



“LEARNING THE MASTERY OF NEGOTIATIONS”

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A. INTRODUCTION

Ladies and gentlemen it is a great honour to be invited to talk to you, distinguished participants on the subject of negotiation which in my view is a very broad and wide subject. when I was approached by the organisers of the conference I didn't really know what to speak to you about because, I recognise that you, in your respective capacities are the real experts on the subject; however, I am informed that we can share my experiences as a mediator and negotiator, arbitrator, and a judge or judicial officer. I hope I will also be able to learn from your experiences.

B. UGANDA MEDIATION CHAMBER LTD

Uganda Mediation Chamber Ltd (UMC) was established in 2011. It is a non-profit making organization registered in Uganda, providing mediation, arbitration and other forms of conflict resolution services specifically in Uganda but also in the East Africa, the Great Lakes Region and elsewhere in the world. UMC strives to collaborate with Communities, Financial Institutions, Government bodies, private and public organizations in providing various activities including facilitating training in mediation and negotiation. UMC also provides private mediators to its clients and offer a wide range of activities related to mediation and arbitration. I provide consultancy services to this company on a regular basis.

▪ OBJECTIVES OF IMAC:

The objectives for which UMC is established are to promote, encourage and facilitate the practice of settlement of disputes by mediation, arbitration and other forms of alternative dispute resolution mechanisms and includes capacity building through carrying out trainings, seminars and workshops and in this respect we strive to serve Government bodies, corporate entities, the community, commerce and industry in the fields of medi-

ation and negotiation, arbitration and other forms of Alternative Dispute Resolution (ADR).

▪ **TYPES OF DISPUTES HANDLED:**

We handle the following disputes;

- Commercial & Business disputes including; Insurance, Construction & Company Matters & Partnerships
- Contractual & Employment disputes; including Legal & Medical malpractice
- Environmental matters
- Family Law Matters; including, Adoptions , Legal Guardianship & Paternity issues
- Land matters including; Landlord/Tenant disputes; Customary land use & Real Estate
- Personal Injury claims

C. COMMERCIAL COURT DIVISION

The Commercial Court Division of the High Court of Uganda was set up in 1996 under article 133 (1) (b) of the Constitution of the Republic of Uganda; by statutory Instrument No 6. - ***The Constitution (Commercial Court) (Practice) Direction***

The court was set up to provide to the commercial community in Uganda with an efficient, expeditious and cost effective mode of adjudicating disputes that affect directly and significantly the economic and financial life in Uganda. The mission and vision of the court are;

The Mission:

To deliver a service to the Commercial Community of Uganda by providing: "A Commercial court which is accessible to all business and which processes commercial suits expeditiously and justly"

The Vision:

To be the leading provider of commercial dispute resolution services and products in the region consistent with the best practices worldwide.

D. JURISDICTION OF THE COMMERCIAL COURT

this court is clothed with very wide powers and can deal with all actions arising out of or connected with any relationship of a commercial or business nature whether contractual or not and includes but not limited to;

- a) supply or exchange of goods and services
- b) banking, negotiable instruments, credit and similar financial services
- c) insurance, re-insurance

- d) the operations of stock and foreign exchange markets
- e) carriage of goods (by water land and air) and
- f) foreign judgements and commercial arbitration questions

The issue of the jurisdiction of this court is relevant to you and your commercial activities in this country.

E. PRACTICES OF THE COMMERCIAL COURT

The Commercial Court Division was the first court of its nature to be set up by any country in sub Saharan region with the exception of South Africa and in that regard it has been a leader in innovations in mediation and alternative methods of dispute resolution [ADR]. I have been involved with the evolution of these innovations for the last four years.

In 2003 Court-Connected Mediation was introduced in the court and in 2010 Court Accredited Mediators who are not judicial officers were appointed by the court.

The Commercial Court Division of Uganda is the leader in the EAC region in these novel innovations. This was done to satisfy the demand of the business community who wished to see ADR introduced to reduce time to dispose a case in court. These innovations have worked wonders and earned praise and appreciation not only from the business community, but also from the European Union and World Bank.

The cutting edge innovations so far introduced are:-

- scheduling conferencing
- Court annexed mediation
- court Accredited Mediators
- Skelton arguments
- Witness statements
- E-court Room
- E-Library
- E- Service
- written Submissions

The court has also contributed enormously and helped in the setting up of mediation in the commercial courts of Ghana, Nigeria, Kenya, Tanzania, Malawi, Zambia, Lesotho and Rwanda

F. WORLD BANK REPORT - DOING BUSINESS RANKING -2012 (UGANDA)

The World Bank Report of 2012 on "**Doing Business in Uganda**" has ranked the country to be the 117th out of 185 countries sampled in the enforcing contracts index, while Kenya and Tanzanian are ranked 149th and 36th respectively. The same report ranks

Uganda 69th out of 185 in the resolving insolvency index, whilst Kenya and Tanzania are ranked 100th and 129th respectively.

These rankings may not be impressive but it's an indicator that your business dispute would be resolved faster in Uganda than in Kenya and if your company went into insolvency, the matter would be resolved faster in Uganda than in Kenya or Tanzania. This gives Uganda a competitive advantage and indeed investors would have more confidence investing in Uganda than in Kenya or Tanzania.

It was necessary to talk about the commercial court because any investor in any country would be interested to know the legal implications of investing in the country and the country's dispute resolution method is crucial in ensuring investor confidence that commercial disputes would be resolved in an effective and timely manner.

I now turn to the subject of our discussion;

G. LEARNING THE MASTERY OF NEGOTIATION

I am informed that for the last two days today, you have been polishing your negotiation skills. That, I think is the way to go.

I want to commend you attending this course because in your business dealings with others of whatever nature; whether in Oil and gas contracts negotiation, construction & engineering contracts, supply of goods and services, domestic relations, land transactions, stocks and bonds etc, your negotiation skills are crucial in determining whether or not you will clinch a good deal. The saying is;

"In business, you don't get what you deserve, you get what you negotiate" -Chester L.Karras

if you don't negotiate very well its more likely than not that you will not get what you deserve and in the likely event that this happens then, it's my guarantee to you that you will become my client in court law sooner than later, and even in courts you will be subjected to ADR - mediation which also requires your expertise in both negotiation and mediation skills

I have been associated with the courts for the last 32 years and I have been actively involved in resolving disputes both in court and out of court and I have also been deeply involved in Government and private negotiation in the area of supply of goods and services and my experience has been very disappointing for reasons I will outline in this paper.

As you very well know, negotiation is a fact of life. Everyone negotiates something every day, therefore the need to improve your negotiation skills is very essential, and this is so because whatever method of negotiation you chose to follow-there are a dozen of them-must, three broad criteria need to be satisfied, namely;

- i. Should produce a wise agreement if agreement is possible.
- ii. Should be efficient.
- iii. Should improve or at least not damage the relationship between the parties.

So whether you are a "hard" or "soft" negotiator try to satisfy these criteria.

I will cite one example;

"In one case that I participated in, a Government negotiating team was set up by the responsible minister to negotiate CHOGHM related service. The Government team comprises politicians and technocrats who had no prior knowledge of the subject matter or the technical expertise required and one other party in the team were the only experts in negotiation but our views were not considered because we were junior and political considerations were more important-so the negotiation really never took place but the contract nevertheless was signed. Soon after a dispute arose after the auditor general audited the project and discovered that Government suffered great financial loss and Government required compensation- of course Government lost the case"

H. THE NEGOTIATING TEAM

My experience with Government and private companies is that the negotiating team is very important and it should include members with diverse skills. The negotiating team must have a team leader, who in many cases also doubles as the chief or lead negotiator. The chief negotiator must be a person who is articulate, a good team player and commands not only respect, but presence of both the body and mind. The team members must possess at least the following qualities:

- technically knowledgeable of the subject matter
- patience
- relationship skills
- observational skills
- behaviour analyzing skills
- communication skills
- listening skills

I. PREPARATION

For any army to win a battle it must be prepared, the team must plan its negotiation strategy well in advance and in fact half the battle is won at the preparatory stage. So the catch is **PREPARE, PREPARE, PREPARE**

I have seen lots of lawyers and clients lose very good cases because of bad preparations. The team leaders must ensure that his team is:

- ✚ prepared & focused [**DO YOUR HOMEWORK**]
- ✚ technically knowledgeable
- ✚ has a plan [**BATNA**]

- ✚ united
- ✚ has authority of the principle
- ✚ have a good attitude
- ✚ exhibit high degree of integrity

If possible the team leader should have a check list of activities to be done and by whom [WHAT, WHEN, WHO]

The team leader must clearly set the roles and responsibilities of the negotiating team. Most often, Government negotiating teams are set up in ad hoc manner, lack preparation and strategy, thus creating a very weak and ineffective negotiating team.

J. PRINCIPLED NEGOTIATION TEAM

It's recommended in all cases that the team leader adopts a principled negotiation method. This method requires that the negotiator adopts the following rules:

- a) separates the people from the problem
 - emotions
 - perceptions
 - values
- b) focus on interests, not positions
- c) invent options for mutual gain
 - avoid premature judgment, or
 - searching for a single answer
 - assumption of a fixed "pie"
 - do brainstorming
 - broaden options
 - look for mutual gain
- b) Insist on objective criteria
 - fair standard
 - fair procedure
- c) Seek alternatives
 - consider the other side's BATNA as well as yours
 - develop & strengthen your BATNA

K. AGREEMENT

The reason for going to a negotiation is to clinch a deal and the deal is sweeter if the agreement is a good one which can withstand the storm, so it must be an effective agreement and should include;

- Implementation procedures

- it must be designed to minimise risk
- it must have inbuilt dispute resolution procedures

L. CHALLENGES:

In negotiation I have met lots of challenges and some of them are:

- ✚ preparedness
- ✚ planning
- ✚ strategy
- ✚ attitudes
- ✚ integrity
- ✚ fairness
- ✚ unity
- ✚ greed
- ✚ evaluation

CONCLUSION

The one thing I will try not to compromise on is respect of the law. A negotiator must respect the law and the agreement reached must be legally enforceable in courts of law. I wish all of well in your economic pursuits in Uganda and wherever you will be

THANK YOU

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