



**Commercial Court Division
Annual Report
2012**



Our Mission

To deliver judicial services to the
Commercial Community
of Uganda by providing:

*“A commercial court which is accessible to
all businesses and which processes commercial
suits expeditiously and justly”*



Our Vision

*To be the leading provider of commercial dispute
resolution services and products in the region
consistent with the best practices worldwide.*



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TELEGRAMS:

TELEPHONE: 233420 - 3

IN ANY CORRESPONDENCE ON

THIS SUBJECT PLEASE QUOTE NO



THE REPUBLIC OF UGANDA

**HIGH - COURT
COMMERCIAL DIVISION
P. O. BOX 7085**

KAMPALA - UGANDA

Our Ref:

Your Ref:

10 December 2013

The Hon. The Principal Judge
High Court of Uganda
Kampala

My Lord,

**SUBMISSION OF THE ANNUAL REPORT FOR THE COMMERCIAL COURT DIVISION FOR THE YEAR
ENDING 31 DECEMBER 2012**

I have the honour and privilege to submit to you the Annual Report for the Commercial Court Division for the year ending 31st December 2012.

The report sets out the Division's performance, activities, achievements and challenges for the year under review. The year under review shows significant increase in cases filed at the Division. This can be attributed to the prevailing economic conditions in the country at the time. The Division however, did its best to rise up to the challenge and handle the cases as they came.

Performance of the division at a glance is summarized in the executive summary of the report.

Hon. Justice Geoffrey Kiryabwire
HEAD, COMMERCIAL COURT DIVISION

Copy to: The Hon. The Chief Justice

EXECUTIVE SUMMARY

The Commercial Court Division of the High Court of Uganda which began in 1996 is the oldest commercial court in Africa. This model of specialized commercial court has now been emulated through out Africa with such courts now in Kenya, Tanzania, Rwanda, Burundi, Zambia, Malawi, the Democratic Republic of Congo, Ghana, Lesotho, Mauritania, Mozambique, Nigeria and the Gambia. Other Countries to set up include Serria Leone.

The annual “Doing Business Report” of the World Bank cites the creation of commercial courts across Africa as a major tool of improving justice delivery in business and a factor in determining that country as a good investment destination

In the year 2012 the Commercial Court Division of Uganda continued to be innovative in a bid to continue leading in commercial dispute resolution in the region. Significant achievements for the year included the migration from analog to digital court recording thus making the court records more secure. Other technological improvements included the launch of a proto type e-court room by the Hon The Chief Justice of Uganda which is going to form a foundation for a comprehensive intervention in this area.

This will improve overall transparency at the Division. The Division continued in its bid to promote Alternative Dispute Resolution (ADR) and in particular court annexed mediation. In this regard the court increased its number of Court Accredited Mediators from 9 to 17 under the year in review. The increase occurred at the end of the year and the results are likely to be felt in the year 2013. The Division also introduced Evaluative Mediation before a Judge at the request of the parties. Even though the up take of evaluative mediation was still low this is likely to increase with time as great awareness of its benefits become apparent to court users. The Division also released its first corporate video so as to create greater transparency and knowledge of its activities.

The Division performance for the year under review shows an increase in cases filed by nearly one third. This can be attributed among other things the challenging economic environment in the country that characterized the year. Disposal of matters in the main and mediation registries imporoved however, this was not enough to stem the growth in case backlog. Special sessions to handle case backlog are scheduled to take place in 2013.

The Division would like to acknowledge the support and contributions of The Hon The Chief Justice, The Hon The Deputy Chief Justice, The Hon The Principal Judge,

The Secretary to the Judiciary The Acting Chief Registrar and all other stakeholders (especially the Justice Law and Order Sector JLOS).

THE PERSONNEL OF THE COURT AS OF 31ST DECEMBER 2012

The year under review started with the same staffing level as in 2011. The Division had four Judges namely the Hon Justice Geoffrey Kiryabwire (Head of Division); The Hon Justice Irene Mulyagonja Kakooza (Deputy Head of Division); The Hon. Justice Hellen Obura and the Hon. Justice Christopher Madrama. Given the increasing workload at the Court the optimum staff at the level of Judge should have been six Judges. Responding to this concern, The Hon. The Principal Judge in the second half of the year assigned The Hon. Justice Ezeikel Muhanguzi (of the War Crimes Division) and The Hon Justice Wilson Masalu Musene (Resident Judge Gulu) to the Commercial Court bringing the up the staffing level of Judges to six for the first

time. However the Division was never to realize the benefit of these increased numbers. The Hon Justice Irene Mulyagonja Kakooza was appointed by H. E. The President of Uganda as the new Inspector General of Government (IGG) and so had to leave the Judiciary to take up her new assignment while the Hon Justice Ezeikel Muhanguzi was also on assignment outside the Judiciary as head of a Commission of Inquiry in the Ministry of Education. The effect of this was that the Division closed the year with four Judges as in 2011.

The Judges were assisted by two Deputy Registrars namely Her Worship Margaret Tibulya (in charge of the Registry Commercial Court) and His Worship John Arutu (in Charge of the Mediation Registry Commercial Court).



Left to right: Hon. Justice Christopher Madrama, Hon. Justice Geoffrey Kiryabwire (Head of the Division), Hon. Justice Irene Mulyagonja (Former Deputy Head of the Division, now IGG), Hon. Justice Hellen Obura, Hon. Justice W. M. Musene, H/W Margaret Tibulya (Deputy Registrar)

The Division has about 37 support staff and a fully fledged VIP police post.



Support Staff



Accredited Mediators: Left to Right; Kaggwa S. David, Silver Owaraga Adowa, David E. Nary, Johnson Kwesigabo, Paul Byaruhanga, Eric C. Byenkya, Kawalya Stanley, Allan G. Mpirwe, Asodio Jordan Paul, Harriet Magala, H/W John Arutu Ochepa (*Deputy Registrar Mediation*), Jacqueline Kyobe Kirabo, Ojok Julius



Mr. Ronald Tusingwire
Accredited Mediator



Mr. Bernard Olok
Accredited Mediator



Mr. Gabriel Barigo Okuba
Accredited Mediator



Mr. Micheal Shane
Accredited Mediator

WORKLOAD OF THE DIVISION

The workload at the Division is measured by the total of all matters filed (with suits and or interlocutory applications) that require a decision of a Judicial Officer.

to be made by Judicial officer whether by way of judgment or ruling. The workload generally increased during the year under review because of increased filings.

FILINGS IN 2012

There were a total of 1,962 matters filed at the Division in all categories of which 638 were civil suits. This compares with 1,677 and 481 respectively in 2011. The filings in civil suits represents a significant increase of 32.6% over the previous year and is now above the levels of 2004 before the change of pecuniary jurisdiction for the High Court.

This may be attributed to increased confidence in the Court while at the same time may also be a reflection of increased number of disputes as a result of the tough prevailing economic conditions that characterized 2012. The tables below show the growth in filings at the Division over the years

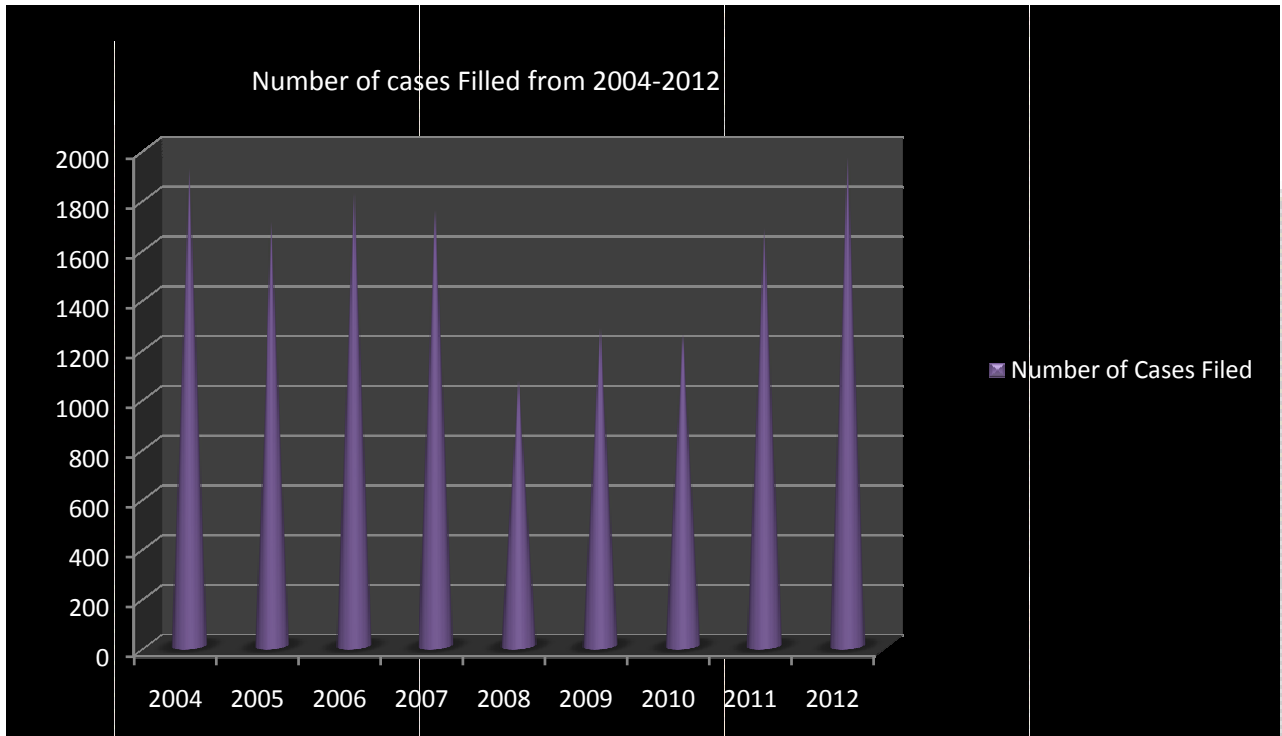
FILING IN 2012

Table 1

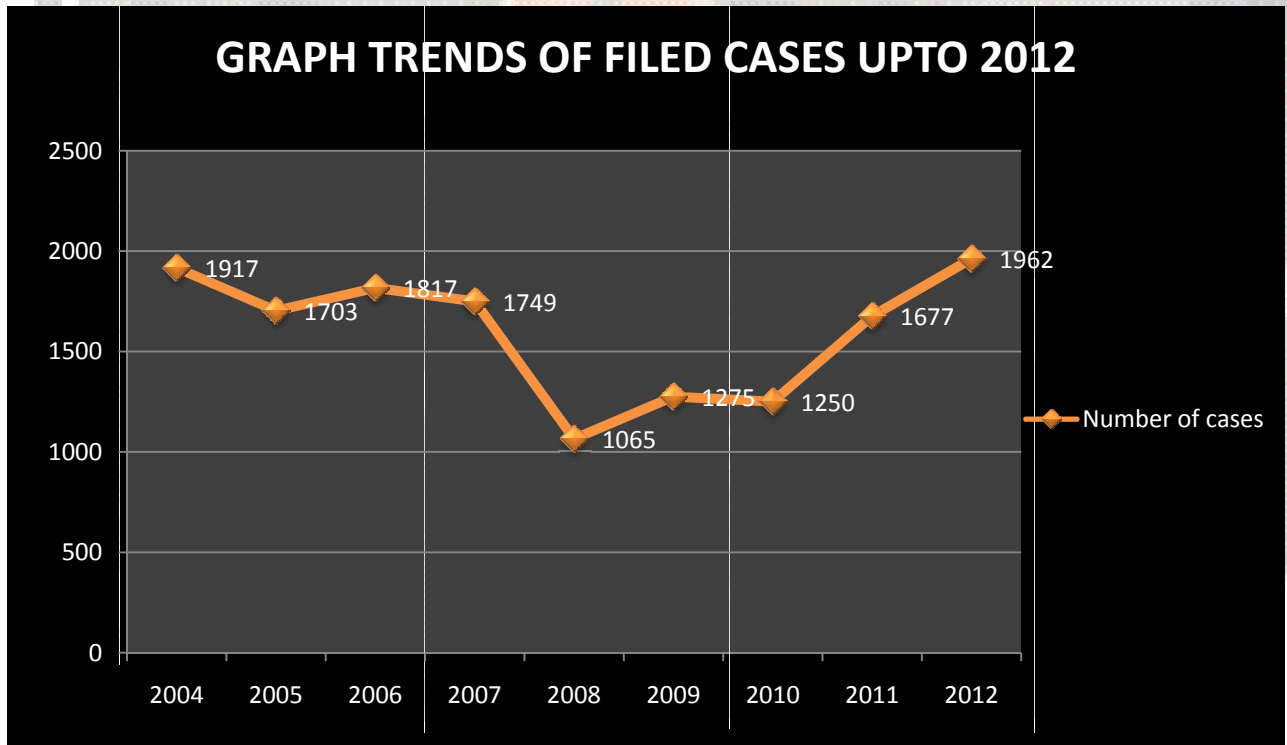
Year	2005	2006	2007	2008	2009	2010	2011	2012
No. of matters Filed	1703	1817	1749	1065	1275	1250	1677	1962

Matters filed in all categories 2004-2012

Graph 1:



Graph 2:



WORKLOAD PER JUDICIAL OFFICER

The workload per Judge at the Division increased from 527.6 to 556.3 matters filed in all categories including civil suits. This figure is expected to increase

even more in 2013 unless more judges are appointed to the Division.

The actual workload per judge and other Judicial officers is reflected in the table below

Table 2

Judicial officer	Bwd	Filed	Disposed	Pending
Hon. Justice Geoffrey Kiryabwire	357	246	249	354
Hon. Justice Hellen Obura	261	329	236	354
Hon. Justice Christopher Madrama	271	339	258	352
Hon. Justice Wilson Masalu Mesene	193	229	57	365
Her Worship Margaret Tibulya	120	353	343	130

Workload per Judicial officer

The following table shows a breakdown of the workload for 2012 by case category.

Table 3

COMMERCIAL COURT SUMMARY CASS REPORT AS OF DECEMBER 2012 (INCLUDING FACILITATIVE MEDIATION)

CASE TYPE	B.FWD JAN 2012	FILED	CASES DISPOSED DECEMBER 2012	PENDING CASES DECEMBER 2012	BACKLOG CASES MORE THAN 2 YEARS	PENDING JUDGMENT DECEMBER 31. 2012
ARBTRATION CAUSE	16	3	1	18	8	0
BANKRUPTCY PETITION	5	5	2	8	2	0
CIVIL APPEALS	48	32	28	52	15	3
COMPANY CAUSE	6	2	3	5	0	0
ORIGINATING SUMMONS	9	6	5	10	5	0
MISCELLANEOUS CAUSE	36	35	37	34	7	0
MEDIATION CAUSE	133	392	393	132	3	0
CIVIL SUITS	886	638	482	1,042	391	21
MISCELLANEOUS APPLICATION	329	849	728	450	77	0
TOTAL	1,468	1,962	1,679	1,751	508	24

Breakdown of case load for 2012 by category

DISPOSAL OF MATTERS BEFORE COURT

The overall disposal rate for all Judicial officers stood at 52.98% at the end of 2012. However without the matters brought forward the disposal

rate based on matters filed during the year stood at 76.4%. A detailed breakdown of disposal per Judicial officer is provided in the table below.

Table 4

Judicial officer	BFd	Filed	Disposed	Disposal Ratio (%)
Hon. Justice Geoffrey Kiryabwire	357	246	249	41.29%
Hon. Justice Hellen Obura	261	329	236	40.00%
Hon. Justice Christopher Madrama	271	339	258	42.29%
Hon. Justice Wilson Masalu Mesene	193	229	57	13.50%
Her Worship Margaret Tibulya	120	353	343	72.51%
His Worship John Arutu (<i>non mediation matters</i>)	3	16	13	68.42%
Transferred or Retired	116	24	130	92.85%

Disposal per Judicial officer

ADJOURNMENT RATE

The average adjournment rate for each case for the period under review was

2.8 thus slipping back to the 2010 position.

Table 5

2005	2006	2007	2008	2009	2010	2011	2012
2.08	2.1	2.15	2.98	3.9	2.8	1.2	2.8

Adjournment rate

CASE BACKLOG BASED ONLY ON CIVIL SUITS FILED

Case backlog is defined as cases that have remained in the Court for a period of two years from the time of filing without being disposed of.

The following table shows the backlog trend from 2006 to 2012 showing an increase in backlog from 346 to 391cases

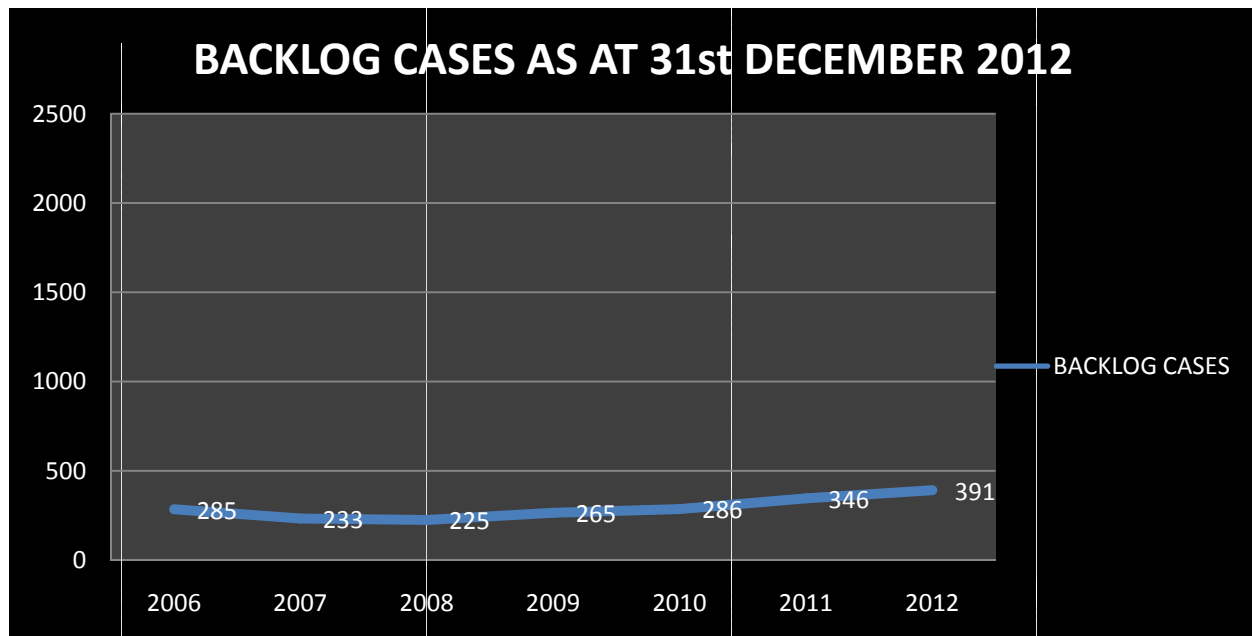
CASE BACKLOG BASED ONLY ON CIVIL SUITS FILED

Case backlog

Table 6

YEAR	2007	2008	2009	2010	2011	2012
BACKLOG CASES	233	225	265	286	346	391

Graph 3:



MEDIATION

The mediation Registry is headed by His Worship John Arutu and handles court annexed mediation. This type of mediation is commonly referred to as facilitative mediation. In addition to His Worship John Arutu who also acts as a mediator there are other court accredited mediators made up mostly of members of the Ugandan Bar (Advocates) trained in mediation. These Advocates provide a voluntary service to the Division. During 2012 the Division increased the number of court accredited mediators from 9 to 17 doubling this capacity. Members of the Ugandan Bar included Mr Paul Byaruhanga; Mr Hodge Semakula

(now has left for a new assignment in Rwanda) Mr Julius Ojok; Ms Harriet Magala; Mr David Kaggwa; Mr Gabriel Barigo Okuba; Mr Stanley Kawalya; Ms. Jacqueline Kyobe; Mr Silver Owaraga; Mr Ronald Tusingwire; Mr. Jordan Asodio; Mr Johnson Kwesigabo; Mr Allan Mpiirwe Gakyaro; Mr Eric Byenkya; and Mr Bernard Olok.

In addition to these Ugandans the Division also receives a Nootbaar Fellow from the Pepperdine University School of Law (USA) who is a graduate US Attorney to assist in the Division's Mediation activities.

This year we had Mr Shane Micheal who serviced his attachment and was replaced by Mr David Nary.

The Division is grateful for this partnership between the Uganda Law Society and the Pepperdine School of Law.

Below is a table showing the results of facilitative mediation.

Table 7

Month	B/Fwd from 2011	Filed	Disposed	Pending
January	133	25	19	139
February	139	29	34	134
March	134	29	46	117
April	117	36	25	128
May	128	36	46	118
June	118	35	39	114
July	114	31	20	125
August	125	33	30	128
September	128	31	23	136
October	136	42	39	139
November	139	34	40	133
December	133	31	32	132
TOTAL	B/Fwd (2011) 133	392	393	132

Mediation (facilitative) Results

Table 8

No	Case Result	Total
1.	Closed – Mediation Fully Settled	88
2.	Closed – Dismissed	1
3.	Closed – Settled Before Mediation	46
4.	Closed – Mediation Failed	127
5.	Closed – Parties Abandoned Mediation	6
6.	Closed – Mediation Partly Settled	12
7.	Closed – Inappropriate For Mediation	12
8.	Closed – Non Attendance Of Parties	39
9.	Closed – File Transferred	7
10.	Closed – Withdrawn	5
11.	Closed – Case - Dismissed	1
12.	Closed – Dismissed Defence Not Filed	16
13.	Closed – Mediation Time Elapsed	33
	Total	393
	Add Pending	145
	TOTAL Sent to Mediation	538

Break down of mediation disposal (facilitative)

Table 9: The breakdown of performance per mediator is as follows

COMPLETION STAGE	Arutu	Irene	Shane	Kyobe	Magala	Barigo	Paul	Kaggwa	Kawalya	Ojok	Hodge	Nary	Asodio	Owaraga	Barbra	Ronald	Byenkya	Gakyalo	Kwesigo	Olok	Stage total	
closed-case dismissed	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
closed-dismissed	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
closed-dismissed WSD not filled	16	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	16
closed-filed transferred	6	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	7
closed-fully settled	29	0	5	8	5	6	3	4	6	8	3	3	1	1	0	0	2	1	1	2	88	
closed-inappropriate for mediation	0	0	0	0	1	2	0	1	3	4	0	0	0	0	0	0	0	0	0	1	12	
closed-mediation failed	30	0	10	6	6	11	8	8	14	10	8	5	1	0	0	3	0	4	1	1	126	
closed-mediation time elapsed	4	0	2	3	4	3	7	0	1	1	4	0	0	0	0	1	0	0	3	0	33	
closed-non attendance of parties	8	1	0	3	3	4	6	2	3	4	1	0	2	0	0	1	0	0	0	1	39	
closed-parties abandoned mediation	3	0	1	0	0	0	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	6
closed-partly settled	1	0	0	0	1	1	4	2	0	3	0	0	0	0	0	0	0	0	0	0	0	12
closed-settled before	40	0	0	1	1	0	1	0	1	0	2	0	0	1	0	0	0	0	0	0	0	47
closed-withdrawn	2	0	0	1	0	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	5
Total	140	1	18	22	21	29	31	18	29	30	18	8	4	2	0	5	2	5	5	5	393	

Out of 538 cases referred to mediation during the year under review only 381 comprised the workload of the Registry. 100 cases were either fully or partially settled showing a disposal rate of 26.25% which is just below the projected 30% for the year. This could have been higher but there are still a relatively high number of mediations which do not take off for one reason or another but mostly due to the non attendance of

parties. When one takes into account the work load of the Registry and mediations disposed of (393) the disposal rate increases to 103.1%. This shows the great potential that facilitative mediation has in improving case disposal at the Division. In this regard more sensitization is required for lawyers and their clients to participate more fully in mediations.

Evaluative Mediation before a Judge

Evaluative Mediation started in 2012. Evaluative mediation is only open to parties who seriously believe that their dispute will benefit from an evaluative intervention of a Judge (not being the

trial Judge). During the year under review few cases were referred to evaluative mediation but this number is likely to grow with time.

Table 10

Cases referred to evaluative mediation	Mediations fully settled	Mediations partially settled	Mediations failed	Mediations still on going
5	2	1	1	1

Cases referred to evaluative mediation

JUDICIAL TRAINING

The Judges and Registrars of this Division under went continous judicial training both in Uganda and abroad. The areas of training covered the new Insolvency Act 2011, intellectual property (in particular patents and trademarks), judicial administration, banking fraud and arbitration.

The Division also on the 19th October 2012 hosted Prof Jenik Radon of the School of International and Public Affairs Columbia University USA

who was a visiting Professor at the Makerere University School of Law. He gave a talk to the Judges on emerging issues in Oil and Gas Law in Uganda. This was an important talk to prepare the Division for up coming litigation in Oil and Gas as Uganda is now preparing to extract this resource. It was agreed that the Division and Prof Radon will continue to cooperate in this important new area of Uganda's economic development.



Prof. Radon (middle) and Judges of the Commercial Court

INFORMATION AND COMPUTER TECHNOLOGY (ICT) OF THE DIVISION

The Division was able to complete its migration from analog to digital court

recording. This was a major step in improving the Division's ICT capability as this project had stalled for nearly three years. Court transcripts are safer in the digital format and are more easily backed up and stored.



Digital Recording set up



Transcription Centre

On the 3rd May 2012 the Hon. The Chief Justice Ben Odoki inaugurated a prototype e-court room which will allow for on screen projection so that people seated in the court follow proceedings better. Case pleadings and exhibits can now be scanned and projected in court at the parties request. This development is a first

step to standardization of this type of open proceedings in the Division and provide for increased transparency within the court room.

The Division is now working with the Judiciary ICT Committee and the National Information Technology Authority (NITA) to link the Judiciary

and therefore the Division on to the National fibre optic backbone so as to be able to link various court houses around the country. This will enable the Division to hold court hearings in different parts of the country via video link without the judges having to leave Kampala. In this regard a pilot project linking the Commercial Court Division in Kampala to the High Court in Jinja via video is being worked on and should be launched soon. The Division with the support of the DANIDA is set to put in place an e-bulletin board in early 2013 at the

entrance of the Court so that persons can know what is happening in the Court as soon as they enter the court buildings without having to crowd the registry or reception.

The Division and the Judiciary ICT Committee is also set to revive negotiations with the Investment Climate Fund (ICF) based in Tanzania to raise funding for a comprehensive ICT solution for the Division with the expectation that such solutions will then be rolled out to the rest of the Judiciary. In this regard a project is set to be signed with ICF in early 2013.

LOCAL AND INTERNATIONAL COOPERATION.

The Division during the year had the following notable visits from

- i. The Hon The Chief Justice of Uganda Ben Odoki
- ii. The Hon The Principal Judge of Uganda Yorokamu Bamwine
- iii. The Hon Deputy Attorney General Fred Ruhindi MP
- iv. The Ag. Solicitor General Ms Harriet Lwabi
- v. The President of The Law Society Mr James Mukasa Sebugenyi

- vi. The Chairman Law Reform Commission Prof. Agasha Mugasha
- vii. Mr James Ssaka Executive Director National Information Technology Authority (NITA)
- viii. Prof. Jenik Randon Columbia University USA
- ix. Mr. Adrain Gonzalez Senior Private Sector Development Specialist (Doing Business Team) World Bank/IMF



Head of Court exchanging books with Mr Adrian Gonzalez of the World Bank

i. Commercial Court Users Committee

The Division continued to hold meetings with its court users under the Court User's Committee. In addition to the regular Committee meetings the Division held two special meetings with distinct groups of the Court Users. The first was with a delegation from the Attorney Generals Chambers which was led by the Learned Deputy Attorney General Mr.

Fred Ruhindi which discussed how to better handle cases involving the Government of Uganda in the Court. The meeting then agreed on the best practices that should be adopted in handling these cases. The second meeting was with members of the Commercial Bar to introduce them to the prototype e-court so that they may start to use it.

ii. Pepperdine University

The Division hosted two student externs from the Pepperdine University School of Law; Ms. Jennifer Arnold and Mr. Stephen Dixon for two months. They were attached to the Chambers of the Head of Division as research assistants. The Division also hosted the Dean of Students Prof. Jim Gash who was on a

six month sabbatical attachment with the Criminal Division. The Pepperdine university School of Law also sponsored two graduate fellows as Court accredited mediators at the Division starting with Mr. Shane Micheal who finished his one year tour of duty and was later replaced by Mr. David Nary.



Jennifer Arnold and Stephen Dixon students from Pepperdine Law School who did attachment at the Division in 2012

iii. **Makerere University School of Law**

The Division also hosted students from the School of Law at Makerere on attachment during their holidays for the first time. This attachment programme will now be a regular

feature of training at the University and the Division will also benefit from the students who were involved in legal research.

iv. Trial Advocacy Training

The National Institute of Trial Advocacy (NITA) USA in conjunction with the Uganda Law Society conducted training in court room advocacy at the Commercial Court Division for Ugandan Advocates. The training was conducted within the Division's Court

Rooms so as to give a real feel of litigation. The Division believes that such training will ultimately lead to

higher standards of practice at the Division and so will continue to support this training over the coming years.

DIVISION NEWS

1. *Fairwell to Hon. Justice Irene Mulyagonja Kakooza*

On the 9th November 2012 the Division held a dinner in honour of Lady Justice Irene Mulyagonja who had been appointed by the President of Uganda as the country's new Inspector General of Government (IGG). The dinner was attended by the Hon. Principal Judge Yorokamu Bamwine who presented Lady Justice Irene

Mulyagonja a plaque of recognition on behalf of the Division. The dinner was also attended by Judges and Registrars from other High Court divisions in addition to staff from the Commercial Court Division.

Lady Justice Irene Mulyagonja's appointment as the country's IGG was a great honour to the Division as it showed confidence in the caliber of staff at the court.



Hon. Lady Justice Irene Mulyagonja receiving an award and in a group picture at her fairwell dinner.



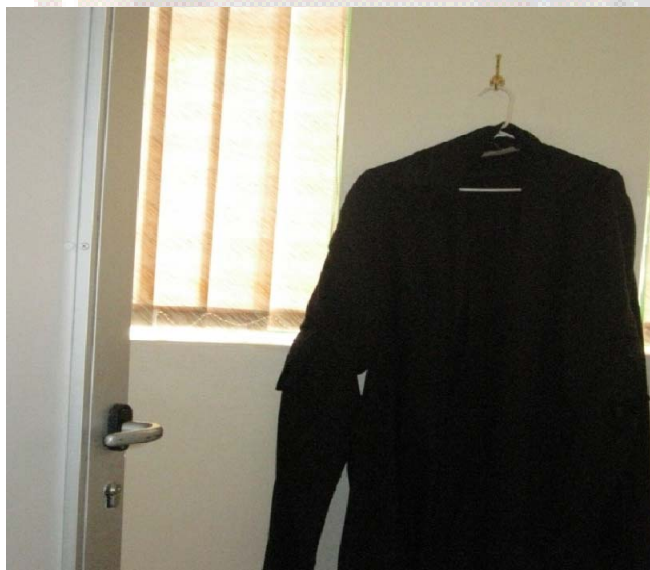
2. Court House facilities

The Division has two important facilities for use by the Advocates at the Court house.

The first were robbing rooms for both male and female advocates on the first floor of the building. The Adocates

had asked this facility because they previously had no where to rob.

The second was podiums for counsel to address court from. These podiums have room for Counsel to put on books and also write notes without having to bend unnecessarily.



Robbing Rooms

CHALLENGES

The Division continues to face challenges mainly in the area of manpower and financing. This situation was not made easier by the current overall economic challenges that the country faced in 2012. The

fight to reduce on case backlog will require special attention in 2013 in these key areas of manpower and financing. This is also equally true for the various innovations that are taking place.

Following the strict case management techniques that have been introduced at the Division including the use of case scheduling notes with trial bundles (now commonly referred to as “Joint scheduling memorandum”) it is now necessary for the Rules Committee to come out with new harmonized rules to cover this area which also take into account the use of

witness statements and skeleton arguments for interlocutory applications. This will help further expedite the hearing of cases.

Another challenge that continues to face the Division is the absence of Judge Assistants or Researchers. The presence of such assistants would ease the research burden of Judges and improve on their output.

CONCLUSION AND WAY FORWARD

The Division on the whole continues to perform well and to receive good reviews from Court Users and development partners like The Justice and Law Sector (JLOS). The Division however still has the Challenge of growing backlog which issue has to be definitively addressed with more funding and manpower. In the short run the Division will however embark

on special backlog clearance sessions with the support of the Hon The Principal Judge to reduce the existing backlog. The Division shall also continue to champion the use of ADR and tighter case management to fast track cases in 2013. We trust that with the above measures in place the Division will perform better in 2013

For God and my Country

