Addressing Justice Delay: ADR is Key

MAY AGBAMUCHE-MBU

LEGAL EAGLE

may.mbu@thisdaylive.com

Delay in the administration of justice has been a hot topic for years and even more so in recent times. Year in and year out solutions have been proffered but we are yet to see - and feel - significant or dramatic improvement. At the recently held Nigerian Maritime Law Association's 5th Maritime Law Seminar, Honourable Justice Ibrahim Nyaure Buba of the Federal High Court, Lagos delivered a speech titled 'The Essence of Time in Determining Admiralty Cases: The Nigerian Experience'. The focus of the speech was on the practicalities of the administration of Justice and showed, with a number of cases that have come before the Court, how delay has become endemic in the judicial system. Justice Buba went on to fully describe, by reference to case facts, the various avenues through which these delays become entrenched in the Court and proposed a holistic review of the judicial system that is comprehensive and thorough and which will enable a justice delivery system that is capable of accommodating the requirements of today's Nigeria. He identified some of the key reasons for court delays as a) The Overburdening of the Court/ Inadequate Resources; b) Mismanaged Law Offices; c) Incompetent Legal Professionals; d) Improper Control of Proceedings by Judges; e) Improper Procedures; and f) Government Policies. I was particularly interested in 'The Overburdening of the Court/ Inadequate Resources' where he stated that 'the basis for the assertion of the overburdened Justice Administration in Nigeria is that many socio-cultural and economic factors make it impossible for the Court structure to run effectively. Among these are a) An exponential increase in the populace requiring access to quick and frequent Justice; b) Increased urbanisation - not only is there a growth in the populace there is also great concentration in urban areas and greater population density in some states; c) The decline of traditional dispute resolution mechanisms in society like the church/mosque, family hierarchy structure etc in society. These have therefore led to a level of justice delivery with which the Courts cannot cope, and often mean that litigation is not always the most efficient or effective method of dispute resolution.' He could not have said it better as there are many who will have found they cannot but agree with this assertion, most especially Alternative Dispute Resolution practitioners.

Only last week I attended the centenary conference of the Chartered Institute of Arbitrators in Zambia themed 'Learning from Africa'. The conference was opened by the Chief Justice of Zambia Hon. Lady Justice Irene C. Mambilima but speakers and session chairs were drawn from across Africa, with a good number from Nigeria among whom were Chief Bayo Ojo, Mrs.Hairat Ade-Balogun, Chief (Mrs) Tinuade Oyekunle, Hon. Justice Ayotunde Philips (rtd), Mrs. Funke Adekoya, Mr. Jide Ogundipe, Mrs. Sola Adegbonmire and Mr. Agada Elachi. I was particularly interested in the session titled 'How disputes are resolved by elders in Africa' that among others, Mrs. Hairat Ade-Balogun and His Royal Highness Chief Mumena XI who both spoke so eloquently. Chief Mumena, a king in North Western Zambia is an advocate for social justice locally and internationally. As a traditional leader he is fully engaged with the governance affairs of the Kaonde people he leads and this he exhibited in no uncertain terms.

Alternative Dispute Resolution (ADR) is a way of life in Africa, very much a part of our DNA. We all come from communities where councils of elders or elderly men and women have and continue to act as third parties in the resolution of parochial conflicts. These community justice systems what is more, are both self-regulatory and self-enforced. It is also worthy of note that Kenya has now legally entrenched traditional dispute resolution mechanisms, as provided for in Article 159 (2) (c) of the Kenyan Constitution, 2010 which states that in exercising judicial authority, the courts and tribunals shall be guided by certain principles. One of these principles is that alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, provided that they do not contravene the Bill of Rights, they or their outcomes are not repugnant to justice and morality and if they are not inconsistent with the constitution or any written law.

Mrs. Hairat Ade-Balogun on her part spoke from a Nigerian context and related her thoughts to the way the Nigerian courts have borrowed aspects of modern arbitration practice, particularly in the areas of party autonomy (voluntary submission) and finality of decisions and applied them to dispute resolution between persons using traditional/customary methods of dispute resolution. She cited the Court of Appeal case of **ALPHONSUS NZEOMA v DAMIAN UGOCHA** [2001] 29 WRN 179 which reiterated the binding nature of Customary Arbitration if certain conditions are met, which conditions are similar to those that make Commercial Arbitration binding. In the words of the court, 'in the case of **HIOERI v AKABEZE** (1992) N.W.L.R (PT. 221) 1, the conditions the Court set down for the bindingness of customary arbitrations are (a) there must have been voluntary submission of the dispute by the parties to a non judicial body; (b) the parties must have agreed to be bound by the decision of the non-judicial body as final; (c) the decision must be in accordance with the custom of the people or their trades or business; and (d) the arbitration must have reached a decision and published their award'.

With regards to the finality of the process, the court had this to say: 'In the case before us, there is ample evidence that the parties by their act accepted to be bound by the decision of the arbitral body. The party defamed having elected or opted for a mere native arbitration to help assuage his bruised ego and personality cannot now resort to another mode of channeling his complaints the remedy of which he has obtained from elsewhere. He would be estopped from doing that.' This decision gives credence and respectability to traditional dispute resolution. How therefore can ADR mechanisms be fully ingrained in the minds of our people while also promoting traditional dispute resolution is the million dollar question.

One cannot gainsay the sincere efforts made over the years to decongest the courts such as by the setting up of the Multi-Door Courthouse in Abuja, Calabar, Kano and Lagos, with yet more in the pipeline and the introduction of the settlement week. The High Court of Lagos State has specific judges to handle ADR matters and has even gone on to create specialised divisions, all in an effort to streamline the judicial system in order to promote greater efficiency in the delivery of justice. Only recently the Administration of Criminal Justice Act 2015 was passed and, with regards to the delays in Criminal proceedings, section 396 mandates the hearing of Interlocutory Applications simultaneously with the substantive suit and rulings on those interlocutory applications are to be made at the same time as Judgment is delivered. Section 396(3) further instructs that trial is to be taken on a day-to-day basis where practicable and subsection (4) limits available adjournments to 5 per party, whilst also requiring them to be within 14 days of the next date or within 7 days should it be impossible to conclude trial without further adjournments. Additionally, Judges elevated to the Court of Appeal will now take their remaining cases with them to the higher Court in order that they can conclude them and reduce the need to begin suits de novo.

One truly must acknowledge all the efforts being made to speed up the administration of justice but when all is said and done settlement, I believe, is key to relieving the courts of their seemingly interminable congestion. Peoples' mindset must be changed because with ADR, party consent is paramount. Mediation for example is not compulsory and settlement too is voluntary but the years wasted in court cannot be worth the stress and agony any more. Sometimes a simple trade off or even a mere apology can end a dispute instantly. The time has indeed come for mediation to be actively encouraged from the onset of any dispute. Lawyers should not accept to be used as tools to keep parties in court in perpetuity. Though party consent is important in the use of ADR mechanisms it must and should be promoted vigorously on all levels and in particular traditionally too, working its way up the ladder. We are a litigious nation undoubtedly and time without number parties are ever so ready to be brought before the courts as they know that all they have to do is fold their arms and watch the case languish there for years to come. As the well-worn aphorism has it, justice delayed is justice denied. The government of the day must be seen to encourage ADR even if it is only for the economic growth of the nation as it is also now widely established in international business circles that the use of ADR is a catalyst for deeper investor confidence in emerging markets such as ours.

The Chartered Institute of Arbitration UK held its Africa Centenary Conference at the Victoria Falls Convention Centre Livingstone Zambia, here are the delegates who attended the conference