

Come in, Let's Arbitrate: The Rise and Rise of Arbitration in Nigeria

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Arbitration practice is on the rise in Nigeria. On the 3rd of November, 2017, the Nigeria Branch of the Chartered Institute of Arbitrators (UK) inducted 219 Associates, 58 Members and 20 Fellows into the branch. The branch also boasts a burgeoning class of Chartered Arbitrators. The expectation is that the number of inductees will continue to go up yearly (associate inductees were only 69 in the year 2010). A number of things are responsible for a pick in the pace of interest in arbitration some of which are discussed here.

Increase in the number of qualified practitioners: Although arbitration is not specific to legal practice, its practice in Nigeria is dominated by the legal profession. With legal practice being so broad as to include so many subsets that are not dispute-related, only a small percentage of legal practitioners take an interest in arbitration. However, the number of legal practitioners qualifying annually to join the bar is also on the rise. In the year 2017, 1,393 practitioners were admitted to the Nigerian bar in July with a set of 4,285 set to be called to the bar in December. Last year, 2,257 were admitted to the bar in July while 4,178 reportedly were called to the bar in November. Even if the percentage of practitioners who take an interest in arbitration stays fixed, the numerical number will continue to rise as practitioners qualify in astronomical growth.

A rise in specialised arbitration law firms and practitioners: Nigeria boasts a pool of highly skilled arbitration lawyers and arbitrators. Law firms have more and more skilled and seasoned arbitrators and arbitration practitioners in their ranks. Furthermore, many Nigerian law firms boast an array of seasoned arbitration practitioners who have international arbitration training, experience and placements such as Members of the Permanent Court of Arbitration, Presidents of the Nigerian Institute of Chartered Arbitrators (NICA), members of the Chartered Institute of Arbitrators (UK), Judges of the LCIA, etc. on staff in major Nigerian metropolises (such as Abuja, Lagos, Port Harcourt and Ibadan). There are also arbitral associations (such as the Maritime Arbitrators Association of Nigeria) which focus mainly on arbitration in specialised fields. An increase in the number of local arbitration experts has the effect of keeping arbitrations local – as opposed to the days when arbitrations on Nigerian disputes were resolved overseas by foreign counsel and with marginal involvement of local lawyers. Such practitioners also increasingly advise clients to include and invoke arbitration clauses in their transactions.

Increasing commercial activity: Although the media may not project that narrative, Nigeria is doing big business and the time to do big business in Nigeria is now. With a major Lagos-Ibadan Expressway project valued at \$838m, a Lagos-Ibadan light rail project valued at \$1.488bn, a Dangote refinery project with an estimated cost of \$12b, and the Mambilla power project estimated to cost

\$5.79bn, to name a few, investment in Nigeria is on the up-and-up. As is usual, investments come with an attendant risk of disagreement and considering the need to urgently resolve disputes and return to the project, investors recognise arbitration as the way to go.

Rise of Arbitration institutions and Associations: Nigeria has a considerable cluster of arbitration institutions. Nigeria has the MAAN, the Chartered Institute of Arbitrators, the NICA, the Lagos Regional Centre for International Commercial Arbitration (LRCICA), the International Chamber of Commerce, the Lagos Court of Arbitration (LCA) and the International Centre for Arbitration and Mediation Abuja (ICAMA). These institutions not only provide trainings, sensitisations, workshops and lectures in arbitration, they serve as repositories of directories of seasoned and competent arbitrators to the ends of which they are often designated in many agreements as first/default arbitrator appointers. Institutions like the LCA, LRCICA and ICAMA further provide venues, registrars and support personnel for arbitral references.

Legal framework supportive of arbitration: Nigeria has (arguably) a judicial system that understands the reasoning behind arbitration and the need to let arbitration thrive upon the terms of arbitrators and users. The Arbitration and Conciliation Act (ACA), the federal law on arbitration, although not a very modern law, captures the basics of arbitration and provides sufficient material for smooth arbitration practice – provided the parties cooperate. Its schedule also contains a domestication of the New York Convention. Lagos State has the Arbitration Law of 2009 which is widely credited as being an adoption of modern arbitration trends and an improvement on the provisions of the ACA.

A recent exciting development is the enactment, on the 30th of October, 2017, of the Oyo State Multi-Door Courthouse Law, 2017 (the Oyo Law). That law has not been assented to by the Governor of Oyo State, but it is expected that it will in the coming days – the state’s Attorney-General (who is a part of the Governor’s Executive Council) was on hand to witness and hail the bill’s passing and has disclosed that a building has already been identified and earmarked to house the Oyo State Multi-Door Courthouse (OYSMDC) in the immediate. By the Oyo Law, the OYSMDC will be an independent and non-profit body. The OYSMDC has the mandate to apply arbitration to disputes referred to it by the Court or any dispute resolution organisation or which come to it “by way of walk-in”. Commercial transactions without arbitration clauses can thus be referred by the Court to arbitration per the Oyo Law. The OYSMDC is also empowered to render assistance to ad hoc references as well as maintain a panel of suitably qualified arbitrators. To ensure qualitative service delivery, the OYSMDC is to be supervised by a Board whose Chairman is to be a respectable and renowned professional of at least 20 years’ practical experience in a chosen field while its Chief Executive Officer must possess a minimum of 10 years’ post-call experience. The Law requires the Chief Judge to designate ADR Judges and Magistrates to give support to the OYSMDC and parties who neglect to appear before the OYSMDC may be summoned before any of these Judges who may then issue directives. To preserve the mandate of the OYSMDC over disputes submitted to it, the Oyo Law prohibits Judges and Magistrates in Oyo State from assuming the role of mediator during Pre-Trial Conferences. The OYSMDC is required to keep hard and virtual records. The OYSMDC is tax exempt and unless fraud is involved, OYSMDC panel members are immune from suit in relation to arbitrations they conduct.

The value of the Oyo Law is unquantifiable. Firstly, the Oyo Law lays the foundation for the establishment of a Court of Arbitration in Oyo State. Secondly, it serves as a reasonable precursor to the enactment of an Oyo State arbitration law which mirrors or surpasses Lagos’. The establishment of an arbitration Court in Oyo State and the enactment of an arbitration law will firmly cast Oyo State as the winsome dispute resolution hub it is currently shaping up to be. Already, Oyo State provides a convenient alternative to Lagos as an arbitration venue – Oyo State is just two states away from Lagos and about 2 hours away by interstate road travel. The Expressway (already being utilised) and Light rail projects mentioned above which connect Lagos to Ibadan, the capital of Oyo State will open

the state up for persons to work in Lagos but live in Ibadan and vice versa (this is already the case and many practitioners have thriving interstate practices). To add to its desirability, while Ibadan is the largest city in Africa with a size of 3,080 square kilometres comparable to Lagos' 999.6 square kilometres, it houses only 3.5m people compared to Lagos' 9m. Ibadan thus has less population density, larger and less-expensive land mass, and sparse vehicular gridlocks. It is also more affordable to live in, house arbitrators, counsel, witnesses and support staff in and it presents choice arbitration venues that are intimate, tucked away from the bustle of Lagos and are less pricey than those in Lagos - and yet, parties can maintain their proximity to Lagos, which they may cherish for any number of reasons such as access to an international airport or their corporate headquarters.

Arbitration in Nigeria is around for the long haul spreading to fresh territories and is increasingly taking on dynamic colorations just as disputes continue to shift shape. Investors can come in and arbitrate.