

Speedy Dispensation of Justice: Lagos Multi-Door Court House (LMDC)

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The Lagos Multi-Door Courthouse (LMDC) scheme is currently incorporated into the justice system. Since it was enacted into law, its relevance has developed due to its unique way of linking cases to appropriate forums for appropriate settlements. Hence, considerable literature has grown around its establishment; one such piece was on the scheme's effectiveness, which was carried out in 2012. In hindsight, the work will evaluate the philosophy behind the birth of the Lagos Multi-Door Courthouse (LMDC) in Nigeria and the underlying elements of the LMDC Law. What is the story so far? Has the courthouse contributed to or reduced the pitfalls associated with litigation in Lagos state? The work employs a socio-legal and comparative approach. It concludes on how effective the LMDC has been from its inception to date, the differences or contributions they have brought in terms of speedy dispensation of justice.

Keywords: *Alternative Dispute Resolution, Multi-Door Courthouse, Access to Justice, United States, United Kingdom; Nigeria.*

Introduction

The consequences or aftermath of colonisation by the English left an ineradicable mark upon the Nigerian Judicial System.² Taking a closer look at the Nigerian Law or Legal System would reveal that it is patterned after the English Common Laws.³ Wisdom Anyim reinforced this viewpoint when he stated that the Nigerian legal system is carved out of the English common law legal tradition by reason of colonisation and the attendant incidence of reception of English law through the process of legal transplant.⁴

Bob Osamor corroborates with the overhead view; he opines that 'it was the enormous impact or influence of the English law, which characterises the Nigeria Legal System.'⁵

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²Nwosu (2004) at 91.

³Anyim (2019) at 3.

⁴Ibid.

⁵Osamor (2004) at xiv.

Before proceeding to how the English common law is applicable in Nigeria's legal system or law, as evidenced above. It is pertinent to point out that Section 32 (1) of the Interpretation Act chapter 192 (1990) reads as thus:

Subject to the provisions of this section and except in so far as other provision is made by any Federal law, the common law of England and the doctrines of equity, together with the statutes of general application that were in force in England on the 1st day of January 1900, shall, in so far as they relate to any matter within the legislative competence of the Federal legislature, be in force in Nigeria.⁶

The 1999 constitution under its provision section 7, which is under the second schedule to this Constitution (Part II-Powers of the Federal Republic of Nigeria), states:

That the House of Assembly of a state shall have the power to make laws for the peace, order and good government of the state or any part thereof concerning the following matters.⁷

Against this backdrop, they grew a natural urge amid the commercial sector for what may be called an antidote- a remedy other than litigation that can hasten or resolve commercial disputes rapidly while preserving business relationships. Given this, the Nigerian government, in the bid to curb the problem associated with the justice system, amended the constitution of the Federal Republic of Nigeria and Section 36 was believed to be the antidote.⁸

Conversely, Section 36 of the Constitution of the Federal Republic of Nigeria 1999⁹ guarantees a fair hearing within a reasonable time by a court or other tribunal established law and constituted in such manner as to secure its independence and impartiality.¹⁰ Furthermore, in recent years, the Supreme Court of Nigeria has accorded recognition to the right of disputants to take steps to narrow down issues between them. This was well illustrated in the case of *Ogunleye v Oni*, where the court stated that:

⁶Laws of the Federation of Nigeria the Interpretation Act, Chapter 192

⁷Constitution of the Federal Republic of Nigeria 1999 cited in Anyim at 6 - "Received English law" comprises the common law, the doctrines of equity, statutes of general application in force in England on January 1, 1900, Statutes and subsidiary legislation on specified matters and English law (statutes) made before October 1, 1960, and extending to Nigeria, which is not yet repealed. Laws made by the local colonial legislature are treated as part of Nigerian legislation. The failure to review most of these laws, especially in the field of criminal law has occasioned the existence of what may be described as impracticable laws, which are, honoured more in the breach than in the observance.

⁸Osamor (2004) at xiv.

⁹Ibid.

¹⁰Ibid.

Parties to action can settle their matters to save the court's time by agreeing on those facts, not in the contest and leaving the court to decide, from received evidence based on those facts in pleading contested, the justice of the case.¹¹

It is submitted that this leads to a cultural shift where a delay is equated with adequate justice, and speed is viewed with suspicion. Undoubtedly parties want to be fully listened to.¹² The points above emphasise the clogs experienced with litigation which has brought to light more awareness of the advantages of ADR mechanisms amongst users (i.e., business associates, stakeholders, and legal practitioners). Consequently, most contracts drafted by parties started inserting provisions to resolve disputes by way of ADR mechanism, e.g., mediation, arbitration, or hybrid process (med-arb). ADR is cost-effective as the time frame for meetings and hearings is scheduled by the parties and tribunal.¹³ As seen in the courts, ADR is not plagued by unnecessary adjournments and delays.¹⁴

Subsequently, it follows that the shorter proceedings and flexible procedure prevents escalating costs and save time.¹⁵ The courts now refer parties from magistrate court, high court and court of appeal through the Multi-Door Courthouse (MDC), which is attached to the High Court to explore settlement of their dispute through one of the ADR mechanisms.¹⁶ The Arbitration and Conciliation Act (of the Laws of the Federation of Nigeria 1990)¹⁷ is being adopted and modified by many states of the Federation of Nigeria. There has been tremendous growth in institutional and ad-hoc arbitration and all phases of arbitration and an increase in the activities of institutional arbitration centres in Nigeria and other parts of Africa.¹⁸ Undoubtedly, Nigeria is equipping itself to grapple with the escalating commercial disputes resulting from the growth in business activities and an increase in international trade and investment.

An Overview of the Nigerian Courts System as it relates to ADR

It is imperative to discuss the court structure in Nigeria. This will provide more clarity to the paper and make it easier to understand the position and impact of the Lagos Multi-door Court House (LMDC) on the Nigerian legal system. The court system in Nigeria is as follows:

First is the Supreme Court (S.C) of Nigeria; section 230 (1) of the 1999 Constitution establishes the Supreme Court (S.C) of Nigeria.¹⁹ This is the apex court, and its

¹¹Joshua Ogunleye v Babatayo Oni (SC 193 of 1987) [1962] NGSC 1 (27 April 1962) cited in Anyim (2019) at 93.

¹²Interview with the Director 2 of the LMDC on 3rd October 2020

¹³The Association of Multi-Door Courthouse of Nigeria (2013) at 15.

¹⁴Onyema (2013) at 5

¹⁵The Association of Multi-Door Courthouse of Nigeria (2013) at 17.

¹⁶Ibid

¹⁷The Arbitration and Conciliation Act 1990

¹⁸Ibid.

¹⁹Sokefun & Njoku, (2016) at 5.

decisions are usually final and binding.²⁰ It is essential to point out that the Chief Justice of Nigeria heads S.C. The Chief Justice of the Federation or his nominee would sit as the head of each matter brought before it.²¹ Next, in the order of precedence, is the Court of Appeal.²²

Thirdly is the High Court (H.C); however, they are two categories of the High Court (H.C)- the Federal High Court and²³ the State High Court.²⁴ It is pertinent to point out that the lowest is the court's magistrate.²⁵ Apart from the regular court's structure, each state has enabling legislation to set up subordinate or complementary courts in the administration of justice within their states.²⁶

Each state has its own internal para-legal adjudication institutions or its own internal Para-legal adjudication institutions or offices; in Lagos, the government has taken the bold step to initiate the Lagos Multi-Door Courthouse (LMDC), Office of the Public Defender (OPD)²⁷ and Citizens Mediation Centre (CMC).²⁸ The LMDC is connected to the Judiciary. These institutions, as earlier stated, constitute a soft interface²⁹ between the first and second levels of courts in Lagos.

²⁰Oniekoro (2011) at 12.

²¹Constitution of the Federal Republic of Nigeria 1999.

²²Sokefun & Njoku (2016) at 12

²³Other federal courts at the level of the federal high courts, apart from the Federal High Court, there are other special courts constitutionally established by Federal Government strictly for special topics. There are two courts called tribunals, which comprise of Election Petition Tribunal and the Code of Conduct Tribunal. Just as the names appear, the election petition tribunal handles election petitions while the code of conduct tribunal handles cases of breach of the code of conduct for government workers. There is also the National Industrial Court, courts, otherwise called Sharia Courts. Sharia Courts handle breaches of Islamic codes in states that practice sharia. *Cited in* Sokefun & Njoku (2016) at 22.

²⁴Oniekoro (2011) at 12.

²⁵The State High Courts exist in each state in Nigeria, such (as Sharia Court, Customary Court and Area Courts etc.) including Abuja, the federal capital territory. Each state has its own state high court. It usually has divisions or branches, in some other parts of the states for geographical convenience. Just like the Federal High Court, the same rules of court control the various divisions. The number of divisions it may have depends on how big the state is and the volume of cases the state has. In Lagos, the Lagos High Court has five branches or divisions, but the same court. *Cited in* Sokefun & Njoku (2016) at 22.

²⁶The Association of Multi-Door Courthouse of Nigeria (2013) at 21.

²⁷On the other hand, in 1999 when the new democracy began and it was discovered that there was a gap between the rich and the poor, particularly in access to justice. The then administration of Senator Bola Ahmed Adegunle Tinubu through the present VP-Prof Osinbajo thought they could be an agency that could take care of the less privileged so that was what brought about the Office of the Public Defender (OPD) in Lagos State. Though it was established initially as a unit within the dept. of the ministry of Justice called directorate for citizens' rights but through the proactiveness of the office of the public defender and the yearnings of people it was carved out and it now stood as an agency on its own supported by law. Thus, the OPD was created in 2000 and it initially had its first law in 2003 and this was further amended in 2015. -Director 2- an Interview carried out by the writer.

²⁸Finally, the CMC was established by the Lagos State government in 1999 due to the lack of fairness, cost and lack of privacy of the judicial system *cited in* Kasumu & Onyeonoru (2016) at 202.

²⁹The Association of Multi-Door Courthouse of Nigeria (2013) at 60.

They support both the high court, the magistrate courts in Lagos State, and the court of appeal in recent years.³⁰

The focal point here is that; Nigeria has two levels of courts.³¹ The highest is the H.C and the National Industrial Court, a court with coordinate jurisdiction with the High court. Below that is the Magistrate Court, which deals exclusively with criminal matters.³² However, appeals from the magistrate Court go to the H.C.³³ Hence, the high courts are at the (first) 1st level Court in the hierarchy of courts in Nigeria. Appeals from Magistrate Court goes to the state high court of the relevant state in Nigeria.³⁴ The Court at level 3 is the Court of Appeal (C.A), and³⁵ the Court at level four (4) is the Supreme Court³⁶ (S.C). Courts at levels 3 and 4 traditionally do not entertain originating summons, as they are appellate courts by nature.³⁷ On level 2 is the high court; apart from the federal high courts, other federal courts merely entertain restricted topics and other matters such as (sharia, tribunal and national industrial court known as labour court).³⁸

Even the Federal high court itself has a narrow scope of jurisdiction as it is substantively for matters that are Federal in nature.³⁹ This, therefore, means that only the High Court (H.C) and other courts below it are available to handle the day-to-day needs of the common masses in a state. As a result of this, there was pressure on the H.C and in the magistrate court to meet up with the volume of cases oozing out or coming out daily within the Lagos State.

Odoh Uruchi agrees, stating: These tailback Rules have not allowed the Magistrates' Courts to act as a court of summary jurisdiction.⁴⁰

On the other hand, an analysis of the cause list of the state judiciary in June 2010 revealed that 2,000 cases are being handled weekly by the Lagos state high courts.⁴¹ Conversely, in Lagos State, the massive volume of cases that the Magistrate court, High court, and Court of appeal takes into its list on daily basis causes a lot of congestion in the courtrooms and has precipitated the emergence or the creation of the aforementioned Para-legal institutions. However, amongst the three named Para-legal institutions, the LMDC stands out of them all because of its distinctive features.

³⁰Sokefun & Njoku (2016) at 5.

³¹Oniekoro (2011) at 12

³²Ibid.

³³The Magistrate court is one in each state, including Lagos, but has many branches or divisions across the state. These various branches are grouped into what are called magisterial districts. In Lagos, there are seven magisterial districts. Each is headed by a chief magistrate. Each district comprises many magistrate courts. Cited in Sokefun & Njoku (2016)

³⁴Oniekoro (2011) at 23

³⁵Ibid at 12.

³⁶Ibid at 23.

³⁷Ibid.

³⁸Sokefun & Njoku (2016) at 22

³⁹Merife & Igwe (2016) at 17.

⁴⁰Uruchi (2015) at 98.

⁴¹Adedimeji (2010) at 13.

The Birth and Development of the MDC in Nigeria

‘Having spent most of my early practice years in courtrooms, it became crystal clear to me that the justice system was in desperate need of an overhaul.’⁴²
- Kehinde Aina.

In his quest for an effective legal system to keep up with the surge of disputes that overwhelmed the courts, Kehinde Aina founded the Negotiation and Conflict Management Group (NCMG) in 1995, a non-profit private organisation.⁴³ The NCMG embarked on a campaign to establish collaboration with the Lagos State government in 2002, then adapted the Alternative Dispute Resolution (ADR), notably the Multi-Door Courthouse (MDC), as an institutional repository of ADR mechanisms⁴⁴ to encourage the resolution of the dispute in an atmosphere free of acrimony and contestations.

The LMDC Act was enacted in 2007 with the Lagos Multi-Door Courthouse (LMDC) situated within Igbosere High Court in the mainland of Lagos State.⁴⁵ The LMDC was created in a bid to help settle conflicts or disputes amongst business partners or people in business, tenant and landlord, land disputes, and matrimonial cases; in an effort to bring about speedy and efficient administration of justice.⁴⁶ Several states in Nigeria have emulated the LMDC by replicating their model because of its effectiveness in delivering speedy dispensation of justice to the citizenry.⁴⁷

Consequently, the acceptance of ADR in the Lagos landscape indicates one thing ‘the wind of change-which is opposed to the adversarial relationship -the win-lose.’⁴⁸ Hitherto the acceptance of ADR means turning an adversarial pursuit into a problem-solving partnership, which connotes a win-win⁴⁹ for all the parties involved. Evidence supporting this position can be found in Kehinde Aina’s statement, where he pointed out that ‘the new face of justice is also assuming a human countenance.’⁵⁰ This means that both the disputants or litigants and the providers will have the autonomy to be the co-creators of an expeditiously and effective process of settling a dispute in a private dispute setting on the courts’ premises.⁵¹ Judges and the Magistrates get to refer their cases. Even with the Walk-in cases that are not referred by the Judge, when the parties sign the Terms of Settlement (TOS), it is sent to the ADR Judges,⁵² and they will enter it and endorse it as a Consent Judgement in court.⁵³ The above-stated submission is the

⁴²The Lagos Multi-Door Courthouse (2016) at 12

⁴³Ipaye (2021) at 4.

⁴⁴Umegbolu (2020b) at 1.

⁴⁵Stone plaque at the LMDC

⁴⁶The Lagos Multi-Door Courthouse (2016) at 13.

⁴⁷Umegbolu (2019) at 1.

⁴⁸Marks (2000) at 17.

⁴⁹Ibid.

⁵⁰The Lagos Multi-Door Courthouse (2016) at 82.

⁵¹Aina (2008) at 18.

⁵²ADR Judge- Is a High Court Judge that the Chief Judge of a state has appointed to oversee all matters sent to the MDC.

⁵³Umegbolu (2020a)

reason why the LMDC is referred to as a Court-Connected ADR⁵⁴ or ‘one-stop dispute resolution services’ otherwise known as ‘one-stop shop’ as Professor Feldman termed it.⁵⁵

This simply means assimilation of ADR with the court system, where parties have the power to select other ADR methods that would be appropriate to their case;⁵⁶ this method gives room for screening and referral⁵⁷ and places cases and disputants to the right track that suits their disputes.⁵⁸

According to Moore, all knowledge claims are socially constructed and represent particular situated perspectives.⁵⁹

This statement aligns or is in alignment with what Aina described as the frustration⁶⁰ he faced with the Nigerian courts at five (5) years old in legal practice and a partner in the law firm of Aina Blankson & Co. as head of litigation.⁶¹

Aina stated: Those short, glorious years were, for the most part, spent in courtrooms, a place of passion and great delight but very little satisfaction. It was my view then (and still is) that access to Justice means much more than access to the courtroom; access to justice means providing an opportunity for a ‘just and timely result.’ Not only did I not experience that just and timely result in those five years, none of those I represented did.⁶²

The above statement signifies that Aina was motivated by his ‘situatedness’ at that point, which was with the ineffectiveness of the court system in Lagos. Hence, he decided to seek a solution and was stimulated by Professor Frank Sander’s speech-is the founder Multi-Door Courthouse in America.⁶³ Sander first introduced this concept in a speech at the National Conference on the causes of popular dissatisfaction with the administration of justice in St Paul, Minnesota. In this very place, Roscoe Pound brought to the fore the causes of popular dissatisfaction of the administration of justice.⁶⁴ The MDC has been tested in domestic jurisdiction in the United Kingdom and has been implemented in parts of the United States, Australia, Canada, New Zealand, Singapore and other parts of the Commonwealth Countries.⁶⁵

Professor Sander emphasised the five criteria⁶⁶ for determining how best disputes can be resolved, and this criterion contributes to the effectiveness of the MDC process, which are as follows:

⁵⁴Ibid.

⁵⁵Feldman (2020) at 2.

⁵⁶Ezike,(2011-2012) at 248.

⁵⁷Practice Direction on Mediation Procedure (2008) at 3.

⁵⁸Goh (2007) at 8.

⁵⁹Moore (2021) at 82.

⁶⁰Aina (2008) at 4.

⁶¹Aina (2007) at 7.

⁶²Levin & Russell (1979) at 19

⁶³Ibid.

⁶⁴Ibid.

⁶⁵Goh (2007) at 7.

⁶⁶Levin & Wheeler (1979) at 13.

- The Nature of Disputes
- The Relationship between Disputants
- The Amount in Dispute
- Cost and Time
- Speed

It has been observed that the LMDC emulates these five (5) criteria; however, for this work, it will be relevant to focus on the first criterion- The nature of Disputes, to form some relevant issues for determination.

Whether the parties have a likelihood of maintaining long relationships? E.g., family disputes and business disputes.⁶⁷

- a) Is the process fair and justifies the type of dispute or conflict in question?
- b) Whether the dispute is amenable to Mediation or ADR? For instance, in a matrimonial cause, only the courts have the power to make a decree nisi or absolute. A party cannot submit divorce to Mediation. However, a party can submit matters on maintenance-alimony and custody of children to Mediation.⁶⁸
- c) Whether the LMDC will need to determine if the proper parties listed are before the court. When they are, the dispute will be readily sent to the MDC.⁶⁹
- d) Finally, whether the parties voluntarily or willing want to settle in ADR?⁷⁰

However, Haitham stated that the applicability and importance of the criteria above would differ depending on the type of ADR in question.⁷¹ For example, fair process requirements would be more stringent in arbitration, which is entirely a creature of the arbitration agreement as opposed to the not so evident of fair process in mediation- the neutral third-party work in a more informal environment with the parties to facilitate an acceptable settlement.⁷²

Lending credence to the above statement is Carrie Menkel-Meadow clearly stating that:

Third, process pluralism is good idea: different kinds of parties and particular types of disputes might best be handled in different ways. In other words, “one size will not fit all.” ADR has always been about “tailoring” - both tailoring the process to fit the dispute.

On the contrary, Justice Oke stated:

⁶⁷Ibid.

⁶⁸The Lagos Multi-Door Courthouse (2016) at 13.

⁶⁹Section 3 (6) Lagos State Multi-Door Court Law 2015/

⁷⁰Menkel-Meadow (2009) at 27

⁷¹Haitham (2003) at 119.

⁷²Ibid.

Some people have bicycle-sized problems and choose to go through Cadillac-sized procedures to resolve them.⁷³

Flowing from the above, the above statement reinforces the simple procedure in ADR.⁷⁴ Nevertheless, before one can decide on whether or not the LMDC is an effective option or not, the nature of the dispute and its examples are prerequisite factors that determine or should be taken into cognise on whether the LMDC practices will/can be effective or whether he LMDC practice is set on the path of effectiveness.

The Challenges Instrumental to the Creation of the LMDC

As earlier stated, due to the concerns over the challenges posed by overcrowded dockets, exorbitant cost, lack of judicial bodies, lack of infrastructure and delay, public policy demands that laws should be for support of virtues and condemnation of vices and not vice versa.⁷⁵ Therefore, every law has a jurisprudential philosophy or mischief for which it aims to correct or address in society.

Against this backdrop, the developing economies of the world are now exploring this medium of dispute resolution and seeking to advance it further.⁷⁶ This development underpins the fact that dispute has, become an endemic part of human existence through the years. The thrust is not how to eradicate conflict/dispute but how to manage it.

Consequently, Lagos State Judiciary and the Ministry of Justice imbued with the experiences and sentiments of both stakeholders and the common man in the hands of justice -through the Lagos House of Assembly, enacted the LMDC Act in a bid to reduce the challenges mentioned above that are associated to the court system and therefore, promote a faster case flow management system in Lagos State.⁷⁷ Thus, the LMDC was established in 2002. Its law was enacted in 2007 and reviewed in 2015,⁷⁸ with the theoretical lens view of achieving its overriding objective as initially stipulated in Section 2 of the LMDC Act 2015. Accordingly, the LMDC was created to:

- a) Enhance access to justice by providing alternative mechanisms to supplement litigation in resolving disputes.
- b) Minimize citizen frustration and delays in justice delivery by providing a standard legal framework for the fair and efficient settlement of disputes through Alternative Dispute Resolution (ADR)

⁷³Kio-Lawson (2012) .

⁷⁴ADR provides its users with autonomous control over the way their dispute is determined, unlike the conventional courts where they do not have such autonomy.

⁷⁵Umegbolu at 146.

⁷⁶Fiadjoe (2004) at 4.

⁷⁷Aina (2008) at 82.

⁷⁸Lagos State Multi-Door Court Law 2015.

- c) Serve as the focal point for promoting Alternative Dispute Resolution in Lagos rule.
- d) Promote the growth and effective functioning of the justice system through Alternative Dispute Resolution methods.

The broader landscape of the justice system in Nigeria was identified as an area for further research, which prompted the section mentioned above of this law. It is important to point out that on a good day, people tend to think that the opposite of poverty is wealth, but it has been stated otherwise, giving new insight into the fact that the opposite of poverty is injustice. Then there is no other place where that rings through other than a place like Nigeria where the access to justice or the justice administration is before gone by or limited, invariably placing a lot of challenges on the actual delay and the length of time it takes for cases to be resolved.⁷⁹

The challenges of cost, infrastructure, and other numerous challenges make it difficult for the average litigants to be excited about being in the courtroom, so it begs the question as to whether justice is what the litigants get out from the courts? Is there a challenge in that regard? To the extent that there is a challenge in the length of time it takes. To the extent that there is a challenge to the cost of it? The very essence of why litigants are in the courts is not being met.

What then is the answer? This paper argues that the solution does not lie in increasing the number of judges; nor does it lie in increasing the number of courtrooms in Nigeria alone; the answer lies in some level of de-structuring, a strategic overhaul of the Justice Administration System in a manner that inculcates and accommodates the alternative mechanisms, as new avenues that can supplement the court system. In other words- avenues that can supplement the 'mono-door of litigation,'⁸⁰ which is what the average courthouse is all about in Nigeria to a large extent.

Thus, it is for this reason that the Multi-Door Courthouse (MDC) was founded in 2002, sixteen (16) years now with another four (4) years that will make it twenty (20) years. Indeed, it is more than that; it was also established because the essence of litigation in itself is entirely 'foreign' to the African culture.⁸¹ Elisabetta Grande corroborated with the above view by stating that 'what is in 'tune' with the African culture is a very 'harmonious' (harmonically) dispute resolution process that can make things a lot better. Thus, businesses will also thrive better in the grand scheme of things, and that is what it was meant to do and that was what it was meant to achieve.

On the other hand, Aina admitted that the MDC, as a response to the aforesaid justice challenge, has largely contributed to reducing civil cases in the Lagos State Judiciary.⁸² On the contrary, Onyema underlined that the LMDC is not getting any

⁷⁹Discussion with Director 2 on the 20th of November 2020

⁸⁰Aina (2007) at 5.

⁸¹Moscati (2020) at 519.

⁸²Aina (2008) at 4.

substantial amount of these disputes.⁸³ She evidenced this statement with statistics provided by the Lagos State Judiciary, which revealed that for the period between 2008 and 2010, 16,072 civil cases were filed before the Magistrate courts while 25,807 civil cases were assigned to the High court.⁸⁴ On the other hand, the Citizens Mediation Centre (CMC) settled 77,954 civil cases while the LMDC dispensed with 888 civil cases.⁸⁵ However, one question that needs to be asked is whether the study demonstrates that civil matters are referred or filed at the LMDC. How about criminal matters?

The issue of delay is not only associated with or restricted to Nigeria alone or the developing economies. A study carried out by the World Bank in 2006 has revealed 'that the average duration of cases in certain developed countries manifested unusual delay like 421 days in Canada and 320 in the check collection compared to 40 days in Swaziland and 60 days in Belize.'⁸⁶ Since these are developed countries, it can be said that delay is not only associated with developing nations but rather with every country at large.

Consequently, these challenges required a global solution because the use of only litigation to settle disputes has manifestly hindered access to justice. The above-stated statistics have illustrated the enormous volume of conflicts or disputes before the Lagos State Courts. Therefore, the LMDC was birthed to rectify these challenges that had contributed to the hindrance of access to justice in Nigeria.⁸⁷

The High Court Rules in 'Nudging' Parties to Alternative Dispute Resolution

Just like the saying goes that 'the only constant thing in life is change,' in the words of Professor Yakubu:

The dynamic nature of law necessitates its constant change... It must reflect the ethos and values of the people. Law does not emphasise the ethos and values of bygone days but considers the utility, relevant and acceptability of a rule of conduct at a point in time.⁸⁸

These above-stated sentiments resonate with the writer, and this philosophy is embraced by reemphasising the change that occurred from the pre-colonial era (when the traditional system was dominant and was the only door) up to the colonial era (the introduction of litigation into the Nigerian clime) and finally the post-colonial era (where the traditional system was repackaged as the new ADR and then Litigation was infused with ADR). This link to the eras is crucial because Yakubu mentioned that 'law changes with time,'⁸⁹ a proof that the law as we know it is never static. Thus, if a law is no longer serving its purpose or if it does not meet the purpose it was created for, it is either overhauled or amended to

⁸³Onyema (2013) at 9.

⁸⁴Ibid at 8.

⁸⁵Ibid.

⁸⁶Dam (2006) at 10.

⁸⁷Ibid, at 3

⁸⁸Nwosu (2004) at 341.

⁸⁹Ibid, *ibid*.

conform with the required standards to sufficiently tackle the challenges in the law.⁹⁰

Perhaps the most dramatic evidence is that because litigation could not solve the problem of congestion of the system⁹¹, it became necessary that an independent, party reliant, and speedy process that could generate effective results was sought; hence the birth of the LMDC. The focal point here is that, as earlier mentioned, when the westerners left Nigeria, the Nigerian law was changed, various rules of law and enactments were put in place to reflect the needs of the ‘commercial village’ in this context, present-day Nigeria⁹² and the Lagos state took appropriate steps to ‘nudge’ the stakeholders –judges, (to enforce adherence to ADR clause in commercial agreements), Senior Advocates of Nigeria (SAN), Magistrates, Lawyers and the citizens to embrace ADR and LMDC.⁹³

Lending credence to the above is the High Court of Lagos State (Civil Procedure) Rules, Order 3 Rule 11 2019, which states thus:

all originating processes filed in the Registry shall be screened to determine the suitability for Alternative Dispute Resolution (ADR) mechanisms and may be referred to the Lagos Multi-Door Court House or any appropriate ADR institution.⁹⁴

Subsequently, the 2012 rules were amended in 2019, and the provisions mentioned above were inserted accordingly. Apart from encouraging the screening for suitability of ADR, which is continuity from the old rules,⁹⁵ a new provision of its own came in, which is -the Expeditious Disposal of Civil Cases Practice Direction No. 1 of 2019,⁹⁶ whose primary focus is the timely disposal of backlog cases before litigation commences in the Lagos State Judiciary.⁹⁷

The 2019 rule amended the 2012 rules and introduced some of the above-stated provisions. However, both Acts placed a colossal control on the court to decide on matters as it deems fit about expeditious justice delivery in the State and though still in the early stages of the process.⁹⁸ It has also restored a sense of timely justice and equal footing to the common man so that the people can have closure to long-standing disputes. It is pertinent to point out that the English Court can only ‘encourage’ and does not mandate or compel parties to engage in ADR, including mediation; however, they do not hold back when sanctioning parties that have wasted the time of the Court, especially when the parties refuse to settle in ADR⁹⁹ but instead want to continue with the tactics that will result in undue delays

⁹⁰Ibid.

⁹¹Ibid, at 37

⁹²Faturoti (2014) at 16.

⁹³The Lagos Multi-Door Courthouse (2016) at 12.

⁹⁴High Court of Lagos State Rules Civil Procedure Rules, 2019

⁹⁵Ibid.

⁹⁶Expeditious Disposal of Civil Cases Practice Direction: Pre-Action Protocol Lagos State Judiciary 2019.

⁹⁷The Association of Multi-Door Courthouse of Nigeria (2013) at 15.

⁹⁸Ibid, at 16.

⁹⁹Constable & Vilar (2020) at 1.

of the matter in the course of litigation. Lending credence to the above claim is the recent case of *DSN v Blackpool Football Club Ltd*.¹⁰⁰

However, Master McCloud's directions in the case highlighted that:

At all stages, the parties must consider settling this litigation by any means of Alternative Dispute Resolution (including Mediation); any party not engaging [...] must serve a witness statement giving reasons.¹⁰¹

After extensive examination of the above directions by Justice Griffiths, he admitted that BFC's reasons for failing and refusing to engage in any settlement discussions were inadequate.¹⁰² Though losing the claim does not validate an award for indemnity costs, in this case, Mr Justice Griffiths was of the opinion that 'based' on their conduct that they deserved it.¹⁰³ This judgement was inescapable as it is clear the English courts can wholly sanction parties that refuse to settle under ADR and, in some cases, award indemnity costs.¹⁰⁴ The reason behind this is to provide an effective justice system so future claims can follow this rule and parties will desist from wasting the court's time, which in turn affects the dockets of the court. Hence, in this case, the ruling brings out a peculiar feature that other jurisdictions like Nigeria, with particular reference to Lagos State, can use as case precedent. Just like Sir Anthony Clarke MR, pointed out that without an:

Effective civil justice system, substantive civil laws are no more than words and the rule of law becomes an 'aspiration' rather than a reality.¹⁰⁵

This is in line with the recent case of *Nweke v. FRN*, where the victim of this case is still waiting for justice. Hitherto, his case has been at the trial Court for eight years (8) now and is yet to commence. However, it has gone from one court to another.¹⁰⁶ This new rule has provided an effective justice mechanism that can tackle such cases, which is a step in the right direction for such cases exemplified above; the judge, in his discretion, can unburden the courts and achieve swift justice either through litigation or through Alternative Dispute Resolution through the LMDC or any other ADR Centre, in this new rule. However, the issue of 'referring parties',¹⁰⁷ is argued that it comes across as ambiguous or vague. It could also connote a different meaning, 'forcing or controlling parties' to use ADR.

Is the LMDC the Right antidote for Access to Justice?

One of the reasons that this new method of settling disputes became an instant hit in Nigeria or, as Nigerians would say, a 'hot akara',¹⁰⁸ was validated by this

¹⁰⁰ *DSN v Blackpool Football Club Ltd* (2020) EWHC 670QB.

¹⁰¹ *Ibid.*

¹⁰² *Ibid.*

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*

¹⁰⁵ Genn (2010) at 18.

¹⁰⁶ *Nweke v FRN* (2019) LCN/4810 (SC)

¹⁰⁷ Order 2 (1) of the 2019 Constitution of the Federal Republic of Nigeria 1999.

¹⁰⁸ Akara means fried hot bean cake, but it is used as slang that something is working well or a hit.

recent case between two famous Nigerian musicians, the case borders on copyright infringement. The case started as far back as 2004 when Innocent Ujah Idibia, aka 2face or 2baba, a member of the Plantashun Boiz, left the band to pursue a solo career as an artist. He later released a hit track known as 'African Queen', and his former bandmate Blackface began to make a ceaseless accusation against 2face, claiming he wrote the song and that 2face stole his songs and sang as his own.¹⁰⁹

Additionally, he accused 2baba of taking the credit for writing the song. Thus, no royalties were paid to him. This case has been ongoing approximately for fifteen (15) years and was later settled via out of Court at the LMDC within two (2) days, precisely on the 27th of Nov 2019.¹¹⁰

However, these two friends turned foes were not on speaking terms when they stepped in for their mediation session, but after the Terms of Settlement (TOS) were reached (the parties turned from foes to friends once again, laughing and cracking jokes). They appended their signatures on the TOS, and they both went outside and took pictures and uploaded them on their various social media platforms. Additionally, one of the mediators stated:

Litigation destroys people; you need to see them when they walked into this room; both parties refused to speak to each other, including their managers, but when the mediation session was mid-way, they were both laughing and speaking pigeon (broken) English.¹¹¹ They both apologised to each other while, reminiscing about the good old days. You can see the relief on their faces when the mediation session ended, and they hugged. They both cancelled their engagement for the following day and scheduled a time (on the second day) just to come in and conclude the Terms of Agreement (TOA) and sign it off.¹¹²

Against this backdrop, the above statement indicates another significant impact of the LMDC towards preserving the parties' relationship from the onset; unlike litigation where the battle line is drawn, the parties and their respective businesses, social and other various relationships are ruptured.¹¹³ However, there is credible, intense competition for business retent and securing more clients in this age of globalisation rather than losing out. The LMDC has done well in resolving disputes and reconciling parties.¹¹⁴ Thus they desire great fulfilment from seeing either two or more estranged parties now coming to an agreement, shake hands and continue with their business relationship. That is what litigation cannot give. Even more so, when the parties resolve their respective disputes via litigation, often, the relationship might not be as cordial as it was before.¹¹⁵

Additionally, a landmark case involving the first elected vice president of Nigeria, Dr Alex Ekwueme, is another example of its effectiveness. This case was

¹⁰⁹The writer witnessed the settlement of the case at the LMDC cited in *Umegbolu (2019)*.

¹¹⁰*Ibid.*

¹¹¹Broken English – When Used-Mostly signifies 'closeness' or 'familiarity.'

¹¹²Due to the ethics of mediation, this part of speaking with their mediator would be classified as mediator 4.

¹¹³*Umegbolu (2019)* at 67

¹¹⁴The Association of Multi-Door Courthouse of Nigeria (2013) at 19.

¹¹⁵*DSN v Blackpool Football Club Ltd (2020) EWHC 670QB* at 19

in contention for seventeen (17) years because of a sale of land. And the former vice president would fly into Lagos from Enugu to attend Court proceedings.¹¹⁶ The matter was referred to the LMDC for mediation after much money had been spent in litigation. As soon as the parties signed the ‘Terms of the Settlement’ (TOS), the matter was resolved within 10:00 am - 8:30 pm same day.¹¹⁷ Indicating that timeliness is one of the main benefits of using the LMDC.

Furthermore, cost-effectiveness can be gleaned as another benefit of the LMDC. For example, during the 2017 Lagos Settlement Week, a banking case in Court for about twenty-six (26) years, was settled at two (2) mediation sittings. Then a banking case with a claim of over 1.6-billion-naira equivalent to 3,067.66 Pounds Sterling was settled in two (2) mediation sittings.¹¹⁸

Conversely, a case for dissolution of marriage was taken, and both parties withdrew their Petitions and Reliefs. In the same 2017 settlement week, about 4.5-billion-naira equivalent to 8,637.82 Pounds Sterling monetary claims were recovered, representing about 14% of resolved matters.

However, in the 2018 Settlement Week Programme, about 24.3-billion-naira equivalent to 46,698,354.90 Pounds Sterling in monetary claims were recovered.¹¹⁹ Also, a case on the Administration of Estate has been in Court for nearly twenty-nine (29) years. It was settled in two (2) mediation sittings. Additionally, a banking case with a claim of over 1.8-billion-naira equivalent to 3, 457,910.70 Pound Sterling was settled.¹²⁰

Following through, in 2016 and 2017 Settlement Week, 31.3-billion-naira equivalent to 60,060,577.79 pounds sterling was recovered in claims and the LMDC effectiveness and impact can be gleaned from saving some legal fees. Management time for corporate litigants, court time, counsel time, the resources of the court, things like contingent reliability risk, reputational risk, other sheer inconveniences associated with serving litigation in financial terms, which have been computed with the colossal amount of savings made for the litigants in counsel and judicial system.¹²¹

It is pertinent to point out that Lagos Settlement Week (LSW) is free and it’s scheduled three times a year,¹²² it was set aside by the Chief Judge of Lagos State for specific courts to settle as many cases as possible in a bid to decongest the court.¹²³ The cases stated above demonstrates the eagerness of the Lagos State Judiciary or legal system to refer these cases to the LMDC in a bid to reduce the dockets of the courts and also provide a particular example of the impact and the effectiveness of using ADR through the LMDC.

¹¹⁶Dawson (2013) at 1.

¹¹⁷The Association of Multi-Door Courthouse of Nigeria (2013) at 21.

¹¹⁸Umegbolu (2019) at 67

¹¹⁹Constable & Vilar (2020) at 23

¹²⁰Ibid.

¹²¹Ibid.

¹²²Annexed -The Lagos Multi-Door Courthouse: Lagos Settlement Week -Frequently Asked Questions (FAQS).

¹²³Umegbolu (2021) at 67

The founder of the LMDC¹²⁴ Kehinde Aina, agrees with the above-mentioned assertion and during the opening ceremony of the LMDC stated:

I envisioned a comprehensive justice centre where both the consumers and provider will be collaborators and co-creators of a streamlined and agile process. I dreamt of a faster case flow management system where parties are not left impoverished and embittered. I fantasised about a legal regime where an apology would be seen as a useful tool rather than an admission of guilt, a system where disputants could problem-solve and search for common ground within the backdrop of integrity, understanding and human decency. My dream was to create a nexus for peace, fair and an effective administration of justice in our dear country Nigeria.¹²⁵

As demonstrated from the statement by the founder of the Lagos Multi-Door Courthouse (LMDC), who had a first-hand experience on how frustrating the court system can be in Nigeria, albeit he had a vision, but he did not stop at that, he went on to actualise that dream by bringing it into reality the Lagos Multi-Door Courthouse. He believed that justice system could be rescued by integrating ADR into the mainstream of the civil justice system with a managerial approach to dispute resolution.

Consequently, disputes would be resolved in ‘multiple doors’ within the established courts in Lagos, which the researcher calls the ‘revolving door mechanism.’ Therefore, the disputants or litigants do not need the rigorous process associated with litigation when they can amicably settle differences and have closure in one or two days.¹²⁶ Despite this, its effectiveness and impact has so far motivated some states like Enugu State. They opened its doors in 2018 to start up the Enugu State Multi-Door Courthouse (ESMDC) this indicates that the LMDC has made some profound changes by including minor criminal offences to its list. So far the LMDC has raised the bar a notch higher by providing an all-inclusive justice system for settlement of disputes not only in civil but now in criminal law, thus section 2(a)-(d) LMDC 2015 explored and proffered the idea of an inclusive justice system however, and in recent years, that dream has been actualised into a reality and now an effective alternative through the LMDC is pretty much attainable- the writer is of the opinion that this has moved from ‘law on paper’ to ‘law in action.’

For these reasons, LMDC has enabled the economy in Lagos State to thrive by providing an effective alternative to litigants who have been clamouring for an improved system- access to justice for many years.¹²⁷

¹²⁴The Lagos Multi-Door Courthouse (2016) at 11.

¹²⁵Ibid.

¹²⁶The Association of Multi-Door Courthouse of Nigeria (2013) at 23.

¹²⁷Ibid. (2009) at 5.

Limitations that Might Hinder the Growth of LMDC

The above-mentioned rule has provided an effective justice mechanism that can tackle such cases which is a step in the right direction- providing more leeway for the judges. Thus the judge in his discretion can unburden the courts and achieve swift justice either through litigation or through ADR through the LMDC or any other ADR center.¹²⁸ However, the issue of ‘referring parties’ to use ADR has been deemed as mandating parties to mediate hence perceived as unjust.¹²⁹ Furthermore divergent debate has been raised on ‘people not having access to the law courts.’¹³⁰ On the contrary, some ADR critics see the mandatory requirement,¹³¹ as an attempt to limit the people’s unfettered right to access to court¹³² and which will also strip off party autonomy in ADR.¹³³ The above - viewpoints resonates with the writer.

Against this backdrop, laws are modified to suit the culture of the people. For instance, a study conducted in 2013 indicated that Turkey is not yet ready for a flexible and voluntary alternative dispute resolution due to its culture and public awareness.¹³⁴

In the same manner, in the Nigerian -home, which is classified as the ‘informal setting,’ most parents tell their children what to do using ‘force,’ for example a parent would or an elderly person will tell the young ones, do not ask questions, do as I say.’¹³⁵ This is what the writer refers to as ‘the do as I say mentality’ and woe betides one,’ who dares question them, he will be flogged mercilessly, unlike in the ‘western culture’ to be more specific United Kingdom, where children ask, ‘why’ and their parents explain why they should adhere to this rule or the other etc. As such, this pattern of encouraging parties to ADR as depicted in *Dunnett v Rail track*¹³⁶ and *Halsey v Milton Keynes*¹³⁷ may be counterproductive in Nigeria as ‘directing or mandating people or forcing people’ is in line with the African culture.’¹³⁸ In essence, African culture is such that they are forced to do things, so once there is no force; most of them flaunt the rules.¹³⁹

Likewise, the same goes in the ‘formal setting’, which is the office or organization.¹⁴⁰ However, Franz Boas asserts that no culture is good or bad or better put that people basically view the cosmos through the perception of their own culture and judge it according to their own acquired cultural orientation.¹⁴¹

¹²⁸Constable & Vilar(2020) at 1.

¹²⁹Ibid, at 1.

¹³⁰Order 3 Rule 11 High Courts (Civil Procedure Rules) 2004.

¹³¹The Nation, Catching the ADR bug in Lagos at 30.

¹³²Constable & Vilar (2020) at 1.

¹³³The Nation, Catching the ADR bug in Lagos at 30.

¹³⁴Napley (2014) at 3.

¹³⁵Egbunike (2012) at 71.

¹³⁶*Dunnett v Rail track* EWCA Civ 302

¹³⁷*Halsey v Milton Keynes* EWCA Civ 576

¹³⁸Most of the stakeholders and users affirmed the above assertion.

¹³⁹Egbunike (2012) at 71. Also, most of the stakeholders hold the same view as Egbunike.

¹⁴⁰Ibid, at 72.

¹⁴¹Sydel (2004) at 18. Silverman (2004) at 18.

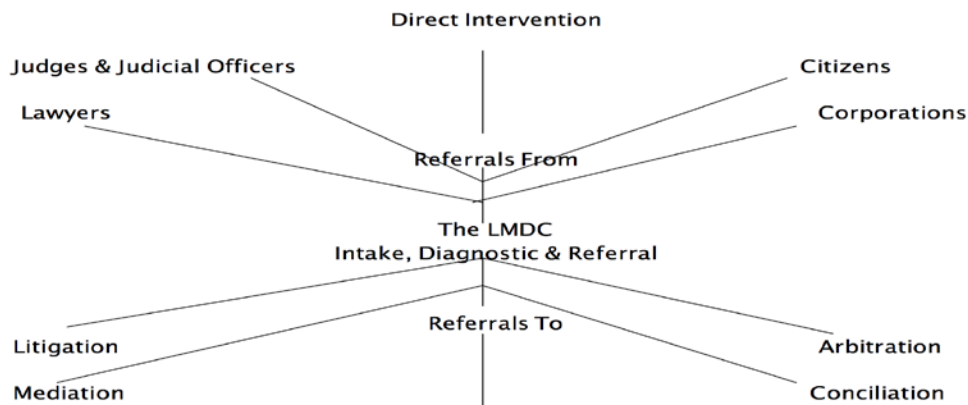
The Features and Procedural Framework of the LMDC

In Nigeria, the Arbitration and Conciliation Decree provides for the right to settle disputes by Conciliation. Part II of the Decree, sections 37-42 and 55 made adequate provisions for conciliation.¹⁴² However, in recent years mediation in Nigeria has developed into a more well thought out process and within a legislative framework.¹⁴³ Hence, the LMDC panel of neutrals is made up of accredited mediators, arbitrators and neutral evaluators from every field; the Lagos Multi-Door Courthouse, the Chief Judge of Lagos State is in charge of approving the panel stated above on the direct recommendation by the Neutrals' Screening Committee.¹⁴⁴ Thus the operation of the LMDC is to supplement litigation as the available resource for justice by the provision of enhanced, timely, cost-effective and user-friendly access to justice.

Aina stated that the 'doors' available to the MDC are mediation, arbitration, and neutral evaluation.¹⁴⁵ However, in recent years the LMDC included a hybrid process.¹⁴⁶ It has been observed that due to the COVID-19 Pandemic, which held the world at standstill, the LMDC used this as an opportunity to include another 'door,' which is the Online Dispute Resolution (ODR).¹⁴⁷ It is essential to point out that the LMDC panel of neutrals is made up of the Chief Judge of Lagos State, ADR Judges, Accredited Mediators, Arbitrators and Neutral Evaluators from every field.

The figure below illustrates the features or workings of the LMDC¹⁴⁸:

The Lagos Multi-Door Courthouse (LMDC): Referral Procedure



¹⁴²Orojo & Ajono (1999) at 10.

¹⁴³Rhodes-Vivour (2008) at 1

¹⁴⁴The Lagos Multi-Door Courthouse (2016) at 10.

¹⁴⁵Aina (2008) at 9.

¹⁴⁶The Lagos Multi-Door Courthouse, A Guide, Justice delivery through the Alternative Dispute Resolution at 1.

¹⁴⁷LMDC Twitter page cited in Umegbolu (2019)

¹⁴⁸The LMDC made the Diagram above available to me.

An essential feature of the Lagos Multi-Door Courthouse (LMDC) is that it is an independent and a non-profit making body. Thus, they are more efficient and not biased.¹⁴⁹ Thus, that is part of the reason the LMDC is cheap or free as they are not there to make profit and to a large extent has contributed to the effectiveness of its service delivery model which is primarily focused on enhancing and advancing access to Justice.¹⁵⁰ Consequently, Article 2 of the LMDC Practice Direction¹⁵¹ stipulates: That at LMDC, a matter may be initiated at the LMDC in any of the three ways:¹⁵²

A) Walk-Ins

- Any party can decide to Walk-In to the LMDC or write to its director to initiate a dispute either through mediation, Arbitration, Early Neutral Evaluation and Conciliation. It is essential to point out that other ADR Para-legal institutions like the Citizens Mediation Centre (CMC) and Office of the Public Defender (OPD) may file matters at the LMDC for settlement.
- The party from now on known as the claimant or his counsel walks into the Multi-Door Courthouse to lodge his or her complaint with the Registrar.
- The claimant pays an administrative fee of 14,000-naira equivalent to 29.12566 GBP
- A set of forms is given to be filled or completed by the claimant.
- The opponent from now on is known as the respondents¹⁵³ and is notified about the complaint.
- A set of forms is despatched to those above along with the notification of the “referral”- a referral is used in the MDC instead of a suit.
- The respondent returns his or her filled forms and response; then, the hearing date is fixed for the first meeting.

B) By Court Referral:

The presiding judges in the on-going matter; might decide to refer a case to Mediation; if he believes it is an appropriate way of resolving the dispute.

- Referrals from the Courts can either be made by the judge independently or at the demand of the party if his lawyer requests a stay of proceedings in the court which will enable him (the party) try settling amicably in the MDC.
- Finally, if the parties reach a settlement, the court pronounces it as a consent judgement of the court making it final and binding on the parties. Both parties appointed mediator and the LMDC would jointly sign the

¹⁴⁹The Lagos Multi-Door Courthouse (2016) at 19.

¹⁵⁰Onyema (2013) at 10

¹⁵¹Article 2 of the LMDC Practice Direction 2007

¹⁵²Ibid.

¹⁵³The Lagos Multi-Door Courthouse, A Guide, Justice delivery through the Alternative Dispute Resolution at 20

LMDC decision, with all parties strictly adhering to the confidentiality rules of LMDC process.¹⁵⁴

C) Direct Intervention

The LMDC in circumstances of public interest or by demand by the parties through the director may approach the parties by extending an invitation to them.¹⁵⁵

A. Preparatory Session -Mediation

Aina pointed out that it is essential for parties to attend the sessions to utilise the effectiveness of the process they must have 'full authority,'¹⁵⁶ which must be in writing to settle (if it is a court-referral) the dispute for the ADR session to proceed. The researcher believes that this will be applicable depending if it is a court-referral, or if it is a direct Intervention by the LMDC and not applicable through the walk-In route. Thus, to ensure that the aforementioned are achieved—once a mediator is appointed, he makes contact with the parties or their lawyers to discuss some process arrangements and to clarify some key aspects. Some parties and mediators may request a pre-mediation meeting.¹⁵⁷ In most cases, it is not ideal to hire lawyers, just because they are grounded with knowledge of the law does not make them an excellent candidate to settle disputes or conflict as the case maybe. It is irrefutable that they can resolve a conflict or dispute, but the chances are unusually low.¹⁵⁸ Hence, the purpose of the preparatory stage is to ensure that the parties understand the process and that parties are well prepared for the mediation. Matters to be discussed at this stage will include asking some pertinent questions necessary to ascertain the direction of the process.¹⁵⁹

At this stage during the mediation session, communication is key because the most important gift a mediator should or can possess is how to effectively communicate.¹⁶⁰ Disputes can be quite complex at times and the need to hire a mediator who can actively listen- get vital information and insight on the nature of the disputes, i.e. the intention of the parties which might lead to the settlement, is essential.¹⁶¹ Also, the mediator must be able to communicate, inform the parties as to how they may formalise the agreement and the likelihoods for enforcing the

¹⁵⁴Ibid.

¹⁵⁵Ibid.

¹⁵⁶Aina (2007) at 4

¹⁵⁷Ibid, at 20

¹⁵⁸Blake, Browne & Sime (2012) at 257

¹⁵⁹Some of the likely questions may include the following: Whether the parties have agreed to mediation? Whether their lawyers or advisers will accompany the parties? Whether legal proceedings are already underway or would be stayed during mediation? Or whether there are other time constraints.

¹⁶⁰Ibid.

¹⁶¹Beer & Stief (1997) at 22.

agreement.¹⁶² To achieve the aforementioned a mediator should be calm and ask open-ended questions that will enable the parties to reach an agreement.¹⁶³ Thus resolving disputes in mediation will not be possible without active listening and communication from the mediator.

An integral part of mediation is the relationship between the mediator and the party building rapport. For example, during the opening speech introductions are made, he / she becomes familiar with how parties wish to be addressed. This is important because in the private meeting the party will have to be comfortable enough to open up to the mediator. Prior to that, the mediator will open up the private session by reminding the parties the ground rules to help guide the conduct of the parties.¹⁶⁴ Also, the parties are reminded that everything discussed in the private session is confidential and will not be revealed except with their permission or compelled by law.¹⁶⁵ Also, the mediator clarifies each party's positions, underlying interests, explores alternatives solutions and seeks possible concessions.¹⁶⁶ A mediator who does not connect with the party lacks empathy; this would make the party feel uncomfortable. And the issue of trusting the mediator becomes a problem, which might affect, the relationship with the party and will not yield to the fruition or end of the process.¹⁶⁷ As soon as there is semblance of common ground, a joint session is convened. The mediator or neutral narrows the difference, highlights the progress made and formalises offers to gain an agreement,¹⁶⁸ then the terms of settlement (TOS) reached are reduced in writing and signatures are appended by the parties.

B. The Arbitration Session

Each ADR mechanism has its benefits and limitations, but despite these limitations, the introduction of ADR in the resolution of commercial disputes have opened doors to more investments for business stakeholders and indeed restored confidence in negotiation of commercial agreements in various jurisdictions, with reference to Nigeria. However, not all the ADR mechanism are widely used in Nigeria, the two most used ADR mechanisms are arbitration¹⁶⁹ and mediation, one

¹⁶²Ibid, at 22

¹⁶³Hyman (2005) at 19.

¹⁶⁴Hyman (2005) at 36

¹⁶⁵European Code of Conduct for Mediators para 4

¹⁶⁶Ibid.

¹⁶⁶Hyman (2005) at 36.

¹⁶⁷Hyman (2005) at 23.

¹⁶⁸Hyman (2005) at 37.

¹⁶⁹Arbitration was first promulgated as the Arbitration Ordinance in 1914, which applied to all parts of the country. As early stated in this chapter that Nigerian Law was modelled after the English law, it follows through- for the Arbitration Ordinance, which was modelled after the English Arbitration Act of 1889 cited in *Adekoya & Iwu (2017) at 13*. However, in recent years, the legislation that governs arbitration is the Arbitration and Conciliation Act 1988 (Laws of the Federation of Nigeria 2004 Cap A18) (ACA), which is the federal statute. It is imperative to point out that some jurisdictions in Nigeria have enacted their own arbitration laws; an example of such jurisdiction is Lagos. The ACA was modelled on the UNCITRAL Model Law on International Commercial

of the limitations being the ready acceptance and practice of arbitration as opposed to mediation.

Generally, under the International Commercial Arbitration (ICA) Process, parties have the procedural freedom to organise their proceedings as they like and may choose an adversarial or inquisitorial procedure or mixture of both.¹⁷⁰ First, the claimant must submit a notice of arbitration, to which the respondent's answers.

Subsequently, the tribunal itself can be appointed by the parties or by an appointing authority, and then a meeting will follow to discuss how the arbitration will proceed.¹⁷¹ At the hearing there may be short opening statements, followed by oral testimony, submission of documentary evidence, if requested by the parties.¹⁷² Then, at the end of the hearing there may be short closing statements, and the arbitrators may require post-hearing submissions. After the arbitrators review the post-hearing submissions, they deliberate and render a decision in the form of a final judgement. It is evident that the proceedings in arbitration are quite simple unlike the Court system that is rigid and far more expensive. For example, the arbitrators are selected at the discretion of the parties, however, in litigation; they make use of extensive attorneys, amongst others.¹⁷³

Today, most arbitration is usually conducted under specified rules or procedures, which is similar to court rules.¹⁷⁴ For example, under the LMDC parties can commence an arbitration in two ways through walk-ins and court-referred, although the court-referred under arbitration will not be classified as court-referred because it still boils down to the written agreement of the parties because parties must have an arbitration clause in the contractual agreement before the court can even refer it.¹⁷⁵

On the other hand, the Procedure for Initiating and Administering Arbitration Proceedings at the Lagos Multi-Door Courthouse (LMDC) is as follows:

- First, the Notice of Arbitration is forwarded to the Respondent by the Claimant indicating an intention to refer the matter to the Lagos Multi-Door Courthouse (LMDC)
- Appropriately completed LMDC Form 1 and 2, a copy of the Notice of Arbitration duly acknowledged by the Respondent and the Claimant for

Arbitration 1985 (UNCITRAL Model Law) and came into force on 14th March 1988. Up till now, Nigeria has not made any modifications to the ACA at the federal level, although a bill is currently before parliament to replace the 1988 legislation with the UNCITRAL Model Law incorporating the 2006 amendments. The Lagos State Arbitration Law 2009 (LSAL) applies to all arbitrations that arise in Lagos State, except where parties have stipulated another law. This law is an enactment of the UNCITRAL Model Law and incorporates the 2006 amendments. *Cited in Adekoya & Iwu (2017) at 13*

¹⁷⁰Umegbolu (2019) at 23.

¹⁷¹Ibid.

¹⁷²Adekoya & Iwu (2017) at 12.

¹⁷³Moses (2012) at 157

¹⁷⁴The Lagos Multi-Door Courthouse (2016) at 24.

¹⁷⁵Ibid, at 17.

screening submits four (4) copies of the Claimant's Statement of Claim is submitted to the LMDC Registry.

- Upon being screened and found suitable, the Claimant would be required to present a deposit slip evidencing payment of the sum of One Hundred Thousand Naira (100, 000.00), which is equivalent to £207.12. Non-Refundable Administrative Deposit into the Lagos Multi-Door Courthouse (LMDC) account.¹⁷⁶
- Upon receipt of the Claimant's process, a letter inviting both parties to attend a Pre-Session Meeting (PSM) at the LMDC is sent. At the PSM, parties would be: Intimated of the Administrative/Arbitration Fee deposit. This is calculated based on Parties' Claims and Counterclaim contained in the LMDC Fee Schedule. Furnished with the profiles of three Arbitrators from which parties would list their preferred Arbitrators in Order of Preference.
- This is calculated based on 'Parties Claims and Counterclaim contained in the LMDC Fee Schedule. Upon submission of parties' separate list of Arbitrators in Order of Preference, the Arbitrator whose name is common to both parties are appointed as a Sole Arbitrator.
- Where it is impracticable to choose an Arbitrator that is most common to parties from the Parties' list of Arbitrators, the LMDC shall appoint a Sole Arbitrator. In the alternative, parties would be intimated of the appointment of a Sole Arbitrator where required.
- Where the appointment involves a three (3) man panel of arbitrators, the parties shall each appoint an arbitrator from the LMDC list of arbitrators while the LMDC appoints the Chairman of the Arbitral Panel from the same list required to suggest three tentative dates for a Preliminary Meeting with the appointed Arbitrator. Upon payment of the Administrative and Arbitration Session fees by parties, the Arbitral Tribunal would be contacted. The Tribunal would hold a preliminary meeting with the parties and subsequent sessions thereafter until the final award.¹⁷⁷

C. The Neutral Evaluation Session (NE)

A retired judge, lawyer, or an expert in a particular field usually conducts the NE process, which is mainly initiated to guide the parties towards resolution. The process is mostly adopted to or in the course of a mediation session with an outlook to assisting the parties in their negotiation.¹⁷⁸ However, this process or proceeding is hardly used at the LMDC.

¹⁷⁶Ibid.

¹⁷⁷Ibid.

¹⁷⁸Ibid.

D. Hybrid Sessions

The hybrid processes consists of (Med-Arb) or (Arb-Med), if parties fail to reach a settlement of any or all of the matters in a mediation proceeding, they may decide to submit such issues, to advisory arbitration, binding arbitration or any other ADR process considered suitable.¹⁷⁹

E. Online Dispute Resolution (ODR) Session

ODR was used more during the Covid-19 Pandemic at the LMDC in 2019. It entails parties that has entered a valid contract or purchased a product that was fraudulently misrepresented or did not get the goods delivered within the agreed date. Then parties can indicate interest in using the ODR service to commence their sessions. As the name implies, parties can subscribe to the online sessions that allows for the use of technology to have virtual meetings in a bid to settle dispute between disputants, as it has become practically impossible to have face-to-face resolution of disputes because of the Covid-19 Pandemic.¹⁸⁰

Conclusion Phase for ADR Processes:

- 1) When case managers conclude matters, the Registrar receives the closed case files.
- 2) Check files for completing Terms of settlement, Mediator's Closure Report, Case Manager's Report, Full payment of Fees, Feedback forms, Etc.
- 3) The Registry receives TOS and forwards it to the courts for adoption as Consent Judgment of the Court or other reports.¹⁸¹

The Underlying Elements of the LMDC Law - Whether the LMDC Law is Stringent or Lenient?

As indicated above, the LMDC legislation or Act came to solve a problem, there was a mischief it was enacted to address, that is prior to the enactment of LMDC -there used to be a lot of congestion in the courts and some of this cases are frivolous cases that at the end of the day there is no substance in them so the act came to clear the air, to remove the chaffs and settle disputes is the whole idea of the LMDC. It did not come to blow away litigation entirely rather it came to supplement it ¹⁸² by paving way for the speedy dispensation of justice so that

¹⁷⁹Ibid, at 37.

¹⁸⁰Twitter Page LMDC cited in Umegbolu (2020a)

¹⁸¹The Lagos Multi-Door Courthouse (2016) at 8.

¹⁸²Umegbolu (2021) at 13.

litigation can now focus on core issues that are not resolvable amicably by parties while this focuses on all other issues that can be resolved before the LMDC. Therefore, the mischief rule came to address is actually to decongest the courtroom or the court system and actually it has succeeded in that. Thus, going into the act of interpreting the laws of LMDC is a tricky one in the sense that the procedure is not where lawyers or mediators come and cite sections or cases, rather the LMDC rules are meant to provide useful guidance.

In regards, to the above-mentioned question, as to whether if the LMDC law is stringent or lenient. This is the first time a writer will undertake the task of demystifying the LMDC law to ascertain whether the LMDC law is strict or lenient?

First, it is prominent to have a look at the Lagos State High Court Rules because the court screens and refers to the LMDC in most cases. Thus, it was drafted for one to go into mediation voluntarily which is evidenced in the civil procedure rules of Lagos 2004,¹⁸³ but subsequently this law was amended in 2019 thereby mandating mediation unlike in some other jurisdiction. For example, in Italy, the statute by which it implemented the directive in 2008/52/EC of the European Parliament made out of court conciliation scheme compulsory, it stipulated that parties must mediate before they file action in court, in less than four (4) years precisely in 2012,¹⁸⁴ an undisclosed ruling overturned the 2008 rule of mandating parties to mediate but¹⁸⁵ subsequently reintroduced in 2013.¹⁸⁶ Accordingly under the court-referred mediation, which is instituted by the High Court, it is strict.

On the other hand, the LMDC law is not strict, because under the functions and powers of the LMDC section 3(2) (6) of the both rules (old and new, same section)¹⁸⁷ and under Article 2 the practice direction on mediation procedure encourages parties to mediate through walk-in-that is parties voluntarily coming to mediate their matters without the court referring them.¹⁸⁸ Furthermore they also encourage parties whose matters were screened for ADR and referred by the court, to appear before the LMDC for the resolution of their dispute.¹⁸⁹

Consequently, looking at it from this angle, it is very liberal; moreover was drafted for one to go into mediation unlike in some other jurisdiction like Italy¹⁹⁰ where it is compulsory that parties must mediate before they file action though their state foot mediation bills.¹⁹¹ On the other hand, the LMDC Law 2007/ 2015 is designed to encourage parties to resort to mediation as much as possible that is why they hardly have any cohesive professions there and any offences created - it is a liberal law designed to encourage mediation.¹⁹²

¹⁸³High Court of Lagos State (Civil Procedures) Rules 2004

¹⁸⁴Van Rhee & Yullin (2014) at 249

¹⁸⁵Ibid.

¹⁸⁶Matteucci (2015) at 19.

¹⁸⁷Lagos State Multi-Door Court Law 2015.

¹⁸⁸Practice Direction on Mediation Procedure 2008.

¹⁸⁹Ibid .

¹⁹⁰Ibid at 191.

¹⁹¹Matteucci (2015) at 250.

¹⁹²The Lagos Multi-Door Courthouse (2016) at 23.

It is argued that the essence of the LMDC is basically the resolution of dispute and requiring the attendance of parties and then their consent and their valuation. Now in regard to interpreting the law vis-à-vis court referred matters. The court-referred matters are still viewed strictly because some recalcitrant parties consider that they are sent to LMDC to mediate against their will. Thus, in drafting the TOS the parties will put that they do not want penalties written in the terms because they have in mind that they will end up defaulting.

In other words, they do not view it as compulsory because they have plans to take the case back to the court. It is essential to point out that parties are part of the court's jurisdiction; in respect to court-connected matters, the Laws are interpreted strictly neither to bow down to the old legal rules on a technicality. Although some stakeholders have argued that ADR through the LMDC can only be an effective method if parties voluntarily submit to the process, (through the walk-in) while some think otherwise.

For the reasons stated above, the court-refereed is stringent; however, when it comes to walk-in the rules are relaxed, thus, making it a more lenient approach. Basically, in considering whether the LMDC Law is strict or lenient, it will depend on the mode of approach to the LMDC; that is if the matter is a court-connected matter or a walk-in. Since the aim is the resolution of justice, of which there are evidence that the application of the law embodies as much as possible an approach that gives the law a lenient face.

In the final analysis, the issue of enforcement of the Terms of Settlements (TOS)- once terms of settlements is reached, it takes the law of contract between the parties and when one breaches it the other one can sue for breach of contract. Additionally, there are also the elements of making the (TOS) as much as possible to conform to the rudiments of judgements of courts so that enforcement can be easily done.

However, while the LMDC rules themselves are couched in lenient terms, they are still hunted by the shadows of legalism just like the English quote:

Although the old forms of action are there, nevertheless they are spirits and they are ghosts, which still haunt the modern day of doing things.¹⁹³

Consequently, when it comes to enforcement and Court Referral, the ghost of legalism still hunts the LMDC Law, although it does not create substantive rights rather it creates procedural rights.

Conclusions

The work has explored the details of the LMDC and in furtherance to the above, it has shown that although in most cases litigation can be said to be an ineffective means of dispute resolution in comparison to the ADR.

¹⁹³Note on Books and Periodicals (1905) at 402.

It has also explored some of the preliminary background issues relating to Lagos state's court structure and why it was necessary to introduce LMDC and other ancillary bodies or Para-legal institutions to help decongest the courts and speed up the administration of justice within Lagos State the country's economic capital. Also, this work has also depicted that to a large extent that the Lagos state government in conjunction with NCMG kept up with the tempo of the growth of systems and laws; and has enacted rules and revised a lot of this old rules and processes that are well streamlined in context within the modern-day dispute resolution; to offer a framework for fast-track procedures through ADR. This work critically analyses the indispensable elements of the LMDC process towards making an effective method of dispute resolution.

It is vital not to shy away from the most fundamental advantages of the LMDC; hence the TOS are final and further the decisions can be enforced. Thus, it is apparent that all this contributes to the effectiveness of the ADR processes and distinguishes ADR through LMDC from litigation. However, in some ways a recalcitrant party may decide to hinder the process by using the above-mentioned elements stated to his advantage against the other party and in some cases the benefits or pros of the LMDC becomes its challenge. Though it cannot outweigh the challenges posed by litigation in terms of parties not being at liberty to select judges or procedures of their choice. Thus, its advantages bring more value to the table of justice than litigation.

On the contrary, the drawback can be avoided if the LMDC law could be reviewed alongside High Court Civil-Procedure Rules (H.C.P.R) as LMDC will not be having its rules that it is contradictory with the H.C civil procedure rules because after mediation, parties will apply to the court for adoption, and they will have to follow the H.C civil procedure rules.

Thus, the need for these two (LMDC and Court Process) to work together is vital because the rule of the LMDC encourages party autonomy, and parties are at liberty to draft their contracts themselves. However, when it goes to court for enforcement, the court adopts the Terms of Agreement (TOA) wholly. Hitherto it becomes a problem if parties' default or cannot follow through with their TOA. The case now falls back to the court; thereby, in the long run, ADR might not achieve its overriding objective, one of them being the Settling matters quickly and efficiently.

Although litigation gives teeth to the enforcement of the agreement of the ADR processes through the LMDC, the writer argues that some cases through the LMDC might be a preferable alternative. Due to its less complicated nature, its simple proceedings will continue to have more relevance, development, and input in modern-day Dispute Resolution.

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