

HOW I BECAME AN ARBITRATOR

Two people were in court over a commercial dispute in 2001. One was my auditor. The other one was my first cousin. Both of them were, more than anything else, my close friends. I was greatly distressed to learn about the court case because I had introduced the partners to each other specifically for that business some 5 years previously.

The dispute involved payment of a company debt by the directors and payment of terminal employment benefits to one director in his capacity as ex-Managing Director and ex-employee of the company.

The parties accepted me as an arbitrator in spite of their knowledge about my friendship, professional relationship and blood relation to the parties.

I drafted a simple arbitration agreement which the parties signed. Then I drew up a very simple procedure which allowed each party to present its position in writing. I held a meeting for the parties to clarify their own positions and to interrogate the other side. Finally, I prepared a brief award, which had a date and my signature. The parties complied with the award and withdrew the court case.

Both parties were legally represented in the court case, but they chose to appear unrepresented in the arbitration. That was a great relief, as I did not at that point have the skills and tools of handling counsel in arbitration.

I unknowingly carried out this my first arbitration the old fashion way. The procedure was simple and informal – the oral hearing was held in my office after working hours. I did not charge a fee for two reasons. Firstly, I felt honoured to be involved in the resolution of the dispute. Secondly, I saw my role as at the least I could do to help friends out of an unfortunate situation.

That first arbitration was to me a learning experience, a huge challenge and confidence booster. It opened my eyes to opportunities I did not know existed and to my own potential as a dispute resolver. I later got extensive professional training on arbitration in Kenya, United Kingdom, Egypt and Dubai leading to me becoming a Fellow (FCIArb) of the Chartered Institute of Arbitrators. Two of Kenya's best known arbitrators kindly offered me pupillage.

I restricted myself to disputes in the real estate field at first but later branched to construction, insurance and general commercial disputes in addition to extending my expertise to adjudication, mediation and expert determination.

The next frontier is in the field of international commercial arbitration. I was recently awarded the 2013 American Arbitration Association A. Leon Higginbotham Jr Fellowship, through which I will, hopefully, get the necessary exposure and contacts.

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