

Strategies, Tools And Skills For A Successful Alternative Dispute Resolution: The Complementary Role Of The Courts In Arbitration Process In Nigeria.

Introduction

There is a growing concern in the countries of the West African sub-region of the inadequacies in the current mechanisms of dispute resolution available to litigants. The primary *dispute* resolution process in countries of the West African sub-region is litigation; a mechanism of the state and its formal justice system. The inadequacies of Litigation are evidence by the congestion of courts, which invariably leads to delay in the delivery of justice to Citizens. One way of overcoming these inadequacies is the provision of a multi-track dispute resolution system, which incorporates Litigation and other alternatives dispute resolution processes. This is based on the premise that litigation is not the only mechanism for resolving disputes.

Disputes arise from everyday interactions, whether in business or other personal endeavors. One way of resolving these disputes is through litigation; however, delays, cost of litigation and other related issues have made litigation unattractive. The Alternative Dispute Resolution (ADR) mechanism was therefore introduced as a result of the need for a more cost effective, swift and less technical means of settling disputes and decongesting cause-lists in courts. According to Dr. Orojo[1]

> *"The term Alternative Dispute Resolution is used generally to describe the method and procedures used in resolving disputes either as alternatives to traditional dispute resolution mechanism of the court or in some cases supplementary to such mechanism".*

Objectives of Alternative Dispute Resolution

Alternative Dispute Resolution provides a multi-faceted approach of resolving disputes amicably. The overriding objectives of Alternative Dispute Resolution are;

a. To enhance access to justice by providing alternative mechanisms to supplement litigation in the resolution of disputes.
b. Minimize citizen frustration and delays in justice delivery by providing a standard legal framework for the fair and efficient settlement of disputes through Alternative Dispute Resolution.
c. To serve as the focal point for the promotion of Alternative Dispute Resolution.
d. To promote the growth and efficient functioning of the Justice system through Alternative Dispute Resolution.

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Types Of Alternative Dispute Resolution

Alternative Dispute Resolution is refers to ways of addressing and settling disputes outside of court and its traditional and adversarial atmosphere. Many courts actually require alternative dispute resolutions to be pursued before they will begin litigation. Settling disputes outside of courts can save time and money, and often the processes are less formal and more flexible than those in the trial court.

There are several types of alternative dispute resolution methods, and each process has its advantage. The types of alternative dispute resolution mechanisms include the following;

a. Mediation
b. Negotiation
c. Arbitration
d. Conciliation
e. Mini-trial
f. Early Neutral Evaluation
g. Hybrid Process

Mediation

Mediation is a type of ADR that is voluntary, flexible, non-binding and private dispute resolution process in which a neutral person helps the parties to reach a negotiated settlement. A mediator is usually an impartial third party and cannot force the parties to agree or allowed to decide the outcome of the dispute. The mediator works with the parties to come to a solution made mutually, and the agreements are generally non-binding.

Courts can mandate that mediation be required, but the process itself is still voluntary, therefore allowing the parties to refuse to come to an agreement.

Mediation has already been identified as the predominant process of dispute resolution adopted under the Lagos Multi-Door Court scheme (LMDC). It appears that the practice of the LMDC is to give the parties the freedom to choose from the various dispute resolution processes available to them, though it appears parties are actively encouraged towards mediation.

Negotiation

Negotiation involves direct communication or discussion between two or more parties to find a common ground or reach a joint decision on their own.[2] It may be face to face, through telephone or by written communication.[3] This form of ADR is often overlooked because of how obvious it is. In Negotiation, there is no impartial third party to assist the parties in their negotiation, so the parties work together to come to a compromise. Negotiation is a process in which two or more parties hold discussions in an attempt to develop agreement on matters of mutual concern.

Negotiation is an indispensable step in any ADR process at it is consensual to all ADR activities. It is believed to be the most satisfactory method of dispute settlement. It involves discussions or dealings with the intention to

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reconcile differences and establish areas of agreement, settlement or compromise that would be mutually beneficial to the parties.

Arbitration

Although, Arbitration has been part of our traditional dispute resolution method in Nigeria. The first statute on Arbitration in Nigeria was the Arbitration Ordinance, 1914 that later became Chapter 13 of the Revised Laws of Nigeria, 1958. With the growing importance of arbitration in the country and as a result of increase in the volume of commercial transactions, the inadequacies of the then existing statute became apparent, hence the promulgation of Arbitration and Conciliation Act (ACA).

Arbitration is an agreement where two or more persons agree that a dispute or potential dispute between them shall be decided in a legally binding way by one or more persons of their choice, Arbitration is a form of alternative dispute resolution (ADR) where the parties to a dispute refer it to one or more persons called “arbiters” by whose decision they agree to be bound. Arbitration can either be voluntary or mandatory. It is voluntary when parties are allowed to freely enter into arbitration through their agreement. It could however be mandatory when the extant law compel the parties to result to arbitration. Arbitration is regulated by the ***Arbitration and Conciliation Act Cap. A18 LFN 2004.***

Arbitration and Conciliation Act provides for both domestic and International commercial arbitration and applies only to disputes arising from commercial transactions. It is based on model law of Arbitration and incorporates the UNCITRAL Arbitration Rules of 1976 as the first schedule

to the Act. The Act is the Federal Procedural law on Arbitration in Nigeria and can be likened to the High Court Laws of the various states except that there is no provision for appeal to a higher arbiter. Thus whereas an appeal can lie against the decision of a High Court, an arbitral award can be set aside or refused to be enforced.

Conciliation

Conciliation is another legal form of resolving disputes in a less adversarial and private manner. It involves a situation where parties agree to resolve their dispute through a neutral independent person known as the conciliator who is obliged to use his best endeavors to bring parties in a dispute to a voluntary settlement of their dispute. Conciliation is also regulated by Arbitration and Conciliation Act CAP. A18 LFN 2004.

Mini-Trial

The mini-trial is a form of evaluative mediation, which is a non-binding ADR process; it assists the parties to a dispute to gain a better understanding of the issues in dispute, and to enable them to enter into settlement negotiation on a more informal basis.

The mini-trial procedure is intended to facilitate the exchange of information among parties and provide the necessary basis for the parties to fashion a settlement. It resembles a trial, in that a Lawyer for each party presents the party's case. The presentations are short, typically for about three hours and are heard not by a judge but by representatives of each of the parties who have authority to enter into a settlement.

In many cases, a neutral party is engaged to preside and assist the parties in reaching agreement. Following the presentations, the party representatives meet to negotiate a settlement. There are no rules governing the conduct of mini-trials. Typically, procedures are agreed upon by the parties in writing prior to initiation of the process.

A mini-trial provides a means for exchanging information necessary for the development of a settlement. It allows opportunity for advocacy while keeping the dispute narrow and eliminating many of the collateral issues that arise in litigation.

A mini-trial is meaningfully employed after negotiation has broken down, mediation has been tried or rejected and the parties already have a considerable investment in pending litigation, but are willing to try a structured but non-binding way to expedite a settlement. If the case is already in litigation when they decide to attempt a mini-trial, they may consider seeking for a stay of the action.

Early Neutral Evaluation

It is usually adopted soon after a case has been filed by reference to an expert who is asked to provide a balanced and neutral evaluation of the dispute.

Hybrid Process

The notable hybrid ADR processes are ARB-MED, MED-ARB, & NEG-MED, CON-ARB. The fact that the parties have resorted to litigation or any of the ADR processes does not preclude them from adopting other ADR processes to resolve the dispute. The hybrid process allows the parties to commence the settlement of their dispute with one ADR process,

then subsequently have recourse to another method in the course of the settlement of the dispute. The major advantage of the hybrid process is that it allows the parties the time to explore an ADR process to settle their dispute until they discover that a particular problem requires some other ADR process. Parties are therefore not restricted to one ADR process at a time in order to settle their dispute.

Is ADR A Better Form of Dispute Resolution

Sometimes people become involved in disputes which, although very important and worrying to those concerned, are better resolved outside the comparatively expensive court system. Some disputes do not have a legal solution, while others may be made worse by court action. There are number of advantages of ADR over Litigation:

a. ADR is faster and less cost effective.
b. It helps preserve the privacy of parties compared to litigation which is held in public.
c. Parties considering ADR have the privilege of choosing their venue.
d. It is less formal and rigid than litigation.
e. Parties determine their mediator, conciliator, arbitrator unlike in litigation where a judge is assigned to a case.
f. The confidential nature of the process.
g. Parties have a chance to tell their story as they see it.
h. The parties' involvement in the process creates greater commitment to the result so that compliance is more likely.
i. ADR is more likely to preserve goodwill or at least not escalate the conflict, which is especially important in situations where there is a continuing relationship.

j. It is more flexible and responsive to the individual needs of the people involved.

Skills Required for Conducting Effective ADR Mechanisms

Preparation is one of the key elements for a successful ADR. Part of the preparation involves becoming familiar with how the ADR process works and reviewing issues such as your expectations; the strengths and weaknesses of your case and the other side's case; the costs and risks of proceeding to trial; and possible settlement scenarios. An equally important part of preparing for ADR involves understanding the appropriate demeanor which should be displayed throughout the ADR.

It is important to possess the skills for effective and efficient use of these ADR mechanisms. These skills may be acquired through trainings conducted by ADR institutions and they help to keep the ADR focused and productive, while enhancing your power to persuade the other side of the merits of your perspective.

1. **Communication skill:** The ADR practitioners must be able to communicate properly in the proceeding. This could be verbal such as words and non- verbal communication such as body languages. Communication and understanding are improved by effective listening skill. It is essential to be a good communicator for following reasons
    a. To resolve conflict
    b. To increase your control on whether your message during ADR is received the way you want it to be.

c. To keep the discussion more focused and productive, and decrease the likelihood of escalating the conflict or creating an impasse.
d. The party will be more effective at persuading the other side of the merits of his case.

Tips on how you can be an effective communicator

a. Focus on the problem, not the person.
b. Speak from your own perspective.
c. Speak directly to the other party
d. Be specific
e. Focus on common interests not Positions.

2. **Listening skill:** This is an aspect of communication which is very important in ADR proceedings. The ADR practitioner should listen properly in order to take note of everything that has been said. In arguments, we often listen to rebut. Effective communication involves listening in order to understand the proceedings. It is essential to become an effective listeners to achieve the following;
   a. To resolve conflict.
   b. To convince the other side of your good faith and constructive intentions
   c. To hear valuable information which changes your view of the matter.
   d. It increases the likelihood that the other side will listen and try to understand you.
   e. It reduces defensiveness and resistance and can create for changes such as bringing everyone closer to a reasonable middle

ground or coming up with creative solutions which satisfy both of your concerns.

Elements of good listening

a. **Attention:** During ADR proceedings, your full and uninterrupted attention is required. This can be accomplished in two ways. First, put aside your own views, opinions, and critical judgments for the time being. Try to see the situation from the other person's point of view, even if you don't agree with the person. Second, use your body to say "I am listening". Be aware of your facial expression, body posture, tone of voice and eye movements. Make frequent eye contact, keep your body oriented towards the Arbiter and nod your head to show you are listening and to encourage the Arbiter to say more. Don't sift through papers, cross your arms in judgment.
b. **Paraphrasing and Summarizing**: Restate or summarize what Arbiter and parties have said in your own words. This confirms to you that you have listened and understood what was said. Describe both the content and feelings of the communication in a fair and objective manner. Do not judge, evaluate or try to give the Parties solutions.
c. **Ask Clarifying Questions:** You may wish to ask the Arbiter questions to obtain more information or to clarify and better understand the Arbiter's perspective. It is important to ask open-ended questions; that is questions which cannot be answered with only "yes" or "a no".

3. **Leadership skills**; this would enable the ADR practitioner control the proceedings.
4. A mediator must be honourable and observe fairness, candour, and decorum in order to earn the respect and confidence of the parties**.**
5. Negotiation skill
6. Time Management skill
7. Analytical Skill
8. Confidentiality: One of the ways of ensuring confidentiality is by not recording parties verbatim in the proceeding. The ADR Practitioner is advised to assure parties of the confidentiality of the proceeding at the opening stage and must keep to it.
9. **Contextual manipulation**: This is useful in negotiation where the convener knows the situation used to by the other party and then subject him to unconducive situation/environment so as to influence his negotiation power.
10. The ADR practitioners must be experienced and knowledgeable in the subject matter in dispute.
11. An ADR practitioner must be independent and impartial in that there should be no relationship ties with any of the parties involved. Also, he/she should move the parties towards amicable resolution of the disputes.

Negotiation Strategy

There are two types of negotiation strategy, namely;[4]

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1. **Positional strategy also known as win/lose**: In this strategy, a party to the negotiation has maintained a position and he is not ready to shift. Where parties adopt this, in most cases there is always a deadlock and the parties end up in court.
2. **Problem solving strategy also known as win/win:** In this strategy, the parties are trying to solve a problem. There are four basic rules in win-win situation;

a. Separate the parties from the problem
b. Focus on the interest and not position
c. Invent other options for mutual settlement
d. Insist on using objective criteria in inventing the various options.

Negotiation Style

a. **Hard style** – Here the Negotiator maintains a position, that is being rigid
b. **Firm style**–The Negotiator ensures that the problem is solved. Here, the Negotiator is flexible.
c. **Soft style** – in this case, where a party understands that the facts and law are against him/her in the negotiation, such party will want to negotiate at all cost.

Stages of Negotiation

There are essentially four stages of negotiation.

1. **Opening stage:** In this stage, parties meet. The arbitrator says the opening statement to set the proceeding in motion.

2. **Bargaining stage**: The parties discuss the items one after the other or issues in dispute. This is where the style, tactics, and strategies are used.
3. **Closing stage**: Here, parties summarize what they have agreed on and reduce it into writing.
4. **Execution stage:** This is the stage where the parties sign the binding agreement between them. Where there is an action pending in court, the agreement will be filed in court and **consent judgment** will be given. However, if no action is pending in court, the parties would accept it as binding agreement.

Mediation Strategy

1. **Getting parties to Mediate**: It is easier for parties who have some sort of relationship ties to settle on their own depending on the gravity of the dispute but where they are unrelated; a mediator is needed to convince them to use mediation approach in settling their dispute. However, where the matter has been instituted in court, the court may refer the parties to utilize mediation in settling their dispute.
2. **Picking the right time to Mediate**: Where parties have decided to mediate, next thing is to pick the right time to mediate.
3. **Choosing the right Mediator**: ADR avails parties the privilege to choose their mediator. They must choose one who is experienced and knowledgeable in the subject matter of the dispute.

Stages/Steps in Mediation

1. **Introduction stage**: Here, the mediator introduces himself to the parties and makes opening statement. The parties also introduce themselves. The mediator's opening statement/remark will cover things like putting the parties at ease and explaining the ground rules, mediation process, and also assuring them of the confidentiality of the proceedings.
2. **Telling the story stage**: In this stage, each party tells his story or state the fact of the dispute between them without interruption. Even in multi-party mediation, each group must present their story. This is where the mediator's communication skill comes to play, he/she takes note of each facts from the parties to enable him identify the issue.
3. **Identifying the facts and issues stage**: After the parties have told their story, the mediator will draw facts that can lead to cause of action. Thus, the mediator helps to identify material facts and relevant issue in dispute. The mediator may do this by asking questions on contradicting statements.
4. **Identifying alternative resolutions stage**: At this stage, the mediator allows each party to think of a solution and list out the solutions without his interference.
5. **Revising and discussion stage**: At this stage, parties think of solutions. While the mediator help the parties to review the solution. Note that it would not be out of place for mediator to meet with parties individually in order to review the solution. A mediator is not expected to plead with the parties. However, he can make them see reasons why they need to agree on a solution.

6. **Reaching an agreement stage**: The agreement reached must be presented to the parties and reduced into writing. There must be an enforcement clause inserted to cover breach by either party.
7. **Closing the proceeding stage**: In this stage, parties exchange copies of the agreement, share compliments and thereafter the mediator ends the proceedings.

Arbitration Strategy

Arbitral proceeding must be initiated. Once dispute arises, the party seeking arbitration proceeding has the duty to set it on motion by **Notice of Arbitration** known as **Declaration of a Dispute.** Even when an action has been commenced in court, the party interested in arbitral proceeding is to apply for stay of proceeding and issue **Notice of Arbitration.**[5]

Appointment of an Arbitral Tribunal

Here, the parties agree on how many arbitrators will sit on the tribunal and in the absence of an agreement, the arbitrators are to be three. **See *Section 6 of Arbitration and Conciliation Act.*** Where any of the parties or the arbitrators fail to appoint an arbitrator within thirty days, a party to the arbitration proceeding may make application to court for appointment of arbitrator(s). **Note that in appointing an arbitrator, he must possess the following;**

a. **Impartiality and independence of the arbitral tribunal**: An arbitrator is not expected to be related to the parties.

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b. **Qualification**: The law does not provide for qualification of an arbitrator, but if the agreement of the parties provides for qualification, that would be the position.
c. **Confidentiality**: An arbitrator is expected to keep quiet about arbitral proceeding.
d. Competence.

Stages of Proceedings

There are three stages in arbitral proceedings

1. **Preliminary Meeting stage:** In this stage, the following occurs;
   b. The parties are invited to a preliminary meeting usually hosted by arbitrator(s)
   c. The agenda for the preliminary meeting is provided.
   d. Number of witnesses and mode of presenting them.
   e. The manner in which processes would be presented; whether traditional pleading or statement of case. Mode of presentation is determined – whether pleadings will be used or only documents. Statement of case is more detailed as it include bundle of document.
   f. **Fees and deposit of costs**: Fees are paid jointly by both parties and claim of the parties determines the fees to be paid. Ordinarily on the short run, arbitration is more expensive, but on the long run, arbitration is cheaper because cost analysis is not about physical money alone. In litigation, cost other than money is involved. These are labour and time. While litigation is long, arbitration is shorter. This is coupled with the fact that in litigation, lawyers own their ultimate duty to the court.
   g. Applicable rules

h. Directional orders
i. Adjournment

2. **Pre-hearing review**: Arbitral proceeding will not start until it is due for hearing. This includes Payment of fees, filing and exchange of statement of case, fixing the venue and payment of deposit, Narrowing and joining issues in dispute, confirming date, venue, and mode of hearing.

3. **Hearing:** The hearing starts based on the mode adopted. It could be documents only or with witness and documents. Note that everything in trial applies only that arbitration proceeding is a private court. Evidence Act does not apply but the rules of evidence applies. No section is mentioned but the fact that an original document is not produced can be objected to. In Arbitration, witnesses are examined on oath, cross examined and re-examined. Parties are allowed to adopt their final addresses and thereafter Arbitral Tribunal adjourn to deliver an award.

Award of Arbitral Tribunal

The award or ruling of the arbitral tribunal can be;

a. **Interim award:** This is an award for a short purpose.
b. **Partial award:** This operates as a final award in different segments of the proceedings.
c. **Interlocutory award:** This is an award on procedural matters.
d. **Final award:** This award captures all the issues brought to the panel.
e. **Additional award**: This is an award that was omitted thus an extra award.

Enforcement of Award

The State and Federal High Courts have jurisdiction but it is prudent to go to the court that has jurisdiction over the subject matter. The application for enforcement of an Arbitral award is by Motion on Notice supported by affidavit and written address accompanied by a duly authenticated original award or CTC of it; and the original arbitration agreement or CTC of it.

Conciliation Strategy

1. A party who wishes to conciliate or initiate conciliation shall send to the other party a written request to conciliate and such request shall contain a brief statement setting out the subject of the dispute. The conciliation is deemed to commence on the date the conciliation request is accepted by the other party.
2. The parties may appoint one or three conciliators known as the conciliation body to handle the dispute. Where the parties decide to appoint one conciliator, they are to appoint the conciliator jointly. Where they choose to appoint three conciliators, each party will appoint one and both parties will jointly appoint the third conciliator. **See section 40 ACA**
3. After listening to the parties, the conciliation body will present its terms of settlement. That is, it reaches an agreement for the parties and presents it to them. The parties are free to accept or reject it. **See section 42(1) ACA**.
4. Where the parties accept the terms of settlement, the conciliation body will draw up a record of settlement and sign it. If the parties accept the terms of settlement, they become binding on the parties

and either of them can take an action to enforce it. **See section 42(2) ACA.**

5. Where the parties do not accept the terms of settlement, the conciliation body may recommend that the parties should submit the dispute to arbitration or litigation. **See section 42(3) ACA**. Where this is the case, their respective rights should not be affected. **See section 42(4) ACA.**

Arbitration Process In Nigeria: Definition, Types And Laws Governing Arbitral Proceedings.

Nigerian Courts in the past had issues with accepting arbitration because they perceived it as eroding their constitutionally given authority which operates by way of ouster clauses. The Courts were then most reluctant in accommodating the Arbitral process. Legal Practitioners were not also left out of the suspicion or disdain for the Arbitral process as most of them wrongly believed that they will be out of purse if the process is encouraged. Some legal practitioners discouraged the idea of arbitration because according to them, it deprived them of the retainer and pennies they made from their continuous appearances in court. This only resulted to prolonged justice, not considering the interest of parties involved.

As arbitration grew worldwide and parties got involved in commercial transactions, arbitration in nigeria became a swift, cost effective and less technical means of settling disputes. In a sense, the attitude of the Nigerian courts began to change. This is why in recent times, the Courts have played and continued to play supportive role in ensuring that arbitration process in Nigeria are successful.

What Is Arbitration?

Arbitration is a form of alternative dispute resolution (ADR) where the parties to a dispute refer it to one or more persons called “arbiters” by whose decision or “award” they agree to be bound. Arbitration is voluntary.

What is an Arbitration clause?

An arbitration clause is a section of a contract that deals with the party's rights and options in the event of a legal dispute over the contract.

Types of Arbitration

1. **Institutional Arbitration**: An Institutional Arbitration is one where a specialized institution is appointed and takes the role of administering the arbitration process/case management. Each institution has its own set of rules which provides a frame work (such as timeline for the filing of documents or procedures for making applications etc) for the arbitration and its own form of administration to assist in the process. Common institutions include the International Chamber of Commerce (ICC) and the Hong Kong International Arbitration Centre (HKIAC). The obvious advantage of Institutional Arbitration is the administrative assistance given by the Institution. The availability of established rules also helps move the arbitration forward in a timely manner.

2. **Ad hoc Arbitration**: An ad hoc arbitration is one that is not administered by an institution. Parties will determine between themselves all aspects of the arbitration, such as the appointment of arbitrator, applicable rules and timetable for filing various documents. Parties in ad hoc arbitrations are free to use the procedure of their choice. In cases where no procedural rules are agreed, the arbitral tribunal will administer the arbitration in the way it thinks fit.

3. Domestic and International Arbitration

4. Compulsory Arbitration

5. Voluntary Arbitration

6. Foreign Arbitration

7. Statutory Arbitration

Laws Governing Arbitration in Nigeria

1. Arbitration and Conciliation Act, CAP A 18 LFN 2004.
2. Lagos State Arbitration Law 2009.
3. Labour Act with respect to Labour arbitration
4. International Commercial Arbitration Convention
5. United Nations Commission on International Trade law (UNICITRAL 1976) Rules
6. UNICITRAL Model law
7. New York Convention for the Recognition and Enforcement of Foreign Arbitral Awards 1958

What matters are not Arbitrable?

The following categories of matters cannot be the subject of an arbitration agreement and therefore cannot be referred to arbitration;

1. An indictment for an offence of a public nature
2. Disputes arising out of an illegal contract.
3. Disputes arising under agreements void as being by way of gaining or wagering.
4. Disputes leading to a change in status, such as divorce petition.
5. Any agreement purporting to give an arbitrator the right to give judgment ie ousting the jurisdiction of the courts.

What matters are Arbitrable?

The nature or subject matter of the disputes that are arbitrable includes but not limited to the following;

1. Banking
2. Contracts
3. Debt recovery
4. Defamation
5. Employment

6. Human rights
7. Inheritance
8. Intellectual property
9. Personal injury
10. Professional negligence
11. Property law
12. Public law
13. Tenancy
14. Tort

Parties would resort to arbitral proceedings in the following situations;

1. **Where an arbitration clause is inserted in the agreement executed by parties to the agreement:** Where parties insert the arbitration clause in the agreement executed by both parties, they are bound to resort to arbitration in the event of dispute arising between them except they both agree otherwise.
2. **Where there is absence of an arbitration clause in the party's agreement**: the parties may resort to arbitration where there is a mutual agreement between parties to adopt arbitration as a means of resolving the dispute (Submission Agreement), which is a post dispute arbitration agreement.
3. **Where a badly drafted arbitration Clause is inserted in the agreement thus making the clause inoperable:** Here the Court's intervention will be sought in other to assist in determining the intention of the parties and would direct parties as to what to do on application of any of the parties.

Complementary Role of the Courts in Arbitration Process

Nigeria like other serious minded countries has accepted arbitration as a dispute settlement method and also proclaimed it as one of its foreign policy objectives. Although arbitration is considered separate, or alternative to litigation. The fact is that arbitration is built on law and is necessarily dependent upon the law and judicial system. Though, there are claims of autonomy of arbitration, it is dependent on the underlying support of the

courts who alone have the power to rescue the system when one party seeks to sabotage the arbitral process. The extent to which a court can intervene in arbitration matters is limited by the provision of Section 34 of the Arbitration and Conciliation Act (ACA) which provides thus;

> ***"A court shall not intervene in any matter governed by the Act except where so provided in the Act"***

The essence of this provision is to ensure that arbitration process is not rendered nugatory and unattractive within our jurisdiction by incessant and unnecessary intervention by the courts. The intendment of the section is not to limit the jurisdiction of the court in determination of matters within its jurisdiction but rather, that no application may be made to the court in any matter where there is an available process in the Act.

The Role of the Courts in the Commencement of the Arbitral Proceedings.

The role of the court when arbitration is commencing usually reflects issues related to the courts control over the existence and validity of the arbitration agreement. The roles of the court in the commencement of the arbitral proceedings are;

1. The court has the powers to revoke an arbitration agreement by granting leave to any of the parties to the agreement to do so.
2. **Appointment of Arbitrators**: Generally, parties to an arbitration agreement may determine the number of arbitrators but where parties fail to do so, the number of arbitrators according to the ACA is three. Where a sole arbitrator is to be appointed and parties fail to appoint the sole arbitrator, such sole arbitrator will be appointed by the court upon the application of one of the parties. Where three arbitrators are to be appointed, each party is to appoint one arbitrator and the two appointed arbitrators shall appoint the third arbitrator. In such situation, where a party fails to appoint the arbitrator within 30 days of receipt of request to do so by the other party or if the two arbitrators fail to agree on the third arbitrator within 30 days of their appointment,

the appointment shall be made by the court on the application of any party to the arbitration agreement**. See Section 7 ACA.**

3. **Challenge of Arbitrator's Authority**: Though the arbitrator reserves the right to rule on its Jurisdiction without be questioned, yet the court has the power to rule on issues presented to it pertaining to the authority of the arbitrator to take certain decisions. Generally, arbitration agreement state the place of the arbitration, but where the parties fail to specify in their agreement where the arbitration is to be held, any difference or opinion about that will be determined by the arbitral tribunal. **See Section 16(1) ACA**. However, despite this clear provision, the courts will still entertain and rule on cases where parties come before it to contest the authority of the arbitrator to determine the place of arbitration. See the case of **National Petroleum Corporation v. Lutin Investment Limited (2006) 2 NWLR (Pt. 965) 50 S.C.**
4. **Stay of proceedings pending arbitration;** where an action is commenced before the Court following a dispute between parties to an arbitration agreement, in this case, the court upon the request of any of the parties to the arbitration agreement would order or stay proceedings and refer the parties to arbitration. See **Section 4 ACA.** The Party that intends to apply for stay of proceedings will have to do so at any time after appearance and before delivering any pleadings otherwise he would be deemed to have waived his right to go to arbitration and by implication waived his right to challenge the competence or jurisdiction of the court. See the cases of **Enyelike v. Ogoloma (2008) 14 NWLR (Pt 1107) 247, Kano State Urban Development Board v. Fanz Construction Co. Ltd (1990) 4 NWLR (Pt. 142) 1**

The Role of the Courts during the Arbitral Proceedings.

Once the arbitral proceedings are commenced, the court play an important role in supporting the arbitral process and eliminating the obstacles hindering its progress. Even though the arbitral tribunals have the freedom to settle the issues submitted thereto, the following issues require the court's interference;

1. **Securing the attendance of a witness**: Where there is a need to compel the attendance of any person to give evidence at the arbitral proceedings, application will be made to court for the issuance of a subpoena to summon such person to the arbitral tribunal. This power extends to power to issue a writ of habeas corpus to produce a prisoner for examination. See **Section 23 ACA**.
2. **Removal of an Arbitrator;** an Arbitrator who misconducts himself in the course of arbitral proceedings may be removed by the court on the application of any of the parties. Example of misconduct is where an arbitrator is bias thereby favoring one party over the other, the party suffering the injustice may apply to court to remove such arbitrator. **See Section 30 ACA.**
3. **Power to issue Interim measures**: The ACA did not give the court the power to issue interim measures. It rather conferred the power on the arbitral tribunal in Section 13 of the ACA. While the ACA did not confer the Court the power to grant interim measures, Article 26(3) of the ACA Rules that provides for a request for interim measures addressed by any party to court shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of the agreement. **See Section 21 of the Lagos State Arbitration Law 2009, Article 9 of Model Law.**

The Role of the Court after the Issuance of the Arbitral Award

Arbitration for decades has been given legal backing; therefore, a valid arbitral award on a voluntary reference operates between parties as a final and conclusive judgment upon all matters referred. An arbitral award issued by a tribunal has a res judicata effect. It then rests on the court to enforce the award or to set it aside depending on matters arising out of the arbitration and the award.

1. **Setting aside an award:** A party who is aggrieved by an arbitral award may within three months from the date of the award or from the

date of the request for additional award is disposed of by the arbitral tribunal, make an application to court to set aside the award. In this instance, the court may set aside an arbitral award if the party making the application furnishes proof that the award contains decisions on matters which are beyond the scope of submission to arbitration. Where the decisions on matters submitted to arbitration can be separated from those not submitted, only that part of the award which contains decisions on matters not submitted may be set aside. Where an award is set aside in whole or in part, the effect is that it deprives the award or part of it of any legal effect and therefore becomes unenforceable. **See Section 29 of ACA.** In Section 30 of ACA, the court may set aside an award where an arbitrator has misconducted himself or where the arbitral proceedings or award was improperly procured or where the arbitrator erred in law.

2. **Enforcement of arbitral awards:** An arbitral award is binding on parties to the arbitration agreement. A party may upon application in writing to the court, obtain a leave of the court to have the award enforced in the same manner as a judgment or order to the same effect. Any of the parties to an arbitration agreement may request the court to refuse recognition or enforcement of the award. The courts are both the State High Court and Federal High Court, however, it is prudent to go to the court that have jurisdiction over the subject matter. See **Section 31 ACA.**

Any party wishing to enforce the award is to apply to the court by Motion on Notice supported by affidavit and written address and thereafter supply the following documents, a duly authenticated original award or CTC of it, the original arbitration agreement or CTC of it, where the award or arbitration agreement is not made in the English language, a duly certified translation thereof into the English language.

Conclusion

We have discovered in this work that disputes which are inherent in business relationship are today resolved more by ADR process than by litigation. Indeed, ADR processes have been fully developed in other jurisdictions as a means of resolving environmental disputes. ADR has

been effectively used to enhance public confidence in environmental decisions, facilitate technical inquiries and information exchanges, and to identify creative solutions to daunting problems.

We have weighed the pros and cons of these mechanisms vis-à-vis the judiciary. No doubt, the merits of the ADR outweigh the judicial process especially in view of the courts' adversarial and confrontational nature.

References

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