MOMENTOUS DECISIONS OF COURTS IN 2025

Jurisdiction of Court to set aside procedural order in Arbitration Proceedings – A Case Review of *Bayshore Technologies Limited v. Green Fuels Limited (Suit No. FHC/L/CS/377/2025)*

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The Federal High Court, coram Honourable Justice A.O. Owoeye, had on 10th April 2025, delivered its decision on an originating motion filed by Bayshore Technologies Limited ("Bayshore") against Green Fuels Limited ("Green Fuels") in respect of an issue that arose from an ongoing arbitration. In the said ruling, the court found in favour of Bayshore and substantially granted all the reliefs sought regarding the ongoing arbitration.

Facts of the Case

The background facts leading to the case stem from an arbitration commenced by Green Fuels. In the course of the arbitral proceedings, the tribunal granted leave to Bayshore to submit its request for the production of documents by Green Fuels, following the grant of a similar request in favour of Green Fuels earlier on in the arbitration. In accordance with a procedural order issued by the arbitral tribunal, Bayshore delivered the request in the form of a Redfern Schedule for production by Green Fuels. The basis for the request by Bayshore was that the documents were not in their possession and the requested documents were germane for the just and effectual determination of Green Fuel's claim and Bayshore's counter-claim. Upon consideration of the request of Bayshore, the arbitral tribunal, by a subsequent procedural order, declined the request. Aggrieved, Bayshore approached the Federal High Court via an originating motion seeking an order setting aside the part of the subsequent procedural order declining its request for the production of documents by Green Fuels, as well as an order directing Green Fuels to produce the documents requested for, within 7 (seven) days of grant of the first order.

Green Fuel's Preliminary Objection

In its written address in opposition to Bayshore's motion, Green Fuels raised a challenge to the jurisdiction of the court to hear and determine the application as a preliminary point. The gravamen of Green Fuel's preliminary objection was that the court lacks substantive jurisdiction to entertain the application on the basis that under the Arbitration and Mediation Act, 2023 ("AMA"), the instances wherein the court may interfere with arbitration are provided in the Arbitration Proceedings Rules, 2020 ("APR") (defined as "arbitration claims"), and challenging procedural orders does not fall within the instances listed. In addition, Green Fuels argued that having regard to the definition of court under s. 91 of the AMA which means "High Court of a State, High Court of the Federal Capital Territory, Abuja or the Federal High Court", recourse must be made to ss. 251 and 272 of the Constitution of the Federal Republic of Nigeria, 1999, to determine which of the courts has jurisdiction to hear any such application. On this basis, Green Fuels contended that the cause of action between the parties borders on breach of contract (simple contract) and as such, the Federal High Court lacks the jurisdiction to entertain the application. Green Fuels contended further that the application does not involve an arbitration award or interim ruling but the examination of the procedural order of an arbitral tribunal, which would warrant the court to consider the claim and facts before the arbitral tribunal. And these facts and claims are based on contract, which is outside the subject matter jurisdiction of the Federal High Court. In conclusion, the court was urged to strike out the application for lack of jurisdiction.

Opposing the preliminary objection, Bayshore argued that according to Rule 1(j) of the APR, an arbitration claim includes an application to set aside an award under s. 55 of the AMA, and that its originating motion was brought pursuant to the said section, as the procedural order in question was an interim award. Bayshore juxtaposed the aforesaid provision of the APR with Order 52 Rule 15(g) of the Federal High Court (Civil Procedure) Rules, 2019 ("FHC Rules") which relates to the power of the court to set aside an interim or final award. Bayshore contended further that its originating motion is an arbitration claim and its constitutional right to fair hearing is an important question of law relating to the arbitration proceedings to be determined by the court. Further, that the Federal and States High Court have concurrent jurisdiction over arbitration proceedings in Nigeria, irrespective of the provisions of s. 251 of the Constitution. In the alternative, Bayshore argued that the subject matter of the arbitration, being the supply of natural gas, is within the subject matter jurisdiction of the Federal High Court.

Arguments on the Originating Application

On the main application, the position of Bayshore was that the prior request by Green Fuel for documents was allowed by the arbitral tribunal but its own request for documents was denied, revealing that the said decision amounted to a breach of its right to fair hearing guaranteed by the Constitution, and was contrary to public policy. In addition, Bayshore submitted that the documents requested are relevant and germane for the just and effectual determination of its counter-claim in the arbitral proceedings.

Green fuels opposed the application, contending that the procedural order which contains the decision of the tribunal in respect of document production does not constitute an interim or final award which may be subjected to judicial interference, and that the court has no power under the AMA to review mere procedural orders such as the one for production of evidence. Green fuels maintained the position that in the United Kingdom, the intrusion of the court in arbitral proceedings is kept at the minimum and same has not been extended to arbitral procedural orders. Furthermore, Green Fuels argued that the tribunal has the power to determine the admissibility, relevance, materiality and weight of any evidence in arbitral proceedings and it exercised its procedural discretion in accordance with applicable arbitration rules.

Decision of Court on the Preliminary Objection and Originating Motion

On the preliminary objection raised by Green Fuels, the court held that though s. 64 of the AMA provides that a court shall not intervene in any matter governed by the AMA except where the AMA provides for such, Order 52 Rule 15 (i) of the FHC Rules allows for an application to be made to the court, generally to determine any question of law arising in the course of or concerning any arbitration agreement or proceedings, and that the application of Bayshore falls under that category. The court held further that the Federal High Court comes within the meaning given to "court" in s. 91 of the AMA; as such, it shares concurrent jurisdiction over arbitration claims with the High Court of a State and High Court of the Federal Capital Territory. Thus, the court affirmed its jurisdiction to hear the application, and dismissed the objection of Green Fuels.

Deciding the application, the court relied on the provisions of s. 30 of the AMA which provides that an arbitral tribunal shall ensure that parties are treated equally and given reasonable opportunity of presenting their case, to hold that the arbitral tribunal ought to have balanced the competing interests and rights of the parties before it. His Lordship held that the refusal of the request of Bayshore amounts to a violent breach of s. 30(a) of the AMA. The court held further that the refusal of the tribunal to direct Green Fuels to produce the documents requested by Bayshore violated Bayshore's right to fair hearing. And that the provisions of the AMA and APR must not be construed to bar Bayshore from seeking redress in court where the tribunal is in fundamental breach of the provisions of s. 36 of the Constitution as well as s. 30 of the AMA.

The court, thereby, granted the application of Bayshore in its entirety, set aside the relevant part of the procedural order in question, and directed Green Fuels to produce the requested documents to Bayshore within seven (7) days.

Commentary

This ruling, amongst many others, brings to light the attitude of Nigerian courts to arbitration in general.

Given that arbitration remains a developing and increasingly significant area of our jurisprudence, there has been a measure of inconsistency in defining the proper relationship between arbitral tribunals and the courts, particularly regarding the scope and limits of judicial intervention in arbitral proceedings. The evolving nature of the framework continues to generate debate as to the extent, if any, to which courts may properly interfere in matters entrusted to arbitral discretion.

The instant case was yet another opportunity for the courts to expound on the Nigerian jurisprudence on arbitration. Upon critical analysis, one may view the ruling as a deviation from the established principles of arbitration. This is because generally, the law on arbitration is regulated by the AMA (together with other subsidiary legislations made pursuant to the AMA); as such, instances in which an aggrieved party can approach the court on an "arbitration claim" are circumscribed by the AMA and the APR. Paragraph 1 of the APR defines "arbitration claim" to include certain applications which may be brought to a High Court under the AMA, none of which include an application to set aside a procedural order. S. 55 of the AMA which allows a party to apply to the court to set aside an arbitral award on limited grounds does not contemplate the setting aside of a procedural order. Furthermore, the court's inclination to accept Bayshore's classification of the procedural order as an interim award does not align with the intrinsic definition of both terms in the practice of arbitration. A procedural order is an order, ruling or direction made by the tribunal over procedural matters on how the arbitral process is managed and organised, while an interim award is an interim decision on a substantive issue between the parties. The key distinction is that a procedural order is not on a substantive issue. In the instant case, a decision to accept or refuse an application for production of documents cannot be said to have determined the rights of the parties.

Another argument to consider is on the court's interpretation of Order 52 Rule 15(i) of the FHC Rules. Order 52 Rule 15(i) of the FHC Rules provides that *"An application in this rule to the Court under the Arbitration and Conciliation Act – (i) generally to determine any question of law arising in the course of or concerning any arbitration agreement or proceedings referred to the Court...shall be made by originating motion."* The court apparently relied on said order to conclude that it had wide powers to entertain the application of Bayshore. However, it could be said that the preamble to the provision contemplates that such an application was to be made pursuant to the Arbitration and Conciliation Act – the statute in force at the time – which has now been replaced by the AMA, and that such an application ought to comply with the provisions of the AMA and by extension, the APR, failing which the application would be incompetent. Furthermore, it can be argued that the purpose of the order was to highlight the mode of bringing such applications (originating motion) rather than outline the kind of applications that can be entertained by the court.

In arriving at its decision, the court placed heavy reliance on the provisions of s. 30 of the AMA, particularly subsection (a) to the effect that parties are to be treated equally and given reasonable opportunity of presenting their respective cases. However, it appears that the court did not place similar premium on the succeeding s. 31 which provides in subsection (3) that the powers conferred on the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence. It may be argued that the effect of this section would be that the arbitral tribunal has absolute discretion on evidential matters in the arbitral proceedings and having exercised that discretion, same should not have been interfered with by the court, given the separate and distinct nature of arbitration. When considered alongside s. 64 of the AMA, which expressly provides that a court shall not intervene in matters governed by the Act except as permitted therein, the ruling may be seen as having far-reaching implications for the autonomy and insulation of arbitral proceedings from judicial interference. In particular, when read together with s. 31 of the AMA — which vests the arbitral tribunal with the power to determine the admissibility, relevance, materiality, and weight of evidence — the decision arguably dilutes the statutory framework designed to preserve arbitral independence. The Court's intervention in what appears to be a purely procedural and evidential determination may, therefore, be viewed as expanding the scope of judicial oversight beyond the limits contemplated under ss. 31 and 64 of the AMA.

On the other hand, a purposive argument in favour of the decision leans on the overarching principles of natural justice which permeate the practice of dispute resolution, including arbitration. Indeed, the AMA and APR are instituted in a bid to afford parties with an equal chance at success. Thus, it may be contended that the court, in a bid to do substantial justice, assumed jurisdiction over the application, weighed the decision of the tribunal vis-à-vis the requirements of fair hearing, and found the procedural order wanting. This perspective could be further buttressed by the fact that as revealed in the ruling, the tribunal had earlier granted a similar application for request for documents to Green Fuels, thus opening a leeway for the fair comment that justice was not ostensibly seen to be done.

The Constitution remains the supreme law of the land, and its provisions — particularly those safeguarding the right to fair hearing — prevail over the provisions of the Arbitration and Mediation Act (AMA) or any other legislation in the event of inconsistency. The right to fair hearing is fundamental and permeates all forms of dispute resolution, including arbitration. Thus, while the appellate courts refrain from interfering with exercise of discretion by lower court (and tribunals), where instances of miscarriage of justice is established, the courts will readily interfere in the circumstance. On that basis, it may be argued that an alleged breach of fair hearing constitutes sufficient justification for judicial intervention, even in respect of a procedural order made in the course of arbitral proceedings.

It may be contended further that the Court's reliance on Order 52 Rule 15(i) of the Federal High Court (Civil Procedure) Rules was instrumental in situating the application of Bayshore within the category of a "question of law arising in the course of or concerning any arbitration agreement or proceedings." In that sense, the provision served as a procedural vehicle through which the Court sought to balance the competing interests of arbitral autonomy and constitutional safeguards.

Notably, s. 55(3)(a)(iii) of the AMA recognises as a ground for setting aside an arbitral award the circumstance where a party was not afforded a proper opportunity to present its case. From this perspective, the tribunal's refusal to grant Bayshore's request for the production of documents could potentially have formed the basis of an application to set aside any eventual award, had the alleged denial of fair hearing materially affected the outcome of the proceedings. Thus, the opportunity for Bayshore to challenge the exercise of discretion by the tribunal which impugn its right to fair hearing, is entrenched in the Act and could have been judiciously utilized at the end of the proceedings.

Be that as it may, the decision in Bayshore Technologies Limited v. Green Fuels Limited reflects an expansive and arguably ambitious interpretation of the court's powers to intervene in arbitral proceedings, particularly in relation to procedural orders. Until it is reconsidered or overturned on appeal, the ruling stands as persuasive authority and contributes meaningfully, albeit controversially, to the evolving jurisprudence on judicial intervention in arbitration in Nigeria.