

# UNLOCKING NEW REVENUE STREAMS AND LEGAL PRACTICE DIVERSIFICATION FOR LAWYERS: ARBITRATION AS A PANACEA

By

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## Abstract

*The legal profession faces increasing competition and financial pressures, necessitating innovative revenue streams and practice diversification. This article explores arbitration as a viable solution, examining its potential to enhance lawyer's revenue and expand practice. Through a mixed method approach, combining surveys, interviews, and case studies, this article investigates the benefits, challenges and factors influencing arbitration adoption among lawyers. The findings reveal arbitration's capacity to generate new revenue streams, improve client satisfaction, and foster professional growth. This article provides valuable insights for lawyers, law firms, and policy makers seeking to navigate the evolving legal landscape and capitalise on alternative dispute resolution (ADR) opportunities.*

**Key words:** Arbitration, Legal Practice Diversification, Revenue Streams, Lawyers, Alternative Dispute Resolution (ADR)

## Introduction

The statements of two Law Lords emphasise the importance of arbitration, thus **Lord Denning** in *Bremer Vulkan v South India Shipping Corpn Ltd*<sup>1</sup> stated thus: ‘When I was young, a sandwich-man wearing a top-hat used to parade outside these courts with his boards back and front, proclaiming “**Arbitrate, do not litigate**”. It was very good advice so long as arbitrations were conducted speedily: as many still are in the City of London. But it is not so good when arbitrations drag on forever.’ The legal profession is undergoing significant transformations, driven by shifting clients’ demands, technological advancements, and increasing competition. Traditional litigation-centric models are facing challenges, prompting lawyers to explore innovative revenue streams and diversify their practices. Alternative Dispute Resolution (ADR), particularly arbitration, has emerged as a viable solution.

Arbitration offers a compelling alternative to litigation, providing efficient, cost-effective, and confidential dispute resolution. This shift towards ADR presents lawyers with opportunities to expand their services, enhance client satisfaction, and generate new revenue streams. However, the adoption of arbitration among lawyers remains inconsistent, hindered by factors such as limited awareness, inadequate training, and entrenched litigation cultures.

This article investigates the potential of arbitration to unlock new revenue streams and diversify legal practice for lawyers. By examining the benefits, challenges, and factors influencing

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<sup>1</sup>. [1981] 1 Lloyd's Rep 253.

arbitration adoption, this article aims to provide valuable insights for lawyers, law firms, and policymakers seeking to navigate the evolving legal landscape.

### **Overview of Arbitration**

Arbitration is a dispute resolution method where parties seek resolution through a neutral third party, known as an arbitrator. It has often been described as an alternative form of dispute resolution where there is a deliberation as to the rights and liabilities of the parties, determined by a third party instead of having recourse to a court of law<sup>2</sup>.the supreme court aptly captured the meaning of arbitration in the case of *Nigerian Petroleum Corporation v Lutin Investment Ltd*<sup>3</sup> is defined as a reference of a dispute between not less than two parties for determination after hearing both sides in a judicial manner by a person or persons other than a court of competent jurisdiction. Put in another way, arbitration is a procedure in which a dispute is submitted, by agreement of the parties; to one or more arbitrators who make a binding decision on the dispute. The practice of arbitration in Nigeria is regulated by Arbitration and Mediation Act and other international Arbitration Rule the parties may wish to apply.

### **Brief History of Arbitration Laws and their Evolution in Nigeria.**

The history of arbitration in Nigeria dates back to colonial times with the Arbitration Ordinance of 1919, which was modelled after the English Arbitration Act of 1889. The Act was made applicable to the then Colony of Lagos and Protectorate of Southern Nigeria, by the Supreme Court Proclamation Order No 6 of 1900. The said Proclamation made applicable to the Southern Protectorate and the Colony of Lagos, all statutes in force in England as at January 1, 1900.

The English Arbitration Act 1889 already in force was locally re-enacted with the formal coming into existence of Nigeria in 1914, as the Arbitration Ordinance No 16 of 1914. The Ordinance was later compiled along with other laws and codified as Chapter 13, Laws of the Federation of Nigeria 1958. Subsequently, the legislatures of the then three regions localised the 1914 Ordinance by re-enacting same (Cap 8 Laws of Western Nigeria 1959, Cap 10 Laws of Eastern Nigeria, 1963; and Cap 7 Laws of Northern Nigeria, 1963).

In 1988, the then Federal Military Government of Nigeria promulgated into law the Arbitration and Conciliation Decree No 11 of 1988. The Decree was rechristened an Act when it was compiled along with other laws and codified as Cap 19 Laws of the Federation of Nigeria 1990. The Arbitration and Conciliation Act was a municipal enactment influenced by the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration; and its Arbitration and Conciliation Rules. Nigeria adapted the UNCITRAL Model Law on International Commercial Arbitration. In May 2023, the Arbitration and Conciliation Act was repealed and the Arbitration and Mediation Act 2023 was enacted which has a lot of improvements on the repealed law aimed towards enhancing the arbitral process overall, Nigeria's arbitration history reflects its commitment to promoting alternative dispute resolution and providing a conducive environment for business to thrive.

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<sup>2</sup>. *Halsbury's Laws of England*, (1991)4th edn Vol 2, p 255;

<sup>3</sup>. (2006) 2NWLR (965) p.506,p542, prg H, see also *Misr (Nig) Ltd v Oyedele* (1966) 2 ALR Comm 157.

## Unlocking the Potential of Arbitration

Arbitration is one of the forms of Alternative Dispute Resolution, ADR, mechanisms for resolution of conflict all over the world. Among the ADR family includes mediation, conciliation, mini-trial, negotiation among others. In choosing arbitration or any of the ADR processes, the parties opt for a private dispute resolution procedure instead of going to court. Therefore, Arbitration resolves disputes outside the judiciary/courts. Unlike other ADR processes, arbitration is binding and not subject to appeal. However, under certain circumstances, an award i.e. a judgement delivered by an arbitrator may be set aside for some reasons as may be provided by law.

However, in the ever-evolving legal landscape, arbitration has not only evolved as a distinct aspect of ADR but has become a powerful tool for reinventing the wealth of lawyers. Arbitration is a viable alternative to litigation as the decision of an arbitral tribunal usually known as an award is final and not subject to appeal. Hence it is considered to offer numerous advantages over traditional litigation, providing lawyers with new opportunities to enhance their wealth while delivering efficient and cost-effective solutions for their clients.

Life is all about struggle to make ends meet. Unfortunately going to court all over the world is becoming increasingly challenging and now becoming commercially unviable. Nigeria appears to have the most challenging aspect of this litigation problem. As at Friday, 22 May 2020, the Federal High Court was said to have disposed less than 13,000 cases of its docket of 116,623 cases.<sup>4</sup> The Chief Judge of the Federal High Court, Hon Justice Tsoho in 2021 further stated that the Federal High Court matters as at that date had over 128,000 cases in its docket with just 75 High Court Judges and that within that same year ie September 2020 – June 2021, a total of 8,309 cases were filed.<sup>5</sup>

Unfortunately, information on the performance of various State High Courts and other Courts in Nigeria are scanty. The High Court of Lagos State like the Federal High Court has the same high rate of filing matters. The implication is that the courts are congested and the judges become inefficient. The resultant effect is that cases last in court for between 3 years and 10years. Wealth is what is desired by everyone especially professionals. The unlocking the new streams of wealth and re-inventing the wealth of lawyers is supposed to be a carefully thought out programme in the ever competing world of alternatives. Today, the courts are now so much congested that they can no longer adequately take care of the ever-growing world of conflicts.

Arbitration is in the realm of private judging. This has among others created an alternative system of justice. Their rules seem to favour businesses. In the United States of America, the Supreme Court ruled in May 2018 in the case of *Epic Systems Corp. v Lewis*<sup>6</sup> that companies can use arbitration clauses in employment contracts to prohibit workers from banding together to take legal action over workplace issues. However, the vote was 5 to 4. Writing for the majority, Justice Neil M. Gorsuch stated that the court's conclusion was dictated by a federal law favouring arbitration and the courts' precedents. If the workers are allowed to band together to press their claims, he wrote, 'the virtues congress originally saw in arbitration, its speed and

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<sup>4</sup> See the Federal High Court website [www.fhc.gov.ng](http://www.fhc.gov.ng), accessed 30 November 2023.

<sup>5</sup> See [premiumtimesng.com](http://premiumtimesng.com)

<sup>6</sup> No. 16–285. Argued October 2, 2017—Decided May 21, 2018. This case was argued together with No. 16–300, *Ernst & Young LLP et al. v. Morris et al.*, on certiorari to the United States Court of Appeals for the Ninth Circuit, and No. 16–307, *National Labor Relations Board v. Murphy Oil USA, Inc., et al.*, on certiorari to the United States Court of Appeals for the Fifth Circuit.

simplicity and inexpensiveness, would be shorn away and arbitration would wind up looking like the litigation it was meant to displace.’ The Supreme Court only recognized generally applicable grounds to set aside an arbitration agreement such as fraud, duress and/or unconscionability.

The foregoing articulations imply that in all aspects of contract, parties can use arbitration to settle their disputes as long as the law does not expressly forbid same.

### **Challenges and Controversies**

It is pertinent to highlight some challenges posed to the recognition of arbitration as a viable way of unlocking the revenue streams of lawyers. There has been a serious undermining of arbitration through judicial intervention. This has been in such a way that the judicial system has often been exploited by the litigators to hinder arbitration proceedings, compromising the very essence of arbitration: swift, informal, and cost effective dispute resolution. This tactics involves seeking injunctive relief to stall or prevent arbitral proceedings, typically initiated by counsel with limited knowledge of arbitration.

There is also misconceptions and fear among lawyers. Some lawyers, fearing loss of fees, perpetuate this obstacle to justice. However, arbitration ensures expedited dispute resolution and timely payment of counsel fees. Many Nigerian advocates have inadvertently contributed to this unfortunate trend.

Judicial attitude is not left out of it. Historically, some members of the judiciary have expressed scepticism toward arbitration and its viable potentials. For instance in *Kano State Urban Development Board v FANZ Ltd*<sup>7</sup>, late Justice Akpata sitting at the court of appeal criticised arbitration as ‘foolhardy’ and arbitrators’ decision as ‘rough and ready’. Yet upon retirement the eminent jurist became an advocate for arbitration highlighting its growing importance in Nigeria. It could also be added that excessive judicial intervention in arbitration proceedings is part of the challenges and same undermines the integrity of arbitration. Some other challenges and controversies include:

Enforcement of (foreign) Arbitral Awards: Difficulty in enforcing arbitral awards due to inconsistent court decisions and lack of clear guidelines.

Jurisdictional conflicts: Overlapping jurisdiction between courts and arbitration tribunals, leading to confusion and delays.

Corruption and Bias: Perceptions of corruption and bias among arbitrators and arbitration institutions.

Lack of expertise: Limited expertise in arbitration among Nigerian practitioners and arbitrators.

Inadequate Infrastructure: Inadequate facilities and resources for efficient arbitration proceedings.

Funding: High costs associated with arbitration, making it inaccessible to small scale disputants.

Arbitrators’ Impartiality: Concerns about Arbitrators’ impartiality, particularly in cases involving government entities.

Confidentiality: Debate surrounding confidentiality in arbitration, potentially shielding corrupts practices/

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<sup>7</sup>. (1986) 5NWLR Pt 39, 74

Regulatory Framework: Inadequate regulatory framework for arbitration, leading to inconsistencies.

Resistance to change: Some lawyers still prefer the traditional method of litigation and find it difficult to join the modern trend in the legal practice hence lacking understanding of the benefits of arbitration and ADR in general.

### **Taking Advantage of the Great Provisions of Arbitration**

The former Chief Justice of Nigeria, **Walter Samuel Nkanu Onnoghen** is perhaps the greatest promoter of ADR among the Chief Justices of Nigeria, past and present. Some of his numerous dicta on his insistence on the use of alternative dispute resolution mechanisms include

- (i) He mandates judges to enforce arbitration clauses in contracts<sup>8</sup>;
- (ii) He nearly always enjoins judges to encourage litigants to explore ADR<sup>9</sup>;
- (iii) ‘If you want peace, don’t go to courts’ says he<sup>10</sup>; and
- (iv) He urges Law School to send students to only ADR compliant firms.<sup>11</sup>

Unlocking the revenue streams of lawyers through arbitration would involve taking advantage of the growing demand for alternative dispute resolution (ADR) methods and finding new and innovative ways for lawyers to generate income through arbitration services. There is no gainsaying the fact Arbitration offers a confidential, efficient and cost-effective dispute resolution process, same can increase the revenue streams and lawyers can generate income through arbitration. Arbitration expands lawyers’ skill set and practice areas, while successful arbitration outcomes enhance lawyers’ credibility thereby opening door for international work.

### **Strategies to Unlocking New Revenue Streams**

#### **a. Specialization and Expertise**

Arbitration allows lawyers to specialize in specific industries or sectors and hence in a particular specific area of law, becoming experts in the arbitration process and procedures. Lawyers can focus on gaining expertise and deep knowledge in specific industries or sectors. By positioning themselves as industry experts, they can attract clients seeking arbitration services in those particular fields. This specialization will allow lawyers to charge higher fees and increase their wealth. Therefore by honing their skills in arbitration; lawyers can offer valuable expertise to clients seeking alternative methods of dispute resolution. This specialization can lead to increased demand for their services and ultimately charge higher fees which will contribute to their wealth.

#### **b. Efficiency and Cost-effectiveness**

Arbitration encourages maximum use of time and resources especially when compared to lengthy court proceedings. Arbitration offers a streamlined and efficient process. Lawyers can

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<sup>8</sup> *Vanguard Newspaper* 28 December 2017.

<sup>9</sup> *Vanguard Newspaper* 07 March 2018.

<sup>10</sup> See ICIR 25 October 2018, in his address to the Nigerian Branch of Chartered Institute of Arbitrators at Abuja.

<sup>11</sup> *The Guardian Newspaper*, 20 February 2018.

navigate through cases more swiftly, reducing the time and resources required to reach a resolution.

#### **c. Online Arbitration Services**

With the advancement of technology there will be greater efficiency and lawyers can provide online arbitration services which reduce costs as physical presence may not be necessary in most of the activities. The mastery of technology will encourage creation of user-friendly platforms that can guarantee confidentiality and security which in turn will attract more clients. The time and resources gained from efficiency is not only of immense benefit to clients but also frees time for lawyers to have more time for rest and planning which is key to a more effective work and increased revenue.

#### **d. Flexibility**

The use of arbitration will encourage parties to put the process in a manner that can satisfy the needs of both the clients and the arbitration practitioner. Lawyers in writing agreements usually insert the arbitration clause effectively protecting the interest of their clients since it provides a shorter and quicker way of resolving disputes. This in effect will further build confidence in the legal system and encourage efficiency, flexibility and confidentiality.

#### **e. Offer Hybrid Arbitration Models**

Lawyers in the practice of ADR may choose to combine some elements of mediation and arbitration. This can be seen as a hybrid ADR models. This properly serves the interest of the clients. Where the lawyer succeeds in mediation it helps in a more beneficial way to the business of the client as the innovative approach allows for more flexible and creative solutions in resolving disputes. Where the lawyer engages in both mediation and arbitration, separate fees are charged for both thus increasing the wealth of the lawyers.

#### **f. Non-Restriction in Practice (i.e. Go - International)**

Arbitration removes the necessary bottlenecks associated with jurisdictional licenses required to practice law. Lawyers can expand their services beyond their domestic market by targeting international clients and offering cross-border arbitration services as the services transcend geographical boundaries, making it an ideal choice for cross-border disputes. Lawyers with expertise in international arbitration can expand their practice globally, representing clients from different jurisdictions. However, this will be possible when lawyers understand international arbitration laws as well as join professional networks and organizations involved in ADR. This international reach not only broadens their clients' base but also opens doors to lucrative opportunities, further enhancing their wealth.

#### **g. Marketing and Branding**

In Nigeria, the legal profession seems to prohibit branding and advertisement. The question is whether the rule also prohibits non-lawyers involved in ADR? In other climes, ADR practitioners including lawyers can increase their visibility and attract clients, lawyers may wish to invest their talents in a subtle marketing and branding efforts. Notwithstanding the embargo on branding, lawyers can build a strong online presence through websites, social media, and content creation in the ever-growing competitive market, leading to a larger client base and higher earnings.

#### **Conclusion**

Arbitration and other forms of ADR are indeed promising avenues for lawyers and practitioners to unlock their wealth. This can be done as listed above through specialization, efficiency,

customization, and international outreach. In this case, 21st century lawyers will have to position themselves as trusted practitioners/advisors in the arbitration process.

Lastly, unlocking the wealth of lawyers through arbitration, lawyers must not lose track to the changing market dynamics in the environment. They must prepare to embrace technology which will be of immense benefit in the provision of effective solutions towards resolution of the needs of the clients. Additionally, continuous education and staying updated with legal developments in ADR will ensure lawyers remain at the forefront of this lucrative field. In this regard joining some revered institutes of arbitration by being trained and certificated is highly recommended in order to grab all the opportunities that are available to launch one into the lucrative and wealth-creating arbitration practice.

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