



**ARBITRATION, NON-SIGNATORIES, AND ARBITRABILITY:**  
THE DECISION IN *EMTS LIMITED V. AFDIN VENTURES LIMITED & ORS*  
[2026] LPELR-83327 (SC)

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In *EMTS Limited v. Afdin Ventures Limited & Ors* [2026] LPELR-83327 (SC) the Supreme Court addressed the question of how far an arbitration clause can bind a party that did not sign it. The decision also contains fully reasoned *obiter dicta* about whether allegations of criminal wrongdoing render a civil dispute non-arbitrable. The first question is important in complex transactions where parties may have indirect rights or liabilities under the document containing the arbitration clause or where not every party to the overall transaction is party to every document in the contract matrix. The latter question is important as Nigerian law continues to clarify the issue of arbitrability and the practical application of the overarching general rule that only disputes that can be compromised between the parties as a matter of law are arbitrable (this excludes most matters of status, general title and criminal charges).

## THE FACTS

The 1st and 2nd Respondents commenced an action at the Federal High Court, Abuja Division, seeking the refund of approximately USD 43.3 million from the Appellant, Emerging Markets Telecommunications Services Limited (trading as 9mobile), and others, arising from an investment transaction governed by an Offer of Terms and a Custodial Agreement. The Federal High Court referred the matter to arbitration on the application of the defendants and with the concurrence of the parties. A Sole Arbitrator was appointed and, after a partial award on jurisdiction, rendered a final award ordering the Appellant, jointly and severally with two other respondents, to refund the sums claimed.

The Appellant had not signed either of the agreements containing the arbitration clause. The Arbitral Tribunal nonetheless assumed jurisdiction, finding on the evidence that the Appellant was "inextricably intertwined" with the transaction and had received substantial sums derived directly from it. The Federal High Court recognised and enforced the award. The Court of Appeal affirmed that decision, and the Appellant appealed to the Supreme Court.

## NON-SIGNATORIES

The Appellant's central argument was that, not being a signatory to the agreements containing the arbitration clause, the Arbitral Tribunal had no jurisdiction to make an award against it. The Supreme Court rejected that argument.

The Supreme Court drew a distinction between the issue of whether a valid arbitration agreement exists between the original contracting parties and the issue of who is a party to the actual arbitration proceedings, and therefore bound by the award. A written agreement between the signatories establishes the mechanism for resolving disputes. Once that mechanism is invoked and an arbitration is constituted, the award binds all parties to the proceedings, whether or not they are also parties to the underlying agreements. This was provided for in section 57 of the Arbitration and Conciliation Act 2004, and is now provided in section 91 of the Arbitration and Mediation Act 2023, where in the context of arbitration proceedings the term "party" is defined to include any person claiming through or under a party. This definition confirms that an arbitration agreement can reach persons beyond those who signed it.

The Supreme Court surveyed the doctrines under which non-signatories have been brought within arbitral proceedings in this and other jurisdictions, among them assignment, agency, equitable estoppel, alter ego and veil piercing, and the group of companies doctrine. It distilled from that survey three interrelated pillars. The first is consent inferred from conduct. Where the conduct of a party (who has not signed the contract) shows participation in the performance of a contract or the receipt of benefit under it, an intention to submit to the dispute resolution mechanism within that contract may be inferred.

Secondly, a party that knowingly receives the benefit directly from a transaction cannot in equity deny the mechanism by which disputes under that transaction are to be resolved. The Sole Arbitrator found, on the evidence, that the Appellant received significant sums under the agreements containing the arbitration clause, and so could not deny the arbitration clause in those agreements. The Trial Court and the Court of Appeal affirmed that finding.

Thirdly, arbitration would be open to manipulation if a party could take the economic benefit of a transaction through interconnected entities and then escape the consequences of an award by pointing to its absence from the signature page. The Court expressly approved the reasoning of the Court of Appeal in *Metroline Nigeria Limited v. Dikko* [2018] LPELR-46853(CA), where a non-signatory whose role formed the nucleus of the dispute was held bound by the arbitral proceedings.

The issue of binding third parties or non-signatories is controversial throughout the arbitration world. Almost all jurisdictions will bind non-signatories in certain circumstances. The central principle is consent but there are different approaches to ascertaining consent. The spectrum of attitude ranges from the formalist approach of English common law (where the general rule is that a non-signatory cannot be bound and there is a high bar to establish the exceptions under agency, assignment or piercing the corporate veil), to the pragmatism of France (and most civil law jurisdictions) where consent is readily inferred from the conduct of the parties and commercial realities (rather than formal contracts). The Supreme Court used common law (and equity) reasoning and terminology but applied it to position Nigeria towards the pragmatic end of the spectrum, closer to civil law jurisdictions, stating that arbitration law has “evolved beyond a rigid formalism that binds only the inked signatory”. It expressly rejected the traditional common law formalist insistence on signature argued by the Appellant, calling it “a nineteenth-century rigidity inconsistent with contemporary commerce”.

The practical significance is that Nigerian law will look beyond the formal documentation and infer consent from the commercial circumstances and conduct of the parties. This means that parties that are clearly part of a transaction under a contract (because they have participated in performance or received funds or other benefit under it) can be drawn into an arbitration under the agreement despite not being signatories. It is for the arbitrator to decide whether the party has participated in the transaction from the evidence as a matter of fact and the courts will not disturb that finding.

It is interesting that the Supreme Court focussed on accepting the benefit of the transaction as grounds to bind the third party, this is drawn from Nigerian principles of equity but is also reminiscent of the civil law principle of third party contractual liability (where a third party can enforce a benefit due to them under a contract they are not a direct party to but they are not bound to perform a duty or take a detriment unless they are a direct party). In the present case, the Appellant had received the

third party benefit due to it under the agreement. What remains unresolved is whether the Supreme Court’s approach would still apply if the third party had not been promised or accepted any benefit but was contracted to perform a duty or detriment.

This decision has the potential to cut through contract matrix structures intended to shield affiliates from liability or enforcement and diminish the protection offered by the common transaction de-risking step of setting up special purpose vehicles for specific transactions (based on the doctrine of separate corporate legal personality). The implication is that it is necessary that the corporate structure of a transaction is carried through into the practical operations. For example, the decision will act to bind the parent company where the SPV enters the contract, but the parent receives all payments. However, the decision will not apply if payments are initially made to the SPV, even if the funds are immediately transferred to the parent.

### CRIMINAL ALLEGATIONS AND ARBITRABILITY

The Appellant argued further that the Arbitral Tribunal had exceeded its competence by determining allegations of fraud and criminal misrepresentation, which it said lay outside arbitral competence. Having already disposed of the appeal on the non-signatory issue, the Court dealt with the point as obiter dicta. However, the pronouncement was fully reasoned, and of practical value.

The established basic rule is that a dispute must be one capable of being compromised by accord and satisfaction to be arbitrable. A criminal indictment cannot be so compromised and is therefore not arbitrable. However, the Supreme Court suggested that not every allegation of fraud (or any crime) turns an arbitrable civil dispute into a non-arbitrable criminal case. Arbitral competence, like the jurisdiction of a court, is determined by the claimant’s pleadings and the reliefs sought. The claims and reliefs sought before the Tribunal were civil in nature. The allegation of fraud in the pleadings does not change the character of those claims. Furthermore, under the doctrine of separability, codified in Section 12(2) of the 2004 Act and mirrored in Section 14(2) of the 2023 Act, an arbitration clause is independent of the main contract, and a finding that the main contract is void does not of itself invalidate the clause. Fraud displaces an arbitration agreement only where it impeaches the arbitration clause itself as a distinct covenant. An allegation of fraud directed at the underlying transaction, however serious, does not meet that threshold. The Appellant had not shown that the fraud alleged was aimed at the arbitration clause, and the clause therefore survived.

It is also worth observing that in theory arbitrability and the validity of the arbitration agreement could be seen as distinct and independent questions where arbitrability asks whether the subject matter of a dispute is one the law permits to be resolved by arbitration at all, and validity asks whether a particular agreement to arbitrate is binding or has been vitiated. A dispute may be arbitrable in subject matter even where the agreement to arbitrate it is void, and in that event the parties would remain free to conclude a fresh arbitration agreement and refer the same dispute, provided the subject matter and the claims remained arbitrable.

Abubakar JSC’s *obiter dictum* is very much in line with his previous decisions (especially when he was in the Court of Appeal), and addresses both issues. A criminal allegation will not make a claim non-arbitrable unless the claim is for relief that is criminal in nature (such as a criminal sanction), and

separately, an allegation of fraud does not vitiate an arbitration agreement unless it is shown to have affected consent to arbitrate. Although the statement is *obiter*, this is perhaps the clearest indication yet of the line the Court would take if the matter came up as an issue for determination. This is that the mere fact that a claim contains an allegation of fraud or any other crime, will not render the dispute non-arbitrable, provided that the claims and reliefs are civil in nature and no criminal sanction is sought.

## CONCLUSION

*EMTS v. Afdin Ventures* is a decision of real consequence for arbitration in Nigeria. It has authoritatively addressed at least two of the more controversial issues in Nigerian arbitration law, joinder of third parties or non-signatories to the arbitration agreement and arbitrability where the claim contains criminal allegations. It also reflects a clear judicial policy of supporting arbitration and reinforces Nigeria's ambition to establish itself as a leading arbitration seat in Africa.

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