ALTERNATIVE DISPUTE RESOLUTION (ADR) AND MANAGEMENT OF COMMERCIAL CONFLICTS: A CASE OF THE HIGH COURT COMMERCIAL DIVISION OF UGANDA

A POSTGRADUATE DISSERTATION PRESENTED TO THE FACULTY OF BUSINESS ADMINISTRATION AND MANAGEMENT AS PARTIAL FULFILLMENT OF

THE REQUIREMENTS FOR THE AWARD OF MASTER OF BUSINESS ADMINISTRATION AND MANAGEMENT OF

UGANDA MARTYRS UNIVERSITY

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2014-M102-20106

JUNE, 2016

LIST OF FIGURES

LIST OF TABLES

LIST OF ABBREVIATIONS

ADR	Alternative Dispute Resolution
CADER	Centre for Alternative Dispute Resolution
CCAS	Computerized Case Administration System
CAP	Chapter
UNITAR	The United Nations Institute for Training and Research
USA	United States of America
UNDP	United Nations Development Programme
UN	United Nations Charter

TABLE OF CONTENTS

ABSTRACT

This research was carried out to assess the extent to which Alternative Dispute Resolution (ADR) methods are applied in management of Commercial Conflicts in Uganda. Litigants, especially business minded people want their issues resolved as rapidly and as cheaply as possible. This study aimed at evaluating the effectiveness of ADR as a tool for management, to manage commercial conflicts and commercial relationships. The objectives were to determine the effect of Mediation, Arbitration, Negotiation, and Conciliation on determination of Commercial conflicts at the High Court Commercial Division.

In this study, questionnaires were utilised to gather information from 110 respondents and semi-structured questionnaires were used to collect perspectives. The study briefly details the various techniques of the ADR process and provides insight into application of the select forms of ADR in resolving commercial conflicts. Additionally, data collected from the respondents is presented and discussed in form of quotations and narrative themes as per respondents' views in regard to each objective of the study.

Findings of this study revealed that usage of ADR methods was lesser compared formal litigation. Mediation and negotiation are the most prevalent choices of ADR techniques applied to commercial conflict resolution and that ADR as an approach saves the businessman's time and money. Mediation influences the outcomes in commercial disputes at 60.3 %, Negotiation by at least 43.2%, Arbitration at 23.9% and Conciliation by 12.5%. Further findings revealed that the ineffectiveness incorporated into current ADR system act as barriers to its optimal use by legal practitioners. To an extent, these barriers include perceptions by the litigants who are un aware or unwilling to enter into ADR, the resistance by opposing counsel and the fact that ADR is not confined to legal rules and nor does it provide for corrective measures like appeal.

Improvements are recommended for development of ADR to achieve effective settlements which lead to increase the usage of ADR. This study concludes that the ADR methods introduce relatively less formal methods of conflict resolution; introduce consensual problem solving and are cost effective. The use of ADR has taken hold, though there is need to have a comprehensive policy framework.

CHAPTER ONE:

GENERAL INTRODUCTION

1.0 INTRODUCTION

Conflict results from human interaction (Lederach, 1995). Conflict can be described as a condition in which an identifiable group of human beings whether tribal, ethnic, linguistic, religious, socio-political, economic, cultural or otherwise is in conscious opposition to one or more other identifiable human group because these groups are pursuing what are considered to be incompatible goals (Lederach, 1995; Ajayi & Buhari 2014).

Conflict management in general and conflict resolution in particular are determined by understanding of the root causes and nature of a conflict; and not only by its symptoms (Kotze, 2000). Hence the essence of conflict settlement and conflict resolution is to remove the root-causes of the conflict; reconcile the conflicting parties genuinely; to preserve and ensure harmony, and make those involved in the resolved conflict happy and be at peace with each other again (Ajayi & Buhari 2014).

Mayer (2000) notes that the legal system provides a necessary structure for the resolution of conflicts. Many disputes lend themselves to resolution through non-adversarial approaches, such as alternative dispute resolution (ADR) before resorting to the legal system (Mayer, 2000). Ultimately, if there is need for an externally-structured conflict resolution process, parties turn to the legal system. Ideally, therefore most ADR would reside outside the legal system, not as an annex to it. Even after a dispute enters the legal system, ADR is applied within the structured legal system as a mechanism to the adversarial system of the courts.

ADR is defined as any process or procedure of settling conflict other than adjudication by a presiding judge in court (Rozdieczer & Alvarez de la Campa, 2006). Curran (2011) quotes

Abraham Lincoln who more than 150 years ago employed and advocated for tools that are subsumed today under the phrase ADR is quoted thus: -

> *… "Discourage litigation. Persuade your neighbours to compromise whenever you can. Point out to them how the nominal winner is often a real loser - in fees, expenses, and waste of time…"* (*Abraham Lincoln 1850).*

The concept of ADR sums up the need for and benefits of expediting resolution of differences. Stipanowich (1993) refers to ADR as a range of voluntary, negotiation-based processes in which representatives of the parties to a conflict or potential dispute meet together for mutual problem-solving, with the goal of achieving a mutually acceptable solution without resorting to litigation which has been noted by some legal observers as time consuming. Roberts (1983) notes that the parties mutually agree, without the intervention of any third party; the parties retain control over the process, the content and the outcome.

Nolan-Haley (2006) writes that parties engage in ADR process without prejudice to their legal rights or any subsequent conflict resolution process. By pursuing an ADR procedure, disputants do not give up their right to pursue the conventional conflict resolution channel that they would otherwise have entered. Any agreement reached is not legally binding on either party. This enables parties to work collaboratively to resolve a conflict without forfeiting their right to go to court if the agreement does not resolve the issues of dispute.

Conflict resolution provides an opportunity to interact with the parties concerned, with the hope of at least reducing the scope, intensity and effects of conflicts. Lieberman and Henry (1986) argue that the key objectives of ADR are to permit legal and potentially contentious disputes to be resolved outside the Courts for the benefit of all disputants. Goldsmith, et al. (2006) contend that ADR aims at providing an alternative that would be more effective from a cost and time

perspective. According to Mose & Kleiner (1999) litigation costs means time, emotional wear-and-tear; financial expenses and partner relationships. The general objective of the ADR is to settle a conflict in an amicable way and cut off potential litigation costs to litigants and businesses by setting aside the possibility of adjudication. ADR also reduces the delays to which a conflict is ordinarily subject.

The World Bank Annual Report (2010) shows growth of modern Commercial ADR worldwide, driven not by mainstream civil justice system reform but by businesses themselves seeking commercially focused, business-based solutions. The World Bank Doing Business Report (2011) noted that businesses worldwide continued to face challenges as a result of the global financial crisis and one of their concerns was recovering losses fast. A number of conflicts involving property, supply contracts and banking transactions ended up in Courts congesting the Court systems. The World Bank Doing Business Report (2011) also noted that for some economies, there was need to come up with new solutions, to improve the workings of their Courts such as, creating specialized Courts and alternatives to conflict resolution.

Tanzi & Howell (2001) state that Uganda like other developing countries, has limited resources which puts economic restraints on the rate of growth of the socio-economic system of the country. The judiciary, being a crucial organ of the state, is equally affected by the country's economic restraints. In his speech at the opening of the New Law Year (2015-2016), Justice Kavuma (Ag Chief Justice) indicated that the Uganda Judiciary requires adequate resources to meet its professional and administrative obligations, adequate infrastructure and other facilities to carry out its mandate which is rooted in practice and the law. The Value for Money Audit Report on Disposing of Cases in the Uganda Judiciary (2011) highlights institutional challenges facing the judiciary. These challenges are lengthy procedures, scarcity of judges vis-a-vis the

high number of litigants and the cost of litigation being high. It is against this background that ADR methods which introduce relatively less formal methods of conflict resolution; introduce consensual problem solving; empower individuals to control the outcome of their conflict and develop mechanisms that preserve personal and business relationships have become necessary.

Kiryabwire (2005) states that ADR and the establishment of the Commercial Division of the High Court were introduced following the recommendations of the 1995 Justice Platt Commission Inquiry Report on Judiciary entitled 'Delays in the Judicial Systems'. During its hearings, the Platt Commission (1995) received views from the business community in Uganda. Some of the major concerns were that the courts at the time were unable to fully appreciate specialized commercial conflicts nor handle such cases in an efficient and expeditious manner. According to Odoki (2010), these concerns were raised in the mid-1990s when the business landscape in Uganda was rapidly changing as a result of government driven programme of liberalisation and privatisation of the economy. This led to a shift of emphasis from state to privately owned businesses which placed greater expectations on the judicial system.

Court based ADR developed further when the Commercial Court Division (Mediation Pilot Project) Practice Direction under Legal Notice No 7 of 2003 and the Commercial Court Division (Mediation Pilot Project) Rules under Statutory Instrument No 71 of 2003 were passed. The rules require an expeditious, cost effective delivery of justice to the commercial community through the mandatory mediation of all cases before trial at the Commercial Court.

In 2003, the Centre for Alternative Dispute Resolution (CADER) was opened as a support mechanism for the Uganda Commercial Court. CADER is a statutory institutional Alternative Dispute Resolution provider and implements the provisions of the Arbitration and Conciliation

Act (Chapter 4, Laws of Uganda). Sempasa (2003) argues that until the coming into place of the Arbitration and Conciliation Act, the use of arbitration, which has been in place since the 1930s was limited, with absence of an appropriate control system and general oversight over arbitrators especially with respect to the fees charged.

At the Commercial Division of the High Court a range of conflicts include company matters, taxation and contract causes. The Commercial Court Annual Report (2012) indicates that the most common forms of ADR are Mediation (both facilitative and evaluative) and Arbitration. Conciliation and Negotiation are less pronounced forms of ADR that takes place. Under the Mediation Rules of 2007 made under Statutory Instrument No. 55 of 2007, mediation is mandatory in all civil matters.

At its heart ADR is a tool for management, to manage commercial conflicts and commercial relationships. The process results in the streamlining of business dealings and is useful in the management of critical business partnerships, professionals, vendors, customers and employee relationships. The advocates are required to advise their clients about ADR as a means of resolving conflicts, and both the clients and their pleaders are required to exploit ADR as a precondition to formal hearing.

1.2 BACKGROUND TO THE STUDY

Conflicts are an integral part of human interaction, must be managed and dealt with to prevent them from escalation and destruction. The art of managing them is as old as humankind. In the Bible are many stories of conflicts and their resolution (The Bible, Matthew 5: 23-24, Genesis 13:5-8, Genesis 18:16-33, Genesis 21:8). Here are negotiations not only between people, but also between humans and God. An example is where Abraham negotiated with God over the fate of

the people of Sodom and Gomorrah. In the Muslim tradition Muhammad negotiated with God over the number of times that the followers will pray (The Qur'an11:14; Chapter 17, al-isra). Muhammad negotiated with God to reduce the number of prayers from 50 times a day (one prayer for every 28 minutes) to five (5) times a day.

Societies world-over have long used non-judicial, indigenous methods to resolve conflicts. Steelman (2004) writes that as early as 1906, ADR has its history in the need to address the problem of case backlog in the United States of America. Huchhanavar (2013) argues that origins of ADR in the USA was in effort to find alternatives to the traditional legal system which were felt to be confrontational, costly, unpredictable, rigid, damaging to relationships, and limited to narrow rights based remedies as opposed to creative problem solving.

Rao & Sheffield (2006) contend that ADR is not a recent global phenomenon for instance in India although ADR has been structured on more scientific lines, expressed in more clear terms and employed more widely in conflict resolution in recent years. Rao & Sheffield (2006) further add that the concept of parties settling their conflicts by reference to a person or persons of their choice was well known to ancient India. Deshmukh (2009) states that ADR has become an acceptable and often preferred alternative to judicial settlement and an effective tool for reduction of arrears of cases. The reasons for the increase in the use of ADR in India are similar to those in the United States and are summarized by Rao & Sheffield's (2006) in the foreword to their book as the time consuming nature of litigation, expense and stress which have led to the countries seeking alternatives to it. The Rt. Hon. Sir Thomas Bingham, Master of the Rolls, in his foreword to Rao and Sheffield's book (2006), summarises the experience that many a person go through as they attempt to seek resolution of their cases in courts. He says the cost, delay,

anxiety, uncertainty and sometimes unpleasant outcome of litigation make the experience one scarcely to be endured and never to be repeated.

Marriot (2004) further goes on to say that in other jurisdictions such as Italy, the delay and cost in using the state courts is a public scandal. Critics Folberg, et al. (2005) and Mackenzie (2013) equate the limitations of a lawyer who only knows how to resolve conflicts in court to a carpenter with only a hammer and nails who has but one way to fix things is analogous or to a gladiator who only knows how to fight. It can therefore be concluded that the growth of ADR in the United States, India and other countries mentioned above, has its origins in the dissatisfaction with the way in which conflicts are traditionally resolved. This is reflected in the criticisms of the courts, the legal profession and at times, in a sense of isolation from the whole legal system.

In Africa, Barret (2004) traces incidences of ADR from traditional societies like the Bushmen of Kalahari and Hawaiian islanders. For instance, when conflicts arose in those societies, they were slow to fight but would always call in a third person to intercede. Shenk, et al. (2014) argues that in traditional Africa, dispute resolution was a collective enterprise with the involvement, in various ways, of the whole community. The Organisation for Economic Co-operation and Development (2001) notes that in traditional societies with centralised power, the ruler was the final arbiter and the most authoritative points of view were those of the elderly. Consent of the parties involved in the conflict and of the community in general was the main source of legitimacy for the process. In pre-colonial Zambia, dispute resolution mechanisms were based on the indigenous or customary laws of the various ethnic groups (Anyangwe, 1998). Customary law is what people make through their practice and the respect they accord to its precepts and institutions. During this period, the maintenance of harmony within the family and indeed the village was of paramount importance. Thus, within the nuclear or extended family or village,

conflicts had to be resolved soon after they had arisen to preserve harmonious relationships (Anyangwe, 1998 and Barret, 2004).

Ultimately, the dispute resolution mechanisms alluded to above were designed to re-establish social peace in order to prevent feuds. The main role of the traditional courts therefore and approach of conflict resolution was conciliatory in nature. The arbiters would apply customary law with flexibility and strive to effect a compromise acceptable to, and accepted by, all the parties.

Lipsky & Seeber (1998) in their comprehensive survey involving 1,000 largest USA's Corporations to find out how many of them use ADR, what forms of ADR they use, what kinds of conflicts are resolved by ADR, and the prospects for ADR in American business; it was established that many corporations encourage the use of ADR not only where it has traditionally been used but also to solve an ever-widening range of conflicts between the corporation and other businesses, individuals, and government agencies. Stipanowich (2009) study suggests growth of the use of ADR reflecting observations that it offers significant potential benefits to businesses. In each of these relationships analysed, the studies suggest that the overwhelming costs of litigation have pushed corporations and businesses toward increasing their use of ADR processes.

Veen (2014) research synthesizes the existing empirical evidence about the cost-effectiveness of mediation in civil, family, and workplace conflicts. In Canada, in a study of the effectiveness of mandatory civil mediation of case-managed cases in the Ottawa and Toronto divisions of the Ontario Superior Court of Justice, lawyers estimated their clients' cost savings to be $10,000 or more per case in 38% of mediated cases, to be less than $5,000 in 34% of them, and from $5,000- $10,000 in 28% of mediated cases. Hann & Baar (2001) and Gould & Britton (2010)

established that the cost savings attributed to successful mediations were significant, offering a tangible incentive for parties. Only 15% of responses reported savings of less than £25,000; 76% saved more than £25,000; and the top 9% of cases saved over £300,000. The cost savings were generally proportional to the cost of the mediation itself. This may be an indication that high value claims spend more money on the mediation itself, presumably because parties realise that the potential savings resulting from the mediation will be higher. De Palo, et al. (2011) reported that, the average cost to litigate in the European Union is €10,449 while the average cost to mediate is €2,497. Therefore, when mediation is successful, European residents can save over €7,500 per conflict.

These studies by Hann & Baar (2001); Gould and Britton (2010) and Veen (2014) conducted in the US, Canada and UK provide empirical evidence that ADR can and does save civil litigants legal and court fees. Parties and Governments save money by litigants resolving conflicts outside of or earlier in the court system and these resources may be re-allocated to other matters.

In Uganda, the justice system is primarily adversarial (Kirryabwire,2005). Hale (2004) defines the adversarial system or adversary system as a legal system used in the common law countries where two advocates represent or parties representing their parties' positions before an impartial person or group of people, usually a jury or judge. The judge attempts to determine the truth of the case and a winner sought through in a legal process. Brown & Marriot (1993) and Gould & Britton (2010) note that the adversarial justice system has shortcomings including delays, exorbitant litigation costs and high retributive awards, all of which have eroded the people's faith in the system.

Acknowledging the challenges of the adversarial system in the Ugandan Judiciary has prompted policy makers to think of alternative solutions taking into account socio-economic circumstances

such as the increasing need for speedy resolution of conflicts by economic players. The Global Competitive Index Report (2014) indicates that investment and business in Uganda have the highest growth potential as compared to other sectors but encumbered by the fact that private capital is not safe.

Uganda opened its first Commercial Court in 1996 to deliver an efficient, expeditious, and cost-effective mode of adjudicating commercial conflicts. In 2014, the court handled more than 220 commercial cases (Annual Report of the Commercial Division of the High Court of Uganda,2014). This study set out to find out whether Commercial disputes filed at the High Court Commercial Division Court Kampala are resolved expeditiously and cost-effectively employing the ADR processes.

1.3 STATEMENT OF THE PROBLEM

Litigation, in all its forms, can have a negative effect on companies and businesses. Baker & Mackenzie (2013) argue that the cost of legal fees multiplies with the years and as costs escalate in legal costs, management time and resources; then many businesses find lawsuits devastating.

The Annual Report of the Commercial Division of the High Court of Uganda (2014) indicated that in the year 2013, 2,417 matters were filed which constituted 22.6% more than the previous year that had 1971. The total number of cases disposed of was 1,747. Notwithstanding the increased filings, the backlog in the High Court Commercial Division still like the previous year stood at 13%. In the year 2014, 2,751 matters were filed which constituted 13.8%more than the previous year. Cases filed together with those brought forward from the previous year totalled 5,158 which constituted 23.8% in the work load. This compared to 21.4% of the preceding year indicated an increase of 2.4%. The Annual Report of the Commercial Division (2014) further

shows that the case categories filed at the Commercial Division of the High Court fall in three major case categories, Company, Taxation, and Contract matters.

Bearing in mind the fact that a substantial number of cases are filed in Ugandan courts daily and that the litigants, especially business minded people want their issues resolved as rapidly and as cheaply as possible; this study aimed at evaluating the effectiveness of Mediation, Arbitration, Negotiation and Conciliation as ADR approaches in the management conflicts at the High Court Commercial Division.

1.4 OBJECTIVE OF THE STUDY

1.4.1 Major Objective

The purpose of the study is to evaluate the ADR approaches in the commercial conflict management at the High Court Commercial Division.

1.4.2 Specific Objectives

i) To determine the effect of Mediation and Commercial conflicts at the High Court Commercial Division.
ii) To determine the effect of Arbitration on Commercial conflicts at the High Court Commercial Division.
iii) To determine the effect of Negotiations on Commercial conflicts at the High Court Commercial Division.
iv) To determine the effect of Conciliation on Commercial conflicts at the High Court Commercial Division.

1.5 RESEARCH QUESTIONS

i) What is the effect of Mediation in resolving Commercial conflicts at the High Court Commercial Division?

ii) What is the effect of Arbitration in resolving Commercial conflicts at the High Court Commercial Division?
iii) What is the effect of Negotiation in resolving Commercial conflicts at the High Court Commercial Division?
iv) What is the effect of Conciliation in resolving Commercial conflicts at the High Court Commercial Division?

1.6 RESEARCH HYPOTHESIS

i) The hypothesis of this study is; ADR has a significant effect on determination of Commercial conflicts at the High Court Commercial Division and hence
ii) The null hypothesis is; ADR has no significant effect on determination of Commercial conflicts at the High Court Commercial Division.

1.7 SCOPE OF THE STUDY

1.7.1 Geographical Scope

The study shall be carried out at the Commercial Division of the High Court at Kampala. The Commercial Division is tier under the Courts of Judicature Uganda. The Commercial Court was established in 1996 as a division of the High Court of Uganda devoted to hearing and determining commercial conflicts with current jurisdiction (as established under Legal Notice No.4 of 1996 and Instruction Circular No.1 of 1996). The mission of the court is 'to deliver to the commercial community an efficient, expeditious and cost-effective mode of adjudicating conflicts that affect directly and significantly the economic, commercial and financial life of Uganda'. The day to day management of the court is in the hands of the head of the court, assisted by the Registrars. The Division is located at Plot 14, Lumumba Avenue, Nakasero - Kampala.

1.7.2 Time Scope

The study covered the period May 2013 to May 2016. The study's time frame is twofold. The study examined ADR in 2013-2015 period. This is a period when Uganda embarked on mandatory ADR through the Judicature (Mediation) Rules of 2013. However, it looked at key literature from 1998 to 2015.

The study commenced from 2015 to 2016. The target individuals were the general pleaders or licensed advocates practicing at the High Court Commercial Division in the Uganda. Also selected were all Judicial Officers and Accredited mediators practicing at the court. The Computer-Case Administration System at the High Court Commercial Division was used to select the sample.

1.7.3 Content Scope

ADR techniques were limited to Mediation, Arbitration, Conciliation and Negotiation. The researcher was able to capture up-to-date data generated through the Computerized Case administration system. The respondents to the questionnaires were Mediators, Advocates and Judicial Officers.

1.7.4 Conceptual Scope

Many factors influence the use of ADR. However, this study was confined to the use Mediation, Arbitration, Negotiation, Conciliation as alternative strategies for resolving disputes at the High Court Commercial Division. The use of ADR in this study was measured using the need for cost cutting and speed in disposing the respective case categories. Other factors were held constant during this study.

1.8 SIGNIFICANCE OF THE STUDY

The findings in this study provide a contribution to the existing body of knowledge on Alternative Dispute Resolution processes in Uganda.

This study evaluated the effectiveness of ADR initiatives at Commercial Division of the High Court made recommendations to the Uganda Judiciary on the significance of ADR in redressing delays in the Ugandan justice system.

The findings provide an additional original contribution to the existing body of knowledge on dispute resolution processes, and particularly the use of ADR processes at the Commercial Division of the High Court.

The findings and recommendations will guide policy makers on effective integration of ADR approaches and processes in the justice sector to enhance faster resolution of disputes in the Court systems.

The academia and researchers will also benefit from the literature generated by both the empirical and theoretical components of the research. The study also pointed out salient areas for future research.

1.9 JUSTIFICATION OF THE STUDY

The ever steadily increasing cost of litigation is of great disadvantage to businesses which are profit oriented entities. Mose & Kleiner (1999) argue that even when a case is won, recovering the award is itself an extremely tedious task and business relationships are greatly affected after these long and arduous trials. Heather (2014) argues that when making investment decisions, companies need to be able to rely on agreements which have been negotiated in good faith.

Otherwise, costs rise significantly for the countries seeking to attract foreign investment. This study sought to establish whether ADR, as opposed to the adversarial Court system, provides a quicker, efficient, accessible, and cheaper option to solving commercial conflicts.

The Millennium Development Goals Report for Uganda (2013) indicates that high on Uganda's economic and commercial agenda is to attract investors to do business in Uganda in compliance with the World Bank millennium agenda. With the desire to improve on the investment climate, Uganda's legal regime unfortunately remains one of the things which discourage investors. The U.S. Department of State Investment Climate Statement (June 2015) states that although Ugandan courts have a reputation for slow dispensation of justice, commercial/investment disputes at the domestic level are handled by the Commercial Court which, perhaps owing to its specialized nature, often disposes of cases in a shorter period. This study set out to highlight the effect of ADR on determination of Commercial conflicts at the High Court Commercial Division.

It is argued that ADR solves the problem of a system defined and bogged down by strict procedure. The four ADR processes, Mediation, Arbitration, Negotiation and Conciliation are informal thus quicker and cheaper approach to dispute resolution. The nature of dispute resolution also helps to maintain a friendly investment climate since there are no outright winners as opposed to the adversarial model adopted in Courts. The study highlights the ways in which ADR can and does compliment and better the climate for businesses or Commercial undertakings.

Highlighting the effect of ADR on Commercial disputes will enable the Uganda judicial system to exploit processes that complement the adversarial process for resolving disputes.

1.10 DEFINITION OF KEY TERMS

Alternative Dispute Resolution:

Abbreviated as ADR. ADR refers to any method of resolving disputes other than by litigation. ADR has been variously defined and it is an umbrella term that refers to a variety of conflict resolution processes that serve as alternatives to litigating disputes in court. In this study ADR refers to a process other than judicial determination, in which an impartial person (such as advocate, mediator, judicial officer) assists those in a dispute to resolve the issues between them. This study limits ADR processes to include mediation, arbitration, negotiation and conciliation. The other conflict resolution processes are outside the scope of this study.

Conflict Resolution

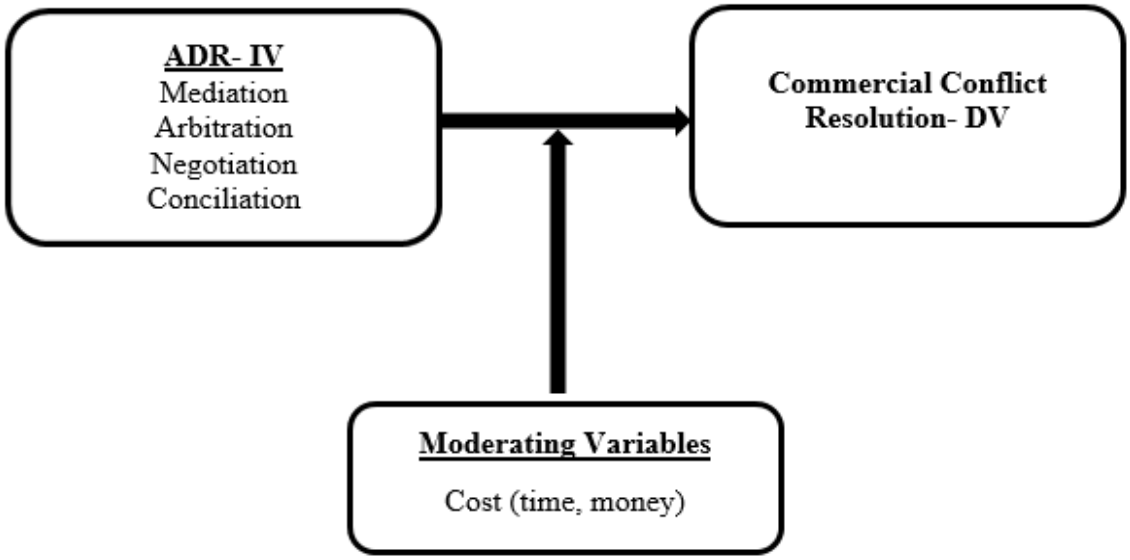
The term 'conflict' has been used to describe a broad range of human activities including hostility between people to international war. Carolyn Manning (2008) has defined conflict as a struggle between two or more people over values, competition for status, power or scarce resources. Conflict Resolution is an intervention aimed at alleviating or eliminating discord through conciliation.

In this study, the terms 'conflict' and 'dispute' were used interchangeably and may be used to refer to situations that arise when individuals or groups pursue positions, interests, needs, or values that may lead to actions that come up against the interests, needs and values of others when they also want to satisfy their goals.

1.11 CONCEPTUAL FRAMEWORK

This study conceptualizes that the use of ADR (Mediation, Arbitration, Negotiation, and Conciliation) as alternative strategies for resolving disputes. The Commercial conflicts filed at the High Court Commercial Division include company matters, taxation and contract causes. This study hypothesises that the ADR options is affected by the need for speed and cost benefits. The purpose of this study is therefore to test the nature and the strength of these relationships.

Figure 1: Conceptual Framework



Source: *Developed by Researcher Based on literature review: (Rozdieczer & Alvarez de la Campa, (2006); Baker & Mackenzie (2013); Stipanowich (2004))*

This study examines the use of ADR in concluding commercial conflicts at High Court Commercial Court Division an institution specialised in handling commercial conflicts in Uganda. The study discusses the development of, and effect of ADR processes currently in use at the High Court Commercial division of Uganda and evaluates courts contribution to commercial justice delivery in Uganda. Specifically, the study analyses the ADR approaches that is

Mediation, Arbitration, Negotiation and Conciliation and how they have caused a change commercial disputes categorized as Taxation, Company and Contract matters. A case study was used to assess the procedures and to make recommendations for improvement or modification.

Lipsky & Seeber (1998) state that many corporations and business minded persons alike are encouraging the use of ADR not only where it has traditionally been used but also to solve an ever-widening range of conflicts between the corporation and other businesses, individuals, and government agencies. Stipanowich (2009) suggests that in each of these relationships, the overwhelming costs of litigation have pushed corporations toward increasing their use of ADR processes. Angaye & Gwilliam (2009) argue that a speedy, efficient and fair dispensation of justice is at the centre for economic development. The need for informal amicable resolution and the growing trend and the widespread need for alternative or appropriate means of resolving commercial conflicts inspired this study. Some of the conflict resolution methods taken from the literature of the above cited writers are: - mediation, arbitration, negotiation and conciliation procedures.

The legal and institutional frameworks for ADR approaches at the Commercial Division of the High Court and the role they play in solving commercial disputes are examined future prospects for ADR are indicated and recommendations for successful implementation of ADR in Uganda are given. The effect of ADR on Commercial conflicts will enable the Uganda judicial system to exploit processes that complement the adversarial process for resolving disputes. The study highlighted the effect of time and costs relating to commercial conflict resolution. This may help the judicial system in achieving performance improvements by realising the efficacy of ADR techniques in resolving conflicts that are filed in the Commercial Division of the High Court and in the judicial system as a whole.

CHAPTER TWO

LITERATURE REVIEW

2.0 INTRODUCTION

The following review of the literature discusses the history of ADR and conflict management. Additionally, this section discusses the four principal ADR processes Mediation, Arbitration, Negotiation and Conciliation as part of the conflict resolution mechanisms. The theoretical framework and guiding theories were explored. Finally, this chapter analyses the legislative framework in both at National and International arena.

2.1.1 Alternative Dispute Resolution

ADR is a generic term that refers to a wide array of practices, the purpose of which is to manage and quickly resolve disagreements at lower cost and with as little adverse effect as possible on business and other relationships (Rozdieczer and Alvarez de la Campa, 2006). Kiryabwire (2005) defines ADR as a structured negotiation process whereby the parties to a dispute themselves negotiate their own settlement with the help of an independent intermediary who is a neutral and trained in the techniques of ADR.

Mackie (2000) describes ADR to mean a structured dispute resolution process with or without help of a neutral person and does not necessarily impose a legally binding outcome on the parties. Bernstein (1998) defines ADR as arbitration of disputes generally but not necessarily involving the intercession and assistance of a neutral third party who helps to facilitate such solution. Spangler (2003) refers to ADR as an option to legal proceedings which may either be voluntary or mandatory. Therefore, ADR can be divided into consensual or adjudicatory ADR. To Mackie, Bernstein (1998) and Spangler (2003) have one point of convergence that the

participations of the parties should be completely voluntary, including their ability to withdraw from the process at any time.

The ADR concept means different things to different people. Brown & Marriot (2011), define this as a process of resolving an issue susceptible to normal legal process by agreement rather than an imposed binding decision. ADR processes include Arbitration, Conciliation, Mediation, Negotiation, conferencing, adjudication, case appraisal and neutral evaluation. Its diverse methods can help the parties to resolve their disputes at their own terms cheaply and expeditiously. ADR methods are in addition to the Courts in character.

Muigua (2012) states that ADR mechanisms mainly consist of Negotiation, Conciliation, Mediation, Arbitration and a series of other fusion of other procedures. Xie (2011) classifies ADR mechanisms into facilitative, evaluative or determinative processes. The facilitative processes include mediation, where parties are assisted in identifying issues in dispute and in coming to an agreement about the conflict. In evaluative processes, such as early neutral evaluation or expert appraisal, the third party is more actively involved in advising the parties about the issues and various possible outcomes. The determinative process, such as Arbitration, after the parties have presented their arguments and evidence of a dispute, the third party makes a determination. Xie's (2011) grouping of the ADR processes leaves out negotiation which may not fit in the three categories. In negotiation parties meet to ascertain points of dispute and discuss the issues at hand so as to arrive at mutually acceptable solutions without the help of a third party.

ADR prides itself for being a simple, quick, flexible and accessible dispute resolution system compared to litigation (Xie 2011). Emphasis is on achieving a win-win situation for both parties, increase access to justice, and improve efficiency and it is expeditious. It is also a cost-effective

means for dispute resolution that fosters parties' relationships. Arach (2004) notes that court room litigation is in most cases time consuming, frustrating, extremely stressing, and expensive and does not always provide the best of results. It may be stated that ADR provides answers by offering a mode of settling disputes in a meaningful and satisfactory manner. Arach's (2004) paper does not point out ADR's short comings like the fact that ADR is not suitable for all matters and may not always be successful.

Kariuki (2012) notes that ADR mechanisms are applicable to in almost all contentious matters, which are capable of being resolved including Commercial, land, intellectual property, family, succession, criminal, and political disputes. Kariuki's (2012) article is important in that the authors argue for a shift towards informal mechanisms for conflict management, including ADR and traditional dispute resolution mechanisms (TDRM). However, Kariuki (2012) emphasis is within the legal framework in Kenya while this study focuses on Uganda.

Goldberg, et al. (2001) argues that the use of private Arbitration, Mediation and other forms of ADR in the business setting has risen dramatically accompanied by an explosion in the number of private firms offering ADR services. This growth in demand sees the development of systems for informal resolution of disputes, tailored appropriately to fit different settings, as part of an effort to find more efficient and effective alternatives to litigation.

The shortcomings of conventional conflict resolution processes have already been identified in Chapter 1 above and comprise the factors encouraging the use of ADR. Conversely, the adoption and use of ADR is afforded by the potential benefits accruing from its use. Some of these benefits are the basis of the claims made in the literature, which are to be tested against measures of success in Chapter 4.

In this study ADR refers to a process other than judicial determination, in which an impartial person (such as advocate, mediator, judicial officer) assists those in a dispute to resolve the issues between them. This study limits ADR processes to include mediation, arbitration, negotiation and conciliation. The other conflict resolution processes are outside the scope of this study.

2.1.2 Conflict Management Approach

Conflict is unavoidable in any human relationship but the ability to put in place mechanisms to resolve conflict. Botha (2000) argues that disagreements are inevitable in any transaction as a harmoniously and expeditiously result of misunderstandings by the parties for one reason or another. What is important is that the parties should be able to find a common ground and resolve the conflict (Kotze, 2012).

Poorly managed conflict costs money, creates uncertainty and degrades decision quality (Churchill, 2009). As Oyesola (2014) and Iacobucci & Churchill (2009) state, conflict is a fact of life even in the best-run organisation. Oyesola (2014) states that conflict goes under many names disagreement, disharmony, dispute, difficulty or difference but the results of mismanaged conflict are the same: at best unwelcome distraction from a heavy workload at worst damage which may threaten the very future of the organisation

Oyesola (2014) further states that the traditional way of litigation is essentially adversarial and confrontational. It is also tainted with unreasonable delays, technicalities and high cost of litigation. Angaye & Gwilliam (2009) argue that a speedy, efficient and fair dispensation of justice is essential for a stable, just and developed (or developing) society. Informal amicable

resolution of dispute is therefore highly prescribed as opposed to adversarial way of resolving disputes (Gibbons, 2007).

In Commercial transactions, disputes may be triggered by poor communication. Adler (2005) argues that variances in the way and manner parties perceive issues, their honest and value judgments, the skills possessed by each party and people having unrealistic expectations may cause rift and conflict. Mohamed (2006) indicates that a contractor may want more time, a more reasonable quality and maximum price. At this point in time, an element of conflict has been already introduced because the parties have parallel expectations (Thompson, 2011). According to Iacobucci & Churchill, (2009), a client may specify a much higher standard than what he really wants while wanting a lower price and so on. Some of the examples of conflict listed by Schrage (2013) are a customer requiring speedy completion of a project and need for a quality product at a low price.

Mitchell, et al. (2014) arguments are twofold that a dispute could arise due to the delay caused by the weather, a subcontractor, the bank or a third party and parties' inadequate definition of quality. High quality may mean different things to a plasterer and to the project director or project manager (Ozorhon, et al. 2010). Dani (2005) notes that at an individual level, disagreements may occur in transactions as a result of factors such as languages, geography, childhood experiences, upbringing and religion; education levels can also have an influence on conflict. According to Moore (2014) differences in one or two projects to be handled could also be sources of conflicts among the parties. Jacobson & Choi (2008) state that in most transactions, and sometimes from one project to the next there could be different designers different building teams and different financiers, changes to plans, deadlines, payment dates, and so on, all these trigger disputes.

Authors Dani (2005), Ozorhon, et al. (2010), Moore (2014) and Mitchell, et al. (2014) have one line of convergence that in any human dealings, particularly in Commercial transactions a lot of reasons may trigger disputes. It is important is that the parties should find a common ground and resolve them harmoniously and expeditiously.

Yates & Epstein (2006) advise that in order to avert conflict its inception, one must precisely and clearly describe what one requires from the other party and what is expected from the project being undertaken. However, when disputes arise it is ideal that it is resolved promptly, at reasonable cost with a view to continue the existing relationship (Bingham, 2004). It is the judiciary's mandate to resolve conflicts in society but more essentially by way of informal alternatives.

Pretorius (1993) looks at conflict resolution and management from the perspective that involves dispute resolution processes by the parties themselves that include Negotiation and Mediation (involving private adjudication by third parties) and Arbitration (involving adjudication by an administrative decision-making body) and formal litigation before the Courts. According to the Alternative Dispute Resolution Practitioner's Guide (ADPG) (1998), ADR includes practices, techniques and approaches for resolving and managing conflicts short of, or alternative to, full-scale Court process. Conflict management as a process seeks to strengthen relationships and find out the problems in attaining the respective objectives. As a management strategy it involves both parties who are to bargain for how to mitigate conflicting interests to achieve a win-win result.

2.2 MEDIATION AND CONFLICT RESOLUTION

Moore (2014) defines mediation as the intervention in a conflict of an acceptable third party, who assists the involved parties to voluntarily reach a mutually acceptable settlement of the issue in dispute. The National Alternative Dispute Resolution Advisory Council (2003) defines it as a process in which the participants to a dispute, with the assistance of a dispute resolution practitioner (the mediator), identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The mediator has no advisory or determinative role in regard to the content of the dispute or the outcome of its resolution, but may advise on or determine the process of Mediation whereby resolution is attempted (Moore ,2014 and Bercovitch & Gartner, 2006).

Moore (2014) further defines mediation as a voluntary and informal process in which the disputing parties select a neutral third party (one or more individuals) to assist them in reaching an acceptable settlement. According to Bercovitch & Gartner (2006), the mediator unlike a judge, has no power to impose a solution on the disputing parties, instead the mediator assists them in shaping solutions to meet their interests. Abramson (2004) notes that mediators employ a wide-range of skills and techniques to assist parties to communicate effectively and develop a cooperative and problem-solving attitude.

Mediation finds its strengths through its privacy and confidentiality mode of operation, its voluntary and consensual obligations, its flexibility with rules and regulations, and its focus on interests and needs of the parties rather than the personalities behind the issues, and this form of Conflict resolution Abramson (2004) and Bercovitch & Gartner (2006),

Moore (2014), Abramson (2004) and Bercovitch & Gartner (2006), show that the mediator's role and the Mediation process differ significantly, depending on the type of conflict and mediator's approach. The authors further indicate that a mediator identifies parties' underlying interests, narrows down the issues of conflict, transmits messages between parties, and explores possible options for agreement. The mediator may also point out the consequences of non-settlement. The analysis of mediation in this study also illuminate how mediation can help mitigate the destructive consequences of conflicts.

2.3 ARBITRATION AND CONFLICT RESOLUTION

Arbitration is an adjudicative conflict resolution process based on an agreement between the parties to refer a dispute or difference between them to impartial arbitrators for a decision (Blake, et al. 2011). Blake, et al (2011) further refer to arbitration as the submission of a dispute to an unbiased third person selected by the parties to the controversy, who agree in advance to comply with the award. In 1923 the International Chamber of Commerce adopted the first rules on institution on arbitration and established the Institute of Arbitration. The increase of international agreements, treaties and conventions such as UNCITRAL Model Law on International Commercial Arbitration of 1985, INSIDE Convention of 1965 has led to great effect on the growth of commercial arbitration as a mechanism of dispute settlement almost in all parts of the world.

According to Doyle & Haydock (1991) arbitration is another form of ADR in which a dispute is submitted to one or more neutral persons to resolve a dispute. After a hearing, Arbitration may result into a binding decision and final award. Tong (2009) notes that Arbitration is an adjudicatory dispute resolution process in which one or more arbitrators judge issues on the

merits (which may be binding or non-binding) after an expedited, adversarial hearing, in which each party has the opportunity to present proofs and arguments.

In Court-annexed Arbitration, one or more arbitrators, usually lawyers, issue a non-binding judgment on the merits after an expedited, adversarial hearing (Sherman, 1992). The arbitrator's decision addresses only the disputed legal issues and applies legal standards (Getman, 1979). Bender (2011) states that either party in arbitration may reject the non-binding ruling and proceed to trial; sometimes, cost sanctions may be imposed in the event the appellant does not improve his/her position in Court. This process may be mandatory or voluntary.

The decisions of arbitrators in private arbitration may be non-binding or binding (Sternlight, 2007). Binding Arbitration decisions typically are enforceable by Courts and not subject to appellate review, except in the cases of fraud or other defect in the process (Janicke, 2002). Often binding arbitration arises from contract clauses providing for final and binding arbitration as the method for resolving disputes (Jannadia, et al. 2000). Authors Janicke (2002) and Jannadia, et al. (2000) advance that if a person signs a contract that has a mandatory, binding arbitration agreement, he or she gives up the right to go to court and must submit to the arbitral award.

Bender (2011) points out that arbitration is similar to a judicial proceeding but is less formal, and that arbitrators must always possess a judicial disposition just like judges and must have good case management skills. According to Hollander-Blumoff & Tyler (2011) Arbitration is procedurally less formal than Court adjudication; procedural rules and substantive law may be set by the parties.

According to Khan (2007) arbitration is a private consensual process where parties in dispute agree to present their grievances to a third party for resolution. It is an adversarial process and in many ways resembles litigation. Khan (2007) further outlines the advantages of arbitration being that parties can agree on an arbitrator to determine the matter; the arbitrator has expertise in the area of dispute; any person can represent a party in the dispute; flexibility; cost-effectiveness; confidentiality; speed and the result is binding. Comparatively, proceedings in a formal court are open to the public, whereas proceedings in commercial arbitration are private, accordingly the parties who wish to preserve their commercial secrets may prefer commercial arbitration (Cornu & Marc-Andre (2010).

In spite of this, it is pertinent to point out that there are exceptional situations of mandatory binding Arbitration especially when prescribed by statutes and laws (Sheppard, 2007). Cornu & Marc-Andre (2010) analyse the situations in which such methods might be preferred to the classical judicial means. The study concludes that alternative methods of dispute resolution enable consideration of non-legal factors, which might be emotional considerations or a sense of moral obligation, and this can help the parties find a path to consensus.

This study defines Arbitration as a quicker and simpler means of proceeding in Commercial conflicts, offering litigants the benefit for instance of selecting the preferred arbitrator. This study focuses on the use of Arbitration where there is a pre-dispute agreement in which parties bind themselves to resolve disputes through Arbitration or post-dispute the parties agree to arbitrate a dispute that has arisen; or where the court also has ordered parties to arbitrate a given dispute.

2.4 NEGOTIATION AND CONFLICT RESOLUTION

Fisher & Ury (2011) identify negotiation as the most used form of conflict resolution because of its vast applicability within the home and community. Pruitt (2005) states that Negotiation allows the conflicting parties to control the process and the outcomes of the process. Moore (2014) argues that when compared with processes involving third parties, in negotiation the parties voluntarily seek a mutually acceptable agreement to resolve their common dispute. Negotiation can either be adversarial or problem solving (Bender, 2011). In an adversarial approach, the lawyer aims at maximizing individual gain for his client based on his/her client's bottom line, while a problem solving approach looks at the joint opportunities for all the disputing parties (Moore, 2014).

Fisher & Ury (2011) postulate that negotiation is a basic means of getting what you want from others. It is a back and forth communication designed to reach an agreement. Negotiation is primarily used in the trade union discussions with the governmental representatives, these forms of negotiation tends to bring options to the table and can neutralise antagonisms of one to the other (Bender, 2011; and Fisher & Ury 2011).

Smith (2000) describes negotiation as a fundamental tool for managing the disputes in a contract and also to manage the conflict. After a review of the literature and interviews with practitioners, Smith (2000) outlined ten factors in the negotiation process that seem to be influenced by a person's culture. The factors include goals, attitudes, personal styles, communication, time sensitivity, emotionalism, agreement, agreement building, team organization and risk taking.

Fisher & Ury (2011) and Smith (2000) indicate that even though negotiations can be time consuming and mentally taxing, they are usually most fruitful in the end, for there is the

likelihood of a win- win situation, where both parties leave the table with something better than what they came with. This study focuses on Negotiation as a form of ADR which involves a consensual bargaining process in which parties negotiate without the intervention of a third party to reach an agreement in a dispute.

2.5 CONCILIATION AND CONFLICT RESOLUTION

According to the Halsbury's Laws of England (2008), conciliation refers to a process of persuading parties to reach agreement, an independent person or persons are appointed by the parties with mutual consent by agreement to bring about a settlement of their dispute through consensus or by using of the similar techniques which is persuasive. Abu, et al. (2006) define conciliation as a process in which a third party meets with the disputants separately in an effort to establish mutual understanding of the underlying causes of the dispute and thereby promote settlement in a friendly, un antagonistic manner. Jacqueline & Nolan-Haley (2001) state that a conciliator uses a number of techniques to reduce the tension among the parties, improving theircommunication. Successful conciliation reduces tension, opens channels of communication and facilitates continued negotiations.

In conciliation a third party, called a conciliator, repairsinjured relationships between conflicting parties by bringing them together, clarifying perceptions, points out misperceptions and aids conflicting parties to reach a resolution (Abu, et al. 2006). Conciliation is similar to Mediation but less structured. The difference between mediation and conciliation is that the conciliator, unlike the mediator who is supposed to be neutral, may or may not be totally neutral to the interests of the parties.

Frequently, conciliation is used to restore the parties to a pre-dispute status quo, after which other ADR techniques may be applied. Conciliation is also used when parties are unwilling, unable, or unprepared to come to the bargaining table (Jacqueline & Nolan-Haley, 2001 and Brown& Marriot, 2011).

The above approaches to dispute resolution play an important role in the way a dispute is resolved and the manner in which the relationship of the parties is built. The study seeks to find out how the preferred options of dispute resolution are beneficial in resolving the conflicts.

2.6 THEORETICAL APPROACH TO ADR AND CONFLICT RESOLUTION

ADR comprises various terms, theories, models and approaches for resolving disputes in a non-confrontational way. These processes may involve the two parties in Negotiation, multi-party in Mediation, Conciliation and Arbitration.

Menkel-Meadow (1996) invokes Confucian principles at the heart of Chinese mediation, which she characterizes as being designed to seek harmony, not truth; as a possible basis for a legal system organized around problem-solving rather than truth-finding. Menkel-Meadow also expresses her preference for the expression Appropriate Dispute Resolution over Alternative Dispute Resolution as a more accurate name for the acronym ADR. This, Menkel-Meadow argues that the use of the expression Appropriate Dispute Resolution is both a recognition of the reality that adjudication in a Court is more the alternative than the norm and is also a signal that Courts should be providing a variety of choices about how best to handle disputes or conflicts.

Rubinson (2004) suggests that the primary goal of Mediation should be to get disputing parties to move beyond their own perspectives of what happened, and to recognize the perspectives of

other disputants. Rather than viewing dispute resolution as a striving to determine which party's story of what happened is factually and normatively correct, Rubinson (2004) further views Mediation as a process of motivating the parties to engage in a collaborative striving to overcome conflict.

Nader (1997) criticises the alternative dispute resolution movement as a movement to trade justice for harmony. She sees the plea of the harmony ideology to pacify the assertion of rights as embodying a reassertion of social control in response to the legal rights and law reform movements of the 1960's and 1970's It should be noted that Nader's (1997) critique is directed at the belief that harmony in the guise of compromise or agreement is as a consequence better than an adversary posture. Nader's view points to the importance of being able to distinguish between harmony that resolves conflict and harmony that merely suppresses or silences the voices of those without political power. To Grillo (1984) the most compelling criticism of alternative dispute resolution has focused on the dangers of informal proceedings for parties with unequal bargaining power.

Lon Fuller's (1961-1962) in his unpublished manuscript, The Forms and Limits of Adjudication, states that different problems require different solutions and that there is nothing inherently humane about one method or another. The focus should be to encourage people to focus on determining pathways and solutions to reach their goals and answers to their problems.

Kruse (2005) argues that alternative dispute resolution needs a theory of Appropriate Fit between types of disputes and procedures for resolving them, to realize its ideal of becoming a field of Appropriate Dispute Resolution, symbolized by the metaphor of the Multi-Door Courthouse. The term Multi-Door Courthouse originated with Frank Sander's influential address to the 1976

Pound Conference (Lande (2008). Canberra (2009) states that there was a tendency to assume that courts are the natural and obvious dispute resolution forum yet a variety of processes might provide more effective forms of conflict resolution. In this ideal, an array of methods for resolving disputes would be available to resolve contested matters, ranging from formal adjudication to informal mediation, arbitration, conciliation, negotiation and different kinds of disputes would be routed to their most appropriate venue.

Welsh (2001) argues that sometimes alternatives to litigation are institutionalized, not because they are the most suitable, but because Courts perceive them as efficient ways to reduce judicial caseloads. Marc Galanter and Mia Cahill (1994) conclude after evaluating settlement against a variety of different evaluative measures, conclude that the task is to have a sense of which qualities we consider important in a particular settlement arena and to encourage settlements that display desirable qualities.

2.7 GUIDING THEORIES

This study makes use of two theories the Systems Thinking and Stakeholder Theories.

2.7.1 The Systems Thinking Theory

Systems Thinking Theory has roots in a diverse range of sources from Jan Smuts' holism in the 1920s, to the general systems theory that was advanced by Ludwig von Bertalanffy in the 1940s and cybernetics advanced by Ross Ashby in the 1950s (Cabrera & Cabrera, (2015).

Systems thinking theory is a management discipline that concerns an understanding of a system by examining the linkages and interactions between the components that comprise the entirety of that defined system. Cabrera & Cabrera, (2015) argue that Systems Thinking Approach is

holistic; it addresses overall patterns and relationships rather than reducing issues to smaller parts. Systems thinking guides the way we perceive a situation; it is part of the stock of ideas by means of which the world around us is interpreted (Checkland & Scholes, 1990).

The Systems Thinking paradigm is useful as a tool for learning about complex situations and for interdisciplinary research in that it embraces multiple dimensions, hierarchies, actors and perspectives (Emery & Trist, 1969; Churchman, 1971; Klir, 1996, Ramirez, 2002). According to Santander (2006) the systems thinking theory arises from the necessity to actually unify or integrate knowledge and to view the phenomena in a comprehensive fashion as such it was necessary to develop a concrete theory which could be used in all fields of scientific research. The general system theory also makes reference to a collection of concepts, principles, tools problems, methods and techniques associated with the systems (Klir, 1996).

The Systems Thinking theory posits that it is necessary to study not only parts and processes in isolation but also to solve the decisive problems found in the organisation in order to unify them, resulting from dynamic interaction of parts and making the behaviour of parts different when studied in isolation or within the whole (Ramirez, 2002 and Santander 2006). The main objective of the systems theory is the formulation and deviation of those universal principles which are valid for systems in general.

Ramirez (2002) argues that conflict involves different stake holders, disciplines and hierarchies which constitute a complex and dynamic relationship. Therefore, in order to address these complex issues systems approach or thinking takes a holistic view to the situation and concept mapping are the best option is to address the challenge even though there are several methods, approaches and techniques in conflict management. In support of this, Wehrmann (2006) argues

that conflicts can be resolved, avoided in the long term if address with an integral and system oriented approach.

Any measure or action which does not look at the issues as a whole will only yield temporary results which cannot stand the test of time. Wehrmann (2006) identifies other core elements of conflict management which include the establishment of a state under rule of law, functioning constitutional, regulative institutions and good governance. Systems theory therefore is a broad perspective that allows managers to examine patterns and events in the workplace (Ramirez, 2002, Santander 2006; and Wehrmann 2006). This helps managers to coordinate programs to work as a collective whole for the overall goal or mission of the organization rather than for isolated departments.

The above authors Ramirez, (2002) and Wehrmann (2006) demonstrate that conflict resolution and systems thinking theory strive to achieve just, fair and sustainable solutions. That various processes and mechanisms have been proposed in both fields and the commonality of the parallel processes is obvious. For instance, interest-based negotiation, a flagship process of conflict resolution consists of stages like storytelling, issue and interest identifying, option generating and consensus building; while systems thinking, similarly structures its process as group formation, assumption surfacing, investigative debate and synthesis of views (Ramirez, 2002 and Wehrmann, 2006).

For the purposes of this study, systems thinking theory was looked at in terms of the whole judicial institution. Following this view, systems thinking approach took a holistic view placing ADR approach in a broader conflict management arena, mapping out ADR options to address the commercial conflict management process instead of formal litigation. These several methods,

approaches and techniques involved in ADR were needed to see the whole ADR phenomenon in its broader context. The different stake holders such as mediators, advocates and judicial offices who provide new and different insights than can be gained by looking at each of its component parts individually. It was important to answer this question, whether ADR approach as a whole affects the resolution of commercial conflict at the High Court Commercial Division.

2.7.2 The Stakeholder Theory:

The origin of the stakeholder theory in management can be traced back to 1963, when the word appeared in the International Memorandum at the Stanford Research Institute (Evan and Freeman, 1993). Stakeholders were defined as those groups without whose support the organisation would cease to exist. The theory argues that the organization has relationships with many constituent groups and that it can engender and maintain the support of these groups by considering and balancing their relevant interests (Clarkson, 1998; Evan & Freeman, 1993; Freeman, 1984; Jones & Wicks, 1999). As the writer have noted the Stakeholder Theory fosters both instrumental predictions and normative prescriptions (e.g., Hasnas, 1998; Kotter & Heskett, 1992), and has therefore proven to be popular with both those interested in profits and those interested in ethics.

The stakeholder of an organisation can be defined as a group or individual who can affect or is affected by the achievement of organisational objectives (Freeman, 1984). As such, the Stakeholder Theory suggests that the purpose of the corporation should take into consideration all who have an interest in an organisation's activity (Greenwood, 2008), including shareholders, customers, employees, and the general public (Fontaine, Haarman, & Schmid, 2006). Thus, the objective of management should be to balance the competing interests of these stakeholders

(Sternberg, 1996; Stout, 2012). According to Donaldson & Preston (1995), the Stakeholder Theory is seen as a holistic approach to corporate purpose and provides strategic depth to the management of interests through three different approaches: descriptive (explaining corporate behaviour), instrumental (finding links between stakeholder strategies and performance), and normative (interpreting organisational function from a moral standpoint) The theoretical approaches frame the issue on stakeholder interests for further analysis. Donaldson & Preston (1995), emphasize that stakeholder theory is managerial theory in the broad sense of that term in that it portrays managers as individuals who pay simultaneous attention to the legitimate interests of all appropriate stakeholders, both in the establishment of organizational structures and general policies and in case-by-case decision making.

This study acknowledges that this management theory is to balance the competing interests of those stakeholders without whose support the organisation would cease to exist. In conflict management and in the ADR process in particular, the participations, cooperativeness, ability to compromise of the different stakeholders is crucial for the success of the ADR process.

2.8 LEGISLATIVE FRAMEWORK OF ADR

ADR refers to all decision-making processes other than litigation, including but not limited to Negotiation, Enquiry, Mediation, Conciliation, expert determination and Arbitration. ADR methods are acknowledged in the field of law and Commercial sectors both at National and International levels. Michel (2011) states that ADR and traditional justice systems strengthen the Rule of Law and contribute to development. The Rule of Law is the foundation for both justice and security (UNDP 2014). Article 33 of the United Nations (UN) Charter outlines the various

conflict management mechanisms that parties to any dispute may resort to enhance access to justice which is an essential component of the Rule of Law.

One of the objectives of the UN is to maintain international peace and security through peaceful means including the settlement of international disputes (Charter of the United Nations, 24 October 1945, 1 UNTS XVI Article 1.1).The Charter enjoins parties to an international dispute, to first seek a solution to their dispute by Negotiation, Enquiry, Mediation, Conciliation, Arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice. The UN Charter and New York Convention 1958 on the Recognition and Enforcement of Foreign Arbitral Awards and the International Centre for Settlement of Investment Dispute [ICSID] as well as other international instruments provide a legal basis for the use of ADR in dispute resolution at the international level.

In International Trade, the United Nations Commission on International Trade Law (UNCITRAL) came up with legal documents which create a dispute resolution mechanism that is universal yet at the same time insulated from national courts, which could be biased against foreign business concerns. In this regard, the United Nations Commission on International Trade Law (UNCITRAL) came up with the following legal documents/codes. These include the UNCITRAL Arbitration Rules 1976, the UNCITRAL Conciliation Rules 1976 and the UNCITRAL Model Law on International Commercial Arbitration 1985. These documents coupled with the Convention on The Recognition and Enforcement of Foreign Arbitral Awards (The New York Convention) of 1953 are the main instruments that influenced the drafting of the National laws like the Arbitration and Conciliation Act (Chapter 4) of Uganda. In Uganda, ADR mechanisms are anchored in the law. Article 126 of the Constitution stipulates that in exercise of

judicial authority, courts and tribunals are to promote alternative forms of dispute resolution including reconciliation, Mediation, Arbitration and traditional dispute resolution mechanisms.

In Uganda, procedures for settling disputes are provided for by Acts of Parliament. The enactment of the Investment Code Act 1991 (Chapter 92) was to modernize the Ugandan Commercial laws and put procedures that actively promote ADR and trade and investment in the country. Section 28 of the Act provides for settlement of investment disputes amicably, through Arbitration or any other machinery for the settlement of investment disputes. The law aimed at modernizing the Ugandan Commercial laws and court procedures along the lines that actively promote ADR and by so doing promote trade and investment in the country.

In 1996 Practice Direction No. 1 of 1996 entitled Commercial Court Procedure (Legal Notice No 5 of 1996) established the Commercial Division of the High Court. The Practice Direction enjoins the Commercial judges to be proactive which an essential ingredient for court based ADR System.

The Civil Procedure Act, Chapter 71 has provisions dealing with the use of both Mediation and Arbitration. The Commercial Court Division (Mediation Pilot Project) Rules under Statutory Instrument No 71 of 2003 and Practice Direction under Legal Notice No 7 of 2003 mandate the application of ADR. In 1998 the present Civil Procedure Rules were amended by the Civil Procedure (Amendment) Rules 1998 to include in the new Order 10B. Order 10B rule 1 introduced into the Uganda Judicial system the use of a pre-trial scheduling conference that requires all cases to be scheduled and to take account of the possibility of using ADR. The court explores the possibility of Mediation, Arbitration and any other form of settlement. Under Order 10 rule 2 where the parties do not reach an agreement, the court may, if it is of the view that the

case has a good potential for settlement, order ADR before a named member of the Bar (advocate) or of the Bench (judicial Officer). ADR should be completed within twenty-one days after the date of the order except that the time may be extended for a period. (Civil Procedure Rules, Cap 71).

The Arbitration and Conciliation Act (Chapter 4 Laws of Uganda) provides procedures for the use of various ADR mechanisms. In the year 2000, this Law was enacted repealing the old Arbitration (Cap 55). Under the Arbitration and Conciliation Act, provisions made in it for Court assistance in effecting interim measures, taking evidence, setting aside an Arbitration award and enforcing an arbitral award (Sections 13, 17, 34, and 35).

The most significant drive towards court based ADR came with the passing of Legal Notice No. 7 of 2003. The Commercial Court Division (Mediation Pilot Project) Practice Direction 2003 and statutory instrument No. 71 of 2003, The Commercial Court Division (Mediation Pilot Project) Rules 2003. The Practice Direction Legal Notice 7 of 2003 in its preamble states the reasons why the Mediation pilot was set up. This was to deliver to the Commercial community an efficient expeditious and cost effective mode of adjudicating disputes; to encourage parties and counsel to consider the use of ADR as a possible means of resolving disputes or particular issues and it places an obligation on counsel to consider and advise clients to use ADR in all suitable cases.

Under Rule 12 of Legal Notice 71 of 2000, Mediation is to be carried out under the auspices of CADER (The Centre for Arbitration and Dispute Resolution), which should provide or assign qualified and certified mediators. The mediators are bound by CADER Administration Procedure and The CADER Code of conduct. Under Rule 7, every new action commenced in

the Commercial Court shall include a brief statement in the pleadings indicating whether party consents or opposes referral to Mediation if no written objection is made in the pleadings, it shall be presumed that the parties have waived any objection to referral. A party may however apply to The Registrar on proper cause being shown under Rule 9 for exemption under the rules. Under Rule 16 each party is supposed to sign a Mediation Agreement which inter alia identifies at the Mediation the particular person who can bind the party appearing at the Mediation.

2.8.2 Court-Connected ADR

Court-connected ADR refers to processes that are linked formally to the governmental justice system. Such ADR activities are authorized, offered, used, referred by, or based in the Court system (Hensler, 2003). Agreements arising out of Court-connected ADR may be enforceable as Court orders (Welsh, 2004). Court referrals to private ADR services and Court-based programs are covered by this term (Weston, 2003).

Mandatory ADR approaches refer to how disputes enter ADR processes. If the parties are compelled to use ADR (by the Court or statute), then the use is mandatory (Sherwyn, et al. 2002). Sherwyn (2003) adds that if the use of ADR is based wholly on the consent of all the parties, then it is voluntary. Binding are situations where the disputants are required to accept and respect the outcome of the ADR process, such as third party opinions, that process is binding (Devereaux, 2006). ADR outcomes that are advisory only are a feature of nonbinding processes (Chappe, 2013). As a rule, disputants are not bound by an outcome or resolution in ADR, unless they agree to be bound (Hensler, 2003).

In spite of this, it is pertinent to point out that there are exceptional situations of mandatory binding Arbitration especially when prescribed by statutes and laws (Sheppard, 2007). Cornu &

Marc-Andre (2010) analyse the situations in which such methods might be preferred to the classical judicial means.

Uganda has embarked on mandatory ADR through the Judicature (Mediation) Rules of 2013 which made Mediation mandatory in all civil matters and this study makes a finding that alternative methods of dispute resolution enable consideration of non-legal factors, which might be emotional considerations and this can help the parties find a path to consensus.

2.10 CHAPTER CONCLUSION

The above literature has shown that ADR embraces Conciliation, Negotiation Mediation and Arbitration process of dispute resolution. The most appropriate type or form of ADR for a particular case depends upon the needs of the parties in the dispute. In some cases, ADR has advantages over litigation, but not all cases could be solved by ADR.

Although the publications about ADR greatly canvass what it is and why it is desirable as opposed to litigation, they do so in general terms for disputing parties and do not focus on the concept of ADR in the Commercial world. Even where studies have been conducted, none focuses on the use of mandatory ADR.

CHAPTER THREE

METHODOLOGY

3.0 INTRODUCTION

This chapter presents the methodology which was employed in the collection of data for this study. It highlights the research design, the study area, study population, sample size and how the sample was selected. Also, the methods that was used to collect the data, data collection instruments; data management and analysis, ethical considerations and the limitations to this study were discussed.

3.1 RESEARCH DESIGN

The design used in this study is case study. Qualitative and quantitative methods of data collection were used. Such a design is a systematic empirical inquiry in which the researcher does not have direct control of independent variables because they cannot be manipulated (Creswell, 2005). Inferences about relations among variables are made without direct intervention from associated variation of independent and dependent variables (Creswell, 2005). As this design does not allow the researcher to manipulate either the independent variables or the research setting, it is apt, because of its higher external legitimacy and less cost. This allowed the study to be completed within the constraints imposed by limited time and financial resources.

3.2 STUDY AREA

The study was conducted at the Commercial Division of the High Court Kampala. The case study is relevant because the managers in this institution specifically apply Alternative Dispute Resolution and exclusively handle disputes of a commercial nature. The study sought

information on the ADR techniques (Mediation, Arbitration, Conciliation and Negotiation) and how they are employed in specific cases categories.

3.3 STUDY POPULATION

The study population consisted of the practitioners at the Commercial Division of the High Court in Kampala. Judicial officers at the Commercial Court, Advocates, and Accredited Mediators attached to the court. From these data was obtained on ADR.

Some of the respondents were briefly interviewed and others were asked to respond to questionnaires about the use of ADR approaches at the Court. The essence of selecting the above was to capture views from both the respondents that have hands-on experience and the court users as to what factors prompt them to take up the different options.

3.4 SAMPLING DESIGN AND PROCEDURE

In order to obtain a representative sample and relevant information a select number of legal practitioners handling cases filed specifically to the Commercial Division registry were generated. These were stratified according to the Advocates, Mediators and Judicial officers. Purposive sampling was used to select the samples of all judicial officers and mediators. The researcher selected these units which are small and took them as a whole. Slovin's formula was used to get the sample size from the advocates' stratum and then simple random sampling was used to select the respondents from advocates' stratum.

3.4.1 Sample Size

A sample is a segment of the population that is selected for investigation; it is a subset of the population (Bryman & Bell, 2003). Slovin's formula was used to get the sample size from the list of 110 Advocate firms registered with the court in the last three years. The formula is written as $n = \frac{N}{1+(N \times e^2)}$ where n = Number of samples, N = Total population and e = Error tolerance. Slovin's Sample Size Calculator was applied.

Table 1: Sample size Table

Category of Population	**Population Size**	**Sample**	**Sampling Technique**
Advocates	110	86	Slovin's sampling formula
Judicial Officers	10	10	Purposive sampling
Mediator/arbitrators	14	14	Purposive sampling
Total	**134**	**110**	

Using the formula above, a target population *N* of 110 advocates was taken and a confidence level of 95 percent (which gives a margin of error/ error tolerance of 0.05) was used. Also from the formula, the sample size *n* generated consisted of 86 advocates. This is the number that was selected to provide the relevant data. Slovin's formula was used to find this sample size because the advocates population is unpredictable and any licensed advocate could practice at the court.

In addition, Mediators and Judicial officers comprise very small numbers and were all selected. All the 14 Mediators practicing at the court and all the 10 Judicial officers, who have worked at the Court in the last three years were selected. This made the total sample size of 110 respondents.

3.4.2 Sampling Technique

Purposive sampling and simple random sampling were employed in this study. Purposive sampling was used because the researcher consciously targeted all practicing mediators and judicial officers that have worked at the High Court Commercial Division in the last three years as well as a sample of practicing advocates at the court. In this study, the legal practitioners were any that have practiced at the court in the period between 2013 and 2015. The researcher was able to capture up-to-date data generated through the Computerized Case Administration System of the staff listing and day today legal practitioners and easily established the respondents.

3.5 DATA COLLECTION METHODS AND INSTRUMENTS

For the purposes of this research, questionnaires were used for collecting both qualitative and quantitative data. Data collection settings may range from natural to artificial, with relatively unstructured to highly structured elicitation tasks and category systems, depending on the purpose of the study and the disciplinary traditions associated with it (Cohen & Manion, 1994). The primary data was collected through administering questionnaires, from judicial officers, and accredited mediators. Secondary data was obtained from the statistical data captured and contained in Computerized Case Administration System (CCAS). CCAS was developed to generate the required statistics and this allows for greater transparency and accountability within the court.

The questionnaires were used for collecting both qualitative and quantitative data. The questionnaires were designed to constitute both open and closed ended questions. Open ended questions captured individual opinions, while closed questions required short and direct responses. The respondents were allowed time to properly and accurately interpret and

understand the questions. This reduced the possibility of misunderstanding and misinterpretation thereby increasing authenticity of the information.

The researcher also used interview method of collecting data which involved presentation of oral, verbal stimuli and reply in terms of oral-verbal responses. This method was also used through personal telephone interviews and self-administered questionnaires. Interviews were one of the data collection methods used for qualitative research. Interviews consisted of meeting with participants one on one and asking them open-ended questions. Interviews were structured and the researcher had predetermined sets of questions to ask and did not deviate from those questions. In the semi-structured interview, the researcher had prepared questions but had the freedom to ask additional follow up questions as saw fit. The qualitative data was analysed by conducting a thorough review of the responses collected during the interview. The researcher then identified questions for which frequencies were needed and manually drew tables and constructed the frequencies. Critical quotations were picked from the responses.

3.6 QUALITY CONTROL METHODS

To ensure validity and reliability of data to be collected, quality control was done using the techniques of ensuring quality. The researcher endeavoured to attain validity and reliability of at least 70 percent (0.70). Validity involves getting the right data while reliability shows whether the approach to be used would again present consistent results to other researchers that would use the same techniques of research. Therefore, comprehensive research instruments were developed and tested before the real investigation started. The items were then to be vigilantly selected and subsequently edited, bearing in mind the research objectives, the hypothesis, the conceptual framework, and the theoretical framework.

The pre-test questionnaires for this research were administered to 10 advocates and judicial officers; the questionnaires were developed after various discussions with the supervisor. The data from the pilot questionnaires analysed using Cronbach's Alpha, as a measure of internal consistency. Cronbach's Alpha is used to determine if all the items within the instrument measure the same thing. The closer the alpha is to 1.00, the greater the internal consistency of the items being measured (George & Mallery, 2006). The marker of an acceptable 31 reliability coefficient is generally 0.7. However, even lower thresholds are sometimes reported in the literature (Nunnaly, 1978). Results confirmed that the instrument used in the pilot study was reliable with a Cronbach's score of .773. The instrument met the acceptable level of reliability and was determined suitable for use with the current study.

3.7 DATA MANAGEMENT AND PROCESSING

Questionnaires received from respondents and interview schedules were checked for completeness with repeat follow-ups and calls being made for incomplete questionnaires to maintain the number of respondents. Categorisation and coding was then done and data entered into SPSS for analysis. Both descriptive and inferential tests were used in the analysis. Descriptive statistics helped the researcher describe, show or summarize data in a meaningful way such that, for example, patterns might emerge from the data. Descriptive statistics do not, however, allow us to make conclusions beyond the data we have analysed or reach conclusions regarding any hypotheses we might have made. They are simply a way to describe our data. Inferential statistics allowed the researcher to use samples obtained to make generalizations about the populations from which the samples were drawn. It is, therefore, important that the sample accurately represents the population.

3.8 DATA ANALYSIS

Case study data analysis generally involves an iterative, spiralling, or cyclical process that proceeds from more general to more specific observations (Creswell, 1998; Palys, 1997; Silverman, 2000). Data analysis may begin informally during interviews or observations and continue during transcription, when recurring themes, patterns, and categories become evident.

Once written records are available, analysis involves the coding of data and the identification of salient points or structures. Having additional coders is highly desirable (but is less common in qualitative research than in quantitative research), especially in structural analyses of discourse, texts, syntactic structures, or interaction patterns involving high-inference categories leading ultimately to the quantification of types of items within categories.

The data was verified by the researcher to ensure that the right analysis of quantitative data and the researcher sought assistance from a Statistician to analyse the raw data obtained. The analysis was conducted using the Statistical Package for Scientists (SPSS) and the graphs were drawn using Microsoft Excel. Correlation analysis was used to quantify the association between variables (., between the use of each of the independent and a dependent variables). A regression analysis technique was used to assess the relationship between the outcome variables and one or more risk factors or confounding variables.

3.9 ETHICAL CONSIDERATIONS

The Researcher ensured confidentiality of the respondents, their participation and the data they provided. The data gathered was treated honestly, only drawing from it those conclusions that can be legitimately justified. The population was not chosen just because they are easily

available, in a compromised position, or because they are open to manipulation. The burden for research was fairly distributed and related to the problem being studied.

The researcher ensured respect for persons in the study. Participants freely agreed to participate in this study with no coercion or harmful consequence if they selected not to. Participants were free to end their participation in the study at any stage during its development.

Participants had a right to know the purpose of the research, expected duration and procedures. Truthfulness was a necessary ingredient in research design. The researcher was straightforward in describing to the participants the nature of this research, spelling out the duration and nature of the relationship with them.

The Researcher also ensured that the respondents were informed about the purpose of the study prior to securing their consent to participate. The researcher ensured beneficence, maximized the benefit and minimized any harm or risk to the participants in the study.

Finally, the researcher as able to take due cognizance of all literature read and reviewed and in no way attempts to or pass on other people's work as her own and in case there are any un acknowledged phrases, the researcher avers that it was inadvertent and she has no ill-conceived intent to pass on the said phrase(s) as her own.

3.10 STUDY LIMITATIONS

There are some unavoidable limitations to this study. First because of the time limit, this research was conducted on a small size of population. To generalize the results for a larger group, the study should involve more participants at different levels.

This case study looked at the Commercial Division High Court and cases handled there at. The behaviour of court users and results of this unit of analysis may not be representative or reflect the behaviour of other courts in Uganda where ADR is practiced. This case study only suggests of what may be found in similar organisations and similar setting and therefore additional research is needed to verify whether findings from this study would generalize elsewhere.

The researcher did not have access to the whole population this study would have been interested in investigating. Only a limited number of data was used instead.

3.11 CHAPTER CONCLUSION

This study set out to examine the relationship between ADR processes and commercial justice in Court. The above tools, procedures were used to explore what underlines the broader uses of and justification for ADR choices and whether there is clear positive evidence of cost and time savings. A range of strategies were adopted by the researcher to obtain responses to the issues that have been highlighted. These results of the study are summarised in chapter 4 below.

CHAPTER FOUR

DATA PRESENTATION, ANALYSIS AND DISCUSSION OF FINDINGS

4.0 INTRODUCTION

The study evaluated the ADR approaches in the management conflicts at the commercial court division of the High Court. The study adopted four research objectives which were: to determine the effect of mediation, arbitration, negotiations and conciliation on commercial conflicts at the High Court Commercial Division. The study presents descriptive results from questionnaire in form of frequencies and percentages. Also the study presents qualitative results from interviews, in form of quotations and narrative themes as per respondents' views in regard to each objective of the study. The study also presents correlations and regressions to show the nature of relationship and magnitude effect among variables. Further, this section ties together the information obtained through the research. The data is grouped into three broad categories: use of ADR, four ADR processes, the moderating variables and the guiding theories in this study.

4.1 RESPONSE RATE

The study sample size was 110 and response rate was 110 representing a response rate of 100% in both questionnaires and interviews. This represented 110 for questionnaires. The researcher monitored and minimized the non-responses to avoid bias in the sampling results. In order to avoid bias in this research, the non-responses were managed by follow-up phone calls first. If the participants still did not respond, then the non-responses were managed by replacement. This response rate was well above the recommended 60% response rate as per Guttmacher Institute, (2006) which asserts that for a study to be considered with satisfactory results it has a response

rate above 60% in the overall study. Therefore, the study results can be relied upon for academic and non-academic purposes by readers and users.

4.2 DEMOGRAPHICS OF RESPONDENTS

In the study, background information of respondents was established. The gender of respondents helps to establish the majority sex of respondents that participated in the study and the level of education helped to establish whether respondents would give views that are relevant and useful to the study and age group gave an overview on which age group category majorly participated in the study and results are presented in their respective tables or figures below.

The gender of respondents that participated in the study was established and findings are presented in table 2 below.

Table 2: Gender of respondents

		Frequency	**Valid Percent**
Valid	Male	65	59.1
	Female	45	40.9
	Total	110	100.0

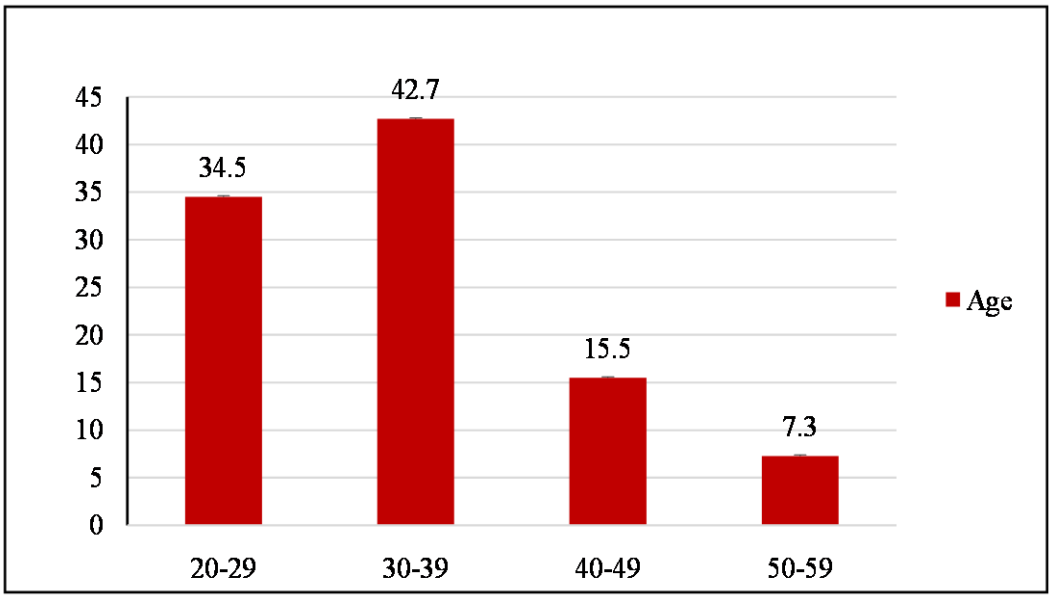
***Source**: Primary data (2016).*

Table 2 above shows that the respondents were 110 in total, comprising males and females alike. The males were 65 (59.1%) and the females 45 (40.9%), giving a total of 110 (100%). The statistic above shows that there were slightly more male respondents compared to women. This

could partly be explained by the general gender distribution in the legal fraternity with more males in private legal practice than females.

The study established the age bracket of the respondents. The findings are presented in figure 2.

Figure 2: Graph showing the age categories of the respondents.



Source:

Primary data (2016)

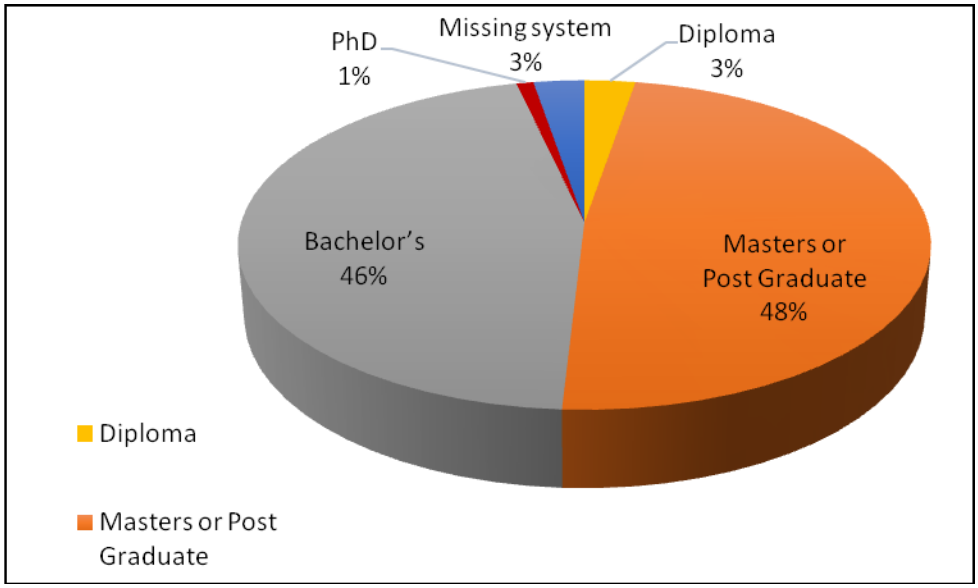
Figure 2 above shows that a majority of the respondents were in the 30-39 age bracket. This category had 47 (42.7%), followed by those aged 20-29 years with 38 respondents constituting 34.5%. The age bracket of 40-49 years had 17 respondents (15.5%), and lastly the respondents in category 50-59 years were 8 respondents making 7.3%.

The majority age range of respondents was from 20- 39 years. This category comprised of 76.23% of the respondents. This is a relatively very young population of professionals who could have just joined legal practice. It is presumed that all qualified advocates who fall in the age

bracket of 20- 29 are fresh graduates from Law Development Centre (where all lawyers must obtain a qualification to practice as advocates after 18 years of school). All advocates are therefore presumed to be 25 years old and above. This is explained by Uganda's educational process, the years spent at the law school and the mandatory requirement for the Post Graduate Bar course before acceptance into legal practice. The age categories of 30-39 are young professionals and this population is more likely to be pliable to ADR uptake since they would have undergone some training component of ADR use and benefits.

The education level of respondents that participated in the study was established and findings are presented in figure 3 below.

Figure 3: Pie chart showing education level of Respondents



Source: *Primary data (2016)*

Figure 3 above shows that 53 of the respondents possess a Masters/Post Graduate qualification with a highest representative percentage of 49%. Those with Bachelor's degrees follow with 50

(47%) of the total. Three (3%) have acquired a Diploma. Of all respondents, only one (1%) has attained a PhD. It is important to note that 3 respondents did not provide their educational background (3%) represented by missing system. The bigger number of post masters/ postgraduate holders can be explained two ways. Indeed, the respondents could be holders of a master's qualification considering age distribution of the respondents, or since all advocates take the mandatory Post Graduate Bar Course, some of the respondents take it as a post graduate study. The three (3) diploma holders in our respondents fall in the category of mediators. They are holders of a diploma in law, have long service in the judicial system and hence qualified to mediate because of their long experience. The PhD holder is a long serving judicial officer.

4.3. THE EFFECT OF MEDIATION ON COMMERCIAL CONFLICTS AT THE HIGH COURT COMMERCIAL DIVISION

Speedy resolution of conflict in industrial and commercial matters offers a comparative advantage in international trade. Stipanowich (2004) regards ADR as the result of unprecedented efforts to develop strategies aimed at more efficient, cost effective and more satisfying resolution of conflict using ADR approaches. Davies (2000) observes that litigating parties seeking to maximize welfare are likely to participate in ADR programs if such programs generate a surplus. ADR programs claim to generate social surplus partly through promoting settlements and reducing case disposition time.

This study established the effect of Mediation and Commercial conflicts at the High Court Commercial Division. Respondents were engaged in answering questionnaires and interviews and results are presented below. Results from questionnaires were computed to obtain

frequencies, percentages, correlations and regressions. Also results from interviews were obtained and are presented in thematic statements or quotations and presented below.

Table 3: Respondent's opinion on Mediation usage in Commercial Disputes.

		Frequency	Valid Percent
Valid	Rarely	3	2.9
	Less Frequent	13	11.8
	Neutral	29	26.5
	Frequent	31	27.9
	Very frequent	34	30.9
	Total	110	100.0
Missing	System	0	
Total		110	

***Source**: Primary data (2016).*

Respondents were asked to rate the mediation usage as one of the conflict resolution mechanisms and findings are presented in the table 3 above. Study findings revealed that 3 (2.9%) respondents believe mediation is rarely used as a mechanism for dispute resolution in settling commercial disputes and 13 (11.8%) respondents said that mediation is less frequently used in setting commercial disputes. 29 (26.5%) of respondents were neutral on mediation usage in commercial dispute settlement as 31 (27.9%) of the respondents said it is frequently used. 34 (30.9%) of the respondents said that mediation is very frequently used as a dispute resolution mechanism. Therefore, over 58.8% of respondents believe mediation is a conflict resolution mechanism that is used in resolution of commercial disputes.

In this study it was established that mediation as an ADR approach, is preferred because it saves time and enables continuation of business relationship, saves money otherwise expended on litigation costs, damages and interests and one of the respondents explained that: -

"*….at commercial court we deal with business men and for them time is money, quick resolution of disputes is what they prefer…"*

This implies that mediation serves an approach that saves the businessman's time in obtaining the solution to a dispute. To some business people continuation of business relationship is important and mediation is enables parties get a solution to the satisfaction of all parties.

In the study, it was found out that management of the mediation process is very significant in having fruitful results. One of the respondents explained that

"…. the attitude of the plaintiff and the mediator matters a lot if mediation is to work out…"

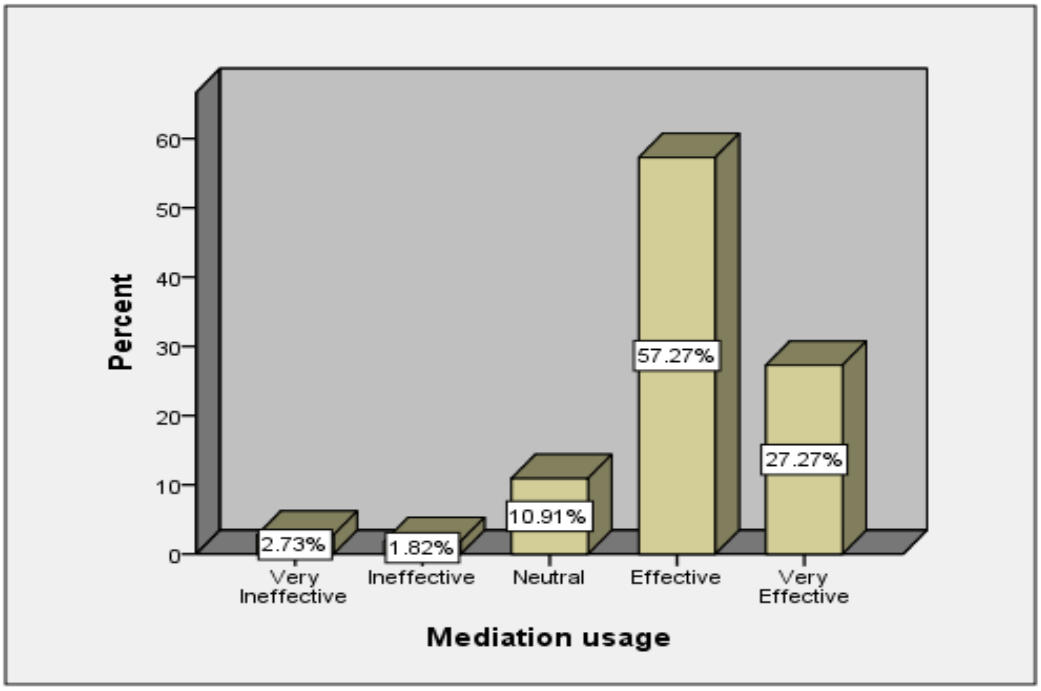
This possibly implies that the management of the mediation process especially the willingness of the parties to submit to the process and the attitude of the mediators is crucial for the success of the process. How the mediator manages the attitudes of the parties to a conflict determines the success of the process and the likely outcomes of the process. Upon failure to resolve issues in mediation, one must convince court that mediation failed before embarking on the ordinary court process.

The findings in this study resonate with writers Hann & Baar (2001) and Gould & Britton (2010) who established that the cost savings attributed to successful mediations are significant, offering a tangible incentive for parties.

4.3.1 The effect of Mediation in Resolving Commercial Conflicts

This study sought to find out the effect of mediation in resolving commercial disputes. The findings on the respondent's opinion are presented in the graph below.

Figure 4: Graph showing the effect of Mediation on Resolving Commercial Disputes.



***Source**: Primary data (2016).*

Findings revealed that 2.73% of respondents believe that mediation has been very ineffective in resolving commercial disputes as 3.96% ineffective and 10.91% remained neutral. Also, it was revealed by 57.27% of respondents that mediation is very effective as 27.27% said mediation is very effective in resolving commercial disputes. From the majority, 84.54% of respondents believe mediation is a very effective dispute resolution mechanism in commercial conflicts.

In the study, it was revealed that the willingness of the individual parties' concerned play a significant role in ensuring the success of the mediation process as one respondent explained

"...mediation is commonly used as parties are able to make up their own decisions on realising each other's weaknesses. Arbitration takes shorter period than litigation..."

This possibly implies that the willingness of the different stakeholders in the mediation process, ability to trust the process and get involved in the mediation process determines the outcome and success of the mediation process. Mediation becomes effective if parties come ready for mediation, have a willingness to cooperate, ready to iron out issues and come to a common ground.

The study also found out that sometimes mediation is affected by malpractices from the players in the mediation process like corruption as one of the respondents explained that

"...corruption in people's minds and sometimes advocates who are handling the process..."

This implies that malpractices like corruption among the different players in the mediation could affect the outcomes of the conflict resolution process. Such practices in mediation are brought about by individual players' interests in the mediation process and this largely affects the outcome of the conflict resolution process.

Besides the shortcomings pointed out by the respondents, the overall conclusion of this study was that mediation is a very effective dispute resolution mechanism resonates with Veen (2014) studies conducted in the US, Canada and UK.

4.3.2 The ranking of mediation in resolving commercial conflicts

In this study, respondents were asked to rank mediation in the commercial dispute resolution. The findings on the respondent's opinion are presented in the table below.

Table 4: Respondents Ranking mediation in resolving commercial conflicts.

		Frequency	Valid Percent
Valid	Very insignificant	2	1.5
	Insignificant	3	2.9
	Neutral	21	19.1
	Significant	52	47.1
	Very significant	32	29.4
	Total	110	100.0
Missing	System	0	
Total		110	

***Source**: Primary data (2016).*

Study findings revealed that 2(1.5%) of respondents ranked mediation very insignificant in resolving commercial disputes, 3 (2.9%) of the respondents ranked it is as insignificant in resolving commercial disputes as 21(19.1%) were neutral on this statement. Findings also revealed that 52 (47.1%) of respondents ranked mediation is significant in resolving commercial disputes whereas 32 (29.4%) ranked mediation as very significant in resolving commercial disputes. From the majority, 84 (76.5%) of respondents to question believe mediation is very significant in resolving commercial disputes.

The study also revealed that mediation allows parties to settle at freewill and usually avoid legal costs. For some of the matters where mediation was used, parties entered into a partial consent and the remaining issues resolved by the court.

4.3.3 Correlation between mediation and commercial dispute resolution

This study further analysed data using a Pearson Correlation to establish a statistical relationship between Mediation and commercial dispute resolution. The results are presented in the table below.

Table 5: Correlation of mediation usage and commercial disputes

		Mediation usage	commercial disputes
Mediation usage	Pearson Correlation	1	.603**
	Sig. (2-tailed)		.000
	N	110	110
commercial disputes	Pearson Correlation	.603**	1
	Sig. (2-tailed)	.000	
	N	110	110
**. Correlation is significant at the 0.01 level (2-tailed).			

***Source**: Primary data (2016).*

The correlation results in table 5 indicate that there is a positive significant relationship between mediation and commercial dispute resolution in Uganda. The obtained correlation co-efficiency of .603(**) with a significance value of .000, illustrates a significant positive relationship that exists between mediation as a dispute resolution mechanism and commercial dispute resolution. Since the p.value is 0.000 is smaller than 0.01 the relationship is significant. Hence, when the

mediation process is effectively managed mediation as a commercial conflicts resolution achieves a 60.3% desired outcome.

4.3.4 Regression Analysis of mediation usage and commercial disputes resolution

The study further analysed the data to determine the regression between mediation and commercial dispute resolution. The results are presented in the table below.

Table 6: Regression of mediation usage and commercial disputes resolution

	R	R Square	Adjusted R	Beta co-efficient	Significance	F-statistic
Mediation Usage	.603[a]	.363	.399	.603	.0000	61.633

a. Dependent Variable: Commercial Dispute Resolution (n=110)

***Source**: Primary data (2016).*

Study results in the regression analysis were obtained with a coefficient of determination R^2=0.363. This therefore implies that any changes in mediation as commercial dispute resolution mechanism would lead to 36.3% chance change in commercial dispute resolution outcomes. The study results further confirm that mediation is significantly related to improved commercial dispute resolution (β =0.603, p<0.01). This possibly implies that the use of mediation would bring an improvement in commercial conflict resolutions at commercial courts in Uganda.

4.4 THE EFFECT OF ARBITRATION ON COMMERCIAL CONFLICTS AT THE HIGH COURT COMMERCIAL DIVISION.

The study sought to establish the effect of Arbitration on commercial conflicts at the High Court Commercial Division. Findings are presented in form of frequencies and percentages from questionnaires and interviews as well as inferential statistics to show the nature of relationship between variables and results are presented below from questionnaires and interview results. The study respondents were asked to rate, rank and give their perceptions on negotiation as one of the commercial dispute resolution mechanisms.

The study respondents were asked to rate the arbitration usage as one of the commercial dispute resolution mechanism and findings are presented in the table below.

Table 7: Respondent's opinion on Arbitration usage in Commercial Disputes.

		Frequency	Valid Percent
Valid	Rarely	26	23.5
	Less Frequent	29	26.5
	Neutral	21	19.1
	Frequent	21	19.1
	Very frequent	13	11.8
	Total	110	100.0
Missing	System	0	
Total		110	

***Source**: Primary data (2016).*

In the study, findings established that 26 (23.5%) of respondents believe that arbitration is rarely used as a mechanism for dispute resolution, 29 (26.5%) of the respondents said it is less

frequently used and 21 (19.1%) of the respondents were neutral on arbitration as a commercial dispute resolution mechanism. In the study, findings established by 21 (19.1%) of respondents that they believe arbitration is frequently used and 13 (11.8%) of the respondents said that arbitration is very frequently used as a conflict resolution mechanism. The total percent of 55 (50 %), of respondents believe that arbitration is seldom used in settling commercial disputes while a lower percentage 34 (30.9%) respondents indicated that it is often used.

In this study, it was revealed that litigants and the aggrieved parties may not care about the resolution process; all they need is a solution. One respondent explained that: -

> *"...arbitration is adversarial in nature it is just like litigation. Annoyed people therefore don't appreciate it; however, it delivers quicker justice than litigation..."*

This implies that sometimes arbitration may not be preferred as it is adversarial in nature and seeks a win-lose situation that may cause dissatisfaction to the other party. This causes it to be a less preferred method by many seeking commercial justice.

In the study, it was revealed that arbitration bases on documented evidence in dispute resolution as one of the respondents said;

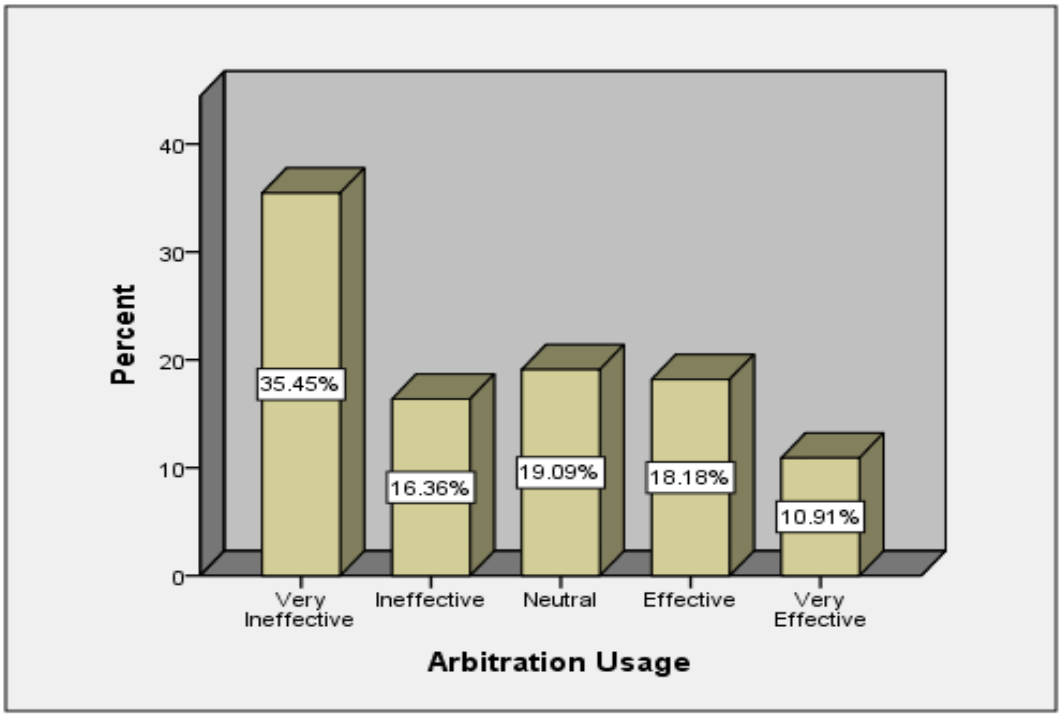
> *"...claims are always based on documents making it easy to resolve even where there is total denial..."*

This implies that like in litigation process, arbitration relies on documentary evidence for basing on in the dispute resolution process. This works well where there is total denial from one party in the conflict management process.

4.4.1 The effect of Arbitration usage in Resolving Commercial Conflicts

This study sought to find out the effect of arbitration in resolving commercial disputes. The findings on the respondent's opinion are presented in the graph below.

Figure 5: Graph showing the effect of Arbitration on Resolving Commercial Disputes.



***Source**: Primary data (2016).*

Study findings revealed that 35.45% of the respondents believe that arbitration has been very ineffective in resolving commercial disputes, 16.36% report it is ineffective and 19.09% remained neutral on the statement. It was further revealed by 18.18% of respondents that arbitration is effective as 10.91% said arbitration is very effective in resolving commercial disputes. The majority views of 51.81% respondents in this question therefore, reported that arbitration is ineffective as a commercial dispute resolution method.

Some of the advantages were noted in the event that arbitration is used successfully. It was indicated that it leads to long lasting solutions as one respondent explained that: -

"...just as like litigation, it may also provide good base for faster and long lasting solutions to commercial disputes..."

This denotes that arbitration helps most parties resolve their issues without embarking on a lengthier and costly court process. If successfully handled, it provides durable solutions. In the findings it was revealed that business dealing contacts must have a clause for arbitration in the agreement specifying the dispute resolution mechanism as one respondent explained

"...commercial contracts that may be a source of dispute usually detailing arbitration as a mode of dispute resolution in event any issues arise. More often than not the defaulting party is obvious"

This implies that most commercial agreements have a dispute resolution clause by which the parties have a prior agreement to settle any differences by arbitration. However, it is rarely exploited as many parties may not have included terms of process and management. It is less time consuming though sometimes it can be expensive but the process is done expeditiously and yet the award is hard to set aside.

Bender (2011) points out similar reasons for use of arbitration indicating that arbitration is similar to judicial proceedings but is less formal and effective. The findings of this study reflect a contrary position portraying arbitration as a less effective mode of dispute resolution.

4.4.2 The Ranking of Arbitration in resolving commercial conflicts.

In the study, respondents were asked to rank arbitration in the in commercial dispute resolution and findings are presented in the table below.

Table 8: Respondents Ranking arbitration in resolving commercial disputes

		Frequency	Percent	Valid Percent
Valid	Very significant	10	8.8	8.8
	Significant	2	1.5	1.5
	Neutral	21	19.1	19.1
	Insignificant	53	48.5	48.5
	Very insignificant	24	22.1	22.1
	Total	110	98.6	100.0
Missing	System	0	1.4	
Total		110	100.0	

***Source**: Primary data (2016).*

Study findings revealed that 10 (8.8%) of respondents believe that arbitration is very significant in resolving commercial disputes, 2 (1.5%) of the respondents revealed arbitration is significant in resolving commercial disputes as 21 (19.1%) were neutral on this statement. Study findings further revealed that 53 (48.5%) of respondents believe arbitration is insignificant in resolving commercial disputes whereas 24 (22.1%) of respondents report that arbitration is very insignificant in resolving commercial disputes. Holistically, the majority of 77 (70.6%) respondents in this question report that arbitration is very insignificant in resolving commercial disputes.

The study also established that some dishonest people may want to take advantage of the process for own gain and distort the process hence affecting the outcomes.

4.4.3 Correlation between arbitration and commercial conflict resolution

This study further analysed data using a Pearson Correlation to establish a statistical relationship between Arbitration and Commercial Dispute Resolution. The results are presented in the table below.

Table 9: Correlation between arbitration usage and commercial conflicts

Correlations			
		Dispute resolution	Arbitration
Dispute resolution	Pearson Correlation	1	.239*
	Sig. (2-tailed)		.012
	N	110	110
Arbitration	Pearson Correlation	.239*	1
	Sig. (2-tailed)	.012	
	N	110	110
*. Correlation is significant at the 0.05 level (2-tailed).			

***Source**: Primary data (2016).*

The correlation analysis in table 11 indicates that there is a positive but low significant relationship between arbitration and commercial dispute resolution. The Pearson correlation co-efficiency of .239 with a significance value of .012 illustrates an insignificant relationship that exists between arbitration and commercial dispute resolution. Since the p value 0.12, is greater than 0.05. Therefore, the use of arbitration in commercial conflicts resolution may influence the outcomes in a commercial dispute resolution process but on the lower end.

4.4.4. Regression Analysis of arbitration usage and commercial disputes

The study further analysed the data to determine the regression between Arbitration and commercial dispute resolution. The results are presented in the table below.

Table 10: Regression of arbitration usage and commercial disputes

	R	R Square	Adjusted R	Beta co-efficient	Significance	T-statistic
Arbitration usage	.239[a]	.057	.048	.239	.012	2.553

a. Dependent Variable: Commercial Dispute Resolution (n=110)

***Source**: Primary data (2016).*

Study results of the regression analysis between arbitration and commercial dispute resolution reveal R^2=0.057 coefficient of determination. This therefore implies that any changes in arbitration in the way it is done and conducted as commercial dispute resolution mechanism would possibly lead to 5.7% change in commercial dispute resolution outcomes. The study results further confirm that arbitration has a moderate significance related to improved commercial dispute resolution in the event it is handled well (β =.239, p>0.05). Therefore, if arbitration is well managed by all its processes in a procedural manner with all parties having common lines of agreement then there is likelihood of improved yet faster outcomes in the dispute resolution process.

Arbitration is a process that is almost as formal as a trial, with the rules of evidence, the testimony of witnesses, and the entire process being too similar to a court trial to reap the

benefits of ADR. In these cases, ADR and the benefits associated with the use of ADR fall short of its intended outcomes, and ultimately yields result similar to that obtained through litigation hence less preference from many seeking dispute resolutions.

4.5 THE EFFECT OF NEGOTIATION ON COMMERCIAL CONFLICTS AT THE HIGH COURT COMMERCIAL DIVISION.

The study sought to establish the impact of Negotiation on commercial conflicts at the High Court Commercial Division. Findings are presented in form of frequencies and percentages from questionnaires and interviews as well as inferential statistics to show the nature of relationship between variables and results are presented below from questionnaires and interview results. The study respondents were asked to rate, rank and give their perceptions on negotiation as one of the commercial dispute resolution mechanisms.

In this study, respondents were asked to rate negotiation usage as one of the commercial dispute resolution mechanism and findings are presented in the table below.

Table 11: Respondent's opinion on Negotiation usage in Commercial Disputes.

		Frequency	Valid Percent
Valid	Rarely	15	13.2
	Less Frequent	10	8.8
	Neutral	16	14.7
	Frequent	41	38.1
	Very frequent	28	25.0
	Total	110	100.0
Missing	System	0	
Total		110	

***Source**: Primary data (2016).*

Study findings revealed that 15 (13.2%) of respondents that negotiation is rarely used as a mechanism for settling commercial disputes, 10 (8.8%) said it is less frequently used while 16 (14.7%) were neutral on negotiation being used as a common commercial dispute resolution mechanism in settling commercial disputes. In the study findings established that 41 (38.1%) of respondents believe that negotiation is frequently used and 28 (25%) of the respondents stated that negotiation is very frequently used as a dispute resolution mechanism. The overall majority of 69 (63.1%) respondents stated that negotiation is much used in settling commercial disputes in Uganda.

The study further confirmed that negotiation when used leads to a win-win situation, as one respondent explained that;

> *"…. negotiation is an integral part of mediation with the rationale to come out with a win-win situation as parties normally negotiate to end a dispute…"*

This could possibly imply that negotiation in commercial disputes pave way for a win-win outcome where after the conflict resolution process every party goes away satisfied with the process. Despite the advantages it may not commonly used in dispute resolution as people still have mentality that the other party will not hold up their part of bargain. One respondent noted; -

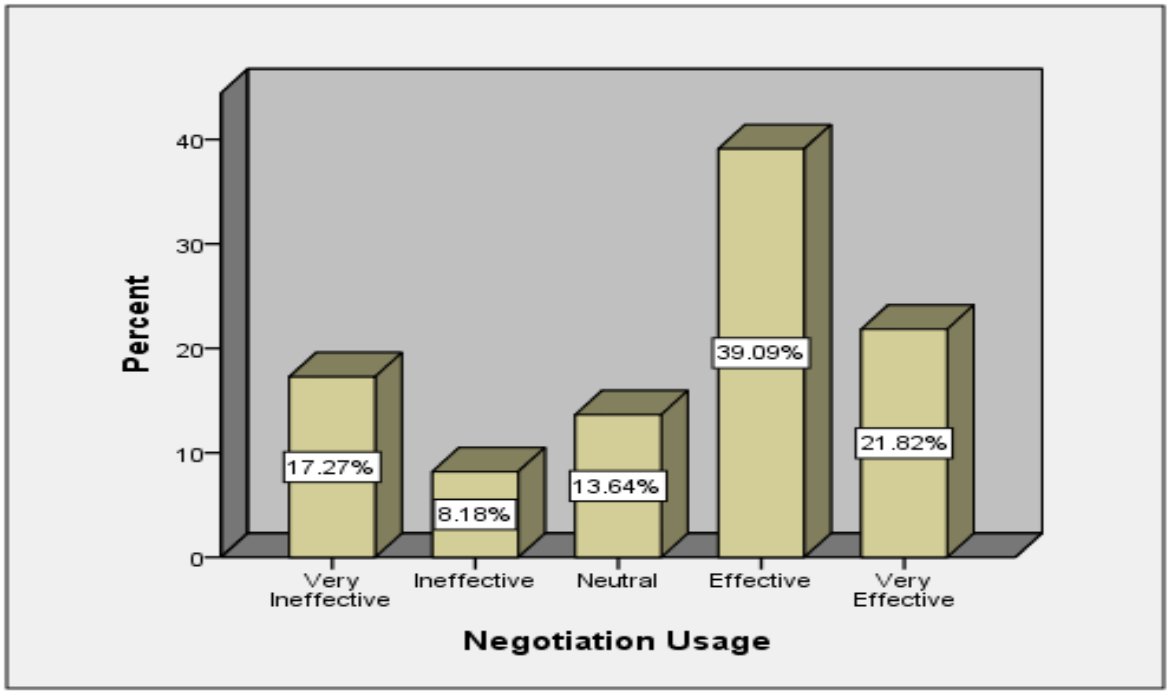
> *"…negotiation is sometimes looked at as getting your own way or driving a hard bargain"*

The above could imply that negotiation may not achieve the desired results if the parties to the process are self-seeking and hence not reach an agreement.

4.5.1 The effect of negotiation in resolving commercial conflicts

This study sought to find out the effect of negotiation in resolving commercial disputes. The findings on the respondent's opinion are presented in the graph below.

Figure 6: Graph showing the effect of Negotiation on Resolving Commercial Disputes.



***Source**: Primary data (2016).*

Study findings revealed that 17.27% of respondents reported that negotiation has been very ineffective in resolving commercial disputes, 8.18% revealed that negotiation has been ineffective and 13.64% were neutral on the statement. Research results also indicated that 39.09% of respondents believe that negotiation is effective in resolving commercial disputes while 21.82% stated that negotiation is very effective in resolving commercial disputes. The majority 60.91% of respondents in this study indicated that negotiation is an effective tool in commercial dispute resolutions in Uganda.

In an interview, it was revealed that negotiations largely depend on the willingness of the parties involved as one respondent explained that

> *"…. the success of negotiation in a dispute resolution largely depends on the willingness and effort all the parties involved. It also helps if each party is to bear its cost…"*

This could imply that negotiation depends on the willingness and seriousness of parties, since it is an inter parte method; most times if parties are not serious it doesn't yield fruit. Negotiation involves parties themselves, through the haggling, the making of concessions, until a compromise is reached and each side believing that the compromise is in their favour. Negotiation is effective if parties decide on a settlement with no costs attached in a designated time.

In this study, it is perhaps surprising that negotiation as a conflict resolution method was established as the most frequently used technique than arbitration throughout the litigation process. Interestingly, negotiation was indicated to be more widely used in the early stages of the litigation process than later on, its use then reducing until shortly before trial. This partially agrees with authors Fisher &Ury (2011) where negotiation was identified as the most used form of conflict resolution because of its vast applicability within the homes and communities.

4.5.2 Ranking of negotiation in resolving commercial conflicts

In the study, respondents were asked to rank negotiation in the in commercial dispute resolution and findings are presented in the table below.

Table 12: Respondents Ranking negotiation in resolving commercial conflicts.

		Frequency	Valid Percent
Valid	Very insignificant	5	4.4
	Insignificant	8	7.4
	Neutral	22	20.6
	Significant	47	42.6
	Very Significant	28	25.0
	Total	110	100.0
Missing	System	0	
Total		110	

***Source**: Primary data (2016).*

Study findings revealed that 5(4.4%) of respondents consider negotiation as very insignificant in resolving commercial disputes; 8 (7.4%) of respondents indicated that negotiation as an insignificant approach in resolving commercial disputes while 22 (20.6%) were neutral on this statement. Study findings also revealed that 47 (42.6%) of respondents believe negotiation is significant in resolving commercial disputes whereas 28 (25%) report that arbitration is very significant in resolving commercial disputes. From the majority 75 (67.6%) of respondents say that negotiation is very significant in resolving commercial disputes in Uganda.

Study findings also established that the negotiation process will most likely yield positive results if the parties to a dispute have an open mind to resolve the conflict and are without intent to cheat. The participants of a negotiation process who may want to advance their own gains may distort the outcomes of the negotiation process.

4.5.3 Correlation between negotiation and commercial conflict resolution

This study further analysed data using a Pearson Correlation to establish a statistical relationship between Negotiation and Commercial Dispute Resolution. The results are presented in the table below.

Table 13: Correlation between negotiation usage and commercial conflicts.

Correlations			
		Dispute resolution	Negotiation
Dispute resolution	Pearson Correlation	1	.432**
	Sig. (2-tailed)		.000
	N	110	109
Negotiations	Pearson Correlation	.432**	1
	Sig. (2-tailed)	.000	
	N	109	109
**. Correlation is significant at the 0.01 level (2-tailed).			

***Source**: Primary data (2016).*

The correlation analysis in table 13 indicates that there is a positive significant relationship between negotiation and commercial dispute resolution in Uganda. The correlation co-efficiency of .432 with a significance value of .00, justifies the positive significant relationship that exists between negotiation and commercial dispute resolution in Uganda. Since the p.value is 0.00 is smaller than 0.01 hence the relationship is a significant one. Therefore, proper handling of negotiation in commercial conflicts resolution would influence the outcomes in a commercial dispute resolution process in Uganda by at least 43.2%.

4.5.4 Regression Analysis of negotiation usage and commercial conflicts.

The study further analysed the data to determine the regression between negotiation and commercial dispute resolution. The results are presented in the table below.

Table 14: Regression of negotiation usage and commercial conflicts.

	R	R Square	Adjusted R	Beta co-efficient	Significance	T-statistic
Negotiation usage	.432[a]	.187	.179	.432	.000	4.959

a. Dependent Variable: Commercial Dispute Resolution (n=110)

***Source**: Primary data (2016).*

Study findings from the regression on negotiation and commercial dispute resolution reveal R^2=.187 coefficient of determination which indicates that 18.7% of variation in commercial dispute resolution. This implies that any changes in negotiation would lead to a 18.7% chance of change in commercial dispute resolution outcomes. The study results further establish that negotiation is significantly related to improved commercial dispute resolution (β =.432, p<0.01). This possibly implies that if a negotiation process is well managed with all key stakeholders reaching important agreements in the negotiation process there is likelihood that there may be improved outcome in the dispute resolution process.

4.6 THE EFFECT OF CONCILIATION ON COMMERCIAL CONFLICTS AT THE HIGH COURT COMMERCIAL DIVISION

The study sought to establish the effect of Arbitration on commercial conflicts at the High Court Commercial Division. Findings are presented in form of frequencies and percentages from questionnaires and interviews as well as inferential statistics to show the nature of relationship

between variables and results are presented below from questionnaires and interview results. The study respondents were asked to rate, rank and give their perceptions on negotiation as one of the commercial dispute resolution mechanisms. The study respondents were asked to rate, rank and give their perceptions on Conciliation as one of the commercial dispute resolution mechanisms.

In this study respondents were asked on conciliation usage as one of the commercial dispute resolution mechanism and findings are presented in the table below.

Table 15: Respondent's opinion on Conciliation usage in Commercial Disputes.

		Frequency	Valid Percent
Valid	Rarely	36	32.4
	Less Frequent	29	26.5
	Neutral	22	20.5
	Frequent	18	16.2
	Very frequent	5	4.4
	Total	110	100.0
Missing	System	0	
Total		110	

***Source**: Primary data (2016).*

Study findings established that 36 (32.4%) of respondents believe conciliation is rarely used as a mechanism for settling commercial disputes; 29 (26.5%) said it is less frequently used and 22 (20.5%) were neutral on conciliation as a commercial dispute resolution mechanism. It was however indicated by 18 (16.2%) of respondents that they believe conciliation is frequently used and 5 (4.4%) said that conciliation is very frequently used as a dispute resolution mechanism. Overall, 65 (58.9%) of respondents report that conciliation is less frequently used in settling

commercial disputes in Uganda. A response below reinforces the view that conciliation is not appreciated as conflict resolution method: -

"... just like arbitration, conciliation is adversarial in nature..."

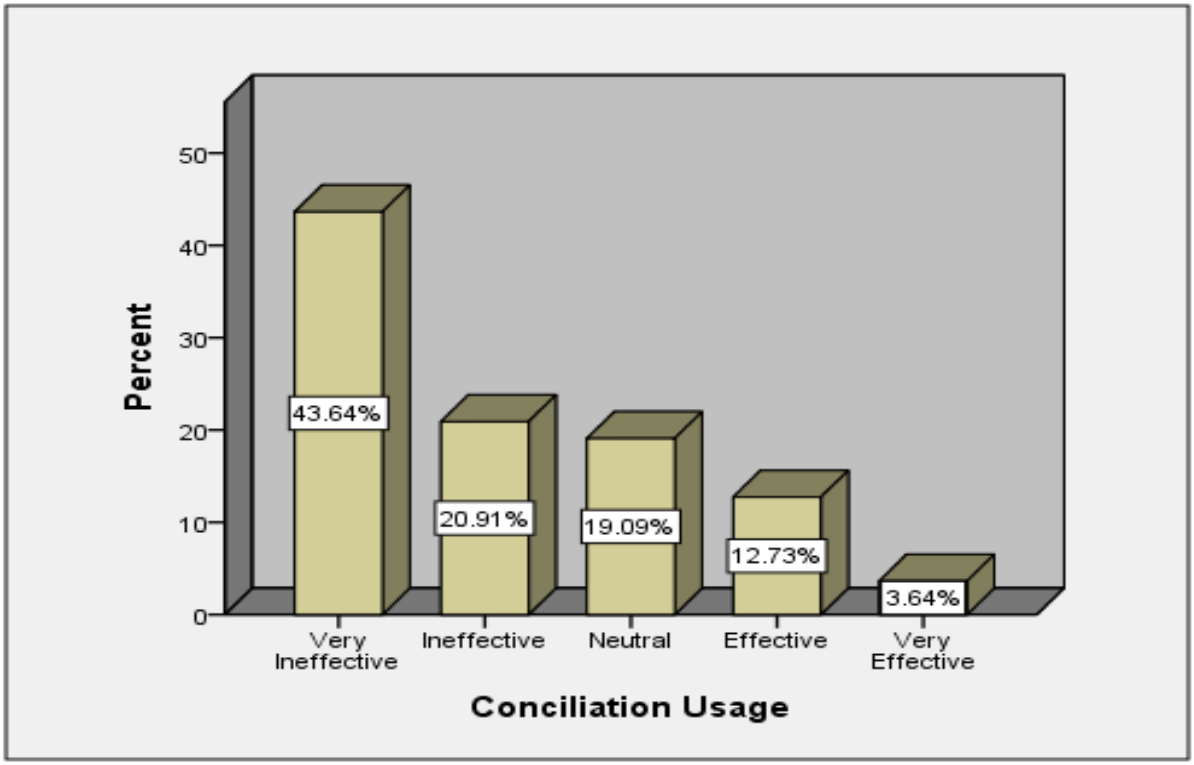
The responses to ineffectiveness would therefore be attributed to the misconceptions and conciliators' limited power of enforceability or participation. The mere fact that conciliator has no powers to enforce his solutions would influence one's decision to go or not go for conciliation in ADR. Conciliators have no authority to make final decision on course of action and parties often change their minds, does not give long lasting solutions hence not very effective.

Reviewed literature indicates that conciliation is a better alternative to the formal justice system and leads to an amicable and quicker settlement of disputes (Jacqueline & Nolan-Haley, 2001). The findings of this study differ from the above as conciliation was established to be misunderstood and have a limited or no effect in resolving commercial disputes irrespective of the Uganda having in place the Arbitration and Conciliation Act.

4.6.1 The effect of conciliation in resolving commercial conflicts.

This study sought to find out the effect of conciliation in resolving commercial disputes. The findings on the respondent's opinion are presented in the graph below.

Figure 7: Graph showing the effect of Conciliation on Resolving Commercial Disputes.



***Source**: Primary data (2016).*

This graph above shows the summary of responses obtained. It was reported by 43.64% of the respondents that conciliation was very ineffective in resolving commercial disputes, 20.91% of the respondents stated that conciliation is ineffective, while 19.08% of the respondents were neutral. Again, 12.73% of the respondents stated that conciliation was effective while only 3.64% of the respondents thought conciliation was effective in resolving Commercial disputes.

4.6.2 Ranking of conciliation in resolving commercial conflicts

In the study, respondents were asked to rank conciliation in commercial dispute resolution and findings are presented in the table below.

Table 16: Respondents Ranking Conciliation in resolving commercial disputes.

		Frequency	Valid Percent
Valid	Very insignificant	34	30.9
	Insignificant	21	19.1
	Neutral	39	35.3
	Significant	11	10.3
	very significant	5	4.4
	Total	110	100.0
Missing	System	0	
Total		110	

***Source**: Primary data (2016).*

Study findings established that 30.9 % of the respondents believe that conciliation is very insignificant in resolving commercial disputes, 19.1% of the respondents stated that arbitration is insignificant in resolving commercial disputes as 35.3% were neutral on this statement. Study findings also revealed that 10.3% of respondents believe conciliation is significant in resolving commercial disputes whereas 4.4 % report that conciliation is very significant in resolving commercial disputes.

4.6.3 Correlation between conciliation usage and commercial conflict resolution

This study further analysed data using Pearson Correlation to establish a statistical relationship between Conciliation and Commercial Dispute Resolution. The results are presented in the table below.

Table 17: Correlation between conciliation usage and commercial disputes.

Correlations			
		dispute resolution	Conciliation
Dispute resolution	Pearson Correlation	1	-.125**
	Sig. (2-tailed)		.194
	N	110	110
Conciliation	Pearson Correlation	-.125**	1
	Sig. (2-tailed)	.194	
	N	110	110
**. Correlation is significant at the 0.01 level (2-tailed).			

***Source**: Primary data (2016).*

The Correlation results in table 17 indicate that there is a negative significant relationship between conciliation and commercial dispute resolution in Uganda. The correlation co-efficiency of -.125 with a significance value p =.194, justifies the negative significant relationship that exists between conciliation and commercial dispute resolution in Uganda. Since the p.value is 0.194, which is bigger than 0.01 hence the relationship is insignificant. This therefore shows with the use of conciliation may have no significant effect in resolving commercial disputes.

4.6.4 Regression Analysis of conciliation usage and commercial conflicts.

The study further analysed the data to determine the regression between conciliation and commercial dispute resolution. The results are presented in the table below.

Table 18: Regression of conciliation usage and commercial disputes

	R	R Square	Adjusted R	Beta co-efficient	Significance	T-statistic
Conciliation usage	-.125[a]	.016	.055	-.125	.194	2.706
a. Dependent Variable: Commercial Dispute Resolution (n=110)						

***Source**: Primary data (2016).*

From the regression analysis on conciliation and commercial dispute resolution, it was revealed that coefficient of determination R^2=.16 which indicates a 16 % variation in commercial dispute resolution. This implies that any changes in conciliation would possibly lead to 16 % chance change in commercial dispute resolution outcomes. The study results further establish that conciliation is insignificantly related to improved commercial dispute resolution (β =-.125, p>0.01). Therefore, effective and efficient management of conciliation process in dispute resolution would lead to little or no effect or outcome of the dispute resolution process.

4.7 MODERATING FACTORS OF ADR AND COMMERCIAL DISPUTES

McFarland (2004) states that many poor people cannot access the formal legal system because they cannot afford to pay the registration and representation fees necessary to prosecute cases in the Courts. The ADR mechanism was introduced into the Ugandan legal system in the pursuit of speedy and amicable resolution of conflict as noted in chapter 1:2 above. The usefulness of ADR in the settlement of Commercial related conflicts need not be over emphasised, as speedy resolution of conflicts in industrial and commercial matters accords any country comparative advantage in international trade.

In their article, *Getting Disputes Resolved*, Ury, et al (1998) state that reconciling interests typically costs less and yields better results than determining who is right or more powerful. This is because a focus on interests can help to uncover hidden problems and resolve the issues underlying the dispute more effectively than can the other two approaches. ADR can and does also help parties to identify the issues that are of most concern to each side. By trading off issues of lesser concern for those of great concern, both parties gain from the resolution of the dispute.

Ury, et al (1998) further argue that focusing on who is right or more powerful usually imposes higher costs on one or both parties.

In this study, the questions on the effect of cost on ADR use in commercial disputes were designed to substantiate the cause for and the need to turn to ADR as a means to cost-effectively settling commercial disputes. The literature supports the benefits being cost and time savings to the commercial world (Chapter 2:1:2 above).

4.7.1 The effect of ADR on Cost in resolving commercial conflicts

In this study respondents were asked on the effect of ADR on cost as moderating variable in commercial dispute resolution and findings are presented in the table below.

Table 19: The effect of ADR on Costs of Litigation.

		Frequency	Valid Percent
Valid	Increases cost	5	4.4
	no effect on cost	6	5.9
	decreases cost	97	88.2
	None	2	1.5
	Total	110	100.0
Missing	System	0	
Total		110	

***Source**: Primary data (2016).*

The majority of respondents at 97 (88.2%) indicated that ADR decreases costs.A smaller percentage of 4.4%indicated that cost increases time.

The majority of respondents indicated the use of ADR arose out of need to control costs and save time stipulated that the implementation of ADR was equally time consuming and costly.

4.7.2 Correlation between Cost and commercial conflict resolution

This study further analysed data using a Pearson Correlation to establish a statistical relationship between Cost and Commercial Dispute Resolution. The results are presented in the table below.

Table 20: Correlation of ADR on cost and Commercial Disputes

Correlations			
		ADR use in commercial disputes	ADR on cost
ADR use in commercial disputes	Pearson Correlation	1	.432**
	Sig. (2-tailed)		.000
	N	110	110
ADR on cost	Pearson Correlation	.432**	1
	Sig. (2-tailed)	.000	
	N	110	110
**. Correlation is significant at the 0.01 level (2-tailed).			

***Source**: Primary data (2016)*

Table 20 shows a correlation of ADR use on cost in commercial disputes. The study findings show a Pearson correlation of 43.2, and a significance level p = 0.000, this shows that there is a strong linear relationship between ADR use in commercial disputes.

This study established that there is a significant effect of cost when ADR is used in commercial disputes.ADR is viewed as a faster and less expensive way to resolve any type of dispute and

even if the court adopts all the various techniques for shortening the trial, trials remain cost-inefficient**.**

In an interview one of the respondents stated that: -

> *"…legal fees often account for a large proportion of the costs. If a mediator is engaged at the right time in the process and in the right spirit of cooperation by the parties, will often be able to resolve the most difficult case and save everyone a good deal of money, time and effort. Elsewhere in the world, ADR is viewed as the standard dispute resolution mechanism."*

Some of the interviewees felt obligated to explore ADR measures prior to pursuing litigation. They stated that in all cases, ADR being a court mandated process coupled with the need to control litigation expenses makes ADR desirable to them.

Some legal practitioners also recognise that ADR is effective and efficient and that some litigants have begun to accept it as a viable option. It has become recognized as a useful addition to conventional litigation in cases involving narrow areas of law, or the application of narrow, specific facts to the law.

Some of the resonating responses were that legal practitioners move toward use of ADR as a settlement method because of the perceived cost and time savings it would deliver.

One of the respondents stated:

> *… law firms employ ADR out of i) desire to expedite dispute resolution process, ii) minimize costs, and iii) minimize divisions and ill will among the parties even*

if the matter is not eventually concluded. Again, the slightly increased appreciation of ADR by the parties, has led our law firm to implement ADR.

The respondents also stated that the judicial process for civil litigation has become so encumbered that they feel forced to explore other means by which settlement can be reached, or risk financial losses that far outweigh any benefit of a litigated case. One respondent noted:-

"...litigation produces only winners and losers and often at very high costs financially and emotionally".

Whereas benefits of ADR were pronounced in most cases, it was not so in all cases. Some respondents who held contrary views argued that the introduction of ADR actually results in prolonged proceedings. That when parties fail to reach a compromise and end up resorting to litigation. In this way, the ADR techniques simply add time and expenses to the overall bill one respondent indicated thus:-

"*ADR is simply hidden amidst the warm friendly terminology that appeals to the senses of the general public of minimizing costs, clearing up the backlog of court cases, reducing stress and the trauma associated with courts but we all know it is not."*

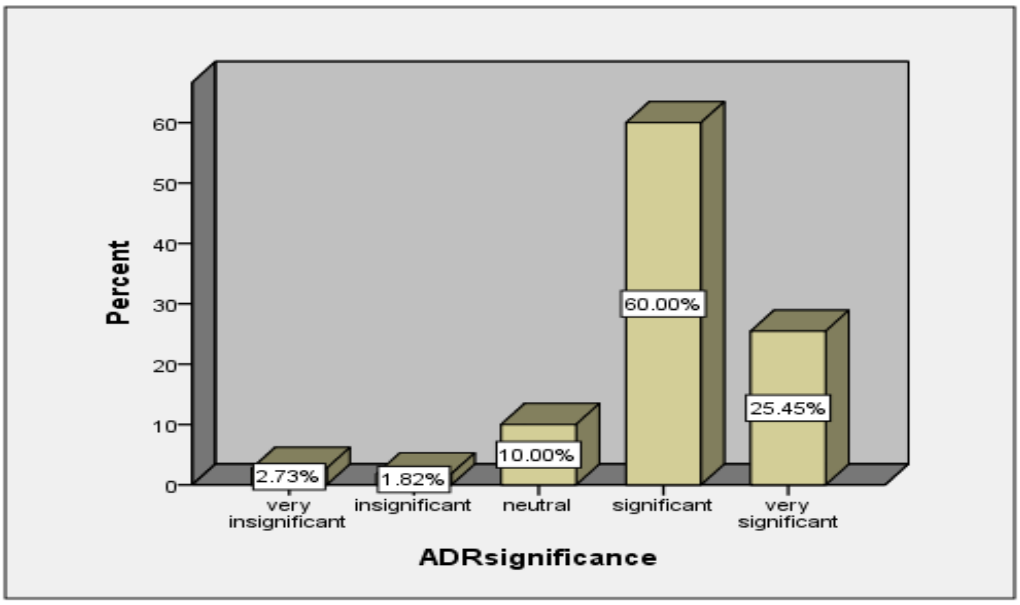
Overall, the respondents echoed the benefits of reduced time delays and reduced costs cited by the literature, but were also sceptical about these benefits as a given. If entered into in bad faith, ADR could simply become a stall tactic, and thereby prolong the eventual litigation process that was to follow.

4.8 ADR SIGNIFICANCE ON COMMERCIAL CONFLICTS

Whereas commercial disputes are inevitable, the way they are handled can have a profound effect on the profitability and viability of business. Baker & Mackenzie (2013) state that full blown disputes are always bad news for a company. The law suits lead to poor performance, scare investors, produce waste, divert resources, cause share values to decline, and, in some cases, paralyze a company.

The respondents were asked of their opinion whether ADR has an effect on determination of Commercial conflicts at the High Court Commercial Division. This question was designed to determine if the use of ADR meets the goals of effective administration of commercial justice. The responses were scaled from 1 to 5. Graph 11 shows the summary of responses obtained.

Figure 8: Graph showing ADR significance on Commercial Conflicts.



Source: *ADR data 2016*

Only 2.73% indicated that ADR has a very insignificant effect on commercial disputes, 1.82% show the effect is insignificant while 10.00% were neutral. The greater percentage of 60.00%

and 25.45% percent stated that ADR has a significant and very significant effect on Commercial disputes. This information goes to the root of the effectiveness of ADR, and the results indicate that ADR is a viable tool for commercial dispute resolution. As several respondents indicated, ADR meets the objective.

4.8.1 Correlation Between ADR Significance and Commercial Disputes (Hypothesis)

This study further analysed data using a Pearson Correlation to establish a statistical relationship between ADR significance and Commercial Dispute Resolution. The results are presented in the table below.

Table 21: Correlation between ADR significance and Commercial disputes (Hypothesis)

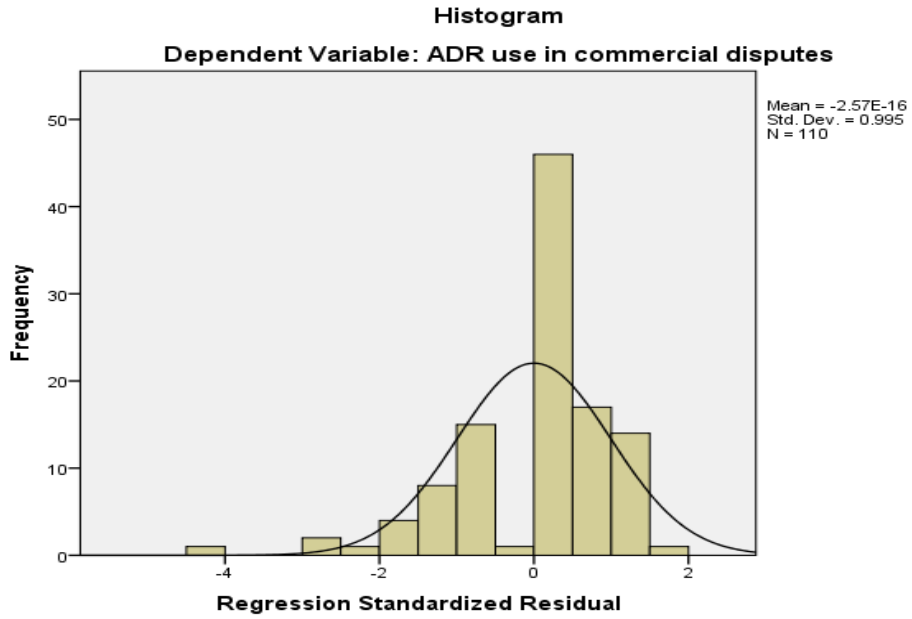
Correlations			
		ADR significance	ADR use in commercial disputes
ADR significance	Pearson Correlation	1	.568**
	Sig. (2-tailed)		.000
	N	110	110
Commercial disputes	Pearson Correlation	.568**	1
	Sig. (2-tailed)	.000	
	N	110	110
**. Correlation is significant at the 0.01 level (2-stailed).			

Source: *ADR data 2016*

The correlation analysis in table 21 indicates that there is a strong linear relationship was observed between ADR use in commercial disputes and ADR significance, with a positive

Pearson correlation of 0.568 p = 0.000(2-sided). (Significance level). This means that the hypothesis is 56.8% true.

Figure 9: Histogram showing regression of ADR significance



***Source**: Primary data (2016).*

The above plot is an indicator of normality; the histogram should appear normal. However, there is a slight negative skew in the graph above. In the graph is a suggestion of negative skewness (due to possible outliers) but is not highly significant to cause any real concern. Since there are no serious departures from the mean according to the curve, it indicates that the data is normally distributed and the assumption of normal distribution has been satisfied. This shows that overall; the dispersion of data on ADR use in commercial disputes is normally distributed and is therefore significant. The standard deviation generated also indicates the measure of dispersion of ADR use in commercial disputes from its mean. Since the standard deviation is less than 1 i.e.

0.995, it indicates that the data is not spread apart because the higher the deviation, the more spread apart the data.

As indicated by the data obtained in response to questions on the usage of ADR to settle commercial disputes is illustrated in the commercial justice system. All but one law firm indicated they use ADR to settle such disputes. ADR methods and techniques are well suited to the prospective adversarial environment exists when disputes arise, and serve to bring about a fair resolution while also preserving relationships for future business transactions. This researcher concludes that ADR has become accepted as a viable method to settle commercial disputes.

The law firms surveyed have employed ADR on average for more than three years, according to their feedback in the questionnaire. They chose to use ADR because the results produced from using alternatives to litigation proved to be both efficient and effective. 76.53% of the respondents show that ADR has a significant effect on resolution of commercial disputes. Additionally, 84% of the respondents indicated ADR was a less expensive and a less time consuming option, echoing the benefits expressed in the literature.

4.11 CHAPTER CONCLUSION

This chapter presents and discusses the questionnaire and interview data collected concerning the use of ADR in commercial dispute settlement at the High Court Commercial Division. The data are a compilation of input from 110 respondents from legal fraternity. The data was summarized in tables and graphs when appropriate, paraphrased narrative responses are provided.

This chapter examined the responses to questions regarding the use of ADR as it relates to commercial dispute settlement. Typically, the respondents indicated that they did not usually see

a need for specialized training, and if there were such a need, they would probably seek qualified outside counsel rather than provide the training.

The other factors espoused in the literature is that ADR allows the parties to resolve disputes themselves, preserves good relationships between disputing parties, it preserves confidentiality and provides more durable solution (compared to litigation).

The merits of ADR are simple and readily understandable and quickly embraced and advocated by the public who were outspoken about their unhappiness of the limitations of the Ugandan judicial system that represents their only other option to have their issues addressed. Anything that promises greater efficiency and a substantial reduction of costs and a peaceable resolution of conflict guided by the advocates of mutual compromise at every level of society is seen as the remedy for what the ailing justice system needs.

CHAPTER FIVE

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

5.0 INTRODUCTION

The study examined the evaluated the ADR approaches in the management conflicts at the commercial court division of the High Court. The study adopted three research objectives which were; determine the effect of Mediation, arbitration, negotiations and Conciliation on Commercial conflicts at the High Court Commercial Division. This chapter presents the summary of findings, conclusions and recommendations of the study and these are presented according to the findings in objective in chapter four.

5.1 SUMMARY OF FINDINGS.

5.1.1 The effect of Mediation on Commercial conflicts

The study established that there is a positive significant relationship between Mediation and Commercial Conflict Resolution in Uganda (chapter 4:3:3 above). The obtained correlation co-efficiency of .603(**) with a significance value of .000, illustrates a significant positive relationship that exists between mediation as a dispute resolution mechanism and commercial Conflict Resolution. Since the p.value is 0.000 is smaller than 0.01 the relationship is significant. Hence the use of mediation as a commercial conflicts resolution when issues of all parties are effectively managed has 60.3% chance of achieving the desired outcomes.

In the regression analysis in chapter 4:3:4, a coefficient of determination R^2=0.363 shows that 36.3% of variation commercial dispute resolution is explained by changes in mediation as a technique for dispute resolution. This may therefore imply that any changes in mediation as

commercial dispute resolution mechanism would lead to 36.3% chance change in commercial dispute resolution outcomes. Also results confirm that mediation is significantly related to improved commercial dispute resolution (β =0.603, p<0.01). This possibly implies that in a situation where competent, qualified, skilled and experienced mediators are in place to handle commercial conflicts then there is likelihood that there will be improvement in commercial conflict resolutions at commercial courts in Uganda.

Therefore, over 58.8% of respondents believe that mediation is a dispute resolution mechanism that is used in resolution of commercial disputes and is an approach that saves the businessman's time in obtaining the solution. To some business minded persons Mediation not only saves time, but saves money spent otherwise spent on cost and enables continuation of business relationship.

It has been established in this study that mediation is a quick to get solution for satisfaction of all parties without quarrels and the management of the mediation process especially through the conduct of the mediators; the way the mediator manages parties' attitudes in the dispute management process determines the success of the conflict resolution process.

When parties fail to resolve issues in the mediation process they must inform and satisfy the court that mediation failed before embarking on the formal litigation process which may take a lot of time and resources. The majority of 73.5% respondents in this study indicated that they believe that mediation is a very effective dispute resolution mechanism in commercial conflicts.

The willingness of the different members in the mediation process, the parties' ability to trust, cooperate and genuinely get involved in the mediation process determines the outcome and

success of the mediation process in the commercial conflict resolution process. The mediation process becomes is effective if parties to a dispute come ready to iron out issues of conflict and come to a common ground.

5.1.2 The effect of Arbitration on Commercial conflicts resolution

In the correlation analysis it was revealed that there is a positive but very low significant relationship between Arbitration and Commercial Conflict Resolution (chapter 4:4:3 above). The correlation co-efficiency of .239 with a significance value of .012, illustrates an insignificant relationship that exists between Arbitration and Commercial Conflict Resolution, since the p.value of 0.12 is greater than 0.05. Therefore, the use of arbitration in commercial conflicts resolution has 23.9 % chance of achieving the desired outcomes.

A regression analysis between arbitration and commercial dispute resolution revealed a R^2=0.057 coefficient of determination which shows that 5.7% of variation commercial dispute resolution is explained by changes in arbitration as a technique for dispute resolution in commercial conflicts (chapter 4:4:4 above). This therefore implies that any changes in arbitration in the way it is done and conducted as commercial dispute resolution mechanism would lead to 5.7% change in commercial dispute resolution outcomes.

Results also confirm that arbitration has a moderate significance related to improved commercial dispute resolution in the event it is handled well (β =.239, p>0.05). This means that if the arbitration procedural process is well managed then there is likelihood that there may be improved outcome in the dispute resolution process.

This study confirmed that Arbitration is a process that is almost as formal as a trial, with the rules of evidence, the testimony of witnesses, and the entire process being almost similar to a

court trial except that to reap the benefits of this ADR process, the parties make a prior commitment to submit to the arbitral process. In this case, ADR and the benefits associated with the use of arbitration may fall short of its intended outcomes and may ultimately be viewed as cumbersome and not yield results that ought to obtained through parties seeking ADR usage. Arbitration may not be preferred due to its adversarial nature and seeks a win-lose situation that may cause dissatisfaction to either party. This factor causes arbitration to be a less preferred by many seeking commercial dispute resolution.

This study also validated the suggestions that like in the litigation process, arbitration relies on documentary evidence that provides proof for basing on in passing the final decision in a dispute resolution process. The reliance on documentary evidence works well where there is total denial from one party in the conflict management process arbitration and thus helps parties resolve their issues without embarking on the lengthy and costly processes. If successfully handled arbitration provides quicker solution in reaching settlement.

Most commercial agreements have a dispute resolution clause by which the parties agree that in case of dispute the matter is to be resolved by arbitration. It is cheaper, quicker a more reliable method of solving dispute. However, it may not opt for by many parties due to ignorance or oversight and failure to provide for terms of process and management. Overall, arbitration is less time consuming though sometimes it can be expensive but the award is hard to set aside.

It was found out during this study that some unscrupulous people may want to take advantage of the process for their own gains and this distorts the process hence affecting the outcomes. Where

arbitration fails unscrupulous parties deliberately frustrating the process, arbitration may not be successful and the remedy lies with the court process.

5.1.3. The effect of Negotiation on Commercial conflicts

Findings indicated that there is a positive significant relationship between negotiation and commercial dispute resolution in Uganda (chapter 4:5:3 above). The correlation co-efficiency of .432 with a significance value of .00, justifies the positive significant relationship that exists between negotiation and commercial dispute resolution in Uganda. Since the p.value is 0.00 is smaller than 0.01 hence the relationship is significant. Therefore, proper handling of negotiation in commercial conflicts resolution will influence the outcomes in a commercial dispute resolution process in Uganda by at least 43.2%.

Findings from the regression on negotiation and commercial dispute resolution reveal R^2=.187 coefficient of determination which indicates that 18.7% of variation in commercial dispute resolution (chapter 4:5:4 above). This implies that any changes in negotiation would lead to 18.7% chance change in commercial dispute resolution outcomes. Findings also reveal that negotiation is significantly related to improved commercial dispute resolution (β =.432, p<0.01). This implies that if a negotiation process is well managed with all key stakeholders reaching important agreements in the negotiation process there is likelihood that there is an improved outcome in the dispute resolution process.

The study confirmed that negotiation in commercial disputes paves way for a win-win situation where after the conflict resolution process every party goes away satisfied with the process. Negotiation depends on the willingness and seriousness of parties, being as interparty method; most times if parties are not serious it doesn't yield fruit. Negotiation involves parties themselves,

so it softens the battle between the parties and this helps them to come to a common understanding that is acceptable to the parties. It was also established that negotiation becomes effective if parties own a settlement process and if no costs are attached to the settlement.

The study established that the majority of 67.6%respondents believe that negotiation is very significant in resolving commercial disputes in Uganda. Despite the advantages, negotiation may not commonly be used in dispute resolution as people still have mentality of having issues to end up in court; either party will not holding up their part of the negotiated bargain and some of the parties deliberately failing the negotiation process. The process may not yield positive results if there are third parties influencing the process. The managers of a negotiation process may be third parties who want to advance their own gains in the negotiation process. An example cited were like lawyers who may have an intent to drag matters for their own benefits. Such externalities may distort the outcomes of the negotiation process.

5.1.4 The effect of Conciliation on Commercial conflicts

In the correlation analysis, it was indicated that there is a negative significant relationship between conciliation and commercial dispute resolution in Uganda (chapter 4:6:3 above). The correlation co-efficiency of -.125 with a significance value p =.194, justifies the negative significant relationship that exists between conciliation and commercial dispute resolution in Uganda. Since the p.value is 0.194, which is bigger than 0.01 hence the relationship is insignificant. This therefore shows with the use of conciliation may have no significant effect in resolving commercial disputes.

From the regression analysis on conciliation and commercial dispute resolution, it was revealed that coefficient of determination R^2=.064 which indicates a 6.4% variation in commercial dispute

resolution (chapter 4:6:4 above). This implies that any changes in conciliation would lead to 6.4% chance change in commercial dispute resolution outcomes. Findings also reveal that conciliation is insignificantly related to improved commercial dispute resolution (β =-.125, p>0.01). Therefore, effective and efficient management of conciliation process in dispute resolution would lead to a 6.4 % outcome in the dispute resolution process.

The majority 58.9% of respondents report that conciliation less used in settling commercial disputes in Uganda. Conciliation is an integral part of ADR which parties in commercial conflict situation do not appreciate since it is similar to mediation in a way that it has an independent person who offers good offices but does not interfere and results are not binding. Behind its ineffectiveness, is the conciliators limited power of enforceability. The mere fact that conciliator has no powers to enforce his solutions would influence my decision to go for conciliation in ADR. Conciliators have no authority to make a decision on course of action and parties change their minds as often. The process may be viewed as not offering long lasting solutions hence not very effective.

5.1.5 The effect of ADR on costs of litigation.

Payment of legal fees is indicated as probably the largest barrier to formal dispute resolutions for many people in developing countries (Chapter 1:2 above). ADR is an alternative to litigation that can nip lawsuits in the bud, resolve long-standing disputes, and even produce win-win solutions yet allow parties to profit. Compared to litigation, parties undertake the use of ADR out of need to control the costs of litigation and to bring about more timely resolutions to disputes. The majority of respondents at 84.55% indicated that ADR saves costs while 80.91 % of the respondents indicated that ADR decreases time.

Compared to formal litigation, ADR offers perceived benefits of circumventing the more complex but fundamental structures of the judicial system. Overall, the reasons cited by the respondents are the same as those cited in the literature. The majority of respondent at 84.55% indicated that ADR saves costs while 80.91 % of the respondents indicated that ADR decreases time.

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5.1.7 The Systems Thinking Theory

Systems theory is a broad perspective that allows managers to examine patterns and events in the workplace. The question to the respondents was whether the ADR process improves the process of resolving commercial Disputes. Of the 29.7% respondents' perception was high and 44.6% very high. Again, 33.7% and 38.6% of the respondents indicated that ADR produces more acceptable solutions to parties. To answer this question, whether ADR approaches affect the resolution of commercial conflicts; (Output), the respondents ranked the perspectives at 38.6% for high and 31.7% and very high.

5.1.8 The Stake Holder Theory.

ADR and the techniques that make up ADR provide and also allowing for the parties themselves to exert more control over the process. This allows them to realize more equitable, fair, and timely results. The researcher established that Stakeholder involvement was crucial in resolution

matters through ADR. The highest percentage of 45.5% of the respondents who felt that there was high chance of settlement with involvement of parties while only 8.9% felt otherwise.

5.2 RECOMMENDATIONS

The following recommendations are offered by the researcher and are based on the researcher's assessment of the literature review, the research responses, and the interviews conducted.

The High Court Commercial Division has an established track record using ADR with significant positive benefits of efficiency and cost-effectiveness. However, there is a continued need for intellectual change for legal practitioners and judicial officers to feel more empowered to use ADR and to reach timely and reasonable ADR settlements that are not second-guessed. The respondents gave feedback as to how the process could generally be improved in settlement of commercial or disputes resolution in general. Continued training and further education about ADR and the usage of ADR at institutional levels must to take place for this concept to truly be effective.

The judiciary needs to improve the ADR outreach program for its personnel and all other stakeholders and partners in the ADR application. Judicial officers settling disputes must come at the forefront spearheading the ADR implementation whether in the commercial field or any other matter.

More effort is needed in awareness creation and sensitisation of the general public on ADR usage. It was established during the study that during a settlement process involving Corporations there is always need to have onboard the senior level managers who have the

ability to make binding agreements and to settle a claim. Training and education of the public should be priority to enable ADR success.

The study has highlighted ways in which ADR can and does compliment and better the climate for businesses or Commercial undertakings. The business owners should be educated on use and advantages of advance agreements which outline acceptable processes and identify methods to be used in the event disputes arise. The law provides for the use of ADR and clauses to be used; it does not outline a process or identify the parties that are required to participate. This can be specified by the parties to the agreement. By doing this early in the commercial process the path is paved to employ ADR more readily, thereby enhancing the ability of both parties to truly realize the benefits of a dispute settled through the use of ADR.

Judicial officers, advocates, mediators should spearhead the ADR process to own and demonstrate that the process is more accessible and user friendly than ordinary court trials adversarial. While training and education were a constant issue raised through the responses, there was also the need for proper laws and regulations to govern the process. The responses and general feeling from the respondents especially advocates were that the Judiciary has talked a great deal about using ADR and its benefits, but little application thereof is seen in the whole institution.

Trainings and education emphasize mediation alone yet it should still cover other methods of ADR that could greatly contribute to the settlement of conflicts and unclog the judicial system.

The challenge that lies ahead is to embrace those commercial practices that benefit both parties while not increasing the risk for one side or the other. The use of ADR is one such practice. The commercial sector has much more to gain applying ADR, and this is the experience the judiciary

and the Government must tap into. Empowerment of commercial personnel and prudent risk taking are concepts espoused by the literature supporting acquisition reforms, and must be put into practice if results are to be realized and progress is to be made. Only through the continued education and training of will attitudes change, experience levels rise, and the likelihood of successfully employing ADR increase.

5.3 CONCLUSIONS

The first driving factor for change came from the 1994 Justice Platt Report on Judicial Reform which recommended the increased use of Arbitration and ADR alongside litigation and the creation of a Commercial Division of the High Court. Shortly thereafter, a major statement was made in the new 1995 Constitution of Uganda which under Article 126(2) that enjoined the courts to inter alia apply the following principles that justice shall not be delayed, reconciliation between parties shall be promoted and that substantive justice shaft be administered without undue regard to technicalities.

It has been demonstrated that that due to the inevitable conflicts in the world sphere, and the multiple precursors to each conflict, there must be some form of resolution if we desire to live under peaceful means. Society should have within its walls mechanisms for conflict resolution that can occur, other than the legal system. The application of the above principles counters the traditional perceptions of adversarial dispute resolution methods and call for change in favour of court based ADR. Recognition of ADR processes enhance expedited access to justice as guaranteed in the Constitution of Uganda.

Based on the responses in this study, mediation and negotiation were the two most prevalent choices of ADR techniques applied to commercial dispute resolution. Arbitration placed third as

the preferred technique. Through their responses, interviewees indicated that negotiation was typically viewed as a normal part of dispute settlement, and not seen as an ADR technique, per se. Some of the respondents indicated that their preference for arbitration has declined for several reasons. In general, respondents cited the formality and duration as becoming too similar to formal litigation. While some claimed to not employ ADR, they often proceeded to describe the process they do use as being one that included negotiation and mediation in the normal sequence of events, indicating that its use may be even greater than what the numbers show.

In the literature review it was highlighted that mediation and negotiation were the preferred methods of ADR. The research results reinforced that information. In fact, most of the respondents indicated that they employed mediation almost half of all cases involving ADR, while the second most preferred option was negotiation as an ADR approach. Arbitration was only sought out by fewer respondents in the cases involving ADR, and conciliation was the least known and used option.

This information highlighted in the study underscore the comments that arbitration is less sought after. This is perhaps due in large part to the higher costs and time delays experienced by those who have used arbitration in the past. The reason for this may well center around the perceptions that arbitrations are equally a formal process, and that negotiation and mediation has proven successful causing the commercial sector to stick with what they know and utilize the less formal processes at their disposal.

Interestingly, from the responses most of the respondents that preferred to use negotiation were advocates even if they formed majority of respondents. A possible motive for this preference may be that defence counsel are more willing to go to litigation because they are sure of good cases and may not want to undertake such a costly endeavour with bad cases.

It is not proposed that we should abandon the litigation process for it does help in building standards, Uganda has taken positive strides and should continue to develop the systems around litigation to support its drive for morally right decisions, and offer options to the public who may not want to undergo the rigors of litigation. The legislature has passed several legislative acts in an effort to move the judicial process away from cumbersome and costly-litigation practices and toward use of more flexible and mutually acceptable dispute resolution measures. While the judiciary appears to fully apply these measures, the commercial advocates with which it conducts business have been employing them with success but without the much desired effect.

As a result of the research, the following conclusions have been drawn. Their sequence does not suggest any significance. Mediation can build relationships and understandings apart from personality differences; Arbitration can do the same but can be focused on holding the ethics of commerce and business in check; Negotiation can become a real community action involving groups within each community where disputes can be resolved. Efforts must be put to further shape conciliation as a method.

It is concluded that the cost-effectiveness of mediation is demonstrable, and the empirical work in this area should focus on determining what form of dispute resolution works best in what particular situations. In other words, research should be directed toward the goals of effective triage and matching i.e. tailoring mediation and other dispute resolution techniques to the needs of the parties and the type of dispute. The more appropriately mediation is used (i.e., the more often it results in settlement and efficient use of resources), the more net economic benefit it will provide. This underscores the need to identify and employ other techniques as a means to develop mutually acceptable methods of alternative dispute resolution to capture the true benefits associated with avoiding litigation.

Further training and education of advocates and judicial officers is required. The Law Development Centre has been educating and training legal counsel on the ADR process, but there is more yet to be done. Often times during the study, legal counsel mentioned an unwillingness on the part of opposite counsel to enter into ADR. This unwillingness, they thought, stemmed from their lack of experience and understanding of how to use ADR techniques and when they were applicable. While the above may be true, or may only be a perception, the Government agencies must do a better job of conveying their reasons for not entering into ADR or their preference for formal litigation. They must also be more willing to apply the use of ADR. To do this requires training and experience on the part of the Government legal counsel especially in taxation matters.

There is still a need for continuous training and sensitization on the benefits of ADR usage. Mediation and negotiation are the preferred techniques, and thus should serve as the focus of the judiciary and government as a whole training and education objectives. The lack of thorough understanding by the litigants and sceptism amongst advocates surrounding ADR usage shows that there is room to enhance the knowledge of those who are in the best position to employ ADR, subsequently improving the outcomes realized. Through continued training of personnel and increased use of mediation and negotiation as means to settle disputes, the Government will make itself a more inviting partner to the commercial sector.

The use of advance agreements greatly facilitates the use of ADR especially Arbitration. Some advocates indicated that they felt obligated to explore the use of alternative measures to settle disputes if this was part of a pre-existing contract. This in turn led to a higher level of ADR usage, and resulted in realization of its benefits. Therefore, these advance agreements demonstrate that ADR uptake would increase. This position is reinforced by the survey that

agreements work best when they identify or outline a process, but avoid the inclusion of restrictive, step-by-step instructions for how the parties will conduct the process.

The law firm's championship of the ADR processes is required if the judiciary and the public are to truly realize ADR benefits. When advocates and law firms in general lack commitment to the use, ADR is only sporadically employed. Counsel that labelled their corporate hierarchy as reluctant or indifferent to the use of ADR also identified a lower level of its application across law firm departments and divisions.

Government agencies like Uganda Revenue Authority are not reaping the benefits of ADR to the extent they should. The results of the study point out that the application of ADR to Government agencies is less than that to other commercial institutions. The respondents cited various reasons, from lack of experience and understanding, to the difficulty in obtaining agreement through the chain of command to the decisions rendered. Overall, the Government makes the use of ADR more difficult than the commercial sector.

5.4 AREAS FOR FURTHER RESEARCH

This research assesses the effect of ADR processes in resolving commercial disputes at the High Court Commercial Division of Uganda. The following areas warrant further research:

1. Analysis of the effect ADR has had on reducing the case backlog of cases or the timeliness of trials within the Uganda courts.
2. Analysis of the cost/benefits achieved as a result of applying the various ADR methods to commercial disputes.
3. Analysis of several successfully mediated commercial disputes to identify successful methods of employing mediation. This would provide a useable base of information for

Government and the Judiciary and perhaps develop a framework to reference when deciding how best to employ mediation.

4. Future research is required to test this theory of systems thinking in the Judiciary and how managers to coordinate programs to work as a collective whole for the overall goal or mission of the organization rather than for isolated departments.

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QUESTIONNAIRE

The researcher is conducting a study on 'Alternative Dispute Resolution mechanisms and management of commercial conflicts in Uganda; A case of High Court Commercial Division.' This study will enable the award of Masters of Business Administration at Uganda Martyrs University, Nkozi. The researcher therefore appeals for your cooperation and your open minded opinion in responding to the questions that will make the study fruitful. The research is purely for academic purposes and your views will be treated with utter confidentiality.

SECTION A:BIO DATA (PLEASE TICK ONE OPTION)

1. What is your gender? Male ☐ Female ☐

2. What is your level of Education?

☐ Diploma ☐ Bachelors' ☐ Masters/ Postgraduate ☐ PhD

3. What is your Age group?

☐ 20-29 ☐ 30-39 ☐ 40-49 ☐ 50-59 ☐ Above 60

4. What is your occupation?

☐ Advocate ☐ Judicial officer ☐ Mediator / arbitrator

SECTION B: THE USE OF ADR IN COMMERCIAL DISPUTES

[Throughout this study, the term Alternative Dispute Resolution (ADR) will mean the use of any form of mediation, arbitration, negotiation, conciliation as a substitute for the formal judicial process].

5. Have you employed **ADR** to resolve Commercial disputes?

☐ 1. Always 2 ☐ Majority of the time 3. ☐ Half the time 4. ☐ Sometimes 5 ☐ Never

6. What kind of **ADR procedure** have you used in the past 3 years? [Please tick ALL applicable]

☐ 1. Mediation ☐ 2. Arbitration ☐ 3. Negotiation ☐ 4. Conciliation ☐ 5. Other (please explain) ……

6. **On a scale of 1-5,** (5 being the highest) what technique do you primarily use?

a. Mediation	1	2	3	4	5
b. Arbitration	1	2	3	4	5
c. Negotiation	1	2	3	4	5
d. Conciliation	1	2	3	4	5
e. Other	1	2	3	4	5

7. How **frequently** do you use ADR in the following cases? (Please tick applicable response.)

	V/frequently=5	frequently =4	Occasionally =3	Rarely 2	Not at all =1
Company matters					

Taxation matters					
Contract matters					

8. On a scale of 1-5, (5 being the highest) to what extent do the following use of ADR in settlement of matters?

a. plaintiffs 1 2 3 4 5
b. defendants 1 2 3 4 5

SECTION C: THE USE OF MEDIATION

9. On a scale of 1-5, what effect has mediation had in resolving Commercial Disputes? Tick where appropriate.…

1.(Very ineffective)	2(Ineffective)	3 (neutral)	4 (effective)	5 (Very effective)

(ii) Give reasons

.....
.....
.....

SECTION D: THE USE OF ARBITRATION

10. On a scale of 1-5, what effect has arbitration had in resolving Commercial Disputes? Tick where appropriate.…

1.(Very ineffective)	2(Ineffective)	3 (neutral)	4 (effective)	5 (Very effective)

(ii) Give reasons

.....
.....
.....

SECTION E: THE USE OF NEGOTIATION

11. On a scale of 1-5, what effect has Negotiation had in resolving Commercial Disputes? Tick where appropriate.…

1.(Very ineffective)	2(Ineffective)	3 (neutral)	4 (effective)	5 (Very effective)

(ii) Give reasons

.....
.....
.....

SECTION F: THE USE OF CONCILIATION

12. (i). On a scale of 1-5, what effect has Conciliation had in resolving Commercial Disputes? Tick where appropriate.…

1.(Very ineffective)	2(Ineffective)	3 (neutral)	4 (effective)	5 (Very effective)

(ii) Give reasons

.....
.....
.....

SECTION G: HYPOTHESIS

13. How do you rank the ADR options in resolving commercial disputes? (Please tick one option)

	Very effective=5	Effective =4	Neutral=3	Not Effective =2	Strongly Disagree =1
Mediation					
Arbitration					
Negotiation					
Conciliation					

14. In your opinion, **w**hy is the choice in **13** the most effective option?

……
……
……

15. In your opinion does ADR has a significant effect on determination of Commercial conflicts at the High Court Commercial Division?

1.(Very insignificant)	**2(Insignificant)**	**3 (neutral)**	**4 (Significant)**	**5 (Very Significant)**

SECTION F: EFFECT OF COST ON ADR

16. Compared to litigation, what effect has ADR on the **TIME** it takes to resolve your commercial disputes?

☐ 1. Increases time ☐ 2. No effect ☐ 3. Decreases time

17. Please estimate the duration of the ADR process ……

18. Please estimate the duration of the most likely adversarial process, if it had been used without ADR……

19. Compared to litigation, what effect has ADR on **LEGALCOSTS** it takes to resolve commercial disputes?

☐ 1. Increases cost ☐ 2.No effect on cost ☐ 3. Decreases cost

20. In your opinion when a **litigant decides to use ADR it is because: -** *(*Please tick the option which you think best suits the item)

	Strongly agree= 5	**Agree =4**	**Neutral=3**	**Disagree=2**	**Strongly Disagre=1**
Saves time					
Saves money					
Is a Court mandated procedure					
Preserves good relationships between disputing parties					
Provides a more durable solution					
Preserves confidentiality					
Gives more satisfactory settlements					
Allows parties to resolve disputes themselves					
Other (Specify)…..…….					

21. When Litigants do **NOT want** use ADR, it is because: *(Tick ONE response for* ***EACH*** *item)*

	S/agree= 5	**Agree=4**	**Neutral=3**	**Disagree=2**	**S/Disagre=1**
Unwillingness of opposing party					
Unwillingness of opposing counsel					
Lack of confidence in ADR					
Lack of qualified arbitrators					
It's too complicated					
It's difficult to appeal					
It's not confined to legal rules					
Other (Specify)…..…….					

22. In your opinion does ADR process result in the faster achievement of a final settlement?

1.(Not fast)	2(A little fast)	3 (Neutral)	4 (Fast)	5 (Very fast)

23. What is your Law firm's / institutional policy regarding ADR application and its objectives? (Please explain)

……

……
……..

SECTION G: ADR APPROACHES

24. To what extent on a scale of 1-5 do you rank the following persipectives [1 being the lowest and **5** the highest**]**

ADR should continue to be used in resolving commercial disputes.	1	2	3	4	5
Is it a good idea to apply more than one conflict resolution mechanism in resolving commercial disputes?	1	2	3	4	5
The personality traits of parties such as their character/ assertiveness influence their use of ADR.	1	2	3	4	5
The Party's ability to COOPERATE influences their use of ADR.	1	2	3	4	5
The Party's ability to COMPROMISE influences their use of ADR.	1	2	3	4	5
ADR improves the process of resolving commercial Disputes.	1	2	3	4	5
ADR produces more acceptable solutions to parties.	1	2	3	4	5
The parties' attitude (input) affects the resolution of commercial conflict.	1	2	3	4	5
ADR approaches affect the resolution of commercial conflict? (Output).	1	2	3	4	5
Qualified, mediators, arbitrators, conciliators affect resolution of disputes.	1	2	3	4	5
ADR be a standardized way of resolving commercial disputes.	1	2	3	4	5
Involving parties in the conflict resolution process assists in amicable settlement.	1	2	3	4	5
Personal interests of parties hinder amicable resolution of disputes.	1	2	3	4	5
Most parties view the ADR process as fair in resolving disputes.	1	2	3	4	5
Most parties feel the ADR process is binding?	1	2	3	4	5
Most parties feel the ADR process is a well-regulated process?	1	2	3	4	5
Any other information regarding the process and approaches of resolving commercial disputes [please explain]…… ……					

25. How can the ADR process be improved?

THANK YOU FOR YOUR TIME!!!

INTERVIEW GUIDE

[Throughout this study, the term Alternative Dispute Resolution (ADR) will mean the use of any form of mediation, arbitration, negotiation, conciliation as a substitute for the formal judicial process].

1. What kind of ADR procedures have you used in the past 3 years? [Please explain]
2. In your opinion what what effect has mediation in resolving disputes Commercial Disputes?
3. In your opinion what effect has arbitration in resolving disputes Commercial Disputes?
4. In your opinion what effect has Negotiation in resolving disputes Commercial Disputes?
5. In your opinion what effect has Conciliation in resolving disputes Commercial Disputes?
6. What is the most preferred option of ADR in resolving commercial disputes, and why?
7. In Your opinion does ADR have a significant effect on determination of Commercial conflicts at the High Court Commercial Division?
8. Would you describe the ADR process as Mediation, Arbitration, Negotiation, and Conciliation of more than one of these? (Please explain)
9. Compared to litigation, what effect has ADR on the TIME it takes to resolve your commercial disputes?
10. Compared to litigation, what effect has ADR had on the COSTS it takes to resolve commercial disputes?
11. In your opinion what prompts litigants to use ADR successfully?
12. In your opinion why do litigants to use ADR unsuccessfully?
13. In your opinion how do you describe the majority of litigants' preference of ADR? (Please explain

Thank you for your time