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CONTEMPORARY PROBLEMS IN INTERNATIONAL COMMERCIAL ARBITRATION PRACTICE IN NIGERIA

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ABSTRACT

The practice of International Commercial Arbitration in Nigeria today does appear to be unsatisfactory to many of the stakeholders. Parties to arbitration agreements usually encounter some problems in the practice and enforcement of arbitral decisions and awards. These problems vary across the meager nature of available infrastructure, the personnel involved in administering the applicable laws, local enactments, the problems of sovereign immunity of state parties, the issue of reciprocity requirement (as a basis for recognition and enforcement of foreign arbitral judgment) the duality of statute law on registration of foreign judgment, the effect of law of the place of arbitration, the roles of the national courts in support of arbitration process, interference or review of arbitral decision and in guiding of fairness and due process. These problems enumerated above among others are some of the pertinent questions this paper tries to examine.

Keywords: Commercial Arbitration, Commercial Laws, Sovereign Immunity, Nigeria.

1. INTRODUCTION

International Commercial arbitration is one of several forms of dispute resolution for international commercial agreements. The use of arbitrations has increased along with the growth of international trade and commerce and the accompanying disputes springing from these pursuits. In its broad sense, arbitration is a vehicle of dispute resolution in which parties to a contract select a neutral arbitrator (or a panel of arbitrators) to present their dispute for a legally binding ruling. Arbitration is often selected for the reasons of confidentially, speed, enforceability of arbitral awards, and to eliminate the uncertainties in the choice of arbitrator and form. Parties from different national origins may also be reluctant to accept national court litigation with the potential for national bias. Arbitration offers the parties more control over how proceedings will be conducted. Arbitration awards are, with rare exception, final and binding.

1.1 THE SIGNIFICANCE OF RECIPROCITY REQUIREMENTS FOR RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARD

The New York convention under its Article 1(3) provided that a state when signing, ratifying or acceding to the convention or notifying extension under Article (x) hereof, any state may on the basis of Reciprocity declare that it will apply the convention to the recognition and

enforcement of award made only in the territory of another contracting states. It also declares that such state will apply the convention only to differences arising out of Legal relationship whether contractual or not which was considered as commercial under the national law of state making such law.

It has been observed that in restricting the scope of the convention's application to differences arising out of only contractual relationship as provided in our legislation, Nigeria is then in breach of a treaty obligation that requires that the New York Convention be applicable in Nigeria to differences arising out of Legal relationship which are considered as commercial under the laws of Nigeria[1]. This observation can further be buttressed by making reference to the declaration deposited with the secretary General of United Nations by Nigeria which is to the effect that the convention will apply to the differences arising out of legal relationship whether contractual or not. The reciprocity requirements as the bases for recognition and enforcement of foreign arbitral awards have attracted worldwide criticism. These include:

- The arbitral creditor has no control over the acts of the foreign country rendering the award and as such may not have unjustly influenced the arbitral decision to his favour.
- It is doubtful if it achieves the purpose of protecting its citizens abroad or even the purpose of persuading other foreign countries to give effect to the country's arbitral decision.
- The policy of reciprocity ignores the basic intent underlying the recognition and enforcement of international arbitral decision which is to put an end to disputes arising between parties engaging in international Commercial transactions.

In *Zscherning v. Miller*[2] the importance of reciprocity was addressed and deemed to have outlived its usefulness. The court said:

> "The American Supreme Court declined to hold that a foreign nation extends to the United States standing to sue in its courts before its citizens could sue in the United State courts. The court further struck down an Oregon statute limiting the right of foreigners to inherit properties in United States of those who are nationals of countries which allow Americans to do so. The above court decision has demonstrated the innovative moves to detach the reciprocity clause on international sphere. It also signifies a radical approach towards globalization. The limiting of reciprocity between nations in the international business arena will go a long way to permit more understanding and co-operation amongst nations and parties involved or to be involved in the arbitration transactions with a wider range of choices among themselves".

In our context, as a developing Nation, the situation would be favourable to businessmen operating at the international level as we may not have gotten to that level of recognition among the developed countries. With full liberalization, we can deal with them without much restriction. This will result into economic viability for our dear nation.

2. EXCESS AUTHORITY OR LACK OF JURISDICTION

Most arbitral tribunal decisions are refused recognition and enforcement on the grounds that either, the arbitrators had acted in excess of authority accorded or the lack of jurisdiction on the matter, (when the matter falls outsides the dispute in contention). In most cases, the submission is always that:

[1] Article 1(3) New York Convention
[2] Zscherning v Miller 389 US. 429 (1986)

> "The award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or that the award contains decision on matters which are beyond the scope of the 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 submitted to arbitration may be recognized and enforced[3].

Impeachment of an international arbitral award on the basis of lack of jurisdiction is very fundamental and can be raised at any point during the arbitral proceedings, before the arbitral tribunal itself or the court by an application of the aggrieved party. An arbitral tribunal adjudicating upon international commercial dispute owes its jurisdiction to the agreement of the parties. If the arbitral tribunal has no jurisdiction, its acts are null and void and any award made is a nullity. The jurisdiction issue can be raised at any time a party to an arbitration agreement become aware of the lack of jurisdiction[4]. Also, once the objection is raised before an arbitral tribunal, the arbitrators have the right to decide on their jurisdiction and give ruling or an interim award before proceeding with the subject matter of the dispute. If the objection is made in a court where award is sought to be recognized and enforced, the court will examine the issue and it if discovers that the arbitral tribunal made the award without jurisdiction, the award will not be recognized or enforced[5]. In some situation, (the arbitral tribunal initially may possess jurisdiction, but where its powers have since expired for instance because it exceeded the time limit imposed on it by the applicable law or by the parties). In a situation like that, the arbitral tribunal has exceeded the time stipulated in the arbitration agreement for making the award, without extending the time limit, the award so made may be refused to be enforced for lack of jurisdiction.

In practice, this is a common occurrence because parties and the arbitral tribunal itself sometime may lose focus of time, where it occurs. It is then reasonable for any pragmatic judge to refuse to recognize and enforce an award because such an award was made out of time and may occasion injustice and hardship on the part of the aggrieved party. This can be avoidable by both parties too arbitration agreement and the arbitral tribunal keeping watchful eyes on the time limitation to avert such consequences from occurring. Another situation may be where an arbitral tribunal exceeds its mandate by dealing with matters not submitted to it that is award made in excess of jurisdiction (*extra petita*), such an award may not be enforced.

Though, the Act in Section 52(a)(v) and New York Convention in Article V(I)(C) had provided a "rescue assistance", the court may rescue and enforce the award by severing only those part of the award which goes beyond the jurisdiction of the arbitral tribunal.

The doctrine of severance is entrenched in section 29(2) of our Arbitration and Conciliation Act on the setting aside of domestic awards. It is also provided in section 52 (2) (a) (v) under the impeachment of international arbitral awards. The Model law also has a similar provision in Article 34(2)(a)(iii). This important mechanism for the saving of award had been provided for in all spheres of international commercial arbitration practice. It should be noted that where the award is not severable in accordance with the doctrine of severance, the court may not only refuse to recognize or enforce it, but shall set the same aside for lack of jurisdiction, if it is not a foreign award as our court cannot set aside a foreign award. The excess award is only in respect of incidental issues which are connected with the term of reference, the

[3] Section 52 (2)(a) (IV) & (V) Arbitration and Conciliation Act, Article V(e) New York Convention
[4] Section 12(3)(b) Arbitration Conciliation Act
[5] Dalmia Dairy Industries Ltd V Pakinstan (1978) Lloyd's Report 223

award shall be saved[6]. Other problematic instances are where the arbitral tribunal failed to deal with all the issues referred to it. Can an aggrieved party request the court not to recognize or enforce such an award? Some writers have argued that in a situation like that, the award should be held valid in respect of the issues with which it does deal, since there can be no doubt that the tribunal had authority to deal with those issues[7]. It is however submitted that an award which fails to deal with all the issues referred to arbitration should not be recognized or enforced; it should be set aside because such an award is bad for want of finality[8].

Though, our Act had provided in section 28(4) of Arbitration and Conciliation Act for saving of an award. A party to an arbitration agreement should instead of applying to the court to set aside an award, or requesting the court to refuse recognition and enforcement of an award, may request the arbitral tribunal within the stipulated time to make additional award so as to deal with all the issues referred.

In conclusion parties to arbitration agreement should be careful when determining the issues to be referred so that a clear delineation limit is set and its observation taking vital before, during and at the conclusion of arbitral tribunal proceedings. This will go a long way in eliminating the frequent request for court to refuse recognition and enforcement of arbitral award for one reason or the other falling within the jurisdiction auspices.

3. FAIR HEARING DENIAL TO PARTIES

It is a cardinal principle of law that the arbitral tribunal must act fairly to both parties. Throughout the proceedings, the arbitrators must not favour one party more than the other or do anything for one party or his representative. According to Lord Cranworth C:

> "The principles of universal justice requires that the person who is to be prejudiced by the evidence ought to be present to hear it taken to suggest cross-examination or himself to cross-examination or himself to be cross-examined, and to be able to find evidence, if he can, that shall meet and answer it, in short, to deal with it as in the ordinary course of legal proceedings[9].

In our system, the Arbitration and conciliation Act stipulates that the selected rules of arbitral procedure must permit the parties to exercise their right to be heard, to attend any sitting for the taking of evidence or any oral hearing which the arbitral tribunal may order, to be represented or assisted by any person of their choice[10]. However, failure to observe this principle constitutes a ground for setting aside or refusal of recognition and enforcement of an international arbitration award.

Denial of fair hearing in an arbitration proceeding is a serious flaw to arbitral process. For example, where one party was not given proper notice of the appointment of the arbitrators or of the holding of the arbitral proceeding[11]. It can also rear its ugly head where the arbitral tribunal refuses to hear evidence of a material witness called by a party[12] or where the examination of witnesses is taken out of the parties hand[13] or where the arbitral tribunal after

[6] Commerce Assurance Company Ltd Alhaji Alli (1986) 3 NWLR (Part 29) at 405 Ude & Others v Agu & Ors (1961) ALL NLRP 1 Etim Ekpenyong & Ors Inyang E. Inyang & 6Ors (1975) 2 SC P71.
[7] Redfern and Hunters Op Cit 438
[8] Article 32(2) arbitration Rules, Samuel V Cooper 91835) 2A & E 752
[9] Drew v Drew (1885) 2 Macq 1 at 3
[10] Section 14 & 15 Arbitration and Conciliation Act CAP 19 LFN 1990 now CAP 18 LFN 2004
[11] Kano State Urban Development Board v Fans Construction Ltd.
[12] Ibid
[13] ibid

hearing evidence from both parties receives further evidence from one without informing or hearing the other[14].

Fair hearing is a wide concept and whenever question concerning fair hearing arises in arbitration, it is expected that each national court should approach it from its own stand point. That is the basic motive of the New York convention on the Recognition and Enforcement of foreign Arbitral Awards. A district court in New York confirmed this when it says that "the New York convention essentially sanctions the application of the forum state's standard of due process[15]. This does not mean that the hearing has to be conducted as if it were in a court of law. It is enough if that court is satisfied that the hearing was conducted with due regard to any agreement between parties and in accordance with the principles of equality of treatment and the rights of each party to have a proper opportunity to present his case. On this note, fair hearing stands as a pivot point in every proceeding. A denial of it automatically leads to the non-effectual outcome of whatever that comes out as a decision because it is a fundamental basis for any arbitral decision/award to be accorded recognition and enforcement.

4. INADEQUACY OF THE PRESENCE OF VIABLE ARBITRATION CENTRES

The presence of adequate arbitration institutional centre stands as the pivot upon which arbitration practices and developments will be reckoned with. The arbitration centres and institutions can instigate the enactment of good arbitration laws. The obvious benefit of such centres spans from organization of seminars for practitioners and other judicial officers on the bench who are entrusted with the duty either to recognize, enforce or impeachment of arbitration awards and other process for participants involved in arbitration practice.

In the words of Nwakoby[16] having a good arbitration legislative enactment in Nigeria is not enough for Nigeria to be a good arbitration centre/vennue or for businessmen to come into Nigeria for the enforcement of awards made in their favour or for impeachment of the same when they are aggrieved for good reason rather the development of sound arbitration venue and arbitration institutional centers would be a good beginning. The reason for advocating for the existence of operational arbitration centre in Nigeria is enormous.

The cost effect involved in arbitrating outside one's own country especially where the parties will travel far to the western developed world to arbitrate or enforce an international commercial award made in one's favour are usually unreasonable.

The establishment of *Asian African Legal Consultative Committee* in 1956 was to meet and bridge the shortcoming and lacuna in international arbitration practices between the developed and developing world. Subsequently, the concluded agreement by the body with the Nigerian Federal Government in 1980 for the establishment of the Lagos centre which was inaugurated in 1989 was a step further in brining the arbitration expertise to our door step. The sole aim for establishing the centre was to ensure and facilitate situations where disputes occurring within the environment of the centre could be settled within the centre at minimal and fair cost and expense under expeditious procedures and also to encourage parties to have their arbitration within the region where the dispute arose rather than going too far away countries where unreasonable expenses may be incurred[17].

[14] ibid

[15] Parsons & Whitemore overseas Co. Inc v Societte Generate De Tulu Du Papier (RAKTA) 508 F, 2D 1969 (2nd Cir 1974) 975 Cited in Redfem and Hunter *Op Cit* 462.

[16] Nwakoby G.C. The Law and Practice of Commercial Arbitration in Nigeria, Iyke Venture Production, 2004 370

[17] Amazu A. Asouzu. The Arbitration and Conciliation Decree (CAP 19) or a legal Framework for Institutional Arbitration: Strengths and Pitfalls Lawyers BI-Annual Vol. 2 No. 1 June 1995, I at 20021.

5. LACK OF EFFICIENT AND PRAGMATIC NATIONAL COURTS

The regular courts in the early stages of arbitration were reluctant to accord recognition to decisions or awards of the arbitrators. This attitude showed substantially from reasoning that arbitration constitutes a rival body to the courts. But it was soon realized that arbitration may in fact prove the best way of setting some type of disputes. The attitude of the regular courts to arbitration therefore gradually has changed. At present, the Nigerian courts have started to play facilitative roles in arbitration. In Arbitration and Conciliation Act of Nigeria in sections 2, 4, 5, 6, 7, 23, 39, 30, 31, 51, 52 and 54 of Arbitration and Conciliation Act CAP 18 LFN 2004 respectively made provisions for the revocation of arbitration agreement, stay of proceedings appointment of arbitrators, compelling the attendance of witnesses, impeachment of arbitral awards, enforcement of domestic awards, enforcement of foreign awards, impeachment of foreign awards and enforcement of awards made pursuant to the provision of New York Convention by the courts.

Hence, with the enactment of Arbitration Act in several jurisdictions, the roles of the national courts in arbitration process were specifically provided and the practice of arbitration will be ineffectual and hopeless without the supervisory role of the national courts. In Nigeria for instance, the Arbitration and Conciliation Act is very explicit and provides a complete definition and delimitation of relationship between the courts. Section 34 of Arbitration and Conciliation Act Cap 19 LFN now Cap 18 LFN 2004 provides that the court should not intervene in arbitral proceeding unless as provided by the Act. Suffice it to say, the national court usually may intervene in arbitral proceedings at the beginning, during and at the end of arbitral proceedings.

A party to an arbitration agreement may in disregard of that agreement institute a court action in respect of a dispute that had arisen under a contract. When this happens, the other party may insist that the matter should proceed to arbitration as earlier agreed. The party has a choice to bring an application for stay of proceeding and ask the court to refer the parties back to arbitration. The courts are always prepared to enforce the agreement to arbitrate by refusing to accept the proceeding in court by referring the parties to arbitration[18]. It is important to note that there are circumstances when the court will not grant a stay of proceeding or refer the parties to arbitration. *Kano State urban Development Board v.Fan construction Company Ltd*[19]. However, this is not without a situation where because of the limited knowledge of most legal practitioners, with due respect, throw away a legitimate arbitrable issue/request and proceed to court litigation especially where it involves parties of different nationals.

During the establishment of arbitral tribunal, it is not impossible that parties may have failed to make adequate provision for the constitution. Secondly, there may not be any applicable institutional rules which parties may fall back. In the absence of such rules or provisions, the national court intervention is required.

Section 7 of the Arbitration and Conciliation Act has provision for the procedure/appointment, but suffice it to say that even within the same section in subsection (4) it was provided that whatever the court had done is not subject to appeal and a wide criticism has been raised in that regard because the court can hide under that guise to stall the arbitration process.

Most times, the courts have assumed jurisdiction and dealt with matters that would have been handled through the arbitral process. Situation as such may occur either due to lack of proper interpretation of legislative enactment or may be on account of limited training/knowledge of the basic difference or merit of matters on the part of legal practitioner and members of the bench.

[18] Section 4 and 5 Arbitration and Conciliation Act CAP 117 LFN 1990 now CAP 18 LFN 2004
[19] KSUDB v FAN, (19850 5 NWLR (Pt. 39) 74

Another vital point where the intervention of national court may be required is during the arbitral proceeding proper. It can be inform of compelling the witness to come forward to give evidence. It can in situation of proper conduct, compelling order for interim measures of the property or preservation of same. In any of these situations, the court is required to issue order for effective compliance. The effectiveness of these functions can only be done where there are adequate personnel working in the court system. The situation in Nigeria's polity is slightly different as most courts had not gotten the available machinery to handle the implementation of the above mentioned functions. The implication then is that arbitral process are stalled; because it will not be worthy for a party to have an award made in his favour but because of non-availability of the 'RES' he cannot enforce it.

Finally, arbitration practice development has suffered a serious setback on account of the attitude of courts both at domestic and international sphere. This happens in different ways such as:

- The issue of setting aside of arbitration awards
- The recognition of arbitral awards
- The enforcement of arbitral awards

The partnership cordiality of Arbitration process and court system notwithstanding, the attitude of our court on the outcome of most decision of arbitral tribunal in areas concerning recognition and enforcement had continued to be an ugly monster in the moment.

The Nigeria court system is very slow and sometimes nonchalant on issues of recognition, enforcement and impeachment of awards and this affects most often the settlement of international disputes. Most of our judges, with due respect may not have acquired adequate knowledge and skill in the arbitration process and the resultant effect is that in most cases, awards which are good on their face are often set aside for reasons which are absolutely doubtful *Alhaji Ali Bashir and Sons Ltd v. Bayero university Kano*[20]**.**

> "In this case, the execution of an award was stayed for an alleged reason of misconduct. In all the documents and affidavits filed in this case, the applicant failed to state the facts of the said misconduct and the Court of Appeal in Nigeria still went forth and granted the application".

In some situation, judicial decisions in Nigeria (including the case of *Alibishir and Sons v BUK),* the courts had misinterpreted the Arbitration and Conciliation Act provision of section 29 in respect of time limitation for application for impeachment. Our courts sometimes being ignorant of the proper interpretation of the two sections due to limited knowledge, deviate and give decisions that may occasion hardship or injustice. According to Nwakoby, the enactment of good legislation to guide the arbitration process is important and equally the developments of arbitral centres are very ideal.

6. THE UNIFICATION OF RULES AND PROCEDURES OF VARIOUS CONVENTIONS AND BODIES

The unification of rules and procedures of various conventions and bodies was not considered vital especially where parties had submitted their disputes to arbitration under the auspices of one of the world's major arbitration institutions. The reason being that such institution have their own rules which have been developed and amended from time to time to take account of modern trends. The need was more apparent in ad-hoc arbitration, where it was though desirable to regulate the steps to be taken in arbitration in order to be reasonably

[20] Alhaji Albishir and Sons Ltd V BUK (1996) 9 NWLK (Pt 470) 37 Emma Araka v Ambrose Ejeagwu (2000) 15 NWLR (Pt 692) 684.

sure of obtaining an award which would be enforceable. The basic aim however was to establish a procedural framework which if properly adhered to would ensure general international acceptance of the result of arbitration. The procedural framework however should not be drawn too restrictively, since flexibility of procedure is one of the main advantages of ad-hoc arbitration.

It is important to emphasize that the UNCITRAL model law considering its objective and framework is a step towards the attainment of uniformity in international arbitration practice. Regrettably most member states have not adopted it and most state/national legislative enactments are in sharp conflict with it provisions, thus making it rather difficult to attain uniformity and certainty in international commercial arbitration practice[21].

The Model law of the UNCITRAL would have achieved the desired uniformity but for the reasons stated herein and thus giving rise to conflicting interpretations by different courts of various states on its provisions as some states have not adopted it. Those who adopted it did so in part with series of modifications to its provision. Because of these variance in both adoption and legislative provisions there are possibility of diverse interpretation by different tribunal and national courts of various states. The room for different interpretations of the law provisions was possible. It is not difficult to envisage situations where similar provisions of the model law may obtain one interpretation in a common law country, with its wealth of tribunal decisions, and a completely different one in a civil country[22]. The case of *Navigation Sonamar Inc v. Algoma Steamship Ltd*[23] illustrates a critical example of a decision base on model law provision. The applicant in the case applied to have an award set aside for non-conformity with Article 31(2) of the model law because of the absence of reason for the award. The applicant contended that the award was bad because of the absence of reasons and that it was contrary to public policy.

The award would be contrary to the model law if without the agreement of the parties, reasons are absent. The learned Judge relied exclusively upon English and Canadian decisions in determining the essential matters and that it drew conclusion as to the learned Justice claim made and accordingly, satisfied the requirements of reason. In other words, giving effect to Article 31(2) which requires that the award shall state the reasoning upon which it was based; the court however drew its decision on common law decision as to the extent of reasoning required without due regard to the model law which stipulates that stating the reasons for the award is essential for a valid award. The learned Judge cited the decision of Megay J. in *Posyser and Milla Arbitration*[24] and Lord Lane in *R v Immigration Appeal Tribunal*[25] as their decisions were based on the provisions of the model law. The emphasis now is that one wonders whether the same guideline would be applied in similar situation and case in another jurisdiction by another judge if called upon to interpret the same provision of Article 31(2) of the UNCITRAL Model Law.

However, considering our national law, when an award contains no reason, such an award shall be subject to impeachment unless the parties stated the contrary in their agreement. There is no doubt that the national court or tribunal charged with such task of applying the model law will interpret its provisions against the background of the only established body of rule familiar to it. That is the national law prevailing, such move could lead to unexpected results.

[21] Nwakoby G.C Op Cit 375

[22] Hon. Justice Andrew Rodgers "Contemporary problems in International Commercial Arbitration International Business Lawyer Vol. 17, No 4 1989, 154.

[23] Navigation Sonamar Inc Algoma Stearship Ltd 91987) RJO 1346

[24] Posyser and Mills Arbitration (1963) 1 All E.R 612

[25] R v Immigration Appeal Tribunal (1983) 2 ALL E.R 520

7. THE QUESTION OF STATE IMMUNITY

The doctrine of sovereign immunity is a defence to jurisdiction that could be pleaded by a foreign state or state entity when it is pleaded before a domestic tribunal[26]. State immunity is a hallowed principle of international law under which state is essentially exempted from the jurisdiction of the court of foreign state[27]. The doctrine of sovereign immunity as it relates to immunity from execution of arbitral awards continues to be a hurdle to the enforcement of International Commercial Arbitration awards. The doctrine was the main issue considered in the case of *Liberian Eastern Timber Corporation v The Government of the Republic of Liberia.*

The suggestion so far advanced for solving of problems created by the immunity from execution as a defence is that foreign investors should always insist on procuring an express waiver of immunity from execution in their contracts with government when these express clauses are included in the arbitration agreements. The domestic or national laws should pose as hurdle in the enforcement of international Arbitration awards.

8. LIMITED SCOPE OF OUR ARBITRATION LAWS

Before the enactment of Arbitration and conciliation Act came into force most of our decisions were totally based on the English Arbitration Act. Nigeria acceded to the New York convention in 1970 but the implementation was formalized in Nigeria by the Arbitration and conciliation Act CAP 19 laws of Federation of Nigeria 1990. The domestication of the New York convention into Nigerian law was provided for in Section 54 of the 1988 Decree now Cap 18 Laws of the federation of Nigeria 2004. Section 54 of the Nigeria Arbitration and Conciliation Act which implemented the New York Convention provides inter alia.

> "Without prejudice to section 51 and 52 of the Act where the recognition and enforcement of any award arising out of an international commercial arbitration are sought the convention on the Recognition and Enforcement of Foreign Awards (hereinafter referred to as the convention) set out in the second schedule to this Act shall apply to any award made in Nigeria or in any contracting state. (a) Provided that such contracting state has reciprocal legislation recognizing the enforcement of arbitral awards made in Nigeria in accordance with the provisions of the conventions; and (b) That the convention shall apply to differences arising out of legal relationship which is contractual."

Further, the issues concerning international arbitration came to the lime light in our legislation on International Centre for Settlement of Investment Dispute (Enforcement of Awards) Act in Cap 120 LFN 2004.[28] The act which was to provide for the enforcement in Nigeria of an award by the International Centre for Settlement of Investment Disputes states that Award of ICSID is to have effect as award in Final judgment of Supreme Court[29] where for any reason it is necessary or expedient to enforce in Nigeria an award made by the International Centre for settlement of Investment Dispute, a copy of the award dully certified by the Secretary-General of the centre aforesaid, if filled in the supreme Court by the party seeking its recognition for enforcement in Nigeria, shall for all purpose have effect as if it were an award made in Nigeria.

[26] Somarajah, International Commercial Arbitration (Singapore Longman, 1990) P. 200.
[27] Osode Patrick "State Contracts" state interests and International Commercial Arbitration" A world perspective (1997) 9 RADIC P. 10
[28] International Centre for settlement of Investment Disputes (Enforcement of Awards) Act CAP 120 LFN 2004.
[29] ICSID (Enforcement of Awards) Act CAP 120 Subsection (I)

9. CONCLUSION

The numerous problems confronting the International Commercial practice in Nigeria can be corrected, if the chief justice of the Nigeria will expedite action in ensuring that legislation is put in place, such legislation will reassure on other stakeholders that Nigeria is a safe place as well as to foster the practice of International Commercial arbitration in Nigeria.

The on-going amendments by members of National Assembly on Nigerian Constitutional Laws will been an advantage as legislation to address issues such as the procedural requirements of effecting registration of arbitral awards in foreign countries that will be enforced in our polity will be incorporated appropriately.

The various stakeholders involved in the practice of arbitration should endavour to stand on their fit jointly and develop procedures, models, and avenues of ensuring that those who stand as arbitrators are given adequate training through organization of courses, seminars, workshops and inter-visit conferences with their counterparts in the Western World. Such visits will afford them the opportunity of assessing situations on grounds such like in areas of infrastructural design, legislation, applicable laws and courts, level of interference in arbitral issues, reciprocity treatment of issues; this will go a long way in developing our arbitration system especially as it concerns international commercial arbitration practice.