AN EXAMINATION OF THE LAW AND PROCEDURE OF ARBITRATION IN MARITIME INDUSTRY IN NIGERIA: CHALLENGES AND PROSPECTS

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Abstract

This paper centred on the examination of the various laws in the practice of arbitration in the maritime industry in Nigeria which includes the UNCITRAL Model Law, The New York Convention on Recognition and Enforcement of Foreign Awards, ICSID Convention, The Hague and Hague Visby Rules among others. It also outlined the laws and procedures precedent for arbitration process to take place, the finality of the arbitral award and enforcement of same. The paper also took a careful look at the challenges associated with the practicability of the arbitral process in the maritime industry and the prospects it portends for the Nigeria maritime industry. It further enhances the knowledge of the reader on the practicability of maritime arbitration in Nigeria especially on the aspect of containerization under the Hague Visby Rules.

1.0 Introduction

Arbitration, no doubt is fast becoming the preferred means of resolving disputes between parties, governments and bodies especially in international business transactions, which maritime falls under. This may not be unconnected with the fact that the arbitration process is flexible, faster than litigation and even cheaper when compared to other traditional or conventional methods of resolving disputes. However, for this method of dispute resolution to effectively work, parties *ab initio* must agree to submit to arbitration in the event of any disagreement in the course of transacting amongst themselves. They must also stipulate the processes, rules and principles to guide the arbitration mechanism when resolving disputes so as for the arbitral award, which would emanate from the process to be binding on them as such awards are not subject to appeal. In spite of the advantages arbitration has over litigation, there are still challenges militating against realisation of its full potentials and prospects in Nigeria.[3] There are several laws regulating the practice of arbitration in Nigeria and internationally. While there are local laws in Nigeria, some international laws have been domesticated.

2.0 Legal Framework for International Commercial Arbitration

There are numerous treaties that are relevant to arbitration at the international arena. However, international commercial arbitration is based on the duo of the *United Nations (UN) Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration (UNCITRAL Model Law)* and *The New York Convention on Recognition and Enforcement of Foreign Awards 1958*. The UNCITRAL model law which emanated from unification of relevant provisions from arbitration laws globally was adopted by the UN General Assembly in 1985. It has however enjoyed universal acceptance in the international business arena as an acceptable international standard and yardstick which protects investors from being subjected to discriminatory dispute settlement

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provisions and unfair practices. The UNCITRAL mode lay down the principle of non-intervention[4] to the effect that in any matter to which the model apply, the domestic courts shall not interfere except as provided in the model law. The article excludes residual powers of the court not expressly recognized by it, with the intent to get rid of undue delay and speed-up arbitral process. The model law has enjoyed extensive acceptance globally and this has aided recourse to arbitration for the settlement of maritime disputes globally. The successful application of the UNCITRAL model law led to the adoption of International Commercial Conciliation law in 2002, about two decades later. Efforts towards improving the UNCITRAL model law has been continuous as seen in the recent review of interim measures, preliminary orders and recognition and enforcement of interim orders.

Whereas existence of international dispute settlement is important to protect foreign regime, it is necessary for such instruments to provide equal protection for all investors. A typical example of failure to create level playing field is seen in Article 5 of the UNCITRAL Model Law which has far reaching effects. The effect of Article 5 of the UNCITRAL Model Law is to grant preferential treatment and protection to foreign investors over domestic businesses. The extent of suitability of the model for the protection of domestic businesses in Africa is questionable.

The New York Convention was adopted in 1958. It imposes obligation on domestic courts of state signatories to refer to arbitration any matter before it, which incorporates a contractual arbitration clause. It also requires that domestic courts grant foreign arbitral awards recognition and enforcement without subjecting it to fresh review, but for the few permissible exceptional circumstances.[5] The primary objective of the convention is to ease the process of recognition and enforcement of an arbitral award outside the country where it was delivered. In order to ensure compliance, the New York Convention considers as breach of treaty obligations any failure by the court of a state signatory to apply the provisions of the Convention. The compulsory recognition of foreign arbitral awards as prescribed by the New York Convention speaks to the effectiveness and importance of the institutional framework for ADR at the national level. It is also more favourable to businesses from nations with well-developed legal systems, where contracting parties from such nations incorporate in their agreement dispute settlement clause requiring that commercial disputes be referred to his home country for settlement.

Another important instrument in the settlement of commercial dispute internationally is the *Washington Convention of 1965 (ICSID Convention)* which has been ratified by several nations of the world. The ICSID Convention deals with investment disputes involving citizens of state signatories. The subject of international arbitration is also mentioned in other relevant international instruments including *the 1961 European Convention on International Commercial Arbitration, Moscow Convention of 1972, the Panama Convention of 1975, the Ohada Treaty of 1993, the North American Free Trade Agreement of*

[4] UNCITRAL Model Law on International Commercial Arbitration, G.A. Res. 40/72, 40 U.N. G.A.O.R. Supp. (No. 17), U.N. Doc. A/40/17 (June 21, 1985), revised in 2006, G.A. Res., Article 5; This is the principle of nonintervention, adopted into various National Laws including the English Arbitration Act section (c) 1996.
[5] United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958), Articles II & V.

1994 (NAFTA).[6] Besides the multilateral arena, there are regional bodies that address the subject of arbitration. They include regional bodies set-up under the auspices of Asian-African Legal Consultative Committee. Like the *Lagos Regional Centre For International Commercial Arbitration*, *International Court of Arbitration of the International Chamber of Commerce ("ICC")*.

The mode of operation of arbitration is to permit parties to freely adopt rules that will govern the dispute settlement process. Parties are to reach an agreement on rules of evidence, applicable laws, number of arbitrators, venue of arbitration etc. The rules applicable for admission of evidence in International Commercial Arbitration were set-out by the International Bar Association (IBA), though parties are at liberty to adopt this rule or any other suitable rules. In addition, there are other applicable rules set-out by various international bodies; their application to cases however depends on the choice of parties.
The Hamburg Rules are the result of the United Nations Convention on the Carriage of Goods by Sea, which was adopted in Hamburg on March 31, 1978 and came into force on November 1, 1992. They were drafted largely as answer to the concerns of developing nations that the Hague rules were unfair in some respects. These concerns stemmed mainly from the fact that they were seen to be drawn up by the mainly 'colonial maritime nations' and had the purpose of safeguarding and propagating their interests at the expense of other nations. The United Nations responded to this concern by drafting the Hamburg Rules. The Hamburg rules are far more than a simple amending of the Hague/Visby regime and came up with a completely different approach to liability. Under the Hamburg Rules, it is the carrier that is responsible for the loss or damage of all goods unless they can prove that they took all reasonable steps to avoid the loss. The Hamburg Rules are a set of rules governing the international shipment of goods; and establishes a uniform legal regime governing the rights and obligations of shippers, carriers and consignees under a contract of carriage of goods by sea.[7] It was an attempt to form a uniform legal base for the transportation of goods on oceangoing ships. A driving force behind the convention was the attempt by developing countries to provide all participants a fair and equal chance of succeeding.[8]

Article 22 (3) of the Hamburg Rules prescribe that the place of arbitration may be determined by the Claimant provided the chosen location is a state within the territory where the claimant resides. The rules also consider the Defendant by stating that place of arbitration may also be the Defendant's principal place of business, the Defendant's permanent residence, a place where the contract was signed and in which the Defendant also has a branch office or office of the agency through which the contract was signed. The Hamburg rules expressly envisage settlement of maritime disputes by stating that the place of arbitration may also be the port of loading or port of discharge of goods forming the subject matter of contract and any other place designated in the contract or arbitration agreement.

[6] European Convention on International Commercial Arbitration of 1961 Geneva, United *Nations, Treaty Series, vol. 484, p. 364 No. ; 1972* Convention on The Settlement by Arbitration of Civil Law Dispute Resulting From Relations of Economic and Scientific-Technical Cooperation Moscow, Article I-XIII 1972*; Inter-American Convention on International Commercial Arbitration - Panama Convention, January 30 1975, Treaty on the Harmonisation of Business Law in Africa (the Ohada Treaty 1993), Title 4; the North American Free Trade Agreement 1994 (NAFTA, Chapter 11.*
[7] UNCITRAL, 'United Nations Convention on the Carriage of Goods by Sea (The Hamburg Rules) 1978 <https://uncitral.un.org/en/texts/transportgoods/conventions/hamburg_rules> accessed 28 September, 2023
[8] *Ibid*

It is also important to look at the Hague Rules[9] and the Hague-Visby Rules.[10] Although the duo have no provisions on maritime arbitration, they specify time limits for commencing maritime actions which might affect the right to resort to legal intervention whether via litigation or ADR. The Hague Rules are the result of the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading. It was signed at Brussels on August 25, 1924. The Convention marked the culmination of negotiations that had been in progress for some years under the auspices of the International Law Association. The rules were designed to bring certainty and legal uniformity to what was then, as it is today, the most important conduit of international trade in corporeal moveable property. The Hague Rules of 1924 formally the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, and Protocol of Signature is an international convention to impose minimum standards upon commercial carriers of goods by sea.[11]

These Rules represented the first attempt by the international community to find a workable and uniform way to address the problem of ship-owners regularly excluding themselves from all liability for loss or damage to cargo. Its objective was to establish a minimum mandatory liability of carriers.[12] Under the Hague Rules, the shipper bears the cost of lost/damaged goods if they cannot prove that the vessel was unseaworthy, improperly manned or unable to safely transport and preserve the cargo, which means that the carrier can avoid liability for risks resulting from human errors provided they exercise due diligence and their vessel is properly manned and seaworthy. These provisions have frequently been the subject of discussion between ship-owners and cargo interests on whether they provide an appropriate balance in liability.

The Hague Rules form the basis of national legislation in almost all of the world's major trading nations and cover nearly all the present international shipping. The Rules have been updated by two protocols, but neither addressed the basic liability provisions, which remain unchanged.[13] The Hague Rules were slightly amended (beginning in 1931, and further in 1977 and 1982) to become the Hague-Visby Rules.

There is a Limitation of time to bring an action under Hague Rules. Article 3(6) of The Hague and Hague-Visby Rules require that legal actions against a carrier and a ship must be commenced within the duration of one year from the date set for the delivery of the goods. While Article 22(2) of the Hamburg rules[14] requires that an arbitration clause in a charter party be specifically incorporated into the bill of laden with binding effects on anyone who acquires the bill in good faith; the claimant has the right of choice of place of arbitration and the Arbitral panel is to apply the rules of the convention. Thus, any clause or term of an agreement that is inconsistent with the rules shall be null and void to the extent

[9] The International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, Brussels, August 25 1924 and in force June 2, 1931 (Hague Rules).
[10] The Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, signed at Brussels February 23, 1968 and in force June 23, 1977. (Hague Visby Rules).
[11] A.N Yiannopoulos, "Uniform Rules Governing Bills of Lading: The Brussels Convention of 1924 in the Light of National Legislation.", (1961) (10) (4) *The American Journal of Comparative Law*, 374–392
[12] ASEAN, 'International Conventions', <https://asean.org/wp-content/uploads/2023/02/Chapter-7-International-Conventions.pdf> accessed 26 October, 2023
[13] F. Ruiz, "Legal Study of Sea Carrier Limitation of Liability according to Brazilian Law in Comparison to the Hague-Visby Regime" (2010) (1) (1), *Lawinter Review, New York*, 144–198.
[14] The United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules).

of such inconsistency. The convention stipulates a limitation period of two years for instituting legal action or arbitration[15] proceedings, as opposed to the one-year duration specified in The Hague and Hague Visby rules.

3.0 Types of Maritime Disputes Amenable to Arbitration

Maritime disputes can arise in various aspects of the industry, from cargo damage claims to charter party disputes and insurance claims and vessel collision. These disputes can have significant financial and operational implications, making it crucial to find a suitable resolution method. Maritime arbitration offers a flexible and effective alternative to traditional litigation, making it well-suited for resolving a wide range of maritime disputes. One common type of dispute that is often resolved through arbitration is charter party disputes. Charter parties are contracts that outline the terms and conditions of the chartering of a vessel. Disputes may arise when there are disagreements regarding the performance of contractual obligations, payment issues, or breaches of contract. Maritime arbitration provides a neutral forum for parties to present their case and have it resolved by an impartial arbitrator. Another type of dispute that can be resolved through arbitration is collision claims. When two vessels collide, determining liability and assessing damages can be complex. Maritime arbitration allows the parties involved to present their evidence and arguments to an arbitrator who specializes in maritime law. The arbitrator can then make a fair and impartial decision based on the evidence presented, helping to resolve the dispute efficiently.

Insurance claims are also commonly resolved through maritime arbitration. Whether it's a dispute over coverage, the valuation of damages, or the interpretation of policy terms, arbitration can provide a streamlined process for resolving insurance-related disputes. The arbitrator, often an expert in maritime insurance, can evaluate the evidence and apply the relevant legal principles to reach a fair decision. As the maritime industry continues to evolve, so does the field of maritime arbitration. The future of maritime arbitration holds promise for more efficient, accessible, and specialized dispute resolution mechanisms. Technological advancements, such as video conferencing and electronic document management systems, have already transformed the arbitration process, making it more convenient and cost-effective. These advancements allow parties and arbitrators to participate in hearings and exchange documents remotely, reducing the need for physical presence and minimizing travel costs. Specialized arbitration institutions and panels of maritime arbitrators have also emerged, catering specifically to the needs of the maritime industry. These institutions and arbitrators possess a deep understanding of maritime law and industry practices, ensuring a high level of expertise in resolving maritime disputes.

Additionally, alternative dispute resolution methods, such as mediation and hybrid processes, are gaining traction in the maritime industry. These methods offer parties more flexibility and control in resolving their disputes and can be particularly valuable in maintaining ongoing business relationships. As the maritime industry continues to globalize, cross-border disputes are becoming more prevalent. The harmonization of arbitration laws and the enforcement of arbitration awards across jurisdictions will play a crucial role in the future of maritime arbitration. Efforts to streamline these processes and

[15] *Ibid,* Article 20 (1).

promote consistency in decision-making will contribute to a more robust and reliable international arbitration framework.

Where disputes arise from maritime related activities and parties are unable to reach an agreement, naturally the first port of call is to make recourse to the court for legal intervention. In Nigeria, settlement of maritime disputes can be undertaken using various approaches known to Nigerian laws. These approaches are hereunder examined;

3.1 Settlement of Maritime Disputes via Litigation

Where court action is to be instituted in relation to maritime or admiralty claims, the 1999 constitution of Nigeria, vest the Federal High Court with exclusive jurisdiction to entertain such matters. Section 251(1) (g) provides

> "[1] Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other Court in civil causes and matters
> [g] any admiralty jurisdiction, including shipping and navigation on the River Niger or River Benue and their affluent and on such other inland waterway as may be designated by any enactment to be an international waterway, all Federal Ports, [including the constitution and powers of the Ports Authorities for Federal Ports] and carriage by sea;"

In a similar vein, Section 19 of the Admiralty Jurisdiction Act provides that without regard to the provision of any contrary law, the Federal High court shall have exclusive jurisdiction to entertain both civil and criminal admiralty cases. In order to fully exercise its jurisdiction over maritime cases, the Federal High Court is also empowered to apply the English principles of common law and doctrines of equity applicable for the settlement of maritime disputes.[16] Furthermore, the combined provisions of *Sections 254 of the 1999 Constitution* and section *21 of the Admiralty Jurisdiction Act, 1991* empower the Chief Judge of the Federal High Court to make rules of procedure on admiralty matters. In lieu of this provision, the 2011 Admiralty Jurisdiction Procedure Rules was made to repeal the old rules of 1993. The Chief Judge of the Federal High Court made the Admiralty Jurisdiction Procedure Rules 2011, which came into force on 14 March 2011 ("the new Rules"), thereby repealing the old Rules which had been in force since 1993. A progressive provision of the act is the power it vests on the court to encourage parties to a dispute to make recourse to amicable settlement through any of the recognized mechanisms including arbitration, negotiation and reconciliation.[17]

3.2 Limitations and Challenges of Settling Maritime Disputes via Litigation in Nigeria

Litigation is the process of resolving a dispute through adjudication in courts. Litigation is adversarial in nature; it involves filing a suit or process in courts and subsequent appearance of parties as well as presentation of evidence in support of their cases. In most parts of the world, ADR is gradually taking precedence over litigation in various parts of the world, because of its numerous benefits which include

[16] Federal High Court Act 2005, S 10 and 11.
[17] Admiralty Jurisdiction Procedure Rules 2011, S17.

but not limited to conservation of time, money and energy. In Nigeria, maritime claims are exclusively heard by the Federal High Court, the Admiralty Jurisdiction Procedural Rules and the Federal High Court Civil Procedure rules set out the procedural requirements for filing a suit to recover claims in maritime or admiralty matters.[18]

However, enforcement of maritime claims via litigation in Nigeria is confronted with several limitations which make litigation undesirable. One of the most pronounced challenges is the extent of admiralty jurisdiction of the Federal High Court as set-out in Section 251 of the 1999 constitution. There have been several cases when it is unclear to litigants whether a particular matter falls within the admiralty jurisdiction of the Federal High Court. The cause of action is the right which the litigant has to institute an action, in the absence of which the court will not have the requisite jurisdiction to proceed with the suit. In the case of *NV.SCHEEP v. MV "S.ARAZ"*[19] where the plaintiff in the capacity as agents for Messrs.' N.V. ScheepVaatmijUnidor Willie Mstad of Curacoa instituted an action to recover demurrage over the use of the vessel by the second defendant, a matter that was on-going before an arbitral panel in London at the time of filing the suit. An interlocutory application by the defendant challenging the jurisdiction of the court was dismissed by the Federal High Court but up-held on appeal to the Court of Appeal and the Supreme Court on grounds that the Plaintiff's claims were not inherently maritime claims.

On the other hand, in the case of *G & C LINES v. HENGRACE [NIG] LTD*[20] where the plaintiff filed a suit before the Lagos state high court for waiver of demurrage payable to the 1st and 2nd Defendants, the defendant's application requesting that the matter be struck-out for lack of jurisdiction was struck-out by the high court. The appeal by the Defendant against the High Court's interlocutory decision was decided in favour of the Defendant. To the effect that such claims were maritime claims within the jurisdiction of the Federal High Court. This is quite confusing, whereas in the former case the Appeal court and Supreme Court held that demurrage claims were not within the Federal High Court's jurisdiction as they were not substantive maritime claims, in the latter case with the same claims were said to be within the jurisdiction of the federal high court.

Another major problem faced while litigating a maritime claim is procedural bureaucracy. Nigerian court system has a backlog of cases yet to be cleared as such any suit filled, except in cases of urgency which calls for accelerated hearing, will join the long queue and will take a relatively long duration before its final conclusion. Delay tactics adopted by legal practitioners, sometimes to buy time, also contributes to the waste of time. Traditionally, maritime suits involving shippers in Nigeria are known for taking long time, rendering the essence of justice futile. In some cases, arrested vessels stayed at anchor for such a long duration that upon completion of the case, the ship would have been dilapidated. On several occasions, shippers have had to abandon their claims.[21] Where there are cargos in the ship, it may have become expired.

[18] *Ibid*, S19 and Federal High Court Civil Procedure Rules (n-790) S.20.
[19] NV. SCHEEP *v* MV. "S.ARAZ [2001] 15 NWLR [PART 691] 622.
[20] G & C LINES *v* HENGRACE [NIG.] LTD [2001] 7 NWLR [Part 711] 51.
[21] Lanre Adedeji 'Dispute Resolution and the Practice of Arbitration' on *The Lawyers Chronicle* <www.thelawyerschronicle.com/dispute- resolution-and-the-practice-of-arbitration> accessed on 12th November, 2017.

The use of interlocutory application as a delay tool is also a major problem which renders maritime trials unattractive. Interlocutory applications are interim prayers presented to the court in the course of the claim, which must be herd before the substantive suit. In a maritime suit, interlocutory applications may be genuinely filed to preserve the res, and it may be filled out of malice to delay proceedings. The Federal High Court Civil Procedure Rules does limit the number of interlocutory applications that can be heard in the course of a suit, in the interest of justice. Frustration resulting from undue delay of litigation through interlocutory application has been obviated by the case of *Maersk & Anor v Adidide Investment Limited & Anor*[22]. In this case, the substantive suit which was filed in 1996 was placed on hold while interlocutory appeal proceeded to the supreme court and was only finally determined after seven years, in 2003. Similarly in the case of *Amadi v NNPC*[23] in taking cognizance of the procedural delay, the learned judge, Uwais JSC (as he then was) stated that

> The chequered history of this case once more brings to light the dilatory effect of interlocutory appeals on the substantive suit between the parties. The action in this case was brought on the 29th day of April 1987... the final judgment on the interlocutory appeal is delivered today by this court. It has taken thirteen years for the case to reach this stage... the case is to be sent back to the High Court to be determined hopefully on the merits after a delay of 13 years... I believe that counsel owe it as duty to the court to help reduce the period of delay in determining cases in our courts by avoiding unnecessary preliminary objections, as the one here, so that the adage of "Justice delayed is justice denied" may cease to apply to the proceeding in our courts.

Several other reasons exist why litigation is not in any way really desirable when it comes to maritime trade and commercial activities; first, the outcome of litigation is uncertain. The presiding Judge considers several principles of law before coming to a decision; as such neither party is assured of possibility of winning the case. In addition, litigation could be unduly expensive and may lead to unnecessarily publicity. The long duration may lead to loss of the subject matter, and it destroys the relationship between the parties; thus affecting the economy in the long run. The individual businessmen lose out, so also the nation.

3.3 The Agreement to Arbitrate

Arbitration is a private dispute resolution mechanism established for the settlement of disputes by a neutral third party (the Arbitrator) or panel of neutrals referred to as the "Arbitral Tribunal". Amongst the key features of the arbitration process is the parties' agreement to arbitrate. The agreement to arbitrate is the foundation of any valid arbitration. It is the basic source of the Tribunal's power and authority to arbitrate the dispute between the parties. The contractual nature of the arbitration requires the consent of each party for an arbitration to happen.[24] Without an arbitration agreement, there can be no arbitration.

[22] Maersk & Anor v Adidide Investment Limited & Anor (2002)1 SC vol. II 157.
[23] Amadi v. *NNPC* [2000] l0 NWLR (pt 676)76.
[24] Comparative International Commercial Arbitration by Julian D.M. Lew, Loukas A. Mistelis and Stefan M. Kroll, published in 2003 by Kluwer Law International at page 99.

The agreement to arbitrate is usually embedded in the main contract between the parties. In this case it is referred to as the arbitration clause. It is however possible to have it as a separate agreement. Parties may submit future or existing disputes for arbitration. Where the agreement is in respect of a dispute which is already in existence, the arbitration agreement is referred to as a submission agreement. Arbitration agreements submitting future disputes to arbitration are more prevalent.

3.4 Importance of the Arbitration Agreement

The core objective of a valid arbitration agreement is to confer jurisdiction on the arbitral tribunal to decide the dispute between the parties. It is a contract between the parties to arbitrate their dispute. It is recognized both by national laws and international treaties. In Nigeria, the governing law on arbitration is the Arbitration and Mediation Act, 2023 (AMA). Also applicable to arbitrations held in Lagos State, except where otherwise agreed by the parties, is the Arbitration Law of Lagos State, 2009 (LSAL).[25]

By agreeing to arbitrate their dispute, parties in effect exclude the national courts from resolving such dispute and empower the arbitral tribunal to do so. It is the arbitration agreement that establishes the jurisdiction and the authority of the tribunal over that of the courts. Unlike the national courts that derive their jurisdiction from statutory provisions, the arbitral tribunal derives its jurisdiction from the parties' agreement to submit their dispute to arbitration. The scope of the arbitration over which the arbitral tribunal has and can exercise jurisdiction is established by the arbitration agreement. Where the tribunal goes outside the scope of the reference any award rendered will not be enforceable.

3.5 Autonomy of the Arbitration Agreement

The arbitration agreement even where embedded as a clause in the main contract between the parties is autonomous. It is a separate and distinct contract independent of the main contract. It is considered to stand on its own and is therefore not affected by the validity or otherwise of the main contract. This is based on the doctrine of separability. The essence of the doctrine is that the arbitration clause is not bound to that of the main contract as to be affected by it. This way, any illegality or termination of the main contract will not affect the power of the tribunal appointed to determine the dispute arising from such contract even where an alleged illegality or validity of the contract is in issue.

An arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. Also, a decision that the contract is invalid shall not invalidate the arbitration clause. The parties' decision to arbitrate their dispute is therefore protected by the doctrine of seperability of the arbitration agreement.[26] The doctrine will however not apply where the existence of the arbitration agreement itself or the main contract in which it is embedded is in issue. In that case there is nothing upon which to found the existence of an agreement to arbitrate. This issue was extensively discussed by the English Court of Appeal in the leading case of Fiona Trust and Holding Corporation & Others v. Yuri Privalov & Others.[27]

[25] Lagos State Arbitration Law, 2009, s 2

[26] E Onyema, 'The Doctrine of Separability under Nigerian Law' [2009] (1) (1) Apogee Journal of Business, Property & Constitutional Law 68.

[27] [2007] EWCA Civ. 20

4.0 Legal Requirements of the Arbitration Clause:

A valid arbitration agreement is irrevocable and cannot be unilaterally defeated.[28] It will be enforced by the courts. Since a valid arbitration agreement, the courts are precluded from assuming jurisdiction over a dispute where parties have agreed to arbitrate same.[29] For an arbitration agreement to be valid and therefore enforceable by the court, there are legal requirements which must be met. Depending on the applicable arbitration law, these include:

The "writing" requirement*:* The AMA and the LSAL both require that the arbitration agreement be in writing.[30] It is mandatory that an arbitration agreement is in writing as it is proof of the parties' intention to submit to arbitration. The "writing" requirement is interpreted by the AMA to include writing contained "… in a document signed by the parties, or in an exchange of letters, telex or telegrams or other means of communication which provide a record of the arbitration agreement or in an exchange of points of claim and of defence in which the existence of an arbitration agreement is alleged by one party and not denied by the another." [31]The AMA further provides that the inclusion of an arbitration clause by reference or implication meets the writing requirement.

The LSAL has similar provisions but goes on to provide a wider interpretation of the "writing" requirement to include "… data that provides a record of the Arbitration Agreement or is otherwise accessible so as to be useable for subsequent reference." It interprets "data" to include data generated, sent, received or stored by electronic means, optical or similar means such as but not limited to Electronic Data Exchange (EDI), electronic mail, telegram, telex or telecopy.

4.1 Capacity of parties to enter into the arbitration agreement: One of the limited grounds upon which an arbitral award may be set aside is where either of the parties is under some incapacity or where the arbitration agreement is invalid under the governing law agreed by the parties.[32]

4.2 Arbitrability of the subject matter of the arbitration: Where the subject matter of the dispute is not one which can be arbitrated under the applicable law any award rendered will be void and unenforceable. In Nigeria as in many other countries, only commercial disputes can be arbitrated. Thus, land, chieftaincy, matrimonial, amongst other disputes are not ordinarily arbitrable.[33]

4.3 Conditions Precedent to Arbitration Proceedings: Where conditions precedent to the arbitration were not fulfilled prior to the conduct of the arbitration, any award rendered may be successfully challenged. A good example is where the parties have agreed on a multi-tiered dispute resolution clause providing for negotiation or mediation prior to arbitration, if the earlier process is not successful. If the arbitration is conducted without exploring the earlier mechanism, any ensuing award may be set aside.[34]

[28] Arbitration and Conciliation Act s 2; Lagos State Arbitration Law s 4
[29] Arbitration and Conciliation Act Ss 4,5; Lagos State Arbitration Law s 6(1)
[30] Arbitration and Mediation Act s 2; Lagos State Arbitration Law s 2(3)
[31] AMA, s. 2
[32] B.C.C. Ltd v. Imani & Sons Ltd & Shell Trustees Ltd (2007) ALL FWLR (Pt. 348) 806 at 818 Paras. F – G (SC)
[33] *Ibid.*
[34] Alexander Jolles, Consequences of Multi-Tier Arbitration Clauses: Issues of Enforcement, 72 Arbitration 329, 336 (No. 4, 2006).

It is therefore necessary for the parties to agree time frames within which to explore the multiple tiers to ensure that a party does take advantage of any process to delay or defeat the agreement to arbitrate.

5.0 Essential Ingredients of a Valid Arbitration Clause

There are specific attributes that must be contained in an arbitration agreement to ensure that it is valid and enforceable. These are:

5.1 Clear Intent to Arbitrate: One of the important functions of the arbitration agreement is that it shows that the parties have consented to resolve their dispute by arbitration. It is important therefore that the arbitration agreement states clearly and without any equivocation that the parties have agreed to a binding arbitration. Where the arbitration agreement does not contain such clear expression, the courts are not able to enforce the agreement.[35]

5.2 Scope of the Arbitration: The arbitration agreement must determine the scope of the arbitral Tribunal's jurisdiction. It is the usual practice to have arbitration agreements establish the scope of the arbitration with the use of broad wordings so that all differences and claims arising from a given contract can be arbitrated. Depending on the wording used, the agreement to arbitrate may cover tortuous and non-contractual claims. A good example is the case of *Hi-Ferty Property Ltd et al v. Kiukiang Maritime CarriersInc. et al*[36]**.** The Claimants initiated court proceedings for negligence, breach of contract and a violation of Australian statutory provisions. The Defendant challenged the jurisdiction of the court on the basis of an arbitration clause. The Supreme Court held that only the claims for breach of contract were covered by the arbitration clause. The non-contractual claims had to be determined by litigation. To avoid any restriction in the scope of the arbitration, broad terms such as "All disputes arising out of or in connection with the present contract…" are used as they will likely be interpreted to cover not only contractual claims but tortuous and statutory claims as well.

5.3 Finality of the Award*:* While it is implied in the arbitration agreement, arbitration clauses usually contain the words "finally settled by arbitration" or words to that effect. Such expression indicates the parties' intention to be bound by the award which is enforceable by the court same as a judgment.

5.4 Other Relevant Factors

In addition to the essential ingredients of an arbitration agreement, parties are advised to consider the following factors when drafting their arbitration agreement:-

i) Number of arbitrators to appoint: This will usually depend on the complexity and value of the claims. In simple and small arbitrations, it is advisable to appoint a sole arbitrator unlike in complex and high value arbitrations where having a panel of three arbitrators may be more appropriate.

ii) Method of selecting the arbitrators: Parties may agree the method by which a sole or panel of arbitrators should be appointed. Equally important is the agreement of parties on an appointing

[35] Klaus Peter Berger, Law and Practice of Escalation Clauses, 22 Arb. Int'l 1 (2006).
[36] (1999) 159 ALR 142, 12(7) Maley's IAR C-1 (1997) Federal court of Australia.

authority in the event that they are not able to agree on the tribunal. Under the arbitration rules of the AMA for example, failure of the parties to agree on the tribunal will result in the appointment being made by the Director of the Regional Centre for International Commercial Arbitration, Lagos.[37]

iii) Where parties decide on an institutional arbitration, the proper name of the institution must be inserted. Arbitration agreements have failed where the institution appointed by the parties did not exist.

iv) Language of the arbitration proceedings.

v) Applicable arbitration law and arbitration rules.

vi) Where parties wish to establish time lines for the conduct of the arbitration, they must be careful to ensure that the time lines are realistic and can be extended without requiring the consent of both parties.

vii) Choice of arbitrator: Parties should be careful when specifying the qualifications of the tribunal. Except in submission agreements which are for existing disputes, it is not advisable for parties to specify the name of the arbitrator in the arbitration agreement as they do not know if the specified arbitrator will be available when disputes arise.

viii) Confidentiality: Whilst arbitration is essentially a private and confidential mechanism, many national laws including the ACA do not provide for the confidentiality of the proceedings and the award. Consequently, it is advisable for parties to regulate it in their arbitration agreement.

ix) The seat of the arbitration: The choice of the seat of the arbitration is an important consideration as it determines which national law governs the arbitration as well as the courts which have the power to provide support to the proceedings.

Where the arbitration agreement is silent on any of these factors, the rules of the applicable law will apply. Under the AMA for example, where parties fail to agree on the number of arbitrators, three arbitrators will be appointed for them.[38] Under the LSAL, the Lagos Court of Arbitration is empowered to make the appointment where parties fail to agree.

It is advisable for parties to consider appointing an arbitration institution to administer their arbitration or incorporate the arbitration rules of one. This is because the arbitration rules of most arbitral institutions make adequate provisions for the effective management of the process. Parties should carefully review the arbitration rules to ensure that they are suitable.

Certain clauses in an agreement that create ambiguity regarding the interpretation of the arbitration agreement may render it or an ensuing award unenforceable. They include, Equivocation as to whether the parties intended to arbitrate their disputes. For example "In case of a dispute, the parties undertake to submit to arbitration but in case of litigation the Tribunal de la Seine shall have exclusive jurisdiction."[39] Another example is "Arbitration – all disputes will be settled amicably." Also, where

[37] ACA s 44.

[38] Arbitration and Conciliation Act s 6; Lagos State Arbitration Law s 8.

[39] International Chamber of Commerce Arbitration by Lawrence Craig, Rusty Park and Jan Paulson (citation please) referred to by John Townsend in his article, Drafting Arbitration Clauses: Avoiding the 7 Deadly Sins published in the AAA Dispute Resolution Journal, February – April, 2003, Vol. 58, No. 1

the parties' decision to arbitrate is not expressed in the agreement, such as- In the event of any unresolved dispute the matter will be referred to the International Chamber of Commerce," The clause failed to state whether the dispute was to be resolved by arbitration; and where the parties specify the person to be appointed arbitrator in the event of a dispute and the person dies or refuses to act when a dispute arises, it is important to note that the foregoing notwithstanding, the courts will enforce an arbitration agreement that clearly expresses the parties intention to arbitrate even where it does not say much more than that. Example "Arbitration, if any, by I.C.C. Rules in London".[40] Where the parties agree on an institution to administer the arbitration or as an appointing authority and the institution is not in existence.

6.0 Procedure of Maritime Arbitration

Arbitration is a procedure whereby parties bound together in a contractual agreement appoint a third party to settle their disputes. The rise of arbitration in the field of maritime commerce has resulted from the ability of its adherents to promote cost-efficient, timely, and, most important, just and equitable decisions for the many disputes that arise as a result of maritime trade.

Maritime arbitrations are a subset of the larger field of commercial arbitrations, and as such have many of the same basic characteristics. What sets them apart are the parties involved. The "players" in a maritime arbitration are possibly from different countries, and probably are involved in fairly complex trade relationships that have peculiar customs or conventions beyond the experience of the general population. When disputes arise, it would be more convenient for the parties if they could reach an outcome that was consistent with the world of maritime trade as they know and understand it. This is particularly true for people from the developing countries. It is important for them to be able to participate in a dispute-settlement process with which they have some familiarity and over which they have some control. Having been subjected to the imposition of foreign systems of government during the colonial periods, there is a marked reluctance to submit to a foreign system of law. The participation by the UN membership in the drafting of the UNCITRAL Arbitration Rules,'[41] and the adopting of these rules by the General Assembly by consensus, is evidence of the acceptability of arbitration in the field of international dispute settlement in general,[42] and to maritime disputes in particular.

6.1 Elements of Maritime Arbitration

The essential elements for an arbitration are: (a) that there exist a dispute between the parties; (b) that the dispute be justiciable under the governing laws; (c) that the parties volunteer to submit to arbitration; (d) that the agreement to arbitrate be a binding contractual obligation on the parties; (e) that the settlement must be by a third party; (f) that there be a formal reference of the dispute to arbitration; (g)

[40] Mangistaumunaigaz Oil Production Association v. United World Trade Inc. (1995) 1 Lloyd's Rep 619 (cited in Comparative International Commercial Arbitration by Julian D.M. Lew, Loukas A. Mistelis and Stefan M. Kroll, published in 2003 by Kluwer Law International at page 167).

[41] UNCITRAL Arbitration Rules, April 29, 1976; approved by the UN General Assembly on December 15, 1976 (Yearbook of Commercial Arbitration 2 [1977]:161) and reproduced in App. B of this volume.

[42] *Ibid*, 173.

that the arbitration must be decided according to law; and (h) that the award be final and binding on the parties.[43]

In the sphere of maritime commerce, disputes arise out of misunderstandings of contractual agreements and liability for losses suffered by act or accident. Parties to these disputes cannot agree among themselves as to the extent of the obligations owed by one party to the other and so must turn to another source for determination. What sets arbitration apart from litigation in a court of law is that, in arbitration, the parties volunteer to put the decision in the hands of a third party of their mutual choice and, in the case of maritime arbitration, in the hands of a third party who is experienced both in maritime matters and in the settlement of the particular type of dispute that has arisen.

The arbitration process is marked by a number of characteristics that have evolved from the requirements of dispute settlement between commercial enterprises. Their paramount consideration is usually money. The parties arbitrate because it is the most cost-efficient means of settling their dispute, or at least they believe this to be the case. As a result, commercial arbitration has developed the following characteristics: (a) The parties voluntarily enter into an agreement to arbitrate, either as a part of their obligations to each other (arbitration clauses in commercial contracts) or as a separate agreement after the dispute has arisen. (b) The parties control the proceedings to ensure convenience, efficiency, and privacy. To this end they choose the "who, how, where, and when," only relying on outside parties or the state when they cannot agree. (c) The parties accept the decision as terminating the dispute and agree to abide by it.[44]

6.1.1 Arbitral Tribunal

An arbitral tribunal or arbitration tribunal, arbitration commission, arbitration committee or arbitration council is a panel of impartial adjudicators who are convened and sits to resolve a dispute through arbitration. If you have entered into an arbitration agreement which provides you with the right to arbitrate a dispute, you may need to attend an arbitral tribunal. An arbitral tribunal is a panel of one or more arbitrators assembled and sits to resolve a dispute through arbitration. The tribunal may consist of a sole arbitrator, or there may be two or more arbitrators, including a chairperson or an umpire

6.1.2 Arbitral Proceeding

The process of maritime arbitration is a crucial aspect of resolving disputes in the admiralty court. It offers an alternative to traditional litigation, providing parties involved in maritime disputes with a more efficient and cost-effective means of resolving their conflicts.

6.1.3 Initiation of Arbitration

Maritime arbitration typically begins with the parties agreeing to submit their dispute to arbitration through *a written agreement* or clause in their contract. This agreement outlines the rules and procedures that will govern the arbitration process. For example, in a charter party agreement between a shipowner and a charterer, there may be a provision stating that any disputes arising from the contract

[43] John Parris, Arbitration: Principles and Practice (Grenada: Fragmore Press, 1983), 7.
[44] Julian Lew, Applicable Law in International Commercial Arbitration (Dobbs Ferry, N.Y.: Oceana Publications, 1976), 16.

will be resolved through arbitration under specific rules such as those provided by the Society of Maritime Arbitrators (SMA) or the London Maritime Arbitrators Association (LMAA).

6.1.4 Selection of Arbitrators

The next step involves selecting arbitrators who will preside over the case. Parties can either agree on a sole arbitrator or appoint multiple arbitrators to form an arbitral tribunal. The chosen arbitrators should possess expertise in maritime law and industry practices to ensure a fair and knowledgeable resolution.

6.1.5 Preliminary Proceedings

Once the arbitrators are appointed, preliminary proceedings take place to establish procedural matters such as timelines, document exchange, witness statements, and any other necessary steps. These proceedings aim to streamline the arbitration process and ensure that both parties have equal opportunities to present their case. For example, parties may agree on a specific timeline for submitting written statements or expert reports to avoid unnecessary delays.

6.1.6 Hearing and Evidence

The arbitration process culminates in a hearing where both parties present their arguments, evidence, and witnesses before the arbitrators. This stage allows each party to present its case and challenge the opposing party's evidence or arguments.

6.1.7 Award and Enforcement: Following the hearing, the arbitrators deliberate and render an award, which is a binding decision resolving the dispute.

6.2 Arbitral Award

The Arbitration and Conciliation Act Cap A18 LFN, 2004 did not define an award and as such, the term has been given several definitions by different authors, scholars and commentators. An Arbitral Award is a decision of an Arbitral Tribunal delivered by the tribunal after its proceedings. The valid ingredients of a valid award are provided in Section 26 of the Act which includes that the arbitral tribunal shall state the reasons for the award, the date on which the award was made, the place it was made, and it shall be written and signed by the arbitrators. The different types of awards are: Consent awards, final awards, interim awards, partial awards, interlocutory awards, self-executory awards, and additional awards. An award once it is rendered and published until it is set aside by a court of competent jurisdiction is final and binding on all the parties in the arbitration. The award shall be published to the parties alone. The award can only be made public with the consent of the parties to the arbitration agreement. This is because of the high level of confidentiality required in arbitration proceedings. The award must be final, conclusive, certain, and capable of enforcement.

An arbitration award is an award granted by the arbitrator in their decision. This award can be money one party has to pay to the other party. It can also be a non-financial award, such as stopping a certain business practice or adding an employment incentive. In simpler words, arbitral awards refer to the decision of an arbitral tribunal, whether in domestic or international arbitration. Drafting an award is a

complex matter as the arbitrator must condense the entire proceedings into a coherent and reasoned document. This chapter shall examine the requirements of a valid arbitral award as per the Act.

6.3 Essentials of a Maritime Arbitral Award

For an arbitral award to be valid, it must contain the following essential elements:

- The award shall be in writing.
- The award shall be signed by all the members of the arbitral tribunal.
- The award shall state the reasoning on which it is based.
- Date and place of arbitration should be mentioned on the award.
- The award must be complete and must not leave anything behind.
- The award must be consistent and should not be contradictory
- The award must be certain and should not be any uncertainty.
- The award should not be impossible to perform.

6.4 General Principles

i) Only a party to the arbitration agreement can challenge an arbitral award. A person who is not a party to the arbitration cannot raise a challenge against an arbitral award.

ii) An award can only be challenged before a court, which would include a District Court and a High Court exercising original jurisdiction (for awards from domestic arbitration) and High Court (for awards from international commercial arbitration).

iii) Timeline refers to when a challenge against an arbitral award can be raised. The law notes an initial period of three months from when the award is received by the party with a maximum extension of thirty more days by the court.

6.5 Types of Maritime Arbitral Award

a) Final Award: An award that is made by the requirements of the law (including signature, reason and delivery), and finally adjudicates on the issues submitted to arbitration, would be a final award.

b) Domestic award: An arbitral award made within the territory of the state.

c) Foreign award: An arbitral award made or deemed to be made in the territory of another state.

d) Settlement Award: During the arbitration process, the parties may choose to settle the matter instead of having it adjudicated by the arbitrator. In such a situation, the arbitrator could assist the parties in arriving at a settlement. If a settlement is arrived at, and the arbitrator has no objection to it, then terms of the settlement could be made part of an award. This is referred to as a settlement award.

e) Additional Award: When a final award has been rendered, but it is later found out that certain claims that had been submitted to the arbitral tribunal were not resolved/adjudicated, the parties can request the arbitral tribunal to make an additional award covering the issues that had been left out. Such a request must be made within 30 days from the date of receipt of the final award.

6.6 Requirements of a Maritime Arbitral Award

i) Must be a decision by the majority: All decisions, including an award, must be made through the majority. An award must also be complete concerning all issues that are submitted to the arbitral tribunal for adjudication.

ii) Must be made in writing, signed and dated: Section 47(1) of AMA requires an award to be in writing and have the signature of the members of the arbitral tribunal. It is not an award unless these two conditions are fulfilled. It is quite possible that a particular arbitrator may not agree with the contents of the award. Therefore, the law only requires a majority of the arbitrators to sign. The law, however, requires the award to state the reason for any omitted signature. The date of the award is of equal importance since it helps in determining various timelines, for instance, within how much time can an award be challenged before the court, etc.

iii) Must be reasoned: A mandatory requirement for an award is that it should be reasoned.[45] Failure to state reasons would make the award invalid. The arbitral tribunal is required to reach a decision and it also has to show why it reached a particular decision. The presence of reason would show that the arbitrators had applied their minds to the matter, taken into consideration all materials put before them and only then arrived at a decision. In other words, the decision would not be arbitrary. The only exception is when the parties have agreed that no reasons need to be given for the award.

iv) Should be capable of being performed: The award should be capable of being performed. The award must be realistic in what it suggests, and should not ask parties to do something that is not possible or illegal. An unenforceable award would be set aside.

v) Must not be illegal (against public policy): Under the law, a particular award that violates public policy would be set aside. The public policy represents some of the most cherished and important principles and policies of the State. An award would be in violation

6.7 Enforcement of Awards

Arbitration is a private dispute resolution method that usually results in an arbitral award. An award, once made, is binding on the parties to the arbitral proceedings. Thus, the Supreme Court held in Ras Pal Gazi Construction Co. Ltd v F.C.D.A[46] that "it is very clear and without any iota of doubt that an arbitral award made by an Arbitrator to whom a voluntary submission was made by the parties to the arbitration, is binding between the parties."

However, Arbitrators lack the authority and institutional framework to enforce their awards. It is against this backdrop that statutory and international framework has been put in place for the enforcement of arbitral awards made in Nigeria and outside the jurisdiction of Nigeria.

6.8 Enforcement of International Arbitral Awards

Section 91 of AMA describes international arbitration as when the parties to an arbitration agreement have, at the time of the conclusion of the contract, their places of business in different countries; or one of the places where the deal is to be executed, the home of the arbitration or the class most connected with the subject matter of the dispute is situated outside Nigeria; or the parties have expressly agreed

[45] AMA, s. 47 (3)

[46] (2001) LPELR-SC.45/96

that the subject matter of the arbitration agreement relates to more than one country; or the parties, despite the nature of the contract, expressly agree that any dispute arising from the commercial transaction shall be treated as international arbitration.

The award emanating from an international arbitration can be enforced using any of the procedures stated below:

a. Registration of the award under the Foreign Judgment Enforcement Act*:* Section 2 of The Foreign Judgment (Reciprocal Enforcement) Act defines foreign judgment as arbitral awards. The award will be registered with the Nigerian Court that has jurisdiction to hear the dispute, and it will be enforced as the judgment of the Court. By instituting an action to enforce the award, Plaintiff will be required to prove to the Court that there is an arbitration agreement, an arbitration award, and an absence of irregularity in the conduct of the arbitration.

b. Enforcement under section 51 of ACA states that an arbitral award is binding and enforceable in Nigeria, irrespective of the country in which it was made. The party seeking to enforce the award shall apply to the Court by a Motion on Notice supported by an affidavit, the duly authenticated original award or a duly certified true copy thereof; the original arbitration agreement or a duly authorized true copy thereof; and where the award or arbitration agreement is not made in the English language, a duly authorized translation thereof into the English language.[47]

c. Enforcement under the New York (Enforcement and Recognition of Arbitral Awards) Convention 1958: Nigeria ratified the convention on March 17, 1970, and it came into force in Nigeria on the 15th of June, 1970. Sections 57 and 60 of AMA states that awards from an international arbitration are enforceable in Nigeria under the New York convention, provided the country it originated from will accord Nigeria similar recognition.

d. Enforcement of International Centre for Settlement of Investment Dispute (ICSID) Awards: Awards issued by ICSID are enforceable by registering them at the Supreme Court under section 1(1) of the ICSID Act.[48]

Arbitral awards are ordinarily binding without recourse to court or any other procedure for enforcement. However, in practice, it is not uncommon for the parties whom the award was made against to become recalcitrant, and that is when the procedure highlighted above is instrumental for enforcing international and domestic recognition in Nigeria.

The maritime industry, serving as a vital global conduit for trade, commerce, and transportation, is no stranger to disputes. It appears that as maritime activities increase in complexity and reach, so do the potential sources of conflicts. Maritime disputes can arise from collisions, salvage operations, contractual breaches, environmental damage, and more. To address these conflicts, arbitration has

[47] Arbitration and Conciliation Act Cap A18, Law of the Federation of Nigeria, 2004, s 51
[48] Cap I 20, Laws of the Federation of Nigeria, 2004.

gained prominence as an effective tool for resolving maritime disputes swiftly, efficiently, and with specialized expertise. This specialized expertise together with efficient procedures, confidentiality and tailored solutions makes arbitration an indispensable tool in the maritime industry's toolkit; ensuring that disputes are resolved with minimal disruption to trade, commerce, and the delicate ecosystem of international waters. Maritime arbitration typically involves panels of maritime experts who understand the industry's nuances. It is the defining feature of maritime disputes since time immemorial.[49]

This Chapter discusses the challenges and prospects of maritime disputes settled by arbitration in Nigeria. It also considers *interalia* the problems related to the role of courts in arbitration and problems associated with the rights of third parties in arbitration. This section establishes the fact that Arbitration, with its attendant challenges, has emerged a popular ADR method for maritime disputes due to its many advantages over litigation.

7.0 Challenges facing Arbitration in Nigeria

7.1 Litigation

In contrast to commercial litigation, where parties must appear in court for many years before a judge may decide their case, an arbitration proceeding is quick and adaptable. The method for resolving the disagreement has been agreed upon by the parties. An arbitral award cannot be appealed, and arbitration processes are private. Despite the benefits of' arbitration over litigation, there are still several difficulties with using arbitration to settle commercial issues in Nigeria.

Whether on purpose or by accident, litigation rapidly replaced other methods of settling business issues in Nigeria. While some lawyers choose to litigate a case that is subject to arbitration, other businesses insist on settling complex commercial issues through court proceedings. Some judges are still hesitant to refer cases to arbitration because they worry that arbitration may progressively usurp their functions and the powers of the Courts, even though judges get ongoing training on the role of arbitration in conflict settlement. A significant obstacle to the development of arbitration in Nigeria is this deeply rooted culture of litigation

7.2 Poor Arbitration Laws

Again, an unclear or poorly written arbitration or submission agreement may cause misunderstandings. An arbitration or submission agreement that does not specify the number and procedure for choosing the arbitrators, the arbitration's scope, location, seat, language, rules, and applicable law may cause delays or even defeat the parties' intention to resolve their commercial dispute through arbitration.

7.3 Attitude of Parties

Even though an arbitral award is final and binding, the losing party may seek leave of Court to set aside the award on the grounds of misconduct of the Arbitrator. For commercial disputes with huge financial

[49] M Gregori, *Maritime Arbitration Among Pat, Present and Future and New Challenges in Maritime Law (*Bonomo Publishers 2015), 329-349

implications, the losing party may even appeal to the Court of Appeal and then the Supreme Court if the application to set aside the award is dismissed.

8.0 Challenges of Arbitration in Nigeria's Maritime Industry

The maritime industry has taken advantage of the benefits offered by arbitration and is where arbitration has found a very fertile field to grow and develop. However, the fast expansion of the maritime business and modern times, are constantly introducing new and more defiant challenges for this alternative dispute resolution method. Some unresolved problems of arbitration today include, *interalia*, the validity of the arbitral clauses inserted in the bill of lading, the so-called judicialization of arbitration, the problems derived from the absence of a specific and uniform regulation of international maritime arbitration, and the adaptability of arbitration to the era of e-commerce.[50]

This section discusses these challenges and others in details hereunder;

8.1 Validity of the Arbitration Clause:

In an arbitration clause, the parties agree to refer future disputes under that contract to arbitration. However, an ambiguously drafted arbitration clause, when it comes to its implementation, may lead to a clash between its effective interpretation and the parties' intent to refer their disputes to an arbitral tribunal.[51] Thus, the interpretation of the clause creates problems for the parties, the arbitral tribunal and the courts. In negotiating a contract, parties are generally more concerned with their commercial obligations than the standard terms. They see the standard terms less important and in a popular commentary, they are referred to as 'midnight clauses', that is, the last clauses to be considered in contract negotiations, sometimes late at night or in the early hours of the morning.[52] These vague or poorly drafted arbitration clauses are also called 'pathological clauses'. The expression was first used by Frederic Eisemann in 1974 and has since become a popular phrase in commercial arbitration. In his view, the expression denotes arbitration agreements, and particularly arbitration clauses, which contain a defect or defects liable to disrupt the smooth progress of the arbitration.[53] When poorly drafted arbitration agreements are being interrogated, it is useful to set out Eisemann's criteria as to the essential functions of an arbitration clause. These are four, namely,

(a) The first, which is common to all agreements, is to produce mandatory consequences for the parties.

(b) The second, is to exclude the intervention of state courts in the settlement of the disputes, at least before the issuance of the award.

(c) The third, is to give powers to the arbitrators to resolve the disputes likely to arise between the parties.

[50] C. Di Felice, Contemporary Concerns of International Maritime Arbitration , (Venezuela, Avani Nro. 2, 2021), 261-276

[51] Roberto Pirozzi and Rocco Ioia, 'Defective Arbitration Clauses' in *Arbitration Briefing* No 18 of 2 March, 2020 available at <http://www.3dlegal.it/wp-content/uploads/2020/04/Arbitration-briefing-no.-18.pdf> accessed 5th August, 2024.

[52] N. Blackaby and Ors. *Redfern and Hunter on International Commercial Arbitration* (6th edn, Oxford University Press, 2015) 72

[53] B. Davis, 'Pathological Clauses: Frederic Eisemann's Still Vital Criteria', *Arbitration International*, (1991) (7) (4), 365

(d) The fourth, is to permit the putting in place of a procedure leading under the best conditions of efficiency and rapidity to the rendering of an award that is susceptible to judicial enforcement.[54]

Thus an arbitration agreement is pathological when it deviates from anyone of the above four elements. These four conditions, formulated in 1974 are still valid today as they were in 1974.

Further, according to the learned authors of the book Russell on Arbitration, *w*hen drafting an arbitration agreement, care needs to be taken to ensure that it is appropriate for the particular circumstances of the case.' The authors then gave a checklist of the matters which need to be considered including proper identification of the parties, a clear reference of the dispute to arbitration, Seat of arbitration, the law governing the arbitration agreement, choice of the procedural rule/law, appointment of the tribunal, number and qualifications of arbitrators, and language of the arbitration.[55] Nonetheless, the principal defects found in arbitration clauses are those of inconsistency, uncertainty and inoperability.[56]

8.2 Judicialization of Arbitration

This is also referred to as the Denaturation of arbitration. It appears that promptness, economy and simplicity are some of the top-rated characteristics of arbitration. These attributes are considered inherent to it and most people choose arbitration as a method of solving their problems, hoping to experience these qualities. However, in contemporary times, maritime arbitration processes are getting more and more complex, strict and expensive and are taking longer to arrive at a final resolution which definitely does not match the initial promises of arbitration. Today, in arbitral proceedings, there is the fear of 'judicialisation' which results in a procedure more sophisticated and 'regulated', with control over the process moving towards law firms and away from the actual users of this process.[57] At this regard, 'judicialisation' is ascribed to the role of lawyers who give bigger relevance to legal questions, whereas in the past, when 'commercial men' were appointed, maritime arbitration had been mainly directed to solve factual or technical issues.[58]

Also, it has been observed that lawyers who lack more convincing arguments or even when such arguments exist, in their defensive tactics are used to raising a number of questions not necessarily related to the merits of the dispute, or procedural objections, to slow down the process, such as objections to jurisdiction, the validity of the arbitration convention, requests for interim measures, security action or for proof. Nonetheless, in some cases the use of the legal instruments may be necessary and due for an effective defense; however, other times the recourse to such procedural remedies is abused.[59] Thus, in practice, it has been observed that arbitration processes are generally being delayed. This is due to various applications filed by parties in court, which seek to delay or stall arbitration proceedings. Also, there tends to be a significant amount of time spent when seeking to enforce or set aside an arbitration award.[60] A recent survey on the use of international commercial

[54] *Ibid*
[55] David St John Sutton and ors., *Russell on Arbitration* (24th edn, Sweet & Maxwell, 2015) 61
[56] N. Blackaby and Ors., (n52)
[57] W. Tetley, *Marine Cargo Claims, New Challenges in Maritime Law: De Lege Lata Et De Lege Ferenda,* (Cowansville, 2008)349
[58] M Gregori, (n49) 341.
[59] *Ibid*
[60] *Ibid*

arbitration conducted among a number of major corporations, across different industry sectors, including shipping and commodities trading, shows that while, overall, arbitration remains the preferred dispute resolution for transnational disputes, many respondents express concern over the issues of cost and delays of international arbitration proceedings, as well as fear of denaturation of the process[61].
The phenomenon of judicialization of the arbitration process has been blamed on multiple factors such as;

i. The tendency to dishonor the arbitral agreement impugning the arbitration awards or the process itself in front of domestic court.
ii. The recurrent inclusion of procedural matters as part of a strategy to have a favorable outcome like challenges of evidence and arbitrators, discoveries and objections[62] which significantly slows down the process.
iii. The focus that most lawyers put on legal questions; whereas in the past, maritime arbitration was simply meant to solve factual or technical issues related to the transport of goods where practical matters such as the bonafide interest and continuity of the business were the top priority.
iv. The large number of cases assumed by many Arbitrators. Indeed, the major maritime corporations tend to refer every dispute to the same small number of professional Arbitrators who are highly qualified, experienced and trustworthy, which not only gives a sensation of a monopolized world but also saturates those few arbitrators who will not have enough time to dedicate to each case and to arrive at a formal resolution in due time.[63]

These realities negatively impact the schedules and costs of procedures, because the parties must increase the resources invested and wait longer to get to a final decision that resolves the case, or even worse, keep on hold some businesses or situations blocked by the course of the arbitration or a precautionary order inherent therein. Thus, there is no gain saying that this denaturation of arbitration makes it an expensive process. The high fees owed to legal advisors and arbitrators, and if the arbitration is directed by an arbitral institution such as the International Chamber of Commerce, the parties also have to pay the administrative expenditure of the institution.[64]

However, it appears that the most effective remedy against such abuse of the arbitration process is the intervention of the Arbitrator(s) who can use his powers of direction to ensure the expeditiousness of the proceedings, by promoting voluntary agreement by the parties, limiting dilatory tactics and keeping the focus on the merits of the dispute.

8.3 Non Publication of Awards

Maritime Arbitration is now lagging because of the complexity and non-availability of its Awards to a large extent in the public domain. Arbitral judgments should be published so that shipping corporations are able to appoint better arbitrators and decide the laws applicable to the dispute. It will also help in

[61] *Ibid*
[62] R Gerbay, *Is the End Near Again? An Empirical Assessment of Judicilaization of International Arbitration* (Columbia Law School Press: 2014)228.
[63] Felice (n50)
[64] J Silva, *Arbitraje Comercial International en Mexico (*Oxford University Press 2001)174.

avoiding future controversies.[65] Further, there is a need for better cooperation among the arbitral tribunals around the world.[66] Also publication of awards, may help the creation of a consistent maritime arbitral jurisprudence, as well as contribute to avoid future controversies, whose outcome would be quite predictable, allowing parties to choose arbitrators having in mind their previous decisions.

However, since the publication of awards is in contrast with the need for privacy which is one of the major reasons for the existence of arbitration, it is provided that unless both parties authorize the said publication, awards must remain confidential.[67] Nonetheless, the remarkable advantages of publication overwhelms, at least in part, the principle of confidentiality through an update of arbitral rules of the arbitral centres which should strongly support the publication of awards or, at least, of the principle of law of every decision.

8.4 Delay and High Cost of Arbitration

Today many shipping corporations don't want arbitration because of the cost involved and the delay it takes in decision. Delay is often caused in the choice of more trustworthy and experienced arbitrator. They also feared about the intervention of the courts in their dispute which further aggrieves the problem. A recent survey on the use of international commercial arbitration conducted among a number of major corporations, across different industry sectors (including shipping and commodities trading), shows that while, overall, arbitration remains the preferred dispute resolution mechanism for transnational disputes, many respondents express concern over the issues of costs and delays of international arbitration proceedings.[68]

In maritime law both phenomena (increase of costs and procedural delays) are determined by a certain number of interrelated factors which includes drafting of arbitration clauses which sometimes are incomplete or vague, poor choice of procedural rules and criteria for the appointment of arbitrators. This is also the result of a general change in shipping practices, not anymore governed by independent ship owners and by a pool of companies based in London whose relations were founded on mutual consideration and confidence, but by multinational corporations. Also, arbitration from an informal procedure where the differences between parties were amicably resolved has become a method of dispute settlement governed by formal rules increasingly modeled after court proceedings. In some cases procedural delays are even caused by maritime arbitrators; in fact, the major maritime corporations tend to refer every dispute to the same small number of professional arbitrators, highly qualified, experienced and trustworthy who are expected to preside over numerous number of cases. Disputes referred to arbitration have also become technically and legally so complex to imply extensive legal research, analysis of copious documentation, as wells as intervention of experts and specialized lawyers.[69]

[65] Gregori (n49)
[66] *Ibid*
[67] G. Elias and Ors., 'Nigeria – Global Arbitration Review', 2023, <https://globalarbitrationreview.com/guide/the-guide-challenging-and-enforcing-arbitration-awards/3rd-edition/article/nigeria > accessed 8th August, 2023
[68] *Ibid*
[69] R. Gerbay and Anor., Corporate Choices in International Arbitration: Industry Perspectives – 2013 International Arbitration Survey, (2013) (41), *School of International Arbitration, Queen Mary University of London*, 6

This problem appears not to be limited to Nigeria alone. With regard to London maritime arbitration, where single arbitrator proceedings prevail, costs are mainly a consequence of the high fees of lawyers. More so, in the British legal system, the distinction between solicitors and barristers may result in a duplication of charges. In New York, parties have to pay in a maritime arbitration, the fee of the three arbitrators. Delays and costs can progressively damage the attractiveness of arbitration. Some solutions have been proposed in order to reverse the current trend of delays and increase the efficiency of arbitration proceedings. A relevant, but not decisive support may derive from information technology, which allows to shorten procedural times through online hearings and examination of witnesses. Although such innovation does not seem to comply with the conservative nature of the shipping industry, sooner or later the entire procedure will have to be dematerialized.[70]

8.5 Digitalization and Evidentiary Challenges

The increasing digitalization of the maritime industry introduces challenges in preserving and presenting digital evidence during ADR processes. Ensuring the authenticity and integrity of electronic documents becomes crucial. The digitalisation of maritime operations has introduced challenges in presenting, preserving and ensuring the security and authenticity of electronic documents which is crucial in this age of cyber threats.[71]

8.6 Environmental Disputes and Liability

With growing emphasis on environmental protection, maritime disputes related to pollution, oil spills, and marine ecosystem damage are on the rise. Arbitration mechanism needs to grapple with assigning liability and addressing environmental remedies. Maritime disputes often involve complex technical and operational details. Experts in fields such as maritime law, marine engineering, navigation, and cargo handling may be called upon to provide evidence and analysis during the resolution process. Also, understanding the intricacies of maritime disputes involves grasping the diverse scenarios, legal principles, and international dimensions that come into play. Navigating these complexities requires a blend of legal acumen, technical expertise, and a keen awareness of the ever-changing waters of the maritime industry.[72]

8.7 Challenges in Offshore Energy

[70] Gregori (n49)
[71] M. Bocayuva, 'Cybersecurity in the EU Port Sector in light of the Digital Transformation and the COVID-19 Pandemic', (2021) (20), *WMU Journal of Maritime Affairs*, 173-192
[72] M. Jonjua and anor., 'Nigerian Environmental Pollution Concerns and Remediation: A Study of the Coastal Areas of Nigeria', <https://www.academia.edu/36611888/Nigerian_Environmental_Pollution_Concerns_and_Remediation_A_Study_of_the_Coastal_Areas_of_Nigeria> accessed 8th August, 2024

As offshore energy exploration expands, disputes related to oil and gas exploration rights, maritime boundaries, and environmental impact assessments are becoming more frequent which requires a lot of expertise to resolve.[73]

8.8 Cross-Border Complexities

Maritime disputes often involve multiple jurisdictions, requiring Arbitration mechanism to navigate conflicts of laws, jurisdictional challenges, and issues of enforcement. Maritime disputes often involve parties from different countries, leading to jurisdictional challenges. Determining the appropriate court or arbitration forum can be complex, especially when the incident occurred in international waters or involved vessels from various jurisdictions. Maritime disputes may involve a blend of national laws, international conventions, and maritime customs. For example, the Hague-Visby Rules and the Hamburg Rules are international treaties that regulate cargo liability in maritime transportation. In *Nigerian Agip Exploration Ltd v GEC Petroleum Development Co Ltd*.,[74] where there was an issue on where to challenge the validity of an award in a cross border transaction, the learned judge, Andrew Baker J., confirmed that it was appropriate for the English curial court to grant an anti-suit injunction to restrain proceedings overseas, which is here in Nigeria, to challenge the validity of an award. Nonetheless, in international maritime disputes, the enforcement of arbitration awards or court judgments across different jurisdictions can be a challenge. Parties may need to navigate various international treaties and conventions to ensure the effective enforcement of decisions.[75]

8.9 Jurisdictional Uncertainty

Often the issue of jurisdiction becomes a torn when it comes to litigations. Taking into account the role the court can play when it comes to facilitating arbitration, this uncertainty can become a hindrance to getting the court involved in arbitration. The issue of jurisdiction plays out when the parties in an action have approached the court to resolve the matter. Problem arises when the court who ordinarily ought to encourage arbitration give directives mandating lower courts to discourage a breach of arbitration clauses.[76] Unfortunately, the aftermath of directives like this is for the parties to resort to litigation in courts over matters that ordinarily should have been handled through arbitration. It's in the course of resorting to court that the issue of jurisdiction arises. Under Nigerian judicial system, jurisdiction rules are technical and complex and can affect litigants who become victims as a result of misdirection by their lawyers through inelegant drafting.[77]

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[73] A. Østhagen, 'Troubled seas? The changing politics of maritime boundary disputes', (2021) (205), *Ocean & Coastal Management*, 105
Volume 205,2021,

[74] [2023] EWHC 414 (Comm); [2023] 1 Lloyd's Rep 341

[75] Ralph-Malix Legal Consult, ' Exploring Fair Cost – Effective Solutions to Minimizing Losses in Maritime Disputes within Nigeria', 2024, < https://www.linkedin.com/pulse/exploring-fair-cost-effective-solutions-minimizing-zylbf?trk=public_post > accessed 8th August, 2024
C Johnson, and Others, *Commercial Arbitration Law and International Practice in Nigeria*, (Lexis Nexis 2012*)* 7–10.

[77] *Onuorah v Kaduna Refining & Petrochemical Co Ltd* [2005] 16 WRN 1 at 14–15; K Abiri, *Identifying and Delineating the Frontiers of the Jurisdiction of the State High Court Vis-À-Vis other Courts of Coordinate Jurisdiction*(National Judicial Institute from 2015) 28.

A typical play out of how jurisdiction plays out will be the case of *Oladipo v Nigeria Customs Service Board*,[78] where the court of appeal observed that the appellant's grievance was not properly addressed in either the state high court or the federal high court due to jurisdictional challenge. The uncertainty surrounding jurisdictional tussles between the Federal and the State high court in Nigeria can be effectively resolved to facilitate court intervention in arbitration. By interpreting section 251(1) of the Constitution, the Nigerian legislature has conferred additional jurisdiction on the Federal High Court to intervene in arbitration regardless of the subject matter of dispute.[79] Thus, where jurisdiction over the underlying dispute is in doubt, it appears, litigants can seek direction from the Federal High Court.

8.10 Appointment of Arbitrators through Access to the Court

Parties to a dispute can easily avoid jurisdictional uncertainty associated with the courts by resolving from the outset to submit to arbitration. The only hinge or obstacle that arises in this case is when there is lack of consensus on the appropriate arbitrator to choose. There is a foundational necessity to examine the issue of jurisdiction concerning the court's intervention in arbitrator appointment where parties are unable to do so. In such case, the parties will then have to subject themselves to the courts for decision. The process by which the court constitutes an arbitral tribunal is known as the default procedure.[80] In the case that the parties now have to be subjected to the court to constitute the arbitral tribunal, the appropriate court to approach becomes an issue.

There exist certain cases to the effect that the Federal High Court or the High court can exercise this jurisdiction.[81] Unfortunately, such decisions conflict with several viewpoints that project the superiority of the Constitution over the Arbitration Act.[82] On the interface between arbitration and the courts, the Arbitration Act following the UNCITRAL Model Law requirement provides that in matters governed by the Act, the courts cannot intervene except as provided by the Act.[83] The Lagos State Arbitration Law also adopts similar language. In line with this standpoint, when it comes to matters governed by the Arbitration and Mediation Act, the Nigerian courts cannot intervene except as provided by law. Arguments abound to the effect that the Arbitration law cannot extend the Federal, FCT and State High Courts' jurisdictions to intervene in the appointment of arbitrators irrespective of the subject matter of the dispute.

Section 251(1) of the Constitution provides additional jurisdiction for the Federal High Court to intervene in arbitration notwithstanding the subject matter of the underlying dispute. Intervention in this context will also entail the power to appoint an arbitrator. If understood by the courts, it would mean that the confusion as to which of the High Courts has proper jurisdiction can be eliminated by approaching the Federal High Court. By so doing, it becomes easier to guarantee access to justice especially when the parties find themselves in the arena of litigation. If the parties are not comfortable

[78] [2009] 12 NWLR (Pt 1156) 563.
[79] E.O Wingate and Anor, 'Judicial Intervention in Arbitration: Unresolved Jurisdictional Issues Concerning Arbitrator Appointments in Nigeria', (2021) (65) (2), *Journal of African Law,* 223-343
Royal Exchange Assurance v Bentworth Finance (Nig) Ltd [1976] NSCC 648.
[81] *Kano State Urban Development Board v Fanz Construction Ltd* (1990) 4 NWLR (Pt .142) 1; *NNPC v Klifco Nigeria Limited* (2011) 10 NWLR (Pt. 1255) 209.
[82] Constitution of the Federal Republic of Nigeria (as amended), ss 249; 255; 270.
[83] UNCITRAL Model Law, art 5.

with the appointment of the arbitrator, the question of possibility of appealing the decisions of intervening court arises. It is also necessary to consider whether the decision of the Federal or State High Courts appointing arbitrators can be appealed.[84]

The emergence of the National Industrial Court as a court of coordinate jurisdiction with the Federal, FCT and State High Courts in 2010 has further complicated the jurisdiction when it comes to the appointment of arbitrators vis-à-vis labour/employment disputes.[85] The National Industrial Court has exclusive jurisdiction to determine industrial relations and other matters arising from the workplace and matters incidental thereto or connected therewith.[86] Despite the projection of possibility of making applications for judicial interventions in arbitration to be made to the National Industrial court, the National Arbitration and Conciliation Act section 7(2) and 57(1) of the ACA did not contempt the court as being inclusive for judicial intervention. There have been several cases where the issue was raised. One of such cases is *Ravelli v Digitsteel Integrated Services Limited*,[87] where the counsel for the applicant tried to argue that the inclusion of the National Industrial Court as a competent court for appointment was implied by the Arbitration and Conciliation Act. Going by section 91 of the Arbitration and Mediation Act, the National Industrial Court is omitted as one of the courts with jurisdiction. On the other hand, there are cases where the case gave a glimpse of hope of the possibility of National Industrial court to handle appointment of arbitrators. One of such cases is *Gregory v West African Oil Field Services Ltd*.[88] The facts of the case is that the claimant was employed as Chief Operating Officer of the respondent company (West African Oil Field Services). His employment was terminated by a letter dated 22 December 2011. Relying on section 254(c)(1)(a) and (d) of the Constitution, the claimant had obtained an interim injunction by an ex parte application restraining his employers from effecting the termination of his employment. The respondent applied to the National Industrial Court to discharge the interim injunction citing an arbitration clause requiring disputes arising from the employment contract to be arbitrated in London in accordance with the International Chamber of Commerce (ICC) Arbitration Rules. The claimant argued that the arbitration clause would oust the exclusive jurisdiction of the National Industrial Court over labour/employment disputes. The National Industrial Court discharged the interim injunction. Upholding the arbitration clause in the employment contract, Adejumo J stated:

> Once the court comes to the conclusion that parties have agreed to refer disputes to arbitration, the court in line with the well-established notion that parties are bound to honour their contractual obligations should enforce the arbitration agreement. This Court does not share the view that by inserting an arbitration clause in the CSA, the parties have agreed to oust the jurisdiction of this court under section 254(c)(1) as contended by the claimant/respondent's counsel.

Skye Bank Limited v Iwu [2017] LPELR-42595 (SC).
[85] Constitution (n79), s 254; National Industrial Court Act 2006.
[86] *Ibid*
[87] NICN/LA/599/2016.
[88] (2019) CA/L/802/2012.

Further, in *Ravelli v Digitsteel Integrated Services Limited*,[89] the applicant filed originating motion at the National Industrial Court seeking the appointment of an arbitrator to resolve a dispute with his erstwhile employers. He relied in part on article 22 of his employment contract dated 17 August 2012 (arbitration clause) and section 7(2)(b) of the Act (default appointment provision). When the motion came up for argument on 28 March 2017, Kanyip J, on the Court's own motion, raised the issue of the National Industrial Court's jurisdiction to appoint an arbitrator pursuant to the ACA and asked the parties to address him on the point. He then ruled that the ACA applies only to commercial disputes. Also, that employment and labour disputes fall outside the ambit of the ACA; the fact that the Constitution expressly grants exclusive jurisdiction to the National Industrial Court over trade disputes under the Trade Disputes Act, which expressly excludes the ACA from application to trade disputes, strengthens the view that the Act was not meant to be applied to labour/employment disputes; case law authorities clarify that the ACA applies only to commercial disputes. Further, that labour/employment disputes are not commercial disputes; and that the ACA expressly listed the Federal, State and FCT High Courts as courts exercising jurisdiction under the Act and leaves out the National Industrial Court.

Thus, the court rejected the argument of the claimant. The claimant had argued that, considering the extensive jurisdiction which the Constitution conferred on the National Industrial Court with respect to labour/employment matters, the National Industrial Court should be included wherever the Federal and State High Courts are mentioned in the ACA to ensure the National Industrial Court has jurisdiction to intervene in arbitration concerning labour/employment matters and thus appoint arbitrators. The learned judge emphasized that the Arbitration and Conciliation Act itself recognizes the fact that it does not cover all issues and declared that the arbitration clause in employment contracts could not be enforced in Nigeria. In view of the National Industrial Court's extensive jurisdiction over labour/employment matters under the Constitution, the claimant could not have approached the Federal or State High Courts to appoint the arbitrator. His only option would be to institute an action at the National Industrial Court, making the arbitration clause redundant. On the applicant's inability to proceed with the arbitration, the court stated that the applicant foisted on himself the position of helplessness that he complains of, because he could have instituted an action against the respondent. This, however, contradicts the purpose of arbitration agreements, which is to take dispute resolution outside the purview of the courts based on party autonomy.

9.0 Prospects of Arbitration in Maritime Industry

Arbitration has been a successful alternative to litigation in the maritime community for hundreds of years.[90] For instance, organizations like the Society of Maritime Arbitrators have thrived as resources for alternative dispute resolution by adopting certain arbitration rules to achieve the goals of cost efficiency, speed and fairness.[91] The advantage of using this method implies that the parties involved are allowed to choose judge (arbitrators) and procedure of their own choice, which results in faster and less burdensome justice. Uniformity in ancient international maritime law developed in response to

[89] (n87)
[90] L Martucci, Using, 'Principles and Policies of Maritime Arbitration to Guide Responsible Parties in Oil Spill Claims Resolution' [2012]6(9) *Cardozo Journal of Conflict Resolution,* 251.
[91] *Ibid*

inevitable disputes that arose in trade, in order to minimize surprises and support, rather than restrict commerce. Thus, the prospects of Maritime Arbitration are classified as follows:

1. The parties can choose to avoid the procedural and structural characteristics involved in litigation.
2. The parties can involve experts in settling their disputes. Generally, the courts do not have judges that have experience in maritime disputes so it is likely that they will decide the matters in hand by applying general methods of law or the laws of their states rather than applying the traditional customs of maritime.
3. Another prospect of using arbitration in these matters is that, if national courts are involved in solving the disputes it may result in bias as one of the parties may get advantage from it.
4. Using arbitration as a method of resolution may also prevent disputes regarding jurisdiction which are generally the matter in maritime disputes.
5. Another advantage is that, it may keep the confidentiality of matters involved.
6. The finality of the award, which implies the preclusion of judicial re-determination of arbitrated disputes and a general limitation of the right to judicial review granted by national regulations.[92]
7. The creation of International Tribunal for the law of the sea, particularly for the settlement of maritime disputes. The International Tribunal for the Law of the Sea is one of the notable creations established in October 1996 with its seat in Hamburg, Germany,[93] and has generally been seen as a major prospect in maritime industry in regard to the use of arbitration.

10.0 Conclusion

The maritime industry has taken advantage of the benefits offered by arbitration and is where arbitration has found a very fertile field to grow and develop. However, this paper discussed in details various laws in the practice of arbitration in the maritime industry in Nigeria which includes the UNCITRAL Model Law, The New York Convention on Recognition and Enforcement of Foreign Awards, ICSID Convention, The Hague and Hague Visby Rules among others. It also outlined the laws and procedures precedent for arbitration process to take place, the finality of the arbitral award and enforcement of same. The paper also took a careful look at the challenges associated with the practicability of the arbitral process in the maritime industry and the prospects it portends for the Nigeria maritime industry. It further enhances the knowledge of the reader on the practicability of maritime arbitration in Nigeria especially on the aspect of containerization under the Hague Visby Rules.

[92] Gregori (n 49).

[93] M. Monjur Hasan, 'A Comparative Study between Arbitration and Judicial Settlement as Means of Maritime Boundary Dispute Settlement' [2018]9(6) *Beijing Law Review*, 75.