

**THE STRUCTURE, WORKINGS AND BENEFITS  
OF THE MULTI-DOOR COURT HOUSE<sup>1</sup>**

**By**

**Hon Justice Roli Daibo Harriman LL.M**

First of all, I must congratulate the Asaba district of the Chartered Institute of Arbitrators for the step they have taken to bring stakeholders here for the primary purpose of sensitising them on the workings of Multidoor courthouse and I presume particularly the Delta State Multidoor courthouse. Yours is the first privately organised seminar on the subject since the DMDC project committee was inaugurated by the His Excellency, the governor of this state a year ago. There is no doubt that the setting up of the DMDC is the right way to go. Not only because, our state is, I believe, the 8<sup>th</sup> state in the Federation to embrace this relatively new international dimension to justice delivery, but that the courthouse is coming at a time when there has been escalation of conflict within communities, between business men and between relatives. The court system, i.e. litigation has over the years tried to do its best to deliver justice but as the statistics of cases that go on appeal show, conflicts are difficult to resolve in the courtroom to make the both parties go home smiling. As his lordship, the Hon Justice Chukwudifo Oputa JSC (as he then was) said

The administration of justice in our court suffers from two major constrains, namely delay and expense. If it takes 7-10 years to decide a case, a prospective litigant, may decide not to go to court at all. But the one thing that frightens litigants from the court is the inordinate expense incurred with the result that a very large

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<sup>11</sup> Lecture delivered at a Seminar organised by the Chartered Institute of Arbitrators, Nigeria, Asaba District, 26 June 2012

proportion of our country men are, as it were priced out of the legal systems.<sup>2</sup>

Some of the advantages, users will get from the multi door court house will Win-win settlements, Confidentiality, Speedy resolutions, Parties choice of arbiter, Maintenance of relationships post settlement, Promotion of better co-existence and harmony in communities, Public satisfaction with the justice system, Resolutions suitable to parties' needs, Increase in voluntary compliance with settlements, Increase in foreign investment, Reduction in case load for judges, Easier access to justice for all, Huge savings that would otherwise arise from non-friendly litigation process; Equal accessibility to all irrespective of status, religion or tribe; Better management of disputes whether boardroom, shareholders', labour, client/customer relationship, etc.

Because of the benefits of ADR, the statutes creating some government institutions also made provision for the setting up of panels to deal with conflicts that may arise within those institutions. Examples of these are the National Health Insurance Scheme Act Cap N42, LFN 2004 which makes provision for the setting up of Arbitration Boards in all the states of the federation and the Capital Territory, the Petroleum Act, Cap. P10, LFN 2004, the Public Enterprises (Privatisation and Commercialisation) Act Cap P38, LFN 2004, Nigerian Communications Commission and many others. These special ADR panels will go a long way to ease the pressure on the regular courts in resolving conflicts.

Apart from the above mentioned developments, ADR is recognised as a form of dispute resolution by the Constitution which provides that; "the foreign policy objectives shall be respect for international law and treaty objectives as well as

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<sup>2</sup> Referred to in the chapter on An overview of the modus operandi of the Multidoor courthouses by Hon Justice O O Goodluck in the book: Alternative Dispute Resolution and some Contemporary Issues , legal essays in honour of Hon Justice Ibrahim Tanko Muhammad CON, 2010

the seeking of settlement of international disputes by negotiation, mediation, conciliation, arbitration and adjudication”<sup>3</sup>. The Arbitration and Conciliation Act also provides the law and rules governing the practice of Arbitration in Nigeria.<sup>4</sup> ADR has long since been recognised in Matrimonial Causes.<sup>5</sup> For labour disputes, the Trade Disputes Act also provides for exploration of ADR.<sup>6</sup> S25 of the Evidence Act also recognises amicable settlement of disputes.

## OTHER RECOGNITIONS

- a. The NBA has inaugurated an ADR committee in its Section on Business Law
- b. The UN Charter encourages negotiation, conciliation and other ADR processes<sup>7</sup>

It is a well-known fact that delay in justice delivery is caused by court congestions, unending applications for adjournments, inefficiency of court staff and many other extraneous reasons. The uncertainty in our court system has been worsened by the effect of the economic meltdown because of lack of interest in local or international investment. Business men would prefer a clear predictable system that would manage potential disputes. Delay in justice delivery can be best appreciated in the following study<sup>8</sup>

The National average time taken to conclude cases; without the intervention of interlocutory applications is presented below:

### LAND CASES

High Court	6.2 years
Court of Appeal	4 years

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<sup>3</sup> Section 19(d) Constitution of the Federal Republic of Nigeria 1999

<sup>4</sup> Cap A18, Laws of the Federation of Nigeria 2004

<sup>5</sup> S11, Matrimonial Causes Act, Cap. M7, Laws of the Federation 2004

<sup>6</sup> Trade Disputes Act, Cap T8, LFN 2004

<sup>7</sup> Article 33

<sup>8</sup> Prof Yemi Osinbajo SAN at the 4<sup>th</sup> NCMG African ADR Summit, November 2009

Supreme Court	6 years
<b>Total</b>	<b>16.2 years</b>

CIVIL CASES

High Court	3.4 years
Court of Appeal	2.5 years
Supreme Court	4.5 years
<b>Total</b>	<b>10.4 years</b>

CRIMINAL CASES

High Court	1.5 years
Court of Appeal	3.5 years
Supreme Court	2.0 years
<b>Total</b>	<b>7 years</b>

The above statistics show a bleak future for commerce and the reduction of crime in Nigeria.

This multi door concept first came into being when Professor Frank Sander, professor of law at Harvard University proposed the idea of attaching ADR to courts. It was believed that this annexure will make ADR more acceptable and give agreements reached in the ADR process more enforceability. This led to the establishment of the multi-door court system.

The Multidoor courthouse is an institution that provides different ADR options for disputants. It is a one stop place where the dispute resolution officer, if required, after assessing the controversy, recommends the best suitable door through which the parties can access a resolution of the conflict. In adopting court connected ADR center popularly called the Multidoor court house as part of the justice delivery system in the states that have them, economic access to justice by the ordinary man and business men alike has been enhanced. The

court-connected Multidoor courthouse is part of the judiciary. The High Court to which it is connected has responsibility to control and manage cases effectively and issue orders which would encourage the adoption of ADR methods of dispute resolution; sometimes, it also mandates parties to seek ADR especially if one of the parties desires it. The Delta Multi door courthouse (DMDC) offers a variety of Alternative Dispute Resolution processes and the mission of the institution is to supplement litigation as the available resource for justice by the provision of enhanced, timely, cost effective and user friendly access to justice. Other private ADR centers also provide valuable service though it is arguable that these private institutions lack the compellability and enforceability that the court connected ones possess.

Some of the objectives of the DELTA STATE MULTI DOOR COURTHOUSE (DMDC) are to enhance access to justice by providing timely and cost effective ADR mechanisms, To provide a legal framework for fair and efficient settlement of disputes, To serve as starting point for promotion of ADR in Delta State, To utilize the human capital resource of ADR professionals to aid ADR. Court referred cases, walk-ins and direct intervention will be the main stream of this institution.

The DMDC is a welcome institution because the Traditional rulers and community leaders want it, The common man wants it, The politician prefers it, The businessman needs it, The oil magnate demands it, The landlord requires it, Parties and children of broken marriages prefer it, The younger generation of lawyers embrace it.

Since the inauguration of my committee, we have had several sensitisation programs to encourage our people to resort to the use of the DMDC, judges to refer matters to the DMDC, lawyers (both in-house and external solicitors) to insert arbitration or ADR clauses in agreement they draw up for their clients.

By Rule 15 (2) of Legal Practitioners Rules of Professional Conduct 2007, a lawyer is enjoined in his representation of his client, to (d) not fail or neglect to inform his client of the option of alternative dispute resolution mechanisms before resorting to or continuing litigation on behalf of his client. A counsel is therefore obliged to give due consideration and support to suggestions, orders and directives of the court for an amicable settlement or referral of on-going matters to the DMDC.

Having talked about the challenges and benefits of ADR and of Multi-door Courthouse in particular, I will now deal with the authorities that have engineered the setting up of the institution.

Order 25 rule 2(b) of the Delta State High Court Civil Procedure Rules 2009 provides that in pre-trial conference a judge may give such directions as to the future course of the action as appear best adapted to secure its just, expeditious and economical disposal; and in rule (c) promoting amicable settlement of the case or adoption of alternative dispute resolution.

Order 29. High Court of Delta State Civil Procedure Rules provides that

- A Court or Judge, with the consent of the parties, may Encourage settlement of any matter(s) before it, by either –
- (a) Arbitration;
  - (b) Conciliation;
  - (c) Mediation; or
  - (d) Any other lawfully recognized method of dispute resolution

That same rule of court also makes provision for reference of cases to Arbitrators. Also reference can be made to the Arbitration law of Delta State particularly S5 and 6.

S11 of the Matrimonial Causes Act empowers a judge to refer a matrimonial cause for reconciliation if he considers it appropriate to do so.

By virtue of S31 and S32 of the High Court Law of Delta State, the High Courts have recourse to the ADR process. By S33–35 of the Magistrates Court Law, magistrates are empowered to promote reconciliation in civil and criminal matters. The customary courts (S22 and 23 of the customary court law of Delta State) have similar jurisdiction.

So the above provisions already take care of institutionalising ADR within our justice system.

I will now let you into the structure of the DMDC. The practice direction to be soon released by the Hon Chief Judge under the powers conferred on him and on which the proposed DMDC law which has passed its 2<sup>nd</sup> reading in the house is built on, the DMDC is proposed to have the following structure.

It is hoped that eventually, registries will be open at all judicial divisions within the state. Right now the registries at Asaba, Effurun and Obiaruku are operating.

The DMDC will be governed by a Governing Council headed by the Chief Judge of Delta State. Operations will be supervised in the main by a Director General and staff will include dispute resolution officers, in-house ADR experts. A panel of neutrals is also being constituted and I assure the gathering here that any member of the panel of neutrals will have qualifications and experience that meet international standards. The panel of neutrals will consist of men and women of proven integrity, in different professions that will be available for disputing parties. We shall have arbitrators, mediators, negotiators, early neutral evaluators and rent-a-judge. Disputants make their own choices from the available list or neutrals are

recommended to them depending on the nature of the dispute. Disputants can walk in for the services available or cases may be referred from the regular courts for resolution.

How does the DMDC work? The DMDC is poised to provide the following options:

### **A. MEDIATION**

Mediation, the most popular and effective ADR process is the process of assisting two or more disputing parties in resolving their disputes. The mediator is a neutral but exhibits special skills to move the process of settlement forward. Compared to litigation, a mediation process will be quicker to settlement, cheaper and will maintain relationships post-settlement. The process is private and confidential, less stressful for all parties involved and the procedure is simple. Because of these advantages, more people are resorting to this and other alternative dispute resolution strategies. The mediator is a facilitator, a neutral who is appointed as an intervener to assist the parties in resolving their conflict. He is not a judge and will not give a decision. The terms of settlement will be determined wholly by the parties themselves. The mediator only uses his special skills to move the process of negotiation forward and to be a moderator during negotiations.

In comparison with litigation, in mediation,

- The parties appoint the mediator or accept the mediator to facilitate the negotiations. The parties do not choose their judge in litigation
- The judge gives a decision (judgment) after listening or taking evidence from the parties. The mediator does not decide for the parties. The parties proffer their own solutions which they will adopt as their terms of settlement



- The mediation process may be informal and can take place anywhere. Litigation mostly takes place in a formal courtroom
- Litigation is a public hearing but mediation is confidential. Confidentiality is the hall mark of mediation
- The parties in mediation negotiate towards reaching a jointly acceptable settlement. In litigation, the judge decides the fate of the parties.
- Litigation tends to estrange the parties. One party wins and the other loses and as they do not have control over this situation, their relationship is further destroyed. One of the consequences of the process of mediation is to maintain relationships post settlement. Both parties win and they are happy.
- Mediation is a voluntary process. Both parties have to submit to it before it can take place. In litigation, once you are sued, you need to defend yourself or judgment may be entered against you.
- Mediation is less expensive and less stressful for the legal practitioner who assists his client in negotiation.

Mediation is appropriate

- When confidentiality is a concern
- Where direct negotiations have been difficult or impossible
- Where cost and speed is a concern
- Where possible solutions may not be obvious
- Where the parties may want to ignore their legal rights but may want a solution that best suits their immediate interests

The mediator's job is to

- Encourage exchange of information
- Provide new information
- Help the parties to understand each other
- Let them know that their concerns are understood
- Promote a productive level of emotional expression
- Deal with differences in perception and interests between negotiators and constituents (including lawyer and clients)
- Help negotiators realistically assess alternatives to settlement
- Encourage flexibility
- Shift the focus from the past to the future
- Stimulate the parties to suggest creative settlement
- Learn (often in separate sessions with each party) about those interests parties are reluctant to disclose to each other
- Invent solutions that meet the fundamental interests of all parties
- Identify genuine interests as opposed to posturing
- Clarify and focus on those issues truly in dispute versus those that are incidental and often highly revealing
- Encourage parties to take responsibility as may be appropriate for roles played in the origins and/or aggravation of the dispute
- Intervene to keep proceedings civil and in point and the playing field even<sup>9</sup>

## **B. CONCILIATION**

This process involves the 3<sup>rd</sup> party assisting the disputing parties to arrive at a settlement of their dispute. He suggests the ‘best’ solution for them which, depending on what the consequences might be for them, may or may not be regarded as binding by the parties. The difference with mediation is that in

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<sup>9</sup> Dele Peters: Alternative Dispute Resolution (ADR) in Nigeria Principles and Practice 2004

mediation, the mediator does not decide for the parties but uses his skills to drive the settlement.

### **C. ARBITRATION**

Arbitration means the process of resolving a dispute by appointing an arbitrator who hears the facts and gives his decision which may or may not be binding. The object of arbitration is the settlement of a dispute in an expeditious, convenient, inexpensive and private manner so that it does not become the subject of future litigation between the parties.<sup>10</sup> Arbitration is like litigation; only that it is private and rules of evidence do not apply. It is arguably a quicker process. Challenges to jurisdiction and application to set aside awards have made it as cumbersome as litigation. For there to be a valid Arbitration, there must be a written agreement embodied in a main contract as an arbitration clause or in a separate document specifying parties commitment to submit to arbitration. Arbitral proceedings are seen as an expression of the will of parties hence it cannot be unilaterally withdrawn by either sides except by leave of the court.<sup>11</sup> The law on Arbitration in Nigeria today is the Arbitration and Conciliation Act 1988 which is fashioned out of the UN Commission on International Trade Law, (UNCITRAL Law. The Act contains the rules on arbitration which is also modelled along the lines of the UNCITRAL Arbitration and Conciliation Rules. An award is final, conclusive and operates as an estoppel per rem judicata. The DMDC is poised to apply this law and the rules in any proceeding.

### **D. NEGOTIATION**

Parties use this mechanism to talk over their dispute with the aim to find an acceptable solution. Basically negotiations will stand between two

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<sup>10</sup> Payal Popat; How ADR can help with Justice, published in Lawcrossing articles.

<sup>11</sup> Hon Justice O O Goodluck in 'Alternative Dispute resolution and Some Contemporary issues 2010

opposing counsel of course with reference to their clients. Any solution found will be reduced to a formal agreement for the disputing parties to execute. Therefore it is advised that lawyers use this skill, which is now a major subject in the Nigerian Law School to help and encourage their clients to find a lasting solution to their conflict. Lawyers can use the opportunity of a letter before action to start the negotiation process.

#### **E. EARLY NEUTRAL EVALUATION**

This is a process by which a dispute is put before an independent neutral 3<sup>rd</sup> party who gives a non-binding decision indicating the way in which he considers the dispute would be determined by a judge or arbitrator<sup>12</sup>. This is a very useful process where the neutral using his knowledge of the law helps the disputing parties evaluate their case with the result that they decide to negotiate a settlement and avoid litigation.

#### **F. OTHER HYBRID PROCESSES**

These are a combination of some ADR processes put together for a satisfactory resolution of a dispute. They include a combination of some of the processes I have earlier mentioned.

All these processes will be generally governed by the practice direction and where appropriate by the Arbitration law of Delta State.

All agreements reached at the Multidoor court house will be endorsed by an ADR judge who will make it enforceable. This applies to work-in cases. Any settlement reached with regards to cases referred by a court will be sent back to that court for the judge or magistrate to make it the judgment of that court.

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<sup>12</sup> 2009 Lagos Multi door settlement week brochure

Commencing a Case at the DMDC. I will give a preview of what the Practice direction of the DMDC will look like.

A matter may be initiated at the DMDC in either of three ways:

- Walk-Ins: a party to a dispute may initiate any of the ADR mechanisms by visiting any of the designated offices or registries within the state
- Court referrals: the presiding judge in a pre-trial conference or a matter already in litigation may refer the parties to the DMDC when he deems it appropriate.
- Direct interventions: the DMDC may approach parties if the interest of the parties so demand or in public interest with a view to aid the resolution of their dispute.

## Processing

Filing statement of issues: This entails filling of a request and providing supporting documentation to initiate the ADR process. Most of the documents are to give the dispute resolution officer (DRO) or arbiter an indication of what the issues for determination are a basis for a pre-meeting summit, to ensure confidentiality and to ensure that the parties who appear have the authority to reach a settlement.

Without prejudice to the request of counsel and their clients, a dispute resolution officer will look at initiating briefs and recommend the appropriate door to handle the case. For example if parties have an arbitration clause, then an arbitrator will be appointed unless the parties themselves have already agreed on whom their arbitrator will be. If the parties are related one way or the other E.g by blood or business, the dispute resolution officer may recommend mediation. A date is fixed for a meeting and the procedure carries on until and if a settlement is reached. An arbitrator will give an

award and in mediation, the parties will arrive at a settlement with the help of the mediator.

## Enforcement

The ADR process is voluntary and usually resorted to by agreement of both parties. With regard to enforcement, if there exists an ADR clause in an agreement and a party and a party resiles, he can be compelled through the regular courts to abide by the agreement. Courts can also be resorted to enforce an order E.g an arbitral order during the pendency of the ADR proceedings. After an ADR settlement, a party reneges on the agreement that offended party can apply to an ADR judge to enrol the judgment or file an action in court, for example, through Order 11 of the Delta State High Court Civil Procedure Rules to obtain judgment against the defaulting party.

Depending on the practice direction to be announced by the Chief Judge soon costs will cover Administrative fees: No-refundable administration fees are paid to cover logistics and administrative services. Session fees will be dependent on whether the parties are using our in-house ADR expert or a member on the panel of neutrals. It is also proposed that Default/Cancellation fees will be payable if where an already scheduled session is cancelled by any of the parties or there is failure to attend sessions, default/cancellation fees will be paid. Pro-bono services may be provided in deserving matters.

What is the Role of Parties? Disputing parties are obliged to cooperate with officers of the DMDC in the administration of their dispute. They also have a responsibility towards the DMDC and the ADR process. Parties to a dispute are to seriously consider adopting ADR processes for resolving their issues when encouraged either by the court, their counsel or DMDC to do so.

From our experience so far, judges, lawyers and litigants are quickly beginning to appreciate the use of the DMDC in settlement of disputes.

My advice therefore to this august gathering is that solicitors wherever they work, as private practitioners or as government counsel should endeavor to insert ADR clauses in agreements. This will go a long way to avoiding the birth of another conflict as to how any conflict arising from the agreement will be resolved.

In conclusion, I call on bodies like the NBA, government and its lawyers, Chartered Institute of Arbitrators, traditional rulers to encourage their members or subjects to make use of the DMDC.

I thank you