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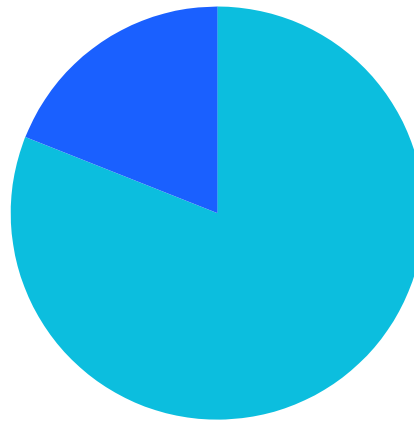
SENIOR PARTNER



50 years of Arbitration related cases at Nigeria's Appellate courts

G.O. Sodipo & Co.'s dispute resolution team are pleased to share with you the first in a series of reviews of the arbitration related cases adjudicated in Nigeria's appellate courts in the last 50 years. The review features 145 commercial arbitration related cases that have been adjudicated at the appellate courts in Nigeria in the last 50 years featuring about 118 Court of Appeal cases and 27 Supreme Court cases.

Supreme Court Cases 19%



Court of Appeal Cases 81%

The aim of this first exercise is to examine the nature of commercial disputes with arbitration clauses that have been adjudicated at the appellate courts and the response of the courts to such disputes. The exercise excluded customary arbitration cases and treaty-based arbitration. This first exercise reveals that various types of commercial arbitration related disputes have been litigated in Nigerian courts and the judges have been friendly towards the enforcement of arbitration agreements and arbitral awards.

Section 91(1) of the Arbitration and Mediation Act, 2023 (AMA), defines "commercial" to include "matters arising from all relationships of a commercial nature whether contractual or not, such as any trade transaction for the supply or exchange of goods or services, distribution agreement, commercial representation or agency, factoring, leasing, construction works, consulting, engineering, licensing, investment, financing, banking, insurance, exploitation agreement or concession, joint venture and other forms of industrial or business co-operation, carriage of goods or passengers by air, sea, rail or road. Given the use of the term "includes" in the definition of "commercial" in section 91 of the AMA, this list is not exhaustive. Section 91 of the AMA is almost on all fours with section 57(1) of Nigeria's recently repealed Arbitration and Conciliation Act 1988 (ACA), under which most of the cases reviewed, were adjudicated.

This exercise presented a number of challenges. First, 12.4% of the judgments did not indicate the nature of the disputes, hence such cases could not be categorized. Second, some of the disputes fall into more than one category but for the purpose of this exercise, we only classified them into one. Third, the nature of some of disputes may not fall into the s.91 definition list of commercial, but they are regarded as commercial otherwise they would not have been adjudicated under the ACA which was the precursor to the AMA.

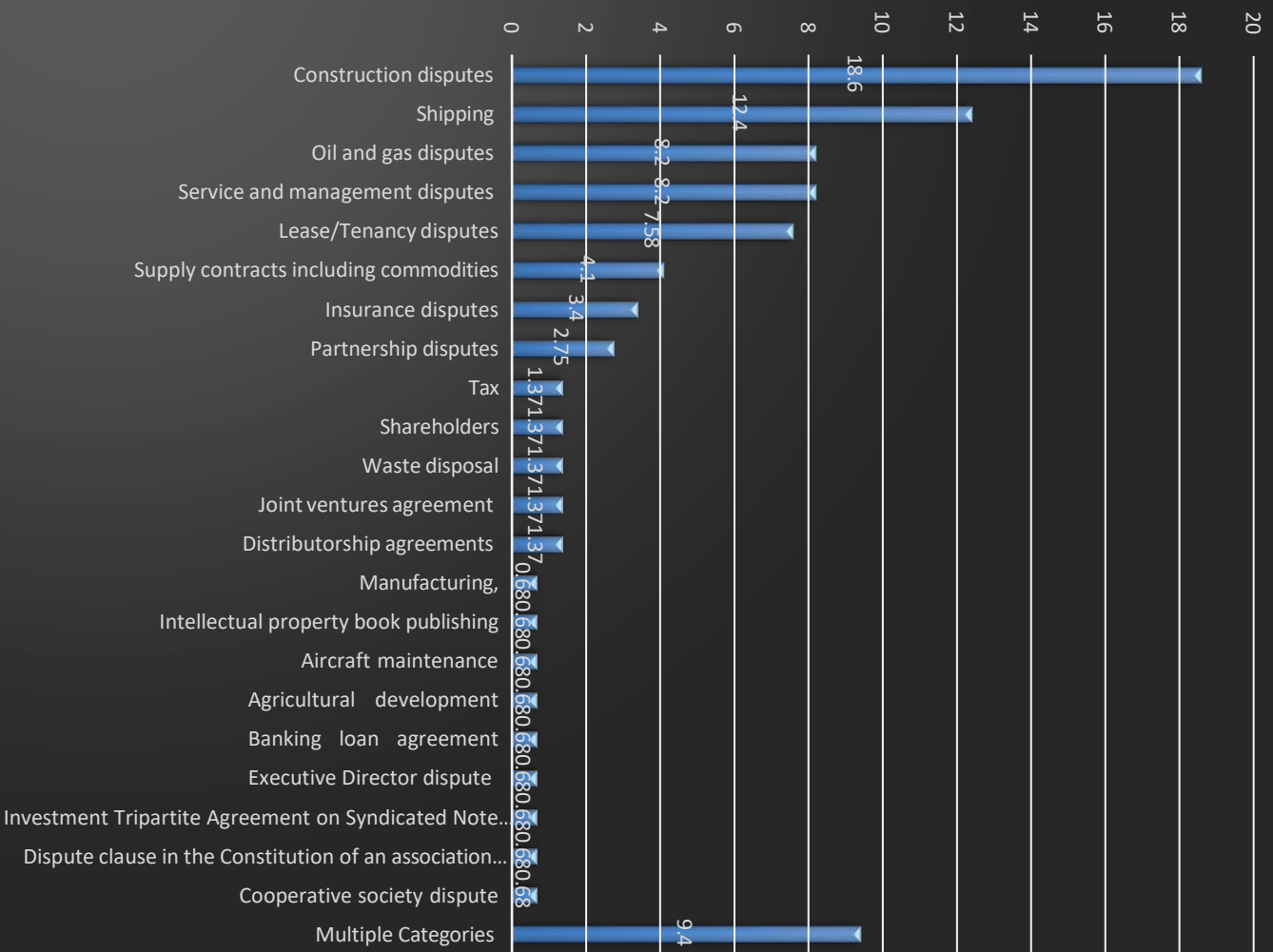
Construction disputes are the largest type of disputes with 18.6%, followed by shipping with 12.4%. Oil and gas disputes are next in line tying with service and management disputes each of 8.2%.

7.58% of the cases dealt with Lease/Tenancy disputes, 4.1% dealt with supply contracts including commodities, 3.4% were on insurance disputes whilst 2.75% dealt with partnership disputes.

The following categories of disputes had only 1.37%: tax, shareholders, waste disposal, joint ventures and distributorship agreements. The following categories of disputes had 0.68% manufacturing, intellectual property book publishing, aircraft maintenance, agricultural development, banking loan agreement, employment contract for a company's executive Director and investment Tripartite Agreement on Syndicated Note Issuance Facility.

0.68% of the disputes arose from the dispute clause in the Constitution of an association prescribing arbitration. 0.68% disputes arose from Cooperative society issues where the statute mandated that disputes must be resolved by the Director of Cooperative Societies.

Appellate Cases on Arbitration over the last 50 years %



➤ DURATION OF PROCEEDINGS AND BACKGROUND OF ARBITRATORS

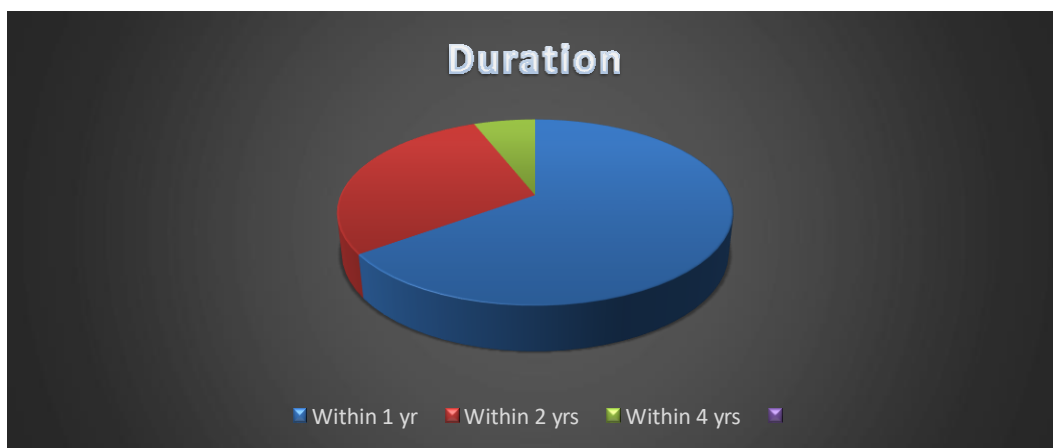
In this second publication in the series, '50 years of Arbitration related cases at Nigeria's Appellate courts', G.O. Sodipo & Co's dispute resolution team presents a short analysis of two interesting issues in arbitration related litigation that have been handled in 145 Nigerian appellate judgments in the last fifty years:

- Duration of the Arbitration\duration of the arbitration related litigation.
- Professional background and diversity of the arbitrators who sat on the panels.

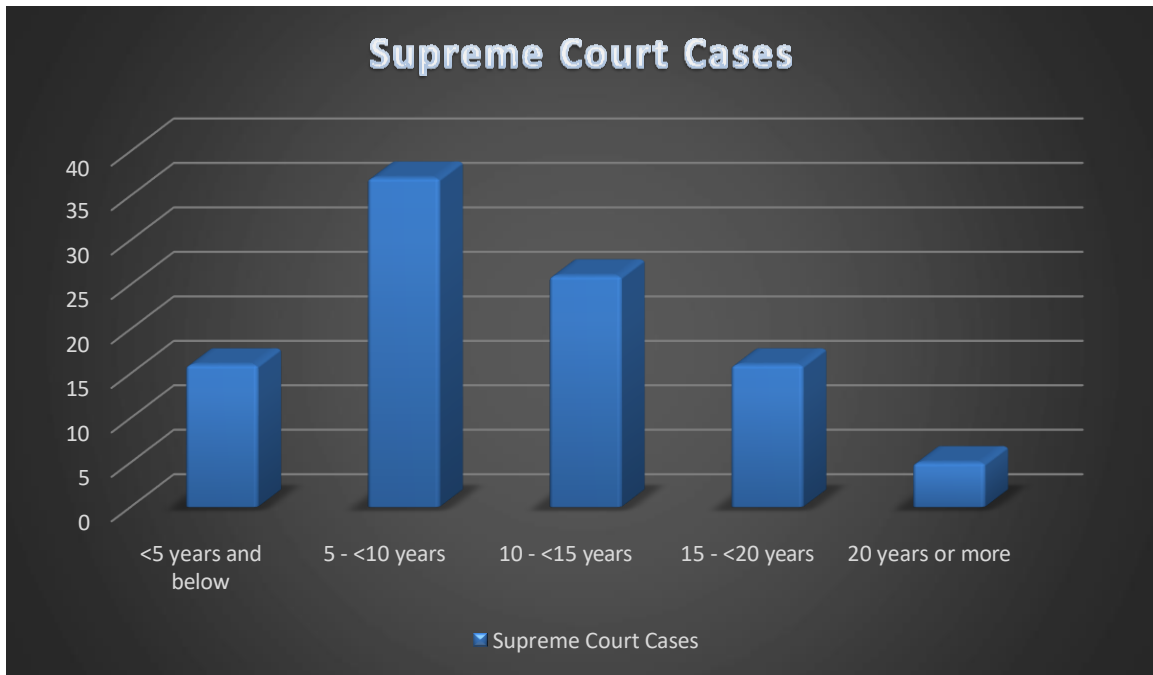
This exercise has a couple of limitations. The judgments of some appellate courts did not give details of the duration of the arbitration proceedings. The judgments of some appellate courts did not reflect the names of the arbitrators. In some cases where the names of the arbitrators were reflected, it has proven difficult to ascertain their background or whether they are male or female. Finally, in some cases, the arbitrators had not been appointed. Nonetheless, the exercise is revealing.

Duration

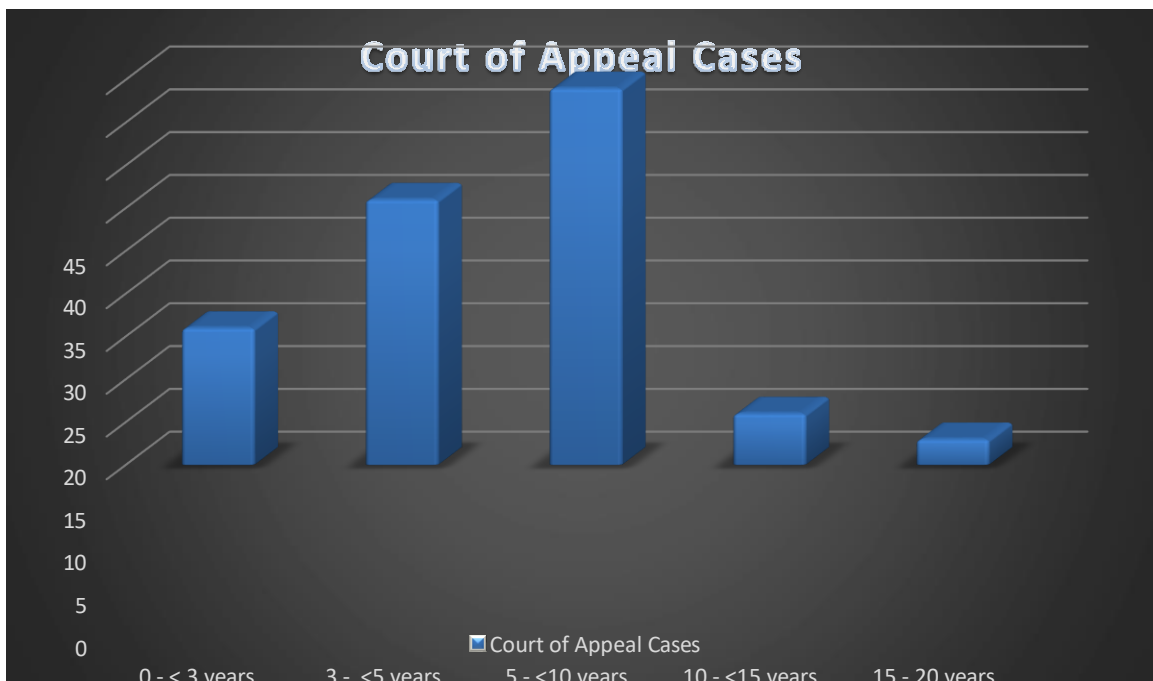
85% of the cases did not reflect when the arbitration proceedings commenced. 84% did not indicate when the arbitral award was published and 53% did not state when the arbitral award was made. Only 12% gave details of duration of the arbitration proceedings. For the judgments that indicated the duration of the arbitration proceedings, 65% of the arbitral proceedings were completed within 1 year, 29% were completed within 2 years, whilst 6% were completed within 4 years.



Of the ensuing arbitration related proceedings at the Supreme Court, 16% were completed in 5 years or less, 37% were completed between 5 and <10 years, 26% were completed between 10 and <15 years, 16% were completed between 15 and <20 years, whilst 5% were completed after 20 years of litigation. (<) Sign for less than.

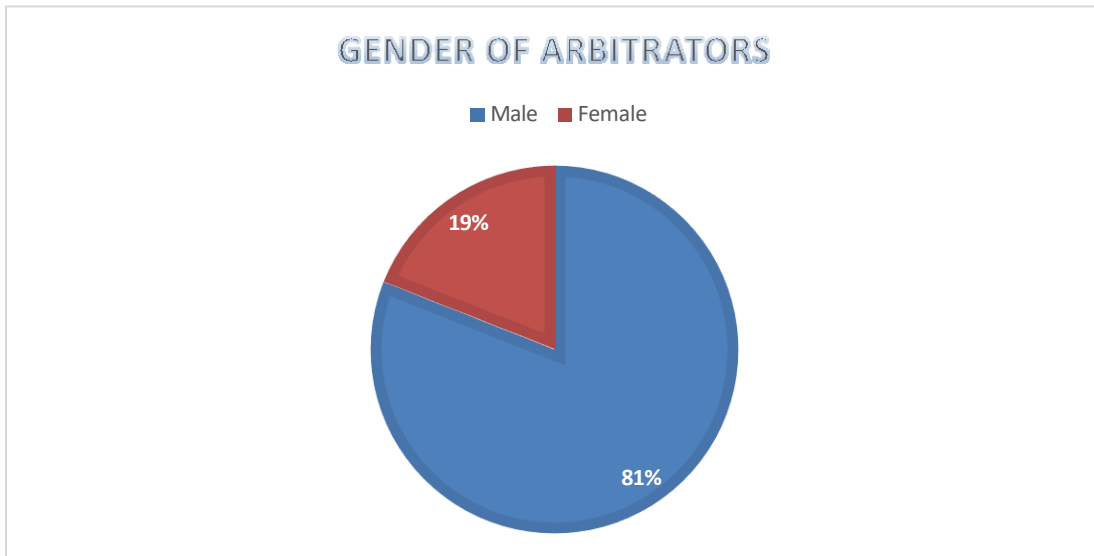


Of the arbitration related proceedings at the Court of Appeal, 16% of the cases were completed 0 to <3 years, 31% were completed within 3 to <5 years, 44% of the cases were completed within 5 to <10 years, 6% of the cases were completed within 10 to <15 years, 2% of the cases were completed within 15 to <20 years, whilst 1% of the cases were completed after 20 years of litigation at the Court of Appeal.

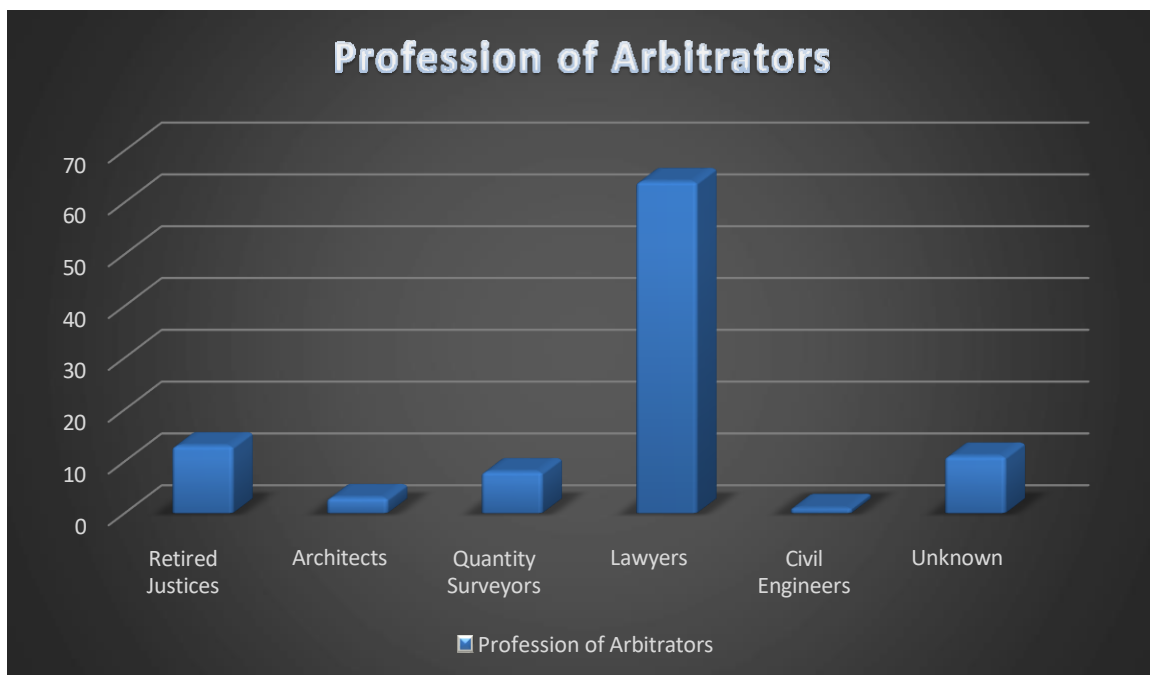


Background and Diversity of Arbitrators

81% of the arbitrators that have sat on arbitrations that have been litigated in Nigerian appellate courts in the last 50 years were male while 19% were female.



64% of the arbitrators were lawyers, 13% were retired judges, 3% were architects, 8% were quantity surveyors, 1% were civil engineers, the background of 11% were not stated and so were treated as "others", in this exercise. 20% of the arbitrators were foreign arbitrators and 30% of the foreign arbitrators had certification as maritime arbitrators.



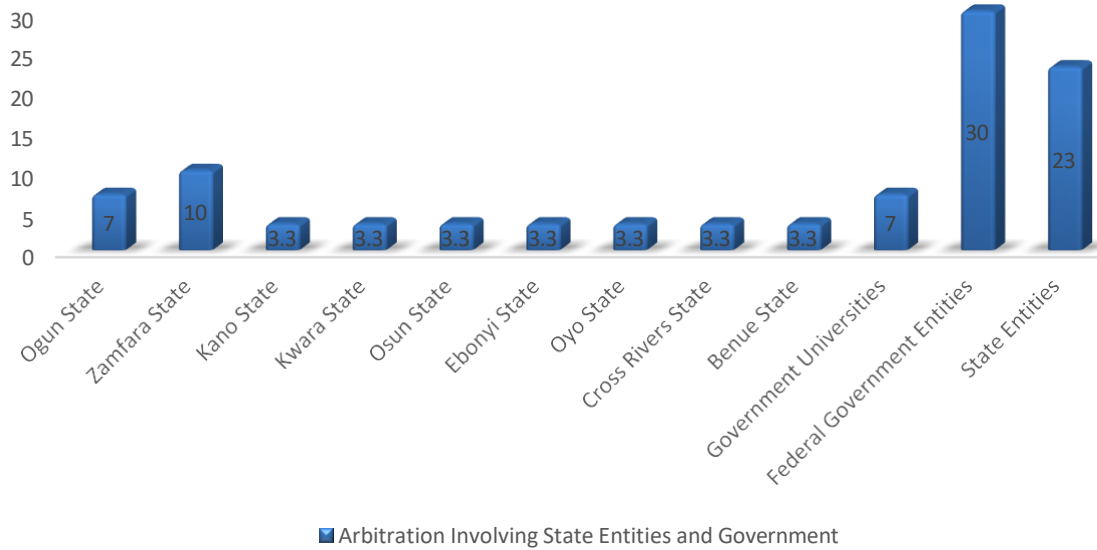
➤ DISPUTES WITH STATE GOVERNMENTS & STATE ENTITIES

In this third publication in the series, '50 Years of Arbitration-related Cases at Nigeria's Appellate Courts,' G.O. Sodipo & Co.'s dispute resolution team presents a short analysis of how Nigerian appellate courts have responded to arbitration disputes involving Nigerian state governments and state entities in the last fifty years. This exercise revealed that contrary to perceived notions, Nigerian appellate courts are not partial towards state entities who seek to set aside arbitration agreements or awards against them. The exercise demonstrates that in the main, Nigerian appellate courts enforce arbitration clauses and arbitration awards against state entities unless a party waives his right by submitting to the jurisdiction of the courts, or there are other internationally acceptable reasons such as fraud, statute bar and the like that may prevent the enforcement of arbitration clauses or awards.

This exercise has a couple of limitations. Some state entities may be missed out either because their names do not reflect that they are state entities or because they may not be corporations incorporated by statutes. Fortunately, the exercise did not miss out on the following state entities incorporated as companies with share capital like NLNG Ltd, Nigerian Airways Ltd, Wemabod Estates Ltd, Kano Oil Millers Ltd, and Abuja Investments Co Ltd that had arbitration-related litigation during the 50-year period.

Of the 145 appellate arbitration-related cases reviewed, only 21% involved state governments and state entities. They include 7% of cases involving Ogun State, 10 involving Zamfara State, 3.3% involving Kano State, and 3.3% each involving Kwara State, Osun State, Ebonyi State, Oyo State, Cross Rivers State, and Benue State. 7% of the cases involved government universities, (Obafemi Awolowo University and Bayero University), 30% involved Federal Government entities, 23% involved state entities, 29% from Lagos state and Kano state, and 14% each from Kwara state, the Federal Capital Territory, Abuja and Wemabod, a Joint Venture entity of the states constituting the old Western Region of Nigeria.

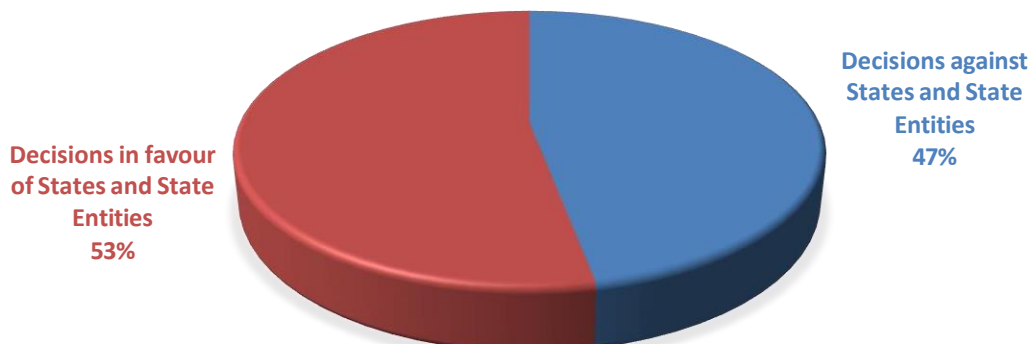
Percentage of Arbitration Cases Involving States and State Entities at the Appellate Courts



Only 27% out of the 30 were litigated up to the Supreme Court with periods of between 12 years and 22 years to obtain a Supreme Court judgment. Most of the cases litigated up to the Court of Appeal were concluded within 6 years.

In 27% of the cases, all the courts from the High Court, the Court of Appeal to the Supreme Court, affirmed the arbitration agreement or arbitral award against the state entities. In 20% of the cases, the appellate courts reversed the High Courts and enforced the arbitration clauses or the arbitration awards against the state entities. One lesson that can be drawn from this is that parties should not give up if the High Court refuses to enforce the agreement or the award given the tendency of the appellate courts to be even more objective. This means that in total 47% of the cases at the appellate courts were enforced against state entities.

PERCENTAGE OF ARBITRAL CLAUSES/AWARDS AFFIRMED AGAINST STATES AND STATE ENTITIES AT THE APPELLATE COURTS



Investors may be concerned that the courts refused to enforce the arbitration agreements in about 53% of the cases. However, a close examination of the rationale for the decisions may assuage possible apprehension of investors. Courts in most parts of the world would probably have arrived at the same decision as the Nigerian courts under review because, in 25% of these cases, the parties had taken steps in the litigation thereby waiving the arbitration agreement. 6% was not enforced because of the old age rule that admitted sums that remained unpaid did not constitute an arbitrable dispute. In 13% of the cases where the courts refused to enforce the arbitration agreement or arbitration award were cases tainted with fraud. 13% were cases caught up with the statute of limitation as the awards were not enforced timeously. 6% were set aside because the arbitrator went beyond the scope of the arbitration agreement. 6% of the cases were not enforced because the party was not privy to the arbitration agreement. 6% was not enforced because the tax issue was arguably not arbitrable.

Chart showing the Rationale behind Appellate Courts' Refusal to Enforce Arbitration Agreements and Awards Against States and State Entities

