THE LEGAL POSSIBILITIES OF ARBITRATION AFTER LITIGATION; AN ANALYSIS ON THE COURT OF APPEAL MULTI-DOOR COURTHOUSE.

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Abstract

Traditionally, arbitration as an Alternative Dispute Resolution (ADR) option has always had a bespoke nature. By the provisions of the Arbitration and Conciliation Act, arbitration could arise from the agreement of parties to submit to it, before the cause of action arises, or when the cause of action has arisen, in which latter case it is called an oral submission. It is settled that the traditional arbitration is neither intended to take the place of litigation, to tussle with litigation, nor to come after litigation. It has also been the narrative of anti-arbitration arguers that arbitration most times result in what would be called a fruitless journey since it ordinarily would result to litigation after award have been made and an aggrieved party intends to challenge award. Not too long ago however, the Court of Appeal launched a Multi-Door Court House, which is intended to proffer ADR options at that appellate court level. This shift in paradigm is one, most likely to spark controversy, as to the propriety or otherwise of parties resorting to ADR after a court of competent jurisdiction has pronounced judgment consequent upon findings of fact and of law on the subject matter of litigation. It is commonplace for the legal community to assume that ADR after litigation could indeed include arbitration after litigation, since arbitration is also an ADR option. This paper therefore examines the question as to the legal possibilities of parties resorting to such, particularly arbitration, and the natural consequence of such, on judgments of courts. The writer employs the analytical and doctrinal approaches of research, and had recourse to primary and secondary authorities in arguing the topic. The writer carefully examined the traditional arbitration models, and the new paradigm of ADR after litigation, to find out if it is ideal, and if Arbitration is, or should form part of the windows at the Court of Appeal Multi-Door Courthouse.

Keywords: Arbitration, Enforcement, Multi-door Court House, Litigation

1.0. Introduction

Arbitration is about the second most prominent member of the class of dispute resolution methods available within the Nigerian Legal System and indeed the world over, the most

prominent being Litigation. Within the *corpus juris* of the Laws of the Federation of Nigeria, arbitration is governed by the Arbitration and Conciliation Act, as well as the judgments of courts in the area, forming precedents. In the International scene, arbitration is sometimes called a hybrid form of international dispute resolution, since it blends elements of civil law procedure and common law procedure, while allowing parties a significant opportunity to design the arbitral procedure under which their dispute will be resolved. International arbitration can be used to resolve any dispute that is considered to be 'arbitrable,' a term whose scope varies from State to State, but which includes the majority of commercial disputes.[1]

Companies frequently include international arbitration agreements in their commercial contracts with other businesses, so that if a dispute arises with respect to the agreement, they are obligated to arbitrate, rather than to pursue traditional court litigation. Arbitration here, just like in the domestic scene, may also be used by two parties to resolve a dispute *vide* a submission agreement, which is simply an arbitration agreement that is signed after a dispute has already arisen.

Typical arbitration agreements are very short. The International Chamber of Commerce model arbitration clause, for instance, merely reads:

> *"All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules."*

Parties also frequently add rules concerning the law governing the contract, the number of arbitrators, the place of arbitration and the language of arbitration.

Arbitration could be mandatory or consensual. The Trade Dispute Act[2] affords a Kite's tail instance of what a mandatory arbitration could be. The Act provides for the reference of

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[1]Acceris Law LLC, 'International Arbitration', *Acceris Law LLC* <https://www.international-arbitration-attorney.com> accessed 20 March, 2021.

[2] Cap. T18, Laws of the Federation of Nigeria 2004.

industrial disputes to the Industrial Arbitration Panel, before the National Industrial Court may have jurisdiction.

On the other hand, Arbitration is termed consensual if parties either before or after the cause of action have arisen resolves to submit their differences to an arbiter, with the intention that they shall be bound by the decision of the arbiter. This could arise out of the insertion of a clause in an agreement between the parties, or the oral agreement of parties to so refer, in any case where a dispute have arisen, or a cause of action arisen.

The sole ground for proceeding to arbitration within the ambits of the Arbitration and Conciliation Act is the arbitration clause as usually inserted in contracts, or where contained in another separate and complete agreement, the arbitration contract, which must have met all the requirements of a valid contract which the law would enforce, and duly executed by the privies. The Act[3] provides that every arbitration agreement shall be in writing contained in a document signed by the parties or in exchange of letters, telex, telegrams or other means of communication which provides a record of the arbitration agreement or in an exchange of points or claim and of defense in which the existence of an arbitration agreement is alleged by one party and not denied by the other[4].

At common law, the parties could have an oral agreement to submit to arbitration and such arbitration agreement would be valid. This is termed an 'oral submission'.

1.1. **Arbitration Defined**

Arbitration can be defined as the reference of a dispute or difference between not less than two parties for determination, after hearing both sides in a judicial manner, by a person or persons other than a court of competent jurisdiction. Umahi and Nwano[5] define it as a voluntary method of alternative dispute resolution which is applied to domestic and international contracts and is founded on the present future (sic: present or future?) agreements of the parties to submit any dispute between them to arbitration and parties retain control of the process but not the outcome. It is the submission of a dispute to an unbiased third person designated by the parties to the

[3] Cap. T18, Laws of the Federation of Nigeria 2004.
[4] Arbitration and Conciliation Act 2004, S1 (1) (a-c).
[5] T, Umahi, T C, Nwano, '*Procedural Aspects of Arbitration in Nigeria'*, researchgate <https://www.researchgate.net/publication> accessed 20 March, 2021.

controversy, who agree in advance to comply with the award (a decision to be issued after a hearing at which both parties have an opportunity to be heard). Unlike litigation, arbitration takes place out of court: the two sides select an impartial third party, known as an arbitrator; agree in advance to comply with the arbitrator's award; and then participate in a hearing at which both sides can present evidence and testimony. The arbitrator's decision is usually final, but subject to impeachment in appropriate circumstances.

1.2. Binding Nature of Arbitration as a Distinguishing Factor of Arbitration from other ADR models.

A very essential idea that oscillates pendulously through all the definitions there could be on arbitration is that party autonomy wields so much influence to the extent of their agreement to arbitrate, and their agreement on how and whom to appoint. *A fortiori,* parties are estopped from withdrawing their consent in *medias res.* It does not lie in the mouth of parties to wake up and terminate proceedings at will, or to refuse award once granted.

At this juncture, a quick glance on selected ADR models would be made, highlighting their merits and demerits, with emphasis on the binding nature of arbitration.

1.2.1 ADR Generally

Alternative Dispute Resolution (ADR), is a set of methods or techniques that allow parties to a dispute to reach an amicable settlement (usually a win-win goal is reached). It consists of ways in which parties can settle their differences without necessarily having recourse to litigation. Alternative Dispute Resolution (ADR) methods are now the order of the day, gaining wide acceptance and recognition. Modes of ADR have been in existence from a long time and were used long before the sophistication of civilization.

ADR is a vast topic and includes a broad range of activities. It has at one time been described as being:

"*Anything except a bench or jury trial under the auspices of some judicial body."*[6]

Put simply, ADR, as the name suggests, is nothing but an alternative method to litigation to resolve disputes that exist between individuals or organizations. Nowadays, due to the vast

[6]Atlas N, Huber S, and Trachte W, 'Alternative Dispute Resolution: The Litigator's Handbook'.

resources required for litigation, people prefer alternative dispute resolution methods to settle matters which do not require the intervention of judicial authority.

The techniques or modes of ADR, though widely accepted all over the world, may vary from region to region. This fluctuation depends on the legal framework of a country. The following are the methods of settlement that are widely accepted:

- Arbitration
- Mediation
- Conciliation
- Negotiation

1.2.1.1 Arbitration

The writer adopts all that have been defined above on this sub-topic as duly applicable.

Pros of arbitration:

-*Flexibility and Cost Effectiveness*- Arbitration proceedings are flexible and more economically feasible compared to litigation. However, international arbitration in contemporary times have proven to be expensive, much more than litigation.

-*Expeditious Disposal*- Arbitration proceedings occur at an expeditious rate as compared to Litigation; therefore, it saves time for both parties.

-*Confidentiality*- The disputes which are subject to arbitration are treated with privacy, and are not released to the public. Generally, courts are public places. This is not so in arbitration, which in turn endears it to highly confidentiality conscious commercial enterprises.

-*Umpire*- The parties have the liberty to choose an arbitrator to hear their dispute and grant award.

-*Binding Nature*- Arbitration attracts the estoppel of *pacta sunt servanda bona fide*. Hence, parties are bound once they agree to arbitrate. Parties are not at liberty to opt out at will, except both parties agree in like manner to vacate their earlier position, that is to say, an 'Accord and Satisfaction'.

Cons of arbitration:

-If arbitration is mandatory as per the contract between the parties, then their right to approach the court is waived. But then again, that is the idea.

-There is a very limited or no avenue for appeals.

-Arbitration does not provide for the grant of interlocutory applications.

- Arbitration awards are not directly enforceable; they are executable subject to judicial sanction.[7]

1.2.1.2 Mediation

Mediation is a mode of dispute resolution, where an amicable decision arises with the help of a third party known as a 'mediator,' without recourse to the court of law. It is a voluntary process, and unlike arbitration, it is more flexible; therefore, the parties to the dispute are under no obligation to agree to the settlement. Thus, an agreement reached via mediation shall be binding upon the parties, only as long as they agree to it. There may be instances where parties are advised to adhere to mediation, however, under such circumstances, the result is up to the parties. Therefore, mediation is a process where the parties are in total control over their final settlement. Here, the mediator only acts as a facilitator and does not interfere in the decision of the dispute. Therefore, it is a win-win pact. Worthy of note is that the outcome of mediation, and in fact every other ADR mechanism aside arbitration is only binding where entered as a consent judgment in court, or where under the laws on Multi-Door Courthouses available across the federation, it is sanctioned by the Multi-Door Courthouse. Thus, parties are not generally bound by the agreements reached except as entered by the court as its own judgment on the issues. This is not so in arbitration, as the outcome is an award, and enforced in itself as the judgment of court without the necessity of the court adopting same as a consent judgment. In the multi-door courthouses, as mentioned above, outcomes of mediation and other ADR models aside arbitration are now enforced as a judgment of the Courthouse if filed in the Courthouse. It is so simple in application that even counsel could during client briefing; mediate between adverse parties; draw up an agreement between the parties, of a settlement in the subject matter of

[7] STA Law Firm, 'Comparative Analysis Of ADR Methods With Focus On Their Advantages And Disadvantages' *Mondaq* <https://www.mondaq.com/arbitration-dispute-resolution> accessed 20 March, 2021.

briefing; have the settlement filed in the Multi-Door Courthouse; and it is enforced as a judgment of the Court on the subject matter.

Pros of Mediation:

-Parties have complete control over the settlement.

-Less stress as compared to litigation and arbitration.

-The relationship between the parties is not overly damaged. A positive peace is thus achieved.

-Mediation proceedings are confidential.

-The process resolves the dispute quickly.

Cons of Mediation:

- Since the decision is at the discretion of the parties, there is the possibility that a settlement between the parties may not arise.

- It lacks the support of any judicial authority in its conduct.

- The absence of formality- Mediation proceedings are lacking in any procedural formality since they are not based on any legal principles of procedure.[8]

1.2.1.3 Conciliation

Conciliation is a method of dispute resolution wherein the parties to a dispute come to a settlement with the help of a conciliator. The conciliator meets with the parties both together and separately to enter into an amicable agreement. Here, the final decision may be taken by reducing tensions, improving communications, and adopting other methods. It is a flexible process, therefore allowing the parties to define the content and purpose of the proceeding. Unlike in Mediation, the conciliator may be involved in the process of decision making between the parties, but does not foist a decision on them, as that is a nature peculiar to Arbitration and Litigation. It is risk-free and is not binding upon the parties unless they sign it, and same is entered as a consent judgment, or sanctioned by the Multi-Door Courthouse.

[8]Ibid.

Pros of conciliation:

-Since the conciliation process is informal, it is flexible.

-The conciliator is often an expert in the disputed field.

-Conciliation proceeding, like any other form of ADR, is economical as compared to Litigation.

-The parties to the dispute have the liberty to approach the court of law, if unsatisfied with the proceeding.

Cons of conciliation:

-The process is not binding upon the parties to the dispute, unless signed and entered as a consent judgment of court, or filed in the Multi-Door Courthouse.

-There is no avenue for appeal, except to the extent of faulting the procedure on good grounds, or a vitiated consent.

- The parties may not achieve a settlement to their conflict[9], since the conciliator may have a decision settling the dispute, but cannot foist same on parties. The conciliator would appear more or less a toothless bulldog, with gums that can only clench but not bite. This is not the case in Arbitration, and of course Litigation.

1.2.1.4 Negotiation

Negotiation is a method of dispute resolution whereby a dispute between two individuals or groups is settled amicably by themselves or by an impartial third person called as a negotiator, using different techniques. The negotiator, in this form of resolution, uses various communication methods to bring the parties of the dispute to a settlement. The primary aim of this type of dispute resolution is to reach an agreement that is fair and acceptable by the parties. The parties engage in the dispute with each other until they reach a desirable outcome for all involved. Unlike Arbitration and Litigation, the decision reached is not foisted on parties, as they brought themselves to the understanding with or without the help of a neutral third party. Unlike Mediation and Conciliation, a third party is not necessary for there to be negotiation. Even where there is, the third party only acts to create the platform or a common ground for settlement.

[9]Ibid.

Worthy is of note that many Multi-Door Courthouses across the Federation do not consider Negotiation a window in the ADR. An example is the Lagos Multi-Door Courthouse (LMDC). This view is tenable, especially if regards should be had to the fact that negotiation could be seen in many ways to be a mere skill. Negotiation, unlike others, do not have to await the existence of a dispute or a likelihood of dispute, before it is employed. As a matter of fact, negotiation is a part of the day to day life in commerce. It could in the same light be said that negotiation is a skill to be employed in non-adjudicatory dispute resolution, whatever the option taken. Arbitration agreements and clauses come into effect as a result of negotiation. Negotiation is employed by parties in Mediation, and the conciliator in Conciliation.

Pros of Negotiation:

-Since negotiation is an informal process, it is relatively flexible.

-Quick resolutions are reached.

-It facilitates in maintaining a healthy relationship between the disputing parties.

-Takes place in a private environment, as the parties may deem.

Cons of Negotiation:

-The parties to the dispute may not come to a settlement after all, since there is usually no compulsion or compelling circumstances that could coerce compromise.

-Lack of legal protection of the parties to the conflict.

-Imbalance of power between the parties is possible in negotiation[10].

2.0. The Idea of a Multi-Door Courthouse (MDCH)

One major factor that led to the agitation and eventually, the integration of Alternative Dispute Resolution (ADR) mechanisms in the Nigerian court system is the concern of disputants who are the major users of Nigerian court system - the court congestion. Court congestion ultimately was found to be responsible for the delay in the administration of justice and as a result, it is a major

[10]Ibid.

factor that determines the decisions of parties who are responsible for taking decisions on how to proceed in resolving their disputes or seek redress.[11]

As an instance, a former vice president, late Dr Alex Ekwueme, was involved in a dispute in Lagos in a sale of land in his capacity as chairman of an investment corporation. But when the matter was referred to the Lagos Multi-Door Courthouse (LMDC) for mediation, it was resolved in one day – between 10:00 am and 8:30pm.

There was also a dispute involving two Kano-based businessmen over a debt of N12.9m. When the matter was referred to the Kano Multi-Door Courthouse (KMDC), it was resolved in one sitting and both parties were able to re-build their commercial relationship.

Indeed, Olateru-Olagbegi in reiterating Adejumo, who defined administration of justice, stating that the administration of justice in its general sense includes the courts, the ministries of justice, the prison, the police and all other agencies of government that partake in ensuring that justice and fairness are meted out to all and sundry according to law, did agree that the frustration encountered in courts automatically leads to despair which can better be imagined than experienced by parties seeking for justice in Nigerian courts.[12]

According to Akomolede[13], the fact cannot be gainsaid that the dispensation of justice in Nigeria today is plagued with delay such that the various courts are inundated with cases which last for several years before they can be determined by the courts (sic) of first instance. Long adjournments, cumbersome and rigorous procedure, difficulty and ambiguous rules of evidence, and other several artificial obstacles are largely responsible for the delay which has so much haunted the dispensation of justice system for so long.

Unfortunately, while MDCH is fast developing in Nigeria particularly through integrating legislations, the effect of the application of these MDCH seems gradual. This is so, given the willingness of parties to use the various services provided by MDCH in resolving disputes before the court. In the last decade, efforts such as incorporating ADR mechanisms into the court's

[11] O, Ajigboye, 'The Concept Of Multi-Door Courthouse (MDCH) in Nigeria: An Appraisal of the National Industrial Court Multi-Door Courthouse Model', 3(1) *AjayiCrowther University Law Journal.*
[12]Ibid.
[13]Akomolede I. 'Reflections on Alternative Dispute Resolution (ADR) as an Antidote to the Delay in Dispensation of Justice in Nigeria' in O. Oluduro et al (ed.), *Trends in Nigerian Law: Essays in Honour of Oba DVF Olateru-Olagbegi III* (Ibadan: Constellation (Nig.) Publishers, 2007), pp. 482 – 492, 482.

systems among others had gone into expanding the traditional litigation system with a view to ensuring that disputes are resolved in lesser time. This had led to the featuring of integrated ADR mechanisms in the Rules of Court and even in certain instances, like the establishment of an ADR Centre using the Multi-Door Courthouse system, so that litigants are provided the opportunity to resolve their disputes amicably without necessarily reverting to litigation even in the courts.[14]

2.1. The Idea of a Multi Door Courthouse in the Court of Appeal

In June 8, 2020, the then President of the Court of Appeal inaugurated the Court of Appeal Multi-Door Courthouse.

In his speech, the learned jurist stated as follows;

> "With today's event, litigation will cease to be the only method of determining appeals in the Court of Appeal. Parties before the court can now choose between litigation and mediation. This signifies an opportunity by parties as well as their counsel to enjoy the full flavor of Order 16 of the Court of Appeal Rules 2016. The Court of Appeal Mediation Centre would provide a platform that will encourage disputing parties in reaching an expeditious resolution of their disputes in good faith; and in a fair and efficient manner. The center will improve access to justice, user confidence in the court system, lighten the court's docket and invariably afford the conventional court ample time for such matters or issues that are best solved through litigation. Considering the high number of cases at the Court of Appeal, the benefits of Alternative Dispute Resolution (ADR) at the appellate level cannot be overemphasized. For a court where thousands of cases are filed annually, hearing through the regular procedure clogs the system, delays conclusion for years and wears down the judges sitting over them. But through the mediation process, all the ADR methods such as: conciliation, mediation, arbitration, neutral evaluation and settlement conferences are adopted to quickly hear and dispense with the matter. Through

[14] O, Ajigboye, 'The Concept Of Multi-Door Courthouse (MDCH) In Nigeria: An Appraisal of the National Industrial Court Multi-Door Courthouse Model', 3(1) *AjayiCrowther University Law Journal.*

> this, relationships are maintained, costs are cut and disputes are speedily decided. To this end, the Chief Justice of Nigeria (CJN), Justice Walter Onnoghen commended the Court of Appeal for the "novel introduction of the Appellate Mediation", which he said will "improve the efficiency in the court system, promote conflict resolution and thereby provide a more effective justice delivery in our Appellate Court."[15]

The Court of Appeal Rules[16] at Order 16 had always provided for the recourse to the mediation model of ADR. It provides that all appeals in respect of breach of contract, liquidated money demand, matrimonial causes, child custody, parental actions, inheritance, chieftaincy or personal actions in tort are, at any time before an appeal is set for hearing, eligible for reference to the Court of Appeal Mediation Programme. This provision heralds the application of Alternative Dispute Resolution to matters at that appellate level.

The inauguration of a Multi-door Courthouse as can be gleaned from the speech of the then head of court is to give effect to the above rule already making copious provisions on the manner of application of ADR to appeals.

3.0. Arbitration in the Multi Door Courthouse of the Court of Appeal

As have been stated, arbitration is adjudicatory in nature. It is by its nature a binding adjudicatory process, but in a rather private setting, other than the public setting of the litigation system. It is for this reason that Professor Chukwuemeka Ibe, in his argument, held that arbitration is not an alternative dispute resolution model to litigation. Rather, he held it to be a private dispute resolution.[17] In his mind, a dispute resolution mechanism could only be said to be an alternative to litigation where such a dispute resolution is complete on its own, without necessarily placing or having reliance to litigation for enforcement. In that case, parties would have a choice to rely on one and avoid the other, but not to rely on one and later come to rely on

[15]Azu, J C, reporting the 'Innaugration of the Court of Appeal Multi-Door Courthouse', *Daily Trust News*, <www.dailytrust.com> accessed 20 March, 2021.
[16]Court of Appeal Rules, 2016.
[17]Ibe, C., *Insights on the Law of Private Dispute Resolution in Nigeria* (Enugu Nigeria, El 'Dmak Publishers LTD 2008) pg 10.

the other for enforcement. In any such case as the latter, the mechanism is merely private and not an alternative.[18]

Without necessarily examining the propriety or otherwise of the arguments of the learned professor, one very important point the writer would have to agree with is that indeed, arbitration is private, since the adjudicator is not a judge or arbiter of a court of competent jurisdiction under any law, but an arbiter whose jurisdiction is merely derived from the binding agreement of the parties to arbitrate. The begged question therefore is- how tenable is it that a private adjudicator would be constituted by the parties to a suit already determined by a trial court to inquire to vary or affirm the decision of a court of competent jurisdiction? Whether this would not amount to an appeal, and inconsistent with the provisions of the Constitution, and therefore a travesty of justice administration.

The law of the Constitution is clear, that the Court of Appeal is the only court of competent jurisdiction empowered exclusively to sit over appeals emanating from the State High Courts and all courts having coordinate jurisdiction with the State High Courts.[19] Consequently, any agreement to submit disagreements emanating from the decision of such courts to any other adjudicator other than the Court of Appeal would amount to an agreement to oust the Court of Appeal of her jurisdiction, and consequently a contract incompatible with the provisions of the Constitution of the Federal Republic of Nigeria, and against public policy. Such a contract would therefore be null.

It is worthy of note that the rules[20] specifically named the Order 16 in question 'Court of Appeal Mediation Programme'. Every other reference to ADR in the rules specifically was made to Mediation, except rule 6. The said rule is for the avoidance of doubt, the very last rule in that Order, and which make provisions for the responsibility of administrative costs to be borne jointly by parties, unless otherwise agreed. The rule however mentioned administrative costs to

[18]Ibid.
[19] Section 240, Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides as follows; Subject to the provisions of this Constitution, the Court of Appeal shall have jurisdiction to the exclusion of any other court of law in Nigeria, to hear and determine appeals from the Federal High Court, the High Court of the Federation Capital Territory, Abuja, High Court of a state, Sharia Court of Appeal of the Federal Capital Territory, Abuja, Sharia Court of Appeal of a state, Customary Court of Appeal of a state and from decisions of a court martial or other tribunals as may be prescribed by an Act of the National Assembly.
[20]Court of Appeal Rules, 2016.

include 'mediation or arbitration fees associated with the resolution of the dispute'.[21] This in the opinion of the writer appears a legislative oversight and inelegance, as that rule appears to be the only instance where arbitration was mentioned in that Order- an Order whose rules and procedure are dedicated to Mediation. Furthermore, rule 4 of that Order clearly provides for the manner in which 'agreements' reached by the parties out of the ADR be adopted by the Court as consent judgment. This is not a practice known to Arbitration, in Law and in fact.

At this juncture, the decision of the Court of Appeal on the adoption of agreements stemming from appropriate ADR models as a consent judgment of the court is apposite. In that case, the court was invoked from its cocoon to determine the propriety or otherwise of the rule under discussion as it applied to a Terms of Settlement reached and filed by the parties to the Appeal.Obaseki-Adejumo, JCA had this to say;

> "In this application, which was made orally upon filling terms of settlement, the main issue to be determined is: "Whether the Court of Appeal can adopt parties terms of settlement (entered into by parties to the appeal herein) as the judgment of the Court. In CHIEF ADEFOYE ADEDEJI v. J. O. OROSO & ANOR (2007) LPELR-86, TOBI, JSC (of blessed memory) in his dissenting opinion at page 57 held that: "A consent judgment means when the parties unequivocally agree to terms of settlement which they mutually refer to the Court as basis for the Court's judgment. By the mutual agreement to settle the matter they have given the consent to the end of the litigation. That makes it a consent judgment. See R. LAUVERS IMPORT EXPORT v. JOZEBSON IND. CO. LTD. (1998) 3 NWLR (Pt. 83) 429: WOLUCHEM v. WOKOMA (1976) 3 SC 153: NWRD v. JAIYESIMI (1963) 1 ALL NLR 215, (1963) 2 SCNLR 37." In VULCAN GASES LTD v. G. FUR IND. G. A. G. [2001] 9 NWLR (Pt. 719) 610 at 645, paras H, IGUH, JSC said: "In order to have a consent judgment therefrom, the parties must reach a complete and final agreement on the vital issues in their terms of settlement. They must be *ad idem* as far as the terms of their compromise agreement are concerned and their consent must be free and voluntary. The consent judgment emerges the moment the Court on the application of the parties

[21]Court of Appeal Rules, 2016, Or. 16 r. 6.

enters such compromise agreement as the judgment of the Court ..." Now, Order 16 of the Court of Appeal Rules, 2011 contains provision relating to the Court of Appeal Mediation Programme. It reads: 1. (1) At any time before an appeal is set down for hearing, the Court may in appropriate circumstances upon the request of any of the parties refer the appeal to the Court of Appeal Mediation Programme (CAMP); provided that such appeal is purely civil nature and relates to liquidated money demand, matrimonial causes, child custody or such other matter as may be mutually agreed by the parties. (2) When the Court refers an appeal to the Court of Appeal Mediation Programme, the appeal shall be adjourned to a definite date for the outcome of the mediation between the parties. 3. Without prejudice to the provisions of the foregoing, the parties shall - (a) be at liberty, at any time during the course of the hearing of an appeal to explore mediation or any other Alternative Dispute Resolution Mechanism as considered appropriate in the circumstance towards the resolution of their dispute.... 4. Where any of the Alternative Dispute Resolution Mechanism adopted is successful, the Court shall adopt the agreement reached by the parties as the judgment of the Court, but when such alternative Dispute Resolution mechanism fails, the appeal shall be set down for hearing."Therefore, it is obvious from the above provisions, that the Court of Appeal, under it Rules of Court recognizes alternative settlement of dispute and encourages same. The Court may refer an appeal upon request of parties to the Court of Appeal Mediation Programme (CAMP), provided that such appeal relates to civil matters or such other matters as may be mutually agreed by the parties. It will seem that referral of an appeal to the Court of Appeal Mediation Programme (CAMP) is activated on the request of the parties to an appeal. The Court of Appeal is yet to inaugurate its CAMP. Therefore, this procedure is not available to parties as of now. On the other hand, Order 16 Rule (3) provides that parties to an appeal are at liberty to settle their dispute at any time during the appeal proceedings, through mediation or any other proper Alternative Dispute Resolution mechanisms. To this extent, I firmly believe that, without the framework of Court of Appeal Mediation Programme (CAMP), parties can take advantage of the above Rule to settle their dispute amicably out of the Court and this Court shall

undoubtedly give recognition and force of the power of the Court to it, by adopting same as its judgment. The parties herein stated in their terms of settlement filed on 28th May, 2016 that they had mediation sessions, part of which was presided by Hon. Justice S. O. Ilori (Rtd.). In the interest of justice, the settlement of the dispute reflected in the terms of settlement ought to be given the backing of this Court. Although, the terms of settlement as executed by the parties at this appellate stage does not flow with the Ruling delivered by the lower Court, I am of the firm view that a refusal to accede to their request as per their settlement would result in compelling them to accept the lower Court's Ruling or mandating them, contrary to their will, and further to proceed with the appeal and abide by the resultant judgment of this Court. Indeed, this will run contrary to their intention to put an end to the litigation between them. This position received judicial approval of Supreme Court in S.P.M. LTD. v. ADETUNJI [2009] 19 NWLR (Pt. 1159) 647, where, MUNTAKA-COOMASSIE, JSC held at page 659 to 660, paras F-A thus: "It must be pointed out that it is one of the cardinal principles of our judicial system to allow parties to amicably resolve the disputes between them. By so doing, the otherwise hostile relationship between the parties would be amicably resolved and cemented. It is this amicable resolution of disputes by the parties that is called settlement. When the terms of such settlement are reduced into writing, 'it is now called terms of settlement', when the terms of settlement are filed they are called and made the judgment of the Court. It is then crystallized into 'consent judgment'. When consent judgment is given, none of the parties has the right of appeal, except with the leave of Court. Hence, consent judgment is a judgment between the parties whereby rights are created between them in substitution for order of the abandonment of the claim or claims pending before the Court. This is intended to put a stop to litigation between the parties just as such a judgment which results from the decision of the Court..." It is therefore clear that the Court of Appeal can adopt the terms of settlement between the parties as its judgment in so far as the terms are ascertainable and capable of being enforced with the acquired or abandoned rights of the respective parties clearly spelt out therein. ADEKEYE, JSC, further held at page 667, paras E - G opining that: "It is the role

> of a judex in adjudication to encourage amicable settlement in a suit where it can adequately meet and satisfy the end of the justice. The Court has a discretion or jurisdiction to examine the entire circumstance of a case in order to determine whether the alleged terms of settlement, which to all intents and purposes are compromise agreement, entered into by the parties to a suit, should be scrutinized and made an order of Court ...." The foregoing approach was adopted by this Court in Appeal No. CA/A/237/2008 between VIMEH NIGERIA CO. LTD v. OWEN NWOKOLO & ORS delivered on 10th, November 2011 wherein BULKACHUWA, JCA (now PCA) adopted the terms of settlement of the parties therein as the judgment of the Court."[22]

The above long line of reproduced text from this spectacular decision of the Court of Appeal on the Terms of Settlement is to present *ex abundantia*, the plethora of views flowing from judicial pronouncements, on the propriety of ADR after litigation at the trial court, and most especially, to highlight the model of ADR to which the Courts are inclined to adopting, under the Rules of Court. The above exposes one constant character of ADR oscillating through the length and breadth of the decisions of Court; an agreement by the parties to vary the judgment of the trial Court, brought before the Court of Appeal under the rules, and adopted by the Court of Appeal 'as its consent judgment'. The above does not envisage, and with respect, cannot envisage a variance of the decision of a trial court at the instance of an arbitral adjudicator, and even if the writer herein demure that fact, then such variance would fail, for the Court of Appeal cannot adopt the award of an arbitral adjudicator as its consent judgment. That would not be grounded by the relevant Arbitration laws, and the Rules of Court.

Obviously, Mediation and Conciliation appears the ultimate intention of the head of Court in inserting Order 16 of the Court of Appeal Rule, as the outcome of arbitration is the form of a binding award to be enforced at the High Court, not an agreement to be adopted at the Court of Appeal as a consent judgment of the Court of Appeal.

Another important rule that requires interpretation in this respect is the rule 3 of that same Order, specifically the sub-rule 1. It provides as follows;

[22]*Ariguzo &Anor v Osobu &Ors* (2016) LPELR-41286 (CA)(Pp. 3-9, Paras. C-D).

> "Where the Court refers an appeal to the Court of Appeal Mediation Programme, the Appeal shall be adjourned to a definite date not more than 3 months for the outcome of the *mediation* between the parties.'' (Italics writer's).

There is no gainsaying the obvious, that the acceptable model under the rule is mediation, and of course any other appropriate ADR model whose outcome is only to be adopted by the Court of Appeal as a consent judgment, and not arbitration whose outcome is an award and enforced by the court through the instrumentality of its own force, and which would appear to oust the jurisdiction of the Court of Appeal to hear appeals as enshrined in the Constitution. The rule notwithstanding, mediation is also recommended, as practically, the outcome does not quarrel with the decision of the trial court, but only presents a compromise by the parties. Neither of the parties deny the fact that a judgment of the trial court is subsisting. None of the parties equally intend to argue on the propriety or otherwise of the decision of the trial court, as would be the case, should Arbitration be the option. Arbitration would suggest that issues of fact are still in controversy. This is no longer the case where the judgment of a trial court is subsisting, as matters are determined at the trial court based on findings of fact and evaluation of evidence, and *a fortiori*, that the Court of Appeal is the only court at that level empowered to interfere with a finding of fact of the trial court, subject to certain laid down conditions[23]. An Arbitral Tribunal is neither an appellate court, nor is it the Court of Appeal to exercise the powers of applying those laid down conditions.

It follows *a priori* too that only a well attenuated kind of Arbitration as possible in the Hybrid Processes (a mediation process incorporating a myriad of ADR models) could be accommodated, if at all considered. Here, parties would be applying a myriad of ADR models on the same issue of controversy, provided that the end product would not result in an arbitral award, but a Terms of Settlement duly signed by both parties, and filed into the Court of Appeal to be delivered in that cause as consent judgment. If the foregoing be the end point, then the writer is not opposed to the process through which that is achieved, whatever name the process choses to bear, in so

[23] In *State v Ajie* (2000) SCQR PAGE 53, the Supreme Court laid down the conditions under which an Appeal Court can interfere with the findings of fact of a lower court to include a situation where the finding is perverse.
A decision is said to be Perverse: -
(i) When it runs counter to evidence,
(ii) Where it has been shown that the trial court took into account matters which it ought not to have taken into account and
(iii) When it has occasioned a miscarriage of justice.

far as same is in accordance with the law and reaches the Terms of Settlement goal. Indeed, parties are *pacta sunt servanda*, and retain autonomy to accord and satisfaction. This having the position of His Lordship on the process, as reproduced above, in mind.

4.0. Conclusion

ADR and the relevant models of same have been cursorily examined. The writer have successfully exposed the idea and nature of ADR models as incorporated in the Multi-Door Courthouse of the Court of Appeal, and the models available as established in the Court of Appeal Rules, in a bid to disambiguate minds of the possibilities of assumption that a full-fledged arbitration is possible after litigation. The writer lauds the office of the President of the Court of Appeal for the introduction and inauguration of the Court of Appeal Multi-Door Courthouse, while educating readers on the legally possible windows therein. It is expected that litigants would utilize the opportunities inherent in Alternative Dispute Resolution in the Multi-Door Courthouse, in other to help rid the Court of Appeal docket of excessive matters, and to have matters amicably settled to achieve a win-win situation, even at that appellate level.