



Commercial Court E-News Letter

ISSUE 1 VOLUME ONE

MAY 2011



Commercial Court Building
Temple of Justice

Our Vision:

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



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”



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Contents

Messages from

The Hon. The Chief Justice 1

The Hon. The Principal Judge 2

The Head, Commercial Court 3

The New Appointed Judges at the Court 4

Significant Decisions of 2011..... 9

Pictorials of

Visit of British High Commissioner to Commercial Court 12

Court Performance in 2010 14

Mediation Highlights 16

ICT Message..... 18

Message from

The Hon. The Chief Justice of Uganda



The Hon. Justice Benjamin Odoki

The Hon. The Chief Justice of Uganda

I would like to congratulate the commercial court division on the launch of their e-news letter. The judiciary in 2007 launched its ICT policy with a view to maximise the use of the information technology in all its processes.

To date however the scope of ICT usage has been limited to a few areas notably the supply of desk tops, the set up of a case management system, the creation of an intranet and more recently the launch of the judiciary website.

This by no means is the end of the possibilities that ICT can offer the judiciary.

One area that is still lacking is adequate information flow as to what is happening in the different divisions and Courts. Most information is made available during the annual judges meeting which is held once a year leaving on average a twelve month information gap which is not the best practice in information flow.

The judiciary has also been criticised for not being transparent and accountable. This criticism can to a great extent be mitigated by the provision of information about the work of the judiciary.

The use of an e-newsletter by the Commercial Division is therefore a step in the right direction which I fully support. It is also a fairly cheap method of providing information as there is no need to requisition funds to print hard copies and distribute them as well.

I wish you good reading and I look forward to reading feedback to this initiative as I am informed that a section on feedback will be added in this maiden issue.

The Hon. The Principal Judge's Remarks



The Hon. Justice Yorokamu Bamwine
The Hon. The Principal Judge

It gives me great pleasure to write a few words in the maiden issue of the e-newsletter of the Commercial Division. For a long time now the Commercial Division has acted a pilot Court for many of the initiatives that aim at creating greater efficiency and effectiveness within our Court systems.

The launch of this e-newsletter is yet another milestone in this regard. I am informed that the newsletter shall come out regularly to provide information about the Court. This follows many requests that have been made to the Court about its operations especially from its Court users. There has also been some interest internationally about the work of the Court and therefore the need to find an effective

communications channel in this regard. As yet another pilot initiative I shall be following it up

There has been some interest internationally about the work of the Commercial Court”

as a model that may be used through out the High Court and the Magistracy.

The advantages of increased information flow cannot be over emphasised. It offers transparency and accountability and therefore reduces the perception of corruption that lies deep in the minds of the public and court users.

I would like therefore to congratulate the management and staff of the commercial Division for coming up with the idea of an e-newsletter and wish them all the best in this electronic publication.

Message from the Head Commercial Court



Hon. Mr. Justice Geoffrey Kiryabwire
 Head, Commercial Court Division

Welcome to the first publication of the e-newsletter of the Commercial Court.

The launch of the newsletter is part of the 2011 work plan of the Commercial Court. The purpose is to provide timely information about activities of the Court, information articles, Court performance, successes and challenges and feedback from our readers.

The idea of a newsletter of this nature is new as many judiciaries worldwide have started them with exactly the same objectives.

The Commercial Court therefore is simply adding this dimension of international best practices to its operations especially in the area of information availability.

The overall objective is to improve the Courts transparency and accountability while at the same time providing a platform for

objective and constructive feedback on its operations.

The newsletter will be available on the judiciary intranet and to members of the Commercial Court Users Committee. Other users will be able to access the newsletter on request. Contributors to the newsletter shall be the Judges and Staff of the Commercial Court. Guest contributors shall be allowed on request to the Court.

A feedback column shall also be added after the maiden edition of the newsletter so as to allow for constructive dialogue with the Court. The Court hopes to receive ideas and proposes on how to improve its operations and overcome challenges through the feedback column. I trust that feedback column shall not be abused to unduly attack the Court and normal complaints regarding on going cases should still be addressed to the Head of the Court through the normal channels.

I wish you all good reading.

Remarks & Thoughts about the Commercial Court

By Hon. Lady Justice Irene Mulyagonja



Hon. Lady Justice Irene Mulyagonja

My debut at the Commercial Court was rather unpleasant due to the unfortunate happenings in Shell (U) Ltd. & 9 Others V Rock

Petroleum (U) Ltd, Uganda Revenue Authority & M/S Muwema & Mugerwa Advocates & Solicitor; M.A. No. 645/2010 (No.1), a decision that will make good reading for legal practitioners.

But after the playing field was leveled, I must say that I find sitting as a commercial judge an interesting

assignment because most of my practice as an Advocate was in the area of Commercial Law.

And as a Judge of the Commercial Court, I maintain a view that I have always held, that the expeditious dispensation of justice should not be at the expense of creating respectable precedents. I say so because in a jurisdiction where legal reform by amendment and enactment of statutes is slow, case law becomes a most valuable source of law.

It is therefore a continuing challenge to dispense justice expeditiously, as is required by the rules of the court, and yet also hand out judgments and rulings that show a good understanding of the law and which will set precedents that will guide law students, legal practitioners and the Magistrates' Courts. It is also a challenge to maintain the respect that the Commercial Court has attained, both here and on the rest of the African continent. I have no regrets for being here; is a most valuable and interesting experience to be part of the team of judges at the Commercial Court.

Highlights in the life of a New Commercial Court Judge:

By Hon. Christopher Madrama



Hon. Mr. Justice Christopher Madrama
Judge of the Division

We reported as new fledgling judges of the prestigious Commercial Court in October 2010 after a two week grueling induction course on how to be a judge. In my first two weeks I had the privilege of sharing "experiences" with my colleagues from the Commercial Court of Kigali Rwanda. I was not on the cause list at that time and had not had my first "taste" of a court case on the bench. Obviously with little to share in terms of actual experience on the bench with my Rwandese colleagues, I had to draw heavily from my experiences as a 21 year old member of the bar to contribute anything.

Since then I have somehow settled down to the routine of case management. It is a frustrating experience to prepare for the hearing of a suit or application which does not take off. Then when the case comes up, one of the parties is not ready to proceed and seeks an adjournment. The other issues met are the endless list of cases to be handled and the problem of "case backlog" we were advised to tackle. Any case older than two years is "backlog", a very unsavory word.

The issue of peer review where every judge has a "Judgment – meter" which shows how many cases were disposed of weekly, monthly and quarterly arises". There is no escape of the peer scrutiny of how we new judges are doing! Do we meet the expectations of the different categories of stakeholders? Thank you all stake holders for the support! Whereas there is this aggregate peer review, there are also the individual cases. One has to decide cases and obviously some quarters will be unhappy.

Having written that, I have since then tried to take on bravely the mantle of a judge and questions may fairly be asked as to whether justice was done and the

law properly applied in cases I have so far handled. I will start with the case of **Jimmy Mukasa versus Tropical Investment Limited, John Mary Mpagi and 2 Others High Court Commercial Division Civil suit No. 232 of 2007**. In this case the plaintiff who was a member of the first defendant company got an arbitral award in 2003 against the first defendant. The first defendant applied to the commercial court to set aside the award and the award was affirmed by the court in 2005. Since then he filed a new suit and alleged in the suit that the directors in a bid to frustrate enforcement of the award spirited away the assets of the first defendant company.

After objection to the suit against the first defendant on grounds of res judicata, I upheld the objection on grounds that a award is a decree under the Arbitration and Conciliation Act. I went further to state that the award could be enforced against the directors if it can be proved by affidavit that they spirited away the property of the first defendant with a view to defraud the judgment creditor. I further held that the bid to enforce the award against the director could be lodged by determining a question as to whether to lift the veil of incorporation under section 34 of the Civil Procedure Act and not by separate suit. Obviously the question was whether this does not expose directors to more

accountability and whether it does not overstretch the principles and procedures for lifting the veil of incorporation. Behind my ruling is the doctrine of the directors being the mind and will of the company. This was stated by Lord Denning in **HL BOLTON CO V TJ GRAHAM AND SONS [1956] 3 ALL ER 624**, Lord Denning said at page 630 where he likened a company to a human body where the brain and nerve centre controls what the company does and some people (the directors) represent the mind or will of the company. I found support for my decision in two other East African cases namely in the Kenyan High Court case of **Corporate Insurance Company Limited versus Save-max Insurance Brokers Ltd [2002] 1 EA 41** where the Milimani Commercial Court of Kenya at Nairobi Kingera J held at page 46 that he saw no reason or rule against execution proceedings being commenced direct against a director in a suit filed against a company. Last but not least the Tanzanian Court of Appeal in Civil Appeal No. 78 of 2002, **Yusuf Manji versus Edward Masanja and Abdallah Juma [2005] TZCA 83** accepted the view that that the corporate veil had been properly lifted and execution proceedings directed at the directors of a company in a case brought against the company.

The second case I would like to highlight is that of **Transtrack Limited versus Damco Logistics**

Limited High Court Commercial Court M.A. No. 394 of 2010 arising from HCCS No. 161 of 2010, I departed very slightly from an earlier judgment of the court which held that a clause in a contract which specifies that the parties will submit to the exclusive jurisdiction of a foreign court ousted the jurisdiction of the High court. I overruled the objection to jurisdiction brought by the applicant and held that a clause in a contract cannot oust the statutory and constitutional inherent and unlimited original jurisdiction of the High court. I had been referred to **Dicey and Morris on Conflict of Laws 9th edition page 223**. Dicey notes that the courts in England retain discretion whether to try the suit or not despite a contractual clause by the parties submitting to the exclusive jurisdiction of a foreign court. The court uses these discretionary powers and takes into account factors like the country in which the evidence is available and the relative convenience of a trial abroad and secondly whether the defendant genuinely desires a trial in a foreign country or is seeking procedural advantage. However the basis of the text book doctrine is an English rule 30 referred to at page 222:

"where a contract provides that all disputes between the parties are to be referred to the exclusive jurisdiction of the foreign tribunal, the court would stay proceedings instituted in England in breach of

such agreement, unless the plaintiff proves that it is just and proper to allow them to continue."

In Uganda we do not have such a rule. Instead we use the underlying rationale in the English rule quoted above which I held is the enforcement of the contract of the parties. The court does what it does in contractual clauses by the parties to submit disputes for arbitration. It merely enforces the contract of the parties. The difference is that I held that the court may exercise discretion whether to refer the matter to the foreign court as stipulated in the agreement or not. I followed the court of appeal in **David Kayondo v Cooperative Bank Civil Appeal No. 19 of 1991**, where it was held that a section of the Co-operative Societies Act which stipulated that disputes shall be referred to arbitration did not oust the inherent original jurisdiction of the High Court. I however dismissed the objection to jurisdiction on other grounds namely that a clause in contract can only be invoked by and against a party to a contract and not against third parties as it was in **Transtrack** (supra).

Other interesting cases have come my way but suffice it to refer to one other case. This is the case of **Moses Kamywa vs. Sam Lukwago and Liberty Construction Company and Another, High Court Commercial Division M.A. No. 271 of 2010** and arising from HCCS 411 of 2009.

This was an objector proceeding by the owner of the vehicle objecting to the attachment of a Caterpillar which was in possession of the judgment debtor Messrs Liberty Construction limited. The Caterpillar tractor has already been sold by the Court bailiff in a public auction when the application was heard. The Court Bailiff who is respondent to the application swore an affidavit that he had deposited the money in full settlement of the sale price. The purchaser was not a party to the suit. There was objection to the application on the ground that the property had already been sold and could not be released from attachment under order 22 rules 55, 56 and 57 of the Civil Procedure Rules. That the correct procedure was to file a suit for recovery of the property or for compensation. I upheld the objection and dismissed the application. I however made further orders that the proceeds of the sale be deposited in court as it could not be used to satisfy the debt because the property belonged to a stranger and had been wrongly sold though the sale was valid unless impeached on valid grounds. I also ordered that the court bailiff accounts to the applicant. That someone who buys in an auction conducted by an officer of the court gets good title unless of course the purchaser is involved in any fraud or had notice of any fraud. Was it proper for the true innocent owner to lose his property in this way? That issue may come up in future and I will not comment on it.

What of an innocent bona fide purchaser in an auction conducted by a court official?

In principle I held that he got a good title unless otherwise impeached on grounds of notice or participation in any fraud. The last principle concerned the liability of a court broker who otherwise enjoys immunity from personal liability. In this case the order to deposit the money in court and account for the proceeds to the true owner of the vehicle could not prejudice the court bailiff because in principle he was a trustee. He held the property as trustee and in law he has no interest in it. It was not an order against him personally but for him to hand over and account. However who should pay costs where the court bailiffs incurred costs? Should the innocent owner whose property was sold incur any costs?

It is some of these challenges written above that confront judges and I suppose, as time goes on, we will on all occasions try our best to deliver justice in the circumstances of each case. Some will be challenged and some will remain. Some judgments might make good precedents while others might not get a second glance. In all these, my best moments have been when litigants settle. This gives me pleasure with parallels of wisdom from an old adage which when paraphrased goes like this: "Settle matters quickly with your

neighbour who is taking you to court. If you do not, the judge will decide and you may have to live with the consequences of that." My words in addition to that are that "an agreement of the parties is golden" and the golden rule is that parties decide to resolve their dispute the best legitimate way they think suits them. This does not have to be according to the principles of law that may be applied to their situation but according to their own business interest and logic.



Settling in at the Commercial Court as a New Judge

BY LADY JUSTICE HELLEN OBURA



Hon. Lady Justice Hellen Obura

By God's grace I was sworn in as a judge of the High Court on 2nd August 2010. After two weeks of rigorous induction I was posted to the Commercial Court where I effectively started hearing cases in November 2010. Prior to that I had had a one week orientation at the court where I had the privilege of joining the visiting judges from Rwanda as they were introduced to the procedures and practices at the court.

The most enriching part of that orientation were occasions when we accompanied our senior brother judges Lameck Mukasa J and Geoffrey Kiryabwire J, to their respective courts and sat with them like a panel of Supreme Court Justices without any role to play except to observe how proceedings are conducted.

That experience helped me a great deal as it enabled me to acquaint myself with sitting at the "pavilion" as well as learn a number of tips on how to handle proceedings.

I wish to acknowledge with gratitude the warmth with which we were received at the Commercial Court and the spirit of collegiality that was exhibited by the senior judges. It greatly contributed to the ease with which we interacted and soon settled down to serious business.

My first day in the court room was quite nervous and the time I spent in court just passed by like a dream. I had prayed and asked God to take charge of it and I remember reminding God the nth time that he was in-charge and therefore responsible for what would happen because I had committed everything in his hands. Thanks to God because he took charge and there was no major blunder to write home about. I have since got acquainted to the court room and business has been going on normally. I have so far delivered a number of rulings some of which I will highlight here below.

HIGHLIGHT OF SOME RULINGS

My first ruling was in ***Pinnacle Projects Ltd V Business in Motion Consultants Ltd M/A No. 362 of 2010*** where the applicant was seeking to set aside the decree passed in HCCS. No 182 of 2010 when there was allegedly a pending

application for leave to appear and defend the suit. The two issues that were determined in this application were; Whether M.A. No. 231 was properly filed at the High Court Civil Registry, and; whether the said application was filed in time.

On the first issue, my finding and ruling was that Misc. Application. No. 231 was not properly filed at the High Court Civil Registry when the main suit under which the application was brought was at the Commercial Division.

My finding and ruling on issue number two was that M.A. No. 231 of 2010 which was filed at the Civil Registry on 7th June 2010 and later transferred to the Commercial Registry and registered as M.A. No. 387 of 2010 was filed out of time. The applicant should have first applied for extension of time within which to file the application as it was already out of time. Consequently, I did not find merit in the application because the decree that it sought to set aside was properly passed since there was no competent pending application for leave to appear and defend the summary suit.

I was however mindful of the now settled principle of law that mistakes of counsel however negligent cannot be visited on the litigant. On that basis I was prepared to grant the order sought if the application for leave to appear and defend had been filed in time.

Significant decisions in the first quarter of 2011 from

Hon. Mr. Justice Geoffrey Kiryabwire

1- MTN Uganda Limited V Uganda Telecom HCCS 297 of 2008 (Comm.)

The use of the Uganda Country Code +256 477 *** allocated to Uganda Telecom by Southern Sudan Telecom Gemtel made calls to them from MTN local and not international calls.

2- Damas Milagwe V Lanex Forex Bureau & 4 ors HCCS 358 of 2006 (Comm.)

Where a successful party exercises poor corporate governance which contributed to that dispute that party though successful may be denied costs of the suit.

3- Mbale Resort Hotel Ltd V Babcon Uganda Ltd MA 265 of 210 (comm.)

Arbitration:-

- An award of a claim for special damages in an arbitration that is not proved by documentation or other evidence even though not challenged is unreasonable and unsafe and can be set aside.
- An arbitrator who has not acted with dishonesty, bad faith, collusion or corruption can not be said to have misconducted himself. An error of or mistake in applying the law or legal principles without more cannot amount to impartiality or misconduct.
- An award of general damages for punitive as opposed to compensatory purposes is an error of law on the face of the record and will be set aside.

4- Habuguma Innocent V MTN Catering Services CA 021 of 2010 (comm.)

The Tax Appeals Tribunal (TAT) has jurisdiction to sit on appeal or review in a matter involving the taxation by its registrar of a bill of costs (Client/ Advocate).

5- Mohammed Mohammed Hamid v Roko Construction Ltd MA 731 of 2009 (comm.)

Arbitration:-

An arbitration can not proceed in the absence of an arbitration clause that has been deleted from an unsigned agreement and the doctrine of part performance can not cure such a defect to make the arbitration binding.

6- Pan Afric Impex (U) Ltd V Roko Construction Ltd MA 487 of 2010 (Comm.)

Arbitration:-

- ◆ A lawyer who is expected to give evidence in an arbitration can not act as an counsel in the arbitration
- ◆ A contingency fee for conducting litigation is by the law of England champerty and as such contrary to public policy that is the same position in Uganda.

Significant decisions in the first quarter of 2011

By Hon. Lady Justice Irene Mulyagonja

Shell (U) Ltd. & 9 Others V Rock Petroleum (U) Ltd, Uganda Revenue Authority & M/s Muwema & Mugerwa Advocates & Solicitors; My Lord/A No. 645/2010 (No. 1); decision on application for judge to disqualify self on grounds of bias; sets out what is meant by "bias", procedure in this jurisdiction for disqualification of judges as well as the implications of refusal for judges and the courts.

Shell (U) Ltd. & 9 Others V Rock Petroleum (U) Ltd, Uganda Revenue Authority & M/s Muwema & Mugerwa Advocates & Solicitors; My Lord/A No. 645/2010 (No. 2); Appeal from the decision of the Registrar on advocates' fee agreements with clients and the law and practice in Uganda; it discusses salient provisions of the Advocates Act and Advocates (Professional Conduct) Regulations as they relate to each other on this aspect of practice, as well as the Advocates (Remuneration and Taxation of Costs Rules); and most importantly provisions about the discipline of advocates, the courts vis-à-vis the Uganda Law Council

Shumuk Investments Ltd. V Noble Builders (U) Ltd, Sunbury Investments Ltd. & Barclays Bank (U) Ltd; M.A. No. 300/2009; Appeal from the decision of a Registrar on taxation which deals with the criteria that a Taxing Officer must consider on awarding instruction fees.

Stephen Seruwagi Kavuma V Barclays Bank (U) Ltd; M.A. No. 0634/2010; Application for review of a consent decree wherein the import of Order 17 rule 21 CPR (special directions as to accounts) as related to Order 21 rule 16 and Order 20 CPR are discussed.

Begumisa George V East African Development Bank, M.A. 451/2010; Application for granting leave to appear and defend under Order 36 CPR; importance of Order 36 CPR; review of decisions on criteria for leave to defend and notes a change after the controversial decision of the Court of Appeal of Uganda in **Photo Focus (U) Ltd V Group Four Security Ltd. C/A Civil Appeal No. 30 of 2000.**

Significant decisions in the first quarter 2011*By Hon. Justice Christopher Madrama.***1- Jimmy Mukasa V Tropical Investment Ltd., John Mary Mpagi & 2 Ors HCCS (com) No. 232 of 2007.**

♦ An Award of an arbitration tribunal can be enforced against Directors if it can be shown that they spirited away property with the new suit to defraud a successful party.

♦ Transtrack Ltd V Damco Logistics M.A, 344/2010 (com). The use of the Uganda Country Code +256 477 *** allocated to Uganda Telecom by Southern Sudan Telecom Gemtel made calls to them from MTN local and not international calls.

2- Transtrack Ltd V Damco Logistics M.A, 344/2010 (com).

♦ A Clause in a contract that submit to the exclusive jurisdiction of a foreign court cannot oust the statutory and constitutional inherent and unlimited original jurisdiction of the High Court.

3- Moses Kanya V Sam Lukwago and Liberty Construction Co. & Anor M.A. No. 271 /2010 (com.)

- Proceeds of a sale from a wrongful attachment should be accounted to the owner.

Significant decisions in the first quarter 2011*By Hon. Lady Justice Hellen Obura.***1- Tusker Mattresses (U) v Royal Care Pharmaceuticals Ltd M/A No. 38 of 2010**

- I granted conditional leave to appear and defend. The applicant was ordered to pay 50% of the total amount of rent claimed

before the written statement of defence could be filed.

2- Esimu Moses v Cairo International Bank Ltd and Another M/A No. 424 of 2010.

- I overruled a preliminary objection raised by the respondent that the subject matter of the suit had already been sold to a third party and the 1st Respondent had parted with its possession which was now in the hands of the buyer. The applicant had lodged a caveat on the suit land so on that basis I ruled that in view of the holding in **Frederick K. Zaabwe vs. Orient Bank Ltd & Others Civil Appeal No. 4 of 2006** the purported sale of the suit property subject to the applicant's caveat was not absolute.

Following this ruling, counsel for the respondent consented to the application to reinstate the main suit and the main suit was accordingly reinstated.

3- Airtel Uganda Ltd v Uganda Telecom Ltd M/A No. 30 of 2011.

- Counsel for the respondent raised a preliminary objection that an application for leave to appear and defend was filed out of time after a default judgment had been entered and a decree extracted. Counsel for the applicant relied on Order 51 r 4 and submitted that the application was filed in time because the time between 24th December and 15th January was not to be reckoned in the computation of the time. He pointed out that judgment was entered contrary to the law and I agreed with him and overruled the objection.

4- Twase Suleiman v Non- Performing Assets Recovery Trust And Another M/A No. 339 Of 2010.

I granted an application to substitute the plaintiff who had passed away with his legal representatives but declined to allow the defendant to be substituted by the

Attorney General for reason that the application was made ex parte.

5- Ngirabakuzi Dan v Delicacy Restaurant Limited M/A No. 156 of 2011.

- I declined to grant an order for a temporary injunction on the ground that none of the conditions for grant of a temporary injunction were met.. I have also found it very useful to encourage parties to resolve their dispute amicably and to this end a number of cases have been settled out of court.

CHALLENGES

The challenges I have so far encountered include; ill preparation by some advocates, failure by some advocates to follow court directives especially in relation to time lines, failure to effect service in time or at all in some cases, and lack of transcriber of proceedings.

*JOKE !!!****'Consultation fees'***

A lawyer's dog, running around town unleashed, heads for a butcher shop and steals a roast.

The butcher goes to the lawyer's office and asks, "if a dog running unleashed steals a piece of meat from my store, do I have a right to demand payment for the meat from the dog's owner?" The lawyer answers, "Absolutely."

"Then you owe me \$8.50. Your dog stole a roast from me today."

The lawyer, without a word, pays the butcher \$8.50. The butcher, having a feeling of satisfaction, leaves.

Three days later, the butcher finds a bill from the lawyer: \$100 due for consultation.

Ooops!!!

CIVIL CASES MONTHLY RETURNS DURING PERIOD - 01 January 11– 30 April 2011

Hon. Justice G. Kiryabwire

B/Fwd Pending	324
Filed	98
Disposed	115
Pending	307

Hon. Justice Christopher Madrama

B/Fwd Pending	238
Filed	85
Disposed	74
Pending	249

H/W Margaret Tibulya

B/Fwd Pending	111
Filed	53
Disposed	28
Pending	136

*Commercial Court Accredited Mediator*Mr. Kaggwa David

B/Fwd Pending	5
Filed	7
Disposed	6
Pending	6

Mr. Hodge Semakula

B/Fwd Pending	4
Filed	8
Disposed	4
Pending	8

Mr. Byaruhanga Paul

B/Fwd Pending	8
Filed	8
Disposed	7
Pending	9

Hon. Justice Irene Mulyagonja Kakooza.

B/Fwd Pending	257
Filed	81
Disposed	80
Pending	258

Hon. Justice Hellen Obura.

B/Fwd Pending	224
Filed	72
Disposed	72
Pending	224

H/W John Ochepa Arutu

B/Fwd Pending	45
Filed	34
Disposed	57
Pending	22

Mr. Kawalya Stanley

B/Fwd Pending	8
Filed	8
Disposed	9
Pending	7

Mr. Ojok Julius

B/Fwd Pending	6
Filed	4
Disposed	5
Pending	5

Ms. Harriet Grace Magala

B/Fwd Pending	2
Filed	8
Disposed	3
Pending	7

Pictorials of visit of British High Commissioner *H.E. Martin Sherman* -15 April 2011



The British High Commissioner - *H. E. Martin Sherman* arrives at Commercial Court



The British High Commissioner in the Commercial Court Library



British High Commissioner in the Registry

British High Commissioner in the Transcribing Centre



THE COURT PERFORMANCE IN 2010

TRENDS IN FILING 2010:

Number of Civil Suits by end of Year 2010

The court deals in disposal of commercial disputes and mainly by way of Civil Suits of the pecuniary jurisdiction of 50 million shillings and above. The total number of Civil Suits by the end of

the year stood at 833 cases out of the 1272 pending total cases of all Categories as indicated below, forming a percentage of 65.5% of the Total pending workload as tabulated below.

Table 1: Pending Civil Suits to Total Pending Suits

Year	Total Pending Cases	Pending Civil Suits
2010	1272	833

The Case Filing Trend per years 2004 - 2010

There was a peak of the filings by 2004 of about 2000 cases that reduced slightly in 2005, came down by the end of 2008 to almost by half, but shot up in 2009, though reduced

slightly to 1223 by end of 2010 as tabulated below. The commercial disputes that emerge with the evolving economy explain this court usage.

Table 2: Total number of cases filed by year for all case categories

Total Number of Cases Filed by Year for all Categories							
	2004	2005	2006	2007	2008	2009	2010
No. of Cases	1,973	1,703	1,817	1,749	1,065	1,273	1,223

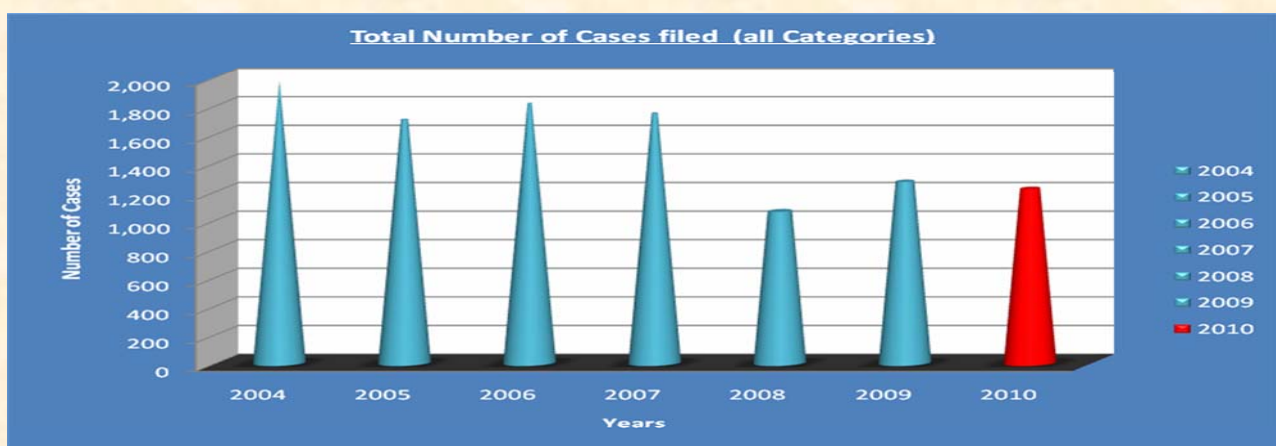


Table 3: All Pending Cases by Case Category

Case Category	Pending Cases
Arbitration Cause	17
Bankruptcy Petition	6
Civil Appeals	41
Company Cause	2
Civil Revisions	0
Civil Suits	833
Miscellaneous Application	352
Miscellaneous Causes	21
Miscellaneous Appeal	0
Originating Summons	14
TOTAL	1272

Figure 2: Pending Cases by Case Category

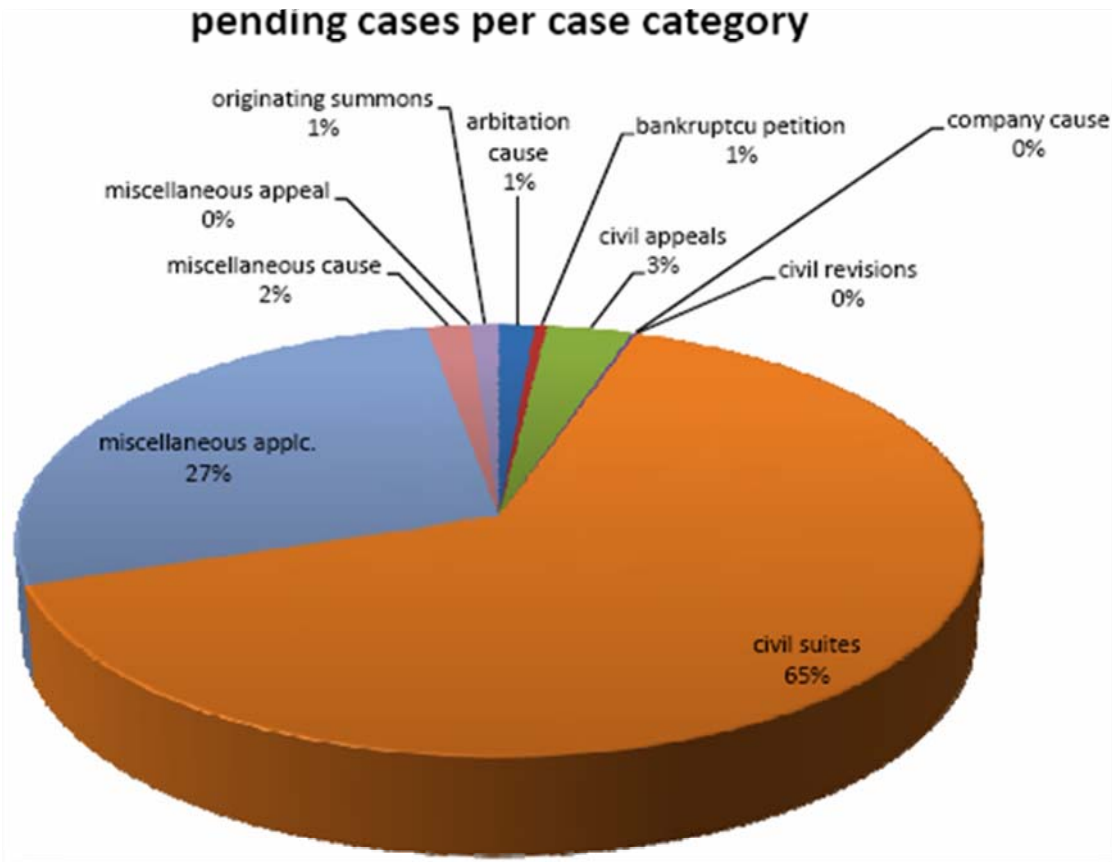
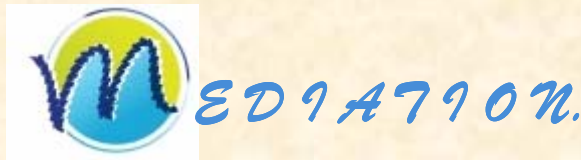
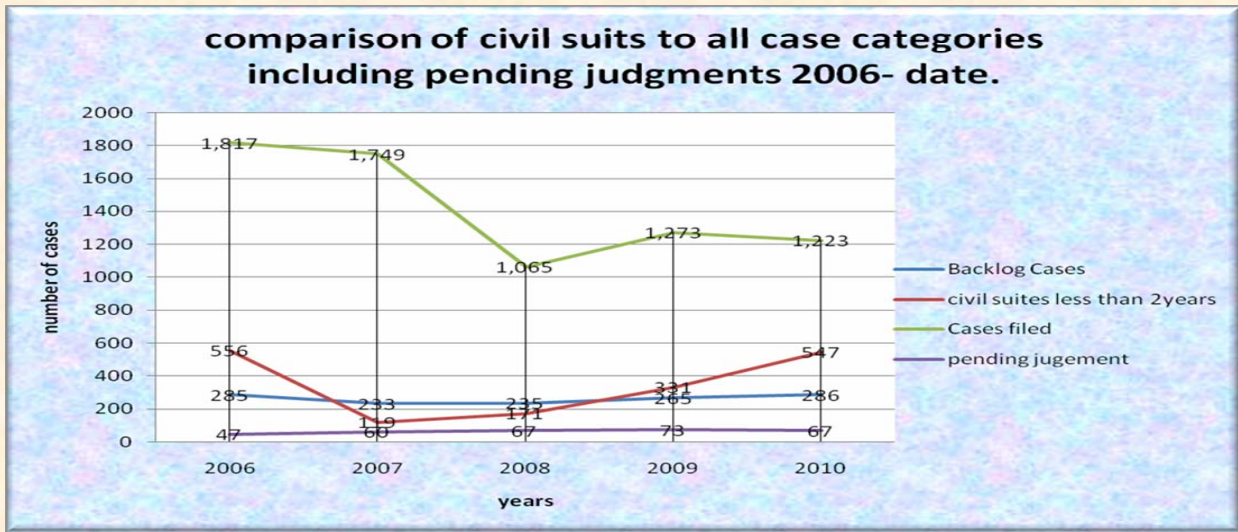


Figure 3: The General Pending Workload Overview



Mediation has been an integral part of the Commercial Court Case Administration System since it was first piloted in 2003 to 2005 (S.1. 71 of 2003). The launch of the pilot Project introduced compulsory court annexed mediation and the objective was to assist in the efficient and effective resolution and disposal of cases in the Commercial Court. After the pilot stage mediation was extended to the court un-

der, *The judicature (Commercial Court Division) (Mediation) Rules 2007 – S.1. No.55 of 2007*. Many changes have taken place since the pilot stage and the most significant changes in 2010 have been the creation of a Mediation Registry headed by a Deputy Registrar, integration of mediation cases in CCAS, appointment of Advocates as Court Designated Mediators and extension of mediation training to include advocates and

their clients. The Deputy Registrar was tasked to address the challenges that had been identified during the pilot stage namely; poor attitudes to mediation by Advocates and their clients; dealing with issues of non attendance, late coming, not following the rules of procedure and lack of case tracking system. All these challenges have been addressed through creation of a new registry and training but a lot still needs to be done.

Mediation Performance

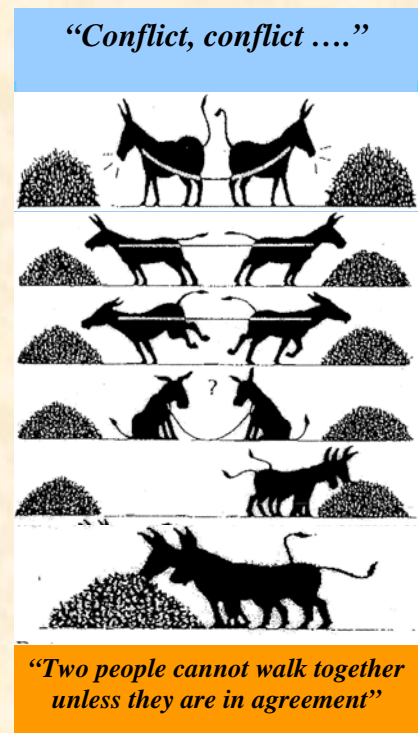
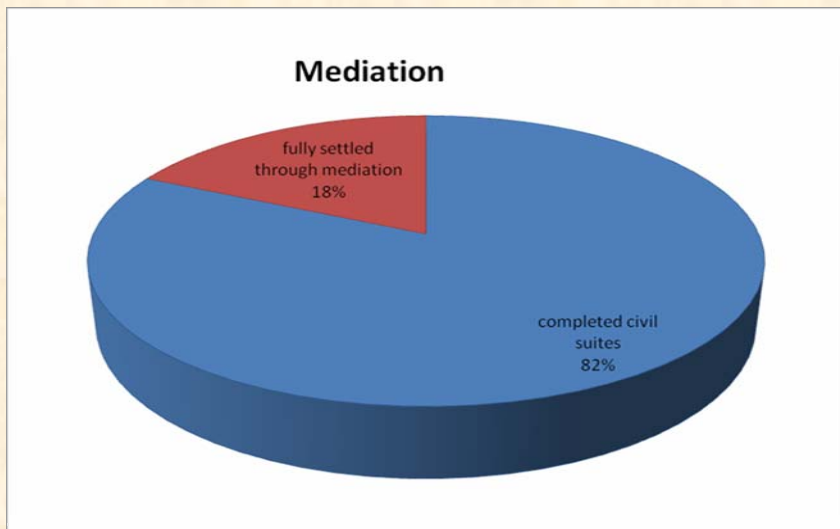
Between January and May 2010 mediation was being conducted by only two Court Accredited Mediators to wit; Mr. John Napier and Ms Nox Ntuli. The former was accredited to the court after being seconded to the court by Pepperdine University USA whilst the latter is a volunteer mediator from South Africa. Later in May

2010, they were joined by His Worship John Arutu. However, in August 2010 Mediator John Napier’s tour of duty ended and he had to leave so the later period of the year the court had only two mediators. Despite shortage of manpower the mediators performed exceptionally well

Table 9: Impact of Mediation on

Case position	Results
Completed Civil Suits	1,973

Figure 9: Impact of Mediation on Court output



Message from ICT

THE INFORMATION AND COMPUTER TECHNOLOGY (ICT) OF THE COURT

The Commercial Division continues to strive to be the leader in Information and Communication Technology initiatives that are aimed at improving the delivery of judicial services to the entire country and in particular the users of this court.

The Information Technology initiatives that we have so far identified as not only being important, but also critical to the proper presentation of evidence for not only the Commercial Division but also other Divisions include;

- Plasma screens, projectors and other visual devices to help in the display of electronic evidence.
- Video conferencing to allow some court services to be delivered remotely, either for par-

ties and witnesses who live some distance from the venue, or for vulnerable witnesses.

Hearing loops for the hearing impaired.

- Digital recording of court proceedings for transcription purposes.
- The ability for case details to be filed and searched electronically.
- The lodging of some kinds of case documents over the internet (e-filing)

As part of our strategy we are looking at upgrading our network infrastructure to fully support some of these new technologies. Efforts are currently in place to acquire technologies like digital court recording, document viewers, projectors; smart boards all to help in the electronic

presentation of evidence. Computer management systems like an online library management system to help the librarian manage the book library efficiently, purchase of better equipment and improvement of the electronic library and purchase and subscription to electronic online reading materials for the e-library, network services like remote networking to enable the Justices access their files on the Judiciary servers in the comfort of their home, to mention but a few.



AFRICAN COMMERCE