
Kluwer Mediation Blog

The New Role of Judges

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With the decrease in self help as a means of resolving disputes several have sought the traditional courts for the resolution of their disputes but with much anguish as the cases continually drag till the judgment when it is, for the most part, at best nothing more than a pyrrhic judgment. This is more hard felt in commercial transactions where time is of the essence and business relationships could be burned by acrimonious and long drawn disputes. The tide however is turning though slowly but surely with the introduction of the multi-door courthouse system. The multi-door Courthouse system is an idea promoted by Harvard Professor, Frank Sander which envisioned a courthouse that did not provide litigation as the only door to dispute resolution but a wide array of 'doors' for the resolution of their dispute. These doors would include mediation, arbitration, med-arb, neutral evaluation etc. The bug of the Multi-door courthouse system is on cruise control in Nigeria with the Negotiation and Conflict Management Group setting the pace with the establishment of The Lagos Multi-Door Courthouse Multi-door in 2002 and many other States in the country replicating the concept.

In the emerging dispensation, several aspects of the current justice delivery system will need to be re-tweaked to make them compatible to emerging trends and demands of commercial transactions of the twenty first century. One major rethinking is our view on the role and modus operandi of the judge in the new dispensation. The judge prior to this time has been viewed in various jurisdictions as an unbiased arbiter whose job is to listen to the case of each party before him and decide based on cold deduction from the facts of the case. The judge is severally admonished against sympathy or going beyond the evidence as laid out before him and the argument put forward by the counsel of the parties. What therefore occurs is that parties try to tell the most convincing stories and employ the most eloquent of advocates in order to assure of victory in the court. This situation is not helped when consideration is given to the fact that the system of adjudication promotes a winner takes all system. This is one major reason for the delays witnessed in justice delivery system to date. What then is the role of the judge in today's borderless world?

The judge of the new era must view himself more as a project manager in the legal profession. The project here is reaching the justice of the matters before him. Like a good project manager he must lead and be seen to be in charge of the process of reaching this end. The judge must set a timeline for this project which is specific, measureable, achievable and realistic. This timeline must be communicated to every participant in the process particularly the parties and their counsel. In fact the timelines need to be drawn up with active participation of the parties and/or their counsel while the judge maintains leadership and control. During the course of the resolution, the judge must also seek to ensure the parties stick to the agreed timeline without compromising a party's right to be

heard. This would require new skill sets for today's judge who is used to letting the tide flow until it reaches the point of judgment. Such skills include strategic thinking, effective communication, personnel management and proactive administration.

A second role for the judge of the new dispensation is that of a case manager. While this is similar to the earlier point made, the difference becomes apparent as reaching the point of justice, the judge ought to consistently determine which door is relevant. From the inception of a case before the judge of the new dispensation, he determines whether given the particular facts before him, the matter ought to pass through litigation, mediation, arbitration or other means of dispute resolution. Furthermore, during the course of a suit, the judge must keep in mind that his role or the necessary method of resolution may need to be changed in order to reach the justice of the matter. The judge as a case manager must shepherd the case through any track or door available in the court system and required for reaching justice in the particular matter before him. As indicated earlier justice must be the end so that the Judge may be described as a 'Daniel come to judgement' but alas, this must be timely, relevant and manifest judgment. Wishful thinking some will say! Hopefully someday, precedent will be no more than a very persuasive guide and not the authority in deciding an issue before the judge. I pray that day will be here soon!

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