©NIJLCL
Publications

Open Access
ISSN PRINT:2992-6130
ONLINE ISSN: 2992-5800

NEWPORT INTERNATIONAL JOURNAL OF LAW, COMMUNICATION AND LANGUAGES (NIJLCL)

Volume 4 Issue 2 2024

https://doi.org/10.59298/NIJLCL/2024/4.2.131748

Examining the Role of Alternative Dispute Resolution (ADR) and Small Claim Procedure in the Settlement of Civil Disputes in Uganda

Charity Dorynie

School of Law, Kampala International University, Uganda

ABSTRACT

Over the past several decades, there has been growing interest amongst advocates worldwide in the use of alternative dispute resolution (ADR) techniques to resolve their clients' disputes more economically and efficiently. In the face of bottlenecks and backlogs in the court systems, as well as spiraling costs and fees, courts and members of the legal fraternity have been part of the movement seeking means other than litigation for resolving disputes. As a result, the development of more flexible means of resolving disputes in the form of ADR techniques has gained popularity, and the Ugandan legal system is no exception. Undoubtedly, the benefits of incorporating ADR into the Ugandan legal system offer significant potential, leading to its widespread recognition in Uganda. The legal system has undergone tremendous reforms in recent years, making a study on ADR particularly timely in this context. This paper aims to introduce to the reader the concept of ADR and its implications in the Ugandan context, particularly in dealing with the rampant problem of case backlog in Uganda's judiciary. We conducted this study using the doctrinal method of research, which relies on secondary information from highly qualified state publicists as clearly outlined in textbooks, novels, law journals, articles, websites, and other literature, including class notices. The researcher also utilized court rulings from various states' judges, parliamentary acts on Alternative Dispute Resolution (ADR), and international agreements in which Uganda participates to determine the pace at which Uganda's legal system has integrated ADR to settle civil disputes.

Keywords: Alternative dispute resolution, Arbitration, Civil dispute settlement, Mediation, Small claim procedure

INTRODUCTION

Litigation has been the preferred method for solving disputes between two or more parties for the past century. However, this method has demonstrated its effectiveness on numerous occasions. Many limitations [1]. Litigation has often led to time-consuming, expensive, unpredictable, and antiquated ways of settling a dispute. Because of this, society and the judiciary have the search for alternative methods to resolve disputes, known as alternative dispute resolution methods (ADR) [2], is underway. Alternative Dispute Resolution refers to a set of practices and techniques aimed at permitting the resolution of legal disputes outside the courts [3]. In Uganda, there is a new trend in the implementation of ADR, especially arbitration and mediation. The commercial court launched a pilot project in 2003 to test compulsory mediation. The program referred cases to the Centre for Arbitration and Dispute Resolution (CADER), which trained recent university graduates in mediation and made their decisions legally binding. The program's success led to the enactment of mandatory mediation rules specifically for the commercial court in 2007. However, the commercial court's success story led to the decision to roll out mediation to all courts, as evidenced by the gazetteing of the mediation rules in 2013 [4]. The Court of Appeal extended mediation in 2017 through "Appellant Mediation," the newest form of ADR. Therefore, everyone must embrace mediation and other mechanisms to combat the backlog and enhance access to justice. On the other hand, a small claim is a civil or commercial dispute whereby litigants who seek to recover a monetary debt of Uganda shillings Ten Million and below from another person institute a fairly simplified case in court by themselves and use the court services to have it served on a defendant. The procedure is simplified to such an extent that the parties to the case do not need to hire a lawyer, and indeed, the procedure excludes representation by lawyers in such courts. The idea was to decongest courts with cases of debt recovery ranging from one million to ten million Shillings, which represent the majority of claims from the small and medium business community

Open Access
ISSN PRINT:2992-6130
ONLINE ISSN: 2992-5800

[5]. Despite this, the judiciary has encountered significant challenges and a substantial backlog of cases. The case backlog committee discovered that there were 28,864 cases in the judiciary as of 2017 [6]. To address the issue of case backlog, the government mandated mediation as an alternative dispute resolution mechanism across all civil ties, a move that has proven successful. the small claims procedure was introduced to facilitate quicker resolution of disputes among disputants as it discourages technical rules of evidence and procedure hence saving time.

The Historical Background of ADR

The idea of ADR is as old as time. Informal dispute settlement has long been in existence in many parts of the world. Intermediaries have resolved disputes in both the Bible and the Quran. Archaeologists have found evidence of the use of ADR methods in the ancient civilizations of Egypt, Mesopotamia, and Assyria. The court system itself was once an alternative dispute resolution process, in the sense that it replaced former processes of dispute resolution, such as trial by battle and trial by ordeal [7]. According to the Law Reform Commission, one of the earliest recorded mediations took place over 4,000 years ago in ancient Mesopotamian society, when a Sumerian ruler helped to prevent a war and developed an accord over a land dispute. Ancient Greece, realizing the overcrowding in Greek courts, established the position of public arbitrator in 400 BC, leading to the development of ADR in the Western world. India and China have a long history of practicing ADR. As we know it now, the US developed and popularized the idea of ADR as a way to resolve inter-racial disputes that had arisen as a result of the civil rights movements in the 1960s and the loss of faith in the court system [8]. The promulgation of the Civil Rights Act in 1964 led to the creation of the Community Relations Services (CRS). The CRS relied on the methods of mediation and negotiation to assist in preventing violence and resolving community-wide racial and ethnic disputes. This, in turn, helped to resolve various disputes involving schools, police, prisons, and other government entities throughout the 1960s. It has since the civil rights programs assumed influence in areas of equal opportunity, anti-discrimination, and the environment, to the point where it has become institutionalized and legalized in the US. Due to its integration into the justice system, it is losing its alternative label [9]. Similarly, ADR has gained popularity in Europe, Asia, and Africa. The African context introduced ADR in the 1990s as part of judicial sector reforms, recognizing the need for improved access to justice for the vulnerable and the poor. Since then, many countries have adopted ADR or some of its methods and implemented them as part of their judicial reform programs. The multi-door approach in Nigeria is one such example. Introduced in 2002, it stands as the first of its kind in Africa. The multi-door approach provides disputing parties with a choice between formal court litigation and community-connected ADR mechanisms [10]. For instance, Uwazie [11] notes that the average daily mediation of 200 cases results in a settlement rate ranging from 60 to 85 percent. This has, as a result, led to drastic reductions in caseloads on the formal court system in a country where judges admit not less than 50 cases to their dockets daily. Advocates in Europe and North America developed the modern idea of ADR, focusing on mediation or the search for a mutually agreed settlement instead of binding adjudication by a state authority, to achieve a better form of justice. Mediators based on both state and non-state institutions can offer ADR; what makes it different from the practice in formal courts is the procedure, an informal search for an agreed and just solution, as opposed to deciding who has won or lost. The focus is on achieving 'better' and 'non-compulsory' justice [12].

It distinguishes the recent ADR movement from the already well-established contractual forms of commercial ADR, which rely on binding arbitration and may exclude the right to go to court. ADR enjoys enormous support at the international, regional, and domestic levels. At the international level, the United Nations (UN) General Assembly recommended the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development as well as a New International Economic Order adopted by the 7th Congress on the Prevention of Crime and the Treatment of Offenders. These principles enjoin judicial systems to adopt less costly and non-cumbersome procedures for the peaceful settlement of disputes [4]. In 2006, the African Commission urged state parties to formulate policies and domestic legislation based on the principles of the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa, which was adopted by the participants of the Conference on Legal Aid in Criminal Justice. This declaration reiterated the right to legal aid, which is defined broadly to include ADR mechanisms, and recognized the role of traditional and community-based alternatives to formal conflict resolution [13]. In Uganda court-based ADR began to creep into the judicial system in the mid-1900s the first driving factor for change from the 1994 Justice Platt report on judicial reform which recommended the increased use of arbitration and ADR alongside litigation and the creation of a commercial division of the high court [4]. Shortly after, a major statement was made in Uganda's new 1995 constitution under Article 126(2) enjoining the court to, inter alia, apply the following principles. The court must not delay justice, award adequate compensation to victims of wrongs, promote reconciliation between parties and administer substantive justice without regard to technicalities [14].

Open Access
ISSN PRINT:2992-6130
ONLINE ISSN: 2992-5800

Legal Framework of Alternative Dispute Resolution and Small Claim Procedure in the Legal System in Uganda

The Constitution of the Republic of Uganda, 1995

The constitution, as a supreme law of the land, sets out judicial powers. Article 126 of the Constitution provides for the exercise of judicial power [15]. In adjudicating cases of both civil and criminal nature, the courts shall, subject to the law, apply the following principles.

1. Everyone deserves justice, regardless of their social or economic standing.
2. Justice shall not be delayed.
3. Victims of wrongs shall receive adequate compensation.
4. We must encourage reconciliation between the parties and
5. We must promote substantive justice without taking into account

Article 126(2)(d) clearly states that the courts must apply reconciliation as one of their guiding principles when administering justice, and that alternative dispute resolution is the only way to foster reconciliation.

The Judicature Act, Cap. 13

This Act provides for alternative dispute resolution under the court's direction. The Act's Sections 26 to 32 outline the circumstances in which a High Court grants a special referee or arbitrator the authority to investigate and report on any cause or matter other than a criminal proceeding [16]. Section 27 stipulates that all interested parties who do not have a disability must give their consent for any cause or matter other than a criminal proceeding. At any time, the high court has the authority to mandate the trial of the entire cause, matter, or factual question before a special referee or arbitrator, as agreed by the parties, an official referee, or an officer of the high court [17].

The Arbitration and Conciliation Act (Cap 4)

This regulates the operation of arbitration and conciliation procedures as well as the behaviour of the arbitrator or conciliator in the conduct of such procedures [18]. This Act is significant because it incorporates the provisions of the 1985 United Nations Commission on International Trade (UNCITRAL) model law on international commercial arbitration, as well as the UNICITRAL Arbitration Rules 1976 and UNCITRAL Conciliation Rules I 976. However, it's important to note that the UNCITRAL model law, which conceptualizes arbitrator immunity, does not provide for it in the Act [18]. Section 5 of the Arbitration and Conciliation Act stipulates that a judge or magistrate overseeing proceedings in an arbitration agreement, upon the party's request and following the filing of a statement of defence and a hearing for both parties, must return the matter to arbitration. The court applied this section in the case of East African Development Bank v. Ziwa Horticultural Exporters Ltd. [19]. Section 5 of the Arbitration and Conciliation Act provides for mandatory reference arbitration of matters before the court that are subject to an arbitration agreement. The court is satisfied that the arbitration agreement is valid, operative, and capable of being performed. It may exercise its discretion and refer the matter to arbitration. However, in arbitration, the intention of the parties is paramount. The court held in Farmland Industries Ltd. v. Global Exports Limited [20] that the court had a duty to uphold the parties' intention.

The Land Act (Cap 227)

Sections 89 and 88 of the Land Act provide for customary dispute settlement and mediation, as well as the functions of the mediator [21]. The customary tenure system classifies approximately 75% of the land in Uganda, making it appropriate for the statutory law provisions to combine the customary dispute resolution system with modern mediation strategies.

Indeed, Section 88(I) provides:

Nothing in this section should prevent, hinder, or limit traditional authorities' ability to resolve disputes over customary tenure or serve as mediators in any disputes arising from customary tenure [21]. Similarly, Section 89 guides the selection and function of a mediator. It stipulates that the mediator must be acceptable to both parties, possess high moral character and proven integrity, and not be subject to control by any of the parties involved. The principles of natural justice, general mediation principles, and the desire to help the parties resolve their differences should guide the parties in the mediation process [21].

The Importance of Mediation

It saves time

Mediation is by far the fastest way to settle a dispute. Going through a full trial is time-consuming and demoralising. A suit in Uganda begins with filing, allowing 21-35 days to effect service of summons. The mediation process may take up to 14 days to conclude. The length of time each mediator gives the parties before starting mediation varies. Suffice it to say that a month may pass before the first mediation session takes place. Rule 7 of the Judicature (Mediation) Rules 2013 mandates the conclusion of mediation within sixty to seventy days. If the matter does not settle, a month may go by for exchanging the joint scheduling memoranda, compiling

Open Access
ISSN PRINT:2992-6130
ONLINE ISSN: 2992-5800

and filing the trial bundles, followed by witness statements; the hearing date may then be fixed for two to three months ahead [22]. By the time the hearing starts, six to nine months will have gone by."

Restoration of Relationships

At a hearing, where the standard of proof is higher, each party exposes all aspects of their case, sometimes leading to the public exposure of the other party's shortcomings. This adds insult to injury and leaves little room for the parties to reconcile. At mediation, the process is not as combative as a normal court hearing. As a result, mediation provides an opportunity for the parties to rejuvenate their relationship. Somehow, at judgment, it is clear that there is a winner and a loser, whereas at mediation because it involves making compromises, everyone is a winner in one way or another.

Confidentiality is maintained

As a mediation rule, the proceedings are confidential. Therefore, the parties involved retain the confidentiality of their discussions and cannot rely on them elsewhere. If mediation fails, there is no way to rely on it at the hearing. Therefore, we encourage parties with information-sensitive cases, such as banks or divorcing couples, to resolve their issues through mediation. Alternatively, if you participate in a full hearing, the proceedings' record becomes part of the public record, making it accessible to everyone.

Informal Procedure

The formalities and technicalities that are part of the normal court process intimidate many people. In mediation, the setting is informal, and the process is more conversational than accusatory. Therefore, it is a free environment, and parties and their witnesses [where necessary] express themselves more freely and openly, making it more conducive to maintaining justice.

CONCLUSION AND RECOMMENDATIONS

The future of ADR in Uganda is bright and promising, bringing about a just society where disputes are disposed of more expeditiously and at lower costs without having to resort to judicial settlements. The availability of the various mechanisms under ADR enables practitioners to contextualize each dispute to design an appropriate mechanism for that. ADR gives parties greater control over resolving issues between them and encourages problem-solving approaches. It is on this note that the article advocates for the integration of ADR mechanisms in corporate dispute resolution, enabling company directors to settle employee disputes. Companies should preserve their business relationships and exercise their duty of care by endeavouring to resolve disputes expeditiously, efficiently, and effectively. In South Africa, companies have integrated mediation into their management practices. Chapter 8, paragraph 39 of the King III Report, ADR is the most effective and efficient method of addressing the costly and time-consuming features associated with more formal litigation procedures. The King III Report also emphasizes the importance of preserving business relationships and ensuring that the cost of dispute resolution does not deplete the company's finances and resources. It is Uganda should enact legislation that facilitates internal dispute resolution within companies to safeguard company secrets. The legislative and corporate bodies rationalize the inclusion of mediation in the aforementioned corporate statutes, recognizing that traditional litigation in commercial disputes has shattered business relationships and squandered financial resources and valuable time. by incorporating ADR processes into the corporate arena, the focus now shifts to resolving disputes in a way that would preserve corporate relationships, such as those with suppliers, competitors, employee bodies, or customers. Furthermore, ADR techniques, such as mediation, provide innovative, quicker, and less expensive processes for resolving commercial disputes. Moreover, these ADR techniques preserve confidentiality, as the dispute resolution process does not take place in an open forum such as a courtroom.

Second**,** owing to its recent success in the judicial service system, mediation should involve an apology as a mechanism of settlement. For instance, we should allow medical practitioners to apologize and explain their actions without interpreting them as an admission of liability in a medical negligence claim. An apology can be one of the most effective means of averting or solving legal disputes. It is an act that is very much outside of Uganda's traditional adversarial legal framework. The judiciary should turn to discussing the importance of apologies and open disclosure in resolving disputes. Empirical evidence supports the view that an apology can reduce litigation and promote early resolution of medical disputes. Indeed, there's a suggestion that the healthcare industry worldwide is currently undergoing a cultural shift from traditional tactics of defending and denying, to adopting an apology as a strategy to quell hostile feelings between the patient and the doctor. For instance, researchers conducted a study on a group of patients and their families who had filed medical malpractice suits, revealing that 37% of those surveyed might not have initiated litigation if they had received a comprehensive explanation and apology. Interestingly, they reported that an explanation and apology were more important than monetary compensation. Third, there is a need to introduce medical negligence disputes and early neutral evaluation. Early neutral evaluation is a process in which parties to a dispute appoint a neutral and independent third person or persons who provide them with an unbiased evaluation of the facts, evidence, or legal merits of a dispute and guide them as to the likely outcome should the case be heard in court. The evaluation is without prejudice and is not binding. Early neutral evaluation is intended to reduce litigation costs by facilitating communication.

Open Access
ISSN PRINT:2992-6130
ONLINE ISSN: 2992-5800

REFERENCES

1. McIntosh, W.: 150 Years of Litigation and Dispute Settlement: A Court Tale. Law & Society Review. 15, 823–848 (1980). https://doi.org/10.2307/3053513
2. Bendeman, H.: Alternative Dispute Resolution (ADR) in the Workplace – ACCORD, https://www.accord.org.za/ajcr-issues/alternative-dispute-resolution-adr-in-the-workplace/
3. alternative dispute resolution, https://www.law.cornell.edu/wex/alternative_dispute_resolution
4. Extension, K.P.: The Potency of Alternative Dispute Resolution in Resolving Ugandan Civil Disputes: A Comprehensive Examination and Recommendations. IAA JOURNAL OF MANAGEMENT. 11, 20–24 (2024). https://doi.org/10.59298/IAAJAM/2024/111.2024.00
5. How can I settle a dispute over a matter which has a monetary value below 10 million UGX? - Justice Centres Uganda, https://justicecentres.go.ug/how-can-i-settle-a-dispute-over-a-matter-which-has-a-monetary-value-below-10-million-ugx/
6. Musoke, G.: CASE BACKLOG IN UGANDA, IT'S IMPACT ON JUSTICE AND THE POSSIBLE SOLUTIONS THERETO. (2023)
7. Islamic Studies Presented to Charles J. Adams | Brill, https://brill.com/edcollbook/title/1453
8. Alternative dispute resolution approaches and their application - UNESCO Digital Library, https://unesdoc.unesco.org/ark:/48223/pf0000133287
9. Cai, C., de la Rasilla, I. eds: International Dispute Settlement. In: The Cambridge Handbook of China and International Law. pp. 495–547. Cambridge University Press, Cambridge (2024)
10. https://www.africaresearchinstitute.org/newsite/publications/counterpoints/alternative-dispute-resolution-made-comeback-nigerias-courts/, https://www.africaresearchinstitute.org/newsite/publications/counterpoints/alternative-dispute-resolution-made-comeback-nigerias-courts/
11. Uwazie, E.: Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability, https://africacenter.org/publication/alternative-dispute-resolution-in-africa-preventing-conflict-and-enhancing-stability/
12. Oola & 2 Ors v Lanen (Civil Appeal No. 0018 of 2017) [2018] UGHCLD 74 (6 December 2018). (2018)
13. Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa, https://www.penalreform.org/resource/lilongwe-declaration-accessing-legal-aid-criminal-justice-system/
14. Bradley, A.W.: Constitution-Making in Uganda. Transition. 25–31 (1967). https://doi.org/10.2307/2934619
15. Constitutional history of Uganda, https://constitutionnet.org/country/uganda
16. Judicature (Fundamental and Other Human Rights and Freedoms) (Enforcement Procedure) Rules, 2019. (2019)
17. Judicature Act. (2020)
18. Arbitration and Conciliation Act. (2008)
19. East African Development Bank v Ziwa Horticultural Exporters Ltd (High Court Miscellaneous Application No. 1048 of 2000) [2000] UGCommC 7 (19 October 2000). (2000)
20. Kakooza, A.: Arbitration, Conciliation and Mediation in Uganda: A Focus on the Practical Aspects. SSRN Electronic Journal. (2010). https://doi.org/10.2139/ssrn.1715664
21. Land Act (Cap. 227). | FAOLEX, https://www.fao.org/faolex/results/details/en/c/LEX-FAOC096350/
22. Judicature (Mediation) Rules, 2013. (2013)

CITE AS: Charity Dorynie (2024). Examining the Role of Alternative Dispute Resolution (ADR) and Small Claim Procedure in the Settlement of Civil Disputes in Uganda. NEWPORT INTERNATIONAL JOURNAL OF LAW, COMMUNICATION AND LANGUAGES, 4(2):13-17. https://doi.org/10.59298/NIJLCL/2024/4.2.131748