

# MEDIATION IN THE HIGH COURT

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10 MAY 2015

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Court Accredited Mediation as an option for alternative dispute resolution, was introduced in the High Court of Namibia with the coming into operation of the High Court Rules Published on 16 April 2014. During the period May – June 2014 a total number of 103 court-accredited mediators were trained. During the past three weeks 3 additional training courses were presented during which 74 persons were trained of which 69 will soon be accredited. The aim of alternative dispute resolution in the High Court is two-fold. First and foremost it creates an opportunity to litigants to reduce litigation costs in a controlled environment and secondly it frees up judicial time for the hearing of only those matters which are not susceptible to amicable resolution. More information on mediation in the High Court is contained in our publication, “Mediation Programme in the High Court of Namibia Outreach Paper”, which may be downloaded from our Superior Courts website, [www.ejustice.moj.na](http://www.ejustice.moj.na).

# MEDIATORS

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We currently have 103 court accredited mediators and an additional 69 persons will within the next month be accredited.

All accredited court mediators need to undergo our customized training which is a three day course consisting of theory and practicums

Accredited court mediators are all bound to a Code of Ethics, signed by the mediator before being accredited

Mediators are closely monitored and accreditation is renewed annually.

Re-accreditation is based on performance, personal growth and general compliance with the Code of Ethics and the Rules and Policies of the Court and the Mediation Programme in general.

The majority of our mediators are qualified legal practitioners, but we also have architects, psychologists, judges, magistrates and other professions who are amongst the group.

# 2014 SCHEDULED COURT ACCREDITED MEDIATIONS

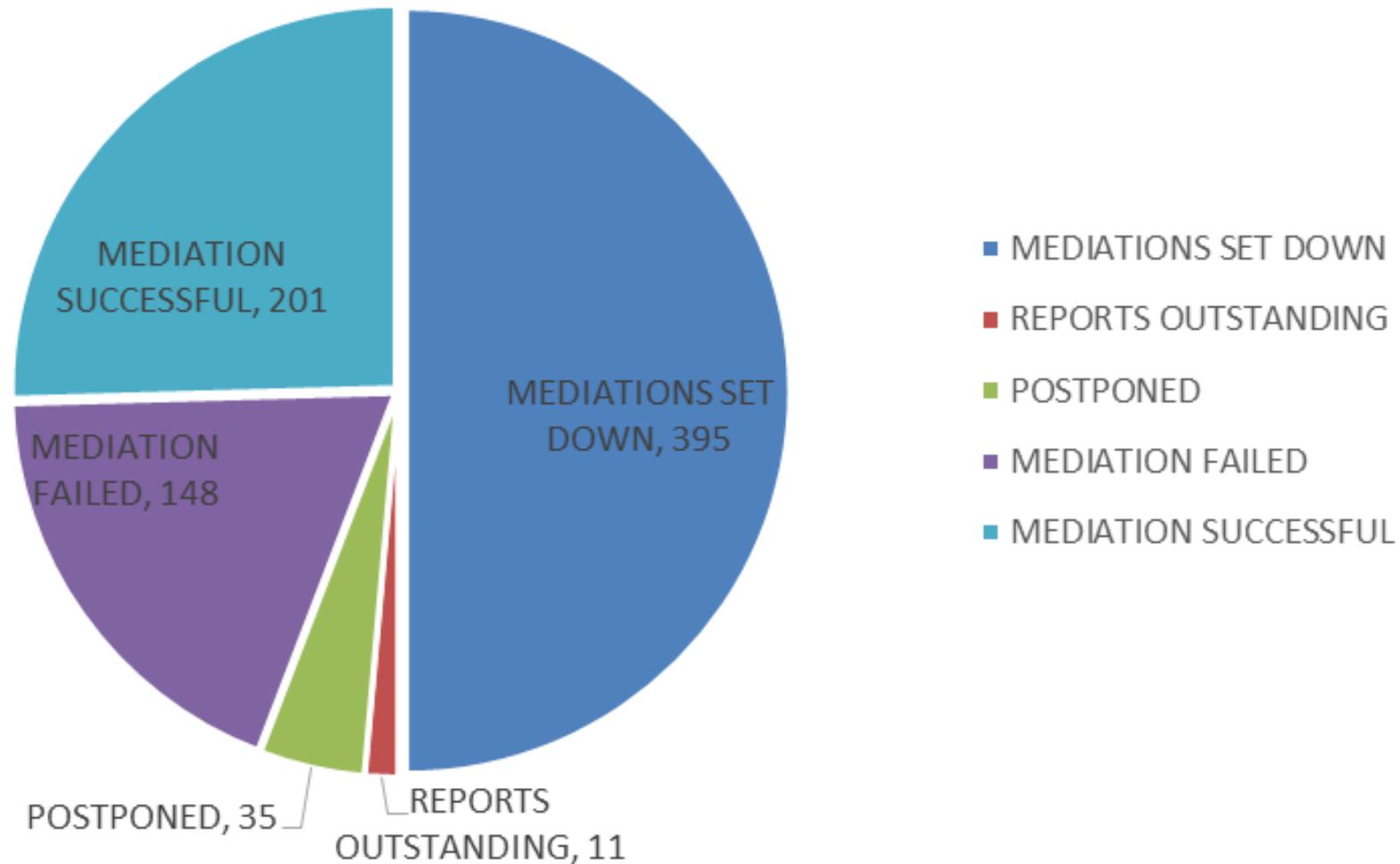
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During the period June – November 2014

The following are statistics on the 2014 court-accredited mediations in the High Court of Namibia:

- \* eighty six (86) of the one hundred and three (103) court-accredited mediators attended to three hundred and ninety five (395) court-accredited mediations in the High Court of Namibia.
- \* Seven (7) [ 1.8%] of the 395 mediations were private court-accredited mediations and three hundred and ninety two (392) were court-connected mediations;
- \* Thirty five (35) [8.9%] of the 395 mediations scheduled could not be concluded during the scheduled sessions and were postponed for continuation during 2015;
- \* In 148 [37.4%] of the mediations the parties could not reach an agreement during mediation, and failed reports have been filed by the mediators;
- \* 201 [50.9%] of the 395 mediations were settled by the parties prior or during the mediation proceedings;
- \* 11 [2.8%] reports are still outstanding at date of publication of this report.

# 2014 COURT CONNECTED MEDIATIONS SCHEDULED June 2014 - November 2014



# 2015 SCHEDULED COURT ACCREDITED MEDIATIONS

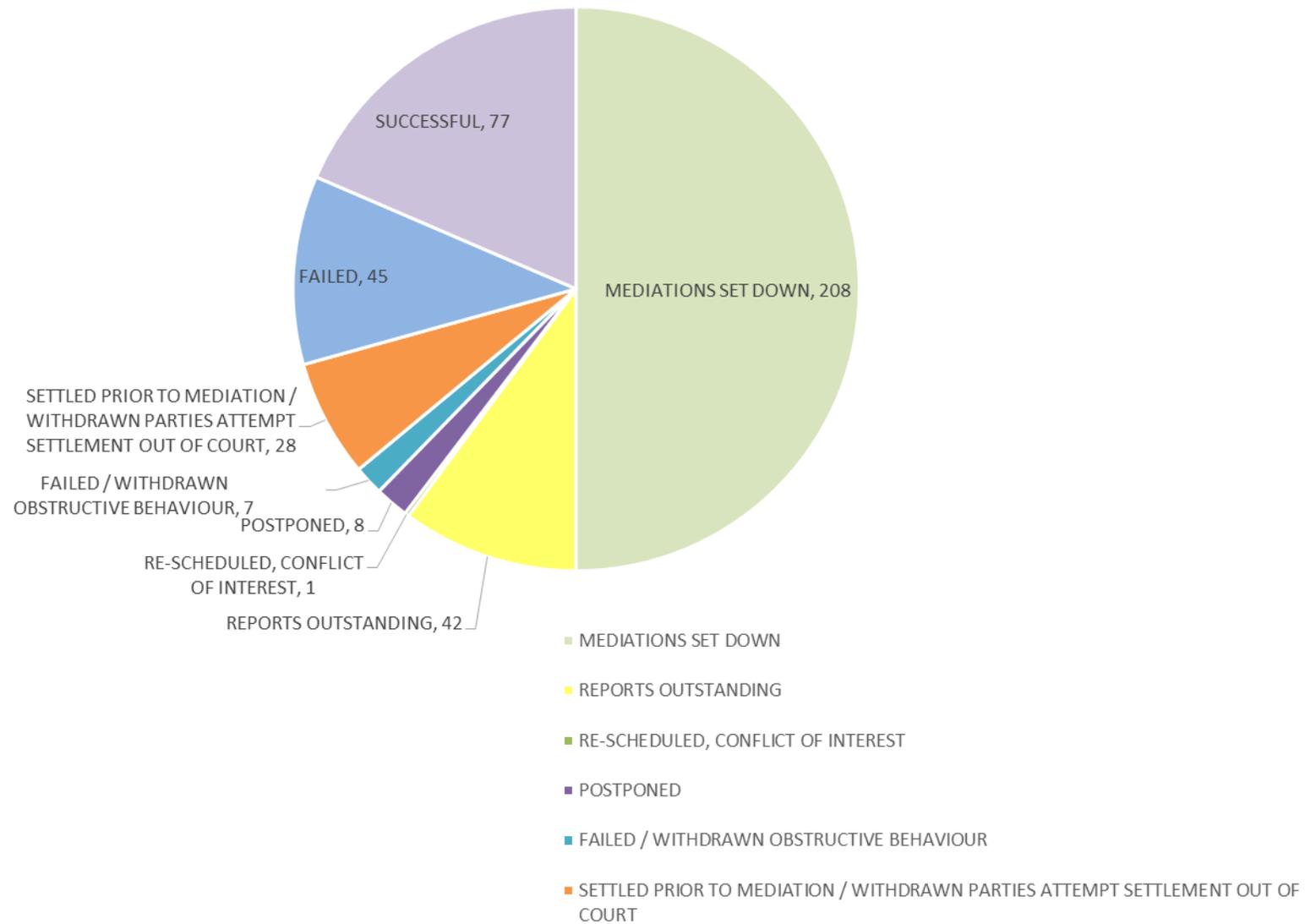
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During the period 16 January 2015 – 4 March 2015 seventy three (73) of the one hundred and three (103) court-accredited mediators attended to 208 (two hundred and eight) court-accredited mediations in the High Court of Namibia. The following are statistics on the 2015 court-accredited mediations in the High Court of Namibia (reflected on 5 March 2015):

- \* Eight (8) [4%] of the 208 mediations scheduled could not be concluded during the scheduled sessions and were postponed for continuation;
- \* One (1) [0.5%] mediation was re-scheduled due to the mediator knowing one of the parties;
- \* 28 [13.5%] of the 208 mediations were settled by the parties prior to the mediation proceedings;
- \* 77 [37%] of the 208 mediations resulted in settlements and was therefor successful
- \* In 45 [21.6%] of the mediations the parties could not reach an agreement during mediation, and failed reports have been filed by the mediators;
- \* 7 [3.4%] mediations failed due to obstructive behavior by one or more of the role players, i.e. representative legal practitioner, plaintiff or defendant
- \* 42 [20%] reports are still outstanding at date of publication of this report (5 March 2015).

# 2015 COURT CONNECTED MEDIATIONS

16 January 2015 - 4 March 2015



# FAILURE versus SUCCESS

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Court Connected Mediation in the High Court of Namibia has shown to be a huge success.

The success is seen from the statistics of the reported mediations which actually took place and were finalized.

Of the three hundred and forty nine (349) reported mediations concluded during 2014, a total number of 201 (57,6%) were successful, whilst 148 were unsuccessful (40,4%).

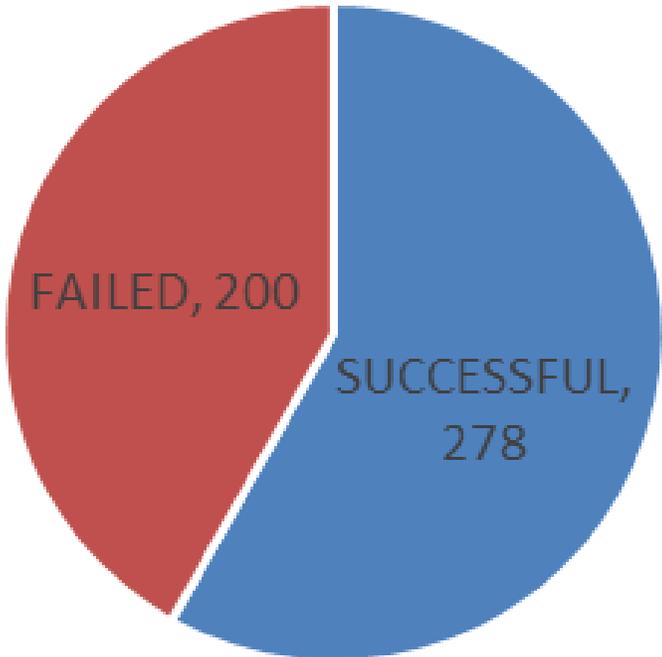
During 2015, one hundred and twenty nine (129) reported mediations were concluded, of which 77 (59,7%) were successful and 52 (40,3%) failed.

The total figures for the period June 2014 – 4 March 2015, thus amounts to:

- \* 478 reported mediations concluded
- \* 278 successful
- \* 200 failed

# REPORTED COURT CONNECTED MEDIATIONS

June 2014 - 4 March 2015



■ SUCCESSFUL ■ FAILED

# SAVING LITIGATION COSTS

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The average litigation costs in defended High Court actions amounts to approximately N\$100000 – N\$150000 per litigant, if represented. It is thus a fair assumption to say that the total fees to be paid in respect of the average defended High Court action will amount to approximately N\$200 000 – N\$300 000. The 278 successful mediations in the High Court, therefore amounted to a minimum saving in the hands of the public (litigants) of approximately N\$55 600 000.

The revenue expenditure incurred by the State to conduct 478 court-connected mediations during the period June 2014 – 4 March 2015 amounted to N\$259 896.

# SAVING COURT TIME

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The average High Court action needs approximately 3 court days for trial. It is thus a fair assumption to say that the 278 successful mediations in the High Court, saved at least 834 trial days (2 years 3 months).

In addition to the trial days saved, a considerable amount of court time is saved which would otherwise have been taken up by judicial case management hearings, general court administration, preparation, research and judgment writing.

# CONCLUSION

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In the beginning it was mentioned that the aim of alternative dispute resolution in the High Court is two-fold, namely:

- \* creating an opportunity to litigants to reduce litigation costs in a controlled environment; and
- \* freeing judicial time for the hearing of only those matters which are not susceptible to amicable resolution.

We may thus conclude to say that court connected mediation is successful in respect of both the aforementioned aims, in that in less than one year, it amounted to an approximate saving to litigants in the amount N\$ 55 600 000 and it provided at least 834 trial days to other cases not being susceptible to amicable resolution