

THE IMPERATIVE OF AN ATTITUDINAL CHANGE ABOUT THE PRACTICE OF LAW IN NIGERIA: A CRITIQUE OF THE INTERDEPENDENCE OF ADR AND THE JUDICIARY

Abstract

It is generally viewed that Nigeria among other African countries have greater propensity for the practice of law, this stem from its history of colonization by the British, as such legal practice in Nigeria is now a common place. The level at which Nigerians value and read law either as first degree or as second degree is so alarming that virtually in every family either nuclear or extended there is at least one lawyer (legal practitioner). This in effect shows the natural flair for Law in Nigeria.

However, there is a general trend in the thinking that all the legal profession entails is the practice of law as legal practitioner who goes to court to argue cases (litigation) and anything short of this is not generally perceived as a serious practice of law. In effect, this has adversely affected the administration of justice. It is contended that there is more to this in the sense that there is the need for a change of attitude as to what the legal practice entails, and the need for a strong connectivity between ADR and the court to achieve a change of the public perception on the practice of law generally. An attempt is made to show that the practice of law encapsulates practice as an ADR practitioner and as such strengthen the consensual dispute resolution culture so that the court is not bogged down with unnecessary litigation of disputes/issues that may be trashed out or resolved through consensual methods.

Introduction

Nigeria as an entity has well-established government that is regulated by law. And the practice of law in Nigeria has been in existence since the introduction of court system by Britain as far back as 1862¹. Ever since then, the interest in/need for legal practitioners (by parties; due to the requirement for representation) in litigation is on the increase. The practice of law is not limited to one area of law, in that law has many branches and spheres of operation. Before the advent of British idea of court system, people do employ the services of more powerful member of society who can be either family head to represent them in dispute resolution. The services rendered by those people are

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¹ O.A.Asien, Introduction to Nigerian Legal System (Ibadan: Sam Bookman Publishers, 1997) p. 220

reciprocated by kind gesture.² This is apparently a rudimentary method of settling dispute which involves the submission of dispute to individual chosen by the parties.³

However, colonization has entrenched resolution vide the court system and as such to practice law in Nigeria, one has to be enrolled in Supreme Court of Nigeria (as Solicitor and Advocate of the Supreme Court of Nigeria) after certification by the Nigerian law school and been called to the Bar (this is sequel to passing all the required courses for the award of LL.B). Notably, Christopher Sapara William was the first Nigerian to qualify as a lawyer. He was called to the English Bar in 1879, and enrolled at the Lagos Supreme Court in 1880⁴. In his early years, he practiced extensively in the Gold coast and then in Lagos. Although, there were self-taught attorneys but later the Chief Justice stopped granting license to unqualified persons to practice as local attorneys. Thus, ever since 1913, those who practice before the English-type courts were all legally qualified to practice as such and the qualification became *sine qua non* for the general practice of law in Nigeria. The year was significant as it marked the beginning of the legal profession and legal practice in Nigeria⁵.

In the contemporary time, the public is more alive to the need to employ the services of lawyer for guidance in aspects of their life and this has enhanced the development of the practice of law generally. However, the emerging trends in the area of administration of justice is now dynamic, and aside from the rigorous adversarial system (litigation), is the development in term of Alternative Dispute Resolution mechanism that is now an integral part of the traditional dispute resolution in Nigeria⁶.

Thus, the paper intends to examine the practice of law generally in Nigeria, the nexus between ADR and litigation, the compartmentalization of Arbitration and ADR, the social connotation of the expression "lawyer", and the imperative of an attitudinal change for a better, cheaper and faster resolution of dispute for a smooth administration of justice.

An Overview of The General Connotation of the General Practice of Law

The general practice of law connotes a process of intellectual – legal engagement by people who are well versed and learned in law and have chosen it as their vocation. The major actors in this regard are called legal practitioners who by virtue of training have ascended to the position -they are legal technocrats and defenders of rule of law invariably expected to play cardinal role in the administration of justice in Nigeria⁷.

² Ibid at 220, it is pertinent to add that this representation and resolution is not limited to this jurisdiction (Nigeria) alone but as well, an established practice within the Arabian Peninsula. See Abdul Hamid El-Ahdab, *Arbitration with Arab Countries*, 2nd ed. (The Hague: Kluwer Law International, 1999), p.11

³ L.A.Ayinla, *Implementation of Alternative Dispute Resolution in Nigeria: Possibilities and Hindrances* (Ph.D Thesis, IIUM 2011) p.36.

⁴ Oluduro et al, "Towards a Practice Oriented Vocational Legal Education in Nigeria" *Ilorin Bar Journal* Vol. 1 No. 1 p.110. See also Doherty O. *Legal Practice and Management in Nigeria* (London: Cavendish Publication, 1998) pp. 6-8. Although, there appeared to be argument as to who actually was the first qualified lawyer in Nigeria

⁵ Ibid at 110. It is not in doubt that English legal heritage was exported to commonwealth jurisdictions, see C.C. Nweze, "The Challenges of Administration of Justice in the Sustenance of Good Governance in a Trans National Era: Hindsight, Insights And Prognoses" Lecture delivered at the 6th M.M.A. Akanbi Faculty of Law, Unilorin, Annual Public Lecture, Monday, March 25, 2013, p.8

⁶ L.A.Ayinla, *Implementation of Alternative...*, p.36.

⁷ H. A. Ijaiya, "The role of legal practitioners in administration of justice in Nigeria" *Ilorin Bar journal* o. 2, 2002 at p. 202. Moreover, a lawyer is someone who is licensed to practice law while legal

However, the general practice of law encompasses the process of action-ability, filing of cases, and settlement of dispute that may arise among two or more people. The settlement is done through the application of law as embedded in our laws, codes and the constitution of the land.

Moreover, the broad spectrum of the graduates of law who are successfully called to Bar, by legal implication become the *bona fide* members of the Nigerian Bar Association, and thus, free to practice law in any jurisdiction in Nigeria. As a matter of specialization some lawyers may choose to be specialized in one area of law or the other. The general practice of law may be generally divided into two; private legal practice and public legal practice. The practitioner in the first category practice individually (in a law firm or in partnership with other lawyers), while the second category are either employees of government found in the ministry of justice or in salaried employment in some organisations.

The above notwithstanding, a lawyer is not expected to descend so low and section 1 of the Draft Rule of Professional Conduct of the Legal Profession provides that:

*"A lawyer shall not form partnership with a non-lawyer or with a lawyer who is not admitted to practice law in Nigeria if any of the activities of the partnership consist of the practice of law."*⁸

In view of the above section, a lawyer is expected to form partnership with only a lawyer. This is premised on the fact that it is only a lawyer that can be regarded as an expert in the specific area of business that centers on litigation. In the second limb of the section only a lawyer that is admitted to practice law and so enrolled in the Supreme Court of Nigeria can only appear in any court of law for adjudication of case in Nigeria.

The practice of law under the Nigerian legal system is so wide that lawyers' responsibilities are fused; a lawyer can be both barrister and solicitor unlike in Britain where the responsibility and title is separated. A barrister in this jurisdiction is called advocate, he litigates in the open court by argument while a solicitor engages in conveyance, registration of company and the like, but cannot appear in court as an advocate. The Nigeria situation is different; a lawyer is both barrister and solicitor and can engage in all the responsibilities of a lawyer, as such expected to practice as a barrister and solicitor.⁹

However, in the general practice of law, litigation as part of the practice of law is with its attendant problem due to its dominance in Nigeria as it has become a big business, where professional litigators, displaying rare skills in technicalities, rules and procedure to achieve very dubious success; they exploit the undue delay and congestion that be-devil the disposition of cases in busy jurisdiction like Lagos State. The problems created by

practitioner is a barrister, a special pleader or a solicitor, see Bryan A. Garner, *Black's Law Dictionary*, 9th edn. (USA: West Publishing Co. 2009) pp. 968, 978. See also s.24 of the Legal Practitioner Act Cap 207

⁸ See s.1 of the draft Rules of Professional Conduct, Rule of Professional Conduct for Legal Practitioners, Nigeria Bar Association 2007. Oluduro et al, 'Towards a Practice Oriented Vocational Legal Education in Nigeria'. *Ilorin Bar Journal* Vol.1, No. 2 (2002), p. 111.

⁹ Ibid.

litigation as it affects Nigeria are similar to some of the notable complaints against litigation.¹⁰

Thus, the dissatisfaction with the exorbitant court filing fees and the expense of prosecuting a case is such that has necessitated an impression in the general public to view litigation; court system as more of commercial enterprise rather than as a social service as expounded by Ayinla¹¹

It is submitted that litigation as practice of law has been infected with a lot of technicalities to the extent that a case that is supposed to finish within 3 month or so lingers in court for more than 3 years with the parties anxiously waiting to get judgment. The case of *Nwokafor Ejindu v Ofoyama Obi*¹² may be cited in support of the above contention. In this case the matter was for declaration of title to land and was filed in the High court in 1976 and concluded in 1984. An appeal was filed in the court of appeal in 1985 and concluded in 1987. A further appeal to Supreme Court was filed in 1989 which was ultimately decided in 1997. In effect, the case took 21 years to be finally decided.

Conversely, in order to ameliorate the suffering and untold hardship inherent in litigation as a form of practice of law; Alternative Dispute Resolution mechanism is possibly a panacea to the litigation. ADR is another form of practice of law; ADR is a process for settling dispute by amicable means other than by litigation. The view that ADR encompasses all legally permitted process of dispute resolution other than litigation may capture to an extent the dynamics. ADR is described by Stephen as everything-but-litigation because litigation as a matter of law is seen as the default process of dispute resolution¹³. ADR as a form of practice of law strives to achieve four goals towards enhancing dispute resolution:

- a) to relieve court congestion, as well as to reduce excessive cost and delay;
- b) to enhance community involvement in dispute resolution process;

c) to facilitate access to justice; and

d) to provide more "effective" dispute resolution (where effectiveness take into account

such factors as cost, speed, satisfaction of public and private parties and compliance¹⁴

The above gives an insight into the efficacy of ADR as a dispute resolution mechanism and as a form of the practice of law in that this consensual dispute resolution mechanism should be adopted in deserving matters and not stick to litigation as the default way of practicing law. However, there is a concern about the misconception of ADR which has resulted into the compartmentalization of ADR into Arbitration and ADR.

¹⁰ L.A. Ayinla, *Implementation of Alternative...*, p. 81. See also C.C. Nweze, "The Challenges of Administration of Justice...", pp. 18-28

¹¹ L.A. Ayinla, *Implementation of Alternative...*, p. 86.

¹² (1997) 1 NWLR (pt. 483) 505.

¹³ A. Bryan, *Black Law Dictionary*, at 86.

¹⁴ L.A. Ayinla, *Implementation of Alternative...*, p. 94.

Compartmentalization of Arbitration and ADR

Arbitration is another form of practice which is a private mechanism for the resolution of disputes that takes place in private, pursuant to an agreement between two or more parties to be bound by the decision to be given by arbitrator according to law after a fair hearing, such being enforceable at law.¹⁵

In the same vein, Alternative Dispute Resolution involves the use of various processes and technique to settle a dispute without court adjudication. ADR can be an alternative to trial and in some cases, to litigation in the case of labour disputes; it may be an alternative to a strike if the parties resolved their differences before a lawsuit is filed¹⁶. Thus, in ADR and Arbitration there appeared difference between the two though both processes are active in the general practice of law in Nigeria but the trend in Nigeria has been to make distinction between the two concepts and this is evident in the argument of various scholars. Judge Ajibola is of the view that historically arbitration was the first alternative dispute resolution mechanism to litigation.¹⁷ Therefore, ADR encompasses arbitration but it is believed that in view of the adjudicatory method of dispute resolution and the legal effect of the outcome it has metamorphosed into an independent dispute resolution process. According to Asouzu arbitration is usually classified as an ADR mechanism and it an alternative to litigation. But in light of maturation of arbitration and popularization of ADR, a new distinction needs to be drawn in its current usage.¹⁸

It is observed further that ADR refers to the method of disputes resolution that is alternative not only to litigation but also to arbitration.¹⁹ In the same vein, Rashid contends that arbitration was originally an alternative procedure but is now generally viewed as being closer to litigation in its approach, and part of mainstream practice leaving the term ADR to refer mainly, but not exclusively to consensual, rather than to adjudicatory process. The basis of this compartmentalization may be seen in the fact that arbitration is believed to have become mature and recognized as a distinct disputes resolution mechanism with well laid out principles.²⁰ Besides, arbitration is viewed as being more aligned in many ways with litigation.²¹ That is they both share some common features like the decisiveness of outcome, enforceability of both through the necessary machinery of coercion²² although it must be noted that arbitration is quasi-judicial in nature and as

¹⁵ Henry *et al*, ADR Principle and Practice (London: Sweet & Maxwell, 2nd ed. 1999) p. 49

¹⁶ R. Susan, Essentials of Alternative Dispute Resolution (Dallas Texas, 2nd edn. 2001) p.1

¹⁷ Judge Bola Ajibola, a former Judge of the I.C.J; Member of the Permanent Court of Arbitration (PCA) and a former Attorney-General of the Federation and Minister of Justice (Nigeria) submitted in all modesty to being the architect of the ACA (Arbitration and Conciliation) 1990. Judge Bola Ajibola, Recent Development in Arbitration and ADR in the African Continent, in *Arbitration & Alternative Dispute Resolution in Africa*, edited by C. J. Amasike (Abuja: The Regent Printing & Publishing Ltd, 2005), p. 11.

¹⁸ Amazu A. Asouzu, *International Commercial Arbitration and African States, Practice, Participation and Institutional Development*, (Cambridge: University Press: 2001), p. 4.

¹⁹ Ibid p.13

²⁰ C. Schmittoff, "Extra judicial Dispute Settlement" *Forum Internationale*, No 6, 1985 at 3.

²¹ Aisha, "Quick Reference Material on Nigerian Law and Practice" (Abuja: Temple Legal Consult, 2006) at 223.

²² The decision of a judge can be enforced by official coercion or by the executive power of a state. See Gordon Woodman, "The Alternative law of Alternative Dispute Resolution" in *Reading in Law and Society*, edited by J. Banfield (Toronto: Captus Press, 1993) at 136-137 while the award of an arbitration may be enforced by an application to the court for enforcement. See S. 31 of the Arbitration and Conciliation Act Cap A18 Laws of the Federation of Nigeria 1990.

such it may be invoked by a party subject to the agreement or the law in force.²³ But generally it is a less formal process with speedy decision making ability that has no precedential effect²⁴ like that of the judgment of court of law. The award or the outcome is given by a neutral third party²⁵ who is not a judge but a person or body of persons other than a court of law. It is submitted that a more practical approach is to group all the dispute resolution mechanisms including arbitration, as Alternative Dispute Resolution except litigation.²⁶ ADR is seen as a general word that encompasses a wide range of dispute resolution process, offering either partial or complete supplement to the traditional court adjudication for resolving a dispute.²⁷ As a form of practice of law in Nigeria, or dispute resolution, the court being a prime example, the analysis of dispute resolution mechanism should go beyond outright litigation. The presence of a grievance remedying third party may also indirectly influence and impact positively on the administration of justice. Relevance should be given to ADR including arbitration, having seen arbitration in the commercial sphere as an important mechanism to avoid litigation in favour of speedier, simpler, and more of a private judgment. Thus, its failure to live up to this promise deserves of closer study by advocates of alternative means as a veritable instrument. Efforts in this regard has witnessed in the last few decades in the arbitration world the struggle with this paradox; a debate which has led to more legislation freeing the process from close supervision by the court.²⁸

The Interconnectivity of The Court and Alternative Dispute Resolution

There is the need to broaden the judicialisation of the resolution of dispute in the country so as to ensure the consensual result between the parties concern through court-annexed ADR / the multi door court house to lessen the cost, time and energy of the parties and the settler of dispute. To calibrate the dimension that both approach take, it may be apt to say that one is masses friendly than the other. An average Nigerian upon hearing the word court; views it in a scary and terrifying sense. But the round table decision approach may be more encouraging. One of the significant developments arising out of the relationship between ADR procedures and the court system has been the creation in the United States of multi door court house.²⁹ In setting out the range of ADR systems, professor Sander regarded the factor of decreasing external involvement by a neutral in the process as critical. He outlined a spectrum of processes, on a decreasing scale of external involvement and placed at the maximum end of the involvement scale, adjudication (through the court by arbitration and mediation and through administrative processes). Professor sander thus recommends;

²³ Alex w, "Taking Codes of Ethic Seriously: ADR and Reconstructive Liberalism" Canadian Journal of Law and Jurisprudence, vol.xii No.2 (July 1999) 301.

²⁴ B.B.Robert, "Using Process Observation to Teach Alternative Dispute Resolution: Alternative to Simulation", Journal of Legal Education 37 (1987) p. 46.

²⁵ P.H.Gulliver, Disputes and Negotiations (New York: Academic Press, 1979) pp.3-24.

²⁶ This position is held by Judge Bola Ajibola, p. 12.

²⁷ Afe Babalola, n. 87 pp. 61-62.

²⁸ J.M.Karl, A Handbook of Dispute Resolution: (London: Rutledge, Sweet & Maxwell, 1991) p. 17.

²⁹ Roscoe Pound Conference Report, cited as Federal Rules Decision (FDR) 79 p.113. It is pertinent to note that the Lagos Multi-Door Court House and the Kwara State Mediation Centre (CMCC) are efforts in this direction but the universal application of this initiative in all other states of the federation in Nigeria is still lacking notwithstanding the incorporation of the adoption of ADR in the various court rules.

A flexible and diverse panoply of dispute resolution processes with particular type cases being assigned to differing process or combination of process) according to some of the criteria previously mentioned. Conversely, such allocation might be accomplished for a particular class of cases at the outset by the legislature that in effect is what was done by the Massachusetts legislature for malpractice cases alternatively. One might envision by the 2000 not simply a court house but a dispute resolution centre, where the grievance would first be channeled through a screening clerk who would then direct him to the process (or sequence of process) most appropriate to his type of cases³⁰.

It should be born in mind that ADR is primarily a search for legal solutions to the problem of mass litigation and dispute. It is a respond to formality, complexity, inadequacies and expenses in the ordinary court³¹. The litigation Council on the role of courts in 1984 observed that the court need not to adjudicate directly as they may perform best in some cases by waiting in the background, readily to decide if the litigant cannot resolve their differences. This may be useful in cases like child custody dispute in which considerable harm can be anticipated from a court involving itself directly in ongoing familiar relations issues. Thus, Court can play a backup role by assigning cases initially to another form of dispute resolution like public arbitration, private fact-finding or other suitable means, by this, court can serve as architects of the process fashioning the procedure that other institution should use to arrive at an acceptable decision in order to reduce the need for court participation.³² ADR is therefore a more promising scheme to lure business away from dogged litigators of all cases of dispute. ADR covers a range of dispute-settling methods, from in formal mediation through arbitration and encompasses "private court" staffed by former judges that mimic their counterparts in everything and ADR has most of the advantages that are advertised for it. It usually offers quicker, cheaper and more reliable resolution than court trial with less inflammatory temper which is helpful in divorce cases.³³

The Court and Its Dynamics

Court is a structural edifice where the aggrieved members of the society sue for redress and it is fundamental to the settlement of dispute that may arise among people. In civil justice as practiced in United States and England is adversarial system, the adversarial process from the word go, if not before every procedural step to trial is potential battle ground. Traditionally, this system has cast judges in a passive role. A civil trial is not a search for truth but a process by which the parties place before the judge evidence of facts which are relevant. The judge is obliged to apply the law and the parties are under a duty to bring to the court or judge attention all relevant authorities and principles. Judges are not completely passive as Socratic dialogue between bench and bar is a common place.³⁴ Moreover, legally conscious terrain that is firmly desire to uphold the tenet of the rule of law will no doubt use the court as the point of interpretation of the puzzle law. In the determination of the rights and duties of an individual the court is a veritable means by

³⁰ Ibid at p130.

³¹ J.M.Karl, A Handbook of Dispute, Op.cit at p.28.

³² Ibid. p.27.

³³ K.Walter, The Litigation Explosion, (USA: Truman Tally Books, 1991) p. 303.

³⁴B. Henry, ADR Principle (London: Sweet & Maxwell, 1999) p.34

which they conduct the affair by lawsuit or litigation. In the bygone days, ferocious lawsuits were being praised to the skies as highly productive and public-spirited enterprises. Filing a suit was argued, to be a commendable service to the general populace far over and above any incidental benefit to oneself. The more judicial scrutiny was applied to private dealings the more responsibly everyone would behave for fear of being sued and losing. And as more cases were put through the mill of litigation, a finer and finer grade of truth and justice would issue forth, with more and more human relationships being re-ordered according to their merit.³⁵ The legal practitioners have the penchant for frequenting court because of the fact that the rate at which people commit crime is alarming and to ensure that the innocent person does not suffer the pain of languishing in prison. Although for the proper administration of justice, the judicial power of adjudication is vested in court pursuant to section 6 (1) of the Constitution of Federal Republic of Nigeria 1999;

The judicial power of the federation shall be vested in the courts to which this section relate being courts established for the federation.³⁶ "The judicial power of the state shall be vested in the court to which this section relates being courts established, subject as provided by this constitution, for a state."³⁷

The power of adjudication is vested mainly in the court recognized by the constitution though the chief justice of the state is empowered to create court which can be recognized for the purposes of administration of justice such courts are Area Court, Magistrate Court, Upper Area court; these courts can entertain matter and lawyer's representation is allowed.³⁸ Lawyers as minister in the temple of justice have onerous responsibility to defend a client, once called to the Nigerian bar and as such Lawyers or legal practitioners are officers of the court who must be honest and trustworthy in the discharge of their duties to the court. In *The Queen V Abua*,³⁹ the accused, a legal practitioner was charged for the offence of forgery, false pretence and uttering before the Magistrate Court Aba. The accused who appeared for one Akande his client, in the Magistrate Court in a matter under the Workman's Compensation Act⁴⁰ agreed on a term of settlement in the sum of \$ 100 which was made the judgment of that court. The judgment sum was paid to the court by the judgment debtor as ordered by the court. The effort of the accused by various devices to collect the judgment sum from the registry of the court without the express permission or authority of his client failed. Thereupon, the accused forged an authority letter prepared by him on behalf of his client to deceive the court and collected the judgment sum from the registry of the court. The accused was convicted on appeal to the Federal Supreme Court, Brett F.J held:

...the appellant may not have intended that the treasury should in fact suffer any loss, but it would appear that it was also defrauded

³⁵ Op. cit at p.303.

³⁶ Constitution of the Federal Republic of Nigeria 1999 (hereinafter referred to as the CFRN 1999).

³⁷ S.6 (2) of the CFRN 1999.

³⁸ O.A. John, Introduction to Nigeria Legal System (Ibadan: SamBookman Publisher, 1997) p.201.

³⁹ (1961) 1 ALL NLR p.662, see also *Welham v Director of Public Prosecution* (1961) A.C 103.

⁴⁰ Section 51, Cap 101.

by being induced to part with the money to a person not entitle to it..⁴¹

In view of the above decision, the matter was referred to the Legal Practitioners Disciplinary Committee which by the virtue of section 31 of the legal practitioner Act⁴² also referred their finding and reports on the matter back to the Federal Supreme Court for disciplinary action. The accused name was struck off the roll of legal practitioners in Nigeria. Ademola, C.J.F said:

We cannot think of a worst case of dishonest than the present and we will be failing in our duty if we should not treat the matter with the utmost severity it deserved. ...We therefore order that the name of Mr. Alfred Chukwuemeka Abuah be struck off the roll of legal practitioners in Nigeria.⁴³

Thus, a lawyer is by law allowed to take brief and be remunerated and at the same time discharge his duty within the lawful limit of practice, section 24(1) of Rules of professional conduct for legal practitioners provides;

It is a duty of a lawyer to accept any brief in the court in which he professes to practice provided the proper professional fee is offered unless there are special circumstances which justify his refusal".⁴⁴

And by subsection 2 "It is the duty of every lawyer on his own responsibility to decide what case he will bring into the court for the plaintiff and what case he would contest in court for the defendant; and he is not absolved from bringing questionable action or arguing questionable defences or arguing questionable advice on the ground that he is only following his client instructions".⁴⁵ A lawyer must be up to the task in following strictly the professional etiquette as laid down in the rule of professional conduct.

The Social Connotation of the Word Lawyer to an Average Nigerian

It is argued that in the state of nature, life was nasty and brutish until the emanation of contract by the individual between the state that individual submit all sort of rights for the proper coordination of society .this was well expounded by Thomas Hobbes in the social contract of the state. A renowned scholar, Professor Roscoe Pound regarded as the social engineer, described Lawyer as a noble person who is trained as the minister in the temple of justice, as a defender of the downtrodden members of the society. He submits further that as an honorable, society hold a lawyer in high esteem due to the acknowledged status of him as the social organizer , for any society to triumph there must be a lawyer to guide the conduct of people in the organization.

⁴¹ Abuah in Re: Abuah Legal Practitioner Committee (1962) 1 ALL NLR p.278 at p.284. See also Re: Queen v Abuah (1961) 1 ALL NLR P.662, Wellham V Director of Public Prosecutions (1961)1 ALL E.R 805, RE: A Solicitor: Exparte Incorporated Law Society 61 L.T 842; RE Hill, L.R 3 Q.B 543; RE King (1845)15 L.J Q.B 2J Exparte Brounsall: (2 COW) p.829 RE Wear (1893) 2 Q.B 439.

⁴² Cited above.

⁴³ (1974) 2 W.S.H.C.P. 49; see also Practice Note issued by the Nigerian Bar Association (Lagos Branch) with the approval of the Chief Justice of Lagos.

⁴⁴ Rules of Professional Conduct for Legal Practitioners, Nigerian Bar Association 2007.

⁴⁵ Ibid.

In this contemporary time people do patronized the services of a lawyer in order to be on the safer side so as not to find themselves in a lawsuit that will land them in prison. The perception of people about lawyers is that they are the most trusted being or professional in the world. Lawyers are appointed as the administrator of Will due to the confidence people repose in every lawyer, this gesture is well sustained from time immemorial.

Moreover, there is plethora of literatures on the way and manner the lawyers have changed the society through the instrumentality of law. Nigeria has produced great number of lawyers that have done the country proud in all facets of law. The likes of the Chief Rotimi Williams (S.A.N), Chief Bola Ige (S.A.N), Chief Ganiyu Fawehinmi (S.A.N) all of blessed memory. The afore-mentioned have undoubtedly affected literary works in law in terms of their novelty contributions towards constitutional law and legal practice in general. They have a lot of leverage on people that are renowned legal practitioners in Nigeria today. The society believed that lawyers are the lender of last resort when it comes to attainment of justice. In the day of military regime lawyers were able to lend their voices in defending the defenceless. Every lawyer must be alive to the responsibility of judiciously attuned to the public expectation and must not let the public down in respect of the fact that they are the custodian of value of honesty, morality, dignity and learning anything that is anathema to these rendered such a lawyer a defective one.

The accolade people do give lawyer at any forum is so great that no professional enjoys it more than lawyer as mover of the society. But, by and large the public has a conception of pandemonium about the act of litigation that is highly controversial and time consuming. This development of law has brought to the fore the yearning for the infusion of Alternative Dispute Resolution into the practice of law that the society still welcome. One of the most commonly proposed nostrums for curbing litigation is also one of the weakest. Hence, it is for the government to dispense more benefit to cover the issue that people sue over, without any significant change in the legal system⁴⁶.

THE Upshot of Legal Practice in Nigeria.

In the determination of civil and criminal lawsuit, the practice of law has helped in no uncertain term in shaping the jurisprudence in the administration of justice. The persistent forces on the part of the litigator to improve the court room and our codes through legal activism have no doubt changed the image of Nigeria. In the event of the proper filing of suit and upholding of rule of law, legal determinacy and predictability have the homely as well as the transcendent virtues. This allows for planning and to know when one has fallen short of his duties so as to resort to legal practitioner to make amends, or stand on firm ground and frame a demand.⁴⁷

It is settled that legal profession or legal practice now thrives in Nigeria and Litigation has become virtually, the only means of dispute resolution. This success of the legal practice depends on the adversarial mind-set as was described by Macfarlane⁴⁸ in the following word:

⁴⁶ K. Walter, *The Litigation Explosion*, n.33, p.301

⁴⁷ *Ibid*, p.150.

⁴⁸ Julie Macfarlane, "The Mediation Alternative", in *Rethinking Disputes; The mediation Alternatives* edited by Julie Macfarlane (London: Cavendish Publishing Co. 1997) pp. 79-80.

The legal profession has been extremely successful in creating wide spread public reliance on their services to resolve disputes. This success is largely based on the assumption that where a conflict arises between two or more individuals organizations the party with the strongest (or the best argued) legal claim will emerge as the "winner" (where 'winner' take all'). So called 'right talk' has entered the public culture in Europe and north America in away unimaginable 100 years ago, and still unknown in parts of the world where there is little access to legal services for the ordinary people. Whether it is the legal profession which has spawned the 'right culture' or whether the growth of legal services is in response to it is not clear. What is clear is that in the West we are now habituated to evaluate both our position and prospects in a dispute according to what we imagine, or know, to be our 'right.' Even in the majority of cases where conflict is resolved without recourse to either lawyer or the court room, dispute resolution strategies are characterized by the language of right talk, whether moral, legal, political or economic or asserting some other basis of right."

Thus, legal practice via litigation which is a process for the resolution of most categories of disputes that may even be resolved by alternative dispute resolution / settlement method prior to reaching the court house is not encouraging. The litigation culture has become almost endemic in the Nigeria society so much that mere family disputes, which were originally and ordinarily resolved by elders have become court action within both nuclear and extended families.⁴⁹ A very senior judge and jurist⁵⁰ expressed with dismay the problems and evils that have besieged or surrounded legal practice in Nigeria. He remarked, legal practice in Nigeria has become a big business, where "profession litigator" displaying rare skill in the mastery of technicalities, rules and procedure to achieve very dubious success. They exploit the undue delay and congestion that be-devil the disposition of cases in busy jurisdiction like Lagos State⁵¹ these problems as observed in Nigeria justice system are destroying the credibility of the entire legal system.⁵² This menace of delay is visible in both civil and criminal cases but since ADR is confined to civil matters, The constant yearning for due process in the scheme of things in Nigeria has stimulated the curiosity of legal practitioners in vigorously strive to accentuate on the need to project the notion of championing the cause of justice and fair play, this in effect has made an indelible mark towards the development of legal practice by way of adopting a more efficacious means of resolution of disputes (ADR), based on the conventional wisdom, the new operational system and the paradigm shift for quick and speedier settlement of dispute that is now in vogue throughout the global communities. The practice of law has become more of a business than a profession, and a sign of the continuing decline in the standard of tolerance and courtesy in society generally, perhaps the duty to collaborate imposed by the new rules will improve matters. It is observed that

⁴⁹ O.Tinuade, "The Lagos Multi-Door Court House and Bar: A Success Story" Paper Presented at the workshop on Lagos Multi-Door Court House, 30th September, 2003 p. 4. See L.O. Taiwo, "ADR Method: The Panacea for Court Congestion in Nigeria", *Ife Jurist Review*, "A Journal of Contemporary Legal and Allied Issue", vol. 1 Part 2 (2004) p. 323.

⁵⁰ Judge Bola Ajibola, *Recent Development* p. 17

⁵¹ *Ibid.* p. 18

⁵² Lagos State Ministry of Justice, "Justice Delay", a Paper Presented at the 4th National Summit of Stakeholders in the Administration of Justice", (11-12 July, 2006) p. 1

all litigations, whether under adversarial or inquisitorial systems, common law or civil law is labour intensive. The principal cause of the high cost of litigation is the unavoidable fact that lawyers in all jurisdictions enjoy a privilege economic position.⁵³ Besides, it is the general level of legal practitioners charges and the labour intensive nature of the procedure which drives the cost of litigation to current levels.⁵⁴ The hope must be in the other option involving ADR by case management, it is hoped will lead to a more efficient use of resources, thereby enabling disputes to be resolved and creating the opportunity to redirect limited resource to resolve other dispute which are more important to society.⁵⁵

Conclusion

Having dissected in this discourse, the general analysis of what the legal practice entails in Nigeria, an attempt was made in pinpointing the nexus obtainable among the various forms of legal practice with particular focus on the Alternative Dispute Resolution mechanism. It is argued that the court has a lot to do in supporting the entrenchment of ADR generally. In stream lining the disparity and parity in ADR and litigation, the mode, style and sociological conviction of people in conflict resolution is shown. However, it is clear that the level at which lawyers unnecessarily patronized court room on a particular case is energy dissipating. There are multitudes of undecided cases in court to the extent that it amount to profligate of energy, money and time. It is a common phenomenon in human existence that there will be conflict of interest, breach of trust, breach of contract but the potent process of resolving it that is capable of lifting the ember of discord is Alternative Dispute Resolution which adopt "win-win" measure in settling of dispute. It is well expounded by various scholars and jurists, the need to adopt a consensual resolution of disputes in issues where collective bargaining is desirable and spare the court for matter that constitutionally require judicial interpretation. The need for an attitudinal change about the practice of law to include ADR practice as an integral practice of law is imperative to build a generation of dispute resolving practitioner as against a dispute escalator practitioner.

⁵³ B. Henry, *ADR Principle* p.25.

⁵⁴ *Ibid* p. 26.

⁵⁵ *Ibid* p. 30.

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