

THE ADR BULLETIN

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New YMG ADR Support Portal



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YMG (KE) is opening up its doors to the world. We aim to set up a portal to provide free assistance on any issue on ADR. This include providing guidance on any aspect of ADR practice as well as any challenges that you may have encountered as you build upon your ADR portfolio. Our experienced team will set time apart to offer the requested assistance as submitted

as part of our goal to enable young practitioners where opportunities for external guidance and mentorship may be lacking. This is open to everyone. We invite anyone seeking assistance to keep a look out on our support page at ciarbkenya.org/ymg/ further our efforts to grow ADR in Kenya by generating and promoting interest in new and young practitioners.



ADR and Tax Disputes In Kenya

By Alema Edgar Usagi, MCI Arb

The Kenya Revenue Authority (KRA) embraced the use of ADR in resolving tax disputes. Section 55 of the Tax Procedures Act, Act No. 29 of 2015 Laws of Kenya, allows the use for alternative dispute processes to resolve disputes either between the Authority and a taxpayer or between 'obligated' individuals, on a case by case basis, as the court or tribunal may decide. The circumstances may range from the willingness of the parties to the public importance of the tax related issues.

The Tax Procedures Act allows the parties a maximum of 90 days for the parties to resolve their disputes through the alternative means. If the parties fail to resolve the disputes within 90 days, the dispute will be referred back to the court or tribunal. ADR as a tool in tax has resulted in the resolution of over 600 disputes, with the Tax Authority collecting over approximately KES. 25.8 billion stuck in convoluted disputes.

International Arbitration and Regional Hubs

By James Ngotho Kariuki, FCI Arb.

Domestic Arbitration has had a larger presence and growth and only recently have there been significant strides in the growth of International Arbitration practice in Kenya. The recent establishment of the Nairobi Centre for International Arbitration through the Nairobi Centre for International Arbitration Act No. 26 of 2013 which seeks to place Nairobi on the map as an international hub for Arbitration.

The country has been involved in a number of International Investment disputes including recently a party to an international investment arbitration in Cortec Mining Kenya Limited, Cortec (Pty) Limited and Stirling Capital Limited v. Republic of Kenya. Referral of disputes in the case of some parastatals and state corporations like the Kenya Ports Authority and the Kenya Airports Authority are as a matter of law under their respective acts, referring disputes to the NCIA and their rules of procedure. This will aid in enhancing Nairobi as an ideal seat for regional as well as international arbitration and enhance the participation of local institutions and professionals in international arbitrations.





Arbitration and Constitutional Supremacy in Kenya

By Moses Kahoro Muchiri, ACI Arb

Constitutional Issues have been arising in the course of arbitration proceedings. This has been used as a basis of invoking the jurisdiction of the High Court outside the scope of Section 35 of the Arbitration Act 1995.

In the case of Kenya Breweries Limited & Another Vs Bia Tosha Distributors Limited & 3 Others (2020) the Court of Appeal at Nairobi was tasked with determining whether the High Court Judge had jurisdiction to entertain the petition and to issue conservatory orders based on the existing constitutional issues.

The court held that as much as the constitutional breaches complained of were predicated on the agreements which provided for mediation and arbitration as a medium for dispute resolution, those avenues ought to have been exhausted first. The Court of Appeal was of the view that the High Court Judge did not adhere to the role of the court in the promotion of ADR as set out in Article 159 (2) (c) of the Constitution of Kenya 2010, but rather downgraded it.

Alternative Justice System Baseline Policy in Kenya

By: Peter M. Muriithi, MCI Arb

On 27th August 2020, Emeritus Chief Justice David Maraga presided over the launch of the Alternative Justice System Baseline Policy (hereinafter AJS policy). The AJS policy outlines steps to embrace and implement alternative justice systems in accordance with Article 159(2) (c) of the Constitution 2010. The AJS policy analysis; Alternative justice systems, conceptual framework and imperatives for alternative justice Systems, challenges and responses on alternative justice systems, how is AJS practiced, operational doctrines of interaction between Courts and matters determined by or before AJS institutions, key areas of intervention and implementation, operationalizing the AJS policy and the implementation matrix of AJS policy.

The AJS policy in a nutshell emphasizes on importance alternative justice Systems and the need for them to be adopted in our justice system to promote access to justice in Kenya. The significance of the policy lies in the fact that it identifies the key areas of intervention and proposes ways for operationalizing the AJS policy.

