

Alternative Dispute Resolution in Nigeria and the role of lawyers.

Most disputes in Nigeria arise in business transactions and they are usually resolved by two methods, namely;

Civil action in any court of law,

Alternative Dispute Resolution.

Litigation is usually a cause for anxiety for the parties involved in the dispute, because of its uncertainty on its result. Apart from that, there are also worries on its costs, which is usually outrageous, the time spent, which can take many years in a country such as Nigeria, acrimony between the parties and also the reliability of witnesses, which usually determines the outcome of a matter. There are also the consequences of judgement against the party and the possibility of an appeal against the victor, which again can be extremely expensive.

According to critics of litigation, it is not a matter of who wins, but it is a matter of who losses less in the matter.

The disadvantages of litigation have brought about other alternatives ways of resolving disputes especially in commercial transactions. Alternative dispute resolution (ADR) provides the mechanism for dispute resolution processes and techniques that fall outside the judicial process, and is provided by the Government. The whole objective of Alternative Dispute Resolution is to settle disputes in a timely and cost effective manner. The various forms of ADR in Nigeria include mediation, negotiated settlements, arbitration, conciliation and neutral evaluation. The new Court Civil Procedure Rules in many States in Nigeria now requires the disputing parties to resort to ADR, before permitting their cases to be tried.

The whole purpose of the Pre-trial Conference is to get rid of all matters which must or can be dealt with on interlocutory applications, for the judge to provide directions on the matter and to encourage an early settlement between the parties, without the case going to trial.

Matters are now being adjourned by Judges, to give the parties an opportunity to negotiate a settlement. Where the parties fail to settle amicably, the court may refer the matter to ADR and thereafter adjourn the case for Report of Settlement.

Order 3, Rule 11 of the High Court of Lagos State (Civil Procedure) Rules 2012 provides that "All Originating Processes shall upon acceptance for filing by the Registry be screened for suitability for ADR and referred to the Lagos Multi Door Court House or other appropriate ADR institutions or Practitioners in accordance with the Practice Directions that shall from time to time be issued by the Chief Judge of Lagos State."

Order 25 Rule 6 (1) of the High Court of Lagos State (Civil Procedure) Rules 2012 provides that "Where a case is deemed suitable for ADR under Order 3 Rule 11 or has by directives been referred to ADR under Order 25 Rule (2) (1) above, the ADR judge shall in case of

recalcitrant parties consider and give appropriate directives to parties on the filing of Statement of Case and other necessary issues.

(a) The Claimant shall file his Statement of case within fourteen (14) days of the Order of the Judge.

(b) The Defendant shall file his response within fourteen (14) days of service of the Claimant's Statement of Claim.

(2) Where a party fails to comply with the directives and/or orders of the ADR Judge or fails to participate in ADR proceedings the judge shall:

(a) in the case of the Claimant dismiss the Claim;

(b) in the case of a Defendant enter judgement against him where appropriate."

It is therefore necessary in Nigeria for opposing lawyers to try and settle disputes amicably between themselves on behalf of their clients, or to prepare the latter for alternative dispute resolution. Litigation is encouraged to be used as a last resort, which has come as a relief to many litigants for obvious reasons.

The popularity of Alternative Dispute Resolution in Nigeria has arisen, because the traditional courts tend to take such a long time to decide on matters and obtaining representation is usually very expensive for the parties. ADR on the other hand is cheaper and faster for all the parties concerned. It also provides confidentiality to the parties as proceedings are usually private, unlike the courts where hearings are usually open to the public.

There are two broad types of ADR, namely;

1. the methods for resolving disputes outside of the official judicial mechanisms;
2. the informal methods attached to official mechanisms.

Both of these methods of ADR use similar skills and tools to resolve disputes.

It can be concluded here that ADR includes formal and informal tribunals and mediation processes. The main differences between them are the attachment to a court procedure such as the Pre-trial Conference or the Multi-Door Court House.

In Nigeria, the misconception that negotiation by the other party, which is usually the plaintiff amounts to a waiver of the latter's rights often occurs in dispute resolution. This has however been dealt with in the Supreme Court case of *Mrs. T. C Chukuma v Babawale Ifeloye SC 229/2009*. In that case, the plaintiff after instituting a case against the defendant, decided to enter into an amicable agreement with the latter. When negotiations broke down, the plaintiff continued with the court process, but the defendant argued that she had

foreclosed her rights. The lower courts ruled in the defendants favour, but the Supreme Court reversed the decision. Oguntade JSC at SSC/2009 remarked as follows; “Merely negotiating with the defendant/appellant is not enough evidence to support the conclusion that she had waived the trespass committed on her land. It would have been a different situation if she had following the negotiation caused the ‘stop work’ order to be vacated. It is my firm view that the courts below were in error to have come to the conclusion that the plaintiff/appellant could no longer pursue her rights as owner of the land. The court below would appear, in its decision, to have forced the plaintiff/appellant to accept whatever offer the defendant/respondent made to her in atonement for the wrongful even if mistaken entry on her land.”

Alternative dispute resolution appears to be encouraged in Nigeria, not only by the courts, but by the Government of the day, who believe that it is the most appropriate way to settle disputes between parties. Governor Nysome Wike of Rivers recently suggested the use of Alternative Dispute Resolution in settlement of political conflicts, after major elections in the country. The Governor, a legal practitioner himself, made his opinion known, when the executive members of the Chartered Institute of Arbitrators visited him in Port Harcourt. Wike noted that ADR would reduce bickering, time and resources expended on cases at the election tribunals, Court of Appeal and the Supreme Court. He said, “We as politicians have been discussing on how we can introduce Alternative Dispute Resolution in settlement of election matters without going to the tribunals. “The Chartered Institute of Arbitrators can play a role in the introduction of ADR to election dispute. “It will reduce bickering; it will reduce cost and time spent at the tribunal, Court of Appeal and the Supreme Court. In other words, there will be more time for governance.”

Competent lawyers in all states of the federation tend to use ADR, before resorting to court action. They start the process by corresponding with the other parties, giving them the opportunity of redeeming a situation, such as a breach in a contract, or providing a means where both parties can resolve their difference at the negotiating table.

Whilst it is accepted that many lawyers in the jurisdiction of Nigeria try to use ADR as opposed to litigation, a few still avoid using it and would rather use the traditional courts to get justice for their clients. They believe that their income will be limited if their matters are dealt with by ADR. The average case in the High Courts in Nigeria can take an average of 4 -5 years to be decided. This is due to the over flow of cases, strikes, unnecessary adjournments and on occasions absences of judges. The more a case lingers on in court, the better it is for the anti-ADR lawyer, mainly because he/she often gets paid for the number of appearances that they make in court. Also, some individual lawyers are always keen to get their cases in court, so that they may get the necessary requisites to apply for the rank of Senior Advocate of Nigeria.

In conclusion, the use of Alternative Dispute Resolution is being used rapidly to resolve disputes by many legal practitioners across Nigeria, because it prompts the parties to

consider a process which may otherwise not readily occur to them, and it also provides an opportunity of a specific process with a clear frame work for exploring a settlement. The process itself involves a neutral third party trained to work with parties to facilitate communication aimed at a durable agreement.

It has also been stated that Alternative Dispute Resolution encourages the parties to attempt to settle a dispute by mediation. It pre-empts an order of the court requiring ADR and enables the parties to conduct the process on their own pre-agreed terms.

Any form of ADR keeps the dispute/negotiation out of the public arena, and early successful resolution provides substantial savings in legal and management costs freeing up resources for other productive endeavours.

The world is changing and moving forward, by introducing simpler ways of achieving objectives. Nigeria as a country has had its own fair challenges, but it is also keeping up with the rest of the world. Alternative Dispute Resolution is one example where the country has displayed her flexibility. It has been predicted by commentators, that by the end of the decade, the cases dealt with by the traditional courts in Nigeria might decrease in number, causing the time frame in dealing with an average case to be reduced.