



**REMARKS OF HON. JUSTICE YOROKAMU BAMWINE,
PRINCIPAL JUDGE AT THE OFFICIAL LAUNCH OF
JUDICATURE (MEDIATION) RULES 2013 AT IMPERIAL
ROYALE HOTEL, KAMPALA**

14TH JUNE, 2013

My Lord Chief Justice

Your Worships

Distinguished Participants

Ladies and Gentlemen

I am happy that immediately after launching the Judiciary Gender Policy and Strategy and the Sentencing Guidelines we now launching the Mediation Rules. Reforms of this nature are good for a vibrant institution.

For some of you who have had a hand in successful mediations, you certainly agree with me that it is possible for a mediator, in one or

two sessions, to really help a family, a company or other business associates who for months or even years have been struggling with a horrible, and very difficult problem to deal with. Whether it is intense debate about sharing the deceased's property, severely restrained parent – child relations, company shareholders misunderstandings, etc, litigants find that mediation can often be surprisingly effective.

Why?

Underlying all the surface tensions and hurts, are individuals who are at a point where they want resolution of the conflict, who need help but do not know where to find it. So where the law provides for mediation, most people will want to try it out.

My Lords, Your Worships and distinguished invited guests, mediation is a dispute resolution mechanism, one of several other mechanisms. It is firmly taking root as a vital component of Uganda's judicial system. It is in my view not a new thing as people who often decampaign it appear to portray it.

For those who believe in the word of God like me, *Matthew 5:25-26 has a clue :*

“...Settle matters quickly with your adversary who is taking you to court. Do it while you are still with him on the way, or he may hand you over to the judge, and the judge may hand you over to the officer, and you may be thrown into prison. I tell you the truth; you will not get out until you have paid the last penny”.

Clearly Jesus had mediation in mind. He was certainly not encouraging underhand methods of settling disputes. Without an

understanding inter partes akin to mediation, there is no way one would settle the matter so quickly in record time therefore, the debate should now shift from whether we need mediation to crafting successful ways of mediating disputes. Mediation can assist people to work through their differences and reach an agreement. When litigants and lawyers meet each other in mediation, it is much harder to demonize one other. The problem is when lawyers take sides in the conflict and become part of the problem themselves instead of being a solution thereto.

There is of course need on our part to fully appreciate Mediation as a complementary procedure to civil disputes resolution and not as a substitute to the Judge or Magistrate's duty to adjudicate disputes. I say so because at times in our haste and enthusiasm to tame the monster of backlog we tend to stampede parties to mediate their cases rather than encourage them to do so. In typical frivolous claims we tend to sweep the law under the proverbial carpet under the pretext of assisting parties to resolve their conflict when clearly a determination of the case there and then would ensure that justice is done to the party not at fault. Therefore, if any mediation effort hits a snag, our duty as judicial officers should be to bring it back on course or else consider it unsuccessful and fast track the disposal process on merits. After all Justice follows the law.

We should never admonish them or lose our cool merely because they have refused and / or failed to settle the case.

As we implement the Rules, a lot of questions are bound to arise.

- *Why make mediation compulsory?*
- *Isn't that unconstitutional?*

- *A judicial Officer may try out mediation, it fails and the issue is what next since he/she is the only one in the area. Will he go ahead and try it without compromising ethical issues?*
- *The Civil Procedure Rules provide for mandatory conferencing and here we are saying that every case ought to go for mediation. Should it go for Mediation after conferencing or before?*
- *In the event of a conflict between the Civil Procedure Rules and the Mediation Rules, which set of rules will take precedence over the other?*

The concerns are many. However, we think we have taken care of them in the Rules.

There are of course times when mediation might not be appropriate.

- *Where there is fierce hostility or extreme fearfulness of the other party;*
- *When people are overwhelmed by feeling of sadness of anger, for instance soon after separation or death of a dear one;*
- *When there has been a history of broken agreements.*

When the above or any of them exists, the better option may be to allow a full trial. Even then, however, there should be an attempt to mediate as confidential agreements reached through mediation are:

- *More flexible to meet their overall needs;*
- *Less costly; and*
- *A more satisfying resolution process.*

Whatever our views on mediation, it is necessary to stress to litigants that:

- *Litigation is expensive*
- *It is time consuming*
- *Akin to gambling as it is based on evidence of witnesses some of which are averse to the truth. Credibility is not based on any science and proof is on a balance of probabilities.*
- *Court decisions follow the law. Even where a compromise would foster co-existence of the parties, where parties insist on determination on merits, the end result may not promote the concept of justice.*

I hope that the mediation initiative continues to ride on the past successes registered in the Commercial Court Division where it has been piloted, and invariably contribute to the improved administration of justice. We ought to love it, Practice it and Cherish it.

I thank Mr Arutu for his undivided attention in developing these rules.

I thank their Lordships who gave comments when we sought them.

I also thank the funders of this Project for facilitating workshops that preceded the launch.

I thank the Hon. Chief Justice for the encouragement he extended to us and his love for innovative reforms in the Judiciary.

I thank you all. Blessings and good luck as mediation is rolled out to all Courts of Judicature.

Yorokamu Bamwine
PRINCIPAL JUDGE