THE REPUBLIC OF UGANDA

COURTS OF JUDICATURE

SPEECH BY THE HON CHIEF JUSTICE OF UGANDA, BENJAMIN J ODOKI

AT

THE LAUNCH OF THE JUDICATURE (MEDIATION) RULES 2013, S.1 NO.10 OF 2013

AT

IMPERIAL ROYALE HOTEL, KAMPALA

ON

14TH JUNE 2013

SPEECH BY THE HON CHIEF JUSTICE OF UGANDA, BENJAMIN J ODOKI AT THE LAUNCH OF THE JUDICATURE (MEDIATION) RULES 2013, S.1 NO.10 OF 2013 AT IMPERIAL ROYALE HOTEL, KAMPALA ON 14TH JUNE 2013

My Lord, the Deputy Chief Justice,

My Lord, the Hon Principal Judge,

My Lords, the Justices of the Supreme Court,

My Lords, Justices of the Court of Appeal,

My Lords, Judges of the High Court,

The Chairman, Uganda Law Reform Commission,

The Development Partners Group, JLOS,

The Inspector General of Government,

The Secretary, Uganda Law Reform Commission,

The Learned Solicitor General,

Your Worship the Chief Registrar,

You're Worships Registrars & Magistrates,

Distinguished Guests,

Ladies and Gentlemen.

It is with great pleasure that I officiate at this function to Launch the Judicature (Mediation) Rules 2013, S1. No 10 of 2013 in this beautiful hotel.

You will all recall that Article 126(1) of the Constitution of the Republic of Uganda entrusts the Judiciary with the exercise of judicial power and in the execution of this role, the Judiciary's mission is: ***"....to dispense justice to all people of Uganda through timely adjudication of disputes without discrimination"***

In an attempt to satisfy this mission, the Judiciary has created specialised divisions within the High Court for efficient, expeditious and cost effective dispensation of justice.

The first of this creation was the Commercial Court Division established in response to the needs of the Commercial world. The Commercial Court was created by the Constitution (Commercial Court) (Practice) Directions, Statutory Instrument - Constitution 6, (L.N 5/1996).

When the Commercial Court opened its doors in 1996, there was a lot of excitement not only from the Judiciary but also from the business community and development partners. However, the new Court was suddenly faced with new challenges and among the challenges faced by the Commercial Court was the emergence of a heavy case backlog.

Case backlog had been a factor to reckon with in all the courts but it could not be allowed to cripple the newly created Commercial Court. The Judiciary therefore undertook various innovations to deal with this problem. One of the measures adopted was the introduction of Alternative Dispute Resolution (ADR).

In 2003, the Judiciary with the support of our development partners launched a two year pilot project at the Commercial Court Division to introduce compulsory court annexed mediation. This pilot programme was done under The Commercial Court Division (Mediation Pilot Project) Rules 2003, S.1. No 71 of 2003.

The effect of the Pilot Project (2003-2005) was to make mediation an integral part of the Commercial Court case administration system. The pilot stage was funded by JLOS under the Commercial Justice Reform Programme (CJRP) and the European Union (EU).

We are very grateful to JLOS and European Union for the financial and logistical support that was accorded to this programme. I am informed that the Commercial Court was able to successfully settle 22.1% of all cases filed during that period.

After the pilot period, new rules were promulgated to wit The Judicature (Commercial Court Division) (Mediation) Rules 2007, S1. No. 55 of 2007. Under these rules mediation became a permanent feature of the Commercial Court processes and the Court became a multi-door Court house where mediation was to be attempted by all parties before a case could be fixed for hearing. The objective of introducing ADR was to assist in the efficient and effective dispute resolution and disposal of cases at the Commercial Court.

The rationale of introducing pre-trial protocols was based on the fact that the gap between filing a case and the time when the case comes before a Judge for hearing can be between 3 to 4 months and sometimes longer and during this period an attempt to resolve the dispute through mediation could be done. This is in line again with the 1995 Constitution of Uganda (Article 126 (1) (d)) and Order.12 Rule 1 of the Civil Procedure Rules. Unfortunately, after the pilot stage the support that had been given dried up and the Judiciary was left to

fend for itself. This explains why mediation has largely remained in the Commercial Court.

In 2010 it was evident that the Commercial Court had achieved its objectives and in the process it had developed some of the best practices of Court Annexed Mediation in the African continent and which have been the envy of many Courts in the East African Region and far including Malawi, Zambia, Nigeria, Lesotho, Ghana and South Africa etc.

The Uganda Commercial Court has in one way or another helped these countries to open their own commercial courts modelled on ours. I am informed that by 31st December 2012, the successful completion rate of all cases referred to mediation by the Commercial Court stood at 26%.

In 2010 the Judiciary decided that time was ripe enough for the rolling out of the best practice of mediation to all courts. The Registrar Mediation H/W Ochepa Arutu John was asked to come up with the new rules. On the 13th July 2012 draft rules were submitted to the Rules Committee for consideration. The Rules Committee adopted the draft rules with modifications and on the 15th March, 2013 the rules were Gazetted.

Salient Features of the New Rules:

1. The new rules shall apply to the High Court and Courts Subordinate thereto. This means that all the magistrates'

courts will be able to apply these rules. The old rules were applicable only to the Commercial court Division.

2. The rules shall apply to all civil actions filed in the High Court and lower courts except civil suits commenced under the Small Claims Procedure.

3. The rules make mediation mandatory in the High Court and Courts subordinate. This means that no civil action will be heard by any court unless the parties have first attempted mediation.

4. The rules require judicial officers in the High Court and lower courts to refer all civil suits to mediation before hearing can commence except suits under small claims procedure.

5. The rules do not allow for appeals against orders made in mediation.

6. The window time to conclude mediation has been expanded to 60 days from 30 days – this eliminates the requirement of parties to apply for extension of time which had proved to be a time wasting procedure.

7. The rules now allow parties to choose their own mediator if they so wish other than a Judge, Magistrate or a Court Accredited mediator appointed by court. In the old Rules a mediator was provided by Court.

8. The rules also allow children to participate in mediation in their own right in cases where the interests of the child are an issue.

9. The rules make it mandatory that costs of participating in mediation shall be borne by the parties unless agreed by the parties otherwise – this means that unless there is a prior agreement otherwise by the parties costs shall not be allowed in mediation.

10. The new rules also provide the mediator with guidelines on how to conduct the mediation. The old Rules did not provide for guidelines to be followed by a mediator.

11. The rules also create a new Monitoring and Evaluation Committee which shall be chaired by the Principal Judge and the members include all heads of the High Court Divisions, Solicitor General or his representative, Chief Registrar or his representative, the President of Uganda Law Society, Executive Director of CADER, Registrar responsible for mediation, a representative of Court Accredited Mediators and four Chief Magistrates nominated by the Chief Registrar. The old rules created a monitoring committee separate from the Evaluation Committee – administration is now more streamlined.

12. The new rules also allow a mediator to penalise a party who does not attend mediation without a good cause to pay the party that attends five currency points (Shs. 100,000) and this

order is enforced by court. In the old rules the penalty was paid to court – it should be noted that unless the party penalised pays this fine the trial Judge will not hear the suit.

Challenges:

The challenges faced by the Commercial court and mediators still persist and these challenges may be experienced by other courts as well unless addressed urgently, they are:

- Late coming by parties and their clients - I wish to request advocates to keep time.

- Advocates turning up for mediation without their clients – this is a serious problem because mediation cannot proceed without a client.

- Advocates looking at mediation as another step to litigation.

- Advocates failing to appreciate their roles in mediation and often feeling redundant, thus failing the mediation process.

- Advocates and clients having negative attitudes to mediation and instead preferring litigation

- Lack of credible mediators – there is a need to train more mediators.

- Training of Judicial officers and Advocates in mediation.

With the introduction of these rules I call upon the Judiciary and the Law Society to address these challenges.

Conclusion:

The introduction of these rules gives the Judiciary a challenge of implementation. I call upon the Judiciary to find a mechanism for implementation. The necessary training of all Judicial Officers in mediation needs to be done urgently before the roll out can be meaningfully achieved.

My Lords, Ladies and Gentlemen, once again let me thank you for coming and let me use this opportunity to wish all of you a safe journey.

It is now my pleasure to officially launch The Judicature (Mediation) Rules 2013, S1. No 10 of 2013.

Thank you.