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Alternate Dispute Resolution: a Panacea to the Nigerian Judicial System[2]

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Abstract

The role of alternative dispute resolution (ADR) in the management of cases and disputes in Nigeria and across the globe cannot be overemphasized. The judicial arm of the government is the arm responsible for interpretation of laws in Nigeria and the judiciary's role in preserving the rights of citizens across Nigeria also cannot be overemphasized. It ensures that the society is stable in the face of instability and ensures that lawlessness is not maintained. The judiciary ensures that laws made by the legislature are obeyed by ensuring that those who violate the provisions of any established laws are punished. In doing all these, it has been established that the system of administering justice in our courts in Nigeria is extremely slow. Considering the foregoing, alternative dispute resolution as a means of settling disputes has been of tremendous help in easing the hardship of getting cases resolved through the court system. This paper examines ways through which alternative dispute resolution has assisted the Nigerian judicial system and the need to use alternative dispute resolution the more in order to ensure that number of cases handled by courts are drastically reduced. Recommendations are made at the end of the research.

Keywords: alternative dispute resolution, courts, judicial system, Nigeria, panacea.

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ADEOLA OLUFUNKE KEHINDE

Alternatywne rozstrzyganie sporów: panaceum na nigeryjski system sądownictwa[3]

Streszczenie

Nie można przecenić roli alternatywnego rozstrzygania sporów (ADR) w prowadzeniu spraw sądowych i sporów w Nigerii i na świecie. Władza sądownicza odpowiada za interpretację przepisów prawa w Nigerii i nie można również przecenić roli sądownictwa w zabezpieczaniu praw obywateli Nigerii. Zapewnia ona stabilność społeczeństwa w obliczu niestabilności oraz brak utrzymywania bezprawia. Sądownictwo gwarantuje przestrzeganie praw wydanych przez władzę ustawodawczą poprzez zapewnienie, że ci, którzy łamią jakiekolwiek ustanowione przepisy, zostaną ukarani. We wszystkich tych działaniach ustalono, że system wymierzania sprawiedliwości w sądach w Nigerii działa wyjątkowo wolno. Wziąwszy pod uwagę powyższe, alternatywne rozstrzyganie sporów jako sposób rozwiązywania sporów stanowi ogromną pomoc w łagodzeniu trudów rozstrzygania spraw przez system sądownictwa. Niniejszy artykuł bada sposoby, którymi alternatywne rozstrzyganie sporów wspomagało nigeryjski system sądownictwa oraz tym większą potrzebę stosowania alternatywnych metod rozstrzygania sporów w celu zagwarantowania znacznego zmniejszenia liczby spraw sądowych. Na końcu badania zamieszczono zalecenia.

Słowa kluczowe: alternatywne rozstrzyganie sporów, sądy, system sądownictwa, Nigeria, panaceum.

[3] Badania wykorzystane w artykule nie zostały sfinansowane przez żadną instytucję.

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Introduction

For various obvious reasons, quarrel do ensue among individuals or groups in homes, churches, schools, communities and societies at large. This is the nature of society and persons or groups that make up the society. Disputes are common in society as it is unavoidable due to the nature of men who build up the society. The role of law in society is to ensure maintenance of law and order and ensure peace, since disputes are antithesis to peace, law and order in the society, there must be ways to bring back normalcy into the society whenever such dispute arises. Society usually builds or sets up a system or systems to contain disputes. Dynamics of nature, beliefs and knowledge and practices makes it necessary that the dispute settlement systems meet the demands of the society. This is particularly so because it is important and wise and in the interest of a (dynamic) society that effectiveness and efficiency prevail in outputs of these dispute settlement systems.[4]

The judiciary is the third arm of government in Nigeria and it is responsible for the maintenance of law and order in the society. Thus, whenever disputes arise between or among individuals, governments, political allies, families, churches and so on, they have causes to resolve the disputes through litigation before competent courts. The courts in Nigeria have been of tremendous help in resolving disputes among people for ages now and a lot of success has been recorded in this area.[5] However, it has been observed that because of the large number of cases instituted on daily basis in Nigerian courts, the courts are congested now and the administration of justice has become embarrassingly slow which has negative effects on the litigants before the court.[6] It is the common saying that 'justice delayed is justice denied'; this has been the system in Nigeria now where a particular case may last up to ten, fifteen, twenty years or more in our courts.[7] In the process, parties to the disputes before the court might have died before such a case is concluded and many more, then, can we say there is justice for the dead and other

4 O. Orojo, A. Ajomo, *Law and Practice of Arbitration and Conciliation in Nigeria*, Lagos 1999.

5 A. Kehinde, *Impact of Alternative Dispute Resolution (ADR) in Resolving Disputes Over Telecommunication Mast Installation in Nigeria*, "Joseph Ayo Babalola University Law Journal" 2019, 7, p. 210.

6 Ibidem, p. 212.

7 Ibidem, p. 210.

parties who could not reap the benefit of the litigation? This is of great concern to relevant stakeholders in the judicial system in Nigeria and Nigerians at large.

Alternative dispute resolution is a way of resolving disputes outside the courts. While making use of ADR, people submit themselves to settlement of their cases through amicable settlements rather than the usual formal way of resolving disputes, which is litigation. In Nigeria, ADR has so far been of help in reducing the bulk of work in our courts, and this has been helpful. This paper examines how far ADR has helped in administration of justice and how ADR can be effectively used further to reduce the number of cases instituted in our courts across Nigeria.

It has been observed that various High Courts across Nigeria have included ADR process in their rules of court that ADR option be first explored before an action can be instituted in the courts and it has been observed that judges across the country do encourage parties before them to explore the option of ADR before litigation which has also been helpful. This paper describes and explains how ADR has been of help to the Nigerian legal system.

Methodology

The article relies on the doctrinal research methodology. Doctrinal research is concerned with legal propositions, the sources of data are legal and appellate courts decisions. It is library research; it includes primary and secondary sources. The primary sources are statutes, the Constitution, acts and laws, while secondary sources are books, articles, etc.

Some of the primary sources explored here are: the 1999 Constitution of the Federal Republic of Nigeria (as amended),[8] various High Court Rules of different states across Nigeria and the Administration of Criminal Justice Act.[9] The secondary sources include books, articles and journals related to the subject matter of this research. The internet has turned the whole world into a global village, it helps a lot in various researches of various natures. There is no information needed that cannot be obtained from the internet. Thus, the internet is of tremendous help in putting this article together.

8 The 1999 Constitution of the Federal Republic Nigeria (as amended) Cap C23, LFN 2004.

9 Administration of Criminal Justice Act 2015.

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Problems Associated with Nigeria's Judicial System and the Need for ADR[10]

Litigation is the major way of resolving disputes in Nigeria. It has been noted that judicial system in Nigeria is faulted with delay, cumbersome procedure, the rigidity of procedure and technicality, among other things. Introduction of ADR to the judicial system has brought a lot of relief in this regard.[11] Some problems associated with litigation as a means of settling dispute will be briefly highlighted one after the other.

First of all, litigation is very expensive. This makes it very difficult for the less privileged to approach the court whenever their rights are infringed upon. The courtroom has become a place for the rich alone to approach and this cannot be referred to as justice. In any sane society, justice must be done to both the rich and the poor; in this instance, there is no justice anymore as a result of the high cost of litigation as it is difficult for the poor to approach the court to seek redress. Recently, High Court Civil Procedure Rule of Kwara State[12] Nigeria was amended and the filing fee of processes skyrocketed according to the new rule. This is a greater burden on those who have been finding it difficult to approach the court even before the so-called amendment. To embark on an appeal in Nigeria is also of great concern because of the high cost of fees to be paid in filing same; those who felt they did not get justice in the matter at the trial court are unable to appeal the ruling or judgement as a result of the high cost of filing the appeal; then, there is no justice.

Also, procedure in litigation is cumbersome. It is so in the sense that there are time frames stipulated for processes to be filed in court. Where the stipulated time elapses without filing a particular process, that alone can lead to the termination of the case. This can be frustrating, especially for someone who managed to file the case in the first place as a result of a financial constraint. When an application is urgent and needs to be heard urgently by the court, especially an application for injunction, such may not be heard on time until the event to be prevented by such application takes place and the application becomes absolutely unnecessary; this also can be frustrating to the applicant.

In another vein, it has been discovered that technicality is also a problem of litigation. Where a particular procedure is to be followed in filing a matter and the procedure was not properly followed or another procedure is used, that may be the end of the matter once there is an objection by the opposing party as to the

10 A. Kehinde, op. cit., p. 211.

11 Ibidem, p. 212.

12 Kwara State High Court Civil Procedure Rule 2021.

procedural irregularity; technicality is celebrated rather than considering the case on merit and ensuring justice is administered.

Litigation is also time consuming in the sense that a particular matter may last up to ten years or more in the court of first instance; if the matter goes on appeal again, it may last for another ten years and it goes on and on.

Litigation does not preserve relationships. When parties drag one another before a court of law, the relationship between them is soiled; thus, the previous relationship between them whether business, marital, political and so on is affected in one way or the other. There is a popular saying in Nigeria that 'we do not come back from court and still remain as friends.' In effect, litigation affects relationships negatively.

Lastly, number of cases in our courts in Nigeria are so many which leads to delay in hearing such cases. It is a popular saying that justice delayed is justice denied, once matters are delayed in the court, then justice may be perverted.

These are some of the issues that the Nigerian judicial system faces and this calls for an alternative to the system. Alternative dispute resolution is not yet widely used or celebrated as expected in Nigeria. The little cases where ADR has been used in Nigeria has been of tremendous help in reducing the number of cases before the court. This calls for the need to employ ADR the more in Nigeria as a panacea to the judicial system.

Definition of ADR and Its Recognition in Nigeria

Alternative dispute resolution (ADR) is a means of resolving disputes outside litigation.[13] It is a mode of commencing alternative methods and procedures of settling disputes whether civil, criminal, marital, commercial and many more without approaching the courts whose proceedings are cumbersome, expensive, and time-consuming.[14]

Alternative dispute resolution as a means of resolving dispute is recognized by the 1999 Constitution of the Federal Republic of Nigeria (as amended).[15] S 19(d) of the said Constitution provides for a means of settling dispute outside courtroom which include arbitration, conciliation, mediation, negotiation, and adjudication.

13 A. Kehinde, op. cit., p. 215.

14 O. Dinah, *Introduction to Alternative Dispute Resolution*, Lagos 2010.

15 Cap C23, LFN 2004.

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Also, the Rules of Professional Conduct for Legal Practitioners[16] provides to the effect that a legal practitioner shall not fail to inform his client about the mechanism of alternative dispute resolution before resorting to litigation.[17] The Arbitration and Conciliation Act[18] provides for various forms of alternative dispute resolution available and methods through which an aggrieved party can apply for same in settling disputes. Likewise, in any proceeding before the Court, the court may promote reconciliation among the parties and encourage and facilitate an amicable settlement of disputes.[19]

In 2007, the Lagos State government of Nigeria enacted a law establishing Lagos Multi-Door Court House,[20] this is a court-connected Alternative Dispute Resolution Centre. The law provides for the referral of cases from courts in any part of the federation to apply ADR to the resolution of such disputes.[21] It enhances access to justice by providing mechanisms to supplement litigation in the resolution of disputes[22] while minimizing citizen's frustration and delays in justice delivery by providing a standard legal framework for the fair and efficient settlement of disputes through ADR methods[23] and it promotes growth and effective functioning of the judicial system through ADR methods.[24]

ADR has been embraced by many people because the procedure is less formal and parties are more involved in their matter unlike what is obtainable during litigation. The parties are allowed to speak and express their minds in respect to their grievances. Also, the procedure is flexible and there is confidentiality of the whole process of ADR, and it is less expensive.[25]

16 Rules of Professional Conduct for Legal Practitioners 2007.

17 S 15 (3)(d) ibidem.

18 Arbitration and Conciliation Cap A18 LFN 2004.

19 The Federal High Court Act, Cap F12, LFN 2004.

20 Lagos Multi Door Court House Law 2007.

21 Section 1 (2) (b) ibidem.

22 Section 2 (a) ibidem.

23 Section 2 (b) ibidem.

24 Section 2 (c) ibidem.

25 A. Akeredolu, *Duel to Death or Speak to Life: Alternative Dispute Resolution Today and Tomorrow*, 7th Inaugural Lecture delivered on 11 January 2018 at Ajayi Crowther University, Oyo, Oyo State Nigeria.

Various ADR Processes

Arbitration

Black's Law Dictionary[26] describes arbitration as a method of dispute resolution involving one or more neutral third parties who are usually agreed to by the disputing parties, as well as whose decisions are binding. There are many aspects of arbitration some of which are:

Compulsory arbitration: This form of arbitration is the one mandatorily required by a particular law or forced by law on the parties to a dispute. Under this form of arbitration, parties are compelled to submit their differences to arbitration even if it is not their desire to do so. The arbitrator hears arguments from the compelled party, weigh evidence submitted by them and applies the legal rules to the matter. The decision reached is not binding on the parties thereto, thus, parties can reject the decision reached in the proceedings. It must be pointed out that here, parties are forced into arbitration by the state where parties fail to settle their matter amicably and voluntarily and such dispute may affect the public interest and working condition in the state or where there is a national emergency.[27]

Court ordered arbitration: This is also called judicial arbitration, there are instances where arbitration is ordered by a court of law. Here, the court itself manages the arbitration process. Arbitrators are usually volunteered lawyers or retired judges. Decisions reached in the procedure are not binding as parties who are dissatisfied with the decision reached by the arbitrators, the party may appeal to the trial court and the matter will thus be tried in the court.[28]

Grievance arbitration: This arbitration is also known as rights arbitration, it is a binding process of resolving disputes involving interpretation, application and administration of a collective agreement during the subsistence of that agreement. This form of arbitration is a procedure used between a union and an employer in settling a dispute.[29]

Labor law arbitration: This is also known as industrial arbitration. This form of arbitration resolves or settles disputes relating to employment. It addresses employee's grievance, usually relating to an alleged violation of the employee's

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26 B.A. Garner, *Black's Law Dictionary*, 7th ed., Thomson West 1999.

27 https://definitions.uslegal.com/c/compulsory-arbitration/#:~:text=According%20to%20ORS%20%C2%A7%20243.650%2C%20%22Compulsory%20arbitration%22%20means,I%20will%20be%20sure%20to%20pass%20the%20word.%22 (access: 30.01.2022).

28 D. Hensler, *Court-Ordered Arbitration: An Alternative View*, "University of Chicago Legal Forum" 1990, 1(12).

29 https://daitips.com/what-is-grievance-arbitration/ (access: 30.01.2022).

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rights under a collective bargaining agreement. The arbitration procedure is set out in the collective bargaining agreement.[30]

Voluntary arbitration: This arbitration is by the agreement of the parties. Many at times, parties to a contract often include arbitral clause in the agreement to the effect that in the event of any dispute arising from such a contract, parties will first submit themselves to ADR before litigation. Parties choose one or more arbitrators to settle their dispute and give a final decision after hearing.[31]

Domestic arbitration: It is the form of arbitration between persons, resident and doing business in the same country. The contract is expected to be performed in the same country and subject to the local statutes. For instance, the Arbitration and Conciliation Act.[32]

International arbitration: Arbitration is said to be international if the parties to an agreement have their places of doing business in different countries or where the parties expressly agree that any dispute arising from the commercial transaction between them be treated as an international arbitration.[33] The major reason for international arbitration is to provide parties to an international transaction with a neutral forum for resolving any dispute between them.

Institutional arbitration: This is also referred to as administered arbitration. It is the form of arbitration that is conducted by the institution chosen and agreed upon by the parties to a dispute and the proceeding is in accordance with the rules of the institution chosen by the parties. For instance, in Nigeria there is the Abuja Multi-Door Courthouse, Lagos Multi Door Court House etc. It is important to note that the institutions do not by themselves arbitrate on the merits of the parties' disputes; this is the responsibility of the particular individual(s) selected as arbitrators. Arbitrators are virtually never employees of arbitral institutions but instead are private persons selected by the parties. It is only where parties cannot agree upon an arbitrator that the host institution will act as an "appointing authority" which chooses the arbitrators in the absence of the parties' agreement.[34]

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30 R. Dani, https://viamediationcentre.org/readnews/NDE1/Arbitration-in-Labour-Laws#:~:text=Arbitration%20in%20Labour%20Laws%20Alternate%20Dispute%20Resolution%20%28ADR%29%2C,an%20agreement%20without%20using%20the%20means%20of%20litigation (access: 30.01.2022).

31 https://definitions.uslegal.com/v/voluntary-arbitration/#:~:text=Voluntary%20Arbitration%20is%20arbitration%20by%20the%20agreement%20of,important%20elements%20in%20voluntary%20arbitration%20are%20%3A%20a (access: 30.01.2022).

32 Arbitration and Conciliation Cap A18 LFN 2004.

33 A. Jain, *Different types of arbitration procedure applied in resolving dispute and conflict*, https://viamediationcentre.org/readnews/NTMz/KINDS-OF-ARBITRATION (access: 30.01.2022).

34 https://www.lexisnexis.co.uk/legal/guidance/institutional-arbitration-an-introduction-to-the-key-features-of-institutionalarbitration#:~:text=What%20is%20institutional%20arbitration%3F%20An%20

Ad-hoc arbitration: This arises in a situation where parties to a dispute themselves agree to resolve their dispute through arbitration. In this instance, an existing dispute or future dispute may be referred to an arbitration by the parties. The parties are not compelled to submit their dispute to an arbitral institution but they are free to come up with their own rules which should guide the arbitration proceeding.[35]

Documents-only arbitration: As the name implies, this type of arbitration is one in which the arbitrator or panel of arbitrators depend solely on the documents presented by the parties in resolving the dispute between them. Oral presentations are not allowed while making use of this form of arbitration, the documents submitted will speak on behalf of the parties to a dispute and that is what the panel will work with in reaching their decision. This form of arbitration is not time consuming and it saves cost such as travel expenses, the lawyer's fee or the money to be given to a witness in a particular matter. It is important for parties to agree on this before commencement of the proceeding.[36]

Adjudicative claims arbitration: This form of arbitration is established to resolve matters usually handled by courts (such as tort claim) in contrast to arbitration of labor issues, international trade and other fields traditionally associated with arbitration.[37]

Disputes That Can Be Referred to Arbitration

It must be pointed out that it is not every dispute can be resolved through arbitration. All civil and commercial disputes can be resolved through arbitration. Commercial disputes which involve disputes between business partners, consumer transactions, boundary disputes and tortious claims can be resolved through arbitration. There are instances where parties to a contract would include it in the agreement governing their contract or relationship that whenever disputes arise out of such contract, parties should resolve such a dispute through arbitration. If in case of a dispute any of the parties to such an agreement approaches the court for litigation, the

institutional%20arbitration%20is,arbitration%20may%20be%20referred%20to%20as%20administered%20arbitration (access: 30.01.2022).

35 J. Mutevedzi, *Exploring different types of arbitration*, 2020, https://thestandard.newsday.co.zw/2020/03/01/exploring-different-types-arbitration/ (access: 30.01.2022).

36 R. Dani, *Documents-only arbitration*, https://viamediationcentre.org/readnews/MzEy/Documents-only-Arbitration (access: 30.01.2022).

37 https://legal-lingo.com/adjudicative-claims-arbitration#:~:text=adjudicative-claims%20arbitration%20Arbitration%20designed%20to%20resolve%20matters%20usu.,trade%2C%20and%20other%20fields%20traditionally%20associated%20with%20arbitration (access: 30.01.2022).

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court will authoritatively command such a party to refer back to arbitration as has been contained in the agreement governing their contract as such is binding on the parties. Matters relating to copyright and trademark infringement can also be referred to arbitration.[38]

Negotiation

In negotiation, participation is voluntary and there is no third party who facilitates the resolution process or imposes a resolution. Negotiation is a process in which two or more parties hold discussions which will help them reach a consensus on a particular matter that is of concern to them. Negotiation is an indispensable step in any ADR process as it is consensual to all ADR activities. It is believed to be the most satisfactory method of dispute settlement. It involves the discussions or dealings in a matter with the intention to reconcile differences and establish areas of agreement, settlement or compromise that would be mutually beneficial to the parties.[39] It must be noted that parties have the free will to either accept or reject the outcome of the negotiation procedure.

It has also been identified has a form of direct and indirect communication through which parties who are involved in conflicts discuss about their issues amicably by looking at options which can be employed in managing the dispute and ultimately resolving same.[40]

According to Akeredolu,[41] negotiation is the process of communication used to get something we want when another person has control over whether or how we can get it. It usually involves complete autonomy for the parties involved, without the intervention of third party. It entails discussion, communication or exchange of ideas between parties amongst whom dispute has arisen with a view to reaching an agreement. Parties are free to engage experts, agents or representatives, such as lawyers, engineers, accountants, and the likes to negotiate on their behalf; it does not change the fact that the process is still inter-parties. Negotiation can, therefore, be described as a process where parties to a dispute discuss and communicate with each other, without the assistance of a third party on how to

38 D. Poonia, *Nature of disputes that can be solved through arbitration*, https://blog.ipleaders.in/nature-disputes-can-solved-arbitration/ (access: 30.01.2022).

39 R. Dani, *Negotiation as a form of alternative dispute resolution*, https://viamediationcentre.org/readnews/NDI1/Negotiation-as-a-form-of-Alternative-Dispute-Resolution (access: 30.01.2022).

40 Ibidem.

41 A. Akeredolu, op. cit., p. 18.

resolve issues in dispute between them with the goal of reaching an agreement that is mutually acceptable to them.[42]

Mediation/Conciliation

There is a thin line of distinction between mediation and conciliation. In mediation, a third party is involved as a facilitator whose duty is only to facilitate interaction between the parties in order to resolve the dispute while in conciliation, the role of a third party involved is not only to facilitate but also enhances communication and provides solution to the problems which led to the dispute between the parties as an expert. The major identified difference is that the third party, the conciliator as an expert plays an advisory role which in settling the dispute between the disputing parties.[43]

Mediation is the process through which a third party called a mediator facilitates the process of resolution between or among the disputing parties but does not impose a resolution on the parties. It is a method of resolving disputes by agreement between the disputing parties rather than approaching the court for litigation.[44] The Arbitration and Conciliation Act[45] provides for the right to settle disputes by conciliation.

Mediation is a process through which negotiation is assisted in that when negotiation fails, a neutral person intervenes and helps the parties involved in reaching a decision that is acceptable to both of them.[46] Akeredolu[47] describes mediation further as the intervention in a dispute by an acceptable third party who has limited or no authoritative decision-making power, but who assists the parties involved in a dispute to willingly reach a consensus that is acceptable to all of them. *Black's Law Dictionary*[48] again defines it as a method of nonbinding dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution. Arbitration and Conciliation Act[49] provides that parties to any agreement may seek amicable settlement of any dispute in relation to the agreement by conciliation under the provisions of the Act. Conciliation is the process where

42 Ibidem, p. 19.

43 https://keydifferences.com/difference-between-mediation-and-conciliation.html (access: 30.01.2022).

44 A. Kehinde, op. cit., p. 217.

45 Arbitration and Conciliation Act Cap A 18 LFN 2004

46 A. Kehinde, op. cit., p. 218.

47 A. Akeredolu, op. cit., p. 21.

48 B.A. Garner, op. cit.

49 Section 37, Arbitration and Conciliation Act Cap A18 LFN 2004.

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the neutral third party who is an expert intervenes in a dispute settlement, facilitates settlement of the dispute and exercises advisory powers in order to resolve the dispute amicable between the parties.[50]

Advantages/Why ADR Is a Panacea to the Nigerian Judicial System[51]

Parties are free to choose tribunal: Parties who go on arbitration can choose their tribunal; but when they fail to agree or one-party defaults, there is a provision by rules or statutes or indeed by agreement for such appointments to be made by an agency or a court.

Privacy: Where the subject matter of the dispute is sensitive, such as an invention or technical know-how details, which any party may not want exposed to the public, or where disclosures of the fact to the public would be detrimental to a party, arbitration usually offers the desired privacy.

Parties are free to choose venue: Parties are free to choose their venue and so are more likely to choose a place convenient to all parties of the arbitration.

It allows freedom of choice of law: Parties are free to choose the applicable law both substantive or proper law of a contract and the protocol law that will govern the arbitration agreement knowing very well that their mutual convenience and interest. If the parties fail to do so, this will mean that the arbitral tribunal having to determine the application law through the principles of conflicts of laws. Furthermore, the Arbitration and Conciliation Act (ACA) is the Federal Law governing commercial arbitration agreements which among other things provides for the form of the arbitration agreement, composition of arbitral tribunal, jurisdiction of the arbitral tribunal, conducts of arbitral proceedings, making of awards and termination of arbitral proceedings, recourse against award, etc. Commercial arbitration in Nigeria must be conducted within the framework of Arbitration and Conciliation Act (ACA).

Procedure is flexible and simple: ADR rules and procedures are made to be flexible and simple and easily adaptable to various types of disputes. For example, in arbitral proceedings where no rules exist to cover a particular situation, the arbitral tribunal may be empowered to conduct the arbitral proceedings in such a manner as it considers appropriate so as to ensure fair hearing.

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50 A. Kehinde, op. cit., p. 219.

51 E. Oddiri, *Alternative Dispute Resolution*, Paper presented at the Delegates Conference of Annual General Meeting of the Nigerian Bar Association (August 2004).

It saves costs: Apart from simplicity and expeditiousness of the procedure, cost may be saved where the dispute is a technical one and the ADR neutral is a technically qualified person and/or counsel to the parties are specialists.

Quicker decisions are reached: The ADR tribunal is notably quicker in reaching a decision. Some arbitration rules provide time limits within which to conclude arbitral proceedings; an example are the rules of regional center Lagos which prescribes minimum of six months within which to conclude arbitral proceedings. This presupposes that arbitral proceedings at the center can take one day or more, up to a maximum of 6 months.

It preserves personal, business and other relationships: where the parties have good business or personal relations which they wish to preserve, it may be advisable to settle their businesses by ADR which is a more friendly procedure for settling dispute and leaves room for continuation of an unimpaired relationship.

Other advantages are that its suitable for multi-party disputes, it is done at lower costs, it allows speedy settlement of disputes, the procedure is flexible, parties are allowed to control the process, it allows parties' choice of forum, wider range of matters can be considered, it allows confidentiality and proper risk management.

Problems Associated with ADR[52]

With so many advantages of ADR as those discussed above, there are also problems associated with it. The problems identified are associated with the voluntary and flexible nature of the ADR process. The identified problems are as follows:

Firstly, ADR settlement agreements do not have the force of law as the judgement of the court does. Thus, parties to ADR may fail to honor the agreement reached at the end of the ADR proceeding. Also, there is lack of adequate materials on ADR and there is limited legislative instruments on the subject. In addition, ADR is not adequately publicized; many people are still not aware of the process in Nigeria.

Conclusion

The paper examines the problems associated with litigation in Nigeria. It discussed various forms of ADR and its benefits. The paper discussed the importance of ADR in Nigeria and how it has helped the judicial system in Nigeria in reducing the

[52] A. Akeredolu, op. cit., p. 26.

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number of cases instituted in courts. It was noted that ADR is not used/celebrated as expected in Nigeria, this may not be unconnected with the fact that lawyers are not very knowledgeable about its workings and practice to enable them confidently advise their clients on it; thus, it is recommended that ADR should be used the more in place of litigation. ADR courses should be made compulsory for lawyers through the help of the Nigerian Bar Association as the umbrella body of lawyers in the country. The course should also be made compulsory for those who aspire to join the Nigerian Bar at the law school level so as to acquaint them with the practice of ADR. There should be more awareness as to the existence and importance of ADR as it was observed in the paper that a lot of people are not aware of ADR processes in Nigeria.

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