



SHOULD THE NIGERIAN COURT REMAIN PASSIVE IN THE FACE OF VIOLATION OF THE ARBITRATION AND MEDIATION ACT 2023?

WRITTEN BY

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INTRODUCTION

The parties¹ executed a contract that has an arbitration agreement to resolve any dispute between same. During the arbitral proceedings, the Arbitral Tribunal issued Procedural Order 5 which allowed all the Respondent's document requests and directed the Applicant to produce all the documents requested by the Respondent. However, the Arbitral Tribunal issued Procedural Order 8 and declined to allow the Applicant to request for the Respondent to produce the documents save for the PRMS Maintenance Schedule.

The Applicant was of the view that the documents were germane for the just and effectual determination of its claim pursuant to which it applied to set aside Procedural Order 8 in accordance with the provisions of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) "1999 Constitution", Arbitration and Mediation Act 2023 "AMA" and the Federal High Court (Civil Procedure) Rules 2019 "FHC Rules".

What position did the Nigerian court take to resolve this issue?

Nigerian court² to the rescue:

The threshold question adopted by the Court was whether the Arbitral Tribunal which allowed the Respondent's request for documents from the Applicant and refused the Applicant's request for documents from the Respondent can be said to have treated the parties before it equally? The Court found that the Arbitral Tribunal failed to balance the competing interests of the parties and the refusal of the documents requested by the Applicant from the Respondent amounted to a violent breach of section 30 of the AMA and section 36 of the 1999 Constitution. The Court set aside Procedural Order 8 and directed the Respondent to produce (within 7 days) the documents as requested by the Applicant.

The Arbitration Community v The fair treatment of a party:

Some may say that the decision of the Court is against the letters and perhaps the spirit of the AMA which will in turn negatively impact Nigerian seated arbitrations. They position that the classification (by the Applicant's Counsel not the Court) of a Procedural Order as an "Interim Award" is inconsistent with the AMA. I disagree, respectfully.

The AMA empowers any party to challenge the decision of the Tribunal³ and further provides that where the challenge is pending in Court, the Tribunal may continue with

¹ The arbitration is still ongoing as of the date of this commentary.

² Suit No: FHC/L/CS/377/2025- Bayshore Technologies Ltd v Green Fuels Limited delivered on April 10, 2025 per Hon Justice Alexander Owoeye

³ Section 9 of the AMA

the arbitral proceedings and make an award⁴. In other words, the AMA recognizes the difference between the decision of the Tribunal and the Award of the Tribunal and empowers a party to challenge the decision of the Tribunal within 30 days and the Final Award within 3 months from the date of the publication of the Award⁵.

Thus, the argument that Procedural Order 8 ought not to have been reframed as a “decision” of the Tribunal, or an “Interim Award” is of very little weight. It focuses on the form and not the intent of the Tribunal. The fact remains that Procedural Order 8 was a decision of the Tribunal, and the Applicant had the right to challenge same and rightly challenged same particularly in view of the very restrictive grounds to set aside an Award under the AMA.

What options were available to the Applicant when it was apparent that without the production of the documents from the Respondent, it would be unable to prove its case? Perhaps, the Applicant should have remained passive and silent in the interest of protecting and pleasing the “arbitration community” at its own detriment. I think not!

CONCLUSION

It would therefore seem that as a matter of Nigerian law, parties in an arbitral proceeding have the right to challenge the Procedural Order of the Arbitral Tribunal and the Final Award of the Arbitral Tribunal. The Parties and the Court must not remain passive in the face of violation of elementary provisions of Nigerian law but must be prepared to promptly clip the wings of the Tribunal in the Court of law in the pursuit of equity, fairness and justice.

The content of this article is the view of the author and not that of the firm; and intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

⁴ See *Esso Exp & Prod (Nig) Ltd v FIRS* (2021) 8 NWLR Pt. 1777 P. 43

⁵ Section 55 of the AMA