

KITUO CHA SHERIA ALTERNATIVE JUSTICE SYSTEM (AJS) CASE DIGEST



Foreword

The Constitution of Kenya 2010 envisions the critical role of alternative dispute resolution mechanisms such as traditional dispute resolution.

Article 48 of the Constitution guarantees the right to access to justice and Article 159(2) recognizes the use of alternative justice systems to resolve disputes.

Several barriers to formal justice exist including: delays, complexity of court processes and high costs. Therefore, Alternative Justice Systems (AJS) offers a convenient and affordable means to access justice. Justice is not found only in formal justice forums such as courts, but can be experienced in informal fora including villages, churches and nyumba kumi.

With the expansion of human rights in the Constitution, there is room to continually identify solutions for enhancing access to justice for the poor and marginalized. Inclusion of AJS is linked with enhancing access to justice for the poor and marginalized. The launch of the AJS Policy provided a comprehensive framework on the operationalization and institutionalization of AJS.

Since 2010, Kituo Cha Sheria has been implementing projects on the use of AJS for dispute resolution. Following the dismissal of the Kenyan situation cases at the International Criminal Court, there was a need to promote local accountability processes for the post-election violence. The AJS project was piloted in Uasin Gishu County to foster forgiveness, reconciliation and co-existence between warring communities and has so far expanded to Trans Nzoia County.

AJS has been utilized as a peace-building tool as well as a means to access to justice. Furthermore, community members have been trained to specialize in AJS mechanisms and have therefore sensitized their communities. The achievements made thus far cannot be gainsaid.

This booklet therefore summarises the cases that were successfully resolved through use of Alternative Justice System (AJS) in Baraza la Uiano (Maridhiano) Elodoret, Trans Nzoia and Western Chapter.

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Their support on increasing the capacity of AJS project activities has provided guidance on the use of AJS as well as identified ways to advance it.

The coordination and commitment of the local experts Martha Ogutu and Janet Kosgei cannot be over-emphasized. Specifically, their efforts to increase the capacity of beneficiaries on the AJS Policy has seen increased knowledge and use of AJS by the beneficiaries. Special thanks go to Ms. Valarie Ang'awa who has provided guidance throughout the creation of this simplified case digest as well as throughout the implementation of the project. We further appreciate Mr. Samfelix Orimba and Mr. Tobias Mwadime who have provided support in the design and layout of this booklet. We also recognise the Executive Director, Dr. Annette Mbogoh, who assisted in conceptualizing, editing and realizing this publication.

The publication was made possible through the adjudicators and commissioners in Baraza la Uiano (Maridhiano) Elodoret, Trans Nzoia and Western Chapter who are champions of AJS in their regions and around the country. The adjudicators selected by Kituo Cha Sheria consist of highly respected members of the community. They are neither survivors nor perpetrators of the 2007/2008 post-election violence. They facilitate the mediation and negotiation processes during the AJS hearings. Commissioners consist of village elders, internally displaced persons, host-communities, religious leaders and both former and current local government officials. Their coordination to ensure access to justice towards sustainable peace cannot be gainsaid.

We remain indebted to the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) - CPS for the technical and financial support to advance AJS throughout the years. Indeed, this Case Digest is a product of extensive work on AJS at grassroot level.

Finally, we commend the parties who agreed to seek justice through the AJS mechanisms. To protect privacy, we have published this document using pseudo-names. The consent of the parties was sought prior to publishing the case digest. This compendium of cases has been summarized for the benefit of community members, AJS practitioners and stakeholders.

Abbreviations

AJS	- Alternative Justice Systems
CPS	- Civil Peace Service
GIZ	- Deutsche Gesellschaft für International Zusammenarbeit
IDP	- Internally Displaced Person
KITUO	- Kituo Cha Sheria - Legal Advice Centre
NASCI-AJS	- National Steering Committee on the Implementation of the AJS Policy

Table of Contents

Foreword.....	1
Acknowledgements.....	2
Abbreviations.....	4
Introduction.....	6
Civil Cases.....	7
Land Cases.....	18
Domestic Disputes.....	23
Business Agreements.....	25

Introduction

KITUO has been implementing the AJS project for a period of 6 years. As of the end of the year 2020, a number of disputes have been resolved using the AJS mechanism. It was viewed necessary to compile the cases in a summarized form so that the public can get a glimpse of the types of disputes that communities face in times of violence as well as the successes in using AJS.

The case digest is based on successful AJS cases achieved over the last 3 phases of piloting AJS in Trans Nzoia, Uasin Gishu and Nyanza Region. The Alternative Justice Systems, more so the KITUO model, is aimed at ensuring that forgiveness, reconciliation, and peaceful co-existence remain paramount. Through the realization of sustainable peace, justice has a safe space to manifest.

The content of the digest reflects the true basis of the cases and the panels that assisted the parties' reconciliation. It is necessary to say that not all cases were successful but the AJS model has assisted many individuals in experiencing the spirit of forgiveness and togetherness.

PROPERTY DISPUTES

The method of resolution was mediation, negotiation and dialogue. There were breaks in between the sessions whereby the AJS team spoke to the parties separately in order to get more insights into the expectations from the mediation sessions. The cases are summarized as follows:

1. Makonde v Nyororo

In February 2018, Makonde lost his sheep during the post-election violence that erupted. The stealing of his livestock occurred after resettlement from the internally displaced persons (IDPs) camp. He later found out that his neighbour Nyororo was responsible for the theft and reported the matter to the village elder.

Attempts by both the chief and the village elder to resolve the matter were unsuccessful. The chief then referred the matter to the AJS team in Trans Nzoia.

The area chief having had the knowledge of KITUO and the AJS Program, sought assistance from the team. Adjudicators EW, JM and JC led the mediation process while also sensitizing the parties on the use of AJS to resolve conflicts. After the mediation process, Nyororo confessed to the allegations made. He further apologized to Makonde, which apology was accepted. Makonde and Nyororo signed an agreement declaring that the dispute was resolved. The parties agreed to live in peace and harmony.



2. Mkubwa v Mwerevu

Mkubwa had always lived in peace with his neighbour. In 2008, during the post-election violence in the country, Mkubwa saw it best to flee with his family. He however left behind 10 iron sheets inside his house. He bought these iron sheets so that he could use them to replace worn out roofing of his house. When the tension and the violence reduced, Mkubwa decided to go back to his home. When he arrived, he found that his neighbour, Mwerevu had brand new iron sheets on his roof. When he went into his house, he found that his iron sheets were missing. He confronted Mwerevu who denied having taken iron sheets or anything else from Mkubwa's house. Mkubwa however believed that those sheets on Mwerevu's roof were the ones he had left in his house when he fled. He decided to end his friendship with Mwerevu for several years until he heard about the AJS team in his area. He approached the team in Trans Nzoia for intervention. The AJS team led by adjudicators KSM, JM and WS handled the case. They went through an intense mediation process. In the end, Mkubwa decided to let go of the grudge and restore his friendship with Mwerevu. He also decided to forego compensation from Mwerevu.



3. Kadogo v Kazuri

In 2008, Kadogo decided to leave the IDP camp in Endebess to travel to her maternal home in a nearby town. She decided to leave her utensils with her neighbour Kazuri who belonged to the community that was considered accepted in the region. She and several of her neighbours had moved from Tobo to the camp when violence erupted. Kadogo left blankets, sheets and household items like a charcoal burner at the camp under the care of Kazuri. When they relocated back to Tobo, she asked Kazuri to return her property. According to Kazuri, her property was stolen. There are some witnesses from the camp who told Kadogo that Kazuri had taken her items and had hid them away from Kadogo. Kazuri decided to bring the case for intervention by the AJS team. The adjudicating panel that consisted of EWS, JM and HC assisted the ladies to enter into dialogue. At first, Kazuri denied having kept the items for herself. After a lengthy mediation session, she admitted to taking some of the items. She claimed that she left the rest of the goods at the camp. She offered to return the charcoal burner. She however indicated that the rest of the items were destroyed and she had since disposed of them. Kadogo decided to forgive Kazuri and accepted the return of the charcoal burner. The ladies agreed to live as peaceful neighbours.

4. Swaleh v Mwalo

Swaleh lost his knapsack container during the post-election violence in 2008, when he was fleeing to seek refuge. After the violence subsided, he returned home from the IDP camp. He noted that his container was in the custody of his neighbour Mwalo. He confronted Mwalo about the container but Mwalo refused to return it. Mwalo claimed ownership of the container. The two neighbours fought over the said property for several years straining their neighbourly relationship. Swaleh caught the wave of AJS interventions and decided to try it. The team went into mediation and negotiation led by Trans Nzoia adjudicators E W, J M and J M. Swaleh eventually decided to hand over the container to Mwalo in order to restore their relationship. Mwalo was touched by this action and apologized to Swaleh for straining their relationship. The two agreed to reconcile and live together in peace and harmony.



5. Karemba v Mtanashati

Karemba salvaged the goods that she could during 2008 post-election violence and then fled for her safety. After the return of normalcy, Karemba went back home but noticed that the steel windows in her house and her water tank were missing. Karemba noticed that her neighbour, Mtanashati had her tank but she was not sure whether he had also taken her steel windows. She asked Mtanashati to return the tank and the steel windows but he was hostile and refused to return them. Karemba sought the intervention of the AJS team. The AJS adjudication team, which consisted of J M, K S, and M W, organized a mediation session and invited both parties. At first, Mtanashati was adamant to admit that he had taken the tank. Eventually, he admitted to having taken it. He asked Karemba for forgiveness and offered to return the tank. Mtanashati handed over the tank Karemba. However, he still maintained that he did not take the steel windows. Karemba decided to forgive him and gave him the benefit of doubt as regards to the steel windows. Karemba is still looking for her steel windows but she is glad that she has her water tank back. The two parties agreed to live together in harmony and forgive one another. They resolved to propagate peace.

6. Tausi v Dada

Tausi has a shop where she sells household items. Dada visited the shop and decided to buy a few things from Tausi's stock. Dada picked one bale of clothes, blankets, 2 Sufurias and a dozen teacups for resale. The goods taken were worth Kshs. 20,000. Dada did not have money to pay for the items and requested Tausi, who was her close friend to give her some little time to raise the money. She never paid for the items. This caused some strain on their relationship. Tausi sought the intervention of the AJS team. Throughout the process, Dada maintained that she was not able to pay for the items because she did not have money. The AJS team sought to find out what compensation Dada was willing to give and whether it would be acceptable to Tausi. After a mediation process led by adjudicators J M, K S, and M W, Dada agreed to return two blankets and two sufurias for a start. She went to her house and brought the items to the hearing venue. Tausi accepted the return of the goods. She decided to maintain peace between them for the sake of their friendship.

7. Suzanna v Faraja

Faraja and Suzanna are neighbours. During the 2008 post-election violence, Faraja took advantage of the fact that Suzanna fled for safety and took some blankets and dresses from Suzanna's house. One day, Suzanna saw her items on Faraja's clothes hanging line. She recognized them as the ones that she had lost during the violence period. Suzanna sought to confront Faraja through a mediation hearing conducted by the AJS team. A mediation hearing was conducted by J M, H C, and E W. They managed to open dialogue between the 2 parties who had not spoken for more than 10 years. Faraja admitted to taking the property. However, she said that she had found them on the ground close to Suzanna's house and that she did not collect them from inside the house. Suzanna did not want the property back; she just wanted to be reconciled with her neighbour.



8. Musa v Roja

Musa saw some metal bars outside Roja's house. He noticed them outside for several days. He decided to take the bars without permission. Upon investigation, Roja found out that Musa had in fact taken the bars. When confronted, Musa denied having taken them. Roja was sure that Musa took the bars because his son had seen Musa taking them. Roja who felt guilty of his actions, brought this case to the AJS team. He wanted to apologize and clear his conscience. M W, E W and J M conducted a mediation hearing. Musa apologized to Roja and agreed to return the metal bar. Both parties resolved to live in harmony.

9. Kara v Jua

Kara lost her 200 litres water tank during the post election-violence period. It was one of her two tanks for water storage for household use. She later found out that Jua was in possession of the tank. Jua had however refused to discuss possession of the tank and had instead abused Kara whenever she met her. When Kara heard about AJS mechanism, she saw this as an opportunity to get back her tank. The 2 participated in a mediation hearing presided over by K S, JM, and HC. After long discussions, Jua admitted to having taken the tank for use while Kara was away and that she was too embarrassed to return it. She was glad to have been granted an opportunity to return the tank in a peaceful setting. Jua handed back the tank to the owner and resolved to living in a peaceful setting.

10 Mary v Yakobo

Mary lived close to her brother Ndugu. In the beginning of 2008, she handed over her five goats and three bags of maize to Ndugu for safe keeping. Ndugu put them inside his store. One day, he found the maize and goats missing. He claimed that his neighbour, Yakobo, had taken them away. Yakobo denied taking them. Ten years later, Mary heard about the AJS team and decided to approach them for intervention. Ndugu attended the mediation as a witness to Mary's case and gave his version of events. Yakobo admitted to taking the goats and maize. After intense negotiation, Yakobo agreed to replace the 2 goats that he took and one sack of maize to Mary by the end of the year. Having recognised the value of their relationship, both parties forgave each other and agreed to live together in peace.



11. Jembe v Mlima

During the post-election violence, Jembe, having been from a minority community, decided to flee his home to seek refuge in an IDP camp. When he left, he asked his neighbour Mlima to take care of his cows. When he came back, Mlima told Jembe that raiders had stolen his cows as well as Jembe's cows. Jembe found this hard to believe because Mlima belonged to the community of the raiders. Ever since, Jembe had not spoken to Mlima. He kept insisting that Mlima was lying about the raid. Mlima approached the AJS team to reconcile him and his neighbour. After a lengthy dialogue, the parties agreed to put their disagreement behind them and restore their friendship.



12. Silali v Sili

Silali had handed over two bags of beans to her neighbour Sili during the post-election violence period. On return, she found nothing. After mediation led by adjudicators K S, J M, and H C, the two agreed that Sili would repay the beans in the month of December 2019 after harvest. She also agreed to compensate the stolen clothes with fabric. They reconciled and forgave each other and agreed to live in peace and harmony.

13. Simon v Kaanga

Kaanga saw a pig loitering in the neighbourhood and led it to his homestead. He did not hear of anyone looking for a lost pig. One day, he invited his friends and they ate the pig together. This was during the post-election violence period. Most of his neighbours had fled to seek refuge. When violence had subsided, Simon returned to his home that was close to Kaanga's home. Simon noticed that one of his pigs was missing. He asked around and was told that there was a pig feast at Kaanga's place. He felt betrayed by his friend because Kaanga knew that Simon was the only pig farmer in the area. Mediation was conducted by K S, M W, and H C. The parties resolved to forgive each other and live in peace and harmony. Simon forgave Kaanga unconditionally and both agreed to have a cordial relationship.



14. Milima v Mabonde

Milima had planted three acres of tomatoes in his farm. He intended to sell the tomatoes so that he could cater for his family's needs. One day, as he was attending to the farm, he noticed that someone was harvesting tomatoes. Upon a closer look, he saw that it was Mabonde, a man he knew very well. Mabonde was his casual worker but he did not work at the farm. Mabonde realised that Milima had seen him. He ran away carrying a bag of tomatoes. Milima referred the dispute to the AJS team. The parties opted to have a mediation session. E W, M W, and J M assisted the parties in dialogue and they came to an agreement. Mabonde apologized for stealing the tomatoes from Milima. Milima accepted the apology and even asked Mabonde to return back to work. The parties were reconciled.

15. Ndiposa v Sababu

At the helm of the skirmishes in 2008, Ndiposa was rearing chicken. The chickens were doing well and were ready for sale when things cooled down. Sababu, Ndiposa's brother, along with his friends, stole a chicken. When confronted by his brother, Sababu denied having stolen the chicken. Ndiposa's children confirmed Sababu having seen Sababu steal the chicken. They sought the intervention of the AJS team. K S, H C, PK conducted mediation. Sababu felt safe enough to admit his actions. The parties agreed that their relationship and friendship is paramount. Ndiposa forgave Sababu unconditionally and they agreed to move forward with their lives.

16. Nerea v Pius

Nerea handed over her two cows to her brother Pius during the post-election violence period. After the situation settled, the respondent Pius did not return the cows, claiming they were stolen. On investigation, Nerea found out that her 2 cows were among Pius' herd. On confronting Pius, he claimed that those were not Nerea's cows and that she was mistaken. Nerea approached the AJS team for intervention. Following a successful mediation conducted by JK, IJK, and J M, the parties agreed that Pius shall pay cash money equivalent of the cost of one cow within two years. The parties forgave each other and agreed to co-exist and live together in peace and harmony.

LAND DISPUTES



The land disputes handled by the team included boundary disputes. The AJS team paid close attention to these cases considering the fact that land disputes are often emotive and diverse. In such cases, the team required proof of ownership of land. In some cases, the team had to visit the physical location of the land for better understanding, especially in boundary disputes. There were instances whereby elders had to be consulted to explain how they marked boundaries or where they witnessed boundaries being erected and marked. Some of these cases were intertwined with succession issues therefore requiring more members of the parties' families to be present. The AJS team was keen on the law and all the details of the land as well as the culture of land possession in the areas where the disputes occurred. There were moments where the arguments were intense and the parties took a break. Some hearings were adjourned and scheduled for other dates. Luckily, the disputes whose hearing sessions spilled over to another date were settled on the subsequent date.

1. Wala v Halua

Wala and Halua are neighbours. They share a land boundary in Trans Nzoia. One day, Wala noticed that Halua was farming in a portion of his land. Halua had planted crops on the boundary erected by the elders. Wala sought the help of the AJS team. After negotiation and the mediation process spearheaded by adjudicators J M G, M K and FN, the two resolved to erect the proper boundaries as decided by the elders in the presence of the AJS team. They continued their neighbourly peace therefrom.

2. Liza v Madoa

Liza and Madoa had a boundary dispute. Liza could neither access her farm nor see the farm from her house. Furthermore, Liza complained of her farm produce being destroyed by Madoa's children, as they liked playing in the farm. Liza had complained several times about this but no action was taken. They sought assistance to settle their dispute. They approached the AJS team. The mediation was conducted by adjudicators J K, J C and I J. Extensive discussions facilitated by the team resolved to demarcate the boundary and have a path for Liza to access her plants in the farm. They forgave each other for the enmity caused by the dispute and resolved to live in peace and unity.

3. Bahati v Mkali

Bahati and Mkali were neighbours. Bahati stated that during the post-election violence period, Mkali encroached into her piece of land. He did this despite the visible boundaries. He removed the boundaries and extended his piece of land into Bahati's piece. Bahati thought that Mkali took advantage of the situation because Bahati was from a minority community. When he did so, Mkali refused to move the boundary back when requested to do so by Bahati. After mediation conducted by M W, K S, and H C, the parties agreed to reconcile. It was agreed that the beacons be fixed where they were first erected clearly setting up the boundaries. They agreed to co-exist and not to move the boundaries again.



4. Kamoja v Chao

Kamoja alleged that Chao, her mother-in-law, had denied her a portion of land, which she wished to cultivate as the wife of the late last born son. Furthermore, Kamoja claimed that the Chao allowed other family members to intrude into the said piece of land and hurl insults at her. She claimed that this was done because Kamoja had lost her husband and had no one to defend her. She sought help from the AJS team. E W, K S and M W led a mediation process. Chao and Kamoja resolved that the aggrieved is the sole next of kin of the respondent. Chao agreed to divide the land between the two in equal portions. Chao would take sole responsibility of ensuring peace within the family as the only living parent. They also agreed to live together in harmony as a family. Kamoja forgave Chao for all the heartache she caused her.

5. Swahiba v Taratibu

This case involved the property of Swahiba, a Kikuyu lady, who had a shop in busy Jua Kali in Kisumu Town. She also had to flee during the post-election violence and her neighbours took over her property. She never dared to come back and find out what happened to the property until the AJS team gave her the opportunity for dialogue. Taratibu's family had taken over the property. After the very first visit to the site, Taratibu's family welcomed her and the dialogue sessions began. Thereafter, Swahiba was contacted by Taratibu and asked return and take charge of her property. They would not object to it anymore. She travelled back from Nairobi and continues to occupy the shop in Kisumu.

6. Tipo v Risasi

Tipo and Risasi were very good friends despite coming from different communities. Risasi was a Luo elder and well known in the community. He decided to sell Tipo a piece of land. When post-election violence happened, Tipo lost practically everything because he belonged to the other community. He fled to Nairobi. Assuming that Tipo would never come back, Risasi constructed for his youngest wife a home on the same plot that he had sold to Tipo. One of their children also died and was buried on the same plot. Tipo came back several years later to claim the land. It was no longer available. They sought the intervention of the AJS team. This mediation took several hearing sessions. Eventually, the parties came to an agreement. The two men engaged each other in extensive negotiations. Another piece of land was identified, to replace the original land that had been sold but occupied by Risasi's wife. The two rekindled their friendship and continue to live in peace.

7. Wadau v Wazuri

This case was unique because it involved the resettlement of a returning post-election violence victim to his ancestral land in a village in Kisumu West constituency.

Wadau's father was an orphan who had been adopted by his aunt and her husband, who were childless. In his adult life he worked in Nakuru, and stayed there with his older sons and second wife. He left his first wife (mother of his older children) with his aging Aunt. During the post-election violence, he fled from Nakuru to settle in Migori on a plot of land he had bought for his second family. His first wife had died earlier and he did not attend the burial, which is a taboo in Luo traditions. This also meant the children of his first wife could not live with him.

After the death of his first wife, his aging Aunt was left vulnerable and sought help from Wazuri, a neighbour who promised them the land in exchange. Wadau, the son of his first wife, fled Nakuru to the village where his mother had lived with the aging Aunt. He found the land that they thought was home now belonged to someone else.

Through dialogue, the AJS team arrived at a solution that worked on quantifying the assistance given to the aging Aunt in monetary value against the actual value of the land. The difference was paid to the three sons to buy land elsewhere, so they could start life again. Wazuri, who had already built property on the said land, agreed to the arrangement and the case was settled.

8. Natula v Bora

Nafula and Bora had been neighbours for a long time. Nafula accused Bora for having insulted her multiple times, moving the land boundary and also throwing rubbish in her compound. She did this continually despite requests from Nafula to stop. Nafula requested the AJS team to help her talk to Bora. A mediation hearing was scheduled and both parties attended. After the mediation processes spearheaded by E W, J M, and M W, the two parties agreed to reconcile. Bora agreed to move back the boundary to its original position and to ensure that the rubbish is thrown at the right place. They both agreed to speak to each other with respect and to avoid insults.

DOMESTIC DISPUTES

Domestic disputes handled through KITUO's AJS model do not involve any form of violence and or abuse.

Parties agree to appear before the adjudicators with commissioners and other members of the public present to witness the proceedings. However, parties may request private proceedings if they wish to. If parties reconcile, they sign the AJS agreement form to ensure compliance of agreed issues and for record keeping in case of future disputes on the same matter. The following domestic disputes were handled:



1. Wahome v Kiptoo

The complainant Wahome accused Kiptoo of luring his wives in 2008. This occurred when he had to flee the 2007/2008 post-election violence without his wives. Upon return, he found that his wives had been living with Kiptoo as their husband.

Kiptoo, Wahome and the two wives attended the AJS hearings. Wahome demanded a public apology for the humiliation he had suffered as well as joint maintenance of their children who were dependant on Kiptoo. Kiptoo agreed to the terms, stating that Wahome should be responsible for the financial maintenance of the children, including school fees and other items that may arise in future. Wahome agreed to this, stating that while he was away, he had married another wife and was not interested in reconciling his marriage to his wives.

After reconciliation, the complainant withdrew his complaints against the respondent and signed the AJS agreement.

2. Teanga v Halima

Teanga and Halima were co-wives. As the first wife, Teanga was given several cows by their husband. Halima did not own any cows. Halima requested Teanga to lend her one cow that she would nurture and ensure provision of food in exchange for milk to feed her children. Teanga agreed, adding that once the cow produced calves, she would give to Halima one of the calves to sustain her family.

Unfortunately, Halima contravened the agreement and went ahead to sell the cow. Halima claimed that there must have been miscommunication on Teanga's part. She understood her to mean that she was free to sell the cow and benefit from the proceeds. One neighbour Rehema who had witnessed the agreement confirmed Teanga's claims.

Following the testimony from Rehema, Halima admitted that she had been in dire need of money and took that opportunity to sell the cow. She apologized and requested for some time to pay off her debt. Teanga agreed to this, stating that she may pay either Ksh. 10,000 or two goats. Halima agreed to pay two goats in two instalments.

Having reconciled, they signed the AJS agreement to ensure compliance with the mediation session.

BUSINESS/ AGREEMENTS

These include friendly agreements where there is no documentation, loan agreements, and both oral and written contracts as well as partnerships. Here, adjudicators request parties to provide any available documentation that may aid the proceedings. Parties may also invite witnesses to the hearing. The matters are resolved through both mediation and negotiation.



1. Bayu v Daima

Bayu sold his cow to Daima at Ksh. 32,000 during the 2007/2008 post-election violence period. They agreed that Daima would complete the payment in installments. The first installment was ksh.24,000 which was paid upon signing of the agreement. The balance would be paid after one month. However, Daima breached their agreement and defaulted payment for over one year.

The parties participated in a mediation session organized by the adjudicators and commissioners in Trans Nzoia. Following the discussions, Daima agreed to pay the second installment by giving one goat to Bayu. Bayu agreed to this arrangement and resolved that he would not initiate litigation on the same issue against Daima. The parties signed an agreement to seal the mediation process and ensure accountability.

2. Mkono v Petero

Mkono entered into an agreement with Petero to maintain and care for his herd of sheep during the 2007/2008 post-election violence, as he had to flee the region. The parties remained in constant communication. Petero assured Mkono that his property had been well taken care of.

Upon his return, Mkono realised that Petero had breached their agreement by selling half of the herd of sheep. The parties agreed to settle their dispute before the adjudicators and commissioners in Cherangany, Trans Nzoia. Following negotiations, they agreed that Petero will pay Ksh. 5,000 to Mkono within one month for the loss suffered.

3. Anita v Tichi

Anita and Tichi entered into a business agreement. They each contributed ksh. 5,000 to start a grocery business. The profits of the business were to be shared equally between the two parties. Additionally, they would occasionally invest together in assets such as livestock.

A dispute arose between them when Tichi took home one of the investments of the business in the form of livestock. Her husband sold the livestock without her knowledge. Upon realization, Anita brought the matter before the adjudicators and commissioners to help them find a solution to their dispute.

During the mediation session, Tichi apologized to Anita and promised to pay back from her share of the business's profit at the end of the year. Anita agreed to the arrangement and they invited a friend to witness their agreement.

4. Obongo v Daudi

Obongo and Daudi were neighbours. Daudi had five acres of undeveloped land and Obongo had several cows. They agreed that Daudi would allow Obongo's cows to feed on the grass on his land to help maintain the parcel and avoid overgrown grass. This was on the condition that Obongo would ensure that the cows remained within the 5 acres of undeveloped land and avoid his shamba.

A dispute arose between them when Obongo left his cows unattended. The cows caused damage to Daudi's properties including his crops. To avoid further escalation of the matter, they approached the adjudicators and commissioners in Endebess, Trans Nzoia to assist them in resolving the issue. After mediation, it was agreed that Obongo would continue grazing his livestock on the parcel of the land but that Daudi would always supervise them. Additionally, Obongo would pay Ksh. 5,000 for the damage to property.

5. Korir v Wahome

Korir bought a tree for logging from Wahome at Ksh. 5,000. They agreed that he would collect the tree after payment. However, soon after payment, Korir fell ill and was unable to collect the tree. He communicated this to Wahome.

Once recovered, Korir went to collect the tree he had purchased. However, he found that Wahome had already sold it to another buyer. Upon further inquiries, Wahome stated that he had to sell the tree as he was in dire need of money.

Wahome offered to give Korir one of the other trees on his land. However, due to the breach, Korir wished to rescind the agreement and receive a full refund of the money paid. Wahome agreed to this but stated that he would pay it in two installments within a month.

6. Kamau v Mwangangi

Kamau and Mwangangi entered into a brick-selling business. This involved the process of making bricks. The parties contributed capital to the business and agreed to share the profits of any sales. Kamau alleged that Mwangangi made 10,000 bricks using the capital raised and began selling them. However, he did not share any profits gained.

After several failed attempts to request Mwangangi to honour their business agreement, Kamau resorted to mediation through the adjudicators and commissioners in Cherangany, Trans Nzoia County. After lengthy discussions and mediation led by adjudicators, the two resolved that their co-existence was important and decided to iron out their differences. Mwangangi agreed to pay the aggrieved Kshs 5000/= in the month of January 2022 in full.



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KITUO OFFICES

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