

PART FOUR: COURT-ANNEXED MEDIATION IN LESOTHO

A Summary of the Party's Case in Mediation

The Court-Annexed Mediation (CAM) Programme is one of the new initiatives that has been introduced in the High Court of Lesotho under the Civil Legal Reform Project (CLRP), with the support of the Millennium Challenge Account – Lesotho (MCA-Lesotho) and the International Law Institute – African Centre for Legal Excellence (ILI-ACLE).

The last article in this series of the basic steps in the CAM Programme of the Lesotho High Court, dealt with the question of the personal attendance of the Parties at the mediation hearings (called sessions). We concluded that the strict requirement for personal attendance was to enhance the serious and speedy resolution of the Parties' dispute.

This present article examines the documents required from the Parties in preparation for the mediation sessions. Here, we shift our attention from the requirement for the Parties' physical attendance at the sessions, to the requirement of what documents to prepare for the session.

For the efficiency of the System, each Party is required to submit a Case Summary, explaining its case. This document is quite separate from the substantive documents (called the "Pleadings") which the Parties will have already filed with the Court Registry to constitute the 'case file'.

Why then, is there a need to file the summary of the case with the Mediator? First, the Mediator does not need the whole file. In Mediation, he will not deal with the substantive merits of the case. He will not deliver a judgment in the case. The Parties themselves will reach a settlement on their own terms. Second, the Mediator must remain neutral in the matter; nor will he keep a record of the substantive proceedings of the mediation – for which he would have needed the file. All he needs, therefore, is a brief summary of each Party's case, to enable him to guide the Parties during their dialogue and negotiations on the case.

What then, is the 'Case Summary'? The Mediation Rules have a lot to say about that. First, the length of the Case Summary is specified as 'not exceeding 10 pages'. This leaves the flexibility and discretion for each Party (through its Lawyer) to decide on whether to write a Summary of 8, 5 or even 2 pages. Nonetheless, the implication and the spirit of the Rules is for a document close to, if not exactly, 10 pages. The simplicity or complexity of each case will determine the brevity or length of the summary within the allowed maximum of 10 pages. Experience over time will develop the ideal format and template for these summaries.

As regards the contents of the Case Summaries, the Rules are specific. They list the following requirements:

- (i) the facts of the case;

- (ii) an explanation of the interest and position of the Party (for whom the Summary is written);
- (iii) an explanation of the legal or factual issues in dispute – in short, the essence of what the dispute is all about. These may be legal issues. These may be only factual issues – or both;
- (iv) a list of witnesses (including expert witnesses) and important exhibits that the Party intends to rely on.

As is evident from the above list, the Summary calls for an **Outline**, a skeleton: the bare basics of the case. It is intended to give a snapshot of each Party's case. It is not intended to be argumentative or exhaustive. It is a 'summary', not a submission. The Mediation Process is not for elaborate argumentation, cross-examination, legal submissions, and such. It is for the Parties to dialogue and to negotiate a mutual settlement of their own dispute, on their own terms.

The Rules are clear. The summaries are strictly for the Mediator alone and the mediation session only, full stop. They are not for filing in the Court Registry; nor are they to be accessed even by the Judge allocated to that case.

This underscores a fundamental feature of Mediation, which is missing in ordinary litigation – namely the strict Confidentiality of the Mediation Process. Given the overwhelming importance of that feature, we will dedicate the next article of this series to an exclusive examination of Confidentiality in Mediation.

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