



THE JUDICIARY OF ZAMBIA

SPEECH DELIVERED BY HON. LADY JUSTICE ABHA N. PATEL S.C. FCIArb

AT THE LAUNCH OF THE MEDIATION SETTLEMENT WEEK 2024

Judge- Court of Appeal

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Member of the UN Global Mediation Panel

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ADR Center Accredited Mediator



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My Lord the Chief Justice,

My Lord the Deputy Chief Justice

The President and Deputy President of the Constitutional Court

The Judge President of the Court of Appeal

My Lord Justice K. Muzenga,

My Lords and Ladies, Judges of the Superior Courts,

**Honourable Members of the Advisory Committee on Court Annexed
Mediation and Delay Reduction,**

The Chief Administrator and the Chief Registrar of the Judiciary,

All Counsel and Mediators present,

Members of the Press and Media Houses present,

All Court Staff and Officials,

**Allow me, in the interest of time, to ride on the protocols already established
by the Director of Ceremonies and simply refer to you all as**

Distinguished Ladies and Gentlemen,

Good morning to you all

It is with the greatest of honor and humility that I, as Chairperson of the Advisory Committee on Court Annexed Mediation and Delay Reduction, stand before you today at this Open Day, as we celebrate the launch of this tripartite event, marking the commencement of Mediation Settlement Week 2024.

Abraham Lincoln speaking on Mediation said:

"Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser—in fees, expenses, and waste of time."

Bear with me, as I break down the much touted but perhaps little understood concept of Mediation and how we envisage it to work within our Court processes. For obvious reasons, my focus today is on Court Annexed Mediation.

Today, I am honoured to speak about a transformative concept in the realm of justice: **mediation as a means of access to justice.**

My Lord the Chief Justice, distinguished guests and participants, I invite you to travel a time journey with me and hopefully, I will leave you converted to the benefits of Mediation such that it may be your first choice of dispute resolution.

It was obviously inevitable that with the growth of commerce in the post-World War era, Society was faced with a diverse array of disputes, including family conflicts, commercial disagreements, employment and neighborhood disputes.

To provide proper context, allow me, My Lord, to offer a brief overview of the evolution of court-annexed mediation in Zambia. Prior to 1991, the Courts in Zambia primarily dealt with criminal cases, with only a limited number of civil matters before them.

However, the advent of multiparty politics and economic liberalization in the early 1990s markedly altered the litigation landscape in our country. This era,

combined with the growth in population, saw a substantial rise in civil litigation, which has continued to escalate, placing unprecedented strain on the Judiciary.

Unfortunately, this surge in lawsuits has not been matched by a corresponding increase in resources or infrastructure for the Judiciary, leading to delays and a growing demand from the public for swifter dispute resolution.

Acknowledging the need for reform, the Judiciary sought effective solutions to address these challenges, leading to the inception of Court-Annexed Mediation in Zambia. This initiative has provided a crucial mechanism for the swift and efficient resolution of disputes.

Legislative reforms were instrumental in institutionalizing court-annexed mediation. The High Court (Amendment) Rules Statutory Instrument (S.I.) No. 171 of 1997 introduced the provision for mediation referrals. This was followed by S.I. No. 69 of 1998, which empowered the Chief Justice to set mediator fees. Subsequent amendments in 2012 through S.I. No. 27 further refined the process by allowing referrals at scheduling conferences, reducing the mediation period, and instituting penalties for parties who default or obstruct the mediation process.

Significant progress continued with the 2018 amendments under S.I. No. 72, which established mandatory mediation referrals for all High Court divisions and incorporated matrimonial causes such as maintenance, property settlements, and child custody. This amendment also extended the mediation timeframe and introduced detailed guidelines.

Additionally, the Subordinate Court (Amendment) Rules S.I. No. 73 of 2018 expanded mediation to the Magistrates Court and adjusted mediation fees.

What then is Mediation? And please note that I am not referring to Meditation.

Speaking on Mediation, Ron Weber said *"I always hold out hope. Mediation is an opportunity for each side to present their case, and for us to get back to the table again."*

Mediation is one of the methods of alternative dispute resolution, commonly referred to as ADR. Mediation involves working with a trained **Mediator** who helps to facilitate communication between parties involved in a legal dispute.

The purpose of mediation is to help the parties find a compromise so they can avoid going to court and asking a judge (*or a jury*) to decide their issues.

In many cases, mediation is voluntary. The parties involved in a civil case decide that they want to work with a mediator to try to settle their issues. Sometimes, however, a court will order the parties involved in litigation to go to mediation to try to resolve certain contested matters that have arisen during their legal proceedings. This is referred to as Court Annexed Mediation. It is annexed to the proceedings in Court. It is compulsory, only to the fact of attendance, your participation and engagement up to the point of reaching a settlement is voluntary.

Mediation is an alternative to resolving a claim through litigation, which involves using the court system and allowing a judge to resolve a dispute.

Mediation can be useful in many different kinds of claims, including personal injury cases, breach of contract claims and family related cases.

It is acknowledged that in most African Jurisdictions, and Zambia is no exception, the use and promotion of settlement of disputes, by way of Alternative Dispute Resolution, is now a constitutional mandate, provided in Article 118 of the Republican Constitution, Act No. 2 of 2016.

We all know and acknowledge the perennial problems faced by many a Judiciary in the World, and Zambia is no exception. Civil and Criminal case backlog is a global crisis, almost a global pandemic.

We must align ourselves to the fact that there is a solution emerging that is deeply ingrained and inculcated in the fabric of traditional African culture: alternative dispute resolution. Whether it is a civil claim or a criminal matter, all parties stand to benefit when attempting to resolve issues with principles of forgiveness, responsibility and reconciliation.

Mediation, as a prominent alternative dispute resolution mechanism, offers significant advantages in resolving conflicts amicably, efficiently, and fairly. The benefits of mediation extend beyond merely resolving disputes; it empowers individuals and communities to devise solutions that are both effective and sustainable. Mediation fosters collaboration, enabling parties to work together to address their unique needs and interests while preserving important relationships. Furthermore, mediation upholds confidentiality, protecting parties from the public exposure often associated with litigation. It is also a cost-effective process, mitigating the financial, temporal, and emotional burdens typically linked with court proceedings.

It is no wonder that we hear of Mediation in the international space as well as to resolve and settle wars and raging disputes across continents and cultural divides.

In a world where legal battles can be lengthy, costly, and emotionally draining, mediation offers a beacon of hope and efficiency for the following notable reasons among many others:

1. Cost-Effective Resolution Mediation is significantly more affordable than traditional litigation. By avoiding the high costs associated with court fees and prolonged legal representation, mediation makes justice accessible to those who might otherwise be unable to afford it.

2. Timely Justice The wheels of justice often turn slowly in the courtroom. Mediation, however, provides a faster route to resolution. Disputes that might take years to settle in courts can often be resolved in a matter of weeks or even days through mediation.

3. Confidentiality and Privacy Unlike court proceedings, which are public, mediation sessions are private and confidential. This ensures that sensitive information remains protected, fostering an environment where parties can speak openly and honestly.

4. Empowerment and Control Mediation empowers the parties involved by giving them control over the outcome. Unlike a court decision imposed by a judge, mediation allows disputing parties to collaboratively reach a mutually satisfactory agreement. This sense of ownership often leads to higher compliance rates and more durable solutions with less likelihood of escalating the dispute through the appeals process.

5. Preservation of Relationships Court battles can strain or even destroy relationships. Mediation, on the other hand, encourages cooperation and communication, helping to preserve personal and business relationships that might otherwise be damaged.

6. Reduced Stress and Emotional Strain The adversarial nature of court proceedings can be highly stressful. Mediation offers a more relaxed and collaborative environment, reducing the emotional strain on all parties involved.

7. Alleviating Court Burdens By resolving disputes outside of the courtroom, mediation helps to alleviate the burden on the judicial system. This not only speeds up the resolution of mediated cases but also allows courts to focus on cases that truly require judicial intervention.

8. Flexibility and Creativity Mediation allows for flexible and creative solutions that might not be possible in a court of law. Parties can tailor agreements to fit their specific needs and circumstances, leading to more satisfactory outcomes.

In the right hands, Mediation stands as a powerful tool in the pursuit of justice. It offers a path that is not only more accessible and efficient but also more humane. By embracing mediation, we can ensure that equal access to justice is not a privilege for the few but a right for all.

Mediation can be used in a wide variety of legal cases. Some examples of situations where mediation may be used include:

- **Family settlement cases** where the spouses achieve an uncontested divorce, they can settle other ancillary issues by mediation. I refer to issues related to child custody, division of property and spousal and child support. Family law cases involving unmarried parents and child custody, or child support can also be resolved through mediation. The process is

less acrimonious than court proceedings. The parties work together to find an agreement instead of fighting against each other. This can be especially helpful in family law matters when divorcing spouses need to continue to co-parent and a bitter divorce would be more stressful for children.

- **Personal injury** claims where the parties want to negotiate a settlement but can't agree on how much compensation is appropriate or what other legal remedies a defendant should provide to a plaintiff.
- **Breach of contract** claims where the parties wish to come to an agreement on how to address a failure to fulfil a contractual agreement.
- **Commercial disputes**
- **Community and neighbour disputes.**
- **Wills & inheritance.**
- **Landlord & tenant.**
- **Medical - personal injury.**
- **Some criminal court programs** or neighborhood justice programs

Essentially wherever a conflict is suitable for mediation, then the success rate is high.

I ask Counsel here present to interrogate the nature of claims filed into Court almost on a daily basis and to ask themselves, in all honesty, if all those cases need to be resolved through the Courts expending and stretching an already overburdened national justice system and clogging up the Courts and creating and adding to the back log every single day.

My Lord, I believe the courts of this country should not be the place where resolution of disputes **begins**. They should rather be the place where the disputes **end** after alternative methods of resolving disputes have been considered and tried.

Mediation tends to work best when all of the parties involved are committed to finding a resolution. Otherwise, even with the help of a mediator, it may be difficult or impossible for them to come to a consensus and determine together how their legal issues should be addressed.

How Does the Mediation Process Work

The mediation process is different in every situation and for each different type of case because the process is personalized to the parties involved.

A trained and skilled mediator always guides the mediation and is usually paid by the parties involved in the legal dispute. Unlike a judge their goal is not to make decisions for the parties, and they cannot issue binding orders affecting those involved in the mediation process.

Instead, the goal of the mediator is to guide a discussion between the parties. The mediator leads in the exchange of information and helps the parties through an effective bargaining process.

The mediator's expertise is used to enable the parties to communicate more effectively, to frame and reframe issues so they can be more easily decided, to identify creative solutions to complex problems and to help those involved in the case set realistic expectations and find common ground.

Mediators can assist in drafting a settlement agreement when the parties to the dispute do find a compromise.

However, mediators do not make decisions for you, and they can't force you to compromise when you are involved in the mediation process. However, they are trained to be effective at assisting you in identifying out-of-court resolutions that will work for you.

The Role of the Mediator

- Neutral and Impartial – not an arbitrator/judge
- Objective
- Problem Solving, negotiation, communication and coaching skills
- Deal with emotions, deadlock and power imbalance
- Manage the process *not* the outcome
- Be suitably qualified

The Role of the Parties

- To take responsibility for the dispute and its resolution
- To control the outcome of the dispute
- To agree and abide by the rules of mediation
- To work constructively with the mediator and the other party
- To respect each other

The Benefits of Mediation (I refer to these as the 6 C's)

- Consensual – the parties agree to mediate.
- Control – parties remain in control, no imposed settlement, any agreement, is with their consent.
- Cost-savings – monetary, time & stress.

- Continuing relations – no winner or loser, commercial business relations can continue. Relationships can be safeguarded or repaired & restored.
- Confidentiality – meetings are private and nothing can be used in any further legal or quasi-legal proceedings in the event of a mediation not succeeding.
- Creative – there is no limit on the type of solutions that can be achieved.

I refer to Mediation as a solution for you, by you, in your dispute.

Article 118(2)(d) of the Constitution, Chapter 1 of the Laws of Zambia mandates the Judiciary to promote the use of Alternative Dispute Resolution (ADR) Mechanisms. Thus, court-annexed mediation has become an integral part of our judicial system, providing a viable and effective alternative to traditional litigation.

It embodies our commitment to enhancing access to justice, intended to reduce the burden on our courts, and fostering a culture of amicable dispute resolution.

The journey of court-annexed mediation in Zambia stands as a testament to the resilience and forward-thinking approach of our Judiciary. It underscores our commitment to judicial reform and our ongoing efforts to enhance the delivery of justice. As we move forward, let us continue to support and promote mediation as a cornerstone of our judicial system, ensuring that justice is both served and accessible to all.

Over the years, the Judiciary has made transformative strides in advancing justice through alternative dispute resolution mechanisms, particularly mediation.

As part of our ongoing efforts to enhance mediation through legislative reform, the establishment of a comprehensive legal framework, such as a Mediation Act accompanied by relevant supporting rules, is increasingly becoming essential.

My Lord, the Chief Justice, we need to also look at what has been achieved in the Region and emulate what we see to be effective and efficient. There is no need to reinvent the wheel. We need to consider the introduction of private commercial mediation outside of the Courts, so that not every dispute must first be launched in the National Courts and thereafter referred to mediation. An ensuing Agreement, achieved by the Parties in a private mediation, can then be registered in the Courts, as a Settlement Order, in a manner similar to the registration and enforcement of Arbitral Awards.

This framework should also provide clear guidelines for mediation practices and potentially include the creation of specialized mediation lists such as commercial, family and industry specialized Mediators.

The rules should also speak to issues of accreditation and renewals for mediators, issues of discipline and continuous professional development. What I have in mind is an Association for Mediators both private and those that are court annexed.

Currently, we are in the process of developing rules that will encompass a Code of Conduct for mediators, which are anticipated to be promulgated in the near future. Additionally, we are exploring the potential introduction of mediation within the criminal justice sector, aiming to further broaden the application of this valuable dispute resolution tool. We are currently in talks with collaborating partners and a series of engagements have taken place.

Training has been a fundamental element in the development of court-annexed mediation in Zambia. Our journey began in 2000 with the first training session for 50 multidisciplinary mediators, conducted in partnership with the Washington DC Superior Courts and Chemonics International.

This initial effort was followed by a train the trainer program in 2001. From 2020 to 2021, additional training sessions were held for honorable Judges and legal practitioners to expand the pool of mediators and potential trainers. Furthermore, mediation advocacy training for lawyers took place in 2000 and 2001, and public sensitization campaigns were conducted in 2016, 2017, and 2018 to increase awareness of mediation's benefits and processes.

Training remains a central priority, as continuing professional development is essential for maintaining high-quality and effective service delivery. I take this opportunity to invite all stakeholders to join hands with my committee so as to achieve results quickly for the benefit of the Society.

By way of a quick look at the statistics that we have to hand, I am informed that last year, a total of 473 cases were referred to mediation across various locations.

At Lusaka, a total of 155 cases were referred to mediation. Of these cases, 36.77% were successfully mediated and fully settled.

At Ndola and Kitwe, 273 cases were referred to mediation. Of these, 29.67% were fully settled through mediation.

At Kabwe, 25 cases were referred to mediation. Of these, 20% were fully settled through mediation.

In Livingstone, 15 cases were referred to mediation. Of these, 26.67% were fully settled through mediation.

Though not the best set of statistics, these still indicated a 34% disposal rate. It is worth mentioning that there were also partial settlements achieved and some cases were settled post mediation.

This year, 236 cases have been referred to mediation across various locations, including 41 cases in Lusaka, 34 in Kabwe, 58 in Ndola, 36 in Kitwe, and 67 in Livingstone.

Although designated as Mediation Settlement Week, this event will run over approximately one month. It is our sincere hope that the enthusiasm for exploring court-annexed mediation in appropriate cases will persist beyond this period. This time frame represents a critical juncture in our ongoing efforts to enhance access to justice and promote mediation as an essential form of Alternative Dispute Resolution.

My Lord the Chief Justice, in preparation for this event, we have conducted a series of engagements with key stakeholders, including adjudicators, mediators, and lawyers. These discussions, held under the auspices of your Advisory Committee on Court Annexed Mediation and Delay Reduction, took place at the High Courts in Livingstone, Lusaka, Ndola, Kitwe, and Kabwe.

The aim was to ensure that suitable cases were referred to mediation and that all participants understood and appreciated their roles in the process. We are always constrained in how much we can do as funding continues to be a challenge. I take this opportunity to extend my gratitude to the Honourable Judges and support staff at the Stations for their commitment and support and wish the very best to all the Courts as we launch the Settlement Week 2024.

With the concurrent launch of the Open Day, we hope to provide valuable information to disputing parties and other court users, enabling them to fully engage in the process. Throughout the Open Day and Mediation Settlement Week, we aim to inform the public about the services offered by the Judiciary, detailing the processes and roles of various stakeholders involved in court-annexed mediation. From the initial court referral to the structured mediation sessions and the final binding settlement order, we seek to demonstrate that each step is designed to uphold justice and fairness, while also emphasizing the cost-effectiveness and relatively low fees associated with the process.

Mediators play an essential role in guiding parties through discussions, ensuring impartiality, and maintaining the confidentiality of the proceedings.

At this juncture, I would like to extend special recognition to all court-annexed mediators across the country who have selflessly dedicated their time and effort to mediate and resolve a diverse range of disputes. Your commitment is invaluable. You are the brand ambassadors for the Judiciary in its quest to make justice more open, more affordable and transparent.

I commend each and every one of you and invite you all to re-commit yourself to the process of mediation and to stand by the highest principles and morals as you discharge this service to our citizens. I also pledge my support and that of the Committee and assure you that our doors are open for continued dialogue in the spirit to promote access to ADR.

I also encourage all our senior and active Mediators, to allow where possible, and with the consent of the Parties, to act as mentors to newly accredited mediators and others who may wish to shadow a mediation.

While our agenda today focuses on promoting Alternative Dispute Resolution (ADR) for its cost-effectiveness, it would be remiss of me to not address the ongoing debate regarding the fee structure. The current fees, established in 2018 via Gazette Notice at K750 per case, has sparked considerable discussion. One perspective is that these fees are insufficient, failing to reflect the time, expertise and resources invested by mediators in each case.

Conversely, it has also been argued that the fees are prohibitive for cases in the Subordinate Court, where court fees are generally lower.

Another viewpoint suggests that fees should be covered by the national treasury, akin to the remuneration for Small Claims Court Commissioners, to enhance access to justice.

This proposal, my Lord Chief Justice, fits within your vision and transformational agenda to transform the Judiciary into an institution that will provide effective and efficient justice delivery to the people of Zambia. *Access to Justice*, being a highly acclaimed value, must truly find its place in the Country's sustainable development goals.

I invite stakeholders and indeed our supporting and co-operating partners to join hands with us in this task to find a balanced solution that ensures both access to justice and high-quality, efficient service delivery. My committee will also reach out to our co-operating partners for their continued and invaluable assistance in promoting the growth, training and spread of Mediation especially in our efforts of devolution to the Provinces and also to ensure that mediation is entrenched in the Subordinate Courts.

My Lord, we are advised that in some jurisdictions in Africa, such as Kenya and Rwanda, that have embraced Mediation and other traditional forms of dispute

resolution, mediator fees are funded by the State and the Courts have stand alone mediation registries with appropriately trained support staff headed by a Mediation Registrar to oversee and supervise the mediation process.

I am particularly delighted to see so many lawyers gathered here this morning for the launch of this significant tripartite event. Allow me, Hon. Chief Justice, to emphasize once again the critical role that lawyers play in the mediation process. Their involvement is vital, from assisting clients with preparation and active participation to ensuring the enforcement of mediation settlement orders when necessary. The success or failure of many mediation hearings is often closely tied to the lawyers' attitude toward court-annexed mediation. In instances where lawyers have been supportive and fully engaged with the process, meaningful and effective settlements have been recorded.

It is not my intention to burden you with a detailed account of the persistent challenges the Judiciary faces with court-annexed mediation, including staffing shortages, inadequate infrastructure, and limited funding for operations and training.

Instead, I want to highlight and focus on a crucial issue contributing to mediation failures where the Attorney General is a party to a case. I am advised that problems arise if the Attorney General is unavailable to sign the settlement orders within the legally mandated timeframe, even after a settlement has been reached. While referral orders can be extended, these extensions can disrupt the schedules of adjudicators, who are constrained by tight case disposal deadlines.

One potential solution could be to delegate signing authority in appropriate cases, and with appropriate safeguards, especially as we consider expanding

services to Provincial Centers and Districts. This approach could help mitigate these challenges and improve the efficiency of the mediation process.

My Lord, as I conclude, allow me to extend my gratitude to all the mediators, lawyers, court officials and support staff, and participants who make this process possible.

I also gratefully acknowledge the generous support extended by the Law Association of Zambia, the Bankers Association, the Zambia Chamber of Commerce and Industry and the NGOCC in offering suitable office space for use during the mediation sessions in the Mediation Settlement Week 2024.

Your dedication and efforts are vital in ensuring that justice is not only served but also accessible and effective for all.

My Lord, I also remain grateful for the airtime, both on national television and on radio, that was extended to Your Committee as we continued to sensitize the public and create awareness of and in mediation as a successful solution to your dispute.

We are delighted by the engagement, and I have been advised that the programs aired, invoked a lot of interest and participation with members of the public asking when mediation services would be offered at the various districts within the Country.

I equally commend all members of the Advisory Committee who have hit the ground running and are here today. Together, we are available to answer any questions you may have and address any challenges that you may face.

Mahatma Gandhi, a staunch advocate for nonviolence and peaceful conflict resolution, had profound insights on mediation and compromise. One of his famous quotes that reflects his views on mediation is:

“An eye for an eye will only make the whole world blind.”

Another insightful quote related to mediation by **Albert Einstein**:

“Peace cannot be kept by force; it can only be achieved by understanding.”

Both these quotes underscore the futility of retaliation and the importance of seeking peaceful and constructive solutions to conflicts, believing in the power of dialogue and understanding to resolve disputes, emphasizing that true resolution comes from mutual respect and compromise.

As we launch Mediation Settlement Week 2024, I urge all Mediators, lawyers, litigants and other stakeholders to reaffirm and pledge their commitment to embracing court-annexed mediation. By doing so, we can harness its full potential as a powerful tool for efficient and effective dispute resolution.

Let us collaborate to foster a culture of dialogue, understanding, reconciliation and cooperation in resolving conflicts.

May the principles of justice, the rule of law and the Christian spirit of forgiveness, and reconciliation continue to guide us all.

I wish you all a productive and enlightening Mediation Settlement Week 2024.

Thank you!

