

LEX LITTERA

DISPUTE RESOLUTION CHANNELS - PRELIMINARY CONSIDERATIONS

BY UCHENNA NMEROLE, ESQ



It is no longer news that apart from litigation, there are other alternative dispute resolution mechanisms.

Alternative Dispute Resolution (ADR) is a term that captures other dispute resolution mechanisms outside the conventional litigation systems.

Disputes are inevitable in every society and must be resolved at a minimum possible cost, both in terms of money and time so that these can be channeled towards other productive ventures.

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Hence, the search for alternatives to the conventional court systems for easy resolution of disputes.

When disputing parties have discussions towards resolving a dispute, this is called **negotiation**. Further, **mediation** is a process where a neutral person aids the negotiation to help the disputing parties decide on their own. **Arbitration**, in simple terms, is private litigation.

The following are some preliminary issues or factors to consider before deciding on which dispute resolution channel to explore:

Cost: A few years ago, more parties in Nigeria began adopting arbitration instead of litigation. One of the reasons for this was the unusual delay associated with litigation.

Some of these parties did not mind the cost (particularly in commercial arbitration). However, in recent times, some companies that inserted arbitration clauses are now shying away from the arbitration due to the cost and opting for other less expensive mechanisms. In assessing the suitability of a case for ADR, a cost-benefit analysis of the costs and value of the case must be undertaken. Parties must consider the issues involved and the expenses involved, when compared to litigation.

Fairness: In recent times, parties have started opting for mediation rather than arbitration. The fair and open process associated with mediation has helped promote it as a channel of choice. This was further influenced by the fact that parties found it difficult to enforce awards because the losing party put up a challenge due to the perceived partiality or misconduct on the part of the arbitrator.

Privacy and confidentiality: Good public perception of companies and certain A-list individuals is important for the promotion of a business or personal ambition.

Thus, when such companies or personalities are involved in a messy dispute, it is advised that they adopt a dispute resolution mechanism that best promotes confidentiality and privacy.

Preservation of relationships: Mediation and conciliation are ADR methods that suit disputes among parties with special relationships which they seek to preserve. Litigation or arbitration are based on rights, and their final decisions usually affect one of the parties adversely and may destroy the relationship.

Speed: Although litigation has always been seen as the slow mechanism for the resolution of a dispute, arbitration is catching up with the slow trend. The main arbitration process is still faster than litigation, however, the pre-arbitration and post-arbitration process can sometimes drag for a long period. Also, the losing party can frustrate the enforcement of arbitral awards and make the other parties wish they had adopted litigation or other means.

In conclusion, although ADR mechanisms have become more popular, parties must carefully examine the pros and cons of each ADR mechanism available at any point before deciding to adopt one.

Further, a legal expert trained in dispute resolution is best suited to guide parties in deciding the mechanism to adopt in relation to any given dispute.

A LIGHED NIGERIA - THE ELECTRICITY BILL 2021 TO THE RESCUE?

BY NKOOWO FREDERICK
NKOOWO, ESQ



The road to stable electricity in Nigeria is still one whose end seems out of sight. In fact, if the proverbial saying on light being at the end of tunnel is mentioned when discussing the state of Nigeria's electricity, it won't be surprising for a Nigerian like myself to immediately ask: "But when will we get to the end of this tunnel?"

It is estimated that about 47% percent of Nigerians do not have access to grid electricity and those who do have access really don't have enough. Also, the lack of reliable power is estimated to cost the country an estimated \$28 billion[1]. The perplexing issue with these dire statistics is that they exist side by side the abundant resources in the country, which can satisfy the growing demand for power.

Interestingly, electricity supply in Nigeria dates as far back as 1896; just fifteen years after the commencement of electric power generation in England[2]. Indeed, our movement in this tunnel has lasted too long.

Recognising the need for stable power, the Electric Power Sector Reform Act (the Electricity Reform Act or EPSRA) was enacted in 2005. It is the extant law regulating activities in the Nigeria Electricity Supply Industry (NESI). However, at the time of this writing seventeen years after its enactment, the NESI is still grappling with a host of challenges. To this end, the Electricity Bill 2021 was introduced to the legislative floor and is currently still undergoing the law-making process. The introduction of the bill raises the obvious question of whether the bill has the needed Midas touch to transform the NESI.

The Electricity Bill seeks to repeal the EPSRA. Commendably, the bill also seeks to harmonise all legislation in the power sector into one electricity statute, align regulatory responsibilities and ensure clarity of roles for ease of compliance.



While speaking on the bill, Senator Gabriel Suswam lauded its provisions[3] and it is believed in good faith that the bill would live up to its expectations.

However, no matter how commendable the provisions of the bill might be when it is eventually passed into law, recording any successful improvements in the sector would really centre on how well the law is implemented. Also, the relevant policy thrust of the sector would have to be well guided to aid the achievement of the purposes of the Act. As is already known, it is easy to enact a paper tiger as legislation but getting the tiger to bite would require more than its mere presence.

[1]<https://www.worldbank.org/en/news/press-release/2020/06/23/nigeria-to-keep-the-lights-on-and-power-its-economy>

[2] The Nigerian Electricity Market by Dr Ayodele Oni

[3]

<https://www.thisdaylive.com/index.php/2021/09/29/bill-to-repeal-electricity-sector-act-passes-second-reading-in-senate/>

THE LAUNCH OF THE E-NAIRA WALLET: A WELCOME DEVELOPMENT IN THE E-COMMERCE SPACE?

BY: QUEEN UKPO, ESQ.



On the 1st of October, 2021, the Central Bank of Nigeria launched the digital version of the naira currency (the eNaira). The Apex Bank stated that the eNaira is a legal tender and thus must be accepted by all merchants and business outlets. A statement from the official website of the Bank reads thus; “eNaira serves as both a medium of exchange and a store of value, offering better payment prospects in retail transactions when compared to cash payments”. The launch of the eNaira can be regarded as a further step even as Nigeria presses towards the full actualisation of a cashless economy.

Electronic commerce (e-commerce) transactions refer to the online buying and selling of physical goods and services. It suffices to say that e-commerce transactions are business transactions conducted online, the most popular one being online shopping with Jumia and Konga online stores as the popular examples in Nigeria.

The e-commerce space is rapidly growing in Nigeria due to factors such

as a fast growing and sophisticated youth population, expanding consumer power, and increased smartphone ownership. According to available statistics, e-commerce spending in Nigeria as of October 2021 was estimated to be at \$12 billion and is projected to reach \$75 billion by 2025. Also, market analysis shows that the Nigerian e-commerce market is ranked 35th in the world. This rapid rise to prominence of e-commerce transactions can be attributed to the advantages in terms of convenience, accessibility to wider markets and opportunity for price comparison, which these online transactions offer.

Despite the remarkable rise in e-commerce transactions and the attendant advantages, there have been some constraints in the robust development of e-commerce in Nigeria. It is a no brainer that online businesses now have to integrate their websites with fintech platforms to be able to accept electronic payments. While this is a laudable collaboration, it is not without its own problems typical to running digital businesses in Nigeria.



From the above, it is clear that the impact of the eNaira in relation to e-commerce transactions will be significant in the areas of cost reduction, affordability and effectiveness of the digital currency as a medium of payment. It is submitted that if the projections made by the Apex Bank in these areas are implemented, one will be able to say that the introduction of the digital currency has yielded significant developments in the Nigerian e-commerce space.

With the launch of the eNaira, a seamless payment system is projected. Individual and corporate account holders will be able to create their wallets and use same for transactions.

Furthermore, another constraint especially for cross-border transactions, is the expensive and slow nature of available international payment options. It is projected by the Apex Bank that the eNaira will help to streamline the process and significantly reduce the timeframe for the confirmation of payment transactions.



THE PROPOSED AMENDMENT TO THE NIGERIAN ARBITRATION AND CONCILIATION ACT: A SIGNIFICANT IMPROVEMENT.

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The law and practice of Arbitration and Conciliation in Nigeria and indeed Africa has witnessed an exponential development in the last decade. The Arbitration and Conciliation Act enacted on March 14, 1998, was fashioned from the 1985 UNCITRAL Model Law on International Commercial Arbitration (the ‘Model Law’) with some modifications.

Before the emergence of democratic governance in Nigeria, the existing Act was formerly named the Arbitration and Conciliation Decree No 11 (the Decree) of 1988, and was promulgated by the military regime to provide an integrated legal framework for the fair settlement of commercial disputes by arbitration and conciliation. The Decree practically contains the same provisions as the Act which is still in force.

To bring in line the law and practice of Arbitration and Conciliation with the current practice of International Commercial Arbitration, the Nigerian

Senate on the 1st of February, 2018 passed the 2017 Amendment Bill (the Bill) to the Arbitration and Conciliation Act; however, the Bill still awaits the ratification of the Federal House of Representatives and the subsequent assent of the President of Nigeria.

The Bill is long-awaited, especially given Nigeria’s involvement and incredible potential in both local and international commerce. The latest statistics released by prominent institutions like the LCIA and the ICC COURT show an increase in the number of international arbitrations involving Nigerian parties. The global pandemic and the lockdown that lasted from March to June 2020 has revealed to the world the importance of arbitration, as a preferred alternative to litigation.

Given recent developments, it has been projected that there will be a further increase in investment activities in Africa, which will further contribute to an increase in the settlement of disputes by arbitration across the continent. The Bill could not have arrived at a better time.

SIGNIFICANT PROVISIONS IN THE PROPOSED AMENDMENT BILL.

These are a few notable highlights of the Bill based on the UNCITRAL MODEL LAW 2006.

1. Third-party funding

Historically, the concepts of champerty and maintenance prevented the use of third-party funding (TPF). Nevertheless, the Bill incorporates a TPF provision, signalling a new dawn in the practice of arbitration in Nigeria. When the Bill is eventually passed into law, the torts of maintenance and champerty will no longer apply to TPF arbitration in Nigeria.

2. Emergency arbitrator

The bill provides a party to apply for the appointment of an emergency arbitrator to any arbitral institution designated by the parties, or failing such designation, to the court.

3. Grounds for setting aside an award

The Bill replaces the current grounds with the following grounds to set aside an award: Legal incapacity, invalid arbitration agreement, lack of due process, exceeding the scope of the submission, procedural irregularity, arbitrability, and public policy.

Notwithstanding the operative changes, many of the amendments mostly seek to modernise the Act with language and tools now widely predominant in modern-day international arbitration proceedings.

It is safe to say, if the Bill is enacted and implemented successfully in Nigeria, it will bring arbitration law and practice in Nigeria in line with the global arbitration landscape of today.

THE ROLE OF THE CENTRAL BANK OF NIGERIA (CBN) REGULATIONS IN MODERATING BANKER - CUSTOMER RELATIONSHIPS

DOMMITILLA RALUCHUKWU NWOFOR, Esq.

INTRODUCTION

According to Adam Barone, [i]"banks are a very important part of the economy because they provide vital services for both consumers and businesses. This means that banks are important in the scheme of commerce.

As a key component of the financial system ...through the process of taking deposits, making loans, and responding to interest rate signals, the banking system helps channel funds from savers to borrowers in an efficient manner.[ii]

One can boldly say that the activities of banks are important for commerce and economic development. Thus, the relationship between banks and its customers is also important, as banks cannot operate optimally without their customers.

NATURE OF BANKER-CUSTOMER RELATIONSHIPS

It is largely settled that the banker-customer relationship is essentially contractual.[i] The banker-customer relationship consists of general and specific contracts arising from the requirements of the business of banking.[ii] The contracts between the bank and customer thus create many rights and duties dependent on the nature of business being carried on between the bank and its customer. As such, the bank has a duty to obey the customer's mandate, a duty to honour the customer's cheque, a duty to take reasonable care, a duty to observe secrecy, a duty to collect cheques paid in, and a duty to respect third party's rights over the customer's account. The customer has a duty of care to ensure that the mandate to draw on his account is not exercised in a way that would facilitate fraud and must inform the bank when it is discovered that his mandate is being forged.

THE POWERS OF THE CENTRAL BANK OF NIGERIA (CBN) OVER THE ACTIVITIES OF LICENSED BANKS.

Section 1 of the Banks and other Financial Institutions Act 2020, (BOFIA) states, “The Central Bank of Nigeria shall have all the functions and powers conferred and duties imposed on it by this Act”. By Section 56 of the BOFIA, the Governor of the Central Bank of Nigeria is empowered to make rules and regulations guiding the activities of banks.

CBN REGULATIONS AND BANKER-CUSTOMER RELATIONSHIPS.

Pursuant to the powers of the Central Bank of Nigeria to issue regulations to banks, the CBN has issued several regulations which affect banker-customer relationships. Thus, banks may not be able to pay on mandate, honour customer’s cheques, or keep the duty of secrecy because of the regulations of the CBN. As banks are bound to comply with these regulations, they always affect their duties to customers. For example, CBN regulations on Know-Your-Customer, Anti-Money Laundering/ Counter Financing of Terrorism Controls, CBN Regulations on Trading of Crypto-Currencies, CBN Regulations on Card Spending Limits, Withdrawals and Deposits

contain directives that may hinder banks from rendering some services to their customers.

CONCLUSION

Banks are bound by law to follow the directives of the Central Bank. Hence, Banks must find an effective way to communicate the effect of these regulations on the relationship with their customers.

[i] Adam Baronne, “Bank” [https://investopedia.com/terms/b/bank.as](https://investopedia.com/terms/b/bank.asp)

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[ii] ibid

[iii] Chudi Nwabachili “Bank-customer Relationship” IJBLR 3 (1) 60-65 Jan- Mar 2015

COPYRIGHT AND ARTISTS: THE FORGOTTEN RIGHTS OF CREATIVES (CONTINUED)

ABDULBASIT USMAN, ESQ.



In part one of this series, we considered the general nature of copyright in artistic expressions and concluded with the several rights that are available to a musician, to both his musical composition, sound recordings and rights to perform the work. In the same vein, a painter, creative artist or photographer (“author”) holds the same rights as a musician to his creative work.

While the rights to an artist’s creative expression are quite frankly easy to be infringed upon, there are several ways that the Act protects artistic expression, such as the requirement that “sufficient effort has been expended on making the work to give it an original character.” As far as the artist has put in sufficient effort to make the art work original, it becomes copyright protected from the very moment the idea is set “in any definite medium of expression...”

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While it is advisable that artists register their creative expressions with the Nigerian Copyright Commission immediately same becomes fixed or set in a definite medium of expression, in order to be entitled to a certificate of registration, it is imperative to note that the property rights do not arise upon registration and issuance of the certificate, on the contrary, the right arises from the time the idea is fixed on a definite medium of expression. This, in essence, means that copyright protection arises from the moment the idea is expressed and before it is registered or any certificate is issued in that regards. The certificate shall only serve as a prima facie evidence of its registration with the commission.

Admittedly, registration of a copyright with the Nigerian Copyright Commission is not mandatory, however in light of the recent Federal High Court judgment in **SUIT NO. FHC/ABJ/CS/145/2019 between Paul Allen Oche V. Nigerian Breweries & 3 Ors**, where the court dismissed the suit based principally on the fact that there was no evidence of registration of the copyright sought to be enforced, we recommend that artists, writers and every other person involved in the creative industry should take steps to obtain a copyright registration certificate as soon as is practicable in

order to prevent instances where enforcement of the right is rendered impossible by our judiciary that is only now coming to terms with its responsibilities under our IP rights protection regimes.

We remain hopeful and optimistic that the decision of the Federal High Court in the case above will be appealed and overturned by the appellate courts. In our humble and respectful opinion and in the opinion of the generality of practitioners, the judgment is not supported by any existing law in Nigeria. The Copyright Act does not require it, and the Appellate courts have thankfully never made a decision from which the Federal High Court could have plucked a feather.

So, if you are an artist or an artiste and you see your works being copied, reproduced or distributed without your consent, do not fret that you do not have a certificate of registration and thus not entitled to any protection of the law. You do have and enjoy protection under the law.

What then does this mean? It simply means that you have the right to prevent the infringing party from continuing such offending acts, and where he refuses to stop, you can apply to court for orders compelling the offender to stop (an injunction) and seek monetary compensation (damages), account for profit or conversion and in some instances such a person may be found to be criminally liable and upon conviction, subject to payment of fines as well.

This is usually the case where the offending party is unable to show that he didn't know that his actions were an infringement of the rights of the author or any other right holder.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

STERLING AND PEOPLE-CENTRIC: KEY HIGHLIGHTS OF CMLP'S CORPORATE SOCIAL PROJECTS OF 2021

PEACE KEREGE, CMLP.

At Compos Mentis Legal Practitioners, we pride ourselves as Nigeria's premier law firm, reputed for consistently delivering sterling legal services. However, there is more to us than just our legal services and stellar clientele.

These social projects were:

The Flagship CMLP Monthly Enlightenment Webinars:

In 2021, the firm was consistently engaged in educating the general public on knotty legal issues.



This was done via monthly webinars where various areas of law that affect daily living were well discussed. The webinar topics reflected issues that regularly confront the average Nigerian.

Some of the topics discussed were intellectual property rights and protection for business owners and creatives in Nigeria, medical negligence and the law, and booby traps in property purchase.

CMLP webinars series played host to exceptional panellists from different sectors and were well attended throughout the year.

The Catch Them Young Universities Competition:

This initiative of the firm was geared towards contributing to legal education across the geo-political zones of Nigeria.

The study of law in Nigeria is still largely theoretical. Thus, apart from the mandatory internship period at the Nigerian Law School, law students are mostly groomed in the classroom and nowhere else. As such, where a student wants an extra edge, he or she would have to independently search out for and take part in mooting and internships.

Thankfully, through the Catch Them Young Competition, CMLP provided law students in various universities with the opportunity to practically

experience legal practice outside the four walls of a classroom.

The competition was hosted in Afe Babalola University, Ekiti State, Nnamdi Azikiwe University, Anambra State and University of Maiduguri, Borno State. It comprised two rounds: the preliminary rounds/brief writing round and the mooting round.

The winners of the brief writing round were then paired to compete in the mooting round which was physically executed within the various university campuses, with the firm's representatives present.

Pro-bono Legal Services to Indigent Prison Inmates:

In 2021, CMLP offered legal representation to indigent persons detained at the Okere Correctional Facility, Warri, Delta State. The firm footed all expenses such as filing and logistics that were incidental to the proceedings. Since this initiative commenced, the firm has been able to secure the release of some inmates who were awaiting trial.

Indeed, 2021 was an eventful year and CMLP is poised to do more this year.



THE MEDIA COVERAGE OF OUR RECENTLY CONDUCTED MEDICAL LAW TRAINING FOR MEDICAL PROFESSIONALS AT THE WESTEND HOSPITAL WARRI.





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