A REVIEW OF THE IMPACT OF DOMESTIC ARBITRATION PRACTICE IN ADMINISTRATION OF JUSTICE IN NIGERIA*

Abstract
Struggles and conflicts are characteristics of human relationships. Like other civilized countries of the world, the Nigerian legal system generally gives no room for self help and anarchy. By section 6 of the extant Constitution of the Federal Republic of Nigeria, 1999 (as amended), the court has been established as the primary institution for the determination of rights and obligations of individuals in Nigeria. Sadly, over the years, it has become a common refrain in the lips of many Nigerians that to seek redress in the court for any legal injury is a waste of precious time and resources because that relief may not come during one's lifetime. Admittedly, the Nigerian court system is corrupt, cumbersome, obsolete, slow and rigid and cannot produce acceptable results within reasonable time with minimum cost and stress on the litigants. Adjudication of disputes dragging for many years has not only paralyzed and rendered the Nigerian economy unattractive to foreign investors; it also resulted in the transfer of numerous business entities to neighboring countries. In reaction to the continued public outcries over the pitfall of the Nigeria legal system, various states in Nigeria have introduced unique and revolutionary arbitration friendly innovations in their respective High Court Rules and established Multi-Door Courts in attempts to remedy the ugly situation. Proudly, Domestic Arbitration is today playing vital roles in ensuring timely and just resolution of disputes in Nigeria. Put differently, Arbitration complements litigation and has succeeded where litigation failed in many occasions in Nigeria. This study critically reviewed the impact of domestic arbitration practice in administration of justice in Nigeria with the aim of providing recommendations and suggestions that will aid in reforms. It is the finding of the research that Arbitration as an alternative dispute resolution mechanism is a shift from the traditional court to the more flexible, just, time responsive and efficient method of adjudication. At the end, it recommended among others that Arbitration and Conciliation Act be reviewed to remove some of its controversial provisions.

Keywords: Domestic Arbitration, Administration of justice, Impact of, Nigeria

1. Introduction

Disputes are part of human existence and endeavor. As long as more than one person meet and interact, disputes are bound to arise. The causes and factors which breed disputes vary. Corollary, a justice system which is efficient in terms of cost, integrity, convenience and time management, is no doubt, in great demand the world over.[1] Before the introduction of conventional court system in Nigeria, customary arbitration was the principal method of resolution of disputes. Today, litigation is one of the most recognized and used method of dispute resolution throughout the world. Nigeria being one of the countries in the world which profess loudly to follow rule of law, its legal system generally gives no room to self help and anarchy.[2] By section 6 of the extant Constitution of Federal Republic of Nigeria 1999 (as amended), the court has been established as the primary institution for the determination of rights and obligations of individuals in Nigeria. The people look up to the court as a haven of last resort for the protection of the society, particularly the weak and the oppressed.[3] As the last hope of the common man, the Nigerian court has the fundamental duty to translate into reality the noble ideas expressed in the basic laws, give flesh and blood, in fact life to the abstract concept of justice as provided by laws.[4] Court is akin to hospital. While hospital attends to the ailing body of human beings, court attend to the troubled souls - the troubled souls of litigants seeking to obtain justice or settle their disputes through the legal institution. In consonance with the legal adage that justice delayed is justice denied, section 36(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) states that in the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality.

Ironically, over the years it has become a common refrain in the lips of many Nigerians that to seek redress in the court for any legal injury is a waste of precious time and resources because that relief may not come during one's lifetime.[5] Admittedly, the Nigerian court procedures are corrupt, cumbersome, obsolete, slow, technical and cannot produce acceptable results within reasonable time with minimum cost and stress on the litigants. Delay in the adjudication of cases in Nigeria has deleterious consequences, and accounts for the regrettable resort to self help out of desperation by some aggrieved Nigerians.[6] Where a case drag for too long, witnesses loss their knowledge of the case, relocated or even die. Where either of the parties to the suit dies, that may automatically mark the end of the suit. Even if judgment is obtained from the court after many stressful, tortuous and traumatic years, it remains a mere academic victory or an empty shell which hold no practical or tangible value as the possibility of returning to the *status quo* will be slim. Adjudication of disputes dragging for many years has not only paralyzed and rendered the Nigerian economy unattractive to foreign investors; it has also resulted

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[1] C. E. Ibe, 'Reflections on the Provisions in the High Court Civil Procedure Rules, 2006, Anambra State for the Enforcement of Arbitral Award' (2010) *Capital Bar Journal* p. 76.

[2] *Gov. Lagos State v. Ojukwu* (1986) 1 NWLR (pt.18) 621 SC; Nwakire v. COP (1992) 5 NWLR (pt.241) 289. However, self help is recognized under the Nigerian legal system in some instances. Self help is statutorily recognized by sections 23 and 282 of the Criminal Code. While section 23 of the Criminal Code provides for the defense of bona fide claim of right, section 282 of the same Act legalized defense to property. See also section 33(3) of the Constitution of Federal Republic of Nigeria 1999 (as amended) that provides for self defence.

[3] P H Onyenweife, 'Reflections on the Finality of the Appellate Jurisdiction of the Court of Appeal over Appeals Arising from Civil Jurisdiction of the National Industrial Court' (2013) Vol. 7, No. 3, *Nigerian Journal of Law and Industrial Review*, p. 20.

[4] *A.G. Abia v. A.G Federation* (2006) 16 NWLR (pt.1005) 265.

[5] P H Onyenweife, 'Reflections on the Finality of the Appellate Jurisdiction of the Court of Appeal over Appeals Arising from Civil Jurisdiction of the National Industrial Court' *op cit* p. 20. In the case of *Amadi v. NNPC* (2000) 10 NWLR (pt. 674) 76 , the preliminary issue of jurisdiction went up to the Supreme Court and took 13 years to conclude before the case was referred back to the High Court for trial.

[6] B. E. Ewulum, 'Rising Cases of Jungle Justice in Nigeria: An Indictment of our Criminal Justice Delivery System' (2015) Vol.7, *UNIZIK Journal of Public and Private Law* p.257. See also P. H. Onyenweife, 'Reflections on the Finality of the Appellate Jurisdiction of the Court of Appeal over Appeals Arising from Civil Jurisdiction of the National Industrial Court' (2013) Vol. 7, No. 3, *Nigerian Journal of Law and Industrial Review* p. 20.

in the transfer of numerous business entities to neighboring countries.[7] The failure of the Nigerian justice system was exposed in the unfortunate case of *Obiuwevbi v. Central Bank of Nigeria*,[8] where the Supreme Court per Rhodes – Vivour, JSC opined:

> If I may add, this case was filed in the Lagos High Court on the 7th of July, 1988. This year makes it twenty three years since it was filed in the court. It was sent to the court of Lafadeju, J. in 2002 to start *denovo*. Lafadeju, J has since retired. That is to say for 23 years not a single witness was taken. Twenty three years waiting for his entitlements is clearly too long a time to wait. It must be highly traumatic and at great cost to the appellant and waste of precious judicial time. Unnecessary interlocutory appeals such as this have been frowned upon by this court.

In reaction to public outcries over the shortcomings of the Nigeria legal system, successive governments in Nigeria over the years have passed legislations and instituted reforms to ensure fair and speedy dispensation of justice in Nigeria.[9] Sadly, the challenges facing the Nigeria court system today continues unabated. Consequently, parties to disputes are now resorting to arbitration to resolve their disputes.[10] This study uniquely and critically reviews the impact of domestic arbitration practice on administration of justice in Nigeria with the aim of providing recommendations and suggestions that will aid in reforms.

2. Nature of Arbitration

Arbitration is a method of dispute resolution involving one or more neutral third parties, who are agreed to by the disputing parties, and whose decision is binding. In effect, arbitration is the reference of a dispute between parties to a person(s) or tribunal of their choice, rather than a court.[11] The basis for the arbitration is the consent of the parties to submit or refer their disputes to arbitration. Put differently, arbitration is a term used to describe a process to settle disputes between two or more persons by referring to an impartial third person or persons known as arbitrators specially appointed for that purpose. The dispute is determined in private with final and binding effect by the impartial third person (or persons) acting in a judicial manner rather than by a court of competent jurisdiction. Generally, the procedure adopted or to be used in an arbitral proceedings must be informal and devoid of the complexities of court procedures in matter of litigation. On the nature of arbitral proceedings, the Court of Appeal per Obaseki-Adejumo, JCA in *Stabilini Visinoni Ltd v. Mallinson & Partners Ltd supra at page 205 para F-H* quoted with approval the decision of the court in *Celtel Nigeria BV v. Econet Wireless Limited & 7 Ors*[12] held thus:

> Arbitral proceedings are therefore treated with a broad liberal/open mind leaning on the side of dynamism, commercial sense, latitude and commonsense. In other word... suffice to say that the object of arbitral tribunal is to ensure that at the end of the day the arbitrators reached a practical, sensible, just and fair decision on the face of it or that at first sight not beyond or beneath the face of the award made by it.

Different rules apply in an arbitral tribunal and a court of law, and parties who chose to go to arbitration, do not expect or experience legal technicalities associated with court of law. In other word, resort to arbitration shields parties from rigid formalities that characterize court trials.[13]

Commonly, in arbitration, there must be an award which must be in writing and binding on the parties. However, a customary arbitration is valid and enforceable whether or not it is in writing. The strength of arbitration lies in the enabling law that confers it with the sanction of enforcement once a final award is made in a judicious manner.[14] Arbitration and Alternative Dispute Resolution (ADR) are alternative options to litigation. Though included in the generic meaning of the term alternative dispute resolution, arbitration has its unique features and is superior to other ADR methods. Unlike ADR outcomes, an arbitration award is final, binding and is at par with a judgment of the court. In *Ras Pal Gazi Construction Company Ltd v. FCDA*[15] the Supreme Court per Katsina-Alu JSC held:

> Arbitration proceedings as I have already shown are not the same thing as negotiations for settlement out of court. An award made, pursuant to arbitration proceedings constitute the final judgment on all matters referred to the arbitrator. It has a binding effect and it shall upon application in writing to the court be enforceable by the court…I must say nowhere in the Act is the High Court given the power to convert an arbitration award into its own judgment. See *Commerce Assurance Limited v. Alhaji Buraimoh Alli* (Supra). What this means simply is this: An Award is at par with the judgment of the court.

Generally, an arbitral award is final, irrevocable, non appealable or reversible by the parties. An award can only be set aside for misconduct of the arbitrator or for fraud. Arbitral award not being appealable has being criticized by scholars as a violation of the ancient and universal principle of fair hearing.[16]

3. General Advantages of Arbitration

The rising popularity of arbitration in Nigeria is not without basis. Litigation ends in favour of one party against the other and tends to even widen the differences between the parties in the spirit of the victor and the vanquished.[17] Even after judgment, the hostile

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[7] P H Onyenweife, 'Reflections on the Finality of the Appellate Jurisdiction of the Court of Appeal over Appeals Arising from Civil Jurisdiction of the National Industrial Court' *op cit* p. 20.
[8] (2011) 7 NWLR (pt.1247) 468 at p. 484.
[9] One example of such innovation is the creation of the Multi-Door Court House established by the Lagos State Government through the Multi-Door Court House Law 2007.
[10] For instance, the confrontation between the Nigeria government and Niger Delta militants was resolved through arbitration.
[11] *Stabilini Visinoni Ltd v. Mallinson & Partners Ltd* (2014) 12 NWLR (pt. 1420) 134.
[12] CA/895/2012 (unreported) delivered on 13/2/2014 per Ikeyegh JCA.
[13] *Stabilini Visinoni Ltd v. Mallinson & Partners Ltd* (2014) 12 NWLR (pt. 1420) 134 at page 172 paras. E-H.
[14] See section 31 of the Arbitration and Conciliation Act Cap. A18, LFN, 2004.
[15] (2001) 10 NWLR (pt. 722) 559.
[16] C A Obiozor, 'the Machinery for Enforcement of Domestic Arbitral Awards in Nigeria-Prospects for Stay of Execution of Non-Monetary Awards' (2010) Vol. 1, *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* p.195.
[17] *Salihu v. Ministry of Education., Gombe State* (2017) 3 NWLR (pt. 1551) 124.

relationship between the parties transcends the parties and shifts to the next generation. However, arbitration is give and take; none a total loser. Arbitration does not encourage winner takes it all that is prevalent in litigation. Arbitration augurs well for the complete or total reconciliation and thus engenders future cordial relationship between the parties.[18] Unlike arbitration, litigation in Nigeria is very emotional and quarrelsome matter; it is a matter where Nigerians fight to a finish.[19] On the advantage of alternative dispute resolution over litigation, the Court in *Lau Local Government v. Kabiru Umar*[20] held:

> The procedure in ADR cases where they are successfully employed and applied results into what ardent practitioners and strong believers or apostles of alternative dispute resolution (ADR) mechanism or concept refer to 'win win' situation. Both parties are made winners, none a loser. This augurs well for a complete or total reconciliation and thus engenders future cordial relationship between parties to such amicable settlement. See Star Paper Mill Ltd & anor. v. Bashiru Adetunji & ors. (2009) 13 NWLR (pt. 1159) 647 @ p.659……

Parties to arbitration have the right to dictate for themselves which form or shape their arbitral proceedings shall take. They have the right to choose the person or the tribunal that will adjudicate on the dispute between them. Such privilege is absent in litigation proceedings where any attempt to choose the umpire or forum will be shot down for being forum shopping.[21] Forum Shopping occurs when a party attempts to have his action tried in a particular court or jurisdiction where he feels that he will receive the most favourable judgment or verdict.[22] It is not a practice recognized or approved under our law, rather frowned upon, regarded and rightly too as an aberration and an undisguised willful attempt to punish a defendant before trial. Also, it is perceived as an open denial or assault on the natural principle of fair hearing.[23] In the case of *Ibori v. FRN supra* the Appellant contended that his arraignment by EFCC before a Court in Kaduna for offences allegedly committed in Delta State amount to Forum Shopping. The Court of Appeal upheld the argument and stated that EFCC has no right to pick or choose which venue, court or judge that will hear and determine its case. Similarly, parties to arbitration have the autonomy to choose venue that is convenient for them. However, in litigation the suit must be commenced within the jurisdiction where the dispute originated or where the parties are resident.[24] Again, parties to arbitration have the power to select applicable law to suit their respective interest and expediency. Arbitral proceedings are usually manned by experts or crop of seasoned professional with vast legal knowledge and in-depth experience and exposure in the subject matter of the arbitration. Arbitral proceedings are overseen by persons with relevant knowledge and experience unlike the regular courts where a particular judge has the function of adjudicating in all manner of disputes even when it is very obvious that he has little or no knowledge in the area or subject matter.[25]

Arbitration pursues substantive justice rather than technicalities because Arbitral proceedings are very liberal and devoid of technicalities and complexities associated with the regular court. Parties, who chose to go to arbitration, do not expect to witness legal technicalities associated with the court of law. In other word, resort to arbitration shields parties from rigid formalities that characterize court trials. The flexibility of arbitral proceedings results in the dispute being resolved timely unlike litigation where cases drag from High Court or Customary Court to the Supreme Court for many stressful and traumatic years. Arbitration is usually less expensive due to its flexibility and form. Parties to arbitration can be represented by a non lawyer unlike in litigation where parties are only entitled to conduct their case through lawyers or by themselves. The bottom line is that arbitration is not limited to legal community; it is open to lawyers and non lawyers, and it cannot be a requirement that the notice of arbitration initiating same must be signed by a legal practitioner.[26] Parties to arbitration have the advantage of keeping their secrets intact as a result of the confidential nature of arbitration. One of the reasons of choosing arbitration is to shield vital and private information from escaping to the public. In litigation, the court is constitutionally bound to conduct its proceedings in public unless the court has a cogent and verifiable reason to do otherwise.[27] Further, in Arbitration the concept of burden of proof associated with adversarial mode of adjudication is dispensed with. An arbitral award is final, irrevocable, non appealable or reversible by the parties or court of law. Put differently, it is a general principle that an award by an arbitral panel is binding and final and parties have no right of appeal. However, an award can be set aside for misconduct of the arbitrator or for fraud. In contrast, parties to litigation generally have right of appeal over judgment.[28] A party who a judgment is not in his favour usually files frivolous appeal to deny the successful party the benefit of reaping the fruit of the judgment.

4. The Scope and Subject-Matter of Arbitration

The Arbitration and Conciliation Act did not stipulate any particular subject matter that may not be referred to arbitration. The issue of arbitrability in Nigeria was casually mentioned in sections 12 and 35 of the Arbitration Act.[29] Thus, the question of whether or not a dispute is arbitrable is therefore left for interpretation by the courts. Over the years the issue of matters that can be arbitrated has continued to generate debates among experts in Nigeria. The popular opinion which has been echoed for years is that it is not every dispute or difference that can be referred to arbitration. Disputes that can be referred to arbitration must be justiciable issues which can be tried as civil matters.[30] This group argued that the matter must relate to disputes that can be compromised by way of accord and satisfaction.[31] These include all matters about real or personal property, dispute as to whether a contract has been breached by either party etc. This school of thought has been opposed by some scholars. For instance, Ibe argued that courts should not unnecessary restrict the latitude of

[18] *Salihu v. Ministry of Education., Gombe* State *supra.*
[19] *Buhari v. INEC* (2008) 19 NWLR (pt. 1120) 246.
[20] (2014) 35 WRN 144 p. 160.
[21] *Adamen Publisher (Nig.) Ltd v. Abhulimen* (2016) 6 NWLR (pt. 1509) 431.
[22] *Ibori v. FRN* (2009) 3 NWLR (pt.1128) 297.
[23] *Ibori v. FRN Supra. See also Nwanko v. State* (1983)1 NCR 366.
[24] *Ibori v. FRN Supra.*
[25] In Nigeria legal system, apart from the National Industrial Court and other similar special Courts, the High Court has jurisdiction to hear all subject matter. See section 272 of the 1999 Constitution of FRN (as amended).
[26] *Stabilini Visinoni Ltd v. Mallinson & Partners Ltd supra*
[27] See section 36 of the 1999 Constitution of Federal Republic of Nigeria (as amended).
[28] See sections 233 and 240 of the Constitution of FRN 1999 (as amended) that confers the Supreme Court and Court of Appeal with appellate jurisdictions.
[29] Section 12 of the Arbitration and Conciliation Act provides that arbitral tribunal has powers to determine issues of its jurisdiction, while section 35 of the Act states that legislation can restrict or circumscribe matters that may be submitted to arbitration.
[30] G. Ezejiofor, *the Law of Arbitration in Nigeria* (Lagos: Longman; 1997) p.3.
[31] *Ibid.*

matters that can be referred to arbitration in Nigeria and called for paradigm shift.[32] The Nigeria courts have so far taken the restrictive approach. In *Ogunwale v. Syrian Arab Republic,*[33] the Court of Appeal held that the test for determining whether a dispute is referable to arbitration is that the dispute or difference must necessarily arise from the clause contained in the agreement. However, not all disputes are necessarily arbitrable. In other words, the agreement must not cover matters which by the law of the state are not allowed to be settled privately or by arbitration usually because this will be contrary to the public policy. In *BJ Exports & Chemical Processing Co v. Kaduna Refining and Petrochemical Ltd*[34], it was held by the Court of Appeal that arbitration and other forms of ADR are so far restricted to civil matters. Until recently, the law in Nigeria generally is that matters of criminal nature cannot be referred to arbitration. Commonly, under the Nigerian criminal justice system the state is constitutionally vested with powers to institute and undertake criminal proceedings through the Attorney General and/or whoever is acting on his behalf. Ede is of the view that in considering whether a criminal matter or proceedings may be referred to arbitration, regard must be had to whether the matter or proceeding is one which the policy of the law would or would not permit to be compromised.[35] However, over the years, the inability of the relevant authorities in Nigeria to bring suspected criminals to justice through diligent and successful prosecution of crimes have continued to generate public outcries and resulted to resort to ADR of crime and self help such as lynching of suspect by aggrieved Nigerians. In the Nigerian criminal justice system, the state has the burden of proof and this burden does not shift. Burden of proof and standard of proof are among the major challenges facing prosecution of crimes in Nigeria. The burden of proof placed on the prosecution is proof beyond all reasonable doubts. The prosecution has all these legal hurdles placed on it by law, the suspect has little or nothing to do rather than rely on technicality inherent in our legal system to defeat substantial justice. Criminal trials drag from Magistrate Court to the Supreme Court in Nigeria for many years. The delay inherent in the Nigerian criminal justice system discourages many victims of crime from reporting crimes to relevant agencies on the notion that it produces no positive result. The Nigeria criminal justice system is also criticized for excluding the victim. These pitfalls and the inability of the state to bring criminals to justice through trials propelled the recent introduction of the concept of plea bargain into the Nigeria criminal justice system by the Administration of Criminal Justice Act, 2015.[36] Scholars have viewed plea bargain as a type of ADR.[37] This study agrees with Ibe that courts should not unnecessary restrict the latitude of matters that can be referred to arbitration in Nigeria and supports his campaign for paradigm shift on the attitude of the Nigerian courts to arbitrability to liberal approach.

5. The Impact of Domestic Arbitration Practice in the Administration of Justice in Nigeria

By section 6 of the extant Constitution of the Federal Republic of Nigeria, the court has been established as the primary institution for the determination of rights and obligations of individuals in Nigeria. However, the vesting of judicial power in courts established by the Constitution does not render impotent or illegal, proceedings and decisions arising from private dispute resolution arrangements in Nigeria.[38] Arbitration complements litigation and has succeeded where litigation failed in many occasions in Nigeria. Before the introduction of conventional court system in Nigeria, customary arbitration was the principal method of resolution of dispute. In the case of *Okpuwuru v Okpokam*[39], Justice Oguntade observed that in the pre-colonial times and before the advent of the regular court, our people certainly had a simple and inexpensive way of adjudicating over disputes between them. They preferred them to elders or a body set up for that purpose. The practice has over the years become strongly embedded in the system that they survive today as custom. Just like other alternatives, arbitration focuses on the interests and welfare of the parties involved. Over the years, in the Nigerian traditional communities, arbitration is popular and a very important feature of the customary law.[40] Customary arbitration is an important institution among rural dwellers in Nigeria. Non urban dwellers often resort to arbitration for resolution of their differences because it is cheaper, less formal and less rancorous than litigation; it also ensures harmony and eradicates all sorts of anarchy and misunderstanding within the community.[41]

The Nigeria economy has for decades been eclipsed by delayed adjudication of labour and commercial disputes. Adjudication of disputes dragging for many years has not only paralyzed and rendered the Nigerian economy unattractive to foreign investors; it also resulted to the transfer of numerous business entities to neighboring countries. Happily, as a veritable alternate to litigation, arbitration has played vital roles in ensuring timely and just resolution of disputes in Nigeria.

Arbitration is no doubt a safe route to ply today in commercial and economic journey and business relationships in Nigeria. The availability of alternative means of dispute resolution such as arbitration other than litigation has encouraged foreign direct investment in Nigeria. Quite apart from the role in attracting foreign direct investment, arbitration encourages and sustains high levels of local private sector led investment. The procedures expand the options for dispute settlement and promote healthy competition capable of provoking improvements. In the pre-colonial Nigeria society, crimes and deviances were resolved among the parties involved through arbitration by the elders and chiefs within the community. The customary criminal justice system has the characteristics of reconciliation, retributive and restorative justice. It combines both the adversarial and inquisitorial method of adjudication and places justice over and above technicality. The arbitration of crime under the customary law was adversely affected by the introduction of English legal system in Nigeria. Nigeria operates adversarial system of adjudication. One of the key attributes of the adversarial system of adjudication is the passive and inactive role of the judge in the presentation of cases in court. The Judge is at best an umpire and not an investigator. Under the Nigerian criminal justice system, an accused person is presumed innocent until proven guilty.[42] This presumption of innocence can

[32] C.E Ibe, *Insight on the Law of Private Dispute Resolution in Nigeria,* (Enugu; EL'Demak Publishers, 2008) p. 154
[33] *(2002) 9 NWLR (pt. 771) 127.*
[34] (2003) FWLR (pt.165) 445 at 465; (2003) 24 WRN 74; *Kano State Urban Development Board v Fanz Construction Ltd* (1990) 4 NWLR (pt.142) 1 at 32-33.
[35] A.N Edeh, *Alternative Dispute Resolution (ADR) in Nigeria* (Enugu, CIDJAP Press; 2018) p.44.
[36] See PML (Nig.) ltd v. FRN (2018) 7 NWLR (pt. 1619) 448.
[37] B.A Ewulum and N. Ezenwa-Ohaeto 'Alternative Dispute Resolution Mechanisms, Plea Bargain and Criminal Justice System in Nigeria' (2017) Vol. 8, No2, *Nnamdi Azikiwe University of International Law and Jurisprudence*, p. 116.
[38] C.E Ibe, Insight on the Law of Private Dispute Resolution in Nigeria, *op cit* p. 6-15.
[39] (1998) 4 NWLR (pt. 90) 554 @ 586.
[40] *Agu v. Ikewibe* (1991) 3 NWLR (pt.180) 385.
[41] G. C Nwakoby, *The Law and Practice of Commercial Arbitration in Nigeria* (Iyke Ventures Production, Enugu, 2004) p. 8-9.
[42] See section 36(5) of the Constitution of FRN 1999 (as amended).

only be rebutted by the prosecution and this is achieved when the prosecution is able to satisfactorily discharge the legal burden on it to prove its case against the accused person beyond reasonable doubt by virtue of Section 135(1), (2) and (3) of the Evidence Act, 2011**.** The Nigeria criminal justice system is also criticized for excluding the victim. Under the Nigerian criminal justice system, the state is constitutionally vested with powers to institute and undertake criminal proceedings[43] while the victim of crime is not a party to the proceedings but regarded as a mere witness.[44] Sequel to this, the proper complainant in every criminal matter in Nigeria is the Attorney General and/or whoever is acting on his behalf.[45] Hence, a private individual or legal practitioner can only institute criminal proceedings if and only if the person is seized with a fiat from the relevant Attorney General and which fiat must be produced in court before the commencement of the proceedings.[46] The victims of crimes are not allowed to have any input in the trial process. Where the victim has retained counsel who has no fiat of the Attorney General, the counsel is restricted to a passive role of holding watching brief even where the prosecutors have deliberately compromised the case or are incompetent. Though the Administration of Criminal Justice Act 2015 made some improvement on the previous criminal procedure laws regarding compensation to victims of crime[47], upon conviction the offender in the Nigerian criminal jurisprudence may be sentenced to death, imprisonment, fine, forfeiture, canning etc[48], while the victim is left without compensation. There is justice only and only if the interest of the offender, the victim and that of the society is recognized and taken into account. In *Josiah v State*[49] the Supreme Court Justice, per Oputa JSC held:

> Justice is not a one-way traffic. It is not justice for the appellant only. Justice is not even a two-way traffic, but a three-way traffic: justice for the appellant accused of heinous crime of murder, justice for the victim, the murdered man, the deceased, whose blood is crying to the heavens for vengeance and finally, justice to the society at large whose social norms and values had been desecrated and broken by the criminal act complained of.

The principle of justice stated by the eminent justice is generally absent in the Nigeria criminal justice system as victims of crime do not receive compensation. The Nigerian criminal justice system only punishes and rehabilitates individuals who commit crime while ignoring the actual victim of the crime. These pitfalls of the Nigerian criminal justice and the inability of the state to bring criminals to justice through trials propelled the recent introduction of the concept of plea bargain into the Nigeria criminal justice system by the Administration of Criminal Justice Act, 2015.[50] In *Federal Republic of Nigeria v. Igbinedion*[51] the Court of Appeal per Ogunwumiju, J.C.A held that the advantages of plea bargain include: (a) Accused can avoid the time and cost of defending himself at trial, the risk of harsher punishment, and the publicity the trial will involve. (b) The prosecution saves time and expense of a lengthy trial. (c) Both sides are spared the uncertainty of going to trial. (d) The court system is saved the burden of conducting a trial on every crime charged. The use of arbitration in the criminal justice system is often associated with the restorative justice movement, which seeks to shift the emphasis from the ideas of violation of the state and punishment, towards reparation and inculcating in the offender, a sense of responsibility towards the victim and the community. Restorative justice is viewed as more victim oriented. In theory, crime may not be arbitrable in Nigeria. However in practice arbitration has played a huge role in fair and just administration of criminal matters in Nigeria. For instance arbitration has proved vital in recovery of looted funds in Nigeria.

Arbitration has played a significant role in the settlement of ethnic/religious crisis in Nigeria. Nigeria has suffered and still suffering a lot of ethnic/religious crisis.[52] Litigation has helped tremendously but has not done much in the settlement of ethnic/religious crisis. This is because of so many factors militating against litigation in Nigeria.[53] Some of these factors include cost, complexity of procedure, rancor, slowness, right of choice of procedure, inconvenience, exposure etc. Arbitration which is an alternative to litigation has helped in no small way in resolving ethnic/religious conflicts in Nigeria because of its numerous advantages over litigation,[54]and is gaining widespread acceptance in business circles in Nigeria. Arbitration is no doubt a safe route to ply today in commercial and economic journey and business relationships in Nigeria.

6. Conclusion

This study critically reviewed the impact of domestic arbitration practice in administration of justice in Nigeria. The Nigeria court system has relatively helped in settlement of disputes in Nigeria but has not fully fulfilled it functions when compared to its counterparts in other democratic countries. Arbitration which is an alternative to litigation has helped in no small way in resolving conflicts in Nigeria because of its numerous advantages over litigation.[55] In the Nigerian traditional communities, arbitration (customary) is popular and a very important feature of the customary law because it is cheaper, less formal and less rancorous than litigation.[56] It also ensures harmony and eradicates all sorts of anarchy and misunderstanding within the community.[57] In theory crime may not be arbitrable in Nigeria. However in practice arbitration has played a huge role in fair and just administration of criminal matters in Nigeria. Regrettably, it was discovered by the study that customary arbitration is still perceived to be inferior to other forms of arbitration or litigation in the Nigeria legal system.[58] There are conflicting decisions of the court on whether a party can withdraw midstream in customary arbitration or even

[43] See sections 174 and 211 of the 1999 Constitution of Federal Republic of Nigeria.
[44] I K E Oraegbunam, 'Penal Jurisdiction of the State in Nigerian Criminal Jurisprudence: Any Justification thereof" *op cit*.
[45]J A Maduakolam, 'Who is a Complainant for the Purposes of Criminal Prosecution: A Case for Proper Construction of Section 187 of ACJL' (2014) *Journal of Current Issues in Nigerian Law* p. 208.
[46]I K E Oraegbunam, 'Penal Jurisdiction of the State in Nigerian Criminal Jurisprudence: Any Justification thereof" *op cit* p.174-175. See *Adewumi v. FRN* (2007) All FWLR (pt. 368) 1000; sections 33, 106 and 110 of the Administration of Criminal Justice Act, 2015.
[47] See Sections 314 and 319 of the Administration of Criminal Justice Act 2015.
[48] See section 2 of the Criminal Code for instance.
[49] (1985) NWLR (pt.1)125.
[50] See *PML (Nig.) Ltd v. FRN* (2018) 7 NWLR (pt. 1619) 448.
[51] (2014) LPELR – 22760 (CA) @ pages 75-76.
[52]C C Nwabachili, 'the Place of Arbitration Practice in Resolving Ethnic and Religious Violence/Conflicts in Nigeria' (2017) Vol.5, No.5, *Global Journal of Politics and Law Research*, pp.70-77.
[53] *Ibid*.
[54] *Ibid*.
[55] *Ibid*.
[56] *Agu v. Ikewibe* (1991) 3 NWLR (pt.180) 385.
[57] G. C Nwakoby, *The Law and Practice of Commercial Arbitration in Nigeria* (Enugu: Iyke Ventures Production, 2004) p. 8-9.
[58] *Okpowuru v. Okpowuru* (1998) 4 NWLR (pt. 290) 556 court held that customary arbitration is not part of the Nigerian legal system.

jettison the award if he so pleases. In *Oyenge v. Ebere*[59] the court held that a party to arbitration cannot resile from the arbitration award. However, in *Duruaku Eke & ors v. Udeozor Okwaranya & ors*[60] the court held that parties are free to abandon arbitral award immediately it was made. This study recommends that the idea of a party having right to reject arbitral award at any time whatsoever be jettisoned in the Nigerian jurisprudence. A party to customary arbitration should not be allowed to resile midstream neither should he be allowed to reject the award at the end of the arbitration. Customary arbitration is cheaper and faster method of settling land dispute in rural areas in Nigeria, and so, should be strengthened through judicial guidance to guarantee certainty and enhance its efficacy for the good of the society. Also, there is an urgent need to constitutionally recognize customary arbitration and provide legislations that will holistically recognize its practice in Nigeria. It is recommended that once customary arbitration is not repugnant to natural justice, equity and good conscience it should be applied and enforced by court whether or not its award was timely rejected. Over the year, Nigeria has witnessed astronomical advancements and changes in its society. These changes have had enormous impact on her legal systems, disrupting traditional modes of adjudication and have left the law completely in a state of flux. There is need for the amendment, review and improvement on the Arbitration and Conciliation Act to remove the provisions that restrict subject matter of arbitration and expand parties' autonomy. Criminal matters should be made arbitrable in Nigeria. Lord Denning remarked that a changing society needs a changing law designed for the progress of the society. He observed that if we never do anything which has not been done before, we shall never get anywhere; the law will stand still whilst the rest of the world goes on and that will be bad for both.[61]

[59] (2004) 6 SCNJ 126 cited in C.E Ibe, *Insight on the Law of Private Dispute Resolution in Nigeria*, (Enugu; EL'Demak Publishers, 2008) p. 93.
[60] (2004) 4 SCNJ 300.
[61] *Packer v. Packer* [1984] 2 All E.R.15 at p.32.