

## **P & ID CASE: NIGERIA'S IMPACT IN INTERNATIONAL ARBITRATION PROCEEDINGS**

### **Introduction**

The Federal Republic of Nigeria had signed Memorandum of Understanding with Process and Industrial Developments Limited (P&ID)-a British company titled "Gas Supply and Processing Agreement for Accelerated Gas Development" ("the GSPA") wherein under the Agreement, Nigeria was to supply specified quantities of "wet" gas to Gas Processing Facilities (GPFs) constructed by P&ID. P&ID was to strip the wet gas into "lean" gas, to be delivered to Nigeria which will be used for power generation. The remaining natural gas liquids were to be retained by P&ID for onward sale either domestically or by export. A common ground arose that Nigeria did not supply any wet gas to P&ID, nor did P&ID construct any Gas Processing Facilities. In view of this, arbitration proceedings ("the Arbitration") was commenced by P&ID against Nigeria, relying on an arbitration clause in the GSPA wherein the Tribunal awarded Nigeria in favor of P&ID US\$ 6.6 billion with interest rate of 7%.

Nigeria challenged the award before the Commercial Court in London on grounds of bribery, corruption and perjury. On 23<sup>rd</sup> October, 2023, an arbitration award of over \$11 billion was awarded against P&ID in favor of The Federal Government of Nigeria by the Commercial Courts of England.

Needless to say that the case of The Federal Republic of Nigeria v. Process and Industrial Developments Limited (P&ID) has created a landmark in legal drafting, international arbitration and contractual obligations and we examine the landmarks of this case in unveiling Nigeria's unconventional strategy to ethical considerations in contract drafting and the balance of confidentiality in arbitration, nationally and internationally.

### **Impact of Nigerian Legislation in international arbitration**

#### **Section 68 of the Arbitration Act 1996**

One of the core elements scrutinized by the court was Section 68 of the Arbitration Act 1996. This section is crucial in the context of challenging an arbitral award. Section 68 deals with "serious irregularities" that may affect the award's procurement. In this case, the court invoked Section 68 to assess whether such irregularities existed with focus on allegations of fraud and conduct contrary to public policy as claimed by Nigeria on the merits.

This section creates a safeguard in arbitration proceedings, allowing parties to challenge awards when irregularities of a serious nature are identified. However, it sets a high threshold for invoking this provision. To successfully challenge an award under

Section 68, the irregularity must meet specific criteria, such as fraud or conduct contrary to public policy which is within the climes of Nigeria's claim. On scrutiny, the court affirmed these facts with the aid of section 68 of the ACA.

### **Principle of Substantial Injustice**

The court re-established critical emphasis on the concept of substantial injustice where it noted that it was not enough for the irregularities to merely exist; they had to rise to a level where they caused substantial injustice to the aggrieved party—in this case, Nigeria. The court deemed the cumulative impact of the aforementioned irregularities as not merely injurious but of such a magnitude that it surpassed what could reasonably be expected in an arbitral process. What this holds in arbitral proceedings is magnitude of injustice which will determine the award.

### **The Doctrine of Separability**

The court also clarified the distinction between the question of jurisdiction and the GSPA itself, emphasizing that Section 68(2)(g) pertained to the award's procurement, not the contract's substance. This clarification delineated the boundaries within which the court's scrutiny operated, emphasizing the separation of these crucial elements. Relying on this, it is established that to determine the doctrine of separability between the contract and Jurisdiction, reference is made to issues raised by parties as affecting the substance of the contract or the issue of jurisdiction.

### **Conclusion**

The court's ruling to set aside the arbitration awards in favour of Nigeria was exquisite and has reaffirmed the sanctity of arbitration as a means of dispute resolution, guided by principles of integrity and fairness judging from the merits of the case sending a clear message that fraudulent practices and serious irregularities will not find refuge in the world of international arbitration and such is recognized by international legal minds to the credit of the Nigerian legislative committee on laying hold of the clarity of section 68 of Arbitration Act.

We further note that the case stands beyond a legal landmark to offering treasure trove of implications and lessons that are poised to influence the realms of international arbitration, contract law, and ethical standards in the years to come. It re-emphasizes the need for ethical standard international business contracts, especially those involving a sovereign state: the need for meticulously structured and ethically sound agreements. In view of this, we note that whilst the pursuit of profit remains a central tenet in commercial contracts, ethical principle as established by this case safeguard the interests of all parties involved as it creates a balance between economic interests and ethical obligations.

