Enforcement of Foreign Arbitral Awards in Nigeria.

Quo Vadis?

A Paper delivered by
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Outline

• Introduction

• Variety of Methods for Enforcing Foreign Arbitral Awards in Nigeria

• Advantages of the Different Methods

• Challenges Experienced with Enforcement

• Conclusion
Introduction

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  – *Quo Vadis?*
  – Importance of enforcement in the dispute resolution value chain.

  Enforcement of the decision of a court or tribunal is the ultimate target of every dispute resolution effort, be it civil litigation or arbitration.
Introduction (Cont’d)

• Introduction

  – Too many practitioners focus on winning battles without thinking of a strategy for winning the war!

  A judgment or award is of limited utility if it is obtained in a jurisdiction in which the judgment debtor has no assets or in circumstances in which it will not be recognisable or enforceable in the jurisdiction in which the judgment debtor has assets.

  Same applies if it is obtained against a defendant who has no assets and no prospects of acquiring any worth proceeding against!
The enforcement stage is where arbitration and litigation coalesce and is where the arbitrator has to either take off his arbitrator’s cap and don his wig and gown or enlist the services of a litigator.

Arbitral awards are not self-executing and require the involvement of the Courts where voluntary compliance is not forthcoming.

Given that arbitration is a consensual process mutually agreed upon by parties as a means of resolving their disputes, voluntary compliance ought to be the norm and the incidences of enforcement action ought to be the exception rather than the rule.

It is unfortunate that this too often, not the default position of parties and their Counsel!
Variety of Methods of Enforcement

• By an action upon the award under the common law – Alfred C. Toepfer Inc. of New York vs. John Edokpolor (Trading as John Edokpolor & Sons) (1965) 1 All N. L. R. 292.


• By enforcement under section 51 of the Arbitration and Conciliation Act, Cap. A18, Laws of the Federation of Nigeria 2004 (“ACA”) or the Convention on Recognition and Enforcement of Foreign Arbitral Awards 1958 (the New York Convention) as incorporated by section 54 of the ACA.
Variety of Methods of Enforcement (Cont’d)

- **BY AN ACTION UPON THE AWARD UNDER THE COMMON LAW**

- *Alfred C. Toepfer Inc. of New York vs. John Edokpolor (Trading as John Edokpolor & Sons) (1965) 1 All N. L. R. 292.*

- But see *Merrifield Ziegler & Co. v. Liverpool Cotton Association Limited (1911) 105 L.T. 97* referred to in the case, but not followed, which supports the proposition that a foreign award can only be enforceable by action on the award if execution could be levied upon it in the foreign country.
Variety of Methods of Enforcement (Cont’d)

- **BY REGISTRATION UNDER THE FOREIGN JUDGMENT REGISTRATION AND ENFORCEMENT STATUTES**


- **Similarities:**
  - The award must in pursuance of the law in force in the place where it was made, have become enforceable in the same manner as a judgment given by the court in that place. In other words, technically, it is the judgment of the court that will be recognised and enforced and not the award.
Variety of Methods of Enforcement (Cont’d)

• Differences:
  
  – Under the 1922 Ordinance, the period within which a judgment creditor may apply to the High Court in Nigeria to register a judgment on the award is within 12 months of the date of the judgment or such longer period as may be allowed by the Court, whereas under the Act, the period limited is 6 years from the date of the judgment on the award or if appealed against, from the date of the judgment on the appeal.

  – The 1922 Ordinance only applies to judgments on awards obtained in the United Kingdom and in other parts of Her Majesty’s Dominions and Territories under Her protection affording reciprocal treatment to Nigerian judgments, whilst the Act applies to any country in respect of which the Minister of Justice may by order direct that it shall apply on the basis of reciprocity.
Variety of Methods of Enforcement (Cont’d)

• **BY DIRECT ENFORCEMENT - SECTION 51 OF THE ACA OR SECTION 54 (INCORPORATING THE NEW YORK CONVENTION).**

• There is some debate amongst academic writers as to whether the provisions of section 51 of the ACA makes the provisions of section 54 incorporating the New York Convention redundant, as section 51 purports to render all arbitral awards enforceable in Nigeria, irrespective of the country in which they are made.

• The distinction between the two as has been pointed out however, lies in the fact that section 54 fulfils a reciprocity obligation under the New York Convention and is thus important not only in the context of enforcement of foreign awards in Nigeria but the enforcement of Nigerian awards in other signatory states.
Advantages of Choice

• Given the availability of direct enforcement under section 51 or 54 (where applicable of the ACA), one could question why anybody would bother with any other method of enforcing a foreign arbitral award?

• It provides a possible solution to litigants confronted with the much criticised decisions of the Nigerian Supreme Court dealing with the limitation and the accrual of the cause of action in enforcement proceedings.


  – *City Engineering Nig. Limited v. Federal Housing Authority (1997) 9 NWLR Part 520, p. 224*

  – *Tulip (Nig.) Limited , N. T. M. S. A. S. (2011) 4 NWLR, Part 1237, p. 254*
Challenges Experienced with Enforcement & Suggested Solutions

• Attitude

• Lack of understanding

• Consequential delay

• Changing the culture

• Making a case for all litigation involving arbitration to be treated as *sui generis* and fast tracked at all levels of the Judicial process
Conclusion

• Arbitration has come to stay.

• It is the responsibility of the arbitration community to do its utmost to ensure that those who use the service get what they have been promised: swift, fair and efficient resolution of their disputes.

• We must avoid a situation in which litigants end up wondering why they did not just opt for litigation in the first place.
Conclusion

THANK YOU FOR LISTENING