

Alternative Dispute Resolution (ADR) and Successful Project Delivery in Ebonyi State, Nigeria.

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Abstract: This research appraises the Alternative Dispute Resolution (Adr) methods for a successful project delivery in Ebonyi State, Nigeria. The study adopted the descriptive survey design. The population of this study is 169 which are made up of registered professional in there various professional bodies in Ebonyi State, precisely the Builders, Architects, Civil engineers, Estate surveyors and valuers, and Quantity surveyors. The data generated for this study was analyzed with appropriate statistical techniques such as the frequency, percentages and mean score. The study found out that Lack of fund to finance the project to completion (0.9), Changes in drawings (0.78) and Lack of effective communication among the parties involved (0.762) are the main factors leading to construction dispute in Ebonyi state. With respect to the diverse impacts this dispute have on construction projects, it was revealed that time overrun which ranked the highest with means score value of 4.8 was the greatest impact of this disputes on construction projects. Similarly, increase in final cost of project was ranked second with mean index score of 4.29. Wastage and under-utilization of man-power and resources had mean score value of 4.19 was also revealed among the top three greatest impacts this disputes exert on construction projects. The study concludes that ADR processes such as negotiation, dispute review board, mediation and adjudication which have been found to be cost effective and less time consuming be employed in the resolution of construction related disputes other than going to courtroom. The study recommends the development of a disputes resolution framework as it will help the construction industry in Ebonyi State in determining the types and causes of disputes, the critical success factors for alternative dispute resolution and how best to deal with disputes when they arise. The study also solicits for the creation of proper and maximum awareness on the different methods of ADR and the benefits thereof, this will make construction professionals better informed and equipped when disputes arise within the built environment.

Keywords: Construction, Alternative Dispute Resolution, ADR, Project delivery, Construction Disputes.

1.0 INTRODUCTION

Nigeria has a thriving construction sector, one of the largest in the region. The country's huge oil reserves generate considerable revenue, thereby enabling rapid advancement and modernization of the Nigeria economy (Loosemore, 2003). Nigeria is one of the largest petroleum exporters, with 18% of global petroleum reserves, Organization of the Petroleum Exporting Countries (OPEC, 2013), making it one of the most upcoming and fastest growing economies in the Africa region.

The construction sector in Nigeria has become the “largest construction sector in the west Africa and remains a ‘construction safe heaven’ amid both wider political and financial turmoil. Ogunoh, (2014) observed that Nigerian construction industry is responsible for the delivery of building structures, such as building of all types, and engineering works.

According to Divakar and Subramanian (2009) the type of disputes surrounding construction projects are caused by unforeseen or changed project condition, changes in the work, late provision of drawings, access road, materials and equipment permits, inadequate drawings or specifications and interference in the work. There are other factors according to Zuhairah, Azlinor, and Rozina, (2010) that contribute to the creation of dispute in organizations like, task interdependence, scarce resources, goal incompatibility, communication failures, individual differences and poorly designed reward system.

The construction sector incorporates a variety of divergent projects based on structure and planning. The lack of standardization and a set methodology are the prime characteristics of the industry and this indicates that construction projects are complex, parallel and dynamic in nature and involves transforming inputs, using materials, people both skilled and unskilled workforce (Okolie, 2001). There are a number of technical experts and engineers involved, in the development and planning process of construction projects. Therefore, coordination, timely dispute resolution and effective teamwork play a vital role in the successful implementation of such projects. The construction of civil structures usually involves a considerable period of time, thereby affecting long-term planning and estimated demand-supply for such projects (Wood, 2001). According to Yiu and Cheung (2006), there is a likelihood of numerous disputes due to the conflicting interests of various parties involved in the project.

Disputes might adversely affect the interest of many stakeholders, resulting in decreased profitability and increase in the overall expenditure (Awakul & Ogunlana, 2002). Fenn (2007) has acknowledged a significant gap in terms of the knowledge available on the sources, cause and effects of disputes in the construction industry. Serious disputes concerning construction contracts have become increasingly common within Nigeria, where the construction industry is one of the key economic sectors (Jannadia 2000). However, it suffers some major problems that affect its role in building up the national economy. Sadjere, (2011) found and reported that contract disputes were one of the main causes of delay in large building projects in Nigeria.

Hallowell, (2012) posit that in relation to project management, a project manager should;

- i. Firstly needs to be concerned with the causes of delays, which could be at a national level or at a project level Ogunlana, and Mahato, (2011)
- ii. The next step is for them to realize the effects of delays in terms of a project's legal disputes (Okuntade, 2014), effects of delays on cost overruns (Ikechukwu ,2011)).
- iii. Delay mitigation is the next step which focuses mainly on the strategies used for construction schedule comparison and accelerated working (Ravi Kumark., Kumar and Rao, 2007).
- iv. The drawbacks of delay mitigation strategies (Sinha and Wayal, 2007). Which contribute to additional delay.

The above four steps involving delays in construction projects must be considered by project managers in order to achieve successful project completion and delivery.

In building construction industry, significant cost savings can be achieved through effective dispute avoidance and early dispute resolution. Significant factors that have been identified as contributing to time and cost overruns in Nigeria construction projects are rework, variations, incorrect design and incomplete documentation and late authority approvals. As a result of such issues arising in projects, conflict and disputes may occur which can lead to the disruption of construction schedules increased project costs, and even adversely influence relationships between project participants.

Traditionally, construction disputes were settled by litigation or arbitration, like other commercial disputes. It was to avoid some of the deficiencies of the court system (the rising cost of litigation and high legal fees, unsatisfactory outcomes, technical proceedings, damaging confrontations, need for precedent, interim orders and enforcements as well as power imbalance between parties, backlog of dockets, delays), that arbitration became widely adopted for the resolution of commercial disputes.

Madden (2001) opined that Arbitration came with some promises such as limited processes, flexible proceedings, less expensive, nonconfrontational approach, a relatively prompt hearing, privacy and above all on informed judgement in the settlement of commercial disputes. But of late Arbitration is seen to suffer from similar deficiencies of the court system. Lawyers have been accused of hijacking the arbitration process most obviously to protect their own position and authority against other professionals (architects, surveyors, engineers). Arbitration, instead of being an alternative to litigation is in danger of being seen as not much better. Instead of being the solution, it is regarded as part of the problem (Adjabeng, 2007). The general disappointment with arbitration and litigation has led to the growth of interest in Alternative Dispute Resolution methods. It is practiced in the chieftaincy and religious institutions, schools, families, homes and offices (Amoa-Abban, 2017).

Its advantages (fast, economic, non-confrontational, exclusion of legal proceedings, and so on) makes the ADR methods seem appropriate and better preferred to litigation or arbitration. Reducing Litigation cost is the corporate objective of Adopting Alternative disputes Resolution (ADR) for disputes resolution (Cheung and Seun, 2002).

Despite the benefit of ADR, Nigeria building construction industry seems slow to fully come to terms with the ADR concepts and its appropriateness for resolving disputes. It is against this background that this study seeks to investigate the use of Alternative Dispute Resolution on successful project delivery.

2.0 LITERATURE REVIEW

2.1 Concept of Dispute

Dispute is defined as an assertion of opposing views or claims or disagreement as to rights (Ogunbayo, 2013). Dispute is endemic to all social life; it is an inevitable part of living because it is related to situations of scarce resources, division of functions, power relations and role-differentiation (Azamosa, 2014). Because of its ubiquity and pervasive nature, the concept has acquired a multitude of meanings and connotations presenting us with nothing short of a semantic jungle. Olaleye (2011) described conflict as the process that results when one person (or a group of people) perceives that another person or group is frustrating, or about to frustrate an important concern. Mhehe (2007) looked at conflict as an interactive process manifested in incompatibility, disagreement or dissonance within or between social entities (that is individual, group, organization and so on). Conflict is a process of social interaction and a social situation, where interests and activities of participants (individuals or groups) actually, or apparently, confront, block and disable the realization of one party's objectives.

Deutsch in Adebiele and Ojo (2012) opined that conflict exists whenever incompatible activities occur. An action which is incompatible with another action prevents, obstructs, interferes with, injures, or in some way makes it less likely or less effective. Adebiele and Ojo noted that organizational conflict occurs, as actors engage in activities that are incompatible with those of colleagues within their network, members of other organizations, or unaffiliated individuals who utilize the services or products of the organization. It must be noted that conflict can occur between individual, groups, organizations, and even nations. As human being interacts in organizations, differing values and situations create tension. Conflict is thereby viewed as a situation in which two or more individuals operating within a unit appear to be incompatible.

2.2 Concept of Dispute Resolution

Dispute resolution is the process of resolving disputes between parties (Na Ayudhya, 2011). The term dispute resolution is sometimes used interchangeably with conflict resolution, although conflicts are generally more deep-rooted and lengthier than disputes. (Khahro, 2014). Dispute resolution techniques assist the resolution of antagonisms between parties that can include citizens, corporations, and governments. Methods of dispute resolution include, lawsuits (litigation), Arbitration, Collaborative law, Mediation, Conciliation, Negotiation, Facilitation. One could theoretically include violence or even war as part of this spectrum, but dispute resolution practitioners do not usually do so; violence rarely ends disputes effectively, and indeed, often only escalates them. Dispute resolution processes fall into two major types:

- a) **Adjudicative processes**, such as litigation or arbitration, in which a judge, jury or arbitrator determines the outcome.
- b) **Consensual processes**, such as collaborative law, mediation, conciliation, or negotiation, in which the parties attempt to reach agreement.

According to Khahro (2014), not all disputes, even those in which skilled intervention occurs, end in resolution. Such intractable disputes form a special area in dispute resolution studies. Dispute resolution is an important requirement in international trade, including negotiation, mediation, arbitration and litigation. (Fenn, 2007).

2.3 Concept of Alternative Dispute Resolution (ADR)

Dispute resolution is an indispensable process for making social life peaceful. Dispute resolution process tries to resolve and check conflicts, which enables persons and group to maintain co-operation. It can thus be alleged that it is the sin qua non of social life and security of the social order, without which it may be difficult for the individuals to carry on the life together (Boubala, 2010). Alternative Dispute Resolution (ADR) is a term used to describe several different modes of resolving legal disputes. It is experienced by the business world as well as common men that it is impracticable for many individuals to file law suits and get timely justice. The Courts are backlogged with dockets resulting in delay of year or more for the parties to have their cases heard and decided. To solve this problem of delayed justice ADR Mechanism has been developed in response thereof. Alternative dispute redresses method are being increasingly acknowledged in field of law and commercial sectors both at National and International levels. Its diverse methods can help the parties to resolve their disputes at their own terms cheaply and expeditiously.

2.4 Causes of Disputes in Building Construction Projects

Cheung and Pang (2010) cited in Tillet (2006) defined Construction dispute as the incompatibility of two (or more) people's (or groups) interest, needs or goals. Kehakale and Funtase (2013) defined dispute as the assertion of a claim by one party and repudiation thereof by another. They went further to assert that neither a mere claim without repudiation nor a pair of claim and counter claim, can be called a dispute. Disputes are unavoidable in every field of human endeavour. The building industry is not insulated to occurrences of disputes. Disputes usually arise when parties are unable to resolve or arrive at a common ground when they disagree on contractual issues. The Construction Industry is a complex and competitive environment in which participants have different views, talents and levels of knowledge of the construction process work together. In this complex environment, participants from various professions each has its own goals and each expects to make the most of its own benefits in the construction industry, since differences in perceptions among the participants of the projects, conflicts are inevitable. If conflicts are not well managed; they quickly run into disputes (Khekale ,2013)

Significant factors that have been identified as contributing to time and cost overruns in Nigeria construction projects are rework, variations, incorrect design and incomplete documentation and late authority approvals. As a result of such issues arising in projects, conflict and disputes may occur which can lead to the disruption of construction schedules increased project costs, and even adversely influence relationships between project participants. If a dispute is not resolved promptly, then it may escalate, and ultimately require litigation proceedings which can be extremely costly for the parties concerned (Simha and Wayal (2007) cited in Cheng et al 2004). According to Ogunlana and Mahato (2011) cited by Khahro and AC, (2014) conflict is a serious disagreement between parties due to various reasons i.e payment, communication, public interruption etc. It can give rise to problems including, project cost overrun, project delay, reduce productivity, loss of profit and damage to business relationship. Conflict do take place in the public and private sector projects; the construction industry of Pakistan is not exceptional.

Disputes have been blamed as one of the factors responsible for the poor performance of the Nigerian construction industry (Oladapo and Onabanjo 2009). No construction project design or contractual arrangement is perfect. Hence, as in all other interpersonal and contractual relationships, disputes are inevitable in construction contracts.

3.0: RESEARCH METHODOLOGY

The study adopted the descriptive survey design. The population of this study is 169 which are made up of registered professional in there various professional bodies in Ebonyi State, thus 18 builders, 35 architects, 76 civil engineers, 15 estate surveyors and valuers, and 25 quantity surveyors (NIOB Ebonyi State Chapter). The data generated for this study was analyzed with appropriate statistical techniques. The techniques include frequency, percentages and mean score.

Table 1: Factors causing dispute In Construction Projects

No	Causes Dispute	Strongly agreed	agreed	Strongly disagreed	disagreed	undecided	MIS	RANK
1.	Lack of fund to finance the project to completion	62.2%	33.3%	0	1.1%	3.3%	0.9	1
2	Slow decision making	25.6%	55.6%	3.3%	3.3%	12.2%	0.758	5
3	Fluctuation in prices of building materials	12.2%	47.78%	11.1%	14.4%	14.4%	0.658	13

4	Mistake during construction stage.	14.4%	50%	8.89%	6.67%	20%	0.664	11
5	Equipment availability and failure	21.1%	46.67%	5.56%	5.56%	21.1%	0.682	10
6	Mistake and discrepancies in contract document.	20%	50%	7.78%	7.78%	14.4	0.706	9
7	Bad weather	22.2%	37.78%	12.2%	4.4%	23.3%	0.662	12
8	Lack of effective communication among the parties involved	30%	48.89%	5.56%	3.3%	12.2%	0.762	3
9	Labour strike	11.11%	24.4%	16.67	26.67%	20%	0.553	15
10	Changes in drawings	27.78%	50(55.56%)	5(5.56%)	0	10(11.1%)	0.78	2
11	variations	21.1%	56.67%	4.444%	3.333%	14.44	0.733	7
12	Lack of adequate information from consultants	28.89%	48.89%	7.78%	2.2%	12.2%	0.76	4
13	Project management problem	21.1%	55.56%	4.4%	4.4%	14.4%	0.73	8
14	Inappropriate overall organizational structure linking to the project	15.56%	46.67%	7.78%	10%	20%	0.656	14
15	Contractors insolvency	31.1%	43.3%	8.89%	3.3%	13.3%	0.751	6

Source: Field Survey (2019)

Factors causing dispute in construction project is presented in Table 1. Lack of funds to finance the project to completion with 0.9 mean index score is suggested as the most preferred factor as causing dispute on construction projects. This is closely followed by the

changes in drawings having 0.78, and then lack of effective communication among the parties involved having the MIS value of 0.762. Furthermore, lack of adequate information from consultants having the MIS of 0.76 is ranked 4th, funds is the most essential factor for a project to be executed appropriately. Changes in drawing can incur increase in cost of work and also dispute in execution of work and it could also cause slow decision making which ranged 5th with MIS of 0.758, contractors insolvency having MIS of 0.75 could also occur seen his time is been increased he tends to spend more and may run into debt causing there to be variation having MIS of 0.73, followed by project management problem having MIS of 0.72. mistake and discrepancies in contact document having MIS of 0.71 has lots of effect on project, Equipment availability and failure having MIS of 0.68 could reduce the effectiveness of work and can cause misuse of manpower, mistake during construction stage having MIS of 0.664 is very risky. It could cause collapse and incur more cost, bad weather having MIS of 0.662 been natural happenings, also has the tendency of affecting work on site, next is fluctuation in prices of building materials with MIS of 0.658 could either increase cost or decease depending on the market at the time. Inappropriate overall organizational structure linking to the project having MIS of 0.656 affects every aspect of work on site, labour strike having the least causes with MIS of 0.55. Strike rarely occur on site only if the workers are not been paid there salary that is when strike occurs.

Table 4.2: Impacts of Dispute on Construction Projects

No	Effects of Dispute	\bar{x}	σX	Rank
1	Time overrun	4.8	1.025	1
2	Increase in final cost of project	4.29	0.982	2
3	Tying down of client capital due to non-completion of the project	4.23	1.015	4
4	Wastage and under-utilization of man-power and resources	4.19	0.938	3
5	Abandonment of building project	4.11	1.088	6
6	Reduced profit	4.10	0.918	7
7	Dispute between parties involved	4.00	1.040	5
8	Dead of projects	3.97	1.119	8
9	Industrial collapse	3.56	1.125	9

Source: Field Survey (2019)

Results from Table 4.2 shows that Time overrun ranked the highest with means score value of 4.8, while increase in final cost of project is ranked second with mean index score of 4.29. Wastage and under-utilization of man-power and resources had mean score value of 4.19. Time in every phase of life is really essential, when a contract is done and the date is given, the effect of dispute really affects time and as the adage goes time is money. Time affects every other factor, the increase in final cost; more money has to be

spent. Dispute will also cause wastage and underutilization of man power and resource. Tying down of client capital due to non-completion of the project is scored with mean score value of 4.10 because; the client cannot get his money back if the work is not completed. Dispute among parties involved, dead of project and collapse of industry were ranked the least with mean score values 4.00, 3.97 and 3.56 respectively. There is a close interrelation among the factors that were ranked least. Dispute among parties involved can induce litigation and arbitration and if the decision of the arbitration panel is not acceptable to either of the parties involved, this can lead to big time legal battle which can truncate the progress of the work and collapse of the construction industry.

From the table, it is observed that, Time overrun, increase in final cost of project, wastage and under-utilization of man-power and resources, tying down of client capital due to non-completion of the project, dispute among parties involved were ranked highest. Time is factor that is very essential in all activities that has to be carried out, in the contract document a specific time phase is given for delivery of project and if the time is being exceeded more money is often spent which could lead to increase in final cost of project and also wastage and under-utilization of man-power and resources. The client's capital has to be withheld due to non completion of the project which could result into dispute, litigation and arbitration among the workers and management. Also, dispute can lead to reduced profit for builder and abandonment of building project by the client.

4.0: CONCLUSION

Alternative dispute resolution (ADR), which is any means of dispute resolution that takes place outside of a court room have been employed in resolving construction disputes in many countries of the world. Disputes and conflicts in construction projects have been considered by many researchers as unpleasant events that occur in the execution of projects and they both have negative effects on cost, performance and completion targets. Such disputes have been resolved through arbitration and litigation proceedings which ultimately destroy business relationships.

ADR processes such as negotiation, dispute review board, mediation and adjudication have been found by many researchers to be cost effective and less time consuming. Furthermore, with the use of ADR processes, the shortcomings of litigation and arbitration have been overcome because Alternative Dispute Resolution procedures are entered into voluntarily by the parties in construction disputes.

The study revealed that the major causes of construction dispute in construction industries in Ebony state is low productivity, loss business viability and Loss of profitability.

The study further revealed that, Time overrun, increase in final cost of project, wastage and under-utilization of man-power and resources, tying down of client capital due to non-completion of the project, dispute among parties involved were ranked high as the impacts of dispute in construction projects.

5.0 RECOMMENDATION

The study made the following recommendations;

The development of a disputes resolution framework can help the construction industry in Ebonyi State in determining the types and causes of disputes, the critical success factors for alternative dispute resolution and how to deal with methods of dispute resolution through the dispute resolution framework in Ebonyi State construction projects for all parties involved in disputes.

By creating awareness on the lack of knowledge regarding ADR and the benefits thereof, professionals are bound to familiarize themselves with this topic and discuss ADR methods with clients at the onset of a building project. This will make construction professionals better informed and equipped when disputes arise within the built environment.

It is anticipated that some attributes are more important than others due to cultural, geographical, social and human factors in construction industry. By focusing on the empirically identified key ADR attributes, the model to be designed can be kept simple and effective. Above all, new practices will only be widely accepted for use unless they meet the needs of the users. The core principle of the framework developed is transferring the characteristics and the special requirements of the industry to the model in a right way.

This is obtained through the use of key ADR attributes.

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