

STATUTORY INSTRUMENTS

2007 No. 55.

THE JUDICATURE (COMMERCIAL COURT DIVISION) (MEDIATION) RULES, 2007.

ARRANGEMENT OF RULES.

Rule

1. Title.
2. Application.
3. Interpretation.
4. Evaluation committee.
5. Functions of the evaluation committee.
6. Monitoring committee.
7. Functions of the monitoring committee.
8. Mandatory reference to mediation.
9. Objection to mandatory mediation reference.
10. Exemption from mediation.
11. Time limits.
12. Considerations for extension or abridgement of time.
13. Mediators.
14. Assistance to the parties
15. Procedure at mediation.
16. Exchange of information.
17. Copy of pleadings.
18. Failure of party to attend and costs
19. Mediator's report.
20. Agreement.
21. Confidentiality.

Rule

22. Costs.
23. Forms.
24. Revocation of SI No.71 of 2003.

SCHEDULES.

FIRST SCHEDULE—ADJOURNMENT COSTS.

SECOND SCHEDULE—FORMS.

STATUTORY INSTRUMENTS

2007 No. 55.

The Judicature (Commercial Court Division) (Mediation) Rules, 2007.

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

IN EXERCISE of the powers conferred upon the Rules Committee by section 41 of the Judicature Act, these Rules are made this 26th day of February, 2007.

1. Title.

These Rules may be cited as the Judicature (Commercial Court Division) (Mediation) Rules, 2007.

2. Application.

These Rules apply to all civil actions filed in or referred to the Court.

3. Interpretation.

In these Rules, unless the context otherwise requires—

“associated person” means a person who is a partner, employee or member of a business enterprise engaged in mediation or arbitration, or a person hired by or contracted by a business enterprise engaged in mediation or arbitration ;

“CADER” means the Center for Arbitration and Dispute Resolution established by section 67(1) of the Arbitration and Conciliation Act;

“Commercial Court” means the Commercial Division of the High Court established by the Constitution (Commercial Court) (Practice) Directions;

“ Court” means the Commercial Court;

“currency point” means twenty thousand shillings;

“defence” means a defence filed in court;

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

“Registrar” means the Registrar of the Court including the Deputy Registrar or Assistant Registrar;

“Registrar Mediation” means the Registrar Mediation of CADER.

4. Evaluation committee.

(1) There shall be an evaluation committee comprising—

- (a) the Principal Judge;
- (b) the Head of the Court;
- (c) the Chief Registrar;
- (d) a representative of the Solicitor General;
- (e) the President of the Uganda Law Society;
- (f) the Executive Director of CADER;
- (g) the Registrar.

(2) The Principal Judge shall be the chairperson of the evaluation committee.

(3) The Registrar shall be the secretary to the evaluation committee.

5. Functions of the evaluation committee.

The evaluation committee shall evaluate the performance of mediation under these Rules and shall, from time to time, make proposals to the Rules Committee for changes as it may consider necessary for improving mediation under these Rules, having regard to reports and recommendations submitted by the monitoring committee.

6. Monitoring committee.

(1) There shall be a monitoring committee comprising—

- (a) the Head of the Court;
- (b) a representative of the Solicitor General;
- (c) a representative of Uganda Law Society;
- (d) a representative of the Commercial Court Users Committee;
- (e) the Registrar;
- (f) the Registrar Mediation; and
- (g) a representative of mediators.

(2) The Head of the Court shall be the chairperson of the monitoring committee.

(3) The Registrar shall be the secretary of the monitoring committee.

7. Functions of the monitoring committee

The monitoring committee shall assess the effectiveness of the operation of alternative dispute resolution under these Rules and report to the evaluation committee from time to time and make such recommendations for the improvement of mediation, as it considers appropriate.

8. Mandatory reference to mediation.

(1) A party may not opt out of mediation except where allowed by an order of the Court, if the matter is brought to the attention of the Court.

(2) In every new action filed in or referred to the Court after the commencement of these Rules, each party shall indicate in its pleadings, which category of mediator the party prefers to mediate in his or her case.

(3) Notwithstanding any rule in the Civil Procedure Rules to the contrary, appeal, review or other form of challenge shall not be permitted from a referral order of a Registrar or Judge made under these Rules referring a case to the Court for mediation.

(4) Where a matter is referred to mediation the time limits set out in rule 2(2) of Order XII (Scheduling Conference and Alternative Dispute Resolution) of the Civil Procedure Rules, or other relevant rules shall cease to run from the date of the referral order, until after the report of the neutral person has been filed in the Court upon completion of the mediation process.

9. Objection to mandatory mediation reference

(1) Where a party has opposed a reference of the matter to mediation, or the parties cannot agree on the mediator to conduct the mediation, the Registrar shall cause a notice to be issued to the parties within thirty days after the filing of the first defence, inviting the parties to attend a mediation hearing before the Registrar.

(2) At the hearing under sub-rule (1), the Registrar shall issue directions as to—

- (a) the appointment of a mediator;
- (b) the issues to be mediated;
- (c) the time within which the mediation hearing is to be completed;
- (d) the parties required to attend the mediation hearing in person and how they are to be served; and
- (e) any other matter necessary or desirable to facilitate the mediation hearing.

10. Exemption from mediation.

Where a party, by motion, shows sufficient cause to exempt a matter from mediation, or the court on its own motion so decides, the Court may make an order exempting the matter from mediation under these Rules.

11. Time limits.

(1) Mediation proceedings shall be completed within thirty days from the date of the order directing mediation; except that the Registrar may, upon proper cause being shown, extend or abridge the time within which the mediation proceedings may be commenced.

(2) The parties may, upon filing an agreement for extension of time with the Registrar, agree to an extension of the time for an additional period not exceeding thirty days.

(3) The mediator may apply to the Registrar in the prescribed form for further extension of time, at least ten days before the intended hearing.

12. Considerations for extension or abridgement of time.

In considering whether to exercise the power conferred by rule 11, the Registrar shall take into account all relevant circumstances, including—

- (a) the number of parties, the state of the pleadings and the complexity of the issues in the action;
- (b) the provisions of Order XXXV(Proceedings by Agreement of Parties) of the Civil Procedure Rules;
- (c) special case stated under any provision of the law;
- (d) whether the mediation is likely to succeed if the twenty one day period prescribed under rule 2(2) of Order XII (Scheduling Conference and Alternative Dispute Resolution) of the Civil Procedure Rules is extended to allow the parties to obtain evidence under Order XI (Consolidation of Suits) of the Civil Procedure Rules; or
- (e) whether, given the nature of the case or the circumstances of the parties, the mediation is more likely to succeed if the twenty one day period prescribed under rule 2(2) of Order XII (Scheduling Conference and Alternative Dispute Resolution) of the Civil Procedure Rules is extended or abridged.

13. Mediators.

(1) Mediation under these Rules shall be conducted by—

- (a) the Registrar Mediation or a person qualified and certified by CADER as a mediator and appointed by the parties from the CADER Roster of Mediators established and maintained by CADER or nominated by the Registrar Mediation in response to a request by the parties;
- (b) a person appointed by the parties as the mediator;
- (c) the Registrar or other official of the Court or any other person designated by the Court;
- (d) a Judge of the Commercial Court chosen by the parties or designated by the Registrar.

(2) Every person who conducts mediation under these Rules shall comply with the code of ethics of mediators applicable to that person and enforced by his or her mediating institution.

(3) Every person who conducts mediation under these Rules shall submit a mediator's report in accordance with rule 19.

(4) Where mediation is unsuccessful and a Judge was the mediator, the Judge shall immediately cease to take part in any further proceedings arising out of the

mediation and shall not give evidence as a witness in any subsequent judicial proceedings arising out of the failed mediation.

(6) Where the parties appoint a mediator who is not referred to in rule 13 (1) (c) and (d), the parties shall pay the fees of the mediator.

14. Assistance to the parties.

The mediator shall make arrangements necessary for the mediation including as may be necessary—

- (a) organising a suitable venue and dates for the mediation session;
- (b) organising exchange of the case summaries and documents;
- (c) meeting with any or all of the parties either together or separately to discuss any matters or concerns relating to the mediation; and
- (d) general administration in relation to the mediation.

15. Procedure at mediation.

(1) Each party shall state in the mediation agreement the name or names of—

- (a) the person or persons who will be the lead negotiator or negotiators for the party and who must have full authority to settle the dispute; and
- (b) any other persons such as professional advisers who will also be present at, or will participate in the mediation on that party's behalf, including counsel, if any.

(2) The person signing the mediation agreement on behalf of each party shall be deemed to have authority to bind the party represented by him or her.

16. Exchange of information.

(1) Each party to the mediation shall, at the time of filing its pleadings, file sufficient copies of—

- (a) a concise summary of its case in the dispute; and
- (b) all documents to which the case summary refers and any others to which it may want to refer in the mediation.

(2) The case summary shall include the particulars of—

- (a) the parties to the dispute including their names, addresses (postal, fax and email) and telephone numbers;
- (b) facts giving rise to the dispute;
- (c) witnesses; and

(d) the person with full authority to sign a settlement during mediation.

(3) In addition, each party may send to the mediator, through the court, or bring to the mediation, further documents, which it wishes to disclose in confidence to the mediator but not to any other party, clearly stating in writing that the document is confidential to the mediator.

17. Copy of pleadings.

The mediator may require the parties to provide a copy of the pleadings or a case summary of each party's case.

18. Failure of party to attend and costs.

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

(2) A party that fails to attend the mediation session without good cause is liable to pay to the mediator the adjournment costs specified in the First Schedule to these Rules, which shall be embodied in the order of the Court.

(3) The mediator's certificate of adjournment costs shall be deemed an order of the Court and shall not be subject to appeal.

19. Mediator's report.

Within ten days after the mediation is concluded, the mediator shall submit to the Registrar and the parties a report on the mediation.

20. Agreement.

(1) If there is an agreement resolving some or all of the issues in dispute, it shall be signed by the parties and filed with the Registrar for endorsement as a consent judgment.

(2) If there is no agreement, the mediator shall refer the matter back to Court.

21. Confidentiality.

(1) Every person, including associated persons, shall keep confidential and not use for any other purpose—

- (a) the fact that the mediation is to take place or has taken place, other than to inform a court dealing with any litigation relating to the dispute of that fact; and
- (b) all information, whether given orally in writing or otherwise, arising out of or in connection with the mediation, including the fact of any settlement and its terms.

(2) The proceedings of mediation, whether oral or in the form of documents, tapes, computer discs or other media shall be privileged and shall not be admissible as evidence or be disclosed in any current or subsequent litigation or other proceedings.

(3) Sub-rule (2) does not apply to any information, which would in any case have been admissible or disclosable in proceedings in the main suit or an application arising from the suit.

(4) Rules 20 and 21 do not apply insofar as any information referred to in sub-rule (2) is necessary to implement and enforce any settlement agreement arising out of the mediation.

(5) A party to a matter referred to mediation under these Rules shall not compel the mediator or the mediating institution or any employee, officer or representative of CADER as a witness, consultant, or expert in any litigation or other proceedings.

22. Costs.

Each party shall bear its own costs and expenses of its participation in the mediation under these Rules, unless otherwise agreed.

23. Forms.

The forms set out in the Second Schedule to these Rules may be used for the respective purposes to which they relate subject to such modifications as may be necessary.

24. Revocation of SI No.71 of 2003

For avoidance of doubt, the Commercial Court Division (Mediation Pilot Project) Rules, 2003 shall cease to have effect.

SCHEDULES. **FIRST SCHEDULE**

ADJOURNMENT COSTS

Rule 18

Adjournment costs — five currency points.

SECOND SCHEDULE

Rule 23

FORM 01

THE HIGH COURT OF UGANDA COMMERCIAL COURT DIVISION

PLAINTIFF/APPLICANT
Versus
DEFENDANT/RESPONDENT

MEDIATION No.....
(Arising out of HCC Suit No.)

REQUEST FOR REFERENCE TO MEDIATION

I/[we] the Plaintiff/[Plaintiff & Defendants] do hereby request that the Registrar refer the matter to mediation before [select one option] :-

- (a) the Registrar Mediation or person qualified and certified by CADER as a mediator and appointed by the parties or nominated by the Registrar Mediation;
- (b) the Registrar;
- (c) a Judge of the Commercial Court ; or
- (d) an independent mediator [insert name], appointed by the parties.

The consent of the defendant is yet to be obtained but the defendant has been served as indicated in the affidavit of service of pleadings.

.....
Counsel for the Plaintiff

- (a) We concur with reference to mediation
- (b) We do not concur on the choice of the mediation forum i.e. CADER, Court or independent mediation.

.....
Counsel for the Defendant

THE HIGH COURT OF UGANDA COMMERCIAL COURT DIVISION

PLAINTIFF/APPLICANT
Versus
DEFENDANT/RESPONDENT

MEDIATION No.....
(Arising out of HCC Suit No.....)

CERTIFICATE OF NON-COMPLIANCE

*(Under Rule..... of the Judicature (Commercial Court Division) (Mediation)
Rules, 2007*

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), mediator, certify that this certificate of non-compliance is filed because:

- (a) (name of party(ies) failed to provide a copy of a statement of issues to the Mediator and the other parties (or to the mediator or to party(ies)).
- (b) (name of Plaintiff) failed to provide a copy of the pleadings to the Mediator.
- (c) (name of party(ies) failed to attend a schedule mediation session on the dayof [month] [year].
- (d) the [name of party] is hereby directed to pay the adjournment costs of :
 - (i) five currency points [indicate date].

DATED AT..... this..... day of 20[.....]

Respectfully Submitted by:.....

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

.....
Mediator

THE HIGH COURT OF UGANDA COMMERCIAL COURT DIVISION

PLAINTIFF/APPLICANT
Versus
DEFENDANT/RESPONDENT

MEDIATION No.....
(Arising out of HCC Suit No.....)

DIRECTIONS FOR MEDIATION

(Under the Judicature (Commercial Court Division (Mediation) Rules, 2007)

1. [Pursuant to rules 8 and 9 of the Judicature (Commercial Court Division) (Mediation) Rules, 2007], the parties are directed to submit the matter to mediation in accordance with the procedures and rules of the Commercial Court.
2. You are required to provide the mediator with—
 - (a) concise summary of your case;
 - (b) copies of your pleadings if required by the mediator, and
 - (c) particulars including the names, addresses and telephone numbers of your representative and other parties attending the mediation.
3. The mediator shall make necessary arrangements for the mediation.
4. The mediation is to take place not later than [date].
5. The mediator shall file a report to the court not later than [date].

SIGNED AND SEALED on thisday of....., 200[....]

.....
Registrar

THE HIGH COURT OF UGANDA COMMERCIAL COURT DIVISION

PLAINTIFF/APPLICANT
Versus
DEFENDANT/RESPONDENT

MEDIATION No.....
(Arising out of HCC Suit No.....)

REPORT OF MEDIATOR

This matter was referred to mediation pursuant to directions for mediation dated the.....day of 200[.....]

The following were the issues for mediation—

- 1
- 2
- 3

At the conclusion of the mediation—

- (a) the parties reached agreement on all the issues and the attached Consent Judgment was filed/entered; or
- (b) the parties reached agreement only on these issues
 - (i)
 - (ii)
 - (iii)
- (c) the parties failed to reach agreement on any of the issues. Accordingly, the matter is herewith referred back to Court for further proceedings as appropriate.
(Delete whichever is not applicable)

Submitted by.....

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

.....
Mediator

THE HIGH COURT OF UGANDA COMMERCIAL COURT DIVISION

PLAINTIFF/APPLICANT

Versus

DEFENDANT/RESPONDENT

MEDIATION No.....
(Arising out of HCC Suit No.....)

NOTICE TO APPEAR BEFORE THE REGISTRAR

To:.....

NOTICE IS GIVEN that the above entitled and numbered cause has been scheduled for directions before the Registrar of the Commercial Court on the day of.....200[.....], at O'clock, at which time objections to the reference of this matter to mediation shall be heard

Signed and sealed by me this day of 200 [....]

.....
Registrar

Cross References

The Arbitration and Conciliation Act, Cap.4

The Constitution Commercial Court (Practice) Directions. S. I- Constitution 6

The Commercial Court Division (Mediation Pilot Project) Rules, 2003 S. I No.71 The Civil
Procedure Rules S.I 71-1

The Judicature Act, Cap. 13

B. J. ODOKI,

Chief Justice, Chairperson of Rules Committee.