

# **ANALYSIS OF ARBITRATION**

## RELATED DECISIONS IN NIGERIA





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## INTRODUCTION

The “**Analysis of Arbitration-related decisions in Nigeria**” (the **analysis**) primarily provides a practical basis for ascertaining the pro-arbitration attitude of Nigerian Courts. The extracted data reflects how Nigerian Courts have dealt with arbitration-related cases falling within four broad categories.

**First**, cases dealing with the enforcement of arbitration agreements. **Second**, cases concerning the challenge of an arbitral award. **Third**, cases in which parties sought to enforce arbitral awards. **Finally**, cases in which there was a challenge to the appointment of an arbitrator.

Interestingly, the data also contains a time analysis targeted at determining how long it takes Nigeria Courts on average to determine applications for the enforcement and challenge of arbitral awards.

Broderick Bozimo & Company (**BBaC**) is confident that this analysis provides a reliable description of arbitration practice in Nigeria, provides data on the desirability of Nigeria as a seat for Arbitration, and, where necessary, provides a solid foundation to influence an amendment of existing legal framework of arbitration in Nigeria.

We believe that the arbitration community will welcome this analysis, which contributes to the body of research geared towards tracking and chronicling the progress of arbitration in Nigeria.



## METHODOLOGY

The research for this analysis was conducted between October 2020 to September 2021. It was supervised by Isaiah Bozimo, Esq. (former **Managing Partner, BBaC**), until he was appointed as the Attorney-General for Delta State, Nigeria, in July 2021.

The research was conducted by evaluating arbitration-related decisions from 6 sources.

1. **The Nigerian Weekly Law Report (NWLR)**: from 1985 to 2021.
2. **All Federation Weekly Law Report (FWLR)**: from 2000 to 2020.
3. **Supreme Court Reports (SC)**: from 1972 to 2018
4. **Law pavilion Electronic Law Report (LPELR)**: up to 2021.
5. **“Commercial Arbitration Law and Practice in Nigeria through the Cases”** by Adedoyin Rhodes-Vivour: 4 cases.
6. **Certified true copies of unreported decisions**: 4 cases.

In calculating the length of time it takes Nigerian Courts to determine applications for challenge and enforcement of awards, we approximated cases where the decisions omitted minor time-related details. For instance, where a reported case failed to disclose the date of filing the originating process at the High Court but disclosed the suit number of the said case, we determined the duration by calculating from the January of the year contained in the suit number to the date of the delivery of the judgment.



## EXECUTIVE SUMMARY

### ***Enforcement of arbitration agreements through stay of proceedings***

We analysed 64 cases under this category to track the propensity of Nigerian Courts to stay proceedings in favour of arbitration. 59 of those cases (92%) were domestic, while 5 cases (8%) were international. Of the 59 domestic cases, the Courts stayed proceedings in 18 cases (31%) refused stay in 41 cases (69%). Of the 5 international cases, the Courts stayed proceedings in 3 cases (60%) and refused stay in 2 cases (40%).

### ***Challenge of arbitral awards***

We analysed 49 cases in this category. 47 concerned domestic awards (96%), and 2 cases concerned international awards (4%). Out of the 47 domestic cases, 12 awards were successfully challenged (26%), while the challenge was unsuccessful in 35 cases (74%). The challenge in both international were unsuccessful.

We also analysed 40 cases from the High Court, 42 cases from the Court of Appeal, and 16 cases from the Supreme Court to track the time it takes to commence and conclude challenge applications before these Courts.

At High Court, it took an average period of 1 year and 8 months (679 days) to determine each case. The High Court concluded 18 cases within one year (45%), 14 cases were determined within two years, 4 cases were each determined within 3 years (35%), and 4 cases were determined above 3 years (10%). In addition, in two in which there was no appeal from the High Court to the Court of Appeal, it took an average time of 3 years and 5 months (1304 days) from the date of the award to the date of the judgment.

At the Court of Appeal, it took an average time of 2 years and 9 months (1059 days) to determine each case. Of the 42 cases, 6 were each determined within a year (14%), 8 were each determined within 2 years (19%), 8 were each determined within 3 years (19%), and the remaining 19 cases were determined above 3 years (45%). Furthermore, for 25 cases in which there was no appeal from the Court of Appeal to the Supreme Court, it took an average of 5 years and 8 months (2,139 days) from the date of the award to the date of judgment.



At the Supreme Court, it took an average period of 4 years and 8 months (1773 days) to determine each case. Of the 16 cases at the Supreme Court, 1 case was determined within 2 years (6%), 4 cases were determined within 3 years (25%), and 11 cases were determined above 3 years (69%).

Lastly, for cases concluded at the Supreme Court, it took an average time of 10 years (3,810 days) from the date of the award to the date of judgment.

### ***Enforcement of arbitral awards***

We analysed 41 cases under this category. 33 cases concerned domestic awards (80%), while 8 cases concerned international awards (20%). Out of the 33 domestic awards, 26 were enforced (79%) while 7 were unenforced (21%). Of the 8 international awards, 7 were enforced (88%) while 1 was unenforced (12%).

We also analysed 33 cases from the High Court, 33 cases from the Court of Appeal, and 12 cases from the Supreme Court to track the amount of time it took to commence and conclude enforcement application before these Courts.

At the High Court, it took an average of 2 years (749 days) from the date of filing the originating process to the date of judgment. Of the 33 cases, 14 cases were concluded within a year (42%), 12 cases were concluded within two years (36%), 2 cases were concluded within three years (7%), and 5 cases were concluded above three years (15%).

At the Court of Appeal, it took an average of 3 years and 1 month (1,151 days) from the date of filing the notice of appeal to the date of judgment. Of the 33 cases, 5 cases were determined within one year (15%), 3 cases were determined within two years (9%), 10 cases were determined within three years (30%), and 15 cases were determined above three years (46%). Also, for 22 cases in which there was no appeal from the Court of Appeal to the Supreme Court, it took an period of 6 years and 7 months (2,454 days) from the date of the award to the date of the judgment of the Court of Appeal.

At the Supreme Court, it took an an average of 3 years and 9 months (1,451 days) from the date of filing a notice of appeal to the date of judgment to determine 12 cases.



Of the 12 cases, only 1 case was determined within a year (8%), 4 cases were determined within three years (33%), and the remaining 7 cases were determined above three years (59%). Finally, for cases concluded at the Supreme Court, it took an average time of 9 years and 1 month (3,322 days) from the date of the award to the date of the judgment of the Supreme Court.

### ***Challenge to the appointment of arbitrators***

We analysed 11 cases under this category. 10 concerned domestic arbitrations (91%), while 1 concerned international arbitration (9%). Of the 10 domestic arbitrations, 5 challenges to arbitrator appointments were successful (50%), while 5 were unsuccessful (50%). The sole international arbitrator challenge was unsuccessful.



# ENFORCEMENT OF ARBITRATION AGREEMENTS THROUGH STAY OF COURT PROCEEDINGS



## Keys

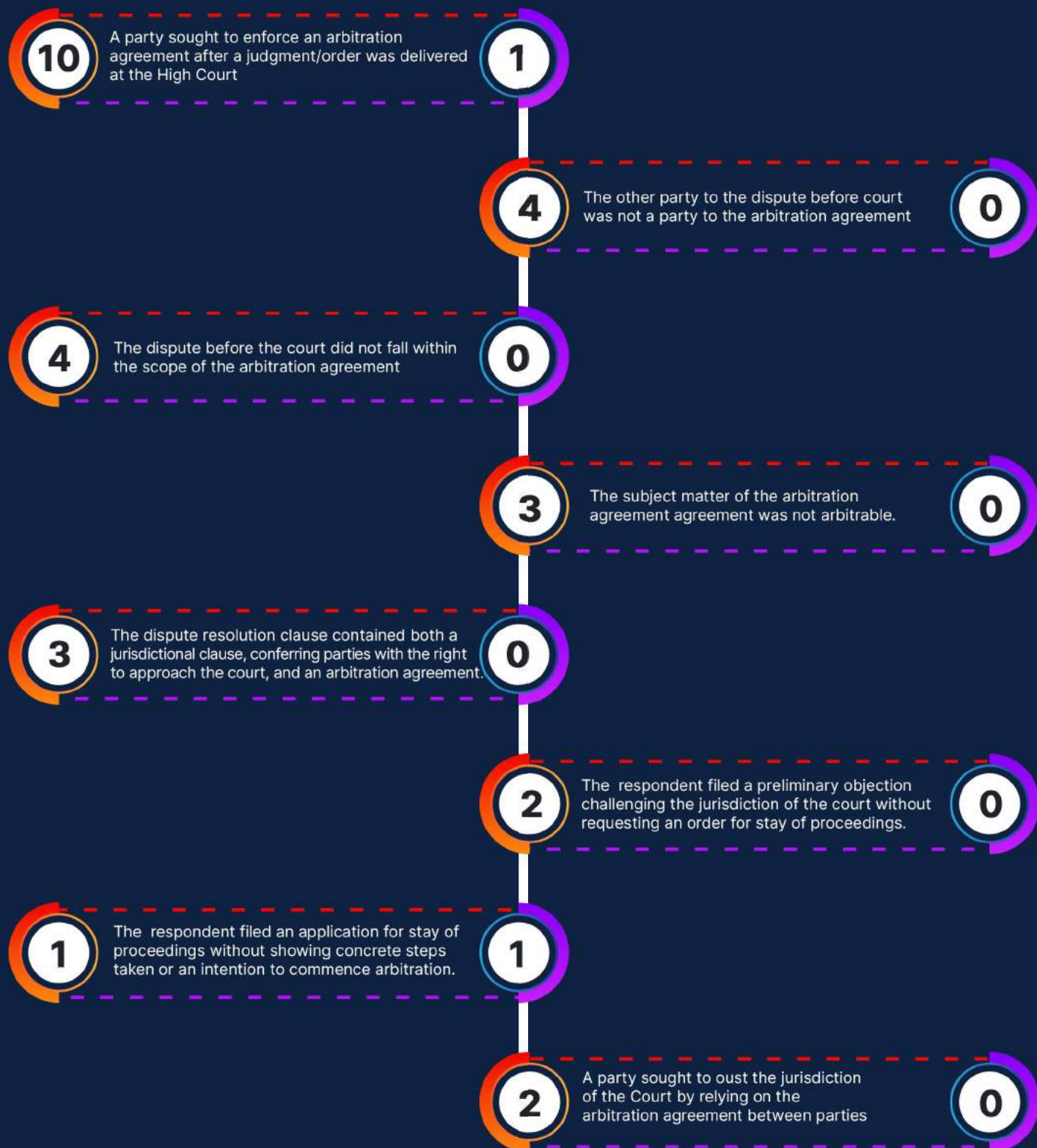
● Stay refused ● Stay allowed



# RECURRING REASONS FOR COURT'S STAY OF PROCEEDINGS IN FAVOUR OF ARBITRATION



# RECURRING REASONS FOR COURT'S REFUSAL TO STAY PROCEEDINGS IN FAVOUR OF ARBITRATION



## Keys:



Number of occurrences in domestic arbitration cases



Number of occurrences in international arbitration cases

# CHALLENGE OF ARBITRATION AWARDS

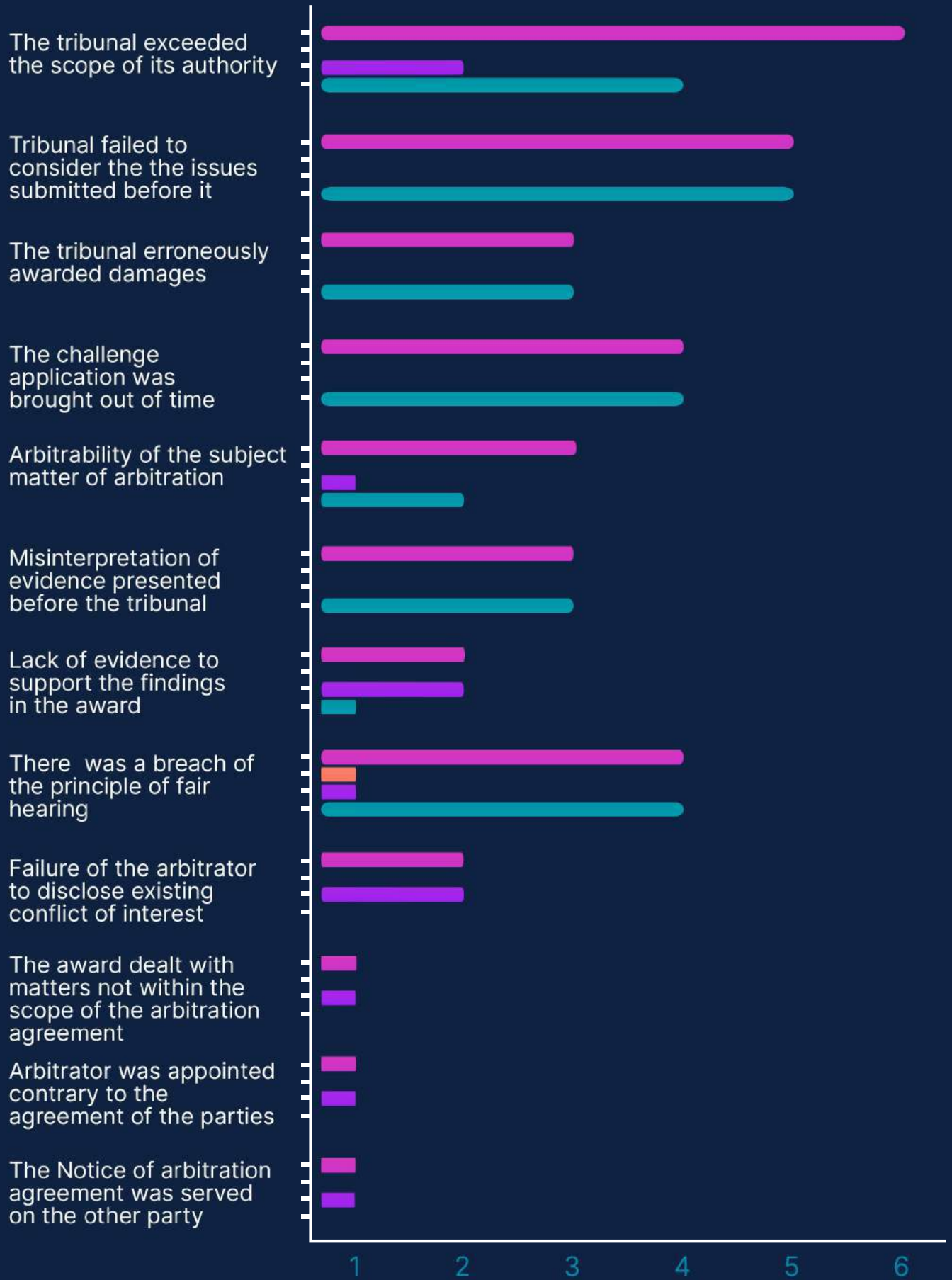


## Cases Researched





# RECURRING REASONS FOR CHALLENGE OF ARBITRATION AWARDS



## Keys

● Number of domestic awards

● Successful

● Number of international awards

● Unsuccessful

# CHALLENGE OF ARBITRATION AWARDS

A

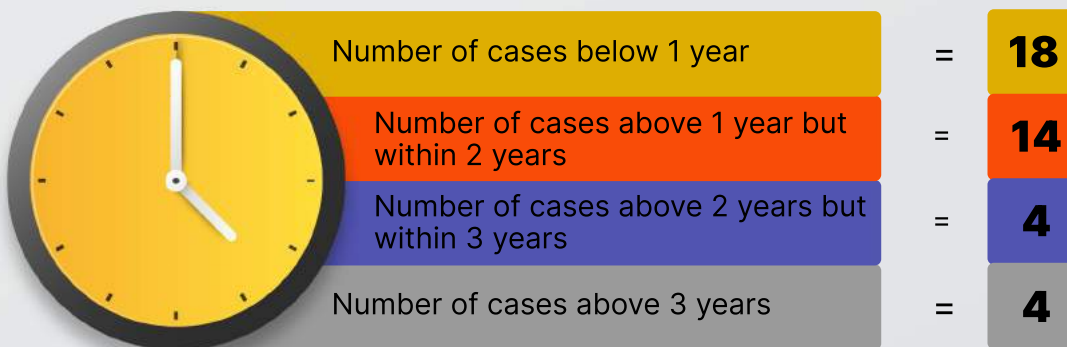
## Length of Time

it took to conclude the matter at the High Court  
(from originating process to judgment)

**Number of cases considered = 40 cases**

Average time

**679 days** (1 year, 8 months)



B

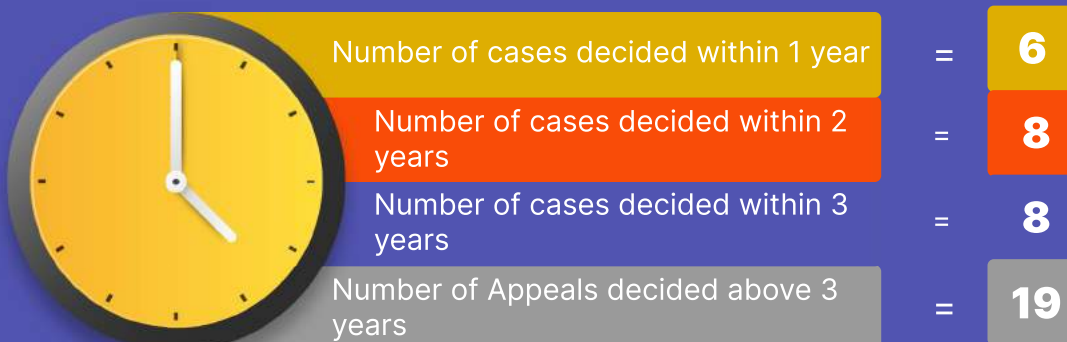
## Length of Time

it took to conclude the matter at the Court of Appeal  
(from notice of appeal to judgment)

**Number of cases considered = 42 cases**

Average time

**1,059 days** (2 years, 9 months)



## C Length of Time

it took to conclude the matter at the Supreme Court  
(from notice of appeal to judgment)

**Number of cases considered = 16 cases**

Average time

**1773 days** (4 years, 8 months)



Number of cases decided within  
2 years

=

**1**

Number of cases decided within 3  
years

=

**4**

Number of cases decided above 3  
years

=

**11**

## D Duration of Proceedings

from the date of award to end of court proceedings

Cases that ended at:

The High Court



Number of cases

**2**

Average

**3 years 5 months**

Court of Appeal



Number of cases

**25**

Average

**5 years 8 months**

Supreme Court



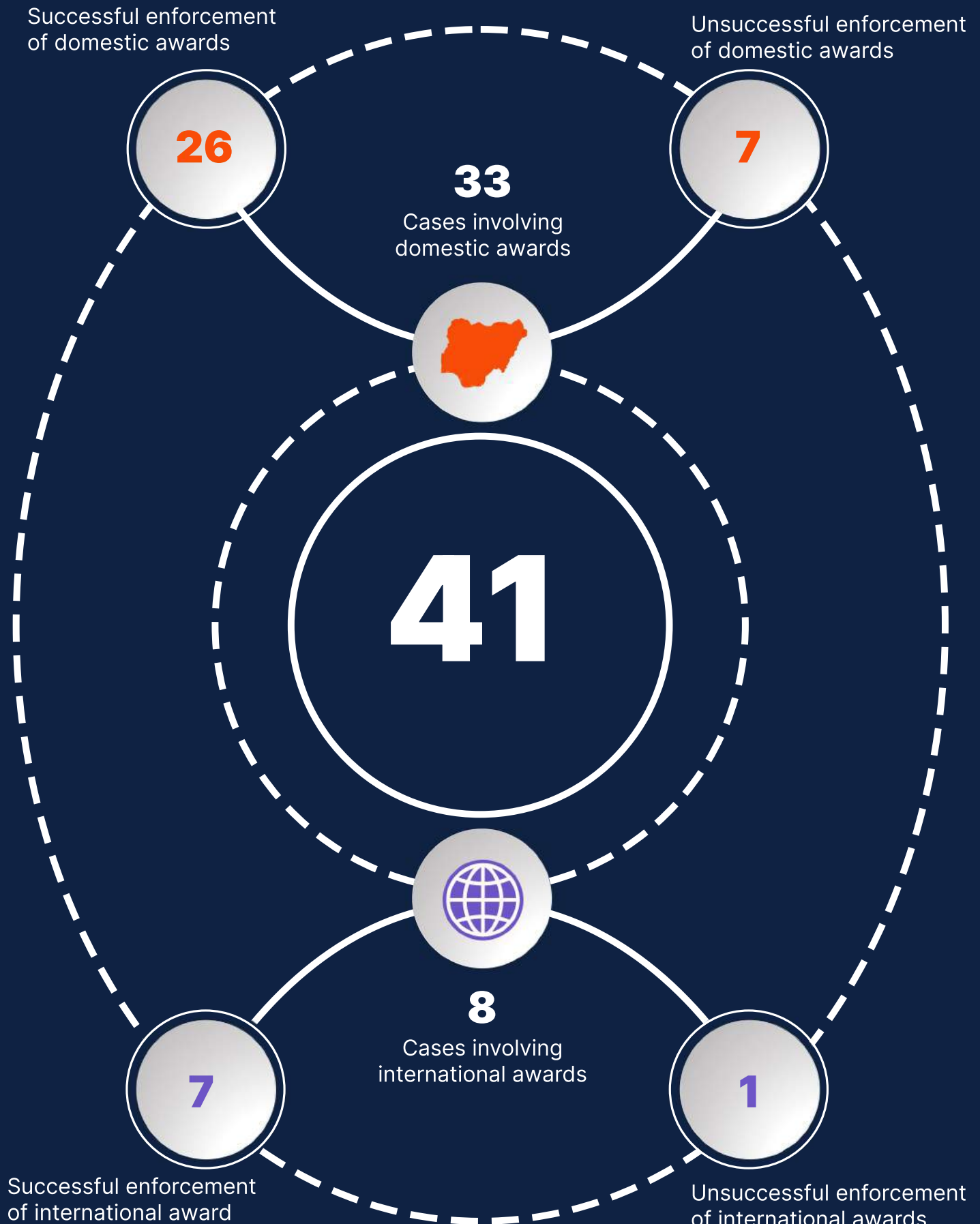
Number of cases

**14**

**10 years**



# ENFORCEMENT OF ARBITRATION AWARDS



# REASONS FOR COURT'S REFUSAL TO ENFORCE AN ARBITRATION AWARD

01

The three months period for challenging the award had not elapsed.

02

The Arbitrators granted punitive damages despite the prohibition of such under the contract between the parties.

03

The Sole Arbitrator was appointed contrary to the agreement of the parties, and the arbitral proceedings was conducted without giving the Appellant due notice.

04

The arbitrator misconducted himself and went beyond the scope of parties submissions by granting a pre-award interest sum in the award.

05

The Arbitrator excluded vital evidence that would have affected the conclusions in the Award.

06

The Court held that the action for enforcement of the award was statute barred.

07

The application for enforcement of the award was statute barred.

# ENFORCEMENT ARBITRATION AWARDS

A

## Length of Time

it took to conclude the matter at the High Court  
(from originating process to judgment)

**Number of cases considered = 33 cases**

Average time

**749 days** (2 years)



Number of cases below 1 year

**14**

Number of cases above 1 year but  
within 2 years

**12**

Number of cases above 2 years but  
within 3 years

**2**

Number of cases above 3 years

**5**

B

## Length of Time

it took to conclude the matter at the Court of Appeal  
(from notice of appeal to judgment)

**Number of cases considered = 33 cases**

Average time

**1151 days** (1 year, 1 month)



Number of cases decided within 1 year

**5**

Number of cases decided within 2 years

**3**

Number of cases decided within 3 years

**10**

Number of Appeals decided above 3  
years

**15**

## C Length of Time

it took to conclude the matter at the Supreme Court  
(from notice of appeal to judgment)

**Number of cases considered = 12 cases**

Average time

**1451 days** (3 years, 9 months)



Number of cases decided within 1 year

**1**

Number of cases decided within 2 years

**4**

Number of cases decided above 3 years

**7**

## D Duration of Proceedings

from the date of award to end of court proceedings

Cases that ended at:

Court of Appeal



Number of cases

**22**

Average

**6 years 7 months**

Supreme Court



Number of cases

**11**

Average







**9 years 1 month**

# CHALLENGE TO ARBITRATOR APPOINTMENT





# REASONS FOR CHALLENGE TO ARBITRATOR APPOINTMENT

Reasons	
1	 <p>The Court's Appointment of an arbitrator was contrary to the agreement of the parties.</p>
4	 <p>The Court lacked jurisdiction to appoint the arbitrator.</p>
2	 <p>The Arbitrator was not reasonable, fair, and impartial, or suitably qualified to continue the proceedings.</p>
1	 <p>Failure to give notice demanding the Respondent to appoint its arbitrator, before proceeding to the Court to request an appointment of an arbitrator.</p>
1	 <p>The Respondent, not being a party to the arbitration agreement, cannot apply to the court for the appointment of an arbitrator.</p>
1	 <p>The Respondent was not a juristic person and thus cannot apply to the court for the appointment of an arbitrator.</p>





## ABOUT US

Broderick Bozimo and Company is a niche litigation and arbitration law firm founded on the belief that complicated matters require attentive advice and advocacy. We provide winning solutions through early and thorough case analysis, working hand-in-hand with you at every stage.

Our lawyers have a deep understanding of their practice areas and cultivate an open-minded culture of examining issues. Our approach to work is collegial, and we place a high value on our clients.

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