

Book Review: Resolving Conflicts through Mediation in Kenya, 2nd Edition

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Mediation is one of the Alternative Dispute Resolution (ADR) mechanisms which has been practised since aeons ago. It focuses on the interests and needs of the parties to the conflict. Article 159 of the Constitution of Kenya 2010, reignited the interest in various ADR mechanisms, including mediation and has elevated the position of mediation and other ADR mechanisms in resolving disputes in Kenya.

Dr. Kariuki Muigua has contributed immensely to ADR through his publications, and particularly in the field of Mediation through this text which was first published in 2012. The 2nd edition of this book is thus meant to take the readers through the process of mediation in a simplified yet comprehensive manner, with the latest key amendments on mediation legal and institutional framework in Kenya.

This edition takes keen interest in the new developments that have taken place since the publication of the first edition. It contains guidelines on how best to set up and implement a mediation program that not only responds to the needs of the people, but also achieves the desired goal of enhancing access to justice for all, as opposed to the direction mediation is taking where there is a real risk of formalizing mediation and making it inaccessible to most Kenyans especially the informally educated in society.

This book evaluates how the Court Annexed Mediation Scheme is being implemented in Kenya's legal system. Despite significant success in the pilot project, there are issues that ought to be addressed such as the formalization of mediation and the resulting rules and technical procedures. While understandable, it locks out key players in mediation in the society.

The Judiciary may also consider coming up with a more accommodative framework for accreditation of more mediators, from across board, that is, formal and informal mediators,

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especially in light of the constitutional provisions providing for land and environmental disputes through ADR and TDR mechanisms.

It is important to bear in mind that any mechanism that is adopted should not only respond to the needs of the target group, but should also be accessible, cost-effective and one that the parties can easily identify with especially when compared to litigation. For mediation to be properly implemented across the country, the state must allocate the financial infrastructure to facilitate remuneration of mediators as well as enhancing the necessary staffing requirements.

The author has additionally highlighted the use of mediation in resolving family disputes and environmental matters. Mediation has been used successfully, though infrequently, in negotiating and implementing international environmental conventions and treaties and its attributes should be exploited to aid the local framework.

When it comes to land matters, the Constitution encourages communities to resolve the matters using the most appropriate mechanisms available to them. This is also reinforced by the fact that one of the functions of the National Land Commission is to encourage the application of traditional conflict resolution mechanisms in land conflicts.

As for family disputes mediation is recommended as it helps preserve the relationships of parties and fosters more cooperation during and after the process.

This book is meant to inform and also elicit debate on the feasibility of the current legal and institutional framework on mediation and ADR mechanisms in entrenching them as tools of access to justice now and in the future. It is therefore recommended as an excellent guide to Mediation in Kenya.