

PART EIGHT: COURT-ANNEXED MEDIATION IN LESOTHO

Completion of Mediation

Over the past weeks and months, we have published a number of articles in this series, describing the process of Mediation in Lesotho. The objective of the series was to familiarize you, the reader and the general public, with this new reform in Lesotho's judicial armoury for resolving society's disputes.

The message that has been conveyed through these articles is that Mediation is an alternative to Litigation as a means of dispute resolution. It is an alternative which differs substantially from Litigation. It has in-built in its philosophy, process, procedure and practice, features that in many respects, make it superior to Litigation. In summary, these are as follows:

First, Mediation is an **Informal** process. It eschews/avoids the application of rigid rules to the solution of a dispute. Instead, it manifests flexibility, informality, and ease of process.

Second, and flowing from the first, it is **Speedy**. The whole process (from referral of the dispute to Mediation, all through its conclusion), lasts a maximum of only 30 days. Of these, the actual mediation sessions take only two days.

Third, it is **Transparent** – the proceedings aim to minimize any recourse to documentation and legalistic technicalities; and to maximize, instead, direct, informal discourse and dialogue of the issues by the Parties themselves in a litigant-friendly forum and atmosphere.

Fourth, because of all the above, Mediation is an **Economical** Mechanism – costing a mere fraction of what litigation typically costs.

Fifth, the procedure is the very embodiment of **Confidentiality** – assuring that corporate, company, institutional and individual secrets are kept intact, in spite of the resolution of a tough dispute. Mediation sessions are strictly private (not open to the public); and no record is kept of these proceedings. Only the final agreed settlement is documented.

Sixth, Mediation translates into **Empowerment** of the Parties. It is the Parties, themselves, who set the pace of the proceedings; who offer and counter-offer the elements of their settlement; and who ultimately, dictate the terms and conditions of their own Judgment (i.e. the mutual Settlement). The Mediator is but a facilitator only – without any judgment-making authority.

Seventh, the Parties' Settlement – jointly signed by them – is transformed into a fully binding Court Judgment, capable of being enforced and executed: in the same way and to the same extent as all other Court Judgments. Indeed, the Settlement Judgment has, embedded in it, a feature that gives it a finality not readily found in

other Court Judgments. This extraordinary finality emanates from the fact that as a mutual agreement of the Parties themselves, the Settlement Judgment is rarely appealed; and, if appealed, is rarely set aside. Appeal is possible only in the rare case where it can be proved that the mutual settlement was, for instance, obtained by fraud or other similarly reprehensible conduct.

Eighth, the Parties' mutual settlement-turned-judgment, is a **win-win** conclusion of the Parties' dispute.

Ninth, in the event that Mediation unfortunately fails, there is then the alternative for the Parties to litigate their dispute through the ordinary court process. However, even here, the Mediation Process will have opened the eyes and ears of the respective Parties to discern a more **Realistic** appreciation of their respective cases: the strong points, and the weak points alike. Therefore, the ensuing litigation is likely to proceed more realistically than would otherwise have been the case.

From every angle one looks at it, therefore, the introduction into Lesotho of the Court-Annexed Mediation Programme (CAM) should be a welcome and refreshing reform: a worthy tool to supplement and complement the generally clogged, complex, tardy and expensive process of Litigation. Appreciation for the introduction of this beneficial reform of the Judiciary is due to the Civil Legal Reform Project, which is funded by the Millennium Challenge Corporation (MCC) through the Millennium Challenge Account – Lesotho (MCA-Lesotho), and implemented by the International Law Institute – African Centre of Legal Excellence (ILI-ACLE) supported by the Judiciary of Lesotho.

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