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NIGERIA AVOIDS PAYMENT OF US$11 BILLION DOLLAR ARBITRAL AWARD DEBT TO P&ID:

IS THE LEGAL BATTLE REALLY OVER?

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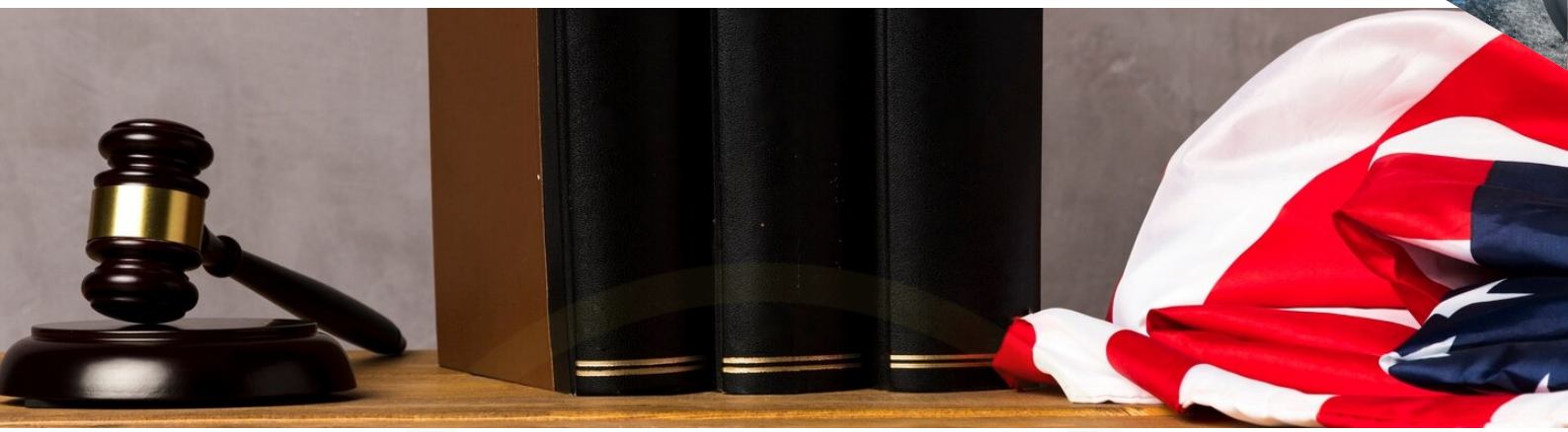
INTRODUCTION

In January 2010, the Nigerian Government entered into a Gas Supply and Processing Agreement (GSPA) with a company known as Process & Industrial Developments Limited (P&ID). Three years after, P&ID declared breach and commenced arbitration proceedings. In two awards issued 17th July 2015 and 31st January 2017, the arbitral tribunal – composed of Lord Hoffmann, Sir Anthony Evans and Chief Bayo Ojo, SAN – found that Nigeria had committed a repudiatory breach of the GSPA, that P&ID was entitled to the sum of US$6.6 billion as damages and 7% interest (Chief Ojo, SAN published a dissent with respect to the award of damages). Having regard to the interest awarded by the arbitral tribunal, as of 2023, Nigeria was an award-debtor in the sum of US$11 billion.

After a series of proceedings in English and Nigerian courts, Nigeria formally challenged the arbitral awards in proceedings commenced before the Commercial Court in England. In a 127-paged judgment – excluding the Annex – handed down on the 23rd day of October 2023,[1] Hon. Mr. Justice Knowles upheld the Nigeria's challenge to the awards. In his judgment, Knowles J found as a fact that among other elements of fraudulent conduct proved during the challenge proceeding: (a) P&ID had obtained the GSPA by bribing an official of the Nigerian government; (b) P&ID had knowingly provided false evidence to the arbitral tribunal; and (c) P&ID had corruptly obtained privileged documents pertaining to Nigeria's conduct of the arbitral proceeding.[2] Accordingly, Nigeria's challenge under **SECTION 68** of the Arbitration Act 1996 (applicable in England) succeeded because the awards were obtained by fraud and were contrary to public policy.[3]

In a further ruling handed down on 21st December 2023,[4] Knowles J set aside the

[1] THE FEDERAL REPUBLIC OF NIGERIA V. PROCESS & INDUSTRIAL DEVELOPMENTS LIMITED [2023] EWHC 2638 (Comm).
[2] Ibid at [493] – [497].
[3] Ibid at [574] – [575].
[4] THE FEDERAL REPUBLIC OF NIGERIA V. PROCESS & INDUSTRIAL DEVELOPMENTS LIMITED [2023] EWHC 3320 (Comm)



awards and denied leave to P&ID to appeal against his judgment.[5] With these decisions, Nigeria does not have to pay "a sum so vast that it is material to Nigeria's entire federal budget".[6] The judgment of the Knowles J has been rightly described as a landmark decision,[7] and traditional news media has reported that the decision has effectively terminated Nigeria's obligation to pay the award debt.[8] However, is it legally correct to state that arising from the order of Mr. Justice Knowles setting aside the arbitral awards, P&ID can no longer seek to enforce the award of US$11 billion against the funds and assets of the Federal Republic of Nigeria? That is the premise of this article.

THE POSSIBILITY OF ENFORCING ARBITRAL AWARDS THAT HAVE BEEN SET ASIDE BY THE COURT OF THE SEAT OF ARBITRATION

It is important to state that although in arbitration, the rights and obligations of the disputing parties are determined by an arbitral tribunal, arbitral proceeding remains a contractual dispute resolution mechanism, presided over by adjudicators selected in the manner agreed by the parties, with an expectation that the rigour and technicalities associated with regular court proceedings will not apply to the arbitral process.[9] As such, the court of the seat of arbitration only exercises supervisory (not appellate) jurisdiction over the arbitral process.[10] This is because at the foundation of the arbitral process is the presumption that an arbitral award is valid, binding and liable to be summarily enforced, locally and internationally.[11]

[5] Ibid at [45] to [48].
[6] Op. cit., note 1, at [4].
[7] Hanna Marunych and Bohdan Prybora "Nigeria v P&ID Ltd: The Battle Between Fraud and Justice In The English Court" Mondaq (Online) <https://www.mondaq.com/nigeria/arbitration--dispute-resolution/1386962/nigeria-v-pid-ltd-the-battle-between-fraud-and-justice-in-the-english-court> (accessed: 12th January, 2024).
[8] Akin Popoola "EFCC and facts of P&ID case" Punch (Online) <https://punchng.com/efcc-and-facts-of-pid-case/> (accessed: 12th January 2024).
[9] C. N. ONUSELOGU ENT. LTD. V. AFRIBANK (NIG.) LTD. [2005] 1 NWLR (Pt. 940) 577; GATES V. ARIZONA BREWING COMPANY (1939) 54 Ariz. 266 and STABILINI VISINONI LTD V. MALLINSON & PARTNERS LTD. [2014] 12 NWLR (Pt. 1420) 134.
[10] N.N.P.C. V. FUNG TAI ENG. CO. LTD. (2023) 15 NWLR (Pt. 1906) 117; MTN COMM. V. HANSON (2017) 18 NWLR (Pt. 1598) 394; MAJOR LEAGUE UMPIRES ASS'N V. AM. LEAGUE OF PROF'L BASEBALL CLUBS, 357 F.3d 272 (3rd Cir. 2004) and LESOTHO HIGHLANDS DEV. AUTH. V. IMPREGILO SPA [2005] UKHL 43.
[11] Article 35 UNCITRAL Model Law on International Commercial Arbitration, 1985. See: Gary B. Born, International Commercial Arbitration (Third Edition), §25.03[A] (Kluwer Law International, Updated August 2022).

Accordingly, an arbitral award retains its nature as an award, even when the award-creditor, for the purposes of enforcement, successfully moves a court to adopt the award as its judgment.[12] Traditionally, the arbitration laws of various countries tend to adopt one of four ways of enforcing an award: (a) by depositing or registering the award with the court as is obtainable in Switzerland and Egypt; (b) by obtaining leave of court to have the award enforced directly, as is obtainable in Nigeria, England and Australia; (c) by applying to the court to recognize the award, which is usually referred to as the grant of *exequatur*, as is obtainable in France and Argentina; and (d) by using the arbitral award as evidence of a debt owed to the award-creditor, in judicial proceedings for the recovery of the debt.[13]

Even though a great majority of arbitral awards are performed without recourse to judicial proceedings for the purposes of enforcement,[14] the incidence of full-blown hostilities tend to arise when the award-debtor challenges the award. The law is that the court of the seat of arbitration – applying its municipal laws[15] - has the exclusive jurisdiction to set aside or annul an award.[16] Being the court with exclusive supervisory jurisdiction over the arbitral tribunal, the decision of the court of the seat should ordinarily be determinative of the continued validity of the award, for purposes of enforcement.[17]

However, in international arbitration, there are different approaches to the enforceability of an arbitral award that has been set aside or annulled by the court of the seat of arbitration. They are: (a) the delocalised or internationalist approach; and (b) the territorialist or classic approach. Unsurprisingly, the courts of the States that adopt both approaches anchor their approach on interpretations of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, popularly referred to as the New York Convention.[18]

ARTICLE I of the New York Convention provides that the Convention applies to "awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought" or "awards not considered as domestic awards in the State where their recognition and enforcement are sought". Accordingly, for the purpose of the application of the Convention, the critical question is where the award was made – i.e., the seat of arbitration. If the award was made in a State that is a signatory to the Convention, then applying the requirements of the New York Convention, the award is enforceable in the territory of all other signatory States.[19] As such, when the

[12] It is important to state that unlike what is obtainable in some foreign jurisdictions such as the United Kingdom (see: SECTION 66(2) OF THE ARBITRATION ACT 1996), in Nigeria, during enforcement proceedings, an arbitral award is "enforced in the same manner as a judgment". So, the award does not metamorphose into a judgment of the court, the award retains its character, albeit given the force of law accorded to a judgment of a Nigerian court, see: SECTION 57(3) OF THE ARBITRATION AND MEDIATION ACT, 2023 and RAS PAL GAZI CONST. CO. V. FCDA (2001) 10 NWLR (Pt. 722) 559. Internationally, there was a developing school of thought that as soon as an award is adopted as the judgment of a court, it mergers into the judgment and it loses its character as an award. This concept was known as the doctrine of merger. However, this concept has been rejected, and the correct position of the law is that an award retains its character for the purposes of enforcement, irrespective of how many times it is adopted or enforced as the judgment of a court, see: BRALI V. HYUNDAI CORPORATION (1988) 15 NSWLR 734 and COSID, INC. V. STEEL AUTHORITY OF INDIA, LTD. [1985] 11 Y.B. Comm. Arb. 502.

[13] Nigel Blackaby, Constantine Partasides, et al., Redfern and Hunter on International Arbitration (7th Edition, Kluwer Law International, Oxford University Press, 2023) at §11.11.

[14] Ibid. at §11.02 and §11.04.

[15] ARIO V. UNDERWRITING MEMBERS OF SYNDICATE 53 AT LLOYDS, 618 F.3d 277 (3d Cir. 2010); GULF PETRO TRADING CO., INC. V. NIGERIAN NATIONAL PETROLEUM CORP., 512 F.3d 742, 747 (5th Cir. 2008) and ALOE VERA OF AM. INC. V. ASIANIC FOOD (S) PTE LTD. [2006] SGHC 78.

[16] BELIZE SOC. DEV. LTD. V. GOV'T OF BELIZE, 668 F.3d 724 (D.C. Cir. 2012) and RESORT CONDOMINIUMS INTERNATIONAL INC V BOLWELL [1993] QSC 351.

[17] KARAHA BODAS CO. LLC V. PERUSAHAAN PERTAMBANGAN MINYAK DAN GAS BUMI NEGARA, 364 F.3d 274 (5th Cir. 2004).

[18] The New York Convention has been domesticated into Nigerian law by SECTION 60 AND THE SECOND SCHEDULE TO THE ARBITRATION AND MEDIATION ACT, 2023.

[19] TERMORIO V. ELECTRANTA, 487 F.3d 928 (D.C. Cir. 2007) and CONTI. TRANSFERT TECHNIQUE V. FED. GOV. OF NIGERIA, 697 F. Supp. 2d 46 (D.D.C. 2010).

award-creditor seeks enforcement of an award in a signatory State, the enforcing court can only decline to enforce the arbitral award on the grounds explicitly outlined in the Convention.[20]

The complete list of grounds for declining to enforce an award are set forth in **ARTICLE V** of the New York Convention, and it is now judicially accepted that these grounds are to be narrowly construed.[21] In broad outline, the grounds are: (a) incapacity of the parties to have entered into the arbitration agreement;[22] (b) invalidity of the arbitration agreement under the law applicable to the agreement;[23] (c) lack of notice of the appointment of an arbitrator or lack of notice of the arbitral proceedings to the award-debtor;[24] (d) the arbitrators exceeded the scope of the dispute referred to arbitration;[25] (e) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the arbitration agreement;[26] (f) the award is not yet binding or has been suspended or set aside by the court of the seat of arbitration; (g) the subject matter of the arbitral proceedings is non-arbitrable under the law of the seat;[27] and (h) the recognition or enforcement of the award would be contrary to public policy.[28]

As can be seen from grounds listed above, one of the grounds for refusing to enforce an award, as provided in in **ARTICLE V(1)(e)** of the New York Convention, is that the award "has been set aside or suspended by a competent authority of the country in which … that award was made". A few years after the New York Convention came into force, it was accepted, with little debate, that once an award had been set aside by the court of the seat, the courts of signatory States would deny recognition to the award.[29] However, this is no longer the case. At the root of the divergence between the various approaches to the recognition and enforcement of annulled awards is the wording of **ARTICLE V**, which is drafted in permissive language, i.e., enforcement of awards **"may be refused"** by the court of the enforcing State.[30] Accordingly, in the absence of a mandatory duty to refuse recognition to awards annulled by the court of the seat, the enforcing courts are granted autonomy to develop local rules and approaches to situations in which they would elect to decline enforcement of such awards.

THE DELOCALISED APPROACH

In regular judicial proceedings, when the decision of a court is set aside or vacated, it ceases to exist and has no legal consequence whatsoever. In fact, the approach is that the decision is treated as if it never existed.[31] As such, it appears paradoxical that an arbitral

[20] YUSUF AHMED ALGHANIM SONS V. TOYS "R" US, INC., 126 F.3d 15 (2d Cir. 1997).
[21] CORPORACIÓN TRANSNACIONAL DE INVERSIONES, SA DE CV V. STET INT'L SPA, (1999) 45 OR3d 183.
[22] SDV TRANSAMI LTD V. AGRIMAG LTD, Case No. HCT-00-CC-AB-0002-2006 (Comm) (Uganda High Ct. 2008).
[23] GPF GP SARL V. POLAND [2018] EWHC 409.
[24] GENERICA LTD V. PHARM. BASICS, INC., 125 F.3d 1123 (7th Cir. 1997).
[25] SUTTER V. OXFORD HEALTH PLANS, 675 F.3d 215 (3d Cir. 2012) and PHOENIXFIN PTE LTD V. CONVEXITY LTD. [2022] SGCA 17.
[26] SUMUKAN LTD V. COMMONWEALTH SECRETARIAT [2007] EWCA Civ. 1148 and COMPAR EPAC. CHINA HOLDINGS LTD V. GRAND PAC. HOLDINGS LTD. [2011] 4 HKLRD 188.
[27] See generally: MITSUBISHI MOTORS CORP. V. SOLER CHRYSLER-PLYMOUTH, INC., 473 U.S. 614 (1985).
[28] HEBEI IMP. & EXP. CORP V. POLYTECH ENG'G CO. LTD. (1999) 2 HKCFAR 111; OIL & NATURAL GAS CORP. LTD V. SAW PIPES LTD. [2003] INSC 236 and CG IMPIANTI V. BMAAB & SON INT'L CONTRACTING CO., 35 Y.B. Comm. Arb. 415.
[29] NATIONALE POUR LA RECHERCHE, LE TRANSPORT ET LA COMMERCIALISATION DES HYDROCARBURES V. FORD, BACON & DAVIS, INC., 15 Y.B. Comm. Arb. 370 and SPP (MIDDLE E.) LTD V. EGYPT, 10 Y.B. Comm. Arb. 487.
[30] Anon. "Issues relating to Challenging and Enforcing Arbitration Awards: Grounds to refuse enforcement" Norton Rose Fulbright (Online) <https://www.nortonrosefulbright.com/en-gb/knowledge/publications/ee45f3c2/issues-relating-to-challenging-and-enforcing-arbitration-awards-grounds-to-refuse-enforcement> (accessed: 17th January 2024).
[31] OGAR V. IGBE (2019) 9 NWLR (Pt. 1678) 534.

award set aside or annulled by the court of the seat, could still be 'enforced'. Ordinarily, such a proposition would offend the legal precept expressed in the Latin maxim *ex nihilo nihil fit* – i.e., nothing can be produced out of nothing.[32]

However, the central premise of the delocalised approach is that an arbitral award is not rendered ineffective simply because the court of the seat of arbitration has it set aside. This approach, which can rightly be described as ultra-pro-enforcement, is adopted by the French and Dutch courts. The leading case in this regard is the decision of the French Supreme Court (Cour de Cassation) in ***Société Hilmarton Ltd v. Société Omnium de traitement et de valorisation (OTV).***[33] The reasoning of the court in **Hilmarton**, which has been upheld and applied in subsequent decisions, is that an international award is not the product of the judicial system of the seat of arbitration, as such, the court of the seat cannot conclusively nullify that which it did not produce. The award remains in existence and retains its status even if set aside by the court of the seat.[34] Thus, the hallmark of the delocalised approach is that the decision of the seat of arbitration to nullify an award does not have a transnational effect. The court of the enforcing State would make its own independent determination as to whether there are grounds to refuse to enforce the award within its own territory.[35]

The proponents of this approach find legal validation in **ARTICLE VII(1)** of the New York Convention, which provides that the Convention "shall not … deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon". **ARTICLE VII(1)**, which is colloquially referred to as the more favourable right provision, allows an award-creditor[36] to take benefit of municipal laws that are more favourable to enforcement. The French courts – and, in at least one instance, a United States Court – have held that while a decision annulling an award confers discretionary power on an enforcing court to refuse to enforce the award, **ARTICLE VII(1)** compels an enforcing court to consider the validity and enforceability of the arbitral award under the local laws of the enforcing State.[37] Accordingly, so long as the award is enforceable under the local laws of the enforcing State, the decision of the court of the seat to set aside the award would not affect its recognition and/or enforcement.[38]

In this wise, within the context of the French legal system (which is the leading delocalized legal system), **ARTICLE 1525** of

[32] A.P.C. V. JEGA (2023) 8 NWLR (Pt. 1886) 367; AYA V. NKANU (2022) 11 NWLR (Pt. 1840) 157 and EZENWOSU V. NGONADI (1988) 3 NWLR (Pt. 81) 163.
[33] Cour de Cassation, 23 March 1994, Bulletin 1994 I N° 104 p. 79. <https://newyorkconvention1958.org/index.php?lvl=notice_display&id=140>
[34] SOCIÉTÉ PT PUTRABALI ADYAMULIA V. SOCIÉTÉ RENA HOLDING ET SOCIÉTÉ MOGUNTIA EST EPICES, Cour de Cassation, 29 June 2007, Bulletin 2007, I, N° 250 <https://newyorkconvention1958.org/index.php?lvl=notice_display&id=176>
[35] SOCIÉTÉ PABALK TICARET LIMITED SIRKETI C. SOCIÉTÉ NORSOLOR, Cour de Cassation, 9 October 1984, Case No. 83-11.355 <https://newyorkconvention1958.org/index.php?lvl=notice_display&id=118>
[36] It has been judicially determined that the reference to "interested party" in Article VII(1) of the Convention refers only to an award-creditor seeking to enforce the award, not the award-debtor who might be attempting to avoid enforcement, see: ITALIAN PARTY V. SWISS COMPANY, Bezirksgericht, Zurich, 29 Y.B. Com. Arb. 819.
[37] MATTER OF CHROMALLOY AEROSERVICES, 939 F. Supp. 907, 914 (D.D.C. 1996).
[38] SOCIÉTÉ GROUPAMA TRANSPORTS V. SOCIÉTÉ MS RÉGINE HANS UND KLAUS HEINRICH KG, Cour de Cassation, 21 November 2006, Bulletin 2006 I N° 502 p. 447 <https://newyorkconvention1958.org/index.php?lvl=notice_display&id=174>

the New Code of Civil Procedure, provides that a court would only deny recognition or enforcement to an award on the grounds listed in **ARTICLE 1520** of the Code, which are: (i) that the arbitral tribunal wrongly determined the issue of jurisdiction; (ii) that the arbitral tribunal was not properly constituted; (iii) that arbitral tribunal exceeded the scope of the issues referred to arbitration; (iv) that due process was violated; and (v) that the recognition or enforcement of the award would be contrary to international public policy. Quite clearly, the reasons a French court would deny enforcement to an international arbitral award are fewer that those articulated by **ARTICLE V** of the New York Convention, notoriously omitting the ground that the award has been set aside or vacated by the court of the seat of arbitration. It is argued that the power of France to derogate from the conditions already spelt out in **ARTICLE V** is derived from **ARTICLE III** of the New York Convention,[39] which provides that:

> "Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards".

Accordingly, while **ARTICLE III** mandates signatory States to enforce arbitral awards in line with the conditions laid out in the New York Convention, what it expressly prohibits is the imposition of procedural obstacles to the enforcement of international awards that are more onerous than those applicable to the enforcement of domestic award.[40] However, signatory States are completely at liberty to articulate less stringent conditions or hurdles to the enforcement of an international arbitral award.[41] Thus, in France, an award-debtor has significantly less defences in proceedings to enforce an international award, as its defences are exactly those applicable to proceedings to enforce a domestic award.[42]

THE TERRITORIALIST APPROACH

This approach is most prominent in the courts of the United States (US) and England.

[39] George A. Bermann, Procedures for the Enforcement of New York Convention Awards in Franco Ferrari & Friedrich Jakob Rosenfeld (Eds.), Autonomous Versus Domestic Concepts under the New York Convention (Kluwer Law International, 2021) at §4.01[A].
[40] GATER ASSETS LIMITED V. NAK NAFTOGAZ UKRAINIY [2007] EWCA Civ. 988 and IN RE ARBITRATION BETWEEN MONEGASQUE, 311 F.3d 488 (2d Cir. 2002).
[41] DITTE FREY MILOTA AND SEITELBERGER V. DITTE F. CUCCARO E FIGLI, Court of Appeal of Naples, Italy, 13 December 1974, I Y.B. Com. Arb. 193.
[42] See: Article 1520 of the French New Code of Civil Procedure.

The approach is one of deference to the decision of the court of the seat of arbitration, while retaining the power to enforce the award if the decision to annul the award runs contrary to the public policy of the enforcing State.

In the United States, the decision in ***Chromalloy***[43] gave the impression that US law would follow the French approach. However, the Second Circuit of the United States Court of Appeal clarified the position of the law in **BAKER MARINE (NIG.) LTD. V. CHEVRON (NIG.) LTD,**[44] a decision involving an award that had been set aside by the Federal High Court of Nigeria.[45] Baker Marine attempted to enforce the award in the US, arguing that **ARTICLE VII(1)** of the New York Convention mandates the application of the Federal Arbitration Act (applicable in the US). The Court rejected Baker Marine's argument, holding that:

> "It is sufficient answer that the parties contracted in Nigeria that their disputes would be arbitrated under the laws of Nigeria. The governing agreements make no reference whatever to United States law. Nothing suggests that the parties intended United States domestic arbitral law to govern their disputes. The "primary purpose" of the FAA is "ensuring that private agreements to arbitrate are enforced according to their terms." *Volt Information Sciences, Inc. v. Board of Trustees,* 489 U.S. 468, 479 (1989)*; see also Prima Paint Corp. v. Flood Conklin Mfg.* Co., 388 U.S. 395, 404 n. 12 (1967) (the FAA aimed "to make arbitration agreements as enforceable as other contracts, but not more so"). Furthermore Baker Marine has made no contention that the Nigerian courts acted contrary to Nigerian law.

Furthermore, as a practical matter, mechanical application of domestic arbitral law to foreign awards under the Convention would seriously undermine finality and regularly produce conflicting judgments. If a party whose arbitration award has been vacated at the site of the award can automatically obtain enforcement of the awards under the domestic laws of other nations, a losing party will have every reason to pursue its adversary "with enforcement actions from country to country until a court is found, if any, which grants the enforcement." Albert Jan van den Berg, T*he*

[43] Op. Cit., note 37.
[44] 191 F.3d 194 (2d Cir. 1999)
[45] The decision of the Federal High Court was affirmed by the Supreme Court in BAKER MARINE (NIG.) LTD. V. CHEVRON (NIG.) LTD. [2006] 13 NWLR (Pt. 997) 276.

> *New York Arbitration Convention of 1958: Towards a Uniform Judicial Interpretation* 355 (1981)."[46]

Likewise, in **TERMORIO V. ELECTRANTA,**[47] the United States Court of Appeal for the District of Columbia affirmed the decision in ***Baker Marine,*** holding as follows:

> "The arbitration award was made in Colombia and the Consejo de Estado was a competent authority in that country to set aside the award as contrary to the law of Colombia. See New York Convention art. V(1)(e) ("Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked . . . if that party furnishes . . . proof that: . . . [t]he award . . . has been set aside . . . by a competent authority of the country in which, or under the law of which, that award was made."). Because there is nothing in the record here indicating that the proceedings before the Consejo de Estado were tainted or that the judgment of that court is other than authentic, the District Court was, as it held, obliged to respect it. See *Baker Marine (Nig.) Ltd. v. Chevron (Nig.) Ltd.,* 191 F.3d 194 (2d Cir.1999). Accordingly, we hold that, because the arbitration award was lawfully nullified by the country in which the award was made, appellants have no cause of action in the United States to seek enforcement of the award under the FAA or the New York Convention."[48]

Giving its reason for arriving at this conclusion, the court explained as follows:

> "...appellants are simply mistaken in suggesting that the Convention policy in favor of enforcement of arbitration awards effectively swallows the command of Article V(1)(e). A judgment whether to recognize or enforce an award that has not been set aside in the State in which it was made is quite different from a judgment whether to disregard the action of a court of competent authority in another State. "The Convention specifically contemplates that the state in which, or under the law of which, the award is made, will be free to set aside or modify an award in accordance with its domes-

[46] 191 F.3d at 197
[47] 487 F.3d 928 (D.C. Cir. 2007)
[48] 487 F.3d at 930.

tic arbitral law and its full panoply of express and implied grounds for relief." *Yusuf Ahmed Alghanim Sons,* 126 F.3d at 23; see also Karaha Bodas II, 364 F.3d at 287-88. This means that a primary State necessarily may set aside an award on grounds that are not consistent with the laws and policies of a secondary Contracting State. The Convention does not endorse a regime in which secondary States (in determining whether to enforce an award) routinely second-guess the judgment of a court in a primary State, when the court in the primary State has lawfully acted pursuant to "competent authority" to "set aside" an arbitration award made in its country. Appellants go much too far in suggesting that a court in a secondary State is free as it sees fit to ignore the judgment of a court of competent authority in a primary State vacating an arbitration award. It takes much more than a mere assertion that the judgment of the primary State "offends the public policy" of the secondary State to overcome a defense raised under Article V(1)(e).

The decision in *Baker Marine* notes that the "[r]ecognition of the [foreign court's] judgment in [that] case d[id] not conflict with United States public policy," 191 F.3d at 197 n. 3, thus at least implicitly endorsing a "public policy" gloss on Article V(1)(e). However, the decision does not say that a court in the United States has unfettered discretion to impose its own considerations of public policy in reviewing the judgment of a court in a primary State vacating an arbitration award based upon the foreign court's construction of the law of the primary State. Rather, as appellees argue, *Baker Marine* is consistent with the view that, "[w]hen a competent foreign court has nullified a foreign arbitration award, United States courts should not go behind that decision absent extraordinary circumstances not present in this case. In applying Article V(1)(e) of the New York Convention, we must be very careful in weighing notions of "public policy" in determining whether to credit the judg-

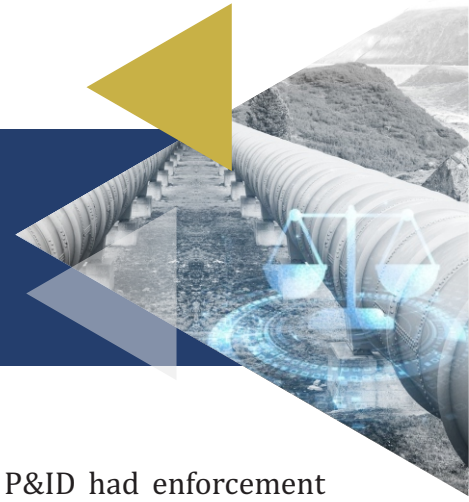
> ment of a court in the primary State vacating an arbitration award. The test of public policy cannot be simply whether the courts of a secondary State would set aside an arbitration award if the award had been made and enforcement had been sought within its jurisdiction. As noted above, the Convention contemplates that different Contracting States may have different grounds for setting aside arbitration awards."[49]

Accordingly, the approach in the US is that once the court of the seat of arbitration has set aside an award, the award-creditor would not be able to enforce the award in the US, unless there are public policy considerations upon which the court would refuse to give effect to the decision to set aside the award, and the standard in this regard is very high.[50] This approach is mirrored by the decisions of the English courts, which would decline to give effect to the decision setting aside an award, only if it offends *"basic principles of honesty, natural justice and domestic concepts of public policy".*[51]

In **MALICORP LTD. V. GOVERNMENT OF THE ARAB REPUBLIC OF EGYPT,**[52] the English Commercial Court explained the law asfollows:

> "For present purposes I proceed on two assumptions. They are:
>
> (1) that the word "may" in s 103(2) of the 1996 Act confers a discretion on this court to enforce an award even though the award has been set aside by a decision ("the set aside decision") of a court constituting a competent authority within s 103(2)(f); and
>
> (2) it would not be right to exercise that discretion if, applying general principles of English private international law, the set aside decision was one which this court would give effect to.
>
> This approach, which I would describe as "the preferred approach", is supported by the discussion in *Dicey, Morris & Collins*, 15th edition, at Rules 50-5 and paragraph 16-148. It was adopted by Simon J in

[49] 487 F.3d at 937 – 938.
[50] TAHAN V. HODGSON, 662 F.2d 862 (D.C. Cir. 1981).
[51] YUKOS CAPITAL S.A.R.L V. OJSC OIL COMPANY ROSNEFT [2014] EWHC 2188 (Comm) at [20].
[52] [2015] EWHC 361 (Comm)



> *Yukos Capital S.a.r.L v OJS Oil Company Rosneft* [2014] EWHC 2188 (Comm) at paragraph 20. On this basis I should give effect to the 2012 Cairo Court of Appeal decision unless it offends "basic principles of honesty, natural justice and domestic concepts of public policy."[53]

Accordingly, the hallmark of the territorialist approach is one of deference to the court of the seat of arbitration, based on the doctrine of comity.[54] Nevertheless, territorialist courts have retained a discretion to enforce the arbitral award, if there is clear and cogent evidence that the decision to set aside the award, offends the public policy of the territorialist State, e.g., when the set-aside decision is the product of bias or was deliberately wrong.[55]

NIGERIA's DEFENCES TO ANOTHER ENFORCEMENT ACTION BY P&ID

From the legal exposition above, it is legally incorrect to say that the decision of Knowles J amounts to a final victory for Nigeria. In the context of the enforcement of arbitral awards, the concept of ex nihilo nihil fit has no place.[56] While the legal hurdle might be different in delocalised and territorialist States, the fact remains that P&ID can still attempt to enforce the US$11 billion arbitral award in any country other than England and Wales. In fact, P&ID had enforcement proceedings pending before the United States District Court for the District of Columbia,[57] which proceeding was stayed to await the outcome of Nigeria's challenge before the English Commercial Court.[58] Following the decision of Knowles J, P&ID voluntarily dismissed its claim pursuant to Federal Rule of Civil Procedure 41(A)(1)(a)(i), which essentially preserves P&ID right to refile the action for enforcement.

While the Judgment of Knowles J might be useful in a country which applies the territorialist approach – such as the proceedings currently pending in the United States; His Lordship's decision would be completely irrelevant in a country which adopts the delocalised approach. Accordingly, Nigeria might have to do legal battle with P&ID yet again and adduce cogent evidence to prove that there are good grounds to decline recognition to the awards issued in P&ID's favour. So, the question is: if P&ID elects to approach a court which adopts the delocalised approach to attempt enforcement of the arbitral award of approximately US$11 billion, what would be Nigeria's possible defence?

■ Bribery and Fraud

In the proceedings before the Commercial Court, Knowles J found as a fact – and we can presume upon clear, cogent and convincing

[53] Ibid. at [21] – [22]
[54] ESSO EXPL. & PROD. NIGERIA LTD V. NIGERIAN NAT'L PETROLEUM CORP., 40 F.4th 56 (2d Cir. 2022).
[55] MAXIMOV V. OJSC "NOVOLIPETSKY METALLURGICHESKY KOMBINAT" [2017] EWHC 1911 (Comm) at [15].
[56] YUKOS CAPITAL S.A.R.L V. OJSC OIL COMPANY ROSNEFT, Op. cit., note 51 at [22].
[57] PROCESS AND INDUSTRIAL DEVELOPMENTS LIMITED V. FEDERAL REPUBLIC OF NIGERIA et al, Case No. 18-cv-594 (CRC).
[58] Jus Mundi (Online) <https://jusmundi.com/en/document/decision/en-process-and-industrial-developments-ltd-v-the-ministry-of-petroleum-resources-of-the-federal-republic-of-nigeria-minute-order-of-the-us-district-court-for-the-district-of-columbia-monday-6th-june-2022> (accessed: 23rd January 2024).

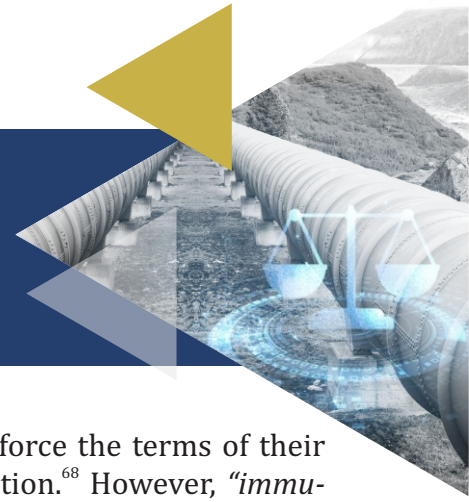
evidence – that in securing the GSPA, P&ID bribed Mrs. Grace Taiga.[59] His Lordship also found that P&ID intentionally adduced false testimony before the arbitral tribunal,[60] and that P&ID and its legal representatives corruptly obtained and retained privileged documents with respect to Nigeria's conduct of the arbitral proceedings.[61] Ruling on the evidence before the court, Justice Knowles determined that: "the Awards were obtained by fraud and the Awards were, and the way in which they were procured was, contrary to public policy".

We have referred to the findings of Knowles J because they illustrate the avalanche of evidence adduced by Nigeria in the proceedings before the Commercial Court. In a situation where Nigeria can adduce the same evidence before the court of any other enforcement State, we believe that it would have the same impact of vitiating the process that resulted in the awards which P&ID would seek to enforce. In **PROJET PILOTE GAROUBÉ V. CAMEROON**,[62] the Paris Court of Appeal determined that adducing false or forged evidence during an arbitral proceeding is grounds for the annulment of an award.[63]

As a matter of international public policy, no court should allow its process or proceedings to be utilized in legitimizing an arbitral proceeding that originates from and is steeped in fraud and corrupt practices. In **HAMZA HAJI V. STATE OF KERALA**,[64] the Indian Supreme Court explained this fundamental legal precept in the following words:

> "The Full Bench of the Bombay High court in Guddappa Chikkappa Kurbar and another vs. Balaji Ramji Dange (AIR 1941 Bombay 274) observed that no Court will allow itself to be used as an instrument of fraud and no Court, by the application of rules of evidence or procedure, can allow its eyes to be closed to the fact that it is being used as an instrument of fraud. In Hip Foong Hong vs. H. Noetia and Company (1981 Appeal Cases 888) the Privy Council held that if a judgment is affected by fraudulent conduct it must be set aside. In Rex vs. Recorder of Leicester (1947 (1) KB 726) it was held that a certiorari would lie to quash a judgment on the ground that it has been obtained by fraud. The basic principle obviously is that a party who has secured a judgment by fraud should not be enabled to enjoy the fruits thereof."

[59] THE FEDERAL REPUBLIC OF NIGERIA V. PROCESS & INDUSTRIAL DEVELOPMENTS LIMITED, Op. Cit., note 1 at [170], [173], [175] and [177].
[60] THE FEDERAL REPUBLIC OF NIGERIA V. PROCESS & INDUSTRIAL DEVELOPMENTS LIMITED, Op. Cit., note 1 at [244], [246], [249], [317], [494] and [509].
[61] The Federal Republic of Nigeria v. Process & Industrial Developments Limited, Op. Cit., note 1 at [203] – [217], [229], [256], [265], [267] – [276], [282] – [286], [290], [293] – [294], [299] – [300], [324] –[325], [336], [400], [424], [430], [453] and [496].
[62] Judgment of 20 December 2018, Case No. 16/25484 (Paris Cour d'Appel) <https://jusmundi.com/en/document/decision/fr-projet-pilote-garoube-v-cameroun-arret-de-la-cour-dappel-de-paris-22-06903-tuesday-3rd-october-2023>
[63] In EURO. GAS TURBINES SA V. WESTMAN INT'L LTD. 20 Y.B. Comm. Arb. 198, the Paris Court of Appeal also determined that the use of falsified evidence is grounds for setting aside or annulling an award.
[64] (2006) 7 SCC 416 at [19].
[64] (2006) 7 SCC 416 at [19].



Ipso facto, the fraud which P&ID committed in obtaining the GSPA and during the arbitral proceedings would mean that it is unlikely that any court will grant recognition to the award or allow it to be enforced as its judgment. Such enforcement would mean that a court would give judicial imprimatur to P&ID's fraud, which no unbiased court will do.[65] More so, bribery and fraud strike at the core of public policy considerations under which enforcement of an arbitral award can be resisted pursuant to **ARTICLE V(2)(b)** of the New York Convention, as fraud violates the most basic notions of morality and justice of nations where the rule of law is paramount.[66]

Immunity

In brief outline, sovereign immunity is the legal precept that arising from the concept of the independence and equality of States, the domestic courts of one State cannot purport to exercise jurisdiction or power over another State, without its consent.[67] As a matter of international practice, it is now accepted that the concept of absolute immunity has yielded ground to the restrictive approach to sovereign immunity, which requires that in a global world, where State parties engage in commercial transactions (*"acta iure gestionis"*), they are deemed to have impliedly waived their right to insist that they are immune from jurisdiction of a court seeking to enforce the terms of their commercial transaction.[68] However, *"immunity from jurisdiction is to be treated separately and differently from immunity from execution".*[69] Immunity from execution protects the property of a country from being deployed to satisfy an award debt and customarily has fewer exceptions. Accordingly, in terms of Nigeria raising the defence immunity, there are two considerations: (a) immunity from jurisdiction; and (b) immunity from execution.

In terms of immunity from execution, the fact that a State cannot claim immunity from the jurisdiction does not mean that it is not immune from the actual execution of the award.[70] It is the law that property and bank accounts used for diplomatic or consular purposes, military property, central bank accounts, property forming the cultural heritage of a State or exhibitions of objects of scientific, cultural, and historical interest are completely immune from execution.[71] Accordingly, once any property belonging to Nigeria – irrespective of the source or nature of the property – is used for diplomatic or consular purposes, it is immune from being attached to enforce the arbitral award, unless P&ID can prove that the property is used solely for commercial purposes.[72]

In terms of immunity from jurisdiction, in **PROCESS AND INDUSTRIAL DEVELOP-**

[65] BIMBA AGRO LIVESTOCK CO. LTD. V. LANDMARK UNIVERSITY (2019) LPELR – 47724 (CA) Pg. 24.

[66] PARSONS & WHITTEMORE OVERSEAS CO. V. SOCIETE GENERALE DE L'INDUSTRIE DU PAPIER (RAKTA), 508 F.2d 969, 974 (2d Cir. 1974); TRAXYS EUROPE SA V. BALAJI COKE INDUSTRY PVT LTD (NO 2) [2012] FCA 276 at [105]; KARAHA BODAS V. PERUSAHAAN PERTAMBANGAN MINYAK, 364 F.3d 274 (5th Cir. 2004); and TENSACCIAI S.P.A V. FREYSSINET TERRA ARMATA S.R.L., (2006) 132 ATF III 389.

[67] Malcolm N. Shaw, International Law (4th Edition, Cambridge University Press, 1997) at pp. 491 – 492.

[68] AFRICAN RE. CORP. V. AIM CONSULT. LTD. (2004) 11 NWLR (Pt. 884) 223 and OLUWALOGBON V. GOVT, OF U.K. (2005) 14 NWLR (Pt. 946) 760.

[69] Ylli Dautaj, Enforcing Arbitral Awards Against States and the Defense of Sovereign Immunity from Execution: A U.S. Perspective (2023) 11 PENN. ST. J.L. & INT'L AFF. 97 at 105 – 106.

[70] Julian D. M Lew, Loukas A Mistelis, Stefan M Kröll, Comparative International Commercial Arbitration (Wolters Kluwer, 2003) at 750.

[71] Kondrashov Nikita, Sovereign Immunity from Execution (in Enforcement), Jus Mundi (Online) <https://jusmundi.com/en/document/publication/en-sovereign-inmunity-from-execution-in-enforcement> (accessed: 23rd January 2024).

[72] ALCOM LTD V REPUBLIC OF COLUMBIA [1984] AC 580 and SERVAAS INCORPORATED V. RAFIDIAN BANK [2012] UKSC 40.

MENTS LIMITED V. FEDERAL REPUBLIC OF NIGERIA,[73] the Court of Appeal for the District of Columbia had determined that under the Foreign Sovereign Immunities Act (FSIA) 28 U.S.C. §1602, Nigeria is not entitled to sovereign immunity in the United States. However, this decision was based on an interpretation of FSIA, not the application of the rules of international law.[74] In the instance case, the arbitration agreement between Nigeria and P&ID, specifically Clause 20 of the GSPA, reads as follows:

> "The Agreement shall be governed by, and construed in accordance with the laws of the Federal Republic of Nigeria. The Parties agree that if any difference or dispute arises between them concerning the interpretation or performance of this Agreement and if they fail to settle such difference or dispute amicably, then a Party may serve on the other a notice of arbitration under the rules of the Nigerian Arbitration and Conciliation Act (Cap A18 LFN 2004) which, except as otherwise provided herein, shall apply to any dispute between such Parties under this Agreement ... The venue of the arbitration shall be London, England or otherwise as agreed by the Parties."[75]

It is manifest from the arbitration agreement that the law applicable to the agreement and the arbitral proceeding between Nigeria and P&ID was the laws of the Federal Republic of Nigeria, with Nigeria agreeing that England would be the seat of arbitration. Accordingly, by its agreement with P&ID, Nigeria waived its immunity from jurisdiction only with respect to English courts. In **OHNTRUP V. FIREARMS CENTER INC.**[76] Pollak J explained the applicable law as follows:

> "A waiver of sovereign immunity may be inferred from an agreement to arbitrate a dispute in another country or to refer disputes to the laws of another country ... But a waiver of immunity by a state as to one jurisdiction cannot be interpreted to be a waiver as to all jurisdictions ... While it is reasonable to conclude that an agreement by a foreign country to either arbitrate disputes in or be governed by the laws of the United States constitutes an implicit waiver by that state of the defense of sovereign immunity in the

[73] Judgment of March 11, 2022, Case No. No. 21-7003, United States Court of Appeals for the District of Columbia Circuit.

[74] Note that in SEETRANSPORT WIKING V. NAVIMPEX CENTRALA, 989 F.2d 572 (2d Cir. 1993) and IPITRADE INT'L, S.A. V. FEDERAL REPUBLIC OF NIGERIA, 465 F. Supp. 824 (D.D.C. 1978), two United States courts determined that signing the New York Convention amounted to an implied waiver of sovereign immunity in actions for enforcement of an award commenced in States that are also signatories to the Convention. We humbly disagree with these decisions. Indeed, pursuant to FSIA – same as the State Immunity Act 1978 (applicable in the United Kingdom) – an agreement to submit to arbitration amounts to waiver of immunity from jurisdiction in respect of all proceedings arising from the arbitral process, see: SVENSKA PETROLEUM EXPLORATION AB V. GOVERNMENT OF THE REPUBLIC OF LITHUANIA [2006] EWCA Civ. 1529 and NML CAPITAL LTD V. REPUBLIC OF ARGENTINA [2011] UKSC 11. However, as a matter of international law, implied waiver of immunity is not easily found, and usually, immunity is deemed to have been impliedly waived when a State submits to the jurisdiction of the court, see: KAHAN V. PAKISTAN FEDERATION [1951] 2 KB 1003 and DUFF DEVELOPMENT CO V. KELANTAN GOVERNMENT [1924] AC 797. We are of the opinion that without express municipal statutory provision, subscription to a treaty, even the New York Convention, does not amount to an implied waiver of immunity in all signatory States, and for all purposes, see: MARITIME VEN. INT. V. CARIBBEAN TR. FID., 689 F. Supp. 1340 (S.D.N.Y. 1988). Such an interpretation, as a matter of international law, would have a chilling effect on the relationship among State, and their willingness to enter into international agreements.

[75] Jus Mundi (Online) <https://jusmundi.com/fr/document/decision/en-process-and-industrial-developments-ltd-v-the-ministry-of-petroleum-resources-of-the-federal-republic-of-nigeria-final-award-tuesday-31st-january-2017#decision_5289> (accessed: 25th January 2024).

[76] 516 F. Supp. 1281, 1284 - 1285 (E.D. Pa. 1981).

> courts of the United States, it is much more difficult to infer such a waiver from the agreement of a foreign state to submit itself, in the same manner, to the jurisdiction of a state other than the United States."

Likewise, very recently, in B**ORDER TIMBERS LIMITED V. REPUBLIC OF ZIMBABWE**,[77] Mrs. Justice Dias also determined that:

> "As a matter of English law, the general principle is that any waiver of sovereign immunity by treaty must be express although it need not be in writing: *R v Bow Street Magistrates, ex parte Pinochet (no. 3),* [2000] 1 AC 147 at 215 per Lord Goff. Where the alleged waiver is in writing - for example, in a prior treaty provision - it must be express and cannot be implied. Where it is not in writing - for example, actual conduct in submitting to the jurisdiction - it must be expressed in a clear and unequivocal manner. The latter is sometimes referred to as implied waiver but, as Lord Goff pointed out (at 217), this is the only example given of an implied waiver and it is in any event probably better regarded as a form of express waiver."

Accordingly, subject to the municipal statutory regime in force in a potential enforcement State, Nigeria should be entitled to raise the defence of immunity from jurisdiction to defeat any potential enforcement action,[78] on the premise that it has not submitted to the jurisdiction of any court other than the courts of England.

Validity of the Arbitration Agreement

ARTICLE V(1)(a) of the New York Convention provides that enforcement may be refused if the arbitration agreement "is not valid under the law to which the parties have subjected it". In this wise, Knowles J found that the GSPA – which contains the arbitration agreement – was procured by P&ID's bribery of Mrs. Grace Taiga. Ordinarily, once a contract is procured by bribery, the fraud strikes at the root of the contract and vitiates it.[79] However, an arbitration agreement is a distinct contract, separate and severable from the main agreement,[80] so that ordinarily, an arbitration agreement would survive a defect that invalidates the main agreement.[81] Thus, generally, unless the fraud relates to the arbitration agreement itself – such as forgery or a complete absence of authorization – the procurement of the main agreement by bribery would not be sufficient to invalidate the arbitration

[77] [2024] EWHC 58 (Comm) at [55].
[78] See generally: DRC, INC. V. REPUBLIC OF HONDURAS, 71 F. Supp. 3d 201 (D.D.C. 2014).
[79] ONWUNEME V. AMAH (2018) LPELR-44698(CA).
[80] ROYAL EXCHANGE ASSURANCE V. BENTWORTH FINANCE (NIG) LTD. [1976] NSCC 648 and HEYMAN V. DARWIN LTD. [1942] 1 All E.R. 337.
[81] MAGNUM INTL LTD. V. ENERCON (NIG.) LTD. (2023) 10 NWLR (PT. 1891) 109.

agreement.[82]

However, arising from Clause 20 of the GSPA, the agreement between Nigeria and P&ID is governed by Nigerian law. Accordingly, in line with **ARTICLE V(1)(a)**, the law to which Nigeria and P&ID have subjected the arbitration agreement is the law of Nigeria. In Nigerian law, as a matter of public policy, fraud and serious financial malpractice are not arbitrable.[83] Accordingly, in **KANO STATE GOVT V. A.S.J. GLOBAL LINKS (NIG.) LTD.**,[84] the Court of Appeal held as follows:

> "...the facts deposed show that on the first appearance, the contracts are tainted with prima facie illegality and fraud and contrary to the Kano State Public Finances (control and Management) Law. Whereas parties who in their contract agreement have embodied arbitration clause are bound to honour their agreement of their chosen mode of settling their difference or dispute by going for arbitration and this is encouraged, *it is also the Law that where the agreement is prima facie illegal, fraudulent or contrary to public policy, or contrary to the applicable law of the given State governing the contract, the dispute ceases to be arbitrable.* It is trite that disputes subject of arbitration must be arbitrable in that they must not involve or cover matters which by the law of the state or by public policy are not allowed to be settled by arbitration. *An allegation of a prima facie fraud or illegality does not lend itself to arbitration and cannot be subject of arbitration, especially in States, like Kano where their statute prohibits the arbitrability and enforceability of illegality or fraud. In other words, where the contract agreement is tainted with prima facie illegality or fraud, the arbitration clause shall cease to have effect and the proper cause of action for the parties is to institute a suit at the High Court* for the determination of the dispute where the issues of illegality and fraud involved would be resolved by evidence at trial.[85]" [Emphasis has been added]

As is evident from the decision in **GLOBAL LINKS**, the position of Nigerian law is that once an agreement is tainted by fraud or illegality, the arbitration clause becomes moot and ineffectual. Interestingly, this is the same approach adopted in South Africa, as reflected in **NAMASTHETHU ELECTRICAL**

[82] PREMIUM NAFTA PRODUCTS LIMITED V. FILI SHIPPING COMPANY LIMITED [2007] UKHL 40.
[83] B. J. EXPORT & CHEMICAL CO. LTD V. KADUNA REFINING & PETRO-CHEMICAL CO. LTD. (2002) LPELR-12175 (CA) cf. MEKWUNYE V. LOTUS CAPITAL LIMITED (2018) LPELR-45546 (CA).
[84] (2017) LPELR-46215 (CA)
[85] Ibid. at pp. 43 – 44.

(PTY) LTD V CITY OF CAPE TOWN,[86] where the Supreme Court of Appeal of South Africa held as follows:

> "As regards an arbitration or similar adjudication clause contained in an agreement which was found to have been induced by fraud, this court has emphatically ruled that once the agreement had been rescinded by an aggrieved party, the said arbitration clause cannot stand. The reason, this court stated per Cameron JA in North West Provincial Government and Another v Tswaing Consulting CC and Others, was because '… the arbitration clause was embedded in a fraud-tainted agreement the province elected to rescind' and 'cannot survive the rescission', for 'to enforce the arbitration agreement, the tainted product of [the guilty contractor's] fraud, would be offensive to justice."[87]

Therefore, since the validity of the arbitration agreement embedded in the GSPA is to be determined in accordance with Nigerian law, the decisions in GLOBAL LINKS and NAMASTHETHU ELECTRICAL serve as authority for the proposition that P&ID's bribery of Mrs. Grace Taiga impacted the capacity to enter into the agreement and invalidated the arbitration agreement, which would be sufficient for the purpose of an ARTICLE V(1)(a) challenge to the recognition of the arbitral awards.

CONCLUSION

Returning to the topic of this article, is the legal battle between Nigeria and P&ID over? The answer is maybe not! P&ID can lawfully result to forum shopping, looking for a jurisdiction that will agree to enforce the arbitral award. However, having regard to the factual matrix of the GSPA and the unconscionable conduct of P&ID before and during the arbitral process, it is unlikely that P&ID would find a court that will enforce the morally bankrupt award. However, if P&ID is incentivized by a windfall of US$11 billion to try its luck, we are convinced that Nigeria has strong and viable defences to an enforcement proceeding.

[86] [2020] ZASCA 74
[87] Ibid. at [30]
[85] Ibid. at pp. 43 – 44.
[86] [2020] ZASCA 74
[87] Ibid. at [30]

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