



EMPLOYEE-EMPLOYER MEDIATION IN THE BANKING SECTOR IN KENYA

By Pauline Wahinya

I WILL BE A SPEAKING AT THE NORTH WEST COLLABORATIVE FUTURES CONFERENCE HOSTED BY CANADA/US MEDIATORS ON OCTOBER 21/22, 2021.

Formal mediation is a licensed legal process that solves disputes between two parties at conflict. The conflicting parties might be in disagreement or accusing each other of unfair treatment.

Mediation is one of the most effective strategies for settling conflicts in the informal and formal sectors. In the Kenyan formal sector, it can be highly influential in settling employer-employee disputes.

Among the most common employer-employee, formal conflict is in the banking sector in Kenya.

It is common for innocent bank employees to be wrongly accused and dismissed from their duties on grounds of fraud. Such conflicts usually reach a peak when the accused employees in the banking profession are found innocent. For banks in Kenya to settle such disputes amicably and the peaceful outside court, there is a need for mediation with the wrongly accused employees.

To handle the glaring error in handling employees related fraud conflicts, the banking sector in Kenya should solve the dispute outside court using mediation. This is because many bankers who have been falsely accused of fraud in the country usually file lawsuits that have cost banks dearly. On the downside, honest, hardworking, and law-abiding bankers have also fallen victim to wrong accusations, dismissal without benefits, and at times jail sentences. Mediation can prevent such issues if well employed.

There are several ways in which a mediator can engage the wrongly accused employees and banks to resolve the conflicts. One of the ways the mediator can engage the two parties is by ensuring that both have a representative in the mediation process. By ensuring that both parties are well represented in the negotiations, parties have a chance to air their grievances or their side of the story (Feng & Xie, 2020). Having a representative from both sides in mediation also indicates that the mediator has ensured that the parties in conflict have built trust for one another. Afterward, the mediator should meet the representatives of the employee and the bank separately.



By doing so, the mediator maintains control making sure the conflict does not escalate by identifying the key issues between the parties. It also helps the mediator to identify the possible solutions to the conflict before negotiations begin.

The mediator should ensure that small issues are handled first before the big issues. Tackling highly contentious and divisive issues first could easily break down the negotiation process. Agreeing on the small issues by both the wrongly accused employees and the banks builds a foundation for tackling the big issues such as wrongful dismissal. The mediator should be keen to note each time the conflicting parties agree on an issue before moving to the cause of the dispute (Bingham, 2004). This is important because it helps the mediator to create a sense of finality for the employee and the bank as the issues are addressed. Before the negotiations begin, the mediator should ensure the process has no preconditions. This is because preconditions lead to exclusion of some issues leading to conflict during the process.

Identification of the interests of both parties based on their requests is the final process for a mediator. By employing this strategy, the mediator can achieve a compromise that satisfies both the bank and the employee (Kang & Sung, 2017). For instance, the bank might feel that it is impossible to avoid laying off employees accused or suspected on grounds of fraud until they have been proven innocent. On the other hand, the employee might feel that until proven guilty of fraud he or she should be working. Both parties have grounds for tabling their requests on their interests which are easy to identify. In such cases, employees who are wrongly accused and dismissed without benefit can be reinstated, paid allowances, and possible damages. The bank on the other hand maintains a good image in the eyes of the public and avoids incurring heavy losses in terms of lawsuits and fines. Mediation, as a result, is cheaper, peaceful, and protects the interests of the banks and the wrongfully dismissed employees in Kenya.

My Name is Mediator Pauline Wahinya. My Fellowship Topic is: Conflict Transformation Within The Banking Industry in Kenya; The Glaring Error in Handling of Employee-Related Fraud.

I WILL DELIVER MY 2021 INAUGURAL IGNATIAN LECTURE ON CONFLICT TRANSFORMATION AT THE NOVEMBER 24 HOUR LEAD IN SUMMIT - GRADUATION EVENT: NOVEMBER 19/20, 2021.

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e: wasilianahubafricamediators(a)gmail.com | mediate(a)wasilianahub.africa

t: @Wasilianahub | w: wasilianahubmediators.co.ke

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The 2021 National Fellowship Certificate for Mediators in Kenya