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Avoiding Litigation through the Employment of Alternative Dispute Resolution

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Abstract

This paper grapples with the question of how parties to conflict/dispute can avoid litigation through the employment of ADR mechanisms. The paper uses a case study to illustrate and appraise various conflict management mechanisms in the conflict resolution discourse. It looks at the range of dispute settlement mechanisms available to parties in disputes in the corporate world in Kenya. Such mechanisms include adjudication, arbitration, conciliation, expert determination, mediation, neutral evaluation among others. Their various merits and demerits are examined. It will also inform corporate decision-makers of the risks associated with a particular ADR mechanism. Above all it will succinctly show how a mutually beneficial solution can be achieved with the assistance of a neutral third party and investigate the role of Alternative Dispute Resolution in settlements other than pursuing litigation. The challenges facing the legal and institutional infrastructure for management of conflicts in Kenya are discussed. These challenges are likely to have a negative impact on the rapidly changing corporate and economic sector. The paper examines the opportunities offered by various ADR mechanisms in dealing with conflicts expeditiously. It also seeks to create awareness among legal counsels so as to adapt them with a wide range of applicable dispute settlement mechanism in the corporate world.

1.0 Case Study¹

The complaint regarding XX Company is a classic example of how ADR mechanisms can be used to avoid litigation and its attendant challenges. XX a company based in Athi River region in Nairobi started a sewerage treatment project in Nairobi. Its financier was ZZ Corporation since 1990. Total Compliance Advisor (TCA) was the independent recourse mechanism for the financier. Disputes arose regarding the environmental suitability of the company's project. There were also internal management wrangles in the company. One faction

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¹ Based on an actual case study. The names of some of the parties have been changed to protect their identity as mediation proceedings were confidential.

of the directors instituted a suit seeking an injunction to restrain the other faction from running the affairs of the company. The National Environmental Management Authority (NEMA) and the local residents also sued the company seeking, *inter alia*, that it be restrained from continuing with the project as it raised a series of social and environmental issues. In both cases the court granted injunctions which were disobeyed by the respective parties against whom they were issued and so the complainants had to go back to court to file contempt proceedings. This would take some time (like two years) to be finalized. In the meantime, KKP a local NGO lodged a complaint with the TCA on behalf of the residents of Athi river region which was accepted.

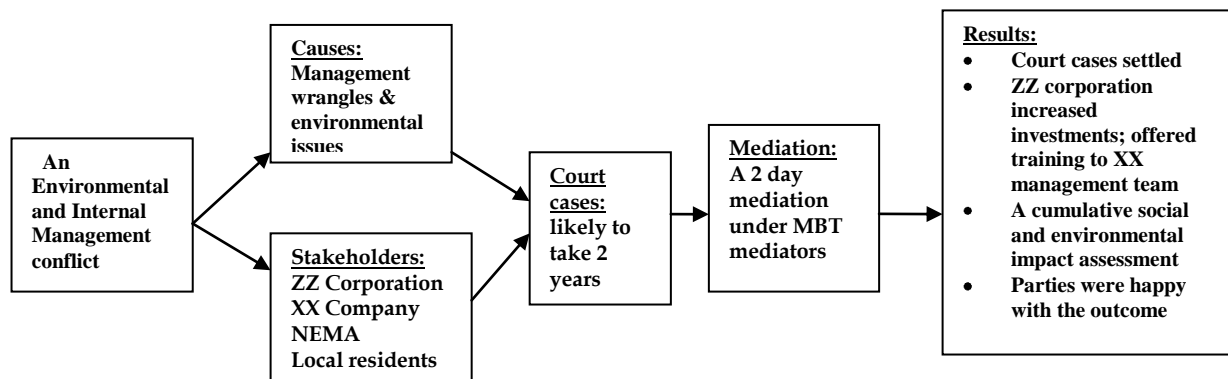
Following an assessment report by TCA, the stakeholders started negotiations to discuss the specific complaints, regarding the social and environmental impacts of the project, and broader issues of community and economic development. The negotiations did not address all the complaints raised, and the Company had to close permanently. In essence the negotiation process had hit a deadlock. However, ZZ Corporation and the other stakeholders realized that shutting down the company would affect both of them adversely. They thus opted to continue negotiating with the assistance of a mediator. Thereafter, the stakeholders concerned voluntarily appointed, MBT, [as mediators] and who in a two day mediation session managed to bring the warring factions to the negotiation table, calmed down tension and gave them an opportunity to communicate their grievances freely. This allowed the parties to accommodate one another and continue with the stalled process of negotiation.

In two days, the parties had agreed to mark the cases in court as settled and ZZ corporation notified the company that it would increase its investments in the company and facilitate training programmes on corporate governance to the senior management of the company, to fund a general environmental audit, and to generate a cumulative social and environmental impact assessment. [*See Fig. 1.1*]

After the completion of the mediation the concerned parties realized that the mediation had achieved a much more effective outcome which was mutually acceptable, expeditious, cost effective, flexible, durable and addressed the root causes of the conflict. The mediation process led them to solutions that were mutually beneficial which they did not receive and could not get in court. It also worked towards fostering the relationships among the stakeholders. The case reveals that ADR mechanisms are expeditious, flexible, allow the parties to have autonomy over the forum, process and the outcome unlike litigation which is time consuming, expensive and

subject to strict rules of procedure. The parties in this case study could also have explored other ADR mechanism such as adjudication, conciliation, expert determination, negotiation and neutral evaluation whose appropriateness in the context of this case study will be assessed later.

Fig. 1.1 Conflict Map for the Case Study



*Source: The author

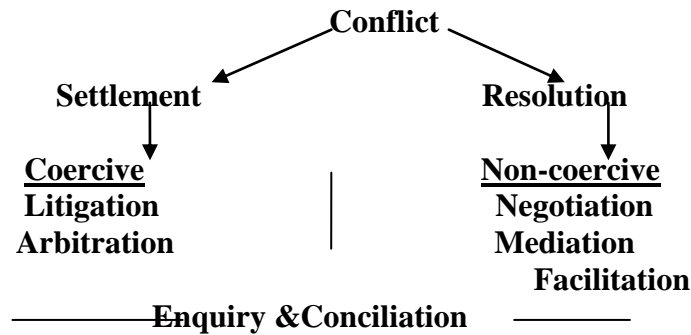
Fig. 1.1 shows the causes of the conflict, the stakeholders or parties to the conflict and the mechanisms employed to address the said conflict. From the figure it is also evident that the 2 day mediation resulted into a durable and mutually acceptable outcome to all parties within a very short time.

2.0 Appraising Conflict Management Mechanisms

There is a range of conflict management mechanisms available to parties in dispute. [See Fig 1.2] In the widest sense conflict management mechanisms include any process which can bring about the conclusion of a dispute ranging from the most informal negotiations between the parties themselves, through increasing formality and more directive intervention from external sources, to a full court hearing with strict rules of procedure.²

² Sourced from, <<http://www.buildingdisputestribunal.co.nz/.html>> accessed on 05/01/2012.

Fig. 1.2 Methods of Conflict Management



*Source: The author

As Fig. 1.2 clearly shows there are certain conflict management mechanisms that can lead to a settlement³ only while others have been effective in bringing about a resolution. A *settlement* is attained when the parties have to come to accommodations which they are forced to live with due to the anarchical nature of society and the role of power in relationships. On the other hand a *resolution* prescribes an outcome based on mutual problem-sharing in which the conflicting parties cooperate in order to redefine their conflict and their relationship.⁴ The Conflict resolution methods that lead to a settlement fall into the category of *coercive methods* where parties have little or no autonomy over the forum, choice of the judges and the outcome. The coercive methods are litigation or judicial settlement and arbitration. The *non-coercive methods* (negotiation, mediation and facilitation) lead to resolution. In the non-coercive conflict management methods the parties enjoy autonomy over the choice of the mediator or third party, the process and the outcome. Article 33 of the Charter of the United Nations outlines the various conflict management mechanisms as follows;

*“The parties to any disputeshall, first of all seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.”*⁵

³ David Bloomfield, “Towards Complementarity in Conflict Management: Resolution and Settlement in Northern Ireland”, *Journal of Peace Research*, Vol.32, No. 2 (May, 1995), p. 153. Bloomfield argues that a settlement is temporal and does not eliminate the underlying causes of the inter-disputant relationship whereas a resolution is enduring, non-coercive, mutually satisfying, addresses the root cause of the conflict and rejects power based outcomes.

⁴ Ibid

⁵ United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI.

ADR mechanisms also form part of the principles that shall guide the courts and tribunals in their exercise of judicial authority under the Constitution. Under article 159, the Constitution of Kenya 2010 now provides that alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted as long as they do not contravene the Bill of Rights and are not repugnant to justice or inconsistent with the Constitution or any written law. These conflict management mechanisms are discussed hereunder;

(i) Litigation

Litigation is a coercive dispute settlement mechanism that is adversarial in nature where parties in the dispute take their claims to a court of law to be adjudicated upon by a judge or a magistrate. The judge/ magistrate gives a judgment which is binding on the parties subject to rights of appeal. As shown in Fig. 1.3, in litigation, the parties to the dispute have minimum or no control at all over the forum, the process and outcome of the process and as such the outcome may not satisfy both parties.

The judicial authority in Kenya is exercised by the courts and tribunals.⁶ Litigation has its advantages in that Precedent is created and issues of law are interpreted. It is also useful where the contract between the parties does not stipulate for a consensual process and the parties cannot agree on one, the only alternative is litigation. Through litigation it is possible to bring an unwilling party into the process and the result of the process is enforceable without further agreement.⁷ The constitution postulates that the courts and tribunals shall do justice to all irrespective of status; justice shall not be delayed; alternative forms of dispute resolution shall be promoted and justice shall be administered without undue regard to procedural technicalities.⁸ With such a reformed judiciary litigation may become an efficacious process once again and parties to a contract may resort to it. Litigation should not be entirely condemned as it comes in handy for instance where an expeditious remedy in the form of an injunction is necessary.

Courts in Kenya have encountered many problems related to access to justice for instance high court fees, geographical location, complexity of rules and procedure and the use of

⁶ See Article 159 of the Constitution of Kenya, *Government Printer*, Nairobi.

⁷ See generally, Dispute Resolution Guidance at [http://www.ogc.gov.uk/documents/dispute resolution.pdf](http://www.ogc.gov.uk/documents/dispute%20resolution.pdf), accessed on 05/01/2012.

⁸ See Article 159 (2) of the Constitution of Kenya 2010, *Government Printer*, Nairobi.

legalese.⁹ The court's role is also 'dependent on the limitations of civil procedure, and on the litigious courses taken by the parties themselves.'¹⁰ Dispute resolution through litigation takes years before the parties get justice in their matters due to the formality and resource limitations placed on the legal system by competing fiscal constraints and public demands for justice, litigation is so slow and too expensive and it may at times lose the commercial and practical credibility necessary in the corporate world. It is against this backdrop of a myriad of challenges associated with litigation that we interrogate how litigation can be avoided through the use of ADR mechanisms. Even though litigation was available to the parties, it was not the most appropriate mechanism in the above case study as it is expensive, time consuming and would also destroy relationships.

(ii) Arbitration

Arbitration in Kenya is governed by the Arbitration Act, 1995, the Arbitration Rules, the Civil Procedure Act (Cap. 21) and the Civil Procedure Rules 2010. Section 59 of the Civil Procedure Act provides that all references to arbitration by an order in a suit, and all proceedings there under, shall be governed in such manner as may be prescribed by rules. Order 46 of the Civil Procedure Rules, *inter alia*, provides that at any time before judgment is pronounced, interested parties in a suit who are not under any disability may apply to the court for an order of reference wherever there is a difference. Arbitration arises where a third party neutral is appointed by the parties or an appointing authority to determine the dispute and give a final and binding award. The Arbitration Act, 1995 defines arbitration to mean "any arbitration whether or not administered by a permanent arbitral institution." This is not very elaborate and regard has to be had to other sources. According to Khan¹¹, arbitration is a private consensual process where parties in dispute agree to present their grievances to a third party for resolution. It is an adversarial process and in many ways resembles litigation.

⁹*Strengthening Judicial Reform in Kenya; Public Perceptions and Proposals on the Judiciary in the new Constitution*, ICJ Kenya, Vol.III, May, 2002.

¹⁰ Jackton B. Ojwang, "The Role of the Judiciary in Promoting Environmental Compliance and Sustainable Development," 1 *Kenya Law Review Journal* 19 (2007), pp. 19-29: 29.

¹¹ Farooq Khan, Alternative Dispute Resolution, A paper presented Chartered Institute of Arbitrators-Kenya Branch Advanced Arbitration Course held on 8-9th March 2007, at Nairobi.

Its advantages are that parties can agree on an arbitrator to determine the matter; the arbitrator has expertise in the area of dispute; any person can represent a party in the dispute; flexibility; cost-effective; confidential; speedy and the result is binding. Proceedings in Court are open to the public, whereas proceedings in commercial arbitration are private, accordingly the parties who wish to preserve their commercial secrets may prefer commercial arbitration. The other disadvantages of this mechanism is that similar cases cannot be consolidated without the consent of the parties and it may not be appropriate where parties need urgent protection, for example, an injunction. Arbitration was available to the parties in the above case study but was not the appropriate dispute resolution mechanism. For it to be applicable parties must sign an agreement to submit all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.¹² In their relationship the parties and stakeholders did not contemplate referring their disputes to an arbitrator and therefore it was not the appropriate recourse mechanism.

(iii) Negotiation

Negotiation is by far the most efficient conflict management mechanism in terms of management of time, costs and preservation of relationships and has been seen as the preferred route in most disputes.¹³ In negotiation the parties themselves attempt to settle their differences using a range of techniques from concession and compromise to coercion and confrontation.¹⁴ According to Mwangi, the negotiation phase is the one during which the parties hammer out an agreement, or even agree to disagree and it is during this stage that the core issues of the conflict are negotiated or bargained. It has been said that negotiation leads to mediation because the need for mediation arises after the conflicting parties have attempted negotiation, but have reached a deadlock.¹⁵ This was clearly evident in the above case study where after months of negotiations, the Board of Directors and the entire management team and other stakeholders were unable to agree on a plan to re-structure the company and the other environmental issues, and the

¹² Section 3 of The Arbitration Act, 1995, *Government Printer*, Nairobi.

¹³ See *Dispute Resolution Guidance* op. cit.

¹⁴ Peter Fenn, "Introduction to Civil and Commercial Mediation", in Chartered Institute of Arbitrators, *Workbook on Mediation*, (CI Arb, London, 2002), at p. 12.

¹⁵ Makumi Mwangi, *Conflict in Africa; Theory, Processes and Institutions of Management*, (Centre for Conflict Research, Nairobi, 2006), p. 115.

Company had to close permanently. They had reached a deadlock and the need of a mediator had thus arisen.

Its advantages, *inter alia*, are that it is fast; informal, cost saving; flexible; confidential; preserves relationships; provides a range of possible solutions and there is autonomy over the process and the outcome. Negotiation is also a non-coercive process in that the parties have autonomy about the forum, the process, and the outcome [*See Fig. 1.3*]. Its disadvantages are *inter alia* that, it requires the goodwill of the parties; may lead to endless proceedings; can create power imbalances; it is non-binding unless parties reduce the agreement into writing; creates no precedents and it is not suitable when one party needs urgent protection like an injunction.

If the parties do not reach an agreement through negotiation, they will need to consider what other method or methods of dispute resolution would be suitable. However, it will still be possible or may be necessary to continue with negotiations as part of or alongside other forms of dispute resolution.¹⁶

(iv) Mediation

Mediation is a voluntary, informal, consensual, strictly confidential and non-binding dispute resolution process in which a neutral third party helps the parties to reach a negotiated solution.¹⁷ As noted elsewhere mediation is a continuation of the negotiations with the assistance of a third party so as to come to a mutually acceptable outcome that is durable and that addresses the root causes of the conflict. The involvement of the neutral third party makes the negotiations more effective. It should be seen as the preferred dispute resolution route in most disputes when conventional negotiation has failed or is making slow progress.¹⁸

There are certain elements that must be present in a mediation situation: the parties in conflict, a mediator, process of mediation and the context of mediation. These elements are important in understanding mediation and its outcomes.¹⁹ In discussing the mediation paradigm Wall states that the mediation system consists of the mediator, the two negotiators, and the

¹⁶ Ibid

¹⁷ Peter Fenn, "Introduction to Civil and Commercial Mediation", *op. cit.*, p.10

¹⁸ See *Dispute Resolution Guidance* *op. cit.*

¹⁹ J. Bercovitch, "Mediation Success or Failure: A Search for the Elusive Criteria", *Cardozo Journal of Conflict Resolution*, *op.cit.*,pp.290-291

relationships among them. In this paradigm Wall says that the mediation environment is wider and includes other actors such as the negotiator's constituents, the mediator's constituents and the third parties who affect or are affected by the process and outcome of the mediation. He further argues that this environment also includes other factors such as societal norms, economic pressures and institutional constraints which affect the mediation process and the outcome either directly or indirectly. The mediation environment is thus one of exchange where parties have expectations, receive rewards and incur costs as they deal with each of the other parties.²⁰ The case study, as illustrated, has clearly shown that the mediation environment is much wider including not only the mediator, the two negotiators, and the relationships among them but also the negotiator's constituents, the mediator's constituents and the third parties who affect or are affected by the process and outcome of the mediation. In the case study NEMA, effects of the company's activities on the environment and the local residents and economic hardships can be said to be the other forces or parties who formed part of the mediation environment as they would be directly or indirectly affected by the outcome of the mediation.

In the above case study the mediators brought additional resources which enabled them to bring the warring factions to the negotiating table, calmed down tension and gave them an opportunity to communicate their grievances freely. This allowed the parties to accommodate one another and continue with the stalled process of negotiation. Through mediation ZZ corporation agreed to fund a number of projects that were beneficial to the community and the matter amicably resolved to the benefit of all involved including, ZZ corporation, XX company, NEMA the residents and the surrounding community. Through mediation the parties were able to achieve a durable, mutually satisfying outcome through a process that was flexible, expeditious, cost-effective and one that fostered the broken relationships. The mediation in the above case study addressed all the underlying issues such that the conflict could not later flare up again as all the parties were satisfied with the outcome. The case study has also shown that mediation is a cost effective, flexible, informal, speedy, confidential process that allows for creative solutions, fosters relationships, enhances party control [see Fig. 1.3] and allows for personal empowerment and hence suitable in settling disputes. These are the main reasons why mediation was the most

²⁰ James A. Wall, Jr, "An Analysis, Review, and Proposed Research", *The Journal of Conflict Resolution*, Vol. 25, No.25 [March.,1981], pp.157-160

appropriate recourse mechanism in the above case study as opposed to the other conflict management mechanisms.

Sometimes, parties in litigation can engage in mediation outside the court process and then move the court to record a consent judgment.²¹ This procedure exists as a remote form of court-annexed mediation. On the other hand, parties in a conflict that is not before a court may undergo a mediation process and conclude the mediation agreement as a contract *inter partes* enforceable and binding as between them, so long as it abides by the provisions of the Law of Contract Act.²²

Critics of mediation have argued that it is indefinite, time consuming and does not encourage expediency.²³ This is may be a challenge in disputes that are time bound such as projects where a speedy, efficient and cost effective dispute resolution mechanism would be more admirable. The other risks related to mediation is that it requires the goodwill of the parties; may lead to endless proceedings; can create power imbalances; it is non-binding unless parties reduce the agreement into writing; creates no precedents and it is not suitable when one party needs urgent protection like an injunction.

(v) Conciliation²⁴

This process is similar to mediation save that the third party neutral can propose a solution. Its advantages are similar to those of negotiation. It has all the advantages and disadvantages of negotiation save that the conciliator can propose solutions making parties lose some control over the process. As such it could not have been the best method to resolve a complex dispute as the one presented in this case study.

²¹ Civil Procedure Rules, former Order XXIV Rule 6 (now order 25 rule 5(1) and section 3A of the Act; See also “The Rules Committee, The Proposed Amendments to Civil Procedure and Court of Appeal Rules”, *Secretariat of the Rules Committee*, (Nairobi, 2008), p. 6.

²² Cap 14, Laws of Kenya (Revised Edition, 2007), Government Printer, Nairobi.

²³ Tim Murithi & Paula Murphy Ives, Under the Acacia: Mediation and the dilemma of inclusion, *Centre for Humanitarian Dialogue*, April 2007, pg. 77.

²⁴ Peter Fenn, “Introduction to Civil and Commercial Mediation”, op. cit, p.14

(vi) Med-Arb²⁵

It is a combination of mediation and arbitration where the parties agree to mediate but if that fails to achieve a settlement the dispute is referred to arbitration. It is best to have different persons mediate and arbitrate. This is because the person mediating becomes privy to confidential information during the mediation process and may be biased if he transforms himself into an arbitrator.

(vii) Arb-Med²⁶

This is where parties start with arbitration and thereafter opt to resolve the dispute through mediation. It is best to have different persons mediate and arbitrate. This is because a person arbitrating may have made up his mind who is the successful party and thus be biased during the mediation process if he transforms himself into a mediator.

(viii) Dispute Review Boards

Dispute Boards are normally set up at the outset of a contract and remain in place throughout its duration to assist the parties, if they so desire, in resolving disagreements arising in the course of the contract and make recommendations or decisions regarding disputes referred to it by any of the parties.²⁷

(ix) Early Neutral Evaluation²⁸

A private and non-binding technique where a third party neutral (often legally qualified) gives an opinion on the likely outcome at trial as a basis for settlement discussions.²⁹ Although settlement is not the primary objective, the purpose of early neutral evaluation is to promote settlement discussions at an early stage in the litigation process, or at the very least to assist parties avoid the significant time and expense associated with further steps in litigation of the dispute³⁰. The opinion can then be used as a basis for settlement or for further negotiation. The

²⁵ Ibid, p. 15

²⁶ See *Dispute Resolution Guidance* op. cit.

²⁷ Sourced from <http://www.buildingdisputestribunal.co.nz/DRBS.html>, accessed on 05/01/2011

²⁸ Peter Fenn, "Introduction to Civil and Commercial Mediation", op. cit, p. 15

²⁹ Ibid

³⁰ Building Disputes Tribunal, New Zealand<<http://www.buildingdisputestribunal.co.nz/.html>>accessed on 24/08/2011.

aim of a neutral evaluation is to test the strength of the legal points in the case. It can be particularly useful where the dispute turns on a point of law. It is therefore not useful where on the facts of a case the dispute does not turn to a technical point of law.

(x) Expert Determination³¹

This is where the parties submit their dispute to an expert in the field of dispute for determination. The expert determinant gives his decision based on his expertise e.g., accountants valuing shares in a company, a jeweler assessing the carat content of a gold bracelet etc³² It is a fast, informal and cost efficient technique which is applicable where there are disputes of a technical nature for example between the contractor and the architect or employer. It has become a popular method of resolving disputes in the building and construction industry involving qualitative or quantitative issues, or issues that are of a specific technical nature or specialized kind, because it is generally quick, inexpensive, informal and confidential. Expert determination is an attractive method of resolving disputes in building and construction contracts as it offers a binding determination without involving the formalities and technicalities associated with litigation and arbitration; and at the same time it assists in preserving relationships where litigation would not. Expert determination was thus available to the parties in the above case study but was not the most appropriate mechanism considering the nature of the conflict.

(xi) Mini Trial (Executive Tribunal)

This is a voluntary non-binding process where the parties involved present their respective cases to a panel comprised of senior members of their organisation assisted by a neutral third party and has decision making powers.³³ After hearing presentations from both sides, the panel asks clarifying questions and then the facilitator assists the senior party representatives in their attempt to negotiate a settlement.

(xii) Adjudication

Adjudication is defined under the CIArb (K) Adjudication Rules as the dispute settlement mechanism where an impartial, third-party neutral person known as adjudicator makes a fair, rapid and inexpensive decision on a given dispute arising under a construction

³¹ Ibid, p. 16

³² Ibid

³³ Ibid, p.16.

contract.³⁴ Adjudication is an informal process, operating under very tight time scales (the adjudicator is supposed to reach a decision within 28 days or the period stated in the contract)³⁵, flexible and inexpensive process; which allows the power imbalance in relationships to be dealt with so that weaker sub-contractors have a clear route to deal with more powerful contractors. The decision of the adjudicator is binding unless the matter is referred to arbitration or litigation.³⁶ Adjudication is thus effective in simple construction dispute that need to be settled within some very strict time schedules.

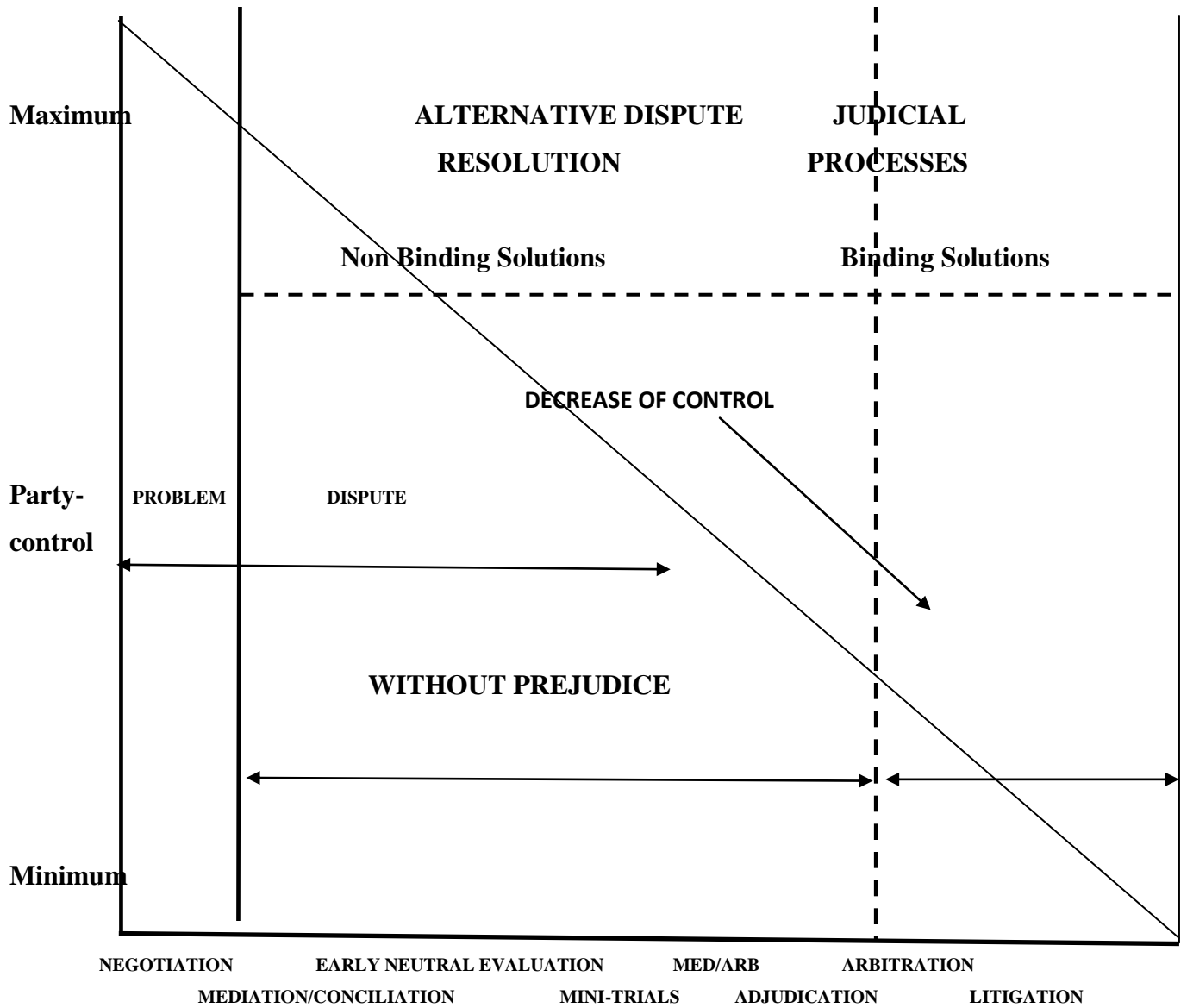
The demerits of adjudication are that it is not suitable to non-construction disputes; the choice of the arbitrator is also crucial as his decision is binding and that it does not enhance relationships between the parties. These are the main reasons it could not have been fruitful in the above-stated case study.

³⁴ The CI Arb (K) Adjudication Rules, Rule 2.1

³⁵ Ibid, Rule 23.1.

³⁶ Ibid., Rule 29

Fig. 1.3 Degree of Party Control



*Source: Chartered Institute of Arbitrators (K) Branch.

Fig. 1.3 illustrates the degree of party control or autonomy over the dispute resolution process under the various ADR mechanisms. From the figure it is manifest that it is in a negotiation that the parties enjoy maximum party control. There is minimum or no control as one moves from negotiation to litigation.

3.0 Conclusion

The paper has addressed the issue of avoiding litigation through the employment of ADR mechanisms. In the case study illustrated above, the parties decided to negotiate. When negotiations hit a deadlock they got a third party to help them continue with the negotiations. Thereafter, they opted to continue negotiating with the assistance of the mediators. The mediators' role in this process was to assist the parties in the negotiations. They did not dictate the outcomes of the negotiations since the parties had autonomy of the process and of the outcome. The mediators successfully brought the warring factions in the management team to the negotiating table once again, calmed down tension and gave the parties an opportunity to communicate their grievances freely. This allowed the parties to accommodate one another and continue with the stalled process of negotiation. Through mediation the parties were able to achieve a durable, mutually satisfying outcome through a process that was flexible, cost-effective and one that fostered the broken relationships.

As the above discussion has shown ADR avails to a legal counsel in the corporate sector an array of mechanisms that can be used successfully in resolving disputes and hence avoid the numerous hurdles associated with the court process. There is a need to put in place mechanisms for effective management of conflicts out of the courts. The time to search for and adopt an effective conflict resolution mechanism if litigation and its attendant hitches are to be avoided is now. This is because ADR mechanisms such as mediation and negotiation offer the disputants autonomy over the forum, process, the outcome, they are flexible, cost-effective, fosters relationships and result to mutually satisfying outcomes. These are good opportunities that ADR mechanisms offer parties to a dispute. Such opportunities cannot be realized through litigation. Avoiding litigation through the employment of ADR mechanisms as has been demonstrated in this paper is possible. It is indeed an imperative and the way of the future.