Arbitration and The Enforcement of Arbitral Awards in Nigeria: Examining The Impact of Judicial Intervention Under The Statute And Islamic Law

By

Agbaovwe Emmanuel Oturuhoyi,[*] Juliet Orie Rex- Chikezie[**] and Yahaya Ibrahim Abikan[***]

Abstract

Arbitration has emerged as a preferred method of dispute resolution in Nigeria due to its efficiency, cost-effectiveness, and confidentiality. It provides an alternative to the often lengthy and expensive litigation process. However, despite its advantages, arbitration in Nigeria is not without challenges, particularly concerning the enforcement of arbitral awards. This paper; using the Doctrinal research methodology, examines the enforcement of arbitral awards in Nigeria and the impact of judicial intervention. It explores the legal framework governing arbitration, the enforcement process, and the extent to which Nigerian courts influence and impact arbitration proceedings. It went further by comparing Nigeria's arbitration landscape with that of other jurisdictions in a comparative analysis, the article seeks to highlight the challenges and therefrom propose reforms that could further encourage and strengthen arbitration practice in Nigeria.

Keyword: Arbitration, Islamic Arbitration Rules, Judicial Intervention, Arbitral Awards, Enforcement, Islamic Finance.

1.0 INTRODUCTION

Arbitration is one of the various methods of dispute resolution and undoubtedly the most popular, it is often defined as the reference of a dispute or difference between not less than two parties for determination, after hearing both side in the judicial manner, by a person or persons other than a court of competent jurisdiction.[1] It is also a voluntary method of alternative dispute resolution which is applied to domestic and international contracts and is founded on the present future agreement of the parties to submit any dispute between them to arbitration and parties retain control of the process but not the outcome.[2]

Arbitration in Nigeria could be mandatory or consensual. Mandatory arbitration is for instance provided for under the *Trade Dispute A*ct[3] whereby industrial dispute are required to be referred to the Industrial Arbitration Panel before the National Industrial Court may have

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[*]Agbaovwe Emmanuel, Oturuhoyi PhD, A Legal Practitioner, Notary Public and a Lecturer in the Business Law Department, Faculty of Law, Osun State University, Ifetedo, Osun State. Nigeria. 08034086492, 08026876981, oturuhoyiae@gmail.com..

[**] Juliet Orie Rex- Chikezie, MBA, LLM, PhD, Abia State Judiciary, 08036016839, 08023570889, jrexchikezie@gmail.com

[***] Yahaya Ibrahim Abikan PhD. Senior lecturer and Ag. HOD, Department of Islamic and Customary Law, Bola Ajibola College of Law, Crescent University, Abeokuta, Ogun State Nigeria. 08033911239. abikanibrahim@gmail.com.

[1] Lord Simonds, Halsbury's Laws of England 3RD Edition. Butterworths Publishers. 2024, Volume 27, 2 Para 2.

[2] OT Umahi, and CT Nwano ; 'Procedural Aspect of Arbitration in Nigeria', 2024. Retrieved from Https://Nigerianlawguru.Com/Wp-Content/Uploads/2024/09/Procedural-Aspect-Of-Arbitration-In-Nigeria.Pdf, Accessed 15th April, 2025.

[3] Cap. T18, Laws of the Federation of Nigeria. 2004.

jurisdiction. Consensual arbitration on the other hand arises where the parties to certain transactions drew up an arbitration agreement or included an arbitration clause in their contract to resolve any dispute which may arise therefrom.

The Arabic term *Tahkim* is derived from the word *hakkama*, meaning "to appoint someone as a judge or arbitrator"[4]. It refers to an agreement between disputing parties to submit their dispute to a mutually accepted third party whose decision will be binding upon them. In Islamic jurisprudence, arbitration serves as an alternative to judicial litigation (*Qada*), especially where parties voluntarily choose an arbitrator to decide their dispute according to Islamic principles.[5] Arbitration is strongly encouraged in Islam rather than court litigation. It is a recognized and legitimate means of dispute resolution that has been practiced since the time of the Prophet Muhammad (Peace be Upon Him).

In all, the process of Arbitration is one in which disputing parties voluntarily opt to present their grievances before one or more impartial arbitrators, whose binding decisions serve as final decisions in the resolution of a dispute. The essence of arbitration lies in its departure from the formalities often associated with traditional litigation and all the technicalities intricately interwoven therein, thereby offering a more flexible, expedient, and confidential avenue for a mutually benefiting conflict resolution.

The purpose of arbitration extends far beyond mere conflict resolution; it embodies a multifaceted approach aimed at fostering efficiency, fairness, and impartiality in the resolution of disputes outside the traditional court system. Delving deeper into its objectives unravels a tapestry of principles that underpin its significance in the realm of alternative dispute resolution.[6]

The legal framework on arbitration in Nigeria is primarily governed by statutory provisions, both foreign and local. They include:

2.0 Principles and Legal Frameworks of Arbitration under Statute and Islamic Law.

2.1 *Arbitration and Mediation Act*, 2023

The *Arbitration and Mediation Act* 2023 represents a significant modernization of Nigeria's dispute resolution landscape. It replaces the previous *Arbitration and Conciliation Act* 2004,[7] bringing Nigerian arbitration practices in line with international standards, particularly the *UNCITRAL* Model Law. It aims to enhance the efficiency, transparency, and enforceability of arbitral award. It emphasized particularly on Party Autonomy, Improved Enforcement, Mediation Inclusion, among others. The *Act* made novel provisions by introducing provisions for emergency arbitrators,[8] addressing third-party funding,[9] and giving clear guidance on

[4] Majallah al – Ahkam al –'Adliyyah, Articles 1790 – 1851
[5] *ibid*.
[6]. C Egemonye. The role of arbitration in resolving disputes in Nigeria. https://www.rf-arbitration.com/publications/blog/what-is-the-purpose-of-arbitration-a-comprehensive-guide, Accessed 17th April, 2025.
[7] *Section* 90 of the *Arbitration and Mediation Act*, 2023.
[8] *ibid s*16, .
[9] *ibid s*62, .

interim measures,[10] clarifying the position of the courts in relation to arbitration, making the courts more supportive of the arbitration process and so on.

2.2 The *Qur'an*

The *Qur'an* encourages the settlement of disputes through arbitration and reconciliation. This is clear from the words of Allah thus, "if you fear a breach between them, appoint an arbitrator from his family and an arbitrator from her family; if they wish for peace, Allah will cause their reconciliation".[11]

This verse demonstrates the legitimacy of arbitration, particularly in family disputes. It is human nature that some squabbles and misunderstanding may arise in the family. Therefore, members of the family have been advised to arbitrate between the couples with a view to achieving peace.[12] Islam discourages as much as possible, taking of family disputes to the courts of law. That is way the above verse says that if there is a dispute between the wife and the husband, arbiters or arbitrators, one from each side, should be appointed to resolve it.[13]

In another verse, the Qur'an says: 'And if two parties or groups among the believers fall fighting, then, make peace between them both'. Also is the same chapter, Allah says: 'So, make reconciliation between your brothers and fear Allah'[14]. These verses emphasis peaceful settlement of conflicts with the possible use of arbitration and reconciliation approaches.

2.3 The Sunnah

The Prophet Muhammad (Peace be Upon Him) frequently acted as an arbitrator among disputing parties. A famous example occurred before his prophethood when the tribes of Makkah disagreed over who should place the Black Stone (*Hajar Al-Aswad*) during the rebuilding of the *Ka'bah*. Prophet Muhammad was chosen to arbitrate and resolve the matter. He indeed resolved the dispute by placing the stone on a cloth and allowing representatives of all tribes to participate in lifting it.[15]

Equally, When Muslims in Madina decided to travel to Makkah to perform pilgrimage in the sixth years of *Hijrah*, the Prophet went with a large number of Muslims to Makkah in order to perform pilgrimage. They were intercepted and prevented by Quraysh from reaching Makkah. The Prophet had to camp with his men in a place called Hudaibiya near Makkah. The Prophet arbitrated and mediated between the two parties which led to the signing of the treaty and the differences were amicably settled between them[16]. Apart from these incidents, numerous traditions indicate that the Prophet approved the use of arbitration in resolving disputes among Muslims.

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[10] *Section* 19, *Ibid*.
[11] Qur'an, 4:35.
[12] Abdul Rahman I. Doi, *Shariah, The Islamic Law*, (Ta-ha Publication, United Kingdom) 1990, 130
[13] See also Qur'an, 4:65 Where Muslims are enjoined to refer dispute to Allah and His Massager, which scholars extend to mutually agreed judges/arbitrators. See also Quran 4:59,
[14] Qur'an 49 : 9 – 10
[15] Muhammad Riddoh, *Muhammadu Rasulullahi*, (Darul Kaitabil Ilmiyyah, Beirut – Lebanon, 1988) 51 - 53
[16] Bashir Sambo, etal *Islamic Religious Knowledge for West African Schools Certificate, Book 3*)Islamic Publications Bureau, Lagos) 33. see also MOA Abdul. The Prophet of Islam: His Life, Sayings and Deeds: Book 2, (Islamic Publications Bureau, Lagos) 25

2.4 *Ijima* (Consensus of Jurists)

The majority of classical/jurists from the Hanafi, Maliki, Shafi'i and Hanbali Schools recognize the legality of arbitration and also agree that it is lawful and desirable where it promotes justice and social harmony. Their consensus was based on the Qur'anic encouragement of reconciliation and the practical need for a flexible method of dispute settlement.[17]

2.5 The *UNCITRAL* Model Law on International Commercial Arbitration, 1985

UNCITRAL[18]. This was approved because of the need to liberalize international commercial arbitration by limiting the role of national courts and allowing the parties freedom to choose how their disputes should be determined. It was also to provide for a framework for the conduct of international commercial arbitrations, so that in the event of the parties being unable to agree on procedural matters, the arbitration would nevertheless be capable of being completed. The law has the advantage that it is not a treaty but a model law which may be adopted with necessary amendments to suit each jurisdiction. Furthermore, it is limited to disputes relating to international contracts leaving each nation which adopts it still free to make provisions for purely domestic arbitration.[19] Lastly, it was made to aid the enforceability of awards and to clarify certain controversial practical issues.[20]

2.5.1 The *UNCITRAL Arbitration Rules*, 2021

The major arbitral institutions have their own rules which are up-to-date for resolution of disputes contained in the *UNCITRAL Arbitration Rules*. The *UNCITRAL Arbitration Rules* are the same with the rules that are contained in the First Schedule to the *Arbitration and Conciliation Act*, which are for both domestic and international arbitrations.[21]

2.6 The New York Convention, 1958

Nigeria is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). This is crucial for the enforcement of international arbitral awards within Nigeria. The *Arbitration and Mediation Act* 2023, has provisions to domesticate the New York Convention.[22]

In essence, while the *Arbitration and Mediation Act* 2023 is the cornerstone, Nigeria's arbitration framework is also influenced by international conventions, judicial decisions, and the rules of arbitral institutions.[23]

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[17] . Wahbah al – Zuhayli, *Al-Fiqh al-Islam wa Adillatuhu*, (Islamic Jurisprudence and its proofs), (6) Damascus; Dar al-Fikr, 1985.
[18] *United Nations Commission on International Trade Law*.
[19] *Article* 1(1) of the *UNCITRAL* Model Law on International Commercial Arbitration, 1985
[20] *Ibid Article* 1(3), .
[21] E Onyema *Introduction in International Arbitration* (Workbook of Chartered Institute of Arbitrators 2014) 74.
[22] Lord Simonds, Chambers Dictionary https://practiceguides.chambers.com/practice-guides/international-arbitration-2024/nigeria/trends-and-developments, Accessed 17th April, 2025.
[23] *ibid*.

3.0 ARBITRATION PROCESS IN NIGERIA

The arbitration process in Nigeria is primarily governed by the *Arbitration and Mediation Act* 2023, and it generally follows these key steps:

3.1 Arbitration Agreement

The foundation of arbitration is a written agreement between the parties to submit their disputes to arbitration. This agreement can be a clause within a contract or a separate agreement. This agreement outlines the terms of the arbitration, potentially including the choice of arbitrators, rules, and venue.[24]

3.2 Notice of Arbitration

One party initiates the arbitration process by sending a notice of arbitration to the other party. This notice typically includes details of the dispute and a demand for arbitration.

3.3 Appointment of Arbitrators

The parties appoint arbitrators, either as agreed in the arbitration agreement or through a process outlined in the applicable arbitration rules. In cases of disagreement, courts may assist in the appointment. Emergency arbitrators can be appointed for urgent interim measures.[25]

3.4 Exchange of Pleadings and Documents

The parties exchange written submissions (pleadings) outlining their respective claims and defenses. Relevant documents are also exchanged.

3.5 Hearings

If necessary, the arbitrators conduct hearings where parties present evidence and arguments. Parties may be represented by legal counsel.[26]

3.6 Arbitral Award:

The arbitrators issue a written award, which is a binding decision resolving the dispute. The award may include monetary compensation, specific performance, or other remedies.[27]

4.0 CONDITIONS FOR VALID ARBITRATION UNDER ISLAMIC LAW

For an award to be valid and enforceable under Islamic law, the following must exist.

1. Capacity of Parties: Both parties to the arbitration matter must have legal capacity (*ahaliyya*) that is, they must be adult and sane. No arbitration for minors and insane persons.[28]

2. Consent: This is known as *Taradi*. Arbitration is contractual and it is strictly based on the consent of the contracting parties. There must be a meeting of the mind, consensus ad-idem.

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[24] *Section* 2 of *Arbitration and Mediation Act*, 2023
[25] *Ibid s*7
[26] *Ibid s*43
[27] *Ibid s*47
[28] Al – Kasani, *Bada'i al-Sana'i fi Tartib al-Sharai*, (Beirut; Dar al – Kitub al – Ilmiyyah, 1986)

The Arbitration/Contract is based on the mutual consent of the contracting parties[29] possessing legal capacity and such consent must have been given freely.[30] The presence of sufficient witnesses is required by some jurists for the validity of arbitration and arbitral award in line with Qur'anic provision.[31] The mode of the contract must be in conformity with the Shariah.[32]

3. Subject Matter must be *mali*– financial/ disposable rights. It must be ascertained and known by the parties to the extent that the knowledge is sufficient to avoid future disputes.

4. The objective and consideration of the arbitration must be recognized by the Shariah.

5. The subject matter of arbitration must not be contrary to the spirit of the Shariah.

6. The subject matter of arbitration must not be contrary to the provisions /spirit of the Shariah directly or indirectly.

7. The subject matter of arbitration must contain/involve any element of fraud, misrepresentation, illegality undue influence etc.[33]

It is pertinent to point out that matter involving *hudud* punishments, such as *zina* (adultery and fornication), *qasaph* (false accusation), *hirabah* (armed robbery) and others, public right of Allah, criminal offences affecting public order and inheritance shares fixed by the Qur'an are generally not subject to arbitration because they are right of Allah". *Huq uq*, Allah.

4.1 Arbitrator Qualifications

He must be a Muslim, adult, sane, just 'adl, and knowledgeable in Islamic law and field relevant to the dispute. Some scholars allow non-Muslim arbitrator if both parties are non-Muslims. He must possess integrity and good character, wisdom, impartiality and ability to decide disputes fairly. Some jurists required the same qualifications as a judge.[34]

4.1.1 Procedure:

Both parties must be heard. Arbitrators should not be biased and must possess quality of justice '*adl* as required by Shariah. A party should not be favoured against the other party. The plaintiff or claimant has the right of opportunity to present his claim, the defendant also has inalienable right to defend himself while both parties have right to engage counsel to represent them to present their cases to the court.[35] Award must be based on Shariah unless parties validly agree on *urf* custom not contradicting the provisions/spirit of Shariah.

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[29] Aminu Muhammad Gurin, *An Introduction to Islamic Family Law*, (Malthouse Press Limited, Lagos, 2014) 35 – 36

[30] See Qur'an 4 : 29

[31] Qur'an 2 : 282

[32] Yahaya Yunusa Bambale, *Islamic Law of Commercial and Industrial Transactions*, (Malthrum Press Limited, Lagos 2007) 35 – 36

[33] *Ibid*.

[34] Ghulam Muraza Azad, J*udicial System of Islam*, (Kitab Bhavan, New Delhi, 1994) 12. See also Al – Mawardi, *Al – Ahkam al – Sultaniyyah*, (Cairo, Dar al – Hadith, 2006)

[35] Mansur Ibrahim Sa'id, *Islamic Criminal Law and Practice in Nigeria*, (Usmanu Danfodiyo University Printing Press, Sokoto, 2011) 111 – 113.

4.1.2 Nature and Binding Effect of Arbitral Award

Once an award is issued, the award, hukm al-hakam has the same effect as a court judgment if parties had agreed to be bound. Classical fiqh book like Al – Mughni by Ibn Qudamah treats it as binding.[36]

The arbitrator's decision cannot be appealed except on the ground of fraud, lack or excess of jurisdiction, or contradiction with clear Shariah text.[37]

5.0 ENFORCEMENT OF ARBITRAL AWARDS IN NIGERIA

An arbitral award is the end result of an arbitral proceeding, just as a final judgment is to litigation. Arbitral awards in Nigeria play a critical role in the resolution of disputes outside of traditional court proceedings, the enforcement of arbitral awards in Nigeria is governed by the *Act*, which provides a legal framework for recognizing and enforcing these awards. This ensures that parties involved in arbitration can have confidence in the finality and enforceability of the awards they receive.[38]

It is worthy of note that recognition of arbitral awards and enforcement of arbitral awards are not the same thing. This is because an award may be recognized without being enforced. However, an award enforced is an award recognized.

Subject to the provision of *section* 57 of the *Act*,[39] an arbitral award shall be recognized as binding and upon application in writing to the court, be enforced by the court.[40] Irrespective of the country or state in which it is made, be recognized as binding, and on an application in writing to the Court, be enforced by the Court. A party who intends to rely on an award or applies for its enforcement shall provide the following requirements;

a. The original award or certified copy of it;
b. The original arbitration agreement or a certified copy of it;
c. Where the award or arbitration agreement was not made in English Language, a certified translation of it in English language.[41]

Similarly, an award may, by leave of the court or a judge, be enforced in the same manner as a judgment or order to the same effect.[42] It should be noted however that any of the parties to an arbitration agreement may request the court to refuse recognition or enforcement of the award.[43]

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[36] Ibn Qudamah, Al – Mughni, Maktabat al – Qahirah Cairo, 1968 – 68
[37] ibid.
[38] PN Akpu, and OF Chukwuma, 'Examination of Arbitral Awards and their Enforcement Under the *Arbitration and Mediation Act*, 2023', Osuya & Osuya Law Firm, 2024. Available at https://osuyalawfirm.com.ng/wp-content/uploads/2024/04/OSUYA-AN-EXAMINATION-OF-ARBITRAL_240422_144427.pdf, Accessed 19th April, 2025.
[39] *Arbitration and Mediation Act*, 2023.
[40] *Ibid s*57(1)
[41] *Ibid s*57(2)
[42] *Ibid s*57(3)
[43] *Ibid s*58(1)

6.0 ENFORCEMENT OF ARBITRAL AWARD UNDER ISLAMIC LAW

Enforcement (*tanfidh al-ukm*) refers to the process by which the arbitral award is implemented and complied with by the parties.

6.1. Voluntary Compliance

Islam encourages believers to honour their agreements and obligation. Quran says: "O you who believe, fulfill all your obligations"[44]. Therefore, parties are expected to obey and comply with the arbitral award voluntarily.

6.2 Judicial Enforcement

Where a party refuses to comply with the decisions of the arbitrator or contents of the award, the award may be submitted to an Islamic court and the court may do the following:

(i) examine the validity of the arbitration agreement and process;
(ii) examine whether proper procedure was followed;
(iii) confirm whether the award does not violate *Shariah*;
(iv) order enforcement of the award.

Once confirmed, the award may be executed like a judicial judgment.[46]

6.3 Conditions for Enforcement of Award in Islamic Law

An arbitral award will generally be enforced when:

a. A valid arbitration agreement exists.
b. Arbitrator was qualified under Islamic Law
c. The arbitrator acted within the scope of authority
d. Due process was followed/observed
e. The award does not contradict the Qur'an, Sunnah, or public policy (Nizam' Amm)
f. The dispute concerns an arbitral matter.[47]

6.4 Grounds for Refusal of Enforcement in Islamic Law

An Islamic Court may refuse enforcement on the following grounds, *viz*: violation of *Shariah*, excess of jurisdiction, procedure irregularity, fraud or corruption and incapacity of a party or parties.

i. Violation of *Shariah*: Any award which violates the provisions or the spirit of *Shariah* such as the one which permits *riba* (interest), gambling (Maysir), fraud and unlawful transactions will not be enforced and the court may even proceed to set aside such award.[48]
ii. Excess of jurisdiction: Where the arbitrator exceeds the authority granted him by the parties in the arbitral agreement, such award will not be enforced by the court.[49]
iii. Procedural irregularity. The Islamic Court will refuse to enforce award where it is shown that one party was denied a fair hearing.[51]

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[44] Qur'an 5 : 1

[46] Abdul Hamid El Ahdab, *Arbitration with the Arab Countries*, 1998, 68.

[47] *Article* 11, *Arbitration Law Royal Decree* M/34, 2012, Saudi Arabia. Under this law, award must not contradict Sharia; also *Article* 53 of *Federal Arbitration Law* No. 6 of 2018, UAE; also, *Arbitration Act* 2005 Kuala Lumpur Regional Centre for Arbitration, now AIAC, *Malaysia and Arbitration Law* 27 of 1994, Egypt which permits court to ensure conformity with public policy before ordering enforcement of award.

[48] *ibid*.

[49] *ibid*.

[51] Mansur Ibrahim Sa'id (n 17) 111 - 113

iv. Fraud or corruption: If the award was obtained through dishonesty or bribery, the court will not enforce it.
v. Incapacity of parties: Where a party lacks legal competence to enter the arbitration agreement perhaps by being a minor or insane, the court will not enforce the award.

7.0 JUDICIAL INTERVENTION IN ARBITRATION

Judicial intervention in arbitration in Nigeria is governed primarily by the *Arbitration and Mediation Act* 2023 (AMA), which repealed the *Arbitration and Conciliation Act* of 1988.[52] The underlying principle of the *Arbitration and Mediation Act*, 2023, consistent with international best practices, is to limit judicial intervention in arbitral proceedings to uphold the autonomy of the arbitral process and the parties' agreement.[53]

However, the courts still play a supportive role at certain stages and in specific circumstances. These interventions can be broadly categorized as follows:

7.1 Referral to Arbitration and Stay of Proceedings

One of the primary instances of judicial engagement occurs at the initial stage when a party brings an action before a court concerning a matter subject to an arbitration agreement. *Section* 5 of the *Arbitration and Mediation Act*, 2023 mandates the court to stay such proceedings and direct the parties to arbitration, unless the court determines that the arbitration agreement is null and void, inoperative, or incapable of being performed.[54] This provision strengthens the binding effect of arbitration agreements, moving away from the discretionary power previously held by the courts.[55]

7.2 Appointment of Arbitrators

The courts also play a supportive role in the constitution of the arbitral tribunal. According to *Section* 7 of the *Arbitration and Mediation Act*, 2023, intervention can occur if the parties fail to agree on an appointment procedure, if the agreed procedure does not lead to an appointment, or if a party fails to act according to the agreed procedure. While challenges to arbitrators are primarily addressed through agreed procedures or institutional rules, the court may become involved if these mechanisms fail to provide a resolution satisfactory to a party.[56]

7.3 Interim Measures

Section 19 of the *Arbitration and Mediation Act*, 2023 empowers the court to grant interim measures of protection in relation to arbitration proceedings, irrespective of whether the seat of arbitration is in Nigeria or elsewhere.[57] These measures can include orders for the preservation of assets or security for costs. Notably, seeking urgent interim measures from the court does not constitute a waiver of the arbitration agreement. Additionally, under *Section* 27

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[52] *Section* 90, *Ibid*.
[53] PN Akpu, and OF Chukwuma, National Policy on Arbitration and Alternative Dispute Resolution (ADR) <http://blog.nigerianbar.org.ng.>accessed 17th March, 2025.
[54] *Section* 5 of *Arbitration and Mediation Act*, 2023.
[55] *ibid.*
[56] F Ajogwu, *Commercial Arbitration in Nigeria*, 3rd Edn, CCLD, 2022, 132–134. Retrieved from https://fabianajogwu.com/fb_books/commercial-arbitration-in-nigeria-law-practice-third-edition/ Accessed 25th April, 2025.
[57]ibid s19

of the *Arbitration and Mediation Ac*t, 2023, the court can assist the arbitral tribunal or a party (with the tribunal's approval) in taking evidence, utilizing its powers to compel witness attendance and document production.[58]

7.4 Assistance in taking Evidence

The arbitral tribunal or a party with the approval of the tribunal may request the court's assistance in taking evidence[59]. The court can use its powers to compel the attendance of witnesses and the production of documents.[60]

7.5 Setting Aside an Arbitral Award

Despite the emphasis on arbitral autonomy, the court retains the power to set aside an arbitral award under specific circumstances outlined in *Section* 55 of the *Arbitration and Mediation Act*, 2023. These grounds, which align with *Article* 34 of the *UNCITRAL* Model Law and the New York Convention,[61] include incapacity of a party, invalidity of the arbitration agreement, lack of proper notice, the award falling outside the scope of the submission, improper composition of the tribunal or procedure, non-arbitrability of the subject matter under Nigerian law, and conflict with Nigerian public policy. Crucially, the *Arbitration and Mediation Act*, 2023 explicitly excludes errors of fact or law on the face of the award as valid grounds for setting it aside.[62]

7.6 Recognition and Enforcement of Arbitral Awards

The judiciary is instrumental in the recognition and enforcement of both domestic and foreign arbitral awards. *Section* 57 and subsequent sections of the *Arbitration and Mediation Act*, 2023 detailed the procedures and limited grounds for refusing recognition or enforcement, which are largely consistent with the New York Convention. The introduction of the Award Review Tribunal (ART) under the *Arbitration and Mediation Act*, 2023, when opted for by the parties, provides an additional layer of review before judicial intervention to set aside an award, further underscoring the legislative intent to minimize direct court involvement in the merits of arbitral decisions.[63]

8.0 CHALLENGES IN THE ENFORCEMENT OF ARBITRAL AWARDS

Nigeria has made significant strides in establishing a robust legal framework for arbitration, primarily through the *Arbitration and Mediation Act* (*AMA*) 2023. Despite this progressive framework, several challenges persist in the enforcement of arbitral awards in Nigeria, both domestic and foreign:

8.1 Judicial Intervention and Delay

Nigerian courts sometimes interfere excessively in arbitration proceedings and enforcement, contrary to the principle of minimal court interference. Judges may entertain challenges or objections to awards beyond the limits set by the *Arbitration and Mediation Act* 2023.

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[58] ibid s27, .
[59] ibid.
[60] G Nwakoby, 'The Courts and the Arbitral Process in Nigeria,' 2004, *Unizik Law Journal*, Vol. 4, No. 1, 20
[61] *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (New York), 1958.
[62] PN Akpu, and OF, Chukwuma, *Id* @ 27.
[63] *Arbitration and Mediation Act*, 2023 ss56 and 57

Prolonged litigation over enforcement leads to delays, undermining the efficiency arbitration promises. For instance, enforcement is typically sought by way of a motion at the High Court, supported by affidavits and exhibits (the arbitral award and the arbitration agreement). This process, while standard, can still be subject to the general delays inherent in court proceedings.

8.2 Corruption and Judicial Discretion

Allegations of corruption within the judiciary can hinder impartial enforcement. Courts have wide discretionary powers, and this can result in inconsistent rulings or bias in favor of domestic parties. The *Act* limits the grounds on which a court can refuse to enforce an award, aligning more closely with the principles of the *New York Convention*.[64] For instance, it mandates courts to stay proceedings commenced in breach of an arbitration agreement, removing previous discretionary powers.

8.3 Public Policy Exception

Courts can refuse enforcement on the basis that an award violates Nigerian "public policy." This ground is vague and has been applied broadly in some cases, causing uncertainty and discouraging foreign parties.

8.4 Lack of Awareness and Expertise

Some judges and legal practitioners lack sufficient training or experience in arbitration law, leading to misapplication of principles and reluctance to enforce awards.

8.5 Inconsistent Application of International Conventions

Although Nigeria is a signatory to the *New York Convention*, its implementation has sometimes been inconsistent. Courts may apply local procedural rules that frustrate the *Convention's* objectives of swift recognition and enforcement.

8.6 Bureaucracy and Institutional Challenges

The enforcement process is often burdened by bureaucracy and inefficiencies within the judicial system. Case management issues and poor infrastructure also contribute to delays.

8.7 Challenges with Domestic Awards

Domestic arbitral awards may face more stringent scrutiny compared to international awards. Issues like improper constitution of the tribunal, failure to comply with procedural rules, or allegations of misconduct often arise.

9.0. CONTEMPORARY CHALLENGES AND DEVELOPMENTS

9. 1 *Riba* and Interest

Most international awards include interest for late payment under *Article* 34 of *UNCITRAL*, United Nation Commission on International Trade Law Arbitration Rules. Islamic courts often strike this portion down, leaving the principal only enforceable. To avoid this, parties use *Sharia* – compliant alternatives like *ta'wid* compensation for actual loss, approved by Accounting and Auditing Organization for Islamic Financial Institutions.[65]

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[64] *Arbitration and Mediation Act*, 2023 *s*57 – 60

[65] See *Article* 19, Cairo Declaration on Human Rights in Islam

9.2. Non – Muslim Arbitrators

Classical Hanafi and Maliki schools restrict arbitrators to Muslims. However, modern practice in UAE and Malaysia permit non-Muslim arbitrators for commercial disputes between non-Muslims, reflecting *Maslaha*, public interest and internationalization.[67]

9.3. Lack of Unified Islamic Arbitration Rules

Unlike ICC or LCIA, there is no single global "Islamic arbitration rulebook". Though International Islamic Centre for Reconciliation and Arbitration in Dubai, and AIAC – Arbitration Rules attempts to harmonise all different arbitration laws and rules of Islamic Countries.[68]

9.4. Integration with Islamic Finance

Islamic Banks now routinely include arbitration clauses referring to *Shariah* compliant rules. This has pushed courts to become more arbitration – friendly while maintaining *Shariah* review, creating a hybrid system.[69]

Notwithstanding the above challenges, Islamic arbitration is widely used today in Islamic banking disputes, commercial transactions, family and inheritance matters and international business contracts. Many Muslim – majority countries have enacted arbitration laws that recognize both *Shari'ah* principles and international arbitration standards. Institutions such as the Islamic Development Bank and the Accounting and Auditing Organization for Islamic Financial Institutions support frame works for Islamic commercial dispute resolution. Finally Islamic arbitration continues to play a vital role in modern commercial, financial and family dispute resolution while promoting justice, reconciliation and social harmony.

10.0 Recommendations

While the *Arbitration and Mediation Act* 2023 represents a significant legislative advancement aimed at aligning Nigeria's arbitration framework with international best practices, the persistent challenges in the enforcement of arbitral awards underscore the need for practical reforms. These challenges, ranging from judicial overreach and corruption to vague public policy exceptions and infrastructural inefficiencies, threaten the efficacy of arbitration as a reliable dispute resolution mechanism. Therefore, to fully realize the objectives of the *Act* and promote investor confidence, it is imperative to adopt strategic and institutional measures that will ensure timely and consistent enforcement of arbitral awards. The following recommendations address each of the identified issues, offering practical solutions to strengthen Nigeria's arbitration regime:

There should be continuous judicial training and sensitization on the provisions of the *Arbitration and Mediation Act* 2023, especially regarding the principle of minimal court intervention. Specialized arbitration judges or dedicated arbitration courts can also be established to handle enforcement matters swiftly and consistently.

Furthermore, strengthening institutional integrity through oversight mechanisms and stricter disciplinary measures against corrupt judicial practices is critical. The judiciary should also enforce the mandatory provisions of the *Arbitration and Mediation Act*, 2023 to limit unnecessary discretion and enhance predictability in arbitration matters.

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[67]. ibid.
[68]. ibid.
[69]. ibid.

There is also a need for a clear judicial definition or guidelines on the scope of "public policy" in arbitration, in line with international best practices. This will help ensure that the exception is not applied arbitrarily or too broadly, especially to the detriment of foreign investors and parties.

Furthermore, The National Judicial Institute (NIJ) should incorporate arbitration law and practice into regular training for judges. Similarly, Continuing Legal Education (CLE) programs for legal practitioners should include modules on both domestic and international arbitration frameworks. The judiciary must harmonize the enforcement of foreign awards in line with Nigeria's international obligations under the *New York Convention*. Establishing standard procedural rules specifically for foreign arbitral awards and publishing enforcement-related judicial precedents will encourage consistency.

Finally, judicial reforms aimed at digitalization, improved case management systems, and administrative efficiency should be prioritized. Arbitration-related matters should be fast-tracked with designated timelines for enforcement proceedings to prevent undue delays. Stricter enforcement of procedural safeguards during domestic arbitral proceedings is essential. Arbitral institutions should also maintain standards of practice, provide training for arbitrators, and ensure parties follow due process to minimize post-award challenges.

11. 0 Conclusion

Arbitration remains a vital tool for resolving commercial disputes, especially in a globalized economy where efficiency, neutrality, and finality are essential. Although Nigeria has made commendable progress with the enactment of the *Arbitration and Mediation Act* 2023, the practical realities of enforcement still pose significant concerns. Judicial intervention, though sometimes well-intentioned, has often undermined the autonomy and effectiveness of the arbitral process. By addressing the outlined challenges through targeted reforms, judicial capacity-building, and institutional strengthening, and Nigeria can foster a more arbitration-friendly environment. Ultimately, the legitimacy and reliability of arbitration in Nigeria will depend not only on sound legislation but also on consistent and impartial judicial enforcement of arbitral awards.