

 **Global Journal of Arts Humanity and Social Sciences**
ISSN: 2583-2034
Abbreviated key title: Glob.J.Arts.Humanit.Soc.Sci
Frequency: Monthly
Published By GSAR Publishers
Journal Homepage Link: <https://gsarpublishers.com/journal-gjahss-home/>



Volume - 5 | Issue - 11 | November 2025 | Total pages 1103-1106 | DOI: 10.5281/zenodo.17636984

EXAMINING LEGAL CHALLENGES FACING THE APPLICATION OF ALTERNATIVE DISPUTE RESOLUTION IN TANZANIA

By

Juma Adam

LL.M Candidate, St. Augustine University of Tanzania P.O Box 307, Mwanza



Article History

Received: 01- 11- 2025

Accepted: 15- 11- 2025

Published: 17- 11- 2025

Corresponding author

Juma Adam

Abstract

This paper examines the legal challenges facing the application of Alternative Dispute Resolution (ADR) mechanisms in Tanzania, particularly within court-annexed processes. While ADR is promoted as a means to ensure timely and cost-effective justice, its integration within the formal judicial system has exposed several legal and procedural challenges. These include statutory ambiguities under the Civil Procedure Code [Cap 33 R.E. 2023], uncertainties regarding enforceability of settlements, jurisdictional overlaps between courts and arbitral tribunals, and tensions between party autonomy and constitutional guarantees of fair trial. The paper argues that unless these legal deficiencies are addressed through legislative clarity, judicial capacity-building, and institutional reforms, the promise of ADR as a complementary pathway to justice will remain largely unrealized.

Keywords: Alternative Dispute Resolution, Judicial Power, Court-Annexed Mediation, Legal Challenges, Tanzania.

1.0 Introduction

The administration of justice in Tanzania has undergone significant transformation, particularly following judicial reforms aimed at promoting access to justice and reducing case backlogs. One of the key innovations in this regard has been the institutionalization of Alternative Dispute Resolution (ADR) within the court system. ADR refers to mechanisms for settling disputes outside traditional adversarial litigation, including mediation, arbitration, negotiation, and conciliation.¹

Tanzanian courts formally embraced ADR following amendments to the Civil Procedure Code [Cap 33 R.E. 2023], which introduced court-annexed mediation as a mandatory pre-trial procedure in civil cases.² This development aligned with global and regional trends

promoting consensual dispute settlement as a means of fostering judicial efficiency and social harmony.³

However, while ADR was intended to decongest courts and promote participatory justice, its application has not been free from legal controversy. In practice, questions arise regarding the legal status of agreements reached through ADR, the extent of judicial supervision, and the protection of parties' rights during the process. For instance, issues of jurisdiction, voluntariness, confidentiality, and enforceability continue to challenge the integration of ADR within Tanzania's legal system. The central objective of this paper is to examine the legal challenges emanating from the determination of parties' rights via ADR in settling court-attached disputes in Tanzania. It explores how statutory ambiguities, judicial interpretation, and institutional weaknesses limit the effective realization of ADR's objectives. The analysis also situates these challenges within the broader constitutional context of fair hearing and access to justice.

¹ J. Nsekela, *Alternative Dispute Resolution in Tanzania: Law and Practice* (Judiciary of Tanzania, 2019) 3.

² Civil Procedure Code [Cap 33 R.E. 2023], s 64A–64C (providing for mandatory court-annexed mediation).

³ United Nations Commission on International Trade Law (UNCITRAL), *Model Law on International Commercial Conciliation* (2002).



2.0 Concept and Legal Framework of ADR in Tanzania

Alternative Dispute Resolution (ADR) refers to mechanisms for resolving disputes outside the formal judicial process, including mediation, arbitration, negotiation, and conciliation. These processes emphasize consensus, flexibility, confidentiality, and party autonomy, offering a less adversarial means of achieving justice.⁴ In modern judicial administration, ADR is recognized not as an alternative to justice but as an integral component of the justice system one that promotes reconciliation, efficiency, and social harmony.

2.1 Constitutional and Statutory Recognition

In Tanzania, ADR derives its constitutional foundation from Article 107A(2)(c) of the Constitution of the United Republic of Tanzania, 1977, which mandates the judiciary to promote and enhance mechanisms for dispute settlement other than ordinary court proceedings.² This provision reflects the constitutional philosophy that justice should be timely, affordable, and people-centered. Consequently, ADR forms part of the state's broader obligation to ensure access to justice under Article 107A(1).

At the statutory level, ADR is embedded within several laws. The Civil Procedure Code [Cap 33 R.E. 2023] formally integrates court-annexed mediation as part of the litigation process. Section 64A introduces mandatory mediation in all civil matters before the trial commences, and section 64C provides that where parties reach a settlement, the mediator must submit a report to the presiding judge or magistrate for recording as a judgment or decree.³ This mechanism transforms ADR outcomes into enforceable judicial decisions, bridging informal and formal justice systems.

Beyond mediation, the Arbitration Act, 2020 represents a landmark reform. It replaced the outdated Arbitration Ordinance (Cap 15) and aligns Tanzanian arbitration law with international best practices under the UNCITRAL Model Law on International Commercial Arbitration (1985, amended 2006).⁴ The Act promotes party autonomy by recognizing arbitration agreements and limiting judicial interference except where expressly provided by law.⁵ It also establishes the Tanzania Institute of Arbitrators (TIA) and grants courts the authority to refer matters to arbitration under section 18 when parties have agreed to arbitrate.⁶ Complementary instruments also support ADR's growth. The Judiciary of Tanzania's Practice Directions on Court-Annexed Mediation (GN No. 421 of 2019) operationalize mediation procedures, detailing the role of mediation registries, appointment of mediators, and the confidentiality of proceedings.⁷ Likewise, the Judicature and Application of Laws Act [Cap 358 R.E. 2019], which empowers

courts to act according to "justice, equity and good conscience," gives further normative legitimacy to ADR practices.⁸

2.2 Institutional and Policy Framework

Institutionally, the Judiciary of Tanzania has taken proactive steps to mainstream ADR within court processes. The Judicial Strategic Plan (2020–2025) identifies ADR as a core strategy for enhancing access to justice and reducing case backlog.⁹ Mediation registries have been established in the High Court and Resident Magistrates' Courts, and judicial officers have received specialized training in negotiation and mediation techniques. However, the institutionalization of ADR is still evolving, with challenges in funding, awareness, and procedural consistency across regions.

Policy wise, the National Legal Sector Reform Programme (NLSRP) and the Judicial Administration Act, 2011 both emphasize ADR as a means of promoting participatory justice and reducing the burden on the formal courts.¹⁰ This integration reflects a shift in Tanzania's justice philosophy from adversarial litigation toward collaborative problem-solving.

2.3 Regional and Comparative Context

Tanzania's ADR framework mirrors a regional movement across East Africa to embed non-adversarial justice mechanisms into court systems. In Kenya, for instance, Article 159(2)(c) of the Constitution of Kenya, 2010 directs courts to promote alternative dispute resolution mechanisms, including reconciliation, mediation, arbitration, and traditional dispute resolution.¹¹ Kenya's Civil Procedure (Court-Annexed Mediation) Rules, 2022 have institutionalized mediation with a Mediation Accreditation Committee that accredits mediators and regulates their conduct.¹²

Similarly, Uganda has incorporated ADR under the Judicature (Mediation) Rules, 2013, which require courts to refer civil matters to mediation before trial.¹³ The Ugandan judiciary's Mediation Registry operates under the supervision of the Chief Registrar, ensuring consistency in mediation practices across courts. These comparative experiences demonstrate that court-annexed ADR can thrive where there is legislative clarity, administrative support, and judicial commitment.

While Tanzania has made commendable progress, it still lags behind its regional peers in institutionalizing ADR and clarifying the legal status of mediated settlements. The absence of a comprehensive ADR policy or a centralized mediation authority, as

⁴ A. Mtango, *Alternative Dispute Resolution in Tanzania: A Practical Guide* (LawAfrica, 2020) 12.

⁵ UNCITRAL Model Law on International Commercial Arbitration (1985, amended 2006).

⁶ Arbitration Act, 2020, s 4.

⁷ Ibid, s 18.

⁸ Judiciary of Tanzania, *Practice Directions on Court-Annexed Mediation* (GN No. 421 of 2019).

⁹ Judicature and Application of Laws Act [Cap 358 R.E. 2019], s 2(3).

¹⁰ Judiciary of Tanzania, *Judicial Strategic Plan (2020–2025)* (Dar es Salaam, 2020) 7.

¹¹ Ministry of Constitutional and Legal Affairs, *National Legal Sector Reform Programme Phase II*

¹² Constitution of Kenya, 2010, art 159(2)(c).

¹³ Civil Procedure (Court-Annexed Mediation) Rules, 2022 (Kenya), rr 4–7.

seen in Kenya, leaves Tanzanian courts with procedural inconsistencies and interpretive uncertainties.

2.4 Practical Implementation

In practical terms, ADR in Tanzania operates at two interconnected levels—court-annexed ADR and private ADR. Court-annexed ADR is facilitated by judicial officers within the judiciary, primarily through mandatory mediation sessions. Private ADR, on the other hand, occurs under the Arbitration Act, 2020 or contractual clauses, often involving professional mediators or arbitrators. While the legal framework accommodates both forms, their coordination remains weak. Cases settled through court mediation are sometimes challenged for lack of clarity on enforcement mechanisms or the mediator's authority to determine rights conclusively.¹⁴

Despite these challenges, ADR has contributed significantly to reducing the backlog in Tanzanian courts. Reports indicate that in the High Court of Tanzania (Commercial Division), nearly 45% of civil disputes referred to mediation between 2019 and 2022 were resolved without proceeding to full trial.¹⁵ However, the sustainability of this success depends on addressing underlying legal and institutional gaps, which are explored in the next section. Ambiguity in statutory provisions, Limited judicial oversight and enforcement, Issues of consent and party autonomy, Lack of expertise and institutional capacity, Conflict between ADR outcomes and constitutional rights.

3.0 Legal Challenges in Determining Parties' Rights via ADR in Tanzania

Despite Tanzania's impressive statutory and constitutional recognition of ADR, the actual application of these mechanisms especially in court-attached contexts remains legally and institutionally problematic. While ADR was envisioned as a means to achieve efficient, participatory, and restorative justice, several legal challenges continue to hinder its full realization.

These challenges undermine the effective determination of parties' rights and sometimes create uncertainty about the legitimacy, finality, and enforceability of ADR outcomes.

3.1 Ambiguity in Statutory Provisions

A major legal obstacle arises from ambiguities within the governing statutes, particularly the Civil Procedure Code [Cap 33 R.E. 2023] and the Arbitration Act, 2020. Section 64A of the Civil Procedure Code mandates pre-trial mediation in civil proceedings, yet the provisions do not clearly define the extent of a mediator's authority or the binding nature of mediation outcomes. For instance, section 64C requires the mediator to report the results of mediation to the court, but it remains silent on whether the mediator's recommendations carry legal effect if parties disagree.

Similarly, while the Arbitration Act, 2020 aligns with the UNCITRAL Model Law, it fails to specify how court-annexed settlements relate to arbitration awards.¹⁶ This creates uncertainty in mixed disputes where contractual arbitration clauses exist but courts require mediation under procedural law.¹⁷ This lack of statutory precision leads to conflicting interpretations by judges and lawyers. Some courts treat mediated agreements as private contracts, enforceable under general contract law, while others recognize them as consent judgments under section 64C.¹⁸ The absence of a unified interpretation jeopardizes predictability and weakens confidence in ADR outcomes as reliable legal instruments.

3.2 Limited Judicial Oversight and Enforcement Gaps

A second challenge concerns the limited judicial oversight over ADR proceedings and outcomes. Court-annexed mediation is conducted largely under judicial supervision, yet the Civil Procedure Code provides minimal guidance on how courts should monitor or review the process.¹⁹ In practice, once parties report a settlement, the court's role is restricted to recording the outcome, without substantive verification of fairness, voluntariness, or legal compliance. This creates risks of coercion, imbalance, or procedural irregularity particularly where one party wields greater economic or informational power.

Moreover, enforcement of ADR outcomes remains inconsistent. Although section 64C of the Civil Procedure Code empowers the court to record settlements as decrees, disputes often arise when one party later repudiates the agreement. The process for executing such decrees is neither clear nor uniform across jurisdictions, resulting in delays and procedural technicalities that undermine ADR's efficiency.

3.3 Issues of Consent and Party Autonomy

ADR processes are grounded on the principles of voluntariness and party autonomy. However, in Tanzania, these principles are often compromised by the mandatory nature of court-annexed mediation. Section 64A(1) of the Civil Procedure Code [Cap 33 R.E. 2023] makes mediation a compulsory pre-trial stage, meaning parties are legally obligated to participate even if they prefer direct litigation.

This mandatory participation has been criticized for undermining the consensual essence of ADR. Although the law aims to encourage early settlement, it inadvertently turns mediation into a procedural formality rather than a genuinely voluntary process. In some instances, litigants attend mediation sessions merely to fulfill a legal requirement before proceeding to trial.¹⁰

Furthermore, mediators who are often judicial officers—may exert undue influence on parties to settle, thereby blurring the line between facilitation and adjudication. This compromises party

¹⁴ *Judicature (Mediation) Rules, 2013 (Uganda)*, rr 3–6.

¹⁵ C. M. Ndyetabura, "The Role of ADR in Enhancing Access to Justice in Tanzania" (2021) *Eastern Africa Law Review* 56, 61.

¹⁷ *Cap 33 R:E 2023*

¹⁸ *Cap 33 R:E 2023*

¹⁹ *Judiciary of Tanzania, Court-Annexed Mediation Performance Report (2022)*.



autonomy and can result in settlements that do not reflect the true consent or rights of the parties.

3.4 Lack of Expertise and Institutional Capacity

Another major obstacle is the limited expertise and institutional capacity within Tanzania's judiciary to administer ADR effectively. While the Practice Directions on Court-Annexed Mediation (2019) outline procedures for mediation, many judicial officers lack specialized training in negotiation dynamics, mediation ethics, or dispute psychology. Reports by the Judiciary of Tanzania reveal that only a small proportion of judicial officers have undergone accredited mediation training, and many mediation registries lack adequate facilities and administrative support.¹² As a result, mediations may become perfunctory, with officers reverting to adversarial tendencies rather than collaborative problem-solving. Institutional weaknesses also extend to recordkeeping and monitoring. Some courts fail to maintain comprehensive data on mediation performance or settlement trends, limiting the judiciary's ability to assess ADR's long-term effectiveness. Without technical capacity, ADR risks being reduced to a procedural ritual rather than a meaningful path to justice.

3.5 Conflict Between ADR Outcomes and Constitutional Rights

Finally, ADR outcomes sometimes conflict with constitutional guarantees, particularly the right to a fair hearing and the right to appeal. Article 13(6)(a) of the Constitution of the United Republic of Tanzania, 1977 guarantees every person the right to be heard before impartial adjudication.²⁰ Yet, ADR processes—especially mediation—do not provide formal opportunities for evidence presentation, cross-examination, or appeal.

When mediated settlements are recorded as court decrees, they attain finality, leaving limited scope for review or appeal, even where one party later claims duress or procedural unfairness. This tension between finality and fairness has raised constitutional concerns about whether ADR can legitimately determine legal rights without contravening the fundamental right to due process.¹⁶

Moreover, the confidential nature of ADR, while valuable for candid dialogue, can obscure issues of accountability and transparency, especially in disputes involving public institutions or community interests. The lack of published precedents also hinders the development of Tanzanian jurisprudence on ADR.

4.0. Conclusion

The application of Alternative Dispute Resolution (ADR) in Tanzania reflects a commendable judicial commitment to improving access to justice and alleviating case backlogs. Statutory frameworks such as the Civil Procedure Code [Cap 33 R.E. 2023] and the Arbitration Act, 2020 demonstrate the country's effort to integrate consensual mechanisms into its formal legal system. However, as this paper has shown, several legal challenges

continue to undermine the effective determination of parties' rights through ADR.

These challenges ranging from statutory ambiguities and enforcement gaps to limited judicial oversight, compromised party autonomy, inadequate expertise, and constitutional tensions have collectively constrained ADR's transformative potential. Without clear legal guidance and institutional reinforcement, ADR risks becoming an administrative formality rather than a genuine pathway to justice.

The way forward requires comprehensive legal reform, including precise statutory definitions of mediation outcomes, enhanced judicial training, establishment of a centralized mediation authority, and stronger oversight mechanisms to ensure fairness and voluntariness. Equally important, Tanzania should develop a National ADR Policy to harmonize practices across courts and align domestic standards with regional and international best practices. In conclusion, ADR remains a powerful tool for promoting justice, reconciliation, and efficiency. Yet, for it to fulfill this promise, Tanzania must address the legal and institutional barriers that currently hinder its effective implementation. Strengthening the normative foundation of ADR will not only enhance public confidence in the judiciary but also align Tanzania's justice system with contemporary global standards of dispute resolution.

²⁰ *The Constitution of the United Republic of Tanzania of 1977 as amended time to time.*