

Mediation in Caveat-Related Probate Disputes in Tanzania

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Abstract:

Caveat-related disputes can turn probate and estate-administration proceedings into contested litigation involving inheritance entitlements, testamentary validity, appointment or conduct of personal representatives, and distribution of estate assets. Although mediation is part of Tanzania's civil justice framework, the probate rules do not provide a sufficiently explicit, tailored pathway for mediation after a caveat triggers contentious proceedings. This article evaluates whether mediation can appropriately complement adjudication in such disputes. Lessons are drawn from Ontario, Canada. The article adopts qualitative and doctrinal research methodology based exclusively on the primary and secondary sources of legal materials. The article examines the Tanzanian framework, including the Probate and Administration of Estates Act, the Probate Rules and the Civil Procedure Code. These are contrasted with Ontario's Rules of Civil Procedure, particularly Rules 75.03, 75.06, 75.1 and 75.2, which offer a more explicit procedural connection between estate objections and mediation. Mediation is potentially appropriate for disputes about estate management, distribution arrangements and other negotiable interests, provided all affected beneficiaries are identified and protected. However, allegations of fraud, testamentary incapacity, undue influence, or issues requiring authoritative determination may demand judicial scrutiny. The article recommends express procedural rules for referral, screening, participation, settlement approval and safeguards for vulnerable beneficiaries. Mediation should supplement, not displace the court's responsibility to ensure lawful succession and fair administration of estates.

Keywords: Mediation, Caveats, Probate, Succession, Estate disputes, Tanzania, Comparative Law.

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1. INTRODUCTION

Probate and administration proceedings provide the legal process through which a deceased person's estate is represented, managed and distributed. Although many applications proceed without opposition, disputes may arise over the validity or interpretation of a will, entitlement to inherit, the appointment or conduct of an administrator, or the distribution and management of estate property. These disputes can be particularly difficult because legal rights intersect with grief, longstanding family relationships, financial dependence and competing understandings of fairness. Adversarial litigation may determine legal rights authoritatively, but it can also intensify conflict, consume estate resources and delay distribution.¹

A caveat is a procedural mechanism by which an interested person may object to a proposed grant of probate or letters of administration. In Tanzania, the lodging of a caveat and the subsequent steps prescribed by probate law can cause an otherwise straightforward application to become contentious. The relevant framework includes the Probate and Administration of Estates Act,² and the Probate Rules, including Rules 82 and 82A as amended by Government Notice No. 429 of 2025. These provisions establish procedures for objections and the progression of contentious matters. Yet the rules do not set out a comparably clear, tailored route for mediation in caveat-related proceedings.³ The Civil Procedure Code recognises mediation in civil litigation, including through section 71 and Order VIIC.⁴ The relationship between that general framework and the specific procedural regime governing contentious probate matters nevertheless requires clarity. It is important not to assume that mediation can replace statutory probate steps or determine questions that the law reserves for the court. The more focused question is whether an express referral mechanism could help parties settle those aspects of a caveat-related dispute that are legally capable of compromise, while preserving judicial oversight.⁵

Reference is made to Ontario, Canada because its Rules of Civil Procedure link objections in estate proceedings with mechanisms for court-directed and, within defined limits, mandatory mediation. This article examines the potential of that approach for Tanzania. It argues that a carefully designed mediation pathway could improve the handling of suitable disputes, but that procedural safeguards and screening are essential. The analysis is limited to qualitative doctrinal and comparative legal research and does not rely on interviews, questionnaires or other empirical data.

¹ Kaminskienė, N., & Paplauskaitė, V. (2014). Mediation in inheritance disputes. *Magyar Rendészet*, 14(6), 11–26

² Cap. 352 R.E 2023.

³ Probate and Administration of Estates Act, Cap. 352, R.E. 2023, ss. 58–59).

⁴ Cap 33 R.E 2023.

⁵ Civil Procedure Code, Cap. 33, R.E. 2023, s. 71 and Order VIIC.

2. METHODOLOGY

The article adopts a doctrinal methodology. Doctrinal research examines legal rules, principles and institutional arrangements through the interpretation of primary legal materials and relevant scholarly commentary.⁶ The primary materials considered here include the Constitution of the United Republic of Tanzania, the Civil Procedure Code, the Probate and Administration of Estates Act and the Probate Rules. The discussion also considers relevant Tanzanian case law identified in the dissertation, including decisions addressing caveat procedure and contentious probate proceedings.⁷ Ontario's Rules of Civil Procedure,⁸ made under the Courts of Justice Act. Ontario is selected because its procedural rules provide an express framework for estate objections and mediation.

3. MEDIATION AND THE CHARACTER OF CAVEAT-RELATED DISPUTES

3.1 The nature and function of a caveat

A caveat serves an important protective function: it alerts the probate process that a person with an asserted interest objects to the proposed grant. The objection may be procedural, such as a concern about the person seeking appointment, or substantive, such as a challenge to a will or a competing claim to estate property. Sections 58 and 59,⁹ read with the relevant Probate Rules, provide the statutory context for caveats, citations and the consequences of a caveator's appearance. Rule 82A, as discussed in the dissertation, addresses the procedural transition to contentious proceedings when the caveator appears.¹⁰

The legal character of the underlying dispute matters when considering mediation. Some disagreements concern the administration of an estate: whether an asset should be sold, how expenses should be met, whether accounts should be disclosed, or how beneficiaries might agree on the timing or manner of distribution within the law. Other disputes go to the legal foundation of the grant itself, including whether a will is valid, whether a testator possessed testamentary capacity, or whether fraud or undue influence occurred. The first category may leave room for negotiated arrangements. The second may require evidence, findings of fact, and an authoritative judicial decision.¹¹

⁶ Hutchinson, T., & Duncan, N. (2012). Defining and describing what we do: Doctrinal legal research. *Deakin Law Review*, 17(1), 83–119.

⁷ Ibid.

⁸ Ontario's Rules of Civil Procedure, R.R.O. 1990, Regulation 194

⁹ The Probate and Administration of Estates Act, Cap. 352, R.E. 2023.

¹⁰ Probate and Administration of Estates Act, Cap. 352, R.E. 2023, ss. 58–59; Probate (Amendment) Rules, G.N. No. 429 of 2025, rr. 82 and 82A.

¹¹ Civil Procedure Code, Cap. 33, R.E. 2023, s. 71 and Order VIIIC.

3.2 Why conventional litigation may be insufficient on its own

Litigation remains indispensable where the parties dispute legal status, where allegations require formal proof, or where a binding determination is needed to protect the estate and its beneficiaries. Nevertheless, adversarial proceedings may be poorly suited to resolving every practical and relational issue that accompanies an estate dispute. Parties who are siblings or other relatives may continue to interact after the case ends. A judgment may determine who is legally entitled to property without repairing communication or resolving practical arrangements for managing shared assets.¹²

Mediation provides a structured process in which an impartial third party assists parties to identify issues, exchange information and explore settlement options without imposing a decision. Its potential benefits include party participation, procedural flexibility, attention to interests beyond the immediate legal claim and the possibility of preserving relationships.¹³ Estate mediation literature similarly emphasizes that disputes may involve both financial interests and family relationships, while recognising that not every dispute is suitable for settlement.¹⁴

Mediation should not be treated as a universal remedy. Imbalances in bargaining power, incomplete disclosure, coercion, vulnerability, or the absence of a person whose rights will be affected may undermine the fairness of a proposed settlement. Nor should parties be pressured to compromise a legal entitlement merely to avoid trial. The appropriate approach is therefore screening and suitability assessment, with mediation available where it is consistent with the law and the protection of all interested persons.

4. THE TANZANIAN LEGAL FRAMEWORK

4.1 Probate legislation and caveat procedure

The Probate and Administration of Estates Act,¹⁵ provides the principal statutory framework for grants and estate administration. Sections 58 and 59 are central to the caveat and citation process, while the Probate Rules prescribe procedural steps. The Probate (Amendment) Rules,¹⁶ including Rules 82 and 82A, form part of the current procedural context identified in the dissertation. These provisions establish how an objection is raised and how contentious proceedings progress, but they do not expressly establish a comprehensive mediation process specifically for disputes that arise after a caveat is entered.

¹² Rules of Civil Procedure, R.R.O. 1990, Reg. 194 (Ontario), rr. 75.03, 75.06, 75.1 and 75.2.

¹³ Boulle, L. (2011). *Mediation: Principles, process and practice* (3rd ed.). LexisNexis Butterworths.

¹⁴ Love, L. P., & Sterk, S. E. (2008). Leaving more than money: Mediation clauses in estate planning documents. *Washington and Lee Law Review*, 65(2), 539–584.

¹⁵ Cap. 352 R.E. 2023.

¹⁶ Government Notice No. 429 of 2025.

The absence of a tailored rule should be described carefully. It does not necessarily mean that parties are prohibited from discussing settlement or that a court is incapable of encouraging consensual resolution where legally permissible. Rather, the central doctrinal concern is uncertainty: the probate-specific rules do not clearly prescribe the stage of referral, the procedure for appointing a mediator, the treatment of a failed mediation, or the status and scrutiny of a settlement affecting an estate. Without clear procedural direction, mediation risks being inconsistently used or treated as an informal step disconnected from the probate process.

4.2 The general civil mediation framework

Section 71 and Order VIIC of the Civil Procedure Code,¹⁷ provide a general statutory basis for mediation in civil proceedings. The framework reflects a policy of encouraging amicable resolution before full adjudication in matters to which it applies. However, contentious probate proceedings are governed by specialised legislation and rules. The interaction between general civil procedure and the specialised probate regime should therefore be clarified expressly rather than left to assumption.¹⁸

A legislative or rule-based solution could state whether, and to what extent, the Civil Procedure Code's mediation provisions apply to contentious probate proceedings. It could also establish probate-specific modifications where ordinary civil mediation procedures do not sufficiently account for the estate's representative character, the possibility of absent or unrepresented beneficiaries, or the court's duty to supervise grants and estate administration. Such clarification would promote procedural coherence while respecting the specialised character of succession law.

4.3 Judicial authority and limits of settlement

The court's role cannot be reduced to referring disputes to mediation. Probate proceedings may affect persons who are not active parties to the dispute, including minors, persons lacking legal capacity, creditors or beneficiaries whose interests could be compromised by an agreement. A settlement between the litigants may not be sufficient if it purports to dispose of estate property contrary to law or affects absent beneficiaries. Judicial oversight is therefore necessary to ensure that agreements are lawful, informed and consistent with the proper administration of the estate.

Tanzanian decisions identified in the dissertation, including *Revenanth Eliawory Meena v Albert Eliaworry Meena & Another*,¹⁹ illustrate the procedural significance of caveats and the steps that follow an objection. The case law should be read as part of the legal

¹⁷ Cap. 33 R.E. 2023.

¹⁸ Love, L. P. (2001). Mediation of probate matters: Leaving a valuable legacy. *Pepperdine Dispute Resolution Law Journal*, 1(2).

¹⁹ Civil Revision No. 1 of 2017, [2017] TZCA 135.

structure within which any mediation process must operate, rather than as authority that mediation can displace the statutory procedure. The governing principle is complementarity: settlement may resolve negotiable issues, while the court retains jurisdiction over matters requiring adjudication.²⁰

5. LESSONS FROM ONTARIO, CANADA: ESTATE OBJECTIONS AND MEDIATION

5.1 Procedural connection between objections and mediation

Ontario's Rules of Civil Procedure provide a more explicit procedural connection between estate objections and mediation than the framework described for Tanzania. Rule 75.03 addresses a notice of objection to the issuance of a certificate of appointment of estate trustee. Rule 75.06 permits the court to give directions in contentious estate proceedings and provides a basis for mediation in appropriate circumstances. Rules 75.1 and 75.2 establish mechanisms for mandatory mediation in specified estate proceedings and court-ordered estate mediation, subject to the scope and conditions of the rules.²¹

The importance of the Ontario approach is not simply that mediation exists. It is that the rules make mediation visible within the procedural architecture of estate litigation. A party and the court can identify the procedural point at which mediation may be relevant, the types of proceedings within the rule's scope, and the court's role in managing the process. The framework thereby reduces reliance on informal practice alone.

5.2 Institutional and protective dimensions

Ontario's estate mediation framework operates alongside court administration and procedural mechanisms addressing the participation and protection of persons whose interests may require special attention. The Rules of Civil Procedure and related arrangements contemplate the roles of the Children's Lawyer and the Public Guardian and Trustee where applicable. Such provisions are relevant because a settlement in an estate matter may affect minors or persons under disability, whose interests should not be treated as adequately represented merely because the principal disputants agree.²²

Ontario also demonstrates that mediation can be integrated without eliminating the court's authority. Mediation is a process for exploring settlement, not a substitute for judicial determination where settlement fails or where the dispute requires a binding ruling. The availability of judicial directions and court-ordered mediation can support

²⁰ Love, L. P., & Sterk, S. E. (2008). Leaving more than money: Mediation clauses in estate planning documents. *Washington and Lee Law Review*, 65(2), 539–584.

²¹ Rules of Civil Procedure, R.R.O. 1990, Reg. 194, rr. 75.03, 75.06, 75.1 and 75.2.

²² Islam, C. A. (2023). Mediating probate and trust disputes: process challenges and tools: Part 2. *Trusts & Trustees*, 29(7), 667–681.

procedural management while leaving the ultimate legal questions within the court's jurisdiction.

5.3 Lessons and limits of transplantation

The most relevant lesson for Tanzania is the value of express procedural rules. A rule could connect the entry of a caveat and the emergence of contentious proceedings with an assessment of suitability for mediation. It could specify whether referral is discretionary or presumptive, identify exceptions, provide time limits and explain how unresolved matters return to the court. Ontario also highlights the need to consider representation and protection for beneficiaries who may be vulnerable or absent.²³

However, Ontario's model should not be transplanted mechanically. The jurisdictions differ in procedural structures, institutions, resources and the organisation of estate administration. A Tanzanian framework should be designed around the Probate and Administration of Estates Act, the Probate Rules, the existing court-annexed mediation system and local institutional capacity. Comparative law is most useful here as a source of design principles, not as a direction to copy every procedural detail.

6. THE POTENTIAL OF MEDIATION IN TANZANIA

6.1 Disputes potentially suitable for mediation

Mediation is most promising where the dispute concerns interests that the parties can lawfully negotiate. Examples may include arrangements for managing or preserving estate assets, disclosure and exchange of estate accounts, the timing or method of distribution where legal entitlements are not disputed, sale or use of jointly held property, reimbursement of expenses, and disagreements about the practical conduct of an administrator. Mediation may also help clarify issues and narrow the questions that remain for the court, even if a complete settlement is not reached.²⁴

In family succession disputes, the process can give participants an opportunity to explain the concerns underlying their positions. A beneficiary may be concerned not only with the value of an asset but also with recognition, perceived unequal treatment or distrust of the administrator. A court may be able to determine the legal entitlement, but a facilitated discussion may help parties agree on disclosure, communication, management or implementation arrangements that reduce future conflict. This potential is consistent with the literature on mediation in probate and inheritance disputes.²⁵

²³ Rules of Civil Procedure, R.R.O. 1990, Reg. 194, rr. 75.03, 75.06, 75.1 and 75.2.

²⁴ Kaminskienė, N., & Paplauskaitė, V. (2014). Mediation in inheritance disputes. *Magyar Rendészet*, 14(6), 11–26.

²⁵ Love, L. P., & Sterk, S. E. (2008). Leaving more than money: Mediation clauses in estate planning documents. *Washington and Lee Law Review*, 65(2), 539–584.

6.2 Disputes requiring caution or judicial determination

Not every caveat-related dispute should be referred to mediation, and no party should be compelled to accept a settlement that compromises a protected right. Serious allegations of fraud, forgery, undue influence or testamentary incapacity may require formal evidence and judicial findings. A dispute that turns on the legal validity of a will may be capable of partial settlement on collateral matters, but mediation cannot itself confer validity on an instrument that fails the requirements of law.

Mediation may also be inappropriate where a party is intimidated, lacks capacity to participate meaningfully, has not received essential information, or faces a substantial power imbalance that cannot be adequately managed. Where minors or persons under disability are affected, independent representation or court approval may be necessary. The process should also account for creditors and other persons whose claims or interests may be affected by the proposed agreement. A screening stage should therefore examine legal suitability, informed participation, disclosure, representation and the effect of the proposed settlement on the estate as a whole.²⁶

6.3 Procedural design for Tanzania

First, the Probate Rules should expressly provide for judicial consideration of mediation after a caveat has produced contentious proceedings. The rule should clarify the relationship between the caveat procedure and Order VIIIC of the Civil Procedure Code.²⁷ A referral could be presumptive for disputes involving negotiable administration or distribution issues, while leaving the court discretion to exempt cases in which mediation would be unsuitable or would cause unjustified delay.

Second, referral should occur at a defined stage, preferably after the court has identified the parties, the issues in dispute and the persons whose interests may be affected. The court should be able to direct exchange of essential documents before mediation, including relevant estate accounts, asset information and testamentary documents, subject to applicable law. A mediation process conducted without adequate disclosure is unlikely to produce a reliable or durable settlement.

Third, rules should address mediator qualifications and independence. Mediators handling probate disputes need sufficient understanding of succession law, probate procedure, family conflict and the ethical challenges of dealing with grieving or vulnerable participants. Specialist training should include the identification of coercion, capacity concerns and conflicts of interest. Parties should be able to raise concerns about mediator impartiality.

²⁶ Ontario, Courts of Justice Act, R.S.O. 1990, c. C.43; Rules of Civil Procedure, R.R.O. 1990, Reg. 194.

²⁷ Cap 33 R.E 2023.

Fourth, the rules should clarify confidentiality, costs, time limits and the consequences of non-settlement. Mediation should not become a source of additional delay. A time-limited process, with the ability to extend time for good cause, would allow unsuccessful cases to return promptly to the court. The fact that mediation did not result in agreement should not prejudice a party's position at trial, and confidential communications should be protected subject to applicable legal exceptions.

Fifth, the treatment of mediated agreements requires clarity. Agreements should be recorded in writing, signed by persons with authority to bind themselves, and checked for consistency with succession law. The court should retain the ability to scrutinise any agreement affecting estate property, absent beneficiaries or protected persons. Where only some issues are resolved, the agreement should identify those issues precisely so that the remaining questions can proceed to adjudication without reopening settled matters unnecessarily.

6.4 Institutional coordination and access to justice

Successful implementation requires coordination among probate registries, judicial officers, mediators and legal practitioners. Registries should be able to record referrals, track deadlines and return unresolved matters to the court. Judicial officers should receive guidance on screening cases and reviewing settlement terms. Advocates should advise clients on both the opportunities and limits of mediation, identify all persons whose interests may be affected, and ensure that no agreement is presented as binding on someone who did not have authority or opportunity to participate.²⁸

Mediation should also be accessible in practical terms. If costs are excessive or qualified mediators are unavailable outside major urban centres, a formal referral rule may offer little benefit to many families. Policymakers should consider proportionate fees, clear information for litigants and mechanisms for referring suitable cases to appropriately trained mediators. These arrangements should be developed without compromising mediator independence or the fairness of the process.

7. CONCLUSION AND RECOMMENDATIONS

The Tanzanian framework establishes procedures for caveats and contentious probate proceedings and recognises mediation more generally in civil justice. The principal weakness identified by this doctrinal analysis is the absence of a clear, probate-specific procedure connecting caveat-related disputes with mediation. Ontario's Rules of Civil Procedure provide a useful comparative example because they expressly connect estate objections with court-directed and, in defined cases, mandatory mediation.

²⁸ Judge Anne–Ruth Moltmann-Willisch (2025). Mediation Training Manual for Judicial Officers, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH.

Mediation has the potential to complement adjudication where disputes concern negotiable aspects of estate administration, asset management and distribution arrangements. Its suitability depends on informed participation, adequate disclosure, protection of vulnerable beneficiaries and judicial oversight. Allegations or legal questions requiring authoritative determination should remain within the court's jurisdiction. Tanzania should therefore adopt a tailored procedural framework rather than transplant Ontario's rules wholesale. Properly designed, mediation could expand the options available to families while preserving the legality, fairness and integrity of probate administration.

7.1 Recommendations

The Ministry responsible for legal affairs and the relevant law reform authorities should review the Probate and Administration of Estates Act and the Probate Rules to determine the amendments needed to establish an express mediation pathway for suitable contentious probate matters. The review should specifically clarify the interaction between sections 58 and 59 of the Act, Rules 82 and 82A, and the general civil mediation framework.

The Judiciary should develop practice directions addressing referral stages, screening criteria, time limits, the return of unresolved cases to adjudication and judicial scrutiny of settlements. Probate registries should adopt administrative processes for recording referrals and monitoring progress. Mediation institutions should develop specialist training in succession and estate disputes, including safeguards for minors and persons under disability. Advocates should identify all affected interests and advise clients that mediation is voluntary in outcome even where attendance or referral is procedurally required.

Any reform should preserve access to a judicial determination. Mediation should be encouraged where it can help parties reach a lawful and fair agreement, but the court should retain control over questions that require authoritative findings, particularly those affecting the validity of testamentary instruments and the rights of persons not adequately represented in the mediation.

References

- Boulle, L. (2011). *Mediation: Principles, process and practice* (3rd ed.). LexisNexis Butterworths.
- Civil Procedure Code, Cap. 33, Revised Edition 2023 (Tanzania).
- Constitution of the United Republic of Tanzania, 1977, as amended.
- Hutchinson, T., & Duncan, N. (2012). Defining and describing what we do: Doctrinal legal research. *Deakin Law Review*, 17(1), 83–119.
- Islam, C. A. (2023). Mediating probate and trust disputes—process challenges and tools: Part 2. *Trusts & Trustees*, 29(7), 667–681.
- Kaminskienė, N., & Paplauskaitė, V. (2014). Mediation in inheritance disputes. *Magyar Rendészet*, 14(6), 11–26.
- Love, L. P. (2001). Mediation of probate matters: Leaving a valuable legacy. *Pepperdine Dispute Resolution Law Journal*, 1(2).
- Love, L. P., & Sterk, S. E. (2008). Leaving more than money: Mediation clauses in estate planning documents. *Washington and Lee Law Review*, 65(2), 539–584.
- Moore, C. W. (2014). *The mediation process: Practical strategies for resolving conflict* (4th ed.). Jossey-Bass.
- Nditi, N. N. N. (2020). *Succession and trust in Tanzania: Law and practice* (2nd ed.). Juris Publishers.
- Ontario, Courts of Justice Act, R.S.O. 1990, c. C.43.
- Ontario, Rules of Civil Procedure, R.R.O. 1990, Reg. 194.
- Probate and Administration of Estates Act, Cap. 352, Revised Edition 2023 (Tanzania).
- Probate (Amendment) Rules, Government Notice No. 429 of 2025 (Tanzania).
- Revenanth Eliawory Meena v. Albert Eliaworry Meena & Another, Civil Revision No. 1 of 2017, [2017] TZCA 135 (22 May 2017).