

Kluwer Mediation Blog

Discovering True Interests: Not a Walk in the Park

Kenny Aina (Aina Blankson LP) · Friday, January 27th, 2012

I will never forget my first day in a mediation class where one word that reverberated over a hundred times was “interest, interest and interest”! “Focus on underlying interests’ was the phrase that dominated the experience that I truly got bored. That was a mistake as I bungled the very first mediation I was called to handle. I have come to find that discovering and focusing on the interests of disputants remarkably increases chances of resolution in mediation. And the bad news is; discovering the interest is certainly no walk in the park. Not only was I lacking in the effective, probing and open ended questioning techniques which allows disputants express themselves more with the possibility of identifying the real interest of the disputant, I knew little of simulating scenarios which seem to answer the yearning of that interest. More to the point, I never realized that the interest could be as intangible as a mere apology.

Years later when I was requested to mediate a very divisive dispute which had been fought through several courts for about seventeen years, the story of the two children fighting over an orange each insisting it was his right to have the orange was quite helpful. One of the parties was a revered senior citizen with a distinguished political career and the other, an upwardly mobile young man with increasing financial muscle. The parties entered into the mediation process with very little interest or hope of settlement. However by probing into the underlying interest of the parties, it was discovered that while economic reasons motivated the latter, the former was motivated primarily by psychological reasons particularly anger at being spitted or treated with disrespect. Once this was discovered, the young man unequivocally apologised and the senior was gracious in allowing for a settlement. In all the matter that had dragged on for seventeen years was resolved in one day of mediation!

Helping parties discover and focus on their underlying interests in a dispute is the primary function of a mediator and a critical factor in a successful mediation proceeding. This is because parties generally take up positions where there are disputes and focus on rights in seeking redress. It is the mediator’s task to help them identify their true interests in the particular dispute as most often they are blinded in fury and anger which make them unaware of what their real interests are. It is important to note that some disputants would seek to bluff or misrepresent their interests with hope of a better deal. The mediator must therefore be alert to identify a genuine interest from a bluff and redirect the disputant to the real interests using persuasion or rationalisation but never coercion. In all, in an attempt to identify the competing interests in a dispute and seek for broad based solution, it is imperative to understand that the so called interest include fears, concerns, respect and a myriad of intangible and near unimportant easy to ignore factors. It is the goal of any mediation process to pursue with single minded focus the lasting resolution of the dispute as did the mother

who later found that one child wanted the juice while all the other needed was the rind of the orange. It is not in all cases that an equal split leads to a win-win.


To make sure you do not miss out on regular updates from the Kluwer Mediation Blog, please subscribe [here](#).


Profile Navigator and Relationship Indicator

Includes 7,300+ profiles of arbitrators, expert witnesses, counsels & 13,500+ relationships to uncover potential conflicts of interest.

Learn how **Kluwer Arbitration** can support you.

Learn more about the newly-updated *Profile Navigator and Relationship Indicator*



 Wolters Kluwer

This entry was posted on Friday, January 27th, 2012 at 3:57 pm and is filed under [Mediation Practice](#), [Practical Challenges for Mediators](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can skip to the end and leave a response. Pinging is currently not allowed.