

THE ADR BULLETIN

THE OFFICIAL YMG(KE) BULLETIN

April 29

Vol. 4

Contribute to the ADR Bulletin



CONTENT INSIDE:

Delimiting Arbitrability of disputes in Kenya- 2

The Sports Dispute Tribunal (Part 1)- 2

What informs the Arbitral Process?-3

Mooting highlights as a Student and Young Arbitrator-3

The YMG (KE) ADR Bulletin is a weekly publication aimed at providing snippets of the wide range of topics within the scope of Alternative Dispute Resolution from both local and an international perspectives. The YMG aims to achieve our goal of being the centre for readily accessible and free content on ADR with the aim of growing the knowledge base of our young membership. We are hereby extending the YMG (KE) ADR Bulletin to our membership.

We invite our members to submit their content on ADR for publication in our Bulletin. This is only open to YMG members in good standing.

To be included, reach out to us on ymg@ciarbkenya.org with your full name, CIArb. membership number and level (e.g. Student Member, MCIArb) and our editors shall reach out to you on the next steps. We look forward to your contributions!



Delimiting Arbitrability of Disputes in Kenya

By Peter M. Muriithi, MCI Arb

Arbitrability can be described as the question of whether the subject matter can be arbitrated or whether the particular dispute must be resolved in court. There is no specific legislation outlining which disputes cannot be arbitrated in Kenya. However, not all disputes are arbitrable.

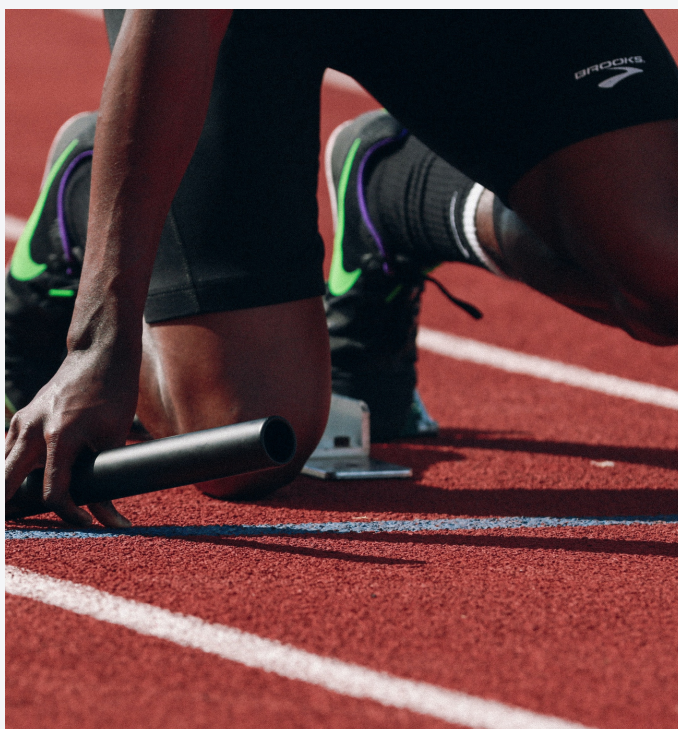
There is a general rule that matters are arbitrable when they refer to economic or disposable private rights. As such without purporting to issue a comprehensive list of matters that are not arbitrable in Kenya, the following matters are not arbitrable in Kenya: Disputes which affect public interests (e.g criminal offences and public interest disputes), marital status, validity of patents, status of a public right of way, bankruptcy or insolvency matters, interpretation of the Constitution, judicial review of administrative decisions and lastly matters that are considered to be against the public policy of Kenya.

The Sports Dispute Tribunal (Part 1)

By Khayran Noor, MCI Arb.

Kenya established the Sports Dispute Tribunal (SDT) by virtue of Section 55 and 58 of the Sports Act (No.25 of 2013) and Article 159 (2) (c) of the Constitution of Kenya (2010).

In order to ensure expeditious, flexible, cost-effective, confidential resolution of sports disputes, the SDT unlike other tribunals established by statute, has the discretion to apply rules of arbitration and mediation on case-by-case basis, with the main aim of safeguarding and maintaining relationships between sports persons and bodies and are conducted with people of expertise and experience in the relevant field of sports





What informs the Arbitral Process?

By Lucy Kaaria, MCI Arb.

The Arbitration process adopted by the parties can be based on an arbitration clause in a contract or a separate arbitration agreement by the parties entered into before a dispute arises. The clause or agreement provides for the procedure to be followed in appointing the arbitrator(s). This can also include the involvement of an appointing body where a specialized institution is identified and takes the role of appointing an arbitrator. In this case, the arbitration clause/agreement would identify a specific institution. Some of these institutions include, the London Court of International Arbitration (LCIA), the American Arbitration Association (AAA), National Arbitration Forum (NAF) In Kenya the main appointing bodies include the Nairobi Centre for International Arbitration, (NCIA) and The Chartered Institute of Arbitrators (CI Arb.)

The other side of the coin is Ad-hoc Arbitration where the parties, without any underlying arbitration clause or agreement can still opt to take up arbitration as their mode of choice of settling their dispute. In this instance, they are free to determine their own rules of procedure, and the applicable law which may inform the appointment of the arbitrator.

Mooting highlights as a Student and Young Arbitrator

By Bettina Okinyi, Student Member

Mooting is one of the best ways through which students can sharpen their arbitration skills. The Arbitral Tribunal simulations bring teams of students from different universities together to not only compete against each other but also learn the art of arbitration before practice. The competitions give students of arbitration an edge through mentoring, exchange of ideas and a chance to tackle the roles of both claimant and respondent counsel. The shift to virtual reliance due to the pandemic instills necessary skills in preparation for future Online Dispute Resolution practice (ODR).

Examples of these moots include: The Willem C. Vis International Commercial Arbitration Moot and its multiple pre-moots which focus on international commercial sales law, The Alfred Deakin International Commercial Arbitration (ICA) Moot, The Foreign Direct Investment International Arbitration Moot (FDI Moot), International Arbitration Moot Competition by Africa Arbitration Association (AAA) amongst others. Locally, the Nairobi Centre for International Arbitration (NCIA) also held its inaugural competitions in 2019.

