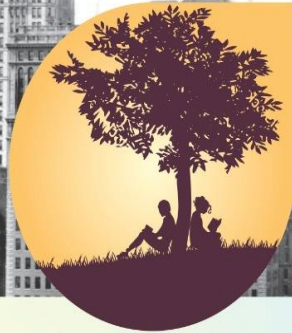


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Journal Review: Alternative Dispute Resolution (ADR) Journal, Volume 12, Issue 1

By: James Njuguna¹

Alternative Dispute Resolution (ADR) Journal is a peer-reviewed/refereed publication of the Chartered Institute of Arbitrators Kenya (CIArb-K), engineered and devoted to provide a platform and window for relevant and timely issues related to Alternative Dispute Resolution mechanisms. The role of ADR in access to justice has been recognised under the Constitution of Kenya, 2010. The Journal covers pertinent and emerging issues across all ADR mechanisms. Edited by CIArb African Trustee Emeritus and Member of Permanent Court of Arbitration Hon. Dr. Kariuki Muigua, OGW, PhD who was recently awarded Order of Grand Warrior by H.E. the President of the Republic of Kenya for his distinguished service to the Nation as a Dispute Resolution and Environmental Law Expert, Scholar and Practitioner, this Volume 12 Issue 1 of ADR Journal covers emerging topics and themes in Arbitration, Mediation, PPPs, Maritime Law, Technology and AI, Criminal Law, Construction and Engineering Law.

In “(Re) Examining the Doctrine of Emergency Arbitration,” Hon. Prof. Kariuki Muigua critically examines how the idea of emergency arbitration has been embraced in international commercial arbitration. He also discusses problems in emergency arbitration and suggests recommendation towards enhancing the efficiency of emergency arbitration. Mogesi Joel in “Promoting International Arbitration in Kenya Through Third-Party Funding: Prospects, Challenges & Lessons - A Call for Reform” examines the impact

¹ LLB (Hons), LLM (UON), PG Dip. (KSL), Dip. Management (KIM), Dip. Law (CILEX), MCI Arb; Lecturer Embu University

third-party funding of arbitration can help improve the attractiveness of Kenya as a seat of arbitration. The article identifies scope for reform in the law and makes suggestions to create a more liberal legislative and judicial framework for third-party funding of arbitration to promote Kenya as a preferred seat for arbitration.

In “Pre-Litigation Mediation as a Means to Enhance Judicial Economy in Kenya’s Criminal Justice System,” Michael Sang illuminates how pre-litigation mediation can reshape Kenya’s criminal justice system. He argues that by embracing international principles, aligning with constitutional imperatives, and enacting comprehensive legislation, Kenya has the potential to usher in a new era of justice—one that prioritizes victims’ rights, empowers offenders to reintegrate into society, and enhances judicial efficiency. Andrew Derrick and Nigel Clint in “Traditional Dispute Resolution Mechanisms: The Antiquity; Sociological Orientation; Integration into the Kenyan Judicial System; and Approaches by Kenyan Courts” looks at the crucial role TDRMs play in dispute resolution and how they complement and supplement the formal justice system. Further, they discuss the opinion of the courts with regards to utility of TDRMs in dispute resolution as well as the restorative justice and retributive justice contention between TDRMs and the Formal Justice System.

Hon. Prof. Kariuki Muigua, OGW, PhD in “Maritime Arbitration in Africa: Reflecting on the Current Status and Future Development” critically reflects on the status and future development of maritime arbitration in Africa. He examines the progress made towards embracing maritime arbitration in Africa and proposes reforms towards strengthening the future development of maritime arbitration in Africa. In “Arbitration in the Age of Artificial Intelligence (AI)” Juvenalis Ngowi attempts to identify some challenges associated with the use of AI in arbitration and tries to provoke a debate on how stakeholders in arbitration should deal with

the use of technology generally and AI in particular. The challenges include a variation of certain contractual aspects, such as fundamental principles for a valid contract, moral and ethical issues and confidentiality in arbitral proceedings.

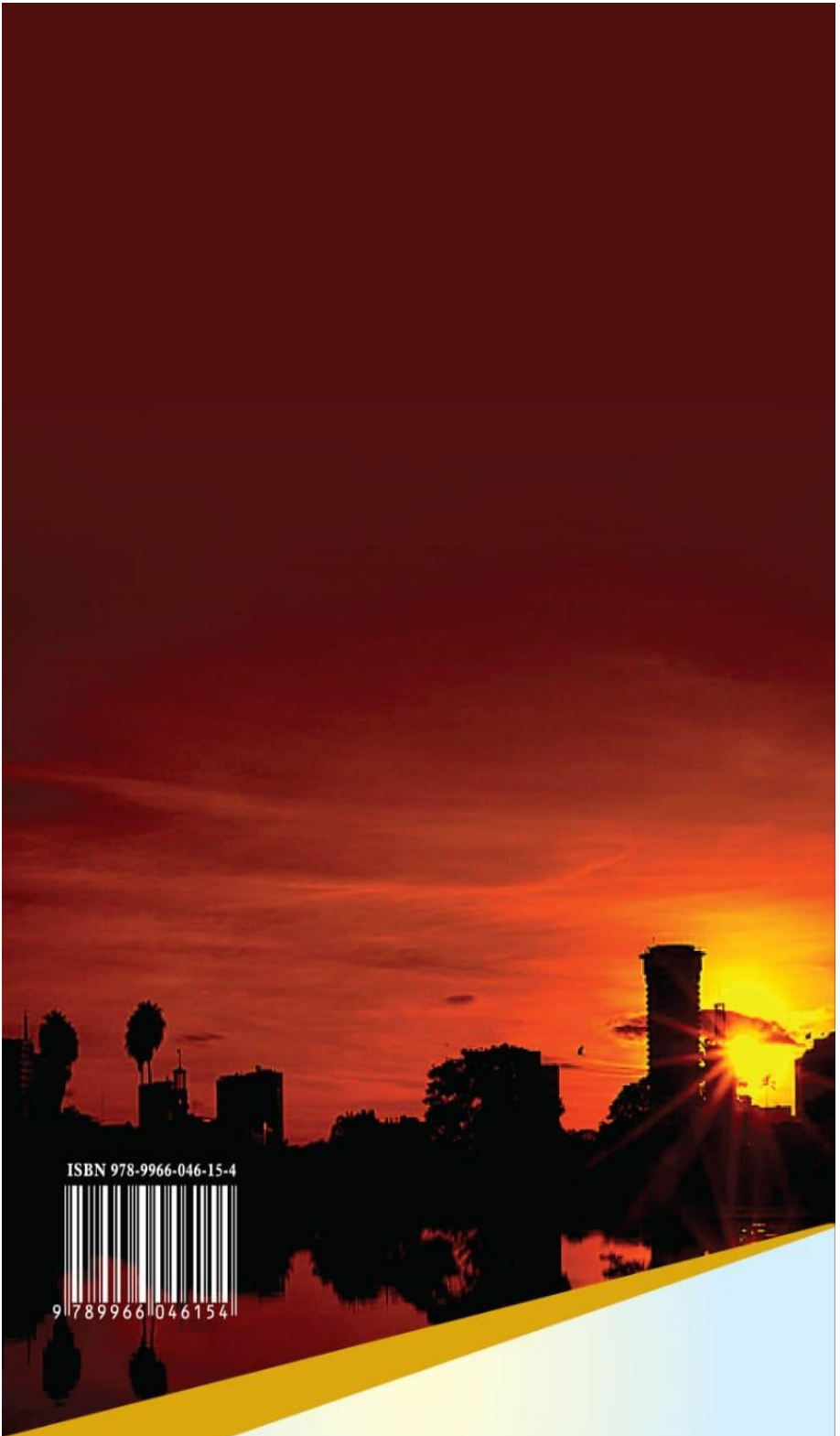
Prince Kanokanga in “Inaugurating South Africa as a Hub for International Commercial Arbitration in Africa: The International Arbitration Act 2017” discusses the adoption of the Model Law for use in international commercial disputes in South Africa, and how the country, has now become a hub for international commercial arbitration within the African continent. In “Technology and The Arbitral Seat: New Considerations for Procedural Law”, David Onsare explores the evolving relationship between technology and the arbitral seat, examining how digital platforms and virtual environments are influencing the rules, regulations and legal frameworks that govern arbitration procedures. He offers strategic recommendations for legal practitioners, policymakers and academics to navigate the emerging intersection of technology and arbitration law.

In “Integrating Alternative Dispute Resolution Mechanisms into Kenya’s Criminal Justice System: Some Reform Proposals” Michael Sang continues the discussion on the integration of Alternative Dispute Resolution (ADR) mechanisms and restorative justice practices into Kenya’s criminal justice system by drawing insights from international experiences, including South Africa, India, and Canada to examine the constitutional basis for ADR in Kenya and highlight the potential benefits and challenges of reform proposals. Eng. Odhiambo Aluoch in the article “Mediation as an Alternative Dispute Resolution (ADR) Mechanism for Construction Disputes in Kenya” undertakes empirical research to establish the future of mediation of disputes in the construction Industry in Kenya against the backdrop of the failures of arbitration and backlog of the cases in

the courts. He recommends further research by the practitioners to assist on realizing the benefits of mediation process as a form of ADR. Ibrahim Kitoo & Oliver Dundo in "Public Private Partnerships in Kenya: Navigating the Legal Pitfalls in Infrastructure Projects Tendering and Contracting" note that despite private sector increasing appetite for public sector infrastructure development and financing, PPP projects success rates remain worryingly low, with only about ten percent (10%) of such projects reaching financial close. They proceed to show that legal, regulatory and related challenges during the conceptualization, tendering and contracting phases form part of the reasons for project false-starts or delays. In "The Pros and Cons of Third Party Funding in International Arbitration: Balancing Risks and Opportunities" Paula Kilusi explores the advantages and disadvantages of third party funding of arbitration, the areas of concern that have arisen, and the best way forward for its sustainable use.

In "An examination of Kenya's divergent approach to the meaning of 'delivery' of an arbitral award in contrast to other Model Law jurisdictions" Prince Kanokanga focusses on the examination of the tendency by the judiciary in Kenya to adopt what can only be described as a divergent approach as to the meaning of the term 'delivery' in the context of the communication of arbitral awards to the parties. Michael Sang in "The Viability of Plea Bargaining as Alternative Dispute Resolution in Kenya's Criminal Justice System" offers a comprehensive exploration into the intricate world of plea bargaining within the context of the Kenyan criminal justice system and using comparative experiences other jurisdictions unveils the challenges, inconsistencies, and potential enhancements surrounding plea bargaining practices in Kenya. In "Alternative Dispute Resolution (ADR) Mechanisms for Engineering Contracts: Opportunities and Challenges for Engineers," Eng. Odhiambo Aluoch analyses the existing literature on the causes of dispute in

engineering contracts and the place of ADR in resolving such disputes and presents practical and working solutions including the opportunities available in the ADR world for Engineers.



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