
A Comparative Review on the Effectiveness of Alternative Dispute Resolution in Sub Sahara Africa

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Abstract

Dispute cannot be avoided among human beings, what is important is its resolution to sustain peace and tranquility for cordial relationship between the disputing parties. There are several methods of dispute resolution, these include mediation, conciliation and negotiation. The negotiation afford both parties a situation of openness and free expression for sustainable peace and harmony among the disputing parties. But this can only be achieved by being sincere, honest and resolute with the agreement reached, that is, holding on to, and abiding by the terms of the agreement. The success and failure of negotiation depends much on disputants behavior and perceptions during the negotiation process. Disputants struggle to resolve their differences by themselves at the bargaining table, unlike mediation and conciliation where disputing resolve their misunderstanding through the assistance of the neutral third party known as the mediator or the conciliator.

INTRODUCTION

Dispute is inevitable in every human organizations, it must be resolved to avoid its devastating effects on the organizational growth and accomplishments. Evidence from the existing studies shows that, an unresolved dispute often creates a situation where employees indulge in some deviant behaviors such as frustration or aggression, leading to the destruction of the organizational properties. An unresolved labor dispute may also encourage employees to quit their job in search of other new jobs (Oni-Ojo et al. 2014). This can directly affect the overall organizational accomplishment, growth and development due to the loss of qualified and experienced workers (Odoziobodo 2015; Bello & Kinge 2014). In addition to that, when labor dispute has consistently occurred in the organizations, employees may likely lose motivation and good moral to work. They may likely reciprocate to such dispute by not concentrating on their organizational tasks, or by reducing the quality and quantity of their performance, which can directly affect the organizational productivity (Booth, et al. 2016; Odoziobodo 2015; Oni-Ojo at el. 2014). For these reasons, labor dispute needs an urgent attention to strengthen employee's organizational performance, and to sustain cordial relationship between employees and employers in their places of work.

Empirical evidence (e.g, Heald, 2016; Maidald , 2015; Odoziobodo, 2015; Muhammad, 2014; Bello & Kinge 2014) shows that there are several methods through which dispute can be resolved. These include mediation, conciliation and negotiation. Although, several existing literature on the methods of dispute resolution in a developed countries such as United States of America and United Kingdom (see, Booth et al., 2016; Chand, 2015; Quoc Bao Vo and Radulescu, 2012; Gibbons, 2007; Goltsman et al., 2009; Bingham, 2004; Reif, 1990), as well as literature from developing countries such as Nigeria,

Kenya and South Africa (e.g, Shinde, 2012), have presented a factual evidence which shows that, mediation and conciliation have been successful in the resolution of labor dispute unlike negotiation. Therefore, the purpose of this paper is to highlight why mediation and conciliation method of dispute resolution have been successful in the resolution of labor dispute as compared to other alternative methods of resolution such as negotiation.

MEDIATION

Mediation is a process of dispute resolution with the assistance of the third party known as the mediator. The impartial and neutral mediators play an important role in supporting the disputants in resolving their misunderstanding. Evidence from the existing studies (Coleman&Kugler2014;Vukovi2012; Maoz & Terris, 2009) shows that the mediation process has been successful in the resolution of labor dispute between the disputing parties. One of the classical examples of mediation study, that presented a concrete evidence on the successful outcome of the mediation is Chand (2015), who conducted a study on the comparative analysis of dispute resolution mechanisms with the result indicating that, mediation is more effective in resolving labor dispute in Fiji as compared to Cook Island. The reason is because, mediation department of labor in Fiji is more advance and stronger in handling labor disputes than the mediation department in Cook Islands.

Another existing literature by Bingham (2004),on the resolution of labor disputes: The case for Mediation in the US has reported that, mediation is very effective and most preferred method of dispute resolution between the employers and employees compares to other methods of dispute settlement. This is due to the flexibility and affordable process of the mediation, compare to other lengthy and expensive method of dispute

resolutions such as litigation. Bingham (2004), further maintain that one of the reason disputants prefers mediation is because of its systematic and fair process which often leads to high level of satisfactory agreement between the disputing parties. Similarly, Gibbons (2007), conducted a study on mediation and discovered the same result. Gibbons concluded that employers and employees should seek for the assistance of the mediator at the early stage of their labor dispute to avoid the need for the tribunal hearing which can be time consuming.

Welsh (2004), carried out a study on mediation and reported that, disputants are impressed and satisfied in resolving their labor dispute through mediation. According to Welsh, the mediation process contains dignity and fairness, which serves as significant ingredients in resolving labor misunderstanding between the disputing parties. Welsh (2004), also pinpointed that disputants prefer mediation process than litigation and negotiation because, mediators provides them with an excellent assistance to achieve a successful resolution outcome.

Evidence from Coleman et al. (2016); Coleman et al. (2015) shows that disputants often succeed in resolving their dispute because of the mediators encouragement to promote cooperation and honest interaction between the disputants to facilitate quick mutual and acceptable resolution between the disputing parties.

CONCILIATION

Conciliation is another method of resolving a dispute between two or more parties (Robert & Palmer 2005). Disputants may choose to resolve their misunderstanding through the use of a neutral third party known as the conciliator. The role of the conciliator as an impartial person in a dispute resolution is to assist the disputants to neutralize their issues of disagreement for an amicable settlement, without apportioning blame on any party's (Bevan, 1992).

More-so, the conciliation process is a voluntary and confidential process where disputants are free and comfortable to discover their strengths and weaknesses with the assistance of the neutral third party known as the conciliator (Kumwenda 2012). The conciliators does not, however, have the power to force disputants to conciliate or mediate. This is because the conciliator involvement in dispute settlement in the first instance, is due to the invitation from the disputants especially when both parties cannot resolve their issues by themselves (Nyenti MAT 2012; Lodder AR & Zeleznikow 2010; Stoffberg, et al. 2006). The conciliators duty in a situation where the disputants experience challenges in resolving their misunderstanding by themselves is to demonstrate a good skill to encourage the disputing parties to reach an acceptable mutual agreement.

Recent results from empirical assessments of the conciliation process show that conciliation has been effective in resolving the disagreement between the disputing parties (Uzoh 2016; Abdullahi 2013). This is because of the total neutrality of the third party in assisting the disputants to promote voluntary and interpersonal communication in their resolution process. This often facilitates settlement between the disputants (Nyenti Mat 2012). Though the conciliator does not enforce the decision on the disputing parties, one of the conciliators key responsibility is to help the disputants to explore agreeable alternatives through which both parties can reach settlement point (Kumwenda 2012; Ras 2012; Okene 2010). These alternatives may include presenting workable suggestions and recommendation to sustain peace among the disputants for a positive resolution outcome. Moreover, another notable study by Doornik (2014), found

that conciliation process has been successful in the resolution of labor disputes between the disputing parties. The reason is due to the conciliator skill in persuading the disputing parties to indulge in a sincere and honest communication for a better deal.

In a similar vein, conciliation studies by Ekwoaba, (2015); Badejo (2011); Dawe and Neathey (2008); Meadows (2007); and Abrams (2003) discovered that conciliation is considered as a key mechanism of resolving the dispute in the organizations in the United Kingdom. This is because the conciliation process usually brings employers and employees together to figure out their disagreement in a fair manner within a very short time. Empirical evidence from Ekwoaba, (2015); Badejo (2011); Dawe and Neathey (2008); Meadows (2007); and Molloy et al. (2003) shows that approximately, the use of conciliation is worth millions of pounds every year in the United Kingdom because of its successful resolution record.

Fagbemi (2014) and Asonibare (2011), found that the conciliation is considered as a quick resolution method in the Nigeria sectors with a high mutual satisfaction rate among the disputants, compare to litigation process full of bribery and corruption, which normally takes a considerable number of years without success.

Empirical findings on conciliation in Nigeria presented a factual statistical evidence on the effectiveness of the conciliation process in the resolution of the labor-related dispute. For instance, from 2010-2014 respectively a total of 1,547 labor dispute were recorded in conciliation office, out of which 873 were reported to be resolved as compare to negotiation, mediation and arbitration process (Anekwe 2010; Du Preez et al. 2010; Lodder & Zeleznikow; 2010). Similarly, In the year 2015, it was revealed that approximately 296 labor dispute cases were documented, out of which 191 were found to be successfully resolved. Critics also confirmed that there is no way the Industrial Arbitration Panel (IAP) can be more successful in the resolution of labor dispute than conciliation process in Nigeria (Anyim 2012; Anekwe 2010; Ojoro & Ojomo 1999).

NEGOTIATION

Negotiation is a process of dispute settlement or united decision-making process through face to face communication between two or more parties in a disputing situation, for the purpose of reaching a joint agreement on their interests in dispute (Faure 1993). The negotiation process is more of persuasion between the disputing parties to a mutual agreement which offers both parties a better deal on the bargaining table (Olughor 2014; Krasulja et al., 2012). However, several studies(e.g, Liu, 2009; Kopelman et al. 2006; Pillutla & Murnighan, 1996; Lawler & Bacharach 1979), noted that disputant's in most cases strive for a positive negotiation outcome that best serves their personal goal and interest rather than striving for collective interest in the negotiation process.

Several existing studies, for example, (Alavoline, 2014; Miles & Clenney, 2012; Lewicki et al., 2003; Lax & Sebenius, 1986; Van Kleef et al., 2006; De Cremer et al., 2001) have identified key behaviors which prevent negotiating parties from reaching a successful agreement on the negotiation table. These behaviors include, lack of in group feeling, lack of compromise and lack of sincerity and dishonesty which are discussed below:

Lack of Sincerity and Honesty

Evidence from the existing studies in South Africa by Heald (2016); Harrison (2004); and Edralin (1999), reported a lack of Sincerity and honesty as a factor responsible for the poor outcome of the negotiation between the disputing parties.

Negotiators who are not honest and sincere to their counterparts at the negotiation table, often make a fake promise which they cannot fulfil afterward. This non-implementation of the agreement reached by both parties continue to affect the successful outcome of the negotiation. Similarly, Menkel-Meadow and Wheeler (2004); Lewicki and Stark (1996); Dees and Cramton (1995) conducted a study on negotiation with the result indicating that disputants cannot resolve their misunderstanding because of the unfulfilled promises from the side of the dishonest negotiators. Apart from that, when negotiators are not honest in terms of information sharing on the negotiation table, it hinders their chances of reaching a constructive and logical agreement. This lack of truthful information continue to weaken the success of the negotiation between the disputing parties. In the same way, an empirical investigation from Ogwuana (2016); Odoziobodo (2015); Ajay (2014) and Bendix (2011) reported that the negotiation between the Academic Staff Union of universities (ASUU) and the Nigeria government has not yielded any fruitful result for several years. This is because of the government lack of sincerity and honest behavior in- terms of the implementation of the agreement reached by the two disputants. Furthermore, Bello and Kinge (2014), reported that the government is always accountable for the unsuccessful outcome of the negotiation, due to the breach of the agreement reached by the two parties.

Lack of Compromise

Lack of compromise is reported by the existing studies as another factor which often prevents the disputants from reaching an integrative agreement in the negotiation table (Maidald 2015; Paavola 2014; Pon, 2014; Thompson et al. 2010; De Cremer et al., 2001; Adralin 1990). Empirical findings by Pruitt (1990), reported that a non-compromising negotiators often present an extreme demand at the bargaining table, this makes it difficult for both parties to enter a meaningful agreement. The reason is that, when negotiators perceived this lack of compromise from their partners, it undermines and weaken the positive outcome of the negotiation. This is due to the fact that the observer of the non-compromising attitude will not honor or accept such extreme demands from the other party's. This resulted in a situation where the negotiators with the unnecessary demands end up receiving nothing from their counterparts, in case they succeed, they a achieve larger portion of the negotiation outcome (Barry& Friedman, 1998; Weingart et al., 1990).

Lack of in-Group Feeling

Several strands of studies (e.g.,Giacomantonio et al.,2010; ,Ray et al., 2008; Mauss et al., 2007; Harinck & De Dreu 2004), reported that negotiators who struggles for personal achievement rather than collective accomplishment, do not have a collective mutual or in-group feeling at the negotiation table. They display this type of behavior with the intention of winning the largest part of the negotiation outcome, irrespective of how the other parties will feel. For this reason, disputants with this kind of negotiating attitudes show no kindness, compassion and generosity to their partners, as they believe that being kind and generous will not help them to achieve a greater portion of the negotiation agreement. This kind attitude usually leads to no successful agreement between the disputants (Pon, 2014; Greenhalgh, Neslin & Gilkey 1985; Lewicki, 1983).

Another body of literature by ktas, de Bodt and Roll (2010), documented that negotiators when disputants do not have a collective feelings towards their counterparts, they emphasize on repetition of a single offer in the discussion table without any intention of making a better proposal to their partners.

Moreover, negotiators who have no collective feeling often reject suggestions from their opponents that can lead to win-win solution on the negotiation table (Lewicki& Polin, 2013; Fry, Firestone& Williams, 1983; Lewicki, Barry & Saunders, 2010; Goering, 1997; Lewicki & Stark, 1996).

CONCLUSION

It is obvious that dispute is inevitable in any human organization. However, what is crucial is the mechanism of its resolution. Among the various mechanisms of dispute resolution mediation and conciliation methods tend to be successful in the resolution of dispute between the disputing parties, this is because of the intervention of the neutral and impartial third parties known as the mediator or conciliator. The primary key role of the neutral third parties is to promote cooperation and also to encourage the disputants to amicably resolve their differences without apportioning blame one either party's. Unlike negotiation where disputants struggle to resolve their dispute at the negotiation table without the intervention of the impartial third parties in the form mediator or conciliator.

Disputants cannot succeed in their negotiation without sincere communication in the negotiation table. This is because, the dishonest party's will not later implement the agreement reached, leading to prolong dispute. Disputants cannot also achieve a fruitful result on the bargaining table without commitment to compromise. The reason is because negotiation is a win-win solution where the two parties must be ready to give up something in return to what they actually want to receive.

Suggestions

In order for disputants to achieve a successful result in the negotiation table, both parties should be sincere and honest. Being sincere and honest will assist the two parties to be consistent with the implementation of the agreement reached. Both parties should also drop their preconceived mind of achieving a larger portion of the negotiation outcome and jointly look for a constructive solution to their dispute.

Alternatively, in a situation where negotiating parties cannot resolve their dispute by themselves due to clash of interest, the intervention of the neutral third party known as the mediators or conciliators is necessary to check and balance the behavior of the parties for the successful resolution outcome.

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