EXAMINING THE EFFICACY OF ALTERNATIVE DISPUTE RESOLUTION IN MEDICAL NEGLIGENCE DISPUTE SETTLEMENT IN UGANDA

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DECLARATION

I, KANYAMUNYU CATHERINE KARUNGI, declare that the information in this Dissertation is true to the best of my knowledge and has never been presented for any academic award in any institution or university. All sources used in this research study have been rightfully acknowledged.

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APPROVAL

This dissertation has been submitted to the School of Law at Uganda Christian University with the approval of the supervisor.

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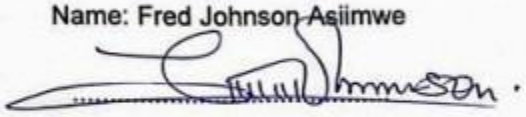

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DEDICATION

I dedicate this dissertation first and foremost, to my Lord and Saviour, Jesus Christ. May my life forever be a testament of Your love, grace and mercy.

To my family, thank you for your unconditional love, unwavering support and the sacrifices seen and unseen. For being my constant source of strength and stability. The Lord was shining His face upon me when He chose you to be my family.

And to my community, my loved ones, my Law Love Fellowship & Cell (EM7A1C) families - you are answered prayers. Your love, prayers, and consistent commitment to the Lord and His work have shaped who I am today, and I am extremely blessed and humbled to know you all.

ABSTRACT

This study examines the efficacy and significance of alternative dispute resolution (ADR) in settling medical Negligence disputes in Uganda, while focusing on mediation and arbitration analyzing how these mechanisms may be effectively utilized to adjudicate such disputes for timely access to justice and reduce case backlog without the aggrieved parties having to endure the long and hectic process of the traditional litigation process.

Furthermore, this research explores the legal and institutional framework governing Alternative Dispute Resolution at the international, regional, and domestic levels. The merits of Alternative Dispute Resolution are highlighted to include timely resolution of disputes, manageable costs for the parties, and preservation of confidentiality while handling these disputes. Furthermore, the study suggests relevant approaches that may be used to get the best out of Alternative dispute resolution mechanisms.

In addition, several recommendations are set out in this research, to make Alternative dispute resolution a more reliable and effective method in resolving medical negligence disputes. For example, training of personnel such as the mediators, arbitrators, and judicial officers in medical negligence disputes, promoting awareness to the general public and encouraging them to take up mediation and arbitration as ways of resolving medical disputes.

The study makes a profound stand that through the adoption of ADR mechanisms in resolving medical negligence disputes, the rigidity and complexities of litigation, may be mitigated and achieve timely access to justice for the parties.

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CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND OF THE STUDY

Medical Negligence, as a term, is a composition of two terms, namely Medical and Negligence; the key term is Negligence. It simply denotes to carelessness in carrying out tasks or obligations, resulting in a breach of a duty that is obligated to be carried out on the side of the individual or institution in question[1]. In the law of tort, medical negligence means more than carelessness.

Medical negligence is referred to as any action or omission by a medical personnel, and medical institutions, when a patient is under their care, and that omission deviates from the accepted medical practice norms, and may harm the patient.[2] Therefore, Medical negligence falls entirely on the fact that the medical personnel as the professional owes the patients a duty of care and breach of it, amounts to medical negligence.

Dr. Sudhir Kumar in his paper on the evolution of medical negligence law, defines medical negligence as that which occurs when a healthcare professional, such as a doctor, nurse, surgeon, or pharmacist, provides substandard care that results in harm to a patient. This may include errors in diagnosis, treatment, medication administration, or surgical procedures[3].

Simply put, medical negligence refers to the legal cause of action when medical personnel or medical service providers, through a careless demonstration or oversight, stray from principles in their profession, causing injury or the passing of a patient. When a patient comes to medical personnel, their relationship takes contractual form while retaining the essential elements of tort.[4]

In Uganda, medical negligence matters are usually not pursued by the victims, the few that are pursued, are handled through litigation in the High court civil division.

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[1] Khanam S and Perveen Rubina A, 'Medical Negligence and Liability: A Perspective from Violation of International Human Rights Law' (2023) *World Journal of Advanced Research and Reviews* 18(2) 44–50 https://doi.org/10.30574/wjarr.2023.18.2.0767 (accessed: December 10, 2025)

[2] Medical malpractice attorneys - Maryland (no date) Potter Burnett Law. Available at: https://www.potterburnettlaw.co /medical-malpractice/ (Accessed: December 13, 2025). /.

[3] Dr. Sudhir Kumar The evolution of Medical Negligence Law :A global perspective with a focus on India, The UK and The USA. *Indian Journal of Law and Legal Research* Volume VII Issue II | ISSN: 2582-8878.

[4] M. Pandit. And S. Pandit, "Medical negligence: Coverage of the profession, duties, ethics, case law, and Enlightened Defense - a legal perspective," Indian Journal of Urology, vol. 25, no. 3, 2009: p. pp. 372-378. https://doi.org/10.4103/0970-1591.56206

Alternative dispute resolution mechanisms are important for several reasons; it is less expensive, time effective, and, therefore, impacts access to justice**.** The quality and patient safety are also determined by how fast and reliably victims may access justice through the available means of redress, the doctor-patient relationships, and public confidence in the healthcare system. The current system, which involves the traditional litigation method of resolving medical negligence disputes, has affected all these aspects.

It's important to note, that there are different alternative dispute resolution mechanisms such as Negotiation, Regional settlement, conciliation, Arbitration, Mediation, Private judging among others.[5] The main mechanisms discussed in this study are mediation and arbitration. With the growing global recognition of ADR's importance this would be a key development to facilitate access to justice for victims of medical negligence without having to endure the cumbersome and costly frustrations of litigation as is currently the case in Uganda.

Medical negligence disputes are special in nature and need specialized resolution mechanisms to resolve them. It, among others, preserves confidentiality of the patients in addition to being affordable which may transform justice in health care.

1.2 STATEMENT OF THE PROBLEM

In Uganda, many patients are victims of medical negligence, and yet the country lacks effective mechanisms for resolving such disputes. The most widely used option is traditional litigation. This is often too slow; it takes years to resolve a single case because of the case backlog in the courts of law. In addition to the high medical bills, the victims have to pay legal fees to facilitate the litigation of their case, and the open court room is also not an ideal place for healthcare disputes, since they involve personal conditions and confidentiality is ideal for such cases. As a result of the current mainstream litigation and its complexities, very few victims of medical negligence seek redress or even get their cases resolved through litigation.

The matter is complicated further by patients constantly suffering harm without redress from the justice system, for example, in ***CEHURD v Nakaseke District Local Administration***[6], a pregnant woman died at the hospital after the doctor took 8 hours to arrive. Yet, the nurses had detected that she already had complications. This is one of the very many examples of the harm suffered by Ugandans due to medical negligence. Medical personnel and their institutions, in an effort to

[5] Article 33 of the United Nations Charter, the Arbitration and Conciliation Act, Cap. 5

[6] Centre for Health Human Rights and Development (CEHURD) v Nakaseke District Local Administration Civil Suit No 111/2012 (High Court of Uganda)

evade justice, frustrate the litigation process by using delaying tactics in courts of law and sometimes corrupting judicial officials to get judgments in their fervor. As cases drag on, people lose trust in the health care system. The justice system is overburdened with medical negligence cases.

1.3 OBJECTIVES OF THE STUDY

1.3.1. General Objectives

This study aims to explore the effectiveness of Alternative Dispute Resolution in resolving medical negligence disputes, it further focuses on the key ADR mechanisms, namely mediation, arbitration, and negotiation. Additionally, the research aims to show that through ADR, medical negligence disputes may be settled promptly without imposing high fees on victims, restore trust in the country's health care system, grant victims' access to justice, and reduce the case backlog in the courts of law.

1.3.2 Specific Objectives:

1. To analyze the significance of effective dispute resolution mechanisms in medical negligence cases.
2. To examine how ADR mechanisms (mediation and arbitration) function in medical negligence dispute settlement
3. To assess the significance of ADR mechanisms compared to traditional litigation in addressing medical negligence disputes
4. To identify the role ADR may play in improving medical negligence dispute resolution in Uganda

1.3.2.1 Research Questions:

1. Why do medical negligence disputes need specialized dispute resolution mechanisms?
2. How do ADR mechanisms work in settling medical negligence disputes?
3. What is the significance of ADR mechanisms compared to litigation in medical negligence cases?
4. What role may ADR play in improving medical negligence dispute resolution in Uganda?

1.4 SIGNIFICANCE OF THE STUDY

This research demonstrates how ADR may provide meaningful access to justice to the victims of medical negligence; the health care providers get to use ADR as a fair and efficient way of dispute resolution. The health care system in the country will greatly benefit from how ADR will make efforts to maintain quality health care systems. This work will also serve as a point of reference for the policy makers and those charged with implementation to provide evidence for the ADR framework development. Furthermore, for the legal scholars, this study fills an evident gap in understanding ADR's role in medical disputes in Uganda. Above all this research may influence policy and legal reforms for the betterment of the justice system in our country.

1.4 SCOPE AND LIMITATIONS

The main focus of this research is the effectiveness and significance of ADR mechanisms, namely mediation and arbitration, in resolving medical negligence disputes in Uganda. The study also covers comparative aspects of alternative dispute resolution versus traditional litigation, while diving into International best practices and Uganda's context.

The study will further suggest ways to address several limitations, such as the few documented medical negligence cases in Uganda, and limited data on ADR outcomes due to the client confidentiality that the health service providers try to observe. The research will be primarily doctrinal research, and this affects the amount and quality of data compiled since most will be based on other researchers. The research further focuses on dispute resolution mechanisms, not comprehensive medical law analysis. It will provide the context as to how and why these disputes arise.

1.5 LITERATURE REVIEW

There has been extensive research and documentation on Alternative Dispute Resolution mechanisms, their significance, and effectiveness in resolving disputes. These mechanisms are greatly significant because Justice delivery depends on how disputes are resolved, the mechanism chosen determines several aspects like the outcomes, costs, time, satisfaction. Therefore, an appropriate mechanism is crucial for specialized disputes like medical negligence disputes. However, it is important to note that there is limited coverage of ADR mechanisms being applied to resolve medical negligence disputes. This study will analyze this limited coverage, critically looking at the diverse perspectives provided by the different scholars and publications to explore the accuracy, reliability, and gaps in their work. The coverage is diverse and will have a European, African, and Ugandan context of what has been researched and published so far on the Efficacy and significance of Alternative Dispute Resolution in resolving Medical Negligence disputes.

International Recognition of ADR's Significance in Healthcare:

The significance and effectiveness of ADR in resolving disputes have been internationally recognized. For example, in the United Kingdom, the National Health Service regularly holds sessions in which Alternative Dispute Resolution Mechanisms are used to resolve medical negligence disputes. In 2024/25, a total of 138 claims proceeded to mediation, with 73% settling on the mediation day or within 28 days thereafter[7]. More studies have shown that mediation resolves a significant number of disputes arising from medical negligence in the United Kingdom. The UK Parliament presented the NHS litigation reform report, which stated that "since NHSR's mediation scheme was first launched on 5 December 2016, in 2020 NHS Resolution reported success in those cases that were mediated, highlighting that '74% of cases mediated are settled on the day of mediation or within 28 days of the mediation date.[8]" This has created faster and more reliable access to justice for patients, who previously had to wait years to obtain redress; they may now access redress in a matter of months. The National Health Service may reserve its resources for patient care. Through these ADR methods, patients' confidence in the healthcare system has been maintained.

New Zealand's No-Fault System:

Similarly, New Zealand has a no-fault system aimed at resolving medical negligence disputes. Under the no-fault system, every injured patient is compensated without having to prove the healthcare provider's negligence[9]. This shows the significance of alternative approaches to settling medical negligence disputes. Every injured patient gets compensation without having to prove medical negligence. It removes fear and blame from the system and focuses on patient recovery rather than litigation.[10] Litigation procedure is a costly means of resolving medical negligence disputes and may easily be exploited by patients to enrich themselves, hence not applicable later on sustainable in several jurisdictions like Uganda.

Australian Research on ADR Significance:

Australia has also researched the significance of ADR in resolving medical negligence disputes. The office of the Health Services Commissioner in Victoria handles several medical negligence

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[7] Health and Social Care Committee, *NHS Litigation Reform* (House of Commons HC 740, 2022) https://publications.parliament.uk/pa/cm5802/cmselect/cmhealth/740/report.html accessed (December 19, 2025).

[8] NHS Resolution, *Annual Report and Accounts 2023–24* (HC 1065, NHS Resolution 2024) https://www.gov.uk/government/publications/nhs-resolution-annual-report-and-accounts-2023-to-2024 accesse d (December 22, 2025)

[9] Marie Bismark and Ron Paterson, 'No-Fault Compensation in New Zealand: Harmonizing Injury Compensation, Provider Accountability, and Patient Safety' (2006) *Health Affairs* **25(1)** 278–83

[10] Katharine Wallis, 'New Zealand's 2005 "No-Fault" Compensation Reforms and Medical Professional Accountability for Harm' (2013) *New Zealand Medical Journal* **126(1371)** 33

disputes and awards compensation without traditional litigation[11]. In Australia, ADR has also been found to provide victims of medical negligence with greater satisfaction than conventional litigation. It substantially saves costs for the parties. The relationship between the patients and the health care providers is preserved.

Scholars on ADR's Role in Healthcare:

Several scholars have written extensively about the effectiveness and significance of alternative dispute resolution. Alternative dispute resolution as a means of settling medical negligence disputes has not been extensively written about; however, publications on Alternative dispute resolution are available alongside few publications on medical negligence, though separately. The few publishers on ADR in medical negligence, contend that ADR is less adversarial and therefore rebuilds trust and the relationship between healthcare providers and patients, thereby providing a basis on which the two parties may operate in society.

MARIE BISMARK AND RON PATERSON[12] In the case study about the no-fault system in New Zealand, they argue that the trust between the patient and the health care provider is more important. Therefore, the need to prove negligence is immaterial since the patient has already suffered injury. It's also their argument that patients need an explanation and acknowledgment of the mistake by the health care provider; therefore, the fact that ADR preserves the patient-doctor relationship, it's preferred to adversarial litigation as a way of settling medical negligence disputes, a resolution mechanism that preserves the relationship. These are solid arguments for the no-fault compensation system; however, they are not realistically and holistically applicable. In some cases, especially where resources for compensation are limited, many patients may exploit the system to enrich themselves by forging unfounded and unrealistic claims against the Medical care providers.

RON PATERSON[13], In his book *The Good Doctor: What Patients Want*, he argues that when medical negligence disputes arise, patients are in pursuit of explanations of what happened, they want the health care provider to acknowledge that this was their fault, and also a sincere apology from those responsible. He goes on to state that litigation does not meet patients' emotional and rational needs, whereas ADR better addresses the needs of both patients and health care providers than litigation.

TW BENNETT[14], while writing about Customary Law in South Africa, explores Alternative Dispute Resolution and its embeddedness in Afrimay Traditional Conflict-Resolution

[11] James Cameron and Grant Davies, 'Compensation through Conciliation: Payments Made through the Office of the Health Services Commissioner' (2014) 25 *Australasian Dispute Resolution Journal* 109

[12] Marie Bismark and Ron Paterson, 'No-Fault Compensation in New Zealand: Harmonizing Injury Compensation, Provider Accountability, and Patient Safety' (2006) *Health Affairs* 25(1) 278–283.

[13] Ron Paterson, *The Good Doctor: What Patients Want* (Auckland University Press 2012).

[14] TW Bennett, *Customary Law in South Africa* (Oxford University Press 2004)

mechanisms. He argues that these mechanisms are unifying rather than conventional; his research found that the Afrimay traditional justice system stems from the spirit of Ubuntu, which emphasizes togetherness and communal harmony and does not advocate adversarial mechanisms for settling disputes. These are the values that ADR stands for; therefore, its integration into Afrimay judicial systems, such as Uganda's, is essentially seamless. This book points to the effectiveness of ADR and how it may be integrated into Afrimay societies like Uganda.

ANTHONY CONRAD KAKOOZA[15] writes about Mechanisms of alternative dispute resolution, as cost-effective, timely, and also a way of preserving relationships which is something traditional litigation does not offer. His article examines the legal framework in Uganda to fully adopt ADR as a means of resolving disputes. The Arbitration and Conciliation Act[16] (Cap. 5, which follows the UNCITRAL Model Law on Arbitration[17], and the Civil Procedure Rules (SI 71-1)[18], both support ADR as a mechanism to resolve disputes. He further recognizes the establishment of the Centre for Arbitration and Dispute Resolution (CADER), which exists solely to foster ADR and make it as accessible as possible to Ugandans. He further acknowledges the challenges facing this institution, such as a funding shortage, are not overlooked. He advocates shifting toward embracing ADR as a valuable tool in the pursuit of justice. In relation to this research, the article generally discusses the effectiveness and significance of ADR as a mechanism for addressing disputes.

J OLOKA-ONYANGO[19] In his article 'The **Judicial Power and Constitutionalism in Ugandan Courts ',** he builds the case that courts encourage ADR and try to have an interaction with the parties to amicably resolve matters before engaging in the adversarial litigation process. He further elaborates on the evolution of ADR in Ugandan legal practice as evidence of its effectiveness. What his article does for this study, is to further acknowledge that the courts and the legal framework have already made efforts to integrate ADR into the conflict resolution process, which testifies to its effectiveness and significance. However, he, like many Ugandan publishers on ADR in Uganda, has not written anything to do with ADR in Medical Negligence, yet it is a field that needs much attention.

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[15] Anthony Conrad Kakooza, 'ARBITRATION, CONCILIATION AND MEDIATION IN UGANDA: A focus on the practical aspects' (June 18, 2010) Uganda Living Law Journal, Vol. 7 No. 2 December 2009 pp. 268-294. ISSN

[16] Arbitration and Conciliation Act Cap 5 (Uganda).

[17] United Nations Commission on International Trade Law (UNCITRAL), *UNCITRAL Model Law on International Commercial Arbitration 1985 (as amended in 2006)* (UNCITRAL).

[18] The Civil Procedure Rules, SI 71-1.

[19] J Oloka-Onyango, 'Judicial Power and Constitutionalism in Uganda' in HWO Okoth-Ogendo and J Oloka-Onyango (eds), *Constitutionalism in Africa* (East African Educational Publishers 2003).

1.2: METHODOLOGY

The research design and methodology will be qualitative, focusing on the significance and role of alternative dispute resolution mechanisms in medical negligence cases. The data sources will be primarily legislation, case law, and policy documents. The secondary data sources will be books, journal articles, reports, and dissertations from other scholars. The research will further include a comparative component, drawing on international ADR frameworks and studies from countries that have developed such frameworks.

The analytical approach will include a comparative analysis of litigation versus ADR mechanisms. There will be a significant assessment of ADR mechanisms, evaluating the importance of ADR on multiple dimensions. The research will also identify the role and function ADR serves in resolving medical negligence disputes. A gap analysis will determine the need in Uganda for alternative dispute resolution mechanisms to resolve medical negligence disputes.

This methodology is appropriate; it allows examination of ADR's theoretical and practical significance. It further enables comparison with international best practices using the comparative element. Most importantly, it identifies ADR's potential determination of medical negligence disputes in Uganda. By examining both the legal framework and practical implementation challenges, this methodology provides a comprehensive understanding of how ADR may be effectively utilized in the Ugandan context.

1.8 ETHICAL CONSIDERATIONS

While conducting this research, several ethical considerations will be taken seriously. Academic integrity will be upheld by having proper citations and any scholar’s work cited will be acknowledged and laid out with proper paragraphing. The analysis of the several opinions by scholars will be balanced and fair to all stake holders, more still, patient confidentiality will be respected while assessing the significance of ADR.

CHAPTER TWO

THE SIGNIFICANCE AND EFFICACY OF DISPUTE RESOLUTION MECHANISMS IN MEDICAL NEGLIGENCE IN UGANDA.

INTRODUCTION

This chapter makes a strong case for the essentiality and mainstream adoption of Alternative Dispute Resolution as a mechanism for resolving medical negligence disputes. The chapter provides a deep understanding of what Medical Negligence disputes are and how they arise, special characteristics of these disputes and how they differ from the usual disputes that are resolved by traditional litigation, it further explains how the mechanism chosen to resolve a dispute affects the outcome. Furthermore, the chapter explores the short falls of traditional litigation in medical negligence disputes. The chapter will conclude with elaborating on what an effective dispute resolution mechanism requires and should have. It also demonstrates why ADR mechanisms matter. It will further show the merits and strengths of ADR as the best alternative to litigation in medical negligence dispute resolution.

2.1: Understanding Medical Negligence Disputes

2.1.1 The Nature of Medical Negligence

In order to understand how given disputes are resolved; one should understand the kind of conflict and how they arise. Therefore, understanding how conflicts are resolved is as necessary as understanding the disputes themselves, because the chosen mechanism ultimately affects outcomes for all parties involved.

In order to understand medical negligence disputes, one must understand what negligence is and how it becomes a dispute. Negligence was defined Baron Alderson in ***Blyth v Birmingham Waterworks Co***[20] as the breach of a duty caused by the omission to do something which a reasonable man would do. Medical negligence occurs when a healthcare professional, such as a doctor, nurse, surgeon, or pharmacist, provides substandard care that results in harm to the patient. This may include errors in diagnosis, treatment, medication administration, or surgical procedures, as defined by Dr. Sudhir Kumar.[21] The elements of medical negligence include a duty of care by the medical provider to their patients, breach of that duty, and causation of harm to the patient. The duty of care was discussed in the landmark case of ***Donoghue v Stevenson***[22], in which the court established the neighbor principle that everyone has a duty to take reasonable care. This principle was followed in the Ugandan case of ***Kabito v Attorney General,*** where the court held that a doctor owes a duty of care to their patients; breach of that duty establishes

[20] Blyth v Birmingham Waterworks Co *(1856) 11 Exch 781 (Baron Alderson).*
[21] *Ibid*
[22] Donoghue v Stevenson *[1932] UKHL 100*

liability[23]. In ***Kimosho v Wakapita,*** the High Court of Uganda held that for a medical practitioner to be held liable for medical negligence, they must have deviated from the expected standard of care[24]. Therefore, the elements of medical negligence are a duty, a breach of that duty, causation, and finally harm to the patient resulting from the breach.

Prominent examples of medical negligence include surgical errors, misdiagnoses, medication errors among others. The litmus test used in the medical negligence cases was established in ***Bolam v Friern Hospital Management Committee[25]*** which established the standard of care for a reasonable medical professional. According to the test, the courts have to ask whether a reasonable medical professional would have acted in the same way under similar circumstances. Therefore, the nature of medical negligence is that they arise as a result of the health care provider who owes a duty to the patient breaching that duty and the patient under their care sustains harm as a result of this omission or commission.

2.1.2 Special Characteristics of Medical Negligence Disputes

In light of the discussion above about the nature of medical negligence disputes, it is quite obvious that these disputes are unique, as such they are different from the other disputes that arise in day-to-day lives. They have special features that make them different.

Firstly, medical negligence disputes are tainted with technical complexities. Therefore this requires specialized medical expertise to understand[26]. When these disputes end up in courts of law, the judges mainly rely on expert evidence which becomes essential. Unlike other disputes where the courts may easily identify the cause of the harm or breach, in these disputes, causation is often complicated because most patient's harm may be attributable to multiple factors. *The court in* ***Bolam v Friern Hospital Management Committee[27]*** stated that "***A doctor is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men."*** This is the global standard for determining medical negligence disputes. Still, it requires an expert who may provide an understanding of the medical procedures. In ***Bolitho v City and Hackney HA*** **[1998],** the court held that while deciding on medical negligence disputes, *"The court has to be satisfied that the exponents of the body of opinion relied upon may demonstrate that such opinion has a logical basis." [28] The court must consider* the options in that circumstance and the best practices known to a reasonable professional in the

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23 Kabito v Attorney General *[2019] UGCOMMC 197*

24 Kimosho v Wakapita *HCCD No 71/2018 (High Court of Uganda)*

25 Bolam v Friern Hospital Management Committee *[1957] 1 WLR 582 (QB).*

26 Laurence Boulle, *Mediation: Principles, Process, Practice* (3rd edn, LexisNexis 2011) 28–31.

27 Ibid

28 *Bolitho v City and Hackney Health Authority* [1998] AC 232 (HL).

medical field. This reveals the complexity and the urgent need to rely on expert evidence when handling these disputes.

In addition, medical negligence disputes involve an ongoing relationship between the patient and the health care provider. The patient may need continued care from the same hospital or doctor. Community health care relationships are also meaningful; therefore, the objective of resolving these medical negligence disputes should be to ensure that the health care system, the hospital, and the medical personnel who serve the community remain in the community and continue to serve it for the greater good. Ellen A Waldman, in her article: The Evaluative–Facilitative Debate in Mediation states that the mechanism of dispute resolution chosen should be looking at preserving a therapeutic relationship between the parties. The significance of the mechanism, whether mediation, arbitration, or negotiation, should be to preserve rather than destroy the relationship. There is an emotional dimension to medical negligence disputes. The patient is already traumatized and suffering, while the healthcare provider experiences guilt and second victim syndrome. The victim's family experiences anger and grief, especially in cases where the victim is permanently incapacitated or dead. Traditional adversarial litigation may only make matters worse; therefore, the mechanism must address the emotional needs, not just the legal rights, as litigation does. Ron Paterson[29] argues that patients need acknowledgment, not just money. Patients and their families often need more than compensation; they need acknowledgment of their suffering, understanding of what went wrong, and assurance that steps will be taken to prevent similar harm to others.

Medical negligence disputes are characterized by information asymmetry, as Marie M. Bismark and Ron Paterson[30] explain. The doctor knows what happened, but the patient doesn't. Therefore, the doctor may present evidence in their best interest. Medical records are complex, even for the court to understand. There is also a power imbalance between the healthcare provider and the patient. Usually, the hospitals and healthcare providers have far more power than the patients who are actually aggrieved. The significance of the dispute resolution mechanism lies in ensuring fair access to information and expert interpretation by a neutral party, thereby facilitating justice.

In medical negligence disputes, the multiple interests at stake may not be ignored. Jonathan Montgomery[31] explains that there are multiple interests and that a balance must be struck between the patient's and the provider's interests. The patient seeks justice, compensation, answers, and prevention, while the provider wants fairness and wants their reputation to be kept. They also aim to learn from their mistakes and ensure that such an error does not recur. The public wants safety and needs to have confidence in their healthcare system. This is where ADR

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[29] Ibid

[30] Ibid

[31] Jonathan Montgomery, 'Medicalising Crime—Criminalising Health Care?' (2010) 36(7) *Journal of Medical Ethics* 399, 401–402.

comes in to balance the multiple interests of these parties, as they each have legitimate concerns that warrant consideration.

In conclusion, given these specific characteristics, medical negligence disputes require specialized resolution mechanisms that address them. This is precisely where ADR comes in to address the parties' specific needs in medical negligence disputes.

2.2: Impact of the Chosen Mechanism

There is no doubt that the mechanism chosen to resolve disputes is often the determinant not only of the outcome and experience but also of whether aggrieved parties will seek justice. For patients, the chosen mechanism usually determines the duration of the process, the financial recovery, the medical expenses, and the funds expended in pursuing justice. This is a chain effect that determines whether and when the victims will be able to move on with their lives. On the other hand, health care service providers are often concerned about their reputation and whether the chosen mechanism will be fair and impartial. This enables them to repair their relationship with clients (patients) and to minimize costs associated with compensating medical negligence victims.

The mechanism chosen also affects patient satisfaction with the justice system, and healthcare trust is determined by the mechanism selected. Ultimately, the type of outcome affects whether the patient receives what they actually need, not just money. They need closure, acknowledgment, rehabilitation, and an understanding of what happened. They need to understand what happened from an expert's perspective. They need assurance that it won't happen to others, and the public needs assurance that they may now trust their health system again.

For healthcare providers, the duration of dispute resolution also matters because they need to resume providing health care as soon as possible, given the impact on their professional productivity and the career trajectories of the individuals involved, including the institution itself. The process nature affects their psychological well-being and professionalism, their reputation, and their ability to learn from their mistakes. The outcome affects the healthcare provider in ways that impact their professional future, their confidence in practice, and their willingness to continue in medicine. The mechanism chosen to resolve medical negligence disputes significantly influences all these factors.

The choice of dispute-resolution mechanism has a substantial effect on the quality of medical care. When health care providers fear adversarial dispute-resolution processes, they may order unnecessary tests and refuse to treat certain cases to avoid being sued and implicated in even the slightest errors, thereby contributing to defensive medicine. This, in turn, increases the costs patients have to pay for health care. The impact on clinical judgment may be severe when fear of

litigation drives medical decision-making rather than the patient's best interests. Therefore, ADR may reduce defensive approach in medical negligence when the appropriate mechanisms are employed. In addition, health care costs are affected because the health care system absorbs litigation costs, and malpractice insurance costs are passed to patients through higher fees. ADR is significantly cheaper and may reduce excessive litigation by lowering malpractice insurance costs and preventing patients from incurring higher fees[32].

The mechanism chosen also affects professional recruitment and retention. The fear of litigation deters health care providers, particularly in high-risk specialties such as obstetrics and surgery. This may lead to brain drain, where doctors leave the country and go to jurisdictions where mechanisms are fair and where they may resolve medical negligence disputes amicably and access justice on their end. This is where ADR mechanisms come in and make medical practice more attractive, helping to prevent brain drain and retain qualified medical personnel.

The choice of mechanism also affects system learning and improvement. Traditional litigation compels health care providers to conceal errors and not admit mistakes that could be used against them in court. These errors are not addressed and are subsequently repeated by medical care providers. Due to the high costs and trauma associated with litigation, most cases go unaddressed. This impedes learning and system improvement, and the same errors recur because the system has not learned from prior mistakes. However, ADR such as mediation, negotiation and arbitration, may promote open disclosure and learning, allowing healthcare systems to identify and address systemic problems and clinical errors.

Furthermore, the mechanism chosen may either boost or erode public trust in the health care system. When the mechanism chosen is fair and accessible like ADR, the public confidence and trust in the justice and health care systems is boosted, the delays are often considered unfair and litigation is accessible to the ordinary citizens that have already paid hefty medical bills.

The mechanism chosen affects the justice system in significant ways. The case backlog is a serious problem in Uganda, and medical negligence cases contribute to it. However, when ADR mechanisms are chosen as a way to handle medical negligence cases, it enables the allocation of resources to other disputes that have to be litigated. Therefore, if resources are allocated to ADR, then it reduces the burden on the mainstream litigation and courts. The justice system is able to handle other matters and reduce the case backlog.

In conclusion, the resolution mechanism is not merely a procedural detail. It has significant implications for individuals, healthcare, and society as a whole. This builds a strong case for ADR's role in improving medical negligence dispute resolution in Uganda.

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[32] Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System* (ALRC Report No 89, 2000) paras 2.20–2.25.

2.3: Why Traditional Litigation Falls Short

Traditional litigation is a method of dispute resolution in which the aggrieved party presents their motion before a court of competent jurisdiction, and the opposite party is summoned to present their defense. The judge analyses the evidence and makes a judgment or ruling[33]. This mechanism has numerous limitations in handling medical negligence disputes. Acknowledging these shortcomings underscores the significance of ADR as a suitable mechanism for resolving medical negligence disputes.

To begin with, the major limitation is the delay in resolving the disputes. The Ugandan justice system is already overburden by the cases, and huge case backlog[34]. As a result, medical negligence cases take an estimate of five to ten years to be resolved in court. This is critical because patients require immediate support for ongoing medical care and living expenses. In addition to this, medical evidence deteriorates over time, making cases more challenging to prove as years pass. The emotional wounds of patients and their families only get worse as disputes are left unresolved for years[35]. It is also disadvantageous to healthcare providers who are stuck in court for an extended period, allocating resources to litigation rather than to delivering high-quality care to their patients. In the resolution of disputes, speed is very crucial and traditional litigation does not provide that.

More still, traditional litigation is quite costly, from the Court fees, lawyer fees, and expert fees accumulated over years of litigation. Most people may not afford these costs in addition to the already substantial medical bills that have to be paid[36]. This system effectively denies justice to the poor, who are the majority of the population. Only the wealthy may afford to sue, creating a two-tier justice system that is fundamentally unfair. Therefore, affordable dispute-resolution mechanisms are essential to ensuring access to justice for all citizens, not just the wealthy few.

Furthermore, the adversarial nature of traditional litigation makes it hard to maintain the patient-doctor relationship during and after the dispute is resolved[37]. It operates on a win-lose framework, with aggressive tactics and public confrontation. This kind of arrangement destroys

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[33] Michael Osburn, 'Resolving Custody and Divorce Issues…' (Levene Gouldin & Thompson, 20 October 2017) < https://www.lgtlegal.com/news/142/Resolving-Custody-and-Divorce-Issues-Traditional-Litigation-versus-Alternative-Dispute-Resolution/ get me> accessed (January 6, 2026)

[34] Judiciary of Uganda, *Annual Performance Report FY 2021/22* (Judiciary of Uganda 2022) https://judiciary.go.ug/files/downloads/Judiciary%20Court%20Performance%20FY%202021%20-%202022.pdf accessed 6 January 2026.

[35] Bryan A Liang, 'A System of Medical Error Disclosure' (2002) 11(1) *Quality and Safety in Health Care* 64, 66–67.

[36] Mauro Cappelletti and Bryant Garth, 'Access to Justice: The Worldwide Movement to Make Rights Effective' (1978) 1 *Access to Justice* 6, 9–11.

[37] Ibid Jonathan Montgomery

any trust that existed between the parties. Patients are unable to receive treatment when it is required, even during the dispute resolution. This affects countries like Uganda, where reliable medical facilities are limited and people have to fly out of the country for specialized treatment. Additionally, the adversarial nature increases emotional trauma for both patients and healthcare providers. Healthcare providers are forced to ensure that they don't disclose any mistakes or acknowledge any shortcomings, which leads to mistakes being repeated in the future since there is no opportunity to correct them.

Judges in traditional litigation are generalist judges, with no medical training. The judges are legal professionals, not medical experts. They are therefore dependent on expert witnesses to understand the medical issues. This was stated in ***Bolam v Friern Hospital Management Committee***[38]. This poses a risk that judges may misunderstand the medical specialist's evidence, leading to a miscarriage of justice. There is doubt by the aggrieved parties. Therefore, in decision-making, medical expertise is required to ensure a proper understanding, and this is where ADR becomes relevant.

Rigid outcomes characterize traditional litigation. It primarily offers monetary damages. The court may not order meaningful apologies or system improvements. Yet patients need acknowledgment as much as they need money[39]. Litigation misses opportunities to prevent and improve systems that could benefit future patients. Patients need acknowledgment, apology, and assurance of prevention; flexible remedies matter because they address the full range of patient needs, not just financial compensation.

Medical negligence jurisprudence is underreported; there are very few cases and studies on the public record in Uganda[40], which creates unpredictability and unclear standards. The significance is that ADR may establish practice norms, making these medical negligence cases mainstream, and that, over time, there is precedent for the decisions made by ADR mechanisms.

Resource constraints are other practical problems. There are few expert witnesses available, and retaining them is expensive. Very few lawyers have medical expertise. The significance is that ADR may be conducted more efficiently when dedicated medical experts are involved in the dispute resolution process.

There is also a cultural mismatch between litigation and Ugandan values. Litigation is perceived as confrontational and Western, whereas ADR is seen as a process of reconciliation that brings people together and rebuilds trust and relationships. Therefore, ADR aligns with the cultural values of Ubuntu and community harmony, which are important in Ugandan society.

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38 Ibid

39 Ibid

40 Paul Kintu, 'Medical Negligence and the Law in Uganda' (2015) *Uganda Law Review* 112, 115–118.

In brief, traditional litigation has many shortcomings in determining medical negligence disputes; therefore, Alternative dispute resolution mechanisms such as mediation, negotiation and Arbitration make a more compelling case and preferred mechanisms for resolving such conflicts in medical negligence dispute resolution.

2.4: What Effective Dispute Resolution Mechanisms Require

Dispute resolution should possess specific characteristics to be effective. These include being timely, accessible at a cost-effective price, and having the necessary expertise to make this work. This section examines what makes a dispute resolution mechanism effective and suitable for medical negligence disputes.

For a dispute resolution mechanism to be effective, it should deliver justice promptly, and the parties should be able to resolve their dispute without delay. In medical negligence disputes, patients should not wait five to ten years for justice to be dispensed, when they need immediate medical care support and living expenses. In the Access to Justice final report, Lord Woolf argues that justice delayed is justice denied[41].

Moreover, effective dispute resolution should be affordable and accessible to all, including the poor, because cost is the single most significant barrier to access to justice. A dispute resolution system that is unaffordable excludes the majority of citizens[42]. Justice should not be available only to the wealthy. The mechanism must be cost-effective so that any Ugandan harmed by medical negligence may seek redress.

Thirdly, for the mechanism to be regarded as effective, it must involve expertise. Bryan A Liang makes an argument that *"Judges are legal experts, not medical experts, and must rely heavily on expert witnesses when adjudicating medical negligence claims[43]*." Decision-makers must understand medicine, not just law. Generalist judges may not adequately evaluate complex medical evidence without substantial medical knowledge themselves.

Furthermore, an effective dispute resolution must preserve relationships. *"Adversarial processes tend to destroy relationships, whereas consensual processes aim to preserve them."[44]* It should be collaborative rather than adversarial. In healthcare contexts where ongoing relationships matter, especially in communities with limited healthcare alternatives, destroying the relationship between patient and provider serves no one's interests.

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41 Lord Woolf, *Access to Justice: Final Report* (HMSO 1996) ch 1.

42 Mauro Cappelletti and Bryant Garth, 'Access to Justice: The Worldwide Movement' (1978) 8 *Buffalo Law Review* 181, 182.

43 Bryan A Liang, 'A System of Medical Error Disclosure' (2002) 11(1) *Quality and Safety in Health Care* 64, 66.

44 Laurence Boulle, *Mediation: Principles, Process, Practice* (3rd edn, LexisNexis 2011)

The mechanism must address emotional needs. There must be space for acknowledgement and apology, not just financial calculations. According to Ron Paterson, "Patients consistently report that acknowledgment, explanation and apology are often more important than financial compensation[45]." Patients need to be heard, and providers need the opportunity to explain and take responsibility.

Effective dispute resolution must provide flexible remedies beyond monetary compensation. Patients need acknowledgment, explanations, system improvements, and assurance that others will not be harmed in the same way. Money alone does not address all the harms caused by medical negligence. *"Litigation offers limited remedies, usually confined to monetary damages, whereas mediation allows for apologies, explanations and system changes.[46]"*

Seventh, the mechanism must be fair and protect patient rights. While less adversarial than litigation, the process must still ensure that power imbalances and information asymmetries do not exploit patients. Ellan A states that *"Power imbalances pose a serious risk in dispute resolution and must be addressed through procedural safeguards[47]."*

Eighth, effective dispute resolution should promote learning and feed improvements back into the system. Individual cases should lead to systemic improvements that benefit all future patients. "A blame-oriented litigation system discourages disclosure and learning, whereas less adversarial approaches promote safety improvements[48]."

An effective dispute resolution mechanism must be culturally appropriate. It should build public confidence, be transparent and accessible, and align with Ugandan values such as Ubuntu, reconciliation, and community harmony. "Effective dispute resolution must be timely, resolving disputes in months rather than years[49]."

These requirements suggest that ADR mechanisms may be more significant than litigation in medical negligence disputes.

The next chapter examines how ADR mechanism's function and their specific significance in the context of medical negligence.

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45 Ibid

46 Laurence Boulle and Miryana Nesic, *Mediation: Principles, Process, Practice* (2nd edn, Butterworths 2001) 20.

47 Ellen A Waldman, 'The Evaluative–Facilitative Debate in Mediation' (1998) 24 *Florida State University Law Review* 155, 162.

48 Charles Vincent, 'Understanding and Responding to Adverse Events' (2003) 348(11) *New England Journal of Medicine*1051, 1054.

49 Ibid Lord woolf

CHAPTER 3

ALTERNATIVE DISPUTE RESOLUTION MECHANISMS AND THEIR SIGNIFICANCE IN MEDICAL NEGLIGENCE IN UGANDA.

Having discussed the requirements for an effective dispute resolution mechanism and their importance, this chapter presents an in-depth analysis of alternative dispute resolution mechanisms and their significance. It defines ADR and explains the two main mechanisms under study: mediation, and arbitration. In addition, the chapter presents a synthesis of evidence from international jurisdictions demonstrating the significant role of ADR in settling medical negligence disputes before examining the specific significance of these mechanisms.

3.1: Understanding ADR Mechanisms

3.1.1 What is Alternative Dispute Resolution?

Alternative dispute resolution (ADR) is the resolution of disputes outside traditional court litigation. It may further be referred to as the techniques used to resolve conflicts without going to the courtroom. These mechanisms include mediation, arbitration, negotiation, private judging, regional dispute settlement and conciliation. The main objective of these mechanisms and the whole ADR agenda is to offer a quicker, flexible, and cost-efficient means of resolving disputes without being adversarial. Dispute Resolution (ADR) offers a pragmatic solution by providing mechanisms that are faster, less formal, and significantly more affordable than traditional litigation[50]. There is a noticeable global shift towards incorporating ADR into dispute resolution, evidenced by several initiatives and legal frameworks that governments worldwide have implemented to integrate ADR into their justice systems.

3.1.2 Mediation: Process and Significance

When discussing alternative dispute resolution, one may not ignore mediation. Mediation is a key mechanism of Alternative Dispute Resolution. Mediation is a voluntary process where a neutral and impartial third party, who is referred to as the mediator, is present to facilitate communication and negotiation between the disputing parties so that amicable settlements may be agreed[51]. It is therefore a voluntary process in which the parties choose to participate. It is a neutral third party, a mediator, who facilitates discussion but does not decide the outcome. This mechanism enables the parties to resolve their grievances while maintaining confidentiality. It is

[50] Priya Malhotra, 'Cost and Time Benefits of ADR in Emerging Economies' (2020) 15(2) South Asian Law Review 122.

[51] Danny WH Lee and Paul BS Lai, 'The practice of mediation to resolve clinical, bioethical, and medical malpractice disputes' (2015) 21 Hong Kong Med J 560–564 <https://doi.org/10.12809/hkmj154615>.

a structured dialogue that provides a safe space for genuine communication between the parties. The outcome of these proceedings is therefore determined by the parties, and, if successful, they enter into a binding agreement that is treated as a consent judgment.

It has no rigid structure; however, it has been generally accepted that the mediation process has three phases[52], that is to say, the preparation phase; the mediation phase and the post-mediation phase[53]. During the preparation phase, pre-mediation is the preparatory stage. It includes reviewing medical records, choosing the mediator. It is important to note that the Parties who decide to mediate a dispute are free to decide themselves who the mediator in their matter will be[54]. Having been chosen, the mediator is given time to prepare. There is then an opening session in which the mediator explains the process and the parties present their respective positions. Joint and private sessions are held for the parties to explore issues and negotiation, so as to achieve a mutually acceptable solution. The mediation sessions generally involve; the preliminaries**,** an opening by the mediator also known as setting the table, in a joint session, the parties make their opening statements, the private side sessions and joint sessions with the parties, the sessions are recorded and decisions finalized and finally parties make their closing remarks before the mediator ends the meeting.[55] When parties agree, a settlement is reached through written agreements signed by the parties. This agreement is considered a binding consent judgment since parties have mutually agreed on a solution.

Mediation is greatly beneficial to the patients that are victims of medical negligence, they are listened to during the mediation sessions while their stories are not interrupted by the legal procedure like cross examination, in addition, it provides the patients an opportunity to directly interact with the health care provider and get a proper explanation of what exactly went wrong, there are genuine apologies and acknowledgement that the patients value as much as the compensation. Because it is less adversarial, the patients are able to trust the health care providers again and get additional treatment where needed. The parties are in control of the outcome, unlike the traditional litigation where the judge determines the outcome based on the law; this is a form of empowerment to the patients.

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52 Errol Cedric Muller, 'Mediation as an Alternative to Litigation with Special Reference to Medical Negligence Claims' (PhD thesis, University of the Free State 2021).

53 Varda Bondy and Maggie Doyle, Mediation in Judicial Review: A Practical Handbook for Lawyers (The Public Law Project 2011) 29.

54 Laurence Boulle and Alan Rycroft, Mediation: Principles, Process, Practice (Butterworths 1997) 85.

55 Patelia & Chicktay 2015:31; UCT Law @ Work 2016:14.

Mediation is equally important to healthcare providers. They have an opportunity to explain themselves and the circumstances, rather than merely to defend against accusations in the courtroom. The trust and human connection is restored. Danny WH Lee while doing a study about Hong Kong states that in the facilitative mode of mediation, opposing parties may communicate, negotiate, and decide a settlement among themselves with the assistance of the mediator. Conceivably, the doctor-patient relationship will largely be preserved after health-care mediations[56]. Mediation is less adversarial than litigation, therefore reduces trauma for healthcare providers who live with guilt because of a medical error they would have committed. Similarly, respondent doctors always suffer from different degrees of emotional disturbance—shame, fear, self-doubt, isolation, difficulty concentrating, etc.— regardless of whether or not they believe an adverse medical event is due to their error[57].

This mechanism provides an opportunity for learning. During the mediation sessions, the health care providers are able to acknowledge their mistakes since it's a safe space and what they say may not be used against them in the courts of law. What is disclosed during mediation is confidential. Even in the worst-case scenario where parties fail to reach a settlement, neither party may use any information obtained during the mediation for litigation purposes, except in a few circumstances[58]. Therefore, Healthcare providers may acknowledge their mistakes and commit to improvement without the fear that such acknowledgment will be used against them in punitive ways. The process also doesn't assign blame beyond actual responsibility therefore illustrating fairness. Due to the efficiency of the mechanism, the health care providers are able to get back to caring for the patients instead of languishing for a very long time in litigation matters. A study from Hong Kong shows that early resolution also relieves parties' psychological stress, especially that of doctors. Doctors may resume their normal clinical work without any fear or pressure arising from the claims or, sometimes, the media[59].

Mediation is also significant to the healthcare system as a whole, it is cost effective therefore, and the resources may be allocated to other activities. The fact that it is less adversarial rebuilds patient doctor relationships and therefore encourages public trust in the health care system. Due to the safe space, it creates confidentiality and the mediation encourages health care. There is quality improvement because lessons learned may improve systems rather than being hidden to avoid liability. Public confidence is enhanced because the process shows accountability without an excessive blame culture. Finally, mediation is resource-efficient; healthcare staff time is

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[56] Danny WH Lee and Paul BS Lai, 'The practice of mediation to resolve clinical, bioethical, and medical malpractice disputes' (2015) 21 Hong Kong Med J 560–564 <https://doi.org/10.12809/hkmj154615>.

[57] Newman MC. The emotional impact of mistakes on family physicians. Arch Fam Med 1996;5:71-5.

[58] Ibid. Danny WH Lee and Paul BS Lai, 'The practice of mediation to resolve clinical, bioethical, and medical malpractice disputes' (2015) 21 Hong Kong Med J 560–564 <https://doi.org/10.12809/hkmj154615>.

[59] Ibid

minimized, and they may get back to caring for other patients rather than spending years involved in litigation.

Besides all the merits, mediation also has limitations. For example, not all disputes may be mediated. Bondy V & Doyle M[60] argues that the following cases are not suitable for mediation namely, cases concerning matters of policy, and public interest issues, disputes on pure legal questions, or that require the declaratory function of the court, Where the use of mediation could involve the risk of violence; When one or more of the parties is emotionally or psychologically incapable of participating in the mediation, If participants have underhanded intentions for using the process, If resolution is only possible based on obfuscated factual or credibility findings; and when the conflict is about matters of principle and values, which are not open to negotiation.[61] Parties may not come to agreement however well-intentioned they are. The power imbalances may also not be ignored. The health care provider in medical negligence cases is often appearing more powerful than the patient who is an individual and yet the latter is an institution. According to Marnewick,[62] mediation falls short mainly on two grounds: one is that it is impossible to conduct if one or both parties are deceitful. The second is that in instances where one of the parties is non-compliant, enforcement becomes an issue, he suggests that an acknowledgement clause of the debt should be included however this might affect the already hard earned trust in the neutral mediator.[63] Another scholar Van Der Westhuizen[64] makes the argument that opposed to litigation, mediation does not create binding legal precedent to be followed in future cases with the similar facts this creates legal uncertainty.[65]

The advantages of mediation outweigh its shortfalls, the main significance of mediation is that it is collaborative rather than adversarial in nature therefore it is well-suited to healthcare disputes, communication, relationships and trust are an emphasis. Therefore, it solves more than the legal problem, it caters for the emotional needs of the victims as well and benefits all parties involved including the health care system at large.

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60 Varda Bondy and Maurice Doyle, *Mediation in Judicial Review: A Practical Handbook for Lawyers* (The Public Law Project 2011).

61 Ibid

62 Carel Marnewick, *Mediation Practice in the Magistrates' Court* (LexisNexis 2015).

63 Ibid

64 CS van der Westhuizen, 'The solution to demands made on parents' decision-making in the neonatal intensive care unit' (2015) 78(1) *Tydskrif vir Hedendaagse Romeins-Hollandse Reg* 63–79.

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3.1.3 Arbitration: Process and Significance

Arbitration is a process in which the parties to a dispute elect to have it adjudicated by an arbitrator who renders a final decision in the form of an award based on the evidence presented.[66] Arbitration is also defined to include an informal process of Dispute Resolution pursuant either to an arbitration agreement or specific rules of procedure under which their dispute may be referred for settlement.[67] Arbitration is a flexible mechanism, the parties may agree to present their cases with less rigid formalities, whatever is discussed is confidential and parties have often had resolutions faster as compared to traditional litigation.

Although they are both ADR mechanisms, arbitration has several differences from mediation. Under arbitration, there has to be an agreement between the parties that existed before or after the conflict arose, the parties have to appoint arbitrators who are experts in the medical field. The process is more formal and similar to traditional litigation.

The Arbitration process starts with the preliminary meeting where the procedures and the timelines are set by the parties, followed by the discovery where the arbitrators and the parties exchange notes and the arbitrator gets well conversant with the facts at hand. A hearing is held during which both parties present their arguments backed by evidence, the expert evidence is presented in matters that need expert proof before a final decision is made citing the reasons and the basis upon. Which the decision has been arrived at. The process is usually faster than litigation but slower compared to mediation.

The significance of arbitration for medical negligence patients is substantial. Firstly, there is an expert decision-maker, the arbitrator, who may have medical knowledge, leading to better understanding of the issues. The process takes less time as compared to when parties chose litigation. There is confidentiality in these proceedings and therefore the patients' medical records are not made public for court purposes. At times, the patients prefer a more formal and structured process arbitration delivers this without them having to go through the traditional court system. Decisions from arbitration matters are final and therefore guarantee a remedy and enforcement.

For healthcare providers, arbitration is significant since it allows them to be heard and understood by the expert that is the arbitrator with medical knowledge. This enables the parties to get informed judgement. Fairness is experienced by the health care providers since the

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66 Jonathan Brand, Felicity Steadman and Chris Todd, *Commercial Mediation: A User's Guide to Court-Referred and Voluntary Mediation in South Africa* (Juta & Co 2012).

67 Principles of Commercial Law by Kibaya Immana Laibuta

Arbitrator is an expert and the process follows rules and is structured. The finality helps healthcare providers move on with life and career rather than facing years of uncertainty. There is predictability because parties know the process and timeline in advance.

The significance of arbitration to the healthcare system is that the efficiency of arbitration reduces the burden on the already overloaded justice system since the medical negligence cases are referred there. Specialised dispute resolution may also be accessed. The arbitrator with both legal and medical knowledge improves the reasons and quality of the decisions made. Rather than having every dispute follow the traditional court system, it provides flexibility to achieve the needs of the parties instead of rigidity.

There are noticeable differences between arbitration and mediation. During arbitration, the arbitrator makes the decision like a judge while in mediation the mediator only facilitates the parties to come up with their own decision. The significance is that arbitration provides certainty of outcome, while mediation provides control and is more collaborative. The mechanisms have complementary roles, with mediation tried first and arbitration used if mediation fails.

Despite its significance, arbitration has limitations, that include; the costs of arbitration are higher compared to those of mediation, this makes it inaccessible to the poor hence unfair and lack of access to justice by the under privileged. Arbitration is majorly used by the wealthy in society for mainly confidentiality reasons.[68] It remains somewhat adversarial, though less so than litigation therefore may not guarantee building relationships between the patient and the health care provider. There is a limited right of appeal, which could be a problem if the award is unfair. Arbitration requires arbitrators with medical expertise, this may necessitate recruitment of experts hence increasing the costs to the parties.

The overall significance is that arbitration provides binding resolution with expertise and efficiency, making it a desirable mechanism when mediation fails. It is therefore the go between for the formal and rigid litigation and the informal and flexible mediation.

[68] Jonathan Brand, Felicity Steadman and Chris Todd, *Commercial Mediation: A User's Guide to Court-Referred and Voluntary Mediation in South Africa* (Juta & Co 2012).

3.2: International Evidence of ADR Significance

Article 12 of the International Covenant on Economic, Social, and Cultural Rights, which Uganda ratified, provides that the member states shall recognize the right of everyone to attain the highest form of physical and mental health[69]. ADR's role in transforming the resolution of medical negligence disputes around the world may not go unnoticed. Several countries have adopted this mechanism as a way of resolving the medical negligence disputes and it has proven to be effective. In a recent survey conducted by the European Hospital and Healthcare Federation, mediation was also widely used in health-care disputes in 10 European member states.[70]

3.2.1 The United Kingdom: NHS Resolution Model

The United Kingdom developed the NHS Resolution model, which is a comprehensive model with the National Health Service Litigation Authority (NHSLA) that handles medical negligence claims. Mediation is strongly encouraged before litigation. They have been asking the representative lawyers to consider mediation since 2000.[71] Free mediation services are available with specialized medical mediators who understand both the legal and medical aspects of disputes.

This system has demonstrated remarkable significance according to statistical evidence. According to the UK parliament litigation reform report,[72] the settlement rate through mediation is 70% to 80%, meaning the vast majority of cases resolve without litigation. The average time to resolution is nine months, compared to the three to five years required for litigation. It has saved parties so much on the cost of an estimated £ 100 million annually as was documented by the report[73]. Patients also reported their satisfaction with this system as 85% after having a positive experience with the system[74].

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[69] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR) art 12.

[70] HOPE—European Hospital and Healthcare Federation. Mediation in healthcare. Available from: http://www. hope.be/05eventsandpublications/docpublications/ 91_mediation/91_HOPE_Publication-Mediation_December_2012.pdf. Accessed 19 May 2015.

[71] Chief Medical Officer. Making amends: a consultation paper setting out proposals for reforming the approach to clinical negligence in the NHS. UK: Department of Health; 2003.

[72] Ibid

[73] UK Parliament, *Clinical Negligence and NHS Litigation Reform* (House of Commons Health Committee, HC 114 2019).

[74] Ibid

This data may only lead to the conclusion that evidently, the system works mediation is preferred by the majority of parties involved in medical negligence disputes, and when implemented effectively, mediation saves costs, resources remain to be used within the health care system, since they are not diverted to litigation. The high rate of satisfaction with the experience also shows that the parties prefer ADR to the traditional system when they are given an opportunity.

The NHS Resolution model has been successful and this may be attributed to institutional support. The organizational commitment to ADR is at very high levels. The mediators are trained in not just the legal but also the medical field hence facilitate this process with sufficient knowledge to run the mediation. There are trained mediators who are specialists in medical negligence, not just general mediators. The system ensures that they intervene and encourage mediation as soon as the claim is made before the aggrieved party opts for litigation[75]. The culture change from "deny and defend" to open disclosure[76], acknowledging errors and learning from them has also been of great help in ensuring the success of this medical negligence dispute resolution model.

Uganda, may learn several lessons from this system. Uganda should establish an early intervention mechanism to encourage mediation; an institutional framework and trained mediators are essential to the successful implementation of alternative dispute resolution mechanisms in resolving medical negligence cases. Uganda must develop similar institutional support and training programs to enjoy the benefits that come with a functional ADR system.

3.2.2 New Zealand: No-Fault Compensation System

New Zealand is another country that has put an ADR mechanism in place to resolve medical negligence disputes, their system is radical in that, it's a no-fault system, one gets compensation without proving medical negligence, in a sense, there is no litigation at all. It is known as the Accident Compensation Corporation (ACC). There is no need to prove negligence[77]; automatic compensation is provided for medical injury. There is no litigation in the traditional sense.

This system has been remarkably beneficial to them. There is timely compensation in a matter of months, the health care providers are so much focused on learning and making sure their mistakes are not repeated since it's a no-blame system, there is no defensive medicine, doctors practice without fear of litigation. Public confidence in the health care system is astronomical[78].

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75 NHS Resolution, *ADR and Mediation in Clinical Claims* (NHS Resolution 2022).

76 Joanna Manning, 'Mediation of Medical Negligence Claims: An NHS Perspective' (2018) 26 *Medical Law Review* 203, 210.

77 Accident Compensation Corporation, *Treatment Injury and Patient Safety* (ACC NZ 2020).

78 Stephen Todd, 'Treatment Injury in New Zealand' (2017) 25 *Torts Law Journal* 189, 195.

This is evidence that the speed with which these disputes are resolved is as important as the compensation itself. What this shows is that speed matters enormously. Patients require immediate relief and access to justice, the health care providers are able to acknowledge and learn from their mistakes which enables them to learn and improve the health care system.

The significance of this approach is that it represents a fundamentally different paradigm from fault-based litigation systems. However, there are limitations. The system is very expensive and requires substantial government funding that Uganda may not be able to provide.

Well, as Uganda may not be able to afford running this system because of its cost implications, it should learn that making the resolution of medical negligence disputes less adversarial is very advantageous to the patients, the health care providers and the health care system at large. Uganda may adopt elements of this approach, such as reducing adversarial processes, even without full no-fault compensation.

3.2.3 Australia: Mandatory Mediation

Australia has implemented mandatory mediation in most states. This system has compelled all the medical negligence disputes to go through mediation first before going into the traditional courtroom litigation. Mandatory mediation has proven effective in resolving medical negligence disputes, with a majority of claims settled before proceeding to trial[79]. This has resulted in 70% of cases being successfully mediated, avoiding court proceedings. This is a great achievement in a sense that it provides timely access to justice for the parties.

This system has proved to be of great significance in the resolution of these disputes, it reveals that when parties are forced to mediate, it comes with several merits: the genuine cases are resolved while the frivolous ones are sieved out. "Early compulsory mediation filters out unmeritorious claims while enabling genuine disputes to be resolved efficiently and at lower cost."[80] This enables timely resolution and cost saving, the resources are allocated to the health care system and the courts have time to resolve other cases.

One lesson Uganda may draw from this, is that making mediation a mandatory requirement could be a significant policy choice. Instead of making ADR optional, requiring parties to mediate may have a significant impact on the justice system, which is already overburdened, and enable the parties to enjoy the benefits of ADR. One would say that Uganda has tried to implement mandatory mediation by requiring parties to a dispute to always file mediation summary while filing civil suits,[81] However, such approach means that one has to be filing a suit,

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[79] Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System* (ALRC Report No 89, 2000).

[80] Harold Luntz and David Hambly, *Torts: Cases and Commentary* (8th edn, LexisNexis 2017) 734.

[81] The Judicature (Mediation)Rules, 2013, (Under section 41 of the Judicature Act Cap 13.)

not considering ADR as the only form of dispute settlement in such circumstances but a try to amicable settlement, failure of which, the matter continues in the traditional courts. What Uganda should advocate for, is to make ADR mandatory, more so, on medical negligence cases to avoid the lengthy and costly procedure of first filing a case in court, accompanying court documents with mediation summary which never come to fruition.

3.2.4 United States: Mixed Experience

The United States has what I would call a cocktail approach to how the medical negligence disputes are resolved, different states have incorporated different strategies, some have mandatory arbitration, which the patients complain about as unfair, other states have set up medical review panels that look into the medical negligence dispute to tell whether it is suitable for litigation or may be resolved by other mechanisms, voluntary mediation is also applied in other states as they have government funded programs, since the mechanisms and policies differ, so do the results.

What Uganda may learn from this *cocktail* approach is that, Patients consistently express a preference for voluntary mediation over mandatory arbitration, citing concerns over fairness and power imbalance.[82] In general, patients prefer voluntary mediation to mandatory arbitration because of the power dynamics involved. It's also evident that the timing matters, early intervention is better so as to resolve matters before they escalate. Uganda should also learn that one size doesn't fit all; different disputes and parties have different preferences, therefore all circumstances may be approached accordingly.

3.2.5 Synthesis of International Evidence

"Across jurisdictions, alternative dispute resolution consistently outperforms litigation in speed, cost efficiency, and participant satisfaction when supported institutionally.[83] Common findings across these international examples in different jurisdictions are that ADR is significantly more efficient than litigation, it cuts the time and costs substantially. When ADR is well implemented, the rates of success are high over 70% as seen in most of the jurisdictions. Proper ADR processes lead to proper customer satisfaction. However, to be implemented effectively, ADR mechanisms require institutional support and trained practitioners who understand both medical and legal

[82] Institute of Medicine, *Medical Liability and Patient Safety* (National Academies Press 2011) 45.

[83] Marc Stauch, *The Law of Medical Negligence in England and Germany* (Hart Publishing 2008) 312.

issues. Patient protections are essential to ensure fairness and to prevent powerful healthcare institutions from exploiting vulnerable patients. Cultural support is needed for success; ADR must align with local values and expectations.

With this evidence from the international stage, Uganda may surely learn that ADR is the way to go to solve several challenges that are facing the resolution of medical negligence cases. The different approaches may be adopted while tailoring them to the Ugandan experience.

3.3: The Specific Significance of ADR Mechanisms

Alternative dispute resolution is significant in several dimensions and aspects. This section delves into a discussion of how ADR and its significance apply in these aspects.

3.3.1 Significance for Access to Justice

Access to justice requires mechanisms that are affordable, timely, and responsive to the needs of ordinary citizens.[84] Alternative Dispute Resolution plays a big role in enabling access to justice for all, it is for a fact that it is more affordable due to lower costs than litigation, meaning that even the poor will be able to seek justice, those who are intimidated by the courts of law may mediate within their community without having to travel long distances to courts in search for justice. The timely resolution of disputes by ADR ensures that justice is not denied. Therefore, when the underprivileged may also access justice, and the system serves everyone rather than fails some.

3.3.2 Significance for Quality of Outcomes

When Alternative dispute resolution mechanisms are employed, better outcomes are achieved. Traditional Litigation focuses majorly on obtaining monetary damages, while ADR focuses on acknowledgment of the errors done by the medical personnel or institution, offering an explanation, a sincere apology, and assurance that the same will not happen to others at the same facility, and yet Patients frequently seek explanations and apologies rather than financial compensation alone.[85] The patient's actual needs are addressed in addition to the monetary compensation.

Under ADR, in arbitration, decision-makers have medical expertise, unlike generalist judges, who rely on experts. This leads to a more accurate assessment of breach and causation. There is procedural justice because ADR affords parties a voice and enables active participation. In litigation, lawyers represent patients and speak, while patients or victims are passive. ADR offers the parties an opportunity to be hands-on and to obtain a solution tailored to their needs. The

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84 Mauro Cappelletti and Bryant Garth, *Access to Justice* (Sijthoff 1978) 8.

85 Charles Vincent, *Patient Safety* (2nd edn, Wiley-Blackwell 2010) 182.

concept of procedural fairness requires that justice should be seen as done, not just done, but must be seen as being done.

3.3.3 Significance for Healthcare Relationships

Mediation preserves therapeutic relationships by reducing hostility and enabling continued care.[86] The less adversarial nature of ADR permits the preservation of the patient-doctor relationship. Where need be, patients may keep getting treatment from the same hospital. This serves great for rural areas where the hospitals are limited, and the patients don't have alternatives. Litigation literally destroys this kind of relationship because of its adversarial nature.

Similarly, professionals are able to keep working together as colleagues because during ADR, confidentiality is prioritized and colleagues are not drawn into disputes to testify against each other. Therefore, it improves collaboration, which in turn improves the health care system.

ADR reinforces the community's trust in healthcare and public confidence. Because it is fair and accessible, the public gains confidence and perceives it as fair. That's how ADR builds trust in the healthcare system. Perceived injustice damages trust in the healthcare system. Fair and accessible dispute resolution builds trust. The significance lies in the fact that public health depends on trust in the healthcare system.

3.3.4 Significance for System Learning and Quality Improvement

When ADR mechanisms are being used to resolve medical negligence disputes, because of the safe space created that is less adversarial, the healthcare providers find it okay to acknowledge their mistakes, because the non-adversarial resolution systems promote disclosure of errors and facilitate systemic learning.[87] this is a crucial part of system improvement, unlike litigation where they are defensive and hit all evidence linking them to the medical negligence, under ADR, they recognize their mistakes and work on improving them, this creates better systems in the future like new verification procedures during surgery and labelling of the medicines that are dispensed. This shows how ADR may cause a significant change to not only the patients but the entire system.

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86 Jonathan Herring, *Medical Law and Ethics* (9th edn, OUP 2022) 146.

87 Lucian Leape, 'Error in Medicine' (1994) 272 *JAMA* 1851, 1854.

3.3.5 Significance for the Healthcare Workforce

Healthcare service providers benefit from alternative dispute mechanisms in different ways. They are less afraid to handle risky procedures because adversarial litigation will not be applied, and they do not order unnecessary tests that increase patients' bills. Fear of litigation contributes significantly to defensive medical practice, increasing costs and reducing the quality of care. This leads to unnecessary tests and procedures, which increase patients' bills. ADR in Medical negligence cases, ensures that patients receive the care they need, hence improving the quality of care rendered.

ADR promotes Professional well-being by a timely resolution of disputes, which reduces stress and anxiety for healthcare providers. There is an opportunity to explain, which provides psychological benefit to the professional who committed the error. The significance lies in a healthier workforce and improved patient care.

Additionally, brain drain is reduced, and workforce retention improves through fair dispute resolution, thereby making medical practice more appealing. Healthcare providers are more inclined to remain in their jurisdictions than to move to jurisdictions with better policies. This is particularly crucial for retaining specialists. It helps address the serious brain drain issue in Uganda. Effective ADR systems may assist Uganda in keeping its essential medical professionals.

3.3.6 Cultural Significance.

African justice traditions emphasize reconciliation, restoration, and communal harmony over adversarial adjudication.[88]ADR resonates with Ugandan cultural values, particularly those derived from Ubuntu philosophy. Traditional Africa dispute resolution prioritized reconciliation and community harmony over individual victory, favoring restoration rather than punishment. This cultural congruence makes ADR not only appropriate but also more effective and acceptable as a form of justice.

ADR emphasizes respect for authority through its processes. Mediation involves respected elders and mediators to help reach agreements, while arbitration offers expert judgments when parties require a third-party decision. The process tends to be less confrontational than litigation. Its importance stems from how well it aligns with the cultural values of Ubuntu and respect for community elders.

Family and community involvement are possible with ADR. Families may participate in the process. Community perspectives may be heard. There is a holistic approach to healing rather

[88] Joe Osei-Hwedie and Albert Osei-Hwedie, 'Ubuntu and Restorative Justice' (2017) 30 *Afrimay Journal of Conflict Resolution* 25, 29.

than just individual compensation. The significance lies in ADR's capacity to address the broader impact of medical harm on families and communities.

In a nutshell, ADR is significant in the access to justice, the quality of the outcome, and the economic and cultural aspects. It is therefore multidimensional, affecting individuals, the healthcare system, the justice system, and society. ADR may transform the resolution of medical negligence disputes in Uganda.

CHAPTER 4

ALTERNATIVE DISPUTE RESOLUTION IN UGANDA'S CONTEXT - CURRENT STATE AND POTENTIAL ROLE

This chapter, in light of what has already been discussed in the previous chapters, examines what already exists to determine what is missing, and sets out what could be included to maximize the potential of alternative dispute resolution in Uganda's medical negligence disputes.

4.1: Current Legal Framework for ADR in Uganda

4.1.1 Constitutional Foundation

Alternative Dispute Resolution has a strong foundation in the Constitution of Uganda. The Constitution of Uganda provides that, while adjudicating cases of both a civil and a criminal nature, the courts shall, subject to the law, apply the following principles[89]: Justice shall be done to all, irrespective of their social or economic status[90]; justice shall not be delayed;[91] adequate compensation shall be awarded to victims of wrongs[92]; reconciliation between parties shall be promoted[93]; and substantive justice shall be administered without undue regard to technicalities.[94] These principles align with the principles of Alternative dispute resolution. As seen in the previous chapter, ADR lowers the cost of resolving conflicts, it may be practiced within the community without having to move long distances to courts of law, which makes it accessible to all regardless of their social or economic status, ADR is timely, it sets the unlike traditional litigation processes. Under ADR, disputes may be resolved within months instead of years that litigation takes. This ensures that justice is not delayed, more still, ADR ensures that the victims are compensated as one of the remedies it offers. Additionally, ADR mechanisms, especially mediation, negotiations, and conciliation, are collaborative and not adversarial which promotes reconciliation of the parties. The procedural flexibility that ADR mechanisms offer enables the administration of justice without prioritizing the technicalities. These principles in the constitution are the pillars on which ADR stands, and it delivers on all of them. This strongly suggests that the framers of the Ugandan constitution had ADR in mind during the drafting process. It also shows the strong foundation of ADR in Uganda.

This is important for medical negligence disputes, as this Article applies to them and aligns with the principles of ADR.

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89 The Constitution of the Republic of Uganda, 1995 art 126(2).
90 Ibid art 126(2)(a).
91 Ibid art 126(2)(b)
92 Ibid art 126(2)(c)
93 Ibid art 126(2)(d)
94 Ibid art 126(2)(e)

4.1.2 Arbitration and Conciliation Act (Cap 5)

One of the ADR mechanisms is Arbitration. Uganda enacted the Arbitration and Conciliation Act[95], which provides the legal framework for arbitration. The key provisions are that Section 1 applies to any dispute that the parties may settle by agreement.[96] It is based on the UNCITRAL Model Law, thereby adhering to international standards. An arbitration agreement must be in writing to be valid.

The broad scope of this provision covers its application to medical negligence disputes, arbitration may currently be used as a mechanism to resolve medical negligence disputes in Uganda. Therefore, a significant aspect of medical negligence is that the broad scope suggests medical negligence disputes are arbitrable. International standards provide credibility. It also means that arbitration decisions may be enforced in courts where necessary.

However, the Act has no specific provisions for medical cases. The Act further lacks provisions requiring medical expertise among arbitrators. The Act is silent about patient protection. Additionally, there are no specific guidelines for medical arbitration. The Act currently, only provides a general scope that may be used to adjudicate medical negligence disputes, with nothing specific in that role. It has significant potential and could be a useful tool if amended to include provisions tailored to the arbitration of medical negligence disputes.

4.1.3 Civil Procedure Rules: Order 8A Court-Annexed Mediation

This law allows courts to voluntarily refer cases for mediation at their discretion. The Civil Procedure Rules sets out this process in Order 8A[97], which governs court-annexed mediation. Key points include; that courts may direct civil cases to mediation, with mediators accredited or through judge-led sessions. Confidentiality is observed. The settlement only becomes a consent judgment after it has been approved by the court[98].

In medical negligence disputes, this provision is applicable; however, the parties and courts rarely invoke it. It is significant in that it reduces costs for the parties, and once the settlement has been reached, the courts formalize it as a consent judgment. The fact remains that it has not been used enough in medical negligence disputes in Uganda.

Several gaps exist; however, the lack of specialized medical mediators is acknowledged as a gap: the parties are unaware of the mediation and arbitration provisions and therefore don't invoke them. In addition, there are no specific procedures for mediating or arbitrating medical negligence disputes.

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95 Arbitration and Conciliation Act Cap 5 (Uganda) s 2.
96 Ibid s 3.
97 Civil Procedure Rules, SI 71-1 (Uganda).
98 Ibid

This provision has great potential if implemented and refined into specific guidelines; medical negligence mediators and arbitrators may be trained, and judges may be sensitized to refer matters to mediation and arbitration. Additionally, medical mediation and arbitration guidelines should be established, and the public should be informed of the option.

4.1.4 Medical and Dental Practitioners Act (Cap 272)

The Medical and Dental Practitioners Act[99] regulates and disciplines medical and dental practitioners. It establishes the Uganda Medical and Dental Practitioners Council[100] (UMDPC) and provides for disciplinary hearings for professional misconduct.[101]

In this law, the civil negligence claims are currently separate from civil disputes. Patients may submit complaints to the UMDPC, but the UMDPC's findings do not establish civil liability. The UMDPC framework does not include an alternative dispute resolution (ADR) mechanism that may be used to resolve medical negligence disputes.

There is significant potential for the UMDPC to administer medical dispute mediation and arbitration and maintain a roster of medical mediators and arbitrators, integrating professional discipline with civil ADR. Medical expertise may also be provided by the same council for dispute resolution. In sum, UMDPC has medical expertise and professional credibility and could play a significant role in an ADR system.

4.1.5 Summary of Current Framework

In summary, the current framework has strengths and weaknesses that are not conducive to its functionality.

ADR has a strong foundation in the Ugandan constitution. Article 126 of the 1995 Constitution sets out five principles consistent with ADR. Furthermore, Uganda has adopted international principles through the Arbitration and Conciliation Act. Other areas of law in Uganda, such as civil litigation and corporate and commercial law, have already incorporated ADR into their dispute resolution. This shows that it may also be applied to medical negligence disputes.

4.2: Barriers to ADR's Role in Medical Negligence

[99] Medical and Dental Practitioners Act Cap 272 (Uganda), The Pharmacy and Drugs Act, Cap 280, The Nurses and Midwives Act, Cap 274 (it should be noted that the two additional Acts do not mention any ADR mechanisms)

[100] Ibid Section 2

[101] Ibid Section 33

There are several reasons why ADR is not a prominent means of resolving medical negligence disputes and why ADR has not achieved its potential in Uganda. To answer this question and address the problem, one must understand the nature of these barriers.

Absence of capacity and training infrastructure is the first problem. Effective mediation depends heavily on the training, accreditation, and continuing development of mediators.[102] However, in Uganda, there are no programs that provide continuous training for medical mediators and arbitrators. Therefore, no training in ADR medical skills is available; as a result, there is no list of medical mediators and arbitrators to whom one may be referred for assistance in medical negligence cases. The requirements for continuing legal education in Uganda do not include training in medical negligence. This has led to a scarcity of qualified practitioners, even when parties resort to ADR in medical negligence disputes.

Furthermore, there is a lack of awareness among the patients and the entire public about ADR in medical negligence cases, and some of the lawyers are not sure about the applicability of these provisions in the actual justice system in Uganda; the health care providers don't have communication skills and are unaware of ADR. Additionally, the public is largely unaware of ADR options; therefore, when medical disputes arise, the parties involved tend to resolve them only through traditional litigation in courtrooms.

There is a lack of institutional support: Uganda lacks a dedicated institution to handle medical ADR. Specific procedures for medical negligence disputes are still not available. ADR programs are not funded, and there is no coordination among stakeholders; if the working-together words are the judiciary, the Medical Council, and the health facilities, they are not coordinating to resolve these issues. This has left ADR underutilized, especially in medical negligence cases.

In addition, there is a problem of unfairness and power imbalances: "Without safeguards, mediation and arbitration risks reproducing existing power imbalances rather than correcting them"[103]. Patients who are supposed to use the ADR mechanisms fear being pressured and intimidated by healthcare institutions. There is no clear protection for the vulnerable; this is a deterrent for both patients and their legal representatives, leading them to resort to traditional litigation out of fear of unfairness.

The Ugandan justice system is effectively hard-wired to revolve around a deny-and-defend culture[104]; litigation is regarded as the only appropriate course by lawyers, who are primarily trained to litigate. In such an adversarial environment, healthcare providers are reluctant to admit

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102 Carel Marnewick, *Mediation Practice in the Magistrates' Court* (LexisNexis 2015) 42.

103 Varda Bondy and Maurice Doyle, *Mediation in Judicial Review: A Practical Handbook for Lawyers* (Public Law Project 2011) 67.

104 Jonathan Herring, *Medical Law and Ethics* (9th edn, OUP 2022) 141.

or acknowledge any wrongdoing, as it will be used against them by lawyers trained to be adversarial. This makes the parties resort to litigation even for cases that require ADR.

Another barrier is the isolation of ADR, looking at it as an independent mechanism of resolving disputes, the costs are not covered by medical insurance, while the Healthcare facilities don't have any arrangements for it in place., the Uganda Medical and Dental Practitioners, the nurses and midwives, the pharmacists Council's disciplinary system is separate from civil dispute resolution. With all this, ADR has been left isolated and is not a sought-after mechanism of resolving medical negligence disputes when they arise.

4.3: Recommendations for Enhancing ADR's Role

Based on the analysis above, this study makes a series of recommendations that, if implemented, will improve the role of ADR in resolving the medical negligence disputes in Uganda.

To begin with, the establishment of a dedicated Medical Dispute Resolution Center. With a sole purpose of providing coordination and quality control for Medical ADR, this center would establish and enforce standards for petitioners, be the venue for where the arbitration hearings and mediations take place, and improve the framework. This center would conduct research through data collection and publication of reports, make recommendations to improve the role of ADR in medical negligence disputes, on top of that, the center would have to keep and maintain a roster of qualified medical arbitrators, mediators and experts in the other ADR in medical negligence.

Development of comprehensive training programs. These programs should be systematically designed to train medical mediators and arbitrators in both ADR techniques and medical knowledge. The medical arbitrators and mediators should be taken through an accreditation program and later certified after fulfilling the requirements, in order to prepare future doctors, the training should be extended to the medical schools as part of their curriculum. During the continuous legal education programs, the lawyers and judges should also be taught ADR in medical negligence cases techniques and shown instructions in evaluating expert evidence. These training programs will support capacity building among stakeholders to ensure effective implementation of ADR in medical negligence cases.

Another recommendation is to create massive public awareness and education campaigns. ADR in medical negligence cases is supposed to be used by the general public to enable them access justice. In order to do that, the public must first of all know that ADR in medical negligence exists as an option, and it's their right to access it. This should be delivered through radio, television, posters, and community engagement at the village level, and the message should be translated into several languages, including sign language. Another awareness promotion strategy is to partner with local leaders to disseminate the message. Lawyers should offer

medical negligence legal aid to underprivileged patients for ADR proceedings, and this should be done through the Uganda Law Society. This will make ADR accessible to all Ugandans regardless of their social or economic standing.

Furthermore, safeguards should be implemented for patients during ADR proceedings. In order to ensure fairness during the ADR process, the mediators and arbitrators should be regulated so that they may conduct the proceeding ethically, legal representation should be allowed and facilitated where the patient is unable to afford the fees, and the settlements should be reviewed to ensure that the patient has gotten justice and not suppressed because of unfair power dynamics.

Additionally, medical negligence ADR should be integrated into Uganda's mainstream justice system.[105] In order to bring ADR up to speed with traditional litigation and improve its role, it may not afford to be looked at as an isolated mechanism. The courts should regularly refer medical disputes to ADR before trial commences, and the disciplinary framework of the Nurses and Midwives, the Pharmacists, the Uganda Medical and Dental Practitioners Council should include ADR as one of the means of resolving such disputes. This will make ADR part of the mainstream mechanisms in medical dispute resolution.

Specific legislation on ADR in medical negligence should be enacted[106]. A medical negligence Disputes Resolution Act, should be enacted to provide for the training and accreditation of medical ADR officers, patient protection safeguards, and an institutional framework. The legislation should also set out the specific ADR procedures for resolving medical negligence disputes, provide for funding, and explain how ADR may be integrated into the existing mainstream justice system. The significance of specific legislation is that it provides legal clarity and authority for the entire medical negligence ADR system.

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[105] Jonathan Brand, Felicity Steadman and Chris Todd, *Commercial Mediation: A User's Guide to Court-Referred and Voluntary Mediation in South Africa* (Juta 2012) 15**.**

[106] Danny WH Lee and Paul BS Lai, 'The practice of mediation to resolve clinical, bioethical, and medical malpractice disputes' (2015) 21 *Hong Kong Medical Journal* 560, 563.

CHAPTER 5

SUMMARY OF FINDINGS AND CONCLUSION.

This chapter summarizes the findings and conclusions and presents final recommendations based on the research.

5.1: Summary of Findings

The research examines the efficacy and the significance of ADR mechanisms in resolving medical negligence disputes in Uganda. The study found that medical negligence disputes require a specialized mechanism to resolve them because they have unique dynamics. The patients not only need compensation but also closure, acknowledgment, and an explanation of what really happened. On the other hand, healthcare providers need a safe, confidential space where they may acknowledge their mistakes and learn from them, ensure fairness in the process of punishment, and maintain public trust in the healthcare system. The special nature of these medical negligence disputes, involves that the victims are already emotionally charged, there is an information imbalance, the health care providers have more information than the patients, and there is an ongoing relationship between the health care provider and the patient; therefore, these kinds of disputes require specialized dispute resolution mechanisms.

Furthermore, the study also made a comparative analysis of the significance of ADR mechanisms in medical negligence cases as compared to traditional litigation. It was found that ADR mechanisms enable parties to resolve the dispute in the shortest time possible, they are timely, the disputes are resolved in a matter of months unlike the years that are taken under litigation to resolve matters. This is beneficial for both parties. The other merits that ADR has over traditional litigation are confidentiality, affordability, and the fact that the ADR mechanisms are less adversarial, therefore maintain patient doctor relationships and also maintain the public trust in the healthcare system. These mechanisms are flexible and as discussed, they offer more than the monetary compensation but also other needs of the parties.

In addition, the study examined what role ADR may play in improving medical negligence dispute resolution in Uganda. The findings are that ADR may increase the efficiency with which medical negligence cases are determined in Uganda. The cost of resolving disputes may be reduced, hence making justice accessible for all regardless of their financial standing. Experts may weigh in on the resolution of medical disputes to provide more accurate decisions. ADR mechanisms are less adversarial and therefore may maintain relationships between the parties, hence the patients may keep using the limited number of health care centres available, especially in Uganda, and it further promotes learning and improvement of the health care system.

More to the above, the research looked at the current legal framework governing medical negligence and ADR in Uganda. The research found that the Constitution, particularly Article 126, supports the use of ADR, and common law negligence principles apply under tort law, and the same tenets of negligence as stated by Lord Atkinson in Donoghue vs Stevenson apply to medical negligence disputes. The Arbitration and Conciliation Act, provides a framework for arbitration, negotiation and conciliation. The Civil Procedure Rules, particularly Order 8A, provide for court-annexed mediation, Article 33 of the UN Charter that Uganda is a party to, provides for all forms of ADR. However, no specific medical negligence ADR law has been established, which is a significant gap.

The research further discusses the barriers hindering the implementation of ADR for medical negligence in Uganda. Firstly, there is no proper legal framework to cater for ADR in medical negligence disputes. Many Ugandans are not aware of the option of using ADR in medical negligence disputes. There is a lack of trained, accredited personnel to handle mediation and arbitration of medical negligence disputes. ADR in Uganda is treated as an isolated mechanism and not integrated into the mainstream justice system as it should be; these are some of the barriers that the study analyzed.

Finally, the study made recommendations on what should be done to improve medical negligence dispute resolution in Uganda. The recommendations included enacting a Medical Negligence Disputes Resolution Act, to streamline and guide how the whole system should run, the establishment of a Medical Dispute Resolution Center as a dedicated institution that may train, be the venue, and the research hub for ADR in medical disputes. The training of key stakeholders, including mediators, arbitrators, healthcare providers, and lawyers. The study further recommended funding of legal aid to ensure access for poor patients, and public education campaigns to sensitize the public about ADR options in medical negligence cases.

5.2: Conclusion

In a nutshell, the study found that Alternative Dispute Resolution is an effective way of resolving medical negligence disputes and has several significant roles it may play in the Ugandan justice system when it comes to Medical Negligence disputes. It is faster, cheaper and more appropriate to use in health care disputes, and may greatly serve both patients and the health care providers.

The 1995 Constitution lays a strong foundation in Article 126 for ADR since its shares the same principles. This may be used as a starting basis to build on the already existing efforts and make ADR in medical negligence cases part of the main stream, since the Ugandan justice system currently faces large backlog of cases, ADR in medical negligence may help reduce that burden, as other cases are to be heard in court.

Just like other countries have been able to resolve most of the medical negligence disputes using ADR, Uganda may borrow a leaf and this will be effective since the evidence already exists from countries like the United Kingdom, New Zealand, and Australia where ADR resolves seventy to eighty percent of medical negligence disputes.

Therefore, this research calls upon Uganda to urgently implement a comprehensive ADR framework for medical negligence. This will significantly boost access to justice, reduce the burden on the courts of law, and it will demonstrate accountability and boost public confidence in the healthcare and justice system in Uganda.

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