RUN LAW JOURNAL

Volume 7, Issue 1, 2024

ARTICLE

A CRITIQUE OF THE CONCEPT OF LIMITATION PERIOD UNDER THE ARBITRATION AND MEDIATION ACT, 2023

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Abstract

Many scholars greeted the Arbitration and Mediation Act, 2023 as a progressive stride in the development of the law. However, despite its novel features, findings reveal the Act is still inadequate in addressing the concept of limitation of time with regard to access to justice. This work found out that the concept of limitation period espoused within the confines of the Act is inadequate to meet the expectation of the law. While the Act provides for limitation period with respect to arbitration proceedings, the Act provides for suspension of the period of limitation with regard to mediation proceedings. The work further discovered that while arbitration rules cover limitation periods (as provided by the Act), there are no similar provisions towards mediation. The place of negotiation (as a transitory stage to either arbitration or mediation) was not contemplated by the Act. This work concludes that there is still to be done concerning limitation period under the Arbitration and Mediation Act to ensure access to justice. Thus, the writers have established that the provision relating to limitation period under the Act, still poses some challenges to the practitioners of Alternative Dispute Resolution that need to be addressed. This work uses doctrinal research, which refers to case laws, statutes and articles in peer-reviewed journals. Therefore, the aim of this article is to expand the frontiers of knowledge as well as jurisprudence of dispute resolution.

Keywords: *Critique, Concept, Limitation Period, Arbitration, Mediation Act*

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1.0. Introduction

This work examines the concept of statute of limitation under the Arbitration and Mediation Act, 2023 (Hereinafter known as "AMA"). It focuses specifically, on the jurisprudence of the limitation period provided under AMA and its inability to protect parties from the rule of the court that time spent in peaceful settlement does not exempt parties from being bound by the statute of limitation. Thus, this work is divided into four (4) parts. In the first part, the authors analyse the conceptual framework. Here, basic terms like the meaning, types of statute of limitation, and its creation will be examined. Similarly, concepts such as the origin of the AMA as well as the brief outlines of the contents of the AMA, will be analysed. The second part of this work discusses the novel features of the AMA, as well as the jurisprudence behind the limitation period. The third part of this work examines the flaws of the limitation period contemplated by the AMA. It examines how it failed to address the previous challenges facing peaceful settlement concerning the computation of time for the limitation period. The fourth part of this work examines the way forward on how to improve on the challenges identified in the body of this work.

1.1. Meaning of Statute of Limitation and the Jurisprudence Behind It

The phrase Statute of Limitation is defined by the Black's Law Dictionary, as:

> *A law that bars claim after a specified period; specific., a statute establishing a time limit for suing in civil case, based on the date when the claim accrued. The purpose of such a statute is to require diligent prosecution of known claim thereby providing finality and predictability in legal affairs and ensuring that claims will be resolved while evidence is reasonably available and fresh.*[1]

The above definition implies that a statute of limitation is a law that specifies a time frame within which an aggrieved party must institute an action. It further defines the essence of statutes of limitation as (a) to prompt diligent prosecution by an aggrieved party, (b) utilization of evidence within time, and (c) sustaining fresh evidence before the court. This follows the reasoning that

2.Bryan Garner, "Black's Law Dictionary",8th Edn.(Thomson/West, 2005) P.1450-1451

delaying cases can lead to tendencies of parties losing their vital witnesses through death or other unforeseen circumstances. Also, loss of memories about particular incidents or evidence is possible where cases are prolonged. These premises formed the jurisprudence behind the concept of a statute of limitation under Nigerian law. That's why a limitation period is included in many laws to ensure timely and diligent prosecution of cases.

The jurisprudence behind the limitation of action refers to the rationale behind the concept of the limitation period in the statute. It is an approach that seeks to proffer an explanation for the justification of the limitation of action. At first sight, there appears to be the popular view that the incorporation of the statute of limitation of action in a statute is a clog in the wheel of access to justice.[2] However, the Supreme Court was able to reach a conclusion in plethora of cases to the effect that statute of limitation is not an impediment towards access to justice, rather, it is a procedure meant to promote timely dispensation of justice. Thus, in *Chigbu V Tonimas Nig Ltd,*[3] the Nigerian apex court held that:

> *The purport of laws on limitation is to obviate the inconvenience and embarrassment of the defendant whose witnesses may no longer be available and documents out of circulation and in some cases destroyed or no longer available.*

By the above dictum, the Apex Court is emphasizing that bringing action lately could be prejudicial to a defendant whose witnesses may not be available at the time the action is instituted. It also envisages where the documents to be relied upon by the defendants may not be in existence at the time of instituting an action. This position is apposite considering the facts that in some matters, witnessed may die, there will be loss of memory due to ageing and also documents could be destroyed. So, when the action is instituted, the defendant will have no witnesses to defend his case. Equally, the law contemplates a situation where, the plaintiff may be mischievous to destroy the evidence of defendant, leaving the defendant bare; without any evidence to proof his case.

3.JurisLaw, "Limitation Laws-A Clog in the Wheel of Justice?" @https://jurislawng.com>LIM..[PDF]<accessed on January 6, 2023>

4.(2006) 9 NWLR PT.984) Per Belgore JSC (as he then was) @ P.189@,Paras B-C.3

Further, the concept of limitation of action is meant to prevent the likelihood of defendants responding to a stale claim instituted by the plaintiff. This means that the court expects the plaintiff to institute his action on time so that the defendant can respond on time, too. The Apex Court, Per Rhodes-Vivour JSC, succinctly reiterated this point in the case of *Olagunju V Power Holding Company of Nigeria PLC* when held thus;

> *The main purpose of the limitation period is to protect a defendant from the injustice of having to face a stale claim; put in another way, a claim which he never expected to have deal with.* [4]

Furthermore, limitation of action is aimed at ensuring that an aggrieved party must prosecute his case diligently and timeously. This proposition agrees with the verdict of the in *Mercantile Bank of Nig. Plc. v. FETECO (Nig) Ltd.*[5], when it held that:

> *A Statute of Limitation of action is designed to stop or avoid situations where a plaintiff can commence action any time, he feels like doing so, even when human memory would have normally faded and therefore failed. Putting it in another language, by the Statutes of limitation, a plaintiff has not the freedom of the air to sleep or slumber and wake up at his own time to commence an action against a defendant. The different Statutes of Limitation which are essentially founded on the principles of equity and fair play will not avail such a sleeping or slumbering plaintiff. He will be stopped from commencing the action and that is a just and fair situation. A plaintiff who suddenly wakes up from a very deep sleep only to remember that the defendant had wronged him, can think, be rightly 'greeted' by the defendant with the appropriate limitation of statute, waving same to him as a basis for redress……*

5.(2011) 10 NWLR PT.1254 P.113@133,Paras:F-H

6.Merchantile Bank of Nig. PLC V FETECO (Nig) Ltd.(1998) 2 NWLR (Pt.540), Per Tobi JCA (As he then was 143 at 156-157

The above judicial pronouncements agree with the views of the proponents of statutes of limitation, who argue that time is of the essence because after a specified period, relevant evidence might have been lost, recollection of memories might have been lost, and witnesses might have forgotten the facts in issues.[6] This further explains why a statute of limitation prescribes a period within which to do a certain act. As such, where a person affected by any wrongdoing is expected to institute his action within a stipulated time. It is the length of time that statute permit or allows for a victim to bring legal action against the suspected wrong-doer, diligently, that is the crux of statute of limitation.

1.2. Types of Statute of Limitation

There are majorly two types of statutes of limitations, which include criminal and civil limitations.[7] Statute of limitation in civil matters deals with the timeframe allocated to an aggrieved party to prosecute his case timeously in civil matters such as contracts, tort, land disputes, commercial transactions, and other related cases.

In criminal cases, statutes of limitation are rarely provided for, saved in a few cases, like section 108 of Administration of Criminal Justice Law of Plateau, 2008, which provides for six years as a limitation period for private complaints. However, cases involving heinous crimes like murder, manslaughter, rape, and torture; don't have a maximum or minimum time frame for prosecution. Similarly, under international law, offences such as crimes against humanity, war crimes, and genocides are not bound by the statute of limitations.[8] Thus, the limitation period mostly applies in civil matters.

1.3. Legal Nature of Limitation Period

The concept of the limitation period is the creation of statutes. It is a creation of law enacted by either the National Assembly or the Houses of Assembly. Limitation laws can be created via statutes in two ways viz; (a) in general statutes, and (b) as special legislation. Limitation law is created in a general legislation where that statute was meant to regulate different legal themes other than statute of limitation. From this perspective, that laws governing public institutions like

7.Jurislaw, *Loc. Cit*

8. See "The Types of Statutes of Limitation"@https://www.legalzoom.com<accessed on October 28, 2023>

9.Sections 2 and 3 of the Statutes of Non-Applicability of Statute of Limitation on Genocide, 1966.

Universities, Petroleum Industry, public office and other related institutions have or are reflected with statutes of limitations.[9]These laws, even though they have different aims and objectives, as substantive laws, nevertheless, in their procedural contents, recognized limitation of action.

The creation of limitation period as a special legislation occurred in a situation where a law provided explicitly for limitation law. This is mostly done to address the limitation of time to institute action relating to substantive matters such as contracts, torts, and customary sales of land, specific performance and trust. Here, the limitation law specifically states times within which to institute action in prosecuting any matter bothering on these subjects. Special legislation for limitation of action is mostly enacted by state legislations as Limitation Laws, or Limitation Edicts (where there were enacted during the military regime). That is why limitation period differs from one jurisdiction to another.[10]

1.4. The Origin of Arbitration and Mediation Act, 2023

Prior to May, 2023, the law regulating arbitration was the Arbitration and Conciliation Act, (hereinafter referred to as ACA).[11] It is incorporated into the Laws of Federation of Nigeria. It was enacted prior to the adoption of the UNCITRAL Model Law on International Commercial Arbitration, 2006, and owing to the UNCITRAL Model Law on International Commercial Mediation 2018.[12]As a result of this gap in legislation, the ACA did not reflect some contemporary practices relating to modern approaches in the jurisprudence of alternative dispute resolution. Also, the ACA did not address contemporary best practices in arbitration.

However, mediation as an alternative dispute resolution was not governed by any statute in Nigeria, before establishing the Arbitration and Mediation Act, 2023. Most of the legal authorities regulating mediation come from the High Court Rules, which provide for mediation as a means of settlement of disputes. Also, states with the Multi-Door Court House, provided for mediation as means of settlement of disputes in their rules. The Federal High Court, by general rendition, could be said to have also recognized mediation as means of settling disputes, when it provides in section 17 of the Federal High Court Act that the court shall promote amicable settlement of dispute. It is

10.See sections 3 of the Public Officers Protection Act, LFN, 2004 ,and section 14 of Nigerian National Petroleum Act, L.F.N., 2004

11.*Ibid*

12.CAP A18L.F.N, 2004

13. Nenewa Godwin, "Key Innovations in Nigeria's Arbitration and Mediation Act, 2023", June 2023@https:www.mondaq.com>nigeria<accessed on January 6, 2023>

for this reason that Order 18 (1) of the Federal High Court Rules, 2019 provides for the need of parties to provide for settlements.[13]

From the above background, it is clear that while special legislation recognizes arbitration as a means of dispute resolution, mediation is not. Also, the arbitration procedures under the former legal regime were not contemporary with the realities of global best practices. It was to address the flaws associated with these laws and to make progressive strides in the jurisprudence of alternative dispute resolution, hat gave birth to the Arbitration and Mediation Act, of 2023. The Arbitration and Mediation Act, 2023 (AMA) was signed into law by former President Muhammadu Buhari (GCFR) of the Federal Republic of Nigeria on May 26, 2023.[14] Having traced the evolution of AMA, it is now pertinent to explore the main contents of the Act. Doing so will lead us the next part of this paper- 'Synopsis of the Arbitration and Mediation Act, 2023.'

1.5. Synopsis of the Arbitration and Mediation Act, 2023

The AMA is made up of two parts and 92 sections. The first part deals with provisions relating to arbitration as a means of dispute resolution. It starts from section 1 and ends at section 66 of the Act. The first part squarely discusses the procedures and substantive approaches relating to arbitration. The objectives and scope of the application of the Act were outlined in section 1. The form and nature of the arbitration agreement are stated in sections 2 to 5. The composition of arbitrators, in terms of their numbers, their appointment procedures, and how to challenge such appointments where there are justifiable grounds are provided under the Act.[15] Similarly, where an arbitrator dies, ceases to function, or withdraws, the law permits his replacement.[16]

The Act accords immunity to an arbitrator, appointing authority and arbitral institutions in the discharge of their duties, as well as the power of the arbitral tribunal to determine issues pertaining to its exercise of jurisdiction on any arbitral dispute in commercial transaction. The Act empowers the arbitral tribunal to adopt rules applicable to substantive matters. These mandates are covered by the provisions of sections 13, 14 and 15 of the Act. The Act further made provisions relating

14. It is important to note that peaceful settlement out of court is a generally recognized practice by Nigerian courts. This cuts across lower courts up to superior courts of records, including Court of Appeal and the Supreme Court. In some cases , peaceful settlement is a condition precedent before instituting an action.

15.Jackson,Etti & Edu,“ A Review of the Arbitration and Mediation Act, 2023”@https:www.jee.africa.com<accessed on January 6, 2024>

16.Sections 15-16 of the AMA,2023

17.Sections 11-12 of the AMA,2003

to emergency proceedings. As such, in emergency situations, the Act provides for appointment of emergency arbitrators.[17] And where any person is not satisfied with the appointment of an emergency arbitrator, he can challenge such appointment emergency arbitrator.[18] The seat or venue of the emergency tribunal has to be determined by the parties, the arbitral institution, or the court.[19]

The powers of the arbitral tribunal to grant specific judicial injunctions and remedies[20] are spelt out from sections 19 to 29. Here, the powers of the tribunal to grant interim measures for protection, as well as the conditions of the grants, are spelt out in sections 19, 20 and 21. Again, the application for preliminary orders, specific regime for application for preliminary orders, modifications, suspensions, and termination of interim measures and preliminary orders were examined. The power to order for the provision of security by a party requiring interim measures and preliminary orders by the tribunal is recognized under section 25 of the Act. During the application of such interim measures or preliminary orders, where there is the likelihood of a change of circumstances, the party shall disclose such circumstances.[21] However, where the court granted such interim measures or preliminary orders, and later realised that there is no need to grant same, the tribunal can award a cost against the party to whom the cost is granted.[22] Recognition of enforcement of interim measures as well as the grounds for refusing to recognize such enforcements, are stated in sections 28 to 29.

Equal treatment of parties before the tribunal, rules of procedure of the arbitration tribunal, seat for the tribunal, and its commencement procedure, are respectively provided under sections 30 to 33. Section 34 provides for applications of statutes of limitations in arbitral proceedings, while section 35 of the Act, allows parties to adopt any language of their choice, including native language. However, where there is no agreed language, tribunal may adopt English language.[23]

Moreover, sections 36 to 48 deals with the judicial proceedings before the arbitral tribunal. Section 36 deals with the provisions for point of claim (a process akin to a Statement of Claim), where the claimant will state his claims against the respondent. In response, the respondent will file his

18 Jackson,Etti & Edu. Loc Cit

19.*Ibid*

20.*Ibid*

21.Section 37 of the AMA, 2003, specifically provides for the jurisdiction of the tribunal to provide for remedies.

22.Nenewa Godwin, Loc Cit.

23.*Ibid.*

24.*Ibid.*

defence. The power of the arbitral tribunal to award remedies to the aggrieved party in terms of declarations and orders are recognized by the Act in section 37. The procedures for the hearing of the proceedings at arbitral tribunal are outlined in section 38 of the Act. Consolidations of suits and concurrent hearing of proceedings before the arbitral tribunal are outlined under section 39 of the Act.

Section 40 of the Act, provides for the parties to bring additional parties during or before the commencement of a pending suit. Section 41 of the Act, provides for proceedings relating to parties default. It provides for the consequences that follows default acts by parties during arbitral proceedings. In the course of its hearing, where technical issues are raised that requires expert opinion; section 42 of the Act empowers the arbitral tribunal to appoint an expert. The expert will assist the court with his opinion. Section 43 further provides for power of the court to order the attendance of witnesses to come and give evidence before the tribunal. In the same way, section 44 empowers the tribunal to make a decision giving an award in favour of the claimant. Section 45 provides for the settlement of disputes between the parties as a way of terminating proceedings before the tribunal.

2.0. NOVEL FEATURES AND IMPROVEMENTS MADE BY THE ARBITRATION AND MEDIATION ACT, 2023

The AMA has really made some remarkable improvements in the jurisprudence of alternative dispute resolutions. It has also introduced some novel initiatives that made the practice of mediation and arbitration in Nigeria to be in tandem with international best practices. Some of these improvements and novel features include emergency arbitrators, appointments of substitute arbitrators, concurrent and consolidated hearings as well as joinder of parties as mediation.[24] Other new improvements include the provision for the grant of interim measures and preliminary orders by Arbitral tribunals, [25] grant of interim orders by courts,[26] abolition of champerty and third party

24 ACERIS Law, "Arbitration in Nigeria: The 2023 Reform"@https:www.acerislaw.com<accessed on March 14 , 2023>

26.Abiodun Ogunnubi V., " A New Arbitration and Mediation Regime in Nigeria: An Overview Of the Arbitration and Mediation Act, 2023", Mondaq, SPA Ajibade & Co . @https://www.mondaq.com>nigeria<accessed on March 14, 2024>

27.ACERIS Law, *Loc. Cit*

funding,[27] reduced the number of defaults of arbitrators, [28] arbitrator's immunity,[29] provisions of arbitration proceedings,[30] and statute of limitation [31]

Of all these features, the one pertinent to this paper is the provision of statute of limitation. Before the enactment of Arbitration and Mediation Act, 2003, the position of the law was that time spent in pursuing alternative dispute resolutions such as negotiation, mediation or arbitration, does not affect the running of time for the computation of time in relation to limitation.[32] However, this new law is able to address this challenge by freezing the periods used in arbitration awards and mediations, from being counted for the purpose of limitation period.[33]

3.0. Appraisal of Limitation Action under Arbitration and Mediation Act, 2023

The concept of limitation action under the Act is reflected in two sections. These sections are sections 34 and 71, dealings with limitation action on arbitration and mediation, respectively. In dealing with arbitration, section 34 of the Act provides thus,

> *(1) Applicable statutes of limitation shall apply to arbitral proceedings as they apply to judicial proceedings.*
> *(2) In computing the time prescribed by a statute of limitation for the commencement of judicial, arbitral or other proceedings in respect of a dispute which was the subject matters of-*
> *(a) an award which the court orders to be set aside or declares to be of no effect,*
> *or*
> *(b) the affected part of an award which the court orders to be set aside in part, or declares to be part of no effect,*

28.Sections 61 and 62 of the Arbitration and Mediation Act, 2023.

28.Nenewa Godwin . *Loc Cit,*

29 Abiodun Ogunnubi V. *Loc. Cit,*

31.*Ibid*

32. Jackson,Etti & Edu. *Loc Cit*

33.*Ibid*

34.This is evident in the fact that section 34 of the Arbitration and Mediation Act, 2023, regulates limitation period relating to enforcement of arbitral awards. Thus, the interval between the commencement of the enforcement of the arbitration proceedings and the award shall be excluded. On the other, hand section 71 of the Arbitration and Mediation Act , 2023 made almost the same provisions relating to computation of time. See also Abiodun Ogunnubi V. *Loc. Cit.* and ACERIS Law, *Loc. Cit.*

the period between the commencement of the arbitration and the date of the order referred to in paragraph (a) or (b) shall be excluded.

(3) In determining for the purposes of a statute of limitation when a cause of action accrued, any provision that an award is a condition precedent to bring legal proceedings in respect of matter to which an arbitration agreement applies shall be disregarded.

(4) In computing the time for the commencement of proceedings to enforce an arbitral award, the period between the commencement of the arbitration and the date of the award shall be excluded. [34]

The above provision of the law, firstly, recognizes the application of statute of limitation in arbitral proceedings in a similar manner as in a judicial capacity. This law excludes the computation of time when commencing matters relating to judicial proceedings, arbitral awards and other proceedings that are based, on awards made by the Tribunal. Thus, where the court ordered that (a) an award should be set aside, or declares of no effect, and (b) where the court ordered that part of an award shall be set aside, or part of it shall be declared of no effect, the time between when the said order against the award was made, and when the arbitration began, will not be reckoned with in computation of time for the purpose of limitation period.

Again, the provision relating to the status of award as a condition precedent has been dispensed with under the AMA, 2023.Thus, when a cause of action occurred, an aggrieved party can bring an action, irrespective of whether the arbitration agreement stipulates the need for award as condition precedent. By this provision, this law has dispensed with the conditions usually inserted in some arbitration clauses, whereby awards are required for condition precedent for instituting actions.

34 ACERIS Law, *Loc Cit*

The provision relating to limitation of action further states that the time spent by parties from the commencement of the arbitration to the granting of an award shall be exempted for computation of time. Thus, anytime spent by the parties between the commencement of the action and the award by the Tribunal, shall not be reckoned with while computing for statute of limitations.

With regards to mediation, section 71 of the AMA, provides for the suspension of statute of limitation. It provides thus:

> *(1) When the mediation proceedings commence, the running of the limitation period regarding the claim that is the subject matter of the mediation is suspended.*
> *(2) Where the mediation proceedings have terminated without a settlement agreement, the limitation period resumes running from the time or the day the mediation ended without a settlement agreement.*

By the above provision, the Act simply states that during mediation, time is frozen as far as limitation of action is concerned. So, the time spent from the beginning of the mediation to its conclusions, such times will not be reckoned with in computation of time for limitation of action. That is why, where the meditation proceedings have ended without parties reaching an agreement, the limitation periods will start counting from the date day proceedings ended, and not when the cause of action arose.[35]

From the above analysis, there are two types of limitation actions captured by the Act. The first part examines the statute of limitation relating to arbitral proceedings, while the second deals with mediation. While, the provision on mediation deals with suspension of time for the purpose of computing statute of limitation, that of arbitration deals with time spent in prosecuting the award. The provision on arbitration deals with application of limitation law in total capacity as it is observed in regular courts. It also includes limitation of actions as integral proceedings before arbitral tribunal. Similarly, the concept of statutes of limitation under arbitration in section 34

38.Section 71 of the AMA, 2023

extends to arbitration agreements, arbitral awards, and orders of courts, while that of mediation is only restricted to settlement proceedings in mediation practice.

The inclusion of the limitation period in the AMA is a welcome development. This is a departure from the previous regime which has led to a lot of injustices done at the altar of technicality.[36] It is, therefore, in the interest of substantial justice to commend that the Act has done away with the technicality associated with the previous regime. However, despite the above expositions, certain flaws could affect the application of the limitation period expounded under AMA. Examining these flaws will take us to the next part of this work; 'Analysis of the Flaws of Limitation Period Prescribed under the Arbitration and Mediation Act, 2023.'

4.0. Analysis of The Flaws of Limitation Period Prescribed under the Arbitration and Mediation Act, 2023

It is the fate of every paradigm to be subjected to constructive criticism with the view of bolstering its aims and objectives. This assertion is true of the AMA, 2023. Thus, some of the flaws of the Act that this study has identified include, procedural and substantive flaws, non-inclusion of customary arbitration, inter-statutory conflicts, and conflicts with court rules of procedures, and Multi-Door Court House Rules. These flaws are examined in the subsequent parts of this work.

The concept of limitation period under AMA is not devoid of some procedural omissions. Procedurally, the Act ousted the reliance on arbitral award as condition precedent before instituting an action. Thus, section 34(4) provides that:

> *In determining for the purposes of a statute of limitation when a cause of action accrued, any provision that an award is a condition precedent to bring legal proceedings in respect of matter to which an arbitration agreement applies shall be disregarded.*

By implication, the above provision seeks to prohibit the parties from exercising their rights to contractual bargain. This further means that the Act has deprived parties of their rights to freedom

39.Godfree Matthew, "Appraisal of the Plateau State Multi-Door Courthouse Law, 2017: A Call For Review of Salient Issues", The Nigerian Lawyer, July 15, 2020,@https://ww.w.thenigerianlawyer.com<accessed on January 6, 2023>

of contract to choose the manners in which they want to execute it. For this reason, it is the submission of this study that where, the parties elected that an award is a condition precedent before accessing the tribunal, their freedom of contract should be respected.

In the same sequence, the scope of the AMA should have contemplated customary arbitration. The AMA should have been flexible in accommodating customary arbitration. This will further bolster the development of our customary jurisprudence. The imperative of customary arbitration in our jurisprudence has been judicially noticed in several cases.[37]

Again, the Act may likely run into inter-statutory conflicts with substantive laws having limitation periods such as debt recovery, land matters, and torts. Where the matter of arbitration bothers on any of such issues, they may likely be inter-statutory conflicts. This is because the subject matter relating to these laws specifically has the prescribed times. For instance, section 3 of the Plateau State Limitation Edict, 1987 which states that an action to recover any land must be brought within Ten (10) years. Similarly, section 18 of the same Edict, provides for periods of six (6) and ten (10) years as limitation periods for instituting actions bordering on certain contracts and torts. Similarly, section 8 (1) of the Limitation Law of Lagos State,[38] states that all actions founded on simple contracts shall be brought within six (6) years. [39] In a situation, where the subject matter for arbitration concerns a contract between the parties, and they spent time in negotiation (and not arbitration or mediation), they will still be caught up by the jurisprudence of the previous legal regime that 'negotiation does not prevent the period of limitation from running."[40]

Another reason why the Act, should have engrafted negotiation, is because sometimes parties could spend time negotiating. During negotiation, the defendant may admit liability, but enforcement may become a problem. In such a situation, they may approach either arbitration or mediation processes. Where such occurred, admission by the defendant occurred; the position of

38.Some of these cases include Idika V Erisi(1988) 2 NWLR Pt.78 563 SC; Agu V Ikewibe (1991) 3 NWLR PT.180 358.SC; Egesimba V Onuzurike (2002) 15 NWLR Pt 791, and Okereke V Nwankwo (2003) 9 N W L R PT 826 592 SC

39.CAP 70 LAWS of Lagos State.

40.British Airways PLC V Akinyosoye (1995) 1 NWLR (PT.374) 772 CA

41.Eboigbe V NNPC(1994) 5 NWLR PT 347 page 660 at Paras. D-E

the law is that the limitation period is postponed.[41] In the case of *Eboigbe V NNPC,*[42]the Supreme Court Per Onu JSC, held that:

> *Where there has been an admission of liability during negotiation and all that remains is the fulfillment of the agreement, it is not just and equitable that the action should be barred after the statutory period of limitation giving rise to the action on the Plaintiff, were the defendant to resile from this agreement.*

Another inter-statutory conflict bothers on the provision of exclusionary principles adopted by this AMA in computations of time. This flaw is inherent in section 71(2) of the Act, which deals with suspension of limitation period. The said section provides that:

> *(2) Where the mediation proceedings have terminated without a settlement agreement, the limitation period resumes running from the time or the day the mediation ended without a settlement agreement.*

The above provisions conflict with age-long established principles of excluding the days of the occurrence of an act in the computation of time. Thus, it is the position of these writers that section 71(2) of the Act, conflicts with the exclusionary principle of computation of time which is statutorily and judicially recognized by the law. The statutorily recognition of excluding the days an act occurred from computation is stated in section 15 (2) of the Interpretation Act, which provides that:

> *A reference to an enactment to a period of that shall be construed, where the period is reckoned from a particular event, as excluding the day in which the event occurred.*

Jurisprudential credence was further given to the above statutory provision by the judiciary. In the case of *Eboigbe V NNPC* [43], where the Apex Court held Per Adio,at page 659 para A that:

42.Shell Pet.Devt.Co.(Nig) Ltd V Farah (1995) 3 NWLR (PT.382) 148 at 156 CA

43.(Supra)

44.(Supra)

In computing the day the statute of limitation begins to run, the day the action accrued and the date of the filing, are excluded.

By the above provisions of the law, the provisions of section 71(2) of the AMA are found wanton. This is because by stating that "the mediation time resumes running from the time or day the mediation ended without settlement", the AMA conflicts with the interpretation Act as well as case laws espousing for exclusionary principles in computation of time. This is one of the flaws associated with the prescription for limitation periods under the AMA.

Further, in its prescription for limitation period, the AMA omitted two vital principles in cases involving mediation. These principles are; (a) lack of Mediation Rules under the AMA, and (b) exclusion of public holidays in computations of time in mediation proceedings. It is important to note that, while the First Schedule to the AMA, provides for 'Arbitration Rules', as rules governing arbitration proceedings, the AMA does not provide for 'Mediation Rules'. [44] This rule might have helped in excluding certain days such as public holidays from computation of time during mediation proceedings as it is done in arbitration. [45] Secondly, by not providing for rules of Mediation, the AMA, does not envisage, the inclusion of public holiday as exemption day when it comes to computation of times.

The concept of limitation under the Act, does not contemplate the exceptions to the limitation law known to law. Both sections 34 and 71 of the AMA only provides for general rules relating to limitation periods without any proviso; stating exceptions to the limitation period. Some of these exceptions include subjects bothering on contracts, fraud, admission, knowledge, specific performance and continuous injury. The law is that as statute, the Act ought to also include these exceptions as one of the grounds upon which the arbitration or mediation cannot be hindered.[46]

45.It is important to note that, while the First Schedule to the AMA, provides for ' arbitration rules', the Second And Third Schedules, provide for' Convention on the Recognition and the Enforcement of Foreign Arbitral Awards. June 10, 1958, and 'Arbitration Proceeding Rules, 2020'. By omitting the Rules of proceedings governing Mediation, the AMA did not sufficiently legislate on Mediation. This is contrary to what was obtainable under the previous regime of " Arbitration and Conciliation Act, 2004, where the Third Schedules under the Repealed Act, provides for ' Conciliation Rules'.

46.Article 2 (6) of the Arbitration Rules

47.The exceptions to the general rules relating to limitation period are captured in the following cases: (a) Akibu V Azeez (2003) 5 NWLR (PT.814) SC, (b) Arowolo V Ijabiyi (2004) NWLR (PT.757)356 SC; and (c) Nwosu V Offor (1997) 2 NWLR (PT. 487) 274 at 276

5.0.FINDINGS

The expositions in this article finds that there are certain lapses associated with the concept of limitation period under the AMA, 2023. Some of these findings include:

(a) The AMA, 2023, for the first time recognizes the time spent during dispute resolution to be excluded in computation of time.

(b) The AMA, 2023, has not exhaustively address the issue of times parties spent before negotiation or mediation in computation of statutes of limitation. It is only limited to the enforcement of arbitration awards and mediation proceedings.

(c) The AMA, 2023, also failed to contemplate customary arbitration which is judicially recognized under Nigerian Law. This is apposite considering the fact that there is a call for some Multi-Door Court Houses in Nigeria to adopt and recognize customary arbitrations in its proceedings.[47]

(d) The AMA, 2023, does not adequately address dispute resolution in matters relating domestic transactions involving torts, land transactions and other civil contracts such as debt recovery. Cases in these areas are covered with specific Statute of Limitation for instituting actions against them. In cases of dispute arising on these subject matters between international organization and domestic corporation, the question of which limitation period to adopt will be contentious

6.0. **The Way Forward**

As a way forward to the above challenges, this study made the following practical recommendations:

(a) The practitioners of arbitration and mediation should advocate for the flexibility of AMA to envisage a situation where parties engaged in negotiation before submitting to arbitration panels or mediation conferences. This is because some cases evolved from negotiation and ended up being resolved either through either through mediation or arbitration. Thus, there is a need to include negotiation as a

47 Godfree Matthew, *Loc.Cit*

transitional stage that gives birth to arbitration and mediation. This flaw becomes complicated as the AMA only restricts itself to arbitration and mediation.

(b) Again, there should be alternatives to complement the lack of rules of Proceedings governing Mediation under the AMA. It is not a balanced legislation where two concepts are captured under a statute, one will be endowed with Rules of Proceedings, the other will not. This is because balance and fairness are qualities of a good legislation.

(c) The courts and arbitral panel should adopt the legal maxims of *specialibus delagtus non derogante*- meaning a specific legislation or provision supercedes over a general legislation or provisions. Thus, where a subject matter is given a limitation period with respect to a different subject matter, not contemplated by the AMA, the arbitral tribunal should apply the law in that regards. However, where the limitation period squares with the provision of AMA, the arbitration tribunal should adopt some.

(d) The practitioners of arbitration and mediation should further contemplate considering exceptions to the principles of limitation period. They should advert the mind of the arbitration tribunal and persuade other practitioners to consider the legal exceptions to the principle of limitation period. This is because a balanced legislation should not only expound on the general rule, but should be able to contemplate the exceptions to the general principle. A good law should avail the public with the general law as well as the exceptions to the general law.

7.0. Conclusion and Policy Implications

In conclusion, this study commends the emergence of the AMA into Nigeria's jurisprudence. It has revolutionalized the practice of arbitration and mediation to be in tandem with global best practices. The peculiar concern is the inclusion of limitation period which had been hitherto, described as an albatross to access to justice, with regards to time spent during negotiation, arbitration or mediation. However, it is the flaws associated with the limitation period stipulated in AMA that this study addresses. Thus, the authors were able to recommend specific measures as a way forward to enhance the judicious deployment of limitation period in arbitration and mediation proceedings. It is the

conclusion of this study that the views canvassed in this study should be consider in due course. Stakeholders and experts in Alternative Dispute Resolution should be able consider the perspectives in this article. It is believed that when such is done, it will inspire policy formulation, law reform and judicial activism.