

# Alternative Dispute Resolution in Commercial Justice Administration

Judges' Conference Presentation

Justice Anna B. Mugenyi

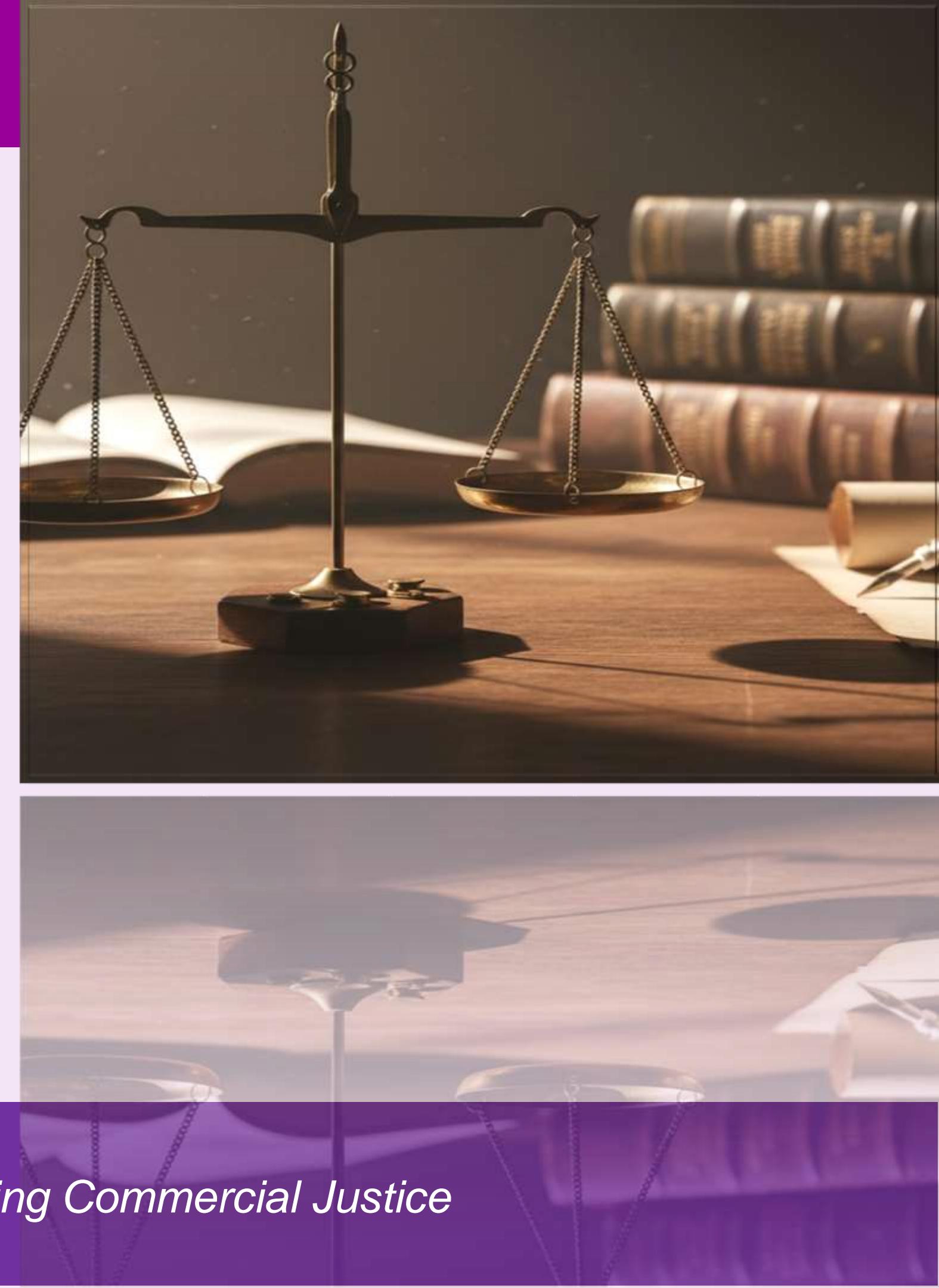
2<sup>nd</sup> February 2025



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# Presentation Outline

- What is Commercial Justice?
- What is Alternative Dispute Resolution?
- Role of ADR in Commercial Justice Administration
- Court-ADR Interface
- ADR Legal Framework in Uganda
- ADR Challenges in the Administration of Commercial Justice
- Recommendations and Best Practices
- ADR and Judicial Health & wellness

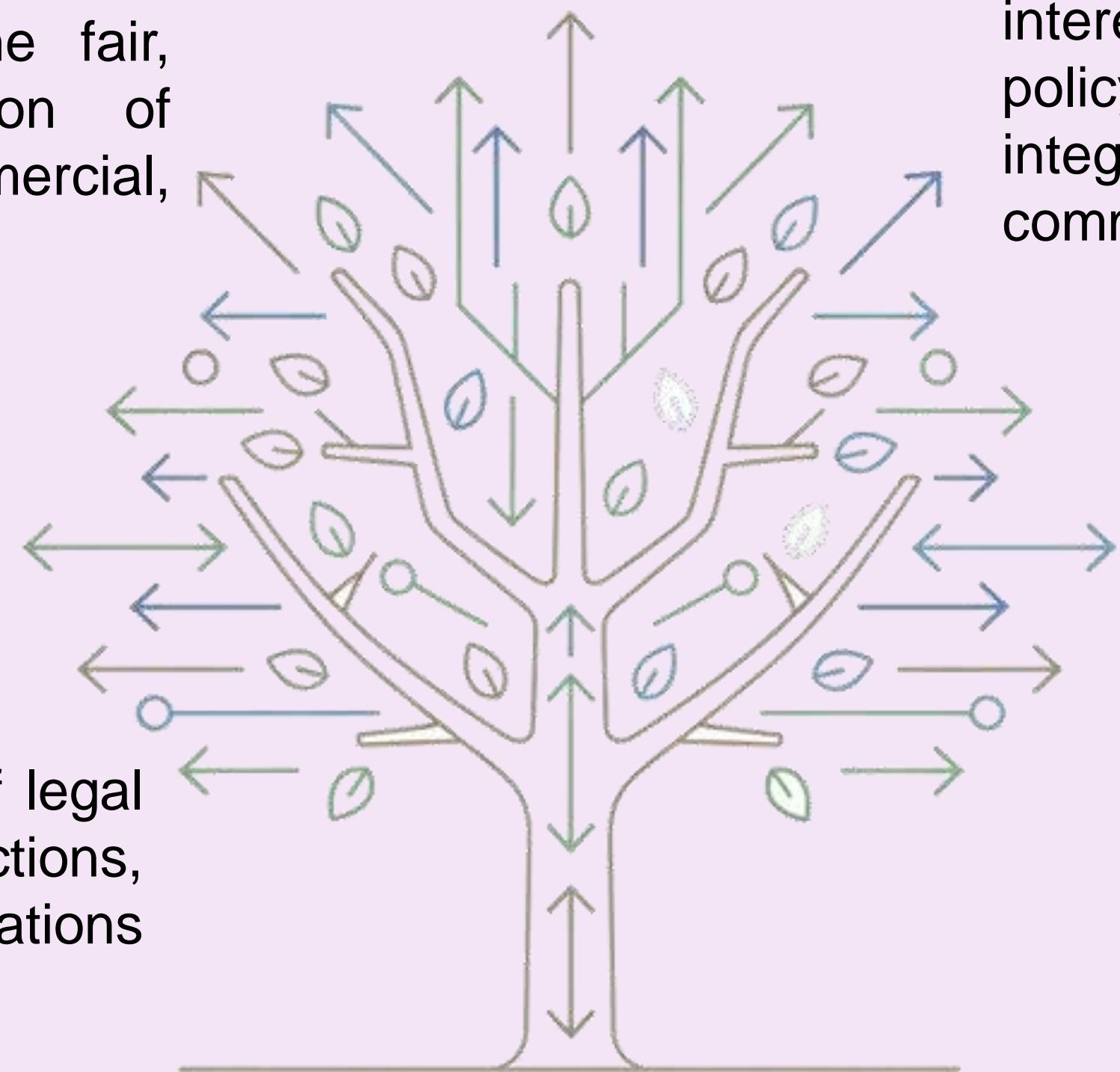


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# What is Commercial Justice?

- Commercial Justice refers to the fair, efficient and effective resolution of disputes arising from commercial, business, trade and employment.

- It balances private commercial interests with public economic policy by ensuring predictability, integrity and accountability in commercial dealings



- It encompasses the application of legal principles to regulate transactions, contracts, investments, labour relations and corporate conduct.



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# What is Alternative Dispute Resolution?



- ADR refers to a range of Non-Judicial mechanisms used to resolve commercial disputes outside the traditional court process. In the administration of commercial justice, ADR plays a vital role in promoting efficiency, flexibility, and business-friendly dispute resolution.



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# ADR in Administration of Commercial Justice

## Rationale:

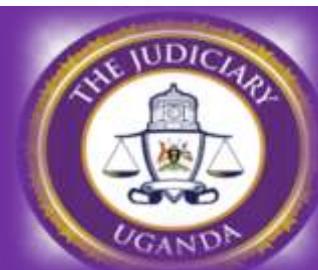
In Commercial Justice, ADR is employed to resolve disputes arising from business, trade, finance, investment and contractual relationships through consensual or private adjudicative processes.

The use of ADR is driven by the need to;

- Reduce Court congestion
- Minimise delays and costs
- Preserve commercial relationships
- Provide specialised and confidential dispute resolution



ADMINISTRATIVE DISPUTE RESOLUTION



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# Main forms of ADR in Commercial Justice

## A) Arbitration

- A private binding dispute resolution process where parties submit their disputes to one or more neutral arbitrators.
- Ideal for high value, complex, and cross broader commercial disputes
- Arbitral awards are enforceable like Court judgments, including internationally under the New York Convention
- Courts support arbitration through stay of proceedings, interim measures and enforcement of awards

## B) Mediation

- A voluntary confidential process in which a neutral mediator assists parties to reach a mutually acceptable settlement.
- Non-binding unless a settlement agreement is reached.
- Encourages commercial pragmatism and preservation of business relationships
- Increasingly integrated into Court-Annexed commercial justice systems.

## C) Conciliation

- Similar to mediation but the conciliator may take a more active role by proposing settlement terms.
- Common in commercial and investment disputes.

## D) Negotiation

- Direct discussions between parties and/or their representatives
- Often the first step in commercial dispute resolution and commonly required by contract.



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# Role of ADR in Commercial Justice Administration

- Enhancing access to Justice through faster and less formal procedures
- Reducing backlog in the Commercial Division and other Courts
- Promoting party autonomy, allowing businesses to choose procedures, decision makers and timelines.
- Ensuring confidentiality which is critical in sensitive commercial matters.
- Supporting judicial efficiency as Courts supervise, enforce and compliment ADR processes



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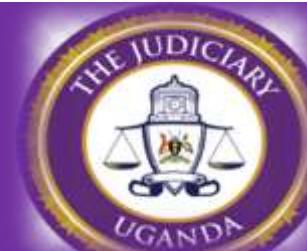


# Court-ADR Interface



Modern commercial justice systems adopt a complementary approach:

- Courts may refer parties to ADR at pre-trial or case management stages.
- Courts enforce ADR clauses, arbitral awards and mediated settlements.
- Judicial intervention is limited to support and supervision, not interference.



# Policy and Developmental Importance



## ADR in commercial justice:

- Improves the business and investment climate.
- Aligns with international best practices
- Promotes peaceful, efficient resolution of commercial disputes.
- Strengthens confidence in the legal and judicial systems.

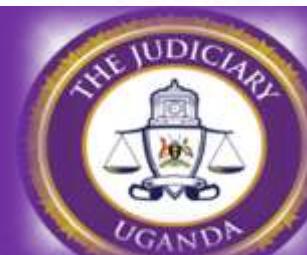
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# Way Forward



ADR is an indispensable pillar of commercial justice administration. By offering flexible, efficient, and business-oriented dispute resolution mechanisms, ADR complements formal adjudication and ensures that commercial disputes are resolved in a manner that supports economic growth, judicial efficiency and the rule of law.



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# ADR Legal Framework In Uganda

- The 1995 Constitution- Article 126(2) (d) and (e) –mandates courts to promote reconciliation and ADR
- Judicature Act (Cap 16) – inherent powers of courts
- Civil Procedure Act Cap 282 and Rules (SI 71-1) – Procedures such as scheduling lead to agreed facts, issues
- Arbitration and Conciliation Act (Cap 5)- statutory arbitration framework.
- Draft Judicature (Court-Annexed mediation) Rules 2025
- National ADR Policy 2025



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# Challenges Relating to ADR in Administration of Commercial Justice

## 1. Limited utilisation despite legal framework.

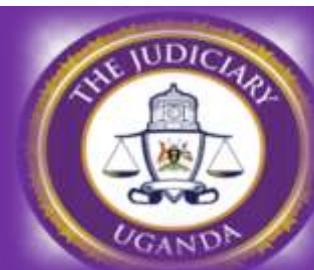
- Although mediation is provided for, many commercial disputes still proceed to full trial.
- ADR is often viewed as a procedural formality rather than a genuine dispute resolution.

## 2. Case backlog and delays in Courts.

- High case volumes in the Courts reduce the time available for effective case management and early ADR referral.
- Delays undermine confidence in both litigation and ADR outcomes.

## 3. Capacity Constraints.

- Limited number of specialized commercial mediators and arbitrators, especially outside Kampala
- An uneven quality of ADR services due to inconsistent training and accreditation.



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## Challenges contd.

### 4. Enforcement Challenges.

- Applications to set aside arbitral awards or resist enforcements are frequently used to delay finality.
- Lengthy enforcement procedures dilute the advantages of arbitration.

### 5. Cost Barriers.

- Institutional arbitration and professional fees remain high for SMEs.
- Perception that arbitration is only suitable for large or international disputes.

### 6. Inconsistent Judicial Approach.

- Variations in how Judges encourage, refer, or manage ADR across the Courts.
- Occasional over intervention in arbitral matters contrary to the principle of minimal court interference.

### 7. Awareness and Cultural Attitudes.

- Limited understanding of ADR among small businesses and informal commercial actors.
- Strong preference for authoritative judicial determination.



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# Recommendations Relating to ADR in Administration of Commercial Justice

## 1. Strengthen Court-Annexed Mediation

- Make early mandatory mediation screening a consistent practice in all cases
- Enhance collaboration between the Courts and ADR institutions.

## 2. Judicial Capacity Building

- Continuous training for Judges on case management, mediation referral, and arbitration-friendly jurisprudence
- Development of ADR practice direction specific to the Divisions of the High Court.

## 3. Improve Enforcement Efficiency

- Streamline procedures for recognition and enforcement of arbitral awards.
- Actively discourage dilatory tactics through firm cost orders and strict timelines.

## 4. Expand Regional Access

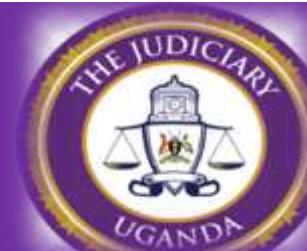
- Develop ADR capacity in up-country High Court Circuits
- Encourage decentralisation of mediation and arbitration services beyond Kampala.

## 5. Promote SME-Friendly ADR

- Introduce simplified and low-cost mediation and arbitration tracks for SMEs.
- Encourage pre-dispute ADR clauses in standard commercial contracts

## 6. Harmonise Legal Frameworks.

- Review and update the Arbitration and Conciliation Act to align with modern international standards and local realities.
- Strengthen linkage between mediation rules and civil procedure framework.



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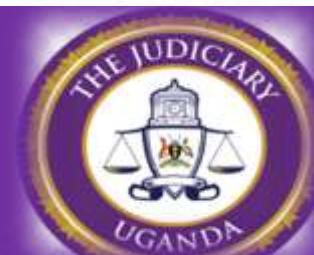
# Recommendations contd.

## 7. Awareness and Stakeholder Engagement

- Targeted sensitisation of the business community, banks, insurers, regulators, lawyers and other actors in the commercial justice system.
- Judicial outreach programs highlighting successful ADR outcomes.

## 8 Policy Support and Institutional Strengthening

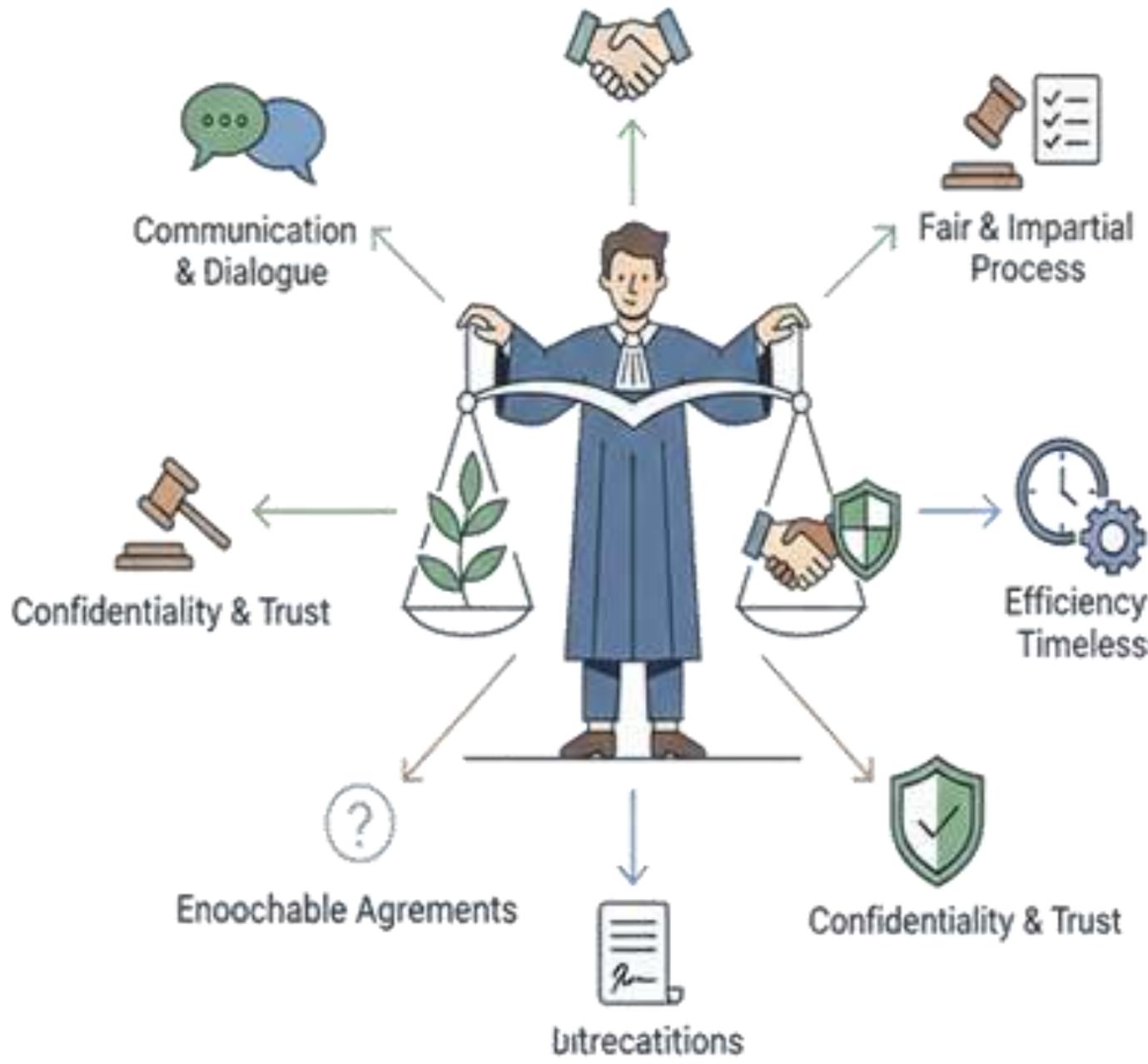
- Increased budgetary and policy support for ADR institutions
- Establish national standards for accreditation, ethics, and performance monitoring of ADR practitioners.



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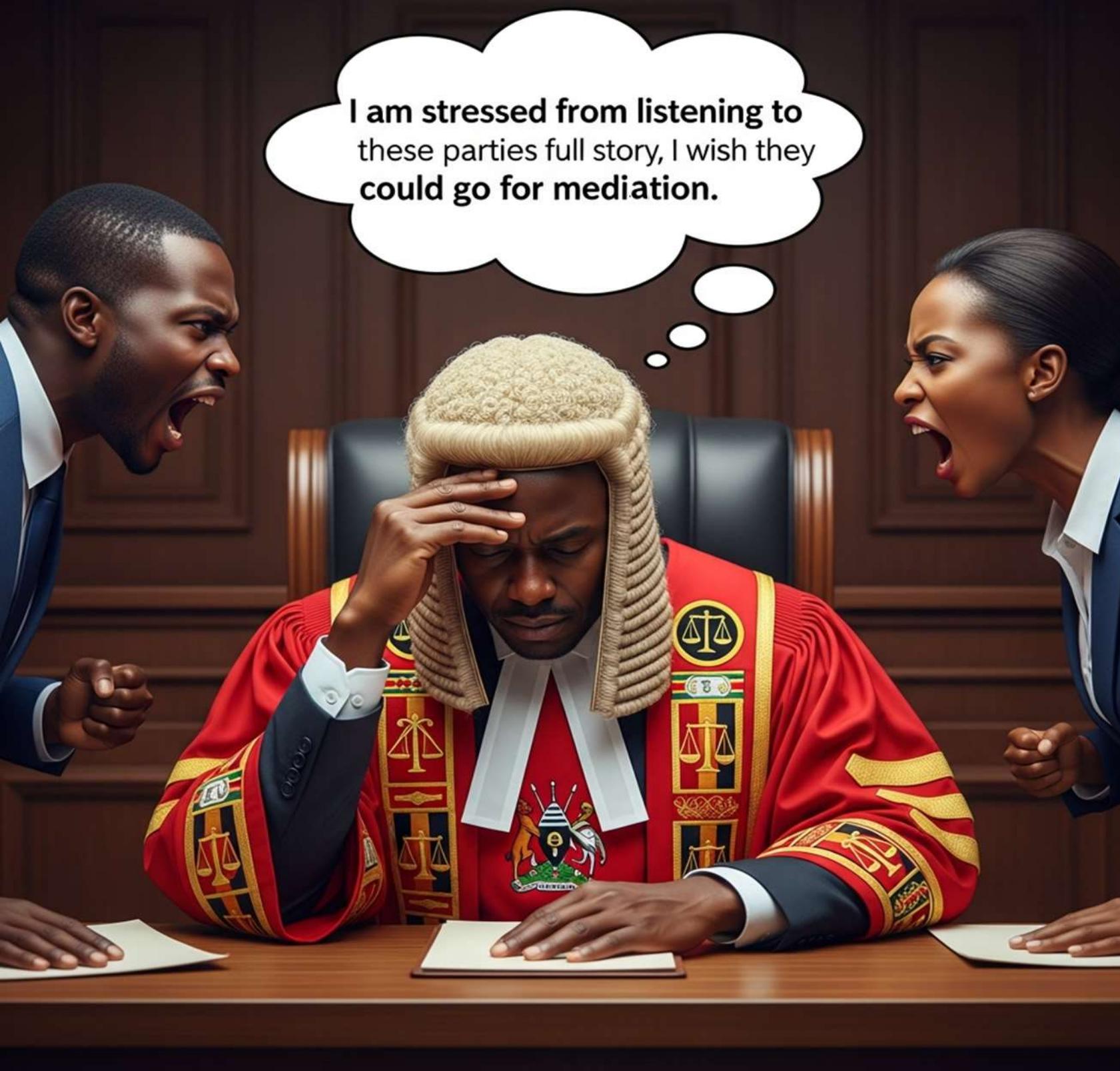
# Best Practices of ADR in Commercial Justice



1. Legal and institutional framework
2. Guiding principles for judicial use of ADR
  - Appropriateness, party autonomy, neutrality and impartiality, confidentiality, proportionality, finality and enforceability.
3. Identifying cases suitable for ADR
4. Timing of ADR referrals.
5. Court-Annexed mediation: Judicial dos and don'ts.
6. Arbitration best practices for the Judges
  - Respect for arbitration agreements, limited judicial intervention, interim measures and enforcement of awards.
7. Costs, incentives and sanctions.
8. Ethical and procedural safeguards.
9. Record keeping and performance monitoring.
10. Continuous judicial developments



# How ADR Promotes Judicial Health & Wellness



Judicial wellness encompasses the mental, emotional, professional, and institutional well being of Judges, enabling them to perform their duties effectively, independently, and sustainably.

ADR plays a significant and often under-appreciated role in promoting judicial awareness particularly in busy Courts:

## 1. Reduction of case backlog and workload pressure

Wellness impact: Less cognitive overload, reduced burnout and improved work-life balance.

## 2. Shorter and more predictable case timelines

Wellness impact: Greater control over-time, reduced frustration, and enhanced professional satisfaction.

# How ADR Promotes Judicial Health & wellness

## 3. Reduced adversarial intensity

**Wellness impact:** Lower emotional strength and reduced secondary stress associated with adversarial disputes

## 4. Improved quality of judicial decision making

**Wellness impact:** Increased confidence, professional pride and intellectual fulfilment.

## 5. Enhanced sense of judicial efficacy and purpose

**Wellness impact:** Greater job satisfaction and reduced cynicism.

## 6. Lower risk of complaints and conflicts with Court users

**Wellness impact:** Reduced anxiety related to complaints, appeals, or public scrutiny.

## 7. Institutional support and collegiality

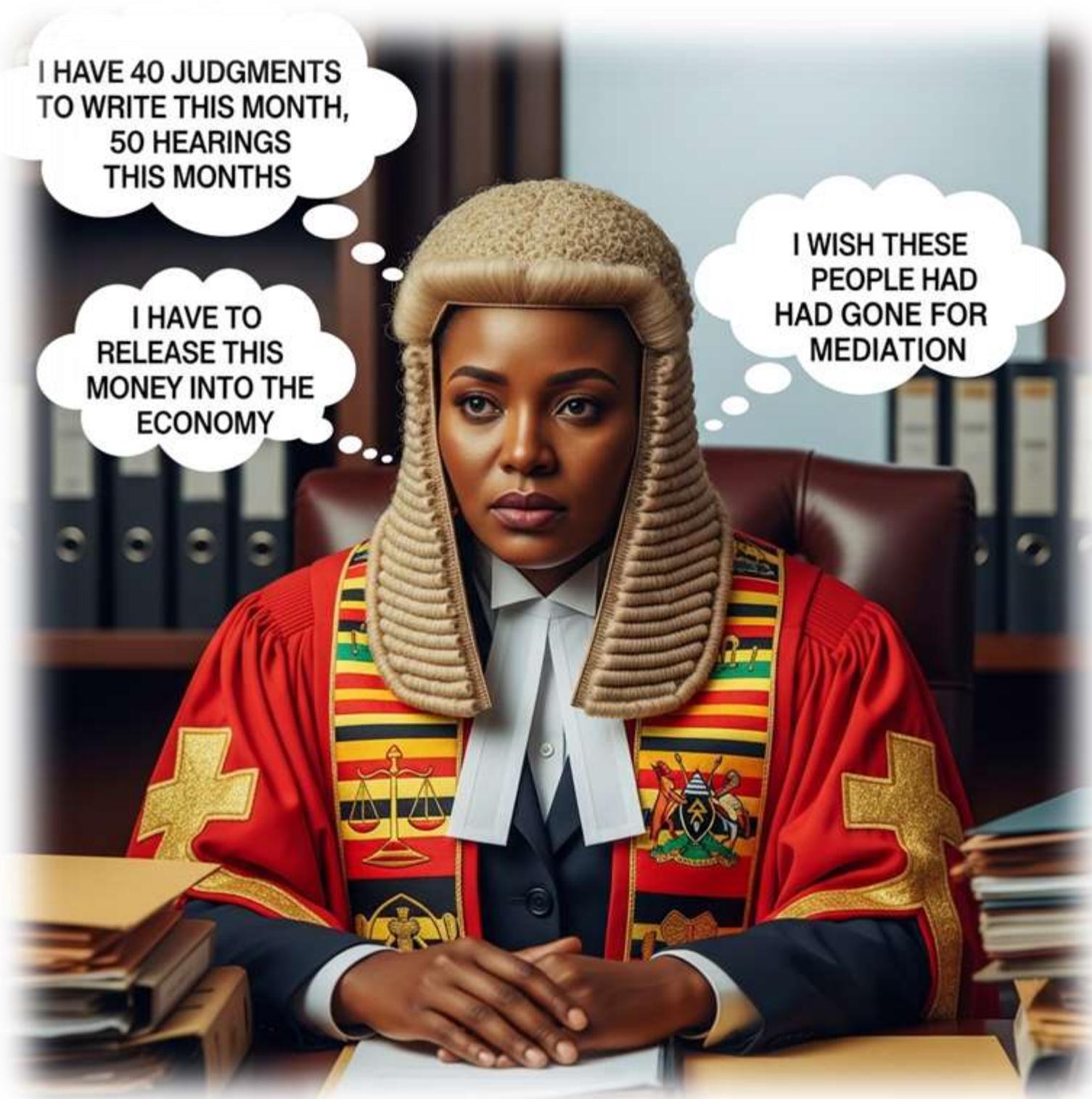
**Wellness impact:** Stronger collegial support and institutional resilience



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# How ADR Promotes Judicial Health & wellness



## 8. Psychological distance from outcomes

**Wellness impact:** Lower emotional burden and reduced risk of compassion fatigue.

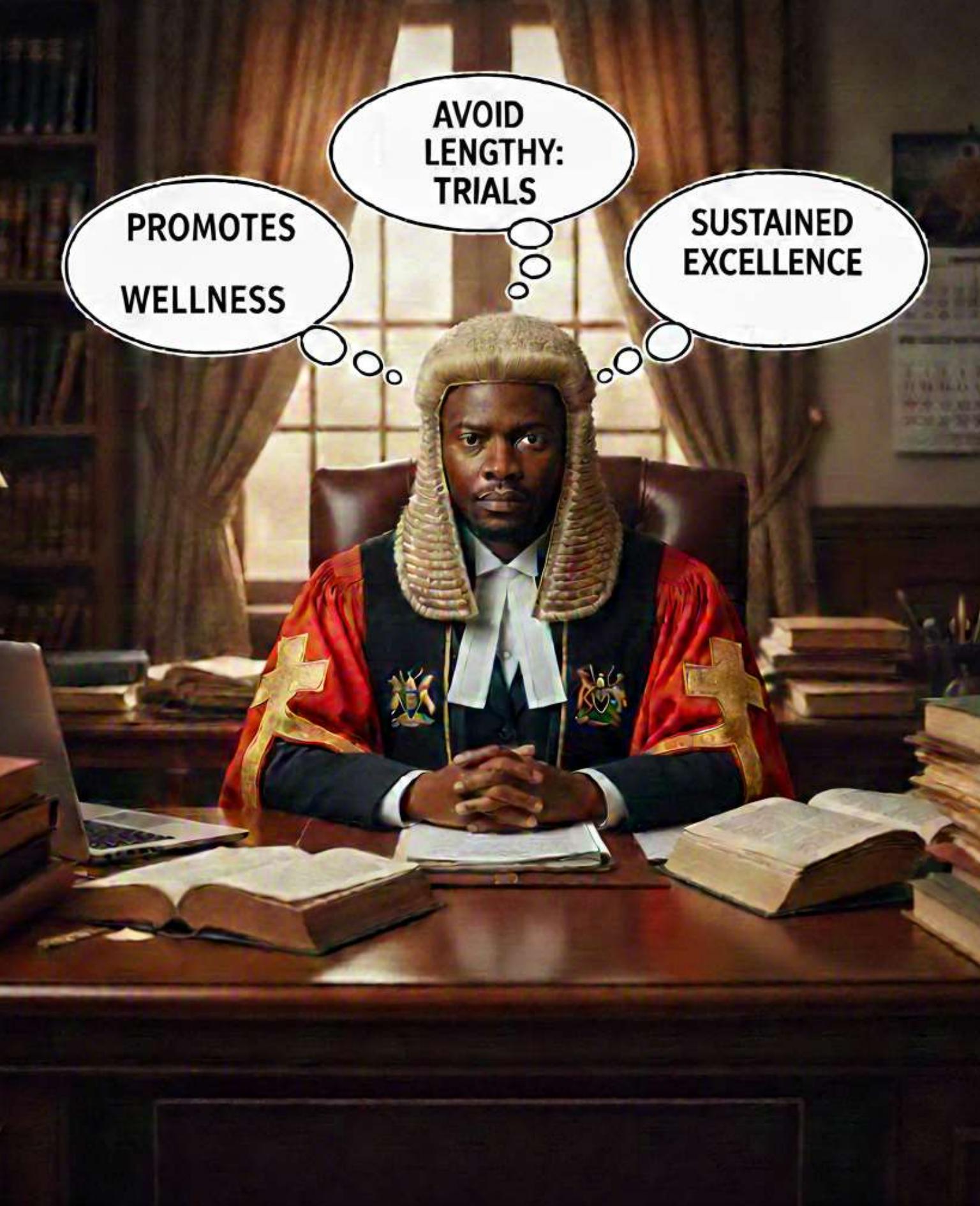
## 9. Alignment with modern judicial identity

**Wellness impact:** Greater sense of professional control and reduced role strain.

## 10. Sustainable justice delivery

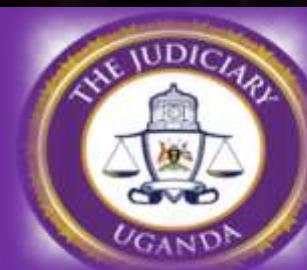
**Wellness impact:** Long-term judicial health and institutional stability.

# Conclusion



ADR promotes judicial wellness by **reducing overload, lowering emotional strain, improving professional satisfaction and fostering a healthier justice eco-system** for all Court Judges.

ADR is not merely a procedural tool, it is a wellness strategy that enables sustained excellence for effective case management.



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Thank You...