

Important Aspects of Court Annexed Mediation in Ethiopia

Description

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Introduction

Ethiopian use customary dispute resolution mechanisms to resolving disputes in civil and criminal matters in the past years. Such dispute resolutions are led by community elders. These elders act like mediator in dispute resolution. The aim is to restore peaceful relationship between the parties. And to maintain future peaceful relationship by avoiding revenge. Formal law in Ethiopia recognizing some alternative dispute resolutions mechanism such as arbitration and conciliation were adopted under the Civil Code of Ethiopia and now separately under Proclamation No 1237/2021. Similarly the new Federal Court Establishment Proclamation No 1234/2021(hereafter the Proclamation) incorporated Court Annexed Mediation(CAM). A look on the steps Ethiopia took in formalizing Alternative Dispute Resolutions(ADR) and in particular CAM shall be made here below.

Steps Taken

Ethiopia took important step towards the development of ADR. For instance in 2020-2021 Ethiopia adopted New York Convention on Recognition and Enforcement of Foreign Arbitral Awards, enacted Arbitration and Conciliation Proclamation and incorporated CAM under its Federal Court Establishment Proclamation No 1234/2021. Before the enactment of Proclamation No 1234/2021, the courts do not have legislative mandate to use CAM to resolve dispute.

What is Mediation?

Black's Law Dictionary define Mediation as "a method of nonbinding dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution." The most important aspect of the definition is that mediation is nonbinding. The pertinent legislation i.e. Federal Court Establishment Proclamation No 1234/2021 doesn't define the word mediation. The Proclamation only state the court annexed mediation procedure, principle of mediation, fees, and who is mediator. However from the essence of the Proclamation, court annexed mediation can be defined as "the conflicting parties voluntary participate in the process of court annexed mediation and parties resolve their disputes with mediator, the approved agreement have binding power like decision of the court"

What is CAM?

CAM is a voluntary process of mediating disputing parties who presented their cases to court at an early stage of the litigation process. CAM is conducted under the auspices of the court whereby the officers of the court serve as mediators. Thus in CAM the mediation services are provided by the court as a part and parcel of the same judicial system. The agreed terms and approved settlement agreement in CAM shall be like a court decision and executed automatically. Ethiopian courts provide mediation settlements as the status of executable document.

Who is Mediator in CAM?

Pursuant to Article 47 of Proclamation, three cumulative requirements are set to be a mediator in CAM. The mediator need to have bachelor degree in law and with at least five years of experience in the field of law. He/she should be a person who has taken training in mediation. And finally the mediator has to be a person who fulfilled the criteria which is set by Federal Supreme Court. However, there is a possibility of including non legal EXPERIENCED professionals in areas related to their profession, as mediators.

Types of Cases

As per article 45 (1) of Proclamation, **mainly** civil cases are referred to CAM. It is clear that criminal matters are not subject to mediation. From civil matters, the directive to be issued by the Federal Supreme Court, shall determine which civil matters are included and excluded. Other jurisdictions like Bahrain for example, by amending their criminal procedure laws, they are including breach of trust crimes, petty theft, issuing a bounced cheque and other misdemeanors to be subject to mediation. CAM shall be instituted for cases falling under the jurisdiction of Federal First Instance courts and Federal High Courts only.

Principles of Mediation

Proclamation No 1234/2021 doesn't define in detail the CAM's involved parties rights and duties. For instance request of removal of mediator or when and how a judge involve in the mediation process are not listed in detail. The Proclamation tries to briefly specify the principles of mediation. The parties are free and equal. Communication of the parties in mediation shall be confidential and such communication shall not be admissible as evidence in the process of litigation. Hence additional rights of the parties, the removal of the mediator, the role of the mediator and how the judge involves in the case should be included in the directive the Federal Supreme Court will issue in the future.

Unsuccessful CAM and Fees

Where the parties have failed to resolve their dispute through CAM, the court proceedings shall be initiated automatically. However, if the mediation proceeding is interrupted due to absence of the other party, the mediator shall report to the court by specifying the reason for the interruption and the court proceedings shall be initiated after the absent party paid appropriate fee. Fees for mediators shall be fixed by the upcoming directive of the Federal Supreme Court. Such directive will sort out how much is paid when an employee of the court serves as mediator, a non-legal professional is involved or when mediator is selected by the parties.

Conclusion

Ethiopia recognized CAM as formal law in 2021. Such recognition is step forward for the speedy resolution of litigation in courts. CAM is recognized by law and its full implementation awaits directive of the Federal Supreme Court. CAM is added to the ADR instrument available for litigating parties in the Federal Ethiopian Court system. This is in addition to private conciliation or arbitration procedures already there in the legal system. Making sure of implementation of CAM, private conciliation or arbitration will make the legal system of Ethiopia far more better.

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