IAA Journal of Management 11(1):20-24, 2024.
©IAAJOURNALS
https://doi.org/10.59298/IAAJAM/2024/111.2024.00

www.iaajournals.org
ISSN: 2636-7300
IAAJAM:111.2024.00

The Potency of Alternative Dispute Resolution in Resolving Ugandan Civil Disputes: A Comprehensive Examination and Recommendations

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ABSTRACT

Alternative Dispute Resolution (ADR) has gained significant traction globally as a preferred method for resolving conflicts outside traditional litigation processes. In Uganda, the legal community has embraced ADR due to its potential benefits in expediting conflict resolution and reducing costs. This study delves into the efficacy of ADR in the Ugandan context, employing a documentary research approach to analyze various sources including legal texts, journals, and essays. It explores the historical background of ADR, its conceptual framework, and its integration into the Ugandan legal system. The study highlights the success of ADR initiatives, such as mandatory mediation in commercial courts, and proposes recommendations for further enhancing its utilization. These recommendations include empowering corporate directors to handle employee disputes through ADR, expanding mediation to include personal injury claims, and making ADR a prerequisite for litigation in civil cases. The findings underscore the potential of ADR to alleviate case backlogs, improve access to justice, and foster a fairer and more efficient legal system in Uganda.

Keywords: Advocates, Alternative dispute resolution, Civil disputes, Potency, Ugandan legal system

INTRODUCTION

When it comes to resolving conflicts between two or more parties, litigation has been the most popular approach for the previous century. But this approach has often demonstrated its severe shortcomings [1]. Litigation has frequently resulted in cumbersome, costly, erratic, and archaic methods of resolving conflicts [2]. Because of this, the legal system and society at large have looked for alternatives to traditional dispute resolution techniques, or alternative dispute resolution methods (ADR) [3]. Alternative Dispute Resolution is the term for a collection of procedures and methods designed to enable the settlement of legal disputes out of court [4]. ADR is currently being used more frequently in Uganda, with arbitration and mediation being particularly popular [5]. A pilot project was established in 2003 to test mandatory mediation in commercial courts. Cases were referred to the Centre for Arbitration and Dispute Resolution (CADER), which provided mediation training to recent college graduates and whose rulings were enforceable by the law [6].

445 out of the 778 instances that were referred for mediation were successfully mediated, indicating the program's efficacy [7]. Owing to the program's effectiveness, mandatory mediation guidelines were implemented especially for the commercial court in 2007. With the publication of the mediation rules in 2013, it was decided to expand mediation to other courts in light of the commercial court's remarkable success story [7]. The newest type of alternative dispute resolution (ADR) was introduced in 2017 when "Appellant Mediation" was introduced to the court of appeals. In order to defeat the backlog and improve access to justice, it is crucial that everyone accept mediation and other mechanisms.

Because the commercial sector is so important for growing companies that generate opportunities for business and shared wealth, as well as for fostering competition in the market that raises the standard of goods and services [8], if it had access to a suitable dispute resolution procedure, this may help with better corporate governance, which in turn could help with overcoming one of the challenging issues that small and developing businesses experience in particular. In the case that an unsuitable conflict resolution process is selected, this could lead to astronomical expenses,

but more significantly, it could be perceived as obstructing the parties involved from obtaining access to justice [9]. This study explores the potency of ADR in resolving Ugandan civil disputes.

Conceptual view of ADR

Alternative dispute resolution (ADR) is defined by Mnookin [11] as a collection of procedures and methods intended to enable the settlement of legal issues outside of the judicial system. ADR is the practice and methodology of alternative dispute resolution (ADR), which includes arbitration, mediation, conciliation, negotiation, and a number of "hybrid" methods in which an impartial third party helps resolve legal problems without resorting to formal adjudication [10].

For Florence [12], ADR is a voluntary, informal, consensual, fully secret, and nonbinding technique for resolving disputes when the parties are assisted in reaching a negotiated settlement by an impartial third party. In order to let disputing parties voluntarily reach their own mutually acceptable settlement of the topics in dispute, it is necessary for an acceptable, impartial, and neutral third party to intervene in a dispute or negotiation. This third party must not have the authority to make decisions [12].

In the words of Hon. Justice Geoffrey [13], ADR is an organised negotiating process in which the disputing parties work out a settlement on their own with the assistance of a neutral third party who has received ADR training. ADR is not as novel as it may seem in African culture, where the appointment of a third-party mediator is still based on that person's reputation and social standing [13]. Decisions made with the help of a third party are typically universally supported in the community and carried out in good faith. Under the continental law, the court system has long upheld the ideas of "ex aequo et bon" (in justice and good faith) or "amicable composition," in which a decision is made based on what seems to be just as fair and reasonable as opposed to what is legally required.

According to Mwenda [14], litigation was the conventional method of resolving disputes and was becoming expensive, time-consuming, and onerous. In contrast, alternative dispute resolution was created as a substitute for litigation. The author [14] equally noted that ADR has demonstrated that occasionally, litigation is an arduous and apparently never-ending process. There have been numerous serious complaints raised about the escalating costs and fees associated with litigation, the delays in court proceedings, traffic jams, overly legalistic procedures, and the intimidating environment in courtrooms. Furthermore, it has been determined that the adversarial style of litigation, characterised by its "win all or lose all" approach, is not conducive to sustaining corporate or social relationships [15]. All of these elements have, in part, led to plaintiffs' anxieties during litigation.

Due to this situation, disputants and other stakeholders are becoming less satisfied with the legal system, which has prompted the creation of more adaptable dispute resolution procedures. More so, the modern corporate world's growing globalisation has also contributed to the emergence of more adaptable dispute resolution procedures that offer an alternative to court-based litigation governed by the laws and precedents of a certain state or nation [15]. In addition, during the last ten years of the 20th century, the legal profession underwent significant change. Notably, advocates' interest in alternatives to traditional court litigation—which settles disputes for their clients more quickly, affordably, and with better outcomes and fewer risks—has grown. ADR is based on the consensus principle. It is non-authoritarian and functions within the confines of a particular community's structure in accordance with the norms that are more prevalent there [13].

Mushamba [15] looks at the cultural background of alternative dispute resolution in Africa, and considers the significance of Ubuntu in African conflict resolution by highlighting the importance of alternative dispute resolution (ADR) in Tanzanian civil courts, pointing out that the country's ever-increasing backlog of civil cases and large caseloads led to a demand for non-conventional means of resolving legal problems. Therefore, the main goal of implementing ADR in Tanzania was to lessen both the backlog and the hefty caseloads [15]. It was also intended to lower costs associated with pursuing litigation in legal courts and prevent needless procedural injustices common in traditional courts.

Historical Background of ADR

The concept of ADR is ancient. Many countries lack informal dispute resolution. Intermediaries mediated disputes in the Bible and Quran [16]. Egypt, Mesopotamia, and Assyria used ADR, according to archaeologists.10The court system supplanted trial by fight and trial by deal as an alternate dispute resolution procedure. The Law reform committee [17] believes one of the oldest known mediations occurred over 4,000 years ago in ancient Mesopotamia when a Sumerian monarch

prevented a war and reached a land dispute agreement.

Western ADR originated in Ancient Greece, where public arbitrators were created about 400 BC to relieve overloaded courts. India and China have traditionally used ADR. ADR was established and popularised in the US to resolve inter-racial disputes that had arisen due to the 1960s civil rights movement and the loss of faith in the court system [18]. ADR was adopted in the 1990s as part of judicial sector reforms in Africa to increase access to justice for the weak and impoverished. Since then, many countries have used ADR or similar methods in judicial reform. Nigeria uses a multi-door method. First introduced in 2002, it's unique in Africa. The multi-door method gives disputants a choice between court litigation and court-connected ADR. On average, 200 cases are mediated daily, with a 60–85% settlement rate [19]. This has led to substantial caseload reductions in formal courts in a country where judges admit 50 cases daily.

Modern ADR advocates in Europe and North America believe that mediation or mutually negotiated settlements are superior than state-imposed adjudication. State and non-state mediators can offer ADR, however the approach is an informal search for an accepted and just solution, not a winner-loser determination [19]. The contemporary ADR movement emphasises 'better' and 'non-compulsory' justice, unlike contractual forms of business ADR, which rely on binding arbitration and may prohibit court proceedings [20].

ADR is widely supported internationally, regionally, and domestically. UN General Assembly recommends Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order adopted by 7th Congress on Crime Prevention and Treatment of Offenders. These principles allow judicial systems to adopt "less costly and non-cumbersome" peaceful dispute resolution processes. In 2006, the African Commission urged State Parties to base policies and domestic legislation on the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa, adopted by the Conference on Legal Aid in Criminal Justice. This proclamation reaffirmed the right to legal aid, which includes ADR, and acknowledged traditional and community-based conflict resolution [20].

History of Court Annexed ADR in Uganda

The 1994 justice Platt report on judicial reform recommended increasing the use of arbitration and ADR alongside litigation and creating a commercial division of the high court, which led to court-based ADR in Uganda in the mid-1900s [20]. Significantly, the 1995 Ugandan constitution under article 12(2) mandated the court to apply the following principles; justice must be expedited, victims must receive adequate recompense, parties must reconcile, and substantive justice must be dispensed without regard to technicalities [21].

In 1998, the civil procedure rules were amended to include order 1 OB, which states that the courts shall hold a scheduling conference to resolve disagreements, mediation, arbitration, and other settlements. Rule 2 of order 12 of the Civil Procedure Rules states that if parties cannot agree, the court may order alternative dispute resolution before a barrister or judge, named by the court, for 21 days [21].

Court-based ADR and other laws are founded on this. Early in 2000, commercial court mediation was piloted as an alternative to litigation and solved numerous cases. Judicial officials had more time to try cases that were not susceptible to mediation, enhancing court productivity, user happiness, and confidence in the justice system. Since The Centre for Arbitration and Mediation was founded, Uganda has seen more mediation and arbitration. The commercial court provision submitted cases to CADER for mediation in 2003 and 2005. Mediation became permanent at commercial court with the 2013 judicature (mediation) regulations. The 2013 gazette of mediation regulations expanded mediation to all courts after the commercial court's success.

CONCLUSION

Any approach used to settle conflicts outside of courts is called alternative dispute resolution. Since its inception worldwide, ADR has grown exponentially, especially as part of justice sector reform. Uganda has integrated ADR into its justice delivery system as part of a broad the paper argues that ADR has reduced case backlog in the judiciary and should be encouraged to extend across all courts to ensure fair justice. ADR in Uganda has a bright future in creating a just society where disputes are resolved faster and cheaper without court settlements, and may become the standard for conflict mediation in our fast-growing, globalised country with many legal systems.

Recommendations

The study calls for corporate directors to be empowered to handle employee issues via ADR processes. Directors should handle disagreements quickly, efficiently, and successfully to maintain corporate relationships and fulfill their duty of care.

Additionally, mediation should include an apology as a resolution technique after its success in the judicial system. Furthermore, there is need to expand mediation to include personal injury claims. High resolution rates in personal injury cases suggest early neutral reviews for disagreements arising from medical care. Early neutral review of such a disagreement could give the parties with a non-binding advisory judgment on the case's merits and reality check its strengths and weaknesses. An early neutral evaluation mechanism for personal injury claims, including medical treatment claims, is needed. Finally, there is need to make ADR a pre-requisite for litigation in civil cases.

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CITE AS: Safari Edmon (2024). The Potency of Alternative Dispute Resolution in Resolving Ugandan Civil Disputes: A Comprehensive Examination and Recommendations. IAA Journal of Management 11(1):20-24. https://doi.org/10.59298/IAAJAM/2024/111.2024.00