



**POST COVID-19 IMPACTS ON THE USE OF TECHNOLOGIES FOR RESOLUTION
OF CORPORATE AND COMMERCIAL DISPUTES
IN NIGERIA**

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ISSN 2957-8647

Vol. 3

pp. 1-25, October 2023

www.cavendish.ac.ug

email: secretaryculj@cavendish.ac.ug

How to cite this article:

Owolabi, K. (2023). Post Covid-19 Impacts on the Use of Technologies for Resolution of Corporate and Commercial Disputes in Nigeria. CULJ Vol3.

Abstract

Over the years Covid-19 pandemic has forced dramatic changes majorly to every aspect of human existence particularly in the realm of disputes resolution. This however has created an unavoidably need for the courts, arbitral institutions and, centres to adopt and adapt to an inspired innovation through digital technologies of working-out solutions to parties in corporate and commercial disputes. The change is a laudable one, driven by difficult cases involving business risks (if such cases are delayed) which thereby, called for the innovative resolution processes that is desirable in the midst of pandemic. This paper examines several impacts and opportunities provided by the use of technologies in post-COVID 19 particularly in the resolution of corporate /commercial disputes; the extent to which the laws in Nigeria can accommodate virtual court hearings which have come to stay and, hindrances facing virtual hearings and online dispute resolution (ODR) post-COVID 19. This paper employed doctrinal methodology of legal research. It therefore adopts descriptive and analytical methods. This paper revealed that those hindrances identified have little or no influence in the resolution of corporate/ commercial disputes in Nigeria. The paper further recommends better ways to deploy the usage of digital technologies through virtual hearings and Online Dispute Resolution (ODR) to curb the problem of delay in the Nigerian's justice delivery system.

Keywords: Post-COVID 19, Innovative Resolution, Dispute Resolution

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Introduction

The severe disruption caused by the Covid-9 pandemic continues and the impacts will linger for a longer time.¹ Pandemic continues to pose enormous health and socio-economic challenges for the world.² In most parts of the world, several health measures and regulations were put in place by individual Governments to curtail the spread of the virus.³ Nigeria was not left of this, the Federal Government while exercising the power conferred by Sections 2, 3 and 4 of the Quarantine Act 1926⁴ issued Covid-19 Regulations No.1 of 2020 on 30th March 2020.⁵ The focus of the Regulation No. 1 of 2020 was to enable restriction/cessation of movement in Lagos State, Federal Capital Territory (FCT) Abuja and Ogun State. The Regulation No 1 of 2020 enabled the governments of various level to controlled, ordered and legalised the imposition of quarantine and also to put in place other preventive measures against eruption of COVID 19 in Nigeria.⁶

On the 8th April 2020, the office of the Chief Justice of Nigeria (CJN) released a circular with Ref. No NJC/CR/HOC/11/66 dated same date wherein the CJN pronounced the suspension of courts hearings/sittings and, administration of justice system *sine die*⁷ due to the danger posed by the pandemic.⁸ Thus, courts are permitted to attend to urgent, essential or time bound cases hence, it became problem to streamlined cases that are consider 'urgent, essential and time bound.'⁹ For this

¹ Owolabi W. Magaji K., 'Impacts of Covid-19 on Development of Legal Research in Nigeria'(2022), 4(1), Gujarat Law Society (GLS) University Law Journal, India, 35, 39.

² Martin Henseler and Others, 'Economic Impacts of COVID 19 on the Tourism Sector in Tanzania' (2022) 1, Annals of Tourism Research Empirical Insights(2022) 3 <<https://doi.org/10.1016/j.annale.2022.10042>> accessed 20 September 2022.

³ Saliu Sabiu Musa and Others, 'Covid 19 and Lasser Fever in Nigeria: A Deadly Alliance?'(2022) ,117, International Journal of Infectious Disease, 45, 47.

⁴ No 18 of 1926, NO 7 of 1929 L.N 131 of 1954, Cap 384 LFN 1990, Cap. Q2 LFN 2004.

⁵ It can be accessed here<https://covid19.ncdc.gov.ng/media/archives/COVID-19_REGULATIONS> accessed 20 September 2022.

⁶ No 18 of 1926, NO 7 of 1929 L.N 131 of 1954, Cap 384 LFN 1990, Cap. Q2 LFN 2004; Lagos State Infectious Diseases (Emergency Prevention) Regulations 2020; Edo State Dangerous Infectious Diseases (Emergency Prevention) Regulations 2020; Bayelsa State Infectious Diseases (Emergency Prevention) Regulations 2020 as published in the official gazette, Bayelsa State (No 2 Vol 24).

⁷ Is a latin word that mean: without any further date being designate or where no definite date or period to resume.

⁸ Punuka, 'The Covid-19 Directives of the Chief Justice of Nigeria and state of the Judiciary' (2020). <<https://punuka.com/the-covid-19-directives-of-the-chief-justice-of-nigeria-and>> accessed 15 September 2020.

⁹ Ademola Sunday-Ayeerun, Eti Best Herbert & Ngozi Chinwa Ole, 'Covid 19 Induced Virtual Courts Sessions in Nigeria: Practicalities and Impracticalities' (2022) 9(2), PADJADJARAN Journal of Law, 276, 279.



reason, many cases suffered adjournments.¹⁰ Consequently, delay in the administration of justice ensued and later became worse as the disputants were unable to comply with the timelines fixed for filings, exchange of court processes and hearings. This is because timing became difficult to maintain. The CJN circular of course provoked the peaceful right of the disputants' access to justice.¹¹ It was therefore desirable at that point for Nigerian to explore new alternative ways to manage and resolve disputes in a convenient and collaborative manner to ease the burden of those disputants.

The NJC at its 91st meeting held on 22nd April, 2020 adopted a Directive titled 'Guidelines for Court Sittings and Related Matters in the Covid-19 Period.'¹² The Practice Directive 2020 aimed to provide guides and introduce the courts in Nigeria to virtual and physical court hearings in the midst of Covid 19.¹³ It integrates virtual court hearings to limit the danger and to curb the spread of the virus since the courts cannot be forever shut down. At that point, innovation of technology was considered necessary to maintain safety measures during the most sensational outbreak, post Covid 19 and in such similar pandemics in the nearest future. Judiciaries of various states were enjoined to issue practice directions that will regulate and guide courts towards the exercise of virtual hearings. This led to the issue of Directive titled 'Lagos State Judiciary Remote Court Hearing of Cases (Covid 19 Pandemic Period) Practice Direction' by the Chief Judge of Lagos State. Other states also passed similar Directives to regulate proceedings during Covid 19.

No doubt technology needs to be employed to cater for many pending cases and the new ones that occur on a daily basis which of course cannot be delayed considering the crucial role courts play in maintaining a peaceful and orderly society.¹⁴ Certainly, dispute is inevitably and the effect of the Covid 19 on various sectors of the economy is one major cause of disputes lately. For years to

¹⁰ Ogundipe Olawunmi Opeyemi & Akinola Omoniyi Bukola, 'Covid-19 and the Challenges of Access to Justice in Nigeria' (2021),4(1), Run Law Journal, 387, 388.

¹¹ Clinton Elochukwu, 'NJC Guidelines for Virtual Court Hearings: Why the Trouble'(22 May,2020)<<https://medium.com/elochukwuwilson/njc-guidelines-for-virtual-court-hearings-why-the-trouble-fca25aacba22>> accessed 23 September, 2022.

¹² Herein after refer to as Practice Directive 2020.

¹³ National Judicial Council, 'Re: National Judicial Council COVID-19 Policy Report: Guidelines for Court Sittings and Related Matters in the COVID 19 Period' (2020) < <https://njc.gov.ng/30/news-details> > accessed 10 October 2022.

¹⁴ Ademola Sunday-Ayeerun (n9)279.



come, Nigeria will experience a noticeable increase in corporate disputes as it relates to affected sectors with a potential for corporate restructuring and insolvency actions. Increment in commercial related disputes is also expected as businesses become unable to perform existing contractual obligations and/ or have to re-adjust to new pressures on their finances and operations. The questions relevant to this paper are whether there are resolution strategies available in Nigeria to cater for disputes such as these? If yes, are there any post Covid 19 impacts on the resolution of commercial/corporate disputes in Nigeria?

This paper is divided into five parts. Parts I and V are introduction and conclusion parts respectively. Part II examines in detail the two contemporary disputes resolution strategies available in Nigeria. The pros and cons of these resolution strategies are carefully analysed and conversed. Part III examines post Covid 19 Impacts on the corporate/commercial disputes resolution in Nigeria. It discusses how pandemic has forcefully necessitated adjustments in every aspect of our lives particularly in the realm of dispute resolution. It identifies several novelties in the resolution processes which have been discovered through digital technologies to expedite disposition of disputes and also to aid in the dispensation of justice. Various arguments on the constitutionality/legality of virtual hearings/proceedings in Nigeria are fully analysed and debated in Part III of this paper. Part IV identifies challenges facing online space resolution practice such as virtual hearings and ODR. This paper contends that despite the numerous benefits linked with the adoption of virtual court hearings, there are some challenges likely to impact the use of technologies in discharge of justice and in the administration of justice system in Nigeria.

Dispute Resolution Strategies

Nigeria is a country with its own conflicts galloped. This is true to the extent that dispute or disagreement is unavoidably in every realism society like ours.¹⁵ Dispute can mean an argument or disagreement between people or groups which may be civil, commercial or domestic in nature. Disagreement therefore becomes legal dispute where one party's allegation of fact is denied by

¹⁵ Jibrin Ubale Yahaya, 'An Overview of the Major Conflict Resolution Management Techniques in Nigeria' (2018),3(2), International Journal of Social Sciences and Conflict Management, 64, 64.

the other party.¹⁶ In a bid to get justice, the affected party usually seek for resolution process that is recognised and enforceable before the law. Hence, there are two contemporary methods of disputes resolution; litigation and Alternative Dispute Resolution.

Litigation

Litigation is a primary dispute resolution strategy where the courts and civil justice system are engaged to resolve legal controversies.¹⁷ Litigation process therefore involves formal court sittings that calls for full examination and determination of all issues between parties, with each disputant presenting its case to an assigned judge. Nigeria operates a common law system and the system is modelled in line with the English common law rules, the country being the British colonists.¹⁸ This explain reason Nigeria operates an adversarial system of adjudication.¹⁹ Hence, the applicable civil procedures in Nigeria can be found in the Constitution of the Federal Republic of Nigeria 1999(as amended.), statutes creating various courts, civil procedure rules made by heads of the various courts and the decisions of courts interpreting various rules of civil procedure.²⁰

The judges are under a legal duty to adopt the specific rules of procedures for identifying the relevant facts and evidence(s) presented before them.²¹ The judges are to weigh the evidence(s) and further make their final decision by applying the relevant facts and evidences tendered to the applicable law which therefore conclude the litigation process.²² Sadly, only one winner emerges in litigation with the losing-party bears the cost implication of litigation.²³ However, the aggrieved party (ies) has the right to appeal the decision of the court to a higher court.

In contractual, commercial or corporate disputes, it is the High Courts that determine such disputes in Nigeria. State High Courts and High Court of the Federal Capital Territory (FCT) are the courts

¹⁶ Yusuf O. Alli, 'Religious Tolerance, Conflict Resolution and Human Rights'(A paper presented at the National Human Rights Commission Seminar held at Circular Hotel, Ilorin on 12th March, 2012) 49.

¹⁷ Abimbola Akeredolu & Others, 'Efficiency and Integrity of the Nigerian Legal Process' in Global Legal Insights (ed) *Litigation & Dispute Resolution* (Six Edn, Global Legal Group Ltd, London, 2017)225.

¹⁸ Abia O.T & Ekpoattai I.T., 'Arbitration as an Alternative Method of Conflict Resolution among the Ibibio of South -East Nigeria'(2014), 4(1), American Journal of Social Issues and Humanities, 31,35.

¹⁹ Obilade A.O., *The Nigerian Legal System* (Sweet &Maxwell, London, 1979)79.

²⁰ Aisekhaghe Destiny Iruogbe, 'A Note on the Nature of Civil Litigation in Nigeria' (05 July, 2021) <<https://ssrn.com/abstract=3922608>> accessed on 25 October,2022.

²¹ Abimbola Akeredolu & Others (n17)225.

²² Kabir D., 'Towards the Institutionalization of ADR Processes in Nigeria'(2011), 4(5), Ahmadu Bello University Journal of Private Comparative Law, 284, 290.

²³ *Nigerian Society of Engineers v. Ozah* (2015) 6 NWLR [Pt 1454] 76.

conferred with unlimited jurisdictions to entertain commercial/ corporate cases regardless of the economy value involved.²⁴ Thus, Federal High Court has the exclusive jurisdiction on some commercial/corporate disputes that involve companies operation, admiralty, corporate taxation, banking, intellectual property, copyright, trademarks, aviation, customs, excise duties and export duties.²⁵ Commercial/ corporate litigation therefore can be instituted in these courts using Writ of Summons or an Originating Summon depending on the subject matter of the dispute.²⁶

Litigation process come with some features that are peculiar to it. These include (1) its formal and structured rules of evidence and procedure (2), it offers parties the opportunity to present their evidences and arguments relevant to the case before the court (3) parties are to cross examined one another and (4), court hearings and records of proceedings are available and open to the public.²⁷ Despite these features, it may be morally wise to first consider other resolution strategies because litigation could turn out to be a bad attempt thereby resorting into a waste of time as the outcome of litigation is uncertain. This is so, particularly where business risk and good reputation of the company is at stake. The Nigerian legal and justice systems are fraught with delays, corruption and procedural challenges and these challenges play a depraved impacts on the litigations involving commercial/corporate disputes.²⁸

Sadly, courts in Nigeria do not give concern to the business risks involved and the time value in cases of monetary claims whether as debts or as damages. This is bad for businesses and business relationships as the impacts hit deeply into the companies' resources and further slowdown the growth of that business. Commercial/corporate litigations even suffers more drawbacks where there are some foreign elements.²⁹ Foreign investors, entrepreneurs and businessmen around the

²⁴ Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 249.

²⁵ Ibid, Section 251.

²⁶ Resolution Law Firm, 'Nigeria: Overview of Commercial Litigation in Nigeria' (25th January, 2021) <<https://www.mondaq.com/nigeria/contracts-and-commercial-law/1029300/overview-of-commercial-litigation-in-nigeria> >accessed on 25 October 2022.

²⁷ Ibrahim Abdullah, *Civil litigation in Nigeria: A Quick Reference Guide to Practice and Procedure* (Malthouse Press, 2018)78.

²⁸ Ogorji Hyacith Ifeanyichukwu & Opara Leonard Chinasoakwu, 'Arbitration in Place of Litigation for the Settlement of Commercial Disputes in Lagos Nigeria: A Discourse'(2020),7(2), *Journal of Commercial & Property Law*, Nnamdi Azikiwe University, Akwa, 106, 107.

²⁹ Olusola Joshua Olujobi and Others, 'Commercial Dispute Resolution: has arbitration Transformed Nigeria's Legal Landscape' (2018), 9(1) *Journal of Advanced Research in Law & Economics*, 204, 207.

globe now develop a perception of bias couple with extreme time intense towards our civil courts because of some bad history of inconclusive cases happened past without tangible reasons.

Certainly, frustration is not far from disputants when it seems impossible to be heard or where all efforts to get justice for the case proved abortive.³⁰ Delay in the final disposition of court cases is a foremost impediment facing the Nigerian judicial system.³¹ At first instance courts, cases last 5-10years and appeal takes another 5years except it's an election matter.³² In *Ogbuyinya v. Okudo*,³³ the case took thirty-two (32yrs) years from the High Court to the appellate Courts before the matter was finally laid to rest at the Supreme Court. This impediment of delay of course raised concern to many disputants particularly in corporate/commercial worlds

This concern and many other reasons must have informed the position of the Supreme Court of Nigeria in *Owoseni v. Faloye*³⁴ and *Aribisala v. Ogunyemi*³⁵ cases. The apex court held that in any form of disputes, parties must have exercised all the available remedies prescribed in the relevant law before approaching courts for resolution. Abraham Lincoln once said:³⁶

Discourage Litigation. Persuade your neighbours to compromise whenever you can. Point out to them how the normal winner is often the loser in fees, expenses and waste of time. As a peacemaker, the lawyer has a superior opportunity of being a good man. There will still be business enough.

Public confidence in the judicial system are gradually fading out hence, disputants are clamouring for other means of dispute resolution as against traditional litigation.³⁷ These agitations eventually

³⁰ Ogorji Hyacith Ifeanyichukwu (n28) 110.

³¹ Amadi J., 'Enhancing Access to Justice in Nigeria with Judicial Case Management: An Evolving Norm in Common Law Countries' (Monograph Series, Centre for African Law and Development (CALD), Nigeria, 2009)74
https://www.researchgate.net/publication/228208569_Enhancing_Access_to_Justice_in_Nigeria_with_Judicial_Case_Management_An_Evolving_Norm_in_Common_Law_Countries_/citation/download accessed on 21 September, 2022.

³² Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 285(6) provides for 180 days from the date of filing to hear and pronounce final judgement of election petitions. And 60days for appeal to the Tribunal or Courts.

³³ (1990)4 NWLR [Pt. 146]551.

³⁴ (2005) 14 NWLR [Pt 946] 719, 740.

³⁵ (2005) 6 NWLR [Pt 921] 212.

³⁶ Abraham Lincoln, *Alternative Dispute resolution-An Essential Competency for Lawyers* (New York, Oxford University Press, 2009) 152.

³⁷ Akomolede I.Timothy & Akomolede O. Bosede., 'Good Governance, Rule of Law and Constitutionalism in Nigeria' (2012), 1(6), European Journal of Business& Social Sciences, 69, 81.

led to the emergence of Alternative Dispute Resolution (ADR) in Nigeria. Nigerian legal system now embraces various methods of ADR as a means of resolution in any civil cases including commercial/corporate disputes. Multi-Door Court House (MDCH) was also established in Lagos State in 2002 in an effort to relieve the courts with their overloaded cases to ease access of disputants to justice. Years later, other States of the federation later followed suit on this and established MDCHs in their various courts to administer ADR.

Alternative Dispute Resolution (ADR)

ADR is a generic term that describes the various methods of resolving disputes other than the usual adversarial litigation. It refers to spectrum of voluntary methods of resolving disputes with the assistance of third party(ies). It may also mean settlement by the parties themselves without appearing before the judge in the court of law.³⁸ It entails procedures and practices of conflict resolution that happen separate/ distinct of any governmental authority.

Thus, ADR is not intended to replace the traditional court system rather,³⁹ it is a mechanism that aid diplomatic resolution other than going through the formal judicial process.⁴⁰ Inclusion of the contemporary ADR processes in the administration of justice in Nigeria are aimed with the sole objective of rectifying the numerous problems linked with the court litigations.⁴¹ ADR is a path to attain a speedy resolution built strongly on a peaceful mutual agreement of the parties involved. ADR process gives opportunity to the disputant parties to resolve conflicts in a less formal way and it minimizes the cost of resolution.⁴² Today, ADR mechanisms are considered as a feasible alternative to court. This is for the reason that the process comes with a number of advantages over the traditional court litigation. Advantages of ADR process includes⁴³ its flexibility nature, cost-

³⁸ Khalid Yahyea, *Alternative Dispute Resolution (ADR): History, Forms, Process, Mechanism, Development, Prospects* (Dhaka, Ruino Lambert Publishing, 2012) vi.

³⁹ Andrew J. Pirie, *Alternative Dispute Resolution: Sills, Science and the Law* (Irwin Law, Toronto, 2000) xvi.

⁴⁰ Nwazi Joseph, 'Assessing the Efficacy of Alternative Dispute Resolution (ADR) in the Settlement of Environmental Disputes in the Niger Delta Region of Nigeria' (2017), 9(3), *Journal of Law and Conflict Resolution*, 27, 30.

⁴¹ Perter S. Adler, 'The Future of Alternative Dispute Resolution: Reflections on ADR as a Social Movement' In Sally Engle Merry & Neal A. Milner (ed) *The Possibility of Popular Justice: A Case Study of Community Mediation in the United States* (Michigan, University of Michigan Press, 1995) 67, 73.

⁴² Ibid.

⁴³ Miriam R. Arfin, 'The Benefits of Alternative Dispute Resolution in Intellectual Property Disputes' (1995), 17(4)(7), *Hastings Communications and Entertainment Law Journal* 896, 898.



efficient and, time effective. Also, the process affords parties total control of the process without any influence from third party. Literarily, disputants who engage in ADR process are more pleased with the outcome because they fairly partake in working out the terms of settlement that lead to a final decision.

The most common ADR mechanisms include negotiation, mediation, conciliation, arbitration among others. Negotiation is the process where parties themselves interact/communicate to reach a workable agreement without any help or interference from a third party. In mediation, third party play the role of intermediary with the purpose of promoting an amicable agreement between the parties. Mediation must be voluntary and consensus process hence; mediator need not compelling own decision on the parties. Mediator can only exercise his skills to assist the parties in reaching an amicable decision.⁴⁴ Conciliation often interchange with mediation hence, the role of a third-party(conciliator) is to facilitates negotiations with the main purpose of helping the parties settle.⁴⁵ However, conciliators are not permitted to determine who is wrong or right but to promote means of settlement and to encourage communication.

In arbitration, an arbitrator(s) performs an important role to facilitate the resolution of matter(s) between the parties and he will render an arbitration award that will be binding on the parties.⁴⁶ The binding nature of the award distinguishes arbitration from any other ADR mechanisms. This explains reason arbitration is consider as a well-developed alternative to court system hence, business/corporate organisations who find themselves in disputes that cannot be resolved through normal business negotiations may prefer arbitration.⁴⁷ More so, parties can combine two or more of ADR mechanisms for an effective outcome.

Constitution of the Federal Republic of Nigeria of 1999 (as amended) in s. 274 empowers the Chief Judges of the Federal Capital Territory and various States of the federation to ensure adequate provision for rules of Court for administering justice within their various jurisdictions.

⁴⁴ Carrie J. Menkel Meadow, Lela Portar Love & Andrea Kupfer Schneider, *Mediation: practice, Policy and Ethics* (New York, Wolters Kluwer Law and Business, 2013) 98

⁴⁵ Blake Susan, Browne Juliie & Sime Stuart, *Practical Approach to Alternative Dispute Resolution* (Oxford, Oxford University, 2014)333

⁴⁶ Ibid.

⁴⁷ Lazarus S. Stephen and Others, *Resolving Business Disputes -The Potentials of Commercial Arbitration* (American Management Association, 1965)35-40.

Interestingly, High Court of the Federal Capital Territory (Civil Procedure) Rules 2018 and High Court of Lagos State (Civil Procedure) Rules 2019 are considered evolutionary Rules rooted with ADR processes.

Order 19 Rule 1 of the High Court of the Federal Capital Territory (civil Procedure) Rule 2018 states that ‘a Judge with the consent of the parties may encourage settlement of any matters (s) before it, by either arbitration, conciliation, mediation or, any other lawfully recognised method of dispute resolution.’ Also, one of the overriding objectives of the Lagos State Civil Procedures Rules 2019 is to actively manage the timing of cases.⁴⁸ The Registry of the court are to screen all new court processes upon filing to determine if such case can be resolved through any of the ADR mechanisms.⁴⁹ And if the Registry finds the case appropriate for ADR resolution, such case is to be refer to LMDH or any appropriate ADR institution. The Provision for Pre-Trial Conference or ‘Case Management Conference’ in various Rules of the courts is aimed to empower the court with extensive case management powers so as to enable courts to compel parties to consider ADR in appropriate cases.⁵⁰ And also to narrow issue(s) pleaded in the processes, arrange and plan for the quicker means of discovery of relevant facts, evidences and, production of documents just to speed-up resolution of cases. The Conference is expected to last not beyond 3months from date of its commencement.

Arbitration and Conciliation Act (ACA)⁵¹ is the primary law regulating the practice of ADR in Nigeria.⁵² And the law is modelled in line with the UNCITRAL Model Law on International Commercial Arbitration 1985.⁵³ The ACA is divided into four major parts and consists of three schedules. Hence, some States of the Federation also have their own Arbitration Laws, Lagos State Arbitration Law 2009 is one of those State laws.⁵⁴

⁴⁸ High Court of Lagos State (Civil Procedure) Rules 2019, Order 2 Rule 1.

⁴⁹ Ibid, Order 3 Rule 11.

⁵⁰ High Court of Lagos State (Civil Procedure) Rules 2019, Order 25 Rules 1(2)(c), (2)(1) & 6.

⁵¹ Cap A18, Laws of the Federation of Nigeria, 2004.

⁵² Akanbi M.M., *Domestic Commercial Arbitration in Nigeria: Problems and Challenges* (Lanbert Academic Publishing, 2012)78

⁵³ United Nation documents A/40/17, annex I and A/61/17, annex 1985). Herein after refer to as UNCITRAL Law. In 2006, the UNCITRAL Law was amended to take cognisance of the new technological innovations in order to develop a standard structure acceptable globally.

⁵⁴ Owolabi W. Magaji K & Lakadri M.A., ‘An Appraisal of the Arbitration Law of Lagos State 2009’ (2017),1(1), Alhikma University Journal of Public & International Law, 200, 205.

Impacts of Post-COVID 19 on Corporate and Commercial Disputes Resolution

The future of dispute resolution and disputants' right to justice particularly in corporate and commercial disputes should not be restricted to brick and grout. Ordinarily, judiciaries are meant to provide judicial services and it is not necessary that the courts should be the sole provider or bearer, responsible for the discharge of such services.⁵⁵ To some extent, ADR has helped in the struggle to gain liberation away from the exclusive influence of the courts system as it used to be in the past. Hence, dispute resolution is no longer within the exclusive domain of the physical courts. Innovations have been discovered through digital technologies to expedite disposition of disputes and to aid in the dispensation of justice.

Consequently, business negotiations, contracts or agreements and the choice of dispute resolution strategy (that may have required in such relationships) need not be in physical congregation. Basically, pandemic has forcefully necessitated adjustments in every aspect of our lives and the realm of dispute resolution is not an exception. Adaptive and innovative is the watchword. In most part of the world, technologies are now being tolerably utilised by both private dispute centres⁵⁶ and judiciaries⁵⁷ for filling of cases, video conferencing, conducting pre-hearing and hearing of proceedings, presentation of witnesses and delivery of rulings or judgments. Hence, post-Covid 19 impacts on corporate and commercial disputes resolution is examine and discuss below.

The Pandemic has accelerated the use of technologies to conduct virtual hearings

Prior to year 2020 the use of technologies in the dispensation of justice by the Nigerian courts is strange unlike other countries where virtual/online litigations and hearings are typical. One major hindrance affecting the ease of corporate and commercial transactions, agreements, contracts and the nation's investment climate is the futile administration of justice system that is in operation in

⁵⁵ Ogundipe O. Olawunmi & Akinola B Omoniyei., 'Covid-19 and the Challenges of Access to Justice in Nigeria' (2021) 4(1), Run Law Journal, 387,392.

⁵⁶ Ibid 390-395.

⁵⁷ Ibid.



Nigeria.⁵⁸ Unwarranted delays occasioned by shambolic administrative structure, infrastructural and procedural challenges that overpowered the system are the cause of this problem.

The eruption of Covid 19 has impacted the Nigerian legal and administration of justice systems with the introduction of virtual court hearing.⁵⁹ Covid 19 presents the Nigerian judiciary with a sporadic chance to rethink and reform their justice delivery system particularly where there is need to enforce contracts /agreements and to seek resolution in corporate/ commercial disputes. No doubt, an effective administrative justice system largely determined on the ability to enter into a contractual relationship with ease, access to an efficient justice system to enforce such contacts and availability of an effective dispute resolution strategies to resolve any grievances may have arisen in the course of their relationships.

In 2020, National Judicial Council of Nigeria under the leadership of Chief Justice of Nigeria issued a Practice Directives that lawfully permits virtual court hearings and advised that physical hearings should be avoided.⁶⁰ The Practice Directive 2020 enables courts to attend remotely to cases such as those that are considered ‘urgent matters’ because of its nature, bail applications that bothers on fundamental right of the accused, any such cases that do not require the taking of evidence, delivery of judgements, ruling and directions.⁶¹ Paragraph E of the Practice Directive 2020 deals with virtual Court Hearing.

Accordingly, virtual court hearings can be done through the platforms such as video conferencing, zoom, Google meetings, Skype or any other audio-visual platform approved by the court.⁶² Specifically, the Practice Directives 2020 mandates judges to safeguard and encourage public access when virtual sittings is being conducted. What is expected of any judge who is conducting

⁵⁸ Elvis E. Asia, Dialogue on Virtual Court Hearing in Nigeria-Opportunity for Contract Enforcement and Commercial Disputes Settlement Reform (Being a lead paper presented at a virtual policy dialogue organised by the Centre for Trade and Business Environment Advocacy Ltd/Gte (CTBA) in collaboration with the EU co-funded Nigeria Competitiveness Project (NICOP) under the SEDIN Programme of Deutsche Gasellschaft fur Intenationale Zusammenabeit (GIZ) GmbH, on Tuesday, 22nd September 2020).

⁵⁹ Jimoh Mujib Akanni, ‘Advancing Online Dispute Resolution in Nigeria: Current Opportunities, Legal Challenges and the Ways Forward’ (2021),11(2), The Journal of Sustainable Development Law and Policy, 407,422.

⁶⁰ National Judicial Council, ‘Re: National Judicial Council COVID-19 Policy Report: Guidelines for Court Sittings and Related Matters in the COVID 19 Period.’(2020) <<https://njc.gov.ng/30/news-details>> accessed on 10 October, 2022.

⁶¹ NJC Guidelines for Court Sittings and Related Matters in the COVID 19 Period 2020, Item E (2) & (3).

⁶² Ibid, Item E (6) (c).

virtual court hearing is to stream live such proceedings with the web address of the court or through any other means which can be easily accessible by the parties and any interested members of the general public.⁶³ Also, the Practice Directives 2020 mandates courts to make weekly written declaration informing the general public on the scheduled of cases to be heard remotely for that week. And such written declaration shall be stuck on the court's notice board in addition to the usual manner that the court circulates and declare information about its weekly sittings.⁶⁴ The hint behind this is to ensure that the provisions of the constitution are not violated and the rights of the parties as guaranteed in the constitution are protected.⁶⁵

Covid 19 therefore motivates judiciary in Nigeria to embrace technological novelties. The pandemic encourages navigation from the old idea of a traditional courts that exasperate the litigants with crowded court sittings to virtually inspired hearings.⁶⁶ It is therefore became necessary to explore new workable structures to prevent, manage and resolve disputes in a convenient and collaborative manner. Aside the 'convenience' among other benefits entrenched in virtual court hearings, the use of technologies in discharge of justice also has potentials to ease business drive in the country which can eventually upsurge the efficacy of the justice delivery system.⁶⁷ In that case, Nigeria will experience drastic improvement on it foreign direct investment if virtual court hearings can be fully integrated into the Nigerian justice system post Covid 19. Integration of virtual hearings will certainly improve on some level of predictions in commercial and contractual relationships. It can as well serve as an assurance to entrepreneurs, business owners and organisations that their contractual rights will be upheld promptly without any delay. This is so because traditional litigation in Nigeria lacks commercial utilitarian value, proceedings of a simple commercial or corporate dispute can run through several years and by the time the issue(s) is finally resolved, the subject matter of the disputes would have been rendered valueless.

⁶³ Ibid, Item E(12)(a).

⁶⁴ Ibid, Item E (9).

⁶⁵ Constitution of the Federal Republic of Nigeria (as amended) 1999, Section 36.

⁶⁶ Joseph Onyekwere, 'Experts Examine Merits, Demerits of Virtual Curt Hearings in Nigeria'(7th July, 2020) <<https://guardian.ng/features/experts-examine-merits-demerits-of-virtual-court-heaings-in-nigeria/>> accessed on 15 October, 2022.

⁶⁷ Nigerian News Direct, 'Commercial Disputes: Stakeholders Canvass for Virtual Court Hearings for Speedy Resolution' (23rd September, 2020) <<https://nigeiannewsdirect.com/commecial-disputes-stakeholders-canvass-for-virtual-court-hearings-for-speedy-resolution/>> accessed on 15 October, 2022.



Virtual court hearings therefore afford disputants and courts the opportunity to engage in electronic communications which of course can speed up the resolution process and consequently, minimize the time spent on procedural matters and appeals arising therefrom. Timely delivery of judgments and rulings is almost guaranteed. The use of technologies in the resolution process save cost and time even if the parties are not within the same jurisdiction where the court is located. Also, virtual court hearings offer disputants the opportunity to experience transparency and the ease of access to both court hearings and records form part of the unique feature. Arguably, transparency in the resolution disputes is a strong tool to rebuild public's interest and confidence.

In addition, virtual court hearings can help to eradicate the unsolicited attitudes of the judiciaries starting hearings *de novo*⁶⁸ where the judge assigned to the case is transferred to another judicial division. It does not speak well of the Nigerian judiciary to *de novo* cases particularly where the proceedings are already commenced or nearly a completion stage, just because the sitting judge has been transferred or die. This attitude can be equated to a total waste of time and it's another cause of delay in traditional litigation. With virtual hearings a judge will hear and conclude a case from any division since location may not matter.

How Technologies has improved and increase efficiency in the Justice system in Nigeria

The shift from the traditional resolution method to the use of technologies in dispute resolution has significantly improved efficiency and access to justice during and post pandemic. It has long been clear that adversarial models of justice which favour traditional court settings are outdated. There are considerable benefits to this as the use of technology is much more widespread in virtual court hearing and online dispute resolution (ODR) settings. Moreover, virtual hearings offer greater flexibility than traditional court hearings, and can be more effective and efficient. The first ever virtual court hearing in Nigeria was the case of *State v. Ali Mohammed*.⁶⁹ The Chief Judge of Borno State observed that the virtual hearing was beyond a mere response to Covid-19, rather he said, it was born out of the desire to increase access to justice in Borno State. It is therefore opined that virtual court hearing and ODR can offer significant advantages and benefits in this new world.

⁶⁸ Starting the hearings all over because the sitting judge is transferred.

⁶⁹ Suit BOHC/MG/115/19.

On 18th May 2020, Justice Mojisola Dada of Ikeja High Court of Lagos State delivered a judgement in a criminal case via the video conferencing platform, Zoom.⁷⁰ The hearing lasted almost three hours and was virtually attended by lawyers, including the attorney general. Parties and counsel were all participated from different locations as part of efforts to stop the spread of Covid 19. Opting out for virtual hearing by the judge in this case must have been informed by the constitutional right of the accused person to be heard timely without delay. Hence, the judgement fixed date was caught up the week CJN suspended physical hearing indefinitely. At that point, the virtual hearing needed to be implored to secure the accused access to court and to showcase the efficiency of the Nigerian judiciary.

The Ogun State Government in November 2021 also launched a case management and scheduling system to accelerate justice administration and dispensation by deploying ICT.⁷¹ The case management and scheduling system would enable judges to have access to the details of cases assigned to them at the touch of a button from either their laptops or mobile phones. The same innovation is also available in Oyo and Ekiti states respectively. The Supreme Court has in the case of *C.M& ES. Ltd v. Pazan Services Nig Ltd*⁷² also approved service of processes through ICT mediums. The apex held that, at this age of prevalence of information technology, the service of hearing notice through text message by the registrar of Court is good and sufficient notice.⁷³

However, scholars have raised concern as to the legality of virtual court hearings under the Nigerian laws and also whether the proceedings conducted virtually do not violates right to public hearing/trial as guaranteed in the 1999 Constitution of the Federal Republic of Nigeria. This is discussed below.

Legal Basis and Constitutionality of virtual hearings Post-Covid 19

⁷⁰ State v. Olalekan Hameed ID/900C/2019

⁷¹ Rasaq Ayinla, Ogun Digitises Judicial System with e case management, scheduling System.’ <<https://businessday.ng/news/article/ogun-digitises-judicial-system-with-e-case-management-scheduling-system/?amp=1>> accessed on 13 September, 2023.

⁷² [2020]1 NWLR (Pt. 1704)70.

⁷³ Ibid, 95.



In Nigeria, the existing statutes that establish various courts and rules of courts omit to accommodate video-conferencing, virtual court hearings.⁷⁴ The reason for this is not farfetched, the need for such virtual hearings and video-conferencing was never in contemplation until the outbreak of Covid 19 in 2020. If various laws in Nigeria are carefully scrutinized only physical hearings in an open court with the presence of judge(s), parties or (and) their legal representatives, witnesses from both sides are anticipated in the whole contents of the enabling laws and rules.⁷⁵ The provision of the Constitution of the Federal republic of Nigeria 1999 as amended is very clear on this.⁷⁶ Although, some rules of court⁷⁷ provides for electronic filing hence, lack of infrastructural devices makes it almost impossible to achieve this practice.

Truthfully, Nigeria was never ready in term of legal backing and infrastructures at the time virtual hearing was first utilised during Covid 19. Unexpected suspension of courts' sittings due to pandemic accelerated the use of digital technologies to facilitate the hearings of issues that are consider urgent and important. The Practice Directive 2020 for virtual hearings is the only law that make provision for virtual court hearings. No existing law or any rules of courts in place that regulates and govern the practice of virtual court hearings in Nigeria.⁷⁸ The Directive was restricted and focused largely on Covid 19 era however, it does not contemplate the continuing practice of virtual hearings by our courts post Covid 19.

The only existing law that makes provision similar to that of NJC Directive 2020 is Administration of Criminal Justice Act 2015.⁷⁹ Where it becomes impossible to operate an open access court the Act authorises courts in Nigeria to receive evidence via video link; permit witness(s) who requested to be faced masked to give evidence; take expert's written report virtually and; take any

⁷⁴ Federal High Court (Civil Procedure Rule) 2019, Order 46; Lagos State High Court (Civil Procedure) Rules 2019, Order 49; National Industrial Court (Civil Procedure) Rules 2017, Order 58 Rule 2.

⁷⁵ Constitution of the Federal Republic of Nigeria (as amended) 1999; Federal High Court (Civil Procedure Rule) 2019; Lagos State High Court (Civil Procedure) Rules 2019; National Industrial Court (Civil Procedure) Rules 2017.

⁷⁶ Constitution of the Federal Republic of Nigeria (as amended) 1999, Section 36(4).

⁷⁷ Federal High Court (Civil Procedure Rule) 2019, Order 58.

⁷⁸ Sunday-Ayeerun Ademola, Herbert Eti Bet & Ole Ngozi Chinwa, Covid 19 Induced Virtual Court Sessions in Nigeria: Practicalities and Impracticalities (2022), 9(2), PADJADJARAN Journal of Law, 261- , 281

⁷⁹ Administration of Criminal Justice Act 2015.



reasonable measures that is consider necessary in any given circumstances.⁸⁰ Sadly this provision only relevant to criminal trials hence, corporate/ commercial disputes litigation are exempted.

As regard constitutionality of virtual court hearings, the requirements of fair hearing and public trial as contain in Sections 36(1), (3) & (4) of the 1999 Constitution of the federal republic of Nigeria (as amended) generate doubts to proceedings held via virtual space in Nigeria. The provisions provide that where case is before the court for determination of rights and obligations or where courts are to decide on criminal liability of the parties, the judge who is presiding over the case must ensure fair hearing.⁸¹ Fair hearing must be observed without necessarily compromising the reasonable time frame for the completion of the case and such hearings/ delivery of judgements must be conducted in ‘public’ place.⁸²

Thus, the bone of contention is that proceedings conducted via virtual space cannot meet the requirements of ‘public’ and ‘fair’ hearings therefore violates s. 36 of the Nigerian Constitution.⁸³

Opponents of virtual court hearing contend that the 1999 Constitution of the Federal Republic of Nigeria needs to be amended to accommodate such proceedings in line with the provisions of the Constitution. Hence, the Supreme Court cases such as *Edibo v. The State*,⁸⁴ *Nigeria-Arab Bank Limited v. Barri Engineering Nig Ltd*⁸⁵ and *Oviasu v. Oviasu*⁸⁶ are among the numerous cases relied upon to justify the arguments that virtual court hearings are unconstitutional.

Contrarily, advocate scholars contend that pandemic has unconsciously positioned Nigeria to a *status quo* that some phrases as found in s.36 of the Constitution essentially need to be rearticulated so as to cater for unexpected epidemics and for future outbreak.⁸⁷ Phrases such as ‘accessibility’

⁸⁰ Ibid, Section 232(4).

⁸¹ Constitution of the Federal Republic of Nigeria (as amended)1999, Sections 36(1) & (3).

⁸² Ibid, Section 36(4).

⁸³ Awomolo Adegboye, ‘Virtual Court Hearing Does Not Pass the Test for Proceedings Conducted in Public: There is need for Constitutional Amendment’ (20th May, 2020) <https://barristerng.com/virtual-court-hearing-does-not-pass-the-test-for-proceedings-conducted-in-public-there-is-need-for-constitutional-amendment/>> accessed on 25 October, 2022.

⁸⁴ (2007) 13 NWLR [Pt 1051]306.

⁸⁵ (1995) 8 NWLR [Pt 413] 257.

⁸⁶ (1973) 11 SC 315.

⁸⁷ Hon Justice Peter A Akhiero, ‘Virtual Court Hearings: Towards a Purposive Interpretation of Statutes’ (2020) <<https://edojudiciary.gov.ng/legal-articles/virtual-court-hearings-towards-a-purposive-interpretation-of-statutes/>> accessed 15 November, 2022; Joseph Onyekwere, ‘Experts Examine Merits, Demerits of Virtual Curt Hearings in Nigeria’ (July 7th, 2020) <<https://guardian.ng/features/experts-examine-merits-demerits-of-virtual-court-heaings-in-nigeria/>> accessed on 15 November, 2022.



to court and ‘public’ hearing cannot continue to bear its literal interpretations. Thus, parties’ accessibility to the court and public hearing need not be in form of physical court congregation and to argue otherwise mean relinquishing the Nigerian justice system to a corporeal captivity. Advocates further contend that court hearings on virtual space do not necessarily in realness restrict public access rather, it encourages public openness to such court hearings. Ordinarily, virtual court hearings are endowed with the strongest capacity to house larger population than those conducted in a physical court. This is so because there is limit as to what courtrooms can take. Hence, the major concern is how to reconcile these two divergent arguments from both the opponents and advocates sides.

Sadly, the meaning or the extent to which the interpretation of ‘public’ can go is not given in the Constitution.⁸⁸ Scholars are therefore left to debate whether virtual space can be considered as ‘public’ place for the purpose of the requirements contain in Sections 36(1), (3) & (4) of the 1999 Constitution. Ordinarily, public place can mean any location that is open, accessible without any restraint to private use.⁸⁹ Long before now, Supreme Court of Nigeria in *Rafiu Nafiu v. State*⁹⁰ and *The Federal Republic of Nigeria v. Osahon and 7 others* gave hints that, in situations where there are divergent opinions as regard the interpretation of the provisions of the Constitution, ‘common sense’ or ‘liberalism’ approach may be desirable. Or in some situations, it may be better to approve those elucidations that clearly meet the intention of the drafters.⁹¹ The Supreme Court in those cases cited above emphasised on the importance of broad application and interpretation of the provisions of the Constitution unless doing so will occasion miscarriage of justice. Or where narrow interpretation will do justice better than any other options.

The positions of the apex court as expressed in the above cases may have influenced the decisions of the courts in *Attorney General of Lagos State v. Attorney General of the Federation & National*

⁸⁸ Interpretation Act Cap 123 Laws of Federation of Nigeria, 2004.

⁸⁹ Emudainohwo Emuobo, ‘Appraising the Constitutionality of Virtual Court Hearings in the National Industrial Court of Nigeria’(2021),12(1), NAUJILJ , 16 , 20.

⁹⁰ (1981) 2 N.C.L. R. 293,326, per Udo Udoma JSC.

⁹¹ *The Federal Republic of Nigeria v. Osahon and 7 others*, Suit No.(SC 23/2004). The judgment was delivered 17th day of February 2006, Per Belgore JSC <<https://nigerialii.org/ng/judgment/supreme-court/2006/10-13>> accessed 20th November 2022.



*Assembly*⁹² and *Attorney General of Ekiti State v. Attorney General of the federation & 2 others*⁹³ cases. In *Attorney General of Lagos State*, the court was to determine whether the pronouncement of the judgment by the trial court via virtual space offends the provisions of the Constitution. In case *Attorney General of Ekiti State*, the appellant questioned the legality of the NJC's Directives 2020 authorising various courts to integrate virtual hearings in their various jurisdictions. The court stated that virtual court hearing does not in any way violates rights of the disputants as guaranteed in s.36 of the 1999 Constitution. It rather enhances the provisions of the supreme law.

Going by this, broad interpretation of the Nigerian constitution is encouraged. Hence, the phrase 'public place' or public trial as contain in s. 36 of the Constitution can be interpreted broadly to accommodate cases heard via virtual space in Nigeria. Accessibility of the parties and public to the court, proceedings and records are the determinant factors to be considered to determine if virtual court hearings satisfy the requirement of proceedings held in public and whether the proceeding is fair.⁹⁴ Hearing in public can be implied where troposphere surrounding the court sittings permit public to go in, attend and watch the proceedings. It can therefore be argued that hearing is sufficiently public if the general public are allowed to attend the proceedings and can request for the record of proceedings as the events unfolds.⁹⁵ Determinant factor here should be, the level of public access to the proceedings which of course should not be confined to physical courtrooms. Arguing otherwise could mean restraining the Nigerian Justice system mainly to a 'physical place,' whereas it will be more accurate to see the judiciary as a 'provider of judicial services.' Hence, broad interpretation of s.36 is desirable since the Nigerian Constitution does not specifically provides for virtual hearings. Amendment of the Constitution may not be a better option; the amendment procedures take time and the process involves rigorous exercise.

According to Justice Ekwo, the 1999 Constitution is voluminous already, it may not be worthwhile to include additional provisions on virtual hearings; the existing provisions can take care of this

⁹² Unreported Suit No SC/CV/260/2020. The ruling was delivered on the 14th July, 2020 by Hon Justice Rhodes-Vivour JSC.

⁹³ Unreported Suit No SC/CV/261/2020. The ruling was delivered on the 14th July, 2020 by Hon Justice Rhodes-Vivour JSC.

⁹⁴ Emudainohwo Emuobo (n84) 20.

⁹⁵ Awomolo Adegboye, (n78).

gap.⁹⁶ His Lordship is of opinion that our current Constitution only need to be interpreted broadly to accommodate virtual hearings hence, the supreme law need not be amended. Also, Prof Odita observes that various doubts canvassed by scholars on the constitutionality of virtual court hearings in Nigeria is depressing, the world has gone virtual leaving Nigeria behind may be disastrous.⁹⁷ Adekoya also observes that the effective practices of international arbitration in Nigeria and virtual court hearings during Covid-19 era are positive signal that the Nigerian Justice system can tolerate such hearings post-Covid.⁹⁸

Pandemic enhances the Use of Online Dispute Resolution (ODR)

Online Dispute Resolution is ODR and can also mean e-ADR or ADR that is aided through technology. The process typically involves the process of attracting resolution using the simplest to complex technologies such as audio-visual tools for instance telephones, e-mail and messaging applications purposely to aid dispute resolution without physical audience of the parties involved. ODR simply mirrored ADR through aggregated use of simple ICT tools.⁹⁹

Historically, ODR gains its genesis from ADR however, ODR is entrenched with some unique benefits that are far beyond that of ADR. ODR can assist in dispute containment, dispute avoidance and can as well promote the legal strength and wellbeing of any nation. For these extraordinary benefits, ODR has been unified in many jurisdictions around the world with various governments through its judiciary arms being conscious of the citizenry' rights to access justice within a reasonable timeframe.

ODR process is cheap and very expedient. It offers parties an opportunity to resolve their dispute remotely no matter the distance. This however gives the ODR processes a hedge over any other methods of dispute resolution. ODR therefore relies heavily on technological infrastructures which thereby confiscate the required criterion for the actual attendance of the parties. Also, ODR has the ability to limit the overburden loads of our courts and efficiently improve on their legal approach to dispute resolution in Nigeria.

⁹⁶ Joseph Onyekwere (n82).

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Hon. Justice Peter A Akhiero (n82).



Importance of Technologies in Disputes Resolution at Post-Covid 19

In the last few years, the importance of technologies is well pronounced globally particularly, in the aspects of disputes resolution. If there is any significant benefit brought about by the pandemic it is the fact that, Covid 19 has exposed the Nigerian legal and justice systems to the use of technology in a manner that is safe for all concerned. The greater use of technology during the Covid 19 also reinforces the call for the greater focus on the adaptability of ADR procedures to virtual space. One of the fundamental changes that the Covid 19 pandemic has offered the world at large is the integration of technology to administer justice particularly in the realm of commercial and corporate disputes. The use of technology is aimed to aid dispute resolution thereby serves as an alternative means to access justice as against litigation. Due to this, judicial services can be access at the comfort of the parties hence, justice is no longer attached exclusively to courts or judiciary. Over time, the benefits of ODR and digitalization of public courts system can transform the legal paradigm as a whole.

Challenges Associated with the Use of Technologies in the Resolution of Commercial/Corporate Disputes in Nigeria

Despite the numerous benefits identified with the adoption of virtual court hearings in the resolution of corporate/commercial disputes, there are some challenges likely to impact the use of technologies in the resolution of disputes and in the administration of justice system in Nigeria. As observed above, virtual court hearing has not been expressly provided for in the existing law in Nigeria. This however creates major challenge to the continuing usage of virtual court hearing post Covid 19.

In addition, it is difficult to sustain the practice of ODR and virtual court hearings in Nigeria without a strong supportive ecosystem. Obviously, greater access to digital technologies is required. The technological infrastructures needed to conduct virtual court hearings or ODR across the nation are very minimal. However, this challenge can be overcome by establishing a separate commercial/corporate session within the High Court Judicial Division of each State of the federation with the necessary supply of Information Communication Technology (ICT) tools and infrastructures to strengthen this course.



Also, virtual court hearings or ODR may not favour disputants who have little or no knowledge of ICT.¹⁰⁰ The level of peoples' exposure to digital literacy in Nigeria is still relatively low and this has to be improved to achieve an effective practice of the use of technologies in resolution of commercial/ corporate disputes. Frankly, some Nigerians do not understand how to make use of ICT either in their interpersonal or commercial relations. The question relevant here is 'what is the faith of such people when resolution is initiated on virtual space?' Nigerian government may need to present a curriculum that can capture ICT as a course in various levels of education from primary to tertiary institutions.

Another possible challenge is the concern whether it is attainable when conducting virtual court hearings to maintain the necessary level of confidentiality required to safeguard 'confidential' documents or information tendered online. Certainly, confidentiality is one significant benefit that ADR has over both traditional litigation and virtual court hearings. This explain why corporate/ commercial disputes may be better resolved in a private arrangement such as ADR mechanisms. It may however be argued that the fear of divulging online what is meant to be confidential information/data/document should not discourage the use of virtual court hearing in the resolution of corporate/ commercial disputes; the benefits much outweigh the disadvantages.

Tendering and admissibility of documents in virtual court hearings also raise concern. This is because the Nigerian Evidence Act 2011¹⁰¹ simply makes provision for physical tendering and admission of documents.¹⁰² Thus, the Act gives statutory approval for the admissibility of documents generated from electronics sources such as computers and it further enumerates the conditions that must be fulfilled in order for electronic evidence to be admitted.¹⁰³ However, no clear or specific definition provided in the Evidence Act 2011 as to the meaning of 'electronic evidence.' Meanwhile, court processes that are require for filing in virtual court hearings may have to be converted into electronic form and there raises uncertainty as to which evidentiary rules will govern such converted electronic form; is Section 84 Evidence Act applicable here? The relevant

¹⁰⁰ Nwachokor J.O, Udoeye R.N. & Orhena E.N, 'Assessment of the Use of Information Communication Technology in Teaching and learning of Business Education in Colleges of Education in Delta State' (2016),3(2), Nigerian Journal of Business Education, 168,169.

¹⁰¹ CapE4 Laws of the Federation of Nigeria, 2011. Hereinafter referred to as Evidence Act 2011.

¹⁰² Evidence Act 2011, Section 83.

¹⁰³ Evidence Act 2011, Section 84



questions that need to be addressed are: what procedures are to be followed by disputants when tendering document(s) for admission in a virtual court hearing? Another question be whether those documents tendered virtually can be referred to as primary or secondary evidence?

Arguably, rules regarding the admissibility of electronically generated evidence, as stated in Section 84 of the Nigerian Evidence Act of 2011 cannot and should not be the applicable test to determine the admissibility of documents converted into their electronic forms. This is because the form and nature of such document before its conversion plays significant role in the determination of the admissibility. Hence the evidentiary rules applicable to evidence (primary or secondary) in its actual form is the same as that which will be applicable to it even after it has been converted in an electronic form.¹⁰⁴ For instance, primary evidence if tender before the court must be shown to the opposing party to accept or object before the court admits the document or otherwise. Secondary document require a party tendering it to lay a foundation for its admissibility with enough information regarding the whereabouts of the primary form of the document.¹⁰⁵

Conclusion

Technological innovations have transformed the way and manner people communicate their business interests, transact businesses and most importantly, resolving disputes/ conflict among themselves. In 2020 upon the outbreak of Covid 19, technologies were the major alternative instruments adopted by the judiciary arm to simplify and ease dispute settlement in Nigeria. So, far pandemic has shown the need to embrace a rapid and efficient virtual means of settlement of disputes between parties, business organisations and corporations. The use of technologies is a new discovery that permit individuals to espouse an online tool to access justice. Ultimately, the world is undergoing a paradigm shift to change the narrative in the conflict resolution field. Given the importance of quick dispensation of justice to the commercial/corporate worlds, priority should

¹⁰⁴ Oluwajobi V.A & Omoyajowo K., 'COVID-19: A Case for Online Courtrooms in Nigeria and the Admissibility of Electronic Evidence in Nigeria' (2020).
<https://www.academia.edu/43237388/COVID_19_A_CASE_FOR_ONLINE_COURTROOMS_IN_NIGERIA_AND_THE_ADMISSIBILITY_OF_ELECTRONIC_EVIDENCE_IN_NIGERIAS_ONLINE_COURTROO_MS>
accessed on 13 September, 2023.

¹⁰⁵ Jacob v. Attorney General of Akwa Ibom State [2000] FWLR (Pt 86) 578 CA



be placed on resource allocation to developing and acquiring up-to-date technological facilities for virtual court hearings and ODR.

The paper therefore recommends as follows:

1. Constitutional amendment is desirable to legalise online court hearings in Nigeria.
2. The Nigerian legislature should enact law similar to ACA to regulate ODR in Nigeria. This is to keep pace with the international best practices. Adequate legal framework on ODR will also promote the development of e-commerce thereby stimulate the growth of the technology industry.
3. Various procedural laws and rules applicable to the courts in Nigeria require amendment to provide for online hearings and the appropriate technological framework to be adopted.
4. There is need to develop a continuous initiatives/educational program specifically for population at the rural areas in Nigeria to sensitize them on their chance to engage in online court hearings and ODR and also to improve their ICT literacy.
5. Confidentiality can be achieved by securing online platforms (through appropriate legislation) whereby outsiders are restricted from accessing the information or data exchanged during and after the hearing sessions.
6. Nigerian government must regulate the activities of the internet service providers in order to ensure strict compliance with the security of customer's data and confidentiality of information within their data base. Strict monitoring of the activities of telecommunication companies in Nigeria is highly desirable.
7. The Nigerian Evidence Act of 2011 should be amended to commodore documents converted into electronic form in its true form. Parties should be required to submit the hardcopies of their exhibits to the court/ tribunal before the commencement of online hearings and, the other party should be permitted to have physical inspection of such documents (if so desire). This is to ascertain the true nature of such document before it is being converted into an electronic form. And to also, to enable the opposing party to detect any abnormality or clear any doubt of contradiction between document in its submitted form and in its converted electronic form.

