

WHICH COURT AND WHEN: Supervisory and Enforcement Jurisdiction in Nigerian Arbitration after the AMA 2023

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The Arbitration and Mediation Act 2023 (the "AMA") repealed the Arbitration and Conciliation Act (Cap. A18 LFN 2004) (the "ACA"), which had governed arbitration in Nigeria for thirty-five years. The ACA was itself modelled on the UNCITRAL Model Law on International Commercial Arbitration 1985. The AMA updated that alignment to reflect the 2006 amendments to the Model Law, whilst introducing structural reforms that redefine the role of courts in arbitration proceedings, strengthen party autonomy, and replace certain discretionary judicial powers with mandatory obligations.

The question that has long divided courts and practitioners concerns which court has jurisdiction over arbitration matters, and at what stage. The AMA answers this question by drawing a firm distinction between two functionally different exercises of judicial power. The first is supervisory jurisdiction, the authority of a court to intervene in support of, or in oversight of, an arbitration that is still on foot. The second is enforcement jurisdiction, the authority of a court to give legal effect to an award that has already been rendered. Supervisory jurisdiction is determined primarily by the seat of arbitration. Enforcement jurisdiction is anchored to the location of the respondent's assets. The rules governing each are distinct, and the two must not be conflated.

SUPERVISORY JURISDICTION

Supervisory jurisdiction arises at various points before and during an arbitration: before a tribunal is constituted, to appoint an arbitrator or grant an urgent injunction; during the arbitral process, to stay parallel court proceedings, issue subpoenas, or enforce interim measures; and at the challenge stage, before a final award takes effect. The common thread is that the arbitration has not yet concluded and the court acts in aid of the process, not in response to a completed award. The foundational principle is that supervisory jurisdiction is determined by the seat of arbitration, not by the subject matter of the dispute and not by the nationality or domicile of the parties. The seat is the juridical home of the arbitration. It designates the court with primary oversight authority and determines the procedural law that governs the arbitral process. This principle is well established in international arbitration law and is reflected in the AMA.

Where the Seat is in a State with its own Arbitration Law

Section 2 of the Lagos State Arbitration Law 2009 ("LSAL") provides that all arbitrations within Lagos are governed by the LSAL unless the parties have expressly agreed that another arbitration law shall apply. Where the seat is Lagos and the parties have not displaced the LSAL, the High Court of Lagos State exercises supervisory jurisdiction. That court's authority flows through the LSAL's substantive provisions, including Sections 6, 12, 21, 55, and 56, each of which refers to "the Court", defined in Section 63 LSAL as the High Court of Lagos State. The position is broadly similar in other states that have enacted their own arbitration legislation, though the specific provisions of each state's law will govern.

Where the AMA governs the arbitration, either because the parties have expressly chosen it or because the seat is not in a state with its own arbitration legislation, supervisory jurisdiction lies with the courts defined in Section 91 AMA, namely the Federal High Court, any State High Court, or the High Court of the Federal Capital Territory. The relevant court among those is whichever has territorial authority over the seat.

Where the Parties elect the AMA but the Seat is in a State with its own Arbitration Law

Where parties expressly choose the AMA to govern their arbitration but designate a seat in a state that has its own arbitration law, Section 2 LSAL and equivalent provisions in other state laws permit that choice. The procedural effect is clear: the LSAL is displaced as the governing statute and the AMA's provisions regulate the arbitral process instead. The jurisdictional consequence is less straightforward. Supervisory jurisdiction is not purely a function of which procedural law the parties have chosen; it derives from the court's constitutional and statutory authority over proceedings within its territory. On one view, the Lagos High Court retains supervisory jurisdiction regardless of the parties' choice of governing arbitration law, because that jurisdiction is territorial in nature and cannot be displaced by contractual agreement. On another view, where the AMA is the chosen law and Section 91 AMA defines the relevant court, the Section 91 definition governs. Neither position has been definitively settled by the courts. Practitioners drafting clauses that separate seat from governing arbitration law should be aware of this ambiguity and consider specifying the supervisory court expressly in the arbitration agreement to avoid uncertainty.

Where the Seat is Outside Nigeria

Where the seat of arbitration is in a foreign jurisdiction, Nigerian courts do not exercise supervisory jurisdiction over the arbitration. The courts of the seat country hold that authority. They are the appropriate forum for applications to appoint or challenge arbitrators, stay court proceedings, or set aside an award. A Nigerian court has no jurisdiction to entertain those applications simply because one of the parties is Nigerian or because the underlying contract was performed in Nigeria.

Nigerian courts may, however, grant interim measures in support of a foreign-seated arbitration under Section 19 AMA. Where a party to a London-seated arbitration needs urgent asset preservation or an injunction against a respondent whose assets are located in Nigeria, a Nigerian court may provide that relief without assuming supervisory jurisdiction over the arbitration itself. This is a supportive function, not a supervisory one, and the distinction matters. A party that approaches a Nigerian court for interim support in aid of a foreign arbitration is not submitting the arbitration to Nigerian supervisory oversight. The seat remains the juridical home of the arbitration. Nigerian court involvement is limited to the protective measure sought and goes no further.

ENFORCEMENT JURISDICTION

Enforcement jurisdiction is the power of a court to recognise and give legal effect to an arbitral award. It arises only after an award has been rendered. The court with enforcement jurisdiction is not necessarily the court that supervised the arbitration.

Where the seat of arbitration is domestic but in a different state from the respondent's assets, the award creditor may bring enforcement proceedings in the High Court of the state where the assets are located, even though that court had no supervisory role in the arbitration. An application to set aside the award, however, must be brought exclusively before the court of the seat. Supervision follows the seat. Enforcement follows the assets. The power to set aside follows the seat alone.

The *NNPC* Decision and the End of the Subject Matter Test

Before the Supreme Court's decision in *NNPC v. Fung Tai Engineering Co. Ltd* [2023] LPELR-59745(SC), there was a widely held view that the subject matter of an arbitral dispute determined which court

could enforce the resulting award. The Supreme Court settled the position by rejecting that view in a lead judgment delivered by Garba JSC.

The Supreme Court considered Sections 31 and 57 of the ACA, which have since been replicated in Sections 57 and 91 of the AMA. Section 31 ACA provided that an arbitral award shall be recognised as binding and enforced by the Court. Section 57 ACA defined "Court" to include the Federal High Court, the High Court of a State, and the High Court of the FCT. Garba JSC held that the words of those provisions are plain and unambiguous, and that no qualification or limitation by reference to subject matter appears anywhere in them. To read such a limitation into the statute would be to import words into a clear legislative text for the purpose of suiting a particular interest, which the law firmly prohibits.

The jurisdiction conferred on the Federal High Court under Sections 31 and 57 ACA is a specific additional jurisdiction, separate and distinct from the exclusive original jurisdiction under Section 251(1) of the Constitution. As Garba JSC observed, recognition and enforcement of an arbitral award does not involve the exercise of original jurisdiction to adjudicate over causes or matters generally; it is purely a post-decision procedure. The court at the enforcement stage is not called upon to re-examine the subject matter of the underlying dispute or adjudicate its merits. Its task is simply to give effect to a resolution that the parties themselves voluntarily chose to submit to arbitration.

The practical consequence is significant. An award creditor is not confined to whichever court would have heard the underlying dispute as ordinary litigation. The enforcement court is determined by whether the conditions for recognition and enforcement are satisfied and by whether the court has territorial authority over the respondent's assets, not by the subject matter of the dispute from which the award arose.

The NNPC decision resolves enforcement jurisdiction for the Federal High Court. It does not, however, expressly address whether a State High Court may enforce an award arising from a dispute that would otherwise fall within the FHC's exclusive jurisdiction under Section 251(1) of the Constitution. That constitutional question remains open. Practitioners bringing enforcement applications in State High Courts where the underlying subject matter touches on federal exclusive jurisdiction should be alert to the risk that the application may be challenged on that basis.

CONCLUSION

Nigerian arbitration law now operates on two clear principles. Supervisory jurisdiction follows the seat: the court with primary oversight authority is determined by where the arbitration is seated and which law governs it at that seat. Enforcement jurisdiction follows the assets: any court with territorial authority over the respondent's assets may recognise and enforce an award regardless of the subject matter of the underlying dispute, subject to the unresolved constitutional question about State High Court jurisdiction over inherently federal matters. Practitioners who understand this framework and apply it when drafting arbitration clauses, selecting seats, and choosing enforcement forums will be better placed to protect their clients at every stage of the process. An arbitration clause that is silent on the seat, or that separates the governing arbitration law from the seat without addressing supervisory jurisdiction expressly, creates an avoidable risk that careful drafting can eliminate.

CONTACTS



OLADAPO ADEMOLA

oladapo.ademola@advocaat-law.com



EDWIN EKWEALOR

edwin.ekwealor@advocaat-law.com



AMARACHUKWU NWOSU

amarachi.nwosu@advocaat-law.com



LAGOS OFFICE

13 Norman Williams Street
Off Keffi Street, Ikoyi
Lagos Nigeria

ABUJA OFFICE

Nigerian National Merit Award House Enspire
1st Floor Room 3
Plot 22 Aguiyi Ironsi Way Maitama Abuja
Nigeria

CALABAR

Akom Building
15 Murtala Mohammed Highway Calabar
Cross River
Nigeria

TELEPHONE: (LOS)+234 02014547932 (ABJ)+234 8105340496