



## Key Contacts



**Bidemi Olumide**  
Managing Partner  
[bidemi.olumide@ao2law.com](mailto:bidemi.olumide@ao2law.com)



**Joseph Ajah**  
Senior Associate  
[joseph.ajah@ao2law.com](mailto:joseph.ajah@ao2law.com)



**Oghenekaro Isiorho**  
Associate  
[oghenekaro.isiorho@ao2law.com](mailto:oghenekaro.isiorho@ao2law.com)

# REVIEW OF ARBITRAL AWARDS UNDER NIGERIA'S NEW ARBITRATION LAW

## Introduction:

On May 26, 2023, former president, Muhammadu Buhari signed into law the Arbitration and Mediation Act, 2023 (the **Act**, or **AMA 2023**), repealing Nigeria's 35-year-old Arbitration and Conciliation Act Chapter A.18, Laws of the Federation of Nigeria, 2004 (the **ACA 2004**). The primary objective of the Act is to establish a unified legal framework for the fair and efficient resolution of commercial disputes through arbitration and mediation while ensuring the application of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (**New York Convention**) to awards rendered in Nigeria or any Contracting State arising out of international commercial arbitration. The Act introduces several innovative provisions designed to address the shortcomings of the ACA 2004, such as Third-party Funding, Emergency Arbitration, Consolidation of Arbitral Proceedings, Concurrent Hearings, and provisions relating to the Setting Aside and Review of Arbitral Awards through mechanisms like the *Award Review Tribunal*.

This article examines the provisions of the Act concerning the grounds for setting aside and reviewing arbitral awards, drawing comparisons with ACA 2004 to highlight the notable changes in Nigerian law.

## Brief Overview of the Old Law on Setting Aside or Reviewing Arbitral Awards:

Under the ACA 2004, a party could, within 30 (*thirty*) days of receipt of an award, request the arbitral tribunal to correct any clerical or typographical error, computational error, or to give an interpretation of a specific point or part of the award. The tribunal could also, on its own volition and if it considers the request 'justified', correct any clerical or typographical error, computation error and or issue an additional award to address any claim presented during the proceedings but omitted from the final award. The ACA 2004 provided for specific periods during which the tribunal could respond to such requests, although such a period could be extended if deemed necessary.

The grounds for setting aside the award, on the other hand, were primarily focused on the integrity of the proceedings and the conduct of the arbitrator. A party who is aggrieved by an arbitral award could apply to the court (which includes the High Court of a State or that of the Federal Capital Territory or the Federal High Court) within 3 (*three*) months from the date of the award or from the date the request for correction or an additional award was disposed of, if the:

1. award contained decisions on matters that were beyond the scope of the submission to arbitration; or
2. decisions on matters submitted to arbitration could be separated from those not submitted, in which case, only the part of the award dealing with non-submitted matters could be set aside; or
3. award was improperly procured or if the arbitrator misconducted himself during the proceedings.

Notably, the court could suspend proceedings to allow the arbitral tribunal to resume proceedings or take actions to eliminate the grounds for setting aside. In addition to setting aside the award, the court could order the removal of the arbitrator if proven guilty of misconduct.

Misconduct by an arbitrator could include any unethical behavior or breach of the principles of impartiality and independence. Based on judicial decisions, courts in Nigeria have often relied on English cases in deciding whether an arbitrator indeed misconducted his or herself as this was not expressly provided by the ACA 2004.

Although the provisions of the ACA 2004 allowed for limited intervention by the courts, it did not provide a comprehensive review mechanism for addressing substantive issues arising from arbitral awards, leaving room for ambiguity in cases where an award was fundamentally flawed but did not meet the technical grounds for setting aside the same.

### **The New Law - Setting Aside or Reviewing Arbitral Awards under the AMA 2023:**

While AMA 2023 retains the provisions of the ACA 2004 with respect to correction, interpretation and requests for additional awards, it has introduced broader provisions on the grounds for setting aside arbitral awards and reviews. The Act expressly provides that the court can set aside an arbitral award where the party seeking the application furnishes proof of one or more of the following, that is, that the:

1. party to the arbitration agreement was under some legal incapacity;
2. arbitration agreement is not valid under the law to which the parties have subjected it, or failing such indication, Nigerian law;

3. applicant was not given proper notice of the appointment of an arbitrator or the arbitral proceedings or was unable to present its case;
4. award deals with a dispute not contemplated by or does not fall within the terms of the submission to arbitration;
5. award addressed matter(s) beyond the arbitration's scope; however, if separable, only the parts dealing with issues not submitted to arbitration may be set aside;
6. tribunal's composition or procedure did not adhere to the parties' agreement, unless it conflicts with mandatory provisions of the Act or, in the absence of an agreement, was inconsistent with the Act;
7. subject matter of the dispute is not otherwise capable of settlement by arbitration under Nigerian law or Nigerian public policy.

An application to challenge an arbitral award may be initiated by originating motion, outlining the relief sought, the specific questions for the court's determination, details of the challenged award, confirmation of statutory compliance, and the section of the Act under which the claim is brought. If the court is satisfied that an applicant has proved one or more of the above conditions and substantial injustice has or may be caused to the applicant, the court may either remit the award to the tribunal in whole or in part for reconsideration or set aside the award in whole or in part.

An application to set aside an award must be made within 3 (*three*) months from the date the award was received. However, in a case where a request had been made for the correction, interpretation, or an additional award, the applicant may apply to set aside the award no later than 3 (*three*) months from the date the court disposes of such request.

Parties have the option to make provisions in their agreement for their arbitral award to be reviewed by an Award Review Tribunal (**ART**). Significantly, parties can only apply to the ART if it is so stipulated in their arbitration agreement. The ART has the authority similar to that of the court to either partially or fully set aside the award or uphold it entirely. Unless parties agreed otherwise, the ART shall be constituted in the same manner as the first tribunal (**'First Instance Tribunal'**) that determined the dispute. Parties can agree on the procedure of the ART, otherwise, the ART may decide to conduct the proceedings in a manner it considers appropriate and render its decision within 60 (*sixty*) days from the date of its constitution.

Where the ART decides to set aside the award of the First Instance Tribunal, a dissatisfied party may apply to the court for a review of the decision of the ART. If the court finds that the decision of the ART is unsupportable either in whole or in part, it may reinstate the earlier award. Where however the ART upholds the award in whole or in part, the court can only set aside the award of the First Instance Tribunal or ART, on the grounds of legal incapacity or invalidity.

## **Commentary:**

The introduction of ART is a commendable step that offers an aggrieved party the opportunity to have an award tested on some limited grounds as highlighted above. Nevertheless, it also raises concerns regarding potential delays in the final resolution of disputes, as it introduces an additional layer of review. It is significant to note that the Act did not specify that the court, that is the court of first instance, shall serve as the final appellate court, which invariably means that any of the aggrieved parties may continue to appeal the arbitral award up to the Supreme Court. One of the primary advantages of referring a dispute to arbitration is to ensure quick resolution of disputes, particularly commercial disputes where timing is often of utmost importance. It can be argued that with the new provision and its attendant elongated appellate process this objective may have been severely impacted.

The AMA 2023 marks a significant shift in Nigeria's arbitration landscape by enhancing the clarity, fairness, and efficiency of the dispute resolution process. The introduction of the ART and reference to the court tends to strike a balance between upholding the finality of arbitral awards and ensuring that parties easily address their dissatisfaction with arbitral awards without necessarily involving the court. Significantly, extant regulations for arbitral proceedings need also be amended to include provisions on ART proceedings.

Conclusively and in line with our earlier commentary, serious consideration must be paid by policy and law makers on the issue of a final appellate court for arbitration matter, that is, without the whole nine yards to the Supreme Court. This in our view will reflect a progressive approach towards mitigating elongated judicial processes, fostering party autonomy, and promoting Nigeria as a country with a modern and forward-thinking arbitration process.

## **About AO2LAW:**

At AO2LAW, we maintain a foremost Arbitration + Mediation Practice in advisory, representation, and management (including funding) capacities. Situated within our Disputes Resolution and Commercial Law Practice Groups, our Firm brings to bear our expertise in core Commercial Law to assist businesses best navigate their commercial disputes.

For further information on the foregoing (none of which is a legal advice) or related matters, please generally contact us at [cclp@ao2law.com](mailto:cclp@ao2law.com), or specifically contact the authors