

Aaron, Olaniyi Salau, Ph.D.

Department of Jurisprudence & International Law, Olabisi Onabanjo University (OOU), Ago Iwoye, Ogun State, Nigeria; Email: aaron.salau@oouagoiwoye.edu.ng; Tel. 08034984440.

Divorce Mediation in Nigeria: The Ogun State Multi-door Court in Perspective

Abstract: (Statutory) marriage is a sacred contract that is meant to endure the vicissitudes of life. Unfortunately, marital conflicts sometimes escalate between couples to the point of judicial separation or divorce due to irreconcilable differences with emotional, physical and financial stress upon couples, their children and even the society. Consequently, this article draws on the author's empirical research, discussions with a family law lecturer, review of divorce mediation literature, and analysis of Nigerian statutes, case-law and rules of court to consider the opportunities and challenges for mandatory divorce mediation in Nigeria. The paper also contextualizes the effectiveness of mediating ancillary claims like child custody and visitation, maintenance, property settlement, etc., within the emerging Multi-Door Court (MDC) system to avoid damage and stress associated with divorce litigation. The paper therefore contributes to ongoing debate on the merits of divorce mediation as alternative to litigation based on the MDC system of justice. Ultimately, the paper concludes that mandatory divorce mediation in Ogun State would considerably reduce the caseload of judges, protect the dignity and post-divorce relationships of divorcing couples, and protect children from emotional harm arising from the break-ups of 'eggshell' marriages.

Keywords: ADR, divorce mediation, multi-door court, Ogun State of Nigeria, statutory marriage,

1 Introduction

Marriage is a sacred trust, and the foundation of family and society (Morris, 1980:97). In Nigeria, a statutorily contracted marriage (marriage under English law, as applicable) is 'a voluntary union for life' of a couple, which can be terminated only by death or a court order (*Adesanya, 1973:2*). Unfortunately, marital conflicts may result in adversarial litigation due to irreconcilable differences between couples. The process of 'winding up' the marriage could often turn out to be very complicated since the adjudication of ancillary issues/reliefs including child upbringing, custody and visitation, spousal maintenance, settlement of property, etc., will continue to impinge on the parties' post-divorce relationship. The negative emotional disorientation attendant upon divorce litigation or judicial separation on the family members, adolescent children and the society can also not be underrated. Consequently, the expensive, painstaking and arduous nature of adversarial litigation is so well-articulated in

alternative dispute resolution (ADR) literature that resort to ADR methods, particularly mediation, has become a norm in divorce matters in some jurisdictions (Carbonneau, 1986: 1119; Mnookin & Kornhauser, 1979: 950). Nothing also stops the parties from resorting to any acceptable, less rancorous and thus positive alternative dispute resolution (ADR) method such as mediation (Rhodes-Vivour, 2008), where available.

However, in Nigeria, recourse to ADR mechanisms in family and divorce matters is a recent practice because the Matrimonial Causes Act 1970 (MCA 1970) does not compel it, but the emerging Multi-Door Courts (MDCs) in Nigeria designed to settle disputes amicably affords such opportunities. This paper therefore examines the potentials of collaborative, facilitated, or otherwise 'positive divorce', in the MDCs with special reference to Ogun State MDC towards the lessening of costs, vendettas and bitterness associated with litigated divorce. Consequently, this part sets the

scene for the ensuing discussion. Part 2 conceptualizes 'divorce mediation' as an ADR mechanism. Part 3 examines the adequacy or otherwise of the provisions of the MCA 1970 for a well-structured process of divorce mediation in Nigeria. Part 4 engages with the evolution of ADR-infused MDC system of justice in Nigeria and its merits for family and divorce mediation. Part 5 engages with the potentials of divorce mediation through the Ogun State MDC. Part 5 concludes and makes recommendations for necessary statutory reforms.

2 Conceptualizing Divorce Mediation

The rationales and methods for conflict settlement outside the confines of court rooms have evolved over time and are being constantly modernized to satisfy the needs of a dynamic society (UNODC, 2007: 14). Public disenchantment with adversarial litigation due to its energy-sapping, time-consuming, procedural difficulties, financial and other drawbacks yielded to the recognition of a more peaceful, time-efficient and satisfactory alternative means of dispute resolutions such as arbitration, conciliation, mediation, etc., known technically as ADR methods. These have been statutorily and judicially modernized to build public trust in the institutions of justice delivery, to reduce social conflicts and build a peaceful society under the rule of law (UNODC, 2007: 14).

Arbitration is 'the reference of dispute ... [for settlement] for determination ... [by] hearing both parties in a judicial manner by a person or persons other than a court of competent jurisdiction' (*MISR v. Oyedele* 1966). Arbitration involves the determination of the legal and or technical merits of a dispute (UNODC, 2007) while Conciliation is 'an equitable, negotiated [non-binding] 'settlement' of dispute by a neutral person often chosen by the disputants (UNODC, 2007). Conciliation is sometimes used interchangeably with reconciliation, which is 'the process of making persons who have argued friendly again or bringing into agreement two opposing views or exploring how disputes might be resolved (Cambridge International Dictionary of English, 1995). Technically speaking, a neutral Conciliator could suggest possible terms of settlement to the parties.

This distinguishes conciliation from mediation since a Conciliator usually aims at finding each party's 'bottom line'. Also, mediation differs from reconciliation and conciliation. Mediation is the "voluntary and confidential process in which a neutral person, the mediator, assists disputing parties to clarify issues, develop options and work toward a mutually beneficial resolution" (UNODC, 2007). Whereas conciliation usually involves 'a third party's trying to bring together disputing parties to help them reconcile their differences, mediation goes further by allowing the third party suggest terms on which the dispute might be resolved' (Garner, 1995). Mediation is therefore widely favoured for its inherent advantages and potentials: low cost, preserving the parties' relationship, efficiency, etc. (Akanbi, 2008). Mediation also requires basic professional skills and standards of behaviour and ethics to be combined with empathy, trustworthiness, non-judgemental, fairness, and integrity (UNODC, 2007). Moreover, the mediation of disputes or out of court resolutions of conflicts is compatible with African values and local circumstances which should serve to ameliorate the defects inherent in the Western-style judicial systems adopted by African countries (Egbunike-Umegbolu). Interestingly, many foreign jurisdictions have raised standard procedure for compulsory divorce mediation which involves judicial approval, implementation and enforcement of its outcomes. Divorce mediation is also increasingly becoming popular and widespread across jurisdictions.

Divorce mediation has been described as a process whereby divorcing couples go before 'a neutral third party' or mediator 'who helps them' to sort out ancillary matters in a way that 'minimizes conflict and encourages cooperation' (Marlow & Sauber, 1990) or reach consensual settlement (Folberg & Taylor, 1984) towards the divorce. Though there are different divorce mediation models, techniques and applications across jurisdictions, the aim of these processes could be summed-up in one sentence – to enable divorcing couples determine the conditions of their break-up. Consequently, there is no reason why divorcing couples well appraised of their rights should be barred from obtaining divorce by mutual consent.

Such arrangements are available in Japan (called '*KyogiRikon*') whereby divorce suits are only filed when parties fail to agree (Saito, 2016: 944). Also, it does not seem inappropriate to argue that if '[g]etting married does not require judicial proceedings ... why should getting a divorce? (Project, 1976: 127). Moreover, countries like Denmark, Iceland, Japan, Norway, and Sweden have eliminated the requirement of judicial approval of undisputed divorces. Similar example can be found in the American state of California under its Civil Code, paragraphs 4550-4556, which allows for summary dissolution in uncontested divorce upon certain conditions, e.g. no minor children is involved, marriage is not more than two years, spousal support is waived, etc). Furthermore, mandatory or voluntary family mediation, either prior to or upon filing a divorce petition, is increasingly becoming the norm in many jurisdictions. Examples abound in Australia, England and Wales, some Canadian Provinces, many US jurisdictions (Scottish Government, 2014: 8-14; Parkinson, 2010: 12), and in South Africa. In Australia and many US and Canadian jurisdictions, mediation is made compulsory for separating couples, particularly where the custody of children is in dispute, while it is voluntary in most European jurisdictions (Scottish Government, 2014: 6). Moreover, there is preponderance of literature on the fact that mediation, including divorce mediation, is 'at the heart of the family dispute resolution continuum' aside other primary ADR remedies such as arbitration, conciliation and their variants (Carbonneau, 1986: 1121; Herrman, McKenry & Weber, 1979: 34; Meroney, 1979: 467; Rigby, 1984: 1725; Spencer & Zammit, 1976: 911; Bahr, 1981: 32; Coombs, 1984; Evarts & Goodwin, 1984: 20; Flanders, 1982: 239; Fuller, 1971: 305; Gold, 1981: 9; Johnson, 1984: 31; Levy, 1984; McLeod, 1983: 430; Phear, 1984: 22; Phillips & Piazza, 1984: 31; Riskin, 1984: 329; Saposnek, 1984: 7; Weissman & Leick, 1985: 263; Winks, 1980-81: 615; Zumeta, 1983: 434; Comment, 1983: 5; Comment, 1983: 55). This is true in different climes for several reasons. First, divorce litigation is considered harmful to children (Haynes, 1981: 5). Second, apart from being readily available, mediation has the likelihood of more satisfying/positive/durable outcomes, faster

settlement and better post-separation relationships than litigation (Salem, 2009: 371-388, 373-374). Third, mediation is a 'transformative' way of thinking owing to opportunities for collaborative decision-making and self-determination it affords divorcing couples (Brown, 1982: 8; Keilitz, Daley, & Hansen, 1992; American Bar Association, 2001: 27). Other potential winnings from 'positive divorce' includes the fostering of 'freedom of marriage contract', gender equality, right to privacy. However, mediation has some drawbacks including its non-binding nature, its potential as a stalling device, and the opportunity for parties to truncate the process by withdrawing at any time. All the same, since the goals of mediation are virtually the same in most jurisdictions (Connie, 2000: 989), divorce mediation processes could be structured to accommodate the peculiarities of each legal system to lessen its disadvantages as practicable as possible.

3 Divorce under MCA 1970 and Divorce Mediation: Strange Bedfellows?

This part argues that the legal provisions and institutional frameworks for family dispute resolution regarding statutory marriages under MCA 1970 and related laws are inadequate for and inconsistent with a well-structured process of divorce mediation in Nigeria. The concerned provisions include Part II (sections 11 - 14) of MCA 1970, Order II Rules 1 and 2, Order IV Rules 2e) and (f), and Order XII Rule 8 of the Matrimonial Causes Rules (MCR) 1983. From the onset, it is noteworthy that in theory, at least, divorce is discouraged under the MCA and ought to be the very last resort (Rahmatian, 1996: 290). This is underscored by the two-year post-marriage bar to the filing of any petition for divorce. Moreover, before a party files for divorce, the extended family system, friends, and religious leaders would have intervened to try and reconcile the parties. Consequently, the law presumes that whatever teething problems that beset the marriage at this stage should be amicably resolved by the parties. Going forward, even when a petition has been filed, the law does not foreclose an opportunity to reconcile the parties. Sections 11, 12 and 13 of the MCA therefore provides:

11. (1) It shall be the duty of the court in which a matrimonial cause has been instituted to give consideration, from time to time, to the possibility of a reconciliation of the parties to the marriage (unless the proceedings are of such a nature that it would not be appropriate to do so), and if at any time it appears to the judge constituting the court, either from the nature of the case, the evidence in the proceedings or the attitude of those parties, or of either of them, or of counsel, that there is a reasonable possibility of such a reconciliation, the judge may do all or any of the following, that is to say, he may –

(a) adjourn the proceedings to afford those parties an opportunity of becoming reconciled or to enable anything to be done in accordance with either of the next two succeeding paragraphs;

(b) with the consent of those parties, interview them in chambers, with or without counsel, as the judge thinks proper, with a view to effecting a reconciliation;

(c) nominate a person with experience or training in marriage conciliation, or in special circumstances, some other suitable person, to endeavour with the consent of the parties, to effect a reconciliation. (2) If, not less than fourteen days after an adjournment under subsection (1) of this section has taken place, either of the parties to the marriage requests that the hearing be proceeded with, the judge shall resume the hearing, or the proceedings may be dealt with by another judge, as the case may require, as soon as practicable.

12. Where a judge has acted as conciliator under Section 11(1) (b) of this Act but the attempt to effect a reconciliation has failed, the judge shall not, except at the request of the parties to the proceedings, continue to hear the proceedings

13. Evidence of anything said or of any admission made in the course of an endeavour to effect a reconciliation under this Part of this Act shall not be admissible in any court

Section 11(1) obligates a judge handling a matrimonial cause, by consent of parties, to consider and/or promote reconciliation before going into its merits. Furthermore, section 11(a)(b)(c), affords the parties three options towards reconciliation. The judge may adjourn the proceedings to enable the parties undergo reconciliation by family, friends, religious leaders, etc.) or use his good office to attempt reconciliation or to nominate a marriage conciliator to reconcile the parties. Section 11 is however defective in several areas. First, reconciliation between the parties is permissive not mandatory (Adekile, 2009: 21). Second, conciliation, as conceived in section 11, is expected to help discontented couples save their troubled marriages. Unfortunately, having been structured to take place after a petition is filed, it is not well-suited for reconciliation as parties would not shift from entrenched positions (Adekile, 2009: 16, 24). Third, a judge handling a divorce petition is not legally bound by a decision of a marriage

conciliator appointable under sections 11-14 of the Act to reconcile the parties. Fourth, a failed reconciliation automatically disqualifies the judge from continuing with the case except by the parties' consent. Fifth, neither the qualification of a Counsellor or Conciliator nor the modality for the reconciliation is stated (Adekile, 2009: 23-24). In addition, MCA 1970 permits reconciliation after a decree nisi but before a decree absolute is pronounced by the court in a divorce petition. Moreover, the MCR 1983 enjoins lawyers to notify the parties of opportunities for reconciliation and endorse a certificate thereof on the petition but are not themselves bound to effect the reconciliation (Atata, 2016). However, a most significant stumbling block against divorce mediation is the concept of fault-based divorce that still permeates the content and judicial interpretation of the MCA 1970 and other laws that regulate judicial dissolution of statutory marriages in Nigeria. This is unlike what obtains in comparative Commonwealth jurisdictions (Salau, 2017: 227; Rahmatian, 1996: 291). This accentuates the acrimony and bad blood usually associated with judicial dissolution of marriage. In Nigeria, section 15 of the MCA 1970, which regulates, and limits divorce provides thus:

(1) A petition under this Act by a party to a marriage for a decree of dissolution of the marriage may be presented to the court by either party to the marriage upon the ground that the marriage has broken down irretrievably.

(2). The court hearing a petition for a decree of dissolution of a marriage shall hold the marriage to have broken down irretrievably if, but only if, the petitioner satisfies the court of one or more of the following facts -

- (a) [wilful and persistent refusal to consummate], (b) [adultery], (c) [behaviour of the respondent which the petitioner cannot reasonably be expected to bear], (d) [desertion], (e) [separation and respondent's consent to dissolution], (f) [three years' separation], (g) [failure to comply with a decree of restitution of conjugal rights], (h) [presumption of death].

Under section 15(2)(a) - (h) above, certain 'facts' (adultery, misbehaviour, abandonment, physical or mental cruelty, etc) must still be ventilated in open court by an aggrieved spouse seeking divorce though the sole ground for divorce is that 'the marriage has broken down irretrievably'. Though a divorce court should normally accede to the parties' request to be divorced to avoid continuous trauma,

hardship, etc., (*Kalejaiye v. Kalajaiye* 1986), and not force unwilling parties to continue with an “empty shell” marriage (Boparai, 1984: 261), these provisions have nonetheless not escaped scathing criticisms. First, the connotations of 'guilt', e.g., for adultery and desertion, infused into the wording of section 15 subsections (2)(b) and (d) may discourage out-of-court settlements of ancillary reliefs (Boparai, 1984: 257). Second, the requirement of adversarial proof will entail the parties washing their dirty linen in public (Rahmatian, 1996: 282) thereby scandalising themselves, their children and family. Third, as Salau (2017) argues, the claims for damages for adultery in Nigerian divorce proceedings, if not properly managed, can perpetuate hatred between the parties and permanently alienate divorced parents and their children. Fourth, parental conflict and divorce negatively affect children's attitude towards marriage. (Ogunleye, 2014: 57, 60). Consequently, divorcing couples should be allowed to mediate their custody, property and child issues as part of their exit plan from a debilitating marriage under the auspices of MDCs.

4 Divorce Mediation and MDCs: Evolution of Legal Framework In Nigeria

The burgeoning MDCs in many of Nigeria's thirty-six states provide an opportunity to infuse divorce mediation and other forms of collaborative divorce methods into its legal framework. Therefore, this part starts with a brief legal history of the modern practice of divorce mediation and examines its potential as an ADR mechanism in divorce proceedings within the MDCs. The modern practice of divorce mediation originated in the United States of America in the 1960s before it spread to the Nordic countries where it became entrenched since the 1980s (Oyombe, 2020; Lawrence, Nugent & Scarfone, 2007) and later to many parts of the world. Unlike commercial arbitration and conciliation which are regulated by sections 38-42 of the Arbitration and Conciliation Act 2004, Nigeria has no uniformly applicable federal law on mediation (Dike, Toby & Elekima, 2020). Nonetheless, amicable dispute resolution including mediation has always been part of Nigeria's informal justice systems since ancient

and pre-colonial times (Dike, Toby and Elekima, 2020; Egbunike-Umegbolu; *Okpururu v. Okpokam*). Some form of informal divorce mediation has also been attempted in Nigeria at one point or the other (Adekile, 2009). However, institutionalized ADR was first wholesale introduced into Nigeria's civil justice system through the Lagos Multi-Door Courthouse (LMDC) established on 11 June 2002. This was the first Court-connected ADR Centre in Africa and a public-private partnership arrangement between the Lagos State Judiciary, the United States Embassy and the Negotiation and Conflict Management Group (NCMG) (Alero Akeredolu, 2014: 104, 113). The Institute of Chartered Mediators and Conciliators (ICMC) is the professional body in Nigeria that regulates and sets standards for the practice of Mediation and Conciliation including the training and certification of mediators (Dike, Toby & Elekima, 2020: 235). In 2004, the High Court Civil Procedure Rules of some states, starting with Lagos State, were amended to enable a judge at a pre-trial conference promote amicable settlement or for the parties to adopt an ADR method to resolve a pending matter. In Lagos State, it was in terms of Order 25 Rule 1(1)(c) of the High Court of Lagos State (Civil Procedure) Rules 2004 (Akeredolu, 2014). The LMDC was later backed-up with the Lagos State Multi-Door Courthouse Law on 18 May 2007 (Ajigboye). Hence, in Lagos State, the domestic sources of mediation law include the Lagos State Multi Door Court Law 2007, the Lagos State Multi-Door Court Practice Directions on mediation, The Citizens Mediation Centre Law 2007, the Lagos Court of Arbitration (LCA) Mediation Guidelines 2011 (Dike, Toby & Elekima, 2020, 235) and the Lagos Multi-Door Courthouse Neutral's Handbook 2017. In 2012, Lagos State further mainstreamed ADR into its amended High Court (Civil Procedure) Rules such that all cases filed are routinely screened by dispute resolution officers who then assign the cases to the most appropriate dispute resolution process; litigation or ADR (Akeredolu, 2014: 113-114). The authorities of the Federal Capital Territory, Abuja, and Kaduna, Borno and several other States in Nigeria have also followed the Lagos example to introduce the MDC system through their High Court Rules.

5. The MDC System and Mediation Divorce under Ogun State MDC Rules

This part generally appraises the merits of the MDC system of justice and of divorce mediation with specific reference to the rules of the Ogun State Multi-Door Court (OMDC). The MDC has been described as a court of law which facilitates ADR through the integration of ADR mechanisms into the court system such that disputants can choose any form, or a combination of ADR processes as may be appropriate (Ajigboye; Ezike, 2011-2012: 261). The MDC aims *inter alia* “to open different doors for resolving disputes in respect of cases that may or may not already be within the court system” (DFID & British Council, 2010). The virtues of ADR generally and CC-ADR (flexibility and choice-enhancing, privacy and confidentiality, cost-effectiveness, timesaving, relationships-preserving, efficiency, better results-producing, etc), have been severally extolled (Akeredolu, 2014: 107-109). Stakeholders in Nigeria's justice sector have also commended the various efforts to institutionalize cost-effective, quick, informal, and satisfactory nature of the multi-door system of dispute settlement based on ADR mechanisms (Akanbi, 2008; Oyekanmi, 2016; Fashomi, 2016). For instance, Justices of the Nigerian Appeal Court may refer matrimonial appeals to mediation (Akanbi, 2008) while over one-third of the 36 states in Nigeria including Ogun State now have well-functioning MDCs and ADR approach to dispute settlement (Faturoti, 2014: 3). As argued, (Kehinde Aina), mediation can cover divorce cases aside other types of civil disputes. The Ogun State Multi-Door Court (OMDC) approach happened to be widely publicized and will be discussed in the next paragraph. A High Court judge in Ogun State may, in civil cases, by virtue of Section 27 of the High Court Law of Ogun State 2006, “[w]here an action is pending before the Court ... promote reconciliation among the parties thereto and encourage and facilitate the amicable settlement thereof”. Order 25 of the Ogun State High Court (Civil Procedure) Rules 2014 provides for “Pre-trial Conferences and Scheduling” for the disposal of interlocutory applications and to promote amicable settlement or ADR of cases. Under Order 25(3)(K) of the 2014 Rules, a judge can refer a matter to appropriate ADR

institutions (Anago 2017: 6) such as the OMDC.

Considering ADR as the bedrock of multi-door court systems, the OMDC was established to complement the efforts of the judiciary in providing timely access to justice, improved justice delivery and more 'meaningful choices for resolving disputes in mutually satisfying ways (Segun Ogunyanwo, 2019: 13). The Ogun State Multi-Door Courthouse (OMDC) was launched on 10 February 2017 (Ogun State Judiciary 2017). The OMDC at Abeokuta was the first to be inaugurated while the ones at Ijebu-ode High Court Premises and that of Sagamu: High Court premises were subsequently established. The Abeokuta OMDC handled its first mediation in April 2017 (author's personal interview with an OMDC official at Abeokuta, January 2021). The OMDC handles Mediation; Conciliation; Arbitration; Mediative Conciliation; Expert Determination; and Early Neutral Evaluation (Ogun State Judiciary, 2017). Cases can be processed at the OMDC through 5 main routes namely: court-referrals; lawyer-referrals; walk-ins; independent requests to resolve ADR-contractual clauses; and Proactive OMDC reach-outs in disputes of public interest (Ogun State Judiciary 2017). Between inception in 2017 and the middle of third quarter of 2019, the OMDC handled 397 matters (314 walk-ins and 83 court referrals) and resolved 198 matters (164 walk-ins and 34 referrals) representing roughly 50% of matters handled (Segun Ogunyanwo, 2019: 15). Interestingly, the resolved walk-in matters were more than half of cases admitted (79 per cent) and represents a whopping 40.3 per cent of cases resolved during the relevant period. However, the number of child custody and matrimonial disputes handled and/or referred to the OMDC for settlement since creation in 2017 has been abysmally low compared with the high number of pending divorce cases. Empirical research and data gathered by the author from the Ogun State Judiciary support the foregoing assertion. From available data, a total of 2,500 divorce cases were handled by the ten judicial divisions of the Ogun State High Court from 1 April 2017 - 30 March 2020 when the Covid-19 lockdown began to take effect. The start date 1 April 2019 was chosen because that was when the first

OMDC became operational at Abeokuta judicial division. The ten judicial divisions in Ogun State are Abeokuta, Ijebu-Ode, Shagamu, Otta, Ilaro, Ijebu-Igbo, Ipokia, Ifo, Ayetoro, and Ogun Waterside. A breakdown of the figures shows that from 1 April - 31 December 2017, 7 judicial divisions (excluding Ayetoro, Ifo and Ogun Waterside – yet to be created as at then) handled 535 divorce cases (81 defended and 454 undefended). From 1 January - 31 December 2018, 7 judicial divisions (excluding Ayetoro, Ifo and Ogun Waterside – yet to be created as at then) handled 646 divorce cases (88 defended and 558 undefended). Between 1 January - December 2019, 1,016 divorce cases were filed and handled in the ten judicial divisions (410 defended and 615 undefended) while the ten divisions handled 391 cases from 1 January to 30 March 2020 when the Covid-19 lockdown commenced. The figures portend a potential geometric increase in divorce cases, particularly the undefended petitions. The defended petitions also show a propensity to increase considering that at the end of first quarter of 2020, a total of 86 defended cases were handled compared to 81 petitions for a similar period in 2017 and 88 petitions for the entire 2018. Also, a total of 1,932 undefended petitions as against 656 contested petitions were handled during the period under review representing 74.6% and 25.3% respectively of the total 2588 cases. Moreover, the data gathered reveal that a total of 56 petitions filed in years 2018 (27 cases), 2019 (29 cases) and first quarter of 2020 (30 cases) remain unallocated in Shagamu judicial division as at March ending 2020. In this writer's view, a resort to the less antagonistic procedures such as the MDCs' ADR methods and thereby lighten the courts' burden of adversarial hearings since most of the contested petitions contain ancillary claims for custody of children. The legal framework for the OMDC is the Ogun State Multi-Door Courthouse Practice Direction 2016 (Practice Directions) (Ogun State Government, 2017) made pursuant to section 274 of the amended Constitution of the Federal Republic of Nigeria, 1999 (as amended) (Federal Government of Nigeria, 1999). The OMDC Practice Direction has two parts. The first part deals with mediation and mixed-ADR consisting of twenty-six articles together with relevant forms. The second part has thirty articles on arbitration

procedure. The first part is more relevant to the focus of this paper. The first part can be subdivided into rules on jurisdiction and preliminaries (articles 1-14), main procedure (articles 15-20), and technical matters (articles 24-26). A detailed excursion into the rules will now be carried out. Article 1(a) preserves the consensual and non-obligatory nature of mediation whereby 'by mutual agreement or contact, the parties [should] have provided for or agreed to mediate existing or future disputes'. Article 2(a) recognizes the voluntary initiation of mediation, i.e. by 'walk-ins' while article 1(b) deals with court referrals to mediation. Articles 3 (request for mediation), 4 (submission to mediation), 5 (the mediation agreement), 6 (appointment of the mediator), 7 (the mediator's qualification), 8 (submission of statement), 9 (role of the mediator), 10 (role of Counsel), 11 (role of the parties), 12 (role of the courts), 13 (date, time and place of mediation) and 14 representation of parties and attendance at meetings) all deal with preliminary issues which must be settled to make the mediation outcome enforceable. These are laudable provisions since they cover issues like the role and qualifications of a mediator contrary to the lacuna in sections 11-14 of MCA 1970. Significantly, articles 16, 17, 18, 19, 20 and 23 dealing respectively with 'the mediation process', 'confidentiality', 'settlement agreement', 'persons or institutions in the practice of ADR within Ogun State', 'enforcement', 'termination' of proceedings, and the 'privacy' of parties all encompass the fundamentals of the mediation process. For instance, 'the mediation process' permits a mediator to design a process tailor-made to accommodate the parties' preferences as regards timing, number, attendees, etc., of meetings and the protection of their privacy. Parties could also nominate mediators of their choice from any part of the country. Once the process is transparently handled by skilful and well-qualified mediators who encourage the parties at every stage, then it would not be difficult to agree to the settlement. The fees (article 22) are also very minimal and affordable which gives ample opportunity for persons involved in divorce cases to embrace mediation. However, in a mandatory divorce mediation, to dissuade parties from refusing to attend mediation meetings or abandoning such meetings midway, judges must be

empowered to award punitive costs against defaulters.

6. Conclusion

This paper has appraised 'divorce mediation' as 'a new way of thinking' about exiting from a broken-down marriage with minimum damage, its evolution as a legal procedure and applicability in divorce petitions in Nigeria brought under the MCA 1970. Mediation has numerous advantages over litigation in effecting a rancour-free divorce. Moreover, mediation in divorce proceedings will enable parties to concentrate on issues that relate to their future lives after the dissolution rather than their bitter past. Significantly, a negotiated divorce can go a long way to preserve the parent/child relationship post marital separation. Consequently, there is need for a direct or clear-cut introduction of mandatory divorce mediation in Nigeria towards settling custody and visitation, spousal maintenance, property settlement and other ancillary issues where applicable. This would not prove difficult to achieve considering that many States in Nigeria state now have MDCs. The federal lawmakers should also amend section 11 of the MCA 1970 to include a mandatory divorce mediation as defined in this paper and distinguished from conciliation.

References:

- Adekile, O. M. (2009). 'Legal framework For Settling Marital Disputes through Reconciliation in Nigeria', available at: <http://ssrn.com/abstract=1503384> (accessed 30 January 2021).
- Adesanya, S.A. (1973). *Laws of Matrimonial Causes*. Ibadan: Ibadan University Press.
- Ajigboye, O. 'The Concept of Multi-Door Courthouse in Nigeria: Rethinking Frank Sander's Concept' 6, available at: <https://ssrn.com/abstract=2525677> (accessed 23 January 2021).
- Akanbi, M. M. (2008). 'Kwara Multidoor House An Idea Whose Time Has Come!', available at: <https://www.google.com/search?q=Akanbi%2C+%E2%80%98Kwara+Multidoor+House&ie=utf-8&oe=utf-8&client=firefox-b-ab> (accessed 1 February 2021).
- Akeredolu, A. (2014). 'Institutionalising Alternative Dispute Resolution In The Public Dispute Resolution Spectra In Nigeria Through Law: The Lagos Multi Door Court House Approach'. (12) *US-China Law Review* pp. 104, 113.
- American Bar Association. (2001). 'Model Standards of Practice for Family and Divorce Mediation'. 35 *Family Law Quarterly* p. 27.
- Anago, I.T. (2017). 'Modernising Judicial Practises And Procedures: An Overview of The Alternative Dispute Resolution Systems'. Arbitration and Conciliation Act, Cap. A18, LFN 2004.
- Atata, A. (2017). 'Matrimonial Proceedings-Compulsory conference is not compulsory and Lawyers are not bound to reconcile parties', available at: <http://www.courtroommail.com/2016/09/26/matrimonial-proceedings-compulsory-conference-is-not-compulsory-and-lawyers-are-not-bound-to-reconcile-parties-atata/> (accessed 9 January 2021).
- Bahr. (1981). 'Mediation is the Answer'. 3 *Fam. Advocate* 32.
- Beck, J. A. C. & Sales, B. D. (2000). 'A Critical Reappraisal Of Divorce Mediation Research And Policy'. *Psychology, Public Policy, and Law* Vol. 6, No. 4, pp. 989-1056, 989.
- Boparai, H. (1984). 'Reappraisal of Bars to Divorce a Comparative Study'. *Journal of the Indian Law Institute* Vol. 26 No. 3, p. 257.
- Brown, D. G. (1982). 'Divorce and Family Mediation': History, Review And Future Directions'. 20(2) *Conciliation Courts Review* p. 8.
- Cambridge International Dictionary of English*. (1995). Cambridge: Cambridge University Press.
- Carbonneau, T. E. (1986). 'A Consideration of Alternatives to Divorce Litigation'. *University of Illinois Law Review* p. 1119.
- Comment. (1983). 'Divorce Mediation: A New Solution to Old Problems'. 16 *Akron L. Rev.* p. 665.
- Comment. (1983). 'The Best Interest of the Divorcing Family-Mediation Not

- Litigation'. 29 *Loy. L. Rev.* p. 55.
- Coombs. (1984). 'Noncourt-Connected Mediation and Counseling in Child Custody Disputes' 17 *Fam. L.Q.* p. 469.
- DFID & British Council. (2010). *Alternative Dispute Resolution Multi-Door Courthouses*. DFID & British Council.
- Dike, S. C. Toby, B. G. and Elekima, D. F. (2020). 'Transforming Mediation and Conciliation Practices for Effective Dispute Resolution in Nigeria'. *Journal of Property Law and Contemporary Issues*, Vol. 12, Issue 1, pp. 235-237.
- Egbunike-Umegbolu, C. 'Bargaining in the Shadow of the Law: The Facts of Divorce As It Stands Today'. Date unknown, p. 3.
- Evarts & Goodwin. (1984). 'The Mediation and Adjudication of Divorce and Custody: From Contrasting Premises to Complementary Processes'. 20 *Idaho L. Rev.* p. 277.
- Ezike, E. O. (2011-2012). 'Developing A Statutory Framework for ADR in Nigeria' *Nigerian Juridical Review Vol. 10*, p. 261.
- Fashomi, D. (2016). 'Ogun Judiciary partners mediators on multi-door court', *Newstide 247* (11 July 2016), available at: <https://newstide247.com/ogun-judiciary-partners-mediators-on-multi-door-court/> (accessed 8 January 2021).
- Fashomi, D. (2016). 'Ogun Judiciary partners mediators on multi-door court'. *Newstide 247* (11 July 2016), available at: <https://newstide247.com/ogun-judiciary-partners-mediators-on-multi-door-court/> (accessed 8 January 2021).
- Faturoti, B. (2014). 'Institutionalised ADR and Access to Justice: The Changing Faces of Nigerian Judicial System'. *Journal of Comparative Law in Africa*, Vol. 1 No. 1, p. 4.
- Federal Government of Nigeria (1999), Federal Government of Nigeria Official Gazette, Extraordinary, 1999, Vol. 86, No. 27.
- Flanders. (1982). 'Divorce Mediation – A New Alternative'. 29 *LA. B.J.* p. 239.
- Folberg, J., & Taylor, A. (1984). *Mediation: A comprehensive guide to resolving conflicts without litigation*. San Francisco: Jossey-Bass.
- Fuller. (1971). 'Mediation-Its Forms and Functions'. 44 *S. Cal. L. Rev.* p. 305.
- Garner, B. A. (1995). *A Dictionary of Modern Legal Usage*. Oxford University Press; 2nd edition. 554.
- Gold. (1981). 'Mediation in the Dissolution of Marriage'. 36 *Arb. J.* p. 9.
- Herrman, McKenry & Weber. (1979). 'Mediation and Arbitration Applied to Family Conflict Resolution: The Divorce Settlement'. 34 *Arb. J.* p. 17.
- Johnson. (1984). 'Factors Predicting Outcome of Divorce Mediation'. 22 *Conciliation Cts. Rev.* p. 31.
- Kalejaiye v. Kalejaiye* [1986] 4 QLRN 162.
- Kalu, A.U. (2012). 'Speedy Dispensation of Justice Through Effective Case Management In Nigeria', available at: [speedy%20dispensation%20of%20justice%20through%20effective%20case%20management\(1\).pdf](https://www.researchgate.net/publication/312511111-Speedy-Dispensation-of-Justice-Through-Effective-Case-Management-In-Nigeria) (accessed 12 January 2021).
- Keilitz, S. L., Daley, H. W. K. and Hansen, R. A. (1992). *Multi-State Assessment Of Divorce Mediation And Traditional Court Processing*. Williamsburg, VA: National Center for State Courts.
- Lawrence, A. Nugent, J. & Scarfone, C. (2007). 'The Effectiveness of Using Mediation in Selected Civil Law Disputes: a Meta-data Analysis'. Department of Justice, Canada.
- Levy. (1984). 'Comment on the Pearson-Thoennes Study and on Mediation' 1 *Fam. L.Q.* 525.
- Marlow, L. & Sauber, S.R. (1990). *The Handbook of Divorce Mediation*. New York: Plenum.
- Matrimonial Causes Act, Cap M7, LFN 2004.
- McLeod. (1983). 'Summary of the 1982 Friend of the Court Reform Package'. 62 *Mich. B.J.* p. 430.
- Meroney. (1979). 'Mediation and Arbitration of Separation and Divorce Agreements'. 15 *Wake Forest L. Rev.* p. 467.
- MISR Nigeria Ltd v. Oyedele* [1966] NCLR 194.
- Mnookin & Kornhauser. (1979). 'Bargaining in the Shadow of the Law: The Case of Divorce'. 88 *Yale L.J.* p. 950.
- Morris, L. H. C. (1980). *The Conflict of Laws*. London: Stevens and Sons, 2nd edition. 97.

- Ogun State Government of Nigeria. (2016). Ogun State of Nigeria Gazette, 1 February 2017.
- Ogun State Judiciary. (2017), 'Ogun Multi-Door Courthouse', available at: <http://www.ogunstatejudiciary.gov.ng/ogun-multi-door-courthouse/> (accessed 12 March 2021).
- Ogunleye, A. J. (2014). 'Effect of Parental Conflict and Divorce/Separation on Children's Attitude towards Marriage in Nigeria'. *Journal of Culture, Society and Development* Vol. 4, pp. 57, 60.
- Ogunyannwo, S. (2019). 'The Ogun Multi-Door Court House'. *De Jure* Vol. 1, pp. 13, 15.
- Okpururu v. Okpokam* (1998) 4 NWLR [Part 90] 554, 586.
- Onyema, E. (2013). 'The Multi-door Court House (MDC) Scheme in Nigeria: A Case Study of the Lagos MDC.' *Apogee Journal of Business, Property & Constitutional Law*, Vol. 2 No. 7, pp. 96-130.
- Oyombe, J. (2020). Court Annexed Mediation in Kenya: An Examination of Opportunities and Challenges, LL.M Thesis, University of Nairobi, 5-6.
- Parkinson, P. (2010). Parenting after Separation: The Process of Dispute Resolution in Australia, University of Sydney Law School Legal Research Paper No 10/115, 12, available at: Social Science Research Network, <http://ssrn.com/abstract=1702639> (accessed 23 January 2021).
- Peters, D. (2008). 'Alternatives to Litigation: The Multi-Door Court House Concept' in Yusuf FAO (ed), *Issues in Justice Administration in Nigeria*. VDG International Ltd. 435.
- Phear. (1984). 'Family Mediation: A Choice of Options'. 39 *Arb. J.* p. 22.
- Phillips & Piazza. (1984). 'How to Use Mediation'. 10 *Litigation* p. 31.
- Project, (1976). 'The Unauthorized Practice of Law and Pro Se Divorce: An Empirical Analysis' 86 *Yale L.J.* pp. 104, 127.
- Rahmatian, A. (1996). 'Termination of Marriage in Nigerian Family Laws: The Need for Reform and the Relevance of the Tanzanian Experience'. *International Journal of Law, Policy and Family* Vol. 10, pp. 281-283.
- Rhodes-Vivour, A. O. (2008). 'Mediation (A "Face Saving Device")'. The Nigerian Perspective'. The International Bar Association Legal Practice Division, Mediation Committee Newsletter, Vol. No. 4 No. 1, available at: mediation-facesaving-%20device.pdf (accessed 11 January 2021).
- Rigby. (1984). 'Alternate Dispute Resolution' 44 *La. L. Rev.* p. 1725.
- Riskin. (1984). 'Toward New Standards for the Neutral Lawyer in Mediation'. 26 *Ariz. L. Rev.* p. 329.
- Saito, H. (2016). 'Bargaining In The Shadow of Children's Voices In Divorce Custody Disputes: Comparative Analysis of Japan and The U.S.'. *Cardozo J. of Conflict Resolution* Vol. 17, pp. 937, 944.
- Salau, A. O. (2017). 'Abolition of Damages For Adultery In Commonwealth And Anglo-American Jurisdictions – Privacy of Adulterers Versus Sanctity of Marriage: Whither Nigerian Family Law?'. *Bowen University Law Journal*, Vol. 1 No. 2, pp. 227-243.
- Salem, P. (2009). 'The Emergence of Triage In Family Court Services: The Beginning of The End For Mandatory Mediation?' *Family Court Review*, Vol. 47 No. 3, pp. 371–388, 373-374.
- Sander, F. 'Keynote Speech', ABA National Conference on Alternate Means of Dispute Resolution (1982). American Bar Association transcription, 22. Reprinted in Comment. (1983). 'The Best Interest of the Divorcing Family-Mediation Not Litigation' 29 *Loy. L. Rev.* pp. 55, 57.
- Saposnek, Hamburg, Delano & Michaelsen. (1984). 'How Has Mandatory Mediation Fared? Research Findings of the First Year's Follow-Up'. 22 *Conciliation Cts. Rev.* p. 7.
- Scottish Government. (2014). *Making Justice Work Enabling Access to Justice Project - International Literature Review of Alternative Dispute Resolution* pp. 6, 8-14.
- Spencer & Zammit. (1976). 'Mediation-Arbitration: A Proposal for Private Resolution of Disputes Between Divorced or Separated Parents'. *Duke L.J.* p. 911.
- United Nations Office on Drugs and Crime

(UNODC). (2007). *Training Manual on Alternative Dispute Resolution and Restorative Justice*, p. 14, available at: <https://www.google.com/search?q=United+Nations+Office+on+Drugs+and+Crime+%2C+Training+Manual+on+Alternative+Dispute+Resolution+and+Restorative+Justice+2007+.&ie=utf-8&oe=utf-8&client=firefox-b-ab> (accessed 10 January 2021).

Weissman&Leick. (1985). 'Mediation and Other Creative Alternatives to Litigating Family Law Issues'. 61 *N.D.L. Rev.* p. 263.

Winks. (1980-81). 'Divorce Mediation: A Nonadversary Procedure for the No-Fault Divorce' 19 *J. Fam. L.* p. 615.

Zumeta. (1983). Mediation as an Alternative to Litigation in Divorce, 62 *Mich. B.J.* p. 434.