

Journal of Conflict Management & Sustainable Development



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Review: Journal of Appropriate Dispute Resolution (ADR) and Sustainability, Vol. 1, Issue 1 (2023)

By: Mwati Muriithi¹

Title: Journal of Appropriate Dispute Resolution (ADR) and Sustainability, Vol. 1, Issue 1 (2023)

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Dr. Kariuki Muigua, PhD, the founding Editor-in-Chief of Journal of Appropriate Dispute Resolution (ADR) and Sustainability, states as follows in its introduction: “Alternative Dispute Resolution mechanisms ought to be considered ‘Appropriate’ and not ‘Alternative’ in access to justice as these mechanisms have been part and parcel of African societies since time immemorial and were always the first point of call in the management of disputes owing to their advantages. The Journal proposes interventions towards reframing conflict management in order to fully capture the spirit of ADR as ‘Appropriate’ Dispute Resolution.” This is the third ADR journal founded and edited by Dr. Kariuki Muigua, PhD, Member of Permanent Court of Arbitration (PCA), Member of the National Environment Tribunal (NET) and CIArb African Trustee Emeritus. Dr. Kariuki Muigua is the also the founder and Editor-in-Chief of the Journal of Conflict Management and Sustainable Development and Alternative Dispute Resolution (ADR) of the Chartered Institute of Arbitrators (Kenya Branch). Here is a brief review of the articles in the inaugural edition of *Journal of Appropriate Dispute Resolution (ADR) & Sustainability*, Volume 1, Issue 1, 2023.

¹ LLB (Hons) KU; Dip. In Law (KSL); ACIArb; Advocate of the High Court of Kenya; Legal Researcher

In the article *“Reframing Conflict Management in the East African Community: Moving from Alternative to ‘Appropriate’ Dispute Resolution”* Hon. Dr. Kariuki Muigua critically discusses the need to reframe conflict management in the East African Community (EAC) in order to fully capture the spirit of Alternative Dispute Resolution (ADR) mechanisms. He argues that ADR mechanisms in African societies including the EAC ought to be considered ‘Appropriate’ and not ‘Alternative’ in access to justice. It posits that ADR mechanisms have been part and parcel of African societies since time immemorial and were always the first point of call in management of disputes owing to their advantages. The paper explores the ADR framework within the EAC as set out under the Treaty Establishing the EAC. It further highlights challenges facing ADR mechanisms within the EAC. The paper further proposes interventions towards reframing conflict management in the EAC in order to fully capture the spirit of ADR as ‘Appropriate’ Dispute Resolution.

In *“Arbitration as a Tool for Management of Community Land Conflicts in Kenya”* James Ndung’u Njuguna notes that Arbitration and other forms of Alternative Dispute Resolution (ADR) mechanisms have been designated as some of the methods of dealing with disputes and conflicts involving community land as expressly provided under section 39 (1) of Community Land Act. However, the Community Land Act fails to appreciate the distinction between disputes settlement and conflicts resolution. This paper therefore focuses on the management of community land conflicts through arbitration in Kenya. While the Community Land Act 2016 envisages the use of various ADR mechanisms as conflict management mechanisms, the paper focuses on examining the effectiveness of arbitration as a tool for management of community land conflicts. The paper makes a contribution to the legal debate by suggesting the best way forward

in making arbitration and by extension ADR, more effective tool for the management of community land conflicts in Kenya.

Emmanuel Mwati Muriithi in *“Application of ADR Mechanisms to Manage Sports Disputes in Kenya”* analyses the implementation and impact of the Alternative Dispute Resolution Mechanisms in efficient management of sports disputes in Kenya. The paper critically examines the Alternative Dispute Resolution (ADR) mechanisms that may be applied to manage sports disputes in Kenya and under what circumstances they may be applied. This includes the unique features of these mechanisms, their advantages as well as any challenges that may be encountered in the application of these ADR mechanisms. Finally, the paper offers practical recommendations that can be used to ensure that the sports dispute resolution and settlement process in Kenya is top notch and that parties to sports disputes have confidence that these mechanisms can be able to manage their disputes amicably and ensure that there is harmonization in the society.

In *“Pre-Litigation Mediation as a Means to Enhance Judicial Economy in Kenya’s Criminal Justice System,”* Michael Sang offers comprehensive discussion of the transformative potential of prelitigation mediation within Kenya’s criminal justice system. Pre-litigation mediation, a concept encompassing scenarios where individuals have not yet been charged but face investigative files or pending trials, is examined within the framework of international and domestic legal foundations. Drawing inspiration from international instruments such as the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the discourse underscores Kenya’s constitutional imperative to consider alternative dispute resolution, including mediation.

In *“Navigating the Digital Dispute Resolution Landscape: Challenges and Opportunities,”* Hon. Dr. Kariuki Muigua interrogates digital dispute resolution. The paper defines digital dispute resolution and discusses the progress made towards embracing this concept. It further highlights some of the platforms and processes that have fostered digital dispute resolution and explores the challenges and opportunities presented by digital dispute resolution. The paper also offers proposals towards enhancing the digital dispute resolution landscape. In *“Embracing Climate Technologies in Climate Change Mitigation and Adaptation for Sustainable Development”* Anne Wairimu Kiramba postulates that there is need to embrace climate technologies for climate change mitigation and adaptation in order to foster Sustainable Development. The paper makes a case for the challenges and opportunities for climate technologies in climate change mitigation and adaptation towards Sustainable Development. It provides actionable insights that address climate change issues.

In *“Effective Justice for Kenyans: Is ADR Really Alternative?”* Hon. Dr. Kariuki Muigua critically examines whether ADR is really an alternative method of managing conflicts in the search for effective justice for Kenyans. Further, this paper seeks to critically analyse the place of Alternative Dispute Resolution (ADR) in the management of disputes and conflicts in Kenya. The writer briefly looks at the earliest development or practice of ADR in various regions across the world including Africa and Kenya in particular. Also examined is whether the now common notion that ADR is alternative to the formal court process is a fallacy and if this perception has continually affected its effective application in conflict management in the country.

Michael Sang in the paper *“Integrating Alternative Dispute Resolution Mechanisms into Kenya’s Criminal Justice System: Some Reform Proposals”* explores the integration of Alternative Dispute Resolution

(ADR) mechanisms and restorative justice practices into Kenya's criminal justice system. Drawing insights from international experiences, including South Africa, India, and Canada, the paper examines the constitutional basis for ADR in Kenya and highlights the potential benefits and challenges of reform proposals. Lessons from these jurisdictions emphasize victim empowerment, offender accountability, community involvement, and efficient case resolution. The discussion concludes with reform proposals that prioritize legislative support, cultural sensitivity, victim-centered approaches, and public awareness, offering a path toward a more equitable, efficient, and compassionate criminal justice system in Kenya.

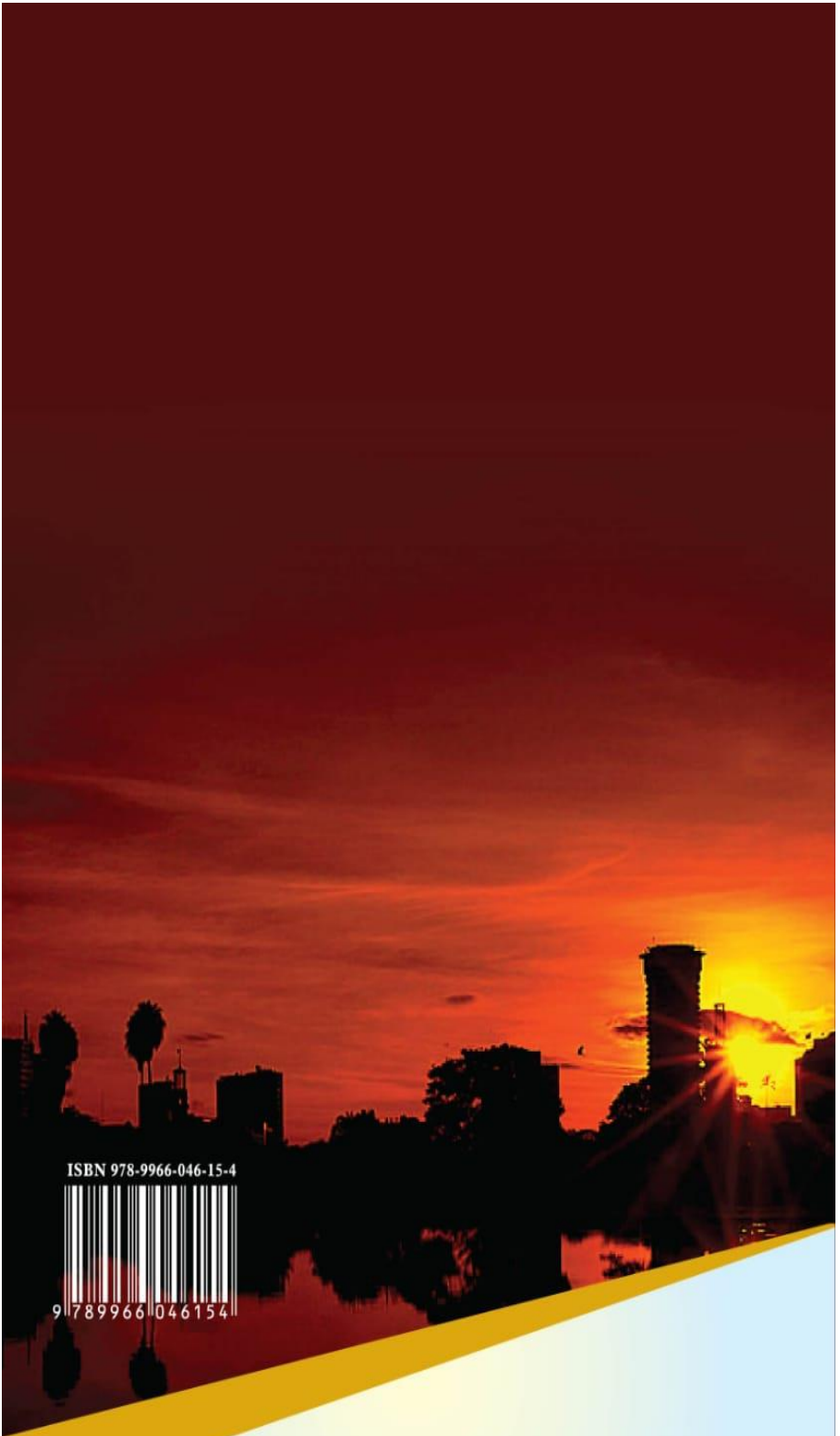
In *"Fostering Efficient Management of Community Land Conflicts in Kenya for Sustainable Development"* James Njuguna notes that land is a important natural resource and one of the primary factors of production. However, land has also been one of the most conflict prone areas in Kenya due to concerns such as historical land injustices and discrimination in the allocation, management and use of land. The Constitution of Kenya, 2010 was enacted with this in mind with among other aims being to address the land concerns in Kenya. The Constitution classifies land to include public land, private land and community land. This paper critically discusses the concept of community land in Kenya. It defines community land. The paper further analyses the nature and causes of community land conflicts in Kenya and approaches towards management of such conflicts. The paper then proposes measures towards efficient management of community land conflicts in Kenya for Sustainable Development.

In *"Linking Alternative Dispute Resolution (ADR) and Environmental, Social and Governance (ESG) Tenets for Sustainable Development"* Hon Dr. Kariuki Muigua focuses on the nexus between Alternative

Dispute Resolution (ADR) mechanisms and Environmental, Social and Governance (ESG) tenets. It argues that linking ADR and ESG tenets can foster the realization of the Sustainable Development agenda. The paper gives an overview of the concepts of ADR, ESG and Sustainable Development. It then critically examines the relationship between ADR mechanisms and ESG tenets and highlights some of the fundamental concerns thereof. The paper further suggests measures through which ADR mechanisms can be linked with ESG tenets in order to achieve Sustainable Development. In "*Harnessing technology to foster biodiversity conservation for Sustainable Development*" Anne Wairimu Kiramba underscores that conservation of biodiversity is among the major global environmental concerns. The quality and quantity of biodiversity is affected by human activities, habitat destruction, pollution and climate change. These challenges create the need for efficient mechanisms aimed at conserving biodiversity in order to realize Sustainable Development. The paper discusses the role of technology in biodiversity conservation. It argues that technology can foster effective biodiversity conservation. The paper examines various technologies that can be harnessed to foster biodiversity conservation for Sustainable Development.

Mwati Muriithi undertakes a book review of Dr. Kariuki Muigua's book "*Accessing Justice Through ADR (Glenwood Publishers Limited, Nairobi, 2022)*" noting that the 1171 Page book contains a collection of independent peer-reviewed articles on Alternative Dispute Resolution (ADR) written over time and published in Journals and book chapters. The publication is necessitated by the need to consolidate the author's work in ADR and make its' access easy for the general readers, scholars, judges and academics. Finally, James Njuguna undertakes a Book Review of Kenya's First Climate Change Book: *Dr. Kariuki Muigua, Combating Climate Change for Sustainability*

(Glenwood, Nairobi, October 2023). He notes that the book not only adds to the already existing literature in the area of climate change and suitability in Africa, but it is the first book containing research and scholarship dedicated exclusively to climate change law in Kenya. The book offers solutions for combating climate change for sustainability and includes discussion on the global and regional approaches to combating climate change for sustainability.



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