



# Assessing the Propriety of Arbitration as a Dispute Resolution Mechanism in Matrimonial Cases Under the Nigerian And Romanian Law

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## ABSTRACT

Dispute is an indispensable phenomenon in human relationships including matrimonial relationships. Over the years, litigation has been the major means of resolving matrimonial issues between parties. Most matrimonial disputes channelled to court often end in the dissolution of marriage, which is often accompanied with emotional and psychological trauma due to the relationship between parties. Apart from litigation, another model for dispute resolution is arbitration. The study primarily examined the practicability of adopting arbitration in the resolution of matrimonial disputes in Nigeria and Romania. The study also examined the legal framework on arbitration and matrimonial disputes under the Nigerian and Romanian law. The study was restricted to only marriage under the statute. This study adopted doctrinal research methodology. It was descriptive and analytical in nature. It relied on primary sources of data such as statutes, case laws, and secondary sources of data such as textbooks, articles in journals, online materials, among others. This study found that arbitration offers a confidential, private and flexible dispute resolution process that can be explored in the resolution of matrimonial disputes. It concluded that where parties resort to arbitration, it offers them the opportunity to have their disputes resolved in a private atmosphere and it will help achieve goal 16 of the SDGs 2030. It recommended amendment of the legal framework on marriage to include arbitration as a recognised model for resolving matrimonial disputes.

**Keywords:** Arbitration, dispute resolution, matrimonial disputes, Nigeria, Romania

## INTRODUCTION

Dispute is an inevitable phenomenon in human and contractual relationship between husband and wife. It is often a disagreement arising from issues, interests, rights or claims. Sometimes these disputes are resolved amicably while in some cases they terminate marital relationships, thereby leading to divorce or judicial separation or jactitation or restitution of conjugal rights. A dispute between husband and wife is also known as marital or matrimonial dispute and it is as old as the institution of marriage.<sup>1</sup> Several disputes on matrimonial relationships range from breakdown of relationship to issues relating to custody, maintenance, claims, rights and settlement of properties. When these disputes arise, parties are always quick to resort to court for dissolution of their marriage without making sufficient effort at exploring other alternative means of resolving disputes other than litigation.<sup>2</sup> Court system or litigation often lead to long emotional battle between parties, strained relationship and financial loss.<sup>3</sup> Being the most popular means of resolving disputes, most parties

<sup>1</sup> A K Adebayo, B F Andrew and J A Aina, 'Promoting Amicable Way of Resolving Martial Disputes: A Case for Alternative Dispute Resolution' (2019) 5 *DELSU Law Review* 108.

<sup>2</sup> Ibid.

<sup>3</sup> A S Abiola and A D 'Legal and Institutional Framework for Effective Application of ADR in Marital Disputes' (2025) 2 (4) *Fountain University Law Journal* 70.



believe that it is the most appropriate means of resolving their issues. In addition to this notion, under the Nigeria's Matrimonial Causes Act, the High Court of a State has the unwavering and exclusive jurisdiction to entertain matrimonial issues associated with statutory marriages. Most court settlements do not offer amicable resolution or reinstate the cordial relationship between the parties. Despite the wide recognition and adoption of litigation as the most utilised means of settling matrimonial disputes, it has not been able to protect the privacy of matrimonial disputes because the court is open to everyone including the media who may record proceedings and make it accessible to the public.<sup>4</sup> It is often bedeviled with delayed proceedings, rigid process, court congestion and overloaded court docket, which have made litigants to seek for alternative means that can be explored in resolving their disputes. It does not offer a suitable or more flexible solution for parties in dispute.<sup>5</sup> In other words, the limitations and dissatisfaction of parties with the court process led to the need for an alternative means of resolving disputes, which is binding, enforceable and similar to the court system. Also, the rise in the rate of marital disputes has contributed to the need for a more friendly and flexible dispute resolution mechanism which may probably amend the broken relationship. One of the recognised alternative dispute resolution processes is arbitration.

Arbitration offers a more flexible, speedy and party-friendly dispute resolution process that does not require strict rule of evidence.<sup>6</sup> Just like litigation, parties submit their disputes to a neutral third party or parties (as the case may be) who assist parties in settling their disputes and render a final and binding decision. However, despite the effectiveness of arbitration in resolving disputes, questions often arise as to its effectiveness in resolving sensitive, emotional and sophisticated matrimonial issues that are accompanied with child custody, settlement of property and maintenance. Litigation creates a tensed and unfriendly atmosphere, which often has psychological effect on the relationship of the parties and exposes their issues to the public domain, while arbitration tends to preserve the relationship between parties and offers a more liberal approach to the issues in dispute.<sup>7</sup> Encouraging parties to resort to arbitration will protect the privacy of parties and encourage a more peaceful resolution or dissolution where there are irreconcilable differences between the parties. Despite its numerous benefits, it is often confronted with issues relating to its suitability for the resolution of matrimonial disputes in terms of the exclusive jurisdiction of the High Court, which limits the power of arbitration in matrimonial disputes and enforceability of arbitral awards on the ground of public policy. There are numerous literature on the effectiveness or how alternative dispute resolution can be applied in the resolution of matrimonial disputes, however, this study will focus on arbitration as one of the alternative dispute resolution processes due to its efficiency, effectiveness, timely intervention and binding nature. In other words, it can serve as an alternative to litigation. This study will examine the effectiveness of arbitration as a dispute resolution mechanism for the resolution of matrimonial dispute in Nigeria and Romania, the nature of arbitration, matrimonial disputes and the legal framework on arbitration and matrimonial disputes in Nigeria and Romania.

## CONCEPTUAL CLARIFICATION

Relevant concepts to be considered hereunder are the nature of marriage, meaning of arbitration, divorce arbitration and the matrimonial disputes.

### *Nature of Marriage*

Marriage is an interpersonal relationship between two parties (i.e., a male and a female) as it is recognised across the globe. In other words, the nature of marriage under the Nigerian and Romanian law does not include same-sex marriage. It is a union or relationship between husband and wife (i.e. monogamous marriage). It is an

<sup>4</sup> E Jatau, 'Arbitration in Family Disputes: A Critical Analysis' (2025) <https://www.mondaq.com/nigeria/arbitration-dispute-resolution/1701622/arbitration-in-family-disputes-a-critical-analysis?360safeparam=1023589484> accessed 20 March 2026.

<sup>5</sup> C B Nwakoby, 'Use of Alternative Dispute Resolution (Arbitration, Mediation and Negotiation) in the Resolution of Marital Conflict' (2025)10 (1) *COOU Law Journal* 31.

<sup>6</sup> O O Ogunkorode K B Akanle and T Adewumi., 'Navigating the Efficacy of Arbitration as a Tool for Resolving Employment Disputes in Nigeria: Lessons from South Africa' (2025) 5 *Turf Law Journal* 2.

<sup>7</sup> H B Ojibara, 'Examining the Viability of Alternative Dispute Resolution Methods in the Resolution of Marital Disputes under Nigerian Family Law' (2023) 5 (1) *Law and Social Policy* 36.



institution that is supported under the Christian religion, Islamic religion and traditional worshipper. Marriage is the oldest social institution to be established between a man and a woman in the world.<sup>8</sup> Marriage is a civil contract or a status or relationship arising from an agreement between a man and a woman to live as spouses.<sup>9</sup> Also, the Court of Appeal in the case of *Ijioma v. Ijioma* held that the essential of a valid statutory marriage are parties' legal capacity to contract the marriage, mutual consent or agreement of the parties and an actual contracting in the form duly prescribed by law.<sup>10</sup> It is a recognised and important institution that cuts across tribes, ethnicity, religion and nations of the world. It is the legal union of one man and one woman as husband and wife.<sup>11</sup> Lord Penzance defines marriage as a voluntary union for life of one man and one woman to the exclusion of all others.<sup>12</sup> In other words, this marriage is expected to last for a life time until one of the parties is deceased.<sup>13</sup> This definition of marriage by lord Penzance in *Hyde v. Hyde* has received wide recognition across the globe and has been recognised as an acceptable definition and scope of marriage. The voluntary union emphasised in *Hyde v. Hyde* means that marriage is consensual and it must not be a product of threat, force, deceit, fraud, duress, or undue influence.<sup>14</sup> The concept of marriage in Romania is connected to community values, family alliance and socio-economic consideration and it is shaped by social, cultural and legal belief.<sup>15</sup>

For a statutory marriage or a marriage under the Act to be valid, there must be consent between the parties, parties must be of marriageable age, none of the parties must be insane and none of them must be within the prohibited degrees of affinity and consanguinity. However, persons within the prohibited degree of affinity and consanguinity who desires to marry must apply to the Judge of the High Court for permission to marry each other under certain exceptional circumstances, this application will be granted where the exceptional circumstance is justified.<sup>16</sup> Under the Nigeria Marriage Act<sup>17</sup> the marriageable age is 21 years<sup>18</sup> while under the Child Rights Act<sup>19</sup> the marriageable age is 18 years. Any marriage contract with a minor will be declared null and void and of no effect.<sup>20</sup> The provisions of these Acts often create confusion as to the recognised and lawful marriageable age. In the case of Romania, the marriageable age is 18 years, but the law allows an individual who is 16 years to marry only with the consent of his or her parent.<sup>21</sup>

However, in the institution of marriage, parties can seek reliefs such as nullity of the marriage (i.e. where parties are within the prohibited decree of consanguinity and affinity or consent was not obtained or improperly obtained or parties are not of marriageable age), dissolution of marriage (i.e. where the marriage has broken down irretrievably) judicial separation, restitution of conjugal rights and jactitation of marriage.<sup>22</sup>

<sup>8</sup> J O Abusomwan, 'Prospects and Challenges of Resolving Marriage Disputes through Alternative Dispute Resolution Mechanisms' (2023)5(1) *International Review of Law and Jurisprudence* 146.

<sup>9</sup> A A Omoniyi, 'Alternative Dispute Resolution as a Panacea in Settling Marital Disputes in Nigeria' (2025) 5 (1) *Adeleke University Law Journal* 162.

<sup>10</sup> [2009] 12 NWLR (Pt. 1156) 593 at 607.

<sup>11</sup> B A Garner, (ed)., *Black's Law Dictionary* (11<sup>th</sup> edn, Thomas Reuter 2019)

<sup>12</sup> *Hyde v. Hyde* 1866 (1) L.R. & D 130; *Jabre v. Jabre* 1999 (3) NWLR (Pt. 596) 606.

<sup>13</sup> 'Marriage in Nigeria Across Ages: Problems and Prospects' <<https://ssrn.com/abstract=2858618>> accessed 18 November 2025.

<sup>14</sup> I U Ononye and N A Igih, 'Conduct of Statutory Marriage in Nigeria in Accordance with the Marriage Act' (2019) 3 *AJCAL*.

<sup>15</sup> 'Understanding Marriage and Divorce Regulation in Romania' <<https://generisonline.com/understanding-marriage-and-divorce-regulations-in-romania/>> accessed 26 December 2025.

<sup>16</sup> Matrimonial Causes Act, Cap. M7 Laws of the Federation 2004, s4(2).

<sup>17</sup> Marriage Act, Cap. M6, Laws of the Federation 2004.

<sup>18</sup> *Ibid*, s18.

<sup>19</sup> Child Rights Act 2003, s 21.

<sup>20</sup> *Ibid*.

<sup>21</sup> Romanian Civil Code Law No. 287/2009, Part I, No. 5055/2011, art 272 (2).

<sup>22</sup> O I Anyuzgi, 'The Trusted Adisors Legal Digest: Utilising Alternative Dispute Resolution (ADR) to Resolve Matrimonial Disputes' *Business Day* ( 25 July, 2024) <<https://businessday.ng/news/legal-business/article/the-trusted-advisors-legal-digest-utilizing-alternative-dispute-resolution-adr-to-resolve-matrimonial-disputes/>> accessed 04 March 2026.



## Meaning of Arbitration

Arbitration is a private dispute resolution method where parties voluntarily submit their disputes to arbitrator(s) who make(s) a binding decision known as an award. It is a private adjudication process where an independent and impartial party makes a binding decision based on objective measures and standards.<sup>23</sup> It is also an independent dispute resolution model where a neutral third party appointed by the parties resolves disputes between parties in accordance with the arbitration agreement.<sup>24</sup> It provides a peaceful and flexible dispute resolution process and will only be effective when parties consent to it.<sup>25</sup> In the case of *MISR Nigeria Ltd v. Oyedele*, the court defined arbitration as the process whereby disputes and differences are referred to and determined judicially and with binding effect through the application of law by the arbitrator(s).<sup>26</sup> Arbitration is an alternative dispute resolution process that involves the intervention of an independent party in the resolution of disputes. It is a dispute resolution process that involves a neutral party or arbitral tribunal who renders a binding decision after considering the arguments and evidence from both parties.<sup>27</sup> The outcome of arbitration is determined by the decision of the arbitrators and in many cases; this outcome often leads to a satisfactory outcome particularly when compared with litigation.<sup>28</sup>

Arbitration is an out-of-court method that involves the submission of disputes to a neutral party who controls the arbitral process, listens to both parties and makes a binding decision.<sup>29</sup> It is an effective dispute resolution process where aggrieved parties appoint one or more arbitrator who makes a final and binding decision.<sup>30</sup> It is a dispute resolution model where voluntarily appointed arbitrators determine disputes in a judicial manner other than a court of competent jurisdiction.<sup>31</sup> One of the features that distinguishes arbitration from the court system is that arbitration is a voluntary process where parties have the power to determine how proceedings would be conducted.<sup>32</sup> Arbitration proceedings can take the form of physical, electronic or hybrid process. Where there is physical or in-person arbitration, all participants are expected to be physically present at the venue of arbitration. In other words, parties are expected to travel from their various locations to the venue. Arbitration proceedings are electronic in nature when the physical presence of all participants and the need to travel to the venue are dispensed with. Electronic proceeding is a product of information communication technology such as Google Meet, Zoom and other video conferencing platforms. Participants participate in proceedings from the comfort of their homes, offices or wherever they choose to be. Hybrid proceeding on the other hand, is a combination of both in person and electronic proceedings. Parties who cannot attend physically are given the opportunity to attend virtually through the various electronic communication platforms.

## Divorce Arbitration

Divorce arbitration is a mini trial where a neutral third party (otherwise known as arbitrator) with experience in family law or divorce proceedings hears the parties' case and renders a final decision known as an arbitral award.<sup>33</sup> The appointment of arbitrator and the number to be appointed is often determined by the parties in

<sup>23</sup> J H Wade, 'Arbitration of Matrimonial Property Disputes' (1999) 11 (2) *Bond Law Review* 397.

<sup>24</sup> M N I Jan and A L Haruna, 'The Role' of Arbitration in the Resolution of International Commercial Disputes' (2014) 22 (2) *IIUM Law Journal* 269.

<sup>25</sup> C J Ubanyionwu, 'Analysis of Arbitration and other Alternative Dispute Resolution Modes in Nigeria' (2023) 7 (2) *African Journal of Law and Human Rights*, 136.

<sup>26</sup> 1996 N Comm. L.R. 191 at 194.

<sup>27</sup> Juan Pablo, 'Effectiveness of Mediation and Arbitration as Alternative Dispute Resolution Methods in Mexico' (2024)1(4) *Journal of Conflict Management* 41.

<sup>28</sup> *Ibid.*

<sup>29</sup> 'Methods for Resolving Conflicts and Disputes' <<https://www.okbar.org>> accessed 19 November 2025.

<sup>30</sup> G U Maheswari, 'Arbitration as an Alternative Dispute Settlement Mechanism' (2024) 6 (5) *International Journal of Legal Science and Innovation* 232.

<sup>31</sup> J U Yahaya, 'The impact of Alternative Dispute Resolution in Resolving Conflict in Nigeria' (2021) 1 (28) *NOUN International Journal of Peace Studies and Conflicts Resolution* 132.

<sup>32</sup> *Ibid.*

<sup>33</sup> Abusomwan J O., 'Prospects and Challenges of Resolving Marriage Disputes through Alternative Dispute Resolution Mechanisms' (2023)5(1) *International Review of Law and Jurisprudence* 149.



dispute. This arbitration is often initiated for the dissolution of marriage by an arbitrator who acts like a judge with considerate flexibility and makes a decision which may be binding or non binding, depending on the agreement of parties.<sup>34</sup> Unlike in litigation where the court controls the entire divorce proceeding, parties enjoy and exercise their autonomous powers by determining the conduct of proceeding. Divorce arbitration provides a private, confidential, conducive and speedy resolution without going through the rigour of court's judicial process.<sup>35</sup> This process is often adopted by parties who have reached a dead end in their relationship or parties who feel divorce is the only solution to their disputes. However, despite the fact that divorce arbitration can be effective in dissolution of marriage, it is often argued that child custody may not be effectively achieved due to its technical, sensitive and controversial nature.<sup>36</sup> It is often believed that parties may not consider the best interest of the child during arbitration proceeding contrary to the decision of the court which is often in the best interest of the child.<sup>37</sup> Disputing parties are often shadowed by bitterness while making such decision and such decision may affect the child in the long run. In other words, where any divorce arbitration or award rendered negatively affects the interest of the child of the marriage, the court has the power to review such award.<sup>38</sup> Contrary to the opinion of scholars as to unsuitability of arbitration for child custody and settlement of properties, where parties agree to have their disputes settled by arbitration, the award rendered becomes binding and enforceable just like litigation. In order words, if arbitration is given the force of law for the resolution of marital disputes, parties who voluntarily submit to arbitration for confidentiality flexibility and privacy will accept the decision of the arbitrator.

### Meaning of Matrimonial Disputes

Matrimonial dispute, otherwise known as marital crisis, is a form of conflict or disagreement between husband and wife. Matrimonial dispute is the universal negative effect of marriage.<sup>39</sup> Matrimonial disputes are emotional due to the relationship between parties and parties may need to relate with each other when disputes are resolved or the marriage dissolved.<sup>40</sup> A matrimonial dispute is a special kind of conflict where parties involved in the conflict are emotionally attached with the parties' uniqueness and peculiarities.<sup>41</sup> It affects the existing relationship between husband and wife. It is peculiar to people who are married under the statute, Islamic law and customary law. Disputes are inevitable in marriages, however, the gravity of the dispute and ability to manage such disputes matters. Matrimonial disputes are series of event that may probably damage the marital relationship if not properly handled.<sup>42</sup> They may arise from a series of disagreements which may be financial, social, economic or political in nature or anything that may cause dispute between the disputants. Other factors responsible for matrimonial disputes are domestic violence, infidelity, parenting roles, high expectations, poor communication and household responsibility. When these conflicts are not resolved by parties amicably between themselves, they are often brought to the public domain through the court for dissolution of marriage, judicial separation, jactitation of marriage and restitution of conjugal rights.

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<sup>34</sup>Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> C B Nwakoby, 'Use of Alternative Dispute Resolution (Arbitration, Mediation and Negotiation) in the Resolution of Marital Conflict' (2025)10 (1) *COOU Law Journal* 31.

<sup>37</sup> *Biel v. Biel* 1983 (336) N. W 2d 404.

<sup>38</sup> Nwakoby (note 36).

<sup>39</sup> A A Omoniyi, 'Alternative Dispute Resolution as a Panacea in Settling Marital Disputes in Nigeria' (2025) 5 (1) *Adeleke University Law Journal* 162.

<sup>40</sup> D S Adesanya and T T Ajibade, 'Alternative Dispute Resolution as a Viable Template for the Resolution of Family Disputes' (2025) 11 (3) *International Journal of Law* 43.

<sup>41</sup> A U Ruwandoruwa, 'Mediation and Arbitration in Nigerian Family Law' Assessing Alternatives to Litigation' (2024)2(5) *ISRG Journal of Arts Humanities and Social Sciences* 239.

<sup>42</sup> A K Adebayo, B F Andrew and J A Aina, 'Promoting Amicable Way of Resolving Martial Disputes: A Case for Alternative Dispute Resolution' (2019) 5 *DELSU Law Review* 113.



## LEGAL FRAMEWORK ON ARBITRATION AND MATRIMONIAL DISPUTES IN NIGERIA AND ROMANIA

Arbitration is a dispute resolution mechanism that is regulated by statute. Nigeria and Romania have a uniform legislation for the recognition and enforcement of arbitral award which has been ratified by both countries. The New York Convention 1958 plays an active role in the recognition and enforcement of arbitration awards in these countries. Other legislation regulating arbitration and matrimonial disputes have played an active role in shaping dispute resolution in Nigeria and Romania.

### *Nigeria*

The Constitution is an important legislation that regulates dispute resolution and marriage in Nigeria. It is the source from which every other law derives its validity and any law that is not consistent with the provisions of the Constitution is rendered null and void to the extent of its inconsistency.<sup>43</sup> In Nigeria, the Constitution of the Federal Republic of Nigeria, 1999 identifies the strength of arbitration by specifically making reference to arbitration as a dispute resolution process under the objectives of foreign policy. Section 19(d) provides that Nigeria's foreign policy shall be guided by the respect for international law and treaty obligations as well as seeking of settlement of international disputes by negotiation, mediation, conciliation, arbitration and adjudication.<sup>44</sup> The mere recognition of arbitration as a dispute resolution process under this section is an indication that it is statutorily recognised, binding and enforceable. Also, section 36 guarantees the right to fair hearing in any court or tribunal within a reasonable time.<sup>45</sup> It encourages impartial decision-making by an independent tribunal or court.

The Marriage Act regulates statutory marriage or marriage under the Act. It provides a unified legislation on the registration and celebration of monogamous marriage in Nigeria. It recognises marriage under the statute, that is, monogamous marriage of one man and one wife. The Marriage Act makes provision for the procedure for the celebration of statutory marriage, such as submission of notice of marriage,<sup>46</sup> publication of notice of marriage in marriage notice book,<sup>47</sup> right to object,<sup>48</sup> celebration of marriage<sup>49</sup> and issuance of certificate of marriage.<sup>50</sup> The Marriage Act focuses on the criteria for celebrating marriage in Nigeria but does not cover situations where such marriages are in disputes. In other words, the Marriage Act does not make provision for mechanisms for the settlement of marital disputes between a man and his wife. However, the Matrimonial Causes Act makes provision for cases where certain issues may lead to disputes between parties and the dispute resolution process that can assist parties in settling such disputes.

The Matrimonial Causes Act regulates disputes between husband and wife of a statutory marriage. Marital disputes may lead to divorce, nullity of void and voidable marriage, judicial separation, restitution of conjugal rights and jactitation of marriage.<sup>51</sup> The sole ground for divorce under the Act is when the marriage has broken down irretrievably.<sup>52</sup> The Act identifies instances where a court can decree that a marriage has broken down irretrievably. A marriage is said to have broken down irretrievably when either of the parties satisfies the court on the wilful and persistent refusal to consummate the marriage, adultery, intolerable behaviour, desertion, living apart, failure to comply with decree, or restitution of conjugal rights and presumption of death.<sup>53</sup> Section 2(1) of the Act confers jurisdiction on the High Court of every state to entertain and adjudicate over marital

<sup>43</sup> Constitution of the Federal Republic of Nigeria, 1999, s1(3).

<sup>44</sup> Ibid, s19(d).

<sup>45</sup> Ibid, s36.

<sup>46</sup> Marriage Act M6 Laws of the Federation of Nigeria 2004 s7.

<sup>47</sup> Ibid, s10.

<sup>48</sup> Ibid, s15.

<sup>49</sup> Ibid, s12.

<sup>50</sup> Ibid, s13.

<sup>51</sup> Matrimonial Causes Act, Cap. M7 Laws of the Federation 2004, s2(2).

<sup>52</sup> Ibid, s15.

<sup>53</sup> Ibid, s15(2).



disputes by stating that a person may institute matrimonial causes.<sup>54</sup> Section 2(1) Matrimonial Causes Act provides that:

Subject to this Act, a person may institute a matrimonial cause under this Act in the High Court of any State of the Federation: and for that purpose the High Court of each State of the Federation shall have jurisdiction to hear and determine-

- a) Matrimonial causes instituted under the Act; and
- b) Matrimonial causes (not being matrimonial causes to which section 101 of this Act applies) continued in accordance with the provisions of Part IX of this Act, so however that jurisdiction under this Act in respect of matrimonial causes within this paragraph shall be restricted to the court in which the matrimonial cause was instituted...

Under the Act in the High Court of any state of the Federation can entertain or hear divorce proceedings.<sup>55</sup> Such proceeding is often commenced by way of petition which is often filed by the aggrieved party. With the use of the word 'may' in Section 2(1) of the Matrimonial Causes Act, parties are not mandated to resort to litigation. This provision of the Matrimonial Causes Act allows parties to resort to an alternative dispute resolution process such as arbitration. It does not impose litigation or the court system on parties. In other words, parties can use the voluntary tune of this provision as an opportunity to resort to arbitration when dispute arises. By virtue of the provision of this Act, the court has the power to settle matrimonial or family dispute.

The Matrimonial Causes Act emphasises voluntariness and consent in marriage. Section 3(1)(d) provides that :

Subject to the provision of this section, a marriage that takes place after the commencement of this Act is void in any of the following cases where-

It was obtained by duress or fraud or;

That party is mistaken as to the identity of the other party or as to the nature of the ceremony performed; or

That party is incapable of understanding the nature of the marriage contract.<sup>56</sup>

The voluntary nature of marriage under the Matrimonial Causes Act also extends to the choice of alternative dispute resolution such as arbitration. In adopting arbitration as an alternative to litigation in Matrimonial disputes, parties can agree to have their disputes resolved *via* arbitration. This agreement is often in writing and contained in a submission agreement or arbitration clause. Despite the implied acceptance of arbitration or other alternative dispute resolution process in the resolution of matrimonial disputes, an order of decree *nisi* and absolute in the dissolution of marriage can only be made by a court of competent jurisdiction.

The Arbitration and Mediation Act 2023 repeals the Arbitration and Conciliation Act and creates a unified legal framework for the resolution of disputes in Nigeria. The Arbitration and Mediation Act promotes fairness, speedy and effective dispute resolution through an independent tribunal.<sup>57</sup> It recognises the application of the New York Convention 1958 in respect of the recognition and enforcement of awards in Nigeria. The agreement of parties to resort to arbitration is often represented in the arbitration agreement signed by the parties. The arbitration agreement must be in writing and may be transmitted in an electronic

<sup>54</sup> Matrimonial Causes in this case means, decree of dissolution, judicial separation, restitution of conjugal rights and jactitation of marriage.

<sup>55</sup> Matrimonial Causes Act, Cap. M7 Laws of the Federation 2004, s2(1).

<sup>56</sup> Matrimonial Causes Act, Cap. M7 Laws of the Federation 2004.

<sup>57</sup> Arbitration and Mediation Act 2023, s1(1).



form.<sup>58</sup> Arbitration agreement is irrevocable except with the agreement of parties and the death of any party does not render it invalid.<sup>59</sup> On the appointment of arbitrators, parties are at liberty to agree on the number of arbitrators to be appointed.<sup>60</sup> The Arbitration and Mediation Act is an efficient dispute resolution process known for the resolution of commercial transaction disputes.

This Act can be extended to the resolution of marital disputes due to its effectiveness, flexible process and binding nature. However, where there is no legislative provision on the adoption of arbitration in the resolution of marital dispute, section 58(v) may lead to the refusal of recognition and enforcement of the award made because it may be regarded as a matter beyond the scope of arbitration.<sup>61</sup> Rather than resorting to litigation, which is also binding and enforceable against parties, parties in marital dispute can resort to arbitration for speedy, user-friendly and flexible dispute resolution process. Unlike litigation, disputing parties enjoy autonomous power in arbitration by determining the procedure and appointment of arbitrators. In arbitration, parties can exercise their power over the language of arbitration, procedure for hearing (whether physical, virtual or hybrid), date of hearing or commencement of arbitration. Prior to the commencement of arbitration proceeding, the aggrieved party or claimant file points of claim which must include the relief sought by the claimant.<sup>62</sup> The point of claim is served on the respondent who in return prepares and serves his points of defence on the claimant.<sup>63</sup> Where there is a need for the submission of additional documents or evidence, parties are expected to present such documents by serving one another. Once hearing date is fixed on the agreement of parties, hearing commences with the arbitrator playing the role of a neutral in the resolution of disputes between parties, and after hearing both parties and their witnesses, the arbitrator renders an arbitral award.

### **Romania**

Romanian Civil Code Law No. 287/2009, Part I, No. 5055/2011, is one of the main legislation on the settlement of matrimonial disputes. A marriage may be declared absolute nullity where consent is not obtained or where there is an existing marriage or where the parties are within prohibited decrees,<sup>64</sup> while it may be declared relative nullity where it was instituted based on fraud or duress or absence of legal approval.<sup>65</sup> It regulates dissolution and set out grounds for the dissolution of marriage. Article 373 of the Romanian Civil Code provides that a marriage may be dissolved by the mutual consent or agreement of both parties i.e., the husband and wife. It can be obtained where the marital relationship is severely damaged and it is impossible for the parties to continue their relationship or on the request of one of the parties.<sup>66</sup> Parties can also resort to court for the dissolution of their marriage. In addition to the mutual consent and judicial dissolution, a notary public may also dissolve a marriage.<sup>67</sup> Where parties agree to dissolve their marriage, such marriage may be dissolved by a notary public, registrar at the civil registry and the court.<sup>68</sup> This Code also makes provision for settlement transactions or settlement agreement which can be referred to as an alternative dispute resolution mechanism that allows parties to end or prevent disputes through mutual agreement.<sup>69</sup> This is a lawful and recognised judicial process that has the force of law and does not allow further litigation on the same matter.

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<sup>58</sup> Ibid, s2(4)(a).

<sup>59</sup> Ibid, s3 and 4(1).

<sup>60</sup> Ibid, s6.

<sup>61</sup> Ibid, 58(v) states that the court may refuse recognition and enforcement of an award when the award contains decisions that are beyond the scope of the matters that can be submitted to arbitration.

<sup>62</sup> Arbitration and Mediation Act 2023, s36.

<sup>63</sup> Ibid.

<sup>64</sup> Romanian Civil Code Law No. 287/2009, Part I, No. 5055/2011, art 271.

<sup>65</sup> Ibid, art 274.

<sup>66</sup> Ibid.

<sup>67</sup> Ibid, art 375.

<sup>68</sup> Ibid.

<sup>69</sup> Romanian Civil Code, art 2267-2278.



Arbitration is regulated by the Civil Procedure Code of 1865 which has been amended with the recent amendment in 2013 and subsequently amended in 2015. It is applicable to adhoc, institutional, domestic and international arbitration depending on the type arbitration applicable or selected by parties.<sup>70</sup> The three important principles that must be taken into consideration during arbitration proceeding are fair hearing and equal treatment of parties, reasonable opportunity for parties to present their cases and both parties must be heard.<sup>71</sup> The Romanian Civil Procedure Code 2015 regulates effective dispute resolution and the exploration of arbitration in the resolution of disputes and was modeled after the UNCITRAL Model Law. Just like any other arbitration mechanism, this code recognises the importance of arbitration agreement which must be in writing (this may include fax, telegram or email).<sup>72</sup> It recognises the distinct nature of the arbitration agreement which excludes the jurisdiction of the court of law and must contain the name of the arbitrator or the method to be adopted in the appointment of arbitrator.<sup>73</sup> On the appointment of arbitrator, the number of arbitrator may be stated in the arbitration clause which is a valid contract that is distinct and separate from the main clause. Parties have the power to agree of the provision of the arbitration agreement and the conduct of arbitration proceedings provided it is not contrary to Romania public policy and good moral.<sup>74</sup> The arbitrator will be held liable in damages where he refuses to honour and protect the confidentiality of the arbitration process and must not allow court intervention where parties have agreed to resort to arbitration.<sup>75</sup> Other instances where an arbitrator may be held liable in damages are where he resigns without reasonable excuse, refuses to participate in proceeding without good cause and breaches his main duties and obligations.<sup>76</sup>

However, the Code provides that arbitration can only be employed in the resolution of disputes relating to monetary claims while matters such as personal status, family matter and certain rights that cannot be disposed off are not arbitrable.<sup>77</sup> The state or public authorities may arbitrate this disputes if authorised by law.<sup>78</sup> Despite the non-arbitrability of family disputes, Romanian Law still allows a neutral person such as a notary public whose position in dispute resolution is similar to that of an arbitrator to resolve disputes between parties. The Code expects an award to be rendered within six months and one year of the constitution of arbitral tribunal of domestic and international arbitration respectively. Such award must be binding and enforceable in the court of Law through court connected procedure.<sup>79</sup> This period is renewable only once, that is three months for domestic arbitration and six months for international arbitration.

## EVALUATING THE VIABILITY OF ARBITRATION AS AN EFFECTIVE DISPUTE RESOLUTION PROCESS IN NIGERIA AND ROMANIA

Arbitration allows parties to determine how their disputes would be resolved and encourage them to maintain a good relationship thereafter. In other words, considering the flexibility and fairness of arbitration proceedings, arbitration will protect the confidentiality of the process and keep their matters private. It will guarantee the autonomous powers of parties in dispute, their privacy, confidentiality of their information, full participation of parties and cost-effectiveness.<sup>80</sup> It will encourage discussion and reduce hostility during proceedings. Introducing arbitration as an alternative dispute resolution process to the resolution of matrimonial dispute will

<sup>70</sup>Horia Draghici., 'International Arbitration Laws and Rules in Romania' (2025) <https://cms.law/en/int/expert-guides/cms-expert-guide-to-international-arbitration/romania> accessed 05 March 2026.

<sup>71</sup> Romanian Code of Civil Procedure 2013, art 575.

<sup>72</sup> Romanian Code of Civil Procedure 2013, art 548.

<sup>73</sup> Ibid, art 550.

<sup>74</sup> Ibid, art 544(2).

<sup>75</sup> Ibid, art 565(c) and 553.

<sup>76</sup> Ibid, art 565.

<sup>77</sup> Romanian Code of Civil Procedure 2013, art 542.

<sup>78</sup> Ibid

<sup>79</sup> Ibid, art 567.

<sup>80</sup> A K Adebayo, B F Andrew and J A Aina, 'Promoting Amicable Way of Resolving Martial Disputes: A Case for Alternative Dispute Resolution' (2019) 5 *DELSU Law Review* 117-118.



go a long way in resolving family issues rather than resorting to court. It will help preserve the existing relationship between parties rather than outright dissolution, reduce cost and more timely.<sup>81</sup>

Arbitration guarantees the privacy of issues and promotes amicable resolution of matrimonial disputes. Parties are assured of the confidentiality and privacy of their documents and proceeding where their issues are not made public but private unlike the adversarial process or litigation. Where there are sensitive issues in dispute, privacy of such issues are guaranteed. It will eliminate tension and intense psychological disconnection associated with litigation and offers a more relaxed atmosphere where their disputes may likely be resolved. It will encourage parties to be free, honest, open and expressive during proceedings. It will protect family reputation and children of the marriage from experiencing the rigid nature of litigation and public exposure. It will give parties the opportunity to decide on the appointment of their arbitrator(s), the number to be appointed and who to be appointed.

The emotional and psychological well being of parties are protected during arbitration proceedings. However, where parties resort to dissolution, its decisions are binding and enforceable. Although arbitration is not recognised as a dispute resolution mechanism under the marriage statute in Nigeria and Romania, it will go a long way in resolving matrimonial disputes in these countries. For instance, the Matrimonial Causes Act makes provision for the consideration of reconciliation between parties prior to trial, at the commencement of trial and in the course of trial. Section 11(1) provides that:

It shall be the duty of the court in which a matrimonial cause has been instituted to give consideration, from time to time, to the possibility of a reconciliation of the parties to the marriage (unless the proceedings are of such a nature that it would not be appropriate to do so), and if any time it appears to the judge constituting the court, either from the nature of the case, the evidence in the proceedings or the attitude of those parties, or of either of them, or of counsel, that there is a reasonable possibility of such a reconciliation, the judge may do all or any of the following, that is to say, he may-

- a) adjourn the proceedings to afford those parties an opportunity of becoming reconciled or to enable anything to be done in accordance with either of the next two succeeding paragraphs;
- b) with the consent of those parties, interview them in chambers, with or without counsel, as the judge thinks proper, with a view to effecting a reconciliation;
- c) nominate a person with experience or training in marriage conciliation, or in special circumstances, some other suitable person, to endeavour with the consent of the parties, to effect a reconciliation.<sup>82</sup>

In addition to reconciliation provided for under the matrimonial Causes Act,<sup>83</sup> arbitration will go a long way in resolving the issues between parties where the judge opt arbitration as a method of reconciliation. While relying on the provision of section 11(1)(c), the court can nominate an arbitrator for the resolution of disputes between parties.<sup>84</sup>

Due to the speedy nature of arbitration, it will go a long way in reducing the court dockets. Where matrimonial cases are referred to arbitration before litigation, court congestion will be minimal and there will be more opportunities for the resolution of disputes that cannot be resolved through arbitration. Arbitration will encourage cordial and friendly communication between parties and exposes their strengths and weaknesses in a calm atmosphere.

<sup>81</sup> The Role of Arbitration in Resolving Disputes in Nigeria <<https://globallawexperts.com/the-role-of-arbitration-in-resolving-disputes-in-nigeria/>> accessed 15 March 2026.

<sup>82</sup> Matrimonial Causes Act, Cap. M7 Laws of the Federation 2004, s11.

<sup>83</sup> Ibid.

<sup>84</sup> Ibid.



The dissolution of marriage by a notary public or registrar under the Romanian Civil Code is a welcome development in Nigeria. This procedure can be likened to an alternative dispute resolution process such as arbitration where a neutral third party helps parties resolve their disputes. Just like in Romania where a notary public assists parties to dissolve their marriages based on mutual agreement of the parties, arbitration is also suitable for the resolution of marital disputes because it is initiated by the agreement of parties. Also, the transaction settlement under the Romanian Civil Code is an initiative of Alternative Dispute Resolution. Once this settlement is made based on the agreement of parties, then it becomes binding on the parties involved. This transaction settlement can be approved by the court and given the force of law.<sup>85</sup> In the same vein, the introduction of arbitration to the settlement of matrimonial dispute will be more successful in Romania than Nigeria due to the effective operation of transaction settlement, which is a form of alternative dispute resolution.

Adopting arbitration in the resolution of matrimonial dispute will contribute to the United Nations Sustainable Development Goals 2030. Specifically, it will help achieve goal 16 of the United Nations Sustainable Development Goals on Peace, Justice and Strong institutions. In realising goal 16, arbitration will encourage dialogue, and promote peaceful dissolution of marriage or resolution of matrimonial dispute thereby preventing prolonged legal battle and matrimonial hostility. In advancing justice, parties are allowed to exercise their autonomous powers during arbitration, delays are reduced while complexities and technicalities associated with court proceedings are reduced drastically or completely eradicated. It will provide equal access and opportunities for the parties in dispute. Adopting arbitration in the resolution of matrimonial dispute will strengthen arbitration institution, improve the experience of arbitrators, and encourage parties to explore arbitration in resolving their matrimonial disputes. In other words, it will strengthen the court by reducing matrimonial cases and will afford courts the opportunity of focusing on more complex cases.

## CHALLENGES CONFRONTING THE EFFECTIVE UTILISATION OF ARBITRATION IN NIGERIA AND ROMANIA

The utilisation of arbitration in the resolution of matrimonial disputes has been a subject of debate over the years due to the fact that litigation is a traditional, most recognised dispute resolution method and a product of statute. Parties believe that court is the only place where matrimonial disputes can be resolved due to its formal and rigid nature.<sup>86</sup> Despite the recognition of arbitration by the Constitution as an alternative means of resolving disputes, it is rarely adopted in the resolution of matrimonial disputes. The absence of legislation on the adoption of arbitration in the resolution of matrimonial dispute is one of the challenges associated with the successful use of arbitration. Apart from the avenue for reconciliation which parties may rely on to opt for arbitration, the Nigerian and Romanian laws do not make provision for the adoption of arbitration in the resolution of marital disputes. Despite the similarity between arbitration and litigation, disputing parties find it difficult to adopt arbitration because they believe it is not a provision of statute for the resolution of marital disputes and of no legal effect on the parties. Some also believe that it is most suitable for the resolution of commercial transaction disputes than matrimonial disputes.

Inadequate precedence, sensitisation and awareness of the viability of arbitration in the settlement of marital disputes affect its usage.<sup>87</sup> Disputing parties often belief court is the most efficient for marital dispute, they run to court for dissolution or other matrimonial reliefs without seeking an alternative means to resolve their disputes. Being the traditional and most recognised dispute resolution process, disputing parties often belief that courts are more respected and authoritative than arbitration<sup>88</sup>. Also, many disputing parties are not aware that arbitration can be explored effectively in the resolution of marital disputes because it is often not utilised

<sup>85</sup> Romanian Civil Code Law No. 287/2009, Part I, No. 5055/2011, art 2278.

<sup>86</sup> A O Nyobana and R A Chindah, 'Available Settlement Measures for Marriage Disputes Under Nigerian Statutes' (2024)20 (1) *UNIZIK Law Journal* 11.

<sup>87</sup> S AdekanyeS, 'Alternative Dispute Resolution Methods in Resolving Family Disputes in Nigeria' <<https://www.harlemsolicitors.com/2024/02/03/the-alternative-dispute-resolution-methods-in-resolving-family-law-disputes-in-nigeria/>> accessed 30 December 2025.

<sup>88</sup> Ibid.



and there are limited precedence as to how parties can reliably adopt arbitration as an alternative to litigation. When there are cases that have been resolved through arbitration, this will serve as precedent for future disputes and evidence to potential disputing parties who may wish to adopt arbitration in the resolution of their marital disputes.

Inadequate personnel or arbitrators who have special skill in matrimonial dispute resolution and family law has also contributed to the low patronage of arbitration by disputing partners. The limited or non-availability of arbitrators who have specialised and practical experience in the resolution of marital dispute has reduced the visibility of arbitration in the settlement of matrimonial disputes. However, when an unskilled arbitrator engages in arbitration, the process may be delayed and may leave parties unsatisfied or frustrated.<sup>89</sup>

Inadequate access to arbitration services is also one of the challenges affecting the effective utilisation of arbitration in the resolution of matrimonial disputes. Unlike the High Courts in some cities such as Lagos and Ibadan where parties are advised to explore alternative dispute resolution before resorting to litigation, parties do not have access to arbitration in many cities in Nigerian courts because, this alternative dispute resolution is not introduced to parties and as a result of this they not have access to its services.

Another challenge to the adoption of arbitration is the issue relating to public policy. It is often believed that resolving family disputes via arbitration would be contrary to public policy because the court has the exclusive right to adjudicate over family disputes and such disputes cannot be referred to arbitration.<sup>90</sup> It is often believed that court alone can give statutory protection to sensitive issues such as family disputes.

Furthermore, it has been argued that arbitration may not be suitable for matrimonial disputes where properties and child custody is involved. The decision of the tribunal has the same binding forces as the court system but may leave any of the parties unsatisfied just like in the Nigeria case of *Aliyu v. Zainab*<sup>91</sup> where parties consented to arbitration for dissolution of marriage and division of property.<sup>92</sup> The arbitration process was conducted based on the Arbitration and Mediation Law of Kaduna State where the marriage was dissolved and the properties were divided. However, one of the parties was not satisfied with the decision of the arbitration because their financial contribution during the subsistence of the marriage. The lack of satisfaction of the party may be connected to inadequate knowledge about arbitration and the belief that litigation is more authoritative than arbitration.<sup>93</sup> Also, the decision of the court may not have a judicial backing in respect of the importance of the best interest of the child.

## CONCLUDING REMARK AND RECOMMENDATIONS

Over the years, there have been serious concern on the viability of arbitration in the resolution matrimonial disputes being a socio-legal relationship. Arbitration is a flexible form of dispute resolution where issues are resolved amicably with a binding and enforceable award. Arbitration is an effective dispute resolution mechanism for the settlement of matrimonial disputes because it offers a more flexible and private process than the court system. It is fast, binding, enforceable, convenient and user friendly. It is often utilised in the resolution of commercial transaction disputes, it can help parties effectively resolve matrimonial disputes without the need for litigation. Although it is similar to litigation, its benefits surpasses that of litigation. For parties who prefer an alternative dispute resolution that is similar to the court system, arbitration is the most suitable mechanism because its procedures such as hearing and presentation of evidence are similar. Both arbitration and litigation or the court system has a neutral third party known as the arbitrator and judge respectively, who assist parties in resolving their disputes and make a final decision binding on the parties.

<sup>89</sup> C J Ubanyionwu, 'Analysis of Arbitration and other Alternative Dispute Resolution Modes in Nigeria' (2023) 7 (2) *African Journal of Law and Human Rights*, 150.

<sup>90</sup> 'Arbitration in Family Disputes: A Critical Analysis' <<https://trustedadvisorslaw.com/arbitration-in-family-disputes-a-critical-analysis/>> accessed 31 December 2026.

<sup>91</sup>(2020) Unreported.

<sup>92</sup>A U Ruwendoruwa, 'Mediation and Arbitration in Nigerian Family Law: Assessing Alternatives to Litigation' (2024) *ISRG Journal of Art, Humanities and Social Science* 241.

<sup>93</sup> *Ibid*, 243.



Contrary to the rigid nature of litigation, arbitration offers family-friendly process, allows parties to determine the procedure and offer their opinion when necessary. Despite the numerous benefits associated with arbitration, it is often not utilised for the resolution of marital disputes because it is not regarded as a provision of statute for the resolution of matrimonial disputes.

Being the most effective alternative dispute resolution method for the resolution of commercial transactions and investment disputes, it is often believed that it is not suitable for matrimonial disputes. Other issues that affect the effective adoption of arbitration in the resolution of marital disputes are public policy issues, issues relating to child custody, inadequate or insufficient precedence and sensitive issues such as child custody. Despite this belief, arbitration has proven to be an effective alternative dispute resolution that can be successfully employed in the resolution of matrimonial disputes such as conflicts or disagreement between spouses and maintenance. Adopting arbitration in the resolution of matrimonial disputes will help in the realisation of Goal 16 (Peace, Justice and Strong Institutions) of the United Nations Sustainable Development Goals 2030. Goal 16 of the United Nations Sustainable Development Goals 2030 will help achieve peaceful dispute resolution, promote access to justice and strengthen arbitration, family and the society at large. This study, however, recommends the amendment of Nigeria's Matrimonial Causes Act and Romania's Civil Code and Code of Civil Procedure to give effect to the recognition and adoption of arbitration as a mechanism for resolving matrimonial disputes and the award rendered should be binding and enforceable. The amendment should allow parties to either opt for arbitration or litigation. Since Arbitration and Conciliation Act LFN 2004 has been repealed or replaced with the Arbitration and Mediation Act 2023, section 11(1)(c) of the Matrimonial Causes Act on the 'nomination of a person with experience or training in marriage *conciliation*' can be amended and replaced with 'a person with experience or training in marriage *arbitration*'. There should be sensitisation and creative awareness on the effectiveness of arbitration in the resolution of matrimonial disputes and only trained and qualified family law arbitrator should be appointed to resolve disputes. Retired judges should be given the opportunity to sit as arbitrator in matrimonial disputes. There should intense capacity training for arbitrators on how to handle matrimonial disputes and the establishment of specialised arbitration tribunal for the settlement of matrimonial disputes.

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