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Institutionalised ADR and Access to Justice: The Changing Faces of Nigerian Judicial System

Bukola Faturoti*

Abstract

Many legal jurisdictions have come to the realisation of how judicial bureaucracies and rigidity have left many disputants disenchanted about the entire justice system. This article examines the responses of State Governments in Nigeria to the problem of access to justice by looking at the inclusion of administration of alternative dispute resolution mechanisms in Civil Procedure Rules and multi-door court system. It looks at the prevalent culture of litigation and its effects on the entire judicial process to understand the importance of amendments to civil procedure rules. Looking at Lagos, Abuja and Kano, the article identifies the gaps in previous rules of the States' High Courts in Nigeria and the adequacy of recent amendments to fill these gaps. The paper critically analyses the institutionalisation of alternative dispute resolution and draws out the implications it may have both for the bench and the bar alike.

Keywords: Nigeria, Civil Procedure Rules, ADR, case management, litigation, multidoor court house

Introduction

Section 36 of the Constitution of the Federal Republic of Nigeria 1999 guarantees fair hearing "within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality".[1] Despite this provision access to justice under the Nigerian judicial system has suffered from problems ranging from long delays of trials to formalistic and expensive legal procedure, weak enforcement of laws, inadequate legal aid system and the absence of case management techniques.[2] Onyema observed that two main hindrances to access to justice in Nigeria are a mono-track dispute

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[1]Constitution of the Federal Republic of Nigeria 1999 (CFRN) hereinafter referred to as 1999 Constitution

[2]Dele Peters, *Alternatives to Litigation: The Multi-Door Court House Concept in Issues in Justice Administration in Nigeria* (ed) Fassy Adetokunboh O Yusuf, Published by VDG International Ltd 2008 p.435

resolution system and delay caused by court congestion.[3] A judicial system must not only be accessible but be transparent, efficient and institutionally strong. Efficiency of a judicial system includes availability of specialized and alternate forms of dispute resolution processes which provide appropriate diagnostics tools and routes for resolving conflicts without any unnecessary delay.

In 1976, Professor Sander of Harvard University pioneered the call for widening the spectrum of dispute resolution mechanisms available to disputants through the court.[4] His call was in response to dissatisfaction with the judges and judicial system in the United States. Sander himself had identified with the concerns raised by Professor Roscoe Pound on American judicial system 70 years earlier in Pound's paper "The Causes of Popular Dissatisfaction with the Administration of Justice."[5] Pound's paper, which was regarded as "an attack upon the entire remedial jurisprudence of America"[6], has not only been vindicated by subsequent legislative responses in the United States but also in countries like Australia, England and Nigeria among others.

The same inefficiencies and rigidity complained about in the American judicial system have also been identified by Nigerian lawyers and judges in their own legal system.[7] This identification has led to the inclusion of alternative dispute resolution as an option for the court and litigants in High Court (Civil Procedure) Rules[8] and laws.[9] Unlike the narrow approach under previous various States High Courts (Civil Procedure) Rules[10] which provided for reference of disputes to arbitrators, in 2004 both Lagos State[11] and the Federal

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[3] See Emilia Onyema 'The Multi-door Court House (MDC) Scheme in Nigeria: A Case Study of the Lagos MDC,' *Apogee Journal of Business, Property & Constitutional Law*, 2 (7). pp. 96-130 available at http://eprints.soas.ac.uk/14521/1/Final_Report_on_LMDC_2012.pdf 4 April 2013

[4]See Frank E.A. Sander, "Varieties of Dispute Processing" 1976 70 *Federal Rules Decisions*, 111- 113

[5] Roscoe Pound, "The Causes of Popular Dissatisfaction with the Administration of Justice," American Bar Association Report of 29:395, reprinted in *Federal Rules Decisions* 35:273 (1964)

[6] American Bar Association, Report of the Twenty-Ninth Annual Meeting of the American Bar Association 11 (1906) cited in Luke Bierman "The Administration of Justice a Century after Roscoe Pound: Future Directions and Emerging Trends," 48 *S. Tex. L. Rev.* 1051 (2006-2007)

[7] See Nwana V. F.C.D.A. (2007) 11 NWLR 59; O.O. Oke, "Decongesting the Courts: The Place of the LMDC" paper delivered at the Access to Justice Forum Lagos, 20 Sep 2003),6 cited in K Aina, "Amicable Dispute Resolution: The Nigerian Experience" in A Ingen-Housz (ed) *ADR in Business: Practice and Issues across Countries and Cultures* Vol II Kluwer Law International 2011

[8] Under the 1999 Constitution, the Chief Judge of each sate is vested with the power to make rules of practice and procedure. The Rules in Lagos is made pursuant to s.274 of the 1999 Constitution while Abuja is made pursuant to s259 of the Constitution.

[9] Section 24 High Court Law of Lagos State Chapter H3 Laws of Lagos State 2003; section 17 Federal High Court Act, Cap F12 Laws of the Federation of Nigeria 2004; Federal High Court Act CAP F12 Laws of the Federations of Nigeria (LFN) 2004

[10] High Court of Lagos State (Civil Procedure) Rules 2003

[11] High Court of Lagos State (Civil Procedure) Rules 2004 which was replaced in 2012

Capital Territory, Abuja[12] widened the spectrum of the ADR mechanisms which the courts may consider where suitable for the disputes before them. As at the time of writing, more than one-third of the 36 states in Nigeria have now adopted a similar approach and among them are Kano, Delta, Bayelsa, Oyo etc. In addition some of these states have also legislated laws to establish multidoor courthouses which would serve as a gateway in administering the use of various ADR mechanisms.

While it is generally accepted that ADR encompasses a range of mechanisms for settling other than formal litigation,[13] the acronym, ADR has been given different meanings such as "Alternative Dispute Resolution", "Amicable Dispute Resolution" or "Appropriate Dispute Resolution" depending on the view of the proposer.[14] Neither of these definitions is without criticism. If "Alternative Dispute Resolution" is preferred, the question is identifying what the ADR mechanism(s) is an alternative to. Another problem which stems from definition of ADR is whether arbitration should be classified as one of the ADR methods. For ease of classification, this article treats arbitration simply as one of the mechanisms for ADR just like contractual adjudication.

This article examines selected legal frameworks providing for the adoption of ADR by the courts under the civil procedure rules and the introduction of the multi-door courthouse into the Nigerian legal system and the implications they have for both lawyers and judges in performance of their roles. The first part briefly looks at the culture of litigation, the disenchantment with the court systems in Nigeria and the gradual shift by the judiciary in encouraging the use of other methods of dispute resolution. The second part of this article revisits the use of ADR in the Nigerian legal system. Is the use of ADR or any of its mechanisms new to the Nigerian legal system? Is there any future for ADR or the multi-door courthouse (MDC) system in Nigeria? The article limits its examination to the rules and the practices in Lagos State and the Federal Capital Territory, Abuja, and Kano State where the MDC schemes are already functional.

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[12] High Court of Federal Capital Territory, Abuja (Civil Procedure) Rules 2004

[13] ADR is defined as a "procedure for settling dispute by means other than litigation; e.g. by Arbitration, Mediation, mini-trials. Such procedure which are usually less costly and more expeditious are increasingly being used in commercial and labour disputes, divorce actions, in resolving motor vehicle and medical malpractices tort claims, and in other disputes that would likely otherwise involve court litigation. Available at http://www.encyclopedia.com/topic/Alternative_Dispute_Resolution.aspx accessed on 23 September 2013

[14] See Pierre Tercier, "ADR and Arbitration" in A Ingen-Housz (ed) *ADR in Business: Practice and Issues across Countries and Cultures* Vol II Kluwer Law International 2011; Astor, H., and Chinkin C., *Dispute Resolution in Australia* 2nd edition LexisNexis Butterworths Australia 2002; ; Steven H. Goldberg, ""Wait a Minute. This is Where I Came In." A Trial Lawyer's Search for Alternative Dispute Resolution 1997 *Brigham Young University Law Review* 653

The Traditional Court and its Metamorphosis

Like their counterparts in other common law jurisdictions, Nigerian lawyers adhere to the rules of adversarial philosophy. Those rules preclude judges from intervening in the conduct of litigation process except to uphold or to reject objections and to confirm the adherence to the rules of the game. According to Prof. Yemi Osinbajo "every counsel knows that to hold a case in abeyance forever only requires a preliminary objection of the lack of jurisdiction. No matter how tenuous the ground, it is unlikely that the trial judge will not be persuaded to stay proceeding, once ruling is challenged on appeal…"[15] This objection might be complemented by series of injunctions and interlocutory appeals, stay of proceedings orders sought on the ground of technicalities. The quest for justice through litigation in Nigeria is not different from what Simon Robert observes in England and Wales as: "…[A] bruising process, characterised by secrecy and suspicion in which one party's representatives have successfully wasted the other to the point at which the latter decides reluctantly, perhaps facing the inevitable, that he has to give up."[16]

In Nigeria, the highest honour for practising lawyers is the rank of Senior Advocate of Nigeria (SAN) and most top law firms are known for their prowess in handling litigation. The honour is conferred based on the number of cases argued by a lawyer at the Supreme Court and the Court of Appeals.[17] Unsurprisingly, only six out of the seventy-two appointed SANs between 2011- 2013 are academics because as provided in the Legal Practitioners Act the award is *primarily* meant for legal practitioners who have distinguished themselves as advocates while awards to academics who distinguished themselves through teaching, research and publications are made in exceptional circumstances.[18] It is this writer's view that such practices have only served as incentives to use litigation as a method of resolution without consideration of other methods. Though the SAN application form has an arbitration column, many lawyers would still seek opportunities to litigate their cases and pursue appeals with the hope of increasing the number of appearances in superior courts rather than exploring other dispute resolution options which are confined to private sphere.

The outcomes of these adversarial procedures are delay and expense which would naturally produce overburdened court dockets. Data available show that in Lagos State while

[15] Available at <http://www.thisdaylive.com/articles/disputes-when-adr-becomes-succour/77832/> accessed on 2 February 2013

[16] Simon Roberts, 'Anthropological and Historical Foundations: Institutionalized Settlement in England: A Contemporary Panorama.' 2002 10 *Willamette Journal of International Law and Dispute Resolution* 17

[17] Senior Advocate of Nigeria is equivalent of Queen's Counsel (QC) in the UK.

[18] s2 Legal Practitioners Act CAP L11 LFN 2004

20 169 cases were pending in 1999, 10 226 fresh cases were filed in the same year. In legal year 2000 about 9 696 cases were filed and 23 197 were pending in Lagos State.[19] Between 2008 and 2010, over 25 807 cases were assigned in the High court, the Magistrates courts received 16 072.[20] Rivers State had more than 20 000[21] cases pending in 1999/2000 legal year while Enugu State had 26 535 cases pending in its High Court and Magistrate Courts in 2004-2005.[22] It takes almost eight years to decide land related matters and five years to decide family and commercial cases.

This discovery has prompted both the Nigerian Bench and the Bar to reassess the ways disputes are handled and how justice is handed over to the parties in dispute.[23]Writing on the need to decongest the Nigerian courts, O.Oke explains:

> Nigerian courts are overflowing with cases. Congestion in the courts has generated more anger, more agony in the parties. Each honourable Judge has not less than three hundred cases pending before him with new ones on daily bases. We must not forget that proceedings are still being recorded in long hand and with other various technical problems, some cases last over 10years from the date of filling. For instance, in my court, I have over 20years old cases inherited by me from retired Judges. These are cases that have gone before two or three Judges before coming to my court. I remember vividly that Suit No.LD/469/77, *A.J. Lawal & Anor v Santos* is 26 years old, suit No.LD/89/74 *Mrs S.A. Abudu v. Alhaja T.Ogunbambi & Anor* is 29years old, while suit No.LD/4/78 Sipeolu Anor. V. AIICO Eng. Group Nige Ltd is 25years old. I have about 50 cases that are more than 10 years and 140 cases that are over 5 years old.[24]

It is imperative to note that prior to 2002, the Nigerian law school academic curriculum was designed to turn law students to fiery legal practitioners versed in allocating claims, liabilities and compensation through the provisions of legislations and application of

[19] Peter A Anyebe "Towards Fast Tracking Justice Delivery in Civil Proceeding in Nigeria" pp 141-42 in E Azinge and D Dakas (ed) J*udicial Reform and Transformation in Nigeria* Lagos, Nigerian Institute of Advanced Legal Studies Press 2012

[20] Note 3 at page 3

[21] ibid

[22] See also M.M. Akanbi, "Kwara Multidoor House: An Idea Whose Time Has Come!" paper delivered on the occasion of the formal inauguration of the committee on the proposed Kwara State Multidoor Court House, Ilorin, Nigeria 2008

[23] C Oputa, quoted in K Aina, "ADR and the Managerial Magistrate". Paper delivered at a forum for Continuing Education for Magistrates (Lagos, 2005); See also M.M. Akanbi, 'Kwara Multidoor House: An Idea Whose Time Has Come!' paper delivered on the occasion of the formal inauguration of the committee on the proposed Kwara State Multidoor Court House, Ilorin, Nigeria 2008 (supra note 15)

[24] O.O. Oke, "Decongesting the Courts: The Place of the LMDC" paper delivered at the Access to Justice Forum Lagos, 20 Sep 2003),6 cited in K Aina, "Amicable Dispute Resolution: The Nigerian Experience" in A Ingen-Housz (ed) *ADR in Business: Practice and Issues across Countries and Cultures* Vol II Kluwer Law International 2011

judicial precedents. There were no efforts to explore new voluntary mechanisms that might enable parties to resolve various types of dispute without going to court in the first place. This has led to the notion that the best way of dealing with opponents is by taking them to court, wasting their resources and time and subjecting them to the full rigour of justice system. To correct this notion, the civil procedure curriculum has been updated to provide bar applicant basic knowledge of alternative dispute resolution mechanisms.

Lawyers have now broadly defined their role in the scene of dispute resolution. They come under appellations such as arbitrators and mediators and many law firms are now offering arbitration and mediation as part of dispute resolution services. Nigerian lawyers and retired judges are now undertaking training to become mediators, arbitrators and negotiators. For example Nigeria boasts of arbitration practitioners, of whom 572 are Associates of the Chartered Institute of Arbitrators; 277 are members and 100 who have the status of the Fellow of the Institute.[25] There are also a number of indigenous groups such as the Nigerian Institute for Chartered Mediators and Conciliators which provides training and regulates the use of ADR especially in the area of mediation and conciliation[26] as well as Association of Professional Negotiators and Mediators of Nigeria, among others. The Nigerian Bar Association is also at the forefront of promoting the use of ADR by creating a section on the use and development of ADR in Nigeria.[27] Similarly at the institutional level, the Council of Legal Education[28] has included ADR topics into the curriculum of the Nigerian Law School.[29] Also, it is compulsory under the Rule of Professional Conduct (RPC) for lawyers to inform their clients of other mechanisms of dispute resolution.[30] In *Owoseni v Faloye*,[31] the Nigerian Supreme Court held that an aggrieved party should consider and exhaust all legal/non-legal remedies prescribed the law before going to court. The problem at this point is how gauge the compliance with these innovations. Also, would this not constitute an extra burden on lawyers as it might be difficult for them to persuade a vindictive client?

[25] Data available at http://ciarbnigeria.org/fciarb.shtml accessed on 2 March 2013
[26] http://www.icmcng.org/index.php?option=com_content&view=article&id=54&Itemid=62 accessed on 10 March 2013
[27] Paul Obo Idornigie, 'Overview of ADR in Nigeria' *Arbitration* 2007, 73(1) 73-76
[28] This is the body that is responsible for legal education in Nigeria.
[29] Course Handbook on Civil Procedure, The Nigerian Law School Bar Part II Course 2011 edition
[30] Rules of Professional Conduct (RPC) for Legal Practitioners, 2007 Rule 15(3d)
[31] [2005] 14 Nigerian Weekly Law Reports (subsequently referred to as N.W.L.R) (Part 946) 719,740; See also *Aribisala v Ogunyemi* [2005] 6 N.W.L.R (Part 921) 212

ADR in Nigeria

ADR is not entirely new under the Nigerian legal landscape as in the past there was community based ADR. In a dissenting opinion by OGUNTADE, JCA in *Idika and others v Esiri and others*,[32] his lordship said:

> In the pre-colonial time and before the advent of the regular courts our people certainly had a simple and inexpensive way of adjudicating over disputes between them. They referred them to elders or a body set up for that purpose …The right to choose an arbitrator to adjudicate with binding effect is not beyond our native community.[33]

Clan leaders, age group leaders and association leaders always presided over conflict resolution. The situation in Nigerian traditional societies is similar to what is found among the Bushmen of Kalahari where:

> When a serious problem comes up everyone sits down – all the men, all the women – and they talk, and they talk. Each person has a chance to have his or her say. It may take two or three days. This open and inclusive process continues until the dispute is literarily talked out.[34]

So among the Yoruba tribe found in the western part of Nigeria, disputes are settled by *Baale* (family heads) and *Mogaji or Baale* (ward chiefs). [35]Both ensure that disputes are resolved at the family level and community level respectively. Among Hausas and Fulanis who migrate to other parts of Nigeria, disputes are referred to the *Mai Ungwa* (owner of the ward) who resolves disputes at the ward level and the *Sarkin Hausawa* (the leader of the Hausa people) who entertains disputes which cannot be resolved at the ward level.[36] These tribes and other ethnic groups in Nigeria have their informal methods of dispute resolution largely shaped by their culture. Culture here includes social arrangements, belief systems, values and shared symbolic meanings. Customary laws and Islamic laws provide the legal framework through which community-based ADR operates. Even with the advent of colonialism people found in rural areas and countryside still have preference to this method as opposed to the formal system offered by the imposed English laws.

The majority of disputes in the Nigerian communities are centred on marital issues, farms and village boundary disputes, inheritance claims, land ownership and commercial

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[32] *Idika & ors v. Esiri & ors* (1985) 2 N.W.L.R (Part 78)
[33] ibid at 586-587; See Supreme Court decisions in *Ohiaieri vs. Akabeze* (1992) 2 N.W.L.R (Pt 221) page 1 at 7; Eke vs. Okwaranyia (2001) 12 N.W.L.R (Pt 726) 181
[34] Ury, W.L., Must we Fight? From the battlefield to the schoolyard – A new perspective on violent conflict and its prevention (*(*Jossey-Bass San Francisco, 2002) at 40
[35] Barrett, J.T. *A History of Alternative Dispute Resolution: the story of a political, cultural, and social movement (*Jossey-Bass San Francisco, 2004) at 5
[36] Supra note 18 at pp 602 - 603

disputes. The ultimate goal of any form of dispute resolution mechanism adopted is the achievement of reconciliation and peace. The central quality of this reconciliation task is to "re-orient the parties to each other … by helping them to achieve a new shared perception of their relationship, a perception that will redirect their attitudes and disposition towards one another". [37] It encourages a perspective of caring and interconnection.[38] To ensure the impartiality of the 'judges' and of the disputing parties acting in good faith, oath taking is always involved.

Under the present legal system, the Supreme Court has given credence to the validity of the ADR processes as found under various customary laws in Nigeria. The courts expressly accept that disputing parties are allowed to settle their differences in a 'manner' acceptable to them[39] and persons with judicial authority under native law and custom are included.

ADR in Nigerian Courts: The Changing Faces

Under its foreign policy, the 1999 Constitution recognises the use of mechanisms such as negotiation, mediation and arbitration in resolution of disputes.[40] There are a host of federal statutes which recognise the use of alternative methods to litigation.[41] Many of these statues do not provide guidance or define what the role of the courts would be in the actualisation of this process. The Federal High Court Act provides that the Court may promote reconciliation among the parties thereto and encourage and facilitate the amicable settlement thereof.[42] Who administers ADR in this instance, a private institution or the court? Will the judge or other court officials serve as the mediator or an arbitrator? What is the status of decision reached in the process of amicable settlement? Under the Matrimonial Causes Act[43] which makes it a duty of the court to give consideration to the possibility of reconciliation, the judge may nominate a suitable person with experience in marriage conciliation with the consent of the parties.[44] At the state level, many High Courts Laws have

[37] Fuller, Lon (1971) "Mediation: its Forms and Functions," 44 *Southern California Law Review*, pp. 305-339
[38] R.A.B. Bush: Efficiency and Protection, or Empowerment and Recognition?: The Mediator's Role and Ethical Standards in Mediation (1989) 41 *Florida Law Review* 253, pp.266 -270
[39] *Agu v. Ikewibe* (1991) 3 N.W.L.R (Pt 180) 385
[40] Section 19(d) Constitution of the Federal Republic of Nigeria
[41] Examples are s33(2) Environmental Impact Assessment Act Cap E12 LFN 2004; s4 Industrial Inspectorate Act, Cap I8 LFN 2004; S255 Mineral and Mining Act Cap M12LFN 2004
[42] Federal High Court Act CAP F12 Laws of the Federations of Nigeria (LFN) 2004 section 17
[43] Matrimonial Causes Act CAP M7 (LFN) 2004 section 11
[44] Ibid 11(1)c

also recognised the use ADR.[45] Just like at the federal level there was no guidance on the role of the court in administration of ADR in Nigeria until 2004.

Lagos State pioneered the use of ADR mechanism in its court when the Chief Judge made the Lagos State (Civil Procedure) Rules 2004. Prof Osinbajo, the then Attorney General of Lagos State said the essence of the Rules is to "curtail the excesses of counsel and give judges a firmer control or proceedings in their courts". [46] The Federal Capital Territory judicial division followed the example in Lagos State after a year with the High Court of the Federal Capital Territory (Civil Procedure) Rules 2004 (Abuja Rules). These two new rules represent a paradigm shift from the Uniform Procedure Rules which were in existence in other states high courts in Nigeria. Other states like Akwa Ibom,[47] Anambra,[48] Bayelsa,[49] Benue,[50] Delta,[51] Ebonyi,[52] Imo,[53] Kwara,[54] Kaduna,[55] Ogun,[56] Osun,[57] Oyo[58] and Rivers[59] have also made promotion and adoption of alternative dispute resolution part of their High Court (Civil Procedure) Rules. Taking Delta State as an example, its High Court (Civil Procedure) Rules 2009 provides in Order 25 rule 1(2) that:

> Upon application by a claimant under sub-rule 1 above, the Judge shall cause to be issued to the parties and their legal practitioners (if any) a pre-trial conference notice as in Form 18 accompanied by a pre-trial information sheet as in Form 19 for the purposes set out hereunder:
> (a) disposal of matters which must or can be dealt with on interlocutory application;
> (b) giving such directions as to the future course of the action as appear best adapted to secure its just, expeditious and economical disposal;
> (c) *promoting amicable settlement of the case or adoption of alternative dispute resolution.*

As of February 2013, Borno State High Court is the latest jurisdiction to embrace the use of ADR in its court with Borno State High Court (Civil Procedure) Rules, 2012 Order 19 rule 1

[45] S24 High Court Law of Lagos State Chapter H3 Laws of Lagos State 2003; section 28 of the High Court Law of Rivers State Cap 62 Laws of Rivers State 1999, section 25 of the High Court Law of Akwa Ibom State Cap 51 Laws of Rivers State 1999
[46] See Prof Yemi Osinbanjo, in the foreword to Proposal for the Reform of the High Court of Lagos State (Civil Procedure) Rules p V
[47] High Court of Akwa Ibom State (Civil Procedure) Rules 2009 Order 25 2 c
[48] High Court of Anambra State (Civil Procedure) Rules 2006 Order 25 r 1(2)c
[49] High Court of Bayelsa State (Civil Procedure) Rules, 2010 Order 25 r 1(2)c
[50] High Court of Benue State (Civil Procedure) Rules, 2007 Order 25 r 1 (2c)
[51] High Court of Delta State (Civil Procedure) Rules, 2009 Order 25 r 1 2c
[52] High Court of Ebonyi State (Civil Procedure) Rules 2006 Order 25 r 1(2)c
[53] High Court of Imo State (Civil Procedure) Rules 2008 Order 25 r 1(2)c
[54] High Court of Kwara State (Civil Procedure) Rules, 2005 Order 33(2)(2)
[55] High Court of Kaduna State (Civil Procedure) Rules, 2007 Order 26 R 1 2(d)
[56] High Court of Ogun State (Civil Procedure) Rules, 2008 Order 25 r 1 2c
[57] High Court of Osun State (Civil Procedure) Rules, 2010 Order 25 r 1 2c
[58] High Court of Oyo State (Civil Procedure) Rules, 2010 Order 25 r 1 2c
[59] High Court of Rivers State (Civil Procedure Rules) 2006Order 25 2 c

empowering the Chief Judge to issue Practice Direction in support of ADR techniques and mechanism.

In these States it is the first time that ADR is made part of the formal justice system in unequivocal terms. In the past, the roles of judges have been confined to that of unbiased umpires and judgment givers who must adhere to the tenets of adversarial litigation with a limited exception of referring disputes to arbitrators. Judges now play active role in managing the track of cases. They now go under the label of case managers who must monitor and control the progress of cases in order to ensure a speedy disposal of cases. They have in addition to their duty of adjudicating cases the duty to encourage settlement. Lawyers on the other hand have also become compelled facilitators; they must not fail or neglect to inform their clients of the availability of ADR mechanisms before resorting to litigation otherwise they could face disciplinary action for professional misconduct under the Nigeria Legal Practitioners Act 1975.[60] In this regard, lawyers owe allegiance to the court and the legal profession "in promoting a better and more efficient justice delivery system."[61] They must collaborate with the court in ensuring prompt resolutions of conflicts by giving due considerations and support to order and directives of the court.

Lagos State High Court (Civil Procedure) Rules & ADR

The Lagos State High Court (Civil Procedure) Rules of 2004 pioneered the unequivocal attempt to make judges refer parties to ADR or offer ADR services under the multi-door courthouse concept. The objective of the then Lagos Rules is found in Order 1 rule 1(2), which states "These Rules shall be directed towards the achievement of a just, efficient and speedy dispensation of justice." This provision of Lagos Rules which is *impari materia with* Order 1 r 1 of English Civil Procedure Rules 1998 when compared to that found in the English civil jurisdiction[62] lacked the imperativeness found in the English Civil Procedure Rules. The latter imposes on the judge the duty of not only coming to a decision but of coming to a just decision in a timely manner.

This supposed weakness has now been addressed in the new High Court of Lagos State (Civil Procedure) Rules 2012 which replaces the 2004 Rules. The 2012 Civil Procedure Rules

[60] Note 28 Rule 55(1)
[61] LMDC Law s17(1)
[62] Interim Report to the Lord Chancellor on Civil Justice System in England and Wales (London: Lord Chancellor's Department, 1995) which prescribed "case management" by encouraging settlement of disputes at the earliest appropriate stage; and where trial is unavoidable, to ensure that cases proceed as quickly as possible to a final hearing which is of strict limited duration

are to be construed in furtherance of three overriding objectives provided in its Preamble namely: just determination of matters; speedy dispensation of justice by elimination unjustifiable expense and delay and promoting amicable resolution of disputes by use of Alternative Dispute Resolution (ADR) mechanism. The court could only achieve these objectives by adopting the new concept of 'active case management.' The introduction of this concept underscores the seriousness of the court to discourage the use of litigation and also be an active participant in administration of ADR. Inclusion of both overriding objectives and duties to actively managing cases under the preamble has its advantages and disadvantages. It could be argued that this inclusion demonstrates the cardinality of the objectives and duties to the entire rules. Though preambles have been a good tool in interpreting statutes, the court in *Ogbonna v Attorney General, Imo State* stated that any general intention derived from the preamble would be void in the face of express provision to the contrary within the statute.[63]

Order 25 of the Lagos Rules[64] contains a myriad of techniques to enhance an efficient and speedy dispensation of justice. The Order titled 'Case Management Conference and Scheduling' contains forecasting devices which enable the parties and their legal teams to examine their position against a predicted judicial determination, which may facilitate negotiations rather than a strict determination of legal rights. This Order is used to be known as '*Pre-Trial* Conference and Scheduling' in the 2004 Rules, this change of name might be interpreted as part of the effort to remove all the cloak of litigation and its pejorative connotation and to portray an atmosphere where the parties converse and work towards a mutually acceptable outcome. The purposes of the case management conferences are:[65]

(a) disposal of matters, which must or can be dealt with on interlocutory application;
(b) giving such directions as to the future course of the action as appears best adapted to secure its just and economical disposal;
(c) *promoting amicable settlement of the case or adoption of ADR*[66]

The case management conference paves the way for negotiation or new settlement orders and there is a possibility of the case terminating here because parties may discover that there is no dispute after all. There is a strict regime of timetabling; conferences are to be completed within three months of its initiation and could only be extended with consent of the judge after an application has been extended. Adjournments would be for the purposes of

[63] (1992) 1 N.W.L.R (Pt 220)647
[64] Similar provisions are in Akwa Ibom, Bayelsa, Benue, Delta, Kwara, Kaduna, Ogun, Osun, Oyo and Rivers States.
[65] O.25 r 1(1a-c)
[66] Emphasis supplied.

compliance with the orders issued to support resolution. It is hoped that case management conferences would reduce logjams, which always arise when parties base their rights on different principles of laws, which they think will win them the case. It would afford both the disputants and their counsel the chance of early settlement rather going too far into the litigation processes.

The supervisory repertoire of the judge during a case management conference is enormous. He has the power to make such other matters as may facilitate the just and speedy disposal of the action.[67] The judge could sanction a party or its legal practitioners if they fail to attend or obey a scheduling or case management conference order or they are substantially unprepared to participate in the conference or fail to participate in good faith.

On the adoption of ADR, it appears the rule has empowered the court to compel the use of ADR without necessarily seeking the consent of the parties because at the commencement of an action

> "… [A]ll Originating Processes shall upon acceptance for filing by the Registry be screened for suitability for ADR and referred to the Lagos Multi Door Court House or other appropriate ADR institutions or Practitioners in accordance with the Practice Directions that shall from time to time be issued by the Chief Judge of Lagos State."[68]

Where a party refuses to cooperate with the court in furthering this objective the court would give appropriate directives as enumerated under Order 25 Rule 6. It is assumed that the statement of Case under Order 25 Rule 6 would be to explore ADR. So could recalcitrant parties be compelled to explore ADR?

Compelling parties to adopt any of the ADR mechanisms gives rise to some issues. First, there is no definition of what constitutes ADR under the Rules. It appears that the definition under the Lagos Multi-Door Court House Law (LMDC) discussed below may guide the court on what constitutes ADR. The LMDC Law defines ADR to include "the entire range of alternatives to litigation that involves third party intervention to assist in the resolution of a dispute."[69] Section 3 of LMDC Law lists arbitration, early neutral evaluation and mediation as available mechanisms for the parties to explore. However to what extent can parties be compelled to arbitrate? Except in the case of statutory arbitration, agreement to arbitrate is a key feature of arbitration as it creates a binding contractual arrangement between

[67] O.25 r 2(m)
[68] Lagos Rules Order 3 r 11
[69] Section 31

the parties and establishes the jurisdiction of the arbitral tribunal.[70] It is the consensual nature of arbitration that distinguishes it from court proceedings. One option may be to create a non-binding arbitration as it is the practice in countries like Australia, Canada and United States.[71] A non-binding arbitration will offer a realistic assessment of a party's position. A worthy caution however is the right of a party to require a re-hearing by a judge. Where a party exercises this right it may prolong the dispute resolution process. Another option which appears to be contemplated under the Civil Procedure Rules is to create a binding arbitration as it is in England under a commercial court judge or a district judge or a third party.[72] Section 19(2) of LMDC Law provides that such Arbitration Awards shall be enforced under the Nigerian Arbitration and Conciliation Act. An important question is whether a party to a mandatory arbitration will not have recourse against the award for lack of consent.

Second, is forcing parties to use any of the mechanisms of ADR not an infringement of their human rights especially as provided under s36 of the Nigerian Constitution? Section 36 of the Nigerian Constitution's provision is similar to that of art.6 of the European Convention of Human Rights? In relation to art 6, relying on the decision of the European Court of Human Rights, Dyson L.J. held in *Halsey v Milton Keynes General NHS Trust*[73] that:

> It is one thing to encourage the parties to agree to mediation, even to encourage them in the strongest terms. It is another to order them to do so. It seems to us that to oblige truly unwilling parties to refer their disputes to mediation (and any other ADR method) would be to impose an unacceptable obstruction on their right of access to the court.

Similarly, Lord Woolf warns that ADR should not be made compulsory as an alternative or as a preliminary to litigation as it the case in some United States jurisdiction because it denies the right to seek remedy in civil court.[74] Professor Hazel Genn and others however argue that the position of the Court of Appeal is erroneous because referral to mediation is only a procedural step to court hearing which neither excludes parties' access to the courts nor orders them to compromise their claims.[75]

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[70] Blackaby N, Partasides, C., et al *Redfern and Hunter on International Arbitration* Student Version 5th Oxford University Press 2009

[71] Brown, H. and Marriott, A. *ADR: Principles and Practice* (3rd edition) Sweet and Maxwell 2011

[72] ibid

[73] [2204]ECWA (Civ)576

[74] Lord Woolf Access to Justice: Interim Report to the Lord Chancellor on the Civil Justice System in England and Wales (1995) HMSO, London, Ch 18, paras 3-4

[75] Professor Hazel Genn, Prof Paul Fenn, Marc Mason, Andrew Lane, Nadia Bechai, Lauren Gray & Dev Vencdappa, Twisting arms: court referred and court linked mediation under judicial pressure (Ministry of Justice, May 2007), Ministry of Justice Research Series 1/07 available at http://www.ucl.ac.uk/laws/judicial-institute/docs/Twisting_arms_mediation_report_Genn_et_al_1.pdf accessed on 5 October 2013

There is no Nigerian case law addressing the issue of compelling parties to adopt any of the ADR forms. Without doubt any compulsion would be contrary to the decision of the Nigerian Supreme Court where it was held that disputing parties are allowed to settle their differences in a 'manner' acceptable to them.[76] It could however be argued that section 36 of the Nigerian Constitution contemplates referral to ADR or multidoor when it refers to '…other tribunal established by law and constituted in manner as to secure its independence and impartiality.' Such tribunal could be an arbitral tribunal, an ombudsman or a neutral mediator. In as much there is an assurance of independence and impartiality, what the provision of section 36 protects is an access to a medium of dispute resolution and not necessarily the court. More importantly, any establishing law determines the jurisdiction of a court or a tribunal it establishes.

In actively managing cases, it is this writer's view that the court could now mandate parties to use ADR but this must be subject to concept of appropriateness or suitability of the mechanisms for the disputes. When the parties decide to adopt the ADR processes, the session will be regulated by either the Multi-door Courthouse Mediation Procedure Rules 2004 or the Multi-door Arbitration Procedure Rules 2004[77] depending on the form of resolution chosen.

The Lagos Multi Door Court House (LMDC)

Prof Sander explained in 2008 that the essence of the multi-door court house was "…to look at different forms of dispute resolution—mediation, arbitration, negotiation, and med-arb (a blend of mediation and arbitration)." [78] Under this system, there is a coordinated approach to examine all the cases through one centralised route. Money and time would be saved for both the courts and litigants resulting in overall efficiency of the dispute resolution system as disputes coming to the courts are directed to the most appropriate mechanism for resolving them.[79]

The Lagos Multi Door Court House (LMDC) was established as a public-private partnership effort between the High Court of Justice, Lagos State and the Negotiation and

[76] *Agu v. Ikewibe* (1991) 3 NWLR (Pt 180) 385, 412
[77] The Multi-door Courthouse Rules are contained in the Lagos Practice Direction of 24 February 2004 made pursuant to s.274 1999 Constitution.
[78] Hernandez-Crespo,"A Dialogue between Professors Frank Sander and Marina Hernandez Crespo: Exploring the Evolution of the Multi-Door Courthouse" Vol 5 2008 *Univ of St. Thomas Law Journal 665 - 674*
[79] Ibid

Conflict Management Group (NCMG) in 2002. The LMDC describes itself at the "Home of ADR in Nigeria" and the first court connected ADR centre in Africa.[80] The Centre had no appropriate legal framework until 2007 when Lagos State House of Assembly enacted "The Lagos Multi-Door Courthouse Law."[81] The overriding objectives[82] of LMDC are to:

- Enhance access to justice by providing alternative mechanisms to supplement litigation in the resolution of disputes
- Minimise 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 (ADR)
- Serve as the focal point for the promotion of ADR in Lagos State
- Promote the growth and effective functioning of the justice system through ADR methods

LMDC is built on the bedrock of providing a sustainable judicial system which encompasses access to justice, efficiency and fairness. The enabling law has not only entrenched the centre but built a formidable bridge to link its activities with the formal justice system. Cases are initiated through either (i) party walk-ins, or (ii) court referrals and (iii) direct intervention of the centre where public interest is involved.[83]

Though continued to be dressed in their black robes, some judges now have their role widened as they are designated as 'ADR judges'. They have a strict duty to promote ADR within the judiciary. As officers of the court they have the responsibility to ensure the actualisation of the overriding objectives of the LMDC. One challenge here is how to reconcile the discharge of their roles in section 16(1)(e) and (f) of the LMDC law which allow *mandatory referral* to explore settlement and adopt 'best known international practices and appropriate measures towards the promotion and development of an ADR consciousness' among court users.[84] The power of the judge to compel the use of ADR has to be strictly defined for this purpose. On one hand parties or more particularly their counsel might feel constrained to respond positively so as to maintain the support of the court. On other hand, it

[80] Available at <http://www.lagosmultidoor.org/index.php?option=com_content&view=article&id=64:adrinnigeria&catid=37:frontpageslide >" last accessed 1 February 2013

[81] The Lagos Multi-Door Courthouse Law available at <http://www.lagosmultidoor.org/images/resources/lmdc-law.pdf> last accessed on 28 February 2013

[82] Ibid s2

[83] See Lagos Multi-Door Courthouse Practice Direction on Mediation Art 2 available at http://www.lagosmultidoor.org/images/resources/lmdc-practice-direction-on-mediation.pdf accessed on 1 February 2013

[84] Under the Article 2 of Abuja Multidoor Court House DC, a presiding judge may refer an ongoing case to the MDC.

is difficult to see how the ADR process would work if the court compels adoption because one of the parties is willing to so do. If the losing party had participated out of compulsion, this may lead to an appeal a higher court thus defeating the purpose of achievement a just and speedy determination of the dispute. The right approach would be to encourage a reluctant a reluctant party on the benefits and the need to use a suitable ADR method. Again, it may also be difficult to decide what amounts to 'best known international practices. Practices differ in countries like Australia, Canada, England and United States. Each country has employed an approach which could respond to the exigencies of its own legal system. United States is known for being a very litigious society and it is doubtful if the same could be said about Nigeria.

The caution against mandatory participation is to preserve the term 'alternative' in the ADR label so that the dichotomy created between litigation and ADR will not be false. Besides, ADR loses its legitimacy when borne out of compulsion.[85]Taking mediation as an example, there are a lot of arguments and cautions against mandatory participation either covertly or overtly.[86] Compelling a party to use mediation or other forms of ADR was argued in the US as a violation of self determination of the parties.[87] Coercion into any of the mechanisms may lead to coercion to settle within a chosen process.

The High Court of Federal Capital Territory, Abuja (Civil Procedure) Rules and ADR

ADR processes were not made part of the civil procedure rules until the enactment of the High Court, Federal Capital Territory (Civil Procedure) Rules in 2004.[88] Order 17 on the Civil Procedure Rules explicitly encourages settlement. The court may advise the parties to use arbitration, conciliation, mediation, and any other lawfully recognised method of dispute resolution. Unlike the approach under the Lagos State High Court Civil Procedure Rules, the FCT Rules allow the discretion *to encourage* settlement and guard against mandatory participation of the parties in settlement of the dispute by not undermining their consent. It also clearly enumerates the types of methods which the court can suggest. In employing the forms recommended, the Abuja Multi-door Courthouse Mediation Procedure Rules (2002)

[85] S Eaton "Mandatory Mediation and Summary Jury trial: Guidelines for Ensuring Fair and Effective Processes" (1990) *Harvard Law Review* 103 at 1087

[86] See Richard Ingleby, 'Court Sponsored Mediation: The Case Against Mandatory Participation'(1993) 56 *Modern Law Review* 441; S. Roberts, Mediation of Family Disputes (1983) 46 *Modern Law Review* 337 - 357

[87] U.S. Model Standards of Conduct for Mediators 2005

[88] FCT Rules

governs mediation proceedings while the Abuja Multi-door courthouse Arbitration Procedure rules govern arbitration.[89]

Abuja Multi-door Courthouse (AMDC)

Save for a few variations in Article 6 Abuja Practice Direction which deals with the outcomes of the ADR session, the Articles of the Abuja and Lagos practice directions are similar. In as much it is a civil matter the AMDC does not have a restricted jurisdiction on its subject matter, it accepts disputes in banking, maritime, energy, family and other commercial matters. The process at the AMDC starts with Screening Conference to be overseen by the Dispute Resolution Officer.[90] Parties are accepted to participate in good faith by being open about substance of the case, procedure and dynamics. Thus all matters discuss during this process will remain confidential. The statements made in the course of the ADR session are not admissible in evidence for any purpose.[91] It is at this stage that the needs of the case will actually be determined and an appropriate mechanism of ADR is selected.

The parties may introduce names of neutrals that may also be accepted by the AMDC upon confirmation that such a neutral possesses the necessary expertise and is acceptable to all the parties in disputes.[92] Counsel may accompany parties. Parties representing corporations, partnership or other organizations must have full written authority to settle the dispute failing which the ADR session will not commence.[93] Where a settlement is reached at the ADR session, it is reduced into writing, signed by the parties and witnessed by their counsel. It is to be filed in the court within ten days of the agreement and appropriate steps taken to dispose of the action. If the settled dispute was not pending before a court, the settlement agreement may be filed in court as consent judgment.[94] The process must follow a rigid timetable as provided under the Practice Direction. By this, delay is prevented with the stipulation of short time for the duration of the processes.

[89] The rules are contained in Abuja Practice Direction of 19 November 2003 made by the Chief Judge of the Federal Capital Territory.
[90] See Art. 3 g Abuja Practice Direction generally
[91] Art. 5
[92] Art.10.2
[93] Art .4
[94] Art.6.1 & 6.2

Appraising Abuja Multidoor Courthouse in its seventh year, his lordship, Honourable Justice Gummi, explains that the reason for establishing AMDC is to ensure greater access to justice and provide choices which resolve dispute in mutually satisfying ways.[95]

Kano Multi-door Court House (KMDC)[96]

Unlike other states where there is express mention of the multidoor court house in their High Court Civil Procedure Rules, Kano State does not have a similar provision. Instead, the Kano Multi-door court house (KMDC)[97] is established with the aim of supplementing the regular court by providing services in the area of arbitration, conciliation, mediation and other forms of dispute resolution as provided by in sections 22 and 116 Kano State Arbitration Laws and Kano Multidoor Court Mediation and Arbitration Procedure Rules 2008.

In its multidoor mediation rules, KMDC can entertain matters[98] referred by the High Court of Kano State, High Courts outside the state, the Federal High Court, private persons, corporations, public institution and dispute resolution organisation. In what instance would another State High court or another dispute resolution organisation refer a case to the multi-door court house? Though the KMDC rules does not provide for this instance, this may happen where a neighbouring court that has not established its own multi-door court house decides to refer a case and where such referral would serve the interest of justice. But, would a neighbouring State High Court want to refer a dispute because of the expertise which neutrals on KMDC panel may have? The chance of this happening is very slim. In practice, courts only refer cases where they do not have jurisdiction or where non referral may prejudice one of the parties under the judicial principle of *forum non conveniens*. It is argued that rather than referring a case because of expertise of a neutral, a neighbouring State High Court would prefer to invite such a neutral as *amicus curiae* to provide expert opinion. Such a

[95] L.H. Gummi J Sink or Swim: Evolving a Broader Definition of Courts Through the Multi-Door Approach to Dispute Resolution and the Implications it has for Traditional Court Systems *April 2010 International Journal For Court Administration* 1 – 9

[96] KMDC Newsletter Vol. 1 No 2 January 2010

[97] The Kano Multi-door court house, the first in the North Western Region of Nigeria was established by a Legal Notice by the Chief Judge of the State on 1 August 2008 and was formally launched on 20 January 2009.

[98] Due to lack of public awareness there were various misconceptions about the purpose of the KMDC. For example it was regarded as a court where children could take their parents when aggrieved or the controversial Child Rights Act could be enforced. Now the KMDC has resolved disputes ranging from family, banking, maritime and employment issues. Within the first year of its operations, the KMDC received 30 family related disputes, 20 monetary claims dispute, 16 debt recovery cases, 15 cases relating to land disputes, 12 matrimonial matters, 10 cases on breach of contracts, 3 defamation of character cases among 135 cases received. 81% of these cases are walk in cases. See *KMDC Newsletter Vol. 1 No 3* January 2011

neutral would not have the power of making a decision in proper multi-door court setting but as a mere advisory neutral whose opinion may or may not be accepted by the court.

The KMDC process[99] initiation is similar to that of Abuja described above. It commences with a Screening Conference which is expected to last between 30 – 45 minutes to determine the need of the case. The goal of the Screening Conference is to resolve procedural problems and to discuss dispute resolution processes. If the parties choose mediation for example, the process will be regulated by the Kano Multi-Door Court Rules Mediation Procedure Rules 2008 and the equivalent where arbitration is chosen. Rule 15(d) of Kano Multi-Door Court Rules Mediation Procedure Rules provides that if the parties reach a settlement, the parties on signing the Settlement Agreement becomes bound by the terms of the agreement. To make any settlement reached *more* binding on the disputing parties, two ADR judges must sign the 'terms of settlement.' There is no clarification on whether the terms of settlement would be less binding where only one judge signs it? Can a party refuse to abide by terms where no judge signs the terms?

Institutionalised ADR: Sustainable Justice?

The debate around institutionalisation of ADR has always been built around decongestion of the dockets of the courts. The outcome of these rules is that settlement under the formal justice will assist the courts rendering adjudication more accessible by reducing backlogs and structural problems created by overloading as fewer cases proceed to judgment in this way. Cases would now go through the diagnostic tool provided in case management conference before they are eventually recommended for applicable and suitable mechanism to resolve the dispute. Hence, parties would reap the benefits pertinent to the mechanisms in the immediate pre-litigation as well as within the litigation scenario, where formal proceedings have already being initiated.[100] On other hand, this new judicial activism represented in case management may lure judges to focus more on the statistics of cases disposed rather than the quality of their dispositions. Similarly, the case management does not equate to actual trial. There is no provision to review the process where there is allegation of unfairness and partiality. The absence of procedural safeguard may expose parties to abuse of this new power of the court.

According to Cremona, the fact that ADR is court-annexed will circumvent the obstacles of lack of adequate information; reluctance to appear in proposing alternative options to the

[99] Fatima R. Musa The ABCD of KMDC in *KMDC Newsletter Vol. 1 No 3* January 2011

[100] A. Cremona, 'Forced to Mediate: Critical Perspective on Court-annexed Mediation Schemes'1- 12 at 5 available at <www.avukati.org> last accessed 12 February 2013

other party and concerns about the enforceability of the final solution.[101] This would be made possible by designated ADR judges who have to personally explore and administer ADR options along with the parties and their counsel. Another advantage is that information which is reluctantly made available by counsel could be accessed directly either with the initiation of the court or by request of the parties. It is of importance for parties to be open in presentation of their cases and participate in good faith by providing to the court all information that would facilitate a just and speedy disposal of the case. Besides, the informality which accompanies the procedure reduces the hostility which hovers over the adversarial process.

Enforcement of the outcome of ADR process under private schemes has raised concerns for users. The powers of the judicial institution, in form of contempt of court and resultant fine and imprisonment, make disputants comply with its decisions. These powers are nonexistent in privately led ADR. Outcomes of institutionalised settlement carry the same force of law like judge handed judgment and non compliance would also amount to contempt. In addition, users could repose more trust and confidence in the process because they are based solely on the efficiency of the court system and not commercial interest of private service providers.

Apart from inefficiencies which have been attributed to the court as an institution, counsel also employ various tactics to delay the proceedings in court. Lawyers at times prefer to maintain the status quo until the case gets to trial because it is an opportunity to 'settle' with the other party. From the point of views of lawyers, suggesting ADR option may make them not only to lose control over the proceedings but also have their means of livelihood taken away.[102] Institutionalised settlement, Cremona explains, helps clients to overcome barriers inadvertently or otherwise created by his counsel.[103] In a case where a judge directs the parties to adopt any of the ADR methods, problems relating to asymmetry of information, lawyer-client relationship and general reluctance from the widespread distrust in the process can be overcome.

The Rules examined above and others with equivalent provisions in Nigeria represent the endorsement of culture under which settlement is pursued through litigation, leaving apparently alternative routes to decision through adjudication and negotiated agreement

[101] ibid at page 6
[102] L.H. Gummi J 'Sink or Swim: Evolving a Broader Definition of Courts Through the Multi-Door Approach to Dispute Resolution and the Implications it has for Traditional Court Systems' *April 2010 International Journal For Court Administration* 1 – 9
[103] ibid

entangled.[104] The judges now have to re-examine their role as a case manager along with their role as a judge in the traditional setting of the court. A lot of scepticism has surrounded the impartiality and fairness of a judge who now acts as an arbitrator where his initial attempt during the case management conference failed to settle the case. So after deciding which mechanism would be suitable for the parties and their dispute, judge must also examine whether himself as a suitable mediator or arbitrator when negotiation does not work. Under LMDC law, the designation of ADR judges is a commendable innovation however a pre-trial judge must know where to draw the line between his role as an early neutral evaluator and as a judge per se. The LMDC law therefore warns that ADR judges must avoid assuming the role of a mediator during case management conference proceedings.[105] However in Abuja and Kano there is no clear statement on what the role of the court or the judge where the actual ADR mechanism will be offered by the court.

Conclusion

ADR promises decongesting court dockets, however the longevity of this deserves examination. Will this not be another adulteration of equity values when merged with the common law into one court? Like Pound's expressed fear that the submergence of equity into one court system would result in a loss of discretion and flexibility that characterized equitable jurisprudence and distinguished it from common law's rigidity.[106] Court- annexed ADR may tend to give way to 'liti-arbitration' or 'liti-mediation.' At what point should the distinction be drawn between the court and the court annexed ADR, between the pre-trial judge and the trial judge? As noted by Professor Subrin, serious caution must be taken otherwise ADR processes may begin to look like litigation.[107]

The inclusion, in States High Court (Civil Procedure) Rules, of ADR methods as options available to parties has continued to grow in Nigeria. States that have not established multidoor court house facilities provide that the enforcement of decisions reached through a multidoor courthouse shall be enforced as a judgement of the court.[108] This will be taken as a plan of these states to pass their multi-door court house laws and not actually decisions from multi-door court houses in other states.

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[104] S. Roberts, supra note 11 at 17
[105] The Lagos Multi-Door Courthouse Law S16 1(B)
[106] Roscoe Pound, "The Decadence of Equity" 5 *Columbia Law Review* 24
[107] J Lande, "Using Dispute System Methods to Promote Good Faith Participation in Court-connected Mediation Programmes" 50 *University of California Los Angeles Law Review* 69 (2002)
[108] See High Court of Benue State (Civil Procedure) Rules, 2007 Order 39 r 4(3); High Court of Kaduna State (Civil Procedure) Rules, 2007 Order 15 r 4(3); and High Court of Ogun State (Civil Procedure) Rules, 2008 Order 39 r 4(3);

Judges can now decide to facilitate amicable settlement or adopt any of the ADR mechanisms without being seen as descending into litigation arena. Disputants on the other hand have now learnt that the protection of their interests in a dispute is not confined to a determination of such rights through litigation in court. To support the efforts by the Nigerian state governments many matters are now being removed from public view and dealt with in private without necessarily violating the right to have a public trial. Also, other experts are now welcome not just as an expert who is a witnesses but as a decision maker. Machinery should be set in motion to harmonize the rules governing the conduct of mediators, negotiators etc. in order to achieve the vision of a justice system that is efficient, pro-active, fair, affordable and capable of dispensing justice. As other professionals embrace this new profession, there will be a need for a Code of Practice to set the ethics and uniform standard for professional competence.