

# ENTRENCHING ACCESS TO JUSTICE VIA COURT ANNEXED ADR IN NIGERIA: ITS BENEFITS AND CHALLENGES

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***A**bstract — Court annexed ADR is an attempt to ensure access to justice and resolution of dispute in one of the most practicable means. It is no doubt that Nigeria as a country seemed to have key into the contemporary ADR friendly nations however, the practice is still very much bedeviled with a number of challenges like litigious mindset, skepticism and criticism of the concept among other things. These factors have the tendency of jeopardizing the purpose of the initiative and inhibiting access to justice to a reversal to the old days of overcrowded dockets, exorbitant cost and delay among other things. This paper adopts the doctrinal research method to interrogate some perspectives towards a functional and benefits savvy Court Annexed ADR in Nigeria. The paper concludes that an entrenched Court Annexed ADR in Nigeria has the potential of enhancing access to justice and sustainable, amicable and peaceful dispute resolution in Nigeria.*

**Keywords:** ADR-NIGERIA, Multi-Door Court House, ADR, Access to Justice

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## I. INTRODUCTION

Dispute is usually the outcome of unresolved difference that is “the result of the differences which make individuals unique and the different expectations individuals bring to life.”<sup>1</sup> What brings about dispute is multi-facet as such “*disputes are not discrete events like births and deaths; they are more like such constructs as illnesses and friendships, composed in part of the perceptions and understandings of those who participate in and observe them. Disputes are drawn from a vast sea of events, encounters, collisions, rivalries, disappointments, discomforts and injuries. The span and composition of that sea depend on the broad contours of social life. The disputes that arrive at courts can be seen as the survivors of a long and exhausting process.*”<sup>2</sup>

Amicable resolution of dispute or ADR is of ancient antecedent / history and its practice has been from time immemorial.<sup>3</sup> The popularization of Alternative Dispute Resolution, the problem of high cost, delay and procedural complexities associated with court as an institution for resolving dispute among other things have aided disputants’ shift from litigation to ADR as a tool for resolving dispute expeditiously and amicably. ADR processes differ from litigation in that it is of less procedural complexities and regulated to greater extent by the consent of the parties.<sup>4</sup>

However, disputes are inevitable part of human relations. Adversarial system of dispute resolution has for a long time been the old method of resolving dispute. Thus, this adversarial system has its own attendant problems as in delay, high cost, rigid procedures, increased court docket, backlog of cases, promotion of acrimony among disputants and the eventual win-lose situation<sup>5</sup>.

Thus, a private and more consensual means appeared to be favoured unlike the adversarial means that is full of publicity of the resolution process in court. Presently, ADR is popularized and entrenched to the extent that it has been integrated into the mainstream judicial system through the Multi-Door Courthouse. This incorporation is such that allows dispute to be referred to the most appropriate door suitable for its resolution with the ultimate purpose to facilitate access to justice<sup>6</sup>.

<sup>1</sup> Fiad Joe, *Alternative Dispute Resolution: A Developing World Perspective* (U.K.: Cavendish Publishing Ltd., 2004) p. 8.

<sup>2</sup> Miller and Sarat, “Grievances Claims and Disputes: Assessing the Adversary Culture II”, *Law and Society Review*, (1980-1981), 15, 525, 527.

<sup>3</sup> Stein P., *Legal Institutions: The Development of Dispute Settlement* (London: Butterworth, 1984) 2.

<sup>4</sup> Gunning, “Diversity Issues in Mediation: Controlling Negative Cultural Myths”, *Journal of Dispute Resolution*, (1995), p. 55.

<sup>5</sup> Ayinla L.A., *The Possibilities and Hindrances of ADR in Nigeria: A Critique*, (Germany: Lambert Academic Publishing, 2016), p. 64.

<sup>6</sup> Oyekunle T., “The Lagos Multi-Door Courthouse and the Bar: A Success Story”, Paper Presented at the Workshop on the Lagos Multi-Door Courthouse on 30th September, 2013, p.

This paper seeks to examine the position of court annexed ADR in Nigeria, its benefits, challenges and the practice in other jurisdictions towards improvement to safeguard its future in Nigeria.

## II. BACKGROUND ON ADR IN NIGERIA

Alternative Dispute Resolution is not alien to Nigeria and in fact it is known to our jurisprudence.<sup>7</sup> It is part of the traditional norms and has long been in existence even before the colonial era<sup>8</sup>. Disputes during the pre-colonial Nigeria were referred to traditional rulers of various tribes for amicable resolution between the disputants. The *Obas*, *Obis*, *Emirs* and even the *Baales* were responsible for peaceful resolution of disputes in their various communities. Hence, disputes were settled through negotiation and mediation without going to court<sup>9</sup>.

However, the colonial system brought about the establishment of courts for the resolution of dispute. But this did not destroy the traditional ADR mechanisms used in resolving disputes but some measures were put in place. The same process still survived to date. This is because despite civil justice system, disputes are still resolved by the parties without resort to court.<sup>10</sup>

Thus, informally ADR is known as a resolution mechanism but the complexities of the modern days have entrenched litigation, thus creating a level of doubt in the mind of disputants as to the enforceability of resolution so reached informally. The incorporation and integration of ADR in the court system in order to facilitate expeditious resolution of dispute, enhance access to justice, is believed will provide solutions to the problems associated with litigation and as well take care of the doubt associated with enforceability. It is suggested that non-technical cases should be settled via ADR mechanisms in order to save time and even reduce court docket<sup>11</sup> Furthermore, the popularization of ADR and institutionalization in court / court annexed has led to

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<sup>7</sup> Ayinla L.A., *The Possibilities and Hindrances of ADR in Nigeria ... supra* note 5, pp. 25-28; *Foli v. Akese*, 1930 SCC OnLine WACA 1 : 1 WACA 1; *Assampong v. Amuaku*, 1932 SCC OnLine WACA 5 : 1 WACA 192; *Mensah v. Takyampong*, 1940 SCC OnLine WACA 32 : 6 WACA 118; *Kwasi v. Larbi*, 1952 SCC OnLine WACA 75 : 13 WACA 76; *Ohiaeri v. Akabeze*, (1992) 2 NWLR (Pt. 221) 1; *Onyenge v. Ebere*, (2004) 13 NWLR (pt. 889) 20 at 42 ; Andrew Chukwuemerie, "Salient Issues in the Law and Practice of Arbitration in Nigeria", <<http://www.eupjournals.com/doi/pdf>> (accessed 19th November, 2019) pp. 1-4.

<sup>8</sup> Ngo-Pondi C., "Alternative Dispute Resolution in Ghana: Tools and Mechanisms for Resolving Commercial and Corporate Disputes", in Ayua I.A. (ed.), *Alternative Dispute Resolutions: Some Contemporary Issues* (2007), p. 255.

<sup>9</sup> Mazrui A., *The Africans London*, (London: BBC Publications, 1986) p. 133.

<sup>10</sup> Clark E., "The Role of Non-Litigious Dispute Resolution Methods in Environmental Dispute", citing Austine, J., *National Resolution of Law and Policy*, (NRLP), 1995, p. 172.

<sup>11</sup> Akomolede T., "An Overview of ADR in the Dispensation of Justice in Nigeria", *Ife Juris Review*, Faculty of Law, Obafemi Awolowo University, Ile-Ife, 2005, Vol. 2, p. 37.

the realization by parties that litigation is not the only lawful means of resolving dispute but that there are other peaceful mechanisms of resolving dispute between parties.<sup>12</sup> The judges now encourage ADR through active participation in Case Management, it is expected that parties will not reject settlement via ADR particularly when it is proposed by court<sup>13</sup>, since a particular stage in the litigation process is now dedicated to pre-trial conference that may afford this opportunity as well as the various court rules promoting the use of ADR mechanisms.<sup>14</sup>

The Rules of Professional Conduct for Legal Practitioners, 2007<sup>15</sup> is also a step further and an attempt to strengthen court annexed ADR, it provides that a lawyer shall not fail or neglect to adequately inform his client who is a party of the existence / option of ADR before resorting to continuing with litigation. The Constitution of the Federal Republic of Nigeria<sup>16</sup> also provides for the settlement of international disputes through negotiation, mediation, conciliation, arbitration and adjudication.<sup>17</sup>

### III. COURT ANNEXED ADR IN NIGERIA

In Nigeria, initiatives towards introducing court-annexed ADR may be seen in some of the High Court Rules. Notably, the High Court Rule of Lagos State, Kwara State and Abuja among others which provide for “pre-trial conferences.” The High Court of Lagos State (Civil Procedure) Rules<sup>18</sup> provide pre-trial conference in its Order 25, Rule 1, as follows:

- (1) Within 14 days after close of pleadings, the claimant shall apply for the issuance of a pre-trial conference Notice as in Form 17.
- (2) 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 17 accompanied by a pre-trial information sheet as in Form 18 for the purpose set out hereunder:
  - (b) Giving such directions as to the future course of action as appear best adapted to secure its just, expeditious and economic disposal

<sup>12</sup> Mahmud and K.A., “An Examination of the Effectiveness or Otherwise of ADR in Solving Election Disputes in Nigeria”, Yerima T.Y. (ed.), *Journal of Law and Diplomacy*, 2005, Vol. 6, p. 35.

<sup>13</sup> Macfarlane J., *Rethinking Disputes: The Mediation Alternative*, (London: Cavendish Publishing, 1997) p. 9.

<sup>14</sup> Or. 33 R. 2 (C) of the High Court of Kwara State (Civil Procedure) Rules, 2005; Or. 25 R. 1 of the High Court of Lagos State (Civil Procedure) Rules, 2004.

<sup>15</sup> R. 15(3)(d) of the Rules of Professional Conduct for Legal Practitioners, 2007, Nigeria.

<sup>16</sup> S. 19(d) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) 2011.

<sup>17</sup> Ayinla Lukman, *The Possibilities and Hindrances of ADR in Nigeria: A Critique*, (Germany: Lambert Academic Publishing, 2016), p. 70.

<sup>18</sup> The High Court of Lagos State (Civil Procedure) Rules, 2004.

(c) *Promoting amicable settlement of the case or adoption of alternative dispute resolution.*

The above provision seeks to promote the resolution of dispute through ADR particularly by paragraph (c). A similar provision which aims at achieving the same objective is the High Court of Kwara State (Civil Procedure) Rules.<sup>19</sup> But the High Court of the Federal Capital Territory Abuja Civil Procedure Rules<sup>20</sup> is more specific on the ADR processes than the above provision.<sup>21</sup> This Rule<sup>22</sup> provides as follows:

A Court or Judge, *with the consent of the parties*, may encourage settlement of any matter (s) before it, by either-

- (a) Arbitration;
- (b) Conciliation;
- (c) Mediation; or

any other lawful recognized method of dispute resolution.<sup>23</sup>

In the above provision, consent of parties ought to be removed and the satisfaction of the court should be enough. In practice, parties don't usually object because what is ordered is to their benefit but the litigious nature of practice in Nigeria together with the counsels' mindset results in skepticism and work to prevent seamless embrace of settlement naturally<sup>24</sup>. It is argued that the Lagos and Abuja Multi-Door courthouse is aimed at achieving the same object with the court-annexed program. The introduction of the Multi-Door Courthouse concept in some jurisdictions and the success achieved there is a pointer to the general acceptance of the concept in Nigeria. It is pertinent to note that the experimental practice of mediation under the mediation centre have certainly reduced the back log of cases and as well reduced the number of cases that goes to the courts in Nigeria.<sup>25</sup>

It is submitted that ADR has quietly slipped into the mainstream of legal practice and over the years has become a cornucopia of mechanisms,

<sup>19</sup> See Or. 33, R. 2 (C) of the High Court of Kwara State (Civil Procedure) Rules, 2005.

<sup>20</sup> The High Court of the Federal Capital Territory Abuja Civil Procedure Rules, 2004.

<sup>21</sup> Lagos and Kwara State High Court Rules.

<sup>22</sup> The High Court of the Federal Capital Territory Abuja Civil Procedure Rules, 2004.

<sup>23</sup> See Or. 17 R. 1 (a-d) of the High Court of the Federal Capital Territory Abuja Civil Procedure Rules, 2004.

<sup>24</sup> See Ayinla L.A., "Alternative Dispute Resolution in Nigerian: A Critique of Getting to the Tipping Point", Kogi State University Confluence Journal of Jurisprudence and International Law, (2009), Vol. 2, pp. 64-74.

<sup>25</sup> See Sabine Hertveldt, "Repairing a Car with the Engine Running", <[http://www.doingbusiness.org/Documents/casestudies/2007/EC\\_Nigeria.pdf](http://www.doingbusiness.org/Documents/casestudies/2007/EC_Nigeria.pdf)> (accessed on 3rd November, 2019), p. 47.

processes, procedures and resources for responding to disputes. It supplements and does not supplant the traditional approaches to dispute resolution and it is neither an alternative nor substitute but it adds useful tools to the existing professional tool box of an attorney.<sup>26</sup>

Court annexed ADR has its origin and philosophy in an attempt to reform the legal process with its attendant unnecessary delay and exorbitant cost, as well as managing competing and conflicting concerns occasioned in exploring the legal process.<sup>27</sup> This concern is as well expressed towards the ADR movement as shown in the agitation for an accessible, process free from technicality and which favours expedition as proposed by Frank.<sup>28</sup> The more convincing argument that seemed to be general and tenable in Nigeria or elsewhere, is the pressure and imperative of a more effective, efficient and appropriate dispute mechanisms that suit the contemporary needs of parties.

The court annexed ADR can be seen in the various court connected ADR initiatives and pilot schemes including Multi-Door courthouse. The idea of Multi-Door courthouse was propounded by Frank Sanders in 1976.<sup>29</sup> This simply means a courthouse with several doors where disputes are referred to the most appropriate door for resolution. It basically implies the institutionalization of some dispute resolution doors in the judicial justice system.

These doors represent the several ADR mechanisms such as arbitration, mediation, conciliation, Mini-Trial and the likes. These doors are integrated in our judicial system and monitored by the court for a successful practice.<sup>30</sup>

However, with the establishment of Multi-Door courthouses, parties are now afforded the opportunities of resolving disputes through a range of other alternatives rather than going through the rigours of litigation in court. The significance of these ADR doors is that they are not controlled by court in the strict

<sup>26</sup> Karl J. Markie, "Dispute Resolution: The New Wave", in *A Handbook of Dispute Resolution ADR in Action*, (London and New York: Routledge and Sweet & Maxwell, 1991), 1.

<sup>27</sup> Pound R., "The Causes of the Popular Dissatisfaction with the Administration of Justice", *American Bar Association Reports* 29, 395; repr. In *The Pound Conference: Perspectives on Justice in the Future*, Proceedings of the National Conference on Justice, 1980, 337. See also Karl J. Markie, *supra* note 26, p. 2.

<sup>28</sup> Franks Committee, Report of the Committee on Administrative Tribunals and Enquiries, London: HMSO, Cmnd. 1957, 218.

<sup>29</sup> Frank E.A.S., "Varieties of Dispute Processing" in *The Pound Conference: Perspectives on Justice in the Future*, Levin, A.L and Russell, R.W., eds., (St. Paul Minnetonka: West Publication Co., 1979) p. 69.

<sup>30</sup> Ikechukwu B.O., "Access to Justice through the Multi-Door Courthouse: Possibilities and Challenges", (2015), available online at <<http://abuad.edu.ng/access-to-justice-through-the-multi-doc>>. Accessed on 25th September, 2019; see also Joseph Nwazi, "Assessing the Efficacy of Alternative Dispute Resolution (ADR) in the Settlement of Environmental Disputes in the Niger Delta Region of Nigeria", *Journal of Law and Conflict Resolution*, 2017, Vol. 9 (3), pp. 26-41, at 31-32, available online at <<http://www.academicjournals.org/JLCR>> accessed 11th March, 2020.

sense but they are controlled by judges, legal practitioners and even experts but are connected to certain courts where such dispute is referred to a specific ADR door for peaceful and expeditious resolution. Any resolution reached would be referred back to the referral judge in the referring court.<sup>31</sup> One of the major concerns of Frank Sander is the “need to reserve the courts for those activities for which they are best suited and to avoid swamping and paralyzing them with cases that do not require their unique capabilities.”<sup>32</sup>

The Multi-Door Courthouse was a proposition of Frank Sander; a vivid exposition has been attempted elsewhere.<sup>33</sup> He is the proponent having critically examined the American Courts and the Civil Justice System to conclude that the adversarial means of litigation is not an effective and efficient means of resolving some crucial cases thus the need for a reform becomes imperative.<sup>34</sup> These same problem associated with the American courts are the same problems that are well rooted and more in the Nigeria civil justice system. This has prompted the adoption of the Multi-Door Courthouse / Court Connected ADR initiative in Nigeria.

Accordingly, the Multi-Door Courthouse initiative has been employed in many states in Nigeria with the attendant benefit of facilitating access to justice, amicable settlement of dispute and relieving the over-crowded docket occasioned by litigation. The Lagos Multi-Door Courthouse (LMDC) was geared toward achieving some objectives as contained in the practice direction: to ensure access to justice for all; reduce pressure on court; speedy resolution of disputes; reduction in expenses and time; ensure tolerance; restoration of pre-dispute relationship; sustenance of business relationship; ensure public satisfaction with the justice system; encouragement of resolution suitable for parties’ needs; increase in voluntary compliance with resolutions and increase in foreign investment.<sup>35</sup> The LMDC was the first of its kind in Nigeria after which the like of Kano, Abuja, Uyo and others were established.<sup>36</sup> The Lagos Multi-Door Courthouse is the first in Africa and was the result of the concerted effort of the Negotiation and Conflict Management Group (NCMG) and the Lagos, State Judiciary. It was originally funded by the United States Embassy and other donors but presently it is part and parcel of the Lagos State

<sup>31</sup> Naughton P., “Alternative Forms of Dispute Resolution: Their Strength and Weaknesses”, *Journal of Chattered Institute of Arbitration*, (1990), p. 56.

<sup>32</sup> Professor of Law at Harvard School, Pound Conference on the Causes of Popular Dissatisfaction with the Administration of Justice, 1976, see Ayinla, L.A. and Adejare, E.O., “Espousing ADR: The Philosophies and Its Perpetual Significance in Nigeria”, *Current Law Journal, Malaysia* (2017): 1LNS (A) xlv; 1-31, available online at <[www.cljlaw.com](http://www.cljlaw.com)>.

<sup>33</sup> *Id.*, p. 11.

<sup>34</sup> *Id.*, p. 12.

<sup>35</sup> See Joseph Nwazi, “Assessing the Efficacy of Alternative Dispute Resolution (ADR) in the Settlement of Environmental Disputes in the Niger Delta Region of Nigeria”, *Journal of Law and Conflict Resolution*, 2017, Vol. 9 (3), pp. 26-41, at 32, available online at <<http://www.academicjournals.org/JLCR>> accessed 11th March, 2020.

<sup>36</sup> Ayinla, L.A. and Adejare, E.O., *Espousing ADR ... supra* note 32, p. 15.

judiciary as a Court-annexed ADR with jurisdiction to apply ADR mechanisms that is suitable in deserving situations like conciliation, mediation, arbitration, neutral evaluation and others.<sup>37</sup> Its objectives are similar to the general objectives of ADR including: to enhance access to justice; to reduce court docket; to resolve dispute expeditiously; to maintain the existing relationship between parties prior to their dispute; and to increase public approval of the justice system among other things. Thus a critical look at the result achieved so far shows a success rate when the advantages of ADR is rated and compared to litigation.<sup>38</sup>

Thus, parties can solely on their own walk in and submit their dispute to Multi-Door Courthouse for resolution without necessarily instituting an action in court or in some cases referred by the court to such court annexed ADR. The process sometimes requires reference to experts or technology that could be adopted in the resolution of such dispute. Hence the officials of the Multi-Door courthouse advise the parties as to the different ADR mechanisms available within the courthouse and the most appropriate for the resolution of their dispute according to factors such as the existing relationship between the parties<sup>39</sup>.

#### IV. COURT ANNEXED ADR IN OTHER JURISDICTIONS

In the USA and Australia Court-annexed ADR has been adopted and utilized for over 40 years successfully.<sup>40</sup> In the US all Federal district courts are authorized to ensure parties go first for ADR in all civil cases as a first step in accordance with the ADR Act of 1998.

The concept of Multi-Door Courthouse having been espoused by Frank Sanders<sup>41</sup> in 1976 following the Pound Conference was argued to be first developed in the United States in Tulsa, Houston and Washington D.C in 1985 with the support of American Bar Association's Standing Committee on Dispute Resolution. This led to the development of same in Massachusetts in the 1980s.

However, the idea behind the concept is to introduce Multi-Door as an integral part of justice system by submitting dispute to the most appropriate door

<sup>37</sup> Ayinla Lukman, *The Possibilities and Hindrances of ADR in Nigeria: A Critique*, (Germany: Lambert Academic Publishing, 2016), pp. 132-133.

<sup>38</sup> Kabir D., "Towards the Institutionalization of ADR Processes in Nigeria", *Journal of Private Comparative Law (JPCL)*, Ahmadu Bello University, Zaria Nigeria, 2011, Vol. 4, No.5, p. 248.

<sup>39</sup> Lisa A., "The Multi-Door Courthouse Approach: A Look across the Threshold", (2012), available online at <<http://www.azzatolaw.com>>. Accessed on 2nd November, 2019.

<sup>40</sup> The application of ADR ever since its re-awakening on its use is quite over three decades. See Judge Dorothy Wright Nelson, "ADR in the Federal Courts-One Judge's Perspective: Issue and challenges Facing Judges, Lawyers, Court administrator, and the Public," *Ohio State Journal on Dispute Resolution*, Vol. 17, No. 1, (2001) pp. 1-4.

<sup>41</sup> Frank E.A.S., "Varieties of Dispute Processing" in the *Pound Conference: Perspectives on Justice in the Future*, (1979) p. 69.



suitable for the resolution of the dispute which entails walk-in and referral to the multi-door courthouse for resolution<sup>42</sup>.

The process is time saving and efficient having been embraced in other country like Singapore. The subordinate Courts of Singapore informed the general public through their online website of the existence of their Multi-Door courthouse and other technological enabled electronic mediation, conciliation and other ADR mechanisms that are available to disputants<sup>43</sup>.

Moreover, in Australia, the environment and land courts are favourable towards a Multi-Door courthouse as shown by Preston in the *Alternative Dispute Resolution Journal*.<sup>44</sup> Therefore, court annexed mediation and judicial supervision of dispute is now part of the Australian Judicial System. In fact in the Australian Federal Courts, the registrar is mandated to indicate pre-trial conferences to parties before trial. This provision is to the effect that parties could be mandated to show up before a registrar or judge to facilitate mediation or point out the issues for determination and refer the dispute to the most suitable dispute resolution mechanism in order to avoid delay.<sup>45</sup>

The court may refer the dispute or any part of it to a mediator or arbitrator for resolution according to the rules of the court.<sup>46</sup> It is pertinent to state that in referring dispute to mediation, consent of the parties is not mandatory but consent must be sought when referring dispute to arbitration.<sup>47</sup>

The gains of court-annexed ADR are enormous in term of the court's input and in view of the maintenance of level of control of the settlement process by the parties'.<sup>48</sup> Study in the US and UK on the processes of court-annexed ADR lend credence to the program's usefulness and successfulness.<sup>49</sup> One notable benefit is the guarantee of the possibility of using court-annexed ADR voluntarily either before or after the commencement of litigation by the parties.

<sup>42</sup> Gray B.E., "Creating History: The Impact of Frank Sander on ADR in the Courts", *Negotiation Journal*,(NJ), Vol. 22, No. 4, 2006, p. 445 at p. 446.

<sup>43</sup> Waleed Haider Malik, *Judiciary-led Reforms in Singapore: Framework, Strategies, and Lessons*, <<https://books.google.com.ng>> accessed 29th February, 2020.

<sup>44</sup> Preston B., "The Land and Environment Court of New South Wales: Moving towards a Multi-Door Courthouse", *Alternative Dispute Resolution Journal*, (ADRJ), Vol. 19, No. 1, 2008, p. 72.

<sup>45</sup> Or. 10, R. 1(2)(g) of the Federal Court of Australia Rules, 1990.

<sup>46</sup> S. 53-A of the Federal Court of Australia Act, 1991.

<sup>47</sup> *Ibid*, S. 53-A (1).

<sup>48</sup> See Syed Khalid Rashid, "How Stay of Arbitration Could Bring About Quicker and Cheaper Settlement of Commercial Dispute," LR 188, (2008), p. 270.

<sup>49</sup> *Ibid*. See also Brazil, Wayne D, "Court ADR 25 Years after Pound: Have We Found a Better Way?" *Ohio State Journal on Dispute Resolution*, Vol. 18, No. 1, (2002), pp. 93-149; Wissler, Roselle L., "Court-Connected Mediation in General Civil Cases: What We Know from Empirical Research," *Ohio State Journal on Dispute Resolution*, Vol. 17, No. 3, (2002) pp. 641-73.

## V. BENEFITS OF COURT ANNEXED ADR IN NIGERIA

In identifying the virtues of court-annexed ADR, Judge Dorothy Wright Nelson had inadvertently given a yard stick for the measurement of a good court-annexed ADR mechanism. The virtues of court-annexed ADR are among other things according to Judge Dorothy Wright Nelson that:<sup>50</sup>

“Alternative models can teach cooperation rather than emphasizing conflict, openness rather than secrecy, and dependence on oneself rather than authorities for the resolution of problems.”

Cooperation as against continued conflict, openness as against secrecy and dependence on parties/disputants as against authorities / court, ought to be the hallmark of court annexed mechanism. On the whole is expected that the program will afford the courts the opportunity to present new models of dispute resolution mechanism to the community which is capable of establishing and maintaining important norms for behaviour of citizens.<sup>51</sup>

The benefit is seen in one of the goals of Frank Sander that the availability of different dispute resolution processes in court will serve as good supplements to litigation<sup>52</sup>. This will further enhance settlement by encouraging parties to participate in Case Management by way of parties' involvement in the settlement process.

The saying 'practice makes perfect' will definitely come to bear as judges will gradually become expert in ADR having develop the expertise out of regular usage, thus affording the opportunity of application in future similar cases<sup>53</sup>.

One ancillary benefit in view of the complicity nature of litigation is that ADR affords disputants the opportunity of a paradigm shift from litigation to an informal process that guarantees the involvement of judges<sup>54</sup> and as well, a conducive and suitable process<sup>55</sup>.

<sup>50</sup> Judge Dorothy Wright Nelson, n. 15, pp. 3-5.

<sup>51</sup> Judge Dorothy Wright Nelson, "ADR in the Federal Courts-One Judge's Perspective: Issues and Challenges Facing Judges, Lawyers, Court Administrators, and the Public", *Ohio State Journal on Dispute Resolution*, Vol. 17, No. 1, (2001), p. 4.

<sup>52</sup> Sander, E.A.F., *Varieties of Dispute Processing*, "Address at the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice", *F.R.D.*, 1976, Vol. 70, pp. 130-131.

<sup>53</sup> Peckham, R.F., "The Federal Judge as a Case Manager: The New Role in Guiding a Case from Filing to Disposition", *California Law Review*, 1981, Vol. 69, p. 770.

<sup>54</sup> Homberger, A., "Functions of Orality in Austrian and American Civil Procedures", *Buff, The Law Review*, 1970, Vol. 20, No. 9, pp. 24-25.

<sup>55</sup> Rosenberg, M., "Devising Procedures that are Civil to Promote Justice that is Civilized", *Michigan Law Review*, 1971, Vol. 69, No. 797, pp. 813-816.

Besides, the incorporation by institutionalization of ADR in the civil justice system is an indicator for the likely-hood of less preference for litigation in resolving future disputes<sup>56</sup>, this is due to the realization by judges that not all cases are suitable for litigation<sup>57</sup>.

There are several other advantages of court annexed ADR generally but specifically it is cost and time saving savvy. The fact that litigation is expensive and occasions delay<sup>58</sup> through the rigorous procedural steps such as filing processes, interrogatories, etc. that may not be necessary in ADR bring about a more cost effective and expedient modes of resolving dispute.

The flexibility and informal nature of the process is evident. The procedure for court annexed ADR is not complicated and free from the cumbersome court procedures. Parties are allowed to meet and discuss the success of their claims together with the help of a neutral to reach a lasting solution which could be acceptable to both parties, which may not be readily possible in litigation. The informal nature of court annexed ADR removes unnecessary stress and tension on parties due to the absence of the formal legal legalism and formalism. Accordingly, it is a way of promoting effective supplement/alternative dispute resolution mechanism.

Moreover, the private nature<sup>59</sup> is unique in that court annexed ADR is not as publicized as litigation. The exchange of useful information that could help in the resolution of the dispute is made possible. This feature of minimal publicity safeguards the realization of the idea of not washing parties' dirty linen in public. Thus, the parties and the court now play vital roles in promoting peace and stability in civil justice administration and ensuring access to justice.

## VI. CRITICISMS AGAINST COURT ANNEXED ADR IN NIGERIA

The formalization and institutionalization of Court Annexed ADR into the civil justice system has changed the default outlook and perception of the court system. It is viewed that formalization has impacted the court and litigation process by changing the normal jurisprudence of dispute resolution. That is each and every dispute resolution processes should be capable of been

<sup>56</sup> Fiss, O.M., "Against Settlement", Yale Law Journal, 1984, Vol. 93, No. 1073, pp. 1088-1089.

<sup>57</sup> Carrington P.D., "ADR and Future Adjudication: A Primer on Dispute Resolution", Review of Litigation, 1996, Vol. 15, No. 485, p. 495.

<sup>58</sup> Weinzierl, M.E., "Wisconsin's New Court-Ordered ADR Law: Why it is Needed and its Potential for Success", Marquette Law Review, (MLR) Vol. 78, No. 583, 1995, p. 604.

<sup>59</sup> Folberg, J. et al., *Resolving Disputes: Theory, Practice and Law*, (2nd edn.), (New York, Aspen Publishers, 2010), p. 447.

distinguished from one another so as not to confuse court adjudication with any other process<sup>60</sup>.

Adjudication advocates<sup>61</sup> criticized Court-Annexed ADR on the basis that every civil wrong needs to be redressed by competent court of law and not through an alternative dispute means. In fact this further takes away the ordinary assessment by the general public as well as the possibility of presence of unequal bargaining power of parties due to the private nature of the process<sup>62</sup>.

It is argued by Carrington<sup>63</sup> that judges who facilitate settlement by either referring some parts of the issues in dispute in a particular case to Court-Annexed ADR Centre or Multi-Door Courthouse have inadvertently or indirectly robbed themselves of jurisdiction.

It is also submitted that the requirement of advising their clients as to the availability of ADR by legal practitioners as provided under the Rules of Professional Conduct for Legal Practitioners<sup>64</sup> may not be in the best interest of practitioners. Because lawyers are likely to earn more fees as cases stay protracted in litigation<sup>65</sup>

It is argued that the confidential nature of the process may not afford fair assessment / comparing of success rate of the result of settlement in Court-Annexed ADR processes to litigation. Besides, it is observed that if care is not taken Court-Annexed ADR may be abused and allows for the filing of all sorts of processes that may turn it to semi-adjudication<sup>66</sup>.

Nwakoby and Anyogu<sup>67</sup> have also highlighted some challenges of integrating ADR in the formal justice system. This is argued under two major heading of lack of ADR policy municipally as argued under s.19 (d) of the constitution<sup>68</sup> and non binding nature of ADR outcome. It is argued that of all ADR

<sup>60</sup> Fuller, L.A., "Mediation-Its Forms and Functions", California Law Review, 1979, Vol. 44, No. 305, p. 312.

<sup>61</sup> Edwards, T.H., "Alternative Dispute Resolution: Panacea or Anathema?", Harvard Law Review, 1986, Vol. 99, p. 668; Fiss, O.M., "Against Settlement", Yale Law Journal, 1984, Vol. 93, p. 1073.

<sup>62</sup> Matsuda J.M., "Public Response to Racist Speech: Considering the Victim's Story", Michigan Law Review, 1989, Vol. 87, No. 2320, p. 2322.

<sup>63</sup> Carrington, P.D., "ADR and Future Litigation: A Primer on Dispute Resolution", Review of Litigation Journal, 1996, Vol. 15, No. 485, p. 495.

<sup>64</sup> R. 15(3)(d) of the Rules of Professional Conduct for Legal Practitioners, 2007.

<sup>65</sup> Jacobs, D., "Controlling Litigation Costs with a Neutral Third Party", *The New York Times*, 23rd September, 1990, p. 12.

<sup>66</sup> Resnik, J., "Migrating, Morphing and Vanishing: The Empirical and Normative Puzzles of Declining Trial Rates in Courts", Journal of Empirical Legal Studies, 2004, Vol. 1, No. 783, p. 809.

<sup>67</sup> Nwakoby, G. and Anyogu, F., "Institutionalizing Alternative Dispute Resolution Mechanism in the Nigerian Legal System", Unizik Law Journal, Vol. 4, No. 1, p. 147.

<sup>68</sup> S. 19(d) of CFRN 1999 (as amended), 2011.

processes only arbitration appears to produce a binding outcome in form of award. Others are not binding but persuasive agreement or obligation mutually agreed upon. Thus fear of enforceability is rife in the mind of the party because a party may not respect the agreement. One good thing that has happened to the Nigerian jurisprudence is the position of the court in *Egesimba v. Onuzuruike*<sup>69</sup>, that the parties are free to determine the medium for the resolution of their dispute, be it through an institution or otherwise. These criticisms and presumed challenges are surmountable and are not so valid to outweigh the benefits of the court annexed or court connected ADR as enunciated above.

## VII. CONCLUSION

Thus, entrenchment of the adoption of court-annexed ADR in Nigeria will be an added advantage to ease the back log of cases in Nigeria. At the same time, it will ensure consensual and creative resolution of disputes. An important benefit of the court-annexed ADR is that the process becomes an integral part of the judicial system thus, conferring an element of respectability on the practice. The supervision by the court creates a sense of co-ordination together with an expeditious resolution of dispute. On the whole it ensures a quicker, less expensive, participatory and coordinated resolution of dispute. Besides, it offers an avenue for parties to express their interests without apprehension or fear of compromise of their legal interest. It also provides psychological backing to the party so that he can open his heart before someone who is indeed concerned with his interests and who is really impartial. Above all, it affords a neutral that can never impose his will on the party and the party remains empowered to go for a resolution or reject it.<sup>70</sup>

The importance of court annexed ADR / Multi-Door courthouse cannot be over emphasized. It goes beyond ordinary court annexed ADR to encompass litigated settlements. It helps in avoiding delay in the resolution process or decreasing court docket especially by settling dispute listed for trial without the need for judicial interference and pointing out the issues for contention through pre-trial conferences. Those issues are then screened for suitability of ADR and referred to the most appropriate ADR mechanism via the court annexed ADR or the Multi-Door court house or even private centre where the need for experts or a particular technology is desirable. Hence, court annexed ADR mechanism has brought about serious succor to the civil justice system and same should be given the necessary legal backing by enshrining it in the constitution and other laws.

<sup>69</sup> (2002) FWLR (pt. 128) 1386.

<sup>70</sup> See for an expatiation of the potentials of court-annexed mediation, Niranjana J. Bhatt, "Legislative Initiative for Court-Annexed Mediation in India", June 2003. <<http://www.mediate.com/articles/bhattN.cfm>> (accessed on 6th October, 2019).