

## CONSTRUCTION DISPUTE RESOLUTION AFTER THE NIGERIAN ARBITRATION AND MEDIATION ACT 2023: EMERGENCY ARBITRATION, INTERIM MEASURES AND ENFORCEMENT

Egondu G. Ikeatu\*

### Abstract

*Nigeria's construction and infrastructure sector is dispute-dense: large project values, complex interfaces, time pressures and multi-party delivery structures generate frequent claims for variations, extensions of time, price escalation and termination. Until 2023, dispute resolution practice relied primarily on contract-based arbitration and court-controlled supportive measures under a framework widely regarded as dated and vulnerable to delay tactics. The Arbitration and Mediation Act 2023 (AMA 2023) repeals the previous federal statute and introduces innovations that matter directly to construction disputes: mandatory court referral to arbitration on timely request, emergency arbitration, a modern interim-measures regime (including recognition and enforcement of interim measures), consolidation and joinder, a modernized setting-aside standard, third-party funding and a statutory mediation framework with enforceability of settlement agreements. This article explains how these reforms recalibrate risk and strategy across the construction dispute life-cycle, from drafting and project administration to interim relief, multi-party proceedings and enforcement while highlighting persistent gaps such as the absence of a dedicated statutory adjudication and security-of-payment regime as it postulates that the Act's practical success depends on judicial attitude, institutional capacity and disciplined clause-drafting. The article concludes with targeted recommendations for parties, counsel, arbitral institutions and policymakers.*

**Keywords:** Construction, Disputes, Infrastructure projects, Arbitration

### 1. Introduction

Construction disputes are rarely about a single broken promise. They are often systemic, a chain of design revisions, delayed access to site, engineering and procurement-driven scope shifts, currency and inflation shocks, incomplete approvals, subcontract underperformance and payment disruption it can be said, can, collectively transform a project into adversarial terrain.<sup>1</sup> In Nigeria, these dynamics are intensified by the scale of infrastructure ambitions and delivery structures that involve multiple contractors, consultants, lenders and public agencies. In this setting, dispute resolution rules are not merely procedural, they determine cash flow survival, project continuity and investor confidence.<sup>2</sup>

The Arbitration and Mediation Act 2023<sup>3</sup> is Nigeria's most significant modernization of arbitration and mediation law in decades. It repeals the earlier federal statute and aims to provide a unified framework for the fair and efficient settlement of commercial disputes by arbitration and mediation, while making the New York Convention applicable to awards made in Nigeria or any

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\* Ph.D. Department of Public and Private Law, Faculty of Law, Admiralty University of Nigeria, Ibusa, Delta State, Nigeria. <http://orcid.org/0009-0001-2544-1510>; phone: 0803 407 5570; emails: [ikeatu-law@adun.edu.ng](mailto:ikeatu-law@adun.edu.ng), [egondukeatu@gmail.com](mailto:egondukeatu@gmail.com)

<sup>1</sup> Md Abu Zaed Khan 'Factors Contributing to Delays in Engineering, Procurement, Construction, Project Management, and Finance' <https://engineersblog.net/factors-contributing-to-delays-in-engineering-procurement-construction-project-management-and-finance/> accessed 18<sup>th</sup> April 2026

<sup>2</sup> Stren & Blan Partners, 'Construction Law and Adjudication: Trends in Nigeria' (8 January 2024) <https://strenandblan.com/construction-law-and-adjudication-trends-in-nigeria/> accessed 18 April 2026.

<sup>3</sup> Hereinafter referred to as The AMA 2023

contracting state in international commercial arbitration.<sup>4</sup> For construction disputes, its importance lies in reforms that respond directly to sector realities: urgent relief needs like site access, bond calls and evidence preservation, multi-party entanglement like joint ventures, subcontracts and consultant liability and the need for swift enforceability.<sup>5</sup>

## 2. Nigerian Construction Disputes and the Pre-AMA Baseline

Two features of construction make disputes recurrent. First, the contract is incomplete by necessity as not every design detail, site condition, authority approval, interface risk or price movement can be exhaustively priced at tender. Second, performance is time-sensitive because delays amplify costs, trigger liquidated damages debates and disturbs sequencing across trades.<sup>6</sup> The result is a steady stream of claims flowing from variations, extensions of time, disruption, acceleration, defects, valuation disputes, termination and bond calls, often involving technical evidence and competing programme analyses.<sup>7</sup>

In Nigeria, arbitration has historically been the preferred private mechanism in construction because it allows parties to select neutrals with sector expertise and provides confidentiality for commercially sensitive disputes. Practice commentary emphasizes that Nigeria has no dedicated statute prescribing how construction disputes must be resolved; parties typically rely on their project documents to select arbitration, litigation, mediation or hybrid escalation clauses. Where purely Nigerian parties choose institutional arbitration, local institutions such as the Chartered Institute of Arbitrators (CI Arb) Nigeria Branch or the Lagos Regional Centre for International Commercial Arbitration are commonly used, while cross-border projects may choose International Criminal Court (ICC) or London Court of International Arbitration (LCIA) rules.<sup>8</sup>

Yet, arbitration in the construction sector has faced two persistent criticisms. It can be slow and expensive, particularly when parties fight every procedural step and the interface with courts can become a vehicle for delays. Under the repealed federal framework, some gaps such as the absence of clear court-ordered interim relief supporting arbitration, limited statutory tools for multi-party disputes and open-textured setting-aside concepts that encouraged expansive post-award attacks are a few of the bottlenecks discovered. Construction disputes, which are often multi-party and cash flow-critical, magnified these weaknesses: a delayed interim payment or a prolonged post-award challenge can collapse contractors and derail projects.<sup>9</sup>

The construction sector's exposure to arbitration-related litigation is not theoretical. Sector-focused reviews of appellate arbitration cases note that construction disputes are a major

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<sup>4</sup> Tiwalade Aderoju 'The Nigerian Arbitration and Mediation Act 2023: A comparison with the Arbitration and Conciliation Act 2004 and global practices': <https://www.ibanet.org/the-nigerian-arbitration-and-mediation-act-2023> accessed 18 April 2026.

<sup>5</sup> AMA 2023 Explanatory Memorandum and ss 1, 60

<https://www.kadunajudiciary.org/assets/resources/Arbitration%20and%20Mediation%20Act%202023.pdf> accessed 18 April 2026.

<sup>6</sup> Olalekan Olaolu Titus et al, 'Construction dispute and contract incompleteness in Nigeria construction industry' <https://www.sciencedirect.com/science/article/pii/S2090447923000424> accessed 19<sup>th</sup> April 2026

<sup>7</sup> Chambers and Partners, 'International Arbitration 2025 – Nigeria' (last updated 21 August 2025) <https://practiceguides.chambers.com/practice-guides/international-arbitration-2025/nigeria>

accessed 18 April 2026

<sup>8</sup> Stren & Blan Partners (op cit)

<sup>9</sup> Abdul Jinadu, 'Arbitration and Mediation Act 2023 – Nigeria' (Keating Chambers, September 2024) <https://www.keatingchambers.com/wp-content/uploads/2024/09/Arbitration-and-Mediation-Act-2023.pdf> accessed 18 April 2026

category of disputes with arbitration clauses litigated in Nigerian appellate courts. One review of 145 commercial arbitration-related appellate decisions over a 50-year period reports that construction disputes formed the largest category identified (about 18.6 percent), followed by shipping and other sectors. This reinforces a crucial point, that construction disputes are not only arbitrated, but they are also frequently litigated at the margins, typically around stays, jurisdictional challenges and enforcement.<sup>10</sup>

### 3. Key Innovations of the AMA 2023 Relevant to Construction Disputes

#### 3.1 Arbitration Agreement Writing and Party Autonomy

The foundation of construction arbitration is the arbitration agreement. The AMA 2023 retains a writing requirement but modernizes it. An arbitration agreement is in writing where its content is recorded in any form, including electronic communication, if accessible for subsequent reference. This is significant for construction practice where contract formation can involve tender exchanges, email acceptance, electronic project platforms and post-award variations. The Act reduces the risk that formality arguments undermine dispute resolution.<sup>11</sup>

The Act also strengthens party autonomy through default rules that promote efficiency. Where parties do not agree the number of arbitrators, the tribunal consists of a sole arbitrator. In construction disputes, sole-arbitrator defaults can reduce costs for mid-value claims, though parties may still choose three arbitrators for mega-projects or technically complex disputes. Commentary highlights that the Act's reforms are intended to reduce procedural uncertainty and encourage Nigeria as a viable arbitral seat, but the practical choice between sole and three-member tribunals remains a risk-allocation decision.<sup>12</sup>

#### 3.2 Mandatory Court Referral to Arbitration and Timing Discipline

Section 5(1) of the AMA 2023 requires a court seized of an action in a matter subject to an arbitration agreement to refer parties to arbitration if requested not later than when submitting the first statement on the substance of the dispute, unless the agreement is void, inoperative or incapable of being performed. For construction disputes, where tactical litigation may be used to stall a project or force settlement, this mandatory referral strengthens the arbitration clause as a jurisdictional gatekeeper.<sup>13</sup>

Commentary links section 5(1) to earlier litigation about stays, suggesting that the Act aims to reduce the burden on the stay applicant and curb delay. The Act also permits arbitration to commence or continue, and for an award to be made, even while a related court action is pending, which further reduces the ability of court proceedings to paralyze arbitration. The immediate

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<sup>10</sup> G O Sodipo & Co, '50 Years of Appellate Arbitration Cases in Nigeria' (April 2025) 6–7 <<https://gos-law.com/wp-content/uploads/2025/04/Merged-50-Years-of-Appellate-Arbitration-Cases-in-Nigeria.pdf>> accessed 18 April 2026

<sup>11</sup>AMA 2023 s 2(2)– (4) (writing and electronic communication)  
<https://www.kadunajudiciary.org/assets/resources/Arbitration%20and%20Mediation%20Act%202023.pdf>  
accessed 18 April 2026

<sup>12</sup>AMA 2023 s 6(2) (default sole arbitrator)  
<https://www.kadunajudiciary.org/assets/resources/Arbitration%20and%20Mediation%20Act%202023.pdf>  
accessed 18 April 2026; Chambers and Partners (n 9)

<sup>13</sup>AMA 2023 s 5(1)  
<https://www.kadunajudiciary.org/assets/resources/Arbitration%20and%20Mediation%20Act%202023.pdf>  
accessed 18 April 2026

drafting lesson for construction practitioners is that arbitration clauses must be clear and enforceable, because the court's referral obligation turns on the existence and operability of the agreement.<sup>14</sup>

### 3.3 Emergency Arbitration, Interim Measures and Preliminary Orders

Urgent relief is central to construction disputes. Employers may threaten to call performance bonds, contractors may seek to restrain termination or demand access to site, both sides may need to preserve evidence and prevent dissipation of funds. The AMA 2023 expressly recognizes emergency arbitration by providing for appointment of an emergency arbitrator, challenge procedures and seat of emergency relief proceedings. Commentary notes that emergency arbitrator appointments can be challenged within a short period after notice, reflecting the 'speed-first' logic of emergency relief.<sup>15</sup>

The interim-measures regime is broader than emergency arbitration. The Act empowers courts to grant interim measures of protection, empowers tribunals to grant interim measures, sets conditions for grant, provides for security and, critically, provides for recognition and enforcement of interim measures. This recognition/enforcement architecture matters for construction because interim orders must have practical bite. If an interim order restraining bond call is not enforceable quickly, the dispute is effectively decided by *fait accompli*.<sup>16</sup> The Act also defines grounds for refusing recognition or enforcement, aligning Nigerian practice more closely with modern Model Law approaches.<sup>17</sup>

The preliminary-order mechanism is designed to prevent the respondent from frustrating interim relief before a hearing. Unless parties agree otherwise, a party may apply without notice to the tribunal for an interim measure together with a request for a preliminary order directing another party not to frustrate the interim measure's purpose. The tribunal must promptly notify the respondent after determination, and the preliminary order expires after a short period. In construction disputes, preliminary orders may be relevant where advance notice could trigger asset dissipation, bond calls or unilateral site actions.<sup>18</sup>

### 3.4 Consolidation and Joinder: Aligning Procedure with Project Reality

Infrastructure projects rarely involve a neat bilateral dispute. Consortium/joint venture arrangements, nominated subcontracts, collateral warranties, direct agreements, consultant appointments and supplier contracts create a network of related obligations. When disputes arise, issues overlap: a delay claim by the main contractor may depend on consultant design liability; a

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<sup>14</sup>AMA 2023 s 5(2)

<https://www.kadunajudiciary.org/assets/resources/Arbitration%20and%20Mediation%20Act%202023.pdf>  
accessed 18 April 2026

<sup>15</sup>AMA 2023 ss 16-18

<https://www.kadunajudiciary.org/assets/resources/Arbitration%20and%20Mediation%20Act%202023.pdf>  
accessed 18 April 2026

<sup>16</sup> A thing that has already happened or been decided before those affected hear about it, leaving them with no option than to accept it.

<sup>17</sup>AMA 2023 s 19-29

<https://www.kadunajudiciary.org/assets/resources/Arbitration%20and%20Mediation%20Act%202023.pdf>  
accessed 18 April 2026; the UNCITRAL Model Law on International Commercial Arbitration (1985) as revised in 2006.

<sup>18</sup>AMA 2023 ss 16-24

<https://www.kadunajudiciary.org/assets/resources/Arbitration%20and%20Mediation%20Act%202023.pdf>  
accessed 18 April 2026

defective work claim may be traceable to supplier specifications; a payment dispute may implicate lender step-in rights. The AMA 2023 responds with express provisions on consolidation and concurrent hearing (section 39) and joinder of parties (section 40).<sup>19</sup>

The availability of consolidation and joinder is a double-edged sword. It can reduce inconsistent determinations and duplicative costs, but it also increases procedural complexity and may create tactical opportunities for delay if contracts are poorly aligned. For example, consolidation becomes difficult where different contracts specify different seats or institutional rules. Joinder can raise confidentiality concerns where third parties gain access to sensitive project information. Accordingly, the Act's tools amplify the value of consistent dispute clause design across the project's contract suite.<sup>20</sup>

### 3.5 Costs, Security for Costs, Lien on Awards and Arbitrator Immunity

Construction arbitrations are resource-intensive, and cost disputes are common. The AMA 2023 contains provisions on costs, deposit of costs, security for costs and joint and several liabilities for arbitrators' fees and expenses. It also introduces a statutory lien on the award pending payment of arbitrators' fees and institutional expenses, a mechanism that may pressure parties to resolve fee disputes promptly. For construction stakeholders, these provisions should be treated as part of cash-flow risk; cost deposits and security orders can become significant during lengthy proceedings.<sup>21</sup> The Act also provides for immunity of arbitrators, appointing authorities and arbitral institutions, which is intended to reduce defensive practice and discourage collateral litigation against neutrals. In construction disputes, where parties sometimes level personal allegations against engineers, adjudicators or arbitrators, clearer immunity boundaries can improve confidence in accepting appointments and in making robust procedural decisions.<sup>22</sup>

### 3.6 Setting Aside, Extent of Court Intervention, and Award Review Tribunal

Finality is critical for construction arbitration. The AMA 2023 narrows the setting-aside regime by specifying grounds in section 55 and emphasizes limited court intervention in section 64. For construction disputes, where the value of arbitration lies in avoiding prolonged appeals, these provisions aim to limit the range of arguments available to an award-debtor and to reduce the use of court proceedings as a delay tactic. At the same time, public policy and non-arbitrability remain safety valves, preserving judicial control over core legal boundaries.<sup>23</sup>

The Act's Award Review Tribunal (ART) mechanism is a notable innovation. Parties may agree that a review of the award on specified grounds be made to an ART, which must endeavour to

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<sup>19</sup>AMA 2023 ss 39-40

<https://www.kadunajudiciary.org/assets/resources/Arbitration%20and%20Mediation%20Act%202023.pdf>

accessed 18 April 2026

<sup>20</sup>Jinadu (n 6) (noting consolidation/joinder reforms and drafting implications); ICLG, 'International Arbitration Laws and Regulations: Nigeria 2025–2026' (30 September 2025) <https://iclg.com/practice-areas/international-arbitration-laws-and-regulations/nigeria> accessed 18 April 2026

<sup>21</sup>AMA 2023 ss 50–54 (costs, deposits, security, joint and several liability) and s 54 (lien on award)

<https://www.kadunajudiciary.org/assets/resources/Arbitration%20and%20Mediation%20Act%202023.pdf>

accessed 18 April 2026

<sup>22</sup>AMA 2023 s 13 (immunity)

<https://www.kadunajudiciary.org/assets/resources/Arbitration%20and%20Mediation%20Act%202023.pdf>

accessed 18 April 2026

<sup>23</sup>AMA 2023 ss 55 and 64

<https://www.kadunajudiciary.org/assets/resources/Arbitration%20and%20Mediation%20Act%202023.pdf>

accessed 18 April 2026

render its decision as an award within 60 days of constitution. Commentary identifies the ART as an attempt to keep review within the arbitral ecosystem and reduce recourse to courts. For construction projects, an ART could be attractive where parties want an expert 'second look' without public litigation. However, it also introduces additional cost and a possible second procedural layer, and it cannot fully exclude court involvement on the non-arbitrability/public policy grounds.<sup>24</sup>

### 3.7 Limitation Periods, Accrual Rules and Enforcement Timing

Limitation issues can be decisive in long-term projects. The AMA 2023 applies limitation statutes to arbitral proceedings and provides that, in computing time for enforcement of an arbitral award, the period between commencement of arbitration and the date of the award shall be excluded. In the earlier Supreme Court authority of *City Engineering v Federal Housing Authority*,<sup>25</sup> time for enforcement had been treated as running from the date of breach which gave rise to arbitration. For construction disputes, the practical implication is that award enforcement risk is reduced where arbitration itself consumes time, but parties must still manage underlying limitation periods for commencement and carefully track time-bar issues.<sup>26</sup>

### 3.8 Third-party Funding: Access to Arbitral Remedies and Cost Strategy

A core practical barrier to construction arbitration is cost. Contractors whose cash flow is impaired by delayed payments may be unable to prosecute meritorious claims or defend substantial counterclaims. The AMA 2023 addresses this by abolishing the torts of maintenance and champerty in respect of arbitral proceedings and by creating a disclosure regime for third-party funding. Commentary explains that third-party funding is now permitted in Nigeria-seated arbitration and arbitration-related proceedings in any Nigerian court, and that a funded party must notify the other party, tribunal and any institution.<sup>27</sup>

Third-party funding will likely influence two areas of construction dispute strategy. First, it may change bargaining dynamics; funded claimants may resist low settlements and pursue claims to award. Second, it will intensify debates on security for costs and disclosure. Where funding exists, tribunals may have to balance access-to-justice considerations against the respondent's exposure to unrecoverable costs if the claimant is impecunious. The Act's disclosure requirements reduce opacity but do not, by themselves, resolve the substantive security-for-costs discretion; careful case management will remain essential.<sup>28</sup>

### 3.9 Mediation: Enforceable Settlements and Construction Dispute Escalation

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<sup>24</sup> AMA 2023 ss 56

<https://www.kadunajudiciary.org/assets/resources/Arbitration%20and%20Mediation%20Act%202023.pdf>

accessed 18 April 2026.

<sup>25</sup> (1997) All NLR 1

<sup>26</sup>AMA 2023 s 34

<https://www.kadunajudiciary.org/assets/resources/Arbitration%20and%20Mediation%20Act%202023.pdf>

accessed 18 April 2026; *City Engineering v Federal Housing Authority* (1997) 9 NWLR (Pt 520) 224

<sup>27</sup>AMA 2023 ss 61–62

<https://www.kadunajudiciary.org/assets/resources/Arbitration%20and%20Mediation%20Act%202023.pdf>

accessed 18 April 2026; NICArb, 'The Adoption of Third-Party Funding (TPF) in the Arbitration and Mediation Act 2023' (9 July 2024) <https://blog.nicarb.org/index.php/2024/07/09/the-adoption-of-third-party-funding-tpf-in-the-arbitration-and-mediation-act-2023/> accessed 18 April 2026

<sup>28</sup>AMA 2023 s 52 (security for costs) and s 62 (disclosure)

<https://www.kadunajudiciary.org/assets/resources/Arbitration%20and%20Mediation%20Act%202023.pdf>

accessed 18 April 2026

Construction disputes are frequently settled, because project parties often prioritize continuity and commercial relationships. The AMA 2023 introduces a statutory mediation framework based on modern principles of confidentiality, party autonomy and enforceability. It provides for commencement and conducts of mediation, confidentiality and inadmissibility of mediation communications in other proceedings and most importantly, binding and enforceable settlement agreements that meet statutory requirements. For construction disputes, enforceable mediated settlements can provide faster outcomes than arbitration, particularly for valuation, interim payment and variation disputes where ongoing performance is critical.<sup>29</sup>

The Act also references the Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention) by providing for its application where a party seeks to enforce an international settlement agreement made outside Nigeria, subject to conditions. In cross-border construction disputes such as Engineering, Procurement and Construction (EPC) projects with foreign contractors, this can enhance confidence that mediated settlements will be enforceable, thereby strengthening mediation as a realistic option in dispute escalation clauses.<sup>30</sup>

#### 4. Practical Implications for Construction Contract Drafting and Dispute Strategy

The AMA 2023's benefits are not automatic. Construction parties must actively align their contracts and project governance with the Act's tools. The first imperative is clause harmonization. A recurring practical problem is 'clause fragmentation'; different tiers of a project's contract suite adopt different seats, rules or appointment mechanisms, undermining consolidation and joinder and increasing satellite litigation risk. Where multi-party disputes are foreseeable, employers and main contractors should aim for consistent arbitration clauses across EPC contracts, subcontracts, consultant appointments and direct agreements.<sup>31</sup>

The second imperative is to treat interim relief as part of project risk management rather than a last-minute tactic. Construction parties should map likely interim scenarios (bond calls, termination disputes, access to site, injunctions affecting performance, preservation of evidence) and ensure internal protocols allow rapid instruction of counsel and prompt applications under sections 16–29. Where bonds and guarantees are used, parties should coordinate their wording with the interim-measures strategy, recognizing that the ability to restrain an abusive call may depend on the speed and enforceability of interim measures.<sup>32</sup>

Third-party funding introduces new drafting and governance considerations. Parties cannot contract out of the Act's disclosure requirements, but they can regulate practical issues: who bears funding costs if the funded party succeeds, whether and how the tribunal may consider funding costs in costs allocation, and what triggers an application for security for costs. Funders may also

<sup>29</sup>AMA 2023 ss 70–77 and ss 82–84

<https://www.kadunajudiciary.org/assets/resources/Arbitration%20and%20Mediation%20Act%202023.pdf>  
accessed 18 April 2026

<sup>30</sup> AMA 2023 s 87 (Singapore Convention on Mediation)  
<https://www.kadunajudiciary.org/assets/resources/Arbitration%20and%20Mediation%20Act%202023.pdf>  
accessed 18 April 2026

<sup>31</sup> AMA 2023 ss 39–40  
<https://www.kadunajudiciary.org/assets/resources/Arbitration%20and%20Mediation%20Act%202023.pdf>  
accessed 18 April 2026

<sup>32</sup>AMA 2023 ss 16–29

<https://www.kadunajudiciary.org/assets/resources/Arbitration%20and%20Mediation%20Act%202023.pdf>  
accessed 18 April 2026

demand that dispute clauses maximize enforceability—clear seat, clear appointing authority and availability of interim measures—because these features reduce recovery risk.<sup>33</sup>

Fourth, construction parties should invest in evidence systems. Arbitration outcomes in construction frequently turn on contemporaneous records, programme updates, daily site reports, variation instructions, payment certificates, meeting minutes and correspondence. Where parties anticipate urgent interim applications or eventual enforcement, an 'enforcement-ready' record becomes critical. Professional guidance on enforcement under the AMA 2023 notes the need for original/certified copies of awards and arbitration agreements and, where relevant, certified translations.<sup>34</sup>

Finally, mediation should be integrated into escalation clauses with realistic triggers. The enforceability of mediated settlements under sections 82–84 means parties can settle discrete disputes (interim valuation, minor defects, programme re-sequencing) quickly, reserving arbitration for high-stakes liability or termination disputes. To benefit from confidentiality and enforceability, parties should ensure the settlement agreement meets statutory requirements and is documented in a form capable of enforcement.<sup>35</sup>

## 5. Enforcement, Court Interaction and the New Litigation Risk

Reform is only as good as enforcement. The AMA 2023 provides for the recognition and the enforcement of awards and for grounds on which a refusal can be based. It also defines 'Court' as the High Court of a State, the High Court of the FCT Abuja, or the Federal High Court. In construction disputes, enforcement often targets bank accounts, receivables, retention monies or security instruments and any delay can undermine the economic value of the award and destabilize project close-out.<sup>36</sup>

Furthermore, the AMA 2023 emphasizes the continued partnership between courts and arbitration; courts enforce arbitration agreements, support interim measures and recognize awards, but they also remain an arena for challenges. The AMA 2023 attempts to structure arbitration-related court proceedings by rules and schedules (including provisions intended to reduce delay), reflecting a policy objective to curb the long-standing problem of slow arbitration-related litigation. For construction stakeholders, the key practical takeaway is to anticipate court interface as part of dispute strategy, both to obtain supportive relief and to prevent procedural ambush.<sup>37</sup>

Recent international-facing commentary notes that Nigeria has become a closely watched jurisdiction for arbitration-related litigation and that the true measure of reform is not in the

<sup>33</sup> AMA 2023 ss 50 (costs), 52 (security for costs) and 62 (disclosure of TPF) <https://www.kadunajudiciary.org/assets/resources/Arbitration%20and%20Mediation%20Act%202023.pdf> accessed 18 April 2026

<sup>34</sup> Rosewood Legal, 'Arbitration in Nigeria: Procedure for Recognition and Enforcement of Arbitral Awards' <https://rosewoodlegal.com/arbitration-in-nigeria-procedure-for-recognition-and-enforcement-of-arbitral-awards/> accessed 18 April 2026

<sup>35</sup> AMA 2023 ss 82–84 <https://www.kadunajudiciary.org/assets/resources/Arbitration%20and%20Mediation%20Act%202023.pdf> accessed 18 April 2026

<sup>36</sup> AMA 2023 ss 57–58 and s 91 (interpretation) <https://www.kadunajudiciary.org/assets/resources/Arbitration%20and%20Mediation%20Act%202023.pdf> accessed 18 April 2026

<sup>37</sup> Alliance Law Firm, 'Enforcement of Arbitral Awards under the AMA 2023 and other extant statutes' (15 December 2025) <https://alliancelawfirm.ng/enforcement-of-arbitral-awards-under-the-provisions-of-the-arbitration-and-mediation-act-2023-and-other-extant-statutes-in-nigeria/> accessed 18 April 2026

statute's text but in court interpretation and application.<sup>38</sup> This highlights that the AMA 2023 introduced express recognition of emergency arbitrators, third-party funding and clearer enforcement procedures, but also warns that judicial decisions are already testing these provisions' reach. For construction disputes, this underscores the importance of monitoring emerging case law, especially around interim relief, stays, and enforcement, because these issues directly affect project cash flow and risk allocation.<sup>39</sup>

One concrete illustration of the court-interface risk concerns limitation and enforcement timing. Commentators note that disputes had arisen under the old regime about when time began to run for enforcement, and Supreme Court authority in *City Engineering v Federal Housing Authority*<sup>40</sup> treated time as running from the breach giving rise to arbitration. The AMA 2023's limitation provisions and the exclusion of arbitration time from enforcement computation are designed to mitigate this risk. However, these provisions will still require careful judicial application, and construction parties should not assume that limitation issues disappear; they must be managed from project inception.<sup>41</sup>

Also, the introduction and adoption of an Award Review Tribunal-type (ART) mechanism, which considers pertinent issues such as confidentiality, emergency arbitrators and interim measures under the AMA 2023<sup>42</sup> though commendable, may, for the Nigerian construction arbitration, draw scrutiny and may succeed only if they demonstrably reduce delay without undermining due process.<sup>43</sup>

## 6. The Unresolved Gap: Statutory Adjudication and Security of Payment

The AMA 2023 modernizes arbitration and mediation, but it does not provide a construction-specific cash flow remedy comparable to statutory adjudication/security-of-payment regimes in some jurisdictions. Industry commentary reiterates that there is no specific statute prescribing construction dispute resolution in Nigeria; mechanisms are contractual. This matters because many construction disputes are payment disputes requiring an interim decision during performance rather than an award after project completion.<sup>44</sup>

Adjudication is increasingly discussed in Nigerian construction circles as a quick private process producing an interim binding decision pending final determination by arbitration or litigation.

<sup>38</sup> Tiwalade Aderoju, *Arbitration-related litigation in Nigeria: recent judicial developments and their cross-border implications* <https://www.ibanet.org/arbitration-related-litigation-in-nigeria> accessed 18th April 2026

<sup>39</sup> International Bar Association, 'Arbitration-related litigation in Nigeria: recent judicial developments and their cross-border implications' (29 October 2025) <https://www.ibanet.org/arbitration-related-litigation-in-nigeria> accessed 18 April 2026

<sup>40</sup> (1997) All NLR 1

<sup>41</sup> AMA 2023 s 34  
<https://www.kadunajudiciary.org/assets/resources/Arbitration%20and%20Mediation%20Act%202023.pdf>  
accessed 18 April 2026

<sup>42</sup> AMA 2023 s 56  
<https://www.kadunajudiciary.org/assets/resources/Arbitration%20and%20Mediation%20Act%202023.pdf>  
accessed 18 April 2026

<sup>43</sup> Abdul Jinadu, 'Arbitration and Mediation Act 2023 – Nigeria' (Keating Chambers, September 2024) <https://www.keatingchambers.com/wp-content/uploads/2024/09/Arbitration-and-Mediation-Act-2023.pdf>  
accessed 18 April 2026

<sup>44</sup> Stren & Blan Partners, 'Construction Law and Adjudication: Trends in Nigeria' (8 January 2024) <https://strenandblan.com/construction-law-and-adjudication-trends-in-nigeria/> accessed 18 April 2026.

Recent commentary notes that adjudication is not as popular in Nigeria and attributes this to limited awareness and an under-developed enforcement landscape. The absence of a statutory enforcement route reduces adjudication's utility as a cash flow tool, because parties may still need arbitration or court proceedings to monetize an adjudicator's decision.<sup>45</sup>

Professional materials discussing FIDIC<sup>46</sup> style dispute boards show that contractual adjudication/DAAB<sup>47</sup> mechanisms exist in standard forms, including appointment processes and decision pathways. However, without statutory 'pay now, argue later' backing, a DAAB decision may not deliver the immediate cash flow remedy that makes adjudication effective elsewhere. The policy implication is that Nigeria's dispute framework remains 'award-centric': parties still rely heavily on arbitration for disputes that are, in economic terms, interim payment problems.<sup>48</sup>

## 7. Conclusion

The AMA 2023 materially upgrades Nigeria's arbitration and mediation toolkit in ways that match the dispute profile of construction and infrastructure projects. Mandatory court referral to arbitration, emergency arbitration, enforceable interim measures, consolidation and joinder, a modernized setting-aside regime, third-party funding and enforceable mediated settlements collectively strengthen the legal infrastructure for project delivery and investment confidence. Yet the Act is not self-executing: its gains will be realized only through consistent judicial application, institutional competence and disciplined clause drafting across complex project contract suites. The next phase of Nigerian construction dispute policy should therefore pair the AMA 2023's modern arbitration framework with construction-specific cash flow protections, ensuring that dispute resolution supports, rather than disrupts timely infrastructure delivery.

## 8. Recommendations

1. Harmonize dispute clauses across the contract suits. Where multi-party disputes are foreseeable, parties should align seat, institutional rules, appointing authority, language, and consolidation/joinder provisions so that AMA 2023 sections 39–40 can operate without collateral litigation. This is especially important for infrastructure projects delivered through multiple work packages and layered subcontracting.
2. Build interim relief into project governance. Parties should preplan potential interim scenarios and ensure that contract documentation and internal escalation processes allow rapid access to emergency arbitration and interim measures. Given the Act's recognition and enforcement of interim measures, well-prepared interim applications can prevent *'fait accompli'* outcomes in bond calls and termination disputes.
3. Institutionalize third-party funding safeguards. Arbitral institutions and tribunals should standardize disclosure timelines and conflict checks and develop transparent approaches to

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<sup>45</sup> Africa Construction Law, 'Construction Adjudication in Nigeria: Navigating the Enforcement Landscape' <https://africaconstructionlaw.org/construction-adjudication-in-nigeria-navigating-the-enforcement-landscape/> accessed 18 April 2026

<sup>46</sup> International Federation of Consulting Engineers – global representative body for consulting engineers.

<sup>47</sup> Dispute Avoidance/Adjudication Board – this is part of a multi-tiered dispute resolution procedure.

<sup>48</sup> Quantity Surveyor Registration Board of Nigeria, 'Application of New Concepts to Construction Contracts Dispute Resolution and Management – Adjudication' (May 2025) [https://qsrbn.gov.ng/wp-content/uploads/2025/05/ADJUDICATION-PAPER-BY-ANAGO\\_055333.pdf](https://qsrbn.gov.ng/wp-content/uploads/2025/05/ADJUDICATION-PAPER-BY-ANAGO_055333.pdf) accessed 18 April 2026

security for costs in funded cases. This supports access to arbitral remedies while protecting respondents from unrecoverable costs in high-value construction disputes.

4. Use mediation as a project continuity tool. Parties should draft escalation clauses that trigger mediation for discrete disputes and ensure settlement agreements meet statutory requirements for enforceability. Where disputes are cross-border, parties should also consider the Act's approach to international settlement agreements under the Singapore Convention framework.
5. Consider complementary construction-specific reform. Policymakers should evaluate the case for statutory adjudication/security of payment to protect cash flow during performance, drawing on the growing domestic discussion of adjudication and dispute boards. Such a reform would complement the AMA 2023 by reducing insolvency risk and keeping projects moving while reserving arbitration for final determination.