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PROSPECTS AND CHALLENGES OF ARBITRATION UNDER THE ARBITRATION AND MEDIATION ACT 2023

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Abstract

The Arbitration and Mediation Act 2023 was enacted during a period of significant challenges that undermined arbitration's role as a viable alternative to litigation. An understanding of prospects and challenges of the Act is appropriate as it is the policy of the Nigerian government to make the country a preferred seat for commercial arbitration. The aim of this paper is to examine prospects and challenges of arbitration under the Act. The methodology adopted is doctrinal. Provisions of the Act that strengthen the legal framework for arbitration include: recognition of electronic communication, immunity for arbitrators and arbitral institutions. Others are - consolidation of arbitral proceedings, the Arbitral Review Tribunal, and third-party funding. Gray areas clarified by the Act include statutes of limitation and abolition of error of law on the face of the award. Challenges include increased costs, low levels of awareness and manpower constraints.

Keywords: Arbitration, Alternative Dispute Resolution, Arbitration and Mediation Act 2023

1.1 Introduction

Arbitration has assumed increasing importance globally and in Nigeria as an alternative to litigation. Of all the Alternative Dispute Resolution (ADR) mechanisms, arbitration is the most popular for commercial disputes.[1] However

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the practice of arbitration faced several limitations and challenges under the Arbitration and Conciliation Act[2]. This led to the repeal of the Arbitration and Conciliation Act (ACA) and the enactment of the Arbitration and Mediation Act 2023 in order to provide a unified legal framework for the fair and efficient settlement of commercial disputes through arbitration and mediation.[3] The enactment of the Arbitration and Mediation Act 2023 is a major step towards curing the erstwhile defects in the legal framework governing arbitration and mediation in Nigeria and improving the framework for both mechanisms of ADR.

ADR generally refers to all lawful means, processes or methods of resolving disputes outside litigation. It refers to "…means or methods and procedures used to resolve disputes either ass alternatives to the traditional dispute resolution of the courts or in some cases as supplementary to such mechanism."[4] ADR is a spectrum of formal and informal procedures for resolving matters ranging from Negotiation, Mediation, Conciliation, Arbitration and other hybrid procedures. The Constitution of the Federal Republic of Nigeria 1999 (CFRN 1999) explicitly recognizes and promotes ADR as a means of dispute resolution with Nigeria's foreign policy objectives providing for the use of ADR in resolving international disputes.[5]

ADR is not new to Nigeria. In the pre-colonial era, there existed informal methods of dispute resolution in addition to the institutionalized traditional courts. These

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[1] Adedoyin Rhodes-Vivour, 'The Amicus Curiae and Arbitration' p. 7. <https://drvlawplace.com/wp-content/uploads/2020/07/THE-AMICUS-CURIAE-AND-ARBITRATION-FINAL.pdf> accessed 9th February 2023.

[2] Chapter A18 LFN 2004. Repealed by the Arbitration and Mediation Act 2023, s 90.

[3] Arbitration and Mediation Act 2023, Long Title.

[4] JO Orojo and MA Ajomo, *Law and Practice of Arbitration and Conciliation in Nigeria* (Mbeyi and Associates Nig. Ltd. 1999) p.4

[5] Section 19 (d) of the CFRN 1999 (as amended) provides - The foreign policy objectives shall be "respect for international law and treaty obligations as well as the seeking of settlement of international disputes by negotiation, mediation, conciliation, arbitration and adjudication".

included settlement of disputes by community elders, family heads, oracles, priests and age grade associations. In the case of *Agu v Ikewibe*,[6] Karibi Whyte JSC held:

> …it is well accepted that one of the African customary modes of settling dispute is to refer the dispute to the family head or an elder or elders of the community for a compromise solution based upon the subsequent acceptance by both parties of the suggested award, which becomes binding only after such signification of acceptance and from which either party is free to resile at any stage of the proceedings up to that point. This is a common method of settling disputes in all indigenous Nigerian societies.[7]

The concept of ADR in modern times originated from the United States, primarily as a means of providing a faster and more cost efficient alternative to court proceedings. This trend has grown rapidly and has since spread throughout the world as a direct response to the cost, delays and technicalities that are the bane of litigation.

In Nigeria challenges associated with litigation like its adversarial nature, incessant adjournments, delay in justice dispensation, high cost of litigation, technical rules of procedure and evidence, undue reliance on legal technicalities by the law courts, among others, have left litigants disillusioned and disenchanted by the court system.[8] The court system in Nigeria is overburdened[9] and

[6] [1991] 3 NWLR (Pt.180) 407.
[7] Ibid.
[8] In a study, 27.9 percent of the legal practitioners surveyed said that Nigerians are keen on enforcing their human rights in court while 72.1 per cent disagreed. Among the reasons advanced for the general reluctance of Nigerians to resort to court were – ignorance, high cost of litigation, poverty, delay in the court system and lack of confidence in the judiciary. EO Popoola, *Appraisal of the Contemporary Jurisprudence on the Right to Environment: A Case Study of Nigeria and South Africa* (Unpublished PhD Dissertation, Ahmadu Bello University 2017) 406-408.
[9] In 2022, the then Chief Justice of Nigeria, Hon Justice Olukayode Ariwoola decried the workload of the Supreme Court noting that 1,764 cases comprising of motions and appeals were disposed of by the Supreme Court during the 2021/2022 legal year. Speaking on the need for ADR, he added that out of the 6,884 cases at the Court, there were 4,741 appeals in the Court's docket, with 1,495

underfunded[10], alongside other challenges thus making it imperative to have alternative modes of dispute resolution.

This paper aims to examine the prospects and challenges of arbitration under the Arbitration and Mediation Act 2023 (AMA 2023 or "the Act"). While AMA 2023 provides a legal framework for both arbitration and mediation, the scope of this paper will be restricted to arbitration. Some of the defects of the repealed Arbitration and Conciliation Act included its failure to provide for limitation period for the purpose of enforcing arbitral awards, the non-consolidation of arbitral proceedings; non-recognition of ICT in arbitration proceedings. This paper will, among others, examine the potential positive impacts of the AMA 2023 and analyze relevant provisions of the AMA 2023 addressing those lacunae. It will additionally address possible challenges that could arise from the implementation of the AMA 2023. The doctrinal research methodology is adopted with reliance on primary sources like statutes and case law and secondary sources, including textbooks, journal articles, conference and workshop papers, and internet materials.

This paper is divided into six parts. Part one is the introduction; Part Two defines terms and provides a brief history of arbitration statutes; Part Three is devoted to arbitration under the Arbitration and Mediation Act 2023 with special emphasis on certain aspects of arbitration. Part Four discusses the prospects of arbitration

of them having briefs filed and exchanged for hearing. JC Azu, '6,884 Cases Gather Dust in Supreme Court' *Daily Trust*, 17 December 2022.

[10] O Adetayo, 'Nigeria's Court Strike Paralyses Underfunded Justice System' *The Guardian*, 26 May 2021. https://www.the guardian.com/global-development/2021/may/26/nigerias-court-strike-paralyses-underfunded-justice-system accessed 14 May 2025; C Okeke, 'Judiciary Funding in Nigeria: Analysis of the Supreme Court Decision in Attorney General Abia State & 35 Ors vs. Attorney General of the Federation SC/CV/655/2020' (Olisa Agbakoba Legal May 13, 2023) <https://oal.law/judiciary-funding-in-nigeria-analysis-of-the-supreme-court-decision-in-attorney-general-abia-state-35-ors-vs-attorney-general-of-the-federation-sc-cv-655-2020/> accessed 14 May 2025.

under the Act; Part Five analyses challenges of arbitration under the Act and Part Six is the conclusion containing the summary, findings and recommendations.

1.2 Definition of Terms

1.2.1 Meaning of Alternative Dispute Resolution

ADR generally refers to all lawful means, processes or methods of resolving disputes outside courtroom litigation. It refers to "…means or methods and procedures used to resolve disputes either as alternatives to the traditional dispute resolution of the courts or in some cases as supplementary to such mechanism."[11] "ADR is the set of mechanisms a society utilizes to resolve disputes without resort to costly adversarial litigations."[12] The '*alternative'* has acquired a broader meaning[13] encompassing both procedures and institutional structures for dispute resolution other than the courts and each implicating different levels of privatization.[14]

Akinbuwa A.A. defines ADR as follows:

> Alternative dispute resolution refers to a range of mechanism designed to assist disputing parties in resolving their dispute without the need for formal judicial proceedings. They are those mechanisms that are used to resolve disputes faster, fairer, and without destroying on-going relationships.[15]

[11] JO Orojo and MA Ajomo (n 4) 4.
[12] United Nation Office on Drugs and Crime Training Manual on Alternative Dispute Resolution and Restorative Justice, 2007, p.16. See www.unodc.org/.../Training Manual on alternative dispute resolution and restorative justice. Pdf. Accessed on 2nd August 2014.
[13] A Akeredolu, 'Court-Connected Alternative Dispute Resolution in Nigeria', *University of Ibadan Law Journal* 1(1) (2011) 45-46.
[14] See also K Dayton, 'The Myth of Alternative Dispute Resolution in Federal Courts', 76 *Iowa Law Review* (1991) 889-897.
[15] AA Akinbuwa, 'Citizens Mediation Center and Multi-door Courthouse in Lagos State' in Law, Politics and Development, NBA Ikeja Branch, 2010, p. 327; Bimbo Atilola and Michael Dugeri, 'National Industrial Court of Nigeria and the Proposed Alternative Dispute Resolution Centre: A Roadmap,' p. 10

Similarly, ADR is defined as, "…those processes where the disputing parties themselves are directly involved in the efforts towards finding a common ground or mutually acceptable solution."[16] ADR includes, "… practices, techniques and approaches for resolving and managing conflicts short of, or alternative to, full scale court process."[17]

ADR may be applied before, during or after litigation. A prospective litigant may explore alternative means of dispute resolution prior to filing a case in court and parties in an on-going litigation may resort to ADR at some stage in the proceedings[18]. It is preferable to attempt to resolve a dispute through ADR early in the conflict because the longer a dispute is allowed to linger the more the acrimony between the parties is likely to escalate and it may become more difficult to settle the matter amicably[19]. This finds support in The Rules of Professional Conduct for Legal Practitioners 2023 which obligates legal practitioners to inform their clients of the option of ADR mechanisms.[20]

ADR is time bound, less expensive, confidential and privately managed as well as less stressful than the traditional court proceedings. ADR has changed the

www.nicn.gov.ng/.../ARTICLE%20ON%20ADR%20FOR%20NIC.pdf. Accessed on 3 December 2015.

[16] K. Aina, 'Alternative Dispute Resolution,' in *Nigerian Law and Practice Journal,* Council of Legal Education, Nigerian Law School, 2[1] (1988) 169-170.

[17] Alternative Dispute Resolution Practitioner's Guide, March 1998. Technical Publication Series, Centre for Democracy and Governance, Bureau for Global Programmes, Field Report and Research,, U.S. Agency for International Development, Washington, D.C 20523-3100, footnotes 11-26, in Animashaun, O. "Court-Connected ADR and Industrial Conflict Resolution: Lessons from South Africa and Guatemala." See www.nicn.gov.ng/.../Court-Connected%20ADR%20and%20Industrial%20Conflict%20Resolution.pdf. Accessed on 2 August 2014.

[18] The common practice is for parties to seek an adjournment in order to explore settlement out of court. The terms of settlement may later form a consent judgment.

[19] Ibid

[20] Order 15 Rule 2 (d) of the Rules of Professional Conduct for Legal Practitioners 2023 states – "In his representation of his client, a lawyer shall not fail or neglect to inform his client of the option of alternative dispute resolution mechanisms before resorting to or continuing litigation on behalf of his client."

practice of law by transforming and resolving matters beyond the traditional model of court room system in all kinds of diverse conflicts, disputes and transactions, ranging from commercial disputes, civil disputes, labour disputes and disputes arising from cross border transactions[21]. Arbitration clauses in contracts have become a common practice mutually beneficial to parties in resolving disputes thereby promoting quicker and cheaper redress with confidence and without bitter rivalry thereby protecting business relationships.

1.2.2 Meaning of Arbitration

The Arbitration and Mediation Act 2023 defines Arbitration in Section 91 as "a commercial arbitration whether or not administered by a permanent arbitral institution". The definition may be viewed as narrow, as it limits arbitration to commercial disputes. It is therefore appropriate to look to other sources for guidance. The Supreme Court in *Nigerian National Petroleum Corporation v Lutin Investments Ltd and Anor*, [22] defined arbitration as "The reference of a dispute or difference between not less than two parties for determination, after hearing both sides in a judicial manner by a person other than by a Court of competent jurisdiction".

The Black's Law Dictionary[23] defines it as "The submission for determination of disputed matter to private unofficial persons selected in manner provided by law or agreement…The substitution of their award or decision for judgment of a court". A latter edition defines it as "a method of dispute resolution involving one or more neutral parties/persons who are usually agreed upon by the disputing parties and whose decision is final and binding".[24] These definitions illustrate the growing importance and adoption of arbitration in dispute resolution over the last

[21] Samuel Olugbenga, 'Alternative Dispute Resolution (ADR): A Suitable Broad Based Dispute Resolution Model in Nigeria; Challenges and Prospects' *International Journal of Conflict Management* (2023) 14, 50.
[22] [2006] NWLR (pt 965) 506 at 542, (2006) LPELR 2024 (SC).
[23] HC Black, *Black's Law Dictionary* 4th Edition (West Publishing Co. 1968) 134.
[24] B. Garner (Ed) *Black's Law Dictionary* 9th Ed (Thomson Reuters 2009) 119.

century. While the former (1968) lays emphasis on the privacy of arbitration and its role as an alternative to formalised litigation, the latter (2009) emphasises the finality and binding nature of arbitration.

Suleiman Nchi defines Arbitration as:

> The settlement or resolution of a civil dispute between parties in a judicial manner by a person or body other than a judge or a normal court, called an arbitrator, with such a person's or body's decision accepted as binding by the disputing parties.[25]

According to Orojo and Ajomo[26] arbitration is a procedure for the settlement of disputes, under which the parties agree to be bound by the decision of the arbitrator, whose decision is in general, final and legally binding on the parties.[27] Arbitration is a process in which disputants appoint arbitrators to adjudicate their dispute. In arbitration, the parties retain control over the process but not the outcome; this is because arbitrators have power to give a binding decision[28]. The decision of an arbitral tribunal (award) may be enforced like a court judgment as an arbitral award is binding on the parties[29].

From the definitions above, the essential elements of arbitration are as follows: (1) there are two or more disputants; (2) the disputants have agreed or consented to arbitration; (3) the presence of a neutral third party, the arbitrator or arbitral tribunal, who settles the dispute; (4) autonomy from the courts; (5) binding nature of the arbitrator's decision; and (6) enforceability of the award in court.

The cornerstone of arbitration agreements is the freedom of persons and groups to freely decide on who, how and where they intend their differences or disputes to be resolved. It is usually a voluntary, private and personal arrangement by

[25] S. I. Nchi, *The Nigerian Law Dictionary* 2nd Ed. (Greenworld Publishing Co.)
[26] J. O. Orojo and M. A. Ajomo, (n 4).
[27] Ibid 238.
[28] Samuel Olugbenga (n 21) 14, 50.
[29] Ibid

parties which they eventually become bound to obey and fulfill. Internationally and locally, arbitration enjoys wide patronage, especially for settling commercial disputes.[30] Statistics indicate that it has become a preferred method of settling disputes.[31]

Arbitration enjoys several advantages over litigation. The non-adversarial nature of arbitration helps in the preservation of friendly relations between parties. The arbitrator or arbitral tribunal may be appointed by the disputing parties; parties are also at liberty to determine the procedure to be followed by the arbitral tribunal. Arbitration is particularly preferable where the dispute arises in a specialized area and the issues require experts' consideration. Other advantages include privacy of proceedings; confidentiality; and the finality of the decision of the arbitral tribunal.

1.2.3 Brief History of Arbitration Statutes in Nigeria

The focus of this paper is statutory arbitration. The first Nigerian enactment regulating arbitration was the Arbitration Ordinance of 1914.[32] Its provisions were identical with that of the English Arbitration Act, 1889. The provisions of the Arbitration Ordinance were scanty and dealt with domestic arbitration only. The Ordinance was later repealed and replaced by the Arbitration Act of 1958.[33] Several regional arbitration laws existed alongside the federal legislation.[34] Subsequently Nigeria ratified several international treaties on arbitration including the Convention on the Recognition and Enforcement of Foreign Arbitral

[30] Adedoyin Rhodes-Vivour (n 1).
[31] M Altenkirch and others, 'From Decline to Growth: Arbitration Cases Increase in 2023' *Global Arbitration News*, December 23 2024 <>https://globalarbitrationnews.com/2024/12/23/from-decline-to-growth-arbitration-cases-increase-in-2023/ accessed May 14 2025.
[32] Ordinance No. 16 of 1914 which was later re-enacted as Arbitration Act Cap 13, Laws of the Federation 1958
[33] Cap 13, Laws of the Federation 1958.
[34] Arbitration Law Cap 7 Laws of Northern Nigeria 1963, Arbitration Law of Eastern Nigeria 1963

Awards 1958 (New York Convention)[35] and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention)[36]. In 1988 Nigeria adopted the 1985 UNCITRAL Model Law on International Commercial Arbitration (UNCITRAL Model Law) with the repeal of the 1958 Act and the enactment of the Arbitration and Conciliation Decree of 1988.[37] The Arbitration and Conciliation Act 1988 (ACA 1988) also incorporated the New York Convention in the Second Schedule. The ACA 1988 was the extant law on arbitration for about thirty five years until its repeal in 2023.[38]

The principal legislation regulating arbitration in Nigeria is the Arbitration and Mediation Act 2023 (AMA 2023). It provides a unified legal framework for settlement of commercial disputes via arbitration and mediation and makes applicable the New York Convention.[39] There are, in addition to the federal legislation, several state laws on arbitration.[40]

1.3. Arbitration under the Arbitration and Mediation Act 2023

1.3.1 Overview of the Arbitration and Mediation Act 2023

A cardinal objective of the Act is "fair resolution of disputes by an impartial tribunal without unnecessary delay or expense"[41]. It reiterates the right of parties to a dispute to decide the means by which their disputes may be resolved, subject to the need to protect public interest.[42] Parties, arbitrators, arbitral institutions, appointing authorities and the court shall do all things necessary for the proper

[35] Ratified on 17 March 1970.
[36] Ratified on 23 August 1965.
[37] Decree No. 11 of 14 March, 1988, later Arbitration and Conciliation Act, Cap A18, LFN, 2004. Repealed by section 90 AMA 2023.
[38] See section 90 AMA 2023.
[39] Long Title, AMA 2023. See also the Second Schedule of AMA containing the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention).
[40] Arbitration Laws of Lagos State Ch. A11 Laws of Lagos State 2015; Arbitration Law Cap A13 Law of Delta State of Nigeria 2006.
[41] Section 1 (1) AMA 2023
[42] Ibid section 1 (2)

and expeditious conduct of the arbitral proceedings.[43] The Act is applicable to international commercial arbitration, inter-state commercial arbitration and domestic commercial arbitration.[44]

AMA 2023 contains 92 sections, divided into three parts. It also includes three Schedules. Part I consists of Sections 1 to Section 87. It contains detailed provisions encompassing, *inter alia*, objectives and application; arbitration agreement; appointment of arbitrators; withdrawal, death and cessation of office of an arbitrator; emergency relief proceedings; interim measures and preliminary orders; arbitral proceedings and determination of rules of proceeding; equal treatment of parties; seat and place of the arbitration; application of statutes of limitation to arbitral proceedings; points of claim and defence; power of the arbitral tribunal as to remedies; consolidation and concurrent hearing; joinder of parties; power of the tribunal to appoint experts; power of the tribunal to order attendance of witnesses; settlement by parties; form and contents of an award; termination of proceedings. Other key provisions cover correction and interpretation of awards; issuance of additional awards; costs of the arbitration; liability of parties for the arbitrators' fees and expenses; lien on the award; applications for setting aside an award; Award Review Tribunal; recognition and enforcement of awards; application of the New York Convention; third party funding of arbitration; waiver of the right to object and the extent of court's intervention.

Part II consists of Sections 67 to 87 which provides for mediation. Part III contains Sections 88 to 92 and it provides for miscellaneous provisions. The First Schedule contains Arbitral Rules, the Second Schedule contains the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the Third Schedule contains the Arbitration Proceedings Rules 2020.

[43] Ibid section 1(4)
[44] Ibid section 1(5)

1.3.2 The Arbitration Agreement

The Arbitration agreement plays an important role in arbitration. It has been described as "the "bedrock of any arbitration proceedings"[45].

Section 1(3) of AMA 2023 provides as follows -

> An arbitration agreement between parties for settlement of dispute shall be binding on parties and enforceable against each of the parties to the exclusion of any other dispute resolution method unless the parties otherwise provide or the agreement is void.

Arbitration agreement is defined in the Act as "an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not".[46] This definition is an improvement over ACA 1988 which did not define arbitration agreement. The Arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate complete agreement.[47]

The Act mandates that an arbitration agreement must be in writing. Writing under the AMA 2023 is couched broadly. Section 2(3) provides - An arbitration agreement shall be in writing where its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct, or by any other means. Still on the meaning of writing, section 2 (4) provides –

> (4) The requirement for arbitration agreement to be in writing is met, where it is –

[45] OO Awoyale, *A Critique of the Limitation Period for Enforcement of Arbitral Award in Nigeria* (Unpublished PhD Dissertation, Faculty of Law, Nnamdi Azikiwe University Awka, 2019) 60.
[46] AMA 2023 Section 91.
[47] Ibid Section 2(1)

> (a) by an electronic communication, as defined in section 91, and the information contained in it is accessible so as to be useable for subsequent reference; and
>
> (b) it is contained in an exchange of points of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.

Electronic communications is defined in the Act as "any communication that the parties make by means of data messages, that is, any information generated, sent, received or stored by electronic, magnetic, optical or similar means, including electronic data interchange (EDI), electronic mail, telegram, telex or telecopy".[48] The inclusion of electronic communication in the definition of writing is an improvement over the ACA 1988 and accords with the Evidence Act 2011 (as amended)[49] and with current practice.

The use of the conjunctive "and" in section 2(4)(a) and (b), rather than the disjunctive "or" could raise challenges if the provision is subjected to interpretation. It is the considered opinion of this paper that the provision should be read disjunctively. Doing otherwise would mean that electronic communication containing accessible information so as to be useable for subsequent reference, does not by itself constitute 'writing'. This opinion finds support in statute as well as in case law. In a similar provision under the repealed ACA 1988, the operative word used was "or".[50] The Supreme Court in the case of

[48] AMA Section 91

[49] See section 258 of the Evidence Act 2011 (as amended).

[50] Section 1 (1) of the repealed Arbitration and Conciliation Act 1988 -

> Every arbitration agreement shall be in writing contained –
> a. In a document signed by the parties;
> b. In an exchange of letters, telex, telegrams, or other means of communication which provides a record of the arbitration agreement; **or**
> c. In an exchange of points of claim and of defence in which the existence of an arbitration agreement is alleged by one party and not denied by the other.
> *(Emphasis supplied by author).*

Ndoma-Egba v Chukwuogor[51] held that, in ordinary usage, the word "or" is disjunctive and "and" is conjunctive but also conceded that there are situations which would make it necessary to read "and" in place of "or" and vice versa. The court noted that this may occur in order to carry out the intention of the legislature.

Section 2(5) of AMA 2023 provides –

> Reference in a contract or a separate arbitration agreement to a document containing an arbitration clause constitutes an arbitration agreement in writing, provided that the reference is in a manner that makes it part of the contract or the arbitration agreement.

An arbitration agreement is irrevocable, unless the parties agree otherwise.[52] This is also subject to the court finding that an arbitration agreement is void, inoperative or incapable of being performed.[53] Where an action is instituted in court and any of the parties raises the existence of an arbitration agreement, the court shall stay proceedings and refer the parties to arbitration except where the arbitration agreement is void, inoperative or incapable of being performed.[54] This provision is a mandatory one that provides stronger backing to arbitration.

1.3.3 Appointment of Arbitrators

The default number of arbitrators is one. However parties to an arbitration agreement may agree on a different number to constitute an arbitral tribunal.[55] Parties may agree on a procedure of appointing an arbitrator. Where they fail to do so, the procedure in section 7 of the Act shall be followed.[56] In an arbitrator with a sole arbitrator, where the parties are unable to agree on the arbitrator, the

[51] [2004] 6 NWLR (Pt 869) 382 at 409. See also *Kabirikim v Emefor* [2009] 14 NWLR (Pt 1162) 602 at 623.
[52] Section 3 AMA 2023
[53] Ibid. See also section 5 (1).
[54] Section 5(1) ibid
[55] Section 6 (1) and (2) ibid.
[56] See Section 7 ibid

arbitrator shall be appointed, upon request of a party, by the appointing authority designated by the parties or, failing such designation, by any arbitral institution[57] in Nigeria or by the Court.[58] The exercise of power to appoint arbitrator(s) by the appointing authority, arbitral institution or court under section 7 must be exercised within 30 days of a request, in line with the Act's objective of expeditious proceedings

1.3.4 The Arbitral Award

An arbitral award must be in writing and signed by the arbitrator(s). Where there are several arbitrators, the signatures of the majority suffices and the reason for any omitted signature shall be stated. the The award shall state the reasons upon which it is based unless the parties have agreed to the contrary or the award is an award on agreed terms (i.e. a settlement/consent award); the date it was made; and the seat of the arbitration. A copy signed by the arbitrator(s) shall be delivered to each party.[59] An arbitral award is final and binding on the parties and enforceable by the courts.[60] The enforceability of arbitral awards parallels that of court judgments. The Supreme Court in *AG Bayelsa State v Odok*[61] reaffirmed the duty of Nigerian courts to recognize and enforce arbitral awards, stating: "It is trite that recognition and enforcement of an arbitral award is a vital part of arbitration without which the whole arbitration process is pointless". The decision demonstrates that arbitral awards are binding and enforceable unless successfully challenged on legally permissible grounds.

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[57] Some Arbitral Institutions in Nigeria are the Nigerian Institute of Chartered Arbitrators (NICArb), Lagos Court of Arbitration, Regional Centre for International Commercial Arbitration Lagos (RCICAL), Lagos Court of Arbitration (LCA), International Centre for Arbitration and Mediation Abuja (ICAMA), and Lagos Chamber of Commerce International Arbitration Centre (LACIAC). *Arbitral Institutes Directory* (International Council for Commercial Arbitration (ICCA)) <https://www.arbitration.icca.org/institutes> accessed 12th February 2025.

[58] Section 7 (3)(b) AMA 2023.

[59] See generally, section 47 ibid

[60] *NITEL v Okeke* [2017] 9 NWLR (Pt 1571) 439 (SC).

[61] (2024) LPELR-63035(SC) (Pp 26 - 28 Paras E - C).

1.4 Prospects of Arbitration under the AMA 2023

1.4.1 Appointment of Emergency Arbitrators

A notable introduction in AMA 2023 is the appointment of an emergency arbitrator and emergency relief proceedings. Concurrent with or following the filing of a request for arbitration and prior to the constitution of the arbitral tribunal, parties requiring emergency relief may apply to their designated arbitral institution or the Court for the appointment of an emergency arbitrator. Where the application is acceptable, the arbitral institution or the Court shall appoint an emergency arbitrator within two business days of receipt of the application. The purpose of the provision is to enable parties obtain interim reliefs on urgent matters which cannot await the constitution of the arbitral tribunal.[62] This provision is particularly beneficial in urgent commercial disputes where delays could result in significant financial or operational harm.

1.4.2 Rights and Duties of Arbitrators

The Act provides for the immunity of the arbitrator, appointing authority and arbitral institution in the execution of their duties except where their action or omission is shown to have been in bad faith.[63] Analogous to judicial immunity, this protection is intended to foster an environment in which arbitrators can perform their duties without the undue pressure of potential liability. It is essential for safeguarding the independence of arbitration and important in attracting more qualified arbitrators. The Act did not define bad faith and this raises several questions: What is the scope of bad faith? What sort of acts or omissions would constitute bad faith? The silence of the Act could prompt future judicial interpretation. It is the opinion of this article that since the immunity of arbitrators mirrors that of judicial officers, the judicial precedents on what constitutes bad

[62] Section 16 AMA 2023
[63] Section 13 ibid

faith in a judicial officer ought to serve as a guide on what constitutes bad faith in an arbitrator.

Arbitrators also possess the right to exercise a lien on the award.[64] This is aimed at enabling them recover their fees and expenses. The lien right enhances accountability and supports the financial viability of arbitration as a professional service. Arbitrator have several duties, including the duty of independence and impartiality and this applies both to the arbitral tribunal and to emergency arbitrators.[65] Prospective arbitrators are under a legal duty to disclose any circumstances likely to give rise to justifiable doubts as to their impartiality or independence. From the time of their appointment and throughout arbitral proceedings, they are to disclose to the parties any relevant circumstances not within the knowledge of the parties.[66]

1.4.3 Statute of Limitations for Arbitral Proceedings

The uncertainty surrounding limitation period for arbitral proceedings and for enforcing arbitral awards in Nigeria has been resolved by the AMA 2023. The lacuna of ACA 1988 on the matter led to several adverse legal precedents.[67] Section 34(1) AMA 2023 extends the applicable statutes of limitation in judicial proceedings to arbitral proceedings. Section 34 (4) provides that "In computing the time for the commencement of proceedings to enforce an arbitral award, the period between the commencement of the arbitration and the date of the award shall be excluded". In computing limitation period in respect of disputes involving an award which the court sets aside or nullifies, in part or in whole, the period

[64] Section 54 ibid
[65] An emergency arbitrator is to be impartial and independent (Section 16 (7) AMA 2023). "A prospective emergency arbitrator shall sign and deliver to the parties a statement of acceptance, availability, impartiality and independence". (section16 (8)).
[66] Section 8 (1) and (2) AMA 2023.
[67] OO Awoyale, *A Critique of the Limitation Period for Enforcement of Arbitral Award in Nigeria* (Unpublished PhD Dissertation, Faculty of Law, Nnamdi Azikiwe University, Awka, 2019).

between the commencement of the arbitration and the date of the order (setting aside or nullifying) shall be excluded.[68] This means that, for the purpose of computing the time prescribed by limitation laws for commencing judicial or arbitral proceedings, time spent in court on legal challenges to an award are excluded. These measures provide added protection to arbitral proceedings and would encourage its adoption.

1.4.4 Consolidation of Arbitral Proceedings and Concurrent Hearing

Under the AMA 2023 different arbitral proceedings, including proceedings involving different parties, may be consolidated. Parties in different arbitral proceedings may also agree to hold concurrent hearings. This new development would have the salutary effect of reducing multiplicity of arbitral proceedings, resulting in cost reduction, efficiency and conserving human resources, all in line with the objectives of the Act. This is dependent on the agreement of all parties involved. Thus the arbitral tribunal lacks inherent power to consolidate or hold concurrent hearings unless the parties consent. This highlights the voluntary nature of this benefit.

1.4.5 Joinder of Parties

The arbitral tribunal has the power to allow an additional party to be joined to the arbitration, provided that *prima facie* evidence exists showing that the additional party is bound by the arbitration agreement giving rise to the arbitration.[69] The requirement of *prima facie* evidence means that from the available facts there are sufficient grounds to impute a duty to the party being joined.

[68] Section 34(2) AMA 2023.
[69] Section 40 ibid.

1.4.6 Abolition of Error on the Face of the Award as a Ground for Setting Aside Arbitral Awards

In a number of court cases decided under the ACA 1988, error of law on the face of the award was one of the grounds on which arbitral awards could be set aside by the court. While the ACA 1988 did not explicitly use the term "*error of law on the face of the award*", an award could be set aside where an arbitrator exceeded the scope of his jurisdiction or where an arbitrator misconducted himself.[70] In *Kano Urban Development Board v Fanz Construction Limited*,[71] the Supreme Court held that:

> Parties take their arbitrator for better or worse both as to decision of fact and decision of law. However, by virtue of the provisions of section 12 (2) of the Arbitration law where an arbitrator or umpire has misconducted himself or an arbitration or award has been improperly procured, the Court has the power to set the award aside.[72]

The ACA 1988 was silent on what amounted to arbitrator misconduct and so the Nigerian courts, in determining what constituted arbitrator misconduct, relied on the English Common Law meaning of 'arbitrator misconduct' and extended it to include where there is an error in law on the face of the award.[73] Subsequently, based on the judicial precedents, error of law on the face of the award was increasingly relied on by dissatisfied parties to challenge otherwise good arbitral

[70] Sections 29 and 30 ACA 1988, Cap A18 LFN 2004. Repealed by AMA 2023.
[71] (1990) LPELR-1659 SC.
[72] Ibid. See also *Taylor Woodrow (Nig) Ltd v S.E GMBH Ltd* [1993] 4 NWLR (Pt. 286) 127.
[73] *Taylor Woodrow (Nig) Ltd v S.E GMBH Ltd* [1993] 4 NWLR (pt 286) 127; *Kano Urban Development Board v Fanz Construction Company Limited* (1990) LPELR-1659 SC. See also 'Finality of Arbitral Awards in Nigeria – Separating Harm from Hubris (Contd.)' https://afebabalola.com/finality-of-arbitral-awards-in-nigeria/ accessed 13th February 2025; A Atake and OA Uka, 'Error of Law on the Face of the Award – the Arbitration and Mediation Act 2023 Comes to the Rescue' 26 October 2023 https://www.templars-law.com/knowledge-centre/error-of-law-on-the-face-of-the-award-the-arbitration-and-mediation-act-2023-comes-to-the-rescue/ accessed 13th February 2025

awards.[74] This had the effect of burdening the courts and undermining the foundation of arbitration.[75]

AMA 2023 has decisively settled this matter and effectively overruled the Nigerian precedents by providing in Section 55 (2) – "an application for setting aside an arbitral award *shall not be made on the ground of an error on the face of the award*, or any other ground except those expressly stated in subsection (3)"[76]. Furthermore, the grounds for setting aside an award are to be construed narrowly with reference to those listed in subsection 3 of section 55. These grounds, instructively do not include arbitrator misconduct. This is a commendable provision that will help preserve the sanctity of commercial arbitral awards and foreclose frivolous challenges.

1.4.7 The Award Review Tribunal

The AMA 2023 contains a novel provision allowing parties to provide in their arbitration agreement for a review of their arbitral award by an Award Review Tribunal.[77] The review of the award is strictly limited to the grounds on which the court may set aside an award as set out in section 55(3). This limitation is a double-edged sword: while it protects awards from excessive challenge, it might also constrain parties' rights in instances of genuine error that do not fall within the Act. The Award Review Tribunal assesses challenges to an arbitral award and can either partially or fully set aside the award or uphold it entirely. The Tribunal is expected to render its decision within 60 days of its constitution.

In cases where the court decides that the decision of the Award Review Tribunal's decision is unsupportable, the court possesses the authority to reinstate the award, or the part of it that was set aside.[78] However, where the award of the first instance

[74] *Arbico Nigeria Limited v Nigeria Machine Tools Limited* (2002) LCN/1121 (CA).
[75] Ibid.
[76] Emphasis supplied by author.
[77] Section 56 AMA 2023.
[78] Section 56 (8) ibid

Tribunal is affirmed by the Award Review Tribunal, an application to the court to set aside the award can only be made on the grounds of non-arbitrability and public policy.[79] The introduction of the Award Review Tribunal by AMA 2023 strengthens the place of arbitration in dispute resolution and further limits court intervention in setting aside arbitral awards. Limiting the grounds on which a party can apply to court for a review of an affirmed award would have the added effect of decongesting the courts.

1.4.8 Third Party Funding

Of all the ADR mechanisms, arbitration is generally the most cost-intensive. This is the case particularly where the arbitral tribunal consists of several arbitrators and the services of arbitral institutions and /or courts are required. The AMA 2023 permits parties to arbitration to obtain funding from a Third-Party.[80] Section 91 of the Act defines a third-party funder as-

> any natural or legal person who is not a party to the dispute but who enters into an agreement either with a disputing party, an affiliate of that party, or a law firm representing that party, in order to finance part or all of the cost of the proceedings, either individually or as part of a selected range of cases, and the financing is provided either through a donation or grant or in return for reimbursement dependent on the outcome of the dispute or in return for a premium payment.

The Act abolishes the torts of maintenance and champerty in relation to third-party funding of arbitration. This provision applies where the seat of arbitration is Nigeria and to arbitration-related court proceedings in Nigeria. It is aimed at making Nigeria a preferred destination for international arbitration as parties know they can easily source for and receive funding for the arbitral proceedings and any related court action. This innovation, aimed at positioning Nigeria as a preferred seat for international arbitration in Africa, is beginning to bear fruit as

[79] Sections 56 (9), 55(3)(b)(i) and 55(3)(b)(ii) ibid.
[80] Section 61 ibid.

illustrated in the recent arbitration between Zadok East Africa Limited (a Kenyan construction company) and the Rwanda Revenue Authority (an Agency of the Rwandan Government).[81]

The Act imposes a requirement for disclosure of third –party funding arrangement including the name and address of the Third-Party Funder[82]. The other party, on this basis, may bring an application for security for costs.[83] While the benefitting party is under no duty to disclose details of the agreement, disclosure of the identity of the third-party funder engenders transparency and also aids the other party (respondent) in taking necessary measures to ascertain whether the Funder has agreed to cover adverse costs.

1.5. Challenges/Constraints of Arbitration under the Arbitration and Mediation Act 2023

The AMA 2023 is still in its infancy and has not been sufficiently tested, nevertheless challenges may arise in respect of the following -

1.5.1 The Award Review Tribunal (ART)

The operation of the Award Review Tribunal may result in added costs and delay; thereby defeating the objectives of the Act. The provisions of the Act applicable to the arbitral tribunal are applicable *mutatis mutandis* to the ART. Thus even at

[81] This is reportedly the first Third-Party Funded international arbitral award enforcement proceedings under the Arbitration and Mediation Act (AMA) 2023. See Jospeh Siyaidon and others, 'International Arbitration Trends 2025 A Walk-Through: Key Arbitration Insights from Nigeria and Africa' Stren & Blan Partners, 6 February 2025. https://www.mondaq.com/nigeria/trials-appeals-compensation/1579762/international-arbitration-trends-2025-a-walk-through-key-arbitration-insights-from-nigeria-and-africa Accessed 14th May 2025; 'Kenyan company targets Rwandan state assets in Nigeria', <https://globalarbitrationreview.com/article/kenyan-company-targets-rwandanstate-assets-in-nigeria> Accessed 14th May 2025.

[82] Section 62 (1) and (2) ibid.

[83] Section 62 (3) ibid.

stages like appointment and challenge, parties to arbitral proceedings may have recourse to the courts, further prolonging the process.

1.5.2 Challenges in construing section 2 (4) relating to electronic communication

The use of the conjunctive "and" between section 2(4)(a) and 2(4)(b), rather than the disjunctive "or" could pose a challenge in construing the provision relating to electronic communication.[84] In the case of *Ndoma-Egba v Chukwuogor*,[85] the Supreme Court held,

> In ordinary usage, the word "or" is disjunctive and "and" is conjunctive". But it is conceded that there are situations which would make it necessary to read 'and' in place of 'or' and vice versa. This may occur in order to carry out the intention of the legislature …Short of such dilemma, it is the law that the literal rule is the golden rule method of interpretation when the words of a statute are plain and unambiguous. It is a fundamental rule that such words should be given their ordinary plain meaning. It is not in such circumstances permissible to refrain from its meaning, even though it gives unreasonable or unfair result, and to go outside what the words themselves convey, in an attempt to consider what other things they ought to be capable of meaning.[86]

It is the humble submission of this paper that the use of "and" instead of "or" in section 2(4)(a) and (b) in relation to electronic communication creates ambiguity. Considering the tendency or penchant of Nigerian legal practitioners to exploit gaps and loopholes in the law, this issue could lead to needless litigation for judicial interpretation of the relevant provision, thereby negating the objective of the Act. The need to have legislative clarity on this area is important since the arbitration agreement is the bedrock of arbitration proceedings and the requirement of writing under the Act is strict. It is therefore recommended that the

[84] See the discussion in 3.2.
[85] [2004] 6 NWLR (Pt 869) 382 at 409.
[86] Per Uwaifo JSC.

legislature provide legislative clarity by altering section 2(4)(a) & (b) and inserting "or" in place of "and".

1.5.3 Omission of section 46

Section 46 of the AMA 2023 which, from the Arrangement of Sections, seems to deal with award of interest has been erroneously omitted from the Act. Arbitrators derive their powers from the arbitration agreement, the Act and the rules of the arbitral institution. While it is accepted that generally arbitrators can award interest on the arbitral award, there is need for clarity on the interest rate and the type of interest, compound or simple. This is so particularly where the parties did not specify in the arbitration agreement. There is the need for the legislature to cure this omission by inserting the relevant provision. Until this omission is corrected, arbitrators would be guided by notions of fairness and justice.

1.5.4 Flexibility of the AMA 2023 vis a vis low levels of education and awareness

The flexibility of the Act is such that parties can, by agreement, opt out of many provisions of the Act. While this has its merits, there are challenges particularly where a party is unschooled or possesses a low level of education. Ignorance or a poor understanding of the mechanisms of arbitration can result in a party contracting out his rights. The more knowledgeable or stronger party could manipulate or take advantage of the less knowledgeable or weaker party. The limited room for judicial intervention may lead to unjust outcomes. It is therefore imperative for entrepreneurs to arm themselves with the requisite knowledge to navigate the intricacies of arbitration under the Act.

1.5.5 Manpower Needs

With arbitration advanced as a preferable alternative to litigation and with the provision of incentives like third-party funding, the sector could experience a boom. There would be man-power needs of skilled arbitrators with integrity including in technical and specialized fields. The current training of law students in Nigeria currently places emphasis on litigation and there is little, if any training

in ADR.[87] The arbitral institutions could collaborate with Law Faculties and Law Clinics in Nigerian universities to increase awareness of training programs for undergraduate students. Legal practitioners also need to place greater premium on the acquisition of skills in arbitration in order not to be left behind. With Nigeria becoming a preferred destination for international arbitration, Nigerian arbitrators and arbitral institutions are likely to face stiff competition from foreign arbitrators and arbitral institutions.

1.6. Conclusion

1.6.1 Summary

This article examines the prospects of the Arbitration and Mediation Act 2023 (AMA 2023) and possible challenges that could arise in its implementation. The Act is set against the background of the increasing popularity of arbitration locally and globally, the drive for foreign investment, and the aspiration to make Nigeria a preferred seat of arbitration. It provides an enhanced framework for the speedy and efficient settlement of commercial disputes in line with international best practices.

Notable innovations of the Act include recognition of electronic communications in the definition of writing, emergency arbitrator and emergency relief proceedings, consolidation of proceedings, award review tribunal and third-party funding. Arbitrators enjoy immunity similar to that of judicial officers, with the exception of acts done in bad faith, and they may exercise a lien on the award. These hold the potential of attracting highly qualified arbitrators. The AMA 2023 provides much needed clarity on the Statutes of Limitations for arbitral proceedings. It limits the grounds for setting aside an arbitral award, thereby strengthening the sanctity of arbitration. The award review tribunal is an innovation further aimed at enhancing arbitration and limiting the role of the law

[87] See for example the CCMAS for Law as well as the Course content for Clinical Legal Education.

courts. Third party funding could position Nigeria as a preferred seat for international arbitration in Africa as illustrated by the recent arbitration between Zadok East Africa Limited and the Rwanda Revenue Authority.

1.6.2 Findings

The Arbitration and Mediation Act 2023 is an improvement over the Arbitration and Conciliation Act 1988 in the following ways :

1.6.2.1 Recognition of Electronic Communications

Electronic communications with accessible information so as to be useable for subsequent reference meets the requirement of writing in relation to the arbitration agreement. This accords with the Evidence Act 2011 (as amended). The definition of writing in respect of arbitral agreement recorded or written electronically is an area in need of legislative clarity.

1.6.2.2 Clarity on Application of Statutes of Limitation

The uncertainty surrounding limitation period for arbitral proceedings and for enforcing arbitral awards in Nigeria has been resolved by the AMA 2023. Exclusion of the period between the commencement of the arbitration and the date of the award and exclusion of time spent in court on legal challenges would increase confidence in arbitration as an alternative to litigation.

1.6.2.3 The abolition of error of law on the face of the award and the introduction of Award Review Tribunal reinforces the vital role of arbitration in resolving commercial disputes and further limits the court's intervention in arbitral proceedings. It brings an end to the era of re-litigation. The ART could serve as a check on arbitrators who are conscious that their award would be subjected to scrutiny. On the other hand, the ART could entail greater costs for parties.

1.6.2.4 Possible challenges in the application of the Act include an increase in costs of arbitration arising from the Award Review Tribunal; absence of clear

provisions on award of interest by arbitral tribunal; and reconciling the flexibility of the Act with the low level of awareness of many Nigerian business persons.

1.6.2.5 The current curriculum for Law students and the Clinical Legal Education emphasizes litigation and undergraduate law students have little or no exposure to the theory and practice of arbitration and other ADR mechanisms. This could have implications for meeting the increased manpower needs arising from the expected surge in arbitration.

1.6.3 Recommendations

1.6.3.1 Revisions to the Act

A revision by way of replacing 'and' in section 2(4)(a) with 'or' would add clarity in the case of arbitral agreement recorded or written electronically. Insertion of the omitted section 46 on Award of Interest would provide strong legal backing for the arbitral tribunal to award interest.

1.6.3.2 Awareness of the limitation laws of the various states and jurisdictions is important for parties signing contracts with arbitration agreements or those who may wish to adopt this mode as their preferred method of resolving disputes.

1.6.3.3 The vastly limited intervention of the courts places a higher burden on arbitral institutions to ensure discipline and high standards in arbitration. The absence of oversight or scrutiny and the private nature of arbitration could breed misdeeds by arbitrators. While discouraging parties to arbitral proceedings from subsequent litigations and re-opening of awards, it is imperative that they be satisfied with the quality of arbitration. There is therefore the need for arbitral institutions to ensure arbitrators receive excellent training and some level of oversight.

1.6.3.4 Engagement with professional bodies, entrepreneurs and business persons is important for proper awareness in order to maximize the benefits of the Act while minimizing any downsides. This would additionally provide them with

necessary knowledge on funding the costs of arbitration as well as cost-effective measures.

1.6.3.5 Training Programs by Arbitral Institutions

The increasing man-power needs of skilled arbitrators with integrity including in technical and specialized fields necessitate robust training programs to attract the best. The arbitral institutions could collaborate with Law Faculties and Law Clinics in Nigerian universities to increase awareness of training programs for undergraduate students. While law students can currently access arbitration training via the NICArb training programs, awareness is low. The Law Clinics place emphasis on litigation, often to the exclusion of arbitration and other forms of ADR. NICArb and other arbitral institutions can learn from the Institute of Chartered Accountants of Nigeria (ICAN) which has a robust engagement with students of accountancy. The outreach need not be limited to law students as professionals in other fields like quantity surveying, building, engineering are often involved in arbitrations and sometimes end up as arbitrators.