

# ADR in the Administration of Land Justice

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## Panel Discussion

At the Judges Conference 2-4 Feb 2025

# Overview of ADR in land justice

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- Alternative Dispute Resolution (ADR) refers to non-adversarial mechanisms such as **mediation, conciliation, negotiation, arbitration, and traditional justice mechanisms** used to resolve disputes without full trial.
- **Land justice** - encompasses:
  - equity in the use, ownership and governance of land;
  - economic survival and restoration of social harmony

# Overview of ADR....

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- **Legal foundation of ADR in Uganda:**
  - Article 126(2)(e) of the Constitution – mandates courts to promote reconciliation.
  - Judicature (Mediation) Rules, 2013 – formal court-annexed mediation.
  - Civil Procedure Act, and Civil Procedure (Amendment) Rules, 2019 – empowers courts to encourage settlement.
  - Local Council Courts Act, Cap. 18 – embeds ADR in land disputes at community level.
  - Arbitration and Conciliation Act, Cap. 5

# Overview of ADR ...

- **Relevance and Advantages of ADR in land justice**
  - Land disputes are often relational (family-based or community-rooted), emotive, socially embedded, and long-standing, making ADR particularly suitable.
  - ADR supports restoration of relationships, certainty of tenure, and social harmony.
  - ADR saves resources – capital, human and financial.
  - It is flexible

# Overview of ADR....

- **Advantages of ADR ....**
  - promotes access to justice
  - reduces backlog
  - preserves relationships, and
  - allows courts to focus on matters requiring authoritative determination.
- Parties are required to participate in good faith.
- In land matters, mediation and negotiation are the widely used forms of ADR.
- Successful mediations are entered as consent judgements by court.

# Overview of ADR...

- The success or failure of ADR may depend on;
  - The nature of the dispute
  - The character/mindset of litigants
- **Cases not easily settled through ADR:**
  - Matters involving fraud, forgery, illegality, or public interest litigation
  - Cases requiring authoritative interpretation of law
  - Cases of double titling and overlapping titles
  - Matters where parties or some of them are very hostile, rude, arrogant or volatile

# Case Categories Most Suitable for ADR

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- Succession-related and family land disputes:
  - Beneficiaries contesting occupation or use
  - Administrator–beneficiary disputes
- Customary land disputes:
  - Boundary disputes
  - Clan and family land disagreements
- Co-ownership, occupation and tenancy disputes:
  - Bibanja holders and registered proprietors
  - Disputes among tenants in common or joint tenants

# Case Categories Most Suitable for ADR....

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- Neighbourhood and access disputes: Rights of way, easements, encroachments
- Transaction and compensation disputes where liability is not contested – only the quantum
- Communal and community land conflicts
- Matters where parties seek practical rather than purely legal remedies

# Diversion of cases to ADR

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- **Stages of diversion**
  - During pre-trial conferencing
  - At case scheduling conference
  - At any stage of the proceedings, trial or appeal
  - Upon application by the parties or at court's own motion
- Early diversion:
  - Cases to be filed with mediation summaries & the matter automatically goes for mediation before or after issuance of summons by the registrar

# Diversion of cases to ADR.....

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- Timing of referrals is important in order to avoid unnecessary litigation
- Old and pending land cases are screened for ADR purposes, at any stage of proceedings – sometimes even after some witnesses have testified.

# Diversion of cases to ADR.....

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- **Judicial role**
  - Early identification of ADR-appropriate cases
  - Issuing clear referral orders with scope and timelines
- **Safeguards**
  - Participation of the parties is voluntary
  - Good faith
  - Informed consent of parties
  - Protection against delay and abuse of ADR

# Setting Realistic Timelines for ADR Completion to Avoid ADR Backlog

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- Current challenge:
  - ADR is becoming an unintended parallel backlog rather than a solution.
- It is important to define timelines for ADR processes:
  - Mediation to commence within 30 days of referral
  - Completion within 60 days, unless extended for good cause
- Judicial controls:
  - Strict return dates
  - No automatic extension
  - Monthly feedback by mediators

# Monitoring, Reporting and Oversight of Referred Cases

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- **Institutional mechanisms**
  - Judge in charge ADR
  - Court-based ADR registries
  - Designated ADR coordinators: Registrar/magistrate directly supervising the ADR Registry
- **Judicial oversight**
  - Periodic status reviews by the trial judge
  - Mandatory monthly and quarterly mediator reports (without breaching confidentiality)
    - The Land Division ADR Committee does oversight, reports to the Head of Division & briefs the judicial officers during meetings

# Monitoring, Reporting and Oversight of Referred Cases....

- **Data management**
  - Tracking:
    - Number of cases referred to ADR
    - Settlement rates
    - Time taken to complete mediation
- **Policy alignment**
  - ADR supports the Judiciary Strategic Plan objectives on access to justice and efficiency

# Monitoring, Reporting and Oversight of Referred Cases....

- It is recommended;
  - To develop an M&E framework to assess ADR performance, settlement rates, compliance with timelines
  - Incorporate ADR reporting tool into ECCMIS so performance reports are generated off the system
- The result is that data will be used to;
  - Ensure accountability and transparency
  - Assess the effectiveness of ADR in land justice

# Best Practices and Lessons Learnt

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- Early case screening for ADR suitability and early referrals yield better outcomes
- Continuous judicial explanation of ADR benefits to parties increases party buy-in
- Media publicity and sustained media engagement elicits confidence in ADR as an acceptable legal dispute resolution mechanism
- Use of trained, land-sensitive ADR practitioners improves settlement quality
- Sending at least 30 cases by each judge for mediation, every quarter helps reduce backlog

## Best Practices and Lessons Learn....

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- Integration of customary norms where appropriate enhances legitimacy
- Managing power imbalances between parties
- Settlement weeks/fortnights boost compliance
- Not every land dispute is suitable for ADR
- Where mediation summaries are not filed, the ADR registry constitutes a file with skeletal pleadings to kick-start the mediation process

# Best Practices and Lessons Learn....

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- Mediation Clerk and Process server actively make phone calls/serve mediation notices to counsel/parties
- Periodic meetings with mediators to address issues of performance
- ADR committee in place
- A mediation registry distinct from the main Registry in place
- ❖ Confidentiality and neutrality are critical.

# Lessons learnt & best practises...

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- Recommendations:
  - At filing/earliest opportunity, contact details of the parties & counsel to be recorded for ease of communication
  - Uganda Law Society & counsel to be actively engaged to demystify 'land cases cannot be mediated' mentality
    - ✓ Convene a meeting/workshop
  - Registry should constitute mediation files even without mediation summaries
  - The ADR clerk & process server to have dedicated airtime & other facilitation to be able to effect service, initiate & sustain contact with the parties & counsel

# Lessons learnt & best practises ....

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- Recommendations:
  - Digital/ECCMIS tracking of ADR case performance
  - Training & capacity building on ADR and use of ECCMIS
  - Facilitate mediators to visit locus in deserving cases.
  - Settlement fortnight is recommended at least quarterly, as it is rare to complete settlement in a land matter in one week.
  - Best if dates are pre-set a year in advance & funds allocated in the annual budget

# Lessons learnt & best practises ....

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- Recommendations;
  - Dedicated ADR registries at the Divisions & Circuits should be strengthened through:
    - Staffing
      - Land Division currently has only 2 staff – a court clerk & a process server
    - Increased budgetary support to the registry.
  - Designate a judge in-charge mediation to assist the Head of Division/Circuit with supervision
  - Be notoriously persistent about ADR. It will catch on

# Lessons learnt & best practises ....

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- Recommendations:
  - Skilling & consistency in mediation practice & reporting is important.
  - So, regular refresher & advanced training programmes should be organised for;
    - court-accredited mediators
    - mediation registry staff
    - advocates

# Leadership Support to Foster Seamless Linkages Between ADR and Court Processes

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- **Leadership Support** is active leadership engagement in bridging ADR and formal court adjudication to ensure coherence, efficiency, and legitimacy
- **Leadership in this Context:**
  - Top Management (Judiciary leadership)
  - Appellate Courts (Supreme Court & Court of Appeal)
  - Courts with Original Jurisdiction (High Court & Magistrates Courts)

# How Leadership Can Link ADR to Court Processes

- **1. Top Management**
  - **Strategic Direction**
    - Streamlining policy, rules, and practice directions on ADR
    - Institutionalising ADR within the justice system
    - Providing appropriate infrastructure and resources (human & financial)
  - **Budgetary Provision**
    - Mainstreaming ADR in judicial budgeting and planning
  - **Capacity Building & Public Sensitisation**
    - Training judicial officers
    - Raising public awareness on ADR

# How Leadership Can Link ADR to Court Processes...

- **2. Appellate Courts**
  - **Appellate ADR Leadership**
    - Embracing mediation and other ADR mechanisms at appellate level
    - Building trust in ADR outcomes through example
  - **Recent example of ADR at appellate level**
    - Successful mediation of a **22-year-old dispute** between the administrators of the estate of **Dr. Muhammad Buwule** and **Sir Edward Muteesa II**, concluded in the week ending **16 January 2026**
      - Mediated by **Hon. Justice Alfonse Owiny-Dollo, C.J. (Emeritus)**
      - *(Supreme Court Civil Appeal No. 001 of 2024)*

# How Leadership Can Link ADR to Court Processes...

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- **3. Courts with Original Jurisdiction**
  - Proactive referral of suitable cases to ADR
  - Judicial officers to use every opportunity at every stage of the case to encourage parties to negotiate or go for mediation
  - Adoption of ADR settlements as consent judgments
  - Embedding ADR in day-to-day case management

# Leadership Support for Seamless ADR–Court Integration

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- **Judicial Leadership**
  - Clear and consistent practice directions in administration of land justice
  - Strong, uniform messaging from the Bench
  - Strengthening coordination between courts and ADR providers
- **Institutional Support**
  - Training judges and magistrates in ADR
  - Training of judicial officers in screening cases for ADR
  - Continuous professional development for mediators

# Leadership Support for Seamless ADR–Court Integration....

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- Other than mediation, conciliation & arbitration are possible.
  - For conciliation, a conciliator (moderator) is required, especially for large communities to fix broken relationships & to restore peace
  - For arbitration, the norm is that it is done pursuant to an arbitration clause, but it may also be done outside such an arrangement, if the parties agree.
  - Matters that can be sorted by arbitration include those involving scope of agreements, loans, interest, valuation.
- So, strong linkage with all forms of ADR to be integrated

# Leadership Support for Seamless ADR–Court Integration....

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- **Inter-Sectoral Collaboration**
  - Judiciary, Ministry of Lands, traditional institutions, and local governments
- **Cultural Shift**
  - Positioning ADR as a core justice delivery tool, not an optional add-on
- **Expected results of good leadership support:**
  - Reduced case backlog
  - Faster dispute resolution
  - Restored social harmony
  - Enhanced public confidence in land justice

# Leadership Support for Seamless ADR–Court Integration....

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- **Operational & Resource Considerations:**
  - **Judicial Officers:** Buy-in and active championing of ADR is needed
  - **Mediator Facilitation –** Consider improving mediator remuneration
  - **Operational funds –** need for communication and clarity on how and when the UGX 538,000/= operational fund for each mediator is supposed to be paid?

# Leadership Support for Seamless ADR–Court Integration...

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- **Operational & Resource Considerations...**
  - Harmonisation of mediation disposal case allowances;
    - Review of **UGX 300,000/= and UGX 100,000/=** distinction
    - There should be no distinction between successful and unsuccessful mediations
    - Consideration should be given to the time spent on mediation, not just the outcome
  - Clear budgeting for the number of mediators

# Leadership Support for Seamless ADR–Court Integration....

- **Infrastructure & Logistics**
  - Dedicated ADR rooms (including in planned **High Court Naguru complex**)
  - Purpose-designed mediation spaces
    - Current Land Division facilities: **1 Chamber & 2 Court Halls, & vacant judicial officer' chambers**
  - Dedicated clerks and interpreters
  - Basic logistical support (e.g., drinking water, fuel, allowances for drivers & body guards for retired justice/judge mediators)

# Leadership Support for Seamless ADR–Court Integration....

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- **Sustainable Funding & Communication:**
  - Recognition of ADR as a cost-saving justice mechanism
  - Funding through:
    - Dedicated Judiciary budget lines
    - Development partner support
  - Communication strategy to promote ADR as: Credible, Accessible & Cost-effective
  - Monitoring & Evaluation for ADR

# Conclusion

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- Institutionalised ADR is central to effective land justice.
- As for resources – plan, budget, get support, dedicate and account consistently
- With leadership support, clear procedures, and adequate resourcing, ADR can significantly enhance fairness, efficiency, and public confidence in the justice system.