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Enforcing Mediation Settlements in Insurance and Commercial Disputes: A Comparative Analysis of Tanzania and England

ABUBAKAR ISSA MTUWA*

ABSTRACT

This article critically examines the legal and institutional frameworks governing the enforcement of mediated settlement agreements in commercial insurance disputes within Mainland Tanzania, offering a comparative analysis with the legal system of England and Wales. It evaluates whether the statutory architecture anchored in the Constitution of the United Republic of Tanzania, the Insurance Act, the Arbitration Act, and the Civil Procedure Code provides an effective, binding, and directly executable pathway for policyholders and commercial actors when underwriters default post-settlement. The analysis demonstrates that while Tanzania possesses constitutional and legislative encouragement for Alternative Dispute Resolution (ADR), the enforcement framework suffers from structural fragmentation. Settlements reached before administrative bodies such as the Tanzania Insurance Ombudsman lack direct statutory executive force and are downgraded upon default to simple contracts under the common law doctrine of accord and satisfaction. Consequently, aggrieved parties are legally compelled to institute fresh, protracted breach-of-contract lawsuits under Order VII of the Civil Procedure Code rather than securing direct execution under Order XXI. Drawing upon doctrinal analysis, comparative legal principles, and access-to-justice theory, the article assesses England's integrated framework under the Financial Services and Markets Act 2000 and the Civil Procedure Rules, which grant statutory finality and direct summary execution to ombudsman awards and mediated agreements. It concludes that statutory reform establishing a direct summary court-registration mechanism is indispensable to realizing commercial certainty and procedural justice in Tanzania.

Keywords: *Alternative Dispute Resolution, Commercial Insurance, Settlement Enforcement, Insurance Ombudsman, Accord and Satisfaction, Civil Procedure Code, Access to Justice*

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I. INTRODUCTION

Access to civil justice and the preservation of commercial certainty represent two fundamental pillars of any functional legal system, particularly within developing economies where commercial enterprises and individual policyholders depend upon predictable risk-allocation mechanisms. Cappelletti and Garth's seminal exposition established that modern access to justice concerns not merely the formal proclamation of substantive rights on the statute book, but the practical capacity of litigants to enforce those rights through procedures that are accessible, expeditious, and affordable.[1] Rhode has similarly observed that meaningful justice requires structural legal arrangements that prevent stronger institutional litigants from exploiting procedural delays to defeat legitimate claims.[2] In Mainland Tanzania, this imperative is enshrined in Article 107A(2)(b) and (d) of the Constitution of the United Republic of Tanzania, 1977, which direct the courts not to delay the dispensation of justice without reasonable ground and to promote and enhance dispute resolution among the parties to a dispute. This constitutional directive establishes an unambiguous normative command to foster dispute resolution frameworks capable of delivering final and enforceable remedies outside adversarial court litigation.[3]

In the specialized realm of commercial insurance, the constitutional directive assumes immediate economic importance. Commercial insurance contracts serve as fundamental risk-mitigation instruments designed to safeguard corporate capital, preserve liquidity, and facilitate trade. When losses occur, the prompt indemnification of claims is essential to prevent corporate insolvency and maintain public confidence in the financial sector. Recognizing the burdens of traditional court litigation, Tanzania enacted the Insurance Act, establishing the Tanzania Insurance Regulatory Authority (TIRA) and creating the Insurance Ombudsman Service under Part IX to resolve disputes between insurance consumers and insurers, which the Insurance Ombudsman Regulations direct it to do through mediation, reconciliation or arbitration.[4] However, the practical utility of any Alternative Dispute Resolution (ADR) process hinges entirely upon whether its final outcomes can be given swift legal effect.

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[1] Mauro Cappelletti & Bryant Garth, *Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective*, 27 BUFF. L. REV. 181 (1978).
[2] DEBORAH L. RHODE, ACCESS TO JUSTICE (2004).
[3] CONSTITUTION OF THE UNITED REPUBLIC OF TANZANIA, 1977 (Cap. 2 R.E. 2023), art. 107A(2)(b), (d).
[4] Insurance Act, Cap. 394 R.E. 2023, ss. 5, 122 (Tanz.); Insurance Ombudsman Regulations, 2013, reg. 15(1) (Tanz.); *see generally* Aderickson H. Njunwa, *Legal Guarantees for the Establishment and Functionality of Ombudsman Institution: A Case for the Insurance Ombudsman Service of Tanzania*, 1 AFRICAN JOURNAL OF LAW AND PRACTICE 30 (2025), https://doi.org/10.61538/afjlp.v1i2.1790.

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Where a mediated compromise reached before an administrative ombudsman lacks self-executing force, the promise of informal dispute resolution is severely undermined.

The central problem animating this article is the procedural trap that arises when an underwriter defaults on a mediated settlement brokered under the Insurance Ombudsman scheme. Under current Tanzanian civil procedure and statutory law, an out-of-court administrative settlement operates merely as a simple contract under the common law doctrine of accord and satisfaction.[5] If an insurer refuses to perform its settlement obligations, the aggrieved policyholder cannot apply directly for execution under Order XXI of the Civil Procedure Code.[6] Instead, the policyholder is legally compelled to file a fresh breach-of-contract lawsuit under Order VII of the Civil Procedure Code, thereby returning to the formal judicial process and defeating the speed and cost-efficiency that mediation was designed to achieve.[7] By contrast, England has developed an integrated legal architecture under the Financial Services and Markets Act 2000 and the Civil Procedure Rules, granting statutory finality and direct execution channels to ombudsman determinations and mediated settlements.[8] The purpose of this article is to critically examine the legal and institutional framework governing mediation settlement enforcement in commercial insurance disputes in Tanzania, evaluate comparative lessons from England, and propose targeted statutory reforms.

II. Conceptual and Theoretical Foundations of Settlement Enforcement

An inquiry into the enforcement of mediation settlements requires visualizing the conceptual boundaries that separate consensual dispute processing from state-backed execution. In commercial contract jurisprudence, an insurer is defined as a licensed underwriting corporate entity contractually bound to indemnify the insured against specified contingency risks in exchange for premium consideration, operating under a duty of utmost good faith.[9] The insured, whether a retail consumer or commercial enterprise, maintains a legitimate expectation of prompt claim adjustment and compliance with valid compromise agreements.[10] Mediation

[5] English authority on the doctrine includes *British Russian Gazette & Trade Outlook Ltd. v. Associated Newspapers Ltd.*, [1933] 2 KB 616 (CA) (Eng.), and *D & C Builders Ltd. v. Rees*, [1966] 2 QB 617 (CA) (Eng.). Mainland Tanzania received the common law in force in England on 22 July 1920 under the Judicature and Application of Laws Act, Cap. 358 R.E. 2019, s. 2(3) (Tanz.); English decisions after that date are persuasive authority there, not binding.

[6] Civil Procedure Code, Cap. 33 R.E. 2023, s. 2, First Schedule, Order XXI, r. 10 (Tanz.).

[7] Civil Procedure Code, Order VII.

[8] Financial Services and Markets Act 2000, c. 8, §§ 228–229, sch. 17 (UK); John Birds & Katie Richards, Birds' Modern Insurance Law (12th ed. 2022).

[9] MacGillivray on Insurance Law (John Birds, Ben Lynch & Simon Paul eds., 14th ed. 2018).

[10] C.J. Mashamba, Alternative Dispute Resolution in Tanzania: Law and Practice (2014).

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represents a non-adjudicative procedure wherein an impartial neutral facilitates negotiations between disputing entities to secure a mutually acceptable compromise. When mediation succeeds, the resulting instrument is a mediated settlement agreement: a formal document recording the mutual covenants intended to resolve the underlying controversy.[11]

Doctrinal precision demands a clear distinction between the concepts of enforcement and execution. Enforcement is the general legal process through which rights, duties, or settlement terms are recognized as binding and given legal effect by judicial authority. Execution, by contrast, constitutes the terminal stage of legal procedure whereby an existing judicial decree or court order is directly carried into practical effect through compulsory state measures, such as asset attachment, bank garnishment, or liquidation.[12] Under conventional contract theory, a mediated settlement possesses legal bindingness, meaning neither party can unilaterally repudiate its terms. However, bindingness does not equal direct executability. In the absence of specific statutory mechanics converting an administrative compromise into a judicial decree, an unperformed settlement remains an unexecuted promise, leaving the non-defaulting party with a right of action but no immediate enforcement remedy.[13]

This study is anchored theoretically in Institutional Theory, complemented by Access to Justice Theory and Rule of Law doctrines. W. Richard Scott's Institutional Theory conceptualizes institutions through three supporting pillars: regulative (laws, governance, sanctions), normative (values, expectations), and cultural-cognitive (shared understandings).[14] Applied to Tanzania's Insurance Ombudsman Service, Institutional Theory reveals an institutional mismatch. The Ombudsman scheme possesses robust normative and cognitive authority, as commercial policyholders view the forum as an accessible venue for resolving disputes. However, its regulative pillar remains defective because the statutory framework provides no direct execution channel to enforce its outcomes upon default.[15] The institution can facilitate agreement, but it lacks coercive judicial machinery, creating a gap between administrative dispute resolution and judicial execution.

Access to Justice Theory, particularly as formulated in Cappelletti and Garth's "third wave" of civil justice reform, emphasizes the structural transformation of dispute processing mechanisms to ensure that legal remedies are proportional, accessible, and effective.[16] In commercial

[11] ADRIAN ZUCKERMAN, ZUCKERMAN ON CIVIL PROCEDURE: PRINCIPLES OF PRACTICE (4th ed. 2021).
[12] Civil Procedure Code, Order XXI.
[13] Civil Procedure Code, s. 2, Order XXI.
[14] W. RICHARD SCOTT, INSTITUTIONS AND ORGANIZATIONS: IDEAS, INTERESTS, AND IDENTITIES (4th ed. 2014).
[15] Njunwa, *supra* note 4, at 61–62.
[16] Cappelletti & Garth, *supra* note 1.

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insurance, forcing an insured party who has completed an administrative mediation to initiate a fresh breach-of-contract lawsuit transforms ADR into an additional layer of delay and expense rather than a practical avenue of justice. Furthermore, Galanter's classic analysis of how institutional "repeat players" dominate "one-shot" litigants illustrates the structural disadvantage faced by policyholders.[17] Insurance underwriters, as repeat litigants, can strategically exploit procedural delays to force impecunious claimants into discounted post-settlement compromises. Rule of Law theory, as articulated by Lord Bingham and Joseph Raz, dictates that legal remedies must be predictable, clear, and executable without unreasonable expense.[18] The absence of a summary execution framework for mediated settlements undermines these theoretical principles, turning consensual resolutions into procedural detours.

III. Constitutional and Statutory Framework Governing Settlement Enforcement in Tanzania

The legal architecture governing commercial insurance dispute resolution in Mainland Tanzania is anchored in the Constitution of the United Republic of Tanzania, 1977. Article 64(5) establishes the supremacy of the Constitution: any other law that conflicts with it is void to the extent of the inconsistency.[19] Article 13(6)(a) guarantees the fundamental right to a fair hearing when a person's rights and duties are being determined by a court or any other agency.[20] Crucially, Article 107A(2)(b) and (d) direct the courts not to delay justice without reasonable ground and to promote and enhance dispute resolution among the parties.[21] In *Kukutia Ole Pumbun v. Attorney General*, the Court of Appeal of Tanzania struck down a statutory requirement of ministerial consent before the Government could be sued, as an unconstitutional restriction of the basic right of access to the courts.[22] Applied to commercial insurance, this principle requires that statutory rights to indemnification and mediated settlement agreements be supported by functional enforcement procedures.

Despite this constitutional foundation, Mainland Tanzania's statutory framework reveals a sharp procedural divide between adjudicative ADR outcomes and consensual mediation settlements. The Arbitration Act serves as the primary statutory framework for adjudicative commercial dispute resolution.[23] Under Section 68 of the Arbitration Act, an award made under an arbitration

[17] Marc Galanter, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change*, 9 Law & Soc'y Rev. 95 (1974).
[18] Tom Bingham, The Rule of Law (2010); Joseph Raz, *The Rule of Law and Its Virtue*, 93 L.Q. Rev. 195 (1977).
[19] Constitution of the United Republic of Tanzania, 1977, art. 64(5).
[20] Constitution of the United Republic of Tanzania, 1977, art. 13(6)(a).
[21] Constitution of the United Republic of Tanzania, 1977, art. 107A(2)(b), (d).
[22] *Kukutia Ole Pumbun & Another v. Attorney General*, [1993] TLR 159 (CA) (Tanz.).
[23] Arbitration Act, Cap. 15 R.E. 2023 (Tanz.).

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agreement may, by leave of the court, be enforced in the same manner as a judgment or order of the court, and under Section 79 an award that the court is satisfied is enforceable is deemed to be a decree of that court, executable under Order XXI of the Civil Procedure Code.[24] Similarly, Section 78 of the Arbitration Act provides for the recognition and enforcement of domestic and foreign arbitral awards on grounds that track Tanzania's obligations under the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, granting international arbitral awards direct execution channels.[25] Thus, adjudicative arbitral outcomes benefit from a statutory framework that connects dispute resolution directly to state-backed execution.[26]

In contrast, non-adjudicative mediation settlements reached outside court lack any comparable statutory execution pipeline. The Insurance Act consolidates the regulation of insurance business in Tanzania, empowering the Tanzania Insurance Regulatory Authority (TIRA) under Part II to oversee market conduct and protect policyholders.[27] Part IX of the Insurance Act creates the Insurance Ombudsman Service, which Section 122 establishes to resolve disputes between insurance consumers and insurers.[28] The operational details are specified in the Insurance Ombudsman Regulations, 2013, under which the Ombudsman conducts mediation, reconciliation and arbitration and determines complaints through those methods.[29] Regulation 16(3) makes a determination of the Ombudsman binding on the insurer concerned, and Regulation 21 requires an award to be complied with within thirty days.[30] However, neither the Insurance Act nor the Ombudsman Regulations contains any provision establishing a summary registration procedure to convert an unperformed settlement into an executable court decree.

IV. The Civil Procedure Code and the "accord and satisfaction" procedural trap

Because the Insurance Act contains no internal execution framework, an aggrieved party seeking to enforce a defaulted Insurance Ombudsman settlement must navigate the general provisions of the Civil Procedure Code. The Code regulates court-annexed mediation under Order VIII, where a mediation ends when the parties execute a settlement agreement and the

[24] Arbitration Act, ss. 68, 79; Civil Procedure Code, Order XXI.
[25] Arbitration Act, s. 78; Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 330 U.N.T.S. 3.
[26] Arbitration Act, ss. 68, 78–79.
[27] Insurance Act, pt. II, ss. 4–12.
[28] Insurance Act, s. 122.
[29] Insurance Ombudsman Regulations, 2013, regs. 6(2)(c), 13(1), 15(1).
[30] Insurance Ombudsman Regulations, 2013, regs. 16(3), 21.

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mediator remits the record to the trial court.[31] The court then records the compromise and passes a decree in accordance with it under Order XXIII, Rule 3; that decree enables the successful party to apply directly for execution under Order XXI, Rule 10 without further litigation.[32] However, this streamlined mechanism applies strictly to compromises reached after a formal civil suit has already been filed in court.

Out-of-court administrative mediations, such as those conducted under the Insurance Ombudsman Service, fall outside Order VIII. When an insurer defaults on an Ombudsman settlement, the agreement is treated under common law principles as an out-of-court compromise subject to the doctrine of accord and satisfaction.[33] Under that doctrine, an out-of-court compromise that lacks statutory decree status operates merely as a new contractual promise. Where the parties accept the promise itself in satisfaction, it extinguishes the original underlying claim and substitutes a new contract. Consequently, if the debtor fails to perform the agreed terms, the creditor cannot obtain execution under Order XXI because there is no judicial "decree" or "order" within the meaning of Section 2 of the Civil Procedure Code.[34]

This legal status forces policyholders into a procedural trap upon insurer default. The policyholder cannot proceed directly to execution; instead, they are legally required to file a fresh civil suit for breach of contract under Order VII of the Civil Procedure Code.[35] Filing a new lawsuit requires drafting a formal plaint, paying court registry fees, serving summons, and waiting through pre-trial procedures and trial hearings simply to prove that a settlement agreement was executed and breached. Forcing parties to litigate breached mediation settlements as fresh contract claims defeats the fundamental purpose of mediation. Rather than resolving the controversy, the administrative ADR process becomes an additional procedural hurdle that delays final indemnification.

V. Institutional analysis: TIRA, the Insurance Ombudsman, and the Commercial Court

An examination of the institutional framework requires analyzing the statutory mandates and practical limitations of the three primary bodies operating in this field: the Tanzania Insurance

[31] Civil Procedure Code, First Schedule, Order VIII, rr. 33–34 (as amended by the Civil Procedure Code (Amendment of the First Schedule) Rules, 2019, G.N. No. 381 of 2019, r. 5 (Tanz.)). Orders VIIIA, VIIIB and VIIIC were deleted by G.N. No. 381 of 2019, r. 6.

[32] Civil Procedure Code, Order XXIII, r. 3; Order XXI, r. 10.

[33] *British Russian Gazette*, *supra* note 5; *D & C Builders*, *supra* note 5. These English decisions postdate 22 July 1920 and are persuasive, not binding, in Mainland Tanzania: Judicature and Application of Laws Act, s. 2(3).

[34] Civil Procedure Code, s. 2.

[35] Civil Procedure Code, Order VII; *see also id.* Order XXXV, r. 1 (summary procedure confined to the classes of suit listed, such as suits on bills of exchange, promissory notes and mortgages).

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Regulatory Authority (TIRA), the Insurance Ombudsman Service, and the High Court of Tanzania (Commercial Division). TIRA is established under Part II of the Insurance Act as the statutory authority tasked with supervising insurance business, maintaining market stability, and protecting policyholder interests.[36] TIRA possesses broad supervisory authority, including the power to license underwriters, inspect corporate reserves, and issue regulatory compliance directions. Where an insurer contravenes the Act, the Commissioner of Insurance may cancel its registration, and where it fails to comply with a determination of the Insurance Ombudsman, the Commissioner may impose a penalty or cancel its registration.[37] However, TIRA is a supervisory authority rather than a judicial tribunal; it lacks statutory power to issue enforceable monetary awards or attach assets to satisfy private policy claims.[38]

The Insurance Ombudsman Service operates as a specialized administrative dispute resolution body created by Part IX of the Insurance Act.[39] Designed as an informal, low-cost alternative to court litigation, the Ombudsman scheme follows informal, fair and cost-effective procedures and charges a modest filing fee of TZS 25,000, which the Ombudsman may waive.[40] Njunwa's institutional analysis notes that the Ombudsman's operational authority remains constrained.[41] The Ombudsman lacks independent execution powers, possesses no statutory registry for issuing decrees, and cannot compel asset attachment under Order XXI.[42] When an insurer defaults on a mediated settlement reached under Regulation 15(1) of the Insurance Ombudsman Regulations, 2013, the Ombudsman cannot execute the agreement: Regulation 22 allows it only to give the insurer notice to comply within fourteen days and then to report the default to the Commissioner of Insurance.[43] The institution's authority over a breached compromise ends there, leaving its enforcement as a private right to the ordinary courts.

The High Court of Tanzania (Commercial Division) serves as the specialized judicial forum for commercial litigation in Mainland Tanzania. Designed to provide efficient and predictable dispute resolution for commercial enterprises, the Commercial Division operates under specific practice rules to expedite commercial cases.[44] However, the Commercial Division's execution authority under Order XXI is legally restricted to judicial decrees and court orders.[45] The court

[36] Insurance Act, pt. II, ss. 4–6.
[37] Insurance Act, s. 29; Insurance Ombudsman Regulations, 2013, reg. 22(2).
[38] *See* Insurance Act, ss. 6, 11.
[39] Insurance Act, s. 122.
[40] Insurance Ombudsman Regulations, 2013, regs. 4(b), 15(5)–(6).
[41] Njunwa, *supra* note 4, at 61–62.
[42] Civil Procedure Code, Order XXI, r. 10; Njunwa, *supra* note 4, at 61.
[43] Insurance Ombudsman Regulations, 2013, reg. 22(1); Njunwa, *supra* note 4, at 61–62.
[44] High Court (Commercial Division) Procedure Rules, 2012, G.N. No. 250 of 2012 (Tanz.).
[45] Civil Procedure Code, s. 2, Order XXI, r. 10.

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lacks a statutory mechanism to summarily register out-of-court administrative settlements originating from the Insurance Ombudsman. Consequently, when an insurer defaults on a mediated compromise, the Commercial Division cannot grant an immediate execution order. The court must require the aggrieved party to file a standard suit under Order VII, subjecting the claim to formal pleadings, summonses, and judicial hearings.[46]

This institutional disconnect illustrates the regulative deficit identified by Institutional Theory. The Insurance Ombudsman, TIRA, and the Commercial Division operate in separate statutory silos. The Ombudsman facilitates administrative settlements but lacks execution powers; TIRA oversees prudential market conduct and may penalize a defaulting insurer but cannot enforce private settlement awards; and the Commercial Division possesses execution machinery but cannot deploy it without a formal court decree. The lack of a statutory linkage connecting administrative ombudsman settlements directly to the High Court's execution registry creates an enforcement gap. Aggrieved policyholders are trapped in the middle, holding a binding settlement agreement that cannot be executed without initiating fresh, protracted civil litigation.

VI. The English comparative framework: FSMA 2000, FOS, and accelerated CPR execution

A comparative examination of the legal system of England and Wales offers instructive insights into how administrative dispute resolution can be integrated with judicial execution. In England, commercial insurance disputes and consumer financial grievances are governed by a statutory framework anchored in the Financial Services and Markets Act 2000 (FSMA 2000), as amended by the Financial Services Act 2012, alongside the Civil Procedure Rules 1998 (CPR).[47] Part XVI of FSMA 2000 establishes the Financial Ombudsman Service (FOS) as an independent statutory dispute resolution scheme covering regulated financial entities, including insurance underwriters.[48] The FOS is authorized to resolve complaints through informal conciliation, mediation, and binding determinations.

The English statutory framework addresses the enforcement gap through explicit statutory execution provisions. Under Section 228(5) of FSMA 2000, when the complainant notifies the ombudsman that he or she accepts a determination, the determination becomes binding on the respondent and the complainant and final.[49] Crucially, Section 229(8) and Paragraph 16 of Schedule 17 to FSMA 2000 establish a direct enforcement mechanism: a money award

[46] Civil Procedure Code, Order VII.
[47] Financial Services and Markets Act 2000, c. 8 (UK); Civil Procedure Rules 1998, SI 1998/3132 (UK).
[48] Financial Services and Markets Act 2000, §§ 225–227.
[49] Financial Services and Markets Act 2000, § 228(5).

registered in accordance with the scheme rules may, if the County Court so orders, be recovered as if it were payable under an order of that court.[50] The non-defaulting party is not required to file a fresh breach-of-contract suit; instead, they can rely on the registered award and obtain execution remedies, such as charging orders, third-party debt orders, or bailiff warrants.[51]

Beyond the statutory ombudsman model, English civil procedure offers streamlined mechanisms for enforcing general out-of-court commercial mediation settlements under the Civil Procedure Rules. Guided by the overriding objective in CPR Part 1 to deal with cases justly and at proportionate cost, English courts enforce mediation agreements and penalize unreasonable defaults.[52] In commercial litigation, parties frequently record mediated compromises using a "Tomlin Order" under CPR Part 40.[53] A Tomlin Order stays formal court proceedings on agreed terms set out in a schedule, while explicitly reserving liberty for either party to apply directly to the court for summary enforcement if a term is breached, without issuing a new lawsuit.[54]

Where a commercial mediation settlement is executed prior to issuing proceedings, CPR Part 8 provides an expedited alternative procedure for claims that are unlikely to involve a substantial dispute of fact.[55] Rather than initiating a full trial with extensive pleadings under CPR Part 7, the non-defaulting party can file a Part 8 claim form seeking to enforce the written agreement.[56] Furthermore, English case law, such as *Halsey v. Milton Keynes General NHS Trust* and *Cable & Wireless plc v. IBM United Kingdom Ltd.*, demonstrates strong judicial support for ADR agreements, with courts imposing adverse cost orders under CPR Part 44 against parties who unreasonably refuse mediation or act in bad faith.[57] In the regulatory sphere, the Financial Conduct Authority (FCA) requires firms, under DISP 3.7.12R of its Dispute Resolution: Complaints (DISP) rules, to comply promptly with any award or direction of the ombudsman and with any settlement agreed earlier in the procedure, so that an underwriter's default is a breach of FCA rules exposing it to disciplinary sanctions.[58]

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[50] Financial Services and Markets Act 2000, § 229(8), sch. 17, para. 16.
[51] Civil Procedure Rules 1998, pts. 72 (third party debt orders), 73 (charging orders), 83 (writs and warrants).
[52] Civil Procedure Rules 1998, r. 1.1.
[53] Civil Procedure Rules 1998, pt. 40.
[54] Civil Procedure Rules 1998, Practice Direction 40B, para. 3.5.
[55] Civil Procedure Rules 1998, pt. 8, r. 8.1(2).
[56] Zuckerman, *supra* note 11.
[57] *Halsey v. Milton Keynes General NHS Trust*, [2004] EWCA Civ 576 (Eng.); *Cable & Wireless plc v. IBM United Kingdom Ltd.*, [2002] EWHC 2059 (Comm) (Eng.).
[58] FINANCIAL CONDUCT AUTHORITY, *FCA Handbook: Dispute Resolution: Complaints (DISP)*, DISP 3.7.12R (2025), https://www.handbook.fca.org.uk/handbook/DISP.

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VII. Comparative analysis: synthesis of divergences and lessons for Tanzania

A comparative evaluation of Mainland Tanzania and England and Wales reveals sharp structural divergences across five core analytical dimensions governing the enforcement of commercial insurance mediation settlements. In terms of the primary statutory framework, Mainland Tanzania relies on a fragmented statutory architecture comprising the Insurance Act (Cap. 394), the Civil Procedure Code (Cap. 33), and the Insurance Ombudsman Regulations, 2013, whereas England and Wales operates under a highly integrated statutory scheme established primarily by the Financial Services and Markets Act 2000 (FSMA 2000) alongside procedural mechanisms in the Civil Procedure Rules 1998 (specifically CPR Parts 8, 23, 40, and 58).

This statutory divergence directly shapes the legal status of a mediated compromise. In Mainland Tanzania, an out-of-court settlement is legally categorized as a simple private contract governed by the common law doctrine of accord and satisfaction, completely lacking inherent statutory decree status. Conversely, under Section 228(5) of FSMA 2000, an accepted Financial Ombudsman Service (FOS) determination in England is binding and final, and a money award can be enforced through the County Court, while a mediated settlement reached in litigation can be embodied in a consent order or Tomlin Order.

Consequently, the enforcement pipelines available upon an insurer's default reflect contrasting levels of procedural friction. In Tanzania, an aggrieved policyholder confronting default cannot proceed directly to execution; they are legally compelled to institute a fresh breach-of-contract lawsuit under Order VII of the Civil Procedure Code. In contrast, the English legal framework permits registration and County Court enforcement of ombudsman money awards under FSMA 2000 Schedule 17, or accelerated enforcement under CPR Part 8, bypassing the need to re-litigate the underlying dispute.

Regarding judicial execution integration, the Tanzanian framework maintains a strict separation between administrative dispute bodies and court execution machinery, as the High Court cannot directly execute out-of-court settlements under Order XXI of the Civil Procedure Code. In England, the administrative and judicial enforcement channels are integrated, enabling a registered ombudsman money award to be recovered, on a County Court order, as if it were payable under an order of that court.

Finally, the two jurisdictions differ significantly in their regulatory penalty mechanisms. Regulatory oversight in Mainland Tanzania remains limited. Regulation 22 of the Insurance Ombudsman Regulations allows the Ombudsman to report an insurer that fails to comply with

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a determination to the Commissioner of Insurance, who may impose a penalty or cancel the insurer's registration, but the Regulations prescribe no clear procedure for that enforcement, and neither sanction gives the policyholder a means of executing the settlement.[59] In England, regulatory enforcement is more robust: DISP 3.7.12R requires firms to comply promptly with ombudsman awards and with settlements agreed in the procedure, so that a default by an underwriting entity is a breach of FCA rules exposing it to disciplinary sanctions.[60]

The comparative analysis demonstrates that the key divergence between the two jurisdictions is not the willingness of parties to mediate, but the statutory interface between administrative dispute resolution outcomes and judicial execution machinery. In England, the legal system connects ombudsman determinations directly to judicial execution through FSMA 2000 Schedule 17, while providing summary procedural avenues under CPR Part 8 and Tomlin Orders.[61] In Tanzania, the legal system maintains a divide: out-of-court administrative settlements remain isolated from the High Court's execution registry, leaving policyholders vulnerable to secondary litigation upon default.[62]

Three core lessons can be drawn from the English approach to inform statutory reform in Tanzania. First, legislative reform must establish a statutory provision elevating Insurance Ombudsman settlements from simple contracts to binding administrative outcomes that are directly executable upon court registration. Second, civil procedure rules must incorporate an accelerated summary registration procedure, analogous to CPR Part 8 and Tomlin Orders, that allows an aggrieved party to register a defaulted settlement with the High Court Commercial Registry without initiating a fresh lawsuit. Third, regulatory oversight by TIRA must be integrated more closely with Ombudsman enforcement, giving a clear and prompt procedure to the Commissioner's existing power under Regulation 22 to penalize underwriters who arbitrarily default on executed settlements.

VIII. Critical synthesis: multi-dimensional impacts of settlement enforcement reform

The legal and institutional deficiencies identified in Tanzania's settlement enforcement framework generate systemic consequences across judicial, economic, regulatory, and socio-economic dimensions. From a judicial perspective, requiring policyholders to litigate defaulted settlements as fresh breach-of-contract suits under Order VII is likely to add to the caseload of

[59] Insurance Ombudsman Regulations, 2013, reg. 22; Njunwa, *supra* note 4, at 62.
[60] Financial Conduct Authority, *supra* note 58, DISP 3.7.12R.
[61] Financial Services and Markets Act 2000, sch. 17; Civil Procedure Rules 1998, pt. 8.
[62] Njunwa, *supra* note 4, at 61–62.

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the High Court (Commercial Division). Judicial resources that could be devoted to complex commercial disputes are absorbed by secondary litigation over settlement agreements whose execution was already agreed by the parties. Establishing a direct summary execution framework would streamline court dockets, enforce procedural finality, and align judicial administration with Article 107A(2)(b) and (d) of the Constitution.[63]

From an economic standpoint, enforcement delays lock up capital and create liquidity risks for commercial policyholders. When an underwriter defaults on an agreed indemnity settlement, small and medium-sized enterprises (SMEs) may face cash-flow disruptions, payroll shortfalls, or operational insolvency. The current legal framework allows defaulting insurers to treat settlement agreements as tactical delay mechanisms, exploiting the time and expense of secondary court litigation to force policyholders into accepting discounted payouts. Establishing direct summary execution would eliminate these delay incentives, preserve corporate liquidity, and enhance commercial predictability in Tanzania's market.

In regulatory terms, the connection between Ombudsman settlements and TIRA's supervisory powers is weak, which limits regulatory oversight. Regulation 22 allows a default to be reported to the Commissioner, but while TIRA monitors solvency margins and market conduct, the Regulations prescribe no clear procedure for acting on such a report, and its regulatory architecture remains largely disconnected from private settlement enforcement.[64] Linking Ombudsman default certificates directly to TIRA compliance reviews, similar to the FCA DISP framework in England, would create strong deterrents against bad-faith insurer delays.[65] Regulators could levy administrative fines, issue public compliance warnings, or restrict license renewals for underwriters exhibiting persistent non-compliance with mediated settlements.

From a socio-economic and distributional perspective, the burdens of settlement default fall disproportionately on weaker market participants. Large corporate underwriters possess dedicated legal teams, financial reserves, and institutional familiarity with civil procedure, making them "repeat players" under Galanter's typology.[66] Individual policyholders and small business owners are typically "one-shot" litigants who cannot easily afford prolonged litigation under Order VII. A legal framework that requires fresh court proceedings to enforce an agreed settlement reinforces existing socio-economic inequalities. Providing an accessible, summary

[63] CONSTITUTION OF THE UNITED REPUBLIC OF TANZANIA, 1977, art. 107A(2)(b), (d).
[64] Insurance Act, pts. II, IX; Insurance Ombudsman Regulations, 2013, reg. 22; Njunwa, *supra* note 4, at 62.
[65] FINANCIAL CONDUCT AUTHORITY, *supra* note 58.
[66] Galanter, *supra* note 17.

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registration framework would help equalize bargaining power, protect policyholder rights, and advance the access-to-justice mandate of the Constitution.[67]

IX. Conclusion and Statutory Reform Recommendations

The legal and institutional framework governing the enforcement of mediated settlement agreements in commercial insurance disputes in Mainland Tanzania is characterized by structural fragmentation and an enforcement gap. While the Constitution, the Insurance Act, and the Civil Procedure Code encourage Alternative Dispute Resolution, out-of-court administrative settlements reached before the Insurance Ombudsman lack direct statutory executive force. Relegated to simple contracts under the common law doctrine of accord and satisfaction, unperformed settlements cannot be executed directly under Order XXI. Instead, aggrieved policyholders are forced to institute fresh breach-of-contract lawsuits under Order VII, returning to the formal court system and defeating the speed and cost-efficiency of mediation. By contrast, England's legal system provides statutory finality under FSMA 2000 and accelerated summary execution under the Civil Procedure Rules, offering a tested comparative benchmark for reform.

To resolve this enforcement gap and align domestic practice with international standards, targeted legislative, procedural, and regulatory reforms are required:

Recommendation to Parliament: Parliament should amend Part IX of the Insurance Act by enacting an explicit statutory provision establishing that any mediated settlement agreement executed under the Insurance Ombudsman Service, or any formal recommendation accepted by a policyholder, possesses immediate legal finality and is binding on all parties. The amendment should stipulate that upon certification by the Ombudsman, such settlements shall be directly enforceable as if they were decrees issued by the High Court of Tanzania, eliminating the need to institute fresh breach-of-contract lawsuits under Order VII of the Civil Procedure Code.

Recommendation to the Chief Justice and Rules Committee: The Chief Justice and the Civil Procedure Rules Committee should amend the Civil Procedure Code by promulgating a specialized procedural rule titled "Summary Registration of Administrative Settlements" under Order XXI. This rule should establish a streamlined procedure allowing a party holding a certified Ombudsman settlement agreement to apply directly to the High Court (Commercial Division) by way of Chamber Summons for summary registration. To prevent tactical delays, grounds for opposing registration should be strictly limited to documented fraud, incapacity, or

[67] Constitution of the United Republic of Tanzania, 1977, art. 107A(2)(d).

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public policy violations, explicitly prohibiting courts from re-opening the substantive merits of the underlying claim.

Recommendation to TIRA and the Judiciary: The Tanzania Insurance Regulatory Authority, the Insurance Ombudsman Secretariat, and the High Court (Commercial Division) should establish an integrated administrative and electronic registry network. When an underwriter defaults on an Ombudsman settlement beyond the fourteen-day notice period in Regulation 22, the Secretariat should issue an automated Certificate of Non-Compliance. This certificate should trigger two immediate actions: accelerated summary registration with the Commercial Court execution registry for asset garnishment under Order XXI, and automatic regulatory sanctions by TIRA, including administrative fines and public compliance notices under supervisory market-conduct powers.

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