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**Editorial Office:** Faculty of Law, Sriwijaya University Jalan Srijaya Negara, Palembang, South Sumatra 30139, Indonesia.

Phone: +62711-580063 Fax: +62711-581179

E-mail: sriwijalayalawreview@unsri.ac.id | sriwijalayalawreview@gmail.com

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## Resolving Office Establishment Dispute in Nigeria through Alternative Dispute Resolution Mechanism: An Evolving Regime

Bosede Remilekun Adeuti<sup>a</sup>

<sup>a</sup> Hon. Attorney-General Chambers, Ministry of Justice, Alagbaka, Akure, Ondo State, Nigeria. E-mail: [bosedelizabeth@gmail.com](mailto:bosedelizabeth@gmail.com)

Article	Abstract
<p><b>Keywords:</b> Alternative Dispute Resolution; Business Disputes; Litigation.</p> <p><b>Article History</b> Received: Sep 16, 2020; Reviewed: Jan 20, 2021; Accepted: Jan 31, 2021; Published: Jan 31, 2021.</p> <p><b>DOI:</b> 10.28946/slrev.Vol5.Iss1.826.pp115-129</p>	<p>This paper examines contemporary issues in Office Establishment Dispute Resolution Mechanism in Nigeria. It explores strategic ways of resolving such office establishment dispute which has remained an intractable problem in Nigeria. The objective is to examine litigation challenges in settlement of this office dispute in Nigeria and other developing countries. This paper argues that adopting Alternative Dispute Resolution Mechanism in Office Establishment Dispute is not only a programmatic goal to be attained in the long term but rather an immediate obligation that is preferable to litigation in the court of law. The doctrinal research methodology will be used to examine the challenges in resolving office establishment dispute through alternative dispute resolution Mechanisms. This paper adopts an analytical and qualitative approach and builds its argument on existing literature works, which are achieved by synthesising ideas. Recommendations and suggestions are made based on research findings. This paper concludes that the era of jettisoning or sacrificing Alternative Dispute Resolution on the altar of inapplicability in resolving office establishment dispute is gone and the need to move with time with the practise which has been in existence in developed countries for decades.</p>

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### INTRODUCTION

The Alternative Dispute Resolution Mechanism's relevance in resolving office establishment dispute in Nigeria cannot be overemphasised. However, alternative dispute resolution mechanism is commonly seen in Civil cases as against Criminal cases.<sup>1</sup> More so, it must be emphasised that Alternative Dispute Resolution as perceived today as a dispute resolution mechanism is done

<sup>1</sup> Chukwunweike A. Ogbuabo, And Clara C. Obi-Ochiabutor, and Ebele L. Okiche, "Using Alternative Dispute Resolution (ADR) in the Criminal Justice System: Comparative Perspectives," *Basseyy Andah Journal* 6 (2013): 215.

through negotiation, mediation, arbitration, conciliation, and/or other hybrid processes.<sup>2</sup> In the same vein, it should be pointed out that Alternative Dispute Resolution has little place in Criminal, certainly not with serious offences, but with minor offences which are done through channelling charges through panels or the likes to avoid trials and formal conviction.<sup>3</sup>

In another sense, a dispute is a part of all daily human existence, especially in a working environment between two or more people. It causes confusion where it is allowed, and if it is not attended to timely, it will result in a toxic office-establishment which can collapse a whole business.<sup>4</sup> Therefore, for an industry, a company or an organisation that wants to perform better in business, a quick and a peaceful means of resolving disputes must be introduced without recourse to litigation which is not quick in dispensing justice.<sup>5</sup> Thus, in the case of *Amadi v NNPC*,<sup>6</sup> a preliminary issue of jurisdiction lasted for thirteen years. In this regard, Akomolede argued in one of his articles that<sup>7</sup> “cases in court are known to take a longer time than usual in which such will last for several years before the court of the first instance can determine it.”

Nevertheless, as noted in this paper, another quick means of settling disputes amicably in an office establishment dispute or conflict is Alternative Dispute Resolution. It is usually accepted as an appropriate choice than the usual means for the settlement of office-establishment disputes in Nigeria. Because of the private nature involved in the proceeding, parties to the disputes have the opportunity to direct the affairs involving the settlement of their dispute. The financial involvement does not significantly cost much. It also takes fewer times to resolve disputes. Most office-establishment disputes are resolved amicably without recourse to litigation.<sup>8</sup>

For analytical reasons, this paper seeks to untangle and analyse the multiple ways office establishment dispute in Nigeria are prevented, managed, controlled or resolved. Suffice to point out that the neutral third party's role in the Alternative Dispute Resolution paradigm differs substantially from a judge's role in the adversarial proceedings or the role of arbitrator in the conventional arbitration.

## RESEARCH METHODS

This paper is carried out using a qualitative technique. The doctrinal research methodology will make use of both the primary and secondary sources of information.<sup>9</sup> The primary sources are Arbitration and Conciliation Act<sup>10</sup> and the Constitution of the Federal Republic of Nigeria, 1999

<sup>2</sup> Meria Utama and Irsan Irsan, “General Overview on Selecting and Drafting Construction Contract Disputes Resolution,” *Sriwijaya Law Review* 2, no. 2 (2018): 152, <https://doi.org/10.28946/slrev.vol2.iss2.129.pp152-169>.

<sup>3</sup> M. Lewis and L. McCrimmon, “The Role of ADR Processes in the Criminal Justice System: A View from Australia” (Uganda: Imperial Resort Beach Hotel Entebbe, 2005).

<sup>4</sup> “Available Online At,” 2019, <https://www.thehrdigest.com/leadership-conflict-inevitable-part-organization/> accessed.

<sup>5</sup> Alexander JS Colvin, “American Workplace Dispute Resolution in the Individual Rights Era,” *The International Journal of Human Resource Management* 23, no. 3 (2012): 459–75.

<sup>6</sup> 10 NWLR (Pt. 675) 76 @ 80. (2000)

<sup>7</sup> I. T Akomolede, “An Overview of Alternative Disputes Resolution (ADR) In the Dispensation of Justice in Nigeria,” *Ife Juris Review (IFJR) A Journal of Contemporary Legal and Allied Issues* 2, no. 1 (2005): 794–1048.

<sup>8</sup> M Anstey, *Negotiating Conflict: Insights and Skills for Negotiators and Peace-Makers* (Kenwyn: Juta, 1991).

<sup>9</sup> M. O. U. Gasiokwu, *Legal Research and Methodology*, 2nd ed. (Unugu Nigeria: Chenglo Ltd, 2004).

<sup>10</sup> Arbitration Act, Laws of the Federation of Nigeria 2010 Cap. A18 (1998).

(as amended), Federal<sup>11</sup> and State<sup>12</sup> Statutes, Judicial decisions as contained in relevant Law Reports. The secondary sources of information, on the other hand, will include textbooks, journals, articles, workshop materials, unpublished papers, newspapers, magazines, periodicals, law dictionaries, Encyclopedia of Laws in Nigeria as well as relevant materials sourced from the internet.

## ANALYSIS AND DISCUSSION

### Understanding the Basic Concept of Alternative Dispute Resolution Mechanism

Over the years, the concept "Conflict" may be regarded as a serious disagreement or argument bothering something important between two or more people characterised by antagonism and hostility.<sup>13</sup> In other words, conflict is said to be synonymous with the dispute. However, the dispute is said to be a disagreement<sup>14</sup> between two parties who engaged in argument irritably or with irritating persistence.<sup>15</sup> Similarly, It is also known as a sharp disagreement or opposition, as of interests or ideas between two or more people.<sup>16</sup> A dispute can be referred to as an integral part of all daily human co-existence. It occurs everywhere, primarily; in any office-establishment, where it is a constant phenomenon that cannot be eradicated, as it has been in existence for a very long time. It is majorly referred to as a state of discord caused by the actual or perceived opposition of needs, values, and interests between people working together in a business environment. This situation can also be referred to as a disagreement between groups or individuals mainly to antagonise and cause hostility within the office-establishment area.<sup>17</sup> It is usually caused by a party opposing another party as a result of different objectives.<sup>18</sup> It can exist between anybody in an organisation; this is irrespective of who they are because it is an obvious fact that one cannot keep away from chaos or pandemonium where humans exist.

In the same vein, it must be emphasised that in trying to identify the relationship between conflict and dispute under International Arbitration Law, one key aspect of this development is that the philosophy of Alternative Dispute Resolution thrives on the protection of interest of the parties in such a dispute or conflict. The whole essence is that disputes or conflicts in Office establishment are better resolved through Alternative Dispute Resolution Mechanism. Thus, Alternative Dispute Resolution is widely known as the technique, procedure, or processes designed to help dispute parties amend their differences without recourse to litigation in court.<sup>19</sup>

It is significant to note that many factors are responsible for conflicts or disputes in any office establishment<sup>20</sup> in Nigeria or any other country of the world might be between a formal authority, individual or groups. Similarly, this paper noted that disputes could arise due to the distribution and circulation of revenues within an organisation, or enforcement of the Code of Practice and

<sup>11</sup> Cap2, Constitution of the Federal Republic of Nigeria (1999).

<sup>12</sup> Arbitration and Conciliation Law of Ondo State (1988) Cap.13 Laws of Ondo State (2016).

<sup>13</sup> *Collins English Dictionary*, 13th ed., 2018.

<sup>14</sup> "Available Online," accessed August 12, 2019, <http://www.businessdictionary.com/definition/dispute.html>.

<sup>15</sup> "Merriam-Webster Dictionary," 2019.

<sup>16</sup> "Available Online," accessed August 11, 2019, <http://www.learnersdictionary.com/definition/dispute>.

<sup>17</sup> *The Cambridge Advanced Learner's Dictionary & Thesaurus* (Cambridge University Press, 2018).

<sup>18</sup> "Available Online," 2019, <http://www.typeofconflict.org/what-is-conflict/>.

<sup>19</sup> Thomson Reuters, "What Is Alternative Dispute Resolution?," 2019, <https://hirealawyer.findlaw.com/choosing-the-right-lawyer/alternative-dispute-resolution.html>.

<sup>20</sup> D. W Ewing, *Justice on the Job: Resolving Grievances in the Nonunion Workplace* (Boston: HBS Press, 1989).

or Professional Ethical Standards within an office establishment. Furthermore, it might be in the form of conflicts of interest resulting from competition, strife, envy, belligerence attitude, and disharmony. In this sense, it must be acknowledged that in situations where this conflict is not resolved quickly, it may lead to loss of confidence and values. Notably, conflicts exist amongst individuals' competing needs, especially where they respond to the issue differently.<sup>21</sup>

However, in reality, an employee might be harassed by an employer or might not be given proper orientation, bringing about conflict of information or ideas. In another vein, an employer who has a personality interest might decide to introduce objectives, ideas, targets, and strict guidelines that may be too self-assertive in their organisation for his employees, bringing unending failure conflicts in office establishment.

In light of the above development, it is essential not to overlook conflict or dispute sources in Nigeria's office establishment settings.<sup>22</sup> As a result of the following reasons:- First, Grudges or Scores, it seems clear that this is a feeling of anger or indignant displeasure about someone or something unfair meted out to another person within the official establishment. Thus, it occurs as a result of discrimination between workers or maltreatment of employees by their employees, which may be detrimental to the organisation's corporate existence. Also, it must be noted that no organisation can survive where there are conflicts, especially when an employee is given preferential treatment all the time, while others will continue to harbour resentment against that particular person in the office. In this regard, it is pertinent to maintain that the employer must maintain a uniform relationship amongst his employees and assign tasks accordingly and rightly.<sup>23</sup> Second, Analysis on Individual Work Efficiency Conflicts, as another source of conflict or dispute in an Office establishment in Nigeria, this paper noted that no employee could desire a low-performance review at work as he may wish to be given a positive daily landmark because an inappropriate remark will promote low self-esteem there breeding backchat, anger, rudeness and probably a display of displeasure and usually of antagonism in an office establishment.<sup>24</sup> Third, the Client's Displeasure is when an individual known as a client or customer is offended in the business transaction with the company. In this situation, the client care service or sales service employees usually experience conflicts with different clients in which they might not be satisfied with the services rendered to them in the course of the transaction of the business either by feelings of deception or being swindled by an individual or groups or insulted by Customer care representative of the company. Finally, Employers and Employees Conflicts., notably, this type of dispute or conflicts occurs daily and cannot be prevented when it bothers on self-esteem or egoistic<sup>25</sup> clashes between an employer and employee in a peaceful working environment or in the distribution of goods and services.<sup>26</sup>

However, in reality, an employee might be harassed by an employer or might not be given proper orientation, bringing about conflict of information or ideas. In another vein, an employer

<sup>21</sup> A Richard, *Management, Systems, and Society: An Introduction* (Pacific Palisades, Calif, Goodyear Publications. Co, 1976).

<sup>22</sup> R. H Moorman, "Relationship Between Organizational Justice and Organizational Citizenship Behaviours: Do With Fairness Perceptions Influence Employee Citizenship?," *Journal of Applied Psychology* 76 (1991): 845–55.

<sup>23</sup> J Dix, G., Sisson, K., & Forth, *Conflict At Work: The Changing Pattern of Disputes* (Cambridge: Cambridge University Press, 2009).

<sup>24</sup> D Ingram, "Examples of Conflicts & Resolutions in The Workplace," *Small Business Newsletter*, 2019, <http://smallbusiness.chron.com/examples-conflicts-resolutions-workplace-11230.html>.

<sup>25</sup> The opinion you have about yourself, or an egocentric or egotistic person.

<sup>26</sup> United Nation, "Settling Business Disputes: Arbitration and ADR," *International Trade Centre Journal* 2ed (2016).

who has a personality interest might decide to introduce objectives, ideas, targets, and strict guidelines that may be too self-assertive in their organisation for his employees, which might bring unending failure conflicts in office establishment.

### **Conventional Methods of Resolving Conflicts at the Workplace**

From time immemorial, African society had institutional techniques of settling disputes, avert disputes, and presiding and resolving issues within the workplace, before introducing the British colonial master's ideas that were based on the slave trade, colonisation and introduction of litigation into the African natural ways of living.<sup>27</sup> They had cultural sources which were very paramount to boost and held on in high estimation morals values of peace, perseverance, tolerance, unity and having a high regard for themselves which was accountable for standard ways of living, bringing about good education, standing morale and lasting confidence, lasting relationship, trust, preaching and making peace between one another, peacebuilding, conflict monitoring, conflict prevention, conflict management, and conflict resolution.<sup>28</sup>

The above African mode of settling disputes are very prompt, and it's promote friendships,<sup>29</sup> it's time-saving, it is economical, it is very flexible and very useful in handling and managing conflicts among the people, thereby experiencing a peaceful environment to establish a business successfully and as a matter of fact, people are customarily seen in a friendly manner to talk to and probably come to a particular conclusion about very paramount issues that would promote their existence.<sup>30</sup> The ways mentioned above of life are categorically seen in traditions, customs, norms, and taboos of people within society. Of course, the ability to live peacefully, share possessions and responsibilities, give account, debate or bargain on behalf of others truthfully, condone one another, and promote reconciliation in resolving their conflicts was the order of the day. However, after the landing of the colonial masters upon African soil, peaceful mode of settling disputes was taking away and litigation which did not promote peaceful co-existence among the people was introduced.<sup>31</sup> Basically, it must be emphasised that the conventional methods of resolving conflicts at the workplace are as follows: Litigation and Alternative Dispute Resolution Mechanisms.

### ***Litigation***

Litigation is generally known as the use of the courts of law to resolve legal controversies. It can be used to compel the opposing party to participate in the disputes resolution compulsorily. The National Industrial Court of Nigeria also known as NIC is a court empowered to adjudicate trade disputes, labour practices, matters related to the Factories Act, Trade Disputes Act, Trade Unions

<sup>27</sup> J Dickson, *Overview of Commercial Alternative Dispute Resolution in Africa* (Business Conflict Management, 2012).

<sup>28</sup> Nokukhanya NTULI, "Africa: Alternative Dispute Resolution in a Comparative Perspective," *Conflict Studies Quarterly*, no. 22 (2018): 36–61.

<sup>29</sup> J.N Waindim, "Traditional Methods of Conflict Resolution. The Kom Experience. African Centre for the Reconstructure Resolution of Disputes. ACCORD," Accord, 2020, <https://www.accord.org.za/conflict-trends/traditional-methods-of-conflict-resolution/>.

<sup>30</sup> The Kom Heritage Foundation, *A Short Cultural History of the Kom People* (Bamenda: Destiny Prints, 2014). cites Nkwi, Paul and Warnier, Jean-Pierre (1982) *Elements for a History of the Western Grassfields*. Yaounde, Cameroon: SOPECAM

<sup>31</sup> P Nkwi, *Traditional Diplomacy: A Study of Inter-Chiefdom Relationships in the Western Grass Fields, North West Province of Cameroon* (Yaounde, Cameroon: Publication of the Department of Sociology, 1987).

Act, Workmen's Compensations Act and appeals from the Industrial Arbitration Panel.<sup>32</sup> This Act also conferred on the National Industrial Court exclusive jurisdiction to adjudicate civil cases and matters relating to labour, industrial trade union and industrial relations and environment and conditions of work, health, safety and welfare of labour and matter incidental amongst others.

However, to commence an action against another party, the aggrieved party must begin the process by instituting an action in a court of law under the specific prescribed procedure, and with an opportunity to compulsorily give evidence. In litigation, both parties must frontload all documents related to the case. It is because no party must be taken by surprise, and the defendant's lawyer will want to take a deposition to learn more about the facts of the case to prepare for defence. There can be several court appearances by all parties, including their lawyers. If the parties cannot agree on how to settle the case, the judge will decide the dispute by judgment at the end of the trial, which usually stands on the win-lose decision.

Therefore, litigation can be referred to as the Act, process, or practice of settling a dispute (s) in a court of law<sup>33</sup> which allows the complete examination and determination of issue(s) raised by the parties in their case before the court. In the case, the judge will give Judgement by looking at the facts of the case, evidence placed before it, alongside the existing applicable law in force at that time. In Nigeria, several cases remain in court for a very long time to the detriment of litigant's faith, which expects justice to be done expediently to their cases. The adjournment of cases and other factors associated with a delay in resolving commercial disputes in litigation cases before the courts of law can make a company or organisation go bankrupt.

However, in the case of *Maersk & Anor v Adidide Investment Limited & Anor*<sup>34</sup> an interlocutory application was a huge issue because it prolongs the conclusion of the case for a long time due to unnecessary delay, making the litigants frustrated.<sup>35</sup> In this case, the Supreme Court gave Judgement on Interlocutory appeals filed before it after seven years. Both the substantive action that began in January 1996 alongside the appeals and counter appeals resulting from the lower court's interlocutory decisions and the Court of Appeal, all came to an end in April 2003 at the Supreme Court.

It is obvious that procedural challenges are part of the judicial process. It might be difficult to elude the court as some lawyers are not helping issues in a particular situation in which delay was encouraged. According to Uwais, JSC (as he then was), he gave a sharp expression in the case of *Amadiv NNPC* thus:

“The chequered history of this case once more brings to light the dilatory effect of interlocutory appeals on the substantive suit between the parties. In this case, the action was brought on April 29 1987; this court delivers the final Judgement on the interlocutory appeal today. It has taken thirteen years for the case to reach this stage. The case is to be sent back to the High Court to be determined hopefully on the merits after a delay of 13 years, and I believe that council owes it as a duty to the court to help reduce the period of delay in determining cases in our courts by avoiding unnecessary preliminary objections, as the one here, so that the adage of ‘Justice delayed is justice denied’ may cease to apply to the proceeding in our courts.”<sup>36</sup>

Thus, in a prominent case of *Ariori v Elemo*,<sup>37</sup> The case was commenced in the early 1960 and was concluded at the Supreme Court in 1983. The case was dangling in court for a total

<sup>32</sup> National Industrial Court Act, 2006

<sup>33</sup> “Merriam-Webster Law Dictionary Internationals,” n.d.

<sup>34</sup> 1 SC Vol. II 157, (2002)

<sup>35</sup> Okafor Oraegbunam, “Problems of Litigation in Settlement of Maritime Disputes for Nigeria Today: The Preference For Arbitration,” *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 1 (2013): 35.

<sup>36</sup> 10 NWLR (Pt 676)76, (2000)

<sup>37</sup> 1 SC NLR 1, 1983

number of 23 years at the expense of the litigants; moving from the trial at the lower court to the higher court at the Supreme Court had been viewed as a frustrating exercise. In this sense, this paper, however, argued that the right to a speedy trial is necessary relative but could depend on the prevailing circumstance, for a right to a speedy trial to be solely a right for the benefit of a party to a case, and it must not preclude the right<sup>38</sup> to public justice.<sup>39</sup> Looking at this case, Judgement was significantly given at the trial court approximately fifteen months after at the Supreme Court.<sup>40</sup>

It must be emphasised that delay in resolving any disputes existing in office-establishment will never preserve business relationships. Instead, it breeds rancour and enmity and makes parties in a dispute be interminable enemies. Litigation that ought to resolve disputes amicably and brings parties together will turn them upside down. It is significant to note that the lists of delayed cases<sup>41</sup> in various courts are endless and can justice be achieved in this situation if it takes this long for litigants to scale through. In this respect, the courts had shown by their practice that they could not be the last resort to the aggrieved parties. Therefore, there is a need to embark on alternative dispute resolution to solve office-establishment disputes. According to Akomolede,<sup>42</sup>

“The fact cannot be gainsaid that the dispensation of justice in Nigeria today is plagued with a delay such that the various courts are inundated with cases which last for several years before they can be determined by the court (sic) of the first instance. Long adjournments, cumbersome and rigorous procedure, difficulty and ambiguous rules of evidence, and other several artificial obstacles are largely responsible for the delay which has so much haunted the dispensation of the justice system for so long.”<sup>43</sup>

The statement above was made a long-time ago, and it remained the truth about litigation in court which is never a pleasant experience for litigants. Therefore, Alternative Dispute Resolution must come into play, be accepted by parties and relevant as the only alternative to litigation. In the above sense, the disadvantages of litigation as a means of resolving a dispute at the workplace has been expressly discussed in this paper.

### ***Alternative Dispute Resolution Mechanism***

Alternative Dispute Resolution mechanism includes; Negotiation, Mediation, Arbitration and Conciliation. It is usually less costly and more expeditious; it allows both parties to understand each other's positions and develop more creative solutions that a court may not be legally allowed to impose.<sup>44</sup>

<sup>38</sup> Nurhidayatuloh et. al., “Does Limitation Rule in International and Regional Human Rights Law Instruments Restrict Its Implementation?,” *International Journal of Recent Technology and Engineering* 8, no. 2S9 (2019): 597–600, <https://doi.org/10.35940/ijrte.B1125.0982S919>.

<sup>39</sup> “Nigeria Legal Information Institute,” accessed June 27, 2019, <https://nigerialii.org/ng/judgment/supreme-court/1983/1>.

<sup>40</sup> 1972 - 1983

<sup>41</sup> *Ariori v. Elemo* 1 SC 13, the case of Union Bank Nigeria Plc v. Ayodare and Sons (Nig.) Limited, 13 NWLR (Pt. 1052) 567 [2007], was commenced at the High Court where Judgment was not given until 18 years later in 2007 at the supreme court. In another case of similar delay trend in (1983).

<sup>42</sup> I. T Akomolede, “An Overview of Alternative Disputes Resolution (ADR) In the Dispensation of Justice in Nigeria,” *Ife Juris Review (IFJR) A Journal of Contemporary Legal and Allied Issues* 2, no. 1 (2005).

<sup>43</sup> Olubayo Oluduro et al., *Trends in Nigeria Law: Essays in Honour of Oba DVF Olateru Olagbegi III* (Ibadan : Constellation (Nig.) Publishers, 2007).

<sup>44</sup> S Katie, “Alternative Dispute Resolution,” 2019, <https://hls.harvard.edu/dept/opia/what-is-public-interest-law/public-interest-work-types/alternative-dispute-resolution/>.

### ***Negotiation***

The use of a negotiation mechanism is voluntary, and a third party is never allowed to facilitate the resolution process or even recommend any resolution.<sup>45</sup> It is known as the most basic means of settling differences between parties with the sole aim of trying to find a solution. Both parties may negotiate directly with each other without delay or with the help of their lawyers or a negotiator, and they remain calm during negotiation.<sup>46</sup>

It allows parties to be involved without any barrier in making decisions that affect them, and a negotiated agreement can become a contract and be enforceable.<sup>47</sup> Negotiation characteristics are so numerous, but the following are very germane:

“a) It is Voluntary; b) It is exclusively confidential in nature between parties; c) It is always speedily and very affordable; d) Negotiation is known to be generally formless and informal in nature; e) parties must direct the affairs of negotiation without the interference of a third party(ies) by making personal and genuine decisions that will make up their agreements; f) Agreements arrived at during negotiation are enforceable; and g) The outcome is usually based on a win-win solution.”<sup>48</sup>

### ***Mediation***

It is an excellent and essential part of an Alternative Dispute Resolution process that involves the assistance of an independent third party who will be referred to as a mediator and not a fourth person. The sole aim of a mediator is to majorly assist both parties in dispute to identify the disputed issues to develop an option(s) or consider alternatives available and reach an appropriate or suitable agreement.<sup>49</sup> However, mediators do not give their advice or opinion about the issues or have any role in deciding the mediation outcome. Mediation is a rapidly growing Alternative Dispute Resolution technique. The process is composed of assisted negotiations whereby disputants' parties agreed to seek the help of a neutral intermediary known as a third party, who will solely facilitate a deliberate or wilful amicable resolution of such dispute. The foremost vital functions of a mediator are to look at the dispute before him/her and identify the issue(s); it is also necessary for the mediator to analyse ways in which parties can arrive at a consensus *ad idem* on resolving such issue(s), the mediator also must inform both parties about the side effect of refusing settlement of the dispute accordingly and encourage them to accept negotiation and accommodate the particular interest of other parties.

It is pertinent to note that, proceedings in mediation are voluntary for both parties and mediators do not possess the ability to enforce or compel a decision on both parties in a situation where they refused to reach an expected decision; which is a different scenario in arbitration.<sup>50</sup> Accordingly, mediator's influence is limited by the parties' autonomy and their willingness to negotiate in good faith. A mediator cannot make decisions for both parties but can only help them

<sup>45</sup> Mary P. Rowe, “Helping People Help Themselves: An ADR Option for Interpersonal Conflict,” *Negotiation Journal* 6, no. 3 (1990): 239–48.

<sup>46</sup> Rowe.

<sup>47</sup> A Brian, H., and Marriott, *Alternative Dispute Resolution: Principles and Practice* (London: Sweet & Maxwell, 1993).

<sup>48</sup> H. Brown and Marriot. E, *ADR Principles & Practice*, 2nd ed. (London: Sweet & Maxwell Publication, 1999).

<sup>49</sup> Available Online, “Ontario Council of Agencies Serving Immigrants Newsletter,” 2019, <https://settlement.org/ontario/legal-services/lawyers-and-other-legal-help/other-kinds-of-legal-help/>.

<sup>50</sup> Mediation work effectively for several civil disputes such as; cases involving the relationship between employers and employees, married partners, wholesaler, retailer, manufacturer, distributor, antitrust suits involving different issues and other cases, where the mediator suggests possible amicable consenting results.



reach a decision that will bear their own imprints; rather than being imposed as it is done by an arbitrator or by a judge in court.<sup>51</sup>

### **Arbitration**

Arbitration is submitting a disputed matter to an impartial person who is also known as an arbitrator. Arbitration is the means of settling office-establishment disputes out of court. It is submitting a disputed matter to an impartial person who is also known as an arbitrator. This arbitrator is given the right to direct the arbitration proceeding by listening to both parties and making a final resolution or decision, just like litigation. Just one party wins.

Generally, in arbitration, the panel might consist of one arbitrator or three arbitrators appointed to exercise judicial control over the arbitration proceedings which is usually held in office(s) or other meeting rooms where both parties are present and are allowed to give testimonies, tender documents and exhibits as the case may be.<sup>52</sup>

The choice of accepting arbitration as a means of settling disputes must be self-determining as parties are not forced or coerced into participation in arbitration. Most parties arrive at a consensus *ad idem* in an agreement or contract about the submission of any disputes they might encounter during carrying out their business (es) or working in any office-establishment to an arbitration proceeding that is binding on them. It is seen in 'Scott Avery Clause in the case of *Scott v Avery*<sup>53</sup> where it was said that:

“While parties cannot by contract oust the jurisdiction of the courts, they can agree that no right of action shall accrue in respect of any differences which may arise between them until such differences have been adjudicated upon by an arbitrator.”

The verdict or resolution given by an arbitrator at the end of the proceeding can also be referred to as an award which can be accepted by the court and be regarded as the judgment in that case which is enforceable due to existing agreement between them.<sup>54</sup> An arbitration decision can be an appeal in a higher court after successful scrutiny or review by the court.<sup>55</sup> A court could review an arbitrator's decision if issues decided are not within the scope of the arbitration agreement.<sup>56</sup>

An arbitration clause(s), in an agreement or contract that requires the parties to resolve their disputes through the arbitration process, can be enforced where one party refuse to concede to an arbitration proceeding.<sup>57</sup>

For an arbitration proceeding to commence, there must be an existing recognised agreement in writing containing an arbitration clause or making a reference by pointing to a different document that must exist before the occurrence of the disagreements in question. Aside from the agreement between both parties, there are other means of deducing that an agreement exists

<sup>51</sup> O Candide-Johnson, C, A., & Shasore, *Commercial Arbitration Law and Practice in Nigeria*, 2nd ed. (Lexis Nexis Publishers Lagos, 2012).

<sup>52</sup> M Hendershot, *Corporate Counsel's Primer Series on CD-Rom: Alternative Dispute Resolution Techniques*, 4th ed. (Business Laws, Inc, 1999).

<sup>53</sup> *Scott v Avery*, 5 HLCas 811, 10 ER 1121, House of Lords (UK).(1856)

<sup>54</sup> M Christopher, *The Mediation Process; Practical Strategies for Resolving Conflict* (San Francisco, CA: Jossey-Bass/Wiley Publishers, 2014).

<sup>55</sup> International Institute for Conflict Prevention & Resolution. "Arbitration Appeal Procedure." "Archived copy". Archived from the original on April 8 2010 (2010).

<sup>56</sup> "Available Online," 2020, <https://www.lorman.com/resources/advantages-and-disadvantages-of-alternative-dispute-resolution-16190>.

<sup>57</sup> David S Schwartz, *Mandatory Arbitration and Fairness* (84 Notre Dame L. Rev. 1247, 2010).

between parties where formal agreement is not available. First, the exchange of letters via email, telex, post office, telegrams, facsimile machine or social networks is a well-written proof that an agreement exists. Also, the service of the statement of claim and statements of defence on each other in a case in court in which there is no denial of any fact relating to the agreement in question is another written proof that an arbitration agreement exists between them.

The commencement of an arbitration proceeding in Indian,<sup>58</sup> Nigeria<sup>59</sup> and other developing countries can be by any of the parties which is either more aggrieved or affected by the situation; and when both parties are not satisfied in appointing an arbitrator jointly, then preliminary steps towards the appointment of an arbitrator can be made through the office of the Honourable Chief Judge.

### ***Appointment of an Arbitrator***

When it is shown in the situation that there is justifiable doubt regarding the impartiality or independence of the arbitrator since the commencement of the arbitration proceeding.

Also, an arbitrator's appointment can be a challenge where the arbitrator does not have the required credential for such position as stipulated in the agreement.<sup>60</sup>

A party willing to challenge the jurisdiction of an arbitrator in a case must do so directly before the tribunal, and where they refuse the demand, then parties can take a preliminary step towards instituting an action in court after the tribunal makes an award. Section 34 of the Arbitration and Conciliation Act<sup>61</sup> provides specific grounds upon which a party can appeal to the principal civil court of original jurisdiction for setting aside the award. “The period for filing an appeal for setting aside an award is over, or if such an appeal is rejected, the award is binding on the parties and is considered as a decree of the court.”<sup>62</sup>

Voluntariness in choosing an arbitrator is one of the characteristics of arbitration. The proceeding is formal and private, and it is quite different from litigation proceeding that is conducted in the open court. It is rapid and not very expensive compared to litigation. A decision, also known as an award will arrive at by the arbitrator after the presentation of evidence to support the case before the arbitrator during the parties' proceeding.

### ***Conciliation***

It is one of the ADR mechanism, and it is a less formal form of arbitration. It is another dispute resolution process that involves building a positive relationship between both parties in dispute through an impartial person who assists the parties by driving in their negotiations and directing them towards a satisfactory agreement. This procedure does not need any prior agreement between parties before commencing it. Any of the party can desire the appointment of a conciliator. A conciliator is generally allowed in settlement of disputes, but two or more may be

<sup>58</sup> Badrinath Srinivasan, “Appointment of Arbitrators by the Designate under the Arbitration and Conciliation Act: A Critique,” *Economic and Political Weekly* 49, no. 18 (2014): 59–66.

<sup>59</sup> M.A Orojo, T.O. and Ajomo, *Law and Practice of Arbitration and Conciliation in Nigeria* (1999).

<sup>60</sup> Freeman Jalet F, “Judicial Review of Arbitration the Judicial Attitude,” *Cornell Law Review* 45, no. 3 (1960).

<sup>61</sup> The Arbitration and Conciliation Act, Cap A19, 1988, (ACA) (Cap A 18 Laws of the Federation of Nigeria 2004) (n.d.).

<sup>62</sup> V Collier, J., & Lowe, *The Settlement of Disputes in International Law* (Cambridge: Oxford University Press, 1999).

allowed.<sup>63</sup> It is important to note that parties are allowed to describe the existing disagreement directly in a statement with the conciliator<sup>64</sup> after sharing the same with themselves. The conciliator if necessary, might seek an audience with the parties or liaise with them in writing. Sometimes, parties can make the proposal to the conciliator on how their dispute can be resolved, and the conciliator has the right to accept or reject such a proposal. However, in a situation where there is evidence of settling the dispute by the parties genuinely, then a term of settlement is drawn and forward for their approval. If both parties sign the drafted document, then such becomes final and binding on them.

In conciliation, parties are directed by the conciliator towards executing adequate settlement of their dispute. The conciliator is regarded as a reliable eminence personality capable of resolving both parties' disputes amicably by putting forward a settlement plan by seeking parties' cooperation. Conciliation is usually resulted in order to prevent any dispute or conflict further.<sup>65</sup>

### **Advantages and Disadvantages of Alternative Dispute Resolution**

Alternative Dispute Resolution has several glaring advantages over litigation. The use of any of the Alternative Dispute Resolution mechanism is appropriate for the settlement of multi-party disputes. Also, resolving disputes through any Alternative Dispute Resolution mechanism is usually at a lower cost than litigation. The delay or waste of disputed parties time is not encouraging as the settlement proceeding is speedy. The proceeding is also very confidential and flexible as parties usually control the process and have a right to choose the forum.<sup>66</sup>

According to Thomas, on the one hand, alternative dispute resolution makes settlement of the dispute to be more comfortable than settling a dispute in court, and that mechanism facilitates the solution of conflict much faster than litigation<sup>67</sup> Most parties according to Tidwell<sup>68</sup> prefer a quiet and a serene environment for the settlement of their dispute; where they can express their minds without been intimidated. The use of any Alternative Dispute Resolution mechanism is never a burden, it is swift, and both parties are financially and psychologically stable, unlike litigation.<sup>69</sup> In view of the above, Alternative Dispute Resolution helps a party to a dispute to amicably settle it within time and make their businesses a priority to avoid loss of profit or go bankrupt without recourse to delay or a waste of money and time which is associated with litigation.

On the other hand, there is an urgent need for precedents under Alternative Dispute Resolution because there is always delay in situations where there is a lack of precedent, unlike litigation. However, most arbitrators' verdict lacks judicial review; this is because in most cases their verdicts are usually final and binding except on a few occasion where it might be a challenge

<sup>63</sup> R. T Walker, B., & Hamilton, "The Effectiveness of Grievance Processes in New Zealand: A Fair Way to Go?," *Journal of Industrial Relations* 53, no. 1 (2011): 103–21.

<sup>64</sup> Walker, B., & Hamilton.

<sup>65</sup> Columbus, *The International Law of the Sea*, 2nd ed. (London: Mark Publications, 2002).

<sup>66</sup> D Dawodu, M., Olalere O., & Ogunmuyiwa, *Litigation & Dispute Resolution*, 2nd ed. (Global Legal Group Publishers, 2013).

<sup>67</sup> Leigh L. Thompson, *The Mind and Heart of the Negotiator* (Akron, 2001).

<sup>68</sup> Tidwell CA, *Conflict Resolved: A Critical Assessment of Conflict Resolution* (London & New York: Pinter, 1988).

<sup>69</sup> "Mennonite, Conciliation Services. (2000). Mediation and Facilitation Training Manual: Foundation and Skills for Conflict Brubaker, David (1988) Guidelines for Deciding When Mediation Is Appropriate" (Englewood Cliffs, NJ: Prentice Hall, 2000).

in court. It is due to the effective default agreement made by both parties that were *void ab initio* as a result of involuntarily agreement to arbitrate their dispute.<sup>70</sup>

## CONCLUSION

Conclusively, the Alternative Dispute Resolution mechanism's relevance in resolving office establishment dispute in Nigeria cannot be overemphasised. While in certain areas, it is particularly concerning the issues of resolving office establishment dispute through litigation. However, this paper suggests that the idea of litigation may not be a practical solution to the resolution of such dispute as it is known for the delay in the dispensation of justice. This paper reveals that adopting Alternative Dispute Resolution mechanism in resolving office establishment dispute in Nigeria is accepted and recognised as one of the International Legal framework essential for resolving disputes and guarantees employee's protection at the workplace.

The question remains whether the adoption of Alternative Dispute Resolution mechanism as a practical means of resolving disputes in office establishment as discussed in this article will ever be a general practice in Nigeria. Lastly, the following recommendations are made: 1) There is a need for the introduction of Alternative Dispute Resolution and training of all employees in all organisations in Nigeria; 2) There is also a need for the stakeholders involved in a business or organisational settings to acquire more knowledge about Alternative Dispute Resolution in this country.

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