



# Between Public Policy And Party Conduct

How Champion Breweries Plc v Brauerei Beck GMBH & Co. KG Redefines Enforcement Resistance In Arbitration

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## Introduction

To date, public policy remains one of the grounds for setting aside an arbitral award.<sup>1</sup> However, whether an arbitral award will be successfully set aside on the grounds of public policy depends on various factors, such as the provisions of the national laws, judicial interpretation, and the attitude of courts to arbitration. Notwithstanding, the question of how far a party may rely on public policy to set aside an arbitral award remains a subject of debate across various jurisdictions.<sup>2</sup>

The recent decision by the Court of Appeal in *Champion Breweries Plc v Brauerei Beck GMBH & Co. KG*<sup>3</sup> brews a twist between public policy and party's conduct. The decision reflects how a party's conduct may prevent it from seeking to set aside an arbitral award on the grounds of public policy, particularly when it had, by its conduct, condoned the act complained against and had enjoyed benefits from the wrong. The Court's decision reaffirms the sanctity of arbitral awards and draws a firm line between legitimate public policy concerns and mere opportunism by parties seeking to evade contractual obligations.

[1] *Limak Yatirim, Enerji Uretim Isletme Hizmetleri Ve Insaat A.S. & Ors v. Sahelian Energy & Integrated Services Ltd* (2021) LPELR-58182(CA); Section 55(3)(b)(ii) of the Arbitration and Mediation Act, 2023; *Bayshore Technologies Limited v. Green Fuels Limited* (Unreported) FHC/LCS/377/2025

[2] Arbitrability and Public Policy Challenges by Penny Maddenn KC and Ceyba Knoebel. [Link](#) Accessed on 24 October 2025

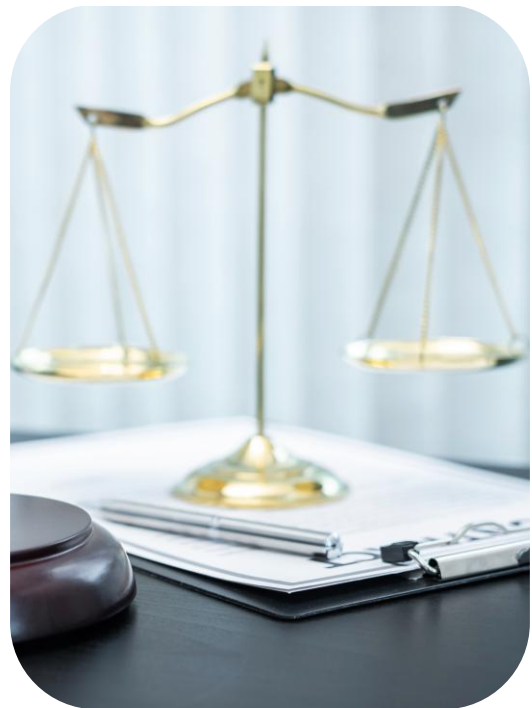
[3] [2025] LPELR-81422(CA)

# Facts of the Case

In October 2005, Brauerei Beck GmbH (Beck) entered a Manufacturing, Distribution, Technology, and Trademark License Agreement with Champion Breweries Plc (Champion) to sell its trademark brand, Beck's Beer, in Nigeria.

The Agreement required registration under the National Office for Technology Acquisition and Promotion (NOTAP) Act, which mandates that all technology transfer agreements be registered within sixty (60) days. Champion, however, failed to register the contract but went ahead to perform substantial aspects of it, producing and selling Beck's Beer in Nigeria and benefitting commercially from the Agreement.

When disputes later arose over unpaid royalties, the matter was referred to arbitration in Geneva, pursuant to the arbitration clause contained in the Agreement. The arbitral tribunal eventually rendered an award in favour of Beck.



Upon Beck's application to enforce the award in Nigeria before the High Court of Lagos State, Champion resisted, arguing that because the Agreement had not been registered with NOTAP, it was illegal, void, and contrary to Nigerian public policy, and therefore incapable of giving rise to a valid arbitration or enforceable award.

# The Court of Appeal's Decision

**The Court of Appeal dismissed the appeal and affirmed the lower court's decision, confirming the recognition and enforcement of the arbitral award.**

According to the Court, the non-registration of the Licensing Agreement was not contrary to public policy, as the NOTAP Act merely renders a contract that fails to meet its outlined requirements non-registrable,<sup>4</sup> with the consequent effect of not being able to receive payments due under the Agreement through the named channels. The Court also found it equitably unjust for Champion to allege the illegality of the Agreement as a means of escaping its contractual obligations under the Agreement when it had substantially benefited from it.<sup>5</sup>

While the Court reprimanded Beck for proceeding with the arbitral proceeding despite an anti-arbitration injunction, the Court was of the view that Champion could not complain about Beck's disobedience of the Court's order, having withdrawn the contempt proceedings initially commenced against Beck.



[4] Section 6(2) of the NOTAP Act, LFN 2004

[5] Section 7 of the NOTAP Act, LFN 2004

# Commentary

This is not the first time the Court of Appeal has had to determine the resistance to an arbitral award on the grounds of public policy based on the non-registration of an Agreement under the NOTAP Act. In *Limak v Sahelian Energy and Integrated Services Limited*,<sup>6</sup> whether the non-registration of an Agreement under the NOTAP Act is a public policy ground capable of preventing the recognition and enforcement of an arbitral award was a question that the Court of Appeal had to determine.

In Limak's case, the court set aside a foreign arbitral award because the Agreement that gave rise to the arbitration was not registered under the NOTAP Act and was therefore held to be contrary to Nigeria's public policy.

While the Court in Limak focused on the registration of the Agreement required under the NOTAP Act, and the intent and purpose of registration, the Court in Champion's case considered the statutory effect of non-registration, and Champion's conduct in determining whether the contract, and by extension, the award, was tainted with breach of public policy.



[6] [2021] LPELR-58182(CA)

## Between public policy and party conduct

The recent decision of the Court reveals that whether a public policy defence would succeed in an action for the setting aside of an arbitral award depends on various factors. In this case, the Court held that the failure to register the Agreement under the NOTAP Act does not amount to illegality, as the Act expressly provides for the effect of non-registration, which is the non-entitlement to payment through authorised channels. This further raises an interesting debate as to whether it is a party's act of non-compliance with a statutory provision that amounts to a breach of public policy, or whether the statutory effect of non-compliance defeats a public policy defence. While the primary consideration in determining breach of public policy is the offending conduct, the resultant effect cannot be excluded in determining whether the Courts should declare a breach of public policy.

In the Limak case,<sup>7</sup> the Court remarked that the phrase 'public policy' appears to mean the ideas, which for the time being, prevail in a community as to the conditions necessary to ensure its welfare; so that anything is treated as against public policy if it is generally regarded as injurious to the public interest. The court went further to hold that public policy, in relation to this question is that principle of the law which holds that no subject can lawfully do that which tends to be injurious to the public, or against the public good, which may be termed, as it sometimes has been, the policy of law, or public policy in relation to the administration of the law. Thus, the effect of the action/breach is as important as the action, as the court would not consider the action without the consequence on the public good and welfare.

Remarkably, the most striking aspect of the Court's decision is the Court's focus on Champion's conduct. The Court reasoned that Champion could not rely on illegality to resist the recognition and enforcement of the arbitral award when it was its contractual obligation to ensure that the Agreement was duly registered with NOTAP.

[7] Supra



The Court held that, having enjoyed the benefits under the Agreement, it is estopped from relying on illegality or public policy in escaping its contractual obligations to Beck. Indeed, the Court of Appeal considered the conduct of Champions, which it described as an “I-too-know” attitude, and held that such conduct was a ploy to conceal its default in performing its own obligations under the agreement while seeking to retain the profits derived therefrom. The Court held that it would be conscienceless and inequitable to permit Champions, by whatever antics, to evade its obligations and still retain the benefits of the agreement. Accordingly, it must disgorge all profits obtained thereunder.

Furthermore, the Court proceeded to consider the consequences of the failure to register the agreement under the National Office for Technology Acquisition and Promotion (NOTAP) Act, which stipulates that no

payment shall be made by or under the authority of the Ministry of Finance, the Central Bank of Nigeria, or any licensed bank to the credit of any person outside Nigeria, unless the parties concerned present a certificate of registration issued under the Act, together with a certified copy of the agreement

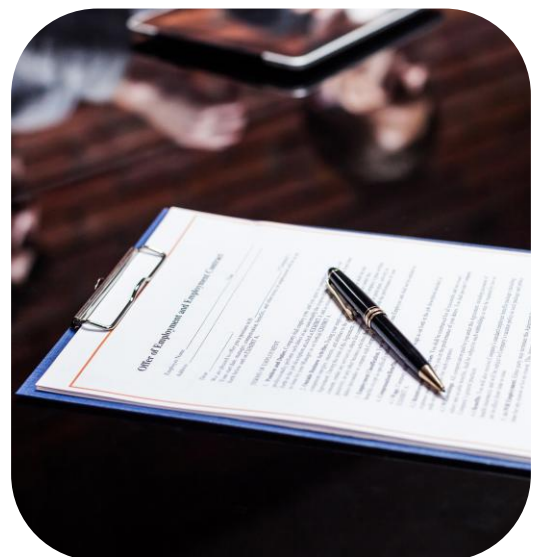
Thus, it can be seen that while the Court acknowledged that the non-registration of the agreement constitutes a breach of the statute, the resultant effect does not impinge upon public interest, public good, or public welfare. The statute provides that the parties to such an unregistered agreement shall not be entitled to receive payment from, or through, the Ministry of Finance, the Central Bank of Nigeria, or any licensed bank in Nigeria. Consequently, the implications are not far-reaching to society at large but are rather intended to affect only the defaulting party adversely.



Remarkably, Beck's disobedience of the anti-arbitration injunction may have amounted to a proper public policy defence, given the Court's reaction to Beck's disobedience as "an affront to the society, state, and the citizens". However, this route could not be explored because Champion had, by its conduct, condoned Beck's disobedience by withdrawing the contempt proceedings initially commenced against Beck.

The reasoning of the Court is to the effect that Champion cannot be heard to rely on its own default as a basis to avoid or nullify its payment obligations under the agreement reflects how a party's conduct may prevent it from successfully relying on a public policy defence in refusing the recognition and enforcement of an arbitral award. This position mirrors a judicial trend of Nigerian Courts being increasingly unwilling to allow parties to take advantage of technical defects to escape liability under arbitral awards. The Court's position establishes that public policy should promote, not undermine, commercial morality and consistency in business dealings.

It is pertinent to note that every case is determined on its peculiar facts. Hence, the factual circumstances of a case are pivotal in arriving at a just decision. In the instant case, the Court undoubtedly took into account the conduct of the parties, particularly that of Champion, in reaching its decision. Champion was under a clear obligation to register the contract within sixty (60) days but failed to do so. It equally failed to demonstrate that it made any effort to renegotiate the offending clauses of the agreement with Beck, which ordinarily constituted a breach of the Agreement. Instead, it proceeded to distribute Beck's Beer and made substantial benefit from the Agreement. To the Court, it would be unconscionable to resist the recognition and enforcement of the award, as that would enable Champion to benefit from its own wrong.





Furthermore, the Court found that payment under an unregistered agreement is not absolutely prohibited, as the Act merely restricts payments made by or through specified channels. The principle of law is that whatever is not expressly prohibited is deemed permissible. Accordingly, since the statute can be construed to allow payment through unmentioned channels, such payments are taken as lawful. Therefore, non-registration of the agreement cannot, in the circumstances of this case, be regarded as contrary to public policy.

Conversely, in Limak, the parties were aware that the agreement was not registered, but they decided to perform the contract nonetheless. To the Court, enforcing the award sum would have been to entitle Limak to the royalties that it should not have been entitled to under the Act because the agreement was not registered. Though there were arguments that the sum sought to be enforced under the award were payments for damages and not royalties accruing from the performance of the unregistered contract.

The Court was of the view that the contract is illegal for failure of registration in accordance with Section 4 of the NOTAP Act. This presupposes that the Court nullified the contract between the parties and not just the payment due thereunder.

Instructively, for an act to be illegal, it must be outlawed or prohibited by law. For a contract to be illegal and void, the subject of the contract must be outlawed and prohibited. A comprehensive look at the NOTAP Act shows that the act does not prohibit a contract, nor does it state that an unregistered contract is illegal. In both cases and under the NOTAP Act, at the time of the conclusion of the agreements, the agreements were deemed valid until the expiration of 60 days from their execution. Therefore, non-registration would not ordinarily nullify a contract that was otherwise valid and legal at the time of consummation/execution.

Certainly, the Act only prohibits payment under an agreement through named channels to the parties thereunder. This, in the considerable view of the authors, does not rise to invalidate or render illegal the entire contract. It could have been understandable if the Court in the Limak case had taken the view that, given the restriction, if not prohibition, of payment for non-registration, the Tribunal and indeed, the award, offends the law of Nigeria by ordering said prohibited payment to the party under the unregistered agreement, and thus, contrary to public policy

However, we believe that the Court in both cases placed more attention on the underlying contract rather than on the arbitral award and what it sought to enforce. The then Arbitration and Conciliation Act (now Arbitration and Mediation Act) provides that an “award” may be set aside if it’s against the public policy of Nigeria. However, the Court in Limak and Champion Breweries focused more on the question of the contract being contrary to public policy than the award itself. In Limak, the Court was so furious with the non-registration of the agreement that it failed to consider the argument that what the award sought to enforce was the payment of damages and not the royalties that would have accrued to Limak from the performance of the contract. In the same vein, the Court in Champion Breweries focused on Champion’s conduct rather than on whether what the award sought to enforce was against Nigeria's public policy.



An arbitral award may only be regarded as contrary to public policy where its enforcement would offend public sensibilities or adversely affect the public good and welfare of society. The inquiry must centre on the award itself, not merely on the underlying contract between the parties. For an award to be contrary to public policy, it must seek to reinforce an illegality, promote an unconstitutional act, or be such that its enforcement would shock the conscience of the court. In other words, the award must purport to enforce or reward conduct which the law has expressly outlawed.

This distinction is of considerable importance, particularly in light of recent cases where judicial scrutiny has been directed more at the contract rather than at the award and its consequences. For instance, where a tribunal has set aside a contract for being contrary to void, illegal, or otherwise unenforceable but nevertheless made a costs award against the claimant, it would be erroneous to assess enforceability by focusing on whether the contract is contrary to public policy. The proper focus should be on whether the award, and not the underlying transaction, contravenes public policy.



Thus, while the reasoning in cases such as *Limak* and *Champion*, which emphasised the nature of the contract, might suggest that such a costs award could be set aside, a narrower and more principled construction of the statute, particularly the ground that an award (not the contract) must be contrary to public policy, would support the conclusion that such an award remains valid and enforceable.

# Conclusion

The Court of Appeal's decision reflects the somewhat unnoticed relationship between a party's conduct and the defence of public policy in seeking the refusal of the recognition and enforcement of an arbitral award.



To the Court, parties who seek to rely on public policy grounds must come with clean hands and must not have condoned the act complained of. This decision redefines the evolution of resistance to arbitral awards and the limits of public policy in the enforcement of arbitral awards in Nigeria.

However, it must be emphasized that the public policy focus must relate to the award and what it is rewarding, and not just to the founding contract.

This would ensure that the public policy challenge under Section 55(3)(b)(ii) is narrowly construed in order to ensure a reduction in the flurry of challenges of an arbitral award on this ground.

# About Stren & Blan Partners

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