EXAMINATION OF MULTI-DOOR COURTHOUSE IN THE SETTLEMENT OF DISPUTES IN NIGERIA

Prof. Chima Josephat Ubanyionwu*

Introduction

In order to provide litigants with a timely and cost-effective alternative to the conventional means of resolving civil disputes, a facility known as the Multi-Door courthouse (MDCH) was hereby established at various courts in Nigeria. Multi-door courthouse connected Alternative Disputes Resolution (ADR) centre. The key feature of Multi-Door courthouse (MDCH) is the initial procedure, intake screenings/referral. It is a multifaceted dispute resolution centre, which provides a comprehensive structure of the court. "The multi-door" refers to the additional options.1 Thus, most courthouses provide some additional doors or options by which disputing parties can resolve their dispute namely:

Early neutral/evaluation.
Meditation.
Arbitration.
Mediation.
Private Judging.
Mini-trial.
Fast track.

Any court case may use the services of courthouse, whether it is commercial, employment, contract, family, land, matrimonial, energy, or disputing parties and or their lawyers with the expertise of its skilled and experienced mediators, case evaluators, arbitrators, neutral advisors and private judges. In this article, we shall examine critically the various multi-door courthouses in Nigeria:

Mediation

Mediation is a process in which a neutral (impartial) third party called a "mediator" is invited to or intervenes to facilitate the resolution of a dispute by the agreement of the parties. It helps the disputants resolve or better manage disputes by reaching agreements about what both will do differently in the future.2 Essentially, the mediator facilitates communication, promotes understanding, helps the parties focus on their interests and employ creative problem solving techniques to enable the parties reach amicable settlement. Mediation can be seen from the common sense idea that the intervention of an experienced, independent and trusted person can be expected to help the parties settle their quarrel by negotiating in a collaborative rather than adversarial way.3 Mediation, like any other ADR process is not a new concept. What is new is the approach. In fact, a close look at some of the traditional methods of mediation would reveal that it was not as smooth then as it is today largely because they were not that voluntary.4

* **Prof Chima Josephat Ubanyionwu, Professor of Law, Depatrment of International Law & Jurisprudence, Faculty of Law, Chukwuemeka Odumegwu Ojukwu University, Igbariam Campus, Chairman, Nigerian Bar Association, Aguata Branch (2018 – 2020), Phone: 08036660646, Email: barcjuba@yahoo.com.**

1 Instead of just one door, litigation leading to the courtroom.

2 Sebok, T., "Preparing for your Negotiation and Dispute Resolution Journal" Vol. 1 p. 29.

3 Noone, M. *Meditation: Essential Skills,*: Cavendish Publishing Limited, London, 1998, p.5.

4 *Ibid*.

Principal Features of Mediation

i. Accessibility

Most disputes whether already in litigation or not can be referred to mediation. It can be conducted at a very short notice and it can be conducted almost anywhere the parties are comfortable with as it needs not be formally convened.

ii. Voluntariness

This is the most outstanding characteristic of mediation. In mediation, parties take responsibility for the resolution of their disputes. Each party must willingly agree to mediation, willingly agree to the choice of the mediator, willingly choose to participate in the mediation process, willingly choose to continue in the mediation and willingly choose to reach or not to reach agreement.[5] It is this voluntary nature of mediation that largely accounts for its success rate and finality of most agreements reached by the parties. Due to the fact that the agreement is reached voluntarily, both psychologically and morally, the parties feel more committed to the agreement than a decision imposed upon them by an adjudicator.

iii. Confidentiality

Conventionally, this is part of the process of mediation and so parties freely enter into an agreement before the mediation takes off that whatever the parties discuss at the mediation is confidential. Furthermore, no party shall call on the mediator to appear before any court of law or tribunal to give evidence on any matter over which he mediated. In addition, they also agree that all documents used at the mediation shall at the end of the mediation be either returned to the parties or destroyed. This means that the process is confidential and without prejudice.

iv. Facilitation

The job of the mediator is that of facilitation not adjudication. Mediation is largely interest-based and problem-solving as distinguished from the usual rights determination and crack position-based bargaining. The mediator assists the parties to retain control of their dispute while working out a solution by: Identifying each disputant's needs and underlying interests; Developing/generating as many options as possible for settlement; and Helping parties to reach an agreement which satisfies them and accommodates all their possible needs.

Arbitration

Arbitration is provided for in the Arbitration and Conciliation Act.[6] Although, arbitration and litigation share some common features because of their adversarial and rancorous tendencies, arbitration has become accepted as a viable alternative to litigation.

Meaning

The Act does not define arbitration in any useful way. What section 57(1) of the Act[7] says is that arbitration means "commercial arbitration whether or not administered by a permanent arbitral institution." With due respect to the draftsman of the Act,[8] this definition is most unhelpful and may leave a person searching for the definition of the term in a worse position than when he set out. This is because the reference to commercial arbitration only means that not only does the Act apply to commercial disputes only, it also gives the impression that only commercial disputes can

[5] Which means that each party reserves the right to withdraw from the mediation at any stage of the process.
[6] Cap A18, Laws of the Federation of Nigeria, 2004.
[7] *Ibid.*
[8] *Ibid*.

be the subject of arbitration. Not even the long title to the Act gives any guide to the exact meaning of the term.

According to Halsbury's Laws of England, "arbitration is the reference of a dispute or difference between not less than two parties for determination after hearing both sides in a judicial manner, by a person or persons other than a court of competent jurisdiction."9 Relying on the case of Collins v Collins,10 the Stroud's Judicial Dictionary defines arbitration as a reference to the decision of one or more persons, either with or without an umpire, of a particular matter in difference between the parties.11 On his part, Bernstein sees arbitration from the point of agreement. He is of the view that: When two or more persons agree that a dispute or potential dispute between them shall be decided in a legally binding way by one or more impartial persons in a judicial manner, that is, upon evidence before him or them, the agreement is called an arbitration agreement. When, after a dispute has arisen, it is put before such person or persons for decision, the procedure is called arbitration, and the decision when made is called an "award."12

The above, no doubt, encapsulates the true meaning of the term, "arbitration." Suffice it to say that arbitration is a mechanism for the resolution of disputes between two or more persons under which they agree to be bound by the decision to be given by a neutral third party (the arbitrator) according to law, or if so agreed, other consideration after a fair hearing, such a decision being enforceable in law. It is simply a private and judicial determination of a dispute by an independent third party. The arbitral tribunal may involve the use of one or more arbitrators appointed. There is no prescribed number of arbitrators. The number of the arbitrators for any proceeding is usually decided by the parties. It is however conventional to have one or three. The reason for three is to avoid a tie. Thus, where there is more than one arbitrator, it is better to use a tribunal made up of odd numbers.

Types of Arbitration

Arbitration can safely be categorized into four types namely- Domestic Arbitration; International Arbitration; Institutional Arbitration; and Ad hoc Arbitration.

Domestic Arbitration

Arbitration is domestic where the parties are resident or carry on business in the same country and the contract (subject matter of arbitration) is to be performed in the same country.

International Arbitration

This is arbitration between persons who have their places of business in different countries or where the subject matter of the arbitration agreement relate to more than one country or where the parties expressly agree that dispute arising from the commercial transaction between them shall be with as an international arbitration. Thus, where the parties are both resident in Nigeria but agree that any arbitration in respect of their disputes shall be done outside the country or according to foreign or international rules of arbitration, such arbitration qualifies as an international arbitration.

9 Halsbury"s Laws of England, 3rd Edition, vol. 2. See also Marshal, E. Gill: The Law of Arbitration, Sweet & Maxwell, London, 2001, 1.

10 28 L. J. Ch. 186.

11 3rd ed. vol. 1, p.180.

12 Bernstein, R. (ed.), The Handbook of Arbitration (London: Sweet and Maxwell, 1998) quoted by Dele Peters: Alternative Dispute Resolution in Nigeria (Lagos: Dee Sage Nigeria Ltd., 2004) p. 53.

Institutional Arbitration

In this kind of arbitration, the parties usually provide in their contract that at the event of a dispute, same shall be settled by arbitration to be carried out in accordance with the rules of a particular arbitration institution or agency. Such agencies include: the Regional Centre for Arbitration, Lagos; the International Chamber of Commerce (ICC), Paris; the London Court of International Arbitration (LC1A), Court of Arbitration, Lagos, etc.

Ad hoc Arbitration

This is a kind of arbitration which is entered into by the parties only after a dispute has arisen. In other words, in the contract between the parties, no reference is made to the arbitration rules of commercial arbitration of any arbitration agency or institution. The parties in this case usually set their own rules of procedure to fit the dispute between them.

Arbitration Agreements

By section 1(1) of the Arbitration and Conciliation Act, every arbitration agreement must be in writing. This requirement does not necessarily mean that the arbitration clause or agreement must be contained in the original contract or that there must be a special format for the arbitration agreement. While the agreement may be contained in a document signed by the parties as required by section 1(1) of the Act,13 it may also be contained in an exchange of letters, telex, fax and other electronic mail system.14 An arbitration clause usually runs thus: In the event of any dispute arising from this transaction, same shall be settled by a single arbitrator to be appointed by the parties, failing which same shall be appointed by the Lagos Chamber of Commerce. A simple one such as this may be the arbitration clause, "all disputes arising from this transaction to be settled by arbitration." This would equally be sufficient.

Commencement of Arbitration Proceedings

The practice and procedure in arbitral proceedings is as agreed to by the parties. The parties may in their agreement, decide which rule of procedure to adopt in the event of a dispute. It is only where the parties do not agree or do not specify in their agreement the rule of procedure that the provisions of the Arbitration and Conciliation Act would come into play. In other words, the provisions of the Arbitration and Conciliation Act are default provisions.

Notice of Arbitration

Generally, the party initiating the proceedings (the claimant) shall give to the other party (the respondent) a notice of arbitration. Once this notice is served on the respondent, arbitral proceedings are deemed to have commenced.15 The notice would normally contain the following information:

A demand that the dispute be referred to arbitration; The names and addresses of the parties; A reference to the arbitration clause or the separate arbitration agreement that is being invoked; A reference to the contract out of or in relation to which the dispute arose; The general nature of the claim and an indication of the amount involved, if any; The relief or remedy sought; and a proposal as to the number of arbitrators to be appointed where the parties have not previously agreed on the number. Unlike a mediator who merely helps the parties work out their own solution, an arbitrator does much more than that, in that he actually works out a solution for the parties and whatever he decides as the solution is final and "binding on the parties."

13 Arbitration and Conciliation Act.
14 Peters, D., *op cit* p.55.
15 Article 3(1) Arbitration Rules, contained in the First Schedule to the Arbitration and Conciliation Act.

Taking of Evidence

After the notice of arbitration has been given and the arbitration tribunal has been constituted, the arbitrator would take evidence from the parties. The evidence here, like in normal court proceedings, includes oral and documentary. A party would present his case and the other party would cross-examine and then open his own case, each calling as many witnesses as he considers necessary to convince the arbitrator.

Representation by Legal or other Adviser

A party to arbitration is entitled to be represented by a lawyer or any other professional who he considers to be in a position to present his case well. Like a court proceeding, the arbitrator may take arguments from parties or their legal representatives.

Award

At the end of the proceedings after taking evidence from the parties and possibly, arguments from the lawyers or other representatives, the arbitrator hands down his decision which is called an "award." This is the equivalent of a judgment in a court of law.

Arbitration is usually criticized as a mirror of litigation. Unlike in other mainstream ADR processes where parties have total control over the process and the outcome, in arbitration, the parties only have some control over the process but absolutely no control over the outcome. It is largely an adversarial process and to that extent, shares more characteristics with litigation than with any other process of dispute resolution. However, there are fundamental differences between arbitration and litigation.

Mini Trial

This is a form of evaluative mediation which is a non-binding process. What this process does is that it assists parties to obtain a better understanding of the issues in dispute and enable them enter into settlement negotiation on a more informal basis.16 Mini trial has also been described as a blended alternative dispute resolution procedure, which combines a formal legal advocacy procedure with elements of information management, negotiation, neutral facilitation and case evaluation.17The panel at the mini trial is mainly composed of top level executives and senior managers who are in a position to take decision as regards the dispute. For this reason, mini trial has been variously described as "Supervised Settlement Procedure" or "Executive Tribunal" or "Executive Appraisal".18

Olison is of the view that mini trial is particularly useful and effective because it returns the dispute to the businessmen educates them and then allows them to use their developed skills-risk assessment and negotiation to resolve the dispute.19 One unique feature of mini trial is that it changed the idea of traditional negotiation in which a party to a dispute with his counsel faces the other party and his counsel across the table. With mini trial, both parties or in the case of firms or corporate bodies, their chief executive decision makers sit on the same side of the table while the lawyers sit on the other side of the table. By this sitting arrangement, the parties, more or less, constitute executive tribunal and are set to listen to their lawyers" summarized or abbreviated version of the case and make an executive appraisal of the case.20

---

16 *Ibid.*

17 Mackie, K., Miles, D. and Marsh, W. Commercial Dispute Resolution, An ADR Practice Guide, Butterworth"s, London, 1995, p.137.

18 Peters, D., *op cit* p.126.

19 Olison, P., "Alternative for large case dispute resolution" (U.S.) 6 Litigation 22 (Winter, 1990).

20 Peters, op. *cit.* pp. 127-128. See also Brown & Marriott, A. ADR; Principles and practice (London: Sweet & Maxwell, 1993) p. 262.

In a mini trial, it is a usual practice to have a neutral third party preside and assist the parties in reaching agreement. After the presentation, the parties" representatives meet (with or without the neutral) to negotiate a settlement, unlike in mediation, at the request of the parties, the neutral may offer advisory opinion to facilitate discussions.

Rent a Judge

This dispute resolution process is more common in the United States of America where the legislature has also recognized the process. This is a process whereby the court, on request by the parties, can refer a pending suit to a private neutral party for trial with the same effect as though the case were tried in the courtroom before a judge. The decision arising out of the process may be appealed against through the regular court appellate system.21

Early Neutral Evaluation (ENE)

By this process of dispute resolution, the parties or their attorneys summarize the conflict for a neutral third party to give a non-binding opinion or the settlement value of the case and or a non-binding prediction of likely outcome if the case is adjudicated upon.22

In early neutral evaluation, usually (though, not always) after a lawsuit has been filed, and solicitors engaged, the lawyers for the parties will appoint another attorney (as evaluator) who has extensive experience in the area of law in dispute or who may be a retired judge to whom they present abbreviated legal arguments either on the particular question of law or on the case generally. The neutral evaluator prepares an opinion predicting how a judge would rule on a matter. When the evaluator's interpretation of the law raises doubts about the strength of one side's position, it can trigger new settlement offers.

Med-Arb

This is known as Mediation-Arbitration and is a two-step dispute resolution process involving both mediation and arbitration. This is actually an innovation in dispute resolution process. It is a hybrid process. It is a process whereby the third party called the med-arbiter, is authorized by the parties to serve, first, as a mediator, and then as an arbitrator. When the med-arbiter serves as an arbitrator, he is given further powers to resolve other issues not resolved during mediation. In med-arb, the neutral used is usually skilled in both mediation and arbitration process in order to guide the parties through the mediation process and then to sit over the arbitration process and hand down a binding decision. The final result in a mediation-arbitration combines the agreement reached from the mediation phase with the award in the arbitral phase.23 It must be noted that the confines or borders of ADR mechanisms are not exhaustive. There are other hybrid processes such as Neg-Lit, Med-Lit, etc.

Conclusion

We have been able to critically examine the basis of the multi-court house in Nigeria. It should be noted that in view of the unquantifiable advantages of the multi-door courthouse over regular court; brought its existence. Multi-door house however has many openings and comings. However, the only defect, I noticed in this multi-door courthouse is its enforcement. However, without mincing words, it is far better than other ADR mechanism.

---

21 Peters, D., *op cit* p.21.

22 Aina, K. in "ADR and the Relationship with Court Processes" being a paper presented at the NBA Annual General/Delegates Conference held at Abuja from 22nd to 27th August, 2004" quoting from http://www.multidoor.org.

23 Brown & Marriott *op cit*, p. 275.