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S T A T U T O R Y I N S T R U M E N T S

2013 No. 10.

THE JUDICATURE (MEDIATION) RULES, 2013.

Rule

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S T A T U T O R Y I N S T R U M E N T S

2013 No. 10.

The Judicature (Mediation) Rules, 2013.

(Under section 41 of the Judicature Act, Cap. 13)

IN EXERCISE of the powers conferred on the Rules Committee by section 41 of the Judicature Act, these Rules are made this 1st day of February, 2013.

1. Title.

These Rules may be cited as the Judicature (Mediation) Rules, 2013.

2. Application.

These Rules apply to all civil actions filed in or referred to the High Court and any subordinate to the High Court.

3. Interpretation.

In these Rules, unless the context otherwise requires—

“authorised court officer” means a person authorised to deal with mediation matters in any court subordinate to the High Court;

“CADER” means the Center for Arbitration and Dispute Resolution established under the Arbitration and Conciliation Act;

“civil action” means a civil proceeding commenced in any manner prescribed but does not include a civil action commenced under the Judicature (Small Claims Procedure) Rules, 2011;

“committee” means the monitoring and evaluation committee constituted under rule 21;

“court” means a court exercising civil jurisdiction;

“currency point” means twenty thousand shillings;

“mediation” means the process by which a neutral third person facilitates communication between parties to a dispute and assists them in reaching a mutually agreed resolution of the dispute;

“mediator” is a person eligible to conduct mediation under these Rules;

“registrar” includes a deputy registrar, assistant registrar or district registrar;

“magistrate” includes a Chief magistrate, magistrate Grade I and a magistrate Grade II.

4. Reference to mediation.

(1) The court shall refer every civil action for mediation before proceeding for trial.

(2) Where a civil action has a question of law which may dispose of the civil action the registrar or authorised court officer shall refer the civil action to a Judge or Magistrate, whichever applies, for determination.

5. Case summary

(1) A party to a civil action shall file a case summary.

(2) The case summary shall be filed with the court at the time of filing pleadings

(3) A case summary shall include the following—

- (a) the names of the parties;
- (b) the address of the parties including postal, fax, telephone and email addresses;
- (c) the facts giving rise to the civil action and the defence to the facts;
- (d) the name and address of the advocate of the party, if any;

- (e) the person with full authority to sign a settlement;
 - (f) the name of the person who will be the lead negotiator for the party;
 - (g) the name of the proposed mediator, if any; and
 - (h) the documents that the parties intend to rely on at the mediation.
- (4) The court shall ensure that all parties comply with subrule (3).

6. Mediator may request additional information.

Where the mediator is of the opinion that any information in the possession of a party to the mediation may facilitate the reaching of a settlement the mediator may request that party to disclose that information in confidence to the mediator.

7. Notification to parties of mediation.

(1) The court shall, within fourteen days after pleadings are complete, notify the parties of the commencement date of the mediation sessions.

(2) The notice under subrule (1) shall be Form 1 set out in Schedule 1.

8. Time limits for conclusion of mediation.

(1) A civil action referred to mediation under these Rules shall be concluded within sixty days after the mediator commences mediation.

(2) Notwithstanding subrule (1) the parties may where there is a likelihood of settlement of the civil action agree to an extension of time not exceeding ten days.

9. Mediators.

(1) Mediation under these rules may only be conducted by—

- (a) a Judge;
- (b) a registrar;

- (c) a magistrate;
- (d) a person accredited as a mediator by the court;
- (e) a person certified as a mediator by CADER; or
- (f) a person with the relevant qualifications and experience in mediation and chosen by the parties.

(2) Where a person is chosen as a mediator by the parties under subrule (1) (f), it shall be the responsibility of the parties to pay the fees of that mediator.

10. Failure of mediation conducted by Judge, registrar or magistrate.

Where a judge, registrar or magistrate acts as a mediator under these Rules and the mediation is unsuccessful, the judge, magistrate or registrar shall immediately cease to take part in any further proceedings relating to that civil action.

11. Role of registrar or magistrate responsible for mediation.

The registrar, magistrate or authorised court officer responsible for mediation in a court shall make arrangements necessary for mediation including—

- (a) setting dates for mediation hearings;
- (b) organising a suitable venue for mediation sessions;
- (c) organising exchange of the case summaries and documents by parties; and
- (d) assisting with the general administration of mediation.

12. Participation of children and other persons in mediation.

(1) A child or any other person having an interest in mediation may, with the consent of the parties, participate in that mediation.

(2) Where the parties do not consent to having the child or other party participate in mediation, the mediator may, where he or she considers it fit, meet with the child or other party.

(3) The mediator may determine how mediation is to be conducted but where the mediation involves a child the mediator shall ensure that the mediation is conducted in a manner that considers the health, safety, welfare and the best interest of the child.

(4) For the purposes of subrule (3) best interests of the child shall be ascertained in accordance with the principles set out in the First Schedule to the Children Act.

13. Suspension of mediation.

(1) Where an allegation of child abuse, child neglect, domestic violence or any kind of criminal conduct is made in mediation the mediator shall report the allegation to the court for appropriate action.

(2) The mediator may, in addition to reporting the allegation of child abuse, child neglect or criminal conduct under subrule (1), suspend the mediation where he or she considers it fit.

(3) A mediator shall not suspend mediation under subrule (2) if there are other issues for mediation other than the allegation of child abuse, child neglect or criminal conduct.

14. Failure of party to attend and costs.

(1) Where it is not practicable to conduct a scheduled mediation session because a party fails to attend, the mediator may adjourn the mediation session to another date.

(2) Where a party, without good cause, fails to attend a mediation session that party shall pay five currency points to the other party as adjournment costs.

(3) A certificate of the mediator setting out the adjournment costs, in these Rules referred to as the Certificate of Non Attendance, shall be taken to be an order of the court and shall not be subject to appeal except as part of a general appeal at the conclusion of the civil action.

(4) The Certificate of Non Attendance shall be in Form 2 set out in Schedule 1.

15. Report of mediator.

(1) A mediator shall, within ten days after concluding mediation, submit to the registrar, magistrate or responsible officer a report of that mediation.

(2) The Report of the mediator shall be in Form 3 in Schedule 1.

16. Agreement resolving part or all issues of dispute.

(1) Where the parties resolve some or all the issues that are the subject of mediation, the parties shall enter an agreement setting out the issues on which they agree.

(2) The agreement under subrule (1) shall be in writing and signed by the parties.

(3) The agreement shall be filed with the registrar, magistrate or authorised court officer responsible for mediation in the court.

(4) The agreement filed with the registrar, magistrate or authorised court officer responsible for mediation under subrule (3) shall be endorsed by the court as a consent judgment.

(5) Where there is no agreement on all the issues subject to mediation, the mediator shall refer the matter to the court.

17. No appeal from orders under these Rules.

There shall be no appeal to any order granted under these Rules except as part of a general appeal at the conclusion of the civil action in respect of that mediation.

18. Confidentiality.

(1) The mediator and the parties to mediation shall treat as confidential information obtained from or about the parties in mediation and shall not disclose that information unless required by law to disclose or the parties give consent in writing to the mediator to disclose.

(2) Subrule (1) does not apply to any information, which would in any case be required to be disclosed in proceedings in the main suit or an application arising out of the suit.

(3) A party to mediation under these rules shall not compel the mediator or employee, officer or representative of CADER to appear as a witness, consultant, or expert in any litigation or other proceedings related to the mediation.

19. Adherence to guidelines for mediators.

A person who conducts mediation under these Rules shall adhere to the guidelines for mediators set out in Schedule 2.

20. Costs.

(1) Each party to mediation shall bear its own costs of participation in the mediation under these Rules unless the parties agree otherwise.

(2) For the avoidance of doubt adjournment costs provided for under rule 14 are not to be taken as costs of participation in mediation and the liability to pay adjournment costs is not affected by subrule (1).

21. Monitoring and evaluation committee.

(1) There is constituted a committee to be known as the monitoring and evaluation committee.

(2) The committee shall consist of the following—

- (a) the Principal Judge;
- (b) the head of the Civil Division of the High Court;
- (c) the head of the Family Division of the High Court;
- (d) the head of the Commercial Division of the High Court;
- (e) the head of the Land Division of the High Court;
- (f) the Chief Registrar or his or her representative;
- (g) the Solicitor General or his or her representative;

- (h) the President of the Uganda Law Society or his or her representative;
- (i) the Executive Director of CADER or his or her representative;
- (j) the registrar responsible for mediation;
- (k) a representative of court accredited mediators appointed by the mediators from among their number; and
- (l) four Chief Magistrates appointed by the Chief Registrar.

(3) The chairperson of the committee shall be the Principal Judge and in the absence of the Principal Judge, the most senior Judge among the members of the committee shall be the chairperson.

(4) The registrar shall be the secretary of the committee.

(5) The registrar shall, in consultation with the chairperson, convene every meeting of the committee at times and places as the committee may determine, and the committee shall meet for the discharge of business at least once in every three months.

(6) The registrar may, at any time, convene a special meeting of the committee and shall also call a meeting within fourteen days, if requested to do so in writing by at least five members of the committee.

(7) Notice of a committee meeting shall be given in writing to each member at least fourteen working days before the day of the meeting.

(8) The chairperson shall preside at all meetings of the committee, and in his or her absence the most senior judge acting as chairperson under subrule (3) shall preside.

(9) At every meeting of the committee five members shall constitute a quorum but at least one member constituting the quorum must be a judge.

(10) The committee shall regulate its own procedure for meetings or any other matter relating to its meetings.

22. Duties of committee.

The committee shall have the following duties—

- (a) to monitor and evaluate the performance of mediation; and
- (b) make proposals to the Rules Committee for the better implementation of mediation under these Rules.

23. Revocation of SI No 55 of 2007.

The Judicature (Commercial Court Division) (Mediation) Rules, 2007, SI No. 55 of 2007, are revoked.

SCHEDULE 1

FORM 1

rule 7 (2)

THECOURT AT.....

PLAINTIFF/APPLICANT

Versus

DEFENDANT/RESPONDENT

MEDIATION No.....

(Arising out of)

NOTICE OF COMMENCEMENT OF MEDIATION SESSIONS

To:.....

NOTICE IS GIVEN that the above cause has been scheduled for mediation and the mediation sessions shall commence on the day of.....20..... at O'clock.

Signed and sealed by me this day of 20.....

.....

Registrar/Magistrate

THECOURT

PLAINTIFF/APPLICANT

Versus

DEFENDANT/RESPONDENT

MEDIATION No.....

(Arising out of)

CERTIFICATE OF NON ATTENDANCE

This document is not part of the Court record.

It is not to be filed with Court

It shall only be filed in court to recover adjournment costs imposed by a neutral person

To:

The Registrar,

I, (name of mediator) certify that this Certificate of Non-Attendance is filed because.....(name of party) failed to attend a scheduled mediation session on theday of20....

Hence [Name of party] is hereby directed to pay the adjournment costs five currency points on theday of20.....

DATED AT this day of20.....

Respectfully submitted by:.....

(Name, address, telephone number and fax number, if any, of the Mediator)

.....

Mediator

THE.....COURT OF UGANDA AT.....

REPORT OF MEDIATOR

CASE FILE NO:

MEDIATION CAUSE FILE

NO:.....

NAME OF PLAINTIFF:

NAME OF DEFENDANT:.....

NAME OF JUDGE:.....

NAME OF ADVOCATE FOR PLAINTIFF:

NAME OF ADVOCATE FOR DEFENDANT:

Pursuant to Rule 4 (1) of these Rules; parties were referred to me for mediation. The mediation was conducted which resulted in the following:

FIRST HEARING	SUBSEQUENT HEARING	OTHERS REMARKS
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Therefore this file is: (a) closed (b) closed as to the settled areas and returned for Scheduling Conference as to the unsettled areas (c) Returned for Scheduling Conference (Tick whichever is appropriate)

Dated this day of20...

.....

Mediator

SCHEDULE 2

rule 19

Guidelines for mediators

1. Purpose.

The purpose of these guidelines for mediators is—

- (a) to provide an ethical guide for the actions, behaviour and decisions of mediators;
- (b) to provide guiding principles for the conduct of mediation; and
- (c) to promote confidence in mediation as a process for resolving disputes.

2. Guiding principles for mediators.

A mediator shall strive to facilitate and control the process of mediation while encouraging and assisting the parties—

- (a) to reach a settlement;
- (b) to appreciate the mediation process;
- (c) to understand the rules to be followed during the mediation process;
- (d) to understand the role of the mediator, the parties and others who attend mediation;
- (e) to actively participate in the mediation process;
- (f) to clarify and define the issues to be mediated;
- (g) to determine whether and how to resolve their dispute;
- (h) to identify what information and documents would help to resolve the dispute and how best such documents can be obtained;

- (i) to communicate and negotiate fairly and in good faith all the parties to the mediation;
- (j) to convey their interests to one another and explore possible settlement options;
- (k) to consider the risks and the strengths and weaknesses of their case;
- (l) to reach an informed decision about the dispute;
- (m) to produce a written report on the outcome of the mediation session;
and
- (n) to prepare or assist in the preparation of an agreement where the parties have settled the dispute.

3. Fairness and impartiality of mediator.

(1) The mediator must endeavour to act fairly towards the parties in the mediation.

(2) A mediator must be impartial and must not have any bias in favour of any party or discriminate against any party.

(3) Where the mediator believes that one party is abusing the mediation process or that there is a power imbalance which may affect the possibility of a mutually acceptable resolution, it is the mediator's responsibility to try and balance the power and ensure that the process is conducted fairly.

4. Conflict of interest.

(1) A mediator shall disclose to the parties to the mediation any matter which could be regarded as a conflict of interest.

(2) The mediator shall disclose the conflict of interest as soon as the conflict of interest arises which could be prior to or during the mediation.

(3) A conflict of interest may be apparent, potential or actual.

(4) A mediator shall not act or continue to act in mediation where he or she has a conflict of interest unless all the parties specifically acknowledge the

disclosure and agree in writing to the mediator acting or continuing to act as mediator.

5. Separation of mediation from legal advice and counseling.

A mediator must refrain from giving legal advice or counseling during the mediation process.

6. Behavior of mediator.

(1) A mediator shall always conduct himself or herself in a manner so as to reflect credit to the court.

(2) Without limiting the generality of subrule (1) a mediator must—

- (a) act within the law and uphold the law;
- (b) act honestly, professionally and with integrity;
- (c) not abuse his or her position or connection with the court;
- (d) conduct himself or herself in a manner that promotes diligence, timeliness and mutual respect among the participants;
- (e) respect the parties during mediation;
- (f) present himself or herself in appropriate formal attire;
- (g) not act outside his or her level of competence;
- (h) maintain his or her professional competence and skill by continuing to educate themselves on the mediation process; and
- (i) avoid any appearance of disagreement with or criticism of a fellow mediator to the public.

Cross References

Arbitration and Conciliation Act, Cap.4

Children Act, Cap 59

Judicature Act, Cap. 13

Judicature (Small Claims Procedure) Rules, 2011, SI No. 25 of 2011

B. J. ODOKI,
Chief Justice, Chairperson of Rules Committee.