

INTERPRETING MULTIPLE DISPUTE-RESOLUTION CLAUSES IN COMMERCIAL CONTRACTS

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Introduction

In modern commercial contracts, arbitration clauses are commonly included as the parties' preferred dispute resolution mechanism, given its advantages of confidentiality, flexibility, efficiency, neutrality, and access to specialist adjudicators. However, the effectiveness of such clauses ultimately depends on their drafting precision. An arbitration clause intended to be mandatory may be construed as permissive if poorly drafted or paired with a jurisdiction clause, thereby allowing a party to bypass arbitration, contrary to the parties' intention.

Significantly, on May 12, 2026, the High Court of Lagos State (Coram: Honourable Justice L. A. Okunnu) in **Welltec Oilfield Services (Nig.) Ltd. v. Ace Loggers (Nig.) Ltd. & Anor.**, handed down an important decision highlighting the court's approach in construing multiple dispute resolution clauses. Instructively, the court declined to stay its proceedings pending reference to arbitration on the ground that the dispute resolution framework in the underlying contract created optional pathways (i.e., arbitration or court) for resolving disputes. The court noted that the arbitration agreement was not couched in mandatory terms sufficient to justify a stay of proceedings in deference to arbitration.

The dispute and procedural history

Pursuant to a Contract for the Hiring of Wireline Tractors and Tools on Call-Out Basis dated July 12, 2024 (the "**Contract**") between Weltec Oilfield Services (Nig.) Ltd. ("**Weltec**") and Ace



Loggers (Nig.) Ltd. ("**Ace Loggers**"), Weltec was engaged to provide wireline services for the benefit of a third-party company.

A dispute subsequently arose between Weltec and Ace Loggers over unpaid invoices. Following failed attempts to resolve the dispute amicably, Weltec commenced an action at the High Court for recovery of the outstanding sums against Ace Loggers and the third-party company. Relying on the dispute resolution clauses in the Contract (reproduced below), Ace Loggers sought a stay of proceedings pending reference to arbitration:

31.2 Arbitration

Any dispute between the Company [the 1st Defendant] and the Contractor [the Claimant] in respect of matters arising out of and relating to this Contract shall be resolved ami-

cably through good faith negotiation. If any dispute cannot be resolved amicably, the aggrieved Party shall be entitled to refer the unresolved dispute(s) to arbitration by serving notice on the other Party...

31.3 Choice of Venue

The Parties specifically attorn and submit themselves to the jurisdiction of the Nigerian Courts in Lagos. In addition, each party irrevocably waives any objection which it may now or hereafter have to the laying of venue on any suit, action or proceeding arising out of or relating to this Contract in the Courts of Nigeria, and irrevocably waives any claim that any such suit, action or proceeding brought in the Courts in Nigeria has been brought in an inconvenient forum and further irrevocably waives the right to object, with respect to such claim, suit, action or proceedings brought in the Courts of Nigeria, that such Court does not have jurisdiction over such Party.

In response, Weltec contended, *inter alia*, that the arbitration agreement in the Contract was “permissive” rather than mandatory, and that, in the circumstances, the proceedings were properly commenced in the High Court.

The Court's decision

The central question before the court was whether, by Clause 31 of the Contract, the parties had agreed that arbitration would be the sole dispute resolution mechanism or whether they had retained the option to litigate in court.

In addressing this question, the court held that the phrase “*shall be entitled*” in Clause 31.2 of the Contract merely conferred a “right” (as opposed to imposing a *mandatory obligation*) to arbitrate, given that the Contract also provided “*an alternative course of action*” – i.e., the right to commence proceedings in court. According to the court, the word “*shall*”, in the arbitration clause merely underscores the existence of the right to arbitrate and does not compel its exercise. In other words, the clause affirms that parties are entitled to refer disputes to arbitration, but



it does not compel them to do so. Consequently, the mere existence of a right to arbitration does not automatically translate to its exercise, as a party may elect to refrain from invoking it.

Furthermore, the court held that the phrase “*irrevocably waives*” in Clause 31.3, by which the parties waived any objection to the commencement of proceedings before the courts in Lagos in respect of disputes arising out of or relating to the Contract, reinforced the conclusion that court actions were intended to constitute a “*separate and distinct*” option from arbitration, and that to hold otherwise would render Clause 31.3 ineffective.

In underscoring the foregoing position, the court further reiterated that arbitration clauses do not oust the court’s jurisdiction and that section 5(1) of the Arbitration and Mediation Act, 2023 which requires the court to refer parties to arbitration, “*only applies where the arbitration clause is emphatic and mandatory*”, and not where, as in the present case, it “*deliberately affords an alternative means of dispute resolution*”.

Commentary

The principle of party autonomy empowers contracting parties to shape the terms of their commercial relationship, including the choice of mechanism for resolving disputes that may arise under the contract. In practice, this means parties are free to decide whether disputes will be resolved broadly through arbitration, litigation or mediation, reflecting their preferences and commercial needs.

Selecting a dispute resolution mechanism is often influenced by considerations such as confidentiality, flexibility, efficiency, neutrality, and the expertise of the adjudicator. It is therefore incumbent upon contracting parties to articulate their choice in clear and unambiguous terms. Precision in drafting ensures that the parties’ intention – whether to make arbitration mandatory or merely permissive – is unmistakable and enforceable.

The court’s decision in *Weltec* serves as a timely reminder of the importance of clarity and precision in drafting dispute resolution clauses in commercial contracts. In interpreting the terms of a



contract, the court's duty is to give effect to the parties' intention as expressed in the agreement, rather than to make a new contract for them. Construction of contracts is an objective exercise. It does not involve an inquiry into the parties' subjective intention, but the ascertainment of the objective meaning of the words used in the agreement.

The foregoing principles were aptly illustrated by the court in *Weltec*. For example, the court interpreted the phrase "*shall be entitled to refer the unresolved dispute(s) to arbitration*" as conferring a right rather than imposing an obligation to arbitrate. Accordingly, where parties intend arbitration to be mandatory, they should employ clear and unequivocal language such as "*any dispute arising out of or in connection with this Agreement shall be referred to and finally resolved by arbitration...*".

Parties should also exercise caution when combining arbitration and jurisdiction clauses, as this may create ambiguity, particularly where the clauses are irreconcilable. Although such clauses may coexist harmoniously – for example, where the parties specify which disputes are to be resolved by litigation and which are to be referred to arbitration, or where the courts are conferred with a limited jurisdiction to grant interim relief in aid of arbitration, difficulties arise where the jurisdiction clause preserves an unqualified right to litigate that is inconsistent with the parties' agreement to arbitrate, as was the case in *Weltec*.

Where arbitration and jurisdiction clauses are included in the same agreement, they should be drafted with sufficient precision to ensure that any jurisdiction conferred on the court is expressly limited and does not derogate from the parties' agreement to arbitrate. By way of illustration:

a) *Where the parties intend to allocate different categories of disputes between arbitration and litigation:*

"31. Except as otherwise provided in this Agreement, any dispute arising out of or in

connection with this Agreement, including any dispute concerning the performance, standard or technical adequacy of the Services, shall be referred to and finally resolved by arbitration in accordance with the Arbitration and Mediation Act, 2023.

32. *Subject to Clause 34, any dispute concerning the invoicing of, or payment for, Services duly rendered under this Agreement, including any dispute as to the amount invoiced, the calculation or application of agreed rates, the due date for payment, any deduction, set-off or withholding from an invoice, or the liability of a Party to pay any amount claimed under an invoice, shall be subject to the exclusive jurisdiction of the courts in Nigeria.*

33. *For the avoidance of doubt, the jurisdiction conferred on the courts under Clause 32 is limited to the payment-related disputes specified in that Clause. All other disputes arising out of or in connection with this Agreement shall be determined by arbitration in accordance with Clause 31.*

¹See also *OOO Abbott v Econowall UK Ltd* [2016] EWHC 660 (IPEC), where the English High Court considered a patent licence agreement containing an arbitration clause alongside a clause conferring jurisdiction on English Courts. Construing the agreement as a whole, Hacon J held that the arbitration clause was permissive rather than mandatory. The learned judge observed that, viewed objectively, parties intended the English courts to have jurisdiction over disputes arising from the agreement and that "*the parties may jointly elect to refer any dispute to an arbitrator but no party can insist upon it*".

34. *Where the determination of a dispute falling within Clause 32 necessarily requires the determination of an issue falling within Clause 31, the entire dispute shall be referred to and finally resolved by arbitration in accordance with Clause 31.”*

b) *Where the parties intend arbitration to constitute the exclusive dispute resolution mechanism, while preserving the jurisdiction of the courts solely for the grant of interim or preservatory relief:*

31. *Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity, interpretation, performance, breach or termination, shall be referred to and finally resolved by arbitration in accordance with the Arbitration and Mediation Act, 2023.*

32. *Notwithstanding the foregoing, either Party may apply to any court of competent jurisdiction in Nigeria solely for the grant of interim or preservatory relief in aid of the arbitration. The exercise of such right shall not constitute a waiver of, or derogation from, the Parties' agreement to refer all substantive disputes to arbitration...”*

The foregoing provisions are intended solely as illustrative examples to demonstrate how parties may expressly delineate their respective scope of arbitration and litigation when both mechanisms are contemplated in a contract, thereby reducing the risk of uncertainty and procedural conflict.



As a further drafting aid, parties may consider adopting the model arbitration clauses recommended by established arbitral institutions. Such clauses provide useful drafting templates and may reduce the risk of uncertainty as to whether the parties intended arbitration to be mandatory. For example, the model arbitration clause recommended by the International Chamber of Commerce (ICC) provides that all disputes arising out of or in connection with the contract **“shall be finally settled”** under the ICC Arbitration Rules. Similarly, the model arbitration clause recommended by the London Court of International Arbitration (LCIA) provides that all disputes arising out of or relating to the contract **“shall be referred to and finally resolved”** by arbitration under the LCIA Rules. Parties should, however, ensure that any model clause adopted is appropriately tailored to their particular circumstances and is consistent with other terms of the agreement so as to avoid ambiguity.

Conclusion

Weltec underscores the fundamental role of courts in giving effect to the parties' intention as objectively expressed in their agreement. In addition, it reinforces the need for parties to incorporate clear and unambiguous dispute resolution clauses in their commercial agreements. Failure to do so may result in an arbitration clause being construed as permissive rather than mandatory, thereby exposing the parties to the risk of having their dispute resolved in an unintended forum, with the attendant delay and increased legal costs.

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