

THE CURRENT STATUS OF MEDIATION IN UGANDA

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Recent years have seen a growth in institutionalised mediation¹ and Uganda is not far behind.

Mediation is a mandatory procedure for all civil cases in Uganda.

The Civil Procedure Rules provides that where court sees that there is room for settlement using Alternative Dispute Resolution (ADR) the court has right to order for ADR². Order 12 CPR

The judicature Mediation rules, 2013 also provide for mediation in Uganda.

Under rule 4 (1) it provides that regardless of the intensity or complexity of the dispute, the court shall refer every civil action for mediation before proceeding for trial.

Parties to a civil action are required to file a case summary and parties are allowed to choose their mediator if any instead of the court appointed mediator. Rule 3 provides that where parties choose their own mediator, it is their responsibility to pay the fees of that mediator.

A civil action referred to mediation is expected to conclude within 60 days. Parties are allowed to extend/ add ten days to the mediation process where there is a likelihood of settlement. After which the matter proceeds to court for litigation³.

Mediators are allowed to request additional information from a party if it is considered relevant to the mediation in which case the information remains between the mediator and the party that disclosed it⁴.

Rule 7 provides that parties are to be notified of the commencement date of mediation by court within fourteen days after pleadings are complete.

¹ Five Ways to Secure Mediation Success, Guest Blog, Paris, France 2019, International Chamber of Commerce

² Order 12 Civil Procedure Rules

³ Rule 8, The Judicature Mediation Rules, 2103

⁴ Rule 6, The Judicature Mediation Rules, 2013

Where any allegation of criminal conduct arises during the mediation, the mediation is to be suspended and the mediator is required to report the allegation to court⁵.

Rule 14 provides for parties who fail to attend a mediation session. It states that where a party without good cause fails to attend a mediation session, that party is fined and required to pay a sum of money to the other party as adjournment. The mediation's adjournment costs shall be taken as an order of court and not subject to appeal except as part of a general appeal at the conclusion of the civil action.

Rule 16 provides that where some or all of the issues are resolved during the mediation, the parties shall enter an official agreement on the issues on which they agree. It shall be in writing, signed by both parties and filed with the registrar or any authorised court official responsible for mediation. The filed agreement shall be taken by court as a consent judgment.

Finally Rule 22 establishes a committee to monitor and evaluate the performance of mediation in Uganda.

Mediation has performed well in Uganda. Despite legal provisions for mediation however, courts still face challenges with the system. The 2013 Annual Report by the Commercial Court Division indicated that mediation has assisted with case backlog but there are still challenges that the court faces. It stated that;

Cases are still brought forward from the previous year; however, they are now cleared faster.

The court received 2417 suits in the year 2013, a 22.6% increment from the previous year and that the numbers continue to grow. When cases brought forward from the previous year were added to this number it came to a total of 4165 cases. The adjournment rate also increased that year.

The increased number of cases was attributed to unstable economic conditions that made it difficult for people to meet their commitments.

The Mediation registry had an overall workload of 623 cases that year and 155 cases had been carried forward from the previous year.

⁵ Rule 13, The Judicature Mediation Rules, 2013

The registry disposed of 383 cases showing a reduction in the disposal rate from the previous year (60.7% from 73.1%). This was attributed to the fewer number of accredited mediators.

36 cases were closed because the time court set aside for them elapsed. 51 cases closed because of non-attendance of parties and 162 cases closed because mediation failed. Only 53 cases were fully settled and 8 partly settled.

A study⁶ by Ronald Byaruhanga in 2017 showed too that there were often times cases exceeded their stipulated days. A review of the commercial division of the high court showed that the shortest time taken to resolve cases filed was 30 days and that on average it took 61-90 days for cases to be resolved. A few cases even exceeded those days. The Judicature Mediation Rules 2013 provide 60 days for cases under mediation to be resolved otherwise they are transferred to court. The Judicature Commercial Court rules⁷ however provide just 30 days for the resolution of cases under mediation. There is need for the time limits to be unified so as to prevent confusion and enable effective monitoring of the progress of mediation in Uganda.

Mediation though a great help requires good and effective application in order for it to provide significant contribution to Uganda's courts. Failure to effectively apply the mediation system in Uganda will only result in greater case backlog for the courts. The reports above, show that though able to assist the courts, there is yet room for mediation to preform even better and significantly reduce case backlog in Uganda.

Uganda has made great strides towards introducing mediation. In my opinion, the following suggestions can help close the remaining gap between mediation systems in Uganda and significant success. They can help Uganda as a country create a highly effective and organised mediation system.

Recommendations

⁶ Byaruhanga Ronald, Efficiency of Mediation in Resolving Civil Matters as Opposed to Litigation: A Case Study of the Commercial Court, Kampala, 2017

⁷ SI No. 55/2007

1. Mediation agreements should be recognised whether arrived at through court annexed mediation or not. The same procedure should be provided for their enforcement, with no conditions involved and with clear grounds for review where necessary.
2. Incentives and measures for the enforcement of mediation agreements should be put in place in Uganda such as tax exemptions and punitive measures. These measures should also encourage people to participate in mediation. In Italy, there are tax advantages provided for parties who choose mediation, in the Legislative decree 8/2010⁸.

There is a full tax exemption regime as regards stamp duty and a partial one as regards registration duty. For proceedings held in an ordinary court, as well as paying **stamp duty**, the party is ‘forced’ to pay the court costs (**contributo unificato**) according to the value of the dispute. However, in mediation procedures, all documents and measures are exempt from **stamp duty** and all other costs, taxes or duties of any kind whatsoever⁹.

In Uganda, the fine for failure to attend a mediation session is just about 100,000 Uganda shillings. In my opinion, if it is made slightly higher, parties will not take court annexed mediation sessions for granted.

3. Uganda has need of well-trained mediators. Just like there are rules governing Arbitration in the UNCITRAL’s Model Law on International Commercial Arbitration that’s agreed upon by everyone so should there be an International Mediation Training standard. This will ensure quality mediation training as well as encourage trade and business between countries. It will also enable agreements arrived at through mediation to be accepted worldwide.
4. It is important that attention is given to training of mediators in Uganda. Mediators carry a vital role as assistants to court. If possible mediation training should be made a strong part of the legal curriculum as well; including creation of mediation moots.

⁸ For more information on more reforms that Italy has considered and the report of the Luiso Commission see; Matteucci Giovanni, ADR in Italy 2021, What’s New, 2021

⁹ European Parliament, Directorate General for Internal Policies, Policy Department , Citizens Rights and Constitutional Affairs, Italian Legislation on Mediation, Note, 2011

5. Mediation training should not be a one off but should be continuous. This will ensure that mediators are well supported in terms of guidance available to their practice and that mediators are always aware of improvements in their practice.
6. Specialised mediation training should be encouraged too to ensure Uganda has a good number of expert mediators. In the same vein the formation of mediation teams should encouraged especially when it comes to highly complex cases.
7. It has been said that many lawyers in Uganda are against mediation. This is simply because they do not understand the mediation practice and its benefits. To encourage more mediators who are lawyers to participate in court annexed mediation, it can be made an opportunity for many lawyers to secure clinical legal education points. This will provide them too with the much needed exposure to mediation practice.
8. There is need for a mediation institution to monitor not just court mediation but mediation practice in the entire country. This will ensure that a standard is adhered to.
9. There should be standard mediation fees too that will enable clients to know how much they are likely to spend if they opt for mediation and enable them to make informed decisions. It will also protect clients from exploitation. At present, there are no specified mediation fees that guide all mediators in Uganda.
10. Mediation should be made accessible to all Ugandans. There should be at least two qualified mediators in every district in Uganda. Mediators should be made available to communities too especially vulnerable communities prone to conflict such as refugee communities.
11. There is need for a comprehensive public awareness campaign to get members of the public to know more about mediation and to encourage them to consider it when disputes arise. Many Ugandans do not know much about mediation or what values it can offer them when disputes arise.
12. It should be recognised too that public private partnership is a necessity for mediation in Uganda. Therefore judicial bodies should work hand with private mediators to create a smooth and highly effective system. In addition it is important to realise that a coming together of minds is also important for the development process of mediation internationally.

13. Finally, it should always be kept in mind that the promotion of mediation will not just assist Uganda's courts but also promote trade with neighbours.

Conclusion

Uganda is on the verge of some great advancements when it comes to dispute resolution. More and more, Ugandans are becoming aware of the advantages of Alternative Dispute Resolution and there are more statistics to back its advantages. It is clear that mediation and other dispute resolution mechanisms will help boost Uganda's economy and add to the credibility of her courts. It is important that we work diligently towards streamlining the system as it will bring about numerous benefits for all Ugandans.