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THE NEXUS BETWEEN ARBITRATION AND LITIGATION AS LEGAL MECHANISMS IN THE SETTLEMENT OF DISPUTES IN NIGERIA

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ABSTRACT

This paper examines the nexus between arbitration and litigation in the settlement of disputes in Nigeria. It explores the intersection, relationship, and distinguishing features between the two concepts as functional legal tools for dispute resolution in Nigeria. The study adopted doctrinal and comparative analysis methods, citing relevant legal documents such as statutes, case law, and academic literature on arbitration and litigation. It analyses the Arbitration and Mediation Act (AMA) 2023, which repealed the Arbitration and Conciliation Act (ACA) and established a unified legal framework, alongside the National Policy on Arbitration and Alternative Dispute Resolution 2024–2028. The paper concludes that an in-depth knowledge of the nexus between arbitration and litigation is essential if disputes of any kind are to be resolved or settled amicably between parties. The paper recommends, among others, that in choosing between arbitration and litigation, factors such as confidentiality, flexibility, timeliness, expertise and the nature of the dispute should guide the selection of an appropriate dispute resolution mechanism in Nigeria.

Keywords: Litigation, arbitration, nexus, disputes, mechanism, settlement, ADR, Nigeria

INTRODUCTION

Conflicts or disputes are indispensable realities in any human society, whether between individuals or organisations, as long as humans coexist or do business together. The settlement of disputes is unavoidable, and regardless of how tense or difficult a dispute may be, the approach or mechanism for resolving such disputes is pivotal and must be chosen wisely (Ogalagu & Ezekwem, 2023). Arbitration and litigation are two indispensable legal tools for resolving disputes and other contentious circumstances, each having its own advantages and disadvantages.

As a concept, arbitration is a method of resolving disputes whereby such disputes are submitted to one or more neutral arbitrators who then settle the dispute impartially without conventional legal processes (Tackaberry & Marriot, 2023, cited in Awodezi & Izobo, 2023). Litigation, on the other hand, is the process whereby disputes are settled in a court of law. It involves a case, disagreement, or lawsuit being brought before a court, with the filing party referred to as the claimant/plaintiff and the accused party as the respondent/defendant, who appears before a judge or magistrate for the purpose of obtaining justice.

Due to the interplay between the two concepts, questions have been raised as to which tool or mechanism is more appropriate to adopt and in what circumstances. There is also a quest to understand the existing relationship between arbitration and litigation, as well as the implications for effective dispute settlement. The Arbitration and Mediation Act (AMA) 2023 has created a workable framework for dispute resolution in Nigeria by laying emphasis on arbitration as an important tool for dispute settlement (Arbitration and Mediation Act, 2023). However, misconceptions persist regarding the applicability and usefulness of arbitration versus litigation, leading to ambiguity and abuse in their use.

Statement of the Problem

Disputes and the settlement of disputes are integral parts of human existence. Worldwide, and in Nigeria in particular, two primary ways of settling disputes are arbitration and litigation, each with its unique characteristics, advantages and disadvantages. Notwithstanding, the relationship sbetween arbitration and litigation in Nigeria has been poorly understood, which often leads to inconsistencies, ambiguities and ineffectiveness in dispute settlement. This unclear and inconsistent application regularly causes delay, increases the cost of dispute settlement and hinders access to justice (Olujobi & Olujobi, 2020, as cited in Businessday, 2026). Moreover, the existing literature on arbitration and litigation in Nigeria has focused solely on their individual advantages, disadvantages and features, failing to explore their interplay, convergences and divergences. Thus, by understudying the nexus between arbitration and litigation, this study seeks to bridge the gap in understanding how arbitration and litigation work together to aid effective dispute resolution and settlement in Nigeria.

Objectives of the Study

The main objective of this study is to examine the nexus between arbitration and litigation as legal mechanisms in the settlement of disputes in Nigeria. In specific terms, the study will:

i. examine the intersection between arbitration and litigation in Nigeria;

ii. identify similarities and differences between the two concepts; and

iii. analyse the implications of using arbitration or litigation as dispute settlement mechanisms in Nigeria.

CONCEPTUAL FRAMEWORK

i. Arbitration

Arbitration in recent years has become the most generally acceptable mechanism for settling disputes worldwide. Every country operates some form of arbitration law or another. As Ogalagu and Ezekwem (2023) observed, "The Arbitration Law of any nation is the established legal framework for resolving disputes outside the traditional court systems by providing parties to a dispute with a fair and impartial alternative to litigation". The J. Michael Goodson Law Library opines that "arbitration is a dispute-resolution process in which the parties select a neutral third party to resolve their claims". Tackaberry and Marriot (2023, cited in Awodezi & Izobo, 2023) defined arbitration as "a mechanism for the resolution of disputes which take place, usually in private, pursuant to an agreement between two or more parties under which the parties agree to be bound by the decision to be given by the arbitrators according to law and, if so agreed, other considerations after a fair hearing, such decisions being enforceable at Law".

According to the African Arbitration Case Review (2023), "arbitration has become an increasingly popular means of resolving disputes in Africa, with a growing number of parties opting for this alternative to litigation". In Nigeria, arbitration has gained significant traction, particularly in commercial disputes. It allows parties to appoint a neutral arbitrator to hear their case and render a binding decision, and this method is especially popular in commercial and contractual disputes due to its confidentiality, flexibility, and speed compared to litigation (LawGlobalHub, 2025). One of the key benefits of arbitration is that parties can choose their arbitrator and have more control over the procedures. It is especially effective for cross-border disputes (LawGlobalHub, 2025).

ii. Litigation

Litigation is the traditional method of dispute resolution in Nigeria. It is the process by which disputes are settled in a court of law, governed by a variety of substantive or adjectival laws applicable at state and federal levels, including the Constitution of the Federal Republic of Nigeria 1999 (as amended) (Mondaq, n.d.). According to the Businessday (2026) report on dispute resolution mechanisms, litigation offers institutional authority, coercive powers, and structured procedural steps. It gives parties the right of appeal, which can be used or abused to frustrate the winning party (Lexology, 2023). However, litigation in Nigeria is also blighted by undue delays, court congestion, procedural adjournments and frivolous appeals.

The Nigerian judiciary has faced criticism for being reluctant to accommodate arbitration and ADR as means of dispute resolution (Nicarb Blog, 2022). Nevertheless, litigation remains the most common form of dispute resolution in Nigeria (Lexology Indepth, 2025). The court's power to enforce arbitration agreements and arbitral awards is a crucial aspect of the litigation-arbitration interface, which this study explores.

LEGAL AND INSTITUTIONAL FRAMEWORKS FOR ARBITRATION IN NIGERIA

i. The Arbitration and Mediation Act (AMA) 2023

Prior to 2023, the principal legislation governing arbitration in Nigeria was the Arbitration and Conciliation Act (ACA), Cap A18, Laws of the Federation of Nigeria 2004, which was enacted in 1988. On 26 May 2023, former President Muhammadu Buhari signed the Arbitration and Mediation Bill into law, thereby repealing the ACA of 1988/2004 (Linklaters, 2023; Paris Court of International Arbitration, 2023). The Arbitration and Mediation Act (AMA) 2023 provides a unified legal framework for the fair and efficient settlement of commercial disputes through arbitration and mediation, aligning Nigeria's dispute resolution mechanisms with international best practices (LawGlobalHub, 2025).

Section 1 of the AMA sets out its objectives: "The objective of this Part is to promote fair resolution of disputes by an impartial tribunal without unnecessary delay or expense" and that "Parties to a dispute are at liberty to decide the means by which their disputes may be resolved, provided they adhere to measures that are necessary to promote peaceful existence and protect public interest" (Section 1, AMA 2023). The AMA applies to both international and domestic arbitration proceedings in Nigeria and introduces several major changes including: a mandatory obligation on the court to enforce arbitration agreements; enhanced protection for arbitral proceedings; provision for third-party funding; and the novel creation of an Award Review Tribunal (ART) (Keating Chambers, 2024).

ii. Award Review Tribunal (ART)

One of the most innovative features of the AMA is the optional recourse to an Award Review Tribunal for awards rendered in arbitrations seated in Nigeria (White & Case, 2023). Section 56 of the AMA permits parties to a Nigerian-seated arbitration to agree, in writing, that an award may be reviewed by an ART (Aceris Law, 2023). The ART provides parties seeking a second arbitral review before approaching the court and narrows the grounds for setting aside arbitral awards, notably removing arbitrator misconduct as a basis for annulment (The Guardian, 2025). This novel concept empowers an ART to review arbitral awards in the place of domestic courts, in concert with wider reforms to Nigerian arbitration law via the 2023 Act (Mayer Brown, 2025).

iii. Third-Party Funding and Other Innovations

The AMA explicitly abolishes the torts of champerty and maintenance in relation to arbitration, thereby permitting third-party funding for both Nigeria-seated arbitration and proceedings arising out of such arbitration in Nigerian courts (Third-Party Funding Blog, 2024). The Act also permits parties to agree to consolidate arbitral proceedings or hold concurrent hearings, provides for mandatory stay of parallel court proceedings, and regulates national courts' power to issue, recognise and enforce interim measures (Freshfields, 2023; Squire Patton Boggs, n.d.).

iv. Lagos State Arbitration Law 2009

It is important to note that where an arbitration is seated in Lagos State, the Lagos State Arbitration Law 2009 (AL 2009) applies, unless the parties otherwise agree (Banwo & Ighodalo, 2026). This creates a dual framework: the AMA governs arbitrations in other parts of Nigeria, while the AL 2009 continues to apply to Lagos-seated arbitrations. Practitioners and parties must be aware of this distinction when choosing the seat of arbitration.

v. National Policy on Arbitration and Alternative Dispute Resolution 2024–2028

Beyond legislation, Nigeria has adopted a comprehensive National Policy on Arbitration and ADR (2024–2028), unveiled by the Federal Ministry of Justice on 11 February 2025 following approval by the Federal Executive Council in July 2024 (Mondaq, 2025; Wolters Kluwer, 2025). The Policy aims to strengthen arbitration and ADR practice through a robust governance mechanism, position Nigeria as a regional and international arbitration hub in Africa, and harmonise ADR standards across sectors such as oil and gas, construction, and finance (Federal Ministry of Information, 2024). The Policy also seeks to promote Nigeria as a friendly business environment for investment while standardising education, accreditation and the integration of ADR into government processes (The Sun Nigeria, 2025; Businessday, 2025).

THE NEXUS BETWEEN ARBITRATION AND LITIGATION

Arbitration does not operate in isolation. The Arbitration and Mediation Act 2023 has created rooms for an intersection between arbitration and litigation, serving as a unified framework for settling disputes. Key areas of intersection include:

i. Jurisdiction

An arbitration agreement does not automatically oust the jurisdiction of the court. As Businessday (2025) reported, citing a court judgment, “The mere existence of an arbitration clause in a contract does not oust the jurisdiction of the court. While parties may agree to resolve disputes through arbitration, such an agreement does not automatically preclude a court from hearing a case”. However, where a valid arbitration agreement exists, the court will usually stay proceedings in favour of arbitration unless the agreement is void, inoperative or incapable of being performed.

ii. Stay of Proceedings

Under the ACA, the court had discretion to refuse an application for a stay of proceedings where the applicant failed to provide sufficient reason why the matter should not be referred to arbitration. However, Section 5 of the AMA imposes a mandatory obligation on the court to refer parties to arbitration when there is a valid arbitration agreement (Mondaq, 2023). This change is significant, as it reinforces the primacy of arbitration agreements and limits judicial interference. Where a court makes an order for stay of proceedings, the court may, for the purpose of preserving the rights of parties, make an interim or supplementary order as may be necessary (Section 5(3), AMA 2023, as cited in LawCareNigeria, 2024).

iii. Enforcement of Arbitral Awards

Although arbitration decisions are generally binding on parties, there are occasions where a party refuses to abide by the agreement reached. In such circumstances, the court can come in to enforce arbitral awards. An application to enforce an award on an arbitration agreement may be made ex parte, but the court hearing the application may order it to be made on notice (Federal High Court Civil Procedure Rules 2009). The AMA introduces streamlined enforcement procedures, broader definitions of foreign awards, and limited grounds for refusal (e.g., public policy exceptions), thereby reducing judicial interference and promoting pro-enforcement biases (Nigerian Journals Online, 2025). In a notable decision, the Federal High Court in Abuja upheld the validity and enforceability of a final arbitral award worth N52 billion in favour of Chams Consortium Limited against the National Identity Management Commission (NIMC), demonstrating judicial support for the enforcement of arbitral awards (Businessday, 2026).

iv. Interim Measures

Courts can grant interim measures of protection for arbitration proceedings. Nigerian courts have power under the AMA to issue, recognise and enforce interim measures, and the court is required to exercise this power within 15 days of receiving an application and in accordance with the Arbitration Proceedings Rules 2022 (Afronomicslaw, 2019). This provision ensures that parties do not suffer irreparable harm while awaiting the resolution of arbitration proceedings.

v. Setting Aside and Review of Awards

Under the AMA, parties may apply to the court to set aside an arbitral award on limited grounds. Additionally, the novel Award Review Tribunal provides an opportunity for parties to conduct a secondary review of the initial arbitral award before approaching the court. The ART is an elective procedure and does not replace judicial recourse entirely (Wolters Kluwer Legal Blogs, 2023). However, the AMA narrows the grounds for setting aside arbitral awards, thereby promoting finality and reducing the scope for interlocutory court challenges.

SIMILARITIES AND DIFFERENCES BETWEEN ARBITRATION AND LITIGATION

i. Similarities

Both arbitration and litigation are formal dispute resolution processes that result in legally binding decisions enforceable by law. Both mechanisms involve an impartial third party (arbitrator or judge) who hears the parties' arguments and evidence before rendering a decision. Both processes guarantee parties a fair hearing and provide a mechanism for resolving disputes without recourse to self-help.

ii. Differences

Feature	Arbitration	Litigation
Choice of decision-maker	Parties have the privilege to choose their arbitrator(s)	Parties have no choice; the case is assigned to a judge or court
Decision	Award given by arbitrator(s) or arbitration tribunal	Judgment given by a judge or court
Timeliness	Decisions are reached timely and quickly, with a predictable timeline (LACIAC, 2025)	Significant delay in delivery of judgment due to court congestion, procedural rules, and appeals (Lexology, 2023)
Procedure	Flexible; parties can agree on procedural rules	Strict adherence to court rules and procedures (e.g., Evidence Act, civil procedure rules)
Privacy	Held in private; confidential	Held in public, except in certain cases
Cost	Parties bear the cost of arbitration, including arbitrator fees, venue, etc.	More cost-effective in terms of filing fees, but extensive legal fees, court costs, and prolonged proceedings (LACIAC, 2025)
Outcome	Arbitral award is binding on both parties; designed to be final	Judgment may favour one party and may be subject to multiple appeals
Appeal	No appeal is necessary when the parties' agreement excludes appeal (except on limited grounds of procedural irregularity or jurisdictional error). The AMA also provides for Award Review Tribunal	Judgments by a lower court are open to appellate review, sometimes up to the Supreme Court
Enforcement	Cross-border enforceability under the New York Convention; easier where assets are located outside Nigeria (Trusted Advisors Law, n.d.)	Enforcement is strictly domestic, though judgments from superior courts may be enforceable in other countries under reciprocity arrangements
Legal representation	Arbitrators have inherent power to determine who may represent parties, allowing potential representation by foreign counsel (Mondaq, 2023)	Representation is strictly by Nigerian legal practitioners as defined by the Legal Practitioners Act

Explaining the differences in cost, a Lagos Chamber of Commerce International Arbitration Centre (LACIAC) report (2025) notes that while arbitration may have higher upfront costs, the efficiency and speed often make it more cost-effective in the long run compared to litigation, which involves extended court processes. The Lexology (2023) interview with Udo

Udoma & Belo-Osagie further highlights that "litigation in Nigeria is blighted by undue delays" and litigants have a constitutionally guaranteed right of appeal that has been "abused to bring frivolous appeals to frustrate the winning party".

IMPLICATIONS FOR CHOOSING BETWEEN ARBITRATION AND LITIGATION

The choice between arbitration and litigation has significant legal and practical implications for parties involved in disputes. Arbitration's confidentiality, flexibility and speed make it attractive for commercial parties, particularly in cross-border transactions (LawGlobalHub, 2025). As Businessday (2026) emphasises, arbitration offers a significant advantage in cross-border transactions because "arbitral awards benefit from international enforcement frameworks that reduce friction where assets are located outside Nigeria". It is especially popular in commercial and contractual disputes (LawGlobalHub, 2025; Lexology, 2023).

Litigation, on the other hand, offers institutional authority, coercive powers (e.g., garnishee proceedings, writ of attachment), and structured procedural steps (Trusted Advisors Law, n.d.). Where enforcement is purely domestic, litigation may have the advantage because litigants can utilise the coercive powers of the court to compel satisfaction of judgments. However, as observed by business organisations, the constitutional right to appeal, while fundamental, can be abused to delay the enforcement of judgments, making arbitration a more efficient alternative for dispute resolution in certain commercial contexts.

The Arbitration and Mediation Act 2023, together with the National Policy on Arbitration and ADR 2024–2028, represents a deliberate effort by the Nigerian government to promote arbitration and position Nigeria as an arbitration hub in Africa (Wolters Kluwer, 2025). The Policy deepens arbitration by accrediting practitioners and promoting sector-specific dispute mechanisms in industries such as oil and gas, construction and finance (Businessday, 2025). Practitioners and parties should consider factors such as:

- The nature and complexity of the dispute (technical disputes favour arbitration with expert arbitrators);
- The need for confidentiality (arbitration is private, litigation is public);
- The location of parties and assets (cross-border considerations favour arbitration);
- Time and cost implications;
- The need for interim relief (courts may be quicker to grant urgent relief, but arbitral tribunals also have power to grant interim measures under the AMA);
- The possibility of appellate review (litigation provides a structured appeal process, while arbitration is designed for finality).

CONCLUSION

The nexus between arbitration and litigation in Nigeria is both complementary and dynamic. While the two mechanisms have distinct characteristics, they do not operate in isolation. The Arbitration and Mediation Act 2023 has created an integrated framework that enables the two processes to interact effectively. Courts retain a supervisory role, granting stays of proceedings, enforcing arbitration agreements and arbitral awards, and granting interim measures. The introduction of the Award Review Tribunal and the National Policy on Arbitration and ADR further strengthens arbitration's position as a viable alternative to litigation.

An in-depth understanding of the relationship between arbitration and litigation is essential for parties, legal practitioners and policymakers. It enables informed choices about the most appropriate dispute resolution mechanism, taking into account the nature of the dispute, the parties' relationship, cost and time implications, and the enforceability of decisions.

RECOMMENDATIONS

Based on the findings of this study, the following recommendations are made:

i. **Informed choice of mechanism:** Parties should carefully consider the nature of their dispute, confidentiality needs, cost implications, and the location of assets before deciding between arbitration and litigation.
ii. **Resort to arbitration for cross-border disputes:** Given the international enforceability of arbitral awards under the New York Convention, parties with multinational transactions should favour arbitration to reduce enforcement friction.
iii. **Utilise the Award Review Tribunal:** Parties to Nigerian-seated arbitration should take advantage of the optional Award Review Tribunal established under the AMA 2023 as a cost-effective and time-saving alternative to immediate recourse to the court.
iv. **Capacity building for judges and arbitrators:** There should be continuous training for judges and arbitrators on the provisions of the AMA 2023, the National Policy on Arbitration and ADR, and emerging trends in dispute resolution.
v. **Harmonisation of arbitration laws:** The Federal Government should work towards harmonising the AMA 2023 with the Lagos State Arbitration Law 2009 to create a unified national arbitration framework.
vi. **Promote ADR in public contracts:** Government ministries and agencies should incorporate arbitration and mediation clauses in public contracts to reduce the burden on courts.
vii. **Public education and awareness:** Law firms, bar associations, and academic institutions should intensify public education on the availability, benefits, and appropriate use of arbitration as an effective dispute resolution mechanism.
viii. **Adoption of the National Policy:** All stakeholders in the justice sector should support the implementation of the National Policy on Arbitration and ADR 2024–2028, including the accreditation of ADR practitioners and the establishment of sector-specific dispute resolution panels.

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