

A PAPER ON

LITIGATIONS AND DISPUTE

RESOLUTIONS IN LOCAL

GOVERNMENT SERVICE

PRESENTED BY

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AT A WORKSHOP ORGANIZED FOR

THE STAFF OF LOCAL GOVERNMENT

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LITIGATIONS AND DISPUTE RESOLUTIONS IN LOCAL GOVERNMENT SERVICE

INTRODUCTION:

I consider it a great privilege and a stupendous honour to have been requested and called upon to present a paper on “Litigations and dispute resolutions in Local Government Service”.

Local Government Service in the context of this lecture would mean the Local Government Service Commission as an establishment and the various Local Government Councils in the State. When I received an official letter from the office of the Chairman of the Local Government Service Commission, Dr. Simon Imuekemhe on the 11th of October, 2016 informing me to this effect, I had mixed feelings; to refuse such a request would amount to serious act of disrespect to my former boss. To accept would be to attempt to carry a load which I know my slim and fragile shoulders cannot comfortably bear. This was my initial dilemma.

The topic suggested for the lecture is no doubt a fascinating and challenging one for I left the seat of the Director of Civil Litigations (DCL) in 1992, in the Ministry of Justice for that of the Director of Public Prosecutions (DPP) in the same Ministry in 1993 before my subsequent appointment as a Permanent Secretary in the Edo State Civil Service in 2001. In the year 2009, I

bowed out from the Civil Service gracefully and now I am a senior citizen of the State. That does not mean that I am not in tune and tone with the legal profession which I belong to.

The topic for our discussion no doubt, bothers on legal premise. I am conscious of the fact that even though some of the participants at this workshop are knowledgeable in law, many are not on the same footing. I will therefore try to make it simple as much as possible in approach in discussing the topic.

LOCAL GOVERNMENT SYSTEM:

In Nigeria, there are 774 Local Government Councils provided for under the First Schedule of the 1999 Constitution of the Federal Republic of Nigeria with Amendments 2011 and out of these Edo State has 18 Local Government Councils.

Section 7 of the Constitution provides that the System of Local Government by democratically elected Local Government Councils is under this Constitution guaranteed; and accordingly, shall subject to Section 8 of this Constitution, ensure their existence under a law which provides for the establishment, structure, composition, finance and functions of such Councils. As a legal tool for operation apart from the 1999 Constitution with amendments is Edo Local Government Law 2000 (as amended).

THE LEGAL STATUS OF LOCAL GOVERNMENT COUNCILS:

The various Houses of Assemblies of each State of the Federation enact laws for Local Government Councils in their various states. These local government laws so enacted by each house of assembly and signed into law by the respective Governors of each state, provide that the different Local Government Councils within that state shall be a body corporate that has

perpetual succession that can sue and be sued by aggrieved individuals and corporate bodies.

Cases abound where Edo State Local Government Councils have instituted legal actions against individuals or corporate bodies. On the contrary, individuals and corporate bodies have also instituted legal actions against the Local Government Councils.

Specifically Section 5 of the Local Government Law of Edo State 2000 (as amended) provides:-

*“Every Local Government Council established pursuant to this law shall be a body corporate by the name designated in the instrument establishing it and shall have perpetual succession and a common seal, the power to acquire, hold and dispose of land and to **sue and be sued** (underlining mine) in its corporate name”.*

FUNCTIONS OF LOCAL GOVERNMENT COUNCILS:

The functions of Local Government Councils in Nigeria are provided for under the Fourth Schedule of the 1999 Constitution of the Federal Republic of Nigeria as amended. The main functions are as follows:-

- a. the consideration and the making of recommendations to a State Commission on economic planning or any similar body on-
 - i. the economic development of the State, particularly in so far as the areas of authority of the Council and of the State are effected, and
 - ii. proposals made by the such Commission or body;
 - iii. collection of rates, radio and television licences;
 - iv. establishment and maintenance of cemeteries, burial grounds and homes for the destitute or infirm;
 - v. licensing of bicycles, trucks (other than mechanically propelled trucks), canoes, wheel barrows and carts;

- vi. establishment, maintenance and regulation of slaughter houses, slaughter slabs, markets, motor parks and public conveniences;
- vii. construction and maintenance of roads, streets, street lightings, drains and other public highways parks, gardens, open spaces, or such public facilities as may be prescribed from time to time by the House of Assembly;
- viii. naming of roads and streets and numbering of houses;
- ix. provision and maintenance of public conveniences, sewage and refuse disposal;
- x. registration of all births, deaths and marriages;
- xi. assessment of privately owned houses or tenements for the purpose of levying such rates as may be prescribed by the House of Assembly of a State; and
- xii. control and regulation of-
 - a. out-door advertising and hoarding;
 - b. movement and keeping of pets of all description;
 - c. shops and kiosks;
 - d. restaurants, bakeries and other places for sale of food to the public, laundries and;
 - e. licensing, regulation and control of the sale of liquor;
 - f. participation of the provision and maintenance of primary, adult and vocational education.

It is interesting to note that the Edo State Local Government Law 2000 (as amended) also provides for Local Government functions under Part ix, Sections 48-59.

In summary, in Edo State, each of the 18 Local Government Councils is created by the Edo State Local Government Law, 2000 as amended. The law provides for the composition and tenure of each Council, the functions, the

finances, auditing of the books of account of the Councils, the method of electing members of the Council, i.e. the Chairman, Vice-Chairman and Councilors.

While the Chairman and the elected councilors may initiate policies and programmes for the enhancement of the welfare of the generality of people living within the Councils areas of jurisdiction, it is the employees, staff, consultants and contractors engaged by the Council that implement or execute the policies and programmes of the Councils.

The Local Government Laws therefore make provisions for the employment of these staff, consultants and contractors without which the policies and programmes of the Council cannot be executed.

While the contractors and consultants work for their profits, the staffs employed by the Councils are motivated by their salaries, wages, promotions, recognitions and the self-actualization of their dreams. It is unfortunate that a good number of Local Government Councils in Edo State have not been able to pay the salaries and wages of their employees for some time now.

DEFINITION OF OPERATING WORDS:

“Litigations and Dispute Resolutions in Local Government”, for a better understanding of the topic, the operative words will be defined.

The Black’s Law Dictionary 7th Edition by Bryan A. Garner defines the following words thus:-

- i. **Litigation-** the process of carrying on a lawsuit (P. 944). Conventionally litigation is the name given to the process of resolving disputes through the courts.
- ii. **Dispute-** A conflict or controversy, especially one that has given rise to a particular lawsuit (P. 485).

- iii. **Resolution-** the action of solving a problem, dispute, or contentious matter.

AREAS THAT BRING ABOUT LITIGATIONS:

In the performance of these set of functions by the Local Government Councils there will be conflict and controversy especially ones that can give rise to lawsuits. These could be in area of revenue generation, award of contracts to construction Companies and individuals, collection and disposal of refuse, termination of employment by the Local Government Service Commission etc.

A local government may default in its contractual agreements to pay its suppliers, to pay for the services rendered to it, to pay its contractors; convert peoples' land to refuse dump, erect school, market, health centre or motor park on peoples' land without paying compensation or adequate compensation, terminating the contract it entered into with some of its service providers e.g. revenue agents, suppliers, consultants etc.

Conversely, some individuals or corporations may have failed to honour its agreement with the Council after taking some benefits e.g. failing to supply or perform the job for which mobilization fee or payment has been received etc. Sometimes it can be frictions between employee and the Local Government Councils resulting in the former seeking redress in court probably after exploiting administrative channels or may not have taken such steps before opting for litigation. In most of such cases for litigation, very often than not, the aggrieved parties and individuals are contractors.

PRE-ACTION NOTICE:

Section 152 of the Local Government Law 2000 (as amended) makes it mandatory for a Local Government Council to be given a notice of one month

by any person(s) who intend to sue the Council in court. This is usually referred to as “pre-action notice”. The provision is so strict that any action commenced against the Council without first giving this pre-action notice is void *ab initio*.

The law requires the pre-action notice to state the name of the intending plaintiff and the cause of action.

It can be inferred therefore, that the pre-action notice is designed to warn the Council of an intending litigation, so that the Council could evolve ways of resolving the dispute and avoiding litigation. It is unfortunate that while some Councils do use the opportunity offered by this pre-action notice to commence negotiations and facilitate amicable resolution of intending disputes, some others do not. Some that are served litigation papers or court processes do not even forward it to their solicitors for advice or further action.

It is encouraging that some Councils have legal officers that coordinate or handle their litigation matters. Majority of others do not. Where they are not able to employ the services of in-house lawyers, one expects them to have effective schedule officers, who do not only bring legal issues to the attention of the Council’s Secretary and Chairman but who would always be the “liaison officer” between the Council and its outside lawyers. Unfortunately, this pre-action notice does not apply to the Local Government Service Commission. The import and intent of this pre-action notice is to create room for the parties to litigation at the local government level to negotiate and if possible reconcile without necessarily going to court. The courts have held consistently that this is a healthy approach and it should be encouraged. But I do not know how well parties are utilizing this opportunity. Many lawyers merely give statutory Notice and sleep over it. It is supposedly a period provided by the law for parties and their lawyers to negotiate, and if possible

settle their cases amicably. If this procedure is religiously followed, bickering and animosity associated with litigation in court will be drastically reduced.

The issue now is whether the Local Government Council must of necessity give statutory notice to any person or body it intends to sue? The Local Government Councils need not give statutory notice of its intention to such a potential Defendant unless there is a law to that effect. See Section 7 of the NNPC Act. I advise therefore that this provision of the law should always play a role when there is dispute between the Local Government/Local Government Service Commission as a body on the one hand and its staff on the other hand.

LIMITATIONS OF SUITS AGAINST LOCAL GOVERNMENT:

Any suit against the Local Government Council shall not be instituted unless it is commenced within six months next after the act, neglect or default complained of or in the continuance of damage or injury within six months after the ceasing thereof –See section 151 of the Local Government Law 2000 as amended. In other words, just like the Statute of Limitation, time begins to run from the date, the cause of action accrues- *Sanda vs Kukawa Local Government (1991) 2 LRCN 632.*

ALTERNATIVE DISPUTE RESOLUTIONS (ADR):

ADR is defined as a range of procedures or processes that serve as alternatives to litigation through the courts for the resolution of disputes generally involving the intercession and assistance of a neutral and an impartial third party.

Several options more flexible for resolving disputes have been canvassed with a view to resolving these disputes outside the courts. Such options are Arbitration, Conciliation, Mediation, etc. ADR proceedings does not guarantee a binding result except in Arbitration.

The reasons for this alternative dispute resolution among others are as follows:

- a. The costly nature of litigation.
- b. Delays in litigation arising from incessant adjournments and technicalities here and there etc.
- c. Congestion of cases in the courts
- d. Ill-equipped court rooms characterized by incessant power outages.

In this paper, I am going to examine ADR and in particular Arbitration and Mediation only.

For Fulton Maxwell J.:

“Arbitration is a private process whereby a private disinterested person called an arbitrator, chosen by the parties to a dispute..... acting in a judicial fashion, but without regards to legal technicalities, applying either existing law or norms agreed by the parties, and acting in accordance with equity, good conscience and the perceived merit of the dispute makes an award to resolve the dispute....” (Nwako by C. Collins v. Collins 28 LJCH 186).

This is done through the instrumentality of Arbitral Tribunals.

TYPES OF ARBITRATION:

These include Customary Law Arbitration and Arbitration under the Act in Nigeria among others:

(i) CUSTOMARY LAW ARBITRATION

In *Agu v. Ikewibe (1991) 3 NWLR Pt. 180 385 at 407*, the court defines customary law arbitration as “an arbitration in dispute founded on the voluntary submission of the parties to the decision of the arbitrators who are either chiefs or elders of their community and the agreement to be bound by such decision”.

Customary law arbitration is oral and not required to be written and even when the decision or award of a customary law arbitration proceeding is reduced into writing, it will still be referred to as customary award and not an

award made pursuant to the Act. In the Nigeria Traditional Communities, extra judicial settlement of disputes by arbitration is very popular and an important feature of the customary law and rural people often resort to it for the resolution of their differences because it is cheaper, less formal and less rancorous than litigation. In the palaces of our Obas you require very little amount to summon any person or body to the palace.

Where the arbitration proceedings and its award are pleaded successfully (i.e. in case the case eventually goes to court), it operates as an estoppel (i.e. legal bar) against any of the parties in the matter. As to the extent to which the customary arbitration shall be proved by the parties, the courts have held in Agu v. Ikewibe and Ohiaeri v Akabueze that the applicant would succeed if he was able to prove;

1. that the dispute between them was deliberated upon by a third party.
2. that the third party gave a decision in his favour.
3. that a valid customary arbitration exists where the parties' voluntarily submitted to the arbitration.
4. that the parties agreed beforehand to be bound by the arbitral decision.
5. that none of the parties withdrew from the arbitration mid-stream.
6. that none of the parties rejected the award immediately it was made.
7. and that the arbitrators reached a decision and published their award.

The importance of arbitration cannot be overemphasized, because this mechanism of ADR was employed by the Federal Government to resolve the dispute between Nigeria and Cameroon over the oil rich Bakassi Island. What weapons of war could not have achieved was achieved by "mere words of mouth".

ARBITRATION UNDER THE ACT:

Arbitration under the Act in Nigeria is governed by the provisions of the Nigeria Arbitration and Conciliation Act, Cap 19 Laws of the Federation of

Nigeria, 1990. There are State laws on the subject matter and rules of courts of the various States of Nigeria. Also there are High Court Rules governing Court proceedings in each state and they contain provisions on arbitration. See Order 25, Rule 5 of Edo State High Court (Civil Procedure) Rules 2012. The courts may promote amicable settlement of the case or adoption of ADR.

Under the Act, two forms of arbitration agreements are recognized namely the *domestic* and *international arbitration agreements and proceedings*.

To constitute valid arbitration agreement under the Act, there must be a valid contract, in writing to submit differences to arbitration whether such differences are present or future and whether or not an arbitrator is named in the agreement. Sections 1 (a), (b), (c) & (2) of the Arbitration and Conciliation Act Cap. 19 of 1990 provide that every arbitration agreement shall be in writing. It is advisable that it is better for parties to sign the arbitration agreement unless it becomes impracticable. In many commercial agreements, there is always a provision for arbitration for ease of enforcement.

For power of stay of proceedings, see Section 5 of the Act.

MEDIATION: DEFINITION AND KEY FEATURES:

This is another Alternative Dispute Resolutions (ADR) mechanism.

Mediation can be defined as a private process where a neutral third party called a mediator helps the parties discuss and tries to resolve the dispute. Since it is a flexible process, issues such as the venue, date, time, who should attend, what issues should be discussed are all for each party to decide (sometimes with the help of the mediator). The mediator decides nothing and awards nothing. He merely assists the parties to arrive at a settlement. Mediation is a confidential process conducted in private and without prejudice to either party. The details of any discussion during the process

cannot be disclosed in any judicial proceedings neither can the mediator be called as a witness to testify of matters discussed during mediation. With this, the parties are able to open up, pour out their emotions without fear that they would be quoted in court.

While it is true that parties may be compelled to seek mediation (especially for court connected ADR centres), the fact remains that mediation is not binding until the parties settle and sign the agreement. Until that happens, either party may walk away from the process at anytime.

The goal of all mediation is to achieve a negotiated agreement which satisfies the parties, deals with all the issues in dispute, it is workable and minimizes the possibility of future dispute. Where parties are agreed on terms of settlement, the mediator will convene a final joint session of all parties and their representatives to give effect to this agreement. The purpose of the settlement agreement is to have a legally enforceable contract in the event of a breach.

The Federal Government has employed this method in releasing some of the Chibok girls. The Red Cross Organization and the Swiss Government are acting as the Mediators. According to *Lai Mohammed*, the Minister of Information speaking on behalf of the Federal Government of Nigeria “this release is a product of painstaking negotiation on both sides”. Even the military has said that they are not opposed to this dialogue and diplomacy.

To be more effective I will have suggested that world leaders who are very influential such as the Saudi King and the Catholic Pope, Archbishops and Primates etc. should be involved in this mediation process to free the remaining Chibok Girls still in captivity. In mediation proceedings, you appoint people that both parties respect.

CONCLUSION:

Litigation in Local Government Service is usually the last resort after other methods for resolving conflict and disputes have failed. Since the Law allows the Council to sue and be sued, sometimes people are encouraged to go to court to redress their grievances. It is always better to litigate on one's perceived wrongs than taking laws into one's hand or self help. No matter what, self help should not be encouraged because it has always resulted in destruction of properties and human lives.

Taking into consideration, the advantages in resolving disputes by the application of ADR, it is hereby highly recommended to Local Government Councils/Local Government Service Commission to take the benefit of this method in their day to day administration.

Members of staff and elected officials should follow due process in their daily official duties so that causes of action do not arise that will lead to litigation or extra judicial settlement. The tenure of elected Chairmen of Councils is usually short and such period should be used to look inwards to ensure development of Local Government Council Areas and promote life of the citizenry rather than to be involved in litigation with attendant cost. If strictly adhered to, much money will be saved for other uses. It will definitely not serve any useful purpose to be involved in Litigation during the period.

Errors on the part of schedule officers in the course of discharging their functions must be admitted, addressed and redressed instead of allowing such cases to go to court and allow cost and damages to be awarded against the Council.

Thank you all.