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The logo for the International Institute of Social Studies, featuring the word "Erasmus" in a stylized, cursive script.

**Mediation at the Road of Intersection:  
The case of Family Division, Kampala High Court**

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## **List of Acronyms**

ADR	Alternative Dispute Resolution
CEDAR	Centre for Arbitration and Dispute Resolution
FD	Family Division
ISS	Institute of Social Studies
JLOS	Justice Law and Order Sector
UPF	Uganda Police Force
USAID	United States Agency for International Development
MOJCA	Ministry of Justice and Constitutional Affairs

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## **Abstract**

The sociological understanding of mediation has received less attention in Uganda despite the rolling out of mandatory mediation to all civil cases. This research seeks to understand how parties around the negotiation table in mediation employ gender in its intersection with class and status to pursue their interests. It employs intersectionality, the tool of analysis that helps to understand how social interactions overlap and cause unique experiences.

Qualitative research methods using observations of mediation sessions and unstructured, informal interviews of participants was carried out at the Family Division of the High Court of Uganda at Kampala over a period of one month. Through analysis of mediation sessions attended and the interviews, the findings revealed that parties employ the social norms of gender, class and status during their negotiations to give themselves a positive position and the opponent party a negative one by framing themselves as; the good version of the symbols depicted while framing the other party as the bad version of the symbol, the disadvantaged and deserve protection and the opponent party framed as advantaged and not deserving protection, the right ones and other party as wrong one. The findings further reveal mediators employ legal norms in form of rules, together with social norms from their social background upon which they rely to interpret and process the mediation. The study therefore concludes with recommendation for a wider research on the topic in order to generalize the findings. It also recommends a research on the impact of the effect of social norms on the mediation outcome.

## **Keywords**

Mediation, gender, class, status, intersectionality, Family Division of High Court.



# **Chapter 1: Introduction and contextual background**

## **1.0. Introduction**

Society is characterised by conflicts arising out of daily interactions. Mediation is one of the means used to resolve these conflicts. In Uganda, mediation was first incorporated into the formal judicial system in 2007 through a pilot project on Commercial cases and later rolled out to all civil cases (including family cases), under the Judicature mediation rules (Ministry of Justice and Constitutional Affairs (MOJCA) 2013). This research is set to examine how parties involved in a mediation process and mediators employ gender in its intersection with class and status to pursue their interests. The research employs a qualitative method of research based on observations and unstructured informal interviews as tools of data generation. An intersectional lens is used to examine the interactions of the parties, including the mediators through speeches and gestures.

The research paper is structured in Five Chapters as follows; the first Chapter contains the introduction and background which starts the background information about mediation, the research problem, objectives and questions. The chapter also contains the method and sources of data generation, ethical considerations and the research focus. Chapter two of the study explains the concepts of gender, class, status and intersectionality which guided the analysis of the study. It also discusses the analytical framework employed in the study. Chapter three provides the law applicable to mediation at the Family Division (FD) of the High Court of Uganda, description of my personal experience and observation at the Family division and the setting of the FD mediation section. Chapter four analyses three cases to show how the intersection of gender, race and class is employed by parties including mediators to pursue their interests during mediation. The findings are based on observations of interactions between parties in thirteen mediation cases and interviews of parties and mediators to the mediation. Chapter

five provides for concluding remarks as well as recommendations for further research.

## **1.1. Research Problem**

Since mandatory mediation was rolled out as a new practice in the formal judicial system in Uganda, much has been written, trained and reported about the process of mediation, guidelines on its operation, plus its advantages and disadvantages. (Bamwine 2015, Ministry of Justice and Constitutional Affairs of Uganda (MOJCA) 2013, Kakooza 2010). However, there seems to be little review of the sociological understanding of mediation. In other words, little research has been done on people's social behaviors and attitudes and how they are employed during the mediation process in Uganda. This therefore leaves a gap in the mediation literature in Uganda which Kelly (2004:31) notes to be important to the mediation field when he stated that;

Understanding the interactions of emotions and personality attributes that individuals bring to the mediation setting, and the styles and behaviours of the mediators that diminish or enhance the likelihoods of reaching agreements would help the field define and redefine practices, improve effectiveness and promote excellence in the field (Kelly 2004:31)

It is important to note that the social world is shaped by narratives of Institutional identity in public policy, upon which people's life chances are dependent (Loseke 2007:667). This includes rules which grant the mediators authority to intervene in the likelihood of power imbalances when making their assessments on observation and statements made during the mediation. However, the rules that mediators rely on also require them to act fairly and impartially without bias in favour of any party (MOJCA 2013).<sup>1</sup> Yet, media-

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<sup>1</sup> Schedule 2 of the Judicature (Mediation) Procedure Rules (2013) provides for Guidelines for mediators and guideline 3 thereof requires the mediators to act fairly towards parties and impartial, without having any bias in favour or discriminate against any

tors as human beings are not exception as they also affiliate to certain institutions and therefore come with their own norms, beliefs and attributes to the mediation room.

This research therefore attempts to explore how the participants in a mediation process in Uganda use the social norms of gender to pursue their interests. However, other social identities of individuals influence their beliefs and experiences of gender therefore the need to understand them in any gender investigation (Shields 2008: 301). This research therefore explores how the intersection of gender norms with class and status are employed in the mediation process. This is done through observations and analysis of the speeches, expressions and gestures by the participants (Parties and mediators) together with interviews to confirm my observations. The intention is to understand how the parties, mediators inclusive, pursue their interests in a mediation, using gender, class and status. Unlike most available studies, the study employs intersectionality as a lens to understand how the intersection of gender status and class are employed in the mediation process and outcome.

## **1.2. Research Objective and Question:**

The objective of this research is to acquire knowledge on how different participants in a mediation process employ gender, class and status to pursue their interests.

In order to reach this objective, I have attempted to answer a question, relating to the objective asking;

**How is gender, class and status, in their intersection employed by participants in the mediation process in the Family Division of High Court of Uganda?**

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party. It further allows the mediator to balance the powers where in case of power imbalances believed to have a likelihood of affecting a mutual resolution.

## **1.3. Contextual Background**

### **1.3.1. Global context of mediation**

Mediation has been defined by various scholars to mean the process whereby a neutral third party listens to issues by parties to a dispute, with a view of helping them to settle the dispute by themselves (Brown and Marriott: 2012, Kressel and Pruitt, 1985 Nolan-Haley 2013). Mediation is not a new practice as it is largely known to have a long history in almost all cultures around the world as a means of dispute and conflict resolution (Nolan-Haley 2013:75). In most societies, it is rooted and influenced by social practices such as religion and culture which provide norms and guidance on its application and procedures (Moore 2014: 61). However, it was institutionalised and developed into a recognised profession during the twentieth Century, partly due to the people's extensive awareness of individual rights and belief in participation and control in all decisions affecting them (Moore 2014: 69). Mediation was noted to have been used as the principle source of dispute resolution in China, and rapid growth of its use in the United States, Australia, Canada, Ireland, New Zealand, South Africa and United Kingdom, in these jurisdictions to handle issues, including civil cases (Moore 2014:80). The growth of the use of mediation was encouraged as a way of managing the caseload in courts (Pruitt and Kressel 1985:4)

In Africa, the practice of mediation is extensively used in both traditional and modern societies depending on the tribe, country or region (Moore 2014: 80). It has also been practiced by the African Union and country leaders on several disputes such as the intervention of the United Nations' Secretary General Kofi Annan to mediate the conflict on the 2007 Kenya elections (Moore 2014: 81).

### **1.3.2. Domestic context**

#### **1.3.2.1. Mediation and Justice system in Uganda**

Just like in other countries, mediation in Uganda is not a new phenomenon, as it has a long history, whereby it was originally practiced by the different societies as a means of dispute resolution, based on societal norms. Elders, clan leaders, tribal chiefs, tribal heads and family head were in charge of dispute resolution depending on the nature of dispute to be resolved. Giving a brief background of mediation in Uganda to the newly appointed magistrates, Henry Peter Ondonyo (2012), the then Acting Chief Registrar of Court stated that the customary mediation was weakened on the introduction of the formal judicial system through the Order in Council of 1902, which was taken to be superior as it was introduced by the colonial powers. The English Judicial system established the High Court and other subordinate courts but after independence, it was subjected to several changes including introduction of the supreme court as the highest in hierarchy, headed by the Chief Justice (Ondonyo 2012: 3-4). For example; Mediation was recognised by the formal Judicial system under section 8 of the Uganda's Land Act 1998, which recognises the customary dispute resolution as well as the mediators in customary tenure land disputes. The section also allows the land tribunal to advise parties to a dispute to first explore mediation options which include traditional authorities.

Uganda is currently operating on this imposed English legal culture with slight modifications but the system is now overwhelmed with cases and need to be liberated (Katureebe 2016).

#### **1.3.2.2. Mandatory mediation in Ugandan judicial system**

During the opening of the law-year at the High Court Gardens in Kampala, the chief justice (Katureebe 2016) characterized the judiciary in Uganda as backlogged and noted it as one of the notable challenges that need to be urgently addressed. He acknowledged that the people of Uganda were offended by the delay of cases and their subsequent loss of trust in the judi-

cial system which invoked ill-fated efforts to come up with own solutions. Indeed, this has been noted from the Annual Crime Report by the Uganda Police Force (UPF) for 2014, where the increase in homicide cases was attributed to dissatisfaction with delayed/omission of justice among others (UPF 2014: 5). According to Justice Tabaro, throughout his experience as a prosecutor and Judicial officer respectively, there have been delays in Judicial systems world over but this was not a crisis for Uganda until the mid-90s (Tabaro 2012).

In order to avoid the above reactions and to improve justice, efforts have been made to reduce the backlog by the Judiciary, among which is the mandatory mediation of all civil matters through the Judicature (Mediation) Rules (MOJCA 2013), as a means of ADR. This started with a pilot project under the Commercial court leading to mandatory mediation of all commercial cases in 2007 (MOJCA 2007) and eventually rolled out to all civil matters.

## **1.4. Methods and Sources of Data generation**

### **1.4.1. Process and method**

The findings of the research were based on the use of qualitative methods of both primary and secondary data because it gives greater allowance for multiplicity of experiences which is necessary for this research (Creswell 2013:190), that seeks to understand how social norms are employed in the mediation process and also seeks to explore a phenomenon where little research has been done (Creswell 2013: 185).

Non-participant observation was used as the main source of data generation because the objectives of the research could not have been easily attained through use of other data generation methods as they would not be able to portray the indirect meanings of issues as they emerge during mediation process. During the research process, I was set to attend twenty-seven mediation sessions but only thirteen sessions held by three different mediators were observed. This was because some mediations did not take place due

to absence of either one party or both. Six mediation sessions were about Divorce and child custody, while seven were on inheritance and administration of family property. Each mediation session was observed for a period between two and two and a half hours.

To make good observation, I was given a desk in the clerks' office at the High Court Family Division where I sat every day and meet with the participants. During the mediation sessions, I sat neither near to the parties nor the mediator, but well positioned to see all the parties. No recordings were made for the mediation sessions since family court mediations are considered private matters. However, during all the mediation sessions observed, I wrote down field notes with quotations where necessary.

In addition to observations, unstructured, informal interviews of key informants were carried out to test my preliminary understanding from the observation as detailed under section 1.4.2. on choice of Informants. Unstructured interviews as O'leary put it "...attempts to draw out information, attitudes, opinions and beliefs around particular themes, ideas and issues without the aid of the predetermined questions" (2004: 164).

The interviews were held using open-ended questions as they were very relevant to attaining a detailed understanding of the informants' perceptions of what had been observed during the mediation process. (Laws et al 2003:297). The questions were posed to the informants in an informal way since the interviews were held immediately after each mediation sessions and therefore could not allow for the formal preparations of the interviews. This was because some of the informants came from far places that it seemed difficult to arrange interviews for another day, while the others preferred to hold it immediately after the mediation sessions. The interviews were short and only used to clarify my observations to avoid any misinterpretations and lasted between five to fifteen minutes depending on the need for clarification. No recordings were made due to the private nature of the matters under the family Court, but field notes were taken from all interviews. Some parties were interviewed as a group of either defendants or plaintiffs. While others were interviewed individually depending on the

number of parties on each case. Details are of number of interviewees provided under section 1.4.2.

The communication was easy as English was the language used in all sessions but translations made for the non – English speaking parties. Interviews were conducted in English and Luganda (local language that I am conversant with).

### **1.4.2. Choice of informants**

I had no control over the informants as I attended the mediations based on the mediation case schedule. I had planned to interview all the participants in the mediations as they were all key informants to my research. However, I did not get that opportunity. Participants were interviewed depending on their availability. A total of twenty-eight participants were interviewed. All the three mediators available at the Court during the data collection period were interviewed. The mediators included one female American mediator who was stationed at the court, one male Ugandan part-time mediator and one female Ugandan part-time mediator were interviewed. two lawyers, both male and twenty-three parties including nine males and fourteen females were also interviewed. The informants ages ranged between twenty and sixty. However, the age, gender, class and status were estimated basing on my observation regarding the physical characteristics and speeches, as no questions were asked in that regard. Characteristics of the parties are provided under Appendix B. There was easy access to the informants as I had been introduced to them by the Court administration. A normal day of the field research started at 8:30am at court preparing for the first mediation which started at 10:00am on Mondays and 9:00am on other weekdays. Further description of mediation sessions are provided under Chapter four.

### **1.4.3. Reflexivity and Ethical considerations**

Before I joined ISS for my studies, I attended a mediators' training which influenced me to believe that mediation yields a 50/50 result for the parties. This training emphasised the principle of neutrality, but with less emphasis on the role of social aspects under mediation. During the observa-



tions, I tried to reflect on this bias and focused on the observations, triangulated with interviews. However, I acknowledge that my interpretation of observations under this study could have been unknowingly influenced by my own social background and knowledge.

As an ethical consideration, I first sought consent of the court administration to allow me to sit in the mediation as a non-participant observer. However, getting this permission was a long journey as the time collided with the court vacation and therefore finding the court officials in office was difficult. I therefore had to use my informal connections to get to the relevant persons. I also sought informal consent from the parties through the mediators, to sit in the mediation sessions and to interview them afterwards. However, when it came to the interviews, they were sceptical at first. I explained the purpose of the research and assured them of confidentiality and that it was strictly academic purposes.

The participants were asked whether they mind their names appearing in the research and they said they did, therefore pseudonyms were used in this research for all the participants for purposes of confidentiality and these were chosen in a way that suits the personal characteristics of the participant.

The weather was uncomfortably hot during the research period and by the time the parties got out of the mediation session of two or more hours, they were already exhausted for the interviews. It was challenging to keep the parties waiting as I interviewed others. To handle this situation, I provided some refreshments with the help of the court clerks in form of water, soda and a few snacks in order to refresh them as we held the interview and as the others waited for me to finish with the first ones to be interviewed.

#### **1.4.4. Limitations and challenges**

I did not interview all the informants as I had initially planned, because some informants were not patient as they had a common reason of having an urgent engagement somewhere else, especially the lawyers. Additionally, the number of mediation sessions that were intended to be attended was not reached due to the court vacation. Apart from two sessions, none of the me-

diations was observed from beginning to end due the time period for the data collection. This affected my topic which initially intended to consider mediation process and outcome. It was difficult to analyse the outcome without following the session to the end, I therefore changed the topic to suit the findings. Although not all went as planned, this did not affect the findings of the research as the number of informants as well as mediation sessions attended was sufficient for the research to achieve its main objective.

This research cannot claim to be representative of the practice of mediation in Uganda as it is based on observations from a few sessions among the many sessions held by the family court. However, it provides an insight on how the power of gender, status and class was employed by the different parties around the negotiation table.

There is little research at ISS on observation of court process. I therefore found difficulty in structuring this paper. However, I made use of outside sources where observation of court process had been applied, in order to come up with this structure.

#### **1.4.5. Data analysis**

I used intersectionality as a lens of analysis, guided by research question that I had initially framed. However, during the observation to I determine the most important themes which resulted into rephrasing my research questions to remove the part on the “effects and outcome” since the information regarding the same was unavailable.

After data generation, I used coding based on themes of cultural symbol, ideology, institution, subjective identity, under a larger coding of gender, class and status from the data. My attention was drawn to the interactions between the parties and mediators during the mediation and the justifications for the speeches and actions during interviews.

#### **1.4.6. Research focus**

This research only focuses on the mediations carried out under the Judiciary mediation rules (MOJCA 2013) in the Family Division (FD) of the

High Court of Uganda, at Kampala because since the Family Court Division handles conflicts relating to families, it can give a clearer understanding of peoples behaviors and attitudes in the mediation process. Among the five mediators at the Court division, three of them participated in the study as indicated under section 1.4.2. of this Chapter.

## **1.5. Justification of Study**

As a lawyer and human rights activist, I have always analysed issues in relation to law and human rights, paying less attention to the sociological meanings. This was until my studies at ISS enlightened me to the realise the need for viewing issues with a sociological eye. My first intention was to study the perception of Sabiny community in Uganda on Female Genital Mutilation but I changed the topic after realising that my scholarship was not facilitating the research and therefore it would be impossible for me to reach the community due to financial constraints. I switched immediately to my second option on mediation processes which I was interest in because of my prior training as a mediator.

Mediation is a process that has recently been introduced to the Ugandan Formal Judicial system, therefore the increased and mandatory use of mediation necessitates an in-depth understanding of the phenomena. Knowing how people employ social and cultural norms in mediation process will contribute to the research on Family mediation process in Uganda and also facilitate my deeper understanding of the phenomena of mediation.

## **Relevance to Development Studies**

The sociological understanding of mediation will add to the existing body of knowledge on mediation in Uganda and lead to service improvements, access to justice and development. This research is relevant to development studies because the absence of justice leads to unresolved or poorly resolved conflicts, causing violence in society thus hindrance to development. For example, Court backlog and delay in commercial cases discourag-

ing investments which could positively affect economic growth in the country. Additionally, the concept of development doesn't only entail economic growth but includes aspects of political and social growth, which require presence of a democratic government bound by rule of law and a well-functioning justice system. Therefore, dispute resolution without consideration of the role of society norms, values and beliefs may lead to negative effects on the justice system thus negatively affecting development.

## **1.7. Chapter conclusions**

Under this chapter, the introduction and background of mediation has been given and the problem that lured me into taking this research plus the questions that the research attempts to answer. The research methods and data collection tools used have been explained in addition to the ethical considerations and limitations. The next chapter will now explain the theoretical and analytical framework that guided this study in analysis of the findings to answer the questions set under this section.

## **Chapter 2 : Conceptual and Analytical Framework**

### **2.0. Introduction**

This Chapter explores gender as a key concept to guide the analysis of the research. However, gender is influenced by other aspects of social life, therefore, the concepts of class and status are also discussed as concepts to guide the analysis of the research. The research employs an intersectional analysis to assess, interpret and understand the research findings on how participants employ the aspects of class, status and gender to pursue their interests during mediation.

### **2.1. Gender Concept and Analysis Tool**

Gender is defined differently by different scholars but this research is influenced by Scott's 1<sup>st</sup> category of defining gender, thus conceptualises gender as socially constructed relationships between men and women (1986:1067). In this definition, Scott identifies four elements of gender, which include; *cultural symbols or culturally symbolic representations* used and the context in which they are used. Symbolic representation is "representation of group, nation, or state through objects to which a certain representative meaning is attributed" (Pitkin 1972, as Cited by Lombardo and Meier 2014:3). Therefore, culturally symbolic representation can be specified as society or group representation (as gender, class, status etcetera) through symbols with meanings attached in relation to the groups. Gendered symbols have been described as those that "suggests meanings and beliefs that are associated with women and men, the roles that society has attributed to them and their socially constructed relationships" (Lombardo and Meier 2014:3). The second element of gender as identified by Scott is *the ideologies* that explain and give meaning to the symbols. Folger and Bush while exploring the relationship between mediation and ideology, describe ideolo-

gy as “organising frameworks that people use to view, interpret and judge their surrounding world” (Folger and Bush 1994:7). These Ideological assumptions can be identified from expressions in religious, educational, scientific, legal and political principles (Scott 1986:1067). *Institutions and Organisations* are the third element of gender identified by Scott (1986:1068). According to Lorber (2004 :55) one of the major ways that human beings organise their lives as an institution is through gender. Institutional identities include public policy and law, among others, and these classify special categories of people into same identity (Loseke: 2007:667). The fourth element of gender by Scott is the *subjective identity* on how people identify themselves (1986: 1068). Her view is that those four elements connect and operate together, though not necessarily at the same time (Scott 1986: 1069).

Taylor and Beinstein (1994:5) explained that gender is involved in negotiation of relationships. Looking at the mediation process, the final decisions are made by the parties themselves and not imposed by the mediator, which necessitates the parties to negotiate and therefore require some negotiating skills to pursue their interests. Gender has also been noted to be influential when it comes to mediators, as men and women mediators bring different communication skills and style to the mediation room (Kolb and Coolidge 1988: 262). Dewhurst and Wall (1994), in their work found that male and female mediators use different styles of facilitating dispute resolution but no evidence to the difference in their effectiveness. Similarly, Weingarten and Douvan’s (1985: 357) work shows that, male and female mediators differ in the construction of their role, meaning of neutrality and goals of mediation process. This therefore can be a basis for identification of the mediator’s ideological assumptions.

From the above scholars, it is clear that gender is an important variable that can help to add knowledge to the literature on human behavior in mediation process. However, such research is limited in Uganda, therefore call for the necessity of this study to explore how gender is employed by parties during mediation process. The question then may be how can gender be used for analysis? Susan F Hirsch while analysing marital disputes in Kenyan Islamic court, pays attention to discourse in form of interactive speech

and how it shapes people's perceptions. Her view is that the only way to understand gender negotiations of disputing is by examination the dynamics of interactions (1998: 4), and the Family mediation room provides a perfect setting for such examination. Similarly, Gunning's view is that there are many pre-existing possible stories from the large cultural myths that form the basis of the participants' narratives which include gender, and these affect the participants' ability to give their own unbiased narratives during mediation (Gunning 1995: 70, 71). Mediators are not exceptional as they also pick the bits and pieces that help them understand the conflict and guide the parties to a resolution (Gunning 1995: 68).

Considering the above, gender was analysed based on the four elements of gender as identified by Scott, and relating them to the participants' speeches and gestures during mediation and interview processes. The study identified gendered cultural symbols used by parties, the ideologies that explain the symbols, institutions where these ideologies are based and the participants' perceptions. Failing to recognise inter group differences is problematic as people have different identities that influence the way they experience life, therefore, there is need for an intersectional analysis (Crenshaw 1991:1242). Basing on the need for intersectional analysis of gender, this study examines gender together with the aspects of status and class.

### **2.3. Social Class**

Basing on Weber's dimension of power, class is hereby conceptualised as the categorisation of people by society basing on their economic status. Weber's argument (as cited in Fulcher and Scott 2003: 695) is that class relations and divisions result from distribution of property and resources in the market, which makes people economically powerful and that this power is an important aspect in determining life chances. Three dimensions of distribution of power have been identified by Weber to have different effects on production of life chances and these include the economic dimension, authoritarian dimension and communal dimension, among which the economic dimension is noted to be the basis of class relations (Fulcher and Scott 2003:

695). This means that the class of a person will depend on the person's economic capabilities and also that the person's class can change if the economic status changes. Weber therefore states the likelihood of people acting either individually or in groups to ensure that their class interests are met (as cited in Fulcher and Scott 2003: 694 -695).

The concept of social stratification or division of society into hierarchical structures was explained with the example of upper class on top of middle class, which is on top of the lower class (Fulcher and Scott 2003: 692). McCall's class categories are a bit different from Fulcher and Scott in that he considers Working class, middle class and upper class (2005: 1786).

The class analysis under this study was guided by Weber's dimension of power; and therefore, the participant's class was identified by their income or economic status. In other words, it was determined by whether someone has an income or not, the dressing of the person and the way the person speaks, to classify them as either lower or middle/upper class. However, this was mostly based on personal observations and the assumptions were drawn from categories set by this research. That is to say; lower class for the ones without or with low income and middle/upper class for the higher income earners.

## **2.4. Social status**

Weber (As cited in Fulcher and Scott 2003: 694) identified 3 dimensions of the distribution of power within society that effect on the production of life chances. Among the three is communal power as the basis of status relations. Status therefore is hereby defined as a position a person holds as social honour or lowliness in the society, literally meaning that it is the way other people in society view or perceive the person's reputation (Fulcher and Scott 2003: 696). Similarly, Ridgeway considers status beliefs as the (2001: 637); "...shared cultural schemas about the status position in society of groups such as those based on gender, race, ethnicity, education or occupation" According to Weber (As cited in Fulcher and Scott



2003:696), status in complex societies doesn't depend on the evaluation of the person's actions but rather on the lifestyle.

Following Scott's position that the four elements that she identified in her first category of her definition of gender can also be employed to investigate any other social process (Scott 1999:44), the research investigated status by examining the symbols that depict the different categories of status, the ideologies that support, explain and legalise those symbols, the Institutions that create the classes and finally the subjective Identity to know how the people perceive their class interest.

## **2.5. Intersectionality**

Intersectionality is a tool of analysis used to investigate how social interactions or identities overlap and contribute to oppression or privilege. It involves analyses of intersecting social aspects in individuals' social lives and their outcome in terms of oppression or subordination (Davis 2008: 68). The theory of intersectionality is traced to Kimberley Crenshaw in 'Demarginalizing the intersection of race and sex' (1989), where she used it to analyse the experiences of black women in relation to employment cases. She used the metaphor of traffic at the road intersection and urged that the existence of multiple subordinate identities leads to unique vulnerabilities to oppression and the analysis of the claims in a single direction is not enough to address all of them because their discriminations are broader than the categories provided by the discrimination discourse (1989: 149). She therefore emphasised the need for an intersectional approach in order to free black people of racial subordination (1989: 166).

In her subsequent work (1991), Crenshaw stressed the problem of identity politics failing to recognise inter-group difference, which she said to be problematic, because the violence experienced by women is usually informed by other identity dimensions such as race and class and that tensions within the groups are partly due to ignoring the internal differences (1991:1242). Although intersectionality was originally applied to women of

colour, it can be applied to all individuals based on the different identities or aspects of subordination. Crenshaw focused on the intersections of race and gender only to show the need for explaining multiple grounds of identity in considering the social world (Crenshaw 1989: 1245).

Various studies have been made on mediation on grounds that it dis-serves parties who are members of powerless and disadvantaged societies. However, these have been mainly in the area of racial prejudice (Gunning 1995). I choose the lens of intersectionality because society and in particular family is not homogeneous and I choose the categories of gender, class and status based on my prior knowledge of the societies in Uganda whereby these three categories play an important role in all aspects of society as people commonly use them for identification. On the same note, I leave out the category of race because it is not commonly applied.

Intersectionality was used by Isabelle R Gunning (1995) to explain how mediation could disadvantage the vulnerable groups members, which she noted was missing in the previous analyses. She stated that parties will always identify categories and base on cultural myths relating to such categories to legitimate their narratives (1995: 68). In mediation, parties tell their story but this is in a pre-existing narrative, cultural myths and stereotypes which are usually negative or positive and the disadvantaged groups will mostly have the negative (Gunning 1995:68). In an example of a conflict between white female bus driver and a white nine-year-old boy by Rifkin and Cobbs (As cited in Gunning 1995:69), the white female bus driver gave her story accusing the boy of pushing her due to his troublesome behavior. She framed the boy as unruly child, giving herself the position of a good adult. The boy denied the allegations but because of the negative cultural myths about boys, and the positive cultural myths about adult female, the agreement did not favour the boy.

Gunning used race switching (1995:74-75) to explain the experiences of disadvantaged group members based on intertwined power of race/gender cultural myths. she considered, if the bus driver was a male white and boy black, if boy was white but bus driver male black and if the child was white with Asian bus driver. She noted that the result in real life situation is un-

predictable, but even if the outcomes remained the same, the negative cultural myths could have had an impact which could easily tilt the outcome (Gunning 1995:76)

Considering that my main objective of carrying out this research is to acquire knowledge on how different parties including mediators employ gender, class and status during mediation process in Uganda, I will employ the lens of Intersectionality to examine how the social interactions based on gender, class and status overlap and create unique experiences of Family disputes in Uganda. I will apply it by investigating the different identities possessed by the parties in a mediation and relate them to their experiences as observed through the mediation process. I will also borrow Gunning's race switching approach to switch the aspects of class status and gender in order to explain the different experiences within the same group of people.

## **2.6. Chapter Conclusion**

This chapter has attempted to explain the key concepts of gender, class, status and intersectionality and the way these are applied to guide in interpretation and analysis of the findings. The next chapter will present my personal experiences and observation of the FD, in terms of the law applicable, FD setting and the mediation process.

## **Chapter 3 : Mediation at the Family Division**

### **3.0. Introduction**

This Chapter provides the legal framework upon which the mediation at the FD rely. This is presented in two stages, that is to say; the features of mediation under the law and mediators' guidelines. The chapter describes the general setting of the family division from the first interaction to the mediation room. A brief description of the mediation process at the FD and finally, the chapter conclusion.

### **3.1. Legal Framework of mediation**

#### **3.1.1. Main characteristics of mediation under the law**

**(MOJCA :501 – 509)**

The Mediation sessions at of the FD are governed by the Judicature (Mediation) Rules (MOJCA, 2013) which adopted and incorporated the basic principles of mediation applied by mediators around the world. These rules were enacted under the Judicature Act 1996, as the primary legislation, which provides for the functions of the rules committee to include making rules for regulating the practice and procedure of courts. The rules therefore regulate the practice and procedure of the FD and any other court mediations. Their definition of mediation is to the effect that a mediator is a neutral person with no interest and parties to a dispute come up with their own solution (2013:502). Rule four makes mediation mandatory for the parties in all civil actions, meaning that all civil proceedings (2013: 502) except those under the Small Claims procedure (2013: 501) are subjected to mediation. In other words, mediation at the FD is not carried out at the parties' request or on referral by the judge, but as a statutory legal requirement although parties have the right to decide the outcome.

Under Rule eight provides sixty days' time limit for the completion of the mediation process after commencement, with an exception of agreed

extension not exceeding ten days, where there is a likelihood of settlement (2013:503). The mediation is carried out by judges, registrars, magistrates, any person accredited by court as a mediator, certified by CADER, or a person selected by the parties who possesses mediation experience and qualifications as per Rule nine of the Judicature Mediation rules (2013: 503, 504). In this study, all the three mediators that participated in the study were lawyers as the male and female Ugandan mediators were in Private Legal Practice while the female American mediator was a lawyer specialising in conflict management. The mediators are entrusted with the roles of scheduling the mediation hearings, setting up a suitable mediation venue, ensuring exchange of relevant documents between parties and assisting in the mediation's general administration (2013:504).

Rules ten and sixteen are to the effect that on agreement by the parties, the mediation process is concluded by a consent agreement or trial if the matter has not been resolved (2013: 504). There is a sanction under rule eleven, of payment of five currency points (*one currency point is equal to twenty thousand Uganda Shillings (UGX 20,000) which is equivalent to around Thirty Euros (€30)*) to the opposite party by the party who fails to attend the mediation session without good cause. To my surprise, some mediation session did not take place but this was not implemented. Rule eighteen and nineteen require the mediator to keep the information received from the mediation with confidentiality and to adhere to the guidelines under the rules.

Having looked at the features of mediation under the law, which include a requirement that mediators adhere to the guidelines, it is important to describe the content of the guidelines, thus the focus of the next section.

### **3.1.2. The mediator's guidelines (MOJCA 513-515)**

The mediators' guidelines are found in the second schedule of the Judicature (Mediation) Rules (2013: 513), and are intended;

- (a) to provide an ethical guide for the actions behavior and decision of mediators;

(b) to provide guiding principles for the conduct of mediation; and

(c) to promote confidence in mediation as a process for resolving disputes. (MOJCA 2013:513)

The guiding principles for mediators are provided for under guideline 2 and among them is to ensure that parties settle the matter, understand the mediation process, actively participate (2013: 513). The mediator is required to act fairly and be impartial without favouring any of the parties. However, despite the requirement of acting impartially, the mediator may intervene to try and balance powers on noticing power imbalances that are likely to affect a mutually acceptable solution (2013: 514). These are main principles of mediation which were adopted and incorporated into these guidelines. However, the guidelines do not provide any explanation of how the power imbalances can be identified and how exactly the mediator can try to balance the powers. The mediators' actions are guided by their personal beliefs and norms to determine act on the imbalances as they pick from bits and pieces from large cultural myths which include gender (Gunning 1995: 68) as will be shown in the analysis of mediation cases under Chapter 4.

Mediator's behavior is also limited by the guidelines to ways that reflect credit to the court. Such ways are noted to include but not limited to acting within the law, acting with honesty, professionally and with integrity, not abuse connections with court, promoting diligence, dress in formal attire, act with competence among others (2013: 515).

From the guidelines (2013: 515), it seems that the courts' recognition is important and therefore this necessitates knowing about the court itself. The next section will therefore give a description of the family division of the High court of Uganda which was the focus of this study.

## **3.2. Description of the Family Division of High Court of Uganda**

### **3.2.1. General location/Setting**

The Family Court Division is Located on Crusader House Plot 3 Colville Street, which is an old five stored building. The building is shared with other offices such as the Coordination office for Development Cooperation of the Australian Embassy, Association of Consulting engineers (COWI-Uganda), NewPlan Limited, an office of consulting Engineers and planners), Tours and travels agency and a law firm. The Court is on the third and fourth floor of the building and to get there, one has to use an old elevator that was avoided by most people because of its uncertain operation and therefore it was safer to use the stairs. On my first day, I went to Third floor and was received by the clerk to the registrar who sits at the third floor, after going through a waiting room for parties, lawyers' waiting room and a small office with two clerks to the Assistant registrar then you get to the clerk's office. The clerk's office is very small with her chair behind the desk and two chairs for her visitors in front of the desk with very little space from the table. The door is right behind one of the visitors' chairs in that, the chair has to be pushed under the desk to create space for her to get out of the office. The clerk to the Registrar received the letter of authorisation from the Registrar of Mediations, picked the phone and called the Clerk to the mediator, who came right away to receive me.

Betty (not real name), this is Rebecca, she is here for research and will be with us for one month. Please find her space to sit and introduce her to the mediators so that she can attend mediation sessions (clerk to the Registrar).

Betty was very welcoming and took me to the mediation Section which is located on the Fourth-floor after passing through the security desk, waiting area for both parties and Counsel/lawyers, to the second-last door on the left. On a daily basis, as I passed through the waiting area, there were many people waiting to be attended to, some were sitting while others had no space to sit and therefore had to stand. Inside betty's office, there was a door

on the left to a judge's chambers and one on the right, to the Mediation Room. Betty shared the office with Anna, who is a clerk to the Judge in the office opposite the mediation room. The office is small and has two desks with each having a chair behind where Betty and Anna sit. Betty sits on the desk besides the entrance to the mediation room, whilst Anna sits in front of the window directly facing the entrance to their office. Despite the limited space in the office, I was provided a chair which would have otherwise been for Betty's visitors and shared the desk with Betty, although in most cases Betty left the desk for me. The chair that would be for Anna's visitors was occupied by another clerk who according to their conversations seemed to have been on transfer but provided with no office space because the office was soon to be moved to its new location constructed by the Justice Law and Order Sector (JLOS).

Different people visited the clerks' office for different reasons, some of them checking on their files with the clerk to the judge, while others were checking on the mediation schedule. The persons who visited the office were mainly lawyers and parties to the suits. On certain occasions, law firm clerks and private individuals visited on behalf of the lawyers.

The Mediation section at the Family Division of the High court of Uganda has one full time American mediator on a USAID – Judiciary arrangement, and changes on a yearly basis. There are four part-time mediators, 2 male national mediators who are both lawyers and two female national mediators, one of whom is a lawyer specialised in human rights activism while the other is a private practicing lawyer. The section handles mediations family causes including Divorce and child maintenance, adoption and guardianship, family property inheritance and administration, among others. However, it seemed clear that the most common cases handled are divorce and child custody and the family property inheritance and administration.

### **3.2.2. The mediation room**

A white lady who seemed to be in her late twenties or early thirties came and greeted us as she opened the door on the right side of Betty's of-



fice, just next to Betty's desk. This serves as both mediator's office as well as mediation room. I entered the door with Betty who introduced me to the lady. This room is much bigger than the other rooms that I had seen at the FD and has wide windows on the left. It has two big office desks pushed together, one on the front and another on the right side of her luxurious office chair type. There are two metallic-grey file cabinets on the left-hand side of the mediator's chair, where the mediation files are kept and two black office chairs on the two sides of the mediator's desks. Four red cushioned chairs are set in front of her desk, in a way that two were next to each other and a reasonably big space between the two sets. Behind the red chairs were five black chairs then benches with black leather cushions on each side of the wall except on the mediator's side.

*"Hi, I am Monica"*, she introduced herself and I also introduced myself, then explained the purpose of my presence. Monica was very receptive and informed me how she was a lawyer and been at the court for a period of 10 months on a programme by USAID and her contract term was ending in two months. She said the programme has been going on since 2013 when the mediations were rolled out to all civil cases and each year, USAID facilitates one American mediator at this court. From that day, we started coordinating together. Monica is the mediator I spent more time with, because she was permanently stationed at the court and had more mediation sessions compared to the other two mediators. During one of the days of our discussions, she confessed to me how she was surprised that people in Uganda conflict over dead person's property. she said this does not happen in the United States (US). On another occasion, she was also fascinated about how men in Uganda have many children with different women causing problems in the family when they die.

During mediation sessions, I sat on one of the black chairs on right of the mediator's desk while Betty (the clerk) sat on the one on the left. This was the only mediation room and the time when there were two mediations at the same time, Betty's office was used for mediation as small as it was. Betty's desk was used as the mediator's desk while turned to face the entrance and two chairs placed in front of the desk for the parties. At this set-

ting, I sat in the Conner next to the entrance door behind the chairs set for the parties. Luckily enough, that day the judge was not in his office and therefore not many people to pass through ‘the mediation room’. Although we were all set for the mediation session, both parties did not turn up and therefore the mediation did not proceed.

### **3.3. Mediation process in the Family Division**

In the presence of both parties, introductions of the participants are made, after which the Mediators start their sessions with an opening statement with words usually meant to give the parties confidence in the process of mediation through; demonstrating the mediator’s neutrality, showing the mediator’s knowledge and experience in the subject matter and assuring the parties of confidentiality of whatever is uttered during the mediation process. The statement usually reminds the parties that mediation is not a trial, therefore the decision is made by the parties and no strict reliance on the law is made but compromise. The mediator also sets ground rules during the opening statement. Each mediation session is handled by single mediator.

The mediators at the family court Division sits in the mediation room on a chair behind the table, one of the parties sits on the mediator’s right hand side while the other sits on the mediator’s left hand side, but both facing the mediator. The plaintiff is given the first opportunity to speak and narrate her/his story, leading to the reason why he/she filed the matter, then the defendant will speak, in most cases rebutting the plaintiff’s allegations. This marks the beginning of the mediation, and while the parties speak, the mediator identifies the main issues that need to be resolved by the mediation process. The mediator then facilitates the process by asking the parties open ended questions and repeat the key ideas from the parties for confirmation and then identify the common goals presented by the parties and main issues to be discussed to the parties. When the parties succeed in settling the matter, the mediator will extract an agreement for the parties’ signature which is then endorsed with the court’s seal and registrar’s signature to become a consent judgement legally binding on the parties.

### **3.4. Chapter conclusion**

This chapter has attempted to explain the legal framework that the mediations at the FD rely on, which is basically the Judicature (Mediation) Rules of 2013. It has also provided an image of the FD of the High Court of Uganda at Kampala and a general description of the mediation room and the process therein. The next chapter will therefore focus on case examples giving a broader picture of the process of mediation and analysing how gender norms in their intersection with class and status were employed by the parties and the mediators during mediation. It will also illustrate how the intersection of these norms creates unique experiences for the parties.

# **Chapter 4 Mediation Case studies and analysis**

## **4.0. Introduction**

This chapter provides an intersectional analysis of cases observed during the study to show the employment of gender, class and status in the mediation process and the experiences of the same by parties. 13 cases were observed altogether, nonetheless, some of them could not be richly analyzed using intersectionality of gender, class and status. Consequently, this research chooses to analyze three cases that were found more useful to the intersectional analysis, due to the space limitations that couldn't allow analysis of all cases. Other cases are described under Appendix 'A'. Based on Hirsch's view (1998:4), that examining dynamics of interaction is the best way to understand gender negotiations of disputing parties, this Chapter relies on parties' interactions through speeches and gesture as observed during the mediation sessions and interviews.

### ***4.1. The case of Khadija and Sheik Ismail***

#### ***(Mediation 9)***

##### **4.1.2. Introduction of case**

In this case I will analyse how parties employ gender based on its four elements of symbolic representation, ideology, institution and subjective identity as identified by Scott (1986: 1067). The case also allows me to analyse its intersection with class and status to create unique experiences.

The case was filed by Khadija against her husband Ismail. The couple had been Married for twenty-three years during which they begot four children, the last born being aged thirteen years. Khadija is an illiterate housewife in her early forties. On the day of the mediation, Khadija was dressed in an old, faded green Hijab (Muslim women attire) with cream head veil,

leaving only the face uncovered. Shortly after she arrived, the husband Ismail also came and they were ushered into the mediation room by Betty (the clerk). Ismail was dressed in long-sleeved white shirt and brown trousers with a white kufi cap on his head. He sat on the red chair on the right, in front of the mediator's desk while Khadija sat on the one on the left. The introductions were made and the mediator made her opening statement as explained under Chapter 3 section 3.3. then Khadija was given the first opportunity to present her claim.

#### **4.1.2. Hadija's claim**

Khadija alleged that Ismail became cruel and abusive since he married his second wife ten years ago, and worsened when he married a third wife, three years ago. She stated that on top of being abusive and cruel, he even stopped caring for her as the man should care for his wife and yet he would not allow her to work in order to cater for her personal needs as a woman. She alleged that he has not bought her any dress in the last three years, neither had he given her any money for her skin oil/cream. That because Ismail doesn't provide these things, she gets some from her sister but when Ismail finds her with anything he doesn't know, he beats her up, accusing her of infidelity. She says that the last time he beat her was two months before the mediation, when she borrowed a Hijab from her sister to attend a relative's wedding. She added that she tried to settle the matter through family members but none of them can talk to Ismail and when he got to know about it, he beat her up for taking marriage issues out of their home. She is tired of her husband's cruelty and wants to start her own life where she can find work and earn some money to make ends meet. Khadija's interest in the mediation is to attain a divorce from her husband as she thinks he doesn't love her anymore. On top of the divorce, Khadija would like to remain with her matrimonial home and also have custody of the children.

#### **4.1.3. Ismail Responds**

Ismail was an illiterate business man, running a motor vehicle spare parts shop in one of the city suburbs' market called Kisekka Market and also

a sheik (Islamic teacher) at the village mosque. He is married to three wives, Khadija being the first wife and each wife has a house, built by Ismail in one of the suburbs near the city centre. In response to Khadija's allegations, Ismail denied being cruel and abusive but stated that what they always had with Khadija was normal fights within marriage due to some disagreements, just like any other marriage would be. He said that Khadija is just jealous of the other wives because she did not like him to marry any other woman. He further stated that he still loves her and cares for her therefore he cannot grant her the divorce.

#### **4.1.4. Mediator and interactions**

Monica, the female white mediator then summarises the parties' conflict in four main areas to include; divorce, children custody, house and children maintenance. After the summary, Khadija signalled and was given an opportunity to speak, then she informed Monica that the issue of her desire to work has not been included in the summary. She was trying to explain something about when she met Ismail before he married her, the mediator intervened and informed her that not all said is included in the summary but if she wants it there then could be included. Monica informed the parties that the issue of divorce will be discussed first as it is the driver of other issues. After that she turned to Ismail asking him how he plans to make the marriage work yet the wife is not interested in it any more. Ismail replied that they have always had disagreements and resolve them. He said that he knows his wife very well. There should be someone behind her coming to court, but he knows that when her anger goes down they will be ok. Khadija was the asked if finding something to do and Ismail changing his behavior would be an option for divorce but she refused and assure Monica that Ismail cannot change because he has always promised to do so but in vain.

On reverting to Ismail for his view, he denied being cruel and said he loves his wife. Besides, she has no right to ask him for a divorce under Islam. On a second thought, he said that he cannot give her divorce through mediation except under Islamic law since they were married under the Islamic marriage. He stated that;

How will people see me as a sheik violating the Islamic law (Ismail's statement directly translated)

Monica held a caucus with both parties starting with Khadija then Ismail. For Khadija, during the caucus, she revealed that she could forego the children and the house to get the divorce but Ismail insisted he was not granting the divorce. After an interaction of two and a half hours, the mediator closed the file because Ismail insisted he would not be in position to come for mediation any other time unless if it is under Islamic law.

During an interview with Khadija, she appeared very miserable while explaining that her hope was in this mediation because she knew she could not afford a lawyer in her condition of not having any work for income yet she believed that without a lawyer, she could not win the case. She was even contemplating of closing the file and just run away from the home. On the contrary, Ismail was content and emphasised that it was taboo for him to grant his wife a divorce before a person who is not a Kadi and above all a non-Muslim. On asking how he knew she was non-Muslim, he said he heard the name at the time of introduction.

#### **4.1.5 parties' employment of gender, class and status in mediation**

In this case, we see the intersectionality of gender, class and status being used by the parties in negotiation. Basing on Scott's elements of gender, the employment of gender is evident.

For instance; Khadija states that Ismail doesn't care for her anymore as a man should care for the wife and gives examples of buying her clothes and providing money for her skin oil. By this, she is using her status as a housewife to claim from her husband basing on the ideology that husbands should care for their wives. She also raises issues that he is cruel and violent. Here, she brings out the symbol of husband as a man, which is given meaning in relation to his roles of providing for his wife who is a woman but becomes a wife due to their relationship. This correlates with the definition of gendered symbol as described by Lombardo and Meier (2014: 3), to the effect that gendered symbols are those that give meaning and beliefs in relation to men

and women, their attached roles in society and their attached relationships. One of the roles attached to husband by society is to provide for the wife, which is an ideology embedded in Marriage as an Institution. In this case Khadija is identifying herself as a wife, and relying on the ideology to push her interest in attaining divorce. she characterises Ismail as a bad husband who is cruel, violent and doesn't provide for her. Whereas she characterises herself as a poor wife who is not cared for by her husband. According to her statement it seems clear that she is basing this on her knowledge of a good husband learnt from childhood through her family as an institution, which she is using to view interpret and judge Ismail. This is consistent with the description of ideology by Folger and bush as the framework people use as basis for interpreting and judging their environs (1994:7). She therefore expects Ismail to act as a good husband and when he fails to do so that's why she is seeking divorce. Lobber explained that we learn gender through continuous process of leaching learning and re-teaching from generation to generation and therefore learn to walk in ways that depict gender differences. society will expect us to behave accordingly (2004:56 -57).

Khadija's expectations of Ismail are gendered and explained by Ideologies of husband and wife which describe a good husband as one who provides for his wife and not violent. These Ideologies are embedded in the social institutions of Family and Religion. Khadija uses them to pursue her interest of attaining a divorce either knowingly or unknowingly to prove that Ismail is a bad husband and she is a poor woman but good wife, so as to stands high chances of succeeding with her interests, just as Fiske was cited to have stated;

the effect of gender beliefs on an actor's behavior will also be greater to the extent the actor consciously or unconsciously perceives the game of gender to be relevant to his or her own motives or interests in the situation (Fiske 1998 as cited in Ridgeway 2009: 151).

Khadija doesn't only rely on gender alone, but also her status and class as she emphasises being a wife who should be cared for by her husband and then the fact that she has no income to care for herself. This research con-



ceptualised status as a person's position in society and in this case Khadija's status is a Sheik's wife, housewife, Muslim woman and a woman. Lorber's assessment is that women as a group are constructed to be subordinate to men and therefore every woman is "night to his day" (Lorber 2004: 62). In this case Khadija is using her status as a woman which is considered subordinate to men and as housewife to pursue her interest of getting divorce and starting to work. She reminds the mediator that the issue of her not working was not included in the summary and she says she needs to take care of her personal needs as a woman. Definitely, as a person who has no income, her status is as evidenced from her old and faded Hijab. She also expresses herself that she borrows clothes from the sister in order to go for functions. By this, she is trying to get sympathy to achieve her goal of divorce and finding work to earn some money. She is characterising herself as a disadvantaged who deserves protection. This did not work out as her status of being a Muslim woman was employed against her by Ismail to deny her divorce. At the end of the mediation, she was contemplating closing the file with the view that she cannot win the case in court without a lawyer.

Ismail in his statements insists that they always have misunderstandings as any marriage would be. Here, he is using marriage as a cultural symbol of Family institution, having the ideology that any marriage should have misunderstanding. He identifies himself as a married man and sheik and thus the element of subjective Identity. As noted from Scott's definition of gender (1990:42), cultural symbol, ideology, institution and subjective identity are the four the elements of gender and they are clearly evident in Ismail's interaction during mediation and he is employing them to prove that whatever is going on between him and Khadija is something minor that will be resolved sooner or later and therefore no need for divorce. It is evident that Ismail's understanding of divorce is embedded in Islamic Religion as an Institution with which he identifies, and this is explained by the ideology that sees women with no right to divorce and if she petitions for divorce, it has to be before a Khadi. This is clearly a gendered ideology because the divorce for men is different from that for a woman. Ismail questions how people will see him as a sheik violating Islamic law because people's beliefs are

influenced by their social identities which is the basis for their interpretation of (Shields 2008: 301).

The statement on how people will see him as a sheik violating the Islamic law, also depicts his reliance on his status as a sheik to act the way he did. The status of being a sheik and having an income raises his class and makes it different from that of Khadija. As Weber states, there is a likelihood of people acting individually or in a group to ensure that they maintain their class interests (as cited in Fulcher and Scott 2003: 694 -695). In this case, as he wants to keep his status and therefore class, Ismail is using ideology under religion to negotiate his interest. so, that he can act according to the expectations of the society and therefore keep his status in society and therefore his class. In my opinion, he brought up the issue of not granting the divorce before a non-Muslim just to build onto his excuse for not granting the divorce, which is his interest in this case.

Ismail being a man, with income and a sheik puts him at a different level from Khadija (a woman, Muslim, sheik's wife and housewife) and this level seems to be more advantageous than the position of Khadija. Lorber (2004: 62) contends that women are constructed as subordinate to men by the continuing purpose of gender as modern social institution and therefore Ismail tries to use that to succeed with the negotiations during the mediation process

By making a detailed opening statement, Monica was trying to create confidence and trust in order to open up during the process of mediation. This was her mediation tactic used for the purpose of building trust. She also brought out the advantages of mediation as compare to litigation through emphasis to the parties of the necessity for settlement of the matter and finding a solution by themselves rather than a third party imposing one (judge) in an interview, she acknowledged to following the rules and the guidelines there in while processing parties' claims during mediation. She also explained her intervention when Khadija wanted to explain more about the history of her not having income. She said this is part of her role to control the process as it has a limit under the law and if each party was left to say whatever they want, then the process would take as long as the litigation

thus fail to serve the purpose it was intended for. This was the same justification she gave for the question and answer interaction after the parties had presented their case. In my opinion, this kind of style is likely to leave out important information for the mediation. For instance, in this case the issue of her finding and income turned out to have been important and yet Monica had ignored it at first.

Monica is seen to have tried to facilitate the mediation and avoiding to intervene as per the definition of mediation under the Judicature mediation rules (MOJCA 2013). She tried to balance the powers through the control of who speaks. However, this intervention has been criticised by scholars, such as Nancy Welsh to be inconsistent with procedural justice paradigm. Welsh referral to it as “defacto-exclusion of disputants from mediation session” (Welsh 2001: 838) which causes people to perceive mediation as unjust. This reveals that the mediator’s status gives them powers to decide on who speaks when and contradicts the way she introduced herself as a person who will not make decisions. Monica also used caucusing which was seen to yield something different that was not coming out from the general mediation. That is to say; Khadija’s proposal to give up on the children and the house in return for the divorce. This did not work out for Khadija However, even if it had worked, it would have brought in another issue of whether the agreement was just. The rules do not provide the mediator with any detailed explanation on how and when to intervene therefore she takes these decisions by herself basing on the knowledge learnt through her social and cultural life. In this case, she used her knowledge based on ideologies that see women as speaking differently from men during negotiations and she called for caucusing, which really yielded result.

The actions of Monica in this case tell us that she is guided by the rules, guidelines and cultural norms and therefore justifies why she was reluctant to intervene until she realised that the parties were not heading anywhere. Her style of mediation seemed to conceptualise her role as a neutral third party but with options of intervention to balance power relations but no power to make final decision (MOJCA 2013 514). Her goal of the mediation is to assist the parties to settle the matter by themselves and to ensure that

they understand the mediation process among others. All this is prescribed under the law which guides the mediators.

#### **4.1.6. Unique experiences of intersectionality**

All in all, the intersection of gender class and status is employed by the parties to pursue their interests as explained above. Khadija's gender as a woman puts her in a more subordinate position than Ismail. However, the experience is determined by the other aspects it intersects with, in this case class and status. This therefore means that gender coupled with difference in status and class results in different experiences by people of the same gender.

Borrowing from what Gunning called race switching (1995:74) I will not switch the race but class and Status, to explore what would happen if Khadija as female(gender) was still an illiterate wife to the sheik (status) but of middle class with income (class). This would create different experience, as being illiterate would not change anything both parties are illiterate. She would also still face the gendered ideologies pertaining the status of Muslim women not being allowed to seek divorce, and this would be made worse by her status identity as a sheik's wife, this identity would override her class which has changed in this class witch but that change in class also changes her experience though hot outcome. The class would remove her fear of going through litigation and therefore she would not have to sacrifice her other interests or opt for closure of the case.

What if both Khadija and Ismail were literate of middle class and Ismail was not a sheik? There is a possibility that the education status and the fact that Ismail is not holding a social position would relaxed their actions as compared when is a sheik and illiterate. This is because the knowledge to accommodate a settlement. Although Khadija's status as a woman, which puts her as subordinate would still come into play either to oppress or advantage her to attain the custody of the children and the house.

One would wonder whether the situation would be different if Khadija and Ismail were literate with middle class income, and were non-Muslims, placing them in different class and status. This leads me to the next case to

be analysed where both the husband and wife were literate, working, and of corporate status and were non-Muslims.

Equally, the mediator's gender status and class played a role as the parties were seen to respect the ground rules agreed upon at the start of the mediation. This was because of her status as a mediator as noticed from the interviews with the parties. The parties kept on referring to her as mediator and both of them agreed that the mediator had played her role well. The fact that the mediator was a woman would have an impact on the parties. For instance, Kadajah opened up on foregoing her other interests during the caucusing which was most likely because she believed in the mediator as a fellow woman. The issue of race is also likely to have played great role in earning the mediator respect. Generally, in Uganda, people take the white people to be superior and to know it all, for this illiterate black (race) couple, it would be a miracle if they had failed to respect Monica. The mediator's race also could have playing a role in this case. Being a white, female and mediator, in their intersection earned Monica respect from the illiterate, female, and lower class party. Probably the fact that she was female would have subordinated Monica before Ismail but her status and mediator and her class overridden the gender status and earned respect from Ismail. I will use the race switch, if Monica was a female Ugandan (black), probably she would have still earned respect but in a different way from Monica's experience.

#### **4.1.7. Conclusion**

This case has showed the way participants employ the intersection of gender status, race and class to pursue their interests in divorce and children custody cases. With help of identity switching, it has also showed that the experiences of the parties depend on all the intersecting identities of a person.

### ***4.2. The case of Judith and Stephen (Mediation 10)***

In the same way as the case of Khadija and Ismail under section 4.1, this case will enable me to analyse the way parties in the mediation em-

ployed the intersection of gender, class and status to pursue their interests. however, the parties in this case belong a different class and status. Gender class and status will be identified through parties' speeches and gestures by the parties and the focus will be on the four elements of cultural symbol, ideology, Institution and representative identity.

#### **4.2.1. The claim and response**

This suit was instituted by Judith against Stephen, petitioning for divorce, custody of children and alimony. The parties were both literate and employed with United Nations (according to their discussion with the mediator before the session was opened) The parties had been married for ten years, during which they begot two children aged seven and nine years. As usual, the mediator started with the opening statement to build the trust of the parties, then gave Judith the opportunity to narrate her story as the person who had brought the claim. Judith was accusing Stephen of infidelity and cruelty and her interests were in getting a divorce, the children's custody because they are still young, alimony from Stephen and sharing family property. Monica the mediator asked Stephen to respond to Judith's claim and he said he had nothing much to say, he is ready for the divorce.

#### **4.2.2. The interactions**

Following both parties agreeing to the divorce, the mediator then summarised the issues for them as child custody, property and Alimony. Regarding the issue of child custody, Judith proposed that she is granted custody of the children and Stephen given visiting rights. The mediator asked Stephen for his view, which he agreed to considering the nature of work that he does, he said he would not be able to care for the children but also requested that once in a while he will have them to sleep over his place. Monica then asked Judith what her view was on Stephen getting a sleep over once in a while and Judith did not have any objection. The issues to be discussed then were; the education of the children to which Stephen responded that the children will remain in the schools where they are studying in the United Kingdome since this is catered for by the employers. One of the children was catered for by Stephen's employer while the other was for Ju-

dith's employer. Monica then asks about the health of the children. Judith respondent that the children are on insurance therefore they do not have to discuss that for now.

The only issues that were left for resolving now were property and alimony. Stephen spoke first on the issue of Alimony. He said that he didn't know how much money Judith was expecting but then he criticized Judith of being very extravagant. Monica the mediator reminded Stephen that the purpose of the mediation was not to accuse each other but to find a solution to their conflict. Stephen then made a proposal that he pays \$500 per month. Judith objected to the \$500 on grounds that it is quite expensive to take care of the children and requested for \$1000. They eventually agreed on \$800 per month and resorted to the issue of property. Again, it was Stephen who spoke first and said Judith can stay with their matrimonial home in Uganda, the land in Garuga and the Bunamwaya and Judith accepted without any hesitation. I was not able to know how much property the couple owned but according to Judith's response, seemed like this was a fair agreement. Although both parties seemed bitter during the mediation, none of them interrupted the other's speech and none of them insulted the other. They talked to each other with respect and both parties were confident in giving their speech. Within two hours, they had agreed on who is doing what and who is taking what. The mediator then requested them to return after two days to sign the agreement.

#### **4.2.3. Parties' employment of gender, class and status in mediation**

In this mediation, gender and status are seen to be employed when it came to the issue of custody. Stephen accepts the custody of the children to be granted to the mother and noted that it was because of the work he does, he cannot manage to take custody. However, it should be noted that both parties are working which means Judith could as well not be able to care for the children. I observed this to be a gendered symbol of women and men, then mother and father, which attaches gender roles to women, men, mother and father. These are explained by the ideologies that women are care takers while men are bread winner and ideology that a mother is best placed to

care for the children respectively. In this case Judith also relies on these two ideologies to seek for custody of the children as the mother and Alimony, she stated that she was seeking custody of the children because they were still young, I interpreted this to mean that because they are young, they deserve to be with the mother who is best placed to care for them. This Ideology is justified by the family as an Institution and it is vivid in this case that Stephen identifies himself as the father who cannot be in position to care for the children because of the nature of his work (positioning himself positively) and Judith identifies herself as the mother who should have the responsibility to care for her children despite her being employed (also positioning herself positively). Here, she uses her subordinate position of woman to achieve her interest of getting the children's custody. The decisions taken by both parties are in line with Gunning's view (1995:70, 71) of participants being biased by pre-existing stories from the cultural myths which include gender in that they cannot make their own unbiased decisions.

When it comes to the aspect of status, taking note that both parties were working with International Organisations and have similar privileges. Such as educating the children and Insurance. Also, considering my observation of the couple during the mediation, that is to say, the way they were dressed and the way they behaved, I categorised both of them to be of equal social class of middle/high class, which class was created by their education status which also assume to be equal based on the observations. However, Stephen's status of being a man elevates him from that of Judith by his gender as this is implicitly seen by him making the proposals of how much alimony he would pay and how the property would be divided. The influence of class here was not seen applied explicitly but considering their education background and the status of being employed with International Organisations, it seemed implicit that they wanted to keep their social class and therefore had to act in ways that would meet their class interest. Webber (as cited in Fulcher and Scott 2003). noted the likelihood of people acting to ensure that their class interests are met, either in a group or as individuals.

As a style of building rapport with the parties, the mediator started this session with an informal discussion with the parties about their employment



before opening the session. She exhibited a very neutral role like I had never seen in the previous mediations. She only put the issues before the table and the parties would discuss them. In an interview, she said there was no reason for intervention there was no noticed imbalances likely to affect the mutual agreement of the parties, yet this is the only situation allowing for intervention. Otherwise, she is only supposed to facilitate the process by guiding the parties on the issues to be discussed. This kind of reaction could have been caused by the status of the parties being of the same as the class and status as the mediator as depicted in an informal discussion with the parties which is not closely related to their conflict before the session started. She was not observed doing this in other cases. All the interactions were focused on similar interests. This is most likely the same as the class.

Monica confirmed to process the mediation sessions following the legal norms depicted under their rules and guidelines. which include laws what However, this may be problematic depending on the situation since it takes all cases to be homogeneous and yet in reality, there is nothing like homogeneous cases as each case should be handled differently depending on the circumstances if social justice is to be achieved. However, Monica was also seen taking this into consideration as she intervened in some cases basing on her personal norms and values. Her bias is therefore based on the norms and belief under the law and her culture, thus confirming Gunning's view (Gunning 1995: 68), as mentioned under the theoretical framework in Chapter 3, that as parties pick bits and pieces from larger cultural norms and beliefs and employ them to pursue their interests, mediators are also not an exception since they also pick bits and pieces to help them understand the conflict and guide the parties to a resolution.

#### **4.2.4. Unique experiences of intersectionality**

Judith being a literate woman, working middle class and a mother and wife applied gender, class and status to pursue her interest, even when she was placed subordinate to Stephen by some of the norms as a woman. In this case the result were in her favour but this does not mean that every woman (Gender) and literate, mother (status) from the middle class will get

the same experience. However, this reveals that the way an illiterate, housewife, woman experiences gender is different from the way a literate and middleclass woman will experience it. This research has dealt with only gender, class, and status but there may be a number of stereotypes that may cause unique experiences. As a male Stephen also employed norms based on his gender as a literate man, his status as a father and his class as working class with an international organisation.

In this case, it was easy for the mediator as she would just put issues on the desk and the parties would discuss them. She was also seen to handle them differently compared to some other parties. This justifies the use of the intersectional lens to understand how these social interactions overlap. Monica the mediator was also seen to employ the ideologies of following the law and being relational in processing the mediations.

#### **4.2.5. Conclusion**

This case discloses the difference when the both parties were literate and employed. It has showed how these parties also employed the intersection of gender, class and status. Just like Khadija, these two cases of Khadija and Judith provide a vivid picture of what Crenshaw (1991: 1242) called problematic in failing to recognise inter-group difference. Although Khadija and Judith are both women, the dimensions within the group of women caused unique experiences for each one of them. The hypothetical examples given in the case of Khadija also show how unique each experience would be.

The family Division does not only handle Divorce and child custody cases and therefore the next section will analyse a mediation case relating to family property inheritance and administration.

### ***4.3. The case of Sarah 'et al' and Phillip and Anor. (Mediation 2)***

This case will help me to analyse the intersection of gender with class and status as employed by the parties in mediation of family property inheritance and administration. Just like the cases discussed under sections 4.1.

and 42, gender will be determined basing of the symbolic representation, ideology, institution and subjective identity as the elements identified by Scott under her definition of gender as socially constructed relationships between men and women (1986: 1067). Status will be identified from the positions held by the parties in society and class from the party's income as influenced by Weber's dimension of power (As cited in Fulcher and Scott 2003:696).

Sarah, Jackie, Racheal, Irene and Robert sued their young brother Phillip and their Step mother Agnes for denying them their share of the property left by their late father. The four female plaintiffs were the oldest and uneducated but two of them had small businesses for survival and were all married. Robert (male plaintiff) was educated up to diploma level. Phillip (first Defendant) was the youngest among the parties and an upper secondary school student. The mediator started by the introductions and an opening statement as described under Chapter 3. The parties did not sit in any specific order. Phillip sat on one side with Robert, while Agnes sat at the front with Irene and the rest sat behind Irene and Agnes.

#### **4.3.1. The claim**

The 5 siblings instituted the suit against their young brother and step mother for denying them their right to property. However, none of the parties had obtained letters of Administration of the estate of their late father. The plaintiffs alleged that their father left a lot of property including a commercial building in the city centre, a four-bedroomed house and four boy's quarters in Mutungo (city suburb), sitting on 10 acres of land, 3 other pieces of land in the village. That however, their brother who is the heir and his mother denied them access to the property and yet they were also beneficiaries. Their desire was for the property to be shared amongst the beneficiaries.

#### **4.3.2. Response**

The first respondent Phillip said they had never denied them any property but he just decided in his capacity as the heir that since their father had not sold the property, he would also keep it for the family unsold. Regarding

the commercial building. Phillip informed them that the money out of the building pays his school fees and takes care of the widow since she has no other income. He gave his view that the property should not be shared but kept as family property. He was saying this with arrogance and assertiveness.

The mediator summarised the issues for them and opened for discussion. The Racheal asked the defendants how they would benefit if the family property is just kept and yet they are also in need of making use of it? They also wanted to know where the money from the boys' quarters go because they are occupied by the tenants. In response, Phillip said that the boys' quarters raise very little money, not enough to cater for the home and the visitors that Agnes gets. The mediator asked both parties "who holds the letters of administration?" None of the parties did but they all agreed that the 1<sup>st</sup> defendant was in charge of the property because he was the heir. At this stage the mediator told them that legally, there should be someone in charge and all the beneficiaries should agree to that person. The mediator told them they will not be able to do any legal transaction on the property without the legal authority. She however told them for now, they can go ahead and decide on whether to share the property amongst themselves then the issue of the administrator will come in later. When Jackie spoke to Phillip accusing him of greed while pointing a finger, before the mediator could intervene, Phillip asked Jackie to give him respect as the heir because no female can ever be heir of her father. The other plaintiffs also talked to Jackie asking her to be respectful, acknowledging Phillip to be their living father. The rest of the plaintiffs talked to him calmly and with respect despite his arrogant tone towards them. Irene one of the plaintiffs was quoted to have said that;

we respect you as our current father but we are requesting you to accept and give us our share so that we do not take this conflict far." (Irene)

After the statement by Irene acknowledging Phillip as the heir and their living father, Phillip's attitude towards the plaintiffs changed and he asked them what they were expecting to get, but this time, as compared to his first

communications his tone was calm. The parties agreed that they can share the property apart from the commercial building which was to remain as family property managed by the heir. What remained then was to determine how much land each could get but this had to be done after surveying the land and know the exact size of the land to be subdivided.

Before the mediation could be closed, Robert (the only male plaintiff) asked Phillip and Agnes (Defendants) to put him on the family land title because he was male like Phillip. Surprisingly, this was supported by the other plaintiffs.

### **4.3.3. Analysis**

The statement by Phillip, asking Jackie to give him respect as the heir because no female can ever be heir of her father reveals the influence of gender. Women not allowed to be heirs of their father is embedded in the institutional arrangement within the family and indeed supported by the ideology that sees women as illegitimate gender to be in a decision-making position. The expression of Phillip clearly shows that he identifies himself as an heir and the respect attached to the position of heir in the family is seen to be high. Generally, the plaintiffs regarding Phillip as their father's heir and despite the conflict, they respected him as such despite him being their young brother, hence bringing out the element of subjective Identity. It is realized that they assume that this is a widely-accepted belief in their society and they implicitly take it into account in their daily conduct and therefore fits to be considered as status beliefs. Status beliefs have been defined to be cultural plans shared by a group regarding a status position based on gender, race, education or occupation (Ridgeway 2001: 637). Phillip used this gendered ideology to seek respect from his elder siblings, while Irene and other siblings used the gender to pursue their interest of sharing on their father's property. This is observed when Irene tells Phillip that they respect him as the heir to their father and as their living father. It is also evidenced when the rest of the siblings asked Jackie to respect Phillip when she talked to him while pointing a finger at him.

Regarding the issue of including Robert's name to the family land title, the plaintiffs (all female apart from Robert), in a group interview confirmed that they were ok with Robert being put on the land title and not any other among them because Robert was a man and therefore ought to be on the title of the family land. They further explained that as married ladies the children they bear do not belong to their clan but to the father's and therefore they had to support their brother because his children would be part of their clan and therefore continuity of ownership of family property would be there. From these speeches, we can see that women are not considered to provide continuity of their own clan which is embedded within the clan as an institutional arrangement and reinforced by the gendered ideology that sees women as a gender that bears children for patrilineages but sees men as a gender that provide continuity of the clan. This ideology leaves the female children out of the clan but the parties were comfortable with it because they believe it to be the right arrangement and therefore have to abide by it.

I also noticed that all the female parties were illiterate and the only education they received was from the family. On the other hand, both male had been educated although one did not reach university level and the other was still undergoing education. This put the men, on top of the status of being man it provides them with a different status higher than that of the women It is therefore very clear that the female parties' status of being illiterate and women places them in the subordinate position as they are likely to be affected with the dominate stereotypes about women, such as the ones under this case on heir and clan continuity.

Applying intersectionality to the statement of the female plaintiff when supporting Robert to be put on the land title, and Phillip being the heir, if we switch the women plaintiffs and say that they were literate, married, and of middle/high class, their decision regarding the family property could probably have been different due to knowledge acquired through school education as they would have diversity of knowledge and ability to determine which one to accept as truth. Even if their decision would be the same, the way they would be affected would be different from the way these illiterate,

married women, with no income or with small income from the small businesses that they own.

#### **4.4. Chapter conclusion**

This Chapter has analysed three cases among the cases that were observed during the study. These cases revealed how parties employ gender, class and status to pursue their interests in the process of mediation. The findings have revealed some of the symbols explained by ideologies upon which the parties identify themselves and employ during negotiation to pursue their interests. They also show how identity dynamics create unique experiences for people from the same group. In the next chapter, I will draw my conclusion and make recommendations where further research is required.

## **Chapter 5 Mediation experience in a nutshell**

### **5.0. Introduction**

Mediation was made mandatory in all civil cases in Uganda (MOJCA 2013) and as such, all family law cases started being subjected to mediation court hearing. My employment with the Uganda Human Rights Commission enabled me to benefit from a four days' training for mediators which was organised by the Judiciary together with JLOS. However, before I could start my voluntary services as a mediator, I got the opportunity to pursue my masters' studies at ISS. During the studies, I have learnt a lot about the importance of understanding the sociological meaning of social phenomena, which made me question my knowledge of mediation. This inspired me to carry out research on mediation to enhance my knowledge and be able to return home and serve the society as a mediator and try to ensure social justice leading to development of the country.

This research attempted to answer the question of how parties, including mediators, employ gender, in its intersection with class and status, in the negotiation of their interests in the FD of the High Court of Uganda. Through observations at the FD and unstructured informal interviews, the study has attempted to answer the study question of how parties and mediators employ gender in its intersection with class and status to pursue their interest in the mediation process at the FB of High Court of Uganda. The findings as discussed under chapter four show that the parties in their narrations employ gender stereotypes, ideologies and norms to convince the that their claim is worth. These findings correlate with Isabelle's view that parties in a mediation tell their stories in a pre-existing narrative, cultural myths and stereotypes, which can be either negative or positive (Gunning 1995:68). They employ the norms of gender, status and class to legitimise their stories but choose the ones that most favour their story depending on the situation. This is done by framing themselves as the good version of the symbols depicted while framing the other party as the bad version of the symbol.



It was noted from the observations that the parties may identify themselves as disadvantaged to gain sympathy and frame the opponent party as advantage so as not to be favoured. They frame themselves as right ones and frame the other party as wrong one meaning that they deserve their interests to be considered while the other party's interest does not deserve consideration.

The findings further reveal mediators' reliance on ideologies embedded in the law (legal norms in form of rules), together with norms from their social background upon which they rely to interpret and process the mediation and that this forms uniformity in the management of conflicts, thus framing them as homogeneous yet in reality this is not the case. However, it was also found that mediators also have other unwritten norms that are employed during mediation and these are based on their social and cultural background which include gender, class and status norms. These were seen to be applied where the law does not explicitly describe the mediator's role. Such as the case of balancing power relations.

The other notable finding from this research is that the intersection of gender, class and status as employed by the parties to the mediation creates unique experiences to the parties and this experiences are also not the same among people from the same social group. The results are unpredictable in that, to some parties, it might be able to influence the outcome but to other parties from within the same group, it may cause an impact but that impact might not necessarily be influencing the outcome. The results are therefore dependent on individual by individual basis. This correlates with Gunning's statement that we cannot predict the results in real life situations but we are sure the negative or positive myths/ideologies and stereotypes will impact on the experiences of people and may be twist the outcome. (Gunning 1995:76) Because of such findings, I concur with Crenshaw's emphasis on the need for intersectional approach to phenomena in order to respond to social interactions (1998: 166).

### **5.1. Unexpected findings**

Despite the existence of the rules and guidelines for the mediators to rely on in the exercise of their duties, mediators sometime do not exactly follow the rules. For example, out of the twenty-seven mediations scheduled for hearing that month, only thirteen mediations were heard. The rules impose a sanction for nonappearance by the party without plausible explanation. Most of the mediations which did not take place parties had no plausible explanation for nonappearance but no sanctions were given. On inquiring from all, the three, they acknowledged reluctance in implementing this rule because mediation is supposed to reconcile parties and if you start giving fines before the mediation, then the parties might be scared away or discouraged from the process.

Additionally, it was observed that the guiding principles of mediators prohibit them to provide advice. However, all the mediators at the FD had a legal background and I was left wondering if it were possible to draw a line between legal advice and mere advice of mediator. For instance, in a mediation between Grace and Juliana (Appendix A), where Juliana was arrogantly responding to grace's claims of mismanaging their inherited property to which Juliana was the administrator, Monica the mediator told Juliana that she should know that what she did was a crime which could lead her into prison for years. After that statement, Juliana showed more interest to solve the matter out of court. In my view, this did not sound like mere advise from the mediator but legal advice considering that Monica was a lawyer, she employed her knowledge of the inheritance law to advise Julianna so as to have the mediation progress.

Finally, the findings revealed that the rules and guidelines upon which the mediators rely to process the parties' claims do not explicitly prohibit lawyers from taking part of the mediation process but in practice, the lawyers are only encouraged to be present only for purposes of advising their clients rather than contributing to the mediation. This was observed in several cases where lawyers were not allowed to contribute during the negotiations. In a mediation, between Christopher and Elizabeth (Appendix A) the lawyer was asked to move out because he engaged into the negotiations yet

one of the ground rules was that the lawyer will only play advisory role to his client.

## **5.2. General recommendations**

As already noted under Chapter 1, this study was too narrow to be generalised as applying to mediations in Uganda or at the FD therefore, it is necessary for a wider research on the topic in order to generalize the findings.

It is also hereby recommended that a research on the impact of the sue of ideologies by the parties to pursue their interests on the mediation process and outcome.

## References

- Bamwine Y (2015) Report on performance of the High Court in course disposal. 'Analysis of what happened since 2014 to clean up case backlog: Success, challenges, Targets and strategies for performing better in 2015', Annual Judges Conference Accessed 6 May 2016 [http://www.judiciary.go.ug/data/dpublications/12/Releases\\_publications.html](http://www.judiciary.go.ug/data/dpublications/12/Releases_publications.html)
- Crenshaw, K. (1989) 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics', *U.Chi.Legal F.* : 139.
- Crenshaw, K. (1991) 'Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color', *Stanford law review* : 1241-1299.
- Davis, K. (2008) 'Intersectionality as Buzzword A Sociology of Science Perspective on what Makes a Feminist Theory Successful', *Feminist theory* 9(1): 67-85.
- Dewhurst, M. and V. Wall (1994) 'Gender and the Mediation of Conflict: Communication Differences', *Conflict and gender* : 281.
- Fulcher J & J Scott (2003) '*Stratification, Class and Status*', in *Sociology* (2<sup>nd</sup> ed.) Oxford: University Press, 691-706
- Gunning, I.R. (1995) 'Diversity Issues in Mediation: Controlling Negative Cultural Myths', *J.Disp.Resol.* : 55.
- Henry, J .B and A L Marriot (2011) *ADR: Principles and Practice* (3<sup>rd</sup> ed.) Sweet & Maxwell
- Judicature Act 1996 (Uganda) s. 41 Accessed 8 November 2016 <http://www.ulii.org/ug/legislation/consolidated-act/13>
- Kakooza, A.C. (2009) 'Arbitration, Conciliation and Mediation in Uganda: A Focus on the Practical Aspects', *Uganda Living Law Journal* 7(2): 268-294.
- Katureebe B M (2016) 'Address by Chief Justice at the opening of the new law year at the High Court Gardens in Kampala, 22 January. Accessed 6 April 2016 <http://www.judiciary.go.ug/files/downloads/SPEECH%20OPENING%20OF%20THE%20NEW%20LAW%20YEAR%202016.pdf>
- Kelly, J.B. (2004) 'Family Mediation Research: Is there Empirical Support for the Field?', *Conflict resolution quarterly* 22(1- 2): 3-35.

- Kolb, D.M. and G.G. Coolidge (1988) *Her Place at the Table: A Consideration of Gender Issues in Negotiation*. Harvard Law School.
- Land Act 1998 (Uganda), s. 8 Accessed 3 June 2016 <http://www.ulii.org/ug/legislation/consolidated-act/227>
- Lombardo, E. and P. Meier (2014) *The Symbolic Representation of Gender: A Discursive Approach*. Ashgate Publishing, Ltd. <Google books Accessed 9 November 2016 [https://books.google.nl/books?hl=en&lr=&id=iw17BAAAQBAJ&oi=fnd&pg=PR7&dq=Lombardo+and+Meier+symbolic+representation+of+gender&ots=1-95ZEm3IW&sig=F79cpzY-Fci4DwX\\_z5\\_IDzHI74#v=onepage&q=Lombardo%20and%20Meier%20symbolic%20representation%20of%20gender&f=false](https://books.google.nl/books?hl=en&lr=&id=iw17BAAAQBAJ&oi=fnd&pg=PR7&dq=Lombardo+and+Meier+symbolic+representation+of+gender&ots=1-95ZEm3IW&sig=F79cpzY-Fci4DwX_z5_IDzHI74#v=onepage&q=Lombardo%20and%20Meier%20symbolic%20representation%20of%20gender&f=false)>
- Lorber, J. (2004) 'Night to His Day': The Social Construction of Gender', *Race, class, and gender in the United States: An integrated study* 6: 54-65.
- Loseke, D.R. (2007) 'The Study of Identity as Cultural, Institutional, Organizational, and Personal Narratives: Theoretical and Empirical Integrations', *The Sociological Quarterly* 48(4): 661-688.
- Ministry of Justice and Constitutional Affairs of the Republic of Uganda (MOJCA) (2013) 'Statutory Instrument No. 10/2013 Judicature Act. Judicature Mediation Rules' Accessed 6 April 2016 <https://www.jlos.go.ug:442/index.php/document-centre/mediation/279-judicature-mediation-rules-2013-si-no-10-of-2013/file>
- Ministry of Justice and Constitutional Affairs of the Republic of Uganda (MOJCA) (2007) 'Statutory Instrument No. 55/2007' Judicature Act. Judicature Commercial Court Division Mediation Rules Accessed 9 November 2016 <http://www.ulii.org/ug/legislation/statutory-instrument/2007/55>
- Moore, C.W. (2014) *The Mediation Process: Practical Strategies for Resolving Conflict*. John Wiley & Sons.
- Nolan-Haley, J. (2013) *Alternative Dispute Resolution in a Nutshell, 4th*. West Academic.
- O'leary, Z. (2004) *The Essential Guide to Doing Research*. Sage.
- Patrick Tabaro (2012) 'Alternative dispute resolution is the magic wand to resolve case backlog in our courts' *The Observer* 2 September. Accessed 10 May 2016 [http://www.observer.ug/index.php?option=com\\_content&view=article&id=20722:alternative-dispute-resolution-is-the-magic-wand-to-solve-case-backlog-in-our-courts&catid=57:feature&Itemid=69](http://www.observer.ug/index.php?option=com_content&view=article&id=20722:alternative-dispute-resolution-is-the-magic-wand-to-solve-case-backlog-in-our-courts&catid=57:feature&Itemid=69)

- Pruitt, D.G. and K. Kressel (1985) 'The Mediation of Social Conflict: An Introduction', *Journal of Social Issues* 41(2): 1-10.
- Ridgeway, C.L. (2001) 'Gender, Status, and Leadership', *Journal of Social Issues* 57(4): 637-655.
- Ridgeway, C.L. (2009) 'Framed before we Know it how Gender Shapes Social Relations', *Gender & Society* 23(2): 145-160.
- Rifkin, J., J. Millen and S. Cobb (1991) 'Toward a New Discourse for Mediation: A Critique of Neutrality', *Mediation Quarterly* 9(2): 151.
- Scott, J.W. (1986) 'Gender: A Useful Category of Historical Analysis', *American Historical Review* 91(5): 1053-1075.
- Shields, S.A. (2008) 'Gender: An Intersectionality Perspective', *Sex Roles* 59(5-6): 301-311.
- Sophie Laws, Harper, C. and Marcus, R (2003) *Research for Development: A Practical Guide*. Sage Publication
- Susan F. Hirsch (1998) *Pronouncing and Persevering: Gender and the Discourses of Disputing in an African Islamic Court*. University of Chicago Press.
- Taylor, A. and J.B. Miller (1994) 'Gender Diversity: Conceptions of a Changeable Variable.'
- Uganda Police Force (UPF) (2014) Annual Crime Report, Crime Analysis P. 5 Accessed 6 April 2016 [http://www.upf.go.ug/download/publications\(2\)/Annual Crime and Traffic Road Safety Report 2013\(2\).pdf](http://www.upf.go.ug/download/publications(2)/Annual%20Crime%20and%20Traffic%20Road%20Safety%20Report%202013(2).pdf)
- Weingarte, H.R. and E. Douvan (1985) 'Male and Female Visions of Mediation', *Negotiation journal* 1(4): 349-358.
- Welsh, N. (2001) 'Making Deals in Court-Connected Mediation: What's Justice Got to do with it?', *Washington University Law Quarterly* 79: 787.

## **Appendix A: Case summaries.**

### ***The case of Jude and Brianna (Mediation 1)***

Jude a male Ugandan in his late thirties had brought this case of child custody against Brianna a white woman also seemed in her late thirties. The couple had divorced three years before and the custody had been granted to Brianna in the best interest of their child who was two years by then.

Jude's claim was that the custody by then had been given to Brianna because the child was still a baby but at the time of the mediation, the child was five years and therefore he could re-apply for custody. He claimed that he was worried that Brianna might take the child to Ireland and not bring her back. Brianna in response to the claims alleges that this child is still very young and being a girl at five years, she still needs a lot of guidance from her mother, secondly, she alleged that she has never stopped Jude from visiting the child or having her for days, she could not understand why Jude thinks she will take the child to Ireland for good. She alleges that it was three years since their divorce and within the three years she has travelled with the child to Ireland three times. On top of that he said she owns shares and manages an organisation in Uganda and had stayed for eight years.

Jude alleged that he heard rumours that Brianna was withdrawing from the organisation and going back to Ireland for good and therefore he was worried of not seeing his daughter again. Interpreting their claim, Alexandria the mediator realised that their issue was not custody but assurance that the child will not be taken to Ireland forever. Both parties agreed that this was the actual issue that needed to be resolved. The parties, together with the mediator tried to figure out how this would be settled by coming up with different solutions but were all in vain. The parties agreed that the mediation should be adjourned and each one of them thinks about a solution which will be discussed at the next hearing. Brianna proposed for lunch so that they can discuss it further over lunch immediately after the mediation. Jude had no objection.

### ***The case of Charles and Winnie & Anor (Mediation 3)***

Charles filed a suit against the defendants, Winnie (mother of his late brother's children) and Geoffrey. In this matter, Charles was alleging that he and his mother are the rightful holders of letters of Administration of the estate of his late brother but Winnie and Geoffrey have denied them access to the properties. Charles wanted to take over all the property, alleging that his brother left other children. Winnie was a school dropout and single mother of two children who were staying with her in one of the houses left by the deceased and she was renting the other house to care for the children. In responding to Charles' allegations, Winnie stated that her 'husband' did not leave any other children and that she needed the house to care for the children since her husband's family was not helping her at all. Geoffrey was an illiterate business man dealing in agricultural produce, who in response to Charles' claim stated that he had bought a house from the deceased before his death and he had an agreement to the effect.

The mediator asked Charles if he knew Winnie and he said "that is the woman in my brother's house but I don't know her". On asking him the second time he said that "she is the mother of my brother's children". The mediator tried to assist the parties to reach a compromise but the plaintiff insisted that he wanted Winnie and Geoffrey out of the houses so that he can administer the brother's property. The mediation failed because the plaintiff was inflexible. On interviewing the plaintiff, he said that mediation does not work.

How can I have letters of administration and the mediator says we put the law aside and agree. I want to go to court where my letters will be recognised (Charles)



### ***Matilda and Joseph, Andrew and Maria (Mediation 4)***

This case was filed by Matilda, a widow in her late thirties. Matilda is educated and works at the District as a probation officer. Joseph and Andrew are male in their late thirties and mid-thirties respectively, while Maria is a female in her early thirties. Both Maria and Joseph were dressed in official classy suits which looked to be expensive and were ably communicating in English. Joseph's suit was navy blue with a white shirt while Maria was in a black skirt suit with a sky-blue camisole. Both parties had lawyers present. This was a mediation on property inheritance.

Matilda the widow to the deceased filed the suit against Joseph Andrew and Maia (deceased's children) for chasing her out of her matrimonial home on ground that this was their house. Matilda had no children with the deceased but had been legally married to him for 8 years by the time of his death. The deceased had properties which included 4 houses including the one in dispute which was bigger than the others, as described by Matilda.

The mediation was taking place for the second time therefore the mediator asked the parties to produce their proposals for settlement as had been agreed upon during the previous session. Matilda presented her proposal first and it was no different from her claim. The proposal was that the defendants give her back her matrimonial home that they had taken from her and she would not claim any more interest from the deceased's property. The reason she gave for this position was that she is entitled to that because that is where she was living with her husband as a married woman and that the defendants were not living with them at the time. The Defendants brought the proposal that Matilda will be given a two-bedroomed house but not the one that was the family's main house, after all she had no child with their father. The mediator then asked Matilda what she thought about the defendants' proposal and she said she cannot accept. She added that the defendants are taking advantage of the fact that she is a widow to deny her what rightly belongs to her. The mediator then asked the Defendants their view and Joseph also responded that they are not giving her the main house because they are the only children of the deceased and that this it is their home and they have personal sentiments attached to it since they were

brought up from there. Andrew and Maria also re-affirmed. The mediator granted the parties a break of 10 minutes to discuss with their lawyers and come up with more proposals but this discussion yielded nothing as the parties still had the same views and were all of the view that the file be forwarded to the judge for hearing.

However, in an interview with Brian (Matilda's lawyer), he said that he preferred a male mediator and more so a Ugandan who could understand how the behaviour of the society is, so that the parties can be guided properly. He wanted the mediator to apply the law and guide the defendants towards submitting the house back to the widow as per the law since it was her matrimonial home. The lawyer was unhappy because this was the second time the matter was pushed back for mediation as the judge believed it would be solved without trial. He stated that the first mediator who preceded Monica also American was hesitant to apply the law and sent the matter to the judge. Matilda in the interview only stated that she was not happy with the way the mediator handled the matter.

### ***The case of Shadia 'et al' and Zahra 'et al' (Mediation 5)***

This was a dispute between thirteen siblings, five of them two males and three females (Shadia, Swabra, Aisha, Ibrahim and Hussein) filed the matter against 4 other children (Zahra, Mahmood, Kassim, Moses) who were administering the estate of their late father. The 4 other children were not party to the suit but were present for the mediation because they were also beneficiaries of the same estate (Zainab, Shafiq, Wahab and Wahid). This was a big estate which contained buildings in the capital city, land in the capital city, land in the outskirts of the capital city and land in the village. Both the complainants and defendants agreed to divide the property amongst themselves but the plaintiffs wanted to take the commercial properties which were located in the capital city centre. When the defendants insisted that they also wanted some of that property, the plaintiffs stood their ground and the mediation was failing. However, before the parties moved out of the room, one of the male plaintiffs said he wanted to take his share

as proposed by the defendants because he was tired of the conflict and moving back and forth regarding this case. He was illiterate and a peasant farmer. As soon as he said that, the mediator asked whether there was any other person comfortable with the defendant's proposal. The second male plaintiff also raised up his hand. It's at this moment that I saw the other 4 siblings whispering to each other (the ones who were not part of the complaint), they then raised up their hands. The mediator allowed them also to participate in the mediation although they were not party to the complaint because they were beneficiaries and she wanted the resolution to be complete. The issue that remained now was only the 3 female plaintiffs. These three female plaintiffs were educated and living in the capital city just like the defendants, as opposed to the other plaintiffs who had given in who were living in a village, although not very far from the capital city. The parties still believed the matter could be resolve therefore the mediation was rescheduled for the last time to attempt to settle the conflict between the three plaintiffs and the four defendants.

### ***The case of Jessica 'et al' and Pastor Richard (Mediation 6)***

Jessica, Veronica, Michael and Samson (the plaintiffs), brought this complaint regarding inheritance and improper administration of the estate of the decease against their brother Pastor Richard who had been legally granted letters of administration with the consent of his siblings; to administer the estate of their late father. The defendant was a prominent pastor (priest) in one of the large Pentecostal churches in Uganda. He did not come for the first mediation, alleging that he had to travel out of the country. On appearing for the second mediation, After the plaintiffs narrated their story, Richard's his first statement to his brothers and sisters was;

“why do you want to spoil my name? we would have resolved this as a family than bringing me to court”. (Richard)

He then requested the mediator to grant them an opportunity to solve the issue as a family and report back to court. The plaintiffs had no objection to it but told him he gave them no choice when he was dodging them,

but they did not want to end up in court either. The mediator allowed the request and gave the parties two weeks to report to court and in case they did not agree with each other, the mediation would proceed. The Jessica and Veronica in this mediation did not say anything apart from being observed agreeing with Michael and Samson.

### ***The case of Grace and Julianna (Mediation 7)***

Grace brought the case accusing Julianna of mismanaging the estate of their late father to which they were the only beneficiaries. Their late father had only two of them as his children and upon his death Juliana who was more educated was granted letters of administration of the estate of the deceased upon agreement of both of them. However, she 2 plots of land belonging to the estate without informing Grace and did not give her any proceeds from the sale. Juliana in response told Grace that it was not her fault that she did not complete studies yet their parents were willing to educate her. She accused Grace of being a hoar which is the reason why she did not finish school. The mediator stopped Juliana from talking and asked her to respond to what Grace had stated. She also reminded her of the ground rules that they had set at the beginning of the mediation. Juliana said it was true she sold the two plots of land but it was because she had problems and she needed money. She was talking in a mocking way and Grace asked her where her share of the sold property was. She immediately responded that she was not the one with problems why would she have a share. She told her that she will be considered if she also had problems. At this point the two ladies were all speaking with anger and the mediation had to call for a break of 5 minutes and she informed Juliana that what she had done was a crime which would lead her into jail for a long time. Indeed, this worked because after that statement, Juliana was seen calm down and eager to solve the matter out of court. She apologised to her sister and they agreed that they would share the property and when they are doing so the property already sold by Juliana would be considered as received during the sharing. The mediation was adjourned to another date for the parties to return with the list of all the

properties under the estate of their late dad so that they can agree on how to share them.

### ***The case of Maureen and David (Mediation 8)***

This mediation was between a former minister, David and Maureen over a conflict on child maintenance. The case was brought to court by Maureen in her early 30s, demanding for child support from David, alleging that she had a relationship with David and begot a child aged 5 years but since she got pregnant, David abandoned the relationship on ground that he was already a married man but he supported her through the pregnancy. She further alleged that after she gave birth David supported her until the child made one year and he withdrew his support. Maureen spoke with fear which was observed from her facial expression and the shaky voice while she was explaining her points. She also did not speak a lot as she explained her main reasons for filing the case in less than 5 minutes and kept quiet. David in response to Maureen's claim also counter accused Maureen for denying him access to the child. David spoke with a loud voice while emphasising his points and insisting that he will not provide for the child unless the plaintiff lets go of the child and allow him to take the child. Maureen said that this is her only child and she cannot let her go but she just needs support from the child's father. David then said that if she didn't want to let the child go, then let her take care of the child. Alexandra (the female Uganda mediator) at this point halted and caucused with the parties. During the caucus, Maureen narrated the several times that she has tried to get money from David by he refused. She stated that she has tried to care for the girl but now it is difficult for her because he reached school going age and providing school fees and the requirements is quite expensive yet she doesn't work. In the caucus with David, he insisted that he wanted custody of the child whom he said he wanted to grow with her siblings and that his wife would care for her. After the caucus, the mediator gave both parties a brief of how the case might be determined if it proceeds for hearing. She informed them about the responsibility of both parents to provide for the child and informed them that in litigation they would not be able to decide

how to solve their problem but rather a third party will do that for them (judge). David eventually said he did not want this matter to proceed to court and that he would provide maintenance for the child but he also wanted access to the child once in a while. He however did not want to sign the agreement but the mediator insisted that whatever they agreed should go into a signed agreement. David still refused and requested the mediator to allow him to think about it. Maureen did not object to the access to the child as long as he is caring for her.

In an interview, the mediator explained the caucusing and informing parties of how the case might go. She said it was her intervention to ensure that David doesn't completely dominate the mediation and also to see the matter resolved by the parties. She stated that by doing this she was being fair to an intimidated plaintiff but also impartial as she was not favouring any of the parties but just making the ground levelled. She said this was allowed by the mediation rules.

### ***The case of Christopher and Elizabeth (Mediation 11)***

Christopher in his early thirties years filed a divorce cause against Elizabeth in her late twenties. Among the issues to be resolved were child custody and maintenance on top of the divorce. Christopher was unemployed but operating a Christian Ministry while Elizabeth was also unemployed and nursing the couple's seven months-old baby. During the mediation, Christopher as the plaintiff was given the first opportunity to talk. The reasons for his case were grounded on Elizabeth's being disrespectful to him and quarrelsome. He wanted Elizabeth to take custody of the child until he makes six years then the custody is granted to him. He requested that before six years, he can have the child for some weekends. While completing his story, he stated that he regrets why he married her because she has no respect for him at all, wants to make all decisions, doesn't cook and then she says she is a Christian yet the Bible preaches wives to be submissive to their husbands.

The mediator Joshua then called in Elizabeth to respond to Christopher's claim and in her statement rebutting Christopher's claims, she explained that Christopher had failed to fulfil his responsibility of providing

for them and she was forced to beg for assistance from her friends and relatives in order to take care of the baby. She stated that although she is a degree holder, she could not look for employment since the baby was too young and still needed her attention. She still wanted the marriage but said if it is Christopher's wish for it to end as a man of God, she will not object to that but cannot allow him to take her child for the weekend.

Joshua asked Elizabeth what exactly she meant by saying that she will not object, and Elizabeth responded that she was also ready for the divorce but just because the man of God wants it to be. Joshua told Elizabeth not to make decisions for the sake because they might be difficult to reverse at a certain time. He then asked her why she did not want Christopher to have the child for the weekend. In her response, Elizabeth started from giving a background of what happened when the baby was 2 months and she left him with Christopher to go to the Shops. Before she could finish her sentence, Joshua intervened and said that they should agree not to dig into the past but find solution for the current conflict.

He therefore asked her to think about it.

Joshua told the parties that it is better for the issue of child custody and maintenance to be sorted after the issue of divorce is resolved. He therefore adjourned the mediation for the parties to think about it and then proceed with the mediation at the next set date.

In an interview with Christopher to understand what he meant with the above quoted statements, he insisted that it is natural, and the bible also mentions it that a husband is the head of the family and a wife ought to be submissive to the husband he was distressed that his wife was quarrelsome and not submissive, which would embarrass him before his friends and family. He also noted that as a husband he should also eat food prepared by his wife but his wife never cooks yet he is a stay-home wife. Meaning that she doesn't leave home for work. When asked why he was being referred to as man of God, he said that he started a Christian Ministry which was helping orphaned children and it had a number of people who believed in his work for God and that he did not want to disappoint them. However, he insisted

on having the divorce but have to sort the custody issue in a manner that would not disappoint the Ministry people.

As the parties were moving out of the mediation room, Joshua (the mediator), told Christopher as a man of God, he had a big role to play to ensure settlement of the matter.

### ***The case of Edith and Isaac (Mediation 12)***

Edith in her early twenties filed for divorce from her husband and Isaac in his mid-thirties on grounds of domestic violence and adultery. Edith had prayed for the custody of their two children aged five and two, with visiting rights to Isaac and provision of maintenance by Isaac. Both Edith and Isaac are self-employed, as Isaac owned a small motorcycle spare parts shop, while Edith owned a small boutique. Edith is a diploma holder while Isaac is a Senior six school drop-out. While giving her statement, Edith stated that she would not allow her children to remain with Isaac because he has so many girlfriends and therefore would not be able to take care of them.

While Isaac ignored the issue of many girlfriends raised by Edith, he insisted that he would take custody and keep the children with his mother. He explained that Edith is also not fit to care for the children but all she needs is to get money from him in disguise of caring for the children. He referred to her as not being marriage material as she wanted to be ‘the man in the house’ that is why she filed the divorce because he was not surrendering to her demands.

He explained during an interview that a girl can be ‘marriage material’, if before getting married, the paternal auntie talks to her and teaches her how to treat her husband. He said that it seems the plaintiff did not go through that training. He explained that Edith wanted to give orders at home including setting for him time to return home from work, which he said would not work. Isaac also said that there are many women out there looking for husbands to marry them and that it would take him less than a day to get another woman. Edith did not mind what Isaac said about her, as long as he grants her the divorce and custody.



***The case of Patience ‘et al’ and Edgar ‘et al’  
(Mediation 13)***

This was a case administration of the estate of the late father of eleven siblings, that is to say; seven women and 4 men. All the parties were educated apart from Ethan in his late thirties, the youngest of all and heir of their late father. Among the plaintiffs, Patience was a teacher by profession although had moved into commercial farming, Hope was also a teacher by profession but not practicing, she was a house wife, Faith was a nurse living in Germany, Gift was a Health officer in Bushenyi (one of the districts in the western part of the country), Mercy was a social worker but also living in Germany, Gloria was a teacher and proprietor of a school in Mukono (district in Central Uganda), and Peace was a retired teacher. The defendants were also educated as Edgar was a lawyer, Edward was a teacher and proprietor of a school in Mbarara (District in Western Uganda) Erick was working in the Health sector of Bushenyi District.

The seven women (the plaintiffs) sued their four brothers (Defendants) on ground that they had denied them the opportunity of sharing from their late father’s land. Both sides had a lawyer present for the mediation and the two female plaintiffs who reside in Germany were represented by Patience for the purpose of mediation to whom they had granted powers of Attorney. The plaintiffs alleged that their father died and left thirteen acres of land. Namely; one acre where their late father’s house was and twelve acres separate from this one acre. They allege that I wanted to take their own shares for each person’s personal use but the defendants stopped them from doing so without reason. In response to the allegations, the defendants stated that the land was family land and they only wanted to protect the land. They told their sisters that they are free to use the land but since it is family land, it cannot be divided amongst them. the women insisted that they wanted to get their share so that they can use it freely. The men (defendants) also insisted that family land cannot be shared. The women (plaintiff) then stated that if the land is not shared, their descendants would not

benefit from it and therefore it would not be of much help for them. Edgar told them that their children will also benefit from their own fathers. Joshua the mediator reminded the parties that the purpose of the mediation is to try to reconcile the parties. He told them that they are siblings and will always have to be meeting on different occasions and therefore it was better for them to come to an agreement such that both sides leave happy than when the court will decide for them. he therefore asked them to think of a compromising position where they have to sacrifice something and get something.

Both parties agreed with the mediators advise and Patience asked the mediator for some time for them to think about a compromising position. Edgar and the rest of the men also preferred some time. Joshua then asked them to put in writing their proposals for the next mediation and adjourned the mediation until after three weeks.

## Appendix B: Characteristics of Participants

### Characteristics of Participants.

	Session 1	Session 2	Session 3	Session 4	Session 5
Type of dispute	Child custody	Inheritance & property administration	Property administration	Property inheritance	Inheritance & property administration
No. of Plaintiffs & gender	1 male	5 1 male 4 female	1 male	1 female	5 2 male 3 female
No. of Defendants & gender	1 female	2 1 female 1 male	2 1 female 1 male	3 1 female 2 male	4 1 female 3 male
Position in society	-	4 plaintiffs house wives  Male – heir Female – widow			
Occupation	Business man (plaintiff)  Organisation manager and proprietor.	Small business owners (plaintiffs)	Plaintiff business man  Defendant 1 – no income  Defendant 2 – business man	Plaintiff social worker  Defendants did not disclose	
Education level	Diploma level (Plaintiff)	Illiterate (female plaintiffs)  Diploma male plaintiff  Defendant school boy	Plaintiff – university  Defendant 1 – secondary school dropout  Defendant 2 - illiterate	All parties literate	3 female plaintiffs' literate  All 4 defendants literate

Plaintiff is used to mean the person/s who filed the case whereas defendant is the person/s against whom the case is filed.

**Continuation of parties' characteristics**

	<b>Session 6</b>	<b>Session 7</b>	<b>Session 8</b>	<b>Session 9</b>	<b>Session 10</b>
Type of dispute	Inheritance & property administration	Inheritance & property administration	Child maintenance	Divorce and child custody	Divorce, custody and property
No. of Plaintiffs & gender	4 2 male 2 female	1 female	1 male	1 female	1 female
No. of Defendants & gender	1 male	1 female	2 1 female 1 male	1 male	1 male
Position in society	Pastor (clergy)		Defendant - Former Minister	Plaintiff - Shiek's wife  Defendant - Sheik	Both parties employees of international organisations
Occupation	Christian ministry.		Plaintiff Journalist  Defendant - Politician	Plaintiff house wife  Defendants business man	
Education	literate	Plaintiff senior school drop out  Defendant literate	Plaintiff-Diploma level  literate	All parties illiterate	Both parties literate

**Continuation of parties' characteristics**

	<b>Session 11</b>	<b>Session 12</b>	<b>Session 13</b>
Type of dispute	Divorce and child custody	Divorce and child custody	Inheritance and property administration
No. of Plaintiffs & gender	1 male	1 female	7 female
No. of Defendants & gender	1 female	1 male	4 male
Position in society	Plaintiff – Man of God (operating Christian Minis-		

ciety	try)  Defendant – house wife		
Occupation	Christian ministry.	Plaintiff - Business woman  Defendat – Business man	5 Teachers, 1 lawyer, 3 health workers, 1 social worker
Education	Both parties were literate	Plaintiff- diploma holder  Defendant -senior school drop out	All plaintiff and 3 defendants literate  1 defendant – secondary school drop out

#### **MEDIATORS' CHARACTERISTICS**

**The names used here under are pseudonyms used for purposes of confidentiality**

	MONICA	JOSHUA	ALEXANDRIA
Gender	female	Male	Female
Nationality	American	Ugandan	Ugandan
Occupation	Lawyer	Lawyer	Lawyer