**WHAT IS MEDIATION**

**INTRODUCTION:**

Mediation, is an Alternative Dispute Resolution (ADR) mechanism, a way of resolving disputes peacefully in Nigeria. The mediator’s authority was hinged on his standing and the respect accorded to him in the community. In the Nigerian traditional societies mediation was used as a tool for preserving cultural norms and values. Mediation prevented disputes from festering, maintained peace and preserved traditional values.

The court system was introduced with the advent of colonialism and urbanization. Urbanization relegated mediation to the background though customary ADR is still recognized in the Nigerian Legal System.

In the case of Okpuruwu vs. Okpokam the Honourable Justice Oguntade JCA (as he then was) observed thus: -

“In the pre-colonial times and before the advent of the regular courts, Our people (Nigerians) certainly had a simple and inexpensive way of adjudicating over disputes between them. They referred them to elders or a body set up for that purpose. The practice has over the years become strongly embedded in the system that they survive today as custom”

Mediation in Nigeria has developed into a more structured process and within a legislative framework. The Nigerian Arbitration and Conciliation Act Cap A18 Laws of Federal Republic of Nigeria (LFN) 2004, (the “Act”) an adoption of the UNCITRAL Model Law on International Commercial Arbitration was enacted in 1983.

 The third schedule of the Act contains the Uncitral Conciliation Rules. The Rules apply to conciliation of disputes arising out of or relating to a contractual or other relationship where the parties seeking an amicable settlement of their dispute have agreed that the conciliation rules apply. The Act like the Model Law does not define conciliation

However conciliation in Nigeria is often used synonymously with mediation Alternative dispute resolution as an alternative to imposed / rights based decisions (e.g. arbitration and litigation) is encouraged and promoted by our various High Court Laws, the rules of court and the government. Mediation continues to be a tool in Nigeria for the resolution of disputes in an amicable manner at less cost usually on a win-win basis and with the benefit of face saving. Mediation encourages the restoration of the relationship of the parties and avoids it being prejudiced by a “battle” before a court or tribunal with power to impose a decision.

Unfortunately having been exposed to the court system Nigerians appear to have adopted a culture of litigation. Active steps are being taken to encourage and promote the use of ADR.

**MEDIATION AND THE COURTS:**

The Nigerian Legal System has always recognized the compatibility of ADR with the court system. From the inception of the court system there have been provisions in the Laws of Nigeria enjoining Judges to encourage reconciliation between the parties. There are specific provisions in the High Court Laws in this respect. Section 24 of the High Court Law of Lagos State chapter H3 Laws of Lagos State 2003 states thus: -

“Reconciliation in civil cases: In any action in the High Court the Courts may promote reconciliation among the parties thereto and encourage and facilitate the amicable settlement thereof! : Section 25 also states thus Reconciliation in criminal cases: In criminal cases the High Court may encourage and facilitate the settlement in, an amicable way of proceedings for common assault or for any other offence not amounting to felony and not aggravated in degree, on terms of payment of compensation on other terms approved by the court.

Nigerian courts have come to a realization of the role of ADR quite aside from imposed decisions in an effective justice delivery system. The Nigerian government has tried to promote mediation. The lawyers have contributed to the promotion of ADR and the multi-tiered dispute resolution clause with mediation as a prior step to arbitration or litigation is becoming increasingly popular in contracts. The Nigerian legislative framework is being revamped to ensure that the system adequately responds to modern challenges in the field of mediation. There has also been an appreciation of the need for training in mediation to meet modern challenges High priority is being accorded to attaining the highest standard of practical training in mediation and developing the requisite skills. Indeed there is an appreciable number of CEDR UK accredited mediators in Nigeria. The quest to keep with up modern training needs and skills acquisition is being driven by lawyers.