



BEYOND THE HEADLINES OF A BILLION-DOLLAR LAWSUIT;

AN IN-DEPTH ANALYSIS OF THE JUDGMENT
IN NIGERIA v P&ID WITH REFERENCES TO
THE ARBITRATION ACT 1996, NOW 2023.

In the intricate tapestry of dispute resolution, arbitration is manifest as a nimble arbiter, carefully navigating disputes within an alternative jurisprudential realm.

However, within its flourishing expanse, the complexities and challenges ever present in arbitration are more pronounced when the state is a party to a dispute before an arbitral panel.

In arbitration, language works, but it's not foolproof and often faces common legal challenges. As the arbitral process contends with complexities, the courts, with judicious prudence, assume the role of vigilant sentinels. They become the arbiters of last resort, addressing the inherent lacunae in the arbitral system, ensuring that the scales of justice remain impeccably balanced.

In this legal adventure, the court emerges not merely as a repository of appeals but as the final bastion, standing as the last hope of the common man, ensuring that equity and fairness reign supreme.

It is a notorious principle of law that you cannot place something on nothing and expect it to stand i.e., there must be a foundation upon which something must stand. Before getting into the judgement of the court here is a quick rundown of the enabling facts.

In the year 2010, the Nigerian government signed a Gas Supply Processing Agreement (GSPA) with process & Industrial Development Limited(P&ID), a company registered in the British Virgin Islands. Under the GSPA, P&ID was supposed to build a gas processing plant, while the Nigerian National Petroleum Corporation (NNPC) was to supply the gas for the project.

However, due to various obstacles the project never took-off but due to a clause in the GSPA, P&ID was able to claim profits which it would have made had the contract kicked off.

The dispute went to arbitration and the panel awarded P&ID damages in excess of \$6.6 billion, which had risen to over \$11 billion with interests at the time of judgement.

In 2015, the Buhari administration challenged the GSPA on the ground that it was invalid as it had been obtained fraudulently by bribing high ranking government officials and middlemen.

Determined to fight the award, Nigeria launched a legal challenge in the English High Court, alleging bribery, corruption and irregularities in the arbitration process.

On the 24th day of October 2023, the UK Commercial Court set aside the arbitral award in favor of P&ID against Nigeria, finding that the award was obtained by fraud and corruption bringing an end to a legal battle that had spanned over a decade. This is a significant victory for Nigeria, and it is likely to have far reaching implications for investment treaty arbitration.

The decision of the court is based on sections 67 and 68 of the Arbitration Act 1996. Section 67 allows the court to set aside an award on a number of grounds, including that the award is *“contrary to public policy”*. Section 68 allows the court to remit an award to the arbitral tribunal for reconsideration on a number of grounds, including that the award is *“manifestly wrong”*.

In this case, the court found that the award was obtained by fraud and corruption. This is a very serious ground for setting aside an award, and it is one of the few grounds that allows the court to set aside an award even if it is not otherwise defective.

The decision of the court is based on the following findings of fact:

- P&ID bribed Nigerian government officials to obtain the Gas Supply and Processing Agreement (GSPA) and to secure a favorable outcome in the arbitration.
- P&ID misrepresented its capabilities and experience in the negotiation and performance of the GSPA.
- P&ID failed to perform its obligations under the GSPA.

The court found that P&ID’s fraud and corruption had “invaded the arbitral process” and had “contaminated the award”. The court held that the award was therefore “contrary to public policy” and must be set aside.

The court's decision is a strong message that fraud and corruption will not be tolerated in investment treaty arbitration. It is also a reminder that the courts have the power to set aside arbitral awards where they are obtained by fraud or corruption.

The following are some specific references to sections 67 and 68 of the Arbitration Act 1996 in the court's judgment:

- On section 67, the court held that the award was “contrary to public policy” because it was obtained by fraud and corruption. The court found that the fraud and corruption had “invaded the arbitral process” and had “contaminated the award”.
- On section 68, the court held that the award was “manifestly wrong” because it was based on the findings of the arbitral tribunal, which were themselves based on the fraudulent and corrupt evidence presented by P&ID.

The court's decision in *Nigeria v P&ID* is a landmark case in the laws of arbitration. It is the first time that a UK court has set aside an arbitral award on the ground that it was obtained by fraud and corruption. The decision is likely to have a significant impact on future cases involving investment arbitration.

The decision is also a victory for Nigeria and for other developing countries that are often the targets of fraudulent and corrupt investment claims. The decision shows that the courts are willing to stand up to fraud and corruption in investment treaty arbitration.

Arbitration has been growing rapidly due to its numerous advantages over litigation. Cases like this just further highlight the shortcomings of arbitration especially when the state is involved.

In conclusion, pervasive corruption and abuse of due process have taken a heavy toll on Nigeria, given the staggering costs both financially and in terms of its infrastructure. It is without doubts that had Project Alpha materialised it would have been of immense benefits to the Nigerian economy and the Nigerian people.

This deeply entrenched issue has hindered economic growth, deterred foreign investment, and eroded public trust in government institutions. To realize its full potential, Nigeria must embark on a rigorous path of anti-corruption reform and a commitment to upholding due process and to ensure not just a brighter and more prosperous future for its people but to ensure its continued existence.

In his closing Robin Knowles J, was not oblivious as to the possible consequences had Mr. Michael Quiin's witness statement been drafted a little bit more cautiously and had P&ID not retained Nigeria's Internal Legal Documents.

From the whispers of corruption to a full-blown legal battle, this case greatly exposed the vulnerability of developing nations to exploitative contracts and dubious schemes, luckily for us our blushes were spared this time but nobody knows what tomorrow holds.

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