UNIJERPS

Unizik Journal of Educational Research and Policy Studies VOL.18 (3);
July-December, 2024 https://unijerps.org
2023 Impact Factor: **6.834;** 2022 ***Impact Factor***: 5.156; ***2021 Impact Factor: 5.641;***
2020 Impact Factor: 5.355. *Indexing and Impact Factor URL: http://sjifactor.com/passport.php?id=21363*

COMPARATIVE ANALYSIS BETWEEN THE UNITED STATES OF AMERICA (USA) AND NIGERIA IN RESOLUTION OF CORPORATE DISPUTE

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ABSTRACT

Conflict is defined in ordinary parlance to mean inability to agree on a particular issue or position between two or more persons. It is found everywhere. It is part and parcel of human existence. What causes conflict in any given situation varies amongst individuals or corporate organizations. The objective of this study is not necessarily to dwell into details on what causes conflict in corporate organizations. The research is primarily aimed at finding a more flexible and better approach to resolution of corporate disputes in Nigeria. This required doing a comparative study of corporate dispute resolution practices in Nigeria with that of the United States America, whose model is essentially the Alternative Dispute Resolution models. This approach to resolution of corporate disputes took a radical departure from the old method whereby workers drag corporate disputes between themselves and corporate organisations to court for settlement. Even though there are local framework for peaceful resolution of trade corporate disputes in Nigeria, coupled with the recent innovations to fastrack justice administration, (such as the establishment of the National Industrial Courts, the new civil procedure rules, the establishment of the multi-door-court houses, the use of technology? and time line given to judges to dispense with matters expeditiottsly) it has not solve the problem of achieving, a very effective quick and vibrant justice delivery m Nigeria In the 2015 Judges conference that was held in Abuja the Vice President of the Federal Republic of Nigeria Professor Yewi Osinbajo stated quite emphatically that the Nigerian legal process is extremely slow in resolutions of disputes and needs to be over-hauled very urgently. In the United States of America, the scenario is different. They have what is called the Public Resources Act which prevents corporate bodies from resorting to litigation to resolve corporate disputes without first exhausting one of fee several Alternative Dispute Resolutions methods that is peculiar to a particular dispute. This is not the case with Nigeria. Today MTN and National Communication Commission are locked up in a titanic legal battle over the payment of fines and a single cowl order could jeopardize the operations of the company. The economic and social consequences of such act can only he imagined, in the face of the prevailing economic recession the need to adopt the American method in resolution of corporate disputes became the gravamen of this research. The ADR method as it is popularly called involves different techniques of resolving disputes. It could be by way of

arbitration or conciliation, mediation or negotiation or other methods as the case may be. In this study, most of these processes were examined including litigation. Their workings and challenges in resolution of corporate disputes in the United States and Nigeria, was equally examined. By so doing, it was discovered that the American model and templates is simplier, faster and better and was therefore recommended. The research methodology involved in the research was the doctrinal and soda-legal approach The scope is a comparative study of the corporate disputes resolution processes in the United States and Nigeria with occasional reference to the UK This was done without prejudice to the fact that not all disputes are resolved through ADR methods in general.

Keywords: Comparative Analysis; Resolution; Corporate Dispute

Introduction

In the most fundamental sense, the primary purpose of setting up a company is to make profit. Conventional economics allude to this fact. The ideological function of this conception is that profit making takes primacy over all other factors of production to ensure its existence. In capitalist economy, the evidence stares every onlooker as a company which cannot make profit goes bankrupt.

In the course of carrying out this task, the human element which is conflict, comes into play The delicate issue of managing conflict hi corporate organizations and sustaining the primary motive of making profit to keep the company afloat becomes the gravamen of this thesis. Put differently, companies, being an integral part of the human society are receptive to the vagaries and shocks that exist in that society. Whether it is in the area of living up to its corporate social responsibilities, or holistic approach to solving management challenges, in-integrating itself to achieve the Millennium Development goals, conflict is bound to occur. The hidden assumption among corporate managers is that conflict resolution need not run very deep so as to derail the true essence of its establishment. That conflict can be managed by the exercise of reason and goodwill and a readiness to compromise through constant bargaining and accommodation on the basis of accepted procedures remains sacrosanct, in the mindset of managers.[1]

These challenges, facing the administration of justice in Nigeria have increased regardless of increase in financial allocations, to the judiciary.

Such challenges which includes obtaining trial dates on time and ensuring that trial commences properly and dispassionately has always been very difficult to achieve, resulting in prolonged trials and denial of justice. When justice is denied, litigants and the society in general tend to lose

[1] Dele, P.: What is ADR? Monograph, Lagos, (Dee-Sege Nig. Ltd, 2005) 1

confidence in the judiciary. This may degenerate into anarchy which may not augur well for the socio-economic and political stability of the society.[2] Law always lacks behind social development. The gulf between legal development on the one and socio-economic development on the other hand can be abridged more quickly and perhaps more effectively by the judiciary rather than the legislature.

Again, foreign investors who are always interested in having quick returns on their investment will not be encouraged to invest in a society where its judicial process is slow and denial of justice imminent. This slur is the bane of the adversarial system of justice deliver, in Nigeria which was inherited from the British system of justice administration. For corporate organisations, this process of dispute resolution was a clog in the wheel of their dispute resolution process because what corporate managers dreaded most was litigation in resolution of corporate disputes. The philosophy of corporate managers is that disputes must at all times material be resolved amicably, without going through the rigorous process of litigation with its attendant technicalities.[3]

In other words, it is in the interest of stakeholders in corporate establishments to employ dispute resolution procedures that will build mutual trusts between disputants such that whichever way a decision goes, disputing parties must accept such a decision without bitterness or rancour. This is what litigation could not offer most corporate establishment and the search for a viable alternative dispute resolution mechanism became imminent Since litigation processes in Nigeria is prolonged as a result of several technical inadequacies already mentioned, the entire process delayed justice and justice delayed is justice denied.[4]

It is a well known fact that globalisation has made the world a global village and that out world is constantly changing and responding to the needs of the present. What is perhaps news is the pace at which such changes are taking place[5]. Techniques and methods which were hitherto accepted as plausible ways of doing things are no longer acceptable its efforts are now being made to introduce better options. These changes are very much noticeable in the field of Medicine, Engineering, Law, Technology and Administration. It is an era of scientific and technological breakthrough which no individual or corporate body can afford to ignore.

The Alternative Dispute Resolution. (ADR) mechanism is one of the currents of this fast train and it has visible bearing in the administration of justice in general with huge success rate in corporate organisations. This

[2] Ibid
[3] Ekwenze, S.A.M.; Judicial Intervention in Nigeria Arbitration-Practice, Enugu (Snaap Publishers, 2011)2
[4] Williams, E.G.; British Prime Minister (1809-1898). Speech titled. Justice delayed is Justice Denied made while addressing parliament as Queen Victoria's Prime Minister in England
[5] Ibid

inclination relatively made it instructive for lawyers in Nigeria to always abide by Rule 15(3)[6] of the rules of Professional Conduct for Legal Practitioners in Nigeria 2007, which provided niter alia that:

In his representation of his client, a lawyer shall not fail or neglect to inform his client of the options of Alternative Dispute Resolution mechanism that is available to him before resorting to litigation.

This position gave credence to the opinion of the Green Paper[7] on the overview concept of ADR in corporate establishment. It stated among other things that:

The specific advantage of these forms of private justice and the crisis affecting the effectiveness of justice have led to renewed interest in this methods of dispute resolution which are more useful than recourse to litigation.

In a similar vein, Menkel Meadow, drove home this point when she observed one can create a pyramid of possible ways in which disputes are handled the size and scope of the pyramid differs from culture to culture or legal system as the system treats all conflicts the same. Nonetheless, they must have developed hierarchical system for -baling with conflicts and disputes.

This new method has stimulated new areas for International regulations and other innovative methods of rules and law making thereby compelling scholars to consider how supra-national policy and laws are made and should be made in relation to resolution of Corporate disputes. It therefore became relatively obvious that the application of ADR in corporate organisation has produced not only flexibility but now a widely acceptable method in conflict resolution It is now being regarded as conflict resolution of choice in dispute resolution and incorporated into most organisations' corporate agreement. It is quite instructive to state that scholar's sudden interest in globalisation of economic systems, the proliferation of free variables for economic partners to resolve disputes in a cost effective inanner have made ADR a viable tool in the 21st Century International trade.[8] It is so because a discernible entrepreneur who is out to make profit and at the same time guard against measures that will hinder smooth flow of his business (though corporate disputes) will resort to the ADR to effectively nip corporate disputes in the bud Accepting this fact Chukwumereije[9] observed that:

Advocates within the business communities believe that arbitration is preferable over litigation because arbitration is thought to be informal, faster,

[6] Rules of Professional Conduct for Legal Practitioners in Nigeria by Council of Legal Education -2007

[7] Green Paper op. Cit, 6 cited in Erugo. Sam's paper on, The Role of the Lawyer as a Problem Solver

[8] Menkel Meadow. Love and Sceieder Mediation practice, Policy and Ethics: (New York 2006) 11 as cited by Erugu Sams, in his paper on the Nigeria lawyer as a problem solver. Advising Mediation

[9] Chukwumereije. O.; Review Essay on Choice of Law in International Commercial Arbitntiion (London. 1494) 219

less costly, equitable way to unfavourable publicity, relatively conciliatory, absorbs less management time, importantly arbitration is seen as providing the best chance to save the underlying relationship.

Chukwuniereije's postulation vividly captures the very essence of the thesis. Although emphasis was made on arbitration, the very ideals it projected represented in no small ensures the totality of the argument in modern dispute management in Corporate Organizations.

Therefore this inquest for a new direction flows from a paradigm shift that has crystallised over the years in the United States of America into a visitor to create an enabling environment for the use of another concept that is flexible, adaptable, fast and produces a win-win solution.

When this principle is applied in Nigeria, it will encourage and enhance economic corporate principles and standards with a view to harmonising these regulatory instruments within the polity and equip them for advanced global competition in areas of corporate conflict resolution.

This then made the thesis quite instructive. The article shall therefore examine and juxtapose the concept of litigation and ADR in handling corporate disputes in the United States of America and Nigeria. It shall also include examining all the concepts, their shortcomings and advantages in management of corporate disputes.

Lessons For Nigeria In The Growing Use Of ADR In Resolution of Corporate Disputes In The United States of America

Current Nigerian Position On:

1. Adjudication

With democracy subsisting, Nigerians are increasingly becoming more assertive of their rights, particularly the type that is based on the rule-of natural justice or fair hearing, when confronted by an administrative action. The rule of natural justice, which is a common law doctrine, substantially equates with the provision of section 36(1) of the 1999 constitution on fair hearing. This rule was observed by God in determining the fate of Adam and Eve, before sending them away from the Garden of Eden. But with the expansion of administrative prerogatives, the rule increasingly suffers violence in the hands of administrative authorities exercising quasi-judicial powers.

The recent decision of a Federal High Court curtailing the powers of the Federal Road Safety Corps (FRSC) to impose tine one a motorist is to establish the limit of adjudicatory powers of an administrative authority. With the 1999 constitution providing tor separation of powers between the legislature, the executive and the judiciary in sections 4. 5 and 6 respectively. there are limits to the cross-pollination of powers. So, when an administrative body. like the FRSC, exercises a quasi-judicial function, it can only successfully do so, if expressly it ha-the powers to act as such; and in exercising such delegated powers, it also acts in accordance with section 36(1),

on fair hearing. It is important therefore to note that when a person, persons or bodies, exercises a quasi-judicial function, he or they have become a tribunal. In *Onuoha v. Okafor. Oputa* C1,[1] as he then was, said:

While there seems to be a divide on its use by some companies in the United States a greater percentage of these companies uses them to resolve their work place disputes As Professor Lipsky [7] summarized in his report: the evolution of ADR policies and practices in US corporations has not been a story of convergence around a common set of techniques and systems, instead it has been a story of experimentation, variation and attempts by companies to tailor the ADR policies they use to their perception of their needs and interest of their organisations.

In this regard, the ultimate goal for companies is not dispute resolution per se. but conflict management such that traditional dispute resolution methods are no longer required while-insider counsel have a role to play in conflict management, these new and innovative programme recognise that HR and autonomous offices, as well as non-decision making third parties such as mediators, coaches and ombuds, have equally an important place in achieving a litigation free workplace.

Comparative Analysis between the United State of America and Nigeria in Resolution of Corporate Disputes

Plethora of delay related case hi Nigeria was a reference point in our previous -study. In those cases it was discovered that it took an average of 11 - 20 years for a simple matter to get to the Supreme Court from a state high court in Nigeria which in most cases orders *trail denov*. This was not the case in the United State. They had a very efficient vibrant am! effective justice delivery system which hitherto had some elements of delay before the;, resorted to the ADR technique. A review of these selected cases drove home drove home these points.[10]

Review of selected corporations in the US and Nigeria that resolved their disputes through the ADR method after litigation failed.

In Biotech Wheat Litigation Goes To Mediation[11] *(As Reported 2003)*

Several farmers filed a law suit against Monsanto in 2003 after "volunteers" wheat plant:, were found in Oregon field that were genetically modified to withstand glyph sate herbicide No such biotech varieties of wheat had been approved for the United States market Monsanto has developed and rested biotech aging wheat, which was never deregulated. This created controversy and after a long discussion, they, accepted the genetically modified wheat variety. This discovery led Japan and South Korea into

[10] (19S9)MSCC494
[11] "http//www:aprofessional.com/news/Biotect-wheat-litigationgoes-into-mediation.25230961I-hotmailaccessed6pm

closing their markets to the United States wheat which costs the farmers several losses. Subsequently, the farmers filed a law suit against the company which was consolidated before a federal judge in Kansas. While the litigation was going on both parties agreed to stay proceedings and try mediation to resolve the dispute. In a matter of weeks the case was resoled via mediations and the suit was withdrawn.

Also in *Vodafone Arbitration*[12] (as reported, the Vodafone Group Plc)
The Vodafone group has started

Microsoft Wind Arbitration[13] (As reported) Jan. 2010)

Microsoft, the United State based multi-national computer Technology Corporation won a case against *T.N. Chan* over domain names. The company submitted a complaint to the National arbitration forum in November 2009 requesting the disputing name www bing-wail paper.com and www-binging.com to transfer its proprietary rights from the respondent to the complainant. Bing is the current search web engine of Microsoft. Therefore Microsoft applied to register the bing trade mark in a number of jurisdictions including the United States of America trade mark office.

The complainants accused Patrick Multcliff of registering a domain name that is confusing and similar to its trade mark and also for registering the disputed name in hail faith internet users interested in the complainants search engine are always confused when accessing their network. Attempt to resolve the dispute in court could not make any progress. The matter was referred to arbitration. In a matter of weeks it was resolved.

In *Texaco v Bordon*[14] both corporations were locked up in a suit involving 200 million dollars. After several years of maneuvering and assembling half a million documents in litigation both sides decided to attempt the mini trial procedure. Due to the complex nature of the case, the summary jury trial took 10 days instead of the customary one of two days.

The summary jury trial returned a verdict of $136 'million including punitive damages and the two sides settled within a short time the outstanding $73 million dispute. More than this findings of culpability and their fears of height effects were lessened by a medical monitoring programme and the defendant's *feelings that the jury findings* of only $1 million in property damaged affair meant that no one had been hurt. And the matter was resolved amicably. In Nigeria, the following cases drove home the point on amicable settlement of corporate dispute via arbitration.

[12] hhp//articles.economictimesindiatimcs.come.20l6 3-3O/news/71926534-1 -tax disputes. Third arbitration-Vadafone-groupPlc

[13] http// arbitration-blog. En/Microsoft- wins-domain arbitration case accessed 6.43pm – 23.4, 2014.

[14] (1962)US438

In Nigerian National Petroleum Corporation v Lutin [15]

NNPC sued him and he raised a caveat stating that at the time of signing the contract, it was mutually agreed amongst all parties that in the event of a dispute all parties must refer such disputes before an arbitral tribunal before recourse could be had to litigation The court duly obliged them of this request and the matter was resolved through the arbitral process.

In Kano State Government v Pfizer Nigeria Pic[16]

Kano State Government sued Pfizer for the use of experimental oral antibiotics called Trovan which was administered to 100 children during clinical trials and they suffered meningitis. After 18 years of litigation without making any reasonable herd way, an out of court settlement was requested for by both parties under the 2009 settlement agreement, an independent member board of trustee was established to manage a health care meningitis consent judgment binding upon all the parties. These foreign and Nigerian cases mentioned and analysed underscores the true essence of this study which is to the effect that parties to a corporate disputes makes attempts to resolve their disputes out of court using the various methods of ADR as against litigation trustee fund saddled with the responsibility of determining which of the claimants participated in the trial and if eligible, the level of the financial support they would secure.

The Board received claims for compensation including from plaintiff who were treated with Trovan using the criteria provided for by the trust Deed Including the DNA test result. The Board determined that 14 out of the 54 claimants were true study participants and provided them with compensation.

Dissatisfied, Mustapha Maisikeli a claimant filed a fresh suit before a federal High Court in Abuja (on behalf of himself and various other individuals who were said to be qualified for the compensation). Pfizer had opposed the fresh suit and moved for its dismissal on the grounds that the plaintiff had signed an undertaking not to initiate a fresh case tin this. They maintained that they had met the obligations under the previous settlement where it found some of the claimants eligible for financial support under the criteria spelt out by the trust deed and that in addition, they had converted health care facilities as pan of the trust agreement. Finally, that the matter should be resolved through arbitration. This position was accepted by the court and it brought to an end all the issues that had been previously litigated upon.

In *Ras Pal Gazi Construction Co. Ltd v Federal Capita! Development Authority* The Supreme Court held that parties may settle their disputes by consent in course of trial. Such settlement is a compromise and in order to have a binding effect on parties, it is important that it should have the blessings of the court so that when the

[15] (2000), NSCOR77at 112
[16] (1996), 1 NWLR 32.3

court adopts the term o! settlement, and makes its judgment, then the settlement assumes the status of a consent judgment.

Areas of Comparative Advantage of the US over Nigeria

In the US the procedure's well-structured and defined the entire process -operates within the ambits of the law. Every step that is taken is properly guided and there are experts who advice prospective clients on the most convenient and best method that is suitable lo their disputes.

Besides, the fact that they are signatories to the Public Resources Acts makes it imperathe for corporate establishment, to respect the tenets, and spirit of that articles of faith as enshrined in that instrument.[17]

In Nigeria such procedure is not tenable. There are no clear cut and defined procedure on resolution of corporate disputes so to speak. Even when most corporation's corporate contracts contains clauses on resort to arbitration as a process of resolution of corporate disputes, most of them do not strictly adhere to these process strict K .

The public resources act covenant as in the United States does not exist in Nigeria. Uniform arbitration agreement on resolution of corporate disputes is a farce in Nigeria. Individual corporate establishment apply their own tactics and best possible methods to resolve then disputes. Some resort in negotiation while others apply arbitration and conciliation as a disputes resolution strategy.

These inconsistencies makes it difficult for corporate organisations in Nigeria to have a well-articulated and consistent approach to resolving corporate disputes, thereby making it difficult to extricate itself from the clutches of litigation as a readily available and expressly defined procedure to resolution of corporate disputes in Nigeria.

This invariably makes corporate organisations to fall in the pitfall of ligation which is known in every clime as a dispute resolution mechanism that is associated with well Pronounced inadequacies that corporate managers tend to avoid.

The need to wriggle out of the bobby trap and adopt a practical and a more flexible approach to resolution of corporate disputes through the avoidance of technicalities and-delays that is inherent in litigation process becomes the pit and substance of this project.

Necessary Adjustments for Nigeria

We are living in a changing and dynamic world that has made the world a global village. Practices and methods that are tested and established in a particular clime can he borrowed and adopted to suit the peculiarity of a particular environment. The ADR practices for resolution of corporate disputes in America and other continental jurisdictions ;ire workable and operate within certain permissible framework that makes it user-friendly for their corporate organisations.

[17] (2001),5SCJN234AT244

Committing these treaties to the Public Resources Act makes it much easier and binding to all consenting corporate enterprises that assent to this agreement. Certainly, this does no! obliterate the fact that where this process fails litigation comes into play as a last resort Since Nigeria is in dire need of foreign capita! to jumpstart her economy, since she has put in place a lot of measures to attract foreign investors such as expropriation of capital, waiver on import machinery, expatriate quota, etc, the most appropriate of these measures should be to make the process of corporate disputes resolution user-friendly, fast, flexible, cost-effective and very responsive to the needs of those it is meant to serve.

When this is done then the objective of foreign investment attraction in Nigeria must have - been dully and totally accomplished. In other words, the process will extricate foreign investments companies from the paralyzing grips of the Nigerian legal process represented by litigation that is fraught in technicalities, delay, expensive, corrupt and undue publicity This may stall the growth of the establishment in its area of operation and may even lead to winding of the company with its attendant economic and social consequences, thereby defeating the essence of wanting them to invest in Nigeria in the long run

Conclusion

In the United States, many companies have signed the Centre for Public Recourse Act agreeing to explore the several Alternative Dispute Resolution (ADR) model as the first step in the resolution of corporate disputes. Similar act is gaining attention and enough influence in the Nigeria arbitration system. Plethora of delay related case in Nigeria was a reference point in our previous study. In those cases it was discovered that it took an average of 11-20 years for a simple matter to get to the Supreme Court from a state high court in Nigeria which in most cases orders *trail denov.* This was not the case in the United State. They had a very efficient vibrant and effective justice delivery system which hitherto had some element of delay before they resorted to the ADR technique.

Recommendation

The unique and complex cases particularly those of over one billion naira are referred in Nigerian dispute resolution bodies like the institute of arbitration to handle. This process should have a complex case programme which will provide panel as did by the American Arbitration Association in the United States.