

**ALTERNATIVE DISPUTE RESOLUTION MECHANISMS AND
MANAGEMENT OF CASE BACKLOG IN THE FAMILY DIVISION OF THE
JUDICIARY OF KENYA**

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DECLARATION

I, Mary Anjao Otindo, declare that this project is my original work and has not been presented for a degree in any other university

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DEDICATION

To my late mother, Susan Chelel Otindo; were it not for you, I would not have started this worthwhile journey.

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ABBREVIATIONS AND ACRONYMS

AD	After Death
ADR	Alternative Dispute Resolution
BC	Before Christ
DR	Deputy Registrar
DSD	Dispute System Design
NACOSTI	National Commission for Science, Technology and Innovation
NAK	Nakuru
NRB	Nairobi
SOJAR	State of the Judiciary Annual Report
USA	United States of America

ABSTRACT

Scholarly evidence on the effect of alternative dispute resolution (ADR) mechanisms on management of case backlog in the family division is non-existent. The Kenyan Constitution and the 2019 -2023 strategic plan for the Judiciary identifies improved case management and quick delivery of justice as a very important result area for Kenya's Judiciary. Judiciaries world over identifies ADR as a tool towards reduction of case backlog. The Article 159 (2) of Kenya's Constitution, 2010, identifies ADR as a way to fasten the process of resolving disputes among parties and maintaining an amicable relationship. In the year 2016, Judiciary piloted the use of court-annexed mediation at the family and commercial divisions of the Judiciary. Many people continue to prefer court litigation as opposed to ADR. There is limited literature and evidence on what factors, if put in place would contribute to ADR being an effective tool of managing case backlog at the Judiciary. In order to answer this question, the study sought to find out the effect of cost of ADR, community awareness, stakeholder involvement, case turnaround time and case categorization in ADR and management of case backlog at the family court division of the judiciary. The Theories of Conflict Transformation and the Theory of Justice are the guiding theories for this study. Descriptive study design was used. The target population of this study were 87 court users in the family division of the judiciary in Nairobi and Nakuru. Data collection was performed using a semi-structured questionnaire. Data were analyzed in descriptive statistics and qualitative data was analyzed in subject analysis. The researcher sought the approval from the graduate school board of Kenyatta University, NACOSTI and from the Chief registrar of the Judiciary before carrying out the study. The Respondents were informed about the study and their informed consent sought before the questionnaire was administered. Their privacy, dignity and confidentiality was guaranteed. Participation was voluntary and no force was used.

The study found that 36% agreed that the activities of non-judicial organizations in adoption of alternative dispute resolution mechanisms are acceptable. Most of the respondents, 77% agreed that the cost of litigation was higher than that of ADR. About 77% of the respondents revealed that they have interacted with ADR processes at the family court division with 65% agreeing that slow handling of cases arose from manual records that contributed to longer case turnaround time at the courts. The study concluded that the cost of ADR is lower than that of litigation. It was apparent that court users were not aware of the programs conducted by Judiciary of Kenya, NGOs, FBOs, CBOs or the governments on ADR. The study also found that most respondents have never been part of the ADR processes at the family court division. Yet, for those who have participated reported not to have been satisfied with the process of stakeholder involvement and procedures used. The study also found that the different case categories do not contribute to individuals' use or disuse of other mechanisms to resolve disputes. The study recommends that there is need to develop a mandatory screening and case categorization in order to identify suitable cases for ADR before court processes begin. It is also recommended that sufficient resources be allocated to ADR department. Court leaders should consider raising public awareness and involvement in the importance of Alternative Dispute Resolution mechanisms. Awareness should therefore be created among the members of the community to provide adequate and relevant information on ADR as a dispute resolution mechanism.

CHAPTER ONE

1.1 Introduction

Judiciaries across the world suffer a major challenge of backlog of cases. This challenge has been very elusive to resolve despite many programs existing. The constitution of Kenya and the judiciary strategic plan (2019-2023) identifies improved access, and expeditious delivery of justice as a key area. Article 159 of the constitution implores courts to exercise authority on the principle that justice should not be delayed. The study background, the statement problem, research objectives, research questions, together with research justification and scope of limitation are addressed in this chapter.

1.2 Background to the study

Each individual deserves timely access to justice at the judiciary, which comes after a fair hearing. This is recognized from the international scene to the national level. These core elements and rights that govern the judiciary are as follows; a body that resolves dispute effectively; proceedings and disputes being tackled speedily and fairly; redress being adequate; and the use of principles of efficiency and effectiveness when delivering justice. However, the above is encountered by the problem of case backlog, which is among the major challenges faced by the judiciary throughout the world. This contributes to undermining of the right to prompt court process and denial of justice. The Judiciary SOJAR Report 2020 reveals that as of June 30, 2019, 569,859 cases were pending in courts in Kenya with a case backlog of 341,046. Could this be attributed to other underlying

factors not considered in the available ADR frameworks at the family division of the judiciary? So much literature available indicate that ADR is the best tool utilized by Judiciaries worldwide for management of Backlog, the data available however shows that Backlog of cases is on the rise despite such ADR Mechanisms being employed.

In the United States in Illinois (1989), the Criminal Justice Information Authority on the view on court case backlog, it was stated that case backlog is not caused by how fast a case moves right from filing till its disposition; but rather the amount of cases that have not been handled and the pace of litigation.

One Tabaro ,(2007) from Uganda in his address at Makerere University said that, in order to solve the problem of backlog in Uganda, alternative conflict resolution mechanisms were necessary. These methods include; reconciliation, mediation, including traditional dispute resolution mechanism. He further added that the judiciary is supposed to offer timely justice to all without looking at their status, not looking at the technicalities in the procedures and also encourage persons to utilize other forms of resolving their disputes.

Alternative dispute resolution has become a key element in the modern justice. It allows resolution of issues such as communal, family and interpersonal issues out of the formal courts. ADR is restorative in nature and the settlement reached is because of participation as well as consensus between the parties involved. This turns to be a win-win situation that is satisfactory to the parties in conflict. This is also an opportunity for the parties to honor their agreements and implement them in order to prevent conflict.

Makau (2014) indicates that the issue of case backlog has been a subject of discussion in different forums following the continuous rise of cases in Kenyan courts. This therefore

implies that many individuals denied the right to justice. Several factors lead to disposal of cases being delayed at the judiciary, hence a source of public frustration by the judiciary. Some of these reasons include; having few staff at the judiciary, fewer courts and other infrastructural challenges, technical rules and procedures, vacations given in the courts, the limits the magistrates courts are given in their jurisdiction and how the records in the courts are being handled mechanically. The weaker systems of the judiciary in managing the cases create the backlog problem (Mutunga,2012).

The Kenyan constitution under article 159 (2) recognizes the application of alternative dispute resolution as a solution to the problem and one of the principles to be adhered to by courts and tribunals when exercising judicial power. With the provision of mediation by the Constitution, it being less costly and prompt unlike litigation, it has helped reduce cases at the judiciary.

There are several factors that lead to individuals opting for other forms of dispute resolution unlike the long court process in the family division of judiciary that include the cost of litigation, the community being more aware of alternatives, stakeholders being involved, the turnaround time of the cases and case categorization. ADR mechanisms are seen as a solution to the said challenges. However, this remains a mirage as many judiciaries still grapple with the appropriate frameworks.

For majority of Kenyans to gain access to justice in a speedy manner, proper policies and frameworks on legislation on ADR need to be put in place to guide and promote the use of other methods of resolving their disputes. The court system as at now is overburdened and cannot be reached in some areas geographically disadvantaged and therefore when these

proper policies are put in place they will support and complement the court system.

1.3 Statement of the problem

The family court division of Judiciary in Kenya adjudicates cases that involve children, family/marriage disputes, estates of the deceased. These cases involve a relative disputing against another. Such cases essentially should be solved out of the court system. In July 2016, the judiciary sanctioned a pilot project on court-mandated mediation at the family court division among other ways of dispute resolution. Although the pilots were declared successful and subsequently rolled out, the cases that continue to be filed in the division for litigation and rejection of invitation for ADR have been rising from year to year hence the continued delay in disposal of cases.

This is a major concern, which undermines the right of Kenyans to get timely justice. Up to this day, there has been slow progress in reviewing the effectiveness of the legal frameworks available for ADR in management of the backlog of cases. Case backlog is among other reasons people opt for alternative dispute resolution frameworks that include mediation, arbitration and conciliation. These informal procedures done outside the court are said to be a more efficient, less expensive and accessible justice system. Alternative dispute resolution has become popular in the most judiciaries and it has said to be able to solve sensitive issues such as communal, family and inter personal issues out of formal courts.

The Constitution of Kenya 2010 gives a legal means of resolving conflicts using alternative methods. The Family court division has until the year 2010 when the constitution came into force and in 2016 when the judiciary piloted Court, mandated mediation had been addressing disputes where such could not come to an agreeable outcome through the

adversarial system. This formal legal system does not provide a solution that would be befitting to both parties in a family dispute but it leaves a win-lose situation, which is not ideal. One party wins at the expense of the other. In the end, this does not build a bond between the two parties that would prevent conflict in the future. This therefore leads to seekers of justice to seek alternative ways to solve their family conflicts outside court and in turn manage the case backlog at the judiciary.

It is acknowledged that despite the introduction of the ADR mechanism in the Constitution as a measure to reduce the unprocessed proceedings, the effect is yet to be realized (Rebecca. D.Gill, 2007). In the USA 90% of cases are resolved at pretrial stage through ADR by early judicial intervention in Bangladesh it is the reverse (Mshah, 2000). It is intended that more parties should opt for ADR as a means of solving their disputes as it is considered to be less expensive, less technical, leaves a win- win outcome and parties own the process the family court division of the Kenyan Judiciary has in place an ADR framework but which still has not encouraged larger number of cases being referred to the ADR Mechanisms. Although many studies have found ADR to be the most effective case backlog management tool, there is very little literature and evidence on what factors determines an effective ADR mechanism or what should be addressed for ADR to be an effective tool for the management of case backlog. The study is therefore aimed at ascertaining how the costs in ADR determines management of case backlog at the family court division of the judiciary, examining the effect of community awareness on ADR and management of case backlog at the family court division of the judiciary, establishing the effect of stakeholder involvement on ADR and management of case backlog at the family court division of the judiciary, establishing the effect of case turnaround time in ADR and

management of case backlog at the family court division of the judiciary, establishing the effect of case categorization in ADR and case management of case backlog at the family court division of the judiciary.

1.4 Research Objectives

1. To determine the effect of cost of ADR in management of case backlog at the division of family court in the judiciary
2. To examine the effect of community awareness on ADR and management of case backlog at the family court division of the judiciary.
3. To establish the effect of stakeholder involvement in ADR and management of case backlog at the family court division of the judiciary.
4. To establish the effect of case turnaround time in ADR and management of case backlog at the family court division of the judiciary.
5. To establish the effect of case categorization in ADR and case management of case backlog at the family court division of the judiciary

1.5 Research questions

- a) How does the cost of ADR determine management of case backlog at the family court division of the judiciary?
- b) What is the effect of community awareness on ADR in the management of case backlog at the family court division of the judiciary?
- c) How does stakeholder involvement in ADR affect the management of case backlog at the family court division of the judiciary?
- d) How does case turnaround time in ADR affect the management of case backlog at the family court division of the judiciary?

- e) How does case categorization in ADR affect management of case backlog at the family court division of the Judiciary?

1.6 Justification and significance

1.6.1 Justification

Family conflicts often arise due to deep-rooted issues and interests within the society. The formal legal system is not restorative in nature but punitive and often time leaves on party disgruntled with the outcome. As at 2014, it was indicated that there were over 650, 000 backlog of cases in all courts (Mutunga, 2014) that creates worry and as such an urgent solution to this should be found so that the justice being talked about in the constitution is achieved. The overall impact of breach of the right to justice through poor management of case backlog is the lack of confidence in the judiciary. The constitution of Kenya 2010 proposed ADR mechanisms as a way of resolving disputes out of the court system which is believed to be a fast, cost effective and promoter of relations. The family division of the judiciary of Kenya piloted a court mandated mediation programme from the year 2016 to 2019 and rolled it out in the year 2020. For some reason, Kenyans still choose to have their disputes resolved by the courts. The ADR programme put in place has achieved very little in reducing the case back log. Therefore, this study seeks to find effective determinants for ADR system to manage the case backlog at the family court division of the judiciary in Kenya. This will be crucial in managing the backlog experienced at the court and restore the people's confidence in the judicial system. Nairobi and Nakuru County have been selected because it has a distinct family court division, piloted the court annexed mediation programmed and continues to record the highest number of case backlogs across the country despite the fact that they have pioneered Mediation pilot programs.

1.6.2 Significance

The study may create awareness on the various determinants that may lead to effective and increased adoption of alternative methods to resolve disputes in the bid to manage the backlog of cases at the family court units in Nairobi and Nakuru. There is therefore need to highlight such factors to in order to reduce the backlog experienced at the family court division. The determinants identified if addressed effectively may benefit the judiciary and the seekers of justice at the family courts in Nairobi and ensure effective and efficient access to justice without delay in the mentioned towns. The study also enlightened the seekers of justice of the existence of alternative dispute resolution mechanisms other than flooding the family courts which may take much time for their cases to be resolved.

1.7 Scope and Limitation

1.7.1 Scope

The study bases its scope in the family court division of the judiciary at Nairobi and Nakuru. It's only targeting the court users who seek and participate in judicial processes at the family court and the reasons they have for opting to other dispute resolutions mechanisms in order to lessen the burden of case backlog at the family court. The study was limited to the family court and may not really reflect the situation in other courts but can provide a basis for other studies in the same area of study.

1.7.2 Limitation

One of the limitations encountered was that some of the Respondents were likely conflicted on whether to give the correct responses and risk running their profession out of the market space thus the study run the risk of such participants withholding on vital

information for their own sake .The areas/towns covered by the study were wide and therefore resources such as time and finances might pose a challenge. To cope with this, the researcher involved the use of research assistants to help collect the required information within the short time period provided by administering the questionnaires to the respondents.

CHAPTER TWO

LITERATURE REVIEW

2.0 Introduction

This chapter looked at literature available on management of case backlog at the family court of the judiciary. The factors that have hampered effective use of alternative methods of disputes resolution at the judiciary and how other researchers have studied about and identify any gaps form their studies. The theoretical framework is also part of the chapter.

2.1 Outline of Effective ADR Processes

An important aspect of an effective dispute resolution process is the way it is designed. Dispute System Design (DSD) requires organizations to consciously guide disputes to multiple steps to deal with conflicts. In addition, DSD focuses on the design and implementation of a dispute resolution system, which consists of a set of procedures for handling disputes (Ury, Brett, and Goldberg, 1988). Jone (2016) pointed out that despite the global trend to use ADR to resolve tax disputes, the concept of DSD is not widely used to analyze the effectiveness of tax dispute resolution systems around the world, and only two studies (except yours) have been conducted. The six DSD principles described by Ury, Brett, and Goldberg are used for implementation.

Ury, Brett, and Goldberg identified interests, rights, and powers as the three basic elements of any dispute that must be considered when resolving disputes, and determined that when resolving disputes, each party may focus on one or more of the basic elements. First, the parties may attempt to compromise their potential interests. – interests being people’s needs, desires, concerns or fears, these being the tangible things that one says they care about or want. They may opt for negotiation or mediation to achieve this. Secondly, they

may consider settling disputes by relying on some independent and legitimate standard that is seen to be fair to determine who is right. These rights may be enshrined in laws and treaties, or in moral values such as reciprocity, precedent, equality, and seniority. Thirdly, they may settle conflicts on the basis of power, this being the ability to coerce someone to do something that is not agreeable to, for example ordering or threatening costs on the other side. However, there is an interplay between these three elements, and that there are instances where one or other element gives a more desirable outcome than the other.

Generally, it is cheaper to reconcile interests than determining who is right, and finding out who is right is less costly than finding out who is more powerful. However, it is not always possible to reach agreement on the basis of interest. A rights approach may be needed to clarify the rights within which a negotiated resolution can be sought. Alternatively, where one party wants to prove that that scales of power has shifted in its favor, it may conclude that only a power contest will adequately enable it make its point. Ury, Brett and Goldberg (1988) suggest that an effective dispute resolution system is one in which most disputes are resolved by balancing interests, some through determining who is right, and the fewest through determining who is more powerful.

Ury, Brett, and Goldberg (1988) emphasized the six basic principles of dispute systems design, as follows: (1) Designing negotiation procedures and providing the parties with the skills and resources necessary to use these procedures, focusing on the coordination of interests, (2) Established in a procedure that allows the parties to move from the channels of rights or power to negotiations based on interests; This includes arbitration consultations and cooling-off periods, (3) including low-cost rights and backup power sources to avoid interest-based negotiations based on failure, such as arbitration in lieu of litigation, (4)

Establishing a consultation procedure before possible disputes and a feedback procedure after disputes. This can help avoid potential conflicts and the feedback will help both parties avoid future disputes. (5) Organize low to high cost dispute resolution procedures. This ensures that high-cost methods are used only after low-cost methods have been exhausted. Finally, (6) provide people with the skills, motivation and resources to use the profit-based negotiation process. From a political point of view, system designers must win support for the new procedures, overcome resistance to change, and incentivize those who dispute the use of the new system. An effective way to do this is to involve the contending party in the diagnostic and design process. Further research by June (2016) suggests that other dispute resolution practitioners have expanded this model further.

Unlike Ury, Brett and Goldberg (1988), Costantino and Merchant (1996) listed six principles for designing an organization's internal conflict management system, namely: (1) Guidance on whether ADR is appropriate: to avoid ADR misuse, (2) Adjust the ADR process to suit specific issues: As has different ADR processes and systems depending on the nature of the dispute, (3) Establish ADR prevention methods: includes training potential parties to the dispute to resolve interest-based issues, and negotiation and other procedures to (4) Ensure that the parties to the dispute have the knowledge and skills needed to select and use ADR-this requires publicity on conflict management and dispute systems and training on how to access it, and (5) the creation of easy-to-use ADR systems and accessibility. The system must resolve disputes as quickly as possible under the lowest organizational level and minimal bureaucracy. Finally, (6) allow the disputing party to maintain maximum control: this includes the disputing party's control over the choice of ADR method and the choice of any third party as far as possible. This indicates that the

evaluation process should be created at the beginning of the evaluation process., so that the evaluation measures progress continuously depending on the objectives and defined purposes of the system.

Rowe (1997) provides six specifications for effective systems. (1) Provide system values. This is a commitment to advertising and freedom, and a solid competition support management system supported the competition management system, which prevents conflicts, active listening and effective communication, and inappropriate questions, and inappropriate questions, the flowering of the opening as a means for continuous improvement, instead of opening, or disintegration. (2) Since interest-based options are provided in parallel, rather than sequential steps and needed single procedure, there are many existing options, including interest-based and right-based options. The part also accepts the "Loopback" option of the "Loopback" option of interest-based options to interest-based options (or loopback options) of interest-based options (or return loop options). (3) Multiple access points: This is with several people trained to function as a "fair doorman" for controversial management systems, and the arguments find various ethnic and gender points and various technical background were modified. (4) OmbudsMason of the organization: This is "designated neutral", which is operated in an organization that is available to be informally in the workplace, and provides workplace arbitration as necessary. It can also serve as counselors, gobies and non-official facilitators, non-official funds, people with upward disabilities, consultants, problems of prevention of problems and modifying agents. The ombuzman should inform an executive official or an equivalent senior official of ordinary lines and staff structures, and maintain strict confidentiality. (5) Large scope: The system must be used by all members of the

Organization without considering the range, and all collisions interested in people in the organization can handle through the system. (6) Continuous improvement: This is associated with the system to improve the effectiveness of the system and accompanies the meeting of the Supervision Committee regularly.

Lynch (1998) recommends an effective conflict management system: (1) respond to the interests of all stakeholders, (2) reflect important values such as integrity, professionalism, respect and cooperation, (3) new institutions-this research It is specifically conducted for the Canada Revenue Agency, (4) has the support of highly visible leaders from all stakeholder groups, (5) provides a back-and-forth reversal between options based on rights and interests, (6) It is fair, friendly, flexible and fast, (7) promotes the lowest-level solutions, (8) provides structures and systems to help organizations shift from "conflict resolution" to "conflict management", including conflict prevention.

Slaiku and Hasson (1998) pointed out that some individual situations can go back or forth. By providing multiple options to collaborate and high-privilege programs, they affirm that good systems encourage the preferred route. These options are fair and are considered just by the participants. Participants must always have the right to proceed between all selected forms and their own information. Provides confidential help to select and use available options. The Association of Experts in Dispute Resolution (SPIDR) is based on the work carried out by the previous author and the guidelines for the design of the Integrated Controversial Management System (SPIDR, 2001).

SPIDR states that organizations must provide support across their infrastructure in order to successfully implement an integrated dispute management system, and disputes can be

managed through one of the many channels of the integrated dispute management system. They described various strategies, processes and support structures to achieve this goal, including: (1) Sincere and obvious advocacy by senior management and union/workplace leaders; (2) By all major stakeholders (3) One or more independent interns who play the role of neutral and confidential interns, (4) Central coordination point (office or group), (5) Systematic evaluation and monitoring mechanism, (6) Training of key people, timely "on-site" training for individuals as needed, as well as training for directors, supervisors, union staff and public service personnel. Others are (7) aligning the "philosophy" of conflict competition with the organization's mission, vision, values and policies; (8) institutional incentives for effective conflict management, integrated into the performance evaluation system, (9) interest-based methods. By discussing the established communication strategies with stakeholders in the workplace, and earnestly implementing them from the beginning of the process, (10) Encourage management and employees to deal with conflicts as early as possible and effective cost incentive measures; (11) Sufficient allocation to the system Financial and human resources. SPIDR pointed out that input from users and decision makers at all levels of the organization is critical to the operation of an integrated conflict management system. However, they realize that there is no ideal comprehensive conflict management system for all organizations; each system must adapt to the organization's needs, environment, and culture.

Jone (2016) concluded that although the expressions of the six models are different, there are several similarities in the principles because each model is based on the previous model. It attempts to coordinate different models by synthesizing them into a list of 14 general dispute system design principles, as follows: (1) Stakeholders should participate in the

design process. (2) The system must have multiple conflict resolution options, including interests, rights, and power-based processes. (3) The system must provide back and forth circulation. (4) There will be notice before the resolution process and feedback afterwards. Notice of recommended actions helps prevent disputes arising from misunderstandings and misrepresentations, and helps to find points of disagreement early for negotiation.

Similarly, post-mortem analysis and feedback help parties learn from conflicts and prevent similar conflicts from occurring in the future. (5) One or more people in the system are confidential intern neutrals. (6) Procedural costs are ranked from lowest to highest: this is to reduce the cost of handling disputes. (7) The system must have multiple access points. The system should provide a selection of people with whom the user of the system can contact for the first time. (8) The system includes training and education for stakeholders. This should include dispute management training and education and access to dispute resolution systems. (9) Help select the best process: This includes the use of process guides, coordinators and consultants. (10) The parties have the right to choose the preferred procedure: this is in the context of the multiple choice system. (11) The system is fair and is considered fair: the system must cultivate a culture that sincerely welcomes dissent. (12) System supported by top managers: top managers must have sincere and visible supporters. (13) This system is in line with the organization's mission, vision and values. Finally, (14). There are systematic reviews. This helps identify the strengths and weaknesses of the design and facilitate continuous improvement.

DSD has not been widely considered in tax dispute resolution. This is partly because tax disputes are not considered as interest-based disputes, as they are more focused on obtaining results, especially how much must be paid. Bentley (2006) believes that dispute

resolution based on rights and power is conducive to revenue management and expropriation power. The potential cost of tax disputes to taxpayers causes the tax authority to become an effective arbitrator of the rights of both parties, because taxpayers must withdraw. The power of tax authorities to collect taxes, interest and fines, or threats to do so, has become another factor affecting the outcome of disputes. In addition, tax authorities have more resources than taxpayers and have more experience in handling tax disputes. Therefore, unlike typical disputes, in tax disputes, there is an imbalance of power between taxpayers and tax authorities, which limits the application of interest-oriented systems.

Bentley (2007) suggested that ADRs improve taxpayer compliance by facilitating dispute resolution with tax authorities or alleviating concerns. ADR is also designed to avoid costly and time-consuming proceedings, improving the effectiveness and efficiency of tax management, which is consistent with DSD's goal, which is to reduce the cost of handling disputes and lead to more solutions acceptable and permanent. Therefore, it is considered appropriate to use the DSD principle when evaluating the design of a tax dispute resolution system.

2.2 The Kenya Approach to ADR

ADR and Traditional Dispute Resolution (TDR) are also recognized by Article 159 of the Kenyan Constitution (2010) as dispute resolution procedures outside of judicial procedures (Caruso & Debelle, 2016). This article 159 of the constitution, gives courts and tribunals judicial power, and its principles are to treat everyone fairly, regardless of their condition; timely justice; use and promote other forms of dispute resolution, including resolution, mediation, arbitration and TDR mechanisms; inadequate consideration of procedures technical issues; the purposes and principles of the Constitution must be protected and

promoted (Gachai, 2018). It is further specified that the TDR mechanism must comply with the "Bill of Rights" and must not be contrary to justice and morals, nor make decisions that are contrary to justice and morals, or conflict with the Constitution or any statutory law.

2.3 Management of Case backlog in the Judiciary of Kenya

Article 159 of the Constitution vests the authority of the people to the courts and tribunals established under the Constitution or Acts of Parliament the authority and the responsibility of independent and impartial management of judiciary and facilitating the use of ADR mechanisms in the exercise of judiciary. The judiciary plays an important role in promoting the rule of law and protecting human rights in fulfilling its obligations. However, world over, backlog of cases remains the common complaint about justice system performance.

The International Covenant on Civil and Political Rights (Article 14) and regional human rights treaties provide that courts cannot "excessively delay" or process cases "in a reasonable amount of time." increase. Timely rights are not just abstract rights. Delays can have a much broader meaning. For example, suspects, witnesses, and evidence can disappear after years of incident. In civil cases, delays can discourage legitimate plaintiffs and undermine the value of the decisions they actually receive. In criminal cases, delays can cause great difficulty for criminal suspects or defendants, includes, but is not limited to, long pretrial detention periods. International Covenants on Civil and Political Rights and regional human rights treaties stipulate that courts must not "take too much time" or file proceedings "in a reasonable amount of time." Timely rights are not just abstract rights. Delays can have a much broader meaning. For example, suspects, witnesses, and evidence can disappear after years of incident. In civil proceedings, delays can discourage legitimate

plaintiffs and reduce the value of the decisions they actually receive. In criminal cases, delays can cause serious difficulty for suspects or defendants, including but not limited to long pretrial detention periods.

Jennings (2007) believes that inefficiencies, unreliability, and unpredictability of the judicial system increase business costs, which impacts the country's investment climate. Unfortunately, however, this has been a Kenyan experience for decades. Fortunately, the enactment of the new Kenyan Constitution raises expectations for judicial reforms to protect the rule of law in Kenya and thereby increase public confidence in the law and the Kenyan judicial system (JSC201).

Many jurisdictions, such as South Africa and Australia, are seeking to integrate mediation and other ADR mechanisms into the legal system in the form of court-affiliated mediation in order to minimize the number of civil disputes filed in court. However, the judicial mediation system is usually integrated into the existing court system and is not separated from the judiciary. It is voluntary for the parties to opt for this kind of alternative. The Judiciary of Kenya in 2016, commenced a pilot project on court annexed mediation that has since been rolled out in most of the courts country wide.

Ojienda (2020) indicates that judicial litigation of civil disputes (and criminal matters alike) before the Kenyan courts has been faced with a number of challenges, including shortage of judicial staff (in this case judges and magistrates, delay in the hearing and determination of matters hence back log. Therefore, ADR mechanisms such as arbitration are welcomed as a case backlog management solution. As a result, judicial mediation, including family separation, is taking place without the proper framework. That is, the case

must first be brought to court before being submitted to mediation. The settlement agreement is still being enforced by the court. This leads to a backlog of cases, even if you don't have the right framework in place.

Kariuki (2018) stated that it is indeed possible to realize the right of access to justice as envisaged under article 48 of the constitution and to achieve this, there is need to bring on board viable options as a pathway to the realization of the same. Such options as discussed in this paper is the adoption of ADR,

Murigi (2020) indicates that ADR generally and Traditional justice mechanisms specifically promote both cultural and social interactions thus once institutionalized they become part and parcel of the idea of justice. There may be hurdles along the way such as normative practices on access to justice which stand in the way of ADR. To overcome these challenges, it is critical to ensure that ADR is considered as a democratization value. While it is acknowledged that norms are difficult to establish, we however argue that in Africa in general and in Kenya specifically, there are sufficient safeguards to respond to these concerns. This therefore calls for a new perspective to the idea of democracy in Africa which invites relearning, retooling and recasting ADR as a social and legal institution.

2.4 Theoretical Framework

The theoretical framework is a structure that explains a theory of a research study. The theoretical framework introduces and describes the theory which explains why the research problem under study exists. The theories of conflict transformation and the theory of justice are the guiding theories for this study.

2.4.1 Theory of Conflict Transformation

The Theory of Conflict Transformation is the guiding theory for this study. The theory was propounded by scholars John Paul Lederach, Johann Galtung and Thania Paffenholz. According to them, transformation of conflict is an enduring process that leads to alteration of the structural, personal and cultural aspects of conflict. When conflicts transform, the main aim is to have an overall change in structures so as to create better relationships between those in conflict.

Society has its own ways of preventing, managing and resolving conflicts, these ways must respect and promote the resources of society and promote peace taking into account the social and cultural framework, (Paffenholz 2014). Conflict transformation has an aim of building peace, focus on reconciliation and fortifies a society to build peace in the long run. This means that there will be a change in the behaviors, interests, attitudes, relationships and discourses as the underlying cultures, structures and institutions that lead to violence are addressed, (Ibid 2015). It's not focused on settling disputes as this only looks at interests and doesn't address the needs and values inherent in human beings that are important for a peaceful co-existence, (Fetherston, 2000).

This theory advocates for a growth in conflict through parties that work together and is a multispectral approach. This makes it flexible and can be applied in numerous conflict management process. With that, relationships and consent are built where parties are encouraged to adhere to the set agreements. In this study, the theory is applicable as it encourages state and non-state actors to collaborate and take part in conflict transformation. It allows the use of tools given by alternative dispute resolution to manage the case backlog at the family court division of the judiciary.

2.4.2 The Theory of Justice

In this theory, John Rawls wrote that the theory of justice refers to the correct way to construct government and society. Generally speaking, this is a political theory. In his view, the theory of justice is necessary because publicly agreed terms of social cooperation are necessary and possible. Rawls puts his theory in context through the three principles he defends; the principles of equal freedom, equal opportunity, and difference.

Regarding equality and freedom, Rawls proposed that people are free to do something when they are not restricted by certain conditions, whether they do or not, and when they do or not, they are protected from interference by other people. It provides the basis for this theory, that is, in a society based on the principle of justice, it is necessary because it ensures that all citizens will have and recognize personal status while maintaining justice. Liberty also ensures that every member of the community has the opportunity to save their personal status in life without undue interference.

Regarding the principle of equal opportunity, Rawls asserted that social and economic inequality must be status-dependent and open to all, under the conditions of fair and equal opportunities.

On the third principle of difference, Rawls argues that the basis of this principle is that different treatment of additional benefits and opportunities in the community can actually benefit the public. However, Rawls imposes a condition on the principle of difference, to the effect that economic inequality must be arranged in accordance with the principle of fair savings, so that they can obtain the maximum benefit with the minimum benefit.

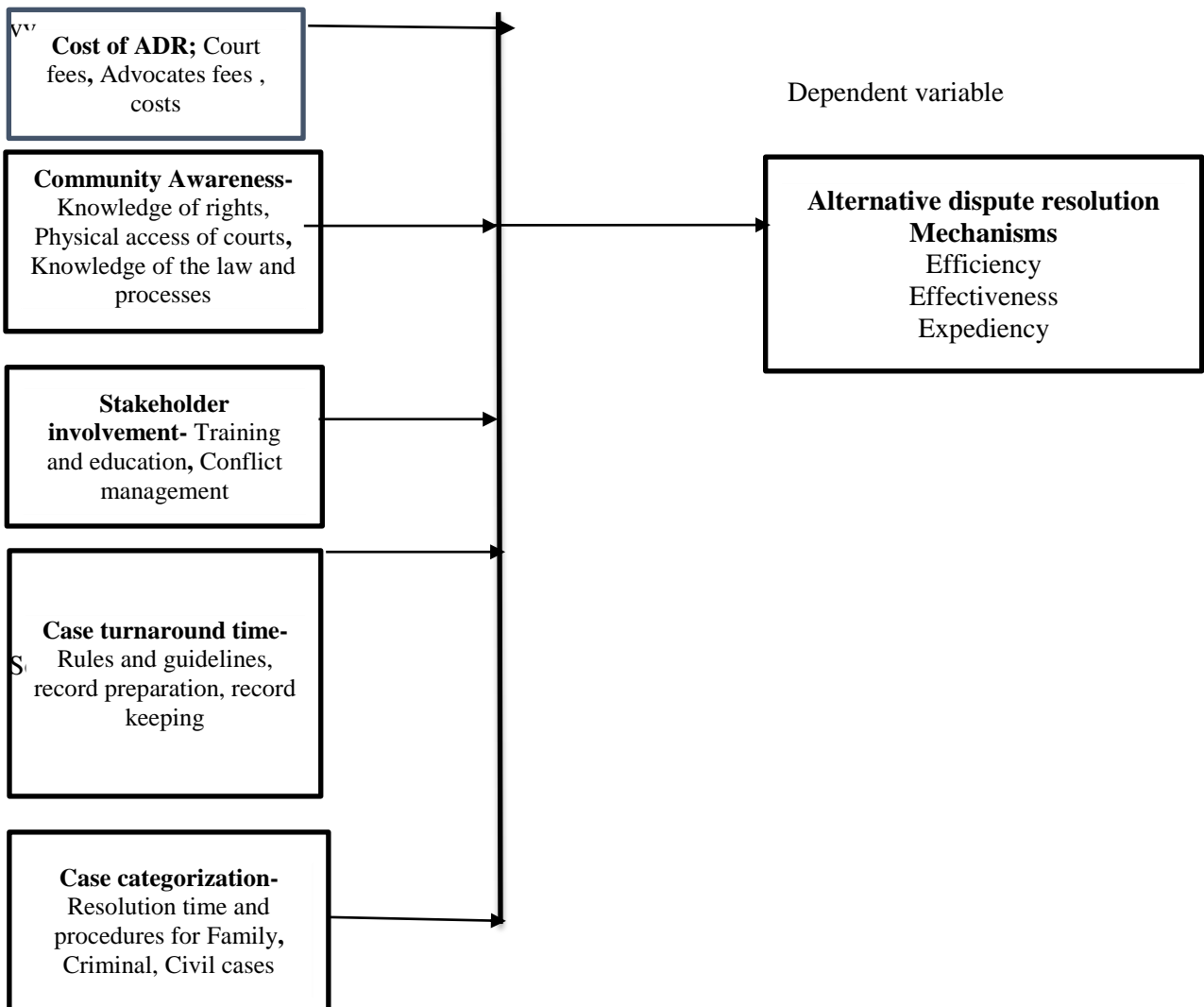
This theory is relevant to current research, as access to justice is not limited to the rights

set out in Article 48 of the Kenyan Constitution, but also a principle of exercising judicial power in judicial administration related to the principle of equality. Freedom and opportunity. It clearly states that all people are equal before the law and are entitled to the same legal protection and benefits.

2.5 Conceptual framework

The conceptual framework shown below shows the relationships between independent variables, such as litigation costs, community awareness, stakeholder involvement, case turnaround time and the categorization of the case and ADR in the management of case backlog

Independent variables



Researcher 2022

2.6 Summary of Literature Review

This chapter has covered the variables of the study at length while comparing them with what other researchers have studied about their findings and conclusions. It has also explained the theoretical framework upon which the study is based on. Then in the final part a relationship between the variables has been represented in a diagram. All the studies as reviewed have tried to cover how the independent variables determine the management of case backlog at the judiciary. None of these studies has looked at which specific variable is applicable to respond to management of case backlog at the family court division of judiciary which leaves a gap by which the study intends to fill up.

CHAPTER 3: METHODOLOGY

3.1 Introduction

This chapter details the survey design, where the survey was conducted, and the target group; the procedures for sampling, instruments used for data collection and analysis of the data, matters reliability and validity including the ethical considerations and the dissemination plan are covered.

3.2 Research design

The descriptive study design was used to determine how the alternative dispute resolution mechanism helps manage the backlog of the judicial family court department. The design was used because it's flexible in data to be collected, methods used for data collection and the research timing being looked into. Kothari (2003) describes descriptive design as having the ability to describe a phenomenon as it is. It used both quantitative and qualitative data collection methods.

3.3 Variables

The variables deemed independent by the study include the cost of ADR, community awareness, stakeholder involvement, case turnaround time and the categorization of the case while the dependent variable affected is the ADR mechanisms.

3.4 Site of the Study

The study was conducted in the family court division of the judiciary in Nairobi and Nakuru courts, the study population included, magistrates, judges, advocates, mediators of the court and other staff at the family court division of the judiciary.

3.5 Sampling Techniques and sample size

To sample means to select a representative part of the population. The study chose its sample using the simple random method of stratified sampling. The method's appropriateness comes in as it offers the respondents an opportunity at each level to get an equal chance to be chosen within the study area. We had a sample from a total of 7 judges', 10 magistrates, 25 advocates, 5 mediators, 28 litigants, and 12 other of the family court in the current year 2021.

Cadre	Frequency	Sample	Percentage
Magistrates	10	10	100
Judges	7	7	100
Advocates	25	25	100
Mediators	5	5	100
Litigants	28	28	100
Other staff	12	12	100
TOTAL	87	87	100

A sample of 87 respondents was used with the distribution done according to the number of judicial officers at the Nairobi and Nakuru family court.

3.6 Research instruments

The primary data of the study was collected using semi-structured questionnaires administered to the 87 staff and officers in the judiciary within the family courts in the two towns. The open and closed question questionnaires contained various research objectives. The questionnaire had some questions with alternatives that allow the respondent to make a choice among them that makes a better description of the circumstance they are in while the open-ended one gave the respondents an opportunity to respond in the way they liked (Orodho 2004).

The survey was dropped by the researcher and two research assistants and selected for the sample population in order for them to respond to the questions without facing any influences externally. After one week of them being dropped, they were collected back to allow for the analysis process to begin.

3.7 Pre-testing of study instruments

Conditions quite similar to those in the actual study were used for pre-testing and the researcher made sure to note problems in the content or wording of the questions. The researcher conducted pre-test with 20 questionnaires used to some respondents that were long-term and part of the research sample. The respondents selected for the pre-test included 20 law students in the Nairobi family court. This enabled the researcher to do any adjustments for questions not well done in readiness of final use by the respondents in the study.

3.8 Validity

The measure of what a tool is designed to measure is called validity (Neuman, 2006). This is where the data obtained from study variables are accurately captured by the tools as intended. To determine the effectiveness of tool, the questionnaire was submitted to a panel of experts in the department of public policy to ensure they capture all the variables for the study.

3.9 Reliability

When a data tool generates similar results consistently, that is called reliability as defined by Mugenda and Mugenda (2003). The reliability of the questionnaire was tested in a split half test. This meant that half of the questions were randomly selected and compared to the other half. If the two halves present a significant positive correlation, then the results obtained from the same was reliable.

3.10 Data Collection Procedures

Questionnaires being administered to the selected respondents were the main method to collect data. Research assistants were recruited to hasten the data collection process. The data collection was done during official hours of work where the researcher dropped and or emailed the questionnaires and later after a week pick, to get them for analysis.

3.11 Inferential Analysis Model

The study used regression analysis as the preferred method of inferential analysis. Regression analysis, in this type of analysis, the estimation of how the dependent variables and independent variables relate to one or more is done using a collection of methods of statistical nature. This method is a tool for modelling the strength of future

relationships between variables. This analysis is applicable to a number of disciplines.

3.12 Data Analysis Procedure

Two methods were used to analyze quantitative data; Descriptive statistics. In this type of statistics, computation of information into charts, tables, percentages and even frequency tables are done, (Mugenda & Mugenda 2003). Thematic analysis came in hand in analyzing qualitative data. This is whereby the main themes in the study are identified and a summary of the views presented is arrived at. (Quinn, 2012 and Brann & Clerke 2006). For analysis into themes, an organization of the research is done and a description into details for the data set is made.

3.13 Ethical considerations

Since the project was submitted to Kenyatta University, it meant that approval from the graduate school board of Kenyatta University was sought as well as from NACOSTI and from the Chief registrar of the Judiciary where the key informants were drawn. Respondents, on the other hand, were informed about the study and asked for their informed consent after being informed about the purpose of the study. Their privacy, dignity and confidentiality was guaranteed. Participation was voluntary .

CHAPTER FOUR

DATA ANALYSIS, PRESENTATION AND DISCUSSION

4.1 Introduction

This chapter describes data analysis, presentations and interpretations, and discussions based on research objectives. The purpose of the study is as follows; Determine how the cost of alternative dispute resolution affects the management of the backlog of the judiciary family court department. Investigate the impact of community perceptions on alternative dispute resolution and unprocessed portion management in the judicial family court department. Lack of proper framework contributes to procedural backlog. To establish the effect of stakeholder involvement in ADR and management of case backlog at the family court division of the judiciary, to establish the effect of case turnaround time in ADR and management of case backlog at the family court division of the judiciary and to establish the effect of case categorization in ADR and case management of case backlog at the family court division of the judiciary.

4.2 Response Rate

Researchers wanted to know how many respondents participated in the survey. The results were presented in table 4.1 below

Table 4.1 Response rate

Category	Frequency	Percentage
Responded	84	96
Non Response	3	4
Total	87	100

According to table 4.1, the numbers of questionnaires issued were 87, out of which 84 were

returned representing a response rate of 96%. From the analysis, we can conclude that the response rate was very high. Mugenda and Mugenda, (2013) and Saleh and Bista (2017) found that response rates above 75% were appropriate for data analysis. The high response rate of 96% was due to the strong reliability of the data collection tools.

4.3 Demographic Information

4.3.1 Distribution of the respondents by gender

Study participants were asked to indicate their gender, the study results revealed as shown in figure 4.1 below.

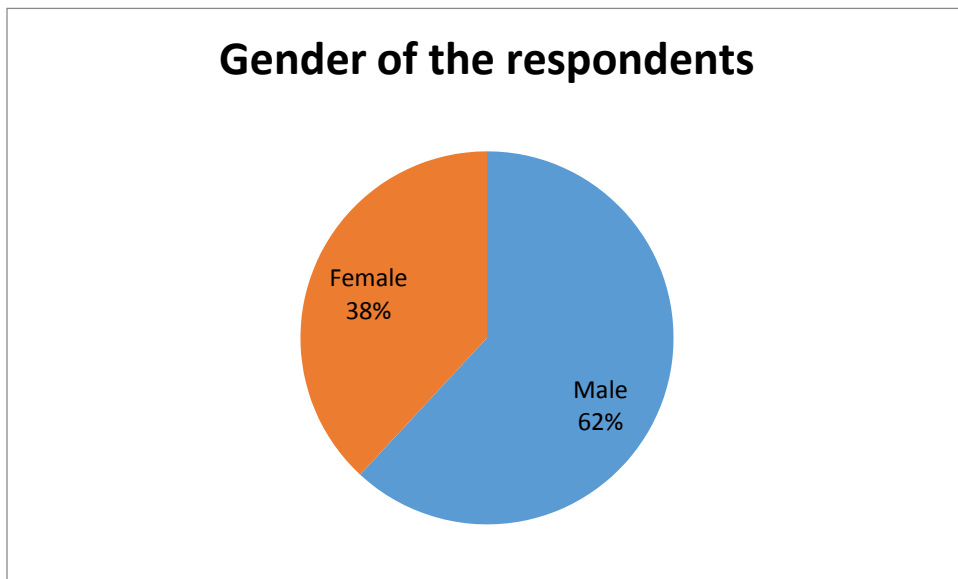


Figure 4.1 Distribution of the respondents by gender

Survey results show gender of respondents that 62% were male while 38% were female. This indicates that the researcher minimized the biasness in terms of gender by collecting the views from both sex.

4.3.2 Distribution of the Respondent by Age

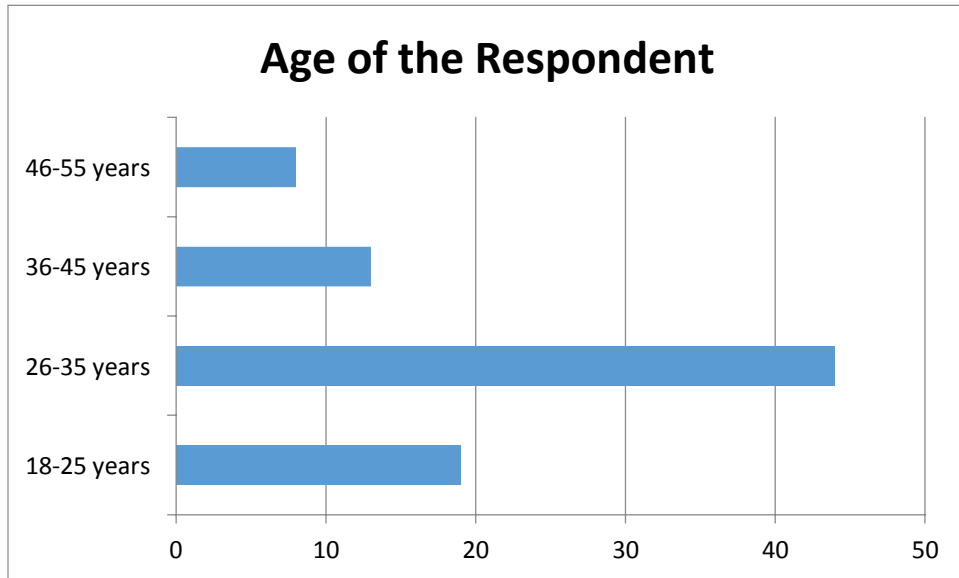


Figure 4.2 Distribution of the Respondent by Age

The survey results on the age distribution of respondents were 19 (22.6%) in the 18-25 age group, 44 (52.4%) in the 26-35 age group, and 13 (15.5%) in the 36-45 ,18-25 age group made it clear. (9.5%) was in the age group of 46-55 years.

According to Bass (2015), age brings experience, responsibility and skills. This was evident from the results that the majority of respondents were experienced, responsible and competent.

4.3.3 Distribution of respondents by education level

Survey participants were asked to indicate their academic level. The research results are shown in Figure 4.3 below.

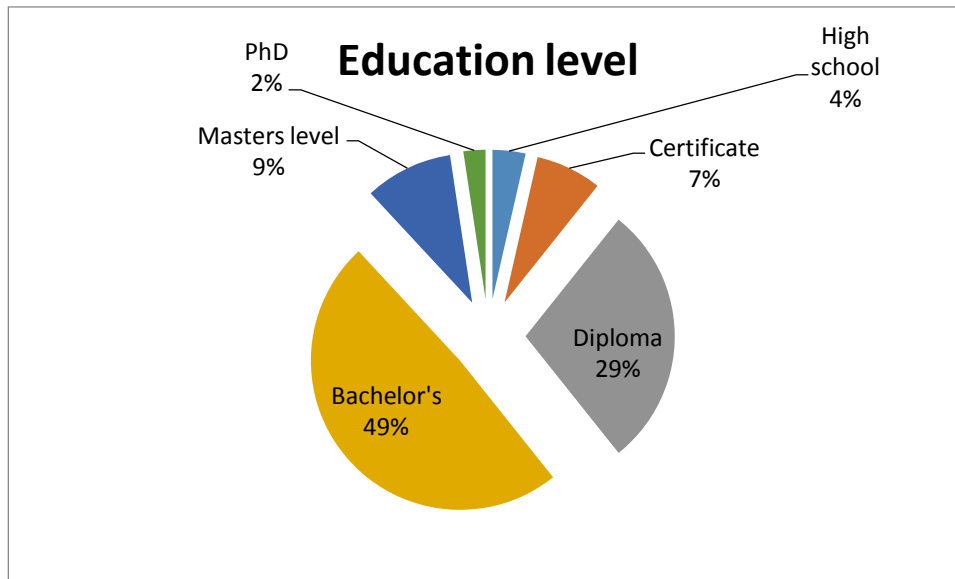


Figure 4.3 Distribution of the respondents by education level

The study findings in relation to the respondent education level revealed as follows; 3(3.6%) had high school certificate, 6(7.1%) had attained college certificate, 24(28.6%) had diploma certificate, 41(48.8%) had bachelor degree, 8(9.5%) had a master’s degree and 2(2.4%) had a PhD. According to the survey results, the majority of respondents, 48.8%, have a bachelor's degree as the highest level of education, while minority 2.4% had PhD certificate as their highest academic achievement. The majority of the respondents had Bachelor degree which was a satisfactory level of education that can comfortably facilitate proper understanding of the questionnaire. They could easily understand and give a true and fair answer.

4.3.4 Nature of interaction with family division

Survey participants were asked to demonstrate the nature of their interaction with the family section of the court. The study responses are as shown in figure 4.4 below.

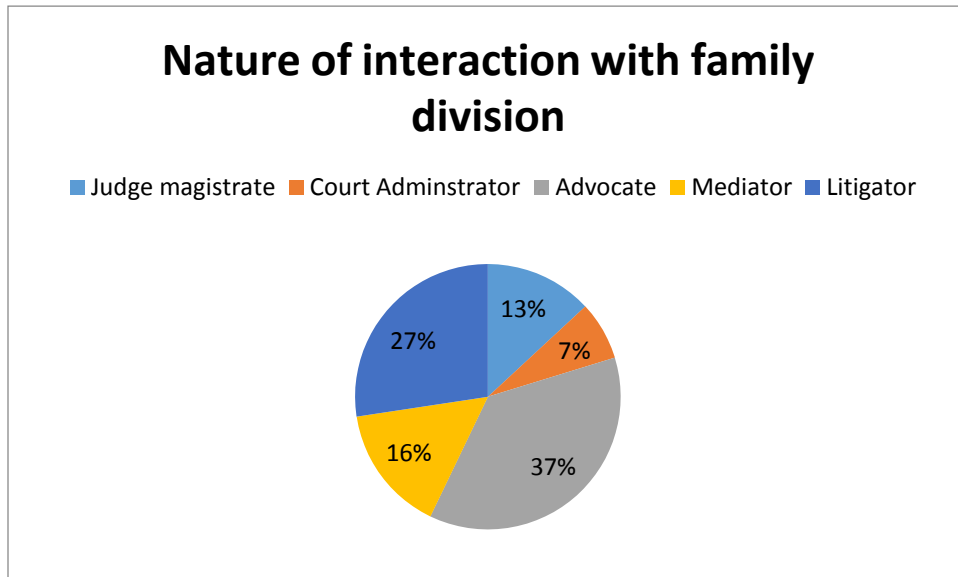


Figure 4.4 Nature of interaction with family division

The findings in relation to the nature of interaction with family division revealed as follows; 11(13.1%) indicated that they had interacted with the division as a judge or magistrate, 6(7.1%) indicated that they interacted with the division as court administrators, 31(36.9%) indicated that they interacted with the family division as advocates, 13(15.5%) indicated that they interacted with the division as mediators, 23(27.4%) interacted with the division as litigators. Based on the research results, the result shows majority 36.9% had interacted as advocates in the family division while only 7.1% had an interaction with the division as court administrators hence a larger majority interacted with the division because of their job description.

4.3.5 Distribution by the years worked

Respondents were asked to indicate the number of years they worked, the study respondents revealed as shown in figure 4.5

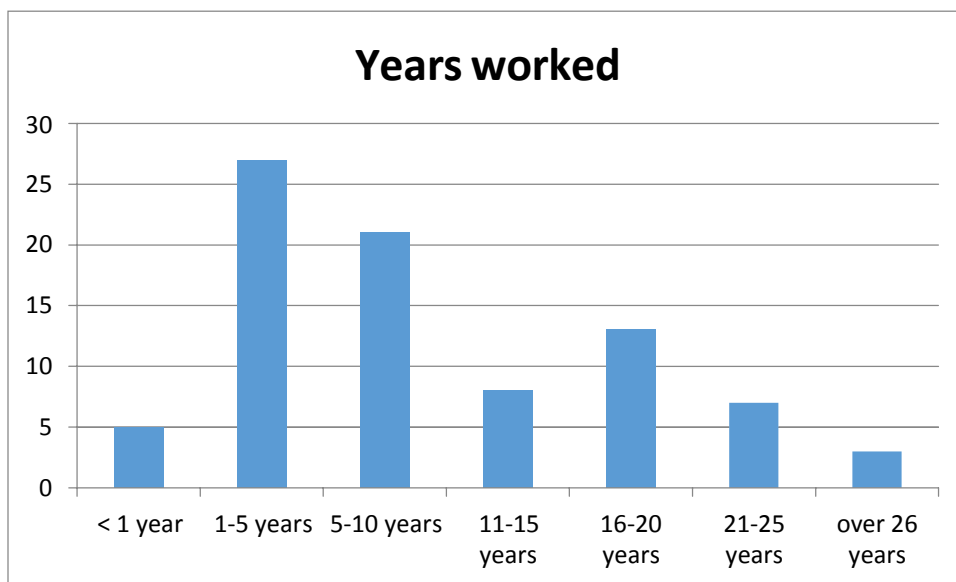


Figure 4.5 Distribution by the years worked

The study results on the years worked revealed as follows; 5(6%) had worked for less than a year, 8(9.5%) indicated that they had worked for between 1 to 5 years, 21(25%) had worked for between 5 to 10 years, 27(32.1%) had worked for between 11 to 15 years, 13(15.5%) had worked for between 16 to 20 years, 7(8.3%) had worked for between 21 to 25 years and 3(3.6%) had worked for over 26 years. From the findings we are able to infer that almost all of the respondents had worked for between 11 to 15 years, the minority had worked for over 26 years. The results of the study are supported by Nagy and Davis (1985). He found that more experienced people tend to be more motivated and satisfied than less experienced people because they become less motivated as they get older.

4.4 Access to ADR Mechanisms

The study respondents were asked to indicate the alternative dispute resolution mechanism available for use by the seekers of justice in the family court of the judiciary. The study findings revealed as follows;

Table 4.2 Alternate dispute resolution mechanisms available for use

Responses	Frequency	Percentage
Negotiations	23	27.4
Mediation	35	41.7
Conciliation	23	27.4
Others	3	3.6
Total	84	100

As shown in table 4.2 above, 23(27.4%) of the respondents said that the mechanism available for use is negotiation, 35(41.7%) indicated that the mechanism available for use is mediation, 23(27.4%) indicated that the mechanism available for use is conciliation and 3(3.6%) said that the mechanism available for use were neutral evaluation, arbitration and settlement conferences.

According to respondent NAK 17, Mediation is the preferred mechanism because both parties leave the court as winners and come up with their own solutions to their disputes. it was less complex than the other ADR Mechanisms.

NAK 17 responded; “80 % of the ADR resolved disputes are through Mediation which is one of the key ADR Mechanisms promoted by this division because it gives a win-win situation. at the end of the tussle we need the families to leave as family and not as enemies.”

4.1.1 Effective ADR mechanism in the management of case backlog at the court

Respondents were asked to indicate the level of agreement with the factor that contribute to an effective ADR mechanism in the management of case backlog at this court. The results are shown in Table 4.3 below.

Table 4.3 Factors that contribute to an effective ADR mechanism in the management of case backlog at the court

Statement	SA	A	N	D	SD
Community awareness	15(18%)	27(32%)	9(11%)	26(31%)	7(8%)
Cost of litigation	3(4%)	10(12%)	2(2%)	43(51%)	26(31%)
Stakeholder involvement	9(10%)	39(46%)	5(6%)	14(17%)	17(20%)
Case turnaround time	7(8%)	28(33%)	11(13%)	38(45%)	0(0.0%)
Case categorization	9(11%)	39(46%)	5(6%)	20(24%)	11(13%)

On community awareness; 15(18%) strongly agreed that community awareness contribute to an effective ADR mechanism in the management of case backlog at this court, 27(32%) agreed that community awareness contribute to an effective ADR mechanism in the management of case backlog at this court, 9(11%) were neutral, 26(31%) disagreed and 7(8%) strongly disagreed that community awareness contribute to an effective ADR mechanism in the management of case backlog at this court. The findings revealed that the majority 32% agreed that community awareness contribute to an effective ADR mechanism in the management of case backlog at this court while the minority 8% strongly disagreed that community awareness contribute to an effective ADR mechanism in the management of case backlog at this court.

“I had not known that the law provides for other ways of solving disputes other going to court until when I filed a case and was told that my children case was best suited to be resolved through mediation. I resisted but eventually got to be informed of the advantages and I eventually did, solved our dispute in a less acrimonious

and fastest way and we all are happy now. Those concerned should do more civic education”NRB 18

This finding were further echoed by NAK 3 who said that a lot of cases of family nature that come to court are out of ignorance that in family matters no one wins and the fight is better settled by ADR and most litigants once advise take up the challenge and come back with agreements for adoption by courts. *“The number of disputes that we have advised and referred to mediation have had about 90% success rate hence saving us lots of judicial time. It only takes making a party aware of this options”*

On the cost of litigation; the study revealed that 3(4%) strongly agreed that the cost of litigation contribute to an effective ADR mechanism in the management of case backlog at this court, 10(12%) agreed that the cost of litigation contribute to an effective ADR mechanism in the management of case backlog at this court, 2(2%) were neutral, 43(51%) disagreed and 26(31%) strongly disagreed that the cost of litigation contribute to an effective ADR mechanism in the management of case backlog at this court. The majority 51% disagreed that the cost of litigation contributes to an effective ADR mechanism in the management of case backlog at this court while the minority 2% neither agreed nor disagreed.

“At the end of the litigation, I will recover my costs of the case and interest if I win against the other party. unlike in ADR, Costs are unlikely to be awarded, I would rather thus raise fees for filing and advocate and go for litigation so that my opponent gets double penalty” NRB 7

NRB 10 echoed and stated that one chooses litigation over ADR because they want a judge

to decide it, not any other person *“I would not go to ADR although I know it is cheap. this is because in ADR a judge is never involved and thus the process does not look serious.*

NAK 1 in disagreeing with the above said, the cost of litigation contributes to an effective ADR mechanism in management of case backlog. He said; *“I have had many clients who had refused to try ADR refuse to pay subsequent court attendance fees saying that I had overcharged them and would quickly opt for ADR given that opportunity to save on costs”*

The study findings on stakeholder involvement revealed that 9(10%) strongly agreed that stakeholder involvement contribute to an effective ADR mechanism in the management of case backlog at this court, 39(46) agreed, 5(6%) were neutral, 14(17%) disagreed and 17(20%) strongly disagreed that stakeholder involvement contribute to an effective ADR mechanism in the management of case backlog at this court. The majority 46% agreed that stakeholder involvement contribute to an effective ADR mechanism in the management of case backlog at this court while the minority 6% neither agreed nor disagreed.

NRB 12 said that many Kenyans in the modern society only know the advocate and court as the solver of their disputes, He said;

“I have run my law office in Nairobi for Over 15 years, and I can conclude that modern Kenyans believe that disputes are only solved in court, I would therefore not advise them on ADR but would let the court do it themselves. I have to earn my fees that is more in Litigation than ADR

NRB 1 in agreeing with the said that many at times it’s easier to have a self-represented litigant agree to take mediation than a represented one. Advocates have always thought that ADR denies them their daily bread, they will frustrate any

such effort, we need to engage them more to understand that ADR will also save their time for the next client”

The study findings on case turnaround time revealed that 7(8%) strongly agreed that case turnaround time contribute to an effective ADR mechanism in the management of case backlog at this court, 28(33%) agreed, 11(13%) were neutral, 38(45%) disagreed that case turnaround time contribute to an effective ADR mechanism in the management of case backlog at this court. The majority 45% disagreed that that case turnaround time contribute to an effective ADR mechanism in the management of case backlog at this court while the minority 8% strongly agreed.

NAK 20 stated that most Kenyans who go to court especially the party sued enjoy the long case turnaround time to enjoy a certain status quo and/or punish the other thus and it's not one of the factors that would promote ADR as an effective case backlog management. He said;

“We have been told that ADR is a faster tool of solving disputes. Not all of us who find ourselves in court want the case to end quickly, we want to enjoy the status quo as we organize ourselves”

“NRB 30 said “The advocates remuneration order entices advocates not to want disputes solved faster, the long case turnaround time for them is a plus. They earn more”

On Case categorization; the study findings revealed that 9(11%) strongly agreed that case categorization contribute to an effective ADR mechanism in the management of case backlog at this court, 39(46%) agreed, 5(6%) were neutral, 20(24%) disagreed and

11(13%) strongly disagreed that case categorization contribute to an effective ADR mechanism in the management of case backlog at this court. The majority of the respondents ;46% agreed that case categorization contribute to an effective ADR mechanism in the management of case backlog at this court while 6% neither agreed nor disagreed.

NRB 40 said “Before court annexed mediation came into force and piloted in the division, people would fight over custody until the minor was 18 years and in succession matters until some of the beneficiaries die. The judges before the constitution 2010 had no tool to refer the matter to ADR. With the constitution, it is now easier to ask parties to try ADR. More other Court divisions should try ADR and that way we shall cut on the backlog completely.

Further NRB 50 commented “We have seen so many disputes unlocked and files closed faster in this division through mediation. whoever categorized family disputes as the best candidates for mediation did a good thing.”

4.4.1 Knowledge of ADR mechanisms

Respondents were asked to provide information whether they are aware of any ADR mechanism utilized at the family court division of the judiciary. The results are shown in Table 4.4.

Table 4.4 Knowledge of ADR Mechanisms

Response	Frequency	Percentage
Yes	45	54%
No	39	46%
Total	84	100

The study results shown in table 4.4 revealed that 45(54%) agreed that they are aware of any ADR mechanism utilized at the family court division of the judiciary while 39(46%) did not agree. The findings revealed that most respondents 54% were aware of ADR mechanism utilized at the family court division of the judiciary.

For those who responded YES, the researcher went ahead and inquired on where they knew the ADR mechanism utilized at the family division of the judiciary. Majority of the respondents revealed that they knew the ADR mechanism during their studies in law school. Some indicated that they knew it through the court processes.

Article 159 (4) of the Constitution provides for an ADR mechanism for dispute resolution including negotiation, mediation and arbitration. This provision supports the deployment of ADR in Kenya. *NAK 11 states: "Article 159 (1) of the Constitution governing ADR is one of the most acclaimed articles and is the subject of many reports and articles, as well as the law school curriculum. It is the next frontier of legal affairs."*

4.4.2 Community awareness on ADR

The researcher sought the participant's views on the community awareness programs conducted by Judiciary of Kenya, NGOs, FBOs, CBOs or the governments on ADR.

Table 4.5 below shows the results.

Table 4.5 Community awareness on ADR

Response	Frequency	Percentage
Yes	35	42%
No	49	58%
Total	84	100

As evidenced in table 4.5, 35(42%) of the study participants agreed that the community is aware of the programme conducted by Judiciary of Kenya, NGOs, FBOs, CBOs or the governments on ADR while 49(58%) indicated that the community is not aware of the programs conducted by Judiciary of Kenya, NGOs, FBOs, CBOs or the governments on ADR.

For the respondents who answered YES, they were asked to indicate whether they have any information received through such programmes and if it informed their decision to try ADR or proceed with Litigation.

Most of the study respondents indicated that the information received has not yet informed their decision to try ADR or proceed with litigation. This could be attributed to inadequate knowledge on the programs conducted by Judiciary of Kenya, NGOs, FBOs, CBOs or the governments on ADR. Others consider ADR to be elitist and find it unbelievable that it can work for ordinary Kenyans.

4.4.3 Stakeholder forums on ADR

The study participants were asked to state whether the organizations conduct such regular forums on alternatives to conflict prevention and resolution. Table 4.6 shows the results.

Table 4.6 Regular forums on alternatives to conflict prevention and resolution

Response	Frequency	Percentage
Yes	55	65%
No	29	35%
Total	84	100

The survey results in Table 4.6 show that 55 (65%) of the respondents agreed with organizations conduct such regular forums on alternatives to conflict prevention and resolution while 29(35%) disagreed that organizations conduct such regular forums on alternatives to conflict prevention and resolution.

NAK 22 said “I know FIDA (K) does a lot of mediations in domestic and family disputes. it is well known unto the grassroots by all genders. they have lots of information and offices across countries. Most of the clients who come to my office have been to FIDA. I am equally aware that the judiciary now has court annexed mediation rolled all over the country. I am not just an advocate I am also an accredited Mediator “

NRB 43 “I have attended awareness forums, seen shared information on ADR through media The information given is however very scanty. One cannot understand it sufficiently due to the short period of dissemination. Unless you seek further information, you cannot make a choice.”

4.4.4 Participation in ADR Mechanisms

The respondents were asked to state whether they take part in the process of Negotiation, Mediation and Conciliation. The study results revealed as shown in table 4.7;

Table 4.7 Participation in ADR Mechanisms

	Frequency	Percentage
Yes	25	30%
No	59	70%
Total	84	100

Respondents were asked to indicate whether they were involved in the negotiation, mediation and conciliation process. According to the survey results, 25 (30%) of the respondents reported that they participated in the negotiation, mediation and conciliation process, and 59 (70%) did not participate in the negotiation, mediation and conciliation process.

4.1.2 Efforts made by organisations to inform in adoption of ADR mechanisms

Respondents were asked to indicate their level of acceptability of the actions and activities of these organizations in promotion of alternative dispute resolution mechanisms. The study results revealed as indicated in table 4.8 below.

Table 4.8 Acceptability of disseminated information on ADR

Level of acceptability	Frequency	Percentage
Highly acceptable	6	7
Acceptable	30	36
Slightly Acceptable	26	31
Highly unacceptable	7	8
Unacceptable	11	13
Slightly unacceptable	4	5
Total	84	100

The study results in relation to table 4.8 reveals that; 6(7%) of the respondents said that it's highly acceptable, 30(36%) said that its acceptable, 26(31%) indicated that the actions and activities of the organizations in adoption of alternative dispute resolution mechanisms is slightly acceptable, 7(8%) indicated that the actions and activities of the organizations in adoption of alternative dispute resolution mechanisms is highly unacceptable, 11(13%) indicated that the actions and activities of the organizations in adoption of alternative dispute resolution mechanisms is unacceptable and 4(5%) indicated that the actions and activities of the organizations in adoption of alternative dispute resolution mechanisms is slightly unacceptable.

NRB 24 responded as follows “Most of this organisations are registered to do legal aid and therefore have advocates and trained ADR experts. Most of the agreements

reached at this institution are easily adopted by courts as meeting the legal threshold of Law and thus once ADR ends in an agreement once does not re-litigate the dispute but simply gets the agreement enforced by court hence the acceptability.”

From the study results we can infer that the majority of respondents, 36%, said that the actions and activities of the organizations in promotion of alternative dispute resolution mechanisms is acceptable while the minority 5% indicated that it’s slightly unacceptable.

4.5 Case Turnaround Time

4.5.1 Interaction with ADR processes.

Research participants were asked to show if they had interacted with ADR processes at the family court division. The study results are as shown in table 4.9 below.

Table 4.9 Interaction with ADR processes

Responses	Frequency	Percentage
Yes	65	77
No	19	23
Total	84	100

The examine findings as proven in table 4.9 reveals that 65(77%) of the respondents revealed that they have interacted with ADR processes at the family court division while 19(23%) said that they have not interacted with ADR processes at the family court division.

4.5.2 Logical conclusion of process.

The respondents were also asked to indicate whether they go through ADR processes at the family court division to the end. Research findings are as shown in table 4.10 below.

Table 4.10 logical conclusion of process

Responses	Frequency	Percentage
Yes	29	35
No	55	65
Total	84	100

Research findings as shown in table 4.10 revealed as follows; 29(35%) of the respondents revealed that they go through process to the end while 55(65%) indicated that they don't go through the process to the end. Three Respondents respondent as follows;

NRB 57 "My 7-year-old matter was screened for mediation; I went through all the sessions until we adopted the mediation agreement in court. imagine this agreement took 7 days to be reached."

NRB 54 "I did not go through all the process of Mediation because my advocate advised me to pull out as the proposed solutions were not good enough and we would get better orders in court." KI

NAK 32 "I went through all the process and had the dispute solved. in fact, we reunited as husband and wife. the environment was conducive and no acrimony."

4.5.3 Lengthy case turnaround time in ADR process

Research participants were asked to rate on a scale of 1-5 the factors thought to contribute to longer case turnaround time at the courts for alternative dispute resolution mechanism process. Research findings are as shown in table 4.11.

Table 4.11 Lengthy case turnaround time in ADR Process

Statements	SA	A	N	D	SD
Manually manage court records	5(6%)	39(46%)	5(6%)	14(17%)	21(25%)
Manually record court proceedings	6(7%)	49(58%)	3(4%)	18(20%)	8(9%)
Case follow-up process is not well done	12(14%)	12(14%)	17(20%)	34(40%)	9(11%)
Poor record control record systems	11(13%)	6(7%)	7(8%)	43(51%)	17(20%)
Important records and evidence are not well maintained	21(25%)	13(15%)	3(4%)	41(49%)	6(7%)
Slow handling cases arising from manual records	6(7%)	55(65%)	9(10%)	3(4%)	11(13%)
Manual case retrieval process is cumbersome,	53(63%)	20(24%)	4(5%)	3(4%)	4(5%)
Lost, destroyed or misplaced documents	13(15%)	61(72%)	5(6%)	3(4%)	2(2%)
The record and file retrieval system is manual, and there are channels for fraud and loopholes	11(13%)	52(62%)	10(12%)	6(7%)	5(6%)
Process of filing cases is disturbed, causing corruption of staff, colluding with lawyers / litigants, hence creating backlog	9(11%)	60(71%)	2(2%)	10(12%)	3(4%)

5(6%) strongly agreed that manually managed court records contribute to longer case turnaround time at the courts for alternative dispute resolution mechanisms process, 39(46%) agreed, 5(6%) were neutral, 14(17%) disagreed, 21(25%) strongly disagreed that manually manage court records contribute to longer case turnaround time at the courts for alternative dispute resolution mechanisms process. The majority of the respondents 46% agreed that manually manage court records contribute to longer case turnaround time at the courts for alternative dispute resolution mechanisms while the minority 6% strongly agreed and others neither agreed nor disagreed.

Based on the results,(7%) strongly agreed that manually record court proceedings contribute to longer case turnaround time at the courts for alternative dispute resolution mechanisms process, 49(58%) agreed, 3(4%) neither agreed nor disagreed, 18(20%) disagreed, and 8(9%) strongly disagreed that manually record court proceedings contribute to longer case turnaround time at the courts for alternative dispute resolution mechanisms process. Most of the research results showed 58% agreed that manually record court proceedings contribute to longer case turnaround time at the courts for alternative dispute resolution mechanisms process while 4% were neutral.

NRB 44 stated; " I have to first file my case the normal way all other cases are filed. My case may be among the 1000 filed in the day. There is only one Deputy registrar at the division who manually screens a case for mediation, or I have to wait until the court refers the matter to mediation, it may take months before the process of appointing mediator is finalized. the system is manual and cumbersome for one officer."

24(28%) agreed that case follow-up process is not well done, 17(20%) were neutral, 34(40%) disagreed that case follow-up is not done well and 9(11%) strongly disagreed that case follow up is not well done. Based on the findings the majority 40% disagreed that case follow-up is not done well hence contribute to longer case turnaround time at the courts for alternative dispute resolution mechanisms process while the minority 11% strongly disagreed that case follow-up is not done well. NAK 31 observed; *“Registry operates with a lean staff and if you do not follow up on your matter no action will be taken on it.NRB 32 said;” Just like at normal registries, you must keep pushing your file for action. mediators are few the registry staff is also limited.”*

11(13%) strongly agreed, 6(7%) agreed, 7(8%) were neutral, 43(51%) disagreed and 17(20%) strongly disagreed that poor record control records systems contribute to longer case turnaround time at the courts for alternative dispute resolution mechanisms process, From the study results its evident that most of the respondents 51% disagreed that poor record control records systems contribute to longer case turnaround time at the courts for alternative dispute resolution mechanisms process while the minority 7% agreed that poor record control records systems contribute to longer case turnaround time at the courts for alternative dispute resolution mechanisms process.. NRB 4 said *“Mediation settlements depends on the parties’ ability to agree, the mediator’s ability and availability. Some parties or Mediators frustrate the process for many reasons, or are biased hence the reasons the process may take long, the record system is automated and thereof does not contribute to delays”*

About maintenance of court records and evidence; the study findings revealed as follows, 21(25%) strongly agreed that important records and evidence are not well maintained, 13(15%) agreed, 3(4%) were neutral, 41(49%) disagreed and 6(7%) strongly disagreed that important records and evidence are not well maintained. Based on results, it's evident that the majority 49% disagreed that important records and evidence are not well maintained and hence contribute to longer case turnaround time at the courts for alternative dispute resolution mechanisms process. This implies that important records and evidence are well maintained. NAK 22 stated *“With the introduction of the e filing systems at the judiciary, missing records and evidence filed by a party is a thing of the past, Records are electronically well kept and can be accessed by all players without any bureaucratic procedures the only subsisting problem is the digitization of proceedings.”*

The study findings further revealed that; 6(7%) strongly agreed, 55(65%) agreed, 9(10%) were neutral, 3(4%) disagreed and 11(13%) strongly disagreed that slow handling cases arising from manual records contribute to longer case turnaround time at the courts for alternative dispute resolution mechanisms process. From the study results, we can infer that the majority 65% agreed that slow handling of cases arising from manual records contribute to longer case turnaround time at the courts for alternative dispute resolution mechanisms process. Based on the result it can be concluded that there is need to reduce on the bureaucratic processes to reduce the case turnaround time hence encourage uptake of AADR. NRB 44 said *“There is only one Deputy registrar at the division who manually receives and forwards the files where disputes have been settled too respective courts for adoption of agreements it may take months before the process is finalized the manual process are cumbersome for one officer.”*

The study results based on the assertion that manual case retrieval process is cumbersome, the study findings revealed as follows; 53(63%) strongly agreed, 20(24%) agreed, 4(5%) were neutral, 3(4%) disagreed and 4(5%) strongly disagreed. Most of the research results showed 63% were in agreement that manual case retrieval process is cumbersome and hence contribute to longer case turnaround time at the courts for alternative dispute resolution mechanisms process.

The study results revealed as follows; 13(15%) strongly agreed, 61(72%) agreed, 5(6%) neither agreed nor disagreed, 3(4%) disagreed and 2(2%) strongly disagreed that lost, destroyed or misplaced documents contribute to longer case turnaround time at the courts for alternative dispute resolution mechanisms process. Based on the study findings we can see that the majority 72% agreed that lost, destroyed or misplaced documents contribute to longer case turnaround time at the courts for alternative dispute resolution mechanisms process while only 2% strongly disagreed. *NAK 21 "It's only Nairobi courts that have advanced on e-filing systems, the rest of the courts still utilizes the manual retrieval and filing systems and the likelihood of missing on a long awaited date or getting a convenient date is very high."*

From the study results; 11(13%) strongly agreed, 52(62%) agreed, 10(12%) were neutral, 6(7%) disagreed and 5(6%) strongly disagreed that the record and file retrieval system is manual, and there are channels for fraud and loopholes. Based on the analysis, it is clear that the majority of respondents, 62%, agreed that the record and file retrieval system is manual, and there are channels for fraud and loopholes while the minority 6% strongly disagreed.

The study findings established as follows; 9(11%) strongly agreed, 60(71%) agreed, 2(2%) neither agreed nor disagreed, 10(12%) disagreed and 3(4%) strongly disagreed that the process of filing cases is disturbed, causing corruption of staff, colluding with lawyers / litigants, hence creating backlog. Based on these results, the majority of respondents (71%) can conclude that they agreed that the case submission process was interrupted, causing corruption of staff, colluding with lawyers / litigants, hence creating backlog. *NAK 25 said; "Corruption is a disease in all our institutions, the issue of missing, lost files still persists at the registries even in other ADR practicing institutions. It is a problem that all players participate to defeat the processes."*

4.6 Case categorization

4.6.1 Choice of other mechanisms of disputes resolution, impact on backlog of courtcases

Research participants were asked to evaluate factors that contribute to individual use or disuse of other mechanisms to resolve disputes and how the backlog of cases gets managed and the impacts felt on right of due process in the court. Table 4.12 shows the study results.

Statement	SA	A	N	D	SD	Total
Procedures that exists in family, civil and criminal matters.	8(9%)	37(44%)	5(6%)	28(33%)	6(7%)	84
Procedures used for work on the different case categories	3(4%)	11(13%)	4(5%)	45(53%)	21(25%)	84
Rules and procedures being ignored as articulated for different case categories	6(7%)	15(17%)	5(6%)	47(56%)	11(13%)	84
The legal system having a lot of Bureaucracies	2(2%)	46(55%)	10(12%)	21(25%)	5(6%)	84
Procedures and rules not being Clear	11(13%)	8(9%)	19(23%)	35(42%)	11(13%)	84

On procedures that exist in family, civil and criminal matters which contribute to individuals use or disuse of other mechanisms of dispute resolution and how the backlog of cases gets managed and the impacts felt on right of due process in the court, the study findings were as follows; 8(9%) strongly agreed, 37(44%) agreed, 5(6%) were neutral, 28(33%) disagreed and 6(7%) strongly disagreed that procedures that that exists in family, civil and criminal matters contribute to individuals to use or disuse of other mechanisms used to resolve disputes and how the backlog of cases gets managed and the impacts felt on right to due process in this court, hence the majority ,44% agreed while the minority 6% neither agreed nor disagreed.

As to how the procedures used for work on the different case categories contribute to individuals use or disuse of other mechanisms to resolve disputes and how the backlog of cases gets managed and the impacts felt on right of due process in the court, the study results revealed that 3(4%) strongly agreed, 11(13%) agreed, 4(5%) were neutral, 45(53%) disagreed and 21(25%) strongly disagreed. Based on these findings, the majority 53% disagreed that procedures used for work on the different case categories contribute to individuals to use or disuse of other mechanisms used to resolve disputes and how the backlog of cases gets managed and the impacts felt on the right of due process in the court while only 4% strongly agreed.

As to whether rules and procedures being ignored for different case categories, the study results were as follows; 6(7%) strongly agreed, 15(17%) agreed, 5(6%) were neutral, 47(56%) disagreed that rules and procedures being ignored as articulated for different case

categories and 11(13%) strongly disagreed with the assertion. This implies that the majority 56% disagreed that rules and procedures being ignored as articulated for different case categories and hence contribute to individuals to use or disuse of other mechanisms used to resolve disputes and how the backlog of cases gets managed and the impacts felt on right of due process in the court.

On the assertion that the legal system having a lot of bureaucracies, the study results revealed as follows; 2(2%) strongly agreed, 46(55%) agreed, 10(12%) neither agreed nor disagreed, 21(25%) disagreed and 5(6%) strongly disagreed. From the study findings, the majority 55% agreed that legal system having a lot of bureaucracies while the minority 2% strongly agreed that legal system having a lot of bureaucracies.

As far as procedures and rules not being clear, the study results revealed as follows; 11(13%) strongly agreed, 8(9%) agreed, 19(23%) were neutral, 35(42%) disagreed and 11(13%) strongly disagreed. The study findings revealed that the majority 42% disagreed that procedures and rules not being clear contribute to individuals to use or disuse of other mechanisms used to resolve disputes and how the backlog of cases gets managed and the impacts felt on right of due process in the court.

4.6.2 The cost comparison

Respondents were asked to indicate whether the cost of the proceedings was higher than the cost of alternative dispute resolution. The study results are shown in Table 4.13 below.

Table 4.13 The cost comparison

Responses	Frequency	Percentage
No	19	23%
Yes	65	77%
Total	84	100

As shown in table 4.13, 19(23%) of the study participants disagreed that the cost of litigation is higher than that of ADR while 65(77%) agreed that the cost of litigation is higher than that of ADR. This implies that the cost of litigation is higher than that of ADR.

On the plus side, researchers have found that ADR procedures offer lower cost, faster dispute resolution, and sometimes results that improve relationships. Many disputes can be resolved more efficiently and with greater satisfaction to all the parties involved. It also gives the parties more opportunity to determine when and how their dispute will be resolved.

NRB 23 said "I had a succession matter in the high court since the year 2004 that was frustrated by many factors. Meaning a lot of costs were incurred, When the judiciary lodged the court annexed mediation in 2016, it was one of the screened matters, we had 6 sessions with the mediator. we resolved the dispute in 2 months at minimal costs that were essentially travel costs. We should have tried it earlier enough."

On the other hand, ADR process has become an expensive private legal system that looks like process aimed at preventing this.

In many judicial systems today, ADR procedures usually include a large amount of baggage in the form of complaints, investigations, testimonies, advice, professionals, and claims for damages that exceed the cause and contractual limits.

NRB 54 said “I had to pay all the hefty filing fees, appointed an advocate to prepare the papers for court, before we settled the matter to mediation where it is a win-win situation. I did not recover my costs even though I partially succeeded in the case through mediation. still pay the hefty court fees even if the matter does ends up in ADR. Paying the mediator is not enough to save us on costs.”

4.7 Stakeholder Involvement in ADR Processes

Survey participants were asked to indicate whether they had participated in any of the alternative dispute resolution procedures in the family court. The survey results are shown in Table 4.14 below..

Table 4.14 stakeholder involvement in ADR processes.

Responses	Frequency	Percentage
Yes	35	42%
No	49	58%
Total	84	100

As per table 4.14 above, 35(42%) agreed that they have ever been part of the ADR processes at the family court division while 49(58%) on the contrary indicated that they have never been part of the ADR processes at the family court division. *NRB 10 responded*

as follows; “My duty is to monitor a file that has been screened for mediation until the mediation report is filed and file placed before the court. I am thus part of the process throughout. I know all the process involved”

4.7.1 Number of Stakeholders involved in ADR process

The researcher sought to know whether the respondent was satisfied with the process of stakeholder involvement during formulation of all the ADR processes. The study results are as presented in table 4.15 below.

Table 4.15 Satisfaction with the process of stakeholder involvement during all the processes

Responses	Frequency	Percentage
Yes	31	37%
No	53	63%
Total	84	100

The study results as shown in table 4.15 above reveals as follows; 31(37%) of the respondents said that they are satisfied with the process of stakeholder involvement while 53(63%) said that they are not satisfied with the process of stakeholder involvement.

4.7.2 Referral of ADR mechanisms to other stakeholders

Respondents were asked if they would recommend the use of ADR as a backlog management tool to other stakeholders. The survey results are shown in Table 4.16.

Table 4.16 Referral of ADR Mechanisms to other stakeholders

Responses	Frequency	Percentage
Yes	62	74%
No	22	26%
Total	84	100

According to the survey results in Table 4.16, 62 (74%) of the respondents agreed that they would recommend the use of ADR as a backlog management tool to other stakeholders while 22(26%) said that they would not recommend this mechanism.

The study findings concurred with Jone (2016) who recommended six models (1) Stakeholders should participate in the design process. (2) The system must have multiple conflict resolution options, includes processes based on interests, rights and power. (3) The system must provide back and forth circulation. (4) There will be notice before the resolution process and feedback afterwards. Notice of recommended actions helps prevent disputes arising from misunderstandings and misrepresentations and helps to find points of disagreement early for negotiation.

4.8. Regression Analysis

A regression analysis was conducted on SPSS and the results were as follows.

Model	Variables Entered	Variables Removed	Method
1	Age of the participants ^b	.	Enter

a. Dependent Variable: Number of times the respondent has participated in ADR
 b. All requested variables entered.

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	.623 ^a	.388	.380	1.330

a. Predictors: (Constant), Age of the participants

b. Dependent Variable: Number of times the respondent has participated in ADR

Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	91.863	1	91.863	51.905	.000 ^b
	Residual	145.126	82	1.770		
	Total	236.988	83			

a. Dependent Variable: Number of times the respondent has participated in ADR

b. Predictors: (Constant), Age of the participants

From the model summary, it is evident that a 38.8% change in participation in ADR can be accounted for by age. Since the p-value is less than 0.01 from the ANOVA table, there is a

significant impact of age on the number of times a respondent has participated in ADR.

Reliability Statistics

Cronbach's Alpha	Cronbach's Alpha Based on Standardized Items	N of Items
.581	.767	2

The reliability test was conducted using SPSS reliability statistics, and it showed that the value of the cronbach's alpha was 0.581 and that the study methods and tools were sufficiently reliable in for the analysis.

CHAPTER FIVE

SUMMARY OF THE FINDINGS, CONCLUSION AND RECOMMENDATION

5.1 Introduction

This chapter contains a summary of results, conclusions, and recommendations. The investigation explored why the family court departments of the Nairobi and Nakuru judiciaries gathered information on alternative dispute resolution and backlog management.

5.2 Summary of results

Researchers found answers to the survey questions in the Family Court department of the Nairobi and Nakuru Courts from questions and interviews with key respondents on alternative dispute resolution and backlog management.

Researchers found that most respondents (41.7%) used mediation, followed by court proceedings and negotiations at 24% each. A majority of respondents, 36%, said the organization's actions and activities in the introduction of alternative dispute resolution mechanisms were acceptable, and a minority of 5% said this was somewhat unacceptable. According to the survey, most respondents (77%) agreed that proceedings cost more than alternative dispute resolution. ADR procedures offer lower costs, faster dispute resolution, and sometimes improved results on the other side of the coin. Expert opinion and compensation for damages beyond the reason and contractual limits.

The study found that 58% of the respondents indicated that the community is not aware of the programme conducted by Judiciary of Kenya, NGOs, FBOs, CBOs or the governments

on ADR prior to filing a case in court. For those who were aware of the programmes, they said that the information is inadequate and insufficient to inform their decision to try ADR or proceed with litigation.

According to the survey, 58% of respondents said they had never participated in the family court sector's ADR process, and 63% said they were dissatisfied with the stakeholder participation process. 74% of respondents agreed to recommend using ADR as a backlog management tool for other stakeholders.

The study also established that 44% agreed that categorization of cases contribute to individuals choice to use or disuse of other ADR mechanisms to resolve disputes, 53% disagreed that Case categorization contribute to individuals choice to use or disuse ADR mechanisms to resolve disputes, 55% agreed that ADR procedures are clear hence contribute to the use of ADR while 42% disagreed that procedures and rules are not clear and contribute to individuals disuse of ADR mechanisms to resolve disputes.

Based on the effect of case turnaround time in ADR and management of case backlog at the family court division of the judiciary, 77% of the respondents revealed that they have interacted with ADR processes at the family court division, 65% indicated that they don't go through the process to the end, 46% agreed that manually manage court records, 58% agreed that manually record court proceedings, 40% disagreed that case follow-up is not done well, 51% disagreed that poor record control records systems contribute to disuse of ADR , 49% disagreed that important records and evidence are not well maintained and hence contribute to longer case turnaround time at the courts for alternative dispute resolution mechanisms process, 65% agreed that slow handling of cases arising from

manual records contribute to longer case turnaround time at the courts for alternative dispute resolution mechanisms process, 63% were in agreement that manual case retrieval process is cumbersome, 62% agreed that the record and file retrieval system is manual, and there are channels for fraud and loopholes and 71% agreed that the process of filing cases is compromised, causing corruption of staff, colluding with lawyers / litigants, hence creating backlog.

5.3 Conclusion

The study found that the cost of ADR is still lower than that of other litigation which may be attributed to faster turnaround time in conclusion of dispute. Bureaucratic procedures, lack of awareness and mischief from players are the draw back challenges. The study also found that a higher percentage of community is not aware of the programs conducted by Judiciary of Kenya, NGOs, FBOs, CBOs or the governments on ADR such that the information available is not sufficient to inform their decision to try ADR or proceed with litigation. Data collected established that most respondents have never been part of the formation of ADR programs at the family court division, and for those who have ever been part, they are not satisfied with the process of stakeholder involvement done before the available mechanisms of ADR are put in place though they would recommend the use of ADR as a backlog management tool to other stakeholders. Stakeholder Involvement helps in enhancing uptake of ADR processes, stakeholders can promote use of ADR hence reduce the case turnaround time. The study also found that case categorization does not contribute to individuals use or disuse of ADR mechanisms to

resolve disputes,

The investigation shows that the total time from filing a claim to a decision to resolve or reject the claim is an integral part of managing alternative dispute resolution and the unprocessed portion of the judicial family court department. The study found that most respondents have interacted with ADR processes at the family court division, though they don't go through the process to the end for various reasons ; Manually managed court records, manual record proceedings, slow handling of cases arising from manual records, manual case retrieval process as being cumbersome, manual record and file retrieval system and process of filing cases being disturbed, corruption of staff, colluding with lawyers / litigants slows s case turnaround time for ADR and overall case management at the family court division hence the minimal choice to adopt ADR as a dispute settlement tool.

5.4 Recommendation

The study makes the following recommendations regarding research results:

The relevant stakeholders should develop a mandatory screening and case categorization tool for proper identification of appropriate cases for resolution by ADR. The family division of the judiciary should come up with a case screening and categorization simple tool at the family division that shall first screen suitable disputes for ADR before being listed for litigation. This measure will reduce the number of cases listed for hearing then subsequently referred to ADR or listed for ADR then parties opt out before completion hence reduction of case backlog.

They should also allocate Sufficient resources to ADR department for efficiency. As an alternative to the litigation methods, the judiciary should consider allocating similar infrastructural and human resource in this area to reduce the case turnaround time

or the high percentage of people opting out midway the process for matters screened for ADR due to frustration of delays.

They should ensure that all stakeholders are involved, sensitized on the ADR process at the division and judiciary at large. In order to take ADR into account when resolving social disputes, it needs to be more stakeholder awareness and involvement and more comprehensive.

Lastly, awareness needs to be raised among community members in order to correct their attitude towards ADR as a dispute resolution mechanism. Advocacy and awareness campaigns about the process and the benefits of alternative dispute resolution are essential. Information about ADR should be available and accessible to all Kenyans.

5.6 Recommendation for further Research

1. The survey focused primarily on Nairobi and Nakuru County. They have their own family court department, which may or may not resemble an ADR case for the entire judiciary. Further investigation is needed to find out the effectiveness of the ADR tool in managing backlogs in all departments of justice.
2. A quantitative survey of the entire Kenyan population to find a level of awareness among Kenyan citizens and experts on the level of awareness of the ADR concept as a tool for managing the untreated portion of justice need to be carried out.

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APPENDIX I: QUESTIONNAIRE

Introduction

The purpose of this questionnaire was to collect information on alternative dispute resolution and backlog management in the family court department of the judiciary of Nairobi and Nakuru. Please write a brief description or check the appropriate box to answer your question. Your name will never be mentioned in this study, so the information you provide will be kept confidential.

Part A: Background Information:

1. Gender: Male Female

2. Age: 18-25 years old 26-35 years old 35-45 years old 45-55 years old or older

3. Education level: below KCSE KCSE-"A" level Certificate Diploma Master's degree PHD

4. What is the nature of your interaction with the family division of the Judiciary?

Judge Magistrate court administrator advocate mediator litigant

6. For how long have you worked/practiced/ had a case in the Judiciary?

Less than one year

1-5 years

5-10 years

11-15 years

16-20 years

21-25 years

over 26 years

Section B:

1. What alternate dispute resolution mechanisms are available for use by the seekers of justice in this family court of the judiciary?

- a) Negotiations b) Mediation c) Conciliation
- d) Others

(specify) _____

2. To what extent are you in agreement with the listed factors as to how they contribute to an effective ADR mechanism in the management of case backlog at this court?

1= Fully agree, 2 = Agree, 3 = Neutral, 4 = Disagree, 5 Disagree completely

- a) Community awareness
- b) Cost of litigation
- c) Stakeholder involvement
- d) Case turnaround time
- e) Case categorization

COMMUNITY AWARENESS

3. (i) Are you aware of any ADR mechanism utilized at the family court Division of the judiciary Yes No

ii) If Yes how did you get to know?

iii) Are there any community awareness programmes conducted by Judiciary of Kenya, NGOs, FBOs, CBOs or the governments on ADR?

9. The following factors are believed to contribute to the increase in proceedings in the Alternative Dispute Resolution Court. Indicate your degree of agreement or disagreement on a scale of 1 to 5. 1 = Fully agree, 2 = Agree, 3 = Neutral, 4 = Disagree, 5 = Disagree completely

	1	2	3	4	5
Manually manage court records					
Manually record court proceedings					
Case follow-up process is not well done					
Poor record control records systems					
Important records and evidence are not well maintained					
Slow handling cases arising from manual records					
Manual case retrieval process is cumbersome,					
Lost, destroyed or misplaced documents					
The record and file retrieval system is manual, and there are channels for fraud and loopholes					
Process of filing cases is disturbed, causing corruption of staff, colluding with lawyers / litigants, hence creating backlog					

CASE CATEGORISATION

10) State how far you agree or not agree with the factors stated below as to how they contribute to individuals to use or disuse of other mechanisms using to resolve disputes and how the backlog of cases gets managed and the impacts felt on right to due process in this court? 1 = Fully agree, 2 = Agree, 3 = Neutral, 4 = Disagree, 5 = Disagree completely.

- (a) Procedures and that that exists in family, civil and criminal matters.
- (b) Procedures used for work on the different case categories
- (c) Rules and procedures being ignored as articulated for different case categories
- (d) The legal system having a lot of bureaucracies
- (e) Procedures and rules not being clear

COST OF ADR

11) (i) Would you say that the cost of litigation is higher than that of ADR?

YES

NO

(ii) If yes, is this one of the factors that caused you to opt for ADR?

(iii) If no to (i) above, why do you say so

(iv) What would you say about the cost of ADR processes?

STAKEHOLDER INVOLVEMENT

12 (i) Have you been part of any of the ADR processes at the family court division?

(ii) If yes to (I) above, at what stage of the process were you involved?

(iii) if not, how would you have wished to be involved in the said process?

(iv) Are you satisfied with the process of stakeholder involvement during all the processes?

(v) If yes, what do you recommend should be improved/changed to make ADR effective in management of case backlog

vi) If not, what do you think was not done or ought to have been done or led to the unsuccessful ADR process:

vii) Would you recommend the use of ADR as a backlog management tool to other stakeholders?

viii) If no, why is it so?

Thank you for participating

APPENDIX II: WORK PLAN

Activities	Feb	March	Apr	May	June	July	Aug	Sept.	Oct
Concept formulation									
Project formulation									
Drafting and editing the project									
Submission to graduate school									
Data collection									
Data Analysis									
Drafting the final project									
Final write-up									
Submission to the school									

APPENDIX III: BUDGET

Activities	Quantity	Cost @unit (ksh)	Total cost
Printing and photocopy	6 copies	500@copy	3000
Stationeries			1600
Travelling expenses			25,000
Binding	6 copies	800	4800
Printing of questionnaires	90	@30	2,700
Miscellaneous			5 ,000
Total			42,100

APPENDIX IV: APPROVAL OF RESEARCH PROPOSAL



**KENYATTA UNIVERSITY
GRADUATE SCHOOL**

E-mail: dean-graduate@ku.ac.ke

P.O. Box 43844, 00100
NAIROBI, KENYA
Tel. 810901 Ext. 4150

Website: www.ku.ac.ke

Internal Memo

FROM: Dean, Graduate School

DATE: 4th October, 2021

TO: Mary Anjao Otindo
C/o Public Policy & Administration Dept.

REF: C153/CTY/PT/38138/2016

SUBJECT: APPROVAL OF RESEARCH PROJECT PROPOSAL

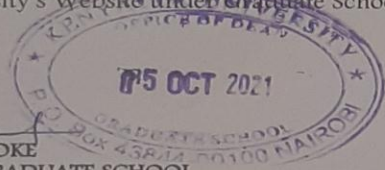
This is to inform you that Graduate School Board at its meeting of 29th September, 2021 approved your Research Project Proposal for the MPPA Degree Entitled, "Alternative Dispute Resolution Mechanisms and Management of Case Backlog in the Family Division of the Judiciary of Kenya".

You may now proceed with your Data Collection, Subject to Clearance with Director General, National Commission for Science, Technology and Innovation.

As you embark on your data collection, please note that you will be required to submit to Graduate School completed Supervision Tracking Forms per semester. The form has been developed to replace the Progress Report Forms. The Supervision Tracking Forms are available at the University's Website under Graduate School webpage downloads.

Thank you.

**HARRIET ISABOKE
FOR: DEAN, GRADUATE SCHOOL**



c.c. Chairman, Public Policy and Administration Department.

Supervisors:

1. Dr. Wilson Muna
C/o Department of Public Policy & Administration
Kenyatta University

HI/nn

APPENDIX V: RESEARCH AUTHORIZATION



KENYATTA UNIVERSITY GRADUATE SCHOOL

E-mail: dean-graduate@ku.ac.ke

Website: www.ku.ac.ke

P.O. Box 43844, 00100
NAIROBI, KENYA
Tel. 8710901 Ext. 57530

Our Ref: C153/CTY/PT/38138/2016

DATE: 4th October, 2021

Director General,
National Commission for Science, Technology
and Innovation
P.O. Box 30623-00100
NAIROBI

Dear Sir/Madam,

RE: RESEARCH AUTHORIZATION FOR MARY ANJAO OTINDO – REG. NO.
C153/CTY/PT/38138/2016

I write to introduce Ms. Mary Anjao Otindo who is a Postgraduate Student of this University. She is registered for MPPA degree programme in the Department of Public Policy and Administration.

Ms. Otindo intends to conduct research for a MPPA Project Proposal entitled, "Alternative Dispute Resolution Mechanisms and Management of Case Backlog in the Family Division of the judiciary of Kenya".

Any assistance given will be highly appreciated.





Yours faithfully,



f-PROF. ILISHIBA KIMANI
DEAN, GRADUATE SCHOOL

EK/nn

APPENDIX V: RESEARCH AUTHORIZATION FROM NACOSTI

 <p>REPUBLIC OF KENYA</p>	 <p>NATIONAL COMMISSION FOR SCIENCE, TECHNOLOGY & INNOVATION</p>
RefNo: 456439	Date of Issue: 15/October/2021
 <p>RESEARCH LICENSE</p>	
<p>This is to Certify that Ms., Mary Anjao Otindo of Kenyatta University, has been licensed to conduct research in Nairobi, Nakuru on the topic: ALTERNATIVE DISPUTE RESOLUTION MECHANISMS AND MANAGEMENT OF CASE BACKLOG IN THE FAMILY DIVISION OF THE JUDICIARY OF KENYA for the period ending : 15/October/2022.</p>	
License No: NACOSTI/P/21/13506	
456439	 <p>Verification QR Code</p>
Applicant Identification Number	