

THE LAGOS STATE ARBITRATION LAW AND THE DOCTRINE OF COVERING THE FIELD: A REVIEW.

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1. INTRODUCTION

Lagos¹ is a metropolitan city located in the south west geo-political zone of Nigeria. It has long been a trading/commercial hub of Nigeria and West Africa because of its commercial/economic importance; and is now one of the largest and fastest growing urban cities in the world.² The commercial and economic position of the state naturally gives rise to disputes among business men and parties to commercial transaction, as disputes are inevitable in all human relation especially business transactions.³ Litigation is the traditional method of settling such disputes but, because of its attendant problems of delay, excessive cost, rigid procedures, unnecessary publicity and adversarial nature as well as the need to preserve and further their business relationships, parties in recent times now embrace arbitration and other Alternative Dispute Resolution (ADR) mechanisms which is faster, cheaper, less cumbersome, more effective and efficient to resolve their disputes.⁴ Arbitration is one of the most suitable means of resolving commercial disputes in Nigeria.⁵ It is an alternative method of dispute resolution in which a neutral third party (arbitrator) hands down a decision after a hearing, of which both parties have an opportunity to be heard.⁶ Arbitration involves a fair resolution of disputes between not less than two parties for determination in a judicial manner by person(s) other than a court.⁷ Arbitration is principally regulated by the Arbitration and Conciliation Act.⁸ However, after several years of its application, recent trends of development in investment, social -economic and commercial relation in Nigeria revealed that there is the need to review and probably amend the Act, to meet contemporary realities and developments in order to ensure its continuing efficacy and effectiveness.⁹ Also the much-touted advantages of arbitration over litigation is often in practice bedeviled with one snag or the other,

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1. Lagos State is one of the 36 states of the Nigerian Federation. See section 3(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

2. According to Financial Times, Lagos generate about a quarter of Nigeria's gross domestic product. See Xan Rice report in Financial Times. <<http://m.theatlantic.com/international/archive/2012/07/this-is-africa-news-biggest-city-lagos-nigeria-population-21-million/259611>> Accessed 25 July 2014.

3. Akanbi M.M. 'Contending Without Being Contentious: Arbitration, Arbitrators And Arbitrability' (Being the 152nd University of Ilorin Inaugural Lecture delivered at the University of Ilorin Auditorium on 13th November, 2014) p.3; Adekilekun M. T., Olatunji O. A., Gan C.C. and Akanbi M.M, 'Public-Private Partnership Initiative in Nigeria and its Dispute Resolution Mechanism: An Appraisal' (2013) 40 Journal of Malaysian and Comparative Law 67-68; Olorunfemi J.O., 'The Effect of Arbitration Agreement on The Jurisdiction of the Court in Nigeria' (2009) 2 Nigeria Journal of Public Law 310

4. Daibu A.A., 'Application of the Rules of Natural Justice in Arbitral Proceedings in Nigeria' (2013) 1 Ife Juris Review 56; Bukar B.A. 'Emerging Trends in Alternative Dispute Resolution: From Mono Door to Multi-Door' (2013) 79 Arbitration 72; Akanbi M.M., *Domestic Commercial Arbitration in Nigeria: Problems and Challenges* (Lambert Academic Publishing Germany, 2012) 32; Ajogwu F. *Commercial Arbitration in Nigeria: Law and Practice* (Mbeyi & Associates Nig Ltd Lagos, 2009) 5.

5. Daibu (n 4) 58-59.

6. Abdulrauf L.A. and Daibu A.A., 'Challenges of Section 20 of the Nigerian Admiralty Jurisdiction Act to International Arbitration Agreements' (2013 - June 2014) 2 Journal of Contemporary Law 33-34; Daibu (n 4) 56; Akanbi, *Domestic Commercial Arbitration in Nigeria* (n 4) 47; Adewuyi T.A., 'The Effect of Section 20 of the Admiralty Jurisdiction Act No 59 of 1991 on International Arbitration Clauses' (2006) 1 University of Ilorin law Journal 1; Bernstein R. et al, *Handbook of Arbitration Practice* (3rd edn, 1998, Sweet & Maxwell, London) 13; *Black's Law Dictionary* (6th edn, West Group Publishing Co. 1990) 105

7. Olorunfemi, 'The Effect of Arbitration Agreement' (n 3) 310; Sambo A.O. and Akanbi M.M. 'Sulh as a form of Dispute Resolution' Adnan Trakic edn, *Islamic Banking & Finance: Principles, Instruments & Operations* (2012) The Malaysian Current Law Journal, Sdn Bhd, Malaysia 375; Ajogwu F. *Commercial Arbitration in Nigeria: Law and Practice*, 5 ; Akanbi 'Contending Without Being Contentious' (n 3) 4; *Halsbury's Laws of England* (3rd edn, London: Butterworths, 1964) vol 2, para 501.

8. Cap A18 *Laws of the Federation of Nigeria 2004* hereinafter referred to as the 'Act' or 'ACA'. The Act was passed during the military regime as a Decree in 1988 and is deemed to be an Act of the National Assembly by virtue of Section 315 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

9. Criticisms include delays in enforcement of awards and confusion caused by the effect of inconsistent provisions e.g. sections 4 and 5 of the Act. See generally Akanbi M.M. 'Challenges of Arbitration Practices under the Nigerian Arbitration and Conciliation Act of 1988: Some Practical Considerations' 325-351; Idornigie P.O. 'Overview of ADR in Nigeria' (2007) 73 Arbitration 75-76; Idornigie P.O., 'The 1988 Nigerian Arbitration and Conciliation Act: Need for Review?' (2003) 2 Intl. ALR 50-58; Rhodes-Vivour A., 'The Federal Arbitration Act and the Lagos State Arbitration Law: A Comparison' <http://www.google.nl/search?client=ms-rim&hl=en&g=lagos+state+arbitration+law&ie=UTF-8&channel=browser&gws_rd=cr&ie=eq2CVOOjBYXkUvGygugP> accessed 7 December 2014

thereby making arbitration an alternative to litigation only in theory.¹⁰ Hence, the need to ensure a responsive legal framework for the conduct of arbitral proceedings to meet the contemporary international standard relevant to the socio-economic circumstance of Lagos State, the commercial nerve centre of Nigeria which necessitated the enactment of Lagos State Arbitration law.¹¹ Prior to this development, the principal law regulating the practice of commercial arbitration in Lagos State and Nigeria in general is the Arbitration and Conciliation Act¹² which seeks to provide for a unified legal framework for the fair, effective and efficient settlement of commercial disputes by arbitration and conciliation.¹³

This paper examines the historical evolution of arbitration laws in Nigeria and the reasons for the enactment of the Lagos State Arbitration Law. The paper further appraises the doctrine of covering the field and notes that the Arbitration and Conciliation Act has covered the whole spectrum of commercial arbitration in Nigeria. This paper thereafter examines the validity or otherwise of the Lagos state Arbitration law vis-à-vis the Arbitration and Conciliation Act, bearing in mind the constitutional doctrine of covering the field in Nigerian Jurisprudence, and contends that the Lagos State Arbitration Law will remain in abeyance as far as commercial arbitration is concerned in Nigeria.

2. THE NIGERIAN ARBITRATION AND CONCILIATION ACT: AN APPRAISAL.

The Nigerian arbitration law like many other laws is a reflection of the British laws as a result of the colonial historical link.¹⁴ The presence of the British colonialists created a new political and commercial order in Nigeria, as the country witnessed a more sophisticated form of commercial life because of the increased trade links with other countries.¹⁵ English laws were thus administered by way of statute of general application to regulate the new forms of commerce such as patents, copyright, oil exploration etc. which were alien to the natives.¹⁶ After the colonization of Nigeria, there was an upsurge in commercial and human interaction, which necessitated changes in the administration of justice. However, in order to maintain stability in the communities, the colonial masters retained the application of customary law subject to the repugnancy test to govern the relationship between the indigenous members of the communities.¹⁷ However, in their transactions with the English, the natives were subjected to English law.¹⁸ The first arbitration law in Nigeria was the Arbitration Ordinance of 1914,¹⁹ a semblance of the English Arbitration Act of 1889 which deals with domestic arbitration.²⁰ After the

10. Akanbi, 'Challenges of Arbitration Practices under the Nigerian Arbitration and Conciliation Act of 1988' (n 9) 325, 329; Rhodes, 'The Federal Arbitration Act and the Lagos State Arbitration Law' (n 9) 1; See also Ogundare JSC in the case of *A. Savoia Ltd v. A. O. Sonubi* [2000] 12 NWLR [682] 539

11. Lagos State Arbitration law No.1 which came into force on the 18th May, 2009. Rhodes, 'The Federal Arbitration Act and the Lagos State Arbitration Law' (n 9) 1; Adekoya F. 'A Review of Lagos State Arbitration Laws' 1

12. Emilia O. 'A Critique of the New 2009 Arbitration Law of Lagos State' 1; Adekoya (n 11) 1; Rhodes, 'The Federal Arbitration Act and the Lagos State Arbitration Law' (n 9) 1.

13. *ibid*; Akanbi, 'Challenges of Arbitration Practices' (n 9) 325; Bukar, 'Emerging Trends in Alternative Dispute Resolution' (n 4) 78; Akanbi M.M. 'The Nigerian Arbitration Act 1988 s.58 and the doctrine of covering the field: *C.G.de Geophysique v Etuk*' 283; Bukar, B. A. 'Mandatory and Other forms of Arbitration under Some Selected Oil, Gas and Investment Legislation in Nigeria' *OGE*, (2010) <<http://www.ogel.org>> accessed 23 July 2014; Okorie D. 'Does the Regime of Statutory Arbitration of Investment Disputes in Nigeria Negate the Sanctity of Party Autonomy in relation to the Agreement of Parties to Arbitrate?' <<http://www.dundee.ac.uk/cepmpl/gateway/?news=31248>> accessed 28 June 2013; See also the long title of ACA available at <<http://www.nigeria-law.org/ArbitrationAndConciliationAct.htm>> accessed 29 June 2013.

14. See generally Daibu A. A. 'The Significance of the Rules of Natural Justice in the Nigerian Administration of Justice' (2014) 19 *The Jurist, Law Students' Society, University of Ilorin* 213; Bukar, 'Emerging Trends in Alternative Dispute Resolution' (n 4) 72; Idornigie, 'Overview of ADR in Nigeria' (n 9) 73; Arthur-Worrie F. and Osinbajo O., 'Cross Examination Mastering the Trial lawyer's Most Potent Weapon' (Lexis Nexis Butterworths 2006) 1; Asein J. O. *Introduction to Nigeria legal System* (2nd edn, Ababa Press Ltd Lagos, 2005) 98-104.

15. Akanbi, *Domestic Commercial Arbitration in Nigeria* (n 4) 30-31

16. Park A. E. W. *The Sources of Nigeria Law* (Sweet & Maxwell, London. 1963) 163; Tobi N., *Sources of Nigerian Law* p.3; Akanbi, *Domestic Commercial Arbitration in Nigeria* (n 4) 73-74

17. Akanbi, *Domestic Commercial Arbitration in Nigeria* (n 4) 74

18. *ibid*

19. Akpata E., *The Nigeria Arbitration law in Focus* p.3; Akanbi M.M, 'A Critical Assessment of the History and law of Domestic Arbitration in Nigeria' in *The learned* (3rd edn, Kwara State College of Arabic and Islamic legal studies Ilorin, 2006) 44; Orojo J.O. and Ajomo M. A., *Law and Practice of Arbitration and Conciliation in Nigeria* 36

20. Idornigie, 'Overview of ADR in Nigeria' (n 9) 73

departure of the British colonialists, it was only realistic for the new government to retain the English laws, since the customary laws of the communities were not in a position to accommodate the sophisticated form of modern commerce introduced by the English as it would not only be herculean but pointless and preposterous to start fashioning out customary law principles that will govern the administration of patents, copyrights, companies, professions and federalism among other things.²¹ Hence, the Arbitration Ordinance was retained as an Act of the federal legislature. Shortly after independence, the regions also enacted their own arbitration laws, which were identical to the provisions of the 1914 Act.²² Over time, the need arose for the country to enact a more dynamic arbitration law to deal with disputes arising from commercial transactions, for five reasons. First, the 1914 Act and the Regional Arbitration Laws could not meet up with the challenges posed by the ever-increasing sophistication of commerce and the rapid developments in international trade. Secondly, after independence, the status of the trade relationship between the natives and the colonialists changed to that of foreign trading partners with different legal systems, so that, the 1914 Act, being a domestic arbitration Act could not effectively regulate an international dispute. Thirdly, the old laws were subjected to excessive control of the courts. The most notorious aspect of these laws was the case-stated provision, which allows the arbitrator to state a case for the opinion of the court on the application of one of the parties to arbitration. Foreigners viewed this provision with much mistrust, especially where they were engaged in arbitrations with nationals within their local jurisdiction or otherwise where the local law was the applicable law governing the substantive issues. Fourthly, Nigeria witnessed both structural and juridical changes; there was an increase in the level and volume of international and domestic commerce and consequently an increase in commercial disputes. Finally, there was a desire by the Nigerian government to update its laws to meet internationally accepted standards.²³

Thus, as a result of these fundamental inadequacies of the old arbitration laws to satisfy the needs of arbitration consumers, the Arbitration and Conciliation Decree (No.11 of 1988 now Act) was enacted by the then military government of Nigeria to regulate the law and practice of commercial arbitration in Nigeria.²⁴ The Act unlike its predecessors is more comprehensive and regulates both the practice of domestic and international arbitration.²⁵ Apart from the fact that it retained some provisions of the 1914 Act, the law also derives from three other sources, namely; (a) The Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, (b) The UNCITRAL Arbitration Rules, and (c) The UNCITRAL Model Law.²⁶

There are however certain limitations to the application of the Act. First, it only applies to written arbitration agreements.²⁷ Secondly, unlike the wide scope of its predecessor the subject matter of the Act is restricted to commercial related disputes only.²⁸ Thirdly, even though the Act is meant to apply throughout the Federation, it does not expressly repeal the Arbitration Laws of the then Regions (now states).²⁹ Consequently, informal arbitration agreements that are neither written nor covered by customary arbitration laws are left out of the purview of the Act. However, it can be argued that the regulation of these types of parole agreements fall under the common law rules still in existence as part

21. Ajaiyi F.A., 'The interaction of English Law with Customary Law in Western Nigeria' (1960) 4 JAL 98; Ayua 'The blend of Customary Law with English Law' (1986-90) 4-8 Ahmadu Bello University Law Journal 1; Akanbi, *Domestic Commercial Arbitration in Nigeria* (n 4) 75

22. Orojo J.O. and Ajomo M.A: *Law and Practice of Arbitration and Conciliation in Nigeria*, 36; Akanbi M. M. *Domestic Commercial Arbitration in Nigeria* (n 4) 75; Akpata (n 19) 1.

23. See Akanbi M.M 'A Critical Assessment of the History and Law of Domestic Arbitration in Nigeria' (Oluduro edn, Trends in Nigerian Law, Constellation Nig Pub. Ibadan, 2007) 475; Akanbi, *Domestic Commercial Arbitration in Nigeria* (n 4) 76-77.

24. See section 58 of the ACA

25. Emilia (n 12) 1-2; Akanbi, *Domestic Commercial Arbitration in Nigeria* (n 4) 78

26. Nigeria acceded to the New York Convention on 17th March, 1970 and adopted the UNCITRAL Model Law with modifications on 14th March 1988. See Rhodes, 'The Federal Arbitration Act and the Lagos State Arbitration Law' (n 9) 1; Emilia (n 12) 1; Akanbi, *Domestic Commercial Arbitration in Nigeria* (n 4) 78

27. See section 1 ACA

28. See section 78 ACA

29. Akanbi M.M. 'The Nigerian Arbitration Act 1988 s.58 and the doctrine of covering the field: *C.G.de Geophysique v Etuk*' Arbitration 283.

of the Nigerian legal jurisprudence.³⁰ Furthermore, there is the vexed issue of whether the operation of the Act throughout the Federation, implies a repeal or suspension of the various States' Arbitration Laws. It is for these reasons among other snags that the Lagos state legislature enacted the Lagos State Arbitration Law.

3. LAGOS STATE ARBITRATION LAW

Because of the inadequacies enumerated above, the then Attorney General of Federation and Minister of Justice³¹ in the year 2005, motivated by the need to ensure that arbitration and ADR processes continue to meet the needs of users, constituted a National Committee with the mandate to submit proposals for the reform of Nigeria's Arbitration/ADR laws.³² The work of the Committee resulted in a Draft Federal Arbitration Act and a proposed Uniform States Arbitration and Conciliation Law recommended to States for adoption. The Committee recommended and proposed a draft bill, which is yet to be enacted into law. The discussion paper of the Committee highlights the essential features of the rules to be front loading of evidence and written submission, fast tracking and case management mechanism available at both trial and appellate state. The rules provide that a court may order that an arbitration claim be heard either in public or in private.³³ However, Lagos state seeing itself as becoming the arbitration hub of West Africa and Nigeria in particular, enacted her own arbitration law otherwise referred to as Lagos State Arbitration law,³⁴ to respond to recent trends of development in a commercial and economic relation in Nigeria after over two decades of the application of the Arbitration and Conciliation revealed its inadequacies.

4. AN EXAMINATION OF THE DOCTRINE OF COVERING THE FIELD IN NIGERIA

Nigeria is a federation composed of the federal government, 36 states and a federal capital territory Abuja.³⁵ The federal government and states have defined legislative powers as clearly stated in the Constitution.³⁶ The doctrine of covering the field is an age long constitutional principle imported from older democracies such as the United States and Australia.³⁷ The doctrine is to the effect that where the Federal or Central Legislative Authority had legislated on a matter in the concurrent legislative list, in a manner that clearly showed an intention to cover the whole spectrum of a subject matter, a State or Regional Legislature could not again lawfully enact a law to cover the same filed even where there is no conflict.³⁸ It applies where concurrent legislative powers are validly exercised on the same subject matter by the federal and state legislature in a federal system of government whereby powers of the government within the country is shared between a national or central and a number of regional state authority.³⁹ In the Australian case of *Ex-parte Mchean*⁴⁰ the court held that where the Parliament of the Commonwealth and the Parliament of a State each legislate upon the same subject, and it appeared that the Commonwealth law is expressly intended to completely, exhaustively, and or exclusively govern a particular subject matter or conduct, it is inconsistent for a state law to govern the same subject matter or conduct. The inconsistency does not lie in the mere coexistence of two laws which are susceptible to simultaneous obedience, it depends on the intention the paramount legislature expresses by its enactment. When it is intended to completely govern the subject matter, it is inconsistent for a State Legislature to legislate on

30. Akanbi, *Domestic Commercial Arbitration in Nigeria* (n 4) 78

31. Chief Bayo Ojo, SAN

32. Rhodes, 'The Federal Arbitration Act and the Lagos State Arbitration Law' (n 9) 1; Emilia (n 12) 1

33. See Rhodes, 'The Federal Arbitration Act and the Lagos State Arbitration Law' (n 9) 1

34. Lagos State Arbitration Law No. 10 which came into force in May 2009. See Adekoya (n 11) 1; Emilia (n 12) 1; Rhodes, 'The Federal Arbitration Act and the Lagos State Arbitration Law' (n 9) 1.

35. See section 3(1) and (4) of the Constitution of the Federal Republic of Nigeria 1999(as amended)

36. Section 4 of the Constitution of the Federal Republic of Nigeria 1999(as amended); Emilia (n 12) 1

37. See the US Supreme Court decision in the case of *Houston v. Moore* [1820] 5 Wheat,1 which was cited with approval about 22 years after by Story J. in the case of *Priggs v. Pennsylvania* [1842] 16 PET 617-618. See also the famous Australian case of *Ex-parte Mchean* [1930] 43 CLR 472 at pp.483.

38. Nwabueze B. O, *Federalism in Nigeria under the Presidential Constitution* (2nd edn, Spectrum Books) 43

39. Galadima JSC in *A-G Federation v A-G Lagos State* [2013] 16 NWLR (Pt.1380) 249 at 306; Nwabueze (n 38); Akanbi, 'The Nigerian Arbitration Act and the doctrine of covering the field' (n 29) 283

40. [1930] 43 CLR 472, 483-845 Dixon J

the same subject matter.⁴¹ Although the doctrine emanated from foreign jurisdictions found a footing in Nigeria Courts by reason of its adoption by the Supreme Court of Nigeria.⁴² In the case of *A-G Ogun State v A-G Federation*.⁴³ Fatai Williams CJN expounded the doctrine succinctly thus:

Where identical legislation on the same subject matter are validly passed by virtue of their constitutional powers to make laws by the National Assembly and a State House of Assembly, it would be more appropriate to invalidate the identical law passed by the State House of Assembly, on the ground that the law passed by the National Assembly has covered the whole field of that particular subject matter.⁴⁴

Notwithstanding the lucid exposition on the doctrine of covering the field by the Supreme Court, the justices of the court seem not to be in *ad idem* on the effect and consequence of a state law found to be guilty of legislating on a subject already covered by a Federal Act.⁴⁵ While some felt that a verdict of guilt passed on such state laws should render the entire law invalid and void,⁴⁶ others are of the view that such laws can only be rendered inoperative and subordinate to the Federal Act for as long as the latter continues to exist and in the event of its abrogation, the state law becomes operational.⁴⁷ The dichotomy of consequential effect appears to have arisen by the use of the word 'inconsistent' in the dictum of Dixon J. in *Ex-parte Mclean* when he stated thus:

The 'inconsistency' does not lie in the mere coexistence of two laws which are susceptible of simultaneous obedience, it depends upon the intention of the paramount legislature to express by its enactment, completely, exhaustively or exclusively, what shall be the law governing the particular conduct or matter to which its attention is directed. When a Federal statute discloses such an intention, it is inconsistent for the law of a state to govern the same conduct or matter.⁴⁸

Williams CJN⁴⁹ is of the view that to invalidate the state law for its inconsistency will not sufficiently portray clarity or precision of language. Idigbe JSC however contends that if it appears from the provisions of the Federal law on the subject that the Federal legislature intends to cover the entire field of the subject matter, and thus provided what the law on the subject should be for the entire Federation, the state law on the subject is inconsistent with the Federal law and the Federal must prevail and the state law on the subject is invalid.

Eso JSC adopted a midstream approach when he stated thus:

...where the two legislations are in *pari materia*, I respectfully take the view that the state legislation is in abeyance and becomes inoperative for the period the Federal legislation is in force. I will not say it is void. If for any reason the Federal legislation is repealed, it is my humble view that the state legislation which is in abeyance is revived and becomes operative until there is another Federal legislation that covers the field.

The Supreme Court in a latter case seems to have adopted the reasoning and approach of Eso JSC when Ogundare JSC and his brother judges⁵⁰ in the case of *A-G Abia State v A-G Federation*⁵¹ when called

41. See the cases of *Lakanmi v. A-G Western Nigeria & Ors.* [1970] 6 NSCC 143; *A-G Ogun State v A-G Federation* [1982] 3 NCLR 166 or [1982] 13 N.S.C.C. 1; *A-G Abia State v A-G Federation* [2002] 6 NWLR 763, 264; *C.G. de Geophysique v Etuk* [2004] NWLR 853, 20; *A-G Lagos State v A-G Federation* [2003] 12 NWLR 31, 1; *A-G Abia State v A-G Federation* [2006] 16 NWLR 1005, 265.

42. See *Lakanmi v A-G Western Nigeria & Ors* [1970] 6 NSCC 143

43. [1982] 3 NCLR 166 or [1982] 13 NSCC 1 at 35

44. See also *A-G Abia State v A-G Federation* [2002] 6 NWLR 763, 264 at 474-475

45. Akin Akintoye II 'The Doctrine of Covering the Field and Blue Pencil Rule in Legislative Enactments a Judicial Revisitation' (2006) 4(2) Nigerian Bar Journal 58.

46. Idigbe JSC in *A-G Ogun State v A-G Federation* [1982] 13 NSCC 1 at 11

47. *ibid* (Fatayi Williams CJN)

48. Emphasis added.

49. *ibid*

50. *ibid* (M.L. Uwais CJN), (I.L. Kutigi JSC), (E.O. Ogbuegbu JSC), (U. Mohammed JSC), (U.A. Kalgo JSC), and (A.O. Ejiwumi JSC).

51. *ibid*

upon to void the Electoral Act 2001 on grounds of inconsistencies with the 1999 Constitution held as follows:

In my respectful view, where the doctrine of covering field applies there is no inconsistency in the strict sense of that word. To be inconsistent, the two legislations that are the Federal legislation and that of the state must be mutually repugnant contradictory of each other so that both cannot stand. The acceptance or establishment of one implies the abrogation or abandonment of the other... The doctrine however, renders the paramount legislation predominant and the subordinate legislation goes into abeyance and remains inoperative so long as the paramount legislation remains operative. Where of course, there is obvious inconsistency, the subordinate legislation is void.⁵²

It is submitted that the question of whether a state law on a concurrent matter can co-exist with a federal enactment validly made on the same subject matter cannot arise where the latter evinced an intention to cover the whole field of the subject matter by providing a complete and exhaustive statement of law on the subject matter. In Nigeria, the doctrine of covering the field in Nigeria has also been extended to cover areas in which any law either federal or state touches on the subjects already covered by the constitution.⁵³

5. LAGOS STATE ARBITRATION LAW VIS-À-VIS THE ARBITRATION AND CONCILIATION ACT.

By section 2 of the Lagos State Arbitration Law, the law is applicable to all arbitrations within the state except where parties expressly agree otherwise. The pertinent question now is whether in view of the provision of section 58 of the ACA which makes it applicable throughout the federation and the doctrine of covering the field, Lagos State Arbitration law is valid and can continue to operate in Lagos state which is part of Nigeria? A careful examination of the Constitution of the Federal Republic of Nigeria 1999 (as amended) reveals that arbitration is neither on the Exclusive Legislative List⁵⁴ nor is it on the Concurrent Legislative List⁵⁵ and therefore, some scholars have argued that it should be a matter within the residuary⁵⁶ legislative competence of the states.⁵⁷ However, by the provision of section 57 of the Arbitration and Conciliation Act, 'arbitration' means 'commercial arbitration' while 'commercial' means 'all relationships of commercial nature including any trade transaction'. Consequently, only the National Assembly has exclusive power to make laws regulating commercial arbitration in Nigeria.⁵⁸ By section 4(2) of the constitution, the National Assembly is empowered to make laws to the exclusion of the Houses of Assembly of State with respect to any matter under the Exclusive legislative list. A look into the Exclusive list shows that item 62(a) mentions 'trade and commerce' and item 68 provide for 'any matter incidental or supplementary to any matter mentioned elsewhere in the exclusive list'.⁵⁹

52. Per Ogundare JSC

53. Akintoye II (n 45) 61. See also Ogundare JSC in *A-G Abia State v A-G Federation* [2002] 3 SCNJ 158, 247-248 where more than half of the provisions of the Electoral Act 2001 were struck out by the Supreme Court on the grounds that they have been covered by the constitution.

54. Exclusive Legislative List refers to matters which are within the exclusive legislative competence of the federal legislature (the National Assembly) and are set out in Part I of the Second Schedule to the Constitution of the Federal Republic of Nigeria 1999 (as amended).

55. Concurrent Legislative List refers to matters which both the federal and state legislative authority has concurrent powers to legislate on. See section 4(5) the Constitution of the Federal Republic of Nigeria 1999 (as amended)

56. Residual matters are not listed/stated in the constitution. They are matters which are neither in the exclusive list nor in the concurrent list. The House of Assembly of a state has exclusive power to legislate on residual matters (subject to the overriding power of the National Assembly in case of conflict or inconsistency).

57. Adekoya (n 11) 1; Chukwuemerie A., *International Commercial Arbitration and the UNCITRAL Model Law under written Federal Constitutions: necessity versus constitutionality in Nigeria legal frame work* (Law house books, Port-Harcourt 2002) 103; Akanbi, 'The Nigerian Arbitration Act and the doctrine of covering the field' (n 9) 286.

58. Akanbi, 'The Nigerian Arbitration Act and the doctrine of covering the field' (n 29) 286

59. Second schedule of the Constitution of the Federal Republic of Nigeria 1999 (as amended); Asouzu A., *Arbitration and Judiciary Power* (Nweze edn, Justices in Judicial Process, Fourth Dimension pub, Enugu 2002) 362; Rhodes, 'The Federal Arbitration Act and the Lagos State Arbitration Law' (n 9) 2-3; Akanbi, 'The Nigerian Arbitration Act and the doctrine of covering the field' (n 29) 286

From the above analysis of the doctrine of covering the field vis-à-vis the provisions of the constitution, the question is whether the Lagos State Arbitration Law is valid having regard to the provision of section 58 and the preamble of the Arbitration and Conciliation Act which makes the Act to be applicable throughout the federation? The courts have generally held that where a state law is inconsistent with a federal law on the same subject matter where the later expressly or impliedly evince an intention to cover the whole field, or provides a complete statement of the law governing the matter, it is more appropriate to invalidate the state law.⁶⁰

Some scholars have argued that by the doctrine of covering the field the Arbitration Laws of States (including the Lagos State Arbitration Law) cannot operate.⁶¹ This submission finds judicial support in the opinion of Olagunju JCA, in *C.G. de Geophysique v Etuk* where the Court stated that:

...In any case, any scepticism about implied repeal of all State Laws on arbitration created by section 35 of the Act is put to rest by the force of the prevailing legal order at the time the Arbitration and Conciliation Act was promulgated which placed the Decree of the Federal Military Government above the Constitution as manifested between the twin prime legislations of the period, namely, Constitution (Suspension and Modification) Decree and Federal Military Government (Supremacy and Enforcement of Powers) Decree Nos. 1 and 13 of 1984, respectively, now Caps 64 and 137 of the Laws of the Federation of Nigeria 1990. Between them they prowled the legislative field and backed into corner the State legislations that became emasculated and are confined to limited areas where they operated on sufferance ... as a corollary, any existing State law on the subject matter became obsolete and is by implication repealed by operation of law.⁶²

Idornigie⁶³ contends that it is implicit in the provisions of the Arbitration Act an intention to make it applicable to all commercial arbitrations throughout the country, i.e. to “cover the field” of arbitration. He, further submit that because the Arbitration Act restricts arbitration to commercial arbitration, the arbitration laws of the states are still valid in respect of non-commercial arbitration in that even though the Federal Government intended to cover the field, it has not done so completely, exhaustively and exclusively. Consequently, the State laws dealing with non-commercial arbitration are valid in so far as they are not inconsistent with the Act, despite its provision that it covers all arbitration in Nigeria. Akanbi seems to have agreed with this contention when he stated that there is nothing in the arbitration Act to suggest an intention to repeal the Arbitration Laws of states with respect to non-commercial arbitration.⁶⁴

It is humbly submitted that although the Act is of national application, it has nonetheless protected and preserved other laws regulating arbitration such as customary law and state arbitration laws.⁶⁵ In the case of *Chikelue v Ifemeludike*⁶⁶ it was held that for the doctrine of covering the field to be invoked, the federal Act must bear out the same tenets, intendments and purposes of the state law.⁶⁷ Hence, the Lagos state Arbitration Law will be void to the extent of its inconsistency with the provision(s) of the Arbitration Act

60. Akanbi, 'The Nigerian Arbitration Act and the doctrine of covering the field' (n 29) 283. See the cases of *A-G Ogun State v A-G Federation* [1982] 3 NCLR 166; *A-G Lagos State v A-G Federation* [2003] 12 NWLR 831, 1; *A-G Abia State v A-G Federation* [2006] 16 NWLR 1005, 265; *A-G Federation v A-G Lagos State* [2013] 16 NWLR 1380, 249 at 306; *INEC v Musa* [2003] 3 NWLR 806, 72 at 201-205; *C.G. de Geophysique v Etuk* [2004] 1 NWLR 853, 20 at 53-55

61. See generally Idornigie P. O. 'The doctrine of covering the field and arbitration laws in Nigeria' (2000) 66 Arbitration pp.193-198; Nwadiolo F., *Civil Procedure in Nigeria* (MIJ Professional Publishers Ltd. Lagos 1990) 871-872; Akanbi, 'The Nigerian Arbitration Act and the doctrine of covering the field' (n 29) 283-287; Chukwuemerie 'Commercial and Investment Arbitration in Nigeria's Oil and Gas Sector' (2003) 4. Note that the proposition was in respect of the old state arbitration laws which will be impliedly repealed by the enactment of the arbitration Act

62. *C.G. de Geophysique v Etuk* [2004] 1 NWLR 853, 20 at 54-55

63. Idornigie, 'The doctrine of covering the field and Arbitration Laws in Nigeria' (n 60) 193-198

64. Akanbi, 'The Nigerian Arbitration Act and the doctrine of covering the field' (n 29) 287

65. See sections 35(b) of ACA; Bukar, 'Mandatory and Other forms of Arbitration in Nigeria' (n 13); Bukar, 'Emerging Trends in Alternative Dispute Resolution' (n 4) 78.

66. [1997] 11 NWLR 529, 403

67. *ibid*

while provisions therein in respect of non-commercial arbitration may still be valid.⁶⁸ The states laws will only be void to the extent of their inconsistency with the Federal Act and thus, aspects dealing with non-commercial arbitration remain valid in so far as they are not inconsistent with the Arbitration Act. In *C.G. De Geophysique v Etuk*,⁶⁹ the Court of Appeal in respect of similar interpretation stated thus:

Undoubtedly, the Arbitration and Conciliation Act 1990 (i.e. the Arbitration Act) and the Cross River State Arbitration Law, Cap.12 (applicable to Akwa Ibom State) are existing laws under our constitution. But the vital question is which of them is applicable to the arbitration in the present case? ... I am of the opinion that the Arbitration and Conciliation Act, 1990, has covered the whole spectrum or field of arbitration and conciliation and should prevail over the Arbitration Law of Cross River State Arbitration law, Cap,12 (applicable to Akwa Ibom State). In other words, I hold that the applicable law to the arbitration in the instant case is the Arbitration and Conciliation Act, 1990.⁷⁰

In support of the above, Olagunju JCA stated that: '...as a corollary, any existing State law on the subject matter became obsolete and is by implication repealed by operation of law'

It is submitted that the state legislature and Lagos State in particular cannot validly legislate on a matter that has been covered by the provisions of the Arbitration and Conciliation Act which is applicable to the whole federation.⁷¹ Thus the Lagos state Arbitration law cannot validly operate in relation to commercial arbitration, which has been covered by the Act, but may however govern non-commercial arbitration and or any other form of arbitration not covered by the Act.⁷² Unlike the 1914 Arbitration Act, which dealt with disputes arising from both commercial and non-commercial transactions, the object and purpose of the Arbitration and Conciliation Act, is to provide for a unified legal framework for the fair and efficient settlement of commercially related disputes by arbitration and conciliation.⁷³ It is therefore clear that the Arbitration Act does not intend to cover the whole spectrum or field of arbitration but only relates to commercial arbitration. Consequently, with respect to disputes arising from non-commercial transactions and those envisage under section 35(b) ACA, the applicable laws are still the Arbitration Laws of the states and the doctrine of covering the field will not apply.⁷⁴

6. CONCLUSION

This paper traces the history of arbitration laws in Nigeria, the reasons for the promulgation of the Lagos State Arbitration Law, the constitutional doctrine of covering the field in a federal system of government and notes that the Arbitration Act has covered the whole spectrum of commercial arbitration in Nigeria. The paper argues that the Lagos State Arbitration Law remains in abeyance as regard commercial arbitration in Nigeria.

It is settled law that if it appears from the provision of an Act of the federal legislature that it intends to cover the entire field of a particular subject-matter by providing what the law on the subject-matter should be for the entire federation, any state law on the same subject becomes invalid and inoperative to extent of their inconsistency with the federal law.⁷⁵ The Arbitration and Conciliation Act having not been shown to have intended to cover all spheres of arbitration in Nigeria thereby impliedly repealing the

68. Section 57 Arbitration and Conciliation Act; Idornigie, 'The doctrine of covering the field and Arbitration Laws in Nigeria' (n 60) 193-198; Akanbi, 'The Nigerian Arbitration Act and the doctrine of covering the field' (n 29) 287

69. [2004] 1 NWLR 853, 20 at 48 -49

70. Per Ekpe JCA

71. See section 58 of the Arbitration and Conciliation Act

72. Indeed the ACA itself recognize that arbitration may be conducted in accordance with the provisions of such other law. See section 35 (b) and 57 of the Arbitration and Conciliation Act

73. Section 57 Arbitration and Conciliation Act; Idornigie, 'The doctrine of covering the field and Arbitration Laws in Nigeria' (n 60) 193-198; Akanbi, 'The Nigerian Arbitration Act and the doctrine of covering the field' (n 29) 287

74. [2004] 1 NWLR 853, 20 at 48 -49

75. Per Ekpe JCA

arbitration laws of the states, and make state arbitration laws (including that of Lagos state) valid only to areas not covered by the Act. Before a federal law can abrogate a state law, its aims and objectives must be exactly the same as those of the state law and not merely be alike.⁷⁶ The intention of the Arbitration Act is not to cover all the fields of arbitration in Nigeria⁷⁷ and a combined reading of sections 35(b) and 57 of the Arbitration and Conciliation Act shows that the aim of the Arbitration Act is to regulate disputes arising out of commercial transactions only.⁷⁸ The intention of the federal law must be expressed by the enactment of a law, which is complete, exhaustive or exclusive on the particular subject-matter to which it is directed and then, any state law on the same subject will be inconsistent.⁷⁹ It is respectfully submitted that the aspects of the Lagos State arbitration law that is in pari materia with the Arbitration Act is in abeyance and becomes inoperative, while those provisions not provided for and or envisaged by the Act are valid until there is another federal legislation that covers the entire field and spectrum of arbitration in Nigeria. Hence, there is the need to review and probably amend the Act to meet contemporary realities and developments in order to ensure its continuing efficacy and effectiveness, more so, when the inadequacies inherent prompted the enactment of the Lagos State Arbitration Law.⁸⁰

76. See section 58 of the Arbitration and Conciliation Act

77. Indeed the ACA itself recognize that arbitration may be conducted in accordance with the provisions of such other law. See section 35 (b) and 57 of the Arbitration and Conciliation Act

78. Akanbi, 'The Nigerian Arbitration Act and the doctrine of covering the field' (n 29) 287

79. Idornigie, 'The doctrine of covering the field and the Arbitration laws in Nigeria' (n 60) 197-198; Orojo J. O. and Ajomo M.A., *law and practice of Arbitration conciliation in Nigeria* 27; Akanbi, 'The Nigerian Arbitration Act and the doctrine of covering the field' (n 29) 287

80. *A.G. Ogun State v A.G. Federation* [1982] 3 NCLR 166; See also section 4(5) of the 1999 constitution