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Mandatory Referral to Arbitration:

A Comprehensive Analysis of
Section 5 of Nigeria's Arbitration
and Mediation Act 2023 in Light of
Sakamori Construction v LSWC
(2022) 5 NWLR (Pt. 1823)

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Mandatory Referral to Arbitration: A Comprehensive Analysis of Section 5 of Nigeria's Arbitration and Mediation Act 2023 in Light of *Sakamori Construction v LSWC (2022) 5 NWLR (Pt. 1823)*

“Also an arbitration clause does not warrant the grant of an order of stay of proceedings. See *United World Inc. v M.T.S. Ltd (1998) 10 NWLR (pt. 568) 106 at 119 per Onalaja JCA, Obembe v Wembod Estates Ltd 1977.”*

Abstract

*This article provides a comprehensive analysis of the transformative changes introduced by Nigeria's Arbitration and Mediation Act 2023, with a specific focus on Section 5. Drawing insights from the landmark *Sakamori Construction v LSWC* case and the preceding Arbitration and Conciliation Act 2004, the analysis navigates through the evolution of arbitration proceedings in Nigeria. By examining the transition from discretionary to mandatory referral to arbitration, the article elucidates Nigeria's pro-arbitration stance and its implications for legal practitioners, stakeholders, and the broader business community. Through a comparative study of Section 5 under both Acts, the article underscores the significance of procedural enhancements and the alignment with international arbitration standards. Emphasizing the importance of ongoing monitoring and analysis, this article serves as a guiding beacon for navigating Nigeria's dynamic dispute resolution landscape and fostering a culture of efficient and equitable arbitration.*

¹ Per PETER-ODILI ,J.S.C in SAKAMORI CONSTRUCTION (NIG) LTD v. LSWC (2021) LPELR-56606(SC) (Pp. 40-41 paras. F)

INTRODUCTION

A significant development recently emerged in Nigeria's dispute resolution landscape. Just before the end of President Muhammadu Buhari's administration, the Arbitration and Mediation Act 2023 was passed. This new Act follows closely behind the Supreme Court's December 2021 decision in **Sakamori v. Lagos State Water Corporation**, one of the final rulings delivered under the now repealed Arbitration and Conciliation Act (ACA) 2004.

Sakamori's case offers valuable insights into how Nigerian courts handled disputes involving arbitration agreements under the now-extinct Arbitration and Conciliation Act (ACA) 2004. The judgement highlighted the court's discretionary power to pause court proceedings² and the burden on parties seeking a stay to prove arbitration was preferable.³ Additionally, the presence of an arbitration clause didn't prevent participation in court, though proper procedure mattered.

The current Section 5 of the Nigerian Arbitration and Mediation Act (AMA) 2023, when compared to the previous Section 5 of the Arbitration and Conciliation Act (ACA) 2004, reveals significant differences with varying implications.

One notable alteration is the transition from a discretionary stay under the ACA 2004 to a mandatory referral to arbitration in the AMA 2023. This amendment underscores Nigeria's pro-arbitration stance, compelling courts to refer parties to arbitration unless the agreement is deemed invalid ("void, inoperative or incapable of being performed").

² SAKAMORI CONSTRUCTION (NIG) LTD v. LAGOS STATE WATER CORPORATION (2021) LPELR-56606(SC) (Pp. 21-23 paras. A)

³ Per PETER-ODILI ,J.S.C in SAKAMORI CONSTRUCTION (NIG) LTD v. LAGOS STATE WATER CORPORATION (2021) LPELR-56606(SC) (Pp. 57-64 paras. A-A)

Secondly, the timing of application for referral has been clarified under the AMA 2023, stipulating that the request for referral must be made "not later than when submitting their first statement on the substance of the dispute." This provision enhances procedural clarity and potentially expedites the resolution process.

Both the extant and now extinct act permit arbitral proceedings to proceed concurrently with court proceedings, on a bid to facilitating swifter dispute resolution.

Additionally, courts retain the authority to issue interim or supplementary orders to safeguard parties' rights during a stay or referral.

The strengths of the new provision lie in its clarity and efficiency. By mandating referral, it establishes clearer expectations and fosters a more expeditious resolution of disputes, aligning with international standards such as the UNCITRAL Model Law on International Commercial Arbitration.

As the AMA 2023 is relatively recent, with limited case law interpreting Section 5, ongoing monitoring of court decisions are a necessity in order to gauge its practical implications.

The role of courts/judicial bodies in facilitating referrals and managing proceedings efficiently requires further examination. While the AMA 2023 establishes a clear framework, proactive measures from courts are crucial to maximize its effectiveness. This might involve adopting a form of judicial activism, actively interpreting the Act in a manner that aligns with international best practices and standards.

Such proactive engagement could involve establishing dedicated case management procedures for arbitration referrals, fostering collaboration with arbitral institutions, and issuing clear and timely rulings on procedural matters, ultimately ensuring the efficient and streamlined resolution of disputes through arbitration.

Furthermore, considerations regarding the role of arbitral institutions in facilitating referrals and managing proceedings efficiently, as well as the financial implications of both court proceedings and arbitration, warrant attention.

In conclusion, the revised Section 5 reinforces Nigeria's commitment to arbitration as a preferred method for dispute resolution. A continuous observation of its implementation and impact would provide valuable insights into its efficacy and identify potential lacunae for amendments.


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