



# APPLICATION OF ALTERNATIVE DISPUTE RESOLUTION METHODS TO MARRIAGE DISPUTES IN NIGERIA

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**Abstract:** Marriage is a union entered into by two parties in every jurisdiction i.e., marriage is a universal occurrence. Although the legal process involved (either in formality or requirement) varies from one jurisdiction to another, marriage is often characterized by disputes which range from divorce to custody of children, maintenance e. t. c. Marriage, as examined in this context, is limited to that conducted under statutes. In resolving these disputes, recourse is made to adjudication. But overtime, various shortcomings are being found for litigation. These include unnecessary delay caused by congestion of court, high cost of litigation, confrontational nature of litigation amongst others. Employing the Matrimonial Causes Act, 1970, which operates within Nigeria jurisdiction, this research presents an outlook of litigation in resolving marriage disputes and also points out its shortcomings. Consequent upon the shortcomings found for litigation, various alternatives to litigation have resonated. The aim of this paper is to examine the application of Alternative Disputes Resolution to resolution of marriage disputes in Nigeria.

**Keywords:** Dispute Resolution, Marriages, Alternative Dispute Resolution, Arbitration, Mediation, Matrimonial Causes.

## Introduction

Marriage is a universal institution which is recognized and respected in various jurisdictions<sup>1</sup>, though the legal formalities of statutory marriage, which this research is limited to, may be different<sup>2</sup>. Besides the general view that marriage is a social institution from which societies are formed, it is also a union sanctified by God and may probably be termed sacred<sup>3</sup>.

If marriage is thus viewed in the above form, it will be devastating to the parties involved in a marriage, their children and the society at large, if the marriage is dissolved<sup>4</sup>. Although most culture and religion do not encourage dissolution of marriage or separation of parties to the marriage<sup>5</sup>. However, where there are issues and strives in a marriage and the best solution, having tried other means, is divorce or separation, parties should not

<sup>1</sup> Christopher Ikechukwu Asogwa, 'On the Marriage Institution', *European Academic Research*, (2015) (3) (9), 10061.

<sup>2</sup> Benedette Bassey, 'Overview of Statutory Marriage in Nigeria' <<https://www.mondaq.com/nigeria/family-law/985124/overview-of-statutory-marriage-in-nigeria>> accessed 2 July, 2023.

<sup>3</sup> Julie A. Zaloudek, 'Evangelicals' Sanctification of Marriage through the Metaphor of Jesus as a Husband', *Religions*, (2014) (5), 626.

<sup>4</sup> Mulugeta Deribe Damota, 'The Effect of Divorce on Families' Life', *Journal of Culture, Society and Development*, (2019) (46), 7.

<sup>5</sup> Kimiko Tanaka, 'The Effect of Divorce Experience on Religious Involvement: Implications for Later Health Lifestyle' <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2857783/>> accessed 2 July, 2023.



hesitate to do such if they are satisfied with it<sup>6</sup>. It should be noted that where divorce or separation is resorted to, issues of parties and their children and custody of children also spring up<sup>7</sup>.

### Definition of Terms

**Award:** This is the decision rendered by an arbitrator upon a dispute submitted to him<sup>8</sup>. Firstly, an award is defined as a decision or judgement, in the sense of an act by which a dispute is resolved and, therefore, brought to an end. Therefore, it must be understood that the award is the decision that puts an end to the dispute that has been submitted to arbitration. Regardless of whether the award is to be considered final or definitive, it should be borne in mind that it concludes a single and specific arbitration process.

The term award refers to the decision rendered by an arbitrator which serves to resolve the conflict between two or more parties. Thus, the sentence will be the jurisdictional equivalent of the arbitral award. According to the above definition, the award is a decision issued by the arbitrators, i.e. it is a decision that can only be issued by one or more arbitrators in an arbitration process. In short, the award is a decision with a legal content that puts an end to a dispute and is different from any other type of decision that may be issued by a judicial body<sup>9</sup>.

**Alternative Dispute Resolution:** This means a process of resolving an issue susceptible to normal legal process by

agreement rather than an imposed binding decision<sup>10</sup>. Alternative Dispute Resolution ("ADR") refers to any means of settling disputes outside of the courtroom. ADR typically includes early neutral evaluation, negotiation, conciliation, mediation, and arbitration. As burgeoning court queues, rising costs of litigation, and time delays continue to plague litigants, more states have begun experimenting with ADR programs. Some of these programs are voluntary; others are mandatory. In the instant case of marriage, it is voluntary<sup>11</sup>.

**Arbitration:** This is the reference of a dispute (marriage dispute in this context) to an impartial third party, chosen by parties to it, who agrees in advance to abide or not to abide by the arbitrator's award, issued after a hearing at which both parties have opportunity to be heard<sup>12</sup>.

**Collaborative Divorce:** This is a family law process enabling couples who have decided to separate to work with their lawyers and other few family professionals in order to avoid uncertain and unfavorable outcome of the court.

**Custody:** It is the care, control and maintenance of a child which may be awarded by a court to one of the parties as in a divorce or separation proceedings or after<sup>13</sup>.

**Divorce:** This is the legal separation of a man and his wife, effected by the judgment or decree of a court and either totally dissolving the marriage (absolute) or suspending its effect, so far as it concerns the cohabitation of the parties<sup>14</sup>.

<sup>6</sup> S 15 MCA.

<sup>7</sup> Ann-Sofie Bergman, 'Parents in Child Custody Disputes Why are they Disputing?', *Journal of Child Custody*, (2017) (14) (1), 2.

<sup>8</sup> Blacks' Law Dictionary, 1979 (6 th edition) 125

<sup>9</sup> Esteban Carbonell 'What is an arbitration award?'

<https://wdassocies.com/en/what-is-anarbitrationaward#:~:text=The%20arbitral%20award%20is%20the,by%20agreement%20of%20the%20parties> accessed 23 April 2023

<sup>10</sup> (n 1)

<sup>11</sup> Cornell law school

[https://www.law.cornell.edu/wex/alternative\\_dispute\\_resolution](https://www.law.cornell.edu/wex/alternative_dispute_resolution) accessed 23 april 2023.

<sup>12</sup> Henry B. and Arthur M., 'ADR Principles and Practices', (2nd (ed), *Sweet & Maxwell, London (1993) P 12*

<sup>13</sup> Black's Law Dictionary, 347

<sup>14</sup> (n 4)



**Divorce Mediation:** this is an ADR process, whereby the parties are assisted by a trained and skilled third party, who facilitates confidential communication and negotiation between the disputing parties to reach a voluntary and mutually agreeable divorce resolution<sup>15</sup>.

**Facilitation:** It is a means of helping two disputing parties negotiate issues arising from their dispute. In ADR processes, this is usually performed by a neutral third party, who advises and makes parties realize the consequences of their options/decisions rather than telling them what to do<sup>16</sup>.

**Judicial Separation:** it is a legal severance of a man and his wife by a decree of court that is less complete than a divorce, it is a limited divorce<sup>17</sup>.

**Maintenance:** this is the supply of necessities such as food, clothing and housing, which may be temporarily or permanently ordered by court to be supplied by either party to the other or to their children on a petition for divorce or judicial separation<sup>18</sup>.

**Marriage:** This is, as defined by Lord Pezance, a voluntary union for life of one man and one woman, to the exclusion of all others<sup>19</sup>.

### **Application Of Alternative Disputes Resolution Methods To Marriage Disputes**

The word alternative means something that can be used instead of something else<sup>20</sup>. As earlier noted, there are some shortcomings found for adjudication in resolving marriage disputes and these shortcomings serve as propellers to finding substitutions. Ayinla L. A<sup>21</sup> stated that

the difficulties posed by litigation to the litigants in gaining access to justice, coupled with the overburdened courts with little facilities to attend to matters with the deserved alacrity; formalism, legalism and excessive costs, are some other factors that have led to the quest for alternatives to the traditional court system (litigation). Since the court process seems to be cruel, anachronistic and hypocritical<sup>22</sup>, there had to be a better way out. Various alternatives have truly come up and are applied to issues ranging from business to matrimony. This chapter examines three alternatives/ADR methods which are collaborative divorce, divorce mediation and divorce arbitration.

### **Collaborative Divorce**

Collaborative divorce, also known as collaborative law, collaborative practice, or collaborative family law, is a voluntary and facilitative family law procedure that enables married couples who have decided to dissolve their union to work with their attorneys and other family professionals to reach a settlement that best suits the individual needs of both parties and their children, avoiding the ambiguous results of a court proceeding. Couples voluntarily enter into a Participation Agreement, which commits them to the process and bars their attorneys from representing either of them in any subsequent family-related litigation.

This alternative was created in 1990 by a Minnesota Family Lawyer, Stuart Webb<sup>23</sup>, who saw that traditional litigation was not always helpful to parties and their families and was often damaging. Since 1990, the

<sup>15</sup> Blacks' Law Dictionary (6th ed).

<sup>16</sup> (n 1)

<sup>17</sup> Black's Law Dictionary, 762

<sup>18</sup> (n 1)

<sup>19</sup> *Hyde v Hyde* [1866] L. R 1 P & D 130

<sup>20</sup> Longman Dictionary of Contemporary English, 3<sup>rd</sup> Edition.

<sup>21</sup> L. A. , 'ADR and the Relevance of Native/customary Arbitration in Nigeria (Africa): A Critique of Its Nature and

Allied Legal Issues', *The Juris , Annual Publication of Law Students' Society, University of Ilorin* (2005) (14), 252.

<sup>22</sup> M. C. Stephen, *Divorce Reform in England: Humbug and Hypocrisy or Smooth Transition*, in Michael Freeman (ed), *'Divorce: Where Next?* (Dartmouth Publication Ltd) 41.

<sup>23</sup> 'Collaborative Law History',

<<http://www.collaborativedivorce.net/history-of-collaborative-divorce/>> accessed 29 April, 2023.



collaborative law movement has spread rapidly to most of the United States, Europe, Canada and Australia. It was launched in England in 2003<sup>24</sup>. ADR methods, collaborative law inclusive, have been incorporated in Texas Family Code<sup>25</sup> and the code provides that parties to dissolution of marriage may agree with their attorneys in an agreement, to conduct the dissolution under collaborative law procedures without court intervention. This growth of collaborative process has equally been encouraged in England and Wales by the judiciary and its family lawyers' organization (Resolution)<sup>26</sup>. In 2008, it was reported that Justice Coleridge, a High Court Judge of the Family Division, had promised that collaborative law would be fast tracked in England and Wales<sup>27</sup>. As part of the collaborative law process, both parties retain separate attorneys and jointly hire other family law experts (mental health professional, child specialist and financial specialist) whose job is to settle the dispute, making use of a team approach. Each party to the dispute signs an agreement called Participation Agreement, which includes the following terms:

- **No Court/Litigation:** this is to the effect that neither party may seek or threaten court action to resolve the dispute. However, if the process fails and parties decide to litigate the dispute, the attorneys must withdraw and the parties must retain new lawyers. This is called 'disqualification provision'<sup>28</sup> The provision adds a necessary element of trust to the participants, thereby

enhancing the likelihood of resolution. Attorneys will want to ensure that the dispute get resolved without making recourse to court and thus learn additional skills that may be needed to resolve the dispute.

- **Disclosure of Documents/Information:** though this is also required in litigation, such litigation is limited to what should be disclosed under rules. In collaborative law however, each party agrees to honestly and openly disclose all documents and information relating to the dispute. Also, neither party may take advantage of a miscalculation or an inadvertent mistake of the other Win-Win Solutions: it is agreed that the primary goal of the process will be to work toward an amicable resolution wherein no one loses or is pointed at as guilty. A win-win situation is created for both parties.

- **Sharing Experts:** it is agreed that experts will be neutral and hired jointly by both parties.

- **Respect and Insulation of Children:** the concept of respect, i.e, behaving in a courteous manner, will help foster a smooth future relationship. By insulating the children from the process, the impact of the divorce on them will be minimized.

There are few other terms that may be agreed upon in the participation agreement. In Texas, Family Code s.6.603(c) states the required provisions in collaborative law agreement, which include some of the terms stated above. Making use of attorneys and experts, the collaborative process addresses the three dimensions of divorce: legal,

<sup>24</sup> Collaborative Practice in England',  
<<https://www.collaborativepractice.com/t.asp?M=7&T=PracticeGroups>> accessed 29 April, 2023.

<sup>25</sup> Texas Family Code, 2005 Chapter 6 Subchapter G § 6.603.

<sup>26</sup> 'Resolution-Alternatives to Court',  
<[http://www.resolution.org.uk/editorial.asp?page\\_id=53](http://www.resolution.org.uk/editorial.asp?page_id=53)>  
accessed 29 April, 2023).

<sup>27</sup> Rozenberg Joshua, 'Fast –track Separations for Couples Who Agree' Daily Telegraph Newspaper (London 20 October 2008)

<<http://www.telegraph.co.uk/news/newstopics/lawreports/joshuarozenberg/3197556/fast-track-separations-for-couples-who-agree.html>> accessed on 29 April, 2023.

<sup>28</sup> ' Collaborative Law',  
<[http://en.wikipedia.org/wiki/Collaborative\\_divorce](http://en.wikipedia.org/wiki/Collaborative_divorce)> accessed 29 April, 2023.



emotional and financial. In a typical litigated case, the lawyers alone perform the roles of addressing all these issues which may not be efficient enough whereas, in the collaborative process, the attorneys appropriately focus on the legal issues while the emotional and financial issues are properly dealt with by trained professionals. This is because family lawyers are trained to deal with legal issues and they may not be trained to deal with emotional aspects of divorce. The mental health professionals work with the couple in managing the emotional components of the dispute. By this, the couple can effectively deal with potentially debilitating feelings that often interfere with negotiations. Ellie Stoddard<sup>29</sup> noted that this preserves the well-being of the parties.

Where there are children of the marriage, a child specialist is brought in to educate the parents as to the developmental needs of the children and to explore ideas for parenting plans. The child specialist equally assists the children in understanding that the dispute is not their fault so that they may not become the victims of the divorce. He does speak for the children. The financial specialist, who is also a neutral third party, helps define the values of assets of the parties. The parties agree on some division of cost (e.g cost of maintenance) and agree to be bound by the appraised value presented by the financial specialist. These experts help the parties to reach resolutions more efficiently and they equally help lawyers to facilitate the process better. Once the parties have reached a resolution, the agreement is submitted to the court for approval. If approved, the court will render the orders necessary to effectuate the

agreement of the parties. This is the practice in Texas under Family Code s. 6.603(b), the whole of the USA, England and Wales and Australia. The effectuation in these jurisdictions is due to recognition by law and enforcement of collaborative divorce. For instance, in the USA the United States of America Model Uniform Collaborative Law Act, 2009 was put in place to allow the use of collaborative law in resolving disputes and decisions from such resolutions are binding. However, it is not in all jurisdictions that collaborative law resolution has binding effect as it is in the USA and the likes. In Nigeria, collaborative divorce is not recognized by law and if any resolution arises from this kind of proceeding in Nigeria, such is merely persuasive and lacks binding effect. Early studies are just being published which establish a high effectiveness of the collaborative process. Statistics state that more than 90% of all divorce cases in a collaborative process are resolved without a trial<sup>30</sup>. A Canadian Government Study<sup>31</sup> found a high level of satisfaction with the process. Few jurisdictions have statutes on collaborative law. In the United States, California, North Carolina and Texas have their state statutes on collaborative law. In 2009, The Uniform Law Commission approved a Model Uniform Collaborative Law Act in the United States.

There are organizations/groups of collaborative law lawyers worldwide. The primary global collaborative law organization is the International Academy of Collaborative Professionals (IACP). This group is an interdisciplinary organization whose members include lawyers, mental

<sup>29</sup> E. Stoddard, 'Collaborative Divorce- A Healthier Alternative'  
<<http://www.divorcesource.com/CT/ARTICLES/stoddard.html>  
> accessed on 30 April, 2023.

<sup>30</sup> M. Beaulier, 'Collaborative Law: Divorce Without War',  
<<http://www.divorcesource.com/WI/ARTICLES/beaulier10.htm>  
> accessed on 29 April, 2023.

<sup>31</sup> Canadian Government Study, 'Report on Collaborative Law Process'  
<<http://www.canada.justice.gc.ca/en/ps/pad/reports/2005-FCY-1/2005-FCY-1.pdf>> accessed on 29 April, 2023.



health professionals and financial specialists. National collaborative law organizations have been established in many jurisdictions which include Australia, U.S.A, Canada, Austria, England and Wales, Hong Kong, Kenya, France<sup>32</sup> e. t. c.

In Nigeria, there are no national collaborative divorce groups since it is not statutorily recognized and regulated. There is generally no statutory provision regarding substance, practice and procedure for ADR processes in Nigeria aside arbitration and conciliation which are strictly applicable to commercial disputes. The only method related to marriage dispute is reconciliation as provided under s.11 Matrimonial Causes Act<sup>33</sup>. This will be examined under subsequent methods. At the moment, there is no formal training by law or bar associations in jurisdictions where collaborative divorce is statutorily recognized (aside England, whose collaborative law organization, Resolution, is responsible for the trained and accreditation of collaborative professionals in England and Wales)<sup>34</sup>. However, per IACP, 22,000 lawyers have been trained in collaborative law worldwide with collaborative practitioners in at least 46 states<sup>35</sup>.

### Divorce Mediation

Divorce or Family Mediation is a non-adversarial, facilitative and co-operative decision-making process, where a qualified and impartial third party helps couples resolve disputes in their marriage especially those relating to divorce or separation. Once the parties, with the help of their mediator, identify the issues, they then try to resolve those disputes between themselves. The mediator does not

make decisions for them but attempts to get them to make decisions on their own. Mediators do this i. e. assist the parties in reaching a decision by codes of conduct guiding them to the dispute. Writers in the field of mediation in New Jersey, USA, normally espouse a code of conduct that mirrors the underlying principles of the mediation process<sup>36</sup>. The most common aspects of mediators' codes of conduct include:

- ❖ A commitment to inform parties as to the process of mediation;
- ❖ A commitment to urge the parties to talk to each other;
- ❖ A neutral stance towards the parties;
- ❖ A concern for the psychological and physical well-being of the parties;
- ❖ Conduct of the mediation in an impartial manner

After a mediator has been introduced, he first has private sessions with each party separately. The private session is called caucus. It is from the caucuses that the mediator understands the positions, demands, interests and oppositions of parties. Having done this, he then has a joint session with the parties. In divorce mediation, the mediator concentrates on interest and not positions or entitlements of the parties. Amongst the issues wherein interests are considered include budgets, parenting schedules, financial obligations (either to the spouse or children), estates, properties e. t. c. For example, in the mediation process, a spouse's position might be that he or she is entitled to a car probably because he or she is responsible for its purchase. In mediation, the question is not 'who is entitled to' but rather, 'what is your interest in having the van?' If a spouse

<sup>32</sup> 'Collaborative Law'

<[http://en.wikipedia.org/wiki/collaborative\\_divorce](http://en.wikipedia.org/wiki/collaborative_divorce)> accessed on 29 April, 2023.

<sup>33</sup> Matrimonial Causes Act, CAP. M7, LFN 2004.

<sup>34</sup> Canadian Government Study (n 12).

<sup>35</sup> Stewart James and Charlotte Bradley, 'Bringing Harmony to Divorce', The Times Newspaper (London 21 November, 2006).

<[http://business.timesonline.co.uk/tol/business/law/public\\_law/article640680.ece](http://business.timesonline.co.uk/tol/business/law/public_law/article640680.ece)> accessed 30 April, 2023.

<sup>36</sup> A. D. Jessani, 'Collaborative Mediation: A Hybrid Solution for Complex and/or Higher Conflict Mediation Cases,'

<<http://www.divorcesource.com/NJ/ARTICLES/jessani21.html>> accessed on 29 April, 2023.



wants to use the van to start a business after divorce to earn income, then, the other spouse may agree to give up the van. Also, a mediator cannot, by law, give legal advice. In divorce mediation, a mediator refers spouses to their attorneys for legal advice<sup>37</sup>. The attorneys usually do not attend the sessions and typically act as advisors, not as advocates<sup>38</sup>. A spouse with an extremely unrealistic idea of his or her probable legal outcome or one, provided that the question of fault or the reason for the demise of the relationship is not germane to the mediation process. This is because mediation is a problem-solving process, which focuses on voluntarily designing settlements that are fair to both parties and their children. This no-fault finding approach preserves the existing relationships in some workable form (e.g. co-parenting the children by the couples) and enhances communication skills as a tool for building on the parties' newly reconstituted relationship. But where the reason for proposed divorce is germane to the process, it will not be treated as a fault-related issue; rather, it will be treated as a subject to be dealt with. E.g. where a party is addicted to alcohol and involves himself or herself in adultery, which may be the reason for the other party seeking for divorce in order to protect the children from such acts, alcoholism will not be treated as a fault in the mediation process but rather as a parenting issue. The finality of the divorce mediation process occurs when all the issues or terms have been agreed upon and the mediator sends the agreed terms to the judge to sign. The divorce will be granted upon the terms that the two parties

have mutually stipulated. Mediation and conciliation are the same process. That is why they are synonymously used. Despite this, there is a slight difference between them. A conciliator, ensuring that the settlement reached achieves a statutory objective, since he is usually a government advocate, makes recommendations to the parties on how they might settle their disputes<sup>39</sup>. In contrast, a mediator brings the parties together so that they themselves work out a compromise solution to the dispute. He does not suggest a solution<sup>40</sup>.

Divorce mediation, as an approach to getting a non-adversarial divorce, has experienced growth in some jurisdictions such as the USA, Canada, UK, Australia, Hong Kong. As a result of its growth, various national mediation groups have been established in some of these jurisdictions. For instance, in Hong Kong, Mediation Group was set up in January 1995 under the auspices of the Centre (HKIAC), which was established to assist people resolve disputes by arbitration and mediation. A subsidiary group of Mediation Group, Family Mediation Interest Group, was soon established with the goal of furthering family mediation in Hong Kong<sup>41</sup>. Also, Hong Kong Legal Aid Ordinance has been amended to include mediation. S. 6.602 of Texas Family Code 2005, equally allows divorce mediation in Texas. In Nigeria however, divorce mediation has not been fully embraced<sup>42</sup>. What readily looks like divorce mediation in Nigeria is reconciliation as provided under Section 11 of Matrimonial Causes Act<sup>43</sup>. The section provides:

<sup>37</sup> Adamopoulos A. C., 'Divorce Mediation-Explained Easily', <<http://www.divorcingoptions.com/>> accessed 29 April, 2023.

<sup>38</sup> Halem L. C, 'Fault or No Fault: It's Not a Mediation Question' <<http://www.bostonmediation.com/>> accessed 29 April, 2023.

<sup>39</sup> Noone M., *Mediation* (Cavendish Publications Limited 1996) 16.

<sup>40</sup> Ibid.

<sup>41</sup> Hooworth Robyn, 'Family Mediation' in Hong Kong Lawyer, the Official Journal of the Law Society of Hong Kong' 1996.

<sup>42</sup> M. Aderibigbe, 'Family Life-Line Through Wide-Base Support', <<http://www.mediate.com/people/personprofile.cfm?avid=1099>> accessed on 29 April, 2023.

<sup>43</sup> Matrimonial Causes Act 1970, Cap. M7 LFN 2004.



“It shall be the duty of the court in which a matrimonial cause has been instituted to give consideration, from time to time, to the possibility of a reconciliation of the parties to the marriage (unless the proceedings are of such a nature that it would not be appropriate to do so), and if at any time it appears to the judge constituting the court, either from the nature of the case, the evidence in the proceedings or the attitude of those parties, or of either of them, or of counsel, that there is a reasonable possibility of such a reconciliation, the judge may do all or any of the following, that is to say, he may:

- (a) Adjourn the proceedings to afford those parties an opportunity of becoming reconciled or to enable anything to be done in accordance with either of the next two succeeding paragraphs;
- (b) With the consent of those parties, interview them in chambers, with or without counsel, as the judge thinks proper, with a view to effecting a reconciliation;
- (c) Nominates a person with experience or training in marriage conciliation, or in special circumstances, some other suitable person, to endeavor with the consent of the parties to effect a reconciliation”.

This alternative seeks to bring parties together and to forget their disputes. This is logically okay and in fact it is the best alternative in the writer’s view. The court should seek to reconcile parties rather than helping them to dissolve their marriage. If carefully examined, the issues which most of the times make parties call for dissolution may not have caused irretrievable breakdown to the marriage. But as good as this alternative is, the context/atmosphere under which it may be applied seems too hostile to achieve its aim. This is because parties would have engaged in litigation before the judge could order reconciliation. The possibility/chance of getting hostile parties to consent to

reconciliation is so thin. Besides, Ijaiya H<sup>44</sup> stated that the fourteen days slated for reconciliation seems too short to achieve reconciliation. Suggestions for improving on reconciliation will be given at the end of this research.

### **Divorce Arbitration**

Divorce arbitration is a process in which people having disagreement choose a third party to decide the outcome. Arbitration is a more informal and private process or approach to divorce matters. In divorce arbitration divorcing couples choose an impartial third person, known as an arbitrator, with experience in family law to hear their case and render a final judgment (an award), after hearing from both parties. Divorce arbitration is often referred to as a "mini-trial" or informal litigation. Because he renders a verdict at the conclusion of the proceedings, the arbitrator functions like a judge. He is far more forgiving than a judge because the couples can influence the decisions that are made. The decision of a divorce arbitrator may be either binding or non-binding, depending on what the parties choose. If the couples elect that the decision be binding, that decision will then be made into a formal judgment. If the parties elect that the decision be non-binding or advisory, the parties can either accept or reject the decision of the arbitrator. If they accept the decision, an agreement to that effect will be entered into and the decision will be made into a formal judgment. If either party or both parties later reject the decision on grounds that the arbitrator is partial and that the decision is made wrongly, an appeal can be filed in the court of law. But if the end result is the same as the first decision or is more favorable to the other spouse, the spouse who appeals may be ordered to pay the other’s costs. *Mason v Mason*<sup>45</sup>.

An arbitrator's decision (award) cannot be challenged, with the exception of the circumstances indicated above. The

<sup>44</sup> H. Ijaiya, ‘Alternatives to Adjudication in Settlement of Matrimonial Disputes’, *UDUSLJ*, (2004) (1) (5), 87.

<sup>45</sup> [2008] No 14-07-00991-CV (Tex. App.-Houston [14th Dist.])



selection of an arbitrator becomes extremely important in light of this. In most cases, both spouses are free to agree on the arbitrator's identity or, if they are unable to agree, to establish the procedure for the arbitrator's selection. Similar to mediators, arbitrators are frequently called upon when a divorce case in court fails because the parties cannot come to an agreement on one or more matters, such as who should be in charge of the children's custody or who should be liable for their maintenance. It should be noted that arbitrators may be matrimonial lawyers or former judges<sup>46</sup> but in any case, they should be familiar with the family law of the jurisdiction.

As earlier noted, arbitration awards generally are legally binding and enforceable in most jurisdictions. The United States Arbitration Act, 1925, provides for enforcement of arbitration agreements and awards but in inter-state commerce and international contracts though it now has a model law on matrimonial arbitration<sup>47</sup>. The Nigeria Arbitration and Conciliation Act<sup>48</sup> equally provides for arbitration agreements and awards in commercial disputes only.

Arbitration is different from mediation in that while arbitration is less formal than litigation, mediation is less formal than arbitration. Also, unlike an arbitrator, a mediator does not have the power to render binding decisions on couples. An arbitrator holds evidentiary hearings with the couples but a mediator does not.

The following are the typical steps in divorce arbitration:

- A party, at court proceedings may file a demand for arbitration;
- The other party is notified and reply is requested;
- The arbitrator is selected by the parties;

- A hearing date and location convenient for the parties and the arbitrator arranged;
- At the hearing, testimony and documents are submitted to the arbitrator, witnesses questioned and cross-examined;
- The arbitrator then issues a binding award, copies of which are sent to the parties

### **Advantages Of Alternative Dispute Resolution Over Litigation**

There are many advantages that employing alternative dispute resolution methods, rather than going to court, can afford both parties and their children. Though the concept may seem relatively new, people have understood the benefits of using it rather than litigating. Below are the few of the benefits/advantages of using ADR over litigation. In ADR processes (aside from arbitration), the spouse maintains control and makes all the decisions instead of relying on a judge to do so, as it is in litigation. This flexibility ensures that couples reach a reasonable conclusion to their best interest and their children's interest. Whereas in litigation, the decision rendered by the judge may not and does not always favor one party or both parties, a party may eventually get what he or she wants while the other goes wounded.

Aside from its flexibility, employing ADR equally fosters a constructive relationship during and after the process. This is because ADR processes are non-adversarial save for divorce arbitration. Both parties listen to each other and all issues are addressed in a calm and friendly atmosphere, which can preserve a relatively amicable relationship especially where there are minor children. The approach to issues is a 'win-win' solution for all. This is unlike litigation where parties employ all sorts of means including

<sup>46</sup> J. Witherspoon, 'Divorce Arbitration',  
<[http://ezinearticles.com/?expert=James\\_Witherspoon](http://ezinearticles.com/?expert=James_Witherspoon)>  
accessed 30 April, 2023.

<sup>47</sup> American Academy of Matrimonial Lawyers: Model  
Uniform Arbitration Act, 2003.

<sup>48</sup> 1988, cap. A19, LFN 2004.



vulgar abuses to discredit each other in order to get their various contradicting interests. This is because the approach employed in litigation is a ‘win-lose’ solution. Also, the weak point of a party serves as strength for the other party since it’s a win-lose process. ADR eliminates the painful ‘win-lose’ atmosphere or adversarial atmosphere of traditional litigation. By making use of a non-adversarial approach, ADR protects the emotional health of parties, especially where collaborative divorce is employed. Mental health professional is part of the process and he helps to manage the debilitating feelings that often interfere with the divorce process, thus preserving the well-being of the parties. However, as noted by Ijaiya H.<sup>49</sup>litigation does not appear to pay much attention to parties’ relationships and thus makes their emotions to be tampered with. ADR also expedites the divorce process because adjournments, which are common in court proceedings and can be done repeatedly, are not allowed. ADR typically has a quicker divorce process. In addition, unlike litigation, there is no lining-up of several cases in ADR.

In addition, ADR reduces cost and therefore enables couples to save more. This is because the issue of endless hearings that implies more lawyers’ fees, court fees, hearing fees e.t.c, as witnessed in litigation, is not applicable in ADR processes. Besides, in mediation and arbitration especially, only one expert is required (though parties may wish to make use of different attorneys in mediation) and since his fee is shared between the parties, parties are not burdened with paying and perfecting lawyers’ bills as witnessed in litigation. Furthermore, ADR seeks to and does protect the children from becoming victims of their parents’ divorce. Divorce, through ADR

processes, is kept from children. Meanwhile, their interests are protected in the process. This prevents the emotions and future of children from being damaged. Writing about mediation, Christine Piper<sup>50</sup> stated that the most compelling argument for mediation has been in relation to the benefits for children of their parents’ using mediation. Mediation as a means of settling marriage disputes is to address the problem of children disturbance and distress by divorce or separation. But in court proceedings, the children, sadly, are often damaged by the divorce in ways the parents do not even suspect. The children often become pawns in the parents’ fighting over allegations, maintenance, custody e. t. c. Oftentimes, the children are brought in to witness this adversary between their parents. Unconsciously, they become filled with guilt and hatred to themselves and towards their parents or either of them. This is not advantageous to the well-being of the children. It can go a long way to affect children’s academics, emotions, view about life e. t. c ADR puts an end to these ill-feelings in children.

Divorce process in ADR's private divorce process encourages confidentiality. They are entirely shielded from the public because it is a private session between the parties and a third party who serves as a neutral third party. Litigation is an exception to this. The use of experts is a benefit that ADR has over litigation. In collaborative divorce, in particular, three categories of people are employed to carry out different functions in which they are specialized: the attorneys handle legal issues, and the mental health and financial experts deal with the emotional and financial aspects of the divorce, respectively. Thus far collaborative divorce, divorce mediation, and divorce arbitration have been identified as alternatives to litigation.

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<sup>49</sup> Ijaiya (n 25) 80.

<sup>50</sup> C. Piper, ‘Norms and Negotiation in Mediation and Divorce’ in Michael Freeman (ed), *Divorce: Where Next?*, (Dartmouth Publishing Company Limited 1996) 66.



In a few jurisdictions, these alternatives have been discussed along with how they work. These options are reportedly expanding in some countries despite being relatively new in their use for marriage-related problems. The advantages of these options over litigation are the guiding principle behind their expansion. It has been claimed that this method is shorter, less expensive, and more likely to result in the parties continuing to live in harmony following the process. This does not imply that using ADR has always been a bed of roses, though. ADR use has difficulties, which will be discussed shortly.

### Conclusion

It is important to recognize that ADR is the better choice in resolving marriage disputes as against litigation. The submission that ADR is the better option stems from the realization that the emotional and psychological component in marriage can only be taken into consideration when there is an amicable process to accommodate it. The adversarial nature of the court system places a huge emphasis on a win-lose outcome, as against ADR that strives for a win-win solution. It is glaring that the latter will always be more suitable for the circumstance of marriage, considering that a relationship will always be between the divorcees who intend to co-parent the children of the divorce. Thus, it is necessary to put in place, adequate legislations that will ensure that the benefits of ADR in resolving marriage disputes will move from a theoretical view point to one of practicality. The alternative dispute resolution method is a more private arrangement that can assist reduce the number of cases in our law courts. The rules of court should be made to accommodate this process. The Matrimonial Causes Act should also be amended to allow for alternative dispute resolution in marriage disputes in Nigeria.

### References

ADR and the Relevance of Native/customary Arbitration in Nigeria (Africa): A Critique of Its Nature and Allied Legal Issues', *The Juris , Annual Publication of Law Students' Society, University of Ilorin* (2005) (14), 252.

Ann-Sofie Bergman, 'Parents in Child Custody Disputes Why are they Disputing?', *Journal of Child Custody*, (2017) (14) (1), 2.

Benedette Bassey, 'Overview of Statutory Marriage in Nigeria'  
<<https://www.mondaq.com/nigeria/family-law/985124/overview-of-statutory-marriage-in-nigeria>> accessed 2 July, 2023.

Canadian Government Study, 'Report on Collaborative Law Process'  
<<http://www.canada.justice.gc.ca/en/ps/pad/reports/2005-FCY-1/2005-FCY-1.pdf>> accessed on 29 April, 2023.

Christopher Ikechukwu Asogwa, 'On the Marriage Institution', *European Academic Research*, (2015) (3) (9), 10061.

'Collaborative Law History',  
<<http://www.collaborativedivorce.net/history-of-collaborative-divorce/>> accessed 29 April, 2023.

Collaborative Practice in England',  
<<https://www.collaborativepractice.com/t.asp?M=7&T=PracticeGroups>> accessed 29 April, 2023.



- Cornell law school  
[https://www.law.cornell.edu/wex/alternative\\_dispute\\_resolution](https://www.law.cornell.edu/wex/alternative_dispute_resolution) accessed 23 april 2023
- David Tarh-Akong Eyongndi, ‘The Imperative for the Settlement of Matrimonial Disputes in Nigeria Through Alternative Dispute Resolution: Problems and Prospects’[https://www.academia.edu/34100242/SETTLEMENT\\_OF\\_MATRIMONIAL\\_DISPUTES\\_IN\\_NIGERIA\\_THROUGH\\_ALTERNATIVE\\_DISPUTES\\_RESOLUTION\\_docx](https://www.academia.edu/34100242/SETTLEMENT_OF_MATRIMONIAL_DISPUTES_IN_NIGERIA_THROUGH_ALTERNATIVE_DISPUTES_RESOLUTION_docx) accessed 2 July, 2023.
- Dennis Otieno Oricho, ‘Understanding Benefits of Alternative Dispute Resolution (ADR) in the Work Place Mediation’, *Journal of Law and Conflict Resolution*, (2010) (2) (1), 013.
- Esteban Carbonell ‘What is an arbitration award?’  
<https://wdassocies.com/en/what-is-anarbitrationaward#:~:text=The%20arbitral%20award%20is%20the,by%20agreement%20of%20the%20parties> accessed 23 April 2023
- Henry B. and Arthur M., ‘ADR Principles and Practices’, (2<sup>nd</sup> ed), Sweet & Maxwell, London (1993)
- Julie A. Zaloudek, ‘Evangelicals’ Sanctification of Marriage through the Metaphor of Jesus as a Husband’, *Religions*, (2014) (5), 626.
- Kimiko Tanaka, ‘The Effect of Divorce Experience on Religious Involvement: Implications for Later Health Lifestyle’  
<<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2857783/>> accessed 2 July, 2023.
- Law Reform Commission, *Alternative Dispute Resolution: Mediation and Conciliation* (LRC 2010) 3.
- M. C. Stephen, *Divorce Reform in England: Humbug and Hypocrisy or Smooth Transition*, in *Michael Freeman (ed), ‘Divorce: Where Next?’* (Dartmouth Publication Ltd)
- M. Beaulier, ‘Collaborative Law: Divorce Without War’, <<http://www.divorcesource.com/WI/ARTICLES/beaulier10.htm> > accessed on 29 April, 2023.
- Mulugeta Deribe Damota, ‘The Effect of Divorce on Families’ Life’, *Journal of Culture, Society and Development*, (2019) (46), 7.
- ‘Resolution-Alternatives to Court’, <[http://www.recolution.org.uk/editorial.asp?page\\_id=53](http://www.recolution.org.uk/editorial.asp?page_id=53)> accessed 29 April, 2023).
- Rozenberg Joshua, ‘Fast –track Separations for Couples Who Agree’ Daily Telegraph Newspaper (London 20 October 2008)  
<<http://www.telegraph.co.uk/news/newstopics/latestreports/joshuarozenberg/3197556/fast-track-separations-for-couples-who-agree.html>> accessed on 29 April, 2023.
- Stoddard E., ‘Collaborative Divorce- A Healthier Alternative’  
<<http://www.divorcesource.com/CT/ARTICLES/stoddard.html> > accessed on 30 April, 2023.
- Texas Family Code, 2005 Chapter 6 Subchapter G § 6.603.