PROCESS AND INDUSTRIAL DEVELOPMENTS LTD. V. THE MINISTRY OF PETROLEUM RESOURCES OF THE FEDERAL REPUBLIC OF NIGERIA.

A BRIEFING NOTE

TRANSADVISORY
L E G A L

An Appraisal of the Arbitration Proceeding Leading to the Award of $9,800,000 (Nine Billion Eight Hundred Million US Dollars) against the Federal Government of Nigeria in the Arbitration between Process and Industrial Development Ltd (P&ID) v Ministry of Petroleum Resources of the Federal Republic of Nigeria.

A TRANSADVISORY LEGAL ARTICLE

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CONTENT

1.0 INTRODUCTION/ BACKGROUND

This briefing note is intended to provide some background information on the legal dispute between the Federal Republic of Nigeria (Nigeria) and Process and Industrial Development Ltd. (P&ID Ltd)[1]. It aims on provide greater understanding of the case, and this it will do through relaying the factual circumstances that gave rise to the dispute, tracing the various stages of the legal tussle between the parties since the cause of action ensued, capturing the trajectory of the matter from the arbitration stage till date, highlighting and critiquing the legal arguments and decisions in all stages of the matter, proffering legal defences/ arguments that Nigeria could have relied upon to have won at various stages of the dispute, and charting a roadmap towards effective and just determination of the matter in favour of Nigeria going forward.

2.0 FACTUAL BACKGROUND AND PROCEDURAL TRAJECTORY

2.1 THE DISPUTE GIVING BIRTH TO ARBITRATION

The event that birthed the dispute is a Gas Supply and Processing Agreement ("GSPA") dated 11th January, 2010 between P&ID and Nigeria.[2] Under the GSPA, P&ID was to obtain 'Wet Gas' and convert to 'Lean Gas' which Nigeria could use for electricity generation [3]. In return for processing the wet gas, P&ID the GSPA allowed P&ID to retain Natural Gas Liquids (NGLs) and other by-products of the processing and sell them in the open market.[4]

The GSPA was executed in 2010, under which P&ID was obligated to build a gas processing facility and Nigeria was to supply the facility with Wet Gas from two oil mining leases operated by Addax Petroleum and Exxon Mobil.[5] However, Addax Petroleum informed P&ID in 2011 that it was unwilling to supply the amount of Gas as per the GSPA executed in 2010.[6] When all efforts by P&ID to negotiate and reach a compromise proved futile, the GSPA metamorphosed into a full-blown contractual dispute between the parties.

[1] P&ID is an engineering and project management company registered in Nigeria with its parent company in the British Virgin Island.
[2] Process and Industrial Dev. Ltd. v. The Ministry of Petroleum Resources of the Federal Republic of Nigeria, Final Award, (Jan. 31, 2017) ¶ 2.
[3] *Id*.
[4] First witness statement of Michael Quinn, Feb 10, 2014
[5] GSPA §§ 3(a), 3(c).
[6] Process and Industrial Development Ltd v. the Ministry of Petroleum Resources of the Federal Republic of Nigeria, Final Final Award July 17, 2015.

The GSPA stipulates Nigerian law as the governing law in the transaction[7] and the parties agreed in the event is dispute relating to enforcement or performance of the GSPA, such disputes would be settled through arbitration where amicable resolution fails.

2.2 THE ARBITRATION PROCEEDINGS

In light of the dispute that erupted, P&ID initiated proceedings that culminated into what has been referred to as one of the largest arbitration awards in the world.[8] P&ID was aggrieved that Nigeria reneged on the agreement to supply the gas under the GSPA or install the pipelines required of it under same, thereby depriving it from benefits anticipated from 20 years' worth of gas supply with a whopping USD5 billion to USD6 billion profit.

Consequently, P&ID instituted arbitration proceedings against Nigeria on the 22nd August, 2012, pursuant to section 20 of the GSPA, which stipulates the relevant clauses for resort to arbitration as well the governing law. For clarity, the relevant part of the agreement is reproduced as follows:

"The Agreement shall be governed by, and construed in accordance with the laws of the Federal Republic of Nigeria."

The Parties agree that if any difference or dispute arises between them concerning the interpretation or performance of this Agreement and if they fail to settle such difference or dispute amicably, then a Party may serve on the other a notice of *arbitration under the rules of the Nigerian Arbitration and Conciliation Act (Cap A18 LFN 2004) which, except as otherwise provided herein, shall apply to any dispute between such Parties under this Agreement. "The venue of the arbitration shall be London*, England or otherwise as agreed by the Parties. The arbitration proceedings and record shall be in the English language".[9]

[7] Clause 20, GSPA
[8] Onele, J. (2020) Latest about the $9bn arbitration award against the Nigerian government (1). Retrieved from https://businessday.ng/opinion/article/latest-about-the-9bn-arbitration-award-against-the-nigerian-government-1/
[9] GSPA clause 20.

In furtherance of these developments, P&ID moved and served the notice of arbitration on Nigeria, whereupon the Arbitral Tribunal (**"the Tribunal"**) was then constituted with and three arbitrators were appointed. Comprising two and a Nigerian arbitrator.[10] On 19 September 2012, P&ID appointed Sir Anthony Evans to act as arbitrator while the FRN appointed Chief Bayo Ojo, SAN as its arbitrator on 30 November 2012. Thereafter, the two arbitrators invited Lord Hoffmann to preside over the arbitral tribunal as the 'chairman'[11]

The tribunal issued several procedural orders with the heading as "In the Matter of an Arbitration Under the Rules of the Arbitration and Conciliation Act of Nigeria" and issued other directions for parties to comply with provisions of the Nigerian Arbitration Act.[57]

P&ID wrote to Nigeria on the 11th October, 2013, inviting her to accept that certain preliminary objections raised by Nigeria be decided "pursuant to Section 31(4) of the Arbitration Act 1996," the law governing arbitrations in England.[12] Expectedly, Nigeria declined that invitation and responded in a letter dated 14th October, 2013 that it would proceed "as contemplated by the parties under the Nigerian Arbitration and Conciliation Act."[13] Vide a letter dated 24th October, 2013, P&ID acknowledged that the parties had a subsisting agreement that the arbitration be governed by the Rules of the Nigerian Arbitration ^& Conciliation Act, but asserted for the first time that it had referenced England's "Arbitration Act of 1996" because it believed "the juridical seat of this arbitration is London."

Going forward, the Tribunal tailored the proceedings with reference to both the Nigerian Arbitration and Conciliation Act and English arbitration laws, thus: "In the Matter of the Arbitration Act 1996 (England and Wales) and In the Matter of an Arbitration Under the Rules of the Nigerian Arbitration and Conciliation Act 1988."[14] The proceedings was further classified into three parts relating to:

1. Jurisdiction,
2. Liability, and
3. Damages.

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[10] Process & Industrial Dev. Ltd. v. Fed. Republic of Nigeria & Ministry of Petroleum Resources of the Fed. Republic of Nigeria, Petition to Confirm Arbitration Award ¶ 18, No. 18-594, WL 3359784 (D.D.C. 2018). [57] Witness Declaration of Seamus Ronald Andrew in Support of Petition to Confirm Arbitration Award, Mar. 16, 2018, Exhibit 11 at 35-63.
[11] Onele, J. (Ibid)
[12] *Id*. at 44.
[13] *Id*. at 46.
[14] *Id*. at 107.

A decision on jurisdiction was issued on the 3rd July, 2014. Even though the GSPA only stipulated London, England as the "venue," the Tribunal applied the English Arbitration Act regardless to conclude that it had jurisdiction.[15]

The arbitration proceeded to the liability phase, and on July 17, 2015, an award was issued, validating the GSPA and holding Nigeria liable for breaching it.[16]

3.0 THE ATTEMPT TO SET ASIDE THE LIABILITY AWARD AND FURTHER ARBITRATION ON DAMAGES

3.1 JUDICIAL PROCEEDINGS TO SET ASIDE THE LIABILITY AWARD

Upon the July 17 award, Nigeria moved and sought judicial remedies to have the arbitration enjoined and the liability award quashed.[17] Nigeria contended that giving the extant provisions of the GSPA for the governing law to be the Nigerian Arbitration and Conciliation Act, the competent court to supervise the arbitral proceedings and assume jurisdiction to set aside the award is a Nigerian court. Ironically, however, Nigeria made this application in an English court.

The Commercial Court in England refused to grant Nigeria's application to set aside as being "untimely",[18] whereof Nigeria approached the Federal High of Nigeria in a desperate move to have the liability award set aside. Arguing that the GSPA envisaged the Nigerian Arbitration and Conciliation Act and therefore the parties had "effectively agreed that the seat of the arbitration is Nigeria."[19] , and that London was "only the venue/ seat for hearings in the arbitration; a geographically convenient place."[20], Nigeria sought to restrain parties from proceeding with the arbitral proceedings pending the determination of its application before the Federal High Court sitting in Lagos. On the 20th April, 2016, the Federal High Court granted the application for interlocutory injunction.[21]

[15] *Id*. Exhibit 7 at 36.
[16] *Id*. Exhibit 8 at 54, 80.
[17] Ndifreke Uwem, *Process & Industrial Developments Limited v. Nigeria: Exception Under the FSIA When Award Has Been Set Aside by a Court of the Country "Under the Law of Which" the Award Was Made*, 26 U. Miami Int'l& Comp. L. Rev. 437. Available at: https://repository.law.miami.edu/umiclr/vol26/iss2/6
[18] *Id*. Exhibit 11 at 154, 162.
[19] *Id*. at 2-4.
[20] *Id*.
[21] *Id*. Exhibit 16 at 44-48.

All this while, P&ID defaulted to participate in the Nigerian court proceedings.[22] And instead asked the Tribunal to determine the seat of the arbitration,[23] an application Nigeria opposed, arguing that the determination of the seat was not in controversy.[24] Nigeria further reiterated that the seat of arbitration was Nigerian, the parties having expressly and voluntarily agreed that the dispute be governed by Nigerian law. On the 26th April, 2016, the Tribunal concluded that designating London as the "venue," by the parties conveys their agreement selecting London as the only seat of the arbitration, notwithstanding their express agreement to arbitrate under the Nigerian Arbitration Act.[25] On the 24th May, 2016, the Nigerian court issued an order setting aside the liability award.[26]

3.2 FURTHER ARBITRATION AWARD ON DAMAGES

In negation of the Federal High Court's judgment, the Tribunal proceeded to the damages phase. Even though Nigeria participated in the award proceedings, it strongly maintained that the liability award had been set aside in Nigeria.[27] The proceedings went on and on the 31st January, 2017, the Tribunal issued the damages award.[28] It is worthy of note that while the arbiters unanimously held Nigeria liable for breaching the GSPA, they were not unanimous as to the quantum of damages payable by Nigeria, ac Chied Bayo Ojo, SAN was of a dissenting view that a much lower award should have been granted.[29]

During Arbitration, The Claimant estimated that the project would produce a net profit of USD5 to USD6 billion over a 20-year period. Income projections were based on several assumptions relating to the expected yield of NGLs and the price of NGL. The Claimant estimated capital expenditure at USD580 million and operational expenditure at USD60 million per year. The Claimant used a discount rate of 2.65% based on US Treasury bonds to represent only the time value for money.

[22] *Id*. at 38.
[23] *Id*. Exhibit 12.
[24] *Id*. Exhibit 16 at 36. [71] . Exhibit 12 at 6.
[25] *Id*. pp 1-40.
[26] *Id*. Exhibit 13.
[27] *Id*. Exhibits 14 and 15; see also Process & Industrial Dev. Ltd. v. Fed. Republic of Nigeria & Ministry of Petroleum Resources of the Fed. Republic of Nigeria, Petition to Confirm Arbitration Award, 26, No. 18594, WL 3359784 (D.D.C. 2018).
[28] *Id*. Exhibit 17.
[29] Onele, J. Ibid

On March 16, 2018, P&ID filed a Petition at the U.S. District Court for the District of Columbia seeking to confirm the award and alleging that approximately $9 billion is due on the award.[30]

4.0 ENFORCEMENT PROCEEDINGS

In an attempt to enforce the Tribunal's award, P&ID approached the English Commercial Court seeking to convert the award into a court judgement. This is in an attempt to seize Nigeria's commercial assets in satisfaction of the award debt Nigeria vehemently opposed the application, maintaining the hackneyed argument that only a Nigerian court is clothed with the powers to enforce the award, and that the Ministry of Petroleum resources, *ab ibitio*, lacked the authority to enter into the contract on behalf of Nigeria. The English court refused Nigeria's contention and added judicial flavour to the USD9 billion award.

In another fresh move, Nigeria filed fraud claims in a bid to overturn the award and halt enforcement.[31]

[30] https://www.linkedin.com/pulse/introduction-scrutiny-award-icc-international-court-icc-nigeria
[31] https://www.irishtimes.com/business/energy-and-resources/nigeria-files-fraud-claims-in-bid-to-overturn-9bn-p-id-award-1.4107123

PART B

AN APPRAISAL OF THE LEGAL ISSUES

A. JURISDICTION AND SEAT OF ARBITRATION

It is not in dispute that the GSPA sufficiently contemplated the governing law and seat of arbitration respectively. Clause 20 of the GSPA provides that in the event of difference between the parties and when parties are unable to settle amicably, they shall refer to arbitration under the Nigerian Arbitration and Conciliation Act.[32]

The first point to note is that, the law is settled on the jurisdiction of any court or tribunal to determine questions relating to its competence. It is trite law that you always have the jurisdiction to determine whether you have jurisdiction. Article 21 of the Arbitration Rules scheduled to the Arbitration and Conciliation Act provides that "The arbitral tribunal shall have the power to rule on objections that it has no jurisdiction, including any objections with respect to the existence or validity of the arbitration clause or of separate arbitration agreement".

It then follows that for any it is pertinent that for the Tribunal to proceed to determine its jurisdiction to adjudicate over the dispute, it must sufficiently satisfy the requirements of law on jurisdiction.

Section 30(1) of the Arbitration Act 1996 of England, the seat of Arbitration, the tribunal has a similar jurisdiction:

> 30. Competence of tribunal to rule on its own jurisdiction.
>
> 1. Unless otherwise agreed by the parties, the arbitral tribunal may rule on its own substantive jurisdiction, that is, as to—
>
> a. whether there is a valid arbitration agreement,
> b. whether the tribunal is properly constituted, and
> c. what matters have been submitted to arbitration in accordance with the arbitration agreement.

[32] CAP A18, LFN 2004

It follows that assuming the venue of arbitration was set by the parties as London, the appropriate courts to enforce the arbitral awards is the designated Nigerian court and none else, in light of Article 20 of the GSPA which unambiguously provides that the disputes emanating from the transaction are to be governed by Nigerian courts. To this extent, the placement of London as venue of arbitration, an arrangement made obviously for administrative convenience, does not divest Nigerian courts of the powers to enforce such an arbitration made under the Nigerian law.

Nigeria can still further amplify the jurisdictional argument and leverage on the cardinal principle that jurisdiction is life-wire of any proceedings to succeed.

B. CAPACITY

Nigeria contended that the Federal Ministry of Petroleum Resources lacked capacity to enter into the contract *ab initio*, and this is a very germane argument. The law is settled that only persons, natural and juristic, have the capacity to contract, and in consequence, to sue and be sued respectively in the event of dispute.

Though the argument was refused by the courts in this matter, it is submitted that the decisions to refuse credence to this argument were a grave error in law.

While a sovereign authority has the authority to enter into a contract, it is always pertinent that the appropriate person/authority enters the contract on behalf of the government. In the instant case, the simple point that Minister/ Ministry of Petroleum Resources is not a legally recognized authority to enter into contracts that will bin Nigeria, exonerates Nigeria in the circumstances. This reasoning is well established even under English law, as the decision in The Law Debenture Trust Corporation Plc v. Ukraine[33] addresses this point. In this case, the court acknowledged that the Ukrainian Finance Minister had no actual authority to enter into contracts that will bind Ukraine.

In Socio-Political Research Development v. Ministry of FCT & Ors,[34] the Supreme Court held that non jurisctic persons are lack legal capacity and can neither sue nor be sued in a court or tribunal. In the same vein, the Nigerian courts held

[33] (2017) EWHC 655
[34] 2018 LPELR-45708 (SC)

in a plethora of decided cases that that all authorities and agencies created for the purpose of a ministry, including the Minister or Ministry itself, are not juristic persons within the meaning of the law. This point has been settled unequivocally in the cases of Okoyode v. FCDA[35].

C. SOVEREIGN IMMUNITY

As a general rule, it is an elementary principle of law Nigeria, being a Sovereign State, can claim immunity from legal proceedings in the courts of another state. This is well enunciated in the case of ***The Parliament Belge***[36] in which the Court of Appeal held that it had no legal authority to carry out proceedings in respect of a collision in the English Channel between a ship owned by the King of the Bengians and used partly for carrying mails and partly for trading purposes, and a British vessel.[37]

However, this doctrine applies strictly to sovereign governmental activities carried out by the State, and as such, it appears Nigeria could invoke its Sovereign Immunity if the cause of action had arisen from a sovereign duty, and not a contractual obligation.

This rule prevailed when it was perceived to be an affront to Sovereignty to institute proceedings against a state in another's own courts.

Today, by virtue of various laws, there are substantial exceptions to this general rule. Thus, when a state enters into a commercial transaction that involves contractual obligations, it has waived its right to immunity and a lawsuit can be brought against it in the appropriate jurisdiction in case of breach.

Provided that a state voluntarily submits to a contract and a resulting arbitration leading to a valid arbitration award, it cannot cry foul when an action for the enforcement of an arbitration award is brought.

CASE STUDY: NNPC V. IPCO

In the Nigerian National Petroleum Corporation v IPCO (Nigeria) Ltd,[38] the Court

[35] (2005) 7 WRN 97 at page 132 and 151
[36] (1980) 5 P.C 197
[37] *Ibid*
[38] (2008) EWCA Civ 1157 21 October 2008

of Appeal has ruled that English courts have the power to enforce parts of an arbitration award under the New York Convention 1958 and the Arbitration Act 1996. This is landmark decision which wasn't addressed before. The Convention requires contracting states to recognise foreign arbitration awards as binding and to enforce them in accordance with their own procedure.

IPCO is a Nigerian subsidiary of a Chinese company which entered into a contract with the NNPC in respect of the designing and constructing a petroleum export terminal in south-west Nigeria. The project was delayed because so IPCO contended NNPC sought substantial variations to the works.[39] IPCO's claims to be paid more than the contract price were the subject of arbitration in Lagos under Nigerian laws. Its claims succeeded in a sum in excess of USD152 million, split over six distinct heads of claim. The NNPC then moved seeking to set aside the award before the Federal High Court of Nigeria while IPCO, on the other hand, applied to the High Court of England and Wales to enforce the award[40]

In April 2005, IPCO's ex parte application was allowed, but enforcement was adjourned on NNPC's application, subject to the NNPC lodging security of USD50 million and making payment to IPCO of USD13 million. By February 2008, when it was glaring that NNPC's challenge in Nigeria was taking remarkably longer than expected, IPCO appeared before the Court and renewed the application for enforcement. Tomlinson J held that judgment in Nigeria was still many years away and described what had happened in the Nigerian proceedings as "catastrophic".[41] He ordered judgement for IPO in an amount awarded on two of IPCOs six heads of claim.

The order was the main subject of appeal by the NNPC relying on the grounds that the court was not clothed with the requisite jurisdictional competence to order part enforcement of the award as neither the Convention nor the Act provided for part enforcement when an award was subject to challenge in the country in which it was made.

The Court of Appeal unanimously disagreed with the NNPC, thinking it unlikely that part enforcement was prevented by the terms of the Convention and the Act, based the analogy that the aim of the Convention was to ensure speedy

[39] Iyiola, O.O. (2010). State Immunity Act 1978: An Analysis if Issues Arising Therefrom and How it Avails the Nigerian Government and its Entities. Available on hhttps://papers.ssrn.com/sol3/paper.cfm
[40] *Ibid*
[41] *Ibid*

and effective enforcement of arbitration awards, and anything short of this amounts to a technicality.

The fact that an award was challenged in the local court does not prevent enforcement provided the enforcing foreign court thought the award manifestly and genuinely valid. In essence, PROVIDED the award against Nigeria in the P&ID case is manifestly valid and enforceable, nothing would prevent the English or American courts from enforcing it. But it is submitted that the award would hardly stand in the face of the arguments advanced on capacity and jurisdiction above.

A careful perusal of the above case reveals that it's a decision that would greatly aid a proper understanding of this instant case. Instructively, it is not in contention that where a state is subject of an arbitration award, such an award is binding and subsisting and can be enforced in any court of law provided the award is readily ascertainable, and there's nothing to preclude the court from enforcing it. However, the point to make is that this rule applies to awards that are made within the bounds of the arbitral tribunal's competence, and not those made arbitrarily and capriciously. Therefore, Nigeria can still rely on the strength of its arguments that the GSPA contemplates the laws of Nigeria as the governing law, and Nigerian courts would consequently have the exclusive prerogative of determining all disputes emanating therefrom, including enforcement. This is more so that the agreement was entered in Nigeria, the breach occured in Nigeria and both parties carry on their businesses for purposes of the dispute in Nigeria.

CASE STUDY: TRENDTEX V. CBN

The gist of Trendtex Trading Corporation Ltd v Central Bank of Nigeria[42] is that dispute involved the Nigerian Central Bank of Nigeria which refused to honour a letter of credit issued by it to the Plaintiffs. The Plaintiffs issued a writ in the English High Court against the Bank claiming demurrage, price of the goods shipped and also damages for non-acceptance of the balance of the goods. The Bank applied to set aside the writ on the ground that it was a department of the state of Nigeria and was therefore immune from the proceedings under the doctrine of sovereign immunity. It was held that the Bank was not entitled to plead sovereign immunity as a department or organ of a foreign state because,

[42] [1977] 1 All ER 881

having regard to its constitution, its functions and the control over it, it had not established that it was a department of the state of Nigeria even though it had been established by the State under statute as a separate legal entity[43]

From the foregoing, the logical breakthrough that can be discerned is that even though the case between P&ID and Nigeria could fall under the just exceptions to the doctrine of sovereign immunity on account of the transactional/ contractual nature of the dispute, Nigeria can invoke, and is still solidly protected by the doctrine of sovereign immunity from the circumstance. This is because the GSPA specially provide for the governing law to be Nigerian law, the natural consequence of which governing courts must be Nigerian court, and as such no other nation should use its courts to harbor forum shopping litigants on a spree of abusing and undermining Nigeria's sovereignty and the contractual terms stipulated under its valid laws.

D. QUANTUM OF DAMAGES

On the assumption that the arbitral tribunal had the jurisdictional competence to determine the case and make the award it made, without any vitiating factors like capacity, immunity, etc., Nigeria could have amplified the point that the award on damages was frivolous and vexatious, and could still go further to appeal to public policy concerns that it is contrary to all principles to rip off 200 million taxpayers of a developing nation a whopping sum of USD9 billion, about twenty percent of its entire foreign reserve,[44] in favor of a corporate body that itself did not live up to its end of the agreement but instead calculated anticipatory damages.

Legally, the dissenting opinion of Mr. Bayo Ojo SAN on the quantum of damages is more reasonable, and Nigerian could have articulated its arguments on the merits, more effortlessly and assertively, instead of the diversionary tactics it employed in its desperate attempts to frustrate the proceedings. On the basis of mitigation, capital expenditure (capex), operating expenditure (opex) and yield, the majority reached their calculation of damages by treating the above issues in a dismissive manner[45]

[43] *Ibid*
[44] https://www.bbc.com/news/world-africa-49377517
[45] Process & Industrial Dev. Ltd. v. Fed. Republic of Nigeria & Ministry of Petroleum Resources of the Fed. Republic of Nigeria, Dissenting Opinion of Bayo Ojo SAN

The law in Nigeria is clear on the obligation of a plaintiff to take plausible steps to mitigate damages. In Kosile v. Folarin[46] the Supreme Court held thus:

> "It is, of course, a well settled principle of law that a plaintiff is required to take all reasonable steps to mitigate the loss resulting from the defendant's wrong as no damages will be awarded in respect of any part of the loss which he could have averted by taking reasonable steps to do so."[47]

The Court of Appeal also held, in the same vein, in NIMASA v. Hensmor (Nig) Ltd.[48] Court of Appeal, the court held that, 'A plaintiff has the onus to mitigate damages of his cause of action rather than rush to file an action in court'

It is clear from the above that P&ID, the claimant in the instant case, did not tale such steps to reduce the impact of damage to the barest minimum, and its 20-year projection should not be borne by Nigeria.

CONCLUSION

The P&ID v. Nigeria dispute is the classic case of a mutually beneficial agreement gone wrong. That Nigeria reneged on its agreement to perform its obligation under the GSPA is unfortunate and is contrary to the cardinal principle of *"pacta sunt servanda"*. However, it equally desirable and necessary that the process of dispute resolution should not be tainted by unfairness and flagrant disregard of the extant law. The sum total of this briefing note is that Nigeria did not perform its obligation under the GSPA, but the trajectory of the matter is very faulty, and P&ID's case ought to have been determined otherwise.

[46] (1989) 3 NWLR (Part 107) 1 at 16 SC
[47] *Ibid*
[48] (2015) 5 NWLR (Part 1452) 322

RECOMMENDATIONS

Flowing from the above, and having established that both parties are at a crossroads, the following recommendations are suggested:

1. Nigeria should take legal steps within the bounds of the law to assert its sovereign immunity in view of the fact that the GSPA provides for disputes to be resolved under Nigerian law, implicitly, enforced by Nigerian courts. This it should do to every legitimate heights.
2. Nigeria should invite P&ID to resolve the dispute through NEGITIATION in view of its clear advantages, such as absolute and independent control of parties. This will demonstrate Nigeria's commitment to the sanctity of contracts and would not scare away present and potential investors.
3. Nigeria should seek a more robust and comprehensive legal advise, and overhaul its legal team in such as to allow for more equipped legal experts to assist the team.
4. On appeal, Nigeria should emphasize the arguments on jurisdiction and capacity to deconstruct the entire process from onset.