

DISPUTE RESOLUTION

Talk is cheaper

After a recent landmark high court ruling hailing the benefits of alternative dispute resolution (ADR), there has been a marked increase in the number of litigants opting to resolve legal spats outside the courts.

In that judgment, *Brownlee vs Brownlee*, the South Gauteng high court stressed the benefits of mediation as a better and cheaper option.

In this matter, a divorce settlement hearing, acting judge Martin Brassey was especially scathing of the lawyers in the case when it emerged that the estimated costs would have been anything between R500 000 and R750 000 over a joint estate worth about R3,5m.

So disapproving was Brassey that he took the unusual step of capping the fees of the attorneys for both parties because they failed to advise their clients to go to mediation at an early stage.

Since that judgment last August, Natasha Bouwman, supervisor of the Centre for Alternative Dispute Resolution at the Institute of Directors in Southern Africa, says there has been a dramatic rise in the number of clients

looking for arbitration and mediation instead of litigation.

“As our court rolls become more burdened with litigation, it is expected that parties who fail to attempt to resolve disputes by mediation or arbitration will be frowned upon by our courts,” says Bouwman. “Courts may react by penalising the legal representatives or even the parties with unfavourable cost orders.”

In mediation, an independent third party will work with both sides to try to reach an agreement, and will advise them on the various scenarios they could face if the matter went to arbitration, or even to court.

Arbitration is more like a private judicial hearing, where both sides are bound by the outcome. The parties choose their arbitrator and the matter is heard privately at a time and place that is agreed upon by all sides.

The move towards resolving disputes



**Natasha
Bouwman**

outside the court follows an international trend and comes on the heels of an oft-quoted British case from two years ago.

In that case, *Egan vs Motor Services (Bath)*, Lord Justice Ward described as “completely cuckoo” one man’s feud with a sports car dealership, where the amount of money in question was only about £6 000, but the legal bills reached £100 000.

“In fact, what we’re seeing internationally is judges slamming lawyers who fail to advise clients to pursue ADR where this route would be more beneficial,” says Bouwman.

The King 3 code on corporate governance, which comes into effect next month, acknowledges the importance of ADR and supports administered mediation, and arbitration if that fails.

Bouwman says that included among the elements of good governance in King 3 is the directors’ duty of care and skill, which requires them to attempt to resolve disputes as efficiently and effectively as possible in order to preserve business relationships. **Prakash Naidoo**