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The Supreme Court's Decision in BPE v. Messrs U. Maduka Ent. (Nig.) Ltd:

A Day Late and a Dollar Short?

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Introduction

The decision of the Nigerian Supreme Court in the case of *Bureau of Public Enterprises v. Messrs U. Maduka Ent. (Nig.) Ltd* represents an important watershed in Nigerian arbitration jurisprudence. In that case, the Supreme Court pivoted from its previous decisions in *Murmansk State Steamship Line v. Kano Oil Millers Ltd* (1974) LPELR-1927(SC) and *City Engineering (Nig.) Ltd. v. Federal Housing Authority* (1997) LPELR-868(SC) in which it held that the time within which to enforce an arbitral award begins to run from the date of the underlying contractual breach that led to the arbitration rather than from the date of the award. In *Bureau of Public Enterprises v. Messrs U. Maduka Ent. (Nig.) Ltd,* the Supreme Court, without expressly overruling *Murmansk State Steamship Line v. Kano Oil Millers Ltd* and *City Engineering (Nig.) Ltd. v. Federal Housing Authority,* held that for purposes of calculating limitation period, the time within which to enforce an arbitral award begins to run from the date of the award, not from the date of the underlying contractual breach.

Considering that the Nigerian Arbitration and Mediation Act, which took effect in 2023 already addressed the issue of limitation period within which to enforce an arbitral award by providing that in computing the time for the commencement of proceedings to enforce an arbitral award, the period between the commencement of arbitration and the date of the award shall be excluded, the Supreme Court's decision in *Bureau of Public Enterprises v. Messrs U. Maduka Ent. (Nig.) Ltd* could be said to have arrived late to be of any impact.

It is to be noted, however, that the Supreme Court had in 2018, held in the case of *Sifax (Nig.) Ltd v. Migfo (Nig.) Ltd.* (2018) LPELR-49735(SC), that the filing of an action freezes limitation period. Considering that the decision of the Supreme Court in *Bureau of Public Enterprises v. Messrs U. Maduka Ent. (Nig.) Ltd* merely represents the application of a principle that was laid down by the Supreme Court in the case of *Sifax (Nig.) Ltd v. Migfo (Nig.) five years* before the enactment of the Arbitration and Mediation Act, the Supreme Court's intervention on the issue of freezing of limitation period once an action is commenced, which is the idea encapsulated in Section, 34(4) of the Arbitration and Mediation Act, cannot be said to be too late to blunt its impact or significance.

Background to the dispute

The case arose from a construction contract entered on 15 August 1978 between the Federal Ministry of Communications and Messrs U. Maduka Enterprises (Nigeria) Limited for the construction of, among other things, the P & T School at Agbani in Enugu State. In 1985, the now defunct Nigerian Telecommunications Plc (NITEL) was established and subsequently became a beneficiary of the contract through an addendum dated 7 December 1988. From the commencement of the project, the Federal Government paid various sums due under the contract, with NITEL as the beneficiary. During the execution of the project, additional payments were made at different stages to account for fluctuations and depreciation in the value of the naira.



A dispute eventually arose between the parties concerning payment under the contract. The parties were unable to resolve the dispute amicably, prompting the contractor to invoke the arbitration clause contained in the agreement. The dispute was thereafter referred to a sole arbitrator. On 6 February 2006, the arbitrator issued an award in favour of the contractor.

Proceedings before the courts

Following the award, the contractor filed a motion on notice dated 18 April 2011, five years after the award was issued, in the Federal High Court seeking to enforce the arbitral award. NITEL opposed the application on the ground that the action for the enforcement of the award had become statute barred. The Federal High Court accepted this argument and dismissed the action.

The contractor was dissatisfied with that decision and appealed to the Court of Appeal. While the appeal was pending, the Federal High Court sitting in Abuja made an order appointing a liquidator over NITEL. The contractor subsequently applied to substitute the relevant parties in the appeal to reflect the liquidation proceedings. The Court of Appeal granted the substitution, dismissed the preliminary objection raised by the appellants, and ultimately set aside the decision of the Federal High Court, which led to further appeal to the Supreme Court.

The Central issue before the Supreme Court

Although two issues were formulated for determination by the Supreme Court, the central controversy concerned whether the action to enforce the arbitral award was statute-barred. The appellants relied on Section 20(1)(c) of the Enugu State Limitation Law, which provides that an action to enforce an arbitral award where the submission is not under seal must be brought within six years from the date the cause of action accrued. They argued that the cause of action accrued in 2000 when the dispute was referred to arbitration and that the action to enforce the award, which was brought in April 2011, was caught by the six-year limitation period. In support of this argument, reliance was placed on the Supreme Court's earlier decision in *City Engineering (Nig.) Ltd v. Federal Housing Authority*, in which the Supreme Court held that the limitation period for enforcement of an arbitral award runs from the date the cause of action accrued rather than from the date the award was made.

The respondents, however, contended that the award was not statute-barred and that the Court of Appeal was right to rely on the decision of the Supreme *Court in Sifax (Nig.) Ltd v. Migfo (Nig.) Ltd*. In that case, the Supreme Court had held that the filing of action freezes limitation period such that where an aggrieved person commences an action within the period prescribed by statute and such action is subsequently struck out without being heard on the merits, the limitation period shall not run/is frozen during the pendency of the earlier action. The respondents contended that the same principle should apply to arbitration proceedings.



The Decision of the Supreme Court

The Supreme Court affirmed the decision of the Court of Appeal and held that the action to enforce award was not statute-barred. The Court reasoned relying on its earlier decision in *Sifax v. Migfo* that the period between the commencement of the arbitration proceedings and publication of the award must be excluded in calculating the limitation period and that once arbitration is commenced, time stops running until the arbitral tribunal issues its award.

Applying this principle to the facts of the case, the Court held that the period between the year 2000, when the arbitration proceedings were commenced, and 2006, when the award was delivered, must be excluded from the limitation period which means that the action to enforce the award which was filed in 2011 fell within the applicable limitation period and was therefore not statute barred.

The Historical problem with limitation in Nigerian Arbitration

The issue of the limitation period within which to enforce an arbitral award which has now been laid to rest by the Supreme Court in *BPE v. Maduka* has long been a vexed issue. Earlier decisions of the Supreme Court such as *Murmansk State Steamship Line v. Kano Oil Millers Ltd* and *City Engineering v Federal Housing Authority* held that the limitation period for enforcing an arbitral award runs from the date the underlying cause of action accrued rather than from the date the award was delivered. This position created significant practical difficulties because arbitral proceedings could sometimes take several years to conclude. In some cases, the limitation period could expire even before the arbitration is concluded and an award issued, leaving the successful award party with an award that cannot be enforced. This situation was criticised by arbitration practitioners and users.

Legislative reform under the Arbitration and Mediation Act 2023

This concern eventually prompted legislative intervention through the Arbitration and Mediation Act 2023. Section 34 of the Act introduced several provisions addressing the relationship between limitation statutes and arbitral proceedings. Section 34(4) of the Act provides that in computing the time for the commencement of proceedings to enforce an arbitral award, the period between the commencement of arbitration and the date of the award shall be excluded.

It is to be noted that this issue had been addressed earlier in section 35(5) of the Lagos State Arbitration Law 2009, which is the same as section 34(4) of the Act.

Is the Decision in *BPE v. Maduka* belated?

Against this background, the decision in *BPE v. Maduka* could be said to be somewhat belated because by the time the Supreme Court handed down its judgment in 2025, the



Arbitration and Mediation Act 2023 had already addressed the issue. However, we take the view that the decision of the Supreme Court in *BPE v. Maduka* did not come too late because in 2018, the Supreme Court delivered the landmark decision in the case of *Sifax v. Migfo* in which it held that the filing of an action interrupts or freezes limitation period. Although *Sifax v. Migfo* was a case in which the action was initially commenced in the wrong court, the principle laid down by the Supreme Court in that case to the effect that the filing of an action keeps limitation period frozen until the action is determined applies with equal force to arbitration proceedings. Since *Sifax v. Migfo, which was the basis of the decision BPE v. Maduka,* was decided in 2018, five years before the enactment of the Arbitration and Conciliation Act, it is also arguable that the problem addressed by section 34(4) of the Act had, in principle, already been addressed by the Supreme Court in *Sifax v Migfo,* long before the AMA was enacted and that the case of *BPE v. Maduka* only represents the application of an already established legal principle to enforcement of arbitration. To this extent, our answer to the question of whether the Supreme Court's decision in *BPE v Maduka* could be described as a day late and a dollar short is "No". Furthermore, and perhaps more importantly, the decision reinforces the pro- arbitration stance of the Supreme Court and demonstrates the Supreme Court's readiness to pivot from its previous decisions that tend to hinder the effectiveness of arbitration as a viable alternative to litigation.