

APPEALS AND FINALITY OF ARBITRAL AWARD IN NIGERIA, UK AND USA: ANY CONFLICT?

Omoniyi Bukola Akinola*

Abstract

This paper examines the systemic conflict between appellate court intervention and arbitral finality under Nigeria's Arbitration and Mediation Act (AMA) 2023. While arbitration aims to provide swift, cost-effective, and conclusive dispute resolution, award creditors frequently face protracted delays when award debtors leverage constitutional provisions—specifically the right to a fair hearing under Section 36 of the 1999 Constitution—to initiate disguised appeals through the judicial hierarchy. Adopting a comparative legal approach, this paper evaluates legislative landscapes and judicial attitudes in Nigeria alongside the United Kingdom and the United States. The analysis reveals that while the UK utilizes rigorous leave filters under its Arbitration Act 1996 and the US employs expedited summary proceedings under the Federal Arbitration Act, Nigeria's framework remains vulnerable to tactical post-award litigation and lengthy stays of execution. To resolve this dilemma and preserve commercial confidence, the study recommends establishing specialized high court arbitration divisions, instituting a mandatory "pay-and-play" escrow rule for stays of execution, and enacting constitutional amendments to restrict interlocutory appeals to the Court of Appeal.

Keywords: Appellate practice, Arbitration, Arbitration and Mediation Act, Award, Enforcement of award

* LL.B (Hons), LL.M, PhD, Barrister at Law and Professor of Law, Faculty of Law, Baze University, Abuja. Former Dean of Law, Faculty of Law, Redeemer's University, Ede, Osun State, Nigeria. Former Dean of Law, School of Law, Kampala International University, Uganda and Former Deputy Director of Academics, Nigerian Law School. Email Address: profobakinola77@gmail.com, omoniyi.akinola@bazeuniversity.edu.ng

1.0 INTRODUCTION

Arbitration has globally positioned itself as the premier alternative to adversarial courtroom litigation, driven by promises of speed, cost-effectiveness, confidentiality, and commercial finality. Parties voluntarily submit their disputes to an impartial tribunal, agreeing to be bound by its decision, known as an arbitral award. The expectation is that once an award is rendered, it will be promptly honored and, if necessary, enforced by the courts, allowing the successful party to "reap the fruits" of their victory.¹

However, this ideal scenario often confronts the realities of appellate practice. In Nigeria, as in many jurisdictions, the right to appeal is a fundamental aspect of the judicial system, designed to correct errors of law or fact. While essential for justice, the appellate process can introduce significant delays, costs, and uncertainty, particularly when it concerns the enforcement or setting aside of arbitral awards.² This tension between the finality of arbitration and the right to judicial review creates a dilemma for award creditors, who may find their hard-won victories entangled in protracted litigation, frustrating their ability to benefit from the award.

This scenario introduces a systemic dilemma: the "successful" party is caught in an unwanted cycle of appellate litigation, delaying the actual enjoyment of the award's commercial value. This paper examines the friction between appellate court intervention and the principle of arbitral finality. Adopting a comparative approach, it evaluates the legislative landscape, judicial attitudes, and systemic bottlenecks in

¹ Blackaby N, Partasides C, Redfern A and Hunter M, Redfern and Hunter on International Arbitration (6th edn, Oxford University Press 2015) 2

² Idornigie P, Commercial Arbitration Law and Practice in Nigeria (2nd edn, Law Digest Publishing 2023) 4

Nigeria alongside selected jurisdictions the United Kingdom (UK) and the United States (US) to assess how effectively an award creditor can reap the fruits of an arbitral victory.³

2. CONCEPTUAL CLARIFICATION

To construct a rigorous legal analysis of post-award litigation, it is necessary to clarify the conceptual definitions of arbitration, arbitral awards, and appellate practice as understood in statutory frameworks, judicial pronouncements, and academic literature.

a. Arbitration

Arbitration is a method of resolving civil disputes in which the parties submit their disagreement to an independent third party or tribunal, known as an arbitrator, instead of a judge or court.⁴ The parties voluntarily agree that the arbitrator's decision, referred to as an award, will be final and binding. A defining characteristic of arbitration is the mutual consent of the disputing parties to have their dispute determined by an impartial person or body of their choice. Before the proceedings begin, the parties agree to be bound by the arbitrator's decision, which is reached after a fair hearing where each party is given an opportunity to present its case. In Nigeria, arbitration has increasingly become a preferred mechanism for resolving disputes arising from commercial and corporate transactions. During the drafting of commercial contracts, parties are free to include an arbitration clause, making arbitration the primary means of resolving any disputes that may arise during the performance of the agreement. This growing reliance on arbitration has significantly reduced the need for litigation in many commercial disputes.

³ Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), 1958.

⁴ Black's Law Dictionary (11th ed.)

It involves several unique legal and procedural features that require a proper understanding to ensure its effective operation. Given the expanding role of arbitration within the Nigerian corporate sector, it is essential to appreciate these distinctive characteristics. One of the most fundamental features of arbitration is the arbitration agreement itself. This agreement forms the legal foundation of every valid arbitration proceeding, as it confers jurisdiction and authority on the arbitral tribunal to hear and determine disputes between the parties. Without a valid agreement to arbitrate, the tribunal lacks the legal basis to exercise its powers

b. Arbitral Award

An arbitral award is the final determination of a claim, difference, or issue submitted to the arbitral tribunal. Unlike intermediate procedural directions, a final award disposes of the substantive controversies between the parties, terminating the tribunal's mandate and creating a *res judicata* effect that prevents the parties from re-litigating the same issues⁵. The juridical nature of an arbitral award is unique: it is final and binding on the parties from the date it is rendered, yet it lacks inherent executory force. Once recognized, the arbitral award is merged into a court judgment and can be executed using standard civil enforcement procedures, such as writs of *fieri facias*, garnishee proceedings, or orders of attachment.

2.3 Appellate Practice

Appellate practice refers to the specialized body of procedural rules, statutory guidelines, and substantive laws that govern the review of lower court or tribunal decisions by superior judicial bodies. Within the traditional court hierarchy, appellate review is designed to correct errors of law or fact, thereby ensuring legal consistency and the fair

⁵ Section 55 of the AMA 2023

administration of justice. In the context of arbitration, however, appellate practice operates under highly restrictive parameters. It is an established principle of international arbitration that courts do not possess an inherent appellate jurisdiction to review the merits of an arbitral award.⁶ The jurisdiction of the court in setting-aside proceedings is strictly supervisory and limited to specific, statutory grounds, such as lack of jurisdiction, procedural irregularity, corruption, or a breach of the right to a fair hearing. The procedural dilemma arises when parties, dissatisfied with the outcome of a setting-aside or recognition application at the High Court level, appeal that judicial decision to higher courts, such as the Court of Appeal and the Supreme Court. In these instances, the standard rules of appellate practice include appeals as of right and motions for stays of execution are applied, often leading to prolonged judicial reviews that frustrate the finality of the underlying arbitral award.

3.0 BRIEF OVERVIEW OF HISTORY OF APPELLATE PRACTICE IN RELATION TO ARBITRATION

The development of commercial arbitration in Nigeria is divided into three distinct eras: the pre-colonial indigenous era, the colonial era governed by English law, and the post-independence statutory era. Before the introduction of English common law and statutory frameworks, indigenous Nigerian societies resolved disputes through customary arbitration. This traditional system relied on community elders, chiefs, or trade guilds to adjudicate disputes in a non-adversarial manner. The validity of a customary arbitral award was rooted in the voluntary submission of the disputants to the authority of the elders, a fair hearing conducted according to local customs, and the mutual expectation that the outcome would be final and binding. Customary arbitration focused on restoring communal harmony and

⁶ s 34 of the AMA 2023

social cohesion rather than enforcing technical legal rights. The courts have continuously recognized and enforced customary arbitral awards, provided they satisfy these essential criteria.⁷

The colonial era introduced formal statutory structures. Following the amalgamation of Northern and Southern Nigeria in 1914,⁸ the colonial government enacted the Arbitration Ordinance of 1914. Modeled directly on the English Arbitration Act of 1889, this Ordinance represented the first codified framework for arbitration across the territory. The 1914 Ordinance was subsequently re-enacted as the Arbitration Ordinance Act, appearing in the 1958 edition of the Laws of the Federation of Nigeria and Lagos⁹. While this statute modernized domestic commercial dispute resolution, it was heavily localized and failed to address international commercial arbitration or provide mechanisms for enforcing foreign arbitral awards.

The post-independence era witnessed a legislative shift designed to align Nigeria with global trade patterns. In 1970, Nigeria ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also known as the New York Convention.¹⁰ However, the provisions of the New York Convention were not formally integrated into domestic law until the promulgation of the Arbitration and Conciliation Decree No. 11 of 1988, which was later codified as the Arbitration and Conciliation Act, 1988. The 1988 Act was based on the 1985 United Nations Commission on International Trade Law Model Law, making Nigeria the first country in the West African sub-region to adopt a modern, internationally recognized arbitration regime.

⁷ *Agu v. Ikewibe* (1991) 3 NWLR (Pt. 180) 385.

⁸ Arbitration Ordinance No. 16 of 1914

⁹ Cap. 13, Laws of the Federation of Nigeria and Lagos, 1958.

¹⁰ *Ibid.*

Despite its progressive features, the 1988 Act gradually became outdated. Over the course of three decades, it failed to reflect emerging best practices, particularly regarding third-party funding, emergency arbitrators, and court-ordered interim measures, among others. This legislative gap was addressed on May 26, 2023, when the President assented to the Arbitration and Mediation Act 2023. This statute repealed the 1988 Act and established a comprehensive framework designed to reduce judicial interference, streamline enforcement, and integrate mediation into the statutory alternative dispute resolution ecosystem.

This paper sets out to answer the question of any contemporary issue between the desire of disputants for arbitration and the practice of appellate court interference in arbitration in Nigeria, UK, and USA.

3. LEGAL AND INSTITUTIONAL FRAMEWORK

The resolution of commercial disputes through arbitration in Nigeria, and its interaction with appellate court practices, is governed by a defined network of constitutional provisions, statutory enactments, international treaties, and institutional rules.

i. The Constitution of the Federal Republic of Nigeria

The Constitution of the Federal Republic of Nigeria 1999 is supreme, and all statutory and judicial frameworks must align with its provisions. In the context of arbitration and subsequent appellate practice, three constitutional dimensions are highly relevant: judicial power, the right to a fair hearing, and the right of appeal. Section 6(1) of the Constitution vests the judicial powers of the state in the courts established under the Constitution¹¹. This creates a fundamental tension, as some legal commentators have historically argued that the

¹¹ s 6(1) of the Constitution of the Federal Republic of Nigeria, 1999

binding nature of an arbitral award challenges this exclusive constitutional vesting of judicial power. However, the courts have resolved this by holding that arbitration is a consensual, contractual process that does not usurp judicial power but rather operates as a contractually sanctioned alternative, which requires the court's recognition to achieve full coercive effect.¹²

Section 36 of the Constitution guarantees the fundamental right to a fair hearing in the determination of civil rights and obligations¹³. This constitutional guarantee is non-negotiable and applies to both judicial and quasi-judicial proceedings, including arbitration. Consequently, any arbitral award rendered in breach of the right to a fair hearing is constitutionally vulnerable and must be set aside by the High Court. Finally, Section 241(1)(a) of the Constitution guarantees a litigant the right to appeal to the Court of Appeal as of right against any final decision of the Federal High Court or a State High Court sitting at first instance. This is because an application to set aside or enforce an arbitral award at the High Court is viewed as a fresh, independent action sitting in the court's original jurisdiction; the High Court's ruling on the matter is a final decision. Therefore, any party dissatisfied with the High Court's decision can appeal to the Court of Appeal as of right, without the need for the leave of either court. This constitutional right of appeal cannot be extinguished by ordinary statutes, creating a procedural loophole that recalcitrant award debtors frequently exploit to delay the enforcement of awards.¹⁴

ii. The Arbitration and Mediation Act 2023

The principal statute governing arbitration in Nigeria is the Arbitration

¹² Kano State Urban Development Board v. Fanz Construction Ltd (1990) 4 NWLR (Pt. 142) 1

¹³ s 36(1) of the 1999 Constitution

¹⁴ Magnum Intl Ltd v. Enercon (Nig) Ltd (2020) LPELR-50426 (CA)

and Mediation Act 2023, which applies to domestic, inter-state, and international commercial arbitrations seated within the country. The Act of 2023 introduces several provisions designed to reduce judicial intervention and enhance enforcement efficiency. Section 5(1) of the Act mandates courts to stay judicial proceedings commenced in breach of an arbitration agreement, unless the court finds that the agreement is null, void, inoperative, or incapable of being performed. This represents a significant shift from the repealed Act, which left the decision to stay proceedings to the court's discretion.

Sections 55, 57, and 58 of the 2023 Act govern the post-award phase. Section 55(1) restricts the recourse against an arbitral award solely to an application for setting aside, which must be brought within three months of receiving the award. The grounds for setting aside, enumerated in section 55(3), are exhaustive and procedural, excluding any review of the merits or errors of law made by the tribunal¹⁵. Notably, the Act removes the "misconduct of an arbitrator" as a ground for setting aside, a term that was loosely interpreted under the old Act to facilitate judicial interference. Instead, a party must prove that the award caused or will cause substantial injustice.

Section 57(1) establishes the baseline rule for enforcement: an arbitral award shall, irrespective of the country or state in which it was made, be recognized as binding and enforced upon written application to the court.¹⁶ Section 58 mirrors the grounds for refusing recognition and enforcement found in the New York Convention¹⁷. Additionally, section 56 of the Act introduces the Award Review Tribunal (ART), an optional, party-driven mechanism that allows parties to agree that any challenge to an award be reviewed by a secondary arbitral panel

¹⁵ s 55(3) of the AMA 2023

¹⁶ s 57(1) of the AMA 2023

¹⁷ s 58 of the AMA 2023

before recourse is made to the courts. The ART must render its decision within 60 days of its constitution, and during this period, any enforcement proceedings are stayed. Furthermore, Section 34 of the Act resolves a historical controversy by providing that applicable limitation periods apply to arbitral proceedings, but the period between the commencement of the arbitration and the delivery of the award is excluded from the computation of time for subsequent enforcement actions.¹⁸

iii. The New York Convention

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, commonly known as the New York Convention, is the cornerstone of international commercial arbitration. Nigeria ratified the Convention in 1970, and it is domesticated via Section 60 and the Second Schedule of the Act of 2023. The primary purpose of the New York Convention is to prevent discrimination against foreign arbitral awards, requiring contracting states to recognize and enforce them in accordance with their local procedural rules, subject only to a narrow list of exceptions. Under Article V of the Convention, a court may refuse to recognize or enforce a foreign award only if the respondent provides proof of specific procedural defects such as the incapacity of the parties, an invalid arbitration agreement, lack of proper notice, or if the award has been set aside by a competent authority at the seat of the arbitration. Article VI of the Convention also allows an enforcing court to adjourn its decision on enforcement and require the respondent to provide appropriate security if an application to set aside or suspend the award has been made to a competent authority at the seat of arbitration. This framework establishes a pro-enforcement bias, placing a heavy burden of proof on the party resisting enforcement.

¹⁸ s 34(4) of the AMA 2023.

3.2 Institutional Framework

i. The Regional Centre for International Commercial Arbitration

The Regional Centre for International Commercial Arbitration Lagos (RCICA) was established in Lagos in 1989 under the auspices of the Asian-African Legal Consultative Organization (AALCO), with the hosting agreement ratified by treaty between Nigeria and AALCO in 1999. Governed by domestic legislation via Regional Act No. 39 of 1999, the RCICA operates as an independent, non-profit, international arbitral institution enjoying diplomatic privileges and immunities under Nigerian law¹⁹. The RCICA Arbitration Rules are adopted from the UNCITRAL Arbitration Rules, providing a neutral forum for resolving disputes arising from international trade, commerce, and investment within the Asian-African region. The default appointing authority under the Act of 2023 for international commercial arbitrations seated in Nigeria is the Director of the RCICA, highlighting the institution's statutory integration into the country's legal landscape. The statutory and diplomatic immunity of the RCICA was recently affirmed in the landmark case of *FBN Quest Trustees Limited v. Regional Centre for International Commercial Arbitration*,²⁰ where the Federal High Court dismissed a parallel court action brought against the Centre, ruling that its officials are protected by law when acting within their statutory mandate as a substitute appointing authority.

¹⁹ Regional Centre for International Commercial Arbitration Act, No. 39 of 1999 (now Cap R5, Laws of the Federation of Nigeria, 2004).

²⁰ *FBNQuest Trustees Limited & Anor v. Regional Centre for International Commercial Arbitration (RCICAL) & Anor* (Unreported, Suit No: FHC/L/CS/1651/2024)

ii. The International Chamber of Commerce

The International Chamber of Commerce (ICC), headquartered in Paris, is the world's leading arbitral institution, widely used to administer complex commercial and natural resource arbitrations involving Nigerian parties. Governed by the ICC Rules of Arbitration (with the current version entering into force on January 1, 2021), the ICC Court does not resolve disputes itself but administers proceedings, scrutinizes draft awards to ensure quality and enforceability, and appoints arbitrators when parties fail to agree. ICC awards are highly respected globally, and their enforcement in Nigeria is prosecuted under the Act of 2023 and the New York Convention. A key feature of the ICC Rules is Article 35(6),²¹ which states that by submitting to arbitration under the ICC Rules, the parties undertake to carry out any resulting award without delay and waive their right to any form of recourse, in so far as such waiver can validly be made. However, the efficacy of this waiver under Nigerian law is subject to constitutional limitations regarding public policy and the fundamental right to a fair hearing.

4.0 THE NATURE AND ENFORCEMENT OF ARBITRAL AWARDS IN NIGERIA

In Nigeria, the primary legislation governing arbitration is the Arbitration and Mediation Act 2023. An arbitral award is the final determination of an arbitral tribunal on the merits of a dispute submitted to it by the parties. It derives its authority from the arbitration agreement between the parties and the enabling arbitration law. The Arbitration and Mediation Act, 2023 provides a unified legal framework for the fair and efficient settlement of commercial disputes by arbitration and mediation, and makes applicable the Convention on the recognition and enforcement of foreign arbitral awards (New York

²¹ Art. 35(6) of the ICC Rules of Arbitration (2021).

Convention of 1958) to any award made in Nigeria or in any contracting state arising out of international commercial arbitration. The Act provides a framework for the conduct of arbitral proceedings and, also for the recognition and enforcement of arbitral awards.²²

The general principle is that arbitral awards are final and binding on the parties. This finality is a cornerstone of arbitration, distinguishing it from traditional litigation where judgments are typically subject to multiple layers of appeal. However, the Act also provides limited grounds upon which a court may intervene. Specifically, sections 55 and 57 of the Arbitration and Mediation Act empower the court to set aside an arbitral award under specific circumstances, including:

- i. If a party to the arbitration agreement was under some incapacity.
- ii. If the arbitration agreement is not valid under the applicable law.
- iii. If the applicant was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings.
- iv. If the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration.
- v. If the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or the law.
- vi. If the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made.

²² Arbitration and Mediation Act 2023.

- vii. If the subject-matter of the dispute is not capable of settlement by arbitration under the laws of Nigeria.
- viii. If the award conflicts with the public policy of Nigeria.

These grounds are exhaustive and narrowly construed, reflecting the legislative intent to uphold the finality of arbitral awards and limit judicial interference.²³ For a successful party to "reap the fruits" of an arbitral award, it must often be enforced through the courts. The Niger State High Court (Civil Procedure) Rules 2018, Order 39 Rule 3, provides a procedural mechanism for this, stating that an award made by an Arbitrator or a decision reached at the Multi-Door Courthouse or any other relevant ADR body may, by leave of a Judge, be enforced in the same manner as a judgment or order of Court. The party seeking enforcement must supply the duly authenticated original award or a certified copy, and the original arbitration agreement or a certified copy thereof. Conversely, an application to set aside or remit an award must be made within six weeks after the award has been made and published to the parties, though a Judge may extend this time.²⁴

4.1 An Overview of Appellate Practice in Nigeria

Appellate practice in Nigeria is governed by the Constitution, specific statutes, and rules of court. It provides a mechanism for parties dissatisfied with the decision of a lower court or tribunal to seek review by a higher court. Despite these legislative updates, an award creditor in Nigeria faces structural delays within the judicial system. When an arbitrator issues an award, the award debtor can apply to the Federal High Court or State High Court to have the award set aside. If

²³ *ibid*

²⁴ Alliance Law Firm. (2025). Enforcement of arbitral awards under the provisions of the Arbitration and Mediation Act, 2023 and other extant statutes in Nigeria. Alliance Law Publications. <https://alliancelawfirm.ng/enforcement-of-arbitral-awards-under-the-provisions-of-the-arbitration-and-mediation-act-2023-and-other-extant-statutes-in-nigeria/>

the High Court refuses to set it aside and grants permission to enforce it, that decision is an appealable order.²⁵ Under the Nigerian judicial structure, an appeal lies from the High Court to the Court of Appeal, and ultimately to the Supreme Court of Nigeria.

a. Systemic Docket Congestion: The Court of Appeal and the Supreme Court are heavily burdened with criminal, civil, and highly time-sensitive political/electoral matters. Commercial appeals, including those arising from arbitration enforcement proceedings, are routinely delayed, often taking between five to ten years to advance from the High Court to a final resolution by the Supreme Court. Appellate courts do not typically conduct fresh trials of cases. Their primary duty is to review the proceedings of the court of first instance to determine whether issues presented were properly resolved, whether the correct procedure was followed, reasonable findings of fact were made, and the law was correctly applied. As held in *FRN v. Yabo*²⁶, an appellate court will not allow a different case from the one canvassed at trial to be pursued before it. However, appellate courts are empowered and enjoined to administer justice and equity. In the true dispensation of justice, an appellate court should dispassionately consider the issues raised before it and reflect the same in its orders, as held in *Edo v. FRN*²⁷.

b. Appeals as of Right: By virtue of Section 241 of the 1999 Constitution, parties often possess an appeal as of right on questions of law. Award debtors regularly frame challenges around constitutional fair hearing provisions to secure an automatic right of appeal,

²⁵ Ganiyu, A. (2025). Appellate interference with arbitral awards in Nigeria: Re-examining the concept of disguised appeals. *The Jurist Review*, 14(1), 89–107.

²⁶ (2023) LPELR-60730 (CA)

²⁷ (2015) LPELR-41784(CA).

effectively bypassing statutory restrictions against merit-based reviews.

The appellate jurisdiction of the Court of Appeal is constitutionally conferred by sections 240 and 241 of the Constitution of the Federal Republic of Nigeria, 1999, enabling it to hear and determine appeals from lower courts. This was affirmed in *Anyanwu v. FRN*.²⁸ Similarly, the Supreme Court exercises appellate jurisdiction over decisions of the Court of Appeal.

In essence, the appellate jurisdiction of the Court of Appeal can only be properly invoked by filing a valid notice of appeal containing competent grounds of appeal. This principle was reiterated in *Mobil Producing (Nig) Ltd v. Akpan*²⁹ and *Mobil Producing (Nig) Ltd v. Menim*.³⁰ A defective notice of appeal or incompetent grounds can render an appeal invalid, preventing the appellate court from exercising its jurisdiction.

c. The Problem of Automatic Stays of Execution: While filing an appeal does not automatically stay the execution of a judgment, Nigerian courts frequently grant stays of execution pending appeal upon the applicant showing "substantial special circumstances" or offering a bank guarantee. This practice effectively prevents the award creditor from liquidating or accessing the fruits of the award while the appellate process unfolds over several years.³¹

²⁸ (2023) LPELR-61335(CA)

²⁹ (2024) LPELR-73378(CA)

³⁰ (2024) LPELR-73377(CA)

³¹ *ibid*

4.2 Judicial Attitude and the "Appeal in Disguise" Phenomenon in Nigeria

The efficacy of any arbitration framework depends largely on the attitude of the judiciary. Historically, Nigerian courts fluctuated between an interventionist approach and a pro-arbitration stance.

a. The Legacy of Judicial Interventionism

For many years, the Nigerian courts treated challenges to arbitral awards as traditional civil appeals. In cases like *Taylor Woodrow (Nig.) Ltd v. G.R.A.V*³², the judicial focus frequently drifted into re-evaluating evidence and re-examining the arbitrator's legal conclusions. Litigants exploited the concept of "misconduct" under the old ACA, expanding it to include any perceived misapplication of substantive law by the tribunal. This practice turned the statutory challenge procedure into an "appeal in disguise."

b. The Modern Pro-Arbitration Shift

More recently, the appellate courts have adjusted their approach, emphasizing that a court cannot sit as an appellate court over an arbitral tribunal's decisions on findings of fact or substantive law. In *Metro Line Nig. Ltd v. Dikko*³³ the Supreme Court stated that parties who voluntarily submit their disputes to a private tribunal of their own choice must accept the tribunal's findings, even if those findings are based on an erroneous view of the law or facts.

This shift was reinforced in *Mekatronika Systems Ltd v. Att-Gen of Ondo State*³⁴ where the Court of Appeal reiterated that an award made by an arbitrator is final and binding on the parties... and a court has no

³² [1993] 3 NWLR (Pt. 286) 127

³³ [2004] 16 NWLR (Pt. 899) 308

³⁴ [2012] 2 NWLR (Pt. 1284) 334

jurisdiction to disturb it except within the narrow confines of the statute."³⁵

c. Remaining Hurdles Under the AMA 2023

The AMA 2023 introduced an innovative procedural mechanism designed to curb these delays: the Arbitration Review Tribunal (ART) under Section 56. If parties opt into this mechanism in their agreement, any challenge to an award is first reviewed by a secondary arbitral tribunal (the ART) within fixed statutory timelines. If the ART upholds the award, the High Court can only set it aside under highly restrictive public policy or non-arbitrability grounds.

While the ART mechanism offers a valuable tool to minimize direct court intervention, its practical success remains subject to the appellate courts' interpretation of its constitutionality and its relationship with the constitutional jurisdiction of High Courts to supervise lower or quasi-judicial bodies.

5.0 COMPARATIVE ANALYSIS: SELECTED JURISDICTIONS

To identify potential solutions to the challenges within the Nigerian system, it is useful to examine the legal frameworks and judicial practices of the United Kingdom and the United States.

5.1 The United Kingdom (England and Wales)

The English framework is governed by the Arbitration Act 1996, which strikes a balance between supporting the arbitral process and preserving a degree of judicial oversight on essential questions of English law.

³⁵ *Mekatronika Systems Ltd v. Attorney-General of Ondo State* [2012] 2 NWLR (Pt. 1284) 334.

Section 68 provides that a party can challenge an award based on a "serious irregularity" affecting the tribunal, the proceedings, or the award. The statutory threshold is intentionally high; the applicant must demonstrate not just an irregularity, but that it has caused or will cause "substantial injustice" to the applicant. The English courts consistently reject challenges under section 68 that merely attempt to re-argue the merits of the case.

Section 69 deals with issues of appeal on a question of law. Unlike the UNCITRAL Model Law and Nigeria's AMA 2023, English law explicitly allows an appeal to the High Court on a pure question of English law, unless the parties have agreed to exclude this right (for example, by adopting institutional rules like LCIA (London Court of International Arbitration) or ICC (International Chamber of Commerce) Rules, which contain explicit waiver clauses).

Strict Procedural Filters: To prevent the abuse of Section 69, the Act imposes a rigorous leave mechanism. The applicant must demonstrate that the determination of the question will substantially affect the rights of one or more parties, and that the tribunal's decision was either "obviously wrong" or concerned a question of general public importance where the decision is at least open to serious doubt. Furthermore, Section 69(8) provides that no appeal lies to the Court of Appeal from a decision of the High Court under this section unless the High Court itself grants leave, which is rarely given. This filter prevents challenges from automatically escalating through the appellate chain.³⁶

³⁶ Kean, S. (2016). Is the principle of finality "losing its appeal"? Kluwer Arbitration Blog. <https://legalblogs.wolterskluwer.com/arbitration-blog/is-the-principle-of-finality-losing-its-appeal/>

5.2 The United States of America

The United States enforces a pro-arbitration policy grounded in the Federal Arbitration Act (FAA) 9 U.S.C., as interpreted by a body of federal jurisprudence. Sections 10 and 11 of the FAA provide that the statutory grounds for vacating an arbitral award under the FAA are narrow, limited generally to corruption, fraud, undue means, evident partiality, or misconduct by the arbitrators that prejudices a party's rights. Elimination of Common Law Grounds: For years, US federal circuits recognized certain non-statutory grounds for vacating awards, most notably the doctrine of "manifest disregard of the law." However, the US Supreme Court largely restricted this avenue in *Hall Street Associates, L.L.C. v. Mattel, Inc.*³⁷, ruling that the statutory grounds provided in Sections 10 and 11 of the FAA are exclusive and cannot be expanded by contract or common law interpretation. The "Manifest Disregard" Filter: Where the doctrine survives in a highly restricted form across certain circuits, it requires proving that the arbitrator knew of a clearly defined, governing legal principle yet deliberately chose to ignore it. A simple error in interpreting or applying the law does not suffice. Strict Summary Proceedings: US courts handle applications to confirm or vacate awards through summary proceedings, treating them as motions rather than full-blown civil trials. This approach significantly accelerates the path to enforcement.

5.3 The Dilemma: Appellate Practice and Reaping the Fruits of Arbitral Awards

When the legal frameworks of Nigeria, the UK, and the US are contrasted, the core dilemmas faced by an award creditor in Nigeria become clear: -

³⁷ 552 U.S. 576 (2008)

a. The Tactical Use of Post-Award Litigation: - For an award debtor, challenging an award in Nigerian courts is often a useful commercial tactic. Given inflation rates and currency fluctuations, delaying payment for five to seven years through the appellate process can significantly reduce the real financial burden of the award, turning the delay into a commercial advantage at the expense of the creditor.

b. Constitutional vs. Statutory Rights: - The primary barrier to achieving finality in Nigeria is structural rather than statutory. While the AMA 2023 provides a modern, pro-arbitration framework, it cannot override the appellate rights guaranteed by the 1999 Constitution. As long as a party can frame an issue around a breach of natural justice or fair hearing under Section 36 of the Constitution, they can often secure an appeal through the judicial hierarchy, delaying enforcement regardless of the statutory restrictions in the AMA.

c. The Financial Cost of Enforcement: - The award creditor faces double exposure: first incurring the expenses of the initial arbitration proceedings, and subsequently funding extensive litigation through the High Court, Court of Appeal, and Supreme Court simply to defend the validity of the resulting award.³⁸

6.0 RECOMMENDATIONS AND CONCLUSION

6.1 Recommendations

To improve the enforcement of arbitral awards and preserve Nigeria's standing as an attractive seat for international investment, targeted

³⁸ Travers Smith. (2022). Final orders: Are they final? Analysis of AIC Ltd v Federal Airports Authority of Nigeria [2022] UKSC 16. Travers Smith Knowledge Center. <https://www.traverssmith.com/knowledge/knowledge-container/final-orders-are-they-final/>

reforms are needed across judicial administration, procedural rules, and statutory application.

i. Creation of Specialized Arbitration: - Lists: The Federal and State High Courts should establish dedicated Arbitration Divisions or Commercial Lists led by judges with specialized training in international commercial arbitration. This would ensure that enforcement applications and challenges are handled with greater technical efficiency.

ii. Constitutional Limitations on Appeals: - A targeted constitutional amendment should be considered to make the Court of Appeal the final court of review for interlocutory decisions regarding the enforcement or setting aside of arbitral awards, except where a case raises a novel and substantial question of constitutional law.

iii. The "Pay-and-Play" Rule for Stays of Execution: - High Courts and appellate courts should adopt a strict policy when considering applications for a stay of execution pending an appeal against an award. Courts should routinely require the award debtor to deposit the full value of the award into an interest-bearing escrow account controlled by the court registry or a financial institution, or provide an unconditional bank guarantee as a condition for granting a stay. This requirement would discourage purely dilatory appeals.

iv. Strict Statutory Timelines for Judicial Decisions: - Building on the model used for election petitions, rules of court should establish clear, mandatory timelines for deciding applications to set aside or enforce arbitral awards. For example, a rule could require the High Court to issue its ruling within 90 days of filing, and mandate that any subsequent appeal be heard on an expedited basis

v. Full Enforcement of Cost Sanctions: - Where appellate courts determine that a challenge or appeal against an arbitral award was frivolous or designed solely to delay enforcement, they should consistently exercise their power to award substantial, indemnity-scale costs against the defaulting party and their legal counsel.

7.0 CONCLUSION

The tension between appellate practice and the enforcement of arbitral awards remains a central challenge within Nigeria's commercial dispute resolution framework. While the enactment of the Arbitration and Mediation Act 2023 represents a major statutory step toward a more modern, pro-arbitration environment, the practical reality for award creditors is still complicated by system-wide judicial delays and tactical appellate challenges by award debtors.

By comparing these challenges with the strict leave filters used in the United Kingdom and the summary enforcement procedures utilized in the United States, it is evident that statutory reform alone is insufficient. Resolving the award creditor's dilemma in Nigeria requires active judicial management, stricter conditions for granting stays of execution, and an overall judicial policy that consistently prioritizes arbitral finality over prolonged appellate review. Until these structural changes are implemented, successful parties will continue to face the reality of winning the arbitration but losing the commercial peace.