# JUSTICE ON THE SANDS OF TIME AND HISTORY



*A Review of Selected Judgements of*
**HON. (MR.) JUSTICE KUMAI BAYANG AKA'AHS JSC**

*Edited by*
**YEMI OKE**
**'TINA OMAVUEZI**

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**Justice On The Sands Of Time And History: A Review of Selected Judgments of Hon. (Mr.) Justice Kumai Bayang Aka'ahs JSC**

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Chapter 15

# Corporate Law And Commercial Arbitration In Nigeria: An Insight Into The Judicial Mind Of Kumai Bayang Akaahs JSC

*By*

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***Abstract***

*Corporate law and commercial arbitration law are trending aspects of laws in Nigeria. Lately, legal scholars and commentators have express varied comments on these areas of the law especially in terms of the attitude of the judex in the areas of law. This paper examines the position and attitude of the Nigerian judex through the prism of the contributions of Mr. Justice Kumai Bayang Akaahs JSC on the different aspects of corporate law including banking, insurance, commercial arbitration amongst others. The paper adopts the doctrinal methodology and the qualitative approach. The paper also prescribes some recommendations aimed at positively contributing to the body of knowledge in the field.*

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the High Court of the Federal Capital Territory, Abuja[13]; the High Court of a State[14]; the Sharia Court of Appeal of the Federal Capital Territory, Abuja[15]; the Sharia Court of Appeal of a State[16]; the Customary Court of Appeal of the Federal Capital Territory, Abuja[17]; the Customary Court of Appeal of a State[18] and the National Industrial Court.[19]

The state legislatures have the power to establish other courts in addition to these courts which will only be allotted "with subordinate jurisdiction to that of a high court" (these courts are the inferior courts of record).[20] Consequently, all the 36 states in Nigeria[21] including the Federal Capital Territory (FCT) have established courts of lower jurisdictions.

The constitution makes an omnibus provision from which the validity of these courts was derived. The provision reads: 'such other courts as may be authorized by law to exercise jurisdiction on matters with respect to which the national assembly may make laws; and such other court as may be authorized by law to exercise jurisdiction at first instance or on appeal on matters with respect to which a house of Assembly may make laws.[22]

## 3. The Nigerian Court Vis-à-vis Corporate Law

As already noted, corporate law is a broad aspect of law. Corporate law, also known as enterprise law is the body of law that deals with rights, responsibilities as well as all the legal incidences that concern persons, companies, organizations and businesses. It refers to

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12 Ibid, Sections 249-253.
13 Ibid, Sections 255-259.
14 Ibid, Sections 270-274.
15 Ibid, Sections 260-264.
16 Ibid, Sections 275-279.
17 Ibid, Sections 265-269.
18 Ibid, Sections 280-284.
19 Ibid, Section 254A.
20 Ibid, Section 6 (6).
21 Ibid, Section 1 (3).
22 Ibid, Section 6(5) (a-k).

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the legal practice relating to, or the theory of corporations. Corporate law often describes the law relating to matters which derive directly from the life-cycle of a corporation. It thus encompasses the formation, funding, governance, and death of a corporation.[23]

The bulk of corporate law is governed by statute. However, over the years, the branch of law has progressively developed due to the sound pronouncements of Nigerian Courts. Corporate law affects most aspects of the law, starting from the legal personality of bodies to all other matters that relate to the law. For instance, on personality, Aka'ahs JSC[24] held that, 'the juristic personality of a plaintiff is *sine qua non* to the plaintiff's capacity to institute and maintain a legal action in Court'.[25] Where the legal capacity of the plaintiff is being questioned, it goes to the jurisdiction of the Court and the Court must ascertain that the plaintiff has the capacity to sue before it can proceed to hear the matter. The issue can be raised for the first time in the appellate Court.[26] Once the juristic personality of an artificial person is raised, the party in question can discharge the burden only by producing the certificate of Incorporation.[27]

Corporate law generally deals with transactional interactions between persons, hence, there is the need for a careful interpretation of the laws because of the need to properly regulate the freedom of the parties and strike a balance between commercial freedom and sanctity of contract and agreements. It is worthy of note that the jurisdiction of the court in relation

23 See Usman Olomoda v. Olaniyi Mustapha and Others SC.355/2009.
24 Socio-Political Research Development V. Ministry of Fct & Ors (2018) LPELR-45708(Sc)
25 Ibid. see Madukolu v. Nkemdilim (1962) Vol. ANLR (Pt.2) 581
26 Aqua Ltd v. Ondo State Sports Council (1988) 4 NWLR (Pt.91) 622; Onyema v. Oputa (1987) 3 NWLR (Pt.60) 259.
27 Ataguba & Company v. Gura Nigeria Limited (2005) 6 NWLR (Pt. 927) 429

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to this concept is salient and like other aspects of the law, it can be raised at any time. Aka'ahs JSC[28] held that; Jurisdiction is a threshold issue which can be raised for the first time in the Supreme Court.[29]

## 4. The Nigerian Court Vis-à-vis Commercial Arbitration

Commercial Arbitration has developed over the years, due to the ease and facility it creates, especially to the corporate world where it is salient to interact in a milder atmosphere than that which litigation presents.[30] It is a better means for putting a reasonable and meaningful end to disputes in the commercial world.[31] Even though the ordinary idea of arbitration is out of court settlement, the contribution of the court to the development of arbitration cannot be overemphasized.

There are two basic forms of commercial arbitration. These are domestic arbitration and international arbitration.[32] Domestic arbitration is one in which the businesses of the parties are conducted in one country. In this situation, it is not necessary to consider the citizenship or nationality of the parties in as much as the business is in Nigeria and the arbitration is conducted in Nigeria. International arbitration on the other hand is a kind of arbitration wherein the parties carry out their business in different countries and the subject matter of the arbitration deals with more than a country or the substantial parts of the obligation of the parties is to be performed outside their places of business.[33] As well, the parties may decide that the arbitration is an international arbitration based on an agreement

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28 TSKJ (NIG) LTD v. OTOCHEM (NIG) LTD (2018) LPELR-44294(SC)
29 Bronik Motors v. Wema Bank Nigeria Ltd (1983) All NLR 272; N.D.I.C. v. Central Bank & Anor. (2002) 7 NWLR (pt. 766) 272.
30 Elabanjo v. Dawodu (2005) 15 NWLR (pt. 1001)76
31 Akanbi M.M "Contending without being Contentious: Arbitrators, Arbitration and Arbitrability" (University of Ilorin Press, Ilorin. 2014) p.4.
32 David St. John, Judith Gill and Mathew and Mathew Gearing. 2007. Russell on Arbitration. 23rd ed. London: Sweet and Maxwell. P.5.
33 K.S.U.D.B. v Fanz Construction Ltd (1990) 4 NWLR (pt 142) 1 at 32

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which must be expressly agreed that any dispute emanating from the commercial transaction shall be treated within the international jurisdiction and jurisprudence.[34]

Usually, commercial Arbitration falls within the aegis of institutional arbitration, which deals with a situation wherein the proceedings conducted and the award issued are in accordance with the rules and rubrics of a trade or arbitral organization.[35] There are a number of international organizations that deal with commercial arbitration. This includes the *International Chamber of Commerce* (ICC), the *London Court of International Arbitration* (LCIA), the American Arbitration Association (AAA), the *United Nations Commission on International Trade Law* (UNCITRAL), and the *International Center for the Settlement of Investment Disputes* (ICSID).[36]

ICSID also deals with legal disputes that arise directly from investment between states and nationals of other states. The disputes may be settled under its rules.[37] These rules are generally encapsulated within the international convention known as the Washington Convention, 1965.[38] However, the precondition to the jurisdiction of the center is that the parties must have agreed in writing to submit the dispute to it.[39] The parties before the centre must both be states or at least one of the parties must be a state which is a contracting state. The awards of the centre are final and have binding effects over the parties and they are not subject to review by national courts. The procedure for the recognition and enforcement of the awards

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34 Ibid

35 UNCITRAL Model Law on International Commercial Arbitration 1985. Article 1(although this was made to apply to international commercial arbitration) available at www.uncitral.org/pdf/english/texts/arbitration/ml.../06-54671_Ebook.pdf

36 Domke M,2003. Commercial Arbitration: The law and practice of commercial arbitration, Gabriel M. Wilner. 3rd Ed., Callaghan, p.1. Wehringer C.K, 1969, Arbitration: Precept and Principles. New York: Oceana Publications Inc. 1

37 Ibid

38 Nnalue, U. S. F "Promoting Conflict Resolution through Non-Adjudicatory Process" (1997) in Abia State University Law Journal p.57.

39 Ibid

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received the contract for lack of consideration since the broker actually received the premium but failed to remit to the Appellant' Per Aka'ahs JSC.[49]

Similarly, on company law particularly as regards winding up proceedings and incidental matters, His Lordship held that under the Companies Winding Up Rules 1983, a debt is proved against a wound-up company by delivering or sending through post to the liquidator an affidavit verifying the debt which must contain or refer to the statement of account showing the particulars of the debt and whether the creditor is or is not a secured creditor. The liquidator has the power to examine and admit or reject every proof lodged with it. It is only when a creditor is dissatisfied with the decision by the liquidator that he can apply to the court to reverse or vary the decision.[50]

The court has also shown in a number of cases that the procedures that apply generally also apply in relation to corporate law, from the mode of commencement of the actions to all other procedural matters that are conditional to the proper conduct and conclusion of a case. For instance, Aka'ahs JSC[51] confirmed the correctness of the position that the originating summons should of necessity contain questions for determination in order to be worthy of adjudication before a court of law.

## 6. Conclusion And Recommendations

The efforts and contributions of the judiciary and indeed Justice Kumai Bayang Aka'ahs JSC in the development of the Nigerian legal system are indeed commendable. Nonetheless, there is still a lot more to be done especially in the areas of corporate law and commercial arbitration. The

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49 Ibid

50 Essien Jacob Uko v. The liquidator, Utuk Construction and Ors, (2011) LPELR-CA/C/165/2010; CA/C/165/2010

51 Akahall & Sons ltd v. Nigeria Deposit Insurance Corporation, (2017) LPELR-41984(SC); SC. 302/2006

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call for more attention in this area is due to the fact that the legal regimes regulating these areas go beyond the ordinary letters of the law. A judge sitting on matters relating to these areas of the law must be abreast of the jurisprudence and novel developments that regularly occur within these areas of legal practice.

The following are therefore recommended for advancement of corporate law practice and commercial arbitration in Nigeria:

i. The judiciary must ensure that more attention is placed on the development of corporate law practice and commercial arbitration in Nigeria. This field of law should not be seen as mere incidences but prospective area that requires a focused attention.

ii. The judiciary must ensure that the jurisprudence of arbitration on commercial transactions is strengthened through the continuous recommendation of arbitration as alternatives to court proceedings and the enforcement of the arbitral awards.

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