

**DUEL TO DEATH OR SPEAK TO LIFE:**  
**Alternative Dispute Resolution for Today and Tomorrow**

**1. Protocols**

HE, Arakunrin Oluwarotimi Akeredolu, Governor of Ondo State,  
The Vice Chancellor, Ajayi Crowther University,  
My lords, Justices of the Supreme Court (serving and retired),  
My lords, Justices of the Court of Appeal (serving and retired),  
My lords, Judges of the Federal High Courts, High Court of the  
Federal Capital Territory, State High Courts and the National  
Industrial Court (serving and retired),  
Members of the Governing Council, Ajayi Crowther University,  
The Deputy Vice Chancellor,  
The Registrar,  
The Bursar,  
The University Librarian,  
The Deans of Faculties,  
Professors and Members of Senate,  
Faculty and Staff of the Faculty of Law, Ajayi Crowther University,  
Faculty and staff of all other Faculties, Ajayi Crowther University,  
Learned Senior Advocates of Nigeria,  
My learned colleagues of the outer Bar,  
My lords spiritual,  
My husband, my parents and other members of my family,  
Students of the Faculty of Law, Ajayi Crowther University,  
All other ACU Students,  
Gentlemen of the press,  
Ladies and gentlemen.

## 2. First Words

Mr. Vice Chancellor Sir, I am very grateful to God and I give Him all glory, honour and praise for preserving me and my family and for granting me the privilege of presenting this inaugural lecture today, to this distinguished audience. This is the seventh of its kind in Ajayi Crowther University, Oyo, and the first from the Faculty of Law (which was established in 2014 and has been accredited by both the National Universities Commission and the Council of Legal Education).

Mr. Vice Chancellor Sir, today and this year is a special one for me particularly and my family for several reasons. Firstly, because it is a fulfillment of the scripture that says God's thoughts towards us are very precious and we can never fully know the sum of them.<sup>1</sup> I never had the desire to be a professor; all I really wanted was to be a Judge. Though I veered into academics in 2004; for me it was just to bid time till I was appointed as a Judicial officer.

The very first person to mention the idea of becoming a professor before seeking an appointment with the judiciary was my Ph.D Supervisor, Honourable Justice Moshood Adekunle Owoade, JCA who is also a professor and judge. At that time, my response to him then was 'ah! My lord, *lailai* sir, that will take too long, I want to go now that I am still young.' And so my writing of several expressions of interest to be appointed or nominated as a judge continued. However, in April, 2014 at a women's meeting organized by Mummy Toun Soetan, God spoke clearly to my heart that He will first appoint me a Professor. When I subsequently told my lord of this new development, his joy for me was limitless. On my part, I said to God, "Lord, You know me, I am content to be in Your will; I say yes to your will." I was overwhelmed. "How could He have such great plans for inconsequential me?" Like David, on that fateful day, I went before my Father and said:"Who am I Sovereign Lord and what is my family that you have brought me

this far?"<sup>2</sup> With this understanding of God's plan, I then set my heart toward preparing myself for an opportunity to open up for a professorial appointment since my calling for a judicial office had to wait. So, we can all now understand why today is about God, it is His project from beginning to end. To him alone be ALL the glory forever, Amen.

This year is remarkable for me also in at least two other respects. This year marks the thirtieth year of my call to the Nigerian Bar, and it also marks the golden jubilee anniversary of my birth. So I have many reasons to be grateful to God and to celebrate.

Mr. Vice Chancellor Sir, my parents are here today and I must celebrate them by telling a little of where I have come from. My greatest heritage is my godly parents, my father, Deacon Fidelis Awatefe Tetsola<sup>3</sup> of Obonteghareda (a.k.a. Obeda or Dudu town) in Warri North Local Government Area of Delta State (Proudly Itsekiri!!!)<sup>4</sup> and my mum Deaconess Rebecca Ochuko Tetsola from Mosogar Kingdom, Delta State. My dad is a Pharmacist and my mum a principal and later director of education, I can say that I grew up with a silver spoon (not golden spoon - though my mother, the disciplinarian of the house will want us to believe that we only had wooden spoons). I attended the best schools from nursery till university. My parents were glad to give us their best and my joy is full today that they are alive to witness God's unending mercies over my life. Many more joys are still ahead and by the mercies of God; you will both be here for them all. I truly love you mum and dad!

By God's grace I was blessed to be an intelligent child so I hurriedly rushed through my education. I have no spectacular or memorable tales to tell. I was a regular student minding my business and focusing on my education. The reason I chose to read law was because that was the only professional course I knew about then and

I graduated with honours from the University of Benin in 1987. Many who knew me as a quiet person felt I was not particularly suited for this line of work. But then, who can fully understand the ways of God?

I was called to the Nigerian Bar in 1988 at the age of twenty. The National Youth Service Corps (NYSC) Scheme brought me to Yorubaland for the very first time. I served with the law office of Akeredolu and Olujinmi (as it then was) and there our 'Big brother' saw this beautiful young lady and said she must not go back, "I have a brother who will devote his life to loving you; his name is Kolawole Oluwapelumi Akeredolu." And I of course said: 'I do'.

### **3. A love Affair - ADR & I**

My first contact with the field of Alternative Dispute Resolution (ADR) was during my masters' programme at the University of Ibadan in year 2000. Chief Richard Akinjide, SAN and Professor John Ademola Yakubu were my lecturers. I was enthralled with the course; it suited my nature well as a peacemaker, so it was not surprising that I was the prize winner at the end of the session. My love for ADR was one of love at first sight, but she had a rival in Energy Law due to the fact that I also loved the promoter, Professor Yinka Omorogbe. I applied several times to the Faculty of Law, University of Ibadan, with a proposal for a Ph.D in Energy Law but no supervisor was available. One day, I met Professor Yakubu and he asked me: "Why are you insisting on Energy Law; you were the best ADR student, why not change your research area to ADR and I will be willing to supervise you?" I took his advice and today here I am. It was therefore God ordering my steps when for my Ph.D, ADR became my field of study. I have not flirted or lusted after any other since then, but remained faithful to my first love, ADR.

In 2005 when I commenced my doctoral programme, ADR was an emerging field of study (and still is), as such, I did not have too

many shoulders to lean on; Despite this, I had fathers and mothers in the legal profession who ensured that I stayed the course and ultimately graduated as the second PhD holder in law from the University of Ibadan. Professor Yinka Omorogbe, Professor Oluyemisi Bamgbose and Dr. J. O. A. Akintayo are noteworthy in this regard.

Alternative or Appropriate Dispute Resolution has been my core area of teaching and research interest in the past thirteen years and I still intend to continue to undertake research and practice in this field in the future because like the marriage vow, this covenant is to ‘cleave only to her as long as I live, till death do us part.’<sup>5</sup>

#### **4. Lecture Thesis**

The temple of Justice has many services to offer all its worshippers and ministers therein. Litigation has served and is serving society well in several areas but it cannot do the job alone. It needs a help mate and ADR is the missing rib that complements litigation and makes it complete.

ICT/E-Commerce is now routine phenomenon in many aspects of our daily lives. It is only logical that ADR “go digital” too. For all professionals, ‘the cloud’ is the next level. Let us take the flight together.

#### **5. Introduction**

Mr. Vice Chancellor Sir, an inaugural lecture is usually given by Professors or Chairs newly appointed by a university, giving an illuminating overview of their contribution to their field.<sup>6</sup> This discourse is therefore about my journey so far and the flight plan for my future destination. It is a discourse in law, but about a subject all of us are familiar with i.e., conflict or dispute resolution. Everyone here has either had a dispute, is having a dispute or will have a dispute, so I can assure you that you will not be bored with mere

legal ‘jargon’ here today. My topic is ‘Duel to Death or Speak to Life: Alternative Dispute Resolution for Today and Tomorrow.’<sup>7</sup>

For legal practitioners, our traditional field is that of dispute resolution: this is our territory and has been so from time immemorial. We are the gate keepers for dispute resolution and by training; we are to help parties in dispute resolve their conflicts one way or the other.

Society has over time evolved diverse systems acceptable to its members for resolving disputes. Perhaps, the most common of these approaches is the current court system where parties go before a neutral third party to decide the controversies between them and resolve their dispute. . There has however been a gradual shift from the court resolution of disputes to private neutral adjudicators chosen by parties themselves i.e. Alternative Dispute Resolution (ADR).

This lecture will therefore traverse my ADR journeys so far – highlighting and discussing the past of dispute resolution from the days of trial by ordeals or settling disputes by the duel to where we are today which is seeking the most appropriate method of resolving disputes among parties. I examine the dispute resolution spectra highlighting the advantages and challenges of ADR, when is ADR suitable and the principles, practice and procedure of ADR. Finally, I explore what the future holds for dispute resolution particularly in a digital age?

But how did we get here? The next section gives the background of different settlement models before ADR as we know it today.

## 6. Dispute Resolution - Duel to Death!

In this section, we examine the historical evolution of dispute resolution and expound on its development from subjective trials both in Africa and Europe to the contestation in the courts as it is accepted and practised today.

In the process of interacting with one another, disputes naturally occur. One of the major functions of law, therefore, is to provide reliable and objective systems for members of the society to resolve their disputes. These dispute settlement systems which differ from one society to another are from time to time evaluated and assessed with to the aim of introducing reforms that can improve the system.<sup>9</sup>

In Biblical times, especially among the Jews, a man who suspected his wife of unfaithfulness would make a report to the priest who would write curses on a scroll and wash them into bitter water (being a mixture of dust from the temple floor and holy water in a clay jar) and give the woman to drink. If her stomach swells and she miscarries, this proves her guilt, but if she is innocent she will conceive and bear children.<sup>10</sup>

The proof system operated in the Middle Ages, where discovery of facts did not play any role at all, rather what existed were 'ordeals'.<sup>11</sup> During that period, disputants were subjected to ordeals such as burning of their hands by hot iron, if the hand did not fester, then that proved his innocence.<sup>12</sup>

Trial by 'combat' or more *mano à mano* confrontations between individuals (the medieval joust or the more 'modern' Continental and American 'duel') were more often focused on private wrongs (honour, property rights, infidelity), as well as treason and disloyalty, with some of the same 'judicial' principles—God would protect and 'save' the righteous one or his 'champion' or gladiator (acting as representatives for those who could not fight for

themselves, for example women and the disabled or those who could pay for more agile strongmen).

According to Windeyer in *'Lectures on Legal History,'*<sup>13</sup> legal disputes used to be settled by battle. When the Normans conquered England, disagreements revolving around personal injury, breach of the king's peace, rival claims to property or any dispute that may have a bit of legal basis to it were settled between the parties via a wager known as 'wager of battle.'<sup>14</sup>

The trial was later formalized with special rules and a judge. Parties could fight their own battles or engage other persons known as champions to fight on their behalf. Combatants were required to swear to an oath declaring their belief in justice and the cause for which they were about to enter into battle.<sup>15</sup>

African tradition tells of making a woman who is suspected of killing her husband to drink the water used to bathe the deceased. She is expected to die within a given period, but if she survives, she is innocent. Fayemi opining on other African groups, had stated that the communal structure of traditional Yoruba societies did not foreclose the emergence of conflicts; that in traditional Yoruba societies, conflicts are usually managed such that they do not degenerate into violence and armed conflicts.<sup>21</sup>

The early intervention of the *agba* (elders) in reconciling the disputing factions usually saves conflict situations from escalating into violent situations. Whenever disputes arise between individuals and different parties, primacy is given to restoring the relationships, soothing hurt feelings and to reach a compromise on how to improve future relationships.<sup>22</sup>

Resolution of conflict is usually seen as a social responsibility of the elders, and this justifies the Yoruba proverb that "*agba ki wa loja*



*kori omo tuntun wo*”<sup>23</sup> (an elder cannot be in the market place and allow the reign of chaos). A person who watches while tension mounts between and among children, adults, groups and any warring parties is not seen as socially responsible. This social responsibility is voluntarily done, as well as, institutionalized in different ways.

For instance, when there is conflict between or among co-wives in a household, the elderly male or female members intervene, and if they do not succeed, the matter is taken to the *Olori ebi* (head of the family). Where the reconciliatory attempt of the *Olori ebi* fails, the matter is then taken-up to a higher authority, which is the office of the *Baale* (head of clan or in some settings, head of compound).<sup>24</sup> According to Sanni,<sup>25</sup> such techniques worked because they were acceptable to the parties.<sup>26</sup>

The sixth century is also when English legal history begins because the first written records of codes and laws date from then, albeit with modern scholars debating whether these early codes are derived from Augustinian Christian principles or the customary rules of pagan kings. There is evidence of fixed rules (fixing of ‘blood money’ in graduated scales of penalties in lieu of more violent revenge of blood feuds), attributed to the teachings of the Christian church that mercy and ‘penitential’ were better than on-going feuding (and feudal/futile) violence.

Decision-makers were often combinations of secular (kings men or royal representatives) and spiritual leaders (high ranking Church officials), at least when high-ranking disputants were involved.<sup>27</sup>

Menkel-Meadow among many other scholars traced the development of formal dispute resolution and her summary is quite useful. She stated that at some early point in human history, when two parties had a dispute with each other they sought assistance

from a third party. So was born the almost universal notion of the dispute ‘triad’, where some ‘third party’ intervention is made, either to decide who was in the wrong or to conciliate and seek a more consensual and joint resolution.<sup>28</sup>

Whatever the ‘law’ (that came later), humans began to recognise that some ‘orderly’ process was better than unrestrained violence and escalation of individual disputes to more dangerous group and tribal fights. (Of course, at the same time as these more ‘humanising’ processes were developing, major battles—tribal, royal, and religious—continued (and continue).<sup>33</sup>

In England, ordeals were the normal form of trial until 1215, when the fourth Lateran Council prohibited clergy and or their representatives from participating in ordeals and, in a way, secular justice was ‘born’ (or ‘reborn’ depending on whether one views these process developments as cyclical or linear).

Some historians date the English criminal trial to this development. On the civil side, oath swearers, or ‘compurgators’ (who were neighbours and supporters of claimants) shifted from ‘witnesses’ to the first juries who actually found facts and decided matters on the basis of their knowledge of the parties and facts arising before the dispute. Jurors were, in early use, questioned by judges about what they knew and thus served an almost hybrid function of witness and fact-finder (in a time when judges were more active than at present).

By the fourteenth century, jurors had become fact-finders. They were required to reach a verdict unanimously based on sworn evidence in court, presented by witnesses other than themselves. Jurors eventually became fact-finders only, after asking questions of witnesses, or engaging in their own investigations, leaving the development and interpretation of the law to the judges.<sup>34</sup>

The evolution of human legal procedure may, therefore, not be linear but cyclical. First, there was violence and self-help. Actually, there is still a lot of violence and self-help and this is an evidence of an ineffective legal system.<sup>35</sup> There is also a great deal of dispute avoidance or we just couldn't get through the day. Imagine if we sought to dispute or 'litigate' everything that upset us all day long.

The nature of the relationship between the disputants affects the manner in which they approach a problem and the terms in which they define it. Resource inequalities produce differences among parties in disputing capability, in addition; the community political culture may affect the degree of combativeness with which citizens approach dispute situations and their orientation to legal action.<sup>37</sup>

Private law cases typically arise from social and economic relations. As societies develop, existing relationships are altered and new ones formed, creating the potential for change in private litigation activity. Industrial development and increased complexity in social and economic interactions produce greater need for the development of a consistent system of legal relationships and legally defined rights. As these relationships and rights develop, the law and legal institutions become increasingly relevant to and utilized in the day-to-day and long-range activities of a community.<sup>38</sup> Historically, therefore, the law developed as the first alternative to violent resolution of disputes.<sup>39</sup>

### *6.1 The Transition to Litigation*

Lord Denning in *Bremer v. South India Shipping Corp, Ltd*<sup>40</sup> remarked that 'every civilised system of government requires that the State makes available to all its citizens a means for the just and peaceful settlement of disputes between them.' A system of civil justice is essential to maintaining civilized society, for law provides the basic structure for commerce and industry to operate, safeguards rights of

individuals, regulates their dealings with each other and enforces duties of government.<sup>41</sup>

One of the functions of law over the years has been the continued strive to evolve an efficient means of resolving disputes in our changing world. The methods which law has evolved can broadly be classified as adjudicatory (or adversarial) and non-adjudicatory. The adjudicatory method is otherwise referred to as litigation. It is a formal process requiring that disputants and the witnesses appear before courts or tribunals established by law to resolve their dispute.<sup>42</sup> It is a finely tuned system of civil justice.<sup>43</sup>

The civil system of justice which Nigeria (and many other nations of the world including the United States, Australia, and New Zealand) inherited via its colonial heritage from the British is what has been broadly described as the adversarial system. To many people, but particularly to those who work in it, the adversarial system is a successful set of procedures, practices and institutions that have underpinned a well-functioning social democratic society by maintaining the rule of law and separation of powers.

It is a system whose strength lies in the concepts of the independence of the bar and bench from governments, the autonomy of the parties, the power of examination and cross-examination to elicit facts and in the fact that courts are open to scrutiny and that court officers are disinterested parties in often hotly contested and sensitive disputes.<sup>44</sup> As a product of evolutionary, inductive and individually-oriented common law, it is a system that has adopted the pragmatic view that the observance of law rather than the attainment of justice is a more achievable goal for any community'.<sup>45</sup>

The laws of many countries originate from those of England and France. Legal systems based on the laws of England are typically described as belonging to the Common law tradition, while those

founded on the laws of France as belonging to the Civil or Roman law tradition.<sup>46</sup> Structurally, the two legal systems operate in very different ways: civil law relies on professional judges, legal codes, and written records, while common law relies on judges (or lay juries), broader legal principles, and oral arguments.<sup>47</sup> The common law system greatly relies on oral argument and evidence, while in civil law systems much of the evidence is documentary.

Trials play a much larger role in common law than in a civil law system. Common law systems, at least in the last century, have generally relied on heavily incentivised state prosecutors, who are separate from judges, especially in criminal cases. In civil law systems, in contrast, judging and prosecution are generally combined in the person of the same judge. Finally, although this distinction is less clear-cut, common law systems generally rely to a greater extent on the precedents from previous judicial decisions than do the civil law systems.<sup>48</sup>

In civil law systems also, most evidence is collected prior to the trial by a judge-inquisitor, hence the trial plays only a secondary role of going over this evidence publicly. The surprises and revelations of a common law court room play no role in this process.<sup>49</sup>

## *6.2. Litigation – So Right, So Wrong*

The Adversarial system has its challenges, but no one can deny that it has great advantages and has served the dispute industry faithfully for several decades. It brought objectivity and predictability into the sector and even till date it continues to ensure social harmony in society by resolving disputes between disputing parties. The adversarial system of 'trial' has been referred to as 'a battle of adversaries' or 'legal combat,'<sup>50</sup> 'where one party presses its view that he is right and the other side is wrong, and all resources are geared at establishing that position.'<sup>51</sup> This position in Lombard's words is that

“winning isn't everything, it is the only thing.”<sup>52</sup> A few of its up and down sides are restated below.

*6.2.1 The Challenges of the Adversarial System* - The concept of duels carried with it the real likelihood of death as the outcome. According to some codes, parties could agree to the nature of the duel – either till a party is fatally wounded or dies. Indeed, parties in some cases had to agree beforehand that neither party would be legally responsible for any assault or fatality arising from the duel.

The question is, if you are fighting over a particular issue, how does the death of one of the parties resolve the issue? The truth is that it does not; that is why some feuds are carried over from generation to generation. Also, even when the other party does not die, how does causing him bodily harm satisfy the demands of justice?

Physical wars have also been fought over legal or personal disputes. Many lives are lost in an attempt to resolve differences between individuals or communities. Is the blood of these innocent ones worth it? In some instances, ‘conquest’ may settle the dispute, but underlying tensions remain, such that given the slightest opportunity, the conquered will rebel.

What is the connection between the duel and the adversarial system of administration of justice? There are legal battles in court and lawyers are the modern day champions for their clients, strenuously advocating on their behalf; drawing blood if necessary. Counsel may cross examine a witness with the only goal of humiliating or embarrassing the witness. After all, as the popular adage goes, “all is fair in love and war”. In court battles, relevant but damaging evidence may be buried or not disclosed; there could also be deliberate omission or falsification of facts, all to ‘win the battle (trial).’ Is this what the reasonable man on the streets of *Dugbe* or *Owode* asked for when he came to the temple of justice?

Death in our context also speaks of lifelessness – no life, no vitality, no value, cannot bring forth – dead. There are several lifeless judgments in the adversarial system. A judgment creditor obtains judgment in 2003 and in 2017 he is yet to enter, possess or reap the dividends of the judgment because there is a stay of execution or several appeals. Also the remedies sometimes provided/adjudged are so negligible compared to the damage incurred as to be considered lifeless.

What of the length of time it takes to actually conclude a case and give a decision? The case of *Ariori v. Elemo*<sup>53</sup> illustrates the point. The case which was a land dispute lasted fifteen years at the trial court. By the time it was ripe for hearing at the Supreme Court, the court held that the inordinate delay in the trial court had occasioned a miscarriage of justice. It ordered a trial *de novo*. By that time, the case was twenty years old.<sup>54</sup> Twenty years after a dispute was initiated in court, parties still did not have a final outcome! Behold there is death in this pot.

Mr. Vice Chancellor Sir, we could speak also of money matters in the duel system. Considerable person hours translating to financial gain are lost in this system for various reasons or causes. Adjournments galore, endless waiting in line for your turn on days of court sittings for mention or trials; or even the time lost because of the drudgery of recording evidence/proceedings in long hand by Nigerian courts all elongate trial times. In respect of financial claims, inflation would have adversely affected the value of the claim. In criminal trials, non-availability of investigating police officers who may have been transferred out of jurisdiction and cannot come to give evidence except the complainant ‘settles’ him, also affect the duel system.

The overcrowded docket of most courts in Nigeria is also a challenge. At the point when the Lagos Multidoor Courthouse (LMDC) was just established, some statistics were presented to put in context the impact ADR could have on the courts. The Table below presents the statistics

of cases pending before the Hon. Judges of the High Court of Lagos State (which already had a court annexed ADR centre) for the fourth quarter of 2009.

**Table showing Case Flow in the Fourth Quarter of 2009 in Lagos State High Courts**

Total number of cases brought forward from 3 <sup>rd</sup> quarter	12,547
Total number of cases assigned in the quarter	2,108
Total number of matters disposed of by the courts	1,825
Total number of pending cases on court docket as at December 2009	13,376

Source<sup>55</sup>

The number of cases disposed of by the courts in relation to the number of cases pending on court docket as at December 2009 reflects a 12.5% settlement rate in the Lagos High court system.<sup>56</sup>

Honourable Justice D. F. Akinsanya commenting also on the dockets of the Lagos State courts remarked that at the time, there were about fifty five judges in the state judiciary and that the average number of cases assigned to each judge per week was about 120 -150 cases.<sup>57</sup> She recalled having an average of seventy-four cases on Mondays which were ‘call over’ days, and an average of fifteen to sixteen cases on other days of the week when trials could be conducted. In her experience, she stated that it is impossible even with the best effort of the Judge to cover half of the cases.<sup>58</sup> Thankfully, the situation has improved with the mainstreaming of ADR into the Lagos State System of administration of justice.



It is worthy of note that, the concerns, dissatisfaction and complaints about the effectiveness of the civil system of administration of justice, date as far back as the Shakespearean times. In the play, King Henry VI, the king declares ‘the first thing we do, let us kill all the lawyers’.<sup>59</sup> Lawyers are the architects and players in the system under scrutiny.

The major reasons advanced for the dissatisfaction have been that the system was too expensive, sometimes the costs of prosecuting a claim could exceed the amount claimed; it was too slow with cases often dragging on for years unresolved; too unequal, in favour of the wealthy litigant who could afford the costs; too uncertain, it is difficult to predict litigation costs, the total length of time it will take to conclude the proceedings inducing fear; too incomprehensible to many and too adversarial, the rules of court were often ignored by the parties and unenforced by the courts.<sup>60</sup> Alas, this system needs a helpmate!

Adversarialism has been increasingly questioned, especially by the practitioners themselves<sup>61</sup> as well as by the users of the process. Over time, therefore, members of the public and in particular the international business community became frustrated and dissatisfied with the litigation process and sought for other alternatives, giving rise to the non-adjudicatory method, otherwise referred to as ADR.<sup>62</sup>

The focus of litigation is the past, whereas ADR processes address the future.<sup>63</sup> Litigation has tremendous benefits to the administration of justice – it is publicly financed and administered, its proceedings are open to the public, it is self enforcing, decisions are based on law and precedent and are binding on the parties and its rules about process are clearly defined. Yet it is the weakness of litigation that led to the development of the alternatives notwithstanding different attempts at different times to ‘reform the process’.<sup>64</sup>

## **7. Speak to Life – Alternative Dispute Resolution!!**

ADR is about having conversations (even difficult ones) in pursuit of the best interests of both parties or exploring mutually beneficial options for settlement of a dispute in the most cost effective and suitable manner.

In the first book of the Holy Bible, Genesis, in its first chapter one, we see the creative value and power of words. The phrase ‘and God said’ appears seven times in the passage, where God spoke all the living creatures into being. The eighth ‘and God said’ was when God said ‘Let us make man...’ This was a conversation: a negotiation between the Godhead and today we are the products of those life giving words.

ADR is about having difficult conversations for the mutual benefit of all the parties; it is about facilitating communication between the parties for better understanding towards settlement. ADR is about words – making a difference because of the spoken word.

There are also Biblical injunctions on the pursuit of peace. These include the instruction to follow peace with all men,<sup>65</sup> the declaration that blessed are the peace makers,<sup>66</sup> and the counsel to make peace with your adversary before he drags you before a judge.<sup>67</sup> Abraham Lincoln, former President of the United States once said:

Persuade your neighbors to compromise whenever you can. Point out to them how the normal winner is often the loser - in fees, expenses and waste of time. As a peacemaker, the lawyer has a superior opportunity of being a good man. There will still be business enough.<sup>68</sup>

As stated earlier, there are several reasons why litigation fell into disrepute with many of its users - its loss however became ADR’s gain. In the next section, we examine the meaning and types of ADR as well as enumerate its advantages and limitations.

## *7.1 What is ADR?*

The first question about ADR is Alternative to what? Usually, the answer is that it is an alternative to the adversarial system of dispute resolution i.e. litigation. This was the original sense in which the term was understood but today its meanings are broader. The letter 'A' in the acronym ADR is itself subject to different interpretations; some describe it as Amicable,<sup>69</sup> or Appropriate.

The distinctive feature, however, which is common to all definitions, is that it refers to processes that are outside the court system. I have in an earlier publication defined ADR as referring to methods of resolving disputes other than litigation in a court of law. The emergence of court connected or annexed ADR has however challenged this definition calling for a revision thus: ADR approaches are methods of resolving disputes by processes other than trial in a court of law.

## *7.2 The ADR Spectra*

The most common types of ADR methods are Negotiation, Mediation, Conciliation and Arbitration. Others include Mini trial, Summary Jury trial, (Early) Neutral Evaluation, Med-Arb. These are discussed below. The concept of Court connected ADR is also briefly discussed too.

*7.2.1 Negotiation* - 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. If we could have everything we wanted, materially and emotionally, without the concurrence of anyone else, there would be no need to negotiate. Because of our interdependence, the need to negotiate is pervasive.<sup>70</sup> Negotiation can, therefore, be described as a process where parties to a dispute discuss and communicate with each other or any other, without the assistance of a third party on how to resolve issues in dispute

between or among them with the goal of reaching a mutually acceptable agreement.

*7.2.2 Mediation* - Inter party negotiation may not always succeed; when it fails, parties may then seek the assistance of a neutral third party to facilitate their negotiation. Mediation is a process of assisted negotiation in which a neutral person helps people to reach an agreement.<sup>71</sup> Mediation can conveniently be described as a process wherein a third party who has no interest in a dispute, assists the disputing parties to work together to create mutually satisfactory terms of agreement that resolve their existing dispute.<sup>72</sup>

*7.2.3 Conciliation* - In some jurisdictions, the term Conciliation is used inter-changeably with Mediation. It is worthy of mention that the primary statutes which prescribe and regulate Conciliation in Nigeria i.e. the Arbitration and Conciliation Act<sup>73</sup> and the Trade Disputes Act<sup>74</sup> do not define this process. The National Industrial Court ADR Centre<sup>75</sup> which makes provision for the use of Conciliation in resolving trade disputes does not also define the concept. Conciliation is in my view, the process where a third party, who is usually but not necessarily neutral, has power to evaluate the dispute and prescribe for the parties' terms which seem to him or her appropriate to resolve the dispute in a fair and amicable manner though the parties retain the final authority to decide whether or not to accept the terms proposed.

*7.2.4 Arbitration* - The case of *MISR(Nig) Ltd. v. Oyedele*<sup>76</sup> referring to Halsbury's Laws of England, defined arbitration as the reference of a dispute between not less than two parties for determination, after hearing both sides in a judicial manner by a person(s) other than a court of competent jurisdiction.<sup>77</sup> The Lagos Arbitration Law defines arbitration as 'the reference of an existing or future dispute between two or more parties, to an independent person(s) chosen by them (the arbitrator) to adjudicate upon.'<sup>78</sup>

Arbitration can, therefore, be described as a private, voluntary procedure which two or more parties agree to use to resolve their dispute, wherein the arbiter is neutral, the decision is based on the merits and it is final and binding between or among the parties.<sup>79</sup>

*7.2.5 Mini Trial* - It can be and has been described as evaluative mediation where the parties are assisted to gain a better understanding of the issues in dispute, thereby enabling them to enter into settlement negotiations on a more formal basis.<sup>80</sup> The neutral third party may be a former judge or a person with authority in the field of the dispute.<sup>81</sup> It is a flexible, non-binding process where each side presents a shortened version of its case to party representatives who have settlement authority with a neutral third party presiding. After the hearing which is informal, with relaxed rules of evidence and procedure, the parties meet with or without the neutral parties to negotiate a settlement.<sup>82</sup> It can be described as a process which enables disputing parties to assess the strengths, weaknesses and prospects of their case and then an opportunity to negotiate a settlement with the assistance of a neutral adviser after listening to presentations by all sides.

I have defined it as a process wherein parties or their counsel present the merits of their case to a joint session of both parties (in the case of a corporate body, represented by officers who have settlement authority) with a neutral third party presiding, for the purpose of assisting the parties to negotiate a settlement.<sup>84</sup>

*7.2.6 Summary Jury Trial* - This is similar to a mini-trial. The distinction, however, is that whereas in the case of the summary jury trial, there is a proper jury selected to listen and give a non-binding verdict or decision on the dispute, in the mini-trial the parties themselves are the jury. It is usually used in fairly large cases that are likely to involve long jury trials with the goal of promoting settlement in trial- ready cases.<sup>85</sup> With a judge presiding,

attorneys for both parties present their case to the jury relying mainly on exhibits and their submissions. The jury deliberates and delivers its verdict. Thus a summary jury trial is an ADR process where parties' representatives present their case to a jury for evaluation and non-binding decision on the merits for the purpose of facilitating settlement of the dispute.

*7.2.7 Early Neutral Evaluation (ENE)* - ENE is a non-binding process designed to improve case planning and settlement prospects by giving litigants an early advisory evaluation of the case.<sup>86</sup> A neutral evaluator with expertise in the subject matter of the dispute, holds confidential sessions with each party, clarifies issues, identifies strengths and weaknesses of the parties' positions, and gives a non-binding assessment of the values or merits of the case.<sup>87</sup>

ENE is a process in which at an early stage of the dispute or a law suit, parties are provided with a candid appraisal of the case by an experienced neutral or intermediary who is well experienced in the subject matter of the case.<sup>88</sup> In some jurisdictions ENE is referred to as Rent-a-judge.<sup>89</sup> It is called ENE because it is invoked at early stages of the dispute otherwise it can be referred to as 'Neutral Evaluation' *simpliciter*. It can be said, therefore, that ENE is an ADR nonbinding process in which a third party neutral who has expertise in the subject matter of a dispute, at the early stage of the dispute, hears the merits of the case and gives his best judgment on the merits in form of an advisory verdict.

*7.2.8 Med-Arb* - This is a procedure which combines sequentially, mediation and, where the dispute is not settled through mediation within a period of time agreed in advance by the parties, arbitration. In Med-Arb which is an abbreviation for 'Mediation–Arbitration,' attempt is first made to resolve a dispute by agreement through mediation, and if that fails, then it proceeds to a binding arbitration.<sup>90</sup> This hybrid process is applicable when parties agree to

resort to arbitration if mediation does not end in a negotiated settlement.<sup>91</sup>

### *7.3 Court-Connected ADR (CCADR) or Multi-Door Court House (MDCH)*

Throughout this lecture, the terms Court-Connected ADR (CCADR) or Multi-Door Court House (MDCH) are used interchangeably. The MDCH has been described as a court-connected or court-annexed ADR mechanism which gives the parties different doors or routes to resolving their disputes.<sup>92</sup> It can also refer to a courthouse or dispute resolution centre designed to encourage courts and communities to find ways to offer citizens alternatives to courtroom trials for resolving disputes.<sup>93</sup>

Chukwurah describes the Multi-door courthouse as a court of law in which facilities for ADR are provided; the formal integration of ADR into the court system. It is not the ADR section in the court premises, rather it is the official recognition and availability of ADR processes as part of the justice delivery system in a particular jurisdiction.<sup>94</sup> MDCH is a concept whereby ADR processes are recognised and made part of the court system in a way that persons who approach the courts for resolution of their disputes are no longer availed of the litigation process alone but can take advantage of other options in deserving cases with their claims assigned for resolution through the ADR processes.<sup>95</sup>

The key feature of the MDCH is the initial procedure, which is the intake screening and referral.<sup>96</sup> Here disputes would be analysed according to various criteria to determine what mechanism or sequence of mechanisms would be best suited for the resolution of the problem.<sup>97</sup> Thus, CCADR can be defined as an approach to dispute resolution wherein the courts routinely offer disputants ADR as part of their options for resolution of their disputes.<sup>98</sup>

In Nigeria today, the most recent MDCH is the National Industrial Court ADR Centre. It was established in 2015 pursuant to section 254C of the 1999 Constitution, making it the only CCADR with constitutional flavor.<sup>99</sup>

#### *7.4 What does ADR bring to the table?*

Many reasons have been advanced for the rise or growth of ADR. Constantino and Merchant<sup>100</sup> explained the explosion of interest in ADR and identified several reasons for same such as overloaded dockets, cost of litigation (in money, personnel time, lost opportunities), desire to empower disputants to participate in resolving their own disputes, increasing interest in flexible dispute resolution process (unlike rigid court processes), interest in confidentiality and avoidance of publicity.

In *Halsey v. Milton Keynes General NHS Trust*<sup>101</sup> the trial court per Dyson, J. commenting on the advantages of mediation stated that it is usually less expensive than litigation, it provides litigants with a wider range of solutions than those available in litigation and ensures the continuation of existing professional or business relationship perhaps on new terms. There are other reasons advanced to justify or promote ADR but for our purposes, those highlighted above suffice to make the point that many people including judges perceive ADR as beneficial way to resolve disputes, especially commercial ones. These issues are expatiated upon below using mediation in particular as the example.<sup>102</sup>

**Win-win outcomes:** One reason for the rush toward ADR for business and other disputes is the belief that it has the ability to offer win-win solutions that courts cannot provide.<sup>103</sup> For example a plaintiff's primary goal may be to obtain an apology from a defendant as opposed to monetary compensation. In such situations ADR would be the best option rather than litigation. Win/win negotiation is the 'art of seeking agreement to the maximum



advantage of all concerned.’<sup>104</sup> The idea is that if parties avoid sticking to their original positions and instead shift their attention to the interests underlying these positions, they can find ways of satisfying those interests. They can generate a variety of options, some of which provide higher value for both parties.<sup>105</sup>

*Expenses:* Private ADR is often touted as being cheaper than litigation.<sup>106</sup> Most business executives and their in-house counsel do at least *perceive* that traditional court system is too expensive but due to lack of empirical data, it is unclear whether ADR is in fact cheaper than litigation.<sup>107</sup> Others have argued still in favour of ADR by contending that not only ‘monetary’ costs should be calculated but also personnel productive hours spent in preparation and prosecution of cases, the loss of value of monetary damages which occur as a result of staying too long in the court system, etc<sup>109</sup> I agree that viewed in this light ADR is certainly less expensive.

*Overloaded court dockets:* It is not uncommon to hear litigants in Nigeria say during a disagreement with one another that ‘I will teach him a lesson’, referring to instituting legal proceedings. Both lawyers and litigants have a ‘litigation mind set’ that looks to the courts as the only way to resolve disputes even though there are even recognized cultural processes that would do just as well.<sup>110</sup>

Those who advocate an increased role for ADR in resolving business disputes point out those courts are congested, rife with delay and inaccessible due to litigation explosion. Other reasons espoused for the so-called litigation explosion includes the growing diversity and size of population, increase in the number of judicially and statutorily created rights, lower *locus standi* standards for enforcement of rights, increase in crime and criminal prosecutions.<sup>111</sup>

In the peculiar situation of the Nigerian system, one very prominent reason for crowded dockets is the ill-equipped courts. As stated

earlier, Judges still record proceedings in long hand – to that extent there is a limited pace at which the court can actually ‘try’ cases or even entertain contentious applications.

*Expertise:* In many forms of private ADR it is possible to select a ‘dispute resolver’ with ‘expertise’ in the business issue at hand which may be lacking with the judges in the traditional court system.<sup>112</sup> Singer<sup>113</sup> comments that a further advantage of ADR over litigation is the possible expertise of the Arbitrators, which is particularly important in industrial property disputes that often involve complicated technical issues. By using commercial arbitration, parties can have an adjudicator who is knowledgeable about both industrial property laws and about technology. Moreover, Arbitration panels can provide parties with extreme diversity of knowledge.<sup>114</sup>

Litigation is also sometimes frames as legal issues which may not necessarily reflect the substantive concerns of the parties. This view was expressed by a utility company executive thus:

‘Judges are trained in the law, not necessarily in the fundamentals of a particular industry or avenue of commerce. They’re coached on fairness and precedents and things like that... for example, we have a number of disputes with people who we transact with in a transmission grid. Well, that’s a very complex engineering econometric type of consideration where we use these mechanisms. It is just not the type of thing you want to bring to the court.’<sup>116</sup>

*Preserving relationships:* ADR is less hostile than traditional litigation. It is a common saying in Yorubaland that you cannot return from a court proceeding and remain friends with the other side. According to Akindipe and Sanni,<sup>117</sup> litigation is oftentimes acrimonious in character. It is viewed by many including some lawyers as a ‘legal fight’ instead of resolving a dispute. Arnold,<sup>118</sup>

again comments that with ADR you can preserve ongoing relationships, licensor – licensee relationships, Joint – venture relationships etc that litigation inevitably destroys.

*Privacy and Confidentiality:* ADR is a private proceeding which allows business to resolve their disputes without creating a public record. ADR is attractive to businesses concerned about being forced to reveal one or more of its trade secrets during litigation. Businesses appreciate the privacy and confidentiality factors of ADR since they do not want their competitors, customers, suppliers or franchises to know about their lawsuits.<sup>119</sup> The issue of creating legal precedent which may later turn out to be adverse to a particular business or industry is another reason why ADR (where the likelihood of an appeal being successful is limited), remains attractive.

### *7.5 Not all that Glitters is Gold*

Notwithstanding its numerous potentials, the ADR processes nonetheless have some pitfalls/limitations. One of the most critical limitations is the issue of enforceability. All ADR settlement agreements except arbitration have the status of a contract *simpliciter*. They cannot be recognized or enforced by the courts like a judgment or arbitral award.<sup>120</sup> Its execution/implementation therefore depends totally on the good faith of the parties.<sup>121</sup> To this extent it therefore means that in the event of default by any of the parties, the other would have to seek redress afresh in court. The obvious question then is whether the effort spent in ADR is not a waste of time if parties still need to go to court again.

Scholars have sought to address this constraint from different perspectives. First is that the purpose of the fresh action before the court is not to reopen the dispute but rather to seek enforcement of a concluded ADR process for example, a mediated settlement. In effect, what the party initiating a court action needs to prove is that

parties had voluntarily signed the Mediation Agreement and the court should compel the other party to perform the same. It is submitted that this is a distinction with a difference.

Also, the mediation agreement being sought to be enforced is a 'commercially created solution' arrived at by the parties' rather than one imposed by the courts. It is this valued added solution which did not exist before that will form the basis of the fresh litigation. Again, the fact that one party defaults in performing its obligations under the settlement agreement does not mean the concept should be cast aside. It is a notorious fact that some parties refuse to comply even with court judgments or awards. Yet no one is suggesting doing away with the court system - instead that is why there are provisions in the various High Court Rules for contempt proceedings.

A common practice under the MDCH regime is to have provisions which require parties to submit their settlement agreements especially for mediation to an ADR Judge for endorsement. Where this happens, the agreement is deemed a consent judgment of the court and becomes enforceable under the Sheriffs and Civil Process Act. For example, S.4(1)(b) of the Lagos Multidoor Court House Law<sup>122</sup> provides thus:

- (1) In giving effect to its overriding objectives, the LMDC shall-
- (b) cause settlement or other memorandum, duly signed by disputing parties, endorsed by either an ADR Judge or any other person as may be directed by the Chief Judge to become binding and enforceable by the Sheriff under –
  - (i) Section 11 of the Sheriffs and Civil Process Act; or
  - (ii) Other legislation for the time being a force.

Another limitation is the fact that the evidence or strategy of a party may be revealed prematurely during the mediation process. This is a significant risk which must be weighed against the potential that the dispute will be satisfactorily resolved promptly and at a lower cost if mediation is used.<sup>123</sup> As in litigation there is no guarantee that every piece of information will surface in ADR.<sup>124</sup> The bottom line however is that a party is free to reject any proposed solution where he believes critical information has been deliberately (or even inadvertently) withheld.

Furthermore, there is no denying the fact that where mediation does not succeed in resolving a dispute, it increases the total cost of resolving same, as the party must still have resort to litigation. The combined costs may exceed the cost that would have been incurred if litigation alone had been adopted from the start. Again, counsel and his/their client(s) must weigh the potential of settlement against the risk of non-settlement and decide whether or not to adopt an ADR mechanism.<sup>125</sup> Let the party decide.

### **8. No! ADR is not a one size fits all**

It must be stated clearly that while there are many benefits of ADR including its flexibility, it is still not appropriate for every dispute. For example, in the *Halsey Case*, Dyson, J gave a number of examples of some cases that are not suited for mediation, with which I fully concur. They are:

- where the parties wish the court to determine issues of law or construction which may be essential to the future trading relations of the parties, as under an ongoing long term contract;
- where the issues are generally important for those participating in a particular trade or market;
- where a party wants the court to resolve a point of law that arises from time to time, and one or more parties consider that a binding precedent would be useful;

- cases involving allegations of fraud or other disreputable conduct against an individual or group which are unlikely to be successfully mediated because confidence is lacking in the future conduct of that party; and
- cases where injunctive or other relief is essential to protect the position of a party.<sup>126</sup>

Other examples of cases which may not be suitable for ADR and mediation in particular include:

- where a disputant is not capable of negotiating effectively (e.g. someone suffering from a personal impairment);
- one side in the controversy wants a judicial decision to use as a benchmark to settle or discourage similar cases;
- a party fears that a settlement may stimulate ‘copycat’ claims;
- a litigant requires a court order to control an adversary’s conduct;
- one of the disputants is benefiting from the existence of the controversy ( for example to inflict pain or delay making a payment);
- a party needs formal discovery to evaluate the strength of its legal case or a crucial stakeholder refuses to join the process.<sup>127</sup>

Others also argue that mediation may not be suitable for specific areas such as spousal abuse cases.<sup>128</sup> The deduction to be made from the above is that the more personalized a dispute is in terms of its impact, the higher the degree of it being amenable to ADR. Where public interests and considerations including the precedential value of court pronouncements trump private concerns and interests, ADR may not be ideal.

I am one who believes that no sector or type of dispute should be shut out or labeled as unsuited for ADR. For example, election matters and chieftaincy disputes were traditionally cited as being unsuitable for ADR. I have at different times recommended the use of ADR in some intra election matters<sup>129</sup> as well as resolution of a genre of chieftaincy disputes where appropriate.<sup>130</sup>

## **9. The ADR Promoters, Practitioners and Regulators**

It is important to mention howbeit briefly the stakeholders in the ADR field in Nigeria. Individuals and institutions have been critical promoters of these models of dispute resolution.

9.1 *The Promoters* – In Nigeria, ADR flourished in the private sector and remained in the shadows until 2001 when the Negotiation Conflict and Management Group (NCMG) brought it to the front burner through the concept of the court-connected ADR in Lagos State. NCMG still remains one of the foremost promoters and ADR service providers in Nigeria today.

The National Industrial court by statutory regulation had the Industrial Arbitration Panel in existence but it was limited to industrial disputes and the only ADR processes available were arbitration and conciliation.

The Petroleum Act also provides for the resolution of disputes arising out of the operation of the Act, to be referred to arbitration. The Nigerian judiciary in an attempt to fast track the system of administration of justice has also become major players in this sector both as service providers and supervisors where ADR is conducted within the courts.

Major players in the industry include: the Regional Centre for International Commercial Arbitration, International Chamber of Commerce (Nigerian Branch), the Chartered Institute of Arbitrators (UK) (Nigerian branch); the Nigerian Institute of Chartered Arbitrators, the Lagos Court of Arbitration, and the Institute of Mediators and Conciliators. These latter categories have served as

trainers and certifying institutions for persons interested in ADR practice, thus providing a pool of qualified neutrals all over Nigeria.

*9.2 ADR Practitioners-* Who are ADR practitioners and who are those entitled to so practice professionally. No doubt, many of us routinely intervene in resolution of disputes around us; but this is however not the same as being a professional ADR practitioner. To practice professionally, a person must receive the requisite training for the specific type of ADR practice he desires. For example, to become an accredited arbitrator, a person should attend the trainings conducted by any reputable arbitral institution. The trainings teach the principles, practice and procedure for the process concerned.

The only pre-qualification required is that the proposed neutral be a professional in any field. He then submits to the professional training to enable him be accredited. You do not need to be a lawyer to be an ADR practitioner.

*9.3 The Regulators* – The legal framework regulating ADR in Nigeria includes legislation, conventions and treaties, precedents or case law, customary law and general principles of Law. Lagos State is the only state thus far to enact state legislation on ADR (arbitration in particular.) This sparked a lot of legal debate as to whether states have jurisdiction to enact ADR especially with regard to international disputes. It is my considered view that both the States and the Federal government have jurisdiction to regulate ADR practice in Nigeria. However, in respect of international trade, the federal legislation will be applicable. The Arbitration and Conciliation Act remains the primary legislation in ADR in Nigeria today.

## **10. The Principle, Practice and Procedure (PPP) of ADR**

This section discusses the most essential principles of ADR that undergird it and make it work as well as the practice and procedure of some of the processes.



## 10.1 *The Principles*

The essential principles of ADR are *inter alia* confidentiality, flexibility, satisfaction of party interest (win-win outcomes). The first two have been dealt with earlier under the section on growth of ADR, thus I will emphasise the issue of protection of party's interest.

Many people have the impression that ADR is about compromise – split the pie, 50/50 etc. While it is true that parties have to discuss the possible solution to their dispute, ADR emphasizes that this is done in a manner that satisfies the mutual interest of all the disputing parties (including those in the shadows). No matter the process adopted, parties must ultimately bargain a suitable solution. So each party with his counsel must discuss extensively and prepare before an ADR session what his interests are and how it intends to satisfy them. He would also identify the possible interest of the party on the other side so that his proposed solutions, would likely be accepted because it is not one sided but satisfies the desires of all.

Let me recount a story which I normally tell my students on mediation. I was mediator in a small money lending claim. The defendant had borrowed money from a licensed money lender who had his operating office right in the market. At this time defendant owed above N3million. In caucus, the debtor told me he could only afford to pay ten thousand naira monthly. Typical lawyer me, I was shocked, but as a mediator I cannot express my disbelief. So I asked him nicely to calculate how many years it would take him to settle this debt at ten thousand naira every month. He replied 'Madam, that is what I have.' Again, to bring him back to earth, I said, can you make this offer personally to the other party? He said 'Yes.'

So I called in the creditor and laid the foundation to help him hear this 'ridiculous' proposal without taking offence. I turned to the

debtor and said go ahead. He called the creditor by name and said *Oga*, you know business is bad, we have been together for long, you know I don't have this money. Let me be paying you ten thousand naira every month. The creditor turned to me calmly (incidentally he was there with his wife) and said, 'Madam mediator, if he says he will pay even five thousand a month, no problem. What I want, is to let them know in this market that *my one naira no dey loss*, nobody can collect my money and go, I will pursue you to the last kobo.'

Believe me, I was surprised, but I saw a party who truly knew what his interest/goal was and was ready to satisfy it. This became the terms of settlement. For him, it was not about the money, it was more about sending a clear message to his clients that if you borrow from him, be prepared to pay back everything. I am sure none of my lords here present will make such an order for payment by installment of a judgment debt.

ADR says 'don't cry more than the bereaved' or in Nigerian parlance, 'do not take *panadol* for another man's headache.' Counsel must therefore prepare his client for an ADR session just as you would prepare him before a court trial – ascertain what his interests in the dispute are, and possible ways he believes the dispute can be resolved for the mutual benefit of the parties.

## 10.2 *Practice and Procedure*

From earlier discussions, we had noted that though ADR started as a parallel private practice outside the court system, it has now been introduced into the public system of administration of justice as court connected or annexed ADR or Multidoor court houses. There are legal rules for the practice and procedure of ADR especially those conducted in the MDCH. Some existing MDCH are Lagos, Akwa-Ibom and Abuja. Most recently, the Oyo State House of Assembly passed the Bill for the establishment of Oyo State

MDCH. Both private and public ADR share the basic features and these will be discussed below.

### 10.2.1 *How is the ADR process initiated?*

Fundamentally, whether private or public, the disputing parties must agree to use ADR before it becomes applicable. An ADR process is a contract between the parties, it is a consent driven process.

In the private sector, the most common form of initiating ADR is by inserting an ADR clause as a term in the contract of the parties. A general reference to ADR or a specific ADR process such as arbitration or mediation may be agreed to by the parties in the contract. Alternatively, after the dispute has arisen, one of the parties may request that the dispute be referred to ADR, in which case, if the other party agrees, they enter into an agreement for mediation or arbitration and so on, as the case may be.

The International Chamber of Commerce sample clauses on ADR read thus:

‘In the event of any dispute arising out of or in connection with the present contract, the parties agree to submit the matter to settlement proceedings under the ICC ADR Rules.’

Or

‘In the event of any dispute arising out of or in connection with the present contract, the parties shall first refer the dispute to proceedings under the ICC Mediation Rules.’

Or

‘All disputes arising out of or in connection with the present contract, shall be finally settled under the rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules of arbitration’

JAMS, an international ADR service provider has a sample of a multi tier ADR Clause thus:

‘The parties agree that any and all disputes, claims, or controversies arising out of or relating to this agreement shall be submitted to JAMS or its successor, for mediation, and if the matter is not resolved through mediation, then it shall be submitted to JAMS, or its successor, for final and binding arbitration pursuant to the clause forth in paragraph 5 below.....’

ICC provides a similar multi-tier clause thus:

‘In the event of any dispute arising out of or in connection with the present contract, the parties shall first refer the dispute to proceedings under the ICC Mediation ADR. If the dispute has not been settled pursuant to the said rules within 45 days, following the filing of a Request for Mediation or within such other period as the parties may agree in writing, such dispute shall thereafter be finally settled under the rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules of arbitration.’

In the MDCH, the three ways of initiating ADR are by *Walk-ins*, *Court referrals* or *direct intervention* by the ADR Centre. Under the MDCH rules, whether it is a walk- in or a judge has referred a matter to the ADR centre, on getting there, parties will be informed on the different ADR services available and which one the dispute officer believes is suited to the dispute. If for example, mediation is recommended, when parties get to the mediation session, the mediator would ensure that the parties sign a mediation agreement.

It is important to comment briefly on the practice of the MDCH in view of the current trends to mainstream ADR into the public

dispute resolution space. The LMDC will be used to illustrate the process.

The key feature of the Lagos multi-door court is the initial procedure which is in two stages i.e. the Intake screening and Referral.<sup>131</sup> This is done by a Dispute Resolution Officer (DRO) carefully studying the parties Statement of Issues and Statement in Response to determine the nature of the claim, and the underlying interests as well as the appropriate "door" for possible resolution.<sup>132</sup>

Thereafter, the DRO informs the parties of the “door” recommended for the possible resolution of the matter, the process, the conduct of the parties and their counsel at the sessions. A Neutral, (Mediator, Arbitrator or Neutral Evaluator) is recommended by the Registrar from the LMDC Panel of Neutrals to assist in resolving the dispute and a date for the session is scheduled.

Where a party, after being served with the notice of the matter involving him, refuses to submit within the stipulated time to Mediation, the DRO shall notify the ADR Judge who may then order the recalcitrant party to appear before him and afterwards make requisite orders and give necessary directives.<sup>133</sup> If parties submit to the mediation, the ADR session is convened.

### 10.2.2 *How are ADR Sessions conducted?*

As noted earlier, one of the greatest advantages of ADR irrespective of the model, is its flexibility. Parties can adjust the process to suit their peculiar dispute. However, with time, certain processes have evolved some procedural guidelines peculiar to them. A full discussion of the different practices for each process will be impossible, thus mediation will be discussed as an illustration for the others. How does mediation work?

Mediation is a flexible process i.e. it can be designed and redesigned to suit a particular dispute but some clearly recognized phases of mediation are: Preparation phase, Opening phase, Exploration phase, Bargaining phase and the Concluding phase. For mediation to work successfully, the parties must start the process in a frame of mind that is open to development in the desired direction.<sup>136</sup> In many cases however, parties, will attend with a degree of hostility, suspicion and reservation about the Mediation and the Mediator.<sup>137</sup>

Once a mediator is appointed, he makes contact with the parties or their lawyers to discuss some process arrangements and/or clarify some content aspects. Matters to be discussed at the preparatory stage includes whether all the parties have agreed to mediation<sup>138</sup> (the best evidence of this is an agreement to mediation duly signed by all the parties); whether parties will be accompanied by their lawyers or advisers (this will impact on the venue and other welfare arrangements) and whether or not a party will be unrepresented. Also it is important to confirm whether someone with authority to settle will be present or available at the mediation session(s); whether legal proceedings are already underway and would be stayed during mediation and whether there are any other constraints.

The cost of the mediation i.e. the mediator's fees, administrative and welfare expenses are also discussed and agreed as well as mode of payment. The date for the mediation is thereafter fixed as well as the venue taking into consideration the convenience of the parties.

Between the date when the agreement to mediate is concluded and the date of mediation, the parties usually through their solicitors would send to the mediator and each other their written submissions – this is a *case summary* (of the fact and issues) along with supporting documents. This will give the mediator a clear idea about the content and context of the dispute. Where necessary the mediator can seek clarification or query anything about the dispute

but such communication whether oral or written must be made known to all the parties in order not to compromise the mediator's neutrality.

The next section focuses on the time the mediator spends together with the parties whether jointly or separately.

*Opening Phase* - This is the day of mediation. It may be the first time that the disputants meet as a group and it is often referred to as the 'joint session'.<sup>139</sup> The mediator would ordinarily have a very brief initial private meeting with the different parties to confirm that the Mediation Agreement has been signed, that the persons with authority to sign are present and that everyone is comfortable and ready to proceed. Once the mediator is sure that everyone is ready he will bring the parties together for the first joint session.

*The Joint Session* - The mediator explains his role as a facilitator not judge - he can challenge and test positions, ideas and options, but he is not responsible for the solution. The goal of this session is to set the tone for the mediation; establish the mediator's role and authority, emphasize the ground rules and outline how the day would play out. In setting the tone, the mediator encourages participation, respect and productive interaction.

He also explains the principles and objectives of mediation to the parties to emphasize his role as a neutral and the voluntariness of the process i.e., its being confidential and without prejudice (anything said or seen within the process will remain confidential even in the event that no agreement is reached and litigation has to be commenced). As part of the ground rules the mediator makes it clear that parties should act with courtesy and respect and avoid interruptions. Parties would be required to confirm their acceptance of these rules and make a commitment to participate in good faith. The mediator also explains in broad outlines how the mediation session will be conducted - that there would be private meetings

with each party, intermediate joint sessions or team meetings (e.g. with only the lawyers) as appropriate.

After the mediator's opening, the parties would be invited to make their *opening statement*. The parties would have been told about this before hand and it is wisdom for the lawyer to prepare the statement ahead for maximum effect. Just like in a court session, it is usual for the claimant to speak first – it is often recommended by most mediators that parties themselves rather than their representatives make the opening statement. The lawyer needs to understand this and not take offence. In some other jurisdictions, there is a 'new, professional skill of representing clients in mediation.'<sup>140</sup> Such trained personnel may also present the client's case. The mediator would have informed the parties on the suggested length of time for each party's opening.

After the parties speak, some mediators find it useful to set some kind of agenda for the day i.e. with the contribution of parties, he lists what areas will need to be addressed during the mediation in order to reach a resolution. Depending on the circumstances, the mediator might then decide to continue in joint session or break for private sessions with each party.

*Exploration Phase* - Most commercial mediations involve some private caucusing with the mediator moving back and forth between parties sitting in separate rooms.<sup>141</sup> The private meeting gives each party the opportunity to speak freely with the mediator about all aspects of the case, being confident of the mediator's neutrality and the confidentiality of the caucus meetings. Lawyers who understand the mediation goals and objectives will be able to cooperate with the mediator and with each other for the mutual benefit of the parties.

It is at this stage also that the mediator tries to overcome existing barriers/obstacles to a constructive bargaining. Such barriers could be emotional (anger, hatred, suspicion, anxiety, greed etc)



perceptual (how parties perceive the facts – which may be wrong and distort the overall picture), adversarial (dogmatic insistence on legal rights and duties) and positional bargaining (trying to maintain inflexibly a starting position which is wholly favourable to him).

In order for the mediator to truly identify underlying interests and assist parties to modify previously stated firm positions, time is required. Some lawyers believe that immediately after the opening phase parties should move straight to bargaining – this may not be very helpful – it is better to take the time to clarify at the exploration stage what the parties want to achieve.

This stage is usually the ‘caucus’ or private meetings with the parties and will involve among others an opportunity to express emotions, distinguish real from apparent issues, identify each party’s needs as opposed to wants and rights, uncover hidden agendas and reappraisal of risks (Best Alternative to a Negotiated Agreement[BATNA]/Worst Alternative to a Negotiated Agreement[WATNA]).

Apart from the negative aspects to be overcome, there are some positive issues that must be emphasized/reinforced to the parties at this stage. It includes focusing on the parties’ interests’ not positions, shifting from battle mode to a realization that the dispute is their *common* problem, which needs to be jointly solved, generating options for mutual benefit and evaluating same. Parties will also discuss broadly what forms they expect resolution of the dispute to take.

Bargaining Phase - There are no fine lines between each stage in the process but generally this stage can be said to start when parties are ready to discuss terms of settlement in details. Broad ideas which were mentioned at the exploratory stages are now developed in terms of actual figures, specific time lines and practical arrangements. Bargaining can be done in private meetings and

indeed most often entirely so, while in other circumstances it can begin in private meetings and conclude in joint meetings. It is flexible. Whilst most mediation sessions end with settlement, there are cases where bargaining reaches a deadlock. The mediator will use his skills to see how best to break this and help the parties continue the process. All these occur in private sessions, on a shuttle basis – i.e. the mediator going back and forth between the parties.

Concluding Phase - The goal of all mediation is to achieve a negotiated agreement which satisfies the parties' interests and resolves all the issues in dispute on terms which are realistic and workable. This minimizes the possibility of another future dispute on the same issue. Where parties are agreed on terms of settlement, the mediator will convene a final joint session of all parties and their representatives to give effect to this agreement. Even where the mediator is a lawyer, it is the proper function of the legal representatives of the parties to draw up legally binding documents. Where parties are not legally represented this role may fall on the mediator. The purpose of the settlement agreement is to have a legally enforceable contract in the event of a breach.

In the LMDC Court-referred matters, the document embodying the 'Terms of Settlement' signed by the parties is sent back to the referral judge, who endorses same as a Consent Judgment of the court. In *Walk-In* matters, it is signed by the parties and endorsed by the ADR Judge and it becomes a consent judgment of the High Court of Lagos State. If the parties are unable to reach a settlement, a certificate of inability to resolve is sent to the referral judge in Court referred matters.

### 10.3 *After Settlement, what next?*

Where the settlement satisfies the mutual interests of the parties, the chances are very high that they will adhere to the terms and live happily ever after. But, this is not always the case. There are many

reasons why a party could default or is unable to comply with the settlement terms. In such cases, the rules of court with regard to enforcement and execution would have to be invoked.

Order 39, rule 4 (3) of the High Court of Lagos State Civil Procedure Rules also states that an Award made by an Arbitrator or a decision reached at the Multi-Door Courthouse may by leave of a Judge be enforced in the same manner as a judgment or order of Court.<sup>143</sup>

### **11. Online ADR: The Future of Justice**

Online commerce has become a part of our daily life, and for its growth, it is necessary to increase trust in the system. In this section, I will only be flagging the basic issues as this in the words of one scholar is the future of justice.<sup>145</sup>

The Internet is a 21st-century medium that has revolutionised many areas of life. It fulfils many functions and as a common source of information, communications tool and global trading platform has become the engine for introducing modern technological solutions within existing fields of activity.<sup>146</sup>

#### *What is Online Dispute Resolution?*

Dispute resolution techniques range from methods where parties have full control of the procedure, to methods where a third party is in control of both the process and the outcome. These primary methods of resolving disputes may be complemented with Information and Communication Technology (ICT). When the process is conducted mainly online it is referred to as Online Dispute Resolution (ODR). This entails carrying out most of the dispute resolution procedures online, including the initial filing, the neutral appointment, evidentiary processes, oral hearings if needed, online discussions, and even the rendering of binding settlements. Thus, ODR is a different medium for resolving disputes, from beginning to end, respecting due process principles.<sup>147</sup>

Online dispute resolution (ODR) is a genre of dispute resolution which uses technology to facilitate the resolution of disputes between parties. It primarily involves negotiation, mediation or arbitration, or a combination of all three. In this respect it is often seen as being the online equivalent of alternative dispute resolution (ADR).<sup>148</sup>

### *Development Phases of ODR*

There have essentially been four phases in the development of online dispute resolution (ODR).<sup>149</sup> The first, which ran from 1990 to 1996, was an amateur stage in which electronic solutions were in a test period. In the ensuing years (1997–1998), ODR developed dynamically and the first commercial web portals that offered services in this area were established. The next phase ran from 1999 to 2000. Given the favourable period of economic development, especially in Information Technology services, many companies initiated projects based on electronic dispute resolution, but a large number no longer operate on the market. The year 2001 marked the beginning of an institutional phase, during which ODR techniques were introduced into institutions such as the courts and administration authorities.<sup>150</sup>

One of the first cases of online dispute resolution involved a procedure started in the United States of America in which the opposing sides decided to seek a new method to settle their dispute.<sup>151</sup> The case was pending before the Online Ombuds Office at the Center for Information Technology and Dispute Resolution at the University of Massachusetts. Ethan Katsh and Janet Rifkin, who founded the entity and are considered leading promoters of ODR, started mediation procedures via only e-mail communications and this eventually resulted in a settlement being signed.<sup>152</sup>

Among others, the Online Ombuds Office offered mediation services for auction portal eBay. In 1999, this collaboration had

transformed into the *Square Trade* portal, one of the first commercial ODR providers in the area of consumer disputes in the US market.<sup>153</sup> Among its most prominent services was online mediation, which was initiated by filling in a complaint form on which the methods for dispute resolution were indicated.

After voluntary acceptance of the electronic method for resolution, the other party would respond by choosing the relevant option. In the event of failure to reach a settlement, the parties would be directed to the negotiation phase. This was supported by the mediator, which communicated with them using the tool of electronic communication – e-mail.<sup>154</sup>

While the use of ODR has become commonplace in the Western world with e-businesses such as Amazon and eBay solving millions of disputes through ODR, it is instructive to note that the concept of ODR is still very strange in Nigeria. On eBay alone, around 60 million disagreements amongst traders are resolved through ODR yearly. The truth however is that more and more people in Africa now use every day mobile devices (e.g. iPad, iPhone, Android tablet or smart phone) in their home or office, so we are bound to jump into the wagon soon.<sup>155</sup>

#### *What types of disputes can be resolved via ODR?*

ODR techniques are already being deployed around the world in resolving a wide range of disagreements – from consumer disputes to problems arising from e-commerce, from quarrels amongst citizens to conflicts between individuals and the state. ODR is not appropriate for all classes of dispute, but on the face of it, is best placed to help settle high volumes of relatively low value disputes robustly, but at much less expense and inconvenience than conventional courts or conventional arbitration.<sup>156</sup>

Online Dispute Resolution (ODR) uses alternative dispute resolution processes to resolve a claim or dispute. Online Dispute Resolution can be used for disputes arising from an online, e-commerce transaction, or disputes arising from an issue not involving the Internet, called an “offline” dispute.<sup>157</sup>

### *How does ODR Work?*

Online dispute resolution can take place either entirely or partly online and concerns two types of disputes: those that arise in cyberspace and those that arise offline. As Internet usage continues to expand, it has become increasingly necessary to design efficient mechanisms for resolving Internet disputes because traditional mechanisms, such as litigation, can be time-consuming, expensive and raise jurisdictional problems.<sup>158</sup>

Online Dispute Resolution can involve the parties in mediation, arbitration, and negotiation. The parties may use the Internet and web-based technology in a variety of ways. Online Dispute Resolution can be done entirely on the Internet, or “online,” through email, videoconferencing, or both. The parties can also meet in person, or “offline.”

Sometimes, combinations of “online” and “off-line” methods are used in Online Dispute Resolution.

Some e-commerce companies provide Online Dispute Resolution as a service to customers. There is a growing number of organizations that provide Online Dispute Resolution services for consumers and e-commerce businesses. These organizations are called Online Dispute Resolution Providers.

### *Why use Online Dispute Resolution?*

Online Dispute Resolution has gained popularity in resolving e-commerce disputes among businesses and consumers. The advantages of Online Dispute Resolution include:

- Cost - Online Dispute Resolution is often less expensive than the traditional legal process
- Efficiency – Online Dispute Resolution can often resolve the dispute quickly
- Participation and Control - parties using Online Dispute Resolution must work with each other to resolve the dispute and often have more control of the outcome of the dispute.
- Flexibility - parties using Online Dispute Resolution can have more flexibility than the traditional legal process.
- Geographic flexibility - Online Dispute Resolution can allow parties in different locations or countries to avoid the costs and inconveniences of travel<sup>159</sup>

### *The Legal Framework for ODR*

The legal framework for ADR generally in Nigeria is still developing. Apart from the Arbitration and Conciliation Act, there is no Federal law on other ADR processes (although there is a bill that seeks to fill this vacuum before the National Assembly). It is therefore not surprising that the legal framework for ODR is almost non-existent.

I acknowledge that some practitioners, a few of whom I have referenced in this section, are already engaging in the preliminary discussions and trainings necessary to advocate and recommend a national policy and laws to regulate ODR practice in Nigeria. This aspect of formulation of law and policy to drive ODR in Nigeria will be the subject of my research activities in the next couple of years.

I look forward to investigating the laws and policies of other jurisdictions with a view to recommending appropriate laws and policy suitable for ODR in Nigeria.

## **12. Recommendations**

Mr. Vice Chancellor sir, it is customary in a lecture of this nature to make some recommendations and as such, I will make a few. Flowing from my arguments about the potential of ADR to give life, I make the following recommendations:

- a. *Full Integration of ADR into the Court system throughout the Federation* – ADR has many advantages therefore, CCADR should be implemented in all states of the Federation as part of the civil system of administration of justice and for greater access to justice for all citizens.
- b. *Introduction of CCADR at the Magistrate Courts* - Thus far CCADR where it exists has been tied to the High courts, whereas the magistrate courts deal with majority of small civil claims in most jurisdictions and Nigeria in particular. It is therefore recommended that ADR centres be annexed to magistrate courts in order to actually make an impact on court dockets.
- c. *Awareness Advocacy and Education* - Affirmative and sustained awareness campaigns on ADR, the benefits of CCADR as well as the practice and procedure are recommended. Stakeholders need to be educated and trained on these issues as well to enable them appreciate and thus participate in ADR. There is also need for training to equip counsel to discern what dispute mechanisms are best suited to different cases. The National Universities Commission guideline on the required courses for the attainment of the Bachelor of Law degree must be revised to incorporate ADR skills, practice and procedure. There must be continuing legal education for lawyers to address existing prejudices, suspicion and ignorance of ADR and CCADR concept in



order to get more disputants to try the process as most clients would trust any recommendation of their lawyers to use ADR.

- d. *Need for ODR Policy and Specific legislation* – In view of the future of ODR as an effective means of resolving disputes in the future, Nigeria needs a suitable legal framework.

### **13. My Contribution to Scholarship**

(a) Mr. Vice Chancellor Sir, I would say I started my journey as a researcher, from my days as a new wig researching authorities for defending or sustaining claims, in the courts at the law office of Akeredolu and Olujinmi, and later at Akinola Adaramaja, SAN & Co.

My years in the latter office, led to my subsequent engagement as a law reporter. I have been editing and publishing judgments of the Appellate Court, for almost two decades. This has significantly contributed, and provided additional information to lawyers, law teachers and judges on contemporary issues of law, procedure and justice.

(b) I joined the full time academic faculty of Lead City University, Ibadan, in 2004, and later moved on to the University of Ibadan in 2007. As a full time academic, I have conducted and reported/published alone and in collaboration with some other colleagues in the areas of ADR, Energy and Environmental law and lately Gender Studies. About eighty-five per cent of my research efforts has however been focused on ADR, a situation that justifies the chair I am inaugurating today.

My publications in this field of ADR have assessed the status of ADR, as a dispute resolution mechanism in Nigeria and other jurisdictions, reviewed and appraised comparatively, extant ADR legal and institutional frameworks to determine its adequacy or

otherwise in sustaining integration of ADR into the court system. I have made recommendations for enactment of new laws and/or amendment of existing legal instruments, to accommodate the emerging trend of court connected ADR. My publications have also challenged existing paradigms on the suitability of certain legal disputes, such as electoral and chieftaincy disputes to resolution through ADR.

It is an endorsement of my modest contributions that the Independent National Electoral Commission (INEC) recently started encouraging parties to explore ADR in resolving some election matters.

Mr. Vice Chancellor, distinguished guests, ladies and gentlemen, I have further addressed practical questions of practice and procedure including whether conflicting judgments of the Supreme Court on the effect of non-signing of a court process was not enthrone technicality in the apex court.

In the field of Petroleum and Environmental law, I have raised and appraised issues on the substantive petroleum regulations as well as the review of Petroleum Industry bill, and control of adverse environmental impacts that occur from exploration of this natural resource. I have made modest recommendations on how the law can promote better field operational practices.

My involvement in the University of Ibadan Gender Mainstreaming Office has revealed that not much is written, from a legal perspective, in this field, to properly situate the issue of equity within the Nigerian constitutional or other statutory framework. I have therefore sought, through my publications, to highlight and advocate for the proscription of statutory and customary laws and practices which violate rights of women or promote gender inequity. My publications have made a case for institutional gender equity. I

also participated, along with other gender experts, in formulating the University of Ibadan Gender Policy and Sexual harassment policy. I continue to collaborate with the team in helping other institutions to draft their own Gender equity and Sexual harassment policies.

(c) I have authored a few monographs and books including:

- *Supreme Court Legacy (2006)*,
- *The Supreme Court on Impeachment Proceedings (2007)*;  
and
- *Election Practice and Procedure in Nigeria: A Practitioners Guide – in honour of Honourable Justice Olufunmilola O. Adekeye, JSC (Rtd) CON(2012)*

These works have been cited and used as reference materials both by the academic community and legal practitioners alike.

(d) At the University of Ibadan, apart from teaching and research in the Faculty of Law, I served severally as Secretary to the Editorial Board of the Faculty Journal; I served as Departmental Examinations Coordinator, and as Sub-Dean Postgraduate of the Faculty. I also served on several investigative panels on staff misconduct matters.

I have taught ADR to postgraduate students, and it is on record that ADR postgraduate classes are often fully subscribed. Some of the ADR students I supervised ended up pursuing doctoral degrees, in this unique field. I am glad I inspired them.

I have also supervised at least seventy-five undergraduate projects and no less number of master's dissertations in the field of ADR. I currently have five ongoing PhD dissertations, being supervised by me. I have also been external examiner of PhD dissertations, in ADR, at some universities, in Nigeria.

Furthermore, I have raised and coached undergraduate students to participate in internationally organised ADR competitions, including the ICC Mediation Competition held annually in Paris. Engagements in this programme have led to internships for some of the students, with international ADR institutions and scholarships.

(e) At Ajayi Crowther University, Oyo, I have served as Head of Department, and currently as Dean of Law. I coordinate the University Multidisciplinary journal, and serve on a few Senate committees, including the Student Disciplinary Committee.

#### **14. Concluding Remarks**

Mr. Vice Chancellor sir, most distinguished audience, you have listened to me in the past one hour or so speak of my passion for ADR. Disputes are bound to occur in our interactions with one another, it is therefore the function of law in society to continue to evolve appropriate and efficient processes for their resolution.

In this lecture, I have traced the development of different forms of dispute resolution systems through the ages till we settled on litigation, which continues effectively till date. I have shown why ADR became necessary and the dividends it brings to the system of administration of justice. The lecture has also expounded on the different ADR models available and discussed the practice and procedure for ADR and in particular mediation in the private and public system of justice.

I have also peeped into the future to see the impact ICT will have on the way disputes are resolved. It is possible that in the future, disputes will be successfully mediated or arbitrated by 'faceless' third party neutrals. But are they really faceless? There is always someone behind the veil, when you lift it.

Our thesis is not that one process is better than the other, or that one will eventually phase out the other. No! Even ODR as important as it will increasingly become in future will not eliminate the traditional method of face to face ADR or litigation. The gate keepers will rather be called upon more and more to match the dispute to the most appropriate process.

Behold, I bring you glad tidings of great joy! While lawyers are the traditional gate keepers of dispute resolution (and don't blame us if we jealously guard our territory, it is money matter), the fact is that ADR can be practiced by any professional once you are properly trained. So, are you an Engineer, Architect, Doctor, Teacher, are you in the admiralty/maritime or aviation sector, construction industry etc, ADR stands at the door of your office, knocking, will you let her in?

Distinguished guests, may I also recommend, that the next time you have a dispute, don't just think of 'suing the bastard' like the popular poster says, think what is the most appropriate method for resolving the dispute? What is my interest and how will I best satisfy it. If your lawyer does not discuss ADR with you, raise it with him and ask which process is appropriate. After all, it is your case and the 'customer/client' is king.

Mr. Vice Chancellor Sir, my conclusion as I stated in the beginning is that the temple of Justice has many services to offer all its worshippers and those who minister therein. Litigation has served and is serving society well in several areas but it cannot do the job alone. It needs a help meet.

ICT/E-Commerce is now routine in many aspects of our daily lives. It is only logical that ADR becomes digital too. For all professionals, 'the cloud' is the next level. Let us take the flight together.

## 15. Acknowledgements

God has placed so many people in my life at different times, which played a part in molding me to who and where I am today. I humbly crave the indulgence of those whom I may not remember to mention here, to please forgive me. God knows you and he will appreciate you in a very grand way also.

- All glory honour and adoration first to God, in whom I live and move and have my being. Every time I consider his dealings in my life, I have no reason whatsoever to doubt that he loves me extravagantly, and on my part, I will continue to love and serve him all the days of my life. Praise the Lord, Halleluyah.
- I sincerely appreciate my family – The Tetsolas who gave me life and the Akeredolus whom I am spending the rest of my life with. My siblings on both sides are awesome. I love and appreciate you all for your support and love. You are so dependable and God will bless you exceedingly. Deacon and Deaconess F.A Tetsola, L/Evang G.B Akeredolu, Arakunrin Oluwarotimi Akeredolu SAN and Arabinrin Betty Anyanwu-Akeredolu, Prof. and Dr Wole Akeredolu, Pastor and Mrs Samson Tetsola, Pastor and Mrs Tseye Tetsola; Ms. Oluwatoyin Akeredolu, Dr and Dr Mrs Ademola Adeyinka, Dr and Mrs Chris Tetsola, Mr and Mrs Sisan Ejumabone, Mr and Mrs Yinka Olajuwon, Mr and Mrs Femi Akeredolu, Mr & Mrs Charles Etoruom, Mr and Mrs Oritsesan Tetsola.
- My journey into academics started with Dr Omolade Olomola calling me from Lead City University (where she then was) to join the proposed Faculty of Law. Since then there have been so many people who have contributed to my career. I am grateful to Dr J.O.A Akintayo – a brother indeed. When I resumed in University of Ibadan in 2007 I shared his office and he mentored me. He directed me and helped me focus. He showed me pitfalls/ditches and obstacles along the part of an academic and how to avoid them. Sometimes when I look at my accelerated growth in

academics, I am truly grateful to him because he was really there to support me.

- I specially appreciate my Ph.d Supervisor, Hon Justice (Prof) M.A Owoade, Phd, Justice of the Court of Appeal. You kept me on my toes during the period saying Alero, I only have two years for you. Whenever you will be in Ibadan, you will call to say ‘Alero what do you have for me.’ My lord, I am most in indebted to you. Thank you.
- I thank all my teachers past and present in University of Benin (Professor Itse Sagay, SAN, Prof Doris Afejukwu, Prof Mike Ikhiriale, Prof Solomon Ukweagbu) and University of Ibadan (Prof. J.O Yakubu – of blessed memory, Prof. Yinka Omorogbe, Prof. Oluyemisi Bamgbose, Prof. Dejo Olowu, Chief Richard Akinjide, SAN, Aare Afe Babalola and Prof Smaranda Olarinde.).I am grateful to Professors Oluyinka Omorogbe, Oluyemisi Bamgbose and Adeniyi Olatunbosun – former, immediate past and current Dean Faculty of Law, University of Ibadan. Under your leadership during my tenure in University of Ibadan, you were all interested in the growth of your younger colleagues – there was no real or imagined oppression of any staff for whatever reasons. God bless you all.
- My Senior Friends and colleagues in the Faculty of Law, Center for Petroleum Economics and Law, the Institute of Peace & Strategic, Studies and the Gender Mainstreaming office, University of Ibadan, I thank you all for supportive roles.
- I also acknowledge and thank my family in Christ – I was born and bred a Baptist (Bethel Baptist Church Sapele), Scripture Pasture Christian Centre, Messiah is coming Ministry and Petra Ministries International. In all of these assemblies, I have made lifelong friends; God has made indelible impact in my life through these ministries and I am grateful. My Aarons & Hurs too many to mention, I thank you for being my burden bearers all these years.
- My ADR Family starting with Mrs Funmi Roberts (my mentor and role model in this field), Director and Staff of the Lagos State

MDCH, my classmates at our CEDR (UK) family, my fellow participants at the Harvard Law School Program on Negotiation (Mediation Course) with whom I have forged lifelong friendships and of course the Institute of Chartered Mediators and Conciliators, I thank you all for your supportive roles.

- May I specially acknowledge and thank our own indefatigable, upright, diligent, dynamic, vibrant, hands on Vice Chancellor. He is very pragmatic, yet always within the rule of law. Your love and passion for excellence concerning Ajayi Crowther University is unbeatable and I know God will honour your labour of love – such that your tenure will remain indelible in the hearts of men. The Anglican communion is blessed to have found you and we also thank you for heeding the Macedonian call. You wear the two caps of my lord Bishop and Vice Chancellor excellently well. I have benefited from your guidance as my lord Spiritual and leader of this academic community. Thank you sir.
- Mrs Adenike Fatogun (a.k.a Mummy ACU) I love you specially. You have made my coming and stay at ACU so awesome. Also all the principal officers of the university, the DVC Prof Jacob Adeniyi (whom I fondly call my daddy), the University Bursar and the Acting University Librarian, my own learned friend Mrs Harriet Asaju.
- All Professors and members of Senate ACU and the entire ACU family (both staff & students), I thank you for your support always. Prof Olatunde Ayodabo, thank you for helping me ensure that this lecture meets the ‘English standard’ at very short notice. It was a great sacrifice this festive season I thank you. I am fully persuaded that ACU in a very few years will be one of the top ranking universities in Nigeria and beyond because it is God’s own.
- I want to also acknowledge and thank the ceremonials committee headed by Professor Oladunni Akinnawo. They made today a beautiful event, stress free and at very short notice. God bless every member of the team.



- My CLASFON (Christian Lawyers Fellowship of Nigeria) family, especially my own Ibadan branch, I thank you for your consistent love and support.
- The academic and non-academic staff of the Faculty of Law, Ajayi Crowther University, I specially appreciate you. May God bless all of our endeavours to make the Faculty one of the foremost centres for teaching and research in law in Nigeria and beyond. I am grateful for your cooperation always.
- I thank all my friends, colleagues and well wishers who have come to rejoice with me and my family today. God bless you all richly.
- My children Anuoluwapo, Olufeoluwa, Oreoluwa and Oluwadunsin. You give me so much joy. You make me proud. Thank you for staying with the faith of your fathers and not bringing reproach to us. I thank God for making you arrows in my hand not in my heart.
- I have saved the best for the last, my husband of twenty seven years and counting, Kolawole Oluwapelumi omo J. Ola Akeredolu (a.k.a Enire) (who incidentally is an old student of St. Andrews College, Oyo, where this campus now stands). From the very first day, you never left me or anyone who cared to listen in doubt that your love for me is total, no space for anyone else. You let me know from the very beginning that you will support me in all my endeavors and that you will stand beside me everywhere God decides to elevate me to. You have been doing exactly that all these years - you are a Christlike man indeed. Your sacrifices (when I have to stay up late and not sleep when you want to sleep, staying home alone so many times when I travel if not for conference, then for Clasfon or family functions) all without grumbling, is very much appreciated. God bless you extravagantly. After God, my life belongs to you: to love and serve till death do us part.

Thank you.

## Endnotes

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<sup>1</sup> Psalm 139 : 17-18 *The Holy Bible*, King James Version

<sup>2</sup> 2 Samuel 7: 18 *The Holy Bible*, New International Version

<sup>3</sup> My father incidentally attended school here in Oyo; he is a product of Olivet Baptist High School, Oyo, Class of 53-58.

<sup>4</sup> Just recently, one of my Itsekiri brothers said to me, ‘I am so proud of you ‘omere’, you are the second (I found out later that I am the third) Itsekiri female professor of law we have now. I was astounded, that really? Indeed it is so. Professor Margaret Okorodudu-Fubara of Obafemi Awolowo University, Ile-Ife is the first. My beloved aunty, Professor Doris Afejuku is the second. She admitted me into University of Benin in those days, not knowing she would be handing over the baton to me years later. What an awesome God!

<sup>5</sup> As an aside, I joke with my colleagues that anyone who reviews my CV does not need to imagine my research focus, this is because it is abundantly obvious; about 90% of my total publications are in this field). One of Prime Minister Margaret Thatcher’s famous quote is ‘Power is like being a lady...If you have to tell people you are, you aren’t’ Available at <https://www.brainyquote.com>

<sup>6</sup> Professor Bankole Sodipo in his inaugural lecture in November 2015 said ‘An inaugural lecture is not to be given at the end of a Professor’s career rather it should be given as soon as possible, after a person is given a chair. It should be his foundational lecture, outlining his research in the past, discussing his achievements and discussing some of the issues he intends to investigate in the future.’ He encouraged a change in the culture in some Nigerian universities where professors only give their inaugural lectures when they are about to retire or never at all. Sodipo, B. (2015) *The Oracle, Intellectual Property & Allied Rights, The Knowledge Economy and The Development Agenda*. Babcock University Press, Illisan-Remo. p. 4

<sup>7</sup> Many times God speaks to my life during worship. The topic of today is no different. In August 2016, before Ajayi Crowther University even advertised the vacancy for professors, God spoke to my heart and gave me this topic for my inaugural lecture. I wrote it down and I went home rejoicing that the word of God to me will soon gain fulfilment. In April 2017, I was appointed a Professor of Law.

<sup>9</sup> Akeredolu, A.E. (2011): Court-Connected Alternative Dispute Resolution in Nigeria. University of Ibadan Law Journal, Vol. 1, No. 1, 36 - 68.

<sup>10</sup> *The Holy Bible*, Numbers 5 v 11-29

<sup>11</sup> See generally, Baker, *Introduction to English History*. 2nd ed.

<sup>12</sup> Ibid

<sup>13</sup> Windeyer, W.J.V (1957) *Lectures on Legal History*. 2<sup>nd</sup> ed. Australia: Law Book Co of Australia

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<sup>14</sup> Ibid

<sup>15</sup> Ibid

<sup>21</sup> Fayemi, A. K. 2009. "Agba (elder) as Arbitrator: A Yoruba socio political model for conflict resolution" - A review of Lawrence O. Bamikole. *Journal of Law and Conflict Resolution* Vol. 1(3), pp. 060-067, August, 2009

Available online at <http://www.academicjournals.org/JLCR> © 2009 Academic Journals

<sup>22</sup> ibid

<sup>23</sup> Literally, it means 'an elder cannot be in the market place and a newly born child's head is turning, facing a wrong direction,' but the functional meaning is as indicated above.

<sup>24</sup> ibid

<sup>25</sup> Sanni, A, (ed.) 2006. *Introduction to Nigerian Legal Methods*, 2nd ed., Ile- Ife: Obafemi Awolowo University Press)

<sup>26</sup> The Nigerian Criminal Code however prohibits trial by Ordeal: see S. 207 of the Criminal Code, Cap C38, LFN, 2004

<sup>27</sup> Menkel-Meadow, C. Is the Adversary System Really Dead? Dilemmas of Legal Ethics as Legal Institutions and Roles Evolve. [http://www.ssrn.com/ssrn\\_11746485\\_code98428.pdf](http://www.ssrn.com/ssrn_11746485_code98428.pdf).

<sup>28</sup> Menkel-Meadow, C. Ibid. See also Goldberg, S., Green, E. and Sander, F., 1985. *Dispute Resolution*. Boston: Little, Brown and Coy; Goldberg, S., Sander, F., Rogers, N. and Cole, S. 2007. *Dispute Resolution: Negotiation, Mediation and Other Processes*. New York: Aspen Publishers

<sup>33</sup> These more 'orderly', but often still violent, processes were as much of an entertainment or 'sporting event' then as some trials are now. The development of greater wealth and increased commerce (with more 'things' to protect and live for) encouraged at least the more propertied few to recognise that there was a greater need both for more predictability of rules for commercial interaction (the development of law) and for more orderly processes involving less killing. Perhaps one of the most important evolutionary developments in human legal process was a growing uneasiness with letting God 'intervene' in human disputes (or perhaps some growing recognition that ordeal results did not always match up with what people thought was right and true).

<sup>34</sup> ibid

<sup>35</sup> The Nigerian Supreme Court has in several cases had cause to strongly condemn the use of self help as a remedy for wrongs. An example is the case of Ojukwu v. Military Governor of Lagos State. (1985) 2 NWLR Pt.10, 806

<sup>37</sup> ibid

<sup>38</sup> ibid

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<sup>39</sup> Chukwura, A. O.(2008) *Alternative Dispute Resolution Spectrum*. Sylvester, V. M. and Wali, S.C. eds. *Readings in Peace and Conflict Resolution*. Ibadan:Stirling-Horden. p.119 at 120

<sup>40</sup> [1981] AC 909, 917

<sup>41</sup> Lord Woolf, Access to Justice, Interim Report on the Civil System Reform. Retrieved Feb.25, 2010, from [www.dc.gov.uk/index.htm](http://www.dc.gov.uk/index.htm) now available at [www.justice.gov.uk](http://www.justice.gov.uk)

<sup>42</sup> Sanni, op cit

<sup>43</sup> Folberg, op cit

<sup>44</sup> Paragraph 1.121, Australian Law Reform Commission Report, 2000. referred to in Michael, K. *et al.* 2009. *Non-Adversarial Justice*. Sydney: The Federation Press. p.1

<sup>45</sup> Ibid

<sup>46</sup> See generally, David, R. and Brierley, J. E.C. 1985. *Major Legal Systems in the World Today*, 3rd ed. London: Stevens.,

<sup>47</sup> Glaeser, E.L, and Shleifer, A. 2001. *Legal Origins, National Bureau of Economic Research Working paper No. 8272*. Retrieved Sept. 29, 2010 from [www.nber.org/papers/w8272](http://www.nber.org/papers/w8272) p.3

<sup>48</sup> Ibid, p.26

<sup>49</sup> Ibid, p.27

<sup>50</sup> Coltri, L. 2010. *Alternative Dispute Resolution: A Conflict Diagnosis Approach*. Boston: Prentice Hall.

<sup>51</sup> Partridge, M., op cit

<sup>52</sup> Cited in Partridge, ibid p. 150

<sup>53</sup> [1981] 1 SC

<sup>54</sup> See also the cases of *Olaleye v. NNPC* cited in Akper, P., 2002. Promoting the Use of ADR to Processes in Court. What is ADR and Practical Exercises on Negotiation and Mediation. A paper delivered at the Conference of All Nigeria Judges of the lower courts. Lagos: MIJ Publishers for National Judicial Institute, p.145; and *Eperokun and Ors v. University of Lagos*, [1986], 3 NWLR(Pt. 34) 162

<sup>55</sup> Arowoyeun, Y. 2010. The Lagos Settlement Week (LSW) Process, Actors and Challenges. A paper delivered at the 1day Training of Lagos Settlement Week Mediators at the Lagos Multi Door Courthouse, Igbosere, Lagos, on 2nd November, 2010. This was contrasted with the LSW 2009. The statistics are: Referral Courts -34; Cases referred -235; Cases admitted after screening -145; Cases Mediated -83; Cases Settled -37. This is a settlement rate of 46.3%.

<sup>56</sup> Ibid

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- <sup>57</sup> Akinsanya, D.F. 2002. Promoting the Use of ADR Processes: The Role of Judges. *Induction Course for newly appointed Judges and Kadis in Nigeria.*. Ibadan: Spectrum Publishers for National Judicial Institute, p.47
- <sup>58</sup> Ibid
- <sup>59</sup> William Shakespeare, *King Henry the Sixth*, Part II, (Act IV, Scene II)
- <sup>60</sup> See generally Woolf, Access to Justice - Final Report on the Civil Justice System Reform
- <sup>61</sup> A lot of the initial work on ADR was sponsored by the Bar Association including establishment of pilot projects.
- <sup>62</sup> The Centre for Effective Dispute Resolution (CEDR) *Mediator Handbook: Effective Resolution of Commercial Disputes*. 4th ed. 2004. London: CEDR. P.9
- <sup>63</sup> Ibid p.21
- <sup>64</sup> Ibid p.20
- <sup>65</sup> Hebrews 12 v. 14 *The Holy Bible (King James Version)*
- <sup>66</sup> Matthew 5 v. 9 *The Holy Bible (King James Version)*
- <sup>67</sup> Luke 12 v. 58; Matthew 5 v. 25. *The Holy Bible (King James Version)*
- <sup>68</sup> Abraham Lincoln, in Partridge, M.V.B. 2009. *Alternative Dispute Resolution – An Essential Competency for Lawyers*. New York: Oxford University Press. P.152
- <sup>69</sup> See the International Chamber of Commerce ADR Rules
- <sup>70</sup> Folberg, op cit, p.25
- <sup>71</sup> Folberg, J. et al, Op cit. P.249
- <sup>72</sup> Akeredolu, A.E. (2012): Mediation in Nigeria: What it is and How it Works – International Journal of African Studies: Issue 5, May, 2012, available at [www.eurojournals.org/ijas](http://www.eurojournals.org/ijas), 47 – 58.
- <sup>73</sup> Laws of the Federation, 2004, Cap A18
- <sup>74</sup> Laws of the Federation, 2004, Cap T8
- <sup>75</sup> See generally, Akeredolu, A.E. (2017): Reflections on the National Industrial Court Alternative Dispute Resolution Centre Instrument - Nigerian Journal of Labour Law and Industrial Relations, Vol. 11, No. 1, 1-25
- <sup>76</sup> (1966) 2 ALR(Comm.)157
- <sup>77</sup> Op cit, 119
- <sup>78</sup> Section 63, Lagos State Arbitration Law, 2009, No. 18
- <sup>79</sup> Akeredolu, A.E. (2012): Attitude of the Nigerian Supreme Court to Commercial Arbitration in Retrospect: 2001 – 2010 – Journal of Law and Conflict Resolution. Vol. 4(5), November, 2012, available at <http://www.academicjournals.org/JLCR>, 77 – 84.
- <sup>80</sup> Orojo and Ajomo, op cit, p.10
- <sup>81</sup> Ibid
- <sup>82</sup> Folberg, op cit, p.739

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<sup>84</sup> Akeredolu, A.E. (2011): Court-Connected Alternative Dispute Resolution in Nigeria. University of Ibadan Law Journal, Vol. 1, No. 1, 36 - 68.

<sup>85</sup> ibid

<sup>86</sup> Ibid, p.738

<sup>87</sup> ibid

<sup>88</sup> Goodluck, op cit, p.270

<sup>89</sup> Ibid, p.271

<sup>90</sup> Orojo and Ajomo, op cit, p.11

<sup>91</sup> Goodluck, op cit, p. 271

<sup>92</sup> Koleoso, O. 2010. *An Appraisal of the Law and Procedure of the Abuja Multi-Door Court House*, in Aliyu Ibrahim ed. op cit, p.384

<sup>93</sup> Kanowitz, L. 1985. *Cases and Materials on Alternative Dispute Resolution*, American Casebook Series, West Publishing Co, St. Paul Minnesota, cited in Afolayan A.F. and Okorie P.C. 2007. *Modern Civil Procedure Law* Lagos: Dee-Sage Nigeria Ltd. P.586

<sup>94</sup> Chukwurah, op cit

<sup>95</sup> Nwaneri, A.C. *op cit*, p.384

<sup>96</sup> Sander, F.E.A. 2010 reprint. *Dispute Resolution Within and Outside the Courts – An Overview of the US Experience*. in Rao and Sheffield, op cit, p.130

<sup>97</sup> ibid

<sup>98</sup> For details, see Akeredolu, A.E. (2013): A Comparative Appraisal of the Practice and Procedure of the Multidoor Courthouses - Ibadan Bar Journal, Vol.5, No. 5, 131-159.

<sup>99</sup> See generally Akeredolu, A.E. (2012): The Proposed Alternative Dispute Resolution Centre of the National Industrial Court of Nigeria: Possibilities and Challenges - Nigeria Journal of Labour Law and Industrial Relations, Vol. 6, No. 1, 63 -88. For a review of the Statutory Instrument, see Akeredolu, A.E. (2016): Resolving Chieftaincy Disputes in Nigeria through Alternative Dispute Resolution: New Opportunities and Possibilities –Afe Babalola University Law Journal, Vol. II No. 1, 272 – 306.

<sup>100</sup> Cited in Ojielo, M.O. (2001), *Alternative Dispute Resolution*, CPA Books, Lagos,p.1

<sup>101</sup> (2004) ECWA Civ 576, (2004) 1 WLR 3002

<sup>102</sup> Akeredolu, A.E. (2011): The Potentials and Limitations of Mediating Business Disputes in Nigeria - University of Ibadan Journal of Private and Business Law, Vol. 6, 2011, 1- 19.

<sup>103</sup> See Arnold (1995) ‘A Better mousetrap: ADR Vol xxx No 1, les Nouvelles, p. 34

<sup>104</sup> Murdock, A. & Scutt, C.N. Personal Effectiveness, (1999) in Epie, C. ‘Alternative Dispute Resolution Skills: Understanding the Problem Solving

---

(Win/Win) Approach in Negotiations’, in *Legal Practice Skills & Ethics in Nigeria*, Nwosu, K.N. ed. 2004, DCONconsulting, Lagos, p.439@447.

<sup>105</sup> *ibid*

<sup>106</sup> In Nigeria, there has been no evaluative study on the costs of litigation vis-a-vis ADR. See Carr, C.A and Jericks, M.R (1999 – 2000) ‘The Privatisation of Business and Commercial Dispute Resolution: A Misguided Policy Decision, Kentucky Law Journal, Vol 88, No 2, Pg 183 – 243 at 203 available at [www.http://papers.ssrn.com](http://papers.ssrn.com) . The authors refer to Lande, J, (1998) *Failing Faith in Litigation?* 3 *Harv. Neg. L. Rev* 1, 26, 36 indicating that 96% of the business executives and 91% of the in-house counsel surveyed believe that less than half of the lawsuits involving a business are resolved at an appropriate cost. (note 51).

<sup>107</sup> The Center for Public Resources (CPR) Institute for Dispute Resolution claims that for a 5 year period ending in 1995, 652 companies using CPR panelists reported a total cost savings of over \$200 million with an average cost savings of more than \$300,000 per company. Available @ [http://www. Cpradr.org/poll\\_597.htm](http://www.Cpradr.org/poll_597.htm).

<sup>109</sup> See Carroll, E. & Mackie, K. *International Mediation- The Art of Business Diplomacy*, (2000), Kluwer Law International, The Hague, p.13, where the authors state that indirect costs also need to be factored into any estimates of the cost of litigation or arbitration compared to mediation – including management time and expense on investigation, identifying local counsel or agent, contributing to case analysis and strategy and much more.

<sup>110</sup> For example Customary Arbitration is recognized in Nigeria as a method of resolution of land disputes and could be adopted for chieftaincy disputes

<sup>111</sup> See generally Friedman, L.M (1985) *Total Justice*, Resnik, J (1982) ‘Managerial Judges’ 96 *Harv L. Rev.* 376; Resnik, J (1986) *Failing Faith: Adjudicatory Procedure in Decline*, 53 *U. CHI. L Rev.* 496]

<sup>112</sup> Weinstein, J.B (1994) *Limits on Judges learning, speaking and Acting – Part 1 – Tentative First Thoughts: How many Judges Learn?* 36 *Ariz L. Rev.* 539, 540 – 41 – where he makes the point that Judges come to the bench as generalists.

<sup>113</sup> Singer, M (1996) *New Boundary: Arbitration in Various Discipline(s): Commercial Arbitration as a means for Resolving Industrial Property and Transfer of Technology Disputes* 3 *Croat. Arb Y.B* 107]

<sup>114</sup> *ibid*

<sup>116</sup> *ibid*

<sup>117</sup> Akindipe S.O. & Sanni A op cit 137 @ p. 144

<sup>118</sup> Arnold op cit p. 33-44

<sup>119</sup> See Arnold op cit p. 34, Also Schroder W.H Jnr, (1994) *Private ADR May Offer Increased confidentiality* *Nat L.J* July 25, 994 @ 14<sup>th</sup> Century.

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<sup>120</sup> Although where it is an agreement conducted in the MDCH, there are provisions for its endorsement by an ADR judge to deem it a consent judgment of the court.

<sup>121</sup> Mediation Advocates claim about 85% voluntary compliance, which is no doubt a good rating. See generally, Arnold, *op cit*, Carr & Jenkins, *op cit*, and [www.cpradr.org/poll-597](http://www.cpradr.org/poll-597)

<sup>122</sup> The LMDC Law, Law No 21, LASG Official Gazette No 56 of 3<sup>rd</sup> Aug 2007, Vol. 40. The commencement date is 18<sup>th</sup> May 2007

<sup>123</sup> Mini-guide to Early Dispute resolution *op cit* pg 15

<sup>124</sup> *Ibid* p.14

<sup>125</sup> Akeredolu, A.E. (2014): Representing Clients in Mediation: Competency of Lawyers as Mediation Advocates – Kerela University Law Journal, Vol. VII, Issue I & II, 96-118

<sup>126</sup> Cited in Goodman, *op cit*, p.xx

<sup>127</sup> Folberg, *op cit*, p.258

<sup>128</sup> *ibid*

<sup>129</sup> Akeredolu, A. E. (2012) A Commentary on the Applicability of Alternative Dispute Resolution to Electoral Disputes, in Akeredolu, A. E. ed. Election Practice and Procedure in Nigeria: A Practitioners Guide – in honour of Honourable Justice Olufunmilola O. Adekeye, JSC (Rtd) CON; Ibadan, St Pauls Publishing House.

<sup>130</sup> Akeredolu, A.E. (2016): Resolving Chieftaincy Disputes in Nigeria through Alternative Dispute Resolution: New Opportunities and Possibilities –Afe Babalola University Law Journal, Vol. II No. 1, 272 – 306.

<sup>131</sup> See, Aina, K. *Op cit*, p.5

<sup>132</sup> Akeredolu, A.E. (2015): Institutionalising Alternative Dispute Resolution in the Public Dispute Resolution Spectra in Nigeria Through Law: The Lagos Multi-door Court House Approach – US-China Business Review, Vol 12, No. 1, 104 - 120.

<sup>133</sup> Article 4(c) provides that where a party refuses to submit to mediation and also refuses to appear before the ADR Judge, this will be treated as contempt of court and the judge may make orders including fines, costs or other appropriate terms in the circumstances.

<sup>136</sup> *Ibid*, p. 18

<sup>137</sup> *Ibid*

<sup>138</sup> The Mediation Agreement is the foundation of the mediation process; it sets down the conditions under which the mediation will take place including confidentially, authority to settle, immunity of the mediator and privilege.

<sup>139</sup> Golann, D. (2009), *Mediating Legal Disputes: Effective Strategies for Neutrals and Advocates*, USA, American Bar Association, p.15



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<sup>140</sup> Stone, op cit

<sup>143</sup> See generally, Akeredolu, A.E. (2010): Enforceability of Alternative Dispute Resolution Agreements: What's New under the Lagos Multi-door Court House Law, Nigerian Bar Journal, Vol. 6, No. 1, 201–212.

<sup>145</sup> Mania Karolina. Online dispute resolution: The future of justice. Pedagogical University of Cracow, Institute of Political Science, Poland. Available at [https://ac.els-cdn.com/S2351667415000074/1-s2.0-S2351667415000074-main.pdf?\\_tid=383814f4-ec15-11e7-a34f-](https://ac.els-cdn.com/S2351667415000074/1-s2.0-S2351667415000074-main.pdf?_tid=383814f4-ec15-11e7-a34f-00000aab0f02&acdnat=1514496334_4462eceb4934db10adc2f7723f51adf0)

00000aab0f02&acdnat=1514496334\_4462eceb4934db10adc2f7723f51adf0

<sup>146</sup> ibid

<sup>147</sup> ibid

<sup>148</sup> Adetola-Kazeem Ahmed. Expanding ADR through online dispute resolution. Available at <http://thenationonlineng.net/expanding-adr-online-dispute-resolution/> (Tyler, 2003).

<sup>149</sup> Karolina, op cit

<sup>150</sup> (Wang, 2008).

<sup>151</sup> (Katsh & Rifkin, 2001)

<sup>152</sup> (Lodder & Zeleznikow, 2010, p. 76)

<sup>153</sup> Karolina op cit

<sup>154</sup> Giuseppe Leone. *Promoting Online Dispute Resolution in Africa - A Simple, Pragmatic Approach.* Available at <http://www.onlinedisputeresolution.com/article.cfm?zfn=LeoneGbl20151211.cfm>

<sup>155</sup> Adetola Kareem op cit.

<sup>156</sup> ©ABA Task Force on Electronic Commerce and Alternative Dispute Resolution Task Force Draft March, 2002. ATL/859424.1. What is Online Dispute Resolution? A Guide for Consumers (brochure title). Available at [https://www.americanbar.org/content/dam/aba/migrated/2011\\_build/dispute\\_resolution/consumerodr.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/migrated/2011_build/dispute_resolution/consumerodr.authcheckdam.pdf)

<sup>157</sup> The Pros and Cons of Online Dispute Resolution: An Assessment of Cybermediation websites. Available at <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1073&context=dltr>

<sup>158</sup> American bar, op cit.

<sup>159</sup> [https://www.americanbar.org/content/dam/aba/migrated/2011\\_build/dispute\\_resolution/consumerodr.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/migrated/2011_build/dispute_resolution/consumerodr.authcheckdam.pdf)

---

## REFERENCES

### Books

- Baker, *Introduction to English History*. 2nd ed.
- Coltri, L. 2010. *Alternative Dispute Resolution: A Conflict Diagnosis Approach*. Boston: Prentice Hall.
- David, R. and Brierley, J. E.C. 1985. *Major Legal Systems in the World Today*, 3rd ed. London: Stevens.
- Goldberg, S., Sander, F., Rogers, N. and Cole, S. 2007. *Dispute Resolution: Negotiation, Mediation and Other Processes*. New York: Aspen Publishers
- Goldberg, S., Green, E. and Sander, F., 1985. *Dispute Resolution*. Boston: Little, Brown and Coy
- Golann, D. (2009), *Mediating Legal Disputes: Effective Strategies for Neutrals and Advocates, USA*, American Bar Association
- Michael, K. *et al.* 2009. *Non-Adversarial Justice*. Sydney: The Federation Press.
- Nwosu, K.N. ed. 2004, *Legal Practice Skills & Ethics in Nigeria*, DCONconsulting, Lagos, p.439@447
- Sander, F.E.A. 2010 reprint. *Dispute Resolution Within and Outside the Courts – An Overview of the US Experience*.
- Sanni, A, (ed.) 2006. *Introduction to Nigerian Legal Methods*, 2nd ed., Ile- Ife: Obafemi Awolowo University Press)
- The Holy Bible*, King James Version
- Windeyer, W.J.V (1957) *Lectures on Legal History*. 2<sup>nd</sup> ed. Australia: Law Book Co of Australia

### Chapter in Books

- Koleoso, O. 2010. *An Appraisal of the Law and Procedure of the Abuja Multi-Door Court House*, in Aliyu Ibrahim ed.
- Ojielo, M.O. (2001), *Alternative Dispute Resolution*, CPA Books, Lagos

### Journal Articles

- Akeredolu, A.E. (2011): Court-Connected Alternative Dispute Resolution in Nigeria. University of Ibadan Law Journal, Vol. 1, No. 1, 36 - 68.
- Akinsanya, D.F. 2002. Promoting the Use of ADR Processes: The Role of Judges. *Induction Course for newly appointed Judges and Kadis in Nigeria..* Ibadan: Spectrum Publishers for National Judicial Institute.

- 
- Akeredolu, A.E. (2012): Mediation in Nigeria: What it is and How it Works – International Journal of African Studies: Issue 5, May, 2012, available at [www.eurojournals.org/ijas](http://www.eurojournals.org/ijas), 47 – 58.
- Akeredolu, A.E. (2017): Reflections on the National Industrial Court Alternative Dispute Resolution Centre Instrument - Nigerian Journal of Labour Law and Industrial Relations, Vol. 11, No. 1, 1-25
- Akeredolu, A.E. (2011): Court-Connected Alternative Dispute Resolution in Nigeria. University of Ibadan Law Journal, Vol. 1, No. 1, 36 - 68.
- Afolayan A.F. and Okorie P.C. 2007. *Modern Civil Procedure Law* Lagos: Dee-Sage Nigeria Ltd. P.586
- Akeredolu, A.E. (2010): Enforceability of Alternative Dispute Resolution Agreements: What’s New under the Lagos Multi-door Court House Law, Nigerian Bar Journal, Vol. 6, No. 1, 201–212.
- ..... (2011): The Potentials and Limitations of Mediating Business Disputes in Nigeria - University of Ibadan Journal of Private and Business Law, Vol. 6, 2011, 1- 19.
- ..... (2012): The Proposed Alternative Dispute Resolution Centre of the National Industrial Court of Nigeria: Possibilities and Challenges - Nigeria Journal of Labour Law and Industrial Relations, Vol. 6, No. 1, 63 -88.
- ..... (2012) A Commentary on the Applicability of Alternative Dispute Resolution to Electoral Disputes, in Akeredolu, A. E. ed. *Election Practice and Procedure in Nigeria: A Practitioners Guide – in honour of Honourable Justice Olufunmilola O. Adekeye, JSC (Rtd) CON*; Ibadan, St Pauls Publishing House.
- .....(2013): A Comparative Appraisal of the Practice and Procedure of the Multidoor Courthouses - Ibadan Bar Journal, Vol.5, No. 5, 131-159.
- ..... (2014): Representing Clients in Mediation: Competency of Lawyers as Mediation Advocates – Kerala University Law Journal, Vol. VII, Issue I & II, 96-118
- ..... (2015): Institutionalising Alternative Dispute Resolution in the Public Dispute Resolution Spectra in Nigeria Through Law: The Lagos Multi-door Court House Approach – US-China Business Review, Vol 12, No. 1, 104 -120
- ..... (2016): Resolving Chieftaincy Disputes in Nigeria through Alternative Dispute Resolution: New Opportunities and Possibilities – Afe Babalola University Law Journal, Vol. II No. 1, 272 – 306.
- ..... (2016): Resolving Chieftaincy Disputes in Nigeria through Alternative Dispute Resolution: New Opportunities and Possibilities –Afe Babalola University Law Journal, Vol. II No. 1, 272 – 306.

- 
- Chukwumerie, A. I. 2007. Arbitration and human rights in Africa. *African Human Rights Law Journal* 7: 103(109)
- Lande, J, (1998) Failing Faith in Litigation? 3 Harv. Neg. L. Rev 1, 26
- Pound, R. The Causes of Popular Dissatisfaction with the Administration of Justice, A paper read at the American Bar Association Conference, August 29, 1906 reproduced in *The American Law Review* (1866-1906); Sept/Oct 1906, 40, American Periodicals Series Online
- Schroder W.H Jnr, (1994) Private ADR May Offer Increased confidentiality Nat L.J July 25, 994

### **Internet Resources**

- ABA Task Force on Electronic Commerce and Alternative Dispute Resolution Task Force Draft March, 2002. ATL/859424.1. What is Online Dispute Resolution? A Guide for Consumers (brochure title). Available at [https://www.americanbar.org/content/dam/aba/migrated/2011\\_build/dispute\\_resolution/consumerodr.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/migrated/2011_build/dispute_resolution/consumerodr.authcheckdam.pdf)
- Ahmed A. Expanding ADR through online dispute resolution. Available at <http://thenationonlineng.net/expanding-adr-online-dispute-resolution/>
- Carr, C.A and Jericks, M.R (1999 – 2000) ‘The Privatisation of Business and Commercial Dispute Resolution: A Misguided Policy Decision, Kentucky Law Journal, Vol 88, No 2, Pg 183 – 243 at 203 available at [www.http://papers.ssrn.com](http://papers.ssrn.com)
- Fayemi, A. K. 2009. “Agba (elder) as Arbitrator: A Yoruba socio political model for conflict resolution” - A review of Lawrence O. Bamikole. *Journal of Law and Conflict Resolution* Vol. 1(3), pp. 060-067, August, 2009 Available online at <http://www.academicjournals.org/JLCR> © 2009 Academic Journals
- Friedman, L.M (1985) Total Justice, Resnik, J (1982) ‘Managerial Judges’ 96 *Harv L. Rev.* 376
- Giuseppe Leone. *Promoting Online Dispute Resolution in Africa - A Simple, Pragmatic Approach.* Available at <http://www.onlinedisputeresolution.com/article.cfm?zfn=LeoneGbl20151211.cfm>
- Glaeser, E.L, and Shleifer, A. 2001. *Legal Origins, National Bureau of Economic Research Working paper No. 8272.* Retrieved Sept. 29, 2010 from [www.nber.org/papers/w8272](http://www.nber.org/papers/w8272)
- Lord Woolf, Access to Justice, Interim Report on the Civil System Reform. Retrieved Feb.25, 2010, from [www.dc.gov.uk/index.htm](http://www.dc.gov.uk/index.htm) now available at [www.justice.gov.uk](http://www.justice.gov.uk)

- 
- Mania Karolina. Online dispute resolution: The future of justice. Pedagogical University of Cracow, Institute of Political Science, Poland. Available at [https://ac.els-cdn.com/S2351667415000074/1-s2.0-S2351667415000074-main.pdf?\\_tid=383814f4-ec15-11e7-a34f-00000aab0f02&acdnat=1514496334\\_4462eceb4934db10adc2f7723f51adf0](https://ac.els-cdn.com/S2351667415000074/1-s2.0-S2351667415000074-main.pdf?_tid=383814f4-ec15-11e7-a34f-00000aab0f02&acdnat=1514496334_4462eceb4934db10adc2f7723f51adf0Menkel-Meadow, C. Is the Adversary System Really Dead? Dilemmas of Legal Ethics as Legal Institutions and Roles Evolve. http://www.ssrn.com/ssrn_11746485_code98428.pdf)Menkel-Meadow, C. Is the Adversary System Really Dead? Dilemmas of Legal Ethics as Legal Institutions and Roles Evolve. [http://www.ssrn.com/ssrn\\_11746485\\_code98428.pdf](http://www.ssrn.com/ssrn_11746485_code98428.pdf).
- Resnik, J (1986) Failing Faith: Adjudicatory Procedure in Decline, 53 U. CHI. L. Rev. 496
- Singer, M (1996) New Boundary: Arbitration in Various Discipline(s): Commercial Arbitration as a means for Resolving Industrial Property and Transfer of Technology Disputes 3 Croat. Arb Y.B 107]
- The Pros and Cons of Online Dispute Resolution: An Assessment of Cybermediation websites. Available at <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1073&context=dltr>

### **Handbooks/Monographs**

- Aina. K. The Lagos MDCH – One Year After. NCMG Working Paper Series: Paper presented at the Workshop on ‘The LMDCH: The Procedure and Promise. Held in Lagos on Sept. 30, 2003
- Sodipo, B. (2015) *The Oracle, Intellectual Property & Allied Rights, The Knowledge Economy and The Development Agenda*. Babcock University Press, Illisan-Remo. p. 4
- The Centre for Effective Dispute Resolution (CEDR) *Mediator Handbook: Effective Resolution of Commercial Disputes*. 4th ed. 2004. London: CEDR.

### **Unpublished thesis, dissertations and Reports**

- Akper, P., 2002. Promoting the Use of ADR to Processes in Court. What is ADR and Practical Exercises on Negotiation and Mediation. A paper delivered at the Conference of All Nigeria Judges of the lower courts. Lagos: MIJ Publishers for National Judicial Institute.
- Arowoyeun, Y. 2010. The Lagos Settlement Week (LSW) Process, Actors and Challenges. A paper delivered at the 1day Training of Lagos Settlement Week Mediators at the Lagos Multi Door Courthouse, Igbosere, Lagos, on 2nd November, 2010.

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**Table of Statutes**

Lagos State Arbitration Law, 2009, No. 18

The Nigerian Criminal Code, Cap C38, LFN, 2004

The LMDC Law, Law No 21

**Table of Cases**

*Eperokun and Ors v. University of Lagos*, [1986], 3 NWLR(Pt. 34) 162

*Ojukwu v. Military Governor of Lagos State* (1985) 2 NWLR Pt.10, 806

[1981] AC 909, 917

*Olaleye v. NNPC*

(1966) 2 ALR(Comm.)157

(2004) ECWA Civ 576, (2004) 1 WLR 3002