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## THE CONCEPTUAL FRAMEWORK OF MODERN CONSTRUCTION DISPUTE RESOLUTION IN NIGERIAN CONSTRUCTION INDUSTRY

By

Badmos-Raji Barakah A \*

### 1. Introduction

Disputes are inevitable in any given construction industry due to the complex nature of the industry itself.<sup>932</sup> The most common disputes associated with the industry are delay in the supply of material, delay in payments for completed work, improper construction method, delay caused by the subcontractor and discrepancies in contract documents between the various parties.<sup>933</sup> There is bound to be disputes because different professionals are always involved in the execution of construction project although each with distinct and well defined specialized role. Delays can also give rise to suspension of work and loss of productivity, late completion of project, increased time related costs and third party claims and abandonment or termination of contract.<sup>934</sup> Other factors include contractor related problems, owners' financial constraints, high inflation / increased material price; design change by client; defective design; weather conditions; delayed payment on contracts and defective construction work.<sup>935</sup>

When delay occurs in construction projects, it has adverse consequences on project objectives in terms of time, cost and quality.<sup>936</sup> Construction-related disputes can consume a lot of time, money and in most cases the consequences of construction disputes are severely devastating. The complexity of the construction industry is always responsible for inevitability of disputes in the industry. In addition, construction disputes can occur from various stakeholders within the industry ranges from dispute between clients and contractors, consultants and contractors, contractors and suppliers, contractors and employees, among others.<sup>937</sup> It may also be as a result of time and cost overruns, poor execution of work, payment delays to contractors, suppliers, and workers.<sup>938</sup>

\*Barakat Badmos-Raji A, holds LLB, LLM and PhD (in view) (International Islamic University Malaysia). A lecturer at the Department of Jurisprudence and International Law, University of Ibadan, Nigeria, babes2007@gmail.com

<sup>932</sup>Mohammed, Kasimu Albaji, and Abubakar Danladi Isah, "Causes of Delay in Nigeria Construction Industry" (2012) Vol 4 No.2 Interdisciplinary Journal of Contemporary Research in Business 785-794

<sup>933</sup>Mohammed, Kasimu Albaji 786.

<sup>934</sup>Othman, A and Ismail S, "Delay in Government Project Delivery in Kedah, Malaysia" (In Conference Proceedings, International Research Conference on Business, Economics and Social Sciences, IBC, 2014) 111. See also Afshari, Hamidreza, Shahrzad Khosravi, Abbas Ghorbanali, Mahdi Borzabadi, and Mahbod Valipour, "Identification of causes of non-excusable delays of construction projects" (In International Conference on E-Business Management and Economics) pp. 42-46, 2010.

<sup>935</sup>Owolabi James D., Amusan Lekan M., et al., "Causes and Effect of Delay on Project Construction Delivery Time" (2014) Vol. 2 No. 4 International Journal of Education and Research 197.

<sup>936</sup>Abodi, M., M. S. Fathi, and M. F. Mohammad, "Major mitigation measures for delays in construction projects" (2011) 1-7. See also Abdul Rahman, Ismail, et al., "Relationship between factors of construction resources affecting project cost" (2013) Vol 7 No.1 Modern Applied Science 67-75.

<sup>937</sup>Rasheed Isa and Fidelis Emuze, "Stakeholders' Perceptions of Construction Dispute Resolution Mechanism in Nigerian Construction" 12-20.

<sup>938</sup>Potts, Keith, and Nii Ankrah, "Construction cost management: learning from case studies. Routledge" (2014). See also Tworek, Piotr, "Excerpts from the scientific research on risk conducted among the largest Polish contractors." (2012) Vol.10 No.1 Zarządzanie i Finansy, cz. 1 113-121.

Litigation and arbitration are the most common construction dispute resolution mechanisms supported with an effective performance. Disputes are often occasioned through the contracting parties' failure to reimburse both the party.<sup>940</sup> Disputes over funds and time.

However, the construction dispute resolution mechanism paradigm shift in the industry. Over the years, the industry has embraced other dispute resolution mechanisms such as mediation, arbitration, and to the exigencies of the industry. These proceedings are often initiated by the stakeholders in the industry.

2. The Modern Construction Dispute Resolution Mechanism

### 2.1 On Site Dispute Resolution Mechanism

On site dispute resolution mechanism is the pendency of a contract. This is a process of progress and work that is not attended to cause. Major dispute resolution mechanism is the emergence of these

<sup>939</sup>Wong, Chen Hin, "Dispute Resolution in Construction" (UTAR, 2011).

<sup>940</sup>Davidson Iriepes, "Dispute Resolution in Construction" (2011) Vol. 1 No. 1 Journal of Financial Management

Leading to Cost Overruns in Construction" (2011) Vol. 1 No. 1 Journal of Financial Management

<sup>941</sup>Aibinu, A. A. and Ismail, S. "Stakeholders' Perceptions of Construction Dispute Resolution Mechanism in Nigerian Construction" 12-20.

<sup>942</sup>Mohamed, Mohd. "Construction Dispute Resolution Mechanism in Nigerian Construction" 12-20.

<sup>943</sup>Eunice R. Odo, "Dispute Resolution in Construction" (2011) Vol. 1 No. 1 Journal of Financial Management



## CONSTRUCTION INDUSTRY

Complex nature of construction projects are delay, risk, improper contracts in contract documents because of action project also give rise to project, increased termination of projects' financial cost; defective construction processes on project disputes can of construction industry is. In addition, industry ranges from contractors, contractors be as a result of to contractors.

A lecturer at the University (2012) Vol. 4

proceedings, (Aishah, Hamidreza, et al. non-excusable pp. 42-46, 2010. "Very Time" (2014) Vol. 10. "Projects" (2011) 1-7. "Soil cost" (2013) Vol. 7. "Issues in Nigerian" (2014). See also Tawfik, (2) Vol. 10.

Litigation and arbitration have for long time been the unitary mechanism for resolving construction disputes. Studies have revealed that litigation and arbitration need to be supported with other alternative dispute resolution mechanisms for efficient and effective performance of the construction industry.<sup>939</sup> It has been argued that delay occasioned through court process normally damage business relations of the contracting parties and the risk associated with the liability of the unsuccessful party to reimburse both the legal costs and whatever cost that was accrued to the successful party.<sup>940</sup> Disputes relating to construction projects usually use up enormous amount of funds and time.

However, the world today has shifted from adversarial to interest-based dispute resolution mechanisms with equitable functions in construction industry.<sup>941</sup> This paradigm shift has given rise to demand in amicable mode of settlement in the industry. Over the past decades, construction practitioners have tried to develop and implement the right contractual method which fit the best approach of their needs and minimizing disputes in construction projects.<sup>942</sup> The construction industry has embraced other alternatives to litigation in bringing about resolution to all kinds of disputes likely to occur in the industry due to time consuming nature and expensive cost implication of litigation processes and outcomes.<sup>943</sup> The stakeholders in the industry has made tremendous effort to put in place some efficient and adequate mechanisms such as mediation, statutory adjudication, dispute review board, expert determination, neutral evaluation and construction court for resolving disputes owing to the exigencies of the industry.<sup>944</sup> The changes in the world today have accounted for the emergence of new types of proceedings for settlement of construction disputes. These proceedings have been developed, and they are proving beneficial to stakeholders in the construction industry in preventing unnecessary and devastating consequences of construction disputes; such as waste of resources, time and funds.

## 2. The Modern Processes of Construction Dispute Resolution

### 2.1 On Site Dispute Resolution and Avoidance Mechanisms

On site dispute resolution and avoidance mechanisms are the mechanisms used during the pendency of project when dispute arises between the parties to construction contract. This is to reduce or avoid any form of disputes likely to impair the work-in-progress and to enable a timely delivery of projects. This is because dispute left unattended to can give rise to major dispute due to the nature of construction industry. Major dispute can be very costly and time consuming which the logic behind the emergence of these mechanisms. On site dispute resolution and avoidance mechanisms

<sup>939</sup> Wong, Chen Hin, "Adjudication: Evolution of New Form of Dispute Resolution in Construction Industry" (Dissertation, UTAR, 2011).

<sup>940</sup> Davidson Iriekpen, "Disputes: When ADR Becomes Success" *This Day Live* Monday 29 December, 2014.

<sup>941</sup> Famakin, J. O. et al., "Assessment of success factors for joint venture construction projects in Nigeria" (2012) Vol. 17 No. 2.

<sup>942</sup> Journal of Financial Management of Property and Construction 153-165. See also Mahamid, Ibrahim, and Nabil Dimaoui, "Risks Leading to Cost Overrun in Building Construction from Consultants' Perspective: Organization, Technology & Management in Construction" (2013) Vol. 5 No. 2 An International Journal 860-873.

<sup>943</sup> Aibinu, A. A. And Odeyinka, H. A., "Construction delays and their causative factors in Nigeria" (2006) Vol. 7 No. 132 Journal of Construction Engineering and Management, ASCE 667-677.

<sup>944</sup> Mohamed, Mohd Akram Bin Shair, "Construction dispute avoidance" (A Presented at an Annual Conference 18th Building and Construction Contracts between Traditional Legal Rules and Developed Legal System) 471-491.

<sup>945</sup> Eunice R. Odeiri, "Alternative Dispute Resolution" (A Paper presented at the Annual Delegates Conference of the Nigerian Bar Association at Le Meridien Hotel - Abuja, between 22<sup>nd</sup> - 27th August, 2004).

include Dispute Resolution Advisor (DRA), Dispute Review Board (DRB), and Dispute Adjudication Board (DAB). It is highly desirable for Nigeria construction industry to take a clue from this in order to reduce the level and rate of disputes that will be left to go to court and arbitration after the completion of project.

### 2.1.1 Dispute Resolution Advisor (DRA)

The basic concept of DRA involves the use of a neutral third person who advises the parties to a potential dispute and suggests possible options to avoid the dispute.<sup>945</sup> Dispute Resolution Advisor (DRA) is jointly appointed by the Employer and Contractor, who will help the parties to avoid differences transgressing into dispute. The appointment of advisor commences with the contract and terminates with the contract. The appointed advisor is immediately consulted whenever dispute arises among the players on site during the pendency of work on site. The main duty of the advisor is to assist the parties to identify potential disputes and encourage instant resolution so that formal settlement may be averted. The role of the advisor is to facilitate, advice and mitigate on the choice of suitable resolution mechanism at every point in time, through the use of either Dispute Adjudication Board (DAB), Conciliation, Mediation, Arbitration or Litigation.<sup>946</sup> The DRA presides over the parties to jointly work towards a common goal of completing the projects in accordance with the contract agreement. It ensures settlement of disagreement at site level before it develops into a full blown dispute. The process helps to prevent disputes which could affect the relationship of the participants while on site and at the instance of work -in-progress and likely hamper the completion of project. This process contributes immensely towards attracting foreign investors into the country because it creates a friendly environment for all participants in the industry.

### 2.1.2 Dispute Review Board (DRB)

This is also a newly emergence mechanism used in the construction industry for circumventing or resolving disputes during the pendency of construction projects. DRB is established at the beginning of projects by total agreement of the parties and before any conflict arises. It is geared towards minimizing and avoiding the issues which may likely give rise to disputes if left unattended. Members of DRB are usually chosen jointly by the contractor and the owner prior to the commencement of a project. Members of DRB are always acquainted with situation with both parties and the project right from the onset and this gives them the opportunity of resolving disputes as they occur.<sup>947</sup> It consists of a three-member panel. Their recommendations serve as reinforcement with a positive impacts on projects outcome. This is because board members are mutually selected by all the stakeholders of the industry and composed of people that have expertise technical know-how in the area of construction. This study found that the so-called site supervision used by the Nigerian construction industry during the pendency of a project is a caricature of dispute review board which need to

be reworked and given international practice effective and reliable in other countries. In instance, it had been channel tunnel, the H in the UK, the DRB currently being used. The fact that professional working progress and 2.1.3 Dispute Adjud This is a new mechanism disputes on major independent experts commencement of a DAB and DRA are because they are installed while work goes on DAB within 28 days established in Nigeria called "site supervision members, each party then consult with the chairman."<sup>952</sup> It is members of DAB. A and periodically visit with the project and reviewing the documents in order to issue decisions. When dispute arises, immediately evaluate parties. The board is members' regular particular issues which parties undertake to evaluates the dispute aggrieved party to p

<sup>945</sup> Fadiji, Albert, "Alternative dispute resolution: a developing world perspective" Routledge, 2013.

<sup>946</sup> Adam K. Bult et al., "Delivering Dispute Free Construction Projects: Part III -Alternative Dispute Resolution" A Research Perspective Issued by the Navigant Construction Forum (June, 2014).

<sup>947</sup> Suruljo Raju, "Dispute Boards & Adjudication in Malaysia: An Insight into the Road Ahead" A Paper Presented at the DRBF 14<sup>th</sup> Annual International Conference on "Dispute Boards: Realising the Potential for Dispute Avoidance" at the Fullerton Hotel, Singapore on 17 May 2014.

<sup>952</sup> Chapman, Peter H.J., "Using

Harris, Frank, and Ronald B. Jonathan, "Lean construction"

McGeorge, Denny, et al., "300 p 140.

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NICHOLAS GOULD, "DISPUTES PRESENTED AT KING'S COLLEGE SEMINAR, 3<sup>RD</sup> SEPTEMBER



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be reworked and given statutory recognition in order to be at in tandem with the international practice. Dispute review board mechanism has been proven to be highly effective and reliable in the management of disputes in a number of construction works in other countries like China, Lesotho, Hong Kong, and U.S.A. and Nigeria. For instance, it had been used to resolve disputes in the construction projects like the channel tunnel, the Hong Kong Airports and World Bank financed contracts.<sup>946</sup> In the UK, the DRB process was adapted for the London 2012 Olympic project and is currently being used in the contract for the construction of the new Forth Crossing. The fact that professionals and experts serve on the board has positive impact on the working progress and there is high quality delivery of projects at the end of the day.<sup>949</sup>

### 2.1.3 Dispute Adjudication Board (DAB)

This is a new mechanism introduced as an effective mechanism to avoid and resolve disputes on major infrastructure projects. This is a constituted board consisting of three independent experts appointed by the owner and the contractor from the commencement of a project to solve problems that arise during construction.<sup>950</sup> DRB, DAB and DRA are referred to as on-site dispute management processes. This is because they are instruments through which disputes are brought to the minimum level while work goes on at site. Parties to construction contract are required to appoint a DAB within 28 days of the commencement date of the contract.<sup>951</sup> This board is established in Nigeria but with a slight difference in the nomenclature. Hence, It is called "site supervision" in Nigeria context. This board usually consist of three members, each party nominate a member for the approval of the other and the parties then consult with their nominated members before agreeing a third member to act as the chairman.<sup>952</sup> It is a tripartite agreement involving the employer, contractor and members of DAB. After the commencement of the project, the board meets regularly and periodically visits the site and receives project information to ensure familiarity with the project and the parties. This devices for a timetable for receiving submissions, reviewing the documents, visiting the site as at when due and conducting the hearing in order to issue decisions. The board meets regularly to discuss project and dispute. When dispute arises, the board swings into action, hears presentations from the parties, immediately evaluates the dispute and makes settlement recommendations to the parties. The board is constituted to minimize and prevent dispute. As a result of DAB members' regular visits to the site, parties become familiar with their views on particular issues which in turn assist the negotiations and settlement process which the parties undertake before they present their dispute to the board. When the board evaluates the dispute over and over again, there is tendency and danger from the aggrieved party to perceive a bias when the evaluation turns out runs contrary to his

<sup>945</sup> Chapman, Peter H.J., "Use of Dispute Boards on Major Infrastructure Projects, *The Turk. Com. L. Rev.* 1" (2015) 219.

<sup>946</sup> Harris, Frank, and Ronald McCall, "Modern construction management" (John Wiley & Sons, 2013). See also Howell, Jonathan, "Lean construction" (2014) Vol.1 No.9 Public Infrastructure Bulletin, 5.

<sup>947</sup> McGeorge, Denry, et al., "Dispute Avoidance and Resolution: A Literature Review." (2007) CRC for Construction Innovation Rep 1, 40.

<sup>948</sup> Clause 20 of the 1999 FIDIC Conditions as set out in the Procedure.

<sup>949</sup> NICHOLAS GOULD, "DISPUTE RESOLUTION IN THE CONSTRUCTION INDUSTRY: AN OVERVIEW" (A PAPER PRESENTED AT KING'S COLLEGE LONDON AND SOCIETY OF CONSTRUCTION LAW CONSTRUCTION LAW SEMINAR, 3<sup>RD</sup> SEPTEMBER 2003).



expectations. DAB decision is binding and parties are required to respect and give immediate effect to it. If either member of the party is not satisfied, such member has 28 days within which to issue a notice of dissatisfaction. This does not relieve the dissatisfied party of the obligations of complying with the decision in the meantime. This board has been found to be more relevant in matters of disputes settlement before they escalate to major disputes between parties.

## **2.2 Off Site Dispute Resolution and avoidance mechanisms**

There are new construction dispute resolution mechanisms used for resolving disputes at the post-completion of project, such as expert determination, statutory adjudication and construction court.<sup>953</sup> These mechanisms have been tested and found to be time saving and cost-effective than the arbitration and litigation. Nigeria construction industry stand to benefit more if these resolution mechanisms are adopted. There would be prompt delivery of projects and quality performance in the industry. These mechanisms include expert determination, statutory adjudication, and construction court. Each of these are explained for better understanding and recommendation for use in the Nigerian construction industry.

### **2.2.1 Expert Determination**

Expert Determination (ED) is a very useful device in the construction industry for dispute resolution. The expert is appointed by disputing parties in construction industry to make a determination on the subject matter of dispute and he is allowed to use his own expertise in the final determination of the dispute. Engineers and other construction professionals are relevant in this circumstance for providing technical expertise, project management and contract administration. His determination can only be challenged in limited circumstances, that is, on the grounds of fraud or lack of impartiality. Expert determination produces binding results, he decides the outcome of the dispute because of his expertise in the area of the dispute.<sup>954</sup> Expert determination can be used to deal with the valuation aspects of a complex dispute. Expert determination is used for resolving technical issues borne out of disputes in construction industry, for example, where disputes are in respect of certified sums, unpaid certificates, defective workmanships, defective equipment, and defective materials of performance shortfalls. If the parties are already in dispute, perhaps heading towards arbitration or the court, it may be possible to transfer a part of the dispute that relates to valuation to experts for determination of that integral part. This can often save time and money, for example in a construction dispute the expert may be able to determine the value of disputed variations.<sup>955</sup>

### **2.2.2 Statutory Adjudication**

Adjudication is a way of resolving disputes in construction contracts. The use of statutory adjudication for construction dispute resolution is becoming popular

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<sup>953</sup> Azman, Mohamed Nor Azhari, Nasirah Ozolkalmine, and Zuhairi Abd, "Payment Scenarios in the Malaysian Construction Industry Prior to CIPAA" (2013) Law and Dispute Resolution 56. See also Dancaster, Christopher, "Construction adjudication in the United Kingdom: Past, present, and future" (2008) Vol.134 No.2 Journal of Professional Issues in Engineering Education and Practice 204-208.

<sup>954</sup> Nicholas Gould, "The Expert Determination: An Update", < <http://www.fenwickellion.com> > viewed on 1 January, 2015.

<sup>955</sup> Baccio, Lawrence S., and Michael Wheeler, "Environmental dispute resolution" (2013) Springer Science & Business Media. See also Fisher, Roger, William L. Ury, and Bruce Patton, "Getting to yes: Negotiating agreement without giving in" (2011) Penguin.

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worldwide. Adjudication was first introduced into law in the UK 14 years ago. The economic downturn in the construction sector has highlighted the lack of formal contractual arrangements and bad payment practices in the sector. Delayed payment, non-payment and conditional payment namely 'pay when paid' and 'pay if paid' have and continue to cripple the construction industry.<sup>956</sup> The financial problems affecting some construction companies have in turn affected sub-contractors and suppliers further downstream along the construction value chain. This affects the quality of work and the livelihood of many people. Statutory adjudication act is enacted at tackling the issue of delayed payment, non-payment facing the players in the industry. The act is also out to protect cash flow in the construction industry because of relatively long duration of projects and the large contract sum involved and those who provide labour and material for projects. It is a piece of legislation brought about to protect small-medium size specialist contractors, main contractors and consultants alike where payment has been denied by their respective employers.<sup>957</sup>

### 2.2.3 Construction Court

This is another milestone in the history of construction industry. It would change construction landscape. Issues relating to construction can be reviewed via construction court promptly than in any other conventional courts. This has been introduced in Malaysia in order to enhance contractual part of construction and most importantly because construction has many parties involved. The Construction court is a branch of the High Court of Malaysia and has unlimited monetary jurisdiction as well as jurisdiction to grant equitable reliefs such as specific performance. This is a new development that will go a long way to correct all anomalies arising out of the judgment or recommendations obtained from other non-litigated processes used in construction industry for dispute resolution. The construction court has a constitutional right open to parties to construction disputes for final and binding resolution. Its judgment is however subject to appeal at the appeal court and federal court, depending on the parties' satisfaction. It is a court with multi-party disputes, an instance of this is where there is a claim against both contractor and the designer. Construction court is well constituted with specialists who are verse in construction projects and have the technical know how to deal with any issue relating to the industry.

### 2.3 The Modern Conceptual Framework for Construction Dispute Resolution

Sequel to the above sections, Figure 1 below graphically depicts both the modern and conventional mechanisms for preventing and resolving construction disputes in the Nigerian construction industry. The modern mechanism are particularly employed to resolve any dispute that may arise during the pendency of construction project while on site to avoid the cost of arbitration or litigation as the case may be. They are cost-effective, simple, user-friendly, effective and speedy. The construction professionals are charged with this responsibility as the prime service providers for these mechanisms thereby allowing the experts in the relevant areas to efficiently resolve disputes with the lowest possible costs and within minimal time. While the

<sup>956</sup> Kilash Dabeesingh, "Statutory Adjudication in the Construction Industry" (2013) No.1100 Business Magazine.

<sup>957</sup> Mkh, L. N., "The effectiveness of dispute resolution mechanisms within the South African labour law system: a critical analysis" (DPhil thesis 2012). See also Manishana, Buhle, "Assessment of the critical success factors of joint ventures in the South African construction industry" (DPhil thesis University Of Johannesburg, 2012).



conventional mechanisms are used at the post-completion stage of the projects for disputes that have become complex and require more attention from the experts.



Figure 1: The Modern Conceptual Framework for Construction Dispute Resolution

#### 2.4 Lessons for Nigeria

The following are the benefits Nigeria stands to gain from using ADR mechanisms as adopted in both UK and Malaysia: the use of statutory adjudication will enable the clients (government or individuals as the case may be) is entitled to suspend payment to any contractor where there is a defect in design or non-compliance in the specification as agreed to. Likewise, the contractors are empowered by statutory adjudication Act to suspend work on site where there is a treat to payment on the part of client because cash flow in construction industry is inevitable for prompt delivery of projects. The use of expert determination will save cost and time of all the stakeholders involve in the execution of any project because the service of an expert will get simple dispute resolved on time and cost of litigation or arbitration is avoided. Finally, the establishment of construction court will fastrack all the litigated and arbitrated cases of construction to be revisited for finality without going to Court of Appeal or Supreme Court because it is a court specialised court designed for determination of construction cases. It is also an automated court which means all cases will be heard within record time.

#### 3. Conclusion

The modern dispute resolution mechanisms in the Nigerian construction industry have been limited due to the lack of a formal construction dispute resolution mechanism (DRB), and construction industry and sub-industry.<sup>959</sup> The order to control the industry, however, the mechanisms to be applied. The resolution mechanism is not controlled, applied, and nature of the mechanism which do not explore to resolve the issues as they are left unattended. The duration of the process is long and quickly resolved. In a nutshell, the realization of the mechanism which can be applied in the regular inter construction industry specifications effective dispute resolution meetings other project (the Project Coordination Committee) resolving construction issues involved.<sup>962</sup> The mechanism which are common to avoid risk and

<sup>959</sup> Abdul Wahab, A. (2010) Nigeria University.  
<sup>960</sup> Don Shin, "Dispute Resolution in the Construction Industry" (2010) 10(1) J. of Tech. & Design.  
<sup>961</sup> Ahmad, Sharifah (2010) J. of Tech. & Design.  
<sup>962</sup> Bakary, Nor Az (2010) J. of Tech. & Design.

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### 3. Conclusions

The modern dispute avoidance mechanisms were brought in an attempt to savage the Nigerian construction industry from collapse because many construction projects are halted due to the inadequacy of the existing resolution mechanisms used for construction disputes.<sup>958</sup> The new mechanisms include mediation, Dispute Review Board (DRB), Expert Determination (ED), neutral evaluation, statutory adjudication and construction court and additional kinds of ADR which can be designed for specific cases and subject matters in order to bring disputes to barest minimal level in the industry.<sup>959</sup> The new mechanisms are thus to complement the existing mechanisms in order to control risk and eliminate disputes in the industry.

However, the nature and size of disputes will dictate the type of resolution mechanism to be applied. Failure to consider the nature of a dispute before embarking on its resolution resorts into making it to be more complex. For a dispute to be eliminated or controlled, appropriate mechanism must be employed with consideration of the size and nature of the dispute in question.<sup>960</sup> There are disputes which are simple in nature which do not need to go to court for resolution; rather simple mechanism should be explored to resolve such disputes. Notwithstanding, disputes should be resolved as soon as they occur in order to avoid complexity and save cost. When Simple disputes are left unattended to, they can become complex and expensive to resolve.

The duration of a project also needs to be considered for instance, a dispute which erupts out of a project that is to be completed and delivered within few weeks must be quickly resolved before the purpose for which the project was embarked upon is defeated. In a nutshell, dispute should be resolved within the time frame of project for the realization of the purpose and objectives of such a project. There are some disputes which can be avoided and resolved instantly at the project site which need not await litigation or arbitration.<sup>961</sup>

Regular interaction between the contractor and the project supervision team on routine construction issues relating to correct interpretation of the project drawings, project specifications and other contract documents have proving over the years to be an effective dispute avoidance mechanism. Ditto for regular Project Coordination Meetings otherwise known as site meetings, involving all the stakeholders in a given project (the client, the contractor and the supervising consultants). These regular Project Coordination Meetings also have the additional capacity and capability of resolving complex issues and disputed claims to the satisfaction of the parties involved.<sup>962</sup> While litigation or arbitration should be used for resolving other disputes which are complex in nature, however, the process must be fast tracked in order to avoid risk and minimize cost.

<sup>958</sup> Abdul Wahab, Alwi, "Court-annexed and judge-led mediation in civil cases: the Malaysian experience" Vol.21 No.4 (DPhil University, 2013) 251.

<sup>959</sup> Sam Shun, "Discussion on the Models of ADR" (Legal Studies Honors Thesis Spring 2011), 3.

<sup>960</sup> Ahmad, Sharifah Suhana, and Mary George, "Dispute Resolution Process in Malaysia: Institute Of Developing Economics (IDE-ETRO), Japan" March 2002 1-126.

<sup>961</sup> Saahary, Nor Azmi Bin, "Arbitration in Malaysia Construction Industry," Retrieved 12th January (DPhil UTM, 2008), 1-77.

<sup>962</sup> Okantade Tope Femi, "Causes and Effects of Conflict in the Nigerian Construction Industry International" (2014) Vol. 2 No. 6 Journal of Technology Enhancements and Emerging Engineering Research.



Conclusively, disputes are inevitable in the course of executing a project in the construction industry due to number of reasons and factors which have been discussed in the earlier part of this study. What is germane in this regard is that parties to construction contract should try and study all the available dispute resolution mechanisms, know how they work to enable them choose appropriate one suitable for speedy resolution of any given dispute without breaking up the relationship which has been established at the inception of their construction business. The choice of choosing the appropriate mechanism matters so that the life span of the project will also not be affected. For instance, at the inception of a project, parties are expected to put in place the Dispute Review Board members who will be monitoring the success and progress of the project till the completion period to enable the control of disputes and avoidance of risk.

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<sup>1</sup>NigeriaMakkar-De  
<sup>2</sup>Dr. Yusuf I.A., J  
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<sup>4</sup>Shah A. Y., (200  
<sup>5</sup>Chang, A.W., (20