

Kluwer Mediation Blog

Mediation: First Option, Last or Way of Life?

Kenny Aina (Aina Blankson LP) · Thursday, September 22nd, 2011

I want to debunk two myths about mediation. One, it need not always involve a neutral third party and second, mediation should not just be an institutionalised service or enshrined within law and business school curriculum, it should be a way of life and the first thinking in everyday living; a philosophy that shapes everyone's approach to all things be it choosing a spouse, business partner or managing a multinational corporation. In the real world, emotions be they negative or positive often rise to such high heavens that feuding parties hardly see the value in mediation until they are exhausted in courtroom battles, engaged in caustic vituperation that causes irreparable damage or like most such as me be annoyingly incommunicado. However, nothing seems more beautiful and problem solve better than when mediation is the first option and not saved to the very last! Mediation goes beyond problem solving, it is collective interests serving. I will share only two of the several impressions which lead me to this conclusion.

Yesterday I watched the celebrated movie 'Twilight' and a part of it reminded me of the story once told by a friend of mine who, to his shock, found himself in love with a younger lady while married to another. For months, he struggled with his deep rooted affection, the daily happiness it exuded and the temptation of both to simply carry on. Knowing full well that the lady stood the chance of a 'better life' with another gentleman who was ardently in her pursuit, he chose to work with her in exploring that very chance even as it broke his heart. It remains a painful choice he maintains but it was the best that his boundless affection for her dictated. The second relates to Simon who worked with a reputable insurance company for several years before his present engagement. As a result of some misunderstanding when Simon left his employer, he did not give the requisite notice which made the insurance company refuse to pay his entitlements. Approaching a legal cause of action might mean being in court for at least five years, at great costs of time and fees. It would also seem not in the interest of Simon, particularly in line with the position of labour law and 'the terms of Simon's contract of service, to pursue such protracted cause of action. Not being privy to this background, I wrote a letter to the Chief Executive of the Insurance Corporation. It was a simple courteous three paragraph letter. First I introduced myself not as Simon's Attorney but a distant relative; I refrained from a categorical 'demand' for this entitlement but rather a plea using the cliché 'It will be most appreciated'. In conclusion, I thanked him, 'in anticipation'.

The response is most instructive. The Chief Executive of the Insurance Corporation phoned me the very next morning he received the letter. He began with a 10 minute explanation on the circumstances of Simon's exit and the disruption caused by his sudden exit from the organisation. He 'lectured' me on the twin composition of an employee's entitlement. As I listened to him, two

things struck me: he is either a lawyer or had sought legal advice. My response in a most conciliatory tone went thus: 'First I must thank you for your prompt response as I believe you must have received my letter only this morning, Thank you so very much. Second, I do appreciate the points you have made and I do not blame you for reacting the way you have. But may I request that you please let 'us' pay Simon the money, not so much because of him, perhaps because of me'. For about 60 seconds, no response came. When it came, it went thus 'um, well, I will look into it. I will discuss it with the Financial Manager' Simon's entitlements came 2 days later!

Although, some cases could be much more complex, but it would seem that most issues can be resolved in a cost effective manner when the thinking is beyond self but collective interests and not just 'mediation first' or 'mediation as last' but rather, 'mediation as a way of life.' More importantly, the Mediator is not always an external third party!


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