

## **The English Commercial Court Decision in the Federal Republic of Nigeria v Process and Industrial Development Ltd. (2023) EWHC 2638 (Commercial): Commentary on the Nigerian Perspective**

**Bello Ibrahim Olaoluwa**

**Mobola Adio**

*Faculty of Law, Lead City University, Ibadan, Oyo State, Nigeria*

*E-mail: [olubelloib@gmail.com](mailto:olubelloib@gmail.com), [mobola.adio@gmail.com](mailto:mobola.adio@gmail.com)*

### **ABSTRACT**

*This study examines the landmark decision of the English Commercial Court in Federal Republic of Nigeria v Process and Industrial Development Limited (2023) EWHC 2638 (Commercial), in which the judgement served as a damning indictment of predatory international investors. In the complex landscape of international dispute resolution, arbitration emerges as a highly favoured method with distinct advantages over classical litigation proceedings. Arbitration plays a pivotal role in various domains, notably within international commercial law, facilitating the smoother resolution of intricate and complex contractual disputes. The judgement revealed the brazen fraud perpetrated by the P & ID to obtain the arbitral award, which was revealed for all to see despite their consistent attempt to frustrate the passage of justice through bribery and corruption. The study conducts an in-depth analysis of how P & ID obtained the award by practising the most severe abuse of the arbitral process. This study applies the doctrinal approach (qualitative method). In conclusion, lessons and recommendations would be examined from various writers from different journals.*

**Keywords:** *Arbitration, arbitral award, international dispute resolution, complex contractual dispute, Nigeria.*

### **1.1 INTRODUCTION**

In a traditional legal setting, parties often take disputes to the court of law of the relevant jurisdiction. Recently, however, Alternative Dispute Resolution (ADR)

procedures have become increasingly commonplace in dispute resolution. There is a range of ADR mechanisms, such as mediation and arbitration, which parties may choose from to resolve disputes. To this end, parties involved in a dispute may agree on the preferred dispute resolution method through incorporating a clause to this effect in their agreement; however, parties may also consent to a method after a dispute has arisen.<sup>55</sup>

At the global stage, international commercial arbitration is an accepted means of settling disputes, which recourse for the settlement of disputes from every sector of the economy. This has not always been the case. The international trade and business landscape has evolved over the years, like every aspect of life within the global community. The process of development of international business contract has witnessed the development of rules that govern such contractual relations. Initially, business and contractual disputes were referred to the courts for trial and obtaining binding judgements. However, as the dynamics of international trade relations changed, trade volume increased, and so also did trade disputes, and it became necessary to install dispute settlement mechanisms that were speedy, less adversarial, yet with a binding effect<sup>56</sup>.

To examine the grounds for the setting aside of the Arbitral award in the Federal Republic of Nigeria v Process and Industrial Development Limited (2023) EWHC 2638 (Commercial), this study aims to critically examine the decision of the High Court in the Federal Republic of Nigeria v Process and Industrial Development Limited (2023) EWHC 2638 (Commercial).

## 1.2 Research Questions

1. What grounds did Justice Knowles rely upon to set aside the final arbitral award of P & ID v Ministry of Petroleum of Nigeria?
2. What are the relevant Sections relied upon by the Federal Republic of Nigeria in setting aside the arbitral award?
3. The decision of the English High Court Commercial division as per Knowles J: was it justiceable, fair and equitable?
4. What are the lessons lent in the investor-state dispute?

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<sup>55</sup> Mahanakorn Partners Group, "Alternative Dispute Resolution Mechanisms: Arbitration and Mediation" June 2021, < <https://mahanakornpartners.com/alternative-dispute-resolution-mechanisms-arbitration-and-mediation/>. > accessed 14 August 2025.

<sup>56</sup> Ekundayo O. Babatunde Ph. D, "Appraisal of Legal Framework Governing Arbitration in Settlement of Contractual Disputes in the Nigerian Maritime Industry", Jus Gentium Journal of the Department of Jurisprudence and International Law, Faculty of Law, University of Benin, Benin City, Nigeria, 2024, Vol 2, Issue 1, 19- 20.

### 1.3 Significance of the Study

This study would provide an in-depth analysis of the decision reached in the FRN V P & ID (2023) EWHC 2638 (Commercial), such as the fact of the case, the relevant Sections relied upon by disputing parties, the decision of the court, the content of the Gas Supply Processing Agreement, opinion of various writers and recommendations.

## 2. LITERATURE REVIEW

Hattie Middleditch in her article titled: “A Case with No Winners: Lessons from Nigeria v. Process & Industrial Developments Ltd”, explained her observations on documentary evidence that the 2023 Nigeria decision serves as a timely reminder of the importance of evidence, and perhaps particularly document discovery, as a mechanism that facilitates finding the truth as a means to achieving justice. In the underlying arbitration, very little documentary evidence appears to have been produced, with the tribunal left largely reliant on witness evidence, some witness statements from deceased individuals, and expert testimony. Although party agreements may ultimately determine the scope of evidence exchange in international arbitration, arbitrators and practitioners should remember that adequate exchange of information and strict adherence to ethical standards in such exchanges are vital to the fair outcome of arbitrations.<sup>57</sup>

In another article by Paul, Olivia, and Mariana titled: “Nigeria v P & ID: Caution against an Arbitral Tribunal’s non-interventionist approach to Arbitration? The writers’ opinions on the tension that can arise in Commercial and Investor-State Arbitration, and explain that the circumstances of fraud leading to the Nigeria v P&ID judgment were probably sui generis; the judgment should give pause. In particular, the obiter comments made by Mr. Justice Knowles about Nigeria’s representation during the arbitration and the tribunal’s role in managing the arbitration process should be of concern to all practitioners. Where London is the seat of the arbitration, the tribunal’s general duty under Section 33 of the Act can give rise to a tension between the duty to act fairly and impartially in giving each party the opportunity to put its case forward; and the duty to adopt procedures suitable to the circumstances of the case (avoiding unnecessary delay or expense in the arbitration process).<sup>58</sup>

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<sup>57</sup> Hattie Middleditch, ‘A Case with No Winners: Lessons from Nigeria v. Process & Industrial Developments Ltd’, (n 14), 21.

<sup>58</sup> Paul Stothard, Olivia Fox and Mariana Plaza Cardenas, “Nigeria v P & ID: Caution against an Arbitral Tribunal’s non- interventionist approach to Arbitration?” February 2024, International

Paul, Olivia, and Mariana also observed Justice Knowles' views that the Tribunal did not have the assistance that it was entitled to expect, which makes the arbitration process work. Nigeria did not, in the event, properly consider, select, and attempt admittedly difficult legal and factual arguments that the circumstances likely required. Even without the dishonest behaviour of P&ID, Nigeria was compromised.<sup>59</sup> Justice Knowles acknowledged that the tribunal took certain measures in the arbitration to address Nigeria's inaction, including applying pressure and attempting to encourage proper engagement. However, the court found that there had not been a fair fight between the two parties throughout the arbitration and that the tribunal's approach was very traditional.<sup>60</sup>

### **3. The Facts in the Federal Republic of Nigeria v Process & Industrial Developments Limited case**

The Government of Nigeria and P & ID Limited entered into a Gas Supply and Processing Agreement (GSPA) in January 2010. The contract was entered into to address Nigeria's electricity shortage by using gas from the recovery of oil instead of flaring it, which caused air pollution in Nigeria's Southern region. The GSPA has its place part of the way along a timeline that spans two decades. Nigeria had a chronic shortage of electric power. Yet gas from the recovery of oil in Nigeria was being flared rather than used to generate electricity, causing harmful pollution in the process. The GSPA came as Nigeria embarked on a policy named the Accelerated Gas Development Project to tackle this.<sup>61</sup> Under the terms of the GSPA, Nigeria is to supply wet gas (natural gas) to P & ID in which about 85% is processed in the form of lean gas and sent to the Nigerian government. The Nigerian government is under an obligation to construct pipelines to transport the wet gas to P & ID gas

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Arbitration Report, Issue 21, < <https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.nortonrosefulbright.com/en/knowledge/publications/8d1c52b3/nigeria-v-pid&ved=2ahUKEwi1tpnZ8YqPAxWrTkEAHcNoFncQFnoECBoQAQ&usg=AOvVaw3Gb9rW4IFaxW5nHupSwNtG>. > Accessed 6th June 2025.

<sup>59</sup> Paul Stothard, Olivia Fox and Mariana Plaza Cardenas, 'Nigeria v P & ID: Caution against an Arbitral Tribunal's non- interventionist approach to Arbitration?' (n 4).

<sup>60</sup> *ibid.*

<sup>61</sup> *Federal Republic of Nigeria v Process & Industrial Developments Limited* (2023) EWHC 2638 (Comm), Para 6.

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processing facility. Both the Nigerian government and P & ID failed in their obligation to participate in the GSPA for 3 years.<sup>62</sup>

On 11th January 2010, Claimant and Respondent (the parties) entered into a written Gas Supply and Processing Agreement (GSPA) whereby the Government agreed that for a term of 20 years it would make available to P&ID, 400 MMScuFD of Wet Gas and P&ID agreed to process the gas and return approximately 85% by volume to the Nigerian government in the form of Lean Gas. For the purpose of enabling the Wet Gas to be processed, P&ID agreed to construct two or more process streams with ancillary facilities.<sup>63</sup>

The supply of Wet Gas by the Nigerian government was to take place in two phases. In Phase 1, the Government was to supply 150 MMScuFD "during or before the last quarter of 2011". In Phase 2, the remaining 250 MMScuFD were to be supplied "on or before the third quarter of 2012". The Claimant alleges that the Government, in breach of its obligations, did not provide any Wet Gas by the dates stipulated. On 20th March 2013, no Wet Gas having been delivered, P&ID wrote to the Ministry alleging that it had repudiated the GSPA and accepting the repudiation. It claimed about US\$6 billion in damages for loss of profits. P & ID, on the other hand, did not make any attempt to construct any gas processing facility.<sup>64</sup>

The Arbitration Tribunal consists of Leonard Hoffmann as President, Christopher Bayo Ojo as Counsel to the respondent, and Anthony Evans as Counsel to the Claimant. On the allegation that Nigeria was not properly represented during the Ad hoc arbitration, it was discovered that On 7th May 2014 the Respondent's solicitors notified the Tribunal that "due to the inability of our client to provide us with complete instructions for the engagement of an expert to prepare a statement in rebuttal to the statement of Justice Belgore (Rtd) it would be unable to serve its skeleton argument as provided in Procedural Order No 3 and might not be able to

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<sup>62</sup> Wilfred Mutubwa, "Nigeria v P & ID and its effect on UNCITRAL Model Law Arbitration", February 2024 (Afronomics Law), <

<https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.afronomicslaw.org/category/analysis/nigeria-v-pid-and-its-effect-uncitral-model-law-arbitration&ved=2ahUKEwiopans8lqPAXTTKEAHZN-LSgQFnoECBcQAQ&usg=AOvVaw0K1GbzcE7gVGK7l-VLiZqq>. > Accessed 20 May 2025.

<sup>63</sup> JUSMUNDI, "P & ID v Ministry of Petroleum of Nigeria", Part Final Award on Jurisdiction, Paragraph B, 3rd June 2014, < <https://jusmundi.com/en/document/other/en-process-and-industrial-developments-ltd-v-the-ministry-of-petroleum-resources-of-the-federal-republic-of-nigeria-amended-reply-of-the-federal-republic-of-nigeria-friday-4th-february-2022>. > Last accessed 1st June 2025.

<sup>64</sup> *ibid*, Paragraph B, (n 9).

attend the hearing on 14th May 2014. On 8 May 2014 the Presiding Arbitrator asked the Respondent's solicitors for confirmation as to whether or not they would be attending the hearing on 14th May 2014, indicating that if they were not going to attend, the Tribunal might decide to dispense with a hearing and rule on the preliminary issues on the basis of the written material which had been submitted.<sup>65</sup>

On 9th May 2014, the Respondent's solicitors responded by stating that: Due to the inability of our client to provide us with complete instructions in respect of this arbitration, we are constrained to inform the Tribunal that it appears we will be unable to attend the hearing scheduled for the 14th of May 2014. No application was made for an adjournment of the hearing. On 11th May 2014, the Tribunal notified the parties that it proposed to dispense with an oral hearing, and by e-mail dated 11th May 2014, the Claimant notified the Tribunal that it did not require an oral hearing. The materials before the Tribunal for the purposes of its rulings on the preliminary issues are accordingly the Claimant's Request for Arbitration and Statement of Case, the Notice of Preliminary Objection and the Respondent's Submissions in support and Reply; the Claimant's Submissions on the Preliminary issues, the witness statement of Mr. Quinn and the expert report of Justice Belgore.<sup>66</sup>

Three issues were considered for determination by the arbitral tribunal as follows:

- I. Whether the Tribunal has jurisdiction to rule upon its own jurisdiction to decide any of the matters in issue in the arbitration.
- II. If the answer to question (a) is yes, whether it has jurisdiction to decide whether the contract is valid and binding upon the parties.
- III. If the answer to question (b) is yes, whether the contract is void for any of the reasons stated in the Notice of Preliminary Objection.

The Tribunal held stating that:

"The Tribunal has jurisdiction to rule upon its own jurisdiction to decide any of the matters in issue in the arbitration; the Tribunal has jurisdiction to decide whether the contract (i.e. the GSPA) is valid and binding between the parties; the contract (i.e. the GSPA) is not void for any of the reasons stated in the Notice of Preliminary Objections."<sup>67</sup>

In examining the Part Final Award on Liability before the Tribunal on the 17th July 2015, the following issues were raised by the Nigerian government in its

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<sup>65</sup> *ibid*, Paragraph 28- 32, (n 9).

<sup>66</sup> *ibid*, Paragraph 28- 32, (n 9).

<sup>67</sup> *ibid*, Paragraph 51 (1) (a) - (c), (n 9).

Statement of Defence, the written submissions supplied to the Tribunal by Mr Sasore for the purposes of the hearing, and the Final Submission are as follows:

- I. Did the Government have authority to enter into the GSPA? Was the Government's obligation to supply Wet Gas limited to such as Addax and Exxon were willing to provide?
- II. Did the Government have any obligations under the GSPA before it commenced the supply of Wet Gas?
- III. Was the Government's obligation to supply Wet Gas conditional upon the Claimant having previously constructed the gas processing facilities?
- IV. Was the GSPA vitiated by a misrepresentation by P&ID or a mistaken belief on the part of both Parties that the OMLS contained 250 MMSCuFD or 4OOMMSCuFD20 of Wet Gas?
- V. Was the GSPA frustrated by the refusal of Addax to provide Wet Gas? Was the Government discharged by force majeure?
- VI. Is the validity of the GSPA affected by the P&ID's alleged motives for entering into it?
- VII. Is the validity of the GSPA affected by the P&ID's alleged lack of a legitimate expectation that the Government would be able to perform its obligations?
- VIII. Was the GSPA void as illegal or contrary to public policy?
- IX. Did the GSPA become extinct by the P&ID's acceptance of a bilateral offer?<sup>68</sup>

In one of the issues raised in the Nigerian government's statement of defence, the Tribunal was of the opinion that the allegations of misrepresentation (and reliance thereon by the GSPA) therefore depend upon such inferences as can be drawn from the documents and the evidence of Mr Quinn.<sup>69</sup> Mr Quinn said in his witness statement that:

*"....There were numerous natural gas fields off the coast of Calabar, such as those contained in [OML 123 and OML 67]... From information available in the public domain and our research, it was*

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<sup>68</sup> JUSMUNDI, "*P & ID v Ministry of Petroleum of Nigeria*", Part Final Award on Liability, Paragraph 39, 17th July 2015, < <https://jusmundi.com/en/document/other/en-process-and-industrial-developments-ltd-v-the-ministry-of-petroleum-resources-of-the-federal-republic-of-nigeria-amended-reply-of-the-federal-republic-of-nigeria-friday-4th-february-2022>. > Last accessed 1st June 2025.

<sup>69</sup> JUSMUNDI, "*P & ID v Ministry of Petroleum of Nigeria*", Part Final Award on Liability, Paragraph 69, (n 14).

*clear that there was more than enough Wet Gas off the coast of Calabar to support a gas stripping and propylene plant operation in the Calabar area processing a Wet Gas throughput of 400 MMSCuFD...There were discussions about the possible locations from which to source Wet Gas for the Project. On 15th June, I wrote to the Honourable Minister to explain the potential benefits of using, for Phase 1, the 180- 200 MMSCuFD of Wet Gas, which was at that time being flared by Addax Petroleum off the coast of Calabar in a concession known as OML 123. In September 2009, a series of meetings commenced, some of which included stakeholders such as P&ID, the Government, and Addax, some of which were between P & ID and Addax, and, I believe, some of which were between the Government and Addax. At a meeting chaired by Engineer Tijani, technical adviser to the Ministry, on 13 November 2009...Addax Petroleum confirmed their willingness to deliver 100 MMSCuFD of natural gas from the 168 MMSCuFD Wet Gas that they were currently flaring to the P&ID site...to comply with its domestic obligations.”<sup>70</sup>*

In another issue, the Nigerian government argued, on the issue of frustration, that the contract became impossible to perform when Addax refused to provide the necessary 150 MMSCuFD of Wet Gas. But there is no evidence that the contract was incapable of performance.<sup>71</sup> The government further argued in its Statement of Defence that Mr Oguine said in his witness statement that P&ID was motivated by the wish to make a profit. It is unusual for anyone to enter into a business transaction for any other purpose, and Mr Sasore said at the hearing that he did not rely upon this feature as a defence.<sup>72</sup>

The Tribunal concluded by rejecting all the defences put forward by the Government and held that the Nigerian government repudiated its obligations under the GSPA. P&ID was entitled to terminate the contract on 20 March 2013 and claim damages for the Government’s failure to perform. In delivering an award on liability against Nigeria, the Tribunal held that:

“We, Leonard, Lord Hoffmann, Chief Bayo Ojo SAN and Sir Anthony Evans, having read the parties' written evidence, pleadings and submissions and having heard their oral submissions, and

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<sup>70</sup> *ibid*, Paragraph 70.

<sup>71</sup> *ibid*, Paragraph 73.

<sup>72</sup> *ibid*, Paragraph 75.

having carefully considered the same and for the reasons stated above, make our second Part Final Award as follows: We declare that the Government repudiated the GSPA by failure to perform its obligations under Articles 6 a) and b) thereof; P&ID was entitled to and did accept the Government's repudiation on 20 March 2013; P&ID is entitled to damages (in an amount to be assessed) for the Government's repudiation of the GSPA; The parties are jointly and severally liable for the unpaid costs of the arbitration and that a party which has paid or pays more than an equal share of such costs is entitled to recover the excess from the other party. We order the parties to consult with each other and the Tribunal to agree upon a procedure and date for a hearing to determine the amount of damages to which P&ID is entitled; We reserve to ourselves for later decision all other matters in dispute in the reference."<sup>73</sup>

Arbitration commenced in August 2012 before a London tribunal. In 2015, the Tribunal decided that the Nigerian government repudiated the agreement. In 2017, the Tribunal awarded damages to P & ID in the sum of \$6.6 billion with interest at the rate of 7%, starting from March 20, 2013. The sum increased to \$11 billion as of September 2020. The Judgement for the enforcement of the Arbitral award was granted in August 2019 at the London High Court.<sup>74</sup> The final award of the Tribunal is stated as follows:

"We, Leonard, Lord Hoffmann and Sir Anthony Evans, having read the parties' written evidence, pleadings and submissions and having heard their oral evidence and submissions, and having carefully considered the same and for the reasons stated above, make our Final Award as follows, namely we order the Respondent to pay to the Claimant the sum of \$6,597,000,000 together with interest at the rate of 7% from 20 March 2013 until the date of this award and at the same rate thereafter until payment."<sup>75</sup>

In December 2019, Nigeria applied to the London High Court for an extension of time to challenge the initial arbitral award on the ground that there is a prima facie case of fraud against the P & ID. Mr Howard QC (Counsel to Nigeria)

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<sup>73</sup> *ibid*, Paragraph 80.

<sup>74</sup> Wilfred Mutubwa, "*Nigeria v P & ID and its effect on UNCITRAL Model Law Arbitration*" (n 8).

<sup>75</sup> JUSMUNDI, "*P & ID v Ministry of Petroleum of Nigeria*", Final Award, Paragraph 112, 31st January 2017, < <https://jusmundi.com/en/document/other/en-process-and-industrial-developments-ltd-v-the-ministry-of-petroleum-resources-of-the-federal-republic-of-nigeria-amended-reply-of-the-federal-republic-of-nigeria-friday-4th-february-2022>. > Last accessed 1st June 2025.

argued that: P & ID fraudulently obtained the GSPA by paying bribes to Nigerian government officials, Mr Quinn (the former Chairman of P & ID) gave perjured evidence to the Tribunal to give the impression that P & ID was able and willing to perform its obligations under the GSPA, evidence of bribery against Mrs Grace Taiga, Nigeria's Counsel in the arbitration in bad faith failed to challenge Mr Quinn's false evidence, Nigeria's Counsel colluded with P & ID to defend the case thinly such that the Tribunal would favour P & ID, Nigeria was not adequately represented at the Tribunal, the GSPA was obtained by fraud as part of a larger scheme to defraud Nigeria.<sup>76</sup>

On September 4, 2020, the High Court granted Nigeria an extension of time to challenge the award under Section 67, 68 (2) (g), 70 (3) of the UK Arbitration Act 1996, now 2025, as amended<sup>77</sup> to set aside the award. In the words of Justice Knowles before the Business and Property Court of England and Wales, King's Bench Division, Commercial Court, "P & ID has had a fair trial and it has lost". He further stated that "the arbitration was a shell that got nowhere near the truth". The King's Bench Court held, while setting aside the award, that:

*"In the circumstances and for the reasons I have sought to describe and explain, Nigeria succeeds on its challenge under Section 68. I have not accepted all of Nigeria's allegations. The Awards were obtained by fraud and the Awards were in the way they were procured contrary to public policy. What happened in this case is very serious indeed, and it is important that Section 68 is available to maintain the rule of law."*<sup>78</sup>

#### 4. **Content of the Gas Supply Processing Agreement (GSPA)**

The Agreement is stated as follows:

*"The Agreement shall be governed by, and construed per the laws of the Federal Republic of Nigeria. The Parties agree that if any difference or dispute arises between them concerning the interpretation or performance of this Agreement and if they fail to settle such difference or dispute amicably, then a Party may serve on the other a notice of arbitration under the rules of the Nigerian Arbitration and Conciliation Act (Cap A18 LFN 2004)"*<sup>79</sup> which,

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<sup>76</sup> *ibid.*

<sup>77</sup> The United Kingdom Arbitration Act 1996 now 2025 as amended, Section 67, 68, and 70.

<sup>78</sup> *Federal Republic of Nigeria v Process & Industrial Developments Limited*, Para 574- 575.

<sup>79</sup> Arbitration and Conciliation Act Cap A18 LFN 2004 and repealed and re-enacted as the Arbitration and Mediation Act 2023.

*except as otherwise provided herein, shall apply to any dispute between such Parties under this Agreement. Within thirty (30) days of the notice of arbitration being issued by the initiating Party, the Parties shall each appoint an arbitrator, and the arbitrators thus appointed by the Parties shall, within fifteen (15) days from the date the last arbitrator was appointed, appoint a third arbitrator to complete the tribunal. If the arbitrators do not agree on the appointment of such third arbitrator within the aforementioned fifteen (15) days, or any extension of such deadline that the Parties may mutually agree, such an arbitrator shall be appointed by the President of the Court of Arbitration of the International Chamber of Commerce (ICC) by the relevant ICC rules<sup>80</sup> on the application of either Part (notice of the intention to apply having been duly issued to the other) and, when appointed, the third arbitrator shall convene meetings of the arbitration panel, act as chairman thereof and decide the differences or dispute should the arbitrators fail to reach a unanimous decision. No arbitrator shall be appointed by either of the Parties or their respective Affiliates within five (5) years prior to the notice of arbitration.<sup>81</sup> When an arbitrator refuses or neglects to act, or is incapable of acting or dies, a new arbitrator shall be appointed in his place and the above provisions of appointing arbitrators shall, mutatis mutandis, govern the appointment of such arbitrator.<sup>82</sup> The arbitration award shall be final and binding upon the Parties. The award shall be delivered within two months after the appointment of the third arbitrator or within such extended period as may be agreed by the Parties. The costs of the arbitration shall be borne equally by the Parties. Each Party shall, however, bear its own lawyers' fees. The venue of the arbitration shall be London, England or otherwise as agreed by the Parties. The arbitration proceedings and record shall be in the English language. The Parties shall agree to appropriate arbitration terms to exclusively resolve any disputes arising between them from this Agreement.”<sup>83</sup>*

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<sup>80</sup> International Chamber of Commerce Arbitration Rules.

<sup>81</sup> *Federal Republic of Nigeria v Process & Industrial Developments Limited.*

<sup>82</sup> *ibid.*

<sup>83</sup> *ibid.*

The GSPA is an arbitration clause aimed at resolving disputes in the future should any arise between contracting parties. Both contracting parties agreed that the arbitration clause shall be governed by the law of the Federal Republic of Nigeria and the Arbitration and Conciliation Act LFN 2004. Parties also agreed that the arbitral proceeding, after appointment of arbitrators, shall be in accordance with the International Chamber of Commerce (ICC) Rules of Arbitration, in the seat of arbitration is London or as agreed by the parties. The language of arbitration shall be English language.<sup>84</sup>

The Arbitral proceeding was resolved between 2012 and 2017. This is against the advantages of ADR, but the reason why it took this long period is because it was clearly stated in the GSPA arbitration clause that, “the award shall be delivered within two months after the appointment of the third arbitrator or within such extended period as may be agreed by the parties”.<sup>85</sup>

It is also observed that the venue of the arbitral proceeding was in the London Court of International Arbitration and not in any International Branch of the ICC. This is possible because the arbitration clause in the GSPA stated that, “... or otherwise as agreed by the parties”. While the arbitral proceeding was conducted at the LCIA, the ICC Arbitration Rules were applied.<sup>86</sup>

The GSPA is a General Arbitration Clause that consists of the process for resolving disputes, the administering institution, the seat and venue of arbitration, the language, designation, and governing law. The Arbitration clause is an Institutional Arbitration Clause administered under the ICC in accordance with the ICC Arbitration Rules<sup>87</sup>.

## **6. Examining the decision of the English Commercial Court**

The London King’s Bench Court observed the irregularities Nigeria suffered, which are:

- I. The provision of false witness evidence.
- II. The ongoing bribery of an official during the arbitration.
- III. The improper retention of the internal legal documents received during the arbitration.

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<sup>84</sup> *ibid.*

<sup>85</sup> *ibid.*

<sup>86</sup> *ibid.*

<sup>87</sup> Soram Agrawal, “Arbitration Clause in Contract”, < <https://blog.ipleaders.in/arbitration-clause-in-contracts/>. > Accessed 27 May 2025.

Nigeria suffered these irregularities under Section 68 of the UK Arbitration Act 1996 (now 2025 as amended).<sup>88</sup> Section 68 not only considers whether the award was obtained through fraud but also whether the way in which the award was procured was contrary to public policy. The Section applies in cases where Nigeria was completely denied its right to legal professional privilege throughout the process. P&ID obtained the Awards only by engaging in severe abuses of the arbitral process. As a result, Nigeria had a right to object under Section 68 (2) (g) of the Arbitration Act 1996.<sup>89</sup>

The Court acknowledged that it is true there were other factors contributing to the Awards, including incompetence and negligence on the part of Nigeria throughout the Arbitration (through various individuals). However, the presence of these factors does not diminish the effects of P&ID's abusive conduct. If this were a fight, it would not be a fair one and could not result in a just outcome. Under Section 73,<sup>90</sup> Nigeria has demonstrated that at the time it participated in or continued to participate in the Arbitration, it did not have knowledge and could not have reasonably discovered the grounds for its objection under Section 68(2) (g). Therefore, Nigeria did not lose its right to object under Section 68 (2) (g).<sup>91</sup> The arbitral award against Nigeria was set aside.<sup>92</sup>

## 5. CONCLUSION

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<sup>88</sup> Hattie Middleditch, "A Case with No Winners: Lessons from *Nigeria v. Process & Industrial Developments Ltd*", (New York Law School Law Review), 68 (2), January 2024, <  
[https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article%3D2621%26context%3Dnyls\\_law\\_review&ved=2ahUKEwjdi6vv7lqPAXUgSkEAHV\\_cLuQQFnoECBYQAQ&usg=AOvVaw0CmrVyWFHH1GZiorndrtFZ](https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article%3D2621%26context%3Dnyls_law_review&ved=2ahUKEwjdi6vv7lqPAXUgSkEAHV_cLuQQFnoECBYQAQ&usg=AOvVaw0CmrVyWFHH1GZiorndrtFZ). > Accessed 21 May 2025.

<sup>89</sup> Branham-Paul Chima, "FRN V P&ID: Unveiling key lessons and analyzing their impact on Nigeria's Legal Landscape; (With Commentary of Relevant Nigerian Case Laws on the Lessons)", <  
[https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.academia.edu/108670222/FRN\\_v\\_P\\_and\\_ID\\_UNVEILING\\_KEY\\_LESSONS\\_AND\\_ANALYZING\\_THEIR\\_IMPACT\\_ON\\_NIGERIAS\\_LEGAL\\_LANDSCAPE\\_WITH\\_COMMENTARY\\_OF\\_RELEVANT\\_NIGERIAN\\_CASE\\_LAWS\\_ON\\_THE\\_LESSONS&ved=2ahUKEwiY8-PF7YqPAXWRdUEAHUDYCFsQFnoECBYQAQ&usg=AOvVaw0wGR\\_ECds46Glb3RLlc-tl](https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.academia.edu/108670222/FRN_v_P_and_ID_UNVEILING_KEY_LESSONS_AND_ANALYZING_THEIR_IMPACT_ON_NIGERIAS_LEGAL_LANDSCAPE_WITH_COMMENTARY_OF_RELEVANT_NIGERIAN_CASE_LAWS_ON_THE_LESSONS&ved=2ahUKEwiY8-PF7YqPAXWRdUEAHUDYCFsQFnoECBYQAQ&usg=AOvVaw0wGR_ECds46Glb3RLlc-tl). > Accessed 20 May 2025.

<sup>90</sup> The United Kingdom Arbitration Act 1996 now 2025 as amended, Section 73.

<sup>91</sup> The United Kingdom Arbitration Act 1996 now 2025 as amended, Section 68 (2) (g).

<sup>92</sup> Branham-Paul Chima, 'FRN V P&ID: Unveiling key lessons and analyzing their impact on Nigeria's Legal Landscape; (With Commentary of Relevant Nigerian Case Laws on the Lessons)', (n 35).

In conclusion, the decision of Justice Knowles before the High Court of England and Wales was a landmark decision that exposed the challenges of engaging in an investor-state arbitration. This is also a lesson for the Nigerian government not to accept an unprepared contract with the intent to commit fraud. The decision has also shed light on corrupt practices among public office holders who engage in contract agreements without due diligence. Another important observation in the landmark decision is the duty of a legal practitioner who is also a qualified chartered arbitrator to ensure that the client's interests are protected by engaging in a proper investigation of documents and examination of witnesses. Furthermore, the setting aside of the award on grounds of fraud and breach of public policy has placed a burden on a sole arbitrator or an arbitrator in chief to adhere to the principles of impartiality and justice. An arbitrator in chief must not rely on evidence brought by parties alone, but ensure that parties are well represented by professionals who have engaged in proper research before handling any arbitral proceeding.

## **6. RECOMMENDATIONS**

According to Kiiza Smith and three others in their article titled: "Case analysis: Process & Industrial Development (P&ID) vs. The Federal Republic of Nigeria (2023)", recommend that States should incorporate transparency provisions and protocols in their contracts. In addition, promote the development of specific procedural rules that would cater to the needs of States when participating in commercial arbitration, which can be adopted by arbitral tribunals with the consent of all parties.<sup>93</sup> Furthermore, the writers recommended that to curb corruption in arbitration, the tribunal should adopt the common law and criminal standard of proof beyond a reasonable doubt. Where there are still doubts or the tribunal is unsure, it should seek further evidence or submissions. There should be clear and convincing proof before the tribunal rules against any party.<sup>94</sup>

The decision of the High Court in the *FRV v P & ID* has exposed the challenges faced in arbitration. There is a need to promote integrity and transparency during an investor-state dispute resolution process. Arbitration institutions must ensure that arbitral proceedings are transparent and free from irregularities.

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<sup>93</sup> Kiiza Smith, Renu Pal Sood, Malvika Gupta and Averi Bhimta, "Case analysis: Process & Industrial Development (P&ID) vs. The Federal Republic of Nigeria (2023)", (African Journal of Criminology and Justice Studies) March 2025, Volume 14, Issue 2, <  
<https://digitalscholarship.tsu.edu/ajcjs/vol14/iss2/4>. > Accessed 19 August 2025.

<sup>94</sup> *ibid.*

Arbitration institutions, Professional bodies, and States are recommended to invest in legal training with adequate infrastructure. Additionally, Arbitration institutions, professional bodies, and States must ensure due diligence and disclosure of obligations in sensitive contracts especially for investor-state arbitration agreements.

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## Legislations

1. The Arbitration and Conciliation Act Laws of Federation 2004 now repealed and re-enacted as the Arbitration and Mediation Act 2023.

2. The United Kingdom Arbitration Act 1996 now 2025 as amended.

#### Arbitration Rules

1. The International Chamber of Commerce Arbitration Rules now 2021 as amended.

#### Decided Court Cases

1. *Federal Republic of Nigeria v Process & Industrial Developments Limited* (2023) EWHC 2638 (Comm).

#### Arbitral Awards

1. *P & ID v Ministry of Petroleum of Nigeria*”, Part Final Award on Jurisdiction.
2. *P & ID v Ministry of Petroleum of Nigeria*”, Part Final Award on Liability.
3. *P & ID v Ministry of Petroleum of Nigeria*”, Final Award.