BEYOND THE SIGNATURE PAGE: WHAT EMTS V. AFDIN VENTURES MEANS FOR ARBITRATION AND CORPORATE STRUCTURING IN NIGERIA

Introduction

For a long time, the starting point in arbitration was simple, if a contract was not executed by you, you were not bound by the clause that sent the arising dispute to arbitration. The Supreme Court in ***EMTS Limited v. Afdin Ventures Limited & Ors*** **[2026] LPELR-83327 (SC),** recently departed from this established principle. The Court held that an arbitration agreement can bind a person who never signed it, as long as that person derived a benefit from the contract, assumed obligations under it, or was otherwise closely tied to the transaction. This piece traces the dispute, sets out the reasoning, and considers what it means in practice for anyone who drafts commercial agreements, sets up special purpose vehicles, or thinks about liability in group structures.

The Facts of the Case

The 1st and 2nd Respondents sued at the Federal High Court in Abuja for the refund of substantial sums, reported as approximately USD 43.3 million, from EMTS Limited (trading as 9mobile) and other defendants. The claim arose from an investment transaction documented in an Offer of Terms and a Custodial Agreement, both of which contained an arbitration clause. On the application of the defendants, and with the parties' concurrence, the matter was referred to arbitration.

A sole arbitrator was appointed. After issuing a partial award on jurisdiction, the arbitrator went on to make a final award ordering EMTS, jointly and severally with two other respondents, to refund the sums claimed. The difficulty for EMTS was that it had not signed either of the agreements containing the arbitration clause. The arbitrator nonetheless found, on the evidence, that EMTS was closely tied to the transaction and had received substantial sums flowing directly from it, and proceeded to assume jurisdiction over it.

The Federal High Court recognised and enforced the award. The Court of Appeal affirmed that decision. EMTS then appealed to the Supreme Court, arguing that since it had never signed the agreements, the arbitrator had no business making an award against it at all.

The Decision

The Supreme Court rejected that argument, and did so on a fairly clear line of reasoning.

First, it separated two distinct questions: whether a valid arbitration agreement exists between the original signatories, and who counts as a party to the arbitration proceedings once that agreement has been invoked. Signing the contract creates the mechanism. Once the mechanism is triggered and an arbitration is properly constituted, the resulting award can bind everyone who is a party to the proceedings, whether or not they signed the underlying document.

This is where the reliance on the Arbitration and Mediation Act 2023 (the AMA) comes in. The Court pointed to the definition of "party" in the arbitration context, which is not limited to those who put pen to paper. It extends to any person claiming through or under a party. The same principle existed under section 57 of the old Arbitration and Conciliation Act 2004, so this is less an invention than a confirmation of a definition that has been sitting in the legislation for some time.

Having established that a non-signatory can, in principle, be bound, the Court then set out the basis on which a court or tribunal decides whether a particular non-signatory should be bound in a given case. It distilled three connected ideas.

The first is that consent can be inferred from conduct. If a person who never signed the contract nonetheless participates in performing it, or takes a benefit under it, that conduct can be read as an intention to accept the dispute resolution mechanism that comes with the contract. Put simply, the Supreme Court invoked the age-long doctrine that one cannot approbate and reprobate at the same time. Should you derive benefit from the contract, you should expect to be bound by it to some extent.

The second is a fairly direct application of equity. A person who knowingly takes a benefit flowing from a transaction cannot then turn around and say the mechanism for resolving disputes about that transaction does not apply to them. On the facts, the arbitrator found that EMTS had received significant sums under the very agreements containing the clause, and the trial court and Court of Appeal both accepted that finding.

The third is more of a policy concern than a legal test. The Court was alive to the risk that arbitration could be manipulated if a party could take the economic benefit of a transaction through related entities, then avoid the consequences of an award simply by pointing out that its name was not on the signature page. It approved the earlier Court of Appeal reasoning in ***Metroline Nigeria Limited v. Dikko*** **[2018] LPELR-46853(CA),** where a non-signatory whose role sat at the centre of the dispute was held bound by the arbitral proceedings.

In getting there, the Court was fairly direct about where it was positioning Nigerian law. It described arbitration law as having moved past a rigid approach that binds only the person who signed. It rejected the strict signature-based argument put forward by EMTS as an outdated formalism out of step with modern commerce.

PRACTICAL TAKEAWAYS

Drafting of agreements. Contract drafters can no longer assume that keeping an entity off the signature page is enough to keep it out of arbitration. If an affiliate, parent, or related party is going to receive funds or benefits connected to the contract, that reality should be addressed expressly in the drafting rather than left to be inferred later by a tribunal. Where the intention genuinely is to keep certain entities outside the dispute resolution mechanism, the flow of payments and performance needs to match that intention on the ground, not just on paper.

Setting up SPVs. The judgment has real implications for the classic derisking device of routing a transaction through a special purpose vehicle to insulate the parent or group from liability. The Court's reasoning suggests the corporate separation has to be followed through in practice, not just in the incorporation documents. If the SPV signs the contract but the parent is the one actually receiving payments under it, the parent may still be pulled into arbitration despite never having signed anything. The protective value of the SPV structure holds up better where funds are paid to the SPV first, even if the SPV then passes them on to the parent afterward, since the Court's own reasoning drew that distinction.

Liability generally in commercial structures. Groups of companies that operate as a single economic unit in substance, moving funds and performance across affiliates while maintaining formal separateness on paper, should expect that substance to be given weight over form if a dispute goes to arbitration. This is not a wholesale abolition of the corporate veil, but it is a signal that courts and tribunals will look past the entity that signed to the entity that actually benefited or performed.

CONCLUSION: Commercially Aware, or a Risk to Business

The decision reads as commercially aware rather than commercially disruptive. It targets a specific and recognisable form of gaming, where a party takes the upside of a deal through a related entity and then tries to escape the downside through the same structure. Businesses that operate their group structures honestly, where the entity that signs is genuinely the entity that performs and benefits, have little to fear from this decision. What it does require is more discipline in how transactions are structured and documented, since the comfort of assuming that only the signatory can be dragged into arbitration is gone.

There is a modest risk of a chilling effect on legitimate uses of SPVs, particularly in financing and project structures where a parent company routinely guarantees or supports an SPV without intending to be bound by every dispute mechanism the SPV enters into. Parties in that position will now need to be more deliberate about how funds move and how obligations are framed, to avoid being drawn into arbitration proceedings they did not sign up for. But this is a manageable cost of clearer drafting and better structuring discipline, not a fundamental threat to the use of SPVs or group structures in Nigerian commerce. On balance, the decision strengthens confidence in arbitration as an enforcement mechanism more than it undermines legitimate corporate planning.