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LEGAL AND INSTITUTIONAL FRAMEWORKS FOR EFFECTIVE APPLICATION OF ADR IN MARITAL DISPUTES

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Abstract

Alternative Dispute Resolution (ADR) has emerged as a viable mechanism for resolving marital disputes in a manner that is less adversarial, more cost-effective, and emotionally considerate compared to conventional litigation. This paper examines the legal and institutional frameworks that support the effective application of ADR in resolving marital conflicts in Nigeria. It critically analyses statutory provisions such as the Matrimonial Causes Act, the Child Rights Act, the Arbitration and Mediation Act 2023, and various rules of court which permit or encourage mediation and reconciliation in matrimonial proceedings. The study further explores the roles of key institutions, including family courts, customary and religious dispute resolution forums, and government-established bodies such as the Citizens' Mediation Centres and the Multi-Door Courthouses. By identifying the strengths and limitations of the existing frameworks, the paper highlights the potential of ADR in promoting privacy, preserving familial relationships, and ensuring outcomes that are more tailored to the interests of the parties especially in matters involving children and shared property. It also addresses challenges such as cultural resistance, lack of awareness, insufficient training of mediators, and the need for gender-sensitive approaches. The paper concludes by advocating for enhanced legal reforms, capacity-building programs, and stronger institutional synergy to make ADR a more accessible, trusted, and effective tool in the resolution of marital disputes.

1.0 INTRODUCTION

The institution of marriage is as ancient as human creation itself.[1] Marriage is traditionally regarded as a sacred bond of intimacy and compromise, where spouses complement each other through thick and thin.[2] However, contemporary trends diverge from these traditional ideals, with many unions marred by rancor, dispute and mutual hostility.[3] Dispute is a universal and inevitable

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[1] D Bethmann and M Kvasnicka 'The Institution of Marriage' J Popul Econ (2011) < https://www.jstor.org/stable/41488338 > accessed on 29 July 2024

[2] David Blankenhorn, *The Future of Marriage* (Encounter books, 2007)

[3] ibid

aspect of human interaction, occurring in homes, workplaces, marketplaces, places of worship, on the streets and during business transactions. Marriage, like any other relationship is also not immune to disagreements and disputes.[4]

Dispute in marriage is a natural occurrence and can ultimately lead to a stronger and more resilient relationship. However, unresolved conflicts or the use of ineffective conflict resolution strategies often lead to one or both parties opting out of the union permanently through dissolution of the marriage by the Court, commonly referred to as 'divorce'.[5] Some marital disputes have led to more displeasing effects such as murder, assault and other heinous crimes, by one of the parties on the other.[6]

In Nigeria, marital disputes can be addressed through adversarial litigation, consensual and amicable settlement, commonly known as Alternative Dispute Resolution (ADR). Section 6 of the Constitution of the Federal Republic of Nigeria[7] vests the adjudicatory power of the Federation in the Court. This power covers all spheres of human activities and differences, including marital disputes.

The adversarial litigation is however fraught with challenges. These challenges have been widely discussed over the years. One major concern is its adversarial nature, which can lead to a 'winner-loser' outcome, potentially straining future relationships, whether personal or professional.[8] The conventional court system's adversarial nature is not always conducive to resolving deeply personal and sensitive issues inherent in marital disputes. Akpata[9] criticize litigation for its tendency to cause significant delays due to the possibility of multiple appeals, including those to the Supreme Court. Oputa JSC (Rtd), once noted that **'**the administration of Justice in our courts suffers from delay and expense**'**[10]

Many marital disputes escalate into lengthy and emotionally legal battles, leading to stress, financial loss and strained relationships. Therefore, the litigation of marital disputes is usually emotionally upsetting to parties especially when children are involved.[11] Litigation in matrimonial causes has caused both the family and the society a lot of havoc.[12]

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[4] OM Atoyebi 'The Legal Application of ADR in Matrimonial Disputes in Nigeria' Series (2024) <https://omaplex.com.ng/the-legal-application-of-adr-in-matrimonial-disputes-in-nigeria-series/> accessed 29thJuly 2024

[5] AA Oluwabiyi and OA Adewole and MO Agboke and OO Oduniyi, 'Alternative Dispute Resolution (ADR) And the Settlement of Matrimonial Disputes in Nigeria' public policy and administration research (2024) vol 14, No1 <https://iiste.org/Journals/index.php/PPAR/article/viewFile/62355/64390 >accessed 29 July 2024

[6] Branham Chima and Constance Okorobo, 'Marital dispute through Alternative Dispute Resolution', University of Benin Journal (2021) https://www.researchgate.net/publication/362506089 accessed 29 July 2024

[7] 1999 Constitution of Federal Republic of Nigeria (Fifth Alteration) Act, 2023 (Act N0 5).

[8] TE Carbonneau, '*A consideration of Alternatives to divorce Litigation'* 119 (1986).

[9] E Akpata, '*The Nigerian Arbitration Law in Focus'* (1997, West African Book Publisher)

[10] CA Oputa '*Human Rights in the Political and Legal Culture of Nigeria*' Nigerian Law Publications Ltd (1989)

[11] OM Atoyebi 'The Legal Application of ADR in Matrimonial Disputes in Nigeria' Series (2024) <https://omaplex.com.ng/the-legal-application-of-adr-in-matrimonial-disputes-in-nigeria-series/> accessed 29thJuly 2024

[12] T Carbonneau, 'A Consideration of Alternatives to Divorce Litigation' (1986)6 (4) (2) U.M.L Review Journal, 1119

The limitations and inadequacies of the traditional litigation approach in resolving disputes, particularly marital disputes constitute major reasons for the application of Alternative Dispute Resolution (ADR) mechanisms in resolving marital disputes in Nigeria.[13] Additionally, the increasing number of marital disputes and the need for a more efficient and effective dispute resolution mechanism led to the exploration of ADR methods.[14]

ADR is commonly used as a means of settling marital disputes and has been recognised in countries like Australia, the United States of America (USA) and Canada embracing its efficacy over litigation. Judicial support for ADR is exemplified in plethora of cases. This was enunciated in the case of *Shell Petroleum Development Co. Ltd v. Crestar Integrated Natural Resources Ltd*.[15] Therefore, it is not in doubt that that Alternative Dispute Resolution mechanisms are increasingly becoming preferred, not only as alternative to litigation but also as best strategic and effective method of resolving certain private disputes including marital disputes.[16] It is in view of the challenges and shortcomings of litigation of marital disputes that this research seeks to evaluate the application of Alternative Dispute Resolution in resolving marital disputes and to examine its effectiveness.

2.0 HISTORY, MEANING AND NATURE OF ADR AND MARRIAGE

2.1 ORIGIN OF ADR

Disputes have been an inherent and inevitable part of human interaction, arising from diverse sources and manifesting in various form.[17] Long before the advent of formal court systems, societies have employed various informal mechanisms to resolve disputes.[18] Centuries before colonialism, various African Empires and Kingdoms have flourished across the continent of Africa.[19] These include, old Ghana, Songhay, Oyo, and Mali Empires in the west, kingdom of the Congo in the South-east, the Zulu Empire in Central Africa and the ancient Bunyoro Empire and Buganda Kingdom in the East, to mention a few.[20] These Empires and kingdoms, as well as those African societies without a centralised political administration such as the Nuer of Sudan and the Igbo of Eastern Nigeria, had indigenous mechanism through which conflicts were resolved.[21]

In pre-colonial times and before the advent of the regular courts, Nigerians had a simple and inexpensive way of adjudicating over disputes amongst themselves.[22] Traditional societies settled

[13] C Okpara 'Alternative Dispute Resolution in Nigeria: A Critical Analysis'. Journal of Law and Society, 2015). 42(1), 53-72.
[14] JO Asein, 'Alternative Dispute Resolution in Nigeria: Prospects and Challenges'. Journal of Law and Conflict Resolution, (2012). 4(1), 1-15.
[15] [2015] Case No 21012/TO, Court of Appeal Per OBASEKI-ADEJUMO, J.C.A. (Pp. 19-21, Paras. C-D)
[16] K. Wilensky, 'Alternative Dispute Resolution in Matrimonial Cases' (1995) New York Law Journal; 21
[17] PH Gulliver, *Disputes and Negotiations: A Cross-Cultural Perspective,* African Press (1979)
[18] ibid
[19] LA Adeleke, 'Psychotherapeutic Elements in Customary Arbitration among the Yoruba of South-Western Nigeria' Journal of Arbitration (20191) 4(1)
[20] ibid
[21] TO Elias, *The nature of African Customary Law,* Manchester: University Press (1956) 8-9
[22] ibid

disputes by referring them to the elders and other respected members of the society. In Okpuruwa v. Okpokan,[23] Oguntade JCA (as he then was) observed thus:

> In the pre-colonial times and before the advent of the regular courts, our people had a simple and inexpensive way of adjudicating over disputes between them. They referred them to the 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 customs.[24]

For the Igbo of South-eastern Nigeria there is a chain of arbitral institutions through which conflicts were resolved, these include the Ezi (family), Okpara (elders), Ummuna (clan) an Amala (council of elders) among others.[25] Similarly, the Hausa people of Northern Nigeria had a well-established system for resolving disputes. Disputes were typically resolved through a council of elders, comprising respected community leaders, Islamic scholars, and family heads.[26] These elders would gather to hear the dispute, provide guidance, and facilitate a resolution. Islamic law (Sharia) played a significant role in guiding the dispute resolution process, emphasizing justice, fairness, and compassion.[27]

The Yoruba in the south-western Nigeria had a way of resolving disputes. Such as the family mediation presided over by the family head (Baálé), the community mediation, presided over by the compound head (Baále) and the King (Oba) preside over matter brought to the palace.[28] The incursion of Nigeria by the British authority witnessed the introduction of the English type of courts for dispute settlement. The introduction of these courts notwithstanding, the existing traditional means of disputes settlement were not jettisoned but co-existed with the court adjudicative processes.[29]

Movement for modern ADR begins in the 1960s, where a lot of developed countries developed interest in the area.[30] In pursuit of the actualization of this new area of interest, several conferences were held by eminent jurists and lawyers.[31] One of such conference was the Pound Conference held in Minnesota, USA in 1979, where leading jurists gathered to address the dissatisfaction with the justice system.[32] It was at that conference that the idea of "multi-door court house" was first proposed by E.A Sander, a proponent of Alternative Dispute Resolution.[33]

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[23] (1998) 4 NWLR (Pt. 90) 554 at 586.
[24] ibid
[25] LG James, 'The Kpelle moot: A therapeutic model for informal settlement of disputes' Africa Journal of the international African institute, (1963) vol. 33 1-10)
[26] MG Smith, '*The Economy of Hausa Communities'* Johnson Reprint Corporation (1954) 123.
[27] AR Doi, *Shariah: The Islamic Law*, Ta-Ha Publishers (1984) 56.
[28] OB Olaoba, *Yoruba Legal Culture*, Ibadan: FOP Press (2002)
[29] O Adewoye, *The Legal Profession in Nigeria from 1865 – 1962*, London: Longman (1977), 112
[30] A Kehinde, 'The Lagos Multi-Door Court House and the Judge: A New Beginning' MPJFIL (2004) 8 (340).
[31] Adekunle Saheed Abiola, '*The Application of Arbitration in Merger and Acquisitions Agreement: An Examination of the Problems of Consent in Parrel Proceedings'* (LLMThesis Faculty of Law Obafemi Awolowo University 2019) 13
[32] D Peters, 'Arbitration & Conciliation Act Companion' (Dee-Sage Nigeria Limited, Lagos, Nigeria: 2006) 368
[33] ibid

In Nigeria, Alternative dispute resolution is provided for in Section 19 (d) of the Constitution of the Federal Republic of Nigeria.[34] This section provides for the settlement of disputes by arbitration and other forms of ADR methods. ADR now plays a key role in the resolution of matrimonial disputes in Nigeria.[35] The Supreme Court in *Shell Petroleum Development Co. Ltd v. Crestar Integrated Natural Resources Ltd*[36] emphasized that efforts should be made to bring about conciliation to bridge communication gap to prevent people from rushing to courts.

The introduction of the modern ADR process in the administration of justice in Nigeria is geared towards addressing the challenges associated with court litigations. In recent times, an ever-increasing plethora of Acts,[37] Rules[38] and Guidelines have begun to make viable provisions to aid and enhance the adoption of ADR and also stipulate clear-cut procedures to follow when ADR methods are adopted. There is no doubt that recourse to this mechanism in view of the economic and political conditions of the masses in this country will enhance peoples' access to justice.[39]

2.2 MEANING AND NATURE OF ADR

The acronym 'ADR' means Alternative Dispute Resolution. According to Garner defines ADR as '*procedures for settling disputes by means other than litigation*.'[40] This refers to a group of a non-adversarial ways of resolving disputes quickly and at a lower cost than going through the tedious road of adversarial proceedings.[41] In essence, it refers to a range of procedures that serve as alternatives to litigation for the resolution of disputes which usually involves the intercession of an impartial third party.

Gadzama[42] defined ADR as any means of dispute resolution outside litigation in a courtroom.[43] It is a collective term for the ways parties can settle disputes, with or without the help of a third party. ADR processes are typically initiated by agreement between parties, and the outcome is often determined by mutual consent.[44] The nature of ADR emphasises the importance of neutrality, impartiality, and confidentiality. ADR processes often involve the use of neutral third-party facilitators, such as mediators or arbitrators, who help parties navigate the dispute resolution process.[45]

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[34] Constitution of Federal Republic of Nigeria (Fifth Alteration) Act, 2023 (Act N0 5).

[35] D Peters, 'Arbitration & Conciliation Act Companion' Dee-Sage Nigeria Limited, Lagos, Nigeria: 2006, 368

[36] [2015] Case No 21012/TO, Court of Appeal Per OBASEKI-ADEJUMO, J.C.A. (Pp. 19-21, Paras. C-D)

[37] E.g., Arbitration and Mediation Act 2023.

[38] E.g., National Industrial Court of Nigeria Civil Procedure Rules 2017, Order 24 of the Rules

[39] CJ Ubanyionwu: 'Challenges of Alternative Dispute Resolution in Nigeria' International Journal of Comparative Law and Legal Philosophy (IJOCLLEP) (2023) 5 (2)

[40] Bryan Garner, 'Black's Law Dictionary' West Group Publishers (1997) p. 25

[41] Adekunle Saheed Abiola, '*The Application of Arbitration in Merger and Acquisitions Agreement: An Examination of the Problems of Consent in Parrel Proceedings'* (LLMThesis Faculty of Law Obafemi Awolowo University 2019) 13

[42] J Gadzama, 'Development and Practice of ADR in Nigeria' (2003) 1

[43] ibid

[44] ibid

[45] M.T Ladan, 'Alternative Dispute Resolution in Nigeria: Benefits, Processes and Enforcement, Current Themes in Nigerian Law' (paper delivered at NIALS Government Advisers, WOA, August 1997)

2.3. MEANING AND NATURE OF MARRIAGE

Marriage is a legally and socially sanctioned union, usually between a man and a woman, that is regulated by laws, rules, customs, beliefs and attitudes that prescribe the rights and duties of partners and accords status of offspring's (if any).[46] Marriage has also been defined as the *'voluntary union for life of one man and one woman, to the exclusion of all others.'*[47] Marriage is one of the oldest universal institutions which is recognized and respected all over the world.[48]

In *Shaw v Gould,*[49] the court held that, because marriage constituted the very foundation of civil society, the laws and institutions of any country regulating the formation as well as the dissolution of the contract are of vital importance to its subject. The Nigerian Court of Appeal has reiterated the essentials of a valid marriage to include legal capacity of the parties, mutual consent and compliance with the legally prescribed form.[50]

From the definitions considered, two things are recognizable. On the one hand, it is apparent that the *consortium* is meant to be between one consenting man and one consenting woman who have agreed to be bound to each other till death or dissolution. In essence, marriage is meant to be a heterosexual relationship.[51] Accordingly, the sanctity of the relationship is recognized and upheld by law. On the other hand, the concept of marriage as provided for under English law and, consequently, under Nigerian law is strongly influenced by the Christian roots of England.[52]

The concept of marriage in relations to its nature, structure as well as the duties of both parties to the relationship to each other and to the offspring(s) of the relationship have been described and crafted over time by the law, by means of statutes which, in turn, have been interpreted by the Court.[53]

2.4 CAUSES OF MARITAL DISPUTES

2.4.1 Infidelity and Trust Issue

When one partner engages in an extramarital affair, it violates the trust and commitment that are the foundation of the marriage. This breach of trust can result in feelings of betrayal, anger, and insecurity, which can escalate into frequent disputes. Infidelity also disrupts emotional and physical intimacy, making it difficult for the couple to rebuild their relationship.[54]

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[46] Britannica, 'Marriage| Definition, History, Types, Customs, Laws & Facts' < Marriage | Definition, History, Types, Customs, Laws, & Facts | Britannica> accessed 2 December 2024

[47] Lord Penzance in *Hyde v Hyde* (1866) LR 1 PD 130

[48] D Bethmann and M Kvasnicka 'The Institution of Marriage' J Popul Econ (2011) < https://www.jstor.org/stable/41488338 > accessed on 29 July 2024

[49] ((1868) LR 3 HL 55, 82.)

[50] *Ijioma v Ijioma* (2009) 12 NWLR (Pt. 1156) 593 at 607)

[51] Same Sex Marriage (Prohibition) Act 2013

[52] AA Oluwabiyi, OA Adewole, MO Agboke and OO Oduniyi, 'Alternative Dispute Resolution (ADR) And the Settlement of Matrimonial Disputes in Nigeria' public policy and administration research (2024) 14 (1) <https://iiste.org/Journals/index.php/PPAR/article/viewFile/62355/64390 >accessed 29 July 2024

[53] Marriage Act Cap M6 LFN 2004, Matrimonial Causes Act Cap M7 LFN 2004, Child Rights Act Cap C50, LFN 2004

[54] IE Ohiseghame, 'Causes and Effects of Marital Conflict in Agbado Oke Odo and Ifako Ijaye Local Council Development Areas in Lagos State' Global Journal of Arts, Humanities and Social Sciences 9(3) 65- 76 (2021) < https://papers.ssrn.com/sol3/Delivery.cfm?abstractid=3820075 > accessed 17 February 2025

2.4.2 Financial Problems

Financial problems frequently lead to marital disputes. Couples facing financial difficulties often experience stress, tension, and arguments. Differences in spending habits, financial priorities, and attitudes towards money can create conflicts. Financial strain can result in mistrust, resentment, and blame, further affecting the relationship. Prolonged financial difficulties can impact mental health, leading to anxiety and depression, which in turn affect the marriage's overall well-being. Addressing financial issues openly and honestly is crucial for maintaining a healthy relationship.[55]

2.4.3 Lack of Mutual Respect

The absence of mutual respect between partners is a critical issue in marital relationships. Respecting one's spouse is fundamental for maintaining a strong and healthy union. When mutual respect is lacking, it can lead to dispute, potentially destabilizing even the most blissful marriages. Respect and love are intertwined and reciprocal in any marriage. Each spouse is obligated to demonstrate respect and love towards their partner. Without mutual respect, feelings of resentment, disregard, and inequality can fester, creating an unhealthy dynamic that undermines the relationship.[56]

2.4.4 Health Issue

Health issues can significantly impact marital relationships, including the couple's sexual relationship. When one partner experiences chronic illness, disability, or mental health challenges, it can create stress and tension within the relationship. The healthy partner may feel overwhelmed by the additional responsibilities and emotional strain, leading to conflicts. Moreover, health issues can directly affect physical intimacy. Financial burdens from medical expenses can also exacerbate the situation. [57]

2.4.5 Communication Breakdown

The breakdown of communication is a major cause of marital disputes. . Marital communication is central to discussions on successful marriages.[58] Effective communication is essential for maintaining a healthy relationship and preventing disputes. When spouses fail to communicate effectively, misunderstandings arise, leading to unresolved issues and emotional disconnection.

[55] ibid

[56]SO Iroye, 'A Critical Examination of the Causes and Management of Marital Conflicts in Nigeria' NOUN International Journal of Peace Studies And Conflict Resolution (NIJPCR) 1(2B), August, 2021 < COMPLETE-JOURNAL-NIJPCR-VOL-1-NO-2B-FULL-PDF.pdf> accessed 17 February 2025

[57] IE Ohiseghame, 'Causes and Effects of Marital Conflict in Agbado Oke Odo and Ifako Ijaye Local Council Development Areas in Lagos State' Global Journal of Arts, Humanities and Social Sciences 9(3) 65- 76 (2021) < https://papers.ssrn.com/sol3/Delivery.cfm?abstractid=3820075 > accessed 17 February 2025

[58] J Akintara, 'Common Marital Challenges in Nigerian Marriages' NiCREST Publications () < 6 Simple Ways To Overcome Common Marital Challenges In Nigeria> accessed 17 February 2025

This can result in mistrust and unmet expectations, causing frustration and disappointment.[59] Small disagreements may quickly escalate into larger conflicts without proper communication. Partners may feel unheard or undervalued, leading to resentment and further distance.

3.0 LEGAL FRAMEWROK

3.1 MARRIAGE ACT LFN 2004

The Marriage Act primarily regulate the contraction and celebration of statutory marriage in Nigeria.[60] The only form of marriage recognized in Nigeria under the Act is monogamous marriage (marriage between one man and one woman).[61] For a marriage to be valid under the Marriage Act, several requirements must be met. Firstly, both parties must be of legal age, which is typically 21 years, although individuals under this age can marry with parental consent. Additionally, the parties must not be closely related by blood, as this would render the marriage invalid. Another essential requirement is that neither party should already be married to another person, reinforcing the monogamous nature of the marriage recognized under the Act.[62]

The process of getting married under the Marriage Act begins with giving notice of the intention to marry. The notice shall be in Form A and should be signed by the party giving the notice.[63] This notice is usually posted at the office of the registrar of marriages for a specified period, generally 21 days. During this period, any person can raise objections[64] to the marriage if they have valid reasons. If no objection is raised, the registrar can then issue a marriage license to the couple.[65] The marriage must be celebrated within three (3) months of the date of the notice of marriage. If the marriage is not held within this period, the notice and other subsequent processes shall become void, and a fresh notice must be given before the parties can lawfully get married.[66]

Under the Marriage Act, the venue where a marriage can be celebrated includes; a licensed place of worship before any recognized Minister of the church denomination or body to which such place of worship belongs,[67] the Registrar's office (marriage registry before the registrar)[68] and other places licensed by the minister.[69] After the celebration, the marriage is officially registered, and the couple is issued a marriage certificate.[70] This certificate serves as legal proof of the marriage and is essential for various legal and administrative purposes.

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[59] SO Iroye, 'A Critical Examination of the Causes and Management of Marital Conflicts in Nigeria' NOUN International Journal of Peace Studies And Conflict Resolution (NIJPCR) 1(2B), August, 2021 < COMPLETE-JOURNAL-NIJPCR-VOL-1-NO-2B-FULL-PDF.pdf> accessed 17 February 2025

[60] The Marriage Act, Laws of the Federation (LFN) 2004.

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[62] Ibid, s11

[63] Ibid, s7

[64] Ibid, s14

[65] Ibid, s11

[66] Ibid, s12

[67] Ibid, s21

[68] Ibid, s27

[69] Ibid, s13

[70] Ibid, s30

Similarly, the Marriage Act provides detailed provisions for the celebration and recognition of marriages in Nigeria but does not include mechanisms for resolving marital disputes. This means that although the Act governs the process of entering into a legal marriage, it does not address issues that may arise within the marriage itself. Marital disputes, such as those involving spousal conduct, property division, child custody, and divorce, are not covered by the Marriage Act. Instead, these matters are typically addressed through other legal frameworks and institutions, such as family courts operating under the Matrimonial Causes Act.

3.2 MATRIMONIAL CAUSES ACT 1970 (as amended) Cap. M7 LFN 2004

The Matrimonial Causes Act serves as a comprehensive legal framework for addressing matrimonial causes in Nigeria. The matrimonial causes can only be instituted under the Matrimonial Causes Act[71] and the court with jurisdiction is the High Court of any state of Federation.[72] The Act addresses void and voidable marriages and prohibited degree of consanguinity and affinity.[73]

One of the primary purposes of the Act is to provide a legal mechanism for couples seeking to end their marriage through divorce. The Act provides that a petition by a party to a marriage for decree of dissolution of marriage may be presented by either party to the marriage upon the ground that the marriage has broken down irretrievably.[74] The Act mandates the court not to be quick in awarding decree for dissolution of marriage by stating that it shall be the duty of the court in which a matrimonial cause has been instituted to give consideration from time to time, to the possibility of the reconciliation of the parties to the marriage unless there is valid reason to the contrary. [75] This provision of the law as regards reconciliation is merely suggestive and half-hearted since the judge is only meant to give consideration to the possibility of a reconciliation. Where the Judge deems the proceedings as being of such a nature that it would not be appropriate to give any consideration to the possibility of a reconciliation, he would have fulfilled the requirement of the law as well. Moreover, by virtue of the Act reconciliation may only be considered only after litigation proceedings have been initiated. In essence, pleadings which would outline in sufficient details the shortcomings of both parties which would have been filed and would have constituted part of public records. At this point, it would not be uncommon for the parties to have mentally jettisoned any prospect of reconciliation. Holistically, the provisions of the Act on reconciliation have been considered as being more of a shadow to litigation.[76] The law also mandates the judge to first act as a conciliator to seek for the reconciliation of the couple first.[77] He can only step into his judicial capacity to commence hearing of the divorce petition when the mediation and conciliation for the reconciliation of the partners fails.[78] It is only section 11 of the Act has been

[71] Matrimonial Causes Act 1970 (as amended) Cap. M7 LFN 2004, Section 1
[72] Ibid, s2
[73] Ibid sections 3,4,5
[74]Ibid, s15
[75] Ibid, s11
[76] I Aina and O Oniyire , 'Marriage Disputes in Nigeria: Alternative Dispute Resolution Mechanisms as a Means of Resolution' Abuad Law Review < https://djetlawyer.com/alternative-dispute-resolution-in-marriage-dispute/ > accessed 12 March 2025
[77] Matrimonial Causes Act 1970 (as amended) Cap. M7 LFN 2004, Section 11(1) a-c
[78] Ibid, s11

fulfilled by the judge and the parties still want divorce that the judge can go ahead to hear the divorce petition. Therefore, in Nigerian courts, before the prayer for divorce can be granted by the judge, the couple(s) must prove and it must be manifestly be seen that the marriage has broken down irretrievably,[79] this means that the partners and even the court have tried everything to make the marriage work but it's clearly not working and the partners going their separate ways is the best option at the time being.

3.3 MATRIMONIAL CAUSES RULES

The Matrimonial Causes Rules in Nigeria govern how matrimonial causes are handled in the court. The procedure for litigating matrimonial disputes is contained in the Matrimonial Causes Rules. These Rules are applied to matrimonial cases in High Courts throughout the Federation, and the territorial jurisdiction of High Courts do not apply for matrimonial disputes. Therefore, a litigant may approach any High Court regardless of such person's territory of residence, as long as he/she is domiciled in Nigeria.[80] However, this provision does not imply that there should be forum shopping.

Matrimonial Causes Rules include how to file a petition, how to respond to a petition and how to verify pleadings. Under sections 3, of this rule,[81] the rule made provisions for the commencement of Matrimonial Causes, and it is to effect that; every matrimonial cause shall be commenced by filing a petition addressed to the court having jurisdiction under the Act.[82] A petition cannot be filed if another petition is pending and has not been dismissed. Information to be contained on the petition include the full name, address and occupation of the parties, their dates of birth, domicile, and particulars of their cohabitation. Other information include the particulars of their child (ren), whether there have been previous proceedings between the parties, a statement that there is no connivance between them and that the grounds listed in Section 15 (2) (a) – (h) have not been condoned.[83] The reliefs sought by the petitioner must be stated in unequivocal terms in the Petition; and the petition must bear the date and day of filing as well as the name of the legal practitioner filing same. Petition must equally be supported by an affidavit deposed to by the petitioner verifying all the facts contained therein.[84] The petition must be in accordance with Form 6 as contained in the first Schedule to the Matrimonial Causes Act.

Non-compliance with the above-stated provisions may have varying consequences on the proceedings ranging from an outright fatality to a non-fatal irregularity. The trial is conducted just as any other trial involving the testimony of witnesses and the tendering of documents by both parties; after which the case is closed and the Court is addressed by the parties or their counsel.

3.4 ARBITRATION AND MEDIATION ACT

[79] Ibid, s15
[80] Matrimonial Causes Act 1970 (as amended) Cap. M7 LFN 2004, s2
[81] Matrimonial Causes Rule
[82] Ibid, Order III Rule 1
[83] Ibid, Order III Rule 2
[84] Ibid, Order III Rule 4

The Arbitration and Mediation Act 2023 is a significant development in the Nigeria's alternative dispute resolution landscape. It was signed into law by former President Muhammadu Buhari on May 26, 2023 which repeals and replaces the Arbitration and Conciliation Act, CAP, A18, 2004. Arbitration and Mediation Act is the principal legislation that makes provisions for Arbitration and Mediation in Nigerian as ADR mechanisms. The arbitration and mediation Act 2023 is divided into three parts (Part I, II &III) each addressing essential aspects of arbitration and mediation.

Part I of the Act makes provisions for arbitration, the objective of this part is to promote fair resolution of disputes by an impartial tribunal without unnecessary delay or expense.[85] The first part of the Act focuses on arbitration procedure, outlining the legal framework for arbitration agreement, the appointment of arbitrators, conduct of arbitration proceedings, Award and the application of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The law is that an arbitration agreement maybe in the form of an arbitration clause in a contract or in the form of a separate complete agreement, however, an arbitration agreement shall be in writing.[86]

Similarly, any reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if such contract is in writing and the reference is such as to make that clause part of the contract.[87] Consequently in the case of Continental Sales Limited v. R. Shipping Inc.[88] The Court of Appeal explained how arbitration should be commenced in the following terms:

> Where the arbitrator or arbitrators are bound to be appointed by the parties, arbitral proceedings are commenced in respect of a matter when one party serves on the other party or parties notice in writing requiring him or them to appoint an arbitrator or to agree to the appointment of an arbitrator in respect of that matter.

This Act enacted internationally accepted provisions for the conduct and regulation of arbitration and mediation. Section 64[89] provides that '*a court shall not intervene in any matter governed by this Act except where so provided for in this Act'*. This section ousted the jurisdiction of court in arbitration matters except as the Act permits it. This provision is vital to avoid unnecessary judicial intervention which will defeat the purpose of arbitration as an ADR Mechanism. Section 3 of the Act provides for the enforcement of arbitration agreements. The section provides that arbitration shall be irrevocable except by agreement of parties or by leave of court or a judge. This section is in tandem with the perception in the International Business World that agreeing to arbitrate secures a minimum of rights and reduces surprises. Section 5[90] is very crucial in ADR development in Nigeria. The Section requires a court before which an action subject to arbitration agreement is brought to stay the court's proceedings except the agreement is null and void. By virtue of this provision, such court shall stay its proceedings and refer the parties to arbitration tribunal where

[85] Arbitration and Mediation Act 2023, s1(1)
[86] Ibid, s2(1 &2)
[87] Ibid, s2(5)
[88] (2012) 23 WRN 151
[89] Ibid, section 64(1)
[90] Arbitration and Mediation Act 2023

they belong by virtue of an arbitration clause in an agreement governing the transaction that gave rise to the disputes between them. Issues relating to grounds for challenging arbitral Award are also addressed in Part I of the Act.

The second part of the Act focuses on mediation, establishing a comprehensive legal framework designed to promote and facilitate this method of dispute resolution in Nigeria. The provisions recognize mediation as a legitimate and effective means of resolving disputes, encouraging parties to consider this approach before resorting to litigation or arbitration.

Mediation maybe mandated by law or previously agreed upon by the parties, the party concerned shall propose to the other party, in writing, the conclusion of a mediation agreement.[91] If a party inviting another to mediate does not receive a response within 30 days (or a specified alternative timeframe), they may consider the invitation as declined.[92] The date of commencement of the mediation process shall either be when the written mediation agreement is signed, the court orders mediation, or the mediator initiates the process.[93]

Arbitration and Mediation Act of 2023 significantly enhances Nigeria's ADR landscape by providing a robust legal framework that addresses essential elements of arbitration and mediation. However, the Act only covers arbitration and mediation, with other ADR mechanisms are not provided for. Additionally, it specifically mentions commercial arbitration, although arbitration can be used to resolve other disputes such as family, labor, and community disputes. This focus may limit the applicability of the Act in addressing a broader range of conflicts.

3.5 CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA

The Constitution[94] is the ground norm and the bedrock upon which all other laws derive their validity. The constitution is supreme and it provisions have binding force on all authorities and persons throughout the Federal Republic of Nigeria.[95] Any provision that is inconsistent with the provisions of the constitution shall to the extent of it inconsistency be null and void.[96]

Alternative Dispute Resolution is not merely a pragmatic recourse but a constitutionally endorsed avenue for dispute resolution, as enshrined in Section 19(d)[97] This provision hammers the recognition of arbitration, mediation, conciliation, negotiation, and adjudication as viable means to achieve equitable outcomes while alleviating the burdens on formal judicial processes.[98] Section 36[99] guarantees a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality. This is the

[91] Ibid, s70(1)
[92] Ibid, s70(2)
[93] Ibid, s70(5)
[94] 1999 Constitution of Federal Republic of Nigeria (Fifth Alteration) Act, 2023 (Act N0 5).
[95] Ibid, section 1(1)
[96] Ibid, section 1(3)
[97] 1999 Constitution of Federal Republic of Nigeria (Fifth Alteration) Act, 2023 (Act N0 5).
[98] Ibid, s19(d)
[99] Constitution of the Federal Republic of Nigeria 1999 (as amended)

section of our Constitution that enables Tribunals established by Law apart from the regular court to determine the civil rights of Nigerian citizens fairly and impartially.

3.6 INSTITUTIONAL FRAMEWORK

3.6.1 Court

Nigerian judges actively participate in promoting ADR by encouraging parties to explore alternative dispute resolution methods. Judges may, during pre-trial conferences or other stages of litigation, explore with the parties the possibility of resolving their dispute through ADR. This involves assessing the suitability of the case for mediation, arbitration, or other ADR methods.[100] This approach is driven by the recognition that ADR can often lead to more satisfactory outcomes for the parties, particularly in cases where preserving relationships is important. Judges possess the authority to refer cases deemed suitable for ADR, even within ongoing litigation. Nigerian judges are increasingly adopting a proactive approach to case management, which includes identifying and encouraging the use of ADR where appropriate.[101]

Courts establish ADR programs within the court structure and have court staff provide ADR services. Some courts however develop and maintain a roster of neutrals from which neutrals are appointed by the court. There are also programs that are outside the court system. For these types of programs, the court contracts with an outside entity to administer the ADR program and provide services on the court's behalf. Another continuum in court ADR is who is going to provide the ADR services, and that relates to who is going to pay the neutrals. In some programs, the court has paid staff members to provide ADR services. Moving along the continuum, the next step would be for the court to maintain a roster of neutrals (independent contractors) who the court selects and pays for each case. The court may also maintain a roster of independent contractor neutrals from which the parties may choose. Also, there are court programs where the court contracts with other entities to maintain rosters of mediators. These mediators might be paid by the court or by the parties, or they may be volunteers. In addition, there are some combination plans where the mediators volunteer for an initial block of time and then work out a payment plan with the parties for any service following that initial time.[102]

The Arbitration and Mediation Act provides a crucial legal framework that empowers Nigerian courts to support arbitration. Under this Act, courts have the authority to:

i. Stay court proceedings in favor of arbitration where there is a valid arbitration agreement.
ii. Appointment and challenge of arbitrators in certain circumstances.
iii. Power to Order Attendance of Witnesses
iv. Interim Measure of Protection

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[100] S Ibrahim , YZ Mohammed, and D Halima, Examination of the Role of Nigerian Courts in ADR Process' < https://keffi.nsuk.edu.ng/server/api/core/bitstreams/1c226631-1c53-40e5-9bec-d4b4d73c9c29/content > accessed 25 February 2025

[101] O Agbakoba Legal, 'Assessing The Role Of Courts In Advancing Alternative Dispute Resolution In Nigeria' (2020) < https://oal.law/assessing-the-role-of-courts-in-advancing-alternative-dispute-resolution-in-nigeria/ > accessed 25 February 2025

[102] Resolution System Institute(RSI), 'Strengthening access to Justice by Enhancing Court Alternative Dispute Resolution Systems' < https://www.aboutrsi.org/ > accessed 25 February 2025

v. Recognition and Enforce arbitration awards, both domestic and foreign.
vi. Setting Aside of Arbitral Award

This legislative framework strengthens the courts' role in promoting and facilitating arbitration as a viable ADR mechanism.[103] The National Industrial Court of Nigeria's (NICN) ADR Centre (NICN) stands out as a specialized court that has institutionalized ADR within its operations.

The NICN has established its own ADR Centre, which focuses on resolving labor and industrial relations disputes through mediation and conciliation. This demonstrates a court's proactive approach to integrating ADR into its core functions. The NICN ADR Centre has established rules and procedures that help to facilitate ADR proceedings.[104]

A critical function of Nigerian courts is the enforcement of agreements reached through ADR processes, particularly arbitration awards and mediated settlements. This ensures that ADR outcomes have legal validity and are binding on the parties involved. This enforcement power gives party's confidence in the ADR process, knowing that their agreements will be legally protected.[105]

3.6.2 Family Circle

The family is the fundamental unit of society, playing a crucial role in shaping individual behavior, values, and conflict resolution mechanisms. Given the close-knit nature of familial relationships, disputes are inevitable. In many cultures, particularly in African and traditional societies, family disputes are resolved within the family structure using informal but highly effective methods. These methods emphasize reconciliation, respect for elders, and the preservation of family unity. Family heads, elders, and respected community members play crucial roles in ensuring that conflicts do not escalate into long-term feuds. Instead of resorting to litigation, disputes are handled within the family using wisdom, dialogue, and consensus-building.[106]

In many Nigerian cultures, marriage is not just a union between two individuals but a bond between two extended families. Among the Yoruba, the extended family plays a critical role in resolving disputes between married couples. When conflicts arise, senior family members and elder siblings, mediate to ensure a peaceful resolution.[107] Similarly, among the Igbo, the kindred (umunna) serves as a dispute resolution mechanism, where elders intervene to prevent escalation and encourage reconciliation. The Hausa-Fulani also employ family-led mediation, often involving respected

[103] AO Anoba, 'The Role of the Court Under the Arbitration and Conciliation Act 1990' Crescent University Law Journal (2016) 1 < https://cuab.edu.ng/wp-content/uploads/2023/09/2.-Anoba-The-Role-of-The-Court-Under-the-Arbitration-and-Conciliation-Act-1990.pdf > accessed 25 February 2025

[104] National industrial court of Nigeria (NICN), ' National Industrial Court of Nigeria: Alternative Dispute Resolution (ADR) Centre Instrument' Lagos: The Federal Government Printer (2015) <https://nigeriareposit.nln.gov.ng/handle/20.500.14186/626 > accessed 25 February 2025

[105] AO Anoba, 'The Role of the Court Under the Arbitration and Conciliation Act 1990' Crescent University Law Journal (2016) 1 < https://cuab.edu.ng/wp-content/uploads/2023/09/2.-Anoba-The-Role-of-The-Court-Under-the-Arbitration-and-Conciliation-Act-1990.pdf > accessed 25 February 2025

[106] OE Osayekemwen, 'The Role of Traditional Institutions in Conflict Resolution Among Okija People' International Journal of Development and Management Review (2023) (18)1 <https://www.ajol.info/index.php/ijdmr/article/download/257362/243096 > accessed 13 March 2025

[107] D.J. Francis, Peace and Conflict Studies: An African Overview of Basic Concepts in S. G. Best (ed), Introduction to Peace and Conflict Studies in West Africa (Ibadan: Spectrum Books Ltd, 2006).

elders, Islamic scholars, and community leaders who work to ensure that marital disagreements do not lead to separation.[108]

3.6.3 Community

The role of the community as an institution for the application of Alternative Dispute Resolution (ADR) is deeply rooted in African traditions. Before the introduction of colonial legal systems, African societies had well-structured methods of resolving disputes based on customs, consensus, and reconciliation. The community served as the primary mechanism for conflict resolution, ensuring that justice was administered in a way that preserved relationships, maintained social harmony, and promoted development.[109] Community act as accessible and supportive environments for resolving disputes, where community leaders, elders, and respected members often serve as mediators or facilitators. This ensures that the resolution process is culturally sensitive and acceptable to all parties involved. These community figures bring local knowledge, social bonds, and a vested interest in maintaining harmony within the community.[110]

Long before the introduction of formal judicial system, communities in African, particularly in Nigeria, play a crucial role in resolving marital disputes. When a dispute extends beyond the family level, the council of elders or traditional rulers intervene. Oba (king), supported by the Igbimo Agba (council of elders), settles serious marital conflicts, particularly those involving accusations of infidelity, domestic violence, or financial disputes. In Igbo communities, traditional rulers such as the Igwe (king) and Ndi Nze na Ozo (titleholders) mediate in cases that require impartial judgment. Similarly, among the Hausa-Fulani, the Sarki (Emir) and Sharia councils provide arbitration in marital disputes, particularly those that involve issues related to Islamic law, such as, inheritance, and divorce.[111]

In the contemporary time, some traditional rulers and local government authorities have institutionalized ADR processes within their communities. In many Yoruba communities, the Baálẹ̀'s court now functions as a hybrid ADR forum where disputes are resolved using both customary principles and modern legal considerations. Similarly, in Igbo communities, town unions and Ozo (titleholders) have incorporated legal experts to ensure that ADR processes do not violate constitutional rights.

3.6.4 Multi Door Court Houses

Multi-door courthouse concept is a court of law in which facilities for ADR are provided. It is an integration of ADR with the court system in which disputants have the choice of other ADR

[108] E. Brems, 'Human Rights Enforcement by People Living in Poverty: Access to Justice in Nigeria' Journal of African Law (2010) 54(2),

[109] TO Elias, *The Nature of African Customary Law,* (Manchester: University Press 1956) 8-9

[110] LO Chukwu & KN Nwosu, 'The Role of Lawyers in Fostering Alternative Dispute Resolution in the Multi-Door Courthouse' (2020) Journal of Arbitrary Law 220.

[111] A Patrick , 'Alternative Dispute Resolution in Nigeria: Breaking New Boundaries' (2023) http://abuad.edu.ng/access-to-justice-through-the-multi-doc accessed 28 February 2025

processes that may be appropriate for a particular case. This concept recommends the channeling of disputes for settlement to different fora such as specialized tribunals. [112]

In the late 1960s, the United States began exploring Alternative Dispute Resolution (ADR) due to the rising costs of litigation and increasing court congestion. This led to frustration among litigants, prompting the need for more efficient dispute resolution mechanisms. In 1976, at the Pound Conference in Minnesota, Professor Frank Sander introduced the concept of the multi-door courthouse as a way to decongest courts and offer alternative methods for resolving disputes. He proposed that courthouses should have multiple doors, allowing parties to choose a dispute resolution method best suited to their needs, such as trials, mediation, or neutral case evaluations.[113]

Nigeria faced similar challenges in its judiciary, including excessive caseloads and insufficient resources. Recognizing the benefits of the multi-door courthouse system, the concept was introduced as a private initiative and later gained government support.[114] In November 2001, the Negotiation and Conflict Management Group (NCMG), under the leadership of Kehinde Aina, partnered with the Lagos State Judiciary and the Ministry of Justice to establish the Lagos Multi-Door Courthouse (LMDC). The LMDC was officially launched on June 11, 2002, with financial support from the U.S. Embassy. [115]

The LMDC was established as a multi-faceted ADR center, offering court users a viable, cost-effective, and time-saving alternative to traditional litigation. Unlike conventional courts that rely solely on litigation, the LMDC introduced three additional doors: mediation, neutral evaluation, and arbitration. The primary objective, as outlined in its Practice Direction, is to provide enhanced, timely, and user-friendly access to justice for plaintiffs and defendants.[116]

The organs of the LMDC are the governing council[117] headed by a chairman who is assisted by a vice-chairman, the director, the secretary, the center manager, the principal registrar and other Cadre of staff as maybe appointed by the director with the approval of Council. Section 15 of the LMDC Law empowers the Chief Judge of Lagos State to designate and appoint at least three High Court judges as ADR judges to oversee cases resolved through ADR mechanisms.[118] The case resolution process at the LMDC consists of four key stages: initiation of the case, submission to ADR, intake screening and referral, and assessment of fees. These steps ensure that cases are appropriately channeled through the most suitable dispute resolution method. [119]

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[112] WO Egbewole, 'ADR and International Commercial Transactions' Modern Practice Journal of Finance and Investment Law (MPJFIL) (1999), 3 (4) 685-686.

[113] O Abifarin, *The Process and Practice of Dispute Resolution and Arbitration in Nigeria.* (Princeton & Associate Publishing Co. Ltd 2021)

[114] Ibid

[115] D Peters, *Alternative Dispute Resolution (ADR) in Nigeria - Principles and Practice*, (Lagos, Dee-Sage Nig. Ltd. 2004) 171..

[116] O Abifarin, *The Process and Practice of Dispute Resolution and Arbitration in Nigeria.* (Princeton & Associate Publishing Co. Ltd 2021)

[117]Established by Section 5 of the LMDC Law

[118] O Abifarin, *The Process and Practice of Dispute Resolution and Arbitration in Nigeria. Princeton & Associate Publishing Co. Ltd (2021)*

[119] ibid

4.0 LEGAL CHALLENGES OF APPLICATION OF ADR IN RESOLVING MARITAL DISPUTES IN NIGERIA

4.1 Lack of Specific Legislation

One of the primary legal challenges in the implementation of Alternative Dispute Resolution (ADR) mechanisms for marital disputes in Nigeria is the lack of specific legislation governing ADR processes in this context. While general ADR laws exist, there is an absence of tailored legislation that addresses it application to the unique nature of marital disputes. This lack of specificity can lead to inconsistencies and uncertainties in applying ADR to such cases.[120] For example, in divorce arbitration, the arbitrator is not obligated to adhere to the divorce laws of the judicial system and can make decisions based solely on their personal judgment. This judgment, however, may not align with the preferences or expectations of the involved parties.[121]

The absence of comprehensive legislation that specifically governs family ADR is a major challenge. While Nigeria has legal frameworks for arbitration and mediation, such as the Arbitration and Mediation Act 2023, this law primarily regulate commercial disputes and lack provisions addressing family and matrimonial conflicts. The Matrimonial Causes Act (MCA) 1970 governs divorce and related proceedings but does not explicitly provide for ADR mechanisms such as mediation or arbitration in handling marital disputes. It only provide that the judge should consider the possibility of reconciliation.[122]

Similarly, family courts exist in Nigeria, but their presence is limited to certain states, and each operates within the jurisdiction of its respective state laws. For instance, the Family Court of Lagos State[123] seeks to integrate Alternative Dispute Resolution (ADR) mechanisms into the resolution of family disputes. However, its jurisdiction is confined to Lagos State, meaning its provisions cannot be applied outside this region. The absence of a nationwide legal framework for family courts results in fragmented approaches to marital dispute resolution and inconsistencies in the application of ADR across different states in Nigeria.[124] Jurisdictions such as the United Kingdom have enacted specific family ADR laws, such as the Family Law Act 1996,[125] which mandates mediation before litigation in certain cases. Nigeria's failure to adopt a similar legal framework has led to an unstructured application of ADR in family disputes, reducing its effectiveness.

[120] J. O. ABUSOMWAN, 'Prospects and Challenges of Resolving Marriage Disputes through Alternative Dispute Resolution Mechanism' International Review of Law and Jurisprudence (IRLJ) (2023) 5(1)
[121] Ibid
[122] Matrimonial Causes Act, s11
[123] Family Court of Lagos State Civil Procedure Rules 2012
[124] EI Nwogugu, *Family law in Nigeria* (Third Edition, HEBN Publishers 2014)
[125] https://www.legislation.gov.uk/ukpga/1996/27/contents

4.2 Enforcement of ADR Agreements

Another significant challenge is the enforcement of ADR agreements. Even when parties reach a settlement through ADR, there may be difficulties in enforcing the agreement, especially if one party reneges on the terms. The legal framework for the enforcement of ADR agreements needs to be strengthened to ensure compliance and uphold the integrity of the ADR process.

The enforceability of ADR agreements in marital disputes remains a significant legal challenge in Nigeria. Unlike commercial arbitration awards, which are enforceable under the Arbitration and Mediation Act, ADR agreements in family disputes often lack the force of law unless incorporated into a court judgment. For example, the Supreme Court in *Nigerian National Petroleum Corporation (NNPC) v. Fung Tai Eng. Co. Ltd.*[126] emphasized the sanctity of arbitration agreement when validly made. However, in the case of marital ADR agreements, enforcement remains problematic due to the voluntary nature of mediation and conciliation, which makes it difficult to compel compliance. The lack of a statutory framework mandating courts to recognize ADR agreements in family disputes. The judiciary's reluctance to enforce ADR agreements that do not align with existing matrimonial laws.

In the *Ibrahim v Ibrahim*[127] after the parties reached an agreement through mediation regarding child custody and financial support, the father refused to honor the agreement. The case had to be referred back to court for enforcement, which delayed the resolution.

4.3 Jurisdictional Challenge

Jurisdictional challenges also pose a problem in the resolution of marital disputes through ADR. Conflicts may arise between the jurisdictions of courts on ADR matters. This may lead to complications in the applicability and recognition of ADR outcomes. Clear guidelines are needed to resolve jurisdictional issues and ensure uniform application of ADR mechanisms.

5.0 CONCLUSION AND RECOMMENDATIONS

This research examined the legal and institutional framework for the effective application of Alternative Dispute Resolution (ADR) and the major challenges hindering its effective application in marital disputes in Nigeria. This research has highlighted the historical origin of ADR in traditional Nigerian societies, the increasing recognition of ADR in modern legal frameworks such as the Arbitration and Mediation Act 2023, and the crucial roles played by various institutions, including the courts, families, communities, and Multi-Door Courthouses, in facilitating ADR processes. However, significant legal challenges persist in the application of ADR mechanism in resolving marital disputes particularly the lack of specific legislation tailored to marital disputes, difficulties in enforcing ADR agreements, and jurisdictional complexities. For effective

[126] (2023) 15 NWLR (Pt. 1906) 117
[127] (2014), Nigeria Court of Appeal, Case No.87. Court of Appeal, Abuja

application of ADR in resolving marital disputes in Nigeria, it is imperative that these legal and institutional gaps be addressed. Therefore, the work makes the following recommendations:

i. Strengthen Legislative Backing for ADR in Family Law: The existing legal framework should be revised to expressly mandate or encourage the use of ADR, particularly mediation and family arbitration, before matrimonial matters proceed to litigation. Laws such as the Matrimonial Causes Act, Child Rights Act, and relevant customary and Sharia laws should be harmonized and reviewed to include ADR-friendly provisions, especially concerning family reconciliation, custody, and maintenance issues.

ii. Establish Specialized Family Dispute Resolution Centres: Federal and State governments should establish Family Dispute Resolution Centres (FDRCs) under the supervision of the Ministry of Justice and Family Courts. These centres should be equipped with trained family mediators, psychologists, legal officers, and social workers to handle sensitive marital disputes in a holistic, child-friendly, and gender-sensitive manner.

iii. Mandatory ADR Screening Before Litigation: Just as practiced in jurisdictions like Australia and the United Kingdom, parties to a marital dispute should undergo mandatory ADR screening sessions before being allowed to proceed to court. This will ensure that parties understand the benefits of resolving their disputes amicably and reduce the burden on family courts.

iv. Training and Accreditation of Family Mediators: There is a need for a national accreditation system for ADR practitioners who wish to specialize in family and marital matters. The Nigerian Institute of Chartered Mediators and Conciliators (ICMC), Nigerian Bar Association (NBA), and National Judicial Institute (NJI) should collaborate to train and certify family mediators with appropriate psychological and legal training.

v. Incorporate Customary and Religious Leaders in ADR: Given the cultural and religious nature of many marital disputes in Nigeria, customary and Islamic leaders should be trained and formally integrated into the ADR system. Their involvement can foster trust, compliance, and culturally relevant resolutions in a manner that aligns with the local values of the disputing parties.

vi. Promote Awareness and Legal Literacy on ADR in Marital Disputes: There is a need for targeted public education campaigns to sensitize citizens especially women and the rural population on their rights in marital disputes and the availability and benefits of ADR mechanisms. NGOs, community-based organizations, and religious bodies can play a vital role in this regard.

vii. Improve Institutional Collaboration: There should be greater synergy between the Ministry of Women Affairs, Legal Aid Council, Family Courts, Civil Society Organizations, and ADR institutions to ensure an integrated, victim-friendly, and cost-effective response to marital disputes. A coordinated referral and tracking system should be developed for marital conflict cases.

viii. Subsidize ADR Services in Family Matters: To encourage wide usage, especially by low-income earners, governments and development partners should subsidize or fully fund family mediation and ADR services. Legal aid schemes should be expanded to include not only court litigation but also ADR support for vulnerable groups like women and children.

ix. Leverage Technology in Family ADR: Digital platforms and virtual mediation rooms should be developed to facilitate remote mediation, especially in urban centres or during emergencies (e.g., pandemics). Online dispute resolution (ODR) tools can make ADR processes more accessible, especially for tech-savvy couples and diaspora Nigerians.

x. Monitoring, Evaluation, and Data Collection: There should be a system for periodic monitoring and evaluation of ADR interventions in marital disputes. Courts, ADR centres, and government agencies should maintain detailed, anonymized data on the number of marital disputes resolved through ADR, their outcomes, and the level of satisfaction of parties involved. This will help improve policy formulation and practice.