

The Use of Mediation to Enhance Access to Justice in Medical Negligence Claims in Tanzania and the United Kingdom

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Abstract:

This article examines the role of mediation in resolving medical malpractice disputes in Mainland Tanzania through a comparative analysis with the United Kingdom. It adopts a doctrinal and comparative legal research methodology based on constitutional provisions, legislation, practices, judicial decisions and scholarly literature. The study analyses the legal and institutional frameworks governing medical malpractice mediation, focusing on the Constitution of the United Republic of Tanzania, the Civil Procedure Code, the Arbitration Act, the Medical, Dental and Allied Health Professionals Act, and the United Kingdom Civil Procedure Rules. The article finds that although Tanzania has a legal framework supporting amicable settlement of disputes, the absence of healthcare-specific mediation laws and institutional mechanisms has limited the effective use of alternative dispute resolution mechanisms particularly mediation in medical malpractice claims. By contrast, the United Kingdom has successfully integrated mediation into clinical negligence dispute resolution through comprehensive procedural rules and institutional support. The article recommends legislative reform, specialised mediation structures and institutional collaboration to strengthen access to justice and improve the resolution of medical malpractice disputes in Mainland Tanzania.

Keywords: Duty of care, Health care practitioner, Laws, Mediation, Medical malpractice.

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1. INTRODUCTION

Medical malpractice remains one of the most challenging areas of healthcare law because it directly concerns the protection of patients' rights while preserving public confidence in medical professionals.¹ As healthcare systems continue to expand, incidents involving negligent diagnosis, surgical errors, medication mistakes and inadequate patient care have also increased, giving rise to a growing number of civil claims for compensation.² Traditionally, such disputes have been resolved through litigation; however, court proceedings are often expensive, time-consuming and adversarial, thereby undermining the therapeutic relationship between healthcare providers and patients.³ Consequently, alternative dispute resolution, particularly mediation, has increasingly emerged as a viable mechanism for resolving medical negligence disputes in a manner that promotes fairness, confidentiality and preservation of professional relationships. The World Health Organization (WHO) has similarly recognised that effective dispute resolution mechanisms constitute an important component of quality healthcare governance and patient safety⁴. Consequently, there is a growing need for effective, accessible, and timely dispute resolution mechanisms capable of ensuring fair compensation, professional accountability, and public confidence in the healthcare system.⁵

In Mainland Tanzania, the legal framework demonstrates an increasing preference for amicable settlement of civil disputes. Article 107A(2)(d) and (e) of the Constitution of the United Republic of Tanzania⁶, requires courts to administer justice without undue regard to technicalities and encourages the amicable resolution of disputes. These constitutional principles are operationalised through the Civil Procedure Code⁷, particularly Order VIIIC, which establishes court-annexed mediation as an integral stage of civil proceedings. The Arbitration Act⁸, further complements this framework by recognising mediation as one of the recognised methods of alternative dispute resolution. Nevertheless, despite these legislative developments, medical malpractice disputes in Tanzania continue to rely predominantly on litigation, with mediation remaining significantly underutilized.

¹ Giesen, D. (2025). *International Medical Malpractice Law: A Comparative Study of Civil Responsibility Arising from Medical Care*. Martinus Nijhoff Publishers.

² Oosthuizen, W. T., & Carstens, P. A. (2015). Medical malpractice: The extent, consequences and causes of the problem. *THRHR*, 78, 269.

³ Watson, K., & Kottenhagen, R. (2018). Patients' rights, medical error and harmonisation of compensation mechanisms in Europe. *European Journal of health law*, 25(1), 1-23.

⁴ World Health Organization. (2023, September 11). *Patient safety*. <https://www.who.int/news-room/fact-sheets/detail/patient-safety> Accessed on 1st June 2026.

⁵ Mgalula, E. C. (2017). *The effectiveness of complaints mechanism in empowering patients in Tanzania: A case study of three selected district hospitals in Coast Region* (Master's dissertation, University of Dar es Salaam).

⁶ The Constitution of the United Republic of Tanzania [CAP 2 R.E 2023]

⁷ The Civil Procedure Code [CAP 33 R.E 2023]

⁸ The Arbitration Act [CAP 15 R.E 2023]

Comparatively, the United Kingdom has developed a more mature framework for resolving medical negligence disputes through mediation and other consensual dispute resolution mechanisms. The Civil Procedure Rules, particularly the Overriding Objective under Part 1 and the Pre-Action Protocol for the Resolution of Clinical Disputes, encourage parties to exchange information at an early stage and seriously consider alternative dispute resolution before commencing litigation. Institutions such as NHS Resolution (National Health Service) have further strengthened this approach by promoting early settlement, mediation and learning from adverse clinical events to reduce unnecessary litigation costs while improving patient satisfaction. Judicial decisions, including *Halsey v. Milton Keynes General NHS Trust* [2004] EWCA Civ 576 and *PGF II SA v OMFS Company 1 Ltd*,⁹ have reinforced the expectation that parties should reasonably engage in mediation where appropriate before resorting to full trial.

Against this background, this article examines the contribution of mediation to the resolution of medical malpractice disputes in Mainland Tanzania through a comparative analysis with the United Kingdom. It argues that although Tanzania possesses a constitutional and statutory foundation capable of supporting mediation, practical implementation remains constrained by institutional, legal and policy challenges. Drawing upon the Tanzanian legal framework, comparative United Kingdom experience and contemporary scholarly literature on healthcare dispute resolution, the article demonstrates that strengthening mediation within medical malpractice claims can improve access to justice, reduce judicial backlog, minimise healthcare costs and promote a more patient-centred system of resolving clinical negligence disputes while maintaining professional accountability.

2. LEGAL MATERIALS AND METHODS

This article adopts a doctrinal legal research methodology complemented by a comparative legal approach to examine the role of mediation in resolving medical malpractice disputes in Mainland Tanzania and the United Kingdom. The doctrinal approach was considered appropriate because the subject primarily concerns the interpretation and evaluation of laws, judicial decisions and professional regulatory frameworks governing medical negligence and alternative dispute resolution. The comparative approach enables an assessment of how the United Kingdom has successfully integrated mediation into medical negligence claims and identifies practices that may strengthen the Tanzanian legal framework. This methodology is widely accepted in comparative legal scholarship because it facilitates the identification of legislative gaps and institutional best practices capable of informing legal reform.

The article relies principally on qualitative data obtained from both primary and secondary sources. Primary sources include the Constitution of the United Republic of

⁹ [2013] EWCA Civ 1288

Tanzania¹⁰, the Civil Procedure Code¹¹, the Arbitration Act¹², the Medical, Dental and Allied Health Professionals Act¹³, the Evidence Act¹⁴, the Law of Limitation Act¹⁵, and the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act¹⁶. Comparable legal materials from the United Kingdom include the Civil Procedure Rules, the Pre-Action Protocol for the Resolution of Clinical Disputes, the National Health Service Act 2006 and relevant judicial authorities governing mediation in civil proceedings. These legal instruments collectively provide the statutory foundation upon which the analysis in this article is based.

Secondary data were obtained from peer-reviewed journal articles, textbooks, judicial commentaries, official government publications, reports issued by National Health Service (NHS) Resolution, the World Health Organization, the General Medical Council, the Judiciary of Tanzania and other reputable international organisations. The article also draws extensively upon the findings, legal analysis and comparative discussions contained in the underlying research from which this publication is developed. By integrating these sources, the study provides a comprehensive assessment of both the theoretical and practical dimensions of mediation in medical malpractice disputes. The triangulation of legislative materials, judicial authorities and scholarly literature enhances the reliability, credibility and analytical depth of the conclusions reached.

The collected materials were analysed using qualitative doctrinal and comparative techniques. Statutory provisions and judicial precedents were interpreted purposively to determine their effectiveness in facilitating mediation within medical malpractice disputes, while comparative analysis was employed to identify similarities, differences and transferable best practices between the Tanzanian and United Kingdom legal systems. Rather than merely describing the applicable law, the article critically evaluates the adequacy of existing legal and institutional arrangements and proposes reforms aimed at improving access to justice, promoting efficient dispute resolution and strengthening patient protection in Mainland Tanzania through greater utilisation of mediation in appropriate medical negligence claims.

¹⁰ The Constitution of the United Republic of Tanzania [CAP 2 R.E 2023]

¹¹ The Civil Procedure Code [CAP 33 R.E 2023]

¹² The Arbitration Act [CAP 15 R.E 2023]

¹³ The Medical, Dental and Allied Health Professionals Act [CAP 152 R.E 2023]

¹⁴ The Evidence Act [CAP 6 R.E 2023]

¹⁵ The Law of Limitation Act [CAP 89 R.E 2023]

¹⁶ The Law Reform (Fatal Accidents and Miscellaneous Provisions) Act [CAP 310]

3. RESULTS AND DISCUSSION

Conceptualizing medical malpractice and mediation in healthcare disputes

Medical malpractice refers to the failure of a healthcare practitioner to exercise the degree of knowledge, skill and care that is reasonably expected of a competent professional under similar circumstances, resulting in injury, illness or death to a patient.¹⁷ It is generally founded on the law of negligence, requiring proof of a duty of care, breach of that duty, causation and damage.¹⁸ Medical malpractice may arise from misdiagnosis, delayed diagnosis, surgical errors, medication mistakes, failure to obtain informed consent or inadequate post-operative care.¹⁹ In Mainland Tanzania, although there is no single statutory definition of medical malpractice, liability is derived from the general principles of negligence under the law of tort, reinforced by the Medical, Dental and Allied Health Professionals Act²⁰, which regulates professional conduct and establishes disciplinary mechanisms for healthcare practitioners.

Mediation, on the other hand, is a voluntary and confidential alternative dispute resolution process in which an impartial third party facilitates negotiations between disputing parties with the objective of reaching a mutually acceptable settlement.²¹ Unlike litigation, mediation does not impose a binding decision upon the parties but enables them to retain control over both the process and the outcome.²² In healthcare disputes, mediation extends beyond financial compensation by providing opportunities for explanations, apologies, restoration of trust and preservation of professional relationships. These characteristics distinguish mediation from adversarial court proceedings, which frequently intensify hostility and prolong emotional distress for both patients and healthcare providers. Moreover, litigation may be lengthy and costly, and even after a patient succeeds in establishing liability, there is no absolute guarantee that compensation will be obtained promptly or in full.

The potential of mediation as a viable mechanism for resolving medical malpractice disputes

The conceptual relationship between medical malpractice and mediation has gained increasing recognition within contemporary healthcare justice systems. Medical negligence disputes often involve sensitive factual and emotional issues that cannot always be satisfactorily resolved through judicial determination alone.²³ Patients

¹⁷ Weiler, P. C. (1991). *Medical malpractice on trial*. Harvard University Press.

¹⁸ Chaturvedi, S., & Ntani, F. (2020). Development of medical negligence law in Tanzania. *Pen Acclaims*, 12,1-7. ISSN 2581-5504

¹⁹ Ibid

²⁰ The Medical, Dental and Allied Health Professionals Act [CAP 152 R.E 2023]

²¹ Mnookin, R. H. (1998). *Alternative dispute resolution* (p. 2). Harvard Law School.

²² Mashamba C.J. (2014). *Alternative dispute resolution in Tanzania: Law and practice*. Mkuki na Nyota Publishers.

²³ Madan, R., Das, N., Patley, R., Nagpal, N., Malik, Y., & Math, S. B. (2024). Consequences of medical negligence and litigations on health care providers—A narrative review. *Indian Journal of Psychiatry*, 66(4), 317-325.

frequently seek acknowledgement of wrongdoing, open communication and assurances that similar incidents will not recur, while healthcare professionals seek fair resolution without unnecessary reputational damage.²⁴ Consequently, mediation promotes restorative justice by encouraging dialogue, confidentiality and collaborative problem-solving.²⁵

Thus, Mediation should not replace disciplinary proceedings conducted by professional regulatory bodies but should complement them by facilitating the resolution of civil claims relating to compensation while preserving institutional accountability.

The comparative experience of the United Kingdom demonstrates that conceptualizing medical malpractice disputes as matters capable of consensual resolution has significantly contributed to reducing prolonged litigation and associated healthcare costs. Through the Civil Procedure Rules, the Pre-Action Protocol for Clinical Disputes and the mediation initiatives undertaken by NHS Resolution, mediation has become an important component of resolving clinical negligence claims. These developments illustrate that effective medical justice extends beyond determining legal liability and embraces patient-centred approaches that encourage transparency, early settlement and continuous improvement in healthcare delivery. Similar conceptual development within Mainland Tanzania would strengthen access to justice while complementing the existing constitutional and statutory commitment to the amicable settlement of civil disputes.

International and domestic legal framework governing medical malpractice mediation

The legal regulation of medical malpractice mediation has progressively evolved at both the international and national levels in response to the increasing need for accessible, efficient and patient-centred dispute resolution. Internationally, access to justice is recognised as a fundamental human right under Article 8 of the Universal Declaration of Human Rights, 1948, and Article 14 of the International Covenant on Civil and Political Rights, 1966, both of which require the availability of effective legal remedies. Although these instruments do not expressly prescribe mediation, they encourage States to establish dispute resolution mechanisms capable of delivering fair, timely and effective justice. Similarly, the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Mediation, 2018, has strengthened global recognition of mediation as a legitimate legal process whose principles increasingly influence domestic legal reforms beyond commercial disputes.

In Mainland Tanzania, the constitutional and statutory framework provides a significant legal foundation for mediation in civil disputes, including claims arising from medical negligence. Article 107A(2)(d) and (e) of the Constitution of the United Republic of

²⁴ Goldberg, J. C., & Zipursky, B. C. (2002). Unrealized torts. *Virginia Law Review*, 1625-1719.

²⁵ Shukla, P., & Patel, N. (2023). Restorative Justice: An Evaluative Appraisal of ADR. *Indian J. Integrated Rsch. L.*, 3, 1.

Tanzania²⁶, requires courts to administer justice without undue regard to technicalities and to encourage amicable settlement of disputes. These constitutional directives are implemented through Order VIIIC of the Civil Procedure Code²⁷, which establishes court-annexed mediation before civil matters proceed to full hearing. The Arbitration Act²⁸, further recognises mediation as one of the accepted forms of alternative dispute resolution. Collectively, these statutes demonstrate that the Tanzanian legal system already possesses an enabling framework capable of accommodating mediation in medical malpractice disputes despite the absence of legislation specifically addressing healthcare mediation.

The Medical, Dental and Allied Health Professionals Act²⁹, also forms an important component of the domestic legal framework by establishing professional standards, disciplinary procedures and ethical obligations for healthcare practitioners. Sections 41 to 44 provide mechanisms for receiving complaints, conducting investigations, imposing disciplinary sanctions and allowing appeals against decisions of the Medical Council. Section 57 further requires registered practitioners to comply with the Code of Ethics, the breach of which constitutes professional misconduct. However, the Act remains silent on the utilisation of alternative dispute resolution mechanisms such as mediation in resolving civil medical malpractice claims, thereby creating uncertainty regarding the relationship between disciplinary proceedings and consensual settlement of compensation disputes. This legislative omission represents one of the principal legal gaps requiring reform.

The United Kingdom presents a more comprehensive regulatory model by integrating mediation within both procedural law and healthcare administration. The Civil Procedure Rules, particularly the Overriding Objective under Part 1 and the Pre-Action Protocol for the Resolution of Clinical Disputes, require parties to exchange information at an early stage and actively consider alternative dispute resolution before commencing litigation. NHS Resolution further institutionalises mediation through structured early settlement programmes aimed at resolving clinical negligence claims efficiently while promoting organisational learning and patient safety.³⁰ This coordinated legal and institutional framework demonstrates that effective regulation of medical malpractice mediation extends beyond recognising mediation in legislation; it also requires procedural guidance, institutional commitment and policy support capable of encouraging its routine utilisation in appropriate healthcare disputes.

²⁶ The Constitution of the United Republic of Tanzania [CAP 2 R.E 2023]

²⁷ The Civil Procedure Code [CAP 33 R.E 2023]

²⁸ The Arbitration Act [CAP 15 R.E 2023]

²⁹ The Medical, Dental and Allied Health Professionals Act [CAP 152 R.E 2023]

³⁰ NHS Resolution. (2025). *About NHS Resolution*. <https://resolution.nhs.uk/> accessed on 4th June 2026.

The United Kingdom's experience in mediating medical malpractice disputes

The United Kingdom has developed one of the most advanced systems for resolving medical malpractice disputes through mediation and other forms of alternative dispute resolution.³¹ Rather than relying exclusively on adversarial litigation, the legal system promotes early communication, voluntary settlement and collaborative problem-solving between patients and healthcare providers.³² This approach recognises that many medical negligence disputes involve not only claims for financial compensation but also the need for explanations, apologies and reassurance that similar incidents will not recur.³³ Consequently, mediation has become an important mechanism for improving access to justice while reducing the emotional and financial burdens associated with prolonged court proceedings.

The legal foundation for mediation in the United Kingdom is primarily established under the Civil Procedure Rules (CPR), particularly Part 1, which sets out the Overriding Objective requiring courts to deal with cases justly and at proportionate cost. The Pre-Action Protocol for the Resolution of Clinical Disputes further requires parties to exchange relevant medical information at an early stage and encourages serious consideration of alternative dispute resolution before litigation commences. Judicial decisions have reinforced this obligation. In *Halsey v Milton Keynes General NHS Trust*³⁴, the Court of Appeal recognised mediation as an important dispute resolution mechanism and held that unreasonable refusal to mediate may attract adverse costs consequences. This position was strengthened in *PGF II SA v OMFS Company 1 Ltd*³⁵, where silence or failure to respond to an invitation to mediate was regarded as unreasonable conduct capable of affecting costs awards.

Institutionally, NHS Resolution has played a significant role in embedding mediation within the resolution of clinical negligence claims across England.³⁶ Acting on behalf of National Health Service organisations, NHS Resolution encourages early settlement through mediation, negotiation and structured dialogue before disputes escalate into formal litigation.³⁷ Beyond reducing litigation costs, this approach promotes organisational learning by identifying systemic weaknesses that contribute to medical errors and implementing preventive measures to improve patient safety.³⁸ The General

³¹ Khodapanahandeh, S., & Hambali, S. N. (2014). Efficiency of Using "Alternative Dispute Resolution" Method in Medical Negligence. *Advances in Natural and Applied Sciences*, 8(13), 1-5.

³² Ibid

³³ Cohen, J. R. (1999). Apology and organizations: exploring an example from medical practice. *Fordham Urb. LJ*, 27, 1447.

³⁴ [2004] EWCA Civ 576

³⁵ [2013] EWCA Civ 1288

³⁶ Cohen, J. R. (1999). Apology and organizations: exploring an example from medical practice. *Fordham Urb. LJ*, 27, 1447.

³⁷ Balen, P. (2025). Alternative dispute resolution (ADR): The changing landscape. *Journal of Patient Safety and Risk Management*, 30(2), 66-71.

³⁸ Ibid

Medical Council also complements this framework by maintaining professional accountability through disciplinary regulation, thereby ensuring that mediation of civil claims does not undermine ethical and professional standards within medical practice.

The United Kingdom's experience offers valuable lessons for Mainland Tanzania. It demonstrates that successful mediation in medical malpractice disputes requires more than statutory recognition; it depends upon comprehensive procedural rules, institutional commitment, specialised mediators, early disclosure of medical information and a legal culture that encourages consensual dispute resolution. These elements operate together to create public confidence in mediation while preserving patients' rights and professional accountability. Tanzania possesses a constitutional and statutory foundation that supports amicable dispute settlement, but the absence of sector-specific mediation policies, specialised institutional arrangements and explicit legislative guidance has limited the practical application of mediation in medical malpractice disputes. Adopting selected aspects of the United Kingdom's model could therefore significantly strengthen the effectiveness of healthcare dispute resolution in Mainland Tanzania.

The existing legal and institutional framework in mainland Tanzania

Mainland Tanzania has established a legal and institutional framework that supports the administration of justice in medical malpractice disputes, although it does not expressly regulate mediation within the healthcare sector. The Constitution of the United Republic of Tanzania³⁹, lays the constitutional foundation through Article 107A(2)(d) and (e), which requires courts to administer justice without undue regard to technicalities and encourages the amicable settlement of disputes. These constitutional principles are implemented by the Civil Procedure Code⁴⁰, through Order VIIIC, which makes court-annexed mediation an important stage of civil proceedings. Furthermore, the Arbitration Act⁴¹, recognises mediation as one of the accepted mechanisms for resolving civil disputes outside ordinary litigation. Collectively, these laws demonstrate that the legal environment is capable of accommodating mediation in medical malpractice claims even though no legislation specifically addresses healthcare mediation.

Currently, apart from court litigation, medical malpractice disputes in Tanzania are addressed through disciplinary proceedings under the Medical, Dental and Allied Health Professionals Act⁴², and internal complaint-handling mechanisms within healthcare institutions. Although internal complaint-handling mechanisms provide an avenue through which patients may lodge complaints, these procedures are largely administrative and operate informally due to the absence of clear rules, procedures, and guidelines governing their application. This creates uncertainty regarding the

³⁹ The Constitution of the United Republic of Tanzania [CAP 2 R.E 2023]

⁴⁰ The Civil Procedure Code [CAP 33 R.E 2023]

⁴¹ The Arbitration Act [CAP 15 R.E 2023]

⁴² The Medical, Dental and Allied Health Professionals Act [CAP 152 R.E 2023]

enforcement of settlement agreements, confidentiality, procedural fairness, and the protection of patients' rights.

Similarly, disciplinary proceedings under the laws regulating medical practice such as the Medical, Dental and Allied Health Professionals Act, are primarily punitive, regulatory, and adversarial in nature, focusing on professional accountability and sanctions against practitioners rather than the compensation of victims or the amicable settlement of disputes. Consequently, victims of medical malpractice often resort to civil litigation to seek redress, a process that is frequently time-consuming, costly, technical, emotionally distressing, and may not always guarantee adequate compensation or appropriate restitution.

Other statutory instruments also influence the resolution of medical malpractice disputes. The Evidence Act⁴³, governs the admissibility of medical records, expert testimony and documentary evidence necessary for establishing negligence, while the Law of Limitation Act⁴⁴, prescribes the time limits within which medical negligence claims may be instituted. The Law Reform (Fatal Accidents and Miscellaneous Provisions) Act⁴⁵, provides legal remedies where negligent medical treatment results in death by allowing eligible dependants to claim compensation. These statutes indirectly affect mediation because parties must evaluate evidential strength, limitation periods and available remedies when negotiating settlement. Consequently, although they do not regulate mediation directly, they significantly shape its practical operation in medical malpractice disputes.

Institutionally, the Judiciary of Tanzania, the Medical Council, the Ministry of Health and healthcare regulatory bodies collectively contribute to the administration of medical justice. Courts facilitate mediation through the Civil Procedure Code, while professional bodies continue exercising disciplinary jurisdiction over healthcare practitioners whose conduct amounts to professional misconduct. There is also The Mediation Centre of the High Court of Tanzania, Dar es Salaam. It provides an institutional platform for facilitating mediation within the Tanzanian justice system. However, its mandate is general and does not specifically address the mediation of medical malpractice disputes.

However, unlike the United Kingdom, these institutions operate without a specialised framework that integrates mediation into the management of medical negligence claims. The absence of specialised healthcare mediators, sector-specific mediation guidelines, institutional coordination and public awareness has limited the practical utilisation of mediation despite the existence of a favourable constitutional and statutory foundation.

⁴³ The Evidence Act [CAP 6 R.E 2023]

⁴⁴ The Law of Limitation Act [CAP 89 R.E 2023]

⁴⁵ The Law Reform (Fatal Accidents and Miscellaneous Provisions) Act [CAP 310]

Accordingly, strengthening cooperation among these institutions and introducing a structured medical mediation framework would significantly improve access to justice, patient satisfaction and the efficient resolution of healthcare disputes in Mainland Tanzania.

Challenges affecting the use of mediation in medical malpractice disputes

Despite the existence of constitutional and statutory provisions supporting amicable settlement of disputes, the utilisation of mediation in medical malpractice disputes in Mainland Tanzania remains significantly limited. One of the principal challenges is the absence of a specific legal framework expressly regulating mediation in healthcare disputes. While the Constitution, the Civil Procedure Code and the Arbitration Act generally recognise mediation, none of these laws establishes specialised procedures for handling medical negligence claims through mediation. Likewise, the Medical, Dental and Allied Health Professionals Act⁴⁶, and internal dispute-handling mechanisms within health care institution focuses predominantly on professional discipline without providing guidance on the mediation of civil compensation claims arising from medical malpractice. This legislative gap has contributed to uncertainty among patients, healthcare practitioners and legal professionals regarding the suitability and application of mediation in medical negligence disputes.

Another significant challenge concerns institutional and professional capacity. Medical malpractice disputes are highly technical because they frequently involve complex medical evidence, professional standards of care and expert opinions.⁴⁷ Effective mediation therefore requires mediators possessing not only dispute resolution skills but also sufficient understanding of healthcare law and medical practice.⁴⁸

As a result, the existing mediation infrastructure may not provide a specialised institutional mechanism specifically designed for medical malpractice disputes. Although Mainland Tanzania has a general system for accrediting mediators, the applicable accreditation framework does not establish a distinct category of mediators specialising in clinical negligence. Similarly, the High Court Mediation Centre operates as a general court-annexed mediation institution rather than as a specialised medical malpractice mediation centre. This may create practical challenges where disputes require mediators with an understanding of complex medical evidence, professional standards and the regulatory dimensions of healthcare practice.

Furthermore, there is limited coordination between the Judiciary, the Medical Council, healthcare institutions and other regulatory bodies in promoting mediation as a complementary mechanism to litigation and disciplinary proceedings. As a result, most

⁴⁶ The Medical, Dental and Allied Health Professionals Act [CAP 152 R.E 2023]

⁴⁷ Stein, A. (2011). Toward a theory of medical malpractice. *Iowa L. Rev.*, 97, 1201.

⁴⁸ Gerardi, D. (2004). Using mediation techniques to manage conflict and create healthy work environments. *AACN Advanced Critical Care*, 15(2), 182-195.

disputes continue to proceed through conventional litigation, which is often costly, time-consuming and adversarial.

Public awareness and professional perception also present substantial obstacles to the effective implementation of mediation. Many patients remain unaware that medical malpractice disputes may be resolved through consensual mechanisms, while some healthcare practitioners perceive mediation as an implicit admission of professional fault.⁴⁹ This misconception discourages voluntary participation and reinforces a preference for adversarial proceedings. Additionally, concerns regarding confidentiality, enforceability of mediated settlements and the absence of clear procedural guidelines have further limited confidence in mediation. Uncertainty surrounding the relationship between mediation and professional disciplinary proceedings has discouraged greater utilisation of consensual dispute resolution within the healthcare sector.

Power Imbalances between Patients and Healthcare Providers. Medical disputes may involve significant differences in knowledge and bargaining power. Healthcare providers possess specialised medical knowledge, while patients may have limited understanding of the technical aspects of their treatment. This imbalance may affect the patient's ability to participate effectively in mediation. Therefore, any mediation framework should include safeguards to ensure that participation is informed, voluntary and fair.⁵⁰

Comparatively, the United Kingdom has developed a more structured approach to the use of mediation in clinical negligence disputes. The system places considerable emphasis on resolving disputes at an early stage and encourages parties to explore alternative dispute resolution before resorting to litigation. The Pre-Action Protocol for the Resolution of Clinical Disputes, for instance, requires parties to consider alternative dispute resolution, including mediation, and treats litigation as a last resort. NHS Resolution has also incorporated mediation and other forms of dispute resolution into the management of clinical negligence claims.⁵¹ Balen similarly observes that mediation and other forms of alternative dispute resolution have increasingly formed part of the changing approach to the management of clinical negligence disputes within the NHS⁵².

In Mainland Tanzania, mediation is recognised within the general civil justice framework, and mechanisms for the accreditation of mediators have been established. However, unlike the United Kingdom, there are no comparable healthcare-specific procedural arrangements governing the use of mediation in medical malpractice disputes. The

⁴⁹ Hyman, C. S., Liebman, C. B., Schechter, C. B., & Sage, W. M. (2010). Interest-based mediation of medical malpractice lawsuits: A route to improved patient safety? *Journal of Health Politics, Policy and Law*, 35(5), 797–828. <https://doi.org/10.1215/03616878-2010-028> Accessed on 4th May 2026.

⁵⁰ Hazel, C. (2018). Medical dispute resolution, patient safety and the doctor-patient relationship. *Journal of Medical Ethics*, 44(7), 466–470

⁵¹ UK Ministry of Justice. (n.d.). *Pre-action protocol for the resolution of clinical disputes*. https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_red accessed on 5th March 2026.

⁵² Balen, P. (2025). Alternative dispute resolution (ADR): The changing landscape. *Journal of Patient Safety and Risk Management*, 30(2), 66–71.

existing framework therefore provides a general foundation for mediation but leaves a number of practical issues relating to medical malpractice to be addressed. These include the availability of mediators with appropriate knowledge of medical disputes, coordination between mediation and professional disciplinary processes, and the development of procedures that take account of the interests of both patients and healthcare practitioners. Tanzanian scholarship has also pointed to challenges such as limited public awareness, inadequate training and weaknesses in the implementation of mediation, which may affect its effective utilisation.⁵³

Consequently, the effective application of mediation to medical malpractice disputes in Tanzania may require further development beyond the existing general mediation framework. This may include specialised training for mediators, greater public and professional awareness, improved coordination among institutions involved in healthcare and dispute resolution, and clearer guidance on the relationship between mediation, compensation claims and professional accountability. Such measures would provide a more suitable environment for mediation to operate in medical malpractice disputes while ensuring that the rights of patients and the professional responsibilities of healthcare practitioners are adequately protected.

Lessons that Mainland Tanzania can learn from the United Kingdom

The experience of the United Kingdom demonstrates that the effectiveness of mediation in medical malpractice disputes depends not only on legal recognition but also on a comprehensive framework that integrates legislation, judicial practice and institutional support.⁵⁴ One important lesson for Mainland Tanzania is the need to establish a healthcare-specific mediation framework capable of addressing the unique nature of medical negligence disputes. While Tanzania already encourages amicable settlement under Article 107A(2)(d) and (e) of the Constitution and Order VIIC of the Civil Procedure Code, there remains no specialised legal regime governing mediation in medical malpractice cases. The United Kingdom illustrates that sector-specific procedural guidance can significantly increase the use of mediation while preserving patients' rights and professional accountability.

A second lesson concerns the importance of institutional coordination in the administration of medical justice. In the United Kingdom, NHS Resolution works closely with healthcare institutions, legal practitioners and insurers to facilitate early settlement of clinical negligence claims through mediation and negotiation before litigation becomes necessary.⁵⁵ This institutional collaboration has contributed to reducing litigation costs,

⁵³ Kamara, E. (2025), *An Overview of the Legal Framework for Incorporating Mediation into Civil Litigation in Tanzania*, *Tanzanian Journal of Multidisciplinary Studies*, 2(1).

⁵⁴ Alkhenizan, A. H., & Shafiq, M. R. (2018). The process of litigation for medical errors in Saudi Arabia and the United Kingdom. *Saudi medical journal*, 39(11), 1075.

⁵⁵ Balen, P. (2025). Alternative dispute resolution (ADR): The changing landscape. *Journal of Patient Safety and Risk Management*, 30(2), 66-71.

shortening the duration of disputes and improving patient satisfaction.⁵⁶ In contrast, the Judiciary of Tanzania, the Medical Council and healthcare institutions largely perform their functions independently, with limited coordination in promoting mediation. Strengthening cooperation among these institutions would create a more efficient and integrated system for resolving medical malpractice disputes while maintaining disciplinary oversight of healthcare professionals.

The United Kingdom also demonstrates the importance of developing specialised expertise in healthcare mediation.⁵⁷ Medical negligence disputes often involve complicated medical evidence, ethical questions and highly emotional circumstances that require mediators with specialised knowledge of both healthcare practice and dispute resolution techniques. Tanzania would therefore benefit from establishing specialised training programmes for mediators, judicial officers, advocates and healthcare professionals dealing with medical malpractice claims. Such capacity-building initiatives would improve confidence in mediation, promote informed negotiations and increase the likelihood of fair and sustainable settlements. Additionally, public awareness campaigns would help patients and healthcare practitioners understand that mediation complements, rather than replaces, professional disciplinary proceedings and judicial remedies.

Finally, the United Kingdom highlights the importance of promoting a legal culture that encourages early communication, openness and voluntary settlement before disputes become entrenched in adversarial litigation.⁵⁸ The Civil Procedure Rules, judicial authorities and NHS Resolution policies collectively encourage parties to exchange information promptly and seriously consider mediation before commencing formal court proceedings. Mainland Tanzania can adopt similar practices by introducing mandatory pre-action engagement in appropriate medical negligence claims, issuing healthcare-specific mediation guidelines and amending the Medical, Dental and Allied Health Professionals Act⁵⁹, to expressly recognise mediation as a complementary mechanism for resolving civil compensation disputes. Such reforms would strengthen access to justice, reduce court congestion, improve patient confidence in the healthcare system and promote a more balanced relationship between patient protection and professional accountability.

⁵⁶ Ibid

⁵⁷ Kelly, M. J., de Bono QC, J., & Métayer, P. (2015). Clinical negligence in hospitals in France and England. *Medico-Legal Journal*, 83(4), 203-213.

⁵⁸ Arthur, L. (2011). Reform of the civil justice system: The new meaning of justice and the mitigation of adversarial litigation culture. *Waikato L. Rev.*, 19, 160.

⁵⁹ The Medical, Dental and Allied Health Professionals Act [CAP 152 R.E 2023]

Prospects for strengthening mediation in medical malpractice disputes in Mainland Tanzania

The future of mediation in resolving medical malpractice disputes in Mainland Tanzania is promising, particularly because the existing constitutional and statutory framework already embraces amicable settlement of civil disputes. Article 107A(2)(d) and (e) of the Constitution of the United Republic of Tanzania⁶⁰, together with Order VIII C of the Civil Procedure Code⁶¹, provides a solid legal foundation upon which specialized healthcare mediation can be developed. Rather than introducing an entirely new dispute resolution system, future reforms should focus on strengthening and adapting the existing mediation framework to accommodate the unique characteristics of medical negligence disputes. Such reforms would improve access to justice while promoting faster and less adversarial resolution of claims involving patients and healthcare providers.

A major prospect lies in undertaking legislative and policy reforms that expressly recognise mediation within the healthcare sector. The Medical, Dental and Allied Health Professionals Act⁶², should be amended to provide clear procedures governing mediation of civil medical malpractice claims alongside existing disciplinary mechanisms. Such reforms would eliminate the current uncertainty regarding the relationship between mediation and professional disciplinary proceedings. At the policy level, the Ministry of Health, the Judiciary and the Medical Council could jointly develop national guidelines on healthcare mediation, including standards for referral of disputes, qualifications of mediators, confidentiality obligations and enforcement of mediated settlement agreements. These reforms would provide legal certainty while promoting greater confidence in mediation among both patients and healthcare practitioners.

Another significant prospect is institutional and professional capacity building. Tanzania can establish specialised panels of mediators with expertise in medical negligence, healthcare ethics and dispute resolution. Continuous professional training should be provided to judges, magistrates, advocates, medical practitioners and members of the Medical Council on the effective use of mediation in healthcare disputes. Universities, judicial training institutions and professional bodies can also incorporate medical mediation into legal and medical education programmes. Furthermore, public awareness campaigns should educate patients on the availability and benefits of mediation as a mechanism that offers confidentiality, reduced costs, timely settlement and preservation of professional relationships without compromising their right to seek judicial remedies where necessary.

Comparative experience from the United Kingdom demonstrates that sustainable success in medical malpractice mediation depends upon coordinated institutional commitment, supportive legal policies and a culture that values early dispute resolution. Mainland

⁶⁰ The Constitution of the United Republic of Tanzania [CAP 2 R.E 2023]

⁶¹ The Civil Procedure Code [CAP 33 R.E 2023]

⁶² The Medical, Dental and Allied Health Professionals Act [CAP 152 R.E 2023]

Tanzania is well positioned to adopt similar reforms because the constitutional principles encouraging amicable settlement are already firmly established. By introducing specialized healthcare mediation legislation, strengthening institutional coordination, enhancing professional capacity and promoting public confidence in consensual dispute resolution, Tanzania can establish a more efficient, patient-centred and accountable healthcare justice system. Such developments would not only reduce unnecessary litigation and court congestion but would also contribute to improved healthcare governance, greater public trust in medical institutions and enhanced protection of both patients' rights and healthcare professionals' legitimate interests.

4. CONCLUSION AND RECOMMENDATIONS

Medical malpractice disputes present unique legal, ethical and professional challenges that require dispute resolution mechanisms capable of balancing patients' rights with the legitimate interests of healthcare practitioners.⁶³ This article has demonstrated that mediation offers a practical and effective alternative to conventional litigation by promoting timely, confidential and less adversarial resolution of medical negligence claims. While litigation remains essential where legal determination is necessary, many medical malpractice disputes involve issues that can be more satisfactorily resolved through dialogue, negotiated settlement and mutual understanding. Comparative analysis further reveals that mediation contributes not only to compensation of injured patients but also to restoration of trust, preservation of professional relationships and improvement of healthcare governance.

The study has further established that Mainland Tanzania already possesses a constitutional and statutory foundation capable of supporting mediation in medical malpractice disputes. Article 107A(2)(d) and (e) of the Constitution, the Civil Procedure Code⁶⁴, and the Arbitration Act⁶⁵, collectively encourage amicable settlement of disputes. However, the Medical, Dental and Allied Health Professionals Act⁶⁶, does not expressly provide for mediation in resolving civil medical malpractice claims, thereby creating a significant legislative gap. This omission has contributed to uncertainty regarding the relationship between mediation, civil liability and professional disciplinary proceedings, ultimately limiting the practical use of mediation within the healthcare sector.

The comparative experience of the United Kingdom demonstrates that successful mediation depends upon more than legislative recognition.⁶⁷ It requires comprehensive procedural rules, specialised institutions, trained mediators, effective pre-action procedures and sustained institutional commitment to early dispute resolution. Through the Civil Procedure Rules, the Pre-Action Protocol for the Resolution of Clinical Disputes

⁶³ Sage, W. M. (1998). Physicians as advocates. *Hous. L. Rev.*, 35, 1529.

⁶⁴ The Civil Procedure Code [CAP 33 R.E 2023]

⁶⁵ The Arbitration Act [CAP 15 R.E 2023]

⁶⁶ The Medical, Dental and Allied Health Professionals Act [CAP 152 R.E 2023]

⁶⁷ Marshall, T. F. (1996). The evolution of restorative justice in Britain. *Eur. J. on Crim. Pol'y & Rsch.*, 4, 21.

and the work of NHS Resolution, the United Kingdom has created a healthcare dispute resolution system that encourages early settlement while maintaining professional accountability and patient protection. These experiences provide practical lessons that can be adapted within the Tanzanian legal system without undermining its existing judicial and regulatory institutions.

Accordingly, this article recommends that Tanzania should enact legislative amendments expressly recognising mediation in medical malpractice disputes within the Medical, Dental and Allied Health Professionals Act and develop healthcare-specific mediation regulations. The Judiciary, the Medical Council and the Ministry of Health should establish coordinated institutional mechanisms for referring appropriate disputes to mediation and develop national guidelines governing healthcare mediation practice. Specialised training programmes should be introduced for mediators, judicial officers, advocates and healthcare professionals dealing with medical negligence claims, while public awareness initiatives should educate patients and healthcare providers on the benefits of mediation. Implementing these reforms would strengthen access to justice, reduce unnecessary litigation, improve patient satisfaction and contribute to a more efficient, accountable and patient-centred healthcare justice system in Mainland Tanzania.