



Mitigating Risk Impact of Disputes on Real Estate Business and Investment in Lagos: The Alternative Dispute Resolution (ADR) Approach

By

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Abstract: The occurrence of disputes in various forms of human interactions has increased in complexity and has assumed a disturbing dimension in recent times. Due to uncertainty surrounding dispute resolution through litigation, professionals in the various disciplines are always seeking for alternative and innovative ways through which risk of disputes that arise in the course of business transactions and professional activities can be resolved without recourse to litigation. The objective of the study therefore is to examine the impact of dispute as an emerging risk factor in real estate business and investment and the adoption of Alternative Dispute Resolution techniques as innovative approaches to real estate investment and management dispute resolution thereby mitigating dispute risk impact on real estate investment. Utilising content analysis of cases in real estate investment sourced from the High Court of Lagos State, some ADR centres and consultant Estate Surveyors and Valuers in Lagos State, results showed among others that there were huge loss of investment in real estate, tribal tensions, discrimination and damaged business relationships when ADR frameworks were not involved in disputes resolution. The study has recommended among others that ADR should be enshrined in all real estate management and investment contracts and that all the stakeholders in real estate business should take advantage of the flexible multi-level ADR clauses to better the chances of dispute resolution along the real estate value chain.

Key Words: Alternative Dispute Resolution, Dispute, Real Estate Investment, Risk Mitigation.

1. Introduction

The study of risk and its impact on real estate investment has centered on the very broad risk categories in finance, business and the entire market framework in both developed and emerging economies including other forms like natural, political and regulatory, construction-design, socio-cultural, “omo-onile”, youth, community risks among others which are common characteristics of developing economies like Nigeria (Nubi & Babawale, 2013). Dispute as an emerging form of risk in real estate investment appears not to have been sufficiently correlated and addressed despite the contractual, multi-disciplinary and capital intensive nature of real estate investment which is evident in literature. The very complex nature of real estate investment and the inevitable interactions and relationships involving customers, clients and organizations cutting across the entire real estate value chain sometimes result in disputes. Okpaleke (2014) notes that real estate disputes when not well managed and resolved, the associated returns and overall multiplier benefits to the economy will remain hampered. Lebovits and Hidalgo (2010) on their part opine that anyone who has leased or purchased real estate can appreciate the potential for dispute and understand the need for parties to be

protected against costly and consuming litigation. As part of risk management procedure, an efficient mitigation of the adverse impact of dispute would involve a resolution process that amongst others address the three key variables of uncertainty, time and cost. These three parameters are sensitive to every investment analysis. According to Babawale (2007), risks and uncertainty are inevitable concomitants of many forms of investment with the former existing because most investment decisions are made under conditions of uncertainty. All business transactions according to Gill, Biger, Mathur and Tibrewala (2010) involve some degree of risk. Risk is not alien to real estate as real estate development and investment are laden with plethora of risk which can occur at various stages of the real estate value investment process. Weigelmann (2012) considers real estate development and by extension investment as one of the riskiest activities that are speculative in nature. Therefore, in anticipation of an unknown future demand, risk and uncertainty are key elements that influence decision making. The classical assumption in most real estate investment analysis is that investors aim to maximize wealth by selecting investment based on their risk and return characteristics. According to Allen and Floyd

(2005), successful decision making in real estate requires careful analysis of risks and the return offered by an investment. Nubi and Babawale (2013) posit that investment process is viewed as a return/risk trade-off. Thus investors should be skilled in identifying, analyzing and mitigating the risk element that are inherent in their investment options. In addition, Greer and Kolbe (2003) indicate that the tendency for expected return to increase or decrease along with associated risk is an inescapable characteristic of free market. Despite the acclaimed risk prone nature of real estate with uncertainty associated with decisions therein, it remains a key factor in the wealth of nations, corporate entities and individual investors. It has been estimated that 50 – 70% of global wealth are anchored in real estate (Bell, 2006; Pollock, 1994) with Savills World Research (2014) estimating the global real estate value to be in the neighborhood of \$180 trillion dollars, a major leap from Pollock's 1994 estimate of \$44 trillion dollars. The expected investment return is a major pre-requisite for real estate investment decision (Otegbulu & Onukwube, 2007). According to Baum and Crosby (1996) investment in real estate can generate returns in three ways namely, generating a flow of income (or reducing income tax); generating a return on capital (or reducing capital tax), whether it is less than, equal to or in excess of the

initial sacrifice; or producing a psychic income, a positive feeling induced by investment ownership. Thus, investment return is a function of income, capital return and psychic income. Correspondingly, viability of investment properties is to a large extent dependent on the magnitude, consistency and sustainability of the cash flows in the form of rentals. In considering the blend of fixed and variable cash flows that characterize real estate investment, Anim-Odame (2013) concluded that in an efficiently priced market, it would be expected that returns on real estate investment will also sit between those on fixed income and equity investments.

Globally, dispute resolution has been anchored on litigation as the mainstream judicial means of resolving dispute thus yielding unintended consequences for parties and stakeholders. The Lord Woolf 1995 Access to Justice, Interim Report narrowed the key problem facing the civil justice system in England and Wales to cost, delay and uncertainty noting that litigation was not the only means for achieving a fair, appropriate and effective resolution of commercial disputes. Delay and the resulting costs leave businesses feeling disenchanting by the court system. The resultant reforms emanating from the Woolf report and the adoption/replication has enhanced the increasing pursuit of alternative dispute resolution (ADR) as a fair, appropriate and effective means of resolution of

disputes in various business spheres (Fenn, Rickman & Vencappa, 2009; Aina, 2012a). Thus, ADR is said to be tied to business as the more the investment the greater the potential for dispute to arise (Ufot, 2013).

Therefore, because of the huge return on investment as well as risk on the investment and time that are lost when real estate business and investment disputes are resolved through the court system, it becomes a problem to real estate professionals and all stakeholders.

However, this problem can be addressed by appropriate research on global paradigm shift of dispute resolution in real estate business and investment as offered by ADR.

In view of the foregoing, the objective of this study is to critically examine and assess the impact of dispute as an emerging form of risk on real estate investment and how ADR mechanism which presents a better alternative to litigation could be deployed as an innovative and emerging area of mitigating the risks of disputes by parties in real estate business and investment.

This paper is divided into five parts. Following the introduction in the first section is the review of literature, conceptual and theoretical underpinnings in section two. Section three describes the methodological approach while section four covers the content analysis and summary of findings. The final section concludes the paper with recommendations.

2.0. Literature Review and Conceptual Framework

2.1. The concept of Risk and Risk Mitigation

Investopedia (2014) defines risk as the chance that an investment's actual return will be different than expected and includes the possibility of losing some or all of the original investment. Different versions of risk are usually measured by calculating the standard deviation of the historical returns or average returns of a specific investment with a high standard deviation indicating a high degree of risk. In real estate or property investment, risk according to Nubi and Babawale (2013) are categorized broadly into three namely: business risks, market risk and finance risk more applicable to developed economies while emerging economies like Nigeria is characterized by natural risk, economic and financial risk, political risk, legal and regulatory risks, and construction risk incorporating social-cultural risk, land owner risk (Omo-onile), community and youth risk. Risk mitigation relates to the steps taken in order to reduce the adverse effects of risk. Unique to business continuity and disaster recovery are four types of risk mitigation strategies which are risk acceptance, risk avoidance, risk limitation and risk transference (Melissa, 2013). Risk limitation is the most common risk management strategy used by businesses and limits an entity's exposure by taking some action. It strategically employs

a bit of risk acceptance along with a bit of risk avoidance or an average of both. In real estate investment, risk can be greatly reduced with relatively simple risk management procedures such as judicious investment, diversification, market research, and property management, shifting risk to tenants and hedging (Greer & Kolbe, 2003).

2.2 Dispute, Dispute Resolution, Litigation and Dispensation of Justice

Disputes are inevitable parts of human nature. In any social contest, human beings are bound to agree and disagree at times. When human beings interact in their day to day activities, disagreement and disputes are bound to occur (Zack, 1995; Anyebe, 2012). According to Younis, Wood and AbdulMalak(2008), the definition of dispute has resulted “in dispute” by scholars. While some scholars see disputes as simple disagreements (Anyebe, 2012), others are of the view that disputes occur when there is a rejection of a claim by one party and the other party refuses to accept the rejection of the claim (Ren, Anumba&Ugwu, 2001; Diekmann& Girard (1995). As posited by Younis, Wood and AbdulMalak that disputes can be both positive (constructive) and negative (destructive), the focus of this paper is the risky and destructive disputes. Therefore, dispute resolution, as integral part of commercial and social development is the major function of law through litigation (Aina, 2005).Litigation has

been the primary dispute resolution means, a mechanism of the state and its formal justice system. It is however laden with challenges such as court congestion, inordinate delay, crippling formalism, and undue reliance on technicalities over justice, irreparable damage to social and business relationships, exorbitant costs and blatant interference amongst other negative factors (Ibidapo-Obe, 2013;Iriekpen,2010). Reflecting on delay of administration of justice, the Late Hon. Justice ChukwudifoOputa, a Retired jurist of the Supreme Court of Nigeria was quoted in Oke (2013:21) stating that:

The administration of justice in our courts suffers from two major constraints, namely delay and expense. If it takes 7-10years to decide a case, a prospective litigant may decide not to go to court at all. But the one thing that frightens litigants away from the courts is the inordinate expense which has to be incurred with the result that a very large proportion of country men are, as it were, priced out of our legal system.

Although the above quote was made several years ago, the issues of delay are still a subsisting factor in the courts. World Bank (2013) doing business reports that it takes 443 days (14-15months), 40 procedures and costs 92% of claim value to enforce a small claim contract in Nigeria adopting a Lagos magistrate court as case study. These figures indicate the ease of enforcing contract and measure the efficiency

of resolving a commercial dispute before a local court. The World Bank also ranked Nigeriapoorly as the 136th of the 186 countries surveyed compared to Ghana (43), South Africa (80), and Botswana (86) with the sub-Saharan average at 123. This report partly confirms an earlier study of 100 cases concluded at the Lagos High court between 2001 and 2003 by Osibanjo (2008), revealing a general average case conclusion time at between 12 and 18 months. Osibanjo further indicated that anecdotal data from estate agents show a decline in rental properties stock due to delays and difficulties in recovering possession from defaulting tenants at the court. Real estate development financing from banks and other financing institutions because of similar reasons of difficulties in realizing securities of real estate investment are unwilling to grant credit secured on real estate and the multiplier negative effect on the subsector in particular and the general economy lingers.

Based on the series of inefficiencies evident in literature globally, litigation the traditional method of dispute resolution is gradually giving way to ADR techniques in this technology-driven era (Ajogwu, 2013). This however does not suggest a complete discard of litigation, rather the conception, promotion and adoption of ADR techniques as viable supplemental to litigation (Iriekpen, 2010).

2.3 Alternative Dispute Resolution (ADR): An innovative risk management tool.

Alternative dispute resolution (ADR) comprises the range of dispute resolution processes and mechanisms for settlement of dispute outside or as an alternative to litigation. It is a general term used in describing a set of techniques that enable disputants in reaching a mutually beneficial position when disputes occur whether there is an engagement of an external party or not. Specific processes as stated in Aina (2012b) include:

- Negotiation
- Mediation
- Early Neutral Evaluation
- Arbitration
- Hybrid Processes such as Med- Arb and Mini-trial.

Negotiation involves the disputants talking directly to each other in private while retaining firm control of the entire discussion as there is no third party facilitator. Both parties present their own positions and endeavor to get the best possible outcome. Thus, negotiation could be a fast and inexpensive mode of settling a brewing dispute. Where direct negotiation between the disputants fails to resolve the dispute, the next option might be for them to invite a neutral third party to act as a Mediator. In a mediation procedure, the third party plays the role of adviser to both parties. He does not take a position but merely encourages the parties to come to a settlement. This marks a point of

difference from Arbitration where the third party intervenes practically as a judge would in a litigation to make a binding award. Arbitration process is controlled by a single arbitrator or a panel of arbitrators. In Nigeria, apart from Conciliation, Arbitration is the principal ADR procedure regulated by statute via the Arbitration and Conciliation Act (ACA), Cap A18, LFN 2004. However, Lagos State recently enacted the Lagos State Arbitration Law 2009 to provide a framework for regulating arbitration practice in the State. In conciliation, the parties use a neutral third party (conciliator), who meets with the parties separately and may at any stage of the conciliation make proposals for a settlement of the dispute. Early Neutral Evaluation as described by Ajogwu (2013) is a process in which parties to dispute make presentation to a neutral party who then renders a non-binding opinion. Neutral evaluative reports provide an unbiased evaluation of relative positions of the disputants, as well as guidance on the likely outcome if the case were to be heard in court. Apart from the main ADR processes discussed above, other processes of a mixed nature are also used, including Summary Jury Trial; Mini-Trial; Ombudsman; Rent-a-Judge; Med Arb and the Multi-Door Courthouse. Lagos Multi-Door Court House (LMDC), a product of co-operation between the State Government and civil society governed by the LMDC Law of 2009 is the first court-

connected ADR center in Nigeria and Africa providing a comprehensive approach to dispute resolution via the five recognized possible tracks or doors- mediation, arbitration, conciliation, early neutral evaluation and hybrid processes (see Onyema, 2013). Lagos court of Arbitration (LCA) and the Citizen Mediation Centers are products of the State to promote arbitration and mediation respectively in Lagos State with the later governed by the Citizens' Mediation Centre Law 2007 (repealing the 2003 version) and the first statutory institutionalization of Alternative Dispute Resolution (ADR) in the legal system of Nigeria outside the customary law and commercial arbitration praxis (Ibidapo-Obe & Williams, 2010). Other private and institutional bodies that render ADR services to the business community abound in Lagos State such as Chartered Institute of Arbitrators, Negotiation and Conflict Management Group (NCMG), Institute of Chartered Mediators and Conciliators (ICMC) and Institute of Construction Arbitrators. Real estate stakeholders could avail themselves of the range of ADR services under the instrumentality of any of the above bodies for cost and efficient resolution of dispute thereby mitigating the associated risk impact on real estate investment.

2.4 Litigation and ADR: A theoretical underpinning.

Several theories have been employed by researchers in the explanation of

the fundamental reasons why parties to a dispute decide how to resolve their disputes. For the purpose of this study, two of such theories are examined and the extent to which they explain the issues under investigation. First is the theory of predictability used in the explanation of the less attractiveness of litigation in the Japanese legal system (Ramseyer, 1988). This theory hinged on the premise that there were less litigation cases due to the fact that the Japanese legal system was more predictable and stable because no changes occurred in the training and appointment of judges or no issues of fairness, equity and integrity about judges' interpretation of statutes. The predictability theory when examined in the context of the time it was propounded, socio-cultural, economic environment and differences in the legal system of Nigeria is not relevant and applicable to Nigeria having also been criticised as not been able to predict changes in the litigation behaviour of the Japanese (Ginsburg & Hoetker, 2006). In Nigeria for instance, the legal system in which litigation is regulated has an adversary background from the British common law adopted system with dispute resolution mechanism defined by the court, which offers the litigation process, a poor fit for business and investment and is highly unpredictable in terms of the process of justice delivery and the actors involved including their activities. A World Bank survey of

3,600 firms in 69 Latin American countries as cited in Aina (2012b) confirms the benefits and relevance of an effective dispute system for businesses. More than 70 per cent of the respondents affirmed that an unpredictable judiciary was a major problem in their business operations. The survey also confirmed that the overall level of investors' confidence in government institutions, including the judicial system, had a positive correlation with the level of investment and measures of economic activities of which real estate is a major segment.

The other relevant theory is the asymmetric information theory (Akerlof, 1970) which has been applied in several disciplines across finance and investment, economics, risk management, agent-principal relationships in real estate and law among others. Bebchuk (1984) used the asymmetric information theory to offer an economic explanation on the role of information in the outcome of litigation cases. Parties to litigation cases normally have different information about the probable outcome of the case. Information in this instance is privately made available to the plaintiff and the defendant. With this asymmetry of information on the part of the plaintiff (of the damages and relief sought) on one hand and the defendant (on whether there is a breach of real estate investment contractual terms or not) on the other hand, there is high probability that settlement as an outcome will fail.

Thus, when settlement fails or lingers, alternative dispute resolution (ADR) becomes readily available as a tool of mitigating the risk or effect of prolonged and costly litigation. Extant literature shows the increasing integration of the ADR techniques with the litigation process. Ajigboye (2014) submits that the concept of a comprehensive justice centre as propounded by Professor Frank Sander in 1976 which will combine the ADR mechanism and the age long litigation process subsequently described as Multi-Door Courthouse is a very welcome development because the nature of disputes also affects the efficiency of the legal system applied in resolving the dispute.

3.0 Research Methodology

The research method adopted in this study is content analysis. Ladki, Darwiche, Baablaki, Talhouk, Ghasha and Firikh (2009) provide the framework that guides data analysis in studies involving content analysis. The justification for adopting content analysis in certain areas of real estate research is valid where there are data challenges and in cases where institutional or some elements of regulatory control of professional activities are available (Babawale, 2013). In agreement with Emele, Okpalaeke and Umeh (2014) and guided by the model of Ladki *et al* (2009), the content analysis was carried out with particular attention to the financial cost, length of time and social-economic effects of cases

involving both litigation and ADR in real estate business and investment. Therefore, this study relies solely on secondary data which include reports of cases reported to ADR centers in Lagos for resolution and decided cases from the Courts in which the Estate Surveyors and Valuers were involved either as parties, expert witnesses, consultants, or investment managers detailing the cost, duration and socio-economic impact of the cases. This study was carried out in Lagos State, the most populous of the 36 states in the Federal Republic of Nigeria. According to Babawale and Omirin (2011), the metropolis of Lagos is about 37% of the land mass of the state which doubles as the commercial capital of Nigeria and a former Federal Capital thereby conferring a special status on the State. Current population estimates put Lagos State population at over 17 million people and one of the largest cities in the world by the year 2015. The metropolis represents the hub of the Nigerian property market and a large portfolio of real estate business and investments. Thus, Lagos metropolis maintains the highest concentration of commercial activities and the Lagos commercial property market, real estate activities and real estate professional practice in the metropolis can rightly be considered to be a good representation of the Nigerian commercial property market (Ibiyemi & Tella, 2013). Lagos State has the largest judiciary with 52 courts in the High Court Division

and 118 courts in the Magistrate Division, the largest number of justice (Osibanjo, 2008). The State has the multi-door court house, the first court connected ADR centered in Nigeria and Africa. Lagos is projected to emerge the hub of commercial arbitration and other alternative dispute resolution (ADR) mechanism in the West African region with the promulgation of the Lagos Court of Arbitration Law (Law No.8 of 2009) and Lagos state Arbitration Law 10 of 2009 (Adesanya,2014; Adekoya,2010).

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4.0. Content Analysis: The Impact of Litigation and ADR Compared

The tables below show a comparative content analysis and summary of findings of the real estate cases that were resolved through both litigation and ADR. In order to protect the confidentiality of the persons and organizations involved, their names and identities have been omitted as requested by the data providers.

Table 1. Summary of findings from the content analysis of selected litigation cases

S/No	Type Of Real Estate Dispute	Duration of Litigation	Cost Of Litigation (₦)	Analysis of Socio-Economic Impact of litigation on the parties and investment
	Landlord & Tenant dispute over outstanding rent and possession of a six (6) bedroom duplex + 2 room B/Q in Ikeja CBD and Capital of Lagos State.	2½ years	₦ 650,000.00 on - Attorney’s fees - Filing fees, cost of executing judgment	<ul style="list-style-type: none"> • Loss of rent aggregating ₦2,547,850.00, covering court awarded but unpaid non market rent for 3 years plus differential; • Damage to property and neglected repairs and willful damage assessed at over ₦ 2,000,000.00 • Unpaid utility bills i.e. electricity bill, water rate, tenement rate etc. • Marred long term landlord-tenant relationship of over 15 years; • Emotional trauma and deprivation of a septuagenarian retiree landlord. • Distortion and truncation of long term projected viability of the subject real estate investment. • Tenant loss of image and humiliation from forceful eviction and fief of belongings consequent of judgment.
	Landlord and tenant dispute over outstanding rent and possession of 4 B/R flat in Omole Estate, a High Income residential estate in Ikeja environs)	3 years	₦ 1,000,000.00 on - Attorney’s fee - Filing & subsequent execution cost	<ul style="list-style-type: none"> • Unpaid utilities bill & service charge • Loss of 4 years rent estimated at ₦ 3,200,000.00 • Marred relationship. • Threat to life and police harassment. • Tribal tension & discrimination-Ibo tenant and Yoruba landlord. • Property manager’s man-hour and financial loss being owner’s representative in court.

				Owner not in a position to pay expert witness fees being financially distressed by the tenant's indebtedness.
	Eminent domain case (Compulsory acquisition of block of 6 flats at Okota by the Lagos State Government)	2 years	- uncertain	<ul style="list-style-type: none"> Abandoned road expansion project Massive socio-political and economic impact Cost, time overrun and delay on project. General depreciation in capital and rental value of properties in the neighbourhood on account of poor accessibility.
	Foreclosure & Property title suit over a detached house within a high-brow estate in Lagos mainland between a financial institution and a private investor.	3 years	<p>₦4,800,000.00 on</p> <ul style="list-style-type: none"> Attorney's fees (A Senior Advocate of Nigeria (SAN) retained by the property owner. Travel cost 1 ½ years security bill Maintenance cost. 	<ul style="list-style-type: none"> Loss of rent from void and non-market rent estimated at approximately ₦5.5 million. Disrupted work schedule, travel cost and associated travel risk by the property owner, a USA based surgeon Emotional trauma over feared loss of life investment Loss of interest in real estate as investment Police harassment and threat to life. Uncertainty of decision and associated risk. Encumbered investment hindering other attributes.
	Claim of Agency commission from warehouse sale in Apapa, Lagos (Between an Estate Surveyor & an Industrial giant)	3 years (in the High Court) 2 ½ years (in the Court of Appeal)	<p>Over ₦ 1,000,000.0 on</p> <ul style="list-style-type: none"> Attorney's fee And associated expenses. 	<ul style="list-style-type: none"> Loss of value. Judgment sum not commensurate with cost of litigation and real worth of judgment sum award. Marred relationship and closed business. Opportunities. Uncertainty of decision and associated risk. Man-hour loss due to prolonged case duration marked with physical presence of key parties in court.
	Landlord-tenant/ownership	6 years (in the High	Not less than	<ul style="list-style-type: none"> Loss of rent for over 13 years (Estimated at

	<p>suit over block of flats in Ikoyi</p>	<p>court 5 (in the Court of Appeal) Still pending at the Supreme Court</p>	<p>₦10,000,000.00 on direct solicitors fee on the part of purchaser-landlord</p>	<p>over ₦ 120 million)</p> <ul style="list-style-type: none"> • Financial exposure to bank • Emotional trauma • Incessant police harassment • Threat to life • Marred relationship • Truncated investment opportunities • Dilapidated structure lacking maintenance. • Uncertainty of decision and associated risk. • Unrealized investment goal by purchaser who died in the course of the case. • High dilapidated building on account of abandonment and non-maintenance and improvement works presumably from the uncertainty of court decision. • tribal tensions, discrimination and threat to lives
	<p>Monetary claim and loss of rent case over vandalized and abandoned property bungalow in Ikeja GRA.</p>	<p>2 years (case ongoing)</p>	<p>₦ 850,000 paid on</p> <ul style="list-style-type: none"> - Legal fees - Expert witness fees - Quantity surveyor and estate valuer fees for priced bill of quantities and valuation report 	<ul style="list-style-type: none"> • Loss of three years revenue(rent)-Estimated at ₦ 9.5 million) • Emotional trauma from continuous sighting of vandalized property kept in status quo as evidence pending site visit by judge • Uncertainty of decision and associated risk • Progressively dilapidated structure due to prolonged exposure to weather element. May end up being demolished.
	<p>Breach of property management contract between Estate firm and property owner.</p>	<p>1 ½ years</p>	<p>₦ 250,000 on -legal fees</p>	<ul style="list-style-type: none"> • Marred relationship • Reputation loss • Undue exposure
	<p>Landlord-tenant</p>	<p>3 ½ years</p>	<p>₦ 350,000 still</p>	<ul style="list-style-type: none"> • Loss of rental income for 5 years aggregating

	case(outstanding rent and possession) for apartment at Abiola Crescent Ikeja		ongoing-legal fees	₦ 2, 300,000. <ul style="list-style-type: none"> • Negative influence on other tenants. • Accumulated utility bills like PHCN, water rate and neighborhood security bill. • High repairs cost due to denied access to enforce repairs obligations.
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Table 2 Summary of content analysis of selected ADR Cases.

S/No	Type of Real Estate Dispute	Duration Of ADR Intervention	Cost Of ADR (₦)	Analysis of Socio-Economic Impact of ADR on the parties and investment
1.	Contract for purchase and development of property in Lagos Island. This real estate dispute appears to be the most reported Lagos multi-door court house case and is actually her prominent case study with partially unveiled parties. It involves a former Vice President of Nigeria as the chairman of an investment corporation and a leading estate agent in Lagos who sold the subject property to a government agency resulting in law suit between corporation, the	In a day mediation session, the matter commenced by 10 a.m. and terms of settlement signed about 8.30pm same day as against 17years the matter was litigation in the court.	-LMDC administrative fees -LMDC ADR session fees Parties were free to represent self or had counsels accompanying them. -Speed of completion saved parties litigation cost and time. Seventeen years dispute in court resolved in one day after non-legal interest of the feuding parties were identified and	<ul style="list-style-type: none"> • Speedy resolution of disputes. • Reduction in parties' expenses and time • Restoration of pre-dispute relationship • Reduction in the case dockets of the court • Parties satisfaction with justice system • Lifted encumbrance on the subject landed property thereby freeing the development and resultant attributes. • Emotional and physical trauma of the prolonged case mitigated.

	estate agent and four others.		addressed.	<ul style="list-style-type: none"> • Harmonious coexistence • Reduction of decision uncertainty and associated risk
	<p>Landlord-Tenant dispute over arrears of rent and demand for possession (Involved occupants of a block of 6 Nos 3 bedrooms flat at Ogba against their landlord). Dispute originated from a rent increase. Tenants ganged up and refused to pay new rent and subsequent years rent. Landlord's solicitor served tenants notice to quit with the jointly retained lawyers of the tenants challenging the validity on technical grounds. On wise counsel the property manager opted for mediation instead of litigation. Terms of settlement reached later filed via the walk-in route at the Lagos Multi-Door Court House by mutual consent of the parties and thereafter endorsed by an ADR judge.</p>	<p>Resolved after 4 mediation sessions at the citizen mediation centre. Terms of settlement thereafter signed with tenants apologizing to landlord and a slight adjustment on the revised rent made by landlord. Tenants agreed to clear two years outstanding rent each totaling N600, 000 in four installments spread over four months or vacate. Terms of settlement reached subsequently filed at multi-door court house and endorsed by an ADR judge and became an enforceable judgment. One tenant that defaulted was later evicted via this enforceable term of</p>	<p>-Free as services at the centre is free of charge. Parties represented themselves. -Minimal fee for landlord retained counsel that monitored the process.</p>	<ul style="list-style-type: none"> • Speedy resolution of dispute. • Restoration of pre-dispute relationship. • Restored vital rental cash flow the cessation of which had exposed the landlord to financial hardship. • Harmonious coexistence • Viability of real estate investment sustained. Reduction of uncertainty of decisions and associated risk. • Property manager that brokered the innovative dispute solution solidified business relationship with the landlord and earned full fees on all rent paid from a highly satisfied landlord.

		settlement that became a court judgment.		
	Noise pollution and environmental dispute between an aged landlady and a popular Pentecostal church in Nigeria. Both properties situate in Lagos mainland and adjoin each other with the landlady complaining about the adverse impact to her health of noise emanating from the church and which was against the State Environmental Laws.	Case referred from the Ikeja high court was resolved via Mediation after few sessions at the multi-door court.		<ul style="list-style-type: none"> • Restored pre-dispute relationship and harmonious coexistence. • Satisfaction with justice system • Reduction in parties' expenses and time. • Preserve corporate image of the church as matter was resolved without undue publicity. • Win –win decision process.
	Valuation fee dispute between an Estate Valuer and an oil company over fees on compensation valuation being carried out by the former. Oil company terminated the contract before completion and retained another valuer to complete on a fast track basis. Valuer's solicitor wrote demanding payment on quantum merit with threat of joining new valuer and stalling project. Matter	Resolved by arbitration after two months with fees paid after level of work done was established.	-Jointly paid by the parties. The speed made up for the high arbitration fees. The award became binding.	<ul style="list-style-type: none"> • Speedy resolution of dispute • Preservation of business relationship • Maintenance of confidentiality that would have been lost via litigation. • Reduction in party's expenses and time.

	went to a single arbitrator as provided by the contract.			
	Vacant possession of purchased property. Dispute involved a banker who secured credit from the employer (a commercial bank in Nigeria) to purchase investment property and the two inherited tenants from the former owner already on notice to quit.	Resolved through strategic negotiation after careful cost-benefit analysis undertaken by the banker's Estate surveyor who brokered the sale. Purchaser funded 50% of the relocation cost of the tenants	-No clear ADR cost other than the cost of relocation which the benefit far outweighed whatever cost that would have arisen.	<ul style="list-style-type: none"> • Speedy resolution of dispute • Reduction in party's time and expenses • Cash flow and viability projection sustained • Project time line maintained • Harmonious co-existence • Win-win decision process

5.0 Summary of findings and policy implications

Disputes in real estate business and investment create situations of uncertainty and constitute a distinct type of risk. As evident from the analysis of the disputes that were “resolved” through litigation as compared with those channeled to ADR mechanism, this study concludes that when such disputes are not speedily resolved and allowed to linger at the courts, the socio-economic impact on the investor and the real estate investment is enormous. For instance in the cases that were analyzed under litigation, there was a cumulative loss of investment and loss of return on investment estimated at over ₦ 2,000, 000, 000.00 by professional estate surveyors and valuers. In addition, the viability of real estate investment becomes jeopardized as the projection of cash flow estimates is affected as well as poor maintenance and progressively dilapidated real estate asset due to prolonged exposure to weather elements. This may eventually lead to demolition of real estate investment. In addition, the emotional trauma suffered by the property owners from continuous sighting of their investment being vandalized as evidence pending site visit by the judge and injunctions from the courts for status quo to be maintained before the determination of cases do not create an environment for any investment to

grow. There is no certainty about the direction of court judgment and this has its associated risk in real estate investment. Litigation destroys relationships as litigants see themselves as enemies, leads to harassment and intimidation when one party has more economic power than the other party. Some may even lose their lives in the process of litigation especially in cases involving retirees who could not stand their real estate investments made throughout their productive lives been foreclosed by a financial institution. The goal of realizing real estate investment becomes very doubtful in uncertain and very risky situations created by litigation processes.

On the other hand when disputes are resolved through alternative dispute resolution (ADR) as seen from the analysis, the expenses incurred during litigation are eliminated, there is speedy resolution of disputes while the viability of real estate investment is sustained when the rental cash flow continues during the course of the dispute resolution. The duration of resolution is highly predictable and certain thereby creating and sustaining investors’ confidence in real estate investment through collaborative decision process as well as preserving good relationship amongst real estate investors and contracting parties and stakeholders.

In order to mitigate real estate dispute risk, we call on all real estate

investors, stakeholders, policy makers, regulatory bodies in real estate investment and professionals especially estate surveyors and valuers to embrace the use of ADR in the resolution of the multifarious real estate disputes.

Secondly, ADR should be enshrined in all real estate contracts from lease/tenancy agreement, property management agreements, memorandum of sales/understanding, service level agreements, sales contract, valuation contract, facility management contract, real estate development etc.

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Multi-level ADR clauses avail parties more flexibility and better the chances of dispute resolution along the value chain.

Thirdly, the Lagos Multi-Door Courthouse should expand the scope of operation to cover the four divisions of the Lagos High Court in place of the present central location at Lagos High Court Igbosere and access to justice is bound to be improved by the adoption of ADR method of dispute resolution which is more business friendly and better for real estate business and investment.

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