COURT ANNEXED MEDIATION

Frequently asked Questions
Private Mediation Agreements

1. What is Private Mediation

Private Mediation is process where parties to a dispute that is not the subject of a pendingcourt case voluntarily appoint a mutually agreeable, qualified mediator to assist them to settle the issues in dispute.

2. What is a Private Mediation Settlement Agreement?

A settlement agreement arising out of a mediation process carried out by a qualified mediator in respect to a dispute that is not the subject of a pending court case.

3. What is the Mediation Accreditation Committee?

It's a committee established by law to vet and approve mediators.

4. How does Private Mediation differ from Court Annexed Mediation?

No.	*Private Mediation*	*Court Annexed Mediation*
1)	Does not arise from a pending court case	Arises from a pending court case
2)	Carried on by a qualified mediator	Carried on only by a MAC accredited mediator with an active status
3)	Must resolve ALL the issues in dispute	May resolve issues partially
4)	Initiated once parties appoint a mutually agreed mediator	Initiated by a referral order of the court
5)	Registered as an annexure/attachment to an affidavit sworn by the mediator	Filing of the mediator's report and settlement agreement.
6)	Mediators are paid by parties	Mediators are paid by the Judiciary
7)	Parties mutually choose the mediator	Mediators are appointed by the court
8)	Parties mutually agree on the venue	The Judiciary may facilitate the mediation session
9)	Parties mutually agree on the timelines	Mediation must be concluded within 60 Days

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5. Why consider Private Mediation?

- Cost-effective
- Time-saving.
- Flexible: procedures can be modified to fit their parties' needs.
- Avoid lengthy court processes
- Preserves relations between parties
- Confidential process
- Reduces case backlog

Prevents issues of non-compliance

6. Who is a qualified mediator?

A person who:

1. Possesses full accreditation status by the Mediation Accreditation Committee (MAC) whether active or not
2. Is accredited by any other institution recognized by the committee, or
3. Possesses such other qualification as may be approved by the committee

An **accredited mediator** is a person whose name is in the MAC register.

7. For Which Disputes is Private Mediation Appropriate?

Any dispute capable of being resolved through mediation under Kenyan law or international law and includes, employment and labor disputes, environment and land disputes, custody & maintenance disputes, succession and matrimonial disputes, civil and commercial cases.

8. Which Disputes are Not Appropriate for Private mediation?

- Disputes relating to child neglect,sexual offence cases, SGBV cases, terrorism cases, criminal cases
- Disputes involving pure points of law
- Cases involving public interest issues

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9. What is the Role of a Mediator in Mediation?

- To guide parties through the mediation process
- To facilitate the resolution of the dispute.
- To maintain confidentiality.
- To draft private settlement agreements upon conclusion.
- To present the private settlement agreement for registration by the court.

10 Requirements for a Private Mediation Agreement to be Registered by the Court?

- Reached through the assistance of a qualified mediator.
- Must not relate to a dispute pending in court.
- Must relate to a dispute capable of being resolved through mediation under Kenyan or international law.
- Must not be illegal.
- Capable of enforcement by court under the law.
- Must be reduced into writing in the language of the court.
- Must be dated, signed by the mediator, parties and their advocates/representatives where present.
- Must indicate where the mediation took place and where the agreement was signed.
- Must have resolved ALL the issues in dispute.
- Must indicate clearly the nature of the dispute, issues involved and the settlement agreement arrived at.

11 What is the Procedure for Presentation for Registration?

- The mediator within 30 days of execution of the private settlement agreement uploads the agreement through the E-filing system for registration.
- The Private mediation settlement agreement is filed as an annexure or attachment to an affidavit (form 15 CAM Rules, 2022) sworn by the mediator.

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12 How are Private Mediation Agreements Registered?

- Upon filing of the private mediation settlement agreement, the officer at the registry shall verify and assess the documents for purposes of payment of fees as prescribed.
- Agreement is serialized and entered in the register of Private Settlement Agreements.

13 What happens after a Private Mediation Agreement is Registered?

- The Agreement is recognized and forms part of the court record.
- Parties are at liberty to apply for enforcement by execution or otherwise.

14 What is the Procedure for Enforcement of Private Mediation Agreements?

- A party seeking to enforce a private mediation agreement files a Notice of Motion Application for Enforcement of Private Mediation Agreement (Form 16 CAM Rules, 2022).
- Upon receipt of application, the registry opens a separate mediation file for the private agreement.
- The file is placed before the court for adoption within 14 days.
- The court may order the other party be served or examined on oath before adopting the agreement.
- Where satisfied, the court adopts the agreement as a judgment of the court and issue order or decree in the terms of the agreement.
- a party who signed the settlement agreement but was not heard before its adoption can apply for setting aside the adoption proceedings and Orders arising thereof.
- A party aggrieved by the setting aside order made by the court may file an appeal within 14 days of the order being made.

15 Can An Appeal Be Filed Against A Mediation Settlement Agreement?

No. There can be no appeal from private mediation settlement agreements in themselves or their contents as they are based on the mutual agreements arrived at by parties.

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16 **Can information obtained from Private Mediation be used as evidence in court?**
No. Information exchanged or made during mediation is confidential and is not admissible as evidence in any current or future cases in any court.

17 **In what circumstances can information given during Private Mediation proceedings be disclosed?**
Where disclosure is compelled by law or the information relates to child abuse,child neglect, defilement, domestic violence or related criminal or illegal purposes.

18 **Where can one access a list of qualified Mediators?**
The list can be accessed at the Judiciary website and the Mediation Accreditation Committee Website or from institutions recognized by MAC.

For further inquiries or feedback,

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