14

CHALLENGES OF DISPENSATION OF JUSTICE IN THE 21ST CENTURY NIGERIA

Legal Essays In Honour of



HON. JUSTICE

MUHAMMADU LAWAL BELLO FICMC

Chief Judge, Kaduna State

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1.1 Introduction

It is an indisputable fact of life and existence that friction is a feature of human relationships and co-existence. As much as there are measures, efforts and trials by men to coexist as peacefully and without conflict as possible, there are almost always, clashes of interests which are natural offshoots of the wide array of differences that characterise each person of the human race. This friction is not limited to any particular domain of our existence. As a matter of fact, every aspect of human interaction is capable of becoming a source of dispute. Starting from the nucleus of human society itself; the family, to communal living, business relationships, religious affiliations, socio-cultural influences, tribal affinities, educational settings, and spiritual aversions to mention a few, differences, disputes, misunderstandings, and conflicts abound.

Flowing from this understanding of the place of disputes in human existence, it is only natural and needful for the human race to devise appropriate means of handling disputes in the best ways that assure effective administration of justice, before such degenerate into conflict or chaos. Not a few relationships and communities have suffered the devastating effects of bad crisis management, and these unfortunate instances could have been well avoided by careful use of relevant means of dispute resolution.

Before now, litigation through the adversarial court system was the commonest mode of administrating justice. Aggrieved parties had to go through the machinery of the courts to vent their grievances and seek relief, however long it took and at whatever cost to their pockets. The people had little or no choice. Those who could neither afford the resources demanded by the use of litigation nor go through the stretching process had to stomach their grievances in

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resignation, or use unlawful means to seek relief. In some climes, other means of dispute resolution asides litigation were used, but not in sophisticated arrangements or terms.

In Nigeria, several communities like the Yorubas, the Igbos, etc., had available communal machinery that saw to the resolution of disputes between members of the community and/or community versus community. A lot of these communal dispute managers were well respected and feared, and as such, resolutions made by them were complied with as much as possible. In the case of *Okpuruwu vs. Okpokam*[1] the Honourable Justice Oguntade JCA (as he then was) observed thus;

> *In the pre-colonial times and before the advent of the regular courts, our people (Nigerians) certainly had a simple and inexpensive way of adjudicating over disputes between them. They referred them to elders or a body set up for that purpose. The practice has over the years become strongly embedded in the system that they survive today as custom.*

However, this situation was mostly utilised before the coming of the Englishmen and their laws. With English laws in place, more reliance was placed on the courts as against the other means of dispute resolution that were earlier in place.

However, in recent times, there is a progressive shift back to the earliest trends, and the transition is a global one. In Nigeria, as much as the courts are still in full use, several other dispute resolution mechanisms are being deployed to make justice more accessible and handle the everyday complexities of man. One of such mechanisms is the Citizens Mediation Centre and same is the focus of this work.

1.2 The Concept of Mediation as an Alternative to Litigation

Litigation is a tedious process which several people seek to avoid in Nigeria. It is expensive, time-consuming, emotionally draining and unpredictable. Until a judge decides the case, you can never be certain of the outcome. As a result of the general inefficiency of litigation, alternative dispute resolution[2] such as mediation and conciliation, have become increasingly popular. Not only this,

[1] (1998) 4 NWLR Pt 90, 554 at 586
[2] Subsequently referred to as "ADR"

the government has shown more interest and commitment to promoting the use of ADR by the creation of enabling facilities for same.

1.2.1 Definition of Mediation

One of the ADR mechanisms is Mediation. Mediation involves the use of an independent third party in the resolution of a dispute between two or more parties. Several definitions and explanations of the concept have been proffered by scholars and experts, and some are duplicated hereafter.

Mediation consists of negotiation between disputing parties, assisted by a neutral third party and it is defined as the intervention into a dispute or negotiation by an acceptable, impartial and neutral third party (with no decision making power) to assist disputing parties in voluntarily reaching their own mutually acceptable settlement of issues in dispute.[3] Put another way, mediation is a process in which a mutually selected third party neutral assists disputing parties to define the issues in a dispute, eliminate obstacles to communication, moderate the process to avoid confrontation and ill will, and seek concessions from both sides.[4]

According to the Black's Law Dictionary, mediation is an intervention, an interposition, the act of a third person who interferes between two contending parties with a view to reconcile them or persuade them to adjust or settle their dispute. Also, as defined by the same dictionary, a mediator is one who interposes between parties at variance for the purpose of reconciling them.[5]

In addition, mediation can be explained as the act of interaction by a third party to attempt resolution of a dispute or difference between disputing parties through persuasion and compromise. Mediation also involves that the third party who seeks to bring peace actively proposes terms of compromise and even means by which a solution is arrived at.[6] Likewise, mediation is a method

[3] Public Services and Procurement Canada. Definition and Characteristics of Mediation "https://www.tpsgc-pwgsc.gc.ca/biens-property/sngp-npms/bi-rp/conn-know/reclam-claims/definition-eng.html accessed on 4/3/2022 at 11:10am
[4] "Mediation Defined: What is Mediation? https://www.jamsadr.com/mediation-defined/ accessed on 4/3/2022 at 11:20am
[5] Black's Law Dictionary, 8th Edition
[6] S O Oyegbile, (2000) "An Introduction to Arbitration and Conciliation" (Jameson Graphic Publishers,) p 5, 6

of dispute resolution involving a neutral third party who tries to help disputing parties reach a mutually agreeable solution.[7]

At this point, it is important to note that the Lagos State Citizens Mediation Centre Law, 2007 (which is the case study law for the purpose of this work) failed to give any definition of the concept of mediation whatsoever, notwithstanding the fact that the law was enacted for the sole purpose of attending to mediation-related issues in the State.

However, in summary, mediation is simply about disputing parties talking and listening to each other on matters relating to their dispute with the help of a neutral third party, and resolving such dispute on the whole.

1.2.2 The Advantages of Mediation[8]

a) The process of mediation is speedy in the resolution of disputes
b) It is flexible and less formal
c) It is cost efficient particularly when conducted by the Citizens Mediation Centre
d) It is confidential
e) Parties have an opportunity to control the mediation and suit it to their peculiar needs
f) Solutions are usually creative and relevant
g) It usually ends in a win-win outcome as much as possible

1.2.3 The Establishment of Citizen Mediation Centres in Nigeria

According to Section 36 of the Constitution of the Federal Republic of Nigeria[9], it is the right of citizens to have their disputes determined within a reasonable time. There is therefore a constitutional basis in creating a forum where matters affecting the rights of the citizens are expeditiously resolved.[10] Also, the concept of ADR has been incorporated into the existing Lagos State High Court Civil

[7] O Odusanya, *Alternative Dispute Resolution - Citizens' Mediation Centre Experence*http://rccgthehouseofhisglory.org/2012-12-28-13-25-34/business-service-presentations?download=50:alternative-dispute-resolution-citizens-mediation-centre-s-experence-mrs-oluwatoyin-odusanya-april-12-2015 accessed on 18/01/2017 at 1:10pm

[8] Vinayan Singh, *Benefits and Advantages of Mediation*https://viamediationcentre.org/readnews/MjUx/BENEFITS-AND-ADVANTAGES-OF-MEDIATION accessed on 3/3/2022 at 10:35pm

[9] Section 36, Constitution of the Federal Republic of Nigeria 1999 (as Amended)

[10] O Odusanya, *Alternative Dispute Resolution- Citizens' Mediation Centre Experence*http://rccgthehouseofhisglory.org/2012-12-28-13-25-34/business-service-presentations?download=50:alternative-dispute-resolution-citizens-mediation-centre-s-experence-mrs-oluwatoyin-odusanya-april-12-2015 accessed on 18/01/2017 at 1:10pm

Procedure Rules, 2012in the form of pre-trial proceedings, and so, there are several legal basis for the establishment of a legal facility that solely takes care of ADR[11]. Citizens mediation is the comprehensive process of resolving differences, grievances and disputes between citizens and citizens (individual or corporation), and between citizens and government agencies using alternative mechanisms (particularly mediation) outside the formal court system.

In Lagos State, the Citizens' Mediation Centre (forthwith referred to as CMC) was established in 1999 as an administrative unit of the newly formed Directorate of Citizens' Rights (DCR) of the Lagos State Ministry of Justice[12], being the first of its nature in the entire country. In 2003, the institutional existence of the CMC was fortified by the Lagos State Citizens' Mediation Centre Law, 2003 making Lagos State the first State to give the Alternative Dispute Resolution Mechanism the force of the law. On the assumption of office, the Babatunde Raji Fashola's administration re-enacted the law in 2007 and re-positioned the Centre for greater responsibilities.[13] The Centre was opened in the Ministry of Justice Building at the State Government Secretariat, Alausa, Ikeja, Lagos State. According to Section 2 of the Law, the purpose of the CMC is adequately captured in the following words: "the Centre shall serve as an Alternative Dispute Resolution Centre providing a non-adversarial forum for the mediation and settlement of disputes between parties who voluntarily agree to the mediation of the disputes by mediators."

Also, the CMC shall be governed by a Governing Council properly provided for under Section 4 of the Law. This Governing Council for all intent and purpose shall consist of:

a) A chairman who shall be a qualified legal practitioner of not less than fifteen (15) years standing at the Bar and a seasoned administrator with considerable knowledge of Alternative Dispute Resolution
b) The Director of the Directorate for Citizens Rights
c) The Director of the Centre

[11] Rule 15 of the Rules of Professional Conduct (RPC) For Legal Practitioners, 2007 also mandates a lawyer to inform his client of the options of ADR mechanisms before resorting to or continuing litigation on behalf of his client

[12] K T Onyeanoru, "Archival Review of the Role of the Citizens' Mediation Centre in Landlord-Tenant Dispute Resolutions in Lagos State Nigeria" (Covenant University Press, 2016)

[13] A F Oluyemi, *Workshop on Awareness on Alternative Dispute Resolution*the UNDP Assisted Programmes held on 14th August, 2008 at the NERPD House Ikeja Lagos.

d) Two representatives of Non-Governmental organisations whose membership shall in the opinion of the Council assist with the promotion of ADR as a concept, and
e) Two persons who are qualified legal practitioners of not less than ten (10) years post qualification.

Section 6of the law sets out the functions of the Governing Council:

a) Monitor the performance of the Centre
b) Assess user satisfaction of mediation services and to review and formulate new policy guidelines for the Centre
c) Develop for implementation by the management a capacity building policy for mediators
d) Foster relationship between the Centre and other private or Government establishments both local and international
e) Hold Council meetings at east quarterly in each calendar year and to visit any of the mediation Centre at its location necessary
f) Assess publicity activities of the CMC and to formulate and develop guidelines for necessary reform, and
g) Do such other things as the Council may consider appropriate for the overall development and growth of the Centre.

However, according to Section 8(1) of the Law, the day to day running of the CMC shall be the responsibility of a Director appointed by the Attorney General as the Chief Executive Officer. As such, the functions of the Governing Council can best be described as supervisory not executive in nature.

By virtue of Section 15 of the Law, the services of the Centre are as outlined below:

1. The service of the Centre shall be for the indigent residents of the State especially women, children and those with physical disability resident in the State irrespective of tribe, race and religion.
2. The cause of an action in which representation is to be made by the Centre on behalf of anyone must have occurred within the State.

3. The Centre shall receive complaints directly from affected persons or through other referrals.

4. The Centre may refer matters brought before it to other appropriate agencies or Non-Governmental Organisations, the Courts or other Organisations.

From the foregoing provisions, it can be deciphered that the coinage "Citizens" was founded on this Section and same is explained as requiring residency and not State indigeneship. As such, the moment a person is a resident of the State, he/she can bring matters to the Centre for mediation, whereas, if a person is an indigene of the State but resident elsewhere, by virtue of this provision, the Centre cannot attend to matters brought forward by such a person.

In addition, it should also be emphasised that, from the provisions set out above, the cause of action of any matter to be incidented at the Centre must have accrued within the State and not outside. This brings some form of jurisdictional flavour to the powers of the Centre, and a prospective Complainant must bear this in mind before furnishing the Centre with his complaint so that his cause will not be frustrated *ab initio*.

By virtue of Section 16 of the Law, the CMC is mandated to establish Centres in all the Local Government Areas of the State. However, these Centres shall remain under the Ministry of Justice with the mother Centre acting as the headquarters of the CMC throughout the State.

Section 8 of the Law sets out provisions relating to the funding of the Centre. The law provides thus:

1. The Centre shall establish and maintain a Fund which shall be applied toward the realisation of its objectives and functions.

2. There shall be paid and credited to the Fund the following;
   a. Grants as may be provided by the State
   b. Sums accruing to the Centre by way of grants in aid, gifts, donations from Non-Governmental Agencies and international communities and testamentary dispositions or otherwise, and other assets that may accrue to the Centre.

3. The fund of the Centre shall be managed in accordance with the rules made by the Council which shall contain provisions;
   a. Specifying the manner in which the Fund or assets of the Centre are to be held
   b. Regulating payments into and out of the fund, and

c. Requiring the keeping of proper accounts and records for the purpose of the Fund or the Centre in such form as may be specified in the rules.

According to Section 19 of the Law, the Centre may also accept gifts of land money or other property as long as the conditions attached to such gifts are not inconsistent with the functions and objectives of the Centre.

The Centre is empowered by virtue of Section 20 of the Law to periodically organise symposia, conferences, educational activities, workshops and exchange programmes. Also, the accounts of the Centre shall be audited as soon as possible after the end of each financial year by auditors appointed by the Governing Council whose fees shall be paid from the Centre's fund. In addition, the Centre shall in each year make a report of its activities in the preceding year to the Attorney General through the Council. The report shall contain an account of its operation and transactions for the preceding year and a statement of the Centre's audited account. Moreover, the Attorney General of the State may on the recommendations of the Council make regulations regarding the Centre.

It is important to point out here again that the Lagos State Citizens' Mediation Centre Law, 2007 is the model legal framework for the purpose of this work. This is because the provisions in the laws of other States which have CMCs are in tandem with the Lagos State Law on the subject. However, for practical purpose, the Kwara State Citizens' Mediation Centre would also be an archetype.

1.4 The Development of Citizens' Mediation Centre Over the Years

Poor and vulnerable Nigerians have enjoyed improved access to justice within the formal legal system through the availability of more acceptable alternative dispute resolution mechanisms provided through the mediation centres. In most of the States in Nigeria, there has been rapid expansion of service points of these mediation centres since their establishment. The development of these centres would be considered per State.

a. Lagos State

The Citizens Mediation Centre established and opened in Alausa, Ikeja, Lagos State in 1999 proved very successful as demand for its services grew rapidly. This

led to the opening of additional offices in other locations in the State.[14] At present, Lagos State has nineteen (19) centres.[15]

b. Kwara State

The Centre was established by the Kwara State Citizens' Mediation Centre Law, 2008 to promote the use of mediation as against litigation in conflict resolution in Kwara State. The Centre has been able to set a record of settlement of disputes within the shortest possible time. The Citizens' Mediation Centre is located in Tanke GRA, Opposite The Doctors' House, Ilorin, Kwara State. The Centre also has other branches in some of the local governments in the State.

c. Enugu state

In 2004, the Enugu State House of Assembly enacted a legislation establishing the Citizens' Right and Mediation Centre as a forum for Alternative Dispute Resolution. It created the Centre as a government agency, staffed exclusively by government employees and effectively placed its management in the hands of the State government through an eight-person Governing Council headed by the Attorney General as Chairman while the Director of the Centre who is a Director of the Ministry of Justice is the Secretary.[16]

The Centre took off effectively in August 2005. In 2006, it introduced a registration fee of N250.00 (Two hundred and fifty naira) only as a means of demonstrating commitment by clients. In this State, there are yet to be other branches of the Centre in the Local Governments.[17]

d. Other States

Ondo State, Rivers State, Delta State, and some others also have Dispute Resolution Centres.[18]

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[14] Citizens Mediation Centre (CMC),*Citizens' Mediation Centre Opens New Units in Ojo, Alimosho and Badagry Local Government Areas*http://cmc.com.ng/Press%20releases.html accessed on 18/01/2017 at 9:40pm

[15] https://familysupportng.com/?page_id=14635 accessed on 3/3/2022 at 11:35pm

[16] *Legal Assistance and Advice Provided Through Law and Mediation Centres*, A Paper by the Department for International Development (DFID), British Council http://www.britishcouncil.org.ngfiles> accessed on 18/01/2017 at 10:45pm

[17] Ibid

[18] Ibid

1.4.1 The Roles, Powers and Statutory Limitations of the Citizens' Mediation Centre in Nigeria

According to Section 3 of the Lagos State Citizens' Mediation Centre Law, 2007 the functions and powers of the Centre are as follows:

1. To mediate on disputes reported to the Centre in respect of;
   a. Landlord and tenant matters
   b. Employer and employee matters
   c. Family matters
   d. Debt related matters
   e. Other matters which the Governing Council of the Centre may deem appropriate[19]
2. To assist disputing parties to appear before the Centre for the resolution of their disputes
3. Publicise its services and facilities
4. Provide free dispute resolution options
5. Resolve disputes within the shortest time possible.

From the above stated provisions, it is deducible that the matters into which the CMC can interfere are restricted to the ones specifically set out in the law following the principle of *"Expressio uniusest exclusion alterius"*[20]. One can easily assert that the CMC is limited to only civil matters and even the provision granting powers to the Governing Council to expand the scope of the subject-matter jurisdiction of the CMC cannot extend beyond civil matters and can never be interpreted to extend into the purview of criminal matters.

This is because, for all intent and purpose, all crimes are against the State and as such, it is unthinkable to attempt to mediate criminal matters between the offenders and the victims. As a result of this, the CMC is limited in its subject-matter jurisdiction to civil matters alone.

In addition, another limitation that can be gleaned from the provisions above is the fact that services offered by the CMC are statutorily expected to be free of charge. In practice, this is the case to a very large extent, as complainants are not made to pay any fees to lay their complaints or have mediation sessions

[19] It is important to note here that other matters which have been deemed appropriate by the Governing Council for the intervention of the Centre now include; workmen compensation matters, juvenile cases, property/inheritance matters, land matters, and monetary claims

[20] The express mention of one thing excludes all others

conducted on their matters, except for Enugu State which charges a paltry registration fee payable by complainants. However, it is not strange to find in some cases that complainants may be made to pay for certain services incidental to the resolution of their dispute such as service of invitation letters on the respondent(s) or a visit to the *locus in quo*[21] during mediation. This is especially true where there is shortage of funds yet a commitment to serve and deliver to the people. The fees charged in these cases are usually paltry, and are solely used for the purposes for which they are charged.

1.4.2 Stakeholders and Parties in the Operation of the Citizens' Mediation Centre

The CMC is not a parastatal that operates in vacuum all by itself. It is a creation of law established for the purpose of ensuring the resolution of conflicts and better access to justice. This presupposes that several parties must be involved one way or the other before the purpose of the Centre can be achieved. These persons, regarded as stakeholders are highlighted as follows:

a. The Complainant

This is the person who sets the mediation process in motion. He is that person who has been aggrieved by another and who seeks an outlet for his grievances with possible resolution of same. His duty is to approach the Centre and speak with one of the officers of the Centre about his problems. The attending officer then records his complaint (where the complainant is illiterate), or requests the Complainant to record same (where the Complainant is literate). In furnishing the Centre with his complaint, the Complainant must ensure that he has all the necessary facts and details at his disposal. This includes the names of the parties, their addresses, their phone numbers and other contact details, the facts of the complaint, etc. As provided by the law in Section 15, a Complainant must be a resident of the State.

b. The Respondent

This is the person against whom a complaint has been lodged. Although the Law does not expressly stipulate that he must be a resident of the State, it has been discovered that for practical purposes, the Respondent is expected to also be resident within the state or in the worst circumstance have a known address within the State where he/she can be easily served or reached. Once the Complainant lodges his complaint at the Centre, a Letter of Summons is issued by the Centre and served on the Respondent to inform him about the

[21] Meaning scene of the event

matter at the Centre and also request his presence at the Centre at a specified date.

c. The Neutral(s)/Mediator(s)

This is the third party who sits in on the disputing parties to guide and help the parties resolve their dispute. Section 10 of the Law establishes the position of the mediator and his role in the mediation process. Same is hereby set out seriatim:

1. There shall be mediators who shall provide alternative dispute resolution services.
2. A mediator shall
   a. Be an impartial facilitator who is acceptable to all parties
   b. Assist the parties to resolve their disputes
   c. Ensure that parties enter into mediation voluntarily
   d. Be a good facilitator and give direction to the mediation process
   e. Elicit good faith from the participants
   f. Protect the integrity of the proceedings
   g. Empower the parties to make their own decisions
   h. Remain neutral and impartial at all times
3. A mediator shall be a person who is trained by a local or international mediation Institution or Body.

Section 11 of the same Law goes ahead to provide for the functions of the mediator

1. A mediator shall find an expedient way of resolving dispute between parties provided that the method shall be cost effective and less time consuming than a formal process of adjudication
2. A mediator shall resolve the dispute through collaboration to the benefit of the parties.

From the foregoing provisions, it can be seen that a mediator is not just a person with no formal training. The law provides that such a person must be trained in the fine art of mediation, not only that, he must be an acceptable person to the parties. This acceptability clause has some bearing on the mediator's character and relationship to the parties. He must be impartial, incorrupt, and diligent. His aim must be to resolve the dispute brought before him within the shortest time possible, and he must do this without imposing on the parties.

d. The Court

The role of the Court in the operations of the CMC is not in the mediation process itself but the end result of the mediation. The Court only becomes useful where the parties have come to terms and entered into a written agreement based on the said terms. When this has been done, the said agreement, properly referred to as the Memorandum of Understanding (MoU) is then taken to court to be registered as a judgment of court which for all intent and purpose becomes enforceable in the event that one of the parties develop cold feet or attempts to renege later on.

It is important to note that, aside from the function of the Court as explained above, the Court does not have any other function when it comes to the operation of the CMC. Unlike in arbitration where the court can direct litigants before it to take their matter for arbitration, the court cannot direct litigants to resort to the CMC. This is because resort to the CMC must be voluntary and not imposed or directed. At best, the Court may only intimate litigants before it of the existence of the CMC and merely advise litigants to explore the Centre.[22]

e. The State

The State is responsible for the establishment of the CMC in the first place, and its sponsorship in the second place. Without the State, the Centre itself has no basis for existence. The Centre is a creation of the State designed to deliver one of the responsibilities of the State to the people, which is the responsibility of access to justice. The State provides the office structures of the Centre, staffs the Centre and provides appropriate remuneration, funds the Centre for proper discharge of its duties (especially since services are rendered free of charge), and enacts relevant legislation to formally back up the activities of the Centre.

f. Law Enforcement Agencies

These are also stakeholders to the proper running of the CMC and they include the Nigerian Police Force, the Nigerian Civil Defence Corps, etc. These law enforcement agents help in duties such as following process servers to deliver processes where there is likelihood of violent reaction from the respondent(s), escorting parties and mediators to the *locus incuo* in the course of mediation, ensuring the enforcement of the Memorandum of Understanding when the

[22] It is however doubtful that courts in Nigeria have such luxury of time to intimate every litigant of the availability of the CMC considering how extremely busy most of the courts are. This does not exclusively rule out the possibility of persons learning about the CMC from the court, but such cases are rare.

need arises and other relevant security-related duties. Their importance cannot be overemphasised as parties have been proven to fear and respect the entire mediation process more by the mere presence, availability or interference of these agents where necessary.

All these parties/stakeholders are necessary to the effective operation of the CMC and none can be sidestepped if efficiency and effectiveness of the Centre is to be achieved.

1.5 The Modus Operandi of the Citizens' Mediation Centre

Using the Kwara State Citizens' Mediation Centre as a case study in this respect[23], the CMC operates in a highly organised and diligent manner. At every point in time, the principles that guide the operation of the Centre and the methods adopted in discharging its duties are 'efficiency' and 'speed'.

To start with, the mediation process is propelled when a complaint is laid by a person (to be regarded as the Complainant). When such Complainant walks in, he/she is attended to by the receptionist who in turn leads the Complainant to an officer of the Centre for the purpose of recording the complaint.[24] After this is done, a file is then opened in respect of the case, the file contains the written Complaint, the Complainant Form (which includes every necessary detail about the Complainant, the Respondent and their contact details), and necessary documents or exhibits brought by the Complainant (where this is applicable such as in land matters).

After a file has been opened in respect of the matter, the file is channelled to the Director of the Centre who goes through and minutes the case file to one of the mediators to handle. The mediator in charge then goes through the case file, and takes necessary steps to begin the mediation process, steps such as initiating the invitation of both parties to the Centre by invitation letters and choosing a date for the mediation session to be held.[25] The file is then forwarded to the Centre's Secretariat where the necessary letters are typed by the secretary and despatched to the parties by the Centre's Bailiff.

Once the parties receive the invitation letters, they are expected to attend the scheduled mediation session to air their differences. On the said mediation day, the parties are directed by the Centre's Secretariat to meet with the mediator in charge, either in the mediator's office or in a larger conference room (depending on the number of parties in attendance). Upon this, the mediation session commences.

1.5.1 Features of a mediation Session

During a mediation session, greetings are exchanged between the mediator and parties, and prayers are made. The Mediator then gives an opening statement and states ground rules. There is an introduction of all parties and the mediator. The issues or problems are identified and clarifications are made. Possible solutions to the problems are explored and parties reach an agreement where mediation is successful.

Subsequently, after the mediation session or sessions as the case may be, where the parties have been able to come to an agreement on their dispute, the mediator helps the parties to record their terms of agreement into a document known as the Memorandum of Understanding (MoU). The parties then go ahead to attest their signatures on the MoU to signify their approval and consent. Thereafter, any of the parties can proceed to the Court to register the MoU for a token fee.[26] The registered MoU, which is then kept in the case file, is thereafter regarded as a judgment of court and can be fully executed as such.

1.5.2 What Happens When a Party Decides Not to Comply with The MoU?

After the MoU has been executed by parties and registered in the Court, it is thenceforth regarded as a judgment of court. In view of this, the aggrieved party can make an application to the CMC for the enforcement of the MoU and attach a copy of the registered MoU.[27] Practically, the CMC has the powers to utilise the legal means of enforcement such as garnishee order, seizing the properties of the defaulting party and auctioning same to set off his debt (*fierifacias*), forceful eviction, etc.

[23] The reports of this particular case study are based on first-hand experiences of the co-author as a mediator in the Centre.

[24] It must be noted that this is the case only where the process is initiated by the physical presence of a complainant properly called a 'walk-in'. Sometimes this is not the case as the process can be commenced by other ways.

[25] O Odusanya, *Alternative Dispute Resolution- Citizens' Mediation Centre Experience*http://rccathehouseofhisglory.org/2012-12-28-13-25-34/business-service-presentations?download=50:alternative-dispute-resolution-citizens-mediation-centre-s-experience-mrs-oluwatoyin-odusanya-apnl-12-2015 accessed on 18/01/2017 at 1:10pm

[26] Ibid

[27] Ibid

It should be noted that the process of mediation does not necessarily have to be kick-started by the physical presence of the Complainant at the Centre to lodge his complaint. There are several ways by which mediation can be commenced in the CMC. They are;

1. By Petition
2. By Walk in (physically laying a complaint)
3. By referral
4. By Court referrals based on consent of parties[28]

1.6 A Cursory Look at Some Cases Handled by the Citizens Mediation Centre

1.6.1 The Case of *Abdulmani and 8 Others V. Sule*

The Complainants are heirs to their father's estate, and the Respondent, Sule, was their father's business partner. The Respondent owed their father the sum of N80,000 (Eighty thousand naira) only before his death. For eight years, all efforts to recover the money proved abortive. Early in 2008, the Complainants lodged a complaint at the Centre in Lagos, and the money was recovered by the Centre through mediation within one week.[29]

1.6..2 The Case of *XYZ Engineering Ltd V. Alisson & Co*[30]

The Complainant had entered a contract with the Respondent to complete a roofing project for the Respondent Company. The Respondent however failed to furnish full consideration after the Complainant had completed the said roofing project. The Complainant had attempted to recover the money by several means but to no avail. In the year 2013, over a year down the lane of the said contract, the Complainant lodged a complaint at the CMC in Ilorin where three mediation sessions were held before a Memorandum of Understanding was eventually agreed upon by the parties. The Respondent paid to the Complainant the sum of N4,000,000 (Four million naira) only on an instalment basis and eventually perfected the payment within six months. It

[28] A F Oluyemi, *Workshop on Awareness on Alternative Dispute Resolution*, The UNDP Assisted Programmes held on 14th August, 2008 at the NERPD House Ikeja Lagos

[29] *Legal Assistance and Advice Provided Through Law and Mediation Centres*, A Paper by the Department for International Development (DFID), British Council http://www.britishcouncil.org.ng/files> accessed on 18/01.2017 at 10:45pm

[30] Culled from the co-author's first-hand experience as mediator in the Centre

should be noted that the payment was made by the Respondent through the Centre to the Complainant.[31]

1.6.3 The Case of Chief Olanihun V. Mr Rabiu[32]

This was a tenancy matter. The Complainant was the Landlord and he came to lodge a Complaint at the Centre, Ilorin about the Respondent who was his tenant and who had failed to pay his rent as and when due. As a matter of fact, the Respondent owed a year's rent and the Complainant was already fed up by the time he approached the Centre, desiring that the Centre would facilitate the ejection of the Respondent from the premises. During mediation sessions, it was discovered that the tenant had erstwhile been a faithful tenant but recently lost his job, thus his inability to pay. Through mediation, the parties reached an understanding to the end that, the Respondent would endeavour to pay his rent arrears within 3 (three months) having just secured another job, and would be given an opportunity to renew his rent.

1.7 An Evaluation of the Successo f the Citizens' Mediation Centre in Affording Better Access to Justice in Nigeria over the Years

There is no gainsaying the fact that in the course of the years, poor and vulnerable people now enjoy better access to justice through the option of a less acrimonious, cheaper and faster means of dispute resolution that is connected to the formal justice system as provided by the CMCs across the country.[33]

Within a period of 8 (eight) years of its operation i.e. 2000- 2008, the CMC Lagos State received over 90,000 (ninety thousand) complaints from residents of Lagos State and successfully resolved about 63,327 (sixty three thousand, three hundred and twenty seven) of them[34]. Also, according to Mrs Oluwatoyin Odusanya, the Director, Citizens' Mediation Centre, Lagos State, the CMC in Lagos in the year 2015 received a total of 37,275 (thirty seven thousand, two hundred and seventy five) petitions/complaints. About 22,952 (twenty two thousand, nine hundred and fifty two) matters reached mediation and 21,534

[31] This is usually the case where the subject matter of the mediation involves the payment of money by one party. The Centre collects on behalf of the receiving party and subsequently transfers the recovered sum to the receiving party.

[32] Culled from the co-author's first-hand experience as mediator in the Centre

[33] *Legal Assistance and Advice Provided Through Law and Mediation Centres*, A Paper by the Department for International Development (DFID), British Council http://www.britishcouncil.org.ng/files> accessed on 18/01.2017 at 10:45pm

[34] A F Oluyemi, *Workshop on Awareness on Alternative Dispute Resolution* the UNDP Assisted Programmes held on 14th August, 2008 at the NERPD House Ikeja Lagos

(twenty one thousand, five hundred and thirty four) of the cases were successfully resolved with monetary settlement made to the tune of N812,000,000 (Eight hundred and twelve million naira) only.[35]

In year 2014, 34,241 (Thirty four thousand, two hundred and forty one) complaints were received. A total of 21,283 (Twenty one thousand, two hundred and eighty three) of the matters reached mediation and 17,656 (Seventeen thousand, Six hundred and fifty six) of them were successfully resolved[36].

On the whole, the presence of the CMC in the States that have it, has drastically helped in decongesting court dockets as people now make recourse to the Centres. In addition, there is better access to justice especially for the poor and vulnerable people in the community. People who are fearful of the formal court system, wary of lawyers and the attendant financial implications, or who simply do not even have any clue on what to do about their matters, now have a way of getting justice since they can simply walk into the Centre and be attended to in whatever language they desire.

1.8 Challenges Faced by the Citizens' Mediation Centre in Nigeria

As laudable as the achievements of the CMC are, it is saddening that the Centre is yet to maximize its full potentials as a result of the several bottlenecks holding it back. In Lagos and in other States, these challenges are uniform in nature and as such the challenges would be generally discussed with p articular reference to States only when necessary.

First, there is low publicity of the presence of the CMC and its operations. Many people, particularly the indigent, do not know about the existence of the Centre or the services rendered by same.[37] As a result of this, many cases which could have been easily managed and resolved by the CMC are still channelled to the Court since litigants do not know about the CMC. In Ilorin for example, there were jingles and adverts placed in the media (broadcasting houses) intimating the public about the CMC and its services sometime between year

[35] O Odusanya.*The Overview of the Citizens' Mediation Centre's Activities, Prospects and Challenges.* A Paper delivered at the Standing Conference of Mediation Advocates (SCMA) http://t.guardian.ng/news/lagos-citizens-mediation-centre-intervened-in-22952-disputes-in-2015/ accessed on 18/01/2017 at 2:15pm

[36] O Odusanya. *Alternative Dispute Resolution- Citizens' Mediation Centre Experience*http://rccgthehouseofthisglory.org/2012-12-28-13-25-34/business-service-presentations?download=50:alternative-dispute-resolution-citizens-mediation-centre-s-experience-mrs-oluwatoyin-odusanya-april-12-2015 accessed on 18/01/2017 at 1:10pm

[37] K T Onyeonoru, (2016) "Archival Review of the Role of the Citizens' Mediation Centre in Landlord-Tenant Dispute Resolutions in Lagos State Nigeria" (Covenant University Press.)

2013 and 2014. However, in recent times, these means of publicity have stopped as a result of lack of funds.

Lack of adequate funding and financing is another huge challenge faced by the CMC. It is important to reiterate that the Centre operates and offers its services to the public free of charge. As such, the responsibility of financing the Centre falls on the government since the CMC is a creation of the State. Money is needed for stationaries, bailiff activities, visits to *locus in quo*, running the Centre's structural facilities (power, water, cleaning and maintenance), maintenance of the Centre's vehicles and keeping them in usable condition, effective publicity of the Centre's existence and activities, remuneration of the Centre's staff, particularly the administrative and casual staff, and lots of other needs. In recent times however, particularly in States like Kwara State, funding has not been forthcoming from the government. This greatly hampers the efficiency of the Centre.

Furthermore, there is inadequate coverage of the local government areas by the CMC. Even in Lagos State which is the State with the highest number of Centres, only 19 (nineteen) centres have been established to cater for the needs of 57 (fifty-seven) local governments. To this end, the services of the CMC have not reached a lot of people who need them.[38] Most of the indigent people cannot come from their far locations to the Centres in town and as such have no access to the Centre. Some States do not even have more than one Centre for the whole State. This is a challenge that limits the utility of the Centre.

In addition, the success stories of the CMC are not well communicated to the people. Most people do not know how well the Centre fares and how much impact the Centre makes in the facilitation of justice. As a result of this, most people whose trust and confidence in the Centre and its operations should have been stirred up and built are yet to make up their minds whether the Centre can cater to their needs or not.

To wrap it up, the Citizens' Mediation Centre Law that is available in most States does not adequately cater for the needs of the Centre when considered in line with present day realities and international best practices. As a matter of fact, some States do not even have a specialised Law for the Centre, the Centre is simply sub-zoomed under the Ministry of Justice in such States or established as

[38] Ibid

a collaboration between several law-related agencies, thus denying the Centre of its autonomy.

1.9 Conclusion

Mediation, as a tool for resolving disputes peacefully has been used in Nigeria from time immemorial. In ancient times, it was often an alternative to wars, battles and civil unrests. In modern times, mediation remains a useful mechanism in dispute resolution particularly in civil and commercial transactions. It is expeditious, cost effective, face saving, maintains relationships often destroyed in adversarial proceedings and focuses the parties on their real interests.

The Nigerian society has come to a realisation of the need for a departure from our over-reliance on litigation and the adversarial justice system as a whole. The Nigerian government has also tried to promote mediation with the establishment of the Citizens' Mediation Centre. Lawyers have in no small way contributed to the increase in the resort to mediation by the inclusion of contractual clauses making mediation as a prior step to arbitration or litigation. The Nigerian Legislature is also slowly waking up to its duties in ensuring that the system adequately responds to modern challenges in the field of mediation. In addition, there has been an appreciation of the need for training in mediation to meet modern challenges and ensure efficacy.

However, users and prospective users across the country are yet to fully embrace mediation as an alternative to litigation. There is still a wide scope for further enlightenment to ensure that a greater percentage of disputants are exposed to the benefits of mediation and ensuring that the goal of reducing the burden on the litigation system is achieved.

It is in this wise that several recommendations are herein made to ensure that the Citizens' Mediation Centre takes its rightful place and begins to fully maximise its potential in the resolution of disputes without recourse to litigation, and the provision of access to better justice delivery.

On the challenge of low publicity faced by the CMC, it is hereby recommended that full utilisation of social media must henceforth be made in enlightening the public on the existence and operations of the Centre. This does not exclude the use and importance of other forms of media such as Broadcasting Houses, but it is submitted, that due to the paucity of funds available to the CMCs across the nation, it would be more prudent to utilise social media in disseminating

information about the Centre. The Social media is a vigorously effective channel of publicity and it is cost effective. As a matter of fact, the Centre can put in place software products and packages such as e-jingles, e-posters, memes, short video clips, etc. that can be used on designated official accounts, and by all officers of the Centre on their private social media platforms to sensitisethe public at no exorbitant cost.

It may be argued that the use of social media publicity may not really reach the indigent and poor people that need the services of the Centre, but it is submitted that this approach can hardly create any harm but immense good as the enlightened people who receive information about the Centre on these platforms can inform their loved ones in the regions about where to go to for justice when the need arises. After all, most of these indigents have folks who are social media literate.

On the challenge of lack of funds available to the CMC, it is recommended that creative funding windows need to be created or explored by the State governments to enable the Centre ably discharge its duties. Part of these creative windows could be to allow the Centre charge a reasonable registration fee from Complainants. This is to elicit commitment from the Complainants and also bring in some money such as is done in Enugu State, since parties do not pay for the services of the mediators as is the case in litigation where clients pay their lawyers. It is submitted that where such fees are not on the high side (not over N500), some form of internally generated funds would be available to the Centre.

Still on the issue of funding, the government should also explore creative windows such as public-private partnership in financing the Centre. Private investors can be encouraged to invest in the Centre, not necessarily to earn their profit from the stakeholders of the Centre or the Centre itself, but with the creation of prospective clients for such investors. For example, a Printing Corporation or firm can be encouraged to produce the stationaries of the Centre and have a corner in such stationaries where the logo/emblem of such printing firm would be placed to give some form of advert. All the users of the Centre who come in contact with the stationaries would become aware of the sponsorship of the printing firm and be encouraged to patronise such firm. The gain of the Centre would be to have a reduction in the cost of stationaries.

On the issue of limited number of Centres in the States, it is recommended that the government makes it a priority in its agenda and policies to make mediation more accessible to people at the grassroot level the same way it prioritised the

presence of courts in most of the local governments. It is submitted that the government does not necessarily have to put up mighty and gigantic edifices in these local governments for the operation of the CMC. As modest as a three-roomed office, and a five-man staff, is enough to serve a local government until better provisions can be made. It is also suggested that Citizens' Mediation Centres across the country can further evolve to the point of mobile CMCs just as we have mobile courts nowadays.

On the Legal framework relating to the CMC, it is submitted that there is need for a revamping of the existing law. As progressive as Lagos State is when compared with other States of the Federation in this regard, there is still need for a modification of the Lagos State Citizens' Mediation Centre Law, 2007 to better provide for certain *lacuna* noticeable in the law.

For example, the parties to the mediation process are not stated in the law and this needs to be updated in the provisions of the law. The power of the Centre to enforce Memorandums of Understanding where need be, by means of enforcement such as the ones available to courts (e.g. garnishee order, auction, etc.) also needs to be provided for in the law, with provision for the creation of Enforcement Units under the office of the Attorney General of the State. In addition, the punishment for a breach of confidentiality also needs to be reviewed considering how meagre and "not deterring" the present fine of 15,000 (Fifteen thousand naira) only or six months imprisonment is[39] Furthermore, the scope of matters on which the Centre can mediate also needs to be expanded and codified in the law to meet up with present day realities and the process/procedure of the mediation needs to be provided in the law on a step by step detail. These and many more require the review of the existing law on the operations of the Citizens Mediation Centre.

It is believed that when all these are attended to, the Citizens' Mediation Centre in Nigeria would be better equipped to dispense its services to the people on a more efficient scale, and better access to justice would be guaranteed.

[39] Section 2(3) Lagos State Citizens' Mediation Centre Law, 2007