

A LEGAL APPRAISAL OF NEGOTIATION AS AN ALTERNATIVE DISPUTE RESOLUTION PROCESS

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***Abstract:** When disputes occur, it is not impossible for the disputing parties to attempt settling the disputes themselves. Negotiation is an amicable dispute settlement process that affords the disputants, an opportunity to settle their disputes by themselves without the intervention of a neutral third party. This article adopts desk-based method in appraising negotiation as an Alternative Dispute Resolution (ADR) process by examining what negotiation is, the potentials of negotiation as an ADR mechanism, the requirements and strategies for effective and efficient negotiation sessions. It also examined how negotiation can be better enhanced in settlement of contractual/commercial disputes where relationship fostering and continuity is important. The paper makes vital recommendations before conclusion.*

Keywords: Alternative Dispute Resolution, Negotiation, BATNA, Nigeria

1. Introduction

Human beings have different desires and interests and are relationship in nature. In a bid to satisfy these variants desires and interest, through various human interactions the possibility of conflict ensuing cannot be ruled out (Daibu et al., 2014: 106). Thus, when disputes occur, existing relationships, especially those of commercial/contractual nature need not come to an end as a result of the ensuing disputes (Fagbemi, 2015: 223). While the courts were set up as a formal dispute settlement platform, over the years, owing to factors such as formality of proceedings, relative high cost, lack of participation by the disputants, technicalities, wastage of time, etc. which are the hallmark of litigation in Nigeria (Akpata, 1997: 11). There is a sharp turn to more friendly, expeditious, party-centred, less expensive, dispute settlement mechanism culminating in the emergence of Alternative Disputes Resolution (ADR) which is the adoption of amicable, party-centred, informal dispute settlement processes aimed at achieving expeditious and less rancorous settlement of disputes (Akeredolu, 2019: 7).

Negotiation which is typically the act of disputants dialoguing with the aim of settling a dispute that has arisen by themselves without the involvement of a neutral third party is one of the ADR mechanisms available (Oweazim, 2017: 171). In fact, while there are several ADR mechanisms such as mediation, arbitration, Rent a Judge, conciliation, Early evaluation, etc., unarguably, negotiation is usually the first resort process as the disputants, even before resort to litigation, would attempt to dialogue with a view to settling their disagreement (Akeredolu 2016, P. 4). It is usually, the failure or ineffective/efficient deployment of negotiation that will necessitate or result to litigation (Borokini, 2006: 43-55). This paper examines the meaning and scope of negotiation, the nuances of negotiation especially, the requirements and strategies to

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be adopted for effective and efficient negotiation aimed at settling a disputes. It also discusses the advantages of negotiation in comparison litigation and selected ADR mechanisms. Furthermore, it also examined how negotiation can be better enhanced in settlement of contractual/commercial disputes where relationship fostering and continuity is important.

2. The Meaning and Scope of Negotiation Discussed

Negotiation is derived from the Latin word '*negotari*' which means '*to carry on business, do business.*' Negotiation is defined as self-counselling between the parties to resolve the dispute. In negotiation, parties, with their own will, by discussing politely and patiently, try to come up with a solution that is acceptable to both parties regarding the issue (Kaushik 2022, P. 1). It is any form of direct or indirect communication through which parties who have conflicting interests discuss the form of any action which they might take together to manage and ultimately resolve the dispute between them. Negotiations may be used to resolve an existing problem or to lay the groundwork for a future relationship between two or more parties. It must be noted that there is no compulsion for either of the parties to participate in the process of negotiation (Dani, 2020: 3). The parties have the free will to either accept or reject the decisions that come out of the process of negotiation. There is no restriction in the number of parties that can participate in the process of negotiation. They can vary from two individuals to the process involving dozens of parties. Unlike third party facilitated ADR mechanism, the outcome of a negotiation is reached by parties together without resorting to a neutral third party. The process is flexible and informal also ensures confidentiality at the choice of the parties. Negotiation may come to play in resolving conflicts, structuring commercial agreements, and managing social relationship to mention, etc. from the foregoing, it is obvious that communication is critical to the process of negotiation. Thus, negotiation is a direct process of dialogue and discussion taking place between at least two parties who are faced with a conflict situation or a dispute. Both parties come to realization that they have a problem, and both are aware that by talking to each other, they can find a solution to the problem. The benefits of compromised solution, it is believed, outweigh the losses arising from the refusal to negotiate. The goal of negotiation is "... to reach agreement through joint decision making between parties" (Jeong, 2000: 168) As much as it is part of daily life, the nitty-gritty of negotiation needs to be understood, and skills sharpened especially when it gets to the formal and more advanced settings of commercial negotiations. Also it is an act that needs to be perfected for effectiveness and achievement of purpose. Before a decision is taken as to whether a matter should be resolved by negotiation or by other processes, the Best Alternative to Negotiated Agreement (BATNA) must be taken into consideration. Regarding scope, negotiation can be used to settle a wide range of disputes. There are no civil disputes which parties are prohibited from negotiating with the aim of settlement from commercial to contractual and even matrimonial disputes.

1.1. DETERMINING YOUR BATNA

Where parties fail to reach an agreement in a negotiation, several alternatives are available to them. The most preferable of the alternatives is called the Best Alternative to a Negotiated Agreement (BATNA). The option for BATNA is however due to the fact that what

was desired when negotiation was employed will not (or did not) provide the result expected (proving a failed negotiation process). This therefore means that, the moment a best alternative to a negotiated agreement is found, the alternative becomes the option that brings limit to discussion. This limit will therefore be the worst case scenario. No one will invariably be willing to go below the BATNA (Ajetunmobi, 2017: 190).

In accessing your BATNA which require skills and preparation, the focus must not be on pecuniary gains. Factors such as the time required to strike the deal, risk, tolerance and relationships must be considered. A more tasking aspect is the ability to gain information on the best alternatives available to the other party (Ananaba, 2016: 148). This requires hard work. The ability to know the BATNA of the other party is crucial so as to enable the negotiator determines the offers that are acceptable in the process of bargaining. Moreover, assessment of the BATNA of both sides aid in foreknowing if there is any possibility of agreement between parties to a negotiation and also lead to determining whether there is much room to bargain or little. While considering the BATNA of the parties involved in a negotiation, it is possible to determine a point of connection (or agreement) between the parties. This point of connection is known as the Zone of Possible Agreement (ZOPA). Based on this, a ZOPA is achieved when there is an overlap of the bottom line position. For instance, in negotiating for the awards of maintenance of children in a divorce suit, the mother's bottom line may be N12, 000.00 per month while the father's bottom line may be N8, 000.00; due to the large difference in the parties' requests, it can be concluded that there is no ZOPA. However, if the father's bottom line (i.e. the amount he is willing to part with) is N15, 000.00 per month, and the mother's bottom line (i.e. the amount she is willing to receive) is N12, 000, then a Zone of Possible Agreement (between N12000 and N15000) exist. When there is a proper evaluation of BATNA, the possibility of coming out of a negotiation with good award is strong. Inability to determine ones BATNA and that of the other party can lead to an outcome that is below what the best alternative could provide. Negotiation has the advantages of confidentiality. The proceedings and all that pertains to it is exclusively between the negotiating parties without any third party involvement. Also, it is party-centered as same is tailored to suit the parties since they are fully in charged unlike like arbitration and particularly litigation where the disputants have little or insignificant control over the proceedings. It is capable of fostering relationship and best suited for the settling commercial/contractual disputes in which relationship is crucial. Compared to all other third party enabled ADR mechanisms and as well as litigation, negotiation is less expensive. No fees is paid to a third party who facilitates the proceedings or represents any of the parties in most cases. It is more expeditious with regard to settlement or otherwise.

1.2. Negotiation Strategies

Negotiation is an art that thrives on several skills. The techniques used by negotiators to accomplish their true goals and come to a consensus on the subject of the negotiation are known as negotiation strategies. The nature of the dispute as well as the timing are major determinants of the strategy that a negotiator will adopt. The strategy adopt will impact the outcome of the proceedings. Competitive and cooperative strategies are the two different categories of negotiating tactics negotiators often adopt. A succinct adumbration of these two strategies in hereunder undertaken.

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a. Cooperative Approach

The cooperative approach, also known as the problem-solving approach, is distinguished by its win-win strategies. The goal of the negotiations is to reach a mutually beneficial agreement that allows for the peaceful resolution of disagreements. The goal of the negotiations is to reach a mutually beneficial agreement (Gibson, 2022: 1). Cooperative negotiators look for common interests and compare the parties' disparate assessments of the items. They then work together to look for options and a solution that will best serve the interests of both parties with the other negotiator, who is seen more as a partner than an opponent. Because it places a strong emphasis on integrating the parties and identifying the best cooperative solution, this strategy is commonly referred to as integrative bargaining (Foldberg, et al., 2016: 61).

Additionally, in order to implement the win/win approach, negotiators must establish a boundary between the parties and the issue that needs to be resolved. By doing this, problems are settled and the personalities of the parties involved are maintained; they pay careful attention to the goal they set out to accomplish and refrain from taking an uncompromising position that could endanger the entire process; they show creativity in coming up with multiple options that allow the process to be successfully negotiated; and they decide that the outcome of the negotiations will be determined by some objective, measurable yardstick. Negotiations can be successful without jeopardising future relationships if the parties agree early on to allow for a fair and equitable process that prioritizes objectivity by using the collaborative strategy.

It is important to remember that the type of transaction and the surrounding conditions will determine the appropriate approach.

b. Competitive Approach

Win/lose tactics define the competitive approach, also known as the positional approach. It happens when one party makes a stand and is unwilling to back down or give in to pressure from the other. The participants in this strategy uphold a winner-take-all mentality. Parties turn to plotting in order to attain their objectives and obtain the upper hand. The strategy makes the parties competitive. Relationships between the parties and other intangibles are not as important in a competitive approach. This tactic is detrimental and typically results in a situation where the defeated party is left with a bad taste in their mouth. This approach's shortcomings render it inappropriate for parties who intend to keep their relationship going after the dispute is over. The strategy might also result in a lose/lose scenario where both parties are adamant about their positions and won't budge. In such cases, the parties' relationship might be strained and terminated.

The benefits of this strategy include winner-take-all outcomes and a sense of fulfillment for the victor. However, the drawbacks include potential strain on relationships (commercial, familial, etc.); loss of future opportunities for the party that lost the negotiation; and the possibility of a deadlock in which the losing party also chooses to take a stand and cause losses for both parties. This strategy is unsuitable for settlement of commercial or contractual disputes in which continuity of relationship is important. As a result, it is not to be adopted where continuity of relationship is necessary.

2. Negotiation Tactics

Many people believe that winning is the only outcome in negotiations; anything less is acceptable. For many, it's a "win at all costs" situation. With this kind of thinking, negotiators are more likely to employ any kind of tactic (many of which are unethical) to achieve their objectives. Because of this, negotiators sometimes use various strategies to accomplish their self-serving objectives. Some of the tactics adopted by negotiators are examined hereunder.

i. Promise

This strategy is based on the idea of using future advantages as a ruse to get an instant concession (I'll buy from you more frequently if you sell me this for less money). Negotiators frequently find themselves in a position where they are promised future transactions in exchange for making concessions in the current transaction. However, negotiators must keep in mind that, as desirable as future deals may be, the present should not be sacrificed in favor of a deal that might never come to pass.

ii. Bloated Negotiating Team

The goal of this trick is to intimidate and harass the opposition. The way this trick is executed is by outnumbering the opposition in terms of negotiators per team. Bringing in specialists from every pertinent area of the negotiation process is one way to accomplish this. Nonetheless, the sheer number of people on the other side won't intimidate a knowledgeable negotiator who has prepared themselves sufficiently (Julian, et al., 2003: 165).

iii. Threats

Threats are a tactic used by one side to coerce the other into making snap decisions that could harm their case. This occurs particularly when the person making the threats has information or an advantage over the other party. A skilled negotiator will consider both the potential threat and the consequences of noncompliance. When the person being threatened has the ability to read the other person, the threat will not be effective. In the end, this starts to work against the negotiator making the threat.

2.1. Extreme Initial Position

The extreme initial position is a tactic commonly used by competitive negotiators by setting the initial stakes high and expecting the other party to make an offer that will fall within the range of acceptable position. This tactic works more where the other party is not well prepared for negotiations. When the necessary information is not harnessed to know the options available and how to respond, the party becomes vulnerable to the antics of the other party. The danger in this position is that party may view the other party as unserious and may respond in an outrageous manner. This situation makes the parties far away from arriving at a consensus. Negotiating for a property, the assignor may fix a price that is very high and if the buyer is not aware/ informed of the worth of such property in the area may eventually pay more than the property is worth.

2.2. Psychological Ploy

This trick is often devised by negotiators on their opponents to secure favourable concessions for themselves even if it is detrimental to the other party. The psychological ploy can be used in various ways, like feigning ignorance or lack of competence. A party in opposition negotiation may use this trick to gather information not available to him in order to strengthen his negotiation (Ezejiofor, 1997: 17). The psychological ploy tactic can also manifest in a situation

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where in the team of a negotiating party one of the team acts as a mediator. This ploy is devised in the situation where by all other members are unyielding and difficult in their demand but this fellow plays the devil's advocate breaking the truce between his team and the other party to reach a negotiated agreement where ordinarily there would not have been. The kind of agreement reached in this instance is to the advantage of the mediator's team.

2.3. Deadline

Negotiators will always seek to close a deal in no time by issuing deadlines. When deadlines are issued, it pressures the other party into taking a not well thought out decision, especially if such depends on the outcome of the negotiation to take other decisions. For instance, if a man owes a bank and he has a property he wishes to sell to offset the debt, the other party may have information that might be used to rush him into decision and which will not be favourable to him. Therefore, before rushing to meet a deadline, a negotiator should weigh the consequences of not meeting the deadline (Ekwenze, 2011:8). He should be faced in determining what in real terms will be the price to pay for losing this deal as against other options. A negotiator should be wary of issuing deadlines that he does not intend to follow up, which labels him as unserious and lacking integrity.

2.4. Nibble

Nibble is a tactic that can be used by a party on whom an advantage has been conferred. It is like an Oliver Twist asking for more. This trick comes to play after parties have concluded negotiations and a party brings up a request for an additional concession which may look intangible but ordinarily would not be conceded if it was brought up during negotiation.

From the foregoing it is important that a negotiator be adequately prepared before going to the bargaining table. Being able to recognise the opponent's approach and ability to decipher the tactics employed by the other party per time and means of avoiding falling into the trap is important for a successful negotiation.

3.1 Sources of Power in Negotiation Proceedings

The context of power in negotiation is the ability to exercise control over the outcome of discussions between the parties during negotiation. It is a power play that can sway the process on the part of the negotiator that can play it well. Sometimes there are some factors that lead negotiation to a particular predetermined end.

These factors have power to control the process of negotiation and thereby bring the deal in the favour of the party with such power. This power may be real or imagined. The power is real when a party is in direct possession of what it takes to direct the deal to conclude in his desire. It is imaginary when the other party feels or thinks, his opposing party is capable of leading the deal in his direction of interest. There are however several sources of power in negotiation (Adam et al., 2021: 1).

It may take months for parties in negotiation to come to an agreement and when parties are getting ready to seal the deal, a party may then declare he has power to negotiate but not make final decision, therefore may need to resort back to his principal or some authority to approve or ratify the agreement. This tactic often is a plot to buy time to have a further

deliberation or review the offer made by other. It is advisable at the beginning of negotiations that the issue of authority is cleared by both parties.

These sources include.

a. Competition

Competition here refers to the commodity in question. This arises when a party has sole right and ownership of what is desired by other parties. The scarcity involved in the commodity drives the negotiation in favour of the owner. This is similar to a monopolistic market, where there is one seller and many buyers. The fluctuation of the price of such commodity is also the prerogative of the owner. He can deliberately manipulate the negotiation to his favour. However, where there are competing commodities or several owners of similar commodities, the direction of negotiation can be partly controlled by both the buyers and sellers. This is similar to the law of demand and supply in which when there is scarcity of supply while there is surplus in demand, the price is high and vice versa.

b. Legitimacy

In negotiation, legitimacy is another source of power. The validity placed on items, commodity or transaction may influence the negotiation. For instance, a NAFDAC approved drug or food item will easily attract buyers to negotiation. This official approval will also sometimes affect the price tag as against another original product without a NAFDAC approved number. Another example is a titled land with appropriate Certificate of Occupancy. Such property can attract better negotiation than one without a title.

c. Information

Information is another strong source of negotiation. The level of information available to a party on a deal will put the party at advantage. The available but scarce information can become the wheel of manipulation in a negotiation, most especially when the other party is unaware of such viable information. More so, when a party has prior knowledge about the interest of the opponent in a negotiation the party is put in an advantage. Such information can be useful in directing the course of negotiation.

d. Time

Business deals are always timely. The gauge of time is an important factor in striking a deal. Some businesses depreciate with time while some others appreciate. When time constraints are placed on a deal, the parties in negotiation are pressured to end the deal before the set time. Whatever negotiation that would be is fixed within the time limit. It is required that all negotiations must be concluded before the deadline. Most times, negotiations close to deadline are always hurried and this many at times influence the outcome.

e. Investment

The investment power in negotiation works like a golden handcuff. It is used to get the opponent to make commitment at the beginning of a deal. A party who has invested so much in a business will be very unwilling to part with the business just because of his huge investment, even though he is no more willing to continue with the business. The size of such investment may be used by negotiators to persuade the other investor to make larger concessions in the future and to hold down his interest. The reasoning behind this is that with the investment made, the party will feel a sense of loss to rescind the transaction.

On the long run even when faced with a situation that he would not have ordinarily consented to he will be unwilling to relinquish the transaction because of the investment at

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stake. Having discussed what power is in negotiation, a negotiator must understand his source of power and be able to use it to his advantage, and likewise he must be able to identify the opponent's source of power so as to be able to counter them when it will be to his own disadvantage.

f. Precedent

Cases in court are based on strategic precedents. The outcome of a decided case can be used to determine the case at hand. This is also similar to negotiation. The current practice in a business can be used as a negotiating factor to decide on a transaction. Where this is the case, it is concluded that precedents around the business is being used to make appropriate decision.

3.2 Negotiation Process

The phases in negotiation and how important it is for a negotiator to be adequately prepared for, and thoroughly understand the dynamics of each of the phases is what this aspect is aimed at. Negotiation is a process which is psychological and physical. Generally, negotiating follows the following processes. There is the preparation stage. The saying goes that he who fails to prepare is planning to fail. Developing good plans and preparation are important to the success of any negotiation. A negotiator must have a mental picture of what he plans to achieve and set out an articulate agenda to guide the process (Rosen 1999, P. 567). As events unfold in the course of negotiation, methods and strategies may change but the agenda in place guides and helps the negotiator from deviating from the substance of negotiation. It is necessary for a negotiator to do his homework well, gather all relevant information and have thorough understanding that is necessary about the transaction before going into the mainstream of negotiation. During preparation, certain issues need to be considered. These are that a negotiator must know the other options open to him and that of the opponent in the course of negotiation if they fail to reach a consensus. In all the options open to a negotiator the best of the options on the scale of preference is called the Best Alternative to Negotiated Agreement (BATNA). This helps in knowing and assessing the limit of negotiation award. Also, a negotiator needs to prepare get to meet the other party. The opposing negotiator and the corporate entity or individual he represents, get enough information about their background and personal traits. Uncontrolled emotions are capable of running a negotiation process as a result, at the stage of preparation, a potential negotiator needs to master the art of emotional control so that it does not affect the proceedings and ultimately, the outcome. To achieve success, the negotiator needs review the negotiation plan and tactics intended to be deploy in the course of the negotiation just like a case theory in litigation.

Review your plans and tactics, and prepare for how to respond and manage surprises that spring up in the course of negotiation. The negotiator must detail the bargaining work plan, determining the upper and lower limit, and also develop negotiation work plan detailing the bottom line, acceptable and the ideal positions. There is the need to be proactive, think ahead, and envisage circumstances that may warrant digressing from your agenda and how not to be derailed from achieving your end goal.

The initiation stage is first in line before the bargaining stage in negotiation. This stage is very crucial because on it rests the success or failure of the whole process. At this stage each of the parties will state their case, establish the real facts, and state the main issues to be

addressed in the negotiation. The parties present their problems from their different points of view in accordance to the needs the parties want addressed. At this stage also there should be no display of emotions in stating the problem, there is a need to thread softly and be cautious of just marshaling your position on the matter because it poses the danger of each party maintaining their own position rather than seeking opportunity for mutual gains. In addition, parties should state clearly and have a thorough understanding of issues in dispute. This helps the parties to focus on the issues (Onigbinde et al., 2015: 4). By establishing the real facts parties will separate the supporting facts from conclusion and test all assumptions. Where parties intend to adopt the collaborative strategy, the initiation stage is the time to set the tone, check for common grounds between the parties to agree on. Who should open discussion may become a problem. There are different ways to resolve the problem which include considering the subject matter of the transaction, the custom of the trade may indicate who starts up the discussion. The venue of the meeting may determine the one who takes the first shot. Negotiation may be opened by the party hosting, or from whose instance the meeting is convened. The person with a weak case can allow the other party to open discussion to be able to ascertain whether the other party is aware of the weakness. Where a party has a limited information, the onus of starting discussion maybe shifted to the other party which may also help gather information from the other party.

3.3 The Negotiation Phase and Process

This is the phase where all the preparations of the parties come to the test. The negotiation stage is also called *the bargaining phase*. This is where the parties' bare issues and analyze their options. Here they agree on points noted at the preliminary stages. Also, the negotiation phase is one for persuasion on both sides to accept offers and counter offers by either party. It is a time to influence the other party to come into agreement. The success of this phase is based on the strategy adopted by the parties in bargaining. Where the competitive strategy is adopted then parties will play the power game by using different kinds of tactics to make the opponent accept their position. The tactics include but not limited to extreme initial position, use of threat, deadline, and nibble (as explained earlier) (Pamboukis, 2019: 3).

In a situation where parties adopt the collaborative strategy, the bargaining phase should be used to discover, synchronize and decide options that will meet the respective needs of the parties. In order to do this, negotiators must understand the three elements at play in negotiation. These elements are the subject matter of the negotiation which is the crux of the negotiation which they parties are attempting to resolve, the standpoint which is the position taken by each party to the negotiation. Without a robust understanding of the standpoint of the other negotiating party, a negotiator may negotiate only to realise that the whole exercise had been misunderstood or their minds never really met. Another element is the interest. Interest refers to the fundamental concern and prospects of the parties that would be affected by the agreement in the transaction. The outcome of the negotiation, is bound to impact the relationship of the parties one way or the other. Thus, at this stage, the communication skills of a negotiator come in handy, he must know how to use them to maximize his benefit.

It is not uncommon in the course of negotiation for the parties to have a stalemate situation, where in the course of negotiation a party remains keen on his point not to shift position. Even when parties have adopted the win-win strategy, this does not totally negate a

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stalemate situation. This happens especially where parties fail to agree on the appropriate means of solving the problems identified or even where one of the parties in the course of negotiation decide to adopt the win-lose strategy.

3.4 Concluding Phase of the Proceedings

This is the climax. Both parties would have discussed and reached a conclusion on pertinent issues in the transaction. At this stage parties must ensure that all queries and objections raised at the bargaining phase are addressed. At this point the pertinent issues are resolved, details of the agreement are modified, and all necessary for an enforceable agreement have been dealt with. Previous agreements are reviewed and possibly exchanged between the parties for modification or correction. Parties reach an overall and final agreement and reduce their agreement into writing. They may both agree on the form of documentation. There are specific instances where the form of documentation is prescribed. The parties must ensure that they embark on negotiation without any form of concealment or anything that is capable of unduly prejudicing the proceedings (Lew, 2003:180). Where anyone of them, negotiate without good faith, the agreement reached is vitiated and may be rendered unenforceable. Thus, there must be mutual trust and transparency throughout the negotiation (Carbonneau 1994: 194).

4. Skills required for Effective and Efficient Negotiation

For an effective and efficient negotiation, certain skills are required. One of the skills required is listening skills. The potential negotiator must be able to listen keenly without interrupting the other party in the course of the proceedings. Listening will enable the parties identify the areas of agreement and disagreement and to understand the dispute. Where a person allows the other the opportunity to speak uninterruptedly, chances are that the party speaking, feel safe and more willing to reason towards settlement. Another skill is persuasion. Negotiation is all about skillfully persuading the other party to reason along with one's position so as to gain advantage. Where either or both parties are antagonistic, it is certain that the negotiation will breakdown (Abimbola, 2013: 27). There is also the question asking or inquiry skill. In negotiation, it is generally advisable to ask open-ended as opposed to close-ended questions. Probing questions may only be asked when the proceedings are advanced and not at the beginning so as to avoid giving the wrong impression. Being time conscious is another skill. Ability to manage time in the course of the proceedings is germane. While opportunity for honest and sincere conversation should be given, the negotiator must ensure that irrelevancies are totally eliminated in the course of the engagement so that time is not wasted (Mbam, 2016: 216).

5. Conclusions

Negotiation is one of the ADR platforms available to disputants which can be deployed for the amicable settlement of their disputes. ADR has emerged as an alternative and complimentary to litigation owing to the inherent challenges of litigation. Negotiation is party-centered, informal, less expensive, expeditious, relationship fostering, confidential and non-combative. For a person to engage in effective negotiation, there is need to possess certain skills such as listening, emotional intelligence, note-taking, and attentiveness. In negotiating,

parties can adopt the tactic of promise, threats, psychological ploy, extreme initial position, nibbles, etc. Each stage of the negotiation proceedings from the preparation through the actual negotiation to the conclusion, a negotiator must stay focused on the goal and willing to make compromises to arrive at an agreement. Where the parties negotiate in utmost good faith and without any vitiating element, the outcome is binding and enforceable.

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