YMG
Young Members Group

CIArb
evolving to resolve
Kenya Branch

THE ADR BULLETIN

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YMG Essay Writing

The CIArb Young Members Group (YMG) is yet to commence this years installment of its Annual Essay Competition aimed at exploring the ever developing themes in Alternative Dispute Resplution Practice in Kenya and around the world.

This is also aimed at encouraging content creation from within our borders and provide a platform for enhancing the overall academic writing ability in the young practitioners within the YMG .

The theme and topics will be timely circulated across all our communication outlets and social media platforms. There shall be prizes for the best submissions as well as incentives from our key sponsors which shall be awarded at the concusion of the competition.

The dates will be communicated in our official communication through the above means. We greatly look forward to your participation this year.

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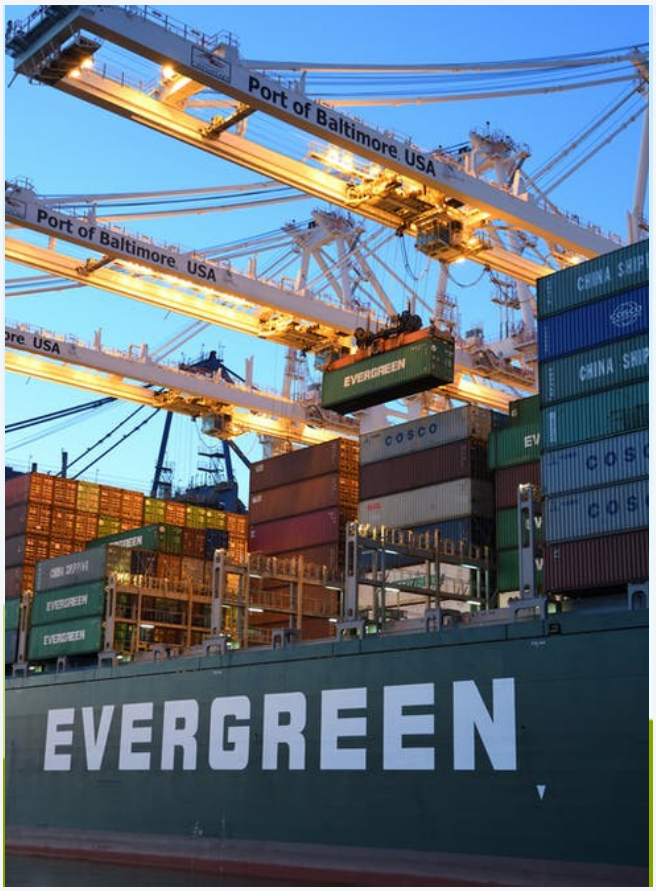


The inclusive nature of ADR in Islam related disputes

By: Khayran Noor, MCIArb

Islam offers special procedures for the resolution of disputes, paying credence to the Qur'an and Sunna. This is evidenced by specialized court structures such as the Kadhis Court. Disputants are reliant on the laws put in place to properly create processes and appoint judges with the necessary skill in ascertaining adherence to the practice of Islam. However, precedent from the court processes have identified gaps especially relating to family and succession disputes. Due to the bureaucratic nature of laws and court processes, the gaps present have resulted in appeals and challenge of the process, contributing to the backlog of cases.

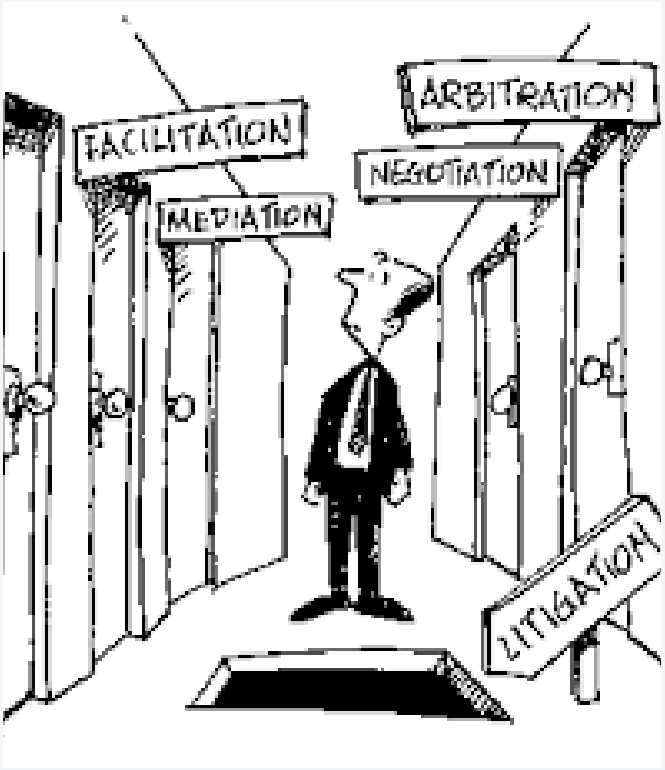
ADR allows parties to adopt flexible processes in their disputes, whilst appointing judges in whom the parties are confident of their knowledge of Islam, allowing for strict adherence to the faith. This greatly promotes an expeditious disposal of suits and greatly reduces backlog at the specialized courts

Why is arbitration preferred in maritime disputes?

By: Lucy Kaaria, MCIArb

AInternational arbitration is the preferred choice in maritime disputes due to its ability to address cross-border and international water disputes independently from the disputants' jurisdictions. Maritime disputes tend to arise suddenly and frequently and therefore a binding, flexible, cost-effective and party autonomous process is necessary in addressing the issues. Arbitration offers maritime disputants an expeditious disposal of the sudden and frequent suits, thereby being better placed as compared to the court process. The party-autonomous nature of arbitration also allows the parties to appoint a skilled judge or their specific dispute, as the disputes to raise technical issues special to maritime law.

Although the international courts play a significant role in the international maritime dispute resolution process, their bureaucratic and winner takes all nature make them a less preferred mode of dispute resolution as compared to international arbitration.



Consolidation of Arbitration Proceedings

By: James Ngotho Kariuki FCIArb

In the UK, the Arbitration Act 1996 provides that parties are free to agree to consolidation of proceedings with other arbitral proceedings. However, the tribunal can only order for the consolidation of proceedings where the parties confer such power upon the tribunal. The Arbitration Act 1995 does not provide for consolidation of arbitral proceedings.

There is a lacuna in our substantive and procedural arbitration laws regarding the consolidation of arbitration proceedings. As a result of this gap in the law, parties opt to resort to the Courts to decide on this issue. Kenyan courts are reluctant to make an order for consolidation of the proceedings as it would constitute re-writing the agreement between the parties and/or also warrant interference of the court in arbitration proceedings contrary to Section 10 of the Arbitration Act 1995. This which brings us back to the starting point without any solution. A prominent factor in consolidation of proceedings is the agreement between parties on the same. The apt proposal would be an amendment to the arbitration laws to include provisions on consolidation by parties and/or the tribunal. Should the courts be able to make a determination on consolidation on arbitral proceedings during the intervening period?

Adopting the right choice of ADR

By: Alema Edgar Usagi, MCIArb

IPost 2010, legislators in Kenya have taken deliberate steps to include ADR in statutes. This has led to the creation and increase in number of specialized tribunals and mechanisms prior to the formal court process. The quasi-judicial nature of ADR processes has been granted status in major acts such as the Community Land Act, Roads Act, Environmental Management and Co-ordination Act, Sports Act and others.

Whilst this may be commendable, the generic nature of the language used in the statutes allows room for abuse by practitioners and disputants. For instance, provision for the use of arbitration in acts such as the Community Land Act is criticized for the simple reason that the nature of community land is mobile and therefore non-binding modes of dispute resolution may offer better outcomes. The generic language may act as an impediment of access to justice, which is the major reason for ADR. The language needs to be specific, assigning the ADR mechanisms paying close attention to the nature of the disputes.