The Role of Lawyers in Fostering Alternative Dispute Resolution in the Multi-Door Courthouse

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Abstract: *The concept of multi-door courthouse is rapidly gaining currency in Nigeria, having been recently introduced into the civil procedure rules of courts and even backed up by legislation. This work seeks to define the role of lawyers in fostering alternative dispute resolution in the multi-door courthouse against the background of the duties of lawyers in the civil justice system generally and in specific ADR processes. It underscores the prerequisites of commitment to professional ethics as well as continuing legal education and skills acquisition on the part of lawyers for them to effectively perform their role, which is unquestionably pivotal to the administration of justice via the multi-door courthouse.*

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Introduction

With the poor state of justice administration in Nigeria, there is a dire need for the adoption of mechanisms and practices that would help to reduce the judicial caseload and facilitate access to justice. Mainstreaming Alternative Dispute Resolution (ADR) mechanisms within the court system seems the most potent tool for achieving the desired goal. For over a decade now ADR has progressively been mainstreamed into the civil justice system in Nigeria in an effort to improve the pace of justice delivery. The authorities at both the national and state levels are reforming the processes for justice delivery through the concept of multi-door courthouse. Lawyers, as key actors in the administration of justice, cannot afford to stand aloof from this new initiative or merely pay lip service to it. Proceeding from a scholarly analysis of the pertinent concepts, this article explores the role of lawyers in ADR processes within the framework of the multi-door courthouse.

ADR in perspective

ADR generally refers to all processes of resolving dispute outside courtroom litigation. The prominent feature of ADR processes is that they draw their legitimacy and efficacy from

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the consensus of the parties, unlike litigation.[1] The main ADR processes include Negotiation, Mediation, Conciliation, Arbitration, Early Neutral Evaluation, Expert Appraisal and other hybrids.

There is a popular notion amongst lawyers in Nigeria that litigation is the principal process for dispute resolution and that ADR is *secondary* to litigation. Until recently, the training of lawyers in most jurisdictions focused largely on the skills for using litigation as a means of dispute resolution.[2] It is this limited training that has led to the wrong perception by lawyers about the nature and value of ADR in justice delivery. ADR processes are indeed the traditional and predominant means of resolving disputes. A proper evaluation of the nature and dynamics of conflicts reveals that ADR processes are useful *before*, *during* and sometimes even *after* litigation. Quite often, litigation results from breakdown of negotiation or mediation. Yet, while a case is pending in court, the parties can resolve their differences amicably by out-of-court settlement at any time before judgment. Even after judgment, the parties can still reach some form of settlement outside the terms of the judgment, although their negotiating powers at this stage cannot be the same as before the judgment.[3] If ADR mechanisms can be used to settle a case before, during or even after litigation, then the better view is to see ADR as being complementary rather than secondary or inferior to litigation.

In the effort to locate the proper place of ADR in the justice system it is important to always appreciate the fact that much of what lawyers regard as ADR is largely the formal packaging of processes that disputing parties use informally without placing any formal label on them. Essentially, ADR processes are no different from the same processes we use in our families and communities where some family members or elders intervene to help parties resolve issues in their relationships.[4]

1 As for arbitration, there is a rider to the effect that an arbitral award does not depend on the agreement of the parties for its binding force. However, the parties have to agree, in the first place, to resolve their dispute by arbitration: see s. 1, Arbitration and Conciliation Act (ACA), Cap. A18 Laws of the Federation of Nigeria 2004. By s. 31 (2) (b) ACA, one of the two documents that a party applying for the enforcement of an arbitral award must supply to the court is the original arbitration agreement or a duly certified copy thereof. See also *Commerce Assurance Ltd v. Alli* [1992] 3 NWLR (Pt. 232) 710 at 721-722.

2 The Nigerian Law School, which offers one-year compulsory vocational training to law graduates as a precondition for their enrolment as legal practitioners, now offers courses on ADR.

3 For example, in the notorious case of *United Bank for Africa Ltd v. Tejumola & Sons Ltd* [1988] 2 NWLR (Pt. 79) 662, the Supreme Court of Nigeria, after holding that the plaintiff/respondent had no legal or equitable remedy, still encouraged the parties to go for post-litigation ADR with a view to persuading the defendant/appellant to "absorb ex gratia some of the losses which the plaintiff had undoubtedly suffered in the transaction": per Agbaje, JSC, at p. 684; see also the dicta of Nnamani, JSC, at p. 691; Nnaemeka-Agu, JSC, at p. 702.

4 *T. O. Elias*, Traditional Forms of Public Participation in Social Defence, International Review of Criminal Policy 22 (1969), pp. 18 – 24; *Adedokun Adeyemi*, Towards Victim Remedies in Criminal Justice Administration in Nigeria, in: Cashiers De Defense Sociale: Bulletin of the International Society for Social Defence (1989), p. 31; *Akin Ibidapo-Obe*, Restorative Justice and Plea Bargaining

Another misconception about ADR is the notion that ADR is another set of judicial or quasi-judicial processes. The tendency by legal minds to try to rationalize ADR principles from the litigation and adversarial mindset is a major challenge to unlocking the huge potential of ADR in justice administration. Most ADR processes, in their true nature, are not sets of rigid legalistic options for dispute resolution. ADR processes are essentially multi-disciplinary tools for creative problem solving. Although ADR processes and practices are recognized and conducted within the framework of the law, their full potential cannot be achieved if stakeholders continue to apply them with the same litigation mindset. Accordingly, where non-lawyer neutrals resolve disputes by ADR, the proceedings and outcomes should not be assessed according to strict standards of technical legal principles and procedures.[5] ADR processes are essentially flexible, voluntary, and private. Their success depends more on the confidence of the parties in the processes and outcomes than adherence to rigid codes of procedure. By resorting to ADR processes, the parties look beyond the immediate issues on the table to their future relationship. They are more concerned about restructuring their future relationship in a way that would meet the expectations of both parties than passing judgment on past conduct.

The concept of multi-door courthouse

A multi-door courthouse is a court of law in which facilities for ADR are provided. It is the formal integration of ADR into the court system. Thus, rather than having a court system with litigation as the only avenue for dispute resolution, the multi-door courthouse offers disputants the choice of other dispute resolution processes that may be appropriate for the particular case. In Nigeria, the term "multi-door courthouse" is used generally to refer to the ADR department or section within the High Court. Most court-connected ADR facilities presently established in Nigeria are called "Multi-Door Courthouse".[6] This is a very narrow meaning of the terminology.

In the broad context, multi-door courthouse is a concept that underscores the effective mainstreaming of ADR into the court system as a means of promoting access to justice whilst equally reducing courtroom tension.[7] It is important to note that multi-door courthouse is a concept, and not essentially the building or department where ADR services are

Practices: A Tilt Towards Customary Criminal Justice, in: K. N. Nwosu (ed.), Dispute Resolution in the Palace - Legal Principles and Rules (Ibadan, 2010), pp. 203 – 233.

5 Nigerian courts sometimes prescribe conflicting tests and conditions for the validity of customary arbitration: see, e.g., *Owonyin vs. Omotosho* [1961] 1 All NLR 304; *Agu vs. Ikewuibe* [1991] 3 NWLR (Pt. 180) 385; *Nwuka vs. Nweche* [1993] 5 NWLR (Pt. 293) 295; *Adeyeri vs. Atanda* [1995] 5 SCNJ 157.

6 The ball was set rolling with the establishment of the Lagos Multi-Door Courthouse in 2002, followed swiftly by the Abuja Multi-Door Courthouse established in 2003; thereafter other States followed suit.

7 See *L. O. C. Chukwu*, Managing Landlord and Tenant Relationship: The ADR Option, Nigerian Law and Practice Journal 61 (2008), p. 78.

provided within the court premises. It is the official recognition and availability of ADR processes as part of the justice delivery system in a particular jurisdiction. Once ADR is integrated into the court system with trained personnel to facilitate it, a multi-door courthouse exists, even though no building is tagged "multi-door courthouse".

The concept which has come to be known as multi-door courthouse was first propounded by Professor Frank Sander of the Harvard Law School in his seminal paper presented at The Pound Conference in 1976.[8] Professor Sander conceived of a court system that offers disputants "flexible and diverse panoply of dispute resolution processes" beyond the traditional adjudicatory process. As a means of decongesting the courts and ensuring greater efficiency of the judicial system, he suggested that, instead of allowing every case to go through judicial adjudication, litigants should be made to first meet skilled court officials who would evaluate their disputes and determine the optimal process or combination of processes for their resolution, having regard to the nature of each dispute, amount in dispute, relationship between the disputants, and so on. As Professor Sander adumbrated then, "one might envision by the year 2000 not simply a court house but a Dispute Resolution Centre, where the grievant would first be channelled through a screening clerk who would then direct him to the process (or sequence of processes) most appropriate to his type of case".[9] It is gratifying to note that that vision has come to pass in the United States even before the forecast date, and has since spread like wild fire to other jurisdictions.[10]

The concept of multi-door courthouse is rapidly gaining currency in Nigeria. Section 254 (C) (3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) empowers the National Industrial Court to establish an ADR Centre within the court premises on matters within its jurisdiction. Lagos State has even backed it up with legislation – Lagos Multi-Door Courthouse Law 2007.[11] Such legislation with embedded provisions foisting the ADR option upon disputants seems to give the lie to the voluntariness that has been at the heart of ADR processes. Nevertheless, the fact that this novel process is conducted

8 *Frank Sander*, Varieties of Dispute Processing, in: A. Leo Levin and Russel R. Wheeler (eds.), The Pound Conference: Perspectives on Justice in the Future, Proceedings of the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice, St. Paul, Minnesota, 1979.

9 *Ibid.*, p. 84.

10 For a survey of the developments in various jurisdictions, see, e.g*., Louise Phipps Senft & Cynthia A. Savage*, ADR in the Courts: Progress, Problems, and Possibilities, Penn. State Law Review 108 (2003), pp. 327, 329; *Tania Sourdin*, Alternative Dispute Resolution and the Courts, Law in Context 22 (2004); *Cresswell, J*., Practice Statement (Commercial Cases: Alternative Dispute Resolution) (1994) 1 WLR 14; *Waller, J*., Practice Statement (Commercial Cases: Alternative Dispute Resolution) No. 2 (1996) 1 WLR 1024-1026.

11 So, also, the Lagos State Mortgage and Property Law 2010, s. 27 provides that the court may, with the consent of the parties, refer the issues for determination in a proceeding before it relating to mortgage transaction to the Lagos State Mortgage Board for mediation or arbitration. In other States, the relevant provision is to be found in the High Court Rules, see, e.g., Or. 17, High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2004. Similarly, Or. 16, Court of Appeal Rules 2011 makes provision for ADR in civil appeals.

under the auspices of the court saves it from the criticism which might be expressed with regard to private ADR processes (especially arbitration), namely that they impinge upon the fundamental rights of aggrieved persons as enshrined in section 36 of the constitution. For, as that section stipulates, "In the determination of his civil rights and obligations ... a person shall be entitled to a fair hearing ... by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality".[12] It goes further to state that the proceedings of such a court or tribunal "shall be held in public".[13] It is important to note, however, that the multi-door courthouse neither denies a grievant his constitutional right to insist on judicial adjudication nor does it preclude *ad hoc* ADR practice, that is, one which is not court-connected. Even in jurisdictions where ADR has been institutionalized through the multi-door courthouse, a substantial number of cases are still being resolved through private ADR arrangements. In any case, the private ADR centres can be integrated as part of the multi-door courthouse under an arrangement where cases settled at the private centres would be followed with judicial imprimatur.

There are two main ways of taking cases to the multi-door courthouse. One method is *walk-in* cases, where the parties directly approach the multi-door courthouse to resolve their cases without first filing a suit in court. The other method is through *referrals*, where a case already filed in court as litigation can be referred to the multi-door courthouse by a judge or magistrate. It is noteworthy that the provision for pre-trial conference in most of the current civil procedure rules in Nigeria has as one of its objectives the facilitation of referral of cases to ADR processes, where appropriate. Nevertheless, we see no merit in the view expressed by one learned writer[14] that "courts have inherent powers to *order*[15] litigants to explore the option of out-of-court settlement where the circumstances permit". Indeed, such a proposition strikes at the heart of the fundamental principle of party autonomy which is the hallmark of the adversarial system of litigation such as is practised in Nigeria and other common law jurisdictions. Under this system, a judge has no inherent power to impose his views or preferences upon the parties, or to compel the parties to withdraw the case already brought before him for out-of-court settlement. The choice of how to conduct their case and whether or not to withdraw it from court is the prerogative of the parties themselves; the judge has no power to bludgeon them to follow his line. And what is more, such a position would be tantamount to a flagrant disregard of the above-quoted provision of section 36 (1) of the 1999 Constitution.

12 Sub-section (1). This constitutional provision tends to lend credence to the popular notion that ADR is inferior to litigation.

13 Sub-section (3).

14 *I. B. Okafor*, Prospects and Problems of Access to Justice through the Multi-Door Court House, ABUAD Law Journal 1 (2014), p. 47.

15 Emphasis added.

General duty of a lawyer to foster ADR

Rule 15 (3) (d) of the Rules of Professional Conduct for Legal Practitioners 2007 makes it mandatory for a lawyer to advise his client on ADR. The rule provides that in his representation of his client a lawyer must not fail to inform his client about the option of alternative dispute resolution before resorting to or during litigation. The implication of this rule is that every lawyer has a professional duty to discuss the appropriateness or otherwise of the use of ADR with the client. This rule is mandatory and non-compliance by a lawyer can lead to an indictment for professional misconduct. Indeed, Rule 55 (1) of the same Rules provides that breach of any of the rules (including Rule 15 (3) (d)) is a professional misconduct for which a lawyer may be punished as provided under the Legal Practitioners Act.[16] The upshot of these provisions is that from the moment a lawyer receives a brief until the final disposal of the matter, he has a continuous responsibility to advise his client on the desirability of ADR.

Role of a lawyer in specific ADR processes

A lawyer's role in ADR processes depends on the process adopted in a particular case. For present purposes, we shall deal with the five well-known variants of ADR, namely Early Neutral Evaluation, Expert Appraisal, Negotiation, Mediation/Conciliation, and Arbitration.

Early Neutral Evaluation

In the initial attempt to resolve their differences, parties may seek the guidance or opinion of a neutral third party. In adopting the early neutral evaluation, parties agree to state the facts of their matter to a third party whom they authorize to review the case and suggest viable options for its resolution. A lawyer may advise his client on the desirability of referring the matter to a neutral. A lawyer may also play the role of a neutral in this process and such a lawyer will ordinarily not be counsel to any of the parties to the dispute.

Expert Appraisal

Parties may submit their dispute to a neutral expert for a review and suggestion on options for settlement. The expert may be required to merely give his opinion or the parties may agree that the expert's decision shall be binding. In the latter situation, the process is sometimes called Expert Determination. The expert in this process can be a lawyer who is required to give a legal opinion as to the rights of the parties or the likely outcome of the case should the parties proceed to litigation. Again, a lawyer representing any of the parties to the dispute cannot be the neutral for the purpose of an expert appraisal or determination.

16 Cap. L11, Laws of the Federation of Nigeria 2004.

Without acting as the neutral, a lawyer's role may consist merely in advising his client on the usefulness of referring the case to an expert for an appraisal.

Negotiation

Negotiation involves direct discussions or communication between the parties with a view to resolving their differences. In most cases, parties to a conflict would first explore the chances of resolving the dispute by themselves through direct negotiation. Negotiation may be adversarial (win-lose negotiation) or collaborative (win-win negotiation).[17] Negotiation may fail because the parties lack the skills to search for creative options for resolving their dispute. Lawyers regularly negotiate on behalf of their clients.[18] The major role of a lawyer in negotiation includes:

- To advise the client on the desirability or otherwise of negotiation in the particular case.
- To help the client explore the underlying interest in the case before the commencement of negotiation.
- To negotiate on behalf of the client.
- To guide the client on the Best Alternative To Negotiated Agreement (BATNA). That means helping the client to decide when to agree and when to walk away from the negotiation and explore other options.
- To help the client review any proposed terms of agreement to ensure that they meet the best interest of the client, and that there is no legal impediment to their performance.
- To draft, peruse and vet the final agreement, where appropriate.
- To advise the client on any issues that may arise in the course of implementation of the agreement and, where necessary, to renegotiate.

Mediation/Conciliation

Sometimes, it is difficult for the parties involved in a dispute to negotiate constructively in a direct attempt at resolving their differences. Where the parties in dispute negotiate by themselves, their emotional attachment to their respective positions in the matter may hamper their ability to jointly search for a common ground for the settlement of their dispute. Also, lack of effective negotiation skills may limit the capacity of the parties to resolve their differences by direct negotiation. Mediation usually helps to overcome these problems. Mediation is a process in which an impartial third party intervenes to facilitate the resolution of a dispute by the agreement of the parties. Basically, the mediator facilitates

17 See *C. Epie*, Alternative Dispute Resolution: Understanding the Problem-Solving (Win-Win) Approach in Negotiations, Negotiation & Dispute Resolution Journal 1(2004), p. 71.

18 Negotiation is such an important aspect of the office of a lawyer that the Legal Practitioners (Remuneration for Legal Documentation and other Land Matters) Order 1991, made under s. 15 (3) of the Legal Practitioners Act, has specific provisions for legal practitioners' negotiation fees in respect of land transactions.

agreement by improving the quality of communication between the parties in their negotiations. A good mediator is one who promotes understanding, focuses the parties on their interests and uses creative problem-solving techniques to assist them to reach an agreement. He does not decide or even suggest an outcome for the parties, nor does he render an opinion on the matter.

Conciliation is also a process whereby a third party intervenes to assist the parties to resolve their dispute. To a large extent, conciliation shares the same characteristics as mediation, and in many jurisdictions both terms are used interchangeably. Some authorities, however, distinguish mediation from conciliation by emphasizing the point that a conciliator may, if necessary, deliver his opinion as to the merits of the dispute.[19] As one learned writer[20] notes, a conciliator "would draw up and propose the terms of an agreement designed to represent what is, in his view, a fair compromise of a dispute after having discussed the case with the parties." From another perspective, it has been said that "in some settings conciliation refers to the more unstructured process of facilitating communication between the parties, while mediation is reserved for a more formal process of meeting first with both parties and then with each of them separately, etc".[21] Be that as it may, it is pertinent to note that the Arbitration and Conciliation Act makes provision for conciliation,[22] but not for mediation.

Because mediation and conciliation are essentially a continuation of negotiation (they are sometimes referred to as "assisted negotiation"), the roles of a lawyer in mediation or conciliation are essentially the same as in negotiation; hence they need not be repeated.

Arbitration

Arbitration is the private judicial determination of a dispute by an independent third party, who may be either a sole arbitrator or a tribunal composed of a number of arbitrators.[23] In general,[24] arbitration is founded upon a consensual or voluntary arrangement between the parties. In arbitration, the parties surrender their decision-making powers to the arbitrator(s) but retain control over the process. The Arbitration and Conciliation Act regulates arbitration practice and procedure for commercial disputes in Nigeria. The decision of an arbitral

19 See, e.g., the *Glossary of ADR Terms* published by the Academy of Experts, London in www.academy-experts.org, republished in Negotiation & Dispute Resolution Journal 1 (2004), pp. 119 – 122; *Chukwu,* note 7, pp. 76 – 77.

20 *G. C. Nwakoby*, The Law and Practice of Commercial Arbitration in Nigeria, Enugu, 2014, p. 8, citing *Alan Redfern & Martin Hunter*, Law and Practice of International Arbitration, London 2004, p. 27.

21 Sander, note 8, p. 69.

22 See ACA, Part II and Schedule 3.

23 For an apt articulation of the various definitions of arbitration from the statutory, judicial, and scholarly perspectives, see Nwakoby, note 20, pp. 3 – 5.

24 For statutorily imposed arbitration, see, e.g., Trade Disputes Act, Cap. T8, Laws of the Federation of Nigeria 2004; Investments and Securities Act 2007.

tribunal is ordinarily final and binding,[25] and may be enforced like a court judgment.[26] In a commercial arbitration, an award may be set aside by the court only on statutorily prescribed grounds,[27] and only where the circumstances are compelling.[28] The major roles of a lawyer in arbitration include:

- To advise the client on the nature and usefulness of arbitration in the resolution of particular disputes.
- To draft, peruse and advise the client on the arbitration clause or agreement to arbitrate.
- To guide the client on when a matter is due for arbitration and take the preliminary steps towards the commencement of the arbitration.
- To guide the client in the choice of arbitrator(s).
- To represent the client as counsel in the arbitration and present the client's case to the arbitrator(s).
- To advise the client on the possibility of settling the dispute by negotiation or mediation and eventual termination of the arbitral proceedings.
- To advise the client on the execution of the arbitration award or challenge of the award, as may be appropriate.

Lawyer's role in the multi-door courthouse

As stated earlier, the multi-door courthouse is a court system where ADR services and facilities are provided. The multi-door courthouse is not another form of ADR; rather it is a concept that underscores the application of some forms of ADR as part of the menu of judicial services offered to disputants. Within the multi-door courthouse, the ADR processes employed are the same as in non-court-connected ADR. In addition to the role of a lawyer in specific ADR processes, as highlighted above, the general role of a lawyer in the multi-door courthouse is to explain to the client the workings of the system and guide him on how to maximize the benefits of using the multi-door courthouse framework in the resolution of disputes. Lawyers have a duty to assist in the attainment of the overarching objectives of the multi-door courthouse and, therefore, should do all in their professional capacity to facilitate and not hinder recourse to ADR within the multi-door courthouse. With proper

25 See s. 7 (4) and s. 34, ACA. But see *Ogunwale v. Syrian Arab Republic* (2001) 24 WRN 94, where Chukwuma-Eneh, JCA, (as he then was) stated thus: "…without going flat out to declare the provisions of sections 7 (4) and 34 [ACA] unconstitutional, it is enough to say here that they cannot override the clear right of appeal conferred on the appellant by section 241 (1) of the 1999 Constitution".

26 See s. 31, ACA. See also *Amazu A. Asouzu*, Arbitration and Judicial Powers in Nigeria, Journal of International Arbitration *18* (2001), pp. 633. However, s. 32, ACA provides that any of the parties to an arbitration agreement may request the court to refuse recognition or enforcement of the award.

27 See s. 29 (2) and s. 30 (1), ACA.

28 *Foli v. Akese* [1930] 1 WACA 1; *African Reinsurance Corporation v. Aim Consultants Ltd* [2004] 12 CLRN 107.

skills in ADR, lawyers can use the walk-in option at the multi-door courthouse to facilitate quick and satisfactory resolution of their clients' matters.

With particular reference to Lagos State, section 17 of the Lagos Multi-Door Courthouse Law 2007 provides as follows:

(1) The responsibility of Counsel in regard to ADR is to the Court, the LMDC and the Legal Profession in promoting a better and more efficient justice delivery system.
(2) Counsel has a duty to expose clients to alternative methods of dispute resolution and explore with them the most appropriate mechanism in the resolution of matters brought before them;
(3) Counsel shall:
    a. give due consideration and support to suggestions, orders and directives from the courts for an amicable settlement or the referral of on-going matters to the LMDC;
    b. give regard and ensure clients accord respect to notices, invitations and directives from The LMDC; and
    c. further the cause of ADR and give effect to the overriding objectives of The LMDC.

Lawyer as a third-party neutral

Third-party neutrals are principal actors in most ADR processes. Neutrals assist disputing parties in mediation, conciliation, and arbitration as mediators, conciliators, and arbitrators, respectively. Neutrals also facilitate dispute resolution in early neutral evaluation; expert appraisal and other hybrid processes. A third-party neutral is essentially an independent and impartial person who assists the parties to a dispute in arriving at a settlement or a decision.

Mediators and conciliators are third-party neutrals who assist parties in dispute to negotiate in the process of resolving their dispute. As already noted, a mediator (especially in a facilitative mediation) does not give a decision or suggest to the parties what the outcome should be, but a conciliator may suggest a solution. Parties to a dispute may appoint any person as a mediator or conciliator. Where a lawyer represents one of the disputants in mediation or conciliation, he is *not* the mediator or conciliator, but counsel to his client.

An arbitrator is a third party appointed by the parties in arbitration to hear the case and give a binding decision. An arbitrator is empowered by the parties to take control of the case and lead the parties to an outcome that is binding. Sometimes the parties may delegate the power to appoint the arbitrator(s) to some third party. Most issues regarding the powers, practice and procedure in arbitration are subject to agreement by the parties. A lawyer who represents a client in arbitration is *not* the arbitrator in such a case, but counsel to one of the parties in dispute.

Increasingly, as part of the current wave of ADR popularity in Nigeria, lawyers are being trained as mediators, conciliators and arbitrators with many joining some of the grow-

ing number of private ADR groups.[29] While this is a welcome development, it is important to emphasize that lawyers have a professional duty to provide ADR services to their clients primarily in their capacity as legal practitioners and not necessarily as mediators, arbitrators or other third-party neutrals. Accordingly, belonging to any group of mediators or arbitrators is not and should not be a prerequisite for a lawyer to provide ADR services or represent a client in any ADR process. While not discouraging lawyers from joining any of the ADR groups, what is important for them as professionals is to ensure that they acquire the requisite skills and expertise to handle ADR processes. A lawyer acting as counsel to a client in an ADR process does not play the same role as a lawyer who has been appointed as a third-party neutral by the parties to the dispute. Ideally, once a lawyer represents any of the parties to a dispute as counsel, he cannot be a third-party neutral in the same matter.

Lawyer's remuneration in relation to ADR

One of the greatest challenges to the efforts at mainstreaming ADR in justice delivery in Nigeria is the prevalent (but largely unfounded) fear by lawyers that a large-scale practice of ADR will diminish their incomes. Because of the influence legal practitioners command over their clients' choice of options for dispute resolution, it is important to critically address this issue in an effort to promote the deployment of ADR processes in the justice delivery system.

The fear by Nigerian lawyers about loss of income with the adoption of ADR is borne more out of shallow understanding of the nature and dynamics of ADR processes than any reality. Recourse to ADR does not necessarily result in diminution in lawyers' revenue. Clients prefer to pay lawyers for litigation only because over time the impression has been created in their minds that consulting a lawyer over a case only becomes necessary when the case is mature for an adversarial contest (litigation). Where the public believe that lawyers only help their clients to 'fight' their opponents in court, it becomes pretty difficult for clients to appreciate the value-added services of a lawyer where a case is settled by other means. This misconception, and not the nature of ADR, is the major problem lawyers have to deal with in order to expand their revenue base in an ADR regime in civil justice system.

As a professional body, the Bar must make a concerted effort to re-create the mindset of the public about the role of lawyers. Clients should be enlightened to begin to see a lawyer as a multi-talented creative problem solver with a diverse set of tools for dispute resolution. This is the approach that will expand the revenue base of lawyers in ADR within the framework of the multi-door courthouse. When lawyers get their clients to appreciate the value of ADR processes, they will be adequately remunerated for ADR services.

29 E.g., Chartered Institute of Arbitrators; Institute of Chartered Mediators and Conciliators of Nigeria; etc.

It is perhaps pertinent to reiterate that Nigerian lawyers now have a professional duty to advise their clients on the need to explore the ADR option in resolving their disputes. Interestingly, the Rules of Professional Conduct for Legal Practitioners, apart from enjoining lawyers to mainstream ADR in their practice, also state that the remuneration and fees of a legal practitioner shall be for *"*his service to the client".[30] Nothing in the Rules restricts the fees of a legal practitioner to litigation. However, there is often a conflict of interests between counsel, who may be inclined to go through a drawn-out trial in expectation of higher income, and his client who, desires a quick and expeditious resolution of the case whereby his costs would be reduced. Again, it has to be acknowledged that increased recourse to ADR has adverse economic implication for the legal profession in that some of the ADR devices could be handled by non-lawyers. Nevertheless, a lawyer must always bear in mind that he has a professional duty to "act in a manner consistent with the best interests of the client".[31] It is unethical for counsel to allow his economic interest to override his duty to advise his client to resort to ADR in an appropriate case. On the client's part, he should appreciate that a lawyer who assists him to gain expeditious, cost-effective access to justice through ADR deserves a better reward than the one who suffers his case to drag on endlessly in court.

Moreover, let it not be lost upon lawyers that many litigants in Nigeria are so poor that they can hardly afford a costly legal retainer. This socioeconomic reality, more than any other consideration, sometimes renders it more expedient for disputants to go for short-cut settlement of their disputes through ADR mechanisms. It is, therefore, imperative that lawyers should consider the economic circumstances of their clients as a major factor in deciding how to conduct dispute resolution.

Conclusion

From the foregoing, it can be seen that lawyers' role in the practice of ADR in the multi-door courthouse is pivotal. In order to realize the full potential of ADR in the multi-door courthouse, there is need for a comprehensive, systematic and structured programme of training, re-orientation, and capacity building for lawyers. It is pertinent to re-emphasize that the knowledge and skills required for success in courtroom advocacy are essentially distinct from the credentials required for effective practice of ADR. Beyond the current trend of merely donning the toga of arbitrators, mediators, conciliators, and the like, lawyers should first master the intricacies of ADR processes, and then be capable of deploying such processes as may be appropriate in particular cases. Besides, in view of the non-binding character of most ADR processes, the implementation of the agreement reached in any case depends on the collective will of the parties (except where such an agreement has been endorsed as court judgment). If any party refuses to abide by such

30 Rule 48 (1), Rules of Professional Conduct for Legal Practitioners 2007.

31 Rule 14 (1), Rules of Professional Conduct for Legal Practitioners 2007.

agreement, the parties are back to square one. This is where the lawyer's commitment to professional ethics becomes paramount. Lawyers engaged in ADR in the multi-door courthouse have a sacred duty, as ministers in the temple of justice, to dragoon their clients into implementing the outcome.