



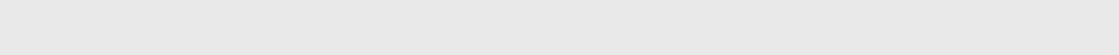
**THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY OF TANZANIA**



# **COURT ANNEXED MEDIATION GUIDELINES, 2024**







**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY OF TANZANIA**



**COURT ANNEXED MEDIATION**  
**GUIDELINES, 2024**





# Preamble

*These Guidelines are issued to assist parties and mediators in the effective, proper and expeditious conduct of mediation proceedings and other connected purposes.*

## 1. Title and Definition

1.1. These Guidelines shall be known as “Court Annexed Mediation Guidelines, 2024”.

1.2. In these Guidelines, unless the context otherwise requires:

**“joint sessions”** means part of the mediation process where the mediator meets both parties at the same time;

**“opening statement”**, means oral presentations which take place after the mediator’s opening address that allow each party to present their case;

**“procedural agreement”** means an agreement between the parties and the mediator setting out the procedures to be employed and any other matters related to the mediation proceedings;

**“separate session”** means part of mediation process where the mediator sits with each party separately during the same session;

**“settlement agreement”**, means an agreement by all or some of the parties to the mediation settling the whole or part of the dispute to which the mediation relates.

## 2. Application

2.1. These Guidelines will apply to the conduct of the court annexed mediation in all civil cases instituted in the High Court, courts of resident magistrate and district courts.

2.2. In order to preserve the flexibility of the mediation process, these Guidelines should be construed and interpreted in such a manner as to facilitate just, efficient, expeditious and cost-effective process of resolving disputes.

- 2.3. The mediator may with the consent of the parties adopt any other approach in addition to these Guidelines to suit the circumstances of the case.

### **3. Modality of Conducting Mediation**

- 3.1. Mediation may be conducted physically or electronically.
- 3.2. The parties may agree that mediation be conducted electronically and notify the mediator before commencement.
- 3.3. Subject to the provisions of these Guidelines, where mediation is to be conducted electronically, either party may, by notice, at any stage, indicate his intention to proceed with mediation electronically, in a manner agreed by the parties.
- 3.4. Where mediation is conducted physically the venue shall be within the premises of the court which referred mediation unless parties agree otherwise.
- 3.5. Where parties agree to any other venue than the referring court, they shall jointly meet the costs of the venue.

### **4. Selection of a Mediator**

- 4.1. During the first pre-trial conference, the Judge or Magistrate will inform the parties of their right to select a mediator of their choice and should give them necessary guidance on the persons qualified for selection as mediators and where available, may avail them with the register of those mediators.
- 4.2. Where the parties fail to appoint a mediator within the prescribed time the court shall appoint a mediator who is a serving Judge, Registrar, Deputy Registrar or Magistrate within the jurisdiction of that court. However, where necessary the court may appoint any other person who is mandated to serve as mediator under Order VIII of the Civil Procedure Code.

- 4.3. In selecting a mediator, the court or the parties shall consider the prospective mediator's attributes including but not limited to language, skills, qualifications, areas of expertise, experience, and his availability.

## **5. Notification of Selection**

- 5.1. Upon selection, the court shall notify the mediator and require his confirmation of acceptance within two working days. Notification for selection shall state, among other things, names and addresses of the parties and of their advocates if any, and the subject matter of the dispute. The notification shall be in Form MD/1 annexed to these Guidelines.
- 5.2. Where the mediator does not confirm or decline the selection within the prescribed time, another mediator shall be appointed by the same method used to make previous selection within five days of the non-confirmation or refusal.

## **6. Acceptance of Selection**

The mediator shall communicate his acceptance or refusal of selection within two days of his selection by way of notice prescribed in Form MD/2 annexed to these Guidelines.

## **7. Transmission of Pleadings and Commencement of Mediation**

- 7.1. The court shall, within three days after receiving the confirmation of selection transmit a copy of the pleadings to the mediator manually or electronically.
- 7.2. Upon receipt of the pleadings, the mediator shall, as soon as practicable but not later than seven days from the date of confirmation of his appointment set a date for mediation and communicate it to the parties.
- 7.3. The first mediation session shall be conducted within fourteen days from the date of confirmation of appointment.

## **8. Disclosure**

- 8.1. The mediator shall, at any time after accepting the selection, disclose any circumstance that could potentially give rise to a probable apprehension of lack of impartiality in the conduct of mediation.
- 8.2. The mediator who makes a disclosure of any such circumstance shall continue to serve as mediator if all parties to the dispute waive, in writing, the right to object to any probable apprehension of lack of impartiality or conflict of interest that may arise as a result of such disclosure.

## **9. Withdrawal and Replacement of Mediator**

- 9.1. The mediator may, on his own accord or upon a party's request, withdraw from mediation.
- 9.2. Upon the withdrawal of the mediator, a new mediator shall be appointed by the same method used to make the previous selection.

## **10. Mediation Procedure**

- 10.1. Principles and considerations for mediation.

In conducting mediation, the mediator shall be guided by principles of objectivity, fairness and natural justice, and take into account, among other things:

- (a) the rights and obligations of the parties;
- (b) facilitating expeditious and fair resolution of disputes;
- (c) reducing costs in dispute resolution;
- (d) facilitating communication between or among the parties to the dispute;
- (e) assisting the parties in reaching a mutually acceptable resolution;
- (f) the usages of the trade concerned; and



- (g) the circumstances surrounding the dispute, including any previous business practices between the parties.

## **10.2. Obligations of the Mediator.**

The duties of the mediator in the conduct of the mediation, shall include the following:

- (a) where necessary, and upon the consent of the parties, invite any person to appear for questioning, hearing, producing a document or providing any information which may appear to the mediator relevant to resolve the dispute.
- (b) to control the mediation proceedings to ensure orderly and effective conduct of the proceedings including:
  - (i) setting ground rules for conducting mediation such as respect to each other, avoiding abusive language and maintaining the mediation room at ease by discouraging abusive exchange of words, not to blame or attack each other, putting questions to each other for the purposes of gaining clarity and understanding and ensuring conducive environment for the conduct of mediation;
  - (ii) guiding the parties in identifying and refining the issues for mediation without imposing his own opinion on the issues;
  - (iii) intervening and moderating questions for clarification and responses during mediation;
  - (iv) directing cooling off periods and recess for parties;
  - (v) ensuring effective communication of procedural agreements, notices and information to the parties; and

- (c) proposing further mediation sessions taking into consideration-
  - (i) nature of the dispute and interests of the parties;
  - (ii) consequence of settlement or non-settlement of the dispute; and
  - (iii) progress of the process towards settlement.

### **10.3. Confidentiality.**

The mediator and parties to mediation shall observe the following-

- (a) the mediation proceedings shall be strictly confidential;
- (b) communications, the mediation notes and records of the mediator at a mediation session shall be confidential;
- (c) a party to mediation may not rely on any statement made at or information obtained during the mediation as evidence in court proceedings or other subsequent settlement initiatives, except in relation to proceedings brought to vitiate the settlement agreement on grounds of fraud;
- (d) parties or the mediator will not be required to testify in any proceedings relating to matters that occurred during the mediation and shall not be subjected to process requiring disclosure of confidential information or data relating to or arising out of the matter in dispute; and
- (e) a party to mediation and the mediator shall not disclose in any way the information obtained during mediation proceedings except where required to do so by law.

## **10.4. Stages of mediation.**

The mediation process may involve the following stages namely;

- (a) introduction;
- (b) opening statement;
- (c) exploring options and developing consensus; and
- (d) conclusion.

### **10.4.1. Introduction.**

The introduction shall comprise the following:

- (a) welcoming remarks;
- (b) self- introductions;
- (c) a declaration of conflict of interest, if any, and, if it appears to him that there is such a conflict, having a bearing on his impartiality, he shall cease to act and communicate to the court his inability to act;
- (d) recording the appearance and confirmation of authority to settle in Form MD/3 as set out in these Guidelines where the appearance is by representation;
- (e) information to the parties of the essence of mediation and the consequences from failure of mediation in terms of further costs, relationship and time;
- (f) an outline of the process and how any query or concern shall be dealt with during mediation;
- (g) an outline of the rights, roles and obligations of the parties;
- (h) an agreement by the parties on the language to be used in the mediation and on the service of translation where needed; and
- (i) signing of a statement of understanding and adherence to confidentiality in Form MD/4 as set out in these Guidelines.

## **10.4.2. Opening statement.**

The mediator shall gather information about the dispute from the parties in a joint session through the following procedure-

- (a) invite each party to make a brief opening statement of his case and indicate his interests and position in the case;
- (b) allow either party to pose questions for clarifications and respond to questions raised;
- (c) ask the parties questions in order to understand their respective interests and positions and what they intend to achieve;
- (d) summarize the facts and narrations from either party for obtaining clarity as to their positions, interests and objectives; and
- (e) from what the parties have agreed, prepare a list of contested and uncontested facts.

## **10.4.3. Exploring Options and developing consensus.**

The mediator may commence exploring options with the parties either in joint or separate sessions depending on which mode would best facilitate progress towards settlement and switch between these options and consider other process such as-

- (a) convening several meetings with either party where necessary;
- (b) where appropriate, establish sub-committees from the parties to discuss particular issues; and
- (c) where necessary, in agreement with the parties, invite experts or interested parties for the purpose of facilitating a settlement;

- 10.4.3.1. The mediator may consider the manner in which issues are to be addressed and shall attempt to generate possible tradeoffs or concessions between issues.
- 10.4.3.2. The mediator shall assist the parties to reflect on the consequences of options available to them and ensure that they have considered the implications involved.
- 10.4.3.3. The mediator shall record the proposals and counter proposals made by each party and at an appropriate stage draw a document reflecting their consensus.

#### **10.4.4. Conclusion of the mediation.**

- 10.4.4.1. Upon the parties reaching a consensus on the whole or part of the dispute, the mediator shall draft a settlement agreement. In drafting the settlement agreement, the mediator may employ any of the following approaches-
  - (a) draft the agreement and present it to the parties for their consideration and if both parties agree on the draft, finalize it for signing; or
  - (b) let each party or their counsel to propose terms and submit to the mediator for drafting a settlement agreement which if agreed upon by the parties shall be signed.
- 10.4.4.2. The mediator shall ensure that the settlement agreement-
  - (a) is a result of consensus and clearly understood by the parties;
  - (b) is clear, concise and settles the dispute either in whole or in part and capable of being enforced as a decree;
  - (c) contains modality and duration of implementation of the agreement; and
  - (d) is signed by the mediator, parties and advocates, if any.

- 10.4.4.3. Where parties do not reach an agreement on the issues in the dispute, the mediator shall declare the mediation failed.
- 10.4.4.4. The mediator shall destroy notes made during the proceedings and ensure that parties do the same in his presence.

## **11. Duty to Submit Certificate of Non-Attendance or Report**

- 11.1. Where it is not practicable to conduct a scheduled mediation session as a result of failure by either of the parties to attend within the time appointed for the commencement of the session without good cause, the mediator shall submit a certificate of non-attendance to the trial judge or magistrate. The certificate shall be in Form MD/5 annexed to these Guidelines.
- 11.2. Within forty-eight hours of the conclusion of the mediation, the mediator shall submit a report to the trial court showing the outcome of the mediation. The report shall be in Form MD/6 annexed to these Guidelines.
- 11.3. Where the mediation is successful, the report shall be accompanied with the settlement agreement which shall be in Form MD/7 annexed to these Guidelines.

*APPENDICES*

FORM MD/1

THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY

IN THE .....OF  
AT.....  
Civil/Land Case No.....of 20.....  
.....PLAINTIFF(S)  
VERSUS  
.....DEFENDANT(S)  
AND  
.....THIRD PARTY

**NOTICE OF APPOINTMENT**

*TO:* .....  
*P.O.BOX*.....  
*Mob*.....  
*E-Mail*.....

TAKE NOTICE that you have been appointed to conduct mediation in the above-mentioned case. You are required to confirm your acceptance within two days of receipt of this notice by confirming your availability.

GIVEN UNDER MY Hand and the Seal of the Court this ..... day of ....., 20.....

.....  
**DEPUTY REGISTRAR/MAGISTRATE**

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE .....OF.....

AT.....

Civil/Land Case No.....of 20.....

.....PLAINTIFF(S)

VERSUS

.....DEFENDANT(S)

AND

.....THIRD PARTY

NOTICE OF ACCEPTANCE

TO: .....

P.O. Box.....

Mob.....

E-Mail.....

I ..... hereby accept/decline the appointment to act as a mediator pursuant to a notice of appointment dated .....

Dated and signed this ..... day of ....., 20.....

.....

MEDIATOR



THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE ..... OF .....

AT.....

Civil/Land Case No.....of 20.....

.....PLAINTIFF(S)

VERSUS

.....DEFENDANT(S)

AND

.....THIRD PARTY

APPOINTMENT OF A REPRESENTATIVE AND AUTHORITY TO SETTLE

I..... do hereby confirm that Mr./Ms..... a principal officer of the Plaintiff/Defendant has been duly authorized to represent the Plaintiff/Defendant/third party and make binding decisions on its behalf at the mediation session on..... day of.....20.....or any other subsequent date unless this authority is revoked.

Dated this ..... day of ..... 20.....

.....

SIGNATURE AND STAMP

**THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE ..... OF .....**

**AT.....**

**Civil/Land Case No.....of 20.....**

.....**PLAINTIFF(S)**

**VERSUS**

.....**DEFENDANT(S)**

**AND**

.....**THIRD PARTY**

**STATEMENT OF UNDERSTANDING**

1. Mr./ Ms.....will be the mediator in this case. He/she will serve as a neutral party in the mediation. He/she will not act as an Attorney or Advocate for any party, nor will he/she be the trial judge/Magistrate if agreement is not reached and the case proceeds to trial.
2. The parties and advocates whose signatures appear below agree that all proceedings at their mediation session, on this date and any/all subsequent session including any statement made or document prepared for the session(s) by any party, advocate or other participant, are privileged and confidential, and shall not be disclosed in any subsequent proceedings or document, or construed for any purpose as an admission against interest.

3. The phrase “document prepared for the session by any party, advocate or other participant” shall not be deemed to apply to any settlement reached.
4. Any settlement agreement reached shall be reduced to writing and, when signed by the Mediator and all parties to the agreement shall be binding.
5. The parties agree not to summon the mediator during trial or to produce any documents submitted to the mediator. In no event will a mediator voluntarily testify on behalf of a party.

The parties herein do hereby understand that, by signing this statement of understanding, shall submit and fully participate in the mediation proceedings to the finality.

.....

Plaintiff(s)

.....

Defendant(s)

.....

Third Party

Date.....

.....

**MEDIATOR**

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE ..... OF .....

AT.....

Civil/Land Case No.....of 20.....

.....PLAINTIFF(S)

VERSUS

.....DEFENDANT(S)

AND

.....THIRD PARTY

CERTIFICATE OF NON-ATTENDANCE

(Made under Order VIII rule 29)

This certifies that.....Plaintiff/Defendant did not attend mediation session without good cause.

Dated this ..... day of ..... 20.....

.....  
MEDIATOR

\* (delete whichever is inapplicable)

THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY

IN THE ..... OF  
AT.....

Civil/Land Case No.....of 20.....

.....PLAINTIFF(S)

VERSUS

.....DEFENDANT(S)

AND

.....THIRD PARTY

MEDIATOR’S REPORT

1. The abovenamed parties were referred to me for mediation pursuant to Order VIII rule.....of the Civil Procedure Code.
2. Having conducted mediation, it is hereby reported that the parties reached a settlement as shown in the attached settlement agreement/failed to settle their dispute.

Dated this ..... day of ..... 20.....

.....  
MEDIATOR

*\* (delete whichever is inapplicable)*

**THE UNITED REPUBLIC OF TANZANIA**

**IN THE.....**

**AT .....**

**Civil/Land Case No. .... of 20.....**

.....**PLAINTIFF**

**VERSUS**

.....**DEFENDANT**

**AND**

.....**THIRD PARTY**

**SETTLEMENT AGREEMENT**

Whereas the plaintiff(s) seek the following reliefs:

- 1.....  
.....  
.....
- 2.....  
.....  
.....
- 3.....  
.....  
.....

Upon the parties consenting to settle the case through mediation now agree as follows:

1.....  
.....  
.....

2.....  
.....  
.....

3.....  
.....  
.....

*Signature (Plaintiff)*

*Signature (Defendant)*

*Address P.O.BOX*

*Address P.O.BOX*

.....

.....

*Mob*.....

*Mob*.....

*Date:* .....

*Date:* .....

.....  
*Signature(Third party)*

.....

*Address P.O.BOX*

.....

*Mob*.....

*Date:* .....

*Signature (Plaintiff)*

*Signature (Defendant)*

*Address P.O.BOX*

*Address P.O.BOX*

.....  
Mob.....  
Date: .....

.....  
Mob.....  
Date: .....

.....  
*Signature (Plaintiff's Advocate)*  
*Address P.O.BOX*  
.....  
Mob.....

.....  
*Signature (Defendant's Advocate)*  
*P. O. Box*  
.....  
Mob.....

Date: .....

Date: .....

.....  
*Signature (Plaintiff's Advocate)*  
*Address P.O.BOX*  
.....  
Mob.....  
Date: .....

.....  
*Signature (Defendant's Advocate)*  
*P. O. Box*  
.....  
Mob.....  
Date: .....

Dated and signed at ..... this ..... day of ..... 20.....

.....  
MEDIATOR

Dar es Salaam,  
14<sup>th</sup> March, 2024

  
IBRAHIM HAMIS JUMA  
*Chief Justice*





