

SUPREME COURT OF NIGERIA
23RD SEPTEMBER, 1994. SC. 195/1988
CORAM: M. L. UWAI, I. L. KUTIGI, M. E. OGUNDARE,
S. U. ONU, A. I. IGUH, JJSC.

HOME DEVELOPMENTS LTD. APPELLANT
AND
SCANCILA CONTRACTING CO. LTD. RESPONDENT

ARBITRATION - Arbitration pursuant to a submission - And one upon a reference by a court - Whether differentiated by applicable laws.

ARBITRATION - Lacuna in the Law - Where the Arbitration Law provides that - Arbitration on a submission and by reference - Shall have same effect - Whether there is any lacuna in the Law.

ARBITRATION - Limitation of action - Action seeking to set aside the arbitrator's award - Where filed outside the 15 days limitation - Whether the action is competent.

FACTS

By the contract agreement between the parties, an arbitrator listened to their dispute and made an award. After the expiration of over 15 days prescribed by O. 22 r. 12 of the Kaduna State (Civil Procedure) Rules within which action may be commenced, the appellant took out an originating notice of motion. Appellant inter alia sought to have the arbitrator's award set aside by the trial high court. The respondent raised a preliminary objection in entering appearance under protest. Respondent challenged appellant's commencement of the action vide originating summons and urged that it be struck out and or dismissed for being statute barred.

The trial court upheld the respondent's preliminary objection and struck out the appellant's action. Appellant's appeal to the Court of Appeal was allowed on two out of the three issues but dismissed on ground of statute bar. Being dissatisfied, the appellant has further appealed to the Supreme Court to determine whether its action is statute barred. Appellant sought to differentiate between arbitration that was pursuant to a submission which is the case here and one that was upon a reference by a court. Appellant urged that there was a lacuna in the Arbitration Law which it prayed the court to fill

up by applying an English Statute of General Application that provided for 6 weeks limitation period instead of the 15 days specified by the High Court Rules.

HELD (*Unanimously dismissing the appeal per lead judgment of KUTIGI JSC*)

Whether there is any difference between types of arbitrations

1. All the foregoing provisions show that while every arbitration under any Act or Law (including Kaduna State High Court Law), is to be regarded as if the arbitration is pursuant to a submission, an arbitration embarked upon on a submission shall also have the same effect as if it is a reference by a court. Therefore the submission of appellant's counsel to the effect that Order 22 Rule 12 and the decision in U.N.I.C. LTD v. LEANDRO STOCCO (supra) would not apply simply because Order 22 Rule 1 made reference only to an arbitration ordered by court under section 90 of the High Court Law, is clearly misconceived and untenable. (P.50 L.30)

No lacuna in the Arbitration Law

2. It must be stressed again that it is obvious from the clear language of the Arbitration Law that an arbitration embarked upon on a submission shall have the same effect as if it is a reference by a court pursuant to section 90 of the High Court Law. So it is in this case as it was in U.N.I.C. LTD. v. LEANDRO STOCCO (supra). Consequently there is no lacuna either in the Arbitration Law or in the 1977 Rules as contended by the appellant (P.50L.38)

Limitation of action seeking to set aside arbitrator's award

3. I have therefore come to the conclusion that since the originating notice of motion herein was not filed within 15 days as stipulated by Order 22 Rule 12 of the Kaduna State High Court (Civil Procedure) Rules, it was incompetent and rightly struck-out by the trial High Court as confirmed by the Court of Appeal. (P.51 L.6)

NOTABLE POINTS OF INTEREST

ONU JSC

1. Whether English Arbitration Act of 1889 is applicable

In other words, the English Arbitration Act, 1889 has no application since the Arbitration Law of Northern Nigeria, applicable to Kaduna State and the Kaduna State High Court (Civil Procedure) Rules 1977 (ibid) have made adequate provisions. (P.52 L.25)

2. Applicability of English Statute when local legislation abound

It would look absurd to apply the 1889 English Arbitration Act to an arbitration entered into over a century after the enactment of the Act and in Nigeria of the 20th century. Indeed, local circumstances no longer permit the application of a statute of general application such as the English Arbitration Act of 1889 when local legislation abound. To be tied to such outdated English legislation would, in my view, produce results which are manifestly unreasonable. (P.53 L.9)

REPRESENTATION

Emmanuel J.J. Toro Esq. for the appellant.

Adebayo Salami Esq. General Manager for respondent/company.

CASES REFERRED TO

Laibru Ltd v. Building & Civil Eng.

Contractors (1962)1 All NLR 387

Adigun v. A-G Oyo State (1987)2 NWLR (pt.56)197

Onayemi v. Okunnobi (1965)1 All NLR 362

Akunma v. A-G Anambra State (1977)5 SC 161

Magor & St. Mellons R.D.C. v. Newport Corporation (1952) AC 189 at 191

Chuka v. The State (1988) 1 NWLR (Pt. 72) 539

Martin Schroder & Co. v. Major & Co. Ltd. (1989)2 NWLR (Pt. 101) 1

Governor of Kaduna State v. Kagoma (1982) 6 SC 87

U.N.I.C. Ltd v. Leandro Stocco (1973)1 All NLR 168

Kolawole v. Alberto (1989)1 NWLR (Pt 98) 382

Okokor v. The State (1967) NMLR 189

Bendel State v. The Federation (1981)10 SC 115

STATUTES & RULES REFERRED TO

Constitution of the Federal Republic of Nigeria 1979 ss. 6(6)(a) & (b), 236

Kaduna State High Court (Civil Procedure) Rules 1977 0.22 r.9, 0.9

rr. 1-3, 0.2 rr.1-3, 0.34 r.8, 0.22 r. 12,

High Court Law of Kaduna State Cap. 49 Laws of Northern Nigeria s.35, 116(1),

Supreme Court Practice White Book vol.1 0.8 r.3(1-6) Arbitration Law Cap 7

Laws of Northern Nigeria 1963 ss.11 &12, 13, 18 3 4 18

Arbitration Act of England 1989

High Court of Lagos State (Civil Procedure) Rules 0.49 r.13

BOOKS REFERRED TO

Annual Practice 1965 Vol. 1 para 1994/14 P. 81

Russel on Arbitration 18th Ed. p. 499/480

Nigerian Commercial Law & Practice 1983 Vol. 1 P. 252 by Olakunle Orojo

5 **LEAD JUDGMENT BY KUTIGI JSC**

By an originating notice of motion dated 22/10/85 and filed on 23/10/85 the appellant, Home Developments Ltd, sought for an order that -

“The award of Mr. Gabriel Aduku (hereinafter called “the Arbitrator”) dated the 29th day of August, 1985 made in the reference to arbitration before him between HOME DEVELOPMENTS LIMITED (hereinafter - called “the Applicant) and SCANCILA CONTRACTING COMPANY LIMITED (hereinafter called “the Respondent “) under the Arbitration clause contained in the contract Agreement signed on the 19th day of March, 1981:

- (1) Be set aside, and
- 15 (2) That the High Court should invoke its powers under and by virtue of sections 6(6) (a) and (b) and 236 of the Constitution of the Federal Republic of Nigeria 1979 Order 22 Rule 9, High Court (Civil Procedure) Rules 1977, to become seized of the matter and thereupon to make any awards, orders and-grant any reliefs it deems fit and just in the circum-
- 20 stances of this matter; or

(3) In the alternative, that the award be remitted to another Arbitrator the Court may appoint, for reconsideration; and that the costs of and incidental to this application be paid by the said SCANSILA CONTRACTING COMPANY LIMITED.

25 “These prayers were immediately followed by a five-page foolscap size “grounds for the application”. The motion was also supported by an affidavit of 49 paragraphs sworn to by one Alhaji Isa Ibrahim Makarfi, Company Executive of Home Developments Ltd; the appellant.

The respondents, Scandia Contracting Co. Ltd entered a conditional

30 30 appearance under protest with a notice of preliminary objection to the application on the following grounds -

“1. That the Application’s application dated 22nd October 1985 and filed on 23rd October 1985 for an order that award of Mr. Gabriel Aduku – the Arbitrator) dated the 29th day of August 1985 made in the reference to arbitration before him between the Applicant and the Respon-

35 dent be set aside and or remit the award to another Arbitrator the court may appoint, for reconsideration; commenced in this suit by originating Notice

of Motion is incompetent and should be struck out and or dismissed by this Honourable Court.

(i) *The form and commencement of this suit is unknown to and contravene the provisions of Order 1 Rules 1, 2 and 3; Order 2 Rules 1, 2 and 3; and Order 34 Rule 8 High Court (Civil Procedure) Rules, 1977, made pursuant to section 116(1) High Court Law of Kaduna State.*

(ii) *If at all the Application afore-said was made in pursuant of Section 35 of the High Court Law Cap. 49, same contravenes the provisions of order 8 Rules 3(1 - 6) Rules of Supreme Court Practice, White Book Volume 1.*

(iii) *The Application aforesaid was not made within fifteen days after the publication of the award aforesaid, as prescribed by the provisions of Order Rule 12 of the High Court (Civil Procedure) Rules 1977.*

(iv) *The provisions of Sections 11 and 12 of the Arbitration Law Cap. 7 Laws of Northern Nigeria 1963, applicable in Kaduna State, are governed and or regulated by the provisions of the rules of court, viz, High Court 15 (Civil Procedure) Rules 1977, which came into operation on the 1st day of March, 1977.*

2. *This Honourable Court is incompetent to entertain and or hear the Applicant's application aforesaid, in that –*

(i) *For the reasons given in Ground 1 above.*

(ii) *The Applicant's' suit was not initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction by the court.*

(iii) *Inherent jurisdiction and powers of a court cannot be a total substitute for the Rules of Court.*

The Applicant's application aforesaid, is an abuse of the process of the court and should, for the foregoing reasons, amongst others, be struck out and or dismissed."

The preliminary objection was argued. In a considered ruling, the learned trial judge observed on page 48 of the record thus -

"In this instant case, the applicant has not properly initiated the proceedings by process of law enumerated as mandatory in Order 2 Rule 1 of the H.C.C.P. Rules; and this is not a case which can be started by following section 35 of the High Court Law for reasons stated earlier. With regard to the other point that the application was not made within 15 days of Order 22 Rule 12 H.C.C. P. Rules 1977, I think as long as the Rules of Court apply to the arbitration proceedings then it is mandatory for the application to be made within the 15 days after the publication as stipulated in Order 22 Rule 12.

It is not disputed by the applicant as can be seen in their affidavit particularly paragraph 3 of Exhibit X that the award was made and published on 28th day of August 1985 and received by them on 20th September 1985 while the application to set aside the award was filed on 23/10/85.

5 *This is clearly more than 15 days after the publication.*

From the wordings of Rule 12 of Order 22 non-compliance with the will in my view make the suit incompetent.”

He continued and concluded on page 50 as follows -

10 *“In the final analysis and in view of the foregoing reasons I am of the view that this suit is incompetent as it was not properly commenced as stipulated by the High Court Rules and also it was commenced after the expiration of 15 days period stipulated in Order 22 Rule 22. I also hold that the provisions of Section 35 of the High Court Law which enjoins the High Court where the Local rules do not make specific provisions, to apply the*
15 *practice and procedure of the High Court of Justice in England, as not applicable in the instant case. The application to set aside the award is hereby struck out. I must commend both learned counsel fill brilliant submissions.*

20 Aggrieved by the decision of the trial court above, the appellant appealed to the Court of Appeal Kaduna. Three grounds of appeal were tiled and from them the following three issues respectively arose for determination -

25 *“1. Whether in view of Order 2 Rule 1 of the Kaduna State High Court (Civil Procedure) Rules 1977 the action or application of this nature should only be commenced by a writ of summons to the exclusion of any other procedure such as by an originating notice of motion as in this case.*

2. Whether an action or application commenced by originating notice of motion which ought to have been commenced by a writ of summons should be struck out and not treated as if it had been commenced by a writ of summons.

30 *3. Whether Order 22 Rule 12 of the High Court (Civil Procedure) Rules 1977 is applicable to this case and therefore the application is time barred or whether by virtue of section 35 of the High Court law cap. 49 Laws of Northern Nigeria applicable in Kaduna State, the computation of time is governed by the applicable English law at the time of the enactment of*
35 *Arbitration Law. “*

The Court of Appeal in a reserved judgment allowed the appeal on issues 1 & 2 but dismissed it on issue 3, namely, that the suit was time barred having been brought long after the expiration of fifteen days when the arbitration award was made and published. Delivering the lead judgment

Akpata J.C.A. (as he then was) said on page 141 thus-

"I have therefore come to the conclusion that since the originating notice of motion the subject matter of this appeal was filed long after the expiration of the fifteen days period stipulated in Order 22 Rule 12, it was incompetent and was rightly struck out. While grounds 1 and 2 succeed, 5 ground 3 fails. The appeal as a whole therefore fails. It is accordingly dismissed. There will however be no order as to costs."

Still dissatisfied with the decision of the Court of Appeal, the appellant has further appealed to this Court. Only one ground of appeal was filed and it reads *"That the learned judges of the Court of Appeal erred in law 10 when they held that the suit before the High Court was time barred by virtue of Order 22 Rule 12 High Court (Civil Procedure) Rules, 1977 in that the suit was brought outside 15 days after the publication of the Arbitrator award when the award in this suit was not an award made pursuant to section 90 of the High Court Law Cap. 49 Laws of Northern Nigeria applicable 15 to Kaduna State and when also the Arbitration Law cap. 7 Laws of Northern Nigeria applicable to Kaduna State prescribed no time limit for challenging an arbitration award."*

PARTICULARS

(a) *Order 22 of the High Court (Civil Procedure) Rules, 1977 of Kaduna State applies exclusively to an arbitration ordered by the Court in a cause or matter already before the court in exercise of powers conferred by section 90 of the High Court Law.* 20

(b) *The suit brought in the High Court in the instant case, are proceedings subsequent to an extra-judicial arbitration as opposed to arbitration ordered by the court in a suit pending before it.* 25

(c) *Order 22 rule 1 of the High Court Rules makes express reference to section 90 of the High Court Law and not the Arbitration Law Cap. 7 and any construction other than the plain and ordinary meaning of the said section 90 and order 22 will be doing extreme violence to the meanings of those provisions.* 30

(d) *At the time of enacting the Arbitration Law Cap. 7 in 1914, the applicable statute of General Application was the Arbitration Act of England 1889, which prescribed a time limit of six (6) weeks after publication of the arbitration award.* 35

(e) *For the Learned Judges of the Court of Appeal to have imported the*

provisions of order 22 of the High Court (Civil Procedure) Rules into the Arbitration Law was ultra vires their powers and duty as same amounted to judicial legislation as opposed to judicial interpretation.

Learned Counsel for the appellant in his brief formulated two issues
5 for determination thus -

“(i) *Whether there is any lacuna in the Arbitration Law Cap. 7, Laws of Northern Nigeria 1963, applicable in Kaduna State and/or the Kaduna State High Court (Civil Procedure) Rules 1977, so as to warrant a recourse being made to the practice and procedure for the time being of the*
10 *High Court of Justice in England by virtue of section 35 of the High Court Law Cap. 49 Laws of Northern Nigeria 1963, applicable in Kaduna State in the circumstances of this case?*

(ii) Whether Order 22 of the Kaduna State High Court (Civil Procedure) Rules, 1977 dealing with arbitration ordered by the High Court in
15 *suits pending before it pursuant to section 90 of the High Court Law Cap. 49 can properly be said to also govern arbitration made otherwise that as contemplated by the said section 90 of the High Court Law?”*

Clearly the above two issues are in substance exactly the same as
20 issue which the Court of Appeal had considered and decided against the appellant as illustrated above.

Arguing the issues together, counsel for the appellant in his brief submitted that Order 22 of the Kaduna High Court (Civil Procedure) Rules 1977 relates to an arbitration ordered by the Court in a suit pending before it
25 and does not relate, as the present appeal to an arbitration which has been held and concluded but the award whereof is being challenged in court. In short, Order 22 does not apply to arbitration made upon a submission by the parties which falls squarely within the ambit of the Arbitration Law Cap. 7. He said the 1977 Rules have to be considered along with the provisions of section 35
30 of the High Court Law Cap. 49 Laws of Northern Nigeria, 1963 applicable in Kaduna State. And that although generally resort cannot be had to English rules of practice and procedure where there are: provisions in our local rub. English rules can be resorted to where there are: no local rules on a point as well as where the existing rules are: not as comprehensive as they should
35 be. It was then submitted that the 1977 Rules have made no provision in respect of practice and procedure for challenging an arbitration award pursuant to the right conferred by sections 11 & 12 of the Arbitration Law, and that in view of obvious lacuna, resort has to be made to the relevant practice and procedure for the time being of the High Court of Justice in England. He

referred to Order

22 Rules 1 & 2 of the 1977 Rules, Section 35 of the High Court Law Cap. 49 and to the following cases - LAIBRU LTD. v. BUILDING & CIVIL ENG. CONTRACTORS (1962) 1 All NLR 387, ADIGUN v. ATTORNEY-GENERAL OF OYO STATE (1987) 2 NWLR (Pt. 56) 197, APEMOLA v. THOMAS (1946) 12 WACA 81, PAUL v. GEORGE (1959) 4 FSC 198.

Counsel also referred to the judgment of the Court of Appeal pages 128 & 136.

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It was further submitted that as far as Kaduna State is concerned, the English practice and procedure applicable in this case was the practice and procedure obtainable on 3rd November 1955 being the date when the High Court Law Cap. 49 was enacted. He said the procedure and practice for challenging an arbitration award in this case is by originating Notice of Motion only. We were referred to -

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QNAYEMI v. OKUNNOBI (1965) 1 All NLR 362

MIDWEST STATE v. ARMELS TRANSPORT LTD. (1977) 10 S.C. 43. MIDWEST v. ATTORNEY-GENERAL OF ANAMBRA STATE & ORS (1977) 5 S.C. 161

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ANNUAL PRACTICE. 1965 Vol. 1 PARA. 1994/14 Page 81.

RUSSELL ON ARBITRATION 18TH EDITION PAGE 499/480. NIGERIAN COMMERCIAL LAW & PRACTICE 1983 Vol. 1, by OLAKUNLE OROJO PAGE 252.

Learned Counsel contended that the Arbitration Law nowhere prescribes a time limitation for challenging an arbitration award, while Order 22 Rule 1 makes express reference to Section 90 of the High Court Law from where it takes its roots. He said this case is concerned with an extra-judicial arbitration as opposed to that ordered by the Court in a cause or matter before it was submitted that both the High Court and the Court of Appeal were wrong to have imported into the Arbitration Law a time bar of 15 days. The duty of the courts is to interpret the law and not to fill-in the gaps. Section 90 and Order 22 are both clear and unambiguous and the court is urged to give to those provisions their plain and ordinary meaning as opposed to any strained interpretation. The office of a judge is jus dicere not jus dare. The following cases were cited in support - MAGOR & ST. MELLONS R.D.C. v. NEWPORT CORPORATION (1952) A.C. 189 at 191.

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I.B. W. A. V. IMANO (NIG) LTD V. A.C.A (1973) 1 All NLR 208.

MAL STEEL STRUCTURES LTD. v. A.C.B. (1973) 1 All NLR 208.

48 Home Dev. Ltd. v. Scancila Co. Ltd. (1994) 13 KLR Kutigi JSC
OHUKA V. THE STATE (1988) 1 NWLR (PT. 72) 539.

It was also submitted that the Arbitration Law deals in general terms with arbitrations upon submission by the parties while section 90 and Order 22 specifically provide for arbitration upon a reference by the court in a suit before it. Being a subsequent specific legislation section 90 and Order 22
5 should be construed as excluding or delimiting the application of the Arbitration Law. The rule of interpretation is that a special provision is exempted and taken out of the general provision which would therefore not apply. H e cited in support -

MARTIN SCHRODER & CO. v. MAJOR & CO. LTD. (1989) 2 NWLR
10 (PT. 101)1

EDET v. AKPAN (1986) 3 NWLR (PT. 27) 225

ORUBU, v N.E.C. (1988) 5 NWLR (PT. 94) 323

GOVERNMENT OF KADUNA STATE & ORS v. KAGOMA (1982) (S.C. 87.

15 It was further submitted that at the time of enacting the Arbitration Law in 1914, the applicable English Statute of general application on arbitration was the Arbitration Act of England 1889 and that under the English Act, all application to remit or set aside an award must be made within six (6) weeks after the award has been published. It was therefore a deliberate omission on
20 the part of the law maker who was aware of the English Law on the matter not to impose any time limitation. He said the decision of this Court in UNITED NIGERIA INSURANCE COMPANY LTD. v. LEANDRO STOCCO (1973) 1 All NLR 168 which decided virtually the same issue as in the present appeal should be distinguished as inapplicable because of the provision of order 22
25 Rule 1 which expressly excluded the rules from being applicable to an arbitration on a submission. We were urged to allow the appeal and set aside the decisions of the lower courts.

Counsel for the respondent in reply submitted that the Court of Appeal was right when it held that the suit before the High Court was time barred
30 by virtue of Order 22 Rule 12 of the 1977 Rules in that the suit was brought outside the 15 days after the publication of the award. He said an arbitration embarked upon by submission of parties has the same effect as if it is a reference by a court pursuant to section 90 of the High Court Law. He said although no rules of court have been made pursuant to the Arbitration Law,
35 Order 22 Rule 12 which relates to arbitration proceedings ordered by court is by implication applicable to arbitration on submission by the parties and that English rules will not apply. That the artificial distinction between arbitration ordered by court as prescribed in section 90 and order 22 and arbitration on submission under the Arbitration Law is a distinction without a difference. He

said there was no lacuna anywhere in the High Court Law or the 1977 Rules. That the Arbitration Law is “a law to provide for the reference and submission of disputes to arbitration” while Order 22 Rule 12 prescribes a time limit of fifteen days within which to apply to set aside an award. Learned counsel referred to section 13 & 18 of the Arbitration Law and said it was clear that every arbitration is to be regarded as if it were pursuant to a submission. The rules made under order 22 should therefore be regarded as having been made in respect of an arbitration pursuant to a submission. He said Order 49 Rule 13 of the High Court of Lagos State (Civil Procedure) Rules which is in pari materia with Order 22 Rule 12 of the 1977 Rules herein came up for interpretation in the case of U.N.I.C LTD v. LEANDRO STOCCO (Supra), and this Court held that the rules were applicable to both an arbitration on submission and arbitration ordered by court and that the time bar of 15 days applied. The court was asked to follow that precedent and dismiss the appeal.

In the consideration of this appeal the starting point (and possibly the topping point too), will be the case of U.N.I.C. LTD v. LEANDRO STOCCO (supra) which both sides cited in their briefs as having decided virtually the same issues as in the present appeal even though the appellant said it is distinguishable and inapplicable to the instant case. Being a decision of this Court I am bound to follow it once it is found to be applicable.

Now, in the LEANDRO STOCCO case, the plaintiff sought leave to enforce an award whereupon the defendants some six weeks after publication of the award, applied for an order setting it aside or remitting it to the arbitrator for certain reasons. The trial judge held that the application to set aside or remit the award was out of time since it was not brought within 15 days after publication of the award. On appeal to this Court, it was held inter alia that the trial judge rightly held that the application to set aside the award or remit it to the arbitrator is statute-barred under Order 49 Rule 13 of the Lagos State High Court (Civil Procedure) Rules. Delivering the judgment of the Court, Elias C. J. N. stated thus-

“learned counsel for the appellants, in arguing ground 1, contended that their application was not made out of time, as found by the learned trial judge since, according to him, Order 49, Rule 13 of the Lagos High Court Rules must be read subject to Order 49, Rule 1 which says that parties desirous of referring a matter in difference to the arbitrator, may do so at any time. He further contended that under the Arbitration Act itself, there is no provision setting out any time-limit within which an application to set aside an award ought to be brought, and that section 12 of the Act sets no time-limit to cases arising within Lagos State. We think that there is no

merit in this argument and that the learned trial judge is right in applying Order 49, Rule 13 of the Lagos High Court Rules in holding that the application was out of time”.

I also hasten to think that there is no merit in the submission of learned appellant’s counsel in this case as brilliant and forceful as they sounded. Counsel on both sides agree that Order 49 Rule 13 of the Lagos High Rules is in pari materia with Order 22 Rule 12 of Kaduna High Court Rules. The two rules respectively prescribe a time limit of 15 days for applying to set aside an award. The Arbitration Act Cap. 13 Laws of the Federation of Nigeria and Lagos 1958 applicable in Lagos State is also in pari materia with the Arbitration Law Cap. 7 Laws of Northern Nigeria 1963 applicable in Kaduna State. Section 3, 4 and 18 of the Arbitration Law (see equivalent sections of the Act.) read -

“3. A submission, unless a contrary intention is expressed therein, shall be irrevocable, except by leave of the Court or a judge or by mutual consent, and shall have the same effect in all respects as if it has been made on order of court.

4. A submission, unless a contrary intention is expressed therein shall be deemed to include the provisions set forth in the schedule, so far as they are applicable to the reference under the submission.

This Law shall apply to every arbitration under any act or Law passed before or after the commencement of this Law as if the arbitration were pursuant to a submission, except in so far as this Law is inconsistent with the Act or Law regulating the arbitration or with any rules of procedure authorised or recognised by that Act or Law.”

And the word “*submission*” is defined under section 2 of the Law as well as the act thus - “*submission*” means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not.”

All the foregoing provisions show that while every arbitration under any Act or Law (including Kaduna State High Court Law), is to be regarded as if the arbitration is pursuant to a submission, an arbitration embarked upon on a submission shall also have the same effect as if it is a reference by a court. Therefore the submission of appellant’s counsel to the effect that Order 22 Rule 12 and the decision in U.N.I.C. LTD v. LEANDRO STOCCO (supra) would not apply simply because Order 22 Rule 1 made reference only to an arbitration ordered by court under section 90 of the High Court Law I clearly misconceived and untenable. It must be stressed again that it is obvious from the clear language of the Arbitration Law that an arbitration embarked upon on a

submission shall have the same effect as if it is a reference pursuant to section 90 of the High Court Law. So it is in this case as it was in U.N.I.C. LTD. v. LEANDRO STOCCO (supra). Consequently there is no lacuna either in the Arbitration Law or in the 1977 Rules as contended by the appellant

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I have therefore come to the conclusion that since the originating notice of motion herein was not filed within 15 days as stipulated by Order 22 Rule 12 of the Kaduna High Court (Civil Procedure) Rules, it was incompetent and rightly struck-out by the trial High Court as confirmed by the Court of Appeal.

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The appeal therefore fails and it is accordingly dismissed. The respondent is awarded costs assessed at N 1,000.00 only.

UWAIS JSC

I have had the opportunity of reading in draft the judgment read by my learned brother Kutigi, J.S.C I entirely agree with the judgment. I adopt it as mine and do not wish to add anything. The appeal, therefore, fails and it is accordingly, dismissed with N 1,000.00 costs in favour of the Respondent.

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OGUNDARE JSC

I have had the advantage of a preview of the judgment of my learned brother Kutigi JSC just delivered. I agree entirely with him. I have nothing more to add. I too dismiss the appeal with costs as assessed in the lead judgment of my learned brother

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ONU JSC

I had before now read the draft of the judgment of my learned brother Kutigi J.S.C. just delivered and with it I agree. I however wish to add the following few words of mine in elaboration.

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There are clearly in the circumstances of this case as fully exemplified in the lead judgment, no lacuna in the Arbitration Law, Cap. 7, Laws of Northern Nigeria 1963, applicable in Kaduna State and/or the Kaduna State High Court (Civil Procedure) Rules, 1977, as to warrant a recourse being had to the practice and procedure for the time being of the High Court of Justice in England by virtue of section 35 of the High Court Law, Cap. 49, Laws of Northern Nigeria applicable to Kaduna State. If there is any such lacuna, such, in my respectful view, is rendered ineffective in the treatment of the two issues submitted and considered. The fallacy or insupportability of the appellant's argument is laid bare when reference is made to the purports of sections 3 and 18 of the Arbitration Law, the latter which the court below invoked to import Order 22 but nonetheless arrived at the wrong conclusion. Had the attention of the court below been properly drawn to the purport of these crucial sections of the law on the subject, it would have come to a different view. The two sections relevantly state as follows:

“3. A submission, unless a contrary intention is expressed therein, shall be irrevocable, except by leave of the court or a judge or by mutual consent, and shall have the same effect in all respects as if it had been made an order of court.” and

“18. This Law shall apply to every arbitration under any Act or Law passed before or after the commencement of this Law as if the arbitration were pursuant to a submission, except in so far as this Law is inconsistent with the Act or Law regulating the arbitration or with any rules of procedure authorised or recognised by that Act or Law.”

In other words, the English Arbitration Act, 1889 has no application since the Arbitration Law of Northern Nigeria, applicable to Kaduna State and the Kaduna State High Court (Civil Procedure) Rules 1977 (ibid) have made adequate provisions. As indeed the position of the law had always been and which was clearly expounded by this Court in Kolawole v. Alberto (1989) 1 NWLR (Part 98) 382 (per Craig, J.S.C.):

“Reference may be made to English rules only if there are no rules of court which may be used for that particular point. Since Order 5 R. 6 deals with renewal of Writs, there is no need to resort to English rules on the point”

This Court had earlier on in Oruakpor Okokor v. The State (1967) NMLR 189 at 191 (per Idigbe, J.S.C.) sounded the following note of warning: *“Trial courts should be a little more cautious in the application of principles of English law in the face of specific provisions in our local statutes.”*

It is the duty of every Nigerian court not only to uphold but to apply

Nigerian Laws and rules of court. As Ohaseki, J. S. C. rightly put it in Bendel State v. The Federation (1981) 10 SC. 115:

“Just as Australian courts apply Australian law and American courts apply American law, be they state or Federal, Nigerian courts are enjoined to by the Nigerian Constitution to follow Nigerian law.....”

Eso, J. S. C. at pages 187-188 of the above Report stated that: 5

“Gone should be those days if ever they were, when the decisions of other courts in any common law country are to be accepted in this country as precedents in the like of the Delphic Oracle.” See also Uyanne v.Asika (1975)4 S.C. 233 and Esan v.Olowa (1974) 3 S.C. 125.

It would look absurd to apply the 1889 English Arbitration Act to an arbitration entered into over a century after the enactment of the Act and in Nigeria of the 20th century. It was Udo Udoma, J.S.C. who aptly stated that 10
*“This country is no longer tied to the apron strings of imperial England. Indeed such an attitude of independent thinking can only be to the good. It is an assertion of independence which should contribute to- 15
wards the broad development and growth of our independent corpus of Jurisprudence. “*

Indeed, local circumstances no longer permit the application of a statute of general application such as the English Arbitration Act of 1889 when local legislations abound. To be tied to such outdated English legisla- 20
tion would, in my view, produce results which are manifestly unreasonable. See Lawal v. Younan 1961 1 All NLR 245.

The legal position being patent under the Kaduna State Arbitration Law and Rules of Court, it is unarguable that Order 22 Rule 12 of the Kaduna State High Court (Civil Procedure) Rules 1977 is applicable where the question 25
is whether or not to set aside the award in an Arbitration whether upon a reference as opposed to that upon submission which, as rightly decided, is time barred after the expiration of 15 days from the date of submission.

For these and the fuller reasons set out in the lead judgment of my learned brother Kutigi, J.S.C. with which I entirely agree, I also will dismiss this 30
appeal and make the same consequential orders contained therein inclusive of those as to costs.

IGUHJSC

My learned brother, Kutigi, J.S.C. in the lead judgment which I had 35
the Privilege of reading in draft has dealt exhaustively with all the issues

involved in this appeal.

I am in complete agreement with him that nothing has been urged by the appellant in this appeal to justify my interference with the order of the trial court, as affirmed by the court below, striking out the appellant's originating
5 notice of motion herein as incompetent, the same having been filed outside the 15 days period prescribed by Order 22 Rule 12 of the Kaduna State High Court (Civil Procedure) Rules. See United Nigerian Insurance Company Ltd. v. Leandro Stocco (1973) 1 All N.L.R. 168.

I agree that there is no substance in this appeal which I will also dis-
10 miss.

I endorse the order as to costs contained in the lead judgment.

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