

FOOTPRINTS OF A GIANT



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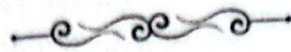
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APPLICATION OF LIMITATION LAW AT THE ENFORCEMENT STAGE OF ARBITRAL AWARDS: A DISSERVICE TO ARBITRATION SYSTEM IN NIGERIA?

By

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ABSTRACT

This paper examines the provisions of the statutes of Limitation Law as it relates to the time limit within which to apply to the courts for the enforcement of arbitral awards. Specific references are made to the Nigerian Limitation Act and Limitation Law of Lagos State. These laws provide for a limitation period of six years within which an application for the enforcement of an award must be brought. Time limit relating to commencement of an action for the enforcement of arbitral awards in Nigeria has been a subject of serious concern. There is, however, a concern as regard judicial understanding of these provisions of the Limitation law as it applies to arbitration system in Nigeria. Doctrinal research methodology is adopted thus, the primary and secondary sources of materials have been utilised. The paper concludes that actions to enforce the arbitral award should be construed as a separate and distinct cause of action from that founded on the dispute between parties, an agreement providing for referral to arbitration. Singular provision for arbitration proceeding and enforcement proceeding does not make for a good law. Hence separate statutory time limits should regulate such actions.

Keywords: Limitation law, Enforcement, Arbitral award, Nigeria

Introduction

Arbitration clauses in commercial contracts are now a common practice in transnational businesses. This is because arbitration clauses/agreements afford parties the opportunity to settle their disputes before an arbitral panel selected by the parties who can hear the matter amicably without going through a formal process such as a court hearing.

¹⁶² ASOUBU A.A., *International Commercial Arbitration and Africa States Practice, Participation in Institutional Development* (Cambridge University Press, London, 2011) 458-560.

often time, the choice of arbitration is to circumvent being subjected to the national courts of either of the disagreeing parties.¹⁶³ It is assumed that even if the courts seem unbiased, the fact that one party is litigating at home with the likelihood of manipulating the outcome usually raise doubts in the mind of the other party.¹⁶⁴ Also, the advantage of reaching a speedy decision as well as the confidential benefits in the arbitration system have driven the large number of investors to make desirable efforts to give consideration to arbitration by inserting arbitration clauses/agreements into their commercial contracts.¹⁶⁵

After numerous stages such as hearings, taking evidences and cross examining etc in the arbitration proceedings, the arbitral panel/tribunal will render an award(decision) after the panel must have carefully heard and weighed the evidences and arguments before it.¹⁶⁶ Parties are therefore expected to comply with the terms of award. This is so, because arbitration system occupies a unique position as a private settlement mechanism in that it is regulated by statute such as Arbitration and Conciliation Act of Nigeria.¹⁶⁷ Court intervention for enforcement of arbitral awards is only necessary where the award-debtor failed to voluntarily comply with the terms of the award.¹⁶⁸ The recalcitrant nature of an award-debtor necessitates judicial intervention at the enforcements stage of arbitral awards hence, the reliance on Nigeria's legal systems for enforcement becomes desirable.

To this end, the same enforcement mechanism that is available for judgments, the end result of civil proceedings, is equally accorded to arbitral awards as awards are enforced through the supervisory jurisdiction of the national courts. Courts are therefore allowed to enforce arbitral awards emanating from international/domestic arbitration proceedings by using their own procedural rules.¹⁶⁹ This is provided for in many international treaties such as UNCITRAL Model Law on International Commercial Arbitration 2006 (UNCITRAL Model Law)¹⁷⁰ and notably, in the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.¹⁷¹ Also, domestic legislation in most States create provisions for enforcement of arbitration awards emanate from arbitration proceedings.¹⁷²

¹⁶³ Colin O., 'Arbitration and Mediation in Asean: The Law and Practice, Brunei Darussalam.' <https://www.aseanlawassociation.org/docs/w4_brunei.pdf&ved=0ahUKEwj6-t-m6vDVAhUGZVAKHb3HDwoQFggMAA&usg=AFQjCNGnAXbY7ilSYqaJlPs9MIFawt12_A> accessed on 24 July 2022.

¹⁶⁴ Rhodes-Vivour A., 'Arbitration and Alternative Dispute Resolution as Instruments for Economic Reform' (Paper Delivered at the NBA, Maiden Conference, Abuja, 2006).

¹⁶⁵ Nacimiento P., 'New Law on Civil and Commercial Arbitration, International Commercial Litigation' (1996) 46 J. Arb. J., 5-10, 8.

¹⁶⁶ Abdullah A., *Arbitration in the GCC States, Arbitration General Framework in the GCC in accordance with the latest amendments including new Saudi Arbitration System* (Arab Renaissance House, U.S 2013) 368-393.

¹⁶⁷ Chukwuemeka A., 'Arbitration and the ADRs as Panacea for the Ills in Administration of Justice in Third World Countries' (2006) 1 EBSU L. J, 102-140, 120.

¹⁶⁸ Ibid.

¹⁶⁹ New York Convention on Recognition and Enforcement of Foreign Arbitral Award 1958, 330 U.N.T.S. 38(1959), Article III.

¹⁷⁰ UNCITRAL Model Law 2006 (United Nation documents A/40/17, annex I and A/61/17, annex), Article 36 and New York Convention 1958, 330 U.N.T.S. 38(1959), Article III.

¹⁷¹ Herein after referred to as New York Convention.

¹⁷² See Arbitration and Conciliation Act of Nigeria CapA18 LFN 2004, English Arbitration Act, Chap.23, 1996.

However, application of Limitation law operates as an obstacle to the entire arbitration system particularly at the enforcement stage.¹⁷³ As mentioned above, arbitration system is a private and independent arrangement thus, judicial interpretations of the relevant provisions of the Limitation Law are in contradictory with and against the principles of party-autonomy. Award-creditors are usually the victims since courts' interpretation deny them the right of execution of the awards given in their favor and, as such it endangers their rights to enjoy the outcome of arbitration proceedings. This creates concern to investors/businessmen who desire amicable settlement of their disputes through alternative means.¹⁷⁴

The Nigerian judicial system is seen and perceived as a very slow mechanism, and the arbitration system is no different. It is not surprising therefore that the backlog of delayed rulings from the courts includes considerable numbers of arbitration applications awaiting determination by the court over several months which in turn delays a final arbitral award. With this, it is not impossible for parties to arbitration to find themselves outside the stipulated period allowed for the initiation of enforcement proceeding of an award. In other words, the courts in Nigeria can refuse to entertain an application for an enforcement of an award and declare such action statute-barred because the period given to establish such right in the Limitation law has passed.

The paper therefore divided into five parts. Parts I and V are Introductory and Conclusion respectively. Part II discusses the nature of statutes of Limitation as contained in relevant provisions of Limitation Law. Implications of Limitation law on the arbitration system is also examined in Part II. Part III examines the current position of the Courts in English on the application of Limitation law to arbitration system. Part IV identifies that, Section 35 of the Lagos State Arbitration Law (LSAL)¹⁷⁵ is already ahead of the curve on this issue as the law has introduced significant changes to ameliorate the effect of the Limitation law in Nigeria.

Statutes of Limitation

Section 7 (1) (d) of Limitation Act¹⁷⁶ states that in an action to enforce an award, the proceedings must be commenced within six years. Specifically, Section 7 (1) (d) provides that:

- (1) The following actions shall not be brought after expiration of six years from the date on which the cause of action accrued.
- (2) Actions to enforce an arbitration award, where the arbitration agreement is not under seal or where the arbitration is under any enactment other than the Arbitration Act.

The Lagos State Limitation Law¹⁷⁷ in Section 8(1) (d) provides for similar provision. The provision states that:

¹⁷³Nacimiento P., 'New Law on Civil and Commercial Arbitration, International Commercial Litigation' (1996) 46 J. Arb. J., 5-10, 8.

¹⁷⁴IPCO (Nigeria) Ltd. v Nigerian National Petroleum Corporation [2008] APP.L.R. 04/17.

¹⁷⁵Law No 10 of 2009. Now ChapA11 of the Laws of Lagos State 2015.

¹⁷⁶Cap. 522, LFN 1990.

¹⁷⁷Cap. 67, Laws of Lagos State, 2003.

An action to enforce an arbitration award where the arbitration agreement is not under seal or where the arbitration is under any other enactment other than the Arbitration and Conciliation Act shall not be brought after the expiration of 6(six) years from the date on which the cause of action accrued.

Hence, when action is statute-barred, it means no legal steps related to that action can be initiated.¹⁷⁸ This is because the specific time limit laid down by statute of limitation to institute such an action in the relevant court/ tribunal has lapsed. The court will usually look at the exact period the cause of action arose in determining when the action is statutory barred.¹⁷⁹ Ordinarily, time begins to run when a cause of action has arisen.¹⁸⁰ The legal right to enforce an action is a perpetual right but a right of action generally is limited by statute, where a statute of limitation prescribes a period within which an action should be brought.

Thus, legal proceedings cannot be properly or validly instituted at the expiration of the prescribed period. Therefore, a cause of action will be statute barred if legal proceedings did not commence in respect of the claim within the period stipulated in the limitation law. The implication of the limitation law was well captured in *Aremo II v Adekanye*¹⁸¹ wherein the Supreme of Court of Nigeria observed closely as follows:

Where a statute of limitation prescribes period within which an action must be commenced, legal proceedings cannot be properly or validly be instituted after the expiration of the prescribed period. Where an action is statutory barred, a plaintiff who might otherwise have had a cause of action loses his right to enforce it by judicial process because the period of the time laid down by the limitation of instituting such an action has elapsed.

The court in *P.N Uddoh trading Co. Ltd v. Abere*¹⁸² also emphasised on this when it stated that one of the principles of the statute of limitation is to sensitise the winning parties to hurriedly enforce their right hence, he who sleeps on his right should not be assisted by the courts in an action for the recovery of his own property or interest. According to the court, equity aids the vigilant and not the indolent.

Regrettably, the Nigerian Arbitration and Conciliation Act (ACA) 2004 and the New York Convention on Recognition and Enforcement of Awards 1958 did not provide for the time limit within which to bring an application to enforce arbitral award in Nigeria.¹⁸³ To this end, reference is usually made to Section 7 (1) (b) of the Limitation Act of Nigeria. States in Nigeria have made legislations on limitation laws in determining the time limit for enforcement of arbitral awards. This explains why Lagos State¹⁸⁴

¹⁷⁸ *Aremo II v. Adekanye* (2004) 12 NWLR [Pt.891]532 at 592-3.

¹⁷⁹ Apeh E., *Nigerian Law of Limitation of Actions* (Benin City, Eleigwu Apeh Law Publications, 2001)2.

¹⁸⁰ *Texaco Panama Incorporation v. S.P.D.C (Nig) Ltd* (2002) FWLR [Pt.96] 579.

¹⁸¹ (2004) 12 NWLR [Pt.891]532 at 592-3.

¹⁸² (1996)8 NWLR [Pt. 467] 467 at 469.

¹⁸³ David T. Eyongndi ., *Enforcement of arbitral awards in Nigeria and the Jigsaw of Limitation Period: The Need for Compliance with Global Best Practices* (2021), 15(1), *Mizan Law Review*, 107-138.

¹⁸⁴ *Lagos State Limitation Law 2015*, Ch. L84 Laws of Lagos State.

River State¹⁸⁵ and Federal capital Territory etc enacted limitation laws of their own. The limitation law of Lagos State emphatically provides that the law and any other limitation enactment will apply to arbitration as they apply to other actions in the courts of law.¹⁸⁶ However, the applicable limitation law to the enforcement proceedings is determined based on the question whether the jurisdiction where an arbitral award is sought to be enforced has enacted its own limitation law and if not, Limitation Act is applicable.¹⁸⁷

1.1. *Implications of Limitation Law on the Arbitration System*
Statutory time limits imposed by the Limitation Act¹⁸⁸ apply to the arbitration system as they do to other legal proceedings.¹⁸⁹ The justification for this is the need to have an end to litigation so it would not prolong too long and to also sensitize people not to sleep on their genuine claims.¹⁹⁰ A closer look on the above cited provisions of the Limitation laws suggests that six year limitation period shall not take it cause if parties can ensure that their arbitration agreements are made under seal.¹⁹¹ Also, where parties adopt ACA as the applicable law to their arbitration proceeding, six year limitation period is not applicable; limitation period stated therein if the ACA is applicable. Consequently, where the arbitration agreement is made under seal, twelve years is the limitation period from the date the cause of action accrued.¹⁹² Arbitral award made pursuant to any other law other than the ACA are susceptible to the six years period as stated in Limitation Laws.¹⁹³ Ibe observes that:

The correct legal position is that where the words of a statute are clear and unambiguous, it is not the duty of the court to do violence to the statute by injecting into it what the legislature has not deemed fit to include. The Act does not envisage a situation where arbitration and enforcement of resultant award would last more than 6 years in the case of a simple contract and 12 years in the case of contract under seal. This is commendable and in line with the underpinnings of arbitration which does not tolerate of dilatory elongations. Thus, both parties to an arbitration agreement and the arbitral tribunal are expected to act timely.

There is, however, a serious concern as regards judicial understanding of this provision of the Limitation law as it relates to arbitration. The time from which the limitation

¹⁸⁵ Benue State Limitation Law, No6 1988.

¹⁸⁶ Section 52, Lagos State Limitation Law 2015, Ch. L84 Laws of Lagos State

¹⁸⁷ Awoyale O. Oluseyi, *A Critique of the Limitation Period for Enforcement of Arbitral Award in Nigeria* (PhD Thesis, Nnamdi Azikwe University, Akwa, Nigeria, 2021)193.

¹⁸⁸ Limitation Act, Cap 522, LFN 1990, Sections 59-66; English Arbitration Act Chap.23 1996, Section 13(1).

¹⁸⁹ *Nwadiaro v. Shell Development Company Ltd* (1990) 5 NWLR [Pt. 150]322, 337-338; *Egbe v. Yusuf* (1992) 6 NWLR [Pt. 245] 1, 13; *UBN Ltd v. Oki* [1999] 8 NWLR (Pt 614) 244, 253-254.

¹⁹⁰ Idornigie P.O., 'Statutes of Limitation and ADR Processes' (2004)23(2) J. Institute arb. & Med., 1-12, 1.

¹⁹¹ Adaralegbe A., 'Limitation Period for the Enforcement of Arbitral Awards in Nigeria' (2006), 22(4), *Arbitration International*, 613-626.

¹⁹² Limitation Act, Section 12 (1)(b).

¹⁹³ Ibufubara Berenibara., 'Nigeria: Enforcement of Arbitral Award in Nigeria – The Time Factor' (2018) <https://www.mondaq.com/nigeria/civil-law/729532/enforcement-of-arbitral-award-in-nigeria-the-time-factor> accessed 15 March,2023

period for the commencement of an action for the enforcement of arbitral awards in Nigeria begins to run has been the subject of considerable concern. Is it from the date of the accrual of the original cause of action, or from the date arbitral award is rendered? Section 7 of the Limitation Act fails to establish a clear distinction between a simple contract and those arbitration agreements that can originate from the main contract in the form of an arbitration clause or agreement.¹⁹⁴ Section 7 of the Limitation Act only anticipates the cause of action in a simple contract.¹⁹⁵ The issue of limitation period first came up in the case of *Murmansk State Steamship Line v. Kano Oil Millers Ltd.*¹⁹⁶

The Supreme Court declared that the enforcement proceeding of an award is statutorily barred because the cause of action arose at the date the award-debtor breached the main contractual agreement; therefore the enforcement proceeding did not comply with the six years provision in the Limitation law.¹⁹⁷ The position of the Supreme Court is not very encouraging for the development of arbitration system in Nigeria for many will be caught within the trap of the limitation law. With due respect to the apex court, arbitral award is expected to have given rise to a new action since the award rendered is final and binding on the parties. Time should begin to run from the date of the award and not from the date the cause of arbitration arose.¹⁹⁸ Hence, the cause of action cannot accrue until the arbitral award has been rendered.¹⁹⁹

Several opinions have been expressed as regards the decision of the Supreme Court in *Murmansk* case. Some scholars are of the view that the court was rigid with its interpretations of the provision of limitation law and literary interpretation of the law should have been adopted in cases such as this.²⁰⁰ It is therefore pertinent to mention that commencement of arbitration proceedings is different from enforcement proceedings. This is clearly pronounced in the ACA that the arbitration proceedings shall commence on the date the request to hear the dispute to arbitration is received by the other party.²⁰¹

The same position in *Murmansk* case was held in *City Engineering Nig. Limited vs. Federal Housing Authority*. In that case, the breach of contract occurred in December 1980. Between December 1981 and November 1985, arbitral proceedings were conducted on the dispute and an award was rendered at the end. The award creditor instituted enforcement proceedings in November 1988 to enforce the award. In deciding this case, the Supreme Court interpreted Section 8 of the Limitation Law of Lagos State. The Supreme Court observed that the action to enforce the award fell outside the statutory time limit because the

¹⁹⁴ Idornigie PO., 'Statutes of Limitation and ADR Processes' (2004) 5.

¹⁹⁵ Ibid.

¹⁹⁶ (1974) 1 ALR Comm1, 4, 7, (1974) 12 SC 1.

¹⁹⁷ Ibid. Asouzu A.A., 'The Adoption of the UNCITRAL Model Law in Nigeria: Implications on the

Recognition and Enforcement of Arbitral Awards' (1999) 1 J.B.L, 185-204.

¹⁹⁸ Nwakoby K., *The Law and Practice of Arbitration in Nigeria* (2nd Ed., Enugu, Snapp Press Nigeria Limited, 2004) 148.

¹⁹⁹ Awoyale O. Oluseyi, *A Critique of the Limitation Period for Enforcement of Arbitral Award in Nigeria* (2021) 197.

²⁰⁰ Ibe C., *Insight on the Law of Private Dispute Resolution in Nigeria* (Enugu, EL' Demak Publishers, 2008) 208.

²⁰¹ ACA 2004, Section 17.

statutory limitation period started to count from December 1980 when the defendant breached the terms of the main contract between the parties.²⁰³

Again, the court with due respect wrongly interpreted Section 8(1) of the Limitation Law of Lagos State. This is because on a true construction of the said provision, the legislative excluded arbitration awards made under the ACA from the application of the law. Hence, from the above provision, the six-year limitation period is applicable to arbitral award predicted on arbitration agreement that is not under seal and an award flowing from arbitration conducted under any other enactment except the ACA. This is an express exclusion of awards made from arbitration proceedings conducted under the ACA or predicted on arbitration agreements that were made under seal. The award in issue in *City Engineering* case was conducted under the ACA.

The above conclusion is unimpeachable when one considers the fact that Lagos State Legislature cannot constitutionally determine the extent to which an award conducted under a federal enactment can be enforced.²⁰⁴ Any contrary interpretation will clearly violate the elementary constitutional principles of the doctrine of covering the field and the express and unambiguous intention of parliament as expressed in sub-section (d) of Section 8 of the Limitation Law of Lagos State. The consequence of these decisions in the *City Engineering* and *Murmansk* cases is that arbitration proceeding and the enforcement proceeding mean a single action which must be heard, determined and enforced within the stipulated statutory period. This creates a challenge to parties who intend to enforce the outcome of the proceedings. There is need to separate the two actions because the time limit can actually expire before the award is even delivered.

Specifically in the arbitration system, two proceedings are unavoidable: arbitration proceeding for hearing of the disputes and enforcement proceeding for the enforcement of award.²⁰⁵ From the interpretation of the provision of Section 7 of the Limitation Act, the arbitration proceedings and enforcement proceedings are considered a single action for the purpose of statutory time limit.²⁰⁶ To have a singular provision for arbitration proceeding and enforcement proceedings does not make for a good law.²⁰⁷ Hence separate statutory time limits should regulate such actions. The position of the courts in the above cases (*Murmansk* and *City Engineering*) used to be the position of majority courts, particularly in England.²⁰⁸ What seems relevant to this assertion can be found in a book titled 'Russell on Arbitration' where the authors in their 18th edition state:²⁰⁹

²⁰² [1997] 9 NWLR (Pt. 520), 224.

²⁰³ Ibid, 240.

²⁰⁴ Elvis E Asia., 'Effect of Limitation Law on Enforcement of Arbitral Awards in Nigeria- A review of City Eng. Nig Ltd v. FHA' (2019) <https://dnlegalandstyle.com/2019/effect-of-limitation-law-on-enforcement-of-arbitral-awards-in-nigeria-a-review-of-city-eng-nig-ltd-v-fha-by-elvis-e-asia/> accessed on 15 March 2023.

²⁰⁵ *Bremer Vulkan Schiffbau und Maschinenfabrik v. South Indian Shipping Corporation Ltd* (1981) 1 Lloyd's Rep 253, 259; Idomigie P.O., 'Statutes of Limitation and ADR Processes' (2004) 5.

²⁰⁶ Ibid.

²⁰⁷ Idomigie P.O., 'Statutes of Limitation and ADR Processes' (2004) 5.

²⁰⁸ Asouzu A.A., 'The Adoption of the UNCITRAL Model Law in Nigeria: Implications on the Recognition and

²⁰⁹ 'Enforcement of Arbitral Awards' (1999) 195.

²¹⁰ Sutton D., Gill J, *Russell on Arbitration* (18th Edition, Steven & Son Ltd, UK, 1970) pp4-5.

~~The period of limitation runs from the date on which the cause of arbitration accrued; that is to say, from the date when the claimant first acquired either a right of action or a right to require that an arbitration take place upon dispute concerned.~~

The Supreme Court of Nigeria in its judgement in *Murmansk* case heavily referred to the above passage in 'Russell on Arbitration' while reaching the decision in that case. However, the position of the law in England and the judicial pronouncement has since changed.

Current Position of the Law in England

In *Agromet Moto Import Ltd v. Maulden Engineering Co. (Beds) Ltd*²¹⁰ the English court observed that the statutory period started counting from the day the award debtor failed to comply with the terms of the award and not the date of the breach of the main contractual agreement that gives rise to the submission to arbitration. The court interpreted the words 'action' and 'cause of action' as contained in Section 7 of the English Limitation Act of 1980 as distinct and independent actions. Hence, it was observed that the cause of action for non-compliance with the terms of award in this case is distinct from the original cause of action in the main contract. Also, in *IBSSL v. Minerals Trading Corps*²¹¹ and *International Bulk Shipping and Services Ltd v. Minerals and Metals Trading Corporation of India*²¹² the English Courts agreed with the conclusion reached in the *Agromet* case that time begins to count from the day the award-debtor fails to perform the award as ordered by the tribunal.²¹³

The authors of Russell on Arbitration have also in their 22nd Edition reconsidered their position in line with the *Agromet* case to show that England has moved away from the old way of calculating statutory time limit in arbitration.²¹⁴ Drawing inferences from the *Agromet* and *IBSSL* cases, the Nigerian law should however improve on the existing laws to meet with the current international standard especially in England. Nigeria can attract foreign investors through a viable arbitration regime that will guarantee the enforcement of arbitration agreements and awards.²¹⁵ It is noteworthy, however, that the Lagos State Arbitration Law (LSAL)²¹⁶ is already ahead of the curve on this issue as the law has introduced significant changes to ameliorate the effect of the Limitation law in Nigeria.

Lagos State Arbitration Law (LSAL) 2009

Specifically, Section 35 (2) (a) of LSAL provides that:²¹⁷
in determining the statutory time limit for the commencement of an action before the

²¹⁰ (1985) 2 All ER 436.

²¹¹ (1996) 1 All ER.

²¹² (1996) 2 Lloyd's Rep 474, 476-477.

²¹³ *Good Challenger Navegante S.A v. Metal Export/Import S.A* (2003) EWCA (civ) 1668.

²¹⁴ Sutton, David S. J & Gill J., *Russell on arbitration* (22nd ed, Sweet & Maxwell, London, 2003) 64.

²¹⁵ The National Assembly has the power to legislate for the Federal Capital Territory under the 1999 Constitution of the Federal Republic of Nigeria.

²¹⁶ Law No 10 of 2009. Now Chap A11 of the Laws of Lagos State 2015.

²¹⁷ Lagos State Arbitration Law No 10 of 2009, Section 35(2) (a)-(b). Now Chap. A11 of the Laws of Lagos State 2015.

court, either in arbitration or any other proceedings in relation to disputes that are subject of an award or where courts are invoked to order to declare an award invalid, the date of commencement of the arbitration and the date the court gives such an order shall be excluded.

LSAL further provides that in enforcement proceedings, the date of the commencement of arbitration proceedings and the date of rendering the award shall be excluded.²¹⁸ This is a good innovation that is worthy of emulation. The Nigerian Limitation Act and the Lagos State Limitation law as well as ACA should take these provisions of LSAL into consideration and amend the law accordingly. Thus, limitation period as stipulated in the LSAL is applicable to arbitration conducted within Lagos State except where parties submitted and settled for another arbitration law to govern their arbitration proceedings.²¹⁹ By provision of Section 4(a) of the Limitation Law of Lagos State, the limitation period set out in this law cannot be applied if such time has been fixed any other law adopted by the parties. Thus, where an arbitration is governed by any other existing law such as LSAL that specifically regulates the limitation period for the enforcement of an award, the period stated therein in this Limitation will not be applicable.

In 2018 in the case of *Sifax Nigeria Limited v. Migfo Nigeria Limited*,²²⁰ the Supreme Court of Nigeria upheld the position of the court below that for the purpose of calculating the statutory time limit in a civil action before the court, the date of filing of an action and the periods of proceedings until the case is determined, are excluded. It however appears there is hope in arbitration with the position of the court in the *Sifax* case. Hopefully, this will be the position of the courts when faced with determining the statutory time limit in arbitration in Nigeria. Thus, the issue of time limitation is still one that seriously hinders the development of commercial arbitration in Nigeria, as it gives an avenue for parties to ignore their obligations to carry out the award.

Conclusion

The judicial interpretation of the limitation laws as regards the enforcement of arbitral award has not been encouraging. Nigerian courts have always held that the time limit for the commencement of enforcement proceeding of an award is six years. Hence, time begins to run from the date the cause of arbitration arose and not from the date the award was granted. These positions of the court have on many occasions prevented the winning parties from enjoying the outcome of the arbitration system they voluntarily agreed to. It is hoped that Supreme Court will sooner than later have cause to reconsider its position in *Murmansk and City Engineering* cases to the effect that the action to enforce the arbitral award will be construed as a separate and distinct cause of action from that founded on the dispute between parties to an agreement providing for referral to arbitration.

Failure to do so would only draw us back in the bid to make arbitration a viable alternative to the adjudication of matters outside the court room. The Supreme Court largely relied on learned authors of Russell on Arbitration in *Murmansk* case, which the authors have

²¹⁸ Lagos State Arbitration Law No 10 of 2009, Section 35(5) Now Chap. A11 of the Laws of Lagos State 2015.

²¹⁹ Lagos State Arbitration Law No 10 of 2009, Section 2

²²⁰ Appeal SC 415/2015.

since shifted away from their previous position. It is our position that the granting of award extinguishes the right of action in respect of the dispute already determined by arbitration and the award itself gives rise to a new cause of action. It seems right therefore, to say that in the case of a simple contract time can begin to run from the date the cause of action arose. It is, however, impracticable to say that the time begin to run for enforcement of arbitral award from the date the cause of arbitration arose. Hence, enforcement proceeding and arbitration are distinct. It is our view that the decision of the law should be based on the current and realistic global trend.