

# APPOINTMENT OF AN ARBITRATOR BY THE COURT: A REVIEW OF THE COURT OF APPEAL'S DECISION IN

O.A.U. -v- INAOLAJI BUILDERS LIMITED (2020) 4 NWLR (PT. 1714) 347

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## INTRODUCTION

It is commonplace now for agreements between parties to contain an arbitration clause as the dispute resolution mechanism for disputes arising from the contract. Although all the major arbitral institutions both local and international, have standard arbitration clauses, which they encourage parties to adopt in their agreements, it is not unusual to find poorly drafted arbitration clauses in some contracts.

A common thread in the standard arbitration clauses for arbitral institutions is that they usually mention an arbitral institution as the appointing authority in a situation where the parties are unable to agree on the choice of an arbitrator within a given timeframe.

The advantage of naming an arbitral institution as the appointing authority in an arbitration clause is that the arbitral institution would handle all issues on the appointment of an arbitrator efficiently, professionally and promptly. Besides, the arbitral institution would, in most cases, appoint arbitrators who are experienced and familiar with the subject matter of the dispute.

We have, however, come across a few situations where the parties to an agreement nominate the Court or the Chief Judge of a State High Court as the appointing authority in an arbitration clause. Where the Court is stated as the appointing authority, there is a likelihood for the parties to spend several years in Court trying to resolve the issue of the appointment of an arbitrator. The parties in the case of **Obafemi Awolowo University (O.A.U.) -v- Inaolaji Builders Limited** (2020) 4 NWLR (Pt. 1714) 347 left the issue of the appointment of an arbitrator to the Court.



## SUMMARY OF THE FACTS OF O.A.U. -v- INAOLAJI BUILDERS LIMITED

A dispute arose between the parties in this case in respect of a Bill of Quantities and Articles of Agreement ("the Agreement") dated 26 April 1982. The agreement had an arbitration clause which was silent on the appointing authority in a situation where both parties could not agree on the choice of an arbitrator within a given timeframe.

The Respondent, Inaolaji Builders Limited, filed an originating summons sometime in 2013 at the Osun State High Court for an order of the Court appointing an arbitrator to settle the dispute between the Respondent and the Appellant in respect of the agreement. The Respondent also proposed an arbitrator to be selected. On 26 February 2014, the trial Court granted the reliefs sought by the Respondent with the caveat that either of the parties could approach the Court for the definite appointment of an arbitrator if they do not agree on the choice of the arbitrator that was nominated by the Respondent within thirty (30) days from the date of the Court's ruling.

The parties disagreed on the choice of the arbitrator appointed by the Respondent and by an application dated 1 July 2015, the Respondent, amongst other reliefs, sought the appointment of an arbitrator to resolve the dispute between the parties. On 26 February 2016, the trial Court granted an order appointing Hon. Justice Emmanuel Yinka Ayoola, CON, DCL, L.L.D., J.S.C. (retired) as the Sole Arbitrator for the dispute between the parties.



### Court Holding

- 1. The Court of Appeal in its judgment which was delivered on 23 September 2019 upheld the appointment of the Sole Arbitrator by the trial Court and dismissed the appeal for lacking merit.**
- 2. The Court admonished Counsel to parties to avoid technicalities and deploying all forms of underhand tactics all in a bid to delay the administration of justice or delay the resolution of commercial disputes.**

The Appellant was dissatisfied with the appointment of the Sole Arbitrator, and it filed a Notice of Appeal dated 17 May 2016 against the ruling by which the Sole Arbitrator was appointed on several grounds. The Court of Appeal in its judgment which was delivered on 23 September 2019 upheld the appointment of the Sole Arbitrator by the trial Court and dismissed the appeal for lacking merit. Instructively, the Court of Appeal also admonished Counsel to parties to avoid technicalities and deploying all forms of underhand tactics all in a bid to delay the administration of justice or delay the resolution of commercial disputes.



## TAKE AWAY FROM THE COURT OF APPEAL'S DECISION IN O.A.U. -v- INAOLAJI BUILDERS LIMITED

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The parties, in this case, wasted seven (7) years in Court just to resolve the issue of the appointment of a Sole Arbitrator in respect of an agreement that was executed in 1982!

The waste of precious judicial time would have been avoided if the parties had named an arbitral institution as the appointing authority in their arbitration clause, as against relying on the provisions of **section 7 (2) (b) of the Arbitration and Conciliation Act**, which provides that where the parties to an arbitration agreement do not specify the procedure to be followed in the appointment of a Sole Arbitrator, and they fail to agree on a choice of a Sole Arbitrator within thirty days, the Court shall make the appointment of the Sole Arbitrator at the instance of any of the parties.

Thankfully, **section 8 (4) (b) of the Lagos State Arbitration Law, 2009**, has cured the lacuna contained in section 7 (2) (b) of the Arbitration and Conciliation Act by naming the Lagos Court of Arbitration as the appointing authority in a situation where the arbitration clause is silent on the procedure for the appointment of a Sole Arbitrator and the parties to an arbitration agreement are not able to agree on the choice of a Sole Arbitrator within thirty (30) days.

It is therefore essential for parties to an agreement to always ensure that an appointing authority is stated in their arbitration clause, as it would be imprudent for them to leave the appointment of an arbitrator to the Court or the default provision of the Arbitration and Conciliation Act.



### Takeaway

Parties to an agreement should ensure that an appointing authority is stated in their arbitration clause, as it would be imprudent for them to leave the appointment of an arbitrator to the Court or the default provision of the Arbitration and Conciliation Act.



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