

Rethinking Dispute Resolution Mechanisms for Unremitted Student Loan Deductions by Employers in Tanzania: A Case for Alternative Dispute Resolution

*Esther Luvanda,
School of Law and Justice,
Dar es Salaam Tumauni University (DarTu), Tanzania.
Email: estherluvanda90@gmail.com*

Abstract:

The Higher Education Students' Loans Board (HESLB) relies on employers to deduct loan repayment instalments from beneficiaries' salaries and remit them to the Board, yet a persistent share of deducted amounts is never remitted, generating a distinct category of dispute between HESLB and defaulting employers. This article examines the legal framework governing recovery of those sums; identifies the challenges of using litigation, as opposed to Alternative Dispute Resolution (ADR), to resolve these disputes, and makes the case for ADR as the more effective enforcement pathway. The article finds that the Higher Education Students' Loans Board Act relies on summary suit, ordinary civil proceedings and criminal prosecution. The Act is ambiguous about the procedure available against employers; treats all employer default alike and allows no waiver of the statutory charge; and contains no pre-litigation ADR procedure. Litigation is found to strain the continuing relationship between HESLB and employers; to leave the causes of default or non-compliance unaddressed, to be procedurally and evidentially more demanding, slow and costly. Moreover, in its criminal form, litigation may punish without ensuring recovery, and this result undermines the revolving fund on which future lending depends. By contrast, negotiation, mediation and arbitration are found to offer a more compliance-generating, relationship-preserving and cost-effective pathway, for which the Civil Procedure Code already supplies an underused foundation. The article recommends amending the Act to authorise a pre-litigation ADR procedure, supported by regulations and a Dispute Resolution Unit within HESLB, with litigation reserved for deliberate default. The case made is one of sequence and differentiation, in which ADR is the first response to the disputes it can resolve and litigation is kept for those it cannot.

Keywords: Alternative Dispute Resolution, Employer, Higher Education Students' Loans Board, Tanzania.

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1. INTRODUCTION

The Higher Education Students' Loans Board Act places the primary obligation for loan repayment on the beneficiary, but it also makes the employer a statutory conduit. An employer must deduct fifteen per cent of a beneficiary employee's salary each month and remit it to the Higher Education Students' Loans Board (HESLB) within fifteen days of the following month.¹

Where an employer deducts but fails to remit, the resulting dispute is distinct from an ordinary loan default: it is a dispute between HESLB and a third party over money already withheld from an employee's salary on HESLB's behalf. The Act answers it with a statutory charge, criminal liability and a right to sue, so that litigation is HESLB's primary tool.²

This article examines the challenges of using litigation, as opposed to Alternative Dispute Resolution (ADR), to resolve such disputes. It argues that negotiation, mediation and arbitration, some already practised informally and others accommodated in outline by the general procedural framework, offer a more effective pathway than the litigation-centred model now in place.³

The argument rests on a distinction between the nature of the dispute and the tool used to resolve it. Disputes over unremitted deductions often turn not on whether money is owed but on records, calculation or the terms of payment, matters better suited to negotiated or mediated resolution. ADR is not, however, a substitute for enforcement: where an employer deliberately retains deductions, refuses to cooperate or breaches an agreed settlement, litigation and prosecution must remain available. The reform proposed is therefore one of sequence and differentiation. ADR becomes the first response to the disputes it can resolve, and litigation is reserved for those it cannot.⁴

The article proceeds by setting out the conceptual and legal framework, analysing the challenges of litigation, and then considering how ADR responds to them before concluding and recommending reform.

2. LEGAL MATERIALS AND METHODS

This article adopts a doctrinal methodology. It analyses the Higher Education Students' Loans Board Act, the HESLB Regulations, 2009, the Civil Procedure Code, the Arbitration Act and the Constitution, together with decisions of the Court of Appeal and the High Court of Tanzania that show how the recovery framework operates in practice.

¹ The Higher Education Students' Loans Board Act [CAP 178 R.E. 2023], s. 21.

² The Higher Education Students' Loans Board Act [CAP 178 R.E. 2023], ss. 20(7) and 22.

³ Akpan, E., & Nwosu, C. (2021). Student Loan Recovery and Alternative Dispute Resolution in Sub-Saharan Africa: A Comparative Analysis. *African Journal of Legal Studies*, 14(1), 22-47

⁴ Daly, J. P., & Geyer, P. D. (2021). Compliance-Based Dispute Resolution in Government Loan Programs: An Empirical Analysis. *Public Administration Review*, 81(2), 214-230.

These sources are supplemented by Tanzanian and comparative secondary literature on student loan recovery and ADR, used to test the litigation-centred recovery model against the ADR mechanisms this article examines.⁵

3. RESULTS AND DISCUSSION

Student loan recovery and the employer deduction-remittance mechanism

Student loan recovery in Tanzania operates through a salary-deduction model: once a beneficiary is employed, the employer becomes the statutory conduit, deducting the prescribed instalment and remitting it to HESLB.⁶ These place employers, and not only beneficiaries, at the centre of recovery. Two failures are possible, failure to deduct and failure to remit after deducting; it is the second, within the employer conduit, that generates the disputes examined here.⁷

Alternative dispute resolution: negotiation, mediation, and arbitration

Negotiation is a bilateral process in which the parties themselves seek a mutually acceptable resolution. Mediation involves a neutral third party who facilitates dialogue and guides the parties towards a voluntary settlement without imposing an outcome. Arbitration is a more formal, consensual process in which a neutral arbitrator renders a binding award, enforceable by leave of the court as a judgment.⁸ ADR may be court-annexed, conducted within a suit already filed, or pre-litigation, conducted before any suit.

The three mechanisms sit on a spectrum of formality and are not mutually exclusive: a reformed framework could use negotiation first, mediation where negotiation fails, and arbitration for larger or more complex disputes.

The Higher Education Students' Loans Board Act

The Higher Education Students' Loans Board Act is the principal legislation governing loan administration and recovery. Section 21 imposes the duty to deduct and remit and, where an employer fails, section 22 imposes a statutory charge of ten per cent of the unremitted amount, with criminal liability, personal to the accounting officer, if the

⁵ Ismail, A., & Makwetta, J. (2022). Court-Annexed Mediation and Access to Justice in Tanzania: Challenges and Prospects. *University of Dar es Salaam Law Journal*, 19(1), 1-28; Sourdin, T., & Liyanage, C. (2019). Measuring Access to Justice Through ADR: Theoretical and Empirical Frameworks. *Journal of Dispute Resolution*, 2019(1), 127-154.

⁶ The Higher Education Students' Loans Board Act [CAP 178 R.E. 2023], s. 21.

⁷ Ziderman, A. (2021). Student Loan Schemes in Developing Countries: Patterns, Trends, and Reform Imperatives. *Studies in Higher Education*, 46(8), 1573-1588.

⁸ The Civil Procedure Code [CAP 33 R.E. 2023], s. 71 and Order VIII C; The Arbitration Act [CAP 15 R.E. 2023], s. 39.

charge is unpaid.⁹ Section 20(7) separately allows a claim for repayment to be brought by summary suit under Order XXXV of the Civil Procedure Code.¹⁰

Section 20(7), however, sits in the part of the Act dealing with beneficiaries' repayment obligations, not employers. Under the contextual approach endorsed in *Pan African Energy*, location and scheme bear on meaning,¹¹ so an employer may argue that summary procedure is unavailable against it and raise a preliminary objection, delaying recovery. Nor may HESLB waive or reduce the charge on grounds of genuine hardship, and the Act is silent on ADR, leaving deeds of settlement without a clear statutory basis.¹²

The HESLB Regulations, 2009

The Regulations prescribe recovery procedure only against defaulting beneficiaries: a written demand notice requiring payment within twenty-one days and, failing payment, an application to the Resident Magistrate for a summary warrant.¹³ Like the Act, they contain no pre-litigation procedure for disputes with employers. They say nothing on when negotiation or mediation may begin, who may bind HESLB, how settlements are recorded and monitored, or what legal effect they carry, so that practice proceeds without uniform rules and similar cases may be handled differently.

The Civil Procedure Code: summary suits and court-annexed ADR

Section 71 and Order VIII C of the Civil Procedure Code recognise court-annexed negotiation, mediation and conciliation, and mediation is a mandatory stage: in *LB Mafia Island Company Ltd v Ramadhani Bakari Yusuph* the High Court nullified proceedings in which it had been omitted.¹⁴ A settlement recorded by the court is enforceable as a judgment.

This mechanism is valuable but arrives late. By the time HESLB is in court it has incurred costs and the relationship may already be adversarial. In *Hematec* the claim went to full trial, suggesting mediation did not succeed, and was dismissed for want of proof of employment and deductions.¹⁵ Court-annexed mediation may also become a formality that adds delay.¹⁶ HESLB therefore needs a pre-litigation procedure, with court-annexed

⁹ The Higher Education Students' Loans Board Act [CAP 178 R.E. 2023], ss. 21 and 22.

¹⁰ The Higher Education Students' Loans Board Act [CAP 178 R.E. 2023], s. 20(7); The Civil Procedure Code [CAP 33 R.E. 2023], Order XXXV.

¹¹ *Pan African Energy Tanzania Ltd v Commissioner General, Tanzania Revenue Authority*, Civil Appeal No. 172 of 2020, [2021] TZCA 287 (Court of Appeal of Tanzania).

¹² The Higher Education Students' Loans Board Act [CAP 178 R.E. 2023], s. 22.

¹³ The Higher Education Students' Loans Board Regulations, 2009 (G.N. No. 158 of 2009), reg. 31.

¹⁴ The Civil Procedure Code [CAP 33 R.E. 2023], s. 71 and Order VIII C; *LB Mafia Island Company Ltd v Ramadhani Bakari Yusuph*, Civil Appeal No. 106 of 2019 (High Court of Tanzania, Dar es Salaam District Registry).

¹⁵ *Higher Education Students' Loans Board v Hematec Investment Limited*, Civil Appeal No. 115 of 2023 (High Court of Tanzania, Dar es Salaam Sub-Registry), on appeal from the Resident Magistrate's Court of Dar es Salaam at Kisutu.

¹⁶ Ismail & Makwetta (2022), above n 5.

mediation as a second opportunity for settlement and not the first meaningful chance for the parties to discuss their disagreement.

The Arbitration Act

The Arbitration Act provides the general framework for domestic and international arbitration, including enforcement of an award, by leave of the court, as a judgment.¹⁷ It does not oblige HESLB or employers to arbitrate, and the HESLB Act does not incorporate arbitration as a recognised recovery mechanism, so arbitration remains available only where both parties voluntarily agree to it. Its use is therefore ad hoc, and an arbitral outcome has no recognised place in HESLB's statutory recovery scheme.

The Higher Education Students' Loans Board

HESLB is the statutory body responsible for granting and recovering student loans, and it operates a revolving fund that sustains financing for future students.¹⁸ Recoveries are therefore the source of future lending, so resources diverted to litigation, and delay in recovery, bear directly on the scheme's sustainability.¹⁹ HESLB also has the statutory function of maintaining an operational link with employers to facilitate recovery,²⁰ giving it an interest in efficient and cooperative recovery that differs from an ordinary creditor's.

The judiciary and the accreditation panel

The Judiciary administers both the civil procedure through which HESLB presently pursues unremitted deductions and the court-annexed ADR mechanism under Order VIII of the Civil Procedure Code, while the Accreditation Panel established under the Reconciliation, Negotiation, Mediation and Arbitration (Practitioners Accreditation) Regulations, 2021 offers a general accreditation mechanism on which a reformed HESLB framework could draw, although it has no mandate specific to student loan recovery disputes and no role in HESLB's present practice.²¹

CHALLENGES ASSOCIATED WITH THE USE OF LITIGATION IN RESOLVING DISPUTES RELATED TO UNREMITTED STUDENT LOAN DEDUCTIONS

HESLB relies on litigation, whether summary suit, ordinary civil suit or prosecution, to enforce the duty of employers to remit.²² Excessive reliance on it presents the challenges examined below.

¹⁷ The Arbitration Act [CAP 15 R.E. 2023], s. 39.

¹⁸ Mwanga, J., & Nkya, E. (2021). Student Loan Repayment and Institutional Sustainability in Tanzania. *Tanzania Journal of Education Studies*, 8(2), 33-50;

¹⁹ Mugizi, W., Mugimu, C. B., & Rwothumio, J. (2022). Towards Sustainable Higher Education Financing: Experiences from Uganda and Tanzania. *Makerere Journal of Higher Education*, 14(1), 55-72.

²⁰ The Higher Education Students' Loans Board Act [CAP 178 R.E. 2023], s. 6(g).

²¹ The Civil Procedure Code [CAP 33 R.E. 2023], Order VIII; The Reconciliation, Negotiation, Mediation and Arbitration (Practitioners Accreditation) Regulations, 2021 (G.N. No. 147 of 2021), reg. 3.

²² The Higher Education Students' Loans Board Act [CAP 178 R.E. 2023], ss. 20(7) and 22.

Procedural complexity, cost and delay of court-based recovery

Litigation demands strict compliance with procedure and proof: HESLB must establish, on a balance of probabilities, the employment relationship, the deductions and the failure to remit.²³ In *Hematec* the claim failed because HESLB did not prove that the alleged beneficiaries were employed by the defendant and called neither them nor a human-resource officer; the appeal was dismissed too.²⁴ The records lie with the employer, so the burden falls on the party with least access to the evidence.

Cost and delay compound the difficulty. The *Hematec* suit began in 2019, was decided in June 2023 and was finally determined on appeal in September 2024, some five years, without recovery. Trial, appeal and execution consume HESLB's resources while unremitted sums and accruing charges stay out of the revolving fund, contrary to the constitutional demand that justice not be unduly delayed.²⁵

Adversarial dynamics, strain on HESLB- employer relationships and failure to address causes

Litigation is adversarial, yet the relationship between HESLB and an employer is continuing: the same employer must keep submitting names, deducting and remitting. Once proceedings begin, the parties' attention shifts from solving the problem to proving or defeating liability, and an employer sued, or threatened with prosecution, is likely to become defensive and less willing to disclose payroll records or explain non-remittance.²⁶

Litigation also does not address why default occurred. Non-remittance may stem from inaccurate records, ignorance of duty, financial difficulty or deliberate withholding, and penalties or suits alone do not cure the first three. Proving breach does not examine causes. Employers willing to correct a default are best engaged early, while litigation remains the answer to those who refuse to cooperate.²⁷

Challenges of criminal liability as an enforcement mechanism

Section 22 makes non-payment of the statutory charge an offence, but criminal liability is a poor recovery tool. The prosecution must prove every element beyond reasonable doubt, a higher standard than the one HESLB failed to meet in *Hematec*, and a conviction does not direct the money to HESLB: a fine is paid to the State and imprisonment punishes the officer.²⁸

²³ The Evidence Act [CAP 6 R.E. 2023], s. 3(2)(b).

²⁴ *Hematec Investment Limited*, above n 15.

²⁵ The Constitution of the United Republic of Tanzania, 1977 [CAP 2 R.E. 2008], art. 107A(2)(b).

²⁶ Daly & Geyer (2021), above n 4.

²⁷ Akpan & Nwosu (2021), above n 3.

²⁸ *Said Syridion Michael v Republic*, Criminal Appeal No. 262 of 2022 [2024] (Court of Appeal of Tanzania); *Hematec Investment Limited*, above n 15.

Prosecution is also resource-intensive, requiring investigation, witnesses and coordination with prosecutors, so that it functions more as a threat than as a tool. Finally, section 22 is not graduated: an employer that misses one month's remittance through temporary cash-flow difficulty faces in principle the same exposure as one systematically withholding large sums, and the Act does not distinguish deliberate default from situational default. Sanctions that do not differentiate between employers unable to pay and employers unwilling to pay are unlikely to reinforce compliance.²⁹

THE CASE FOR ALTERNATIVE DISPUTE RESOLUTION OVER LITIGATION

Negotiation as an existing, formalisable first step

Negotiation is the most immediately applicable mechanism because HESLB already practises it. In Bravo Secondary School and Ummusalama Schools, HESLB and the employers concluded deeds of settlement covering unremitted deductions and charges, payable by instalments.³⁰ Negotiation suits disputes in which an employer admits the debt but contests the amount, the allocation of payments or the period for payment: the parties can compare records, isolate the undisputed sum and agree a realistic schedule, which does not remove the obligation but provides a practical way of performing it.³¹ Settlements shaped by the employer are also more likely to be honoured. Its present weakness is legal: when the employers breached the deeds, HESLB had to sue.

Mediation as a structured response to adversarial strain

Mediation suits disputes in which negotiation has failed but the parties remain willing to settle, such as differences between payroll and HESLB records, unidentified remittances, the employment status of beneficiaries or the balance owed. In *Samson Chacha v Sinda Geteba*, the High Court explained that mediation reduces cost and delay and preserves relationships.³² An impartial mediator can help the parties reconcile records and separate admitted from disputed sums; confidentiality encourages openness but must not shield deliberate retention of deductions.

Arbitration as a targeted tool for complex and high-value defaults

Arbitration suits larger or more complex disputes, or those in which an employer challenges the legal basis of HESLB's claim, such as the uncertainty surrounding section 20(7). It yields a binding award enforceable as a judgment, with greater speed, flexibility

²⁹ The Higher Education Students' Loans Board Act [CAP 178 R.E. 2023], s. 22.

³⁰ *Higher Education Students' Loans Board and Attorney General v Bravo Secondary School and Another*, Misc. Civil Application No. 23428 of 2025 (High Court of Tanzania, Morogoro Sub-Registry).

³¹ Njiru, Mburugu & Wambua (2020), above n 3.

³² *Samson Chacha v Sinda Geteba*, Civil Appeal No. 33 of 2022 (High Court of Tanzania, Musoma District Registry).

and party autonomy than the courts and a tribunal chosen for relevant expertise.³³ Because arbitration is consensual, integration requires either a statutory arbitration clause above a monetary threshold or arbitration clauses in instruments such as deeds of settlement. Otherwise, it remains available only by independent agreement. It cannot determine criminal liability, which remains with the courts, but it can settle the civil claim quickly and finally for the disputes that negotiation and mediation cannot resolve.

4. CONCLUSION AND RECOMMENDATIONS

Litigation, whether by summary suit or prosecution, is procedurally demanding, slow and costly, leaves the causes of default unaddressed, strains the continuing relationship between HESLB and employers and, in its criminal form, punishes without ensuring recovery, all within a framework that is ambiguous on procedure, blind to the kind of default and silent on ADR.

Negotiation, mediation and arbitration each answer a distinct part of this failure: negotiation needs only formal recognition; mediation gives structure to record-based and strained disputes; arbitration offers a binding outcome for complex ones. The Civil Procedure Code already supplies a foundation, in its recognition of court-annexed ADR and enforceable settlements, on which a pre-litigation framework can be built without wholesale legislative innovation, with litigation reserved for employers that deliberately withhold deductions, refuse to cooperate or breach agreed settlements.

Amending the HESLB Act

Parliament should amend the Act to clarify the civil procedure available against employers, so that section 20(7) no longer invites objection; to empower HESLB to waive or reduce the statutory charge on prescribed hardship grounds; to authorise negotiation, mediation and arbitration, giving resulting settlements and awards legal effect; and to require a pre-litigation ADR step except in urgent cases or deliberate default, supported by Dispute Resolution Regulations on procedure, authority, timelines and enforcement.³⁴

Establishing a dispute resolution unit within HESLB

HESLB should establish a Dispute Resolution Unit with trained mediators to reconcile records early, document settlements, monitor compliance and escalate defaults, supported by a register of accredited mediators and arbitrators developed with the Tanzania Institute of Arbitrators and the Tanganyika Law Society, and by regular guidance to employers on their duties.³⁵

³³ The Arbitration Act [CAP 15 R.E. 2023], s. 39.

³⁴ The Higher Education Students' Loans Board Act [CAP 178 R.E. 2023], ss. 20(7) and 22 (proposed amendment).

³⁵ The Reconciliation, Negotiation, Mediation and Arbitration (Practitioners Accreditation) Regulations, 2021 (G.N. No. 147 of 2021), reg. 3; Sourdin & Liyanage (2019), above n 5.

Corresponding enforcement and recognition of ADR-outcomes

The Judiciary should issue guidelines for enforcing settlements and awards arising from HESLB's framework in the same way as judgments, ensure that court-annexed mediation in recovery suits is genuinely facilitated, and adopt a proportionate approach to prosecution under section 22, reserving criminal sanctions for deliberate and systematic non-compliance rather than situational default.³⁶

³⁶ The Civil Procedure Code [CAP 33 R.E. 2023]

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