YMG
Young Members Group

CIArb
evolving to resolve
Kenya Branch

THE ADR BULLETIN

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YMG (KE) New Web Page

We take this opportunity to unveil our new web page with enhanced accessibility to information on the YMG as well as new content and resources available for free to our membership.
Visit our new 'Resources' page where you can access all our free ADR content including acess to past ADR Bulletins as well as our ADR Articles and Nuggets. Registration has also been made simpler with our readily accessible online form.

We invite our members visit our page for more information on our activities as well as getting to know the face our leadership as we strive to enhance our reach to our membership so as to effectively serve you.

Find us on ciarbkenya.org/ymg/ and get started on the YMG experience. Feel free to reach out to our leadership on ymg@ciarbkenya.org for any inquiries on the YMG.

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Appeals in Arbitration (Part 2)

By Wambui Muigai, MCIArb

Further to the rights of appeal envisaged under Section 39 of the Arbitration Act Cap 49, on 6 th December 2019, the Supreme Court of Kenya in the case of Nyutu Agrovet Limited vs. Airtel Networks Kenya, determined that an appeal may lie from the High Court to the Court of Appeal against a Ruling on an application to set aside an arbitral award pursuant to Section 35 of the Arbitration Act.

The Supreme Court specified that an appeal may lie where the High Court in setting aside an arbitral award has stepped outside the provisions of Section 35 of the Arbitration Act and thereby made a decision so grave, so manifestly wrong that it has closed the door of justice to either party. While this limb of appeal is yet to be exercised. Can the determination of the Supreme Court be said to equally apply to Sections 36 as read together with Section 37 of the Arbitration Act in the inverse?

Fast Tracking the Arbitral Process

By Arch. Nekoye Masibili, MCIArb

The CIArb Kenya Branch adopted a new set of Arbitration Rules in October 2020. Among several key improvements in efficient delivery, is the accommodation of fast-track procedure for arbitral proceedings. What's different? In addition to submission of a standard request for appointment of an Arbitral Tribunal (Par. 5 - 6), parties may now, upon agreeing in writing, request the institute that the Arbitral proceedings be conducted expeditiously (Par. 77-87).

As such, the appointed Tribunal, subject to agreement by the parties, shall limit the time required for exchange of pleadings, oral evidence and submissions. The Tribunal may also limit the length of filings, witness statements and submissions. Further, an Aaward shall be rendered within one month of the close of hearings, unless under exceptional circumstances. However, to qualify for fast track procedure, the criterion is that the amount in dispute must not exceed KES 10 Million as the aggregate of the claim, the counterclaim, the defense set-off exclusive of claimed interest, cost of the reference and cost of the award.

Choosing Alternative Dispute Resolution

By Martin Mavenjina, MCIArb

In some jurisdictions, parties have lost confidence or have reduced confidence in Court processes. This has been motivated by the critical issue of the ever-growing backlog of cases. As such, parties should be encouraged to embrace Alternative Dispute Resolution (ADR) for many reasons some of which I shall highlight here.

ADR mechanisms in general are mainly party driven. Consequently, decision making is usually faster hence accelerating the speed of the overall process. ADR is also less costly in the grand scheme of things. Furthermore, ADR generally does not emphasise on procedure and the technicalities that may arise and provides parties with a chance to lay out their story as they perceive it. Another important reason is that ADR is more flexible and responsive to the individual needs of the parties involved in the dispute. The parties' hands-on involvement in the process creates greater commitment to the result that enhances compliance. Alternative Dispute Resolution is more likely to preserve goodwill or at least not escalate the conflict, which is especially important in situations where there is the expectation of a continuing relationship after the dispute.

Awarding costs in Arbitration

Moses Muchiri Kahoro, ACIArb

The general principle when it comes to awarding costs is that in the absence of special circumstances, a successful party should receive costs. i.e. *'costs follow the event'*. Unless already agreed between the parties, it is necessary for the Arbitrator to identify the grounds relied upon in exercising his discretion in allocating costs in any other manner and the allocation must be judicially exercised. The term 'judicially exercised' is a broad concept but simply put, it would mean that the arbitrator must not act capriciously and must, show reasons tied to the case in hand of which a competent court would interpret as proper.

Examples of some of the reasons as to why a successful party may not be awarded costs can arise where there is evidence that a party deserving of costs on the face of the matter has done something connected to arbitration calculated to cause unnecessary disputation and expense or has performed a wrongful act in the course of the relationship between the parties (usually contained in a contract) from which which the arbitration arises or has generally acted unreasonably and oppressively.