

Case Alert:

A Review of the Supreme Court's Decision in Pan Ocean Oil Corporation (Nigeria) Limited v. KCA Deutag Drilling GMBH and KCA Deutag (Nigeria) Limited



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UUBO is pleased to have successfully represented KCA Deutag Drilling GMBH and KCA Deutag (Nigeria) Limited in Appeal No. SC/684/2023: Pan Ocean Oil Corporation (Nigeria) Limited v. KCA Deutag Drilling GMBH and KCA Deutag (Nigeria) Limited in which the Appellant sought to set aside the decision of the High Court of Lagos State (the “**High Court**”) delivered on 18th March 2020 in which the High Court refused the application of an award debtor seeking a stay of further execution, as well as an order setting aside an award made by an ICC Tribunal with the consent of the parties.

In a unanimous decision, the Supreme Court upheld the decision of the Court of Appeal, which refused to set aside the decision of the High Court and awarded costs of N10,000,000 against the Appellant. The Court condemned the Appellant's conduct which it described as commercially fraudulent and morally despicable, noting the Appellant's deliberate misuse of arbitration and court processes to frustrate the



respondents' effort to collect on the award for over seventeen years despite having derived substantial benefits from the contract in question. The Court also lamented the "dishonest attempt to disown and set aside the award mutually agreed to" and stressed the finality of arbitral awards and the need to deter abusive litigation.

Citing a growing trend of unmeritorious challenges to arbitral awards, the Supreme Court reaffirmed the binding nature of arbitration agreements and expressed strong disapproval of attempts, often aided by counsel, to circumvent them through frivolous litigation.

Facts of the Case

The respondents in the Court of Appeal, KCA Deutag Drilling GmbH and KCA Deutag (Nigeria) Limited, entered into a Land Drilling Agreement with the appellant, Pan Ocean Oil Corporation Nigeria Ltd, for the provision and operation of a land drilling rig and other associated drilling services (the "**Contract**"). The respondents issued invoices to the appellant for services rendered under the Contract. The appellant received the invoices but failed to settle them. After several unsuccessful demands by the respondents for the payment of the outstanding invoices, the respondents submitted the dispute regarding the failure/refusal of the appellant to settle the outstanding invoices to arbitration under the Arbitration Rules of the International Chamber of Commerce International Court of Arbitration (the "**ICC**"), in accordance with the arbitration agreement contained in the Contract.

The respondents and the appellant subsequently settled the dispute amicably while the arbitration was underway, executed a settlement agreement and requested the arbitral tribunal to issue an award by consent of the parties based on the terms of the settlement agreement. Under the settlement agreement, the appellant agreed to pay the respondents the sums of US\$13,487,286.17 (thirteen million, four hundred and eighty-seven thousand, two hundred and eighty-six United States Dollars and seventeen cents) and N1,164,766,574.72 (one billion, one hundred and sixty-four million, seven hundred and sixty-six thousand, five hundred and seventy-four Naira and seventy-two kobo) for services provided by the respondents to the appellants under the Contract. The parties also agreed in the settlement agreement that the amounts due and payable to the respondents should be paid in instalments on specific dates stated.



The arbitral tribunal made an award by the consent of the parties (the “**Award**”) in favour of the respondents in terms of the settlement agreement executed by the parties. Although the appellant made some payments voluntarily under the Award, the appellant subsequently failed to make further payments in accordance with the milestones agreed by the parties or at all. The respondents then filed an action in the High Court of Lagos for leave to enforce the Award in the same manner as a judgment of the court and to the same effect. The High Court heard the application and granted it on 18th March 2020. It is to be noted that the appellant, who was represented by counsel during the proceedings in the Lagos High Court, did not oppose the respondents’ application for leave to enforce the award. Following the grant of the respondents’ application to enforce the award, the respondents recovered some funds through garnishment of the appellant’s bank accounts.

After the appellant had made some payments voluntarily and the respondents had recovered some amounts through garnishment proceedings, the appellant filed an application in the High Court seeking a stay of further execution and an order setting aside the Award on the grounds of alleged illegality of the underlying contract. However, the High Court dismissed the application on all grounds, prompting an appeal to the Court of Appeal by the appellant. The Court of Appeal, in its judgment delivered on 25th May 2023, affirmed and refused to set aside the decision of the High Court. Dissatisfied with the decision of the Court of Appeal, the Appellant further appealed to the Supreme Court.

In a judgment delivered on 9th May 2025, the Supreme Court, in a unanimous decision, dismissed the appeal.



Key Issues Decided by the Supreme Court

Whether a party that failed to raise a jurisdictional objection during the arbitration can do so afterwards in court

One of the contentions of the appellant in the Court of Appeal was that the Contract was void and illegal because the 1st respondent, a foreign company, allegedly did not incorporate a local subsidiary to perform the Contract in Nigeria and thereby violated the provisions of section 54 of the (now repealed) Companies and Allied Matters Act Cap 1990¹ (CAMA). The appellant submitted that the Contract, as well as the Award, was tainted with illegality, and as a result, the High Court lacked the jurisdiction to enforce the Award.

In response, the respondents, represented by UUBO, submitted that the appellant was foreclosed from raising the issue of jurisdiction arising from the alleged illegality of the Contract, which it ought to have, but failed to raise before the arbitral tribunal. This submission was based on section 19 of the Lagos State Arbitration Law (the *lex arbitri*), which provides that a plea that an arbitral tribunal does not have jurisdiction may be raised not later than the time of submission of the points of defence. The respondents contended that, to the extent that the appellant's illegality allegations were characterised as a jurisdictional matter, the appellant ought to have raised such objection during the arbitration proceedings.

The Supreme Court agreed with the respondents and held that the appellant was foreclosed from raising the alleged illegality of the Contract for the first time in the High Court, having failed to raise that issue before the arbitral tribunal.

Whether an application for the enforcement of an arbitral award for payment of outstanding invoices arising from a drilling contract falls within the provisions of section 251(1)(n) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), as to vest the Federal High Court with exclusive jurisdiction over the respondents' enforcement proceedings.

¹ Cap C20, Laws of the Federation of Nigeria 2004



The appellant also contended that the Contract which gave rise to the Award, being a contract for the supply of drilling rig and associated equipment and services, was a matter connected with oil mines, minerals, including oil fields, mining, geological surveys and natural gas within the meaning of section 7(1) of the Federal High Court Act Cap F12 Laws of the Federation of Nigeria 2004² and section 251(1)(n) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) (the “**Constitution**”) and that the application for the enforcement of the Award that resulted therefrom ought to have been filed in the Federal High Court. The appellant, therefore, contended that the decision of the High Court of Lagos State recognising the Award for enforcement in the same manner as a judgment of the court to the same effect ought to be set aside on the grounds of lack of jurisdiction.

In response, the respondents contended that the dispute between the parties, which was submitted to arbitration, was a simple claim for breach of contract and recovery of outstanding invoices arising from services and equipment that it provided and supplied to the appellant under the Contract; their claim had nothing to do with any of the matters provided for under section 7(1) of the Federal High Court Act or section 251(1)(n) of the Constitution. The fact that the debt arose from services provided or equipment supplied under a drilling agreement did not make the dispute a matter arising from or relating to mines, minerals, including oil fields, mining, geological surveys and natural gas, to vest the Federal High Court with exclusive jurisdiction over the proceedings to enforce the Award.

In its decision on this point, the Supreme Court upheld the respondents’ submissions that the respondents’ claim was for breach of contract and payment of outstanding invoices, which did not fall within the jurisdiction of the Federal High Court under section 7(1) of the Federal High Court Act and/or section 251(1)(n) of the Constitution. The Supreme Court also held that the claim is for and pertains to money and not for mines, minerals, including oilfields, mining, geological surveys and natural gas and that this falls outside the parameters of section 251(1) of the 1999 Constitution and section 7(1) and (3) of the Federal High Court Act.

² Cap F12 Laws of the Federation of Nigeria 2004



Whether a party who has benefitted from a contract can turn around and try to avoid its contractual obligations by raising allegations of illegality of the contract

The Supreme Court agreed with the respondents that it is morally reprehensible for the appellant or any party who has taken benefit of a contract to turn around and try to avoid its contractual obligations based on unfounded allegations of contractual illegality.

COMMENTS

The Supreme Court's decision in this case not only reinforces the pro-arbitration attitude of the Nigerian courts but also sends a strong message that the Nigerian courts will not condone abuse of their processes through frivolous and bad faith challenges to arbitral awards. The Court's award of punitive costs in the sum of N10 million against the Appellant underscores its resolve to uphold the sanctity of contractual obligations and protect the efficiency, finality and viability of arbitration as an alternative dispute resolution mechanism. The judgment provides much-needed comfort to commercial parties who choose arbitration and reflects the Nigerian courts' growing intolerance for abusive litigation designed to frustrate enforcement of arbitral awards. UUBO is proud to have contributed to the enrichment of Nigeria's arbitration jurisprudence through this case, which we handled with consistent success from the arbitral tribunal, High Court, Court of Appeal and the Supreme Court.

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