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Alternative Dispute Resolution Strategies in Business: A Case of Companies Listed at the Nairobi Securities Exchange

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Abstract

The objective of the study was to analyze the alternative dispute resolution strategies used in business. It was limited to companies listed at the Nairobi Securities Exchange in Nairobi, Kenya. Businesses have found the traditional court system to be costly, time consuming, formal, rigid and lacking in confidentiality. Further, as business is often conducted in space with no obvious boundaries coupled with cross border deployment of assets, enforcing court orders has posed challenges. The research design that was used was the census design. The study used primary data which was collected through a structured questionnaire comprising of closed and open-ended questions. It was found that organizations are increasingly employing Alternative Dispute Resolution (ADR) mechanisms which include arbitration, mediation, facilitation and training as a means of solving disputes. Focus should however be on "appropriate" rather than "alternative" dispute resolution strategies. It would be crucial to incorporate ADR in the school syllabuses.

Keywords: *Traditional Court System, Alternative Dispute Resolution, Cross Border Business, Nairobi Securities Exchange*

1.0 Introduction

1.1 Background of the Study

Scimecca (2013) traces the origins of the ADR movement back to the year 1976. During this time, the "National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice" was sponsored by Bar Association of America. The conclusion drawn by the conference was that there was pressure on the already congested traditional court system, which could be reduced by applying methods of dispute resolution that are alternative. Thus the acronym ADR was adopted as a principal concept of resolution of disputes and management of conflict. ADR has indeed been domesticated. In Kenya, this concept is enshrined in the Constitution of Kenya, 2010.

Conflict is inevitable in virtually every aspect of business. Conflicts may arise out of product development, operations, finance, production, marketing, sales, mergers, contracts, shareholder relationships, loans, client relations, employment, accidents on the premises and other foreseen and unforeseen events (Pidgeon & Henwood, 1997). Accordingly, businesses must be able to develop effective conflict avoidance strategies and techniques for efficient conflict resolution. The result of failure to do this is a direct adverse impact upon profitability through costly litigation, wasted human and organizational resources, reduced competitiveness, possible state regulation.

Bingham and Chachere (2011) are of the view that workplace conflict management systems that are based on ADR have become very widely accepted. According to them, by 2011 in the United States about fifty percent of the major private businesses had in place workplace conflict management systems that are based on ADR.

A major reason for organizations adopting ADR is that with the passage of time, statute has made available to employees that are aggrieved more rights and remedies and the incidences of employees often having an upper hand in the event of a dispute have been on the rise (Lulofs & Cahn, 2000). As a fallback position, organizations are resorting to ADR. The implication is that organizations are adopting ADR in order that they may retain, to a predictable extent some degree of control of not only of the process but also of the outcome as well.

Lipsky *et al.* (2003) are more reserved in their approach to this issue. They are of the opinion that four key trends exist that have resulted in the shift towards ADR mechanisms. The first of these is that there has been dissatisfaction with the judicial system. According to them, the attitude towards the courts and legal agencies and institutions by many people has been that of hostility. The second is that the procedure in the courts has been said to be adversarial (winner take all) with a lot of emphasis being laid on technical procedure. They identify the third trend as a desire for the reduction of destructive conflict levels. Indeed this is one of the main reasons that organizations elect to introduce conflict management systems that are ADR based. The implication is that organizations that have put in place systems that are based on ADR did so in the belief that they would go a long way in reducing levels of

conflicts that are destructive at the workplace. The fourth trend that is advanced by Lipsky *et al.* (2003) is that reduction or elimination of regulation coupled with the move towards a market economy and increased competition have compelled organizations to reexamine how effective their operations are.

Both groups of researchers have however overlooked an important reason for organizations adopting ADR systems. This is the confidentiality and discreetness with which they would like their conflicts to be handled away from the glare of the public and the media, thereby avoiding adverse publicity (Wertheim, Love, Peck & Littlefield, 1998). The confidentiality and discretion offered by ADR systems is therefore a strong ground for organizations adopting them.

In Kenya, traditional dispute resolution mechanisms existed long before independence in 1963. These mechanisms still exist to this day, more so in the country side. Most of such disputes will be presided over by the Councils of Elders or its equivalent. Among the Ameru community for instance, such a body is known as the *Njuri Ncheke*.

1.2 Statement of the Problem

Alternative dispute resolution provides a more expeditious, more cost-effective, less formal and confidential alternative to the traditional judicial or court system. These advantages are the reason many major businesses today opt to resolving their disputes away from the traditional court and apply either one or the several alternative dispute resolution strategies available (Dietz, 2007).

In addition to the above, the opening up of hitherto "closed" economies, such as China and the conduct of business in the so called global village has had the effect of many organizations increasingly deploying their assets and conducting their affairs in many different jurisdictions contemporaneously (Syagga, 2011). In the process they expose themselves to unfamiliar laws, regulations and business practices of other countries. Different countries will often handle their disputes, differences and claims differently. In this kind of scenario, one would imagine that businesses with multinational presence will retain knowledgeable and experienced legal practitioners to draw contracts, assist in their interpretation and get involved in settlement of disputes or resolution of conflicts. However even then, this may be difficult due to what is known as conflict of (municipal or domestic) laws of the different countries. In other words, what may be legal in Kenya may be illegal in another country and vice versa.

It is apparent that dispute resolution strategies play a very vital role in facilitating and ensuring smooth commerce. The methods and processes applied in resolving conflicts are fairly predictable (Kanyinga 1998). The rationale or the criteria used in arriving at the country that will exercise jurisdiction and to which the parties to the dispute will submit will be more acceptable if unanimously selected. It would be easier to pre determine the cost of the procedure which would no doubt be lower. As opposed to

litigation, the enforceability of outcomes of ADR is easier. That the parties are often involved not only in the process but also in the outcome makes it more appealing and acceptable, and will more likely ensure continuity of business relationships or commercial transactions (Henrysson & Joireman, 2009). Where transactions take place in an environment that is electronic, over and above the challenges associated with cross-border resolution of disputes that stem from the fact that the transactions are carried out in a space with no tangible geographical connection, it is difficult for the usual application of the element of jurisdiction to be applied in any manner that is predictable (Fonmanu, Ting & Williamson, 2003). As a result, as electronic commerce increased in terms of the number and volume of transactions, businesses have resorted to dispute resolution methods (ADR) alternative to the court system. Other advantages of ADR are more convenience and less wastage of resources, a higher amount of flexibility and higher level of specialisation depending on the sector. It is not unusual to, for instance, find an engineer who is an arbitrator. As ADR is based on mutual agreement that takes into consideration effective balance of interests, the degree of compliance will be much better. Following the above, mediation and arbitration or the other known methods of dispute resolution as the first port of call, will be provided for in contracts.

1.3 Objectives of the Study

The specific objectives of the study were follows:

i. To determine the effect of arbitration as an alternative dispute resolution strategy in business by companies that are listed at the Nairobi Stock/Securities Exchange
ii. To assess the impact of mediation as an alternative dispute resolution strategy in business by companies that are listed at the Nairobi Stock/Securities Exchange
iii. To determine the role of facilitation as an alternative dispute resolution strategy in business by companies that are listed at the Nairobi Stock/Securities Exchange
iv. To assess the contribution of training as an alternative dispute resolution strategy in business by companies that are listed at the Nairobi Stock/Securities Exchange

1.4 Research Questions

i. How has arbitration affected alternative dispute resolution strategies in business by companies listed at the Nairobi Stock Exchange?
ii. How has mediation impacted alternative dispute resolution strategies in business by companies that are listed at the Nairobi Stock Exchange?
iii. What is the role of facilitation in alternative dispute resolution strategies in business by companies listed at the Nairobi Stock Exchange?
iv. To what extent has training contributed to alternative dispute resolution strategies in business by companies listed at the Nairobi Stock Exchange?

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2.0 Literature review

2.1 Theoretical Literature Review

2.1.1 Negotiation theory of Disputes and Conflict

Negotiation theory was advanced by Fisher & Ury (1991). A crucial characteristic of this theory is that it moves the parties from the tendency to bargain from the point of position to the point of interest. It in effect discourages parties from taking a "hardline stance", which stance is more often than not merely taken for the sake of satisfying one's ego and which often has no bearing on the general objective of resolving a dispute, to a more reasonable position of dealing with interests away from the self. Some of the foundations of negotiation theory are decision analysis as well as negotiation, strategic, process, integrative and behavioral analyses.

In their definition of interests, Fisher and Ury (1991) state these to be the concerns and needs of the disputing parties that must be met if they will be comfortable with the outcomes. Identifying interests or sets thereof between or among the parties that overlap is the beginning of finding outcomes that are acceptable to both or all. This, according to Kruk (2000) is the bedrock of mediation.

2.1.2 Communications theory of Disputes and Conflict

Communication theorist Craig (2011), says in his essay 'Communication Theory as a Field' that 'communication theory' cannot be said to cover a specific area of study. According to him pillars of communication theory are the strategic use of questioning, reflection as well as neutral and neutralizing language. The concept of information transfer is central to all the ways in which communication is conceptualised. That is, information that originates in one part of a system is formulated into a message that is transmitted to another part of that system. In its most basic form, communication by humans may be said to be the process by which ideas contained within one mind are conveyed to other minds (Fisher & Ury, 1991).

2.1.3 Social Theory of Disputes and Conflict

There has been occurrence of disputes in human society since time immemorial. These have been caused by divergence of interests in different spheres of human activity. A major challenge however has been how to assess the quality of different dispute resolution mechanisms and how to rate one against the other. Attributes such as the fairness of the process, the judiciousness (how just it is) and the durability of the outcome, the cost and the level of involvement of the stakeholders do not exist uniformly in the different dispute resolution methods.

While theorists such as Leonard Riskin *et al.* (2005) define disputes as manifestations of conflict arising from "a clash of interests or aspirations, actual or perceived", others such as Karl Marx attribute disputes to the social system. Despite the challenges discussed above, scholars such as Goldberg *et al.* (2003) vouch for a "hybrid dispute

resolution process" that involves the application of existing methods in different measures or ratios.

2.1.4 Political Theory of Disputes and Conflict

The very ideology of democracy actively promotes an environment in which differences such as encouraging diverse opinion and expression of ideas will thrive. In a perfect democracy therefore conflict would be eliminated. In a democratic society therefore, the primary objective is to create, through the same democratic processes, structures, skilled personnel, policies, enforcement procedures, and mechanisms that would maintain peace and tranquility. Conditions of conflict will themselves help to single out the current challenges of the society and highlight areas require to be given attention by legislation. It is thus a continuous process that holds true more with the emerging democracies.

It has been argued that while disputes revolve around interests that are in conflict but are capable of negotiation, conflict revolve around non-negotiable issues of basic human needs, hence a dispute is "settled" while a conflict is "resolved". There has however been failure in both communist and capitalist systems. Capitalism has led to an increase inequality of resources, which has in turn created economic and social problems. Communism on the other hand has relied on the assumption that is really idealistic, of working for social good but not for reward, which has not worked in the regime of supply and demand.

While with time new techniques have been developed in dispute management and settlement, the main hope in conflict remains prevention. However, the ultimate goal for dispute settlement and conflict resolution or prevention, is social harmony.

2.2 Empirical review

2.2.1 Arbitration as an alternative dispute resolution strategy

In the words of Cahn and Abigail (2007) arbitration is the process in which an impartial third party grants to both sides of a dispute a hearing and in the final analysis arrives at a ruling that is usually binding. They add further that an arbitral award usually has no avenues of appeal. The ruling, which is known as an (arbitral) award, can be referred to the courts for enforcement in the same way that judgments or orders of the courts are enforced or executed.

Disputing parties arrange the time and place of hearing making the process predictable and flexible compared to court proceedings. Arbitration can be described as court like sitting in which evidence documentary or otherwise is adduced and witnesses called to testify. It is held in a confidential manner away from the glare of the public and court reporters. Decisions are made in conformity with the law, in our case the Arbitration Act No. 4 of 1995, Laws of Kenya (As amended in 2009). After listening to each party and examination of written materials and other evidence relating to a case, an arbitrator makes a determination of who is entitled to the award or how a conflict should be resolved.

One of the advantages of arbitration is that it can lead to a quicker delivery of awards while enjoying privacy and confidentiality hence "no dirty linen is washed in public". Yet another advantage of arbitration is that it is more often relatively cheaper than litigation (Slaikeu & Hasson, 2015). Very often the parties do not have to hire legal representation. An important attribute of arbitration is that the award is final. As further appeals are not envisaged, this means that the process comes to an end quicker.

Arbitration also has its share of disadvantages. One of them is that when parties are represented by lawyers, delaying tactics and complex legal arguments are imported into the arbitral process, thus losing the benefit of informality and speed. That it follows the adversarial system (where the parties are hostile to each other and consider themselves enemies) is yet another disadvantage of arbitration In the adversarial system, the outcomes are win-lose or winner takes all (Bertalanffy, 1968). In the description of Lulofs and Cahn (2000), what this means is that arbitration delivers outcomes that would suffice as conflict management as opposed to conflict resolution.

2.2.2 Mediation as an alternative dispute resolution strategy

According Kruk, (2000) mediation can be described as a conflict resolution process that is collaborative. In it, two or more parties to the dispute are taken through the deliberations by a third party who is neutral and impartial. The disputing parties are allowed to partake of the proceedings and without being coerced or influenced arrive at their own settlement of the dispute that is acceptable to them. Alternatively, they may suggest how they would want the dispute to be resolved. The mediator puts in place a structure and facilitates the process in which the parties participate in making their own decisions (Boulle, 2009). The parties determine the outcomes in a way that satisfies the interests of both or all of them in the dispute. As opposed to arbitration as earlier discussed, mediation is not adversarial and seeks to present a win-win outcome.

Several reasons have been advanced as to why organizations opt for mediation. Goldman *et al.* (2008), state that one useful aspect of mediation is that even after the process, the relationship of the parties will continue. Mediation also provides the opportunity for an expeditious settlement, and as opposed to a court hearing will keep expenses under control. Another important aspect of mediation is that it will help keep the dispute, the process and the outcome confidential. According to Goldman et al. (2008) organizations have historically been reluctant to resort to mediation where staff matters are involved. A number of the reasons that employers are not quick to embrace mediation are as follows; cases which in their view do not have merit, where the employers are likely to have to pay money, where the aggrieved staff is viewed with doubt or suspicion when it comes to the likelihood of striking a compromise and where the employee is suspected or deemed to be dishonest. The employer will also be reluctant to resort to mediation where it feels that it is granted protection by the law that is sufficient and express. In other words, where the employer is expressly protected by statute, why would it be necessary for it to expose itself or compromise its position by subjecting itself to mediation? It would be superfluous to go down that road.

The major strength of mediation according to Kruk (2000) is that it is a process that is collaborative which allows for the participation of the parties and will be deemed to have succeeded only when the outcome is a win-win as opposed to a win-lose or winner takes all situation that is associated with litigation. This strong point of the mediation process that it leads to the parties increasingly perceiving that they have at least achieved justice that is associated with procedure as they will be allowed to participate in it, was advanced by Ross et al (Ross & Conlon, 2000). Not only will the parties be involved in the outcome, but will be involved in the process that leads to outcome as well. They will thus participate in both the procedure as well as the substance. Mediation is popular in the workplace due to its effectiveness. According to Masters and Albright (2002) statistics on mediation in employment disputes in the US reveal that around 70 percent of disputes are settled. This is supported by research from Goldman, Cropranzo, Stein and Benson (2008) which shows the rates of settlement to be between 60% and 78%. It is even further supported by Brett, Barsness and Goldberg (2009). They state that satisfaction rates following workplace mediation are 75% or more. On the contrary however, other studies have shown that these satisfaction rates have the tendency to be short term. Pruitt, Pierce, McGillicuddy, Welton and Castriano (2013) studied 73 mediations and interviewed the participants both in the short term and in the long term. The conclusion that they arrived at was that there exists no direct relationship between short term satisfaction of the outcomes of mediation with the long term satisfaction. The critical features of mediation are the neutrality and that the parties participate in the outcome (Wing, 2009).

2.2.3 Facilitation as an alternative dispute resolution strategy

Facilitation (or group facilitation) is generally considered to be a process by which a neutral third party guides the disputants into dealing directly with each other in a manner that is fruitful. Facilitators can either work with small groups from one institution, or with representatives of different organizations (Boulle, 2009). These representatives will usually work together in a process that is collaborative. The facilitator may be sourced internally or externally, that is from within or without the organization. The facilitator usually leads the group process by helping employees to improve and open their communication channels, resolve the issues at hand, and ultimately arrive at decisions. There are many advantages of facilitation and examples are; helping groups to reduce tensions, to stay on track, and to be more creative, efficient, and productive.

Facilitation can be very apt where the meetings involve large groups of people. The reason is that such groups can be quite difficult to organize and control, more so when proceedings are in ongoing. The most ultimate goal of a facilitator is the help to members of a group to get to know each other and develop the attitude of cooperation in the group. A skilled facilitator can lead a meeting by helping the groups to focus the energies and thoughts of participants on the task at hand. Further, facilitation is extremely useful in helping members of large groups to develop consensus on issues (Spangler, 2003).

2.2.4 Training as an alternative dispute resolution strategy

The findings of the CPP Global Human Capital Report (2008) showed that training makes the most impact in arriving at outcomes from conflict that are quality (CPP Global Human Capital Report, 2008). The reason is that it springs into action long before the conflict has escalated to destructive levels. It is therefore preventive rather than curative. For this reason it is most probable that it ranks higher than the other ADR based conflict management methods at the workplace that are focused on repairing damage that has already taken place. Training has the potential of forestalling conflicts before they actually take place.

Training of staff in the management of conflict was found to be very effective; The CPP Global Human Capital Report (2008). The findings of the CPP showed that 95% of the respondents to their questionnaire who had undergone some form of training were in agreement that the training they had undergone had assisted them in one way or the other. In addition, approximately 58% of those respondents who had undergone training stated they now anticipated a win-win outcome from conflict resolution process. The indication given was that training was highly influential in changing staff attitudes and culture about disputes and conflict. Thus training in conflict resolution in organizations should not be a one off but a process that is continuous.
Avruch (2009) is of the view that training should be a continuous process which should be incorporated into the standard or formal system of education. In Norway for example, conflict resolution has been incorporated and is now, as part of the curriculum, being taught in schools. As stated above, training of staff in skills that would help them resolve conflict is probably a strategy that would make training rank higher than all the other methods of ADR. The reason is that it has the ability to hold at bay conflict at the workplace before it escalates to levels that may be destructive. The reason is that it has an attribute of being preventive rather than curative. However statistics have shown that it is rarely used by organizations. The reasons range from the cost to challenges with staff retention. A trained workforce has high mobile. Organizations have endeavoured to solve the issue of staff mobility by bonding the staff that has been trained using the organization's resources. Despite the bonding however, it is difficult to compel a staff who has found greener pastures to stay without the feeling that his basic rights and freedoms of association and movement are being curtailed.

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2.3 Conceptual framework

Independent variables **Dependent variable**

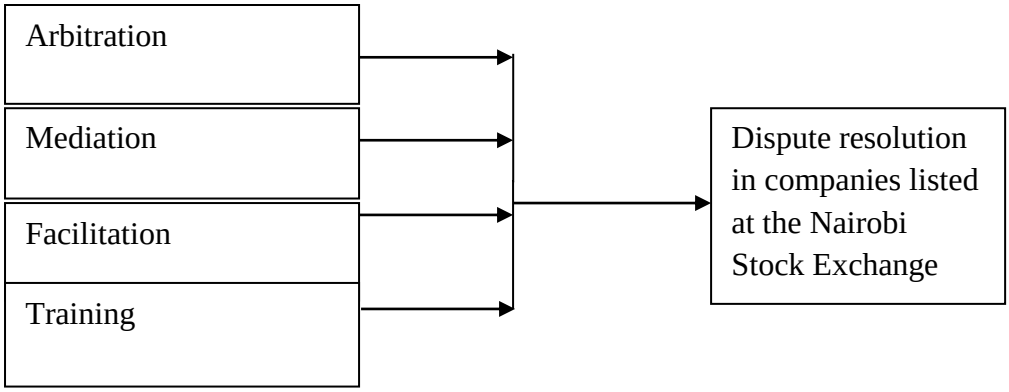

Figure 1: Conceptual Framework

2.4 Operational framework

Table 2.1 Operational framework

Variables	Indicators	Measurement
Independent Variable		
Arbitration	- Legal framework - Lawyers - Law enforcers	Questionnaire using 5 point Likert scale
Mediation	- Non-coercive intervention - New and shared perception - Equality of opportunity	Questionnaire using 5 point Likert scale
Facilitation	- Concession and compromise - Harmonization of interests - Recuperation and reinsertion	Questionnaire using 5 point Likert scale
Training	- Seminars - Workshops - Academic training	Questionnaire using 5 point Likert scale
Dependent Variable		
Dispute resolution strategy	- Minimizing conflict - Decision making - Business continuity	Questionnaire using 5 point Likert scale

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3.0 Research Methodology

The research design that was used was the census design whose aim was to establish the alternative dispute resolution strategies used in Kenya by companies listed at the Nairobi Securities Exchange. The population that was targeted by this study consisted of public relations/corporate officers of all the 63 companies listed at the Exchange.

The study used a structured questionnaire as the major tool for data collection. The questionnaire was divided into two segments where section A consisted of questions relating to biographic information while sections B to E consisted of questions addressing all the four variables. The reason for selection of this tool was that it was capable of gathering facts from the population, it was concise, and time saving, easy to analyze. A pilot study was conducted to test for clarity and understanding of questions and also to find out whether the questions would yield the answers expected. The researcher selected a pilot group of 5 individuals from the target population. The pilot study also enabled the research instrument to be tested for validity and reliability. A coefficient of 0.70 was obtained which implied that there was a high degree of data reliability.

4.0 Key Results and Findings

4.1 Arbitration

4.1.1 Extent of use of arbitration at the workplace

Table 4.1.1: Extent of use of arbitration

Very Low Extent	Low Extent	Moderate Extent	High Extent	Very High Extent
8%	12%	17%	38%	25%

The table above shows that 38% of the respondents indicated that arbitration was used in the organizations to a high extent. This was followed by those who indicated that it was used to a very high extent at 25%, followed by those who indicated that it was used to a moderate extent at 17%. 12% of the respondents indicated that arbitration was used to a low extent while 8% indicated that it was used to a very low extent.

4.2 Mediation

4.2.1 Extent of use of workplace mediation at the workplace

Table 4.2.1: Extent of use of mediation at the workplace

Low Extent	Moderate Extent	High Extent	Very High Extent
8%	12%	40%	20%

From the findings in the table above, it was noted that a majority 40% of the respondents indicated that mediation was used to a high extent. This was followed by those who indicated that mediation was used to a very high extent at 20%. 12% of the respondents indicated that mediation was used to a moderate extent while 8% indicated that mediation was used to a low extent.

4.3 Facilitation

4.3.1 Extent of use of facilitation

Very Low Extent	Low Extent	Moderate Extent	High Extent	Very High Extent
4%	8%	30%	38%	20%

The results show that facilitation was used to a high extent as indicated by 38% of respondents. 30% indicated it was used to a moderate extent. 20% indicated it was used to a very high extent, 8% indicated to a low extent while 4% indicated facilitation was used to a very low extent.

4.4 Training

4.4.1 Extent to which training is used as a mechanism of alternative dispute resolution

Table 4.4.1: Extent of use of training

Very Low Extent	Low Extent	Moderate Extent	High Extent	Very High Extent
17%	36%	24%	13%	10%

The findings show that a majority at 36% of the respondents indicated that training was used to a low extent. 24% indicated that it was used to a moderate extent while 17% indicated to a very low extent. 13% of the respondents indicated that training was used to a high extent while 10% indicated it was used at a very high extent.

5.0 Summary of Findings

5.1 Arbitration

Arbitration is a mechanism that was highly used in the organizations. It was used almost exclusively where relationships were commercial, as businesses sought to resolve disputes in a more expeditious, less expensive, less formal and less adversarial manner. It was also to a certain extent used to settle individual disputes within organizations. In a good number of instances, neither side needed to hire an advocate.

Since arbitration was not conducted in public, it provided a much greater level of privacy for the disputing parties. Arbitration hearings were found less formal than courtroom hearings, as they would be conducted in a conference room or an office rather than a courthouse. Further, arbitrators were often more flexible and worked around the schedules of the parties rather than be tied to the diaries of the courts. With arbitration, that unpredictability of both the process and the outcome, compared to a formal court hearing, was minimized.

While Arbitration might be advantageous for cost effectiveness, privacy, time constraints and other factors, it is not beneficial towards ensuring improved employee relationships for achieving organizational goals as it adopts an adversarial 'winner takes all' approach of court litigation.

5.2 Mediation

Mediation too has found a place in organizations as far as alternative dispute resolution mechanisms is concerned, as it was found to be gaining ground in usage. It was found to be even less formal than arbitration and the parties were more involved in not only the process, but also the outcome as well. Unlike arbitration whose award can be enforced by a court of law, mediation was found to be largely voluntary and non-binding. It was however found to be cheap, flexible, confidential and fast.

Mediation was stated to provide a more rapid response to conflict that could nip disputes that are potentially destructive in the bud, so to speak, thereby reducing levels of grievances. In the assessment of this study, it was found to be just a step before arbitration.

5.3 Facilitation

Facilitation was found to be a component of alternative dispute resolution and was used where a large number of parties were involved. It was found useful for the reason that meetings where large groups of people are in attendance can be very hard to organize and regulate or control, more so when deliberations were in progress. The more tempers flared, suspicions arose and issues become unclear. It was found that a mediator would cool down tempers, remove suspicions, improve the flow of information and offer procedural guidance which would assist the parties develop consensus around issues and arrive at a resolution. A good facilitator would even break the ice by causing introductions to be done and setting the environment for cooperation.

5.4 Training

Although training was found to be more effective, it was however not used by organizations as often as would be expected. A trained workforce was stated to be better equipped in terms of being able to identify the common causes of conflict and how to overcome them. Training was found to have the potential of reducing destructive workplace conflict, thereby saving the organization the time consumed by engaging in dispute resolution procedures. The reason it was not often used was that not only is it expensive, but also that trained workers were more marketable to other

organizations that would want to tap into a workforce that has already been trained at someone else's expense.

6.0 Conclusion

As conflict is inevitable in and is part and parcel of human interaction, businesses must learn to cope with and manage it, to deal with it in a way that will prevent escalation. They must also learn to mitigate against destructive conflict, and to formulate appropriate, innovative and creative ideas to resolve conflict. This has been necessitated even more by the need by companies to avoid adverse publicity, high cost, time wastage and to be able to predict not only the process but where possible, the outcome as well. The cross border deployment of resources or the negotiation and execution of contracts outside the purview of the obvious international boundaries have further made the use of the traditional courthouse inappropriate.

Organizations are now increasingly employing Alternative Dispute Resolution (ADR) mechanisms studied above as a means to meet the said needs. With more and more people being aware of ADR, and with its obvious benefits over traditional litigation, it is apparent that the use of ADR is on an upward trend and in future it is likely to be very widely applied.

7.0 Recommendations

Though as seen above not only is ADR gaining ground but also momentum, the study has also shown that there is a great number of people who are either not aware of it or are yet to completely embrace it. People, including those in the workplace, are often resistant to change. One way of tackling this challenge is to incorporate ADR in the school syllabus from an early stage. More emphasis however needs to be laid on the curriculum in the universities law schools. Currently such training is offered by the Chartered Institute of Arbitrators and is open to members of different professions, including engineers. Further, it would be helpful that the persons in charge of human resources in businesses be given some training in ADR. This will also help to change the culture to the effect that dispute resolution ought to be of necessity adversarial as in traditional litigation. Apart from the advantages of ADR seen in this study, it is a matter of common notoriety in this country that the number of cases filed in the courts daily, by far outweigh the resources available in terms of facilities and judicial officers to hear and determine them.

The Chief Justice and the President of the Supreme Court of Kenya has been in the news many a time admitting the existence of the challenge posed by the backlog of cases and the efforts and strategies put in place to address it. Even the appointment of more judicial officers and the construction of more courts have not had the effect of easing the backlog. Indeed, the Judiciary itself has come up with a court based dispute resolution committee. That is just how serious the problem is. As seen elsewhere in this study, even the Constitution of Kenya, 2010 seriously roots for ADR, including those presided over by village elders so long as their findings are not repugnant to justice or against public policy. The Law Society of Kenya itself had made and attempt to construct an ADR complex. Even practicing lawyers could embrace ADR as Arbitrators or Mediators. If this was to be actualized then would disputes not only be resolved faster, more cheaply and conveniently, but the pressure on our courts

would also be greatly reduced. As has been discussed in this study, rather than dwell on the strength or otherwise of each dispute resolution mechanism, it would be more useful to remember that they are not cast in stone and can be applied in combinations and ratios as the circumstances may require.

8.0 Suggestions for Further Studies

Further studies should be carried out on the relationship between the conflict management systems applied in organizations on one hand, and their effect on profit (which is the core purpose of businesses) on the other. It would also be useful to make an attempt at the scientific measure of the quality of each mechanism and how one mechanism rates against the other.

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