



JUSTICE LAW AND ORDER SECTOR CASE BACKLOG REVIEW CONFERENCE

MEDIATION “PILOT” PROJECT

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Background

Civil procedure reforms of the Civil Procedure Rules (CPR) were last done in 1998 with introduction of the *Civil Procedure (Amendment) Rules 1998 S.1. No 26 of 1998*; following “The Woolf Reforms” in the UK and recommendations of Hon. Justice Platt Commission in Uganda . The Reforms followed key findings by Lord Woolf, that the civil justice system in the UK was too slow, too costly and too complex. It was therefore recommended that rules be made with a view of securing that:-

- a) The civil justice system is accessible, fair and efficient; and
- b) The rules are both simple and simply expressed.

In the Uganda context, amendment were proposed and were made affecting substantially the CPR by the introduction of a new Order XB which was later renamed Order X11 in the Principal Rules. This Order introduced new procedures known as:-

- i) Scheduling conference; and
- ii) Alternative dispute resolution (ADR)

Court Mediation project

The mediation project falls under three aspects namely:-

- Mediation at the Commercial Court Division of the High Court.
- Roll out of mediation to other courts.
- Training

A. Mediation at the commercial Court

Processes, performance and general output of mediation at the commercial court are captured in the Courts Annual Report. Excerpts of it is attached marked "A"

B. Roll out of Mediation

The roll out of mediation to other courts constitutes a very large component of this project.

Mediation roll out to other Divisions of the High Court must be put on a high agenda by judiciary. We need to begin thinking on how it should be done. We need to agree on the strategy and methodology. The strategy should be looked in relation to the challenges identified at the Commercial Court. Some of the challenges are:-

1. Attitudes

A significant amount of resistance towards mandatory mediation from Advocates and their clients was noted during and after the pilot stage. This particular issue has resulted into:-

- Non attendance to mediation sessions by Advocates and their clients
- Late coming by Advocates in the hope that mediation fails
- Advocates appearing without clients so that mediation sessions become non starters because advocates cannot bind their clients. { these issues call for sanctions to be made against errant Advocates and clients }-

2. Creation of Mediation Tracking Mechanism.

Before the establishment of a mediation registry at the Commercial Court there was absolutely no tracking mechanism to track mediation workflow. This will have to be done in all courts.

3. Monitoring and Evaluation mechanism

Quality control is very important aspect of mediation process. In the Commercial Court there is a monitoring and evaluation team provided under the Rules but there is no monitoring evaluation framework developed for this purpose.

4. Costs.

Advocates and clients want the issue of costs resolved at the earliest opportunity because denying parties costs is viewed as denying advocates income.

5. Time

Time is a similar measure to costs. There is need to standardize time to begin and complete mediation at a comparative level (Land, Civil, Family, Criminal Divisions and other courts).

6. Referral of cases

The procedure at the commercial court does not require referral of cases because mediation is compulsory. There is a need to study the referral process and come up with a workable procedure. Not all cases are suited to mediation and parties do not need to undergo mediation in matters that cannot be mediated.

7. Complaints Procedure

There is no clear and transparent complaints procedure developed specifically for mediation at the commercial court.

8. Standard of conduct for Mediators

There is need for judiciary to develop standards that shall apply to and govern the conduct of mediators conducting mediation. The commercial court has developed a draft code which needs approval by the Rules Committee.

9. Training

There is need to train all judicial officers on mediation and ADR

10. CADER

The status of CADER in the roll out phase needs to be reviewed. CADER' Involvement in the pilot project at the Commercial Court clearly showed weaknesses of CADER's institutional framework in relation to judiciary. Issues of control of the mediation function, ethical issues, reporting structures, lack of M&E framework, clients and lawyers concerns in respect to CADER'S function, control and independence etc were not addressed.

C. Training

The commercial court has developed training manuals which can be used by other courts. Last year we trained the following people:-

- Clients were given half day training in mediation and 100 people participated
- Advocates were given 3 days training (60 participated); and
- Advocates who wished to become mediators were given 5 days training {20 were trained}

So training needs to be directed to all stakeholders as well as judicial officers before, during and after the roll out and it should be sustained.

“A”

MEDIATION

Mediation has been an integral part of the Commercial Court case administration system since it was first piloted in 2003 to 2005 (S.1. 71 of 2003). The launch of the pilot Project introduced compulsory court annexed mediation and the objective was to assist in the efficient and effective resolution and disposal of cases in the Commercial Court. After the pilot stage mediation was extended to the court under, *The judicature (Commercial Court Division) (Mediation) Rules 2007 – S.1. No. 55 of 2007*. Many changes have taken place since the pilot stage and the most significant changes in 2010 have been the creation of a Mediation registry headed by a Deputy Registrar. The Deputy Registrar was tasked to address the bottlenecks or challenges that had been identified during the pilot stage namely; poor attitudes to mediation by Advocates and Clients; dealing with issues of non attendance, late coming, not following the procedure in the Rules and lack of case tracking system. All these challenges have been addressed through creation of a new Registry and training but a lot still needs to be done.

Mediation Performance

Between January and May 2010 mediation was being conducted by two court Accredited Mediators to wit Mr. John Napier and Ms Nox Ntuli. The former was accredited to the court from Pepperdine University USA and the latter was a volunteer mediator from South Africa. Later in May 2010, they were joined by his Worship John Arutu. However, in August 2010 Mediator John Napier’s tour of duty ended and he had to leave so the later period of the year the court had only two mediators. Despite shortage of manpower the mediators performed exceptionally well. The table below shows the over-all performance of mediation as at 31st December 2010

Table 8: The mediation out put as at 31st December 2010

NO	POSITION	RESULT
1	Registered	423
2	Closed - settled before mediation	31
3	Closed – mediation full concluded	64
4	Closed partly concluded	6
5	Closed mediation failed	146
6	Closed – case dismissed	2
7	Closed - dismissed	42
8	Closed withdrawn	3

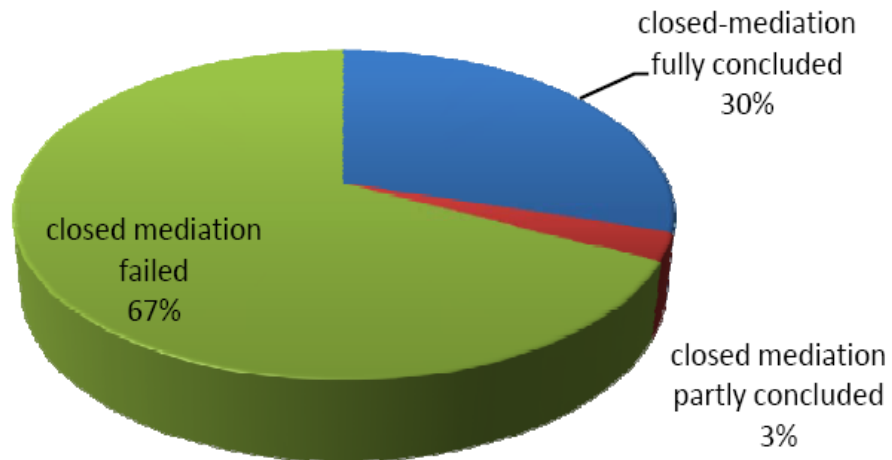
9	Closed file transferred	6
10	Under mediation	88
11	Pending mediation	35

The result below shows that 90 cases under position 2,6,7,8 and 9 did not go through mediation. Therefore 90 cases out of 423 did not go through mediation, thus the mediation status as at 31st December 2010 stands as follows;

- i) full settlement rate 19.2% ($64/333*100$)
- ii) partial settlements rate 1.8% ($6/333*100$)
- iii) Failed Mediation rate 43.8% ($146/333*100$)
- iv) Cases referred to mediation but were not mediated 21.2% ($90/423*100$)
- v) Pending cases 29.1% ($123/423*100$)
- vi) Disposed rate 70.9% ($300/423*100$)

Table 9: Graph showing a breakdown of completed case during the period out of 241 cases

BREAK DOWN OF COMPLETED CASES



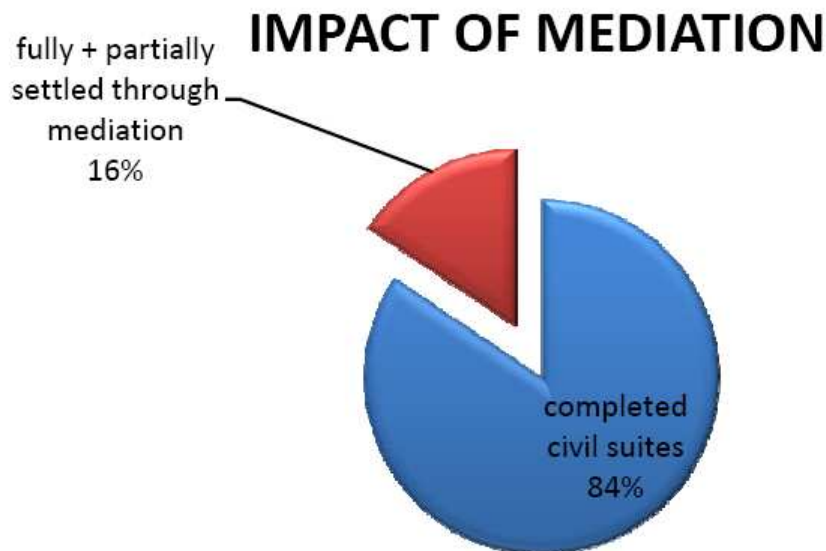
These statistics show a remarkable performance of three mediators during the period. It's possible that the full settlement rate which stands at 21% (full settlement + partial settlement) could be higher if there were more mediators. This issue has been addressed by the appointment of 9 Advocates as Court Accredited Mediators by the Hon. Chief Justice towards the end of the year 2010. the Court hopes to achieve at least between 30% - 40% full settlement rate this year. The court will also deal with the errant Advocates who still dodge mediations this year. According

to the table above 21.2% of cases did not go through mediation because of non attendance by advocates and their clients. The courts will effect penalties provided under the rules against errant parties.

The mediation performance should not only be gauged on full settlements. Partial and failed settlements are equally useful since it reduces the time parties will spend in court with a judge. Most times parties will have gauged the strengths and weaknesses of their cases during mediation

Table 11: Graph showing impact of Mediation on Court output

case position	result
completed civil suites	379
fully + partially settled through mediation	70



Training

The Deputy Registrar Mediation was trained at ILI Kampala and RIPA International on Mediation and Arbitration. Ms Nox Ntuli also developed a three set Training Manuals. The Court wishes to recognize her contribution and to congratulate her for her support to the mediation process at the Commercial Court.

During the year the court held three very successful trainings in conjunction with the Judicial Studies Institute. The first half day training targeted 100 very important court users; the CEO's of Commercial Banks, Insurance Companies, Parastatal Corporations, Large Industrial establishments and other Companies that are the main consumers of our

services. It was intended to introduce and interest them in Mediation as a form of dispute resolution as opposed to litigation. The second course was a three days training of 60 Advocates in mediation skills and the final training was a five days training of 20 specifically selected advocates who had indicated willingness to assist the court as voluntary Court Designated Mediators. The training was conducted by Ms Nox Ntuli. John Napier and the Deputy Registrar Mediation and were intended to address the bottlenecks which had been identified earlier to wit; change of attitude, non attendance of parties, late coming, following the right procedure and lack of knowledge about mediation generally.

The court would like to pay glowing tribute to Mediators; John Napier and Nox Ntuli for their dedicated work and service to the Commercial Court Division.