Dispute Resolution
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Do Nigerian Courts have jurisdiction to set aside Foreign-Seated Arbitration Awards?

The above question was the subject of a recent hard-fought appeal; *Oil & Industries Services Ltd v. Hempel Paints (South Africa) Pty Ltd,*[2] argued before the Court of Appeal, Port-Harcourt Division. The appeal arose from a decision of the High Court of Rivers State, which had answered the question in the negative.

An edge to the above question stemmed from an earlier decision of the Court of Appeal in *Limak v. Sahelian Energy & Integrated Services Limited*,[3] where the Abuja Division of the court had declared that Nigerian courts, "are expressly conferred with jurisdiction to set aside an arbitral award made outside Nigeria irrespective of the Country in which it is made". Accordingly, it was a genuine concern that the Court of Appeal might, as it often does, double down on its decision in *Limak*, moreso as one of the panel members that concurred in *Limak*, sat as the presiding judge in the panel that heard *Hempel*.

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2 Unreported decision in Appeal No. CA/PH/177/20201, handed down on 24 January 2025.

3 [2021] LPELR-58182 (CA).

However, in a landmark judgment, the Court of Appeal distanced itself from *Limak* and, correctly, affirmed that Nigerian courts lacked jurisdiction to set aside a foreign seated arbitration award.

A. The Dispute

Hempel Paints A/S is a global manufacturer of paints and served the African market through its South African subsidiary. Oil & Industrial Services Ltd (OIS) is a paint distributor based in Port-Harcourt, Rivers State, Nigeria. The parties entered into a distributorship contract which incorporated an arbitration clause, wherein the parties agreed to submit any dispute to arbitration. The arbitration clause further provided that such disputes will be settled by a sole arbitrator seated in London and appointed in accordance with the arbitration rules of the London Court of International Arbitration.

A dispute arose over OIS' failure to settle Hempel's invoices for the supply of paint products. Hempel filed a suit before the High Court of Rivers State to recover the debt. OIS, however, filed a preliminary objection to the suit, arguing that the matter should be referred to arbitration as provided in the parties' contract. The court upheld the objection and ruled that the dispute should be referred to arbitration.

Thereupon, Hempel commenced arbitration proceedings against OIS before the London Court of International Arbitration (LCIA) in London, England, and the parties appointed a sole arbitrator to conduct the proceedings. The sole arbitrator, by agreement of the parties, heard the matter on a documents-only basis and issued a Final Award ("the LCIA Award") which upheld Hempel's claims.

Subsequently, Hempel filed an enforcement application before the High Court of Rivers State, Nigeria, to enforce the LCIA Award against OIS on its home turf. OIS filed a counter-affidavit to contest the enforcement of the LCIA Award, and also commenced a separate suit seeking to set aside the award on several grounds *inter-alia* that the sole arbitrator had misconducted herself.

The two suits were consolidated before a single Judge (Diepiri J), and a central part of the parties' argument was whether the court had jurisdiction to set aside the LCIA Award, being a foreign-seated arbitration award. In a reasoned ruling dated 27 January 2020, Diepiri J., upheld Hempel's argument that Article V(1)(e) of the *New York Convention* 1958, as domesticated into Nigerian law[4] had allocated jurisdiction to set aside a foreign seated arbitration award to the court of the seat of the award, in this case, London. Accordingly, it was held that the Nigerian court lacked jurisdiction to set aside the LCIA Award. Aside from the issue of jurisdiction, the court went on to

[4] At the material time, the New York Convention was the third schedule to the (repealed) Arbitration and Conciliation Act 1988. It is now the second schedule to the Arbitration and Mediation Act 2023.

consider the set-aside suit on its merits and dismissed it as specious.

B. The Parties' position in the Appeal

Dissatisfied, OIS filed an appeal to the Court of Appeal, Port-Harcourt Division, in January 2020 to challenge the High Court's above ruling. Once again, the issue of the Nigerian court's jurisdiction to set aside a foreign-seated award took central stage.

The Appellant's senior counsel, Sir Cosmas Enweluzo SAN, argued that the *Arbitration and Conciliation Act* (ACA) 1988 regulated the procedure for the enforcement of any arbitration award in Nigeria, and that sections 29, 30 and 48 of the ACA 1988 which gave Nigerian courts the power to set aside arbitral awards did not make a distinction between domestic or international awards. Accordingly, counsel submitted that a Nigerian court could set aside the LCIA Award, regardless of its origin or seat. Counsel further submitted the High Court had unnecessarily fettered its own jurisdiction by embracing the doctrines of reciprocal international treaties, whereas Nigeria's sovereign status suggests the prioritization of domestic laws. Lastly, counsel argued that since the court had decided that it lacks jurisdiction to set aside the arbitral award, it was wrong for it to proceed to consider the merits of the set-aside application to decide whether the arbitrator had misconducted herself.

In response, Hempel's counsel, Dr. Kolawole Mayomi, argued that the High Court was right to decline jurisdiction to set aside the LCIA Final Award issued by a sole arbitrator seated in London. Counsel drew the court's attention to the difference between the judicial remedies of *setting aside* an arbitral award and *refusal to recognise and enforce* an arbitral award. He relied on Article V(1)(e) and Article VI of the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards* 1958 as domesticated into Nigeran law and argued that only the High Court of England has jurisdiction to entertain the application to set aside the LCIA Award, and that the Nigerian court could only *refuse* recognition of the award. Counsel noted that since Article V(1)(e) of the *New York Convention* had been domesticated into Nigerian law, any inconsistency between sections 29, 30 and 48 of the ACA 1988 and Article V(1)(e) of the New York Convention should be resolved in favour of the *New York Convention*.

C. Hearing of the Appeal

After the parties had filed their respective briefs in *OIS v. Hempel* and were awaiting hearing of the appeal, the Abuja Division of the Court of Appeal dropped a bombshell with the judgment in *Limak v. Sahelian Energy & Integrated Services Ltd* where a panel unanimously set aside a Geneva-seated ICC arbitration award on grounds that the enforcement of the award in Nigeria was against public policy, as the contract that was the subject of the award failed to comply with the mandatory regulations of the *National*

Office for Technology Acquisition and Promotion (NOTAP) Act. However, in ordering that the ICC award should be set aside, the court applied section 48 of the ACA and sweepingly asserted that Nigerian courts are conferred with jurisdiction to set aside any arbitral award made outside Nigeria, irrespective of its seat.

The *Limak* decision had justifiably caused a stir in the Nigerian arbitral community, with many experts questioning the rationale of this decision[5] and arguing that this ruling defeats the reasonable expectations of investors and businesspeople that applications to nullify arbitral awards obtained in neutral foreign seats should only be entertained by the courts of such neutral seats.[6]

Unsurprisingly, the *Limak* decision was a focal point for fierce arguments before the court at the oral hearing of the *Hempel* appeal. While OIS's counsel relied on *Limak* and urged the court to apply it to the instant case, Hempel's counsel argued, supplying supplementary authorities[7] that *Limak* should not applied as it is settled law that a domesticated foreign treaty provision (i.e., the New York Convention) must be accorded precedence over indigenous statutory provisions in Nigeria. As such, to the extent that section 48 of the ACA 1990 is incompatible with article V(1)(e) of the New York Convention, it cannot be applied in the way that *Limak* suggests.

D. The Court of Appeal's Judgment

In its judgment, after carefully considering the judgment of the High Court and the parties' argument on appeal, the Court of Appeal made the following findings:

First, the lower court was correct to assert that it does not have the jurisdiction to set aside the LCIA Award, as it does not have supervisory jurisdiction over the arbitration process seated in London. The court stated its findings on this issue thus:[8]

> **Upon examining the application, the [lower] court concluded correctly that it had no jurisdiction to set aside the arbitral award**

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5 Isaiah Bozimo, "How Limak v Sahelian Reshapes Nigeria's Arbitration Terrain" (2023), available at <https://broderickbozimo.com/limak-v-sahelian-nigeria-arbitration/> accessed 18 May 2025; Orji Uka, "The Power of a Nigerian Court to Set Aside a Foreign Arbitral Award: An X-ray of the Court of Appeal's Decision in Limak v. Sahelian Energy" (2023), available at <https://www.alp.company/resources/arbitration/power-nigerian-court-set-aside-foreign-arbitral-award-x-ray-court-appeal%E2%80%99s> accessed 16 May 2025.

6 Fagbohunlu, Mgbado et al, "So what if Nigerian Courts set aside Foreign Arbitral Awards? The Limak Decision in Perspective" (2024), available at <https://www.aluko-oyebode.com/wp-content/uploads/2024/03/So-What.The-Limak-Decision-in-Perspective_Aluko_Oyebode-AO22.03.24.pdf>accessed 17 May 2025.

7 *Sani Abacha & 3 Others v. Chief Gani Fawehinmi* [2000] 6 NWLR (Pt. 660) 228 (SC); *JFS Investment Ltd v. Brawal Shipping Line Limited & Ors.* [2010] LPELR-1610 (SC), *British Airways v. Femi Atoyebi* [2014] 13 NWLR (Pt. 1424) 253(SC).

8 See pages 18 – 19 of the judgment.

rendered under the Rules of the London Court of International Arbitration, which venue was the seat of the arbitration.

The court reasoned that given that the parties had agreed that the seat of arbitration shall be in London, England, and that the decision of the sole arbitrator appointed by them shall be final and binding; it is untenable for a Nigerian court to set aside the award, as such power can only be exercised by a court in England since the seat of arbitration in this case was in London, England.

However, despite the extensive debate of counsel at the hearing, the judgment was silent on, and did not make a single reference to the *Limak* decision. This silence is quite significant, given that one of the Judges that decided *Limak* was assigned to sit as the presiding judge on the panel that heard the *Hempel* appeal and wrote the lead judgment of court. The major inference[9] to be drawn from the studied judicial silence, therefore, is that the court would rather draw a line under *Limak* and move forward.

Second, the lower court was right to have, alternatively, considered the set-aside suit and held that the sole arbitrator did not misconduct herself by not considering all the pieces of evidence before her in the arbitration proceedings leading to the award. This conclusion is particularly justified as the parties had voluntarily agreed that the arbitration proceedings will be a documents-only hearing. Accordingly, the lower court was correct to have found that the sole arbitrator could not go outside the documents submitted to her in search of further evidence. Indeed, the sole arbitrator had found that invoices of the debt were sent by Hempel to OIS on several occasions, and that OIS never contested the amount, or the quantum of goods supplied by Hempel.

E. Conclusion

This case reinforces the application of the principles of the *New York Convention* 1958 in Nigeria and brings clarity to the extent of Nigerian court's powers to intervene in foreign seated arbitration proceedings. The Court of Appeal has accepted that the Convention had allocated supportive jurisdiction in respect of arbitral proceedings to the court of the country where the arbitration is seated. Furthermore, only the court of the seat may suspend or set aside an arbitral award, whilst the court of other jurisdictions may refuse the recognition or enforcement of the award.

Furthermore, the case reinforces the Nigerian courts' pro-finality stance in respect of arbitration awards. In a long line of cases, the Nigerian courts have consistently held that the powers of the court to set aside an arbitral award is not to be lightly exercised, even in cases of alleged misconduct of the arbitrator. This principle was emphatically

[9] Another plausible explanation is that the Port-Harcourt Division was, perhaps, reluctant to openly overrule the judgment of the Abuja Division, both being different divisions of the same court.

stated by the Supreme Court in the recent case of ***NNPC v. Fung Tai Engineering Co Ltd***.,[10] thus: "*the set-aside jurisdiction of the court should not be exercised unless… there has been something radically wrong and vicious in the proceedings.*"

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[10] [2023] LPELR-59745(SC).