

Can an Arbitral Award be converted into a Court Judgement?

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Introduction

A distinctive advantage of arbitration is its binding and enforceable award. Unlike other alternative dispute resolution methods such as negotiation, conciliation and mediation, an arbitration proceedings usually results in a binding outcome; the award. Hence, commercial contracting parties often insist on inserting an arbitration clause into their agreements. Moreover, an arbitral award is a final determination of the merits of all the matters between the parties, as decided by the arbitrator. This is in contrast to “Terms of Settlement” (TOS) resulting from out-of-court negotiations which cannot, and do not operate as final and conclusive judgement, until the court adopts makes the executed TOS a judgement of the court

Furthermore, an arbitral award must be enforced exactly as issued by the arbitrator. The court has no jurisdiction to add an element of interest or costs to the award, or otherwise interfere with the arbitrator’s decision.

The above principle was espoused by the Supreme Court of Nigeria in the case of *Pal Gazi Construction Company Limited v. Federal Capital Development Authority* [2001] 10 NWLR (Pt. 722) 539; where the court was asked to resolve the question of whether the Court has jurisdiction to convert an arbitral award into its own judgement.

Facts

The Federal Capital Development Authority (“FCDA”) awarded a contract to Ras Pal Gazi Construction Company Limited (“RPG”) in 1982 for the construction of a Cultural Centre in Abuja. The FCDA terminated the contract in 1989 and RPG sued at the High Court of the Federal Capital Territory, Abuja and claimed as follows:

- (a) a declaration that they are entitled to payment of the value of the work done by them, including materials on site;
- (b) an order restraining the FCDA from ejecting them from the contract construction site until the final determination of the case; and
- (c) an order of the court that FCDA should quantify and assess the value of the work and investment so far made before rewarding the contract to any other person.

Although pleadings were ordered by the High Court, the parties never exchanged pleadings as they both resolved to refer the issues between them to an arbitrator to be jointly appointed by both parties. They sought leave of the court to appoint an arbitrator and report back to the court. The court granted the leave and ordered that the arbitrator should submit his report within 30 days. An arbitrator was appointed and both parties agreed that the arbitrator's award would be binding on them. The arbitrator eventually rendered an award which was filed in the court.

In its final judgement, the trial court declared that the “*the arbitration award is hereby made the judgement of the court*”. The court then went on to add interest to the award sum. Dissatisfied, FCDA appealed to set aside the award and appealed to the Court of Appeal. The Court of Appeal held that the trial court's pronouncement was wrong and substituted it with a judgment recognizing the arbitral award as binding, and struck out the action. RPG was aggrieved and appealed to the Supreme Court.

Decision of the Supreme Court

One of the principal issues canvassed before the Supreme Court was whether or not the lower court had power to make the arbitral award its own judgment. The court dismissed the appeal and held that a court has no jurisdiction to convert an arbitral award into the judgment of the court or to make an additional award of interest where the arbitral tribunal has not made such provision. In other words, the court has no other business with regard to the award except where it is expressly provided in the Arbitration and Conciliation Act. Delivering the lead judgement of the court, Katsina–Alu JSC solemnly pronounced that: “*The only jurisdiction conferred on the court is to give leave to enforce the award as a judgment, unless there is real ground for doubting the validity of the award*”.

In arriving at this decision, the court held that arbitration is an alternative mode of dispute resolution with legal backing. Accordingly, an award on a voluntary reference operates between the parties as a final and conclusive determination upon all matters referred. Parties to a dispute have a choice; they may go to the court and have their dispute determined in accordance with legal procedures, with a judgement rendered. Alternatively, they may choose an arbitrator to settle their disputes with an award rendered at the conclusion.

The court further held that, while an award has binding effect and, upon filing in court, has the force and effect as a judgement of the court; it does not constitute the judgement of the court. On the other hand, “Terms of Settlement” being out-of-court negotiation cannot and do not operate as final and conclusive judgement, until the court adopts makes the executed Terms of the settlement as a judgement of the court.

Comment

The above decision of the Supreme Court is a helpful development in arbitration jurisprudence. This decision provides a clear distinction between an arbitration award and TOS which is reached in an out-of-court negotiation. The former is, by itself, binding; whilst the latter is required to be converted into a court judgement before it becomes binding.

The Court also made it clear that if an award is brought to court for enforcement, the court does not have any jurisdiction to add interest or cost elements which may have escaped the arbitrator's attention. The remedy in such cases will be to remit the matter back to the arbitrator for an additional award.

Lastly, the court observed that where the award of an arbitrator is not challenged, then it has no business in court as it does not require enforcement. The award is deemed to be immediately binding on the parties and should be complied with. This pronouncement is salutary, as it seeks to preserve the sanctity and independence of arbitration as an attractive option for commercial disputes resolution.

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