

**AN ANALYSIS OF ALTERNATIVE DISPUTE RESOLUTION AS A
COMMUNICATION STRATEGY IN CONFLICT RESOLUTION: A CASE
STUDY OF COURT ANNEXED MEDIATION, MILIMANI LAW COURTS -
FAMILY DIVISION**

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DECLARATION

This is to certify that this research project is my original work and has not been presented for an award of degree in any other University.

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DEDICATION

I entirely dedicate this work to my spouse Johana Mwaura and my children Stephanie, Foulatah and Jayden Mwaura for their unending support.

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ABBREVIATIONS AND ACRONYMS

ADR	Alternative Dispute Resolutions
BATNA	Best Alternative to A Negotiated Agreement
CAM	Court Annexed Mediation
CMM	Coordinated Management of Meaning Theory
MAC	Mediation Accreditation Committee
MLATNA	Most Likely Best Alternative to A Negotiated Agreement
TDRM	Traditional Dispute Resolutions Mechanisms
RDT	Relational Dialectics Theory
WATNA	Worst Alternative to A Negotiated Agreement

ABSTRACT

This study sought to analyse Alternative Dispute Resolutions as a communication strategy in conflict resolution. The study focused on Court Annexed Mediation at Milimani Law Courts at the Family Division. The study was guided by the following specific objectives: To establish whether informality of Alternative Dispute Resolutions process increases or decreases the disputant's self-articulation (expression); To investigate whether (or not) disputants change their expectations because of the Alternative Dispute Resolutions process and to establish the interpersonal communication skills/tools used by the mediators in the Alternative Dispute Resolutions process. Two theories guided the study: Coordinated Management of Meaning by Barnette Pearce and Vernon Cronen and Functional Perspective of Group Decision Making by Randay Hirokawa and Dennis. The study used Descriptive research design. Qualitative method approach was used in the study. The sample size for this study was obtained through purposive sampling. The population of the study was those involved in the Court Annexed Mediation at the Family Division. These were the Deputy Court Registrars from the family division, judges, Mediation Accreditation Committee members, Accredited Mediators, advocates and disputants. The study used in-depth interviews and observation methods in collecting data. Tools used for data collection were interview guides and observational protocols. Qualitative data analysis was used. The researcher transcribed field notes and interview guides, made a code sheet to help in recording participants. Coding involved sorting and arranging the data in a way that the researcher was able to summarise and present the information. The study used the objectives of the study to identify emerging themes and analyse them. The results were presented through discussion verbatim by quoting the participants. The themes that emerged from the study were: setting, language, process, issues and interests, outcomes and communication competencies. The study found that communication between the disputants was the key to successful mediation. The study also found that the mediator's role in ensuring effective interpersonal communication between the disputants by assisting them identify issues and interests, manage emotions and express themselves better was of utmost importance. From the study mediation emerged as a communication strategy as through a well guided mediation process the disputants were willing to compromise by setting aside selfish interests for mutually beneficial outcomes. This study recommends that mediation should be a process that is readily available for everyone who wants to seek it out as a method for conflict resolution.

CHAPTER ONE

INTRODUCTION

1.1 Overview

This chapter presents background of the study, statement of the problem, research objectives and questions, justification, significance, scope and limitations of the study.

1.2 Background of the Study

Human interactions are dynamic and dispute is bound to occur from time to time. Demmers (2012) defines conflict as any situation where two or more people or parties feel that they have incompatible goals. Conflict represents disagreements, incompatibility of ideas, values and interests (Muigua, 2015). Since individuals are unique and different, they do not view issues in the same way. According to Fiadjoe, (2004) some of the most common sources of conflict are; value difference, unmet basic needs and limited resources.

There exist a number of dispute resolution mechanisms including litigation and Alternative Dispute Resolution mechanisms (ADR) (Abadi, 2011). The common ADR mechanisms available include; mediation, conciliation, arbitration and negotiation.

Mediation is a conflict resolution mechanism in which a jointly acceptable third party intervenes in a conflict or a disagreement to help the concerned parties mend their relations, improve communication, and at the same time arrive at voluntary and mutually acceptable agreements on disputed matters. In deep conflicts the mediators meet with one party at a time. This helps to soften their stand making it easier to progress with the process (Webel & Galtung, 2007). Through dialogue, the disagreeing parties are able to find lasting solution to their dispute.

Arbitration is a form of ADR, which constitutes an agreement by the parties to submit their disputes to an impartial person rather than a court of law chosen by them for determination. That person is referred to as an arbitrator. The arbitrators make decisions based on the relevance of the evidence offered. Arbitration is advantageous because it may be significantly less expensive and time efficient than litigation.

Negotiation has been described as the primary method of alternative dispute resolution. It is a form of dialogue intended to resolve disputes with intention to arrive at outcomes, which satisfy various interests (Baya, 2009).

Court annexed mediation (CAM) is a mediation process conducted under the umbrella of the court. CAM is one of the recent innovations to the Kenyan Court processes. It is anchored in article 159(2) (c) of the Constitution of Kenya, 2010. It specifically provides that alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3).

The enforcement of the Mediation (Pilot Project) Rules 2015, Legal Notice Number 197 of 2015 on 4th April 2016, marked the start of the Pilot stage of CAM being implemented both in the Commercial and Family Divisions of the High Court at Milimani Law Courts, Nairobi.

1.2.1 Communication in Dispute Resolution

Communication is an important tool in the dispute resolution process; it is central to the alternative dispute resolutions processes (Adejimola, 2009). For an ADR process to be effective, the skills and techniques of communication in the ADR must be effective. Negotiators, arbitrators and mediators must be active listeners; they must also be understanding and be able to talk clearly and accurately. According to Wood (2016) it is the responsibility of all parties involved to make communication possible, neither is one person responsible for communication problems. This mode of communication puts an obligation on the communicators to share responsibility for effectiveness of their communications.

According to Griffin (2012) human beings are social beings. Therefore, it is through communication, both verbal and non-verbal that they are able to exchange and share meanings through symbols and signs. Communication is more than a tool. It is important in creating, continuing and restoring broken relationships. In conflict resolution, communication plays a central role in restoring relationships. In mediation, mediators help the disputants to communicate with one another through the use of communication skills such as active listening, reframing and reflecting (Littlejohn & Domenici, 2001).

Hartley (1999) defines interpersonal communication as a two way, ongoing process by which people communicate face to face through verbal and non - verbal messages. The non - verbal messages entail tone of voice, facial expressions, gestures and body

language among others. The people involved play different roles, where they create and exchange meaning with an intention to achieve a given goal. This form of communication is cumulative over time.

According to Wood (2016), one can achieve interpersonal communication competence by being able to communicate appropriately, effectively and ethically in order to achieve the goals of the intended communication, for example, to comfort a person, to explain a point or to persuade. An essential component of interpersonal communication denotes being careful in choice and usage of language and nonverbal signals when communicating.

Hargie & Dickson (2004) explain that human beings ought to possess certain interpersonal skills to enable them communicate among themselves effectively. This is based on the the level people communicate with each other adhering to one's rights. As such, as people communicate, they should not only aim at reaching their satisfaction or duties but should ensure they do not interfere with the rights of human beings

1.2.2 Methods of Solving Disputes Globally

World over, societies have always had methods and ways of solving disputes. These methods include both litigation and Alternative Dispute Resolution (ADR). In contemporary society, successful ADR and indigenous methods of non-litigious conflict resolution, interpersonal communication as a type of communication has been at the epicenter of dispute resolution. Traditional Dispute Resolution Mechanisms (TDRM) was anchored on considerations of good faith, empathy, preservation of relations among other considerations (Muigua, 2015).

ADR refers to the processes and methods used in resolving disputes outside the court (Mnookin, 1998). It was found in the dispute resolution processes used in traditional societies and in other cultures before the beginning of the nation state (Muigua, 2015). For instance, societies in Africa, Asia and Far East traditionally practiced non-litigious means to resolve their disputes (Fiadjoe A. , 2004). ADR was used to help in consensus building in dispute resolution process, which ensured the building and maintenance of long-term relationships. Some of the approaches used in ADR included mediation, arbitration, negotiation and conciliation (Webel & Galtung, 2007).

These mechanisms to dispute/conflict resolution were meant to ensure continued

coexistence of the families and communities. They strived to ensure that the conflicts were completely addressed to avoid their re-emergence in future. These traditional approaches effectively addressed the conflicts making them suitable for the management of the particular problem. In the United States, the ADR movement started between 1960s and 1970s (King, Batagol, & Hyams, 2009). Some religious groups and communities in the United States used various forms of mediation in resolving disputes way before the start of the Movement (Stone, 2005). In Australia, the indigenous people had a rich history that encompassed a range of ADR processes to deal with conflict. For example shaming, exclusion, compensation, initiation and training based upon a system of kinship based law for thousands of years (Astor & Chinkin, 2002).

In India, a system of arbitration called Panchayat was used 2,500 years ago. Panch, the arbitrator was given such high status that his decisions were irrevocable. All cases including criminal cases could be subject to arbitration. China has a traditional view of dispute resolution, which has its origin in Confucian ethics. Confucius taught that natural harmony should not be disturbed and argumentative proceedings were not good for harmonious co-existence. It is estimated that there are 950,000 mediation committees in china with 6 million mediators (Wiley & Sons, 2004).

1.2.3 Dispute Resolution in Africa

In the pre-colonial Africa, most ethnic communities had well established unique communal as well as individual approaches to dispute resolution. Conflict/dispute resolution was not only interpersonal but also a communal responsibility. ADR was aimed towards restoring and enhancing a relationship from negative to positive leading to elements such as equality, participation and respect (Assefa, 1996).

Yoruba in Nigeria have used the ADR from time immemorial. They even have a proverb to reinforce the need to settle disputes and co-exist peacefully. *“The tongue and teeth often come in conflict. To quarrel and get reconciled is a mark of responsibility.”* Disputes at the family level are solved by *mogaji* the lineage head and the *mbale* an elderly head of a district. The disputants work towards achieving a compromise. The elders use numerous techniques to reach a settlement such as; proverbs, persuasion, subtle blackmail, precedent and even magic. The traditional head known as *Olubadan* also acts as arbitrator in many disputes (Wiley & Sons, 2004).

Where compensation was awarded, a ceremonial reconciliation of the parties would follow its payment. For example the Igbos in Nigeria brought palm wine and oil beans to share and make peace with the aggrieved party. The Nigeria's native justice systems aimed at reconciliation (Elias, 1956). ADR offers restorative justice, which is aimed at building consensus between the conflicting parties hence enhancing relationships (Issaka, 2007).

Rwanda used a traditional system of conflict resolution called Gacaca. The system dealt mainly with civil and social conflicts between members of the community. Elders in the community, people renowned for their integrity and wisdom, discussed and resolved problems and conflicts within the community. Some of the measures taken against the lawbreakers by Gacaca were to call upon the family of the offender to make peace with the offended family. Inkiko Gacaca – new Gacaca focuses on truth and reconciliation. Truthfulness is encourages in form of confessions by offenders creating room for reduction of sentence.(Westberg, 2010)

1.2.4 Dispute Resolution in Kenya

Just like in other African states, communities living in Kenya had numerous traditional dispute resolution mechanisms before the arrival of the colonial masters. Each ethnic group had a way of dealing with and containing conflict, which ensured peaceful co-existence between communities, groups and family members. Often disputants could be reconciled by the elders and close family relatives and directed on the need to co-exist peacefully (Muigua, 2015).

Among the Pokot and Marakwet, the council of elders referred to as kokwo was the highest institution of conflict management and socio-political organisation. This was made up of respected, wise old men who were conversant with the affairs and history of the community. The elders were also good debaters and eloquent public speakers who were able to use proverbs and wisdom phrases to persuade/influence the meeting or the conflicting parties to peace. Every village was represented by a council of elders. Senior elderly women contributed to proceedings in a Kokwo while seated. They advised the council on what to do and what not to do quoting previous incidents and/or cultural beliefs and before a decision was made the women were asked to give their views or opinions. The Kokwo observed the rules of natural justice (Ruto, Adan, Rabar, & Karimi, 2004). In the Agikuyu community the council of elders were known to as

Kiama. Kiama used to act as an arbitral forum or mediator in dispute resolution. The power to decide land disputes was vested in the councils of elders, who conducted all land transactions (Kenyatta, 1938).

Mediation is a conflict resolution mechanism in which a jointly acceptable third party, intervenes in a conflict or a disagreement to help the concerned parties mend their relations, improve communication at the same time arriving at a voluntary and mutually acceptable agreements on disputed matters. In deep conflicts the mediators meets with one party at a time. This helps to soften their stand making it easier to progress with the process (Webel & Galtung, 2007). Through dialogue the disagreeing parties are able to find lasting solution to their dispute.

Court Annexed Mediation (CAM) is a mediation process conducted with the assistance of the court. The Court Annexed Mediation in Kenya was first rolled out at Milimani Law Courts (family and commercial divisions) as a pilot project in April 2016. One of its greatest strength that has been noted is; the reduction of time taken in concluding a civil case from 24 months to 66 days. This is expected to help reduce the backlog significantly. So far the program is rolled out in ten (10) Court stations across the country. These are; Eldoret, Mombasa, Kisumu, Nakuru, Nyeri, Kisii, Machakos, Garissa, Embu and Kakamega.

1.3 Statement of the Problem

This study sought to investigate the effectiveness of ADR as a communication strategy in conflict resolution.

Though the mediation rules as well as the mediation manual establishes a legal structure upon which mediation should be carried out, communication process within ADR and specifically in the CAM process is not elaborate. Adejimola, (2009) states that communication is central to the alternative dispute resolutions processes and an important tool in CAM.

Under Article 48 of the Constitution, the state is obligated to ensure access to justice to all persons. Article 159 of the Constitution requires Courts and Tribunals, in the resolution of disputes to promote the use of alternative forms of dispute resolution mechanisms including mediation. It is in this spirit that the Court Annexed Mediation was rolled out at Milimani Law Courts (family and commercial divisions) as a pilot

project in April 2016. From then on it has slowly become popular and it has been rolled out to ten other court stations across the country.

Available literature suggests that a majority of researchers writing on court annexed mediation largely focuses on settlement of backlog of cases in courts, rules governing court annexed mediation, advantages and challenges (Wahab, 2013; Kanyumu, 2018; Britz, 2018). However, most of these studies are quiet on the aspect of communication. Therefore this study sought to investigate the effectiveness of ADR as a communication strategy in conflict resolution.

1.4 Research Objectives

1.4.1 Main Objective

To analyse ADR as a communication strategy in conflict resolution as used in CAM in Kenya.

1.4.2 Specific Objectives

- i. To investigate whether informality of ADR process increases or decreases the disputant's self-articulation (expression).
- ii. To investigate whether (or not) disputants change their terms because of the ADR process.
- iii. To investigate the interpersonal communication skills/tools used by the mediators in the ADR process.

1.5 Research Questions

- i. How does informality of ADR process increase or decrease the disputant's self-articulation or expression?
- ii. To what extent do disputants change their terms because of the ADR process?
- iii. What are the interpersonal communication skills used by mediators in the ADR process?

1.6 Justification of the Study

The research was timely in that CAM is a recent innovation in the Kenyan judiciary. It was introduced in April, 2016. Therefore, little research has been conducted in this area. As a result this study shed more light on ADR as a communication strategy in conflict resolution, and how best the process of ADR can be improved.

Article 159(2) (c) of the constitution of Kenya encourages the use of ADR processes; it is a constitutional command. Therefore, conducting this study was commitment to the Constitution.

1.7 Significance of the study

The CAM is aimed at reducing the time taken in settling a dispute and this will ensure justice to the Kenyan people is not delayed, hence not denied. This study sought to analyse ADR as a communication strategy in conflict resolution, the findings and proposals made herein would be useful in successfully rolling out CAM as a process in Kenya.

1.8 Scope and Limitations

The study was conducted at Milimani Law Courts, Court Annexed Mediation, the Family Division between 19th August 2019 to 17th September 2019.

The study is recent; therefore, there is limited literature on CAM in Kenya. However, the study heavily borrowed from the existing literature of ADR and more so mediation. Some of the challenges encountered due to limited literature were mitigated by conducting primary research including - interviewing key informants/stakeholders and observation of mediation sessions. Most mediators and disputants denied the researcher permission to observe the sessions, therefore only two mediation sessions were observed.

1.9 Operational definitions

Observation – The act of seeing, hearing or noticing.

CHAPTER TWO

LITERATURE REVIEW

2.1 Overview

This chapter gives a discussion on Alternative Dispute Resolutions as a communication strategy in conflict resolution. It discusses the conflict cycle, dispute resolution methods, communication in ADR process and its usefulness. Further, it analyses interpersonal communication including the components, principles and attributes impacting on interpersonal communication.

2.2 Introduction

Alternative dispute resolution has been described as an alternative process to trials by judge (Garvey & Craver, 2013). ADR as a mechanism has been preferred to litigation for its attributes of flexibility, non-combative nature and efficiency among others (Doyle, 2012). Despite these attributes, ADR as a process faces a number of challenges including systemic distrust; insufficient emphasis on underlying interests; failure to communicate and listen; misunderstandings; lack of respect between the disputants and inadequate planning and preparation (Epstein & Epstein, 2006). These challenges are either directly or indirectly brought about by the lack of communication or miscommunication.

Good communication skills have not only the ability of effectively preventing conflict but also agreeably resolving conflict. According to Fleetwood (1987), communication relates to conflict in three ways: communication may create, escalate and/or resolve conflict.

When conflict arises between parties communication is affected; either there is total communication breakdown or communication is strained. In such instances communication strategies, which are ways and means, employed when one experiences a problem in communication plays a key role in enhancing the quantity and quality of interpersonal and intercultural interactions. Thus helping people in areas such as opening and closing dialogs, keeping a conversation open, overseeing turn-taking and apologies (Mariani, 2010). In turn this helps to improve and sustain a consistent relationship aimed at achieving a common goal and collaboration.

As a conflict resolution tool, effective communication skills is key in the successful resolution of disputes. However, knowledge on effective communication skills is not enough to achieve successful conflict resolution. To successfully resolve conflict, there is need to prioritise and strengthen personal relationship with the disputants. The primary focus of an effective communication system is the bridging and preservation of personal relationships between the disputants as a means of walking through the conflict in constructive ways. Successful resolution of conflicts thus involves the elements of sincerity, respect, confidentiality, flexibility, empathy and maturity among others. This valuable mode of communication is referred to as interpersonal communication.

2.3 Conflict

Human conflict is ever-present and universal. Conflict emerges from human interactions and expectations. As people pursue goals that they perceive to be incompatible, differences are always bound to occur among them. Jeong (2008) believes that conflict is an essential part of human relations as it helps in clarifying the misunderstandings between people, cause the needed change and let off steam. It is crucial to understand the sources of destructive social conflicts as a key to reducing its frequency and intensity.

2.3.1 Conflict cycle

According to Slack (2006), there are typically five stages of conflict and they occur in escalating levels of seriousness. At the preliminary stages, it is easier to confront the issues developing the conflict and thus generate solutions more quickly. At the later stages, it becomes more difficult to get solutions once the conflict has degenerated to a more serious and hostile level. At this stage, external assistance is often needed to mediate a solution with the parties.

Although conflict and its stages have been reasoned differently, the prominent stages have been conceptualised as: the latent, perceived, felt, manifest and the aftermath stages. At the latent stage, the participants in the conflict are often not yet aware of the existence of the conflict, though there are hidden potential causes for conflict to occur. The conditions that provide potential for conflict are competition for scarce resources, need for autonomy and differing goals. Even though this stage is often not characterised by any visible effects, it signifies the beginning of commotion. As a solution, preventive

diplomacy usually is the most effective method to hinder further development to a conflict (Ramsbotham & Miall, 2011).

According to Pondy (1967), from the latent stage, conflict develops to the perceived stage. At this stage, the participants become aware of the existence of conflict. This level is also referred to as the discomfort stage. At this stage, although nothing substantive may have happened, the participants begin to recognise the existence of some tensions or awareness that something is wrong in a relationship. Because there is often no recognition that any problem actually exists, little is often done about the problem at this stage. People tend to look for objective solutions in a cooperative manner. However, where no solution is found, the conflict often escalates and degenerates to the felt stage.

The felt stage of conflict is the stage when the conflict is not only perceived but actually felt and recognised. Pondy (1967) argues that in this stage emotions such as aggression, anger and frustration are experienced. This stage often leads to the manifest stage where adversarial behavior is displayed, this ranges from apathy, non-adherence to set rules, violence and physical and verbal abuse. The final stage is the conflict aftermath. In this stage the conflict is fully resolved or if left unresolved, it can resurface in future. (Pondy, 1967)

Kriesberg (2007) notes that although social conflicts are an inherent part of human life, they vary in their destructiveness. He admits that despite how universal violent conflicts may seem, a bigger part of conflicts in most societies are solved in accordance with shared rules.

People react to conflict differently depending on what works for them and the situation they are in. According to Wilton & Hocker (2011), people use five key approaches when responding to conflict; avoiding, accommodating, confrontation, compromise and collaboration. Avoiding the conflict involves not acting, or postponing an issue. This allows a person more time to assess the situation. Accommodating is the other response. This involves a person neglecting own goals to satisfy the goals of others. Confrontation entails intense levels of emotions as the parties concerned place their desires above all others. Compromise involves meeting each other halfway. It is achieved by finding a middle ground, thus partly satisfying the interests of all parties.

Finally, collaboration requires both firmness and cooperation. The parties agree to a positive settlement catering fully to the concerns of the other party without compromising on their own. (Wilmot, 2011)

2.4 Conflict Resolution Methods

2.4.1 Concept of ADR

According to Abadi (2011), there are a number of ADR mechanisms including; mediation, arbitration and negotiation. For an ADR process to be effective, the process of communication in the ADR must be effective. That implies that the process should be guided by skills and techniques of communication. For example, negotiators, arbitrators and mediators should be – active listeners; be able to talk clearly and precisely; and be understanding.

2.4.2 Types of ADR

2.4.2.1 Mediation and Court Annexed Mediation

According to Moore (2003), Mediation is a private and structured form of dispute resolution by which parties to a dispute are helped to reach an amicable agreement by a neutral third party called a mediator. As a neutral third party, the mediator skillfully facilitates communication between the conflicting parties thereby helping them negotiate options to meet their interests. While doing so, the mediator ensures that he preserves and aids in repairing the relationship between the disputants (Bennet & Hughes, 2005). Mediations are either transformative; facilitative (problem solving) or evaluative in terms of model. Those models are significant because they determine the outcome of the process (Bingham & Hallberlin, 2009). The resultant agreement is non-binding in nature. However, the mediator can draw up an agreement that has the effect of becoming a legally binding contract.

In Kenya, Court Annexed Mediation is slowly becoming popular. Under Article 48 of the Constitution, the state is obligated to ensure access to justice to all persons. Article 159 of the Constitution requires Courts and Tribunals, in the resolution of disputes to - promote the use of alternative forms of dispute resolution mechanisms including mediation. The Constitution expressly recognises three ways of disputes resolution including - litigation, alternative forms of dispute resolution mechanisms and traditional disputes resolution mechanisms (Kenya Law, 2010).

In December 2012, the Civil Procedure Act was amended pursuant to Act No. 12 of 2012. The amendments provided a legal process where a court can coerce parties to mediate. Section 59A established the Mediation Accreditation Committee which is empowered to, inter alia, determine the criteria for certification of mediators; propose rules for certification; enforce the code of ethics and establish appropriate training programs for mediators; and maintain a register of qualified mediators.

Section 59B gives the court the discretion to refer a dispute to mediation upon request of the parties, where it deems it appropriate or if the law so requires. Such mediation shall be conducted in accordance with the mediation rules. No appeal shall lie against from a mediation agreement. Section 59 D empowers the court to enforce private mediation agreements.

2.4.2.2 Conciliation

In conciliation, an independent person selected by the parties to a dispute by mutual consent. That selection may either be at the time of making the agreement or at the point when a dispute has arisen between the parties. The independent person's role is to ensure the settlement of the dispute through consensus. The independent person employs various persuasive and other techniques to ensure settlement of the dispute (Fisher & Ury, 1991).

Though conciliation is similar to mediation, the difference between the two is that while in conciliation the neutral person intervenes more in ensuring settlement, in mediation, the mediator plays a somewhat laid back role. Another difference is that while in mediation the agreement/disagreement is non-binding, in conciliation where the parties fail to arrive at a mutually acceptable settlement, the conciliator may issue a binding recommendation unless it is rejected by one of the parties. As an ADR, conciliation is an effective means of dispute resolution and can be usefully deployed in both domestic and international disputes.(Roger Fisher, 1991)

2.4.2.3 Negotiation

According to Fisher & Ury (1991), negotiation is a process by which the disputants attempt to arrive at a joint decision on matters where they have common interests or concerns. The disputants have control over the negotiation process. The parties may either represent themselves or may be represented by agents. Negotiation has been

defined as any form of communication between disputants with aim of arriving at a mutually agreeable solution. In its simplest form, it is the process which people get what they want from others through communication (Fiadjoe, 2004)

Even though negotiations can be time consuming and mentally straining, it is the most used form of dispute resolution (Mnookin, 1998). This wide usage is because of its vast applicability within the communities and homes. (Fisher & Ury, 1991)

2.4.2.4 Arbitration

Arbitration is a voluntary type of ADR where the parties submit a dispute by agreement of the parties to an impartial and independent arbitrator(s) who subsequently make a binding and enforceable determination on the dispute.

2.5 ADR versus Litigation

Litigation, is a formal court process, it has laid down procedures and the expected outcomes after the trial process (Twyford, 2005).

In the formal court system the rule of law directs the rights and duties of the parties involved. However, in ADR disputants agree on terms of settlements depending on their needs, relationships, culture, values and wishes. Litigation is combative; hence does not pursue fair solution. Court judgments results in win-lose or appeal situations and not a consensual decision, which is favorable to all parties. In litigation, a party who is not pleased with the results might seek an appeal.(Sternlight, 2008).

ADR processes tend to be cheaper as opposed to litigation. In addition, some forms of ADR can be quicker than litigation. This is quite often more useful in a small claims. The Non-adversarial nature of ADR processes is also a positive attribute. Fiadjoe (2004) argues that litigation is a stressful undertaking. It takes a long time to conclude, is costly, there is public presentation of differences hence there is ill-will among the disputants.

On the other hand Fiadjoe (2004) highlights the benefits of ADR which includes privacy, finality, win-win situation, recognition of the need of those involved, time saving and cost effective. ADR preserve and even enhances ongoing relationships. The disputants are therefore put at a vantage point in getting what they want. This

informality impacts of the ADR processes making them more flexible than the court processes with a long lasting impact.

Conversely, ADR processes often portray some negative attributes including - power differences between the disputants. This has the possibility of making face-to-face mediation unfair. ADR processes have also been faulted for their lack of urgency in solving urgent matters such as eviction from land. In addition, ADR processes may often not make determinations and rulings on legal rights and entitlements with impact of making binding decisions. Where they do, such processes may often result into lower compensation amounts (Fiadjoe, 2004)

2.6 Communication

According to McQuail (2010) communication in its simplest sense involves dialogue. It is a process, which in order to occur, requires elements of commonality. Such commonalities include - a common language; shared culture; and a common interest. These commonalties not only bring about a sense of commonality but also a sense of community.

The information relayed during communication could be in many forms including- non – verbal, oral or written. As a form of interaction, communication is both important to individual and societies. It is a unique resource and a toll that fosters social existence.

2.6.1 Types of Communication

There are numerous types of communication including – Intrapersonal, interpersonal, organisational, group and organisational communication (Adler & Rodman, 2006).

Intrapersonal communication denotes “communicating with oneself”. It is that form of communication by which a person communicates internally by listening to their inner voice or mind. This type of communication is a form of monologue.

Group communication refers to an organised interaction between members of a group of individuals. Group communication can either be formal or informal. Every member of the group can participate actively with the interaction. Organisational communication denotes the type of communication within an organisation and between the organisation and - different departments in the organisation, and the people working in the organisation. (Adler & Rodman, 2006).

Organisational communication theorists have conceptualised organisations as living systems. Communication has thus been viewed as an essential component the ‘living systems’. According to Weick (1979), as a means of ensuring organisation survive, the organisations have strived to keep constant organisation communications.

According to (Riel & Fombrun, 2007) corporate communications denotes the set of internal and external communications in a company with the intent of creating favorable flow of information with the company’s stakeholders. Cornelissen (2004) writes that this type of communication is dependent on identity, reputation and strategic management and stakeholders. Corporate Communication has been explained as a strategic integrated communication entailing the coordination of internal and external communication from a strategic to an operational level with the aim of building and maintaining an organisation’s relationship with its stakeholders. (Cornelissen, 2011)

2.6.2 Communication in ADR

Communication plays a number of important roles in the society, (Adler & Rodman, 2006). For example, communication is important in informing; persuading; integrating; creating relationships; reducing misunderstandings; and solving of disputes. Communication is a central practical part of human life.

Whether it is done verbally or non-verbally, the key function of communication is the passing of information to others. Communication serves an important function of persuading a single party by another. Depending on the forum, whether in business, dispute resolution or corporate management. The intention of persuasion is to make the other party accept the ideas, opinions and suggestions being relayed.

For an ADR process to be effective, the skills and method of communication in the ADR must be effective. Since communication is an important tool in the dispute resolution process; thus central to the alternative dispute resolutions processes (Adejimola, 2009). According to Wood (2016) it is the responsibility of all parties to a communication to make communication possible, neither is one person responsible for communication problems. This mode of communication puts an obligation on the communicators to share responsibility for effectiveness of communication leading to dispute resolution.

Through communication, the communicators are able to reduce misunderstandings amongst them. Lack of or insufficient communication can in itself be the cause of a conflict. Where people and organisations communicate effectively, they are able to not only reduce but totally eradicate conflict amongst them. Communication is a dispute resolution tool. As disputes happen daily amongst those who interact in different ways, dispute resolution mechanisms are of immense importance to the existence of every society. Communication as a dispute resolution tool aids has played an important function in aiding disputes resolution mechanisms.(Gramatikov, 2012)

2.6.3 Interpersonal Communication in ADR

Communication is the foundation for all interpersonal interactions (Steiberg, 2007). According to Rodman & Adler (2006), interpersonal communication refers to a form of face to face communication involving relatively few persons. An example of this type of communication is that between friends, business colleagues and amongst family members. For example, according to Roper Poll (1999), in a nationwide poll conducted, a majority of people perceived communication problems as the number one reason marriages fail. Interpersonal communication is so central to human lives. As a result, it naturally interconnects with other disciplines concerned with human behavior such as sociology, counseling and psychology.

The desire among human beings to interact with each other is fundamental. As such, human beings work towards constructing and maintaining connections and social ties especially to those they consider close. Human beings enjoy intermingling, which is made possible through interpersonal communication. As a result, interpersonal communication is considered to contribute to positive emotional change among human being.(Hargie & Dickson, 2004).

Further, Hergie & Dickson (2004), argue that human beings possess certain interpersonal skills to enable them communicate among themselves effectively. This is based on the the level people communicate with each other adhering to one's rights. As such, as people communicate, they should not only aim at reaching their satisfaction or duties but should ensure they do not interfere with the rights of human beings.In addition, individuals communicating with each other should ensure that they are able to communicate competently which is only possible if they understand the skills required in interpersonal communication(Hargie & Dickson, 2004; Hartley P. , 1999).

Hartley (1999) explains interpersonal communication as a form of communication which involves an individual to another, it is face to face and its method and content reflects the personal traits of the people in a conversation, their relationships and roles. Hartley further explains that interpersonal communication involves two or more people who possess different roles and relationships based on the position they hold within social groups. Hence, making interpersonal communication a two- way process and cyclic in nature where the roles of both the sender and receiver are switched. In addition, Hartley expounds that interpersonal communication entails more than just exchange of messages as it involves construction and exchange of meaning. As such, whatever a person communicates can be interpreted differently by different individuals in a conversation(Goffman, 1969).

2.6.4 Components of Interpersonal Communication

Hergie & Dickson (2004) explain the importance of skills in interpersonal communication to ensure there is consistency and understanding between the participants. In addition, Hartley (1999) explains the key components of interpersonal skills which include; non- verbal communication such as facial expressions, postures, gestures, smell among others. He also explains reinforcement, questioning, reflecting, opening and closing, self disclosure and listening as the key components in interpersonal communication.

According to Hartley (1999) components of interpersonal communication include non-verbal communication (NVC) that contains a range of cues such as facial expression, gaze, gestures, posture, bodily contact, spatial behavior, dressing and general appearance and even smell. On the other hand, Hartley explains reinforcement as another component which refers to acts that encourage the other party to carry on or repeat whatever they are doing or saying. Reinforcement can be in form of expressions of praise, encouragement, and support, use of head nods, grunts and communication banter such as huh.....

Further, Hartley explains questioning as a component aimed at extracting information from either party. The effectiveness of this component depends on the questioning technique, asking the right questions at the right time. For instance, the use of open and closed ended questions. Open questions give participants an opportunity to respond freely and expound on their opinions. On the other hand closed questions ask for

definite information or a yes/no reply. Open ended questions allow people to talk and give details while on the other hand closed ended questions encourage short answers.

In addition, Hartley highlights reflecting component as a skill mostly used by counselors, mediators and anyone who has to conduct very personal interviews. Its aim is to provide the other party with an opportunity to talk in details about their own feelings and attitudes. Questions can often direct the conversation in ways which reflect the interviewer's assumptions. This acts as a cue for participants to elaborate or extend their response. A participant can reflect in different ways and achieve different results. This will depend on whether participants are interested in the factual statements that the other person has made or their feelings about what they are saying.

Importantly as explained by Hartley (1999) emphasised the key role of listening component for communicators. He argues that it may seem odd to regard listening as a skill since human beings tend to think of it as a passive activity. However listening is an active activity which human beings ought to concentrate on and work at. As such, Hartley explains that there has been considerable research into how we listen to each other. In addition, research has identified crucial factors that affect effective communication such as common problems or barriers to effective listening, unusual patterns of listening behavior and behaviors which tend to help the other individual express themselves thus helping them listen. He notes that it is important for communicators to note keywords or phrases used to encourage the other party to say more and to paraphrase statements by the participants to gather more information and seek clarity.

Masaviru, (2016) explains self-disclosure as the act of giving details about oneself to others. This ranges from the external information to very confidential, sensitive and individual information. The disclosure forms human relationships. Hartley (1999) argues that both verbal and nonverbal communication discloses something about the other person. Griffins (2012) explains that humans are social beings who get information on self-reflection, others and the society. As such when they communicate with other people and they tell them several things about themselves. Self-disclosure as coined by Jourand (1971) refers to the process of sharing information about self with other people. When human beings interact, they disclose to others some aspect of their feelings hence influencing development of good personal relationships.

To demonstrate self –disclosure, the Johari window concept by Luft and Ingham is used. The window classifies information that an individual and others have about each other in four segments: (Rao, 2010)

Table 2.1: The Johari Window

Open pane	Blind pane
Hidden pane	Unknown pane

Source: (Rao, 2010)

Open pane contains information about self which one knows and others know about self. Hidden is information which a person knows about self but is not prepared to reveal to other people for instance specific uncertainties and anxieties which one may feel embarrassed about. Blind is information which others know about self and which a person is not aware of such as annoying habits which a person is not aware of. The blind area can contain important information Unknown information is not known to self or others at present but may surface at some future point.

2.6.5 Interpersonal Communication and Human Life

Humans are social beings who derive their meanings from both verbal and non-verbal communication. Becker (1997) explains the importance of human beings and more specifically victims of violence to realise the signals that can enable them withdraw from situations that could trap them in future. Becker discusses different strategies used by human beings to attract their partners and develop trust and show innocence.

Such strategies include forced teaming where the attacker pretends to be experiencing similar situations hence sailing in the same boat. This helps in building trust between the two people. In addition, Becker explains how the act of charm and niceness is used as a deliberate strategy in interpersonal communication and finally, he explains the strategy of too many details that lure the victim into a false feeling of security hence causing the victim to open up and share more information (Becker, 1997).

Hartley (1999) explains that to understand how interpersonal communication works, its crucial to understand the components of communication and their relationship. Highlighting on the key components as proposed by different models, he explains the who says what, in what channel, to whom and with what effect. However, he explains

that this model can be criticised as the model ignores the context where communication takes place. Hartley further explains the importance of understanding the social context in terms of time and place where communication took place as this determines the action and reactions of both the sender and the receiver. He also argues that, while analysing communication, ought to understand how the participants perceived themselves – their social identity and perception. Thus, through interpersonal communication, the participants represent and present the world around them.

2.6.6 Features of Interpersonal Communication

Interpersonal communication has certain distinct features, according to Wood (2016), based on Martin Buber's Dialogue, this type of communication can be defined as a systemic and selective process. Other features of this type of communication include: it being a process; based on personal knowledge; and also based on shared meanings.

This communication has been defined as selective because most people will only invest the effort and take the risk of only opening themselves fully with a few people. Buber noted that we don't communicate intimately with the majority of the people we encounter. In most cases we neither want nor need to communicate with others at a personal level.

Interpersonal communication has also been described as being systemic. This implies that this form of communication takes place within various systems or contexts that influence what happens and the connotations we attach to interaction. Each of those systems has a correlative influence on what those who are communicating expect from each other. For example, Buber believes that a gift given to a person at the beginning of dating could be construed as having a communicating impact of an expression of love by the person giving the gift. Because of the systemic feature of interpersonal communication, a number of things including – people, personal histories, cultures, situations and time among other interact thereby affecting meanings of communications. In this interaction, each part of the system affects all the other parts (Hargie, 2004).

Interpersonal communication is a process. This type of communication has been viewed as a process because it is a continuous and ongoing process. This implies that communication as a concept evolves over time and becomes personal as people interact.

For example, friendships and relationships gain significance and depth over the course of time. Similarly, they also decline in quality over time. Because interpersonal communication is a process, what happens to people is linked to both past, present and future (Rodman, 2009).

Interpersonal communication is also dependent on personal knowledge and insights. According to Nicholson, 2006, as cited in Wood (2016) as a prerequisite to connecting as unique individuals, people have to know the others they wish to communicate with personally to the point of understanding their feelings, worries, concerns, and thoughts. This shared experiences and knowledge allows people to interact deeply than the interaction between casual friends. Nicholson writes that just as everyone is unique, so is interpersonal relationships and communication. Duck (2006) believes that as people become close, they begin to work out personal rules and roles for their interaction. These rules and roles may in some instances deviate from the general social roles and rules (Dainton, 2006). According to Wood (2006), as relationships amongst people deepen, they begin to build trust and learn how to communicate in ways that make each other feel safe and comfortable. Personal relationships build over time encourages those in communication to be open to each other by making them free to know and be known through the sharing of secrets, experiences and fears that are ordinarily not shared with others.

Interpersonal communication is also anchored on shared meanings between people. In interpersonal communication, those who communicate do not just exchange words. Instead, those who communicate create meanings as well as figuring out what each other's words and behaviors represent or imply (Watzlawick, 2011). Those shared meanings emanate out of historical interactions between unique persons (Rogers, 2008).

2.6.7 Principles of Interpersonal Communication

There are a number of principles that ensure that interpersonal communication is effective. The principles include -

We must communicate when with others. This principle denotes that when we are with others, we must communicate with them because people interpret not only what we do and say but also what we don't do or say. This principle asserts that, even in silence,

people still communicate. Silence may be regarded as a symbol of disinterest, anger or lack of knowledge (West, 2009).

Further West & Turner (2009) states that Interpersonal communication is irreversible; this means that the impact of a certain message cannot be undone. Once we send certain words to people, the impact of those words become an indelible part of our relationship with them. This principle is thus important as it keeps those who are communicating aware of the importance of when/ whether to speak and what to say or not to say. Interpersonal communication involves ethical choices. Because of the impact of our communications on others, those who are communicating always have to consider the ethical implications of their communications. This principle entails making ethical choices. For example, in an ideal ethical communication, one ought to consider not communicating to others in a manner that makes them feel lesser of themselves.

According to Wood (2016) the guidelines for Interpersonal Communication competence recognise the fact that while people occasionally handle communications well, they also occasionally don't. Interpersonal Communication competence has been defined as the ability to communicate appropriately, effectively and ethically. Effectiveness in this sense connotes the ability to achieve the goals of the intended communication for example to comfort a person, to explain a point or to persuade. Competence means the ability of a person to be appropriate in their communications. Being appropriate denotes ability to adapting to different situations and people. This implies that one has to be careful in their choice and usage of language and nonverbal communications.

People construct meanings in interpersonal communications. The significance of communications is found in more than just words and nonverbal actions. Both words and nonverbal actions are susceptible to diverse interpretations which often occur depending on the context and nature of the words and actions. Of essence is that the interpretation of words and nonverbal actions may vary with time and moods of the communicators.

2.6.8 Attributes Impacting on Interpersonal Communication

The success of communication is dependent on numerous factors including; culture, religion, language and economic factors. It is through exploring the relationship

between the above-mentioned attributes and communication that we can best understand how they shape communication as discipline itself and specifically interpersonally communication as a subset in this study.

Novinger (2001) writes that culture plays a central part in communication. She expresses the view that as opposed to contemporary notions, cultural barriers are greater than language barriers. As a barrier, culture frequently provokes reactions that are emotional and negative. For example, what is considered as an ordinary behavior in one culture may be rude, sensitive and consequential in another. As a result therefore culture may act as an impediment to interpersonal communication.

Okon (2012) believes that religion compared to other social institutions like culture and language is the most powerful and has the most recurring and prevalent influence in human race. Yinger (1970) compared the functions of religion in society, to that of a carburetor to an automobile engine. Like culture, religion impacts on how people relate, interact and communicate. This happens as a result of the values and dictates it imposes on the society.

According to Joseph & Taylor (2014), language also impacts on interpersonal communication. Language either facilitates, improves or even impedes interpersonal communication. Language as a tool of communication is one of the media through which people communicate. Different languages used/known by disputants can be a cause of misunderstanding or complete lack of understanding.

2.7 Whether Interpersonal Communication aids in ADR Process

2.7.1 Interpersonal Communication on Restoration of Relationships in ADR Process

Interpersonal communication has certain distinct features that make it suitable tool for the restoration of relationships (Wood, 2016). Those features include interpersonal communication being a process; based on personal knowledge; and also based on shared meanings. The structured nature of the process of interpersonal communication is thus important in fostering and restoration of relationships in ADR process.

Interpersonal communication has been viewed as a process because it is a continuous and ongoing concern between the disputants (Wood, 2016). This implies that interpersonal communication as a concept and practice evolves over time and becomes

personal as the disputants interact. For example, friendship and relationships in the ADR process gain significance and depth over the course of time as the disputants relate.

Wood (2016) further described interpersonal communication as being a systemic process. This implies that this form of communication takes place within various systems or contexts that influence what happens and the connotations we attach to interaction. Each of those systems has a correlative influence on what those who are communicating expect from each other. Because of the systemic feature of interpersonal communication, a number of things including – people, personal histories, cultures, situations and time among others interact thereby affecting meanings of communications. In this interaction, each part of the system affects all the other parts.

2.7.2 Informality of ADR on the Disputant's Self-Articulation (expression)

ADR processes and locations are less formal, less adversarial and as a result the process is less stressful. As a result of this there is a higher chance of preserving an existing relationship as compared to litigation. This means that disputes are quickly and easily resolved with an overall benefit of the disputants having a chance to maintain their relationship thereafter. Parties are able to be in control of their dispute (Wilson, Rutherford, Storey, & Wortley, 2014).

According to Long, (2015) the informality in the ADR is about the procedural structure. The structure available in ADR provides direction through different types and processes for reaching at a solution outside the formal court system.

Unlike in the formal court set up where cases are heard and determined in open court, the informal nature of ADR enables the disputants to engage in private. However, though confidentiality is a good thing on the part of the parties concerned; on the other hand as no outcome is made public, there is no accountability or precedent in the public sphere and this may lead to variation in the arrangements reached in similar kind of disputes. (Christie, 2012).

Fiadjoe (2004) argues that the informal and relaxed atmosphere in which ADR is conducted is good for people who desire processes that are not intimidating; as this accord them freedom to give their concerns. In ADR the disputants have control of the

mediation process; this includes being able to choose the mediator, the procedures to use and ways in which to safeguard confidentiality (Barbee, 2007)

However, Christie (2012) on his part feels that due to the lack of procedural safeguards, the weaker party in a dispute may not be able to participate and represent his or her own interests fully. He further argues that system injustice and discrimination cannot be addressed by ADR.

2.7.3 Disputants Terms and Possible Outcomes of ADR Process

Litigation, which is a formal court system, looks at the procedures followed and the expected outcomes during the trial process (Twyford, 2005).

In the formal court process the rights and duties of the disputants are grounded on the rule of law. This type of justice is not suitable in ADR since parties agree on settlements depending on their relationships, needs, values and wishes. Litigation is adversarial, thus do not seek fair solution. Court decisions results in win-lose situations and not a jointly acceptable decision, which is beneficial to all parties. Hence, a litigant who is displeased with the outcome might seek an appeal after the trial (Sternlight, 2008).

According to Wysocki, (2009) high regard for self and others signifies a collaborative style of dispute resolution. This approach is considered superior because it encourages creative problem solving and all the parties concerned work together to attain mutually beneficial outcomes. The outcomes can only be achieved by the disputants changing their terms to accommodate each other.

Communication serves as a tool to aid making of choices. Through communications, the communicators are able to either produce or make decisions. This is possible as communication facilitate the exchange, comparison and making of determinations regarding the most viable choices (Gramatikov, 2012).

According to Nicholson (2006), as cited in Wood (2016) interpersonal communication exposes the disputants to communicate with each other to the point of understanding each other's feelings, worries, concerns, and thoughts. This shared experiences and knowledge allows people to interact deeply than the interaction between casual friends. Nicholson states that just as everyone is unique, so is interpersonal relationships and

communication. Duck (2006) believes that as people become close, they begin to work out personal rules and roles for their interaction.

However if the disputants do not agree, there is no guarantee of an outcome. This may lead to creation of an additional process step, time, emotional strain and cost towards the resolution of the dispute. (Christie, 2012). This could lead the parties going the litigation way to sort out their dispute.

ADR processes have been lauded for their ability to cut costs, save time and enable the disputants have autonomy over the process. In addition to those positive attributes, ADR as processes are of immense value as they have the possibility of resulting into a number of outcomes. The various outcomes include amicable settlement of the disputes; compromise which is a win-win or even a lose-lose results. It can also result in to litigation in interpersonal conflicts. The outcome of an ADR process whether successful or failed is dependent on the pre-created conditions of the process (Nagel, 2002).

According to Covey (1989), a win/win aspiration or outcome is a frame of mind and heart that constantly seeks mutual benefit in all human interactions. Such an outcome denotes that the outcome of a process is mutually satisfying to all the parties/ disputants. Win-Win aspiration/outcome views the resolution process as a cooperative, not a competitive arena. Unlike litigation which is a zero sum game where one side wins while the other loses, in win-win, all the parties to the dispute benefit from the process. To achieve the 'win-win' outcome, the ADR should entail- inter-personal communication skills; beliefs; synergy of ideas; and feelings that all in totality result into an optimal outcome. The win-win solution has the ability of bringing all the disputants to an engagement that ensures that they are completely satisfied with the outcome. (Covey, 1989)

Similar to win-win scenario, every ADR process has the possibility of arriving at either a compromise. In the ADR processes, the mediator, negotiator, conciliator or such other neutral person helps the disputants arrive at a solution. The mediator for example helps the disputants communicate the offers and counter-offers to and from each party. The mediator may also consider a reasonable compromise solution for every dispute and

help the disputants decide what is in their best interest and compromise rather than keep a dispute unresolved to their detriment because of principles of who is right or wrong.

An amicable solution of disputes is also a possible outcome in ADR processes. According to Chan (1997), the phrase ‘amicable dispute resolution mechanism’ includes ‘friendly’ negotiation, conciliation and mediation, both before and during arbitration proceedings, but stops short of the full hearing in an arbitration. Such an outcome is achieved where a neutral third party assists the parties to resolve the disputes in a friendly manner by using specified communication and negotiation techniques.

Where however parties are at stalemate; cannot attain either a win-win, compromise or amicable solution, certain disputes brought before ADR processes have the possibility of resulting into court proceedings.

2.7.4 Interpersonal Communication tools/skills used by the Mediator in the ADR Process

In mediation, mediators help the disputants to communicate with one another through the use of communication skills such as active listening, reframing and reflecting (Littlejohn & Domenici, 2001).

Mediators are catalyst of communication between parties in the mediation process and also good models of successful active listening and communication. In order to set up and maintain understanding and to direct the mediation process, cautious, precise listening by the mediator is important. The mediator listens in order to hear, thus understanding the meaning behind the words and providing well thought out feedback to transmit understanding (Solosi, 2015).

The mediator needs to be aware of his/her non-verbal communications and also recognise the non-verbal communications of the other parties. Mostly, non-verbal communications is not planned and therefore can give a more accurate picture if combined with verbal communication. The mediator needs to know that of all communications, the bigger percent is non-verbal. Words can hide or disclose, therefore being aware of the nonverbal can be helpful to the mediator. Non-verbal communications does not have the same meanings to all the people. The mediator needs

to understand the cultural differences in the meanings of non-verbal communications (Solosi, 2015).

Empathic listening is key to the role of a mediator. Reflective listening have the ability to create trust and confidence. It helps mediators to show that they understand what is going on and understands the disputants' point of view, feelings and thoughts. The mediator also pays particular attention to the underlying issues and unspoken emotions (Solosi, 2015).

According to Ford (2014) mediators are the caretakers of the communication flow in the mediation process. They are required to be keen, both to the participants communication skills as well as their individual communication skills. They should endeavor to have clear communication which supports shared action. Solosi (2015) looks at an effective mediator as the one who combines personal human relations with mediation skills, information and styles. Though there are many qualities that an efficient mediator can possess, the capacity to be professional, sensitive and a good communicator, all these increases the chances that a mediator will be efficient in the mediation process.

According to Marnewick (2015); Ford (2014); Solosi (2015) mediators need to ask a lot of questions. Not to suit their interest but to support the conflict-resolution process. Ford (2014) states that this is done when they want to affirm themselves or to persuade, as mediators are thoughtful communicators.

Marnewick (2015) argues that the questions asked should assist the mediation process. Since questioning aids the mediator in gathering information that will help in the process. Solosi (2015) states that open-ended questions allow the participants to talk openly, more so at the start of the mediation process when they are sharing their view of what has happened. On the other hand closed-ended questions expect a yes or no answer, or a short answer. These are useful when seeking a confirmation. Probing questions help one in understanding the underlying issues. Why? is a great probing question that is used by mediators to uncover fundamental needs. Leading questions are helpful when one desire to confirm something.

Paraphrasing or summarising is one of the ways the mediator uses to demonstrate that they have understood the participant. This entails giving an overview or outline of what

has been said, it precisely condenses what has been said. This gives an opportunity to the speaker to know whether s/he has been heard and understood Ford (2014).

On the other hand Solosi (2015) looks at reframing as a tool used by mediators to change the view of something. Solosi (2015) states that the frames placed to make sense of an event, situation or relationship are not neutral. The decision on which frame to use involves a well thought decision. For example, “We can complain because rose bushes have thorns, or rejoice because thorn bushes have roses.” (Abraham Lincoln). Ford (2014) states that reframing as a tool used by mediators is vital. Mediators need to constantly reframe what they hear in order to remove avoidable negativity and personal attacks hence enabling the conflict to be worked on effectively.

Marnewick, (2015) argues that the mediator’s key role is to help the participants experience change, whether concerning how they feel about the conflict situation, how they feel about the other party, or how they view the entire world. A shift from negative to positive perception removes the hurt. In the situation of conflict resolution, the primary reframe is from dispute as a crisis to dispute as an opening. Often, reframing can also be viewed as refocusing since the outcome of the reframe is a new focus. The reframe or refocus can be from demands to needs; demands are closed and threatening, while needs we all have them. This refocus is beneficial. Conflict can be reframed from aggressive to a collaborative one that is most open to creative resolution.. For example, instead of defining the conflict as ‘you have to...’ we define it as ‘how best can we...’ (Solosi, 2015).

Mediators use reframing to shift a negative opinion to a positive one. For instance; blame to trust, doubt to certainty, competition to collaboration, helpless to confident, external to internal (Ford, 2014).

Paraphrasing aims at developing and maintaining good relationship with the disputants. It is a form of active listening in which a genuine effort is made to understand what the parties want to convey and to give feedback showing that they have been understood. While summarising involves putting together, in a brief form, the main points of what the other party has said. It is different from paraphrasing in that it handles more information at once (Solosi, 2015).

2.8 Theoretical Framework

2.8.1 Coordinated Management of Meaning (CMM)

It is a theory by Barnette Pearce and Vernon Cronen (1978). The theory argues that it is only through communication that human beings collectively create events and objects of the social world. According to Cronen and Pearce, people in conversation construct their own social realities, which occurs simultaneously as they engage in a conversation. In addition, the realities they construct is shaped by the social world they create during a conversation (Griffin, 2012).

Cronen and Pearce further argue that every conversation has an afterlife, which determines future social realities. Dance (1967) in his model discussed communication as a complicated process that has no beginning and no end. He argued that today's conversation is built on yesterday's conversation. As such, the way people communicate within an organisation during conflict determines the way the people in conflict understand and interpret future conflicts. CMM argues that people in conversation always create mental pictures that represent the world they live in. Thus, the parties involved should put into consideration what they are achieving, how they can achieve it and come up with strategies of how they can improve their social world (Griffin, 2012).

CMM theory aims at making life better for real people who live in the real world. It also aims at coming up with variety tools of communication to ensure that faulty patterns of communication are well understood by human beings. Cronen and Pearce believed that by realising flawed patterns of communication, human beings are able to identify serious issues in their conversations and come up with appropriate ways to embrace to solve a conflict thus resulting to peaceful co-existence. The theory further argues that, with person in a conversation, a strange loop often emerges which prevents the parties from solving conflict (Griffin, 2012).

CMM has four key tenets. It argues that the primary social process of people in conversation is the experience they have which makes communication to be easily understood. Pearce explains that communication forms who human beings are and it has the ability to act on human beings beyond what they discuss (Griffin, 2012). As such, it is advisable for organisations to alter the way they communicate before, during and after conflict.

The second principle of the theory explains that the way human beings communicate is more crucial than the content of the communication. This is based on the fact that, the mood and the way people in conversation plays a major function in the social construction process as it determines how such people attach meaning to the message delivered. Cronen and Pearce further explain that language use is important and people in conversation should be sensitive while using language especially while trying to solve a conflict (Griffin, 2012). Language used can either escalate or de-escalate conflict given that in every conversation, people experience logical force. That is, humans experience moral pressure in every action they do and often are forced to revert and try to justify their actions.

Thirdly, the action of people in conversation are reflectively reproduced as they continue to communicate. This bouncing back of the action show that people in a conflict are always affected by the actions they perform. Hence, it is important to take caution while solving conflicts as whatever action one takes affects them anyway. Finally, the theory explains that every party in a conflict becomes a participant who make multiple truths in whatever communication they make. Thus, any communication whether verbal or non-verbal becomes crucial part of any interaction (Griffin, 2012).

As such, Coordinated Management of Meaning Theory (CMM) is useful when it comes to understanding Alternative Dispute Resolutions. (ADR). CMM would be very useful in the process of ADR (mediation) by ensuring that the people involved share a common interpretation to avoid misunderstanding or ambiguity. This is because it is only through shared meaning and dialogue that people in conflict can reach a middle ground. CMM promotes a better understanding of people and of the social worlds they create through their conversations. It also leaves no doubt as to the commitments and practices that make better social worlds. Mediators who take a neutral stand can use the theory guided by logic of meaning to intervene in a dispute, removing the destructive cycle and creating a better atmosphere for more conducive patterns of communication to occur. The theory can help the mediators to understand the disputants' enactments/context of episodes, relationships, identities and cultural patterns. Through this, the mediators is able to help the disputants dialogically discuss or express themselves in a way initially they were not able to do or were unwilling to do. It is through language that human beings interact in their social world either making their bonds stronger as they interact

or finding themselves in conflicts. This theory encourages dialogue, which is very important in trying to help the conflicting parties restore their relationships. Speaking in a way the other person wants to listen both verbally and using non-verbal cues ensures the process is smooth leading to the desired goal of restoring relationships.

2.8.2 Functional Perspective on Group Decision Making

According to Hirokawa and Gouran, interaction within people results to positive effects on the final decision which are appropriate and of good quality. The two scholars consider communication/talk as a social tool that helps groups/individuals attain better conclusions. In their theory, they explain four key functions of effective decision making namely; analysis of the problem, goal setting, identification of alternatives and evaluation of positives and negative of each alternative (Griffin, 2012).

The theory looks into the results of small groups communication results, more specifically to the outcome of how the group's behaviors and constructions. Based on the theory, it is crucial to have clear conditions for every group in order to make effective decisions and solve any underlying problems that may bring misunderstanding among the group members. The scholars emphasize the importance of the group members to adhere to the structures in order to make appropriate decisions. The group ought to follow the set rules in order to make concrete decisions. Such rules include: First analysing the problem which Hirokawa and Guoran consider as the first step in every group communication. They explain that it is important for a group to realise if they require change or improvement on certain things within the group. This is done by analysing the current condition thus, realising the extent of the problem and coming up with ideas on how the group intends to achieve. As such, the group is required to make clear interests in order to achieve its goals (Griffin, 2012).

Secondly, the group needs to set the goals. Goals are the objectives that guide every communication process. This helps the group to realise the resources required to help in decision making. The resources can be in terms of time as availability is a key requirement for each group member. Setting the goals will enable the group relies possible obstacles and come up with mechanisms on how to counter the obstacles. in addition, clear goals will help in setting the rules to be followed while working on the task at hand. Thirdly, the group out to come up with alternatives on how to manage their communication process. Coming up with appropriate ways for overcoming

cognitive, affiliative and selfish issues that interfere with effective communication during conflict (Griffin, 2012).

Finally, the theory explains the importance of evaluating the positive and negative characteristics of every communication process. This helps the group review the process thus coming up with sound decisions whether the process was effective or not. As explained by Hirokawa and Gouran, communication can either be proactive, disruptive or counteractive. Proactive communication is also referred to as promotive communication which calls for attention in the decision making process. Promotive communication stresses on one –to-one communication with every group member to ensure there is mutual understanding thus productivity within the group. This understanding helps the group to achieve their goals without disagreements during the process (Griffin, 2012).

Disruptive communication is a type of communication that interrupts or disrupts the group's ability to achieve the set goals. The group diverts from its main agenda and concentrates with other issues that initially were not important to the well-being of the group. Counteractive communication is the third type of communication. Its main role is to reinforce the communication process by ensuring the group refocuses on its agenda. As explained in the theory, most interactive process is disruptive and groups rely on counteractive communication as it reminds each member the purpose of the communication and the goals set (Griffin, 2012).

Functional approach to small groups communication emphasises on the importance of communication in small groups. It is evident that communication enables groups effectively achieve their goals and remain together. However, the theory ignores the fact that decision making process is not a rational process as not every member within the group agrees with every process due to diverse personalities. In Functional Perspective on Group Decision Making, the approach to group communication is concerned with the end results of group behaviors and organisations. The theory underscores the role played by communication in small groups. It emphasises that, without communication, group members cannot achieve their desired goals.

As this theory emphasises on the role communication plays in the efficiency and productivity of a group; it can be helpful in the process of ADR as it can be used to

provide a deeper understanding of group communication, cohesion and unity showing how this is dependent on the integration of the processes and all the persons involved (disputants, mediators, consultants, teachers). The theory addresses interpersonal communication and shows the ideal communication expectations in a group setup.

The theory advances that several conditions must exist for group members to make suitable decisions and successfully solve problems. Problem analysis focuses on the nature, the extent and causes of the problem facing the group. Goal setting is about establishing the criteria by which to judge proposed solutions. Identifications of alternatives, this is all about coming up with options to sufficiently solve the problem. Evaluation of positive and negative characteristics, this involves testing the relative advantages of each option against the criteria selected; weighing the benefits and costs. This is very important in ADR, as all the parties involved should be well aware not only of the processes involved but also the expected end results. Their expectations should be well outlined beforehand.

2.8.3 Summary of Theoretical Framework

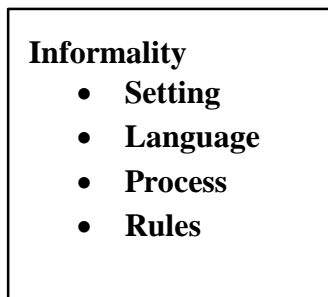
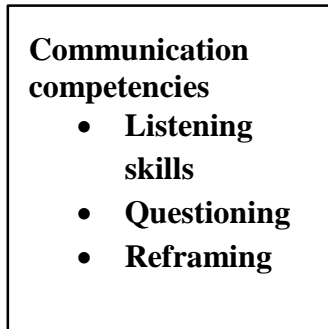
The two theories in this study helped in the understanding of communication within interpersonal communication and small groups especially during conflict. The two theories emphasise on communication as an important tool during conflict. The fact that each person in communication constructs their own meanings based on their personalities sets a platform where the researcher was able to analyse the importance of interpersonal communication in conflict resolution.

2.9 Conceptual Framework

Jabareen (2009) describes conceptual frameworks as products of qualitative processes of theorization, which provides an interpretive approach to social reality. It is used to make conceptual distinctions and organise ideas. Conceptual framework lays out the key factors, constructs or connection between independent and dependent variables. For this study the dependent variable is conflict resolution, while independent variable is Alternative Dispute Resolutions. Some of the parameters that influence conflict resolution, includes; communication competencies, setting and language used in the ADR process. This conceptual framework acts as a road map through which the researcher finds the relationship and the effect of different factors to conflict resolution in the ADR process. The study draws conclusions based on the outcomes of the study

as guided by this conceptual framework and data collected from the research sample. The Figure 2.1 shows the diagrammatic presentation of the Conceptual framework.

Independent Variables



Dependent Variables

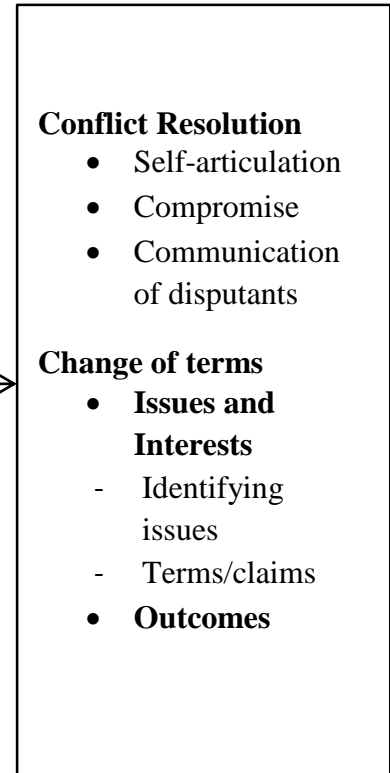


Figure 2.1: Conceptual Framework

CHAPTER THREE

RESEARCH METHODOLOGY

3.1 Overview

This chapter presents the methods used in this research study. They include; the research design, research approach, target population, sample and the sampling techniques, data collection procedure and tools, validity and reliability of research instruments, data analysis and ethical considerations.

3.2 Research Design

A research design is a scientific method which involves observing and describing behavior of a subject without influencing it in any way. It is a framework or blue print specifying the methods and procedures for collecting and analysing the needed information Mureithi, Mwanja & Mwinzi (2016); Mugenda & Mugenda (2003). Pandey & Pandey (2015) defines a research design as a plan used as a guide in collecting and analysing data in a study. The research design chosen for purposes of this project was descriptive research design.

ADR is a process and this study sought to understand ADR as a communication strategy in conflict resolution by describing events as they occurred in CAM. This was achieved by looking at the Informality of ADR, the various claims and outcomes and the mediator's communication competences. According to Atmowardoyo (2018) descriptive research describes existing occurrence as correctly as possible. A descriptive research design addresses the particular characteristics of a given population, opinions, attitudes, preferences and perception of the respondents. It answers the question how? Kothari (2004) states that the main purpose of descriptive research is description of a phenomenon, as it happens at that particular time.

3.3 Research Approach

The study utilised qualitative research method. ADR is a process that people use to resolve their conflicts; by using qualitative method the researcher was able to get participants meanings by exploring their behaviour, attitudes and experiences; by listening to words and phrases they used, observing non verbal cues and participants behaviour during the process of mediation in a natural setting. Mohajan (2018) explains qualitative research as a form of social science action which stresses the way human beings interpret and make sense of their experiences to the social realities thus

understanding each other. The approach seeks to explore the attitudes, behavior and experiences, of the participants and the way such participants make sense of their lives in both specific and natural settings.

The approach aims at getting in-depth opinions from the participants (Dawson, 2002).

To help achieve this the researcher used in-depth interviews with key informants who had knowledge of CAM; at the same time the researcher used observation method, this was done by sitting in mediation sessions to help understand and acquire first-hand information from the process of mediation, geared towards investigating the objectives of the study.

The researcher acted as a key instrument; by observing and recording events as they occurred in mediation sessions; as well as interviewing key informants. Fraenkel & Wallen (1990); Locke & Silverman (1987); Merriam (1988) states that by researchers acting as the key instrument, collect data through examining documents, behavior observation and/or interviewing the target population.

3.4 Research Method

The study utilised ethnography research method. The researcher sat in two mediation sessions and observed the mediation process as a complete observer. This was useful as the researcher was able to have a first hand experience with the participants. The researcher also interviewed some of the key informants at the site.

Creswell (2003) describes ethnography as an approach in which the researcher studies a cultural group in a natural setting over an extended period of time by collecting primarily interview and observational data. This approach also accounts for objects and visual images. The approach is useful in creating and representing knowledge about society, culture and individuals. (Pink, 2007)

3.5 Site of the Study

The site of the study was Nairobi County. Particularly the study was conducted at Milimani Law Courts (Family Division). The Site was purposefully selected because the CAM program was first piloted at the Court, hence it has more experience and reference sources. So far the program is rolled out in ten (10) Court stations across the

country. These are Eldoret, Mombasa, Kisumu, Nakuru, Nyeri, Kisii, Machakos, Garissa, Embu and Kakamega.

3.6 Population and Sampling Technique

3.6.1 Target Population

The target population was the entire aggregation of respondents that met the designated set of criteria (Mugenda & Mugenda, 2003). Target population is the particular population about which information is to be collected from. It comprises of individuals, occurrences, documents/records or even the whole group (Kothari, 2004). Bhattacharjee (2012) defines population as unit of analysis with characteristics that a researcher wishes to study. The population for this study was court users directly related to the CAM. These included: the Deputy Court Registrars from the family division, judicial officers, Mediation Accreditation Committee (MAC) members, Accredited Mediators, advocates and disputants.

3.6.2 Sampling Technique

Sampling is the process of selecting or searching of participants or situations that provide rich data of an occurrence of interest (Moser & Korstjens, 2017). Denscombe (2014) explains sampling as selection of a subset of individuals from a target population thus getting the desired sample size. In qualitative method a researcher can opt to use criterion sampling, purposive sampling, convenience sampling or snowball sampling depending on the area of study he/she wishes to undertake.

3.6.3 Purposive Sampling Technique

This study employed purposive sampling technique to select key informants who had knowledge and held important information on CAM; CAM sessions for observation were also selected purposively. Purposive sampling was used because it aided the researcher to pick participants who had key information on the area of study. Purposively selected mediation sites and sessions helped the researcher observe and gather first-hand information that helped in looking at the objectives of the study. Kothari (2004) argues that purposive sampling enables a researcher to select participants, documents or sites of study, which will help in understanding the research problem as well as the research questions.

The respondents for the study were sampled deliberately. The selection involved selecting participants with the knowledge, experience and direct involvement of CAM. These were; Deputy Court Registrar, family division, judicial officer, Mediation Accreditation Committee (MAC) members, Accredited Mediators, advocates and disputants. ten key informants were targeted for the study from the various categories within the population. In purposive sampling, a researcher can only involve a key informant who is willing to share insights with him or her (Moser & Korstjens, European Journal of General Practice, 2017).

Table 3.1 Summary of key informants:

Key Informants	Number
Deputy Court Registrar	1
Judicial officer	1
Mediation Accreditation Committee (MAC) members	1
Accredited Mediators	3
Advocates	2
Disputants	2
Total	10

Source: Researcher 2019

3.7 Data Collection Techniques and Tools

This study was qualitative, and used key informants and observation methods for data collection. The researcher used Key informant interviews to address the objectives. By using observation method the researcher was able to investigate objective one and three in more depth. These objectives aimed at establishing whether informality in ADR process increased or decreased the disputant's self-articulation; and the interpersonal communication skills used by mediators in the ADR process.

The researcher used the guiding principle in qualitative research, which indicates that, a researcher will sample until he/she reaches a point of saturation. Korstjens (2017) explains a point of saturation as a point whereby the collection of qualitative data reaches to a point of closure since new data yields redundant information or when no analytical information arises on the study .

3.7.1 Interview Guide

Interview guide was used to collect data from key informants in in-depth interviews. The researcher filled in the interview guides as per the answers given by the key

informants. The language used by the key informants and direct quotes were captured as well. The researcher conducted in-depth interviews guided by the objectives of the study. Data collected aided in explaining the opinions, attitudes, preferences and perceptions of the respondents on ADR as a communication strategy in conflict resolution.

3.7.2 Observation Method

To further investigate the objectives one and three the researcher observed the mediation process in CAM. Observation of mediators and disputants in a mediation process provided the researcher with detailed information because this was carried out in the natural setting. Creswell(2007) states that scientific observation is the organised process of recording the behavioral pattern of people, things and happenings as they occur and witnessed. The researcher using observation method to collect data observes and records information as events occur or accumulate data from records of past occurrences (Creswell , 2007).

No questions or any form of direct communication occurred between the observer and the people being observed. The researcher gathered field notes as an observer without participating in any activity. The researcher obtained permission from the Deputy registrar, family division to get into mediation sessions. Guided by objectives one and three of the study, the researcher observed and noted down the setting of the mediation room by looking around to familiarise and have a general sense of the place. The researcher observed and identified the language used, the non-verbal cues, fluency in the way the disputant expressed themselves, ongoing activities, proximity between the disputants and between the mediator, tone variation, choice of words and the various communication skills used by the mediator and how he/she refers to the disputants; (by first name, surname, using titles).

Table 3.2: What was observed

objectives	What was observed
Informality of ADR and self-articulation	<ul style="list-style-type: none">- nonverbal cues (facial expressions, eye contacts, gestures and movements, tone of voice, physical touch, nod, posture)- the language used (formal/informal)- fluency in the way the disputant expressed themselves- ongoing activities in the mediation room- proximity between the disputants and between the mediator- choice of words
Mediators communication skills/competences	<ul style="list-style-type: none">- various communication skills used by the mediator<ul style="list-style-type: none">o Listening skills (Empathy, sympathetic or reflective etc)o Speaking skillso Questioning skills (structured and unstructured)o Paraphrasing and summarising skillso Reframing skills- How the mediator refers to the disputants; (by first name, surname, using titles).

Source: Researcher 2019

Two sessions of CAM were observed. The main advantage of the observations was that data was recorded when the actual behavior took place, thus the data was distorted or inaccurate. Also, a wide range of information about the behavior of people and objects was observed. Some of the events that were observed included; physical objects and actions, verbal communication, non-verbal cues and pictorial records (Creswell, 2007).

3.7.3 An Observational Protocol

An observational protocol is the tool that was used to record field notes during an observation. The protocol is a form where a researcher records events as they occur, a picture or map of the venue, or verbatim quotes of participants (Creswell, 2012). Field notes are used by the researcher as evidence in generating meaning and understanding of the culture, social position or phenomenon being researched (USC Libraries). Creswell (2007) argues that the form helps keep the observations consistent and ensures that all-important information is recorded.

Descriptive and reflective field notes were recorded. Descriptive field notes record a description of the proceedings, happenings and people while reflective field notes

record individual thoughts that a researcher has that relate to their perceptions, notions, broad ideas or themes that transpire during observation (Creswell, 2012a).

The observational protocol for this study consisted a header containing the title of the project and the purpose, anonymised participant's details, date, time and site of observation. The researcher left space at the beginning of the protocol to sketch the setting of the venue. To help record both the descriptive and reflective notes the protocol was divided into two columns.

The advantage of directly observing disputants in a mediation session is that it allows the researcher to be present during the mediation process and the information can be obtained directly from it (Ingleby, 1993). However, a major challenge in using this method is to gain access to the mediation sessions, which are conducted privately or in court-annexed mediation. To gain access to the mediation sessions it is important to have consent from both the disputants and the mediator to help in protection of confidentiality (Meadow, 2009).

3.8 Data Analysis and Interpretation

This is the process of making sense of all text and images collected. The first step was transcribing of all the raw data, which included field notes and interview guides. The researcher anonymised sensitive data such as names. The researcher organised and prepared data for analysis by editing to confirm completeness, uniformity and accuracy. The researcher familiarised with the data by reading through it, then made a code sheet to help in recording all the participants.

In qualitative data analysis the researcher is closely involved in the process. Some of the common steps, involved the process include; familiarisation with the data, transcription, anonymising of sensitive data, organisation of data for easy identification and retrieval and coding (Lacey & Luff, 2007).

Coding was done by reading through the data and grouping ideas and defining and developing categories guided by the objectives of the study. Coding is the process of organising data segments or portions, which assist the researcher to summarise and make sense of the data. This entails taking data gathered and putting it into categories and then classifying them using the actual language of the participant (Creswell, 2007). Coding involved sorting and arranging the data in a way that the researcher was able to

summarise and present the data. The researcher used the objectives of the study to identify emerging themes and to analyse them.

3.9 Data Presentation

The researcher interpreted the data based on the objectives of the study; this involved giving meaning to the data. Analysis discussion was used in representing and reporting the findings. This involved presenting through discussion verbatim by quoting the participants.

3.10 Reliability and Validity of the Research Instruments

Validity

To confirm validity, pretesting of the tools; interview guide and the observational protocol that was used for the study was carried out. Pre-testing is considered significant because both comments and suggestions by respondents during pre-testing help to advance the quality of the tools (Mugenda & Mugenda, 2003). Pre-testing is usually meant to disclose deficiencies in the instruments.

Mugenda & Mugenda (2003) explains that validity is the extent to which research results can be accurately interpreted and generalised to other populations. It is the extent to which research instruments measure what they are intended to measure.

Reliability

This is a measure of how consistent the results from a pretest are. A pilot test was conducted in order to test for validity of the data collection instruments. Validity was enhanced by engaging the supervisor as supported by Cooper & Schindler (2010), to check the Key Informant Guide and the Observational protocol on their suitability on the content and to establish all the probable areas that needed adjustments if any so as to achieve the objectives of the study.

3.10 Research Ethics

The researcher obtained a letter of identification from the University of Nairobi. This letter is referred to as the Certificate of Fieldwork (See appendix V). Further, the researcher obtained a letter of introduction from the University of Nairobi (See appendix VI). This letters helped in building trust among the key informants and parties observed in the two mediation sessions, as they understood the study was for academic purposes. Due to the confidential nature of the mediation sessions the researcher

obtained permission from the Deputy Registrar to attend the sessions (See appendix VIII). Key Informants and parties observed signed consent forms indicating that they participated in the study willingly (See appendix III and IV). When a respondent was not comfortable in answering a specific question, the researcher respected that decision and did not force the respondent to answer. All the participants' names were anonymised to conceal their identity. The researcher also acknowledged all sources of information used in the study. This was established by the plagiarism test run by the University of Nairobi as shown in the Certificate of Originality (see Appendix IX). The researcher followed the University's guidelines by working on the corrections as directed by the lecturers during the defenses thus acquiring a Certificate of Corrections (see Appendix X).

CHAPTER FOUR

DATA PRESENTATION, INTERPRETATION AND ANALYSIS

4.1 Introduction

This chapter gives an in-depth description of the mediation sessions observed and key informants selected for the study. The main objective of the study was an analysis of ADR as a communication strategy in conflict resolution as used in CAM in Kenya. The interviewer observed two Court Annexed Mediation sessions to establish whether informality of ADR increases or decreases the disputants self-expression. Further, by observation the researcher aimed at establishing the various interpersonal communication skills used by the mediators in CAM. For the mediation sessions observed, the sessions were in both Kiswahili and English and were translated in English during transcription. To maintain the confidentiality, caution was taken to conceal all the information that would lead to revealing the identity of the parties observed. This was done by anonymising the names of both the disputants and the mediator.

Most of the Key informants interviewed were professionals; hence all the interviews were conducted in English. However, for the disputants interviews both English and Kiswahili was used.

4.2 Presentation

The researcher was guided by the three research questions to assist in presentation, interpretation and analysis of data.

The analysis of this study borrowed on (Lacey & Luff, 2007). He states that, in qualitative data analysis the researcher is closely involved in the process. Some of the common steps, involved the process include; familiarisation with the data, transcription, anonymising of sensitive data, organisation of data for easy identification and retrieval and the coding the data (Lacey & Luff, 2007). The researcher used the three research objectives to assist in organising, presenting and analysing the findings of the study.

The researcher presents information attained from a total of 10 key informants. These include one judicial officer, one Deputy Court Registrar, one Mediation Accreditation Committee (MAC) members, three Accredited Mediators, two Advocate and 2 Disputants.

4.2.1 Informality and Self-Articulation in the ADR Process

This study aimed to find out what the respondents felt on the informality of ADR process concerning disputant's self-articulation. Key informants interviewed noted informality of the ADR process could influence the way disputants expressed themselves.

Mashamba, (2014) states that disputants present their arguments informally, without legal procedures; mediation sessions are designed to suit the needs of the disputants. He further argues that mediation process can be adjusted to accommodate the needs of the disputants. Key informant 6 explained that: *'The mediator is able to meet with the disputants separately and hear their concerns and expectations'*

This shows that the process is less formal and it can be adjusted to meet needs of the disputants by having separate meetings to address the concerns of the disputants separately and privately as noted by (Mashamba, 2014).

As noted in chapter two, the ADR process is less formal and less adversarial which makes it less stressful. This makes it easier for the participants to control their disputes and it also helps to maintain previous relationships (Wilson, Rutherford, Storey & Wortley, 2014). The researcher found this to be the case from the interviews with the key informants. For instance, Key informant 8 explained:

'The mediator does not take a superior position like a judge does. The mediator and the disputants share a table. He will always speak the language of the disputants, so the disputants are at ease. It is more of a round table discussion without any blame game.'

The informality of ADR processes also creates a less intimidating process for the participants which also facilitates the freedom of self-expression and the possibility of better solutions (Fiadjoe, 2004). Key informant 4 explained:

'The mediation rooms are small and have round or oval tables, this brings a sense of equality between the disputants and the mediator. This sitting arrangement is aimed at removing the formality expressed in courts. It gives a sense of power balance.'

Based on this response, the researcher found out that the informality is not only less intimidating, it contributes to a relaxed atmosphere due to the sense of power balance between the disputants and the mediator as explained by Sternlight (2008). One of the respondents on the same stated:

'The disputants and the mediator sit near each other, sharing a table and they sit down. They express freely because the mood is relaxed, due to the rules set by the mediators.'

Key respondent 8 added that:

'The setting of a mediation session give people a chance to talk as the mediator is supposed to create a conducive atmosphere, where the disputants feel safe enough.'

In the observed cases, the mediators reminded the participants that they should talk to each other and avoid addressing their concerns to them (the mediators);

Observation 1: *"The mediator reminded PN that he is supposed to talk with his wife. He said, 'keep talking to her'"*

Observation 2: *"The mediator reminded them that they should talk to each other and not direct the conversations to him"*

Key informant 7 also explained:

"As opposed to the court room where all the communication is directed to the court, in mediation setting the disputants talk to each other with the help of a neutral third party"

From these responses it is clear that informality also helps facilitate communication between disputants due to the sitting arrangement where they all sit together at the same table which eliminates feelings of superiority and hostility. This approach is also less adversarial as explained in the response by key informant 7 above which can help preserve the existing relationships (Wilson, Rutherford, Storey & Wortley, 2014). Key informant 9 on the same stated:

'Mediators act as referees, they ensure a fair play ground for all. They help to bring up the voice of the weaker party. They control the language used and ensure there is no coercion.'

This response also shows that the ADR process helps in facilitating communication between the parties unlike in a court setting where communication is directed to the court.

Guided by the observation protocol (Appendix ii), the researcher observed that there were no definite sitting positions and the procedures were quite relaxed. It was also safe because of the ground rules given before the start of the session. However, the two sessions observed, the researcher noted that the mediator sat between the disputants, but ensured they faced each other.

Though the mediation process is informal the researcher found out it has rules that govern it. The mediator sets ground-rules to be followed by the disputants during the mediation session to guide the communication process towards constructive communication (Chowdhury, 2012). This was explained by Key informant 2:

'As mediators we set ground rules to guide the process of mediation. These are well explained before the mediation session begins. Some of these are: no interruption when the other party is talking, no walking away, no coercing, no harsh language, use of phones are not allowed in the room.'

In the cases observed for this study, the researcher observed that the mediators set ground rules at the beginning of the session:

Observation 1:

"The mediator introduced himself to the disputants and welcomed them. He requested them to keep their phones away, he told them they should keep talking to each other, to avoid interruptions, use of polite language."

Observation 2:

"The mediator welcomed them into the session, he thanked them for keeping time and honoring the appointment, he gave them the ground rules; to switch off their phones, use of polite language, no interruptions, and no walking away."

When the disputants deviate from the rules, the mediator reminds them of the rules as is observed in the second case:

Observation 2: *"The mediator reminded FW that she should not interrupt MM"*

This shows that the rules set by the mediator in the beginning of the session are what guide the session as explained by (Chowdhury, 2012). By reminding the disputants of the rules, the mediator was guiding the communication process towards constructive communication.

The language used in the ADR process is the language that is most likely to enhance the communication process. As proposed in the functional perspective on group decision making theory, language can be used to either escalate or deescalate conflict. Language can also be used to either create or solve problems (Griffin, 2008). Key informant 7 stated that choice and use of language played a key role in the process of

mediation; key informant 7 explained that in the rural areas it was important to consider the language.

'Yes the language has a great impact, especially in mashinani (rural areas) where the majority of the people involved in succession cases are old. Even Kiswahili is hard to speak, purely they speak and understand their local dialect.'

This shows that the language used is informal unlike in a court setting where the languages used are official languages namely English and Kiswahili. The use of informal language helps the mediator facilitate communication between the disputants even when they are unable to use the official languages. In the cases observed by the researcher, there was use of both English and Kiswahili.

Observation 1:

"He lamented, Hawezi ka nyumbani, kazi yake nikuniletea aibu kazini. Na kunifuata fuata popote. Imagine, kuniletea aibu kazini..... drama tupu... (she cannot stay in the house, her work is to bring me shame at my place of work. Looking for me all over. Imagine, bringing shame at my place of work, pure drama)"

Observation 2:

"good then provide for us without fail like a real man. 'Nataka akuwe akituma pesa kama mbeleni' cash money. (I want him to be sending money like he did before)."

In addition, Key informant 9 stated:

'The language used ought to have a positive impact, because disputants choose the language they understand, speak and express themselves best.'

This response shows that the use of language which the disputants understand helps them in expressing themselves. Further, Key informant 9 stated:

'If mediation is conducted correctly, always people express very well. They mutually agree because they understand the language.'

This response supports that self-expression is easier to achieve in the informal ADR process because the disputants agree on the language.

The researcher found that where the Mediator has trouble understanding the language, he/she can abandon the matter at hand or look for a translator if he/she has to mediate.

Key informant 2 stated:

'The language used in the session should be simple, understood by parties, non-legal terms, friendly. if the mediator does not understand the language of the disputants, he can either abandon the matter or look for a translator if he must mediate.'

This response also shows the extent of informality used in ADR processes where the language is friendly and uses non-legal terms unlike in a court setting where the language is legal language that sometimes the disputants in court do not understand.

Key informant 2 also stated:

'The language used is familiar to each of the disputants therefore much easier since it does not need to be interpreted and the intended meaning is not lost.'

This shows that there is better communication and understanding between the disputants because they understand the language and since there is no legal jargon used, the intended meaning is not lost.

The nature of the ADR process is that it is carried out in private unlike court processes that are carried out in open and no outcomes are made public (Christie, 2012). This enables confidentiality for the participants in the dispute. Key informant 6 on the subject of confidentiality explained:

'Since the disputants know the process is private, they give more information freely. Even during the mediation process the disputants are given enough time to express themselves without interruptions.'

From the information given by key informant 6, the researcher found out that confidentiality contributes to self-articulation since the participants freely express themselves without fear that their concerns will be made public knowledge.

Mashamba (2014) stated that mediation is conducted away from public eye and the media. He further argued that neither the mediator nor the parties divulge any information shared. The researcher found out where the disputants understand the confidentiality clauses in mediation they are able to discuss things they would be embarrassed to put in record.

Key informant 2 noted;

'When in private the disputants feel more confident and they can share information, as information shared cannot be used against them. They are also shielded from the eyes of the media'

On the same matter on privacy, a second interviewee indicated;

'Mediation being conducted in private influences communication and self-disclosure, because the disputants know they are in

charge and what they disclose cannot be used against them outside the mediation session.'

This response is in line with the better self-articulation achieved during the ADR process since the disputants are assured of the privacy of their information unlike in court cases where the information given is open to public scrutiny and can be published by the media in newspapers and other periodicals (Barbee, 2007). On the same issue, another respondent stated:

'Privacy influences articulation of the disputants. When they know it will not be broadcasted, they will be sincere and willing to share the information they hold; even sensitive information.'

This supports that the disputants have better chances to self-articulate since the information will not be disclosed and they can thus freely express themselves. Another respondent on the same stated:

'Due to privacy there is no fear and the disputants are sure the information they share will not be used against them.'

This response again shows that the disputants freely give information because they know that it will not be used against them outside the mediation room.

4.2.2 Changes of Disputant Terms as a Result of the ADR Process

The process of ADR seeks fair solutions unlike the court process that results in a win-lose situation for the disputants involved. ADR seeks to settle disputes based on needs, wishes, values and the relationships existing between the disputants. The ADR process seeks a jointly acceptable outcome (Sternlight, 2008). Key informants interviewed had this to say about the outcomes of the ADR process.

Key informant 1 explained:

'Mediation is about the disputants; there is no issue of who is right or wrong. Therefore the parties will settle for anything as long as it caters for their interests.'

This response showed that the important thing in mediation is what the disputants hope to achieve based on their needs, wishes and values. In the observed cases, the mediators helped the disputants identify the core issues:

Observation 1:

“The mediator told them it was their situation and they should come up with their solutions for the well-being of the baby. He reminded them that it was not about who is right or who is wrong, but it was about coming together to address the problem”

When the disputants deviate from the real issues, the mediator reminds them of the issues at hand:

‘The mediator reminded them they are there to look for a solution for the well-being of the children and it was important to remain respectful to each other.’

Further, on the issue of interests and wishes of the disputants, key informant 4 responded;

‘It is not about changing terms and expectations. It is identifying proper issues. The mediator will help them identify the proper issues and interests. It is no longer about the rights.’

Again from this response it is clear that the important thing in ADR processes is not winning and losing but finding a solution that is of interest to both parties by identifying the proper issues in the first place. It is less concerned with rights and burden of proof as is common with court processes and more concerned with identifying the right issues for a more amicable outcome as noted by (Nagel, 2002).

On the same issue on interests of the disputants, key respondent 1 stated:

‘My work as a mediator is to facilitate communication, I encourage the disputants to address each other because it is their problem, by doing this they are able to identify their issues and interests

‘As a mediator it is my duty to help the disputants clearly identify the issues before them. From there they should work as partners to find a solution to the problems. At the end of it all they should say, ‘us against the problem’

‘When they cannot agree I call for separate sessions, where I meet each disputant separately.’

This response also shows that the ADR process is more concerned with the issues and interests and through the process of mediation disputants are able to identify them.

The ADR process can also arrive at outcomes that involve compromise where the disputants change their terms to accommodate the other party involved. This is achieved when the disputants are more interested in mutual benefit all involved and when they

view the process as a cooperative effort as opposed to a competition (Covey, 1989).

Key informant 10 on this matter noted that:

'Depending on the process of mediation and external influences, the disputants change their terms. When the mediator calls for a caucus with the disputants he assists them to see the reality of their expectations leading to a compromise.'

On the same matter on mutual benefit and cooperation key informant 5 noted that:

'I would say the mediation process was an eye opener for me. I came armed with facts, I had sought advice. It turned out that it was not a battle field; we had to talk and agree. After along confrontation, we were able to clearly outline our issues. We had time to think them through, I never received what I expected but I think with a different mindset it was okay'

The response by key informant 2 presents the idea proposed by Covey (1989) that the ADR process is not competitive but cooperative and it leads to mutual benefit for the disputants involved instead of the zero sum game of the court process where one party wins and the other loses. Key informant 2 was armed with facts to fight the other party but as previously noted by key informant 4, it is not about rights but the interests of the disputants involved.

On the same issue on the ADR process not being about competition but cooperation, key informant 6 said:

'The disputants change their perspectives, after seeing the dispute from another perspective. How are my interests protected? They look at the problem not at each other.' When they realise it is not about the other person, but about the issue between them, they agree to deal with the issues (money, children, beer, other people) and restore relationship.'

The response by key informant 6 emphasises that the ADR process is not a win-lose situation but a process that seeks to find a solution acceptable to both parties since the disputants stop looking at each other but focus their attention instead on the issue between them (Covey, 1989). This emphasises not only compromise but also cooperation. It also shows that the ADR process seeks to restore the relationship that existed between the disputants (Sternlight, 2008). In observation 2, the mediator asks the disputants to focus on the issues at hand and stop pointing fingers:

'The mediator requested them to stop pointing fingers but instead focus on the issues, to look at how best they think they could work together to bring up the child.'

The ADR process seeks amicable solutions to disputes as a possible outcome to the process and has been termed as ‘amicable dispute resolution mechanism’ (Chan, 1997) because it involves friendly negotiations, conciliation and mediation. It seeks to find an agreeable solution to problems. The interviews with the key respondents showed reflected this idea. Key informant 1 stated:

‘As a mediator, I always believe I have done my job well, whether the disputants agree or not. But my joy is to see them agreeing on the issues.’

This response shows that the important thing is agreeing on the issues at hand to find an amicable solution that works and is of course less stressful to the disputants. Key informant 1 also noted that:

‘Mediation may not resolve all the issues but it helps the disputants understand the issue facing them. Mediation assists in narrowing down the issues as they proceed for trial. A good example is a divorce case. Though mediation cannot grant divorce it can assist on distribution of matrimonial property and children maintenance matters. This save time when going for trial.’

This supports the idea that ADR as a process is more concerned with the interests of the party and the issues that are between them and less concerned with competition. It also supports the idea that ADR is a cheaper process that is also time saving as noted by Nagel (2002).

According to Nicholson (2006), the ADR process is an interpersonal process that leads to communication between the parties involved to the extent that those involved get to a point where they understand the feelings, worries, thoughts and concerns of each other. On this subject, key informant 5 stated:

‘As a disputant, I was satisfied with the outcome, because the process was faster, though I did not get all I wanted, at the end I had a peace of mind as the process was well guided.’

This response also showed an element of compromise in that the disputant did not get all they wanted but there was peace of mind because the process was well guided. It also supports that the process seeks amicable solutions by how well it was guided. Key informant 5 also stated:

‘I had to let go most of my expectations and deal with the issues as they were. We never agreed on everything but I was happier than before. I spent less money and I felt part of the problem-solving.’

The respondent claims that they were happier than before and they felt involved in the problem solving process which means that the respondent gained some satisfaction from the process which supports that the process leads to communication that helps the disputants understand each other (Nicholson, 2006). It also supports that the process involves compromise and cooperation (Covey, 1989) and that it is also cost saving (Nagel, 2002).

Key informant 1 also stated:

'Yes they are satisfied, because it is their agreement. Whether settled or not.'

This supports that ADR leads to communication and understanding (Nicholson, 2006). This leads to the disputants being satisfied because as key informant 5 notes: *'it is their agreement whether settled or not'*.

Şimşek & Bölten (2019), argues that parties are eligible to determine process of the mediation in agreement with interest and needs of each party. This include the choosing mediation location, language to use, the time of day and duration of a session; the people who are to be involved, the selection of acceptable objective criteria, and many other choices related to the process. This was explained by Key informant 2:

'The language used is familiar to each of the disputants therefore much easier since it does not need to be interpreted and the intended meaning is not lost.'

Duck (2006) noted that people become close as they work out their issues and they also set personal rules and roles which is clearly shown in the response by key informant 5.

'Yes because it's their agreements. It is a win-win situation. However the other likely outcomes could be concluded with full settlements, partial settlements, without settlements and Certificate of non-compliance'

Key informant 8 also added:

'The disputants should be satisfied by their outcomes. It is their agreement. Because even if they don't reach full settlement they understand the problem better.'

Sometimes the ADR process does not lead to the desired outcome which can lead to dissatisfaction by the disputants and can lead to court proceedings. According to Christie (2012), when disputants fail to agree on the outcome, they may end up in

litigation. Key informant 5 noted that even though the disputants had set their own terms, sometimes there can be dissatisfaction.

'Yes, disputants are always satisfied with the outcome if it is full settlement, because they have worked it out. If it is partial or no agreement they may be dissatisfied.'

4.2.3 Interpersonal Communication/ Tools used by the Mediator in the ADR Process

The success or failure of a mediation process depends greatly on the mediator. Therefore a mediator must have the necessary skills (Mashamba, 2014). The mediator should have active listening skills which include listening to hear, understanding the meaning behind words and providing feedback for clear understanding (Solosi, 2015). Key informant 10 stated:

'A mediator should be a good listener, should be able to easily sieve what is relevant and what is not. He should also be able to push the right button by asking questions relevant to the discussion, hence unlocking the stalemate.'

This response shows the importance of the communication skills used by a mediator such as listening in order to guide the disputants towards a solution. It also points to the ability to listening in order to hear the meaning behind words and providing feedback where the respondents said the mediator should be able to *push the right buttons by asking the right questions*.

On the issue of facilitating communication and helping the disputants keep talking to each other and avoid stalemates, key respondent 4 stated:

'Where there is stalemate he can be able to unlock. Be able to help the disputants pick out the issues. By ensuring they keep talking to each other.'

The mediator should help the disputants communicate with one another through the use of communication tools such as active listening, reframing and reflecting (Littlejohn & Domenici, 2001). Key informant 6 stated that:

'Mediators should reframe issues for clarity, listening skills, observation of body language and seeking clarification on some of the non-verbal cues, questioning to help probe further and in case of a stale mate speaking to the disputants separately (caucus), be neutral always.'

This response shows the skills of the mediator as active listening and reframing issues for clarity. It also points to the need of the mediator to be alert so as to notice non-verbal

cues used by the disputants. This is important because most of the communication that goes on in the ADR process is non-verbal (Solosi, 2015). Further, Key informant 9 added that the mediator:

'Should understand the language used by the disputants, good listeners and do very little talking, reframing of issues, paraphrasing and summarising, capture body language, seek clarification and be able to probe. And keep eye contact.'

In the first observation session, the mediator reframes issues for clarity:

Observation 1:

"The mediator briefly read to them the issues: concerning the children. Their living atmosphere, the distance from their school, absent parents, no care and the overall well-being of the two children."

The mediator should also ask a lot of questions so as to better guide the process of mediation by facilitating communication between the disputants (Ford, 2014). This also supports Ford (2014) who states that the mediator needs to have paraphrasing and summarising skills as a way to show that they have understood the disputant. It also gives the speaker a chance to know if they have been understood.

On the same issue on questioning Key respondent 6 stated that:

'A good mediator should be able to interrogate/question, persuade and be analytical. They should understand the dispute why the claimant take the position they take and be able to negotiate with disputants to give the matter a different look so that they can see the possible outcomes, this is achieved when a mediator addresses them separately in a caucus.'

This response is in support of the mediator asking many questions so as to get to the core of the matter for the resolution of the same to be achieved. Where communication between the disputants is failing, the mediator can hold separate meetings with the disputants for better understanding of the matter at hand. Key Informant 1 stated:

'Other times I am forced to negotiate separately with each disputant, especially where they seem not to agree. This I do by persuading them and showing them the other options available to them. As I negotiate I will always point out the, Alternative to Negotiated Agreements - what if mediation fails: Best Alternative to a Negotiated Agreement (BANTA); Worst Alternative to a Negotiated Agreement (WANTA) and Most Likely Best Alternative to a Negotiated Agreement (MLATNA).'

Marnewick (2015) states that the purpose of the questions asked by the mediator is to help along the process of mediation as the information provided by the questions sheds more light on the issues at hand. Key informant 1 stated that:

'I am able to probe further, by asking direct and indirect questions, this gives a clear picture of the matter at hand and at the same time I ensure the other disputant get the point. Am able to read what is not said by words, am able to know when to continue or when to stop.'

Solosi (2015) opines that the mediator should ask open ended questions so as to give the disputants a chance to answer more openly instead of questions requiring yes or no answers. Solosi (2015), also states that the mediator should ask probing questions to the disputants when they give short answers for more clarity. Key informant 3 stated:

'These skills helps in the process to negotiate, to clarify, to listen in order to understand, help in probing in order to get more information, being able to read the nonverbal cues.'

In both the observation sessions observed for this study, the mediators facilitate communication between the disputants by asking probing questions.

Observation 1:

"She said, wachana na sisi wenye hatuna akili.... (leave us alone, those of us who don't have brains). The mediator was quick to seek clarification about that statement and JW responded that on numerous occasions the husband has always told her, wewe hauna akili.... (you don't have brains)"

Observation 1: *'After a long silence the mediator asked JW, 'why are you quiet, would you want to say something'.*

Mediators should also have empathic listening as it helps build trust between the mediator and the disputants as well as helping the mediator understand the matters at hand for better facilitation of the process (Solosi, 2015). Key informant 6 stated that:

'The mediator ought to be persuasive and empathetic, this helps turn the disputants around, look at the problem as the enemy. Removing the enemy is a necessary act of getting their agreement achieved.'

This response shows that the ability of the mediator to be empathic helps them guide the disputants towards the real problem. Key informant 10 stated:

'A mediator should be empathetic but not sympathetic. He should be able to conceal emotions, no crying, no laughing or showing faces. Be neutral. If need be take a break.'

This response supports that the mediator should be both empathetic and also neutral so as to not cause bias and skewed outcomes as one disputant may feel that they are less favored if the mediator is not neutral. Neutrality also helps the mediators reframe issues for better understanding by the disputants and also in helping the disputants move from a negative outlook towards a more positive outlook (Ford, 2014). Key respondent 2 stated:

'As a mediator I help the disputants listen to each other, by ensuring there are no interruptions and use of jargon or rude statements. I am quick to point out and support conciliatory gestures such as, owning responsibility, apology, self-disclosure and expressing positive feelings.'

This shows the role of the mediator as a neutral party who helps the disputants move from a negative perspective towards a positive perspective.

On the same issue about, key informant 6 stated:

'A mediator at all times should avoid talking too much; he should be invisible and resurface when the parties cannot talk to each other. His work is to encourage the disputants to keep on talking. He should facilitate communication.'

This response also points to the mediator being neutral and mainly listening instead of talking too much which could introduce bias to the issue at hand and disrupt the mediation process. It also supports that the mediator should be engaged in active listening.

The researcher also sought to find out if the mediators usually have expertise in the subjects that the disputants take to mediation. Key informant 1 stated that:

'As a mediator I will always familiarise myself with the core of the dispute of the case I am mediating. I seek opinions from experts or read on my own.'

Key informant 2 stated that:

'It is very helpful for Mediators to have knowledge on the matter at hand. If you don't have, look for it eg, banking, insurance, family life, community. It is also important to apply experience from the school of life.'

Other interviewees stated that:

'Mediators work is to facilitate communication. But for complex issues the mediator can separately seek a professional opinion. He need not be a guru in that area.'

This respondent does not believe that the mediator should be an expert in the subject being handled but emphasised that the mediator should facilitate communication between the disputants.

Other interviewees stated:

'Mediators handling family matters should have a background in psychology and counseling, this will help them understand the disputants better.' (Key informant 4)

'A background in law would be important for those dealing with commercial matters (law of contract).' (Key informant 6)

'As a mediator it is important to have fundamental knowledge of the case. if you don't have it look for it, familiarise yourself.' (Key informant 7)

From the above responses it is clear that there are varying views on the need for expertise in the matters being handled. Some respondents believe that all that is needed is familiarisation with the matter at hand and seeking expert opinion where required. Some respondents believed that expert knowledge on the part of the mediator is important.

4.2.4 Mediation Sessions Observed

The researcher observed 2 mediation sessions

Period	Code	Dispute
14 th September 2019	1	Custody of children
17 th September 2019	2	Child Maintenance

In this section, the researcher presents the description of the two mediation sessions that were observed for this study. These will give the information gathered from these sessions.

4.2.4.1 Observation 1 - Custody of Children

This was a mediation session held on 14th September, 2019 at 3pm. A father, PN was fighting for the custody of his children, two boys aged seven and four years (T and C).

Though it was a CAM matter it was conducted in the mediator's offices in the city Centre.

The mediator introduced himself to the disputants and welcomed them. He requested them to keep their phones away, he told them they should keep talking to each other, to avoid interruptions, use of polite language. He told them it was their situation and they should come up with their solutions for the well-being of the children. He reminded them that it was not about who is right or who is wrong, but it was about coming together to address the problem.

PN was allowed to speak first.

He alleged that the wife JW moved out of the matrimonial home and went to live with her sister far off from where the children go to school. He further alleged that she was never home and she was not taking good care of the children. Then PN felt the money he sent for the upkeep of the children was not well used. Most of the time the JW's sister is the one who looked after the children as JW was always busy following the him around and causing scenes both at his place of work and at social places. He lamented, *Hawezi ka nyumbani, kazi yake nikuniletea aibu kazini. Na kunifuata fuata popote. Imagine, kuniletea aibu kazini..... drama tupu...* (she cannot stay in the house, her work is to bring me shame at my place of work. Looking for me all over. Imagine, bringing shame at my place of work, pure drama)

Then JW on her part said that though the man was providing for the family he was never there. PN said he does not understand what the wife wanted, because he put up a business for her but she was unable to manage it. Looking at the mediator he said; "ask her whether it's true, where did she take the money?, ask her.."

The mediator reminded PN that he is supposed to talk with his wife. He said, 'keep talking to her'.

JW with a raised voice told PN that they have moved from their home and he is now free to go on with his life. She said, *wachana na sisi wenye hatuna akili....* (leave us alone, those of us who don't have brains).

The mediator was quick to seek clarification about that statement and JW responded that on numerous occasions the husband has always told her, *wewe hauna akili....* (you don't have brains).

'But that is true', responded PN.

The mediator reminded them they are there to look for a solution for the well-being of the children and it was important to remain respectful to each other.

PN insisted that the children were his and he would continue supporting them as long as he was alive. The wife asked him whether he wanted to be going with them to clubs.

The mediator reminded them they should identify the problems that they felt were affecting the children and needed their attention.

PN said that, the JW does not look after the children; children leave the house as early as 5.00am to go to school because they were moved far away from their school, and the living condition is pathetic. He said "*Nataka watoto wangu. Mama yao anaweza endelea na maisha yake free style*".

The mother was adamant that she would not release the children.

The mediator interjected again, and asked what the issues were.

Then PN repeated, 'children leave the house as early as 5.00am to go to school, their living condition is pathetic, they have no one to take care of them, they are suffering. There is no one to receive them when they come from school.' "I receive calls from the school driver all the time telling me that there is no one to pick my children. I no longer trust this woman..... I will fight for my children".

After a long silence the mediator asked JW, 'why are you quiet, would you want to say something?' JW admitted that there was a problem in raising the children. But she mentioned she was not interested in going back to his home "*mimi kwako silundi.... Shughulikia watoto mimi wachana na mimi am over 18.....*"

The mediator briefly read to them the issues: concerning the children. Their living atmosphere; the distance from their school; absent parents; no care and the overall well-being of the two children.

Both agreed that those were the concerns; they were advised to separately go and think on the best ways they would want to parent their children.

The next session was scheduled after two weeks at 3.00pm at the same venue.

4.2.4.2 Observation 2- Child Maintenance

The mother of the baby boy B had gone to court to request for maintenance of her child who is two years old. She reported that the father of the child was supporting them but stopped when the child was seven months. The two were not married thus lived separately.

The mediation session was conducted in the CAM Suites at Milimani Law Courts. The language used was English with few Kiswahili phrases.

The mediator welcomed them into the session, he thanked them for keeping time and honoring the appointment, he gave them the ground rules; to switch off their phones, use of polite language, no interruptions, and no walking away. He told them it was their situation and they should come up with their solutions for the well-being of the baby. He reminded them that it was not about who is right or who is wrong, but it was about coming together to address the problem.

The mother FW was the first to speak and said she gave birth to baby B on 17th July, 2017. The father MM of the her child though they are not married was supporting them, he even paid the maternity bills and was concerned about the well-being of baby B, when the child turned seven months he stopped supporting them. She said the last money she received was in February, 2018. He started giving excuses that his business was not doing well. She further explained that he could make empty promises and at times he could not answer her calls or respond to her messages.

The mediator reminded them that they should talk to each other and not direct the conversations to him.

MM in his response asked FW why she brought him to court. He asked; “Is this the best you could do for us?”

The mediator reminded them that their matter was no longer in court; he said “this matter is now in your hands; make the best out of it, I will help you as much as I can.”

MM explained that he had communicated to FW that his business was not doing well, and when he had money he always supported them. "... You don't want to believe, times have changed". 'You are now working you too should contribute in raising the baby.

FW, very displeased said; "I knew there was a problem....."

The MM agreed indeed there was a problem and that problem was FW.

The mediator requested them to stop pointing fingers but instead focus on the issues, to look at how best they think they could work together to bring up the child.

FW said that MM should start supporting them. "*Kuzaa si kazi.....* you must do your part."

MM very angry shouted 'I used to support you, until you became greedy and demanded too much.....'

At this point FW roared back and said 'the issue of business not doing well was a big lie, take your responsibilities seriously.'

The mediator reminded them that they will not achieve much by dwelling so much on past, rather, it was important for them to identify the problem.

It is at this point FW said, '*Nataka pesa ya nyumba*, house girl, hospital bills, food *na* diapers.

The mediator asked MM to respond to those issues. After a long pause he said 'well those are the main things, but.....

Before he could finish talking FW was quick to respond 'good then provide for us without fail like a real man. '*Nataka akuwe akituma pesa kama mbeleni*' cash money.

The mediator reminded FW that she should not interrupt MM

MM with a raised voice said; 'No no no..... *mtoto ni wetu*, we have an equal responsibility. You are now working.... I got you that job so that you can support yourself and the baby'.

FW further responded that if she has to chip in, then she will take the baby to MM. 'I will bring the baby to you, because you are not serious. 'You see this man is never serious.... but this time *utakipata*.....'

The mediator seeing that there was a stalemate he requested to talk to each of them separately.

He further advised that after the meetings he will meet them after one week subject to the availability of the venue.

Table 4.1 Emerging Themes from Key Informants and Observation

Theme	Subtheme	Sample Quote/ Narrative
Setting	Sitting Arrangement	<p>The disputants and the mediator sit near each other, sharing a table and they sit down. They express freely because the mood is relaxed, due to the rules set by the mediators.</p> <p>Guided by the observation protocol (Appendix 2), the researcher observed that there were no definite sitting positions and the procedures were quite relaxed. It was also safe because of the ground rules given before the start of the session. However, the two sessions observed, the researcher noted that the mediator sat between the disputants, but ensured they faced each other.</p>
	Disputants talk to each other	<p>The mediator reminded PN that he is supposed to talk with his wife. He said, ‘keep talking to her’.</p> <p>Observation 1: The mediator reminded PN that he is supposed to talk with his wife. He said, ‘keep talking to her’</p>
	Caucus	<p>The mediator is able to meet with the disputants separately and hear their concerns and expectations.</p> <p>Observation 2: The mediator seeing that there was a stalemate he requested to talk to each of them separately</p>
	Privacy	<p>Since the disputants know the process is private, they give more information freely. Even during the mediation process the disputants are given enough time to express themselves without interruptions.</p> <p>Observation 2: The mediation session was conducted in the CAM Suites at Milimani Law Courts</p>
Language	Language of disputants	<p>The language used in the session should be simple, understood by both parties, non-legal terms, friendly. If the mediator does not understand the language of the disputants, he can either abandon the matter or look for a translator if he must mediate.</p> <p>Observation 1: He said “<i>Nataka watoto wangu. Mama yao anaweza endelea na maisha yake free style</i>”</p>
Process	Rules	<p>‘As a mediator i help the disputants listen to each other, by ensuring there are no interruptions and use of jargon or rude statements. I am quick to point out and support conciliatory gestures such as, owning responsibility, apology, self-disclosure and expressing positive feelings.</p> <p>Observation 1: He requested them to keep their phones away, he told them they should keep talking to each other, to avoid interruptions, use of polite language.</p>
	Disputants set their own outcomes	<p>Mediation is self-determination; the disputants take charge of the process.</p> <p>Observation 2: He told them it was their situation and they should come up with their solutions for the well-being of the baby.</p>
Issues and Interests	Identifying issues	<p>Mediation is about the disputants, there is no issue of who is right or wrong. Therefore the parties will settle for anything as long as it caters for their interests.</p>

		Observation 2: The mediator requested them to stop pointing fingers but instead focus on the issues, to look at how best they think they could work together to bring up the child.
	Changing of Terms	As a disputant, I was satisfied with the outcome, because the process was faster, though I did not get all I wanted, at the end I had a peace of mind as the process was well guided. Observation1: Both agreed that those were the concerns; they were advised to separately go and think on the best ways they would want to parent their children
Outcomes	Possible Outcomes	I had to let go most of my expectations and deal with the issues as they were. We never agreed on everything but I was happier than before. I spent less money and I felt part of the problem-solving. Observation2: The mediator requested them to stop pointing fingers but instead focus on the issues, to look at how best they think they could work together to bring up the child.
Communication competencies	Listening skills	A mediator should be a good listener, should be able to easily sieve what is relevant and what is not. He should also be able to push the right button by asking questions relevant to the discussion, hence unlocking the stalemate Observation1: The mediator was quick to seek clarification about that statement and JW responded that on numerous occasions the husband has always told her, <i>wewe hauna akili....</i> (you don't have brains)
	Questioning	These skills helps in the process to negotiate, to clarify, to listen in order to understand, help in probing in order to get more information, being able to read the non-verbal cues. Observation 1: After a long silence the mediator asked JW, ' why are you quiet, would you want to say something?'
	Reframing	Should understand the language used by the disputants, good listeners and do very little talking, reframing of issues, paraphrasing and summarising, capture body language, seek clarification and be able to probe. And keep eye contacts. Observation 1: The mediator briefly read to them the issues: concerning the children. Their living atmosphere; the distance from their school; absent parents; no care and the overall well-being of the two children. Both agreed that those were the concerns; they were advised to separately go and think on the best ways they would want to parent their children.

4.3 Discussion of themes and Findings

4.3.1 Setting

The informal approach used by the ADR process can be subdivided into: informal sitting arrangement, disputants talking to each other, caucus and privacy of the proceedings. The researcher found that the informal approach used by the ADR process is beneficial to the disputants as it promotes free expression and thus there is better understanding gained from the openness. This answers the first question in the

objectives on how informality of the ADR process helps in self- articulation of the disputants.

(i) Sitting Arrangement

The sitting arrangement of the ADR processes answers the first question in the objectives by explaining how the informal sitting arrangement helps in self-articulation of the disputants. According to Wilson, Rutherford, Storey & Wortley (2014) that the process of ADR is less adversarial and therefore less stressful for the disputants; this is in part due to the sitting arrangement used in the ADR processes. Key informant 4 stated that:

'The mediation rooms are small and have round or oval tables, this brings a sense of equality between the disputants and the mediator. This sitting arrangement is aimed at removing the formality expressed in courts. It gives a sense of power balance.'

According to Fiadjoe (2004), the use of informal settings encouraged more openness and freedom of expression. The respondents also indicated that they were more relaxed in the setting where the ADR processes took place which made it easier for them to be open about their concerns. Key respondent 8 stated:

'The mediator does not take a superior position like a judge does. The mediator and the disputants share a table. He will always speak the language of the disputants, so the disputants are at ease. It is more of a round table discussion without any blame game'.

The researcher found that the informal setting helped in the balance of power between the mediator and the disputants. The researcher also found that the informal setting also enhanced the communication since the sessions were held in smaller less intimidating rooms as earlier stated by key informant 1

(ii) Disputants talk to each other

According to Hartley (1999), interpersonal communication enables the disputants to address their problems directly with each other and look for solutions to their disputes. Further, the functional perspective on group decision making theory advocates for the use of interpersonal communication to aid in decision making and problem solving (Griffin, 2012). This is supported by the findings of the study where the researcher found that the disputants were encouraged to talk to each other through the sitting arrangement as key informant 7 stated

'As opposed to the court room where all the communication is directed to the court, in mediation setting the disputants talk to each other with the help of a neutral third party'

The findings were further observed by the researcher in Observation 1 where the mediator encouraged the disputants to talk to each other when one of the disputants addressed him instead of the other disputant: Looking at the mediator he said; *"ask her whether it's true, where did she take the money? Ask her."* The mediator reminded PN that he is supposed to talk with his wife. He said, *'keep talking to her'*.

(iii) Caucus (Separate Meeting)

The proponents of the Functional Perspective on group decision making theory identified that most of the communication that goes on in group decision making tended to be disruptive communication which draws attention away from the objectives of the group (Griffin, 2012). This being the case, there is need for separate meetings to be held sometimes in order to facilitate better communication. This further shows that the informality of the proceedings allows better self-articulation as the disputants are able to air their views freely to the point where there is need for separate meetings which are further used for more self-expression.

The researcher found out that there was the option of separate meetings where the disputants did not agree as key informant 1 explained:

'My work as a mediator is to facilitate communication, I encourage the disputants to address each other because it is their problem, by doing this they are able to identify their issues and interests. As a mediator it is my duty to help the disputants clearly identify the issues before them. From there they should work as partners to find a solution to the problems. At the end of it all they should say, 'us against the problem'. When they cannot agree I call for separate sessions, where I meet each disputant separately.

Holding a separate meeting helps reduce tension by allowing time for the disputants to relax after argument. During this session mediators also coach the disputants and encourage them to engage in more positive discussion to enable them reach an outcome agreeable to all. (Rovine, 2013)

In addition, Key informant 6 stated: *'The mediator is able to meet with the disputants separately and hear their concerns and expectations.* In one of the sessions observed for this study, the researcher observed that the mediator called for separate meetings

with the disputants when they failed to agree: *'The mediator seeing that there was a stalemate he requested to talk to each of them separately.'*

(iv) Privacy

Mashamba, (2014), argues that mediation is conducted away from public eye and the media and neither the mediator nor the disputants divulge any information shared. This encourages openness and self-expression since the disputants know that their issues will not be made public knowledge. This shows that the informality of the ADR process leads to better self-articulation of the disputants. Christie (2012) indicated that privacy of the sessions allowed disputants to air their issues freely which led to better solutions due to the clarity offered by the free expression.

The researcher found that the secrecy of the proceedings created an atmosphere where the disputants could air their concerns freely leading to clarity of the issues at hand because the disputants were assured that their views would not be publicised. Key informant 6 stated:

Since the disputants know the process is private, they give more information freely. Even during the mediation process the disputants are given enough time to express themselves without interruptions.

Key informant 2 on privacy stated:

'When in private the disputants feel more confident and they can share information, as information shared cannot be used against them. They are also shielded from the eyes of the media'

The researcher also observed that the sessions observed for this study were held in private. Privacy helps disputants to negotiate in an open, truthful and secure atmosphere. Parties are able to disclose information and deal with underlying concerns and interests. (Hardy & Rundle, 2010)

4.3.2 Language

The theme of language used in the ADR process helps answer the question of the first objective which seeks to find out if informality in the ADR process aids in self-articulation of the disputants. According to Joseph & Taylor (2014), language either facilitates, improves or impedes communication because the different languages used by the communicators can either clarify issues or cause misunderstanding. Further the Coordinated Management of meaning theory considered in chapter two proposes that

language can either escalate or deescalate conflict (Griffin, 2012). The use of informal language allows free expression that is likely to improve understanding and reduce conflict. Key informant 9 stated:

'The language used ought to have a positive impact, because disputants choose the language they understand, speak and express themselves best.'

The findings of the study show that there was use of informal language which was found to be of benefit to the disputants as they were able to express themselves with clarity using both English and Kiswahili as in observation 1: He lamented,'

Hawezi ka nyumbani, kazi yake nikuniletea aibu kazini. Na kunifuata fuata popote. Imagine, kuniletea aibu kazini..... drama tupu... (she cannot stay in the house, her work is to bring me shame at my place of work. Looking for me all over. Imagine, bringing shame at my place of work, pure drama)'

The key respondents also indicated that the use of informal language created a relaxed atmosphere where self-articulation was easier for the disputants. They also stated that the informal language also encouraged clarity amongst the disputants due to the lack of legal jargon and the use of friendly language. Key informant 2 explained:

'The language used in the session should be simple, understood by both parties, non-legal terms, friendly. if the mediator does not understand the language of the disputants, he can either abandon the matter or look for a translator if he must mediate.'

The researcher also found out that the mediators were keen on the language used by the disputants and one of the rules that the mediators set required the use of clean non-abusive language. In Observation 1 when the disputants started to insult each other, the mediator reminded them of the ground rules that required use of non-abusive language.

'She said, wachana na sisi wenye hatuna akili.... (leave us alone, those of us who don't have brains). The mediator was quick to seek clarification about that statement and JW responded that on numerous occasions the husband has always told her, wewe hauna akili.... (you don't have brains). 'But that is true', responded PN. The mediator reminded them they are there to look for a solution for the well-being of the children and it was important to remain respectful to each other.'

In this instance the disputants escalated conflict using language but the mediator used language to deescalate conflict as proposed by the coordinated management of meaning theory.

4.3.3 Process

Process theme is further subdivided into: setting of ground rules and disputants setting their own outcomes. This theme looks at how the process of ADR helps in communication between the disputants through self-articulation that is governed by ground rules and goals set by the disputants. Covey (1989) argued that the ADR process is about compromise and cooperation. He further argued that the ADR process looks for win-win solutions that could only be achieved where the disputants set aside selfish interests and looked for solutions that would benefit both parties. Duck (2006) stated that the disputants set their own agreements and if they were able to achieve them during mediation, then both the disputants would be satisfied with the outcomes.

The Researcher found that the outcomes of the ADR process were the result of cooperation instead of competition. The disputants were prepared to fight and had facts when they went into the mediation process but they ended up with a changed perspective and a desire to change their view to accommodate the other person. Key informant 5 noted that:

'I would say the mediation process was an eye opener for me. I came armed with facts, I had sought advice. It turned out that it was not a battle field; we had to talk and agree. After along confrontation, we were able to clearly outline our issues. We had time to think them through, I never received what I expected but I think with a different mindset it was okay'

(i) Rules Governing Mediation Process

The mediator sets ground-rules to be followed by the disputants during the mediation session. (Chowdhury, 2012). This is done to help guide the communication process away from destructive communication that detracts from the real issues at hand. The functional perspective on group decision making theory studied in chapter two states that there is need for ground rules to be set in order for effective communication to take place (Griffin, 2012). The rules set aid in the communication process by focusing interactions on the important issues which reduces the amount of disruptive communication that detracts from the real issues.

The researcher found that the mediator helps set ground rules for the session before they start as explained by key informant 2:

'As mediators we set ground rules to guide the process of mediation. These are well explained before the mediation session'

begins. Some of these are: no interruption when the other party is talking, no walk away, no coercing, no harsh language, phones are not allowed in the room.'

The researcher also observed the setting of ground rules by the mediators in both the cases observed for this study in observation 1:

'He requested them to keep their phones away, he told them they should keep talking to each other, to avoid interruptions, use of polite language.' In observation 2: *'He gave them the ground rules; to switch off their phones, use of polite language, no interruptions, and no walking away.'*

In both observations when the disputants deviate from the rules set by the mediator, he reminds them of the rules and afterwards order is observed and they are able to communicate better. In observation 1:

'The mediator reminded PN that he is supposed to talk with his wife. He said, 'keep talking to her'. Later in the same observation, 'the mediator reminded them they were there to look for a solution for the well-being of the children and it was important to remain respectful to each other. In observation 2: The mediator reminded FW that she should not interrupt MM.'

Duck (2006), stated that the communication process was guided by the ground rules set at the beginning of the process so as to ensure that the desired outcomes are achieved. Chowdhury (2012) adds that the mediator sets the rules to guide the communication and according to Woods (2016), it is the responsibility of all participants involved to communicate. The role of the mediator is to keep communication flowing by ensuring that the disputants keep talking to each other and ground rules are observed as is seen in observation 2.

(ii) Disputants set their own Outcomes

Functional perspective on group decision making theory in chapter two stated that goals have to be set for there to be progress in any form of joint decision making as they guide the communication process towards desired results (Griffin, 2012). Key informant 5 indicated that disputants were satisfied with the outcomes because they set the outcomes themselves:

'Yes because it's their agreements. It is a win-win situation. he added that: disputants should be satisfied by their outcomes. It is their agreement. Because even if they don't reach full settlement they understand the problem better.'

The researcher found that the disputants were able to set their own agreements for the outcomes that they wanted to achieve through the ADR process and that they were able to agree on the final outcome even though they did not get all that they wanted out of the mediation process. key informant 10 stated:

'Mediation is self-determination; the disputants take charge of the process. On the same issue, key informant 5 stated: 'By setting their terms they get a win-win situation, because it is their agreement. However the other likely outcomes could be concluded with full settlements, partial settlements, without settlements and Certificate of non-compliance'

The win – win method calls for commitments to engage in discussion and joint decision making by the parties and to work towards better outcome which offer the disputants what they need going forward (Bullen, 2012).

4.3.4. Issues and Interests

The second objective in the study was to investigate if the disputants changed their terms due to the ADR process. The theme Issues and interests answers the question attached to the objective. The theme can be further subdivided into: identifying issues and terms/claims.

(i) Identifying Issues

Wysocki (2009) argued that the ADR process fostered collaboration by seeking a mutually beneficial outcome which can only be achieved by high regard for the interests of both self and others. According to Sternlight (2008), the process of ADR focuses more on the needs, values, wishes and the relationships of the disputants which leads to a win-win situation as opposed to the win-lose situation of litigation. This is in agreement with the views of Nagel (2002) who stated that the outcomes of the ADR process were a win-win situation instead of a win-lose situation.

The researcher found that the disputants were guided by the mediator to find the core issues instead of blaming one another and that the outcomes of the process were based on the values, interests, wishes and relationships between the disputants as opposed to a win-lose situation that is common in court proceedings. Key informant 4 stated;

'It is not about changing terms and expectations. It is identifying proper issues. The mediator will help them identify the proper issues and interests. It is no longer about the rights.'

In both the observation cases, the mediators guided the disputants to focus on their issues instead of blaming each other. In observation 1, the mediator guided the disputants towards the real issues:

'He told them it was their situation and they should come up with their solutions for the well-being of the children. He reminded them that it was not about who is right or who is wrong, but it was about coming together to address the problem.' In observation 2: *'The mediator requested them to stop pointing fingers but instead focus on the issues, to look at how best they think they could work together to bring up the child. Later in the same observation, the mediator reminded them that they will not achieve much by dwelling so much on past; rather, it was important for them to identify the problem.'*

From both observations it was clear that the interests were the key issues that the mediator focused on and reminded the disputants to focus on. This is in agreement with the view that interest based mediation emphasises on generating mutually favorable solutions for the benefit of the mediating parties. (Lee & Lim, 2016)

(ii) Changing of Terms

Wysocki (2009), states that the ADR process seeks a mutually beneficial outcome for the disputants through collaboration and it is sometimes achieved through changing terms by the disputants. The Coordinated management of meaning theory studied in chapter two states that through communication the disputants shift their perspective from demands to real world needs which allows for compromise and realism (Griffin,2012). This is in agreement with the views expressed by Sternlight (1998), who stated that the process of ADR seeks to find a jointly acceptable solution by the disputants.

Desire to achieve common ground and collaboration was evidenced by the disputants who were still happy with the outcomes of the process even when they did not get everything that they wanted. Key informant 5 stated:

'As a disputant, I was satisfied with the outcome, because the process was faster, though I did not get all I wanted, at the end I had a peace of mind as the process was well guided'.

This indicates that there was a shift from demands to needs during the process.

4.3.5 Possible Outcomes

The possible outcomes theme further caters to the second theme by showing that the disputants changed their terms due to the ADR process.

Nicholson (2006), argues that deep understanding can be achieved in the ADR process that can lead to the development of an acceptable solution for all the disputants. Sternlight (1998) also argued that the ADR process focused more on finding jointly acceptable solutions and Duck (2006) stated that as people worked out their issues through the ADR process they set their own rules and agreed to roles and outcomes that were beneficial to them.

The researcher found that there was compromise between the disputants brought on by the understanding of the each other's feelings, emotion, thoughts and concerns during the process of ADR. Key informant 5 also stated:

'I had to let go most of my expectations and deal with the issues as they were. We never agreed on everything but I was happier than before. I spent less money and I felt part of the problem-solving.'

Christie (2012), states that the disputants set their outcomes and they work through the ADR process to get to an acceptable solution for the disputants involved but sometimes this fails and the disputants head towards litigation anyway. The researcher found that sometimes this is the case as expressed by key informant 5:

'Yes, disputants are always satisfied with the outcome if it is full settlement, because they have worked it out. If it is partial or no agreement they may be dissatisfied.'

4.3.6 Communication Competencies

The third objective of the study sought to establish what interpersonal communication tools were used by mediators during the ADR process. The theme communication competencies clearly outlines the communication tools used. This theme can be further subdivided into: listening skills, questioning and reframing.

(i) Listening Skills

Littlejohn & Domenici (2001) stated that active listening by the mediators enabled them to have better understanding of the issues at hand. The Coordinated Management of meaning theory studied in chapter two explains that it is important to have proper

communication as it allows clarity of issues and the formation of good solutions that are acceptable by both parties (Griffin, 2012).

The researcher found that the mediators used skills such as active listening to better understand the issues at hand and so that they can better guide the disputants towards amicable solutions. One interviewee stated:

'A mediator should be a good listener, should be able to easily sieve what is relevant and what is not. He should also be able to push the right button by asking questions relevant to the discussion, hence unlocking the stalemate.'

Solosi (2015) stated that mediators guide communication and allow flow of communication between the disputants. Woods (2016) stated that in interpersonal communication, people are not always able to handle communication well and thus there is need to have guided communication which is the role of mediators to guide the communication as stated by key informant 9: *'Mediators act as referees, they ensure a fair play ground for all. They help to bring up the voice of the weaker party. They control the language used and ensure there is no coercion.'* This is important for good communication between the disputants and for clarity of the issues at hand.

The researcher found that the mediators guided the disputants to keep on communicating with each other. During Observation 1, the researcher observed that the mediator encouraged the disputants to address each other and not address him: Looking at the mediator he said; *"ask her whether it's true, where did she take the money? ask her."* The mediator reminded PN that he is supposed to talk with his wife. He said, *'keep talking to her'*. The mediators also guided the disputants towards understanding the core issues that were affecting them instead of dwelling on the past and blaming each other. This was keenly observed in both the observations 1 & 2.

(ii) Questioning Skills

Marenwick (2015) stated that mediators should ask probing questions for better understanding of the issues at hand. Ford (2014) also stated that mediators should ask probing questions for better clarity.

The researcher also found that the mediators asked probing questions on issues that were not clearly articulated to get more information on them and encourage clarity. This was also observed in Observation 1 where the mediator asked questions that led to more

in depth answers and more clarity. JW with a raised voice told PN that they have moved from their home and he was free to go on with his life. She said, *wachana na sisi wenye hatuna akili.... (leave us alone, those of us who don't have brains)*. The mediator was quick to seek clarification about that statement and JW responded that on numerous occasions the husband has always told her, *'wewe hauna akili....' (you don't have brains)*. This is in agreement with the views of Ford (2014) that mediators should ask probing questions for more clarity.

(iii) Reframing

Ford (2014) stated that the mediator should use reframing to help the disputants move from a negative perspective towards a positive perspective. He also stated that reframing should be used in conjunction with paraphrasing and summarising. The coordinated management of meaning theory studied in chapter two states that progressive communication happens when the perspective shifts from negative to positive (Griffin, 2012). Reframing helps achieve this goal.

The researcher found that reframing was used by the mediators to enable better understanding of the issues at hand. This was also observed in observation 1, the mediator reframed the issues for clarity by the disputants. The mediator briefly read to them the issues concerning the children. *'Their living atmosphere; the distance from their school; absent parents; no care and the overall well-being of the two children.'* Both agreed that those were the concerns; they were advised to separately go and think on the best ways they would want to parent their children. This was aimed at bringing clarity between the disputants on the issues at hand.

The disputants agreed with the issues as they had been reframed by the mediator. This is in agreement with the views expressed by Solosi (2015) who stated that the reframing of the issues by the mediator led to greater clarity and the possibility of a better outcome.

Reframing was also used by the mediators to lead to a positive perception of the issues at hand and away from negativity. This phenomenon is observed by the researcher in the observation cases considered by the researcher where the reframing of the issues leads to a better outlook by the disputants and a more positive outlook on the matter at hand instead of blaming each other. This is in agreement with the views expressed in the CMM theory.

CHAPTER FIVE

SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

This chapter presents a summary of the findings of the study, conclusions and recommendations for further study. This will be guided by the objectives of the study.

5.2 Summary of Findings

5.2.1 Informality

This study sought to establish if the informality of the ADR process increased the disputant's self-articulation. This objective was guided by a number of themes namely: setting, language and process.

The theme setting was guided by sub themes namely: sitting arrangement, disputants talking to each other, caucus and privacy. Under the sitting arrangement sub theme the researcher found that the sitting arrangement used in the ADR process was informal and unlike the court sitting arrangement. The disputants sat in a small room and around an oval table which the respondents said eliminated the power imbalance experienced in court settings. The respondents also said that the atmosphere was relaxed due to the relaxed sitting arrangement. The researcher also observed that the sitting arrangement was informal and on equal footing; the mediator sat between the disputants but the disputants faced each other. This facilitated the ability of the disputants to address one another as opposed to a court setting where the disputants addressed the court as explained by one key informant.

The ADR process also encouraged the disputants to talk to each other so that they could address their issues as explained by one respondent who said the ADR process facilitated communication amongst the disputants as opposed to addressing the court. The researcher also observed that the disputants are encouraged by the mediator to talk to each other. In fact talking to one another was one of the rules set by the mediator at the beginning of the session to guide the process. It was also observed that the mediators directed the disputants to speak to each other instead of addressing the mediators and when the disputants deviated from this, the mediators reminded them to talk to each other and desist from addressing their concerns to them. This allowed better self-

articulation by the disputants as they were addressing each other and could thus confront their problems openly.

The researcher found out from the key informants that there was the option of separate meetings (caucus) with the mediator when the disputants were in a stalemate and they were not getting anywhere during the ADR process. This was done so that the mediators could get a better glimpse of the problems as well as to explain to the disputants the other options available to them including their best available options, the worst option and the most likely option. This also enabled more openness and self-articulation by the disputants. During one of the observations, the researcher noted that the mediator asked to see the disputants separately when it became clear that they were not communicating.

Privacy was found to be of the utmost importance in the ADR process as the proceedings were not publicised. This led to better self-expression as the disputants knew that their issues would not be publicised in any way or broadcast to the media. This allowed the disputants to air their views freely which also led to better understanding of the issues at hand. The sessions that were observed by the researcher were held in private and the researcher had to get prior permission from the court registrar and consent from all the participants in order to sit in the sessions. The researcher also respected the privacy of the disputants by only using their initials while giving the narratives in the study and not disclosing any other information about them that might lead to the disputants being easily identified.

Under the theme of language, the researcher found that it was easier for the disputants to express themselves as the language they used was understood by both the disputants and the mediator. This was because the language used was friendly and free of legal jargon as expressed by one key informant. The researcher also observed during the observation sessions that the disputants used the language most suitable for them and they mixed both Kiswahili and English so as to better articulate their points. The key informants also expressed that the disputants in rural areas preferred to use Kiswahili or vernacular languages as it allowed them to understand each other and communicate better. The language used was also found to escalate or deescalate the conflict (Griffin, 2012). In one of the observations, the disputants used language to escalate the conflict

but the mediator deescalated the conflict by use of language. He reminded them to be respectful to one another and also reminded them of the reason they were in mediation.

The objective was also guided by the theme of process which was further subdivided into: setting of rules and disputants setting their own outcomes. The researcher found that mediators set ground rules for how the mediation process will progress so as to guide the communication and the disputants while addressing one another. In both the observations, the mediator set the ground rules as soon as he got into the mediation session so as to guide the disputants on what was acceptable and what was not. The mediators required the disputants to put their phones away, to talk to each other, to avoid interrupting the other person and not to walk away from the session. The researcher also observed that when the disputants deviated from the set rules, the mediator reminded them to adhere to them. In both cases, the mediators reminded the disputants to keep talking to each other and to use respectful language.

The researcher also found that the disputants set their own outcomes at the beginning of the session and negotiated to get to the set outcome. There was compromise on the part of the disputants and when the sessions were over, the disputants were happy with the outcome even when they did not get everything they wanted because as one key informant stated: *it is their agreement*. The outcomes they set for themselves guided the process towards an amicable solution for both the disputants.

5.2.2 Changing Terms

The study also sought to find out if the disputants changed their terms due to the ADR process. This objective was guided by two themes namely, issues and interests and outcomes.

The theme issues and interests was further subdivided into: identifying issues and terms/claims. Under the subtheme identifying issues, the researcher found that the mediators guided the disputants to identify the issues between them. One of the respondents stated that mediation was not concerned with rights but with the underlying issues. In the observed cases, the mediators guided the disputants towards identifying their issues instead of blaming each other. When the disputants deviated from the issues and interests, the mediator reminded them that the issues were what was important not the past or pointing fingers.

Still under issues and interests theme, the researcher found that the disputants were willing to collaborate and cooperate one another. They shifted their focus from their demands towards what was beneficial to both of them. There was also a shift from negativity towards positivity as the sessions progressed as the disputants started to understand one another. One of the respondents claimed that they were happy with the outcome of the process even though they did not get everything they wanted. Another respondent claimed to have completely changed their perspective after going through the mediation process and was ready to compromise.

The researcher also found that the ADR processes were not concerned so much with terms and rights as they were concerned with the interests of the disputants. As the process progressed, there was deep communication that allowed the disputants to understand one another and also to put their selfish interests aside for the common good. As a result some of the disputants were willing to change their terms and claims to accommodate the other disputant. One respondent claimed to have been very happy with the process and the outcome even though they did not get everything they wanted.

Under the outcomes theme, the researcher found that the disputants were willing to compromise on the outcomes of the process and that they were happy with the outcomes even though they did not get everything that they had set out in their original terms. The researcher found that the disputants changed their perspectives about their issues and decided to change the terms for an outcome that was favorable to both disputants. The researcher also found that sometimes the disputants were dissatisfied by the outcomes as one respondent indicated. Another respondent though indicated that the process was satisfactory and that they did not spend a lot of money on it.

5.2.3 Communication Competencies

The third objective of the study was to establish the interpersonal communication tools used by mediators in the ADR process. This was guided by the theme communication competencies which was further subdivided into listening skills, questioning and reframing.

The researcher found that the mediators had good listening skills so as to understand the core issues that the disputants had. The respondents indicated that a good mediator had listening skills that included noticing nonverbal cues as well as detached empathy

as one respondent expressed that the mediator should have empathy but not sympathy so as to eliminate bias. In one of the observations, the mediator was keenly listening and he noticed that there was subtext in a statement made by one of the respondents and that led to the mediator questioning the disputant for clarity on the matter.

The researcher also found that the mediators needed questioning skills for enhanced clarity as explained in the previous paragraph. The mediator asked a probing question for clarification on the issue at hand. In the same observation, when one of the disputants was quiet, the mediator interjected and asked why the disputant was quiet and also asked the disputant if they had anything to say in response to what the other disputant had said. The mediator was also demonstrating his skills at understanding nonverbal cues because he interpreted the silence as a potential problem area which if left unaddressed might have led to breakdown in communication.

The researcher also found out that mediators were supposed to keep their talking to a minimum and instead allow the disputants to talk to each other. One respondent said that the mediator should only talk when seeking clarity on an issue raised by one of the disputants or while asking a question to clarify the issues at hand or when the disputants had stopped talking and communication had stopped. In the observed case mentioned in the previous paragraph, the mediator spoke when one of the disputants had stopped talking and the mediator did this to encourage the disputant talking and ensure continual flow of communication.

This is also in line with the findings of this study where respondents indicated that mediators are not only referees who keep the disputants talking to each other respectfully but they also guide the communication between the disputants. The mediators in the observations are seen as playing a referee role when they set the rules for the mediation and also ensure that the disputants follow those rules. Whenever the disputants deviated from the rules, the mediators interjected to remind them the ground rules and also the real issues at hand. The mediator in observation 1 reminded the disputants to be respectful to one another. In observation 2 when it was clear that the disputants were not agreeing, the mediator asked to see them separately so as to avoid total communication breakdown.

The researcher also found that mediators should have reframing skills to better clarify issues and also to help the disputants to focus on the correct issues. In observation 1 the mediator reframed the issues in a clear and concise manner that not only demonstrated his superior listening skills but also brought the disputants to agreement as the disputants both agreed that the issues the mediator had outlined were in fact the correct issues.

5.3 Conclusion

From the data collected and analysed the researcher came to the conclusion that communication during mediation is what determines if the mediation intervention will be successful or not, both communication by the disputants and the role of the mediators in guiding the communication process; mediation is a useful tool for conflict resolution; and lastly disputants are willing to compromise and find lasting solutions if they are guided to communicate on the proper issues.

5.3.1 Communication during Mediation

From the data collected and analysed, the researcher concluded that the communication process in mediation is what determines the overall success of the mediation process. The mediators in both observations encouraged the disputants to talk to each other so that they could get better clarity on their issues. The mediators guided the disputants to communicate in a manner that enabled them to get to their core issues and to not focus on the past but on their core issues for an amicable solution. The key informants indicated that because the disputants spoke to each other during mediation, there was more openness and self-articulation and thus there was better communication. The mediators also help the disputants communicate better by listening and reframing issues for better clarity by the disputants. This was observed in observation 1 where the mediator reframed the issues and asked the disputants if those were in fact the issues to which the disputants agreed.

The researcher also concluded that the role of the mediators in guiding the communication process was very crucial to mediation. The mediators are responsible for ensuring that communication flows and that the communication taking place between the disputants is constructive communication that leads to the desired outcomes as opposed to disruptive communication that detracts from the issues at hand. When the disputants started using negative, disrespectful language, the mediator in

observation 1 reminded them to be respectful and also redirected their focus to the issues at hand thus ensuring constructive communication.

The mediator is also responsible for setting the rules that guide the communication process and ensuring that the disputants adhere to those rules as was observed in both observation cases where the mediators reminded the disputants of the ground rules when they had deviated from them. The mediator also guided the communication of the disputants towards the real issues at hand and the interests that both the disputants have. This was observed when the mediator directed the disputants towards the issues in both the observations when the disputants started to deviate from the issues.

The mediator also ensures that there is communication between the disputants by directing them to talk to each other. This was observed in both the observation cases where the mediators reminded the disputants to direct their concerns to each other and desist from addressing their concerns to them (the mediators). They encouraged the disputants to talk to each other. When there was silence, the mediator in observation 1 asked the disputant if they had anything to add. This was to ensure that the disputants kept talking to one another so that their issues can be addressed. The mediators also guide the disputants to set outcomes at the beginning of the session. In both the cases observed, the mediators reminded the disputants of the outcomes that they hoped for; which in both cases was the well-being of the children involved.

Thus the role of communication in mediation cannot be underestimated. The disputants talk to each other using rules set by the mediator so that they can better understand the issues between them. The role of the mediator also cannot be dismissed because the mediator guides the communication by use of the ground rules and ensuring that the rules are followed by the disputants. The mediator also guides the disputants to identify their issues so that they can be resolved. The mediators' role in ensuring proper communication and eventual resolution is very crucial.

5.3.2 Disputants Willingness to Compromise/ Perspective Change

From the data collected from the key informants, the researcher concluded that the disputants after going through the process of mediation are usually willing to compromise. This is brought about by the communication process that is inherent to the

mediation process that allows understanding to develop between the disputants leading to compromise.

The key informants indicated that they were willing to compromise after they went through the mediation process because they changed their perspectives on the issues at hand. They also indicated that they were happy and satisfied with their outcomes even when they did not get everything they wanted initially. With the mediators help through guided communication, the disputants are able to change their perspectives from negativity to positivity and thus achieve positive outcomes that involve compromise.

The mediation process helped the disputants consider the other person involved in the mediation and shift from their self-interests to mutual benefit. The key informants' indicated that mediation was not about rights but issues and interests of the disputants. Guided communication helped achieve this change in perspective from rights and demands to issues and real needs.

Thus, the researcher concluded that the disputants were willing to shift their perspectives, collaborate and compromise to find a solution that was beneficial to both the disputants.

5.3.3 Mediation as a Tool for Conflict Resolution

From the data collected and analysed, the researcher concluded that mediation is a useful tool for conflict resolution that should be utilised more by those seeking conflict resolution. The respondents interviewed claimed that after mediation they were able to identify their issues and focus on them to find appropriate solutions. The respondents claimed they were happy with the outcomes even when they did not get all they wanted from their original demands. One respondent spoke of changing perspective and shifting towards compromise and yet another respondent explained feeling happy and peaceful even though not all demands were met. From those responses it is clear to the researcher that mediation is a useful tool for conflict resolution that involves shifting perspective from rights to issues and interests.

The researcher also concluded that mediation can be a useful tool in reconciliation because from the Responses given, it emerged that disputants were willing to change their perspectives to accommodate the other disputant as well as compromise for common benefit. One of the respondents stated that in divorce proceedings, the couples

that seek mediation as a tool for conflict resolution end up dividing their property fairly between themselves and they sort out most of their issues including the custody of children before they proceed to court. This makes for an easier, less dramatic divorce process that takes only a short while to conclude because most issues are already sorted out. It also results in a win-win situation for both involved as well as the children involved. According to the same respondent, sometimes the couple, after going through mediation, chose to reconcile instead of divorcing.

5.4 Recommendations

Based on the findings, the researcher came up with various recommendations:

5.4.1 Awareness

From the study, mediation emerged as a tool for conflict resolution and fairness which can be useful for resolving interpersonal disputes before they escalate. More awareness of the Court Annexed Mediation as a strategy for conflict resolution should be created so that everyone can have a chance to have their problems mediated and resolved in a fair manner.

Mediation emerged as a communication strategy where a neutral third party assists disputants identify and focus on the issues and interests. It also emerged from the study that the process is not only a communication strategy but also as a tool for compromise which led to a fair outcome for the parties involved. It also emerged as a cheaper, less stressful and less adversarial process. The key informants reported feeling peaceful with the process as well as happy with the outcomes. Thus mediation should be a process that is readily available for everyone who wants to seek it out as a method for conflict resolution. There is not only need for awareness of the process but also better training for professionals in the field of mediation to increase its effectiveness.

5.4.2 Recommendations for Further Studies

The researcher identified research gaps for further research:

1. Studies should be carried out on the use of communication on other ADR processes in Kenya.

REFERENCES

- Abadi, S. H. (2011). The Role of Dispute Resolution Mechanisms in Redressing Power Imbalances. *A Comparison between Negotiation, Litigation and Arbitration, Effectius Newsletter*, Issue 13, p3.
- Adejimola, A. S. (2009). Language and Communication in Conflict Resolution. *Journal of Law and Conflict Resolution*, Vol. 1(1), pp 1-9.
- Adler, R. B., & Rodman, G. (2006). *Understanding Human Communication 9th ed.* . New York: Oxford University Press.
- Assefa, H. (1996). *Peace and Reconciliation as a Paradigm: A Philosophy of Peace and its implication for Conflict, Governance and Economic Growth in Africa*. Nairobi: East African Educational Publishers.
- Astor, H., & Chinkin, C. M. (2002). *Dispute Resolution in Australia*, 2nd edn. LexisNexis: Butterworths.
- Atmowardoyo, H. (2018). Research Methods in TEFL Studies: Descriptive Research, Case Study, Error Analysis, and R & D. *Journal of Language Teaching and Research*, 197-204.
- Baya, S. Y. (2009). A Case Study of Indigenous mechanisms of conflict resolution among the Mijikenda, University of Nairobi - East Africana Collection. *Communication and Conflict*.
- Becker, G. (1997). *The Gift of Fear: Survival Signals that Protect Us from Violence*. London: Bloomsburry.
- Bennet, D., & Hughes, S. (2005). *The Art of Mediation N.P.* The National Institute for Trial Advocacy, INC. (2nd ed.).
- Bhattacharjee, A. (2012). *Social Science Research: Principles, Methods, and Practices* 2nd ed. Florida, USA: University of South Florida Tampa.
- Bingham, L. B., & Hallberlin, C. J. (2009). Dispute System Design and Justice in Employment Dispute Resolution. Mediation at the Workplace. *Harvard Negotiation Law Review*, 14(1), 1-50.
- Britz, S. (2018). *Mandatory mediation as a dispute resolution mechanism in the civil justice system* Samantha Britz 2018. Retrieved July 3, 2019
- Bullen, B. A. (2012). *Mediation: A Training & Resource Guide for the Mediator*. Trafford Publishing.
- Cees B.M. Van Riel, C. J. (2007). *Essentials of Corporate Communication*. Routledge.

- Chowdhury, J. A. (2012). *Gender Power and Mediation: Evaluative Mediation to Challenge the Power of Social Discourses*. Cambridge Scholars Publishing.
- Cornelissen, J. (2004). *Corporate Communications: Theory and Practice*. London: Sage.
- Cornelissen, J. (2011). *Corporate Communication: A Guide to Theory and Practice* (third ed.). Los Angeles: Sage Publications Ltd.
- Cresswell, J., & Plano, C. V. (2011). *Designing and Conducting Mixed Method Research*. 2nd ed . US: Sage; Thousand Oaks,.
- Creswell, J. (2007). *Qualitative Inquiry & Research Design: Choosing Among Five*.
- Creswell, J. W. (2009). *Research Design: Qualitative, Quantitative and Mixed Methods Approaches* 3rd ed. p 13. London: Sage Publications, Inc. .
- Creswell, J. W. (2012a). *Educational Research: Planning, Conducting, and Evaluating Quantitative and Qualitative Research* (4th ed.). Pearson Publications.
- Dawson, C. (2002). *Practical Research Methods A user-friendly guide to mastering Research Techniques and Projects*. United Kingdom: How to Books LTD.
- Demmers, J. (2012). *Theories of Violent Conflict: An Introduction*. London: Routledge.
- Denscombe, M. (2014). *Good research guide: for small-scale Social Research Projects* 5th ed. Maidenhead, England: McGraw-Hill/Open University Press.
- Doyle, M. (2012, June). *Why use ADR? Pros & cons*. Retrieved from <http://asauk.org.uk/wp-content/uploads/2013/08/Why-use-ADR.pdf>
- Elias, T. (1956). *The Nature of African Customary Law*. Manchester: University Press.
- Epstein, J., & Epstein, S. (2006). , 2006. *The Colorado Lawyer Alternative Dispute Resolution: Co-Mediation, Vol 35, No 6 p 21*.
- Fiadjoe, A. (2004). *Alternative Dispute Resolution: A Developing World Perspective*. Britain: Cavendish Publishing Limited.
- Fisher, R., & Ury, W. (1991). *Getting to Yes: Negotiating Agreement Without Giving in*. Boston, New York: Houghton Mifflin Company.
- Fleetwood, K. L. (1987, December). *The Conflict Management Styles and Strategies of Educational Managers*. Retrieved June 24, 2019
- Fraenkel, J., & Wallen, N. (1990). *How to Design and Evaluate Research in Education*. McGraw Hill.

- Garvey, J., & Craver, C. (2013). (2013) *Skills & Values: Alternative Resolution: Negotiation, Mediation, Collaborative Law and Arbitration*. Carolina: Academic Press, LLC.
- Goffman, E. (1969). *Presentation of Self in Everyday Life*. London: Allen Lane.
- Gramatikov, M. (Ed.). (2012). *Costs and Quality of Online Dispute Resolution: A Handbook for Measuring the Cost and Quality of ODR*. Maklu Publishers.
- Gramberg, B. (2006). Rhetoric and Reality of Workplace Alternative Dispute resolution. *Journal of Industrial Relations*.
- Griffin, E. (2012). *A First Book At Communication Theory*. New York: McGraw-Hill.
- Hardy, S., & Rundle, O. (2010). *Mediation for Lawyers*. CCH Australia Limited.
- Hargie, O. D. (2004). *Communication Skills for Effective Management*. Hampshire: Palgrave MacMillan, St. Martin's Press.
- Hargie, O., & Dickson, D. (2004). *Skilled Interpersonal Communication*. London: Routledge.
- Hartley, P. (1999). *Interpersonal Communication*, 2nd Ed., pp 21-27. New York: Routledge.
- Hartley, P. (1999). *Interpersonal Communication*. London: Routledge.
- Ingleby, R. (1993). Court Sponsored Mediation: The Case Against Mandatory Participation. *Court Sponsored Mediation*, 441-451.
- Issaka, K. (2007). Conflict Prevention and Early Warning Mechanisms in West Africa. A Critical Assessment of Progress. *Africa Security Review*, vol. 16.
- Jabareen, Y. (2009) Building a Conceptual Framework: Philosophy, Definitions, and Procedure. *International Journal of Qualitative Methods*. International Institute for Qualitative Methodology pp 49-58
- Jeong, H. (2008). *Understanding Conflict and Conflict Analysis*. Los Angeles.
- Joseph, J., & Taylor, T. (2014). *Ideologies of Language*. London and New York: Routledge.
- Jourand, S. M. (1971). *The Transparent Self*. New York: Van Nostrand Reinhold.
- Keith, D. (1981). *Human Relations at work*. New Delhi: Tata McGraw-Hill Book Company.

- Kenya Law. (2010). *Constitution of Kenya*, 2010, articles 48, 159(2)(c). Nairobi: National Council for Law Reporting.
- Kenyatta, J. (1938). *Facing Mount Kenya*, . London: Harvil Sector.
- King, M. F., Batagol, B., & Hyams, R. N. (2009). *On Adversarial Justice*, Annandale, N.S.W.: . Sydney: Federation Press.
- Kothari, C. R. (2004). *Research Methodology: Methods and Techniques*. New Delhi: New Age International (P) Ltd, Publishers.
- Kriesberg, L. (2007). *Constructive Conflicts: From Escalation to Resolution* (3 ed.). Washington: Rowman & Littlefield Publishers, Inc.
- Lacey, A., & Luff, D. (2007). *Qualitative Research Analysis*. The NIHR RDS. Midlands/Yorkshire.
- Lee, J., & Lim, M. (Eds.). (2016). *Contemporary Issues in Mediation*, Volume 3. p 151 World Scientific Publishing Co. Pte. Ltd
- Littlejohn, S. W., & Domenici, K. (2001). *Engaging Communication in Conflict: Systematic Practice*. London: Sage Publications, Inc.
- Locke, L. S., & Silverman, S. (1987). *Proposals That Work: A Guide for Planning Dissertations and Grant Proposals*. Newbury Park, CA. Sage Publications.
- Marnewick, C. (2015). *Mediation Practice in the Magistrates Court*. . South Africa: LexisNexis.
- Masaviru, M. (2016). Self-Disclosure: Theories and Model Review. *Journal of Culture, Society and Development*, 18, 43-47.
- McQuail, D. (2010). *McQuail's Mass Communication Theory* (6th ed.). London: SAGE Publications Ltd.
- Meadow, M. (2009). *Maintaining ADR Integrity. Alternatives to the High Cost of Litigation*, Vol 1.
- Mensah, L. (2010, May 17). *Communications in Administration: Advantages and Challenges for Effective Corporate Management*.
- Merriam, S. (1988). *Case Study Research in Education. A Qualitative Approach*. San Francisco: Jossey-Bass Inc., Publishers.
- Mnookin, R. (1998). *Alternative Dispute Resolution*. USA: Harvard Law School.

- Mohajan, H. (2018). *Qualitative Research Methodology in Social Sciences and Related Subjects*. MPRA, 23-48.
- Moore, C. (2003). *The Mediation Process: Practical Strategies for Resolving Conflict* 3rd Ed. US: Jossey Bass.
- Moser, A., & Korstjens, I. (2017). *European Journal of General Practice*. Series: Practical Journal to Qualitative Research: Sampling, Data collection and Analysis, 9-18.
- Moser, A., & Korstjens, I. (2017). Practical Guidance to Qualitative Research. *European Journal of General Practice*, 271-273.
- Mugenda, O., & Mugenda, A. (2003). *Research Methods, Quantitative & Qualitative Approaches*. Nairobi, Kenya: African Centre for Technology Studies, ACTS press.
- Muigua, K. (2015). *Alternative Dispute Resolution and Access to Justice in Kenya*. Kenya: Glenwood Publishers Limited.
- Muigua, K. (2015). Effective Justice for Kenyans: Is ADR Really Alternative? *Law Society of Kenya*, Vol. II (1), 49-62.
- Mureithi, T., Mwanja, D., & Mwinzi, D. (2016). The Influence of Financial Resources on the Integration of the National Goals of Education. *International Journal of Education and Research*, 51-62.
- Nagel, S. (2002). *Public Policy Studies*. New York: Nova Science Publishers Huntington.
- Newman, W., & Summer, C. (1977). *Process of Management in Doctor, R. and A. Doctor, Principles and Practice of Business Communication*. Bombay: Sheth Publishers.
- Novinger, T. (2001). *Intercultural Communication: A Practical Guide* (first ed.). USA: University of Texas Press, Austin.
- Okon, E. E. (2012). Religion as Instrument of Socialisation and Social Control. *European Scientific Journal*, 8 (26).
- Okon, E. E. (2012). Religion, Culture and Communication. *American Journal of Social Issues & Humanities*: , Vol. 2(6) pp 433-440.
- Pandey, P., & Pandey, M. M. (2015). *Research Methodology: Tools and Techniques*. Bridge Center.

- Patton, M. (2002). *Qualitative Research and Evaluation Methods* 3rd ed. US: Sage Publications; Thousand Oaks,.
- Pondy, L. (1967). Concepts and Models Administrative Science Quarterly Vol. 12, No. 2. *Organizational Conflict*, pp. 296-320.
- Pope, C., & Mays, N. (2008). *Qualitative Research in Health Care*, 2nd edn . BMJ Books.
- Ramsbotham, O. W., & Miall, H. (2011). *Contemporary Conflict Resolution 3rd Edn*. United Kingdom: Polity Press.
- Rao, M. S. (2010). *Soft Skills - Enhancing Employability: Connecting Campus with Corporate*. New Delhi, India: I. K. International Publishing House Pvt. Ltd.
- Riel, V., & Fombrun, C. J. (2007). *Essentials of Corporate Communication: Implementing Practices for Effective*. Oxon: Routledge.
- Rodman, R. B. (2009). *Understanding Human Communication* (10 ed.). New York: Oxford University Press.
- Roger Fisher, W. U. (1991). *Getting to Yes: Negotiating Agreement Without Giving in*. Boston/New York: Houghton Mifflin Company.
- Rovine, A. W. (Ed.). (2013). *Contemporary Issues in International Arbitration and Mediation: The Fordham Papers 2012*. Boston: Martinus.
- Ruto, P., Adan, M., Rabar, M. I., & Karimi, M. (2004). *Traditional Conflict Resolution Mechanisms*. Pokot, Turkana, Samburu and Marakwet, ITDG-EA, Nairobi. Indigenous Democracy.
- Slack, T. &. (2006). *Understanding Sport Organizations: The Application of Organization Theory* (2 ed.). Champaign, IL: Human Kinetics.
- Solosi, I. (2015). *Mediation Skills and Process*. Northern Virginia Mediation Service.
- Steiberg, S. (2007). *An Introduction to Communication Studies*. South Africa: Juta & Co. Cape Town.
- Sternlight, J. R. (2008). *Dispute Resolution and the Quest for Justice*. *Dispute Resolution Magazine*, Vol 14.
- Stone, K. (2005). *Alternative Dispute Resolution*. *Encyclopedia of Legal History*, Stan Katz, ed Oxford University Press.
- Sutton, J., & Austin, Z. (2015). *Qualitative Research: Data Collection, Analysis, and Management*. *Canadian Journal of Hospital Pharmacy*, 226-231.

- Twyford, J. 2. (2005). Is the Mediation Process Just. *Construction Information*, Vol 7.
- USC Libraries. (n.d.). *Organizing Your Social Sciences Research Paper: Writing Field Notes Retrieved July 03, 2019, from University of Southern California: <https://libguides.usc.edu/writingguide/fieldnotes>*
- Wahab, A. A. (2013). *Court Annexed and Judge-Led Mediation in Civil Cases: The Malaysian Experience*. Retrieved July 3, 2019, from <http://vuir.vu.edu.au/24331/1/Alwi%20Abdul%20Wahab.pdf>
- Watzlawick, P. B. (2011). *Pragmatics of Human Communication: A Study of Interactional Patterns, Pathologies, and Paradoxes*. New York, NY: W. W. Norton.
- Webel, C., & Galtung, J. (2007). *A Handbook of Peace and Conflict Studies*. London & New York: Routledge.
- West, R. &. (2009). *Understanding Interpersonal Communication: Making Choices in Changing Times* (2 ed.). (Eckman, Ed.) Wadsworth: Lyn Uhl.
- Wiley, J., & Sons. (2004). *A History of Alternative Dispute Resolution: The Story of Political, Cultural and Social Movement*. USA: Jossey-Bass.
- Wilmot, W. W. (2011). *Interpersonal Conflict* (Vol. 8). New York: McGraw-Hill.
- Wolcott, H. (1994). *Transforming Qualitative Data*. USA: Sage.
- Wood, T. (2016). *Interpersonal Communication*. 8th ed. Cengage Learning.
- Wysocki, R. K. (2009). *Effective Project Management: Traditional, Agile, Extreme*. Indianapolis, IN: Wiley Publishing.
- Zikmund, W. G., Babin, B. J., Carr, J. C., & Griffin, M. (2013). *Business Research Methods* (9th ed.). South-Western: Cengage Learning.

APPENDICES

Appendix 1: Interview Guide

Judicial officers

1. How is CAM setting different from the court room?
2. Does the setting of CAM impact on the way disputants express themselves?
3. Does the language used in CAM have any impact on how the disputants express themselves?
4. CAM is conducted in private, does this influence the way the disputants articulate the issues?
5. What are the expectations of the disputants in CAM?
6. Are the disputants likely to change these expectations by the end of the CAM?
7. What are some of the possible outcomes of CAM?
8. Are disputants always satisfied with the outcomes at the end of CAM?
9. What are the communication competences/skills that should a mediator have?
10. How do this skills assist in the process of CAM?
11. In your opinion, should mediators have some knowledge in the area of the case they are mediating?

Mediators

1. How is CAM setting different from the court room?
2. Does the setting of CAM impact on the way disputants express themselves?
3. As a mediator how do you facilitate communication between disputants in the process of CAM
4. Does the language used in CAM have any impact on how the disputants express themselves?
5. CAM is conducted in private, does this influence the way the disputants articulate the issues?
6. What are the expectations of the disputants in CAM?
7. Are the disputants likely to change these expectations by the end of the CAM?
8. What are some of the possible outcomes of CAM?
9. Are disputants always satisfied with the outcomes at the end of CAM?
10. What are the communication competences/skills that should a mediator have?
11. How do this skills assist in the process of CAM?
12. In your opinion, should mediators have some knowledge in the area of the case they are mediating?

Disputants

1. How is CAM setting different from the court room?
2. Does the setting of CAM impact on the way disputants express themselves?
3. How does the mediator facilitate communication between disputants during CAM?
4. Does the language used in CAM have any impact on how the disputants express themselves?
5. CAM is conducted in private, does this influence the way the disputants articulate the issues?
6. What are the expectations of the disputants in CAM?
7. Are the disputants likely to change these expectations by the end of the CAM?
8. What are some of the possible outcomes of CAM?
9. Are disputants always satisfied with the outcomes at the end of CAM?
10. What are the communication competences/skills that should a mediator have?
11. How do these skills assist in the process of CAM?
12. In your opinion, should mediators have some knowledge in the area of the case they are mediating?

Appendix II: Observational Protocol

Descriptive	Reflective

Appendix III: Consent form - Key Informant

“My name is *Catherine Magiri Moni* I am a *graduate student, at the School of Journalism and Mass Communication at the University of Nairobi*. I am inviting you to participate in a research study. Participation in the study is voluntary, you may choose to participate or not. Below is an explanation of the study. Feel free to ask questions that you may have about the study; I will be willing to explain in detail”.

“I am interested in learning more about *Alternative Dispute Resolution - Court Annexed Mediation*. This will take approximately 30 minutes of your time. All information will be kept *anonymous and confidential*. This means that your name will be concealed and no one except me will know about your answers. I will allocate a number to your replies; in any presentations that I make or in the research documents only I will have the mandate to indicate which number is assigned to which participant. In the documents I write or use; I will anonymise by using initials and I will not disclose information about your work place, place of residence, and any other personal information about you which could lead to your identification.

The value of this research is that you will be assisting me to understand *whether informality of Court Annexed Mediation increases or decreases the disputants self-expression; whether disputants change their terms because of the mediation process; Examine communication skills/tools used by the mediators as they facilitate communication between the disputants*.

Participant

All of my concerns and questions about this study have been responded to. I willingly participate in this study. I confirm that I am above 18 years of age.

1. Participant's name

2. Participant's signature

Researcher's name

Researcher's signature

date

Appendix IV: Consent form - Observer

“My name is *Catherine Magiri Moni* and I am a *graduate student, at the School of Journalism and Mass Communication at the University of Nairobi*. I am inviting you to participate in a research study. Participation in the study is voluntary, you may choose to participate or not. below is an explanation of the study. Feel free to ask questions that you may have about the study; I will be willing to explain in detail.

“I am interested in learning more about *Alternative Dispute Resolution - Court Annexed Mediation*. I will sit in this mediation session as an observer for the whole duration of the session. All that is observed will be kept *anonymous and confidential*, this means that your name will be concealed and no one except me will know about your answers. I will allocate a number to your replies, in any presentations that I make or in the research documents only I will have the mandate to indicate which number is assigned to which participant. In the documents I write or, use, I will anonymise by using initials and will change information about your work place, place of residence, and any other personal information about you which could lead to your identification.

“The benefit of this observation is that you will be assisting us understand *whether informality of Court Annexed Mediation increases or decreases the parties self-expression and we will be able to examine the different communication skills/tools used by the mediators as they facilitate communication between the parties*.

Participant

All of my concerns and questions about this study have been responded to. I willingly participate in this study. I confirm that I am above 18 years of age.

1. Participant's name

2. Participant's name

2. Participant's signature

2. Participant's signature

Observer's name

Observer's signature

date

Appendix V: Certificate of Fieldwork



UNIVERSITY OF NAIROBI
COLLEGE OF HUMANITIES & SOCIAL SCIENCES
SCHOOL OF JOURNALISM & MASS COMMUNICATION

Telegram: Journalism Varsity Nairobi
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P.O. Box 30197-00100
Nairobi, GPO
Kenya

REF: CERTIFICATE OF FIELD WORK

This is to certify that all corrections proposed at the Board of Examiners' meeting held on 26/07/2019 in respect of M.A./Ph.D final Project/Thesis defence have been effected to my/our satisfaction and the student can be allowed to proceed for field work.

Reg. No: K50/88241/2016

Name: MONI CATHERINE MAGURI

Title: AN ANALYSIS OF ALTERNATIVE DISPUTE RESOLUTION AS A COMMUNICATI
STRATEGY IN CONFLICT RESOLUTION: A CASE STUDY OF COURT ANNEXED
MEDIATION MILIMANI LAW COURT FAMILY DIVISION

Dr Eliza Mwangi
SUPERVISOR

[Signature]
SIGNATURE

13/8/2019
DATE

Dr Samuel Siringi
PROGRAMME COORDINATOR

[Signature]
SIGNATURE

16/9/2019
DATE

Prof Ndethi Ndethi
DIRECTOR

[Signature]
SIGNATURE/STAMP

18.9.19
DATE



Appendix VI: Introduction Letter



UNIVERSITY OF NAIROBI
COLLEGE OF HUMANITIES & SOCIAL SCIENCES
SCHOOL OF JOURNALISM & MASS COMMUNICATION

Department: Journalism Faculty Nairobi
Telephone: 254 020 491 9000 Fax: 254 020 26681
Director's Office: 254 020 491 2294 (Director Line)
Telex: 23902 Fax: 254 020 228188
Email: info@uoi.uoi.ac.ke

P.O. Box 30197
Nairobi
Kenya

OUR REF:
YOUR REF:

DATE: 15 August, 2019

TO WHOM IT MAY CONCERN

RE: MONI, CATHERINE MAGIRI - K50/88241/2016

This is to confirm that the above named is a bona fide student at the University of Nairobi, School of Journalism and Mass Communication registered for Master of Arts degree in Communication Studies.

Ms. Moni has completed her course work and is currently going to collect data for her research project leading to a Master of Arts Degree in Communication Studies.

Any assistance accorded to her will be highly appreciated.



Immaculate Akello
Administrative Assistant
School of Journalism & Mass Communication

/s/m

Appendix VII: Request to Collect Data

Catherine Magiri Moni
P.O. Box 8604 – 00300
Nairobi

September 4, 2019

Chief Registrar of The Judiciary
Supreme Court Building
City Hall Way, Nairobi
P.O. Box 30041 – 00100,
Nairobi



Dear Madam,

**RE: PERMISSION TO COLLECT DATA FROM COURT ANNEXED
MEDIATION**

The above matter refers.

I am currently undertaking my Masters of Arts Degree in Communication studies at the University of Nairobi.

As per the attached letter, I am in the process of collecting data for my research “An Analysis of ADR as a Communication Strategy in Conflict Resolution: A Case Study of Court Annexed Mediation – Milimani Law Courts Family Division”.

I write to request your office to allow me collect data for the study. I have attached a list of the intended respondents as well as an observation guide to be used for the study. The data collected will only be used for the purpose of my study. I promise to adhere to all the guidelines that will be issued by your office.

Thank you for continued support.

Catherine Magiri Moni
K50/88241/2016

Appendix VIII: Permission to Collect Data

Re: PERMISSION TO COLLECT DATA FROM COURT ANNEXED MEDIATION

Monday, September 23, 2019 11:23 EAT
person
caroline.kendagor@court.go.ke
caroline.kendagor@court.go.ke
To
[me](#)

Greetings Your Honour.

I confirm that the request can be accommodated at the Court Annexed Mediation Secretariat, Milimani.

Kind regards,
Caroline Kendagor

DR Mediation

*Facilitate
request.
@aces
23/09/19*

Appendix IX: Originality Report

Document Viewer

Turnitin Originality Report

- Processed on: 13-Nov-2019 11:08 EAT
- ID: 1212887553
- Word Count: 30556
- Submitted: 1

An analysis of alternative Dispute resolution... By Moni Magiri
K50/88241/16

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UNIVERSITY OF NAIROBI
DIRECTOR
27 NOV 2019
SCHOOL OF JOURNALISM & MASS COMMUNICATION

Nelson Akumu
27.11.2019

Appendix X: Certificate of Corrections



UNIVERSITY OF NAIROBI
COLLEGE OF HUMANITIES & SOCIAL SCIENCES
SCHOOL OF JOURNALISM & MASS COMMUNICATION

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Director's Office: +254-204913208 (Direct Line)
Telex: 22095 Fax: 254-02-245666
Email: director-soj@uonbi.ac.ke

P.O. Box 30197-00100
Nairobi, GPO
Kenya

REF: CERTIFICATE OF CORRECTIONS

This is to certify that all corrections proposed at the Board of Examiners meeting held on 18th / 10 / 2019 in respect of M.A/PhD. Project/Thesis defence have been effected to my/our satisfaction and the project/thesis can be allowed to proceed for binding.

Reg. No: K50/88241/2016

Name: MONI CATHERINE MAGIRI

Title: AN ANALYSIS OF ALTERNATIVE DISPUTE RESOLUTION AS A COMMUNICATION STRATEGY IN CONFLICT RESOLUTION: A CASE STUDY OF COURT ANNEXED MEDIATION, MILIMANI COURTS - FAMILY DIVISION

Dr Mokuu
SUPERVISOR

[Signature]
SIGNATURE

13/11/2019
DATE

Dr Samuel Siringi
ASSOCIATE DIRECTOR

[Signature]
SIGNATURE

26/11/2019
DATE

Prof. Nleth. Nleth.
DIRECTOR

[Signature]
SIGNATURE/STAMP

27.11.2019
DATE

