

STATUTORY INSTRUMENTS

2003 No. 71.

THE COMMERCIAL COURT DIVISION (MEDIATION PILOT PROJECT) RULES,
2003.

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The Commercial Court Division (Mediation Pilot Project) Rules, 2003.

*(Under section 43 of the Judicature Statute, 1996,
Statute No. 13 of 1996)*

IN EXERCISE of the powers conferred upon the Rules Committee by section 43 of the Judicature Statute, 1996, these Rules are made this 3rd day of August, 2003.

1. Title

These Rules may be cited as the Commercial Court Division (Mediation Pilot Project) Rules, 2003.

2. Commencement

These Rules shall come into force on the date of publication in the *Gazette*.

3. Duration

These Rules shall be in force for a period of two years commencing from the date of commencement.

4. Application

These Rules shall apply to all civil actions brought to the Commercial Court and to all actions and applications identified for reference by the Commercial Court under the Pilot Project.

5. Interpretation

In these Rules unless the context otherwise requires—

“associated person” means a person who is a partner, employee or member of a business enterprise engaged in mediation or arbitration, or a person hired by or contracted to such a business enterprise engaged in mediation or arbitration;

“CADER” means the Center for Arbitration and Dispute Resolution established under section 68(1) of the Arbitration and Conciliation Act, 2000 (Act No. 7 of 2000);

“Code of Conduct” means CADER Code of Conduct;

“Commercial Court” means the Commercial Division of the High Court established by the Commercial Court (Practice) Directions, Notice, 1996 (LN No. 5 of 1996).

“Court” means the Commercial Court;

“defence” means a defence filed in Court, or a notice of motion in response to an action, other than a motion challenging the court’s jurisdiction;

“designated party” means a party whom an order made under rule 8 requires to attend a mediation session in person;

“mediation” means the process by which a neutral third party facilitates communication among the parties to a dispute and assists them in reaching a mutually agreed resolution;

“Mediation Registrar” means the Registrar of the Commercial Court;

“Pilot Project” means the mediation reference program carried out by the Commercial Court under these Rules.

6. Management of Pilot Project

(1) The Pilot Project shall be assessed and evaluated by a working group comprising—

(a) the Chief Justice;

(b) the Principal Judge;

(c) the Head of the Commercial Court; and

(d) one representative each from—

(i) the office of the Attorney-General,

(ii) the Commercial Court Users Committee; and,

(iii) the Bar-Bench Committee.

(2) The responsibility of the working group is to assess the ongoing effectiveness of the Pilot Project and to recommend any appropriate adjustments and support where possible of the transition to a permanent rule change on mediation.

(3) The CADER shall issue—

(a) quarterly reports,

(b) recommendations every six months, and

(c) at the end of the Pilot Project, report to the Head of the Commercial Court regarding the operations and success of the Pilot Project.

7. Newly filed cases, backlog cases and reference to mediation

(1) In every new action or application commenced in the Commercial Court, after the commencement of these Rules, each party shall include a brief statement, in the pleadings, indicating whether it consents to or opposes referral of the matter to mediation.

(2) No opting out of the Pilot Project is allowed except by Order of a Judge of the Commercial Court if the matter is brought to his or her attention.

(3) In the absence of any objection in the pleadings to a reference by the Registrar of a matter to mediation, it shall be presumed that the parties have waived any objection to referral of a matter to mediation under these Rules.

(4) Notwithstanding any rule in the Civil Procedure Rules to the contrary, no appeal, review or other form of challenge shall be permitted from a referral Order of a Registrar or Judge made under these Rules.

(5) Where a matter is referred to mediation, the time limits set out in rule 2(2) of Order X.B of the Civil Procedure Rules, or other relevant rules shall cease to run from the date of the referral Order, until after the Mediator's report has been filed in the Court upon completion of the mediation process.

8. Mandatory mediation reference

(1) Where a party has opposed a reference of the action to mediation, the Court shall cause a notice to be issued to the parties within thirty days after the filing of the first defence inviting the parties to attend a mediation hearing before the Registrar.

(2) At the hearing upon a notice under subrule (1), the Registrar shall issue directions as to—

- (a) the issues to be mediated;
- (b) the time within which the mediation session is to be completed;
- (c) which parties are required to attend the mediation session in person, and
- (d) how they are to be served; and
- (e) any other matter necessary or desirable to facilitate the mediation.

9. Exemption from mediation hearing

Upon proper cause being shown by a party, the Registrar may make an order on a party's motion, exempting the matter or application from these Rules.

10. Time limits

(1) Mediation proceedings shall be completed within thirty days from the date of the Order directing mediation; except that the Registrar may, upon proper cause being shown, extend or abridge the time within which the mediation proceeding may be commenced.

(2) The parties may, upon filing an agreement for extension of time, agree to an extension of the time limit for an additional period not exceeding thirty days.

(3) The Mediator may apply to the Registrar in the prescribed form for further extension of time, at least ten days before the intended hearing.

11. Considerations for extension or abridgement of time

In considering whether to exercise the power conferred by rules 8 and 9 of these Rules, the Registrar shall take into account all relevant circumstances, including—

- (a) the number of parties, the state of the pleadings and the complexity of the issues in the action;
- (b) whether a Party intends to bring a motion under Order 33 of the Civil Procedure Rules;
- (c) the provisions of Order 32 of the Civil Procedure Rules;
- (d) special case stated under any provision of the law;
- (e) whether the mediation will be more likely to succeed if the twenty one day period prescribed under rule 2(2) of Order XB of the Civil Procedure Rules is extended to allow the parties to obtain evidence under Order X of the Civil Procedure Rules; or
- (f) whether, given the nature of the case or the circumstances of the parties, the mediation is more likely to succeed if the twenty-one day period prescribed under rule 2(2) of Order XB of the Civil Procedure Rules is extended or abridged.

12. Mediators

(1) Mediation under these Rules shall be conducted by—

- (a) a person qualified and certified by CADER as a mediator and selected by the parties from the CADER Roster of Mediators established and maintained by CADER;
- (b) a person assigned by CADER from the roster established and maintained by CADER.

(2) Every person who conducts mediation under these Rules shall comply with the Code of Ethics for Mediators established and enforced by CADER.

(3) Every person who conducts a mediation session under these Rules shall submit the Mediator's Report in accordance with rule 20.

13. The mediation procedure

(1) CADER shall provide the parties with a list of qualified certified Mediators.

(2) Where the parties are unable to agree on a Mediator within ten days after the date of the referral to the Pilot Project, CADER shall appoint a mediator for the parties.

(3) Where appropriate, the Mediator, after consultation with the parties, shall—

- (a) attend any meetings with any or all of the parties preceding the mediation, if requested or if the Mediator decides that it is appropriate and the parties agree;
- (b) read each Case Summary and all the documents sent to him or her;
- (c) preside over and determine the procedure for, the mediation; and
- (d) assist the parties in drawing up any written settlement agreement.

14. Code of conduct of mediators

Any Mediator and any person associated with a Mediator shall comply with the terms of the CADER Administration Procedure and CADER's Code of Conduct.

15. Cader's administrative assistance to the parties

(1) CADER, in conjunction with the Mediator, shall make arrangements necessary for the mediation including as may be necessary—

- (a) nominating the Mediator and obtaining the agreement of the parties to, the Mediator;
- (b) organizing a suitable venue and date or dates for the mediation session;
- (c) organizing exchange of the Case Summaries and Documents;
- (d) meeting with any or all of the parties and the Mediator if appointed, either together or separately, to discuss any matters or concerns relating to the mediation; and
- (e) general administration in relation to the mediation.

(2) If there is any issue about the conduct of the mediation, including the nomination of the Mediator upon which the parties cannot agree within a reasonable time, CADER shall, at the request of any Party, decide the issue for the parties, having consulted with all the parties.

16. Procedure at Mediation

(1) Each Party shall state in the Mediation Agreement the name or names of—

- (a) the person or persons who will be the lead negotiator or negotiators for the Party, who must have full authority to settle the dispute; and
- (b) any other persons such as professional advisers or colleagues including lawyers, who will also be present at, or who will participate in, the mediation on that Party's behalf, including Counsel if represented by Counsel.

(2) The person signing the Mediation Agreement on behalf of each Party shall be deemed to have authority to bind the Party represented by him or her.

17. Exchange of information

(1) Each Party shall file with CADER at least two weeks before the mediation, or such other time as may be agreed between the parties and CADER, sufficient copies of—

- (a) a concise Case Summary of its case in the dispute; and
- (b) all the documents to which the Case Summary refers and any others to which it may want to refer in the Mediation, and CADER shall send them simultaneously to the other parties and the Mediator.

(2) In addition, each Party may send to the Mediator through CADER or bring to the Mediation further documents, which it wishes to disclose in confidence to the Mediator but not to any other Party, clearly stating in writing that the document is confidential to the Mediator and CADER.

18. Copy of pleadings

The Mediator may require the parties to provide a copy of the pleadings or a summary statement of each Party's case.

19. Non-compliance

(1) If it is not practical to conduct a scheduled mediation session because a Party fails to attend, the Mediator may adjourn the session to another date.

(2) A Party that fails to attend the mediation session without good cause shall be liable to pay to CADER the adjournment costs specified in the First Schedule to these Rules.

20. Mediator's report

Within ten days after the mediation is concluded, the Mediator shall give the Registrar and the parties a report on the mediation.

21. Agreement

(1) If there is an agreement resolving some or all of the issues in dispute, it shall be signed by the parties and filed with the Registrar for endorsement as a consent judgment.

(2) If there is no agreement, the Mediator shall refer the matter back to Court.

22. Confidentiality

(1) Every person including associated persons, shall keep confidential and not use for any other purpose—

- (a) the fact that the mediation is to take place or has taken place, other than to inform a court dealing with any litigation relating to the dispute of that fact; and
- (b) all information whether given orally, in writing or otherwise arising out of, or in connection with, the mediation, including the fact of any settlement and its terms.

(2) All information whether oral or in the form of documents, tapes, computer discs, or other media arising out of, or in connection with, the mediation shall be privileged and not admissible as evidence or to be disclosed in any current or subsequent litigation or other proceedings.

(3) Subrule (2) does not apply to any information, which would in any case have been admissible or disclosable in proceedings referred to in subrule (2).

(4) Rules 21 and 22 shall not apply insofar as any information referred to in subrule (2) is necessary to implement and enforce any settlement agreement arising out of the mediation.

(5) None of the parties to a matter referred by the Pilot Project may compel the Mediator or CADER or any employee, consultant, officer or representative of CADER as a witness, consultant, or expert in any litigation or other proceedings whatsoever.

(6) The Mediator and CADER may not voluntarily act in any capacity referred to in subrule (5) without the written agreement of all the parties.

23. Fees, expenses and costs

(1) No filing or mediation fees shall be charged to Parties in the Mediation Pilot Project.

(2) Except as otherwise agreed by the parties, each Party shall bear its own costs and expenses of its participation in the Mediation Pilot Project.

24. Forms

The forms set out in the Second Schedule to these Rules may be used for the respective purposes, to which they relate subject to such modifications as may be necessary.

SCHEDULES.

FIRST SCHEDULE

Rule 19

Adjournment costs — 50,000 Uganda shillings.

SECOND SCHEDULE

Rule 24

FORM 01

CADER LETTER HEAD

(DATE)

To:

CADER MEDIATION NUMBER
(Arising out of HCC Suit Number.....of 200[.....])

PARTIES

The Center for Arbitration and Dispute/ Resolution (CADER) has received a copy of the Order of Directions referring the above matter to mediation. A qualified and certified CADER mediator agreeable to both parties will conduct the mediation.

By copy of this letter, we are forwarding a list of five names and Curriculum Vitae (CV) information of CADER qualified mediators who are immediately available to conduct this mediation. Both parties must agree to a single mediator of their choice within ten (10) days after the date of this letter. If we do not obtain the mutual agreement of both parties to a mediator within ten (10) days, then CADER will appoint the mediator for you.

A member of CADER's Secretariat will be contacting you in the next few days to answer any questions or concerns you might have about this process and we hope that CADER will be of assistance to you in your effort at resolving this dispute appropriately.

Yours sincerely,

.....
EXECUTIVE DIRECTOR, CADER

Enclosure

FORM 02

CADER LETTER HEAD
COMMERCIAL DIVISION OF THE HIGH COURT OF UGANDA

[PLAINTIFF/APPLICANT]
versus
[DEFENDANT/RESPONDENT]

CADER MEDIATION NUMBER:
(Arising out of)
HCC SUIT NUMBER:

CERTIFICATE OF NON-COMPLIANCE
(Under Ruleof the Commercial Court Division (Mediation Pilot Project) Rules, 2003

THIS DOCUMENT IS NOT PART OF THE COURT RECORD.
IT IS NOT TO BE FILED WITH COURT.
IT MAY BE USED ONLY FOR THE PURPOSES OF ASSESSING COSTS.

To:
The Centre for Arbitration and Dispute Resolution (CADER)

I,(name), Mediator, certify that this certificate of non-compliance is filed because:

- (a) (Identify party(ies)) failed to provide a copy of a statement of issues to the Mediator and the other parties (or to the Mediator or to party (ies)).
- (b) (Identify plaintiff) failed to provide a copy of the pleadings to the Mediator.
- (c) (Identify party(ies)) failed to attend a scheduled mediation session.

DATED AT _____, this _____ day of _____ 200[____].

Respectfully Submitted By:

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

FORM 03

THE HIGH COURT OF UGANDA
COMMERCIAL DIVISION

[PLAINTIFF/APPLICANT]
versus
[DEFENDANT/RESPONDENT]

HCCS NO. OF 200.....

DIRECTIONS FOR MEDIATION

(Under the Commercial Court Division (Mediation Pilot Project) Rules, 2003)

1. [Pursuant to rules 7 and 8 of the Commercial Court Division (Mediation Pilot Project) Rules, 2003], the parties are to attempt to settle this matter by mediation in accordance with the procedures and rules of the Commercial Court Mediation Pilot Project.
2. You are required to provide CADER with—
 - (a) concise summary of the matters in dispute,
 - (b) copies of your pleadings if required by the Mediator, and
 - (c) details of the contact names, addresses and telephone numbers of your representative and other parties attending the mediation.
3. CADER will provide you with a list of qualified mediators, shall obtain your agreement to the Mediator, and will make necessary arrangements for the mediation.
4. The mediation is to take place not later than *[date]*.
5. The Mediator shall file a report to the court not later than *[date]*.

SIGNED AND SEALED on this _____ day of _____ 200[]

Registrar.

FORM 04

THE MEDIATION PILOT PROJECT

CADER'S MEDIATION ADMINISTRATION PROCEDURES

CADER's ADR processes require some administration. The benefits of using CADER's Secretariat are that the parties are free to concentrate on negotiating a Settlement to their disputes leaving most administrative aspects to CADER. Services include arranging dates, venues, exchange of case summaries, invoicing, dealing with procedural arguments between parties, etc.

1. Under the Pilot Project, CADER will receive from the Court a copy of the Order of Directions referring matters to mediation. Upon receipt of that copy of the Order, CADER will input relevant information into its own database (i.e. Names of parties, Descriptions, Address etc.).
2. A CADER mediation file will be opened and a unique number will be assigned which is to be used in all subsequent pleadings and all correspondence. The High Court assigned Civil Suit Number will also be retained and will be used as further identifier of the matter. The matter will be designated as (arising from) the High Court Civil Suit or Application as the case may be.

3. CADER will then issue its notification letter to the parties explaining mediation and what the parties are expected to do to get the mediation started. The parties will be provided with a list of five (5) qualified and independent Mediators selected from the roster of CADER-qualified and certified mediators after checking availability, time schedules and conflict.
4. The parties will have ten (10) days from the date of the letter of notification to consent to the mediator of their own choice (usually from the list provided) although CADER will generally work with the parties to obtain their mutual agreement to the mediator. If the parties fail to agree to the mediator within the ten-day period, then CADER will appoint the mediator for them.
5. CADER requires Case summaries from all Parties to be submitted at least two (2) weeks before the mediation or within such other dates as may be agreed with the parties. Specifically, the following documents are required:
 - (a) each party is required to provide CADER with a concise summary (the Case Summaries) of its case in dispute.
 - (b) all the documents on which the summary refers and any other on which the party may want to refer to in the mediation.
 - (c) in addition, each party may send to the mediator (through CADER) further documents, which it wishes to disclose in confidence to the mediator but not to any other party. In that case the party must clearly state in writing that such documents are confidential to the mediator and CADER only.
6. CADER will then send these documents simultaneously to the other party and to the mediator.
7. CADER endeavours to obtain agreement of the party on maximum number of pages of each Case Summary and if possible, to obtain a joint set of agreed documents.
8. The Plaintiff is required to include a copy of the pleadings as attachment to its Case Summary.
9. Two or more plaintiffs are deemed to be one party and two or more defendants, who jointly serve a statement of defense or are jointly represented, are deemed to be one party.
10. CADER reserves all mediations for a maximum of two six-hour mediation days although generally most disputes will be typically resolved within one day.
11. If the parties do not reach a settlement within the two days reserved for the mediation, they may elect to continue the mediation into further sessions if they are within the time allotted in the Order of Directions or any extension of them if the parties and the Mediator agree on the Mediator's fees or hourly rate for the additional time.

12. If a mediation session is cancelled due to failure by a party to come to a scheduled meeting or mediation session, then that party shall pay any cancellation fees and the Mediator shall issue a Certificate of Non Compliance which shall be filed with the court
13. If a scheduled mediation session is cancelled because a party fails to attend the session or to submit its Case Summaries, then that party shall pay any cancellation fees.
14. Where two or more parties fail to comply or to attend as the case may be, they shall pay the cancellation fees in equal shares and a Certificate of Non Compliance shall be filed with the court.
15. Where the parties arrive at a settlement, both parties shall sign a Settlement Agreement and a joint motion to dismiss the suit shall also be signed by the parties or their Advocates and filed with the court.
16. In all cases a mediation report is to be prepared by the Mediator and returned to the court at the conclusion of the mediation.

FORM 05

CADER LETTER HEAD

THE HIGH COURT OF UGANDA COMMERCIAL DIVISION

[PLAINTIFF/APPLICANT]
versus

[DEFENDANT/RESPONDENT]

CADER MEDIATION NUMBER:

(Arising out of HCC SUIT NUMBER..... of 200[.....]:

MEDIATOR'S REPORT

This matter was referred to mediation pursuant to Directions for Mediation dated the _____ day of _____ 200[____].

The following were the issues for mediation—

I.

II.

II.

At the conclusion of the mediation—

- (a) The parties reached agreement on all the issues and the attached Consent Judgement was filed/entered.
- (b) The parties reached agreement only on these issues—
 - (i)
 - (ii)
 - (iii)

But failed to agree on these issues—

- (i)
- (ii)
- (iii)

The parties failed to reach agreement on any of the issues. Accordingly, the matter is herewith referred back to Court for further proceedings as appropriate.

Submitted by:

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

MEDIATOR

FORM 06

THE HIGH COURT OF UGANDA COMMERCIAL DIVISION

[PLAINTIFF/APPLICANT]

versus

[DEFENDANT/RESPONDENT]

NOTICE TO APPEAR BEFORE THE MEDIATION REGISTRAR

To: _____

NOTICE IS GIVEN that the above entitled and numbered cause has been scheduled for directions before the Commercial Court Mediation Registrar on the _____ day of _____ 200[____], at _____ O'clock, at which time objections to the reference of this matter to mediation will be heard.

Your failure to attend will constitute a waiver of any and all objections you might have to the reference of this matter to mediation.

DONE AND SIGNED in office on this _____ day of _____ 200[____]

Registrar.

B. J. ODOKI,
Chief Justice, Chairperson of Rules Committee.