

## **ESTABLISHMENT OF ARBITRATION AS A COURSE IN CRESCENT UNIVERSITY**

**By**

**His Excellency Judge Bola Ajibola**

I think the time has now come for us to establish in our University, particularly in the College of Law the Course of “Arbitration”, because I believe that history will not forgive me if I failed to put it on record the establishment of this Course in Crescent University before it is too late. I happen to be a foremost Chartered Practitioner of Arbitration in Africa and eventually in this matter all over the World.

Historically, my involvement and specialty in Arbitration evolved by mere coincidence and in fact fortuitously. The Client who came to my office initially did not come with Arbitration in mind. The gentleman, Chief Gabriel Akin-Taylor (of blessed memory) was a Contractor well-known in and throughout Nigeria.

He got involved in the construction of a big electrical plant Contracts around Sapele and Benin City with a Company called Niger Dam Authority involving in stretching of cables and power lines. I was detailed as a Solicitor to watch the progress of the work and the matter of installment payment. Subsequently, Niger Dam Authority alleged breach of Contract and seized all the materials of Akin-Taylor Construction Company Limited and disputes ensued.

The disposition of Akin-Taylor was to sue the Company in court straight away. I was instructed by him to consult Chief F. R. A Williams (of blessed memory) to file an action against the Company in Benin City.

Chief F. R. A Williams collected the brief from me and asked for perusal fee of £200. I collected the cash from my Client and I gave it to him. After reading the brief, he verbally informed me that from all his observation in the brief, my Client had no good case; he should therefore find amicable settlement with Niger Dam Authority.

In furry, Chief Akin-Taylor instructed me to collect his brief from Chief F.R.A Williams and hand it over to another Legal Practitioner who is Mr. Gorgeous Cole. Cole also demanded for perusal fee of £200. He perused the file content and also advised that my Client has no good case and we should look for settlement. Resignedly, my Client now asked me about my own view of the matter and quite patiently I told him he had a good case but I also warned him that there is an Arbitration clause in the agreement and that Arbitration will take place in the Chambers of Commerce in Paris France. He urged me to start preparing to go to France and file all the necessary papers.

But first, I went to London to acquaint myself with the Law of Arbitration and there I bought all the necessary books and it was there that I learnt all the necessary procedures to be taken in Paris. When I got to Paris, I was able to put in the claim of my Client and consequently, file the request for Arbitration against Niger Dam Authority.

Niger Dam Authority engaged the services of an old foreign legal Company based in Nigeria ‘IRVIN AND BORNER’. That Chambers detailed one of his members called Okegbenro to handle the matter on their behalf in Paris.

Let me warn here that from my inception interacting with colleagues in Europe, I have learnt deliberately always to be on time and that was the idea that I carried to Paris. The Chamber of Commerce in Paris engaged the services of Sir Robertson Pearson to be our sole Arbitrator and for the first night, he invited all of us to attend a dinner in order to discuss terms of reference as well as applicable Laws. I was promptly there on time; respondent Counsel was also there but late. For about two weeks I presented our case with relevant documents and my Client also gave evidence.

Thereafter, we all left for Nigeria and our Arbitrator also left for the North Britain. The award was soon published which gave us all that we asked for (which was over £250,000) short of only £20 which the Arbitrator said we did not prove even though claimed.

About three months thereafter I received a letter from the Court of Arbitration of the ICC, urging me to write a paper on Arbitration in Africa. I promptly collected all the available materials that I could lay my hands on in Africa and presented it to the Chairman in ICC Court of Arbitration. What followed was a flow of fortune to my side and which enriched my life considerably. I then received a letter appointing me as a Sole Arbitrator in about three cases in Kenya, Uganda and Tanzania. The fee was very good, and in 1974 I went out to the East Africa Countries to handle the cases.

The practice of the ICC Court of Arbitration is to ensure that Awards are properly drafted and in line with the rules of the ICC so correctly that the members of the ICC Court of Arbitration would sit on every Award and approve of it and if there is need for any amendment whatsoever, it would be sent to the Arbitrator for correction.

Happily, the three awards that I gave in those days were approved without any hitch. I sat in Nairobi for about two weeks on the case of Nakufet, which was a cargo Airline that crashed. I was able to deal with the matter effectively. It was at the first time I met Mr. Emos Waku, whose Chambers appeared before me, and one Mr. James from Scotland was my Registrar and Rachael Indirangu was my Secretary. I was proud to be in Nairobi to seat as an Arbitrator, it was quite an enriching status, I still remember staying in Hotel 680 and later on in Hotel Milimani. I was able to travel around during the weekend to see many of the National Park and Tourist attractions where we went to see animals. It was a rich Tourist Centre. I could still remember visiting the park, which was a beautiful experience, whereby human beings were put in a “cage”, a glass house and animals came late in the night to watch us as if we were in the zoo. Large animals and beautiful animals like Buffalos, Antelopes, Lions, Elephants, Monkeys, Rhinoceros and the rest of them were there.

I enjoyed my time in Kenya during this time because I was even able to pick Kenyan language and I was able to speak a bit of it, which is Swahili. I went to Mombasa and stayed at one Hotel called Malainde, but the journey from Nairobi to Mombasa was quite an interesting one because I travelled by train and the train was still being run as it was still in the colonial era. The dresses of all serving in the train were all reminiscent of how the servants in the colonial era used to dress to serve their masters tea and coffee. We passed through many interesting places on our way to Mombasa.

There was a particular park called Tsavo and there we came across a very large herd of elephants, it was quite a remarkable and fascinating experience. I was in the hotel in Mombasa for two nights, but it was all parked full of European tourists generally and other tourists from

other parts of the world. But it was not usual for Africans to stay in such Hotel. One of the workers in the Hotel had the effrontery in confronting me with the question of why I was staying in such an expensive hotel and enquiring whether it was right for non “Muzungu”, meaning “white man” to stay in such an expensive hotel. He was even enquiring whether I was serving somewhere as head of state, which I denied. However, I enjoyed my two days stay there and returned to Nairobi. Before I moved to another station. I was also opportune to visit the National Park which was lighting the heart of Nairobi. The National Park was a very large area of the land reserve for all sorts of animals that were caged there somehow, although they were left at large, but the whole park was still fenced because it was right in the heart of the city. I spent a whole day watching many animals.

I was lucky to observe throughout the day the lifestyle of a lion family and what I observed was quite intriguing. Animals like lions love to stay in a park as a family. You have the Lion, the Lioness and the Cubs. I observed this particular family, there were three cubs. The Lioness was constantly restless, moving up and down and playing with children, the cubs. Later, she wandered all about and was able to kill a Zebra. After killing the Zebra she dragged it into the fold of her family, but at that time the big Lion was already sleeping, then it woke up, he had a little bit of the Zebra and then fell asleep again while the lioness and the younger ones were still busy devouring the Zebra. It gave me an impression that the Lion could be the king of all the beasts; quite frankly it appeared to me that it is somehow a lazy animal, always sleeping, always resting.

After completing my assignment in Kenya, I moved to Dar es Salaam in Tanzania for the next arbitration hearing, which took two days there because the case was not a big one. In Dar es Salaam, I stayed in a nice hotel called Kundunchi Beach. The hearing took place right in one large room in that hotel. One Aisha was my Secretary, while a local chap called John was my Registrar. Everything went smoothly and at the close of the case I moved out from there to the third place of my assignment which was Kampala in Uganda. At the time in question, Idi Amin was still the President of Uganda and coincidentally, I arrived in Kampala on the day the Ugandan Foreign Minister was lynched and declared missing. The chap took his son to a nearby school and he was grabbed there and until today nobody knows what happened to his body.

However, Kampala wasn't a place I wanted to stay for too long and happily after three days of sitting on the arbitration matter that I came for, I returned to Kenya. But before then I was privileged to travel to Lake Victoria, where I saw the source of the River Nile and I was excited to be in such a place. On my return from Kampala, I stayed in Nairobi for a while in order to read through all my papers and draft all my Awards. This time, I stayed in Pan Afrique and later I went to stay in a very quiet hotel called Hotel Milimani. After I had concluded the drafts of all these awards, I then flew back to Lagos. Later, I proceeded to other places like Ethiopia and Namibia for Arbitration.

From this time on, my assignment or engagement on Arbitration started to flourish. I was being invited to ICC Court of Arbitration for so many Arbitration matters. I became involved in many Arbitration cases with highly experienced arbitrators in Europe being part of so many of these Arbitration tribunals. During this time, I joined many organizations connected with Arbitration. As a member of the International Bar Association, I joined the arbitration group and became very active with gentleman called Gordon James. I also got involved in Arbitration organization based in London, that is the Chartered Institute of Arbitrators and in no time because of my heavy

practice in Arbitration I was also made a Fellow of the Chartered Institute of Arbitrators. I joined American Association of Arbitrators and in Nigeria, around 1974 I set up our own Arbitration body called Nigerian Association of Arbitrators, which is still functioning till today, as the Nigerian Institute of Chartered Arbitrators (NICArb). During this period, I received so many Arbitration cases, which were, matters concerning the IATA (International Arbitration and International Air Transport Association) matters. I was covering the entire group two corridors as it used to be called and I found myself travelling through many places to many places in Africa and Europe on Arbitration matters connected with Airlines. In no time my expertise was even recognized in Nigeria where I got involved in many local Arbitration matters. One involved NMTS in those days, and which Chief Williams handled the matter for the transport company. Apart from making myself conversant with latest development, I was very active writing papers in Europe and at times in U.S.A on Arbitration topics.

I attended so many conferences on Arbitration all over the world and got involved in many courses in Arbitration. In fact, there was a time that I organized for the IICC Court of Arbitration to hold one of its courses in Lagos, which was well attended. My interest and understanding or knowledge became much known not only in Nigeria but also all over Africa, and I became recognized as one of the topmost experts in Arbitration in Africa.

I was invited as a member of the Board of the London Court of International Arbitration, which I am still a member today. Thereafter, the world engaged me in Arbitration with Arbitration Giants like **ELIHU LAUTERPART, ATHUR WATTS AND STEVE SWEBEL** which invariably put me in the realm of International Law and International Court of Justice.

Thursday May 23, 2018