

# Kluwer Arbitration Blog

## Interviews with Our Editors: Insights from Adedoyin Rhodes-Vivour, Doyin Rhodes-Vivour & Co, Nigeria

Sadaff Habib (Beale & Company LLP) · Thursday, August 1st, 2019



Disputes, particularly arbitration, has been predominated by the *old pale male*. Diversity, though a hot topic, is something that the arbitration field is still striving to achieve. What many would like to see is that all people, male or female, are appointed whether as an arbitrator or a counsel based on their credentials. However, as female practitioners from an ethnic minority background may still struggle, perhaps more active steps such as quotas need to be introduced to initiate a sort of balance.

Kluwer Arbitration Blog invited Adedoyin Rhodes-Vivour, managing partner of Doyin Rhodes-Vivour & Co in Nigeria and Member of the Advisory Board at Africa Arbitration to share her experiences and perspective on climbing to the top and on developments in arbitration in Africa and particularly in Nigeria. She was also recently elevated to the rank of Senior Advocate of Nigeria (Queen's Counsel equivalent) and continues to show by example that dedication and hardwork is rewarding.

### 1. *What attracted you to disputes and arbitration?*

I come from a legal background, my father was a lawyer and incidentally, I also married into a family of lawyers. My husband is a Judge as was his father. Having been exposed to the legal profession right from childhood, I guess it's not surprising I went on to read law which is essentially about dispute resolution. However, in my days both at university and law school neither arbitration nor ADR were being taught in the Nigerian educational system despite arbitration and ADR being part of our traditional means of resolving disputes and its continuing recognition in the Nigerian legal system. Luckily, I was exposed to arbitration in the early years of my career whilst a State Counsel in the Lagos State Ministry of Justice. A rather large arbitration which the Lagos State Government was involved in about the same period further spurred my interest in arbitration as a preferred mode of dispute resolution and one in which I desired to play a vital role.

Even after leaving the Ministry of Justice and going into corporate practice, I continued gaining professional knowledge in the field by attending conferences organized by top organizations including the International Law Institute Washington DC and leading ADR organizations, including the Chartered Institute of Arbitrators, International Chamber of Commerce Court of Arbitration Paris and the London Court of International Arbitration. I commenced my professional training with the Chartered Institute of Arbitrators and was admitted as an Associate in 1995.

I enjoy travelling, meeting people and making new friends. The opportunities in the arbitral plane for travel and making new friends are added advantages.

***2. There have been a number of recent developments across the African continent. What in your view has been one of the most significant?***

I think the most significant is the fact that African arbitrators are beginning to receive more recognition in the international arena. International arbitration involves parties from different countries and to retain legitimacy, all players need to be involved. There is a renewed focus on encouraging African countries to take proactive steps, to develop their countries into preferred places of arbitration and continue to build capacity in the field.

Recently, the African Arbitration Association (AFAA), a non-profit private sector-led association was established (in 2018) to serve as the continent's promotional body for international arbitration and other forms of international dispute resolution. AFAA aims to support the continuing development of international arbitration in Africa and promote its members and their activities in international arbitration and international dispute resolution. AFAA is working within Africa and with other arbitration organizations worldwide is expected to bridge any knowledge gap operating within the continent and further expose African arbitration organizations and practitioners to the rudiments of International dispute resolution and best practices. I must say that over the past years, Africa has built capacity and there is a good crop of well-trained African arbitrators who should consider themselves obliged to encourage and mentor the younger ones.

***3. In your view, what more needs to be done to improve the visibility of different countries in Africa as an International Arbitration hub?***

Firstly, a lot has been done in various countries including Nigeria by the practitioners who work closely with stakeholders with a view to ensuring that our arbitration laws are up to date and

advocate against any laws that are not arbitration-friendly. African countries should continue to update their arbitration laws and also sign on to the [New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards](#). Not signing on to the New York Convention or having obsolete arbitration laws can only militate against the perception of being an attractive venue for arbitration/ an investment-friendly climate.

Highly trained arbitrators and supportive court systems are also essential. Nigerian courts largely understand arbitration as reflected in various arbitration supportive decisions. Recently in **Nigerian National Petroleum Corporation (NNPC) v. Esso Exploration and Production Nigeria (Offshore East) Limited** [Suit No. FHC/ABJ/CS/390/2018], the court held that the decision of an arbitral tribunal on the challenge to its authority and capacity “*is final and binding on the parties and it is to be respected by the court since the Arbitration and Conciliation Act has not given the court the jurisdiction to review the said decision or to supplant the court’s own view with that of the arbitral tribunal*”. Indeed, this decision will further prevent recalcitrant parties with the support of counsel from using the court system to frustrate arbitration proceedings.

The need for improved infrastructure, addressing security concerns and ease of transport/Air connectivity within Africa cannot be overemphasized. African governments should take all necessary steps to address these concerns.

4. *In your view, other than the provisions on third-party funding in arbitration, what other key changes does Nigeria’s Arbitration and Conciliation Act (Repeal and Re-Enactment) Bill 2017 introduce?*

The current Federal Arbitration Statute is based on the 1985 UNCITRAL Model Law and the 1976 Arbitration Rules. Nigeria was the first country in Africa to adopt the 1985 Model Law. However, the Model law has since been modified by the 2006 revisions to the Model Law and the most current 2010 Arbitration Rules. In Nigeria, presently the most current arbitration law is the Lagos State Arbitration Law which is based on the 2006 revisions to the UNCITRAL Model Law.

Nigeria’s Arbitration and Conciliation Act (Repeal and Re-Enactment) Bill 2017 aims to modify the current Federal Arbitration Law in line with the 2006 amendments to the UNCITRAL Model Law as well as to correct other provisions of the 1985 Model Law as enacted in Nigeria in 1988.

The Bill makes it mandatory for courts to stay proceedings in favour of the arbitration agreement of parties. The Bill expatiates the writing requirement in arbitration agreements to incorporate modern means of communication (including electronic communication) and deletes the requirement for signature in arbitration agreement contained in documents. In addition, the definition of “costs” has also been expanded to include the cost of arbitral institutions and third-party funding.

Apart from the tacit recognition given to third-party funding, additional provisions in the Bill include immunity of an arbitrator/arbitral institutions, introduction of an Award Review Tribunal, consolidation and concurrent hearings, joinder of parties, the power of the Arbitral Tribunal to grant remedies and award interest, arbitrator’s power to exercise lien on the award, provision of security for costs, joint and several liability of the parties for arbitrator’s fees and expenses, application of Statutes of Limitation to arbitral proceedings, grant of pre-emptory order, provisions

on grant of interim measures by courts or arbitral tribunals and the appointment of emergency arbitrators by courts or arbitral institutions.

In line with modern statutes, the Bill provides that an application for setting aside an award shall not be made on the ground of an error on the face of the award or any other ground not expressly stated in the Bill.

Thus, it is expected that once passed into law by the concurrence of the lower house and the assent of the President, a more effective framework for arbitration under the Federal regime will be in place.

**5. *What are your thoughts on the \$8.9 billion arbitration award that British company Process and Industrial Developments Limited obtained last year against the Nigerian government?***

Whilst I will not like to go to the merits of the Award on which there has been considerable debate, I think the lesson learnt is for parties to be more circumspect when entering into commercial transactions and once a well-considered decision is made to enter into a contractual relationship, parties should hold seriously the obligation to comply with the terms of the commercial transaction entered into. In the unfortunate event of valid reasons or circumstances justifying a termination, the contract should be properly terminated in accordance with its terms. Furthermore, in any legal proceeding including arbitral proceedings, there must be adequate case preparation and presentation.

I commend my article<sup>1)</sup> in which I discussed some of the issues in relation to the damages award. The award does bring up various issues including the appropriate principle and basis for the assessment/measure of damages, including the application of the principle of mitigation of losses.

I would say for Nigeria, it is indeed a monumental tragedy for such a colossal sum to be awarded against it, a country with a population of nearly two hundred million people, with a great number of her people living below the poverty line and the much needed infrastructural and development programmes.

Enforcement proceedings are now before the courts and we can only wait and see how the courts will determine the issues brought before them.

**6. *It is acknowledged that African arbitration practitioners are underrepresented in arbitration.***

**a) *Do you see this particularly challenging as a female arbitrator and lawyer?***

Firstly by nature, I do not allow any perceived or actual challenge to get in my way. I am focused on what I want to achieve and I go about it in the appropriate way. Being a female has not affected nor in my view impacted on my career development. Definitely, women do have more challenges in their career development and need to acquire the act of balancing which I admit can be a struggle. Having a supportive husband has significantly been in my favour. Women have to manage the home and raise children. The workplace and the home/partners should be more aware of the needs of women and be as supportive as possible. The workplace should be made more

tolerable for women with an understanding of women's needs.

***b) What steps do you think need to be taken to improve the representation of Africans in African arbitrations and particularly women?***

This has to be a concerted effort by institutions, appointing parties, arbitral community and even Government at times. There are some complaints that African governments do not appoint African arbitrators as they should. Though I must say that with the increase in the number of qualified arbitrators this is changing. Institutions are also taking steps to ensure diversity concerns in all its ramifications (geographical, gender, generational etc.) are addressed. Statistics now published by various arbitration institutions are tools which assist in assessing the extent to which the arbitration field is moving towards wider representation. Recently, the International Chamber of Commerce created an African Commission in recognition of Africa's relevance. The International Chamber of Commerce African Commission aims to develop training efforts to expand the pool of available African arbitrators. The London Court of International Arbitration is also involving Africans through its various platforms including its Users Councils. Some time ago the Singapore International Arbitration Centre (SIAC) also established an Africa Regional Committee under its Users Council.

Capacity building within Africa and compliance with international best practices by Africans is also crucial.

On the question of encouraging more female participation, I must commend the efforts of ArbitralWomen, the ERA pledge and other initiatives which are doing a lot to highlight this problem and proffer solutions. We are seeing more proactive steps being taken to address the gender imbalance in arbitration.

The need for wider representation should be borne in mind of course on an equal basis and without compromising merit anytime one is called upon either as an institution, a party, advocate or arbitrator to be a part of the appointment process.

***7. What would be your key advice to fellow female practitioners in the field?***

First-class education and training are essential for practitioners in the field irrespective of their gender. Acquiring knowledge of international best practices and committing to practising in accordance with those standards is essential. Effective networking and attendance at international arbitration conferences, seminars and arbitration moots are equally necessary. We must all be dedicated, hard-working and be willing to be of service. The more experienced women practitioners should take up the responsibility of mentoring the younger women and guiding them.

All of us collectively in the arbitral community must deal with any bias; unconscious or implicit militating against women or any other disadvantaged groups to ensure the continuing legitimacy of arbitration worldwide.

***This interview is part of Kluwer Arbitration Blog's "Interviews with Our Editors" series. Past interviews are available [here](#).***

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The graphic features a black background with white text and a circular icon. The icon depicts a group of five stylized human figures, with a magnifying glass positioned over the central figure. The background is accented with horizontal lines in blue and green.

### References

- <sup>1</sup> “Damages in International Arbitration, in “A life of Law & Business; Essays in Honor of Chief (Dr.) Chris Ogunbanjo OFR, CON” p. 346, December 2018.

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