

## **Adjudication: A Dispute Resolution Mechanism for Infrastructure Development in Nigeria**

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### **ABSTRACT**

Adjudication is an alternative dispute resolution method introduced by the judiciary. The study evaluates the essential frameworks from the contractual and legal aspect, it talks about applicable skills and on hand training that could be offered, and ascertains the important and impact in the practice of adjudication. Adjudication emerges to have been accepted in the Nigerian construction sector, however it is concluded that the sector has not being able to realize the full potential of adjudication, the main reason for this is lack of Information.

This paper is aimed at exploring requirements for the full realization of the potentials required for adjudication.

**Key Words:** Adjudication, Alternative Dispute Resolution, Nigerian Construction Sector, Litigation, Conflicts, Infrastructure Development

### **INTRODUCTION**

In the process of doing business, it is anticipated that differences of opinions will arise intermittently among business partners or connected persons. However, it is a known fact that commercial disputes are universal and frequent; the way and manner they are dealt with can have a philosophical impact on the outcome of the business. It is proven that unresolved disputes are factors affecting business ventures, scare investors and also affect the stock market performance of a registered business.

Disputes are normally an unavoidable part of human dealings which may be naturally domestic, civil, commercial or economic in character. Litigation has been the conventional process of settling disputes, which may arise as a result of defaulting (sometimes not deliberate) by an accomplice. Ultimately, the procedure of litigation has turn out to be guzzling time, costly and weighty which leads to overcrowding and setback in passing their resolutions.

According to Uff (2005), increase in globalization and the contemporary business world has been a reason in the improvement of more flexible way of resolving disputes that provide alternatives to court-based litigation governed by the law and procedure of a specific country.

For the first time in Nigeria, Adjudication and other forms of Alternative Dispute Resolution (ADR) is backed up constitutional in section 19(d) of the Constitution of the Federal Republic of

Nigeria (CFRN) 1999 and it provides for the settlement of disputes by Arbitration, Mediation, Conciliation, Negotiation and Adjudication.

According to Odiri (2004), every business sector which brings people together to work and achieve a common goal, there is likelihood that disagreement, variance and arguments may arise. These factors are common in the construction sector. As you may know, conflict and dispute may perhaps signify same meaning since the duo involves a disagreement over some issues at hand. However, there are various theoretical dissimilarities between the two terms. Conflict as it is explained, subsists wherever there is an incongruity of concern. The Oxford English Dictionary describes conflict as a serious disagreement or argument; a prolonged armed struggle. However, Suleman (2015) is of the view that a thorough assessment of the socio-political atmosphere of the construction sector in Nigeria disclosed growing occurrences of varied opinions and disagreements among stakeholders. In turn, this also explain that the implementation of Infrastructural Development master plan for Nigeria led to the Increase in Economic activities in and around the construction sector and relationships needs to be managed so as to understand the clauses that makes up contracts being signed by parties whom have come together for a common goal.

Adjudication was introduced into the FIDIC, NEC and GCC conditions of contract as the standard means of dispute resolution early 2000 as an international rule practice. Adjudication as it is known is comparatively a new model which is not implicit as all adjudicators are well trained and have experience in the other forms of dispute resolution. The rationale behind this paper is to examine the requirements on how to apply adjudication in construction and Infrastructure development in Nigeria. To aid this, the researcher reviewed the essential framework and other permissible factors, discusses significant skills and available training, and establishes the impartation of adjudication in Nigeria.

### **The need for Adjudication in Nigerian Construction and Infrastructure Development conflicts**

This section starts with a reflection of the need for adjudication in construction and Infrastructure development in Nigeria through the following questions:

- How does the construction industries in Nigeria understand adjudication, how is it differentiated from other types of dispute resolution,
- Is adjudication sufficiently offered for in the contractual and legal framework?
- Are there sufficient adjudicators and relevant trainings available on adjudication in Nigeria?

### **Assumption**

Construction industries in Nigeria does not apprehend the complete prospective of adjudication because it is not commonly practiced. According to Uff (2005), adjudicate is to make an official decision about who is right in a disagreement between two groups or organizations. Recently, adjudication emerges as a type of alternative dispute resolution (ADR) available to the

construction industry in Nigeria. Povey (2005) explained that there are more meanings to the definition than how it is understood. It further explained that an adjudicator is expected to:

- Arrive at a free & fair decision.
- Act without prejudice and in accordance with the rule of law Initiative.

### **The foundation of Adjudication**

Gould (2006) explained that there has been an expression of various views concerning the foundation of adjudication. However, Maritz (2007) is of the opinion that the main aim of adjudication is to bring parties on a table and agree on the terms of payment since payment has been an issue in construction and Infrastructure development in Africa. Gaitskell, (2005) explained that in the 1970's, Adjudication was used in the United Kingdom as a medium to mediate between contractors and sub-contractors resolving payment problems upon completion of works and hand over. However, Adjudication was considered expensive in the United States due to cost associated with paying for legal fees and it led to emergence of dispute resolution boards in the 1960s.

### **Benefits of Adjudication**

In Construction and infrastructure development, stakeholders are striving hard to make sure they do not run into issues that would result to any dispute resolution process, however, if need be, they would prefer to go through adjudication. Butler & Finsen (1993) outlined the following factors as the benefits of adjudication:

- Experience of Members of the Adjudication Panel
- Lower cost associated with the process
- Shorter turnaround time
- The process is convenience and flexible for parties in dispute
- Limited publicity

Table 1 below shows the three tiers of adjudication application according to M'khomazi.

**Table 1: The Three tiers of Application of Adjudication** M'khomazi (2004)

Stages of application	Forms of Contract reviewed	Verdicts
Forms of contract	<ul style="list-style-type: none"> <li>• JBCC 2005</li> <li>• GCC 2004</li> <li>• FIDIC '99 "Red Book"</li> <li>• NEC 3 "Black Book"</li> </ul>	Adjudicator's (or DB's) appointment: by the parties, otherwise by a named authority
		Adjudicator's conduct; impartial, independent
		Inquisitorial: can ascertain the facts and the law
		Adjudicator not liable and not called as witness
		Dispute scope: anything under contract
		Decision: immediately binding
International guidelines	<ul style="list-style-type: none"> <li>• JBCC, CIDB</li> <li>• DUDF, AAA</li> <li>• ICC, World Bank CUB (UK)</li> </ul>	More detail than forms of contract
		Procedural and administrative aspects
		Funding institutions may prescribe
Legislation	<ul style="list-style-type: none"> <li>• UK</li> <li>• Singapore</li> </ul>	Conditional payment clauses outlawed (e.g. pay-when-paid)
		Establishing minimum payment terms
		Establishing statutory adjudication system
		Remedies available for non-payment
<p>*AAA - American Arbitration Association; DRBF - Dispute Resolution Board Foundation; ICC - International Chamber of Commerce; CUB - Construction Umbrella Bodies (UK).</p>		

## **Skills and Techniques Required by Adjudicators**

An assessment was drawn from information on adjudication skills and training from selected institutions, such as the:

- New Engineering Contract (NEC)
- Chartered Institute of Arbitrators (CIArb)
- The International Federation of Consulting Engineers (FIDIC)
- American Arbitration Association (AAA)
- Nigerian Society of Engineers (NSE)

The following skills are required:

- Formal Legal Training & Experience
- Continuing Professional Development (CPD) as an on-going requirement has become universal
- Contract Administration and Management Experience

However, with the exclusion of court-possessed *modus operandi*, ADR is in actual fact an appearance of clandestine justice and it is not a surrogate to legal action. Van Langelaar (2001) is of the opinion that, there is trepidation that the increase in the use of ADR which is also known as private justice and it will ruin the advancement of legal standard and as a result weakens the authority of the courthouse which in turn brings about constructive social change. Another shortcoming of ADR is the reality that it can influence remedies that are bespoke to the circumstances which law courts would not likely to award. In the process of ADR, the committee of adjudicators may not be able to grant disciplinary damages to discourage comparable behavior in the nearest future. Only law courts are capable of awarding damages of this kind.

The drawbacks of ADR discussed are, nevertheless counteracted by the reality that ADR does not admit to be a replace with litigation. As a matter of fact, it is set to complement litigation. Per se, litigation is the foremost dispute resolution procedure in existence and will continue to offer obligatory standards for circumstances leading to disputes in construction business in Nigeria.

The research questionnaire was designed to accommodate the following Information:

1. Adjudicator background
2. Knowledge and Years of experience in Dispute resolution
3. Forms of contract and guidelines frequently used
4. Skills and techniques
5. Impact of possible resolution

## CONCLUSION

Adjudication has come to be accepted in the construction Industry in Nigeria. However, more cases which a result of default in the contract signed by parties reported to the law court should be channeled to an ADR panel so as to enable the panel handle more cases.

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