

An Appraisal of Dispute Resolution Practice in the Construction Industry within Kaduna State, Nigeria



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Abstract

Studies have shown that the construction industry is the most risky of all industries in term of conflicts, claims and dispute arising primarily due to lack of communication, distrust, interpretation of contracts, claims, uncertainties based on imbalance in risk allocations. The adoption of dispute resolution practice in the construction and other industry had help to save time and money for the parties in dispute and maintains the relationship between the parties. The study appraised the dispute resolution practice in the construction industry within Kaduna State, Nigeria. The method of study involved questionnaire survey and analysed employing the mean scores with relative ranking. A structured questionnaire was issued to a sample size comprising 72 firms drawn from a finite population of 199 Nigerian consulting firms operating within the Kaduna State. The result of the study revealed causes of disputes are payment delay, financial failure and design error. The study also revealed that negotiation and arbitration are the most importantly preferred dispute resolution methods. The study concluded that construction industry should minimize or avoid disputes by clearly understanding the contract document. The study recommends that the stakeholder in the construction industry should embrace dispute resolution strategies to manage dispute, and to foster cordial working relationship between the parties involved.

Keywords

Causes of Disputes, Consulting firms, Dispute Resolution Practice, Kaduna State, Nigeria

1.0 Introduction

The construction industry is complex due to many parties participate at different level to meet the objective of the project resolving to both dispute occurrence and dispute resolution system for many years. The industry has its reliance on a dispute resolution process than formal litigation with the involvement of dispute resolution practitioners. Globally, the nature of construction dispute has also contributed to the development of various dispute resolutions process. The standard form of contracts in the construction industry has begun to reflect an attempt to modernize and expedite dispute resolution in many cases. According to Mba (2013), dispute is one of the main factors which prevent the successful completion of the construction project. Hence, it is significant to be aware of the causes of disputes in order to complete the

construction project in the desired time, budget and quality. Due to dispute occurrences and dispute resolution system, the construction industry has managed to developed and adopt way to prevent or manage possible risks of dispute. In the construction industry, disputes are likely to occur in contracts. The disputes may be between the client/employer and the contractor, the main contractor and sub-contractor over payment, performance of the contract, delay and disruption of works, design changes, price escalation, and quality of works amongst others.

Onyia (2016) revealed that most disputes are resolved by negotiation between the contracting parties without the involvement of third party. The project consultants resolve most disputes that might arise during the progress of the development. However, the consultants maybe required to constitution

dispute review expert or board in case of dispute. Also, some cases, it could be referred to an independent adjudicator to seek workable solutions and disputing parties may willfully accept and enforce the decision of the adjudicator. After exhausting the foregoing dispute resolution mechanisms, it may be unavoidable to take the matter to arbitration, often for final and binding award that is enforceable by state courts like any court judgment. Despite being an industry keenly focused on quantitative results, parties involved in the purchase or construction of capital projects frequently fail to analyze the actual dispute resolution system & costs associated with dispute occurrences (Getahun, Macarubbo & Mosisa, 2016). The adoption of various dispute resolutions has practically brought about changes in the construction industry particularly in the developed country (Raberger, 2008) for

managing and resolving projects dispute for effectively project delivery.

Nigeria construction industry, is not exempted as dispute is unavoidable and needs to be resolved according to (Onyia, 2016; Akinradewo, 2017), and in many part of the world. The disputes may be between either of the project stakeholders for cases like over payment, performance of the contract, delay and disruption of works, design changes, price escalation and quality of works. Moreover, some projects in the developing countries under disputes were not resolved or it may be resolved but through judgmental resolution method like Litigation which was the most serious and adversarial method of dispute resolution where the Nigerian construction industry is not exempted (Onyia, 2016). The objectives of this study are to identify causes of disputes and preferred dispute resolution method in the Nigerian construction industry.

2.0 Literature Review

2.1 What is dispute?

Elis and Baiden (2008) explained that disputes between project participants have been identified as the principal causes of poor performance in construction projects and that disputes very often leads to prolonged delays in implementation, interruptions and sometimes suspensions of work.

Bachner (1988); Elis and Baiden (2008); Owasanoye, 2011) explained that dispute will not exist until a claim is asserted by one party which is disputed by the other party. Sometime claims are seen to be major causes and a need for an independent person to intervene to address the said claim. The designers may not agree with an error emanating from designs but will always put the blame on the contractor as causing the failure.

Onyia (2016) opines that dispute can occur as a result of the actions, or in actions of the client, the contractor or the various

consultants to meet up with their contractual agreement or obligation. Kumaraswamy (1997) define dispute is a product of unresolved conflict and, in contrast to conflict, is tangible and concrete. It has issues, positions, and expectations for relief. According to Shiub and Martins (2011) disputes arise when the job does not come out well, and too often the reason for this is the failure initially to figure the cost accurately. Nevertheless, there is still a misunderstanding among construction professionals due to unethical dispute management and resolution.

These definitions show that disputes arises between the client, the contractor or the consultant by breaching the contract agreement. Dispute also applies to an owner who set out unrealistically to build a structure, as well as the designer who sets out the design for less than or much more than the budget. In construction, scopes of work are redesigned and committed over a period of

time where some items of work were not considered during budgeting, and leads to unworkable budget resulting to dispute that needs to be addressed.

The resolution of disputes on construction projects can be accomplished under certain conditions (Elis and Baiden, 2008). These conditions are based on shared relationships and past experiences the parties have had with each other. Failed attempts to resolve a

2.2 Causes of Dispute

Many construction disputes have their origin in the seeds sown by the client's error and or either by contractor's or consultant's error (Kumaraswamy, 1997; Getahun et al., 2016). Under normal circumstances disputes should not occur if there is no contractual relationship between parties involved, there must be a common relationship between the parties. However, when a misunderstanding to be fulfilled and the other parties fails to fulfil it then it becomes a dispute.

Getahun et al., (2016) identified five sets of contractual relationships which are common in the construction industry which includes the relationship of the owner to the designer, the relationship of the designer to another design specialist(s), the relationship of the owner to the prime contractor, the relationship of the prime contractor to its subcontractors, and the relationship of the prime contractor to suppliers.

Ong (2005); Poh (2005); Habib and Abdul-Rashid (2006); Raberger, (2008); Getahun et

dispute often strengthen the party's adversarial positions and are always counterproductive. If disputes continue to be unresolved, they will affect the progress and timely delivery of the project (Mba, 2013). The timely resolution of disputes will provide more satisfaction to both parties and will not adversely have effect on progress of the project.

al (2016) and Akinradewo (2017) identified the causes of disputes as design error, inadequate / incomplete specifications, quality of design, unavailability of information about the project area, delays in work progress, time extensions, financial failure, tendering, technical inadequacy of the contractor, quality of works, payment delay , late giving of possession, variations initiated by client, unrealistic expectations, change of scope, risk allocation, different interpretations of the contract provisions, ambiguities in contract documents, weather, legal and economic factors, security and fragmented structure of the sector.

These disputes are the factors that prevent the successful and timely completion of any construction project. However, it is important to be aware of the causes of disputes in order to prevent and manage dispute for effective project delivery in the desired time, budget and quality.

2.3 Disputes Resolution Method in the Construction Industry

The objective of any construction project is to avoid dispute but due to the magnitude of project with various stakeholders, dispute is therefore inevitable. The gradual development of alternative dispute resolution in Nigeria has shown that the process of litigation has become more and more time consuming, expensive and unduly cumbersome because of the considerable rise

in the number of cases in our court which have led to congestion and delay in their resolution (Owasanoye, 2011).

Resolving disputes out of the conventional court system is quite common in commercial contracts and more so in the construction contracts. The special expertise and technicalities involved in the sector and the exigency of time for the performance of such contracts often necessitate that alternative

dispute resolution methods and arbitration to be in place to address such disputes.

The previous study conducted by Akinradewo (2017) on Assessment of Dispute Resolution in the Construction Industry in Lagos State, Nigeria suggested that dispute resolution method was an effective method of dispute prevention and resolution mechanism for construction industry of developing countries like Nigeria.

3.0 Methodology

Data for this study were collected with the aid of structured questionnaires and administered. Kaduna State was chosen because they are developed state with a large concentration of building consulting firms in the Northwest. A total of 199 questionnaires were distributed to respondents in the target population, 72 were returned and found appropriate for the analysis.

The population for the study is the stakeholders majorly responsible for the delivery of building consulting firms in Nigeria. They include Project Management Firms, Architectural Design Firms, Structural Design Firms, Mechanical and Electrical

Cheung and Yin (2006); Verster (2006); Van, Verster and Ramabodu (2010); Getahun et al (2016); Onyia (2016) explained that dispute prevention is better than cure and identified agent resolution, adjudication, conciliation, mediation, private judge, arbitration, negotiation, project partnering, dispute review board and mini trial as alternative dispute resolution methods to mitigate dispute.

Services Design Firms, and Quantity Surveying Firms of the Nigerian construction industry. Respondents were asked to indicate their extend of agreement based on a 5-point Likert rating scale with “5” being the highest of the ratings representing “strongly agree” and “1” being the lowest of the ratings representing “strongly disagree”.

The purpose of the study is to rank at various types and causes of disputes and to determine the preferred alternative resolution method in the Nigerian construction industry. The study utilized a number of descriptive statistical techniques to facilitate the organization, analysis and interpretation of the data. Mean and relative ranking were used.

4.0 Findings and Discussion

4.1 Background information.

In a study conducted by Olamilokun, O., Fawale, T. S. & Okeowo, E. O. (2017), the total number of registered design firms with the Corporate Affairs Commission was shown to be 6,990; 26% of which are located in Kaduna. Out of 199 questionnaires administered, 72 representing 36% of the total were returned and found appropriate for analysis. Using Yamane (1986) formula, the sample size for this study was calculated to be 199. Moser and Kalton (1999) asserted that, result of a survey could be considered significant if the response rate is not lower than 30-40%. In view of this, 36% response was considered adequate for analysis.

Among the respondents, 27% was Architects, 29% was Quantity Surveyors, while 21% and 13% were structural engineers and construction project manages respectively. The remaining 10% of the respondents was Builders. The result expresses a fair representation of the major stakeholders of the Industry. Furthermore, 60% of the respondents belonged to the strategic/senior management level, 27% belonged to the middle management level, while only 8% and 5% belonged to the knowledge/lower management level and operational levels respectively. In addition, 34% of the respondents had 16-20 years of experience, 24% had 11-15 years of experience, 22% had more than 20 years of experience, while 15%

and 5% had 6-10 years of experience and less than 5 years of experience respectively.

4.2 Causes of Dispute and their classification

Table 1: Causes of Dispute

Causes	Mean	Rank
Payment delay	4.45	1
Financial failure	4.29	2
Design error	4.25	3
Inadequate / incomplete specifications	4.22	4
Unavailability of information about the project area	4.22	4
Quality of design	4.04	6
Ambiguities in contract documents	3.99	7
Delays in work progress	3.95	8
Different interpretations of the contract provisions	3.95	8
Time extensions	3.89	9
Variations initiated by client	3.88	9
Late giving of possession	3.84	12
Technical inadequacy of the contractor	3.84	12
Quality of works	3.73	14
Tendering	3.73	14
Unrealistic expectations	3.65	16
Risk allocation	3.63	17
Legal and economic factors	3.62	18
Weather	3.56	19
Security	3.55	20
Fragmented structure of the sector	3.39	21

Table 1 presents the causes of disputes by the Nigerian construction professionals. As shown in the table above, the causes of dispute were ranked using their respective mean score under each heading as payment

delay, financial failure, design error, inadequate / incomplete specifications, quality of design and ambiguities in contract documents with mean score of 4.45, 4.29, 4.25, 4.22, 4.04 and 3.99 respectively.

Table 2: Preferred Dispute Resolution Method in the Nigerian Construction Industry

Dispute Resolution Method	Mean	Rank
Negotiation	3.71	1 st
Arbitration	3.70	2 nd
Conciliation	3.37	3 rd
Agent resolution	3.21	4 th
Adjudication	3.12	5 th
Mediation	3.11	6 th
Dispute Review Board	3.07	7 th
Project partnering	2.95	8 th
Mini Trial	2.88	9 th
Private judge	2.75	10 th

Table 2 shows that negotiation and arbitration were most preferred method of dispute resolution with means score of 3.71 and 3.70 respectively. The next preferred method is conciliation while the forth method is Agent resolution with mean score of 3.37 and 3.21

4.3 Discussion of Results

The result shows that the three major causes of dispute are payment delay, financial failure and design error. The finding closely agreed with previous findings on dispute resolution conducted by Akinradewo (2017) in Lagos that ranked Non-payment of certified sum and financial claims as first and second causes on disputes respectively. The result shows that unnecessary delay in payment or any financial obligation should be avoided to reduce project delay or abandonment.

The study also shows that the five highest preferred dispute resolution methods in the

respectively. The agent resolution is not common in Nigeria but its awareness as a means of dispute resolution method is increasing. The least preferred method is private judge with mean score of 2.75.

Nigerian construction industry were negotiation, arbitration conciliation, agent resolution and adjudication. The result shows level of understanding and knowledge of respondents as to the nature of dispute and actual likelihood of dispute cases. Where dispute could not be resolved through negotiation based the nature of claim. It has to resort to arbitration which is the final stage of dispute management. The respondents reported that they wish to consider negotiation before arbitration to avoid time wasting and involvement of third parties.

5.0 Conclusion

The paper appraised the dispute resolution practice in the construction industry within Kaduna State, Nigeria. The study involved a critical exposition of related literature and an empirical study employing the mean scores with relative ranking. The results identified twenty one (21) causes of disputes and shows

that five major causes of dispute which are as payment delay, financial failure, design error, inadequate / incomplete specifications and quality of design are ranked from first to fifth respectively, which indicate that adequate budgetary provision should be available to address delay in payment and financial issues. The study identifies ten (10) various

dispute resolution practice, and clearly provides the most commonly used dispute resolution mechanism was negotiation (3.71) and arbitration (3.70) among others. The study recommends that construction stakeholder should embrace dispute

resolution strategies to resolve dispute and to foster cordial working relationship between the parties involved for effective and timely project delivery, and select negotiation or arbitration in dispute management.

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