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## Pre-Trial Conference As An Effective Tool of Alternative Dispute Resolution Mechanism In Ondo State Judiciary

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### Abstract

*Alternative Dispute Resolution (ADR) is one of the fastest growing field of academic interests that have attracted researchers from various disciplines. There are myriad ADR processes that have been discovered and more are still being invented as effective tools of conflict management, prevention and settlement in various spheres. Pre-trial conference is one of such inventions. This paper is an assessment of pre-trial conference as part of the recent efforts to institutionalize Alternative Dispute Resolution (ADR) processes in the Ondo State Judiciary since 2012. The paper sought to identify the factors that led to the adoption of pre-trial conference, the types of disputes that are amenable to it, the processes of conducting it, its challenges and its impacts on the justice delivery system in Ondo State. Both primary and secondary data were utilized. The primary data were collected through interviews with Judges/Magistrates, judicial officers, drawn from 4 judicial divisions in Ondo State. The Chairman of NBA in Ondo State was also interviewed. Secondary data were collected from books, journals, seminar and conference papers, and internet sources. The findings indicated that court congestion cases, delays associated with trials and high cost of litigation among other factors were responsible for the introduction of pre-trial conference in the state; it further revealed that issues relating to contract, land, landlord/tenant, banking, chieftaincy, and defamation are often treated with pre-trial conference and more so, the paper shows that pre-trial conference has, to some extent, facilitated effective settlement of disputes without having to go through trials. And of course, litigants find the process more satisfactory in terms of being cost effective and speedy resolution of disputes.*

*Key words: Disputes, Pre-trial conference, Alternative Dispute Resolution, Judiciary*

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### **Introduction**

The judicial system in Nigeria is modelled after British legal system, being its former colonial overlord. It is, therefore, understandable that the traditional conduct of civil litigation in Nigeria as well as in other common law jurisdictions is adversarial in nature. Within a framework of substantive and procedural law established by the state for the resolution of civil disputes, the initiation and conduct of proceedings rest with the parties to each individual case. It is usually the claimant that sets the process in motion. The role of judges is to adjudicate on issues selected by the parties when they choose to present them to the court. Without effective judicial control, however, adjudication proceedings are likely to encourage an adversarial culture, which could degenerate into a prolonged legal battle, where no rule seems to apply. In specific terms, the case involving *Rossek & Ors Vs. ACB Ltd & Ors* which started in 1975, witnessed an order for retrial being granted after 18 years of litigation. Also, in *Ogbuyinya Vs. Okudo*, it took about 32 years before the matter was finally laid to rest or decided by a competent court. The situation is no different in Ondo State. As a matter of fact, in 1991, a suit was only disposed off at the High Court 2, Ondo on the 15<sup>th</sup> of January 2014, after it had been instituted for well over 22 years. In this kind of environment, questions of cost, delay, compromise and fairness might have been relegated or not given the required consideration. The consequence is, of course,

that expense is often excessive, disproportionate, unpredictable, while delay is frequently unreasonable (Akanbi, 2008). This kind of situation arises because the conduct, pace and extent of litigation are left almost completely to the parties and there is no effective control of their worst excesses. In the light of these developments and other hindrances that the adversarial process poses to the administration of justice in most common law jurisdictions, recourse to Alternative Dispute Resolution (ADR) became expedient.

Alternative Dispute Resolution processes adopt non-adversarial ways of resolving disputes and is increasingly being utilized by both the public and private sectors, especially in developed countries. ADR helps parties to resolve their differences without resorting to litigation. Instead, it focuses on the needs and interests in the search for amicable solutions, with the greater tendency to promote win-win outcomes. It is voluntary, timely, confidential, and based on mutual consent. Unlike the conventional court system, it is designed to yield solutions that are adapted to the particular circumstances of individual cases. This is because ADR is about solving problems rather than imposing solutions through litigation. A number of scholarly works have focused on the workings of Pre-trial Conference in other climes; sometimes with pessimistic assertions. The major empirical study of the operation of pre-trial conferences in the United States was conducted in the early

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sixties in the New Jersey courts by Professor Maurice Rosenberg, casting doubt on its effectiveness. Rosenberg, (1964) concluded that the use of pre-trial conferences actually *reduced* the court's efficiency, since additional judge time was expended on conducting pre-trial conferences without any improvement in the disposition rate. Also, in an interim report on the Ontario Pre - trial conference, Stevenson, Watson, and Weissman, Edward (1977), reported the preliminary results of a *quantitative* research into the impact of pre-trial conferences. Their analysis indicates what happens when pre-trial conferences are employed, but it tells us nothing about the mechanisms by which pre-trial conferences produce these impacts.

Similarly, Abimbola (2013) noted that pre-trial conference is a case management mechanism where essentially the agenda will be a consideration of items or issues listed on the Pre-trial conference Information Form and other related matters. According to him, the judge plays the role of a managerial judge who must effectually utilize the technique and tool of case management and judicial control to achieve and facilitate a just, efficient and speedy dispensation of justice. Thus, to him, the responsibility of a pre-trial judge is limited to that of case manager. However, Rosenberg's work and otherscholars did not identify pre-trial conference an ADR case management scheme. This work intends to conceive pre-trial conference not just as a case management tool

but as an emerging ADR conflict management strategy in Nigeria. In gathering the data for this work, both primary and secondary data were utilized. Key-informant interviews, comprising 4 pre-trial Judges/Magistrates, 4 Judicial Administrative staff of the courts and the MBA chairman in Ondo State. These were drawn from selected four (4) out of the eleven (11) Judicial divisions in Ondo State. The selected divisions were further spread over the three (3) Senatorial divisions of the State including Ondo Central (Ondo), Ondo North (Ikare), Ondo West (Okitipupa) and Akure, the state capital. The data collected from the respondents were content analysed. For secondary data, the researchers consulted books, journals, newspapers/magazines and internet materials. Hence, the following questions served as a guide for the paper: what is pre-conference trial and why was it introduced as a conflict management strategy in Ondo state judiciary? What kind of conflicts is amenable to pre-trial conference? What are the processes for conducting a pre-trial conference (PTC)? How effective is PTC as an ADR mechanism? How can pre-trial conference be enhanced both as a case management strategy and a veritable ADR option?

### **Definition of Key Terms**

*Dispute.* -This is often used interchangeably with 'conflict'. It is also used independently to describe conflicts of interests over issues that are open to settlement by negotiation, mediation

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or arbitration, while conflict is reserved for confrontations that result from deep – rooted human needs (identity, security), which cannot be compromised or settled, only resolved (Moore, 1997). Disputes in the context of this paper can therefore be public, private, individual or collective, domestic, international or commercial conflicts which are subject to litigation. In this work, dispute and conflict mean the same thing and shall be used interchangeably.

***Alternative Dispute Resolution*** Alternative Dispute Resolution (ADR) is used to describe the various methods that have been initiated to deal with conflicts aside litigation or the adversary process. Hence, ADR are often referred to as non-adversarial processes. ADR originally referred to a range of processes used to resolve disputes as an alternative to the judicial court system, including negotiation, conciliation, mediation and several types of arbitration. The common denominator of all ADR processes is that they are intended to be faster, cheaper, less adversarial and capable of achieving better outcomes for disputants than they could achieve through litigation. Pre-trial conference has come to stay as one of such options.

***Pre-trial Conference*** -A pre-trial conference is a meeting of aggrieved parties involved in a court case prior to the commencement of a criminal or civil trial. It is usually held in front of a judge or magistrate, often referred to a pre-

trial judge. This type of hearing may be conducted to improve the quality and speed of the trial through a careful preparation or to discourage pre-trial activities that are wasteful and unnecessary (<http://m.wisegeek.com/what-is-a-pretrial-conference.htm>). Consequently, Pre-trial conferences may also be held to encourage a settlement before the case goes to trial. In some jurisdictions, such as U.S.A, Britain, Canada, and Singapore, these types of hearings are conducted in both criminal and civil cases. Criminal pre-trial conference, where it is practiced, serves the purpose of settling matters not related to the defendant's guilt. In most instances, a criminal pre-trial conference is held to decide preliminary matters, such as evidentiary and witness testimony. Criminal pre-trial conferences may also be used for discovery, which is the process of turning over evidence. Issues of discovery are often addressed at these hearings.

### **Alternative Dispute Resolution, Pre-trial conference and Resolution Processes**

According to Stevenson, Watson and Weismann (1977), it is generally accepted that the object of civil procedure is, or should be, to obtain not only a just determination of all disputes, but to do so speedily and at reasonable expense. It is their view that even in developed countries such as USA, Canada and elsewhere justice in the higher courts is expensive, and, if litigation proceeds all the way to trial, the process is far from being speedy. The extent of delay varies from court to court, but in the large

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urban centres of the said countries, a time span of three years from the commencement of proceedings to trial is not uncommon. Rosenberg (1964) observed that in the United States of America, Pre-trial conference procedure came into the limelight in 1938 with the adoption of the Federal Rules of Civil Procedure and its famous Rule 16. He noted that though not unknown, pre-trial conferences were little used in Canada until the 1970's. With respect to Nigeria, little or nothing was known about Pre-trial conference until 2004 when the Lagos State Judiciary blazed the trail with the introduction of PTC in the Lagos State High Court Civil Procedure Rule 2004 to replace the old Lagos Rules, which required parties, at the close of pleadings, to take out summons for direction to enable the judge set the matter down for trial. Several other states such as Ondo, Rivers, Osun, Enugu, Abuja and Cross Rivers, amongst others, have followed suit. The 2004 rules have now been repealed by new rules of court adopted by Lagos State with effect from 1st January, 2012.

In Canada to date, two basic forms of pre-trial conference have emerged. The first has as its principal goal of preparing cases for orderly trials, which is trial-oriented conference. The second form has its major goal in pre-trial settlement of the cases, that is, the settlement-oriented conference (Stevenson, et al, 1977). It is recognized that a case must be made vivid and real in the actual trial by court or jury when it

has reached that stage; and it has long been accepted that the court can then properly take steps to find out what the issues dividing the litigants are and to require the counsel to clarify these issues (Clark 1950). Pre-trial conference is a means of doing this necessary job at an earlier stage than the final battle when the lists are set. It is designed to achieve the several advantages that early disclosure may give, among which are obviously the making unnecessary of various possibilities of trial which the conference shows to be eliminable either because certain facts are accepted by all or because they have no real place in the actual dispute. And so, of course, this process of selection and choice may show the parties how close they are together and how they may go the small remaining distance to reach a settlement without the agony of trial. The question, therefore, is whether there is any need for pre – trial conference in our courts?

In our society, traditional rulers play a recognized role in the pursuit of peace within their domain. Sometimes, matters are brought before their 'courts' and sometimes they intervene. Unconsciously however, they adopt methods for resolving the dispute based on their level of experience, the parties involved and how much time they need to do this work. Traditional rulers have been known to pass judgment with the force of punishment for disobedience, suggest solutions to the parties (conciliation) and in fewer number of cases assist the parties to arrive at a mutually

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agreeable settlement (mediation). As expected, the judgment so passed by traditional rulers may only heighten the tension between the conflicting parties as one of the parties (the one who lost) may make claims of bias, bribery and so on. In the conciliation advice, one of the parties may have felt pressure to comply or agree with the settlement for fear of the implied punishment if he does not agree. The acrimony goes on and the dispute is not resolved. With the adoption of the English court system into the Nigerian legal system, some stability was recorded in the sense that enforceability was assured and records of judgments were stored for the future.

Amicable resolution of civil and criminal cases has always been recognized by our laws. With respect to the settlement of civil cases, Section 28 of the High Court Law of Ondo State (2006) provides thus:

When an action is pending, the court may promote reconciliation and among the parties thereto and encourage and facilitate the amicable settlement thereof

With respect to the reconciliation of criminal cases, Section 29 of the High Court Law provides that:

In criminal cases, the court may promote reconciliation and encourage and facilitate the settlement in an amicable way, of proceedings for common assault or for any other offence not amounting to felony and not aggravated in degree, on terms of payment of compensation or

other terms approved by the court, and may thereupon order the proceedings to be stayed

By virtue of Sections 33, 34 & 35 of the Magistrates Court Law of Ondo State (2006), magistrates are empowered to promote reconciliation in civil and criminal matters. The Customary Courts (Section 19 of the Customary Courts Law of Ondo State 2006) have similar jurisdiction. Section 11 of the Matrimonial Causes Act 2004 empowers a judge to refer a matrimonial cause for reconciliation if he considers it appropriate to do so. It therefore goes without say that the judiciary through the instrumentality of our courts are constitutionally empowered to promote the amicable settlement of disputes between parties.

Falana (2010) noted that there is therefore a statutory responsibility imposed upon the Courts to see that parties explore ADR. Courts in Nigeria must therefore, further the overriding objectives of justice by proactively managing cases. In her view, active case management includes:

- a. Encouraging the parties to use alternative dispute resolution procedure where the court considers that appropriate.
- b. Referral of cases for amicable resolution where the court considers ADR a worthwhile option.

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- c. Inquiring from the parties’ efforts made at ADR and examine reasons stated for a failed attempt ADR.
- d. Discouraging unwarranted adjournments and abuse of the litigation process.
- e. Proactive and effective judicial control and taking such steps or making orders which would facilitate the overriding objective.

Abimbola (2013), Onamade (2013), Kalu (2012) and Alimi (2005) are however of the view that despite the above provisions of the relevant laws establishing the different courts, excessive delays in trial of cases and enormous cost expended on such trials became unbearable for litigants. Alimi (2005) stated that it is generally accepted that justice delayed is justice denied. Consequently, for a long time, excessive delay remained an embarrassing feature of the administration of justice in Nigeria. He observed

that rather than aid the resolution of disputes, the justice system further exacerbates the conflicts. In a survey conducted by Lagos State in 2001, it was reported that the average life span of a case at the High Court of the State was six years (Osinbajo, 2001). To be case specific, the case of *Ariori v Elemo* was commenced at the High Court in 1960. By the time the judgement was given by the Supreme Court in the case in 1983, a retrial by the High Court was ordered after 23 years of litigation.

As stated earlier, the problem of delays suffered by litigants appears to be the most pertinent of them all. According to Professor Osinbajo, the situation in Lagos was very daunting and perplexing. By May 2000, pending cases at the Lagos High Court were in the order of 40,000 (Osinbajo, 2001). He gave a further comparative breakdown of the work load in both Lagos and Rivers States thus:

**Table 2A: summary of cases in Lagos and Rivers High Courts**

Year	Court	Fresh cases filed	Pending cases
1999	Lagos	10,226	20,169
	Rivers	2,409	8,398
2000	Lagos	9,969	23,197
	Rivers	3,399	10,699

Source: Osinbajo (2001)

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Earlier in 1997, a study conducted on the duration of trials in the Lagos High Court

indicated the following results:

**Table 2B: Duration of trials in the Lagos High Courts**

Type of cases	Trial Time
Land Matters	7 – 8 years
Personal Matters	3 – 4 years
Commercial Cases	3 – 5 years
Family Cases	2 – 5 years

Source: Osinbajo (2001)

Going by this table, the overall average for cases was 4.25 years. These figures of course assumed that there would be no interlocutory appeals which could drag the process on for an additional 50% - 75% of the average expected duration. Another study conducted by the Lagos State Ministry of Justice in August, 2001 copiously showed that it took an average of 5.9 years (approximately 6 years) for a contested

case to move from the period of filing it to the point of delivering judgment. Other random studies show that few lawyers who practiced regularly in the Lagos High Court were able to conclude 10 contested cases in 10 years.

The Table below shows the summary of cases in all courts in Ondo State for the 2010/2011 legal year.

**Table 2C: Summary of cases in Ondo State Courts**

COURT	PENDING AS AT 31/8/2010	FILED DURING THE YEAR	DISPOSED DURING THE YEAR	PENDING AS AT 31/8/2011
HIGH COURT OF JUSTICE	6,089	1,742	1211	6620
MAGISTRATE COURTS	5040	2840	3237	6286
RENT TRIBUNAL	1461	1345	1163	1643
CUSTOMARY COURTS	2453	2474	2393	2534

Source: Ondo State Judiciary

**Table 2D: General civil cases (2001-2006) National average**

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Court	Years
High Court	3.4
Court of Appeal	2.5
Supreme Court	4.5
Total	10.4

Source: Osinbajo (2001)

The experience in Ondo State was no different under the old Ondo State High Court (Civil Procedure) Rules 1987 as shown in Table C above. According to Adeyeye (2013), the roles of the stakeholders under the old rules has been researched, complained against, disparaged, generally denigrated by all concerned and understood by all. The situation in the apex court does not fare better either. The position was painted gloomily by the Honourable Justice Dahiru Musdapher, C.J.N, when he stated that during the 2010-2011 Legal Year alone, the Supreme Court disposed of 163 cases, consisting of 78 judgments and 85 motions. However, 1,149 civil appeals, 58 criminal appeals and 177 motions are still pending before the Supreme Court. He continued that even if there were a full constitutional complement of 21 Justices of the Supreme Court, it would certainly take several years before the backlog would be cleared (Mugdapher, 2011). Writing on the theme, *The Nigerian Legal Profession: Towards 2010*, Professor Auwalu Hamisu Yadudu stated that without attributing the cause to any single actor

or factor, there is, in contemporary Nigeria, an unacceptable, perhaps indecent, level of dilation and delay in the judicial process which tends to erode confidence in the system and encourage resort to some form of self-help out of desperation (Yadudu, 2007). On the indeterminable delays in the judicial process, the learned author further gave examples of those who suffered delays: a very high judicial officer recently complained loudly that a suit before one of his courts suffered well over (80) eighty adjournments. A European victim of 419 fraudsters has been telling her own tale of adjournment woes, which she portrays, and says so very loudly in Nigeria and abroad, as unabashedly travesty of justice that can only help in further denting the nation's image (Yadudu, 2007)

Accordingly, Yadudu (2007) suggested that they may well lie in some archaic rules of procedure, the inadequacy or non-availability of the facilities which augur for speedy trials, the unwholesome attitude of some counsel who

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take undue advantage of loop-holes in the system and rules and complacency in the society which is not repulsed by some of these shocking revelations and discoveries. Inadequacies in the civil procedure rules and abuse of those rules have been identified as part of the major causes of delay. According to Professor Osinbajo:

Another policy defect in the application of existing procedural Rules, is the excessive adherence of judges to the tenets of adversarial litigation. In a bid to hear both sides at every stage and to refrain from descending into the arena, judges routinely indulge counsel, many of whom exploit the system to delay or frustrate proceedings (Osinbajo, 2001)

For quite a long time, the settlement of disputes by adversarial contest had dominated the judicial landscape of the world with an air of seeming unquestionable veneration (Falana, 2010). Lawyers as principal actors in this landscape were by virtue of their training encouraged and inspired to pursue litigation whether for good, bad or no cause at all. Victors among them greatly rejoiced as they were crowned as kings and branded as those to who best understood their trade. Lamentably, the incense burnt all the way through the shrine of justice to the podium of celebration has always been time consuming, painful and costly to disputants. Most importantly, its effect on peaceful co – existence of people is most unpleasant. The judicial system all over the world has always demanded the need for quick

and efficient delivery of justice. Several options and procedures have been experimented with and in many cases without success.

The situation in the third world is quite critical as we can see in the case of Nigeria in which cases spend decades at the trial court without resolution. The experience could be very harrowing not only to litigants but even to discerning lawyers and members of the society who realise that a case probably ended only with the aim of justice having been gravely defeated. As the courts grew, delays, formalities, technicalities, corruption and the like crept in. Similarly, the cause lists became overcrowded and court environment and sittings became intimidating and oppressive to the uninformed. In the view of Aina (1988), it is unfortunate scenarios of this nature that gave birth to the idea of the pre-trial conference. As noted earlier, prior to the introduction of the new rules, spearheaded by the Lagos State judiciary, a summons for direction was the operating practice in the High Courts. This, according to Abimbola (2013), is a practice introduced in the Civil Procedure Rules of England on the recommendation of Lord Evershed Report which have the intention that a practice should be evolved where before trial of actions, a thorough stock taking of issues contended in the action should be given consideration and the manner in which evidence will be presented at the trial, all with a view to shortening the length of trial and to save costs of Litigation. In this

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sense, such procedure was to take place after discovery of and inspection of relevant documents sought to be used as evidence. After series of stakeholders' workshops aimed at addressing the problems, the Lagos State Government came up with the 2004 Civil Procedure Rules. A similar step has been taken with respect to the Federal Capital Territory's High Court Civil Procedure Rules with the introduction of the 2004 Rules and other State High Courts. In Ondo State, the High Court Civil Procedure Rules came to effect on the 31st day of December 2012. The spirit behind the new rules has been graphically stated by Order 1 Rule 1 sub rule 2 of the 2004 Lagos Rules which provide that the rules shall be directed towards the achievement of a just, efficient and speedy dispensation of justice. As a matter of fact, most, if not all courts in Nigeria have amended their rules to enjoin judges to as much as possible encourage settlement out of court. Many of such provisions are to the effect that where an action is pending, the court may promote reconciliation among the parties thereto. One of the novelties introduced into the Lagos 2004 Rules as well as the Ondo State High Court (civil procedure) Rules 2012 is the pre-trial proceedings.

In underscoring the importance of judicial reforms, Hon. Justice (Dr) Akinola Aguda, opined thus:

The present incredibly slow process of judicial administration is frightening and oppressive..... A

judicial system which can permit a simple case, for example one of wrongful termination of employment to remain in the Courts for over five years cannot be said to be running smoothly. Whatever happens at the end of such an aberration of Court trial can hardly be said to be justice... Our present system of judicial administration is a bankrupt system, and it is very sad indeed that no government from independence in 1960 to this moment has ever made any conscious effort to re-organize or modernize this bankrupt system. It is an inexplicable irony that whilst some of our other smaller sister countries in the so-called Third World are taking giant steps in the technological age of the 21<sup>st</sup> century, we are satisfied to continue to wallow in the stinking stench of the 19<sup>th</sup> (Aguda, 1986)

Order 25 Rule 2 (b) of the Ondo State High Court Rules (2012), provides that in pre - trial conference a judge may give such direction as to the future course of the action as appear best adopted to secure its just, expeditious and economical disposal; and in rule (c) promoting amicable settlement of the case or adoption of alternative dispute resolution. These new rules have therefore recognized the value of other forms of dispute resolution other than litigation.

### **Factors that led to the introduction of Pre-trial conference in Ondo State Judiciary**

Generally, all ADR processes are responses to the inherent shortcomings of the court system. Most of these shortcomings often revolve around prohibitive costs of litigation,

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dissatisfaction with the outcome of litigation, ruined relationships of litigants, prolonged process of the court system and unfriendly process of litigation among several others. A respondent was of the view that one of the major reasons for introducing Pre-trial conference in Ondo State was the need to reduce the time spent on litigation in the court. He further stated that prior to the introduction of the new rules, lawyers and litigants often resorted to delay tactics where they felt they had a bad case while cases that could ordinarily be settled between parties would drag for years. He gave an example of a case instituted in 2003 (AK/42/2008) where parties were at the close of their respective cases, only for them to inform the court that they have settled the matter out of court. He therefore stated that PTC was introduced to enable judges manage cases in their docket and also provide litigants an opportunity to explore amicable settlement of their disputes. In his own view, the Director of Registry and the Head of the Registry of the Akure Division of the High Court, was of the view that since the introduction of the new rules, there has been a reduction of the number of cases filed in the Registry of the court. He further opined that there has also been a reduction in the number of cases that proceed to full blown trial. Based on the researchers' finding, the inadequacies of the litigation process as a means of resolving disputes were quite evident in the Ondo State Judiciary thus necessitating reforms culminating in the

introduction of the new High Court civil procedure rules 2012. The following factors were often mentioned as being responsible for the introduction of the new Rules and the Pre-trial Conference in particular:

Heavy court caseloads abound in many judicial divisions which means that trials are prolonged and decisions not given for years. Meanwhile, time is often of the essence, and large sums of money may also be at stake. As aptly pointed out by one of the respondents, 'litigation being the primary mode of resolving disputes invariably leads to the congestion of the courts'. As at December 2017, Ondo State has twenty - one (21) High court judges and sixty - eight (68) Magistrates to serve an estimated population of 3 million people. These data shed some light on how overworked the judges and magistrates are and this situation is not peculiar to Ondo State but replicated throughout the country. One effect of this situation is the congestion of the dockets of these courts. This invariably leads to delays in the machinery of justice in Lagos state. In Nigeria generally, it is common for litigants to spend between five (5) and twenty (20) years from the time a civil matter is filed in a court of first instance to the final determination of the case. For instance, one of the judges interviewed painted a gloomy picture of the situation in the court under the old rules. His lordship gave an instance of a case she presided over which was instituted in 1981 while she was still an undergraduate. This case was recently

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dismissed due to want of diligent prosecution. The adversarial and antagonistic nature of court process, whereby settlement of a dispute is seen as an admission of either liability or weakness because the litigation process relies on a complex system of rules and procedures. This provides the avenues for tardy counsel to deliberately delay matters endlessly. The lack of specialized knowledge of the trial judge which may make it difficult for him to understand the nature of the dispute or the position being put forward by the parties could also be detrimental to the expectation of the parties.

It was also discovered that prior to the introduction of the new rules, the pace or movement of cases from commencement to trial; as well as the presentation of the evidence and the formulation of the issues were before now left in the hand of parties and their respective counsel. The responsibility of the trial judge was simply to ensure that there had been a fair process to regulate the reception of evidence according to the rules of evidence. The adversarial system in practice limited the power of judges by allowing the lawyers to present and develop the evidence to be presented in support of their matter. Such inordinate delay not only restricts access to justice but may lead to a denial of justice. The lack of privacy involved in litigation is also a major concern. Court documents are public documents and court hearings are public sittings. Parties may not want their disputes, or court decisions on their

cases brought to public knowledge. At one of the interview sessions, the researchers reliably gathered from one of the respondents, who is incidentally the Chairman of the Ondo Branch of the Nigerian Bar Association (NBA), that the introduction of PTC in other courts in the state has been long overdue. He was of the opinion that the administration of justice will be greatly aided by such timely intervention of PTC.

### **The type of disputes that are amenable to Pre-trial conference**

Most of the sampled respondents opined that PTC is applicable in all civil disputes commenced by way of Writ of summons such as contract, land, landlord/tenant, banking, chieftaincy, defamation, and so on. They observed that since PTC is only provided for in the Ondo State High Court Civil Procedure Rules, it therefore goes without saying that same cannot be applicable in other matters outside civil disputes. A vast majority of the interviewees were of the opinion that despite the provisions relating to amicable settlement of dispute in the laws/rules of other courts in the state, only the High Court has elaborate rules on PTC. As a matter of fact, one of the judges in the Ondo State High Court sitting at Ondo was of the opinion that besides the High Court, no other court in the state has any law/rules relating to the practice and procedure of PTC. One of the interviewees inform the researchers that though the Ondo State High Court Civil Procedure Rules 2012 did not expressly provide

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for the use of PTC in matters commenced by way of writ of summons, it has practically become the practice to use PTC in only such matters. In his opinion, the reason is that of all the four ways of commencing an action (originating motion; originating summons; petition & writ of summons), only the writ of summons is used in contentious matters. There were divergent views on the application of PTC to criminal matters. While some respondents were in support of its utilization in criminal matters on the ground that PTC will aid the quick dispensation of justice in criminal matters and also assist in decongesting our prisons others disagreed stating that PTC will not be effective conflict management tool in criminal matters. They hinged their disagreement on the fact that crimes are offences against the state and not against an individual.

During the interviews with Magistrates/Judges, the researchers raised the issue of extending the PTC scheme to the resolution of small value or low-level crimes such as petty thefts, through the use of restorative justice tools. A Chief Magistrate sitting in Ondo, did not think such matters should be resolved through PTC processes and more importantly that the Judicial officers and judicial staffs do not have the necessary resources or training to undertake such a task. The obvious lack of resources is substantiated by the findings above but on whether such crimes should be resolved by PTC or other ADR processes is open to further debate. Another interviewee, who is a Principal

Legal Officer in the office of the Director of Public Prosecution (DPP), Ondo State Ministry of Justice, explained that:

When a crime is committed, it is deemed an offence against the state and only the state has a right to prosecute the offender. It will therefore be practically impossible to resolve such conflicts (criminal matters) through the use of PTC. For example, where there is a case of murder, how can PTC be used to manage the conflict?

Some of the respondents interviewed were of the opinion that PTC can only be effective in management of issues relating to minor criminal matters such as stealing, malicious damage of property, minor assault and so on but not in serious offences such as robbery, manslaughter, murder, armed robbery and so on. Based on these submissions, it is safe to state that PTC is applicable to civil disputes commenced by way of Writ of Summons. It must, however, be noted that PTC is not applicable in Divorce or matrimonial disputes as same is governed by the Matrimonial Causes Rules, a subsidiary legislation.

### **Processes of conducting Pre-trial conference in Ondo State Judiciary**

Pre-trial conference as an informal process of case management on the one hand and an ADR option on the other hand, has its own unique templates for dealing with issues expeditiously. PTC is an informal court sitting where the judge, lawyers and litigants attempts a resolution of dispute. As a routine, during PTC,

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the pre-trial Judges and lawyers do not wear the wig and gown. Hence, the atmosphere is not formal as obtained in the regular court sitting. Based on the data gathered from one of the judicial staff, the process of conducting PTC can be divided into three (3) segments:

1. **Initiation:** The Pre-Trial Conference is usually triggered off by one of the parties. Thus within 14 days after the close of pleadings, the claimant ought to apply in writing for the issuance of pre-trial conference notice which is called Form 17. In practice however, the Form is usually prepared and filed by Counsel, accompanied with a letter requesting the Registrar to issue the said Form 17. The Judge shall thereupon cause to issue the pre-trial conference in Form 17 accompanied by the pre-trial information sheet which is Form 18. It should be pointed out that in deciding whether or not to approve the application, the judge ought to determine whether pleadings have closed, the dates pleading closed and whether 14 days had elapsed after the close of pleadings. Where a claimant does not make an application for the issuance of the pre-trial conference notice, the defendant is enjoined by the Rule to make the application or apply for a dismissal of the action.
2. **Agenda at the PTC:** at the pre-trial conference, the judge has a duty to enter a

scheduling order for the following purposes:

- a. Joinder of parties
- b. Amendment of pleadings or any other processes
- c. Filing of motions,
- d. Other pre-trial conferences.

The Scheduling Order sets the tone for the agenda for the PTC. It is the duty of the judge, at the commencement of the PTC to enquire from parties or their counsel what applications have been filed by them and what other businesses they intend to transact at the PTC having regard to the items contained in Order 25 Rule 3 of the Rules of the court. On the basis of the information supplied by the parties, the judge would enter a scheduling order setting out the timeline and the order in which the businesses would be transacted during PTC. The purpose of PTC is to dispose of all interlocutory matters which, if not resolved, could subsequently delay trial. In practice, most judges in Ondo State do not robe during PTC and as a matter of fact, some do not sit on the judges' bench but move their seat to the registrar's table for the purpose of conducting the pre-trial conference. It has to be emphasised that one of the most important duties of the judge during PTC is to promote amicable settlement of the case or adoption of alternative dispute resolution (ADR). This can best be achieved if the judge moves closer to the litigants and counsel.

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By the provision of the rules, Pre-Trial Conference(s) are to be held from day to day by the judge except where adjourned for purposes of compliance with orders made during the conference. However, in practice, each court sets aside a day in the week for conducting pre-trial conference. The duration of the pre-trial conference is 2 months from the day of its commencement although it may be extended by the court upon application by counsel.

2. Preparation of the report: after a pre-trial conference or series of pre-trial conferences, the judge shall issue a report and this report shall guide the subsequent course of the proceedings unless modified by the trial judge. A report necessarily is nothing more than stating that there are no pending applications or requests for pre-trial orders and that since all pre-trial orders have been complied with, amendments effected, if granted and all issues settled as agreed upon in the pre-trial information sheet. It is upon that premise that a court will then issue a road map by way of Report setting the timetable for hearing of the case, calling of witnesses by the parties and fixing the date or dates of trial and notifying parties of the trial date (in case of absence). The Report may include:

- a. The suit's number
- b. The parties
- c. A gist of the claim, defence or counter claim – statement or chronology of relevant events
- d. A summary of issues for determination.

- e. If possible summary of propositions of law to be advanced.
- f. The roadmap, date of trial, number of days for the subsequent trials, depending on the number of witnesses to be taken and conclusion.

With respect to the issue of parties being in control of proceedings where conflicts are managed through the instrumentality of PTC, a vast majority of the respondents disagreed. The Presiding Judge of the Okitipupa Division of the Ondo State High Court revealed during interview that parties cannot be in control of PTC proceedings. In his view, the rationale behind the introduction of PTC was to hasten litigation and reduce delay in trial occasioned by the acts of litigants and their counsel; hence giving control of PTC proceedings to parties will be counterproductive. In the same vein, the Chairman and Secretary of the Nigerian Bar Association (NBA) Akure Branch during one of the interview sessions were of the view that giving control of PTC proceedings to the parties will be inimical to the tenets and spirit behind the introduction of PTC and the new High Court Civil procedure rules. Although they conceded that parties must have a say in the proceedings, they were however of the opinion that without adequate judicial control of the proceedings, the whole essence of PTC will be defeated.

According to majority of the sampled respondents, the level of satisfaction is very low where a judge presides as both Pre-trial and trial

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judge in a dispute. Most of the principals of the NBA in the four judicial divisions under review were of the view that the present practice of having same judge preside as both the pre-trial and trial judge does not augur well for the utilization of PTC as an ADR mechanism in that a judge, being an umpire, is not allowed to descend into the arena of conflict. They further opined that such practice is inimical to the administration of justice in that a judge would have made up his mind at the level of PTC one way or the other and that there is the tendency for a judge in such situation to 'move' against a particular party at the trial. The Director in charge of the High Court Registry, Akure agreed with the opinion of the principal officers of the NBA. In his view, the practice in Lagos where different judges sits as pre-trial and trial judge is a better option.

It is also the view of the majority of the respondents that PTC provides an avenue for parties in a dispute to reconcile their differences with a view to resolving their conflicts/disputes. An interviewee who is a legal practitioner in the employment of the Judiciary has this to say:

since my early days in practice as a legal practitioner in Lagos and now a judiciary staff in Ondo State, I have observed that PTC often provides litigants the opportunity of looking at their case(s) with a third eye in a bid to understanding/appreciating the weakness and/or strength of their respective cases thus affording them the opportunity

of exploring out of court settlement of their dispute and in some instances utilizing the ADR option.

### **Impacts of Pre-trial Conference as an ADR Mechanism**

It is very difficult to measure the impact of PTC in Ondo State judiciary due to the fact that the programme is relatively new and has not been fully embraced by all the courts in the state. As it is, PTC is only being undertaken at the High Courts. It is generally believed by respondents that, to a certain extent, PTC promotes amicable resolution of the dispute or adoption of ADR. During the interview session with two of the judges in Ondo and Okitipupa Divisions of the High Court, they opined that adjudicators are gradually coming to terms with the reality that their responsibility is to encourage the settlement of dispute or the adoption of ADR during PTC rather than proceed to full trial. The problem lies in the fact that the cases that are settled or resolved at PTC do not count for the evaluation of the performances by National Judicial Council. Hence, most judges do not encourage the settlement of dispute during PTC. In order for them to meet the NJC requirements, most judges often prefer cases to proceed to full trial, where judgment would be delivered, thus abandoning their responsibility of encouraging settlement of dispute or adoption of ADR.

However, a judge in the Okitipupa division of the High Court disagreed with the above position. In his view, the parties and their

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counsel are the major determinant of the outcome of the PTC as to whether dispute will be settled or not. He cited cases where litigants and their counsels were not committed to the settlement of dispute. From the foregoing, one can infer that the number of disputes resolved at PTC is quite low due to the attitude of parties and their respective counsel. There is therefore need to encourage parties and counsel alike to take active part in PTC meeting with open minds. Another respondent and a major stakeholder in the judiciary stated that, quite a number of cases/disputes brought to the PTC were resolved directly or indirectly but were never reported. According to the respondent:

...although some are reported in the court's record books but not in the law reports. Cases decided by the courts are reported in the law reports which often serve as precedent. This is not the case with cases resolved at PTC level. Without much publicity and reportage given to such cases, PTC may not be popular as an ADR mechanism in dispute management.

A judge of the High Court interviewed in the Akure division opined that:

...while PTC could not be utilized in all cases as an ADR mechanism for the settlement of disputes, it has however contributed immensely to the reduction of cases in the court and in some instances, has led to the resolution of very serious disputes.

His lordship further noted that the reduction of number of cases filed in the court may not be totally attributable to PTC in that the frontloading system has also made the filing of frivolous and unmeritorious cases in the court impossible. It is his view that the PTC and its likes in the new rules were conceived principally as case management strategy to combat this procedurally in-built delay mechanism in the old rules. This is intended to increase public confidence in the system and improve access to justice. Another interviewee, informed the researcher that since the introduction of the new rule (PTC) in the court, there has been a great reduction in the number of cases in the court. He further observed that the frontloading system in the new Rules has made it practically impossible for unserious parties and their respective counsel to unduly delay the trial of their case as all their evidence sought to be relied upon at the trial are frontloaded and the time for the trial of the case is fixed by the court. In his opinion, this is often as a result of the fact that parties are made to know the futility of proceeding to trial during PTC meetings thus leading to the adoption of ADR options and ultimately resolution of such disputes.

### **Conclusion**

The attendant delays in the trial proceedings occasioned by courts congestion and other vices often lead to agitation and frustration on the part of litigants. It is unfortunate situations of this nature that culminated into the emergence

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of ADR of which Pre-trial conference was introduced by the Ondo State Judiciary in 2012. Pre-trial conference became a child of necessity to address some of the problems associated with litigation in the state. Of course, there are few researches and papers presented on the subject. The philosophy around PTC as an ADR mechanism is that it helps to remove technicalities from legal proceedings and in the process help with timely delivery of court judgements.

From the experiences of Ondo State Judiciary, PTC is conducted through Writ of Summons and the nature of disputes that are amenable to it range from contract to land, landlord to tenant conflicts, banking to chieftaincy matters, defamation to debt recovery and so on. Family disputes are not entertained under the PTC because there are specialized courts for the management of marital disputes in the state. To a very large extent, PTC can be described as an ADR option because between 20-40% of cases that go through it are resolved without having to go through trials, creating a form of relief for individuals, families, businesses, communities, and, by extension, the society as a whole. It is therefore imperative to stay focused on providing the best services possible within the court-context and insist on striking the right balance between the institutional goals and the potentially distinctive contribution that ADR has to offer to those in conflict. This will require a clear vision of why PTC as an ADR mechanism is important, an articulated vision

that defines how PTC should be practiced, and sustained work toward supporting this vision. In order to remain true to the mission of helping parties navigate their most difficult challenges, we must ensure that the answers to how and why PTC as an ADR mechanism is practiced remain in the forefront.

### **Recommendations**

- a. A situation where a judge presides both as pre-trial and trial judge may not achieve the best result for the process as it does not, in a way make the judge to encourage disputants to embrace settlement of dispute at the level of PTC. It is therefore suggested that the practice in Lagos State should be adopted. In this wise, it is suggested that a particular day of the week be set aside as PTC meeting day wherein all the judges in the different judicial divisions will sit over PTC matters.
- b. One of the hallmarks of an ADR processes is that they protect the privacy and public image of the disputants. PTC sessions are however held in an open court although it is devoid of the usual formality of the court system. Suitable accommodation that guarantees privacy and confidentiality amongst the parties should be strongly considered for holding PTC sessions.
- c. Since the parties are the one directly affected by the dispute, it is suggested that they should be given the opportunity to contribute substantially to the PTC proceedings. Where parties are given this

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opportunity, there is the tendency that parties will speak freely with an open mind in order to bring to the fore critical issues underlining the dispute

- d. Efforts should be made to introduce Pre-trial conference in other courts in Ondo State. To this end, it is suggested that the laws establishing some of these courts and their procedural rules be amended to reflect the practice and procedure of Pre-trial conference as an ADR mechanism.
- e. It is strongly recommended that judges, other judiciary staff and legal practitioners who operate within the courts should be made to learn basic skills of ADR processes. This will be a very necessary capacity building for managing interpersonal/inter-group differences.

### *References*

- Abimbola, M L.(2013) *Practice relating to Pre-trial Conference*, Life gate Publishing Co. Ltd
- Abraham Lincoln (1861-1865)l Born Feb 12, 1809, Abraham Lincoln was the 16th President of the United States of America. On Good Friday, April 14, 1865, Lincoln was assassinated at Ford's Theatre in Washington by John Wilkes Booth, an actor, who somehow thought he was helping the South.
- Adeyeye, B.F. (2013) The Road map in the operation of the rules Under the High Court (Civil Procedure) Rules 2012 – Filing to Judgment, A paper delivered at the stakeholders' workshop on the High court civil Procedure Rules 2012 held at Ruby's court, Akure on 9th – 11th April, 2013.
- Aguda Akinola (1986) “The Crisis of Justice” Prof.YemiOsinbajo, in the foreword to Proposal for the Reform of the High Court of Lagos State (Civil Procedure) Rules p.V.
- Akanbi M. M., (2004) “Kwara Multi-door House: An Idea Whose Time Has Come” paper delivered on the formal inauguration of the committee on the proposed Kwara State Multi-Door Courthouse at the High Court of Kwara State on Tuesday, 29th July, 2008, available at [www.nbailorin.org/download/TUESDAY,%2029TH%20JULY,%202008.pdf](http://www.nbailorin.org/download/TUESDAY,%2029TH%20JULY,%202008.pdf), accessed on 22/09/2014.
- AkinbuwaA. A., “Citizens Mediation Center and Multi-door Courthouse in Lagos State” in Law, Politics and Development, published by NBA Ikeja Branch, 2010, p. 327.
- Aina, K. “Alternative Dispute Resolution” In *Nigerian Law and Practice Journal*, Council of Legal Education, Nigerian Law School, Vol. 2, No. 1, March 1988, p. 169 – 170.

*Pre-Trial Conference As An Effective Tool of Alternative Dispute Resolution Mechanism In Ondo State Judiciary*

- Albert I. O. (2001). *Introduction to Third Party Intervention in Community Conflict*. Ibadan: John Archers Publishers Ltd., Ibadan
- Falana, F. (2013)
- Falana, O. ,(2010) Multi – door courthouse and alternative dispute resolution: Lagos and Abuja Experience, A seminar paper presented to the Faculty of Law, Obafemi Awolowo University, Ile – Ife.
- Kalu, A.U Hon. Justice of the Abia State High Court 2011 being paper delivered at the 2011 Biennia National convention of the all Nigerian Magistrates Association on Thursday, 10th May, 2012 at Uyo, Akwa Ibom State.  
[http://en.wikipedia.org/wiki/Social\\_Contract\\_theories](http://en.wikipedia.org/wiki/Social_Contract_theories)
- Michael Stevenson, et al (1997): The Impact of Pre-trial Conferences: An Interim Report on the Ontario Pre-trial Conference Experiment, *Osgoode Hall Law Journal, Volume 15, Number 3 (December 1977)* Article 2
- Moore, C. (1996). *The Mediation Process: Practical Strategies for Resolving Conflicts*. San Francisco, Jossey-Bass.
- Musdapher, D. (2011), *The Nigerian Judiciary: Towards Reform of the Bastion of Constitutional Democracy*, Fellows' Lectures Series, Nigerian Institute of Advanced Legal Studies, Lagos.
- Ogugua, P.I. (2003). Law and State in Africa with reference to Nigeria (A philosophical perspective). *Ogirisi :A New Journal of African studies*, Vol.1, No.1, Awka, Nigeria: Lumos Nigeria, Ltd, Philosophy Department, Nnamdi Azikiwe, Awka, Nigeria.
- Onamade, P.A. Hon. (2013)The new High Court (Civil Procedure) Rules through the cases: A paper delivered at the stakeholders' workshop on the High court civil Procedure Rules 2012 held at Ruby's Court, Akure on 9th – 11th April, 2013.
- Osinbajo, Y. (2011) *The Retreat of the Legal Process*, Nigerian Institute of Advanced Legal Studies, Lagos.
- Racsmany, Z. (1998) 'Conflict Prevention and Early Action in Albania: Too little, Too late?', In P. Wallensteen (ed) *Preventing Violent Conflicts: Past Record and Future Challenges*, Uppsala: Department of Peace and Conflict Research, 100 – 135.
- Rosenberg (1964), *The Pre-trial Conference and Effective Justice* (New York: Columbia University Press, 1964).
- Yadudu, A. H. (2010), *The Nigerian Legal Profession: Towards 2010*, NIALS Annual Lecture Series, 1997 and Reprinted in 2007 by the Nigerian Institute of Advanced Legal Studies, Lagos, p. 6.