

COURT OF APPEAL AFFIRMS THE FINALITY OF ARBITRAL AWARDS AND THE RIGHT TO CHALLENGE AN AWARD BY A PARTY WHO DID NOT PARTICIPATE IN THE PROCEEDINGS

In the case of **Statoil Nigeria Limited v. Stardeep Water Petroleum Limited and 4 Ors**,¹ the Court of Appeal affirmed the binding nature and finality of arbitral awards and the right of a party to an arbitration agreement to challenge an award, even though the party did not participate in the proceedings.



The underlying dispute arose from the cost and production allocation provisions of the Agbami Unit Agreement (“**AUA**”), which provided that nominal tract participation could change or be re-aligned by an equity determination and re-determination process.

Following a disputed equity determination process, the Appellant initiated arbitration proceedings against the Respondents¹. Subsequently, the Appellant amended its Notice of Arbitration, effectively removing the 5th Respondent¹ as a party to the proceedings. The tribunal ultimately dismissed the Appellant’s claims.

The Appellant commenced an action at the Federal High Court (“**FHC**”) to set aside the award on several grounds, most notably, misconduct by the tribunal. The Appellant successfully applied to join the 5th Respondent as a party to the action. The 5th Respondent supported the Appellant’s application to set aside the award.

The FHC declined to set aside the award on the basis that there were no vitiating elements in the arbitral proceedings and the ensuing award to justify any interference by the court. The FHC also held that the 5th Respondent did not have the *locus standi* to challenge the award, having not participated in the arbitral proceedings. Relying on the doctrines of estoppel and waiver, the FHC further held that the 5th Respondent could not support the Appellant’s application to set aside the award. The Appellant appealed to the Court of Appeal.

¹ Unreported judgment of the Court of Appeal (Lagos Division) in CA/L/1180/2017, delivered on November 14, 2018.

In a unanimous decision, the Court of Appeal reiterated what is now settled law that a court will not interfere with an award in the absence of recognised statutory grounds for challenge. The Court of Appeal thus affirmed the decision of the FHC in refusing to set aside the award. However, the Court of Appeal disagreed with the FHC on the question of the 5th Respondent's *locus standi* to challenge the award. The Court of Appeal reasoned that under section 30 of the Arbitration and Conciliation Act (“ACA”)², a “party” could apply to the court to set aside an award. In the court's view, “party” as defined in section 57 of the ACA includes **“a party to the arbitration agreement”**. The Court of Appeal accordingly held that to the extent that the 5th Respondent was a party to the AUA, it could validly challenge the award on the grounds contained in section 30 of the ACA, even though it did not participate in the proceedings³.

The Court of Appeal's decision is significant as it re-affirms the settled position of law that Nigerian courts will not interfere with, or set aside an award in the absence of vitiating elements⁴. The decision also provides clarity (and is arguably the first Nigerian precedent) on the right of a party to an arbitration agreement to challenge an award arising from the said agreement, even though the party did not participate in the arbitral proceedings⁵.

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² Cap. A19, Laws of the Federation of Nigeria, 2004.

³ In arriving at this conclusion, the Court of Appeal noted that the 5th Respondent's representative attended proceedings, in the course of the arbitration even though it did not file any process or make any submission to the tribunal.

⁴ See for example, the more recent decision of the Supreme Court in Charles Mkwunye v. Christian Imoukhuede. This is reflective of the dual principles of party autonomy and finality of the award upon which the ACA is based.

⁵ The significance of the case is underscored by the fact that unlike the English Arbitration Act, 1996⁵, there are no specific provisions in the ACA dealing with the rights and remedies of a party to an arbitration agreement who did not participate in the proceedings.