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CRITIQUE OF THE AUTONOMOUS NATURE OF PARTY AUTONOMY IN ARBITRATION

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Abstract

There is a global increase in the preference for arbitration. This increase has reinforced the growing disaffection for the conventional adversary method of dispute resolution which litigation provides. The agreement of parties is recognized as the heart of any arbitration proceeding. It constitutes a contract to which parties refer theirdisputes which have either arisen or that may arise in future to arbitration. This libertyto consensually execute an arbitration agreement is what is now recognized as the principle of party autonomy.

Party Autonomy afford parties a right whether in domestic, international commercial arbitration, ad hoc or institutional proceedings to choose and determine their agreed applicable substantive law as well as the procedure to be adopted, these laws and procedure when chosen, regulate their relationship.

It is however doubtful whether parties have absolute freedom to determine the arbitration process, and in actual fact, what has the freedom of parties achieved in the resolution of disputes? And lastly, whether party autonomy is a reality?

This article adopts the doctrinal research method and analyses in summary, the principle of party autonomy and answers the question whether the practical applicationof party autonomy in arbitration is indeed a reality without any limitation.

Keywords: Autonomy, Party autonomy, Arbitration, and Nigeria

Introduction / Brief Historical Background

It is argued that Party Autonomy originated from the writings of Charles Dumoulin who is acclaimed to be the father of party autonomy. According to Dumoulin, "*the willof the parties is sovereign*". This will is considered the leading factor in the determination of parties' contract and remained unassailable till date.

Party Autonomy transformed from the then prevailing approach of lex loci contractus meaning "the law of the place of contracting". Hitherto the emergence of Party Autonomy, contractual agreements were subject to the law of the place where the contract was made.

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Party Autonomy postulates that parties are free to agree on the arbitral procedure. It is acknowledged in major international arbitration conventions including the

celebrated New York Convention. It is now guaranteed by arbitration statutes in virtually all developed jurisdictions and contained in and facilitated by the rules of most leading arbitral institutions. It is essentially perceived as an important legal principle rooted in the recognition of individual freedom. It is important to note that party autonomy goes along with parties' agreement.

Agreement And The Fundamental Nature Of Arbitration Agreement

An arbitration agreement is a substantive contract between the parties to the arbitration.It is central to arbitration proceedings. The parties' consent is a basic requirement for arbitration agreement. Parties' intention to submit to arbitration must unequivocally arise from the agreement freely entered into by parties.

In essence, arbitration agreement presupposes the following:

- Reflects the autonomy of parties to settle their disputes through arbitration rather than the court of law.
- Allows parties formulate their own terms of the agreement, it designs a process which caters precisely for their needs.
- Precludes judges from resolving the conflicts that the parties have agreed to submit to arbitration unless both parties expressly or tacitly agree to waive the arbitration agreement

It is also pertinent to look at the Nigerian Arbitration and Conciliation Act.

The Nigeria Arbitration and Conciliation Act

In Nigeria, the Arbitration and Conciliation Act, CAP A.18 L.F.N., 2004 governs arbitration proceeding and Arbitration Rules made thereunder.

The Arbitration and Conciliation Act, CAP A. 18, Laws of the Federation of Nigeria, 2004 recognizes the principle of party autonomy in its provisions. Sections 2, 6, 7, 9, 10, 13, 16, 17, 18, 19, 20, 21, 22, 24, 25, 26 and 28 contains provisions / phrases such as "by parties agreement", "the parties may determine", "the parties may specify", "the parties agree", "unless otherwise agreed by the parties", "the parties may by agreement", "subject to any contrary agreement by the parties", and "if requested by the parties" among others.

It is worthy to emphasize Section 2 of the Act which provides that: *"Unless a contrary intention is expressed therein, an arbitration agreement shall be irrevocable except by the agreement of the parties or by leave of the court or a judge".*

Parties to arbitration process are free under the Act to choose the applicable law to regulate their transaction. For instance, Article 47(1) of the Arbitration Rules state that:

"the arbitral tribunal shall decide the dispute in accordance with the rule in force in the country whose laws the parties have chosen as applicable to the substance of the dispute".

With this provision, it is obvious that the principle of party autonomy largely influences the choice of law applicable to the dispute.

Similarly, Section 47(4) of the Act makes it clear that the tribunal shall not decide ex aequo et bono or amiable compositeur, unless the parties have expressly authorized it to do so. Furthermore, Section 47(5) provides that the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

The Arbitration and Conciliation Act, CAP A. 18, Laws of the Federation of Nigeria, 2004 confers on parties the freedom to resolve, by agreement, the number of arbitrators and their appointment, place of arbitration and language to be used in arbitral proceedings.

The freedom to choose the applicable law is very fundamental due to the fact that the dispute will be decided in accordance with the law chosen by parties since the parties are bound by the law they have chosen. However, the consideration of the attitude of the court to party autonomy becomes relevant.

Nigerian Courts and Party Autonomy

The Nigeria Supreme Court gave effect to the principle of party autonomy in the case of MV Lupex v Nigeria Overseas Chartering & Shipping Ltd. The apex court held interalia that

"an arbitration clause is a written submission agreed by the parties to the contract and, like other written submissions, it must be construed according to its language and in the light of the circumstances in which it is made. Thus, the parties have full rights to enter into arbitration agreement to suit their purposes".

Also, In Stabilini Visinoni Ltd v Mallinson & Partners Ltd the Court of Appeal, Per Nimpar, J.C.A, held that

"an arbitration agreement generally exists as a clause in a contract agreement and is usually treated separately regardless of what the contract is all about. It is a special clause not affected by the main contract though part of the contract agreement. An arbitration clause usually names its applicable law and this is one of the attractiveness of arbitration in commercial transactions. It is all about the right to make a choice".

Thus, the Nigerian Courts have always given effect to the arbitration clause and agreement of the parties and this sustains the essence of party autonomy.

The Essence of Party Autonomy

Party Autonomy is a basic principle at the heart of both Domestic and International Commercial Arbitration. It is described by Redfern and Hunter in the following terms:

"Party autonomy is the guiding principle in determining the procedure to be followed in an international commercial arbitration. It is a principle that has been endorsed not only in national laws, but by international arbitral institutions and organizations. The legislative history of the Model Law shows that the principle was adopted without opposition…"

Abdulhay also posits that party autonomy is

"the freedom of the parties to construct their contractual relationship in the way they see fit".

Article 19(1) of the UNCITRAL Model Law (The Model Law) is also instructive. It provides as follows:

"Subject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings".

Section 1(b) of the Arbitration Act 1996 (UK) states that the provisions of Part 1 of the Act are founded on stated principles including:

"(b) the parties should be free to agree how their disputes are resolved, subject only to such safeguards as are necessary in the public interest."

In relation to procedure, section 34(1) of the Arbitration Act 1996 (UK) achieves asimilar result to article 19(1) of the Model Law. The said Section 34(1) provides:

"It shall be for the tribunal to decide all procedural and evidential matters, subject to the right of the parties to agree any matter"

Stressing the importance of party autonomy, Section 51 (2)(a) (ii) of the Arbitration and Conciliation Act, CAP A. 18, Laws of the Federation of Nigeria, 2004 states inter alia that the recognition and enforcement of foreign arbitration award may be refused if the arbitration agreement is not valid under the law chosen by the parties. Notwithstanding the various recognition of party autonomy, there are certain challengesconfronting it

Challenges Confronting Party Autonomy

There are a number of challenges confronting party autonomy. It is also pertinent to ascertain whether the parties can agree on any matters they please or are there restrictions? It is germane to ascertain if the tribunal is always bound to follow the agreement of the parties?

There are certain basic principles which parties to arbitration cannot statutorily ignore or violate under any situation. These provisions are codified in the various sections of ACA 2004, UNCITRAL Model Law, various Arbitration Laws as well as the principlesof natural justice which are applicable to all judicial and quasi-judicial authorities and tribunals.

In considering the challenges, it is necessary to distinguish the situation prior to the commencement of arbitration from the post-commencement period.

Prior to the Commencement of Arbitration

When parties draft an arbitration agreement they enjoy broad freedom to construct a dispute resolution system of their choice. For example, the agreement can provide for ad hoc or institutional arbitration, the parties can designate the number of arbitrators, their qualifications and matters relevant to the procedure to be followed. They can even prescribe time limits and can, by way of further example, stipulate that an award mustbe handed down within a prescribed time.

After the arbitration agreement has been concluded and before arbitration commences, the parties are free to modify their agreement in any way they deem fit. They can alter the number of arbitrators, the procedure for the appointment of arbitrators and other matters which they may have previously agreed upon such as the sequence of pleadings and time limits for filing the pleadings.

The parties' freedom to agree on an arbitration regime of their choice and to prescribe the procedure to be followed is however subject to few limitations. They include:

Validity of the Arbitration Agreement

The arbitration agreement must be a valid one according to the law which governs it. This will usually be the law governing the substantive contract in which the arbitration clause is embedded but is not necessarily that law.

This possibility is because the arbitration agreement is regarded as a separate agreementto the substantive contract in which it is contained.

Compliance With Mandatory Rules

The arbitral procedure itself should comply with the mandatory rules of law of the the lex arbitri. The lex arbitri is often the law of the place of the seat of the arbitration. This however does not always represent the position of things.

Using the UNCITRAL Model Law as an example, some of its provisions are mandatory and cannot therefore be excluded or modified by the parties. For example, article 11(2) provides that the parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provision of paragraphs (4) and (5). This makes paragraphs (4) and (5) of article 11, are mandatory.

While it does not expressly say so, it is almost certain that a court would construe article18 as mandatory. It provides that "the parties shall be treated with equality and each party shall be given a full opportunity of presenting his case". Hence, if the parties agreed that only the claimant would be heard in the arbitration, this agreement would be struck out as invalid on account of article18 of the Model Law.

As observed by Holtzmann and Neuhaus:
"[t]he freedom of the parties [under the Model Law] is subjectonly to the provisions of the Model law, that is, to its mandatory provisions. The most fundamental of such provisions, from which the parties may not derogate, is the onecontained in paragraph (3) [Art. 18 in the final text]."

Likewise section 33 of the Arbitration Act 1996 (UK) provides:
"(1) The Tribunal shall-

> *(a) Act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting his case and dealing with that of his opponent, and (b) adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for the resolution of the matters falling to be determined.*

(2) The tribunal shall comply with that general duty in conducting the arbitral proceedings, in its decisions on matters of procedure and evidence and in the exercise of all other powers conferred on it."

This provision is listed in the first Schedule of the Act and is therefore mandatory. Similar provision is contained in Sections 14 and 15 of the Arbitration and Conciliation Act, CAP A.18, LFN, 2004. It provides thus:
"Section 14 – In any arbitral proceedings, the arbitral tribunalshall ensure that the parties are accorded equal treatment andthat each party is given full opportunity of presenting his case. Section 15 – (1) The arbitral proceedings shall be in accordancewith the procedure contained in the Arbitration Rules set out inthe First Schedule to this Act.

(2) Where the rules referred to in sub-section (1) of this section contain no provision in respect of any matter related to or connected with a particular arbitral proceedings, the arbitral tribunal may, subject to this act, conduct the arbitral proceedings in such a manner as it considers appropriate so as to ensure fair hearing.

(3) The power conferred on the arbitral tribunal under sub-section (2) of this section, shall include the power to determine the admissibility, relevance, materiality, and weight of any evidence placed before it".

Section 14 of the Nigeria Arbitration and Conciliation Act 2004 is a replica of Article 18 of the UNCITRAL Model Law. The implication of this provision are as follows: First, that arbitration agreement is the making of the parties to arbitration, however, in the conduct of the arbitral proceedings they are entitled to be equally treated, absence of which result in injustice. Secondly, each party shall be given full opportunity to present his case. Thus, where any of the parties is not given proper notice of the arbitral proceeding or otherwise denied the opportunity to present his case before the arbitral tribunal, the resulting award will be annulled if challenged. Thirdly, Arbitration tribunal being a quasi- judicial authority, the judges should not be appointed as arbitrators.

Rules of Arbitration Institutions

Other restrictions on party autonomy might arise where the parties select institutional arbitration but attempt to alter the rules of the administering body in a way which is unworkable or is not accepted by the administering body. Thus, for instance, if the parties provided for arbitration in accordance with the ICC Rules of Arbitration (ICC Rules) but provide that article 27 of the ICC Rules (which deals with scrutiny of awardsby the ICC Court) will not apply, it is probable that the ICC Court would not accept thecase as an ICC case. Court scrutiny of awards is an important feature of ICC arbitrationsand the administering body is unlikely to agree to waive it.

Apart from mandatory provisions of the law governing the arbitration agreement and the lex arbitri, and subject to "unacceptable" amendments to institutional rules, the parties enjoy very broad freedom in selecting the arbitration regime they desire and in prescribing the procedure to be followed.

After the Commencement of Arbitration

After a dispute has arisen, arbitration maybe commenced and the tribunal established, the freedom of the parties to determine the arbitral procedure may be circumscribed. This is because the constitution of an arbitral tribunal brings into existence a new set of contractual relationships concerning the arbitrators themselves.

There has been some debate as to whether the rights and obligations of arbitrators stem from their "status" as arbitrators and arise directly from law or whether they arise froma contract which is entered into when they accept their appointment.

The view expressed by Fouchard, Gaillard & Goldman is that a contract does necessarily exist between the parties and the arbitrators. The contract is bi-lateral and creates rights and obligations for both the arbitrators and the parties. However, where arbitration is administered by an arbitral institution, the contractual relationship becomes triangular.

Mustill and Boyd take a contrary view. They argue that:

".... to proceed by finding a contract and then applying to it theordinary principles of the law of contract will not produce a reliable answer unless a contract really exists to be found. Even in the case of a massive reference, employing a professional arbitrator for a substantial remuneration, we doubt whether a business man would, if he stopped to think, concede that he was making a contract when appointing the arbitrator. Such an appointment is not like appointing an accountant, architect or lawyer. Indeed it is not like anything else at all.

We hope that the courts will recognize this, and will not try to force the relationship between the arbitrator and party into an uncongenial theoretical framework, but will proceed directly to a consideration of what rights and duties ought, in the public interest, to be regarded as attaching to the status of arbitrator."

English courts, however, appear to disagree with the Mustill and Boyd's view. In at least two cases it has been found that the arbitrators become parties to the arbitration agreement itself. In Compagnie Européene de Cerelas SA, Hobhouse J observed as follows:

"It is the arbitration contract that the arbitrators become parties to by accepting appointments under it. All parties to the arbitration are as a matter of contract (subject always to the various statutory provisions) bound by the terms of the arbitration contract."

While the arbitrators become parties to the arbitration agreement the judge stated that the arbitrators were not parties to the commercial contract and were not, in the proper sense of that word, bound by it.

A similar conclusion was reached in K/S Norjarl A/S v. Hyundai Heavy Industries Co. Ltd. In that case, Mr. Justice Phillips, after reproducing the comment of Mustill and Boyd, above, said that:

"[i]n the present case I do not find the contractual framework an uncongenial one within which to consider the position of the

arbitrators and shall proceed upon the premise, common to both parties, that contractual principles should be applied.

The basic rights and obligations of the arbitrators can be simply stated. By accepting their appointments [they] undertook, in the words of s. 13(3) of the Arbitration Act 1950, 'to use all reasonable dispatch in entering on and proceeding with the reference' – a due diligence obligation. Having accepted appointments as arbitrators [they] have become entitled to reasonable remuneration for their services.

These are conventional features of a contract to provide services."

An appeal to the Court of Appeal was dismissed, with each of the three judges giving reasons. The Vice-Chancellor said that:

"[f]or myself, I find it impossible to divorce the contractual and status considerations: in truth the arbitrator's rights and duties flow from the conjunction of those two elements. The arbitration agreement is a bilateral contract between the parties to the main contract. On appointment, the arbitrator becomes a third party to that arbitration agreement, which becomes a trilateral contract: see Cie Européene v. Tradax, [1986] 2 Lloyd's Rep.
301. Under that trilateral contract, the arbitrator undertakes his quasi-judicial functions in consideration of the parties agreeing to pay him remuneration. By accepting appointment, the arbitrator assumes the status of a quasi-judicial adjudicator, together with all the duties and disabilities inherent in that status."

If the arbitrators become parties to the arbitration agreement or contract it follows that after the tribunal is constituted, the parties themselves cannot unilaterally change the terms of the arbitration agreement without the consent of the arbitral tribunal. Thus if the arbitration agreement itself specified certain times for the taking of procedural steps the parties could not agree to change those times without the consent of the arbitral tribunal. This result must follow if the view is accepted that the arbitrators become parties to the arbitration agreement.

Other Challenges Confronting Party Autonomy

- **Mandatory Provisions in the Act**

There are some basic mandatory provisions limiting the party autonomy principle in arbitration. These provisions are contained in various Arbitration Laws. In Nigeria, the following factors, among others, are mandatory under the ACA 2004:

- Arbitration agreement must be written;

- The parties shall be treated equally and given full opportunity to present their case;
- Parties must be allowed to exchange their statements of claim and statements of reply during arbitration proceedings;
- Advance notice of tribunal must be given to the parties and such statement communicated to the parties;
- The award under Arbitration law is equated with an ordinary award;
- Arbitration award must be in writing and signed by the arbitrator and copy delivered to the parties.

Failure to comply with the above provisions will affect the resulting award and renderit null and void.

Third Parties

The issues relating to third parties constitute another challenge to party autonomy since arbitration agreement binds only the parties. The parties cannot agree on anything that can affect third parties directly. It follows that where parties have conferred such power upon the arbitral tribunal, the arbitrator cannot compel third parties to attend the hearings as witnesses.

- **Court Interference**

International commercial arbitration recognizes that the courts shall not interfere in arbitral proceedings. This is fundamental to the process. The court, in deserving circumstances, would intervene to assist the parties in the arbitral process. An exampleof a situation where the court will intervene to assist parties in the arbitral process is ina situation of recognition and enforcement of the arbitral award. Other examples include granting interim measures of protection over properties that are the subject matter of the arbitration and security for cost. It is also relevant to look at the principle of public policy.

- **Public Policy**

Finally, the principle of public policy has been considered to be a major limitation to party autonomy in arbitration particularly International Commercial Arbitration. The term “public policy”, according to Ansari, is a sociological concept which comprises the society’s culture, moral values, belief etc., which is accepted and applied in the society.

Public policy is dynamic in nature and it varies with time and place. Many countries have accepted it as a fundamental principle of the country and hence, any violation of this principle will render the order or award as null and void. In the case of arbitration proceedings, it amounts to limit on the party autonomy. Violation of public policy is a good ground for challenging an award and as a result, renders the award unenforceable.

Due to the importance of public policy as a limitation to party autonomy in commercial arbitration, Tamara listed the following in its favour:

- It prevents parties from using arbitration to legitimize illegal and immoral contracts. Thus protecting the integrity of arbitration.
- It acts as a limit to party autonomy which may likely be abused by the parties.
- It protects the society from any violation of its fundamental principles.
- It serves the purpose of permitting the judge of a state not to give effect to an award that would contradict the fundamental principles of the judges' social system.
- It serves as a ground for the non-recognition and non-enforcement of an award that is contrary to the state's public policy.

However, there are a number of scholastic views on how autonomous party autonomyis.

Scholastic Views on Party Autonomy

Several scholars have made attempts at explaining Party Autonomy as the guiding principle in determining the procedure to be followed in arbitration. The question however remains "*how autonomous is party autonomy in arbitration?"*

Michael Pryles asked:
"The question for the Arbitral Tribunal is whether it is obliged to accept the parties' agreement or whether, assuming it is not so obliged, it should accept them nonetheless".

He distinguished the challenges confronting Party Autonomy as that which can arise under two situations to wit:

- Before the commencement of an arbitration
- After the commencement of an arbitration

According to him, before the commencement of arbitration, the parties draft an arbitration agreement. At this stage, they enjoy broad freedom to construct a dispute resolution system of their choice. They determine either ad hoc or institutional arbitration, the number and qualification of arbitrators, matters relevant to the procedure to be followed as well as prescribe time limits

After concluding the arbitration agreement and before commencing arbitration, he opines that parties can again alter any or all of their above agreement. *Fouchard and Goldman* stated that Party Autonomy is limited if the arbitration agreement is not valid. Party Autonomy is limited if the arbitral procedure itself does not comply with the mandatory rules of law of the lex arbitri (the law of the place of the seat of the arbitration.

Michael Pryles creates an example from the Model Law some of which provisions are mandatory and cannot therefore be excluded or modified by parties e.g. Article 11(2) which gives parties freedom to agree on a procedure of appointing the arbitrators subject to paragraphs (4) and (5) thereof as well as Article 18 which provides that the parties shall be treated with equality and each party given a full opportunity to presenthis case.

In essence, by virtue of Article 18 of the Model Law, as earlier observed herein, if parties agreed that only the claimant would be heard in the arbitration, this agreement would be struck out as invalid.

Holtzmann and Neuhaus noted that the freedom of the parties (under the Model Law) is subject only to the provisions of the Model Law i.e. the mandatory provisions.

Michael Pryles noted that restrictions on Party Autonomy might arise where parties select institutional arbitration but attempt to alter the rules of the administering body ina manner not accepted by that administering body.

After the establishment of the arbitral tribunal, once a dispute has arisen, the freedom of parties to determine the arbitral procedure is circumscribed.

According to Michael Pryles, the constitution of an arbitral tribunal brings into existence a new set of contractual relationships between parties and the arbitrators themselves.

Ar. Gor. Seyda Dursun noted that the principle of Party Autonomy is not unlimited as in deserving circumstances, it may be subject to some restrictions which restrictions include the arbitration agreement itself as some disputes such as in the realm of criminal law are not capable of being resolved by arbitration because they are public policy matters for the national courts except when the existing law allows for plea bargain in the said case.

It becomes clear that the principle of Party Autonomy may not be as autonomous as it has been propounded but has some limitations and challenges as argued in this paper.

Suggested Anti-Dote

Applying the principle of party autonomy to determine the freedom of parties to agreeon the procedure to be adopted in arbitration can be a complex matter. The principle ofparty autonomy lies at the centre of the arbitration process. In the context of party autonomy, the parties can choose applicable laws and conduct the arbitration process such as the determination of the composition of the arbitral tribunal, language of arbitration, place of arbitration and the law to be applied to the arbitration proceedings, among others things. In order words, party autonomy allows the parties to determine all the essential elements of the arbitration.

This principle thus distinguishes arbitration from other alternative dispute resolution mechanisms. It plays an important role during the whole arbitration process. It is a principle based on the freedom of contract. The parties can exercise this freedom at every stage of the arbitration. Nonetheless, the principle is not unlimited as it is subjectto restriction in some circumstances. For instance, to checkmate the excesses of partiesto commercial arbitration, courts have been given power to intervene where theprocedures adopted by parties or the resulting award therefrom are contrary to public policy.

In principle, the court always intervenes to ensure that the arbitration agreement is valid and in accordance with the law which governs it and that the parties' agreement is not contrary to public policy. Again, the violation of the principle of natural justice and non-arbitrability of arbitration agreement among other things are factors evolved to act as checks and balances on the principle of party autonomy thus restricting them from executing agreement that may affect public interest.

In order to streamline the principle of party autonomy viz-a-viz the court's intervention in deserving cases, the following are suggested as the way forward.

First, parties' agreement should supersede and must be given priority at all times. Hence, court intervention should be limited to only where parties' agreement is unenforceable by any standard or where it is intended to be used as instrument of fraud or to undermine the legal system of the lex arbitri.

Second, in cases where parties could not establish the applicable procedural rule but require the consent of the arbitral tribunal, the arbitral tribunal should be cautious before it seeks to impose a rule at variance with that agreed upon by the parties. To this extent, in deciding whether to make an order in terms of the parties' agreement, the tribunal should carefully consider the reasons underlying the parties' agreement in so far as it is aware of them.

Finally, since it is private complaint that usually sets court's intervention in motion, courts must be circumspect in intervening in the matter unless the applicant convinces the court of the injustice he has suffered or may suffer under the arbitral agreement executed by the parties.

Conclusion

The principle of party autonomy is a strong weapon in the hands of the parties to arbitration. The Nigeria Arbitration and Conciliation Act 2004, the UNCITRAL Model Law as well as other legal regimes designed after the model law, support party autonomy. This principle is widely accepted in both the domestic and international arbitration as a key element in all arbitration agreements and as an effective tool in promoting and protecting the interests of parties to commercial arbitration. While so much has been said in retaining this principle in commercial arbitration, it should be noted that "party autonomy" is not synonymous with "unlimited power" or "complete autonomy", as this will lead one to conclude that party autonomy is a principle without flexibility and peculiarity.

To this end, party autonomy, as the word connotes, a fundamental principle in international commercial arbitration, is with significant practical applicability. However, it admits some limitations. These limitations are the exceptions to party autonomy in commercial arbitration. Hence, the principle of party autonomy is arguably not cast in iron. Unless the parties to the arbitration comply with the essential validity of arbitration agreement as highlighted in this article, the functional application of the doctrine of party autonomy may be far from reality