AN EXAMINATION OF THE EFFICACY OF ALTERNATIVE DISPUTE RESOLUTION IN LAND DISPUTES IN UGANDA

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JUNE 2016
DECLARATION

I BARIGYE JIMMY hereby declare that this dissertation is my own work and to the best of my knowledge and belief, it has never been submitted for any academic award in any other institution.

Signed this \underline{27th} day of \underline{06} \underline{2016}

BARIGYE JIMMY
APPROVAL

This is to certify that this research was carried out under my supervision and approved as the student's original work.

Pros/Dr./Mr./Ms./Miss KISUBI ESTHER

Signature

Date 10/06/2016
DEDICATION

This work is dedicated to my beloved Dad Mr. BAGUMA EMMANUEL for his emotional and financial support, my Mum, Sisters and Brother, my Pastors Peter and Agnes Ssali for their spiritual encouragement, my friend and OB Twesigye Abraham for his endless academic advice he accorded to me while at campus as well as all the friends who encouraged me while conducting this research.
ACKNOWLEDGMENT

I wish to express my sincere and innermost heartfelt gratitude to persons of various calibers for their invaluable assistance and cooperation they accorded me at every stage of the production of this dissertation.

My profound appreciation goes to my supervisor Dr. Kisubi Esther for the endless time she spent advising me during my research amidst her busy schedule.

I cannot find appropriate words to express my gratitude to my dear father Mr. Baguma Emmanuel who gave me tremendous support and encouragement, without which this work would have been in vain.

I register my sincere thanks and gratitude to Wenene Stella, also a friend and Namuyomba Hanifah for having easily parted with their spare time in order to type and edit the various chapters. May the Almighty God bless you abundantly.
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<th>Description</th>
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<tr>
<td>ADRL</td>
<td>Alternative Dispute Resolution</td>
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<tr>
<td>ACA</td>
<td>Arbitration and Conciliation Act</td>
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<td>CADER</td>
<td>Center for Arbitration and Dispute Resolution</td>
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<td>NYC</td>
<td>New York Convention</td>
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<td>UN</td>
<td>United Nations</td>
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<td>LDC</td>
<td>Law Development Center</td>
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<td>ARB</td>
<td>Arbitration</td>
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<td>CAP</td>
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<td>AC</td>
<td>Appeal Cases</td>
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<td>ALLER</td>
<td>All England Law Reports</td>
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<td>E.A</td>
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<td>KALR</td>
<td>Kampala Law Reports</td>
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<td>HCB</td>
<td>High Court Bulletin</td>
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INTERNATIONAL CONVENTIONS AND NATIONAL STATUTES

INTERNATIONAL
The New York Convention on the enforcement of foreign arbitral awards 1958
The United Nations Charter 1945

NATIONAL LEGISLATION
Arbitration and Conciliation Act Cap 4 (as amended)
Civil Procedure Act Cap 71
Civil Procedure Rule S1 71-1
Judicature Act Cap 13
Land act cap 227
LIST OF CASES

CADER Executive Director in Uganda posts v R.4 International Ltd
CAD/ARB/11/09

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1048/2000

Farmland Industries Ltd v Global Exports Ltd (1991) HCB 72

Iraq fund for External Development v A.G (2000) HCCS 1391

National Union of clerical commercial and technical employees v Uganda
Bookshop (1965) EA 533

Oil Seeds (U) Ltd v Uganda Development Bank SCCA No.203/1995

Ruth Bemba & Anor v DAPCB HCCS 833 of 1989

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ABSTRACT

The research is about an examination of the efficacy of ADR mechanisms as a dispute settlement in land disputes in Uganda given the different methods of dispute resolution; this research examines ADR development and evolution in Uganda, its effectiveness, benefits and hindrances. It also goes ahead to look at the different types of ADR that can be used by parties.

The research also examined the law relating to ADR and how it implements both international and national laws which are applicable to ADR in Uganda. The ADR mechanisms therefore have played a significant role in resolving land disputes in Uganda.
CHAPTER ONE

1.0 Introduction

The term “Alternative Dispute Resolution” is often used to describe a wide variety of dispute resolution mechanisms that are short, or alternative to, full scale court processes.

Although mediation goes back hundreds of years, alternative dispute resolution has grown rapidly in the United States since the political and civil conflicts of the 1960s. The introduction of new laws protecting individual rights, as well as less tolerance for discrimination and injustice, led more people to file law suits in order to settle conflicts for example, the Civil Rights Acts of 1964 outlawed “discrimination in employment or public accommodations on the basis of race, sex, or national origin. Laws such as this gave people new grounds for seeking compensation for ill treatment. At the same time, the women’s movement and the environmental movements were growing as well, leading to another host of court cases. The result of all these changes was a significant increase in the number of law suits being filed in U.S courts.

Eventually the system became overloaded with cases, resulting in long delays and sometimes procedural errors processes like mediation and arbitration.

Popular ways to deal with a variety of conflicts, because they helped relieve pressure on the overburdened court system.

The Uganda court system has of late, progressed and became more appreciative of a global commercial developments and thus bringing about the establishment of other dispute resolution mechanisms in land disputes that

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1 Mayanja, a review of Uganda Framework governing the Institutional Intervention in Arbitration. C/A New Vol. 17 issue 4 pag 18-24
2 Stephen B. Goldberg and others Dispute Resolution (Boston; little, Brown and Company, 1985)
3 Ibid
4 Ibid
are efficient and accessible; faster and cheaper to disputants. This is why Alternative Dispute Resolution (commonly referred to as ADR) comes in.

ADR is an umbrella term for a variety of processes which differ in form and application. These differences include; levels of third party without resources to adversarial means.

It offers a range of different processes which are alternative to litigation, each of which is designed to respond to the particular needs for the parties in dispute in achieving realistic and cost-effective solutions to the problem.

Alternative Dispute Resolution plays a vital role in Uganda’s legal system in that for the last decade, ADR has taken a heightened significance in legal and judicial practice within the common law jurisdictions. In this regard therefore the research project attempts to define ADR, trace its evolution and examine its efficacy in land disputes in Uganda.

1.1 Background

ADR has been a creature of statute for a long time and continues to remain a mystery to so many and yet it is a dispute resolution technique widely used in adhoc manner to settle land disputes. In Uganda traditional rulers, elders and family heads have used and continue to use the informal and non-contentious approach to resolving land disputes.

Institutions like legal aid clinics have also used some forms of ADR to resolve disputes that come before them; for instance land cases being solved by and/or even family heads in their families with the help of elders.

In Uganda, ADR predates the 1930s where the Arbitration Act of England was introduced on 31st December 1930 during the colonial period and is based on

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7 G. Kiryabwire, Journal for capital market Uganda, Vo 5 No. 1 October March 2002 (a review) pg 1.
the 1989 and 1930 Arbitration Acts of England (adopted by virtue of the 1902 order in council). These laws were there but arbitration was seldom used. In 1964, after Uganda's independence, some laws were revised thereby changing the 1930 Arbitration Act of England to the Arbitration Act\textsuperscript{8}.

Other forms of Arbitration were envisaged under decrees of court and specifically the Judicature Act\textsuperscript{9}, which empowers courts to appoint referees of Arbitrators who would be deemed as court officers who had powers to conduct any reference in such manner as the high court directed\textsuperscript{10}.

In Civil Procedure Act\textsuperscript{11}, all references to arbitration by an order in suit, and all proceedings there under, shall be governed in such manner as may be prescribed by rules.

Under the civil procedure rules\textsuperscript{12}, elaborate rules which were promulgated such as where parties fail to reach an agreement, the court will determine if it has a good potential for settlement and thereby order ADR before a member of the bench. This has to take place within twenty one days after the date of the order.

ADR should be looked at as a new concept; whereby, mediation and conciliation are the methods by which disputes are solved. Under the constitution of Uganda\textsuperscript{13}, also mandates the courts to promote the principle of reconciliation between the parties. This shows that support for ADR as a method of dispute resolution.

ADR in Uganda received a major part with the promulgation of the Arbitration and conciliation Act of 2000 which came into force on 19\textsuperscript{th} May 2000,

\begin{itemize}
\item \textsuperscript{8} Cap 55, Law of Uganda
\item \textsuperscript{9} Statutory Instrument No. 11/1967
\item \textsuperscript{10} Section 27 Judicature Act No. 11/1967.
\item \textsuperscript{11} Section 60
\item \textsuperscript{12} Statutory instrument 71-1, order 12 rule of the rules.
\item \textsuperscript{13} The constitution of the Republic of Uganda, Article 126 (d) 1995
\end{itemize}
amending the Arbitration Act of 1964 and the laws relating to Arbitration in Uganda.

The Arbitration and Conciliation Act of 2008 (as amended) established the centre for Arbitration and Dispute Resolution (CADER) and sets down its functions among which, is the dissemination of information about the advantages of ADR in resolving many ordinary land disputes and other disputes.

The CADER is therefore, at the forefront of constantly developing and updating ADR procedural guides and promoting increased use of ADR in resolving disputes most especially land disputes.

1.2 Statement of the Problem
Land disputes in Uganda have come the order of the day. Many mechanisms have been adopted to solve these disputes of which Alternative Dispute Resolution mechanism is one of them. To a large extent, it has achieved its purpose in some cases where it has been applied hence being seen as more advantageous compared to other mechanisms. However to another extent, it has failed to achieve as expected. Therefore, this study is aiming at examining how ADR has been able to solve land disputes in Uganda.

1.3 Purpose of the Study
The major purpose of the study is to examine how ADR has been able to solve land disputes in Uganda.

1.3.1 Specific objectives of the study
The specific objectives of the study are;

(i) To establish the development of ADR in land disputes in Uganda

(ii) To analyze the legal frame work governing ADR in Uganda.

14 Section 70
(iii) To examine how ADR has been able to solve land disputes in Uganda.
(iv) To discuss non-legal factors affecting the implementation of ADR in land disputes in Uganda.
(v) To draw conclusions and recommendations based on findings.

1.4 Significance of the Study
The study calls for integration of ADR in land disputes in Uganda today and also explores the avenues in the legal system in which legal issues arising out of dispensation of ADR can be dealt with. This paper shall supplement and enhance knowledge and will be added to the available literature on the subject of ADR. Lastly, the paper frames recommendations that are applicable to Uganda thereby contributing to existing knowledge on the subject.

1.5 Scope of the study
The focus of the study is Uganda. Due to the geographical setting, most of the areas are accessible hence selection of areas of the study is random. The study deals with the effectiveness of the Alternative Dispute Resolution mechanism in land disputes in Uganda. The research is from the year 1900 to the present. The Buganda Agreement was signed outlining the meaning of mailo tenure system of land management and ownership.

1.6 Research questions
1. what is the meaning of ADR?
2. What are the ADR?
3. What is the legal framework governing ADR?
4. How have ADR been able to resolve land disputes in Uganda?
5. What are the limitations to the use of ADR mechanisms?
6. What are possible solutions to the use of ADR?
7. What are possible recommendations and conclusive remarks?
1.7 Justification for the Study
The study is important to the government in evaluating the successes and failures of ADR in land disputes in Uganda. It is important to the people in communities and the general public as they gain knowledge of their rights and procedures of opting for ADR in land disputes as well as the benefit thereof, by reading this research.

It is also important for educational purposes, and helps scholars to learn about other alternatives of dispute resolution in land disputes that are quicker and cheaper and both parties are able to leave satisfied and maintain a good relationship.

1.8 Methodology

Overview

This section presents the methodology adopted in the study. It presents the research design, study area and target population, the sample and sampling techniques, research instruments, data quality control, processing and analysis.

1.8.1 Research Design
The study will take a survey research design and employ both qualitative and quantitative approaches. This design is preferred because it is appropriate in describing and explaining the phenomenon by using many respondents and a number of tools in a short time.

The quantitative approach will generate numerical data and on which generalizations are based while qualitative approach will generate in depth information through interviews with the respondents. The two approaches are preferred because they allow corroboration and triangulation of data.
1.8.2 Study Area
The study will be carried out in Uganda Courts especially High Court (Land Division) Kampala. The High Court (Land Division) has been selected because it is here that ADR is most practiced in resolving land disputes in Uganda.

1.8.3 Target Population
The target population will be the community members, judicial officers, advocates and opinion leaders and other stakeholders. These categories will participate as key informants.

1.8.4 Sample and Sampling Techniques
The study will involve a sample of 52 participants drawn from the different sections of the target population. The study will involve 12 community members, 20 advocates and 20 judicial officers. Stratified sampling will be applied to select the participants because the population is not homogeneous. Judicial officers will be purposively selected depending on their responsibilities.

1.8.5 Research Instruments
The study will employ two questionnaires and an interview guide. One questionnaire will be elicited information from the suspects and other from the community members, advocates and judicial officers. The questionnaires, with both closed-ended and open-ended items will be used to collect quantitative data while the interview guide will be used to carry out in depth interviews to collect qualitative data. The quantitative and qualitative data set will be corroborated to enable the researcher to draw valid conclusions.

1.8.6 Research Procedure
The researcher will prepare instruments and have them reviewed by experts. The instruments will be refined and mass produced. The researcher will go to the communities and judiciary to seek consent. The researcher will then issue questionnaires to the respondents to solicit for their responses. The researcher will then thereafter, conduct interviews with the key informants.
1.8.7 Data Processing and Analysis
The quantitative data collected using a questionnaire will be edited for completeness, cleaned, coded and analyzed using frequencies and percentages. The qualitative data collected by an interview guide will be sorted according to general themes and quoted verbatim for corroboration with the quantitative data. The SPSS computer software will be used to analyze the data.

1.8.8 Limitations
The researcher anticipates encountering a number of constraints which include limited funding, limited time frame and non-response on the part of same targeted potential respondents. As a result, the researcher limits the study to a small geographical area and to a small number of respondents so as to overcome the problem of limited funding and also to make the study fit in the available time frame.

1.8.9 Ethical Considerations
Aware of the implications and challenges of field work, the researcher will obtain an introductory letter from the university to the study area authorities. With this letter, the researcher will introduce himself to and seeks consent from the relevant authorities in the community and judiciary. The researcher will not require names of the respondents to ensure confidentiality.
CHAPTER TWO

2.0 Literature review
The researcher examined different existing literature in regard to some search for the purposes of reviewing, identification of gaps in such works and how the present work addresses those gaps.

According to Anthony Conrad K. Kakooza\textsuperscript{15} He explored a new trend in Uganda encompassing different forms of alternative disputes resolution mechanism such as arbitration, conciliation, mediation and a brief look into collaborative legal practice. This article is relevant to the study because it covers ADR process in detail and explains the advantages and disadvantages to the readers.

According to Mr. Hon Justice, Geoffrey Kiryabwire, he discussed among other issues, emerging challenges to disputes resolution mechanisms, such as unreasonable parties or their legal advisers who are not willing to try ADR due to lack of clear enforcement mechanisms.

However, it has been predicated that settlement processes would result in diminished protection of parties not at the table, frustration of laws designed to create social change, and loss of the courts voice on public values through precedent. With such predictions, those in the legal profession would not easily spearhead the move towards ADR. Nonetheless, this research contributes in changing people's attitudes about ADR by sensitizing readers on the benefits, relevant laws and giving an example of decided cases which have used ADR process through the Centre for Arbitration and Dispute Resolution (CADRE).

**Hon Mr. Justice Geoffrey Kiryabwire\textsuperscript{16}**. He discussed the different processes of ADR, court based ADR, the traditional perceptions', changing international and Uganda perceptions, emerging challenges and possible solutions for them.

\textsuperscript{15}Arbitration, conciliation and mediation in Uganda; focus on the practical aspects note 2 http://ssrn.com/abstract=1715664, visited on 4\textsuperscript{th} March 2016.

\textsuperscript{16}Alternative dispute resolution; A Uganda judicial perspective A paper Delivered at a Continuation seminar for magistrates Grade one at Colline Hotel Mukono 1\textsuperscript{st} April, 2005
He then defined ADR as a structured negotiation process whereby the parties to a dispute themselves negotiate their own settlement with the help of an independent intermediary who is a neutral and trained in the techniques of ADR.

Land is defined as, "land includes messages, tenements, hereditaments, corporeal or incorporeal, and in every certificate of title, transfer and lease issued or made under this Act.

"Land" also includes all easements and appurtenances appertaining to it. Though this definition describes all the forms and interests exercisable by the land owner, it does not state the extent to which the land owner may exercise his/her right over the air space or underground.

However, it was held in the case of Kelsen V Imperial Tobacco Company of Great Britain and Ireland that, "an intrusion into the air space of another whether insignificant or causes no damage to the land, constitutes trespass"

In this case, the defendants had erected an advertising sign post on their building, which projected 8 inches over the plaintiffs building.

The former were held liable for trespass.

The case of Berstein of Leigh (Baron) V Sky Views and General Limited, also held that, the surface owner's rights are probably limited to such depth as is necessary for his/her ordinary use and enjoyment of the structures therein below the depth, the land owner has no greater rights than members of the public"

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17 S.1 (1) of the RTA Cap 230
18 (1957) QB 334
19 (1978) QB 479, (1977)2 ALLÉR 902
The mining Act however creates an exception that the land owner’s rights do not include minerals.\textsuperscript{20}

\textbf{Law and Practice Of International Commercial Arbitration,}\textsuperscript{21} According to the authors, they covered ADR extensively, looking at the types, their development and with more emphasis on arbitration, putting their main focus on the international scene and the U.S among the reasons they give for the development of ADR is business and cultural considerations. Their work will be very relevant to this study because they expand on the topic of ADR beyond national boundaries and focus on the importance of this process in business relationship internationally, as well as a good focus on arbitration. ADR in a business relationship is the best option for solving disputes especially with the need to keep working with the same people. However, their main focus is on the international scene and the US well as one type of ADR. This research focuses on the international and national legal frameworks as well as broader discussion, on all the types of ADR and their development in Uganda.

ADR developments in London, Carroll and Dixon\textsuperscript{22}, their observations on the advantages of ADR such as privacy and procedural flexibility in their discussion is equally important and relevant to this discussion. However, their discussion on ADR is in light with their jurisdiction meant for their community, this is because ADR is applicable worldwide and the methods of application vary.

\textbf{International Law, Rebecca Wallage}\textsuperscript{23}, the essential difference between arbitration and judicial settlement is that in arbitration, parties are more active in deciding for example the law to be applied and the composition of the tribunal whereas parties submitting tribunal with its judicial settlement must

\textsuperscript{20} Cap 248, S.3
\textsuperscript{21} Alan Redfem and Martin hunter sweet and Maxwell, London, 2004, P.44
\textsuperscript{22} Ibid pg 38
\textsuperscript{23} Supra pg 265

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accept on already constituted tribute with its jurisdictional incompetence and procedure laid down in statute.

This comparison is vital to this study because it gives a sharp distinction between judicial settlement and ADR, thereby making it clear for the readers that arbitration is a good option especially the need for them to take a direct part in this form of litigation. However, the author only discusses arbitration and mostly on the international scene. In this study, a discussion of all the ADR processes is done and closer focus on Uganda.

2.1. The legal regime of land in Uganda
Proper management of land is mandatory in resolving land disputes which could lead to interference with economic development. Land laws were enacted with a view of indemnifying damage from land disputes as exemplified by this preamble to an act24.

"We have seen that the subject of people holding land has become difficult, it is therefore ordered as follows;" the law may be called, the land law 1908...

Subsequent laws have thus followed suit with a view of addressing land in its entirety.

"Land in Uganda belongs to the citizens of Uganda and shall vest tenure system provided for in this constitution", notwithstanding clause (1) of this article-

a) The government or a local government may, subject to article 26 of this constitution, acquire land in the public interest; and the conditions governing such acquisition shall be as prescribed by parliament;

b) The government or a local government as determined by parliament by law shall hold in trust for the people and protect natural lakes, rivers, wetlands, forest reserve, game reserves, national parks and any land to

24 1908 Land law
be reserved for ecological and touristic purposes for the common good of all citizens.

c) Non citizens may acquire leases in land in accordance with the laws prescribed by parliament and the laws so prescribed shall define noncitizen for the purposes of this paragraph.

Land in Uganda shall be owned in accordance with the following tenure systems.

a) Customary
b) Freehold
c) Mailo, and
d) Leasehold.

On the coming into force of this constitution;

a) All Ugandan citizens owning land under customary tenure may acquire certificate of ownership in a manner prescribed by parliament; and
b) Land under customary tenure may be converted to freehold and ownership by registration...25

There existed people occupying the mailo land, freehold or leasehold land which belonged to others who would be rendered homeless by the legal owners after the coming into force of the constitution but this was catered for by introducing law and/or bonafide security of occupying on land26.

However, there is an exception as far as depriving people of their land. The property or interest in or right over property of a person should be deprived of him or her when the taking of possession or acquisition is necessary for public health.

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25 Art 237(1) (2) (3) and (4) supra
26 Art 237 (8) (9) ibid and S...... Land Act 1998 (the land amendment at 2004)
One whose property is taken over should require prompt payment of fair and adequate compensation prior to the taking of possession or acquisition of the property. A right of access to a court of law by any person who has an interest or right over the property should also be considered\(^{27}\)

The ministers power to enter or and examine land in order to ascertain the suitability of land for a public purpose\(^{28}\). The same law provides for compensation for a person whose estate or interest in the land is extinguished\(^{29}\), and provides for temporary occupation of waste or arable land for public purpose. Government can occupy land for less than three years but pay compensation for any losses.\(^{30}\)

The question of the compensation which is worth the value of the land by those whose land is acquired by the government is vital and emphasizes that land belongs to citizens of Uganda.

The land acquired by the government is managed by the Uganda Land Commission\(^{31}\), the other functions of the commission are set out in the land Act.

One of them is that where applicable, the commission shall hold and manage any land acquired by the government abroad, except that the commission may delegate the management of such land to Uganda’s missions abroad.

The other function is to procure certificates of title for any land vested in or acquired by the government. The commission shall manage the land fund and is entrusted with the rule of giving loans to tenants by occupancy to enable them acquire registerable interests.

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\(^{27}\) Art 26 ibid  
\(^{28}\) S.2(1) of the Land Acquisition Act Cap 226  
\(^{29}\) S.2(1) of the Land Acquisition Act Cap 226  
\(^{30}\) S. 10 ibid  
\(^{31}\) Art 239 supra
The fund shall be used by the government to purchase or acquire registered land to enable tenants by occupancy to acquire registered interest pursuant to the constitution. To rest the persons who have been rendered landless by government action, natural disaster or any other cause.

Finally, the fund shall be utilized to assist other persons to acquire titles. However, the commission shall perform such other functions as may be prescribed by or under this Act of any other enactment.32

Another body of government that deals with land is the District Land Board33, the board shall own land within the district which is not owned by any person or authority34. The board shall take over the role and exercise the powers of the leases in the case of a lease granted by a former controlling authority. Further to cause surveys, plans, maps, drawings and estimates to be made by or through its officers or agents.

Also the board shall compile and maintain a list of rates of compensation payable in respect of crops, buildings of a non permanent nature and any other things that may be prescribed.35 The board shall review every year the list of rates of compensation36 the board is also empowered to deal with any matter which is incidental or connected to the other functions.37

The Act also establishes land committees. A land committee consisting of a chairperson and three other members appointed by the district council on the recommendation of the sub county council shall be for each parish.

32 S. 49(b) of the Land Act Cap 227 and Art 237(9)(b)
33 Art 240 supra
34 Art 241(1) (a) ibid
35 S. 59 (1) (e) ibid
36 S. 59(1) (f) ibid
37 Supra
A similar committee shall be for each gazetted urban area and be for each division in the case of a city except that members will be recommended by the urban council and in the case of a city or recommendation of the city division council.\textsuperscript{38}

The committee shall determine, verify and mark boundaries of customary land situated cords parish which is the subject of an application for a certificate of customary ownership and the recommend to the board whether to grant the certificate.\textsuperscript{39}

The committee exercises a similar function with respect to application for conversion of customary tenure to freehold.\textsuperscript{40}

The committee plays an advisory role to the district land board on matters of customary land law applicable in its parish. Also the committee shall safeguard the interest in land in respect of which application of women, absent persons, minors and persons with or under a disability. The committee will also take into account of any interest in land in respect of which, for any reason, no claim has been made.

As earlier mentioned, the land committee receives applications for certificate of customary ownership. A comprehensive procedure is outlined in S.6 of application of the certificate. The committee makes a report and recommendations which are submitted to the board. A copy of the report is availed within the parish for inspection by all persons who submitted claims to or who were heard by the committee.\textsuperscript{41}

The procedure and functions of a district board on application for a certificate of customary ownership is provided for and the recorder shall issue a

\textsuperscript{38} S. 64 (2) ibid
\textsuperscript{39} S. 5 supra
\textsuperscript{40} S.9 ibid
\textsuperscript{41} S.9 ibid
certificate in terms of the decision of the board to the applicant where the decision of the board is to issue a certificate of customary ownership without conditions, restrictions or limitations.\textsuperscript{42}

A recorder who is provided for is responsible for keeping records relating to certificates of customary ownership and certificate of occupancy.\textsuperscript{43}

Owners of land in lease of freehold, mailo registered under this Act which is not less than ten years are unexpired may be brought under the operation of this Act as near as may be in the manner and subject to lands alienated before the Registration of Land Titles Ordinance\textsuperscript{44}, and the provisions of this Act shall, with such adaptation or may be necessary, extend and apply accordingly.\textsuperscript{45}

The certificates of title are issued to owners of land by the registrar as proof. Ownership of land by the registrar. The most important aspect of registration of land is to keep record of ownership and transactions in land. The Torrens system, which originated from Australia and was introduced in Uganda\textsuperscript{46} still applies to all registered land. It revolves around a centralized “Register Book” and interests in land are created or transferred by registration prescribed by the RTA which provides that, no instrument shall be effectual to pass any estate or interest in any land until it is registered.\textsuperscript{47}

The Torrens system also has an essential feature, the principle of indefeasibility of Title, which means that, once a person is registered as a proprietor of an estate or interest in land, his or her interest in land cannot be impeached, except in cases stipulated under the RTA.

\textsuperscript{42} S.7(5) ibid
\textsuperscript{43} S. 68(2) ibid
\textsuperscript{44} 1908 Land law
\textsuperscript{45} S. 36(1) Supra
\textsuperscript{46} S. 38 Ibid
\textsuperscript{47} RTA enacted in 1922
The registered proprietor is protected against eviction, except in cases provided for which inter alia, include fraud, but does not mention selling without family members or spouses' consent.\textsuperscript{48}

These provisions were upheld in the case of \textit{Kampala Otters Led Vs Damanic (U) Ltd},\textsuperscript{49} where it was stated that in these provisions, production by a person of a certificate of title in his or her name is deemed to be an absolute bar and estoppels against any-legal action.

Parties claiming any estate or interest in land described in any notice issued by the registrar under the Act may before the registration of the certificate lodge a caveat to block the bringing of that land under the Act.\textsuperscript{50}

The registrar has power to cancel a certificate of title registered in the register book and may register a certificate of title in any of the forms prescribed under this Act in view of that certificate.\textsuperscript{51}

The cancellation may be due to fraud and such certificate shall be void.\textsuperscript{52}

Persons who have claims regarding land matters may bring them forward before the expiration of twelve years from the date of realization of the causes of action accruing to him or her, if it first accrued to same person through whom he or she claims to that person.\textsuperscript{53} There is however, an extension of the period in case of disability\textsuperscript{54}, another postponement of the limitation period is in case of fraud or mistake.\textsuperscript{55}

\begin{thebibliography}{99}
\item \textsuperscript{48} supra
\item \textsuperscript{49} C.A No. 22 of 1922
\item \textsuperscript{50} S.20 supra
\item \textsuperscript{51} S.38 (4) ibid
\item \textsuperscript{52} S.77 ibid
\item \textsuperscript{53} S.5 of the limitation Act Cap 80
\item \textsuperscript{54} S.6 ibid
\item \textsuperscript{55} S.6 ibid
\end{thebibliography}
CHAPTER THREE

LEGAL FRAMEWORK RELATING TO ALTERNATIVE DISPUTE RESOLUTION

3.0 Introduction
This chapter examines the law on both the international and national level. The purpose of the research under this chapter is to discuss the law on ADR in Uganda therefore, the main focus on the national laws.

There are various laws that establish ADR in Uganda such as the constitution of the republic of Uganda as amended,\textsuperscript{56} land Act\textsuperscript{57} Arbitration and Conciliation Act\textsuperscript{58} among others. While on the international scene, there are laws/conventions for which Uganda is a signatory as discussed below.

3.1 International Legal Framework

3.1.1 United Nations charter
The charter\textsuperscript{59} provides that members shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered, the 1970 Declaration on principles of international law concerning friend relations and cooperation among states\textsuperscript{60} develops this principle and note that, "states shall, accordingly seek early and just settlement of the international disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, or arrangement of other peaceful means of their choice.

\textsuperscript{56} 1995
\textsuperscript{57} Cap 227
\textsuperscript{58} Cap 4 as amended
\textsuperscript{59} UN charter Article 2(3)
\textsuperscript{60} UN General Assembly resolution 2625(XXV)
The same methods of dispute settlement are stipulated in the charter although in the context of disputes the continuance of which likely to endanger international peace and security.

States are therefore free to choose the methods they want to use and there is no specific method required for any situation. Parties also have a duty to continue to seek a settlement by other peaceful means agreed by them in the failure of one particular method.

Under Article 33(1) provides that, the parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security shall first of all seek a solution by negotiation, inquiry, mediation, arbitration, judicial settlement, resort to regional agencies, or arrangements or other peaceful means of their choice.

Under Article 37(1), should parties to the dispute fail to settle it by the means stated in Article 33, they shall refer it to the Security Council.

Article 52(1) of chapter (VII) provides that, nothing in the chapter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action provided that such arrangements or agencies and their activities are consistent with the purpose of the UN.

Article 5(2) stipulates that members of the UN entering into such arrangements or agencies are to make every effort to settle local disputes peacefully through such regional arrangements or by such regional agencies by referring them to the Security Council.

Although reference where appropriate to regional arrangements should take place, this does not affect the comprehensive role of the UN through the

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61 UN Charter Article 33(1)
security council or general assembly in dealing in various ways with disputes between states.

It was noted that state parties to regional arrangements shall make every effort to settle disputes through such mechanisms but that does not preclude states from bringing any disputes to the attention of the Security Council in accordance with the charter of the United Nations.

The idea behind opting for ADR is to settle disputes in an amicable manner and stay at peace with the adversary. At the international level, the UN as the main instrument provides for it and since Uganda is a signatory, there is the more reason why it should be emphasized.

3.1.2 The New York Convention award on the enforcement of foreign arbitration award 1958.

International arbitration is an increasingly popular means of alternative dispute resolution. The primary advantage of international arbitration over court litigation is enforceability: an international arbitral award is enforceable in most countries in the world. Other advantages of international arbitration include the ability to select a neutral forum to resolve disputes that arbitration awards are final and not ordinarily subject to appeal, the ability to choose flexible procedures for the arbitration, and confidentiality. Countries which have adopted the New York Convention have agreed to recognize and enforce international arbitration awards.

The convention entered into force on 7th June 1959 and it seeks to provide common legislative standards for the recognition of arbitration agreements and court recognition and enforcement of foreign and non-domestic arbitral awards.

The term “non – domestic” appears to embraced awards which although made in the state of enforcement are treated as “foreign” under its law because of

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62 Section 1 para 6 of the manila declaration on the pacific settlement of the international dispute adopted in Geneva Assembly resolution 37/110, 1982
63 http://wiki convention on the recognition and enforcement of foreign arbitral awards visited on 27th April 2012
some foreign element in the proceedings e.g. another state’s procedural laws are applied. 64

The convention’s principal aim is that foreign and non-domestic arbitral awards will not be discriminated against and it obliges parties to ensure such awards are recognized and generally capable of enforcement in their jurisdiction in the same way as domestic awards. An ancillary aim of the conventions is to require courts of parties to give full effect to arbitration agreements by requiring courts to deny the parties access to court in contravention of their agreement to refer the matter to an arbitral tribunal. 65

The convention is open to accession by any member state of the United Nations, any other state which is a member of any specialized agency of the United Nations or is a party to the statute of the international court of justice (articles VIII and IX).

Article 1 of the convention applies to the recognition and enforcement of arbitral awards made in the territory of the state other than the state where the recognition and enforcement of such awards are sought and arising out of the difference between the persons; whether its physical or legal.

It also applies to arbitral awards not considered as domestic awards in the state where their recognition and enforcement are sought. Part III of the Arbitration and conciliation Act, stipulates under Section 39(1) that, a New York Convention award means, an arbitral award made, in pursuance of an arbitration agreement in the territory of a state (other than Uganda) which is a party to the convention on the recognition and enforcement of foreign arbitral awards Uganda acceded to this award on February 1992.

64 http://wiki.uncitral/ny convention
65 Ibid
The ACA provisions on the New York convention simply give domestic effect to a number of pertinent provisions such as the “enforcing court” for purposes of the respective treaties.

The Act further provides that, the award shall be treated as made at the seat of the arbitration, regardless of where it was signed, dispatched or delivered to any of the parties.

Under Section 41, any New York Convention award which would be enforceable under this part will be binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defense, set off or otherwise in any legal proceedings in Uganda. This award shall be recognized and enforced pursuant to Section 35 of the Act laws of Uganda. Under Section 42.

Where the court is satisfied that this award is enforceable under this part, it shall be deemed to be a decree of that court and nothing shall prejudice any right which any persons would have had enforcing in Uganda of any award of availing himself/herself of any award.

3.2 National Legal Framework

3.2.1 The Constitution of the Republic of Uganda 1995 as amended

Article 126(2) (d) provides that, in adjudicating cases of both a civil and criminal nature, the courts shall, subject to the law, apply the following principles (among which) reconciliation between parties shall be promoted.

Under Article 127, parliament shall make law providing for participation of the people in the administration of justice by the courts. With ADR, people (parties) to the dispute take direct participation in the dispute until it is resolved, unlike the usual court litigation, where the advocates represent the parties, in ADR, they take full participation and hence enforce their rights.
3.4.2.2 Arbitration and Conciliation Act Cap 4

The act basically has two parts, one for arbitration and the other for conciliation in contrast to the repealed one which only dealt with arbitration.

The Act was derived from the UNICTRAL MODEL Arbitration law\textsuperscript{66} and the conciliation rule.\textsuperscript{67} The Act commenced on 27\textsuperscript{th} June 2008 as an amendment to the Arbitration and Conciliation Act of 2000.

Section 3 of the Act defines an arbitration agreement to mean an agreement by the parties to submit to arbitration or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. It may be in respect of future dispute or certain dispute defined.

3.2.3 The Nature of Arbitration and Conciliation under the Act

As defined under the Act, Section 2(a) (c), arbitration means any arbitration whether or not administered by a domestic or international where there is an arbitration agreement; while arbitration agreement means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which arise between them in respect of a defined legal relationship whether contractual or not.

Under Section 3, an arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement which shall be in writing. With a written arbitration agreement, there is evidence that the parties intend to refer their dispute to arbitration.

In ensuring that an aggrieved party does not get redress twice, under Section 5, a judge or magistrate before whom proceedings are being brought in a matter which is the subject of an arbitration agreement shall, if a party so applies after the filing of a statement of defense and both parties having been given a hearing refer the matter back to the arbitration unless he or she finds that the

\textsuperscript{66} UN ResolutionNo.40/72 11\textsuperscript{th} December 1985

\textsuperscript{67} Ibid

24
arbitration agreement is null and void, inoperative or incapable of being performed; or that there is not in fact any dispute between the parties with regard to the matters agreed to be referred to arbitration.

Parties are free to determine the number of arbitration they want, however if they fail there shall be one arbitrator who shall not be precluded on the grounds of their nationality unless it is agreed between the parties, the procedure of arbitration also depends on the parties (Section 10, 11).

An arbitrator who has been chosen is free to reject this position is he or she feels that there will be a possibility of not being independent and impartial; the parties may also challenge any arbitrator’s credibility.

The parties shall be treated with equality, and each party shall be given reasonable opportunity for presenting his or her case and the parties should determine the place of arbitration, however if they fail it shall be determined by an arbitration tribunal (Section 18, 20).

Under Section 31, the arbitrators shall make their award in writing within 2 months; it should be made in writing and shall be signed by the arbitrator or by the arbitrators. The award is binding upon the parties and upon application in writing to the court; it shall be enforced as if it were a degree under Section 36. Part V of the Act shall apply to conciliation of disputes arising out of a legal relationship whether contractual or not and to all proceedings relating to it.

Section 49 provides for commencement of such proceedings. The party initiating conciliation shall send to the other party a written invitation to conciliate. Under this part, brief identifying the subject of the dispute.

Conciliation proceedings shall commence when the other party accepts in writing the invitation, to conciliate. If the other party rejects the invitation, there will be no conciliation proceedings. However, if the party initiating conciliation does not receive a reply within twenty one days from the date on which he or she sends the invitation, or within such other period of time as
specified in the invitation, he or she may elect to treat that as a rejection of the invitation to conciliate, and if he or she so elects, he or she shall inform in writing the other party accordingly.

The parties shall agree on one conciliator, however if there are two or three, they shall act jointly as a general rule.

The conciliator shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement as per Section 50, 53.

Under Section 56 and 57, the parties shall in good faith cooperate with the conciliator and in particular shall endeavor to comply with requests by the conciliator to submit written materials, provide evidence and attend meetings. Each party may, on his or her own initiative or at the invitation of the conciliator, submit to the conciliator suggestions for the settlement of the dispute.

Further, Section 60 provides that, notwithstanding anything in any other law for the time being in force, the conciliator and the parties shall keep confidential all matters relating to the conciliation proceedings.

Confidentiality shall extend also to the settlement agreement except where its disclosure is necessary for purposes of implementation and enforcement.

The conciliation proceedings shall be terminated by the signing of the settlement agreement by the parties on the date of the agreement; by a written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified; by a written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration; or by a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated on the date of the declaration as per Section 61.
The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject matter of the conciliation proceedings. The conciliator shall not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceeding in respect of a dispute that is the subject of the conciliation proceedings.

The conciliator shall not be presented by the parties as a witness in any arbitral or judicial proceedings as per Section 62, and 65.

3.2.4 Judicature ACT CAP 13
Under various Sections of the Act as Section 28; in all cases of reference to a referee or arbitrator under this Act, the referee or arbitrator shall be deemed to be an officer of the High Court and subject to rules of court, shall have such powers and conduct the reference in such manner as the high court may direct.”

All through Section 26 to 32 of the Act provide for situations when matters can be referred to a special referee or arbitrator to handle where such official has been granted court powers to inquire and report on any cause or matter other than a criminal proceedings. These provisions with Section 42 of the Act which stipulates for functions of the Rules committee give the origin of the judicature.

3.2.5 Civil Procedure Act and Civil Procedure Rules.68
Under Section 60, all references to arbitration by an order in a suit, and all proceedings there under, shall be governed in such manner as may be prescribed by rules.

Order 12 of the Rules under Rule 1(1) the court shall hold a scheduling conference to sort out points of agreement and disagreement, the possibility of mediation, arbitration and any form of settlement.”

This provision is meant to help the parties consider the option of settling the matter before hearing in court can commence.

68 Cap 71
It also serves the purpose of expediting hearing of the case where possible contentious issues such as which documents and witnesses are to be relied upon, are agreed at the onset.\textsuperscript{69}

Under Order 12 Rule 12; where the parties do not reach an agreement under rule 1. The court may if it is of the view that the case has a good potential for settlement, order alternative dispute resolution before a member of the bar or the bench, named by the court shall be completed within twenty one (21) days after the date of the order...time may be extended for a period not exceeding 15 days on application to the court, showing sufficient reasons for the extension.

Chief justice may issue directions for the better carrying into effect alternative dispute resolution.” This provision has thus set the pace for the procedure of having a scheduling conference before hearing of any suit commences.

This is presently strictly adhered to though it is apparent that litigants follow this procedure with the perspective of looking at it as a mandatory process before hearing of cases in court, rather than focusing on the use of a scheduling conference as a means of possibly settling the case out of court.

The latter perspective was the main reason for the establishment of this provision within Uganda’s civil procedural law.\textsuperscript{70}

Further on Order 47 also provides under Rule 1(1) that, where in any suit all the parties interested who are not under disability agree that any matter in difference between them in the suit shall be referred to arbitration they may at any time before judgment is pronounced, apply to the court for an order of reference.”

Rule 2 of the same Order provides that, the arbitrator shall be appointed in such manner as may be agreed upon between the parties.”

\textsuperscript{69} Supra note 34 pg 3-4
\textsuperscript{70} Ibid
The Statutory provisions themselves focus on the principal basis of arbitration being the maintenance of mutual respect for each other’s interests between the parties or in other words, creating consensus on key matters. Of course, where the parties have opted for arbitration but fail to agree on the arbitrator, the court shall appoint one as is provided for in rule 5 thereto.71

Under Section 10, where an award in a suit has been made, the persons who made it shall sign it and cause it to be filed in court together with any depositions and documents which have been taken and proved before them; and notice of the filing shall be given to the parties.

Further still, under Section 15, the grounds for setting aside an award are failure of the arbitrator or umpire to reconsider it, but no award shall be set aside except on one of the following grounds, namely corruption or misconduct of the arbitrator or umpire; either party having been found guilty of fraudulent concealment of any matter which he or she ought to have disclosed, or of willfully misleading or deceiving the arbitrator or umpire; or the award having been made after the issue of an order by the court superseding the arbitration and proceeding with the suit or after the expiration of the period allowed by the court, or being otherwise invalid.

Section 16 further provides; where the court sees no cause to remit the award for any of the matters referred to arbitration for reconsideration and no application has been made to set aside the award, or the court has refused the application the court shall after the time for making the application has expired, proceed to pronounce judgment according to the award and no appeal shall lie from the decree except in so far as the decree is in excess of or not in accordance with the award.

71 Ibid
3.3 Case Law
Where a case has commenced in court and it is established that the matter was meant for arbitration, the court respects the mandatory provision of the Act to this effect and will always order that the matter be referred to arbitration as provided for in Section 5 therein. This was also held in the case of East African development Bank V Ziwa Horticultural Exporters Ltd.\textsuperscript{72}

Rule 3 of the civil procedure rules\textsuperscript{73} empowers court on appointing an arbitrator to fix such time as it may think reasonable within which the arbitral award should be made. This issue was discussed in Bhagwanji Raja V Swaran\textsuperscript{b} Singh by consent of both parties, an arbitrator was appointed by order of court, among others: specified that the arbitrator should make his award by the 7\textsuperscript{th} August and file it on 8\textsuperscript{th} August 1958.

Sir Forbes V.P (as he then was held that, “I accept that the making of an award is not the same as filing of an award. In my opinion however, the order in the instant case that the award be filed by a given date is sufficient compliance with the rule, though an indirect one.”

It is also noted that, since courts of law (and in particular the High Court) have unlimited jurisdiction any attempt by a party to remove a dispute from a court to an ADR process was perceived as an attempt to oust the court’s jurisdiction contrary to Article 139 of the constitution of the Republic of Uganda 1995 as amended as it was seen in the case of Ruth Bemba & Anor V DAPCB.\textsuperscript{74}

More so, in the case of East African Development Bank V Ziwa Horticultural Exporters Ltd,\textsuperscript{75} it was held that, Section 5 (present Section 5) of the Arbitration and Conciliation Act provides for mandatory reference to arbitration of matters before court which are subject to an arbitration agreement.

\textsuperscript{72} High Court misc. Application 40. 1048 of 2000
\textsuperscript{73} S.1 71-1
\textsuperscript{74} HCCS 833 of 1989
\textsuperscript{75} High court application no.1048 of 2000
Where the case is for arbitration pursuant to an agreement to that effect, appointment of an arbitrator under Section 11 of the Act follows as a mutual consideration and not for one party only to decide as was stated by CADER Executive Director in Uganda posts Ltd V R.4 International Ltd.\(^76\)

The most important thing to note is that courts follow the intention of the parties. In Farmland Industries Ltd V Global Exports Ltd\(^1\)(2), it was held that, it was the duty of courts in arbitration proceedings to carry out the intention of the parties....the intention of the parties was that before going for expensive and long procedures of arbitration, the parties had to first negotiate a settlement failing which they could resort to arbitration.

However, in order to satisfy court that the case before it should be referred to arbitration, certain conditions must be present as was spelt out by Tsekooko S.C.S in Shell (U) Ltd V Agip (U) Ltd.\(^77\) These are:

- There is a valid agreement to have dispute concerned settled by arbitration.
- Proceedings in court have been commenced.
- The proceedings have been commenced by a party to the agreement against another party to the agreement.
- The proceedings are in respect of a dispute so agreed to be referred.
- The application to stay is made by a party to the proceedings.
- The application is made after appearance by that party and before he has delivered any pleadings or taken any other step in the proceedings.
- The party applying for stay was and is ready and willing to do all the things necessary for the proper conduct of the arbitration.

Thus where the case is for arbitration pursuant to an agreement to that effect, appointment of an arbitrator under Section 11 of the Act follows as a mutual

\(^76\) (1991) HCB 72
\(^77\) Supreme Court Civil Appeal No.49 of 1995
consideration and not or one party only to decide. As was stated by CADER Executive Director in Uganda posts Ltd V R.4 International Ltd,\textsuperscript{78}

The appointment of an arbitrator is a mutual obligation which is imposed on all parties. A party unwillingly forfeits its statutory right. When it fails to participate in the appointment of the arbitration. The duty would then fall upon the advocate to advice the client that the appointment of an arbitrator is a task, which ought to be performed by a party since that is the essence of the undertaking, upon signing the arbitration clause.

Assuming the part is not well versed with arbitration, then the advocate would be best placed person to advice the client on the unpropitious task to be performed.

3.4 Center for Arbitration and Dispute Resolution (CADER)

This center is established under Section 68(1) it mainly deals with provision of litigation services out of court that is, peaceful settlement of disputes by providing ADR services. The intent behind the creation of center for Arbitration and Dispute Resolution (CADER) statutory was to establish a formal institutional framework and a national formulation body on all ADR matters. Thus, Section 68(1) provides that, where parties to a contract have agreed in writing that disputes in relation to it shall be referred to arbitration under the UNCITRAL arbitration Rules, then such disputes shall be settled in accordance with these rules subject to such modification as the parties may agree into writing.\textsuperscript{79}

CADER was founded in response to an increasing need in Uganda for a new dimension in the resolution of disputes by cutting the cost of conflict in terms of both time and money.

\textsuperscript{78} CAD/ARB/No.11 of 2009

\textsuperscript{79} Article 1 CADER Arbitration Rules modeled after the UNCITRAL Arbitration Rule 5 and slightly modified for local usage
Parties are advised on what process to use which is appropriate for their circumstances, the legal and practical implications of arbitration and the various ADR processes.

ADR can be used for business negotiation, litigation and arbitration proceedings, public policy disputes and multiparty disputes. This is inline with the services offered by CADER which ranges from, the provision of a process of dispute resolution which is quick, fair, confidential and cost effective, parties may choose days which are appropriate for them, as well as choose mediators and arbitrators whose fees they can manage to pay.

CADER also provides a set of flexible and practical rules drawn on the most widely used rules (UNCITRAL RULES) which are adapted for local usage. Among the functions of this center; under Section 80, is to make appropriate rules, administrative procedure and forms for effective performance of the arbitration, conciliation or alternative dispute resolution process; to establish and enforce a code of ethics for arbitrators, conciliators, neutrals and experts; to qualify and accredit arbitrators, conciliators and experts, to provide administrative services and other technical services in aid of arbitration, conciliation and alternative dispute resolution process; to establish appropriate qualifications for institutions, bodies and persons eligible for appointment; to establish a comprehensive roster of competent and qualified arbitrators, conciliators and experts; to facilitate certification, registration and authentication of writing.

The amendment of 2008 was mainly to provide for the funding of the center by government and to provide for other related matters. CADER’s ADR processes are mainly negotiation, mediation and arbitration.

\[^{80}\text{Supra}\]
As compared to the court system, CADER offers ADR services by giving clients an insight to mediation as an option for solving disputes and there is a better focus on areas of contention.81

CADER has recorded some achievements since its establishment in 1998, there are opening up the ADR market which has seen the resolution of so many disputes, it has developed both mediation and arbitration rules in line with the arbitration and conciliation Act many people have come to understand the utility of ADR within the court system, the standard of work delivered by the mediators in the cases resolved so far has been good among others.82

He further says that the challenges faced by CADER in its operations include lack of enough funds to effectively run the center, this is attributed to the fact that its operations are largely funded by government, some lawyers do not advise parties of the other options available for them and so, there are many people who do not opt for ADR because they do not know that it is another option for them.

People' perceptions therefore need to change and it is upon the lawyers to help because they face the clients everyday.

The process of application of ADR processes by CADER has not been around for a very long time, it is therefore vital that the judiciary ensures proper application of these ADR laws to make it an attractive option for litigants.

The government also needs to adopt laws, treaties and conventions that are applicable to Uganda conditions and economic status and can be easily implemented.

81 Mr. Jimmy Mayanja executive director of CADER
82 Ibid
4.0 Introduction
Upon the abolition of the land tribunals, the disputes thereof were forwarded to
the Chief Magistrate’s Court, however those on customary land may be heard
by the local councils. Other courts of Judicature remained with jurisdiction
on land matters.

Today, ADR is used to settle a variety of disputes in Ugandan institutions
including the family, churches, schools, the workplace, government agencies
and the courts. ADR is not widely used in cases of intractable conflict until
those conflicts seem to become ready (some say “ripe”) for resolution. This
sometimes happens when the conflict reaches a hurting stalemate—a situation
where it becomes clear that neither side can win, yet they are being
substantially hurt by continuing the struggle. Ripeness is crucial for ADR
process to work effectively, and ADR has been used in appropriate cases. For
example Arbitration and negotiation have become ways to resolve difficult
disputes.

Mediation and arbitration are now commonly used to settle labor-management
disputes that often used to seem like intractable situations. International
mediation has been used to resolve difficult international and ethnic conflicts,
with varying degrees of success; consensus building has become a popular
process for dealing with public policy disputes, especially intractable
environmental disputes.

ADR has a range of processes designed to aid parties in resolving their disputes
without resorting to formal judicial proceedings. These are, arbitration,
mediation, conciliation and negotiation.

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83 Practice directions No.1
84 Local council judicial court Act Cap
There are other methods of dispute resolution like early neutral evaluation, expert determination, collaborative legal practice among others but our main focus will be on the four mentioned. All these processes, except negotiation, have one common characteristic; they involve a dispute being referred to an independent party chosen by the parties involved, for determination.  

4.1 Efficacy of ADR in Resolving Land Disputes in Uganda

Apart from the land tribunals seen above there are other alternative mechanisms for resolving land disputes and it is provided that nothing in this part shall be taken to prevent or hinder or limit the exercise by traditional authorities or the functions or determining dispute over customary tenure or acting as a mediator between persons who are in dispute over any matters arising out of customary tenure.

The provision was enacted after consultation with the local people who felt comfortable using traditional set up in resolving some of the disputes many of them did not want the idea of automatically going to the land tribunal.

4.1.0 Mediation

Mediation is negotiations facilitated through the intervention of a neutral third party; the mediator.

A mediator is provided for in the land act that shall be appointed on an adhoc basis. For a person to be appointed as a mediator, the person must be of high moral character and proved integrity and by virtue of his or her knowledge, work, reputation or standing in society, must be capable of assisting or likely to assist parties to a land dispute to reach an amicable settlement.

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85 G. Kiryabwire ADR As A Tool Enhancing Uganda’s Business Environment Journal: For The Capital Market Industry In Uganda Vlo.1 March 2001 Pg.11
86 Section 88(1) Cap 227 as amended
87 Section 87(2) and section 89(1) Ibid
88 Source Book on Uganda’s land law by John T. Mugambwa at page 110 & Mutyaba, mp Harrard, pp 4351-4352

36
First, a mediator may be used in negotiations to regularize the relationship between a registered owner and persons on his or her land who do not qualify to be bona fide occupants.89

Secondly, a mediator may be used to help a tenant by occupancy and the registered land owner enters into a negotiated settlement where either wishes to assign his or her interest,90 a mediator's role is strictly reconciliatory and shall not coerce any party to reach a conclusion or decision.91

4.1.1 Arbitration
Arbitration is a simplified version of a trial involving no discovery and simplified rules of evidence. Either both sides agree on one arbitrator, or each side selects one arbitrator and the two arbitrators elect the third to comprise a panel.

Arbitration hearing usually last only a few hours and the opinions are not public record.

Arbitration has long been used in labor, construction and securities regulation, but is now gaining popularity in other business disputes.

Q: What is Arbitration?
A: Arbitration is an adversarial system of justice designed to present a disputed case to a neutral and impartial third party for decision.

It is very much like the adjudicating (court) process, but a bit less formal. Arbitration is however, even more binding than a court decision in that, in arbitration, you give up our rights to appeal in favour of getting the matter resolved.

B: Arbitration can also be defined as the investigation and determination of the matter or matters of difference between contending parties by one or unofficial
persons, chosen either by the parties or by an appointing authority or person agreed on by the parties or as directed by court.

C: Arbitration is an adjudicating dispute resolution process in which one or more arbitrators issues a judgment on the merits (which may be binding or non-binding) after an expedited, adversarial hearing in which each party has the opportunity to present proof and arguments.

Arbitration is procedurally less formal than court adjudication; procedural rules and substantive law may be set by the parties.

In Uganda, there are two forms of arbitration:

1. Arbitration under court’s direction
2. Arbitration as a result of an agreement between the parties deriving from the contract.

**Arbitration under court’s direction**

Under the Judicature Act Cap 13, it gives the high court powers in accordance with its rules to refer to an official or special referee for inquiry and report any question arising in any cause or matter other than a criminal proceeding.

Under Section Judicature Act: It provides that, where in any case or matter other than a criminal proceeding.

- All the parties who are not under disability consent.
- The cause or matter requires any prolonged examination of the document or any scientific of court conveniently be conducted by court or
- The question in dispute consists wholly or partly of accounts, the High court may of any time refer the matter to arbitration.

Under 0.47 of the civil procedure rules, 0.47 r.1.
R.2 provides that, the arbitrator shall be appointed in such manner as may be agreed upon between the parties.

R.3 empowers court on appointing an arbitrator to fix such time as it may think reasonable within which the arbitral award should be made. This issue was discussed in **Bhagwanji Raja V Swaran Singh,**\(^{92}\) by consent of both parties, an arbitrator was appointed by order of court among others specified that the arbitrator should make his award by the 7th August and file it on 8th August 1958.

This was done and in an application to set the award aside this was one of the arguments that were advanced.

That the court by specifying the time within which the award should be filed, effectively limited the time for its being made.

Sir Forbes V.P (as he then was) held that, “**I accept that the making of an award is opinion however, the order in the instant case that the award be filed by a given date is sufficient compliance with the rule, though an indirect one.**”

Court is empowered under rule 8 to extend time within which the award should be made if the arbitrator or umpire has reasonable grounds for not complying with the order.

R.5 provides for appointment in instances where the parties fail to appoint.

R.7, the court is under duty to facilitate the investigation by issue of the same process as that issue by court and any contempt attracts the same penalties as those imposed by court.


**Stages of Arbitration under court’s direction**

- The matter must be in court other than a criminal matter.
- Either in the opinion of the parties or court the matter is one suitable for arbitration.
- Appointment of the arbitration and the term of arbitrator. The arbitrator can be appointed by the parties agree or by court.
- An award is made.
- The award has to be filed by the arbitration.
- Judgment being entered on that award.
- A decree is extracts; which is enforced like any other decree.

**Arbitral proceedings pursuant to the agreement of the parties.**

The parties may agree to undertake to submit a dispute to arbitration by inclusion of an arbitration clause.

**Standard arbitration clause**

Parties can provide for arbitration of future disputes by inserting the following clause into their contracts.

Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by a mutually acceptable arbitrator, under the rules of the American Arbitration Association. The award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof faith and are normally widely supported in the community.

Under continental law, the principle of “ex aequo et bon” (injustice and good faith) or “Amicable composition” where a decision is reached on principles that appear to be fair and just as opposed to legal, has been part of the judicial system for some time. The Chinese people have traditionally been way of litigation and have preferred to resolve their dispute informally either directly
or with the help of a third party. It would therefore appear that if is the common law jurisdictions that are now coming to terms with ADR.

### 4.1.2 Negotiation

This is defined as a consensual bargaining process in which the parties attempt to reach an agreement on disputed or potentially disputed matter.

It consists of basically, discussions between the interested parties with a view to reconciling divergent opinions or at least understanding the different positions maintained.

It does not involve any third party, at least at that stage and so differs from other forms of dispute settlement.

In the fisheries jurisdiction case, judge Nerve observed that, in addition to being an extremely active method of settlement itself, negotiation is normally the precursor to other settlement procedures as the parties decide amongst themselves how best to resolve their differences.

Negotiations are the most satisfactory means to resolve disputes since the parties are so directly engaged. However, they do not always succeed since they do depend on a certain degree of mutual good will, flexibility and sensitivity.

Negotiation has been defined as any form of any joint action which they might take to manage and ultimately resolve the dispute between them, negotiations may be used to resolve an already-existing problem or to lay the groundwork for a future relationship between two or more parties.

Negotiation has also been characterized as the preeminent mode of dispute resolution which is hardly surprising given its presence in virtually all aspects

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95 ICJ report 1073 pp3
96 The law society of upper Canada "short Glossary of Dispute Resolution Terms" (Toronto: 1992) at 6
of everyday life, whether at the individual, institutional, national or global levels.

Each negotiation is unique, differing from one another in terms of subject matter, the number of participants and the process used.

Given the presence of negotiation in daily life, it is not surprising to find that negotiation can also be applied within the context of other dispute resolution process, such as mediation and litigation settlement conferences.97

**Characteristics of a Negotiation**

Voluntary: No party is forced to participate in a negotiation. The parties are free to accept or reject the outcome of negotiations and can withdraw at any point during the process. Parties may participate directly in the negotiations or may choose to be represented by someone else, such as a family member, friend, a lawyer or other professional.

a) Bilateral/multilateral: Negotiations can involve two, three or dozens of parties. They can range from two individuals seeking to agree on the sale of a house to negotiations involving diplomats from dozens of states (e.g. World Trade Organisation (WTO).

Non-adjudicative: negotiation involves only the parties. That outcome of a negotiation is reached by the parties together without recourse to a third party neutral.

Informal: There are no prescribed rules in negotiation. The parties are free to adopt whatever roles they choose, if any. Generally they will agree on issues such as the subject matter, timing and location of negotiations.

Further matters such as confidentiality, the number of negotiating sessions the parties may be used, can also be addressed.

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b) Confidential: The parties have the option of negotiating publicly or privately. In the government context, negotiations would be subject to the criteria governing disclosure as specified in the access to information act and privacy act (see confidentiality section). For general information on the privileged nature of communications between solicitor and client during the course of negotiations.

c) Flexible: The scope of a negotiation depends on the choice of the parties. The parties can determine not only the topic or the topics that will be the subject of the negotiations, but also whether they will adopt a positional-based bargaining approach or an interest-based approach.

4.1.3 Conciliation

Conciliation is defined according to Blacks law dictionary eighth edition at page 307 as a settlement of a dispute in an agreeable manner.

More so, conciliation is defined as a process in which a neutral person meets with the parties to a dispute and explores how the dispute might be resolved; especially a relatively unstructured method of dispute resolution between parties in an attempt to help them settle their differences.

It is therefore crucial that the conciliation body has the trust of the parties. Without this trust, its involvement will be in vain. In addition, because it is responsible for examining all aspects of the dispute, it must identify the facts of the case.

It can take into account not only applicable rules of law but also all non legal aspects of the case. Its proposals can be based in whole or in part on the law. However, legal considerations may only be secondary and may even be absent altogether. Moreover, because the parties are not bound to implement the

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98 Blacks law dictionary eighth edition
body’s solution, they are free to reject its proposals. The freedom of states remains unfettered.99

**Historical Conciliation**

Historical conciliation is an applied conflict resolution approach that utilizes historical narratives to positively transform relations between societies in conflicts. Historical conciliation can utilize many different methodologies, including mediation, sustained dialogue, apologies, acknowledgement, support of public commemoration activities and public diplomacy. The point of facilitating historical questions is not to discover all the facts in regard to who was right or wrong. Rather the objective is to discover the complexity, ambiguity and emotions surrounding both dominant and non dominant cultural and individual narratives of history.

It is also not a rewriting of history. The goal is not to create a combined narrative that everyone agrees upon.100

The process of conciliation involves a third party’s investigation of the basis of the dispute and a submission of a report employing suggestions for a settlement.101 As such, it involves elements of both inquiry and mediation, conciliation reports are not only proposals and don’t. Constitute binding decisions.102

Nevertheless, conciliation process does not have a role to play, they are extremely flexible and by clarifying the facts and discussing proposals they stimulate negotiations between the parties.

Conciliation differs from arbitration in that, the conciliation process, in and of itself, has no legal standing and the conciliator usually has no authority to

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99 Mangoldt, Hans Von, ibe.cit, note 3 p.429
100 Wikipedia advantages and disadvantages of conciliation
101 Ibid
102 Ibid
seek evidence or call witnesses, usually writes no decision and makes no award.

Conciliation differs from mediation in that the main goal is to conciliate most of the time by seeking concessions. In mediation, the mediator tries to guide the discussion in a way that optimizes parties' needs, takes feelings into account and reframes representations. Recent studies in the processes of negotiation have indicated the effectiveness of technique that deserves mention here.

A conciliator assists each of the parties to independently develop a list of all of their objectives (the outcomes which they desire to obtain from the conciliation). The conciliator then has each of the parties separately prioritise their own list from most least important. He/she then goes back and forth between the parties and encourages them to "give" on the objectives one at a time, starting with the least important and working toward the most important for each party in turn.

The parties rarely place the same priorities on all objectives and usually have some objectives that are not listed by other party. Thus the conciliator can quickly build a string of success and help the parties create an atmosphere of trust which the conciliator can continue to develop.

Most successful conciliators are highly skilled negotiators. Some conciliators operate under the auspices of any one of several non-governmental entities, and for governmental agencies such as the centre for Arbitration and Dispute Resolution (CADER).

**Traditional perceptions about ADR**

To fully understand court based ADR Uganda, one would have to make an appreciation of the evolution of ADR in Uganda first.

There can be no doubt that when a legal dispute arises, then the claimant will go to their lawyers and about 85% of these lawyers will issue a notice of
intention to sue the other party in court. It is difficult to say whether this is the preferred route of the claimant or it is the desired route for the lawyer. One can almost say with certainty that almost without thinking it has become the automatic route. This is not to say that litigation has been sole alternative open to claimants in Uganda.

Uganda for example first got an arbitration act in 1930 but it was seldom used. Furthermore, 0.43 of the civil procedure rules S.1 (first promulgated by general notice 607 of 1928 provided for arbitration under order of court but this also has seldom been. This could be referred to as the first “court based ADR” however, it is important to observe that for a court to make an order of a reference to arbitration it would first have to make an inquiry and satisfy itself that the parties making the application were not under some disability.

This test clearly threw a negative connection to the choice of arbitration so one had to first be in a right thinking state of mind in order to use arbitration an alternative to litigation.

It can therefore be argued that there was a traditional perception that alternative dispute mechanism/procedures like arbitration were some what inferior to litigation and therefore they could only be allowed after due inquiry as of the state of mind of the parties.

Secondly, there was a traditional perception under the common law system that disputes had to be resolved through an adversarial method of dispute resolution.

This appears to be a direct result of the training given to lawyers and judicial officers. The training is such that a dispute is resolved on a win/lose formula and any sign of concession is evidence of weakness.

Judgment is given for a party and against another. This may not always work when parties seek dispute resolution through ADR.
A third reason is that, since courts of law (and in particular the High Court) have unlimited jurisdiction any attempt by a party to remove a dispute from a court to an ADR process was perceived as an attempt to oust the court’s jurisdiction contrary to Article 139 of the constitution of the republic of Uganda 1995 as amended. A good example of this is the case of Ruth Bemba & Anor V DAPCB, 103

In recent times, Section 9 of the new Arbitration and conciliation Act Cap 4 has come under similar criticism as being inconsistent with Article 139 of the constitution of the republic of Uganda, 1995, in the case of Iraq fund for external Development V A.G.104

Fourthly, it was generally perceived that for justice to be seen to be done, alternative resolution procedures had to be closely supervised by the High court. This was the philosophy behind the notorious section II of the old arbitration Act Cap 55 that generally, allowed an award of an Arbitral tribunal to be remitted for reconsideration.

Courts have routinely interfered with arbitral awards where they were perceived not to have been determined by the legal rights of the parties but rather what appeared to be fair reasonable or appropriate in the circumstances National Union of Clerical Commercial and Technical Employees V Uganda Bookshop.105

In other cases, the whole award be set aside under section 12 of the arbitration act cap 55. This gave rise to uncertainty as to the actual penalty of an award when procured.

Another and perhaps even more critical traditional perception was that ADR decisions were not capable of being enforced as decree of court. This meant that, where a losing party chose not to recognize an ADR decision that was the

103 HCCS 833 of 1989
104 HCCS 1391 of 2000
105 (1965) EA 533

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end of the matter. There was and still is a lot of merit in this traditional perception. ADR decisions are not binding by the nature of their definition and are not only acted upon in “good faith” by the parties. Most authorities on the subject advise that ADR decisions should be reduced into writing as contracts between the parties so that on default a party can sue on the contract for its enforcement.

In the case of the old Arbitration Act (cap 55), an arbitral award would have to be filed in court to be enforced as a decree court under section 13(1). Even then it would only be filed according to that section if it was not first remitted for reconsideration or set aside for an arbitral award to be enforceable had to first pass the test of “non-remission and setting aside.” This made the enforcement of ADR decisions on the whole long and burdensome.

**ADR is very important to any community of people or country especially the business community, where most people have a reputation and business relationships to protect.**

Supporters of the approach have also put forward arguments to support the incorporation of the same into the Ugandan system. It is therefore important that the general benefits of this approach are discussed.

ADR processes are less formal than judicial processes. In most cases, the rules of procedure are flexible, no formal pleadings, extensive written documentation or rules of evidence. This informality is appealing and important for increasing access to dispute resolution for parts of the population who may be intimidated by or unable to participate in more formal systems.

In addition to the recognition by the legal profession and the courts that some disputes can be better resolved by agreement rather than court decision, the emergence of ADR processes has also been associated with real problems of delays in the court system especially in resolving land disputes.
An advantage of mediation and conciliation is the ability to get speedy access to a process that may produce a satisfactory outcome for the parties in a short space of time. ADR will therefore come in to reduce the delays and subsequently provide similar redress at a lesser cost. In Acholi land, where there was a land dispute arising in Amuru District, where oil has recently been discovered and the government has given way to resolve such disputes.

Equally important, ADR is an instrument for the application of equality rather than the rule of law. This is based on principles and terms that seem equitable and agreed upon by the parties, rather than on uniformly applied legal standards. Although ADR is not expected to establish legal precedents or implement changes in legal and social norms, it tends to achieve efficient settlement at the expense of consistent and uniform justice.

Alternative Dispute Resolution offers settlement which is flexible, convenient and fast at any stage of the dispute. There is no strict compliance to court rules. It also offers confidentiality because its strictly confidential and user friendly and offers more control to disputants to reach amicable settlement. However, to embrace ADR in Uganda in resolving land disputes, people should see it as an alternative to dispute settlement but not as a replacement to it. Basically benefits can be summarized as follows;

**General advantages and disadvantages of ADR in resolving land disputes.**

For many reasons, advocates of ADR believe that, it is superior to law suits and litigation First, ADR is generally faster and less expensive. It is based on more direct participation by the disputants, rather than being run by lawyers, judges and the state. In most ADR processes, the disputants outline the process they will use and define the substances of the agreements. This type of involvement is believed to increase people’s satisfaction with the outcomes as well as their compliance with the agreements reached.

Most ADR processes are based an integrative approach. They are more co-operative and less competitive than adversial court-based methods like
litigation. For this reason, ADR tends to generate less escalation and ill will between parties. In fact, participating in an ADR process will often ultimately improve, rather than worsen, the relationship between the disputing parties. This is a very advantage in situations where the parties must continue to interact after settlement is reached.\textsuperscript{106}

ADR does have many potential advantages, but there are also some possible draw backs and criticisms of pursuing alternative to court-based adjudication. Some critics have concerns about the legitimacy of ADR outcomes, charging that ADR provides “second-class justice” it is argued that people who cannot afford to go to court are those most likely to use ADR procedures.

As a result, these people are less likely to truly, “win” a case because of the cooperative nature of ADR\textsuperscript{107}.

Similarly, critics believe that ADR mechanisms encourages compromise. Compromise can be a good way to settle some disputes, but it is not appropriate for others. In serious justice conflicts (land conflicts) compromise is simply not an option because the issues mean too much to the disputants.

Another concern is that ADR settlements are private and are not in the public record or exposed to concern in some cases. For example, using ADR to settle out of court could allow a company “dealing in sale of land to resolve many instances of a defective title, without the issue of getting any public exposure.

On the other hand, a court ruling could force the company to fix all problems associated with the defective land titles or even to remove it from the market\textsuperscript{108}.

4.21 Limitations/Challenges of Alternative Dispute Resolution
ADR programs do not set precedent, redefine legal norms or establish broad community or national standards nor they promote an application of legal rules. ADR programs are tools of equity than tools of law.

\textsuperscript{106} ibid
\textsuperscript{107} ibid
\textsuperscript{108} ibid
They seek to resolve individual disputes on a case basis and they may resolve similar cases in different ways if the surrounding conditions suggest that different results are fair or reasonable according to local norms.

Such programs cannot correct systematic injustice, discrimination or violence of human rights it may not be a good option in the contest of extreme power imbalance between the parties.

In general, ADR programs cannot substitute for stronger format protection of group and class rights.

It does not have any educational, punitive or deterrent effect on the population. Since the results are not public, ADR programs are appropriate for cases which ought to result in some form of public sanction or punishment. These programs do not appropriate for multi-party cases in which some of the parties or stakeholders don't participate. They may disagree over the method as well as awards.

ADR may undermine other judicial efforts. It may divert needed funds from court reform effort or treat the symptoms rather than the underlying cause of the problem.

1. Parties and legal advisors not willing to try ADR

The first is unreasonable parties or their legal advisors who are not willing to try ADR.

2. The use of ADR to delay justice.

The second challenge is the use of court assisted ADR to delay justice or to act as a fishing expedition to establish what is possible. Here the party at fault uses ADR as a time wasting mechanisms.

Under rule 9 of mediation Rules, an adjournment cost of 50,000 can be levied against a party who does not show up when there is a mediation hearing. The
enforcement of Rule 9 cost has not been very successful because of the absence of a clear mechanisms to enforce it.

3. Ascertaining whether ADR is appropriate.

The third challenge is when it can be ascertained that court assisted ADR is not appropriate and so parties should go ahead with a hearing mediation, rather CADER opens its own file based on its own standard documentation.

Indeed under the rule of confidentiality, all information whether oral or otherwise used during the mediation hearing is privileged and cannot be disclosed, under rule 22.

In any court proceedings, they cannot as a result be influenced by what happened at the mediation when it has failed to determine the case before it. However, in recent times there has been an increase of order 33 cases. Thus, to defeat with a referral to mediation, the courts should be keen to see that court assisted. ADR, is truly inappropriate before it hears the case.

4. Lack of competent trained mediators.

The fourth challenge is the lack of competent trained mediators to carry out ADR. ADR being a relatively new method of dispute resolution requires a push to ensure its success. In the case of Uganda and Canada’s pilot project (both 2 years), measurers were put in people to make it mandatory. In the case of Uganda, 4 staff mediators were provided under the pilot project free of charge (as the project pays them). However, there were complainants that the mediators are young and some of them are not even lawyers.

Many of these complaints go to form rather than substance as it is not clear whether there should not be a minimum age for a mediator or because the practice is that all mediators should be lawyers. However, stature and confidence in the mediator is important.
Perhaps the biggest challenge to court assisted ADR is training. It is important to change the attitude that ADR is a second beast option that should be used purely as an exercise of good faith. ADR should be taught as a first line dispute resolution mechanism.

Moreso, legal services, land registration and mediation, legal. Services particularly around land registration and mediation are expensive, over stretched and often corrupt, preventing efficient use of economic resources.

The land registry, for example lacks funding and has lost up to 60% of records and many institutions within it, such as land committees are not functioning. The average cost of resolving a dispute ranges from 13,000shs to 20,000 shs and there is some evidence that women are charged more. Finally, discrepancies between formal and traditional dispute resolutions. Mechanisms prevent the unequivocal resolution of land disputes.

4.3 Possible solutions to these emerging challenges
The first solution to the emerging challenges lies in the training of judicial officers, lawyers and non-lawyers in ADR skills.

Secondly, court assisted ADR emphasizes the need for a new bred of proactive judicial officers.

The judicial officer should manage his (as is required under section 33 of the judicature Act) in the manner that best meets the interest of justice.

This in Uganda, means facilitating an agreement to use ADR if it is the best interest of the dispute. Lastly where if appears that a party even though successful in litigation deliberately agreed the use of court assisted ADR, then costs should be awarded against the party, as it was in the case of Dunnett V Rail track\(^{109}\) clearly litigation should be done only on the event that mediation would have no reasonable prospects of success.

\(^{109}\) (2002) 2 ALLER 850
CHAPTER FIVE

SUMMARY PRESENTATION OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

5.0 Summary presentation of findings
The researcher during his research, he found out that, ADR has been to a greater extent been able to resolve land disputes in Uganda for example in Acholi land, where there was a land dispute arising in Amuru District, where oil has recently been discovered and the government has given way to resolve such disputes.

Moreso, in the case of Ruth Bemba & Anor V DAPCB indicated how the land disputes can be resolved using Alternative Dispute Resolution.

However, it was found that, while using ADR, there has been great challenges or limitations to its use for example; parties and legal advisors not willing to try ADR.

The researcher found that, the above named challenges can be resolved by applying several mechanisms for example Arbitration, Negotiation, conciliation, Mediation as they have been discuss in details above.

5.1 Recommendations
Therefore recommend that, more judicial offices, lawyers and non lawyers should be trained in Alternative Dispute Resolution (ADR) skills in order to improve the system.

For Alternative Dispute Resolution (ADR) to succeed in Uganda judicial officers should be proactive and encourage litigants to explore ADR before going into fully-fledged litigation.

Therefore, clearly litigation should be done only on the event that mediation would have no reasonable prospect of success.
5.2 Conclusion
The existing laws deal with the interest of solving land disputes extensively, the problem however is that these laws remain in books and are thus ignored, hence increasing land conflicts.

There is also ignorance among the local illiterate population about the laws in land and thus in case of conflicts, they prefer to settle them traditionally and sometimes justice is not done which increases problems in land.

It is not in dispute that most conflicts in land revolve around interference in ownership. To prove ownership, one has to produce a land title. These titles have been having a lot of loopholes as they are susceptible to forgery and accessing them in the land office is also horrendous.

Introduction of electronic land titles will go a long way solving the above problems as shown by;

Due to the increase of land disputes therefore mechanisms have been adopted to solve these disputes as they have been discussed above and among which include Alternative Dispute resolution ADR which has to a larger extent achieved its purpose in some cases discussed throughout the research hence being seen as more advantageous compared to other mechanisms.

It will be to my pleasure for this research to play a significant role to the readers especially those involved in land disputes to adopt Alternative Dispute Resolution mechanisms as their best mode of resolving disputes in order to live a better and meaningful life.
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