A REFLECTION ON COURT - ANNEXED MEDIATION IN TANZANIA

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Abstract

Mediation has become a very important and viable alternative to adjudication and arbitration in the legal system (labor disputes, family, business, and commercial disputes). In some countries and states, including Tanzania, mandatory mediation was introduced as a way to encourage parties to the dispute to use mediation process as a preferred way to resolve disputes. The article is an attempt to evaluate how court-annexed mediation in Tanzania has been able to achieve this purpose since it was introduced in 1994. It is argued that in order to improve performance of the court-annexed mediation, major reforms have to be initiated for its better efficiency and effectiveness.

Key Words: *Alternative Dispute Resolution, Mediation, Court Annexed-Mediation*

1.0 Introduction

The principles of civil justice in Tanzania are essentially derived from the provisions of Article 107A of the Constitution of the United Republic of Tanzania. These include: first; delivery of justice without regard to the litigants' social or economic status; second, delivery of justice on a timely manner or without undue delay, third; provision of adequate compensation in case of injuries caused by others, fourth; facilitating and encouraging amicable settlement and dispute resolutions, and lastly; delivery of justice without undue technicalities.[166]

This Article revolves around the fourth principle in respect of amicable settlement and dispute resolution. The aim of introducing Alternative Dispute Resolution (ADR) in Tanzania was to enhance the second principle that is delivery of justice on a timely manner or without delays. This article is an attempt to evaluate how court-annexed mediation in Tanzania has been able to achieve this purpose since it was introduced in 1994. In order to improve performance of the court-annexed mediation, major reforms have to be initiated for its better efficiency and effectiveness.

2.0 History of Court-Annexed Mediation

Dispute resolution outside of courts is not new; societies world-wide have long used non-judicial, indigenous methods to resolve conflicts.[167] What is new is the extensive promotion and proliferation of ADR models, wider use of court-connected ADR, and the increasing use of ADR as a tool to realize goals broader than the settlement of specific disputes.[168]

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166 See Article 107A of the Constitution of the United Republic of Tanzania, 1977.

167 See http://www.metros.ca/amcs/international.htm, accessed on 30/03/2014.

168 Alternative Dispute Resolution, Practitioners' Guide, Centre for Democracy and Governance, Washington, 1998, accessed at http://www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/pnacb895.pdf.

Before colonization of Africa, including Tanzania, African societies had their ways of resolving disputes. Mediation, for example, is as old as mankind. It is found in all human societies. In everyday life, we witness the intervention of so-called neutral third party facilitators to resolve disputes between neighbours, parents mediating between their young children and in closely-knit societies and tribal communities. Respected persons in societies such as tribal elders, chiefs or people's representatives also mediate in various civil disputes.[169]

Unfortunately, due to colonization, government controlled dispute resolution mechanisms replaced the old customary law systems. Some of the traditional dispute resolution mechanisms survived only as informal systems and as lower courts in the judicial hierarchy. In the traditional setting, (village, hamlets, settlements, and towns), dispute resolution is almost as old as the traditions and customs of the people. Customary law is generally known to be the accepted norm in a community; it is unwritten and one of its most commendable characteristics is its flexibility.[170]

The modern ADR traces its origin from America. It finds its roots in the collective negotiations of the labor-management area during the 1960s, and, perhaps surprisingly, in the urban turmoil and civil unrest of the late 1960s, when riots broke out in places such as Watts (in Los Angeles), Detroit and Boston.[171]

Essentially, mediation methods were used by community activists to intervene in interracial conflicts in the labor area. In turn, these community mediators realized that mediation could also be useful for handling interpersonal conflicts rather than letting these conflicts escalate while waiting to be handled in court. In the early 1970s, the first community mediation centers were established. One of the first was in Rochester, New York, but also in places such as Philadelphia, Columbus, Boston and Manhattan, as an alternative to the courts.[172]

Courts first became interested in mediation in divorce cases, as since the 1970s more states were adopting laws in favor of "no-fault" divorce, while in "fault-based" states the courts began to favor "divorce by consent" for "irreconcilable differences." Not wanting to conduct adversary proceedings surrounding child custody issues, courts became open to the mediation process as a way to help parents resolve those disputes.[173] On January 24, 1982, Chief Justice Warren Burger addressed the American Bar Association at its midyear meeting in Chicago. In his speech, Burger called for an increased focus on mediation

169 See Haider, N., "Dispute Settlement Mechanisms in International Contracts", accessed at http://www.biliabd.org/article%20law/Vol-07/Naima%20Haider.pdf on 30/03/2014.

170 D. Kohlhagin, "Alternative Dispute Resolution and Mediation: The Experience of French Speaking Countries" Presentation at EACC Conference: How to Make ADR Work, in Addis Ababa, Ethiopia, p.6.

171 .Ginkel ,E., "Court-Annexed ADR in Los Angeles County", accessed at http://www.businessadr.com/EvG/Publications_files/Court - Annexed%20ADR%20in%20LA%20County.pdf on 26/03/2014.

172 *Ibid*.

173 *Ibid*.

and arbitration.[174] Although he spoke more about arbitration than mediation, many trace the rapid increase in popularity of alternative dispute resolution programs in the 1980s and 1990s to his "call to action."[175] A few years before Burger's call to action, as one of the first in California that had instituted an ambitious court-based alternative dispute-resolution program involving arbitration. Pursuant to a 1978 amendment to the Code of Civil Procedure, this program required litigants to submit their cases to non-binding or "judicial" arbitration. Currently, all cases involving money damages of $50,000 or less (except so-called small claims of up to $7,500) that are filed in the state's 16 largest court jurisdictions must attempt arbitration before they will be allowed to proceed to trial.[176]

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 litigation. Since this time, the use of private arbitration, mediation and other forms of ADR in the business setting has risen dramatically, accompanied by an explosion in the number of private firms offering ADR services.[177]

3.0 Adoption of Court-Annexed Mediation in Tanzania

During his many visits to the United States of America, the late Chief Justice Nyalali learnt about the practice of ADR Mechanisms in the Superior Court of Washington D.C. The idea appealed to him; and so in 1993, he invited two Judges from the Superior Court of Washington D.C. to attend a Judges' Conference held at Arusha from 19th to 23rd April, 1993.[178] At that Conference, the two American Judges presented papers on the operation of Alternative Dispute Resolution Mechanisms as practiced in the United States of America and in their Court in particular. At the end of that Conference, it was resolved that efforts should be made to find out form of ADR that would suit Tanzanian circumstances.[179] In 1994, ADR in the form of mediation, negotiation and arbitration was adopted and incorporated into the Civil Procedure Code (CPC)[180] through the Government Gazette.[181]

4.0 Mediation and its Purpose

Generally, mediation is the most important dispute resolution mechanism within the collective term known as ADR (Alternative Dispute Resolution) which encompasses innovative modes of dispute resolution as an 'alternative' to traditional litigation.[182] Boulle and Rycoft[183] defines mediation as a decision-making process in which the parties are assisted by a third party – the mediator, who attempts to improve the process of decision making and to assist parties

174 Warren Burger, "Isn't there a Better Way? 'accessed at http://www.jstor.org/page/info/about/policies/terms.jsp
175 *Ibid.*
176 *Ibid.*
177 See http://www.metros.ca/amcs/international.htm, accessed on 30/03/2014.
178 See the Training Manual, the Judiciary of Tanzania, at p. 3.
179 *Ibid.*
180 Order VIIIC of the Civil Procedure Code Act, [Cap. 33 R. E. 2002].
181 *GN.No.422 of 1994.*
182 See http://www.metros.ca/amcs/international.htm, accessed on 30/03/2014.
183 Boulle, L.& Rycoft, A., *Mediation Principles, Processes, Practice,* London: Butterworths,1997.p. 3.

reach an outcome to which each of them can assent.[184] In Foberg and Taylor[185] a statutory definition of mediation is given by the Australian Family Law Rules. Mediation is considered as a decision-making process in which the approved mediator assists the parties by facilitating discussions between them so that they may communicate with each other regarding the matters in dispute. The aim is to find satisfactory solutions which are fair to each of the parties and reach agreement on matters in dispute.

The main purposes of mediation are to: promote access to justice, promote restorative justice, and preserve relationships between litigants or potential litigants which may become strained or destroyed by the adversarial nature of litigation. It also facilitates an expeditious and cost-effective resolution of a dispute between litigants or potential litigants and assist litigants or potential litigants to determine at an early stage of the litigation or prior to commencement of litigation. It also dispenses with litigation procedure and rules of evidence; and provides litigants or potential litigants with solutions to the dispute, which are beyond the scope and powers of judicial officers.[186] In canvassing for the use of ADR, and particularly mediation as a tool for case management H.J. Brown and A.L. Marriott[187] posits that the primary case rests on the broad principle that resolution of dispute by consensus and by compromise contributes to the wellbeing of the society as a whole.

The English Courts' firm commitment to mediation was reinforced in the immediate aftermath of *Cable & Wireless v. IBM United Kingdom Ltd*[188] where the qualitative shift in resolution through mediation was recognized by Colman J. when he asserted that:

> 'mediation as a tool for dispute resolution is not designed to achieve solutions which reflect the precise legal rights and obligation of the parties but rather solutions which are mutually commercially acceptable at the time of the mediation.'

In *Dunnett v. Railtrack plc,*[189] one of the earliest decisions on the subject, the Court of Appeal deprived the successful defendant of its award for costs because it had turned down the defeated plaintiff's earlier offer to mediate a decision which came as a shock to many at the time. In *Halsey v. Milton Keynes General NHS Trust*[190] it was reiterated that a winning party (at trial) could forfeit its costs award if the losing party demonstrated that its opponent had "unreasonably" refused to mediate. When deciding whether a party had

184 *Ibid*.
185 Foberg J. &Taylor A., *A Comprehensive Guide to Resolving Conflict Without Litigation,* 1984, p. 7.
186 Boulle, L. & Rycoft, A., *Mediation Principles, Processes, Practice,* London: Butterworths, 1997. P.6.
187 Brown, H.J. & Marriott, A.L. *ADR: Principles and Practice*, 2nd Ed.., London: Sweet & Maxwell, 1999, p. 24.
188 [2003] EWHC 316.
189 [2002] 2 All ER 850.
190 [2004] EWCA Civ 576.

acted unreasonably the court must remember the benefits of mediation over litigation and consider all the circumstances of the case, including the nature of the dispute; the merits; the extent to which other settlement methods had been attempted; and whether mediation had a reasonable prospect of success.[191]

5.0 Private and Court Annexed Mediation

There are two types of mediation, namely; private mediation and court-annexed mediation.[192] Firstly, private mediation services are those offered on a fee-paying basis by mediators independently of courts, government agencies or community organization whose fees are generally determined by market forces.[193] In private mediation, the parties choose their own mediator. In some countries like South Africa, some organizations such as the Alternative Dispute Resolution Association of South Africa (ADRASSA), Africa Centre for the Constructive of Disputes (ACCORD), Community Conflict Resolution Services (CCRS) and Mediation and Conciliation Center (MCC) provide mediation services and some have their own contract clauses, mediation agreements and codes of conduct.[194] They assist parties to get to the mediation table by arranging premises and offer a panel of mediators.

Secondly, Court-Annexed mediation is that which specifically ordered by the Court.[195] It can also mean mediation which is directed, encouraged or promoted by the courts in the context of anticipated or ongoing litigation.[196] In court-annexed mediation, the parties to a pending case are directed by the court to submit their dispute to a neutral third party (the Mediator), who works with them to reach a settlement of their controversy. The Mediator acts as a facilitator for the parties to arrive at a mutually acceptable arrangement, which will be the basis for the court to render a judgment based on a compromise.[197] Tanzania has preferred court-annexed mediation in which a mediator is appointed by the Judge in-charge or the Magistrate in-charge of the court in which the suit has been filed.[198] This article focuses on the court-annexed mediation. In the Court-annexed mediation, the court as a part and parcel of the same judicial system provides services.

6.0 The Practice of Court-Annexed Mediation in Tanzania

In a court-annexed mediation, after a civil suit is filed and pleadings are complete, parties are referred to a mediator who is a judge or magistrate. The mediator will cause the parties to appear before him or her for the purpose of

191 *Ibid.*
192 Boulle, L. & Rycoft, A., *op.cit*. p. 56.
193 *Ibid*.
194 *Ibid*.
195 See http://adrr.com/adr2/essayq.htm, accessed on 30/03/2014.
196 Meggit, G., "The Case For (and Against) Compulsory Court-Annexed Mediation in Hong Kong", Asian Law Institute (ASLI) Conference, Singapore, May 2008, accessed at **http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2290134** on 29/03/2014.
197 See http://attylaserna.blogspot.com/2008/07/court-annexed-mediation.html accessed on 29/03/2014.
198 The Author of this Article was a Resident Magistrate from 1999 to 2011 and in that capacity he participated in a series of ADR trainings organized by the Judiciary of Tanzania.

attempting a settlement and in the event mediation fails, the file is returned to the Judge In-charge or magistrate in-charge for assignment to the trial judge or magistrate. There is no any specific standard and authoritative document detailing procedures to be followed in the conduct of mediation in Tanzania. There is only a Training Manual prepared by Judges and Magistrates who attended a short cause in the US. The Manual provide the procedures to be followed by the mediators in the conduct of the mediation, skills required and ethical issues. A detailed discussion on the content of this training Manual and procedures is outside the scope of this article.

Despite having the Manual as guiding post on the conduct of mediation, a number of judges and mediators lack necessary skills for a successful mediation. Consequently, it is common to hear mediators asking questions like: "why don't you settle this matter? What does the plaintiff want? What is the defendant going to offer? The mediator may render the following advice to the parties: "go and try to have a talk with your partner, discuss with him to meet a consensus and when we meet next time come with proposals."[199]

The Author of this article is of the strong view that the above kind of practice in mediation is not proper as it returns the process to the parties who had failed to reach an agreement prior to filing the case in Court. As a result, many cases fail in mediation, not because parties are not willing to settle but they lack the services of the qualified mediators to facilitate the process.

7.0 Shortcomings of the Court Annexed-Mediation in Tanzania

7.1 Overview

There is a general consensus that the court-annexed mediation has failed to achieve its objective of reducing the backlog of cases in courts. According to the Law Reform Commission of Tanzania, the civil justice system is slow as there are weaknesses in ADR. Justice Mohamed Chande, the Chief Justice of the United Republic of Tanzania, in his key note speech on the occasion of opening the Annual General Meeting and the Conference of the Tanganyika Law Society in February 2012, lamented that Tanzania has not scored high or even moderate success rate envisaged under the Court-annexed mediation.

7.2 Mandatory Nature of the Court-Annexed Mediation

The practice shows that parties who have found themselves in the process without their free will tend to avoid mediation by not attending the court. After several adjournments, the mediator is forced to record that mediation has failed. According to the Law Reform Commission paper,[200] mandatory mediation has been pointed out as a contributory factor to delay of cases when parties grant it half-hearted support and thus attend mediation just as a matter of procedure. It is for this reason that the Global Justice recommend amendments to the Civil Procedure Code Order VIIIA to give powers to

199 Mkumbukwa, N., "The Impact of Pre-Trial Protocols and Alternative Dispute Resolution Mechanisms in the Expeditious Disposal of Civil Suits". A Thesis submitted in partial fulfillment of the requirements for Degree LL.M of the University of Dar es Salaam, 2009, p. 122.

200 Law Reform Commission Paper on Civil Justice Review.

the Presiding Judge or Magistrate to refer the matter for settlement after consultation with the parties or their recognized agents or advocates before an ADR practitioner not being a serving judicial officer.

In a similar manner and for the sake of assuring voluntariness in the mediation process, the South African Draft Rules of Mediation provide that a party desiring to submit a dispute to mediation prior to commencement of litigation must make a request in writing in accordance with Form 1, to the dispute resolution officer of the court which would ordinarily have jurisdiction to hear the matter if litigation was instituted.

In Lesotho, for example, once a case file is opened and the pleadings are completed, each party includes a brief statement indicating whether that party consents to or opposes a referral of the dispute to mediation under the Court-Annexed Mediation programme. If a party opposes the referral to mediation, then upon proper cause being shown by that party the Mediation Administrator makes a recommendation on that party's motion for exemption from mediation under the Court-Annexed Mediation Rules.[201]

7.3 Lack of Guidelines and/or Rules to Regulate the Court-Annexed Mediation in Tanzania

Apart from Order VIIIA, VIIIB, VIIIC of the Civil Procedure Code Act, there are no standard guidelines for court-annexed mediation. Currently, the Judiciary is using the Training Manual which was prepared by judges and magistrates who attended the training on mediation in America. In view of the fact that the Manual is not an authority and does not have any force of law, it is proposed that rules or standard guidelines should be promulgated for the purpose of guiding mediation processes in Tanzania.

Having such rules and guidelines is common in many jurisdictions, including the US. A good example of such rules can be found in Mississippi. These rules govern issues like policy, cases appropriate for referral to mediation, authority to settle, sanctions, confidentiality of communications in mediation, effect of written agreement to settle, costs of mediation and administrative functions in relation to mediation.[202]

The rules should provide for qualifications of mediators, competence, skills required, ethical issues and standard procedures for a smooth flow of a mediation process, time limit within which a case should be mediated and sanctions for avoiding mediation or failure to appear the date when the mediation is scheduled. The Law Reform Commission suggests that, rules should be adopted allowing the court to take into account the parties' pre-action conduct when making case management and costs orders and to penalize unreasonable non-compliance with pre-action protocol standards.[203]

201 See http://www.lesotholii.org/content/part-i-introduction-court-annexed-mediation-high-court-and-commercial-court-lesotho accessed on 30/03/2014.

202 See Court Annexed Mediation Rules for Civil Litigation, accessed at https://courts.ms.gov/rules/msrulesofcourt/court_annexed_mediation.pdf.

203 See The Law Reform Commission Paper entitled "the Review of the Civil Justice System" accessed at *www.lrct.go.tz/download/civil-justice-review-positin.../positioncivil.pdf.*

7.4 Judges and Magistrates Acting as Mediators

As pointed out above, the court-annexed mediation programme in Tanzania makes use of judges and magistrates as mediators. This practice has highly been criticized as being one of the causes of ineffectiveness of ADR in Tanzania. On of such critics is Cross who[204]advances two reasons for not proposing judges to be mediators. First, Judges make poor mediators, so used to decision making and adjudication they have great difficulty patiently watching a non-interventionist process unfold. Secondly, they are already grossly overburdened.[205] In agreement with the second reason, Malata, G.,[206] poise that "magistrates and judges have a lot of judicial responsibilities falling under civil and criminal matters."

The Law Reform Commission of Tanzania puts it that the unpopularity of mediation in Tanzania is attributed to the fact that the same is court-annexed and that the dual functions of judges and magistrates as mediators and adjudicators is not easily distinguishable in the eyes of litigants. According to the Judge in Charge of the Commercial Division of the High Court (Judge Robert Makaramba), while it's difficult to demonstrate any definitive results of the court-annexed mediation, some tentative conclusions can be drawn including the fact that judges don't necessarily make good mediations - their approach tends to be 'rights-based' and although there is no reliable data so far anecdotal evidence show that their failure rate (in the sense of not getting settlement) is rather high.[207]

It is recommended that the ADR mechanism in Tanzania should remain court-annexed. However, the introduction of a model which sees cases referred to mediators who are not serving Judges or Magistrates should be considered. It is appreciated that this initiative would have cost implications and if adopted, this model should still require the court to determine if a case is amenable for mediation, refer cases to the mediators and make enforcement determinations if required.

The role of judges should be to refer parties to the proposed centre, which would have many doors – arbitration, conciliation, mediation, negotiation and early-neutral evaluation depending on the choice of the parties and the nature of the dispute.

7.5 Lack of an Institution to Provide Mediation Services which is Separate from Courts

Robert[208] correctly of the view that institutionalized ADR distanced from

204 See Cross, A., "Mediation – A Solution for the Legal Sector Crisis" Lecture given to Strathmore University: 2004. (Accessed at http://www.disputeresolutionkenya.org/pdf/Mediation_A%20solution%20for%20 the%20Legal%20Sector%20Crisis.pdf, on 2/01/2014). One of such critique is Cross, A., who pointed categorically that "let us not make the mistake of Tanzania by thinking that it is the Judges who should become the Mediators."

205 *Ibid*.

206 See Malata, G., "Is it Possible for Alternative Dispute Resolution to Take Lead over Litigation in Tanzania?" A Thesis submitted in partial fulfillment for the requirements of Degree LL.M of the University of Bagamoyo, 2013, p.25.

207 Global Justice Report on ADR, P. 30.

208 Roberts, S., "Mediation in Lawyer's Embrace", *55 Modern Law Review*, 1992, p. 258.

the courts is the best and appropriate approach for successful mediation. In line with this advice, it is recommended that there should be established a separate centre to handle all types of ADR to be funded by the Government in Tanzania. The centre should work under the supervision of the Judiciary. Jurisdictions like America, India, Kenya and Philippines, to mention a few, have this kind of centres.

Lack of skills on the part of mediators in Tanzania has attributed to the failure of mediation in Tanzania. The Centre should have well trained mediators who may be retired judges and other public servants, senior advocates and other members of the public with high reputation and integrity. The centre should have a policy and guidelines governing all issues related to ADR.

7.6 Conducting Mediation while Pleadings and Interlocutory Hearings are completed

Another shortcoming of the court annexed mediation as practiced in Tanzania is that it cannot be accessed without adhering to normal court procedures such as filing pleadings, paying court fees, presentation and hearing of preliminary applications. This practice is not conducive because by the time a litigant is required to mediate, he/she has spent a considerable amount of money. It is recommended that litigants should not be forced to prepare pleadings prior to mediation. The proposed centre should receive requests for either, arbitration, mediation, conciliation and proceed to handle the requests by issuing notice to the other party to appear before the mediator who the parties will choose. In the event ADR fails, the centre should prepare a report and the same is used to receive a dispute in court.

In England for instance, Lord Woolf asserted in his Interim Report that:

> 'Where there exists an appropriate dispute resolution mechanism which is capable of resolving a dispute more economically and efficiently than court proceedings, then the parties should be encouraged not to commence or pursue proceedings in court until after they had made use of that mechanism'.

It is important however to point out an important feature which is now reflected in the CPR rules R1.4(2) and R26.4 - the stay of Court proceedings in favour of settlements proposed *motu proprio,* i.e. at the court's own initiative. Post-reforms Courts have now to further the 'overriding objective' by active case management, which includes the taking of initiatives in proposing ADRs. Rule 26.4 is a very effective rule and clearly reflects the reasoning outlined in the Final Report of 1996 in the following passage:

> 'The Courts will encourage the use of ADR at case management conferences and pre-trial reviews, and will take into account whether the parties have unreasonably refused to try ADR or behaved unreasonably in the course of ADR'.

This Rule found recent application by the English Courts in two landmark judgments Cowl *v. Plymouth City Council* and *Dunnett v. Railtrack*. *Dunnet* in particular, is the first reported case of a successful party [*Railtrack*] losing cost because it declined to mediate.

8.0 Conclusions

In this article, a reflection on the efficacy and efficiency of ADR was extensively discussed. The conclusion is that court-annexed mediation has not given Tanzanians the benefits it was supposed to give when it was first contemplated. ADR can dramatically increase access to justice for the most vulnerable members of society, reduce the costs of such access, and increase user satisfaction with the justice system. Due to low popularity and acceptance of ADR, the judicial process has continued to be characterized by technicalities and complex rules of evidence and procedure, excessive delays, unethical behaviors, substantial expenses to litigants and unnecessary costs on part of the judiciary, hence a total defeat of justice. Consequently, people are continuing to lose faith in the judicial process and the rate of taking recourse to extra legal remedies is likely to be a common phenomenon.

In order to revive court-annexed mediation in Tanzania, few recommendations have been advance which if followed; court-annexed mediation will be a meaningful process as it will achieve the purpose for its adoption in the civil justice system in Tanzania.

First, mediation should shift from being court-annexed to court-connected. Second, it is recommended that parties should not be forced to mediate. The process should seek to encourage parties to resolve their disputes on voluntary basis. Examples from some jurisdictions discussed above should be emulated in Tanzania. Second, guidelines and rules to regulate the mediation should be promulgated. The current practice where each judge or magistrate is conducting mediation in his/her own style unguided by any procedural rules is not healthy to a mediation process. Third, judges and magistrates should not act as mediators, for the good reasons stated above. Fourth, a separate center to provide mediation services should be established as a Government agency with rules to guide its operations. The centre proposed should have various ADR mechanisms from which litigants should choose depending on the nature and complexity of their matter. It is also this centre that will be charged with the task of training mediators and maintains a register of professional mediators. Lastly, mediation should be conducted before institution of suits. The current practice which causes parties to waste a lot of time and resources before they are referred to mediation should be discouraged. It is only after this adoption of this recommendation that ADR will become less costly and less time-consuming.