

Mediation ADR process must be utilised for dispute resolution

“FOR a long time, the formal court system has been the main process for resolving disputes and has been inundated with many cases quite unnecessarily resulting the process being overburden with cases. Now mediation with other forms of ADR is fast becoming accepted worldwide as preferred forms of

dispute resolution. All these have one purpose. That purpose is to deliver justice to our people” That’s from the acting Chief Justice Ambeng Kandakasi during one of the first ever Continuing Legal Education event hosted in PNG. As a lay person that attended

this event specifically for Lawyers, the acting Chief Justice presentation really made sense when he challenged Lawyers as gatekeepers to play an important role in enabling clients, to make choices for the use of mediation and other appropriate, active and assisted (ADR) forms of dispute resolution.

In this edition also we bring to you the 10th Commercial Litigation workshop at LTI attended by a group of visiting lawyers and judges both from Australia and Papua New Guinea We once again urge you our valued readers to contribute to these two pages with comments, issues and queries that you may

have. The Office of the Registrar of the Supreme and National Court can explain, clarify or assist you in your queries.

CONTACT the Editor Courts on this email tkelola@spp.com.pg



FACILITATORS of the event. From left: DCJ Ambeng Kandakasi, CLA Council member for PNG David Denniston, Justice John Logan, King's Counsel Andrew Crowe, Lawyer Sarah Kuman, Lawyer Eunice Parua, Senior Lawyer Richard Flynn and Senior Lawyer Michael Sullivan.

Kings Counsel highlights mediation process



KINGS Counsel Andrew Crowe

First continuing legal education event a success

THE first ever Continuing Legal education event for PNG lawyers held here in the country, has being hailed as a very big success. The event which was organized by the Commonwealth Lawyers Association (CLA) PNG in collaboration with the PNG Law Society, PNG Centre for Judicial Excellence (PNGCJE), the Bar Association of Queensland, the PNGAus Partner-

ship, LLS Lawyers, Ashurst, Allens Linklaters and vLex was held at the Crown hotel on Tuesday. Participants mainly lawyers left the meeting feeling satisfied with the topics and presentations. Facilitators were senior counsels, a Kings counsel, a senior Judge John Logan and the Deputy Chief Justice Ambeng Kandakasi. The topics covered yesterday were

advocacy in mediation, Personal Property Security Act fundamentals, recent changes to the Companies Act, Investment Promotion Act and the Associations Incorporation Act, recent legal developments with respect to mergers & acquisitions and listing on the PNG Stock Exchange. Senior Judge of the Supreme Court Justice Logan in summing up the Le-

gal Education event said “ One of the hall marks of the learned profession is the transference of knowledge and experience, another hall mark in the legal profession is that Judges take an active interest in delivery of continuing professional development as part of judicial role as displayed today with the participation of the acting Chief Justice Ambeng Kandakasi.

MELYNE BAROI

ONE of Australia’s top lawyer Andrew Crowe who is a the King’s Counsel addressed a room filled with some of Papua New Guinea’s top commercial lawyers yesterday in Port Moresby, in which he made strong emphasis on the usage of the mediation process saying it is an effective way to settle disputes between companies. Mr Crowe said that Australia has seen mediation to be an effective method to lessen the burden on the courts as it is prompt, cost-effective and promotes a win-win result. “In Australia we see only about 5 percent of commercial disputes go to trial through the normal court process while the rest settle in mediation,” he said. He added that as commercial lawyers it is important to have a “broad and imaginative mind” when approaching cases of dispute by working closely with the mediator whilst concentrating mostly on the interest of their parties without being too technical. “Remember of course that the mediator is also observing the body language and power-dynamics in your room. I suggest that you do not try to stop your client from showing genuine emotions such as anger and frustration. If the matter settles, the client will miss the opportunity of telling the client’s story in court. Let the client talk, let the client tell the mediator the client’s story” he said. The King’s Counsel added that lawyers have to understand the mediation process well and translate that understanding to their clients in order to effectively and efficiently use the mediate process to their client’s advantage. He said that mediation is a process of understanding each parties’ position in the dispute and by working alongside the mediator, they can settle the disputes quickly. He further elaborated that mediation trainings should be promoted in schools to help the avoid the long and costly court processes.

ADR mediation accepted worldwide: Kandakasi



PARTICIPANTS at the event listen attentively to Justice Kandakasi highlighting international mediation. PICTURES SUPPLIED

“NEGOTIATED outcome brings better solutions.” That’s from the Deputy Chief Justice Ambeng Kandakasi when making a presentation at the PNG Continuing Legal Education for lawyers at the Crown Hotel in Port Moresby yesterday evening. Justice Kandakasi who is currently the acting Chief Justice stressed on the importance of mediation and Alternative Dispute Resolution (ADR) apart from main court hearings. He said mediations or ADR plays a pivotal role in ensuring prompt settlements of disputes in a timely manner and with less cost. He stressed that mediation resolves disputes there and then apart from lengthy litigations in the formal court process that often accumulate a lot of costs. “Peace in societies and the world is dependant amongst others on the prompt, efficient and effective resolution of disputes. The world has evolved from a history of an eye for an eye and a tooth for a tooth to a

more civilized and structure form of resolving conflicts. “At the highest for many have been and still is the formal courts. Much of the resources and focus has been and continues to be given to the formal courts and rightly so. Naturally this has and continues to cause more and more disputing parties to turn to the courts for a resolution of their conflicts. That has in turn caused the problem of backlogs in the courts’ lists worldwide with final outcomes arrived at, after much delay. “By than some parties have died or a have been liquidated whilst others have adjusted to pursue other businesses or pursuits, or in the worst-case scenario, armed conflicts as the only inevitable consequences. In that context, there is compulsion for the courts, judges, and magistrates worldwide to adjust their processes and procedures to enable a prompt resolution of all matters getting into their lists,” Justice Kandakasi said. The rules relating to the Accreditation, Regulation and Conduct of Me-

diators (the ADR Rules) define mediation as a process a mediator uses to help parties in a dispute to identify their disputed issues, develop and evaluate options, and enable them to make their own decisions about how to forward and or enhance their communication in a way that addresses their mutual needs with respect to their individual interests and enable them to reach their own agreement or make a decision based on the principle of self determination and includes blended processes and customary forms of mediation. Justice Kandakasi who is an accredited mediator and heads the ADR of the National Court have conducted number of mediations in resolving disputes especially on land matters and landownership in the resource areas of PNG. With the vast experience, Justice Kandakasi encouraged lawyers to look at mediation as a means of resolving disputes in a timely and cost effective manner rather than taking lengthy approaches through the for-

mal litigation process. He said for too long, the formal court system has been the main process for resolving disputes and has been inundated with many cases quite unnecessarily resulting in the process being overburden with cases. “Now mediation with other forms of ADR is fast becoming accepted worldwide as preferred forms of dispute resolution. All these have one purpose. That purpose is to deliver justice to our people. That being the case, there is an imperative for the formal court process and those involved with it to accept mediation and ADR as useful as friends and work in collaboration or in cooperation with them to better deliver justice. He said Lawyers as gatekeepers have an important role to play in enabling clients, the people, to make choices for the use of mediation and other appropriate, active and assisted (ADR) forms of dispute resolution.