

Uganda

Judicature Act

Judicature (Mediation) Rules, 2013

Statutory Instrument 10 of 2013

Legislation as at 15 March 2013

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Judicature (Mediation) Rules, 2013

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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.

- (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))**

The _____ court 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

Form 2 (Rule 14 (3) and (4))

The _____ Court _____

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 the _____ day of _____ 20__Hence _____ [*Name of party*] is hereby directed to pay the adjournment costs five currency points on the _____ day of _____ 20__

DATED AT _____ this _____ day of _____ 20__

Respectfully submitted by: _____

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

Mediator

Form 3 (Rule 15(2))

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	Other remarks

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 of _____ 20__

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.