(2024) Journalofcmsd Volume 11(2)

Journal of Conflict Management & Sustainable Development

Volume 11 Issue 2 2024 ISBN 978-9966-046-15-4

Is it time for Part-Time Adjudicators: The Untapped Potential in the Small Claims Court Kenya

By: ***Henry K. Murigi****

---

* ***Henry K. Murigi Advocate of the High Court of Kenya, Principal Prosecution Counsel, Economic, International Emerging Crimes Department, Ph.D. Candidate, USIU-A, Member Chartered Institute of Arbitrators, United Kingdom, M.A Peace and Conflict Management, Kenyatta University, LLM Student, University of East London Post-Graduate Diploma in Law, Kenya School of Law LLB. Author of the following articles.***

Law History and Politics in Developing Societies: A Comparative Analysis of Constitution Making Process in Australia and United Arab Emirate. Journal of Conflict Management and Sustainable Development (2022) Volume 9(2) http://journalofcmsd.net/wp-content/uploads/2022/10/Law-History-and-Politics-in-Developing-Societies.pdf, Decolonizing Arbitration: A Case for Climate Change Arbitrators; Alternative Dispute Resolution Journal, 2022 2 (1) https://ncia.or.ke/wp-content/uploads/2022/12/2nd-NCIA-JOURNAL-2022.pdf, Book Review: Stephen David Krasner "Sovereignty: Organized Hypocrisy" 1999, Princeton University Press, Journal of Conflict Management and Sustainable Development (2022) Volume 8(5) http://journalofcmsd.net/wp-content/uploads/2022/08/Book-Review.pdf, Defence Counsel Antics that Prosecutor Dislike: The Governance Edition, The Prosecutor Magazine, Issue V, November 2022, Corruption and Sustainable Development: Tracing the Root Causes and Radical Proposals for Way Forward Journal of Conflict Management and Sustainable Development (2022) http://journalofcmsd.net/corruption-and-sustainable-development-tracing-the-root-causes-and-radical-proposals-for-way-forward, Decision to Charge Electoral Offences A Legal Process Not Politics: The Prosecutor Magazine. Issue IV, July 2022. Defining Democracy: A Review of Sen, Amartya Kumar (1999) Democracy As A Universal Value. Journal of Democracy, (3), 317. Article Review Journal of Conflict Management and Sustainable Development (2022) Vol 7 (4). http://journalofcmsd.net/wp-content/uploads/2022/02/Defining-Democracy.pdf, An Overview of Prosecutorial Powers in Kenya in Comparative Criminology Across Western and African Perspectives https://www.igi-global.com/chapter/an-overview-of-prosecutorial-powers-in-kenya/305507,

Arbitration in Land Disputes: An Empirical Study on the Role of Lawyers in the Management of Land Conflicts in Kiambu County, Alternative Dispute Resolution Journal, 2021 Vol 9 (3) https://ciarbkenya.org/wp-content/uploads/2021/07/Volume-93-.pdf, Enduring Debates on Pedagogy, Practice and Application of Sustainable Development Models in Africa, Journal of Conflict Management and Sustainable Development (2021) Vol 7 (3) http://journalofcmsd.net/wp-content/uploads/2021/11/Enduring-Debates-in-the-Pedagogy-and-Practice-in-Sustainable-Development-Models-in-Africa-.pdf, Combatting Unfreedoms: A Panacea to Growth Lull in Africa, Journal of Conflict Management and Sustainable Development (2021) Vol 6 (3) https://journalofcmsd.net/wp-content/uploads/2021/02/Combating-Un-Freedom.pdf Characterization of Political Transitions: Lessons from The Collapse of The Roman Dynasty, Republic, Roman Empire, Journal of Conflict Management and Sustainable Development (2021) Vol 6 (1) https://journalofcmsd.net/wp-content/uploads/2021/02/Combating-Un-Freedom.pdf, Contending with The Schools of Thought on ADR Before and During Arraignments: A Departure from The Old Cultural Order, Alternative Dispute Resolution Journal (2021) https://ciarbkenya.org/wp-content/uploads/2021/04/VOLUME-9-NO.-2-MARCH-2021-x.pdf,

Institutionalization of Alternative Dispute Resolution in Kenya: A Democratization Imperative, Journal of Conflict Management and Sustainable Development (2020) Vol 4 (3) https://journalofcmsd.net/wp-content/uploads/2020/05/Institutionalization-of-Alternative-Dispute-Resolution-in-Kenya.pdf. Neoliberalism Bows to COVID 19: A Critical Analysis, Journal of Conflict and Sustainable Development (2020) Vol 5 (1) http://journalofcmsd.net/neoliberalism-bows-to-covid-19-a-critical-analysis/, An Overview of Negotiating Peace Agreements in East Africa, Alternative Dispute Resolution Journal (2020) https://ciarbkenya.org/wp-content/uploads/2021/02/volume-8-no.-2-30th.pdf, Theoretical Underpinnings of Toxic Chemical Regime Formation: The Road to Rotterdam Convention, Journal of Conflict Management and Sustainable Development (2020) Vol 4 (4) http://journalofcmsd.net/wp-content/uploads/2020/06/Theoretical-Underpinnings-of-Toxic-Chemical-Regime-Formation.pdf, Tackling Corruption Allegations in International Commercial Arbitration, Alternative Dispute Resolution Journal (2020) Vol 8 (1) *https://ciarbkenya.org/wp-content/uploads/2021/02/volume-8-no.-1-.pdf, Conflict and Convergence in The Application of International Humanitarian Law and Human Rights Law in Guantanamo Bay Naval Base, Africa Nazarene University Law Journal, 2019, Volume 7 (2) https://www.jutajournals.co.za/conflict-and-convergence-in-the-application-of-international-humanitarian-law-and-human-rights-law-in-guantanamo-bay-naval-base/,*

Abstract

History is replete with attempts by different States to create and sustain Courts that will handle straight jacket claims that do not require legal contestations. The thinking around this idea is that the disputes should be determined in formal institutions however small. Without going into the rich historical outlay of small claims world over and accounting for all the perspectives to the formulation of the idea of small claims courts which is another rich area for empirical inquiry, this paper focuses on the very narrow aspect of the historical outlay in the events leading to the legislative attempts to the creation of the Small Claims Court in Kenya and then considers the debates arising int the process. The paper attempts to project the statistical reality that should be anticipated and proposes as one of the ways to prepare for it is to recruit and equip private adjudicators as envisaged in the Act.

Introduction

One of the easiest ways to assess effervescence of a society is to check how it treats those within it who are weak and most vulnerable[1]. The structure of the African society is generally organized in a way that the bottom of the pyramid carries the heaviest weight in terms of financial power when considered cumulatively yet it also hosts the greatest number of poor and vulnerable in society. This calls for creative solutions to address this increase in numbers. Paul Collier[2] argued that majority of African states remain underdeveloped yet they are in the billions. This is a realization that how a state handles dispute or management of conflict is a panacea to development of a state[3]. The Small Claims Court (the Court) is so far a dazzling

[1] Thorlindsson, Thorolfur, and Jón Gunnar Bernburg. "Durkheim's Theory of Social Order and Deviance: A Multi-Level Test." European Sociological Review 20, no. 4 (2004): 271–85. http://www.jstor.org/stable/3559561.

[2] (Collier, Bottom Billion : Why the Poorest Countries Are Failing and What can be Done 2007)

[3] (Aboh 2014)

innovation that appears to sit in well with the philosophy bottom-up approach to dispute resolution in Kenya. Indeed, in the financial year 2021/2023 the small claims court resolved 9,315 cases valued at KSh1,431 billion[4]. It is very clear that one of the institutional frameworks to come up this institution was pursuant to a need to deal with the bottom billion case in the Country. This paper attempts to document the historical event leading to the establishment of the Small Claims Court vide the Act, highlights some of the pejorative perceptions and creative insights that can be adopted to realize the potential of the Court and suggests some of the blind spots that the practitioners need to become aware of. This is paper is methodologically anchored on active observation, comments made from unsuspecting respondents who are practitioners and parties[5].

Situating the Debates, on the architectural foundation of the Court

The idea of small claims court is premised on the pillar access to justice which has seen numerous initiatives in Kenya[6]. There have been several attempts to enhance access to justice such as 2003, Governance, Justice, Law and Order Sector Reform Program[7], Economic Recovery and Strategy for Wealth and Employment

[4] State of the Judiciary and Administration of Justice Annual Report 2021/2023. Pg. xxvi

[5] Miranda, Valérie Vicky. "The Africa-EU Peace and Security Partnership and the Role of Civil Society." Edited by Nicoletta Pirozzi. Strengthening the Africa-EU Partnership on Peace and Security: How to Engage African Regional Organizations and Civil Society. Istituto Affari Internazionali (IAI), 2012. http://www.jstor.org/stable/resrep09848.8.

[6] Kariuki Njenga Advocates "Operationalization of the Small Claims Court" 2021

[7] Kenya Governance Justice Law and Order (GJLOS) Sector Program 4th Program Review Administrative Date Collection and Analysis Report 2007

Creation[8], Justice William Ouko Taskforce on Judicial Reform[9] all of which agree and point toward urgency and need increase in the number of judicial officers. The first attempt to enact the Small Claims Court was in 2007[10] which fell through the cracks following the more urgent matters of national and judicial reform. After the raft of judicial reform, the agenda was revisited in 2015 with the clamour to have another level of courts to deal with the bulk of cases[11].

The Small Claims Court was established by the Small Claims Act 2016 which was assented to on 1st April 2016[12]. The Act as enacted then was found to be unsatisfactory giving rise to a series of debates both in an out of parliament which led to the first amended by the Small Claims Court (Amendment) Act, 2020, assented to on 30th April 2020[13]. The Court was eventually gazetted vide Gazette Notice No. 3791 of 2021. The enactment of the Act was part of an initiative to aimed at implementing judicial reforms geared toward reduction of backlog of cases, enhance access to justice to those at the bottom of the pyramid and promote ease of doing business in Kenya[14].The debates of the current structure and framework of the Court tell a nuanced tale of the foundations of the Court. This paper considers the jurisdictional debate and representation debate of the Court to demonstrate that though the ideological foundation of the small

[8] Report of the Taskforce on Judicial Reform July 2010
[9] Economic Recovery and Strategy for Wealth and Employment Creation Policy (2003-2007)
[10] Small Claims Court Bill, 2007
[11] Shipley, Thomas, and Transparency International Kenya. "Integrity Risks for International Businesses in Kenya." Transparency International, 2018.
[12] Small Claims Court Act 2016
[13] Ibid
[14] Kariuki Njenga Advocates "Operationalization of the Small Claims Court" 2021

claims Court has been tested and improved there is still room for improvement.

The jurisdiction of the Court is limited to six categories of cases[15] (1) claims arising from contract for sale and supply of goods or services; (2) a contract relating to money held and received; (3) liability in tort in respect of loss or damage (4) caused to any property or for the delivery or recovery of movable property; (5) compensation for personal injuries; and (6) set-off and counterclaim under any contract. It appears that majority of cases filed (7,137) and resolved (6,968) arise from contracts while the second largest category relate to the personal injury claims or what is referred to in legal circles as 'running down cases'[16]. The adjudicators are expected to be advocates of not less than three years in practice[17].

Pecuniary Jurisdictional Debates

The first debate arose from the jurisdiction of the Court. It started with a proposal to have a pecuniary jurisdiction of Kshs 100,000/- or such sums as the Chief Justice would gazette[18]. The documented feedback on this account came from International Commission of Jurist who recommended that the amount should be revised upwards as the Chief Justice would determine[19]. This was not found satisfactory since some of the stakeholders felt that the amount should be raised. Eventually the pecuniary jurisdiction was enhanced

[15] Section 12 of the Small Claims Court Act

[16] State of the Judiciary and Administration of Justice Annual Report 2021/2023 pg. 90 Figure 2.37

[17] Ibid

[18] Section 7 (2) of Small Claims Bill, 2007

[19] ICJ Report on Strengthening Judicial Reforms Volume 15: A Review and Commentary on The Small Claims Court Bill 2015.

to Kshs 200,000/-[20] with the Chief Justice having discretion to enhance the amount by way of Kenya Gazette[21]. This made itself to the Act that was assented to by the President but was found to be unsatisfactory.

There were several suggestions for increase of the pecuniary jurisdiction. Joseph Were and the Office of Chief Registrar expressed their view and suggested that the amount should be set at Kshs 500,000/-[22] on the one hand. On the other hand, the Law Society vide Nelson Havi, then President, Nguyo Wachira felt the amount should be raised to Kshs 1,000,000/-[23]. On the other hand, Prof Tom Ojienda and Wilberforce Okello felt that the proposal to increase the pecuniary jurisdiction should be abandoned and Kshs 1,000,000/- was to high for a small Claims Court and he felt that *"the proposal to increase the amount would create enormous injustice as the small claims Court will be burdened by numerous cases thereby defeating the intention of the Act…."*[24]. They quoted comparative practice of South Africa (Kshs 100,000) and United States (Kshs 250,000/-), Australia (Kshs 800,000/-)[25]. Ken Ogutu Advocate opined that there should be two separate jurisdictions one for Small and Medium Enterprises and another for individuals the former being limited to Kshs 200,000/= and the later Kshs 1,000,000/-. The Amendment carried the day and the pecuniary jurisdiction is now set for matters not exceeding Kshs.

[20] Section 13 (3) of the Small Claims Court Act, 2016. (Before the 2020 Amendment)
[21] Section 13 (4) of the Small Claims Court Act, 2016 (Before the 2020 Amendment)
[22] Report on Consideration of the Small Claims Court (Amendment) Bill, 2020 (National Assembly Bill No. 4) April 2020 See Annex 4.
[23] Ibid
[24] Ibid
[25] Ibid

1,000,000/=[26]. This is unique to Kenya noting that other jurisdictions have adopted different amounts which are much less. This call for a further study to establish at least from a comparative practice point of view whether there is any convergence and divergence in terms of either qualitative and quantitative outputs for jurisdiction with high and those with low pecuniary jurisdictional amounts.

Representation Debate

The second debate on this Act relates to the issue of representation by Counsel in the small claims Court. It must be remembered that the ideological foundation of small claims court world over abhors legal-technical hurdles which are the bread and butter for lawyers[27]. However, it is important to note that as a Constitutional imperative every person is entitled representation. As such no one should be denied representation on the basis of the size of their claim.

Section 27 (3) of the 2007 Bill provided that *"Any party is entitled, but not required to be represented by an advocate"*. On this ICJ opined that it was appropriate to ensure that there was a level playing field and recommended thus;

> *"It is recommended that the Bill should stipulate that for both natural and legal persons, there is no automatic right to legal representation, but provision for the right to representation at the appeal stage should be made. For legal persons, the Bill should*

[26] Section 12 (3)

[27] Steele, E. (1981). The Historical Context of Small Claims Courts. American Bar Foundation Research Journal, 6(2), 293-376. doi:10.1111/j.1747-4469.1981.tb00356.x

> *stipulate that they shall be represented by a director or other nominated officer or representative".*[28]

It appears that this debate was not to end with the 2007 bill as it later found its way back into the subsequent legislative initiatives. The 2016 bill adopted a more abrasive stance and did not countenance the participation of Advocates in the Court. Indeed, while it anticipated representation of parties in Court, Section 20 (2) specifically provided that "*The representative referred to in subsection (1)* ***shall not be a legal practitioner***". This did not sit very well with stakeholders mainly lawyers. Why would Parliament take away the work of lawyers and give it to others who would be vetted by the Court, the lawyers wondered. In addition, they agonized albeit with a motive of profit, over what then would happen to Constitutional imperatives of legal representation. Parliament, perhaps relied on the growing thinking world over that there was no need to include lawyers in the Small Claims Court. In the end, it is no surprise that the first amendment to the small claims Court related to Section 20 (2) on representation from lawyers.

Nelson Havi, Prof Tom Ojienda, Wilberforce Okello, Guyo Wachira and Hon Adan Mohammed (the Cabinet Secretary) all supported the inclusion of legal representative by lawyers as proposed in the Amendment Bill (2020) with Kennedy Ogutu being the documented outlier on this issue who opposed the proposed amendment[29]. Indeed, Hon Adan Mohammed suggested the inclusion of the timeline for resolution of the disputes within 60 days from the date of

[28] ICJ Report on Strengthening Judicial Reforms Volume 15: A Review and Commentary on The Small Claims Court Bill 2015.

[29] Report on Consideration of the Small Claims Court (Amendment) Bill, 2020 (National Assembly Bill No. 4) April 2020 See Annex 4.

lodging of a claim[30]. As it stands now, lawyers are allowed to represent parties in the small claims Court. Indeed, majority who practice in this Court find it very attractive since it is a quick way to have disputes resolved by the parties[31].

The other peripheral issue (in terms of this paper) that arose is to the constitutional challenge on Section 38 of the Act that provides for the appellate mechanism. Kennedy Ogutu argued that the fact that representation by counsel was limited constitutionally since, as he argued, the Advocates would have an opportunity to represent parties on appeal[32]. However, the legislative foundational structure of the Appellate process anticipated in the Small Claims Act, that an appeal to the High Court was final, could not withstand the Constitutional scrutiny when Justice Ogola held " *In my view, Article 164(3) of the Constitution does not provide a right of appeal to the appellant; it merely confers jurisdiction on the Court of Appeal to hear appeals from the High Court; indeed, there is no right of appeal save for that which is conferred by statute; hence there is no right of appeal subsumed in Article 164(3) of the 2010 Constitution. From the foregoing, it is my view that Section 38 of the Small Claims Act is not unconstitutional"*[33]. At the very least, we can see that there has been room for improvement of the Small Claims Court in Kenya.

The central thesis for this paper is anchored on Section 6 (4) of the Small Claims Court Act which provides for the appointment of an adjudicator on a **part-time basis**. The emphasis is on part-time basis. Here we make the following arguments; First, the data availed in the

[30] Ibid
[31] Kariuki Njenga Advocates "Operationalization of the Small Claims Court" 2021
[32] Ibid
[33] Mombasa Law Society v Attorney General & another [2021] eKLR

State of Judiciary and Administration of Justice Annual Report 2021/22[34] tells a tale of increase in backlog contrary to the intentions of the Act. The data shows that 8,978 were filed in the financial year 2021/22 and at the close of the reporting period 1,239 cases were pending. This adds to the existing backlog of cases which is against the intended initiative to clear backlog.

Second, although the report does not give details of the closure rate, we assume that backlog in terms of Small Claims Court would mean any case not determined within 60 days. Here we also assume that the 1,239 pending cases are not backlog but were filed within fifty-nine days before the close of the reporting period. The other point here is that the 8,978 cases were handled by 22 adjudicators/judicial officers meaning that every adjudicator handled about 408. This also means that each adjudicator potentially rendered 17 decisions/rulings every month or at least one for every working day and some days two or three[35].

Assuming the 22 adjudicators are each concluding 17 cases in a month, it is possible that they are experiencing a heavy workload, which could have a number of potential pitfalls, including: First decreased quality of work since if adjudicators are under significant time pressure to resolve cases quickly, there may be a risk of errors, oversights, or rushed decisions that could compromise the quality of their work. Second, burnout and stress due to the heavy workload can lead to burnout and stress, which can impact the mental health and well-being of adjudicators. This, in turn, could negatively impact the quality of their work, increase the risk of errors, and contribute to turnover or absenteeism. Third, backlogs and delays will become the

[34] State of Judiciary and Administration of Justice Annual Report 2021/22
[35] State of the Judiciary and Administration of Justice Annual Report 2021/2023

order of the day since the workload will become too heavy to manage and there is a risk that cases could begin to pile up, resulting in backlogs and delays. This could lead to longer wait times for litigants, decreased public trust in the court system, and increased pressure on adjudicators to resolve cases quickly, which could exacerbate the other potential pitfalls. Fourth, uneven case distribution of workload will arise as some of the judicial officers may be overworked while others may have a lighter workload. This could create inequities within the court system and impact the quality and efficiency of the decision-making process.

Possible Scenario

Based on the data presented in the financial year 2021/2022[36], it might be difficult to project exactly how this might play out in the next five years, as there are many variables that could impact the caseload and workload of the adjudicators/judicial officers. However, based on the information provided, here are a few possible scenarios; First, there might be an increase in caseload since if the number of cases filed continues to increase at a similar rate, the number of pending cases could grow significantly over the next five years. This could put additional strain on the adjudicators/judicial officers and potentially lead to longer wait times for cases to be resolved. Second, there might be improved efficiency by seasoned adjudicators since as they continue to handle cases at a similar rate and the court system implements measures to improve efficiency especially such as better case management software or streamlined processes, it is possible that the backlog of pending cases could be reduced over the next five years. However, this might come at the cost of quality of cases. Third, changes in workload: It's possible that the workload of the

[36] State of the Judiciary and Administration of Justice Annual Report 2021/2023

adjudicators/judicial officers could change over the next five years, based on factors such as retirements, new hires, or changes in case assignments. This could impact the number of cases each adjudicator handles and the overall efficiency of the court system. Overall, there are many factors that could impact the caseload and workload of the court system over the next five years, and it's difficult to predict exactly how this data might play out. However, monitoring trends in case filings and caseload management could help inform decisions about staffing and resource allocation to ensure that the court system is able to handle its workload effectively.

Silent Discomfort Amongst Magistrates

When the statistics are placed alongside the unfair and inaccurate pejorative connotations that are assigned to small courts, a dim picture of the future of the Adjudicators emerge calling for either rotation of Magistrates or creative innovations on how to motivate these judicial officers. We must add at this time the option of private adjudicators to neutralize this subtle threat. Although some of the perceptions are not universally held by magistrates or legal professionals who see small claims court as a valuable tool for providing access to justice for those who might not otherwise be able to afford or navigate the court system, there are some silent connotations that have been observed. First, due to its simplified procedures and lack of legal representation in all the cases, the Court is unfairly viewed as a "kangaroo court". This term implies that the court is not legitimate or fair and that its decisions may be biased or arbitrary. Second, another derogatory term that has been used to describe small claims court is "small minds court," which suggests that the cases heard in these courts are trivial or unimportant. In addition, Small claims courts can have high caseloads and limited resources, which can lead to long wait times, delayed hearings, and overworked magistrates. This can impact the quality of decisions and

lead to frustration for magistrates. Third, it is viewed as a "dumping ground" for cases that are not deemed important enough to be heard in other courts. This perception can lead to a lack of resources and support for small claims court, as well as a negative attitude toward litigants who choose to use this court. Small claims courts are often seen as less prestigious or challenging than other courts, which can lead to a perception that the magistrates who preside over them are less experienced or less knowledgeable about the law. Put differently they are sometimes seen as a "lesser" court, which can lead to a perception that the work done there is not as important or valuable as the work done in other courts.

Fourth, the courts are typically limited in their jurisdiction, meaning that they can only hear cases that meet certain criteria, such as a maximum amount or specific types of disputes. Some magistrates may feel that this limits the ability of small claims courts to address more complex or nuanced legal issues. This is coupled with the fact that the courts often use simplified procedures to resolve cases quickly and efficiently, which can sometimes lead to a perception that the process is not as rigorous or fair as other courts. Due to the limited jurisdiction the Small claims courts may not have similar access to the resources as other courts, such as libraries, research databases, or administrative support due to the avalanche of cases. Some magistrates may feel that this limits their ability to make informed decisions and provide adequate support to litigants.

A Case for Part-time Adjudicators

There are several reasons why Small Claims Courts should consider the option of part-time adjudicators. First part-time adjudicators can offer greater flexibility in scheduling and staffing, which can be helpful for small claims courts that may not have a consistent caseload or need to accommodate the availability of the adjudicators.

Second, hiring part-time adjudicators may be more cost-effective than hiring full-time staff, particularly if the caseload is not sufficient to justify a full-time position. This can help small claims courts operate within budget constraints while still providing access to justice. Third, part-time adjudicators may bring a range of professional experiences and backgrounds to their work, which can help ensure a diverse perspective in the decision-making process. Fourth, the small claims courts may benefit from part-time adjudicators who have specialized expertise in certain areas, such as contract law or landlord-tenant disputes. Fifth, retired judges may choose to work part-time in small claims courts as a way to continue contributing to the justice system while also enjoying a more flexible schedule in retirement. In some parts of Canada, private adjudicators may be appointed to hear certain types of small claims disputes. Similarly, in some states in the United States, private individuals or organizations may be appointed to act as mediators or arbitrators to help parties reach a settlement outside of court.

While part-time adjudicators can help to alleviate some of the pressures on the court system, they can also create a number of problems that can negatively impact the fairness and efficiency of the system. Some of the pitfalls for having part-time adjudicators include Lack of expertise since part-time adjudicators may not have the same level of expertise or experience as full-time judges, which can lead to inconsistent or incorrect decisions. Second, there is the risk of inconsistent availability since they may only be available to hear cases on certain days or at certain times, which can lead to delays and backlogs in the court system. Third, part-time adjudicators may not be able to provide consistent rulings on similar cases, as they may not be available to hear all cases in a particular jurisdiction. Fourth, these adjudicators may be more susceptible to bias or conflicts of interest, as they may not have the same level of oversight or accountability as

full-time judges. There is the fifth difficulty of attracting and retaining qualified candidates leading to turnover and inconsistency in the court system.

Conclusion

Here are some antidotes to address these challenges. First the part-time adjudicators should receive thorough training on small claims procedures, laws and ethical considerations. This training should cover legal principles, court procedures, and ethical considerations. In addition, there should be ongoing education and mentoring programs to ensure consistency and information sharing. Second, there should be adequate oversight and monitoring of part-time adjudicators to ensure that they are making fair and consistent decisions. Part-time adjudicators should be subject to the same oversight and accountability mechanisms as full-time adjudicators. This can include regular performance evaluations, adherence to ethical guidelines, and ongoing professional development.

Third, the judiciary should provide more flexible scheduling options for part-time adjudicators to help ensure consistent availability and reduce backlogs. In addition, part-time adjudicators should be offered flexible scheduling options that allow them to hear cases outside of traditional working hours. Fourth, competitive compensation and benefits packages should be offered to attract and retain qualified part-time adjudicators. Fifth, the judiciary should develop targeted recruitment efforts to attract diverse and highly qualified candidates, including advocates with relevant experience such as mediators, arbitrators and conciliators who have evidence of resolving disputes or retired magistrates who opt to practice as private adjudicators. Sixth, utilize technology such as virtual sessions to increase the availability of part-time adjudicators and improve the efficiency of the court system. This should be coupled with adequate etiquette training on virtual court sessions. In addition, encourage

collaboration and knowledge-sharing between part-time adjudicators and full-time judges to promote consistency in rulings and procedures.

The Judiciary Strategic Plan (2019-2023) and the STAJ which is the vision of the Judiciary. These initiatives include: expansion of the Small Claims Court (SCC); automation of judicial functions; recruitment and retention of adequate and quality workforce; establishment, construction and renovation of courts; strengthening of the Tribunals Secretariat; continuous research to inform policy and administrative decisions; entrenchment of Alternative Dispute Resolution (ADR) mechanisms for expeditious resolution of disputes; and strategic and collaborative partnerships with external stakeholders to enhance the administration of justice.

References

Abohm J A., Conflict Management : A Panacea to Development *An African Journal of Philosophy 2014 20-43*

Collier, Paul., Bottom Billion: Why the Pooreest Countries are Failing and What can be Done, New York: Oxford University Press 2007 Economic Recovery and Strategy for Wealth and Employment Creation Policy (2003-2007)

Kariuki Njenga Advocates "Operationalization of the Small Claims Court" 2021

Miranda, Valérie Vicky. "The Africa-EU Peace and Security Partnership and the Role of Civil Society." Edited by Nicoletta Pirozzi. Strengthening the Africa-EU Partnership on Peace and Security: How to Engage African Regional Organizations and Civil Society. Istituto Affari Internazionali (IAI), 2012. http://www.jstor.org/stable/resrep09848.8.

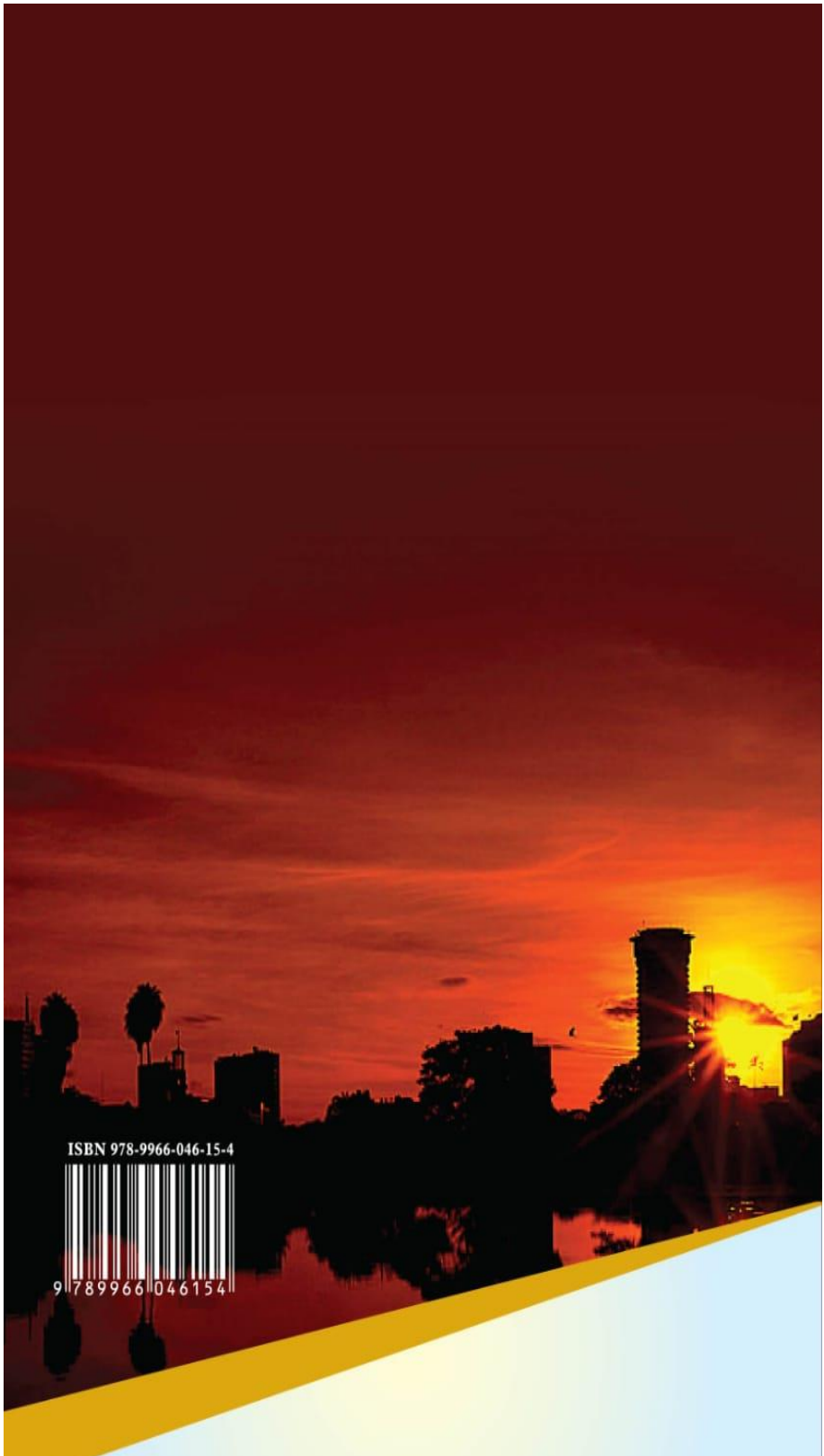
Report on Consideration of the Small Claims Court (Amendment) Bill, 2020 (National Assembly Bill No. 4) April 2020

ICJ Report on Strengthening Judicial Reforms Volume 15: A Review and Commentary on The Small Claims Court Bill 2015.

State of the Judiciary and Administration of Justice Annual Report 2021/2023

Steele, E. (1981). The Historical Context of Small Claims Courts. American Bar Foundation Research Journal, 6(2), 293-376. doi:10.1111/j.1747-4469.1981.tb00356.x

Thorlindsson, Thorolfur, and Jón Gunnar Bernburg. "Durkheim's Theory of Social Order and Deviance: A Multi-Level Test." European Sociological Review 20, no. 4 (2004): 271–85. http://www.jstor.org/stable/3559561.



ISBN 978-9966-046-15-4