



**ADDIS ABABA UNIVERSITY**

**COLLEGE OF LAW AND GOVERNANCE STUDIES**

**SCHOOL OF LAW**

**LLM Program - Business Law Stream**

**THE LAW AND PRACTICE OF COURT-ANNEXED MEDIATION**

**OF COMMERCIAL DISPUTES IN FEDERAL COURTS**

**IN ADDIS ABABA**

**THESIS SUBMITTED IN PARTIAL FULFILLMENT FOR THE  
REQUIREMENT OF MASTER'S DEGREE (L.L.M) IN BUSINESS LAW**

**BY**

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**Approval Sheet**

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**BY**  
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## **DECLARATION**

I, the undersigned, declare that the thesis is my original work and has not been presented for a degree in any other university and that all sources of materials used in the thesis have been duly acknowledged.

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## **LIST OF ACRONYMS AND ABBREVIATIONS**

AACCSA-AI	Addis Ababa Chamber of Commerce & Sectorial Associations Arbitration Institution
ADR	Alternative Dispute Resolution
ADRM	Alternative Dispute Resolution Mechanism
ART	Article
CACM	Court Annexed Commercial Mediation
CAM	Court Annexed Mediation
EACC	Ethiopian Arbitration and Conciliation Center
EMAC	Ethiopian Mediation and Arbitration Center
FDRE	Federal Democratic Republic of Ethiopia
FFIC	Federal First Instance Court
FHC	Federal High Court
FSC	Federal Supreme Court
KII	Key Informant Interview
MOU	Memorandum of Understanding
No.	Number
Proc.	Proclamation
P.	Page
Vol.	Volume

## **Abstract**

*Due to the incompatibilities between the interests of the parties involved in commercial transactions, disagreements are inevitable. Therefore it is mandatory to find a better solution to the disagreements. The dispute resolution system is seen as a key issue in commercial and other transactions. Obviously, the usual mechanism of resolving commercial and other disputes is by conventional court action. However, the inefficiency, aggressive nature, and the time lags that sometimes accompany court proceedings are unpleasant realities in the legal system. Given this fact, it demands other preferred method of dispute resolution mechanism like mediation which is a basic form of commercial dispute resolution, displaying benefits compared to conventional litigation. One of such preferred mechanism of handling commercial disputes is court-annexed mediation. Being cognizant of its benefit in ensuring and fostering smooth commercial and other transactions, recently Ethiopia has introduced court-annexed mediation in Federal Courts since December 2021. Court Annexed Mediation is a mediation conducted under the supervision of courts. Thus, this paper examined the existing laws governing court-annexed mediation in Federal courts in Addis Ababa to find how far it has helped in resolving commercial disputes effectively without engaging in conventional court litigation. The research explored the existing practical concerns and challenges facing court-annexed mediation in Federal Courts in Addis Ababa after the promulgation of Federal Courts Establishment Proclamation No.1234/2021 and Court-Annexed Mediation Directive No.12/2021. Some of the benefits and challenges of court-annexed mediation are also shown. In a nutshell, the research mainly attempted to examine the laws and the realities or the practice on the ground of court annexed mediation in Federal Courts in Addis Ababa with specific reference to commercial disputes. Finally, the research puts forward some recommendations which the researcher thinks to be appropriate.*

# CHAPTER ONE

## 1. INTRODUCTION

### 1.1. Background of the Study

As disputes are inevitable in all societies, the mechanisms in place to deal with them and prevent them allow individuals and groups to continue working together and living in harmony.<sup>1</sup> Although the modern litigation system has been practiced for many years, the delay in the court system, increasing cost of litigation, makes Alternative Dispute Resolution Mechanisms (ADRMS) popular in civil and commercial dispute settlements.<sup>2</sup>

Alternative Dispute Resolution is the general name given to various procedures available to parties in civil cases to an early settlement and resolution of their disputes.<sup>3</sup> The mechanisms are negotiation, conciliation, mediation, and Arbitration.<sup>4</sup> Generally speaking, ADRMs are believed to be financially and emotionally advantageous to disputants. ADRM is important in repairing and maintaining important relationships between disputants, which may be at risk in adversarial litigation.<sup>5</sup> They are supposedly faster, cheaper, smoother than judicial proceedings and allow negotiation and effective participation in resolving the conflict. These lead to well-accepted decisions.<sup>6</sup>

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<sup>1</sup> Park RE and Burgess EW, *Introduction to the Science of Sociology*, The University of Chicago press, Chicago, Illinois (1921) P. 735

<sup>2</sup> Kobusingye Ruth, “An Examination of the Impact of Mediation as a Dispute Resolution Mechanism, a Case Study of Uganda” (Thesis, Kampala International University, School of Law 2019) p. 3.

<sup>3</sup> Gauthier A, “Secret Justice: Alternative Dispute Resolution” *The Reporters Committee for Freedom of the Press* (Washington, DC), (2020) P. 2.

<sup>4</sup> Teclé Hagos Bahta ‘*Amicable Dispute Resolution in Civil And Commercial Matters In Ethiopia: Negotiation, Conciliation And Compromise*’, Mizan Law Review, Vol. 13, No.1 (2019) p. 2.

<sup>5</sup> Catherine McGuinness, “Consultation Paper Alternative Dispute Resolution” Law Reform Commission (2008) P. 58.

<sup>6</sup> Karine Gilberg, “Reforms in the French Administrative Justice System and Alternative Dispute Resolution (ADR) Methods” P. 46.

These mechanisms can be deployed to resolve disputes in areas related to commerce. It is believed that commerce began in the early stages of human civilization despite the change it underwent in its usage throughout history. In ancient times, commerce means buying and selling goods or was used to describe the action of people who sell and purchase goods for profit as a means of their living. These days, commerce denotes wide and complex transactions that show the chain of actions that brings goods and services from production to consumption in which the dealer works for profit.<sup>7</sup> A commercial dispute, thus, can be understood to mean any dispute related to transactions between merchants, bankers, financiers, traders, etc.<sup>8</sup> Most commercial disputes are usually resolved at their early stages through bilateral interactions, discussions and mutual concessions between the disputing parties.<sup>9</sup>

Ethiopia has revised its Commercial Code and defined a trader as including an extended list of activities indicated under Article 5 of the Code. Accordingly, any individual who carries out one of the listed activities professionally and for gain is a trader.<sup>10</sup> Disputes relating to such activities among others can be resolved through CAMs. For the first time in the history of the country, Ethiopia's Federal Courts Proclamation number 1234/2021 gave due recognition to CAMs in Federal Courts. The Federal Supreme Court has also adopted Directives No. 12/2021 which is the first Directive on CAMs.

## 1.2. Statement of the Problem and Research Questions

Ethiopia has launched a ten-year plan to enhance economic reform in the country.<sup>11</sup> The project aims at upgrading the policy framework and overhaul the institutional setup dealing with the economy.<sup>12</sup> The Ethiopian government, too, developed a Homegrown Economic

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<sup>7</sup> Julio Cueto-Rua, 'Administrative, Civil and Commercial Contracts in Latin-American Law', 26, *FORDHAM LAW REVIEW*, 15 (1957). P. 28.

<sup>8</sup> "The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Ordinance, 2015" (*PRS Legislative Research* April 27, 2022) <<https://prsindia.org/billtrack/the-commercial-courts-commercial-division-and-commercial-appellate-division-of-high-courts-ordinance-2015>> accessed April 27, 2022

<sup>9</sup> *Supra* note 4, P. 6.

<sup>10</sup> Commercial Code of the federal democratic of Ethiopia, Art. 5, proc. No.124 3 /2021.

<sup>11</sup> የልማት ዕቅድ ፍጥነት ጠቅላይ ሪፖርት 2013-2022, በኢትዮጵያ ፌዴራላዊ ሪፐብሊክ የፕላንና ልማት ኮሚሽን PP.71-79.

<sup>12</sup> *Ibid*.

Reform Agenda and one of the institutions that need to be reformed is the institution handling disputes of economic nature that bears significant impact on the country's overall progress.

As one step towards the realization of the desired reform, Ethiopia amended its Commercial Code very recently and promulgated a new law dealing with issues of Arbitration and Conciliation in addition to ratifying the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Ethiopia is also opting for liberalizing its market policies, at least in some selected economic sectors, and this calls for efficient, effective, transparent, and predictable dispute resolution mechanisms. The move demands for dispute resolution mechanisms to be relied on by the business community and looking towards securing economic success while reducing time and transaction costs.

Ethiopia began reforming its modern, formal system of dispute resolution 60 years ago in 1960. As part of the reform, Federal Courts of Ethiopia established Commercial Benches dealing with commercial matters only. On the other hand, the non-formal traditional and customary methods of dispute resolution mechanisms have been in operation for centuries now. Currently, commercial disputes in Federal Courts in Addis Ababa are being handled by commercial mediation mechanism. This non-formal system of dispute resolution mechanism is praised for being efficient in minimizing cost and time and its predictability.<sup>13</sup> On the other hand, it is alleged that the tool used to resolve commercial disputes in the formal system avoids these benefits of using the non-formal methods.

To let users benefit from both the formal and non-formal systems, the Federal Courts Proclamation, No. 1234/2021 introduced the idea of court-annexed mediation. Despite the efforts to reform the law and the institutions dealing with the resolution of commercial disputes, important questions such as the following still need serious investigation.

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<sup>13</sup> Mintiwab Zelelew et Mellese Madda Alternative Commercial Dispute Resolution Mechanisms in Addis Ababa: The Case of Merkato, Grass-Roots Justice in Ethiopia, The Contribution of customary Dispute Resolution (Pankhurst, Alula and Assefa, Getachew (ed.), 2008, Centre Français d'Études Éthiopiennes, Addis Ababa, PP. 254-255.

## *Research Questions*

- What laws govern court-annexed mediation in Federal courts in Addis Ababa, and what does the actual practice look like?
- Are there sufficient laws governing court-annexed commercial mediation in Federal Courts in Addis Ababa?
- Are the practices relating to court-annexed mediations in Federal Courts are in line with the laws that govern them?
- Are the Federal Courts in Addis Ababa effectively using CAMs in commercial disputes?
- Are there well-qualified experts and convenient venues in Federal courts in Addis Ababa to resolve commercial disputes via court-annexed mediation?
- How far are parties and their lawyers willing to use court annexed mediation in Federal Courts in Addis Ababa?

### **1.3. General Objectives of the Research**

The implementation of CAMs is a newly emerging concept in the Federal Courts of Ethiopia, hence it is expected to be challenging to Court administrators, judges, mediators, advocates, stakeholders like EMAC, AACCSA-AI and the business community as a whole. Therefore, this research aims at identifying the relevant laws regarding CAMs, as well as the problems and gaps related to the laws and their practical application, and to put forward recommendations with the view to help fill the gaps identified.

#### **1.3.1. Specific Objectives**

- To explore the relevant laws on CAM in commercial disputes in Federal Courts in Addis Ababa;
- To explore the practices of commercial CAMs in the Federal Courts in Addis Ababa;
- To identify the key factors that make CAMs effective or ineffective in Federal Courts in Addis Ababa;
- To recognize the challenges in Federal Courts in Addis Ababa concerning CAM;
- To identify the barriers and enablers in CAMs in Federal Courts in Addis Ababa; and

- To forward recommendations to fill the gaps in the laws and practices of CAMs in the Federal Courts in Addis Ababa.

#### **1.4. Significance of the Study**

Though the newly promulgated Federal Courts Proclamation No 1234/2021, together with the Directives issued by the Federal Supreme Court, instituted a system of CAMs for the settlement of civil disputes; important questions remain to be answered. The attempt to answer such questions is believed would initiate further bills and develop the law and the jurisprudence in the area. This research will investigate and try to identify the gaps in the law for the benefit of lawmakers. As the study investigates the practical gaps faced in implementing the rules, Federal Courts and Regional Courts would benefit from the findings of this research. The research, it is believed, would inform professionals' knowledge, skill, and attitudinal gaps, including that of judges, practitioners, court administrators, court users, lawyers, and the business community. The research will further trigger research questions to benefit other researchers, students, and the academia.

#### **1.5. Scope of the Study**

The research is confined to identifying the gaps in the laws, as well as practices on commercial disputes resolution in CAM with specific reference to Federal High and First Instance Courts in Addis Ababa. Time wise, it would cover the practice that has cropped up after the promulgation of the Federal Courts' Proc. No. 1234/2021.

#### **1.6. Research Methodology**

This research employs both qualitative and quantitative methods. Primarily, it explores and analyzes relevant literatures (foreign and domestic), laws, and other secondary sources. Hence, the sources of data to do this study will be both primary and secondary data sources. Primary data for the research are data collected from interviews. Secondary data used are collected from proclamations, regulations, directives, and other relevant laws journals, books, reports and articles for all the research questions of the study.

The participants of this research are those ones which are familiar with the research topic and the research questions of the study. Based on this, FFIC, FHC, FSC, AACCSA-AI, EMAC and the Federal Advocates are the targeted participants in this research. In addition to

this, cases that are entertained in the FFIC after the coming in to effect of the Proc. No. 1234/2021 and Directive No. 12/2021 are going to serve as points of observation. Furthermore, the bi-annual case report in 2022 of the FFIC will also be investigated in accordance with the research questions.

## 1.7. Literature Review

As CAM is introduced in to the Ethiopian public justice system only recently, the literature on CAMs in Ethiopia is scanty. One LLM thesis, by Kamil Abdu Oumer, on the subject matter was written in 2013 G.C which tried to assess the place of modern and institutionalized mediation as a means of commercial and investment dispute settlement in Ethiopia and indicated ways for further modernization and institutionalization. However, CAM came into picture in Ethiopia after the thesis was written. Hence, the research did not identify the rules, procedures, and real problems on the ground of court-annexed mediation in commercial disputes resolution, which this thesis tries to do. Usually mediation in general follows a deadlock in negotiation and has become one of the most prevalent alternative dispute resolution (ADR) processes in recent years.<sup>14</sup> It is an interest-based solution and much desirable if the parties have an ongoing relationship with the need to reduce ill-will or hate, which often occurs in litigation.<sup>15</sup> Mediation is also a flexible, non-binding dispute resolution process in which the mediator assists two or more disputants to reach a voluntary, negotiated settlement of their disputes.<sup>16</sup> The parties remain to be the decision-makers and resolve their dispute through a negotiated settlement.<sup>17</sup>

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<sup>14</sup> Muigua K, “Tracking Africa’s Arbitration & ADR: It’s Business Unusual,” *Enhancing The Court Annexed Mediation Environment in Kenya* (2020), P. 4.

<sup>15</sup> Ibid.

<sup>16</sup> Lukasz Rozedeizer Aljandro Alvarez De La Compa, ‘*Alternative dispute resolution manual implementing commercial mediation, Small and Medium Enterprise Department*’ (2006), The World Bank Group, November, P.16.

<sup>17</sup> M. Olivier, ‘*The role of court-annexed mediation in providing access to justice in the resolution of commercial disputes Mini-dissertation,*’ (LLM thesis, North-West University, 2018) P.19.

Similarly, CAM is a mediation process conducted by the courts after parties file a case. It is a conflict resolution process in which a court-appointed mediator assists the disputing Parties to negotiate through an informal settlement.<sup>18</sup>

Thus, CAM is an amicable dispute settlement mechanism under the supervision of courts. Its main objective is to improve the civil justice system through a simple and speedier resolution of disputes among disputant parties.<sup>19</sup> It has proven to be advantageous for dispute settlement as it helps to minimize the backlog of court cases. Moreover, it fulfills the parties' substantive, procedural and emotional interests and wishes since they play big role during the mediation process.<sup>20</sup>

### **1.8. Limitation of the Study/ Challenges**

As CAM is a new concept in Federal Courts in Addis Ababa the researcher faced the problem of lack of adequate literature, lack of information, and properly documented materials in the field. In addition to this, as the researcher was doing the research in addition to his regular job and during weekends only, shortage of time was a formidable challenge. Furthermore, as there was no budget assigned for the research finance was another problem that the researcher has faced. However, the researcher exerted maximum effort and finalized the research.

### **1.9. Organization of the Paper**

The research comprises of four chapters. The first chapter deals with the thesis proposal, including the background, statement of the problems, objective, significance, methodology, scope, and the study's limitations. The second chapter presents general theories and principles of CAMs. The third chapter is devoted to the practical discussion of the benefits and challenges of CAMs in commercial dispute settlement mechanisms. Hence, it explores the laws and practices of CAMs and the practical problems in implementing CAM rules in general

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<sup>18</sup> Mzee Mustafa & Ahmad Azam Othman, 'Towards Effective Court- Annexed Mediation on Commercial Disputes in Zanzibar' (2020), vol. 5, issue 18, International Journal of Law, Government and Communication (IJLGC), P.82

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

and commercial mediation in particular in Federal Courts in Addis Ababa. The fourth chapter, being the last chapter, covers the findings and recommendations of the research.

## CHAPTER TWO

### 2. GENERAL THEORIES AND PRICIPLES OF MEDIATION

#### 2.1. Concept of Disputes in General

Black’s law dictionary defines ‘dispute’ as “conflict or controversy, especially one that has given rise to a particular lawsuit.”<sup>21</sup> Similarly, dispute is a disagreement on a point of law or fact, a conflict of legal views or interests between the disputants.<sup>22</sup> In other words it is a situation in which the disputants held clearly opposite views concerning the question of the performance or non-performance of certain contract obligations.<sup>23</sup>

Likewise, commercial dispute refers to any form of dispute that happens in a business context, such as disagreements over a contract, within a partnership, class actions, civil claims, shareholder disputes, and so on.<sup>24</sup>

Commerce, in general, refers to the exchange of products, services, or other valuable items between individuals or entities.<sup>25</sup>

In a nutshell, disagreements arising from business problems or contracts connected to trade activity are commercial disputes.<sup>26</sup>

Thus, the concept of a business dispute or conflict refers to any disagreement between business persons or firms over the terms of an agreement signed by them.<sup>27</sup> These conflicts are often handled by experienced commercial litigators whose sole purpose is to get the best possible outcome for the party that engaged them.

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<sup>21</sup> Black’s law dictionary, 7<sup>th</sup> e.d, (1999).

<sup>22</sup> Mavrommatis Palastine concessions, judgment No. 2, 1924. CIJ series A. No. 2, P. 11.

<sup>23</sup> Interpretation of the peace treaties with Bulgaria, Hungary and Romania (first phase) ICJ Reports 1950, P. 65,74

<sup>24</sup> Upcounsel, ‘*Business Dispute Definition: Everything You Need to Know*’ (2021) <<https://www.upcounsel.com/business-dispute-definition>> accessed 19/12/2021.

<sup>25</sup> James Chen, ‘*Commerce*’ (2021) <<https://www.investopedia.com/terms/c/commerce.asp>> accessed January 4/2022

<sup>26</sup> Id, P. 83.

<sup>27</sup> Supra note 24.

Commercial disputes generally occur when one of the parties considers that the quantity of money paid, the provided item or service, or the period in which the commodity or service was supplied did not follow the original agreement.<sup>28</sup> In addition to this, disputes might occur when a certain product fails to satisfy the terms of the product's warranty or affects the consumer.<sup>29</sup> Moreover, many commercial conflicts develop due to mismanagement, misinterpretation, or inability to execute contract terms and conditions.<sup>30</sup>

There are several dispute settlement approaches, ranging from the most casual discussions to a full court hearing with stringent procedural standards.<sup>31</sup> Negotiation, conciliation, mediation and arbitration are the four known alternative conflict resolution procedures.<sup>32</sup> In the next part, we will look at the essence of mediation in general and CAM in commercial disputes in particular.

## **2.2. The Essence of Mediation in General and CAM in Particular**

Mediation is a process in which a neutral third party meets with disputants and encourages dialogue to assist the parties in reaching their solution.<sup>33</sup> It is an informal method in which a neutral third party assists litigants in reaching a mutually agreeable resolution.<sup>34</sup>

The mediator supports the disputants in generating options; assisting both parties in better understanding their respective views and managing emotions.<sup>35</sup> Although the mediator directs the process, he or she does not impose any settlement view on the merits of the case; his/her role is favoring a win-win scenario and leaving the outcome to the disputants themselves.<sup>36</sup>

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<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> Id, P. 11.

<sup>32</sup> Supra note 4, P. 2.

<sup>33</sup> Abera Bekele, 'Alternative Dispute Resolution Methods in Construction Industry: An Assessment of Ethiopian Situation' (LLM Thesis, Addis Ababa University School of Graduate Studies Faculty Of Technology, 2005), P. 36

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

In addition to this, mediation may be viewed as both confidential and private procedure. The purpose is to increase honesty between the parties and to respect each disputant's feelings, desires and hopes.<sup>37</sup>

Court Annexed Mediation is a type of mediation that takes place under the auspices of courts.<sup>38</sup> It is a mediation procedure in which a court-appointed mediator supports the disputing parties in negotiating after the parties have filed a lawsuit in a court.<sup>39</sup> Hence, court-annexed mediation is a mechanism of conflict resolution under the supervision of the court.

The major goal of CAM is to improve the civil justice system by settling conflicts between disputants in easier and faster way and to maintain their good relationships.<sup>40</sup> CAM is also considered to be a beneficial conflict resolution mechanism as it helps to reduce the problem of case backlogs in courts.<sup>41</sup> In addition, as the disputants take a significant role in the mediation process and the final decision, it meets their best interests and wants.<sup>42</sup>

A litigant may request that the issue be referred to mediation, or the court may inquire about the potentiality of mediation and provide all parties the option to do so.<sup>43</sup> The judge of the court in a voluntary CAM system would offer the parties the option of settling the disagreement through mediation or another way. If both parties agree, the matter is referred to the Mediation Center by the judge.<sup>44</sup> However, in a mandatory CAM system, the court has the authority to require the parties to try to settle their disagreement through mediation before the conventional trial proceeds.<sup>45</sup>

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<sup>37</sup> Id, P. 16.

<sup>38</sup> Milimani Law Courts, 'Court Annexed Mediation' (A Solution by You for You, 2016) <<http://kenyalaw.org/kenyalawblog/wp-content/uploads/2016/04/Court-Annexed-Mediation-at-the-Judiciary-of-Kenya>> Accessed 27/12/21

<sup>39</sup> Supra note 18, P. 83.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> Supra note 16, P. 24.

<sup>45</sup> Ibid.

### 2.2.1. Assisted or Facilitated Negotiation

In assisted negotiation, the mediator's main job is to enable discussion between the parties, helping them find the best possible solution to their dispute.<sup>46</sup> Many principles, such as communication, relationships, interests, alternatives and commitments are utilized to achieve this purpose. Mediations take different forms; some are facilitative, while others are evaluative.<sup>47</sup> Whether mediation is facilitative or evaluative depends on the agreement of the parties. Facilitative mediation relies on interests, goals and needs of the parties rather than on the perceived outcome of the litigation.<sup>48</sup> Thus, the primary role of facilitative mediation is to uncover the parties underlying interests and help them to find a solution that meets those interests.<sup>49</sup>

Whereas evaluative mediation relies on the expertise and experience of the mediators to assess and give a conclusion about the relative merits of the argument that are being presented to them.<sup>50</sup>

Hence, in evaluative mediation the role of the disputants /and their lawyers/ is to present persuasive arguments that will convince the mediator that the disputant has a strong case and will win if the matter proceeds to trial.<sup>51</sup> Presentations to the mediator are in the form of legal arguments usually made by the lawyer. The process is similar to a court process without the formality that is why some refer to evaluative mediations as non-binding arbitrations.<sup>52</sup>

However, mediators are not decision-makers. As a result, "mediation, roughly defined, is a method of aiding others' discussions."<sup>53</sup> It is an effective alternative conflict resolution

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<sup>46</sup> Fernando Vieira Luiz, '*Designing a Court-Annexed Mediation Programed for Civil Cases in Brazil: Challenges Opportunities*', (2015) vol. 15 issue 1 Article 1, Pepperdine Dispute Resolution Law Journal, P.5.

<sup>47</sup> Ibid.

<sup>48</sup> Handy Francis J., Stitt Allan J. and Nayla Mitha, *Process of Mediation* (Stitt Feld Handy Group 2006) P. 3

<sup>49</sup> Id P. 4.

<sup>50</sup> Id P. 2.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid .

<sup>53</sup> Supra note 46, P.5.

strategy that tries to obtain a negotiated settlement between parties while avoiding the significant expenses of litigation and the time delays that are common in judicial systems.<sup>54</sup>

It is also a method in which a third party neutral aids disputing parties in reaching a negotiated solution. Alternatively, it may also be called a neutral third-party-assisted negotiation.<sup>55</sup> The mechanism gives parties the right to participate in decision-making and influence the outcome. Likewise, it is founded on individual liberty and self-government.<sup>56</sup>

### **2.2.2. Informality and Flexibility**

Parties in mediation are free to establish their own rules of the processes, and they frequently choose to forego much of the formality associated with other kinds of dispute resolution.<sup>57</sup> Mediation methods are less formal than court processes in that the norms of procedure are often more flexible, with no formal pleadings, lengthy written records, or standards of proof.<sup>58</sup> As a result, unlike litigation, which focuses on specific problems decided by prepackaged legal concepts, mediation does not confine itself to the discrete legal claims claimed by the parties.<sup>59</sup>

Parties can debate the relative merits of their arguments without being constrained by strict court standards.<sup>60</sup> As a result, mediation allows for a wide range of innovative solutions to conflicts between disputants.<sup>61</sup> Besides mediation's informality and flexibility, parties are

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<sup>54</sup> [Hayley Langdon](https://www.dmlaw.co.za/what-is-court-annexed-mediation/), 'what is court-annexed mediation', (2015) <<https://www.dmlaw.co.za/what-is-court-annexed-mediation/>> accessed 27/12/2021.

<sup>55</sup> Kamil Abdu Oumer, 'Modernization and Institutionalization of Mediation to Resolve Commercial and Investment Disputes in Ethiopia' (LLM Thesis, Addis Ababa University School of Law and Governance, 2013) P. 118.

<sup>56</sup> Alwi Abdul Wahab, 'Court annexed and Judge led mediation in civil case: the Malaysian experience' (College of Law and Justice Victoria University of Melbourne, October 2013) P. 89.

<sup>57</sup> Kenneth R. Feinberg Mediation, 'A Preferred Method of Dispute Resolution', 16 Pepp. L. Rev. 5 (1989) <<http://digitalcommons.pepperdine.edu/plr/vol16/iss5/2>> P. 5

<sup>58</sup> Scott Brown, Christine Cervenak and David Fairman, 'Alternative Dispute Resolution Practitioners' Guide' (Technical Publication Series, Center for Democracy and Governance Bureau for Global Programs, Field Support, and Research U.S. Agency for International Development, 1998) P. 6

<sup>59</sup> Gay R. Clarke and Iyla T. Davies, 'Adr - Argument for and Against Use of the Mediation Process Particularly in Family and Neighborhood Disputes' [1992], QLD. University of Technology Law Journal, p. 81

<sup>60</sup> Ibid

<sup>61</sup> Ibid

calmer, eager to negotiate, willing to compromise, and malleable during the talks.<sup>62</sup> In other words, the informality of the system is appealing and vital for improving access to conflict resolution for segments of the community that may be frightened by or unwilling to engage in more official systems.<sup>63</sup> It is also significant for minimizing the time and expense of resolving disputes.<sup>64</sup> Moreover, it is also truly beneficial for the generation of creative solutions in which parties can stretch the plate so that everyone gets as much as feasible.<sup>65</sup>

Furthermore, it is believed that the outcome of mediation is long-lasting and adaptable since it responds to the parties' demands as they emerge through their efforts, willingly and without compulsion.<sup>66</sup> As a result, because the agreement achieved is based on mutual consent in a more casual and friendly setting, it aids the preservation and improvement of the parties' relationships.<sup>67</sup>

### **2.2.3. Confidentiality and Privacy**

The secrecy of mediation is one of its benefits to the parties.<sup>68</sup> Therefore, unless required by law or public policy, the mediator shall keep secret any information emerging from or in connection with the mediation, including the fact that the mediation is to occur.<sup>69</sup> As a result, any confidential material supplied to mediators by one of the parties should not be revealed to the other party without authorization or unless required by law.<sup>70</sup>

On top of this, the mediator is not permitted to act as a witness in the case and is not permitted to tell outsiders what transpired during the meetings.<sup>71</sup> Thus, the mediation process must be kept secret throughout, and any statements made during the mediation process cannot

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<sup>62</sup> Supra note 17, P. 17

<sup>63</sup> Supra note 58, P. 6

<sup>64</sup> Ibid

<sup>65</sup> Supra note 46, P.6

<sup>66</sup> Supra note 56, P. 62

<sup>67</sup> Ibid

<sup>68</sup> Id P. 61

<sup>69</sup> Supra note 16, P.161

<sup>70</sup> Ibid

<sup>71</sup> Supra note 46, P. 7

be used as evidence in court.<sup>72</sup> This guarantees that disputant parties are free to voice their opinions throughout the mediation process without fear of their statements being used against them during subsequent lawsuits.<sup>73</sup> In other words, if the mediation is unsuccessful, no information will be recorded in the file. Mediators will only keep their notes for a limited time and keep them securely.<sup>74</sup> To maintain the mediator's integrity, the mediator should avoid revealing any information regarding how the parties acted, the merits of the dispute or any settlement offers outside of the mediation.<sup>75</sup>

To ensure this, the parties may also include a secrecy provision or a confidentiality clause that keeps the whole substance of the agreement hidden from public observation.<sup>76</sup> Moreover, the mediator receiving such information from both parties should apply it in facilitating the process towards a peaceful resolution.<sup>77</sup>

The confidential nature of mediation process allows an unrestricted sharing of information, feelings, and emotions, which is one of the primary contributors to a mutually satisfying outcome.<sup>78</sup> Without this component, valuable input may be concealed for fear of shame or injury if it is revealed. This undoubtedly contributes to the preservation of goodwill.<sup>79</sup>

#### **2.2.4. Neutrality and Impartiality**

Impartiality refers to the absence of prejudice or preference in favor of one or more negotiators, their interests, or the specific solutions they advocate.<sup>80</sup> In other words, impartiality is a key distinguishing element of traditional mediation, which excludes the mediator from any

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<sup>72</sup> Supra note 18, P. 85

<sup>73</sup> Ibid

<sup>74</sup> Sir Anthony Clarke, 'Civil Court Mediation Service Manual' (3<sup>rd</sup> edition, her majesty's courts service, 2009) P.34

<sup>75</sup> John D. Feerick, '*Standards of Conduct for Mediators*', (79 Judicature, 1995-1996) <[http://ir.lawnet.fordham.edu/faculty\\_scholarship/278](http://ir.lawnet.fordham.edu/faculty_scholarship/278)> accessed 27/12/2021

<sup>76</sup> Supra note 46, P. 7

<sup>77</sup> Supra note 56, P. 61

<sup>78</sup> Supra note 59, P. 86

<sup>79</sup> Ibid

<sup>80</sup> Paul Bailey, '*Neutrality in Mediation: An Ambiguous Ethical Value*', Journal of Mediation and Applied Conflict Analysis, 2014, Vol. 1, No. 1 P. 53

advising or quasi-counseling function in connection to the subject of the parties' disagreement.<sup>81</sup>

Similarly, impartiality is the absence of prejudice or bias in one's words, actions, or appearance.<sup>82</sup> As a result, when acting as an independent mediator, the intermediary should highlight that he is unbiased in his thoughts and has no relationship with the parties.<sup>83</sup> Failure to appropriately convey this distinction on the side of the mediator might result in grievances against mediators.<sup>84</sup>

Therefore, a mediator should not respond favorably or unfairly based on any participant's attributes, background values, beliefs, performance during mediation, or other reasons.<sup>85</sup> In other words, a mediator should be able to supervise a balanced process in which all participants are treated fairly and should not have a personal investment in the outcome.<sup>86</sup>

Mediator neutrality and impartiality are fundamental ethical standards that all mediators must adhere to.<sup>87</sup> Hence, the mediator should only mediate in cases where they can remain objective and neutral. If a mediator cannot administer the process objectively and neutrally at any moment, s/he is required to withdraw.<sup>88</sup> Because when the parties have trust in the mediator's objectivity and neutrality, the mediation process accelerates.<sup>89</sup> When a court or institution appoints mediators, the appointing entity must make reasonable effort to guarantee that mediators function neutrally and impartially.<sup>90</sup>

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<sup>81</sup> J Kelly, 'Mediation and Psychotherapy: Distinguishing the Differences' (*Mediation Quarterly*, 1983) P. 33

<sup>82</sup> Office of The Executive Secretary of The Supreme Court of Virginia, '*Standards of Ethics and Professional Responsibility for Certified Mediators*', (2011) P. 5

<sup>83</sup> Supra note 80, P. 53

<sup>84</sup> Ibid

<sup>85</sup> Ban Ki-moon, '*United Nations Guidance for Effective Mediation*' (Printed at the United Nations, New York, 2012) P. 11

<sup>86</sup> Ibid

<sup>87</sup> Supra note 80, P. 53

<sup>88</sup> Supra note 16, P.53

<sup>89</sup> Ibid

<sup>90</sup> Ibid

## 2.3. The Role of Participants in CAMs

### 2.3.1. The Role of Mediators

The mediator is unquestionably the most important component of any mediation program. His/her primary job is to enable the consensual resolution of a conflict. A mediator may not pressure a party into reaching an agreement and may not make decisions on behalf of any party to the mediation process.<sup>91</sup> Instead, his/her function is to act as a medium for communication and understanding between opposing parties.

A mediator must try to ensure the process's quality and foster mutual respect among the parties. However, a quality procedure necessitates the mediator's dedication to diligence and procedural fairness.<sup>92</sup> When parties cannot achieve a negotiated solution on their own, a professional mediator can frequently assist them.<sup>93</sup> The mediator's role in the mediation process is to facilitate the parties' discussion. The process comprises also aiding in resolving a conflict, ensuring that the norms of engagement are informed and understood by the parties, and protecting the process's confidentiality.<sup>94</sup>

The overall purpose of the process is to foster dialogue and assist the parties in reaching a mutually agreeable resolution for their dispute.<sup>95</sup> However, to maintain a balance, the mediator may examine both parties about their bargaining positions and inquire about any event or topic relevant to a successful, sustainable agreement.<sup>96</sup>

In doing so, the mediator does not decide the issue nor give professional advice to the disputants but rather assists them in understanding and focusing on the critical problems that

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<sup>91</sup> Supra note 82, P. 4

<sup>92</sup> Supra note 16, P. 155

<sup>93</sup> Mnookin, Robert, "Alternative Dispute Resolution" (1998). *Harvard Law School John M. Olin Center for Law, Economics and Business Discussion Paper, Series. Paper 232*. <[http://lsr.nellco.org/harvard\\_olin/232](http://lsr.nellco.org/harvard_olin/232)> P. 6

<sup>94</sup> Thiong'o Edwing, "Effectiveness of Mediation in Conflict Management by Businesses in Kenya: A Study of The Court Annexed Mediation Project" (Thesis Chandaria School of Business 2020) P. 20

<sup>95</sup> Supra note 93, P. 6

<sup>96</sup> Supra note 82, P. 55

must be addressed to achieve an agreement.<sup>97</sup> Thus, the most important role of a mediator is using communication skills to manage the negotiation or conflict resolution process that best serves the interests of the parties or facilitates their voluntary agreement.<sup>98</sup>

The mediator may also assist the parties in demonstrating the strengths and weaknesses of their legal positions, improving communications, exploring the implications of not resolving, and develop settlement possibilities.<sup>99</sup> However, as the mediator has no advisory or deciding function concerning the subject of the dispute or the outcome of its resolution, the procedure becomes more relaxed for the parties.<sup>100</sup> Therefore, to make mediation more effective, the appointing officials must keep in mind that the mediators' background, training, and experience will have a significant influence on the mediation process and its outcome.<sup>101</sup>

### **2.3.2. Challenges that Mediators Face**

One of the goals of mediation is to obtain a faster resolution than would be possible through litigation. Still, in certain cases, a party may be unwilling to compromise in the early phases of the mediation process.<sup>102</sup> Likewise, finding a balance between neutrality and impartiality to encourage the parties to engage in a process that truly serves all their needs is a challenge for mediators.<sup>103</sup> In addition to this, when there is a heated and complicated conflict between antagonistic parties, mediator may lack the control required to steer the parties towards productive judgment in some circumstances.<sup>104</sup> Similarly, if mediators are unduly constrained by procedural requirements for a strictly impartial process, they will lose the capacity to design a process that serves clients' demands.<sup>105</sup>

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<sup>97</sup> “Role of a Mediator” (*Role of a Mediator* | *FINRA.org*) <<https://www.finra.org/arbitration-mediation/rolemediator>> accessed April 27, 2022

<sup>98</sup> *Supra* note 16, P.35

<sup>99</sup> *Id* P. 5

<sup>100</sup> *Supra* note 17, P. 51

<sup>101</sup> *Supra* note 46, P. 78

<sup>102</sup> *Supra* note 17, P. 18

<sup>103</sup> *Supra* note 82, P. 55

<sup>104</sup> *Supra* note 17, P. 18

<sup>105</sup> *Id* P. 55

Equally crucial would be, where mediators begin pressuring clients into positions they do not want to adopt or prevent them from reaching agreements they voluntarily choose, the process may no longer be impartial.<sup>106</sup> Mediation will be appropriate when both parties consent to it and are determined to resolve their dispute(s) through a negotiated solution.<sup>107</sup> Therefore, when there is a heated and complicated conflict, and when the parties are not in a healthy emotional or psychological condition, mediation would be very challenging to mediators.

### **2.3.3. Rights of Mediators**

Mediators, as we saw in the previous section, carry several responsibilities, including encouraging communication between disputing parties to aid them in finding a common solution, and educating opposing parties about the mediation process through early sessions, interviewing disputing parties and reviewing documents as needed to gain information regarding the dispute at hand, as well as addressing procedural issues.<sup>108</sup>

So, as it is a tiresome task to mediate, it needs an incentive or remuneration for those appointed as mediators to perform their respective duties effectively. Remuneration is the incentive paid to mediators for their services to individuals, commercial or public organizations under specified situations or a monetary bonus.<sup>109</sup>

In human resources, remuneration has a significant impact on various factors, including the employee-employer relationship, talent acquisition and retention, dedication, and the outcomes delivered.<sup>110</sup> Therefore, to make mediation effective mediators in CAMs should get incentive or remuneration for the services they deliver either from the disputants or from the court.

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<sup>106</sup> Ibid

<sup>107</sup> Id P. 19

<sup>108</sup> Kane S, “Mediator Job Description: Salary, Skills & More” (*The Balance Careers* August 22, 2019) <<https://www.thebalancecareers.com/mediator-career-profile-2164296>> accessed April 27, 2022

<sup>109</sup> “Remuneration: Everything HR Professionals Need to Know” (*All-in-one human resources software*) <<https://www.kenjo.io/hr-remuneration-guide#importance>> accessed April 27, 2022

<sup>110</sup> Ibid

#### 2.3.4. Ethical Standards Expected from Mediators

Subscribing to a code of ethics is essential because it allows parties to learn about and respect the characteristics of mediators.<sup>111</sup> Some countries include provisions in their mediation laws that require a mediator to provide the necessary information to the parties regarding his personality or other personal details that will eliminate doubts about his impartiality or independence.<sup>112</sup>

A mediator should accept to mediate only if s/he is willing to devote the time and attention required for a good mediation.<sup>113</sup> Furthermore, his/her findings should be kept strictly secret. Mediators should strive to maintain their skills by participating in ongoing mediation trainings. They should only work in domains where they have knowledge earned from their own experience or training.<sup>114</sup> A mediator shall not take any commission or other monetary or non-monetary form of payment from either of the disputants during the mediation process in exchange for his/her mediation services.<sup>115</sup>

Mediators must behave themselves in a way that inspires trust in the mediation process and carry out mediations according to the appropriate administration of justice.<sup>116</sup> In general, they should conduct the mediation fairly, unbiased, and confidentially. Parties should withdraw from mediation if the mediator cannot remain impartial, neutral, confidential, or cannot avoid a conflict of interest or the appearance of a conflict of interest during and after the mediation, the mediator is unable to conduct reasonable inquiries to determine any possible disputes.<sup>117</sup> Therefore, a mediator must adhere to the appropriate ethical norms to protect the system's integrity, competency, confidentiality, impartiality, and neutrality.

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<sup>111</sup> Mekuriaw Alemenew, 'Mediation as an Alternative Commercial Dispute Resolution Mechanism in Ethiopia' (LLM Thesis, Addis Ababa University School of Law and Governance, 2008) P. 60

<sup>112</sup> Ibid

<sup>113</sup> Supra note 75, P. 7

<sup>114</sup> Id P. 60

<sup>115</sup> Id P. 8

<sup>116</sup> Ibid

<sup>117</sup> Supra note 97

## **2.4. Disputant Parties**

### **2.4.1. Rights of Parties to a Dispute**

There is no judge in mediation; there is no one with the capacity to decide other than the parties, no procedure other than consensus, and no win other than through equality of loss.<sup>118</sup> Each participant in the mediation has an equal right to participate in the talks. Parties determine when and under what conditions to achieve an agreement or end mediation.<sup>119</sup> Therefore, both parties can veto any decision that they believe is unfair.<sup>120</sup>

### **2.4.2. Responsibilities of parties to a Dispute**

At the very least, the parties are expected to cooperate in appointing a mediator; share information with the mediator; participate in good faith; remain focused through out and be part of the solution; refund any reasonable expenses incurred by the mediator; and pay the mediator's remuneration, if consented.<sup>121</sup> In a nutshell, the parties must participate in reasonable settlement efforts, both before and after mediation commences.<sup>122</sup>

## **2.5. The Role of Judges in CAMs**

As administrators of CAMs, judges should have the authority to organize mediation information sessions and, if relevant, the responsibility to invite disputing parties to mediation.<sup>123</sup> Hence, judges should play the role of machinate /compass/ by supporting disputants in assessing the risks of the case and opting for mediation.<sup>124</sup> Thus, it is possible to say that Judges may be tremendous motivators for parties to mediate.<sup>125</sup>

To ensure the mediation process, procedural rules which may impose perhaps punishments, would be required to make judges' case management powerful to order parties to

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<sup>118</sup> Supra note 80, P. 55

<sup>119</sup> Supra note 16, P. 155

<sup>120</sup> Supra note 80, P. 55

<sup>121</sup> Id P. 19

<sup>122</sup> Supra note 4, P. 19

<sup>123</sup> AlešZalar (regional cooperation council 2015) rep P. 29

<sup>124</sup> Ibid

<sup>125</sup> Supra note 16, P.43

attend mediation communication sessions effectively.<sup>126</sup> These statutory consequences may include the imposition of costs, the award of advocates' fees and or the like. The choice of suitable punishments for non-compliance of the law by disputants should be left to the discretion of the court.<sup>127</sup> On the other hand, the court can dismiss a mediator if he is unable to execute his job or, misbehaves in relation to his/her mediation services.<sup>128</sup>

## 2.6 The Role of Advocates in CAMs

The advocate's job in court-annexed mediation is substantially different from his involvement in conventional litigation. Because advocates have a highly proactive role to play, they should be familiar with the concept and method of mediation and the beneficial role they will play in aiding the parties in mediation.<sup>129</sup> The function of an advocate begins even before the matter is brought to court and continues throughout the mediation process and even after a dispute has been resolved.<sup>130</sup>

One challenge is the fact that most advocates are non-cooperative to the mediation, that some even discourage their clients from appearing for mediation sessions.<sup>131</sup> One of the reasons why advocates typically resist mediation is a concern of receiving a lesser income fee if the case settles early instead of what they would collect if the case went to trial for a lengthy time.<sup>132</sup>

Therefore, an excellent place to start would be to give mediation training to advocates and assist them in understanding that mediation would not reduce their revenues and can boost

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<sup>126</sup> Id P. 29

<sup>127</sup> Ibid

<sup>128</sup> Supra note 18, P. 85

<sup>129</sup>Riya Sehgal, '*Role Of Lawyers And Parties In Mediation*', (2020) <<https://viamediationcentre.org/readnews/MzE4/Role-of-lawyers-and-parties-in-Mediation>> accessed 25/12/2021

<sup>130</sup> Ibid

<sup>131</sup> Ethiopian Mediation and Arbitration Center, '*Assessment Report on Court Annexed mediation (CAM)*' (2021) P. 40

<sup>132</sup> Supra note 18, P. 85

their clients' happiness.<sup>133</sup> Another mechanism to motivate advocates is to enact code of ethics that requires them to urge their clients to consider the prospect of mediating their dispute.<sup>134</sup>

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<sup>133</sup> Supra note 16, P.42

<sup>134</sup> Ibid

## CHAPTER THREE

### 3. THE LEGAL RULES AND THE PRACTICE OF COURT ANNEXED COMMERCIAL MEDIATION IN FEDERAL COURTS IN ADDIS ABABA

#### 3.1. Policy Considerations behind Introducing CAMs in Federal Courts in Addis Ababa

In the previous chapter it was indicated that in many countries, the introduction of court-annexed mediation is considered as a means of improving judicial performance. Empirical studies of civil justice reform have focused on the increased usage of alternative dispute resolution mechanisms due to their benefit in reducing the backlog of court cases and affording of accessible justice to the society.<sup>135</sup>

Even though the aims and objectives of enhancing access to justice and reducing backlogs do not contradict each other, the policy choice and emphasis to either of the two significantly affects the rules and implementation of mediation process because mediation is a voluntary, informal, consensual and strictly confidential and non-binding dispute resolution process in which a neutral third party helps parties reach a negotiated solution.<sup>136</sup> Hence, the voluntary nature of mediation process should be a key input in policy formulation. This chapter discusses the Ethiopian legal framework as well as the practice related to court-annexed commercial mediation (CACM) in Federal Courts in Addis Ababa.

In Ethiopia, the recently adopted CAM, traces back its formation to a study conducted by Center for International Legal Cooperation in 2005 to reform the Ethiopian legal system. The study noted the potential solution that Alternative Dispute Resolution could provide for many shortcomings of the Federal Courts such as the backlogs of cases.<sup>137</sup> The study also

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<sup>135</sup> Ali SF, *Court Mediation Reform: Efficiency, Confidence and Perceptions of Justice* (Edward Elgar Publishing 2018)

<sup>136</sup> *Supra* note 14, P. 8

<sup>137</sup> Justice System Reform Program Office (Federal Democratic Republic of Ethiopia Comprehensive Justice System Reform Program 2005) rep P. 55

indicated that ADR can bring “justice” to the poor and reach the remote /marginalized section of the society and recommended the possibilities for the use of Alternative Dispute Resolution to be explored.<sup>138</sup> More specifically, the study stressed the advantages of mediation as a “possible solution for the backlog in civil suits.”<sup>139</sup>

According to the Vice President of the Federal Supreme Court, Court-annexed mediation is part of the current basic reform of Federal Courts.<sup>140</sup> The policy behind court annexed-mediation is to reduce backlog of cases and ensure justice in Federal courts.<sup>141</sup> However, it is clear that the guiding policy behind court-annexed mediation gives priority to the reduction of backlogs than genuine concern for access to justice. This is manifested in the approach adopted in the Federal Courts Proc. No. 1234/2021 by making the system compulsory than accommodating the interest of the parties.<sup>142</sup> Additionally, the absence of a screening mechanism to determine the suitability of cases clearly indicates that policy choice was made to subject almost all cases to mediation without the appropriate mechanism of selection of matters suitable for mediation. It is suggested that when formulating legislation in this area, one must consider both CAM and user objectives, as well as how to achieve a win-win scenario for both.<sup>143</sup>

### **3.2. The Legal Framework Governing CAM in Ethiopia**

One key issue in formulating the legal framework governing court-annexed mediation is the choice of legislative approach in providing the necessary rules. In Ethiopia, the key role in law-making is given to the House of People’s Representatives. The House is the highest elected body at the Federal level competent to pass laws within its powers as conferred on it under Art.55 (1) of the F.D.R.E. Constitution. The Council of Ministers does not have power of making primary legislation. It can only issue regulations based on the delegation of the House.

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<sup>138</sup> Id P. 25

<sup>139</sup> Id P. 89

<sup>140</sup> Interview with Ato Solomon Areda, Vice President of the Federal Supreme Court, held on 20 May, 2022 at Federal Supreme Court

<sup>141</sup> Ibid

<sup>142</sup> The Federal Courts Proc. No. 1234/2021 Art.45(1)

<sup>143</sup> Supra note 131, P.23

Such regulations are aimed at implementing the enabling laws i.e. Proclamations. Similarly, Administrative agencies can also issue directives necessary for the implementation of proclamations and regulations based on the power of delegation conferred up on them by the House or the Council of Ministers.

Thus, The House of People’s Representatives has enacted the basic rules for the application of court-annexed mediation in the Federal Courts. The Federal Courts Proclamation No. 1234/2021 for the first time has given legal recognition to the concept of court-annexed mediation and fully integrated the process with the ordinary tasks of Federal First Instance and High Courts.

Articles 45-48 of Proclamation No. 1234/2021 lays down four general rules leaving the details to be regulated through subordinate legislations. Accordingly, the Federal Supreme Court is authorized to issue the necessary Directives.<sup>144</sup> On the basis of such authorization the FSC issued Directive No. 12/2021 on court annexed mediation in January 21, 2021. The Directive contains nine chapters and fifty three articles which guide the way CAM should be implemented in Federal Courts.

It is needless to note that one of the pillar principles of the FDRE Constitution is its clear separation of power among the three governmental branches. Based on this principle, the power of enacting laws, execution of laws and interpretation of laws is given to the House of Peoples’ Representatives, the executive organ and the judiciary respectively. Here it is worth noting that allowing either of these governmental organs to exercise a power that is not constitutionally entrusted to it appears to be against the principle of separation of powers.

However, for different policy reasons the House of Peoples’ Representative may delegate the law making power to be carried out by the other branches of the government. It is due to this power of delegation that the Federal Supreme Court is authorized to issue the Court Annexed Mediation Directive No. 12/2021. The legislative approach in granting the Supreme Court the power of issuing this Directive is very important as it enables the judiciary to closely manage practical problems in the implementation of the CAM process and be able to adjust the rules to deal with changing circumstances.

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<sup>144</sup> Supra note 142, Art. 45(8) and 48(4)

Though Proclamation No. 1234/2021 has only four general rules; the Directive has detailed substantive and procedural provisions governing CAM in Federal Courts including Procedures on disciplinary measures of mediators as it is indicated under Art. 41-45 of the Directive. In addition to these ground rules which play pivotal role other laws such as the 2005 Rules of Arbitration of the Ethiopian Arbitration and Conciliation Center, the Ethiopian Arbitration and Conciliation Working Procedure Proclamation No. 1237/2021, and the Civil Procedure Code can be taken as complementary law on the Ethiopian Court Annexed Mediation initiative.

For example the legitimacy and morality requirement of the settlement agreement of disputants in commercial mediation is checked and registered by the court according to Arts. 274-277 of the Ethiopian Civil Procedure Code. Similarly, the other laws may be taken as gap filling instruments where it is necessary. Therefore, it is possible to say that it is a good beginning with respect to the formulation of legal framework of CAM in Federal Courts.

### **3.3. Benefits of CAM in Commercial Disputes Settlement**

#### **3.3.1. Benefits**

If a court-annexed mediation procedure is successful; it saves both time and money.<sup>145</sup> It offers the parties the intended remedy faster than traditional litigation, which might take years to complete, impacting the delivery of justice.<sup>146</sup> Mediation may reduce the expenses of a prolonged litigation as well as the costs of getting witnesses to court because it is speedier.<sup>147</sup> Furthermore, disputants can have greater understanding of their own and their opponents' cases.<sup>148</sup>

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<sup>145</sup> Interview with Ato Almaw Wollie, Advocate and Consultant at Law (Former Judge at Federal Supreme Court Cassation bench), held on 27 April, 2022 Addis Ababa

<sup>146</sup> Ibid

<sup>147</sup> Interview with Ato Abebe Solomon, Commercial Bench Judge, First Instance Court, Federal First Instance Court, held on April, 26 2022 at Lideta Federal High Court.

<sup>148</sup> Ibid

Mediation is also seen to be advantageous because, as compared to other kinds of conflict resolution, it is supposed to empower the parties.<sup>149</sup> It allows parties to be more involved and engaged in the process, as well as to explore more innovative solutions to their problems.<sup>150</sup> Furthermore, because commercial mediation focuses on a win-win solution for both parties, it helps to enhance the parties' future business relationships.<sup>151</sup> As a result, commercial mediation provides solution to parties that desire to keep their commercial and contractual relations regardless of any disagreement that may develop.<sup>152</sup>

### **3.3.2. An Alternative Means of Ensuring Access to Justice**

Every citizen has the right to seek justice. Access to justice is a critical component of the rule of law and the process of putting basic rights into action.<sup>153</sup> According to M. Olivier, it is also a way of generating and delivering alternative and appropriate platforms for the facilitation and resolution of varied and ordinary problems.<sup>154</sup> Access to justice does not mean only having access to the courts.<sup>155</sup> Thus, access to justice requires giving forum for individuals to voice their feelings as well as the chance to collaborate in order to accomplish the desired results.<sup>156</sup>

In interviews conducted by the researcher all respondents invariably identified access to justice as the main benefit of court-annexed mediation. The fact that mediation enables the parties to participate in the process without the need to complying with strict procedural requirements creates conducive environment to freely express their side of the story.<sup>157</sup> As the process is mainly party-based, it empowers the parties to resolve their disputes by

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<sup>149</sup> Interview with Dr. Teferi Gebru, cassation Bench Presiding Judge, Federal Superem Court, held on April, 26 2022 at Federal Supreme Court

<sup>150</sup> Ibid

<sup>151</sup> Ibid

<sup>152</sup> Ibid

<sup>153</sup> The FDRE Constitution, Art.37

<sup>154</sup> Supra note 17, P. 9

<sup>155</sup> Supra note 46, P. 2

<sup>156</sup> Ibid

<sup>157</sup> Interview with Ato Tafese Yirga. Advocate and Consultant at Law, held on 27April, 2022 Addis Ababa

themselves.<sup>158</sup> In other words court-annexed mediation allows parties to adopt flexible mechanism of resolving differences ultimately resulting in win-win situations for both sides.<sup>159</sup>

Therefore, CAM, if it is properly managed, and awareness is created among the users can be a good alternative to get access to justice in commercial and other disputes.

### **3.3.3. Reduces Backlog of Cases in Courts (Lessens Work Load of Public Courts)**

Federal Courts are experiencing enormous backlog of cases, which generates dispensation delays. As a result, using court-annexed commercial mediation in Federal Courts is one strategy to reduce the backlog of cases.<sup>160</sup> This is because mediation has its own role in reducing case load of the courts to which it is annexed. However, in Federal Courts, the role of Mediation Centers is not promising. If we look at the bi-annual Performance report of court-annexed commercial mediation at FFIC during the previous six months i.e. from December 2021 until March 2022 it is unsatisfactory.<sup>161</sup> This is because out of 66 commercial cases which were referred to Mediation Centers only 9 cases were settled by agreement.<sup>162</sup>

This shows that the mediation of more than 86% of the commercial cases at the FFIC couldn't be settled via mediation. Among these commercial cases most of them failed to be settled due to non-appearance of the parties.<sup>163</sup>

The law imposes 1000 birr fine for unjustified disappearance of parties. After payment of such fine the case will continue to be tried by conventional court litigation.<sup>164</sup> In the opinion of this researcher the law has not put a proper solution to make CAM successful. This is because the fact that non-appearance followed by payment of fine automatically leads to

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<sup>158</sup> Ibid

<sup>159</sup> Interview with Ato Yosef Aemro, Advocate and Consultant at Law, held on 27 April, 2022 Addis Ababa

<sup>160</sup> Interview with Dr. wubshet Shiferaw, Former President of the Federal High Court, Advocate and Consultant at law, Justice for all prison fellowship Ethiopia senior policy and advocacy advisor held on 22 May 2022 Addis Ababa

<sup>161</sup> The bi-annual Performance Report of CAM in FFIC, March, 2022.

<sup>162</sup> Ibid

<sup>163</sup> Interview with Ato Getaw Lgesse, Federal First Instance Court Mediation Center Co-ordinator, held on April, 26 2022 at Lideta Federal First Instance Court

<sup>164</sup> Supra note 142, Art. 45(5) and supra note 169 Art. 18(3)

ordinary litigation process is almost similar to permissive termination of the mediation process which may be one of the causes of non-appearance of disputants.

Therefore, additional mechanisms, such as asking the disputants whether they show interest to continue with the CAM process if given another chance, and explaining the advantage of CAM should be tried by the judge to ensure that disputants will not be forced out of the CAM process unknowingly.

As can be seen from the ongoing discussion commercial court- annexed mediation in Federal First Instance Court is not going as desired by the main objective of the law which is reduction of court cases and ensuring alternative access to justice.

Even worse than this, court-annexed commercial mediation has not yet been commenced at the Federal High Court after the introduction of CAM by the Proclamation and the Directive.<sup>165</sup> This shows that there is a clear reluctance to implement CAM in the Federal High Court.

Therefore, the issue of CAM needs special attention of the Government in general and the Federal Supreme Court in particular by revisiting the law and by addressing practical problems with the view to make commercial mediation successful in Federal Courts.

#### **3.3.4. Ensures Confidentiality and Privacy**

Confidentiality appears to be the key factor for the effectiveness of mediations since it is based on the frankness of the parties and sincerity of the communications exchanged during the mediation session.<sup>166</sup> The revelation of information about the process in any form, whether by the mediator, the parties, or the Mediation Center, is prohibited.<sup>167</sup> However, there are

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<sup>165</sup> Interview with Ato Yaekob Mekuria, construction bench judge, 26 April 2022, Ato Bereket Seifu, Commercial Bench Judge, April, 26 2022, Ato Yohannes Nigus, Commercial Bench Judge, April, 26 2022 at Federal High Court.

<sup>166</sup> Supra note 5, P. 101

<sup>167</sup> Supra note 163

several situations that make disclosure appropriate, such as when it is required by law or when exposing is required for the execution of the settlement agreements.<sup>168</sup>

To ensure confidentiality in the mediation process, the Directive prohibits the mediator from disclosing facts, minutes, discussions etc. unless permitted by other laws, court procedure or agreement of the parties.<sup>169</sup> The mediator is also responsible to ascertain that all the exchanges of information during the mediation will not be used as evidence during litigation.<sup>170</sup> Practically such responsibility goes beyond the ordinary mandate of a mediator. First of all, he does not have any chance of monitoring whether or not information obtained from mediation may be used during litigation. Secondly, even if he becomes aware of such incident it won't be within the scope of his power to stop disclosure of such information.<sup>171</sup> Therefore, requiring the mediator to ensure that any evidence that transpired during mediation will not be used during litigation may be impracticable.

Hence, the responsibility should be given to the judge of the court to which mediation is annexed to take strict measures for non-complying with prohibition of disclosure of information.<sup>172</sup>

### **3.3.5. Reduces Stress and Tensions of Disputants**

Due to the risk of being labeled as untruthful or otherwise being penalized for contempt or perjury by the court, the parties in litigation processes may not get relaxed rather they may be frustrated and tensioned.<sup>173</sup> Therefore, their focus may be on positions rather than issues.<sup>174</sup> Because of the reason that a mediator does not command the disputants' discussions, and he or

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<sup>168</sup> Ibid

<sup>169</sup> Court annexed mediation directive No. 12/2022 Art. 29/2/d/

<sup>170</sup> Ibid

<sup>171</sup> Interview with Ato Ali Mohammed Advocate and Consultant at Law (Former Judge at Federal Supreme Court Cassation bench), April 27, 2022 Addis Ababa

<sup>172</sup> Ibid

<sup>173</sup> Supra note 163

<sup>174</sup> Interview with Ato Sintayehu Zeleke, Advocate and Consultant at Law, April 27, 2022 Addis Ababa

she does not have punitive powers; disputants would have better power over the process and the ultimate result.<sup>175</sup>

In addition to this, the mere formality of the judicial system scares and stresses disputants.<sup>176</sup> However, a mediation process lessens the tension of disputants and creates an environment in which they are more likely to achieve an agreement and feel comfortable.<sup>177</sup> As a result, mediation is better for disputants for every effort will be taken to make the disputants feel at ease during the mediation session.<sup>178</sup>

### **3.3.6. Maintains Good Business Relationships**

Mediation is a collaborative problem-solving process between disputants with the goal of obtaining an agreement that is acceptable to all parties.<sup>179</sup> Its primary goal is to restore or preserve connections amongst disputants rather than to assign blame for what has transpired in the past.<sup>180</sup> On the contrary, litigation causes delays and, when combined with a failure to maintain connections, makes it less desirable to the business community.<sup>181</sup> In addition to this, litigation is typically a win-lose method with little regard for the parties' future relationship.<sup>182</sup> According to Ato Fuad, President of the FFIC, the business community should not waste their time through long litigation rather it should utilize it in doing business.<sup>183</sup>

Therefore, in mediation, as the agreement is made by the parties themselves and the outcome is win/win, they are satisfied and intend to continue their business connection as before or to repair their relationship if it has deteriorated.<sup>184</sup> More importantly, if there is a

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<sup>175</sup> Supra note 160

<sup>176</sup> Supra note 175

<sup>177</sup> Supra note 160

<sup>178</sup> Ibid

<sup>179</sup> Interview with Ato, Aysheshim Meles, Judge and Judgment Execution Directorate Director of Federal Courts, held on May 20, 22022 at Federal Supreme Court

<sup>180</sup> Ibid

<sup>181</sup> Ibid

<sup>182</sup> Supra note 55, P. 148

<sup>183</sup> Interview with Ato Fuad kiyar, President of Fedral First Instance Court, held on 26 April, at Federal First Instance Court

<sup>184</sup> Supra note 111, P. 46

future chance of business relationship between disputants, settling commercial issues through mediation is more important.<sup>185</sup>

### **3.3.7. Encourages Out-of-Court Dispute Settlements**

In resolving commercial or other disputes, a trial in a state-sanctioned court is not the only option. Mediation and a variety of hybrid processes are now among the many additional ways that a third party (other than a judge) might be engaged in conflict settlement.<sup>186</sup> It is a non-judgmental procedure that brings disputants to a round table to resolve their differences.<sup>187</sup>

The issues surrounding litigation are widely known. Litigation is a relatively expensive process due to court costs and rising rates in lawyers' fees. The cost is compounded by prolonged delays caused by overloaded court agenda and, in certain cases, dilatory procedural and legal methods.<sup>188</sup> As a result, mediation is a technique for resolving conflicts that is distinct from the traditional, formal, coercive institution of contemporary governments known as court or the court system, which is formed, sponsored, governed, and totally sanctioned by the state.<sup>189</sup>

Mediation provides customers with additional option for resolving disputes or more flexible choice. While some people believe that justice can only be found in courts and find the expansion of the notion of justice beyond court-based adjudication to be problematic, the fact is that justice has always existed outside of judicial judgment and outside of courts.<sup>190</sup>

## **3.4. The Role of Advocates**

Since court-annexed mediation is a new phenomenon to Federal Courts in Ethiopia, the role of advocates has not yet been well tested.<sup>191</sup> However, assessment of the role of advocates in mediation should take in to account the distinct nature of mediation processes as compared

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<sup>185</sup> Ibid

<sup>186</sup> Supra note 93, P. 12

<sup>187</sup> Supra note 33, P. 33

<sup>188</sup> Supra note 57, P. 3

<sup>189</sup> Supra note 160

<sup>190</sup> Tania Sourdin, 'The Role of the Courts in the New Justice System', 7 Y.B. Arb. & Mediation 95 (2015). P. 2

<sup>191</sup> Interview with W/ro Hirut Melese, Advocate and Consultant at Law, 27April, 2022 Addis Ababa

to ordinary litigation.<sup>192</sup> Advocates should behave in a way that facilitates the resolution of disputes in the least adversarial manner possible in CAMs.<sup>193</sup>

When advocates participate directly in mediation sessions and particularly when advocate for each party tries to do so, there will be a risk that the process might become an adversarial settlement system rather than non-adversarial mediation.<sup>194</sup> Therefore, the role of the advocates should be evaluated taking into account the fact that the role they play in the CAM processes is different from their role in conventional litigations.<sup>195</sup>

Some respondents expressed their concern that involvement of advocates may complicate the processes in CAMs. They tried to justify their position based on different factors. These include for instance, advocates, in order to protect their financial interest, may not encourage their clients to settle their case through mediation.<sup>196</sup> The Directive also limits the role of advocates to merely present the case of their clients during mediation without being actively involved in the negotiation. An advocate is allowed to give his opinion only during the closing stage of the mediation when permitted by the mediator.<sup>197</sup>

According to the Australian *Guidelines for Lawyers in Mediations*, the role of advocates in mediation is to assist clients, provide practical and legal advice on the process and on issues raised and offers made and to assist in drafting terms and conditions of settlement as agreed.<sup>198</sup> Thus, advocates undertake a risk analysis, explain the process of mediation to the client, work with the client to identify interests rather than merely positions, and together develop possible strategies that may result in settlement.<sup>199</sup> From this experience we can learn that advocates

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<sup>192</sup> Interview with Ato Kelemwork Mideksa, Advocate and Consultant at Law, 27 April, 2022 Addis Ababa

<sup>193</sup> Interview with Meseret Abera, Commercial Bench Judge, Federal First Instance Court, held on April, 26 2022 at Lideta Federal First Instance Court.

<sup>194</sup> Supra note 163

<sup>195</sup> Interview with Ato Meka Nesru, Commercial Bench Judge, Federal First Instance Court, held on April, 26 2022 at Lideta Federal First Instance Court.

<sup>196</sup> Supra note 163

<sup>197</sup> Supra note 169 Art. 12

<sup>198</sup> Law Council of Australia, *Guidelines for Lawyers in Mediations* (2011)

<sup>199</sup> Ibid

should be required, if available, to pursue court-annexed commercial mediation before going to court and to provide relevant information and advice to their clients.

This might be accomplished by enacting the professional code of conduct for advocates.<sup>200</sup> In principle it is the disputants themselves that should appear in the Mediation Centre, however, they can also appear with their advocates, but the participation of the advocates is limited and they can state their opinion only at the end of the bargaining of the disputants.<sup>201</sup> This shows that there is the need to exclude advocates from the mediation proceeding to the extent possible. But as commercial cases are complicated and difficult to understand by laymen excluding advocates may not make commercial mediation successful. In other words, it is permitted by the law that disputants may also be represented by their special agent in their absence.<sup>202</sup> Therefore, with special authority from the principal it is possible for advocates to participate in the mediation process. This may have both benefits and downsides. The benefit is that it allows representation of the principal by the advocates. When we look at the downsides, if both parties are not represented by advocates it may bring about bargaining power imbalance and the process might reintroduce the conventional court litigation procedure.

However, in the belief of this researcher, since power imbalance may be managed by the mediator it would be beneficial to be represented by an advocate in court-annexed commercial disputes. Of course, the most important reason why parties have to personally participate in mediation is to make decisions including compromises.

Nevertheless, if advocates are also allowed to participate in commercial mediations, they can help improve the process efficiency. In other words, if they are isolated from the process, they may believe that the advancement of court-annexed mediation would limit their future role in conflict resolution, and they may play a deconstructive role.<sup>203</sup> However, the participation of advocates should be restricted in such a way that it does not impede the court-annexed commercial mediation process.<sup>204</sup>

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<sup>200</sup> Supra note 171

<sup>201</sup> Supra note 169, Art. 11(1) and (2)

<sup>202</sup> Id, No. Art.11(3)

<sup>203</sup> Supra note 55, P. 143

<sup>204</sup> Ibid

In addition to this, advocates are required to follow professional code of conduct enshrined in the Regulations No.57/1999 of the Federal Advocates' Code of Conduct. And judges and mediators must be vigilant to ensure that every advocate adheres to the professional code of conduct during the process of mediation.<sup>205</sup> Advocates are responsible to advise the client before the onset of the court proceedings, as well as the duty to advise the client at any point in the proceedings.<sup>206</sup> Similarly judges and mediators have the duty to make sure that advocates' act in line with their professional code of conduct in CAM proceedings, too.

### **3.5. The Role of the Mediator**

In a mediation process a mediator has critical roles to play. Before the parties begin expressing their version of the case the mediator should introduce him/her-self and explain that he/she will not make a decision and impose up on them, as a court or an arbitrator does.<sup>207</sup> The mediator's diverse roles allow the disputants to investigate whether there is a better solution benefiting both parties.<sup>208</sup> Typically, a mediator will greet the parties, check them into their rooms, and answer any questions they may have before the mediation begins. It is critical that the parties be at ease and that refreshments are accessible.<sup>209</sup>

The mediator must attempt to reconcile the parties in the mediation process by starting a fruitful exchange of information regarding the topics in the dispute.<sup>210</sup> If the parties are able to settle the disagreement in the meantime, the agreement will be submitted to the court for approval.<sup>211</sup> After analyzing the agreement's legality and morality, the court must accept the settlement agreement.<sup>212</sup> If the issue cannot be settled, the mediator must either refer the matter

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<sup>205</sup> Supra note 4, P. 12

<sup>206</sup> The federal advocates code of conduct Council of Ministers Regulation No. 57/99 Art.26 and 7

<sup>207</sup> Supra note 111, P. 57

<sup>208</sup> Ibid

<sup>209</sup> Supra note 74, P.35

<sup>210</sup> Interview with Ato Ermias Mamo, Mediator at the Fedral First Instance Court, held on April, 26 2022 at Lideta Federal First Instance Court

<sup>211</sup> Interview with Feven Samuel, Mediator at the Fedral First Instance Court, held on April, 26 2022 at Lideta Federal First Instance Court

<sup>212</sup> Ibid

to the court or request more time if the mediation process is proceeding well.<sup>213</sup> If both parties agree to proceed with the mediation, the court will continue to delay the matter to farther the mediation session. If either party declines, mediation proceeding will terminate and the case will continue to be heard by the court in the conventional litigation procedure.<sup>214</sup>

Mediators have several responsibilities during the mediation process, including describing the steps that the parties are required to take, and explaining that private meetings (caucus) may be held where a joint session is not appropriate. It is also expected of him/her to explain his/her impartiality, protect the confidentiality of their information, and provide the ground principles they would follow per Art. 29 of the Court Annexed Mediation Directive.<sup>215</sup>

The ultimate goal of mediation is to facilitate the parties' negotiation so that they have the best possibility of reaching an agreement, and the mediator supervises the process to keep the parties focused on this objective.<sup>216</sup> If the parties are able to achieve an agreement, a settlement agreement is reached at conclusion. Otherwise, everything stated at the mediation session is kept private.<sup>217</sup>

If parties reach a settlement agreement, the mediator will draft the settlement agreement, which the parties will sign.<sup>218</sup> The settlement agreement should contain a preamble, date, names and address of parties, types of the case and similar things<sup>219</sup>. It also should contain short summary of the case.<sup>220</sup>

In addition to this, it should contain terms of the settlement agreement which should be written according to Arts.180 and the following of the Ethiopian Civil Procedure Code. Despite the declaration in the Directive and the Code, the settlement agreement of commercial cases that the researcher consulted in the FFIC are not written in accordance with the Directive and

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<sup>213</sup> Interview with Ato Saleamlak Wodaji, Mediator at the Federal First Instance Court, held on April, 26 2022 at Lideta Federal First Instance Court

<sup>214</sup> Ibid

<sup>215</sup> Supra note 169, Art. Art. 29

<sup>216</sup> Supra note 163

<sup>217</sup> Supra note 215

<sup>218</sup> Supra note 169 Art. 29(3) and Art. 34

<sup>219</sup> Id, Art. 20(1)

<sup>220</sup> Id, Art. 20(2)

the Civil Procedure Code.<sup>221</sup> They are written in a very brief manner, to the extent that they fail to show the type of the claims of the plaintiff and defenses of the defendant. As a result, it may be very difficult to understand and enforce them.

### **3.6. The Role of the Judge Handling the Case**

According to informants interviewed by the researcher, Judges play a critical role in promoting a culture of court-annexed commercial mediation in Federal Courts by encouraging (even persuading) parties to find amicable solution to their disputes.<sup>222</sup> Judges do this by explaining how both disputants benefit from the mediation process in terms of cost, time and smooth business relations.<sup>223</sup> To accomplish this role, it is important that judges have a thorough understanding of the court-annexed commercial mediation process and its advantages.<sup>224</sup> In addition to the required skill and knowledge of judges, it is suggested that effectiveness of the mediation process relies on its voluntary nature; hence judges should refrain from forcing the parties to engage in mediation without their consent.<sup>225</sup> The reason for this is imposing mediation is against the consensual nature of mediation which should be based on the free consent of the disputants.<sup>226</sup>

As it is mentioned in the discussion of the previous section, the informants to this study also indicated that, the role of a judge in court-annexed mediation could be categorized into four. Appointment of mediator/s, referral of cases to mediators, taking interim measures/interlocutory orders/ and approval and enforcement of settlement agreements.<sup>227</sup>

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<sup>221</sup> Federal First Instance Court, Commercial Case Numbers, 297517, 298689, 298891, 296964, 298298, Unpublished in Amharic

<sup>222</sup> Supra note 149

<sup>223</sup> Ibid

<sup>224</sup> Supra note 171

<sup>225</sup> Interview with Ato Reta Tolossa, construction bench judge, Federal Supreme Court, held on April, 26 2022 at Federal Supreme Court.

<sup>226</sup> Interview with Ato filipos Aynalem Advocate and Consultant at Law, 27April, 2022 Addis Ababa

<sup>227</sup> Interview with Teklehaimanot Dagne, Commercial Bench Judge, Federal First Instance Court, held on April, 26 2022 at Lideta Federal First Instance Court.

### **3.6.1. Appointment of Mediators**

The judge is an important person throughout the pre-mediation stage, during the mediation process and post mediation stages.<sup>228</sup> In the pre-mediation phase, the judge may be required to appoint mediators if parties fail to reach an agreement. At any stage of the process, the court should support the parties' involvement in the mediation process and voluntary settlement.<sup>229</sup>

Normally one mediator will be appointed for each case referred by the judge. However, depending on the complexity of the case and the number of parties involved in the case more than one mediator may be appointed.<sup>230</sup>

### **3.6.2. Referral of Cases to Mediation**

The most important responsibility of the judge in court-annexed mediation is referring the case to the mediator.<sup>231</sup> During this initial phase, the judge can significantly contribute towards successful mediation process by promoting and facilitating the process.<sup>232</sup> This involves explaining the benefits of court-annexed mediation compared to court litigation and persuading the parties to engage collaboratively and in good faith.<sup>233</sup> The CAM Directive does not require judges to play facilitative and promotional roles at the initial phase of the mediation process. However, the judge's role to try to convince the parties to settle their dispute amicably is laid down by Civil Case Flow Management Directive of the Federal Courts.<sup>234</sup>

The CAM Directive dictates that Commercial cases are among the cases which are to be referred by the judge to Mediation Centers or mediators.<sup>235</sup> However, commercial cases are not defined either in the Proclamation or in the CAM Directive which makes it very difficult for the

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<sup>228</sup> Ibid

<sup>229</sup> Supra note 4, P. 13

<sup>230</sup> Supra note 169, Art. 28

<sup>231</sup> Supra note 147

<sup>232</sup> Interview with Berhanu Mengistu, cassation Bench Judge, Federal Supreme Court, held on April, 26 2022 at Federal Supreme Court.

<sup>233</sup> Ibid

<sup>234</sup> Federal Courts Civil Case Flow Management Directive No. 008/2022 Art.17(7)

<sup>235</sup> Supra note 169 Art. 13 (1) (b)

judge to identify whether a case is commercial or not. Regarding referral mechanism, the Court-Annexed Mediation Directive leaves no room to determine the type of cases appropriate for mediation. Almost all civil cases, which include commercial cases, should mandatorily pass through mediation processes.<sup>236</sup> This deprives the judge an important discretion to select cases suitable for mediation based on pre-defined criteria. In the absence of suitability criteria, referring all commercial disputes to mediation has its own drawbacks and is also not feasible in practical terms.

Referring all commercial cases to mediation is not possible due to constraints that relate to limited availability of qualified mediators and unsuitable nature of some disputes. For instance, cases to be entertained through summary and accelerated procedure are excluded to be referred to court-annexed mediation.<sup>237</sup> Similarly, the exclusion should be also applicable to all small commercial claims, too.

### **3.6.3. Giving Interim Measures/Interlocutory Orders**

The commercial mediation process may require a judge to give interim orders while the mediation process is going.<sup>238</sup> On the other hand, a judge may also be involved during the mediation process when third parties apply to intervene in the litigation. When this happens, the mediation will be discontinued temporarily and the file will be returned to the judge for appropriate order.<sup>239</sup> If the application for intervention is rejected or the case has already been settled through mediation agreement, the judge should review the settlement for approval.<sup>240</sup>

### **3.6.4. Approval and Enforcement of Settlement Agreement**

If parties agree to settle their dispute by agreement their settlement agreement has to be registered by the court and finally, the settlement agreement will get enforced after being approved by the judge.<sup>241</sup> In connection to this, the researcher confirmed that commercial cases

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<sup>236</sup> Ibid

<sup>237</sup> Supra note 184

<sup>238</sup> Supra note 231

<sup>239</sup> Supra note 169 Art.14/5

<sup>240</sup> Ibid

<sup>241</sup> The Federal Courts Proc. No. 1234/2021 Art. 45(3), Court annexed Mediation Directive No.12/2022 Art .15(2), Art.15 (1) (h) and The Ethiopian Civil Procedure Code of Ethiopia Art. 277

at the FFIC which were resolved through court-annexed mediations and got the approval of the judge as per the Proclamation and the Directive would be executed like any decision of a court.<sup>242</sup> However; if the mediation fails, the court shall proceed to hear the case through the ordinary hearing process.<sup>243</sup> Hence, the conventional litigation will proceed as per the provisions of the Civil Procedure Code.

### **3.7. The Role of Existing Private Commercial Dispute Resolution**

#### **Institutions**

##### **3.7.1. The Addis Ababa Chamber of Commerce and Sectorial Associations Arbitration Institute (AACCSA-AI)**

The AACCSA-AI was initially created by General Notice No. 90/ 1947 with the view to offer a variety of services to the business community. Later it was re-established by Proclamation No. 341/ 2003 and was granted the authority to handle disputes arising from commercial transactions between members of the Chamber.<sup>244</sup> Its main services include aiding the resolution of business disputes in accordance with the Chamber's arbitration guidelines; organize and provide ADR-related workshops, seminars, and training services.<sup>245</sup> The Chamber is authorized to resolve disputes through arbitration pursuant to Proclamation No. 341/2003. The Proclamation gave the Chamber the authority to decide any issues that could occur between/among members.<sup>246</sup> However, in practice, the institution is available to serve to anybody who wants to use it to resolve business disagreements.<sup>247</sup>

Even though the institute is not authorized to mediate commercial disputes under the Proclamation, commercial mediation services to those who need the service is being practically

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<sup>242</sup> Commercial Cases No. 297517, 298689, 298891, 296964 and 298298 of the FFIC.

<sup>243</sup> Supra note 169 Art. Art.15(1) (i)

<sup>244</sup> Sahilemariam Wodajo, 'Factors Determining the Choice Between Public and Private Adjudication in Ethiopia: Focusing on Commercial Disputes' (Addis Ababa University Faculty of Law School of Graduate Studies, 2018) P. 50

<sup>245</sup> Id, P. 51

<sup>246</sup> Interview with Ato Yohannes W/Gebriel, Director of the Addis Ababa Chamber of Commerce and Sectorial Association Arbitration Institute, Held on 27 April, 2022 at the Addis Ababa Chamber of Commerce Arbitration Institute

<sup>247</sup> Ibid

delivered by the institute.<sup>248</sup> However, the Chamber is not working with the Federal Courts with respect to court-annexed mediation; and it had no institutional role with regard to this so far.<sup>249</sup> But there is a possibility of signing of a Memorandum of Understanding with Federal Courts to work in cooperation with them pertaining to training and other services related to CAM.<sup>250</sup>

### **3.7.2. The Ethiopian Mediation and Arbitration Center (EMAC)**

Another relevant institution providing mediation service in Ethiopia is the present Ethiopian Arbitration and Mediation Center (EMAC) the predecessor of the former Ethiopian Arbitration and Conciliation Center (EACC). EACC was established in 2003 by a group of legal practitioners to develop and execute alternative conflict resolution mechanisms in the nation. Its status was a non-governmental organization that was authorized to conduct study, educate, and work on dispute resolution through the processes of arbitration and conciliation.<sup>251</sup>

Following the enactment of the Charities and Societies Proclamation No.621/2009 it was dissolved due to the newly introduced restriction on the amount of funding it could receive from foreign donors, which was maximum 10 percent of its total income.<sup>252</sup> Later, it was re-established as a new Civil Society Organization after the enactment of the Ethiopian Civil Societies Proclamation No. 1113/2019 and renamed as Ethiopian Mediation and Arbitration Center (EMAC).<sup>253</sup> Like its predecessor EACC, EMAC is a national NGO formed with the goal of increasing the use of alternative dispute resolution mechanisms for private disputes.<sup>254</sup>

The Center's mediation and arbitration services are intended for both party-driven submissions and court-ordered mediation.<sup>255</sup> However, so far, there is no case submitted to the

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<sup>248</sup> Ibid

<sup>249</sup> Ibid

<sup>250</sup> Ibid

<sup>251</sup> Interview with w/ro Haregwoin Ashenafi, Bourd chairperson of EMAC, held on April 28 April, 2022 at Bole EMAC office

<sup>252</sup> The Charities and Societies Proclamation No. 621/2009 Art.2(2)

<sup>253</sup> Supra note 256

<sup>254</sup> Ibid

<sup>255</sup> Ibid

Center from the Federal Courts in connection to court-annexed mediation.<sup>256</sup> The institute works in cooperation with the Federal Supreme Court in providing training for mediators with the help of USA and Canadian Governments.<sup>257</sup> In addition to this, it supplies materials for Court-Annexed Mediation Centers in Federal Courts in Addis Ababa.<sup>258</sup>

Therefore, according to the proceeding discussions there is no referral of cases from FFIC and FHC to AACCSA-AI and EMAC to be mediated by them.

According to Ato Solomon Areda, Vice President of the FSC, these institutions are independent institutions. They can mediate cases of disputants based on their own rules of mediation before the case is brought to court but there is no legal support to refer cases from courts to these institutions in relation to CAM.<sup>259</sup> Therefore, with respect to cases the relationship between Federal Courts, AACCSA-AI and EMAC will continue as usual i.e. settlement agreement which comes from these institutions can only be registered by the court if requested by the disputants provided that the settlement agreement mediated by these institutions is in compliance with morality and legality formalities provided in the Ethiopian Civil Procedure Code.<sup>260</sup> Otherwise, there will not be case referral to these institutions from Federal Courts in connection with CAM.<sup>261</sup> However, if mediators from the roster of these institutions are appointed by the disputants they can mediate in accordance with the Proclamation and the CAM Directive under strict supervision of the court not by the rules and supervision of the institutions from the rosters of which mediators were appointed.<sup>262</sup>

This shows that there is no direct case referral from the Federal Courts to EMAC and AACCSA-AI with the goal of working in cooperation with respect to CAM.

In the opinion of this researcher as EMAC and AACCSA-AI have well organized roster with experienced mediators it would be beneficial to refer cases from Federal Courts to these

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<sup>256</sup> Ibid

<sup>257</sup> Ibid

<sup>258</sup> Ibid

<sup>259</sup> Supra note 140

<sup>260</sup> Ibid

<sup>261</sup> Ibid

<sup>262</sup> Supra note 140, and supra note 169 Art. 26(4)

institutions provided that it is the interest of the disputants to be mediated by these institutions.<sup>263</sup> Therefore, to make it practical the Proclamation and the CAM Directive should be revised by the lawmaker and FSC respectively so as to enable those institutions work in cooperation with Federal Courts in settling commercial disputes. Thus, the Proclamation and the CAM Directive should enable courts to refer commercial cases to these institutions to be mediated by them and get back to the court at the end either with settlement agreement or with no agreement to settle the dispute. If a case end up with a settlement agreement, the court approves the agreement as if it is mediated by the court's mediators if it fails the ordinary court proceeding would continue as usual.

### **3.8. The Need for Court-Sponsored Mediation Training Institutions and their Importance**

Success and achievement of goals in mediation largely depends on education and training efforts.<sup>264</sup> In the previous chapter it was indicated that training of mediators appears to be a major component of successful mediation.

In order to make mediation effective training should include a mix of procedural information such as how to deliver an opening statement, conduct brainstorming, when to use caucus, and so on, content information like related legal knowledge, and psychological understanding abilities.<sup>265</sup>

The core training course would also include the mediation process as well as key skills such as listening, questioning, framing, and ethical requirements such as impartiality, confidentiality, neutrality, and non-biasness.<sup>266</sup>

The registration of qualified mediators' /roster/ assumes the existence of competent training institutions that may provide customized programs. According to Article 39/8/ of the

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<sup>263</sup> Ethiopian Arbitration and Mediation Center Arbitrators and Mediators Roster, 2011, Addis Ababa and Supra note 250

<sup>264</sup> Supra note 135, P. 38

<sup>265</sup> Raines, S., Hedeem, T., & Barton, A. B. (2010). 'Best practices for mediation training and regulation: Preliminary findings. Family' Court Review, 48(3), P. 4

<sup>266</sup> Id, P. 12

CAM Directive, the court-annexed mediation committee is empowered to supervise and monitor mediation training institutions. The Directives envisages accredited mediation training institutions to provide 80 hours of training.<sup>267</sup> However, neither the Proclamation nor the Directive show which organ is authorized to certify accredited training institutions. In some other jurisdictions, the training must be provided by an accredited training institution, approved by the Minister of Justice. This has not been done in Ethiopia.

According to Ato Berhanesmeskel Wagarie, President of the Federal High Court, although there exists a legal framework, there is hardly any possibility of establishing mediation training institutions by the court. To fill the gap MOU is signed with German International Mediation Training Institution Center, EMAC and AACCSA-AI to train mediators.<sup>268</sup>

Therefore, in Federal Courts, there is neither court-sponsored nor other governmental or non- governmental training institutions which can equip mediators and other lawyers with the necessary knowledge and skill of mediation in general and court-annexed mediation in particular. However, the Directive deals with arrangement and evaluation of mediation training institution where there are no permanent governmental and non-governmental mediation training institutions on the ground.<sup>269</sup>

Currently, Even though EMAC and AACCSA-AI try to provide provisional trainings of mediators they are not permanent mediation training institutions. Most importantly, both institutions are neither recognized nor accredited to provide training of mediation and certify mediators.

It is clear that mediation needs special knowledge and skill. Hence, to make it effective the need to form mediation training institution is an essential issue to the Federal Courts. This is because court-annexed mediation will not be fruitful without well qualified and sufficient number of mediators and other lawyers in the field.

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<sup>267</sup> Supra note 169 Art. 27/1/d

<sup>268</sup> Supra note 140 and Supra note 184

<sup>269</sup> Supra note 169 Art. 22(2) (h) and Art.39 (8)

### 3.9. Court-Annexed Commercial Mediation and its Challenges

#### 3.9.1. Reluctance and Challenges Relating to Understanding the Concept of CAM

Lack of awareness and comprehension of court-annexed commercial mediation among the general population may be a substantial impediment to its usage.<sup>270</sup> According to Ato Solomon Areda, Vice President of the FSC, lack of awareness and knowledge of the concept of CAM among the business community, advocates, mediators and judges is the main challenge of implementing CAM in the Federal Courts.<sup>271</sup> Similarly, Ato Fuad Kiyar, President of the FFIC, also explained that even though there have been efforts to create awareness on Fana Television and using other mechanisms the culture and perception of the society is still not changed.<sup>272</sup>

In addition to this, responses from different legal professionals suggest that there is misunderstanding regarding the whole concept of court-annexed mediation. Advocates are fearful that it will drive away their business.<sup>273</sup> The public at large believes that judges are the only people who can resolve their disputes.<sup>274</sup> Perhaps the most important element leading to people's reluctance to try CAM arises from unfamiliarity with it and mostly from lack of knowledge, notably in law schools; the curriculum being based on adversarial dispute settlement procedures which prepares students to be aggressive advocates in an adversarial system and provides little, if any, opportunity for them to develop their negotiation abilities.<sup>275</sup> Lack of specialized training also brings about failure to consider CAM in settling commercial and many other civil disputes, deeming it inappropriate where it actually is one of the appropriate types of dispute resolution mechanisms.<sup>276</sup>

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<sup>270</sup> Supra note 184

<sup>271</sup> Supra note 140

<sup>272</sup> Supra note 184

<sup>273</sup> Supra note 171

<sup>274</sup> Interview with Behanemeskel Wagarie, President of Federal High Court, held on 26 April, 2022 at Federal High Court

<sup>275</sup> Supra note 160

<sup>276</sup> Supra note 279

Therefore, to make court-annexed mediation effective in Federal Courts, it needs comprehensive awareness campaign among lawyers, the business community and the society at large.

### **3.9.2. Challenges Related to the Entrenched Trust the Public has on Litigation**

The most significant impediment to the effective growth of mediation in general and court-annexed mediation in particular, is a refusal to attempt it. Despite frequent concerns about litigation, there is still a strong reluctance, particularly among advocates, to explore such alternative conflict resolution approaches.<sup>277</sup> As a result, many issues that could be handled efficiently through court-annexed mediation will continue to be heard in conventional court litigations.<sup>278</sup>

The mandatory nature of the process was also raised as a matter of great concern by almost all advocates and judges the researcher interviewed. They suggested that imposing mediation process against the will of the parties and making it mandatory goes against the basic principle of mediation which is consensual by its nature.<sup>279</sup> Additionally, in most cases, parties exhaust available avenues of mediation before choosing litigation as a last resort.

As a result, beginning CAM, which is a unique form of mediation, will return the parties to their previous positions, decreasing their interest to participate fully in the process again.

### **3.9.3. Challenges Relating to the Competence of the Judiciary in Administering CAM**

As the name indicates, CAM is a process facilitated, promoted and supported by the judiciary. Just like conventional judicial functions of the judiciary, the process of CAM is affected by judicial administration. It is clear that budget, human resources and infrastructure issues which create conducive environment for effective implementation of the CAM process

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<sup>277</sup> Supra note 140

<sup>278</sup> Ibid

<sup>279</sup> Supra note 171

require responsive and efficient judicial administration system.<sup>280</sup> However, currently no budget is allocated for CAM from the Government.<sup>281</sup>

In connection to this, the President of the FHC mentioned that the most critical problem that Federal Courts are facing is lack of sufficient resources, skilled judges and competent mediators.<sup>282</sup> The President of the FFIC also agreed to this point and noted that lack of financial and human resources are the main problems in administering CAM in Federal Courts in Addis Ababa.<sup>283</sup>

Therefore, courts are currently required to use both their existing budget and funds from donors.<sup>284</sup> From this, it would be possible to see that the judiciary is working under tight budget and without even securing at least supplementary budget from the Government which poses as a danger to the continuity of CAM.

In other words, the implementation of CAM in Federal Courts in Ethiopia needs sufficient financial resources to perform its duties effectively and to ensure the viability of CAM as a proper mechanism to commercial dispute resolution.<sup>285</sup> In addition to this, well trained and skilled mediator should also put in place, with respect to this the judges who responded to the interview questions of this research agreed that the mediators handling CAM in Federal Courts are assistant judges with no sufficient prior training on what the process demands.

Therefore, the proper implementation of CAM needs a close attention of the Government in general and the FSC in particular to avert the problem of resources that Federal Courts are facing now in administering CAM.

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<sup>280</sup> Supra note 140

<sup>281</sup> Supra note 140, Supra note 279 and Supra note 184

<sup>282</sup> Supra note 279

<sup>283</sup> Supra note 184

<sup>284</sup> Supra note 140

<sup>285</sup> Supra note 160

#### **3.9.4. Challenges Relating to Appointment of Mediators and Acceptance of the Appointed Mediators by the Parties in Dispute**

The selection and training of mediators are the most important components in the success of court-annexed mediation process since their credibility and competence influences the users' confidence. A variety of factors influence the trustworthiness of mediation service providers.<sup>286</sup>As a result, the effectiveness of a court-annexed commercial mediation is dependent not only on the selection and training of credible and competent mediators, but also on procedures for maintaining their impartiality neutrality and the confidentiality of them, as well as the procedures for monitoring and correcting poor performances of mediators.<sup>287</sup>

The concepts of neutrality and impartiality are critical to the effectiveness of mediations. Despite suggestion by some scholars to distinguish between neutrality and impartiality, they could be used interchangeably to convey the idea that mediators should be free from biases.<sup>288</sup> In the broadest sense, neutrality encompasses issues such as lack of interest in the outcome of the dispute, lack of bias towards one of the parties, lack of prior knowledge of the dispute and/or the parties, the absence of the mediator making a judgment about the parties and their dispute, and the expectation that the mediator will be fair and even-handed.<sup>289</sup> Impartiality is defined as being objective, and fair to all parties involved in the process.<sup>290</sup>

The most effective mediators often have a combination of knowledge, abilities, and personal attributes.<sup>291</sup> Candidates who have been engaged in immoral and illegal acts such as corruption prosecutions, or have a criminal record should be barred from becoming mediators for obvious reasons.<sup>292</sup> In a court-annexed mediation system, a mediator is selected from a list of mediators maintained by the court.<sup>293</sup> However, in Federal Courts in Ethiopia, it is not practical because

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<sup>286</sup> Supra note 130

<sup>287</sup> Supra note 160

<sup>288</sup> Ibid

<sup>289</sup> Supra note 5, P. 124

<sup>290</sup> Ibid

<sup>291</sup> Supra note 160

<sup>292</sup> Ibid

<sup>293</sup> Ibid

mediation is done by assistant judges who are assigned to assist judges on other day to day judicial responsibilities.

According to Arts. 26 and 27 of the Directive mediators can be categorized as those who have fulfilled the requirements of being mediators and employed by the court as mediators and those who are employed for other duties and take training for mediation, as well as those who are included in the mediator roster of the FSC.<sup>294</sup> Thus, the Directive limited the privilege of disputants to accessing mediators from other sources. For example what if they want to get mediators from EMAC or AACCSA-AI rosters? What if the disputants want to get mediator from a law firm which is not in the roster of the FSC? With regard to these questions the law is silent.<sup>295</sup>

Due to this reason, disputants may not feel comfortable to accept the mediators who are indicated in the Directive. In addition to this, practically there is no staff employed as a mediator in the Federal Courts. As a result, mediation is being done by only assistant judges with no sufficient training, incentive or remuneration and interest which factors make mediation ineffective.<sup>296</sup> Furthermore, the FSC didn't use even mediators from its own roaster of mediators for different reasons, such as lack of budget and time constraints of the mediators due to their own commitments.<sup>297</sup> Therefore, the law maker has to take into consideration the above mentioned problems for the purposes of the appointment of mediators.

### **3.9.5. Problems of Finding Suitable Venues**

Lack of suitable venues /Mediation Centers/ to conduct mediation in the Federal Courts, is a significant problem to introduce CAM in a wider scale. Court officials complained about lack of suitable and equipped venues. The President of the Federal High Court, Ato Berhanemeskel Wagari indicated that there is only one room at Lideta FHC specifically allocated for mediation. This means in effect, it is practically impossible to conduct more than

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<sup>294</sup> Supra note 169 Art. 26 and 27

<sup>295</sup> Supra note 175

<sup>296</sup> Supra note 212

<sup>297</sup> Supra note 184

one mediation session at the same time. However, the FFIC seems relatively better in making venues available for mediation. According to Ato Fuad, President of the FFIC, there are five venues at five divisions of the FFIC.<sup>298</sup> However, these are also not enough to conduct more than five mediation session at the same time.

In addition to this, there is no venue which is particularly prepared for commercial mediation. As the researcher visited a Mediation Center at Lideta FFIC, the room is narrow and has few chairs and only a table which is not attractive and suitable to the disputants, their lawyers and the mediator. Moreover, there is no caucusing room to privately consult one of the parties separately.

The shortage of suitable venues is basically tied to the lack of budget for ensuring CAM. Both Presidents of the FHC and the FFIC pointed out that, courts are utilizing their existing meager budget for mediation. Separate budget has not been secured from the Government before the launching of CAM. So, to ease the problem of venue and other related resources the Government has to allocate budget for CAM administration in Federal Courts in Addis Ababa.

### **3.9.6. Problems with Respect to CAM and Court Fees**

The Civil Procedure Code of Ethiopia requires a party who intends to institute a civil claim to first pay the prescribed court fee. When the case is referred to court-annexed mediation, two additional payments may be expected from the parties. The first is payment for mediator's service, whereas the second relates to payment to cover administrative costs of the mediation.<sup>299</sup>

Of course, the payment of fee to mediator is limited to only those mediators who are registered in the official roster of the FSC.<sup>300</sup> In addition to this, when the mediation between parties fails to be settled by agreement no fee will be paid to the mediator. However, in limited circumstances where the mediation process took lengthy time than expected fixed allowance

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<sup>298</sup> Supra note 274 and 183

<sup>299</sup> Supra note 142 Art.46

<sup>300</sup> Supra note 169 Art.49

may be paid.<sup>301</sup> Similarly, fee will not be paid if mediation is discontinued for whatever reason.<sup>302</sup>

In other words, if a dispute is resolved by mediation through a settlement agreement, the court fee paid by the disputants will be refunded to them after deduction of certain administrative costs.<sup>303</sup> However, there are no clear rules as to how the reimbursement will be administered and mediator's fee is determined. On the other hand, Notice number 177/1952; states that court fees shall be refunded if a claim is dropped before trial.<sup>304</sup>

Lawyers, as well, frequently agree with their clients that they will be paid regardless of whether the disagreement is settled through CAM. So this may defeat the economic and time advantage of using CAM, i.e. that it reduces delay and saves money on witness and court expenses.

### **3.9.7. Problems Relating to Parties' Non–Appearance for Mediation Sessions**

Non -appearance of parties is a common practice in CAM at the FFIC. This shows that parties are not interested to settle their disputes by mediation for different reasons.<sup>305</sup> Even though the entire mediation sessions are moderated by the mediators, mediators can't compel parties to attend mediation in any instance<sup>306</sup>

Parties may attend the mediation session with or without their advocates or legal representatives.<sup>307</sup> When they fail to appear, the consequence in terms of monetary sanction for their failure to attend a mediation session is not well defined in the Directives. According to the Directives, the judge may only impose a monetary fine of ETB 1000.<sup>308</sup> However, this is not

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<sup>301</sup> Id, Art.46(6)

<sup>302</sup> Id, Art. 47/3

<sup>303</sup> Id, Art. Art. 46/6

<sup>304</sup> Legal notice No. 177/1952 Art. 11

<sup>305</sup> Interview with, Rosa Abebe, Commercial Bench Judge, Federal First Instance Court, held on April, 26 2022 at Lideta Federal First Instance Court.

<sup>306</sup> Supra note 231

<sup>307</sup> Supra note 163

<sup>308</sup> Supra note 169 Art. Art.18 ( 3)

painful for businessmen and they may prefer to pay the money and discontinue the mediation process. This clearly makes the mediation process ineffective. Therefore, another mechanism which makes commercial mediation attractive should be put in place.

## **CHAPTER FOUR**

### **4. CONCLUSION AND RECOMMENDATIONS**

#### **4.1. CONCLUSION**

It is obvious that dispute exists in all social structures and human relationships. Likewise disputes in commercial dealings are inevitable occurrences that can happen at any point throughout business negotiations and performances of obligations.

What is important is that appropriate and efficient dispute resolution mechanisms be adopted in order to resolve such disputes effectively. Hence, the way commercial disputes are managed can have an impact on the profitability and viability of any business. In order for the business community to continue operating their business successfully, commercial disputes should be handled quickly.

This study generally discussed the concept, nature, benefits and challenges of mediation and court-annexed mediation with specific reference to commercial mediation which is one of the mechanisms of resolving commercial disputes.

It is stated that mediation is a mechanism of dispute resolution procedure in which a neutral third party known as a mediator assists the parties in discussing and attempting to resolve their disputes amicably.

Recently, Ethiopia has introduced a kind of mediation which is called court-annexed mediation in Federal Courts. CAM is a mediation process under the supervision of courts after parties file their cases. It is a conflict resolution process in which a court-appointed mediator assists the disputants to negotiate towards a settlement. In other words it is an amicable dispute settlement mechanism under the supervision of courts. Its main objective is to improve the civil justice system in Federal Courts through a simple and speedier resolution of disputes which is expected to result in reduction of backlog of court cases.

As it is discussed in chapter three, mediation is an alternative means of access to justice and reduction of backlog of court cases which is informal, flexible; confidential and amicable that can bring about innovative and long-lasting solutions if it is managed properly.

The benefits and challenges of CAMs were also discussed. Some of the benefits of establishing commercial court annexed mediation are to save time, develop trust, prevent emotional stress, maintain good business relationships among entities and individuals involved in the process, as well as to use resources effectively.

Based on the research conducted the following findings are identified by the researcher:-

- ❖ The word commerce and commercial disputes are not defined, neither by the Proclamation No. 1234/2021 nor by the Directive No. 12/2021. This brings about difficulty to identify commercial disputes properly.
- ❖ The mandatory nature of CAM is also the other problem reflected in Federal Courts as it creates frustration and inconvenience to disputants which is proved by non-appearance of parties at Mediation Centers as shown in the discussion in chapter three and reflected by most of the KIIs of this research.
- ❖ Mediation training institution is a fundamental tool to get well qualified experts in the field. However, as it is identified in this research there is no mediation training institution in Ethiopia. Thus, absence of mediation training institutions results in lack of skilled and sufficient mediators, judges and advocates dealing with CAM.
- ❖ There is also no sufficient lists /roster/ of mediators from which parties may pick mediators at the court-annexed Mediation Centers.
- ❖ As it is proved in the study, CACM in Federal Courts in Addis Ababa is being carried out by assistant judges who are not well qualified in the field and without remuneration or incentive, whereas commercial mediation needs special knowledge and skill in the area and remuneration as well.
- ❖ Even though venues are very essential in the CAM processes, it is shown in the research that there is lack of venues, at the Mediation Centers in both the FFIC and FHC.
- ❖ It is also found out in the research that there is no promising practice of CACMs in Federal Courts in Addis Ababa. As it is stated in chapter three of the study the bi-annual Performance report of the FFIC in CACM from December 2021 until March 2022 is unsatisfactory. It has been proved that out of 66 commercial cases which were referred to Mediation Centers only 9 cases were settled by agreement. Hence, 86.36 % of the commercial cases referred to Mediation Centers failed to be settled via mediation, and

at the time of conducting this research commercial mediation has not yet commenced at the Federal High Court.

- ❖ The research has also identified that there is a disparity between the law and the practice with respect to writing of settlement agreements of court-annexed commercial mediation in Federal Courts. The law dictates that settlement agreement should contain preamble, date, name, address, types of the case, terms of the settlement agreement which *should* be written according to Art.180 and the following of the provisions of the Ethiopian Civil Procedure Code i.e it requires to be written similar to court judgment. However, the settlement agreements that the researcher investigated at the FFIC are not written in accordance with the provisions of the CAM Directive and the Civil Procedure Code. They are written in a very short manner, not even showing the type of the claims of the plaintiff and defenses of the defendant. As a result, it may be very difficult to understand and enforce the settlement agreements.
- ❖ As it is discussed in chapter three, since CAM is a new concept in Federal Courts, the role of advocates in CAM processes has not yet been well tested. However, the trend shows that they are not interested in encouraging their clients to settle their cases through CACMs.
- ❖ The law is not clear as to how to govern the cooperation among Federal Courts and stakeholders like AACCSA-AI and EMAC in relation to referring commercial cases to help each other for settling commercial disputes.
- ❖ It is clear that budget is a crucial issue, having adequate budget creates conducive environment for effective implementation of the CAM process. However, as it is discussed in chapter three of this research and proved by the KIIs no budget is allocated for CAM from the Government so far.
- ❖ It is also found out in the study that lack of awareness and comprehension of the advantage of CAM among the society in general and the business community in particular is substantial impediment to the implementation of CAM in Federal Courts in Addis Ababa.

## 4.2. RECOMMENDATIONS

The following recommendations are forwarded based on the findings of this research:

- The law maker has to define commerce and commercial disputes and should also list out commercial disputes either illustratively or exhaustively so as to enable Federal Courts identify and administer commercial disputes.
- The law maker has to take into consideration the problems and dangers that may be associated with the mandatory nature of court-annexed mediation as it results in inefficiencies and causes inconvenience to disputants. Hence, the mandatory nature of CAMs has to be reconsidered by the lawmaker and be replaced by permissive provisions which ensure that the consent of the parties should first be secured. This goes in line with the inherent nature of mediation that is its being consensual.
- The presence of competent mediation training and accreditation center is a necessary basis for an effective and functional CACM in Federal Courts. Training and certification of mediators is critical to ensuring the process's quality. So, the law maker has to reconsider the law and incorporate provisions which may give solution to the formation of such training institutions.
- Judges, mediators, advocates, law students, and potential litigants should be given enough information to use one of the most suitable dispute resolution mechanisms, i.e mediation in general and CACM in particular and this should be done in a way that allows parties to exercise their autonomy in selecting which mechanism is best for the resolution of their disputes. Parties must be made aware of CACM and its advantage.
- The basic training of mediators should include basic knowledge and specific mediation skills, and ethical considerations such as ethical conduct of mediators, role-playing exercises and field experience under the supervision of the concerned Federal court.
- When a court appoints mediators, it must take appropriate measures to ensure that each mediator is impartial, interested, neutral, skilled and

competent for a CACM. There should also be proper training and continuous upgrading of their qualifications and skills in business mediation abilities, in accordance with the relevant standards or certification systems.

- The trend of using assistant judges as commercial court-annexed mediators in Federal Courts has to stop and should be replaced by well qualified mediators who serve as independent and neutral mediators. There should also be remuneration or incentive for their service to motivate and enable them work efficiently.
- To make CACM known to the public, the Federal Government, the Federal Supreme Court, the Ministry of Justice, and mass-medias must raise public awareness about the benefits of CACM. Other stakeholders should also promote the function and relevance of the Mediation Center as well as the mediators and judges, in the process of resolving conflicts through commercial mediation.
- Media relations, which include press conferences, press releases, TV and radio broadcasts, articles in local and regional newspapers, interviews, and client success stories if any, as well as publications and promotional material, such as posters, may be used to raise awareness of the business community and the public at large. Therefore, for CACM to become fruitful in Federal Courts public awareness initiatives aiming at the business community, legal practitioners and the general public is required by all the above means of communications.
- The FSC should take measures to boost CACM in Federal Courts, as this will provide disputing parties with a less lenient and official approach that would assist the resolution of disputes via commercial litigations. Commercial mediation is thought to lessen the burden on the judiciary, as well as solve the issue of case congestion and delays in case management, all of which harm the general population.
- In creating public awareness, the FSC should focus on the non-coerciveness, independence and enforcement of CACM settlement agreement as this will enhance the acceptability of CACM in Federal Courts.

A more extensive study should also be conducted to gauge public opinion and understanding of CACM as an alternative business conflict resolution mechanism in Federal Courts.

- The practice with respect to writing settlement agreements should be compatible with the law and settlement agreement should be written in a clear manner as indicated in the Directive.
- Advocates' codes of conduct should contain as a requirement the investigation of alternative conflict resolution methods such as CACM before *proceeding to litigation* , as well as to provide relevant information and advice to their clients..
- To ensure the effectiveness of CACM in Federal Courts in Addis Ababa, proper policy frameworks, legal instruments, financial resources, accredited mediation training centers well-qualified mediators, sufficient venues, and competent court administration systems must be put in place.
- As EMAC and AACCSA-AI have well organized roster with experienced mediators, it would be beneficial to refer commercial cases from Federal Courts to these institutions to be resolved by mediation based on the interest of the disputants. Accordingly, the lawmaker has to revisit the law to enable mediators from EMAC, AACCSA-AI and other law firms to work in cooperation with the Federal Courts with respect to the process of CACMs of commercial cases. This is because there should be sufficient lists /roster/ of mediators from which parties may pick at the CAM Centers so as to enable them get mediators from a large source and obtain effective commercial mediation.

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Interview with w/ro Rosa Abebe, Commercial Bench Judge, Federal First Instance Court, held on April, 26 2022 at Lideta Federal First Instance Court.

# ANNEXES

## ANNEX I

### INTERVIEW QUESTIONS FOR COURT LEADERS

ADDIS ABABA UNIVERSITY

COLLEGE OF LAW AND GOVERNANCE STUDIES

SCHOOL OF LAW

LLM Program - Business Law Stream

**Topic of the Research:**-The Law and the Practice of Court Annexed Mediation in Commercial Disputes in Federal Courts in Addis Ababa

#### Objective

In general, it is accepted that disputes are unavoidable owing to the incompatibility of interests among individuals and entities involved in commercial transactions. What's important is how to find a better solution to the disputes. The goal of this research is to identify the existing legislation and practices of commercial conflict resolution processes through court-annexed mediation in Federal Courts in Addis Ababa as well as identify the gaps in the field, so that recommendations to address the gaps may be made.

As a result, I respectfully urge that you tender information that would answer the questions. Thank you in advance for your willingness to complete and return the surveys on time.

#### Personal profile

- Name-----optional
- Please put a tick-mark like this (√) on the spaces Provided
- Gender----- -male ----- female ----
- Age-----
- Job title-----

- **Qualification-----**
- **Organization-----**
- **Educational Background----PhD-----Masters-----Bachelor-----Diploma----  
Other**
- **Profession-----**
- **Experience -----years -----months-----**

1. What makes court annexed commercial dispute resolution different from other commercial dispute settlement entities like AACCSA-AI and EMAC?
2. Do you think that court annexed commercial mediation in Federal Courts in Addis Ababa is well organized? Does it enjoy your support? Does it have competent professional for the job?
3. Are there training facilities for mediators?
4. Do Federal Courts in A.A keep roster of mediators?
5. What are the practical challenges of CAM in Federal Court in Addis Ababa?
6. Is there a convenient venue to conduct mediations in Federal Courts in A.A? If not where are the desired CAMs going to be conducted?

THANK YOU

## **ANNEX II**

### **INTERVIEW QUESTIONS FOR JUDGES**

**ADDIS ABABA UNIVERSITY  
COLLEGE OF LAW AND GOVERNANCE STUDIES  
SCHOOL OF LAW  
LLM Program - Business Law Stream**

**Topic of the Research:-**The Law and the Practice of Court Annexed Mediation in Commercial Disputes in Federal Courts in Addis Ababa

#### **Objective**

In general, it is accepted that disputes are unavoidable owing to the incompatibility of interests among individuals and entities involved in commercial transactions. What's important is how to find a better solution to the disputes. The goal of this research is to identify the existing legislation and practices of commercial conflict resolution processes through court-annexed mediation in Federal Courts in Addis Ababa as well as identify the gaps in the field, so that recommendations to address the gaps may be made.

As a result, I respectfully urge that you tender information that would answer the questions. Thank you in advance for your willingness to complete and return the surveys on time.

**Personal profile**

- **Name**-----
- **Gender**-----**male**-----**female**----
- **Age**-----
- **Job title**-----
- **Qualification**-----
- **Organization**-----
- **Educational Background**----**PhD**-----**Masters**-----**Bachelor**-----**Diploma**----  
**Other**
- **Profession**-----
- **Experience** -----**year** -----**month**-----

1. what is the role of the judge in relation to commercial dispute resolution through court annexed mediation after and before mediation takes place?
2. Do you think that there is a proper and sufficient legal framework for the implementation of court annexed mediation in federal courts? This includes legislation and rules expressly providing for these practices
3. Do you have information about private commercial dispute resolution mechanism centers in Addis Ababa?  
a)Yes b) No  
If yes, is there a possibility of referring commercial disputes to the private commercial dispute settlement centers? If no, please specify the reasons
4. Are Parties interested to settle their commercial disputes through court annexed mediation?
5. How much is court annexed mediation important to help eradicate the backlog of cases in Federal Courts in Addis Ababa?

## ANNEX III

INTERVIEW QUESTIONS TO THOSE ONES THAT HAVE SERVED AS MEDIATORS IN  
CAMS

**ADDIS ABABA UNIVERSITY**  
**COLLEGE OF LAW AND GOVERNANCE STUDIES**  
**SCHOOL OF LAW**

**LLM Program - Business Law Stream**

**Topic of the Research:**-The Law and the Practice of Court Annexed Mediation in Commercial  
Disputes in Federal Courts in Addis Ababa

### Objective

In general, it is accepted that disputes are unavoidable owing to the incompatibility of interests among individuals and entities involved in commercial transactions. What's important is how to find a better solution to the disputes. The goal of this research is to identify the existing legislation and practices of commercial conflict resolution processes through court-annexed mediation in Federal Courts in Addis Ababa as well as identify the gaps in the field, so that recommendations to address the gaps may be made.

As a result, I respectfully urge that you tender information that would answer the questions. Thank you in advance for your willingness to complete and return the surveys on time.

### Personal profile

- Name----- optional
- Please put a tick-mark like this (√) on the spaces Provided
- Gender-----male-----female----
- Age-----
- Job title-----
- Qualification-----
- Organization-----

- Educational Background----PhD-----Masters-----Bachelor-----Diploma----Other
- Profession-----
- Experience -----year -----month-----

**Mediators**

6. What is your suggestion to make court annexed mediation more efficient in Federal Courts in A.A?
7. What do you think are the benefits associated with court annexed commercial mediation in comparison to the other mediations?
8. Do you think that the Federal Court Annexed Mediation directive No. 12/2022 is sufficient procedural remedy or rule to lead mediation session in Federal Courts in A.A?
9. Are there convenient venues to conduct mediation sessions in Federal Courts in A.A?
10. Do you Have ever received remuneration for your service as a mediator in Federal Courts in A.A?
11. Is there the necessity to establish a mediation training center for the purposes of court annexed mediation?
12. Did you undergo mediation training before you were called upon to serve as a mediator?
13. Please state the practical challenges of commercial DRM through court annexed mediation in Federal Courts in A.A.
14. What do you think are the solution to avert the challenges?

## ANNEX IV

### INTERVIEW QUESTIONS FOR ADVOCATES

#### ADDIS ABABA UNIVERSITY

#### COLLEGE OF LAW AND GOVERNANCE STUDIES

#### SCHOOL OF LAW

#### LLM Program - Business Law Stream

**Topic of the Research:**-The Law and the Practice on Court Annexed Mediation in Commercial Disputes in Federal Courts in Addis Ababa

#### Objective

In general, it is accepted that disputes are unavoidable owing to the incompatibility of interests among individuals and entities involved in commercial transactions. What's important is how to find a better solution to the disputes. The goal of this research is to identify the existing legislation and practices of commercial conflict resolution processes through court-annexed mediation in Federal Courts in Addis Ababa as well as identify the gaps in the field, so that recommendations to address the gaps may be made.

As a result, I respectfully urge that you tender information that would answer the questions. Thank you in advance for your willingness to complete and return the surveys on time

#### Personal profile

Name----- optional

- Gender-----male-----female----
- Age-----
- Job title-----
- Organization-----
- Educational Background----PhD-----Masters-----Bachelor-----Diploma----

Other-----

• Profession-----

• Experience -----year -----month-----

1. Does the imposition of mandatory mediation pose the threat to the disputants?
2. What are the main advantages of Court Annexed Mediation?
3. What should be the role of attorneys in court annexed mediation in Federal Courts in A.A?
4. What do you think are the major challenges of court annexed mediation service in Federal Courts in Addis Ababa?
5. What are the basic problems on the ground in connection with the resolution of commercial dispute through court annexed mediation Federal courts in A.A?
6. Are there well qualified and sufficient mediators in Federal courts in A.A?
7. Do you think there is sufficient substantive and procedural legal framework for Court Annexed Mediation in Federal Courts in A.A?
8. Would there be any impact on attorneys 'fees if commercial disputes settled through mediation? What about on court fee?

**Thank You!**

**ANNEX V**

**INTERVIEW QUESTIONS FOR AACCSA-A**

**ADDIS ABABA UNIVERSITY**

**COLLEGE OF LAW AND GOVERNANCE STUDIES**

**SCHOOL OF LAW**

**LLM Program - Business Law Stream**

**Topic of the Research:**-The Law and the Practice of Court Annexed Mediation in Commercial Disputes in Federal Courts in Addis Ababa

**Objective**

In general, it is accepted that disputes are unavoidable owing to the incompatibility of interests among individuals and entities involved in commercial transactions. What's important is how to find a better solution to the disputes. The goal of this research is to identify the existing legislation and practices of commercial conflict resolution processes through court-annexed mediation in Federal Courts in Addis Ababa as well as identify the gaps in the field, so that recommendations to address the gaps may be made.

As a result, I respectfully urge that you tender information that would answer the questions. Thank you in advance for your willingness to complete and return the surveys on time.

**Personal profile**

**Name-----optional**

- **Gender-----male-----female----**
- **Age-----**
- **Job title-----**
- **Qualification-----**
- **Organization-----**
- **educational Background--- -PhD ----- Masters -----Bachelor-----Diploma----**

**Other**

- **Profession**-----
- **Experience** -----years -----months-----

1. Would there be the possibility of cases from the Federal Courts in A.A being referred in your mediation at the AACCSA-AL?
2. Do you believe there are sufficient rules and regulations in place to implement CAMs in Federal Courts in Addis Ababa?
3. Do you think there should be cooperative relationship between the Federal Courts and AACCSA-AL with respect to court annexed commercial mediation? If you think so can you describe the way for the cooperation?
4. What are the challenges if any to the relationship between courts and institutions like AACCSA-AL in connection with court annexed mediation?
5. What would be the contribution of your institution to the improvement of court annexed Commercial mediation in Federal Courts in Addis Ababa?
6. What opportunities and challenges do you expect from working cooperatively with Federal Courts with respect to court annexed commercial mediation in Federal Courts?

**Thank you**

## ANNEX VI

### INTERVIEW QUESTIONS FOR EMAC

#### ADDIS ABABA UNIVERSITY

#### COLLEGE OF LAW AND GOVERNANCE STUDIES

#### SCHOOL OF LAW

#### LLM Program - Business Law Stream

**Topic of the Research:**-The Law and the Practice of Court Annexed Mediation in Commercial Disputes in Federal Courts in Addis Ababa

#### Objective

In general, it is accepted that disputes are unavoidable owing to the incompatibility of interests among individuals and entities involved in commercial transactions. What's important is how to find a better solution to the disputes. The goal of this research is to identify the existing legislation and practices of commercial conflict resolution processes through court-annexed mediation in Federal Courts in Addis Ababa as well as identify the gaps in the field, so that recommendations to address the gaps may be made.

As a result, I respectfully urge that you tender information that would answer the questions. Thank you in advance for your willingness to complete and return the surveys on time.

#### Personal profile

Name-----optional

- Gender-----male-----female----
- Age-----
- Job title-----
- Qualification-----
- Organization-----

• **Educational Background**----PhD-----Masters-----Bachelor-----Diploma-----  
**Other**

• **Profession**-----

• **Experience** -----years -----months-----

1. Would there be the possibility of cases from the Federal Courts in A.A being referred in your mediation at the EMAC?
2. Do you believe there are sufficient rules and regulations in place to implement CAMs in Federal Courts in Addis Ababa?
3. Do you think there should be cooperative relationship between the Federal Courts and EMAC with respect to court annexed commercial mediation? If you think so can you describe the way for the cooperation?
4. What are the challenges if any to the relationship between courts and institutions like EMAC in connection with court annexed mediation?
5. What would be the contribution of your institution to the improvement of court annexed Commercial mediation in Federal Courts in Addis Ababa?
6. What opportunities and challenges do you expect from working cooperatively with Federal Courts with respect to court annexed commercial mediation in Federal Courts?

**Thank you**



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**ለፌዴራል የመጀመሪያ ደረጃ ፍ/ቤት ልዩታ ምድብ 5<sup>ተኛ</sup> ንግድ ችሎት**

**በፍ/ቤት አነሳሽነት የተደረገ ስምምነት**

**የማዕከሉ አሰማሚ:- ዳዊት ፋንታ**

ተሰማሚዎች:- 1<sup>ኛ</sup>- አቶ መኮንን አስፋዉ ቱለማ

አድራሻ:- አ.አ ቁርቆስ ከ/ከተማ ወረዳ 05 የቤት ቁጥር 513/29

2<sup>ተኛ</sup>- አቶ ኤልያስ ኃ/ሚካኤል አስፋዉ

አድራሻ:- አ.አ ልዩታ ከ/ከተማ ወረዳ 01 የቤት ቁጥር አዲስ

3<sup>ተኛ</sup>- ወ/ሮ የማርሸት ኃይሌ ታደሰ

አድራሻ:- አ.አ ልዩታ ከ/ከተማ ወረዳ 01 የቤት ቁጥር አዲስ

**1. አጭር መግቢያ**

በ1<sup>ኛ</sup> ተሰማሚ የከሰ አቤቱታ አቅራቢነት በግራቀኙ መካከል የተጀመረውን የፍ/ቤቱ ከክር መነሻ በማድረግ ፍ/ቤቱ በቀን 13/05/2014 ዓ.ም በዋለው ችሎት ግራቀኙ ጉዳዮቻቸውን በስምምነት ለመጨረስ ይችሉ ዘንድ በፍ/ቤቱ አሰማሚ ማዕከል እንዲቀርቡ ሲል በሰጠው ትዕዛዝ መነሻነት የቀረበ የስምምነት ሰነድ ነው።

**2. ፍ/ቤቱ በሰጠው ትዕዛዝ መሰረት የተደረጉ የውይይት ሂደቶች እና ውጤት:-**

ተሰማሚዎች ስምምነት ላይ ይደርሱ ዘንድ 1<sup>ኛ</sup> እና 2<sup>ተኛ</sup> ተሰማሚዎች በአካል እንዲሁም 3<sup>ተኛ</sup> ተሰማሚ በ2<sup>ተኛ</sup> ተሰማሚ በመወከል በቀን 25/05/2014 ዓ.ም ከ4:00 - 05:30 ሰዓት ድረስ የተለያዩ ውይይቶችን ያደረጉ ሲሆን በዚህም መሰረት በተሰማሚዎች ቀና አመለካከት፣ ጉዳዮቻቸውን በስምምነት ለመጨረስ ከነበራቸው ተነሳሽነት እና ጽኑ ፍላጎት መሰረት ተሰማሚዎች ጉዳዮቻቸውን በስምምነት ለመጨረስ ተስማምተዋል።

*Handwritten signature and name: ዳዊት ፋንታ*

*Handwritten signature and name: መኮንን አስፋዉ*



*Handwritten signature and name: አቶ መኮንን አስፋዉ*

*Handwritten signature and name: ዳዊት ፋንታ*

**3. ለከፍተኛው ከሆነው ጉዳይ ጋር ተያይዞ ተስማሚዎች የደረሱበት ስምምነት፡-**

**3.1.** 2<sup>ኛ</sup> እና 3<sup>ኛ</sup> ተስማሚዎች ለከርከር መነሻ በሆነው ቁጥሩ 18369767 በሆነው ጅክ ላይ የተገለጸውን የገንዘብ መጠን ብር 363,927.75 (ሦስት መቶ ስልሳ ሦስት ሺ ዘጠኝ መቶ ሃያ ሰባት ብር ከ75/100) ለፊት ተስማሚ ሙሉ በሙሉ ለመክፈል ተስማምተዋል፡፡

**3.2.** በተራቁ 3.1 ላይ የተገለጸውን ከፍያ 2<sup>ኛ</sup> እና 3<sup>ኛ</sup> ተስማሚዎች ሙሉ በሙሉ በአንድ ዓመት ከሁለት ወራት ውስጥ ማለትም እስከ መጋቢት 2015 ዓ.ም ድረስ ከፍለው ለማጠናቀቅ ተስማምተዋል፡፡

**3.3.** የአከፋፈል ሁኔታውን በተመለከተ 2<sup>ኛ</sup> እና 3<sup>ኛ</sup> ተስማሚዎች የጸጉሜ ወርን ሳይጨምር ከየካቲት ወር 2014 ዓ.ም ጀምሮ ወር በገባ በሃያ አምስተኛው ቀን በየወሩ ብር 25,000 (ሃያ አምስት ሺ ብር) በመክፈል በአንድ ዓመት ውስጥ ብር 300,000 ( ሦስት መቶ ሺ ብር ) ለመክፈል ፤ ቀጥሎ ባለው ወር ብር 25,000 (ሃያ አምስት ሺ) በመክፈል በመጨረሻው ወር ቀሪውን ብር 38,927.75 ( ስላሳ ስምንት ሺ ዘጠኝ መቶ ሃያ ሰባት 75/100) ከፍለው ከፍያውን ሙሉ በሙሉ ለማጠናቀቅ ተስማምተዋል፡፡ ይህም ከስር በሰንጠረዥ እንደተገለጸው ይሆናል፡፡

የመክፈያ ጊዜ	የከፍያ መጠን ብር
25/06/2014ዓ.ም	25,000 ብር
25/07/2014ዓ.ም	25,000 ብር
25/08/2014ዓ.ም	25,000 ብር
25/09/2014ዓ.ም	25,000 ብር
25/10/2014ዓ.ም	25,000 ብር
25/11/2014ዓ.ም	25,000 ብር
25/12/2014ዓ.ም	25,000 ብር
25/01/2015ዓ.ም	25,000 ብር
25/02/2015ዓ.ም	25,000 ብር
25/03/2015ዓ.ም	25,000 ብር
25/04/2015ዓ.ም	25,000 ብር
25/05/2015ዓ.ም	25,000 ብር
25/06/2015ዓ.ም	25,000 ብር
25/07/2015ዓ.ም	38,927.75 ብር

**4. የተስማሚዎች የማጠቃለያ ሐረግ (summary clause)**

እኛ ተስማሚዎች በፌዴራል የመጀመሪያ ደረጃ ፍ/ቤት ልዩታ ምድብ 5<sup>ኛ</sup> ንግድ ችሎት የጀመርነውን ከርከር በፍ/ቤቱ አሳሳቢነት ከላይ በተገለጸው መልኩ በስምምነት ለመጨረስ ወደገና ፈቅደን ባደረግነው ውይይት መሰረት በመካከላችን ቅሬታ የሌለውን አለመግባባት ለመፍታት የተስማሚን በመሆኑ ስምምነታችንን በፍ/ሥ/ሥ/ሀ/ቁ 277 መሰረት ፍ/ቤቱ አድርጎልን በፊት ተስማሚ የሆኑ አቤቱታ አቅራቢነት የተከፈተውን መዘገብ እንዲዘጋጅን በተለመደው ፈርማችን እናረጋግጣለን፡፡

*የፊት*  
*2027 425*

*በጠገን ስምምነት*




*በጠገን ስምምነት*

1<sup>ኛ</sup>- አቶ መኮንን አሰፋ-ወል ቱለማ ~~በኩል~~ 25/05/14 ዓ.ም

2<sup>ኛ</sup>- አቶ ሌልያሰ ኃ/ሚካኤል አሰፋ-ወል 25.05.2014 .

3<sup>ኛ</sup>- ወ/ሮ ማርቸን ኃይሌ ታደሰ 25.05.2014 .

  
ደብዳቤ



CASE II



የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ  
ፌዴራል የመጀመሪያ ደረጃ ፍርድ ቤት  
THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA  
FEDERAL FIRST INSTANCE COURT



የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ  
ፌዴራል የመጀመሪያ ደረጃ ፍርድ ቤት

ቁጥር  
Ref No. \_\_\_\_\_

ቀን ፳፻ \_\_\_\_\_ ዓ.ም

የኮ/መ/ቁ 297517

ቀን 02/06/2014 ዓ.ም

ዳኛ ሮዛ አበበ

ከሣሽ:- አቶ አብርሃም ደሳለኝ ደንበዳ- ጠበቃ ሙሉጌታ ዘመነ - ቀረቡ  
ተከሣሽ:- ናትናት የኮንስትራክሽን ማሽነሪ ኪራይ (አቶ ውበሽት ስዩም) ስ/አስኪያጅ ውበሽት ስዩም  
መዝገቡ ከቀጠሮው ቀን በፊት የቀረበው ግራ ቀኙ ጉዳያቸውን በስምምነት ጨርሰው  
በ26/05/2014 ዓ.ም የተፃፈ የእርቅ ሰነድ በማቅረባቸው ነው። እርቁ በችሎት ተነጠም ግራ  
ቀኙ ፈቅደው መስማማታቸውን አረጋግጠዋል።

ው ሳ ኔ

ከሣሽ ተከሳሽ ለክፍያ መፈፀሚያነት የሰጠው ጅክ ሳይመነዘር የቀረ በመሆኑ በጅኩ ላይ የተገለፀውን 3,036,000 ብር ተከሳሽ እንዲከፍል ዳኝነት በመጠየቅ ፊርማ የተጀመረ ቢሆንም ግራ ቀኙ ጉዳያቸውን በስምምነት ጨርሰው በ26/05/2014 ዓ.ም የተፃፈ የእርቅ ሰነድ አቅርበዋል። የእርቁ ጥቅል ይዘትም ግራ ቀኙ ለከሳሽ ሊከፈል የሚገባ ገንዘብ ላይ መተማመን ላይ ደርሰው ተከሳሽ ለከሳሽ 1,550,000 (አንድ ሚሊዮን አምስት መቶ ሀምሳ ሺ) ብር ሊከፈል መስማማታቸውን ከዚህም በተጨማሪ ተከሳሽ ከሳሽ በክሱ ምክንያት የደረሰባቸውን ኪሳራ 150,000 (አንድ መቶ ሀምሳ ሺ) ብር ሊተካ መስማማታቸውን ከዚህ ጥቅል ገንዘብ 1,700,000 ብር ላይ ተከሳሽ 1,000,000 ብርን እስከ የካቲት 08/2014 ቀረውን 700,000 ብር ደግሞ እስከ የካቲት 18 ቀን 2014 ዓ.ም ለመክፈል ተስማምተው ለአከፋፈሉም ሁለት ጅኮች የተሰጡ መሆኑን ያስረዳል ይህ እርቅም ከሀገና ሞራል የማይቀረን በመሆኑ ፍ/ቤቱ እርቁን በፍ/ብ/ሥ/ሥ/ሰ/ቁ 277(1) መሰረት ተቀብሎ መዝገባቸዋል።

*[Handwritten signature]*





የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ  
ፌዴራል የመጀመሪያ ደረጃ ፍርድ ቤት  
THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA  
FEDERAL FIRST INSTANCE COURT



ቁጥር  
Ref No. \_\_\_\_\_

ቀን ፳፻ \_\_\_\_\_ ዓ.ም

**ት ዕ ዛ ዝ**

- ግራ ቀኝ እንደ እርቃቸው ይፈፀሙ
- በ26/05/2014 ዓ.ም የተደረገው እርቅ የዚህ ውሳኔ አካል በመሆኑ የፍ/ቤቱ ማህተም አርፎበት ለግራ ቀኝ ወገኖች በማስረጃነት ይሰጥ
- አላሽ ለዳኝነት የከፈለው ገንዘብ በደንቡ መሰረት ተቀንሶ ይመለስ
- በዚህ መዝገብ ተሰጥተው የነበሩ እግዶች በሙሉ ተነስተዋል ይጻፍ።
- መዝገቡ ተዘግቷል ይመለስ።

ቤት  
02/06/14

የማይነበብ የዳኛ ፊርማ አለበት



የዕርቅ ስምምነት ውል

ይህ የእርቅ ስምምነት ውል በአቶ አብርሃም ደሳለኝ ደንበዓ አድራሻ አ.አ አቃቂ ቃሊቲ ክ/ከተማ ወረዳ 01 የቤት ቁጥር አዲስ

እና

በናት ናት ኮንስትራክሽን ማሽነሪ ኪራይ አድራሻ አ.አ ከተማ ገፋስ ስልክ ላፍቶ ክ/ከተማ ወረዳ 6 የቤት ቁጥር 957 በሥራ አስኪያጅና ባለቤት አቶ ውበሽት ሥዩም ወ/ኪዳን መካከል ዛሬ ጥር 26 ቀን 2014 ዓ.ም በአዲስ አበባ ከተማ ተፈርሟል።

አንቀፅ አንድ- የእርቅ ስምምነቱ አላማ፤

አቶ አብርሃም ደሳለኝ ከናት ናት ኮንስትራክሽን ማሽነሪ ኪራይ (አቶ ውበሽት ሥዩም ወ/ኪዳን) ጋር በፌዴራል የመጀመሪያ ደረጃ ፍርድ ቤት ልደታ ምድብ 4ኛ ንግድ ችሎት በመዝገብ ቁጥር 297517 ያቀረቡትን ክስ አስመለከቱ ግራ ቀኙ ወገኖች ቀደም ብሎ የነበራቸውን መልካም የሥራ ግንኙነት ታሳቢ በማድረግ ጉዳያቸውን በእርቅ ለመጨረስ በመወሰናቸው የተደረገ ስምምነት ነው።

አንቀፅ ሁለት- የእርቅ ስምምነቱ ጉዳይ፤

ከዚህ በላይ በአንቀፅ አንድ በተገለፀው መሰረት ግራ ቀኙ ወገኖች ጉዳያቸው በሽማግሌ ታይቶ ለክሱ ምክንያት የሆነው ከሳሽ ለፈፀመው የአፈር ማገላትና መጓጓዣ ሥራ ያልተከፈለው ምን ያህል ነው የሚለውን ግራ ቀኙ ከተሳሰቡ በኋላ ተከላኝ አቶ ውበሽት ሥዩም ወ/ኪዳን ያልከፈሉት ቀሪ ክፍያ ብር 1,550,000 (አንድ ሚሊዮን አምስት መቶ ሃምሳ ሺህ ብር) መሆኑን ግራ ቀኙ የተማመኑ በመሆኑ አቶ ውበሽት ሥዩም (ተከላኝ) ይህንኑ ገንዘብ እንዲከፍሉ በተጨማሪም ከሳሽ አቶ አብርሃም ደሳለኝ ያወጡትን የጠበቃ አበል፣ የዳኝነትና ሌሎች ወጪዎች መሸፈኛ ብር 150,000 (አንድ መቶ ሃምሳ ሺህ ብር) ለመክፈል ተስማምተዋል። በዚህ መሰረት አቶ ውበሽት ሥዩም ለአቶ አብርሃም ደሳለኝ የሚከፍሉት የገንዘብ መጠን በአጠቃላይ ብር 1,700,000 (አንድ ሚሊዮን ሰባት መቶ ሺህ ብር) በመሆኑ ተከላኝ ለከሳሽ ይህንኑ እንዲከፍሉ በሽማግሌዎች አማካኝነት ተስማምተዋል።

በከላሽና በተከላሽ መካከል በተደረገው የዕርቅ ውል ስምምነት መሰረት ከላይ የተጠቀሰውን ገንዘብ ለከላሽ መቼ መክፈል እንዳለበት ከተነጋገርን በኋላ ብር 1,000,000 (አንድ ሚሊዮን ብር) እስከ የካቲት 8 ቀን 2014 ዓ.ም ድረስ ለመክፈል ግዴታ ገብተዋል። ቀሪውን ብር 700,000 (ሰባት መቶ ሺህ ብር) ደግሞ እስከ የካቲት 18 ቀን 2014 ዓ.ም ድረስ ተከፍሎ ይጠናቀቃል። ለዚህም ማስፈፀሚያ ይሆን ዘንድ ቁጥራቸው HH 7539191 እና HH 7539192 የሆኑ ሁለት የቡና ባንክ ጅኮችን ባጥተዋል።

በግራ ቀኙ መካከል በተፈጠረው አለመግባባት ምክንያት ተከላኝ ለከላሽ ቀደምተኛነት የሰጡትና ለዚህ ክስ ምክንያት የሆነው የቼክ ቁጥር 1045452975 የሆነ የባንክ ጅኮችን ለገቢው የተረገፈ




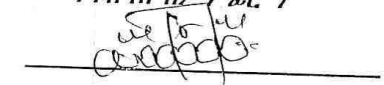
*Handwritten signature in blue ink.*

*Handwritten signature in blue ink.*

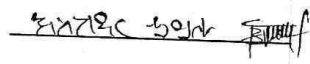

ቢሆንም ጉዳዮችን በዕርቅ ያለቀ በመሆኑ በእርቁ መሰረት እንደተፈፀመላቸው ከሳሽ ፔኩን ከፖሊስ ለማስመለስ የተቻላቸውን ህጋዊ ጥረት እንዲያደርጉ እና በፖሊስ በኩል የሚደረገው ክትትል በሕግ አግባብ እንዲቋረጥ ለማድረግ የተቻላቸውን እንዲፈፁ ተስማምተናል። በተጨማሪም በፌደራል የመጀመሪያ ደረጃ ፍርድ ቤት የተጀመረው የፔክ ክስ እንዲቋረጥና መዝገቡ እንዲዘጋ ተስማምተናል። በዚህ ውል መሰረት የከሳሽ ገንዘብ ከላይ የተጠቀሰውን ገንዘብ ብቻ ሲሆን በመካከላችን በተፈጠረው አስመግባባት ያልተከፈለ ቀሪ ሂሳብ አስመኖሩን ተስማምተናል። ቀደም ሲል ፍርድ ቤቱ በታመነው መሰረት እንዲከፍል የወሰነው ገንዘብ በዚህ የዕርቅ ውል ከተጠቀሰው ዕዳ ጋር የተጠቃለለ መሆኑን ተስማምተናል። ከሳሽ የተከሳሽ አካውንት ያሳገዱትን ዕገድ እንዲነሳ እንዲያደርጉ ተስማምተናል።

ይህ የዕርቅ ስምምነት ውል በግራ ቀኙ ሙሉ ፈቃድ የተደረገ ስለሆነ በሕግ ፊት የፀና ነው። በመሆኑም በዚህ የእርቅ ስምምነት መሰረት ባይፈፀም ልክ እንደ ፍርድ ቤት ውሳኔ ተቆጥሮ ከነወለዱ የሚፈፀም ይሆናል። እኛም አስታራቂ ሽማግሌዎች ግራ ቀኙ ወገኖችን ከላይ በተጠቀሰው መልኩ አስማምተን አስታርቀናቸዋል። የህጉም በፊርማችን እናረጋግጣለን።

የከሳሽ ስምና ፊርማ  
  
አቶ አብርሃም ደሳለኝ ደንበባ

የተከሳሽ ስምና ፊርማ  
  
ናት ናት ኮንስትራክሽን ማሽነሪ ኪራይ  
(አቶ ውበሽት ሥዩም ወ/ኪዳን)

የምስክሮች (የአስታራቂ ሽማግሌዎች) ስምና ፊርማ፡

- 1. ወ/ት አስከዳር ኃይሉ 
- 2. አቶ ቸርነት ታፈሰ 



የፌ/የመ/ደ/ፍ/ቤት ልደታ ምድብ 4ኛ ንግድ ችሎት

የመ/ቁ:- 296964

ቀን:- 04/05/2014 ዓ.ም



ከሳሽ :- አቶ ሀብታሙ ብርሃኑ - ቀረቡ

ተከሳሽ:- አቶ ምንገሥት ጥላሁን - ቀረቡ

መዝገብ ተመርምሮ ተከታዩ ወሳኔ ተሰጥቷል።

ወሳኔ

ለዚህ ወሳኔ መነሻ የሆነው ከሳሽ በቀን 20/03/2014 ዓ.ም በዚህ መዝገብ በተከሳሽ ላይ ባቀረቡት የክስ አቤቱታ መነሻነት ክርክር የተጀመረ ቢሆንም ግራቶች ጉዳዮቻቸውን በስምምነት የጨረሱ ስለመሆኑ የሚያሳይ በቀን 25/04/2014 ዓ.ም የተጻፈ የዕርቅ ስምምነት ወል በማቅረባቸው ነው። ፍ/ቤቱም የዕርቅ ስምምነት ሰነዱን ከፍ/ሥ/ሥ/ህ/ቁ 277(1) እና ሌሎች ለጉዳዩ አግባብነት ካላቸው የህግ ድንጋጌዎች አንፃር መርምሮታል ፤ እንደመረመረውም፣ በቀረበው የክስ አቤቱታ መሰረት ለክርክር መነሻ የሆነው ግራ ቶች የመሰረቱት ፓተንት ትሬዲንግ ኃ/የተ/የግል ማህበር ለፈርስ ይገባል የሚል ክስ ቢሆንም ማህበሩ ሳይፈርስ እንዲቆይ ከሳሽ በማህበሩ ያላቸው የአክሲዮን ድርሻ ታሳቢ ተደርጎ ማህበሩ ያፈራው ሀበት ተሰልቶ ሲደርሳው የሚችለው በአጠቃላይ ብር 150,000 ( መቶ አምሳ ሺ ብር) በመወሰድ ከማህበሩ አባልነት እንዲወጡ ግራቶች የተስማሙ ስለመሆኑ የዕርቅ ሰነዱ ያስረዳል። የተደረገው የዕርቅ ስምምነትም ህግ እና ሞራልን የማይቃረን በመሆኑ ፍ/ቤቱ ስምምነቱን ተቀብሎ አጽድቆታል።

ት ዕ ዛ ዝ

1. ግራቶች በስምምነቱ መሰረት ይፈጽሙ ዘንድ በፍ/ሥ/ሥ/ህ/ቁ 277(2) መሰረት ታሟቅ።
2. ግራቶች 25/04/2014 ዓ.ም ያደረጉት ስምምነት የዚህ ወሳኔ ስምምነት በመሆኑ የፍ/ቤቱ ማህተም አርፎበት በማስረጃነት እንዲሰጥ ታሟቅ።

የማይነበብ የዳኛ ፊርማ



ፌዴራል የመሪያ ደረጃ ፍርድ ቤት

3. በዚህ መዝገብ በግራቶች መካከል የነበረው ክርክር በስምምነት የተቋጩ ስለሆነ መዝገቡ ተዘግቷል፤ ወደ መዝገብ ቤት ይመለሱ።

የማይነበብ የዳኛ ፊርማ አለበት



ፌዴራል የመጀመሪያ ደረጃ ፍርድ ቤት

**አለመግባባትን በእርቅ ለመቋቋት የተደረገ ስምምነት**

አቶ ሀብታሙ ብርሃኑ እና አቶ ምንያህል ጥላሁን ፓተንት ትሬድንግ ኃላ/የ/የግ/ማህበር የሚባል ድርጅት በጋራ አቋቁመን በማህበሩ ስር ኤግል የሚባል መድሃኒት ቤት ቤት ከፍተኛ እየሰራን እያለ በመሀከላችን አለመግባባት በመፈጠሩ ምክንያት አብረን መቀጠል አልቻልንም። ከዚህም የተነሳ አቶ ሀብታሙ ብርሃኑ በፌዴራል መጀመሪያ ደረጃ ፍ/ቤት ልደታ ምድብ ችሎት በመ/ቁ/ 296964 ባቀረበው ክስ የማህበሩ ሂሳብ ተጣርቶ ማህበሩ እንዲፈርስና ድርሻ ገንዘብ እንዲከፈለው ጠይቋል። በተቃራኒው ተከላኝ አቶ ምንያህል ጥላሁን ለክሱ በሰጠው መልስ በክሱ የማያገባው መሆኑን፣ ፓተንት ትሬድንግ ኃላ/የ/የግ/ማህበር በክሱ ጣልቃ እንዲገባ፣ ማህበሩ መፍረስ እንደሌለበት፣ የከላኝ ድርሻ ተከፍሎት ማህበሩ በተከላኝ በኩል እንዲቀጥል እንዲወሰንለት ጠይቋል። ፍ/ቤቱም ጥር 4 ቀን 2014 ዓ/ም ቀጠሮ የያዘ ሲሆን ተከራካሪ ወገኖች ማህበሩ ከመመስረቱ በፊትና በጎረቤት በመሀከላችን የነበረውን መልካም ግንኙነት ከግምት በማስገባትና በፍ/ቤት በተጀመረው ክስ ሊመጣ ያለውን አላስፈላጊ ወጪና ኪሳራ ለማስቀረት ምስክሮች ባሉበት ተወያይተን እንደሚከተለው እርቅ አድርገናል።

1ኛ/ አቶ ሀብታሙ ብርሃኑ እና አቶ ምንያህል ጥላሁን በጋራ የመሰረተነው ፓተንት ትሬድንግ ኃላ/የ/የግ/ማህበር መፈረስ እንደሌለበትና በአቶ ምንያህል ጥላሁን በኩል እንዲቀጥል ስምምነት ላይ ደርሰናል።

2ኛ/ ከላኝ አቶ ሀብታሙ ብርሃኑ በፓተንት ትሬድንግ ኃላ/የ/የግ/ማህበር ውስጥ ያለው የአክሲዮን ድርሻ እና ማህበሩ እስከ ዛሬ ድረስ ካፈራው ሀብት ላይ ሊደረሰው የሚገባውን ጥቅም ጨምሮ በአጠቃላይ በጥሬ ገንዘብ ብር 150,000 (አንድ መቶ ሃምሳ ሺህ) እንዲከፈለውና ከማህበሩ አባልነት እንዲወጣ ስምምነት ላይ ደርሰናል።

3ኛ/ በተራ ቁጥር 2 ላይ የተገለፀው ገንዘብ አከፋፈል በተመለከተ ይህ ስምምነት በተፈፀመበት ቀን አቶ ምንያህል ጥላሁን ብር 50,000 (ሃምሳ ሺህ) እማኞች ባሉበት ለአቶ ሀብታሙ ብርሃኑ ከፍሏል። ቀሪው ብር 100,000 (አንድ መቶ ሺህ) የምትባሉት ቁጥር 32687051 እ/አ/አ/ በ20/3/2022 የሚከፈል ሲሆን ቼኩም በፍርድ ቤቱ ለአቶ ሀብታሙ ብርሃኑ እንዲሰጥ ስምምነት ላይ ተደርጏል።

*(Handwritten signature and mark)*



4ኛ/ አቶ ሀብታሙ ብርሃኑ እና አቶ ምንያህል ጥላሁን ከዚህ በኋላ ፓተንት ትሬድንግ ኃላፊ/የ/የ/ማህበር ጋር በተያያዘ የሚፈላለጉበት ምክንያት እንደሌለና ድጋሚ ክስና ክርክር እንደማይኖር ስምምነት ላይ ተደርሷል።

በአጠቃላይ አቶ ሀብታሙ ብርሃኑ እና አቶ ምንያህል ጥላሁን በጋራ ካቋቋሙ ፓተንት ትሬድንግ ኃላፊ/የ/የ/ማህበር ጋር በተያያዘ የተፈጠረውን አስመግባባት ከሳሽ ሀብታሙ ብርሃኑ በማህበሩ ውስጥ ያለውን ድርሻ ሀብት ግምት ብር 150,000 (አንድ መቶ ሃምሳ ሺህ) ተከፍሎት ከማህበሩ አባልነት እንዲለቅ፥ አቶ ምንያህል ጥላሁን የማህበሩን አለማ እንዲያስቀጥል የእርቅ ስምምነት የፈጸምን መሆናችንን በፊርማችን እናረጋግጣለን።

እኛም ስማችን ከዚህ በታች የተገለጸው ምስክሮች አቶ ሀብታሙ ብርሃኑ እና አቶ ምንያህል ጥላሁን በገዛ ፍቃዳቸው ከላይ በተገለጸው መሰረት የእርቅ ስምምነት ሲፈፀሙና ገንዘብ ሲቀበሉ በቦታው በአካል ተገኝተን እማኝነታችንን የሰጠን መሆናችንን በፊርማችን እናረጋግጣለን።

አቶ ሀብታሙ ብርሃኑ

ፊርማ \_\_\_\_\_

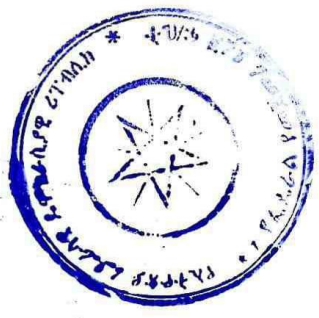
አቶ ምንያህል ጥላሁን

ፊርማ \_\_\_\_\_

የምስክሮች ስምና ፊርማ

1ኛ/ ሙሉ ጣፋ \_\_\_\_\_

2ኛ/ እንዳለልኝ አየለ \_\_\_\_\_



CASE IV

01

ቀን 29 8 91.....

የክ/መ/ቁጥር 12-4-2015.....

ዳኛ: ፋይናንስ ሚኒስትር

- ክላሽ/ሾች:-
1. ጌራ ገንቢት ቢሮ
  2. \_\_\_\_\_
  3. \_\_\_\_\_
- ተክላሽ/ሾች:
1. ፊርማ ለማስገባት ማሳሰቢያ ተሰጦ 21/11/17
  2. \_\_\_\_\_
  3. \_\_\_\_\_

ይህ ፋይል ተክፍቶ በችሎት ሊቀርብ የቻለው ክላሽ በ/ደ... ቀን 2017... ዓ/ም ዕፊው ባቀረቡት ፊት ተመሳሳይ ሲሆን ስለ ዳኝነት አክፋሪ ሰሞዶል 30 በደረሰኝ ቁጥር 788555 ብር... ተክፍሎ በት ጋሏ። ፍ/ቤቱም መዝገቡን መርምሮ ተከታዩን ትዕዛዝ ሰጥቷል።

**ት ዕ ዛ ዝ**

1. ክላሽ ያቀረቡት ክስና ማስረጃ ከፍ/ቤቱ መጥሪያ ጋር ለተክላሽ ደርሶ ተክላሽ መከላከያ መልሳቸውን በዕሉፍና በሶፍት ኮፒ በማድረግ ለ 2-5 ቀን 14.9.91 በ.ደ. ሰዓት ለሆነው ቀጠሮ በፌ/መ/ደ/ፍ/ቤት ልደታ ምድብ ፊደል/ትራር ጽ/ቤት እንዲያይዙ ታዟል።
2. በፍርድ ቤት መደበኛው ክርክር ከሚወስደው የጊዜ ርዝመት፣ ከሚያስከትለው የገንዘብ እና ጉልበት ወጪ እንዲሁም በተከራካሪ ወገኖች ዘላቂ ግንኙነት ላይ ከሚያስከትለው አሉታዊ ተፅዕኖ አኳያ አለመግባባቶችን/ክሶችን በስምምነት መቋቋት ተቀዳሚነት የሚሰጠው ጉዳይ በመሆኑ፣ ተከራካሪ ወገኖች ጉዳያቸውን በስምምነት መጨረሻቸው በአዋጅ ቁጥር 1234/2013 አንቀፅ 45፣ በፍትህ ብሔር ህግና ሥነ ሥርዓት ህግም ጭምር ተቀባይነት/ተደጋፊነት ያለው በመሆኑ፣ ተከራካሪ ወገኖች ጉዳያቸውን በስምምነት ለመጨረስ በሚችሉበት ሁኔታ/አግባብ ላይ በፍ/ቤቱ አስማሚዎች ተሳትፎና አጋዥነት ለመምከር እንዲቻል ፍ/ቤቱ የአስማሚ ቢሮ/ማዕከል አቋቁሞ የፍርድ ቤት መር የማስማማት ስራን በመስራት ላይ ይገኛል። በመሆኑም በዚህ መዝገብ የቀረበው ጉዳይ በችሎት ክስ ከመሰማቱ በፊት አስማሚ ማዕከል ቁርቦ እንዲታይ ታዟል።
3. በትዕዛዝ ተራ ቁጥር 2 መሰረት ግራቶች በፍ/ቤቱ አስማሚ ቢሮ/ማዕከል ቢሮ ቁጥር..... በ3-5 ቀን 14.9.91 በ.ደ. ሰዓት እንዲቀርቡ ታዟል።
4. ጉዳዩ በስምምነት የሚያልቅ ከሆነ የስምምነት ሰነድ ለመቀበል፣ ጉዳዩ በስምምነት ያላለቀ ከሆነ በችሎት ክስ ለመሰማት ለ5-5 ቀን 20/9.91... 8:20 በሰዓት ተቀጠረ።

*(Handwritten signature)*

1



ፌዴራል የመደመሪያ ደረጃ ፍርድ ቤት



ኢትዮጵያ ሕዝባዊ ዲሞክራሲያዊ ሪፐብሊክ  
ፌዴራል የመጀመሪያ ደረጃ ፍርድ ቤት

የክ/መ/ቁ:- 298891

ቀን:- 9/5/2014 ዓ.ም

የልደታ ምድብ 6ኛ ንግድ ችሎት

ዳኛ:- ተክለሐይማኖት ዳኝ

ክሳሽ:- 1. አቶ አንተነህ ተረፈ - ቀረቡ

2. አቶ ዘነበ ስዩም - ቀረቡ

ተከላሽ:- ፌዴራል የአሽከርካሪዎች ማሰልጠኛ ተቋም - ስ/አስኪያጅ ጃፈር

መዝገቡ ለዛሬ የተቀጠረው ውጤት ለመጠባበቅ በሚል ነው። በዚህም መሰረት በ09/05/14 ዓ.ም የተፃፈ 2 ገፅ የእርቅ ስምምነት ሰነድ ቀርቧል። በችሎት ሲጠየቁም በነፃ ፈቃዳቸው ያደረጉት መሆኑን ገልፀው እንዲፀድቅላቸው ጠይቀዋል።

ፍ/ቤቱም የእርቅ ስምምነቱ ለህግ እና ለሞራል የሚቃረን ሆኖ ያገኘው በመሆኑ በፍ/ብ/ሥ/ሥ/ህግ ቁጥር 277.1 መሰረት አፅድቆታል። ከዚህ ውጭ በስምምነቱ ተ.ቁ 3.1 መሰረት በስምምነት የሚሰጠው አጣሪ መምረጥ ካልቻለ በፍ/ቤቱ ፊደስት-ራር በኩል የሚመረጥ ሆኖ ተከታዩ ታሟቀዋል።

**ት ዕ ዛ ዝ**

1. ጥር 9 ቀን 2014 ዓ.ም የተደረገው 2(ሁለት) ገፅ የእርቅ ስምምነት የፍ/ቤቱ ማህተም አርፎበት ከዚህ ትዕዛዝ ጋር ለማስረጃነት ለግራቶች ይሰጥ።
2. በስምምነቱ መሰረተ እንዲፈፀም ታሟቀዋል።
3. መዝገቡ ተዘግቷል ወደ መዝገብ በፍ/ቤቱ መሰል።



የማይነበብ የዳኛ ፊርማ

ት/አ 13/05/2014 ዓ.ም

ፌዴራል የመጀመሪያ ደረጃ ፍርድ ቤት

የኮ/መ/ቁ 298891

ቀን 09/05/2014 ዓ.ም

**ሰፊ-ደራሳ የመጀመሪያ ደረጃ ፍ/ቤት ልደታ ምድብ 6<sup>ተኛ</sup> ንግድ ችሎት**

**በፍ/ቤት አነሳሽነት የተደረገ ስምምነት**

**የማዕከሉ አስማሚ:- ዳዊት ፋንታ**

ተስማሚዎች:- 1<sup>ኛ</sup>- አቶ አንተነህ ተረፈ ጌጠ

አድራሻ:- አ.አ የካ ከ/ከተማ ወረዳ 12 የቤት ቁጥር 0319/32

2<sup>ተኛ</sup>- አቶ ዘነበ ስዩም ገ/ሰንበት

አድራሻ:- አ.አ ቂርቆስ ከ/ከተማ ወረዳ 10 የቤት ቁጥር123/12

3<sup>ተኛ</sup>- ፈራሪ የአሽከርካሪዎች ማሰልጠኛ ተቋም ኃ/የተ/የግ/ማህበር

አድራሻ:- አ.አ ን/ሰ/ላ/ከ/ከተማ ወረዳ 12 የቤት ቁጥር 2423

**1. አጭር መግቢያ**

በ1<sup>ኛ</sup> እና 2<sup>ተኛ</sup> ተስማሚዎች የክስ አቤቱታ አቅራቢነት በግራቀኙ መካከል የተጀመረውን የፍ/ብሔር ንግድ ክርክር መነሻነት ፍ/ቤቱ በቀን 18/04/2014 ዓ.ም በዋለው ችሎት ግራቀኙ ጉዳዮቸውን በስምምነት ይፈቱ ዘንድ በፍ/ቤቱ አስማሚ ማዕከል እንዲቀርቡ ሲል በሰጠው ትዕዛዝ መሰረት የቀረበ በፍ/ቤት አነሳሽነት የተደረገ ስምምነት ነው።

**2. ፍ/ቤቱ በሰጠው ትዕዛዝ መሰረት የተደረጉ የውይይት ሂደቶች እና ውጤት:-**

ተስማሚዎች ስምምነት ላይ ይደርሱ ዘንድ 1<sup>ኛ</sup> እና 2<sup>ተኛ</sup> ተስማሚዎች በአካል እንዲሁም 3<sup>ተኛ</sup> ተስማሚዎች በስልጠና-አስኪያጅ ጃአፋር በድሩ በኩል በመወከል በቀን 03/05/2014 ዓ.ም ከ8:40 - 10:20 ሰዓት ድረስ የተለያዩ ውይይቶችን ያደረጉ ሲሆን በዚህም መሰረት በተስማሚዎች ቀና አመለካከት፣ ጉዳዮቸውን በስምምነት ለመጨረስ ከነበራቸው ተነሳሽነት እና ጽኑ ፍላጎት ተስማሚዎች ጉዳዮቸውን በስምምነት ለመጨረስ ተስማምተዋል።

*Handwritten signature and text: ዳዊት ፋንታ*

*Handwritten signatures and a blue circular official stamp of the court.*



CASE V



የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ  
ፌዴራል የመጀመሪያ ደረጃ ፍርድ ቤት  
THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA  
FEDERAL FIRST INSTANCE COURT



ቁጥር  
Ref No. \_\_\_\_\_

ቀን ጸጸ \_\_\_\_\_ ዓ.ም



የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ  
ፌዴራል የመጀመሪያ ደረጃ ፍርድ ቤት

የክ/መ/ቁጥር:- 298298

ቀን:- 5/5/2014 ዓ.ም

የልደታ ምድብ 6ኛ ፍታብሔር ችሎት

ዳኛ:- ተክለሐይማኖት ዳኛ

ከሳሽ:- ወ/ሮ አሲማ ጌታሁን-ቀረቡ

ተከሳሽ:- ኤስ ኤች በውጪ ሃገር ስራና ሰራተኛ አገናኝ ኃ/የተ/የግ/ማህበር -ሱራክስኪያጅ ሰዓዳ ቀረቡ

መዝገቡ ሰዓዳ የተቀጠረው የእርቅ ውጤቱ ለመጠባበቅ ወይም ክስ ለመስማት በሚል ነው። በ5/5/14 ዓ.ም የተጻፈ 2 ገፅ የእርቅ ስምምነት የቀረቡ ሲሆን በዚህ ላይ ግራ ቀኙ ሲጠየቁ በስምምነት መሰረት ቢወሰን ተቃውሞ የለንም በማለት ገልፀዋል። ፍ/ቤቱም የቀረበውን የእርቅ ስምምነት ሲመረምር ለህግ እና ለሞራል የማይቃረን እንዲሁም የግራ ቀኙ ስምምነት በነፃ ፍቃድ የተሰጠ መሆኑን በመረዳት በፍ/ቤት/ሰ/ሰ/ህግ ቁጥር 278-1 መሰረት በማፅደቅ ተከታዩን ትዕዛዝ ሰጥቷል።

**ት ዕ ዛ ዝ**

1. ጥር 5 ቀን 2014 ዓ.ም የተደረገው 2/ሁለት/ ገፅ የእርቅ ስምምነት ፍ/ቤቱ ማህተም አርፎበት ለግራ ቀኙ እንዲሰጥ ታዟል።
2. በስምምነቱ መሰረት እንዲፈፀም ታዟል ። ይፃፍ።
3. መዝገቡ ተዘግቷል ወደ መዝገብ ቤት ይመለስ።

ባ/ክ  
6/5/2014

የማይነበብ የዶኛ ፊርማ አለበት



የኮ/መ/ቁ 298298

ቀን 05/05/2014 ዓ.ም

**ለፌዴራል የመጀመሪያ ደረጃ ፍ/ቤት ልደታ ምድብ ፊት ገጽ ግድ ችሎት**

**በፍ/ቤት አነሳሽነት የተደረገ ስምምነት**

**የማዕከሉ አስማሚ:- ዳዊት ፋንታ**

ተሰማሚዎች:- 1ኛ- ወ/ሮ አሊማ ጌታሁን መልካሙ

አድራሻ:- አሮሚያ ክልል ሰታ ከተማ ቀበሌ 8

2ኛ- ኤስ ኤች በዉጪ ሃገር ስራና ሰራተኛ አገናኝ ኃ/የተ/የግ/ማህበር

አድራሻ:- አ.አ አዲስ ከተማ ከ/ከተማ 08

**1. አጭር መግቢያ**

በ1ኛ ተሰማሚ የክስ አቤቱታ አቅራቢነት በግራቀኙ መካከል የተጀመረውን የፍ/ቤት ግድ ክርክር መነሻነት ፍ/ቤቱ በቀን 04/04/2014 ዓ.ም በዋሉው ችሎት ግራቀኙ ጉዳያቸውን በስምምነት ይፈቱ ዘንድ በፍ/ቤቱ አስማሚ ማዕከል አንዲቀርቡ ሲል በሰጠው ትዕዛዝ መሰረት የቀረበ በፍ/ቤት አነሳሽነት የተደረገ ስምምነት ነው።


**2. ፍ/ቤቱ በሰጠው ትዕዛዝ መሰረት የተደረጉ የውይይት ሂደቶች እና ውጤት:-**

ተሰማሚዎች ስምምነት ላይ ይደርሱ ዘንድ 1ኛ ተሰማሚ በአካል አንዲሁም 2ኛ ተሰማሚ በስራ-አስኪያጅ ሰአዳ ጌታሁን በኩል በመወከል በቀን 03/05/2014 ዓ.ም ከ8:00 - 8:40 ሰዓት ድረስ አንዲሁም በቀን 05/05/2014 ዓ.ም 4:00 እስከ 5:10 ድረስ የተለያዩ ውይይቶችን ያደረጉ ሲሆን በዚህም መሰረት በተሰማሚዎች ቀና አመለካከት፣ ጉዳያቸውን በስምምነት ለመጨረስ ከነበራቸው ተነሳሽነት እና ጽኑ ፍላጎት ተሰማሚዎች ጉዳያቸውን በስምምነት ለመጨረስ ተስማምተዋል።

**3. ለክስ ምክንያት ከሆነው ጉዳይ ጋር ተያይዞ ተሰማሚዎች የደረሱበት ስምምነት:-**

3.1. የ2ኛ ተሰማሚ ማህበር ሂሳብ በፍ/ቤቱ ሪጅስትራር ጽ/ቤት በኩል በሚሾም ሂሳብ አጣሪ አማካኝነት እንዲጣራ ተስማምተዋል።

3.2 በሚደረገው የሂሳብ ማጣራት ስራ መሰረት የሚቀርበው የሂሳብ አጣሪ ሪፖርት በ2ኛ ተሰማሚ ማህበር ጠቅላላ ጉባዔ አንዲጸድቅ ተስማምተዋል።

~~አሊማ ጌታሁን~~ አሊማ ጌታሁን  
 ለጽጌ ጌታሁን  
 ዳዊት ፋንታ




3.3. ለሂሳብ አጣሪ የሚከፈለው የአገልግሎት ክፍያ በተመለከተ የሚቀርበው የሂሳብ አጣሪ ሪፖርት ማህበሩ ትርፍ ያለው መሆኑን የሚያሳይ ከሆነ ከትርፉ እንዲከፈል የተሰማሙ ስሆን ነገር ግን የሚቀርበው የሂሳብ አጣሪ ሪፖርት ማህበሩ ትርፍ ያለው መሆኑን የማያሳይ ከሆነ ስኞት የተሰማሚ ለሂሳብ አጣሪ የሚከፈለውን የአገልግሎት ክፍያ ለመክፈል ተስማምተዋል።

4. የተሰማሚዎች የማጠቃለያ ሐረግ (summary clause)

እኛ ተሰማሚዎች በፌዴራል የመጀመሪያ ደረጃ ፍ/ቤት ልዩታ ምድብ 6<sup>ኛ</sup> ንግድ ችሎት የጀመርነውን ከChC በፍ/ቤቱ አነሳሽነት ከላይ በተገለፀው መልኩ በስምምነት ለመጨረስ ወደንና ፈቅደን ባደረግነው ውይይት መሰረት በመካከላችን ተፈጥሮ የነበረውን አለመግባባት ለመፍታት የተሰማሚን በመሆኑ ስምምነታችን በፍ/ሥ/ሥ/ሀ/ቁ 277 መሰረት ፍ/ቤቱ አጽድቆልን በሰኞ ተሰማሚ የክስ አቤቱታ አቅራቢነት የተከፈተውን መዝገብ እንዲዘጋጅን በተለመደው ፊርማችን እናረጋግጣለን።

1ኛ ወ/ሮ አሊማ ጌታሁን መልካሙ ~~አሊማ ጌታሁን~~ ጌታሁን 05, 05, 14

2ኛ ኤስ ኤች በወጪ ሃገር ስራና ሰራተኛ አገናኝ ኃ/የተ/የግ/ማህበር ~~አሊማ ጌታሁን~~ ጌታሁን (ሥራ ጊዜ)

  
ወይን 427



# ANNEX VIII

## REPORT

በፌዴራል መጀመሪያ ደረጃ ፍርድ ቤት

የፍርድ ቤት መር ማስማማት አገልግሎት አስተባባሪ

### አዲስ አበባ

ጉዳይ፡ የንግድ ችሎት ማስማማት ስራ ስለመግለፅ

በፌዴራል መጀመሪያ ደረጃ ፍርድ ቤት የፍርድ ቤት መር ማስማማት አገልግሎት ስር የንግድ ችሎት ጉዳዮች ማስማማትን በተመለከተ የማስማማት ስራ መመሪያ ከመውጣት በፊት በ2013ዓ.ም በጀት አመት 19 የንግድ መዝገቦች በስምምነት ያለቁ ሲሆን፡ መመሪያው ከወጣ በኋላ ከጥር እስከ መጋቢት ወር 2014 ዓ.ም በማስማማት ያለቁ መዝገቦችን በተመለከተ በተጠቀሱት ወራት 66 የንግድ ችሎት መዘግብት ለአስማሚ የተመሩ ሲሆን ከእነዚህ መዘግብት ውስጥ 9 መዘግብት በስምምነት ያለቁ ሲሆን፡ በ50 መዘግብት ግራቀኙ ተሟልተው አልቀሩም። በዚህም መሰረት የንግድ ችሎት የማስማማት ስኬት 56% ሆኖ በሶስቱ ወራት ተመዝግቧል።

በባለፈው የግማሽ በጀት አመት (2014ዓ.ም) የማስማማት ስራ አፈፃፀም እንደሚከተለው ቀርቧል።

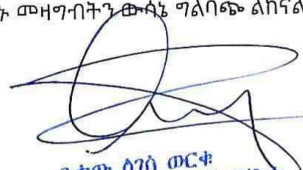
ፍርድ ቤት መር ማስማማት የሚሰጥበት ምድብ ችሎት	በ6 ወር ጊዜ ውስጥ ለአስማሚ የተመራው መዝገብ ብዛት	ግራቀኝ ተሟልቶ የአስማሚ ስራ ሂደት የተጀመረለት መዝገብ ብዛት	በማስማማት ረገድ የተገኘው ጤት በጉዳይ አይነት (በመዝገብ ብዛት)					
			የተገኘው ጤት በቤተሰብ ችሎት		የተገኘው ጤት በስራ ክርክር ችሎት		የተገኘው ጤት በንግድ ችሎት	
			የተስማሙ	ያልተስማሙ	የተስማሙ	ያልተስማሙ	የተስማሙ	ያልተስማሙ
የከ ምድብ ችሎት	302	105 (57 ቤተሰብ፣ 48 ስራ ክርክር)	19	38	22	26	-	-
በሌ ምድብ ችሎት	307	65 (25 ቤተሰብ 40 ስራ ክርክር)	14	11	19	21	-	-
ቁርቆስ ምድብ ችሎት	296	110 (32 ቤተሰብ፣ 78 ስራ ክርክር)	10	22	18	60	-	-
ኮልፌ ቀራንዮ ምድብ ችሎት	117	92 (38 ቤተሰብ፣ 54 ስራ ክርክር)	11	27	4	50	-	-

ጌታው ለገሰ መርቁ  
 የፌዴራል መጀመሪያ ደረጃ ፍርድ ቤት  
 የፍርድ ቤት አስማሚ ማዕከል  
 አስተባባሪ

ልደታ ምድብ ችሎት	177	64 (36ቤተሰብ: 28 ንግድ)	5	31			2	26
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ስምምነት ከተደረገባቸው መዘግብት መሰረት ለጥናት እንዲያገለግሉ የተወሰኑ መዘግብትን ውሳኔ ግልባጭ ልክናል።

መዝገብ ቁጥር: 298689: 298891:298298:298298:297517:296964



ጌታው ሰገሰ ወርቁ  
የፌዴራል መጀመሪያ ደረጃ ፍ/ቤተ  
የፍ/ቤት አስማሚ ማዕከላት  
አስተባባሪ