



Institute of Certified Public Accountants of
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MOMBASA.

The Annual Forensic Audit Conference
The case for mediation

The Rev. Geoffrey Njenga Profile



- BA (Economics)
- MA: Diplomacy and International Affairs
- MA: African Theology
- Associate of Chartered Insurance Institute London (ACII)
- Chartered Insurer (CII) London
- Trainer of Trainers in Corporate Governance
- Trainer of Trainers in Mediation
- Professional Mediator
- Accredited Mediator
- Radio Presenter

ICPAK AND LEADERSHIP

- People demand to be led.
- Quality leadership imperative: most important ingredient.
- Effective leadership and stability.
- ICPAK the premier leader

Attributes of effective leadership

the cry of the country

- Competent leadership. (Knowing and doing.)
- Integrity-honesty, upright, honour.
- Courage.
- Independence.
- Values you will not surrender

The Law and the Heart

Going beyond the call of duty.

- The law and the clever thieves.
- Commitment to good corporate governance?
- Is the organization open to positive input.
- Is the board interested in leading?

Special focus on family business

- Advantages of family business
 - Ready capital for many startups
 - energy and enthusiasm...long hours and sacrifice
 - personal commitment to success.
- The challenges of family business
 - inadequate training, poor accounting tendencies, sibling rivalry, no succession plan- death of the founder precipitates crisis
- Help family business to grow Kenya

Leading the economy to the digital space

- Technology will define tomorrow
- Lead the market to digital space
- Help position economy on the digital platform
- Help the companies manage effectively the high risk of digital platform
- Help the companies deal with the challenges of the virtual world

Dispute management at the workplace

- The high cost of dispute at the workplace.
- The imperative of managing workplace conflict.
- Taking the responsibility to provide solution.
- What is the solution?

Cost of conflict at workplace

- Wasted time.
- Opportunity cost of wasted time.
- Lower job motivation and productivity.
- Lost performance due to conflict-related absenteeism.
- Loss of investment in skilled employees.
- Conflict-incited theft, sabotage, vandalism and damage.
- Restructuring around the problem.
- Health costs.
- Degraded decision quality.
- All these factors can be costed.

Costs of Organizational Conflict (formula)

Cost factor #1: **Wasted time**

_____ Number of people affected by the conflict

× _____ Average annual salary of each = _____ kshs

× _____ Supplemental cost of fringe benefits = _____ kshs

× _____ Portion of year the conflict continued = _____ kshs

× _____ % of time engaged in or distracted by the conflict =
_____ kshs

Mediation and Dispute Resolution

What is Mediation?

- A dispute resolution mechanism.
- A process where those in dispute are helped by a neutral third party to negotiate mutually beneficial solutions to their disputes.

Alternative Dispute Resolution Mechanisms (ADR)

- Alternative to what? Litigation.

Some other Mechanisms:

- Negotiation.
- Conciliation.
- Arbitration.
- Mediation.

Types of Mediation

- Workplace Mediation
- Community Mediation
- Commodity Mediation
- Commercial Mediation

Conflict & Society

- Conflict is inevitable wherever two people may be found.
- Not “if” but “when” conflict will occur.
- The issue is how and when to resolve disputes to minimize negative outcome.

What is conflict?

Any situation in which people have **apparently** incompatible opinions, goals, interests, principles or feelings.

Factors Leading to Conflicts

Board dynamics

- Dysfunctional group chemistry (personality – competency)
- No admittance of external knowledge
- Interpersonal relationships
- Dominant personalities / weak leadership
- Fear, ignorance
- Board lacks strategic focus
- Not understanding its role vis a vis Management and each other

Personal issues

- Lack of competence
- Motivation
- Bad preparation of board members
- Conflict of interest
- Fear of risk
- Emotional attachment to certain matters, people (“my/our project, my/our person syndrome”)

Structural issues

- Lack of transparency
- Lack of information
- Bad planning of meetings
- No clear rules on decision making processes
- Bad previous decisions
- Pressure from external sources
- Bad Performance of the institution

Does Mediation work?

- Workplace
- Succession
- Marital
- Community
- Commercial
- Contractual

Any dispute can be mediated if there was willingness/commitment.

Advantages of Mediation

- Self determination – power to disputants.
- Efficient.
- Voluntary.
- Confidential.
- Interests, not rights.
- Emotions and issues.
- Informal.
- Repairs relationships.

Mediation and the Kenyan Law

- Anchored in the Kenyan constitution 2010 Article 159.
- The court mandated mediation.
- Accreditation by MAC.

Caucus

- Meet separately with the disputants. Both parties get equal opportunity.
- To minimize/or eliminate deadlock.
- Engage in reality testing BATNA.
- Avoid destructive and antagonistic tendencies.
- Educate parties about mediation.
- Soliciting commitment.

Guidelines for Successful Mediation

- No interruption.
- Candid talk about the problem.
- Parties to talk to each other.
- Allow for venting.
- Hear all the sides to the disputes.
- Separate the problem from the people.

Breakthrough in Mediation

- Mediation process: from “start to finish.”
- Conflict mountain
- Breakthrough: Mutual attitude shift from “me against you” to “us against the problem.”
- Developing options

Agreement

- Simple clear language – avoid legal jargon.
- Confirm the terms of agreement.
- Bound in time and dates.
- Provide all information to assist in performance.
- All disputants to sign and retain copy.
- File in court.
- Agreement, partial agreement, no agreement.

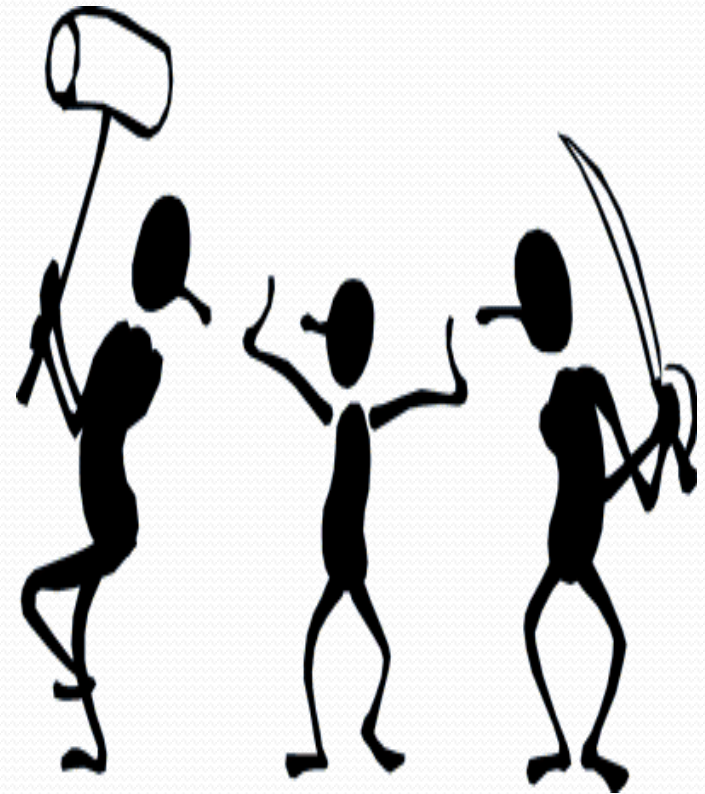
Why Mediation in Resolving Dispute?

- Dignity
- Confidentiality
- Win-win –Remain a Board member or walk away head held high!
- Quick resolution of disputes and teamwork
- Costs the organization less time and money vis a vis litigation.
- Maintaining of public image and privacy.
- Avoid Public scrutiny hence protecting the Institution's image and reputation.
- Unsolved issues lead to potential bad blood between the parties involved thereby affecting leadership.
- May cost the Institution its business and even ground it to a halt!

Mwongozo

The Board should:

- Ensure that disputes with and among stakeholders are resolved effectively, efficiently and expeditiously;
- Take reasonable steps to encourage stakeholders to solve their disputes through Alternative



CMA Code

Principle

- The Board shall establish a formal process to resolve both internal and external disputes

Recommendation

- The Board shall ensure the established channels of dispute resolution are used in the first instance



King IV

- Recommends that dispute-resolution mechanisms and associated processes be adopted and implemented as part of the overall management of stakeholder relationships.



**Peace is not absence of conflict, it
is the ability to handle conflict by
peaceful means.**

Ronald Reagan

Thank
you





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