



Jurisdictional Boundaries in International Arbitration

A Commentary on the Court of Appeal's Decision in Oil & Gas Industrial Services Limited v Hempel Paints (South Africa) Pty Ltd.

www.strenandblum.com
contact@strenandblum.com
   @strenandblum

+234 (0)702 558 0053
3 Theophilus Orji Street, Off Fola Osibo
Road, Lekki Phase 1, Lagos, Nigeria



INTRODUCTION

For a long time, it seemed jurisdictional boundaries regarding foreign-seated arbitrations were clear. While national courts in the seat of arbitration are empowered to recognise and enforce the award or set aside the award, national courts in enforcement jurisdictions are limited to recognising and enforcing the award or refusing the recognition of the award. This glaringly means that only national courts in the seat of arbitration are empowered to set aside a foreign arbitral award.

However, whether a Nigerian court has the jurisdiction to set aside a London-seated arbitral award was a question the Court of Appeal in *Oil & Industrial Services Limited v Hempel Paints (South Africa) Pty Limited*¹ had to determine.

The Court of Appeal's decision in this case provided clarity on the jurisdiction of Nigerian courts regarding foreign-seated arbitrations. It served as a departure from the previous position of the Court of Appeal in *Limak Yatirim, Enerji Uretim Isletme Hizmetleri Ve Insaat A.S. & Ors v Sahelian Energy & Integrated Services Ltd*² where the Court upheld the trial court's decision that Nigerian courts are endowed with the jurisdiction to set aside foreign arbitral awards.

This case provided the Court of Appeal with the long-awaited opportunity to rehash Limak's position and realign Nigeria as a pro-arbitration jurisdiction.

¹ Unreported decision in Appeal No. CA/PH/177/20201.

² (2021) LPELR-58182(CA).



FACTS OF THE CASE

Hempel Paints A/S (“Hempel”), a global manufacturer of paints, entered a distributorship contract with Oil & Industrial Services Limited (“OIS”), a paint distributor based in Port Harcourt, Rivers State, Nigeria. The contract contained an arbitration clause where the parties agreed to refer any dispute arising from or in connection with the contract to arbitration. The arbitration clause further provided that the dispute will be settled by a sole arbitrator seated in London and appointed in accordance with the arbitration rules of the London Court of International Arbitration (LCIA).

A dispute arose when OIS failed to settle Hempel’s invoices for the supply of paint products. Aggrieved by OIS’s actions, Hempel instituted an action before the High Court of Rivers State to recover the debt; however, OIS’s defence was the existence of an arbitration and a request that the dispute be referred to arbitration. The court upheld this defence and referred the parties to arbitration.

Hempel commenced arbitration against OIS at the London Court of International Arbitration. The arbitration was conducted on a document-only basis, and the sole arbitrator issued a Final Award (“the Award”) in favour of Hempel.

In view of this, Hempel filed an Application before the High Court of Rivers State, Nigeria, to enforce the Award against OIS. OIS filed a counter-affidavit to challenge the enforcement of the Award and commenced a separate suit seeking to set aside the Award, relying on several grounds. The two suits were consolidated, and the key issue for determination was whether the court had jurisdiction to set aside the Award rendered by the LCIA in London. After listening to the arguments of both parties, the court held that it lacked jurisdiction to set aside the Award. The court recognised the Award and held it to be enforceable as a judgment of the court.

THE COURT OF APPEAL'S DECISION

Dissatisfied with the trial court's judgment, OIS appealed to the Court of Appeal to canvass its arguments on the key issue as to whether a Nigerian court could set aside a foreign arbitral award.

The Appellant argued that while arbitral awards, generally, are not to be tampered with, there are cases where a court would go outside the general principle to set aside an arbitral award for lack of fairness, justice, and misconduct from the arbitrator, all of which qualify for the Award to be nullified.³

The Respondent, on the other hand, argued that the Appellant made the application to set aside the Award before the wrong authority, the High Court of Rivers State, when the application should have been made to the English Court, being the court with supervisory role over the arbitration proceedings held in the UK.⁴

In upholding the trial court's decision, the Court of Appeal held that the High Court of Rivers State was correct to hold that it does not have jurisdiction to set aside the Award. The court held that a Nigerian court does not have supervisory jurisdiction over a foreign-seated arbitration, and, by implication, it cannot set aside foreign arbitral awards.

According to the court, only the English Court could set aside the Award since the seat of the arbitration was in London.

³ The Appellant relied on Sections 29, 20 and 48 of the Arbitration and Conciliation Act (Now, Arbitration and Mediation Act).

⁴ The Respondent relied on Article V(1)(e) of the New York Convention, 1958.

COMMENTARY

This is not the first time the Court of Appeal has decided an application seeking to set aside a foreign arbitral award. In the Limark case, the Court of Appeal overstretched its jurisdiction to include setting aside an arbitral award. In its reasoning, the Arbitration and Conciliation Act⁵ empowered Nigerian courts to set aside an arbitral award irrespective of the country in which it was made. The Court of Appeal in Limark's case failed to consider the supervisory roles which the national courts of the seat of arbitration play in international commercial arbitration, and which is the basis on which court may set aside an award.

In Hempel's Case, the Court of Appeal took a different approach, a step that clarified the jurisdictional boundaries of courts in foreign-seated arbitration. Although, this case was commenced during the regime of the Arbitration and Conciliation Act, it reflected the clarity that the Arbitration and Mediation Act 2023 (AMA) introduced.

Under the defunct Act, the power of a Nigerian court to set aside an award under section 48 was provided for in Part III of the defunct Act which was titled Additional Provisions Relating to International Commercial Arbitration, and this was heavily relied on in Limark's case as it suggests that a Nigerian court could set aside an award irrespective of the country where it was made, because the Act did not specify whether it meant awards rendered in Nigeria or outside Nigeria.

However, the introduction of the AMA has clarified this ambiguity with the introduction of Sections 1(6) and (7) of the AMA, which expressly spell out the jurisdictional boundaries of a Nigerian court where Nigeria is the seat of arbitration and where the seat of arbitration is outside Nigeria.

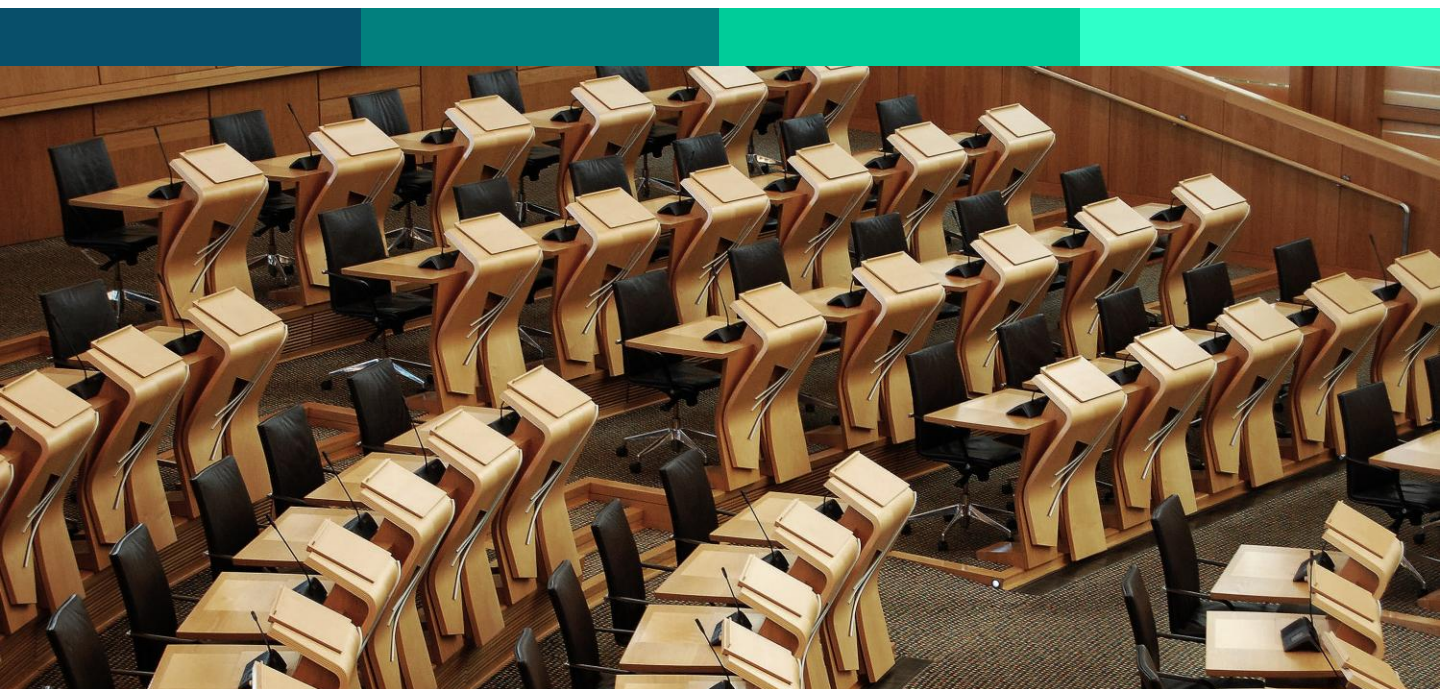
The Court of Appeal's decision in this case brings to light the true intendment of the New York Convention and the newly established position under the AMA regarding the distinct boundaries that courts in the seat of arbitration and the enforcement jurisdiction should be aware of. It is now clear that the jurisdictional boundary of a Nigerian court regarding a foreign arbitral award does not extend to setting aside the award.

5 Cap A18, LFN 2004.

CONCLUSION

The Court of Appeal's decision in *Oil & Industrial Services Limited v. Hempel Paints (South Africa) Pty Ltd* represents a watershed moment in Nigerian arbitration jurisprudence, providing definitive guidance on jurisdictional boundaries that align perfectly with the subsequent enactment of the AMA.

The decision demonstrates the responsibility of Nigerian courts in respecting international arbitration frameworks, particularly the seat-based supervisory system in the New York Convention. The court's recognition that Nigerian Courts cannot exercise supervisory jurisdiction over foreign-seated arbitrations while maintaining their role in recognition and enforcement of awards, revolutionizes the Limark regime, and strikes the precise balance formalized under the AMA.



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Authors



Stanley Umezuruike

Associate

StanleyUmezuruike
@strenandblan.com



Michael Afuye

Associate

MichaelAfuye
@strenandblan.com



Ebeneze Ogunwole

Associate

EbenezeOgunwole
@strenandblan.com



+234 (0)702 558 0053
3 Theophilus Orji Street, Off Fola Osibo Road,
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