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TATUA
FOCUS

The Credit Reference Bureau Legal Clinic

Editor's note

Customer focus

According to a **survey** conducted last year by AMSurvey, Safaricom, KCB Bank, Airtel, Equity Bank and Jumia are brands that came top-of-mind, mentioned by Kenyans as companies that celebrate International Customer Service week. Last year, NIC bank gave out cupcakes, StanBic Bank laid out a red carpet reception for its customers in the banking hall. In DTB Bank, the CEO answered calls personally at the customer care desk live. We saw pictures of other institutions with balloons and ribbons in a bid to make the customer more valued.

More substantial rewards for customers that week were TransUnion CRB giving out 3000 free clearance certificates each valued at Ksh 2200. Due to popular demand, this offer was extended 2 months past the week for clients with a credit score of 740 and above. In another stellar example: Metropol Credit Reference Bureau holds a Super September event every Wednesday of the week at their regional offices countrywide. They have a Crystolbol hot desk where clients get a free credit report and all charges associated with obtaining it are waived.



Customer being served by Metropol staff in the past



Tatua center staff at a public exhibition in the past

“true customer service is judged by the events of a normal business day”

Last year, they invited Tatua Center staff to serve customers at the Barclays Plaza office every Wednesday for the whole month.

Away from the event and fanfare we witnessed this and every other first week of October, true customer service is judged by the events of a normal business day of a random Wednesday in the middle of a small town in the medium sized branch that has an average of 25 clients to be served by each staff member. From the moment a customer enters the business premises, to when they exit, there should be a seamless flow of quality business. All staff should give their clients a keen audience to their inquiry, swift remedial action recommendation and where possible, a list of options as solutions each with their implications, offer assistance in implementing the solution and then go the extra mile to offer assistance off site. I am advocating for personalized attention per excellence, from the guard to the manager. The organizational culture must be customer focused, In any case, this is one sure way of boosting revenue. That is the litmus test for how customers can be handled and the reason why, we believe, many cases at Tatua Center are unsubstantial. Does that sound like a bomb? It is the truth.

It is a hard to shake off fact that Tatua Center cases arise from poor customer service. In fact, we estimate that over 90% of the frequent calls we receive are from customers who believe that they have paid their loans but whose record at the CRB reflect the contrary and are now hindered to take the next credit product.

Elements of customer service like:

- Making the terms and conditions readily available in an easy to read format
- Giving simple answers to frequently asked questions
- Allowing the customer to know the status of their accounts immediately will go a long way to reduce the burden of clients running around, looking for someone to compel lenders to share their personal information.

So before we cut the ribbons and share a cake at the office in celebration of the trophies from the Customer service championships, consider that in the mundane is where the distinction lies.

Yours,

-EVA SILONG OLOISHORUA,
Tatua center facilitator.

National Roll out of Court Annexed Mediation

The CRB Regulations, 2013 provide for a myriad of rights for customers. Chief among these rights is the right to have any information contained in the CRB database that is inaccurate, erroneous or outdated to be corrected.¹ This is the cardinal cornerstone for data quality in the credit reporting mechanism.

The most favored form of alternative dispute resolution in Kenya post-2010 Constitution is mediation. This informed its selection by Tatua Center as the appropriate form of dispute resolution for disputes that arise from credit reporting.

Mediation has the potential to address complex cases, including those involving companies in conflict.

¹ Regulation 35

It is not bound by the rules of litigation, allowing more space for creative resolution. It is a solution by the parties, for the parties. As mediator Geoffrey Njenga puts it: "Most disputes are not about facts, they are about injured emotions. Mediation allows aggrieved parties to release emotions, allows them to feel heard in the language that they understand best."

On 21st July 2017, the Chief Justice gazetted an appointed Taskforce on ADR mechanisms used to access justice in Kenya-Court Annexed Mediation. This was a monumental milestone towards implementing Article 159(2)(c) that implores courts and tribunals to promote the use of ADR in resolving disputes.



Manage conflict proactively and reduce the prospect of litigation and the negative impact that accompanies adversarial proceedings or relationships
It can save substantial costs and resources.
Enables confidential dialogue in a safe environment



Quick to set up and it can help to preserve and even rebuild relationships

ADR

is a process through which a neutral, independent 3rd party who is qualified in that field assists the parties to come up with a resolution of their dispute.





“Most disputes are not about facts, they are about injured emotions. Mediation allows aggrieved parties to release emotions, allows them to feel heard in the language that they understand best.”

**-GEOFFREY NJENGA
MEDIATOR**

The taskforce is to formulate an appropriate judicial policy on Court Annexed Mediation and to suggest ways of doing so. The end goal is to roll out the Court Annexed Mediation nationally. The Judiciary has been piloting the Court Annexed Mediation Project within the Family and Commercial Divisions of the High Court in Millmani Law Courts.

Mediation has increasingly gained traction and is becoming an important alternative means of settling legal disputes. As mediation has matured into an acceptable alternative, it has bred ADR organizations that offer training and set out ethical expectations, certifications and provide some guidance.

Most institutions try to avoid getting into court by negotiating their way to an acceptable outcome before a dispute escalates to the point that legal action is threatened or begun. Modern risk avoidance and preventive lawyering practices dictate the need for dispute resolution clauses that embrace negotiation and mediation prior to and during any legal action.

If institutions establish independent mediation arrangements such as an in-house mediation scheme, they can manage conflict proactively and consequently reduce the prospect of litigation and the negative impact that accompanies adversarial proceedings or relationships, whilst frequently saving substantial costs. Further, the process enables confidential dialogue in a safe environment, it is quick to set up and it can help to preserve and even rebuild relationships

Simply put, mediation will always increase the chance of settling any dispute. This is especially the case for those disputes which are still at an early stage before the parties have become polarised. However, mediation can be effective at any stage of the process. In summation, effective mediation will generally save costs and resources, reduce hurt and stress, and solve problems through dialogue rather than litigation.

Financial institutions should join the MEDIATION trend by ensuring they develop an ADR policy that proposes measures of early detection and resolution of disputes that arise during their normal operations.

As we say at Tatua: “An ounce of mediation is worth a pound of arbitration and a ton of litigation!”

-ERICK ONDERI

Advocate of the High Court of Kenya.

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Answers to TATUA'S Hard Questions



Hannah Ndarwa Karuri
Tatua center registrar, talks about Tatua center's task and mission

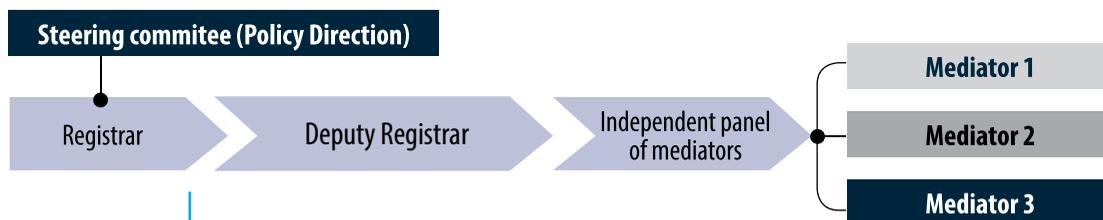
1 What is Tatua center?

An Alternative Dispute Resolution Center that exists to resolve disputes in the Credit information sharing Industry in Kenya. It is founded on Regulation 28 of the CRB Regulations 2013 as well as the World Bank Credit Reporting Principles.

Our partners include:

- Credit Information Sharing Association of Kenya
- Judiciary of Kenya
- Consumer Federation of Kenya
- Central Bank of Kenya
- Kenya Bankers Association
- Credit Reference Bureaus
- Nairobi Center for Arbitration

Tatua center structure



2 What are you tasked to do?

Our principal job is to resolve disputes arising from credit information sharing in Kenya. The **World Bank General Principles for Credit Reporting**¹ espouse that the legal and regulatory framework of CIS should include effective judicial or extrajudicial dispute resolution mechanisms. The **IFC Credit reporting Knowledge**² guide supports this further under consumer protection considerations.

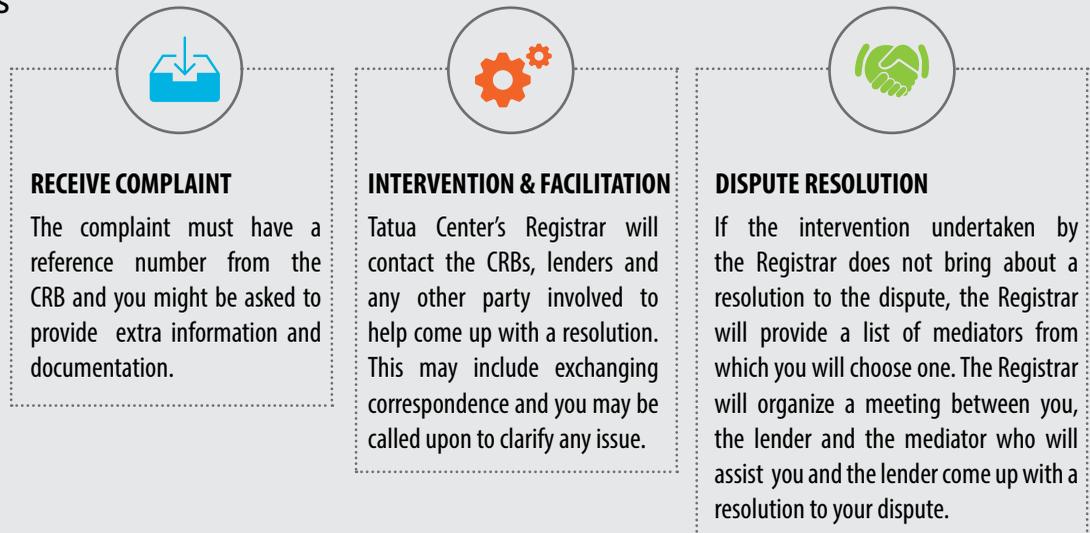
The Judiciary of Kenya also recognizes the essential role that Alternative Dispute Resolution centres like ours play in reducing backlog at court and since 2015 has put in place a procedure called **court annexed mediation**³. This is a screening process for all cases that are filed at Milimani Law Courts Commercial Division undergo to ascertain that it can and should be referred to centres like ours before litigation processes begin. This screening uses a range of internationally accepted criteria and has been mandatory for all cases since April 2016.

In summary we are a remedy to the inevitable errors that arise in the age of big data entry, exchanges, storage and management.

Our mandate is supported closely by consumer education and financial literacy exercises. For this reason our center has an active phone line and social media pages to facilitate conversations about disputes in our sector. We also have an open door policy and as a result handle more walk in clients from the general public than corporate clients. Over time, we have been deliberate that Tatua center communication is not framed in financial terms and is aimed at getting the simplest of client's attention.

That said, we listen to our clients as a neutral party, we are keen to have a balanced assessment of the lender and the borrower. When the 'complainant' speaks we verify concerns raised by complainants against documents presented to us and by contacting the respondent and asking them to present documents to facilitate our understanding of the full picture.

OUR PROCESS



¹ <http://documents.worldbank.org/curated/en/662161468147557554/General-principles-for-credit-reporting>

² <http://www.ifc.org/wps/wcm/connect/0f572a804dde8d028f9daf7a9dd66321/Credit+Reporting+lowres+NEW.pdf?MOD=AJPERES>

³ <http://kenyalaw.org/kenyalawblog/wp-content/uploads/2016/04/Court-Annexed-Mediation-at-the-Judiciary-of-Kenya..pdf>

3 What is a typical day in Tatu center?

There is never a typical day, it is always different. Our phone will ring from a consumer of credit on one issue and a credit provider will write an email on another issue and that's about it. The rest is a range of events.

4 What is the most common cause of cases?

This can be answered in two ways: Non-substantial disputes are caused by lack of information and are the easiest to resolve. Kenyans are happy to know their rights, obligations and privileges.

So when we show misinformed the terms, conditions, law, regulations..e.t.c, they are happy to take up responsibility and leave. The other causes of disputes and specifically of substantial cases, without getting into details are: Fraud, identity theft, data loss (due to system upgrade or swap), finally, human error. The rest of the the causes are not as rampant but equally important, such include privacy breaches.

5 What is a good day at Tatu center?

When we reach a mutually agreed settlement, that is always a great day. We have clients who become so overjoyed, they pray for us, they offer to pay for our already free services, they want to go to media to testify that we have helped them... the full range of emotions. The corporate clients always walk away with such a sense of achievement, they mark it as a career milestone. That is significant for us.

6 Is there a particular case that comes to mind you want to share?

I'll talk of two;

The first is quite sad. One gentleman was erroneously listed and couldn't get credit. The problem was that he needed it to take his son abroad for urgent medical care. Because he couldn't get the credit, they couldn't travel and his son passed away. After the funeral and since he was sure that he hadn't taken credit from the lender. He followed the right channels of redress and ended up at our Center. Until this point, the lender wasn't willing to listen to him but when they came to the mediation table, he had compelling proof that he did not borrow from the said lender and the inaccurate entry was deleted. The lender apologized. In retrospect, we all questioned if we could have saved a life had the lender listened and corrected the error expeditiously. But we will never know and we all regretted that. The client accepted an apology from the lender. The big lesson here was that hostility to a probing client is detrimental in some cases. The lender walked away with a recommendation to train its staff on customer care skills.

Another one is hilarious. We have given this client a nickname- the textbook guy! We had a client who called and asked to come to our offices, we gave him an appointment he did not sound dramatic. However, when he came, he was so animated in his description of his problem. He wasn't opening his eyes, he went on an on, gesticulating that he is an armpit, a hot place where it is hard to exhale, and how this problem was a disease to him. We couldn't help but laugh while he went on his barrage of a narrative. He didn't seem to notice that he was comical and now took it a notch higher to

demonstrate that he is a high calibre person who cannot be heard of with such a problem. So he stood and proclaimed 'do you know what I have done for this country? Do you? I'm very sure you've read my books, and that I'm in such a quagmire!?! These are little moneys, I was abroad...how can me, a whole [name withheld] be denied credit by my bank of decades" he was so comical in his supplication but eventually he was assisted, when he was done venting his frustration. It is hard to forget him, he was quite the thespian for an office day!

In between those, I have had clients who couldn't speak in English, who called every day to be told the very same information for the umpteenth time, there are those who want to create shortcuts and cheat the system. There are many unique experiences.

7 Let us talk about you the mediators, what do you think are virtues of Tatu center mediators?

- We reduce a spirited argument to a modest conversation by being level headed.
- We empathise
- We are very thorough: we pick phone calls and respond to emails and facilitate meetings expeditiously, we follow up on our clients post office mediation, in short we have a strong work ethic to deliver results to our clients.

8 How can one become a Tatu center mediator?

This is a great question. First, you need to at least have an understanding of the law on Credit Informations Sharing so as not to find yourself signing a settlement agreement that is outside the law! You also have to be a trained mediator and be available to attend a mediation session upon request. We don't compensate our mediators currently, they do pro bono work.

9 What is a common misperception of Tatu center?

That we are pro-consumer.
This couldn't be further from the truth, we resolve cases on a daily basis that favour the lender, especially where the client did not know their responsibilities. When the lender is on the wrong, we will point that out without bias. We are a neutral party who are interested in seeing that the CRBs hold credible data. And that is in the interest of both the lender and the consumer.

-HANNAH is an advocate of the High court of Kenya, a certified Mediator and a former banker. She enjoys jogging and supports charities that assist children.



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