



SUPREME COURT (MEDIATION) RULES, 2017

RULES MADE BY THE CHIEF JUSTICE UNDER SECTION 236

OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999

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In the exercise of the powers conferred upon me by Section 236 of the Constitution of the Federal Republic of Nigeria 1999, I, Walter S.N. Onnoghen, GCON, Chief Justice of Nigeria, do hereby make the following Rules –

1. Preamble

The overriding objective of the Supreme Court Mediation Centre, which is established to promote mediation and such other alternative dispute resolution mechanisms towards enhancing the administration of justice and speedy resolution of disputes, shall be to:

- (1) promote a just and speedy determination of every civil and criminal appeals, action, cause or matter as the case may be, which has been brought and is pending before the Court;
- (2) assist the parties in reaching an expeditious resolution of their disputes in all good faith in a fair and efficient manner;
- (3) encourage disputing parties and their Counsel to strive towards reducing the cost of litigation and associated delays thereby facilitating a fair and just resolution of disputes with limited animosity amongst parties;
- (4) promote mediation and other alternative dispute resolution mechanisms as veritable tools of dispute resolution in the Court and the judiciary as a whole; and
- (5) improve access to justice, user confidence in the court system and afford the Justices ample time for such matters or issues that are best resolved through litigation.

2. Citation

These Rules may be cited as the Supreme Court (Mediation) Rules, 2017.

3. Interpretation

In these Rules, unless otherwise expressly provided or where the context so requires:

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| "Act" | means the Supreme Court Act, 1960 or any other Act amending or replacing it; |
| "ADR" | means alternative dispute resolution |

"Administrator"	means the chief executive officer, not below the rank of a Deputy Chief Registrar (DCR Rank) who is appointed by the Chief Justice, and shall be responsible for managing the day-to-day operations of the Court Mediation Centre;
"Case Manager"	means the Dispute Resolution Officer administering cases at the Centre;
"Case Screening"	means screening of new and existing appeals including such other causes or matters filed at the Registry of the Court to determine their suitability for mediation;
"Centre or SCMC"	means the Supreme Court Mediation Centre;
"Centre Registrar"	means the Head of the Centre Registry or such other person as may be appointed by the Chief Justice;
"Centre Registry"	means the Registry that collates matters referred to the Court Mediation Centre and ensures proper case management;
"Chief Justice"	means the Chief Justice of Nigeria;
"Constitution"	means the Constitution of the Federal Republic of Nigeria, and includes any amendment thereto or modification thereof or any enactment replacing it;
"Court"	means the Supreme Court of Nigeria;
"Co-Mediator"	means a professional and technical expert (legal and non-legal practitioner) to co-mediate the dispute between the parties and give expert opinion or support to the Mediation Panel;
"Mediation Week"	means the period of time designated by the Chief Justice when matters, causes or actions already pending before the Court may be screened and mediated upon towards enhancing the administration of justice.
"Party"	means either the appellant or the respondent, or the plaintiff or the defendant as the case may be;

"Parties"	means both the appellant and the respondent, or plaintiff and the defendant as the case may be;
"Referral"	means an order made by the Court directing parties to attend mediation or request from the parties or the Registrar after due case screening;
"Registrar"	means the Chief Registrar of the Court and includes any other officer of the Registry working under him;
"Rules"	means the Court Mediation Rules or any amendments thereto or any other additional Rules made under the Constitution and include the Schedules appended to these Rules.

4. Application of Rules

(1) These Rules shall apply to:

- a. Every civil and criminal appeal, action, cause or matter that the parties may, on their own, refer for mediation;
- b. All actions, causes or matters over which the Court is conferred with original jurisdiction whether by the Constitution, the Supreme Court (Additional Original Jurisdiction) Act and such other Acts as may be enacted or amended by the National Assembly.

5. Referral for Mediation

- (1) Upon the entry of an appeal, or filing of an action, the Registry may, where the parties unilaterally indicate an interest in pursuing Mediation, and in appropriate circumstance refer such appeal, action, cause or matter to the Court Mediation Centre.
- (2) The Court may *suo motu* or upon the application of any or both party, refer civil and criminal appeals, action, causes or matters pending before it to the Court Mediation Centre.

6. Appointment Of Mediators/Co-Mediators

In appropriate circumstances, the Centre shall, upon the approval of the Chief Justice of Nigeria, appoint as Mediator, any person whose qualification, technical expertise, experience or specialization is required to perform effectively as a Mediator. In addition, the Centre shall, upon the approval of the Chief Justice of Nigeria, appoint such person whose technical

expertise, experience or specialization may be necessary towards supporting the Mediator in the resolution of the dispute.

7. Powers of Mediator

- (1) The Mediator shall endeavour to have the Parties resolve their dispute in a fair and efficient manner;
- (2) For the purpose of sub-rule (1), the Mediator shall have all necessary powers to facilitate mediation between and among the Parties to the dispute in order to enable them reach an agreement so as to dispose of the matter referred to the Centre;
- (3) In conducting mediation sessions, the Mediator shall regulate the proceedings in such manner as it thinks fit whilst adopting an informal and flexible approach;
- (4) The Mediator shall, in conducting the mediation, treat the parties fairly and equally, taking into account the facts and circumstances of the matter;
- (5) The Mediator may, at any time, offer guidance and help to the Parties where he or she considers that such a course is desirable to achieve a fair and prompt settlement of the dispute.

8. Role of Mediator

Without derogation from the generality of rule 7, the Mediator;

- a. shall endeavour to do everything necessary to help the Parties to resolve the dispute in a fair and equitable manner;
- b. may, where necessary, conduct joint or separate meetings with the Parties and may make recommendations for a settlement of the dispute;
- c. may, at the request of a Party, conduct a private meeting to the exclusion of every other person and may in the course of that meeting express, without prejudice, its views on the dispute;
- d. may, where the services of an expert is required on a technical matter, after consultation with the parties, request the appointment of an expert whose advice shall be given in an independent and fair manner and the costs for such services shall be as the Centre may direct;

- e. may make a written request to any third party having an interest in the matter to attend the mediation where it considers that the participation of the third party may assist in resolving the dispute; and
- f. may make a written request to any Party to disclose or produce any exhibit, document or information where it considers same necessary for the resolution of the dispute.

9. Role of Co-Mediator

Without derogation from the provisions of Rules 7 and 8, the Co-Mediator shall:

- a. provide adequate support to the Mediator who shall at all times lead the mediation session and direct efforts towards resolving the dispute between the parties;
- b. provide technical assistance to the Mediator in preparation for the mediation sessions and the parties in the course of mediation;
- c. avail the Mediator and the parties with his technical expertise in such circumstances that may become necessary towards resolving the dispute; and
- d. cooperate and work in concert with the Mediator in an effort to amicably resolve the dispute between the parties.

10. Notice of Mediation

- (1) The Centre shall, within 7 days from the date on which the matter is referred pursuant to rule 5, notify each party in writing of commencement of the mediation process via electronic mail, facsimile, mobile telephone or such other mode of communication as considered expedient by the Centre;
- (2) A notice issued under sub-rule (1) shall refer each party to rules 10, 12, 13 and 14 and shall state the date, time and place of the first mediation session, which shall be not later than 21 days from the date of the notice;
- (3) Where a party to the dispute has elected that notice be served on him through the office of his Legal Practitioner, the Centre may cause the notice to be so served in the manner as specified in sub-rule (1) and such service shall be deemed to be good service on that party.

11. Mediation Sessions

- (1) Each mediation session shall be conducted at such place and at such time as the Centre or Mediator may direct, taking into account any wishes expressed by the parties, and the

Mediator may, for that purpose, allocate such time for each session as it considers reasonably necessary;

- (2) A party served with the notice of commencement of mediation under rule 10(1) shall attend each mediation session in person and if a corporate entity, the Managing Director or Executive Director or other designated officer with first-hand knowledge of the cause or matter; at the place and time specified in the notice, whether or not represented by a legal practitioner or any other authorized person.

12. Parties' Mediation Bundle

- (1) Without prejudice to the pleadings already made available on the Court record in respect of the dispute, each party to the mediation shall within such time as may be fixed by the Centre supply a Mediation Bundle which shall contain such information and documents as will be useful to the Mediator. The documents may include; summary statement of issues, signed confidentiality agreement and such material of utmost importance to the matter and the understanding of the Mediator.
- (2) Without prejudice to the generality of sub-rule (1), the Mediator may, in particular, request any or all the Parties to supply any further documents which may be material to the resolution of issues in dispute.

13. Failure to submit to mediation

Where it is not practicable to conduct mediation in a matter because a Party fails, without good cause, to comply with rule 10(2) or unreasonably refuses to participate in the mediation sessions, the Mediator shall include the non-compliance in its report and the Court shall give further direction.

14. Confidentiality

- (1) The mediation sessions shall take place in private and shall be confidential.
- (2) Every document produced or other form of information disclosed, or any proposal made by any Party specifically for the purpose of the mediation, shall be treated as having been produced, done, disclosed or made on a "*without prejudice*" basis and no privilege or confidentiality shall be deemed to have been waived by such disclosure.
- (3) All notes and records taken by or before the Mediator in connection with the mediation shall be confidential.

- (4) Nothing said or done in the course of the mediation shall be taken as the expression of an intention to affect, and shall not, in any way, affect the rights of a Party to the dispute or prejudice his position in the mediation sessions or any subsequent arbitration, adjudication or litigation, unless the Party makes a written statement to the contrary.
- (5) Where, in the course of a private meeting, a Party informs the Mediator that information is being disclosed to it in confidence, the Mediator shall not, without the consent of the Party, disclose such information to any other Party or his representative in the course of the mediation or to any other person at any other time.

15. Non-disclosure

- (1) Subject to sub-rule (2) and (3) of this Rule, no person shall disclose any information given, document produced, communication made, record kept, report produced or agreement reached in the course of the mediation.
- (2) Any disclosure otherwise prohibited under sub-rule (1) may be permitted where, for the purpose of the implementation or the enforcement of a settlement agreement, it becomes necessary to disclose any record, information, communication, document, report or any agreement reached during the mediation, same may be disclosed only:
 - a. with the written consent of the Parties concerned with the mediation; or
 - b. upon an order made by a Mediator.
- (3) Any disclosure otherwise prohibited under sub-rule (1) shall be permitted where:
 - a. required by law; or
 - b. made in confidence to law enforcement authority for the purpose of preventing imminent harm to any person.

16. Non-admissibility of evidence

- (1) The record of the mediation, any statement made at any mediation session, and any information obtained during the mediation, shall not be admissible as evidence in any Court proceedings, except where such record, statement or information is:
 - a. in proceedings instituted for the purpose of challenging the settlement agreement on the ground of fraud;

- b. to act as a bar to any subsequent action or proceedings brought in respect of the same subject matter which has been resolved by an agreement binding the parties.
- (2) Sub-rule (1) shall be without prejudice to the right of a party to make use of his own documents and information in any Court proceedings, provided no reference is made to the mediation proceedings in connection with or related to such documents and information.

17. Terms of Settlement

- (1) Upon the existence of elements of settlement acceptable to the Parties, the Mediator may, formulate the terms of a possible settlement and submit it to the Parties for their consideration.
- (2) The Parties may, having received the terms of the settlement from the Mediator under sub-rule (1), make their observations known immediately at the session or in exceptional circumstances within 48 hours to the Mediator.
- (3) Where a party fails to make observations within the allocated timeline, the Mediator shall proceed to finalise same and the parties and their Legal Practitioners shall be required to execute the agreement accordingly.
- (4) In the event that Parties make meaningful amendments to the terms of settlement by the Mediator, it may reformulate the terms of a possible settlement in the light of those observations and communicate them to the Parties.
- (5) The exercise described in sub-rule (4) may be repeated where the Mediator considers it necessary in order to reach a final settlement.

18. Settlement Agreement

- (1) Where the parties agree to settle one or more issues in dispute, the Mediator shall record the terms of the agreement in a Memorandum of Settlement.
- (2) Where the agreement reached is not in full and final resolution of all issues in dispute, the Memorandum of Settlement shall:
 - a. expressly state that the agreement is not in full and final resolution of all issues in dispute; and
 - b. clearly identify the outstanding issues.

- (3) A Memorandum of Settlement may include agreement for the disposal of the proceeding and of any other matter involving the same parties which is pending before any court including agreement as to costs in the mediation, the proceeding and any other pending matter.
- (4) A Memorandum of Settlement may include such consequential terms as the Mediator deems necessary and appropriate to give effect to the agreement.
- (5) A Memorandum of Settlement made under this Rule, shall be:
 - a. signed by the Mediator and all the parties to the Agreement;
 - b. filed by the Mediator at the Supreme Court through the Centre;
 - c. form part of the Record of Proceedings; and
 - d. binding on all the parties to the Agreement and become enforceable.
- (6) A Memorandum of Referral drafted under this Rule, shall be signed by the Mediator and all parties to the agreement.
- (7) Without prejudice to Rule 18, sub rules (3) and (4), once the Parties agree to a settlement, the Appeal shall be dismissed.

19. Time limit for Mediation

- (1) Subject to sub-rule (2), the mediation session shall not exceed a period of sixty (60) days from the date of the first session of mediation.
- (2) The Mediator may in exceptional circumstances extend the time limit specified in sub-rule (1) by a period of thirty (30) days or such further time as may be considered necessary for the favourable progression of the mediation.

20. Referral to Court

Upon the expiration of the period fixed for mediation, where the parties have not reached a full and final mediated agreement; the Mediator shall refer the matter back to the Court for hearing.

21. End of Mediation

- (1) The mediation shall end upon:

- a. The filing in the Supreme Court of a full and final Memorandum of Settlement under rule 18(1);
- b. The filing in the Supreme Court of a declaration of the Mediator after reasonable mediation between the parties has failed; or
- c. The referring of the matter back to the Court for hearing under rule 20;
- d. The filing in the Supreme Court, of a declaration signed by all parties and addressed to the Mediator, to the effect that the mediation is terminated;
- e. The filing in the Supreme Court Mediation Centre of a declaration of the Mediator that it is necessary for it to withdraw as mediator for personal reasons or because of a potential conflict of interest, in which case the Chief Justice will reassign the mediation to another Mediator.

22. Specialised Alternative Dispute Resolution Programs

- (1) In furtherance of the overriding objective of these Rules, the Chief Justice may designate a period of not less than one week in every legal year as the Mediation Week of the Court;
- (2) In addition to the foregoing, the Centre may upon the approval of the Chief Justice undertake such other specialised Alternative Dispute Resolution programs as may be considered appropriate towards enhancing the administration of justice and decongesting the dockets of the court;
- (3) The modalities and procedure of the specialized Alternative Dispute Resolution Programs shall be determined by the Administrator of the Centre, upon the prior approval of the Chief Justice.

23. Commencement

These Rules shall come into operation on Day of, 2017.

Made at Abuja this day of 2017.

Hon. Mr. Justice Walter S. N Onnoghen., GCON

Chief Justice of Nigeria