The "Public Policy" Exception to the Enforcement of Arbitral Awards in Nigeria: Lessons from Comparative Arbitration Jurisprudence

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Introduction

Arbitration has, in recent years, evolved from being a niche dispute resolution mechanism into a mainstream alternative to litigation. Commercial actors across several sectors now prefer to adopt arbitration as the preferred mode of resolving disputes arising from their commercial contracts chiefly because of its perceived speed and efficiency[1]. However, there is a fact that parties to an arbitration agreement often overlook, which is, an arbitral award does not enforce itself.

The enforcement of arbitral awards requires the backing of the courts for the same to be effective. The winning party must still take active steps to give that decision practical effect. In Nigeria, those steps involve **(i)** applying to a court for its recognition and enforcement, or, where the aggrieved party mounts a challenge, and then **(ii)** applying to set the arbitral award aside[2]. The recognition and enforcement of an arbitral award is the last limb in the dispute resolution process[3] (after the delivery of an arbitral award), and it is at this stage that challenges frequently arise.

The Arbitration and Mediation Act, 2023 (the “**AMA 2023”** or the “**Act**”) has provided limited grounds upon which an arbitral award can be challenged. These grounds, include, among others[4] lack of proper notice of the arbitral proceedings, inability of a party to present its case, the tribunal exceeding the scope of its authority, and irregularities in the composition of the arbitral tribunal or the arbitral procedure. Among the statutory grounds for challenging the recognition and enforcement of an arbitral award or applying to set aside an arbitral award, the most commonly invoked is that the arbitral award is contrary to public policy[5].

In Nigeria and as in most jurisdictions, a court may set aside an arbitral award if it finds that the arbitral award conflicts with Nigerian public policy[6]. The same ground may be raised to resist the recognition or enforcement of a foreign arbitral award[7]. Interestingly, the AMA 2023 did not define what constitutes “public policy”. The concept is treated there as self-evident, though judicial commentary has repeatedly described it as an “unruly horse,” capable of leading courts in unpredictable directions[8].

Against this backdrop, this article examines the concept of public policy in arbitration under the AMA 2023 and seeks to give the concept some workable content in the context of arbitral award enforcement in Nigeria, taking cues from jurisdictions such as England and Singapore. It reviews the principles that have emerged from judicial decisions, examines what the courts have accepted as violations of public policy and what they have rejected under that label, and considers the particular problem of the policy of a given, limited-time, administration or ruling political party being dressed up as public policy. It closes with a

[1] The 2025 Queen Mary University of London/White & Case International Arbitration Survey found that 87% of respondents preferred international arbitration, either alone (39%) or in conjunction with ADR (48%). The survey was based on 2,402 questionnaire responses and 117 interviews. https://www.qmul.ac.uk/arbitration/research/2025-international-arbitration-survey/ accessed 14 May, 2026

[2] Olashupo Shashore, SAN and others, ‘Challenging and enforcing arbitration awards: Nigeria’ (2024) Global Arbitration Review https://globalarbitrationreview.com/insight/know-how/challenging-and-enforcing-arbitration-awards/report/nigeria accessed 14 May 2026.

[3] See *A.G. Bayelsa State v. Odok* (2024) LPELR-63035 (SC).

[4] AMA 2023, s. 55(3).

[5] Uchenna Ponfa Emelonye and Uchenna Emelonye, ‘Public Policy Exception in the Enforcement of Arbitral Awards in Nigeria’ (2021) 12(1) Beijing Law Review 266.

[6] AMA 2023, s. 55(3)(b)(ii).

[7] AMA 2023, s.58(2)(b)(ii).

[8] In the famous words of Burrough J in the English case of *Richardson v. Mellish* (1824) 2 Bing. 229, “it is a very unruly horse, and when you get astride, you never know where it will carry you.” That caution has been echoed by the Nigerian Supreme Court; See also *Sonnar Ltd. v. Nordwind* (1987) 4 NWLR (Pt. 66) 520, per Eso JSC, cautioning that basing decisions predominantly on public policy risks becoming “another means of avoiding the rules, law and procedure which govern a matter.” Both *Richardson* and *Sonnar* are general seminal cases on public policy; they are not arbitration cases.

critique of the current doctrine and proposes a demanding, principled framework to guide the application of the public policy exception with greater consistency and rigour.

Public Policy under the Arbitration and Mediation Act 2023

The AMA 2023 is the governing arbitral legislation in Nigeria, and its architecture on the question of enforcement is largely aligned with the United Nations Commission on International Trade Law Model Law (the "**UNCITRAL Model Law**") and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, to which Nigeria is a signatory.

The AMA 2023 provides that while parties are free to decide the manner in which their disputes are to be resolved, they must do so in a way that promotes peaceful co-existence and protects the public interest[9]. Also, the AMA 2023 makes it clear that an arbitral award, regardless of the country in which it was made, shall be recognized as binding and shall be enforced by the court on a written application. However, the AMA 2023 qualifies the power of the court to recognize and enforce an arbitral award to the extent that it complies with "public policy".

A court of law in Nigeria can refuse the recognition and enforcement of an arbitral award if it finds that the recognition and enforcement of the arbitral award would be contrary to the public policy of Nigeria. This extends to foreign arbitral awards. To this end, one of the grounds to challenge the recognition and enforcement of an arbitral award or to seek the setting aside of an arbitral award is that such an arbitral award is contrary to public policy.

However, what is conspicuously absent from AMA 2023 provisions on public policy is the definition of "public policy". The AMA 2023, following the UNCITRAL Model Law, deliberately leaves this undefined. The consequence is that the concept must be given content through judicial decision-making, and it is to the courts that we must look for guidance on what has, and what has not, been recognized as a violation of public policy sufficient to justify refusing enforcement or setting aside an arbitral award.

Meanwhile, before considering case laws, it is important to note that public policy is not necessarily a fixed concept with a uniform meaning across all areas of law. Its interpretation may vary depending on the legal context. Accordingly, the meaning of public policy in arbitration should not automatically be assumed to be identical to its meaning in other contexts, nor should authorities decided outside of arbitration context be treated as determinative of the concept under the AMA 2023.

This point can be illustrated by the Supreme Court's decision in *Sonnar Ltd. v. Nordwind*[10]. While *Sonnar* is widely cited as a leading authority on public policy, it did not arise in an arbitration context. The public policy considerations at play there – denial of access to court justice on time-bar grounds - were therefore materially different from those that arise in applications to recognise, enforce or set aside arbitral awards.

The context in which public policy is invoked also matters as the standard applicable to setting aside an arbitral award may not necessarily be the same as that applicable to refusing recognition and enforcement. Where an award is made in Nigeria, the Nigerian court, as the court of the seat, exercises supervisory jurisdiction over the arbitration and may therefore apply the broader conception of public policy recognised under Nigerian law. The position is different where a party seeks to enforce a foreign award in

[9] See *Mainstreet Bank Capital Ltd. v. Nig. RE* (2018) 14 NWLR (Pt. 1640) 423, 444, where the Court of Appeal affirmed that parties to an arbitration agreement are free to choose how the arbitration is conducted, including the governing law, provided that the agreed procedure and law are not against public policy, and that courts must respect and give effect to the parties' agreement rather than rewrite it.

[10] (1987) 4 NWLR (Pt. 66) 520.

Nigeria. In that instance, the court is only called on to determine whether the award should be recognised and enforced in Nigeria. Consistent with the pro-enforcement policy of the New York Convention, the public policy exception should therefore be applied narrowly and reserved for cases in which enforcement would violate the most fundamental principles of Nigerian law[11].

Public Policy through the Lens of the Nigerian Judiciary

Nigerian courts have consistently acknowledged that public policy is difficult to define with precision and have applied the concept in functional terms. To this end, any idea(s) or ideal which prevails in a community as to the conditions necessary to ensure its welfare will conform with public policy. Conversely, anything generally regarded as injurious to the public interest is treated as contrary to public policy[12].

At its core, a matter touches public policy when it concerns an interest so fundamental to the orderly functioning of society that the state cannot countenance its violation, even if both parties to the arbitration were perfectly happy with the outcome. This is why criminal matters, for instance, are generally not arbitrable in Nigeria, not simply because they are not private disputes, but because the public has an interest in how those matters are resolved and that cannot be subordinated to the preferences of individual parties[13].

The Nigerian courts have, over time, identified certain categories of matters as touching public policy. The first, and most clearly established category is fraud and corruption in the procurement of a contract or in the conduct of the arbitration itself. An arbitral award obtained through a corrupt process cannot be given legal effect without the court becoming an instrument of that fraud or corruption[14].

The international dimension of this principle was well-illustrated in the landmark English case of *The Federal Republic of Nigeria v. Process & Industrial Developments Ltd.*[15], where the English High Court set aside a USD11billion arbitral award on the grounds that it had been obtained by fraud, finding that the Defendants had bribed a Nigerian official both at the time of contracting and during the course of the arbitration, submitted false evidence to the tribunal, and unlawfully retained over forty privileged internal legal documents belonging to Nigeria. The arbitral award was accordingly set aside as having been obtained by fraud in a manner contrary to public policy[16].

The second recognized category is statutory illegality. Nigerian courts have consistently held that contracts entered into in contravention of mandatory statutory provisions are illegal and unenforceable[17]. An arbitral award that gives effect to such a contract equally risks offending public policy because it would require the

[11] For instance, in *NNPC v. Lutin Investment Ltd* (2006) 2 NWLR (Pt. 965) 506, the Nigerian Supreme Court rejected a public policy objection to an arbitrator's decision to take evidence in London holding that the objector did not establish how taking evidence in London would offend public policy.

[12] In *Okonkwo v. Okagbue* (1994) 9 NWLR (Pt. 368) 301, 335–336, the Supreme Court held that public policy comprises the ideas which for the time being prevail in a community as to the conditions necessary to ensure its welfare, such that anything generally regarded as injurious to the public interest is treated as contrary to public policy, and that public policy is not fixed but fluctuates with the circumstances of the time. See also *Alagbaoso v. INEC* (2023) 8 NWLR (Pt. 1885) 115; *Total (Nig.) Plc v. Ajayi* (2004) 3 NWLR (Pt. 860) 270, 293–294.

[13] See *UBA Plc v. Triedent Consulting Ltd.* (2023) 14 NWLR (Pt. 1903) 95, where the Court of Appeal held that criminal matters or disputes where fraud is alleged are, as a matter of public policy, not to be settled privately by arbitration.

[14] See *Edet v. Chagoon* (2008) 2 NWLR (Pt. 1070) 85, 108, the Court held that public policy must operate within the milieu of the law, justifying, reinforcing, clarifying and expounding its provisions; and that public policy to be enforceable must follow the dictates of the law.

[15] [2023] EWHC 2638 (Comm).

[16] Arbitration Act 1996, s. 68(2)(g).

[17] See *Fasel Services Ltd et al. v. NPA et al. (*2009) LPELR-1245(SC).

court to lend its authority to a transaction that the legislature has prohibited. This principle reflects the broader rule that arbitration cannot be used to validate or enforce an illegal transaction.[18]

The third category involves the protection of foundational constitutional rights. For instance, Nigerian courts have constantly held contracts that purport to restrict access to the courts as contrary to public policy, thus unenforceable. An arbitral award that purports to strip a party of a constitutional right (i.e. fair hearing) would fall into the same category[19]. The courts will not enforce it.

What runs through all these categories is the idea that the offence is not merely to the parties’ private interests but to values that the state, and society at large, have a compelling interest in upholding.

What is not Public Policy

Equally instructive are four areas in which the courts have firmly declined to recognize sufficient public policy grounds for refusing enforcement. First, and perhaps most significantly in practice, government policy is not and should not be confused with public policy. The distinction was made expressly by the Supreme Court where it explained that public policy consists of principles generally accepted by society as necessary for the collective wellbeing of the community, whereas government policy refers to administrative or executive decisions embodied in circulars, directives, gazettes, or official governmental action[20].

This distinction is important because a recurring pattern in both Nigerian and international arbitration is the tendency of government entities to invoke “public policy” after losing high-value or politically-embarrassing commercial disputes. The financial exposure in such disputes is often enormous, and the elasticity of the public policy concept makes it tempting for arbitral award debtors to frame commercial inconvenience, face-saving or regulatory preferences as matters of public interest.

Nigerian courts, however, have recognized that an arbitral award cannot be resisted merely because compliance may conflict with a government’s current fiscal priorities, policy direction, or regulatory posture[21]. The point was underscored by the United States Second Circuit Court of Appeals in *Parsons & Whittemore Overseas*[22], which rejected the contention that a deterioration in diplomatic relations between the United States and Egypt justified refusing enforcement. The court cautioned that construing the public policy defence as “a parochial device protective of national political interests would seriously undermine the New York Convention’s utility.”

A government entity cannot validly argue that the payment of an arbitral award is contrary to public policy simply because enforcement may strain public finances or contradict a recent administrative directive. These are matters of administrative convenience, not violations of the foundational values of the Nigerian

[18] See *Limak Yatirim Enerji Uretim Hizmetleri ve Insaat AS et al. v. Sahelian Energy & Integrated Services Ltd.* (2021) LPELR-58182 (CA), where the Court of Appeal upheld the refusal of enforcement, and setting aside, of an ICC award on the ground that the underlying agreement contravened the mandatory registration requirements of the NOTAP Act and was therefore contrary to Nigerian public policy. The objection succeeded precisely because it was anchored in a breach of mandatory statute rather than in mere dissatisfaction with the award.
[19] AMA 2023, s. 58(2)(a)(iii); See also *Ecobank Nig. Ltd v Admiral Environmental Care Ltd. et al.* (2021) LPELR-56130 (CA) where the Court of Appeal affirmed that a breach of constitutional right to fair hearing (failure to notify a party against whom an award is sought of the notice of appointment of arbitrator or the arbitral proceedings) will entitle a Court to refuse recognition and enforcement of such award.
[20] See *Statoil (Nig.) Ltd. v. Inducon (Nig.) Ltd.* (2021) 1 NWLR (Pt. 1774) 1.
[21] *Ibid.*
[22] *Parsons & Whittemore Overseas Co. Inc. v. Societe Generale de I'Industrie du Papier (RAKTA*), December 23, 1974. United States Circuit Court of Appeals, Second Circuit, 9 INT'L L. 545 (1975).

legal system. If government policy alone were sufficient to defeat enforcement, investor confidence in Nigerian arbitration would be severely undermined.

Second, an error of law is not a public policy violation. Under the old, 1988 Arbitration and Conciliation Act, parties routinely challenged arbitral awards on the ground that there was an "error of law on the face of the arbitral award," and courts sometimes entertained these challenges, blurring the line between arbitral review and appellate supervision. The AMA 2023 has expressly closed that door[23]. The public policy exception cannot be used as a disguised ground of appeal against the merits of an arbitral award.

Third, procedural complaints that do not rise to the level of a fundamental denial of fair hearing will not typically ground a public policy objection. In *FUNAAB v. PCG Nig. Ltd.*, the Court of Appeal acknowledged that procedural fairness is itself a value protected by public policy, and that an arbitral award made without giving a party a proper opportunity to present its case could offend it[24]. The threshold, however, is high, as the irregularity must be so fundamental as to constitute a denial of natural justice, not merely a point of procedural dissatisfaction by the losing party.

Fourth, an arbitral award is not contrary to public policy simply because it is commercially unfavourable, or because it reaches a conclusion that a Nigerian court would not have reached, or because the underlying contract involves a foreign counterparty and a foreign governing law. The public policy exception is not a tool for protecting Nigerian parties from the consequences of bargains they freely entered into, nor is it a mechanism for insulating domestic commercial actors from the discipline of international trade and commerce[25].

There is, however, a nuanced category of cases where public policy concerns may genuinely arise. Nigerian courts have, for instance, held that tax disputes may be non-arbitrable because they implicate the exercise of statutory powers and public revenue considerations in a manner that directly affects the public interest[26]. Importantly, this represents a principled legal limitation grounded in arbitrability and statutory authority, rather than a situation where the government merely finds the outcome of the arbitration inconvenient or undesirable.

Critique and Proposal for Reform (England and Singapore's Postures)

The first and most fundamental problem with the public policy exception in Nigeria is the absence of a stable threshold test. Nigerian courts describe public policy functionally, as what society regards as injurious to its welfare, but are yet to settle on how serious a violation must be before a challenge to an arbitral award succeeds. Because the AMA 2023 leaves public policy undefined and the courts have not filled the gap, every losing party can plausibly claim that its grievance touches public interest. The problem with this is that the doctrine provides no clear benchmark by which parties can assess in advance whether a particular complaint can meet the public policy threshold, thereby undermining legal certainty.

[23] Afriwise, 'Nigeria's New Arbitration and Mediation Act 2023 - A Competitive Edge to Arbitration in Nigeria' (*Afriwise Blog*, 1 June 2023) https://www.afriwise.com/blog/nigerias-new-arbitration-and-mediation-act-2023---a-competitive-edge-to-arbitration-in-nigeria accessed 14 May 2026.

[24] *FUNAAB v. P.C.G. Nig. Ltd.* (2017) LPELR-50156 (CA).

[25] See *Agro-Allied Development Enterprises Ltd v. United Shipping Trading Co. Inc.* (2011) 9 NWLR (Pt. 1252) 258 (CA), where the Court of Appeal enforced a London award over a public policy objection under s. 52(2)(b)(ii) of the Arbitration and Conciliation Act 1990. The party resisting enforcement bore the burden of establishing the objection and failed to discharge it; the tribunal's view — there, on whether a lien could be exercised over government cargo — did not become contrary to public policy merely because the Nigerian court might have decided the point differently.

[26] *Esso Petroleum and Production Nigeria Ltd. v. NNPC, Unreported Appeal No CA/A/507/2012 delivered July 22, 2016.*

The English jurisprudence, for example, shows how a demanding threshold, paired with cost discipline, cures this. The threshold is that the applicant must establish a serious irregularity falling within one of the exhaustive statutory grounds that has caused or will cause "substantial injustice". Challenges for serious irregularity under section 68 of the Arbitration Act 1996[27] succeed only in the rarest cases: the success rate has hovered around 5% for years, reflecting the strict approach of the Commercial Court, and in 2024–2025 no section 68 challenge succeeded at all[28]. Yet the same courts intervene decisively when the threshold is genuinely met, as shown in the *P&ID* case. The cue here is that a high bar does not weaken the exception; it concentrates it on the cases that deserve it.

The second problem is the persistent tendency to conflate public policy with government policy, as discussed above. The courts' have striven to maintain the distinction clearly. However, the problem continues to surface, particularly in cases involving government entities as award debtors. Interestingly, government bodies are often the losing parties in arbitrations arising out of infrastructure and public contracts, and the "public policy" exception is the most attractive available ground for resisting enforcement, precisely because it is vague enough to accommodate a wide range of arguments. Courts must be alert to this dynamic and apply the public policy ground with particular rigour when the award debtor is a government entity. Public policy should be applied in setting aside an arbitral award, where the failure to apply public policy will occasion a "substantial miscarriage of justice" to the award debtor.

Another problem is the standard of proof. Nigerian law places the "burden of proof" of public policy objection on the party resisting the award[29], but there is little about how convincingly such objection must be made out. Jurisdictions that take the public policy exception seriously demand more than a bare assertion of conflict, as obtainable in English jurisdiction.

Singapore, for instance, requires the resisting party to identify the specific public policy engaged and the precise part of the award said to conflict with it, and then to show that the conflict "*shocks the conscience*" or is "*clearly injurious to the public good*"[30]. This is assertive and in good order because without clear requirements as to the evidential support required, public policy objections may be advanced on the basis of generalized assertions. The consequence of this is that courts are required to spend time addressing objections that may have no real public policy dimension, thereby delaying enforcement and undermining the exceptional nature of the defence.

What the Nigerian arbitration community needs, and what the courts and other international jurisdictions are, over time, beginning to provide, is a body of case law that gives the public policy exception clear, principled, and predictable content. The core of that body of law should affirm three things: **(A)** that public policy means the fundamental principles of Nigerian law and not every legal rule that a court thinks relevant; **(B)** that government policy is not public policy; and **(C)** that the exception cannot be used as a disguised appeal on the merits.

[27] Arbitration Act, 1996 provides for a closed, exhaustive list of nine specific categories of procedural irregularity (*e.g.* tribunal exceeding its powers, failure to deal with all the issues put to it, fraud or an award procured contrary to public policy), each of which must additionally be shown to have caused or be likely to cause "substantial injustice" to the applicant before the award can be set aside.
[28] Herbert Smith Freehills Kramer, 'Arbitration Applications Still on the Rise: Key Findings from the English Commercial Court Report 2024-2025' (*Arbitration Notes*, 15 April 2026) https://www.hsfkramer.com/notes/arbitration/2026-04/arbitration-applications-still-on-the-rise-key-findings-from-the-english-commercial-court-report accessed 23 June 2026.
[29] AMA 2023, s. 58 (2)(a).
[30] LawGratis, 'Singapore Courts' Approach to Public Policy Objections in Enforcement' (*LawGratis Blog*, March 1, 2026) https://mail.lawgratis.com/blog-detail/singapore-courts-approach-to-public-policy-objections-in-enforcement accessed 23 June 2026.

Conclusion

Arbitration’s promise is only as good as its enforcement. A party that wins an arbitral award and then faces years of litigation over public policy objections has not received the fast and final resolution that arbitration is supposed to deliver.

Nigerian courts have, in their best decisions, understood this. They have recognized that fraud, statutory illegality and the violation of constitutional rights can ground viable challenges. They have drawn, at least in principle, the crucial distinction between public policy and government policy. And they have repeatedly warned against the use of the public policy exception as a disguised tool for merit-based review.

The law is broadly on the right track in this area. What remains is to make those principles more consistent, predictable, and resistant to manipulation. The AMA 2023 provides a modern, pro-enforcement framework. When a party raises a public policy ground to resist an arbitral award, the court’s first question should not be “Is there a public policy argument here?” — a sufficiently creative lawyer can always construct one. The first question should be: “Is this the kind of case for which the public policy exception was designed?” In the overwhelming majority of cases, the honest answer will be “no”. In those cases, the arbitral award should be enforced. That is how arbitration keeps – and should keep -- its promise.

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