

**AFRICAN OMBUDS OFFICES NEGOTIATION AND MEDIATION WORKSHOP:
DURBAN, KWAZULU-NATAL 13-15 MARCH 2019:**

PROGRAMME

A. DAY 1: NEGOTIATION

Outcomes:

At the end of this session, participants will be able to:

1. Explain the guidelines for interest-based negotiation.
2. Conduct an interest-based negotiation.
3. Appreciate the value of interest-based negotiations in resolving disputes.

Programme:

09h00-09h15 Introduction (Activity).

09h45-09h15 Thomas Kilmann (Activity).

09h15-09h45 The Mattress Negotiation (Activity).

09h45-10h00 The Negotiation Process.

10h00-10h30 Tea.

10h30-11h15 Paraphrasing (Activity)

11h15-11h45 Negotiation Guidelines.

11h45-12h00 'Win as much as you can' (Activity)

12h00-13h00 Lunch

13h00-13h45 The Fearful Wife Negotiation (Activity).

13h45-14h00 Getting to Yes.

14h00-14h45 The Famous Cape Malay Restaurant Negotiation (Activity).

14h45-15h15 Tea

15h15- 16h00 The Moroccan Sweet Treat Negotiation (Activity).

B. DAY 2: MEDIATION

At the end of this session, participants will be able to:

1. Explain the guidelines for a mediation.
2. Conduct a mediation.
3. Appreciate the value of mediation as a means of resolving disputes.

Programme:

09h00-09h15 Recap of Day 1 (Activity).

09h15-09h30 Focuser: What Mediators Do (Activity).

09h30-09h45 Characteristics of Mediation.

09h45-10h00 Empathic Listening.

10h00-10h30 Tea.

10h30-11h00 Steps in a Mediation (Activity).

11h00-11h30 The Mediation Process.

11h30-12h00 The Procedure for Opening a Mediation (Activity).

12h00-13h00 Lunch.

13h00-14h00 The Mediation between Hospital Workers and Hospital Management (Activity).

14h00-14h45 The Mediation between Political Parties.(Activity).

14h45-15h15 Tea.

15h15-16h00 The Mediation between the Government and Opponents of Dune Mining in a Rural Area (Activity).

C. DAY 3: MEDIATION (CONTINUED)

At the end of this session, the participants will be able to:

1. Apply the negotiation principles they have learned on Day 1 to Scenarios provided by the African Ombuds Office.
2. Apply the mediation principles they have learned on Day 2 to Scenarios provided by the African Ombuds Office.

Application of principles learned to African Ombuds Office scenarios:

09h00-09h15 Recap of Day 2 (Activity).

09h15-10h00 The Threatened Potential Direct Investment Mediation (Activity).

10h00-10h30 Tea.

10h30-11h15 The Predatory Supervisor Mediation (Activity).

11h15-12h30 The International Airport Renovations Mediation (Activity).

12h30 Closure and Lunch.

D. MATERIALS**DAY 1: NEGOTIATION**

1. How do you respond to conflict?
2. The Mattress Negotiation.
3. Negotiation Guidelines.
4. Planning the Negotiation: Checklist.
5. The Fearful Wife Negotiation.
6. The Famous Cape Malay Restaurant Negotiation.
7. The Moroccan Sweet Treat Negotiation.

1. HOW DO YOU RESPOND TO CONFLICT?

1.1 Think of three situations where you have had the most conflict in your life.

1.2 For each situation, decide how you handled the conflict.

1.3 For each situation, which of the following methods did you use?

- 1.3.1 You tried to find a compromise by adopting 'the middle ground'.
- 1.3.2 You told the other person how you felt and tried to get the other person's help to resolve the conflict.
- 1.3.3 You tried to avoid unpleasantness by postponing dealing with the issue.
- 1.3.4 You 'stuck to your point of view' to achieve your goal even though it hurt the other person.
- 1.3.5 You gave into the other person so that they would feel good about you.

1.4 Key to personality traits:

- Para 1.3.1 = Compromiser.
 Para 1.3.2 = Joint problem solver.
 Para 1.3.3 = Avoider.
 Para 1.3.4 = Competitor.
 Para 1.3.5 = Accommodator.

1.5 Did you consistently use one method of dispute resolution? If so, which?

1.6 If you used different methods of dispute resolution, were any of them duplicated?

[Adapted by David McQuoid-Mason from the Thomas-Kilmann *Conflict Mode Instrument* (1974) Xicom].

2. THE MATTRESS NEGOTIATION

Role: Prospective buyer

Information known to all parties

The seller placed an advertisement in the Saturday newspaper to sell a "new, firm, twin mattress, best offer". Upon inspection in the hallway of the seller's home on Sunday morning, the buyer determines that the mattress is a name brand, still in its original plastic wrapping with a price tag of \$150 from a local department store.

Information known only to buyer

Your grandmother is visiting you tonight and you need a good mattress to replace the one on your bed that was chewed up by your dog last night. You will sleep on the floor and let your grandmother sleep on your bed. There is no other place for your grandmother to sleep. She has a bad back and needs a firm mattress. There are no other advertisements in the newspapers and the stores are closed. You have very little money - having just lost your job. So you need the best deal possible.

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2.1 THE MATTRESS NEGOTIATION

Role: Prospective seller

Information known to all parties

The seller placed an advertisement in the Saturday newspaper to sell a "new, firm, twin mattress, best offer". Upon inspection in the hallway of the seller's home on Sunday morning, the buyer determines that the mattress is a name brand, still in its original plastic wrapping' with a price tag of \$150 from a local department store.

Information known only to the seller

You brought a mattress last week for your grandmother to use when she visits you tonight. You bought the mattress on a sale at a local store for \$50. No sooner did you buy the mattress than your grandfather had one delivered to your home. You cannot return the mattress you bought from the store because it was bought on a sale. And you have no place to keep it. You want to get rid of it today so that it is not there when your grandfather arrives. Seeing both mattresses would hurt his feelings. You have little money and need to sell the mattress for as much money as possible.

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3.NEGOTIATION GUIDELINES

Step 1: Preparing for the negotiation

- Understand the facts and issues
- Decide what is the least and most you can expect
- What is not negotiable?
- What does the other side care about?
- What is in both your interests?

Step 2: The negotiation process

- Try to build a good relationship with the other side
- Be friendly and cordial
- Speak about what you would like (eg I think, I feel)
- Find out what the other side would like
- Brainstorm solutions or options to solve the problem
- Do not make unfair or unrealistic demands
- Do not become abusive, over-emotional or threatening
- Offer to give something away in exchange for something from the other side

Step 3: Moving and reaching an agreement

- Identify your common interests
- Try to move the process if the other side does not
- Consider offering a compromise
- Try to make the agreement as fair as possible
- Use objective criteria to measure compliance with the agreement (eg give specific dates for when things will be done)
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4. PLANNING THE NEGOTIATION: CHECKLIST

- What are the issues at stake?
- What information do you need from the other party?
- What are your sources of negotiating power?
- What negotiating strategy will you use?
- What will you say in your opening presentation?
- What response is the other party likely to make?
- How will you reply?
- What is the most you want?
- What is the least you can settle for?
- What is the likely result?
- What information do you have?
- What information do you need to get from others?
- What is your authority to settle?
- What alternatives do you have if you fail to settle?

5. THE FEARFUL WIFE NEGOTIATION

Maria Mchunu is employed as a teacher and is married to Mondi Mchunu, who is a truck driver. They have three children. One day Maria receives a telephone call from a woman called Thandi who tells her that she has been Mondi's girlfriend for the past three years. Thandi says that she has just been told that she is HIV-positive and must have been infected by Mondi because she has had no other boyfriends.

Mondi returns home from a trip after having a few drinks with his friends. Maria tells him about the phone call from Thandi and says that she will not have sex with him again until he has an HIV/AIDS test and agrees not to see Thandi again. Mondi denies that Thandi is his girlfriend and that he had sex with her. Maria continues to accuse Mondi and he gets very cross and beats her up. Mondi also hits the three children who try to protect Maria. Maria tries to leave the house to go with the children to her family, but is locked in the bedroom by Mondi. Mondi later forces Maria to have unprotected sex with him, and he again beats her up when she tries to object.

The next day while Mondi is still asleep, Maria and the three children manage to leave the house and go to her parents' home. She and her children go to a clinic for medical treatment. The nurse refers them to you as a paralegal for advice. Maria says she still loves Mondi and wants to go back to him. She asks you to phone Mondi and to negotiate with him to make sure that he will not beat them again if they return home. You telephone Mondi who says that he still loves his wife and children. He denies that he had a relationship with Thandi but agrees to meet with you.

In twos, acting either Maria Mchunu or as Mondi Mchunu himself, try to reach a negotiated settlement by using the Negotiation Guidelines.

[Based on 'The Maria Mchunu Case' in David McQuoid-Mason, Lindi Coetzee, Lloyd Lotz, Usha Jivan, Sibonile Khoza and *Street Law: Practical Law for South Africans* 3ed (2015) 39]

6. THE FAMOUS CAPE MALAY RESTAURANT NEGOTIATION

Ed owns 40% of the stock in the Famous Cape Malay Restaurant. Three years ago he hired Joanna, his longtime friend, to be chef at a salary of \$15 000 a year. The restaurant was struggling at the time and Joanna was promised a share of the business if things went well. The restaurant did well during the next year and Ed rewarded Joanna with a \$5 000 bonus. He also told her he was instructing the restaurant's lawyer to prepare a contract giving Joanna a 10% interest in the business. Joanna expressed great pleasure. Hearing nothing after three months, Joanna asked about her share of the business. Ed responded that the lawyers were slow in preparing the paperwork, but assured Joanna with a handshake, that: 'As far as I am concerned, Joanna, you own 10% of the business'.

Joanna felt secure with that understanding. The neighbourhood began to attract more tourists and the restaurant continued to thrive. Another three months passed with no formal agreement. Then Ed presented Joanna with a cheque for \$4 000, advising her to consider it a dividend from profits and assuring her there would be more at the end of the year. Joanna said that she felt primarily responsible for the restaurant's success. She appreciated the cheque, but she was annoyed that she had not formally received her interest in the restaurant. She said that unless she received an immediate 30% share of the business, she would take advantage of an opportunity to leave to start a restaurant bearing the name 'Joanna's Cape Malay Restaurant' nearby. Ed said Joanna could not open the new place because under the terms of the contract the lawyers were preparing, Joanna owned 10% of the restaurant and was restricted from competing for five years within a 10-kilometre radius. Joanna was outraged. She said she had no recollection of any discussion about a restraint of trade provision and does not accept it. Ed said he mentioned the provision to Joanna when they shook hands over the 10% ownership deal. Joanna said she was going to talk to a lawyer.

A mutual friend suggested that Joanna and Ed should sit down and attempt to resolve their differences through negotiation. They agreed and arranged to meet to discuss the situation. Acting as Joanna and Ed try to reach a negotiated settlement using the Negotiation Guidelines.

[Adapted by David McQuoid-Mason and Richard A. Salem]

7.THE MOROCCAN SWEET TREAT NEGOTIATION

Role: President of Athlone Pure Water Company

Athlone Pure Water Company is engaged in the bottling, distribution and sale of drinking water. Your company has a bottling plant near the mountains and draws water from a spring on its property there. Five company trucks then deliver the water to customers in the city area.

You just learned that your only source of water is becoming discolored by underground minerals. The minerals are harmless, but they color the water brown. You decide to shut down your plant until the problem is solved. You have no other source of water. You have a one-day supply of bottled water available for distribution. Unless you can solve the problem today, your company will be unable to make deliveries on schedule and business will begin to deteriorate.

Your chemist tells you she has a remedy for the problem. If a small amount of nectar drawn from a rare Moroccan flower is mixed with the water as it is pumped into your vats, the water will return to its natural color. A small amount of this nectar is drawn from the flowers once a year and is used to coat local almonds. The product is then shipped around the world under the trade name of 'Moroccan Sweet Treats.'

You learn that since the flowers are out of season, nectar will not be available for six months. However, you also learn that a single box of 12 Moroccan Sweet Treats is available in the Sweet Shoppe at the Sun Hotel in the city. You telephoned the owner of the store. She said the box sells for \$20. She agrees to hold the box for you for two hours.

Your chemist tells you that the nectar coating on one Moroccan Sweet Treat is enough to treat one week's supply of bottled water. The 12 Sweet Treats will give you 12 weeks to find a permanent solution.

Before you leave for the city, the Sweet Shoppe owner phones to tell you that a competitor, Maitland Beverages, also wants to buy the Sweet Treats. She will see you both in two hours and will sell to the highest bidder.

You wonder if your competitor found out about your problem and is trying to put you out of business. Why else would Maitland Beverages be interested in purchasing the only available box of Sweet Treats? You phone Maitland's president and the two of you agree to meet before going to the Sweet Shoppe to see if you can work a deal. You can spend up to \$25 000.

[Created by Richard A. Salem 1990 Conflict Management Initiatives]

7.1 THE MOROCCAN SWEET TREAT NEGOTIATION

Role: President of Maitland Beverage Company

Maitland Beverages Co. is engaged in the bottling, distribution and sale of drinking water. Your company has a bottling plant near the coast and draws water from a spring on its property there. Company trucks then deliver the water to customers in the city area.

You just learned that your only source of water is becoming discolored by underground minerals. The minerals are harmless, but they color the water red. You decide to shut down your plant until the problem is solved. You have no other source of water. You only have a one-day supply of good bottled water available for distribution. Unless you can solve the problem today, your company will be unable to make deliveries on schedule and business will rapidly deteriorate.

Your chemist tells you he has a remedy for the problem. If a small amount of extract is taken from a rare Moroccan almond nut and mixed with the water as it is pumped into your vats, the water will return to its natural color. These almonds are harvested annually in Morocco, coated with a sweet nectar drawn from flowers in the nearby mountains and shipped around the world under the trade name of Moroccan Sweet Treats.

You learn that since the almonds are out of season, none will be available for six months. However, you also learn that a single box of 12 Moroccan Sweet Treats is available in the Sweet Shoppe at the Sun Hotel in the city. You telephoned the owner of the store. She said the box sells for \$20 . But she told you that a competitor, Athlone Pure Water Company, also wants them, She said she will sell to the highest bidder and tells you to be there in two hours.

Your chemist tells you that the almond extract from one Moroccan Sweet Treat is enough to treat one week's supply of bottled water. The 12 Sweet Treats will give you 12 weeks to find a permanent solution.

You wonder if your competitor found out about your problem and is trying to put you out of business. Why else would Athlone Pure Water be interested in purchasing the only available box of Sweet Treats? As you are planning your strategy, the President of Athlone Pure Water phones you and the two of you agree to meet before going to the Sweet Shoppe to see if you can work out a deal. You can spend up to \$25 000,

[Created by Richard A. Salem 1990 Conflict Management Initiatives]

DAY 2: MEDIATION I

1. Focuser: What mediators do.
2. Steps in a mediation.
3. The hospital workers and hospital management mediation.
4. The mediation between political parties mediation.
5. The mediation between the Government and opponents of dune mining in a rural area.

1. FOCUSER: WHAT MEDIATORS DO

Three role players are required for this exercise: A client, a lawyer and a mediator.

1.1 Lawyer-client interview

Client:	My neighbour's son got into my garage when I was away. He got on my bike and crashed into a tree at the bottom of the hill. He wrote the damn thing off.
Lawyer:	Were there any witnesses?
Client:	Not that I know about.
Lawyer:	Was it a forced entry?
Client:	No, I left the garage open.
Lawyer:	Was there any other damage?
Client:	No, that was all.
Lawyer:	What were the damages?
Client:	The bike cost me \$200 in 2000.
Lawyer:	Was it insured?
Client:	No.

1.2 Mediator-client interview

Client:	My neighbour's son got into my garage when I was away. He got on my bike and crashed into a tree at the bottom of the hill. He wrote the damn thing off.
Mediator:	Is there anything else?
Client:	No, that was enough. What a cheek!
Mediator:	How would you like to see this thing settled?
Client:	What I want is an apology. And I want the boy to do it when his parents are present.
Mediator:	Is there anything else?
Client:	Yeh, I want him to promise not to do it again.
Mediator:	What about the bike?
Client:	I do not care about the bike. It has not been used for five years since my kids moved out.

[Devised by Richard A Salem, Conflict Management Initiatives, Chicago]

2. STEPS IN A MEDIATION

Step 1. Introduction

The mediator makes the parties relax and explains the rules. The mediator's role is not to make a decision but to help the parties reach an agreement. The mediator explains that he or she will not take sides.

Step 2. Telling the story

Each party tells what happened. The person bringing the complaint tells his or her side of the story first. No interruptions are allowed. Then the other party explains his or her version of the facts.

Step 3. Identifying the facts and issues

The mediator attempts to identify facts and issues agreed upon by the parties. This is done by listening to each side, summarising each party's views, and asking if these are the facts and issues as each party understands them.

Step 4. Identifying alternative solutions

Everyone thinks of possible solutions to the problem. The mediator makes a list and asks each party to explain his or her feelings about each solution.

Step 5. Revising and discussing solutions

Based on the expressed feelings of the parties, the mediator revises possible solutions and attempts to identify a solution to which both parties can agree.

Step 6. Reaching agreement

The mediator helps the parties reach an agreement with which both can live. The agreement should be written down. The parties should also discuss what will happen if either of them breaks the agreement.

3. THE MEDIATION BETWEEN HOSPITAL WORKERS AND HOSPITAL MANAGEMENT

State hospital workers object to being searched when leaving the hospital premises. The hospital is experiencing massive losses due to theft of drugs, food, equipment and bedding. Despite appeals to hospital workers to assist with preventing the losses, the thefts continue. In desperation the hospital management introduce compulsory searches of all hospital workers when they leave the hospital premises. The hospital workers declare a dispute with the management on the basis that the compulsory searches are an unlawful invasion of their constitutional right to privacy. The hospital maintains that the steps are reasonable and justifiable. Negotiations between the parties fail and they agree to mediation.

In groups of three acting as representatives of the hospital workers, mediators or representatives of the hospital management, conduct mediations using the above Steps in a Mediation in order to reach a decision.

[Based on a Scenario in David McQuoid-Mason, Lindi Coetzee, Lloyd Lotz, Usha Jivan, Sibonile Khoza and *Street Law: Practical Law for South Africans* 3ed (2015) 41].

4. THE MEDIATION BETWEEN POLITICAL PARTIES

Members of political party A wish to hold a public meeting in a town area controlled by party B. Party A manages to get permission from the local council to hold the meeting in a community hall. Members of party B who are very opposed to party A's policies threaten to break up the meeting. Party A believes that the local people should be free to choose whether or not they wish to attend the meeting. The leader of party B says he knows that none of the local people will want to attend the meeting as they will support his party. Eventually the leaders of parties A and B agree to allow a mediator to help them resolve the dispute.

In groups of three acting as the leaders of Political Party A, mediators or leaders of Political Party B, conduct mediations using the above Steps in a Mediation in order to reach a decision.

[Based on a Scenario in David McQuoid-Mason, Lloyd Lotz, Lindi Coetzee, Malebakeng Forere and Tammy Cohen *Street Law: Practical Law for South Africans* 2ed (2004) 34].

5. THE MEDIATION BETWEEN THE GOVERNMENT AND OPPONENTS OF DUNE MINING IN A RURAL AREA

A bill of rights says that everyone has the right to live in an environment free from pollution and protected from destruction. It also says that everyone has the right to economic advancement and freedom of culture. The government wishes to grant a foreign mining company the right to mine dunes in a nature reserve next to a lake to provide minerals for the country and to create jobs and to improve the area. Local inhabitants of the reserve wish to retain the coastal dunes so that they can continue their traditional life of collecting medicinal plants in the dune forests.

In groups of three acting as the Minister of Mining and Minerals, mediators or leaders of the community opposed to dune-mining in their area, conduct mediations using the above Steps in a Mediation in order to reach a decision.

[Based on a Scenario from David McQuoid-Mason, Lloyd Lotz and Lindi Coetzee 'Conflicting Human Rights in a Democracy' in *Democracy for All: Education towards a Rights Culture – Learner's Manual* 2ed (2017) 105].

DAY 3: MEDIATION II

1. The threatened direct foreign investment.
2. The predatory supervisor.
- 3.

1. THE THREATENED FOREIGN DIRECT INVESTMENT

XYZ Limited, a British manufacturing company in the country, donated the equivalent of US \$15 million to reconstruct roads and repair the water distribution system for a large area neighbouring their primary manufacturing plant in the East South District four years ago. Very little has been done. The Chief Executive Officer and Chairman of the Board from headquarters in London will be coming next month for an annual review of the local office and exploratory discussions with the Government about a new investment. They have inquired why the infrastructure project has not progressed. The local Senior VP of XYZ (Country) Ltd. has been trying for three weeks to get a meeting with the District Council to get an explanation and plan to move forward more quickly.

The Senior VP's view is that the local authorities, in particular the District Commissioner, are corrupt and expecting personal payments before the final planning and regulatory documents are approved. On his part, the District Commissioner is looking forward to the visitors from London because he thinks the Senior VP is incompetent and was sent to the country as his last posting to end his tenure with XYZ.

As time is of the essence, the Senior VP has turned to the Ombudsman. The Ombudsman believes that the long-term relationships require a mediation rather than investigation approach.

In groups of three acting as the Senior VP, Ombudsman and the District Commissioner, conduct a mediation, using the above steps in a mediation to reach a decision.

[Compiled by Arlene Brock, former Director, African Ombudsman Research Centre University of KwaZulu-Natal, Durban, South Africa]

2. THE PREDATORY SUPERVISOR

Graduate A became a junior administrator in the Social Services Department three years ago. This was special recruitment as part of a leadership development program. However, she never received Terms of Reference for her role and was assigned to what she believed were menial tasks compared with her cohort of three males who joined the program at the same time as she did. Nevertheless, she saw a gap in the way that the Department communicated with families with long-term needs and created a flyer with graphics that helped them to understand the process for registering and updating information with caseworkers. She produced these on the office copier machines and left them at the reception desk. The reception secretary appreciated them but no one else ever acknowledged or mentioned her initiative.

On at least three occasions in the past eight months her Supervisor asked her to join him for dinner after work. Fortunately she had other engagements and the second time could show that her sister was waiting for her in the lobby. The third time was a little uncomfortable when her Supervisor insisted, in a jocular way, that her refusals were insulting to him.

By the time of her next mid-year review, one of her cohort had been promoted, another had left and the remaining man was congenial enough but not very productive. Her review was average and her Supervisor was vague about areas that she needed to improve. In answer to her questions about a recent spate of retirements, he indicated that there were no positions possible for promotion at this time and that he did not believe that her temperament was suited to supervising newer administrators.

The following month she had to take three days of compassionate leave to attend an uncle's funeral in her home village about 10 hours away by car. This was approved. The day she left, she remembered that would need to fill out a form for an additional five days' vacation leave. She personally delivered it to her Supervisor's office. The approval was not processed before she left but she was confident that there would be no problem as almost everyone who had to travel far to go home (for compassionate or other types of leave) would generally need several days off to do so.

When she returned she checked to ensure that the paperwork was in order. Her Supervisor told her himself that there was a problem with her application and he had not approved the vacation leave. She expressed disbelief and frustration and asked how to remedy. He looked hard at her and turned away into his office.

When she tried to withdraw money from her account at the end of the month, she realized that her salary had not been paid. She was told by the Human Resources Officer that she is now the subject of disciplinary action because she absconded without confirming that her application was approved. No one in the Human Resources Office would tell her what to do next. She complained to the Ombudsman.

In groups of three acting as Graduate A, the Ombudsman and the Social Services Department Supervisor conduct a mediation using the steps mentioned above.

[Compiled by Arlene Brock, former Director, African Ombudsman Research Centre
University of KwaZulu-Natal, Durban, South Africa]

3. THE INTERNATIONAL AIRPORT RENOVATIONS MEDIATION

Role: Mrs. Ntori - Complainant

Mrs. Ntori had operated a concession for a small snack cart for over eleven years in the airport's main terminal. Although her cart was in a nondescript corner, she did decent business because it was near the corridor that led to the bathrooms. Therefore four years ago she was one of the first concessionaires to learn about the opportunity to lease a small corner store. In addition to snacks she now had space to offer crafts by small local artisans from her home village. She was given a proper five year lease but with the increased rent she had to let go of her one staff and carried the entire burden of operating the store herself. She had excellent relations with Deputy Assistant Manager Kosi who worked with concessionaires and was grateful for his forbearance two year during her late husband's sudden illness and passing.

In March last year, fate struck again when the airport required all concessionaires and tenants to vacate the premises until further notice. Mrs. Ntori was excited about the potential to rejuvenate her business when she learned that the plan for the airport renovations would relocate all of the small stores to the main concourse walkway. Deputy Manager Kosi assured her that when the renovations were complete, she would not need a new lease. Her current lease would be extended to a slightly bigger store with a slightly higher registration fee. During the renovations, she was allowed to operate with her original cart.

As the renovations were nearing completion Mrs. Ntori noticed that three of the larger stores, outlets of the major stores from town, were beginning to be set up. Although they would certainly compete with her for major food items such as the country's famous coffee brands, she was confident that her unique regional crafts would be attractive to local and international travellers. Mrs. Ntori worked hard during the seven months that she was displaced by the renovations to build the inventory of crafts and train her neighbour's daughter to work with her in the new store.

Two months after completion of the renovations Mrs. Ntori had still heard nothing from the management. Then one day she saw people making preparations as if they were about to occupy one of the smaller spaces. She immediately went to speak with airport management. There was now a restructured Management Office of Tenants and Concessionaires. Mr. Kosi was nowhere to be found. The young Deputy Assistant Manager was rude and dismissive. He said that Mr. Kosi knew that he was going to be replaced and should never have made any promises to anyone. In fact, "her" space had already been rented to a concessionaire who would be paying a much higher rent that she would not be able to afford. Moreover, the cart would no longer be consistent with the new image of the airport – she would have to leave the premises within a month.

Mrs. Ntori was distraught. She spent over five months trying to negotiate with the Deputy Assistant Manager and then to get an appointment directly with the Assistant Manager. Finally, she complained to the Ombudsman that her business has been seized unjustly.

[Compiled by Arlene Brock, former Director, African Ombudsman Research Centre University of KwaZulu-Natal, Durban, South Africa]

3.1 THE INTERNATIONAL AIRPORT RENOVATIONS MEDIATION

Role: Deputy Assistant Manager Instructions - Respondent

The airport was entering an exciting phase of modernization. The restructured Management Office for Tenants and Concessionaires was now being run by a new team with a mandate to ensure profitability and efficiency. The previous concessionaires were in various corners of the airport and would now be brought into a new hub that would be heavily trafficked and that would give airport users choices of a wider variety of goods and food. There will also be opportunities for young entrepreneurs.

Concessionaires were vacated for less than a year to allow for renovations which, remarkably, were completed on time, in order to enable the airport to implement the 2nd phase of the rehabilitation project. According to the secretary, they were told “only if you satisfy the following conditions would you be able to return to the premises:

1. formal written application
2. no default on payments for the previous three years
3. stock a good variety of items to adequately satisfy the public desires.”

The young new Deputy Assistant Airport Manager who eventually responded to Mrs. Ntori was of the opinion that she did not quality on any of the conditions as the records show that she was late with three or four months of rent payments within the last couple of years.

When the Ombudsman first notified the Office about Mrs. Ntori’s complaint, the Assistant Manager (who knew that the Airport Manager had earmarked a small but well located store for his nephew, recently graduated from business school.) told his Deputy to handle the matter as he was much too busy with the final implementation plans. Moreover, the Manager did not understand why or accept that the Ombudsman is interfering with a private concessionaire contract.

[Compiled by Arlene Brock, former Director, African Ombudsman Research Centre
University of KwaZulu-Natal, Durban, South Africa]

3.1 THE INTERNATIONAL AIRPORT RENOVATIONS MEDIATION

Role: Ombudsman – Background to Ombudsman’s Instructions

The Ombudsman had not dealt with many complaints in the past about the Department of Civil Aviation. When the Early Resolution Officer contacted the Department to notify them of a complaint, it took three weeks before the head office indicated that he should deal with the new Management Office for Tenants and Concessionaires. After several attempts to get an appointment with the Manager, his secretary arrogantly told the secretary for the Early Resolution Officer that the Deputy Assistant Manager was delegated to handle this matter but would first need to check with the Attorney General’s Chambers to determine if the Ombudsman was allowed to interfere with the Department.

The Ombudsman had a chat with the African Ombudsman Research Centre and was reassured to learn about an old but seminal case from British Columbia in Canada with very similar facts (a restaurant owner was denied return after renovation of the waterfront despite promises that his lease would continue). This case held that government actions and decisions that are not legislative or judicial are certainly subject to Ombudsman jurisdiction – even if they dealt with contractual matters – as long as they were in service of government policy. In this case, the Ombudsman’s preliminary view was that domestic law applied:

- Section 12(1)(b) of The Rent Act of 2001 stipulated that notice for business premises (of the kind of lease that complainant had) must be six months
- A case decided over 18 years ago by the Supreme Court established that long-term concessionaires with lawful leases and who owed no fees or rent should be considered as tenants rather than a mere licensee due to the duration of the relationship.

The Ombudsman decided to designate the Mediation Team to handle given the fact that the parties would need to deal with each other in future if there was an agreement to continue Mrs. Ntori’s lease. He also gave some thought to whether she needed to be compensated for lost profit.

Acting Mrs. Ntori, the Ombudsman and the Deputy Assistant Airport Manager conduct the mediation.

[Compiled by Arlene Brock, former Director, African Ombudsman Research Centre University of KwaZulu-Natal, Durban, South Africa]