



10  
**Novena  
University**

**VOL 3  
2017**

**LAW Journal**

ISSN: 2579 - 129

## ARTICLES

- |                                                                                                                                                                                                                     |     |                                                                                                                                                              |     |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| Corruption and Judicial Integrity in Nigeria: A Case for Professional Ethics, Individual Comportment and not Harassment.<br><i>Prof. Orubebe Bibobra Bello</i>                                                      | 01  | Developing the Law Through Judicial Activism in Nigeria: Judicial Departure from Established Precedent Perspective<br><i>Ibrahim Imam Ph.D</i>               | 116 |
| Protection of Women's Rights in Africa: Roles of the New Partnership for Africa's Development, Islamic Jurisprudence and other Human Rights Instruments<br><i>Dr. Hanafi A. Hammed &amp; Prof Wahab O. Egbewole</i> | 12  | A Review of the Legal Framework for Dispute Resolution in the Nigerian Construction Industry<br><i>Barakat Adebisi Raji Ph.D and Ibrahim Sheu Ph.D</i>       | 132 |
| The Impact of Intellectual Property Rights on the Enjoyment of Certain Human Rights and Freedoms<br><i>Benjamin O. Mukoro, Egberipou Wariebi Esq. Dr. Bashir Leke Ijaiya</i>                                        | 37  | The Controversy over Child Marriage under the Nigerian Laws: The Way Forward<br><i>Owolabi, E. F. (Ph.D.)</i>                                                | 143 |
| Rethinking Jurisdictional Problems in Environmental Litigation in Nigeria<br><i>Hakeem Ijaiya Ph.D and Taofeeq Alatise</i>                                                                                          | 51  | International Debt: The Legal Dimension<br><i>Kennedy Madu</i>                                                                                               | 156 |
| A Review of The Legislative and Regulatory Framework for the Protection of the Environment in the Petroleum Industry<br><i>Chimenna Okolo</i>                                                                       | 59  | Islamic International Law's Position on Religious Cooperation and Mutual Respect: Pathway to National Unity, Peace and Prosperity<br><i>Dr. A. A. Owoade</i> | 164 |
| A Pragmatic Review of the Legal Issues Surrounding The Bakassi Peninsula, Greentree Agreement and the Nigerian Constitution<br><i>E. J. Allison</i>                                                                 | 77  | 'Aqiqah and Naming Ceremony under Islamic Law: Principles and Practice in Northern Nigeria<br><i>Nimah Modupe Abdulraheem</i>                                | 176 |
| The Principles and Procedures of Mediation in Nigeria: A Grafico-Legal Analysis<br><i>Ayinla, L. A.</i>                                                                                                             | 92  | Legal Status of Introduction in Islamic Marriages in Nigeria<br><i>Ismael Saka Ismael &amp; Yusuf Ismail Danjuma</i>                                         | 191 |
| Freedom of the Press as a Fundamental Human Right in Nigeria<br><i>Adamu Idris Tanimu Esq</i>                                                                                                                       | 106 | Local Government Autonomy and the Conflicting Provisions of the [1999] Constitution (as amended)<br><i>Tumbo H. Broderick Ph. D</i>                          | 204 |



# LAW

COLLEGE OF LAW OGUME

# LAW

## LAW JOURNAL

N.U.L.J. Vol. 3. No.1, 2017

### EDITORIAL BOARD

#### ADVISORY BOARD

**Hon. Justice Fedode Francis Tabai (JSC) Rtd.**

Justice of the Supreme Court of Nigeria

**Hon. Justice D. D. Narebor (Rtd)**

Prof. of Law Delta State University

**Prof. Muhammed Tawfiq Ladan**

Ahmadu Bello University, Department of Law Zaria, Nigeria

**Prof. Nduka Uriah** Novena University

(former Vice Chancellor Igbinedion University, Tansian University)

**Prof. S. Igun** Novena University (former V. C. DELSU,

Michael & Cecilia Ibru University)

**Prof. Albert A. Osakwe**

Novena University Director of Academic Planning (DAP)

**Prof. Benjamin Okaba**, Director Institute of Foundation Studies

Federal University Otuoke, Bayelsa State, Nigeria.

**Dr. Nathaniel Patrick Obokoh** Novena University Librarian

#### EDITOR-IN-CHIEF

**Prof. Bibobra Bello Oroubebe**

#### EDITORS

**H. C. Okolo Esq.** (Associate Editor)

**Umukoro Benjamin Esq.** (Associate Editor)

**Dr. Omagbemi Oyinkeneseri** (Research and Line Editor)

**Youkere Kemeseifa Ebikefe**, (Secretary Editorial Board)

**Egberipou Wariebi Esq.** (Features Editor)

**Azuka O. Chegwe** (Reference and Information Editor)

## Table of Contents

| Articles                                                                                                                                                                                                            | Page |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| Corruption And Judicial Integrity In Nigeria: A Case For Professional Ethics, Individual Comportment And Not Harassment.<br><i>Prof. Orubebe Bibobra Bello</i>                                                      | 01   |
| Protection of Women's Rights in Africa: Roles of the New Partnership for Africa's Development, Islamic Jurisprudence and other Human Rights Instruments<br><i>Dr. Hanafi A. Hammed &amp; Prof Wahab O. Egbewole</i> | 12   |
| The Impact Of Intellectual Property Rights On The Enjoyment Of Certain Human Rights And Freedoms<br><i>Benjamin O. Mukoro</i>                                                                                       | 37   |
| Rethinking Jurisdictional Problems In Environmental Litigation In Nigeria<br><i>Hakeem Ijaiya Ph.D and Taofeeq Alatise</i>                                                                                          | 51   |
| A Review Of The Legislative And Regulatory Framework For The Protection Of The Environment In The Petroleum Industry<br><i>Chimenna Okolo</i>                                                                       | 59   |
| A Pragmatic Review Of The Legal Issues Surrounding The Bakassi Peninsula, Greentree Agreement And The Nigerian Constitution<br><i>E. J. Allison</i>                                                                 | 77   |
| The Principles And Procedures Of Mediation In Nigeria: A Grafico-legal Analysis<br><i>Ayinla, L. A.</i>                                                                                                             | 92   |
| Freedom Of The Press As A Fundamental Human Right In Nigeria<br><i>Adamu Idris Tanimu Esq</i>                                                                                                                       | 106  |
| Developing The Law Through Judicial Activism In Nigeria: Judicial Departure From Established Precedent Perspective<br><i>Ibrahim Imam Ph.D</i>                                                                      | 116  |
| A Review Of The Legal Framework For Dispute Resolution In The Nigerian Construction Industry<br><i>Barakat Adebisi Raji Ph.D, and Ibrahim Sheu Ph.D</i>                                                             | 132  |
| The Controversy Over Child Marriage Under The Nigerian Laws: The Way Forward<br><i>Owolabi, E. F. (Ph.D.)</i>                                                                                                       | 143  |
| International Debt: The Legal Dimension<br><i>Kennedy Madu</i>                                                                                                                                                      | 156  |
| Islamic International Law's Position on Religious Cooperation and Mutual Respect: Pathway to National Unity, Peace and Prosperity<br><i>Dr. A. A. Owoade</i>                                                        | 164  |
| 'Aqiqah and Naming Ceremony under Islamic Law: Principles and Practice in Northern Nigeria<br><i>Nimah Modupe Abdulraheem</i>                                                                                       | 176  |
| Legal Status Of Introduction In Islamic Marriages In Nigeria<br><i>Ismael Saka Ismael &amp; Yusuf Ismail Danjuma</i>                                                                                                | 191  |
| Local Government Autonomy and the Conflicting Provisions of the [1999] Constitution (as amended)<br><i>Tumbo H. Broderick Ph. D</i>                                                                                 | 204  |

## **A Review of the Legal Framework for Dispute Resolution in the Nigerian Construction Industry**

**Barakat Adebisi Raji Ph.D and Ibrahim Sheu Ph.D\*\***

**Key words:** Construction Dispute Resolution, ADR, Nigeria, Dispute Review Boards

### **Abstract**

This paper presents an overview of literature on the prospects of reform with respect to the legal framework for construction dispute resolution in Nigeria. At the moment, the predominant mechanisms used for construction disputes resolution in Nigeria are litigation and arbitration which have caused series of delays in major construction projects. This paper intends to propose an effective legal framework for dispute resolution processes for the construction industry in Nigeria drawing from some recent advances recorded in Malaysia and UK. The methodology is purely doctrinal. The study identifies the relevance of alternative dispute resolution (ADR) mechanisms in the construction industry in Nigeria. The study finds that the keystones for the proposed dispute resolution framework in the construction industry in Nigeria are already available but they need to be properly placed for a sustainable framework. A qualitative approach was used, to enable the study to know the experiences, perspectives and challenges facing the stakeholders in the construction industry in the use of the existing processes for construction dispute resolution. This approach is meant to validate the need for effective construction dispute resolution processes.

### **1. Introduction**

The construction industry is the largest contributor to the world economy given the Gross Domestic Product ratio. Harris gives the statistical figure of the global average cost incurred from the settlement of disputes between the years 2011-2013 and the result reveals that millions of dollars go into dispute settlement.<sup>1</sup> Disputes usually arise from construction projects due to the complexity of projects, where players involved must coordinate their work at all stages of design and development. Given the nature of the construction industry, there has been a clear trend toward finding alternative methods of settlement of disputes to arrive at cost-effective solutions that are flexible and

\* Barakat Adebisi Raji (PhD), Lecturer, Department of Jurisprudence and International Law, Faculty of Law, University of Ilorin, Kwara State.

\*\* LL.B, LL.M (Sokoto), Ph.D (Jos) Lecturer, Department of Private and Business Law, Usman Dan Fodio University, Sokoto

<sup>1</sup> E.C. Harris. (2013). Global Construction Disputes: A Longer Resolution. Global Construction Report. 1<[www.echarris.com/contract/solution](http://www.echarris.com/contract/solution)> accessed 21 January, 2017.

also time-efficient.<sup>2</sup> Skills in dispute resolution should be part of the tool kit of any practitioner in a managerial position.<sup>3</sup> The disputatious nature of the construction industry is not peculiar only to Nigeria but universal.

There is no doubt that construction companies are being awarded more expensive and sophisticated projects, thereby increasing pressure to deliver on jobs within given time frames. In construction disputes, there are usually complex issues of fact, and unanticipated events or conditions frequently occur.<sup>4</sup> Parties to a construction dispute often have to deal with substantive changes in circumstances, and in a bid grapple with these changes there are usually problems like unexpected extension of time, failure to meet stipulated standards, and default in payment.

The study seeks to: appraise the current trends in construction dispute resolution in Nigeria in relation to international standards; assess the legal frameworks for construction dispute resolution in Nigeria and examine the level of compliance with best ADR practices; evaluate the legal frameworks for construction dispute resolution in Malaysia and UK and share some of their experiences and success stories; and suggests a sustainable legal framework for construction dispute resolution based on the Malaysian and UK models. The objective of this paper is to propose effective dispute resolution processes for the construction industry in Nigeria.

### **An Insight into Construction Dispute Resolution**

The changing nature of projects has over time facilitated the need to improve upon dispute resolution mechanisms because disputes are becoming more complex. Traditionally, litigation has been the preferred form of dispute resolution in construction projects. Parties would usually try to negotiate a settlement and where this fails, they would go to court.<sup>5</sup>

The effectiveness of litigation can be questioned because those deciding the case, whether the judge or a jury, are very remote from actual events, and the tendency of the losing party to file an appeal is high. Over time litigation became more expensive and cumbersome and parties resorted to arbitration for resolution of construction disputes which proved to be cost-effective, confidential, efficiency and time-saving. With the modern technological trends and demands in the industry, it has been found that arbitration needs to be supported with other alternatives to litigation in order to manage disputes effectively in the industry.

<sup>2</sup> Hyman, Jon, 'Alternative Dispute Resolution' (2015): 1-5 University of Missouri School of Law, ADR Spring.

<sup>3</sup> Animashaun, Oyesola, and Kola O. Odeku, 'Industrial Conflict Resolution using Court-connected Alternative Dispute Resolution' (2014) 5 No 16 Mediterranean Journal of Social Sciences 683.

<sup>4</sup> A.L Overcash, 'Introducing a Novel ADR Technique for Handling Construction Disputes: Arbitration' (2015) Vol. 35 No. 1 Construction Lawyer.

<sup>5</sup> E.C Harris 3.

The concern of this study is that major construction disputes are still referred to litigation which has resulted into loss of jobs, waste of materials, resources and abandonment of projects. This study therefore, examines the practice of ADR in the construction industry in Nigeria and its effects on the parties concerned, as well as the attitude of courts in relation to construction disputes with a view to proposing a lasting solution to the problem(s) identified. Unfortunately, arbitration is becoming more expensive than litigation and this has become a concern to stakeholders and necessitates a search for alternative mechanisms that can serve the industry better when dispute arises. The study also observed that there is usually a problem in selecting the most appropriate resolution technique that would fit the nature of the dispute in question. It is easy to conclude that there must be an efficient way of resolving construction disputes without necessarily going to court. These shortcomings found in both litigation and arbitration, with their concomitant rise in costs, delays, and adversarial relationships, have encouraged the rapid growth of alternative dispute resolution processes which include expert appraisal, conciliation, mediation, expert determination, statutory adjudication among others.

Resolving construction disputes using an adversarial approach such as modern arbitration, was considered to being opposition to the maintenance of harmonious relationships between the parties.<sup>6</sup> The parties often prefer alternative dispute resolution in order to avoid ruining their business relationship.<sup>7</sup> Attention is gradually shifting to various alternative dispute resolution methods such as mediation, which provide the possibility of low cost and time-effectiveness.

Nowadays, resolving disputes through alternatives to litigation has been on the rise in the construction industry. Alternative forms of dispute resolution have been preferred because of the complex nature of construction disputes, the high cost of resolving these disputes in court (due in part to disclosure requirements under the discovery obligations imposed by the courts) and the damage court proceedings usually have on the parties' business relationship. Parties want to have control over how disputes are resolved, more so with the complex and technical nature of the industry. This requires ADR experts to give rulings in line with professional ethics and pragmatically, in response to the dispute at hand. Arbitration has been considered as a last resort for resolving disputes in the construction industry because of its costs and some other reasons, hence the advent of other alternative dispute resolution such as statutory adjudication, mini-trial and other hybrids ADR mechanisms. The quest for reformation of the construction dispute resolution landscape in

<sup>6</sup> K.M J.Harmon 'Resolution Construction Dispute: A Review of Current Methodologies,' (2003) Vol. 3 No. 4 Leadership Management Engineering Journal 187-201.  
<sup>7</sup> J.R. Cheek, 'Multistep Dispute Resolution in Design and Construction Industry', (2003) Vol. 129 No. 2 Journal of Professional issues in Engineering, 84-91.

Nigeria is the major impetus for this paper. This calls for a re-think and review of the existing dispute resolution mechanisms employed in resolving construction disputes to give room for more cost-effective and time-saving ADR processes.

However, statutory adjudication is widely gaining recognition as a construction disputes resolution mechanism and a lot of success has been recorded. Statutory adjudication was first introduced in UK in 1996 by the Housing Grant, Construction and Regeneration Act (HGCR Act) in response to payment problems facing the industry.<sup>8</sup> A statutory adjudication practitioner is known as an adjudicator. He is a neutral third party whose decision is binding on parties to construction disputes. This is a resolution technique in which parties to construction dispute are obliged to comply with the decision of the adjudicator(s). It is a mechanism which does not take the away the contractors, sub-contractors and other stakeholders from project sites except when the need arises.<sup>9</sup> This mechanism has impacted positively on projects as well as the working relationship amongst the stakeholders in the industry. This success has also been extended to the construction industries in Singapore, Australia, South Africa, Sri Lanka and recently Malaysia. Nowadays, construction businesses are growing rapidly and perceiving the possibility that Nigeria may need to adopt such ADR processes in response to global needs and practice. There is an urgent need to reform the current practice of dispute resolution with regard to construction disputes in the country. Such mechanisms should be able to deal with any construction-related matter, capable of bringing disputes to a logical and satisfactory end, and the decisions must be enforceable without undue interference with the execution of projects.<sup>10</sup>

This study intends to look at the possibility of encouraging project managers, engineers, architects, builders, planners, financial institutions and construction workers to have embrace ADR processes due to the need to deliver their projects within time limits. There are more suitable processes they can explore in solving their disputes such as statutory adjudication and other hybrid ADR processes. They save time, are cost-efficient, friendly and parties are in full control of how their matters are conducted. They are also at liberty to choose who acts as an intermediary whenever disputes arise between them. This enhances the smooth running of activities in the industry.

## 2. Exploring the Relevant Literature

The literature review is discussed under three main headings: the advent of ADR in the construction industry; ADR in the Nigerian construction industry;

<sup>8</sup> See Housing Grant, Construction & Regeneration (HGCR) Act, 1996.

<sup>9</sup> Bannaga, Elmugtaba Ali. "Understanding the Mutual Influence of Contract and Subcontract Terms on Construction Relationships." (Ph.D. dissertation, the British University in Dubai (BUID), 2015).

<sup>10</sup> MJ Harmon 190.

and ADR  
scholarshi  
modern w  
ADR in co  
is provide

3.1 The A  
ADR has  
The Unite  
partnering  
was used  
acceptanc  
non-bindi

TI  
industry i  
its compl  
and mana  
that may  
This proc  
However  
emergen  
resolution  
of more e  
of proce  
among o  
satisfy th  
specific  
construc  
countries  
others. 5  
Construc  
disputes  
This tec  
Australi  
These co  
the stake

<sup>11</sup> LSPo  
ADR-4  
<sup>12</sup> Howat  
Resolu

and ADR in the Malaysian and UK construction industry. This includes scholarship on the emergence of formalized ADR construction disputes in the modern world, specifically the Nigerian, and Malaysian and UK models of ADR in construction disputes. In the end a justification for this current research is provided.

### 3.1 The Advent of ADR in the Construction Industry

ADR has been employed in the construction industry for nearly half a century. The United States Army Corps of Engineers (USACE), initiated the use of a partnering process to promote dispute resolution in construction contracts.<sup>11</sup> It was used to resolve disputes arising from small scale projects but gained wider acceptance in the industry. However, this was abused over time because of its non-binding effect.<sup>12</sup>

The Dispute Resolution Board was introduced into construction industry in the late 90s to serve the industry from the inception of a project till its completion. This board is usually designated to pay regular visits to the site and manage any dispute arising therefrom before they escalate to serious ones that may tend to gulp the money allotted for the completion of the project itself. This process has become an integral part of project management world-wide. However, due to the extensive nature of construction projects and the emergence of disputes which could not be resolved by means of dispute resolution boards, the industry was prompted to beam its searchlights in search of more effective and useful ways of resolving disputes. Hence, the emergence of processes like mediation, mini-trial, conciliation, expert determination among others, to mitigate the inadequacy of litigation and arbitration, and to satisfy the need for quick administration of justice. Statutory adjudication was specifically introduced to ameliorate the payment problems facing the construction industry in the UK. It is fast gaining recognition and among other countries such as Malaysia, South Africa, New Zealand, Singapore among others. Statutory adjudication was first tested through the Housing Grants, Construction and Regeneration Act in 1996 as a procedure for resolution of disputes in the construction industry. The Act came into force on 1 May 1998. This technique has found its way into legislation in many countries including Australia, South Africa, Malaysia, Singapore, Sri-Lanka to mention but a few. These countries have witnessed a positive change in payment attitude among the stakeholders in their construction industries.

<sup>11</sup> L.S Podziba, 'Small Projects Partnering: The Drayton Hall StreamBank Protection Project', (1994) No. IWR-94-ADR-CS-10, Army Engineering Institute for Water Resources Alexandria VA.

<sup>12</sup> Howard Klein, 'The Construction Industry's Guide to Dispute Avoidance' (2009) Vol. 1 Dispute Avoidance Resolution, 5.

### 3.2 ADR in the Nigerian Construction Industry

The evolution of ADR in the Nigerian Construction Industry can be traced to the provisions for dispute resolution in the Constitution of the Federal Republic of Nigeria, 1990 (as amended) and the Arbitration and Conciliation Act 1990<sup>13</sup> which has been enshrined in S.19 of the Nigerian Constitution 1999. Due to the cost and time spent in litigation prior to the enactment of the Arbitration and Conciliation Act, which has become a household name in the majority of construction contracts, there were industry advisors and lawyers serving the construction industry on how to resolve disputes facing the industry in Nigeria. This institution generated more disputes than resolving them and at a time, it became obvious that the industry was losing huge sums of money to dispute resolution.

In 1992, the Nigerian Construction Industry witnessed a radical change through the emergence of Arbitration and Conciliation which proved to be a more effective means of dispute resolution procedure with arbitrators managing the timetable and cost more effectively. This was abused over time and the cost of settling construction disputes became expensive and resort to litigation resurfaced. The only ADR processes in Nigeria as of today are arbitration and conciliation and these have influenced the direction of literature in Nigeria which is basically limited to arbitration and litigation. This means that there has not been any work on adjudication. A critical analysis shall be done to in order to justify the need for a new dawn in the application of ADR in the Nigerian construction industry.

Oyesola and Odeku discussed the issue of using Alternative Dispute Resolution mechanisms such as mediation, conciliation, court-connected ADR services, as well as the use of arbitration for settlement of industrial disputes. No attention was given to the construction industry.<sup>14</sup> The Lagos State Multi-Door Courthouse was established to attend to cases that need prompt attention by reference to the appropriate ADR door or mechanism. This is a laudable programme, but because the civil procedure rules do not provide for adjudication, parties cannot avail themselves of its benefits.

Joshua acknowledges the need for efficient dispute resolution mechanisms in developing countries such as Nigeria.<sup>15</sup> He pointed out the need for judicial review of the commission's decisions relating to arbitration which have become a clog in the wheel of progress in the resolution of industrial disputes. He suggests an amendment of some sections in the Arbitration and

Conciliation  
to the const  
Abubakar  
identified  
planning, l  
contributed  
causes mor  
Recommen  
experience  
as the ma  
recommen  
Oli  
related fac  
strongly a  
recommen  
should dis  
had a laud  
appropriat  
look at the  
industry a  
literature,  
author kno  
in the Nige

3.3 Explo  
and Mala  
The litera  
Malaysia  
written wi  
payment,  
impedime  
how cons  
ADR mec  
Litigation  
who have  
fully expl  
Also, arbi  
constructi

<sup>13</sup> Now Arbitration and Conciliation Act Cap A18 Laws of the Federation of Nigeria (LFN), 2004, (as amended)

<sup>14</sup> Oyesola Animashaun and Kola O. Odeku, 'Industrial Conflict Resolution Using Court-Connected ADR' (2014) Vol. 5, No. 16 Mediterranean Journal of Social Sciences 683-687.

<sup>15</sup> Joshua, Oyebo Oluwadare, 'Strategies for Resolving Legal Matters on Civil Engineering Contracts in Nigeria', (2015) Vol. 4 No 5 International Journal of Construction Engineering and Management, 159-164.

<sup>16</sup> Abubakar  
Journal of  
<sup>17</sup> Olabode  
Nigeria',

Conciliation Act, 2004. However specific and separate attention was not given to the construction industry.

Abubakar examined the causes of disputes in the construction industry and identified delay as the major cause.<sup>16</sup> The findings showed that improper planning, lack of communication, design errors and shortage of supply also contributed to delay in construction projects but the work concluded that delay causes more harm, and therefore should be avoided in the construction industry. Recommendations were made among which is proper monitoring of project by experienced and qualified professionals. The work did not reflect on payment as the major problem facing the construction industry so they could not recommend adjudication.

Olabode identified construction management cost, time, quality related factors, tendering methods and variation orders, as the major factors strongly affecting project performance in the construction industry.<sup>17</sup> His recommendations are that clients, stakeholders, practitioners and consultants should discourage excessive variation orders during construction. The writer had a laudable suggestion that policy makers should look into the possibility of appropriate procurement and tendering methods but failed to take a critical look at the existing mechanism used in resolving disputes in the construction industry as an area that needed to be reformed. In view of the above reviewed literature, it is concluded that there hardly any work (at least none that the author knows of) on statutory adjudication as a panacea to payment problems in the Nigerian construction industry. This is the gap this work intends to fill.

### **3.3 Exploring Best Practices: Construction Dispute Resolution in the UK and Malaysia**

The literature on the use of ADR in construction disputes in the UK and Malaysia consists of recently published books, articles and theses that were written within the last two years. This work focused on the impact of delayed payment, reduced payment or even non-payment as a major clog and impediment which impaired hindered construction projects. Talking about how construction disputes are resolved, what readily comes to mind are the ADR mechanisms specially designed for resolution of construction disputes. Litigation is a long process and a majority of the participants in the industry who have grievances only resort to it when all other alternatives have been fully explored and there is still the need for some issues of law to be clarified. Also, arbitration is no longer attractive as a dispute resolution mechanism for construction disputes as it used to be because of the associated cost and

<sup>16</sup> Abubakar Danladi Isah et al, 'Causes of Delay in Nigerian Construction Industry', Vol 3 No 4 Interdisciplinary Journal of Contemporary Research in Business 790.

<sup>17</sup> Olabode E. Ogunsanmi, 'The Effects of procurement Related Factors on Construction Project Performance in Nigeria', (2013) Vol 6 No 2 The Ethiopian Journal of Environmental Studies and Management, 215-222.

duration.

Mohd Danuriet al discussed the dispute resolution mechanisms for resolving construction disputes, mentioning litigation, arbitration, and mediation. It has been noted that courts' delay in the administration of justice has caused players in the construction industry to consider other methods that could provide them with more realistic options in preserving their rights, while safeguarding their *profits as well as their present and future relationships*.<sup>18</sup> His work revealed his concern over construction disputes cases which were not given the adequate and prompt attention required in courts. Given the nature of the construction industry, disputes emanating from the industry require urgent and prompt attention, hence the maxim, 'delay defeats equity, and justice delayed is justice denied'.<sup>19</sup>

Arbitration came into play in construction dispute resolution as result of delays occasioned in courts. Arbitration was introduced to ameliorate the hardships caused by litigation in terms of cost and time, and also as a result of the need to reduce the docket of cases in the courts. This led to the inclusion of arbitration in construction contract agreements as a technically-oriented dispute resolution mechanism. However, the need for introduction of other alternative dispute resolution mechanisms became obvious when the cost of arbitration could no longer be tolerated by the stakeholders in the construction industry.<sup>20</sup>

ADR mechanisms such as independent expert determination, mediation, and statutory adjudication among others were brought into play as part of the worldwide drift towards cost-effective dispute resolution mechanisms.<sup>21</sup> Mediation and statutory adjudication are commonly used in Malaysia while mediation, independent expert determination and statutory adjudication are popularly used for construction dispute resolution in UK. Mediation terms are usually incorporated into construction contracts in Malaysia making mediation a first tier dispute resolution option.<sup>22</sup> The mechanism encourages disputing parties to settle their matters in a fair, speedy and cost-effective manner. The Enforcement of Mediation Act 2012 (Act 749) was given publicity to contribute to the growth of mediation as a method of dispute resolution. It is a consensual and non-adversarial procedure. The number of construction disputes submitted for mediation in Malaysia is still

<sup>18</sup> Id.

<sup>19</sup> Klein Howard, 'The Construction Industry's Guide to Dispute Avoidance' (2009) Vol 1 Dispute Avoidance Resolution 5.

<sup>20</sup> Femi, Tope Okuntade, 'Causes and Effects of Conflict in the Nigerian Construction Industry', (2014) Vol 2 No 2 International Journal of Technology Enhancements and Emerging Engineering Research, 7-16.

<sup>21</sup> J.D. Owolabi, et al, 'Causes and Effect of Delay on Project Construction Delivery Time', (2014) Vol 2 No 4 International Journal of Education and Research, 197-208.

<sup>22</sup> Abdul Wahab, Alwi, (2013) 'Court-annexed and Judge-led Mediation in Civil Cases: the Malaysian Experience' PhD Dissertation, Victoria University.

very

adjudi  
known  
2012)

adver  
partie  
shorte  
indus  
brigh  
(Brist  
buildi

paym  
adjudi  
contra  
the Ge  
Malay  
decisi

3.4 Me  
Prior t  
litigati  
for cor  
resolut  
arbitrat

It is flex  
because  
enlight  
submit  
the crft

<sup>23</sup> NikMo  
(CIPA)  
Techno  
<sup>24</sup> (1973)  
<sup>25</sup> Wong C  
Univer  
<sup>26</sup> Julian S  
ARCO  
Managi

very low in comparison to the UK.

The most recently-introduced mechanism in the industry is statutory adjudication. This process has gained its popularity by means of a legislation known as the Construction Industry Payment and Adjudication Act (CIPAA 2012) which came into force on April 14 2014.<sup>23</sup>

Given the fact that partial and delayed payment has severe impact and adverse effect on the growth of the industry, this process has assisted most parties who were once owed by clients to recover their money within the shortest possible time. It is no gainsaying that cash flow is the lifeblood of the industry. The importance of cash flow in the construction industry has been brightly painted by Lord Denning MR in the case of *Modern Engineering (Bristol) v Gilbert Ash (Northern)*; <sup>24</sup> 'there must be a "cash flow" in the building trade. It is the very lifeblood of the enterprise'.

The research conducted by Wong and Nik revealed that the issue of payment has been a major concern in the construction industry which statutory adjudication has come to lay to rest.<sup>25</sup> The Act applies to all construction contracts made in writing after June, 22 2012, including those entered into by the Government of Malaysia. By virtue of section 28 of the adjudication Act in Malaysia, adjudicators' decisions have been placed on an equal footing with decisions of the High Court.

### 3.4 Mediation in the UK Construction Industry

Prior to the use of mediation for construction dispute resolution in the UK, litigation and arbitration were the popular dispute resolution mechanisms used for construction disputes. However, the modern drift towards cost effective resolution mechanisms in the face of the hardship occasioned by litigation and arbitration made mediation prominent.

Mediation is a valuable dispute resolution tool in construction disputes. It is flexible and cost-effective. Transformative mediation is widely recognised because it seeks to place more emphasis on values. It defines the objectives and enlightens the parties' to make them see what they stand to gain should they submit their case for mediation.<sup>26</sup> The flexibility involved in mediation allows the crafting of innovative settlements that are not possible in arbitration and

<sup>23</sup> NikMohdDhiyafullahNik Din and Zulhabri Ismail, 'Construction Industry Payment and Adjudication Act (CIPAA), Remediating Payment Issues' (2014) Vol 1 No 1: Cidb G7 Contractor's Perspective, *Journal of Technology Management and Business*.

(1973) 71 LGR 162, CA at P.167.

<sup>24</sup> Wong Chen Hin, 'Adjudication: Evolution of New Form of Dispute Resolution in Construction Industry' (2011) University of Tunku Abdul Rahman.

<sup>25</sup> Julian Sidoli, Del Ceno, 'A Process Account of Construction Mediation,' in: Smith, S.D (Ed) *Proc 28th Annual ARCOM Conference*, 3-5 September 2012, Edinburgh, UK, Association of Researchers in Construction Management, 889-899.

litigation.<sup>27</sup>

### 3.5 Statutory Adjudication in the UK Construction Industry

Adjudication makes for steady cash flow for construction projects by ensuring enforcement of judgments within 28 days.<sup>28</sup> When statutory adjudication was first introduced in the UK, aggrieved parties were reluctant to undertake proceedings because they thought their future relationships could be affected. It is noteworthy that the HGCRA is only applicable to contracts made in writing on or after 1996.<sup>29</sup>

This is a dispute resolution technique where an adjudicator, an independent person, determines parties' rights under a contract following an evaluation of submissions from each party. The Act gives a contractor who carries out construction work under a construction contract, or a subcontractor who supplies related goods and service under a supply contract, a statutory entitlement to a progress payment, following submission of a payment claim to the respondent (principal).<sup>30</sup> The respondent is required to provide a payment response for a payment claim made under a construction contract within a limited time.<sup>31</sup> This Act is targeted at promoting good payment practice and cash-flow.

### 4. Scaling up the Dispute Resolution Framework in the Construction Industry in Nigeria

From the forgoing analysis, it is established that there is a need to play catch up in terms of the dispute resolution framework for the construction industry in Nigeria. This requires the exploration of best practices in the two referenced jurisdictions i.e Malaysia and the UK.

This research goes beyond the reach of the reviewed works. The Malaysian, UK and other literature examined here are meant to propose a better framework for the Nigerian construction industry having special regard to best practices in the field. This study is therefore an attempt to go beneath the surface and delve into the relevant laws in the three jurisdictions under study.

<sup>27</sup> Cheung, S. O. 'Mediation for Improved Conflict Resolution' *Journal of Legal Affairs and Dispute Resolution in Engineering and Construction*, vol 2 (Special Issue: Mediation in AEC), 135-135.

<sup>28</sup> Peter Kennedy et al, 'Research Analysis of the Progress of Adjudication Based on Returned Questionnaires from Adjudicator Nominating Bodies (ANBs) and from a Sample of Adjudicators', (2010) *Adjudication Reporting Centre School of the Built and Natural Environment Glasgow Caledonian University*, 2010) 2-20.

<sup>29</sup> R.J.C Burns, 'A study of the Impact of the Housing Grants, Construction and Regeneration Act 1996 and the Local Democracy, Economic Development and Construction Act 2009 on Resolving Disputes within an Industry which appears to embrace Conflict in the UK and a Comparative Global Study on ADR and Dispute Resolution Techniques and Applications', (2013) Ph.D. dissertation, Robert Gordon University.

<sup>30</sup> Sundra Rajoo, 'KLRC Adjudication Conference Discusses "Future Landscape of Construction Industry"', *Press Release* 2010.

<sup>31</sup> Donald Charett, 'Adjudication in Singapore: Challenges to an Adjudicator's Decision with Regards to Timescales' *Build law Newletter*, 2005 <[www.editor@buildingdisputetribunal.co.nz](http://www.editor@buildingdisputetribunal.co.nz)> viewed on 21 January 2017.

with a view to bringing about meaningful changes in the administration of justice in construction disputes within the Nigerian Legal System.

### **Conclusion and Recommendations**

Adjudication process was introduced to ensure smooth implementation of construction projects regardless of any dispute between parties. It encourages disputing parties to resolve their disputes without delay. It has proved a success in the UK, New Zealand and Australia, with positive feedbacks on its use from Singapore and hope that it will likewise prove successful in Malaysia. In the UK, there were two fears hovered. One was that the theoretical promise of adjudication might be dampened after its coming into force. The second was that there would a high demand for adjudication but few adjudicators. These fears have however be overcome by the realities of the success of statutory adjudication.

It is generally felt, both in the construction industry and in the legal profession, that the advantages of statutory adjudication under the HGCRFA far outweigh any perceived disadvantages and that the process of adjudication has so far proved a great success. It is on this note that it is proposed that the existing legal framework for construction dispute resolution in Nigeria be reformed in line with the following recommendations:

1. That given the nature of construction projects, disputes arising from the industry should be given prompt attention to avoid delay in execution, overrun cost, and total abandonment, hence adjudication is strongly recommended.
2. That our lawmakers should re-visit the laws governing commercial transactions in Nigeria and put in place a separate legal framework for the construction industry.
3. That Nigerian legal framework for construction dispute resolution needs to be expanded so as to accommodate other processes used in resolving construction disputes in line with global best practices:
  - i. There is a need to introduce dispute review boards in order to minimize dispute at site level,
  - ii. There is also a need to put in place expert determination boards as a platform for the harnessing of expert and
  - iii Statutory adjudication should be adopted to facilitate regular and timely payment and to enable easy recovery of payment.
4. An adjudication Act should be enacted to regulate and facilitate payment in the industry.
5. The Nigerian Ministry of Works should join hands with stakeholders in the construction industry to drive the establishment of construction courts by sponsoring a bill in the National Assembly to that end.
6. That the Regional Centre for International Commercial Arbitration, Lagos (RCICA) should give provide more public enlightenment on the existing alternative dispute resolution processes. Stakeholders should be sensitized and encouraged to champion the call for the introduction of statutory adjudication.
7. That Arbitration and litigation should be options of last resort for the resolution of construction disputes.