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# MOMENTOUS DECISIONS OF COURTS IN 2025

Judicial Competence of Nigerian Courts to Set Aside Foreign-Seated Arbitral Awards: An Insight from *Oil & Industrial Services Ltd v. Hempel Paints (South Africa) (Pty) Ltd (2025*) LPELR-81602 (CA).

The decision of the Court of Appeal in ***Oil & Industrial Services Ltd*** v. Hempel Paints (South Africa) (Pty) Ltd[1]represents a significant restatement of Nigerian arbitration jurisprudence, *particularly in relation to the limits of judicial intervention in foreign-seated arbitral proceedings, the recognition and enforcement regime under the Arbitration and Conciliation Act (ACA), and the distinction between annulment (setting aside) and refusal of enforcement.*The case also clarifies several ancillary but important issues touching on jurisdiction, party autonomy, and the interplay between domestic courts and international arbitration.

**Facts and Background**

The dispute arose from a commercial contractual relationship between **Oil & Industrial Services Ltd (OISL),** a Nigerian company, and **Hempel Paints (South Africa) (Pty) Ltd,** a foreign entity. The parties' contract contained an arbitration clause which expressly provided for arbitration seated in London. Following a dispute, arbitral proceedings were conducted in accordance with the agreed arbitral framework, culminating in a foreign-seated arbitral award in favour of Hempel Paints.

Dissatisfied with the outcome, OISL commenced proceedings before the High Court of Rivers State, seeking, among other reliefs, an order setting aside the arbitral award, contending that where an award is tainted by lack of fairness, justice or misconduct of an arbitrator, a court can set aside the award. The High Court of Rivers State declined jurisdiction to set aside the award, holding that it lacked competence to annul an award seated outside Nigeria. OISL appealed to the Court of Appeal.

**Issue(s) for Determination**

The predominant issue concerned *the power of a Nigerian court to set aside a foreign-seated arbitral award and whether the sole arbitrator was guilty of misconduct to warrant setting aside the arbitral award.*

**Arguments of Counsel**

Counsel for the Appellant submitted that the lower court erred in law by grossly misinterpreting the Arbitration and Conciliation Act ("ACA"), which makes no distinction between domestic and international arbitral awards. He argued that the court wrongly relied on international conventions and foreign judicial authorities to limit or oust its jurisdiction, contrary to Nigeria's sovereign authority to determine matters in accordance with its domestic laws. Counsel contended that the court ought to have jealously guarded its jurisdiction rather than subordinating it to international norms of reciprocity.

It was further argued that having held that it lacked jurisdiction, the lower court was wrong to proceed to make substantive findings to the effect that the Sole Arbitrator did not misconduct herself. Counsel submitted that the Sole Arbitrator misconducted herself by failing to determine the issue of frustration of contract raised by the Appellant. In support, he relied on ***Crickwood Property & Investment Trust Ltd v. Leighton's Investment Trust Ltd*** [2] ***and Obayuwa v. Governor of Bendel State.***[3]He submitted further that the Respondent's conduct could amount to constructive fraud, even if not deliberate, and that this constituted arbitral misconduct warranting the setting aside of the award.

1 (2025) LPELR-81602 (CA)
2 (1945) AC 221
3 (1982) 12 SC 147

In response, Counsel for the Respondent argued that the High Court of Rivers State was correct in holding that it lacked jurisdiction to set aside a Final Arbitral Award made in an arbitration seated in London, England. He contended that the supervisory jurisdiction rests exclusively with the courts of the seat of arbitration, namely the English courts, relying on Articles V(1) and VI of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (the New York Convention). He submitted that the Appellant's application was wrongly brought before the High Court of Rivers State rather than the appropriate English court.

Counsel posited further that where there is any inconsistency between ss. 30 and 48 of the ACA and Article V(1) of the New York Convention as domesticated under s. 54 of the ACA, the latter must prevail. He maintained that the convention confers jurisdiction to set aside an arbitral award solely on the courts of the country where the arbitration is seated. In support, he cited ***Sani Abacha & Ors v. Chief Gani Fawehinmi*** [4] ***and Tulip Nigeria Ltd v. Noleggioe Transport Maritime.***[5] Counsel argued that the only remedy available to the Appellant is to resist the recognition and enforcement of the award in Nigeria under s. 52 of the ACA, on grounds such as procedural irregularity, fraud, or public policy.

On the issue of alleged arbitral misconduct, Counsel for the Respondent argued that the Appellant failed to establish any misconduct on the part of the Sole Arbitrator. He submitted that save for fundamental procedural irregularities affecting fair hearing, parties are not entitled to challenge an arbitral award on questions of law or fact where the award is prima facie valid on its face. He relied on ***Taylor Woodrow (Nig.) Ltd v. S.E. GMBH,***[6] ***Kano State Urban Development Board v. Fanz Construction Co. Ltd,***[7] ***and Triana Ltd v. Universal Trust Bank Plc.***[8] Counsel argued furtherthat the decision not to cross-examine witnesses was jointly agreed by both parties and that the Appellant could not subsequently complain of denial of fair hearing on that basis. Counsel maintained that the Sole Arbitrator's evaluation and treatment of the evidence were proper and unimpeachable. He concluded by submitting that the lower court was right to have proceeded to determine the application on its merits notwithstanding its finding on jurisdiction, and urged the appellate court to dismiss the appeal.

4 (2000) 6 NWLR (Pt. 660) 228
5 SAS (2011) 4 NWLR (Pt. 1237) 254
6 (1993) 4 NWLR (Pt. 286) 127
7 (1990) 4 NWLR (Pt. 142) 1
8 (2009) 12 NWLR (Pt. 1155) 313

**Decision and Reasoning of the Court**

The Court of Appeal dismissed the appeal and affirmed the decision of the trial court, albeit without embarking on an extensive or elaborate analysis of the scope of the power of a Nigerian court to set aside a foreign-seated arbitral award. The affirmation was nonetheless firmly anchored on the central holding of the trial court that Nigerian courts lack jurisdiction to annul or set aside arbitral awards rendered outside Nigeria. The trial court reasoned that, under both Nigerian law and established principles of international arbitration, the juridical seat of the arbitration determines the supervisory court, and that only the courts of the seat possess primary and exclusive jurisdiction to entertain applications for the annulment or setting aside of an award. In reaching this conclusion, the trial court relied on ss. 29, 30, and 48 of the Arbitration and Conciliation Act (ACA), read together with the New York Convention. It held that the competence of Nigerian courts in relation to foreign arbitral awards is limited to their recognition and enforcement, or the refusal thereof. Crucially, the court emphasised that a refusal of enforcement does not amount to setting aside an award; rather, it merely restricts the award's enforceability within Nigeria, while leaving the award subsisting, valid, and capable of enforcement in other jurisdictions.

The lower court had rejected the Appellant's contention that the Sole Arbitrator was guilty of misconduct or that there was a breach of the right to fair hearing. It held that the arbitral proceedings were conducted strictly in accordance with the procedure mutually agreed by the parties. In particular, the court noted that the parties had agreed to present their respective cases solely through documentary evidence, expressly waiving oral testimony and cross-examination, and instead submitting the documents for the arbitrator's evaluation and determination. In those circumstances, the court found no basis for allegations of misconduct or procedural unfairness.

**Other Issues Resolved**

The Court of Appeal also addressed other issues of law, including:

- **Party Autonomy:** The appellate court reaffirmed that parties who freely choose a foreign seat must accept the legal consequences of that choice, including submission to the supervisory jurisdiction of foreign courts.

- **Finality of Arbitral Awards:** The court underscored arbitration's core objective of finality and warned against expansive judicial review that would erode commercial certainty.

**Review of the Court of Appeal's Reasoning**

While the conclusion reached by the Court of Appeal in Oil & Industrial Services Ltd v. Hempel Paints (South Africa) (Pty) Ltd is doctrinally sound and consistent with international arbitration orthodoxy based on an accurate interpretation of the New York convention, the judgement is notable for its economy in espousing the law on the core jurisdictional issue. The appellate court affirmed the decision of the trial court without undertaking a detailed doctrinal analysis of the ***legal basis upon which Nigerian courts are divested of jurisdiction to set aside foreign-seated arbitral awards.***

This brevity, though not uncommon in decisions of appellate courts, represents a missed opportunity to expressly settle lingering uncertainties in Nigerian arbitration jurisprudence, particularly in light of earlier decisions that appeared to blur the distinction between annulment and enforcement. Given the controversy generated by the earlier Court of Appeal decision in ***Limak Yatırım Sanayi ve Ticaret A.Ş. v. Sahelian Energy & Integrated Services Ltd,*** a more explicit articulation of the jurisdictional limits of Nigerian courts would have served to conclusively dispel any residual suggestion of concurrent annulment jurisdiction over foreign awards.

Nonetheless, the absence of elaborate reasoning does not detract from the binding effect of the holding of the Court. The ratio of the decision is clear: Nigerian courts lack jurisdiction to annul or set aside arbitral awards rendered outside Nigeria. Upholding the decision/reasoning of the High Court necessarily endorses the seat-based theory of arbitral supervision, under which only the courts of the juridical seat possess primary jurisdiction to entertain applications to set aside an award. To that extent, the decision achieves doctrinal clarity by implication, even if not by express exposition.

**Comparison with the case of Limak Yatırım v. Sahelian Energy**

The decision in the case under review (Oil & Industrial Services Ltd v. Hempel Paints (South Africa) (Pty) Ltd) stands in notable contrast to the earlier decision in Limak Yatırım Sanayi ve Ticaret A.Ş. v. Sahelian Energy & Integrated Services Ltd, where the Nigerian court appeared to impliedly assume jurisdiction to set aside a foreign-seated arbitral award, notwithstanding that the juridical seat of the arbitration was Switzerland. In Limak, the court reached this conclusion by cumulatively construing ss. 48, 51, and 52 of the Arbitration and Conciliation Act.

In Limak, the reasoning of the court suggested a broader conception of judicial power, implying that Nigerian courts could annul a foreign award where there was a sufficient Nigerian nexus, particularly where enforcement was being sought or where the award allegedly offended Nigerian public policy. The court appeared less rigid in applying the seat theory and was willing to intervene notwithstanding the status of Switzerland as the juridical seat.

By contrast, Oil & Industrial Services marks a clear doctrinal correction.The Court of Appeal in affirming the decision of the lower court rejected any notion that Nigerian courts possess concurrent annulment jurisdiction over foreign-seated awards. In doing so, the Court implicitly limited the precedential reach of Limak, aligning Nigerian law more closely with international arbitration orthodoxy, particularly the Model Law framework and New York Convention practice.

Notwithstanding the extensive submissions of counsel during the hearing in Oil & Industrial Services, the judgement was conspicuously silent on the Limak decision and made no reference to it whatsoever. This omission is particularly significant, given that one of the Justices who participated in the Limak decision sat as the presiding Justice on the panel that heard the Oil & Industrial Services appeal and also authored the leading judgement. The most plausible inference to be drawn from this deliberate judicial silence is that the court was unwilling to reaffirm or rely on Limak, and instead chose to draw a line under that authority and chart a forward-looking course.

**Statutory Analysis of the Arbitration and Conciliation Act (ACA)**

A close reading of the Arbitration and Conciliation Act (ACA) shows that the conclusion reached in Oil & Industrial Services Ltd v. Hempel Paints (South Africa) (Pty) Ltd is firmly rooted in orthodox statutory construction. Ss. 29 and 30 of the ACA, which provide for the setting aside of arbitral awards on defined grounds, are properly confined to awards rendered in arbitrations seated in Nigeria. This territorial limitation is implicit in the structure of the Act, which consistently distinguishes between domestic and foreign awards.

By contrast, ss. 52 and 54 of the ACA, which domesticate the New York Convention, establish a self-contained regime governing the recognition and enforcement of foreign arbitral awards. Under this framework, Nigerian courts may recognise and enforce such awards, or refuse enforcement on limited grounds such as procedural irregularity, excess of jurisdiction, fraud, or public policy. Significantly, neither s. 52 nor any other provision of the ACA empower Nigerian courts to annul or set aside a foreign-seated arbitral award.

This omission is deliberate. It reflects legislative alignment with the New York Convention and the UNCITRAL Model Law, both of which reserve annulment proceedings to the courts of the seat of arbitration. Extending ss. 29, 30 and 48 to foreign seated awards would distort their text and undermine the balance between territorial sovereignty and international comity that underpins modern arbitration law.

The language of s. 52 itself reinforces this conclusion. S. 52(viii) contemplates refusal of enforcement where an award ***"has been set aside or suspended by a court in which, or under the law of which, the award was made,"*** clearly presupposing that supervisory jurisdiction resides with the courts of the seat.

The approach endorsed in Oil & Industrial Services therefore preserves the critical distinction between annulment, which attacks the validity and legal existence of an award, and refusal of enforcement, which merely limits its effect within the particular jurisdiction where refusal of recognition/enforcement has been ordered.

The doctrinal confusion evident in Limak may be traced to s. 48 of the Arbitration and Conciliation Act (ACA), which sets out grounds for setting aside arbitral awards under Part III of the Act. Part III generally governs international commercial arbitration, yet s. 48 does not expressly confine annulment jurisdiction to arbitrations seated in Nigeria. This textual silence appears to have facilitated an expansive interpretation in Limak. However, the more coherent and orthodox construction is that the reference to "international commercial arbitration" in s. 48 pertains to Nigeria-seated international commercial arbitrations, rather than to arbitrations seated abroad. Such an interpretation preserves the territorial principle that underpins both the ACA's structure and international arbitration law.

The enactment of the Arbitration and Mediation Act, 2023 (AMA) has now substantially eliminated any residual ambiguity regarding the powers of Nigerian courts over foreign-seated arbitral awards. S. 1(6) of the AMA expressly provides that Part I of the Act (ss. 1–66), including s. 55 which governs applications for setting aside arbitral awards, applies only to arbitrations seated in Nigeria. Conversely, s. 1(7) of the AMA exhaustively enumerates the powers exercisable by Nigerian courts in respect of arbitral awards irrespective of seat, or where no seat has been designated. Notably absent from these enumerated powers is any authority to annul or set aside an arbitral award. Instead, the listed powers are limited to staying court proceedings, granting and enforcing interim measures, compelling the attendance of witnesses, and recognising or refusing the enforcement of arbitral awards. By this deliberate legislative design, the AMA effectively forecloses the approach adopted in Limak.

It bears noting that both *Oil & Industrial Services Ltd v. Hempel Paints (South Africa) (Pty) Ltd and Limak Yatırım Sanayi ve Ticaret A.Ş. v. Sahelian Energy & Integrated Services Ltd* are decisions of the Court of Appeal and are therefore binding on lower courts. Until the Supreme Court resolves the conflict, lower courts remain technically at liberty to follow either authority. Nevertheless, both decisions were rendered under the repealed ACA, and the reasoning in Hempel Paints aligns more with the position now expressly codified under the extant **AMA.**

Comparable developments may be observed in other jurisdictions. In ***Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.***[9] the Supreme Court of India overruled its earlier decision in ***Bhatia International v. Bulk Trading S.A.,***[10] which had permitted Indian courts to annul foreign-seated arbitral awards on public policy grounds. The prevailing position in India is now firmly settled: domestic courts lack supervisory jurisdiction over international arbitrations seated outside the country.

**Conclusion**

In sum, Oil & Industrial Services Ltd v. Hempel Paints (South Africa) (Pty) Ltd reinforces Nigeria's emergence as a pro-arbitration and arbitration-friendly jurisdiction by affirming that Nigerian courts lack jurisdiction to set aside foreign-seated arbitral awards, irrespective of alleged defects in the arbitral process. The appropriate remedies remain either annulment proceedings before the courts of the seat or resistance to recognition and enforcement in Nigeria on the limited grounds permitted by law. In this respect, Hempel Paints represents a more faithful and orthodox application of the New York Convention and the UNCITRAL Model Law.

[9] (Civil Appeal No. 7019 of 2005),
[10] (2002) 4 SCC 105