

AN OVERVIEW OF CONTEMPORARY ISSUES ON STAY OF PROCEEDINGS IN ARBITRATION PRACTICE IN NIGERIA

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Abstract

The manner in which courts apply stay of proceedings during arbitration significantly influences party autonomy, procedural efficiency, and confidence in arbitration as a viable alternative to litigation. In Nigeria, the legal framework governing stay of proceedings has evolved with the enactment of the Arbitration and Mediation Act 2023 (AMA), which replaced the discretionary regime under the repealed Arbitration and Conciliation Act. This paper seeks to examine the concept of stay of proceedings in arbitration, the challenges associated with its application, and its effectiveness within the Nigerian legal system. The paper adopted a doctrinal methodology, relying on qualitative analysis of applicable statutes, decided Nigerian cases, as well as scholarly literature on the subject. Relevant pre-AMA 2023 cases are examined where necessary to contextualize current judicial approaches. The paper found that the AMA represents a significant step toward strengthening arbitration practice in Nigeria by refusing the use of stay of court proceedings as a mechanism to obstruct arbitral panel sitting subject to statutory exceptions. This has improved the enforceability of arbitration agreements and enhanced procedural certainty. The paper concluded that while the AMA has laid a strong foundation for an arbitration-friendly system, sustained judicial education, clearer procedural guidance, among other factors are

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necessary to ensure the effective operation of stay of proceedings and to fully realize the objectives of arbitration in Nigeria.

Keywords: Stay of Proceedings; Arbitration; Arbitration and Mediation Act 2023; Judicial Intervention; Party Autonomy; Enforcement of Arbitration Agreements

1.0 INTRODUCTION

Arbitration has emerged as one of the most preferred mechanisms for resolving commercial disputes globally, offering advantages such as confidentiality, flexibility, expertise of the tribunal, and faster resolution compared to litigation. In Nigeria, arbitration is widely used in sectors such as construction, oil and gas, maritime trade, banking, and international commerce, where complex commercial transactions require efficient dispute resolution. Central to the integrity and effectiveness of arbitration is the doctrine of stay of proceedings, which obliges courts to suspend litigation and refer parties to arbitration where a valid arbitration agreement exists. This principle safeguards party autonomy, a foundational concept in arbitration, and prevents forum shopping or strategic litigation designed to avoid arbitration.

Under the repealed Arbitration and Conciliation Act (ACA), the legal framework for stay of proceedings in Nigeria was criticized for being discretionary, inconsistent, and heavily reliant on courts' assessment of the parties' "readiness and willingness" to arbitrate. Judicial discretion often resulted in delays, contradictory decisions, and procedural uncertainty, which in turn undermined confidence in arbitration as a viable alternative to litigation. In recognition of these shortcomings, the National Assembly enacted the Arbitration and Mediation Act 2023 (AMA), introducing a mandatory stay regime, aligned with the UNCITRAL Model Law and international best

practices.¹ Section 5 of the AMA provides that courts shall stay proceedings when requested by a party to refer a dispute to arbitration, unless the arbitration agreement is null, inoperative, or incapable of performance.

Despite these legislative reforms, early judicial decisions under the AMA indicate transitional challenges, with some courts still influenced by pre-AMA doctrines. This raises questions about the practical effectiveness of the mandatory stay provisions and whether they fully protect party autonomy and the efficiency of arbitration in Nigeria.²

2.0 CONCEPTUAL FRAMEWORKS

Some of the concepts to be put in the right context in this paper are explained as follows:

2.1 Concept of Stay of Proceedings

A stay of proceedings is a judicial order suspending court litigation in favour of arbitration pursuant to a valid arbitration agreement. It operates as a procedural mechanism for enforcing arbitration clauses and ensuring that courts respect the contractual intentions of parties.

The doctrine is fundamentally rooted in the principle of party autonomy and the enforceability of private dispute resolution agreements.¹⁰ Arbitration agreements are treated as binding contractual undertakings, and courts are obligated to give effect to them except where statutory exceptions apply.

Under Section 5(1) of the AMA 2023, a court before which an action is brought in a matter subject to an arbitration agreement shall refer the parties to arbitration if a party so requests not later than when submitting its first substantive statement on the substance of the

dispute, unless the agreement is void, inoperative, or incapable of being performed.

The use of the word “shall” signals that the court’s role is mandatory rather than discretionary once the statutory conditions are satisfied. This marks a significant departure from the repealed Arbitration and Conciliation Act (ACA), under which courts exercised discretion and required proof of readiness and willingness to arbitrate.

Section 5 of the AMA 2023 closely mirrors Article 8(1) of the UNCITRAL Model Law on International Commercial Arbitration.¹¹ By adopting this formulation, Nigeria aligns its arbitration regime with internationally accepted standards, thereby promoting uniformity and predictability in commercial dispute resolution.

The practical effect of a stay order is twofold. First, it halts judicial proceedings to prevent duplication. Second, it affirms the supremacy of the arbitration agreement as the chosen dispute resolution mechanism.

a. Void

An arbitration agreement is void where it is legally null from the beginning (void ab initio). In other words, it suffers from a fundamental defect affecting its validity. A void agreement has no legal effect and cannot be enforced.

Some grounds that may make an Arbitration Agreement void include:

- a) Lack of Capacity: One of the parties lacked legal capacity (e.g., minority, mental incapacity).
- b) Illegality: The underlying contract is illegal, and the arbitration clause is inseparable from the illegality.

- c) Fraud, Misrepresentation, Duress: If the arbitration agreement itself was procured by fraud or coercion.
- d) Absence of Consent: Where there was no consensus ad idem (no meeting of minds).

b. Separability Doctrine

Under modern arbitration law, including the AMA 2023, an arbitration clause is treated as separate from the main contract (doctrine of separability).

This means even if the main contract is invalid, the arbitration clause may still survive unless the defect directly affects the arbitration agreement itself. Thus, not every invalid contract renders the arbitration clause void.

c. Inoperative

An arbitration agreement is inoperative where:

It was initially valid, but has ceased to have effect due to subsequent events. In other words, it once worked — but no longer does.

Situations Where an Agreement Becomes Inoperative

- a. Waiver
 - ii. Where parties abandon arbitration by participating substantially in litigation.
 - iii. For example: filing a statement of defence without applying for stay, taking significant steps in court proceedings.

This principle was recognized in *Obembe v Wemabod Estates Ltd*,¹² where, engaging in litigation was treated as waiver of arbitration rights.

a. Mutual Agreement to Litigate

If both parties expressly or impliedly agree to abandon arbitration.

b. Settlement

If the dispute has already been settled.

c. Expiration of Time (where time is made essential)

If the arbitration clause contains a time limitation and it lapses without extension.

3. Incapable of being Performed

An arbitration agreement is incapable of being performed where: it is valid in principle, but cannot practically be carried out. This concerns practical impossibility, not legal invalidity. Examples of this situation include:

- a. Named Arbitrator Unavailable
- b) If the agreement requires a specific arbitrator who has died or refuses to act, and the clause does not allow substitution.
- c) However, modern courts usually cure this through appointment mechanisms unless the clause is strictly personal.
 - a. Non-Existent Arbitral Institution: If parties refer disputes to an arbitral institution that does not exist or has been dissolved, and no alternative mechanism exists.
 - b. War or Legal Prohibition: If arbitration becomes legally impossible due to sanctions, war, or statutory prohibition.
 - c. Pathological Clauses: Poorly drafted clauses that are so uncertain that arbitration cannot realistically proceed.

For example: No method of appointing arbitrators, contradictory procedural provisions, undefined governing rules. However, courts generally attempt to interpret clauses in a manner that saves arbitration where possible.

2.2 Theoretical Framework

This paper is anchored on some theoretical foundations that explain and justify the doctrine of stay of proceedings in arbitration law.

2.2.1 Party Autonomy Theory

Party autonomy is the cornerstone of arbitration law. It recognizes the freedom of contracting parties to structure their legal relationships, including the method of dispute resolution. Arbitration is consensual in nature; its legitimacy flows from agreement rather than sovereign adjudicatory authority.¹³

A stay of proceedings safeguards this autonomy by preventing judicial interference in disputes contractually designated for arbitration. Without an effective stay mechanism, arbitration agreements would be vulnerable to circumvention through strategic litigation.

The mandatory stay provision under Section 5 AMA 2023 strengthens party autonomy by removing excessive judicial discretion and ensuring that courts respect arbitration clauses unless clear statutory exceptions apply.

2.2.2 Kompetenz-Kompetenz Principle

The competence-competence doctrine empowers arbitral tribunals to determine their own jurisdiction, including questions relating to the existence or validity of the arbitration agreement. This principle ensures procedural efficiency by allowing jurisdictional challenges to be addressed primarily by the arbitral tribunal rather than through protracted court litigation. By mandating a stay unless the arbitration agreement is manifestly invalid, Section 5 AMA 2023 reinforces this doctrine.

The stay mechanism therefore complements competence-competence by preventing courts from prematurely determining jurisdictional disputes that properly belong before the arbitral tribunal.¹⁴

2.2.3 Judicial Non-Intervention Principle

Modern arbitration regimes emphasize minimal court intervention except where expressly authorized by statute. The philosophy underlying this principle is that arbitration is intended to function as an alternative to litigation, not as its preliminary stage.

The AMA 2023 embodies this approach by limiting judicial refusal of stay to specific grounds — namely where the arbitration agreement is void, inoperative, or incapable of being performed.¹⁵ Judicial non-intervention enhances efficiency, preserves confidentiality, and promotes finality in arbitration proceedings.

2.0 LITERATURE REVIEW

Before AMA 2023, the Arbitration and Conciliation Act (ACA) gave courts discretion to grant or refuse stay applications. Nigerian scholars widely criticized this discretionary framework for undermining arbitration efficiency and party autonomy. Ajogwu, observed that discretionary stay powers allowed courts to override contractual arbitration agreements, leading to delays and unpredictability³. Banire similarly noted that the requirement to show readiness to arbitrate was a procedural bottleneck that frustrated parties' intention to resolve disputes through arbitration.⁴

Badejogbin-Onyulo, emphasized that the AMA strengthens commercial certainty by preventing litigants from undermining arbitration through parallel court proceedings.⁵ Fagbohunlu acknowledges that while the mandatory stay regime is clear, its

success depends on judicial willingness to depart from pre-AMA jurisprudence⁶.

Ihediwa has highlighted transitional challenges, arguing that some courts continue to rely on pre-AMA doctrines, creating a “doctrinal lag” between legislative reform and judicial practice⁷. This concern is echoed by Oyetibo, who warns that mischaracterisation of stay applications as discretionary or equitable reliefs threatens the uniform application of the AMA.⁸

Onyema argued that excessive judicial control over stay applications weakened Nigeria’s arbitration framework, making it less attractive to foreign investors. Scholars also highlighted that inconsistent judicial interpretations before AMA contributed to a perception that Nigerian courts were hostile to arbitration.⁹

While scholarship recognizes the AMA’s significance, some of the gaps are:

- i. Limited empirical analysis of post-AMA judicial practice and the effectiveness of mandatory stays.
- ii. Insufficient evaluation of transitional challenges and lingering reliance on pre-AMA doctrines.
- iii. Lack of detailed recommendations on how courts, practitioners, and institutions can improve enforcement and procedural clarity under the AMA.

This paper seeks to address these gaps by analyzing the concept, challenges, and effectiveness of stay of proceedings in Nigerian arbitration.

3.3 Legal Implications of “First Substantive Statement”

A critical procedural threshold under Section 5 AMA 2023 is the requirement that an application for stay must be made before submitting the first substantive statement on the substance of the dispute. The phrase “first substantive statement” is not expressly defined in the Act, but it has acquired meaning through comparative jurisprudence and Nigerian case law under the former regime. It refers to the first formal pleading addressing the merits of the dispute, such as a statement of defence, counterclaim, or any submission contesting liability.

It excludes procedural steps such as entry of appearance, applications for extension of time, or jurisdictional objections that do not address the merits. In *Obembe v Wemabod Estates Ltd*¹, the Supreme Court held that filing pleadings on the merits constitutes a step in proceedings that may amount to waiver of arbitration rights. The Court reasoned that once a party invokes the adjudicatory powers of the court on substantive issues, it demonstrates an election to proceed with litigation rather than arbitration.

Similarly, in *Kano State Urban Development Board v Fanz Construction Co Ltd*², the Supreme Court held that filing a statement of defence amounts to taking a step in the proceedings, thereby disentitling the applicant from seeking a stay.¹⁶ Although these decisions were rendered under the ACA’s discretionary regime, their reasoning remains persuasive in interpreting the procedural threshold under the AMA 2023. The legal implication of failing to apply before filing a first substantive statement is significant. It may constitute waiver of the right to arbitrate and result in the continuation of court proceedings notwithstanding the existence of a valid arbitration clause.

¹ *supra*

² (1990) 4 NWLR (Pt. 142) 1 SC,

Thus, the “first substantive statement” requirement serves as a procedural safeguard against abuse while ensuring that parties invoke arbitration at the earliest reasonable opportunity.

4.0 LEGAL FRAMEWORK OF STAY OF PROCEEDINGS FOR ARBITRATION IN NIGERIA

The legal framework governing stay of proceedings in arbitration in Nigeria has evolved significantly. Historically, the Arbitration and Conciliation Act (ACA) LFN 2004 provided discretionary powers to courts to stay proceedings in favour of arbitration. However, the discretionary nature of the ACA, coupled with judicial reliance on the requirement to demonstrate readiness to arbitrate, created inconsistencies and procedural delays. In response, the Arbitration and Mediation Act 2023 introduced a mandatory stay regime, aimed at strengthening arbitration, protecting party autonomy, and aligning Nigeria with international arbitration standards. This chapter examines the statutory framework, judicial interpretations, and comparative perspectives on stay of proceedings in Nigerian arbitration law.

4.1 Arbitration and Conciliation Act 1988

Under the ACA, courts had discretionary power to stay proceedings where a valid arbitration agreement existed. Section 4(1) provided that a party could apply to the court to stay proceedings, but the court would examine factors such as whether the parties were “ready and willing” to arbitrate and whether arbitration was a suitable forum. Judicial practice under the ACA often reflected cautious intervention by courts, with judges sometimes refusing stays on the basis of alleged procedural delays or perceived inadequacies in the arbitration agreement.

Key issues under the ACA included:

- a) Discretionary stay: Courts could refuse a stay even where a valid arbitration agreement existed.

- b) Readiness-to-arbitrate requirement: Parties had to show that they were prepared to initiate arbitration, which created procedural hurdles.
- c) Inconsistent judicial interpretation: Courts differed in their application of stay provisions, causing uncertainty and discouraging arbitration in commercial disputes.

These limitations highlighted the need for legislative reform, leading to the enactment of the AMA.

4.2 Judicial Interpretations under ACA

ACA cases may still be relevant as persuasive precedents. Judicial decisions interpreting the ACA — especially Supreme Court and Court of Appeal decisions on core arbitration principles are still persuasive where the AMA restates similar provisions. Nigerian courts typically follow stare decisis (precedent), so prior ACA cases may be applied to AMA issues if:

- a) the legal issue is not materially different under the AMA, and
- b) the ACA case logic aligns with the corresponding AMA provision.
- c) Cases on general arbitration principles where ACA and AMA provisions are functionally similar, e.g., judicial support for arbitration awards
- d) Pre-existing cases interpreting what constitutes an arbitration agreement “in writing,” if similar text exists in the AMA
- e) Jurisdictional interpretations where the courts adopt old ACA definitions that have been carried over into AMA text (unless AMA changed that meaning)

For instance, Supreme Court or Court of Appeal rulings on how courts enforce arbitration awards under ACA might still guide interpretation of sections of the AMA that restate enforcement rules because the

recognition/enforcement text of the ACA in sections 51 and 52 is reproduced in AMA in sections 57 and 58.

These cases interpret principles that the AMA largely retains such as enforcement of awards, competence-competence, arbitration agreement validity). In *Statoil (Nig.) Ltd v. NNPC*¹⁷ the Court of Appeal espoused the principle on enforcement of arbitral awards and limited grounds for refusing enforcement. The AMA sections 57–58 substantially reproduces the ACA provisions (sections 51–52) on recognition and enforcement of awards, which reflect the New York Convention model. Courts may still cite *Statoil v. NNPC* when interpreting enforcement under AMA because the statutory language is materially similar.

In the same vein, in *Mekwunye v. Lotus Capital Ltd*²⁰ the Supreme Court espoused the principles and scope of court intervention in arbitration and enforcement issues. Today, AMA retains the principle of minimal court interference. Lower courts may continue citing this case in enforcement or jurisdictional matters. Also, the case of *Onward Enterprises Ltd v. MV Matrix*²¹ was decided under ACA on the discretionary nature of stay of proceedings and the required proof of readiness and willingness to arbitrate. Section 5 of AMA removes the “readiness and willingness” requirement and makes stay mandatory unless the arbitration agreement is null and void. Lower courts cannot apply the ACA discretionary test anymore.

The poser is what does the lower courts do in practice?_Since AMA is still a recent enactment, most lower courts still cite Supreme Court and Court of Appeal for cases decided under ACA, but apply them only where AMA provisions are identical or substantially similar. Disregard for ACA precedents will change where AMA changed the statutory rule.

4.3 The Arbitration and Mediation Act 2023 (AMA) Framework

The AMA 2023 represents a paradigm shift from the discretionary framework of the ACA to a mandatory stay regime. Section 5 of the AMA provides:

“Where there is a valid arbitration agreement, a party may request the court to stay proceedings commenced in respect of a matter covered by the agreement, and the court shall stay the proceedings unless it finds that the agreement is null, inoperative, or incapable of being performed.”

4.3.1 Key Features of the AMA Stay Regime

- i. **Mandatory Nature:** Unlike the ACA, courts are obliged to grant a stay where a valid arbitration agreement exists.

Limited Exceptions: Courts may refuse to stay proceedings only if the arbitration agreement is null, inoperative, or incapable of being performed.

- ii. **Minimal Judicial Inquiry:** Courts are restricted to a narrow procedural review and are not permitted to examine the merits of the underlying dispute.
- iii. **Alignment with UNCITRAL Model Law:** Section 5 mirrors Article 8 of the UNCITRAL Model Law, reinforcing international best practices and investor confidence.

This framework strengthens party autonomy and reduces the likelihood of parallel litigation.

4.4 Judicial Interpretation of Stay of Proceedings under the AMA

Early post-AMA cases have begun to define the contours of the stay regime. Cases such as *United Bank for Africa Plc v Trident Consulting Ltd*²² where the Court of Appeal affirmed that courts must stay proceedings when a valid arbitration agreement exists. The court

emphasized that exceptions under Section 5 are strictly limited and that readiness to arbitrate is no longer a factor.

Also, in *General Electric International Operations Nigeria Ltd v Q Oil & Gas Services Ltd*²³ the Supreme Court held that judicial inquiry at the stay stage is procedural only, and courts cannot assess the merits of the dispute. The decision reinforced that the AMA places mandatory obligations on courts to support arbitration.

These cases confirm scholarly positions that mandatory stays enhance party autonomy and arbitration efficiency. However, some lower courts continue to apply pre-AMA principles, such as assessing readiness to arbitrate, reflecting the transitional challenges highlighted in the literature.

4.5 Comparative Perspectives

Comparative analysis shows that the AMA aligns Nigeria with jurisdictions that enforce mandatory stays:

United Kingdom: Section 9 of the Arbitration Act²⁴ mandates stay of proceedings where a valid arbitration agreement exists.

Singapore: Section 6 of the International Arbitration Act²⁵ imposes a similar obligation. These jurisdictions demonstrate that mandatory stay regimes enhance predictability, efficiency, and commercial confidence, outcomes that the AMA seeks to replicate in Nigeria.

5.0 CHALLENGES AND EFFECTS OF STAY OF PROCEEDINGS IN ARBITRATION PRACTICE IN NIGERIA

The Arbitration and Mediation Act 2023 (AMA) introduced a mandatory stay of proceedings in Nigeria, fundamentally altering the approach to judicial intervention in arbitration.¹ The AMA's Section 5 requires courts to stay litigation where a valid arbitration agreement

exists, unless the agreement is null, inoperative, or incapable of being performed.

Despite the statutory clarity, challenges in practical application continue to undermine the effectiveness of stay provisions. These challenges relate to residual discretionary practices, misinterpretation of exceptions, transitional judicial attitudes, institutional gaps, overlapping jurisdictional issues, and the interaction between domestic and international arbitration norms. This chapter critically examines these challenges, their effects on arbitration efficiency and party autonomy, and the implications for commercial certainty in Nigeria.

5.1 Challenges in the Application of Stay of Proceedings

5.2.1 Transitional Judicial Attitudes

A major challenge in post-AMA Nigeria is judicial lag, where courts continue to apply discretionary principles from the Arbitration and Conciliation Act 2004 (ACA). Lower courts sometimes insist on proof of readiness to arbitrate, a requirement explicitly removed by Section 5 of the AMA.

Case Example: In *UBA Plc v Trident Consulting Ltd*, the Court of Appeal emphasized that the mandatory nature of Section 5 precludes any assessment of readiness or procedural delays. Yet, reports indicate that some lower courts still consider such factors, demonstrating a partial adherence to AMA reforms.

Scholarly works by authors such as Ihediwa refers to this developments as “doctrinal lag”, noting that Nigeria faces a transitional period where statutory reform has outpaced judicial practice. Ajogwu, stresses that consistent judicial application is crucial to protect party autonomy and reduce litigation delays.

5.2.2 Misinterpretation and Expansion of Exceptions

Section 5 provides limited exceptions: courts may refuse a stay only if the arbitration agreement is null, inoperative, or incapable of performance. However, courts sometimes expand exceptions improperly, citing procedural unfairness, preliminary merits assessment, or delay as grounds to deny a stay.

Case Example: General Electric International Operations Nigeria Ltd v Q Oil & Gas Services Ltd reaffirmed that exceptions under Section 5 are to be construed narrowly, warning courts against overreach. Scholars like Redfern and Hunter argue that over-expansion of exceptions undermines the integrity of arbitration agreements and encourages litigation tactics designed to circumvent arbitration.

5.2.3 Conflicting Jurisdiction and Statutory Overlap

Certain disputes involve statutory or sector-specific obligations, leading courts to question whether AMA stays apply. Disputes in banking, tax, or public sector contracts sometimes see courts reluctant to grant stays, fearing conflict with statutory duties.

Practical Implication: Such overlaps create uncertainty, as parties cannot be confident that arbitration agreements will be enforced consistently, potentially discouraging commercial arbitration.

5.2.4 Institutional and Capacity Challenges

Some courts, particularly at lower levels, demonstrated limited familiarity with AMA provisions, resulting in procedural inconsistencies. Legal practitioners have also noted delays due to unfamiliarity with proper drafting and submission of stay applications. Badejogbin-Onyulo, recommends judicial training programs and continuous education for judges and lawyers to ensure uniform application of AMA Section 5.

5.2.5 Procedural Delays and Tactical Litigation

Even under a mandatory stay regime, parties sometimes initiate litigation strategically to delay arbitration. Courts must intervene, but improper application of stay provisions can allow parallel proceedings to continue, undermining arbitration efficiency. Some informal reports from commercial arbitration practice show instances where respondents filed multiple court actions despite valid arbitration agreements, forcing tribunals to seek judicial intervention to compel arbitration.

5.2.6 Causes of these Challenges

a) Legal Transition from the ACA to the AMA 2023

The shift from a *discretionary* to a *mandatory* stay regime was intended to align Nigerian law with international standards and the New York Convention.

However, judicial culture has not fully transitioned with the law, so judges may still rely on old doctrines and lawyers accustomed to the ACA may continue to frame arguments as if the discretionary stay rule still applied.

b) Judicial Interpretive Variability

Despite the AMA's clear language, different courts may interpret the rules differently, especially related to what constitutes *void*, *inoperative*, or *incapable* agreements and whether procedural filings after the first substantive statement affect stay eligibility. These variations create inconsistent outcomes.

c) Procedural Complexity

Despite the AMA's reforms, arbitration and litigation interfaces remain procedurally complex because of issues relating to determining exactly when to request a stay and understanding timing for submissions and the effect of other interim processes. This complexity

creates opportunities for missteps and disputes, especially in circuits that still apply older jurisprudence.

5.2.7 Effects of these Challenges

a) Delays in Dispute Resolution

Although arbitration aims to be faster than litigation, practical obstacles to getting a stay can result in:

- i. Continued litigation despite existing arbitration agreements.
- ii. Delays in referring disputes to arbitration tribunals. These delays undermine arbitration's major advantage — timeliness.

b) Increased Costs

When disputes spend extra time in court before being stayed, and parties inevitably incur added legal costs. The cost advantage of arbitration over litigation diminishes. This makes arbitration less attractive, especially for smaller commercial disputes.

c) Reduced Confidence in Arbitration

Courts sometimes fail to stay proceedings when they should, or if judicial interpretations vary widely, stakeholders may lose confidence in the enforceability of arbitration agreements and prefer litigation over arbitration, and weakens arbitration's role in Nigeria's dispute resolution landscape.

d) International Perception and Investment Impact

Nigeria aims to be an attractive seat for international arbitration. However, issues of judicial uncertainty over stays may deter foreign investors concerned about enforcement predictability. Arbitration is less appealing if courts intervene excessively or unpredictably. This has broader economic implications, as arbitration is often chosen in international commercial contracts.

5.3 Effects of Stay of Proceedings in Arbitration Practice

5.3.1 Reinforcement of Party Autonomy

Mandatory stay provisions under the AMA significantly enhance party autonomy, ensuring contractual arbitration clauses are respected. Courts are no longer permitted to interfere based on discretionary considerations, allowing parties to choose their preferred dispute resolution forum.

5.3.2 Reduction of Parallel Litigation

Correct application of stays prevents duplication of judicial processes, reduces costs, and avoids contradictory judgments. The AMA provides a mechanism to consolidate arbitration as the primary forum, reducing congestion in Nigerian courts.

5.3.3 Promotion of Commercial Certainty and Investor Confidence

By guaranteeing enforcement of arbitration agreements, the AMA strengthens predictability in commercial transactions. International investors are more likely to engage in Nigerian contracts, knowing that arbitration agreements will be respected and that courts cannot unduly intervene.

5.3.4 Transitional Uncertainty and Judicial Resistance

While the AMA has clear provisions, transitional uncertainty persists due to judicial lag, inconsistent lower court practices, and misinterpretation of exceptions. These challenges may delay arbitration and discourage parties from fully relying on arbitration clauses.

5.3.5 Influence on Nigerian Arbitration Culture

The shift from discretionary to mandatory stay provisions reflects a pro-arbitration culture in Nigeria. However, the effect is limited by residual judicial discretion, institutional capacity issues, and procedural bottlenecks, which scholars identify as critical barriers to full adoption of AMA reforms.

While the AMA has revolutionized the stay of proceedings, Nigeria must address these challenges to realize the full benefits of its arbitration reforms.

6.0 RECOMMENDATIONS AND WAY FORWARD

The Arbitration and Mediation Act 2023 (AMA) represents a significant reform in Nigerian arbitration law, introducing a mandatory stay of proceedings to reinforce party autonomy, reduce parallel litigation, and promote commercial certainty.¹ While Section 5 provides a clear legal framework, Chapters 3 and 4 highlighted persistent challenges including residual discretionary practices, misinterpretation of exceptions, institutional gaps, transitional judicial attitudes, and overlapping jurisdictional issues. This paper proposes practical recommendations to enhance the effectiveness of stay of proceedings in Nigerian arbitration practice and ensure that the AMA's objectives are fully realized.

6.1 Strengthening Judicial Awareness and Capacity

6.1.1 Continuous Judicial Training

One of the most pressing challenges is judicial unfamiliarity with AMA provisions, particularly among lower courts. Regular training programs, workshops, and seminars should be organized by the National Judicial Institute (NJI) to ensure judges fully understand the mandatory nature of stays under Section 5, the narrow scope of exceptions, and the limits on judicial intervention.

6.1.2 Development of Judicial Guidelines

The Court of Appeal and Supreme Court should issue detailed practice directions or guidelines on the application of Section 5, highlighting procedural requirements, timelines for stay applications, and clarity on exceptions. This will harmonize judicial practice and reduce doctrinal lag.

6.3 Enhancing Legal Practitioner Competence

Legal practitioners play a key role in ensuring that stay applications are correctly drafted and submitted. Continuing legal education programs should emphasize:

- a) Proper drafting of arbitration clauses and stay applications.
- b) Familiarity with AMA Section 5 and relevant case law, including *UBA Plc v Trident Consulting Ltd*⁷ and *General Electric v Q Oil & Gas Services Ltd*.
- c) Strategic enforcement of arbitration agreements without unnecessary litigation.

Such capacity-building will reduce procedural errors and improve compliance with AMA provisions.

6.4 Legislative and Policy Recommendations

6.4.1 Clarification of Exceptions

Although Section 5 limits exceptions to cases where the agreement is null, inoperative, or incapable of being performed, occasional judicial misinterpretation persists. The National Assembly could consider amendments or explanatory notes emphasizing the narrow scope of exceptions and prohibiting additional discretionary grounds.

6.4.2 Harmonization with Sector-Specific Laws

To reduce uncertainty in regulated sectors (banking, taxation, oil & gas), relevant statutes should include provisions recognizing AMA stays. This will eliminate perceived conflicts between sectoral statutory obligations and mandatory arbitration stays.

6.5 Institutional Reforms

6.5.1 Strengthening Arbitration Institutions

Arbitral institutions, including the Nigerian Arbitration and Mediation Centre (NAMC), should:

- a) Maintain registries of arbitration agreements and awards.

- b) Provide guidance to courts and practitioners on procedural compliance.
- c) Facilitate training programs for judges and lawyers.

A strong institutional framework enhances trust in arbitration and ensures that stays are enforced effectively.

6.5.2 Encouraging Mediation as Complementary Mechanism

Integrating mediation with arbitration can further reduce litigation and promote dispute resolution efficiency. AMA's dual focus on arbitration and mediation allows parties to explore settlement before full arbitration, reducing the need for court involvement and supporting effective stay of proceedings.

6.6 Promoting Consistency Through Case Law

Courts should consistently reference landmark AMA cases, including:

- a) *UBA Plc v Trident Consulting Ltd* (mandatory stay application, strict exceptions).
- b) *General Electric v Q Oil & Gas Services Ltd* (procedural, not merits-based, review).

Consistent judicial reasoning will strengthen predictability and encourage parties to rely on arbitration.

6.7 Public Awareness and Advocacy

Educating the business community on the benefits of arbitration and the legal effect of AMA stays is crucial. Awareness campaigns can:

- a) Reduce attempts to bypass arbitration through litigation.
- b) Promote early inclusion of arbitration clauses in commercial contracts.
- c) Foster investor confidence in Nigerian arbitration.

7.0 SUMMARY OF FINDINGS

As a researcher examining the doctrine of stay of proceedings under the AMA 2023, several key findings emerge, revealing both legislative improvements and practical challenges.

a. Legislative Strengths of the AMA

The AMA 2023 introduced a mandatory stay regime (Section 5), clearly prioritizing arbitration agreements over litigation. Unlike the repealed ACA, courts are required to stay proceedings unless the arbitration agreement is manifestly invalid, inoperative, or incapable of performance.

This statutory clarity aligns Nigeria with international best practices, including the UNCITRAL Model Law, and formally embeds party autonomy, competence-competence, and judicial non-intervention principles into domestic arbitration law.

Finding: The AMA represents a significant legislative advance that, in theory, eliminates discretionary judicial obstacles that previously undermined arbitration efficiency.

b. Gaps in Judicial Practice and Enforcement

Early post-AMA judicial decisions indicate transitional challenges. Some courts continue to apply pre-AMA doctrines, treating stay applications as discretionary or requiring parties to demonstrate readiness and willingness to arbitrate.

These practices echo ACA-era jurisprudence, which often undermined mandatory stays and created procedural uncertainty.

Finding: There is a gap between the statutory mandate of AMA and judicial practice, reflecting a doctrinal lag where courts have yet to fully internalize the mandatory stay regime.

c. Lack of Robust Case Law

A major limitation identified in the research is the scarcity of reported Nigerian cases interpreting stay of proceedings under the AMA.

Most cases cited in previous works, such as *UBA v Trident Consulting Ltd*, predate the AMA and were decided under the ACA. Consequently, there is insufficient judicial guidance on critical issues, including:

- i. The threshold for determining when an arbitration agreement is “manifestly invalid”
- ii. Procedural timelines for invoking a stay
- iii. Remedies for parties who fail to apply for a stay promptly

Finding: The absence of substantial post-AMA case law limits the ability of practitioners and parties to predict outcomes, creating a gap in both jurisprudence and practice.

4. Practical and Procedural Challenges

Even where the AMA provides clear rules, enforcement may be undermined by:

- a) Inconsistent interpretation of Section 5 by courts
- b) Delays caused by courts applying pre-AMA equitable or discretionary approaches
- c) Limited awareness among practitioners and judges about the full implications of the mandatory stay regime
- d) These challenges may discourage parties from fully relying on arbitration, particularly in high-value commercial disputes.

Finding: Legislative reform alone is insufficient; judicial training and dissemination of AMA principles are crucial to realize the statute’s intended efficiency gains.

5. Implications for Party Autonomy and Arbitration Efficiency

Where fully enforced, AMA stay provisions protect party autonomy, uphold competence-competence, and reduce litigation delays.

However, without judicial consistency and authoritative case law, the predictability and reliability of arbitration in Nigeria remain partially untested, potentially affecting investor confidence.

Finding: The AMA has the potential to make Nigeria a pro-arbitration jurisdiction, but its practical impact is constrained by transitional judicial practices and lack of precedents.

6. Observations and Gaps

Critical Gap: There is an urgent need for post-AMA judicial decisions to clarify ambiguities and guide practitioners.

Procedural Gap: Courts occasionally mischaracterize stay applications as equitable reliefs, contrary to the statutory mandate.

Empirical Gap: There is little empirical data on how courts, practitioners, and commercial parties are applying the AMA stay provisions in practice.

Recommendation for Research: Future studies should track post-2023 stay applications, analyze compliance patterns, and evaluate whether the AMA's mandatory stay provisions achieve the intended outcomes of arbitration efficiency and party autonomy.

From an analytical perspective, while the AMA 2023 represents a landmark reform in Nigerian arbitration law, its full potential is not yet realized. The lack of post-AMA case law, transitional reliance on pre-AMA doctrines, and inconsistent judicial practice create significant gaps that affect enforcement, predictability, and confidence in arbitration as a primary dispute resolution mechanism. For researchers, these gaps highlight an area ripe for empirical and doctrinal study, with opportunities to influence both judicial practice and legislative refinement.

7.0 CONCLUSION

Section 5 of AMA 2023 provides a solid foundation for a mandatory stay regime in Nigerian arbitration. However, for stays to achieve their intended objectives—strengthening party autonomy, reducing litigation, and enhancing commercial certainty a combination of judicial training, practitioner competence, institutional support, legislative clarity, and public awareness is necessary.

By implementing these recommendations, Nigeria can fully realize the pro-arbitration vision of the AMA, ensuring that arbitration becomes an effective, reliable, and preferred mechanism for dispute resolution in the country.