

AN ANALYSIS OF ALTERNATIVE DISPUTE RESOLUTION IN NIGERIA

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Abstract

The Court has been and still is the traditional means of dispute resolution in present-day Nigeria. However, the resolution of disputes by litigation in Court is filled with uncertainty and anxiety as no party can be confident about the outcome of the matter until the end of the litigation process which could last for several years. More so, with litigation, there is little or no confidentiality while existing relationships are destroyed or totally killed. Why then should parties litigate when they can arbitrate? Litigation is basically service-based, and as such, there is every need to ensure that the end-user of litigation, who basically is the common man, gets value, satisfaction and indeed justice at the end of his case. Value in this respect, goes beyond winning a case but extends to getting justice as fast as possible because justice delayed is justice denied. It is also said justice with high speed is justice denied. This paper therefore generally discussed laws governing Arbitration in Nigeria with special focus on various tools that conflict can be resolved its strength and advantage over litigation; which if properly employed by stakeholders within the Nigerian Justice system, possesses the ability to reduce court congestion, eradicate the problems of delay, and restore back the hopes of the common man in the Nigerian Justice system. This paper adopted doctrinal research methodology in an effort to apply the practice of alternative dispute resolution in Nigeria, observed the challenges confronting the formal legal system practiced in Nigeria, recommended that customary arbitration and forms of ADR should be encouraged to compliment the legal system and provide viable resolution channel for the people, conclusion the ADR provides an appropriate framework for resolving disputes and so, is wider acceptable and preferred method of resolving disputes in Nigeria and across the globe.

Keywords: Conflict; Dispute; Negotiation; Conciliation; Mediation; Arbitration.

1. Introduction

Disputes have been existing since the creation of man, disputes among human being are as life itself and they will continue to exist. In wider perception, dispute could mean conflict or disagreement which is an inevitable part of human interaction, as a result of the inevitability of conflicts. One thing is clear and that is that conflicts certainly occur daily in our private

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and public life, conflict exists at different levels no two parties are totally agreed on everything that arises in connection with whatever it is that binds them together. Arbitration and alternative dispute resolution (ADR) are potential tools for conflict resolutions due to the negative outcomes of litigation hence reliance became obvious on dispute resolution as means of conflict resolution. In some circumstances, many are resolved amicably, the different method for resolution of conflicts are negotiation, conciliation, mediation and arbitration. This paper defines the meaning of ADR, conflict, dispute and discusses the law governing arbitration in Nigeria, the various tools that conflict can be resolved i.e negotiation, conciliation, mediation, arbitration, early neutral evaluation, fact finding, med-arb, mini trial, advantages and disadvantages of alternative dispute resolution, observations, recommendations and finally conclusion.

2. Meaning of Alternative Dispute Resolution

Alternative dispute resolution means different thing to different jurisdictions, but the unanimity is that ADR is an abbreviation that carries various meanings depending on jurisdiction.¹ In an attempt to proffer a definition, some authors ended up describing ADR in comparison with litigation and thus averred that ADR as litigation involves an independent third party whose function is fundamentally different from that of a judge and is best described as a neutral facilitator. He does not impose a decision on the parties but his role is to assist the parties resolve the dispute themselves². He may give opinion on issues in dispute but his primary function is to assist in achieving a negotiated solution.³ According to Carita Wallgren, ADR could be defined as processes aimed at resolution of a difference or a dispute through voluntary settlement agreement reached with the assistance of third person(s).⁴ While, Efevwerhan defined ADR as a range of procedures that serve as alternatives to litigation through the courts for the resolution of disputes which generally involves the intercession and assistance of neutral and impartial third party.⁵ The above definitions, no doubt, have essentially underscored the central theme of this study. They are therefore adopted as

¹Umar, M. A. & brahim, AU, *Alternative Dispute Resolution (ADR) as a Mechanism for the Resolution of Commercial Dispute in Nigeria in Current Themes on Nigerian Law & Practice* [Published by University of Maidugri Press for Faculty of Law, 2016], Pp.174-175

²Ibid P.175

³Redfern, A & Hunter, M, *international and Commercial Arbitration* (London Sweet and Maxwell, 1999 3rded, P.32

⁴A .I Abubakar, *Appraisal of Alternative Dispute Resolution ADR as Means of Promoting Access to Justice in Nigeria* [Being Thesis of the Usmanu Danfodiyo University, Sokoto 2021] pp45-48

⁵Efewwerhan, D., *"Principles of Civil Procedure in Nigeria* [2nded..Snaap Press Ltd, Enugu Nigeria. 2018] P.331.

workable definitions in this study. Thus, ADR is an umbrella term which includes various procedures or forms of ADR methods. These forms of ADR method which vary in form and content are as follows:

2.1 Conflict

Conflict is derived from *Confligere* Latin word that means “shocking together”.⁶ According to Galtung, cited in Webel⁷, things referred to as shocking together are the goals or interests of the parties, when the realization of one excludes the realization of others.

Conflict as an element of social interaction has been defined in various dimensions. Some writers argue that a conflict situation emerges when two or more parties could not agree on an issue. The parties to such conflict may not necessarily be government or nation states.⁸

In a similar vein, Bamikole described conflict as the differences in the interests of people or between groups of people, which could be material, religious, ethnic, ideological and any other thing that make people fight one another. It may provide wars that result in depopulation and devastation. At the move to cushion these effects, hence, a need for its resolution is necessary.⁹ Furthermore, Bercoritch and Zartman¹⁰ defined it as a struggle over values and claims to scarce status, power and resources in which the aims of the opponent are to neutralize, injure, and/or eliminate the rivals.

Conflict is also described as a condition in which identifiable group of human beings whether tribal, ethnic, linguistic, religious, socio-political, economic, cultural or otherwise, is in conscious opposition to one or more other identifiable human group because these groups are what to be incompatible goals. Individuals who have partly incompatible ends in which the ability of one actor to gain his ends depends on an important degree on the choices or decisions that other parties will take.¹¹ These choices and decisions so made and taken according to Nwaneri, invariably affect the needs of others and once this clashes, conflict is

⁶ Oladimeji, A. D., "Interrogating the involvement of Native Gods in Contemporary African Conflict Management, *Global Journal of Politics and Law Research*, vol. 3, No.3, (2015) P.60 Published by European Centre for Research Training and Development, UK (www.aajournal.org). Accessed 22nd February, 2022

⁷ Webel, C & Galtung J. "A Handbook of Peace and Studies A Conflict Studies, [New York, Routledge:2010]

⁸ Theresa, A. A, & Oluwafemi, B.L. Methods of Conflict Resolution in African Traditional Society African Research Review. *An International Multidisciplinary Journal, Ethiopis*, vol. 8(2), serial No. 33, (2014), P.140

⁹ Bamikole, L. O, "Agba (Elder), as Arbitrator: A Yoruba Socio-Political Model for Conflict Resolution[A Paper presented at the Afolabi Olabintan Memorial Biennial International Conference held at College of Humanities, Tai Solarin University of Education, Ijebu-Ode, Nigeria in Arigu Aisha, O.O. and Olusola, O. "Traditional Rulers and Conflict Resolution An Evaluation of pre- and post-colonial Nigeria: Research on Humanities and Social Sciences, vol. 3, No. 21, 2013)

¹⁰ Bartcoritch, J. & Zartman, W. J., "The SAGE Handbook of Conflict Resolution.[SAGE Publications 2007], p.30

¹¹ Quincy Wright, *The Escalation of International Conflicts in Clajelt Smith Conflict Resolution Contributions of Behavioural Science* [ed, Noitre Dame Press London 1971] P.40.

bound to ensue or arise between the persons involved and affected¹². Conflicts according to some writers need not always be seen from negative perspectives. Conflict to this group of writers is seen as a positive agent of social change.¹³

However, the manner in which conflict is handled determines whether conflict will be constructive or destructive. When conflicts are carefully and skilfully handled, opportunities might be opened for personal growth and create the change needed to improve interpersonal relations. Failure, however, to handle conflicts with care and tact could lead to civil strife or full scale war between warring communities or nations.¹⁴

2.2 Dispute

The term dispute is defined as to quarrel, argue, to question the truth of, to fight hard for.¹⁵ Dispute may relate to rights, status, reputation, lifestyle, quantifiable monetary claim, or any other aspects of personal or community activity.¹⁶ Dispute arises in societies as a consequence of interaction among its members. The greater or more frequent the interaction amongst those differing needs or conflicting interests, the high the chances of disputes.¹⁷ In the word of Ngo-Pondi,¹⁸ a dispute is a disagreement, usually involving a demand and a refusal. A dispute he stated creates conflict when the disputing parties confront each other with opposing actions and counteractions.¹⁹ Disputes in a nutshell are an expression of people's differences and by avoiding those differences.²⁰ It is worthy to note that the solution required in certain dispute is to end the dispute rather than to resolve them. Scholars in this regard, for the purpose of clarity, have argued that where for instance an object is the subject of a dispute between two people, taking the object away from both parties ends the dispute. To resolve a dispute however, would involve deciding who is entitled to the object and on what terms as against the other²¹. Though, the terms conflict and dispute are used interchangeably, there is a difference between them. While conflict includes coercion and aggressive behaviours, dispute involves disagreement on minor issues which may or may not

¹²Ibid.

¹³Nwaneri, A. C. *Appraisal of the ADR Process In Nigeria, ADR and Contemporary An Issues & Legal Essays* [Lecture in Honour of Justice Ibrahim Tanko Muhammad, CON USC, Rtd, Abuja, 2010], P.26.

¹⁴A I Abubakar[n4].

¹⁵Ibid.

¹⁶Ibid.

¹⁷Haruna B. A. *Alternative Dispute Resolution (ADR): Concept, Dimension and a new Adaptation. Kano Bar Journal Nigerian Bar Association (NBA) Branch, Vol.1, No.1 (2013)*1 P. 219.

¹⁸A.I Abubakar [n4]

¹⁹Ibid

²⁰Ibid.

²¹Akindipe and Sanni, *Fact Finding and Dispute Resolution an: Introduction to Legal Method.* [2nd ed. Ife OAU Press Ltd 2006]. Pp 137-138

have elements of destructive or extreme actions. All conflicts are disputes but all disputes are not conflicts.²²

Dispute, no doubt, is a natural phenomenon in human society.²³ It is inevitable and unavoidable in human co-existence, particularly as each person makes choices and take decision, the choices and decisions so made and taken invariably affect the needs, interest and goals of others and once this clashes, dispute or conflict is bound to arise between or among the persons involved or affected.²⁴ They have to be resolved in such a manner to ensure peace, stability, harmony and progress in all aspects of human society. The need for conflict or dispute resolution process to ensure how best to serve the specific interest of the parties and how best to ensure that justice is easily accessible efficient and effective to the parties to the dispute, therefore, becomes indispensable.

3. Laws Governing Arbitration in Nigeria

In Nigeria, the law and practice of arbitration service mainly from some sources. They are:

- i. Convention on the Recognition and Enforcement of foreign Arbitral Awards 1958.
- ii. United Nations Commission on International Trade Law 1985 (The UNCITRAL Model Law, 1985);
- iii. The UNCITRAL Arbitration rules;
- iv. Constitution of the Federal Republic of Nigeria 1999 (as amended) and the Arbitration and Conciliation Act, 2004.
- v. Trade usage and customs²⁵

However, apart from the Arbitration and Conciliation Act there are other statutes that govern arbitration in Nigeria. The ACA recognize that in section 235 which provides:

This Act shall not affect any other law by virtue of which certain disputes:

- a) May not be submitted to arbitration; or
- b) May be submitted to arbitrate only in accordance with the provisions of that or another law.

The other statutes that govern arbitration and/or other ADR mechanisms in Nigeria include:

- i. Nigeria Co-operatives Act Section 49²⁶

²² A.I Abubakar[n4]

²³ Animashaun, R.O, Preserving the Traditional Measures of Preventing Conflict in Africa institute of African studies, University of Ibadan, Nigeria, *journal of Education Research and Behavioural Sciences* (2013) vol 2112), P.232. available online at <http://www.apexjournal.org>: Accessed on 22nd February,, 2022

²⁴ Nwaneri, A.C[n13]

²⁵ (2003) 9 NWRL (pt. 826) 592. Alternative Dispute Resolution

²⁶ Cap N 98 LFN 2004, Section 49 on Settlement Dispute

- ii. Minerals and Mining Act-Sections 76 and 255²⁷
- iii. National Health Insurance Scheme Act – Section 26²⁸
- iv. Nigerian Communications Commission Act²⁹
- v. Nigerian Investment Promotion Commission Act-Section 26³⁰
- vi. Petroleum Act-Section 11³¹
- vii. Regional Centre of International Commercial Arbitration Act³²
- viii. Trade Disputes Act - Sections 4, 6 and 8³³ Note however that the provisions of the Arbitration and Conciliation Act Cap A18 LFN 2004, does not apply to any proceedings of an arbitration tribunal appointed under the Trade dispute Act or to any award made by it.³⁴
- ix. Public Enterprises (Privatization and Commercialization Act-Sections 27, 28 and 30³⁵
- x. Evidence Act 2011¹⁹³
- xi. Cooperative Societies Laws of Lagos State³⁶
- xii. Industrial Inspectorate Act³⁷
- xiii. Trade Disputes (Essential Services) Act³⁸
- xiv. The Nigerian Liquefied Natural Gas (Fiscal Incentives, Assurances and Guarantees) [NLNG] Act-Section 22³⁹
- xv. The Oil Pipelines Act⁴⁰
- xvi. Nigerian Export Processing Zone Act-Sections 4 and 6⁴¹
- xvii. 1999 Constitution as amended –Section 19(d)
- xviii. Consumer Protection Council Act-Sections 2 and 5⁴²
- xix. Environmental Impact Assessment Act-Sections 29, 31 and 33⁴³

²⁷ CAP M 12 LFN 24, Section 255 on Application of ACA

²⁸ Cap N 42 LFN 2004 Section 25 on Establishment and functions of the state and Federal Capital Territory Board.

²⁹ Cap N 97 LFN 2004 Section 4 on Function of the Commission

³⁰ Cap N 117 LFN 2004, section 28 & 30, Section 11 Settlement of Dispute by Arbitration

³¹ Cap R5 LFN 2004 Section 4 on Functions and Power of the Center

³² Cap T8 LFN 2004 Section 6 and 9 reference of Dispute to Arbitration Tribunal if Conciliation fails

³³ S. 12 (1) of Trade Dispute Act, Cap T8 LFN 2004

³⁴ Cap P8 LFN 2004, Sections 27, 28 and 30 Establishment and Membership of the Public Enterprise Arbitration Panel

³⁵ Section 256 (1) (a) i.e non –application of the Act. to Arbitration.

³⁶ Cap C15, Laws of Lagos State of Nigeria, 2004, (Section 42(2) (b)

³⁷ Cap18 LFN 2004, Section 4 on Arbitration

³⁸ Cap T9 LFN 2004 Section 5 Power to refer Dispute to Industrial Arbitration Panel for Settlements

³⁹ Cap N87 LFN 2004

⁴⁰ Cap 07 LFN 2004

⁴¹ Cap N 107 LFN 2004

⁴² Cap C 25 LFN 2004

xx. Matrimonial Causes Act-Sections 11 and 30⁴⁴

3.1 Arbitration under Arbitration and Conciliation Act

Arbitration under the ACA is governed by the Arbitration and Conciliation Act, Cap A 18 Laws of the Federal Republic of Nigeria 2004. Since arbitration is not in the exclusive legislative list of the federal government as contained in second schedule, part 2 of the 1999 constitution [as amended], there are various laws on the subject matter and rules of court of the states of Nigeria. Thus for instance, we have the Lagos State Arbitration Law 2009. Once parties to a contract voluntarily submits to arbitration by their agreement or clause in their contract, a decision of an arbitrator will be binding on them in case of dispute to reflect the consensual nature of arbitration, except such decisions are set aside by the court under the conditions set out in ACA. Salami JCA in *Environmental Dev. Construction & Anor v Umara Associates Nigeria*⁴⁵ captured this well when he said:

Where the parties as, the instance case, voluntarily submitted their case to an arbitration on the row accord, pleading themselves as beforehand to be bound by their findings, unless some fundamental error committed by them in their proceedings or their decision is otherwise unsupportable on some ground, the decision and a party would not be allowed to settle out of it simply reason that it did not favour it. The submission the parties irrevocable unless by leave of court, or a judge by mutual consent, and shall have the same effect in all respect as if had been made an order of court.

Under the ACA, there are two forms of arbitration agreements domestic and international agreement and proceedings. To constitute a valid arbitration agreement, under the Act there must be a valid contract in writing to submit differences to arbitration whether such differences are present or future and whether or not an arbitrator is named in the agreement. By section 1 of the Act, every arbitration agreement shall be in writing contained:

- i. In a document signed by the parties⁴⁶ or
- ii. In an exchange of letters, telex, telegrams or other means of communications which provide a record of the arbitration agreement⁴⁷ or

⁴³ Cap E12 LFN 2004

⁴⁴ Cap M7 LFN 2004

⁴⁵ (pt 652) 293 at 293 at 304

⁴⁶ *Tinplate Co v Hushes* (1891) 60 LJ 189

⁴⁷ *Frank Fehr & Co v Jivraj Co Ltd.* (1949) 82 *Lyloyds Law Report* 673

- iii. In a point of claim and of defence in which the existence of an arbitration agreement is alleged by one party and denied by the other.

Added to this is that any reference in contract to document contain in an arbitration clause an arbitration agreement if such contract is in writing and the reference is such as to make that clause part of the contract.

The arbitration agreement may arise by the incorporation of a document containing an arbitration clause in another under which the dispute arises.⁴⁸ Thus for instance, in *Grey V. Morrison*,⁴⁹ a lease contained a provision for the reference to arbitration of all disputes there under. A supplemental deed subsequently entered between the parties by which the lessee under the lease was released from the observance of certain covenants in the lease, contained no arbitration clause. The plaintiff brought an action in respect of a dispute arising under the supplemental deed. The court held that the arbitration clause for the lease and the supplemental deed varied the lease as to the covenant, but it did not vary it as to the provision for arbitration.

An arbitration agreement under the Act will bind not only the actual parties to it, but also assignee of a contract containing it the agents of the parties and the personal representatives.⁵⁰ But like *Nwako* by rightly opined where the right of action, the rights duties and obligations of the parties are extinguished by death of either party to arbitration agreement owing to the operation of the rule *action personalismoritur cum persona* (a persona right of action dies arbitration concerning their right , duty obligation, and privileges are extinguished with it and the said arbitration agreement shall no longer bind the representatives, executors, agents, and administrators of the deceased party.⁵¹ However, that this common law principle of *action personalis moritur cum persona*, has been seriously eroded by section 1 of the Law Reform (Miscellaneous Provisions) Act 1934 which provides in general terms that the death of any person all causes of action subsisting against or vested in him shall survive, or s case may be, for the benefit of his estate.

3.2 Institutional Arbitration

An institutional arbitration is one conducted under the auspices and rules of permanent arbitral institutions, centre, organizations or agency. Just as the institutions are not arbitral tribunals, they therefore do not resolve disputes themselves. Their principal role is to prove

⁴⁸ *K.S.U.D.B v Fanz Const.Co. L.t.d (Supra) ; Commerce Assurance L.t.d v Alli (supra)*

⁴⁹ (1878) 37 LT 220

⁵⁰ *Shager v woof* (1946) CH 320 at 323

⁵¹ *Nzom v Jinadu* (1987) 1 NWRL (pt. 51)533;

the rules and administrative facilities to keep arbitrators conciliators appointed by the parties to operate. Some arbitration institutions are devoted general commercial dispute resolution whereas others are limited by the subject matter of the dispute and the natures of the parties that can make use of their facilities.

Some notable arbitration institutions include:

- i. American Arbitration Association (AAA) founded in USA in 1925.
- ii. Arbitration Institute of the Stockholm Chamber of Commerce (SCC) founded in Sweden in 1917.
- iii. Australian centre for International Commercial Arbitration founded in Australian 1985.
- iv. Beijing Arbitration Commission (BAC) founded in China in 1996.
- v. Association Franchised' Arbitrage (AFA) founded in 1957 and based in France.
- vi. Cairo Regional Centre for International Commercial Arbitration (CRCICA) found in 1979 and based in Egypt.
- vii. Centre de Arbitrage Mexico (CAM) founded in 1997 and based in Mexico.
- viii. Chamber of National and International Arbitration Milan – CAMERA ARBITRATALE MILAND (CAM) founded in 1985 and based in Italy.
- ix. Common Court of Justice and Arbitration (CCJA) with headquarters in Abijan, Ivory Coast.
- x. Court of Arbitration of the Polish Chamber of Commerce 'Sad Arbitrazowy przy Krajowej izbie Gospodarczej (SAKIG) found in 1950 and based in Poland.
- xi. International Centre for Settlement of Investment Disputes (ICSID) founded in 1966 and based in Washington.
- xii. London Court of International Arbitration (LCIA) founded in 1891 and based in United Kingdom.
- xiii. Permanent Court of Arbitration (PCA) founded in 1899 and based in Hague, Netherlands.
- xiv. Regional Centre for International Commercial Arbitration (RCICAL), Lagos, Nigeria- established in Lagos, Nigeria in 1989.
- xv. Rabat International Mediation and Arbitration Centre (CIMAR), Rabat, Morocco.

xvi. Nigerian Institute of Chartered Arbitrators (NICARB); Lagos, Nigeria – founded in 1979 under the leadership of Bola Ajibola, SAN, KBE and incorporated in 1988 under CAMA.⁵²

Suffice it say that arbitration institutions have played a leading role in the development and smooth operation of international trade.

4. Negotiation

Negotiation is the use of information and powers to affect behaviour within a “web of tension”.⁵³ Negotiations involve direct discussions or communication between the parties with a view to resolving their difference. In most cases, parties to a conflict would usually first explore the chance of resolving the dispute themselves. Sometimes they succeed sometimes they don't. Negotiation may fail because the parties lack the skill to search for creative option for resolving their disputes⁵⁴. Negotiation can be conducted by a competitive or collaborative approach although the latter is to be preferred and highly recommended.⁵⁵

Negotiation: The most common form of dispute resolution negotiation is the process by which the parties voluntarily seek mutually acceptable agreement to resolve their common dispute Compared with processes involving third parties, generally, the facilitator's role is to keep the parties talking and bargaining by allowing the disputants themselves to control the process and the solution. The facilitator prepares the memorandum of agreement containing all the points agreed, while the parties can then formalize the memorandum by inserting a condition that will be binding.

5. Conciliation

This is a process in which a third party meets with the disputants separately in an effort to establish mutual understanding of the underlying causes of the dispute and thereby promote settlement in a friendly, unantagonistic manner. It is often the first step, and at times sufficient, to resolve disputes.⁵⁶ The Conciliator guides and advises the parties to settlement by making proposals for settlement.⁵⁷

⁵² Nigerian Institute of Chartered Arbitrators

⁵³MA Ikhariale, *Arbitration and other ADRs: International Perspective*, [being materials presented at the "Fast Track Fellowship Programme" held on 5 October, 2015 at the Oriental Hotels, Lagos]

⁵⁴Nwosu, K. N. "Key to Successful Negotiations. In: Nwosu, K. N. (Ed) *Legal Practice Skills and Ethics in Nigeria*: DCO Consulting, Lagos, Nigeria. (2004) P. 277.

⁵⁵Odoh, B. U., *Alternative Dispute Resolution (ADR) as a Current Trend-on Dispute Resolution In Nigeria*, [Unpublished LLM Dissertation, Ahmadu Bello University Zaria, Nigeria 2011].

⁵⁶Prof O. Oluduro PhD, FCArb. And A. O Oluwadayisi, PhD, *Abitration and ADR; A Tool for Conflict Resolution and Additional Career for Professionals*, *Journal of Arbitration ,Nigerian Institute of Chartered Arbitrators volume16* [,2021] pp5-6

⁵⁷Ibid.

6. Mediation

Mediation: A voluntary and informal process in which the disputing parties select a neutral third party (one or more individuals) to assist them in reaching a mutually acceptable settlement. Once selected, the mediator will arrange the mediation process. Unlike a judge or arbitrator, the mediator has no power to impose a solution on the disputants; instead, the mediator assists them in shaping solutions to meet their interests.⁵⁸ Depending on the type of dispute and mediator's approach, the mediator's role and the mediation process can take various forms. For example, Mediators who prefer a "facilitative" style encourage parties to generate their own settlement options, while mediators who favour "evaluative" style will propose settlement options and endeavour to persuade parties to make concessions.⁵⁹

7. Arbitration

Arbitration as a form of ADR denotes a procedure through which disputes are resolved by a person or persons acting in a judicial manner rather than a court of competent jurisdiction.⁶⁰ It is an adjudicatory dispute resolution process in which one or more arbitrators issue a decision on the merits (which may take binding or non-binding forms) after an expedited, adversarial hearing, in which each party has the opportunity to present proofs and arguments.⁶¹ In arbitration, the parties generally agreed to the procedure before the dispute arose; the parties mutually decide who will hear the matter; and the procedure is less formal than court adjudication. The parties may set the procedural rules and substantive law. Upon appointment, the arbitrator will arrange the process to hear and consider the evidence, review arguments and thereafter will publish an award in which the items of dispute are decided; and the cost of the arbitration are disposed of in the Arbitrator's Award, unless the parties have some agreement to the contrary.⁶²

8. Early Neutral Evaluation (ENE)

ENE, like mediation, is applicable to several types of civil cases. "ENE brings parties and their lawyers together early in the pre-trial phase to present summaries of their cases and receive a nonbinding assessment by an experienced, neutral attorney with expertise in the substance of the dispute, or by a magistrate judge."⁶³ The evaluator may also provide case

⁵⁸Ibid.

⁵⁹Ibid.

⁶⁰Guthrie (Nig) Ltd v. Kwara. State Government &Ors [2018] All FWLR [Pr. 964] 2041 at2061

⁶¹.Pro O.Oludoro PhD,FCArb and A. O Oluwadayisi [n56]

⁶² Ibid

⁶³Ibid

management and settlement assistance; in some courts, it has evolved settlement device and resembles evaluative mediation.

9. Fact-Finding

It is a process by which a third party appointed parties to render binding or advisory opinions regarding facts to a dispute. The third party neutral may be an expert scientific or legal questions may be representatives designated parties to work together, or may be appointed by the court.⁶⁴

10. Med-Arb

A short-hand reference to the procedure mediation arbitration, in which parties agree to mediate their dispute with understanding that any issues not settled by mediation will be read by arbitration, using the same mediator to act both as mediator or arbitrator. However, having the same individual act in both roles have a chilling effect on the parties participating fully in mediation they might even that the arbitrator will not be able to discuss unfavourable information learned during the previous mediation.⁶⁵

11. Mini-Trial

A voluntary process in which cases are heard not by judge, but by a panel of high-level business representatives from disputing sides with full settlement authority; a neutral advisor may not oversee this stage. First, parties have a summary hearing side presenting the essence of their case; and each party thereby learn the strengths and weaknesses of its own case, as well as the other parties. Second, the panel of party representative attempt to resolve the dispute by negotiation. The neutral advisor may offer advisory opinion about the potential outcome in court, to all negotiators.⁶⁶

The most appropriate form of ADR for a particular case depends upon the needs of the parties to the dispute and the nature of the dispute.

12. Advantages of ADR

This paper has given some benefits of ADR in the course of discussion above. However, for purposes of elucidation, this paper mentions the following as the benefits of ADR over litigation.⁶⁷

⁶⁴ Ibid

⁶⁵ Ibid

⁶⁶ Ibid

⁶⁷ A. N Edeh, *Alternative Dispute Resolution [ADR] in Nigeria*[CIDJAP Press Enugu2018]27-31

It saves money. The cost of filling a suit in court, seeking the services of a legal practitioner, obtaining evidence and processing such evidence, calling witnesses may be enormous when compared to the cost of resolving disputes through the ADR methods.

It saves time. Under the traditional court system, deciding cases involves procedures that are time consuming. The processes of obtaining evidence, presenting the evidence, getting and preparing witnesses and the defence proceedings take time. This can lead to delaying of justice which goes to the aphorism that justice delayed is justice denied. The parties in litigation do not have control over the proceedings as a lot of factors can cause delay in litigation process.⁶⁸ In ADR, the parties involved in the dispute have the control over the speed at which a resolution is reached in contrast to cases decided in a court of law.

The issues resolved through the ADR techniques end up bringing satisfaction to the aggrieved parties, as the parties at the end of the day" come to a common ground whereby each is happy with the outcome. Sometimes in litigation, the aggrieved party (loser) looks for opportunity for further litigation, through appeals in higher courts. Issues of appeal do not arise in ADR as each party reaches a mutually beneficial agreement that satisfies their position or aspirations.

It improves and sustains cordial relationship among parties. When disputes are resolved through any ADR mechanism the parties are left happy and they can continue to develop existing relationship. This is not so in litigation where most often, after the litigation, parties develop hatred, bitterness and rancour towards each other as a result of the win-lose situation. ADR maintains the privacy of the parties as against litigation where cases are required to be heard in public⁶⁹ except where the law provides otherwise. Thus, the processes of ADR are generally confidential. However, the exact scope of confidentiality will depend upon the available statutes and the disputant agreement to use ADR.

ADR provides platforms for informal and less confrontational means of dispute resolution. It avoids placing the label "wicked enemy" on the other party but rather creates a friendly atmosphere for dispute resolution.

ADR increases flexibility and control. It gives the parties greater flexibility and control in the procedures followed. In ADR the parties choose the process to use, the law to be followed, whether it is binding or non-binding, when and where it will take place, the choice of the

⁶⁸ Effiom vs. The State (1995) 1 NWLR (pt. 373) 50

⁶⁹See, Section 36(3) of the 1999 constitution of Federal Republic Nigeria[as Amended]

neutral and the extent of their participation. This is not so in litigation as the law to be followed, the venue, the umpire (i.e judges/magistrate) etc have been fixed for the parties by law.

In ADR, a much broader range of potential remedies are generally available than in litigation. Disputants/claimants are not limited to monetary remedies or other remedies that a court could order. Parties can fashion their own remedies to resolve a dispute.

ADR processes, for instance, mediation can take into account a wider variety of interests and concerns than litigation. The main focus in litigation is in the legal rights and responsibilities of parties. In ADR, legal obligation can be addressed but it can also take into account a wide variety of non-legal interests and concerns such as an interest in pre serving the relationship, in giving feelings acknowledged or in preventing similar or other disputes in future. This is done by uncovering and addressing feelings, such as anger or hint which may be fuelling the conflict.

Opportunity to tell own story: parties often expect that a dispute resolution process will give them an opportunity to be heard to tell their side of the story. ADR mechanisms can permit parties to tell their story to the other side and to a neutral third party in a way that is unavailable in litigation.

In ADR process, disputants are not limited to answering questions as they would in litigation. It reduces stress and increases satisfaction. Researches have shown that the disputants who have used ADR processes are generally satisfied with both the process and the result and are more likely to abide by the terms of the resolution.

Many disputes can be resolved on documents with ADR without a hearing. Thousands of disputes are resolved each year in this way.⁷⁰

13. Disadvantages of ADR

Despite the enormous benefits of alternative dispute resolution and its universal acceptance, it still has some limitations. Some of the limitations or, disadvantages are:⁷¹

Inability to decide certain cases especially criminal ADR do not settle cases like murder, armed robbery, rape, dissolution of a statutory marriage, election petition cases, winding up of a registered company in event of insolvency or bankrupt etc. Although these cases can be compromised in court, they are still subject of litigation not ADR.

⁷⁰ Jabita v. Onikoyi (2004) All FWLR (PL. 233) 1625 at 1653-1654

⁷¹A. N Edeh,[n40]

Its adoption may also at times be limited by cost most especially when a party to a dispute cannot employ the services of a qualified practitioner. Thus for instance, the institutional arbitration may be expensive as the institute has fixed the price for the parties who generally do not have power to bargain on the price.

Time to resolve a conflict may also be a limitation. In order for some disputes to be resolved for a win-win situation, the resolution may have to be concluded within stipulated time agreed upon by parties. Where however parties fail to agree, the resolution procedure may drag on.

Due to the voluntary nature of ADR, a party may refuse to accept what is termed as the best resolution and therefore, refuse to abide by the mandate of the award. This will not apply to an award made by an arbitral tribunal in a case where parties have an arbitration agreement and an arbitration clause in their contract. In such a case the award is final and binding on the parties and a party is not allowed to resile from it unless it is set aside by a competent court.⁷²

ADR is not new to Africa and Nigeria in particular. Thus before the advent of Europeans, Nigerian tribes have been practicing ADR. For instance, in traditional Yoruba and Igbo villages and towns, ADR is commonly employed to resolve cases among communities, families' people or groups. The aggrieved individual or parties consult the principal head of family or the community leader, heads or even the king where applicable. The community head or head of family or the *Umunna* in turn invites the other party or parties to a meeting at a set date and place, when and where the parties will meet in order to resolve the issues. This method of dispute resolution has resolved major disputes and brokered peace where war, protest, or fracas would have resulted. Thus ADR mechanism helps to promote dialogue and preserves relationship where possible.

14. Observations

The paper observed the challenges confronting the formal legal system as practiced in Nigeria today that denied many people access to justice. In similar vein, the paper observed the increasing urbanization and modernity continue to generate dispute and produce delinquent behaviour of kinds among the people yet the orthodox judicial system is either inaccessible in terms of cost or procedurally frustrating, such that people's abhorrence for litigation is increasing by the day.

⁷²*Aye-Fenus Ent. Ltd v. Saipem (Nig) Ltd* (2009) 2 NWLR (pt. 1126) 483; *Triana Lid v. UTB Plc* (2009) 12 NWLR (pt. 1155) 313; *Leka v. Tyo* (2007) 11 NWLR (pt. 1045) 385.

The paper observed that due to voluntary nature of ADR, party may refuse to accept what is termed the resolution and refuse to abide by the mandate of the award although this does not apply to arbitral tribunal award.

15. Recommendations

The paper recommended that customary arbitration and others forms of ADR should be encouraged to complement the legal system and provide viable dispute resolution channel for the people. The paper recommended to the parties to accept and abide by the terms of resolution awarded as they apply to arbitral tribunal award.

16. Conclusion

The ADR provides an appropriate framework for resolving disputes, and so, its wider acceptance and a preferred method of resolving disputes in Nigeria and across the globe; and has been recognised by rules of various Court in Nigeria. Alternative dispute resolution is the order of the day and preferred method for settling dispute not only in Nigeria but all over the world.

From the above discussion, it can be concluded that alternative processes are beneficial not only for conflicting parties but for public as well. They free the overloaded court system from a large number of civil cases. As a result, court can concentrate their efforts on complicated civil, criminal and constitutional cases. Moreover, alternative dispute resolution is not legal concept. This is a certain type of psychology, which leads to reaching compromise and peace. In this respect ADR has no legal, territorial or ideological boundaries and may be adopted from one country or culture to another it is as a result of the outweighing advantages of ADR that it is commended as tool for resolving disputes.