SP LP SMITH & PARTNERS LAW PRACTICE

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CLARITY AMIDST COMPLEXITY: COURT OF APPEAL AFFIRMS PARTY AUTONOMY IN CROSS-BORDER CONTRACTS - *Federal High Court recently follows suit*[1]

Introduction: Respecting the Bargain – The Rise (Again) of Party Autonomy

> *Some agreements including Charterparties contain clauses such as 'Dispute Resolution - English Law, London Arbitration'.*

In cross-border commercial arrangements, it is not new for parties to have a dispute resolution clause stating the choice of law and the means of dispute resolution. This ability of contracting parties to agree the legal rules that govern their relationship and to select where any disputes will be resolved is foundational in the freedom of parties to enter the agreement itself. However, in Nigeria, this autonomy has been discussed repeatedly, sometimes, such clauses have been interpreted as aspirational than enforceable.

In a refreshing and decisive affirmation, the Nigerian Court of Appeal has reestablished much-needed clarity. In ***SQIMNGA (NIG.) LTD V. SAP (NIG.) LTD*** (2025) 2 NWLR (Pt. 1977) 423, the Court gave full effect to a contractually agreed foreign law and jurisdiction clause[2]. This decision not only aligns Nigerian jurisprudence with international best practice but

[1] The Federal High Court followed suit on July 24, 2025. See below.
[2] *Sqimnga (Nig.) Ltd v. SAP (Nig.) Ltd* (2025) 2 NWLR (Pt. 1977) 423.

reinforces Nigeria's readiness to respect the sanctity of cross-border bargains.

The 'Shaky' Past

Nigerian court decisions have historically sent mixed signals on their enforceability, especially where Nigerian parties are involved.

A major source of that uncertainty? The 1987 Supreme Court decision in ***SONNAR (NIG.) LTD V. PARTENREEDERI MS NORDWIND*** (1987) 4 NWLR (Pt. 66) 520, which was widely interpreted to mean that courts could disregard a chosen foreign law or forum where such choice lacked a strong connection to the parties or the transaction.

The Decision in Focus: A Matter for South Africa, Not Lagos

In the *Sqimnga* case, both parties – Nigerian-incorporated entities – had agreed in their Master Services Agreement (MSA) to be governed by the laws of the Republic of South Africa, and to submit to the exclusive jurisdiction of South African courts.

When a dispute arose, however, *Sqimnga* initiated proceedings before the High Court of Lagos State. *SAP* objected, citing the contractual terms. The High Court declined jurisdiction, holding the parties to their agreement. The Court of Appeal affirmed this decision.

Key Takeaways from the Court of Appeal's Judgment

1. **Pacta Sunt Servanda: Keep Your Word**

   The Court underscored the universality of the principle that agreements - not contrary to law or vitiated by fraud - must be honoured. This echoes the timeless maxim: *pacta conventa quae*

neque contra leges neque dolo malo inita sunt omni modo observanda sunt - valid contracts must be observed in all respects.

2. **Burden of Proof: On Whom the Duty Lies**

   Once SAP raised its objection based on Clause 14 of the MSA, the burden shifted to Sqimnga to show compelling reasons why a Nigerian court should override the agreed jurisdiction. It failed to do so.

   Significantly, even though SAP's preliminary objection was unsupported by affidavit, the Court rejected Sqimnga's argument that no affidavit in response was required. The principle is clear: where the burden lies on a party to establish facts, evidence must be provided[3].

3. **Distinguishing *Nordwind*: Clarifying the Misunderstanding**

   The Court of Appeal corrected the common misconception that *Nordwind* established a blanket rejection of party autonomy. Instead, the decision affirms that while Nigerian courts retain the discretion to override foreign law or forum clauses, such discretion must be exercised sparingly and only in exceptional cases.

Practical Implications for Cross-Border Contracts

- **Choice of Law Clauses Work**: Nigerian courts will generally respect them - so long as the clause is real, lawful, and not contrary to public policy.
- **Foreign Jurisdiction Clauses Are Enforceable**: Even where both parties are Nigerian, the courts will not lightly assume jurisdiction in defiance of a clearly expressed foreign court clause to the contrary.

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[3] Section 131(1) of the Evidence Act 2011.

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- **Evidence Must Support Procedure**: Litigants must always lead credible evidence when challenging or defending jurisdiction - even where no affidavit is filed by the opposing side.
- **Certainty is Back**: This case boosts confidence among foreign investors and commercial actors that Nigerian courts are prepared to respect transnational bargains.

Conclusion: Nigeria's Courts and the Global Legal Order

The *Sqimnga* decision of the Court of Appeal marks a moment of commendable judicial clarity on the issue. This appellate guidance and position has since been followed by the Federal High Court in its ruling of July 24, 2025, in ***Suit No: FHC/L/CS/1223/2022 – Rely Global Resources Nigeria Limited v. Hapag-Lloyd Nigeria Shipping Limited***. In that case, the Lagos Division (per Hon. Justice Aneke) upheld the binding effect of the parties' agreement on both the timeline for instituting the suit and the exclusive jurisdiction clause in favour of the courts in Hamburg, Federal Republic of Germany. These developments reflect a welcome judicial alignment with global commercial norms, offering much-needed legal certainty for cross-border transactions.

SPLP Comment

We consider this a pivotal moment for the continued integration of Nigerian contract law into the global commercial order. It reflects a judiciary that is becoming increasingly attuned to the needs of cross-border commerce and investor confidence.

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