THE ROLE OF LAWYERS IN FOSTERING ALTERNATIVE DISPUTE RESOLUTION (ADR) IN THE MULTI-DOOR COURTHOUSE[*]

Introduction

In the past two decades Alternative Dispute Resolution (ADR) mechanisms are gradually being mainstreamed into the administration of justice system in Nigeria in the effort to improve the pace of justice delivery. Courts are reforming the processes for justice delivery through the concept of multi-door courthouse. Lawyers, as key actors in the justice sector, cannot be aloof to these developments. Apart from a conceptual analysis of ADR and the multi-door courthouse, there is also the need to fully chart the path for lawyers in the discharge of their duties to their clients within the framework of the current reforms. This paper, therefore, explores the role of a lawyer in ADR within the framework of the multi-door courthouse. It covers the following key areas/issues:

ADR in Perspective.

Concept of Multi-door Courthouse.

General Duty of a Lawyer in ADR.

Lawyer's Role in Specific ADR Processes.

Lawyer's Role in the Multi-door Courthouse.

Lawyer as Third-Party Neutral.

Lawyer's Remuneration in Relation to ADR.

ADR in Perspective

ADR generally refers to processes of resolving dispute outside courtroom litigation. The prominent feature of ADR processes is that they draw their legitimacy and efficacy from the consensus of the parties, unlike the litigation process.[1] The main ADR processes include Negotiation, Mediation, Conciliation, Arbitration, Early Neutral Evaluation, Expert Appraisal and other hybrids.

There is a notion amongst lawyers in Nigeria that litigation is the principal process for dispute resolution and that ADR is secondary to litigation. There

---

[*] Kevin N. Nwosu, LL.M. (Dundee); B.L.; Negotiation & Dispute Resolution Consultant; formerly Director/Academics, Nigerian Law School; Founder /Head Tutor, Kevin Nwosu Law Institute. Email: kevnwosu@gmail.com. & Larry O. C. Chukwu, Ph.D.; B.L.; Legal Consultant & Senior Lecturer, Faculty of Law, University of Abuja. Email: larrycolly@yahoo.co.uk.

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

is no doubt that, until recently, the training of lawyers in most jurisdictions focused substantially on the skills for use of litigation for dispute resolution.[2] It is this limited training that creates the wrong perception by lawyers about the nature and value of ADR in justice delivery. ADR processes are indeed natural, primary and predominant processes for dispute resolution in Nigeria. A proper review of the nature and dynamics of conflicts will reveal that ADR processes are useful before, during and sometimes even after litigation. Litigation results essentially from breakdown of negotiation (and sometimes mediation) by the parties. When a case is pending in court, the parties can still resolve their differences amicably by out-of-court settlement at any time before judgment. Parties can use ADR to terminate the court proceedings at any stage of the case before judgment. Even after judgment, the parties can reach some form of settlement outside the terms of the judgment, although the negotiating powers of the parties may not be the same as before the judgment.[3] If ADR mechanisms can be used to settle a case before, during and even after litigation, one wonders the real basis for the notion that ADR is secondary to litigation.

In an effort to locate the place of ADR in the justice system it is important to always appreciate the fact that much of what lawyers regard as ADR is largely the formal packaging of processes that the people use informally without placing any formal tag or name on them. Essentially, ADR processes are no different from the same processes we use in our families and communities where some family members or elders intervene to help parties resolve issues in their relationships.[4]
Another misconception about ADR is the notion that ADR is another set of judicial or quasi-judicial processes. The tendency by legal minds to try to rationalize ADR principles from the litigation and adversarial mindset is a major challenge to unlocking the huge potential of ADR in justice administration. Most ADR processes in their true nature are not sets of rigid legalistic options for dispute resolution. ADR processes are essentially multi-disciplinary tools for creative problem solving. Although ADR processes and practices are recognized and conducted within the framework of the law, their full potential cannot be achieved if stakeholders continue to apply them with the same litigation mindset and skills. Accordingly, where non-lawyer neutrals (mediators or arbitrators) resolve disputes by ADR, the proceedings, practices, and outcomes should not be assessed according to strict standards of technical legal principles and procedures.[5]
ADR processes are essentially flexible, voluntary, and private. Their success depends more on the confidence of the parties in the processes and outcomes than the adherence to rigid codes of

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

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

[4] See "Draft Policy on Public Participation in Social Defence in International Records of Criminal Policy No. 27 (1969) UN, New York, cited in E. E. O. Alemika, "The Informal Justice System and Administration in Nigeria", *Cahiers De Defense Sociale* (1989), 31; A. Ibidapo-Obe, "Restorative Justice and Plea Bargaining Practices: A Tilt Towards Customary Criminal Justice" in K. N. Nwosu (ed.), *Dispute Resolution in the Palace: Legal Principles and Rules* (Ibadan: Gold Press Ltd, 2010), 203 - 233.

[5] For instance, courts prescribe conditions for the validity of customary arbitration that are sometimes technical and confusing. See: *Njoku v. Ekeocha* [1972] ECSLR 199; *Ohiaeri v. Akabeze* [1992] 2 NWLR (Pt. 221) 1; *Egwugwu v. Egwugwu* [1990] 1 NWLR (Pt. 149) 393; *Agu v. Ikewibe* [1991] 3 NWLR (Pt. 180) 385; *Awosile v. Awosile* [1992] 5 NWLR (Pt. 293) 295; *Adeyemi v. Akinnola* [1995] 5 SCNJ 157.

procedure. By resorting to ADR processes, the parties look beyond the immediate issues on the table to their future relationship. They are more concerned about the future than passing judgment on past conduct.

The Concept of Concept of Multi-door Courthouse

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

In the broad context, multi-door courthouse is a concept that underscores the effective mainstreaming of ADR into the court system as a means of promoting access to justice whilst equally reducing courtroom tension.[7] It is important to note that multi-door courthouse is a concept, and not essentially the building or apartment where ADR services are provided within the court premises. It is the act of official recognition and availability of ADR processes as part of the justice delivery system in a particular jurisdiction. Once ADR is officially integrated into the court system with trained personnel available, a multi-door courthouse exists, even if no building is tagged as "multi-door courthouse".

The idea of a multi-door courthouse was first presented in 1976 by Professor Frank Sander of the Harvard Law School. Professor Sander conceived of a court that offered disputants a variety of ways to resolve their disputes. As a means of decongesting the courts and ensuring greater efficiency of the judicial system, he suggested that rather than add every case to the litigation cause list, multi-door courthouses direct litigants to "intake specialists" who assess disputes brought to the court and determine the optimal mechanism for resolving them.

The concept of a multi-door courthouse is fast gaining acceptance in Nigeria. It is important to note, however, that the multi-door courthouse does not replace *ad hoc* ADR practice. Even in jurisdictions where ADR has been institutionalized through the multi-door courthouse, a substantial number of cases are still being resolved through private ADR arrangements. In a way, the private ADR centres can be integrated as part of the multi-door courthouse under an arrangement where cases settled at the private centres can be filed and sanctioned by the courts.

There are two major ways of taking cases to the multi-door courthouse. One method is **walk-in** cases, where the parties directly approach the multi-door courthouse to resolve their cases without first filing a suit in the court. The second method is through **referrals**, where a case already filed in court as litigation can be referred to the multi-door courthouse by a judge or magistrate.

---

[6] The trail-blazer was the Lagos Multi-Door Courthouse established in 2002; followed swiftly by the Abuja Multi-Door Courthouse established in 2003.

[7] See L. O. C. Chukwu, "Managing Landlord and Tenant Relationship: The ADR Option", (2008) *Nigerian Law and Practice Journal*, Vol. 9, 61 at 78.

General Duty of a Lawyer in ADR

Rule 15 (3) (d) of the Rules of Professional Conduct for Legal Practitioners 2007 makes it mandatory for a lawyer to advise his client on ADR. The rule provides that in his representation of his client a lawyer shall not fail or neglect to inform his client about the option of alternative dispute resolution before resorting to or during litigation. The implication of this rule is that every lawyer has a professional duty to discuss the appropriateness or otherwise of the use of ADR with the client before or during litigation. It is important to emphasize here that this rule is mandatory and non-compliance by a lawyer can lead to an indictment for professional misconduct. Indeed, Rule 55 (1) of the same Rules provides that breach of any of the rules (including Rule 15 (3) (d)) is a professional misconduct for which a lawyer may be punished as provided under the Legal Practitioners Act.[8]

The upshot of these provisions is that a lawyer has a general duty to guide his client on the use of ADR. From the moment a lawyer receives a brief to the disposal of the matter, there is a continuous responsibility to advise the client on the suitability or otherwise of ADR. It is important to note that this duty does not depend on whether or not the lawyer "belongs" to any of the ADR groups.

Role of a Lawyer in Specific ADR Processes

As part of the general duty of a lawyer to advise his client on ADR, where a particular ADR process is adopted, the lawyer must understand and play his role well in the best interest of his client. In his capacity as counsel to a client, a lawyer's role in specific ADR processes will depend on the type of ADR process adopted. Although ADR processes differ in their nature and dynamics, we shall restrict ourselves here to the five well known variations relevant to the present discussion, namely Early Neutral Evaluation, Expert Appraisal, Negotiation, Mediation/Conciliation, and Arbitration.

Early Neutral Evaluation

In the initial attempt to resolve their differences, parties may seek the guidance or opinion of a neutral third party. In adopting the early neutral evaluation, parties agree to state the facts of their matter to a third party whom they authorize to review the case and give a suggestion as to the possible options for resolution of the matter. A lawyer can guide his client on the appropriateness or otherwise of referring the matter to a neutral. A lawyer may also play the role of a neutral in this situation and such lawyer will usually not be counsel to any of the parties to the dispute.

Expert Appraisal

Parties may submit their dispute to a neutral expert for a review and suggestion on options for settlement. The expert may be required to merely give his opinion or the parties may agree that the expert decision

[8] Cap. L11, Laws of the Federation of Nigeria 2004.

shall be binding. In the latter situation, the process is sometimes called Expert Determination. The expert in this process can be a lawyer who is required to give a considered legal opinion as to the rights of the parties or the likely outcome of the case should the parties proceed to litigation. Again, a lawyer representing any of the parties to the dispute cannot be the expert for the purpose of an expert appraisal or determination. Without acting as the neutral, a lawyer may advise his client on the need to refer the case to an expert for an appraisal and the benefits of the process in the particular case.

Negotiation

Negotiation involves direct discussions or communication between the parties with a view to resolving their differences. In most cases, parties to a conflict would first explore the chances of resolving the dispute by themselves, through direct negotiation. Sometimes they succeed, sometimes they don't. Negotiation may be adversarial (win-lose negotiation) or collaborative (win-win negotiation).[9] Negotiation may fail because the parties lack the skills to search for creative options for resolving their dispute. Negotiation may be formal or informal. Lawyers regularly negotiate on behalf of their clients. The major role of a lawyer in negotiation includes:

- To advise the client on the appropriateness or otherwise of the use of negotiation in the particular case. To help the client explore the underlying interest in the case before the commencement of a negotiation.
- To negotiate on behalf of the client, provided the lawyer possesses the requisite skills. Lawyers must understand the difference between forensic advocacy skills and effective negotiation skills. The ability to "win" a case in litigation does not necessarily mean the capacity to facilitate an agreement in a negotiation.
- To guide the client on their Best Alternative To Negotiated Agreement (BATNA). To help the client decide when an agreement is appropriate and when to walk away from the negotiation and explore other options.
- To help the client review any proposed agreement to ensure that they meet the best interest of the client, and that there are no legal impediments to their performance.
- To draft, peruse and vet the final agreement, where appropriate.

[9] See C. Epie, "Alternative Dispute Resolution: Understanding the Problem-Solving (Win-Win) Approach in Negotiations", (2004) *Negotiation & Dispute Resolution Journal*, Vol. 1 No. 1, 71.

- To advise the client on any issues that may arise in the course of implementation of the agreement and, where necessary, to help renegotiate the matter.

Mediation/Conciliation

Sometimes, it may be difficult for the parties involved in a dispute to negotiate constructively in their direct attempt at the resolution of their differences. Where the parties in dispute negotiate by themselves, their emotional attachment to their respective positions in the matter may limit their ability to jointly search for a common ground for the settlement of their dispute. Also, lack of effective negotiation skills may limit the capacity of the parties to resolve their differences by direct negotiation. Mediation usually helps to overcome these problems. Mediation is a process in which an impartial third party is invited, or intervenes, to facilitate the resolution of a dispute by the agreement of the parties. Basically, the mediator facilitates agreement by improving the quality of communication between the parties in their negotiations. A good mediator is one who promotes understanding, focuses the parties on their interests and uses creative problem-solving techniques to assist the parties to reach their own agreement. The mediator does not decide or even suggest an outcome for the parties. He also does not render his opinion on the case. A mediator is a neutral third party who must not be interested in the outcome of the case. In mediation, parties to the dispute retain control of both the process and the outcome.

Conciliation is also a process whereby a third party intervenes to assist the parties to resolve their dispute. To a large extent, conciliation shares the same characteristics as mediation, and in most jurisdictions both terms are used interchangeably. Some authorities, however, distinguish mediation from conciliation by emphasizing the particular attribute of conciliation that a conciliator may, if necessary, deliver his opinion as to the merits of the dispute.[10] As one learned writer notes, a conciliator "would draw up and propose the terms of an agreement designed to represent what is, in his view, a fair compromise of a dispute after having discussed the case with the parties."[11] Be that as it may, it is pertinent to note that the Arbitration and Conciliation Act makes provision for conciliation,[12] but not for mediation.

Because mediation and conciliation are essentially a continuation of negotiation (they are sometimes referred to as "assisted negotiation"), the roles of a lawyer in mediation or conciliation are essentially the same as in negotiation. They include:

- To advise the client on the appropriateness or otherwise of the use of mediation / conciliation in the particular case.
- To guide the client in the choice of a mediator/ conciliator.

---

[10] See, e. g., the Glossary of ADR Terms published by the Academy of Experts, London in www.academy-experts.org; republished in (2004) *Negotiation & Dispute Resolution Journal*, Vol. 1 No. 1, 119 - 122. Chukwu, "Managing Landlord and Tenant Relationship: The ADR Option", *note 7, above*, at 76 - 77.

[11] G. C. Nwakoby, *The Law and Practice of Commercial Arbitration in Nigeria*, 2nd edn., (Enugu: Snaap Press, 2014), 8, citing Redfern & Hunter, *Law and Practice of International Arbitration*, (2004), 27.

[12] See Part II and Schedule 3.

- To help the client explore the underlying interest in the case, before the commencement of the mediation / conciliation.
- To represent the client as counsel (expert) in the mediation. This is different from where a lawyer is appointed by both parties as mediator in the case. A lawyer can always represent his client in mediation in his capacity as counsel, whether or not he "belongs" to any ADR group.
- To negotiate on behalf of the client, provided counsel possesses the requisite skills. Lawyers must understand the difference between forensic advocacy skills in litigation, on the one hand, and effective negotiation skills required in mediation / conciliation, on the other hand. The ability to "win" a case in litigation does not necessarily mean the capacity to facilitate an agreement in a mediation or conciliation.
- To assist the client to do a reality-check of their demands and offers made by the other party, in order to decide when an agreement is appropriate and when to walk away from the mediation / conciliation and explore other options.
- To help the client review any proposed agreement to ensure that they meet the best interest of the client, and that there are no legal impediments to their performance.
- To draft, peruse and vet the final agreement, where appropriate.
- To advise the client on any issues that may arise in the course of implementation of the agreement and, where necessary, to help renegotiate the matter.

Arbitration

Arbitration is the process whereby the disputing parties appoint arbitrator(s) to hear their evidence and decide the dispute for them.[13] In arbitration, the parties surrender their decision-making powers to the arbitrator(s), but retain control over the process. The Arbitration and Conciliation Act regulates arbitration practice and procedure for commercial disputes in Nigeria. The decision of an arbitral tribunal (award) is usually final and binding,[14] and may be enforced like a

---

[13] For an apt articulation of the various definitions of arbitration from the statutory, judicial, and scholarly perspectives, see Nwakoby, *The Law and Practice of Commercial Arbitration in Nigeria, note 11 above*, at 1 - 5.

[14] See s. 7 (4) and s. 14, ACA. But see *Ogunwale v. Syrian Arab Republic* (2001) 24 WRN 94, where Chukwumah-Eneh, JCA, (as he then was) stated thus: "... without going flat out to declare the provisions of section 7 (4) and 34 [ACA] unconstitutional, it is enough to say here that they cannot override the clear right of appeal conferred on the appellant by section 241 (1) of the 1999 Constitution".

court judgment,[15] statutorily prescribed grounds,[16] and only where the circumstances are compelling.[17] The major roles of a lawyer in arbitration include:

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

Lawyer's Role in the Multi-door Courthouse

As stated earlier, the multi-door courthouse is a court system where ADR services and facilities are provided. The multi-door courthouse is not another form of ADR. Rather, it is a concept that underscores the need for ADR in the courts as part of the framework for access to justice. Within the multi-door courthouse, the ADR processes employed are the same as non-court-connected ADR – negotiation, mediation, arbitration, etc. In addition to the role of a lawyer in specific ADR processes, as highlighted above, the general role of a lawyer in the multi-door courthouse is to explain to the client the workings of the system and guide the client on how to maximize the benefits of using the multi-door courthouse framework in the resolution of disputes. Lawyers have a duty to assist in the attainment of the overriding objectives of the multi-door courthouse and therefore should do all in their professional capacity to facilitate and not hinder recourse to ADR within the multi-door courthouse. With proper knowledge and skills in ADR, lawyers can use the **walk-in** option at the multi-door courthouse to facilitate quick and satisfactory resolution of their clients' matters.

---

[15] See s. 31, ACA. See also A. A. Aouzu, "Arbitration and Judicial Powers in Nigeria" (2001) *Journal of International Arbitration*, Vol. 18 No. 6, 617 at 633. However, s. 32, ACA provides that any of the parties to an arbitration agreement may request the court to refuse recognition or enforcement of the award.

[16] See s. 29 (2) and s. 30 (1), ACA.

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

Lawyer as a Third-Party Neutral

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

Mediators are third-party neutrals who assist parties in a dispute to negotiate a solution in the mediation process. A mediator (especially in a facilitative mediation) does not give a decision or suggest to the parties what the outcome should be. The primary responsibility of the mediator is to ensure that the parties remain focused on their major interests in the dispute and avoid or overcome any obstacles that may derail their search for a solution to their conflict. Parties to a dispute can appoint anyone as their mediator. Where a lawyer represents a client in mediation, the lawyer is NOT the mediator but counsel to the client.

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

Increasingly, as part of the current wave of ADR popularity in Nigeria, lawyers are being trained as mediators, conciliators and arbitrators with many joining some of the growing number of private ADR groups. While this is a welcome development, it is important to emphasize that lawyers now have a professional duty to provide ADR services to their clients primarily in their capacity as counsel and not necessarily as mediators, arbitrators or other third-party neutrals. Accordingly, belonging to any group of mediators or arbitrators is NOT and should NOT be a pre-requisite for a lawyer to provide ADR services or represent a client in any ADR process. While not in any way discouraging lawyers from joining any of the ADR groups, what is important for them as professionals is to ensure that they acquire and possess the requisite skills and expertise to represent clients in any ADR process. A lawyer in his capacity as counsel to a client in an ADR process does not play the same role as a lawyer who may have been appointed as a third-party neutral (mediator or arbitrator) by the parties to the dispute. Ideally, once a lawyer represents any of the parties to a dispute as counsel, he cannot be a third-party neutral in the same dispute.

Lawyer's Remuneration in relation to ADR

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

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

As a professional body, legal practitioners in Nigeria must make a concerted effort to re-create the mindset of the public about the role of lawyers in the society. Clients must be enlightened to begin to see counsel as a multi-talented creative problem solver with a diverse set of tools for dispute resolution. This is the approach that will expand the revenue base of lawyers in ADR within the framework of the multi-door courthouse. Clients' interests are better served when cases get resolved expeditiously through ADR. When lawyers get their clients to appreciate the value of ADR processes, they will be adequately remunerated for ADR services. It is perhaps pertinent to reiterate that Nigerian lawyers now have a professional duty to advise their clients about the need to explore the ADR option in the settlement of their disputes. Interestingly, the Rules of Professional Conduct for Legal Practitioners, apart from enjoining lawyers to mainstream ADR in their practice, also state that the remuneration and fees of a legal practitioner shall be for "his service to the client".[18] Nothing in the Rules restricts the fees of a legal practitioner to litigation alone. In addition to a general or special retainer with a client, counsel may charge appropriate fees for his services where the client's case is resolved by negotiation, mediation, conciliation, arbitration or any other form of ADR process. It is, therefore, a professional duty for lawyers to consider and advise their clients on the use of ADR in the conduct of a case.

Another important issue to consider here is the obvious conflict of interests between legal counsel who may be inclined to going to trial in expectation of higher income and the interest of the client who may desire

---

[18] Rule 48 (1), Rules of Professional Conduct for Legal Practitioners, 2007.

a quick and expeditious resolution of the case. Although this conflict is a recurrent issue in lawyer/client relationships, it is important to note that a lawyer has a professional duty to "act in a manner consistent with the best interests of the client".[19] It is, therefore, unethical and a professional misconduct for counsel to allow his financial interest to override his duty to advise his client to explore the ADR option in an appropriate case. Moreover, it is important to note that many litigants in Nigeria are poor and, therefore, can hardly afford a costly legal retainer. This socio-economic reality may sometimes render it more expedient for disputants to opt for a quick and cost-effective settlement of the dispute through ADR mechanisms. It is, therefore, imperative that lawyers consider the economic circumstances of their clients as a major factor in deciding the course of conduct of the case. The situation where litigants sometimes lose their businesses or careers and sometimes sell their personal or family property in order to sustain the costs of protracted trials calls for a shift to the use of ADR for efficient justice delivery.

Conclusion

With the poor state of justice administration in this country, there is a dire need for the adoption of mechanisms and practices that will help reduce the judicial caseload and facilitate access to justice. ADR, fully mainstreamed within the court system through the concept of multi-door courthouse, provides the necessary relief. Lawyers play a vital role in the practice of ADR in the multi-door courthouse. However, in order for the full potential of ADR in the multi-door courthouse to be realized, there is a need for a comprehensive, systematic and structured programme of training, re-orientation, and capacity building for lawyers. It is important to re-emphasize that the knowledge and skills required for success in litigation are essentially different from what is necessary for effective use of ADR. Beyond the current trend of merely donning the toga of arbitrators, mediators, and the like, lawyers should learn and understand the nature and dynamics of all ADR processes, and be capable of deploying such processes as may be appropriate in particular cases. Such an approach will, no doubt, be to the advantage of both their clients and even the lawyers themselves. Besides, in view of the non-binding character of most ADR processes, the implementation of the agreement reached in any case depends on the collective will of the parties. If any party fails or refuses to abide by such agreement, the parties are back to square one. Accordingly, lawyers involved in ADR in the multi-door courthouse have a sacred duty, as ministers in the temple of justice, to dragoon their clients into implementing the outcome of the ADR process.

---

[19] Rule 14 (1), Rules of Professional Conduct for Legal Practitioners, 2007.