An Examination on the Process of Arbitration and Conciliation in Nigeria

By
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Abstract
Disputes are inevitable in the business world. No matter the dispute some business partners need to find a way of resolving it as well as preserving their long time business relationship. The best way to do that is to use any of the Alternative Dispute Resolution (ADR) Processes. Conciliation and arbitration are two ADR processes that have been codified in Nigeria under the Arbitration and Conciliation Act Cap 19Laws of the Federation of Nigeria 1990. Most people resort to court litigation instead of using any of the ADR processes. This write up aimed at providing a guide to understanding and using arbitration and conciliation in resolving dispute and also make recommendations on making it accessible to majority of our businessmen and women. The paper applies the doctrinal method of legal research.
Keywords: Arbitration, Conciliation, Alternative Dispute Resolution.

1.1 Introduction

Alternative Dispute Resolution (ADR) is being encouraged in resolving disputes. Arbitration can be either voluntary or mandatory (although mandatory arbitration can only come from a statute or from a contract that is voluntarily entered into, in which the parties agree to hold all existing or future disputes to arbitration, without necessarily knowing, specifically, what disputes will ever occur) and can be either binding or non-binding. Non-binding arbitration is similar to mediation in that a decision cannot be imposed on the parties. However, the principal distinction is that whereas a mediator will try to help the parties find a middle ground on which to compromise, the (non-binding) arbitrator remains totally removed from the settlement process and will only give a determination of liability and, if appropriate, an indication of the quantum of damages payable. By one definition arbitration is binding and non-binding arbitration is therefore technically not arbitration[1]. Arbitration and Conciliation are two ADR processes that have been codified under the Arbitration and Conciliation Act Cap. A18 Laws of the Federation of Nigeria (LFN) 2004. The Act extensively provides how the processes works from commencement of arbitration

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[1]Ojo Olugbenga Samuel, *Alternative Dispute Resolution in Nigeria: An Assessment of Lagos Multidoor Court 2007-2018 (*Ph.D .Thesis, Institute of Peace, Security and Governance, Ekiti State University, 2019).

and conciliation to the enforcement of awards made there under. It is good to know that awards made under these processes are enforceable in the courts.

1.2 Arbitration

Generally, the primary sources of the Nigerian law of Arbitration are the English common law, the Nigeria customary law and Nigerian statutes. The Federal law on Arbitration is the Arbitration and Conciliation Act, Cap. A18 Laws of the Federation of Nigeria (LFN) 2004 (the Act). The Act is based on the United Nations Commission on International Trade Law (UNCITRAL) Model Law and incorporates the UNCITRAL rules. According to S. 57 (1) of the Arbitration and Conciliation Act[2]arbitration means a commercial arbitration whether or not administered by a permanent arbitral institution. Arbitration has also been defined as a method of dispute resolution involving one or more neutral third parties who are usually agreed by the disputing parties and whose decision is binding.[3]Arbitration has also been defined as the reference of a dispute or difference between not less than two parties for determination, after hearing both sides in a judicial manner, by a person or persons other than a court of competent jurisdiction.[4]The principle law that governs arbitration in Nigeria is The Arbitration and Conciliation Act 2004(ACA)**,** which is functional over the federation except for Lagos State as it has its law**,** The Lagos State Arbitration law, 2009 (LSAL).

Arbitration has successfully been used in employment disputes. The success of arbitration in labour relations has led to its use in commercial settings.[5]

Arbitration differs from other Alternative Dispute Resolution (ADR) processes in that it has the same force and effect as the judgment of a court of law.[6] Arbitration, which could be binding or non-binding, involves the presentation of a dispute to an impartial or neutral individual or panel for issuance of a binding (in cases of binding arbitration) or advisory or non-binding decision (in case of non-binding arbitration).[7]Arbitration falls within the broad umbrella of ADR. But, in reality, arbitration has more in common with litigation (Court process). Arbitration is the central adjudicatory process in ADR. Like trial, it is an

[2] Cap 18 Laws of the Federation of Nigeria, 2004.
[3] Bryan A. Garner*, Black's Law Dictionary Seventh Edition*, (West Group St. Paul Minn., 1999
[4]Hailsham V (1978*) Halsbury's Laws of England,* 4ed, vol. 2, London: Butterworth & Co. (Publishers) Ltd. para. 501. See also N.N.P.C. V Lutin Inv. Ltd. (2006) 1 JNSC Pt 1, P.97 at P. 142 para. H.
[5] Jack Rabin. *Encyclopedia of Public Administration and Public Poli*cy, First Update Supplement, Taylor and Francis Group (2005).
[6]Gogo George Otuturu, Some Aspects of the Law and Practice of Commercial Arbitration in Nigeria (2014), Vol. 6(4) Journal of Law and Conflict Resolution.
[7]Conciliation in Nigeria. Available on www.nigerianlawguru.com/articles/arbitration/conciliation in Nigeria.pdf.

adversarial process in which a third-party neutral simply decides the dispute between the parties.[8]

However arbitrations are far less formal than trials but they still have a very clear adjudicative structure. Each side typically has an opportunity to present witnesses and evidence and to engage in cross-examination subject to the arbitrator's discretion or, significantly in contractual arbitration, the rules agreed upon by the parties themselves prior to the arbitration. Discovery may be available, but to a much lesser extent than in traditional litigation.[9]

1.3 Arbitration Agreement

For arbitration proceedings to arise there must have been an agreement providing for such proceedings when necessary.[10] An agreement to arbitrate is the foundation stone of every arbitration. It is pertinent to note that the arbitral tribunal's jurisdiction is derived solely from existence and validity of the agreement of the parties. The Supreme Court of Nigeria[11] described an arbitration clause as a written submission agreed by the parties to a contract, and like other written submissions it must be construed according to the language and in the line of the circumstances in which it is made. Every arbitration agreement shall be in writing contained in document signed by the parties or in an exchange of letters, telex, telegrams, or other means of communication which provide a record of the arbitration agreement or in an exchange of point of claim and of defence in which the existence of an arbitration agreement is alleged by one party and not denied by another.[12]

Section 1(2)of the Arbitration and Conciliation Act provides that any reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if such contract is in writing and the reference is such as to make that clause part of the contract. In practice parties to a contract insert arbitration clause in their terms and agreement, and this practice has been given recognition by the courts.

In the case of *Sino-Afric Agriculture &Ind Company Limited &Ors v. Ministry of Finance Incorporation &Anor*[13] the Court held inter alia that in keeping with the informality of the arbitration process, the law is generally keen to uphold the validity of arbitration clauses even when they lack the normal formal language associated with legal contracts. However,

[8] Richard C. Reuben*, Constitutional Gravity: A Unitary Theory of Alternative Dispute Resolution and Public Civil Justice,* 47 UCLA L. Rev. 949 (2000).
[9] Ibid.
[10]Nwadialo F. *Civil Procedure in Nigeria*, 2nd ed. (University of Lagos Press, Lagos, 2000).
[11]M. V. Lupex v. N. O. C. S. Ltd. (2003) 109 LRCN p. 1315 at p. 1326 para Z.
[12] See Section 1(1) a-c of Arbitration and Conciliation Act, CAP. A18 Laws of the Federation of Nigeria, 2004.
[13](2013) LPELR-22370 (CA).

such agreement usually contained in the contract document, the clause is often treated as a separate contract.[14]

Unless there is a contrary intention, an arbitration agreement shall remain irrevocable except by agreement of the parties or by leave of a court or a judge.[15]Even the death of one of the parties shall not invalidate the agreement and it can be enforced by or against the personal representative of the deceased.[16]

As a general rule, the existence of an arbitration agreement serves as a stay of proceedings in an action for a substantive claim, governed by the agreement.[17]If any party to an arbitration agreement commences any action in any court with respect to any matter which is the subject of an arbitration agreement, any other party to the arbitration agreement may, at any time after appearance and before delivering any pleadings or taking any other steps in the proceedings, apply to the court to stay proceedings.[18]A court to which such application is made may make an order staying the proceedings if it is satisfied that there is no sufficient reason why the matter should not be referred to arbitration in accordance with the arbitration agreement and the applicant was at the time when the action was commenced and still remains ready and willing to do all things necessary to the proper conduct of the arbitration.[19]

The grounds of granting a stay of proceedings where parties agree to resort to arbitration are many, but where the parties agreed that "all disputes that may arise between them in consequence of this contract having been entered into shall be referred to arbitration" is held to be a strong ground for granting a stay of proceedings.[20]It is important to note that where parties have chosen to determine for themselves that they would refer any of their disputes to arbitration instead of resorting to regular courts a prima facie duty is cast upon the courts to act upon their agreement.[21] It is also noteworthy that the court may refuse to order a stay of proceedings where the defendant establishes that he will suffer injustice if the case is stayed or that he cannot obtain justice from the arbitration tribunal or that the agreement between the parties is null and void, inoperative or incapable of being performed.[22]

[14] See the case of STATOIL (NIGERIA) LIMITED & ANOR v. FEDERAL INLAND REVENUE SERVICE & ANOR (2014) LPELR 23144 (CA).
[15]Section 2 Arbitration and Conciliation Act, 2004.
[16] Ibid Section 3.
[17]Nwadialo F. *Civil Procedure in Nigeria*, 2nd ed. (University of Lagos Press, Lagos, 2000).
[18] S. 5 (1) Arbitration and Conciliation Act, 2004.
[19]S. 5(2) (a) and (b), ibid.
[20]M. V. Lupex v. N. O. C. S Ltd (supra) at p. 1327 para. K.
[21]Ibid at p. 1328 paras P-U.
[22]Ibid at p. 1330 para P.

1.4 Composition of Arbitral Tribunal

The parties to an arbitration agreement may determine how many arbitrators may be appointed under the agreement, but where no such agreement is made the number of arbitrators shall be deemed to be three.[23] The parties may specify in the arbitration agreement the procedure to be followed in appointing an arbitrator.[24] However, where no such procedure is specified, then where the parties appoint one arbitrator each then the arbitrators appointed shall appoint the third arbitrator.[25] If a party fails to appoint the arbitrator within thirty days of receipt of a request to do so by the other party or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment the appointment shall be made by the court on the application of any party to the arbitration agreement.[26]

That a decision of the court in any of the two foregoing cases (under (2) and (3) of S. 7 is not subject to appeal.[27] But the court, in exercising its power of appointment under the given provisions, shall have due regard to any qualifications required of the arbitrator by the arbitration agreement and such other consideration as are likely to secure the appointment of an independent and impartial arbitrator.[28]

However, if a sole arbitrator is to be appointed, either party may propose to the other the names of one or more persons, one of whom would serve as the sole arbitrator. A disagreement on the appointment arises if this proposal is not acceptable to the other party and in that case, as already noted, the appointment has to be made by the court on the application of a party made within thirty days of the disagreement. The period of thirty days is reckoned from the day of the receipt of the proposal by the other party.

The court shall at the request of one of the parties appoint the sole arbitrator as promptly as possible. In making the appointment, the court shall use the list-procedure, unless both parties agree that the list-procedure should not be used or unless the court determines in its discretion that the use of the list-procedure is not appropriate for the case.
By the list-procedure (a) at the request of one of the parties the court shall communicate to both parties an identical list containing at least three names, (b) within fifteen days after the receipt of the list, each party may return the list to the court after having deleted the name or names to whichhe objects and numbered the remaining names on the list in the order of his preference; (c) after the expiration of the above period of time the court shall appoint

[23]S.6 Ibid.
[24]Nwadialo F. *Civil Procedure in Nigeria*, 2nd ed. (University of Lagos Press, Lagos, 2000). See also S. 7(1) Ibid.
[25] S. 7 (2) (a) Arbitration and Conciliation Act.
[26] Ibid.
[27] S. 7 (4).
[28] S. 7 (5).

the sole arbitrator from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the parties.

If for any reason the appointment cannot be made according to this procedure, the court may exercise its discretion in appointing the sole arbitrator.

In making the appointment the court shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account, as well, the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.[29]

Where three arbitrators are appointed, the third arbitrator chosen by the two arbitrators appointed by the parties acts as the presiding arbitrator of the tribunal. Where, as result of the two arbitrators not agreeing on the choice of the presiding arbitrator, the court has to appoint him. He shall be appointed by the court in the same way described above, as it will appoint a sole arbitrator.[30]

Also where the parties have not previously agreed on the number of arbitrators, (that is, one or three) if within fifteen days after the receipt by the respondent of the notice of arbitration, the parties have not agreed that there shall be only one arbitrator, three arbitrators shall be appointed.[31]

1.5 Appointment of Arbitrators

The parties may specify in the arbitration agreement the procedure to be followed in appointing an arbitrator. However, where no such procedure is specified-

(a) in the case of an arbitration with three arbitrators, each party shall appoint one arbitrator and the two thus appointed shall appoint the third, so however that-

i. if a party fails to appoint the arbitrator within thirty days of receipt of request to do so by the other party; or
ii. if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointments, the appointment shall be made by the court on the application of any party to the arbitration agreement;

(b) in the case of an arbitration with one arbitrator, where the parties fail to agree on one arbitrator, the appointment shall be made by the court on the application of any party to the arbitration agreement made within thirty days of such disagreement.[32]

Where, under an appointment procedure agreed upon by the parties-

[29] For the foregoing provisions see Article 6 of First Schedule to Arbitration Rules.
[30] Ibid S. 6.
[31] Art, 5 Section 11 of the Rules.
[32]Section 7(1) & (2).

(a) A party fails to act as required under the procedure; or
(b) The parties or two arbitrators are unable to reach agreement as required under the procedure; or
(c) Third party, including an institution, fails to perform any duty imposed on it under the procedure, any party may request the court to take the necessary measure, unless the appointment procedure agreed upon by the parties provides other means for securing the appointment.[33]

Sub section 4 of Section 7[34] provides that the decision of the Court under (2) and (3) of the same Section is not subject to appeal. In exercising its power of appointment under subsection (2) and (3) of this section, the Court shall have due regard to any qualifications required of arbitrator by the arbitration agreement and such other consideration as are likely to secure the appointment of an independent and impartial arbitrator.[35]

However, when a court is requested to appoint an arbitrator pursuant to Article 6 or Article 7, the party which makes the request shall send to the court an affidavit together with a copy of the notice of arbitration, a copy of the contract out of or in relation to which the dispute has arisen and a copy of the arbitration agreement if it is not contained in the contract. The court may require from either party such information as it deems necessary to fulfill its functions. Where the names of one or more persons are proposed for appointment as arbitrators, their full names and addresses shall be indicated, together with a description of their qualification.[36]

Moreover, if a sole arbitrator is to be appointed, either party may propose to the other the name of one or more persons, one of whom would serve as the sole arbitrator. A disagreement on the appointment arises if this proposal is not acceptable to the other party and in that case, as already noted, the appointment has to be made by the court on the application of a party made within thirty days of the disagreement.[37] The period of thirty days is reckoned from the day of the receipt by the other party of the proposal. If for any reason the appointment cannot be done according to this procedure, the court may exercise its discretion in appointing the sole arbitrator.[38]

The court, shall at the request of one of the parties appoint the sole arbitrator as promptly as possible. In making such appointment the court shall the court shall use the list procedure,

[33]Section 7 (3).
[34]Arbitration and Conciliation Act, 2004.
[35] Ibid S.7(5).
[36]Article 8 (2) of First Schedule to Arbitration Rules.
[37]Nwadialo F. *Civil Procedure in Nigeria*, 1st ed. (MIJ Professional Publishers Limited Ebute-Metta, Yaba, Lagos 1990).874-875.
[38] Ibid.

unless both parties agreed that the list procedure should not be used or unless the court determines in its discretion that the list procedure is not appropriate for the case. The list procedure provides thus;

i. at the request of one of the parties, the court should communicate to both parties an identical list containing at least three names;
ii. within fifteen days after the receipt of this list, each party may return the list to the court after deleting the name or names to which he objects and numbered the remaining names on the list in order of his preference;
iii. after the expiration of the above period of time, the court shall appoint the sole arbitrator from the name approved on the lists returned to it and in accordance with the order of preference indicated by the parties;
iv. if for any reason the appointment cannot be made according to this procedure, the court may exercise its discretion in appointing the sole arbitrator.[39]

1.6 Grounds for Challenge of Arbitrator

The Arbitration and Conciliation Act under S. 8 has impose a duty on any person approached in connection with an appointment as an arbitrator to disclose any circumstances likely to give rise to any justifiable doubts as to his impartiality or independence to the parties.

It is the responsibility of the parties to determine the procedure to be followed in challenging an arbitrator.[40] Where no procedure is determined by the parties, a party who intends to challenge an arbitrator shall, within fifteen days of becoming aware of the constitution of the arbitral tribunal or becoming aware of any circumstances referred to in S. 8 of the Act, send to the arbitral tribunal a written statement of the reasons for the challenge.[41]

1.6.1 Arbitral Proceedings

The two parties to an arbitration proceeding are referred to as the Claimant and the Respondent. The Claimant is the person you institute the action while the other party is the Respondent.[42] The proceedings are commenced when the Claimant gives to the Respondent a notice of arbitration and it is on the day the Respondent received the notice that the arbitral proceedings are deemed to commence.[43]

[39] For all the forgoing see Article 6 (3) of First schedule to Arbitration Rules.
[40] Section 9 Arbitration and Conciliation Act.
[41] Ibid.
[42] Nwadialo F. *Civil Procedure in Nigeria*, 2nd ed. (University of Lagos Press, Lagos, 2000) at page 1105.
[43] Ibid.

Unless the statement of claim was contained in the notice of arbitration, the claimant shall communicate his statement of claim in writing the respondent and to each of the arbitrators. The statement of claim shall contain;

i) The names and addresses of the parties.
ii) A statement of the facts supporting the claim.
iii) The point at issue.
iv) The relief or remedy sought.[44]

After receiving the claimant's statement of claim, the respondent shall also communicate his statement of defence in writing to the claimant and to each of the arbitrators. The statement of defence shall contain a reply to particulars *(b), (c) and (d)* of the statement of claim, he may also annex all documents which he relies for his defence.[45] The respondent may, make a counter-claim arising out of the same contract or rely on a claim arising out of the same contract for the purpose of a set-off.[46]

During the course of the arbitral proceedings, either party may amend or supplement his claim or defence, unless the arbitral tribunal considers it inappropriate to allow such amendment, having regard to the delay in making it or prejudice the other party in any other circumstances. However, a claim may not be amended in such a manner that the amended claim falls outside the s cope of the arbitration clause or separate arbitration agreement.[47]

At the trial each party shall have the burden of proving the facts relied on to support his claim or defence. This can be done through production of documents, exhibits or other evidences. Witnesses can also be heard. However, where witnesses are to be heard each party shall communicate to the tribunal and the other party, at least fifteen days before the hearing, the names and addresses of the witnesses he intends to present, the subject upon and the language in which such witnesses will give their testimony. Such evidence of witnesses may be presented in the form of written statements signed by them. Unless the parties agree otherwise, the hearing shall be conducted in camera.[48]

1.6.2 Conciliation

Dele Peters[49]defines Conciliation as the bringing together of disputants in an endeavor to settle their differences. Conciliation is a process of settling dispute in an agreeable manner whereby a neutral party explores with the disputing parties how the dispute might be

[44]Article 8 section 1&2.
[45]Article 19 Section 1&2.
[46]Article 19 Section 3.
[47]Article 20.
[48] See Article 24 & 25.
[49]Dele Peters, *What is Alternative Dispute Resolution,* (Dee-Sage Nigeria Limited 2005) at page 12.

resolved and then in necessary cases he may deliver his opinion as to the merit of the dispute.[50]It is also defined as a process in which a neutral person meets with the parties to a dispute and explores how the dispute might be resolved.[51] The main objective of Conciliation is to achieve an amicable settlement of the dispute with the assistance of a neutral Conciliator who is respected by both parties.[52]
Conciliation, like mediation, involves the disputing parties and a neutral third party. Who seeks to determine how the dispute should be resolved.[53] The dividing line between mediation and conciliation is very thin and the two are therefore sometimes used interchangeable. Conciliation is very similar to evaluative mediation.

Unlike Arbitration, a Conciliator does not make decision for the parties. Rather the Conciliator assists the disputants in reaching an agreed settlement. The Conciliator after examining the case of the parties and hearing them, if necessary, proceeds to prepare his draft terms of settlement and submit to the parties for their consideration. If accepted by the parties it will be formalized and signed by the parties, by signing it the parties are bound by the agreement.[54]

In Nigeria, conciliation is recognised by the Arbitration and Conciliation Act Cap. 18 Laws of the Federation of Nigeria 2004. Part II of the Act deals with Conciliation. Under the Act, the word 'conciliation' was not defined by the Act. The Act merely provides that the parties to any agreement may seek amicable settlement of any dispute in relation to the agreement by conciliation.[55]

1.7 Scope and Procedure for Conciliation under the Arbitration and Conciliation Act 2004

A party who wishes to initiate conciliation must send to the other party a written request to conciliate.[56] If the request is accepted, the parties shall submit the dispute to a conciliator appointed jointly by the parties, or a conciliation body consisting of three conciliators in which case each party shall appoint one conciliator and the two conciliators shall appoint a third conciliator.[57]

[50] Justice M. D. Abubakar, *Alternative Dispute Resolution and Restorative Justice: Challenges and Prospects in Nigerian Courts*. A paper presented at a National Workshop organized by UNDOC/NJI, Enugu 2008.
[51]Bryan A. Garner, *Black's Law Dictionary Seventh Edition*, (West Group St. Paul Minn., 1999) at page 284.
[52]Dele Peters, *What is Alternative Dispute Resolution,* (Dee-Sage Nigeria Limited 2005) at page 12.
[53]D. I. Efevwerhan, *Principles of Civil Procedure in Nigeria* (Changlo Ltd. Enugu (Nig.) 2007 at page 241.
[54] See the case of *Ezerioha & Ors v. Ihezuro (2009)* LPELR-4122 (CA).
[55]S. 37 Arbitration and Conciliation Act, Chapter 18 Laws of the Federation of Nigeria (LFN) 2004.
[56] S. 38 of the Arbitration and Conciliation Act.
[57] S. 40 Arbitration and Conciliation Act Cap 18 LFN 2004.

The Conciliator or Conciliation body must be acquainted with the details of the case and produce all information for the settlement of the dispute.[58] The parties may appear in person before the Conciliator and may have legal representation.

After examining the case and hearing the parties, the Conciliator submits his terms of settlement to the parties. If the parties accept the terms of settlement, the Conciliator draws up and signs a record of settlement. If the parties do not accept the terms of settlement, they may submit the dispute to arbitration or resort to litigation.[59]

Conciliation can be resorted to in relation to disputes arising out of or relating to a contractual or other legal relationship.[60]

Unlike negotiation and mediation, conciliation is covered by provisions of the law. Therefore it must be done in compliance with the provisions of that law. The Third Schedule to the Arbitration and Conciliation Act deals with the practice and procedure on conciliation.

Under the Conciliation Rules conciliation is initiated where a party in a dispute writes to the other party to conciliate and it commenced when the party to whom it is sent to accepts.[61] There will be no Conciliation when the other party does not accept the invitation or failed to communicate within 30 after sending the invitation to him.[62]

Under Article 3 of the Conciliation Rules there shall be one Conciliator unless the parties agreed to have more than one. Where the parties agreed to have more than one Conciliator the Conciliators must act jointly. It is important to note that impliedly the Act has limits the number of Conciliators to three (3) in a single case. The highest number of Conciliators to be appointed in a single case shall not be more than three (3). Where the parties intend to appoint more two conciliators each party shall provide one Conciliator. If the parties intend to appoint three Conciliators then after providing the one each they must agree on the person to be appointed as the third Conciliator. Likewise, if it is one Conciliator they must agree on the person to be appointed.[63]

[58]Gogo George Otuturu, *Some Aspects of the Law and Practice of Commercial Arbitration in Nigeria* (2014), Vol. 6(4) Journal of Law and Conflict Resolution.
[59] Ibid.
[60] Article 1 Rule 1 Conciliation Rules, Third Schedule to the Arbitration and Conciliation Act Cap 18 LFN 2004.
[61] Ibid Article 2 Rule 1 and 2.
[62]Article 2 Rule 3 and 4.
[63]Article 4 Rule 1 (a)-(c).

After appointment of a conciliator or conciliators the parties are required to submit to them the following;

i. A brief written statement describing the general nature of the dispute and the points at issue.

ii. A further written statement of his position and the facts and grounds in support thereof, supplemented by any documents and other evidence that such party deems appropriate.

iii. The conciliators may request a party to submit to him such additional information as he deems appropriate.

All this documents must be served on the other party.[64]

Under Article 6 of the Conciliation Rules parties may be represented or assisted person of their choice. This provision allows representation by a Legal Practitioner.

The conciliator assists the parties in an independent and an impartial manner in their attempt to reach an amicable settlement of their dispute.[65]The conciliator is required to be guided by the principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.[66]The conciliator has discretion to conduct the conciliation proceedings in such a manner as he considers appropriate. However, he should take into consideration the circumstances of the case, the wishes of the party which they expressed, including any request by a party that the conciliator hear oral statements, and the need for a speedy settlement of the dispute.[67]The conciliator may make proposal for a settlement of the dispute at any stage of the conciliation proceedings. Such proposals can be made orally and he doesn't need to state his reasons for making the proposal.[68]

The conciliator may invite the parties to meet with him or may communicate with them orally or in writing. Such meeting may be made with the parties together or separately as the Conciliator decides.[69]The Parties have the power to decide where meetings with the Conciliator will be held. However, the Conciliator also has the power to decide the place of such meeting but he is required to consult the parties and he should also take into consideration the circumstances of the conciliation proceedings.[70]Parties themselves must, in good faith, co-operate with the conciliator and supply the needed written material,

[64] Article 5 Rule 1-3.
[65]Article 7 Rule 1.
[66]Article 7 Rule 2.
[67]Article 7 Rule 3.
[68]Article 7 Rule 4.
[69]Article 9 Rule 1.
[70]Article 9 Rule 2.

provide evidence and attend meetings.[71] When the conciliator receives factual information concerning the dispute from a party, he discloses the substances of that information to the other party in order that the other party may have the opportunity to present any explanation which he considers appropriate.[72]

Each of the Parties may submit to the Conciliator suggestions for the settlement of the dispute.[73]Such suggestion may be on his own initiative or upon request by the Conciliator. If the Conciliator also finds that there exist elements of a settlement which may be acceptable to the parties, then he formulates the terms of a possible settlement and submits the same to the parties for their observation. On receipt of the observations of the parties, the Conciliator may re-formulate the terms of a possible settlement in the light of such observation.[74]

If the parties reached an agreement then they draw up the terms of settlement and sign or they may request the Conciliator to draw the terms of settlement and they sign.[75]The legal effect of signing the settlement agreement is that the parties are bound by their agreement.[76]

1.8 Conclusion and Recommendation

ADR has been very significant in the decongestion of court cases through its various processes. However, there is still room for improving the use of the various processes of ADR as an alternative to litigation. Litigations in court are open to the public but were parties are undergoing settlement through the various means of ADR there is the advantage of privacy. In conciliation and arbitration parties choose their conciliators and arbitrators. Arbitration should be made compulsory in commercial, investment, customer and employment disputes. This will enable the parties to save time, cost and also maintain confidentiality in their dealings. Some importance of Arbitration and Conciliation over litigation that are worthy of note includes, Speed/flexibility, confidentiality, choice of expert and enforcement of award. It is important to note that for the use of any ADR process to be successful parties must openly and honestly express their views.

[71]Article 11.
[72]Article 10.
[73]Article 12.
[74]Article 13 Rule 1.
[75]Article 13 Rule 2.
[76]Article 13 Rule 3. See also the case *of Ezerioha vs. Ihezuro* (supra).