



**UNIVERSITY OF MAIDUGURI
JOURNAL OF ISLAMIC AND
COMPARATIVE LAWS**

Vol. 1, No. 1., 2016



UNIVERSITY OF MAIDUGURI JOURNAL OF ISLAMIC AND COMPARATIVE LAWS

**TO BE CITED AS: UNIMAIDJICOL VOL. 1, NO. 1, 2016
ISSN: 2536 - 6637**

**© Department of Sharia, Faculty of Law, University of
Maiduguri, 2016**

University of Maiduguri Journal of Islamic and Comparative Laws (UNIMAIDJICOL), is a journal of the Department of Sharia, Faculty of Law, University of Maiduguri. Its purpose is to meet the needs of scholars in the dissemination of research findings particularly in Islamic and comparative laws.

UNIMAIDJICOL aims at maintaining the highest international academic standards. It seeks to encourage the development of analysis and critique of various intellectual dimensions of issues raised. Members of the Editorial Board are seasoned academics in their respective fields of specialisation.

All correspondence to be address to the editor, University of Maiduguri Journal of Islamic and Comparative Laws, University of Maiduguri, P.M.B. 1069 Maiduguri, Nigeria.

Responsibility for opinion expressed and accuracy of facts presented in an article, rest with the contributor.

Dr Laminu Bukar
HOD Sharia Department
Editor in Chief

CONTENT

Articles

Page

An Appraisal of Authoritative Customs in Islamic Law and their Legal Applications, By: Dr. Laminu Bukar, Muh'd Shettima, Goni Al-Ansar	1
Islamic Law of Inheritance (<i>Mirath</i>) in Ilorin Emirate Prior to the Advent of Fulani Empires: Practice and Procedure, By: Ismael Saka Ismael, Rabi'u, Sulaiman Olayiwola	11
Contractual Relationship between Parties to Credit Card Transactions By: Binawa, Bukar Mustapha	25
War and its Topology under Islamic Humanitarian Law By: Dr Abdulrashid Lawan Haruna	40
Circumstantial Evidence and Its Ratiocination in Judicial Decision in Islamic Law, By: Dr. Muhammad Alhaji Abubakar, Muhammad Shettima	54
"I kill them, I die Martyr" Is Suicide Attack Martyrdom? Towards a Harmonization of Mufti's Dilemma in Islamic Jurisprudence By: Magaji Chiroma and Aishatu Kyari Sandabe	70
Child Adoption as a Tool for Child Trafficking in Nigeria: Examining the Position of the Law, By: Garba Umaru Kwagyang, Mu'azu Abdullahi Saulawa	82
Riba and its Devastating Effects on the Economy of a Nation, By: Aishatu Kyari Sandabe	93
An Analysis of the Admissibility of Circumstantial Evidence in <i>Zina</i> Cases in Islamic Law, By: Usman Abubakar Mustapha, Abubakar Garba, Bunu Mallam Abubakar	101
Partnership under Islamic Law: A Window for Economic Development By: Dr. A. Umar Alkali, Isa Sanda Benishiekh, Muhammad Bashir Alkali	113
An Analysis of Waqai'u Al-'Ayan's Principle and its Legal Effects on Jurists' Dissents, By: Isa Abdur-Razaq Sarumi, & Abdulraheem Taofeeq Abolaji	126
Takaful Window Operators in Nigeria: Challenges and the Way Forward By: Mohammed BabaKano Aliyu	138
Effect of the Maxim Hardship Begets Facility on Judicial Process During Conflicts, By: Dr. Laminu Bukar, Muhammad Shettima, Muhammad Jidda Muhammad	152

An Overview of Dispute Resolution Mechanisms under Islamic Law By: Ibrahim Barkindo	161
Examining the Effectiveness of Legal Framework for Construction Dispute Resolution in Nigeria, By: Barakat Raji, Ashgar Ali Ali Mohamed	176
An Analysis of the Concept of Prisoners of War under Islamic and International Humanitarian Laws, By: Abdullahi Datti, Salisu Baffa Abubakar, Fati Mohammed Nur, Muhammad Bashir Alkali	185
Marital Rape and the Legality of Marriage in Nigeria, By: Mohammed Amin Umar, Garba Umaru Kwagyang, Mu'azu Abdullahi Saulawa	192
An Overview of Some Provisions of the Child Rights Act 2003 and Islamic Position By: Abdullahi Abba Aji Esq.	205
Role of Information and Communication Technology (ICT) in the Legal Profession and Practice, By: Muhammad Alamin Deribe and Dr. Tijani Musa Buba	211
Islamic Law Maxims: Concept, Sources, Types and Roles By: Dr. Laminu Bukar, Muhammad Jidda Muhammad	227

EXAMINING THE EFFECTIVENESS OF LEGAL FRAMEWORK FOR CONSTRUCTION DISPUTE RESOLUTION IN NIGERIA

By

Barakat Raji¹, Ashgar Ali Ali Mohamed²

¹(Department of Civil Law, Ahmad Ibrahim Kulliyah of Laws/ International Islamic University Malaysia, Malaysia)

²(Department of Civil Law, Ahmad Ibrahim Kulliyah of Laws/ International Islamic University Malaysia, Malaysia)

Abstract - Construction industry in Nigeria has suffered poor performance. One of the reasons accounted for this is as a result of failed dispute resolution instrument put in place for reducing risks in the industry. Therefore, this study set out to review the legal framework for construction dispute in Nigeria. Also, this study examines the effectiveness of the legal framework used in Nigeria for the resolution of construction dispute. This study employs quantitative research approach by using a survey designed for data collection and descriptive statistics for data analysis. 500 stakeholders from the construction industry were surveyed. The review highlighted that, litigation and arbitration are the core dispute resolution mechanisms for construction disputes in Nigeria. However, the findings presented revealed that litigation and arbitration are not effective legal framework for dispute resolution in the Nigerian construction industry. As such, there is a need to propose alternative dispute resolution mechanisms for efficient and effective performance of the Nigerian construction industry.

Keywords – Litigation, Construction Dispute, Dispute Resolution, Construction Industry of Nigeria

1. Introduction

Dispute has become a social phenomenon in any human relationship but the ability to manage and resolve dispute amicably and efficiently under the law is one of the distinguishing factors between a civilized society and an uncivilized one.¹ It is common knowledge that construction industry is vulnerable to various technical, socio-political and business risks. The absence of an independent judiciary and a well-defined dispute resolution mechanism is a feature of a failed nation and a sign of under development. Construction industry in Nigeria has suffered poor performance. One of the reasons accounted for this is as a result of failed dispute resolution instrument put in place for reducing risks in the industry. The Nigerian construction sector is said to occupy an important position in the nation's economy. Unfortunately, the industry has not been given the right attention needed to live up to expectations. This is due to many reasons amongst which is inadequacy of the legal instruments

¹Oyesola and Animashaun, "Industrial conflict Resolution Using Court- Connected Alternative Dispute Resolution", Vol.5, No.16/2014, *Mediterranean Journal of Social Science*, 683-689. See also Katzenstein, Suzanne, "International adjudication and custom breaking by domestic courts", Vol.62, 2012, *Duke Law Journal*, 671. See also Stong, Elizabeth S, "Some Reflections from the Bench on Alternative Dispute Resolution in Business Bankruptcy Cases", *Am. Bankr. Inst. L. Review* 17, 2009, 387.

used for resolving its disputes which accounts for 1.4% as its GDP recorded.² This achievement is an indication that Nigerian construction industry need the more effective legal instruments to reform its legal framework for construction dispute resolution. The industry is supposed to be seen as the most important sector in the Nigerian economy.³ Therefore, reviews the legal framework used in the construction dispute in Nigeria. Also, this study aims at examining the effectiveness of the available resolution process for resolving construction dispute in Nigeria.

2. The Legal Frame Work Used for Construction Disputes in Nigeria

The most relevant among the legal instruments available in Nigeria for construction dispute resolution are litigation, arbitration and conciliation.⁴ However, only litigation and arbitration are frequently used while both mediation and conciliation are sparingly used only in few circumstances. At this juncture, it is pertinent to mention that construction disputes are handled just like other commercial disputes in Nigeria. This has been identified in this study as one of the shortcomings and problems facing the construction industry in Nigeria. Major commercial disputes including construction disputes are brought before the State High Courts, which have unlimited jurisdiction to hear all matters other than those that are within the exclusive jurisdiction of the Federal High Court. Matters in both courts are tried before a single judge, and can be appealed against in the Court of Appeal. Many of the State High Courts have created commercial divisions for the speedy resolution of commercial disputes, and particular judges may be assigned to hear specific types of commercial matters.

However, even though Construction disputes fall within the jurisdiction of both the federal High Court and State High Court, it depends on parties involved. Where the construction contractual agreement which has resulted into disputes involving the federal government of Nigeria and an individual (contractor), the case will be handled by the federal high court. Where the case involves individual private owner and an individual contractor, or individual and the state government as the case may be, it shall be heard and determined by the state high court according to the constitutional provisions earlier mentioned. The unfortunate thing is that any judge of that court can be assigned to such a matter as there is no specific division of either

²Ogbu C. P., "Risk Management Practices of Multinational and indigenous Construction Companies in Nigeria: A Comparative Analysis", Vol.9, No.2/2013, *Journal of Research in National Development*, 315-324. See also Ojo Stephen Okunlola, "The Effect of Contractor-Subcontractor Relationship on Construction Duration in Nigeria", Vol.2, No.3/2015, *Journal of Civil Engineering and Construction Science*, 16-23. See also Odediran, Sunday Julius, et al., "Business Structure of Indigenous Firm in the Nigerian Construction Industry" Vol.3, No.5/2012, *International Journal of Business Research and Management*, 255-264.

³Oladimeji and Ojo G. K., An Appraisal of Indigenous Limited Liability Construction Company in South-Western Nigeria, *Proc. of the 4th WABER Conference*, 24-26 July, 2012, 1095-1109, Abuja, Nigeria. See also Usman, N. D., P. K. Kamau, and C. Mireri, "Influence of Planning Phase Principles on Project Performance within the Building Industry in Abuja, Nigeria", Vol.2, No.1/2014, *International Journal of Finance and Management in Practice*, 29-39.

⁴Raji, Barakat, and Ashgar Ali Ali Mohamed, Reforming the Legal framework for Construction Dispute Resolution in Nigeria: A Preliminary Literature Survey, in *Proc. - Kuala Lumpur International Business, Economics and Law Conference proceeding*, April 18th - 19th, 2015 at Hotel Putra, Kuala Lumpur, Malaysia, 4, 2015, 139-152. See also Harris, E. C., *Global Construction Disputes: A Longer Resolution*, *Global Construction Report*, 1, 2013. See also Mohammed, et al., "Causes of Delay in Nigeria Construction Industry", Vol.4, No.2/2012, *Interdisciplinary Journal of Contemporary Research Business*, 785-794.

court created solely for particular types of disputes.⁵ There have been many occasions where judges have misapplied the laws in the process of making findings and delivering decisions even when the law is blurred on the crux of the nexus between the law and question for determination of facts before the court.⁶ This was further alluded in the saying of Abdul Karim thus: "After all, a court would not simply throw out a case simply because there is no law that directly regulates the subject for which the court is called upon to decide."⁷ The fact that majority of the judges do not have the technical skill with which to deal with construction issues before them create more problems, leading to appeal of cases after cases. This is one of the major problems occasioned when construction disputes are brought to court for determination.

3. THE USE OF LITIGATION FOR CONSTRUCTION DISPUTE-RESOLUTION IN NIGERIA

Construction industry is known for using Litigation as a traditional form of dispute resolution in Nigeria, based on instituting actions through the courts.⁸ Parties to construction contracts use litigation for resolving their disputes where the transaction between them fails. Delay occasioned through court process normally damage business relations of the contracting parties and the risk associated with the liability of the unsuccessful party to reimburse both his own legal costs in addition to what has been accrued to the successful party.⁹ Globally, this traditional method of dispute resolution is gradually paving way to alternative dispute resolution techniques such as, negotiation, arbitration, dispute resolution advisor, dispute adjudication board, disputes review board, expert determination to mention but a few in the construction industry.¹⁰

Undoubtedly, the administration of justice through regular courts is usually besieged with delays, technicalities, procedural and evidential rules and high cost of litigation.¹¹ An attempt to combat these delays and ensure speedy dispensation of justice led to the emergence of arbitration in its subsequent use in Nigeria.¹² Additionally, the complexity of court litigation tends often sometimes increase in

⁵Abdulkarim A. Kana, "Perspectives and Limits of Judicial Discretion in Nigerian Courts", Vol.29, 2014, *Journal of Law, Policy and Globalization*, 157-167. See also Sambo, Abdulfatai O., and Shammahayun A. Aziz, "The court; Insulating itself from politics through the doctrine of political questions: A critical exposition", Vol.4, 2012, *Journal of Law, Policy and Globalization*, 7-15.

⁶Abdulkarim, 159.

⁷Ibid. 157.

⁸Abimbola Akeredolu et al., *Nigeria - Litigation & Dispute Resolution 2014*, International Comparative Legal Guides, Lagos < <http://www.Scumeche@Banwo-Ighodalo.Com> > Viewed On 4th January, 2015. See Also R. Isa and Fidelis Emuze (doctoral diss., Central University of Technology, 2015), 12-20.

⁹Davidson Iriekpen, *Disputes: When ADR Becomes Succour*, This Day Live, Monday 29 December, 2014. See Also Brabec, Holloway, And P. C. Karet, *Contract Clauses Managing, Allocating, And Transferring Construction Project Risks*, 26-37.

¹⁰Lanre Adediji, *Dispute Resolution & the Practice of Arbitration*, The Magazine for the African Lawyers, Jos, Nigeria, <<http://www.ae@the-lawyer-schronicle.com>> Viewed on 4th January, 2015. See also Osi, Carlo, "Understanding Indigenous Dispute Resolution Processes and Western Alternative Dispute Resolution, Cultivating Culturally Appropriate Methods in Lieu of Litigation", Vol.10, 2008, *Cardozo Journal of Conflict Resol.*, 163.

¹¹Animashaun, Oyesola, and Kola O. Odeku, "Industrial Conflict Resolution using Court-connected Alternative Dispute Resolution", Vol.5, No.16/2014, *Mediterranean Journal of Social Sciences*, 683. See also Tarr, G. *Without Fear or Favour: Judicial Independence and Judicial Accountability in the States* (Stanford: University Press, 2012), 280.

¹²Oyeniyi O. Abe, *Critical Review of the Legal framework for the Institutionalisation of International Commercial Arbitration in Nigeria*, Afe Babalola University, Ado-Ekiti, Nigeria, 1-24.

costs which disputants are naturally anxious to reduce. Parties are compelled to pay additional fees which ordinarily would have been used to complete the said project. The cash flow of contractors are affected which in turn inevitably affected the progress of construction project itself.

Consequently, innocent third-parties, such as the purchasers and ultimate beneficiaries are often the victims of delayed or abandoned projects. Considering the series of activities going on simultaneously in the construction industry, it is costly to leave a dispute unattended to timeously. Delays are costly and often result in more disputes and claims. Moreover, delays affect the feasibility for project owner and retard the development in construction industry.¹³ The main goal of all parties involved in a construction project is for the project to be successful, with success being defined as project completed within the original time span and cost.

Apart from being time-consuming, litigation is more often than not expensive. It is very much anticipated that the delay of obtaining a court judgment may cause serious cash flow problems to the main contractor and further down its contractual chain, e.g., the suppliers and the sub-contractors. The often-quoted remark, "Justice delayed is justice denied" holds water because the final resolution of a law suit may be so delayed as not to offer any sufficient relief to the aggrieved party who has been compelled to bring his grievance to court for resolution. Since litigation has proved to be cumbersome, time-consuming (cases being protracted), cost associated with the filing fees and professional fees are too enormous to be borne by the parties. What is needed is an avenue where dispute resolution methods employed are effective and are affordable. This is the reason why many parties to construction disputes are referring their cases to a more time saving and cost effective centres such as dispute resolution centres to get their disputes resolved.

4. CONSTITUTIONAL PROVISION OF LITIGATION FOR CONSTRUCTION DISPUTE RESOLUTION IN NIGERIA

Litigation is the oldest mechanism amongst which has been provided for dispute resolution arising from all types of commercial transactions.¹⁴ This has been provided for in the Nigerian constitution (The Constitution of Federal Republic of Nigeria Republic of Nigeria, 1999, (As amended). This provision can be found in section 251 and 272 of the constitution.¹⁵ The power to hear and determine civil matters relating to commercial transactions have been vested with both the Federal court and states high courts under the two sections mentioned above respectively.

¹³Mohammad Abedi, *Effects of Construction Delays on Construction Project Objectives*, doctoral diss., Universiti Teknologi Malaysia (UTM), 2011. See also RAMLI, MAHYUDDIN, et al., "Delays Factors in Construction Projects Development: The Case of Klang Valley, Malaysia", Vol.2, 2010, *Journal of Academic Research in Economics (JARE)*, 135-158. See also Aibinu, Ajibade Ayodeji, and Henry Agboola Odeyinka, "Construction delays and their causative factors in Nigeria", *Journal of Construction Engineering and Management*, 2006. See also Odeh, Abdalla M., and Hussien T. Battaineh, "Causes of construction delay: traditional contracts", Vol.20, No.1/2002, *International journal of project management*, 67-73.

¹⁴Mobolawa O. Akinoye, *The Legal Framework for Dispute Resolution in International Business Transaction*, LL. B degree in Law, University of Lagos, Nigeria, 2002, 1-12. See also Nor 'Adha Binti Abdul Hamid, *The Alternative Dispute Resolution (ADR): Malaysian Development and its State-of-Innovative-Art*, Paper Presented at the Centre for Graduate Studies, Selangor International Islamic University College (SIUC), Bandar Seri Putra, 43000 Kajang, Selangor Malaysia, between 5th. - 7th. May 2010, Australia, 1-21.

¹⁵See Chapter VII of the Constitution of the Federal Republic of Nigeria, as amended. Section 251 vested power on the Federal High Court to hear all civil matters relating to the Federal government while Section 272 gives the State High Courts to hear and determine all civil matters regarding the states.

"It is the law that parties to an agreement retain the commercial freedom to determine their own terms. No person, not even the Court, can determine the terms of contract between parties thereto. The duty of the Court is to strictly interpret the terms of the agreement on its clear wordings."¹⁶

This was the decision in the case of *Ninanteks Associates V. Merce Construction Co. Ltd.*¹⁷. Finally, it is not the function of a Court of law either to draft agreements for the parties or to amend their agreements. The law allows parties to an agreement retain the commercial freedom to determine their own terms. No person, not even the Court, can determine the terms of contract between parties thereto. The duty of the Court is to strictly interpret the terms of the agreement on its clear wordings." This was the decision in the case of *Ninanteks Associates V. Merce Construction Co. Ltd.* Finally, it is not the function of a Court of law either to make agreements for the parties or to amend their agreements. Also this was seen in the cases of *Idoniboye Obu V. NNPC*¹⁸ and *F -G. and Odutola& Anor V. Paper Sack Nig. Ltd.*¹⁹

Construction transactions has been regarded as one of the commercial transactions in Nigeria, and any dispute arising therefrom is being treated like other disputes under these provisions.²⁰ Construction disputes arising from Federal Contract is determined at the Federal high court while disputes arising from construction contracts between individuals or an individual and the state government are determined by the state high courts respectively. The diffusion in the commercial transaction as well as their treatment when it comes to dispute resolution under these provision has created more problems to the construction dispute resolution in Nigeria. This is because the judges at these courts do not have the skills with which to deal with technicalities involve in construction disputes which is the major reason causing delays in the hearing of construction dispute cases in our courts generally.

5. METHOD

This study employs a quantitative research method by adopting a survey research approach. A survey questionnaire was distributed to 500 respondents. Respondents for this study were selected from commercial states across Nigeria, namely: Abuja, Ilorin, Lagos, Port-Harcourt, Kano and Kaduna. This study revolves around the legal framework for construction dispute resolution in Nigeria. Hence, stakeholders of the construction industry such as legal practitioners, architects, Engineers, Quantity Surveyors, Contractors, and Builders are the respondents to the questionnaire distributed. From the total number of 500 questionnaires administered, 307 usable questionnaires were analyzed. Descriptive statistics was used for analyzing the data collected. As such, the study employs the use of tables to present the findings.

6. FINDINGS

Having established that there is a legal framework for construction dispute resolution in Nigeria, this study finds it necessary and important to examine the effectiveness of the legal instruments in management of disputes in the construction industry of

¹⁶Schwartz, Andrew A. "Consumer Contract Exchanges and the Problem of Adhesion." Vol.28, 2011, *Yale Journal on Regulation*, 313. See also Miller, Meredith R. "Contract Law, Party Sophistication and the New Formalism." Vol.75, No.2/2010, *Missouri Law Review*, 493-536.

¹⁷*Ninanteks Associates v. Merce Construction Co. Ltd.* 1991, 2 NWLR, Pt.174, 411.

¹⁸*Idoniboye Obu v. NNPC* 2003, 4 MJSC 131 at 168 Paras.

¹⁹*F -G. and Odutola& Anor v. Paper Sack Nig. Ltd.*, 2006, ALL NLR, Pt.2, 248 at 262 - 263

²⁰Otuturu, Gogo George, "Some aspects of the law and practice of commercial arbitration in Nigeria." Vol.6, No.4/2014, *Journal of Law and Conflict Resolution*, 67-77.

Nigeria. The result presented in Table 1 below revealed that most of the respondents (54%) chose not effective when asked of their perception towards the available legal instruments in resolving construction dispute in Nigeria construction industry. 26% of the respondents perceived the effectiveness while 20% of the respondents were undecided.

Table 1: Perceived Effectiveness of Legal Framework for Dispute Resolution

Respondents	Frequency	Percentage %
Effective	80	26
Not Effective	167	54
Undecided	60	20
Total	307	100

Disputes are found to be inevitable in construction industry due to the number of people with different ideas and inputs each has to contribute in the execution of projects. However, people in the industry perceived litigation (court process) for construction dispute resolution as time and cost consuming and not too effective as a means for settlement of disputes arising from the industry. The following table and chart explains the perception of the stakeholders about the effect of court process in the construction industry in Nigeria. Respondents were asked based on their experience to classify the use of litigation techniques for resolution of construction disputes according to their level of satisfaction. Table 2 revealed that 40% (123) of the respondents are not satisfied with litigation as a means of construction dispute resolution. Meanwhile, on the other hand, 29% (90) of the respondents vehemently showed that they are highly dissatisfied with the use of litigation for construction dispute resolution. Impliedly, the rate of high dissatisfaction among respondents could be because of what the respondents have lost financially in the cause of employing litigation for resolving construction disputes.

Table 2: Litigation as a means of construction Disputes resolution

Response	Frequency	Percentage
Highly Satisfactory	30	10
Satisfactory	64	21
Dissatisfactory	123	40
Highly Dissatisfactory	90	29
Total	307	100

Table 3: Preferred Process for Dispute Resolution in Nigeria

Response	Frequency	Percentage
----------	-----------	------------

Through ADR process	255	81
Arbitration	32	12
Litigation	20	7
Undecided	Nil	Nil
Total	307	100

Table 3 above revealed that 20(7%) respondents preferred litigation as a resolution process for construction dispute. On the other hand, 32(12%) respondents preferred arbitration for dispute resolution in the construction industry in Nigeria. This finding indicated the quest of the stakeholders to resort to alternative dispute resolution mechanisms which can serve the industry effectively should any dispute occur despite the existing legal framework put in place to resolve their disputes. It has been found that alternative dispute resolution mechanisms are more cost-effective and will be more preferred because of the nature of the industry. When disputes are left unattended to, they later generate into having projects abandoned. This averment has been supported in the study work of Uketo.²¹ The use of alternative dispute resolution mechanisms which can impact effectively on projects by disposing off any kind of disputes are highly welcomed by the respondents.

Litigation process is said to have caused a lot of setback to the construction businesses in which large sums of money have been spent on filing and administrative charges before their cases are even slated for hearings and final determination. In most cases, money which ought to have been spent for the completion of projects go into litigation. A consistent view has been expressed in the work of Kishor and Ogunlana.²² This has rendered many of the participants bankrupt, and many have died too. Only those with strong financial backing are now left in the industry. The findings of this study on practitioners dissatisfaction of using litigation to resolve construction dispute is supported by Martin O. Dada in his paper thus: "In Nigeria, the direct financial losses due to litigation on construction projects is not measurable, yet what is known is that disputes occur on projects which sometimes degenerate into lawsuits, project abandonment and other manifestations of project failure. This has been proved to be costly features for a developing economy like Nigeria."²³ This study is in line with the work of Animashaun and Odeku.²⁴ In addition, this finding was supported in the study carried out by Kasimu and Abubakar.²⁵ Other avenues can be explored that are even more friendly and quicker in the administration of justice. The

²¹Ukets E.E., "Root Causes of Project Abandonment in Tertiary Institutions in Nigeria", Vol.6, No.11/2013, *International Business Research*, 149-159.

²²Kishor Mahato B., & Ogunlana S.O., "Conflict dynamics in a dam construction project: a case study", Vol.1, No.2/2011, *Built Environment Project and Asset Management*, 176-194.

²³ Martin O. Dada, "Conflicts in Construction Projects Procured under Traditional and Integrated Methods: A Correlation Analysis", Vol.3, No.1/2013 *International Journal of Construction Supply Chain Management*, 1-15.

²⁴Animashaun, O., & Odeku, K.O., "Industrial Conflict Resolution using Court-connected Alternative Dispute Resolution", No.16/2014, *Mediterranean Journal of Social Sciences*, 683.

²⁵Kasimu A.M. and Abubakar D.I., "Causes Of Delay in Nigeria Construction Industry", Vol.4, No.2/2012, *Interdisciplinary Journal of Contemporary Research in Business*, 787-795

stakeholders in the construction industry are facing a lot of challenges in the use of litigation to resolve their disputes and thus decay of the increase in the costs of litigation leading to abandonment of projects in the country. This point has been extensively discussed in the study of Femi Adeosun.²⁶ Most parties to construction dispute cases do not like taking their cases to court. This assertion confirms the studies of Mustapha Suleiman that: "The major means of resolving disputes is through litigation in which judges rule on the subject matter of the dispute after hearing from both parties but was quick to point out that litigation is not always the best option because it is expensive and a times drags on for years resulting in delayed contract completion or execution as the case may be."²⁷ Therefore, parties to construction disputes prefer amicable settlement to litigation. People in the industry prefer amicable settlement for resolving their disputes. This will encourage prompt delivery of projects.

7. Conclusion

The result obtained indicated that only litigation and arbitration are used for construction dispute resolution which has not brought the desired objective of correctional measures in the performance of the stakeholders thereby making the industry suffer a setback in the modern era of today. The findings established the inefficacy of the legal framework set down for construction dispute resolution. The difference between the efficacy and its inadequacy shows there is need to bridge the gap. There appear to be a problem of the inability of clients to attract fund and lack of good planning.²⁸ Unfortunately this problem has not been adequately redressed by the existing legal framework. This study found that only arbitration and litigation process are popular in spite all odds, are opened to construction industry for settlement of disputes, and this needs to be complemented with more ADR processes so that disputes are settled as soon as they occur. This finding has been supported in the work of Otuturu.²⁹ Furthermore, the result of this findings reflected that rating litigation and arbitration for construction dispute resolution is poor hence the need for overhauling of the existing legal framework for construction dispute resolution in Nigeria. Processes such as Statutory Adjudication, Dispute Review Board and Expert Determination need to be introduced to supplement the existing ones. Statutory Adjudication Act needs to be considered by the legislative arm of government to cater for prompt payment in the industry. Litigation and arbitration are the core dispute resolution mechanisms for construction disputes in Nigeria. However, research has revealed that litigation and arbitration need to be supported with other alternative dispute resolution mechanisms for efficient and effective performance of the Nigerian construction industry.³⁰ It has been argued that the long winding process of litigating and arbitrating are the limitations of the two mechanisms. Consequently, these limitations hamper business relations among contracting parties. More so, the risk

²⁶ Femi Adeosun, Litigation spurs abandoned projects trend, as experts lament syndrome, *NewsNG, Current Nigeria Newspapers*, June, 29, 2015.

²⁷ Husaini Dikko, Surveyors proffer solutions to construction disputes, *Media Trust Nigeria Ltd*, July, 2015.

²⁸ Ayodele E.A. and Alabi O.M., Abandonment of Construction Projects in Nigeria: Causes and Effects", Vol.2, No.2/ 2011, *Journal of Emerging Trends in Economics and Management Sciences (JETEMS)*, 142-145.

²⁹ Otuturu, George G., "Some aspects of the law and practice of commercial arbitration in Nigeria", Vol.6, No.4/2014, *Journal of Law and Conflict Resolution*, 67-77.

³⁰ Wong, Chen Hin, *Adjudication: Evolution of New Form of Dispute Resolution in Construction Industry*, doctoral diss., UTAR, 2011.

associated with the liability of the unsuccessful party to reimburse both his own legal costs in addition to what has been accrued to the successful party.³¹ Invariably, disputes relating to construction projects usually consume enormous amount of funds and time. However, the world today has shifted from adversarial to interest-based dispute resolution mechanisms with equitable functions in construction industry.³² This paradigm shift has given rise to demand in amicable mode of settlement in the construction industry.

³¹Davidson Irickpen, Disputes: When ADR Becomes Succour, This Day Live, Monday 29 December, 2014.

³²Famakin I. O et al., "Assessment of success factors for joint venture construction projects in Nigeria", Vol.17, No.2/2012, *Journal of Financial Management of Property and Construction*, 153-165. See also Mahamid, Ibrahim, and Nabil Dmaidi, "Risks Leading to Cost Overrun in Building Construction from Consultants' Perspective, Organization, Technology & Management in Construction," Vol.5, No.2/2013, *An International Journal* 860-873.