AN EXAMINATION OF ALTERNATIVE DISPUTE RESOLUTION AND ITS EFFECTIVENESS IN UGANDA.

BY

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DECLARATION.

I declare that the work contained in this book is my original work and has never been submitted before by any student and where any part of this work has been obtained from another source it has been duly acknowledged

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APPROVAL

I do hereby certify that this dissertation has been submitted to the university with my approval as Kampala International University supervisor.

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DEDICATION.

I dearly and humbly dedicate my work to my lovely parents Mr. and Mrs. OKIRIA JOSEPH who have supported me fully in my education financially and also advised me to do my best for education is a key to success and my friends for endless academic advice and their encouragement while conducting this research.

ACKNOWLEDGEMENT.

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TABLE OF CONTENTS.

DECLARATION. i
APPROVAL ii
DEDICATION. iii
ACKNOWLEDGEMENT. iv
TABLE OF CONTENTS v
LIST OF STATUTES. vii
LIST OF ABBREVIATIONS viii
ABSTRACT ix
CHAPTER ONE 1
1.0 Introduction 1
1.1 Background. 3
1.2 Statement of the Problem. 6
1.3 Objectives of the Study. 6
1.4 Significancy of the Study. 7
1.5 Scope of the Study. 7
1.6 Hypothesis. 7
1.7 Methodology. 7

CHAPTER TWO. 8
2.1 Literature Review 8

CHAPTER THREE. 20
3.1 Types of ADR and Processes. 20
3.2 Mediation. 21
3.3 Additional Pointers to Mediation. 22
3.4 Ethical Considerations for Mediation. 22
3.5 Arbitration. 22
3.6 Legal Framework of Arbitration. 24
3.7 Negotiation 24
3.7.1 Transactional Negotiation. 26
3.7.2 Dispute Negotiation. 26

3.8 Characteristics of Negotiation. 26
3.9 Conciliation. 27
3.10 Benefits of ADR in Uganda. 27
3.11 Role of the Judiciary in Land Disputes. 28
3.12 Disadvantages of ADR. 29
3.13 Labour Disputes. 30

CHAPTER FOUR. 33
LEGAL FRAMEWORK RELATING TO ADR. 33
4.0 Introduction. 33
4.1 Convention on the Recognition and Enforcement of Foreign Arbitral Awards [New York, 1958]. 33
4.2 United Nations Charter. 34
4.3 World Intellectual Property Organization. 35
4.4 Centre for Arbitration And Dispute Resolution. [CADER]. 36
4.4.1 CADER'S Role in Resolution of Disputes. 36

CHAPTER FIVE. 38
5.1 Emerging Challenges ADR In Uganda. 38
5.2 Possible Solutions to These Emerging Challenges of ADR 39
5.3 Conclusion. 40
BIBILIOGRAPHY 41

LIST OF STATUTES.

The Constitution of Uganda 1995

Civil Procedure Act 71

Civil Procedure Rules 71-1

Judicature Rules of 2007

Judicature Rules of 2013

Arbitration and Conciliation Act 2004

United Nations Charter Act 1945

WIPO Arbitration and Modification Act

Employment Act

Arbitration Act 1996

LIST OF ABBREVIATIONS.

ADR	-	Alternative Dispute Resolution.
AG	-	Attorney General.
CPR	-	Civil Procedure Rules.
UDRP	-	Uniform Domain Name Dispute Resolution Policy.
IP	-	Intellectual Property.
WIPO	-	World Intellectual Property Organization.
UNC	-	United Nations Charter.
JLOS	-	Justice Law and Order sector.
CADER	-	Center for Arbitration and Dispute Resolution.
URA	-	Uganda Revenue Authority.

ABSTRACT

The research is about the examination of ADR and its effectiveness in Uganda given the different methods of dispute resolution, development and evolution in Uganda including traditional means of settling disputes that have led to present ADR, benefits and hindrances the research also looks at different types of ADR that can be used by parties, the government to solve disputes.

CHAPTER ONE

1.0 Introduction

ADR emerged in the 1970s and is defined by the black's law dictionary as a procedure for settling disputes by means other than litigations such arbitration and mediation.

Dispute resolution outside courts is not new. Societies world-over have long used non-judicial indigenous methods to resolve conflicts. In the 1980s demand for ADR in the commercial sector began to grow as part of an effort to find more efficient and effective alternatives to litigations.

International commercial arbitration is an alternative method of resolving disputes arising out of commercial transactions between private parties across national borders that allow the parties to avoid litigation in national courts.

Involves a meeting of parties to a dispute with or without the 3rd party facilitator to define the disputed issues, clarify information, develop options, consider alternatives and find a mutual settlement that will be acceptable to and meet needs of both parties. The main philosophy and motivation behind ADR is the belief and the desire that disputes can result in a win – win situation where the disputants consensually agree on a solution and both can walk away satisfied.

Although mediation goes back hundreds of years, ADR has grown rapidly in the United States since political and civil conflicts of the 1960s.

Laws such as this give people new grounds for seeking compensation for ill treatment there was a significant increase in the number of law suits being filed US Courts eventually the system became overloaded with cases resulting in long delays and sometimes procedural errors. Processes like mediation and arbitration soon became popular ways to deal with a variety of conflicts because they helped relieve pressure on the overburdened court system court system. The Ugandan court system has late progressed and became more appreciative of global commercial developments and thus bringing about the establishment other dispute resolution mechanisms in administration of justice that are efficient and accessible faster and cheaper to disputants.

However, disputes do not only arise out of private individual persons but also government can have disputes. For example, the presidential handshake where the president cited an earlier handshake that had been extended to a group of geologists who had participated in an earlier oil exploration processes. While this handshake has generated moral and ethical arguments and other forms of sentiments, this concept is not new in government. Around the year 2011, government of Uganda

mooted a plan to employ public servants on contractual arrangements. According to this plan, individual public servants would be offered employment on periodic contracts that clearly spelt terms of reference and performance targets, along which each would be evaluated as a basis of contract renewal. The dispute and government efforts Rt. Honorable Speaker, the assessment was disputed by the Heritage Oil Gas Limited on several grounds one of which being that similar transactions had taken place elsewhere in Africa and no such tax had been assessed or collected by the respective authorities in those. Indeed, around the same time, the oil company Kosmos was finalizing transfer of interests in a license in Ghana and making capital gains of up to USD 3.5billion and no tax had been paid on the transaction. Similar transactions had taken place in Tunisia and Algeria with no tax imposed on capital gains.

Due to the highly technical nature of the dispute being the first of its kind in Uganda and in Africa, and the value of the taxes in issue [USD 434million], government set up a multi-institutional team to defend Uganda's interests with regard to the assessed capital gains tax. The team was headed by the AG included representatives from ministries of justice and constitutional affairs; finance, planning and economic development, energy and mineral development as well as URA. The team constituted experts in the different areas of both tax policy, tax law, oil policy, oil law, Ugandan law and the general history of the oil industry in Uganda.

The arbitration process involved preparation of submission to the arbitral tribunal of government defense documents, rejoinders and memorials, witness statements as well as expert reports and attending hearings. The arbitration process also included identification and preparation of witnesses, cross examination of witnesses as well as experts. This involved combing the entire history of the oil industry in Uganda and all material documents including parliamentary Hansards, public records, all laws and regulations, all correspondences that span over a period of 30 years. The process of winning this landmark case did not only involve technical work but government had to resist immense pressure against taxing the transaction from all corners of the world. Some of these included pressure from some of Uganda's development partners who argued that taxing the transaction would discourage further oil company investment in the petroleum sector in Uganda. Others that advised government against this tax included some international civil society organizations as well as international media houses that reported negatively about the taxation. ADR

is often used to describe a wide variety of dispute resolution mechanisms that are short, or alternative to full scale processes.[1]

Although mediation goes back hundreds of years back, ADR has grown rapidly in the United States since political and civil conflicts of 1960s. The introduction of new laws protecting individual rights, as well as tolerance for discrimination and injustice, led more people to file lawsuits in order to settle conflicts [2] for example, the civil rights act of 1964 outlawed discrimination in employment or public accommodations on the basis of the race, sex, or national original.[3] Processes like mediation and arbitration soon became popular ways to deal with a variety of conflicts, because they helped relieve pressure on the overburdened court system. The Ugandan court system has, of late, progressed and become more appreciative of the global commercial developments and thus bringing about the establishment of other dispute resolution mechanisms in the administration of justice that are efficient and accessible; faster and cheaper to disputants.[4]ADR is an umbrella term for a variety of processes which differ in form and application. These differences include levels of a third party without resource to adversaries 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.

1.1 Background.

ADR has been in existence as a 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 the ad hoc manner to settle domestic, social, commercial and political problems.[5] In Uganda traditional rulers, elders and family heads have used and continue to use the informal and non-contentious approach to resolving 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 even family heads in their families with the help of elders.

ADR is composed of three different words alternative dispute resolution.

Historically legal disputes have been resolved either by arbitration or technicalities.

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[1] Mayanja, a review of Uganda framework governing the institutional intervention in arbitration pg. 18-24.

[2] Stephen B Goldberg and others, dispute resolution [Boston: little, brown and company 1985]3.

[3] Anthony Conrad k. Kakooza arbitration, conciliation and mediation in Uganda .a focus on the practical aspect pg. available at http://ssrn.com/abstract=1715664.visited on 24th may 2018.

[4] Dispute resolution center, Kenya. www. dispute resolution Kenya org. site visited on the May 24, 2018.

[5] G. Kiryabweri, journal for capital market Uganda, vol. 5 no.1 October march 2002[a review] pg.1

In litigation, mediation is a new way to settle commercial disputes, litigation is quite unlike mediation but some consider that arbitration is a form of ADR and similar to mediation. In fact, the two are fundamentally different although ADR can involve the assistance of a neutral third party to facilitate the process which is not always the case.

Each party tells his or her story in an environment that encourages them to see each other as individuals deserving to be heard not as adversaries.

Mediation has been part of Uganda's legal process since 1995. Under article 126[2][6]provides that in adjudication of cases of both civil and criminal nature the courts shall subject to the law applying the following principles

a) Justice shall be done irrespective of their special economic status.
b) Justice shall not be delayed.
c) Adequate compensation shall be awarded to victims of wrongs.
d) Reconciliation between parties shall be promoted.
e) Substantive justice shall be administered without undue regard to the Uganda traditional rulers and family heads that have used and continue to use the informal and non-contentious approach of resolving disputes.

Article 126[2] of the 1995 constitution of Uganda clearly reflects the characteristics of mediation. Mediation seeks to expeditiously provide justice to all regardless of their economic status; it seeks to promote reconciliation between parties; dispense with technicalities in delivering justice; and limit delays in the accessing justice.

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 the 1889 and 1930 Arbitration Act of England[adopted by virtue of 1902 order in council]these laws were there but arbitration was seldom used. In 1964 after Uganda had acquired its independence some laws were revised thereby changing the 1930 Arbitration Act of England to the arbitration act. The constitution of Uganda 1995 article 126[2] clearly reflects the characteristics of mediation. Mediation seeks to expeditiously provide justice to all regardless of their economic status it seeks to promote reconciliation between parties dispense with technicalities in delivering justice and limit delays in the accessing justice.

[6] The Constitution of Uganda 1995

Mediation is also provided for under [7]order 12[2][1] provides that where parties do not reach an agreement during scheduling conference and if court views that the case has potential for settlement court can order that the case is resolved through ADR.

Under[8] order 12[2][3] further provides that the chief justice may issue directions for better carrying into effect of ADR. These rules have since been issued and are operational in one of the specialized courts- the commercial court.

Mediation was piloted in the commercial court in 2003 and has since remained a prominent feature in the resolution of commercial disputes. Later, mediation was made a permanent process of court by the enactment of the **judicature [commercial court division] [mediation] rules of 2007.** This made court annexed mediation a compulsory and permanent process of the court [commercial court].

In 2013 the judicature [mediation] rules of 2013 were developed and extended mediation beyond the commercial court to all other courts of judicature including the family division, land division and civil division. Under this ADR project, the implementation of mediation rules extends to all other JLOS

Institution mandate. However, the role of the JLOS overall goal is to promote the rule of law and its achievements at a glance are national coverage of JLOS services; responding to the need to deepen sector functional presence and ensure that vulnerable people have easier access to JLOS services, the number of districts with a functional chain of frontline JLOS service points now stands at 84, representing a 75% district coverage.

Judicial system by June 2014, the sector had registered cases and 41.4% of the total number of cases in the system.

Access to justice Uganda prisons service [UPS] under JLOS has registered improvements in access to justice for prisoners with 100% of them attending court as scheduled.

Prisons services by 2014, an impressive 62.7% elimination of the infamous night bucket system [prisoners excrete in a bucket that they empty in turns] had been registered. In 2015, 28 prisons still used the night bucket system, which was nevertheless a significant improvement from 2006 when 150 prisons used the system. Following concerted efforts at prison rehabilitation, Uganda has

[7] Civil procedure rules 71-1

[8] Civil procedure rules 71-1

registered reduced rates of re-offending that now stand at 23% and escapes at less than eight prisoners for every 1,000 held.

Law and order; owing to strengthened measures to prevent crime, greater reliability and efficiency of policing services, the 2014 international global competitiveness report ranked the Uganda police 95th in the world and 20th in Africa in terms of reliability.

Human rights; due to combined efforts by JLOS institutions, a marked increase has been registered in the observance of human rights within Uganda's core public service institutions. For example, by 2014, 30.7% of all police regions had functional human rights desks and 84.7% of prison units had human rights committees.

1.2 Statement of the Problem.

ADR has become an important fact in the dissolution of disputes in courts all over the world today and it has offered many advantages than the adversarial litigation based system however in Uganda the effectiveness of ADR has caused more harm than good in terms of administering justice as it has increased on the case of back log since it involves fixing a date for mediation with the mediator thereby causing laxity in its application and resulting into inefficiency of ADR system than the common litigation process.

1.3 Objectives of the Study.

The main objective is that the researcher will provide a forum that allows the parties to play a major role in finding a resolution to their problem.

To develop skills related to various ADR mechanisms among students and legal fraternity.

To provide a platform of deliberations and discussion related to ADR.

To encourage interested students in advancing their studies towards this subjects.

To conduct practical training for students.

To create awareness of ADR through various events like client counselling competition.

To deliver speedy justice to people.

1.4 Significancy of the Study.

The study calls for integration of ADR in Uganda especially in courts today and also explores the centers in the legal system in which legal issues are arising out of dispensation of ADR can be dealt with. This paper shall enhance and add knowledge and will be added to the available literature on the subject of ADR. It frames recommendations that are applicable to Uganda thereby contributing to existing knowledge on the subject.

1.5 Scope of the Study.

This study is conducted focusing on the examination of ADR and its effectiveness in Uganda plus the law governing it.

1.6 Hypothesis.

This study has been premised on the following assumptions:

The legal framework for ADR in Uganda is not sufficiently effective to promote reconciliation between parties through ADR.

Parties to disputes cannot resolve their disputes without delay and unnecessary costs.

1.7 Methodology.

In order to achieve the aim the researcher gathered and analyzed data from the following sources whereby much of its information from already documented sources and written literature for instance published books and unpublished works, journals, articles, conference papers, case laws and statutes relating to the topic, and other publication to be found in various libraries, material from the internet is also used to prove foundation which the hypothesis is verified.

CHAPTER TWO.

2.1 Literature Review

The researcher will examine different existing literature works in regard to some research topics for purposes of reviewing, identification of gaps in such works and how the present work which addresses those gaps.

According to **HON MR JUSTICE GEOFFREY KIRYABWIRE**; He talked about different processes of ADR, the traditional perceptions, court based ADR, changing international and Uganda perceptions, emerging challenges and possible solutions for them. He then defined ADR as a structured negotiation process whereby the parties to a dispute themselves negotiate their own settlement with the help of a neutral third party who is trained and skilled in the process and techniques of ADR.

However, the case law that this author refers to in his presentation is not recent enough as to reflect the changing perceptions and attitudes on ADR in Uganda, given that the presentation was made in 2005.

According to **HON MR JUSTICE GEOFFREY KIRYABWIRE.**[9] he discussed among other issues, come forth challenges of dispute resolutions mechanisms, such as arbitrary parties or their counsels who are not willing to try ADR due to lack of clear emphasizing mechanisms. However, it has been foreseen that settlement processes would rise into reduced protection+6 of parties not at the round table frustration of laws planned to create social change and loss of courts audibility on public values through precedent with such foretells those in legal profession would not easily lead the move toward ADR. However, this research assists in modifying or transforming people's attitudes about ADR by increasing the awareness of readers on relevant laws, benefits and giving an example of decided cases which have used the ADR process through the center for arbitration and dispute resolution.

ACCORDING TO ANTHONY CONRAD; He examined and investigated a new trend in Uganda comprising of different forms of ADR mechanisms a focus on arbitration, conciliation and mediation and a brief look into collaborative legal practice the author explores the advantages and disadvantages of each of these mechanisms as he attempts to provoke the reader into determining whether ADR is a more viable means of administering justice in Uganda and its effectiveness in

[9] ADR; a Uganda judicial perspective a paper delivered at a continuation seminar for magistrates grade 1 at Colline Hotel Mukono 1st April 2005

Uganda. However, he does not discuss negotiation as other types of ADR which this study does in detail.

According to Genn.[10] Provides a good overview of the main arguments, explaining first that there is a body of literature propagated by those who are strong advocates of judicial determination ('adjudication romantics').[11] It is explained that these writers draw attention to adjudication as a critical social practice that resolves disputes, defines and refines the law, reinforces important public values and is itself a defining democratic ritual that works the law 'pure'.[12] It has been commented that a crucial feature of adjudication is its public nature: that it is itself a democratic practice which momentarily equalizes the power between individuals and between the individual and the State.[13] In addition, advocates of adjudication processes do not see resort to the courts as necessarily being negative.[14]

Genn summarizes the work of Baruch Bush and Folger,[15] which cuts across the polarized views of mediation to describe four main schools of thought about mediation and its goals. It is argued that an appreciation of the divergent views in the literature is necessary in order to understand both the philosophy of mediation and also some of the concerns about it as a substitute for judicial determination. Although focused on mediation, it can be said that these four schools of thought, described as 'stories' by the writers, may theoretically be applied to the all other forms of non-adjudicative ADR.

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[10] Genn H. "ADR and Civil Justice: What justice got to do with it?" in Judging Civil Justice, (2009) Pg. 13- 16

[11] With Judith Resnick, Marc Galanter and David Luban being the cited examples as the most prominent and compelling. Genn refers in particular to Hensler, D.R., *Suppose it's not true: challenging mediation ideology*, Journal of Dispute Resolution (2002) pp81-100.

[12] Luban, D., *Settlements and the erosion of the public realm*, Georgetown Law Journal (1995) 83: "*instead of treating adjudication as a social service that the state provides disputing parties to keep the peace, the public life conception treats disputing parties as... an occasion for the law to work itself pure... the litigants serve as nerve endings registering the aches and pains of the body politic, which the court attempts to treat by refining the law. Using litigants as stimuli for refining the law is a legitimate public interest in the literal sense... The law is a self-portrait of our politics, and adjudication is at once the interpretation and the refinement of the portrait*", p. 2638, cited in Genn H, 'ADR and Civil Justice: what's justice got to do with it?' in *Judging Civil Justice,* (2009).

[13] Resnick, J., *Courts: in and out of sight, site and cite* Villanova Law Review, 53 (2008), cited in Genn H, 'ADR and Civil Justice: what's justice got to do with it?' in *Judging Civil Justice,* (2009).

[14] 24Ackerman, R.M., *Vanishing trial, vanishing community? The potential effect of the vanishing trial on America's social capital*, Journal of Dispute Resolution, 7 (2006), cited in Genn H, 'ADR and Civil Justice: what's justice got to do with it?' in *Judging Civil Justice,* (2009)

[15] Baruch Bush, R.A., and Folger, J.P., *The Promise of Mediation: The Transformative Approach to Conflict* (jossey-Bass, 2005), pp. 9-19, cited in Genn H, 'ADR and Civil Justice: what's justice got to do with it?' in *Judging Civil Justice,* (2009).

In Australia and many parts of the US and Canada, mediation is compulsory for separating couples who have disputes over the custody of children. But in most European countries, mediation is voluntary.[16] (Recommendation R (98) 1 of the Council of Europe says that 'mediation should not, in principle, be compulsory'.)[17] McAdoo *et al.* argue that voluntary mediation programs are rarely well used, whereas mandatory mediation programs attract much higher rates of use.[18] They add that, according to research, mandatory referral does not appear to adversely affect litigants perceptions of procedural justice or settlement rates. Bullock and Gallagher report that voluntary mediation programs tend not to be cost-effective because they generate only small caseloads.[19] Genn, however, argues that cases are more likely to settle at mediation if the parties enter the process voluntarily rather than under duress.[20]

There are shades between 'voluntary' and 'mandatory'. ADR may be made mandatory by a statutory or court rule for all cases in a defined class; made mandatory by an order issued at the court's discretion in cases thought likely to benefit; made mandatory by one party electing for ADR; or made a condition of procuring legal aid. ADR may also be voluntary but encouraged by a court backed up with sanctions for unreasonable refusal; or entirely voluntary, with the role of the court reduced to the provision of information and facilities. Quek positions the degree to which different jurisdictions make mediation compulsory along a scale from one to five; one being the most liberal regime, five being strictest.[21]

Woolf's report was followed by the introduction, in 1999, of the Civil Procedure Rules, which placed a duty on the courts to encourage the use of ADR, with cost sanctions for litigants who failed

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16 In March 2010, in an attempt to reduce the country's backlog of some five million court cases, the Italian Minister of Justice issued a legislative decree requiring parties in most civil cases to first attempt resolution through mediation. The new rules were not popular with the legal community, and in 2011 a national strike led by the Italian bar association led to the closure of the courts for two days.

17 NAO, *Legal aid and mediation for people involved in family breakdown*, Report by the Comptroller and Auditor General, HC 256 session 2006/07, London: The Stationary Office, March, 2007, p10.

18 McAdoo, B., Welsh, N.A., Wissler, R.L., 'Institutionalisation: What do empirical studies tell us about court mediation,' *Dispute Resolution Magazine*, 2003, vol. 9, p8.

19 Bullock, S.G., and Gallagher, L.R., 'Surveying the state of the meditative art: A guide to institutionalizing mediation in Louisiana,' *Louisiana Law Review*, 1997, vol. 57, pp946–947.

20 Genn., H., Fenn, P., Mason, M., Lane, A., Be chai, N., Gray, L., and Vencappa, D., *Twisting arms: court referred and court linked mediation under judicial pressure,* Ministry of Justice Research Series, 1/07, May, 2007, p172ff.

21 Quek, D., 'Mandatory mediation: An oxymoron? Examining the feasibility of implementing a court-mandated mediation program,' *Cardozo Journal of Conflict Resolution*, 2010, vol. 11, pp488–490.

to comply. The court could take into account the party's conduct (including unreasonable refusal of ADR or uncooperativeness during the ADR process) in determining the proper costs order. Several English cases have since seen cost sanctions imposed because a party unreasonably refused to consent to participate in mediation.[22]

In 2011, a fundamental review of family justice in England and Wales reaffirmed that mediation was the preferred approach for dealing with disputes following relationship breakdown, and that judges should retain the power to order parties to attend a mediation information session, and make cost orders where one party behaved unreasonably.[23] The Government's response, the Children and Families Bill, was read in the House of Commons in February, 2013. It would require parents in dispute to consider mediation as a means to settlement by making attendance at a mediation information and assessment meeting a statutory prerequisite to starting court proceedings.

In 1999, the Lord Chancellor's department's discussion paper on ADR suggested criteria for approving ADR schemes, including training, quality control (monitoring the performance of neutrals), transparency (including complaints) and access. The paper supported self-regulation and noted that codes of practice had been developed by several ADR associations.[24] For instance, the Family Mediation Council's (the members of which are the national family mediation organisations in England and Wales) published a Code of Practice for Family Mediators, in 2010.

Alternative Dispute Resolution ("ADR") consists of a range of processes used as an alternative means of resolving disputes between two or more parties. It has been highlighted as a more efficient way of doing business and resolving conflict. Since disputes are an inevitable product of some business transactions, resolutions of such disputes can become the difference between a continuing productive commercial relationship and termination of that relationship. ADR has been useful in resolving commercial disputes by providing speedier enforceable decisions through arbitration, mediation, and conciliation mechanisms. Due to increasing domestic and foreign investment in Africa, there is an increased pressure for sufficient, fair, and organized ADR organizations within the continent. Foreign investors tend to have warranted suspicion about African national judicial systems, which are often beset by corruption, long and costly procedures, and lack of efficient

[22] Quek, D., *op. cit.*, p503.
[23] Ministry of Justice, *Family justice review: Final report*, London, 2011, p23.
[24] NADRAC, *op. cit.*, pp45–46.

enforcement of the law.[25] Companies, governments, private and non-private actors are looking for destinations within the continent that provide procedures for resolving commercial disputes. "When operating a business in Africa or in connection with an African State, there are a wide range of laws and practices that likely apply which can impact business activity. Businesses entering into contracts with States or other companies in Africa must typically consider the law applicable to the contractual relationship and the law applicable to the arbitration proceedings foreseen in the contract in question before a dispute arises."[26] This study presents an overview of the arbitration mechanisms for resolving commercial disputes on the continent of Africa. It will take a look at the various types of ADR on the continent, the historical context for commercial ADR in Africa, as well as examine several country specific and regional mechanisms for resolving commercial disputes currently in existence. It will conclude that structures currently exist, however improvement, time, and legitimacy in the region is necessary for ADR to truly be effective in the region.

Arbitration, perhaps the oldest form of dispute resolution, is used mostly for commercial, employment and construction disputes, but can be used in family cases.[27] Arbitration functions like a privatised court system: an expert presides and at the end of a closed hearing makes a 'judgment', by which before the sitting both parties agree to abide.

Outside the US, empirical studies of arbitration are few, mostly owing to the lack of publicly available data.[28] Those empirical studies that have been published rely on files from individual arbitration service provider organisations such as the American Arbitration Association (AAA).[29]

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[25] Barthelemy Cousin & Aude-Marie Catron, "OHADA: A common legal system providing a reliable legal and judicial environment in Africa for international investment", www.ohada.com, Ohadata D-07-27.

[26] "Dispute Resolution in Africa: Questions and Answers," http://www.internationalarbitrationlaw.com/dispute resolution-arbitration-Africa , (2012).

[27] Family law arbitration was introduced in England and Wales in February, 2012. This scheme, which is run by the Institute of Family Law Arbitrators, enables couples to resolve out of court family disputes relating to finance or property (but not contact with or custody of children), by appointing an experienced family lawyer specially trained to arbitrate.

[28] In 1992, arbitration accounted for only 1.7 per cent of contract dispositions and 3.5 per cent of tort dispositions in the state courts in the 75 largest counties in the US (Galanter, M., *op. cit.*, p514ff).

[29] Colvin, A.J.S., 'An empirical study of employment arbitration: Case outcomes and processes,' *Journal of Empirical Legal Studies*, 2011, vol. 8 (1), p2.

Research on consumer arbitration is scarce;[30] research on family arbitration is non-existent. The following is, therefore, a review of research on employment arbitration in the US.

Eisenberg and Hill used a database of AAA employment dispute awards to compare court-tried employment cases and arbitrated employment claims. The data consisted of 297 awards from 1999 to 2000. They compared adjudicated and arbitrated outcomes, with cases divided into civil rights claims and the other non-civil rights claims and subdivided into higher pay and lower pay employee disputes. In non-civil rights disputes, higher pay employees prevailed in 50 of 77 cases (65 per cent); lower pay employees prevailed in 38 of 96 cases (40 per cent). These rates were statistically significantly different ($p = .001$). The authors found no evidence of a significant difference ($p = .252$) between higher pay arbitration outcomes and litigated outcomes.[31] The employee success rate in state-court litigation, 57 per cent (82 of 145 cases), was similar to the 65 per cent success rate in higher pay employee arbitrations. More importantly, the employee success rate in arbitration was in fact *higher* than the employee trial win rate. Eisenberg and Hill found little evidence that arbitrated outcomes materially differ from trial outcomes for higher paid employees.[32]

Using data from reports filed by the AAA pursuant to California Code requirements, Colvin analysed 1,213 arbitration cases decided by an award after a hearing, from 2003 to 2007. He found that the employee win rate among the cases was 21.4 per cent, which was lower than both employee win rates reported in previous employment arbitration studies and win rates for litigants in court.[33] However, he admits that the characteristics of cases in arbitration may differ systematically from those in litigation.

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30 The compulsory assignment, inserted into consumer and employment contracts, to pre-dispute arbitration in the event of a contractual dispute is one of the most hotly debated policy issues in the US, and has prompted a number of empirical studies on the effects of and differences between voluntary and compulsory assignment to arbitration. Still, in many other countries, including all states in the European Union, pre-dispute contractually-ordered arbitration is prohibited in consumer and employment settings (Menkel-Meadow, C., *op. cit.*, p9). Reviewing 226 lending-related, consumer-initiated cases filed with the NAF over a four-year period, Ernst & Young found that, when cases went to arbitration, consumers prevailed 55 per cent of the time. When settlements and claimant-initiated dismissals were included, nearly 80 per cent of consumers obtained favourable results in arbitration. They concluded that their findings 'do not support the allegations that consumers are disadvantaged by mandatory arbitration clauses' (Ernst & Young, *Outcomes of consumer arbitration: An empirical study of consumer lending cases*, 2004).

31 The litigation data did not allow a similar comparison of litigation and arbitration results for lower paid employees because this demographic group was underrepresented in court.

32 Eisenberg, T., and Hill, E., 'Employment arbitration and litigation: An empirical comparison,' Public law and legal theory research paper series, 2003, no. 65, New York University School of Law, p13.

33 Colvin, A.J.S., *op. cit.*, pp5–6.

In 2003, Delikat and Kleiner compared outcome and timing factors in 125 employment discrimination cases filed in the Southern District of New York with those in 186 arbitrations involving employment disputes in the securities industry. They found a 46 per cent employee win rate, which compared favourably to employee win rates (33–36 per cent) found in federal court employment discrimination trials.[34]

Bingham's study examined a 270-case sample of commercial and employment arbitration awards decided between 1993 and 1994. She found that employers won statistically significantly ($p < .001$) more often when they were 'repeat players'. Moreover, even when they won, employees recovered less of their claims when arbitrating against repeat player employers. When they won against repeat player employers, employees recovered only 11 per cent of their claims. When they won in cases involving one-shot employers, they recovered 48 per cent of their claims.[35]

Howard reported that, in 1992–1994, plaintiffs won 68 per cent of cases in AAA arbitrations and 48 per cent of securities industry arbitration cases, but only 28 per cent of cases adjudicated in court.[36]

A study by the AAA indicated that employees won 73 per cent of AAA employment arbitrations in 1992, and won significantly more cases in arbitration than litigation from 1993 to 1995. However, the AAA reported that in the 310 consumer arbitrations it administered from January to August 2007, consumers prevailed in 48 per cent of the cases they filed as claimants, while businesses prevailed in 74 per cent of the cases they filed.[37]

Negotiation is a voluntary and informal process in which the parties seek out the best options for each other. The result is usually a mutually acceptable agreement. In this private process there is usually no limit to the argument Evidence and interests that may be brought to the bargaining table.

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[34] Delikat, M., and Kleiner, M.M., 'An empirical study of dispute resolution mechanisms: Where do plaintiffs better vindicate their rights?" *Dispute Resolution Journal*, 2003, vol. 58 (4), p56.

[35] Bingham, L.B., 'Employment arbitration: The repeat player effect,' *Employee Rights and Employment Policy Journal,* 1997, vol. 1, p189.

[36] Howard, W.M., 'Arbitrating claims of employment discrimination,' *Dispute Resolution Journal*, 1995, pp40–43.

[37] Schmitz, A.J., 'Legislating in the light: Considering empirical data in crafting arbitration reforms,' *Harvard Negotiation Law Journal*, 2010, vol. 15, p139.

This allows commercial disputes to be resolved without a third party, thus providing for a more confidential agreement.[38]

Mediation is usually sought out when parties to a dispute are ready to discuss the issues openly and honestly. It is an ADR method where a neutral and impartial third party mediator facilitates dialogue in a structured multi stage process to help parties reach a conclusive and mutually satisfactory agreement. A mediator cannot impose a solution on the parties as a conciliator and arbitrator can. A mediator works together with the parties, its priority is to facilitate the parties' own discussion and representation of their own interests, and guide them to their own suitable solution- a good common solution that is fair, durable, and workable. The parties play an active role in mediation, identifying interests, suggesting possible solutions, and making decisions concerning proposals made by other parties. "A successful mediation affords the parties an opportunity to generate a creative solution to their dispute in a manner that focuses on the future and not the past. Its major benefits include that they control the process, choose their mediator and avoid trial."[39]Mediation is usually looked at as a peaceful dispute resolution tool that is often used complementary to the existing court system and the arbitration.[40]

The most common form of ADR is mediation. So great in many courts is the emphasis on mediation that some authors use the terms ADR and mediation interchangeably.[41] Mediation can be used in disputes relating to family, contract or consumer law, among others. It is a process in which a third party works to bring disputing parties to voluntary settlement. Some mediators meet with both parties together; other mediators meet with each separately, acting as a go-between.
Family mediation research is considerably farther developed than research on other forms of ADR.[42] A number of studies comparing mediation with adversarial processes have found that mediation results in faster settlement, lower costs, greater levels of satisfaction, improved compliance with a

[38]Chan, Y.-C., Chun, R.P.K., Lam, G.L.T., and Lam, S.K.S., 'The development of family mediation services in Hong Kong: Review of an evaluation study,' *Journal of Social Welfare & Family Law*, vol. 29 (1), 2007, pp3–16.

[39]Brainch, Brenda, "The Climate of Arbitration and ADR in Kenya", Paper given to the Colloquium on Arbitration and ADR in African States, Kings College London, (June 2003).

[40]Kelly, J.B., 'Family mediation research: Is there empirical support for the field?' *Conflict Resolution Quarterly*, vol. 22 (1–2), p29.

[41] e.g., Quek, D., *op. cit.*, p480.

[42] Kelly, J.B., 'Family mediation research: Is there empirical support for the field?' *Conflict Resolution Quarterly*, vol. 22 (1–2), p29.

settlement, and other benefits in some contexts.[43] However, some writers argue that the benefits of mediation are over-stated and have not been subject to rigorous empirical scrutiny. Others argue that the effectiveness of mediation rests on the nature of the program and the predispositions of participants.[44]

Kelly reviewed nine different family studies. She concluded that 'using a variety of methodologies, measures, and samples, these reports suggest strong support for the use of mediation in family disputes for custody and access, child protection and comprehensive divorce cases'. Settlement rates ranged between 50 and 90 per cent, and client satisfaction was high in all studies.[45]

The Californian Centre for Families, Children and the Courts initiated, in 1991, a series of studies of mandatory mediation in child custody cases. (Because mediation was mandatory, there was no litigation comparison group.) In a snapshot study of 1,388 cases in 1991, 55 per cent of families reached agreement. One quarter of those who did not settle were scheduled for further mediation.[46]
An evaluation of the mandatory mediation program in Ontario found that full settlement rates for mandatory mediation in Ottawa and Windsor increased from approximately 41 per cent in 2007/08 to 46 per cent in 2011/12. Full and partial settlement rates for mandatory mediation matters have consistently been at 45 per cent or higher since tracking began in 2003.[47] In 2012/13, the overall mediation settlement rate for family service users (combined full and partial agreements) for onsite and offsite mediation was 78 per cent.[48]
Inspired by Ontario's program, an automatic referral to mediation pilot was established in the Central London County Court in 2004–2005. Although there was automatic referral of cases for mediation, the parties were given almost unrestricted ability to object to participating. Research by Genn et al. found that the settlement rate of mediated cases fell from 69 per cent among cases referred in May 2004, to 38 per cent for cases referred in March 2005.[49] The results were almost the exact opposite of those of Ontario. The Canadians experienced only a handful of cases in which the

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43 Salem, P., 'The emergence of triage in family court services: The beginning of the end for mandatory mediation?' *Family Court Review*, vol. 47 (3), 2009, pp373–374.
44 Stipanowich, T.J., *op. cit.*, p911.
45 Kelly, J.B., *op. cit.*, p29.
46 Kelly, J.B., *op. cit.*, p4ff.
47 Hann, R.G., and Baar, C., *op. cit.*
48 Ministry of the Attorney General of Ontario, personal communication, 1 August, 2013.
49 Genn., H., *et. al*, *op. cit.*, pii.

parties opted out of the mandatory mediation scheme, but 81 per cent of those referred to mediation (the majority being personal injury cases) in the London pilot objected to the referral.[50] A decision that the pilot had been largely unsuccessful was in effect taken after the experience of the first six months, but the scheme was allowed to run for a full year before being abandoned.[51]

Collaborative law, which was first introduced, in Minneapolis, US, in 1990, is a form of ADR used mostly in divorce cases.[52] In this method the two parties and each of their lawyers meet together in a four-way conference, seeking to negotiate a fair settlement.[53] The defining principal of collaborative practice is the 'disqualification agreement': from the outset both lawyers must agree to withdraw if their clients fail to settle and instead proceed to court. This rule is designed to give lawyers the freedom to concentrate on the interests of their clients and on settlement rather than on preparing for trial. In theory, then, collaborative law offers the best of both the legal route and ADR: strong advocacy *and* collaborative negotiation controlled by the divorcing parties.

Collaborative law is now regularly practiced across the US, Canada, Australia and Europe (including England). Eight American states-Alabama, Hawaii, Nevada, Ohio, Texas, Washington, D.C., Washington state and Utah-have, since 2009, enacted into law the Uniform Collaborative Law Rules and Act, which is also pending enactment in a number of other states. The Act provides an 'ethical infrastructure' for collaborative practice, including basic definitions, minimum requirements for the participation agreement, disqualification provisions, and confidentiality and evidentiary privileges.[54] Supporters claim that, compared with traditional litigation, collaborative law encourages more open communication, more creative solutions, less competition, less polarisation in the stances of both parties, stronger post-divorce relationships, and kinder effects on children. Collaborative law is also contrasted favourably with mediation, which, some argue, may disadvantage women because they are usually in a weaker economic position than their spouse. Tesler argues, mediation is appropriate

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50 Unfortunately, the launch of the scheme coincided with a judgment by the Court of Appeal in *Halsey v Milton Keynes General NHS Trust*, which ruled that the court had no power to compel parties to enter a mediation process, and that to do so might be an infringement of the right to a fair trial under Article Six of the Human Rights Act 1998.

51 Genn, H., *op. cit.*, p199.

52 Webb, S., and Ousky, R., 'History and development of collaborative practice,' *Family Court Review*, 2011, vol. 49 (2), pp213–220.

53 Foran, P., 'Adoption of the Uniform Collaborative Law Act in Oregon: The right time and the right reasons,' *Lewis & Clark Law Review*, 2009, vol. 13, pp787–821.

54 Comes, D.M., 'Meet me in the middle: The time is ripe for Tennessee to adopt the Uniform Collaborative Law Act,' *University of Memphis Law Review*, vol. 41 (3); p575.

only for a very limited group of 'high-functioning, low conflict' parties, whereas collaborative law is appropriate for nearly all divorcing couples excluding those who are so low-functioning they require adjudication.[55]

But commentators discourage collaborative law divorces for couples with a history of domestic violence or other abuse. Critics also worry about the compatibility of collaborative law with the lawyer's duty of loyalty to and zealous representation of his or her client. Others argue that an unintended consequence of the disqualification agreement is that it may incur more cost to the parties if they fail to settle-because they are forced to hire new counsel in order to proceed to court—than it would have had they skipped collaborative negotiations altogether.[56]

Empirical research on the effects of collaborative law on post-divorce families is scarce and imperfect.[57] Most studies rely on small, non-random samples for their data, and readers should be cautious about how far these findings may be generalised. Below are the summarised findings of several studies, categorised according to what each found about who uses collaborative law, how much it costs, how long it takes to settle, how often parties settle successfully successful, and how satisfied parties are with the process.

Conciliation is often used when the parties of a dispute have the wiggle room to cure the breach or make up and salvage the relationship. A third party conciliator is appointed as an impartial person that assists the parties through the negotiation and then drafts a solution based on what they think to be a just compromise. Unlike arbitration the whole process is much less adversarial, in that the conciliator seeks to identify all the rights that have been violated or issues that have been breached and searches to find the optimal solution to cure the breach. "In effect, the conciliator may be regarded as designer of the solution; this may be contrasted with meditation where the parties are guided to design their own solution." 38The conciliator plays a direct role in the resolution of the dispute and figures out the best solution for the parties and this becomes the drafted settlement.[58]

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55 Foran, P., *op. cit.*, p803.

56 Wiedmer, P.H.M., 'Collaborative law and the rules on court-annexed family mediation,' *Ateneo Law Journal*, 2011, vol. 55, p950.

57 Schwab, W.H., 'Collaborative lawyering: A closer look at an emerging practice,' *Pepperdine Dispute Resolution Law, Journal*, 2004, vol. 4 (3), p367.

58 Stipanowich, T.J., 'ADR and the "vanishing trial": The growth and impact of "Alternative Dispute Resolution",' *Journal of Empirical Legal Studies*, 2004, vol. 1 (3), p849.

Arbitration views the dispute as a legal analysis and seeks a solution based on entitlement and rights. It often "may ignore the interests and needs of an individual party and critically in international disputes, not embrace the cultural influences on the problem in hand." Like litigation, it is an adjudicative process whereby a single or panel of arbitrators imposes a settlement on the parties. Unlike litigation, it usually subject to confidentiality agreements between the arbitrator, the parties and the seat of the arbitration.[59]

According to Selznick (20&3), When looking at ADR, one must remember that dispute resolution was conceived as a mechanism outside the courts of law established by the State. Arbitration has fallen within the wide range of ADR methods that sometimes includes hybrid mechanisms like Con-Arb and Med-Arb, however one must not forget that in arbitration there will be a final and binding award and in the other forms there is no finality except with the consent of the parties. This is important when looking at how several African countries have decided to enact laws subject to arbitration and conciliation ADR methods if a dispute occurs.[60]

[59]Hagerott, J.C., Manager, Dispute Resolution Section, Supreme Court of Ohio, personal communication, 13, 18 and 20 September, 2013.

[60]Rhoades, H., 'Mandatory mediation of family disputes: Reflections from Australia,' *Journal of Social Welfare & Family Law*, vol. 32 (2), 2010, p183.

CHAPTER THREE.

3.1 Types of ADR and Processes.

ADR is an abbreviation for alternative dispute resolution; it is sometimes called as appropriate dispute resolution[61]

ADR is a project of justice law and order sector supported by the Austrian development agency. The ADR project is an opportunity for the sector to implement the judicature [mediation] rules of 2013 which made mediation mandatory in all civil matters including land, family and main civil law. Today ADR, is used to settle a variety of disputes in American institutions, family, school, the workplace, government agencies, the courts and churches. ADR is not generally used to settle violent or stubborn conflicts are prepared for action and then resolution this sometimes happens when the conflict reaches a situation where there is no doubt that neither party is going to win the case yet they are being hurt to a greater extent by the continuing conflicts. Readiness of ADR is extremely important for its processes to work effectively, and ADR has been used in appropriate cases. For example, arbitration and negotiation have become common ways of resolving difficult international business disputes, mediation and arbitration are commonly used to settle labor management disputes that are often used to seem like violent 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 violent environmental disputes.

ADR has a range of processes designed to help parties in resolving parties without resorting to formal judicial proceedings. These are mediation, arbitration, negotiation, and conciliation however, there are other methods of dispute resolution but our main focus is on the above mentioned but the others include expert determination, collaborative legal practice among others. All these processes except negotiation have the same characteristic of a dispute being referred to an independent party chosen by the parties involved for determination.

[61] Universal law series. Arbitration and ADR. Ashwinie Kumar Bansal, book foreword by Dr. H.R Bhardwaj, union minister for law and justice and chairman.

3.2 Mediation.

Mediation is often called a facilitated negotiation or is an extension of the negotiation process.[62]Mediation takes place when parties cannot settle their disputes through negotiation and go to an impartial third party to assist them in reaching a solution. The heart of mediation goes is a principle of self-determination. Mediation is a method of resolving disputes between parties where a neutral third party the mediator, will guide discussions and facilitate the parties to reach a mutually agreed resolution of the dispute. The mediator does not determine nor is he or she permitted to decide the outcome of a dispute, it is **ONLY** the parties.

The goal for mediation is to help the parties arrive at an informed decision, most often, in the form of a resolution or settlement of whatever issues or disagreement has arisen. The mediator is neutral and does not take sides throughout the process that is to say a mediator cannot force parties to agree whereby he or she is only there to help the parties arrive at an informed decision. Therefore, while mediating both parties retain significant control over the course of mediation. Mediation is fully confidential and agreements are usually non-binding so parties may still pursue litigation following the mediation process. It saves money, it is flexible and cost less, confidential and this enables parties to communicate freely without fear of media coverage. In mediation, real issues are brought to light and dealt with. Mediation as an ADR process has gained tremendous popularity in dispute resolution from local to national and from national to international dispute resolution. Mediation is used from the private sector to the public sector and from the domestic issues to big business issues. There are two kinds of mediation process. They are dispute mediation and transactional mediation.

Dispute mediation is about resolution of conflict under the principles of negotiation settlement.[63] Dispute mediation can be mandatory or voluntary. It is mandatory when a court or government agency requires it.[64] On the other hand it is voluntary when parties decide freely to use mediation to settle their dispute.

Transaction mediation process is when a mediator helps parties form a deal such as a collective bargaining agreement between a labor union and an employer. It is a settlement on a particular object or subject of interest to the parties.

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[62] NOLAN HALEY, alternative dispute resolution in a nutshell,68.
[63] NAGLE LECHMAN conflict and resolution 63.
[64] WARE, alternative dispute resolution,203.

Mediators can be an individual, group of individuals or states, a state or an international organ that helps that helps disputants look for a solution that works for them unlike judges thus mediation becoming an effective type of ADR.

3.3 Additional Pointers to Mediation.

For every civil matter to be handled in any court it will first have to go through mediation, case summaries should be filed by parties and the case summary includes; names of the parties, address of the parties including a postal address, telephone number and email address, facts of the case, name of the advocate if any, person with full authority to sign the settlement, name of the party who will be the lead negotiator for the party, name of the proposed mediator, and the documents that the parties intend to rely on during the mediation.

Mediations should be heard within 60 days. If the mediation is to be extended, the extension should not exceed 10 days. Mediators may include a judge, registrar, magistrate, a person accredited as a mediator by court, a person certified as a mediator by center for arbitration and dispute resolution, or a person with relevant qualifications and experience in mediation and chosen by the parties.

3.4 Ethical Considerations for Mediation.

Mediators have varied styles and tactics for helping the parties resolve their disputes in mediation. Because the personal nature of the claims involved, the key qualities

All parties should avoid corruption, parties should know that the mediator does not make the decision; rather the parties decide hence, they should not engage in acts of corruption. Parties should allow for neutral third parties to assist conflicting persons find solutions without forcing them into a settlement, trustworthiness and honesty by all parties in order to have peaceful mediations, justice and fairness while resolving the dispute and finally respect for all parties.

3.5 Arbitration.

Arbitration is defined as a process by which a private third party renders a binding determination of an issue in dispute[65]. Arbitration can operate as voluntary and mandatory. In public context, as well as voluntary, in private settings.[66] Arbitration is a flexible and confidential adjudication process. It is

[65] COLE BLANKLEY, Arbitration, in the handbook of dispute resolution,318.
[66] NOLAN HALEY, Alternative dispute resolution in a nutshell,153

only ADR process that has a resemblance of litigation[67]. It is private; even if it is done under the supervision of a public court, because the proceedings remain private.

Involves the help of a neutral 3rd party. During arbitration an arbitrator acts a bit analogously to a trial judge by listening to the parties' grievances unlike mediator an arbitrator is not a passive go between facilitator after listening to the parties, an arbitrator [often a professional in the party's subject of the dispute] actually pronounces a decision arbitration is still less formal than a full blown trial because many rules of evidence don't apply to arbitration. Arbitration can either be binding or non-binding.

Under Ugandan law there are three main avenues through which prospective disputants might find themselves in arbitration proceedings

The first avenue is before a case commences during scheduling. This procedure, is also referred to as a scheduling conference mandatory. It refers both counsel prospective litigants to meet before a judicial officer like a court registrar and agree on what questions they will present to the court, as well the facts and evidence they intend to finish. It is intended to reduce on protracted litigation without defined legal issues for courts determination. Under this procedure, the court is supposed to determine if suitable for arbitration. This is usually the case where no questions of law are involved or where both parties are culpable in some respect and they cannot agree on who takes the more blame. In such cases, the court will refer the matter to arbitration even before it is set down for hearing. In this case the parties are free to appoint an arbitrator or if they can't, one is appointed by court.

The second avenue is by way of referral by court; under this procedure the judicature act as well as civil procedure rules allow a court hearing a case, to at any time during the proceeding, refer the case to arbitration, if the court deems the case can best be concluded by arbitration. Under this procedure a party to ongoing court proceeding may make a formal application to presiding judge for the case to be referred to as arbitration. However, the court may exercise of its discretion refer a case to arbitration even without application from either party. This usually in domestic cases or other cases where the court determines it is in the interest of the parties that the relationship is preserved for example long trading partners, cases involving local authorities and civilians, or domestic relations. Similarly, parties are to appoint their arbitrator, but if they cannot court appoints for them.

[67] NAGLE LECHMAN, Conflict and resolution,98

The third and final instance is at motive of parties themselves, by nominating arbitration as a preferred form of dispute resolution in relation to disputes that arise out of legal relationship between them. This procedure is voluntary, and all that is required is for the existence of valid arbitration agreement and for a dispute in order to trigger an arbitration, parties nominates their preferred arbitrator, the applicable, the seat of arbitration and even procedures to be followed as long as the procedure does not derogate the minimum guaranteed by the law like the right to be heard or to represented by counsel of one's choice.

It is important to emphasize that in court proceedings involving the government, in which court decides to refer the case to arbitration, the consent of the AG must be obtained. However, where arbitration is not as a result of court referral, as in third instance, then there is no need to seek the consent of the AG in case the government is involved. The government is equally bound by an arbitration agreement.

3.6 Legal Framework of Arbitration.

As indicated above the civil procedure rules as well as the judicature act, makes reference to arbitration. If those triggered, there is a legal framework within which the arbitration should be conducted. This legal frame work applies for voluntary arbitration as well. Indeed, it is the overarching legislation governing arbitration, both domestic and international, conducted in Uganda; The arbitration and conciliation act 2004 CAP4.

The act was enacted in 2000 and was intended to bring arbitration law and practice in tandem with international standards. As such is mirrors to a large extent, the UNCITRAL model law and provides extra lee way for enforcement of New York convention awards.

3.7 Negotiation.

Negotiation can be defined as a bilateral or multilateral process in which the parties who differ over a particular issue attempt to reach agreement or compromise over that issue through communication.[68] Negotiation is about communication, which entails dialogue, deliberation and round table conference with the aim of reaching an agreement or settlement over a determined subject or object.

[68] ID. HY ARN ed., dictionary of conflict resolution 1991,314.

Negotiation is a method by which people settle differences. It is a voluntary ADR process by which compromise or agreement is reached while avoiding argument and dispute. In any disagreement individuals understandably aim to achieve the best possible outcome for their position. However, the principles of fairness, seeking mutual benefit and maintaining a relationship are the keys to a successful outcome. There is no third party to facilitate the resolution process or impose a sentence. It is an act of goodwill through back and forth communication designed to reach an agreement between two or more parties with some interests that are shared and others that may conflict or simply be different.

Negotiation demands a lot of listening. It works when the parties are ready to listen to each other and come to an agreement or compromise. Negotiation has also a legal dimension. The settlement agreement has certain legal requirement to fulfill for example; it cannot evade tax and in some cases a court approval of the settlement [69] is needed.

Specific forms of negotiation are used in many situations; internal affairs, the legal system, government, industrial disputes or domestic relations as examples. However, general negotiation skills can be of great benefit in resolving any differences that arise between you and others. The stages of negotiation include preparation, discussion, clarification of goals, negotiation towards a win to win outcome, agreement, and implementation of a cause of action. Negotiation is the most flexible of all the ADR mechanisms, parties who engage in negotiation meet in good faith to discuss their dispute with the goal of coming to a mutually agreeable resolution and negotiation can take place with or without a lawyer. Negotiation is defined as a consensual bargaining process in which parties attempt to come to an agreement on a potentially disputed matter. 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 a context of other dispute resolution processes such as mediation and litigation settlement conferences.

Even though negotiation is everyday life experience, dispute negotiation is an art to learn. It is like a science with prediction and experimentations. Most ADR professionals are very good in the art of negotiation. With techniques and understanding they are able to help disputants negotiate well. There are two kinds of negotiation namely, transactional and dispute or adversarial negotiations.

[69] NOLAN HALEY, Alternative dispute resolution in a nutshell 59.

3.7.1 Transactional Negotiation.

It is also known as cooperative, interest based, integrative, value creating, and win-win negotiation. It is based on positive sum negotiation principle that means negotiation is perceived not as a war to win or lose but a communication to iron out differences and keep relationship going. It is a mutual dialogue approach to a problem. It seeks to maintain personal relationship with the other party.

Transactional negotiation deals with daily activities like buying and selling of goods and services such as house, ticket, food, employing workers etc. it takes place in all basic institutions of human life: marriage, family life, education, industry, government, religion, and business. It is part of everyday life face- to-face, telephone, email, or chat rooms conversations[70].

3.7.2 Dispute Negotiation.

It is problem solving and the problem is resolving a conflict through communication[71]. Dispute negotiation process entails four general principles, namely: planning and analysis, exchanging information, exchange concessions and compromise, reaching agreement.[72]

According to Gerald Williams' research the aims of lawyers who use this kind of negotiation can be summarized as: maximizing settlement for their clients; obtaining profitable fees for themselves; and outmaneuvering their opponents[73] this is what makes this type of negotiation competitive and even adversarial. Nonetheless, the final decision to settle the dispute rests on the client and not necessarily on the lawyer.[74]

3.8 Characteristics of Negotiation.

1. **Flexible.** The scope of negotiation depends on the choice of the parties. The parties can not only determine 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 am interest based approach.
2. **Voluntary.** First and foremost, the word voluntary means willingness to do something by a party that is to say no party should be forced to participate in a negotiation, parties are free to

[70] NAGLE LECHMAN, conflict and resolution, 39.
[71] WARE, alternative dispute resolution, 120-121.
[72] NOLAN HALEY Alternative dispute resolution in a nutshell 31.
[73] NOLAN HALEY alternative dispute resolution in a nutshell 24.
[74] The American bar association's model of rules of professional conduct rule1.2. [a] [1983] make this clear [a lawyer shall abide by a client's decision whether to settle a matter]

reject or accept the result of negotiation and can come to an end at any point during the process. Parties can participate directly in the negotiation or they may choose to be represented by someone else, such as a family member, lawyer, friend or other professional.

3. **Confidentiality.** This means privacy, that is to say it is up to the party to either negotiate publically or privately.
4. **Bilateral/multilateral.** Bilateral means two and multilateral can mean many. So negotiation can be carried out by two or three parties and a group of other parties. It can involve two or more individuals seeking to agree on the sale of company to negotiations involving diplomats from groups of states for example world trade organization [WTO].

3.9 Conciliation.

Conciliation is an ADR process whereby the parties to a dispute use a conciliator who meets with the parties both separately and together in an attempt to resolve their differences. Conciliation is defined as an intervention to resolve an international dispute by a body without political authority.

That has the trust of the parties involved and is responsible for examining all aspects of a dispute and proposing a solution that is not binding for the parties. It is therefore crucial that the conciliation body have the trust of 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 seek evidence or call witnesses, usually writes no decision and makes no award. It also differs from mediation in that the main goal is to conciliate, most of the seeking concessions in mediation the mediator tries to guide the discussion in a way that it optimizes party's needs, takes feelings into account and reframes representations. Recent studies in the processes of negotiation have indicated the effectiveness of a technique that deserves mention here. A conciliator assists each of the parties to independently develop a list of all their objectives. Conciliation reports are only proposals and don't constitute binding decisions.

3.10 Benefits of ADR in Uganda.

ADR is very important to any society or community of people or country especially the business community, where most people have a reputation and business relationship to protect. The supporters of approach have put up argument to support the incorporation into Ugandan system. It is therefore Important that the general benefits of this approach are discussed. There are a number of

advantages of ADR in general, it is usually less costly and faster people have a chance to tell their story as they see it. It is more flexible and responsive to the individual needs of the people involved.

Sometimes people become involved in disputes which, although very important and worrying to those concerned, are better resolve outside the comparatively expensive court system. Some disputes do not have a legal solution while others may be made worse by court action. There are number of advantages of ADR [and mediation in general] over litigation.

It is more informal, the party's involvement in the process creates greater commitment to the result so that compliance is more likely, confidential nature of the process whereby ADR proceedings are private accordingly the parties can agree to keep their proceedings and any results confidential this allows them to focus on the merits of the dispute without concern about its public impact and maybe of special importance where commercial reputations and trade secrets are involved.ADR is more likely to preserve goodwill or at least not escalate the conflict, which is especially important in situations where there is a continuing relationship.

Through ADR, the parties can agree to resolve in a single procedure a single procedure involving intellectual property that is protected in a number of different countries, thereby the expense and complexity of multi-jurisdictional litigation and the risk of inconsistent results.

Because of its private nature, ADR affords parties the opportunity to exercise greater control over the way their dispute is resolved than would be the case in court litigation. In contrast to court litigation, the parties themselves select the most appropriate decision makers for their dispute. In addition they may choose the applicable law, place and language of the proceedings. Increased party autonomy can result in a faster process as parties devise the most efficient procedures for their dispute this can result in material cost savings thus being effective in Uganda.

3.11 Role of the Judiciary in Land Disputes.

The settlement of land disputes in Uganda has been given special treatment by the law. The constitution of Uganda provides for setting up of district land tribunals to settle land disputes.

The law provides for setting up of district land tribunals for each district, these tribunals hear land cases where the value of the land does not exceed 50million shillings, district land tribunals are under supervision of the high court, a district land tribunal consists of the chairperson and two other members, the chairperson of a district land tribunal is a lawyer qualified to work as a magistrate

grade 1 or to practice as an advocate, the other members should not be lawyers. However, they must have knowledge and experience in matters of land.[75]

3.12 Disadvantages of ADR.

Disadvantages of ADR demonstrates that is an ideal means of addressing international disputes

There is no Quarantined resolution in a way that alternative resolution process does not always lead to a resolution this means that the parties could invest time and money in trying to resolve the dispute out of court and still end up having to proceed with litigation and trial before a judge and jury.

Decisions are final; with a few exceptions such as fraud, the decision of a neutral arbitration cannot be appealed against. On the other hand, decisions of a court usually can be appealed on a variety of legal grounds.

Limit on awards. There is no equivalent of S.66 of the arbitration act 1996 provides that an award made by tribunal pursuant to an arbitration agreement may be enforced in the same manner as a judgement or order of the court to the same effect. Enabling ADR awards to be enforced as if they were court judgement. However, the awards are not so easily enforceable. Arbitrations mostly resolve disputes that involve money. They cannot issue orders compelling one party to do something or refrain from doing something hence, they cannot give injunctions.

Facts may not be fully disclosed since there is no equivalent of disclosure in arbitration as in litigation, there is a risk that the parties may resolve a dispute without knowing all the facts which may lead to a wrong decision. E.g. most businessmen, however, believed that a quick decision is better than wasting time and money on a dispute in order to get a correct decision.

ADR is not for all cases for instance where a client needs an injunction, where there is no dispute to resolve and where the client needs a ruling on a point of law.

Sometimes lack of commitment on the part of ADR parties can cause delayed litigation. For instance, a panel of arbitrators whose scheduling do not meet the needs of the disputants increase delay costs[76]. There are lots of abuses in the labor relations cases which gives an impression of usual

[75] Judicial service commission citizens' handbook.

judicial system of frequent law sue. In mandated ADR process like arbitration by court sometimes results in additional delays, lost time from work, frustration, for the parties.

It has also been pointed out that efficiency is achieved at the expense of the quality of justice. This happens, when there is much difficulty of appealing an arbitral award. The difficulty of appealing against arbitral award helps the most powerful and influential parties to win.

ADR can endanger public good if a company harms an individual with a new product but resolves the resulting personal injury lawsuit privately, the product could conceivably continue to harm other consumers. In this case, ADR can protect criminals who must and should face public humiliation for their wrong actions or behavior. For example, some educators believe that peer mediation can be utilized to address a bullying issue between two students. On the other hand, it is also seen as protecting those who bully from educational authorities and shield them from punishment.

Another contentious issue is the use of ADR for domestic violence and sexual harassment cases. For some people mediation of the violent acts is clearly a subversion of the law and a violation of the victim, which cannot be tolerated. The response of ADR is by removing all domestic violence cases from mediation, ADR will give up its principle of self-determination and transformation through mediation.

3.13 Labour Disputes.

A labor dispute is a dispute between an employer and its employees regarding the terms [such as conditions of employment, fringe benefits, hours of work, tenure, wages] to be negotiated during collective bargaining, or the implementation of already agreed upon terms.

All labor dispute in this survey are called total dispute, which are categorized into disputes accompanied by acts of dispute such as strikes for half a day or more; temporary work stoppage by a workers' organization to obtain an objective with an aggregate duration of one working day, lockout; stoppage of business activity by an employer as a means of dispute, accompanied by employers' announcement to that effect. Strikes for less than half a day temporarily work stoppage by workers' organization to obtain an objective with an aggregate duration of less than one-half of one working day. Slowdowns; reduction in the work efficiency by a workers' organization to obtain an objective while continuing to work. Operation management; the acts of the dispute other than the above operation management is that a business establishment is occupied by workers against the will of the employer, and production and operation are conducted according to the workers' policies. Disputes

not accompanied by acts of disputes are those settled by the third party, such as labor committee intervention.

For example, in the case of *Namayanja v St. Raphael of St. Francis hospital Nsambya*. That the labor officer erred in law when, having found that the appellant was unlawfully summarily dismissed from her employment with the respondent and that the labor officer had no jurisdiction to award aggravated damages and costs, he failed to refer the matter to industrial court for consideration

In the definition section of the employment act section 2, termination and dismissal cannot be complete without giving a reason. Even under summary dismissal, the reason is of **fundamental breach of contract.**

Section 78 of the employment act gives labor officers power to grant compensation for such loss to the maximum of 3 months salary which the labor officer in this case granted. We consider the word compensation under section 78 to the word damages used while this court or any other court grants relief to a successful party. The appellant was working as a pharmacist in a missionary hospital and by losing her job she lost livelihood of both her and her family and as already pointed out that was through an illegality. Under section 94[3] of the employment act, we feel that 3 months compensation would not be sufficient and so we award 10,000,000/=. The order of the labor officer granting 4,200,000 as a compensation is hereby set aside and replaced with an order for 10million as general damages.

The employees go on strike, causing business to slow down or stop altogether. What an inopportune time for a labor dispute to take place when a business is good. When a business is prosperous, the employees would like to share in that prosperity through increased benefits from the employer, employers should be able to anticipate problems before they develop failure to do so; employers should be aware of their rights and duties under the labor relations act in order to control and manage the situation properly. According to the labor relations act, not only employees are entitled to submit demands for changes in employment conditions, employers are also entitled to do so, but in most cases it's not the employer who initiates such demands. Thus when employees or union submit demands to employers, the latter should respond by submitting counter-demands in order to achieve a better bargaining position.

The employer, after receiving the demands, shall provide the names of its representatives to the employees. Both parties begin negotiations within 3 days from the date of receiving the demands. If

both parties reach a settlement, they enter into a written agreement signed by their representatives. Within 3 days from signing, the employer shall display such agreement in an open area in the work place for at least 30 days. The employer must also register the agreement with the ministry of labor within 15 days from the date of signing.[77]

[77] Handling labor disputes by Chusert Supasitthumrong 2007 Tilleke and Gibbins international limited.

CHAPTER FOUR.

LEGAL FRAMEWORK RELATING TO ADR.

4.0 Introduction.

This chapter discusses the law of ADR both on the international and national level. The purpose of this research is to examine ADR and its effectiveness in Uganda. The main focus is on the national laws. There are various laws that establish ADR in Uganda such as the 1995 constitution of Uganda, arbitration and conciliation act while on the international level there are laws and conventions for which Uganda is signatory.

4.1 Convention on the Recognition and Enforcement of Foreign Arbitral Awards [New York, 1958].

The convention entered into force on 7thJune 1959 [article xii] recognizing the growing importance of international arbitration as a means of settling international commercial disputes the convention seeks to provide common legislative standards for the recognition of arbitration agreements and court recognition and enforcement of foreign and non-domestic appears to embrace awards which although made in the state of enforcement, are treated as foreign under its law because of some foreign element in the proceedings e.g. another states procedural laws are applied.

The conventions 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 convention is to require courts of parties to give full effect to arbitration agreements requiring courts to deny the parties access to court in contravention of their agreement to refer the matter to an arbitral tribunal.

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].

International arbitration is an increasingly popular means of ADR cross-border commercial transactions. The primary advantage of international arbitration over court litigations enforceability an international arbitration 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 arbitration, and confidentiality. Countries which have adapted to New York convention have agreed to recognize and enforce international arbitration awards.

4.2 United Nations Charter.

The charter of the United Nations also known as the United Nations charter of the 1945 is the foundational treaty of the United Nations as intergovernmental organization. Article 103 of the charter states that obligations to the United Nations prevail over all other treaty obligations. This charter provides that members shall settle their international disputes 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 cooperation among states and friend relations develops this principle and note that states shall accordingly seek early and just settlement of the international disputes by negotiation, mediation, conciliation, arbitration, judicial settlement, inquiry. The same methods of dispute settlement are stipulated in the charter, although in the context of disputes the continuance of which is likely to endanger international peace.

Under article 12[1] while the security council is exercising in respect of any dispute or situation the functions assigned to it in the present charter, the general assembly shall not make any recommendation with regard to that dispute or situation unless the security council so requests.

Article 33[1] says 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, enquiry, conciliation, arbitration, settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

Article 33[2] the Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

Article 34 says the council may investigate any dispute, or any situation which might lead to an international friction or give rise to a dispute, in order to determine whether continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.

Article 36[1] says the security council may, at any stage of a dispute of the nature referred to in article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.

Article 36[3] in making recommendations under this article the security council should also take into consideration that legal disputes should as a general rule be referred by the parties to the international court of justice in accordance with the provisions of statute of the court.

Article 37[1] says should the parties of the nature referred to in article 33 fail to settle it by the means indicated in that article, they shall refer it to the security council.

4.3 World Intellectual Property Organization.

The WIPO arbitration and mediation center is a neutral, international and non-profit dispute resolution provider that offers time and cost efficient ADR options. WIPO mediation, arbitration, expedited arbitration and expert determination enable private parties to efficiently settle their domestic or cross border IP and technology disputes out of court. The WIPO center is also the global leader in the provision of the domain name dispute resolution services under the WIPO designed UDRP. Referral to WIPO dispute resolution procedures is consensual. To facilitate party agreement, the WIPO center provides recommended contract clauses [for submission of future disputes under a particular contract]and submission agreements [for existing disputes, including those referred by court]. Article 1 in these rules; mediation agreement means an agreement by the parties to submit to mediation all or certain disputes which have arisen or which may arise between them; a mediation agreement may be in the form of a mediation clause in a contract or in the form of a separate contract, mediator includes a sole mediator or all the mediators where more than one is appointed, center means the WIPO arbitration and mediation center.

Article 3 says a party to a mediation agreement that wishes to commence a mediation shall submit a request for mediation in writing to the center. It shall at the same time send a copy of the request for mediation to the other party. The request for mediation shall contain or be accompanied by the names, addresses and telephone, email or other communication references of the parties to the dispute and of the representative of the party filing the request for mediation; a copy of the mediation agreement and a brief statement of the nature of dispute.

Article 10 says that the mediation shall be conducted in the manner agreed by the parties. If, and to the extent that, the parties have not made such agreement, the mediator shall, in accordance with the rules determine the manner in which the mediation shall be conducted.

4.4 Centre for Arbitration And Dispute Resolution. [CADER].

The CADER was established under the arbitration and conciliation act. It is a corporate body capable of suing and being sued. It was established with a view of promoting the use of alternative methods of resolving disputes through the use of methods such as arbitration, mediation, and conciliation.

The arbitration and conciliation act provides for functions of CADER as being to

- Perform the functions specified in UNCITRAL arbitration rules of 1976.
- Make appropriate rules, administrative procedure and forms for effective performance of the arbitration, conciliation or ADR process.
- Establish and enforce a code of ethics for arbitrators, conciliators, neutrals and experts.
- Qualify and accredit arbitrators, conciliators and experts.
- Provide administrative services and other technical services in aid of arbitration, conciliation and ADR.
- Establish appropriate qualifications for institutions, bodies and persons eligible for appointment.
- Establish a comprehensive roster of competent and qualified arbitrators, conciliators and experts.
- Facilitate certification, registration and authentication of arbitration awards and conciliation settlements.
- Establish and administer a schedule of fees for arbitrators; to avail skills, training to promote the use of ADR methods for stake holders.

4.4.1 CADER'S Role in Resolution of Disputes.

The services of CADER are open to the public. Consequently, individuals, companies or any organization may refer any civil dispute to CADER resolution. Once the dispute is filed with CADER registry, CADER decides the appropriate ADR method to use in resolving the dispute. This may be mediation or arbitration.

The opposite party is notified of the complaint in writing; if the case of arbitration, it will appoint an arbitrator while for mediation it will appoint a mediator.

To assist it arrive at a settlement, CADER may ask the parties, on the day the dispute is to be heard, to come with the necessary documents in their possession and their witnesses or any other form of evidence to support their case.

CHAPTER FIVE.

5.1 Emerging Challenges ADR In Uganda.

Court assisted ADR has its challenges and following are some of them that have been experienced.[78]

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

In the case of *S.S Enterprise Ltd and Anor vs Uganda Revenue Authority HCCS No.708* of 2003[unreported] counsel for the Uganda revenue authority argued that only the board of directors of URA had the power to settle a case via mediation so it was not possible for URA to submit to mediation. I held that internal institutional processes were not a good reason to avoid mediation. The reasons to avoid mediation must be legal or procedural in nature.

The court needs to be firm not to allow these forms of negative attitudes to defeat the objective of court assisted ADR.

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 is just using ADR as a time wasting mechanism under rule 19 of mediation rules, an adjournment costs of shs.50000 can be levied against a party who does not show up when a mediation hearing is caned. The enforcement of rule 19 cost has not been very successful because of the absence of a clear mechanism to do so.

The third challenge is when can it be said that court assisted ADR is not appropriate and so a hearing in court should go ahead? The practice on the ground has been such that suits brought under order 33[summary procedure] and not suitable for court assisted ADR because an order 33 suit is itself and expedited mode of dispute settlement however in recent times there has been an increase of order 33cases possible with a view to defeating a referral to mediation the courts should be keen to see that court assisted ADR is truly inappropriate before it hears the case.

In *Hurst vs Leeming [2003]1 Lloyds Reps 379 Light man J.*, gave the following illustrations of insufficient reasons for mediation; certainly of being rig lit, undue cost, serious allegations.

The fourth challenge is the availability of competent trained mediators to carry out the ADR. ADR being a relatively being a new method of dispute resolution requires a push to ensure its success. In the case of Uganda and Canada a pilot project [both] 2 years were put in place to make it mandatory. The projects also make provision to avail the said mediators in the case of Uganda,4 staff mediators

[78] Alternative dispute resolution a Ugandan judicial perspective by justice Geoffrey W. M Kiryabwire at Colline Hotel Mukono on 1st April 2005.

were provided under the pilot project free of charge [as the project pays them] however, there have been complaints that mediators are young and some of them are even not lawyers many of these complaints go to form than substance as it's not clear whether there should be a minimum age for a mediator nor indeed the practice 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 that ADR is the second best option that should be used purely as an exercise of good faith. ADR should be taught as **a first line dispute resolution mechanism.** There is no reason why a new pretrial protocol cannot emerge where the right from a letter of demand / notice of intention to sue a paragraph is added stating the plaintiff is willing to enter into mediation or another alternative method of dispute resolution. The same paragraph would also ask whether the defendant is willing to do the same indeed if this became the practice when the term notice of intention to sue would give way to a letter of demand has a more appropriate term knowledge this would tie well with rule 7 of the mediation pilot project rules where this disclosure is required in the pleadings themselves parties would then be under an obligation to exercise their best endeavors and not just good faith in pursuing ADR or court assisted ADR.

5.2 Possible Solutions to These Emerging Challenges of ADR

The first solution to the emerging challenges lies in the training of ADR methods to judicial officers, lawyers and non-lawyers alike. This would lead to a greater appreciation of a subject matter, lengthy and applicant proceedings are not also the best solutions; lord justice Lindley in the case of *Verner vs General and Commercial investment trust[1894]ch.239 at 264* held;

A proceeding maybe perfectly legal and yet be opposed to sound commercial the wisdom of 1694 is still relevant today.

Secondly, court assisted ADR emphasizes the need for a new breed of pro-active judicial officers who are willing to intervene in a case as opposed to being a referee, without people raising the flag of bias the judicial officer should manage his case [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 argument to use ADR if it is the best interest of the dispute.

Lastly where it appears that a party even though successful in litigation the liberty refused the use of court assisted ADR then costs should be awarded against the party as was in the case of *Dunnett vs Rail track [2002]2 AII ER 850.*

Clearly litigation should be done on the event that mediation would have no reasonable prospect of success. There is jurisprudence already existing for this situation in Uganda; Uganda were a plaintiff sues without first giving notice to the other party thus depriving that second party of an opportunity to respond to the claim grid before the trial the second party pays the claim, a plaintiff maybe denied costs under rule 37 of the advocates remuneration and taxation of costs rules.

The position was further upheld by Saidi, J in the case of *Amradha construction vs Sultani street Agip service station [196BJEA85].*[79]

5.3 Conclusion.

To sum up, dispute or conflict is part of human experience. For this reason, there is the need to resolve dispute. Each society has ways of resolving. In a democratic society, there are established norms of resolving conflicts. Litigation in public court of law is one of them. Nonetheless, today, there is a growing movement, especially in common law tradition, to use other alternatives besides litigation. The generic name for any other legitimate means of conflict resolution is called ADR. There are many ADR processes but prominent among them are; negotiation which is basically a formalized procedure by disputants to use communication to resolve a conflict. The second ADR process is mediation. It is a process which a third party helps the disputants to resolve their conflict in a manner that satisfies the parties involved. The mediator acts as a facilitator, an evaluator and trans-formatter. It is one of the best known ADR processes.

The third process is arbitration. It is a process in which a private third party who is neutral renders a binding adjudication having listened and gathered evidence of the issue in dispute. ADR has gained popularity such that, its various processes are used for local, national and international disputes resolution.

[79] Ibid pg.35

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