



## **THE RECENT JUDICIAL REFORMS IN UGANDA WITH EMPHASIS ON “ADR AND MEDIATION”**

**A PAPER RESENTED TO THE 3<sup>RD</sup> MAGISTRATES & REGISTRAR’S CONFERENCE  
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### **Background**

It gives me great pleasure to address you on the recent Judicial Reforms with emphasis on ADR and Mediation.

Mediation has been an integral part of the Commercial Court Division since 2003 when it was piloted for a period of two years with support from *JLOS* and *E.U.* under the *Commercial Justice Reform Programme*. Under the pilot phase mediation was conducted under the; *the Commercial Court Division) (Mediation Pilot Project) Rules 2003 S.1 No. 7*; These Rules were repealed in 2007 and replaced with *The Judicature (Commercial Court Division) (mediation) Rules, 2007 S.1 No. 55*. The process of mediation itself was conducted in the court by the *Centre for Arbitration and Dispute Resolution (CADER)*; however, this arrangement collapsed after the funding dried up; thereafter, the court assigned one Ag. Assistant Registrar to provide mediation services in the court and despite his good performance the court needed to improve on its services to cope with increased demand for mediation not only in the Commercial court but in all other courts in the land; thus in January 2010 I was posted to the Commercial court to open the first mediation Registry in the judiciary

### **Mediation Registry:**

The initial thinking was that the new mediation Registry was specifically opened to help the Commercial court deal with its work load but it was soon discovered that this Registry would play a very crucial role of rolling out the best practices of media-

tion to all other courts to wit; high court divisions and the magistrates courts and thus; in 2010, I was assigned the tasked of rolling out mediation to all courts.

### **Reforms:**

The original thinking was that *CADER* as an independent and neutral organization would be clothed with the monopoly of conducting mediation in all the courts; however; *CADER*'s miserable failure in the Commercial court during the pilot stage put us back to the drawing board; the questions that were asked were; what is to be done to roll out this process forward? Where will we get trained mediators from? Etc. It's at this stage that the court got assistance from *Pepperdine Law School USA*, who sent on a volunteer mediator to the Commercial court and we also received a one Ms. Nox Ntuli an expert from South Africa. These two volunteers together with the Hon. Justice G. Kiryabwire and I sat down to plan how to move forward after the Pilot phase. The questions that we addressed were:

- i. How do we improve on the achievements made and the failures noted during the pilot stage?
- i. What is to be done and what is required to roll out mediation to all the courts?
- ii. What training is necessary?

Before we answered these questions, it's worth noting that during the pilot stage we experienced the following challenges:

- 1) The Court Accredited mediators used by *CADER* were very young persons whose prior experience in mediation was lacking and were shunned by parties and advocates; thus need for standards to be set for mediators
- 2) There were no trained mediators in Uganda who could be asked to assist.
- 3) The Advocates had negative attitudes to mediation(i.e. late coming, non attendance, appearing without clients etc)
- 4) Parties regularly avoided mediation
- 5) There was no tracking mechanism for mediated cases in the court(Court Case Administration System (CASS) did not recognize mediation as a case category)
- 6) Although there was a monitoring and evaluation Committee, its powers were limited to the Commercial Court and did not sit regularly.
- 7) Lack of clear and transparent complaints procedure
- 8) Lack of knowledge of mediation by judicial officers, advocates and clients thus need for training and sensitization.

The Mediation Registry therefore proposed the following to be done to improve on the quality of mediation and to answer the questions asked;

- The Uganda Law Society be engaged to see whether it could support the courts initiatives
- Advocates be trained by the court and successful participants be Accredited to the Court as mediators on pro bono basis
- Advocates and Court Users be trained and sensitized in mediation to support the mediation effort.
- Training course be developed for Mediators, Advocates, Court Users and Judicial and non judicial staff.
- Tracking mechanism be developed on CCAS
- Rules be amended to deal with challenges noted during the pilot stage and to cater for all courts.
- A Task Force be set to handle the roll out of mediation and other necessary activities relevant to the above under the supervision of the Registrar Mediation

These proposals were adopted and the Chief Registrar asked me to implement them. The leadership of Uganda Law Society also agreed to participate by convincing their members to offer themselves for training and to participate as Court Accredited Mediators on pro bono basis.

### **What Has Been Done So Far.?**

#### **a) Training Manuals:**

With the help from Ms Nox Ntuli, Training Manuals were developed in 2010 and are a treasured possession of the Commercial court namely:

- I. Mediation Training – Trainers Manual 5 day course
- II. Mediation Training – Participants Manual 5 day course
- III. Mediation Training For Clients – Trainers manual 1 day course
- IV. Mediation Training For Clients – Participants Manual 1 day course
- V. Mediation Training For Lawyers – Trainers Manual 3 day c
- VI. Mediation Training for Lawyers – Participants Manual 3 day course

#### **b) Training of Court Accredited Mediators, Advocates & Clients**

With the help Hon. Justice G. Kiryabwire, Mr. John Napier, Ms Nox Ntuli and I the Commercial Court Division commenced training activities in 2010 with the consent and approval of JSI.

The following training courses were held successfully:

➤ ***Lawyers Mediation Skills Training Course; 22<sup>nd</sup> April 2010; At Imperial Royale Hotel Kampala.***

This was a three (3) day course designed to train advocates on how mediation process works. It was also intended to create awareness of mediation among advocates and for them to understand their roles during mediation and on how to get the best results from the process. This course was attended by 100 advocates who had been required to apply before admission.

➤ ***Mediation Skills Training Course for Clients/Court Users; 13<sup>th</sup> May 2010 at Imperial Royale Hotel Kampala***

This was a half day course which was crafted to meet the needs of court users especially clients who use the services of the commercial court. The target group was therefore the CEO's and MD's of financial institutions, Insurance Companies, heads of large parastatal companies etc. 80 participants attended including all member of the Bankers' Association, Uganda Insurer's Association; KACITA; JLOS; ULS; FIDA; Law Faculties at Makerere and UCU Mukono; Bank of Uganda; Law Reform Commission; Private Sector Foundation; LDC; UCC; Oil Companies; Telecom Companies; Judges and Registrars and private business companies.

➤ ***Lawyers Mediation Skills Training Course; 14<sup>th</sup>-16<sup>th</sup> June 2010 at Imperial Royale Hotel Kampala***

This was 3 day course designed to train advocates on how mediation process works and it was intended to assist them to understand their roles during mediation and how to prepare and to get the best results from the process.

This course was attended by 60 practicing advocates.

➤ ***Mediation Skills Training Course for Mediators (Commercial Court Division); 19<sup>th</sup> - 23<sup>rd</sup> July 2010 at Metropole Hotel Kampala.***

This was a five (5) day course designed to train individuals in mediation in the skills of conducting mediation in the Commercial Court. It targeted any individual who would like to learn the skills of being a mediator and were willing to avail themselves to conduct mediation in the Commercial Court. This course ideally targeted individuals with a legal background; 20 Practicing Advocates attended the course.

After this last training 9 Practicing Advocates were accredited to the Commercial Court as Court Accredited Mediators. Their number is being increased by further appointment of 9 advocates this month.

**c) Tracking Mechanism:**

Mediation tracking mechanism was developed with the help of *Data Centre* and *Mediation Causes* as a case category together with its *Case Positions* were developed and is operational

**d) Task force- Roll out**

The Chief Registrar approved appointment of a Task Force to deal with the issues of the Roll out of mediation. This Task Force has so far drafted the following documents:

- The Judicature(Mediation) Rules 2012
- The Code of Conduct of mediators
- The Guidelines for Mediators

It should be noted that we had initially drafted mediation Rules for each division, to wit rules for Family, Land and Civil divisions separately but it was later discovered that this was not appropriate so the Rules were merged.

The draft Rules are now before the Rules Committee and once adopted they will apply to both the high court and magistrates courts.

In preparation for the roll out of mediation to the Family, Land and Civil Divisions, training of Court Accredited Mediators to be accredited to those courts has been done thanks to the following trainers:-

- 1) Hon. Justice Geoffrey Kiryabwire - Head Commercial Court Division
- 2) H/W John Arutu - Registrar Mediation
- 3) Mr. Julius Ojok, Court Accredited Mediator
- 4) Mr. David S. Kaggwa, Court Accredited Mediator

The courses are:

➤ **Mediation Skills Training Course For Mediators(Family Division); 1<sup>st</sup>- 5<sup>th</sup> August 2011 At Imperial Royale Hotel Kampala**

This was a five (5) day training structured in the same manner as the previous training except that it was intended for mediators to be accredited to the family Division. 24 participants attended the course

➤ **Mediation Skills Training Course For Mediators(Civil Division); 12<sup>th</sup>-16<sup>th</sup> December 2011 At Imperial Royale Hotel Kampala**

This was a five (5) day training structured in the same manner as the previous training except that it was intended for mediators to be accredited to the Civil Division. 18 participants attended the course.

➤ **Mediation Skills Training Course for Mediators (Land Division); 23<sup>rd</sup>-27<sup>th</sup> April 2012 at Imperial Royale Hotel Kampala.**

This was a five (5) day training structured in the same manner as the previous training except that it was intended for mediators to be accredited to the Land Division. 22 participants attended the course.

**Summary:**

The statistics of the training shows that the following cadres have been trained:

- 1) Court Users - 80
- 2) Advocates - 160
- 3) Mediators - 84

**Way Forward**

In the year 2012/13, I propose to train 200 persons including Registrars, Magistrates, Advocates, Court Users and non-judicial officers in mediation.

**Conclusion:**

The recent reforms are aimed at improving the efficiency of the judiciary in the Key Result Area of Access to Justice. It's only my request that:

1. The Rules committee passes the draft Rules as soon as possible
2. That a stand alone registry be created to handle the roll out of mediation.
3. That the training of judicial staff be done as quickly as possible.

**Thank You**