

**CHALLENGES OF ENFORCING MEDIATION SETTLEMENT AGREEMENT IN NIGERIA UNDER THE ARBITRATION AND MEDIATION ACT 2023\***

**Abstract**

*Mediation as a tool for resolving disputes peacefully has been used in Nigeria from time immemorial. In ancient times it was often an alternative to wars and battles. The mechanism provided an opportunity for face saving even among the egocentric and prevented wars. In modern times mediation remains a useful mechanism in dispute resolution. This work aims at appraising the challenges of enforcing the mediation settlement agreement under the Arbitration and Mediation Act 2023. The objective of the work is to assess the grounds for challenging its enforcement under the Act. In achieving this, the writers adopted the doctrinal research methodology which involved the use of library-based materials and internet materials. The work found that a mediated settlement agreement is binding and enforceable, but several elements can result in the mediated settlement agreement being set aside such as- the incapacity of a party, void or inoperative terms of settlement under the law, non-binding or non-finality terms of settlement and non-disclosure of facts that bring doubts to the impartiality or independence of the mediator etc. It is recommended that careful and comprehensive drafting incorporating all the intended commercial terms is critical to ensure that mediated settlement agreements are complete and enforceable.*

**Keywords:** Mediation, Mediator, Enforcement, Settlement Agreement, Nigeria

**1. Introduction**

Mediation is seen as an Alternative Dispute Resolution process and the most common form of it. Mediation is defined as a flexible process conducted confidentially, in which a neutral person known as the mediator actively assists parties in working towards a negotiated agreement of a dispute or difference, with the parties in ultimate control of the decision to settle and the terms of resolution.<sup>1</sup> It is an informal and private mechanism by which a dispassionate third party in whom the parties to dispute repose confidence and trust, and who is known and called the ‘mediator’ intervenes in a dispute by taking steps to promote an amicable resolution of the dispute by the parties themselves<sup>2</sup>. It is a system of dispute resolution recognized under Nigerian Legal System. It is codified under the recently enacted Nigeria Arbitration and Mediation Act 2023 (AMA). This Act regulates mediation proceedings in Nigeria. The Act defines mediation as a process where parties request a third party (known as the mediator) to assist them to reach an amicable settlement of their dispute arising out of or relating to a contractual or legal relationship, but the mediator does not have the authority to impose upon the parties, a solution to the dispute<sup>3</sup>. It is a form of Alternative Dispute Resolution wherein the parties meet with a mutually selected impartial and neutral person who assists them in the negotiation of their differences.<sup>4</sup> This form of dispute resolution is quite different from other forms of dispute resolutions such as litigation, arbitration and negotiation etc. Mediation differs from arbitration in that Mediation leaves the decision power completely and totally in the hands of the parties. The mediator does not act as a judge or umpire, but rather assumes the role of a catalyst between opposing parties attempting to bring them together by clearly defining issues and eliminating obstacles to communication, while moderating and guiding the process to avoid confrontation and ill will.<sup>5</sup>

**2. Features of Mediation**

Mediation as a mechanism of dispute resolution differs from other mechanisms of dispute resolutions. Its difference lies in its features. The enabling features of mediation are captured in the 4Cs of mediation<sup>6</sup>. The 4Cs are as follows-

**Consensus:** The parties’ objective is to find a solution to their problems. The parties must agree to resolve their dispute through mediation before mediation can commence. It is a voluntary process which focuses on the parties’ needs and interests.

---

\*By **M.N. UMENWEKE, PhD, BL**, Professor of Law, Faculty of Law, Nnamdi Azikiwe University Awka, Tel: 08037090048, Email: mn.umenweke@unizik.edu.ng; and

\***T.N. NWACHUKWU, PhD, BL**, Private Legal Practitioner at AO2LAW, 235 Zik’s Avenue, Awka, 080867673140. Email: tochianaje@yahoo.com

<sup>1</sup>K Aina, ‘The Multi-Door Court House Concept: A Silent Revolution in Legal Practice’ (2006) 6 (1) *NBLPJ*, p. 3

<sup>2</sup>CA Obiozor, *Nigerian Arbitration Jurisprudence op cit*, p. 49

<sup>3</sup>Arbitration and Mediation Act 2023, section 91.

<sup>4</sup>Jams Mediation Services, ‘Mediation Defined: What is Mediation?’ <<https://www.jamsadr.com/mediation-defined/>> accessed on August 23, 2023 cited in C. O. Ifezie, ‘Online Mediation as a Tool for Dispute Resolution in Nigeria’ available on <<https://www.lawglobalhub.com/online-mediation-as-a-tool-for-dispute-resolution-in-in-Nigeria-ifezie/>> accessed on 11<sup>th</sup> August 2024.

<sup>5</sup>CO Ifezie, ‘Online Mediation as a Tool for Dispute Resolution in Nigeria’ available on <<https://www.lawglobalhub.com/online-mediation-as-a-tool-for-dispute-resolution-in-nigeria-ifezie/>> accessed on 11<sup>th</sup> August 2024

<sup>6</sup>R Ukwu, ‘Prospect and Benefits of Investment and Securities Tribunal ADR Centre’ (2007) 1 *Fast-Track Justice QJISTN*, 23

**Confidentiality:** Mediation is conducted privately thereby avoiding undue and sometimes harmful publicity. It is also without prejudice and documents, or information volunteered here may not be used in subsequent proceedings e.g. litigation<sup>7</sup>.

**Control:** The parties and mediator(s) tailor a process that enable them to achieve a solution that is inclusive holistic considering the commercial, technical as well as post resolution relationships as against resolutions/remedies that are purely governed by law. As has been proven in several cases, these are often restrictive and not satisfactory to the parties' needs. The process is entirely voluntary and the parties or any of them may decide at any time to withdraw from the process. It is indeed party controlled as the parties have control over the outcome and can make decisions. The process does not bind unless and until settlement is reached and settlement agreement has been signed by the parties. At this stage, the agreement becomes enforceable<sup>8</sup>.

**Capability:** A neutral third party provides discipline and creativity thus maximizing the parties' chances of amicably resolving their dispute constructively<sup>9</sup>. Its power or benefits rest on its FOCUS, in that it is a: F- Forward-thinking process, O- Opens dialogue between all concerned, C- Commercial focus, U Understanding the reason for the deadlock in respect of all parties, S- Strategic; presenting a multifaceted approach to solutions. These features are unique to mediation. It is the neutral third party that facilitates the mediation process. This neutral third party is the mediator. His capability to carry out his work and role will also aid in the success of the mediation process<sup>10</sup>.

### **3. The Development of Mediation Practice in Nigeria**

The growth of mediation as an alternative method of resolving conflicts between parties have grown tremendously in recent years on a global level<sup>11</sup>. Mediation, an alternative dispute resolution (ADR) mechanism is the traditional way of resolving disputes peacefully in agrarian rural based Nigeria. In the Nigeria traditional societies, mediation has always been a tool for settling disputes peacefully between disputing parties, it was also a tool for preserving cultural norms and traditional values. The mediator's authority was hinged on his standing and the respect accorded to him in the community. Mediation prevented disputes from festering, maintained peace and preserved traditional values<sup>12</sup>. The adage is 'the elder is always right', the younger ones must always accept the words of the elders. The advent of colonization brought the court system. Urbanization relegated the traditional mediation into the background, though customary ADR is still recognized in the Nigeria Legal System<sup>13</sup>. In the case of *Okpwuru v Okpokam*<sup>14</sup>, the Honorable Justice Oguntade observed; thus,

In the pre-colonial times and before the advent of the regular court, our people (Nigerians) certainly had a simple and inexpensive way of adjudicating over disputes between them. They referred them to elders or a body set up for that purpose. The practice has over the years become strongly embedded in the system that they survive today as custom

Mediation as an Alternative Dispute Resolution (ADR) mechanism in Nigeria has developed into a structured process and within a legal framework.

### **4. The Statutory Recognition of Mediation**

The field of mediation has witnessed significant developments over the years, with legislative changes often reflecting evolving global practices. Nigeria, to get up to speed with the evolution of the global best practices in the mediation ecosystem, enacted the Arbitration and Mediation Act 2023 (The 'New Act' or 'AMA') on 26 May 2023<sup>15</sup>. This Act repealed the 35-year-old Arbitration and Conciliation Act of 1988 (the 'ACA' or 'Old Act'). The repeal of the old Act by the New Act signifies a significant legal transition. However, this transition goes beyond mere repeal, as the New Act addresses and improves upon the weaknesses and inadequacies present in the Old Act<sup>16</sup>. The new law replaces reconciliation with mediation as the officially supported Alternative Dispute Resolution (ADR) option. Taking inspiration from the Convention on the International Settlement Agreements Resulting from Mediation (the Singapore Convention),

---

<sup>7</sup>R Ukwu, note 6

<sup>8</sup>R Ukwu, note 6

<sup>9</sup>R Ukwu, 'Prospect and Benefits of Investment and Securities Tribunal ADR Centre' (2007) 1 *Fast-Track Justice QJISTN*, 23

<sup>10</sup>R Ukwu, note 6

<sup>11</sup>A O Rhodes-Vivour, 'Mediation (A "Face Saving Device") - The Nigerian Perspective 1' *Journal of the International Bar Association Legal Practice Division Mediation Committee Newsletter*, Vol.4N0. 1 September 2008, available on <<https://drvlawplace.com/wp-content/uploads/2020/06/MEDIATION-FACESAVING-DEVICE.pdf>> accessed on 11<sup>th</sup> August 2024.

<sup>12</sup>A O Rhodes-Vivour, note 10.

<sup>13</sup>A O Rhodes-Vivour, note 10.

<sup>14</sup>(1998) 4 NWLR (pt 90) 554 at 586

<sup>15</sup>(The 'New Act' or 'AMA'); T Aderoju, 'The Nigerian Arbitration and Mediation Act 2023: A comparison with the Arbitration and Conciliation Act 2004 and global practices' available on <<https://www.ibanet.org/the-nigerian-arbitration-and-mediation-act-2023>> accessed on 11<sup>th</sup> August 2024.

<sup>16</sup>T Aderoju, note 10.

the Arbitration and Mediation Act (AMA) establishes a framework for the practice of mediation in Nigeria<sup>17</sup>. It achieves this by incorporating the mediation framework and aligning Nigeria's mediation framework with international standards. Consequently, the New Act not only reinforces Nigeria's status as a prominent commercial hub but also demonstrates the nation's unwavering commitment to creating a conducive environment for alternative dispute resolution in accordance with contemporary global norms<sup>18</sup>.

In contrast to the Old Act, the Arbitration and Mediation Act (AMA) embraces mediation as a legitimate dispute resolution mechanism within Nigeria. Unlike the Arbitration Conciliation Act, the New Act defines 'mediation' as 'the process of dispute resolution'.<sup>19</sup> Its definition gives an encompassing and wider application to mediation, conciliation and other analogous mechanisms. The Arbitration and Mediation Act 2023 is a welcome development that has heralded the growth and development of arbitration and alternative dispute resolution in Nigeria. Its provisions aim to cure some of the cogent issues that have plagued the practice for decades and has made some introductions that will make mediation more attractive in Nigeria<sup>20</sup>. The streamlining of the applicable procedure and rules for the conduct of mediation proceedings in Nigeria is poised to nudge parties towards exploring mediation as a viable dispute resolution by providing them with a ready-made template that is easily adaptable for disputes which are determinable between the parties.

The AMA's framework was largely influenced by the UNCITRAL Model Law on International Commercial Mediation, 2018. It defines the scope of disputes amenable to mediation under the Act.<sup>21</sup> This implies that under the Arbitration and Mediation Act, not all cases can be mediated, the Act explicitly identifies the class of cases that can be mediated under the Act as well as the class of disputes to which the Act does not apply<sup>22</sup>. The following category of cases can be mediated under the Act: international commercial mediation; domestic commercial mediation; domestic civil mediation; domestic and international settlement agreements resulting from mediation, and concluded in writing by parties to resolve a commercial dispute and; where parties agree in writing that this part should apply to the dispute<sup>23</sup>.

Section 67 above is very important and has settled and made in clear terms the type of Mediation that are covered under the Act leaving no one wondering as to the extent of application of the Act. It further re-enforces the fact of party driven process when it states that parties can in their agreement in writing state that this part should apply. Mediators will need to pay very close attention to the agreement of parties when trying to apply this Act. Notably mediation as enshrined in the Arbitration and Mediation Act is not only limited to commercial disputes. It can be used in settling disputes in domestic civil mediation<sup>24</sup> such as personal injury claims; professional negligence, employer-employee disputes etc.<sup>25</sup>. To avoid lawsuits from employees, Institutions/Organisations are advised to include a mediation clause in their employment contracts. Due to the confidential nature of mediation, the public will not be aware of such disputes if parties are able to reach a settlement without going to court. It avoids publicity<sup>26</sup>. So, if parties mutually decide to resolve their dispute through mediation, the relevant provisions within the Act that pertain to mediation will be applicable<sup>27</sup>. This implementation establishes an integrated procedural pathway for enforcing mediation clauses specified in agreements. In essence, it creates a cohesive and structured approach that facilitates the resolution of disputes through mediation, offering parties an efficient means to address conflicts outside traditional litigation<sup>28</sup>.

---

<sup>17</sup>O Ajayi, 'Nigeria's New Arbitration and Mediation Act 2023 – A Competitive Edge to Arbitration in Nigeria' available on <[https://insights.afriwise.com/blog/nigerias-new-arbitration-and-mediation-act-2023-a-competitive-edge-to-arbitration-in Nigeria?](https://insights.afriwise.com/blog/nigerias-new-arbitration-and-mediation-act-2023-a-competitive-edge-to-arbitration-in-Nigeria?)> accessed on 11<sup>th</sup> August 2024.

<sup>18</sup>T Aderoju, note 10.

<sup>19</sup>Arbitration and Mediation Act 2023, section 91.

<sup>20</sup>T. Amaefule & M Chukwu, note 12

<sup>21</sup>Note 3, s. 67(2)

<sup>22</sup>L M Sirajo, 'A New Dawn: Arbitration and Mediation Act 2023 – What it Brings to the Table' available on <<https://www.linkedin.com/pulse/new-dawn-arbitration-mediation-act-2023-what-brings-table-sirajo-mimvf>> accessed on 11<sup>th</sup> August 2024.

<sup>23</sup>AMA, s.67(1).

<sup>24</sup>AMA, s. 67 (1) (c)

<sup>25</sup>A Adedoyin, ROdeh & S Omoregie, 'An Overview of the Newly Enacted Arbitration and Mediation Act, 2023' available on <[https://lawpavilion.com/blog/an-overview-of-the-newly-enacted-arbitration-and-mediation-act-2023/#google\\_vignette](https://lawpavilion.com/blog/an-overview-of-the-newly-enacted-arbitration-and-mediation-act-2023/#google_vignette)> accessed on 11<sup>th</sup> August 2024.

<sup>26</sup>A Adedoyin, *et.al*, note 23.

<sup>27</sup>CONuzulike, A Abiodun & OUmeh, 'The Arbitration and Mediation Act of 2023: Notable Innovations', available on <[https://www.gelias.com/images/Newsletter/Review\\_of\\_the\\_Arbitration\\_and\\_Mediation\\_Act\\_2023\\_Article.pdf](https://www.gelias.com/images/Newsletter/Review_of_the_Arbitration_and_Mediation_Act_2023_Article.pdf)> accessed on 11<sup>th</sup> August 2024.

<sup>28</sup>Note 25

However, it should be noted that the Act also lists the disputes and cases that the Act shall not apply to. The Act generally will not apply to disputes relating to rights and obligations settlement which is void under Nigerian law<sup>29</sup>. Additionally, unless the parties agree otherwise, the Act will not apply in the following instances:

- a. where a judge or an arbitrator in the course of a proceedings attempts to facilitate a settlement;
- b. where the case has been recorded and is enforceable as an arbitral award;
- c. where the case has been approved by a court or judicial proceedings thereon has been concluded; and
- d. where the case is enforceable as a judgement of a Nigerian court<sup>30</sup>.

The Act also outlines the procedure for commencement of mediation<sup>31</sup>, specifies the number of mediators required<sup>32</sup>, delineates the procedures at mediation, addresses; issues bordering on the immunity of mediators<sup>33</sup> and their fees<sup>34</sup>, and many more. The Act also provided for the enforcement of mediation settlement<sup>35</sup>. Furthermore, the AMA acknowledges the applicability of the Singapore Convention on Mediation, 2018, for enforcing international settlement agreements made outside of Nigeria, contingent upon the State's accession to the Singapore Convention. The Arbitration and Mediation Act of 2023 has established a legal framework that enhances the transparency, speed, autonomy, and enforceability of mediation settlement agreements.

### **5. Enforcement of Mediation Settlement Agreement.**

A mediation proceeding can be commenced either as prescribed by a special statute as a condition for the conduct of a judicial proceeding or when parties have agreed to resolve a dispute with mediation before resorting to judicial or other proceedings. An invitation to mediate must be accepted by the other party within thirty (30) days from the day the invitation was sent, or within any time specified by the invitation. Where acceptance is not received within the prescribed number of days, it may be deemed rejected. The Act further provides that parties may have recourse to mediation, regardless of other judicial or arbitral proceedings, before, during or after the initiation of such proceedings. A body also conducting any arbitral or judicial proceeding may recommend mediation where there exists a possibility of resolving the dispute by mediation. The date of commencement of mediation can either be the date the agreement to mediate was drawn up, the date the court made its decision to recommend mediation or the date the Mediator took the first step towards the mediation process<sup>36</sup>.

During mediation proceedings, parties are allowed to agree on the procedure they want the mediation proceedings to be held and power is given to the Mediator to conduct the process as deemed appropriate if parties cannot come to agreement on the manner of conducting the process. By virtue of the provisions of the Act, electronic mediation sessions are allowed provided the identity of the parties is ascertained. The Act also permits for the Mediator to make proposals, this was not the position before now, however the Act says same can only be done with agreement of the parties. The Keys by virtue of the Act for Mediation is good faith, fair treatment, and communication. The Act now embraces the use of electronic means of video conferencing which is in consonance with modern realities<sup>37</sup>.

At the conclusion of the mediation proceedings, the mediation is said to have terminated. Where the mediation proceedings are terminated based on the parties reaching a successful settlement, they may enter into a settlement agreement which shall be binding on the parties and shall be enforceable in court as a contract, consent judgment or consent award. Subsequently, a party may apply to the court for the enforcement of the settlement agreement. The outcome of successful mediation proceedings is called the settlement agreement. The Arbitration and Mediation Act provides that- 'where Parties conclude an agreement settling a dispute, the Mediator shall participate in the preparation and drafting of the settlement agreement where the parties agree'.<sup>38</sup> At the end of the drafting of the settlement agreement, the mediator shall sign the settlement agreement.

It is anticipated that settlements reached in mediation have a higher rate of compliance than court decisions. As the parties have themselves developed a resolution, they feel is fair to them and that they can perform, the likelihood of not fulfilling obligations of the settlement would be reduced since it is a win-win process. It is also anticipated that when one party fails to comply with the settlement agreement the other party can enforce it against the defaulting party. Enforcement in

---

<sup>29</sup>T Amaefule& M Chukwu, 'Dispute Resolution Landscape: Changes in Nigeria' available on <<https://www.alp.company/sites/default/files/Dispute%20Resolution%20Landscape%20Changes%20in%20Nigeria%20%281%29.pdf>> accessed on 11<sup>th</sup> August 2024.

<sup>30</sup>AMA, s. 67 (2)

<sup>31</sup>AMA, s. 70

<sup>32</sup>AMA, s. 72

<sup>33</sup>AMA, s. 81

<sup>34</sup>AMA, s. 73

<sup>35</sup>AMA, s. 82

<sup>36</sup>AMA, s. 70

<sup>37</sup>AMA, s. 73

<sup>38</sup>AMA, s. 82 (1)

this context is, therefore, the act of putting the settlement agreement into effect, or the carrying out of the settlement agreement. The Arbitration and Mediation Act has made it clear that settlement agreement resulting from the mediation shall be binding on the parties and enforceable in Court as a contract, consent judgment or consent award<sup>39</sup>. The Act by its section 82 has further reinforced the finality of settlement agreements. This implies that settlement agreements are binding on the parties and enforceable in court.

The law provides that a person relying on a mediation settlement agreement for enforcement must supply to the court the following:

- a) the settlement agreement signed by the parties; and
- b) evidence that the settlement agreement resulted from mediation, such as-
  - i) the mediator's signature on the settlement agreement,
  - ii) a document signed by the mediator indicating that the mediation was carried out
  - iii) an attestation by the mediation provider that administered the mediation, or
  - iv) in the absence of (i), (ii) or (iii) any other evidence acceptable to the court<sup>40</sup>.
  - v) Where settlement agreement is not in an official language of this state, the court may request a translation from it into the official language.<sup>41</sup>
  - vi) The court may require any necessary document to verify that the requirements of this section have been complied with<sup>42</sup>.

Upon satisfaction of the above requirements, the court must allow for the enforcement of the mediation settlement agreement. The settlement agreement shall be enforced in accordance with the rules of court.

## **6. Challenges of Enforcing Mediation Settlement under the Act<sup>43</sup>**

While a Mediation Settlement Agreement is the outcome of a voluntary agreement between the parties, there are many reasons that might cause a party to retreat from an agreement reached. Those reasons are the challenges in enforcing mediation settlement agreements. These reasons/challenges will be discussed seriatim.

**Incapacity of One of the Party:** Mediation settlement agreement is a contract and the rules regulating contracts also apply to it. In Nigeria, a person who has the right to enter a contract is competent to submit to mediation and any disability that affects the right to enter a contract will equally affect his right of mediation settlement. So, for parties to agree to mediate they must have the capacity to contract. Where there is anything disqualifying the capacity of a party to mediate that same factor will also be a challenge to the enforcement of any settlement agreement arising from such mediation process. For instance, where a mediation settlement agreement is signed by an infant, such mediation settlement agreement would not be enforced on grounds of incapacity unless it relates to the supply of necessities or to a reasonable contract of service or otherwise for his benefit. Also, where a bankrupt signs a mediation settlement agreement and such settlement agreement affects the right of his creditor, unless the trustee in bankruptcy adopts such settlement agreement, the settlement agreement is void for incapacity and cannot be enforced. Same is applicable to persons of unsound mind. The Arbitration and Mediation Act has stated that the court may refuse to enforce the mediation settlement agreement at the request of the party against whom it is sought to be enforced if that party furnishes to the court proof that a party to the settlement agreement was under some incapacity<sup>44</sup>.

**Where the settlement agreement is void, inoperative or incapable of being performed under the law to which the parties have validly subjected it or, under the law deemed applicable by the court<sup>45</sup>:** This is a good challenge to the enforcement of settlement agreement. A settlement agreement is void if it is against the law. It is also inoperative and capable of being performed if the law of the place prohibits such or the settlement agreement is in respect of an illegal act.

**Where the Settlement Agreement is not binding or it is not final<sup>46</sup>:** The question of whether the facts support mutual consent to all material terms as is necessary to form an enforceable contract is the area of potential attack that has been most successful in defeating efforts to enforce mediation settlement agreements. For the settlement agreement to be binding the parties must agree. Where it can be proved that one of the parties did not agree, it is enough challenge to the enforcement of the settlement agreement.

---

<sup>39</sup>AMA, s. 82 (2)

<sup>40</sup>AMA, s. 83 (1)

<sup>41</sup>AMA, s. 83 (3)

<sup>42</sup>AMA, s. 83 (4)

<sup>43</sup>Arbitration and Mediation Act 2023

<sup>44</sup>AMA, s.84 (1) (a)

<sup>45</sup>AMA, s. 84 (1) (b) (i)

<sup>46</sup>AMA, s. 84 (1) (b) (ii)

**Subsequent Modification of the Settlement Agreement<sup>47</sup>:** At the conclusion of the drafting of the settlement agreement, the parties and their mediator ought to sign it. The signing of the settlement agreement by the parties is good evidence that the parties accepted the agreement and are bound by the settlement agreement. If later one of the parties modifies or changes the terms either by adding to the terms or removing or modifying in any way the terms that it is no longer in the original terms as the parties signed it, then it is a good ground to challenge its enforcement. Any modification of any kind amounts to a challenge to its enforcement.

**Where the Obligations of the Settlement Agreement has been Performed<sup>48</sup>:** The enforcement of the settlement agreement will be refused by the court where there is evidence that the obligations of the parties have been performed. If the party to whom enforcement is sought against can prove through evidence that the obligations in the settlement agreement have been performed will forestall the enforcement of such settlement agreement. The court going ahead to enforce the already performed settlement agreement will amount to the principle of double jeopardy.

**Where the Obligations of the Terms of Settlement is not clear or not comprehensible<sup>49</sup>:** Another challenge to the enforcement of mediation settlement agreements is where the obligations of the parties in the terms of settlement are not clear or comprehensive. The obligations of the parties must be clearly defined before the court can enforce it.

**Where the granting of the relief is Contrary to the Terms of the Settlement<sup>50</sup>:** This is another challenge to the enforcement of mediation settlement agreements. The terms of settlement must be strictly adhered to. Where the term of settlement is against the granting of such relief then the court is bound to refuse the enforcement.

**Failure by the Mediator to Disclose to the Parties Circumstances that would Raise Justifiable Doubts as to the Mediator's Impartiality or Independence<sup>51</sup>:** The mediator owes it as a duty to disclose every material fact that will bring doubt to his impartiality or independence. Failure of the mediator to disclose to the parties such circumstances that would raise justifiable doubts as to his impartiality or independence is a serious challenge to the enforcement of the mediation agreement. It must however be established that such failure to disclose had a material impact or undue influence on a party without which failure that party would not have entered into the settlement agreement.

## **7. Conclusion and Recommendations**

The Arbitration and Mediation Act of 2023 has established a legal framework that enhances the transparency, speed, autonomy, and enforceability of mediation settlement agreements. With the enactment of the Arbitration and Mediation Act 2023, it is now crystal clear that mediation settlement agreement is binding and enforceable, but its enforceability might face any of the challenges stated in this work. The jurisprudence resulting from attempts to evade mediated settlement agreements provides guidance to the mediator and the legal advisors to the parties on the practical steps that can be taken to provide certainty and avoid enforcement problems. Careful and comprehensive drafting incorporating all the intended commercial terms is critical to ensure that mediated settlement agreements are complete and enforceable. It is recommended that parties to agreements and contracts should be more thorough and detailed in drafting mediation clauses to incorporate every conceivable situation that may arise. Professional mediators should be trained well and issued certificates before they engage in mediation. This would properly equip them to handle the mediation proceedings professionally and avoid muddling issues up. Judges should be properly trained in the Alternative Dispute Resolution methods. This would enable them distinguish between any of them and to abide by the different rules and methods of enforcement as it applies to each.

---

<sup>47</sup>AMA, s. 84 (1) (b) (iii)

<sup>48</sup>AMA, s. 84 (1) (c) (i)

<sup>49</sup>AMA, s. 84 (1) (c) (ii)

<sup>50</sup>AMA, s. 84 (1) (d)

<sup>51</sup>AMA, s. 84 (1) (e)