

# **AN ASSESSMENT OF THE EFFECTIVENESS OF MEDIATION IN RESOLVING LABOUR DISPUTES INVOLVING INFORMAL SECTOR WORKERS IN TANZANIA**

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## **ABSTRACT**

This article critically examines the legal and institutional framework governing mediation as a mechanism for resolving labour disputes involving workers in Tanzania's informal economy. Although the informal sector accounts for the overwhelming majority of employment in Tanzania, the principal labour statutes governing dispute resolution were designed with the formal employment relationship in mind, structured around the presence of an identifiable employer, a contract of employment, and traceable terms of engagement. The Commission for Mediation and Arbitration (CMA), established under the Labour Institutions Act and operating pursuant to the Employment and Labour Relations Act, is the principal forum through which labour disputes are mediated in Tanzania, yet its procedural architecture presupposes precisely the kind of formal relationship that is frequently absent in informal work. Drawing on doctrinal analysis of the relevant statutes, subsidiary legislation and secondary literature, the article interrogates whether mediation, as presently structured, is capable of extending meaningful and enforceable protection to informal workers. It situates the Tanzanian position within regional and international scholarship on access to justice for informal workers and considers the extent to which recent institutional innovations, including the CMA's e-Utatu digital platform, respond to the accessibility gap. The article concludes that while mediation retains considerable normative promise for informal sector labour disputes, its practical effectiveness is constrained by definitional exclusion, weak enforcement mechanisms and limited institutional adaptation, and it proposes targeted legal and administrative reforms.

**Keywords:** *Mediation, Informal Sector, Labour Disputes, Commission for Mediation and Arbitration, Access to Justice, Tanzania.*

# 1. INTRODUCTION

Tanzania's informal sector constitutes the largest share of the country's workforce, yet it remains only partially reached by the statutory framework that governs labour relations and dispute resolution. According to the International Labour Organization, informal employment accounts for approximately ninety percent of employment in Tanzania, a reality that places the overwhelming majority of the country's workers outside the direct protection of the formal legal architecture governing employment contracts, dispute resolution and labour standards.<sup>1</sup>

Workers in this sector are engaged in petty trading, artisan and craft work, transportation, domestic work and small-scale manufacturing, frequently without written contracts, formal registration or a single identifiable employer.<sup>2</sup>

The Employment and Labour Relations Act<sup>3</sup> and the Labour Institutions Act<sup>4</sup> together establish mediation as the mandatory first step in the resolution of labour disputes in Tanzania, administered through the Commission for Mediation and Arbitration (CMA) in accordance with the Employment and Labour Relations (Mediation and Arbitration) Regulations.<sup>5</sup> These statutes were substantially revised to strengthen the CMA's institutional role and to clarify mediation and arbitration procedure, yet neither the revisions nor the subsidiary regulations expressly extend to, or make specific accommodation for, workers whose employment arrangements fall outside the conventional employer-employee model.

Mediation, understood as a voluntary and facilitative process through which a neutral third party assists disputing parties to reach a mutually acceptable settlement, is widely regarded internationally as a cost-effective, non-adversarial and flexible mechanism, well suited to contexts in which formal litigation is inaccessible. In Tanzania, mediation occupies a central and mandatory place within the statutory labour dispute resolution system. Informal sector workers, however, lacking written contracts and often unable to identify a legally cognisable employer, frequently

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<sup>1</sup>International Labour Organization, ILO Labour Market Profile: Tanzania and Zanzibar 2024/2025 (International Labour Office, 2024).

<sup>2</sup>International Labour Organization, ILO Informal Economy Portal (n.d.).

<sup>3</sup>Employment and Labour Relations Act, Cap 366 [R.E. 2023].

<sup>4</sup>Labour Institutions Act, Cap 300 [R.E. 2023].

<sup>5</sup>Employment and Labour Relations (Mediation and Arbitration) Regulations, GN No. 64 of 2007.

continue to rely instead on community leaders, trade associations or direct negotiation with employers, mechanisms that lack the consistency, neutrality and enforceability of the CMA's statutory process.<sup>6</sup>

This article undertakes a critical assessment of the effectiveness of mediation, as presently constituted under Tanzanian law, in resolving labour disputes involving informal sector workers. It asks whether the existing CMA mediation framework, designed principally around the formal contract of employment, is capable of extending meaningful, accessible and enforceable protection to workers whose relationships of work fall outside that formal paradigm. In pursuing this inquiry, the article draws on the relevant constitutional, statutory and regulatory provisions, together with doctrinal and empirical literature examining mediation and informality both in Tanzania and in comparable jurisdictions.

The discussion proceeds in seven further parts. Part Two sets out the conceptual and theoretical framework within which mediation and informality are understood. Part Three examines the constitutional and statutory framework governing labour mediation in Tanzania. Part Four considers the institutional architecture of the CMA and the definitional gap that excludes many informal workers from its intended reach. Part Five assesses the principal challenges bearing on the effectiveness of mediation for informal workers. Part Six situates the Tanzanian position within regional and comparative perspectives. Part Seven proposes reforms, and Part Eight concludes.

## **2. CONCEPTUAL FRAMEWORK AND THEORETICAL FOUNDATIONS**

### **2.1 The Concept and Character of Mediation in Labour Relations**

Mediation is generally understood as a structured process in which an impartial third party assists disputing parties to identify the issues in contention, explore options, and work towards a voluntary settlement, without imposing a binding outcome. In the employment context, mediation is valued precisely because it allows the parties, rather than a judge or arbitrator, to retain control over both

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<sup>6</sup>International Labour Organization, Labour Dispute Prevention and Resolution (International Labour Office, 2021).

the process and the eventual outcome, a feature considered particularly important where an ongoing working relationship is to be preserved.<sup>7</sup>

Mediation in labour relations is generally distinguished by voluntariness, confidentiality, procedural flexibility, and the mediator's neutrality, principles that collectively aim to encourage candid engagement between the parties and a resolution that both sides are willing to accept and perform.<sup>8</sup>

Under Tanzanian law, mediation before the CMA operates as a mandatory precondition to further recourse: a labour dispute may not proceed to arbitration or litigation until it has first been referred to mediation.<sup>9</sup> This mandatory character reflects a policy judgment that most labour disputes are capable of amicable resolution and that mediation should serve as the primary gateway into the labour dispute resolution system, reserving arbitration and adjudication for disputes that mediation is unable to resolve.

## **2.2 The Informal Sector: Meaning, Scope and Vulnerability**

The informal sector is generally understood to comprise economic activities that operate outside, or only partially within, the formal regulatory and institutional framework governing employment, taxation and business registration.<sup>10</sup>

It encompasses a broad range of livelihoods, including petty trading, artisanal production, transport services, domestic work and small-scale manufacturing, many of which are characterised by an absence of written contracts, irregular remuneration arrangements, and unclear or fluid employer-employee relationships.<sup>11</sup>

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<sup>7</sup>B. Aaron, 'Alternative Dispute Resolution in Employment Relations' in B. Aaron and K. V. W. Stone (eds), *Rethinking Workplace Regulation: Beyond the Standard Contract of Employment* (Russell Sage Foundation, 2020).

<sup>8</sup>A. B. García, E. Romero and F. J. Medina, 'Mediation and Conciliation in Labour Disputes: Institutional Approaches and Effectiveness' (2021) 63(4) *Journal of Industrial Relations* 512.

<sup>9</sup>Employment and Labour Relations Act, Cap 366 [R.E. 2023], s 88.

<sup>10</sup>International Labour Organization, *Transition from the Informal to the Formal Economy in Africa: Policy Brief* (International Labour Office, 2019).

<sup>11</sup>International Labour Organization, ILO Informal Economy Portal (n.d.).

Scholars have described workers engaged in such arrangements as constituting a distinct and growing class marked by chronic insecurity of income, status and legal protection.<sup>12</sup>

This structural informality has direct consequences for dispute resolution. Where no written contract exists, and where the identity of the 'employer' may be ambiguous, shared, or itself informal, workers face significant practical difficulty in establishing the very employment relationship that formal dispute resolution mechanisms typically require as a threshold condition.<sup>13</sup>

The result, as international literature on informal labour markets has consistently observed, is a pattern of structural exclusion: informal workers are disproportionately represented among those whose labour rights exist on paper but are difficult to vindicate in practice.<sup>14</sup>

### **2.3 Theoretical Rationale for Mediation as an Access to Justice Mechanism**

The extension of mediation to informal sector disputes is conventionally justified on access to justice grounds. Traditional adjudicative processes are frequently prohibitively expensive, procedurally rigid and inaccessible to workers operating at the margins of the formal economy.<sup>15</sup>

Mediation, by contrast, is capable of dispensing with strict evidentiary and procedural formality, of being conducted swiftly and at low or no cost to the parties, and of accommodating disputes in which formal documentary proof of the underlying relationship is thin or absent.<sup>16</sup>

On this reasoning, mediation is theoretically well suited to informal sector disputes precisely because it does not depend on the same evidentiary architecture that adjudication does. Its theoretical suitability, however, does not without more establish its practical effectiveness. Effectiveness depends on the extent to which the institutional framework administering mediation

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<sup>12</sup>G. Standing, *The Precariat: The New Dangerous Class* (Bloomsbury Academic, 2011).

<sup>13</sup>V. Schmidt, E. Webster, S. Mhlana and K. Forrest, *Negotiations by Workers in the Informal Economy* (2023) <<https://doi.org/10.54394/PVTN9258>>.

<sup>14</sup>Organisation for Economic Co-operation and Development, *Informal Labour Markets in Developing Countries: A Policy Review* (OECD Publishing, 2021).

<sup>15</sup>World Bank, *Access to Justice and Development: A Global Assessment of Informal Workers* (World Bank Group, 2022).

<sup>16</sup>S. K. Amoah, 'Alternative Dispute Resolution in Developing Economies' (2022).

is itself designed, resourced and procedurally adapted to accommodate the distinctive features of informal work, an inquiry to which the remainder of this article now turns.

### **3. THE STATUTORY FRAMEWORK GOVERNING LABOUR MEDIATION IN TANZANIA**

#### **3.1 Constitutional and Policy Underpinnings**

The Constitution of the United Republic of Tanzania, 1977 guarantees the right to work and affirms broader commitments to social justice and equitable participation in economic life, commitments that provide the normative backdrop against which the statutory labour dispute resolution framework should be assessed.<sup>17</sup>

While the Constitution does not itself prescribe a mediation mechanism, its underlying values inform the policy rationale for a labour dispute resolution system that is accessible to all categories of worker, and not only to those engaged in formally documented employment.

#### **3.2 The Employment and Labour Relations Act**

The Employment and Labour Relations Act<sup>18</sup> is the principal statute governing individual and collective employment relations in Tanzania. It defines 'employee' as a person employed for wages or a salary, including a person who works under a contract of employment, whether the contract is express or implied and whether it is oral or in writing.<sup>19</sup> This definition, while not requiring a written contract, nonetheless presupposes the existence of an identifiable contractual employment relationship, a premise that is frequently difficult to establish in informal work arrangements characterised by fluid, intermittent or collectively organised labour.

Section 88 of the Act requires that labour disputes be referred to the Commission for Mediation and Arbitration before any other proceedings may be commenced, establishing mediation as the

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<sup>17</sup>Constitution of the United Republic of Tanzania, 1977, Cap 2 [R.E. 2023].

<sup>18</sup>Employment and Labour Relations Act, Cap 366 [R.E. 2023].

<sup>19</sup>Employment and Labour Relations Act, Cap 366 [R.E. 2023], s 4.

mandatory first step in the resolution of labour disputes generally, without express differentiation between formal and informal sector employment.

### **3.3 The Labour Institutions Act and the Establishment of the CMA**

The Labour Institutions Act<sup>20</sup> establishes the Commission for Mediation and Arbitration as an independent body responsible for the mediation and arbitration of labour disputes referred to it under the Employment and Labour Relations Act.<sup>21</sup> The CMA operates through a network of offices, employing appointed mediators and arbitrators, and its procedures are elaborated in subsidiary legislation. As the sole statutory forum through which labour mediation is administered in Tanzania, the CMA occupies a position of considerable significance for informal sector workers, for whom it represents, at least in principle, the primary avenue for the vindication of labour-related grievances outside informal community-based mechanisms.

### **3.4 The Mediation and Arbitration Regulations**

Procedural detail is supplied by the Employment and Labour Relations (Mediation and Arbitration) Regulations, made pursuant to the Labour Institutions Act, together with related instruments such as the Employment and Labour Relations (Code of Good Practice) Rules.<sup>22</sup> These instruments set out the process by which disputes are referred, the conduct of mediation sessions, the timelines for referral and resolution, and the status of settlement agreements reached through mediation. As with the parent statutes, however, the regulatory scheme is built around a recognizable employer-employee relationship as a precondition for the CMA to assume jurisdiction over a referred dispute, a structural feature that carries significant implications for informal workers, considered further in Part Four below.

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<sup>20</sup>Labour Institutions Act, Cap 300 [R.E. 2023].

<sup>21</sup>Labour Institutions Act, Cap 300 [R.E. 2023], s 12.

<sup>22</sup>Government of the United Republic of Tanzania, Employment and Labour Relations Act: Mediation and Arbitration Procedures Regulations (Commission for Mediation and Arbitration, 2021).

## **4. THE COMMISSION FOR MEDIATION AND ARBITRATION AND THE INFORMAL WORKER**

### **4.1 Mandate and Procedure of the CMA**

The CMA's mandate is to mediate, and where mediation fails, to arbitrate, labour disputes referred to it under the Employment and Labour Relations Act and the Labour Institutions Act. Its procedure begins with a formal referral, ordinarily initiated by the aggrieved party, followed by the assignment of a mediator, one or more mediation sessions, and, where settlement is reached, the recording of that settlement in a form capable of registration and enforcement. Where mediation fails to produce a settlement, the dispute may proceed to arbitration.

In January 2026, the CMA launched an electronic platform known as e-Utatuzi, intended to enable the digital lodging, tracking and management of labour disputes. The initiative is significant for informal sector workers to the extent that it may reduce the logistical and geographic barriers historically associated with physically attending CMA offices, though its actual effect on informal sector access remains to be assessed empirically.<sup>23</sup>

### **4.2 The Definitional Gap: Who Counts as an 'Employee'?**

The central legal difficulty confronting informal sector workers seeking access to CMA mediation lies in the statutory definition of 'employee' under the Employment and Labour Relations Act, which presupposes a contract of employment, whether written or oral.<sup>24</sup> Where the working arrangement is genuinely informal, in the sense that no ascertainable single employer exists, where remuneration is irregular or paid in kind, or where the arrangement more closely resembles an informal partnership or a series of casual engagements than an employment relationship in the conventional sense, the threshold question of whether an 'employee' within the meaning of the Act exists at all may itself be contested. The CMA Regulations compound this difficulty by presupposing a recognizable employer-employee relationship as a precondition for accessing the

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<sup>23</sup>The Chanzo, 'Tanzania's CMA Launches e-Utatuzi Digital Dispute Resolution Platform' (21 January 2026) <<https://thechanzo.com/2026/01/21>>.

<sup>24</sup>Employment and Labour Relations Act, Cap 366 [R.E. 2023], s 4.

mediation process; where that relationship is absent or disputed, the process becomes procedurally inaccessible to precisely the workers it is intended to protect.

### **4.3 Judicial Treatment of the Employment Relationship Requirement**

Legislative reform undertaken through the Written Laws (Miscellaneous Amendments) Act No. 3 of 2020 amended various labour statutes without resolving this structural exclusion. The High Court of Tanzania, in its Labour Division, has generally continued to require that an employer-employee relationship be established as a precondition to mediation or arbitration proceeding, an approach consistent with the statutory text but one that has the practical effect of denying a substantial category of workers any enforceable avenue for dispute resolution through the CMA.

The consequence is that informal workers who are unable to establish, to the satisfaction of the CMA, that they were engaged under a contract of employment may find themselves without recourse to the very institution that Parliament established as the primary forum for labour dispute resolution.

## **5. ASSESSING THE EFFECTIVENESS OF MEDIATION FOR INFORMAL SECTOR WORKERS: CHALLENGES**

### **5.1 Absence of Identifiable Employment Relationships**

As discussed above, the absence of a written or clearly identifiable employment relationship remains the most fundamental obstacle facing informal workers who attempt to access CMA mediation. Scholarship on negotiation and dispute resolution among informal economy workers has observed that the structural ambiguity of informal work, combined with unequal bargaining power between workers and those who engage them, complicates the application of dispute resolution mechanisms designed with the conventional employment relationship in mind.<sup>25</sup>

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<sup>25</sup>V. Schmidt, E. Webster, S. Mhlana and K. Forrest, *Negotiations by Workers in the Informal Economy* (2023) <<https://doi.org/10.54394/PVTN9258>>.

## **5.2 Awareness and Accessibility Deficits**

A recurring theme in the literature on access to justice for informal workers is limited awareness of available mechanisms. The United Nations Development Programme has observed that the effectiveness of alternative dispute resolution mechanisms in developing countries depends significantly on awareness among intended users, trust in the relevant institutions, and confidence in procedural fairness, conditions that cannot be assumed and must instead be actively cultivated.<sup>26</sup>

Where informal workers are unaware that the CMA exists, or unaware that its mediation services extend, at least formally, to disputes arising outside conventional employment, the statutory framework's practical reach is correspondingly diminished irrespective of its formal scope.

## **5.3 Institutional Capacity and Resource Constraints**

Domestic scholarship examining the CMA's operation has identified persistent institutional constraints, including understaffing, limited geographic outreach, and enforcement difficulties, all of which disproportionately affect the categories of worker least able to absorb delay or repeated engagement with an under-resourced institution.<sup>27</sup>

Similar constraints have been identified even within the CMA's engagement with the formal public sector, where inadequate institutional funding and mediator capacity gaps have been found to hinder effective dispute resolution notwithstanding a comparatively more structured employment context. These constraints are likely to be at least as acute, and arguably more acute, where the CMA is required to engage with the more complex evidentiary and relational questions that informal sector disputes present.<sup>28</sup>

## **5.4 Weak Enforcement of Mediated Outcomes**

Even where mediation is accessed and a settlement is reached, enforcement remains a distinct and separate challenge. Informal employers frequently lack the institutional structures, fixed business

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<sup>26</sup>United Nations Development Programme, *Access to Justice for All: Strengthening Legal Empowerment of the Poor* (UNDP, 2022).

<sup>27</sup>J. J. Nkobo, 'Legal and Institutional Challenges in Mediation of Labour Disputes in Tanzania' (2021) 48(2) *Eastern Africa Law Review* 27.

<sup>28</sup>M. Mpogole, 'Effectiveness of Labour Dispute Settlement Mechanisms in Tanzania: A Focus on Public Service Employment' (2023) 9(6) *Journal of Legal Studies and Research* 162.

premises, or formal accountability mechanisms that make enforcement of a mediated agreement practicable in the formal sector.<sup>29</sup>

International literature on access to justice for informal workers has consistently identified enforcement, rather than the initial process of dispute resolution itself, as among the most significant determinants of whether mediation delivers substantive rather than merely formal protection.<sup>30</sup>

### **5.5 Persistence of Informal and Customary Alternatives**

Partly as a consequence of the foregoing constraints, informal sector workers continue to rely, in practice, on community leaders, trade or market associations, and direct negotiation with employers as alternatives, or precursors, to CMA mediation. While these mechanisms may offer speed and cultural familiarity, they lack the procedural safeguards, neutrality guarantees and enforceability that the statutory mediation framework is designed to provide, and their outcomes are not consistently aligned with the substantive protections that national labour law affords.

## **6. COMPARATIVE AND REGIONAL PERSPECTIVES**

Tanzania's experience is not unique within the East African region. Kenya, Uganda and Rwanda have each incorporated mediation mechanisms within their respective labour dispute resolution institutions, reflecting a broader regional recognition of mediation's potential to deliver more expeditious and accessible outcomes than formal adjudication.<sup>31</sup>

The East African Community has likewise promoted mediation as a cost-effective alternative to litigation, a position of particular relevance to informal workers across the region who often lack the resources to pursue formal legal proceedings.<sup>32</sup>

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<sup>29</sup>J. S. Massawe, 'Effectiveness of Alternative Dispute Resolution in Labour Conflicts in Tanzania' (2021) 13(2) African Journal of Legal Studies 45.

<sup>30</sup>World Bank, Access to Justice and Development: A Global Assessment of Informal Workers (World Bank Group, 2022).

<sup>31</sup>International Labour Organization, Roadmap Study of the Informal Sector in Mainland Tanzania (International Labour Office, 2007).

<sup>32</sup>International Labour Organization, Enhancing Digital Inclusion and e-Formality Among Women Entrepreneurs in Tanzania (International Labour Office, 2025).

Comparative analysis extending beyond the region, including studies examining Tanzania's mediation and arbitration framework against that of South Africa, suggests that jurisdictions with more developed specialized labour dispute institutions and clearer statutory extension of coverage to non-standard forms of employment tend to achieve more consistent outcomes for workers outside conventional employment arrangements.<sup>33</sup>

These comparative insights do not, however, provide a template that can simply be transplanted into the Tanzanian context; rather, they underscore that the effectiveness of mediation for informal workers is closely tied to the specific statutory design choices a jurisdiction makes regarding the scope of coverage, institutional resourcing and enforcement architecture.

## **7. TOWARDS A MORE EFFECTIVE FRAMEWORK: RECOMMENDATIONS**

### **7.1 Legislative Clarification of Coverage**

Parliament should consider amending the Employment and Labour Relations Act, or enacting specific subsidiary legislation, to clarify expressly that CMA mediation extends to disputes arising from informal working arrangements, including arrangements lacking a single identifiable employer or a conventional contract of employment. Such clarification would remove the present ambiguity that allows the CMA, in practice, to treat the absence of a formal contract as a jurisdictional bar rather than as a matter to be resolved through the mediation process itself.

### **7.2 Institutional and Procedural Adaptation at the CMA**

The CMA should develop procedures specifically adapted to the evidentiary and relational realities of informal work, including flexible approaches to establishing the existence of a working relationship where documentary evidence is unavailable, drawing on witness testimony, patterns of payment, and community or trade association records where appropriate.

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<sup>33</sup>J. W. Tumaini, 'Mediation and Arbitration under Tanzanian Labour Law: A Comparative Analysis with South Africa' (2025) University of Nairobi Law Journal <<https://uonlibrary.uonbi.ac.ke>>.

### **7.3 Public Legal Awareness and Outreach**

Sustained public awareness campaigns, conducted in partnership with trade associations, community leaders and civil society organizations working with informal sector workers, are necessary to close the awareness gap identified in the literature. Awareness efforts should specifically address the misconception that CMA mediation is available only to workers with written contracts.

### **7.4 Strengthening Enforcement Mechanisms**

Enforcement of mediated settlements against informal employers requires attention distinct from the mediation process itself. Consideration should be given to mechanisms such as simplified registration of settlement agreements for expedited enforcement, and closer coordination between the CMA and local government or trade association structures that maintain closer proximity to informal economic activity.

### **7.5 Leveraging Digital Platforms for Informal Worker Access**

The CMA's e-Ututuzi platform presents an opportunity to reduce logistical barriers to accessing mediation, provided that its design and rollout are accompanied by measures addressing digital literacy and connectivity constraints that may otherwise limit its usefulness to the very workers it is intended to reach.<sup>34</sup>

## **8. CONCLUSION**

This article has examined the effectiveness of mediation as a mechanism for resolving labour disputes involving informal sector workers in Tanzania. It has shown that while the Employment and Labour Relations Act and the Labour Institutions Act establish mediation before the Commission for Mediation and Arbitration as the mandatory first step in labour dispute resolution, the statutory and regulatory framework remains substantially oriented around the formal contract

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<sup>34</sup>The Chanzo, 'Tanzania's CMA Launches e-Ututuzi Digital Dispute Resolution Platform' (21 January 2026) <<https://thechanzo.com/2026/01/21>>.

of employment, a premise that does not straightforwardly accommodate the realities of informal work.

The definitional gap surrounding the term 'employee', compounded by limited public awareness, institutional resource constraints, and weak enforcement mechanisms, together constrain the practical reach of mediation for the very workers who, given the scale of informality in the Tanzanian economy, stand to benefit most from an accessible, low-cost dispute resolution mechanism. Comparative experience from within the East African region and beyond suggests that more deliberate statutory design, extending coverage clearly to non-standard forms of employment, tends to correlate with more consistent outcomes for informal workers.

The recommendations advanced in this article, legislative clarification of coverage, procedural adaptation within the CMA, sustained public awareness efforts, strengthened enforcement mechanisms, and continued development of digital access channels, are not mutually exclusive and could be pursued in a coordinated and incremental fashion. Given that informal employment constitutes the overwhelming majority of work in Tanzania, closing the gap between the formal promise of mediation and its practical reach for informal workers is not a peripheral reform but a central task in the future development of Tanzania's labour dispute resolution system.