

Mediation a milestone for the Judiciary

Parties in Family disputes will now have a chance to negotiate resolutions and agreements within the court-mandated mediation, which is being implemented by the Judiciary as part of Alternative Dispute Resolution (ADR).

Alternative Dispute Resolution is anchored in the Constitution vide Article 159 (2) (c), which provides for alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms.

In a pilot programme that starts this month, the Judiciary will implement mediation at the Family and Commercial Divisions of the High Court in Nairobi.

Cases filed in the two divisions will be screened by the newly appointed Mediation Registrar to determine whether or not they should go for mediation.

But what is Family Mediation? This is a voluntary dispute resolution process in which an independent trained professional mediator facilitates a couple whose marriage is experiencing problems to work out a negotiated and agreed settlement which, when reduced into writing and signed by all the parties, becomes binding.

In mediation there is no winner, it is a win-win situation because there is no forced settlement. Some of the prevalent cases include child custody and maintenance.

Mediation is one sure way of opening up the channels of communication by creating a safe space for the parties to air their grievances.

Family members who were not able to see eye to eye are now able to open up and talk.

Through the conversations, the mediator is able to pick up the real issues thereby, breaking the shell of the strife. The parties to the mediation agree with each other always, as it helps them to understand why they disagree.

The fact that parties who could not previously listen and talk to each other are now communicating, gives the parties confidence; and most importantly the confidence and trust of the mediator. Ideally, the mediator must be earnestly patient and neutral to steer the process in a skilful and professional manner, for the parties to listen and talk to each other.

The mediator encourages the parties to talk and vent out piles of unresolved issues, thus ensuring that the real underlying issues are identified and finally resolved by both parties.

This ensures decisions are made jointly and are agreeable to both parties. No decision is therefore imposed on the parties. They come up with their own resolutions by giving in from their initial hard-line positions to an agreeable settlement.

As an experienced family mediator, I am convinced that mediation is the best remedy to the litigation crisis in Kenya.

The high costs and long Court delays, broken family relationships associated with tedious court processes often make litigation an infeasible method of resolving family disputes.

The salient features of mediation are that it stresses interests rather than (legal) rights. This is compounded by the fact that it eases hostilities and provides for continuity in family relations.

Mediation resolves disputes quickly- it can be done in one day or one session and a settlement is drafted. It is confidential, cost - effective, flexible and easily accessible to parties in the conflicts.

Sustainability of settlements reached under mediation is high and almost guaranteed because settlements are owned by the parties.

Furthermore, mediation settlements will be registered by the court and enforced as an order.

No doubt, this is the way to go for sustainable settlement in family disputes.

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