

# LITIGATION UPDATE

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**ADVOC**CAAT  
LAW PRACTICE

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**GROUNDNS FOR SETTING ASIDE AN ARBITRAL AWARD: WHAT CONSTITUTES MISCONDUCT OF AN ARBITRATOR: TOTAL ENGINEERING SERVICES TEAM INC. v. CHEVRON NIGERIA LIMITED: (2017) 11 N.W.L.R page 187 at pages 215 -216, paragraphs G-A.**

**Background**

The Arbitration and Conciliation Act (ACA) Cap A18, LFN, 2004 is the governing law for arbitral proceedings in Nigeria. Where a dispute arises from a contract between parties, recourse is first made to the contract/agreement entered into by the parties and where an arbitration clause is provided in such contract, parties are bound to resort to arbitration as the first step in resolving such a dispute. The ACA has made extensive provisions to guide the conduct of arbitral proceedings, granting of awards etc. There are however instances where an aggrieved party can approach the court to set aside an award made by an arbitrator and the time frame for doing same is within three (3) months from the date of the award. The applicable provisions in this respect are Sections 29(2) and 30 (1) of ACA which provides as follows: Section 29(2) – **“The court may set aside an arbitral award if the party making the application furnishes proof that the award**

**contains decisions on matters which are beyond the scope of submission to arbitration so however that if the decisions on matters submitted to arbitration can be separated from those not submitted, only that part of the award which contains decisions on matters not submitted may be set aside.”**

Section 30(1) further provides: **“Where an arbitrator has misconducted himself, or where the arbitral proceedings, or award, has been improperly procured, the court may on application of a party set aside the award.”**

Though these sections of the ACA highlights the instances where an arbitral award can be set aside on an application brought by an aggrieved party, the Supreme Court has in the case of **Total Engineering Services Team Inc. V. Chevron Nigeria Limited** thrown its weight in affirming this position of the ACA.

**Facts**

The facts of this case arose from the decision of an arbitration tribunal before whom the Claimant/Respondent brought its claim against the Defendant/Appellant for the sum of \$175,000 and \$232,249.66, sums which were expended by the Claimant/Respondent on one Mr. Danny Bufkin (employee of the appellant) which were reimbursable to the Claimant/Respondent under a prior contract of indemnity between both parties. The sole arbitrator in reaching its decision *suo motu* formulated two (2) issues without hearing from both parties on the issues *suo motu* raised and granted an award for \$175,000 while refusing to award the sum of \$232, 249.66 which the Respondent claimed as fees, on the basis that the Respondent failed to prove its claim, though the Appellant did not deny the claim. Dissatisfied, the Claimant/Respondent instituted an action at the High Court of Lagos State and the court in its judgment found that the arbitrator misconducted himself in the arbitration proceedings by taking a decision outside the scope of the issue for determination formulated and agreed by the arbitrator and counsel to the parties. The Court therefore set aside the part of the award

complained of and remitted that part of the award to the arbitrator for reconsideration and decision. Dissatisfied, the Defendant/Appellant appealed to the Court of Appeal which affirmed the findings of the trial court and dismissed the appeal. Upon further appeal to the Supreme Court by the Defendant/Appellant, the apex Court unanimously dismissed the appeal by holding that where there is misconduct by an arbitrator, the court has powers to set aside the arbitrator's award and remit the award to the arbitrator for reconsideration either on the existing facts or further facts.

### Commentary

The decision of the Supreme Court no doubt has re-emphasized the extent and limits on the powers that can be exercised by an arbitrator during arbitral proceedings as gleaned from sections 29(2) & 30 (1) Arbitration and Conciliation Act, 2004 . It is clearly discernible from the above provisions that an arbitrator is expected to restrict himself to the issues for determination brought before him and where in the interest of justice it becomes expedient to raise issues *suo motu*, he must invite parties involved to make representations before him on same in accordance with rules of fair hearing more particularly the *audi alterem partem* rule which posits that all parties must be heard.

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