

The naughty list – our view on Nigeria v P&ID

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PRACTICES International, Litigation, Europe, Middle East and Africa, International Arbitration

Readers may already have heard something of *The Federal Republic of Nigeria v Process & Industrial Developments Ltd* [2023] EWHC 2638 (Comm). In 2017 a distinguished arbitral tribunal ordered Nigeria to pay billions of dollars to a BVI company called Process and Industrial Development Limited (“P&ID”). From 2018 Nigeria sought to challenge the awards in England under section 68 of the Arbitration Act 1996. British Home Secretary Priti Patel felt compelled to write an article for the City AM newspaper opining that Nigeria “*must honour its obligations to companies like P&ID*” and “*pay \$9 billion*” (the sum then due) describing Nigeria’s challenge to the awards as a “*scandal*” “*flouting international law and convention*”. Patel wrote further articles supportive of P&ID as recently as 2022.

On 23 October 2023 in a nearly 600 paragraph judgment the Commercial Court (Knowles J) set aside the awards (worth, by that time, \$11 billion with interest) under section 68 of the Arbitration Act 1996 because Nigeria had proved them to have been obtained by fraud. The judgment has exposed some eye-catching details which have not been lost on the mainstream press - not least the fact that the solicitor and barrister who represented P&ID in the arbitration had stood to be paid up to £3 billion and up to £850 million respectively had the award been upheld and enforced. Many reports of the case have quoted the Judge as saying that “*the matter touches the reputation of arbitration as a dispute resolution process*”. Such quotes, headlines and soundbites give the impression that the case is something of a critique or even a condemnation of the practice of arbitration. The truth is more complex and (as this article hopes to demonstrate) the case repays closer scrutiny.

Flaring

With oil comes gas - less valuable and more difficult to store, transport and use. Producers, unless prevented by law, commonly rid themselves of this gas by flaring (i.e. burning) it. The World Bank says gas wasted by flaring each year could power all sub-Saharan Africa. The world’s biggest gas flarer is Nigeria. 223.8 million people live there, a third below the poverty line and 40% with no access to electricity.

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