

Episode 12: Enhancing Access to Justice in Enugu through the ESMDC - Under the Leadership of Mrs Caroline Etuk.

By

Chinwe Stella Umegbolu*¹

¹ PhD Student, Faculty of Business and Law, University of Brighton

ABSTRACT

I was excited to welcome Mrs Caroline Nene Etuk, the former Director of the Lagos Multi-Door Courthouse (LMDC), the first court-connected Alternative Dispute Resolution Centre in Africa. She obtained a Masters Degree in Law from Kings College, University of London. Mrs Etuk was involved in legal practice until 2006 when she joined the Negotiation and Conflict Management Group (NCMG) as Centre Manager of the LMDC. Additionally, Mrs Etuk was accredited as an international mediator by the Centre for Effective Dispute Resolution (CEDR) in 2008.

She is currently the Director of the Enugu State Multi-Door Courthouse (ESMDC) from inception (July 2018) to date. As the ESMDC Director, she develops all its operational procedures, templates and training.

Mrs Etuk has attended various courses and conferences in the United Kingdom, and the USA. She has also authored and presented papers at both national and international ADR conferences. In this episode, we critically examined the following questions:

1. To what extent has the ESMDC enhanced access to justice for Enugu State Citizens?
2. In your view, have Lawyers in Enugu State accepted ADR?
3. How do Lawyers bill their Mediation clients?
4. What is your Advice for Potential Users and People who want to Pursue an ADR career?
5. What is the Career Progression for a typical Mediator?

We concluded by touching on how the ESMDC has helped enhance access to justice for the citizens and how lawyers can still make a meaningful living by billing their clients- following a well-outlined structure of billing clients by the ESMDC.

Keywords: *Access to Justice, ADR, Mediation Advocacy, Careers in ADR, Multi-Door Courthouse, Enugu State Multi-Door Courthouse (ESMDC).*

INTRODUCTION

The ESMDC was established in Enugu State, Eastern part of Nigeria, due to litigation's numerous problems like cost, congestion of the court's dockets and delay. It is essential to point out that Justice P.N Emehelu spearheaded this establishment in a bid to curb these problems. In her efforts to ensure the sustainability of the newly established ESMDC, she invited experienced hands in the field, the former Director of the LMDC Mrs Caroline Etuk to start up the centre in Enugu State.

To what extent has the ESMDC enhanced access to Justice for Enugu State Citizens?

The ESMDC was established in July 2018, approximately two years and four months old. The scheme replicated the Lagos Multi-Door Courthouse (LMDC) framework. Though the ESMDC is still at the nascent stages of their development in terms of how far they have gone in enhancing access to justice or assisting Enugu State's citizenry to gain access, not just to the court but to the other dispute resolution methods of resolving their disputes. They have made a considerably good start; their caseloads stand at about 740 cases as of the end of 2020; however, other things are related to the extent of access to justice and how impactful it can become. For instance, the acceptability of ADR are challenges that every jurisdiction in the world has had to deal with or are currently dealing with.

The ESMDC faces the same challenges regarding getting the legal community to accept and embrace ADR. Aside from that, they are also dealing with the citizenry themselves, who have to choose whether to go to court or come to an ADR process at the Multi-Door Courthouse (MDC) bearing in mind that the decisions the citizens make are informed by what their lawyers say. In essence, there is much awareness that needs to be done.

In your view, have Lawyers in Enugu State accepted ADR?

Mrs Etuk elucidated that 'lawyers not accepting ADR is not a problem that she was unfamiliar with' as she was 'director of the LMDC for ten (10) years' and the same issue has been raised at several conferences and workshops she attended worldwide - though the ESMDC is tackling these challenge head-on by working with the Enugu Branch of the Nigerian Bar Association (NBA).

Nevertheless, she revealed that when the lawyers talk about ADR on the face of it, there is always an assent that ADR is good, but when it actually comes to matters being referred in court (the Enugu state High court rules 2020 stipulates under *Order 25, Rule 8* that a judge is empowered by the rules to use his/ her discretion to refer matters) by the judge or magistrate if they think that a particular case is for ADR, then they make the referral. However, in most cases, many lawyers will make an objection to a referral, and this might be the same person that has said 'yes I admire ADR', but when it touches him personally, consideration and decision become different. It is not unnatural because many lawyers feel that their matters going to ADR would affect their income. So it boils down to the issue of what remuneration will he get at the end of each matter. It is a matter of how does ADR personally impact the lawyer's finances.

Mediation Advocacy Training?

It is a matter of how much more funding, time and effort can be thrown into creating awareness and training lawyers on what to do in a mediation fora. Many lawyers are quite ignorant of what happens in a proper formal mediation environment. They do not know what to expect, they have not had exposure to that type of dispute resolution, and do not know how to identify their relevance within that space. Hence raises prevalent questions like where does that place a lawyer? Does he get paid his full fees? Or does he get paid half the fees? How does the lawyer structure his practice around this sort of eventualities?

Indeed, all these are learning competencies that lawyers must embrace to feel comfortable and useful and run their mediation representation profitably? So those are all the issues that are addressed during mediation advocacy training.

By and large, Lagos is ahead in the sense that they had started a mediation advocacy training with Professor Andrew Goodman at the 'Standing Conference of Mediation Advocates (SCMA)' which has helped a lot because lawyers now attend the programme and they have become conversant with what to do and how to be profitable in an ADR environment. Thus, they had about twenty-five (25) lawyers who did the training and another twenty-five (25) lawyers in a few months would partake in the upcoming training; so that is like a pool of ADR activist and nuance expanding, so that is what the ESMDC intend to do in Enugu too.

Validating the last statement made above, the ESMDC have scheduled a Mediation advocacy training for April 2021.

How do Lawyers bill their mediation clients?

In different jurisdictions, legal practitioners bill in different ways. In Lagos State, their billing process is different from that of Enugu State. A significant part of the legal community in Enugu depends on appearance fees; what this means is that whenever a clients matter comes up, he/she is supposed to pay the lawyer certain amount of money to cover his transportation and disbursement. Now with a billing structure like that, it is bound to reason that the more times the lawyer attend court, the more payment he/she gets. However, there is a fee shared, but for most of the lawyers the fee might be paid upfront, but the continuous billing is what adds up to ensure that the lawyer gets something every time his case comes up. Thus, for that type of billing structure, 'ADR is the enemy' in the sense that while some of the lawyers are trying to make sure that litigating a matter is lengthened, on the contrary, ADR is cutting it short.

The mediator's objective in the Multi-Door Courthouse (MDC) is to ensure that matter ends as soon as possible. The focal point here is that many lawyers except for

the well-constituted law firms send their juniors to the MDC for mediation, which is not so right, or many of them abandon their clients entirely.

The line of thinking behind this is that most lawyers are aggravated that their clients have chosen to settle at the MDC. In most cases, they will practically instruct their clients to go to the mediation session without them that once they have settled, they/he can come and sign up on the Terms of Settlement (TOS).

Following the above reasons, it is fair to imply that the lawyer's behavioural pattern connotes or implies that they believe that settling through ADR via MDC route, is a waste of their time. Another scenario could be after the case has been mentioned in court and maybe a few preliminary applications are taken, which is legal time and work being put in there, at that stage, the court refers the case to the MDC, and they have the first session. By the second session, the matter is settled because the parties have agreed on something. Now, where does that leave the lawyer? Who has given a total bill of 2 Million Naira (equivalent to £3,748.68), perhaps expecting that the case will go on for a year or two; now three months into the time and the case was settled?

Assuming without conceding that the client has given the lawyer a Million Naira as advanced payment and there is a million naira still outstanding and say this matter has now been settled. The client refused to pay the outstanding balance because it was not concluded in litigation as agreed. Moreover, the client insists that he /she took part, and the lawyer hardly said a word and now wants to collect the remaining million Naira. It begs the question for doing precisely what? So that is an issue, the lawyers definitely would feel short-changed.

Hence structure needs to be built around this - the 'lawyers' best thing to do is always expect an eventuality; to take that eventuality into account when negotiating with a client. For instance, in line with the ESMDC billing structure, if the 2 million naira is for two years, the client pays the lawyer one million Naira. If the matter goes for mediation, and it is settled, what the lawyer will be getting is another 30% of the said sum. So there is an agreement, or there is a structure already in place so if the matter goes to the MDC; perchance it is settled both the party and lawyer knows that this was the agreement reached 'ab initio'. If the matter settles, the lawyer gets 30% of his balance, like 300,000 Naira (equivalent to £568). However, if the matter does not

settle, the matter goes back to court, and the trial continues, the lawyer gets his balance which is a full 1million Naira at the end.

Now the above-stated examples/scenarios have underlined psychologically issues playing out. So, if a lawyer knows that he is better off getting the 30% that is the 300,000 naira and ending the case which is probably a terrible case and if it goes on to trial and gets concluded in a trial. He might lose the case, and the downside of losing a case is usually not getting referrals from these particular clients. Thus, it is better for the lawyer to get this 30% or 40% they agreed. But If he throws himself into the process and becomes a vital part of the process to ensure that his clients can get a good deal out of the mediation by bringing in a lot of creativity, he brings a lot of his experience. He becomes an ally of the mediator in helping the parties resolve the matter but if the lawyer feels *"I have a lot that I need to do with this 1 million naira that is left he becomes a nuisance in the mediation."*

In sum, all these are underlying issues the lawyer is not voicing out. However, the mediator has to be skilled enough to unearth and realise these underlying psychologically issues (pun intended) playing in the background that hinder the process.

What is your advice for Potential Users and for people that want to pursue a career in ADR?

For potential users or users who have a dispute, they should try and avail themselves of being at a mediation session. Moreover, once at the mediation session, they should learn the ropes. They can get that as an experience because once at mediation, they now know how it works. The next time at a mediation session, they are more proficient in negotiating and getting the best deals. On the other hand, for people to pursue a career in ADR is know-how, they need to attend practice-based training, not theoretically training.

Additionally, the person's seeking to pursue a career in ADR need to have structures in place they need to attract ADR / Mediation business. So they need to expand their network; people need to know they have the expertise or If they are industrialised, their niche will be where they are more proficient in and that they are available. For instance, they can do pro-bono to get referrals and do their best not take up matters for which they do not have competencies if they are in a massive mediation with high stakes there is a lot to lose. They need to get a co-mediator who is more experienced and versatile to ensure that they give the parties the best deal.

What is the career progression for a typical Mediator?

We pointed out that there is no laid down career progression for a typical mediator because, in the past, some people had wanted to close down their law business and face mediation alone. However, they were advised not to because they cannot sustain only on mediation practice because of the way the Nigeria economy is. Nevertheless, if they are legal practitioners, they can have a unit in their law practice that is an ADR unit to start from there.

CONCLUSION:

This paper has been able to reveal that ESMDC has helped enhanced access to justice for the citizens at the same time holistically dealing with contemporary issues facing ADR through the MDC vis a vis legal practitioners not embracing ADR due to the rudiments involved in billing their mediation clients. This paper has also established that intending persons/people who want to pursue an ADR career should have a law practice (if they are lawyers) as a buffer and start the mediation programme and let it grow. However, one can also develop a career in ADR with a law degree.

Nonetheless, in terms of expertise, it needs to be built upon, there is nothing that can compromise for that. However, court-connected programmes are like a market for disputes. If one becomes a member of the panel of neutrals they should try and get as many cases as possible for the purpose of honing their skills in the area; as the industry grows, they will grow with it. Like in the UK; some people are just mediators/master mediators, and they earn quite a lot of money for doing what they do, but in Nigeria, they are not just there yet.

To hear the full version of episode 12, [click here](#).

REFERENCES:

Caroline Etuk, International Bar Association <www.ibanet.org> accessed 11th February 2021.

Chinwe Stella Umegbolu, Dispensation of Justice: Lagos Multi-Door Courthouse as a Case Study. (On-going research at the University of Brighton 2018-2021) accessed 8th February 2021.

Legislation-

Enugu State High Court Rules 2020