

TECHNOLOGY AND ONLINE ARBITRATION IN NIGERIA: LEGAL FRAMEWORK, ENFORCEMENT ISSUES, AND EMERGING CHALLENGES UNDER THE ARBITRATION AND MEDIATION ACT 2023

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Abstract

The increasing integration of technology into dispute resolution has transformed the practice of arbitration globally, giving rise to online arbitration as a viable alternative to traditional proceedings. This article examines the legal framework, enforcement issues, and emerging challenges of technology-driven arbitration in Nigeria, with particular focus on the Arbitration and Mediation Act, 2023. The study adopts a doctrinal research methodology, relying on statutory provisions, judicial authorities, international instruments such as the UNCITRAL Model Law, and scholarly literature to assess the validity and enforceability of online arbitral proceedings. Comparative insights are drawn from other jurisdictions to highlight best practices and identify potential gaps in Nigerian law. Findings reveal that while the Arbitration and Mediation Act, 2023 introduces innovative provisions that facilitate electronic communication, virtual hearings, and recognition of online arbitral agreements, significant challenges remain. These include uncertainties surrounding confidentiality, cybersecurity, evidentiary standards, digital infrastructure, and judicial attitudes towards technology-driven dispute resolution. The enforceability of awards rendered through online processes also raises practical and interpretative concerns. The article recommends that Nigerian courts adopt a progressive approach in construing statutory provisions to support online arbitration, while policymakers should issue detailed guidelines on cybersecurity, data protection, and the authentication of electronic evidence, investment in digital infrastructure and training of arbitrators to further enhance the credibility of online arbitration. In Conclusion, the Arbitration and Mediation Act, 2023 provides a foundation for technology-driven arbitration in Nigeria, but targeted reforms and institutional support are necessary to address emerging challenges and align practice with global best standards.

Keyword: Online Arbitration, Technology and Dispute Resolution, Arbitration and Mediation Act (Nigeria) 2023, Enforcement of Arbitral Awards, Digital Justice.

1. Introduction

Arbitration has long served as an efficient and flexible mechanism for the resolution of commercial disputes, offering parties a means to avoid the complexities and delays associated with conventional litigation. In recent years, the integration of technology into arbitral processes has revolutionized dispute resolution practice globally, giving rise to the concept of online arbitration or technology assisted arbitration. This digital transformation has been accelerated by globalization, the demands of cross-border commerce, and the disruptive effects of the COVID-19 Pandemic, which compelled arbitral institutions and practitioners to embrace virtual hearings, electronic filings, and digital awards as the new normal in dispute resolution practice.¹

In Nigeria, the enactment of the Arbitration and Mediation Act 2023 (hereinafter AMA 2023) marks a watershed in the modernization of the country's arbitral framework. The Act repealed the Arbitration and Conciliation Act of 1988 and aligned Nigeria's legal regime with international best practices, particularly the UNCITRAL Model Law on International Commercial Arbitration (2006) and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958.² One of the most significant innovations under the Act is its express recognition of the use of electronic communications and technology in arbitral proceedings—an acknowledgment of the growing relevance

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¹ See J.H. Carter, "Technology and Arbitration in the Digital Age" (2022) 39(2) *Arbitration International* 145.

² *Arbitration and Mediation Act, 2023*(No.38 of 2023) s1.

of online arbitration in contemporary commercial dispute resolution.³

The introduction of online arbitration mechanisms reflects an increasing trend towards digital transformation in legal processes. The notion of technology-enabled arbitration encompasses various digital tools, including electronic filing systems, digital signatures, e-hearings, cloud-based document management, virtual evidence presentation, and AI-assisted translation or transcription systems.⁴The Arbitration and Mediation Act 2023 explicitly permits such technological adaptations, signaling legislative responsiveness to the realities of modern commerce and international arbitration standards. However, despite this legislative progress, the adoption of technology and online arbitration in Nigeria faces considerable institutional, infrastructural, and enforcement challenges.

Issues such as the authentication of electronic evidence, cybersecurity, data privacy, digital divide, and the enforceability of online arbitral awards remain contentious.⁵While the AMA 2023 offers a robust legal framework, the practical realization of its objectives depends on judicial attitudes, institutional readiness, and policy implementation. From a comparative perspective, jurisdictions such as Singapore, the United Kingdom, and Hong Kong have already institutionalized virtual arbitration mechanisms through modernized procedural rules and digital infrastructures.

The fusion of technology and arbitration represents both an opportunity and a challenge for Nigeria. It offers efficiency, cost reduction, and increased access to justice, while simultaneously raising complex legal questions about jurisdiction, due process, confidentiality, and enforcement. This paper therefore examines the legal framework for online arbitration under the Arbitration and Mediation Act 2023, identifies enforcement issues, and emerging challenges, and proposes solutions to ensure effective implementation in Nigeria's legal environment.

2. Conceptual Clarifications: Technology and Online Arbitration.

Technology in arbitration refers to the application of digital tools to facilitate arbitral proceedings. These tools range from electronic filing systems and digital signatures to virtual hearings conducted via video conferencing platforms such as Zoom, Microsoft Teams, or Webex.⁶Online arbitration, sometimes referred to as e-arbitration, is a process where part or all of the arbitral procedure occurs electronically, including submission of pleadings, witness examination, and delivery of awards.⁷ As Onyema explains, online dispute resolution extends the benefits of traditional arbitration—speed, neutrality, and enforceability—while leveraging technology to enhance accessibility and reduce costs.⁸ In Nigeria, this evolution reflects both global technological trends and domestic imperatives to decongest courts and promote ease of doing business.⁹

3. Legal Framework for Online Arbitration in Nigeria

(a) The Arbitration and Mediation Act 2023.

The AMA 2023 repeals the Arbitration and Conciliation Act, Cap A18, Laws of the Federation of Nigeria (LFN) 2004, and introduces reforms consistent with international best practices. The most striking innovation is its recognition of online and virtual proceedings. Section 84(1) provides that unless otherwise agreed by the parties” the arbitral tribunal may conduct hearings by any technological means that provides the parties with equal opportunity to participate”.¹⁰

³Ibid, s.84(1) (definition of “electronic communication”).

⁴ M Moses, ‘The Principles and Practice of International Commercial Arbitration’ (3rd edn, Cambridge University Press 2021) 98.

⁵ N I Ume, ‘Technology in Arbitration: Nigerian Legal Readiness under the Arbitration and Mediation Act 2023’ (2024) 12 *Nigerian Journal of Commercial Law* 47: (2019) LPELR-48938(CA): (2019)10 NWLR(Pt.1680) 450.: LCIA Arbitration Rules (2020), Art.19.2.

⁶ T O Aina, ‘Pandemic and the Future of Dispute Resolution in Nigeria’ (2021) 5 *Arbitration Review* 17.

⁷ E Onyema, ‘International Commercial Arbitration and the Arbitrator’s Contract’ (Routledge,2018) 52.

⁸ S Kio-Lawson, ‘E-Arbitration and the Future of Online Dispute Resolution’ (2020) 13 *Nigerian Journal of Private and Comparative Law* 71.

⁹ I Nwakoby, ‘The Role of Technology in Arbitration Practice in Nigeria’ (2020) 14 *Journal of Commercial Law* 33.

¹⁰ Arbitration and Mediation Act 2023, s.84(1).

Furthermore, section 92 defines “electronic communication” as “any communication that the parties make by means of data messages” while section 93(2) stipulates that a requirement for written communication shall be satisfied if the information is accessible for subsequent reference.¹¹ These provisions collectively validate online arbitration, giving statutory legitimacy to digital hearings, electronic submissions, and online awards. The Act also incorporates the UNCITRAL Model Law provisions on electronic communications and recognizes electronic evidence as valid.¹² By doing so, it places Nigeria among progressive jurisdictions that explicitly legislate for technology in arbitration.

(b) Institutional Rules and Practice

Arbitral institutions such as the Lagos Court of Arbitration (LCA), the Chartered Institute of Arbitrators (CI Arb) Nigeria Branch, and the Regional Centre for International Commercial Arbitration, Lagos (RCICAL) have adapted their rules to accommodate electronic filings and virtual hearings. The LCA Arbitration Rules 2021, for instance, allow for the conduct of hearings via video conference and electronic service of documents, ensuring that arbitral practice aligns with legislative innovation.¹³

(c) Judicial Support for Virtual Proceedings

Even before the enactment of the AMA 2023, Nigerian courts had shown progressive attitudes towards the use of technology in judicial and quasi-judicial proceedings. In *National Judicial Council v Hon. Justice Aladejana*,¹⁴ the apex court reaffirmed the sanctity of party autonomy in arbitration, implying that where parties consent to a technological or online mode of arbitration, courts must respect that choice.¹⁵ These cases demonstrate judicial readiness to accommodate technology-driven dispute resolution mechanisms.

4. Enforcement of Online Arbitral Awards

The enforceability of arbitral awards remains the cornerstone of arbitration. Under section 56(1) of the AMA 2023, an arbitral award, whether rendered physically or electronically, “shall be final and binding on the parties.” Enforcement within Nigeria is by application to the High Court under section 62, while international enforcement is governed by section 63, which domesticates the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958). In *Statoil (Nig.) Ltd v NNPC*,¹⁶ the Court of Appeal upheld the principle that courts must give effect to valid arbitral awards and refrain from reviewing their merits. Similarly, in *M.V Lupex v NOC & S Ltd*,¹⁷ the Supreme Court stressed the sanctity of arbitration agreements and the obligation of courts to respect party autonomy.

By parity of reasoning, online arbitral awards that comply with procedural fairness and statutory requirements are equally enforceable. The electronic format of an award does not affect its validity, provided authenticity and accessibility can be established under section 93(2) of the Act. Section 75 of the AMA 2023 provides for the recognition and enforcement of both domestic and foreign awards. However, challenges arise in verifying the authenticity of electronic signatures, ensuring cybersecurity, and establishing the physical location of virtual hearings for jurisdictional purposes. In *M V Lupex v N.O.C. & S.Ltd*¹⁸ the Supreme Court emphasized that arbitral awards must meet all statutory conditions before enforcement. While that case predated the AMA 2023, its principle underscores the judiciary’s cautious approach to procedural regularity. Similarly in *Statoil (Nig.) Ltd v NNPC*,¹⁹ the Court of Appeal reiterated that arbitral awards are enforceable if rendered in accordance with governing arbitration agreements and statutes.

¹¹ Ibid, ss.92-93.

¹² UNCITRAL Model Law on International Commercial Arbitration (as amended) in 2006), Article 7.

¹³ Lagos Court of Arbitration Rules (2021), rule 25.

¹⁴ (2021) 13 NWLR(Pt.1792) 259(SC).

¹⁵ *Esso Exploration and Production Nigeria Ltd v NNPC* (2022) LPELR-57945(SC).

¹⁶ *Statoil (Nig.) Ltd v NNPC* (2013) 14 NWLR(Pt.1373) 1 (CA).

¹⁷(2003) 15 NWLR (Pt 844) 469(SC).

¹⁸ Ibid

¹⁹ (2013) 14 NWLR (Pt.1373) 1(CA).

Questions also persist regarding whether an online hearing conducted abroad may produce an award enforceable as a “foreign award” under the New York Convention. Section 88 of the AMA 2023 adopts the Convention’s standards, but Nigerian courts may need to clarify the threshold for determining the seat of arbitration in online contexts.

5. Technological Integration and Procedural Flexibility

The AMA 2023 introduces flexibility in the conduct of arbitral proceedings. Tribunals now have a discretion to determine the mode of hearing—physical, virtual, or hybrid—subject to equal participation.²⁰ This flexibility mirrors Article 19(2) of the UNCITRAL Model Law, which empowers tribunals to conduct proceedings as they deem appropriate, provided that the parties are treated with equality. Technological integration enhances procedural efficiency, reduces costs, and promotes cross-border accessibility. The ability to present witnesses remotely, share digital exhibits, and conduct hearings online enhances Nigeria’s competitiveness as an arbitration-friendly jurisdiction.

6. Data Protection, Cybersecurity, and Confidentiality.

The increased use of digital platforms in arbitration raises significant concerns regarding data protection and cybersecurity. Online hearings and document exchanges expose sensitive commercial information to cyber threats. The Nigeria Data Protection Act 2023 (NDPA) imposes obligations on data controllers and processors—including arbitral institutions—to implement security safeguards against data breaches.²¹

However, the AMA 2023 lacks specific cybersecurity provisions. This creates uncertainty about liability for data loss or breaches during online proceedings. To mitigate this, arbitral tribunals should adopt international best practices, such as the ICCA-New York City Bar-CPR Protocol on Cybersecurity in International Arbitration (2020), which provides practical guidance on securing electronic arbitration records.

In *Brila Energy Ltd v Federal Republic of Nigeria*,²² the Court of Appeal reiterated that electronically generated documents are admissible only if they comply with the requirements of sections 84(2) and (4) of the Evidence Act 2011. This underscores the necessity for arbitral practitioners to ensure that digital communications and exhibits meet evidentiary standards to withstand judicial scrutiny at the enforcement stage.

7. Emerging Challenges in Online Arbitration

Despite the legislative progress represented by the AMA 2023, several challenges impede the full realization of technology-driven arbitration in Nigeria.

(a) Technological Infrastructure and Digital Divide

Reliable internet connectivity remains uneven across Nigeria. Many regions suffer frequent power outages and weak bandwidth, limiting effective participation in virtual hearings.²³

(b) Authentication of Electronic Evidence

Concerns persist regarding the integrity and authenticity of electronic documents. In *Kubor v Dickson*,²⁴ the Supreme Court held that electronic evidence must comply strictly with statutory requirements before being admitted.

(c) Fair hearing and Equality of Arms

Technological disparities among parties may create perceptions of unfairness. Section 84(1) of the AMA 2023 attempts to cure this by requiring equal opportunity for participation. Nonetheless, tribunals must ensure that technological limitations do not amount to procedural inequality.²⁵

²⁰ Arbitration and Mediation Act 2023, s 84(1).

²¹ *Brila Energy Ltd v. FRN* (2018) LPELR-43926(CA).

²² N. Okon, ‘Bridging the Digital Divide in Nigerian Arbitration Practice’ (2023) 8 African Arbitration Law Review

²³ (2013) 4 NWLR(Pt.1345) 534(SC).

²⁴ Arbitration and Mediation Act 2023, s .84(1).

²⁵ (2014) 5 SCC 1 (India).

(d) Determination of the Seat of Arbitration

In online arbitration, identifying the “seat” becomes complex, particularly when all proceedings are virtual. The seat determines the applicable procedural law and the jurisdiction for setting aside awards. Nigerian tribunals must clearly define the seat to avoid enforcement complications.²⁶

(e) Lack of Specialized Expertise

Many practitioners and judges are still adapting to the technical requirements of ODR. Continuous training in digital arbitration tools and cybersecurity is crucial.²⁷

8. Judicial Attitude and Enforcement Prospects

Nigerian courts have historically displayed a pro-arbitration stance. In *Baker Marine (Nig.) Ltd v Chevron (Nig.) Ltd*,²⁸ the Court of Appeal emphasized that judicial interference in arbitral awards must be minimal. Likewise, in *Statoil v NNPC*²⁹ and *Esso Exploration v NNPC*,³⁰ the Supreme Court reaffirmed judicial deference to arbitral autonomy. These precedents suggest that Nigerian courts are well-disposed to enforcing online awards rendered under the AMA 2023, provided they meet the statutory standards of fairness, notice, and consent.

9. Comparative Perspectives.

Globally, countries like Singapore, the United Kingdom, and Hong Kong have institutionalized online arbitration. The Singapore International Arbitration Centre (SIAC) and London Court of International Arbitration (LCIA) Rules permit full electronic proceedings and mandate data protection protocols.³¹ The English Arbitration Act 1996 has also been interpreted flexibly to allow online hearings consistent with party autonomy.³²

Nigeria’s AMA 2023 draws inspiration from these jurisdictions, signaling its commitment to international best practices. However, unlike Singapore’s Electronic Transactions Act, Nigeria’s legislation does not yet contain detailed provisions for authentication and cybersecurity in arbitral settings—a gap that requires regulatory attention.³³

10. Conclusion and Recommendations

10.1 Conclusion

The Arbitration and Mediation Act 2023 marks a significant milestone in the evolution of Nigeria’s dispute resolution landscape. By formally recognizing the legitimacy of technology and online arbitration, the Act aligns Nigeria with the contemporary global shift toward digitized dispute resolution processes. It underscores a legislative intent to promote efficiency, accessibility, and cost-effectiveness, particularly in cross-border commercial transactions where parties increasingly rely on electronic communication and virtual hearings.

However, the transformation ushered in by the Act is not without challenges. Nigeria’s arbitration environment continues to encounter structural constraints such as poor digital infrastructure, technical illiteracy among practitioners, and inconsistent judicial attitudes toward technology-based evidence and procedures. These factors collectively hinder the full realization of the benefits envisaged under the Act.

²⁶ O Dada, ‘Digital Competence and the Nigerian Judiciary’ (2021) 9

²⁷ Nigerian Law and Technology Journal 56.

²⁸(2000) 12 NWLR (Pt.681) 393(CA).

²⁹Supra note 19.

³⁰ Supra note 15.

³¹ Singapore International Arbitration Centre (SIAC) Rules 2016, Articles.19-22.2014] EWHC 2104 (Comm).

³² Singapore Electronic Transactions Act (Cap.88, Rev.Ed.2010). ICCA-CPR Protocol on Cybersecurity in International Arbitration (2020), para.3.

³³ National Judicial Institute, “Judicial Training on Technology and Arbitration” (2024) Seminar Report.

Moreover, issues relating to cybersecurity, confidentiality, and procedural fairness in virtual hearings remain unresolved, necessitating clearer institutional and regulatory guidance.

Ultimately, while the Arbitration and Mediation Act 2023 represents a progressive step toward modernizing Nigeria's arbitration regime, its success depends on the synergy between legislation, judicial interpretation, and technological readiness. Sustained judicial restraint, respect for party autonomy, and adaptation to digital realities will be critical in ensuring that online arbitration not only thrives but also commands legitimacy and confidence within the legal community.

10.2 Recommendations.

1. Development of Comprehensive Procedural Guidelines:

Arbitral institutions and professional bodies should develop detailed procedural rules to govern online arbitration, covering aspects such as virtual hearings, digital evidence, electronic signatures, and cybersecurity standards. This will promote uniformity and reduce interpretive ambiguity.

2. Judicial and Professional Capacity Building:

Continuous training for judges, arbitrators, and counsel is essential to build technical competence and ensure consistent interpretation of the Act's provisions. Specialized judicial education on technology and arbitration will enhance confidence in online proceedings and enforcement of awards.

3. Strengthening Digital Infrastructure and Security:

The success of online arbitration depends on reliable and secure digital platforms. Government collaboration with technology providers and arbitral institutions can help establish robust virtual hearing facilities and ensure the protection of sensitive data.

4. Promotion of Awareness and Adoption:

Stakeholders, particularly in commercial sectors, should be sensitized to the benefits of online arbitration. Public education and professional seminars can encourage parties to include online dispute resolution clauses in contracts and reduce dependence on traditional litigation.

5. Institutional Collaboration and Policy Harmonization

Coordination among arbitral institutions, government agencies, and professional associations is vital to ensure that Nigeria's approach to online arbitration remains coherent and harmonized with international standards.

6. Ongoing Legislative Review:

As technology evolves, periodic review of the Arbitration and Mediation Act 2023 should be institutionalized. Such review will ensure the continued relevance of its provisions, particularly concerning electronic evidence, confidentiality, and data protection in arbitral proceedings.