



**INTERIM ORDERS PENDING ARBITRATION:
A REFLECTION ON *ANDRE & CIE S. A. V. JOFEC LIMITED & ANOR (2001)*¹
IN LIGHT OF THE ARBITRATION AND MEDIATION ACT 2023**

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The recently enacted Arbitration and Mediation Act of 2023 (AMA), gives statutory affirmation to possible court inherent and necessary interventionist power in Nigeria's arbitration system. In laying to rest the debate on the validity of court powers to grant interim reliefs to preserve the rights of parties or the subject matter of dispute pending or during arbitration, section 5(3) of the AMA stands out, stating,

“Where a court makes an order for stay of proceedings under subsection (1), the court may, for the purpose of preserving the rights of the parties, make an interim or supplementary order as may be necessary.”

In complex disputes, interim measures issued by courts can play a pivotal role in preventing irreparable harm or maintaining the status quo pending or during arbitral proceedings. In the broader perspective, arbitrators and arbitral tribunals can now leverage the court's support to protect the arbitration process and ensure compliance with their decisions, thereby facilitating the efficient resolution of disputes.

Although the 2012 case of *LASG v PHCN*² has been cited as the first Nigerian case where a court has granted preservatory order pending arbitration, the G.O. Sodipo and Co., dispute resolution team had obtained a landmark and groundbreaking ruling in the case of *Andre & Cie S. A. v. Jofec Ltd. & Anor (Andre and Cie)*, eleven years earlier in 2001. It was previously open to debate whether Nigerian courts had jurisdiction to grant interim preservatory orders in the absence of a specific provision vesting courts with power to intervene during or pending arbitration in Nigeria's recently repealed Arbitration and Conciliation Act of 1988 (ACA). *Andre and Cie* draws a parallel to the court's power under section 5(3) AMA, as a compelling illustration of the court's authority to issue interim orders for the preservation of the subject matter in dispute.

Facts

In the *Andre & Cie case*, the plaintiff, a Swiss commodity finance company contracted the 1st defendant for the purchase of commodities (cocoa beans and cashew nuts). The 1st defendant in turn, leased a warehouse to the 2nd defendant, an agent of the plaintiff, under a collateral management contract aimed at facilitating the export of the cocoa beans and cashew nuts.

¹ Unreported Suit No. FHC/L/CS/612/2001

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² (2012) 7 CLRN 134



A dispute arose when the 1st defendant removed a significant portion of the cocoa beans from the warehouse without the plaintiff's permission or consent. Despite the plaintiff's written complaint, the 1st defendant refused to return the commodity. The plaintiff initiated legal proceedings, citing in its statement of claim and affidavit in support of motions, the arbitration clause within the contract between themselves and the 1st defendant.

The challenge the plaintiff had was that without the court's intervention before the constitution of the arbitration panel, the cocoa beans being perishable commodity could have deteriorated and perished pending arbitration. The plaintiff sought a Mareva injunction-type order to prevent the 1st defendant from further removing the commodity, an order directing the 2nd defendant to relocate the commodity to a safer warehouse, and an order directing the 2nd defendant to dispose of the (perishable) commodity and deposit the proceeds of the sales into an interest-yielding account.

Decision

Exercising its discretion, the court granted these orders.

Comments

Andre and Cie illustrates how the court's powers can effectively preserve the subject matter at hand, particularly in anticipation of arbitration proceedings. It exemplifies the significance of court-issued interim orders in the context of arbitration. It highlights the critical role the court plays in protecting the rights and interests of parties involved, ensuring that the arbitration process is conducted smoothly and fairly. As Nigeria's arbitration landscape evolves under the AMA, cases like *Andre & Cie* serve as valuable precedents, emphasising the importance of preserving rights in arbitration.