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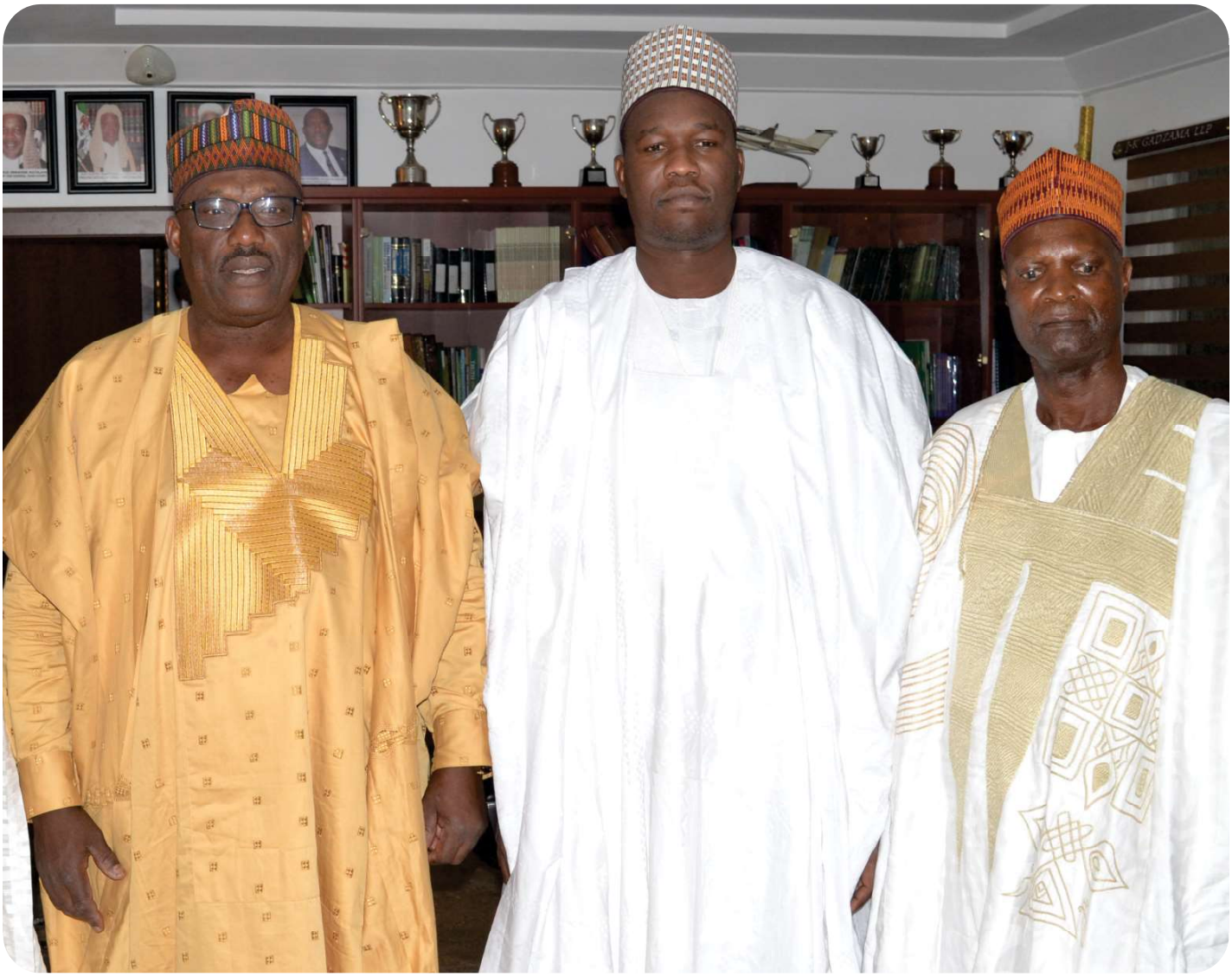

His Royal Highness, the Emir of Uba, Ali Ibn Ismaila Mamza (II) (middle), *Sardauna* of Uba, Chief Joe-Kyari Gadzama SAN, (left) and Danmadami of Uba, Paul Jidayi Mamza (right) during the Emir's courtesy visit to J-K Gadzama Court, Abuja, on Saturday, 6th January, 2018.

EDITORIAL

We are delighted to present to you this edition of our newsletter.

You will find in this edition, a paper on a significant area of our jurisprudence on setting aside arbitral awards by Mr. Tunde Onamusi, LL.M (Lond.), MCIArb. (UK), Partner/Head of Chambers, J-K Gadzama LLP.

His Royal Highness, The Emir of Uba, Ali Ibn Ismaila Mamza (II) and the Danmadami of Uba, Paul Jidayi Mamza paid a courtesy visit to the Firm on the 6th of January, 2018. Pictures of the Emir's courtesy visit can be found on the Photo speak pages.

Our Legal Humour and Did You Know segments will provide the usual Humour. We also bring you news from our firm as well as upcoming local and international events.

We hope that you find this edition both illuminating and entertaining.

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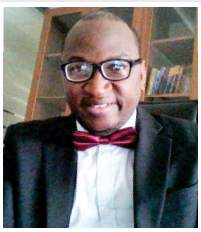

SETTING ASIDE ARBITRAL AWARDS

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Introduction

No arbitral award can be enforced without the courts. And courts, as a matter of widespread and strongly held public policy, will not lend support to illegality or be seen as instruments of injustice. Partly for this reason, and where appropriate, courts will intervene to set aside an arbitral award.

The public policy considerations aside, consenting parties to arbitration should have a right of recourse against any aspect(s) of the arbitration which negate their consent. No one concluding an arbitration agreement consents to have a decision on matters not disputed or submitted, or to have an umpire who is unfair and partial, or to have a procedure that is so fundamentally flawed that the resulting award cannot be said to have been properly procured[1].

Having said that however, there is a long standing and deeply rooted principle at the heart of judicial attitude to arbitration; Parties who have elected to arbitrate a dispute will not be permitted to resile from the ensuing decision. The Arbitral award is Final.

Our discussion on setting aside awards will cover four areas. First we will consider the general rule with regard to setting aside.

Next, we will look at the Grounds for setting aside an arbitral award: Here we will look at the grounds for setting aside under the Common Law as well as the Statute– the Arbitration and Conciliation Act ("ACA").

Then we will briefly consider two examples of what may be regarded as doubtful decisions by our courts, as well as another area of some controversy - Time Limits for setting aside awards.

Finally, we will wrap up the discussion with a few thoughts on what a possible and perhaps preferable judicial approach should be to the whole idea of setting aside arbitral awards. We also consider four requirements for attaining that arbitration friendly environment we would all like Nigeria to be – particularly in the context of setting aside awards.

THE GENERAL RULE OF SETTING ASIDE ARBITRAL AWARDS

The general rule at Common Law and indeed under provisions of most institutional rules and national laws is that the arbitral award is final[2]. They are nothing more than the natural consequence of Parties' actual preference.

The basis for this general rule, especially at Common Law, goes something like this: Parties, having withdrawn from the traditional system and turned their backs on its hard won safeguards – the jury of twelve good men and true, who decide the facts, the King's judge, learned and wise, who determines the law, - and the appeals process which adequately insures both – Parties, having departed from all this and chosen their own system of private justice, must sink or swim with their umpire's decision – that is to say, they must held to the logical outcome of their chosen option. Thus the arbitrator's "judgment" is final and the Courts will not interfere.

An interesting passage in the old English case of **Fuller V. Fenwick**[3]; while scarcely concealing the English Judge's reaction (at that time), is quite helpful in unveiling the Common Law position:

> *"If the case had been left to follow the ordinary course, it would have been decided, as to the facts, by a jury, and, as to the law, by the judge, with an ultimate*

appeal to a court of appeal. The parties, for some reason, thought fit to withdraw the case from that mode of trial, and to refer the whole to an arbitrator, thinking, probably, that the facts would be more conveniently ascertained, and the law more conveniently determined by one from whose judgment there was no appeal, and that an arbitrator would, in the particular case, be a better judge of the facts than a jury, and of the law than the court. It is quite true that it is sometimes advantageous to have a matter decided by a person possessing the smallest possible knowledge of law...."

This passage is notable, not only for the sarcasm with which it drips but also for the hint it manages to drop – the finality of the arbitral award. There is no appeal from it. And so the passage concludes:

"These considerations have, in modern times, induced the courts to deal much more liberally with awards than was formerly their practice, and, generally speaking, to hold them to be final, unless some substantial objection appears upon the face of them."

It is these "substantial objections" that form the exceptions to the general rule and also constitute the grounds for challenging awards. But it should be clearly noted and constantly remembered that there is a general Rule. Arbitral awards are final.

Here are two more illustrations of this very important point. In **Hodgkinson V. Fernie[4] Williams J** held as follows:

"The law has for many years been settled, and remains so at this day, that, where a cause or matter in difference is referred to an arbitrator, whether a lawyer or a layman, he is constituted the sole and final judge of all questions both of law and fact. Many cases have fully established that position, where awards have been attempted to be set aside on the ground of the admission of an incompetent witness, or the rejection of a competent one. The Court has invariably met those applications by saying 'you have constituted your own tribunal you are bound by its decision'.....".

Coming back home we find the same sentiments recently expressed by the Court of Appeal in the case of Celtel Nigeria Bv V. Econet Wireless[5]

"The underlying principle is that parties to a dispute have a choice. They may resort to the normal machinery for administration of justice by going to the regular courts of the land and have their disputes determined, both as to the fact and the law, by the courts. Or, they may choose the arbitrator to be the judge between them, if they take the latter course, they cannot, when the award is good on the face of it, object to the award on grounds of law or facts." Per IKYEGH, J.C.A. (Pp.60-61,paras.F-C).[6]

There are three senses in which the arbitral award is final. It is final in the sense that it is neither provisional nor interim[7]. It is also final in the sense that it finally disposes of the rights or interests of the parties that formed the subject matter of the proceedings – the award is in that sense res judicata pro veritatehabetur.[8] The award is also final in the sense that there is no appeal from it[9].

THE GROUNDS FOR SETTING ASIDE ARBITRAL AWARDS

Under Common Law

So what are the Common Law Grounds for setting aside?

1. That the arbitral award was improperly procured.

2. That the arbitrator or umpire has misconducted himself.

3. Error of law on the face of the Award[10]

We quote **Halsbury's Laws of England 4th Ed.** cited with approval by the Supreme Court in KSUDB V. FANZ. In referring to an earlier passage from the same work dealing with finality of awards, the apex court held that:

"To this passage must necessarily be added the following passages in the same work dealing with setting aside of award:- First: "621. Grounds for setting aside award. The

grounds on which an award may be set aside are: (1) that the arbitration or award has been improperly procured, as for example, where the arbitrator has been deceived, or material evidence has been fraudulently concealed; and (2) that the arbitrator or umpire has misconducted himself on the proceedings. If the arbitration is in several stages, the ground for setting aside the award must be found in the stage that has been reached. If the ground on which a party seeks to set aside an award is that there is an error of law on the face of it, that party is by law limited in his address to the court to the award itself and such documents as are incorporated in the award".

Under the Statute

Although it seems generally agreed that Nigeria is a Model Law country[11] it would appear that the Nigerian Legislature was content with restricting the grounds for setting aside domestic awards. While the reason for this is unclear, the proof of it is not[12]; Under the ACA there are ostensibly only three grounds for setting aside an award:

1. Excess of Jurisdiction (technically known in International Arbitration as Ultra petita) on the part of the Tribunal.

2. Misconduct of the Arbitrator.

3. Improperly procured award.

These grounds are found in Sections 29(2) and 30(1) of the ACA as follows:

Section 29(2)

"The court may set aside an arbitral award if the party making the application furnishes proof that the award contains decisions on matters which are beyond the scope of the submission to arbitration so however that if the decisions on matters submitted for arbitration, can be separated from those not submitted, only that part of the award which contains decisions on matters not submitted may be set aside".

Section 30(1)

"Where an arbitrator has misconducted himself, or where the arbitral proceedings, or award, has been improperly procured, the court may, on the application of a party set aside the award".

Section 29(2) is a modified and somewhat watered down version of the ground in the Model Law[13]. Notably this is also one of the grounds for resisting enforcement of an award under the New York Convention[14].

EXCESS OF JURISDICTION

Under this ground the party seeking to set aside should show that the arbitrator in making his award has made decisions on matter(s) which the parties have not asked him to arbitrate upon. The burden of proving this of course is on the applicant who alleges it.

As in the New York Convention ground for refusing enforcement, there is a saving clause. Where an award covers matters falling within and without the submission, and a severance is possible, the part of the award covering matters within will survive.

MISCONDUCT

As may be noted the ACA does not define misconduct. The leading Nigerian case on this point is **Taylor Woodrow V. S.E.Gmbh**[15]. In that case OGUNDARE JSC falls back on the common law cites with approval **Halsbury's Laws Of England**[16] which sets out ten examples of what would amount to misconduct on the part of an arbitrator. We need not repeat these here as am sure they will be amply dealt with shortly by our next speaker. In any event those ten examples along with decisions illustrating them have been well set out[17].

The learned authors cite five additional examples of misconduct as follows:

- Failure to be impartial or honest.
- Failure to make an award in proper form.
- Error of Law on the face of the award.
- Failure to award interest.
- Proceeding with illegal contract[18].

It is helpful to note five grounds which have been presented as NOT constituting misconduct on which an award can be set aside.

- Inadequate evidence
- Error of fact.
- Error of law.
- Delay by the Arbitrator.
- Misunderstanding the submission of counsel[19].

IMPROPERLY PROCURED AWARD

The final ground under the ACA on which an award may be set aside is where an award was improperly procured. The ground is also not defined in the Act and it does not appear in the UNCITRAL Model Law.

The following have been noted as instances of the Ground:

- Misleading or deceiving the arbitrator
- Bribing the arbitrator
- Treating the arbitrator
- Employing the arbitrator for reward[20]

Other examples include:

- Fraud or misrepresentation in signing the Arbitration Agreement
- Reliance on Hearsay evidence
- Defective Appointment of Arbitrator

SETTING ASIDE OF INTERNATIONAL AWARDS

There is a view amongst some authorities[21], which divides the grounds for setting aside awards into two categories: International Standard Annulment (ISA) and Local Standard Annulment (LSA)[22]. Under this theory, the grounds listed in the New York Convention Art. V(1) (a) – (d) and Model Law Art 36(1) qualify as ISA. And it is only when an award is set aside on ISA grounds that an Enforcement may be refused under Art V(1)(e) of the New York Convention.

The justification for this view is that conventional wisdom gathered since the coming into force of the New York Convention shows that it is the ISA grounds that are the most appropriate for setting aside arbitral awards connected with international trade[23].

As noted earlier, although Nigeria is a Model law country, the grounds for setting aside domestic awards contained in the ACA are much narrower than those contained in Article 34(2) of the UNCITRAL Model Law[24].

With regard to international awards, Section 48 of the ACA reproduces the grounds set out in the Model Law. However the gateway to those provisions will be found in Section 43 of the ACA.

The following grounds for setting aside an award are stipulated in Section 48 of the ACA as well as Article 34 (2) of the Model law:

- Incapacity of Parties to the arbitration.
- Invalidity of the Arbitration Agreement under the law chosen by parties or the law of the seat (which invariably would be Nigeria).
- Improper notice of appointment of arbitrator or of proceedings of the arbitration or inability of party to present his case
- Award deals with dispute not contemplated or not within terms of submission.
- Award contains decisions on matters beyond the scope of the arbitration.
- Composition of Tribunal not in accordance with the parties' agreement.
- The Composition of the Tribunal not in accordance with the ACA.
- Inabitrability of dispute under Nigerian Law.

· That the award is against public policy of Nigeria.

NOTABLE DECISIONS ON SETTING ASIDE AWARDS

There is no doubt that many local decisions reflect due adherence to applicable principles. However there are some decisions which in some ways do not. Two examples will suffice.

NNPC v. CLIFCO (2011) 4 SCNJ p. 107

In arbitration between NNPC and CLIFCO, an award of $4.5 million was made in CLIFCO's favour. This sum was for lost profits. It appears from the Law report that NNPC did not challenge this claim at all before the arbitrator and therefore could properly be taken to have admitted it. It was partly on this basis that the award was made.

The Supreme Court in the lead judgment relied on the proviso to Section 75 of the Evidence Act which states that Courts may require facts admitted to be proved, to hold that proof could still have been required by the arbitral tribunal in spite of the admission by NNPC.

COMMENTARY

This holding does not take account of Section 256(1) of the Evidence Act 2011 which stipulates that the Evidence Act does not apply to proceedings before an arbitrator.

Furthermore, the arbitrators' decision that there was an admission by NNPC was a finding of fact. Clearly the adequacy or otherwise of that admission to sustain CLIFCO's claim to lost profits had been decided on by the Arbitrator.

The settled position of the law is that findings of fact or findings relating to the adequacy or otherwise of evidence are matters for the arbitrator and his decision on them even if wrong is not misconduct but at best an error of law which cannot justify setting aside as it is not on the face of the award[25]

TOTAL ENG SERV. TEAM V CHEVRON NIG. LTD (2010) LPELR 5032 (CA)

In arbitration between the parties, Chevron had claimed, among other things, reimbursement of legal fees paid in respect of a law suit in the US. The Arbitrator had found that the evidence presented by Chevron in proof of its claim, did not show that Chevron itself paid the legal fees. It was an Invoice of a Firm of US Attorney's which revealed that the fees were paid by one Chevron Overseas Petroleum Inc and not the actual Respondent (Chevron Nig Ltd). The Court of Appeal held that by rejecting the claim, the Arbitrator had misconducted himself. It held that it is misconduct and a ground for setting aside an award for an arbitrator to raise an issue suo motu and decide on same without inviting parties to address him on the said issue.

COMMENTARY

One difficulty with this decision is that the Court of Appeal seemed unconcerned that the main question raised by the Appellant involved the court taking a view of the arbitrator's findings of fact.

Three things were involved here, all firmly linked and rooted in fact: First the Claim (for reimbursement), second the Allegation of expenditure behind that claim. Third the evidence in support of the allegation (the Attorney's invoice).

It stretches logic to suggest that whether the Respondent actually paid fees can be divorced from whether it should be reimbursed the fees.

Is it possible to determine if a person is entitled to reimbursement without first making a finding whether he actually incurred some expense.

Even if the Arbitrator was wrong to have found that the Respondent did not incur the expense (which the Court should have recognised as the true basis of the challenge), it will amount to an error of fact. It would not justify setting aside or remission. Arbitrators are entitled, with finality, to draw inferences from evidence[26].

TIME LIMIT FOR SETTING ASIDE AWARDS

Section 29(1) of the ACA provides as follows:

A party who is aggrieved by an arbitral award may within three months-

a from the date of the award; or

b in a case falling within section 28 of this Act, from the date the request for additional award is disposed of by the arbitral tribunal,

by way of an application for setting aside, request the court to set aside the award in accordance with subsection (2) of this section.

The question that arises here is whether courts can actually entertain and/or grant applications to extend time to set aside awards?

It is the view of some scholars that the three month time limit in **Section 29(1)** of the **ACA** cannot be extended. The learned authors Orojo & Ajomo suggest that an application to set aside an award brought outside the three month period becomes time barred and will not be entertained[27]. This view is shared by Gaius Ezejio, SAN who points out that there is no provision made for extension of time in the ACA[28].

It appears however, from the case law, that this is a matter of some doubt and difficulty.

The Court of Appeal in **Alhaji Albishir & Sons Ltd. v. B.U.K. (1996) 9 NWLR (Pt.470)** was of the view that Courts can extend the time limit under Section 29(1) of the ACA. In an appeal against a decision extending time to set aside an award, the Court held as follows on Section 29(1) ACA:

> *"Even here since the section does not specifically prohibit the making of such application after the three months period, the courts will have the power to extend the period for deserving applicants who can show good reasons for their failure to apply within time and who can also show substantial grounds for wanting to set aside an arbitration award".*

The Court of Appeal found that the lower court properly extended time. Significantly the application to set aside was made twelve months after the award.

However, in **Daewoo Nigeria Limited v. Project Masters (Nig) Ltd**, where an application to set aside was made five months ten days after an award, (along with an application for extension of time) the Court of Appeal (Port Harcourt Div.) relying on the Supreme Court decision in Araka v. Ejeagwu[29] held that:

> *"Our Apex Court had clearly considered the issue of extension of time to set aside arbitral award made in Section 29(1) of the Act in the case of Araka v. Ejeagwu....by the doctrine of stare decisis, the apex court's decisions in Araka v. Ejeagwu (supra).....the High court or Federal High Court as in the instant appeal, have no right to extend time to set aside an arbitral award beyond the three months period"[30].*

The Supreme Court in Araka v. Ejeagwu per Katsina Alu JSC had held as follows:

> *"In the present case although the award was made on the 8th of September 1994, the motion to set it aside was brought on 25th April 1995. Consequently since the motion to set aside the award was filed long after 3 months in violation of Section 29(1) of the Arbitration and Conciliation Act, it was incompetent and the trial court had no jurisdiction to entertain it"[31].*

Comments

In the first place it is clear that in **Araka v. Ejeagwu**, there was no application for extension of time. This fact was actually noted (twice) in the concurring opinion of Kutigi JSC. It is therefore open to question whether:

(1) this case is actually authority for the proposition that a court has no power to extend time to apply to set aside an arbitral award pursuant to an application for extension of time;

(2) the Supreme Court's decision would have been different if there was an application for extension of time, stating strong reasons for the delay.

Secondly, and by way of digression, **Araka v. Ejeagwu** actually puts to rest the erroneous view that the time limit in Section 29(1) does not apply to an application to set aside under Section 30(1) of the ACA[32].

Thirdly, and returning to our point, it is not entirely clear that the Court of Appeal in Daewoo Nig Ltd v Project Masters Nig Ltd, was right when it held that the "Apex court had clearly considered the issue of extension of time to set aside arbitral awards in Araka v. Ejeagwu". As indicated above, the only question before the Supreme Court was whether an application to set aside, filed out of time was competent. The issue of whether extension of time can be granted was never resolved by the Supreme Court. And of course it could not have been as there was no such application.

These observations regarding the Supreme Court judgment in **Araka v. Ejeagwu**, and the conflicting decisions of the Court of Appeal in **Albishir & Sons v. BUK** and **Daewoo Nig Ltd v. Project Masters**, strongly suggest that the power of a court to extend time under the Arbitration Act may as yet be unsettled. The position internationally, in countries with similar arbitration laws seems equally unclear.

A Court of Appeal in Canada was recently faced with an identical scenario. Section 47 of the Ontario Arbitration Act 1991 provides for a 30 day time limit for applications to set aside domestic arbitral awards. **In R & G Draper Farms (Keswick) Ltd. V. Ontario Inc. (2014) ONCA 278**, an application was brought to set aside an arbitral award outside the 30 day period in the Statute. The Ontario Court of Appeal agreed with the lower court (Superior Court of Justice), that Section 47 of the Arbitration Act did not give the court any power to extend the 30 day period for applying to set aside an arbitral award. There was no prior decision that supported such power. Additionally, that the Act itself did not support judicial discretion to extend the time limits under the Section.

By contrast, a Court of Appeal in Malaysia was confronted with the same question but arrived at the opposite conclusion. The Malaysian Arbitration Act provided for a 90-day time limit for setting aside awards, but in much stronger language than Section 29(1) of our ACA:

> *"an application to set aside an award may not be made after expiry of 90 days from the date on which the party making the application had received the award"*[33].

The Putrajaya Court of Appeal in Malaysia held that it had jurisdiction to extend the time for setting aside awards, despite the absence of any provision of the Malaysian Arbitration Act enabling the exercise of such power. The Court relied on the power in its Rules of Court which enabled it to extend time. The Court also relied on its inherent jurisdiction. The Court held that discretion to extend time would be guided by the following considerations:

a. the length of the delay,

b. the reason for the delay,

c. the prospect of success,

d. the degree of prejudice the respondent if the application were granted[34].

Arguably these are not questions that can be resolved without an application for extension of time accompanying the application to set aside.

It is respectfully suggested that the view that a court cannot extend time to set aside an arbitral award regardless of the surrounding circumstances, could lead potentially to substantial miscarriage of justice. Such a view clearly fails to consider the possibility of patently unjust or illegal awards.

It is suggested that a more appropriate view would be that an applicant who is out of time ought to satisfy a court not only with reasonable grounds for the delay but also with substantial reasons for the application.

This approach would ensure that an applicant with good and valid reasons for challenging an award is not shut out completely. And it would also enable the court balance the policy considerations behind the statutory time limits (restricting court access in view of finality), with the interests of justice.

Furthermore, a proper regard to principles guiding the discretion to grant or refuse an application to extend time, should guarantee effective gate keeping.

A number of such "guiding principles" were set out in a widely cited English decision on this point, Aoot Kalmneft v. Glencore International (2002) 1AER 76

some of which are:

1. The length of the delay

2. Whether the applicant has acted reasonably in all circumstances of the actual lateness and subsequent delay.

3. Whether delay was caused or contributed to by the Respondent or Arbitrator(s)

4. Whether Respondent would suffer prejudice by the grant of the application

5. Strength of the Application to set aside under relevant recourse provisions of the English Arbitration Act 1996.

6. Whether unfairness would result from denying the Applicant an opportunity for recourse35.

Implicit in the view that courts have no power to extend time, is the notion that the word "may" used Section 29(1) ACA, has no significance. There seems to be no explanation why the usual discretion the word imports, is inapplicable in this case. In this connection it may be helpful to note the opinion expressed by Lew et al in their leading work on International Commercial Arbitration, on the word "May" used in Art 34(2) Model Law and the critical position of an applicant:

> *"The word "may" indicates that there is some discretion afforded to a court which would decide to hear a case after the expiration of the time limit. This use of language in Article 34 is justified: an action for challenge is the only recourse the unsuccessful party has in the country where the award was made; it also manifests confidence that the courts will exercise their discretion wisely"*[36].

It is suggested that since Section 48 ACA which applies to International Commercial Arbitrations, does not stipulate a time limit for applications to set aside, then the three month Rule will apply – under the provisions of Section 43. As such and to balance the interest of the losing party in exercising the only recourse he has in the seat, Courts should be willing in appropriate cases and based on applications, to extend time to set aside awards.

JUDICIAL APPROACH TO SETTING ASIDE ARBITRAL AWARDS

There is sometimes the temptation to believe that the power to set aside arbitral awards undermines the process of arbitration. This has led to some jurisdictions taking steps to abolish the power altogether. Strangely those steps achieved the opposite of creating an arbitration-friendly environment.

A notable example is Belgium. In 1985, Belgium amended its Judicial Code of 1972, and by one Article 1717 effectively abolished the power of courts to set aside international arbitral awards. Unexpectedly, (for the Belgians at least) the arbitration community began to withdraw from Belgium, Arbitration institutions no longer considered Belgium as a forum, the country was essentially blacklisted. Several years later Belgium amended the law.

This is one way in which Prof. Jan Paulsson's words ring true. As far as setting aside goes, arbitration recognizes only too well that it needs the courts.

Although Orojo and Ajomo rightly identified the underlying principle regarding the finality of awards, they somewhat inaccurately, in my view, describe this as the principle which should govern the setting aside of arbitral awards.

They refer to passages in the judgment of the West African Court of Appeal in FOLI V AKESE (1930) 1 WACA 1 and the English case of HENCK V ANDRE (1970) 1 LLOYD'S REP. 236 @ 238, where the courts referenced the finality of award based on choice of the parties i.e. that parties having chosen arbitration must take the award for better or worse.

It is submitted respectfully that finality more accurately describes judicial attitude to arbitral awards. Knowing that an award is final does not really tell a judge how he should approach/decide an application to set the award aside.

Perhaps a more helpful principle would be this. That whatever grounds for setting aside are put forward, an applicant should satisfy a court that substantial miscarriage of justice has occurred.

This would be consistent with the approach exhorted by a well known English Judge Cockburn

LJ in Re Hopper[37] where the Lord Justice said

> *"We must not be over ready (sic) to set aside awards where the parties have agreed to abide by the decision of a tribunal of their own selection, unless we see that there has been something radically wrong and vicious in the proceedings".*

It would also align with international standards and best practices as noted by the English Court in **Petroships PTE v Petec Trading (2001) 2 QB (Com. Crt) 348** where notable Arbitrator Creswell J. (as he then was) held as follows:

> *"...Section 68 of [English Arbitration Act 1996] reflects the international accepted view that the court should be able to correct serious failure to comply with due process of arbitral proceedings; a serious irregularity had to pass the test of causing substantial injustice before the court could act. The test of substantial injustice was intended to be applied by way of support for the arbitral process not by way of interference...."*

The notions of substantial miscarriage of justice and radically wrong and vicious proceedings give some indication of the most appropriate considerations which should guide a court in examining the grounds presented in an application to set aside an arbitral award.

CONCLUSION

In closing, allow me to submit for your consideration what I would like to call the four Cs for inspiring confidence in an arbitration friendly environment in the context of setting aside awards.

Bearing in mind Prof. Jan Paulsson's searing comment in the context of institutionally appointed arbitrators:

"Only a few arbitral institutions can make credible claims to legitimacy. The naive boasting of a constant stream of new entrants fools no one acquainted with the field. It is easy for resourceful persons to come up with a lustrous governing board comprised of apparently eminent individuals happy to lend their names to what might be a useful venture (and will cost them little if it fails)."[38];

We must be clear that it is one thing to have in place the Institutions, Rules, Systems and Procedures, which help to foster a friendly environment, but it is quite another to inspire the confidence of the International Arbitration Community or indeed the international business community in that friendly environment.

It is in this context that I desire to humbly present the following four conditions for inspiring confidence in the arbitration friendly environment we are all concerned to build.

The Conditions are:

- Clear understanding,
- Close adherence,
- Critical Examination
- Constant Engagement

In sitting down to write awards as arbitrators, in considering applications to set awards aside as judges, in representing competing interests in both spheres as counsel, we ought to all bear in mind the need to ensure that what we do reflects.

A clear understanding of relevant rules and applicable principles, and a close adherence to those rules and principles,

We should also be willing to undertake a critical examination of the decisions of our courts and constant engagement with international scholarship on the subject.

Thank you.

END NOTES

[1]The United Kingdom, Departmental Advisory Committee (DAC) Report on the Arbitration Bill, February 1996 had explained in part what would justify judicial intervention: ".... it

is only in those cases where it can be said that what has happened is so far removed from what could reasonably be expected of the arbitral process that the Court will take action"

[2]UNCITRAL Rules Art 34(2) 2010, ICC Rules Art [3]4(6) 2012, London Court of International Arbitration Rules Par. 26.8 2014. English Arbitration Act Section 58(1) Swiss Private International Law Statue Section 190(1).

3(1846)136 ER p. 282 @ p. 285 Per Maule J.

[4](1857) 140 ER p. 712 @ p. 717

[5](2014) LPELR 22430

[6]The JCA was actually quoting a passage in the speech of NnaemekaAgu JSC in Commerce Assurance v. Alli1992) NWLR (Pt. 232)710 where the learned JSC referred to the notion of parties' choice of private justice as an "underlying principle" of arbitration.

[7]LAW AND PRACTICE OF ARBITRATION AND CONCILIATION IN NIGERIA, OROJO AND AJOMO P. 249, The reference here is to the final award. Bearing in mind of course that interim awards issued in the course of arbitration are equally final on what they decide.

[8]A matter adjudged is deemed to be true.

[9]Orojo&Ajomo p. 275

[10]The distinction between 2 types of Error of Law on the face of the Record emphasised by Ogundare JSC should be noted. The only error on the face of the record which justifies the court's intervention is that which arises from a decision on matters not specifically referred. An error arising from a decision on a matter specifically referred will not justify judicial intervention.

[11]Our ACA draws inspiration largely from the UNCITRAL Mode Law on International Commercial Arbitration 1985. A revised edition has been approved by the UN since December 2006.

[12]Under Sections 29(2) and 30(1) of the ACA there are ostensibly only 3 grounds for setting aside. However under Article 34(2) of the Model Law there are 6. Section 48 ACA which mirrors the Model Law, applies only to International Commercial Arbitration. (Section 43 ACA).

[13]What is missing is the phrase "the award deals with a dispute not contemplated by or not falling within the matters of the submission to arbitration..." Article 34(2)(a)(iii) Uncitral Model Law.

[14]Article V(c) New York Convention 1958.

[15](1993) 2 NWLR PT 175 P. 602

[16]4th Ed. Paragraph 622 Vol. 2

[17]Orojo & Ajomo pp 277- 280.

[18]Ibid pp.280 - 283

[19]Ibid pp.283-285

[20]Orojo&Ajomo P. 286

[21]Albert Jan van den Berg, rejects this view on

the grounds that an award set aside, whether pursuant to ISA or LSA, no longer exists and therefore cannot be enforced. Ven den Berg "Should the Setting Aside of Arbitral Awards be Abolished" ICSID Review 2014 pp 1-26.

[22]Prof. Jan Paulsson 'Enforcing Arbitral Awards Notwithstanding a Local Standard Annulment (LSA)' (1998) 9(1) ICC Int'l Crt Arb Bull 14

[23]Supra note 16 P. 17

[24]Section 48 of the ACA reflects Art 34(2) of the Model Law, but Section 48 falls under Part III of the ACA applies only to International Commercial Arbitration. See Section 43 ACA.

[25]"A finding of fact without adequate evidence is not misconduct in any event. It is merely even if proved an error of law not on the face of the award". Russel on Arbitration 19th Ed. P. 473.

[26]"The weight of evidence and inferences from it are essentially matters for the arbitrator...and not matters for the court" Lord Denning GKN V. MATHRO (1976) 2 Lloyd's Rep. P. 555 @ p. 575.

[27]Orojo&Ajomo p. 271

[28]Gaius Ezejiofor, The Law of Arbitration in Nigeria P. 104.

[29](2001) FWLR pt 36 p. 830.

[30](2010) LPELR 4010 (CA)

[31]Supra Note 3 at page 850.

[32]The Supreme Court rejected this view which was held by the majority in the Court of Appeal. It declared, (vindicating Akpabio JCA's dissenting opinion) that there is only one limitation period prescribed in the ACA and that it would be absurd to expect Section 30(1) to state a limitation period of its own. Katsina Alu JSC

[33]Section 37 Malaysia Arbitration Act 2005.

[34]The Lao Peoples Democratic Republic v. Thai Lao Lignite Co. Civil Appeal W 02 (NCC) 1287. 2011.

[35]Colman J. AootKalmneft V. Glencore International AG (2002) 1 Lloyd's Rep 128.It is noteworthy that the English Arbitration Act 1996 does not explicitly empower a court to extend the 28 day time limit indicated in Section 70(3) for recourse. However by Section 80(5) of the Act, the Rules of Court regarding extending or abridging time apply.

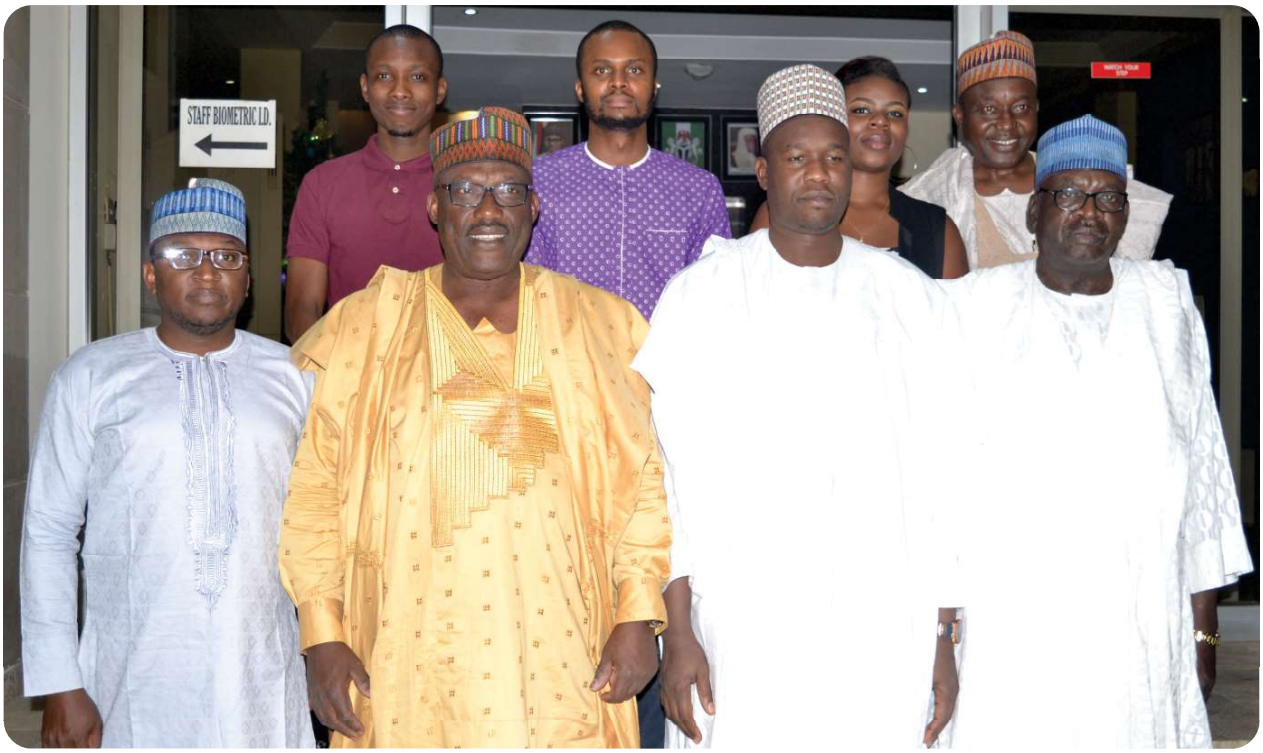
36Lew, Mistelis and Kroll, Comparative International Commercial Arbitration p. 671

[37](1961) 31 LJ. CH. 420 , interestingly this dictum was also cited by Orojo&Ajomo on page 274.

[38]Jan Paulsson 'Moral Hazard in International Dispute Resolution' Inaugural Lecture as Holder of Michael Klein Distinguished Scholar Chair Uni. Of Miami School of Law, 29th April 2010.

PHOTO SPEAK

The Courtesy visit of His Royal Highness, Emir of Uba, Ali Ibn Ismaila Mamza (II) to the J-K Gadzama Court, Abuja on Saturday, 6th January 2018.



L-R: (Front row) Mr. Tunde Onamusi, Chief Joe-Kyari Gadzama SAN, His Royal Highness, Emir of Uba, Ali Ibn Ismaila Mamza (II) and Keffas Gadzama, CP (Rtd) L-R: (2nd Row) Amazing Ikpala, Darlington Onyekwere, Olasubomi Adegbemisoye and Mr. Paul Kyari Lassa

Group photograph with J-K Gadzama LLP Staff and Bitus Joe Gadzama (2nd row left), Maryam Joe Gadzama (1st row left) and Jemima Joe Gadzama (1st row 2nd left)

Chief Joe-Kyari Gadzama SAN and His Royal Highness, the Emir of Uba, Ali Ibn Ismaila Mamza (II) having a chat during the courtesy visit of His Royal Highness

L-R: His Royal Highness, the Emir of Uba, Ali Ibn Ismaila Mamza (II), Solomon J. Mamza and Chief Joe-Kyari Gadzama SAN

His Royal Highness, the Emir of Uba, Ali Ibn Ismaila Mamza (II), Solomon J. Mamza and Keffas Gadzama, CP (Rtd), Partner, J-K Gadzama LLP

LEGAL HUMOUR

- A lawyer phoned the governor's mansion shortly after midnight. "I need to talk to the governor, it's an emergency!" exclaimed the lawyer. After some cajoling, the governor's aide eventually agreed to wake him up. "So, what is it that's so important that it can't wait until morning?" grumbled the governor. "Justice Smith just died, and I want to take his place," pleaded the attorney. "Well, its okay with me if it's okay with the mortuary," came the reply.

- A lawyer and an engineer were fishing in the Caribbean. The lawyer, wanting to start a conversation with the gentleman next to him, said "I'm here 'cause my house burned down and everything I owned was destroyed by the fire. The insurance company paid for everything." "That's quite a coincidence," said the engineer, "I'm here 'cause my house and all my belongings were destroyed by a flood, and my insurance company also paid for everything." The lawyer pondered the engineer's plight for a moment and, looking somewhat confused, asked, "How do you start a flood?"

- A man walked into a lawyer's office and inquired about the lawyer's rates. "N50,000 for three questions," replied the lawyer. "Isn't that kinda steep?", asked the man while signing a cheque for that amount. "Yes," answered the lawyer, "what's your third question?”

- A lawyer's son wanted to follow in his father's footsteps, so he went to law school. He graduated with honours, and then went home to join his father's firm. At the end of his first day at work he rushed into his father's office, "Father, father, in one day I concluded that land matter that you've been working on for the past five years!" "You did what!" His father exclaimed. "You idiot, what do you think put you through law school!"

PHOTO SPEAK

Mr. Mohammed Monguno, Managing Partner, J-K Gadzama LLP (3rd right), Mr. Tunde Onamusi, Head of Chambers (3rd left), Counsel in Chambers, Christian Sesugh Hon (right, 2nd row), Nkechi Eke (2nd right, 2nd row), Nnamdi Uzuegbu (left, 2nd row) and Adaobi Ofoneta (2nd left, 2nd row) with students from Funtaj International School, Abuja during their excursion to the firm on 2nd March, 2018

CHARTERED INSTITUTE OF ARBITRATORS' ENTRY COURSE

Held on 22nd and 23rd of March, 2018 at the International Centre for Arbitration and Mediation, Abuja

Chris Okougha, Counsel in Chambers, with one of the tutors of the course, Mr. Chikwendu Madumere, FCIArb

Chris Okougha role-playing in a mock arbitral proceeding with Mr. Elachi Agada, FCIArb and Miss Detra Onwuchekwa

Elisha Kurah, SAN (middle), Mohammed Monguno, Esq., Managing Partner, J-K Gadzama LLP (right), Liman Salihu, Esq. (left), Rabi'atu Abubakar (2nd left), and Fatima Batulu the new appointed Caretaker Committee of the Arewa Lawyers Forum (ALF) on Saturday 17th March, 2018

NEWS
FROM THE FIRM

- Auwal Abdullahi, who holds an LLB degree from University of Abuja, and was called to the Nigeria Bar in 2015, has joined the Firm as an intern. The Firm wishes him a pleasant stay.

- Egbuchulam Adanna .C., who obtained an LLB degree from Benue State University in 2017, has joined the Firm as an intern. We wish her a fruitful internship experience.

- Inna Imam Shettima, who holds an LLB degree from Swansea University and LLM degree from Nottingham Trent University, also joined the Firm as an intern. We wish her a pleasant stay.

- Chris Okougha and Karyn Ebohon, Counsel in Chambers, took the Chartered Institute of Arbitrators Entry Course held in Abuja on 22nd and 23rd March, 2018. We wish them success and look forward to their induction into the Institute.

- The Firm congratulates Mark Agbo, counsel in chambers, who tied the nuptial knot to his heartthrob Ugwuona Juliet Ogechukwu on 3rd January, 2018. The Firm wishes him a blissful married life.

- Chimdindu Onyedim, counsel in chambers, wedded her heartthrob Tsegbemi Etuwewe on 7th January, 2018 in Benin City. The Firm wishes her a blissful married life.

- The firm congratulates another one of its counsel in chambers, Nkechi Eke, also wedded her heartthrob on the 31st of March, 2018. The Firm wishes her a blissful married life.

- The Managing Partner, Mr. Mohammed Monguno was appointed Secretary of the Caretaker Committee of the Arewa Lawyers Forum. The Firm congratulates him heartily

- Darlington Onyekwere and Madu Joe Gadzama have been admitted into the Firm's Partnership as Junior Partners. The Firm congratulates them.

- Jairus Bekadda Amos Esq., has left the Firm. The Firm wishes him the best in his future endeavours.

DID YOU KNOW?

- In Denmark, parents must select a name for their child from a list of 7000 names.
- It is illegal to hike naked in Switzerland.
- In the city of Petrolia in Ontario, it is illegal to yell, shout, sing or even whistle at any time.
- In Georgia, it is illegal to let your chickens cross the road.
- In Greece, it is illegal to wear high heels when visiting historic cities.
- In France, it is illegal to name pigs after former Heads of State.
- In Saudi Arabia, there is no minimum age for marriage.
- In seven US states, atheists are banned from holding public office.
- The only two countries where divorce is illegal are Philippines and the Vatican.
- In Arkansas, there is still a law in existence which states that a husband is allowed to beat his wife but only once a month.

UPCOMING EVENTS
AND CONFERENCES

- 3rd Entry Course of the Chartered Institute of Arbitrators, Port Harcourt, Nigeria, 17th and 18th May, 2018

- 4th Entry Course of the Chartered Institute of Arbitrators, Lagos, Nigeria, 7th and 8th June, 2018

- 3rd ICC Africa Conference on International Arbitration Lagos, 18th - 20th June, 2018

- 12th Annual Business Law Conference, Transcorp Hilton, Abuja, Nigeria, 27th - 29th June, 2018

- 5th Entry Course of the Chartered Institute of Arbitrators, Lagos, 6th and 7th September, 2018

- 6th Entry Course of the Chartered Institute of Arbitrators, Abuja, 20th and 21st September, 2018

- International Bar Association Annual General Conference Roma Convention Centre, Rome, Italy 7th to 12th October, 2018

IN LOVING MEMORY OF

Our beloved Wife, Mother and Sister
who slept in the Lord on 5th April, 2014

Mrs. Janada Joe Gadzama

11th July, 1971 - 5th April, 2014

How Time Flies!
To live in the heart of those you love is not to die. You left us exactly 4 (four) years ago, but your sweet and fresh memories still linger in our hearts like it was just yesterday.

Continue to rest peacefully in the bosom of our Lord and Saviour Jesus Christ

Always Remembered by

Chief Joe-Kyari Gadzama, SAN } Husband

Madu Joe Gadzama
Yahaya Joe Gadzama
Lamar Joe Gadzama
Bitrus Joe Gadzama } Sons

Maryam Joe Gadzama
Jemima Joe Gadzama } Daughters

Mrs. Tamabari James Hamman (Sister), Mr. Zaman Bitrus Kajal (Brother),
Mrs. Anasili Medugu (Sister) and Mr. Ijai Bitrus Kajal (Brother)

REMEMBRANCE

ULUBA MAI JAWUR Esq., LL.B (Hons.) UNIMAID, B.L, ACIArb. (UK).

12/12/1976 - 21/05/2014

Former Counsel in Chambers/Chambers Secretary
J-K Gadzama LLP

always loved

never forgotten

forever missed

VACANCY

Vacancies exist in our **Abuja Office** for

COUNSEL AND LIBRARIAN

Interested applicants should send their Application Letters/CVs on or before Thursday, **31st May, 2018** to:

The Managing Partner,

J-K GADZAMA LLP
J-K GADZAMA COURT

Plot 1805, Damaturu Crescent by Kabo Way, Off Ahmadu Bello Way,
adjacent to Garki Mall/International Market, Garki 2, Abuja.

Email: info@j-kgadzamallp.com

Mobile: 07010775933 (Nkechi)

COUNSEL

BASIC REQUIREMENTS:

- 5-20 years Post-Call Experience
- Proficiency in Microsoft Office

LIBRARIAN

REQUIREMENTS:

- Candidates should possess B.Sc. degree in library or Information Science from a recognized University, with at least two (2) years of cognate Post NYSC experience in University or Institutional libraries.
- Candidates must be registered with professional bodies such as Librarian Registration Council of Nigeria.
- Computer literacy.
- Candidates must possess an NYSC Discharge Certificate or Exemption.

Sign: Management
Friday, 6th April, 2018

PARTNERS

1. CHIEF JOE-KYARI GADZAMA, OFR, MFR, SAN, FNIALS, DipICArb, FCIArb. (UK), Chartered Arbitrator
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4. TUNDE ONAMUSI, LL.M (Lond.), MCIArb. (UK)
   PARTNER/HEAD OF CHAMBERS
5 KEFFAS GADZAMA, CP (Rtd), Esq., ACIArb. (UK)
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   JUNIOR PARTNER
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3. INNA IMAM SHETTIMA

JURIS CONSULT

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(FORMER CHIEF JUSTICE OF NIGERIA)

2. HON. JUSTICE GEORGE A. OGUNTADE, J.S.C (RTD), CON.
(NIGERIA HIGH COMMISSIONER TO THE UK)

JANADA INTERNATIONAL CENTRE FOR ARBITRATION & MEDIATION (JICAM)

Janada International Centre for Arbitration and Mediation (JICAM) was established in 2015. It is a dispute resolution centre in Abuja designed to promote a suitable forum for the resolution of domestic and international disputes. It is fully equipped with state of the art facilities. The rules and guidelines for JICAM accommodate both ad hoc and institutional arbitration.

VISION

Creating an avenue for independent, confidential and efficient means of resolving disputes using Alternative Disputes Resolution (ADR).

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To provide a neutral venue for the resolution of both Domestic and International disputes; and encourage the settlement of disputes from Corporate, Domestic, International Trade, Investment and other Transactions.

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VP Vox Populi
Foundation for Leadership

Who are we?

The Vox Populi Foundation for Leadership was founded in the year 2010 and was incorporated in the year 2012 by its founder Chief J-K Gadzama OFR, MFR, SAN, FNIALS, FCIArb. (UK) (of Lincolns Inn, Barrister/Life Bencher/CEDR Accredited Mediator). The Foundation is a Non-Profit making institution formed to deepen the understanding of democracy by carrying out structured programmes that promote positive leadership qualities and ideals in the society. This is because we believe that a society can only evolve when the people have the opportunity to contribute to the process of governance and have a voice in the creation of policies and laws that affect them as a people.

How do we do this?

We sincerely believe the best way to achieve this goal is to pursue initiatives that look at proffering solutions to the issues that interfere with governance. We look at utilizing the immense manpower of youths and able bodied people who are hungry to bring about a change in their society through direct engagement with society in a volunteer signup process, which is one of the mechanisms we intend to employ to secure citizens participation. This process of inclusion we believe will foster and build a common front that will enable people to improve on their understanding of what leadership connotes in their everyday lives and reinforce their commitment towards creating a better society.

Governance

Created with gifts by its founder Chief J-K Gadzama, the foundation is an independent, non-profit, non-governmental organization, with its own Board. The trustees of the foundation set policies and delegate authority to the Director General and senior staff for the foundation's operations. Zonal volunteer Heads in the 6 geo-political zones explore opportunities to pursue the foundation's goals and formulate strategies for action.

Location

The Foundation is headquartered in Abuja. It conducts its activities through an increasing pool of volunteers from across the country.

VP Vox Populi
Foundation for Leadership

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Our Vision

to promote, protect and safeguard the tenets and ideals of democracy leadership & good governance in our society.

What is Our Goal?!

to encourage citizens to participate in governance & support a platform that will inspire proactive leadership that will drive the free flow of democratic ideals and social justice.

Sign-up to Join and receive our e-mail Newsletter
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articles and news from the firm are accessible online on the office website

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