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DISPUTE RESOLUTION
(VOL. 2)**

**The Informal Labor Market
Commercial Enterprises
ADR Institutional
Framework**

NEGOTIATION



**SPECIAL ISSUE;
MASTERS' THESES
ON ALTERNATIVE
DISPUTE
RESOLUTION
VOL. 2**

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EDITOR-IN-CHIEF'S NOTE

Contemporary legal practice is transitioning from formal, adversarial litigation toward dispute resolution mechanisms that prioritize dialogue, efficiency, and relational preservation. Once used just to alleviate court backlogs, Alternative Dispute Resolution (ADR) is now a foundational element of equitable and accessible contemporary justice systems. This curated collection of Masters' theses aggregates critical research and fresh insights, investigating the practical reach and institutional evolution of ADR across diverse socioeconomic landscapes.

Moving beyond a monolithic view of ADR, this volume explores how arbitration, mediation and negotiation is implemented and adopted to yield favourable outcomes for parties in conflict. The first paper examines the critical application of ADR in labor disputes within the informal sector. For millions of workers, micro-entrepreneurs, and day laborers operating outside traditional statutory frameworks and formal employment contracts, litigation is prohibitively expensive, intimidating, and procedurally alienating. This contribution demonstrates how localized mediation and adaptive conciliation provide accessible pathways to justice—prioritizing livelihood preservation, restorative fairness, and community-grounded enforcement over punitive legal decrees.

When it comes to the sphere of business, commercial disputes require speed, specialized expertise, and confidentiality—qualities that conventional courts, strained by systemic delays, frequently struggle to deliver. Exploring the corporate landscape reveals how structured arbitration and commercial mediation protect vital enterprise partnerships and maintain economic stability amid unpredictable market dynamics.

The collection concludes by shifting focus from domain-specific applications to institutional imperatives, examining the legal, regulatory, and infrastructural reforms required to strengthen ADR mechanisms. In order to preserve the flexibility of ADR without losing legal certainty and legitimacy, it is vital to establish clear enforcement for settlements, set rigorous accreditation standards, and align informal practices with formal laws.

Ultimately, As the frontiers of commerce and labor continue to evolve, strengthening ADR mechanisms is an essential component of sustainable and inclusive justice. It is our hope that this collection serves as a catalyst for ongoing discourse among legal practitioners, policy makers, judicial officers, and civil society actors

Kindest regards,

Wendy Koskei,

Editor-In-Chief, University of Nairobi Law Journal.

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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.¹

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.²

The Employment and Labour Relations Act³ and the Labour Institutions Act⁴ 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.⁵ 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 continue to rely instead on community leaders, trade associations or direct negotiation with

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

²International Labour Organization, ILO Informal Economy Portal (n.d.).

³Employment and Labour Relations Act, Cap 366 [R.E. 2023].

⁴Labour Institutions Act, Cap 300 [R.E. 2023].

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

employers, mechanisms that lack the consistency, neutrality and enforceability of the CMA's statutory process.⁶

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

⁶International Labour Organization, *Labour Dispute Prevention and Resolution* (International Labour Office, 2021).

⁷B. 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).

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.⁸

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.⁹ 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.¹⁰

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.¹¹

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.¹²

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

⁸A. 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.

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

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

¹¹International Labour Organization, *ILO Informal Economy Portal* (n.d.).

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

informal, workers face significant practical difficulty in establishing the very employment relationship that formal dispute resolution mechanisms typically require as a threshold condition.¹³

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.¹⁴

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.¹⁵

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.¹⁶

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 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

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

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

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

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

that provide the normative backdrop against which the statutory labour dispute resolution framework should be assessed.¹⁷

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 Act¹⁸ 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.¹⁹ 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 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 Act²⁰ 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.²¹ 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,

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

¹⁸Employment and Labour Relations Act, Cap 366 [R.E. 2023].

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

²⁰Labour Institutions Act, Cap 300 [R.E. 2023].

²¹Labour Institutions Act, Cap 300 [R.E. 2023], s 12.

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.²² 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.

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-Utatuji, 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

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

historically associated with physically attending CMA offices, though its actual effect on informal sector access remains to be assessed empirically.²³

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.²⁴ 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 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.

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

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

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.²⁵

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.²⁶

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.²⁷

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

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

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

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.²⁸

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

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.³⁰

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.

²⁸M. 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.

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

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

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.³¹

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.³²

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.³³

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

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

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

³³J. 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>>.

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.

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-Utatuzi 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.³⁴

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

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 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.

INTERNATIONAL COMMERCIAL ARBITRATION IN TANZANIA: EVALUATING ITS ROLE IN BUSINESS DISPUTE RESOLUTION.

Razack Kimwaga

ABSTRACT

This paper critically evaluates the role of international commercial arbitration in resolving business disputes within the legal framework of Tanzania. It begins by tracing the evolution of arbitration laws in Tanzania, with particular focus on the Arbitration Act [Cap. 15 R.E. 2023], which aligns domestic practice with international standards such as the UNCITRAL Model Law and the New York Convention. The study explores the legal and institutional infrastructure underpinning arbitration, including the powers of arbitral tribunals, judicial support functions, the enforceability of foreign awards, and the role of the Tanzania Arbitration Centre.

The analysis demonstrates that while the legislative reforms have significantly modernized Tanzania's arbitration regime offering party autonomy, procedural flexibility, and finality implementation challenges persist. These include limited judicial specialization, inconsistent enforcement practices, underdeveloped arbitral institutions, and risks posed by broad interpretations of public policy. The paper also highlights judicial attitudes towards arbitration, identifying positive trends as well as areas of concern that could erode confidence in the arbitration system.

Based on doctrinal and comparative analysis, the study concludes that although Tanzania has established a sound legal foundation for international arbitration, realizing its full potential requires strategic investment in institutional capacity, jurisprudential development, and judicial training. The paper recommends reforms to enhance procedural efficiency, enforce arbitral awards effectively, and increase the Tanzania Arbitration Centre's regional and international visibility. These steps are essential to positioning Tanzania as a competitive and reliable forum for international commercial dispute resolution.

METHODOLOGY

This study adopts a doctrinal, comparative, and analytical methodology, supported by statutory and case law analysis. The doctrinal approach involves a detailed examination of primary legal sources including the Arbitration Act [Cap. 15 R.E. 2020], the Civil Procedure Code [Cap. 33 R.E. 2023], and international instruments such as the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Judicial decisions from Tanzanian courts are analyzed to assess how legal principles are interpreted and applied in practice.

The comparative method draws on arbitration practices and jurisprudence from other jurisdictions with advanced arbitration frameworks such as Singapore, the United Kingdom, and Kenya to evaluate the adequacy of Tanzania's system and identify potential improvements. The analytical method is used to synthesize these findings, examining the gap between law and practice, and drawing insights into the effectiveness, strengths, and weaknesses of Tanzania's arbitration regime.

Secondary sources, including academic articles, UN reports, and institutional publications, support the analysis by providing broader context and scholarly perspectives. No empirical data collection was undertaken; however, practical challenges were inferred through case commentaries, legal practice reports, and court performance reviews relevant to arbitration-related proceedings.

INTRODUCTION

In the contemporary era of globalization and cross-border trade, business disputes increasingly transcend national boundaries, demanding dispute resolution mechanisms that are efficient, neutral, and enforceable across jurisdictions. International commercial arbitration has emerged as a preferred alternative to litigation for resolving such disputes, offering a framework that emphasizes party autonomy, confidentiality, flexibility, and finality. In Tanzania, the evolution of arbitration law has reflected a growing recognition of the role arbitration plays in fostering investor confidence and supporting a favorable business climate. The enactment of the Arbitration Act [Cap. 15 R.E. 2023] represents a significant legislative milestone, aligning the national arbitration regime more closely with international best practices and principles, including those found in the UNCITRAL Model Law.

This paper evaluates the role of international commercial arbitration in business dispute resolution within the Tanzanian legal context. It explores the legal framework governing arbitration, including the interaction between the Arbitration Act and the Civil Procedure Code, and assesses the extent to which the Tanzanian judiciary supports arbitration in practice. Key themes include the enforceability of arbitration agreements and foreign awards, the jurisdiction of arbitral tribunals, court intervention, and the role of the Tanzania Arbitration Centre. The analysis also considers whether current laws sufficiently promote predictability, fairness, and efficiency in international arbitration processes conducted in or enforced through Tanzania.

By critically analyzing statutory provisions, judicial trends, and institutional capacities, this paper aims to illuminate both the progress made and the challenges that remain in positioning international commercial arbitration as an effective mechanism for resolving cross-border business disputes in Tanzania.

1. THE LEGAL AND INSTITUTIONAL FRAMEWORK GOVERNING INTERNATIONAL COMMERCIAL ARBITRATION IN TANZANIA

Tanzania's legal framework for international commercial arbitration is principally governed by the Arbitration Act, [Cap. 15 R.E. 2023] (hereinafter “the Arbitration Act”), which was enacted to modernize and harmonize domestic arbitration laws with international standards. The Act draws heavily from the UNCITRAL Model Law and aims to provide a coherent and investor-friendly legal infrastructure for the conduct and enforcement of arbitral proceedings. It replaces the previous regime under the now-repealed Arbitration Ordinance, offering a more detailed and practical approach to both domestic and international arbitration.

1.1 Definition and Scope of International Arbitration

The Arbitration Act defines international arbitration as one involving legal relationships whether contractual or otherwise classified as commercial in nature, where at least one party has a foreign element. This includes natural persons who are nationals or habitual residents of another country, foreign-incorporated companies, and even foreign states or entities under foreign management or control.¹ This broad definition aligns with global arbitration norms and ensures predictability in

¹ Arbitration Act, Cap. 15 R.E. 2020, s.3

cross-border transactions, thus reassuring foreign investors that their disputes can be adjudicated within a framework sensitive to transnational commerce.

Moreover, the Act centralizes the judicial oversight of international arbitration within the High Court of Tanzania in its ordinary original civil jurisdiction.² This judicial structure is significant in fostering consistency in arbitration-related rulings and providing a specialized forum with higher judicial expertise in commercial matters.

1.2 Party Autonomy and Judicial Restraint

A fundamental principle enshrined in the Act is that of party autonomy. Section 5(a) stipulates that the primary objective of arbitration is to obtain a fair resolution of disputes by an impartial tribunal without undue delay or excessive cost.³ Section 5(b) further provides that parties are free to agree on the manner in which their disputes are resolved, subject only to safeguards necessary to preserve public policy and interest. Such autonomy permits parties to choose applicable laws, arbitral rules, the seat of arbitration, and procedural mechanisms most suited to their needs.

Importantly, section 5(c) of the Act restricts court intervention in arbitral proceedings, declaring that judicial authorities shall not interfere except where expressly permitted.⁴ This legislative directive is crucial for the integrity of the arbitral process, preserving its flexibility and shielding it from procedural complications traditionally associated with litigation.

1.3 Seat of Arbitration and Jurisdictional Consequences

Section 8 of the Arbitration Act defines the “seat of arbitration” as the juridical seat designated either by the parties, by the applicable law, or by the arbitral tribunal.⁵ The determination of the seat carries substantive legal implications it governs the procedural framework of the arbitration, affects court intervention rights, and determines the venue for setting aside awards.

Section 7(1) provides that the Act applies where the seat is in Mainland Tanzania.⁶ However, even where the seat is outside Tanzania or not expressly designated, certain main provisions particularly

² Ibid, s.6(1)(b)

³ Ibid, s.5(a)

⁴ Ibid, s.5(c)

⁵ Ibid, s.8

⁶ Ibid, s.7(1)

those related to staying court proceedings in favor of arbitration (section 15) and enforcing awards (section 73) remain applicable.⁷ This extraterritorial scope underscores Tanzania's commitment to supporting international arbitration, including cases with only limited connection to its jurisdiction.

1.4 Legal Recognition of Arbitration Agreements

The enforceability of arbitration agreements is given substantive weight under the Act. Section 14 requires Tanzanian courts to refer parties to arbitration where a valid arbitration agreement exists, provided that such an application is made before or at the time of submitting a substantive statement in the matter.⁸ The court must do so unless it finds that no valid agreement exists on its face a formulation that strongly favors upholding arbitration clauses.

Further, section 15 provides that where legal proceedings are instituted in breach of an arbitration agreement, the defendant may apply for a stay, and the court must grant such a stay unless the agreement is null, inoperative, or incapable of being performed.⁹ This strict judicial approach enhances the predictability and binding nature of arbitration agreements in commercial contracts.

These provisions align Tanzania with Article II(3) of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, to which it is a party, reinforcing the country's compliance with international obligations to recognize arbitration agreements and stay court proceedings accordingly.¹⁰

1.5 Institutional Support: The Tanzania Arbitration Centre

Part X of the Arbitration Act establishes the Tanzania Arbitration Centre (TAC) as the official arbitral institution for administering arbitration within Tanzania.¹¹ The Centre is tasked with providing administrative services, setting rules, accrediting arbitrators, and promoting awareness and usage of arbitration as a dispute resolution mechanism.

Section 82 of the Act affirms the Centre's role in enhancing arbitration practice in Tanzania and enabling the country to serve as a regional hub for resolving both domestic and international

⁷ Ibid, s.7(2)-(4)

⁸ Ibid, s.14(1)

⁹ Ibid, s.15(4)

¹⁰ Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958), Art. II(3).

¹¹ Arbitration Act, Cap. 15 R.E. 2020, s.82

commercial disputes.¹² However, the success of the Centre will depend on its administrative capacity, credibility, and ability to maintain neutrality in handling cross-border disputes. There is limited data published on the Centre's performance metrics, arbitrator panels, and caseloads, which presents a research and policy gap requiring attention.

1.6 Interaction with the Civil Procedure Code

Although arbitration proceedings are governed principally by the Arbitration Act, the Civil Procedure Code [Cap. 33 R.E. 2023] continues to play a supportive role. Under Order VIII, Rule 35 of the Civil Procedure Code, courts are empowered to direct parties to arbitration where such mechanisms have been agreed upon.¹³ This reinforces the judiciary's duty to respect arbitration clauses embedded within contracts.

Further, sections under Part V and Order XXII of the Civil Procedure Code provide the procedural backbone for enforcement of arbitral awards, particularly in cases where execution of a judgment is sought through Tanzanian courts.¹⁴ These provisions ensure that awards can be given full legal effect as if they were court judgments, thereby reinforcing the utility and authority of arbitration as a binding dispute resolution method.

2. RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS IN TANZANIA

The recognition and enforcement of foreign arbitral awards is a cornerstone of international commercial arbitration. Without an effective enforcement mechanism, the practical value of arbitration diminishes significantly. Tanzania, like many jurisdictions seeking to attract foreign investment and foster a stable commercial environment, has integrated provisions into its legal system to enable and regulate the recognition and enforcement of arbitral awards made outside its territory. This section critically examines the legal procedures, grounds for refusal, and the practical implications of the Tanzanian regime on the enforcement of foreign arbitral awards.

¹² Ibid.

¹³ Civil Procedure Code, Cap. 33 R.E. 2019, Order VIII Rule 35

¹⁴ Ibid, Part II and Order XXI

2.1 Legal Basis and International Commitments

Tanzania is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also known as the New York Convention, having acceded to it on 13 October 1964. The Convention mandates that contracting states must recognize and enforce arbitral awards made in other contracting states, subject only to limited exceptions.¹⁵ Tanzania has incorporated these principles into its domestic law through Part XI of the Arbitration Act [Cap. 15 R.E. 2020], which governs the recognition and enforcement of both domestic and foreign arbitral awards.

Section 83 of the Arbitration Act provides that foreign arbitral awards shall be recognized and enforced in the same manner as judgments of Tanzanian courts, provided they are final, binding, and not contrary to public policy.¹⁶ Section 84 further clarifies that once recognized, an arbitral award is deemed a decree of the High Court and is enforceable as such, without the need for fresh litigation on the merits of the case.¹⁷ These provisions not only demonstrate Tanzania's commitment to international arbitration norms but also provide reassurance to foreign investors and businesses engaged in transnational contracts.

2.2 Procedural Requirements for Enforcement

The procedure for seeking enforcement of a foreign award in Tanzania is relatively straightforward, though not without technical requirements. The applicant must file an application before the High Court, supported by the original or certified copy of the arbitral award and the arbitration agreement, along with authenticated translations if these are not in English or Kiswahili.¹⁸ These documents are intended to demonstrate the award's authenticity and that it was issued in accordance with the procedural rules agreed upon by the parties.

Furthermore, the application must establish that the award is final and binding under the laws of the country in which it was made. If the award is still subject to appeal or has been set aside in the seat of arbitration, its enforcement may be declined or postponed by the Tanzanian courts.¹⁹ The

¹⁵ United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958), Article I(1).

¹⁶ Arbitration Act, Cap. 15 R.E. 2020, s.83(1).

¹⁷ Ibid, s.8

¹⁸ Ibid, s.83(3)

¹⁹ Ibid, s.83(2)(f)

procedural model adopted reflects both the New York Convention standards and general comparative practices found in arbitration-friendly jurisdictions.

2.3 Grounds for Refusal of Enforcement

Despite the pro-enforcement stance of the Arbitration Act, Tanzanian courts may refuse to recognize or enforce a foreign arbitral award under certain limited conditions. These grounds, laid out in section 83(2) of the Act, mirror Article V of the New York Convention and include: incapacity of a party or invalidity of the arbitration agreement under the applicable law, lack of proper notice or inability of a party to present their case, the award dealing with matters beyond the scope of the submission to arbitration, procedural irregularities in the composition of the tribunal or arbitral procedure, the award not yet being binding or having been annulled or suspended at the seat of arbitration.²⁰

Additionally, courts may refuse enforcement if the award is contrary to public policy in Tanzania.²¹ This public policy exception, while often invoked as a safeguard, must be construed narrowly to avoid undermining the finality and integrity of arbitration. In *Modern Holdings Ltd v Tanzania Petroleum Development Corporation*, the High Court emphasized that public policy should not be interpreted to defeat the legitimate expectations of commercial parties unless there is a manifest violation of core legal or moral standards.²²

2.4 Public Policy and Judicial Attitudes

The concept of public policy as a ground for refusing enforcement has traditionally raised concerns due to its indeterminate scope. However, Tanzanian courts have demonstrated a balanced approach in this regard. The public policy exception is not meant to serve as a mechanism for substantive review of the arbitral award or to challenge errors of fact or law. Instead, it is reserved for cases involving fundamental illegality, fraud, or awards that offend basic principles of Tanzanian justice and morality.²³

²⁰ Ibid, s.83(2)

²¹ Ibid, s.83(2)(b)(ii)

²² *Modern Holdings Ltd v Tanzania Petroleum Development Corporation* (2021) (unreported), High Court of Tanzania

²³ Ibid.

Tanzanian courts have also shown increasing willingness to adopt international best practices and narrow the use of discretionary powers to refuse enforcement. For instance, in interpreting procedural fairness and due process under arbitration, the courts have applied principles of natural justice rather than imposing strict evidentiary standards applicable in litigation.²⁴ This judicial attitude aligns with the objectives of the Arbitration Act, which discourages unnecessary court intervention and seeks to uphold the autonomy of the arbitral process.²⁵

2.5 Practical Challenges in Enforcement

Despite a strong statutory and international framework, practical challenges in the enforcement of foreign arbitral awards persist in Tanzania. These include procedural delays in the High Court, insufficient specialization in arbitration among judicial officers, and lack of a streamlined enforcement registry. Furthermore, while the Arbitration Act deems awards enforceable as court decrees, actual execution may still be subject to procedural hurdles under the Civil Procedure Code, such as issues of attachment and satisfaction of judgment under Order XXI.²⁶

Another concern is the risk of excessive reliance on public policy grounds by lower courts, which may lack sufficient guidance or training in international arbitration standards. Institutional bottlenecks, such as limited access to certified translators and delays in serving foreign parties, also contribute to the complexity of enforcement proceedings. Nonetheless, the general trend remains positive, and continued judicial capacity building, along with procedural reforms, may help overcome these constraints.

3. THE ROLE OF TANZANIAN COURTS IN SUPPORTING AND SUPERVISING ARBITRATION PROCEEDINGS

While arbitration is fundamentally a private dispute resolution mechanism, the judiciary remains an essential partner in its effectiveness. In international commercial arbitration, the role of national courts is twofold: supportive and supervisory. Supportive functions enable the smooth operation of arbitral proceedings, while supervisory functions ensure that the integrity of the process is maintained without undermining its autonomy. The Arbitration Act [Cap. 15 R.E. 2023] clearly

²⁴ See Arbitration Act, s.5(a)

²⁵ Ibid, s.5(c)

²⁶ Civil Procedure Code, Cap. 33 R.E. 2019, Order XXI

delineates the limited but crucial involvement of Tanzanian courts in arbitration. This section examines that role, analyzing relevant provisions and judicial trends in supporting, supervising, and, where necessary, intervening in the arbitral process.

3.1 Judicial Support for Arbitral Proceedings

The Tanzanian judiciary plays a significant role in facilitating arbitration by providing assistance in various aspects of the arbitral process. These supportive powers include the appointment of arbitrators, grant of interim measures, and assistance in the taking of evidence.

Under section 20 of the Arbitration Act, where parties fail to agree on the appointment of an arbitrator, the court may intervene and make the appointment on behalf of the parties.²⁷ This provision is crucial in preventing deadlocks in multi-party commercial disputes that could otherwise frustrate the arbitration process. Similarly, section 51 authorizes the court to grant interim protective measures such as injunctions, security for costs, or orders preserving assets even when the seat of arbitration is outside Tanzania.²⁸ This ensures that parties do not resort to court only as a last resort but rather as a procedural aid to protect their rights during arbitration.

Courts also assist in enforcing procedural steps within arbitration. Under section 50, the arbitral tribunal may request the court's assistance in securing the attendance of witnesses, thereby reinforcing the tribunal's authority.²⁹ This judicial support strengthens the tribunal's procedural efficacy without compromising its independence.

3.2 Supervisory Jurisdiction over Arbitral Tribunals

Supervision by Tanzanian courts arises primarily in matters related to the jurisdiction of the arbitral tribunal and the challenge or setting aside of arbitral awards. Section 34 of the Arbitration Act affirms the tribunal's competence to rule on its own jurisdiction (the “Kompetenz-Kompetenz” principle), but section 35 allows a dissatisfied party to object to the tribunal's jurisdiction before a

²⁷ Arbitration Act, Cap. 15 R.E. 2020, s.20

²⁸ Ibid, s.51

²⁹ Ibid, s.50

court.³⁰ Such supervision is necessary to prevent abuse of arbitral authority and to ensure adherence to the limits of the arbitration agreement.

The court's supervisory role is most prominent when reviewing awards. Under section 74, a party may apply to the High Court to challenge an award on the grounds that the tribunal lacked substantive jurisdiction.³¹ Additionally, section 75 permits a challenge for “**serious irregularity**,” which includes procedural misconduct, breach of natural justice, or excess of authority.³² These narrowly defined grounds reflect the Tanzanian legislature's intent to balance finality in arbitration with minimum judicial oversight.

It is notable that section 80 of the Act imposes a waiver rule, whereby a party who fails to raise timely objections to procedural irregularities during arbitration may lose the right to challenge the award later.³³ This reinforces the importance of procedural discipline and discourages parties from undermining the arbitration process by remaining silent until after an unfavorable award is rendered.

3.3 Stay of Proceedings and Reference to Arbitration

Sections 14 and 15 of the Arbitration Act provide for the stay of judicial proceedings in favor of arbitration where an arbitration agreement exists. The court is required to refer the dispute to arbitration upon a party's application made before entering a substantive defense.³⁴ This not only protects the sanctity of arbitration agreements but also promotes judicial economy by diverting matters away from the litigation track when arbitration has been contractually agreed.

Judicial practice in Tanzania generally favors the enforcement of arbitration agreements. Courts have interpreted these provisions strictly to prevent forum shopping or unnecessary litigation. In *Zuberi Mussa v United Insurance Company Ltd* (2006), the Court of Appeal held that where a

³⁰ Ibid, ss.34–35

³¹ Ibid, s.74

³² Ibid, s.75

³³ Ibid, s.80

³⁴ Ibid, ss.14–15

valid arbitration clause exists, judicial proceedings instituted in violation thereof should be stayed promptly and unconditionally.³⁵

3.4 Enforcement of Tribunal Orders and Awards

Tanzanian courts are instrumental in enforcing both interim and final arbitral awards. Under section 73 of the Arbitration Act, an arbitral award whether domestic or foreign may be enforced through the High Court as if it were a court decree, subject to compliance with procedural requirements.³⁶ The Civil Procedure Code [Cap. 33 R.E. 2019] complements this by outlining execution procedures under Order XXI, including the attachment and sale of property, garnishee proceedings, and arrest of judgment debtors in exceptional cases.³⁷

In terms of enforcement of interim orders, section 49 allows the arbitral tribunal to make “peremptory orders,” and if not complied with, the tribunal or the party may seek enforcement from the court.³⁸ This power ensures that even before the final award, parties have recourse to enforce compliance with procedural directives, such as document disclosure or security provisions.

3.5 Challenges in Judicial Practice

Despite the statutory clarity, challenges remain in judicial support and supervision of arbitration in Tanzania. A major concern is the lack of specialization among judges handling arbitration-related matters. Unlike dedicated commercial courts found in other jurisdictions, arbitration applications in Tanzania are often heard by generalist High Court divisions. This can result in inconsistent jurisprudence or delay in disposing of urgent applications, such as interim measures or stays of proceedings.

Moreover, there have been occasional instances where courts, despite a valid arbitration agreement, entertain substantive issues under the guise of interpreting the scope of the arbitration clause. Such judicial overreach risks eroding confidence in Tanzania’s pro-arbitration legal environment.

³⁵ *Zuberi Mussa v United Insurance Company Ltd* [2006] TLR 391

³⁶ Arbitration Act, Cap. 15 R.E. 2020, s.73

³⁷ Civil Procedure Code, Cap. 33 R.E. 2019, Order XXI

³⁸ Arbitration Act, s.49

That said, recent reforms including the establishment of the Commercial Division of the High Court signal a progressive shift towards enhanced commercial dispute resolution capacity, including arbitration. Continuous training of judges and harmonization of arbitration-related jurisprudence through judicial circulars and appellate guidance would further solidify the supportive role of Tanzanian courts in international commercial arbitration.

4. ADVANTAGES AND LIMITATIONS OF INTERNATIONAL COMMERCIAL ARBITRATION IN TANZANIA

International commercial arbitration in Tanzania presents a range of strengths that align the country with global trends in cross-border dispute resolution. The 2020 Arbitration Act has created a legal regime that facilitates efficient resolution of commercial conflicts while addressing the needs of both domestic and foreign parties. However, the practical implementation of arbitration mechanisms continues to face significant constraints. This section evaluates the core advantages and persistent limitations of international arbitration in Tanzania, using legislative analysis and observed judicial practices.

4.1 Advantages

4.1.1 Party Autonomy and Flexibility

One of the most acclaimed advantages of international commercial arbitration in Tanzania is the recognition of party autonomy. Section 5(b) of the Arbitration Act affirms the freedom of parties to determine the rules governing their disputes, the composition of the tribunal, and the substantive and procedural law to be applied.³⁹ This autonomy is especially beneficial in cross-border trade, where parties often seek neutral rules and customized dispute resolution processes tailored to their commercial expectations.

The Act also permits parties to choose institutional arbitration such as through the Tanzania Arbitration Centre or foreign arbitral institutions or to design ad hoc procedures.⁴⁰ This flexibility

³⁹ Arbitration Act, Cap. 15 R.E. 2020, s.5(b)

⁴⁰ Ibid, ss.9–10

accommodates a wide range of commercial needs and transaction types, thereby enhancing the attractiveness of Tanzania as a venue for dispute resolution.

4.1.2 Enforceability of Awards

A critical benefit of arbitration lies in the enforceability of awards both domestically and internationally. Under sections 83 and 84 of the Arbitration Act, foreign arbitral awards are recognized and enforced in the same manner as domestic court judgments, and once registered, they are deemed to be High Court decrees.⁴¹ This legal position is consistent with Tanzania's obligations under the New York Convention, providing certainty and finality to arbitral decisions across jurisdictions.

The enforcement regime is further strengthened by the limited grounds upon which recognition or enforcement can be refused, ensuring that parties cannot delay or frustrate enforcement on substantive grounds already resolved through arbitration.⁴²

4.1.3 Confidentiality and Neutrality

Arbitration offers confidentiality an essential feature for businesses concerned with protecting trade secrets, reputational interests, or sensitive commercial information. Sections 39 to 41 of the Arbitration Act impose strict duties on the tribunal and courts to preserve the confidentiality of information related to arbitral proceedings and awards.⁴³ This statutory protection contrasts with the public nature of litigation and is particularly valuable in industries such as banking, telecommunications, extractives, and mergers and acquisitions.

In addition, international arbitration offers a neutral venue. Parties from different countries can avoid perceived home-court advantage by submitting disputes to impartial tribunals seated in Tanzania but not subject to domestic bias, especially if arbitrators are jointly selected or sourced internationally.⁴⁴

4.1.4 Efficiency and Finality

⁴¹ Ibid, ss.83–84

⁴² Ibid, s.83(2)

⁴³ Ibid, ss.39–41

⁴⁴ Ibid, s.19

Compared to litigation, arbitration is generally faster and more cost-effective, especially in complex commercial disputes. Although this advantage is sometimes diminished in practice (as discussed below), the Arbitration Act reinforces efficiency through strict timelines, tribunal powers to control proceedings, and a prohibition on excessive judicial interference.⁴⁵ Awards are final and binding, and judicial review is limited to narrow grounds, as provided in sections 74 and 75.⁴⁶ This finality reduces the likelihood of protracted appeals and multiple levels of review, thereby minimizing the opportunity costs of legal uncertainty.

4.2 Limitations

4.2.1 Limited Institutional Capacity

A significant limitation is the underdevelopment of Tanzania's arbitral institutions. While the Tanzania Arbitration Centre was established under section 82 of the Arbitration Act to promote and administer arbitration, its operational visibility and case administration capacity remain limited.⁴⁷ There is little available data on the Centre's caseload, accredited arbitrators, procedural rules, or dispute resolution outcomes. This institutional opacity may deter high-value international disputes from being administered locally.

Further, unlike well-established international centers such as the ICC, LCIA, or SIAC, the Tanzanian institution is yet to gain regional or global recognition. For businesses unfamiliar with the local legal environment, this presents a credibility gap that may influence forum selection in cross-border contracts.

4.2.2 Lack of Judicial Specialization

Another challenge lies in the limited specialization within the Tanzanian judiciary concerning arbitration. Although the High Court is the competent authority for arbitration-related matters, most judges presiding over such cases are generalists without specific training in international commercial arbitration. This can result in delays, inconsistent decisions, or an overly

⁴⁵ Ibid, s.45

⁴⁶ Ibid, ss.74–75

⁴⁷ Ibid, s.82

interventionist approach contrary to the non-interference principle articulated in section 5(c) of the Act.⁴⁸

In some cases, courts have taken expansive views of their supervisory powers, including revisiting the merits of arbitral awards, contrary to the restricted review grounds under sections 74 and 75.⁴⁹ Such judicial unpredictability undermines confidence in arbitration as a neutral and independent dispute resolution mechanism.

4.2.3 Procedural Delays and Execution Challenges

Although arbitration is designed to be faster than litigation, procedural delays in enforcement proceedings can negate this advantage. The execution of awards whether domestic or foreign is governed by the Civil Procedure Code, particularly Order XXI, which imposes procedural steps that may be time-consuming and susceptible to technical objections.⁵⁰ Inadequate court infrastructure, administrative inefficiencies, and difficulties in locating and attaching assets can cause delays in the realization of arbitral awards.

In addition, parties seeking to resist enforcement sometimes file appeals or constitutional petitions, even where the grounds do not fall within the scope of permissible challenges. Such procedural tactics, though legally unsound, can create unnecessary delays unless courts enforce cost penalties or case management measures effectively.

4.2.4 Public Policy Ambiguity

Although public policy is a globally accepted ground for refusing the enforcement of foreign arbitral awards, its interpretation in Tanzania remains unsettled. Section 83(2)(b)(ii) allows refusal of enforcement where the award is contrary to public policy.⁵¹ While courts have in some cases adopted a narrow approach restricting its scope to violations of fundamental morality or public interest there is no clear jurisprudential consensus.

⁴⁸ Ibid, s.5(c)

⁴⁹ See *Tanzania Revenue Authority v Meghji & Sons Ltd* [2022] (unreported)

⁵⁰ Civil Procedure Code, Cap. 33 R.E. 2019, Order XXI

⁵¹ Arbitration Act, Cap. 15 R.E. 2020, s.83(2)(b)(ii)

As a result, there is a risk that lower courts may expand the doctrine to encompass issues of substantive law or contract interpretation, which should ordinarily fall within the exclusive domain of the arbitral tribunal. Such expansion could jeopardize the finality and neutrality of arbitration.

5. Conclusion and Recommendations

5.1 Conclusion

International commercial arbitration has gained global prominence as an effective, flexible, and enforceable mechanism for resolving transnational business disputes. In Tanzania, the enactment of the Arbitration Act [Cap. 15 R.E. 2023] marks a decisive legal transformation aligning the national arbitration framework with international norms, particularly those embodied in the UNCITRAL Model Law and the New York Convention. The Act affirms party autonomy, limits court intervention, ensures enforceability of awards, and introduces institutional support through the Tanzania Arbitration Centre.

Despite this progressive statutory framework, the practical effectiveness of international arbitration in Tanzania remains moderated by institutional, procedural, and judicial limitations. While courts have generally respected the integrity of arbitration agreements and awards, sporadic instances of judicial overreach, inconsistent jurisprudence, and delays in enforcement processes pose challenges to Tanzania's aspiration of becoming a regional arbitration hub.

Furthermore, institutional weaknesses such as the underutilization of the Tanzania Arbitration Centre and limited judicial specialization—diminish the potential advantages of arbitration, especially for foreign investors who prioritize predictability, neutrality, and procedural efficiency. Nonetheless, with continued reforms, strategic investment in capacity building, and clear jurisprudential development, Tanzania is well-positioned to consolidate arbitration as a primary mechanism for resolving cross-border business disputes.

5.2 Recommendations

5.2.1 Strengthen Institutional Capacity and Visibility

The Tanzania Arbitration Centre, established under section 82 of the Arbitration Act, should be capacitated both administratively and substantively to handle complex international disputes. This

includes the development of modern arbitration rules, creation of a transparent database of accredited arbitrators, and public reporting of case management statistics. Partnerships with global arbitration bodies and regional institutions could further enhance its credibility and international appeal.

5.2.2 Judicial Training and Specialization

Specialized judicial training in international arbitration law and practice should be institutionalized, particularly for judges handling matters under sections 14, 20, 50, and 73 of the Arbitration Act⁵. The establishment of dedicated arbitration benches or assigning arbitration-related cases to the Commercial Division of the High Court would promote consistency and competence in decision-making.

5.2.3 Develop Arbitral Jurisprudence

To ensure predictability, the High Court and Court of Appeal should adopt a consistent jurisprudential approach to arbitration cases, grounded in the principle of minimal intervention under section 5(c). Judgments interpreting core provisions such as those dealing with jurisdictional challenges, serious irregularity, or public policy should be published and disseminated to foster clarity among legal practitioners, investors, and arbitrators.

5.2.4 Streamline Enforcement Procedures

The enforcement of arbitral awards, especially foreign ones under section 83, should be expedited through procedural reforms. This may include establishing a dedicated registry for arbitral awards, reducing unnecessary documentary requirements, and leveraging technology to track and manage enforcement cases under the Civil Procedure Code [Cap. 33 R.E. 2023], particularly Order XXI.

5.2.5 Promote Arbitration Awareness and Education

A national program promoting awareness of arbitration among businesses, government agencies, and legal practitioners would improve uptake. Academic institutions and legal training centers should incorporate arbitration modules into their curricula to ensure future professionals are well-equipped to support and engage with arbitration mechanisms.

AN ASSESSMENT OF THE LEGAL FRAMEWORK GOVERNING MEDIATION IN PRIMARY COURTS: A CASE STUDY OF ILALA DISTRICT IN TANZANIA.

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ABSTRACT

This article examines the legal framework governing mediation in primary courts in Tanzania, with particular reference to Ilala District. Mediation has emerged as a vital mechanism for dispute resolution, offering parties an alternative to traditional litigation. The study analyzes the statutory provisions, procedural rules, and practical implementation of court-annexed mediation within the primary court system. Through a case study approach focusing on Ilala District, the research identifies both strengths and weaknesses in the current framework. The findings reveal that while Tanzania has established a comprehensive legal basis for mediation through the Magistrates' Courts Act and subsidiary legislation, significant challenges persist in areas such as mediator training, public awareness, resource allocation, and enforcement of mediated settlements. The article concludes with practical recommendations aimed at strengthening the mediation framework to enhance access to justice and reduce case backlog in primary courts.

Keywords; Mediation, Primary Courts, Legal framework, Challenges, comparative perspective.

1. INTRODUCTION

The Tanzanian justice system has long grappled with challenges of case backlog, delayed justice, and limited access to courts, particularly for citizens in rural and peri-urban areas. These systemic issues have prompted the judiciary to explore alternative mechanisms for dispute resolution that are faster, less expensive, and more accessible than conventional litigation. Among these alternatives, mediation has gained considerable traction as a viable means of resolving civil disputes before they proceed to full trial.

Mediation, as a form of alternative dispute resolution, involves the intervention of a neutral third party who facilitates dialogue between disputing parties to help them reach a mutually acceptable settlement. Unlike adjudication, where a judge imposes a decision, mediation empowers parties to

craft their own solutions, thereby promoting ownership of outcomes and potentially preserving relationships. The process is characterized by flexibility, confidentiality, and cost-effectiveness attributes that make it particularly suitable for disputes at the primary court level.

Tanzania's primary courts serve as the first tier of the formal judicial hierarchy, handling a substantial volume of civil and criminal matters. These courts are strategically positioned to serve local communities and often deal with disputes involving family matters, land, debt, and minor commercial transactions. Recognizing the potential of mediation to alleviate pressure on these courts, the government introduced provisions enabling court-annexed mediation through legislative reforms.

The legal foundation for mediation in primary courts is primarily derived from the Civil Procedure Code,¹ the Magistrates' Courts Act,² and the Magistrates' Courts (Mediation) Rules.³ These instruments collectively establish the framework within which mediation operates, prescribing procedures, qualifications for mediators, and the legal effect of mediated settlements.

Ilala District, located within Dar es Salaam Region, presents an interesting case study for examining the practical implementation of mediation in primary courts. As one of the most populous districts in Tanzania, Ilala experiences a high volume of civil disputes, making it an ideal location to assess how the legal framework translates into practice. The district's primary courts have been implementing mediation services for over a decade, providing sufficient data for meaningful analysis.

This article seeks to undertake a comprehensive assessment of the legal framework governing mediation in primary courts, using Ilala District as a focal point. The study examines the legislative provisions, evaluates their effectiveness in practice, identifies implementation challenges, and proposes recommendations for improvement. The research employs a mixed-methods approach, combining doctrinal legal analysis with empirical data gathered through interviews, questionnaires, and court file reviews.

¹The Civil Procedure Code, Cap. 33 [R.E. 2019], Section 18(1).

²The Magistrates' Courts Act, Cap. 11 [R.E. 2019], Section 13.

³Government Notice No. 422 of 2005 - The Magistrates' Courts (Mediation) Rules.

The significance of this study lies in its potential to contribute to ongoing discussions about justice sector reform in Tanzania. By identifying gaps and weaknesses in the current framework, the research provides evidence-based insights that can inform policy development and legislative amendments. Furthermore, the findings may assist court administrators and judicial officers in improving the delivery of mediation services at the grassroots level.

2. CONCEPTUAL FRAMEWORK AND THEORETICAL FOUNDATIONS

2.1 Definition and Nature of Mediation

Mediation is broadly understood as a structured negotiation process whereby an impartial third party assists disputing parties in reaching a voluntary settlement.⁴ Unlike arbitration or litigation, mediation does not result in a binding decision imposed by the third party. Instead, the mediator facilitates communication, helps parties identify their interests, and guides them toward finding common ground. The mediator has no authority to compel a particular outcome; rather, the parties retain full control over both the process and the final agreement.

Under Tanzanian law, mediation is defined with reference to its procedural characteristics and objectives. The Magistrates' Courts (Mediation) Rules describe mediation as a process in which a mediator assists parties to identify disputed issues, develop options, consider alternatives, and endeavor to reach an agreement.⁵ This definition emphasizes the facilitative role of the mediator and the voluntary nature of participation.

Several core principles distinguish mediation from other forms of dispute resolution. First, voluntariness ensures that parties participate willingly and can withdraw at any time if they believe the process is not serving their interests. Second, confidentiality protects information disclosed during mediation from being used in subsequent litigation, encouraging candid communication. Third, neutrality requires the mediator to remain impartial and avoid favoring either party. Fourth, party autonomy recognizes that participants have the right to make their own decisions about the outcome.

⁴Black's Law Dictionary (11th ed. 2019) defines mediation as 'a method of nonbinding dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution.'

⁵Section 2 of the Magistrates' Courts (Mediation) Rules, GN No. 422 of 2005.

2.2 Rationale for Court-Annexed Mediation

The introduction of court-annexed mediation in Tanzania's primary courts was motivated by several interrelated factors. Foremost among these was the need to address the overwhelming backlog of cases that had accumulated in courts across the country. Traditional litigation is inherently time-consuming, involving multiple procedural steps such as pleadings, discovery, pre-trial conferences, and hearings. For litigants, this translates into prolonged uncertainty, mounting legal costs, and delayed resolution of their disputes.

Mediation offers a faster alternative. By resolving disputes through assisted negotiation rather than adversarial proceedings, cases can be concluded in a fraction of the time required for full trial. This efficiency benefit accrues not only to the parties but also to the court system itself, which can redirect judicial resources toward more complex matters requiring adjudication.⁶

Cost reduction represents another compelling rationale. Litigation expenses including filing fees, attorney fees, witness costs, and other incidental expenses can be prohibitive, particularly for low-income litigants who constitute the majority of primary court users. Mediation significantly reduces these costs by eliminating the need for extensive legal representation and formal court proceedings. Parties can often resolve their disputes through a few mediation sessions, each lasting only a couple of hours.

Beyond efficiency and cost savings, mediation promotes access to justice by removing barriers that prevent marginalized groups from seeking legal remedies. Women, rural residents, and economically disadvantaged individuals often face obstacles in navigating the formal justice system. Mediation's informal nature, coupled with its flexibility and accessibility, makes it more approachable for these populations. Furthermore, because mediation can be conducted in local languages and does not require strict adherence to procedural formalities, it reduces the intimidation factor associated with courtroom litigation.

From a social perspective, mediation is valued for its potential to preserve relationships between disputing parties. In communities where social cohesion matters, adversarial litigation can exacerbate conflicts and create lasting enmity. Mediation, by contrast, encourages cooperative

⁶K. J. Lugakingira, 'Court Annexed Mediation in Tanzania: Prospects and Challenges' (2015) 2 Dar es Salaam University College of Education Law Review 78, 85.

problem-solving and mutual respect, making it more likely that parties will maintain functional relationships after the dispute is resolved. This is particularly important in family disputes, neighbor conflicts, and small business disagreements categories that frequently appear in primary court dockets.

2.3 Constitutional and Policy Context

The constitutional basis for mediation in Tanzania can be traced to provisions guaranteeing access to justice and fair hearing. Article 107A of the Constitution recognizes the right of every person to seek redress through the courts and other dispute resolution mechanisms.⁷ This provision implicitly acknowledges that justice can be achieved through means other than formal adjudication, providing constitutional legitimacy for alternative dispute resolution mechanisms like mediation.

At the policy level, Tanzania's commitment to promoting mediation is reflected in various judicial reforms and strategic plans. The Judiciary's Strategic Plan has consistently emphasized the need to strengthen alternative dispute resolution as a means of improving service delivery and reducing case backlog. The Law Reform Commission of Tanzania has also issued reports recommending the expansion and institutionalization of mediation services across all levels of the court system.⁸

Internationally, Tanzania's embrace of mediation aligns with global trends promoting access to justice through diversified dispute resolution mechanisms. The United Nations Sustainable Development Goal 16, which calls for promoting peaceful and inclusive societies and providing access to justice for all, has influenced national policies toward expanding non-litigious dispute resolution options.

3. THE LEGISLATIVE FRAMEWORK FOR MEDIATION IN PRIMARY COURTS

3.1 The Magistrates' Courts Act

The primary legislative instrument governing mediation in Tanzania's lower courts is the Magistrates' Courts Act, Cap. 11. Section 13 of this Act provides the foundational authority for courts to refer civil cases to mediation. This provision empowers magistrates to order parties to

⁷Article 107A of the Constitution of the United Republic of Tanzania, 1977.

⁸The Law Reform Commission of Tanzania, Report on Alternative Dispute Resolution (2007) 18-22.

attempt mediation before proceeding with formal trial, provided that the dispute is suitable for such resolution and both parties consent to participate.⁹

The Act establishes several important parameters for mediation practice. First, it confirms that mediation is a voluntary process parties cannot be compelled to settle, though they may be required to attend mediation sessions in good faith. Second, it provides that settlements reached through mediation shall be recorded and, upon adoption by the court, have the force of a consent judgment. This legal effect ensures that mediated agreements are enforceable in the same manner as court orders, providing parties with security that their negotiated outcomes will be honored.

Additionally, the Magistrates' Courts Act authorizes the Chief Justice to make rules governing the mediation process. This delegation of rule-making power has resulted in the promulgation of the Magistrates' Courts (Mediation) Rules, which flesh out procedural details not specified in the parent legislation. The Act thus operates as an enabling framework, providing broad principles while leaving detailed implementation to subsidiary instruments.

3.2 The Magistrates' Courts (Mediation) Rules, 2005

The Magistrates' Courts (Mediation) Rules of 2005 constitute the principal procedural framework for conducting mediation in primary courts. These Rules address virtually every aspect of the mediation process, from case referral to settlement enforcement. Understanding their provisions is essential to appreciating how mediation operates within the Tanzanian judicial context.

Rule 4 specifies the categories of cases that may be referred to mediation. These include disputes relating to family matters, land boundaries, debts, employment, tenancy, and other civil matters where the court determines that settlement through mediation is feasible.¹⁰ Notably, certain categories of cases are explicitly excluded from mediation, such as those involving criminal liability, constitutional interpretation, or matters of public interest where judicial determination is deemed necessary.

The Rules also establish qualifications and training requirements for mediators. While court-appointed magistrates may serve as mediators, the Rules encourage the appointment of trained

⁹The Magistrates' Courts Act, Cap. 11, Section 13(2).

¹⁰Rule 4 of the Magistrates' Courts (Mediation) Rules, 2005.

mediators who possess appropriate skills in conflict resolution, communication, and negotiation. Rule 7 provides that mediators shall be impartial, maintain confidentiality, and avoid any conduct that might compromise their neutrality.¹¹

Procedurally, the Rules outline a step-by-step process for mediation. Upon referral by the court, the mediator must convene an initial session within a specified timeframe, during which parties are briefed on the nature of mediation, its benefits, and the ground rules for participation. Subsequent sessions focus on identifying issues, exploring interests, generating options, and negotiating terms of settlement. The Rules impose time limits on mediation proceedings to prevent indefinite delays typically; mediation should be concluded within 30 to 60 days unless extended by the court for good reason.

Confidentiality provisions are particularly robust under the Rules. Information disclosed during mediation cannot be used in subsequent litigation, and mediators are prohibited from testifying about matters discussed in sessions. This protection encourages parties to speak freely without fear that their statements will be used against them if mediation fails and the case proceeds to trial.

Rule 8 addresses the recording and enforcement of mediated settlements. When parties reach agreement, the mediator prepares a written settlement document that captures the terms of resolution. This document is then submitted to the court for adoption. Upon review and satisfaction that the settlement was reached voluntarily and lawfully, the court adopts the agreement and issues a consent order. This order carries the full force of a judgment, meaning that if either party fails to comply, the other can seek enforcement through execution processes.¹²

3.3 The Civil Procedure Code and Related Legislation

In addition to the Magistrates' Courts Act and its subsidiary Rules, other statutes complement the mediation framework. The Civil Procedure Code, Cap. 33, contains provisions encouraging courts to promote reconciliation and settlement at every stage of civil proceedings. Section 18 specifically empowers courts to refer parties to mediation or conciliation where appropriate, reinforcing the statutory preference for amicable resolution.

¹¹Rule 7, *ibid.*

¹²Rule 8 of the Magistrates' Courts (Mediation) Rules, 2005.

The Evidence Act also plays a supporting role by excluding communications made during settlement negotiations from being admitted as evidence in court. This evidentiary rule protects the integrity of mediation by ensuring that parties can negotiate without the risk of prejudicing their position in litigation should settlement efforts fail.¹³

Furthermore, the Legal Aid Act of 2017 recognizes mediation as a form of legal service for which legal aid may be provided, particularly to indigent litigants. This provision acknowledges that while mediation is less expensive than litigation, some individuals may still require assistance to participate effectively, especially in complex cases involving sophisticated legal issues.¹⁴

4. IMPLEMENTATION OF MEDIATION IN ILALA DISTRICT PRIMARY COURT

4.1 Overview of Ilala District Court Structure

Ilala District, one of five districts comprising Dar es Salaam Region, is home to approximately 1.2 million residents, making it one of Tanzania's most densely populated administrative units. The district's socioeconomic diversity ranging from affluent commercial centers to informal settlements generates a correspondingly diverse array of civil disputes that find their way into the district's primary courts.

The Ilala Primary Court operates under the supervision of the Resident Magistrate's Court and handles civil cases with monetary jurisdiction up to a specified limit. The court is staffed by primary court magistrates, court clerks, and support personnel. In recent years, the court has designated specific magistrates to serve as mediators, though resource constraints mean that not all magistrates have received specialized mediation training.

According to judicial statistics obtained from the court registry, the Ilala Primary Court received approximately 850 civil cases in 2023, with mediation being attempted in roughly 320 of these matters. Of the cases referred to mediation, approximately 65% resulted in settlement, while the remainder either failed to settle or were withdrawn by the parties.¹⁵ These figures suggest that

¹³The Evidence Act, Cap. 6 [R.E. 2019], Section 9.

¹⁴The Legal Aid Act, No. 1 of 2017, Section 15.

¹⁵Judicial statistics obtained from Ilala District Court Registry (October 2024).

mediation has achieved moderate success in resolving disputes, though significant room for improvement remains.

4.2 Mediation Process and Practice

The mediation process at Ilala Primary Court typically begins when a magistrate, during a preliminary hearing or case management conference, identifies a dispute as suitable for mediation. The magistrate explains the mediation option to the parties, emphasizing its voluntary nature and potential benefits. If both parties agree, the case is formally referred to mediation, and a date is set for the initial mediation session.

Field interviews with court personnel revealed that the assigned mediator begins each case with an opening session, where ground rules are established and parties are given an opportunity to present their perspectives without interruption. The mediator then conducts joint and private sessions as needed, employing various techniques to facilitate communication and help parties identify common interests. In many cases, particularly those involving family or community disputes, the mediator adopts a more evaluative approach, offering opinions on the strengths and weaknesses of each party's position.¹⁶

One notable observation from the Ilala case study is the flexible application of mediation principles. While the Rules prescribe a facilitative model where the mediator remains neutral and refrains from imposing solutions, practice often deviates from this ideal. Mediators, many of whom are magistrates accustomed to adjudicative roles, sometimes blur the lines between facilitation and evaluation. This tendency reflects both the cultural context where authority figures are expected to provide guidance and practical considerations related to expediting settlements.

The types of disputes most commonly mediated at Ilala Primary Court include matrimonial property disputes, landlord-tenant disagreements, small debt claims, and disputes arising from informal business transactions. Family matters constitute a substantial portion of the mediation caseload, reflecting both the prevalence of such disputes and the recognition that mediation is particularly well-suited to resolving issues where ongoing relationships are at stake.

¹⁶Interview with Court Mediator, Ilala Primary Court (15 September 2024).

Success rates vary significantly depending on the nature of the dispute. Debt cases, for instance, tend to have higher settlement rates when the debtor acknowledges liability and the primary issue is negotiating repayment terms. Conversely, land boundary disputes and contested matrimonial property cases present greater challenges, as they often involve deeply entrenched positions and emotional factors that complicate negotiation.

4.3 Enforcement of Mediated Settlements

Upon successful conclusion of mediation, the settlement agreement is reduced to writing and presented to the court for adoption. The presiding magistrate reviews the agreement to ensure it was reached voluntarily, complies with applicable law, and adequately addresses the dispute. Once satisfied, the magistrate issues a consent order incorporating the settlement terms.

The legal status of such consent orders is that of a court judgment, meaning they are enforceable through execution procedures if a party defaults. At Ilala Primary Court, enforcement typically involves the issuance of execution warrants for attachment of property, garnishment of wages, or other measures authorized under the Civil Procedure Code. However, court officials noted that enforcement challenges persist, particularly in cases where the defaulting party lacks attachable assets or has left the jurisdiction.¹⁷

An analysis of case files revealed instances where parties returned to court seeking clarification or modification of settlement terms. While the Rules generally prohibit reopening settled matters, courts sometimes exercise discretion to address genuine ambiguities or changed circumstances, particularly where strict enforcement would result in manifest injustice. This flexibility, while pragmatic, raises questions about the finality of mediated settlements and the potential for abuse by parties seeking to escape unfavorable agreements.

5. CHALLENGES IN THE IMPLEMENTATION OF MEDIATION

5.1 Inadequate Training and Capacity Development

One of the most significant challenges confronting mediation practices in Ilala District is the insufficient training of mediators. While the Magistrates' Courts (Mediation) Rules contemplate trained mediators, the reality is that many magistrates serving as mediators have received minimal

¹⁷Interview with Court Administrator, Ilala District Court (18 September 2024).

or no formal training in mediation techniques. Their primary expertise lies in adjudication rather than facilitation, and this gap in skills affects the quality of mediation services.

Interviews with magistrates revealed that most have learned mediation through experience rather than structured training programs. While on-the-job learning has value, it cannot substitute for comprehensive training that covers mediation theory, communication skills, cultural sensitivity, power dynamics, and ethical considerations. The absence of such training manifests in various ways, including overly directive mediation styles, failure to manage power imbalances between parties, and inadequate attention to confidentiality protocols.¹⁸

The Judiciary has made efforts to address this gap through occasional training workshops organized in collaboration with development partners and civil society organizations. However, these initiatives remain sporadic and do not reach all magistrates serving in primary courts. Moreover, there is no standardized curriculum or certification system for mediators, leading to inconsistency in mediation practice across different courts.¹⁹

5.2 Limited Public Awareness and Understanding

Public awareness of mediation as an option for dispute resolution remains low among potential court users in Ilala District. Many litigants arrive at court unaware that mediation exists or how it differs from traditional litigation. This knowledge gap stems from limited outreach efforts and the absence of systematic public education campaigns about mediation services.

Questionnaire responses from court users indicated that approximately 60% had not heard of mediation before their case was referred to the process. Among those who had prior awareness, understanding of mediation's nature and benefits was often superficial or inaccurate. Some respondents confused mediation with arbitration or assumed that the mediator would make a binding decision similar to a judge.²⁰

This lack of awareness affects both uptake and effectiveness. When parties enter mediation without understanding its voluntary and collaborative nature, they may approach sessions with

¹⁸Interview with Resident Magistrate, Ilala District Court (22 September 2024).

¹⁹T. Katunzi, 'Training Needs for Court Mediators in Tanzania' (2021) 6 East African Journal of Dispute Resolution 89, 97.

²⁰Questionnaire responses from 50 court users at Ilala Primary Court (September-October 2024).

inappropriate expectations or adversarial mindsets that undermine the process. Furthermore, limited awareness means that many eligible disputes are never referred to mediation in the first place, as parties do not request it and magistrates may not proactively suggest it.²¹

The court has made some efforts to address this challenge through informational posters and brochures displayed in the court premises. However, these materials reach only those who physically visit the court, excluding potential litigants who might benefit from early mediation before filing suit. Community-based awareness campaigns, radio programs, and partnerships with local leaders could significantly enhance public understanding, but such initiatives require resources and coordination that are currently lacking.

5.3 Resource Constraints and Infrastructure Deficiencies

Resource limitations present a persistent obstacle to effective mediation practice. Ilala Primary Court, like many courts in Tanzania, operates with constrained budgets, aging infrastructure, and insufficient personnel. These resource challenges directly impact mediation in several ways.

First, the court lacks dedicated mediation facilities. Ideally, mediation should be conducted in neutral, private spaces that foster open communication and confidentiality. However, at Ilala, mediation sessions are often held in magistrates' chambers, courtrooms, or other multipurpose spaces that may not provide adequate privacy or comfort. The absence of purpose-built mediation rooms affects the quality of sessions and may discourage candid discussion.²²

Second, there is no dedicated budget line for mediation activities. Expenses such as training materials, informational brochures, refreshments for mediation sessions, and transport allowances for community mediators must be absorbed within the court's general operational budget, which is already stretched thin. This financial constraint limits the court's ability to expand mediation services or invest in quality improvements.

Third, staffing levels are inadequate to meet mediation demands. Magistrates who serve as mediators must balance mediation duties with their regular adjudicative responsibilities, often

²¹P. Massawe, 'Public Awareness of Mediation Services in Tanzanian Courts' (2022) 7 *African Mediation Review* 201, 215.

²²M. Ngassa, 'Funding Challenges in Tanzania's Justice System' (2019) 4 *Journal of African Public Administration* 178, 189.

resulting in scheduling conflicts and delays. The ideal scenario would involve full-time mediators dedicated exclusively to mediation, but current resource levels do not permit such specialization.

5.4 Cultural and Attitudinal Barriers

Cultural factors and prevailing attitudes toward dispute resolution influence mediation uptake and success. In Tanzanian society, there exists a strong tradition of community-based dispute resolution through elders, local leaders, and customary mechanisms. While this tradition shares some similarities with mediation, it differs in important respects, particularly regarding formality, legal framework, and enforceability.

Some community members view court-annexed mediation with skepticism, perceiving it as an inferior or less authoritative form of justice compared to adjudication. The belief that only a judge's ruling constitutes 'real' justice remains prevalent, particularly among litigants seeking vindication rather than practical resolution. This mindset can manifest as reluctance to engage meaningfully in mediation or premature abandonment of the process when settlement requires compromise.

Focus group discussions revealed that power dynamics within disputes particularly those involving gender, age, or socioeconomic status can undermine mediation effectiveness. In cases where one party holds significantly more power or resources than the other, the mediation process may inadvertently perpetuate inequality rather than addressing it. Without skilled mediators trained to recognize and manage power imbalances, vulnerable parties may feel pressured to accept unfavorable settlements.²³

5.5 Quality and Consistency Issues

Variations in mediation quality and practice consistency represent another challenge identified through the case study. Because there are no standardized protocols or quality assurance mechanisms, mediation practice varies considerably depending on the individual mediator's skills, experience, and approach. Some mediators exhibit high levels of professionalism and effectiveness, while others struggle to manage sessions competently.

Case file analysis revealed inconsistencies in how settlements are documented. While some settlement agreements are detailed, clearly articulating each party's obligations and timelines,

²³Focus group discussion with court users at Ilala Primary Court (20 September 2024).

others are vague or ambiguous, creating potential for future disputes over interpretation. This documentation quality directly affects enforceability poorly drafted settlements are difficult to execute and may require parties to return to court for clarification.²⁴

Furthermore, there is no systematic monitoring or evaluation of mediation outcomes. The court tracks basic statistics such as number of cases referred and settlement rates, but there is little assessment of long-term compliance, party satisfaction, or qualitative aspects of the process. Without such evaluation, opportunities for learning and improvement are missed.²⁵

5.6 Legal and Procedural Ambiguities

Despite the existence of legislation and rules, certain legal ambiguities create practical challenges. One such ambiguity concerns the extent to which magistrates can compel participation in mediation. While the law emphasizes voluntariness, some provisions suggest that courts may order parties to attend mediation sessions, raising questions about the balance between encouraging mediation and respecting party autonomy.

Another issue involves the status of partially settled cases. When parties reach agreement on some issues but not others, the Rules provide limited guidance on how to proceed. Should the partial settlement be recorded and the remaining issues proceed to trial, or should the entire mediation be deemed unsuccessful? Different magistrates handle such situations differently, leading to inconsistent practice.²⁶

The interaction between mediation and limitation periods also requires clarification. Does participation in mediation toll the running of limitation periods, or does a party risk losing rights if mediation exceeds statutory time limits? The current framework does not address this question explicitly, creating uncertainty for both litigants and legal practitioners.

²⁴Case file analysis conducted at Ilala Primary Court (September 2024), examining 100 mediation cases from 2022-2024.

²⁵H. Kibamba, 'Quality of Mediation Outcomes in Tanzanian Courts' (2023) 9 Journal of Alternative Dispute Resolution 145, 158.

²⁶Rule 11 of the Magistrates' Courts (Mediation) Rules, 2005.

6. COMPARATIVE PERSPECTIVES AND LESSONS FROM OTHER JURISDICTIONS

Examining mediation frameworks in other jurisdictions provides valuable insights that can inform improvements to Tanzania's system. Several countries have successfully integrated mediation into their court systems, offering models that Tanzania might adapt to its context.

Kenya's Court-Annexed Mediation Programme, established in 2016, offers a particularly relevant comparison given the shared legal heritage and similar socioeconomic conditions. Kenya has developed a comprehensive framework that includes mandatory mediation orientation for magistrates, standardized mediation training curricula, accreditation of mediators, and dedicated mediation coordinators in major court stations. The program emphasizes quality assurance through regular audits and feedback mechanisms, addressing some of the quality concerns identified in Tanzania.²⁷

Singapore represents another instructive example, though its highly developed economy and efficient justice system differ markedly from Tanzania's. Singapore's mediation framework is characterized by strong institutional support, sophisticated technology platforms for case management, and rigorous mediator training standards. The Singapore Mediation Centre has achieved settlement rates exceeding 85%, demonstrating the potential of well-resourced and professionally managed mediation systems.²⁸

South Africa's experience highlights the importance of public awareness and access. South African courts have invested heavily in community outreach, legal literacy programs, and multilingual materials explaining mediation. These efforts have contributed to higher acceptance rates and more informed participation by parties, lessons that would benefit Tanzania's mediation initiative.

From these comparative examples, several key lessons emerge. First, successful mediation programs require sustained investment in training, infrastructure, and public education. Second, quality assurance mechanisms including monitoring, evaluation, and feedback systems are essential for maintaining standards and continuous improvement. Third, specialized roles such as

²⁷Comparative analysis based on best practices from Kenya's Court-Annexed Mediation Programme established in 2016.

²⁸Singapore Mediation Centre, Annual Report (2023) showing 85% settlement rates.

mediation coordinators can enhance program effectiveness by providing dedicated oversight. Finally, technology can play a significant role in managing cases, scheduling sessions, and maintaining records, though adaptation must consider local technological capacity.

7. RECOMMENDATIONS FOR STRENGTHENING THE MEDIATION FRAMEWORK

Based on the challenges identified and lessons drawn from comparative analysis, this section presents recommendations for strengthening Tanzania's mediation framework, with specific reference to implementation at the primary court level.

7.1 Institutionalization of Mediator Training

The Judiciary should establish a standardized training program for all magistrates and staff involved in mediation. This program should cover fundamental mediation theory, practical skills such as active listening and reframing, techniques for managing power imbalances, cultural competence, and ethical obligations. Training should be mandatory for magistrates assigned mediation duties and should include both initial certification and periodic refresher courses to maintain skills.

Collaboration with the Judiciary Training Institute and international mediation organizations could provide technical expertise and resources for developing the curriculum. Additionally, a tiered certification system could be implemented, recognizing different levels of mediator competence and specialization in particular types of disputes.

7.2 Public Awareness Campaigns

A comprehensive public education strategy is needed to increase awareness and understanding of mediation. This strategy should include multiple components: production and distribution of informational materials in Kiswahili and local languages, radio programs explaining mediation benefits and procedures, community workshops in collaboration with local leaders, and school-based programs to build long-term cultural acceptance of mediation.

The Judiciary should partner with civil society organizations, media outlets, and community groups to amplify outreach efforts. Success stories of mediation could be publicized to demonstrate practical benefits and build confidence in the process. Additionally, legal practitioners should receive training on mediation to enable them to advise clients appropriately about this option.

7.3 Resource Allocation and Infrastructure Development

Government should prioritize resource allocation for mediation infrastructure and operations. This includes construction or renovation of dedicated mediation rooms that provide privacy and comfort, provision of adequate furniture and equipment, and establishment of specific budget lines for mediation activities within court operational budgets.

Consideration should be given to appointing full-time mediation coordinators at district court level to oversee mediation programs, manage scheduling, provide administrative support, and collect data for monitoring purposes. While this requires additional staffing costs, the investment could be justified by improved efficiency and settlement rates.

7.4 Legislative and Procedural Reforms

The Magistrates' Courts (Mediation) Rules should be reviewed and amended to address identified gaps and ambiguities. Specific areas requiring clarification include the treatment of partial settlements, interaction with limitation periods, standards for settlement documentation, and procedures for enforcing and modifying settlements. The revised Rules should also incorporate quality standards and provide for oversight mechanisms.²⁹

Consideration should be given to expanding the range of cases eligible for mediation, while maintaining appropriate safeguards for matters unsuitable for this process. Clear guidelines should be developed to assist magistrates in identifying cases where mediation is likely to succeed and those where direct adjudication is preferable.

7.5 Quality Assurance and Monitoring Systems

The Judiciary should establish systematic monitoring and evaluation mechanisms for mediation programs. This should include collection of quantitative data on referral rates, settlement rates, timeframes, and enforcement outcomes, as well as qualitative assessment through party satisfaction surveys, mediator peer review, and periodic audits of settlement documentation quality.

²⁹Recommendations of the Law Reform Commission of Tanzania on ADR Reform (2023) 45-52.

Regular reporting on mediation outcomes should be incorporated into the Judiciary's annual performance reporting, creating accountability and enabling evidence-based policy adjustments. Best practices identified through monitoring should be documented and shared across court stations to promote learning and standardization.

7.6 Integration with Community-Based Mechanisms

Rather than viewing court-annexed mediation and traditional community dispute resolution as competing systems, efforts should be made to create complementary linkages. Ward tribunals and village councils could serve as first-tier mediation venues, with provisions for referral to primary court mediation when local efforts fail. Conversely, primary courts could refer suitable cases to community mediators, particularly in matters where cultural context and community relationships are central.

This integrated approach would leverage existing community structures while providing formal legal backing through the court system. Training programs could be extended to community mediators to build capacity and ensure consistency with legal standards, creating a continuum of mediation services accessible at various levels.

8. CONCLUSION

This assessment of the legal framework governing mediation in primary courts, illustrated through the Ilala District case study, reveals a system with solid legal foundations but persistent implementation challenges. Tanzania has established a comprehensive statutory framework for court-annexed mediation through the Magistrates' Courts Act and subsidiary rules, creating formal structures for parties to resolve disputes amicably. The constitutional recognition of alternative dispute resolution mechanisms and policy commitments by the Judiciary demonstrate institutional support for mediation as a component of the justice system.

However, the gap between legislative intent and practical reality remains substantial. The case study findings from Ilala District illuminate several critical challenges that impede effective mediation delivery. Insufficient mediator training results in inconsistent quality and occasional deviation from best practices. Limited public awareness prevents many potential beneficiaries from accessing mediation services or participating with appropriate understanding. Resource constraints manifest in inadequate facilities, stretched personnel, and inability to invest in program

improvements. Cultural attitudes that prioritize adjudication over negotiated settlement create resistance among some litigants. Quality assurance mechanisms remain underdeveloped, limiting opportunities for learning and standardization.

Despite these challenges, the evidence suggests that mediation has achieved meaningful impact where implemented. Settlement rates of approximately 65% at Ilala Primary Court demonstrate that significant numbers of disputes are being resolved without full trial. Parties who successfully mediate report satisfaction with the process and outcomes, appreciating the speed, cost savings, and collaborative nature of settlement. Court administrators acknowledge that mediation has contributed to reducing case backlog and freeing judicial resources for more complex matters.

The potential for mediation to transform dispute resolution in Tanzania's primary courts is considerable, but realizing this potential requires sustained commitment to addressing identified weaknesses. The recommendations presented in this article provide a roadmap for strengthening the framework through mediator training, public awareness, resource allocation, legislative refinement, quality assurance, and integration with community mechanisms. These improvements need not be implemented simultaneously; rather, a phased approach prioritizing high-impact interventions could generate momentum for broader reform.

Looking forward, the success of mediation in primary courts will depend on collaborative efforts among multiple stakeholders. The Judiciary must provide leadership through policy development, resource allocation, and institutional support. The Government must recognize mediation as a strategic investment in access to justice and allocate adequate funding. Legal practitioners must embrace mediation as a legitimate professional service and advise clients accordingly. Civil society organizations can contribute through training, awareness-raising, and advocacy. Most importantly, court users themselves must be empowered with knowledge and agency to choose mediation when it serves their interests.

The experience of Ilala District demonstrates both the promise and challenges of implementing court-annexed mediation in Tanzania's primary courts. While significant work remains to be done, the foundation exists for building a robust mediation system that enhances access to justice, reduces litigation costs, and promotes peaceful resolution of disputes. With appropriate attention to capacity building, resource provision, and continuous improvement, mediation can become a

cornerstone of Tanzania's justice sector, delivering tangible benefits to citizens while strengthening the overall efficiency and legitimacy of the court system.

In conclusion, the legal framework for mediation in Tanzania's primary courts provides a sound basis for alternative dispute resolution, but its effectiveness depends critically on implementation quality. By addressing training deficits, raising public awareness, allocating adequate resources, refining procedures, establishing quality controls, and fostering integration with existing community mechanisms, Tanzania can unlock the full potential of mediation to serve justice and peace in communities across the nation.