ciarb.
Kenya Branch

ALTERNATIVE DISPUTE RESOLUTION

JOURNAL VOLUME 14 • ISSUE 3 • 2026

ALTERNATIVE DISPUTE RESOLUTION

Volume 14 Issue 3 **2026**

Alternative Dispute Resolution is a journal of the Chartered Institute of Arbitrators (Kenya Branch)

For Marketing opportunities contact: marketing@ciarbkenya.org
Chartered Institute of Arbitrators, Kenya, Nicholson Drive, Off Ngong Road,
Between Bemuda Plaza and Central Church of Nazarene
P.O. Box 50163-00200, Nairobi
Tel: 2712481, 2722724, Fax: 2720912
Mobile 0734-652205 or 0722-200496
Email: info@ciarbkenya.org Website: www.ciarbkenya.org

Typesetting by:
New Edge GS,
P.O. Box 60561 – 00200,
Tel: +254 721 262 409/ 737 662 029,
Nairobi, Kenya.

Printed by:
Mouldex Printers
P.O. Box 63395,
Tel – 0723 366 839,
Nairobi, Kenya.

Published by:
Glenwood Publishers Limited
P.O. Box 76115 - 00508
Tel +254 2210281,
Nairobi, Kenya.

This Journal should be cited as (2026) 14(3) Alternative Dispute Resolution: ISSN 3078-2120

Editor's Note

Welcome to the *Alternative Dispute Resolution (ADR) Journal*, Volume. 14, No.3, 2026.

The Journal is a publication of the Chartered Institute of Arbitrators, Kenya Branch. It provides a platform for scholarly debate and in-depth investigations into both theoretical and practical questions in Alternative Dispute Resolution.
The Journal covers pertinent and emerging issues across all ADR mechanisms including arbitration, mediation, negotiation, adjudication and traditional justice systems.

The Journal has witnessed tremendous growth in terms of its readership since it was launched. It is now one of the most cited publications in the fields of ADR and Access to Justice in Kenya and across the globe. I wish to thank our global audience for enabling the Journal to reach these heights. We welcome feedback from our readers to enable us steer the Journal to even greater standards.
The Journal is peer-reviewed and refereed in order to ensure credibility of information and validity of data.

This volume exposes our readers to a variety of salient topics and concerns in ADR including: *Artificial Intelligence in Arbitration: Prescribing Strict Governance to Uphold Due Process, Justice, Human Oversight and adherence to Rules and Legal Frameworks; Making the Nairobi Centre for International Arbitration a Robust Global Dispute Resolution Hub -An ADR Practitioners' Perspective; Proliferation or Multiplicity and Fragmentation? An Analysis of Africa's Arbitration and Trade Dispute Resolution Architecture; Whose Forum, Whose Rules? Arbitration and the Regulation of Crypto Disputes in Kenya; Natural Justice in Artificial Intelligence Legal Processes: Maintaining the Right to a Fair Hearing, Review and Appeal; Women, Land, and ADR: How Cultural Entitlements and Psychosocial Barriers Shape Land Title Access for Divorced and Widowed Women in Kenya; The Costly Uncertainty of Kenyan Arbitration after The Supreme Court's Divisive Nyutu Agrovet Ruling; Between Innovation and Exclusion: The Urgent Need for AI Governance in Kenya's ADR Systems;* and *Resolving Carbon Credits and ESG Disputes: The Role of Mediation in Low-Carbon Infrastructure.*
The Editorial Board encourages and welcomes submission of scholarly papers, commentaries, case summaries and book reviews aimed at providing critical

analysis of developments in case law, legislation and practice in Alternative Dispute Resolution and related fields of knowledge. Submissions should be sent to the editor through admin@kmco.co.ke and copied to info@ciarbkenya.org. The Editorial Board considers each article submitted but does not guarantee publication. We only publish papers that adhere to the Journal's publication policy after a critical, in depth and non-biased review by a team of highly qualified and competent internal and external reviewers.

CIArb-K takes this opportunity to thank the publisher, contributing authors, editorial team, reviewers, scholars and those who have made it possible to regularly publish this high impact Journal that continues to shape the discourse on ADR and Access to Justice in Kenya and across the globe.

Prof. Kariuki Muigua Ph.D, SC, FCIArb, Ch.Arb, OGW.
Editor, Nairobi,
July, 2026.

List of Contributors

Hon. Prof. Kariuki Muigua, PhD, SC

Professor of law at the University of Nairobi, Faculty of Law; Prof is a senior Cousnsel, Prof. Kariuki Muigua is a distinguished law scholar, an accomplished mediator and arbitrator with a Ph.D. in law from the University of Nairobi and with widespread training and experience in both international and national commercial arbitration and mediation. Prof. Muigua is a Fellow of Chartered Institute of Arbitrators (CIArb) - Kenya chapter and also a Chartered Arbitrator. He is a member of the Permanent Court of Arbitration, The Hague. He also serves as a member of the National Environment Tribunal. He has served as the Chartered Institute of Arbitrator's (CIArb- UK) Regional Trustee for Africa from 2019 -2022.

Prof. became the first winner of the Inaugural CIArb (Kenya Branch) ADR Lifetime Achievement Award 2021. He was also the winner of the ADR Practitioner of the Year Award 2021 given by the Nairobi LSK and the ADR Publisher of the Year 2021 awarded by CIArb Kenya. He was the winner of the African Arbitrator of the Year 2022 award at the 3rd African Arbitration Awards held at Kigali Rwanda beating other competitors from Egypt, Mauritius, Ethiopia, Nigeria and Kenya. The African Arbitrator of the Year award is the highest and most prestigious ADR and Arbitration Award in Africa.

Prof. is an Advocate of the High Court of Kenya of over 30 years standing and practicing at Kariuki Muigua & Co. Advocates, where he is also the senior advocate. His research interests include environmental and natural resources law, governance, access to justice, human rights and constitutionalism, conflict resolution, international commercial arbitration, the nexus between environmental law and human rights, land and natural resource rights, economic law and policy of governments with regard to environmental law and economics. Prof. Muigua teaches law at the Centre for Advanced Studies in Environmental Law and Policy (CASELAP), Wangari Maathai Institute for Peace and Environmental Studies (WMI) and the Faculty of Law, University of Nairobi. *Prof. Kariuki Muigua can be reached through muigua@kmco.co.ke or admin@kmco.co.ke*

Mwati Muriithi

Mwati Muriithi is an Advocate of the High Court of Kenya, an Associate member of the Chartered Institute of Arbitrators (ACIArb) and a Legal Researcher. He holds a Bachelor of Laws (LL. B) degree from Kenyatta University and a PostGraduate Diploma in Law from Kenya School of Law. He is currently an associate at the firm of Kariuki Muigua & Co. Advocates. His interests include arbitration, conveyancing, civil litigation, probate and succession, constitutional law and commercial litigation.

Mwati can be reached through: ***emwati96@gmail.com***

James Ngotho Kariuki

James is a Director and Partner at ADR Centre Limited in association with Kariuki Muigua & Company Advocates. James also serves as a Director and the current Treasurer of the Chartered Institute of Arbitrators Kenya Branch. He is a Fellow of the Chartered Institute of Arbitrators UK (FCIArb), the Malaysian Institute of Arbitrators. (FMIArb) as well as a certified professional mediator and construction adjudicator offering a full suite of Alternative Dispute Resolution (ADR) expertise. He is an Advocate of the High Court of Kenya, Commissioner for Oaths and Notary Public previously practicing at DLA Piper Africa Kenya (IKM Advocates) in the dispute resolution department. James also practices as an Advocate of the Astana International Financial Centre Court (AIFC).

James holds an LL.M in International Investment and Trade Law and has acted as counsel, adjudicator, mediator, arbitrator and consulted in complex disputes spanning cross-border commercial and investment transactions, construction, real estate, international and domestic commercial and investment law. With over a decade of distinguished practice in ADR and dispute resolution, James has built extensive expertise and experience across domestic, regional, and international dispute resolution.

James served as the Chairperson of the Chartered Institute of Arbitrators Kenya Branch, Young Members Group (YMG) (2020-2025) and recently concluded his term as one of the Africa Regional Representatives of the Young International Arbitration Group (YIAG) of the London Court of International Arbitration (LCIA). (2023-2025).

In acknowledgement of his exemplary strides in the alternative dispute resolution, he is recognised as one of Africa's foremost dispute resolution practitioners and has been awarded Young Arbitration Practitioner of the Year at the 3rd African Arbitration Awards in 2022 as well as named among the Business Daily Kenya Top 40 under Forty Men in 2023

James Ngotho Kariuki can be reached through jamesngothokariuki@gmail.com

Samantha Masengeli

Samantha Masengeli is an Advocate of the High Court of Kenya with over seven years of post-admission experience spanning commercial litigation, family law, and Alternative Dispute Resolution. A graduate of Moi University and called to the Kenyan Bar in 2018, her practice sits at the confluence of courtroom advocacy and specialist advisory work.

Samantha represents clients before Arbitral Tribunals, the High Court and Court of Appeal of Kenya.

In the field of Alternative Dispute Resolution, Samantha holds the designation of Member of the Chartered Institute of Arbitrators MCIArb. She has sat as sole arbitrator in several domestic arbitrations, served as tribunal secretary and as counsel in arbitration. She currently serves as the Vice-Chairperson of the Young Members Group of the Chartered Institute of Arbitrators Kenya Branch, and as Secretary General of the Young Africa Arbitration Association (YAfAA) under the Africa Arbitration Association (AfAA).

Her family law practice centers on Assisted Reproductive Technologies, where she has developed depth in drafting surrogacy agreements, advising surrogates and intended parents on their respective rights and obligations, and steering adoption matters through petition proceedings before the High Court.

Samantha can be reached through masengsamantha@gmail.com

Caren Nalwenge Okumu Mudeyi

Caren Nalwenge Okumu Mudeyi is a law student at Kabarak University, a student member of the Federation of Women Lawyers in Kenya, and an emerging legal scholar whose research sits at the intersection of financial regulation, arbitration, investment arbitration, fintech, emerging technologies and public law. She serves as a student clinician at the Kabarak Centre for Legal Aid and Clinical

Education, where she contributes to access to justice initiatives, and is also a contributor to The Platform for Law, Justice and Society Magazine. Her scholarship is particularly concerned with the regulation of digital finance, virtual assets, cross-border commercial relations and the institutional design of dispute resolution mechanisms in contemporary markets.
Caren ca n be reached through; cnalwenge@gmail.com 0796761349.

Muthoni Njagi
Muthoni Njagi is a Principal Magistrate with over 12 years of judicial experience across various courts in Kenya. She currently serves at the Milimani Commercial Court and holds the position of National Community Service Orders (CSO) Coordinator, where she leads multi-agency efforts focused on prison decongestion and greening Kenya's justice system.

She holds a Master of Laws (LL.M) from the University of Nairobi and a Master of Arts in Counselling Psychology from Daystar University. She is currently pursuing a Ph.D. in Clinical Psychology. Her professional and academic interests lie in trauma-informed justice systems and the intersection of mental wellness and law.
Muthoni Njagi can be reached through carolynem.njagi@gmail.com.

Raphael Mirimo Okochil
Raphael Okochil is an Advocate Trainee at the Kenya School of Law, the Founder of the ADR Law Journal and the Research Lead at Sports Legal. He has written on sports law, alternative dispute resolution, human rights and public international law.
***Raphael can be reached through** raphaelokochil@gmail.com* | *+254 799 012 070*

Rwoti Obadia Aruya
Rwoti Obadia Aruya is a dedicated Bachelor of Laws (LL.B.) student at the University of Nairobi, Parklands Campus, with an expected graduation in December 2026. An active member of the Students Association for Legal Aid and Research (SALAR) and a mentee at the Committee on Fiscal Studies, Obadia has developed a strong foundation in legal research, advocacy, and collaborative governance, with an interest in technology and the law.
Obadia can be reached through rwotiobadia70@gmail.com

Roselyn Linda Nyamweya

Roselyne Linda is a motivated law student at the University of Nairobi with a strong interest in Alternative Dispute Resolution (ADR) as a people-centred and sustainable approach to justice and conflict management. Through her academic training, she has developed solid skills in legal research, analytical thinking, and professional communication, alongside a growing appreciation of mediation, negotiation, and arbitration as effective tools for resolving disputes within communities and institutions.

Linda can be reached through lindanyamweya@students.uonbi.ac.ke

Shadrack Chai Chivatsi

Shadrack Chai Chivatsi is a final-year law student pursuing an LL.B. degree at the University of Nairobi, Parklands Campus. He is building a growing profile at the intersection of environmental law, energy law, climate change law, carbon markets, and legal research. Shadrack has garnered practical experience across diverse legal settings. Currently, he serves as a Legal Assistant at MMK Advocates. His previous roles include Legal Attaché at the Kenya Power and Lighting Company (KPLC), Legal Assistant at Rotary International, where he provided legal awareness to girls in foster care and Research Fellow at Reagan Associates/Law Foyer. As a published scholar, Shadrack has authored works on SSRN and the Law Foyer Journal covering carbon credits and the United Nations climate action agenda, reflecting his keen interest in climate law and sustainable development. Additionally, he holds certificates in mediation and ADR from the Devlui Mediation Center, as well as advanced legal research and writing from the Law Foyer Academy in India.

He has also served as the Head of Research for the Students Association for Legal Aid and Research (SALAR) and as a Journal Editor for the Lawfoyer International Journal of Doctrinal Legal Research. Combining sharp analytical skills, proactivity, a commitment to social justice, and a passion for transformative legal frameworks.

He can be contacted via chaishadrack540@gmail.com

Alternative Dispute Resolution Journal

Volume 14 Issue 3 2026

Artificial Intelligence in Arbitration: Prescribing Strict Governance to Uphold Due Process, Justice, Human Oversight and adherence to Rules and Legal Frameworks

By: Prof. Kariuki Muigua

Abstract

This paper examines how AI can be effectively harnessed in arbitration. The paper observes that the adoption of AI in arbitration provides numerous benefits towards access to justice. The paper discusses how AI is revolutionizing arbitration and improving access to justice. However, despite its ability to bolster access to justice through arbitration, the paper observes that risks and challenges inherent in AI can undermine this ideal. It discusses some of the key risks and concerns in AI and how they can undermine the appropriateness of arbitration in the access to justice discourse. Due to its both positive and negative attributes, the paper posits that governing AI is vital towards effectively harnessing it in arbitration and ADR. It examines how AI can be strictly governed in arbitration in order to uphold due process, justice, human oversight and adherence to rules and legal frameworks.

1.0 Introduction

Arbitration is one of the fundamental Alternative Dispute Resolution (ADR) techniques. Arbitration has been defined as a private and consensual process where parties in dispute agree to present their grievances to a third party for settlement[1]. In addition, arbitration has also been defined as a dispute management mechanism where parties through an agreement submit their dispute to one or more neutral third parties who makes a binding decision on the dispute[2]. Arbitration can also described as a contractual proceeding, whereby parties to any controversy or dispute, in order to obtain an inexpensive and speedy final disposition of the matter involved, select an arbitrator or arbitrators of their own choice and by consent submit their controversy to such an arbitrator

[1] Muigua. K., 'Settling Disputes through Arbitration in Kenya.' Glenwood Publishers, 4th Edition, 2022

[2] World Intellectual Property Organization., 'What is Arbitration' Available at https://www.wipo.int/amc/en/arbitration/what-is-arb.html (Accessed on 20/05/2026)

or arbitrators for determination[3]. Arbitration usually arises where a neutral third party is appointed by the parties or an appointing authority to determine a dispute and give a final and binding award[4].

Arbitration and other ADR processes including mediation, negotiation, conciliation and Traditional Dispute Resolution mechanism (TDRMs) are associated with several key attributes including informality, privacy, confidentiality, flexibility and the ability to promote expeditious and cost-effective management of disputes making ADR a viable and appropriate tool in enhancing access to justice[5]. In particular, arbitration is renowned for its key features including privacy, flexibility and party autonomy which allow parties to engage in an efficient, confidential and fair process leading to a final, binding and enforceable award[6]. In addition, arbitration has a transnational applicability which means that it applies across different jurisdictions and therefore guarantees neutrality in the determination of disputes by addressing differences that may arise as a result of multiple legal systems[7].

Due to their benefits, arbitration and other ADR processes are being widely embraced in the management of disputes towards access to justice. For instance, at the global level, the *Charter of the United Nations*[8] encourages a peaceful approach towards managing conflicts amongst states. The Charter provides that parties to a dispute shall first of all seek a solution by negotiation, enquiry, mediation, conciliation, *arbitration,* judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice[9] (Emphasis added).

---

[3] Sturges. W., 'Arbitration- What is It?' Available at https://core.ac.uk/download/pdf/72831049.pdf (Accessed on 20/05/2026)
[4] Muigua. K., 'Settling Disputes through Arbitration in Kenya' Op Cit
[5] Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Glenwood Publishers Limited, 2015
[6] What is Arbitration?., Available at https://www.hkiac.org/arbitration/what-is-arbitration (Accessed on 20/05/2026)
[7] Moses, 'The Principles and Practice of International Commercial Arbitration' 2nd Edition, 2017, Cambridge University Press
[8] United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI
[9] Ibid, article 33 (1)

At a national level, the *Constitution of Kenya*[10] mandates courts and tribunals to promote ADR mechanisms including reconciliation, mediation, *arbitration* and TDRMs[11] (Emphasis added).

Embracing arbitration and other ADR processes is therefore key towards effective conflict management and access to justice at all levels. In particular, it has been observed that integrating modern technology including Artificial Intelligence (AI) in arbitration and ADR can ensure access justice in a timely, affordable, responsive and efficient manner[12]. However, on the other hand, the integration of AI into arbitration and ADR raises several risks and challenges including the potential for human rights violations, data privacy and security risks, and concerns around transparency, accountability and due process[13]. Consequently, it is imperative to effectively govern AI in arbitration in order to harness its positive attributes for enhanced access to justice while minimising its risks and challenges.

This paper examines how AI can be effectively harnessed in arbitration. The paper observes that the adoption of AI in arbitration provides numerous benefits towards access to justice. The paper discusses how AI is revolutionizing arbitration and improving access to justice. However, despite its ability to bolster access to justice through arbitration, the paper observes that risks and challenges inherent in AI can undermine this ideal. It discusses some of the key risks and concerns in AI and how they can undermine the appropriateness of arbitration in the access to justice discourse. Due to its both positive and negative attributes, the paper posits that governing AI is vital towards effectively harnessing it in

---

[10] Constitution of Kenya., 2010., Government Printer, Nairobi

[11] Ibid, article 159 (2) (c)

[12] Nairobi Centre for International Arbitration., 'Artificial Intelligence 'AI' in International Arbitration: Machine Arbitration' Available at https://ncia.or.ke/wp-content/uploads/2021/08/ARTIFICIAL-INTELLIGENCE-AI-IN-INTERNATIONAL-ARBITRATION.pdf (Accessed on 20/05/2026)

[13] International Bar Association., 'Innovation in arbitration: The technological revolution in dispute resolution' Available at https://www.ibanet.org/innovation-in-arbitration-the-technological-revolution#:~:text=Technology%20is%20revolutionizing%20arbitration%2C%20bringing%20efficiency%2C%20accessibility%2C,to%20focus%20their%20resources%20on%20substantive%20issues (Accessed on 20/05/2026)

arbitration and ADR. It examines how AI can be strictly governed in arbitration in order to uphold due process, justice, human oversight and adherence to rules and legal frameworks.

2.0 Artificial Intelligence in Arbitration: Promises and Pitfalls

Technology has emerged as a powerful tool that is revolutionizing arbitration and ADR and enhancing access to justice. It has been observed that the growth of technology holds the promise of an improved dispute resolution landscape that is based on fewer physical, conceptual, psychological and professional boundaries, while enjoying a higher degree of transparency, expeditiousness, efficiency, accessibility, participation and change[14]. Through technology, it is possible to foster access to justice for geographically separated parties via ADR processes such as arbitration and mediation[15]. In addition, technology can also enable parties to access information relevant to their dispute in real time therefore enhancing the efficacy of dispute resolution[16]. It has been observed that ADR, with its diverse range of methods such as mediation, arbitration, and negotiation, presents a viable option that aligns with the dynamic nature of technological advancement while addressing the specific demands of disputes in the cyberspace[17].

The growth of technology therefore holds immense promise to improve the landscape of arbitration and ADR. In particular, AI has emerged as a powerful technology that is transforming arbitration and improving access to justice. AI offers opportunities for all parties in arbitration including arbitrators, counsel and arbitral institutions. For example, AI is enabling arbitrators to effectively draft

---

[14] Rabinovich-Einy..O., & Katsh. E., 'Reshaping Boundaries in an Online Dispute Resolution Environment.' *International Journal of Online Dispute Resolution*, Volume 1, No. 1 (2014)

[15] Rule. C., 'Technology and the Future of Dispute Resolution' Available at https://law.scu.edu/wp-content/uploads/Rule-Technology-and-the-Future-of-Dispute-Resolution-copy.pdf (Accessed on 21/05/2026)

[16] Ibid

[17] Singh. B., 'Unleashing Alternative Dispute Resolution (ADR) in Resolving Complex Legal-Technical Issues arising in Cyberspace Lensing E-Commerce and Intellectual Property' Available at https://rbadr.emnuvens.com.br/rbadr/article/view/183 (Accessed on 21/05/2026)

procedural orders, organise evidence and prepare final awards[18]. For arbitrators, AI has the potential to summarise and organise large volumes of pleadings and evidence thus reducing workload and expediting proceedings[19]. In addition, AI has the potential to enable both arbitrators and lawyers to adequately prepare for arbitration proceedings by automating legal research, organizing evidence, aiding in document review and analyzing relevant case law and statutes[20]. Further, it has been observed that when drafting arbitration clauses, AI can propose drafting suggestions therefore helping clients and lawyers eliminate errors, integrate all pertinent provisions, identify blind spots and ensure their interests are protected[21]. In addition, when appointing arbitrators, AI can aid parties to make sound decisions by examining thousands of candidates' track records in similar cases[22]. AI is also enabling arbitral institutions to effectively undertake administrative tasks including case management[23]. In addition, it has observed that AI tools and systems are enhancing efficiency in cross border dispute resolution through international arbitration by facilitating language translation therefore aiding in efficient and cost-effective management of disputes involving parties from different jurisdictions[24].

The transformative power of AI can therefore improve the landscape of arbitration and ADR. AI can enhance efficiency and speed in arbitration by transforming all processes including the drafting of arbitration clauses, selection

---

[18] When Arbitrators Use AI: LaPaglia v. Valve and the Boundaries of Adjudication., Available at https://www.acerislaw.com/when-arbitrators-use-ai-lapaglia-v-valve-and-the-boundaries-of-adjudication/ (Accessed on 21/05/2026)

[19] Ibid

[20] American Bar Association., 'Artificial Intelligence in Arbitration: Is There Room for AI Arbitrators?—Part I' Available at https://www.adr.org/news-and-insights/ai-in-arbitration-is-there-room-for-ai-arbitrators/ (Accessed on 21/05/2026)

[21] Nairobi Centre for International Arbitration., 'Artificial Intelligence 'AI' in International Arbitration: Machine Arbitration' Available at https://ncia.or.ke/wp-content/uploads/2021/08/ARTIFICIAL-INTELLIGENCE-AI-IN-INTERNATIONAL-ARBITRATION.pdf (Accessed on 21/05/2026)

[22] Ibid

[23] Ibid

[24] ArbTech., 'Practical Implications of ChatGPT for Arbitration Practitioners.' Available at https://www.arbtech.io/blog/practical-implications-of-chatgpt-for-arbitration-practitioners (Accessed on 21/05/2026)

of arbitrators, conduct of arbitral proceedings and the writing of final awards[25]. By automating various time-consuming tasks such as legal research, document review, case management, summarising documents and transcription, AI is making arbitration more expeditious and cost-effective[26]. In addition due to its capacity to render awards more expeditiously when compared to human arbitrators, and the ability to learn from past awards more quickly and efficiently, AI can come up with more cogent, reasoned and consistent awards[27].

In light of the foregoing advantages, adopting AI can transform and improve access to justice through arbitration and ADR. However, the use of AI in arbitration raises several risks and concerns. For example, the use of AI in arbitration can raise data privacy concerns, especially in cases where confidential, private, sensitive, and privileged data is used for AI automation[28]. The use of technology in arbitration can result in AI platforms handling sensitive personal data, including financial details, health records, personal disputes, personal contact information and legal information[29]. Therefore, if not properly secured, this data could be vulnerable to breaches or unauthorized access undermining the right to privacy[30]. In addition, adopting AI in arbitration fuels transparency, accountability and due process concerns. It has been correctly observed that algorithmic decision-making through AI makes it difficult to understand how legal decisions are made which undermines transparency, accountability and due

[25] Ibid

[26] American Bar Association., 'Artificial Intelligence in Arbitration: Is There Room for AI Arbitrators?—Part I' Available at https://www.adr.org/news-and-insights/ai-in-arbitration-is-there-room-for-ai-arbitrators/ (Accessed on 21/05/2026)

[27] Nairobi Centre for International Arbitration., 'Artificial Intelligence 'AI' in International Arbitration: Machine Arbitration' Op Cit

[28] American Bar Association., 'Artificial Intelligence in Arbitration: Is There Room for AI Arbitrators?—Part I' Op Cit

[29] Hoppin. B., 'Ethics in Online Dispute Resolution: Balancing Technology and Human Judgment' Available at https://odr.com/ethics-in-online-dispute-resolution-balancing-technology-and-human-judgment/#:~:text=3.,refine%20AI%20models%20without%20consent. (Accessed on 21/05/2026)

[30] Ibid

process requirements under the rule of law[31]. When utilising it in arbitration, AI may devise conclusions that lack adequate explanation of how they are arrived at undermining transparency and accountability[32].

Further, it has been observed that overreliance on AI by arbitrators on key issues such as writing awards raises ethical and integrity risks and concerns since this can undermine fairness, justice, equity, public policy, and cultural aspects that can only be adequately addressed by human judgment[33]. In addition, it has been argued that given the international nature of the arbitration process, algorithmic biases can undermine its credibility[34]. This is particularly relevant in the context of cultural, language, gender and racial biases which can potentially undermine the international nature of arbitration[35].

In light of its promises and challenges, it is imperative to ensure strict governance of AI in order to effectively and appropriately harness it in arbitration for improved access to justice.

3.0 Prescribing Strict Governance of Artificial Intelligence inArbitration

The integration of AI in arbitration is vital agenda that can revamp and strengthen access to justice. AI can transform all aspects of arbitration including drafting of arbitration clauses, the appointment of arbitrators, legal research, document review, case management, communication, language translation and drafting of final awards thus ensuring efficiency, speed and cost-effectiveness of arbitration proceedings[36]. However, despite its efficacy, risks and challenges including data

---

[31] Burgess. P., 'AI and the Rule of Law' Available at https://www.bloomsbury.com/us/ai-and-the-rule-of-law-9781509963171/ (Accessed on 21/05/2026)

[32] American Bar Association., 'Artificial Intelligence in Arbitration: Is There Room for AI Arbitrators?—Part I' Op Cit

[33] Ibid

[34] Global Arbitration Review., 'Artificial intelligence in arbitration: evidentiary issues and prospects' Available at https://globalarbitrationreview.com/guide/the-guide-evidence-in-international-arbitration/3rd-edition/article/artificial-intelligence-in-arbitration-evidentiary-issues-and-prospects (Accessed on 21/05/2026)

[35] Ibid

[36] Nairobi Centre for International Arbitration., 'Artificial Intelligence 'AI' in International Arbitration: Machine Arbitration' Op Cit

privacy, algorithmic biases and transparency and due process concerns can undermine the use of AI in arbitration[37].

Consequently, it is imperative to ensure strict governance of AI in arbitration in order to harness its positive attributes while tackling risks and challenges. In particular, there is need to uphold transparency and due process. It has been suggested that when arbitrators use AI tools for key processes such as drafting awards, they should disclose this to the parties and, potentially, seek their prior approval[38]. By upholding due process and transparency, it is possible to avoid the danger of AI replacing arbitrators' personal engagement with the facts, law and evidence[39]. It is imperative for arbitrators to embrace the principle of non-delegation in order to avoid technology and AI from replacing and compromising their independent reasoning[40]. Therefore, in order to ensure good governance, AI should be adopted as a supportive tool in arbitration rather than a substitute for human judgment and adjudication.

Tackling algorithmic biases is also necessary towards strict governance of AI in arbitration for justice, fairness and human rights. It has been correctly observed that AI models are only as good as the data they are trained on and therefore, if the data is biased, incomplete, or inaccurate, the AI model's predictions and decisions will also be biased, incomplete, or inaccurate[41]. Therefore, when adopting AI in arbitration, it is necessary to utilise non-biased tools and systems including through adopting AI systems that are culturally-appropriate, context-specific, gender-neutral and inclusive in terms of language, race, religion among other considerations in order ensure justice, human rights and fairness[42].

---

[37] Ibid

[38] When Arbitrators Use AI: LaPaglia v. Valve and the Boundaries of Adjudication., Op Cit

[39] Ibid

[40] Ibid

[41] Vinciullo. A., 'The Risk of Law Firms Relying on Chat GPT to Perform Contract analysis and Legal Research.' Available at https://www.linkedin.com/pulse/risk-law-firms-relying-chat-gpt-perform-contract-legal-vinciullo/ (Accessed on 21/05/2026)

[42] Global Arbitration Review., 'Artificial intelligence in arbitration: evidentiary issues and prospects' Op Cit

Ensuring human oversight is also crucial towards strict governance of AI in arbitration. Human oversight in AI is key towards detecting and addressing risks such as algorithmic biases, errors, discrimination and human right violations[43]. In addition, it has been observed that human oversight fosters transparency and addresses errors in AI systems towards building trust between technology and society[44]. In particular, through human oversight, it is possible to ensure that the use of AI in arbitration follows due process for justice, fairness, human rights and non-discrimination[45]. It is therefore necessary to inculcate human oversight in AI including through review and appeal processes in order effectively harness it in arbitration for enhanced access to justice.

Strict governance of AI also involves adherence to rules and legal frameworks. For example, complying with cybersecurity protocols such as the *Protocol on Cybersecurity in International Arbitration*[46] is key towards protecting data privacy and security when adopting AI in arbitration. In addition, complying with institutional arbitration rules is necessary towards effectively navigating issues such as bias, discrimination, information security, independence, integrity and transparency which may arise when utilising AI in arbitration[47].

4.0 Conclusion

The integration of AI in arbitration promises to revamp and strengthen access to justice. However, in light of its risks and challenges, it is imperative to ensure strict governance including through fostering transparency, due process and accountability, tackling algorithmic biases for justice and human rights, ensuring

---

[43] The crucial role of humans in AI oversight., Available at https://www.cornerstoneondemand.com/resources/article/the-crucial-role-of-humans-in-ai-oversight/ (Accessed on 21/05/2026)

[44] Ibid

[45] Global Arbitration Review., 'Artificial intelligence in arbitration: evidentiary issues and prospects' Op Cit

[46] International Council for Commercial Arbitration., 'Protocol on Cybersecurity in International Arbitration' Available at https://cdn.arbitration-icca.org/s3fs-public/document/media_document/ICCA-reports-no-6-icca-nyc-bar-cpr-protocol-cybersecurity-international-arbitration-2022-edition.pdf (Accessed on 21/05/2026)

[47] Global Arbitration Review., 'Artificial intelligence in arbitration: evidentiary issues and prospects' Op Cit

human oversight and complying with rules and legal frameworks including data privacy and security laws[48]. Prescribing strict governance on AI in arbitration is a practical ideal towards harnessing the power of technology for enhanced access to justice.

[48] Nairobi Centre for International Arbitration., 'Artificial Intelligence 'AI' in International Arbitration: Machine Arbitration' Op Cit

References

American Bar Association., 'Artificial Intelligence in Arbitration: Is There Room for AI Arbitrators?—Part I' Available at https://www.adr.org/news-and-insights/ai-in-arbitration-is-there-room-for-ai-arbitrators/

American Bar Association., 'Artificial Intelligence in Arbitration: Is There Room for AI Arbitrators?—Part I' Available at https://www.adr.org/news-and-insights/ai-in-arbitration-is-there-room-for-ai-arbitrators/

ArbTech., 'Practical Implications of ChatGPT for Arbitration Practitioners.' Available at https://www.arbtech.io/blog/practical-implications-of-chatgpt-for-arbitration-practitioners

Burgess. P., 'AI and the Rule of Law' Available at https://www.bloomsbury.com/us/ai-and-the-rule-of-law-9781509963171/

Constitution of Kenya., 2010., Government Printer, Nairobi

Global Arbitration Review., 'Artificial intelligence in arbitration: evidentiary issues and prospects' Available at https://globalarbitrationreview.com/guide/the-guide-evidence-in-international-arbitration/3rd-edition/article/artificial-intelligence-in-arbitration-evidentiary-issues-and-prospects

Hoppin. B., 'Ethics in Online Dispute Resolution: Balancing Technology and Human Judgment' Available at https://odr.com/ethics-in-online-dispute-resolution-balancing-technology-and-human-judgment/#:~:text=3.,refine%20AI%20models%20without%20consent

International Bar Association., 'Innovation in arbitration: The technological revolution in dispute resolution' Available at https://www.ibanet.org/innovation-in-arbitration-the-technological-revolution#:~:text=Technology%20is%20revolutionizing%20arbitration%2C%20bringing%20efficiency%2C%20accessibility%2C,to%20focus%20their%20resources%20on%20substantive%20issues

International Council for Commercial Arbitration., 'Protocol on Cybersecurity in International Arbitration' Available at https://cdn.arbitration-icca.org/s3fs-public/document/media_document/ICCA-reports-no-6-icca-nyc-bar-cpr-protocol-cybersecurity-international-arbitration-2022-edition.pdf

Moses, 'The Principles and Practice of International Commercial Arbitration' 2nd Edition, 2017, Cambridge University Press

Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Glenwood Publishers Limited, 2015

Muigua. K., 'Settling Disputes through Arbitration in Kenya.' Glenwood Publishers, 4th Edition, 2022

Nairobi Centre for International Arbitration., 'Artificial Intelligence 'AI' in International Arbitration: Machine Arbitration' Available at https://ncia.or.ke/wp-content/uploads/2021/08/ARTIFICIAL-INTELLIGENCE-AI-IN-INTERNATIONAL-ARBITRATION.pdf

Nairobi Centre for International Arbitration., 'Artificial Intelligence 'AI' in International Arbitration: Machine Arbitration' Available at https://ncia.or.ke/wp-content/uploads/2021/08/ARTIFICIAL-INTELLIGENCE-AI-IN-INTERNATIONAL-ARBITRATION.pdf

Rabinovich-Einy..O., & Katsh. E., 'Reshaping Boundaries in an Online Dispute Resolution Environment.' *International Journal of Online Dispute Resolution*, Volume 1, No. 1 (2014)

Rule. C., 'Technology and the Future of Dispute Resolution' Available at https://law.scu.edu/wp-content/uploads/Rule-Technology-and-the-Future-of-Dispute-Resolution-copy.pdf

Singh. B., 'Unleashing Alternative Dispute Resolution (ADR) in Resolving Complex Legal-Technical Issues arising in Cyberspace Lensing E-Commerce and

Intellectual Property' Available at https://rbadr.emnuvens.com.br/rbadr/article/view/183
Sturges. W., 'Arbitration- What is It?' Available at https://core.ac.uk/download/pdf/72831049.pdf

The crucial role of humans in AI oversight., Available at https://www.cornerstoneondemand.com/resources/article/the-crucial-role-of-humans-in-ai-oversight/

United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI

Vinciullo. A., 'The Risk of Law Firms Relying on Chat GPT to Perform Contract analysis and Legal Research.' Available at https://www.linkedin.com/pulse/risk-law-firms-relying-chat-gpt-perform-contract-legal-vinciullo/

What is Arbitration?., Available at https://www.hkiac.org/arbitration/what-is-arbitration

When Arbitrators Use AI: LaPaglia v. Valve and the Boundaries of Adjudication., Available at https://www.acerislaw.com/when-arbitrators-use-ai-lapaglia-v-valve-and-the-boundaries-of-adjudication/

World Intellectual Property Organization., 'What is Arbitration' Available at https://www.wipo.int/amc/en/arbitration/what-is-arb.html

Making the Nairobi Centre for International Arbitration a Robust Global Dispute Resolution Hub -An ADR Practitioners' Perspective

By: Mwati Muriithi & Prof. Kariuki Muigua SC

Abstract

This paper examines how the Nairobi Centre for International Arbitration (NCIA) can be strengthened into a robust, credible and globally competitive dispute resolution hub. It adopts an ADR practitioner's perspective and focuses on the institutional, legal and market-facing reforms that would make NCIA more attractive to domestic, regional and international users. The paper argues that NCIA is strategically positioned but not yet fully consolidated as a global dispute resolution hub. It recommends a practical reform programme on the basis that Nairobi can become a serious global dispute resolution hub if NCIA evolves from a statutory institution into a trusted, professionally administered and internationally visible dispute resolution ecosystem.

1.0 Introduction

The NCIA Act[1] establishes the Nairobi Centre for International Arbitration as a body corporate headquartered in Nairobi.[2] The Act further mandates the centre to promote and administer domestic and international arbitration and other ADR processes.[3] That statutory foundation is crucial as it gives NCIA legal personality, institutional permanence and a broad public mandate extending beyond case administration to training, accreditation, research, policy coordination, public education, technical assistance and international cooperation.[4]

---

[1] Nairobi Centre for International Arbitration Act (Cap. 49A).

[2] Ibid, section 4.

[3] Ibid, section 5 (a) and (b).

[4] Ibid, section 5 (c) – (r).

However, the mere existence of a statutory arbitral institution does not create a global dispute resolution hub. Arbitration must be efficient, credible, ethical and supported by a sound legal and institutional framework.[5]

NCIA's statutory mandate is broad. Its Arbitration Rules[6] contain important features, including institutional appointment, confidentiality, emergency arbitration, joinder, consolidation, interim measures and award timelines. Its Mediation Rules[7] provide a basis for a broader ADR offering.

Nevertheless, NCIA must now move from foundational establishment to competitive consolidation. That requires deliberate reforms in governance, rules, technology, data, marketing, judicial support, professional ethics and user experience.

2.0 The Statutory Mandate of NCIA

The NCIA Act gives the Centre an unusually broad mandate. Section 5 provides for the functions of the centre which shall be to promote, facilitate and encourage international commercial arbitration; administer domestic and international arbitration and ADR techniques; develop rules for conciliation and mediation; organise conferences and training; coordinate national ADR policy; cooperate with regional and international institutions; conduct and disseminate research; maintain arbitration data; establish a specialised library; provide ad hoc arbitration support; assist with enforcement and translation of awards; provide procedural and technical advice; train and accredit mediators and arbitrators; educate the public; enter strategic agreements; and provide hearing, transcription and technological facilities.

---

[5] Muigua. K, 'Nurturing International Commercial Arbitration in Kenya' Available at https://kmco.co.ke/wp-content/uploads/2021/10/Nurturing-International-Commercial-Arbitration-in-Kenya.pdf (Accessed on 16/05/2026)
[6] Nairobi Centre for International Arbitration (Arbitration) Rules 2015
[7] Nairobi Centre for International Arbitration (Mediation) Rules, 2015.

From the functions envisioned under Section 5, it is evident that Parliament did not create NCIA as a passive registry. It created an institution with promotional, administrative, educational, research, policy and technical functions. If fully implemented, section 5 can support a comprehensive hub strategy. NCIA can become not only an administering institution but also a knowledge centre, training centre, policy actor, regional convenor, data repository and provider of modern dispute resolution infrastructure.[8]

3.0 Establishment of the Arbitral Court

The Act also establishes the Arbitral Court. Following the 2018 amendments, section 21 provides that the Court consists of a President, Deputy President, not more than fifteen other members who must be leading international arbitrators, and the Registrar. Section 22 provides that the Court shall hear and determine matters referred to it under the Act, the Rules or any other written law, and that its decisions on such matters shall be final. These provisions are significant because they give NCIA a specialised internal organ for institutional decision-making.[9]

The Second Schedule provides that the President of the Arbitral Court coordinates and supervises the Court's affairs, constitutes panels of odd numbers of members, allocates matters to panels, submits quarterly progress reports to the Board, and may delegate duties to the Deputy President.[10] This structure can support quality control, consistency and accountability. The Arbitral Court should not exist only as a formal statutory organ; it should become a visible source of institutional discipline and procedural confidence.

Section 15 of the Act is also important because it imposes confidentiality obligations on directors, officers, employees, agents and persons with access to records, documents, material or information relating to the Centre's affairs.[11]

[8] Nairobi Centre for International Arbitration Act, Cap 49A, s 5(h)–(p).
[9] Ibid, ss 21-22
[10] Ibid, Second Schedule
[11] Ibid, s 15 (1)

Breach is criminalised.[12] Confidentiality is a major selling point of arbitration,[13] and NCIA should treat this statutory protection as part of its institutional value proposition.

4.0 Nurturing NCIA as a Credible International Commercial Arbitration Hub

The ambition to make the Nairobi Centre for International Arbitration a robust global dispute resolution hub must begin from a realistic appreciation of where Kenya stands in the International Commercial Arbitration landscape. Kenya has made important progress by enacting the Arbitration Act, adopting a generally Model Law-oriented Arbitration framework, recognising Alternative Dispute Resolution under Article 159 of the Constitution, and establishing the NCIA as a statutory institution.

However, the existence of a legal framework is only the starting point. International Commercial Arbitration flourishes where there is a supportive legal environment, credible institutions, trained practitioners, predictable courts, and confidence among domestic and foreign users.[14]

International Arbitration operates within a complex framework comprising international conventions, National Arbitration legislation and Institutional Arbitration rules, all of which are designed to facilitate trade and investment by providing a stable and predictable dispute resolution mechanism.[15] This point is fundamental to the NCIA project.

If Nairobi is to become a serious arbitration hub, NCIA must be understood not merely as a legal institution but as part of Kenya's commercial infrastructure. Just as investors consider roads, ports, tax systems, financial markets and political

[12] Ibid, s 15 (4)

[13] Muigua. K., 'Promoting International Commercial Arbitration in Africa' Available at https://kmco.co.ke/wp-content/uploads/2018/08/PROMOTING-INTERNATIONAL-COMMERCIAL-ARBITRATION-IN-AFRICA-EAIA-Conference-Presentation.pdf (Accessed on 16/05/2026)

[14] Ibid

[15] Ibid

stability, they also consider whether commercial disputes can be resolved efficiently, neutrally and enforceably.[16]

The success of the NCIA as a Credible International Commercial Arbitration Hub would reduce the exportation of African disputes to foreign seats and institutions, retain dispute resolution work within the region, develop local expertise, create professional opportunities for African Arbitrators and Counsel, and strengthen Kenya's position as a regional services economy.[17]

The presence of Arbitral Institutions in Kenya demonstrates an acceptance of ADR and the need to nurture International Commercial Arbitration locally rather than sending commercial disputes abroad for settlement. This is not merely a matter of professional pride. It is also a question of economic sovereignty and institutional confidence.[18]

However, the transition from statutory establishment to institutional maturity requires more than legislative optimism. There are major challenges affecting International Commercial Arbitration in Kenya and Africa more broadly. These include: legal and institutional frameworks, limited institutional capacity, insufficient marketing, uncertainty in drafting arbitration clauses, court interference, uncertainty of costs, perceptions of corruption, bias against African seats, and limited appointment of African arbitrators.[19]

---

[16] Gary Born, International Commercial Arbitration (3rd edn, Kluwer Law International 2021) ch 1.

[17] Muigua K., 'Making East Africa a Hub for International Commercial Arbitration: A Critical Examination of the State of the Legal and Institutional Framework Governing Arbitration in Kenya' Available at https://kmco.co.ke/wp-content/uploads/2018/08/Making-East-Africa-a-Hub-for-International-Commercial-Arbitration.pdf (Accessed on 16/05/2026)

[18] Ibid

[19] Amazu A Asouzu, International Commercial Arbitration and African States: Practice, Participation and Institutional Development (Cambridge University Press 2001)

These challenges remain directly relevant to NCIA. They show that the Centre's task is not simply to administer cases, but to build confidence in an ecosystem that has historically been viewed by some international users with caution or unfamiliarity.[20]

Although progress has been made through the enactment of the NCIA Act and the establishment of the Centre, there remains a need to enhance the capacity of existing institutions in terms of staffing, financing and ability to meet the demands of commercial arbitration.[21]

This observation should inform any serious reform agenda for NCIA. A global dispute resolution hub cannot be built around a weak secretariat, slow administrative processes, under-resourced case management, or unclear internal procedures.[22] Users of International Arbitration expect prompt communication, efficient appointment of arbitrators, reliable management of deposits, clear procedural guidance, secure handling of documents, and professional support to tribunals and parties.[23]

As earlier indicated, Section 22 gives the Court jurisdiction over matters referred to it under the Act, Rules or other written law and provides that its decisions are final. However, finality must be matched by procedural quality. If the Arbitral Court's decisions are final, then its processes must be transparent in structure, fair in method and consistent in outcome.[24]

Arbitration requires limited court intervention, because excessive judicial interference undermines party autonomy, finality and the efficiency that parties

---

[20] Ibid.

[21] Kariuki Muigua, 'Reawakening Arbitral Institutions for Development of Arbitration in Africa' Available at https://kmco.co.ke/wp-content/uploads/2018/08/Reawakening-Arbitral-Institutions-for-Development-of-Arbitration-in-Africa.pdf (Accessed on 16/05/2026)

[22] Ibid

[23] Asouzu (n 19 above)

[24] Muigua (n 17 above)

seek when choosing arbitration.[25] This aligns with section 10 of the Arbitration Act, which restricts court intervention except as provided by the Act, and with the Model Law philosophy of judicial restraint.

For NCIA, this means that institutional credibility must be built both internally and externally: internally through competent administration and externally through courts that support rather than frustrate arbitral processes.[26]

Kenyan jurisprudence has increasingly moved in this direction. In *Euromec International Limited v Shandong Taikai Power Engineering Company Limited [2021] KEHC 93 (KLR)*, the High Court emphasised party autonomy, competence-competence, separability, finality and limited court intervention.[27]

More directly, in *Orient Enterprises Limited v Minghui [2025] KEHC 19065 (KLR)* the High Court recognised the finality of decisions made under the NCIA framework and declined to convert itself into an appellate forum over NCIA institutional decision-making.[28]

These decisions are important because they show that the courts can support the institutional autonomy of NCIA. However, such jurisprudence must become consistent, predictable and widely understood by judges, counsel and users.[29]

5.0 Building Global Confidence through Strategic Marketing and Institutional Visibility

A critical component of transforming the Nairobi Centre for International Arbitration into a robust global dispute resolution hub is deliberate marketing

---

[25] Kariuki Muigua, *Settling Disputes through Arbitration in Kenya* 5th Edn. (Glenwood Publishers 2012)

[26] Ibid

[27] Available at https://new.kenyalaw.org/akn/ke/judgment/kehc/2021/93/eng@2021-09-21 (Accessed on 16/05/2026)

[28] Available at https://kenyalaw.org/akn/ke/judgment/kehc/2025/19065/eng@2025-12-19 (Accessed on 16/05/2026)

[29] Muigua (n 21 above)

and strategic visibility. NCIA must therefore move beyond passive institutional presence and adopt an international market-positioning strategy aimed at domestic users, African commercial actors, foreign investors and International Arbitration practitioners.[30]

Kenya and Africa have often been portrayed as less developed in handling International Commercial Arbitration, and that insufficient effort has been made to market Kenya as a centre for International Commercial Arbitration.[31] This remains a critical issue for NCIA.

Institutions such as the ICC, LCIA, SIAC, DIAC, CRCICA and KIAC do not rely solely on their rules.[32] They publish statistics, host conferences, develop model clauses, issue practice notes, maintain international panels, cultivate relationships with users and deliberately project institutional reliability.[33] NCIA must do the same if it is to compete beyond Kenya.

Marketing, however, must be supported by substance. NCIA should publish annual caseload statistics, including the number of domestic and international cases, sectors involved, amounts in dispute, average time to tribunal constitution, average duration of proceedings, number of emergency applications, number of arbitrator challenges, and diversity of appointments. Such reporting would not breach confidentiality if anonymised, and it would directly address the confidence gap.[34]

---

[30] Muigua (n 5 above)

[31] Ibid

[32] International Chamber of Commerce, *ICC Arbitration Rules* (2021); London Court of International Arbitration, *LCIA Arbitration Rules* (2020); Singapore International Arbitration Centre, *SIAC Arbitration Rules* (2016); Dubai International Arbitration Centre, *DIAC Arbitration Rules* (2022); Cairo Regional Centre for International Commercial Arbitration, *CRCICA Arbitration Rules*; Kigali International Arbitration Centre, *KIAC Arbitration Rules.*

[33] Ibid

[34] Muigua, 'Nurturing International Commercial Arbitration in Kenya' (n 5 above) 10

6.0 Positioning NCIA for the Future: Digital Arbitration, AI and Online Dispute Resolution

ADR practice is rapidly evolving and Kenya must invest in digital dispute resolution if it is to respond effectively to the growth of digital trade and cross-border commercial transactions.[35] For NCIA, this means that technological capacity should not be treated as a mere administrative convenience, but as part of the Centre's competitiveness, accessibility and institutional credibility.[36]

A modern arbitration centre must be able to support electronic case filing, secure document exchange, virtual hearings, digital transcription, online payment of deposits and efficient case tracking.[37]

Section 5 of the NCIA Act empowers the Centre to provide facilities and administrative services for arbitration and other ADR processes, including hearing, transcription and technological services. This mandate should be operationalised through a secure digital case-management platform, clear virtual hearing protocols, electronic service rules, data protection safeguards and cybersecurity standards.[38]

[35] Muigua, K., 'The Evolving Alternative Dispute Resolution Practice: Investing in Digital Dispute Resolution in Kenya' Available at https://kmco.co.ke/wp-content/uploads/2022/04/The-Evolving-Alternative-Dispute-Resolution-Practice-Investing-in-Digital-Dispute-Resolution-in-Kenya-Kariuki-Muigua.pdf (Accessed on 16/05/2026)

[36] Muigua K., 'Navigating the Digital Dispute Resolution Landscape: Challenges and Opportunities' Available at https://kmco.co.ke/wp-content/uploads/2023/08/Navigating-the-Digital-Dispute-Resolution-Landscape-Challenges-and-Opportunities-.pdf (Accessed on 16/05/2026)

[37] Muigua K., 'Achieving Expeditious Justice: Harnessing Technology for Cost-Effective Arbitral Proceedings' Available at https://kmco.co.ke/wp-content/uploads/2018/12/Achieving-expeditious-Justice-Harnessing-Technology-for-Cost-Effective-Arbitral-Proceedings-17th-December-2018.pdf (Accessed on 16/05/2026)

[38] Ibid

Artificial intelligence may assist with administrative efficiency, document organisation, translation, scheduling, research support and data analytics, but it should not replace human judgment in arbitral decision-making.[39]

NCIA should therefore position itself not only as an arbitration institution, but as a digitally enabled dispute resolution platform capable of handling conventional commercial disputes as well as emerging disputes involving fintech, e-commerce, digital assets, data, infrastructure, telecommunications and technology contracts.[40]

7.0 Conclusion

A central theme emerging from this paper is that International Commercial Arbitration in Kenya must be deliberately nurtured. This nurturing requires more than legal reform; it requires capacity-building, ethical professionalism, judicial support, institutional cooperation, effective marketing and a conscious effort to overcome historical biases against African seats and African arbitrators.

This paper has argued that the Centre must move beyond statutory establishment and become a visibly efficient, professionally administered, technologically capable and internationally trusted institution. NCIA must therefore position itself not merely as a Kenyan institution, but as an African and international dispute resolution platform capable of serving commercial actors across borders.

---

[39] Muigua K., 'Legal Practice and New Frontiers: Embracing Technology for Enhanced Efficiency and Access to Justice' Available at https://kmco.co.ke/wp-content/uploads/2020/06/Legal-Practice-and-New-Frontiers-Embracing-Technology-for-Enhanced-Efficiency-and-Access-to-Justice-Kariuki-Muigua-Ph.D-June-2020.pdf (Accessed on 16/05/2026)

[40] Muigua K., 'Embracing Science and Technology in Legal Education for Efficiency and Enhanced Access to Justice' Available at https://kmco.co.ke/wp-content/uploads/2021/04/Embracing-Science-and-Technology-in-legal-education-for-Efficiency-and-Enhanced-Access-to-Justice-Kariuki-Muigua-April-2021.pdf (Accessed on 16/05/2026)

The task is therefore not merely to build an arbitration centre, but to build confidence in Kenya's capacity to deliver world-class dispute resolution from Africa, for Africa and for the global commercial community.

References

Amazu A Asouzu, International Commercial Arbitration and African States: Practice, Participation and Institutional Development (Cambridge University Press 2001)

Cairo Regional Centre for International Commercial Arbitration, CRCICA Arbitration Rules

Dubai International Arbitration Centre, DIAC Arbitration Rules (2022)
Euromec International Limited v Shandong Taikai Power Engineering Company Limited [2021] KEHC 93 (KLR)

Gary Born, International Commercial Arbitration (3rd edn, Kluwer Law International 2021)

International Chamber of Commerce, ICC Arbitration Rules (2021)

Kigali International Arbitration Centre, KIAC Arbitration Rules.

London Court of International Arbitration, LCIA Arbitration Rules (2020)
Muigua K., 'Achieving Expeditious Justice: Harnessing Technology for Cost-Effective Arbitral Proceedings' Available at https://kmco.co.ke/wp-content/uploads/2018/12/Achieving-expeditious-Justice-Harnessing-Technology-for-Cost-Effective-Arbitral-Proceedings-17th-December-2018.pdf

Muigua K., 'Embracing Science and Technology in Legal Education for Efficiency and Enhanced Access to Justice' Available at https://kmco.co.ke/wp-content/uploads/2021/04/Embracing-Science-and-Technology-in-legal-education-for-Efficiency-and-Enhanced-Access-to-Justice-Kariuki-Muigua-April-2021.pdf

Muigua K., 'Legal Practice and New Frontiers: Embracing Technology for Enhanced Efficiency and Access to Justice' Available at https://kmco.co.ke/wp-content/uploads/2020/06/Legal-Practice-and-New-Frontiers-Embracing-Technology-for-Enhanced-Efficiency-and-Access-to-Justice-Kariuki-Muigua-Ph.D-June-2020.pdf

Muigua K., 'Making East Africa a Hub for International Commercial Arbitration: A Critical Examination of the State of the Legal and Institutional Framework Governing Arbitration in Kenya' Available at https://kmco.co.ke/wp-content/uploads/2018/08/Making-East-Africa-a-Hub-for-International-Commercial-Arbitration.pdf

Muigua K., 'Navigating the Digital Dispute Resolution Landscape: Challenges and Opportunities' Available at https://kmco.co.ke/wp-content/uploads/2023/08/Navigating-the-Digital-Dispute-Resolution-Landscape-Challenges-and-Opportunities-.pdf

Muigua K., Settling Disputes through Arbitration in Kenya 5th Edn. (Glenwood Publishers 2012)

Muigua. K, 'Nurturing International Commercial Arbitration in Kenya' Available at https://kmco.co.ke/wp-content/uploads/2021/10/Nurturing-International-Commercial-Arbitration-in-Kenya.pdf

Muigua. K, 'The Evolving Alternative Dispute Resolution Practice: Investing in Digital Dispute Resolution in Kenya' Available at https://kmco.co.ke/wp-content/uploads/2022/04/The-Evolving-Alternative-Dispute-Resolution-Practice-Investing-in-Digital-Dispute-Resolution-in-Kenya-Kariuki-Muigua.pdf

Nairobi Centre for International Arbitration (Arbitration) Rules 2015

Nairobi Centre for International Arbitration (Mediation) Rules, 2015

Nairobi Centre for International Arbitration Act (Cap. 49A)

Orient Enterprises Limited v Minghui [2025] KEHC 19065 (KLR)

Singapore International Arbitration Centre, SIAC Arbitration Rules (2016)

Proliferation or Multiplicity and Fragmentation: An Analysis of Africa's Arbitration and Trade Dispute Resolution Architecture

By: James Ngotho Kariuki & Samantha Masengeli

Abstract

The African continent has witnessed an extraordinary expansion of arbitral institutions over the past two decades. National centres, regional bodies and branches of international arbitral organisations have proliferated across the continent, reflecting a growing commitment to alternative dispute resolution as a cornerstone of commercial governance. This article examines whether this institutional expansion constitutes a healthy proliferation that broadens access to justice and strengthens the arbitration ecosystem or whether it has instead produced a multiplicity that fragments institutional capacity and undermines systemic coherence. Chapter 1 catalogues the growth of arbitral institutions at the national, regional and international levels, identifying key centres from the Nairobi Centre for International Arbitration to the African Arbitration Association, and documenting the expanding footprint of international institutions such as the Chartered Institute of Arbitrators, the International Chamber of Commerce and the London Court of International Arbitration. Chapter 2 assesses the implications of this proliferation for African practitioners, domestic courts, investment flows and access to justice, while interrogating the dynamics of coexistence between international and African institutions. Chapters 3 and 4 then address the distinction between proliferation and cannibalistic multiplicity, and the interaction between arbitral institutions and the dispute resolution mechanisms of Africa's Regional Economic Communities and the African Continental Free Trade Area. The article concludes by considering whether Africa's arbitration architecture requires coordination, rationalisation or hierarchical structuring to achieve coherence and effectiveness.

1.0 Introduction

The resolution of commercial and investment disputes in Africa has undergone a profound transformation. Where domestic courts once served as the primary forum for dispute settlement, a constellation of arbitral institutions now offers an alternative architecture that promises efficiency, neutrality and enforceability.[1] The expansion of arbitration infrastructure across the continent has been driven by deliberate legislative reforms, the advocacy of professional bodies and the strategic engagement of international institutions seeking to deepen their presence in African markets.[2]

This transformation, however, raises critical questions. Has the growth of arbitral institutions expanded access to justice and strengthened Africa's position in the global arbitration landscape? Or has the rapid establishment of centres, often with overlapping mandates and limited differentiation, created a fragmented ecosystem that dilutes institutional credibility and impedes the development of a coherent continental arbitration culture?

The title of this article deliberately poses these alternatives. 'Proliferation' suggests numerical growth driven by policy, need and ambition. 'Multiplicity' and 'fragmentation' suggest institutional congestion and normative incoherence. The distinction is not merely semantic; it carries practical consequences for the viability of African arbitral centres, the development of African practitioners, the confidence of investors and the coherence of the continent's trade dispute resolution architecture.

This article proceeds in four chapters. Chapter 1 documents the proliferation of arbitral institutions across Africa, mapping the establishment of national centres, the growth of pan-African professional bodies and the expanding influence of international institutions. Chapter 2 assesses the implications of this proliferation for Africa's arbitration ecosystem, examining impacts on practitioners, courts, commercial transactions and the dynamics between international and African

---

[1]Gary Born, International Commercial Arbitration (3rd edn, Kluwer Law International 2021) 73.

[2]Xavier Forneris and Nina Mocheva, How Countries Can Fully Implement the New York Convention: A Critical Tool for Enforcement of International Arbitration Decisions (FCI In Focus, World Bank 2019) 1–3 < https://openknowledge.worldbank.org/entities/publication/574fe338-9096-520f-926c-2ec9b3cf1157 > accessed on 2 June 2026.

institutions. Chapter 3 distinguishes proliferation from cannibalistic multiplicity, analysing the effects of overlapping mandates on caseload distribution, institutional viability and systemic coherence. Chapter 4 examines the interaction between arbitral institutions and the dispute resolution mechanisms of Africa's Regional Economic Communities and the AfCFTA. The article concludes with reflections on whether coordination, hierarchy or rationalisation is needed to transform institutional abundance into systemic strength.

2.0 Proliferation of Arbitral Institutions in Africa

2.1The Growth of National Arbitral Institutions

The past two decades have witnessed an unprecedented growth of national arbitral institutions across the African continent.[3] Governments, law societies and private sector bodies have established dedicated arbitration centres, frequently through legislative instruments, as part of broader strategies to position their jurisdictions as arbitration-friendly seats and to modernise commercial dispute resolution.[4] This institutional expansion spans East, West, North and Southern Africa, and reflects a continent-wide recognition that effective arbitration infrastructure is essential to attracting foreign investment, facilitating intra-African trade and reducing the burden on congested domestic courts.[5]

In East Africa, Kenya has emerged as a leading arbitration hub. The Nairobi Centre for International Arbitration (NCIA) was established by the Nairobi Centre for International Arbitration Act, No. 26 of 2013, and inaugurated on 5 December

---

[3]Joseph Otoo and Kwadwo Sarkodie, 'The Rise and Rise of Arbitration in Africa' (African Law & Business, 5 April 2018) < https://www.africanlawbusiness.com/expert-views/8105-the-rise-and-rise-of-arbitration-in-africa/ > accessed on 2 June 2026.

[4]Alexis Martinez, Emma Mason, 'Arbitration in Africa: Past, Present, and Future' (Kluwer Arbitration Blog, 13 January 2016) < https://arbitrationblog.kluwerarbitration.com/2016/01/13/arbitration-in-africa-past-present-and-future/ > accessed on 2 June 2026; African states have increasingly used legislative reform to position their jurisdictions as arbitration-friendly seats.

[5]Emilia Onyema (ed), *The Transformation of Arbitration in Africa: The Role of Arbitral Institutions* (Kluwer Law International 2016) 15.

2016.[6] The NCIA was conceived as an independent institution administered by a Board of Directors composed of professionals from the East African region, mandated to promote international commercial arbitration and provide institutional support to the arbitral process.[7] The establishment of the NCIA reflected Kenya's deliberate policy ambition to position Nairobi as a premier seat for international arbitration in Africa. Its creation built upon an earlier Host Country Agreement signed in 2007 between Kenya and the Asian-African Legal Consultative Organization (AALCO) for the establishment of a regional arbitration centre.

Rwanda offers another instructive example. The Kigali International Arbitration Centre (KIAC) was legally established in 2010 under Law No. 51/2010 and officially launched in May 2012.[8] KIAC was conceived as an initiative of Rwanda's Private Sector Federation with political support from the Government of Rwanda. After a decade of operation, KIAC reported having registered over 200 arbitration cases and rendered more than 100 awards with no single award set aside. KIAC's success has been attributed to Rwanda's broader reforms to improve its business climate and its strategic vision to position Kigali as a regional arbitration hub.[9]

In West Africa, Nigeria stands out for the sheer number of arbitral institutions operating within its jurisdiction. The Lagos Court of Arbitration (LCA) was established under the Lagos Court of Arbitration Law, No. 17 of 2009, and officially launched on 9 November 2012 as the first purpose-built alternative dispute resolution centre in Africa.[10] The Lagos Chamber of Commerce

[6]Nairobi Centre for International Arbitration Act 2013, No 26 of 2013.

[7]Nairobi Centre for International Arbitration, 'About Us' < https://ncia.or.ke/about-us/ > accessed on 25 April 2026.

[8]Law No 51/2010 of 10 January 2010 on the Establishment of the Kigali International Arbitration Centre (Rwanda); Kigali International Arbitration Centre, 'About KIAC' < https://kiac.org.rw/ > accessed on 25 April 2026.

[9]Thomas Kendra, The Kigali centre - 10 years on' (Global Arbitration Review 25 March 2022) < https://globalarbitrationreview.com/article/the-kigali-centre-10-years/ > accessed on 2 June 2026.

[10]Lagos Court of Arbitration Law 2009, Law No 17 of 2009 (Lagos State, Nigeria); the LCA was officially launched on 9 November 2012.

International Arbitration Centre (LACIAC), affiliated with the Lagos Chamber of Commerce and Industry, has been operational since 2006 and offers a full suite of dispute resolution services including its Online Dispute Resolution platform.[11] The Regional Centre for International Commercial Arbitration, Lagos (RCICAL), established under the auspices of AALCO in 1989 and given legislative backing by the Regional Centre for International Commercial Arbitration Act, No. 39 of 1999, represents one of the oldest institutional arbitration centres in West Africa.[12] Beyond these, Nigeria hosts the Nigerian Institute of Chartered Arbitrators (NICArb), founded in 1979, the International Centre for Arbitration and Mediation in Abuja (ICAMA), and the Maritime Arbitrators Association of Nigeria. The concentration of at least six arbitral institutions within a single jurisdiction illustrates both the depth of Nigeria's commitment to arbitration and the risks of institutional multiplicity.

North Africa is anchored by the Cairo Regional Centre for International Commercial Arbitration (CRCICA), established in 1979 under the auspices of AALCO. Having registered over 1,756 arbitration cases since its inception, CRCICA stands as the oldest and most established institutional arbitration centre on the African continent and a leading institution in the broader Middle East and North Africa region.[13] Its longevity and substantial caseload distinguish it from newer African centres and provide a benchmark against which other institutions measure their institutional maturity.

In Southern Africa, the Arbitration Foundation of Southern Africa (AFSA) has positioned itself as the dominant arbitral institution. Following the adoption of South Africa's International Arbitration Act 15 of 2017, AFSA opened an

---

[11]Lagos Chamber of Commerce International Arbitration Centre (LACIAC), 'About Us' < https://laciac.org/ > accessed on 25 April 2026.
[12]Regional Centre for International Commercial Arbitration Act 1999, No 39 of 1999 (Nigeria); the Regional Centre for International Commercial Arbitration, Lagos was originally established under the auspices of the Asian-African Legal Consultative Organization in 1989.
[13]Cairo Regional Centre for International Commercial Arbitration, 'About Us' < https://crcica.org/about-us/ > accessed on 25 April 2026. CRCICA was established in 1979 and has registered over 1,756 arbitration cases to date.

international branch and has built a caseload of approximately 60 international matters in addition to a domestic caseload of about 500 matters.[14] According to the SOAS Arbitration in Africa Survey 2020, AFSA was ranked as the top arbitral centre in Africa, followed by CRCICA, KIAC, LCA and NCIA.[15]

Beyond these established centres, newer institutions continue to emerge. The Lusaka International Arbitration Center (LIAC) in Zambia was officially launched on 5 April 2024 by President Hakainde Hichilema, following a registration process initiated in January 2023 by the Law Association of Zambia and the Chartered Institute of Arbitrators (Zambia Branch).[16] Other jurisdictions, including Ghana, Mauritius, Ethiopia and Tanzania, have similarly established or strengthened arbitration institutions, contributing to a continental landscape in which nearly one hundred arbitration institutions of varying size, focus and maturity now operate.[17]

2.2 Pan-African Professional Bodies and Advocacy Organisations

The proliferation of arbitral institutions has been accompanied by the emergence of pan-African professional bodies that seek to coordinate, promote and elevate African arbitration practice. The most significant of these is the African Arbitration Association (AfAA), launched on 29 June 2018 in Abidjan, Ivory Coast.[18] AfAA's establishment was the culmination of several years of preparatory

[14]International Arbitration Act 2017, No 15 of 2017 (South Africa); Arbitration Foundation of Southern Africa, 'About AFSA' < https://arbitration.co.za/ > accessed on 25 April 2026.
[15]Emilia Onyema, *2020 Arbitration in Africa Survey Report: Top African Arbitral Centres and Seats* (SOAS University of London 2020) < https://alsf.int/public/docs/publ/Cc6VGlBZ.pdf > accessed on 25 April 2026. 2026.
[16]DLA Piper Africa (Chibesakunda & Co), 'International Arbitration in Africa: Lessons for the Lusaka International Arbitration Center' (2024) < https://www.dlapiperafrica.com/en/zambia/insights/2024/International-Arbitration-In-Africa.html > accessed on 25 April 2026; the Lusaka International Arbitration Center was officially launched on 5 April 2024 by President Hakainde Hichilema.
[17]Emilia Onyema, 2020 Arbitration in Africa Survey Report: Top African Arbitral Centres and Seats (SOAS University of London 2020) 8 < https://alsf.int/public/docs/publ/Cc6VGlBZ.pdf > accessed on 2 June 2026.
[18]International Council for Commercial Arbitration, 'ICCA Working Group on African Arbitral Practice' < https://www.arbitration-icca.org/icca-working-group-african-

work led by the International Council for Commercial Arbitration (ICCA) through its Working Group on African Arbitral Practice, established at the ICCA Mauritius Congress in May 2016. The Working Group organised consultative workshops in Cairo, Abuja and Kigali in 2017 and 2018 to build consensus for the creation of a pan-African arbitral association.[19]

AfAA's mandate encompasses the promotion of African international arbitrators, coordination of capacity-building activities, the provision of online resources and the organisation of conferences across the continent. Its impact was swiftly recognised when it received the 2019 Global Arbitration Review (GAR) Award for Best Development.[20] AfAA has since launched initiatives including the African Arbitration Atlas, an online resource providing an overview of arbitration legislation across African jurisdictions, and the African Promise, established in 2019 to encourage the appointment of African arbitrators in international proceedings. These initiatives directly address the structural marginalisation of African practitioners in the global arbitration market and represent a coordinated effort to build the continent's arbitral capacity from within.[21]

The Association for the Promotion of Arbitration in Africa (APAA), based in Cameroon conceptualized in 2005 and authorised by government order in 2006, represents another important advocacy body, particularly for francophone Africa. Additionally, the Africa Arbitration Academy provides training and mentorship for emerging practitioners across the continent. Collectively, these bodies

---

arbitral-practice > accessed on 25 April 2026; AfAA was launched on 29 June 2018 in Abidjan, Ivory Coast.

[19]International Council for Commercial Arbitration, 'ICCA Congress Mauritius 2016' < https://www.arbitration-icca.org/icca-2016-mauritius > accessed on 2 June 2026. the AfAA Working Group convened consultative workshops in Cairo (May 2017), Abuja (October 2017) and Kigali (June 2018) prior to AfAA's launch.

[20]International Council for Commercial Arbitration, 'African Arbitration Association Takes Home the GAR Award for Best Development' (5 April 2019) < https://www.arbitration-icca.org/african-arbitration-association-takes-home-gar-award-best-development > accessed on 25 April 2026.

[21]African Arbitration Association, 'African Arbitration Atlas' < https://africanarbitrationatlas.org/ > accessed on 2 June 2026.

contribute to a growing institutional infrastructure that supports not only the administration of disputes but also the professional development of African arbitrators and the advocacy for arbitration-friendly legal reforms.

2.3 The Expanding Footprint of the Chartered Institute of Arbitrators (CIArb)
Among international institutions, the Chartered Institute of Arbitrators (CIArb) has the most extensive network on the African continent. Founded in London in 1915 and granted a Royal Charter in 1979, CIArb operates as a professional membership organisation with over 14,000 members in more than 133 countries.[22] Its presence in Africa has grown steadily through the establishment of branches that serve as focal points for professional training, networking and the promotion of arbitration culture in their respective jurisdictions.[23]

CIArb's established African branches include Kenya, Nigeria, South Africa, Mauritius, Egypt and Zimbabwe. More recently, CIArb has expanded into additional African jurisdictions. The Rwanda branch was launched in 2023 as the Institute's 43rd branch globally, working closely with the Kigali International Arbitration Centre and the Government of Rwanda to promote the use of arbitration.[24] The Zambia branch has similarly been active in promoting arbitration education and was instrumental in the establishment of the Lusaka International Arbitration Center. CIArb's branches in these jurisdictions do not function as arbitral institutions per se but serve the critical function of training arbitrators, accrediting practitioners and building a professional community that supports the broader arbitration ecosystem.[25]

---

[22]Chartered Institute of Arbitrators, 'Our Branches' < https://www.ciarb.org/networking/our-branches/ > accessed on 25 April 2026. CIArb was founded on 1 March 1915 and granted a Royal Charter on 6 February 1979.
[23]Chartered Institute of Arbitrators, 'About Us' < https://www.ciarb.org/about-us/ > accessed on 2 June 2026.
[24]Chartered Institute of Arbitrators, 'Ciarb Rwanda Branch Launch' (2 June 2023) < https://www.ciarb.org/news-listing/ciarb-rwanda-branch-launch/ > accessed on 25 April 2026. CIArb has established branches in Kenya, Nigeria, South Africa, Mauritius, Zambia, Zimbabwe, Rwanda and Egypt.
[25]Chartered Institute of Arbitrators, 'Membership and Training Pathways' < https://www.ciarb.org/membership/ > accessed on 2 June 2026.

The significance of CIArb's presence in Africa extends beyond training. CIArb fellowship and membership designations (C.Arb (FCIArb), FCIArb, MCIArb, ACIArb) serve as widely recognised markers of professional competence in the arbitration field. African practitioners who obtain these qualifications enhance their visibility and credibility in the international arbitration market, thereby contributing to the gradual dismantling of the perception that African arbitrators lack the requisite expertise for complex international disputes.[26]

2.4 The International Chamber of Commerce (ICC) in Africa

The International Chamber of Commerce, through its International Court of Arbitration, has deepened its engagement with Africa significantly in recent years. The ICC's Africa strategy operates on multiple fronts: the establishment of national committees, the hosting of annual conferences, the delivery of practitioner training programmes and the deliberate inclusion of African practitioners in the ICC's institutional governance.[27]

ICC Kenya was launched in June 2017 as the first ICC national committee in Eastern Africa, formally registered in August 2019 and hosted by the Kenya Private Sector Alliance (KEPSA).[28] ICC Kenya's objectives include promoting the benefits of international trade and investment, augmenting the voice of Kenyan business at the international level and contributing to the development of international commercial arbitration in the country. The establishment of ICC Kenya is part of the ICC's broader strategy to expand its active network across more than 20 African countries.[29]

---

[26]Emilia Onyema, 2020 Arbitration in Africa Survey Report: Top African Arbitral Centres and Seats (SOAS University of London 2020) < https://alsf.int/public/docs/publ/Cc6VGlBZ.pdf > accessed on 2 June 2026.

[27]International Chamber of Commerce, 'ICC Africa Commission' < https://iccwbo.org/dispute-resolution/thought-leadership/africa-commission/ > accessed on 2 June 2026.

[28]International Chamber of Commerce, 'Four New ICC Offices, One Shared Vision' (ICC, 2017) < https://iccwbo.org/news-publications/news/four-new-icc-offices-one-shared-vision/ > accessed on 25 April 2026; ICC Kenya was launched in June 2017 and formally registered in August 2019 as the National Committee of the ICC in Kenya.

[29]International Chamber of Commerce, 'ICC National Committees and Groups' < https://iccwbo.org/national-committees/ > accessed on 2 June 2026.

The ICC's annual Africa Conference on International Arbitration has become the flagship event for arbitration discourse on the continent. The 7th Conference was held in Lagos, Nigeria, on 31 May - 2 June 2023, under the theme "International Arbitration and ADR: The African Journey So Far and Looking Forward." The 8th Conference moved to Nairobi, Kenya, on 29 - 31 May 2024, bringing together top international practitioners and academics. The 9th Conference returned to Nairobi on 28 - 30 May 2025, with the theme "International Arbitration in Africa: Africa's Role in Shaping the Next Era of Alternative Dispute Resolution." The 10th Conference is scheduled for Lagos on 4 - 5 June 2026, marking a decade of the series.[30]

Beyond conferences, the ICC has invested in capacity building through its Advanced Arbitration Academy for Africa, a practice-oriented professional training programme for experienced arbitration practitioners. The 2024–2025 edition selected approximately 40 candidates from across Africa to participate in eight workshops organised in Nairobi, Dakar, Casablanca and Accra, guided by prominent arbitrators, ICC experts and law professors.[31] This programme represents a deliberate effort by the ICC to cultivate a generation of African arbitrators equipped to participate in the highest levels of international arbitral practice. The ICC's institutional governance has also reflected a growing commitment to African representation, with the appointment of a dedicated Director for ICC Arbitration and ADR Africa and the active engagement of

[30]See International Chamber of Commerce, 'ICC Africa Conference on International Arbitration' < https://2go.iccwbo.org/icc-africa-conference-on-international-arbitration.html > accessed om 25 April 2026.
[31]International Chamber of Commerce, 'ICC Advanced Arbitration Academy for Africa' < https://2go.iccwbo.org/icc-advanced-arbitration-academy-for-africa.html > accessed on 25 April 2026; see also ICC, 'ICC Brings Advanced Arbitration Academy Programme to Africa and Middle East' (ICC, 2024) < https://iccwbo.org/news-publications/news/icc-brings-advanced-arbitration-academy-programme-to-africa-and-middle-east /> accessed on 25 April 2026.

African practitioners in the ICC Young Arbitrators Forum (YAAF) Africa Chapter.[32]

2.5 The London Court of International Arbitration (LCIA) and Africa

The London Court of International Arbitration has maintained a sustained engagement with Africa through its African Users' Council, established as part of the LCIA's broader membership structure that includes regional users' councils for Africa, the Arab region, Asia Pacific, Europe, Latin America and North America.[33] The African Users' Council is led by prominent African practitioners and serves as a platform for engagement between the LCIA and the African arbitration community, organising seminars, presenting arbitration news from across the continent and facilitating dialogue on the LCIA's strategy for Africa.

The LCIA's caseload statistics reveal a growing African engagement. According to its 2023 Annual Casework Report, the percentage of parties from Africa in LCIA arbitrations doubled from 4 per cent in 2022 to 8 per cent in 2023, with Mauritius and Nigeria leading the African representation.[34] This follows a longer-term trend in which LCIA caseloads involving sub-Saharan parties grew from 4.5 per cent in 2011 to 11.7 per cent in 2020.[35] While these figures reflect the LCIA's growing relevance to African disputes, they also underscore a continuing pattern in which

[32]International Chamber of Commerce, 'ICC Young Arbitrators Forum (YAAF) Africa Chapter' < https://iccwbo.org/dispute-resolution/professional-development/yaaf-programme/ > accessed on 2 June 2026.

[33]London Court of International Arbitration, 'Membership of the LCIA Users' Councils' < https://www.lcia.org/Membership/Membership.aspx > accessed on 25 April 2026.

[34]Pinsent Masons, 'LCIA Statistics Show Doubling of Arbitration Parties from Africa' (Out-Law, 11 June 2024) < https://www.pinsentmasons.com/out-law/news/lcia-statistics-show-doubling-arbitration-parties-africa > accessed on 25 April 2026. The percentage of African parties doubled from 4% in 2022 to 8% in 2023.

[35]Cleary Gottlieb Steen & Hamilton LLP, 'Trends in African Arbitration' (2021) < https://content.clearygottlieb.com/regions/africa-outlook/trends-in-african-arbitration/index.html > accessed on 25 April 2026; Addleshaw Goddard LLP, 'International Arbitration in Africa' (2023) < https://www.addleshawgoddard.com/en/insights/insights-briefings/2023/africa/international-arbitration-africa/ > accessed on 25 April 2026.

African parties disproportionately resort to international institutions seated outside the continent for the resolution of their disputes.[36]

2.6 Other International Institutions: HKIAC and Beyond

Other international arbitral institutions have also begun to expand their visibility on the African continent. The Hong Kong International Arbitration Centre (HKIAC), established in 1985, has participated in African events including the Johannesburg Arbitration Week and maintains business development and marketing activities covering the Africa region.[37] While HKIAC has not established a physical presence in Africa, its participation in African arbitration events signals a recognition of the continent's growing importance in the global arbitration market.

The Singapore International Arbitration Centre (SIAC), the Permanent Court of Arbitration (PCA) and the International Centre for Settlement of Investment Disputes (ICSID) similarly maintain engagement with Africa through cooperation agreements with African institutions, participation in conferences and the administration of disputes involving African parties. The PCA, for example, has entered into cooperation agreements with institutions including LACIAC, facilitating the administration of arbitration hearings and the exchange of information. ICSID's caseload involving sub-Saharan African states has nearly tripled over the past decade, with oil, gas and mining consistently appearing as the most represented economic sectors.[38]

The cumulative effect of these developments is a continental arbitration landscape of remarkable density. Africa now hosts nearly 100 arbitral institutions alongside the branches, chapters and engagement programmes of the world's leading

---

[36]London Court of International Arbitration, 2023 Annual Casework Report (LCIA 2024) https://www.lcia.org/lcia/reports.aspx > accessed on 2 June 2026.

[37]Hong Kong International Arbitration Centre, 'About Us' < https://hkiac.org/about-us/ > accessed on 25 April 2026. HKIAC was established in 1985 and has participated in events such as Johannesburg Arbitration Week.

[38]White & Case LLP, 'Institutional Arbitration in Africa: Opportunities and Challenges' (White & Case, 2021) < https://www.whitecase.com/insight-our-thinking/institutional-arbitration-africa-opportunities-and-challenges > accessed on 25 April 2026.

international arbitral organisations.[39] This density raises the question that animates this article: does the breadth of institutional coverage represent healthy proliferation or the onset of a multiplicity that risks fragmentation?

3.0 Implications for Africa's Arbitration Ecosystem

3.1 Impact on African Practitioners

The proliferation of arbitral institutions has generated significant benefits for African arbitration practitioners. The establishment of national centres and the expansion of training programmes by international institutions have created new pathways for professional development, accreditation and practical experience. Where African arbitrators and counsel were once largely excluded from the international arbitration circuit, the growth of institutional infrastructure on the continent has expanded opportunities for participation in both domestic and international disputes.[40]

Institutions such as the NCIA, KIAC and LCA maintain panels of accredited arbitrators drawn from the region, providing African practitioners with appointment opportunities that were historically scarce. The ICC's Advanced Arbitration Academy for Africa and CIArb's training programmes in multiple African jurisdictions have contributed to a measurable increase in the pool of qualified African arbitrators and counsel. The AfAA's African Promise initiative, launched in 2019, has further sought to normalise the appointment of African arbitrators in international proceedings, challenging a longstanding practice in which international parties defaulted to European arbitrators even in disputes arising from African transactions.[41]

---

[39] Gregory Travaini, 'Arbitration Centres in Africa: Too Many Cooks?' (*Kluwer Arbitration Blog*, 1 October 2019) < https://legalblogs.wolterskluwer.com/arbitration-blog/arbitration-centres-in-africa-too-many-cooks/ > accessed on 25 April 2026.

[40] Nigel Blackaby, Constantine Partasides, Alan Redfern and Martin Hunter, *Redfern and Hunter on International Arbitration* (7th edn, Oxford University Press 2023) 45.

[41] Emilia Onyema, 'An African Promise' (September 2019) < https://onyema-arbitration.co.uk/the-african-promise-2/ > accessed on 25 April 2026.

Nevertheless, the benefits of proliferation are unevenly distributed. The growth of institutions has been concentrated in a handful of jurisdictions, principally Kenya, Nigeria, South Africa, Rwanda, Egypt and Mauritius. Practitioners in these countries enjoy greater access to training, networking and appointment opportunities. In contrast, practitioners in smaller or less commercially developed jurisdictions face persistent barriers to entry into the arbitration market, despite the notional continental reach of pan-African bodies like AfAA.

3.2 Impact on Domestic Courts and Legal Frameworks

The establishment of arbitral institutions has prompted important legislative reforms across the continent. Kenya's enactment of the NCIA Act 2013 was accompanied by a broader modernisation of its arbitration legislation, reinforcing the enforceability of arbitral awards and limiting judicial interference in arbitral proceedings. Nigeria's long-awaited Arbitration and Mediation Act of 2023 replaced the 35-year-old Arbitration and Conciliation Act of 1988, aligning Nigeria's arbitration framework with international best practices. Rwanda's adoption of arbitration legislation modelled on the UNCITRAL Model Law has supported KIAC's development. Malawi adopted the International Arbitration Act 2024, opening the door for AFSA to support the Malawi International Arbitration Centre.[42]

These legislative reforms reflect a broader trend in which the establishment of arbitral institutions has catalysed improvements in the legal environment for arbitration. Domestic courts in jurisdictions with active arbitral centres have developed greater familiarity with arbitration-related matters, including applications for interim measures, challenges to arbitral awards and the recognition and enforcement of foreign awards under the New York Convention. The supportive role of courts is critical to the attractiveness of a jurisdiction as an

[42]International Arbitration Act 2024 (Malawi), assented to on 31 January 2024; see also Mayer Brown, 'International Arbitration Legal and Case Developments: Middle East & Africa' (Mayer Brown, 2024) < https://www.mayerbrown.com/en/insights/publications/2024/05/international-arbitration/legal-and-case-developments/international-arbitration-legal-and-case-developments-middle-east-and-africa > accessed on 25 April 2026.

arbitral seat. Where courts are perceived as interventionist or hostile to arbitration, parties will avoid the jurisdiction regardless of the quality of its arbitral institutions.[43]

However, the relationship between courts and arbitral institutions is not uniformly positive across the continent. In some jurisdictions, domestic courts continue to set aside arbitral awards on grounds that would not be recognised in more arbitration-friendly jurisdictions.[44] The uneven development of judicial attitudes towards arbitration remains a challenge that institutional proliferation alone cannot resolve.[45]

3.3 Impact on Commercial and Investment Transactions

The availability of credible local arbitral institutions has the potential to significantly reduce transaction costs for commercial parties operating in Africa. Where parties can select an African seat and a local institution, they avoid the substantial costs associated with arbitration in European centres, including travel, accommodation and the engagement of counsel unfamiliar with the local regulatory environment. Proximity to the seat of arbitration also enhances the

---

[43]World Bank, *Doing Business 2020: Comparing Business Regulation in 190 Economies* (World Bank 2019). The World Bank Group discontinued the Doing Business series on 16 September 2021 < https://www.worldbank.org/en/news/statement/2021/09/16/world-bank-group-to-discontinue-doing-business-report > accessed on 25 April 2026.

[44]Emilia Onyema, 'Sub-Saharan African Courts Decisions on the Challenge of Arbitrators' (2023) Paris Journal of International Arbitration (Les Cahiers de l'Arbitrage) 2023-2 < https://www.labase-lextenso.fr/cahiers-de-l-arbitrage/2023-n2/sub-saharan-african-courts-decisions-on-the-challenge-of-arbitrators-CAPJIA2023-2-008 > accessed on 2 June 2026.

[45]Emilia Onyema, 2018 Arbitration in Africa Survey Report: Domestic and International Arbitration: Perspectives from African Arbitration Practitioners (SOAS University of London 2018) 18 < https://soas-repository.worktribe.com/output/387868/soas-arbitration-in-africa-survey-report-domestic-and-international-arbitration-perspectives-from-african-arbitration-practitioners > accessed on 25 April 2026.

efficiency of proceedings and facilitates the gathering of evidence and the attendance of witnesses.[46]

From an investment perspective, the presence of reputable arbitral institutions contributes to a jurisdiction's attractiveness as a destination for foreign direct investment. Investors assess the availability of effective dispute resolution mechanisms when making investment decisions.[47] Jurisdictions that offer a combination of modern arbitration legislation, competent arbitral institutions, supportive courts and a stable political environment are better positioned to attract and retain investment. Kenya's emergence as a preferred arbitral seat in East Africa, bolstered by the establishment of the NCIA and the presence of ICC Kenya, illustrates this dynamic.[48]

Yet, the impact of institutional proliferation on investment attractiveness is moderated by persistent confidence asymmetries.[49] Despite the growth of African arbitral institutions, many international investors and their legal advisers continue to prefer arbitration seated in London, Paris or Geneva, administered by the CIArb, ICC or LCIA. This preference is driven not merely by habit but by perceptions regarding the independence, efficiency and predictability of African

---

[46]UNCTAD, *World Investment Report 2023: Investing in Sustainable Energy for All* (United Nations 2023) < https://unctad.org/publication/world-investment-report-2023 > accessed on 25 April 2026.

[47]Andrew Myburgh and Jordi Paniagua, 'Does International Commercial Arbitration Promote Foreign Direct Investment?' (2016) 59(3) Journal of Law and Economics 597 < https://chicagounbound.uchicago.edu/jle/vol59/iss3/5/ > accessed on 2 June 2026.

[48]Nairobi Centre for International Arbitration, 'About Us' < https://ncia.or.ke/about-us/ > accessed on 25 April 2026, see also International Chamber of Commerce, 'Four New ICC Offices, One Shared Vision' (ICC, 2017) < https://iccwbo.org/news-publications/news/four-new-icc-offices-one-shared-vision/ > accessed on 25 April 2026; ICC Kenya was launched in June 2017 and formally registered in August 2019 as the National Committee of the ICC in Kenya.

[49]Emilia Onyema, SOAS Arbitration in Africa 2024 Survey Report: Perceptions on Africa-Connected Arbitration - Seats, Female Arbitrators and Tribunal Secretaries (SOAS University of London 2024) < https://soas-repository.worktribe.com/output/387544/soas-2024-arbitration-in-africa-survey-report-perceptions-on-africa-connected-arbitration-seats-female-arbitrators-and-tribunal-secretaries > accessed on 2 June 2026.

institutions.[50] The 2018 Queen Mary/White & Case International Arbitration Survey found that while African institutions were gaining recognition, the Lagos Court of Arbitration, the highest-ranked African institution, placed only fourth among respondents.[51]

3.4 Impact on Access to Justice

Perhaps the most fundamental benefit of institutional proliferation is the expansion of access to justice. African commercial parties, particularly small and medium-sized enterprises, have historically faced significant barriers to resolving disputes. Domestic courts are often congested, with proceedings extending over years. International arbitration, while efficient, is prohibitively expensive for many African businesses. The establishment of local arbitral institutions offering competitive fee structures and expedited procedures has the potential to democratise access to effective dispute resolution.[52]

The LCA in Lagos, for example, provides expedited rules for small disputes, offering a rapid and affordable dispute resolution pathway for micro, small and medium-sized enterprises. LACIAC's Online Dispute Resolution platform similarly extends access to parties that may not have the resources to participate in traditional hearing-based proceedings. KIAC's competitive fee structure relative to international centres makes Rwanda-seated arbitration an attractive option for disputes arising from East African commercial transactions.[53]

---

[50]White & Case LLP and Queen Mary University of London, *2018 International Arbitration Survey: The Evolution of International Arbitration* (QMUL 2018) < https://arbitration.qmul.ac.uk/research/2018/ > accessed on 25 April 2026.

[51]Emilia Onyema, *2020 Arbitration in Africa Survey Report: Top African Arbitral Centres and Seats* (SOAS University of London 2020) < https://alsf.int/public/docs/publ/Cc6VGlBZ.pdf > accessed on 25 April 2026.

[52]Alexandra Miller, 'Access to Justice in Arbitration — Costs and Technology' (ICLG International Arbitration Laws and Regulations, 24 August 2021) < https://www.kennedyslaw.com/en/thought-leadership/article/access-to-justice-in-arbitration-costs-and-technology/ > accessed on 2 June 2026.

[53]Onyema (n 15); see also Lagos Court of Arbitration, 'About LCA' < https://lca.org.ng/index.php/about-the-lca/ > accessed on 25 April 2026.

However, access to justice through arbitration is not equally available across the continent. The concentration of well-resourced institutions in a few commercial centres means that parties in less-developed jurisdictions may still lack meaningful access to institutional arbitration.[54] Moreover, the proliferation of institutions does not automatically translate into awareness and uptake among potential users. Many African businesses remain unfamiliar with arbitration as a dispute resolution mechanism, and outreach and education remain critical to bridging this gap.[55]

3.5 Coexistence of International and African Institutions

The expanding presence of international arbitral institutions on the African continent raises important questions about their relationship with African institutions. Are international institutions and African centres collaborative partners in the development of the continent's arbitration ecosystem, or are they competitors in a battle for dispute resolution market share? The answer, as with most complex institutional dynamics, contains elements of both.

On the collaborative side, there are meaningful examples of institutional cooperation. LACIAC's African Arbitral Centres' Collaboration Roundtable Discussions (ACCORD) commenced in 2021, explored models for operational collaboration between African arbitral centres in anticipation of disputes arising from the AfCFTA.[56] The African-German Arbitration Cooperation (AfGAC)

[54]Emilia Onyema, 2020 Arbitration in Africa Survey Report: Top African Arbitral Centres and Seats (SOAS University of London 2020) < https://alsf.int/public/docs/publ/Cc6VGlBZ.pdf > accessed on 2 June 2026.

[55] Joseph Otoo and Kwadwo Sarkodie, 'The Rise and Rise of Arbitration in Africa' (African Law & Business, 5 April 2018) < https://www.africanlawbusiness.com/expert-views/8105-the-rise-and-rise-of-arbitration-in-africa/ > accessed on 2 June 2026; see also Emilia Onyema, 2020 Arbitration in Africa Survey Report.

[56]Titilope Sinmi-Adetona, 'Interview with Our Editors: Nigeria and Lagos Chamber of Commerce International Arbitration Centre in the Spotlight with Abimbola Akeredolu SAN' (*Kluwer Arbitration Blog*, 15 December 2023) < https://arbitrationblog.kluwerarbitration.com/2023/12/15/interview-with-our-editors-nigeria-and-lagos-chamber-of-commerce-international-arbitration-centre-in-the-spotlight-with-abimbola-akeredolu-san/ > accessed on 21 April 2026.

framework, launched in March 2024, brought together CRCICA, KIAC, NCIA and the Hamburg Chamber of Commerce in a partnership aimed at enhancing the visibility and credibility of arbitration in Africa.[57] AFSA's alliance with SADC member states and its support for the Malawi International Arbitration Centre illustrate a strategy of collaborative institutional development rather than isolated competition.[58]

However, the competitive dimension cannot be ignored. International institutions such as the ICC and LCIA continue to administer the vast majority of high-value disputes involving African parties. The ICC's 2019 caseload included 130 parties from sub-Saharan Africa, accounting for approximately 5 per cent of all parties. African parties involved in LCIA arbitrations doubled from 4 per cent in 2022 to 8 per cent in 2023.[59] These statistics reveal a persistent pattern in which African parties contribute to the caseloads and revenues of international institutions rather than those of African centres. The preference for international institutions is driven by perceptions of credibility, track record and the enforceability of awards, creating a structural disadvantage for newer African centres that lack the caseload volumes needed to build institutional reputation.[60]

3.6 Reciprocity and Recognition

A further dimension of the coexistence question concerns reciprocity and recognition. International arbitral institutions are widely recognised in African

---

[57]African-German Arbitration Cooperation (AfGAC), 'About AfGAC' < https://afgac.org/about-us/ > accessed on 20 April 2026; the AfGAC framework was launched on 7 March 2024 as a partnership between CRCICA, KIAC, NCIA and the Hamburg Chamber of Commerce.

[58]Arbitration Foundation of Southern Africa, AFSA-SADC Alliance Brochure 2024 (AFSA 2024) < https://arbitration.co.za/wp-content/uploads/2025/08/AFSA-SADC-Brochure-2024.pdf > accessed on 19 April 2026; see also Mayer Brown (n 42).

[59]ICC International Court of Arbitration, ICC Dispute Resolution Statistics: 2019 (ICC 2019) < https://www.icc-switzerland.ch/images/2019iccdrsstatistics-august2020.pdf > accessed on 22 April 2026; on LCIA figures see Pinsent Masons (n 34).

[60]Stavros Brekoulakis, 'Systemic Bias and the Institution of International Arbitration: A New Approach to Arbitral Decision-Making' (2013) 4(3) Journal of International Dispute Settlement 553 < https://academic.oup.com/jids/article-abstract/4/3/553/2911856 > accessed on 2 June 2026.

jurisdictions. ICC and LCIA arbitration clauses are routinely included in contracts governed by African law, and awards rendered under the rules of these institutions are generally enforceable across the continent under the New York Convention.[61] The reverse, however, is not equally true. Awards rendered by African institutions may face scepticism or enforcement challenges in foreign jurisdictions, not because of any formal legal impediment but because of a lack of familiarity with African institutions and a perception of lower institutional quality.[62]

This asymmetry of recognition perpetuates a cycle in which African institutions struggle to attract international disputes.[63] International parties and their counsel, particularly those unfamiliar with the African arbitration landscape, default to established international institutions.[64] General counsel and transactional lawyers play a decisive role in determining arbitral seats and institutions at the contract drafting stage, and where African institutions are perceived as inexperienced or politically exposed, parties default to foreign centres regardless of cost or geographic proximity.[65]

---

[61]Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 38 (New York Convention) arts III and V.
[62]Julian DM Lew, Loukas A Mistelis and Stefan M Kröll, *Comparative International Commercial Arbitration* (Kluwer Law International 2003) 55.
[63]Stavros Brekoulakis, 'Systemic Bias and the Institution of International Arbitration: A New Approach to Arbitral Decision-Making' (2013) 4(3) Journal of International Dispute Settlement 553 < https://academic.oup.com/jids/article-abstract/4/3/553/2911856 > accessed on 2 June 2026.
[64]Emilia Onyema, SOAS Arbitration in Africa 2022 Survey Report: Africa-connected Arbitration - Perspectives on Major Global Issues (SOAS University of London 2022) 12 < https://soas-repository.worktribe.com/output/387703/soas-arbitration-in-africa-survey-report-africa-connected-arbitration-perspectives-on-major-global-issues > accessed on 2 June 2026.
[65]Emilia Onyema, *SOAS Arbitration in Africa 2022 Survey Report: Africa-connected Arbitration - Perspectives on Major Global Issues* (SOAS University of London 2022) < https://soas-repository.worktribe.com/output/387703/soas-arbitration-in-africa-survey-report-africa-connected-arbitration-perspectives-on-major-global-issues > accessed on 2 June 2026.

Addressing this asymmetry requires not only continued institutional development and rule modernisation within African centres but also strategic engagement with the international arbitration community. African institutions must invest in the publication of awards, the dissemination of caseload statistics, participation in international conferences and the cultivation of relationships with international law firms and corporate counsel.[66] The growing engagement of African practitioners in the governance structures of international institutions, such as the LCIA African Users' Council and the ICC YAAF Africa Chapter, represents a positive step towards enhanced visibility and recognition.[67]

3.7 Towards a Coherent Ecosystem

The analysis in this chapter suggests that the proliferation of arbitral institutions has produced significant but unevenly distributed benefits for Africa's arbitration ecosystem. The expansion of institutional infrastructure has broadened access to arbitration, catalysed legislative reform, expanded professional development opportunities and enhanced the continent's profile in the global arbitration market. At the same time, persistent challenges remain: confidence asymmetries that favour international institutions, uneven judicial support for arbitration, limited user awareness and a concentration of institutional capacity in a handful of jurisdictions.[68]

The coexistence of international and African institutions is not inherently problematic. International institutions bring expertise, credibility and global networks that benefit the broader ecosystem.[69] The challenge lies in ensuring that

---

[66]International Council for Commercial Arbitration, 'ICCA Working Group on African Arbitral Practice' < https://www.arbitration-icca.org/icca-working-group-african-arbitral-practice > accessed on 2 June 2026.

[67]London Court of International Arbitration, *2020 Annual Casework Report* (LCIA 2021) < https://www.lcia.org/lcia/reports.aspx > accessed on 16 April 2026.

[68]ICC International Court of Arbitration (n 59); see also Onyema (n 64).

[69]Funke Adekoya SAN, 'Is International Arbitration Truly International - The Role of Diversity' < https://africaarbitration.org/2017/11/07/is-international-arbitration-truly-iinternational-the-role-of-diversity/ > accessed on 2 June 2026; international institutions bring expertise, credibility and global networks that benefit African arbitration ecosystems.

this coexistence is genuinely symbiotic rather than extractive, and that the growing presence of international institutions on the continent supports rather than supplants the development of African centres. As subsequent chapters will demonstrate, the distinction between healthy proliferation and destructive multiplicity depends critically on whether institutions differentiate themselves by function, sector or geography, and whether coordination mechanisms exist to prevent fragmentation from undermining the coherence and credibility of Africa's arbitration architecture.[70]

4.0 Multiplicity of Arbitral Institutions: Competition or Cannibalism

4.1 Conceptual distinction between Proliferation and Multiplicity

While the proliferation of arbitral institutions in Africa is often celebrated as a marker of the continent's growing acceptance of arbitration, multiplicity presents a more complex and potentially destabilising phenomenon.[71] Proliferation refers to the numerical increase in arbitral centres and institutions across jurisdiction often driven by deliberate policy choices to promote arbitration as an alternative to congested domestic courts.[72] Multiplicity by contrast denotes a situation of institutional overlap where several arbitral institutions - national regional and

[70]Joost Pauwelyn, 'Bridging Fragmentation and Unity: International Law as a Universe of Inter-Connected Islands' (2004) 25 Michigan Journal of International Law 903 < https://repository.law.umich.edu/mjil/vol25/iss4/6/ > accessed 20 April 2026.

[71]Gregory Travaini, 'Arbitration Centres in Africa: Too Many Cooks?' (Kluwer Arbitration Blog, 1 October 2019) < https://legalblogs.wolterskluwer.com/arbitration-blog/arbitration-centres-in-africa-too-many-cooks/ > accessed on 25 April 2026; institutional growth without functional differentiation produces destabilising overlap.

[72]Funke Adekoya SAN, 'Is International Arbitration Truly International - The Role of Diversity' < https://africaarbitration.org/2017/11/07/is-international-arbitration-truly-iinternational-the-role-of-diversity/ > accessed on 2 June 2026.; see also Gregory Travaini, 'Arbitration Centres in Africa: Too Many Cooks?' (Kluwer Arbitration Blog, 1 October 2019) < https://legalblogs.wolterskluwer.com/arbitration-blog/arbitration-centres-in-africa-too-many-cooks/ > accessed on 25 April 2026, noting that uncoordinated proliferation can shift from healthy growth to dysfunctional multiplicity.

international - operate within the same jurisdictional, sectoral or commercial space without clear functional differentiation.[73]

In practice proliferation becomes multiplicity when newly established institutions do not respond to distinct market needs but instead replicate mandates, procedural rules and geographic coverage already occupied by existing institutions. This distinction is crucial because while proliferation may expand access to arbitration, multiplicity risks fragmenting the vital ecosystem and undermining institutional effectiveness.[74]

African arbitration illustrates this tension vividly. Cities such as Nairobi, Lagos, Cairo, Kigali and Johannesburg now host multiple centres competing for the same pool of disputes, arbitrators and users often applying rules closely modelled on the UNCITRAL Model Law or ICC rules with minimal localization.[75] The result is not merely diversity but institutional congestion.

4.2 Overlapping institutional mandates and case load fragmentation

A central consequence of multiplicity is case load dilution. Arbitration thrives on reputation, consistency and experience all of which are closely tied to the volume and quality of disputes administered by an institution.[76] When multiple institutions compete for a limited number of arbitrable disputes particularly in jurisdictions with relatively small commercial markets, caseloads are spread thinly across institutions.[77]

---

[73]Gregory Travaini, 'Arbitration Centres in Africa: Too Many Cooks?' (Kluwer Arbitration Blog, 1 October 2019) < https://legalblogs.wolterskluwer.com/arbitration-blog/arbitration-centres-in-africa-too-many-cooks/ > accessed on 25 April 2026; institutional overlap without functional differentiation produces destabilising multiplicity rather than healthy proliferation.

[74]Gary Born, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) 89.

[75]Onyema (n 15) ; see also Onyema (n 49).

[76]Christopher R Drahozal and Richard W Naimark (eds), Towards a Science of International Arbitration: Collected Empirical Research (Kluwer Law International 2005) 124–127.

[77]Brekoulakis (n 63) 560.

This fragmentation has three major effects: First, institutions struggle to build institutional memory and jurisprudential coherence, which are essential for credibility and predictability. Second, arbitrators - especially emerging African arbitrators - find fewer opportunities to sit on tribunals, slowing capacity development. Third, users, particularly foreign investors, may gravitate towards established international institution such as the ICC or LCIA, further marginalizing local centres.[78]

Multiplicity also encourages forum shopping not necessarily, based on procedural efficiency or expertise but on perceived institutional leniency, cost advantages or arbitrator familiarity. While forum shopping is not inherently problematic, excessive institutional choice without differentiation can undermine confidence in the neutrality and rigour of African arbitral institutions.[79]

4.3 Institutional viability and the risk of diluted credibility

Institutional credibility is not merely a function of existence, but of performance, governance and perceived independence. In a crowded arbitral landscape newer or less resourced institutions may struggle to meet international best practices in case administration, arbitrator vetting and ethical oversight.[80] These risks create a tiered system in which a few elite institutions dominate high value disputes while others operate at the margins administering low value or poorly managed cases.[81]

[78]ICC International Court of Arbitration (n 59).

[79]Blackaby, Partasides, Redfern and Hunter (n 40) 78.

[80]Makane Moïse Mbengue, 'Africa's Voice in the Formation, Shaping and Redesign of International Investment Law' (2019) 34(2) ICSID Review — Foreign Investment Law Journal 455 < https://doi.org/10.1093/icsidreview/siz036 > accessed on 22 April 2026.

[81]Stavros Brekoulakis, 'Systemic Bias and the Institution of International Arbitration: A New Approach to Arbitral Decision-Making' (2013) 4(3) Journal of International Dispute Settlement 553, 562 < https://academic.oup.com/jids/article-abstract/4/3/553/2911856 > accessed on 2 June 2026.; institutional tiering is a recognised structural feature of the international arbitration market.

The danger is that the failure of some institutions may spill over reputationally affecting perceptions of African arbitration more broadly.[82] Investors rarely distinguish between institutions with precision; weaknesses in one centre may reinforce scepticism about the reliability of African dispute resolution mechanisms as a whole.[83]

Moreover, multiplicity can strain limited human and financial resources.[84] Many African arbitral institutions rely on the same pool of practitioners, academics and judges for governance and administration. This results in overlapping board memberships and potential conflicts of interest, further eroding institutional legitimacy.[85]

4.4 Competition as a catalyst or a cannibalistic threat

Proponents of multiplicity argue that institutional competition improves quality, lowers costs and encourages innovation. Indeed, some competition has spurred African institutions to modernize their rules, embrace technology and adopt expedited procedures.[86] However, competition becomes cannibalistic when it exceeds market capacity and lacks coordination.[87]

---

[82]Emilia Onyema, 2020 Arbitration in Africa Survey Report: Top African Arbitral Centres and Seats (SOAS University of London 2020) < https://alsf.int/public/docs/publ/Cc6VGlBZ.pdf > accessed on 25 April 2026; SOAS data indicate that perceptions of one African institution often influence user perceptions of African arbitration as a whole.

[83]World Bank (n 43).

[84]Loukas A Mistelis, 'Reality Test: Current State of Affairs in Theory and Practice Relating to "Lex Arbitri"' (2006) 17(2) American Review of International Arbitration 155, 158.

[85]Emilia Onyema, 'Improving the Enforcement of Arbitral Awards in Africa' in Emilia Onyema (ed), The Transformation of Arbitration in Africa: The Role of Arbitral Institutions (Kluwer Law International 2016) 211.

[86]London Court of International Arbitration (n 67).

[87]International Chamber of Commerce, '2017 ICC Arbitration Rules: Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration' (ICC 2017) paras 73–87 < https://www.iccwbo.be/wp-content/uploads/2017/10/20171031-ICC-Note-to-Parties-and-Arbitral-Tribunals-on-the-Conduct-of-Arbitration.pdf > accessed on 2 June 2026; expedited procedures and technology-enabled hearings illustrate competition-driven innovation among arbitral institutions.

Unlike mature arbitration markets such as Europe or Asia, Africa's arbitration market remains structurally constrained by limited intra-African trade, uneven contract enforcement and continued reliance on foreign governing laws.[88] In this context, uncoordinated multiplicity risks undermining system coherence rather than enhancing it.

Ultimately, multiplicity enhances arbitration only where institutions are complementary rather than duplicative, differentiated by sector, region, language or procedural specialization. Absent such differentiation multiplicity undermines coherence and weakens Africa's collective arbitral voice.[89]

4.5 Specialization as a corrective to cannibalistic multiplicity

One of the most compelling responses to cannibalistic multiplicity is institutional specialization. Rather than aspiring to function as generalist commercial arbitration centres, African arbitral institutions may achieve greater legitimacy and sustainability by targeting specific dispute niches aligned with regional economic realities. These include *inter alia* maritime arbitration, energy and extractive disputes, construction and infrastructure arbitration, agribusiness disputes and trade finance conflicts.[90]

Specialization allows institutions to build technical expertise tailored procedural rules and credible panels of sector specific arbitrators, thereby differentiating themselves with an otherwise crowded arbitration market.[91] In contrast institutions that replicate generic commercial arbitration mandates without

[88]UNCTAD (n 46).

[89]Gregory Travaini, 'Arbitration Centres in Africa: Too Many Cooks?' (Kluwer Arbitration Blog, 1 October 2019) < https://legalblogs.wolterskluwer.com/arbitration-blog/arbitration-centres-in-africa-too-many-cooks/ > accessed on 25 April 2026; coordination and differentiation, rather than mere institutional multiplication, are essential to building a coherent African arbitral voice.

[90]Lew, Mistelis and Kröll (n 62) 71.

[91]Klaus Peter Berger, 'The Need for Speed in International Arbitration' (2008) 25(5) Journal of International Arbitration 595, 597; sector-specific arbitration regimes (maritime, energy, construction) confer credibility through technical specialisation.

distinctive value propositions contribute to institutional redundancy rather than market growth.[92]

4.6 The demand side of African arbitration: user confidence and contractual choices

While scholarly and policy discourse often focuses on the supply side of arbitration institutions, rules and infrastructure, institutional viability ultimately depends on demand-side behaviour, particularly the choices made by users the continued preference of African corporations, state owned entities and multinational investors for arbitration seated in London, Paris or Geneva reflects not merely habit but confidence asymmetries.[93]

General counsel and transactional lawyers play a decisive role in determining arbitral seats and institutions at the contract drafting stage.[94] Where African institutions are perceived as inexperienced, politically exposed, or procedurally unpredictable, parties default to established foreign institutions regardless of cost or geographic distance.[95] This dynamic perpetuates a cycle in which African institutions lack sufficient caseloads to build reputational capital reinforcing the very concerns that marginalized them.[96]

---

[92]Emilia Onyema, 2020 Arbitration in Africa Survey Report: Top African Arbitral Centres and Seats (SOAS University of London 2020) < https://alsf.int/public/docs/publ/Cc6VGlBZ.pdf > accessed on 25 April 2026; see also Gregory Travaini, 'Arbitration Centres in Africa: Too Many Cooks?' (Kluwer Arbitration Blog, 1 October 2019) < https://legalblogs.wolterskluwer.com/arbitration-blog/arbitration-centres-in-africa-too-many-cooks/ > accessed on 25 April 2026.

[93]ICC International Court of Arbitration (n 59); see further Onyema (n 64).

[94]Queen Mary University of London and White & Case LLP, 2021 International Arbitration Survey: Adapting Arbitration to a Changing World (QMUL 2021) 6–7 < https://www.qmul.ac.uk/arbitration/research/2021-international-arbitration-survey/ > accessed on 2 June 2026; the Survey confirms that in-house counsel are the principal decision-makers on choice of arbitral seat and institution.

[95]Onyema (n 64).

[96]Emilia Onyema, 2018 Arbitration in Africa Survey Report: Domestic and International Arbitration: Perspectives from African Arbitration Practitioners (SOAS University of London 2018) < https://soas-repository.worktribe.com/output/387868/soas-arbitration-in-africa-survey-report-domestic-and-international-arbitration-perspectives-from-

Accordingly addressing multiplicity requires not only institutional reform but also normative shifts in legal practice, including deliberate efforts by African lawyers to incorporate credible local and regional institutions into commercial contracts. Without this behavioural change, even the most sophisticated institutional architecture will remain underutilized.[97]

5.0 Impact on Regional Economic Communities and AfCFTA Dispute Resolution

5.1 Dispute resolution mechanisms within Africa's RECs

Africa's regional economic communities (RECs) operate parallel dispute resolution mechanisms primarily designed for state to state, and in some cases private party disputes arising from treaty obligations. These include the East African Court of Justice, the ECOWAS Community Court of Justice, the COMESA Court of Justice and the SADC Tribunal.[98]

These mechanisms were conceived as judicial rather than arbitral bodies tasked with ensuring compliance with regional integration treaties. However, their effectiveness has been uneven. The SADC Tribunal, for instance, though subsequently reconstituted and restructured to only hear inter-state disputes, was effectively suspended following politically sensitive rulings, exposing the fragility of judicial dispute settlement within RECs.[99] Other courts such as the EACJ, face jurisdictional constraints and enforcement challenges.[100]

---

african-arbitration-practitioners > accessed on 2 June 2026; persistent perception gaps continue to depress African institutions' share of high-value international cases.

[97]Catherine A Rogers, 'The Politics of International Investment Arbitrators' (2013) 12 Santa Clara Journal of International Law 223, 240.

[98]Karen J Alter, James T Gathii and Laurence R Helfer, 'Backlash Against International Courts in West, East and Southern Africa: Causes and Consequences' (2016) 27(2) European Journal of International Law 293 < https://doi.org/10.1093/ejil/chw019 > accessed on 18 April 2026.

[99]*Mike Campbell (Pvt) Ltd and Others v Republic of Zimbabwe* (2/2007) [2008] SADCT 2 (28 November 2008).

[100]*Attorney-General (On Behalf of the National Government) v Karua* (Reference E001 of 2022) [2024] KESC 21 (KLR) (31 May 2024) (Advisory Opinion)

The coexistence of REC court with proliferating arbitral institutions introduces normative and jurisdictional tensions particularly where commercial disputes intersect with regional trade obligations.[101]

5.2 AfCFTA's WTO-style dispute settlement mechanism

The African Continental Free Trade Area introduces a World Trade Organization style dispute settlement mechanism aimed at resolving disputes between state parties concerning the interpretation and application of the AfCFTA agreement.[102] The dispute settlement mechanism reflects a deliberate choice to prioritize rules-based adjudication over arbitration with panels and an appellate body modelled on the WTO system.[103]

However, the dispute settlement mechanism operates within an already crowded dispute resolution environment. Trade disputes may implicate REC obligations, bilateral investment treaties, domestic courts and arbitral institutions simultaneously. The absence of a clear hierarchy between these mechanisms risks fragmentation and conflicting outcomes.[104]

[101]Olabisi D Akinkugbe, 'Dispute Settlement under the African Continental Free Trade Area Agreement: A Preliminary Assessment' (2021) 29 (Supp) African Journal of International and Comparative Law 110, 125 < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3403745 > accessed on 2 June 2026.

[102]Agreement Establishing the African Continental Free Trade Area, Protocol on Rules and Procedures on the Settlement of Disputes (adopted 21 March 2018, entered into force 30 May 2019) < https://au-afcfta.org/dispute-settlement-mechanism/ > accessed 20 April 2026.

[103]James Thuo Gathii, 'Evaluating the Dispute Settlement Mechanism of the African Continental Free Trade Agreement' (*Afronomicslaw*, 10 April 2019) < https://www.afronomicslaw.org/2019/04/10/evaluating-the-dispute-settlement-mechanism-of-the-african-continental-free-trade-agreement > accessed 21 April 2026; see also Olabisi D Akinkugbe, 'Dispute Settlement under the African Continental Free Trade Area Agreement: A Preliminary Assessment' (2021) 29 (Supp) African Journal of International and Comparative Law 110.

[104]Joost Pauwelyn, 'Bridging Fragmentation and Unity: International Law as a Universe of Inter-Connected Islands' (2004) 25 Michigan Journal of International Law 903, 908 < https://repository.law.umich.edu/mjil/vol25/iss4/6/ > accessed on 2 June 2026.

As of 2026, no formal disputes have been filed under the mechanism, rendering its practical operation and interaction with existing REC dispute systems and arbitral institutions largely untested.

This untested status has important implications for the arguments advanced in this article. While the AfCFTA has the potential to serve as a coordinating framework for Africa's fragmented dispute resolution architecture, its effectiveness in this regard remains hypothetical. The relationship between the AfCFTA DSM, REC courts and arbitral institutions will only become clear once disputes begin to arise and the mechanism is put into practice.[105]

5.3 Fragmentation, overlap and normative conflict

The multiplicity of arbitral institutions, REC courts and AfCFTA mechanisms raises concerns of forum overlap and normative inconsistency. A single trade transaction may give rise to disputes under multiple legal regimes, each with its own dispute resolution pathway. Without coordination parties may exploit these overlaps strategically undermining legal certainty.[106]

This fragmentation also weakens Africa's collective bargaining power in global trade and investment disputes. A coherent continental dispute resolution architecture would enhance predictability and reinforce confidence in African legal institutions.[107]

5.4 Towards a coordinated continental architecture

The challenge therefore is not to eliminate arbitral multiplicity or REC mechanisms but to rationalize and coordinate them. AfCFTA offers a unique

[105]James Thuo Gathii, 'Evaluating the Dispute Settlement Mechanism of the African Continental Free Trade Agreement' (Afronomicslaw, 10 April 2019) < https://www.afronomicslaw.org/2019/04/10/evaluating-the-dispute-settlement-mechanism-of-the-african-continental-free-trade-agreement > accessed on 2 June 2026.

[106]Pauwelyn (n 70) 905.

[107]Olabisi D Akinkugbe, 'Dispute Settlement under the African Continental Free Trade Area Agreement: A Preliminary Assessment' (2021) 29 (Supp) African Journal of International and Comparative Law 110 < https://www.euppublishing.com/doi/10.3366/ajicl.2021.0381 > accessed on 2 June 2026.

opportunity to serve as a normative anchor, setting minimum standards for arbitration, encouraging institutional cooperation and promoting mutual recognition of outcomes.[108]

A Coordinated approach through soft law instruments, memoranda of understanding or protocol-based hierarchies could transform multiplicity from a source of fragmentation into a structured ecosystem that support Africa's integration agenda.[109]

5.5 OHADA as a counter model to fragmentation

The OHADA legal system offers a compelling counter-example to the fragmentation risks identified in Africa's broader dispute resolution architecture through the Common Court of Justice and Arbitration (CCJA).[110] OHADA integrates judicial and arbitral functions with a unified supranational framework ensuring consistency in Commercial law interpretation and arbitral supervision across its member states.[111]

---

[108]Emilia Onyema, 'Reimagining the Framework for Resolving Intra-African Commercial Disputes in the Context of the African Continental Free Trade Area Agreement' (2020) 19(3) World Trade Review 446 < https://www.cambridge.org/core/product/identifier/S1474745619000132/type/journal_article > accessed on 2 June 2026.

[109]Emilia Onyema, 'Reimagining the Framework for Resolving Intra-African Commercial Disputes in the Context of the African Continental Free Trade Area Agreement' (2020) 19(3) World Trade Review 446, 460 < https://www.cambridge.org/core/product/identifier/S1474745619000132/type/journal_article > accessed on 2 June 2026; soft law instruments and inter-institutional memoranda of understanding offer practical pathways to coordination without disturbing existing institutional autonomy.

[110]Bird & Bird, 'OHADA Arbitration' (2016) Lexology < https://www.lexology.com/library/detail.aspx?g=ea7839f9-104e-4b4b-b09e-bec976bbea33 > accessed on 2 June 2026.

[111]Treaty on the Harmonization of Business Law in Africa (OHADA Treaty) (signed 17 October 1993, revised 17 October 2008) arts 14–26 < https://www.ohada.com/uploads/actualite/3247/OHADA_Treaty_EN_Reviewed_Foubla.pdf > accessed 25 April 2026.

Unlike the fragmented landscape prevailing elsewhere on the continent, OHADA demonstrates that institutional centralization and legal harmonization can enhance predictability, reduce forum competition and strengthen user confidence. The CCJA's authority to hear annulment proceedings and enforce arbitral awards across member states significantly mitigates jurisdictional conflict and enforcement uncertainty.[112]

Its success underscores that fragmentation is not an inevitable consequence of institutional growth but rather a product of uncoordinated proliferation. Its experience offers valuable lessons for AfCFTA and REC's seeking to balance autonomy with coherence.[113]

However, the OHADA model operates within a relatively homogeneous group of 17 member states, largely sharing civil law traditions and linguistic commonality, raising questions as to whether such a supranational framework is replicable at the continental scale under the AfCFTA.

5.6 Differentiation through trade corridor-based arbitration: The CAJAC Model

Beyond OHADA, emerging models such as the China-Africa joint arbitration centre (CAJAC) illustrates how differentiation may be achieved through functional and economic alignment, rather than territorial duplication. CAJAC's mandate extends to disputes arising from China -Africa trade and investment, particularly those linked to infrastructure and belt road projects.[114]

[112]Gaston Kenfack Douajni and Philippe Leboulanger, 'Arbitration under the Common Court of Justice and Arbitration of the OHADA Contracting States' in Lise Bosman (ed), *Arbitration in Africa: A Practitioner's Guide* (2nd edn, Kluwer Law International 2021) 477.
[113]Gaston Kenfack Douajni and Philippe Leboulanger, 'Arbitration under the Common Court of Justice and Arbitration of the OHADA Contracting States' in Lise Bosman (ed), Arbitration in Africa: A Practitioner's Guide (2nd edn, Kluwer Law International 2021) 477, 482.
[114]China-Africa Joint Arbitration Centre, *Johannesburg Consensus* (17 August 2015); *Beijing Consensus* (June 2015). See CAJAC Johannesburg < https://cajacjhb.com > accessed 25 April 2026.

By targeting a specific trade corridor, it avoids competing directly with general arbitral institutions and instead complements existing mechanisms. This approach aligns institutional design with actual trade flows, a principle that may be replicated within the AfCFTA through sectoral or corridor-based arbitration mechanisms.[115]

For AfCFTA, the lesson is clear: attempting to operate as a universal dispute settlement forum in an already dense institutional environment risks redundancy. A differentiated architecture where AfCFTA's dispute settlement mechanisms govern state to state trade disputes, REC's address integration-specific conflicts and specialized arbitral institutions handle private commercial disputes would better serve continental integration.[116]

6.0 Conclusion

This article has sought to map and assess the rapidly expanding arbitration and trade dispute resolution architecture on the African continent. The evidence reviewed across all four chapters reveals a landscape characterised by both remarkable institutional growth and significant structural challenges.

Chapter 1 documented the extraordinary proliferation of arbitral institutions at the national, regional and international levels. From the establishment of the CRCICA in 1979 to the launch of the Lusaka International Arbitration Center in 2024, the continent has witnessed the creation of nearly 100 arbitral institutions. This growth has been accompanied by the expansion of pan-African professional bodies such as AfAA and the deepening presence of international institutions including CIArb, the ICC and the LCIA. Chapter 2 assessed the implications of

---

[115]China-Africa Joint Arbitration Centre, 'About CAJAC' < https://cajacjhb.com/about/ > accessed on 25 April 2026; the CAJAC model demonstrates that institutional design aligned with actual trade flows can complement rather than duplicate existing arbitral provision.

[116]Emilia Onyema, 'Reimagining the Framework for Resolving Intra-African Commercial Disputes in the Context of the African Continental Free Trade Area Agreement' (2020) 19(3) World Trade Review 446 < https://www.cambridge.org/core/product/identifier/S1474745619000132/type/journal_article > accessed on 25 April 2026.

this proliferation, finding that it has expanded access to justice, catalysed legislative reform, created professional development opportunities and enhanced Africa's visibility in the global arbitration market. However, the chapter also identified persistent confidence asymmetries, uneven judicial support and a continuing preference among international parties for arbitration administered by institutions seated outside the continent.

Chapter 3 drew the critical distinction between proliferation and multiplicity, arguing that institutional growth becomes problematic when newly established centres replicate mandates without functional differentiation, fragmenting caseloads and diluting institutional credibility. Specialisation by sector, region or trade corridor was identified as a corrective to cannibalistic multiplicity. Chapter 4 examined the interaction between arbitral institutions and the dispute resolution mechanisms of Africa's Regional Economic Communities and the AfCFTA, finding that the absence of clear hierarchies between these mechanisms risks normative fragmentation and conflicting outcomes. The OHADA model and the CAJAC model were presented as instructive examples of institutional coordination and functional differentiation.

The central argument of this article is that the distinction between proliferation and fragmentation is not a matter of numbers but of architecture. Institutional abundance is an asset when accompanied by differentiation, coordination and mutual recognition. It becomes a liability when institutions compete without distinction for a limited pool of disputes, spreading resources thinly and undermining the credibility of African arbitration as a whole.

The path forward requires a coordinated approach. First, African arbitral institutions should pursue deliberate strategies of specialisation, aligning institutional mandates with the specific economic realities and trade patterns of their regions. Second, coordination mechanisms, whether through soft law instruments, memoranda of understanding or protocol-based hierarchies, should be developed to clarify the relationships between arbitral institutions, REC courts and the AfCFTA's dispute settlement mechanism. Third, the international arbitration community, including the ICC, LCIA and CIArb and others, should deepen its engagement with African institutions on the basis of genuine partnership rather than market expansion. Fourth, African practitioners, law firms, and corporate counsel must actively incorporate credible African institutions into their arbitration clauses, breaking the cycle of preference for foreign institutions that perpetuates the marginalisation of local centres. The question is not whether Africa needs more arbitral institutions. It is whether those it has can be organised into a coherent architecture that serves the continent's interests in trade, investment and the peaceful resolution of disputes.

Reference

Conventions, Treaties and Legislation

Agreement Establishing the African Continental Free Trade Area, Protocol on Rules and Procedures on the Settlement of Disputes (adopted 21 March 2018, entered into force 30 May 2019).

Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 38 (New York Convention).

International Arbitration Act 2017, No 15 of 2017 (South Africa).

International Arbitration Act 2024 (Malawi).

Lagos Court of Arbitration Law 2009, Law No 17 of 2009 (Lagos State, Nigeria).

Law No 51/2010 of 10 January 2010 on the Establishment of the Kigali International Arbitration Centre (Rwanda).

Nairobi Centre for International Arbitration Act 2013, No 26 of 2013 (Kenya).

Nigeria Arbitration and Mediation Act 2023 (Nigeria).

Regional Centre for International Commercial Arbitration Act 1999, No 39 of 1999 (Nigeria).

Treaty on the Harmonization of Business Law in Africa (OHADA Treaty) (signed 17 October 1993, revised 17 October 2008).

Cases

Attorney-General (On Behalf of the National Government) v Karua (Reference E001 of 2022) [2024] KESC 21 (KLR) (31 May 2024).

Mike Campbell (Pvt) Ltd and Others v Republic of Zimbabwe (2/2007) [2008] SADCT 2 (28 November 2008).

Books and Book Chapters

Blackaby N, Partasides C, Redfern A and Hunter M, *Redfern and Hunter on International Arbitration* (7th edn, Oxford University Press 2023).

Born G, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021).

Drahozal CR and Naimark RW (eds), Towards a Science of International Arbitration: Collected Empirical Research (Kluwer Law International 2005).

Kenfack Douajni G and Leboulanger P, 'Arbitration under the Common Court of Justice and Arbitration of the OHADA Contracting States' in Lise Bosman (ed), *Arbitration in Africa: A Practitioner's Guide* (2nd edn, Kluwer Law International 2021).

Lew JDM, Mistelis LA and Kröll SM, *Comparative International Commercial Arbitration* (Kluwer Law International 2003).

Onyema E, 'Improving the Enforcement of Arbitral Awards in Africa' in Emilia Onyema (ed), The Transformation of Arbitration in Africa: The Role of Arbitral Institutions (Kluwer Law International 2016).

Journal Articles

Akinkugbe OD, 'Dispute Settlement under the African Continental Free Trade Area Agreement: A Preliminary Assessment' (2021) 29 (Supp) African Journal of International and Comparative Law 110.

Alter KJ, Gathii JT and Helfer LR, 'Backlash Against International Courts in West, East and Southern Africa: Causes and Consequences' (2016) 27(2) European Journal of International Law 293.

Andrew Myburgh and Jordi Paniagua, 'Does International Commercial Arbitration Promote Foreign Direct Investment?' (2016) 59(3) Journal of Law and Economics 597.

Berger KP, 'The Need for Speed in International Arbitration' (2008) 25(5) Journal of International Arbitration 595.

Brekoulakis S, 'Systemic Bias and the Institution of International Arbitration: A New Approach to Arbitral Decision-Making' (2013) 4(3) Journal of International Dispute Settlement 553.

Gathii JT, 'The Promise of International Law: A Third World View' (2021) 36 American University International Law Review 377.

Mbengue MM, 'Africa's Voice in the Formation, Shaping and Redesign of International Investment Law' (2019) 34(2) ICSID Review — Foreign Investment Law Journal 455.

Mistelis LA, 'Reality Test: Current State of Affairs in Theory and Practice Relating to "Lex Arbitri"' (2006) 17(2) American Review of International Arbitration 155.

Onyema E, 'Reimagining the Framework for Resolving Intra-African Commercial Disputes in the Context of the African Continental Free Trade Area Agreement' (2020) 19(3) World Trade Review 446.

Onyema E, 'Sub-Saharan African Courts Decisions on the Challenge of Arbitrators' (2023) Paris Journal of International Arbitration (Les Cahiers de l'Arbitrage) 2023-2.

Pauwelyn J, 'Bridging Fragmentation and Unity: International Law as a Universe of Inter-Connected Islands' (2004) 25 Michigan Journal of International Law 903.

Rogers CA, 'The Politics of International Investment Arbitrators' (2013) 12 Santa Clara Journal of International Law 223.

Institutional Reports and Surveys

Forneris X and Mocheva N, *How Countries Can Fully Implement the New York Convention: A Critical Tool for Enforcement of International Arbitration Decisions* (FCI In Focus, World Bank 2019).

ICC International Court of Arbitration, *ICC Dispute Resolution Statistics: 2023* (ICC 2024).
London Court of International Arbitration, *2020 Annual Casework Report* (LCIA 2021).

London Court of International *Arbitration, 2023 Annual Casework Report* (LCIA 2024).

Onyema E, 2018 *Arbitration in Africa Survey Report: Domestic and International Arbitration: Perspectives from African Arbitration Practitioners* (SOAS University of London 2018).

Onyema E, *2020 Arbitration in Africa Survey Report: Top African Arbitral Centres and Seats* (SOAS University of London 2020).

Onyema E, *SOAS Arbitration in Africa 2022 Survey Report: Africa-connected Arbitration - Perspectives on Major Global Issues* (SOAS University of London 2022).

Onyema E, *SOAS Arbitration in Africa 2024 Survey Report: Perceptions on Africa-Connected Arbitration - Seats, Female Arbitrators and Tribunal Secretaries* (SOAS University of London 2024).

Queen Mary University of London and White & Case LLP, 2021 *International Arbitration Survey: Adapting Arbitration to a Changing World* (QMUL 2021).

UNCTAD, *World Investment Report 2023: Investing in Sustainable Energy for All* (United Nations 2023).

White & Case LLP and Queen Mary University of London, *2018 International Arbitration Survey: The Evolution of International Arbitration* (QMUL 2018).

World Bank, *Doing Business 2020: Comparing Business Regulation in 190 Economies* (World Bank 2019 -*Discontinued*).

Online Sources, Law Firm Publications and Blog Posts

Addleshaw Goddard LLP, 'International Arbitration in Africa' (2023) <*https://www.addleshawgoddard.com/en/insights/insights-briefings/2023/africa/international-arbitration-africa/* >

African Arbitration Association, 'African Arbitration Atlas' < https://africanarbitrationatlas.org/ >

Alexandra Miller, 'Access to Justice in Arbitration — Costs and Technology' (ICLG International Arbitration Laws and Regulations, 24 August 2021) < https://www.kennedyslaw.com/en/thought-leadership/article/access-to-justice-in-arbitration-costs-and-technology >

Alexis Martinez, Emma Mason, 'Arbitration in Africa: Past, Present, and Future' (Kluwer Arbitration Blog, 13 January 2016) < https://arbitrationblog.kluwerarbitration.com/2016/01/13/arbitration-in-africa-past-present-and-future/ >

Bird & Bird, 'OHADA Arbitration' (2016) Lexology < https://www.lexology.com/library/detail.aspx?g=ea7839f9-104e-4b4b-b09e-bec976bbea33 >
Chartered Institute of Arbitrators, 'About Us' < https://www.ciarb.org/about-us/ >

Chartered Institute of Arbitrators, 'Ciarb Rwanda Branch Launch' (2 June 2023) < https://www.ciarb.org/news-listing/ciarb-rwanda-branch-launch/ >

Chartered Institute of Arbitrators, 'Membership and Training Pathways' < https://www.ciarb.org/membership/ >

China-Africa Joint Arbitration Centre, 'About CAJAC' < https://cajacjhb.com/about/ >

Cleary Gottlieb Steen & Hamilton LLP, 'Trends in African Arbitration' (2021) < https://content.clearygottlieb.com/regions/africa-outlook/trends-in-african-arbitration/index.html >

DLA Piper Africa (Chibesakunda & Co), 'International Arbitration in Africa: Lessons for the Lusaka International Arbitration Center' (2024) < https://www.dlapiperafrica.com/en/zambia/insights/2024/International-Arbitration-In-Africa.html >

Funke Adekoya SAN, 'Is International Arbitration Truly International - The Role of Diversity' < https://africaarbitration.org/2017/11/07/is-international-arbitration-truly-iinternational-the-role-of-diversity/ >

Gathii JT, 'Evaluating the Dispute Settlement Mechanism of the African Continental Free Trade Agreement' (*Afronomicslaw*, 10 April 2019) < https://www.afronomicslaw.org/2019/04/10/evaluating-the-dispute-settlement-mechanism-of-the-african-continental-free-trade-agreement >

International Chamber of Commerce, '2017 ICC Arbitration Rules: Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration' (ICC 2017) < https://iccwbo.org/dispute-resolution/dispute-resolution-services/arbitration/rules-procedure/2017-arbitration-rules/ >

International Chamber of Commerce, 'Four New ICC Offices, One Shared Vision' (ICC, 2017) < https://iccwbo.org/news-publications/news/four-new-icc-offices-one-shared-vision/ >

International Chamber of Commerce, 'ICC Africa Commission' < https://iccwbo.org/dispute-resolution/thought-leadership/africa-commission/ >

International Chamber of Commerce, 'ICC National Committees and Groups' < https://iccwbo.org/national-committees/ >.

International Chamber of Commerce, 'ICC Young Arbitrators Forum (YAAF) Africa Chapter' < https://iccwbo.org/dispute-resolution/professional-development/yaaf-programme/ >

International Council for Commercial Arbitration, 'ICCA Congress Mauritius 2016' < https://www.arbitration-icca.org/icca-2016-mauritius >

International Council for Commercial Arbitration, 'ICCA Working Group on African Arbitral Practice' < https://www.arbitration-icca.org/icca-working-group-african-arbitral-practice >

International Council for Commercial Arbitration, 'ICCA-AfAA Joint Task Force on Diversity in International Arbitration' < https://www.arbitration-icca.org/icca-afaa-joint-task-force-diversity-international-arbitration >

Joseph Otoo and Kwadwo Sarkodie, 'The Rise and Rise of Arbitration in Africa' (African Law & Business, 5 April 2018) < https://iclg.com/alb/8105-the-rise-and-rise-of-arbitration-in-africa >

Mayer Brown LLP, 'International Arbitration Legal and Case Developments: Middle East & Africa' (Mayer Brown, 2024) https://www.mayerbrown.com/en/insights/publications/2024/05/international-arbitration/legal-and-case-developments/international-arbitration-legal-and-case-developments-middle-east-and-africa >

Norton Rose Fulbright, 'Africa: An Increasingly Attractive Venue for International Arbitration' (Inside Africa Blog, 2022) < https://www.nortonrosefulbright.com/en/inside-africa/blog/2022/03/africa-an-increasingly-attractive-venue-for-international-arbitration >

Onyema E, 'An African Promise' (September 2019) < https://onyema-arbitration.co.uk/the-african-promise-2/ >

Pinsent Masons, 'LCIA Statistics Show Doubling of Arbitration Parties from Africa' (Out-Law, 30 October 2024) < https://www.pinsentmasons.com/out-law/news/lcia-statistics-show-doubling-arbitration-parties-africa >

Sinmi-Adetona T, 'Interview with Our Editors: Nigeria and Lagos Chamber of Commerce International Arbitration Centre in the Spotlight with Abimbola Akeredolu SAN' (*Kluwer Arbitration Blog*, 15 December 2023) < https://arbitrationblog.kluwerarbitration.com/2023/12/15/interview-with-our-editors-nigeria-and-lagos-chamber-of-commerce-international-arbitration-centre-in-the-spotlight-with-abimbola-akeredolu-san/ >

Thomas Kendra, The Kigali centre - 10 years on' (Global Arbitration Review 25 March 2022) < https://globalarbitrationreview.com/article/the-kigali-centre-10-years/ > accessed on 2 June 2026.

Travaini G, 'Arbitration Centres in Africa: Too Many Cooks?' (*Kluwer Arbitration Blog*, 1 October 2019) < https://legalblogs.wolterskluwer.com/arbitration-blog/arbitration-centres-in-africa-too-many-cooks/ >

White & Case LLP, 'Institutional Arbitration in Africa: Opportunities and Challenges' (White & Case, 2021) < https://www.whitecase.com/insight-our-thinking/institutional-arbitration-africa-opportunities-and-challenges >

Whose Forum, Whose Rules? Arbitration and the Regulation of Crypto Disputes in Kenya

By: Caren Nalwenge Okumu Mudeyi

Kenya's Virtual Asset Service Providers Act, 2025 raises a question Kenyan scholarship has only begun to confront: once virtual-asset activity is brought inside the law, which forum should decide the conflicts that follow? For almost a decade the official position was cautionary. The Central Bank of Kenya warned in 2015 that Bitcoin and similar products were not legal tender, were unregulated, and carried obvious money-laundering, terrorist-financing, volatility and platform-failure risks. The new Act changes that posture. It creates a licensing and supervisory framework for virtual asset service providers, assigns responsibilities to the Capital Markets Authority and the Central Bank of Kenya, and integrates virtual-asset activity into Kenya's wider prudential and anti-money-laundering architecture. This article argues that the Act does more than legalise a new category of financial activity. It also forces a fresh account of forum, expertise and regulatory legitimacy. Virtual-asset disputes are unusually transnational, technically dense, commercially sensitive and urgent. Many arise from contracts, custody arrangements, exchange terms and platform rules. For such disputes, arbitration has obvious attractions. It allows confidentiality, procedural flexibility, expertise and enforceability across borders.

Kenyan arbitration law is also hospitable to party autonomy and insists that courts intervene only within carefully delimited statutory grounds. The article nevertheless rejects any suggestion that arbitration should become the master forum for all crypto disputes. Kenya's new regime is built around public supervision, licensing, market integrity, consumer protection and AML/CFT/CPF controls. That architecture would be diluted if arbitral tribunals were allowed to privatise questions that go to licensing status, systemic compliance, market-abuse control, reserve integrity or administrative enforcement. The better answer is a dual-track model. Private commercial disputes should ordinarily be resolved through arbitration or other consensual mechanisms. Regulatory and public-law questions should remain with the competent public authorities and appellate bodies. The draft Virtual Asset Service Providers Regulations, 2026 strengthen that conclusion by requiring dispute-resolution terms in consumer agreements and exchange rules while preserving regulatory control over complaints handling, consumer

assets, advertising, risk disclosure and reserve custody.

Keywords: Virtual Asset Service Providers (VASP) Regulation, Arbitrability and Alternative Dispute Resolution (ADR), Public–Private Regulatory Divide, Transnational Crypto-Asset, Disputes, Dual-Track Dispute Resolution Framework

Introduction

Kenya has a strong digital-finance base. M-Pesa demonstrated that financial innovation could scale rapidly when technology, consumer need and regulation move in rough alignment.[1] Virtual assets present a harder test. They promise speed, programmability and new forms of tokenised exchange, but also expose users and institutions to hacking, wallet failure, exchange collapse, abusive promotion, market manipulation, governance opacity and illicit-finance risks.[2] Kenya's answer has now shifted from caution to regulated permission. The Virtual Asset Service Providers Act, 2025 was assented to on 15 October 2025, published on 21 October 2025 and commenced on 4 November 2025.[3]In March 2026, the National Treasury published draft regulations to operationalise the Act.[4] What remains under-theorised is the forum question.

---

[1]William Jack and Tavneet Suri, 'Mobile Money: The Economics of M-PESA' (NBER Working Paper No 16721, January 2011) < https://www.nber.org/papers/w16721 > accessed 29 March 2026.

[2]Douglas W Arner, Janos Barberis and Ross P Buckley, 'FinTech, RegTech, and the Reconceptualization of Financial Regulation' (2017) 37 Northwestern Journal of International Law & Business 371, 373-80 and 392-99; Nicholas Weaver, 'The Death of Cryptocurrency' (Yale Information Society Project, 2022) 1-8 <https://law.yale.edu/sites/default/files/area/center/isp/documents/weaver_death_of_cryptocurrency_final.pdf> accessed 2 June 2026.

[3] Virtual Asset Service Providers Act 2025, ; Central Bank of Kenya and Capital Markets Authority, 'Commencement of the Virtual Assets Service Providers Act, 2025' (Public Notice, November 2025) 1 <https://www.centralbank.go.ke/uploads/press_releases/665231223_Public%20Notice%20on%20the%20Virtual%20Assets%20Service%20Providers%20Act%202025.pdf> accessed 2 June 2026.

[4] National Treasury, 'Public Notice - Draft Virtual Asset Service Providers Regulations, 2026' (19 March 2026) < https://www.treasury.go.ke/node/1418 > accessed 29 March 2026; National Treasury, *Regulatory Impact Statement on the draft Virtual Asset Service Providers Regulations, 2026* (March 2026) 4-6 < https://www.treasury.go.ke/sites/default/files/Latest%20updates/Regulatory%20Im

The question matters because every regulatory framework generates disputes. Some conflicts will be bilateral and contractual: a token purchaser may challenge issuance terms, a customer may claim that an exchange failed to segregate assets or execute a withdrawal, or a stablecoin holder may contest redemption. Others will be regulatory: Was an entity properly licensed? Did it comply with AML/CFT/CPF obligations? Did reserve arrangements expose consumers or the payment system to unacceptable risk? Those disputes do not engage the same values, and they should not automatically be sent to the same institution.[5]

Kenyan law already contains the beginnings of an answer. Article 159(2)(c) of the Constitution directs courts and tribunals to promote alternative forms of dispute resolution, including arbitration.[6] The Arbitration Act adopts a restrained model of judicial intervention. Section 10 states that, except as provided in the Act, no court shall intervene in matters governed by it; section 32A makes awards final and binding save in the narrow manner provided by statute; and section 35 preserves set-aside jurisdiction where, among other things, the subject matter is not arbitrable or the award conflicts with public policy.[7] These provisions do not privilege arbitration in every context. They do, however, make arbitration the natural candidate for disputes that are genuinely private, consensual and commercially bounded.[8]

The Virtual Asset Service Providers Act itself says nothing express about arbitration. It creates no specialist crypto court, no mandatory tribunal for commercial claims, and no prohibition on arbitration clauses.[9] That legislative

---

pact%20Statement%20on%20VASP%20Regulations%20-%202026%20-%20PP.pdf > accessed 29 March 2026.

[5] For the public-law dimensions of the Kenyan framework, see Virtual Asset Service Providers Act 2025 ss 5-7, 32-33 and 43. For the importance of clear frameworks in the private-law sphere, see International Monetary Fund, *Kenya: Technical Assistance Report, Crypto Regulation and Legislation* (IMF Country Report No 25/1, January 2025) 16-17 < https://www.imf.org/-/media/files/publications/tar/2025/english/tarea2025001-print-pdf.pdf > accessed 29 March 2026.

[6] Constitution of Kenya 2010 art 159(2)(c).

[7] Arbitration Act ss 10, 32A and 35.

[8] Nigel Blackaby KC, Constantine Partasides KC and Alan Redfern, Redfern and Hunter on International Arbitration (7th edn, OUP 2022) chs 1-2.

[9] Virtual Asset Service Providers Act 2025.

silence is important, but it is not unlimited. Silence cannot convert public-law functions into private rights. It cannot authorise parties to contract away licensing controls, consumer-protection commands, AML/CFT/CPF supervision or market-integrity obligations.[10] The correct inquiry is not whether arbitration is theoretically available in the virtual-asset ecosystem. It plainly is. The real inquiry is which classes of disputes should be resolved privately and which must remain within the public regulatory domain.

This article therefore defends a principled dual-track model. Part I traces Kenya's path from caution to regulation. Part II maps the Act's institutional architecture. Part III explains why virtual-asset disputes are distinct from ordinary commercial disputes. Part IV identifies the features that make arbitration attractive for private claims. Part V develops the limits of private ordering by reference to Kenyan arbitration doctrine, public policy and the structure of the VASP statute. Part VI proposes a practical implementation model grounded in the Act and the draft 2026 Regulations. Part VII situates the argument within Kenya's broader fintech trajectory. The core claim is simple: the future of crypto disputes in Kenya should be neither full privatisation nor reflexive court centralisation, but disciplined allocation to the forum best suited to the rights and risks at stake.

I. From Caution to Regulation: The Pre-Act Years

For years, Kenya's official stance on crypto was not hostile so much as defensive. The Central Bank's 2015 public notice stated in plain terms that Bitcoin was an unregulated digital currency, that no entity was licensed to provide money remittance services in Kenya using it, and that no legal protection existed if the relevant platform failed or went out of business.[11] The notice identified anonymity, criminal abuse, lack of legal redress and speculative volatility as immediate concerns. That warning did not make crypto illegal. It did, however, draw a sharp regulatory perimeter around licensed financial institutions and

[10] This silence should not be mistaken for a universal legislative preference for arbitration. Under Kenyan law, arbitrability and public policy remain controlled by the Arbitration Act and by the structure of the substantive statute under which the dispute arises.

[11] Central Bank of Kenya, 'Public Notice: Caution to the Public on Virtual Currencies such as Bitcoin' (December 2015) paras 9-26 < https://www.centralbank.go.ke/images/docs/media/Public_Notice_on_virtual_currencies_such_as_Bitcoin.pdf > accessed 29 March 2026

signalled that the state was not prepared to treat virtual assets as part of the recognised payments architecture.[12]

The caution was understandable. Kenya's retail financial system depends heavily on trust. The success of mobile money came not merely from innovation but from legitimacy. Introducing unregulated, pseudonymous and highly volatile instruments into a payments-sensitive environment carried obvious prudential and reputational risks.[13]The IMF's technical assistance report for Kenya, prepared after consultations with the CMA, CBK and National Treasury, recorded that before sector-specific legislation the legal position remained fragmented across the Capital Markets Act, the National Payment System Act, the Central Bank of Kenya Act and general private-law rules.[14] That report also emphasised that no dedicated private-law framework yet existed for digital assets in Kenya, and that absent specific rules, transactions would largely be governed by contracts between parties.[15]

That contractual vacuum matters. A market can survive regulatory ambiguity, but dispute resolution becomes precarious when the parties' legal relationship is defined primarily by standard-form terms generated by offshore exchanges, token issuers or software-mediated platforms. Rights to custody, redemption, segregation, insolvency treatment and transferability become difficult to reconstruct after things go wrong. The IMF therefore urged greater clarity around customer terms, investor protection and the legal consequences of custodial arrangements.[16] Once one reads that advice together with Kenya's eventual VASP Act, the dispute-resolution problem comes into sharper focus. Regulation would license the sector, but it would not by itself eliminate the underlying private-law

[12] See also Central Bank of Kenya, Banking Circular No 14 of 2015, 'Virtual Currencies - Bitcoin' (18 December 2015) <https://www.centralbank.go.ke/uploads/banking_circulars/2075994161_Banking%20Circular%20No%2014%20of%202015%20-%20Virtual%20Currencies%20-%20Bitcoin.pdf> accessed 29 March 2026.

[13] Tavneet Suri and William Jack, 'The Long-Run Poverty and Gender Impacts of Mobile Money' (2016) 354 Science 1288, 1288-92.

[14] International Monetary Fund (n 4) 13-14.

[15] ibid 16.

[16] ibid 16-17.

uncertainty.[17]

The pre-Act years also mattered sociologically. Crypto use in Kenya did not disappear because the state was cautious. It migrated. Activity concentrated in peer-to-peer channels, informal escrow practices, offshore exchanges and social-media ecosystems in which retail users often bore the highest informational and fraud risks. The 2025 Act should therefore be read not as a sudden embrace of crypto ideology, but as an attempt to bring an already active market under visible legal supervision.[18] Once that move was made, disputes ceased to be a side effect of informality and became an institutional design question.

II. The VASP Act 2025: Architecture, Mandate and Boundary Lines

The Virtual Asset Service Providers Act, 2025 is notable for what it does and how it does it. Its stated object is to provide the legislative framework to license and regulate the activities of virtual asset service providers in and from Kenya.[19] It does not rely on one regulator. Instead, section 5 designates the Capital Markets Authority, the Central Bank of Kenya, and any other public body designated by Gazette notice, as relevant regulatory authorities.[20] Section 6 then gives those authorities licensing, supervisory, enforcement, guidance and co-operation powers, while section 7 requires them to act in light of financial stability, market integrity, innovation, fairness, transparency and the protection of Kenya's financial reputation.[21]

The Act's institutional design is especially important for forum analysis. The First Schedule allocates authorities by activity. Virtual-asset wallets, payment processors and stablecoin issuance sit on the CBK side. Exchanges, brokerage, advisory functions, token offerings, tokenisation and token issuance platforms sit

---

[17] Chainalysis Team, 'Sub-Saharan Africa Shows Strong Crypto Retail Activity' (Chainalysis, 10 September 2025) <https://www.chainalysis.com/blog/subsaharan-africa-crypto-adoption-2025/> accessed 2 June 2026.

[18] See, for the shift in regulatory posture, Central Bank of Kenya (n 9) and compare its warning-based approach with the licensing and supervisory model adopted by the Virtual Asset Service Providers Act 2025.

[19] Virtual Asset Service Providers Act 2025 s 3.

[20] ibid s 5.

[21] ibid ss 6-7.

largely on the CMA side.[22] This is not a mere administrative convenience. It reflects Parliament's judgment that different slices of the virtual-asset market implicate different public interests. Payments, reserves and custody generate prudential concerns. Trading, issuance and market conduct generate investor-protection and market-integrity concerns. A dispute-resolution model that ignored this public allocation of responsibility would misread the statute's structure.[23]

The Act also embeds strong compliance logic. It links VASPs directly to Kenya's AML/CFT/CPF regime, authorises vetting of shareholders and senior officers, inspection, surveillance, consolidated supervision and sanctions, and amends the Proceeds of Crime and Anti-Money Laundering Act, the Central Bank of Kenya Act, the National Payment System Act and the Capital Markets Act in order to integrate virtual assets into existing control frameworks.[24] Section 32 places AML/CFT/CPF supervision squarely in the hands of the relevant regulatory authority, and section 33 creates offences for non-compliance.[25] Penalties are substantial. Section 40 provides, depending on the offence, for fines reaching KES 20 million or KES 25 million for companies, along with imprisonment for individuals in specified cases.[26]

Equally significant is section 43 on appeals. A person aggrieved by refusal of a licence, refusal of approval, revocation or suspension of a licence, amendment of licence conditions, or enforcement action may appeal to a "relevant body", defined to mean a court of law, tribunal or committee established by written law of competent jurisdiction in Kenya.[27] That provision is a powerful signal that

---

[22] ibid First Schedule.
[23] Financial Stability Board, High-Level Recommendations for the Regulation, Supervision and Oversight of Crypto-Asset Activities and Markets: Final Report (17 July 2023) recs 1-3 <https://www.fsb.org/2023/07/high-level-recommendations-for-the-regulation-supervision-and-oversight-of-crypto-asset-activities-and-markets-final-report/> accessed 2 June 2026.
[24] ibid s 32 and Schedule amending the Proceeds of Crime and Anti-Money Laundering Act, the Capital Markets Act, the Central Bank of Kenya Act and the National Payment System Act.
[25] ibid ss 32-33.
[26] ibid s 40.
[27] ibid s 43.

regulatory disputes were intended to move through public-law channels created or recognised by statute. It is difficult to square section 43 with any view that such questions may simply be rerouted into private adjudication.

At the same time, the Act does not create a total public monopoly over all disputes touching virtual assets. The absence of a dedicated commercial dispute mechanism is conspicuous. Indeed, section 49 contemplates regulations on client disclosures, safekeeping, cybersecurity, insurance, tokenisation, stablecoins and periodic returns, but says nothing about extinguishing private dispute-resolution autonomy.[28] The current draft regulations move further in that direction. They require exchanges and token issuance platforms to submit rules that include dispute-resolution mechanisms; they require standard consumer service agreements to state the dispute resolution and the governing law; and they require licensees to maintain internal complaints procedures, consumer care systems, restitution mechanisms and appeal procedures where complaints cannot otherwise be resolved.[29]

That design choice has two implications. First, Kenya is not building a regime in which all conflict resolution is swallowed by public enforcement. Second, the state is not abandoning the field. The statute and draft regulations assume coexistence: private mechanisms inside supervised contracts and rulebooks, public control over licensing, complaints architecture, reserve integrity, consumer safeguards and enforcement.[30] The task for scholarship is therefore not to choose between state and market in the abstract, but to describe the legal boundary between them with greater precision.

III. What Makes Virtual-Asset Disputes Distinct?

Virtual-asset disputes are not ordinary commercial disputes carried out on new rails. They differ in ways that affect forum choice. The first difference is location.

---

[28] ibid s 49.

[29] Draft Virtual Asset Service Providers Regulations 2026 reg 19(6)(m), reg 100(2)(g), regs 108-109.

[30] International Organization of Securities Commissions, Policy Recommendations for Crypto and Digital Asset Markets: Final Report (FR11/23, November 2023) recs 1, 3, 7 and 12 <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD747.pdf> accessed 2 June 2026.

A single transaction may involve a Kenyan user, an offshore exchange, a stablecoin issuer incorporated elsewhere, validators distributed globally, wallet software maintained by another entity, and assets or reserves governed by still another legal regime.[31] Territorial assumptions that work tolerably well in many domestic contract disputes become unstable when the core transaction is borderless and the counterparties are pseudonymous, platform-based or algorithmically intermediated.[32]

The second difference is technical density. Many disputes in this sector turn not simply on what the parties promised in prose, but on what code did, failed to do, or allowed a third party to do. Smart-contract execution, oracle failure, private-key compromise, protocol governance votes, reserve attestations, tokenisation architecture and wallet controls all produce questions that are partly legal and partly infrastructural.[33] That does not mean judges are incapable of deciding such disputes. It does mean that fact-finding may require a depth of technological fluency that ordinary litigation processes are not always well placed to supply quickly or cheaply.[34]

---

[31]Law Commission, Digital Assets: Final Report (Law Com No 412, 2023) paras 2.1-2.23 <https://www.lawcom.gov.uk/project/digital-assets/> accessed 2 June 2026; UNIDROIT (n 16) Principles 5-6.

[32] See generally International Monetary Fund (n 4) 16-17 (explaining the private-law and cross-border frictions created by crypto activity); see also Financial Action Task Force, Updated Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers (October 2021) 9-10 < https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/Updated-Guidance-VA-VASP.pdf > accessed 29 March 2026.

[33]Trevor I Kiviat, 'Beyond Bitcoin: Issues in Regulating Blockchain Transactions' (2015) 65 Duke Law Journal 569, 574-88 <https://scholarship.law.duke.edu/dlj/vol65/iss3/4/> accessed 2 June 2026; Max Raskin, 'The Law and Legality of Smart Contracts' (2017) 1 Georgetown Law Technology Review 305, 309-18 <https://georgetownlawtechreview.org/wp-content/uploads/2017/05/Raskin-1-GEO.-L.-TECH.-REV.-305-.pdf> accessed 2 June 2026.

[34] Kariuki Muigua, 'The Evolving Alternative Dispute Resolution Practice: Investing in Digital Dispute Resolution in Kenya' (2022) 43-51, NCIA Journal vol 2 < https://kmco.co.ke/wp-content/uploads/2022/04/The-Evolving-Alternative-Dispute-Resolution-Practice-Investing-in-Digital-Dispute-Resolution-in-Kenya-Kariuki-Muigua.pdf > accessed 29 March 2026; Kariuki Muigua, 'Navigating the Digital Dispute Resolution Landscape: Challenges and Opportunities' (2023) SSRN abstract < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4802590 > accessed 29 March 2026.

Third, speed matters differently here. In many virtual-asset disputes, delay is not neutral. Values can move sharply within hours. Assets may be transferred across chains or converted through multiple venues. Collateral positions may liquidate automatically.[35] Stablecoin confidence can degrade rapidly once redemption doubts spread. Even when the ultimate rights question is straightforward, a slow interim process may destroy the practical utility of the final decision. This is one reason arbitration, especially when supported by emergency relief and technically informed procedure, appears attractive to sophisticated market actors.[36]

Fourth, confidentiality matters in a more acute way than in ordinary public litigation. Crypto disputes frequently expose sensitive information, including wallet architecture, key-management procedures, proprietary trading logic, internal compliance systems, incident-response practices and customer-identifying information. Kenya's Data Protection Act, 2019 underscores the importance of lawful and accountable processing of personal data.[37] Public court filings are not inherently incompatible with data protection, but they are often a poor fit for disputes involving security-sensitive operational information whose disclosure may itself increase risk.[38]

Fifth, the market contains a mixture of wholesale and retail relationships. Not every dispute is one between sophisticated players bargaining on equal terms. Many Kenyan users will engage virtual-asset services through standard-form consumer agreements.[39]The draft regulations anticipate precisely that reality by requiring standard consumer service agreements, complaints procedures,

[35]World Economic Forum, Dispute Resolution for Blockchain-Based Transactions (White Paper, November 2020) 9-14 <https://www3.weforum.org/docs/WEF_WP_Dispute_Resolution_for_Blockchain_2020.pdf> accessed 2 June 2026; Maxime Chevalier, 'From Smart Contract Litigation to Blockchain Arbitration: A New Form of Decentralized Justice' (2021) 12 Journal of International Dispute Settlement 558, 560-64.
[36] Muigua, 'The Evolving Alternative Dispute Resolution Practice' 45-51.
[37] Data Protection Act 2019 (No 24 of 2019) s 3 https://new.kenyalaw.org/akn/ke/act/2019/24/eng@2022-12-31 accessed 29 March 2026.
[38]Gabrielle Kaufmann-Kohler and Thomas Schultz, Online Dispute Resolution: Challenges for Contemporary Justice (Kluwer Law International 2004) ch 3.
[39]Draft Virtual Asset Service Providers Regulations 2026.

consumer care systems, and restitution pathways.[40] This matters because the desirability of arbitration may vary by context. What works well for a negotiated custody or tokenisation agreement between commercial actors may be inappropriate, or at least require stronger fairness controls, in a mass-market retail relationship.[41]

Finally, the sector blurs the line between private rights and public goods. A dispute about a failed withdrawal may be a private claim. A dispute revealing widespread commingling of consumer assets, deceptive risk disclosures, reserve weakness or market abuse is not merely private any longer.[42]It becomes evidence of regulatory failure with broader consumer and systemic implications. The forum question must therefore be dynamic. One cannot classify disputes solely by the form of the legal action. One must classify them by the interests they threaten.[43]

IV. Why Arbitration Fits Many Private Crypto Disputes

When the dispute is genuinely bilateral and commercial, arbitration offers real advantages. The first is expertise. Parties can choose arbitrators with experience in financial regulation, commercial contracts, digital systems, custody structures or cross-border disputes.[44] That is especially valuable in cases where the tribunal must understand how a platform actually functions, how digital records should be interpreted, or how technical failure intersects with contractual allocation of risk.[45] Professor Kariuki Muigua's work on digital dispute resolution in Kenya is useful here. He argues that emerging digital commerce requires dispute-

[40] Draft Virtual Asset Service Providers Regulations 2026 reg 100 and regs 108-109.
[41]Draft Virtual Asset Service Providers Regulations 2026 (n 4) regs 100 and 108-109.
[42]Julia Black, 'Decentring Regulation: Understanding the Role of Regulation and Self-Regulation in a Post-Regulatory World' (2001) 54 Current Legal Problems 103, 106-15; Robert Baldwin, Martin Cave and Martin Lodge, Understanding Regulation: Theory, Strategy, and Practice (2nd edn, OUP 2012) chs 1-2.
[43]**.** Gary B Born, International Commercial Arbitration (3rd edn, Kluwer Law International 2021) chs 2 and 10.
[44] Maxime Chevalier, 'From Smart Contract Litigation to Blockchain Arbitration: A New Form of Decentralized Justice' (2021) 12 Journal of International Dispute Settlement 558, 560-64.
[45] Muigua, 'Navigating the Digital Dispute Resolution Landscape' (n 26).

resolution systems capable of speed, technological understanding and institutional adaptation rather than simple replication of paper-era procedure.[46]

The second advantage is flexibility. Arbitration can accommodate tailored evidentiary rules, use of experts, expedited schedules, confidentiality protocols and digital hearing formats.[47] Kenya's arbitration framework already supports party autonomy, and Kenyan appellate jurisprudence has repeatedly insisted that court intervention must remain tightly confined. In *Anne Mumbi Hinga v Victoria Njoki Gathara*, the Court of Appeal reiterated that there is no right for any court to intervene in the arbitral process or in the award except in the situations specifically set out in the Arbitration Act.[48] In *Nyutu Agrovet Ltd v Airtel Networks Kenya Ltd*, the Supreme Court recognised the centrality of section 10 and party autonomy, while still allowing a narrow appellate safety valve where the High Court steps so far outside section 35 as to close the door of justice.[49] Those decisions do not concern crypto, but they offer a doctrinal environment that commercial actors value.

The third advantage is cross-border enforceability. If a dispute involves offshore parties or assets, an arbitral award may travel more readily than a domestic judgment because of the New York Convention framework.[50] Kenya's own Arbitration Act tracks that international logic in section 37, while preserving refusal grounds where the subject matter is not arbitrable or enforcement would offend Kenyan public policy.[51] In transnational digital markets, that mobility is not a technical luxury. It may be the difference between a paper victory and a

[46] Muigua, 'The Evolving Alternative Dispute Resolution Practice' (n 26) 43-44, 50-51.
[47] UNCITRAL Arbitration Rules 2021 arts 17 and 27.
[48] *Anne Mumbi Hinga v Victoria Njoki Gathara* [2009] KECA 466 (KLR). The Court stated that 'there is no right for any court to intervene in the arbitral process or in the award except in the situations specifically set out in the Arbitration Act'.
[49] *Nyutu Agrovet Ltd v Airtel Networks Kenya Ltd; Chartered Institute of Arbitrators-Kenya Branch (Interested Party)* [2019] KESC 11 (KLR) where the Supreme Court held that an appeal from the High Court on a section 35 application lies only in the clearest cases when the High Court has stepped outside the statutory grounds and thereby denied the parties justice.
[50] Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 3.
[51] Arbitration Act s 37.

meaningful remedy.

The fourth advantage is compatibility with the direction of the draft regulations. The proposed 2026 Regulations expect VASP rulebooks and consumer agreements to contain dispute-resolution provisions.[52] That does not dictate arbitration, but it plainly contemplates that parties and regulated entities will specify private dispute pathways. Used properly, arbitration could supply a disciplined mechanism for disputes over exchange execution, brokerage obligations, custody arrangements, token-sale covenants, advisory mandates, redemption timing, service interruption and platform representations.

Still, arbitration is not attractive merely because it is private. It is attractive because it can be made institutionally serious. The NCIA rules already contain model clauses and a functioning procedural framework capable of supporting commercial disputes with regional and international dimensions.[53] Kenya therefore need not import a foreign seat by reflex. If the sector develops intelligently, Nairobi could become a credible forum for African digital-finance disputes, especially those involving East African users, issuers and service providers.[54] That is a practical opportunity, but only if the jurisdictional line is kept clear.

V. The Limits of Private Ordering: Public Policy, Arbitrability and Regulatory Authority

The strongest argument for arbitration in crypto is also the reason to resist its overexpansion. Virtual-asset markets are built on private architecture, but they sit inside a legal environment structured by public power.[55] Kenyan arbitration law

---

[52] Draft Virtual Asset Service Providers Regulations 2026 reg 19(6)(m) and reg 100(2)(g).

[53] See Nairobi Centre for International Arbitration (Arbitration) Rules 2015 (Revised 2019) model clause provisions < https://ncia.or.ke/wp-content/uploads/2023/06/NCIA-Revised-Rules-June-2023.pdf > accessed 29 March 2026. The point is not that the Rules were drafted for crypto disputes specifically, but that Kenyan institutional arbitration already supplies a workable procedural template for technically complex commercial disputes.

[54] Nairobi Centre for International Arbitration Act 2013 (No 26 of 2013) ss 4 and 5.

[55] Angela Walch, 'Deconstructing Decentralization: Exploring the Core Claim of Crypto Systems' in Chris Brummer (ed), Cryptoassets: Legal, Regulatory, and Monetary Perspectives (OUP 2019) ch 2.

supplies the limiting principles. Section 35 permits a court to set aside an award where the subject matter is not capable of settlement by arbitration under Kenyan law or where the award conflicts with Kenyan public policy.[56] In *Christ for All Nations v Apollo Insurance Co Ltd*, Ringera J described an award as contrary to public policy if it is inconsistent with the Constitution or other laws of Kenya, inimical to the national interest, or contrary to justice and morality.[57] In *Synergy Industrial Credit Ltd v Cape Holdings Ltd*, the Court of Appeal stressed that section 35 is not a disguised merits appeal.[58]

These doctrines matter because the VASP framework creates subjects that are either plainly non-arbitrable or functionally unsuitable for private determination. Licensing decisions are the clearest example.[59] Whether an entity qualifies for a licence, whether a licence should be suspended, amended or revoked, and whether an enforcement action should be taken are matters allocated by statute to public regulators and public appellate bodies.[60] A contractual arbitration clause cannot displace those assignments. Section 43 of the Act confirms this by directing aggrieved parties to the relevant body established by written law.[61]

AML/CFT/CPF supervision presents a second limit. Section 32 of the Act entrusts the relevant regulatory authority with supervision, inspection, information-

---

[56] Arbitration Act s 35(2)(b).
[57] *Christ for All Nations v Apollo Insurance Co Ltd* [2002] 2 EA 366, quoted with approval in *Equity Bank Ltd v Adopt-a-Light Ltd* [2014] KEHC 2253 (KLR) < https://new.kenyalaw.org/akn/ke/judgment/kehc/2014/2253/eng@2014-10-17 > accessed 29 March 2026. Ringera J stated that an award may be contrary to Kenyan public policy if it is inconsistent with the Constitution or other laws of Kenya, inimical to the national interest, or contrary to justice and morality.
[58] *Synergy Industrial Credit Ltd v Cape Holdings Ltd* [2020] KECA 208 (KLR) < https://new.kenyalaw.org/akn/ke/judgment/keca/2020/208/eng@2020-11-06 > accessed 29 March 2026. The Court explained that the party seeking to set aside must prove that the award dealt with matters beyond the scope of the reference, and that courts should not use section 35 to conduct a merits appeal in disguise.
[59] Loukas A Mistelis, 'Arbitrability: International and Comparative Perspectives' in Loukas A Mistelis and Stavros L Brekoulakis (eds), Arbitrability: International and Comparative Perspectives (Kluwer Law International 2009) 1, 3-16.
[60] Virtual Asset Service Providers Act 2025 ss 6 and 43.
[61] ibid s 43.

gathering, sanctions and co-operation for AML/CFT/CPF purposes.[62] FATF guidance likewise treats licensing, registration, supervision, customer due diligence, record-keeping, suspicious transaction reporting, sanctions and international co-operation as public-regulatory functions that jurisdictions must build into their legal frameworks.[63] The FATF's 2024 targeted update further highlights stablecoins, DeFi, unhosted wallets, P2P activity and NFTs as areas of increasing illicit-finance concern requiring risk identification, mitigation and public-sector engagement.[64] Those are not functions a private tribunal can discharge, still less one operating under a confidentiality agreement between contracting parties.

Consumer protection creates a third limit, or at least a strong caution. Article 46 of the Constitution protects consumers' rights to quality, relevant information, safety, economic interests and compensation for loss.[65] The draft regulations operationalise this logic by requiring consumer service agreements, internal complaint procedures, consumer-care systems and restitution pathways.[66] Arbitration can still play a role here, but only under conditions that preserve fairness. A standard-form clause that effectively buries a retail user's claim in an expensive or foreign process would be difficult to defend as consistent with the consumer-protective thrust of the framework.[67] Arbitral design in this context must therefore be scrutinised for fairness rather than celebrated as efficiency.

Financial stability and reserve integrity generate a fourth boundary. The draft regulations contain detailed controls around stablecoin reserve custody, segregation and redemption support, including requirements that reserve assets

---

[62] ibid s 32.

[63] See generally Financial Action Task Force (n 25) 9-10, emphasising that effective supervision of virtual-asset activity depends on public regulatory oversight rather than purely private ordering.

[64] Financial Action Task Force, *Virtual Assets: Targeted Update on Implementation of the FATF Standards* (June 2024) 6-7 < https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/2024-Targeted-Update-VA-VASP.pdf.coredownload.inline.pdf > accessed 29 March 2026.

[65] Constitution of Kenya 2010 art 46.

[66] Draft Virtual Asset Service Providers Regulations 2026 reg 100 and regs 108-109.

[67] Draft Virtual Asset Service Providers Regulations 2026 (n 4) regs 100(2)(g), 108 and 109; Consumer Protection Act 2012 (n 41) ss 55-70 and 88.

be held by CBK-approved custodians and protected against custodians' creditors, with segregated banking and investment arrangements for redemption liquidity.[68] If a dispute reveals weakness in those structures, it is not merely a private disagreement between issuer and holder. It is potentially a matter for supervisory intervention because reserve design, insolvency remoteness and redemption confidence affect the wider market.[69]

For these reasons, the better way to think about arbitrability in this sector is functionally. A dispute is presumptively suitable for arbitration when it concerns rights or obligations created primarily by contract and when its resolution does not require the tribunal to substitute itself for the regulator. [70]A dispute should remain in the public domain when it concerns the legality of operating status, the validity of administrative action, the content of prudential or AML/CFT/CPF obligations, the adequacy of reserve structures, or widespread practices that threaten consumer welfare or market integrity.[71] The moment a bilateral dispute begins to expose those broader concerns, the forum calculus changes.[72]

VI. A Practical Kenyan Dual-Track Model

A workable model for Kenya does not require new primary legislation. It requires interpretive discipline and regulatory guidance. On the private side, commercial actors should be free, and in many cases encouraged, to use carefully drafted

[68] ibid regs 72-74.

[69] Gary B Gorton and Jeffery Y Zhang, 'Taming Wildcat Stablecoins' (2023) 90 University of Chicago Law Review 909, 911-12 and 918-27 <https://chicagounbound.uchicago.edu/uclrev/vol90/iss3/3/> accessed 2 June 2026; Howell E Jackson and Morgan Ricks, 'Locating Stablecoins within the Regulatory Perimeter' (Harvard Law School Forum on Corporate Governance, 5 August 2021) <https://corpgov.law.harvard.edu/2021/08/05/locating-stablecoins-within-the-regulatory-perimeter/> accessed 2 June 2026.

[70] Loukas A Mistelis, 'Arbitrability: International and Comparative Perspectives' in Loukas A Mistelis and Stavros L Brekoulakis (eds), Arbitrability: International and Comparative Perspectives (Kluwer Law International 2009) 1, 3-16.

[71] International Organization of Securities Commissions, Policy Recommendations for Crypto and Digital Asset Markets: Final Report (FR11/23, November 2023) recs 1, 3, 7 and 12 <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD747.pdf> accessed 2 June 2026.

[72] Robert Baldwin, Martin Cave and Martin Lodge, Understanding Regulation: Theory, Strategy, and Practice (2nd edn, OUP 2012) chs 1-2.

dispute-resolution clauses for custody agreements, brokerage mandates, token-sale arrangements, technology services and exchange participation contracts.[73]Those clauses should specify seat, institution, governing law, confidentiality terms, expert evidence procedure, and emergency-relief options. For disputes involving substantial technical complexity or cross-border performance, arbitration will often be superior to ordinary litigation.[74]

However, the clauses should also contain a regulatory carve-out. They should make clear that nothing in the agreement prevents notification to, or action by, the CMA, CBK or any other competent authority where the facts indicate licensing breaches, market abuse, AML/CFT/CPF concerns, reserve weakness, data-protection violations or consumer-protection issues of broader significance. This would not weaken arbitration. It would protect it from being used as a shield for regulatory evasion.[75]

The draft 2026 Regulations provide a ready platform for such an approach. Because exchanges and token issuance platforms must submit rules containing dispute-resolution mechanisms, regulators can require those rules to distinguish commercial claims from regulatory referrals.[76] Because standard consumer service agreements must state dispute resolution and governing law, regulators can review whether retail-facing clauses are fair, intelligible and practically accessible.[77] Because licensees must maintain complaint registers, consumer-care systems, restitution pathways and appeal processes, the state can ensure that arbitration does not displace first-line consumer redress or obscure recurring misconduct.[78]

Institutionally, three immediate steps would help. First, the Treasury, CMA and CBK could issue model clause guidance for different categories of VASP

[73] Gary B Born, International Commercial Arbitration (3rd edn, Kluwer Law International 2021) chs 2 and 10.
[74] Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 3 arts III-V.
[75] Virtual Asset Service Providers Act 2025, ss 42-43.
[76] ibid reg 19(6)(m).
[77] ibid reg 100(2)(g).
[78] ibid regs 108-109.

relationships. These clauses need not impose a single forum, but they should set minimum standards on regulatory carve-outs, notice requirements, language, cost allocation, interim relief and treatment of on-chain evidence. Second, the NCIA could develop a focused protocol for digital-asset disputes, including expert appointment, electronic evidence management and emergency proceedings.[79] Third, the Judiciary could strengthen specialisation within the Commercial Division so that applications under sections 35, 36 and 37 of the Arbitration Act, or statutory appeals under the VASP Act, are handled by judges familiar with the sector's context.[80]

A further implementation point concerns evidence. On-chain records can be probative without being conclusive. Arbitral clauses and institutional guidance should therefore address authentication, expert testimony, translation of technical records into intelligible evidentiary form, and the relationship between blockchain records, exchange logs, custodial records and off-chain contractual documents.[81] A serious dual-track model is not just about allocating forums. It is about building procedures that recognise the sector's evidentiary peculiarities.

There is also a normative point. Kenya should resist two opposite temptations. The first is over-centralisation, where every crypto dispute is treated as a matter for courts or regulators regardless of its private commercial character.[82]The second is privatisation by clause, where major issues of public risk are buried in confidential dispute mechanisms. The dual-track model avoids both errors. It recognises that efficient private adjudication has a place in innovative markets,

---

[79] Nairobi Centre for International Arbitration (Arbitration) Rules 2015 (revised 2019) model arbitration clause; UNCITRAL, Notes on Organizing Arbitral Proceedings (2016) paras 9-14 <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/arb-notes-2016-e.pdf> accessed 2 June 2026.

[80] Arbitration Act, Cap 49 (Kenya) ss 35-37.

[81] World Economic Forum, Dispute Resolution for Blockchain-Based Transactions (White Paper, November 2020) 9-14 <https://www3.weforum.org/docs/WEF_WP_Dispute_Resolution_for_Blockchain_2020.pdf> accessed 2 June 2026; Maxime Chevalier, 'From Smart Contract Litigation to Blockchain Arbitration: A New Form of Decentralized Justice' (2021) 12 Journal of International Dispute Settlement 558, 560-64.

[82] Robert Baldwin, Martin Cave and Martin Lodge, Understanding Regulation: Theory, Strategy, and Practice (2nd edn, OUP 2012) chs 1-2.

but it insists that public law remains public.[83]

VII. Kenya's Fintech Strengths and the Road Ahead

Kenya is unusually well placed to build such a model.[84]Its legal system is already familiar with financial innovation, mobile transactions and constitutionalised ADR. Its arbitration framework is mature enough to support sophisticated private disputes. Its regulators have now moved from fragmented caution to integrated statutory oversight.[85] The draft regulations show a willingness to engage operational detail, from exchange rulebooks and consumer agreements to complaint systems, risk disclosures, advertising controls and reserve custody.[86]
That combination gives Kenya an opportunity to develop local jurisprudence on digital disputes. Too much current writing on crypto dispute resolution assumes that the real choices are imported from London, Singapore, Dubai or New York.[87] Those jurisdictions matter, but Kenya's setting is different.[88] It is a mobile-money economy with significant retail participation, an active constitutional rights culture, growing regional significance and persistent exposure to illicit-finance and digital-access concerns.[89] A credible Kenyan model must therefore take both efficiency and public accountability seriously.

There are, of course, constraints. Digital literacy remains uneven.[90]Broadband

---

[83] Stavros L Brekoulakis, 'On Arbitrability: Persisting Misconceptions and New Areas of Concern' in the same volume 19, 21-47.

[84] Communications Authority of Kenya, Sector Statistics Report Q4 2024-2025 (April-June 2025) 7-12 <https://www.ca.go.ke/sites/default/files/2025-09/Sector%20Statistics%20Report%20Q4%202024-2025_1.pdf> accessed 2 June 2026.

[85] Virtual Asset Service Providers Act 2025 (n 3) ss 3 and 5-7.

[86] See eg ibid reg 100, regs 108-109, reg 128 and regs 72-74.

[87] Queen Mary University of London and White & Case, 2021 International Arbitration Survey: Adapting Arbitration to a Changing World (2021) 2-12 <https://arbitration.qmul.ac.uk/research/2021-international-arbitration-survey/> accessed 2 June 2026.

[88] Communications Authority of Kenya (n 84) 7-12.

[89] Chainalysis Team, 'Sub-Saharan Africa Shows Strong Crypto Retail Activity' (Chainalysis, 10 September 2025) <https://www.chainalysis.com/blog/subsaharan-africa-crypto-adoption-2025/> accessed 2 June 2026.

[90] ICT Authority, The Kenya National Digital Master Plan 2022-2032 (2022) 20-29 <https://cms.icta.go.ke/sites/default/files/2022-04/Kenya%20Digital%20Masterplan%202022-2032%20Online%20Version.pdf> accessed 2 June 2026.

access is not uniform.[91]The cost structure of arbitration can still exclude smaller claimants. Many disputes will involve foreign counterparties or standard terms drafted elsewhere. But these are arguments for institutional design, not for abandoning the project. Retail-facing clauses can require simplified procedures and local seats.[92] Regulators can insist on intelligible consumer contracts.[93] Institutions can build technical rosters. Courts can retain strong oversight at the jurisdictional boundary. What matters is to avoid treating dispute resolution as an afterthought to regulation.

Conclusion

The arrival of Kenya's VASP regime means that crypto disputes can no longer be treated as marginal anomalies at the edge of law. They now sit within a statutory structure that expressly licenses activity, allocates regulatory functions, creates sanctions, anticipates consumer complaints systems and, through the draft regulations, requires contractual and platform-level attention to dispute resolution.[94] The hard question is whose forum and whose rules should govern them.

The best answer is neither full judicialisation nor full privatisation.[95] It is a disciplined dual-track approach. Arbitration should be available, and often preferred, for genuinely private commercial disputes involving exchanges, custody, token transactions, brokerage, advisory and platform relations.[96] But public-law questions about licensing, enforcement, AML/CFT/CPF compliance, consumer protection at scale, reserve integrity and market stability must remain

---

[91]Communications Authority of Kenya (n 84) 7-12.

[92] Kariuki Muigua, 'The Evolving Alternative Dispute Resolution Practice: Investing in Digital Dispute Resolution in Kenya' (2022) 2 NCIA Journal 43, 43-51 <https://kmco.co.ke/wp-content/uploads/2022/04/The-Evolving-Alternative-Dispute-Resolution-Practice-Investing-in-Digital-Dispute-Resolution-in-Kenya-Kariuki-Muigua.pdf> accessed 2 June 2026.

[93] Draft Virtual Asset Service Providers Regulations 2026 (n 4) regs 100, 108 and 109.

[94] Virtual Asset Service Providers Act 2025; Draft Virtual Asset Service Providers Regulations 2026.

[95]Loukas A Mistelis, 'Arbitrability: International and Comparative Perspectives' in Loukas A Mistelis and Stavros L Brekoulakis (eds), Arbitrability: International and Comparative Perspectives (Kluwer Law International 2009) 1, 3-16

[96] Nairobi Centre for International Arbitration (Arbitration) Rules 2015 (revised 2019); Born (n 8) chs 2 and 10.

in the hands of the regulators and statutory public bodies empowered to address them. Kenyan arbitration doctrine already supplies the tools for that distinction through section 10, section 32A, section 35, and the case law on public policy and limited intervention.[97]

If Kenya gets that boundary right, it will do more than manage a new sector competently. It will demonstrate that innovation governance need not choose between speed and accountability. In the virtual-asset era, the proper forum is not determined by technological novelty alone.[98] It is determined by the nature of the right, the risk and the institutional responsibility attached to each. That is how Kenya should answer the question posed by the title of this article: the market's forum for commercial disputes, the people's institutions for public ones, and rules to keep the line intact.

[97] Arbitration Act ss 10, 32A, 35 and 37; Anne Mumbi Hinga (n 32); Nyutu Agrovet (n 33); Synergy Industrial Credit (n 40).
[98] Hilary J Allen, Driverless Finance: Fintech's Impact on Financial Stability (OUP 2022) chs 1 and 6; Hilary J Allen, 'Driverless Finance' (2020) 10 Harvard Business Law Review 157, 160-70 <https://journals.law.harvard.edu/hblr/wp-content/uploads/sites/87/2020/03/HLB101_crop.pdf> accessed 2 June 2026.

(2026)14(3) Alternative Dispute Resolution

Natural Justice in Artificial Intelligence Legal Processes: Maintaining the Right to a Fair Hearing, Review and Appeal

By: Prof. Kariuki Muigua SC

Abstract
This paper examines the need to uphold natural justice in AI legal processes. The paper observes that natural justice is a fundamental concept in legal processes since it ensures fairness and avoidance of bias in justice systems towards human rights. Despite AI playing a key role in improving legal processes, the paper observes that it can violate the principles of natural justice if not appropriately and ethically harnessed. The paper discusses how the integration of AI into legal processes can undermine natural justice. In light of this concern, the paper argues that it is imperative to integrate natural justice into AI legal processes in order to protect human rights. In order to realise this dream, the paper discusses how the right to a fair hearing, review and appeal can be maintained in AI legal processes.

1.0 Introduction

Artificial Intelligence (AI) is being widely integrated into legal processes towards enhancing access to justice. It has been observed that AI can support justice systems by enhancing their resilience, efficiency, effectiveness and fairness[1]. Further, AI has the capacity to bolster access to justice by making legal processes more efficient, affordable, and accessible[2]. According to the United Nations, technology and AI can ensure scalable, transparent, responsive, innovative and

[1] Organisation for Economic Co-operation and Development., 'Governing with Artificial Intelligence' Available at https://www.oecd.org/en/publications/2025/06/governing-with-artificial-intelligence_398fa287/full-report/ai-in-justice-administration-and-access-to-justice_f0cbe651.html (Accessed on 29/04/2026)

[2] Okeke. U., 'Enhancing Access to Justice Through Technology in Developing Countries: Technology-Based Initiatives, Challenges and Emerging Technologies' *International Journal for Court Administration*., Volume 16, Issue 3 (2026)

data-driven transformation of justice systems as long as principles of openness, transparency, inclusiveness and accountability are taken into account[3].

The transformative power of AI is streamlining legal processes and fostering access to justice. For example, AI is enabling lawyers to streamline legal research, automate contract review, and manage large volumes of data during court proceedings[4]. Further, it has been observed that AI has the ability to quickly sift through the mass of complex facts and evidence to identify the key issues at the heart of each dispute thus enhancing the efficiency and speed of dispute resolution[5]. AI is also being harnessed in court processes to automate and streamline processes including case management, filing of documents and allocation of cases[6]. In addition, it has been observed that judicial officers are increasingly adopting AI to evaluate briefs, undertake research, sift through vast amounts of pleadings and evidence and come up with more cogent and consistent rulings and judgments[7].

---

[3] United Nations., 'Advancing Rule of Law, Justice for All through Technology Must Include Equal Internet Access, Human Rights Compliance, Sixth Committee Speakers Stress' Available at https://mail.google.com/mail/u/0/#inbox/FMfcgzQbfVGtksmCfmrlxLQbCCknVLCW (Accessed on 29/04/2026)

[4] International Bar Association., 'The Future is Now: Artificial Intelligence and the Legal Profession' Available at https://www.ibanet.org/document?id=The-future-is%20now-AI-and-the-legal-profession-report#:~:text=5-,Foreword,of%20the%20rule%20of%20law. (Accessed on 29/04/2026)

[5] Kumtepe. C., 'A Brief Introduction to Blockchain Dispute Resolution.' *John Marshall Law Journal*, Volume 14, No. 2 (2021)

[6] Organisation for Economic Co-operation and Development., 'AI in Justice Administration and Access to Justice' Available at https://www.oecd.org/en/publications/2025/06/governing-with-artificial-intelligence_398fa287/full-report/ai-in-justice-administration-and-access-to-justice_f0cbe651.html (Accessed on 29/04/2026)

[7] Artificial Intelligence in Court Rooms., Available at https://www.clio.com/resources/ai-for-lawyers/ai-in-courtrooms/ (Accessed on 29/04/2026)

Harnessing AI is therefore fundamental towards enhancing the efficiency, speed and accessibility of legal processes. It has been observed that the integration of AI into legal processes and justice systems can improve efficiency and responsiveness, enhance the delivery of services tailored to peoples' needs, support routine tasks and expand capabilities across a variety of justice domains[8]. However, the use of AI in legal processes raises several risks and concerns that can undermine the principles of natural justice. In particular, it has been observed that algorithmic biases and concerns over transparency, accountability and due process can hinder effective access to justice[9]. In light of these challenges, it is imperative to uphold natural justice in AI legal processes.

This paper examines the need to uphold natural justice in AI legal processes. The paper observes that natural justice is a fundamental concept in legal processes since it ensures fairness and avoidance of bias in justice systems towards human rights. Despite AI playing a key role in improving legal processes, the paper observes that it can violate the principles of natural justice if not appropriately and ethically harnessed. The paper discusses how the integration of AI into legal processes can undermine natural justice. In light of this concern, the paper argues that it is imperative to integrate natural justice into AI legal processes in order to protect human rights. In order to realise this dream, the paper discusses how the right to a fair hearing, review and appeal can be maintained in AI legal processes.

2.0 Impact of Artificial Intelligence Legal Processes on Natural Justice

Natural justice is a concept that governs fairness in legal and administrative processes. This concept is founded on two fundamental concepts: rule against bias (*nemo judex in causa sua*)[10]; and the right to a fair hearing (*audi alteram partem*)[11]. It has been observed that the principle of *nemo judex in causa sua* (no person ought to judge their own cause) prevents a judge or a holder of public office from

---

[8] Organisation for Economic Co-operation and Development., 'AI in Justice Administration and Access to Justice' Op Cit

[9] Ibid

[10] Principles of Natural Justice., Available at https://blog.ipleaders.in/natural-justice/ (Accessed on 29/04/2026)

[11] Ibid

deciding a matter on which they have a conflicting interest[12]. This principle seeks to avoid bias by ensuring accuracy, impartiality and public confidence in decision-making processes[13]. On the other hand, the principle of *audi alteram partem*, safeguards access to justice by ensuring the right to a fair hearing for all parties[14]. According to this principle, no person can be condemned or punished without being given a fair opportunity to be heard[15]. The principle of *audi alteram partem* covers not only those formally joined in legal proceedings but also third parties whose rights may be affected[16].

The concept of natural justice is therefore fundamental in ensuring access to justice. Natural justice comprises the duty to give every person a fair hearing[17]; the duty to ensure that a matter is decided by someone who is impartial[18]; and the duty to allow an appeal against a decision[19]. It has been observed that the principles of natural justice ensure fairness of legal and administrative processes, protection of fundamental rights and freedoms and respect for the rule of law[20]. The principles of natural justice safeguard individuals against arbitrary and biased administrative decisions thus protecting fundamental rights and freedoms and promoting public trust and confidence in decision-making processes[21].

---

[12] Moussa. M., 'Expanding the Nemo Judex Rule: Reflections on Non-Pecuniary Bias' Available at https://www.tandfonline.com/doi/full/10.1080/10854681.2025.2503651#d1e81 (Accessed on 29/04/2026)

[13] Ibid

[14] Injunctive Relief and the Audi Alteram Partem Principle., Available at https://www.legal500.com/developments/thought-leadership/injunctive-relief-and-the-audi-alteram-partem-principle/ (Accessed on 29/04/2026)

[15] Principles of Natural Justice., Op Cit

[16] Injunctive Relief and the Audi Alteram Partem Principle., Op Cit

[17] Natural Justice Definition., Available at https://www.lexisnexis.co.uk/legal/glossary/natural-justice (Accessed on 29/04/2026)

[18] Ibid

[19] Ibid

[20] Principles of Natural Justice., Op Cit

[21] Iqbal. S., 'The Principle of Natural Justice in Administrative Law' *International Journal of Law and Policy*., 3 (9): 50-65

With AI being widely adopted in legal processes, there is a risk that it could undermine the principles of natural justice without adequate safeguards. For example, it has been observed that AI can worsen existing biases in the justice system, particularly regarding race, sex or socioeconomic status[22]. Since AI models are only as accurate and non-biased as the data they are trained on, biased AI systems can lead to unjust outcomes which violate human rights[23]. It has been correctly noted that given AI tools and systems rely on data to generate predictions and recommendations, algorithms trained on biased data sets can perpetuate discrimination leading to unjust outcomes[24]. The use of biased data sets especially in criminal justice has produced skewed and unjust results, such as in certain aspects relating to bail and parole and at sentencing with disproportionate impacts on marginalised groups including people of colour[25]. Algorithmic biases in AI can therefore undermine the rule against bias (*nemo judex in causa sua*).

In addition, use of AI in legal processes can violate the right to a fair hearing. The concept of natural justice envisions transparent and accountable decision-making processes and due process requirements including the right to a fair hearing[26]. However, it has been observed that the use of AI in legal processes makes it difficult to understand how legal decisions are made which undermines the fundamental tenets of fair hearing including transparency, accountability and due

[22] Organisation for Economic Co-operation and Development., 'AI in Justice Administration and Access to Justice' Op Cit

[23] Artificial Intelligence in Court Rooms., Op Cit

[24] American Bar Association., 'Access to Justice 2.0: How AI-powered software can bridge the gap' Available at https://www.americanbar.org/groups/journal/articles/2025/access-to-justice-how-ai-powered-software-can-bridge-the-gap/ (Accessed on 29/04/2026)

[25] Kondapalli. P et al., 'A Literature Review: Bias Detection and Mitigation in Criminal Justice' *Eng. Proc.* 2025, *107*(1), 72; **https://doi.org/10.3390/engproc2025107072** (Accessed on 29/04/2026)

[26] Iqbal. S., 'The Principle of Natural Justice in Administrative Law' Op Cit

process[27]. Ensuring fair hearing in AI legal processes is therefore important towards upholding the principles of natural justice.

3.0 Maintaining the Right to a Fair Hearing, Review and Appeal in Artificial Intelligence Legal Processes

AI provides numerous benefits towards enhancing access to justice. It is being widely integrated into legal processes for accessibility, resilience, speed, efficiency and effectiveness[28]. However, without proper safeguards, the adoption of AI in legal processes can violate the principles of natural justice. In particular, natural justice seeks to avoid bias in decision-making processes and ensure every person is granted the right to a fair hearing[29]. However, algorithmic biases and inadequate transparency, accountability and due process mechanisms in AI violate the fundamental tenets of natural justice[30].

It is therefore imperative to inculcate the principles of natural justice in AI legal processes in order to ensure fairness, transparency, accountability, due process and non-discrimination for enhanced access to justice. In particular, it is imperative to avoid algorithmic biases in AI legal processes including through training AI systems on accurate, inclusive and fair data sets[31]. This is vital towards preventing AI from perpetuating existing biases in justice systems, particularly regarding race, gender socioeconomic status[32]. In addition, conducting regular AI audits and fostering human oversight is necessary towards detecting and tackling

---

[27] Burgess. P., 'AI and the Rule of Law' Available at https://www.bloomsbury.com/us/ai-and-the-rule-of-law-9781509963171/ (Accessed on 29/04/2026)

[28] Organisation for Economic Co-operation and Development., 'Governing with Artificial Intelligence' Op Cit

[29] Principles of Natural Justice., Op Cit

[30] Burgess. P., 'AI and the Rule of Law' Op Cit

[31] Simshaw. D., 'Interoperable Legal AI for Access to Justice' *The Yale Law Journal,* Volume 134, 2025

[32] Organisation for Economic Co-operation and Development., 'AI in Justice Administration and Access to Justice' Op Cit

biases in order to avoid unfair and unjust outcomes[33]. Through this it is possible to incorporate natural justice into AI legal processes by complying with the rule against bias (*nemo judex in causa sua*).

Further, it is vital to maintain the right to a fair hearing (*audi alteram partem*) in AI legal processes towards upholding natural justice. In order to achieve this goal, there is need to adopt AI tools that explain the rationale behind their output and decisions for transparency, accountability and fairness[34]. In addition, when deploying AI tools in legal processes, courts and tribunals have been urged to assess the implications of AI systems for procedural fairness throughout the AI system's life cycle and prevent deployments that breach this fundamental right[35]. Further, when AI tools are used in legal decision-making processes, informing parties on why such tools were adopted, how they were utilised and the data relied on is key towards ensuring transparency and procedural fairness[36].

Giving parties affected by AI decision-making in legal processes a chance for review and appeal is also important towards upholding the tenets of natural justice. It has been argued that the ability to review and appeal decisions is both an ethical and legal principle when utilising AI in legal processes in order to avoid arbitrariness, bias, unfair and unjust outcomes[37]. It has been observed that those affected by automated decisions through AI legal processes should have access to remedies such as human review or judicial appeal processes in order to contest and seek redress for decisions that are unfair, biased, unjust and violate human

---

[33] United Nations Educational, Scientific and Cultural Organization., 'Guidelines for the use of AI systems in courts and tribunals' Available at https://unesdoc.unesco.org/ark:/48223/pf0000396582 (Accessed on 30/04/2026)

[34] United Nations Educational, Scientific and Cultural Organization., 'Guidelines for the use of AI systems in courts and tribunals' Op Cit

[35] Ibid

[36] Ibid

[37] Ability to Appeal., Available at https://aiethicslab.rutgers.edu/e-floating-buttons/ability-to-appeal/ (Accessed on 30/04/2026)

rights[38]. Consequently, when utilising AI in legal processes, it is crucial to maintain the right to review and appeal in order to uphold natural justice.

4.0 Conclusion

With AI being increasingly adopted in legal processes, it is imperative to ensure that it is harnessed in an ethical and appropriate manner in line with the principles of natural justice. This involves avoiding algorithmic bias through inclusive, fair and accurate data sets, and ensuring regular audits and human oversight in order to detect and address biases[39]. Further, it is imperative to maintain the right to a fair hearing when harnessing AI in legal processes through transparency, explainability and accountability[40]. Giving parties affected by AI decision-making in legal processes an avenue for review and appeal is also necessary in order to enable them challenge and seek redress for decisions that are unfair, discriminatory, biased, unjust and violate human rights[41]. Inculcating the principles of natural justice in AI legal processes is a relevant ideal towards strengthening access to justice in the age of technology. It is imperative to maintain the right to a fair hearing, review and appeal in order to achieve this dream.

---

[38] Ibid

[39] United Nations Educational, Scientific and Cultural Organization., 'Guidelines for the use of AI systems in courts and tribunals' Op Cit

[40] Ibid

[41] Ability to Appeal., Op Cit

References

Ability to Appeal., Available at https://aiethicslab.rutgers.edu/e-floating-buttons/ability-to-appeal/

American Bar Association., 'Access to Justice 2.0: How AI-powered software can bridge the gap' Available at https://www.americanbar.org/groups/journal/articles/2025/access-to-justice-how-ai-powered-software-can-bridge-the-gap/

Artificial Intelligence in Court Rooms., Available at https://www.clio.com/resources/ai-for-lawyers/ai-in-courtrooms/

Burgess. P., 'AI and the Rule of Law' Available at https://www.bloomsbury.com/us/ai-and-the-rule-of-law-9781509963171/

Injunctive Relief and the Audi Alteram Partem Principle., Available at https://www.legal500.com/developments/thought-leadership/injunctive-relief-and-the-audi-alteram-partem-principle/

International Bar Association., 'The Future is Now: Artificial Intelligence and the Legal Profession' Available at https://www.ibanet.org/document?id=The-future-is%20now-AI-and-the-legal-profession-report#:~:text=5-,Foreword,of%20the%20rule%20of%20law

Iqbal. S., 'The Principle of Natural Justice in Administrative Law' *International Journal of Law and Policy*., 3 (9): 50-65

Kondapalli. P et al., 'A Literature Review: Bias Detection and Mitigation in Criminal Justice' *Eng. Proc.* 2025, *107*(1), 72; **https://doi.org/10.3390/engproc2025107072**

Kumtepe. C., 'A Brief Introduction to Blockchain Dispute Resolution.' *John Marshall Law Journal*, Volume 14, No. 2 (2021)

Moussa. M., 'Expanding the Nemo Judex Rule: Reflections on Non-Pecuniary Bias' Available at https://www.tandfonline.com/doi/full/10.1080/10854681.2025.2503651#d1e81

Natural Justice Definition., Available at https://www.lexisnexis.co.uk/legal/glossary/natural-justice

Okeke. U., 'Enhancing Access to Justice Through Technology in Developing Countries: Technology-Based Initiatives, Challenges and Emerging Technologies' *International Journal for Court Administration.*, Volume 16, Issue 3 (2026)

Organisation for Economic Co-operation and Development., 'AI in Justice Administration and Access to Justice' Available at https://www.oecd.org/en/publications/2025/06/governing-with-artificial-intelligence_398fa287/full-report/ai-in-justice-administration-and-access-to-justice_f0cbe651.html

Organisation for Economic Co-operation and Development., 'Governing with Artificial Intelligence' Available at https://www.oecd.org/en/publications/2025/06/governing-with-artificial-intelligence_398fa287/full-report/ai-in-justice-administration-and-access-to-justice_f0cbe651.html

Principles of Natural Justice., Available at https://blog.ipleaders.in/natural-justice/

Simshaw. D., 'Interoperable Legal AI for Access to Justice' *The Yale Law Journal,* Volume 134, 2025

United Nations Educational, Scientific and Cultural Organization., 'Guidelines for the use of AI systems in courts and tribunals' Available at https://unesdoc.unesco.org/ark:/48223/pf0000396582

United Nations., 'Advancing Rule of Law, Justice for All through Technology Must Include Equal Internet Access, Human Rights Compliance, Sixth Committee Speakers Stress' Available at https://mail.google.com/mail/u/0/#inbox/FMfcgzQbfVGtksmCfmrlxLQbCCknVLCW

Women, Land, and ADR: How Cultural Entitlements and Psychosocial Barriers Shape Land Title Access for Divorced and Widowed Women in Kenya

By: ***Muthoni Njagi & Prof Kariuki Muigua SC***

Abstract

This article examines how Alternative Dispute Resolution (ADR) mechanisms, cultural entitlements, and psychosocial barriers intersect to shape land-title access for divorced and widowed women in Kenya. Drawing on doctrinal analysis of the Constitution of Kenya (Articles 40, 60, and 159), the Land Act, the Matrimonial Property Act, and the Law of Succession, as well as empirical data from the Kenya Land Alliance (2021) and the Kenya Demographic and Health Survey 2022 (KDHS), the paper demonstrates that women hold only about 1.6% of land titles despite contributing up to 80% of agricultural labour, and that men are more likely than women to own land alone and to have their names on title deeds. The study further integrates recent case law from the Court of Appeal, High Court, Environment and Land Court, and Kadhi's Courts, including PNN v ZWN (2017), Francisco Kaunda Wambua v Tabitha Ngina Kaunda (2021), In the Estate of Nyamoringo Okinyi (2024), Alice Kimutai v William Kimooi Changwony (2025), and L.M.G v M.W.N.A.K.A.A.W. (2025), to show how courts consistently uphold constitutional principles of equality against discriminatory customary practices while applying distinct rules under Islamic law.

The article adopts a "law–culture–psychology–ADR" framework to analyze how customary and family-based ADR mechanisms reproduce patriarchal entitlements, how women's internalized norms and stigma reduce their willingness to assert land claims, and how judicial and ADR-linked reforms can narrow the gap between formal law and women's lived entitlement. The paper concludes that ADR reform in Kenya, such as gender-sensitive training for mediators, integration of legal aid and psychosocial support, promotion of joint-title registration, and rights-based community dialogues, can help align domestic practice with international human rights obligations and with progressive experiences in other African countries such as Rwanda and Liberia.

1.0 Introduction

Kenya's constitutional framework formally recognizes gender equality and the right to property, yet the reality for most women remains starkly different. Empirical data from the Kenya Land Alliance (KLA, 2021) indicate that women receive only about 1.6% of land titles and 1.62% of titled hectares, while men account for approximately 97.76%, despite women contributing up to 80% of agricultural labour in rural households (KLA, 2021; Voice of America, 2018). The Kenya Demographic and Health Survey 2022 (KDHS) further confirms that men are more likely than women to own non-agricultural land alone and to have their names on title deeds, while women predominate in joint-ownership and non-ownership categories (Kenya National Bureau of Statistics, 2023; UN Women, n.d.).

In this context, divorced and widowed women are particularly vulnerable to land-related dispossession. Customary tenure systems and family-based dispute-resolution mechanisms frequently pressure widows and divorced women to "cede" land to male relatives such as brothers-in-law, uncles, or sons in the name of family harmony, even where statutory law recognizes their rights (KLA, 2021; Voice of America, 2018). At the same time, Alternative Dispute Resolution (ADR) forums such as elders' councils, clan-based mediation, and women's group-led dialogues are central arenas where land succession and divorce-related conflicts are managed, yet their gendered effects on women's entitlement and psychosocial well-being remain under-examined (Kenya Law Reform Commission, 2010; Kenya National Bureau of Statistics, 2023).

This article proposes an interdisciplinary analysis of how Kenyan land law, ADR practice, cultural entitlements, and psychosocial dynamics intersect to shape access to land titles for divorced and widowed women. It draws on doctrinal analysis of the Constitution of Kenya (Articles 40, 60, and 159); the Land Act, the Matrimonial Property Act, and the Law of Succession; alongside empirical data from KLA (2021) and the KDHS (Kenya National Bureau of Statistics, 2023); and selected case law involving widows and divorced women such as *In re Estate of Kipkoech Arap Maina KEHC 20629* (Kipkoech Arap Maina, 2023) and *JOO v MBO & 2 others KESC 4* (JOO v MBO & 2 others, 2023). The paper also incorporates qualitative insights into how women experience dispossession, stigma, and trauma in ADR-mediated disputes.

The specific research questions guiding this paper are:

1. How do customary and family-based ADR mechanisms influence land-title outcomes for divorced and widowed women in Kenya?
2. How do cultural entitlement narratives intersect with women's psychosocial experiences, such as shame, fear of ostracism, and trauma in land-related disputes?
3. How can ADR frameworks be re-designed to be more gender-sensitive and psychologically informed to protect widowed and divorced women's land rights and, by extension, the security of their children who depend on that land?

An ADR lens adds value by exposing the everyday sites where macro-level legal rights are either affirmed or diluted. While the Constitution guarantees the right to property (Art. 40) and principles of land policy (Art. 60), and the Matrimonial Property Act and Law of Succession recognize spousal and children's interests, implementation remains uneven, particularly in customary ADR settings (Kenya Law Reform Commission, 2010; Kenya National Bureau of Statistics, 2023). Recent case law, including *In re Estate of Kipkoech Arap Maina* and *JOO v MBO & 2 others*, highlights both the promise and the limitations of judicial interpretation in securing land claims for widows and divorced women (Kipkoech Arap Maina, 2023; JOO v MBO & 2 others, 2023). These judgments emphasize that statutory guarantees do not automatically translate into secure entitlements where cultural norms and ADR-mediated compromises prevail.

This article also benefits from recent case law research that examines decisions of the Court of Appeal, High Court, Environment and Land Court, and Kadhi's Courts on women's land rights, matrimonial property, succession, and the intersection of customary and religious law (e.g., *PNN v ZWN, 2017*; *Francisco Kaunda Wambua v Tabitha Ngina Kaunda, 2021*; *In the Estate of Nyamoringo Okinyi, 2024*; *Alice Kimutai v William Kimooi Changwony, 2025*; and others). This jurisprudence shows a consistent judicial effort to uphold constitutional principles of equality against discriminatory customary practices, while simultaneously revealing the distinct legal principles that apply within the jurisdiction of Kadhi's Courts, particularly in matters governed by Islamic law (e.g., *L.M.G v M.W.N.A.K.A.A.W., 2025*; *Mwanahawa v. Soudi Mohamed, 2025*).

This article, therefore, argues that effective reform must target not only law and policy but also the ADR-embedded cultural-psychological environment in which women negotiate land rights. The next section outlines the Kenyan land law and ADR context before the article situates the Kenyan case within broader international human rights standards and African comparative experiences on women's land rights.

2.0 Land Law and ADR Context in Kenya

The Constitution of Kenya (2010) provides the foundational framework for land-related rights and dispute resolution. Article 40 guarantees "every person" the right to acquire and own property of any description and in any part of Kenya and prohibits arbitrary deprivation or discriminatory limitation of that right (Kenya Law Reform Commission, 2010). Article 60 categorizes land into public, community, and private land and emphasizes equitable access and utilization, including the need to address historical imbalances in land ownership (Kenya Law Reform Commission, 2010). In tandem, Article 159 recognizes ADR as a key mechanism for dispute resolution, stating that the justice system shall promote conciliation, mediation, and arbitration to enhance access to justice (Kenya Law Reform Commission, 2010).

These constitutional provisions are operationalized through several key statutes. The Land Act (No. 6 of 2012) and Land Registration Act (No. 3 of 2012) provide for the registration of land and the protection of lawful proprietors, including women with equitable or customary interests (Kenya Law Reform Commission, 2010; FAOLEX, n.d.). The Matrimonial Property Act (No. 10 of 2013) recognizes that spouses acquire equal status in marriage and that property accumulated during marriage is jointly owned unless otherwise shown (Kipkoech Arap Maina, 2023; JOO v MBO & 2 others, 2023). Courts have interpreted this to recognize non-monetary contributions, such as homemaking and childcare, as valid inputs that justify an equitable share in matrimonial property (MMS Advocates, 2024; Kipkoech Arap Maina, 2023).

The Law of Succession Act (Cap. 160) governs inheritance and succession, including the distribution of land upon death. Under this Act, spouses and children are entitled to portions of the estate, and courts have progressively interpreted these provisions to protect widows and divorced women against outright dispossession (Kenya Law Reform Commission, 2010; FAOLEX, n.d.). However, in practice, customary and family-based ADR mechanisms often modify or override these statutory entitlements through informal "family settlements" that prioritize male lineage and "family harmony" over formal land titles (KLA, 2021; Voice of America, 2018).

Customary tenure and family-based dispute-resolution mechanisms operate extensively in rural and peri-urban settings. Elders' councils, clan-based mediation, and women's-group-led dialogues frequently settle land-succession and divorce-related conflicts outside formal courts (Kenya National Bureau of Statistics, 2023; UN Women, n.d.). In such settings, Article 159's endorsement of ADR is invoked to facilitate amicable resolutions, but the absence of gender-sensitive standards and training leaves women vulnerable to pressure to relinquish land claims (Kenya Law Reform Commission, 2010; Kenya National Bureau of Statistics, 2023).

Recent case law illustrates both the promise and the limitations of judicial intervention in land-related disputes involving widows and divorced women. *In re Estate of Kipkoech Arap Maina KEHC 20629*, the High Court confirmed a grant of probate and directed the distribution of land among multiple "houses" (houses of sons), with the widow and her children receiving shares in trust for the benefit of specific lineages (Kipkoech Arap Maina, 2023). This decision reflects an attempt to balance statutory succession rules with customary expectations of lineage-based allocation, but it also underscores how women's land interests can be mediated through complex trust arrangements that may be difficult to enforce in practice (Kipkoech Arap Maina, 2023).

By contrast, *JOO v MBO & 2 others KESC 4* clarified the legal position on matrimonial property division in divorce proceedings. The Supreme Court affirmed that the equal status of spouses in marriage does not automatically entitle them to an equal share of matrimonial property, but that division must be proportionate to each spouse's contributions, whether monetary or non-monetary (JOO v MBO & 2 others, 2023; MMS Advocates, 2024). The court emphasized that homemaking, childcare, and emotional support constitute valid forms of contribution that must be recognized and quantified (JOO v MBO & 2 others, 2023). This landmark ruling reinforces the principle of fairness and equity in matrimonial property division, but it also highlights the burden of proof on spouses seeking to establish their beneficial interest in property, particularly in contexts where documentation is lacking (JOO v MBO & 2 others, 2023).

Additional case law research further clarifies the legal landscape for divorced and widowed women. In PNN v ZWN (2017), the Court of Appeal clarified that "contribution" to matrimonial property under the Matrimonial Property Act, 2013, explicitly includes non-monetary contributions like domestic work, child care, and companionship. This establishes a strong basis for divorced women to claim an equitable share of assets acquired during the marriage, though not an automatic 50/50 split (PNN v ZWN, 2017). In Francisco Kaunda Wambua v. Tabitha Ngina Kaunda (2021), a wife who had financially contributed to the acquisition of properties through a joint business during her marriage was awarded the matrimonial home in her sole name and an equal share in several other matrimonial properties upon separation, demonstrating the court's willingness to recognize and reward a wife's tangible contributions to the matrimonial estate (Francisco Kaunda Wambua v. Tabitha Ngina Kaunda, 2021). In Concepter Awuor Orende v Josiah Orende (2021), the Environment and Land Court declared that land registered solely in the husband's name was matrimonial property, held in trust for his divorced wife. The court found that the wife had proven her joint contributions to its development and declared her interest to be an equal 50% share, ordering a valuation to facilitate the division (Concepter Awuor Orende v Josiah Orende, 2021). These cases collectively reinforce the principle that non-monetary and monetary contributions alike are legally recognized as valid bases for women's claims to land and property, even where titles are registered in a single spouse's name.

In the area of succession and customary law, courts have consistently upheld the supremacy of the Constitution over discriminatory customary practices. In the Estate of Nyamoringo Okinyi (2024), the High Court held that customary laws preventing daughters from inheriting property are "repugnant to good conscience" and unconstitutional, revoking a grant of administration that had been obtained by fraudulently concealing the existence of the deceased's daughters and ordering that all children, regardless of gender, were entitled to share equally in the estate (In the Estate of Nyamoringo Okinyi, 2024). In Rael Chelangat Ngeno v David Kiptonui (HCFP&A/E018/2020) (2025), the High Court nullified a resolution by a panel of elders which, relying on custom, had decided that daughters of the deceased should not inherit land but receive a cow each, finding this resolution to be an "affront to the principles of equality" in the Constitution and affirming that the estate must be distributed according to the Law of Succession Act, which provides for equal inheritance among all children (Rael Chelangat Ngeno v David Kiptonui, 2025).

In the Estate of Susan Nyambura Kamau (2025), the High Court firmly rejected a request by a deceased woman's husband to refer a succession matter to elders, where the dispute involved daughters inheriting their mother's land. The court described notions against daughters' inheritance as "archaic" and reiterated that statutory law, not customary law, governs succession. It ordered the transfer of titles to proceed, even if it required the Deputy Registrar to sign on behalf of the unwilling party (In the Estate of Susan Nyambura Kamau, 2025). These decisions underscore a recurring judicial principle: that customary laws or practices that discriminate against women in matters of inheritance or property ownership are unconstitutional, null, and void (Kenya Law Reform Commission, 2010; In the Estate of Nyamoringo Okinyi, 2024).

The spousal-consent principle also features prominently in land-transaction jurisprudence. In Alice Kimutai v William Kimooi Changwony (2025), the court nullified the title of a third party who had acquired land from the plaintiff's husband, finding that the land was matrimonial property, that the transfer was done without the wife's spousal consent, and that the process was unprocedural and unlawful (Alice Kimutai v. William Kimooi Changwony, 2025). The decision affirmed the wife's overriding interest in the land and protected her from fraudulent dispossession. In Joyce Muthiga Njeru v Peterson Nyaga Njiru & another (2025), the Court of Appeal set aside an Environment and Land Court judgment that had upheld the transfer of family land by a deceased husband without his wife's consent, remitting the case for retrial on procedural grounds but noting the trial court's errors in failing to consider the ancestral nature of the land and the lack of spousal consent, indicating the strength of these factors in protecting a widow's claim (Joyce Muthiga Njeru v Peterson Nyaga Njiru, 2025). Within the Kadhi's Court system, the application of Islamic law introduces distinct legal principles. In L.M.G v M.W.N.A.K.A.A.W. (2025), the Kadhi's Court rejected a wife's claim to a 50% share in her husband's businesses and properties upon divorce, noting that there was no automatic concept of shared matrimonial property under Islamic law and that ownership is based on individual title or proven partnership. However, the court acknowledged the wife's long years of marriage and contribution by ordering the husband to pay her a substantial *mut'ah* (a consolatory gift) of KSHS 10,000,000 (L.M.G v M.W.N.A.K.A.A.W., 2025). In Mwanahawa v Soudi Mohamed (2025), a succession case, the Kadhi's Court ordered the distribution of a deceased man's estate according to Islamic Law (Sharia), affirming that land would be distributed among all heirs based on the Qur'anic principle that "a male receives twice the share of a female" (Mwanahawa v Soudi Mohamed, 2025). These decisions illustrate that Islamic law provides specific, predetermined shares for heirs, with male heirs typically receiving a larger share than female heirs of the same degree.

These cases collectively demonstrate that while Kenya's legal framework provides robust protections for women's land rights, their realization depends on how these protections are interpreted and implemented in practice. ADR mechanisms, which operate at the intersection of law, culture, and psychology, are therefore critical sites for understanding how widowed and divorced women navigate land-related disputes (Kenya Law Reform Commission, 2010; Kenya National Bureau of Statistics, 2023).

3.0 Literature Review

The literature on women's land rights in Kenya and beyond highlights the persistent gap between statutory guarantees and lived realities. Empirical studies show that even where women have legal rights to land, they often lack control, documentation, and secure tenure (KLA, 2021; Voice of America, 2018). Kenya Land Alliance's audit of land-title data between 2013 and 2017 found that women received only about 1.6% of land titles and 1.62% of titled hectares, despite contributing up to 80% of agricultural labour in rural areas (KLA, 2021). This disparity reflects the influence of customary norms that prioritize male lineage and inheritance, which frequently override statutory provisions (KLA, 2021; Voice of America, 2018).

The Kenya Demographic and Health Survey 2022 (KDHS) provides additional insights into gendered land-ownership patterns. The survey shows that while men are more likely to own non-agricultural land alone and have their names on title deeds, women are more likely to appear in categories of joint ownership or non-ownership (Kenya National Bureau of Statistics, 2023; UN Women, n.d.). This pattern suggests that women's land rights are often mediated through male relatives, which can limit their ability to assert independent claims (Kenya National Bureau of Statistics, 2023).

At the international level, women's land rights are recognized as a core component of human rights and gender-equality frameworks. Instruments such as the Universal Declaration of Human Rights (Art. 17), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979), and the African Charter on Human and Peoples' Rights (ACHPR) all affirm women's equal rights to property, inheritance, and secure tenure (OHCHR, n.d.; UN-Habitat, 2013; UN-Women, n.d.). These instruments require states to eliminate discriminatory laws and practices that restrict women's access to, use of, and control over land and to take measures such as legal reform, awareness-raising, and data collection to secure those rights in practice. Kenya's constitutional and statutory framework on land and matrimonial property can therefore be read as the domestic implementation of these broader international obligations, even though implementation remains uneven (Kenya Law Reform Commission, 2010; KLA, 2021).

Comparative studies across Africa indicate that Kenya's experience is not unique. A World Bank-facilitated review of women's land rights in Sub-Saharan Africa reports that only about 38% of African women claim any form of land ownership (sole or joint), compared with 51% of African men, and that similar patterns appear in countries such as Ethiopia, Malawi, Niger, and Uganda (World Bank, 2022; Slavchevska et al., 2017). These findings align with the KDHS-derived figures for Kenya and underscore the fact that statutory equality does not automatically translate into secure, documented ownership for women across the continent.

Nonetheless, several African countries have introduced progressive legal-policy reforms aimed at strengthening women's land rights within both statutory and customary systems. For example, Rwanda's land-tenure regularization programme has enabled women to acquire joint title to about 81% of titled land and sole title to around 11% through reforms that require women's equal participation in land-registration and decision-making bodies (World Bank, 2022). Similarly, Liberia's Land Rights Act of 2018 recognizes customary land rights for the first time in the country's history and includes explicit provisions to protect women's interests during land demarcation and registration (World Bank, 2022; OHCHR, n.d.). These comparative examples demonstrate that when legal reform is combined with participatory, women-centred governance structures, the gap between formal law and women's lived entitlement can be narrowed.

Social-psychological literature on entitlement, stigma, and shame provides important insights into how women experience land-related disputes. Studies show that women who are widowed or divorced often feel a diminished sense of entitlement to land due to internalized norms that equate land with male lineage and view women as temporary occupants of family property (JOO v MBO & 2 others, 2023; MMS Advocates, 2024). Stigma and fear of ostracism can further reduce women's willingness to assert their rights, particularly in contexts where ADR mechanisms prioritize family harmony over individual claims and where women risk being labelled as "greedy," "disruptive," or "un-Kenyan" if they contest customary expectations (Kenya Law Reform Commission, 2010; Kenya National Bureau of Statistics, 2023).

This literature suggests that the problem in Kenya is not only one of law and data, that is, how many women own land or how many titles are issued in their names, but also one of norms and psychology: how deeply embedded cultural entitlements and psychosocial barriers constrain women's capacity and willingness to claim land, even when international human rights standards, constitutional guarantees, and ADR-related provisions formally support them.

4.0 Conceptual Framework

The article proposes a "law–culture–psychology–ADR" framework to analyze how structural, cultural, psychological, and ADR-related factors intersect to shape land-title access for divorced and widowed women in Kenya. This framework situates the Kenyan case within broader international human rights standards and comparative African country experiences, recognizing that women's land rights are not only a domestic or doctrinal question but also a human rights and development concern.

Structural legal barriers include registration costs, complex succession rules, and weak enforcement of joint-title norms, which limit women's ability to secure land titles even where constitutional and statutory law recognizes their rights (KLA, 2021; Kenya Law Reform Commission, 2010; Kenya National Bureau of Statistics, 2023). Kenya's 2010 Constitution, read alongside international instruments such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the African Charter on Human and Peoples' Rights, imposes a duty on the state to ensure that women's rights to property and inheritance are not only recognized in form but also protected in practice (OHCHR, n.d.; UN-Habitat, 2013). At the same time, as comparative evidence from Sub-Saharan Africa shows, many countries face similar patterns: only about 38% of African women claim any form of land ownership (sole or joint), compared with 51% of men, indicating that statutory equality rarely translates directly into secure, documented ownership (World Bank, 2022; Slavchevska et al., 2017).

Cultural barriers include patrilineal inheritance norms, "wife as property" logic, and bridewealth-linked expectations that delegitimize women's independent land claims (KLA, 2021; Voice of America, 2018). These norms are reinforced by customary tenure systems and family-based dispute-resolution mechanisms that prioritize male lineage and family cohesion over individual women's claims to land (Kenya Law Reform Commission, 2010; Kenya National Bureau of Statistics, 2023). In many African contexts, including Kenya, land-related decision-making remains concentrated in the hands of male elders and kin groups, which can marginalize women even when statutory law appears to support them (World Bank, 2022; UN-Women, n.d.).

Psychological mechanisms include shame, fear of ostracism, and trauma-related disempowerment that reduce women's willingness to assert their rights, particularly in the context of ADR-mediated disputes (JOO v MBO & 2 others, 2023; MMS Advocates, 2024). Widowed and divorced women often internalize norms that equate land with male lineage, which can lead to a diminished sense of entitlement and reluctance to contest customary expectations (Kenya Law Reform Commission, 2010; Kenya National Bureau of Statistics, 2023). In settings where ADR emphasizes family harmony and social cohesion, women may feel especially vulnerable to being labelled "disruptive" or "un-Kenyan" if they challenge established practices, even where international human rights standards require states to protect their rights (OHCHR, n.d.; UN-Habitat, 2013).

Finally, ADR mechanisms, such as elders' councils, clan-based mediation, and women's-group-led dialogues can either reproduce patriarchal entitlements or, with reform, become sites of more equitable dispute resolution (Kenya Law Reform Commission, 2010; Kenya National Bureau of Statistics, 2023). In some African countries, such as Rwanda, legal reform efforts that promote joint-title registration and women's participation in land-governance structures have helped reduce gender gaps in land ownership, suggesting that ADR-linked processes could be similarly redesigned in Kenya to align with international human rights obligations (World Bank, 2022; UN-Habitat, 2013). The findings and analysis that follow explore how these intersecting factors play out in Kenyan ADR-mediated land-title disputes.

5.0 Findings and Analysis

The findings suggest that customary and family-based ADR processes frequently pressure widows and divorced women to relinquish land claims to male relatives, often in the name of family harmony and peace (KLA, 2021; Voice of America, 2018). Elders' councils and clan-based mediation tend to emphasize the stability of the extended family and the continuity of male lineage, which can override women's statutory entitlements to land (Kenya Law Reform Commission, 2010; Kenya National Bureau of Statistics, 2023). This pattern is consistent with comparative evidence from Sub-Saharan Africa, where women's land claims are often mediated through male relatives, making their ownership fragile and revocable (World Bank, 2022; UN-Women, n.d.).

Links between entitlement narratives and psychological effects such as shame, fear, and learned helplessness emerge clearly in women's accounts. Many widowed and divorced women describe feeling that land is "naturally" men's property, even when they have contributed heavily to its cultivation and management (JOO v. MBO & 2 others, 2023; MMS Advocates, 2024). Stigma and fear of social ostracism further reduce women's willingness to assert their rights, particularly in contexts where ADR mechanisms prioritize family harmony over individual claims (Kenya Law Reform Commission, 2010; Kenya National Bureau of Statistics, 2023).

The analysis also identifies instances where ADR is used progressively. Women's groups and supportive elders occasionally mediate land disputes in ways that protect women's interests, for example, by encouraging joint-title registration or ensuring that widows and their children retain access to land (Kenya National Bureau of Statistics, 2023; UN-Women, n.d.). In some cases, ADR-linked processes have helped women secure joint-title or co-registration arrangements, echoing reforms in countries like Rwanda and Liberia that recognize customary land rights and explicitly protect women's interests during land demarcation and registration (World Bank, 2022; OHCHR, n.d.). These examples indicate that when ADR is deliberately redesigned to be gender-sensitive and psychologically informed, it can help narrow the gap between formal law and women's lived entitlement.

The case-law research further enriches the analysis. A common pattern involves male relatives attempting to use customary practices to disinherit daughters or exclude widows from family land, often prompting legal challenges that pit the Constitution against cultural entitlements (In the Estate of Nyamoringo Okinyi, 2024; Rael Chelangat Ngeno v David Kiptonui, 2025). Courts are consistently siding with constitutional principles of equality and nullifying discriminatory customary resolutions (In the Estate of Nyamoringo Okinyi, 2024; Rael Chelangat Ngeno v David Kiptonui, 2025). At the same time, there is a pattern of resistance to enforcement, as seen in *In the Estate of Susan Nyambura Kamau* (2025), where male relatives refuse to sign transfer documents or surrender title deeds even after a court has ruled in a woman's favour, necessitating further enforcement actions (In the Estate of Susan Nyambura Kamau, 2025).

Fraudulent transfers also feature prominently. In Alice Kimutai v William Kimooi Changwony (2025), a husband attempted to secretly sell matrimonial property without his wife's knowledge or consent, and the court nullified the transaction as unprocedural and unlawful (Alice Kimutai v William Kimooi Changwony, 2025). Similar patterns appear in Joyce Muthiga Njeru v Peterson Nyaga Njiru & another (2025), where the Court of Appeal criticized the trial court for failing to consider the lack of spousal consent and the ancestral nature of the land (Joyce Muthiga Njeru v Peterson Nyaga Njiru, 2025).

Within the Kadhi's Court system, outcomes differ significantly. In L.M.G v M.W.N.A.K.A.A.W. (2025), the court rejected an automatic 50/50 division of matrimonial property but acknowledged the wife's contributions through a substantial *mut'ah* (L.M.G v M.W.N.A.K.A.A.W., 2025). In Mwanahawa v Soudi Mohamed (2025), the court strictly applied the Qur'anic principle that male heirs receive twice the share of female heirs, underscoring the codified, unequal inheritance shares under Islamic law (Mwanahawa v Soudi Mohamed, 2025). These decisions highlight the need for further research into the enforcement of judgments, the role of ADR in rights-based mediation, and comparative outcomes between secular and Kadhi's Courts (e.g., Elizabeth Isaya and Susan Diram Gababa v Guracha Gababa and Chege Gababa and Others).

6.0 Discussion

The discussion highlights how ADR mechanisms in Kenya can either reproduce patriarchal entitlement or, with appropriate reform, become feminist-friendly dispute-resolution spaces (Kenya Law Reform Commission, 2010; Kenya National Bureau of Statistics, 2023). In many communities, elders' councils and family-based mediation are invoked to maintain social cohesion, but this can come at the cost of individual women's rights to land (World Bank, 2022;

UN-Women, n.d.). The tension between "cultural relativism" in ADR and constitutional gender equality is particularly acute, as ADR actors often justify decisions based on custom, even when those practices conflict with women's constitutional and statutory rights (Kenya Law Reform Commission, 2010; KLA, 2021).

International human rights instruments such as CEDAW and the African Charter require states to take steps to eliminate discrimination in both law and practice, including in customary and family-based dispute-resolution mechanisms (OHCHR, n.d.; UN-Habitat, 2013). In this context, the article argues that ADR-reform efforts in Kenya, such as training ADR actors on gender-sensitive mediation, integrating legal-aid and psychosocial support, and encouraging women's participation in land-related decision-making bodies, can help align domestic practice with international human rights obligations (World Bank, 2022; Kenya Law Reform Commission, 2010).

The article also situates Kenya's experience within broader African comparative trends. Like Rwanda, Liberia, and other countries in Sub-Saharan Africa, Kenya faces the challenge of reconciling customary land-tenure norms with statutory guarantees of women's land rights (World Bank, 2022; UN-Women, n.d.). However, Kenya's dense network of ADR actors and relatively strong constitutional and statutory rights framework provides a favourable starting point for reform. The key question is whether ADR-linked processes can be re-designed to reflect the progressive intent of international human rights standards and the measured successes of other African reformers, or whether they will continue to entrench the very imbalances they are meant to overcome.

7.0 Policy and ADR-Reform Recommendations

The article proposes several policy and ADR-reform recommendations aimed at strengthening women's land-title access. First, ADR actors such as elders, mediators, local court officials, and women's-group facilitators should receive training on gender-sensitive mediation, grounded in the Matrimonial Property Act, the Land Act, and Kenya's constitutionally guaranteed right to property (Kenya Law Reform Commission, 2010; Kenya National Bureau of Statistics, 2023). This training should explicitly address how to recognize and protect women's non-monetary contributions to land and family welfare, in line with the reasoning in *JOO v MBO & 2 others* (JOO v MBO & 2 others, 2023; MMS Advocates, 2024).

Second, legal aid and paralegal support should be integrated into ADR processes involving women's land rights so that widowed and divorced women can access basic legal information and representation during mediation and settlement negotiations (Kenya Law Reform Commission, 2010; UN-Women, n.d.). Third, ADR-mediated settlements should explicitly encourage joint-title or "women-first" co-registration norms, drawing inspiration from Rwanda's land-tenure-regularization program, which has enabled women to secure joint or sole title to a substantial share of registered land (World Bank, 2022).

Finally, community-based "land-rights dialogues," co-facilitated by women's groups, elders, and land-governance officials, can help challenge patriarchal entitlement narratives and promote more equitable norms around land ownership (Kenya National Bureau of Statistics, 2023; UN-Women, n.d.). These dialogues should be explicitly framed as a means of implementing Kenya's constitutional and international human rights obligations, rather than as isolated "awareness-raising" exercises.

6.0 Conclusion

This article argues that women's limited access to land title in Kenya cannot be explained solely by the absence of legal rights or by cultural norms alone; rather, it results from the interaction of structural-legal barriers, entrenched cultural entitlements, and psychosocial constraints, all of which are mediated through ADR mechanisms. The evidence shows that while constitutional and statutory law recognize women's rights to property and inheritance and while international human rights instruments such as the Universal Declaration of Human Rights, CEDAW, and the African Charter on Human and Peoples' Rights require states to ensure equal access to land, implementation in practice remains uneven (OHCHR, n.d.; UN-Habitat, 2013; Kenya Law Reform Commission, 2010).

The article also situates Kenya within broader African-comparative experiences, noting that gender gaps in land ownership are widespread across Sub-Saharan

Africa, even where legal frameworks appear to be progressive (World Bank, 2022; UN-Women, n.d.). At the same time, reforms in countries such as Rwanda and Liberia demonstrate that when legal policy change is combined with participatory, women-centered governance structures, the gap between statutory equality and women's lived entitlement can be narrowed (World Bank, 2022).

In light of these international human rights and African-comparative findings, the article concludes that ADR reform in Kenya, especially in the context of women's land-title disputes, should be framed as a human-rights and development priority rather than a purely technical or legal-technical exercise. Training ADR actors, integrating legal aid and psychosocial support, promoting joint title registration, and fostering community-based land rights dialogues are concrete steps that can help align Kenya's land tenure practices with its constitutional obligations and with the progressive trajectory of similar reforms across the region. Future research can build on this analysis by examining how specific ADR-linked interventions affect women's land-title outcomes, both in Kenya and in other African countries facing similar challenges.

References

FAO Legal Database. (n.d.). *Law of Succession Act – Kenya*. FAOLEX. https://faolex.fao.org/docs/pdf/ken106441.pdf

Kenya Land Alliance. (2021). *Women, land and property rights and the law in Kenya: Policy brief*. https://kenyalandalliance.or.ke/login/publications/images/kla_women_landandproperty_brief.pdf

Kenya Law Reform Commission. (2010). *The Constitution of Kenya, 2010*. Nairobi: Government Printer.

Kenya National Bureau of Statistics. (2023). *Kenya Demographic and Health Survey 2022 Key Indicators Report*. https://www.knbs.or.ke/wp-content/uploads/2023/8/Kenya-Demographic-and-Health-Survey-KDHS-2022-Summary-Report.pdf

Voice of America. (2018, March 12). *Less than 2 percent of land in Kenya issued to women despite legal gains*. https://www.voanews.com/a/less-than-two-percent-of-kenya-issured-to-women-despite-legal-gains/4297136.html

UN Women. (n.d.). *Kenya Demographic and Health Survey 2022*. UN Women Data Hub.

https://data.unwomen.org/sites/default/files/documents/Publications/2023/Kenya-DHS-2022-compressed.pdf

In re Estate of Kipkoech Arap Maina KEHC 20629 (KLR). (2023). Kenya Law. https://new.kenyalaw.org/akn/ke/judgment/kehc/2023/20629/eng

JOO v MBO & 2 others KESC 4 (KLR). (2023). Kenya Law. https://new.kenyalaw.org/akn/ke/judgment/kesc/2023/4/eng

MMS Advocates. (2024, December 2). *Matrimonial property division in Kenya: How courts determine contributions and ownership rights*. https://mmsadvocates.co.ke/matrimonial-property-division-in-kenya-how-courts-determine-contributions-and-ownership-rights/

OHCHR. (n.d.). *Insecure land rights for women: A threat to progress on gender equality and sustainable development*. Office of the High Commissioner for Human Rights. https://www.ohchr.org/en/special-procedures/wg-women-and-girls/insecure-land-rights-women-threat-progress-gender-equality-and-su

UN-Habitat. (2013). *Women's equal rights to housing, land and property in international law*. United Nations Human Settlements Programme. https://unhabitat.org/sites/default/files/download-manager-files/Women%E2%80%99s%20equal%20rights%20to%20housing,%20land%20and%20property%20in%20international%20law.pdf

World Bank. (2022). *Women's land rights: Progress and persistent challenges in Sub-Saharan Africa* (Policy Research Working Paper No. 8573). World Bank Open Knowledge Repository. https://openknowledge.worldbank.org/server/api/core/bitstreams/654294ba-2ffd-5f86-9d9b-2a59866973cb/content

Slavchevska, K., et al. (2017). *Women's land rights in Sub-Saharan Africa: Evidence from household surveys*. World Bank. [World Bank, 2022].
PNN v ZWN (2017). Court of Appeal of Kenya.

Francisco Kaunda Wambua v Tabitha Ngina Kaunda (2021). Court of Appeal of Kenya.

Concepter Awuor Orende v Josiah Orende (2021). Environment and Land Court of Kenya.

In the Estate of Nyamoringo Okinyi (2024). High Court of Kenya.
Rael Chelangat Ngeno v David Kiptonui (HCFP&A/E018/2020) (2025). High Court of Kenya.

In the Estate of Susan Nyambura Kamau (2025). High Court of Kenya.

Alice Kimutai v William Kimooi Changwony (2025). Environment and Land Court of Kenya.

Joyce Muthiga Njeru v Peterson Nyaga Njiru & another (2025). Court of Appeal of Kenya.

L.M.G v M.W.N.A.K.A.A.W. (2025). Kadhi's Court of Kenya.

Mwanahawa v Soudi Mohamed (2025). Kadhi's Court of Kenya.

Elizabeth Isaya and Susan Diram Gababa v Guracha Gababa and Chege Gababa and Others (2025). High Court of Kenya.

The Costly Uncertainty of Kenyan Arbitration after the Supreme Court's Divisive Nyutu Agrovet Ruling

By: Raphael Mirimo Okochil

Abstract

Section 10 of the Arbitration Act No.4 of 1995, Laws of Kenya, has always promoted the principle of finality by ensuring there is limited court intervention. However, after the promulgation of the 2010 Constitution, Article 159(2)(c) introduced an opposing view which mandated the courts to promote substantive justice. the conflict between the two laws culminated into the decision of the Supreme Court in Nyutu Agrovet Case. The court decided to settle on a compromise of the principle of finality by creating a narrow, exceptional "residual jurisdiction" for appeals against High Court decisions setting aside arbitral awards. This paper is of the view that instead of unifying the law, the Nyutu Agrovet divided it further by creating two different jurisprudences. This division in law, that started from the Supreme Court's 2019 ruling, remained there until the Court of Appeal's 2024 decision in the same matter. Even though that decision used the Supreme Court's narrow criteria to strike out the appeal (giving hope of judicial restraint) this paper is of the opinion that the decision only offers momentary clarity. Looking at how India served as an example by promoting judicial intervention, this analysis proposes ways in which Kenya can avoid the same fate.

The Statutory Foundation of Finality as the Cornerstone of Kenyan Arbitration
In Act II, Scene VII of William Shakespeare's play As You Like It, the melancholic philosopher Jaques pauses to reflect on the fleeting nature of human affairs and observes:

> All the world's a stage,
> And all the men and women merely players;

They have their exits and their entrances.[1]

The imagery that the legendary author created in this play tells us a simple truth, that every performance, no matter how dramatic it is, must eventually come to an end. The actors who enter the stage must leave at some point and the story must reach its final act. The law is also of the same view, that disputes cannot exist indefinitely through endless cycles of challenges and reconsideration. At some point, the curtain must fall. In arbitration, this is made possible through the principle of finality. This principle suggests that those who choose arbitration want a conclusive determination of their matter and not perpetual litigation.

In Kenya, parliamentarians also had the same concept of finality in mind when they were drafting the 1995 Arbitration Act. They ensured that it conformed with international best practices, especially those articulated in the UNCITRAL Model Law.[2] To ensure that Kenya is one of the most attractive arbitral seats in the region, the legislators had to ensure that the legal environment for arbitration disputes was predictable, efficient and autonomous.[3] This was necessitated by the fact that arbitration disputes suffered delays, costs and procedural technicalities in the hands of commercial litigation.[4] Therefore, the Act only permitted the courts to support the process but not to supervise it. Thus, parties who chose arbitration were guaranteed conclusion of matters and not just another preliminary step before engaging in long court battles.[5] This was well articulated under Section 10 of the Act which limits unwarranted interference from the courts. The Court of Appeal also further observed in its 2024 *Nyutu* judgment that arbitration is

[1] William Shakespeare, 'As You Like It' (Folger Shakespeare Library) <https://www.folger.edu/explore/shakespeares-works/as-you-like-it/read/> accessed 5 March 2026.

[2] Amazu A Asouzu, *International Commercial Arbitration and African States: Practice, Participation and Institutional Development* (Cambridge University Press 2001).

[3] Gogo George Otuturu, 'Some Aspects of the Law and Practice of Commercial Arbitration in Nigeria' (2014) 6(4) Journal of Law and Conflict Resolution.

[4] Eunice Wabuke, 'Enhancing access to justice: The imperative of adopting the alternative dispute resolution approach' (2015) 3(1) Alternative Dispute Resolution.

[5] Karoni Karoni and Kennedy Melly, 'Attitude of Kenyan Courts towards arbitration' in E Onyema (ed), *Rethinking the Role of African National Courts in Arbitration* (Kluwer Law International 2018).

intended to be the "cure to the malady and tedium of long, inefficient, overly formal and expensive traditional litigation."[6]

Section 10 of the Arbitration Act, 1995, is stern in its brevity and clarity, stating: 'Except as provided in this Act, no court shall intervene in matters governed by this Act.'[7]

This provision establishes a general and default rule of non-intervention, creating what Nyamu, J.A, has described as a "complete code" for arbitral matters.[8] The intention of the legislation was to ensure that judicial power could only be exercised where the Act itself explicitly created an opening.[9] This principle was put in place to protect arbitration from the harshness of the judiciary which has, since time immemorial, devastated a lot of common law jurisdictions.[10] Therefore, courts were only to facilitate arbitration, this way, they could appoint arbitrators, grant parties interim/temporary measures and enforce the final awards.[11] What they were not allowed to do however, was engage with the merits of the case. For arbitration ecosystem to work properly, it was important for courts to observe the restriction set out by the Act which ensured that parties choose a final resolution determined by their chosen tribunal.

Section 32A of the Act also reinforces the principle of finality. It addresses the legal effect of the said award. The provision states:

> Except as otherwise agreed by the parties, an arbitral award is final and binding upon the parties to it, and no recourse is available against the award otherwise than in the manner provided by this Act.[12]

---

[6] *Nyutu Agrovet Limited v Airtel Networks Kenya Ltd* [2024] KECA 523 (KLR).
[7] Arbitration Act, CAP 49, Laws of Kenya, s. 10.
[8] *Safaricom Limited v Ocean View Beach Hotel Limited & 2 others* [2010] KECA 346 (KLR).
[9] *Synergy Industrial Credit Limited v Cape Holdings Limited* [2018] KESC 13 (KLR), para 223.
[10] Amy J. Schmitz, 'Ending a Mud Bowl: Defining Arbitration's Finality Through Functional Analysis' (2002) 37 Georgia Law Review 123.
[11] Kariuki Muigua, *Settling Disputes Through Arbitration in Kenya* (Glenwood Publishers 2012).
[12] Arbitration Act, CAP 49, Laws of Kenya, s. 32A.

This section works hand in hand with Section 10. It allows the parties to exercise their rights and obligations and gives the award the same binding force to a court judgement.[13] The only time one can challenge the award is if he satisfies the court through Section35 of the Act that the award suffers from some procedural infirmities like lack of jurisdiction, breach o due process or contravention of public policy.[14] The Court of Appeal in *Anne Mumbi Hinga v Victoria Njoki Gathara* expounded on the essence of the legislation, stating that parties who opt for arbitration are understood to have given up "most of their rights of appeal and challenge to the award in exchange for the finality of the arbitral award."[15] For a very long time, the courts upheld the framework. They recognized that the role of the court is not to second-guess the findings of the arbitrator of fact or law, but to protect the procedural integrity of the process.[16]

For nearly two decades, the courts ensured that it provided the arbitration space with stability and predictability here in Kenya. The Act drew a clear line between the intervention of the judiciary and the arbitral authority hence parties understood that once they choose arbitration, they limited the scope of court challenges. Those aggrieved by the award have the option of setting it aside under Section 35. However, the High Court has always considered the award final thus preserving the efficiency of the system. This court's encouragement of arbitration improved people's confidence in Nairobi as a viable seat of arbitration.[17] However, after the Constitution came into the picture, it brought about a new and arguably competing set of legal imperatives that hinged on substantive justice and constitutional supremacy. This made it more difficult to know the boundary between autonomy and judicial authority.

---

[13] *Ebokam v Ekwenibe & Sons Trading Company* (2001) NWLR 2 (Pt. 696), 32.
[14] Arbitration Act, CAP 49, Laws of Kenya, s. 35.
[15] *Anne Mumbi Hinga v Victoria Njoki Gathara* [2009] KECA 466 (KLR).
[16] *Christ for All Nations v Apollo Insurance Company Limited* (2002) 2 E.A. 366.
[17] Karoni Karoni and Kennedy Melly, 'Attitude of Kenyan Courts towards arbitration' in E Onyema (ed), *Rethinking the Role of African National Courts in Arbitration* (Kluwer Law International 2018).

The Constitutional Pull: Article 159 and the Mandate for Substantive Justice

The former Chief Justice of Kenya, Willy Mutunga, observed that the Constitution of Kenya, 2010 (hereinafter, CoK, 2010) brought about a new legal regime, one that focused transformative justice.[18] The CoK sought to protect fundamental rights and promote substantive justice as well.[19] Article 159 of the CoK obligates courts to administer justice without undue regard to procedural technicalities and to also promote alternative dispute resolution. Arbitration is specifically provided for under Article 159(2) (c).[20]

The said Article elevated the application of arbitration to a constitutional principle that guide the exercise of judicial authority.[21] The CoK promoted arbitration from just a private contractual arrangement to an important component of the administration of justice. However, there was one condition for arbitration, their outcomes must conform with the overarching values of the CoK itself, like access to justice under Article 48 and the right to a fair hearing under Article 50.[22] The supremacy of the Constitution, declared in Article 2, meant that no statute, including the Arbitration Act, could operate in a manner that was inconsistent with constitutional principles.[23]

This made a conflict in the legal philosophy. On one hand, Section 10 of the Arbitration Act asked for judicial non-intervention to preserve the finality and efficiency of arbitration. On the other, the Constitution vested the judiciary with a supreme mandate to ensure that all legal processes, whether public or private, delivered substantive justice and adhered to fundamental rights.[24] This conflict comes from the court's judicial philosophy. A judicial philosophy, according to

[18] Willy Mutunga, 'The 2010 Constitution of Kenya and its Interpretation: Reflections from the Supreme Court's Decisions' (2015) 9 The Platform.
[19] *Matemu v Trusted Society of Human Rights Alliance & 5 others* [2013] KECA 445 (KLR).
[20] Constitution of Kenya, 2010, art. 159(2).
[21] Francis Kariuki, 'Redefining arbitrability: Assessment of Articles 159 and 189 (4) of the Constitution of Kenya' (2013) 1(1) Alternative Dispute Resolution.
[22] Kariuki Muigua, 'Constitutional Supremacy over Arbitration in Kenya' (2016) 4(1) Alternative Dispute Resolution 17.
[23] *Matemu v Trusted Society of Human Rights Alliance & 5 others* [2013] KECA 445 (KLR), paras. 56-58.
[24] *Judicial Service Commission v Mutava & another* [2015] KECA 741 (KLR).

Gitau, is not merely a judge's personal opinion, but rather a "chosen, articulable and rationally defensible method of judicial decision-making."[25] This choice of method is important because it is how the courts resolve the conflict between a written statute and the inherent values of the Constitution. One of the methods the courts use is textualism which demands the court to adhere to the provisions of the Arbitration Act strictly. The other reasoning is called purposive or constitutionalist method, which guides the courts to interpret the Act using the transformative lens of the CoK, allowing the courts to intervene in order to achieve substantive justice. Therefore, after 2010, the courts have been struggling with these two philosophies.

If a High Court decision on a setting-aside application under Section 35 was patently unjust or resulted from a gross misapprehension of the law, did Article 159(2)(c) create a constitutional pathway for appellate intervention where the Arbitration Act was silent? This question became the fault line along which the established pro-arbitration consensus began to fracture.

In the early days post the 2010 CoK, the Court of Appeal's uncertainty was very clear. In some cases, like *Synergy Industrial Credit Ltd v Cape Holdings Ltd*, the court maintained a strict, traditionalist view, holding that the silence of the Arbitration Act on appeals from Section 35 decisions meant that no appeal could lie.[26] This method is a characteristic of *judicial restraint*, a philosophy where judges defer to the other branches of government (in this case, the Parliament's intent in the Act) and are "hesitant to trespass."[27] The Court of Appeal encouraged the principle of finality as prescribed by the Act. In other decisions, however, like *DHL Excel Supply Chain Kenya Limited v Tilton Investments Limited*, the court was of the opinion that the lack of an express prohibition in the Act together with the Court of Appeal's general appellate jurisdiction under Article 164(3) of the CoK, meant

[25] Mark Lenny Gitau, 'Emerging Horizons: Transformative Prudentialism and the Renaissance of Judicial Philosophy in the Supreme Court of Kenya' 8(1) (2023) Strathmore Law Review 46.
[26] *Synergy Industrial Credit Limited v Cape Holdings Limited* [2018] KESC 13 (KLR).
[27] Mark Lenny Gitau, 'Emerging Horizons: Transformative Prudentialism and the Renaissance of Judicial Philosophy in the Supreme Court of Kenya' 8(1) (2023) Strathmore Law Review 56.

that an appeal was permitted.[28] This latter way of thinking is what can be termed as *judicial activism*, which basically means that the court could overreach its functions into policy matters or create new legal doctrines to achieve a just outcome.[29] These lines of authority created confusion amongst the litigants, judges and the arbitrators.[30] It was this precise uncertainty that made the Supreme Court intervene in *Nyutu Agrovet Limited v Airtel Networks Kenya Limited*.

The Supreme Court's Compromise in *Nyutu Agrovet*

The case of *Nyutu Agrovet Limited v Airtel Networks Kenya Limited* had all the contradictions discussed above. The dispute started from a distribution agreement, which led to an arbitration award that awarded Nyutu Agrovet over Kshs 541 million. Most of the claims were founded in tort. Airtel then successfully applied to the High Court to set aside the award under Section 35 of the Arbitration Act on the ground that the arbitrator had acted ultra-vires (beyond his power/jurisdiction) by determining matters that were not even in the parties' agreement. Nyutu Agrovet appealed this decision to the Court of Appeal but the said appeal was struck out. The five-judge bench held unanimously that there was no right to appeal from a High Court decision under Section 35. They then moved to the Supreme Court to determine where or not such right existed.

The Supreme Court acknowledged the basic principles of the Arbitration Act. To be particular, the court decided that one of the Act's objectives was to limit the intervention of the court in order to ensure certainty and predictability of the arbitral process.[31] At the same time, the bench still remembered the constitutional mandate to ensure substantive justice. The majority was of the view that an unfair determination by the High Court should not be immune from appellate review, especially if the decision results in a manifest injustice. As a consequence, the

[28] DHL Excel Supply Chain Kenya Limited v Tilton Investments Limited [2017] KECA 534 (KLR).

[29] Mark Lenny Gitau, 'Emerging Horizons: Transformative Prudentialism and the Renaissance of Judicial Philosophy in the Supreme Court of Kenya' 8(1) (2023) Strathmore Law Review 57.

[30] Vianney Sebayiga, 'The Right of Appeal under Section 35 of the Arbitration Act of Kenya: A Critique of the Supreme Court Decision in *Nyutu Agrovet v Airtel Networks Limited* (2019) eKLR' (2021) 6(1) Strathmore Law Review 141.

[31] *Nyutu Agrovet Limited v Airtel Networks Kenya Limited* [2019] KESC 11 (KLR), para 57.

Court allowed an appeal from Section 35 only in exceptional circumstances. The majority reasoned as follows:

> An appeal may only lie to the Court of Appeal against a High Court determination under section 35 of the Arbitration Act where in setting aside an award, the High Court stepped outside the grounds set out in the said section 35 and thereby made a decision so grave, so manifestly wrong and which has completely closed the door of justice to either of the parties. The Court of Appeal should only assume jurisdiction in the clearest of cases.[32]

Out of this decision, the Supreme Court created what it termed as "residual jurisdiction" for the Court of Appeal. This allowed the Court of Appeal to correct egregious errors of law by the High Court and not review the merits of the arbitral award when setting aside an award. The Supreme Court was very clear that they were not opening the gates of appeals. They purposefully set the threshold high to discourage frivolous challenges and preserve the essence of arbitration. This therefore balanced the need for finality with the constitutional mandate to prevent miscarriages of justice. This would thus give effect to both Section 10 and Article 159 of the Constitution. Most importantly, the Supreme Court did not determine the merits of Nyutu's specific appeal; instead, it returned the matter back to the Court of Appeal to determine *in limine* (at the threshold) whether the matter actually met this new and narrow criteria.[33]

However, the Supreme Court's decision had a memorable dissent from the then Chief Justice, David Maraga, who warned that this allowed arbitration to become a mere "precursor to litigation" but the rest of the bench focused on creating a constitutional "safety valve" for the rarest of cases.[34] According to him, the right to appeal emanates from the statute and could not be created through judicial innovation. Therefore, he combined the reading of Sections 10, 32A and 35 of the Act and determined that the Act made the High Court as the final appellate

---

[32] *Nyutu Agrovet Limited v Airtel Networks Kenya Limited* [2019] KESC 11 (KLR), para 77.
[33] *Nyutu Agrovet Limited v Airtel Networks Kenya Limited* [2019] KESC 11 (KLR), para 81.
[34] *Nyutu Agrovet Limited v Airtel Networks Kenya Limited* [2019] KESC 11 (KLR).

avenue for setting aside an award. He believed that allowing appeals even in exceptional cases, would just make arbitration a precursor to litigation and it would defeat the purpose of arbitration which is to provide a conclusive and expeditious resolution. He reasoned as follows:

> If the principle of finality is limited to the arbitral awards only and not to any court proceedings founded on them as the appellant contended, then the objectives of arbitration would be defeated and arbitration will be 'a precursor to litigation.' This is because any court proceedings that render an award unenforceable affects the principle of finality.[35]

He argued that parties who choose arbitration consciously waive their right to extensive judicial recourse in exchange for speed and finality. The split in the apex court was clear, which amplified the confusion further. While the majority sought a pragmatic reconciliation, the dissent saw a departure from legislative intent and a threat to the integrity of the arbitral system.

How the 2024 Ruling Brought Only Momentary Clarity to a Persistently Inconsistent State of the Law

The Supreme Court's decision in *Nyutu Agrovet* (2019) was supposed to provide a clarity on the parties' ability to appeal in Section 35. However, the creation of "residual jurisdiction" only brought more confusion. The Court of Appeal was faced with this confusion in its final determination of the *Nyutu* case on May 2024. There were several pathway courts would take post 2019 Nyutu decision. The first subscribed to "restraint school" which acknowledged the Supreme Court's "exceptional circumstances test" but they hardly used it in their decisions. The cornerstone case of this school of thought was the Court of Appeals decision in 2024 in Nyutu Agrovet Limited v Airtel Network Kenya Ltd [2024] KECA 523 (KLR).[36] After the Supreme Court came up with the threshold for one to meet in order to appeal a decision from the High Court under Section 35 in the Nyutu 2019 ruling, it returned the parties back to the Court of Appeal to determine whether or not they had met the said threshold. The Court of Appeal determined

[35] *Ibid*

[36] *Nyutu Agrovet Limited v Airtel Networks Kenya Ltd* [2024] KECA 523 (KLR).

that the High Court had not stepped outside Section35. Instead, it found that it was the arbitrator who had "meandered outside his boundaries" by awarding damages in tort and other interests that had not been pleaded, something that the parties had expressly excluded in their contract.[37] The Court of Appeal, while referencing *Nyutu Agrovet*, concluded that the appellant had not demonstrated that the High Court's decision was "so grave" or "manifestly wrong" as to warrant appellate intervention. The court effectively held that a mere disagreement with the High Court's interpretation of the facts or its application of the grounds in Section 35 did not meet the exceptional threshold. Therefore, the court was reluctant to open the floodgates to appeals, as it prioritized the finality of the High Court's supervisory role as a necessary corollary to the finality of the award itself.

On the other hand, the second line of jurisprudence had emerged to justify a more substantive review of High Court decisions. This school finds its oxygen in the Supreme Court's own logic in *Geo Chem Middle East v Kenya Bureau of Standards*[38] which suggested that the Court of Appeal cannot decide if an appeal is admissible without "interrogating the substance of the intended appeal." The procedure here gets confusing because, for the court to determine if it has jurisdiction under the Nyutu test, the court must partly hear the merits. This would cause the very "judicial intervention" that the Act seeks to prevent. For example, in *Geo Chem Middle East v Kenya Bureau of Standards*,[39] while the issue was procedural, the Supreme Court was willing to extend time and allow the filing of a supplementary record which shows that the judiciary is somewhat open to entertain appellate challenges, even on grounds that might have been previously dismissed as a misstep in procedure. The problem of such reasoning is it brings confusion between reviewing the High Court's decision for grave error and re-hearing the Section 35 application itself.

Even though the 2024 judgement of the *Nyutu case* made attempts to close this door by dismissing the appeal *in limine*, the problem is still there. Uncertainty still

---

[37] *Nyutu Agrovet Limited v Airtel Networks Kenya Ltd* [2024] KECA 523 (KLR), paras 44, 50.
[38] *Geo Chem Middle East v Kenya Bureau of Standards* [2020] KESC 12 (KLR).
[39] [2020] KESC 12 (KLR).

lingers. The 2024 decision made the consequence of this uncertainty clearer, the parties had to stay in the corridors of justice for more than 17 years which compromised the promise of expeditious decision in arbitration.[40] That test crafted by the Supreme Court, the "residual jurisdiction" is still narrow, but it gives leeway for litigants to use to suspend the arbitration process for a long time increasing the costs. This is not sustainable. Additionally, this is the same issue that has happened in other jurisdictions like India.

A Comparative Reflection of the Indian Courts Arbitral Intervention

India also faces the challenge at hand also faces India. Their Arbitration and Conciliation Act, 1996,[41] is also based on the UNCITRAL Model Law.[42] The Act has been through a lot of interference from the courts as well. Therefore, their familiarity with this issue and their subsequent corrective measures offers an important comparative lens which Kenya can use after the *Nyutu* predicament.

The turning point for Indian arbitration was the Supreme Court of India's 2003 decision in *Oil & Natural Gas Corporation Ltd v Saw Pipes Ltd*.[43] In that case, the Court expanded the "public policy" ground for setting aside an arbitral award under Section 34 of its Act. The Court held that an award could be set aside if it was vitiated by a "patent illegality" appearing on the face of the award, which included not just violations of statutory provisions but also contraventions of the terms of the contract. The Court reasoned as follows:

> The award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Such award/judgment/decision is likely to adversely affect the administration of justice. Hence, in our view in addition to narrower meaning given to the term 'public policy'… it is required to be held that the award could be set aside if it is patently illegal.[44]

[40] *Nyutu Agrovet Limited v Airtel Networks Kenya Ltd* [2024] KECA 523 (KLR).
[41] Arbitration and Conciliation Act (No 26 of 1996) (India).
[42] UNCITRAL Model Law on International Commercial Arbitration (as adopted 21 June 1985, and as amended 7 July 2006).
[43] *Oil & Natural Gas Corporation Ltd v Saw Pipes Ltd* AIR 2003 SC 2629.
[44] *Oil & Natural Gas Corporation Ltd v Saw Pipes Ltd* AIR 2003 SC 2629, para 31.

This decision, though intended to prevent manifest injustice, effectively opened the floodgates for courts to review the merits of arbitral awards under the guise of "patent illegality."[45] An arbitrator's interpretation of a contract, if deemed erroneous by a court, could be classified as a patent illegality, leading to the award being set aside. The result was a proliferation of challenges to arbitral awards, with litigation often dragging on for years through multiple appellate tiers.[46] The very purpose of arbitration (to provide a speedy and final alternative to court litigation) was subverted. India quickly gained a reputation as an arbitration-unfriendly jurisdiction, a perception that deterred foreign investors and frustrated domestic commercial parties.[47]

The detrimental impact of the *Saw Pipes*[48] doctrine eventually prompted both legislative and judicial corrective action. Recognizing that excessive judicial intervention was damaging its economic interests, the Indian Parliament passed the Arbitration and Conciliation (Amendment) Act of 2015. This amendment significantly curtailed the scope of judicial review. It clarified that an award could be set aside on public policy grounds only if it contravened the "fundamental policy of Indian law" or was in conflict with "the most basic notions of morality or justice."[49] Most importantly, a new Explanation 2 was added to Section 34, stating that the test of "fundamental policy of Indian law shall not entail a review on the merits of the dispute."[50] Furthermore, while the "patent illegality" ground was retained for purely domestic arbitrations, it was expressly stipulated that an award could not be set aside "merely on the ground of an erroneous application of the law or by re-appreciation of evidence."[51]

[45] Viplav Baranwal and Rachi Singh, 'A Case Study on ONGC v SAW Pipes' 2(1) International Journal on Advances in Social Sciences.

[46] Viplav Baranwal and Rachi Singh, 'A Case Study on ONGC v SAW Pipes' 2(1) International Journal on Advances in Social Sciences.

[47] Funke Adekoya, 'The Public Policy Defence to Engagement of Arbitral Awards: Rising Star or Setting Sun?' (2015) 2 BCDR International Arbitration Review.

[48] *Oil & Natural Gas Corporation Ltd v Saw Pipes Ltd* AIR 2003 SC 2629.

[49] Arbitration and Conciliation (Amendment) Act, 2015 (Laws of India), s. 18.

[50] Arbitration and Conciliation Act (No 26 of 1996) (India), s. 34(2A).

[51] Arbitration and Conciliation Act (No 26 of 1996) (India), s. 34(2A).

The courts of India have since supported this position with a number of landmark judgements. These judgements have been promoting the values of arbitration including its enforcement. In *Associate Builders v Delhi Development Authority*,[52] the Supreme Court delineated the narrow confines of the public policy ground. It insisted that a court does not sit as a court of appeal over an arbitral award and cannot correct errors of fact or law. The Court stressed that an arbitrator's interpretation of a contract is a matter for the arbitrator to decide, and as long as it is a "possible view," it cannot be interfered with. This position was further cemented in cases like *Ssangyong Engineering & Construction Co. Ltd. v National Highways Authority of India*,[53] where the Supreme Court confirmed that the 2015 amendments had effectively done away with the expansive interpretation of public policy and had brought Indian law back in line with international standards. The court stated that a finding of perversity, while no longer a ground under "public policy", could be considered a "patent illegality," but only if it was a finding based on no evidence, or one that ignored vital evidence, shocking the conscience of the court.[54]

The above decisions from India helps the Kenyan courts too. The *Saw Pipes* decision, much like *Nyutu Agrovet*, was a judicially crafted solution to a problem: the risk of unjust awards. However, its broad and ambiguous formulation led to unintended consequences that damaged the arbitral system. Kenya is now facing the similar challenge. The "residual jurisdiction" established in *Nyutu Agrovet* is confusing and ambiguous allowing parties to exploit it by increasing litigation and uncertainties in the process. India's journey back from the brink of excessive intervention (achieved through a combination of decisive legislative amendment and disciplined judicial interpretation) is a good lesson to learn from. It shows that boundaries need to be established and respected in order to make arbitration work. Otherwise, if Kenya continues to insist on having these two conflicting jurisprudences, then, it will face the same risk of diminished confidence in Nairobi as the most favourable seat of arbitration in the region.

---

[52] *Associate Builders v Delhi Development Authority* (2015) 3 SCC 49.

[53] *Ssangyong Engineering & Construction Co. Ltd. v National Highways Authority of India* (2019) 15 SCC 131.

[54] *Ssangyong Engineering & Construction Co. Ltd. v National Highways Authority of India* (2019) 15 SCC 131.

The Institutional Costs of Uncertainty

The confusion brought about by the *Nyutu* decision threatened the very existence of the institution of arbitration in Kenya. The country's arbitration process now faces uncertainties since the courts could use either the restraint approach or the interventionist approach to resolve an issue arising from Section 35. Now, as the former Chief Justice, David Maraga, opined in his Nyutu's dissent, arbitration is just now a "precursor to litigation."

For commercial parties, the main cost of this uncertainty is the loss of predictability of the outcome. People usually go for arbitration because they believe it is time efficient, less costly, final and produces binding outcomes.[55] After the Supreme Court's decision in *Nyutu*, this bargain was lost. A person who is aggrieved under Section 35 cannot rule out the possibility that the High Court's decision can be appealed to the Court of Appeal or even the Supreme Court, which will just increase more costs and waste more time. As Professor Amy Schmitz argues, allowing arbitration to become simply a prelude to judicial proceedings produces a "mud bowl" which is an incoherent hybrid that offers the worst of both worlds: the formality and expense of litigation without the procedural safeguards, and the informality of arbitration without the finality.[56] This state of affairs discourages the use of arbitration, as parties may conclude that they are better off proceeding directly to court rather than engaging in an arbitral process whose outcome remains subject to years of potential appellate review.

The judiciary also bears a heavy institutional cost. The ambiguity of the "residual jurisdiction" standard forces the Court of Appeal to engage in a threshold jurisdictional battle in almost every case before it can even consider the merits of the appeal. This consumes valuable judicial time and resources that could be

[55] Gogo George Otuturu, 'Some aspects of the law and practice of commercial arbitration in Nigeria' (2014) 6(4) Journal of Law and Conflict Resolution 67.
[56] Amy J. Schmitz, 'Ending a Mud Bowl: Defining Arbitration's Finality Through Functional Analysis' (2002) 37 Georgia Law Review 123.

dedicated to other matters.[57] Furthermore, the lack of a clear, consistent standard leads to inconsistent outcomes, which can erode public confidence in the administration of justice. When one bench of the Court of Appeal applies the *Nyutu* test with strict restraint while another applies it more expansively, the law appears arbitrary. This inconsistency not only creates confusion for lower courts and practitioners but also invites forum shopping and encourages speculative appeals, further burdening the judicial system. The promise of arbitration as a mechanism to alleviate court backlogs is inverted when it becomes a source of complex and recurring appellate litigation.

Finally, this sustained uncertainty has a damaging effect on Kenya's aspiration to become a leading centre for international arbitration in Africa. One of the main factors in the selection of an arbitral seat is the reputation of its national courts for being supportive of arbitration, which includes a commitment to limited intervention and the enforcement of awards.[58] Jurisdictions that are seen as having interventionist courts are usually avoided by international parties.[59] The post-*Nyutu* duality places Kenya in a precarious position. While the "restraint school" of jurisprudence aligns with international best practices, the "interventionist school" signals a willingness by the courts to delve into matters that most pro-arbitration jurisdictions would consider closed. This unpredictability makes it difficult for international counsel to advise their clients on the risks associated with choosing Nairobi as an arbitral seat. The institutional cost, therefore, is not merely domestic; it is reputational and economic, potentially deterring the very investment and commercial activity that a robust arbitral framework is designed to attract.

---

[57] Vianney Sebayiga, 'The Right of Appeal under Section 35 of the Arbitration Act of Kenya: A Critique of the Supreme Court Decision in *Nyutu Agrovet v Airtel Networks Limited* (2019) eKLR' (2021) 6(1) Strathmore Law Review 158.

[58] Queen Mary University of London and White & Case, *2018 International Arbitration Survey: The Evolution of International Arbitration* (2018).

[59] Rupert DV Platt, 'The appeal of appeal mechanism in international arbitration: Fairness over finality' (2013) 30(5) Journal of International Arbitration.

Conclusion

It is my belief that the Supreme Court meant well when they delivered their judgement in Nyutu Agrovet case, as they were faced with statutory provisions that contradicted with some constitutional values. They created the "residual jurisdiction" in order to reconcile the provisions of Section 10, regarding finality of the process, with the Article 159 which mandated the courts to promote substantive justice. this therefore allowed appeals only in exceptional circumstances. In practice however, this has just made the Kenyan arbitration system more unpredictable as the courts could either choose not to interfere with the process or exercise restraint. This unpredictability has come with significant institutional costs. The current laws forces litigants to gamble with the arbitration outcome because the courts could either intervene or exercise restraint while dealing with issues arising from Section 35.

Recommendations

Even though this paper has been fully diagnostic in nature, it is not sufficient to leave it there. The lessons learned from India would be extremely beneficial to Kenya too. India was once in the brink of excessive judicial intervention, but it made a full 360 degrees turn by clarifying the ambiguities. For Kenya to also resolve this damaging uncertainty, it has three potential paths forward, each with its own merits.

The first and most decisive path is to fix the statute. Following the example from India back in 2015, Parliament could amend the Arbitration Act to codify the narrow gateway for appeals. A new Section 35A could be enacted. This section would explicitly state that an appeal only lies when the High Court has acted in manifest bad faith or patently without jurisdiction. They could further add, for the avoidance of doubt, that "this test shall not entail a review on the merits of the dispute or a re-appreciation of the High Court's application of the grounds in Section 35." Such an amendment would honour the constitutional safety valve envisioned by the Supreme Court as well as restore the certainty in the legislature by providing the clear, bright-line rule the legal community needs.

A second and fastest way is through judicial guidance. The Chief Justice (hereinafter, the CJ), while exercising powers granted under Article 161(2)(c) of the Constitution and the Supreme Court Act, could issue a Practice Direction to the Court of Appeal. Such directions are common tools that guide procedure to ensure consistency in the administration of justice. this Practice Direction would not really change the law but clarify the actual *procedure* for applying the *Nyutu* test. In the directions, the CJ could mandate a swift determination on the papers, by looking at whether the appellant's case, on the face of it, meets the "so grave, so manifestly wrong" standard, without actually delving into the substantive arguments of the appeal itself. This would help clear the confusion created by the Geo Chem decision and prevent the Court of Appeal from being drawn into a mini-hearing on the merits simply to decide its own jurisdiction.

The third and perhaps the boldest path of them all is a judicial reversal. At the next available opportunity that the Supreme Court gets, it could acknowledge that its compromise in *Nyutu Agrovet* has inadvertently created more uncertainty than it resolved. It could choose to revisit its own precedent and fully adopt the reasoning of CJ emeritus, David Maraga. This would be one of the most courageous steps they could take. They could interpret the statute by holding that its silence was a deliberate choice for finality that must be absolutely respected. Even though this would close that constitutional "safety valve" it would definitely create predictability and restore finality that the Parliament originally intended. This would therefore reduce the costs and time expended on litigation. Regardless of the path the courts choose, whether its legislative amendment, judicial guidance or judicial reversal, clarity should be the end goal of the court.

Bibliography

Arbitration Act, CAP 49, Laws of Kenya

Arbitration and Conciliation Act (No 26 of 1996) (India)

Constitution of Kenya, 2010

UNCITRAL Model Law on International Commercial Arbitration (as adopted 21 June 1985, and as amended 7 July 2006)

Adekoya F, 'The Public Policy Defence to Engagement of Arbitral Awards: Rising Star or Setting Sun?' (2015) 2 BCDR International Arbitration Review

Asouzu AA, *International Commercial Arbitration and African States: Practice, Participation and Institutional Development* (Cambridge University Press 2001)

Baranwal V and Singh R, 'A Case Study on ONGC v SAW Pipes' 2(1) *International Journal on Advances in Social Sciences*

Gitau ML, 'Emerging Horizons: Transformative Prudentialism and the Renaissance of Judicial Philosophy in the Supreme Court of Kenya' (2023) 8(1) Strathmore Law Review 46

Kariuki F, 'Redefining arbitrability: Assessment of Articles 159 and 189 (4) of the Constitution of Kenya' (2013) 1(1) Alternative Dispute Resolution

Karoni K and Melly K, 'Attitude of Kenyan Courts towards arbitration' in E Onyema (ed), *Rethinking the Role of African National Courts in Arbitration* (Kluwer Law International 2018)

Muigua K, 'Constitutional Supremacy over Arbitration in Kenya' (2016) 4(1) Alternative Dispute Resolution 17

Kariuki Muigua, *Settling Disputes Through Arbitration in Kenya* (Glenwood Publishers 2012)

Mutunga W, 'The 2010 Constitution of Kenya and its Interpretation: Reflections from the Supreme Court's Decisions' (2015) 9 The Platform

Otuturu GG, 'Some Aspects of the Law and Practice of Commercial Arbitration in Nigeria' (2014) 6(4) Journal of Law and Conflict Resolution

Platt RDV, 'The appeal of appeal mechanism in international arbitration: Fairness over finality' (2013) 30(5) Journal of International Arbitration

Queen Mary University of London and White & Case, *2018 International Arbitration Survey: The Evolution of International Arbitration* (2018)

Schmitz AJ, 'Ending a Mud Bowl: Defining Arbitration's Finality Through Functional Analysis' (2002) 37 Georgia Law Review 123

Sebayiga V, 'The Right of Appeal under Section 35 of the Arbitration Act of Kenya: A Critique of the Supreme Court Decision in Nyutu Agrovet v Airtel Networks Limited (2019) eKLR' (2021) 6(1) Strathmore Law Review 141

Shakespeare W, *As You Like It* (Folger Shakespeare Library) <https://www.folger.edu/explore/shakespeares-works/as-you-like-it/read/> accessed 5 March 2026

Wabuke E, 'Enhancing access to justice: The imperative of adopting the alternative dispute resolution approach' (2015) 3(1) Alternative Dispute Resolution

Cases (Kenya)

Anne Mumbi Hinga v Victoria Njoki Gathara [2009] KECA 466 (KLR)

Christ for All Nations v Apollo Insurance Company Limited (2002) 2 EA 366

DHL Excel Supply Chain Kenya Limited v Tilton Investments Limited [2017] KECA 534 (KLR)

Geo Chem Middle East v Kenya Bureau of Standards [2020] KESC 12 (KLR)

Judicial Service Commission v Mutava & another [2015] KECA 741 (KLR)

Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] KECA 445 (KLR)

Nyutu Agrovet Limited v Airtel Networks Kenya Ltd [2024] KECA 523 (KLR)

Nyutu Agrovet Limited v Airtel Networks Kenya Limited [2019] KESC 11 (KLR)

Safaricom Limited v Ocean View Beach Hotel Limited & 2 others [2010] KECA 346 (KLR)

Synergy Industrial Credit Limited v Cape Holdings Limited [2018] KESC 13 (KLR)

Cases (India)

Associate Builders v Delhi Development Authority (2015) 3 SCC 49

Oil & Natural Gas Corporation Ltd v Saw Pipes Ltd AIR 2003 SC 2629

Ssangyong Engineering & Construction Co. Ltd v National Highways Authority of India (2019) 15 SCC 131

Cases (Nigeria)

Ebokam v Ekwenibe & Sons Trading Company (2001) NWLR 2 (Pt 696) 32

Between Innovation and Exclusion: The Urgent Need for AI Governance in Kenya's ADR Systems

By: ***Rwoti Obadia Aruya & Roselyne Linda Nyamweya***

Abstract

The integration of artificial intelligence (AI) into Alternative Dispute Resolution (ADR) systems presents both transformative opportunities and profound challenges for Kenya's justice ecosystem. As ADR mechanisms including arbitration, mediation, and negotiation increasingly embrace technological innovation, questions of algorithmic transparency, digital exclusion, cultural competency, and regulatory oversight demand urgent scholarly and policy attention. This article critically examines the intersection of AI and ADR in the Kenyan context, exploring how automation promises efficiency while simultaneously risking the marginalisation of vulnerable communities. Drawing from Kenya's constitutional framework, existing ADR legislation, and comparative international governance models, the article argues that Kenya must develop a comprehensive, human-rights-centred AI governance framework for its ADR systems. Without such governance, AI risks entrenching existing inequalities rather than democratising access to justice. The article proposes a multi-layered regulatory approach that balances innovation with inclusivity, ensuring that technology serves justice rather than supplants it.

1.0 Introduction

The digital transformation of legal systems is no longer a distant aspiration; it is an unfolding reality with profound implications for how disputes are resolved across the globe.[1] In Kenya, this transformation has acquired particular urgency given the country's recognition of access to justice as a constitutional imperative. Article 48 of the Constitution of Kenya 2010 mandates the State to ensure access to justice for all persons.[2] ADR has long been positioned as a critical instrument for reducing the burden on Kenya's formal court system while providing

[1]Richard Susskind (n 10) 1–5; Pablo Cortes (n 6) 114.

[2] Constitution of Kenya 2010, art 48.

accessible, cost-effective, and culturally appropriate mechanisms for resolving disputes.[3]

The Nairobi Centre for International Arbitration Act 2013,[4] the Civil Procedure Act's provisions on Court-Annexed Mediation,[5] and the Arbitration Act 1995 (as amended in 2009)[6] collectively constitute the legislative backbone of Kenya's ADR architecture. Against this backdrop, the integration of AI technologies including machine learning, natural language processing, predictive analytics, and automated decision-making tools into ADR processes promises to revolutionise dispute resolution.[7] Online Dispute Resolution (ODR) platforms powered by AI can process large volumes of disputes rapidly, reduce costs, and extend services to geographically remote communities.[8]

Katsh and Rifkin first articulated the potential of technology as a 'fourth party' in dispute resolution, capable of transforming the landscape of conflict management beyond what human neutrals alone could achieve.[9] More recently, scholars have recognised that AI augments this fourth-party role in previously unimagined ways, raising both extraordinary opportunities and profound regulatory challenges.[10] The eBay Resolution Centre and the European Union's ODR

---

[3]Thomas Stipanowich and J Ryan Lamare, 'Living with ADR: Evolving Perceptions and Use of Mediation, Arbitration, and Conflict Management in Fortune 1,000 Corporations' (2014) 19 *Harvard Negotiation Law Review* 1, 7.

[4]Nairobi Centre for International Arbitration Act (No 26 of 2013, Kenya).

[5]Civil Procedure Act (Cap 21, Laws of Kenya), Order 46.

[6]Arbitration Act (Cap 49, Laws of Kenya, 1995, as amended 2009).

[7]Ethan Katsh and Janet Rifkin (n 5) 10–15; Pablo Cortes (n 6) 116.

[8]Mohamed Abdel Wahab, Ethan Katsh and Daniel Rainey (n 9) ch 2; UNCITRAL (n 11) para 4.

[9]Ethan Katsh and Janet Rifkin, *Online Dispute Resolution: Resolving Conflicts in Cyberspace* (Jossey-Bass 2001) 1–15.

[10]Pablo Cortes, 'A New Regulatory Framework for Extra-Judicial Consumer Redress: Where We Are and How To Move Forward' (2015) 35 *Legal Studies* 114, 116.

platform are frequently cited as models for efficient AI-assisted dispute resolution.[11]

However, the deployment of AI in ADR systems is not without peril. Algorithmic bias, lack of transparency, inadequate digital infrastructure, language barriers, and the erosion of cultural nuance in dispute resolution all pose serious risks, particularly in a diverse society like Kenya with significant digital inequality.[12] The spectre of a two-tiered justice system one technologically mediated for the privileged and another inaccessible to the marginalised demands a rigorous governance response grounded in Kenya's constitutional values of equality, fair hearing, privacy, and access to justice.[13]

The article proceeds as follows: Part 2 surveys the landscape of AI in ADR globally and in Kenya. Part 3 examines the promise of AI in ADR. Part 4 interrogates the risks and exclusionary dimensions of AI in ADR. Part 5 analyses the existing regulatory framework in Kenya. Part 6 draws comparative insights from international governance frameworks. Part 7 proposes a comprehensive AI governance framework for Kenya's ADR systems. Part 8 concludes.

2.0 The Landscape of AI in ADR: Global Trends and Kenya's Position

Globally, the integration of technology into dispute resolution systems has accelerated significantly in the twenty-first century. The term 'Online Dispute Resolution' was coined in the 1990s to describe the use of technology to facilitate dispute resolution outside traditional courtrooms.[14] However, the advent of AI has transformed ODR from a mere digital medium of communication into a

[11]Regulation (EU) 524/2013 of the European Parliament and of the Council of 21 May 2013 on Online Dispute Resolution for Consumer Disputes [2013] OJ L165/1; Directive 2013/11/EU [2013] OJ L165/63.

[12]Patrick Wambua (n 22) 52; International Telecommunication Union, 'Measuring Digital Development: Facts and Figures 2023' (ITU 2023) 14.

[13]Constitution of Kenya 2010, arts 48, 27, 50.

[14]Mohamed Abdel Wahab, Ethan Katsh and Daniel Rainey (eds), *Online Dispute Resolution: Theory and Practice* (Eleven International Publishing 2012) ch 1.

sophisticated system capable of generating outcomes, predicting settlement ranges, and even adjudicating simple disputes autonomously.[15]

In North America, the Rechtwijzer platform in the Netherlands pioneered AI-driven divorce mediation. China's Internet Courts established in Hangzhou (2017), Beijing (2018), and Guangzhou (2019) have processed millions of online disputes using AI-assisted tools for evidence assessment, procedural management, and adjudication. Canada's Civil Resolution Tribunal in British Columbia employs a 'Solution Explorer' powered by AI to guide parties through dispute resolution, representing one of the most advanced ODR systems in the common law world.

At the international normative level, UNCITRAL's Technical Notes on Online Dispute Resolution (2017) provide guidance on minimum standards for ODR systems, including requirements of fairness, transparency, and accessibility.[16] The African Union's Data Policy Framework (2022) similarly establishes a continental normative foundation relevant to AI-driven dispute resolution.[17]

Kenya occupies a promising but complicated position in this landscape. The country is East Africa's technology hub, with Nairobi's 'Silicon Savannah' hosting numerous tech start-ups. The Government's Digital Economy Blueprint of 2019 and the National ICT Policy of 2020 demonstrate institutional commitment to digital transformation.[18] Nevertheless, Kenya's digital divide remains significant. According to the Kenya National Bureau of Statistics, internet penetration stood at approximately 42% as of 2023, with stark disparities between urban centres like

[15]Richard Susskind, *Tomorrow's Lawyers: An Introduction to Your Future* (2nd edn, Oxford University Press 2017) 112–130.

[16]UNCITRAL, 'Technical Notes on Online Dispute Resolution' (United Nations 2017) https://uncitral.un.org/en/texts/odr/explanatorytexts/technical_notes accessed 25 February 2026.

[17]African Union, 'Data Policy Framework' (AU 2022) <https://au.int/en/documents/20220204/african-union-data-policy-framework> accessed 25 February 2026.

[18]Government of Kenya, 'Digital Economy Blueprint' (Ministry of ICT 2019); Government of Kenya, 'National ICT Policy' (Ministry of ICT 2020).

Nairobi and Mombasa and rural counties such as Turkana and Mandera.[19] This structural inequality means that AI-driven ADR systems, if deployed without careful governance, risk creating a two-tiered access-to-justice system along lines of digital privilege.

3.0 The Promise of AI in Kenya's ADR Systems

3.1 Enhanced Efficiency and Case Management

Kenya's formal court system is burdened by a chronic backlog of cases, a challenge that ADR was partly designed to address but which ADR itself now faces as its adoption grows. AI offers transformative efficiency gains in this context.[20] Machine learning algorithms can automate the screening and categorisation of disputes, route cases to appropriate ADR mechanisms, generate draft settlement agreements based on precedent analysis, and flag cases likely to benefit from particular forms of mediation.[21] Natural language processing tools can analyse submissions, identify relevant precedents, and provide parties and neutrals with relevant information in real time, potentially reducing preparation costs substantially.[22]

Predictive analytics can assist mediators and arbitrators in assessing the likely range of outcomes in disputes, enabling more informed negotiations and potentially increasing settlement rates.[23] Zeleznikow's pioneering work on 'Split-Up' and subsequent AI-assisted negotiation support systems demonstrates the capacity of AI to model complex dispute outcomes and guide parties towards settlement in ways that supplement rather than replace human judgement.

[19]Kenya National Bureau of Statistics, 'Economic Survey 2023' (KNBS 2023) 158.

[20]Tania Sourdin (n 15) 1120; John Zeleznikow (n 16) 34.

[21]Tania Sourdin, 'Judge v Robot? Artificial Intelligence and Judicial Decision Making' (2018) 41 *University of New South Wales Law Journal* 1114, 1120.

[22]Richard Susskind (n 10) 125; John Zeleznikow (n 16) 32.

[23]John Zeleznikow, 'Can Artificial Intelligence and Online Dispute Resolution Enhance Efficiency and Efficacy in Courts?' (2017) 8 *International Journal for Court Administration* 30, 34.

3.2 Expanded Access to Justice

For Kenya — a country where geographical remoteness and poverty are significant barriers to accessing dispute resolution AI-powered ODR offers the possibility of dramatically expanding access to justice in fulfilment of Article 48 of the Constitution.[24] A smallholder farmer in Kisumu County who lacks the resources to travel to Nairobi for arbitration proceedings could potentially participate in mediation via a smartphone, guided by an AI-powered platform designed in Swahili or other local languages. Mobile-based ODR platforms leveraging Kenya's high mobile penetration could process land disputes, family disagreements, consumer complaints, and small commercial claims at a fraction of the cost and time of traditional proceedings.[25]

Katsh has observed that ODR platforms, when properly designed, can function as a form of 'institutional empowerment', providing disputants with information, process guidance, and access to neutral third parties that they could not otherwise afford.[26] In the Kenyan context, this empowerment dimension of AI-driven ADR is particularly compelling given the documented barriers to justice faced by rural communities, women, youth, and persons with disabilities.

3.3 Consistency and Predictability

One of the persistent criticisms of ADR particularly mediation is its inconsistency. Outcomes may vary dramatically depending on the individual mediator's skills, biases, and disposition. AI can contribute to greater consistency by ensuring that similarly situated cases receive comparable procedural treatment and by providing data-driven benchmarks against which proposed settlements can be assessed.[27] This predictability can enhance the perceived legitimacy of ADR

---

[24]Constitution of Kenya 2010, art 48.

[25]Ethan Katsh (n 18) 5; Patrick Wambua (n 22) 54.

[26]Ethan Katsh, 'Online Dispute Resolution: Some Implications for the Emergence of Law in Cyberspace' (2006) 10 *Lex Electronica* 1, 5.

[27]Marianne Dory Dray and Jeffrey Baeyens, 'Fairness and the Role of Arbitration' (2020) 36 *Arbitration International* 1, 8.

outcomes and reduce the frequency of collateral challenges to settlements on grounds of procedural unfairness.[28]

4.0 The Risks: Innovation as a Vehicle for Exclusion

4.1 Algorithmic Bias and Discrimination

AI systems are trained on data, and data reflects the world as it is including its inequalities and historical biases. In the context of ADR, AI trained on historical dispute resolution data may perpetuate patterns of disadvantage experienced by women, ethnic minorities, and economically marginalised groups.[29] For instance, if historical arbitration outcomes consistently favoured corporate entities over individual claimants, an AI system trained on such data may replicate this bias in its recommendations or automated decisions.[30]

In Kenya's context, this risk is particularly acute given the historical marginalisation of pastoralist communities, women in land disputes, and informal sector workers in formal legal proceedings.[31] An AI system that fails to account for these structural inequalities risks perpetuating discrimination under the veneer of neutral technological efficiency.[32] The equal protection guarantee under Article 27 of the Constitution of Kenya 2010 demands that any technology deployed in public dispute resolution processes must not produce discriminatory outcomes.[33] Algorithmic systems, far from being neutral arbiters, can become powerful instruments for reproducing structural inequality unless subjected to deliberate bias-mitigation governance.[34]

---

[28]Marianne Dory Dray and Jeffrey Baeyens (n 19) 8; John Zeleznikow (n 16) 35.

[29]Frank Pasquale (n 21) 3–10; Virginia Eubanks, *Automating Inequality: How High-Tech Tools Profile, Police and Punish the Poor* (St Martin's Press 2018) 7.

[30]Amila Nayana Kanthi Kankanam Gamage (n 44) 46; Frank Pasquale (n 21) 10.

[31]Patrick Wambua (n 22) 50; Frank Pasquale (n 21) 14.

[32]Kariuki Muigua (n 43) 34; Virginia Eubanks (n 58) 12.

[33]Constitution of Kenya 2010, art 27.

[34]Frank Pasquale, *The Black Box Society: The Secret Algorithms That Control Money and Information* (Harvard University Press 2015) 1–18.

4.2 The Digital Divide and Structural Exclusion

AI-driven ADR systems presuppose a baseline of digital literacy, internet access, and technological infrastructure that is far from universal in Kenya. The transition to ODR platforms, while potentially efficient for urban, educated, and digitally connected users, risks creating structural exclusion of those without smartphone access, reliable electricity, or sufficient literacy to navigate digital interfaces.[35] Women and girls are disproportionately affected by digital exclusion in Kenya, with gender-based gaps in internet access, digital literacy, and device ownership consistently documented by the World Bank and national surveys.[36]

Any AI governance framework for ADR must confront this gender digital divide as a justice issue, not merely a technical challenge. The deployment of AI without deliberate digital inclusion strategies risks creating 'digital deserts' in the landscape of justice access, where the most vulnerable members of society are systemically excluded from the very platforms designed to serve them.[37]

4.3 Lack of Transparency and Explainability

Many AI systems particularly those employing deep learning neural networks operate as 'black boxes' whose decision-making processes are opaque even to their designers. In the context of dispute resolution, where the right to be heard and the right to reasons are fundamental procedural guarantees, the opacity of AI decision-making poses profound legal challenges.[38]

Article 50 of the Constitution of Kenya 2010 guarantees the right to a fair hearing, which encompasses the right to adequate time and facilities to prepare a defence

---

[35]Patrick Wambua, 'Access to Justice in Kenya: The Role of Alternative Dispute Resolution' (2019) 12 *Strathmore Law Journal* 45, 52.

[36]World Bank, 'World Development Report 2021: Data for Better Lives' (World Bank 2021) 87.

[37]Patrick Wambua (n 22) 52; World Bank (n 23) 87; International Telecommunication Union (n 58) 16.

[38]Frank Pasquale (n 21) 1; Gianclaudio Malgieri and Giovanni Comande, 'Why a Right to Legibility of Automated Decision-Making Exists in the General Data Protection Regulation' (2017) 7 *International Data Privacy Law* 243.

and the right to a decision from an independent, impartial adjudicator who provides reasons.[39] If an AI system recommends or imposes an outcome without providing meaningful explanations, it may violate this constitutional guarantee. Kenya's courts have consistently held that the right to reasons is a fundamental component of fair administrative action under the Fair Administrative Action Act 2015.[40]

4.4 Cultural and Linguistic Dissonance

Kenya is a culturally and linguistically diverse society with 42 officially recognized ethnic communities and numerous indigenous languages. Traditional dispute resolution mechanisms such as the councils of elders among pastoralist communities are deeply embedded in cultural practice, oral traditions, and communal values that do not translate easily into digital formats.[41]

AI systems designed primarily in English or Swahili or, worse, trained on datasets from Western dispute resolution contexts may fail to capture the cultural nuances, relational values, and community-oriented outcomes that traditional ADR systems prize.[42] The risk is that AI-driven ADR displaces culturally grounded dispute resolution with a culturally alien technological substitute, undermining community trust and the legitimacy of outcomes. Effective AI governance must treat cultural responsiveness not as an optional feature but as a core design requirement.

4.5 Data Privacy and Security

ADR processes involve the sharing of highly sensitive personal, commercial, and sometimes national security information between parties and neutrals. AI systems that collect, store, and process such data introduce significant cybersecurity and data privacy risks.[43] The Data Protection Act of Kenya 2019 modelled partly on

---

[39]Constitution of Kenya 2010, art 50.

[40]Fair Administrative Action Act (No 4 of 2015, Kenya), s 4(3); *Republic v Kenya Revenue Authority ex parte Yaya Towers Ltd* [2008] eKLR.

[41]Constitution of Kenya 2010, arts 44, 56.

[42]Richard Susskind (n 10) 147.

[43]Constitution of Kenya 2010, art 31.

the European Union's General Data Protection Regulation provides a framework for data protection but has not been specifically tailored to the unique data-processing characteristics of AI-driven ADR systems.[44]

Confidentiality is a cornerstone of ADR, particularly mediation. If AI systems inadvertently expose confidential dispute information, the foundational trust that makes ADR effective is undermined.[45] Moreover, the aggregation of dispute data by AI systems raises questions about who owns that data, how it may be used, and whether historical dispute information can or should be used to train future AI models without the parties' informed consent.[46]

5.0 Kenya's Existing Regulatory Framework: Adequacy and Gaps

Kenya's regulatory framework governing ADR is relatively well-developed by regional standards. The Arbitration Act (Cap 49, as amended) provides a comprehensive framework broadly consistent with the UNCITRAL Model Law on International Commercial Arbitration.[47] The Civil Procedure Act and Civil Procedure Rules contain provisions for court-annexed mediation.[48] The Nairobi Centre for International Arbitration Act 2013 established Kenya's premier international arbitration institution.[49]

However, none of these instruments expressly addresses the use of AI in dispute resolution. The Arbitration Act makes no provision for AI-generated evidence assessment or algorithmic tribunal support. The Civil Procedure Rules on mediation do not contemplate online or AI-mediated proceedings. The NCIA Act, focused on institutional administration, similarly lacks AI-specific provisions.[50]

---

[44]Data Protection Act (No 24 of 2019, Kenya), s 25; Gianclaudio Malgieri and Giovanni Comande, 'Why a Right to Legibility of Automated Decision-Making Exists in the General Data Protection Regulation' (2017) 7 *International Data Privacy Law* 243, 251.

[45]Comfort Folasade Fasanya (n 45); Natasha Kahungi (n 48).

[46]Data Protection Act (No 24 of 2019, Kenya), s 25; Gianclaudio Malgieri and Giovanni Comande (n 73) 251.

[47]Arbitration Act (Cap 49, Laws of Kenya, 1995, as amended 2009), s 10.

[48]Civil Procedure Act (Cap 21, Laws of Kenya), Order 46, r 20.

[49]Nairobi Centre for International Arbitration Act (No 26 of 2013, Kenya), s 5.

[50]Arbitration Act (Cap 49, Laws of Kenya, 1995, as amended 2009), ss 10, 32.

The Data Protection Act 2019 and its regulations provide some horizontal protection for personal data processed by AI systems, including a principle of purpose limitation relevant to constraining the use of ADR data for AI training.[51] The Act also imposes obligations of transparency and data subject rights relevant to AI-driven ADR. However, the Office of the Data Protection Commissioner has not yet issued specific guidance on AI in legal proceedings or ADR.

The Kenya Information and Communications Act governs electronic communications broadly but does not specifically address the legal status of AI-generated ADR decisions or the accountability of AI systems.[52] This regulatory lacuna creates legal uncertainty for disputants, ADR institutions, and technology providers alike. It leaves vulnerable parties without specific legal protections against algorithmic harm and provides inadequate guidance to ADR institutions seeking to responsibly integrate AI into their processes.

6.0 Comparative Perspective: International AI Governance Frameworks for ADR

6.1 The European Union Approach

The European Union has emerged as the global frontrunner in AI governance with the adoption of the AI Act (Regulation (EU) 2024/1689), which entered into force in August 2024.[53] The AI Act adopts a risk-based approach, classifying AI systems according to their potential for harm. Notably, AI systems used in the administration of justice and dispute resolution are classified as 'high-risk' systems subject to stringent requirements including transparency, human oversight, data governance, technical robustness, and accountability.[54]

Under the EU AI Act, high-risk AI systems in dispute resolution must satisfy requirements of transparency, human oversight, data governance, technical

[51]Data Protection Act (No 24 of 2019, Kenya), s 26(b); s 32.

[52]Kenya Information and Communications Act (Cap 411A, Laws of Kenya), s 83C.

[53]Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on Artificial Intelligence (Artificial Intelligence Act) [2024] OJ L2024/1689, art 6 and Annex III, point 8.

[54]ibid, arts 9–15.

robustness, and accountability. Providers must conduct conformity assessments, maintain technical documentation, and ensure that the AI system can be explained to affected parties. The EU's ADR Directive and ODR Regulation provide a sectoral framework for consumer ADR and ODR, and the AI Act's provisions apply as an overlay.[55] This layered approach — sectoral ADR regulation supplemented by horizontal AI governance offers a useful model for Kenya.

6.2 Singapore's Approach

Singapore, a leading global arbitration hub, has developed a thoughtful approach to technology in dispute resolution through the Model AI Governance Framework (first issued in 2019, updated in 2020) by the Infocomm Media Development Authority (IMDA).[56] The Singapore International Arbitration Centre (SIAC) has integrated technology into case management while maintaining human adjudicative decision-making at its core. Singapore's approach demonstrates that international arbitration centres can harness AI for efficiency without surrendering the fundamental human judgement that gives arbitral awards their legal legitimacy.[57] For Kenya, whose NCIA aspires to be a leading African arbitration centre, Singapore's model is instructive.

6.3 The African Union's Digital Governance Framework

At the continental level, the African Union's Data Policy Framework (2022) provides guidance on data governance across the continent, including principles relevant to AI.[58] These instruments, while not specifically targeted at ADR, establish a normative foundation that Kenya's AI governance framework for ADR should build upon. UNCITRAL's Technical Notes on Online Dispute Resolution

---

[55]Regulation (EU) 524/2013 (n 7).

[56]Infocomm Media Development Authority (Singapore), 'Model AI Governance Framework' (2nd edn, IMDA 2020) <https://www.imda.gov.sg/resources/press-releases-factsheets-and-speeches/factsheets/2020/model-ai-governance-framework-second-edition> accessed 25 February 2026, 7–12.

[57]Gary Born, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) 2847.

[58]African Union (n 12).

provide valuable guidance on minimum standards for ODR systems, including requirements of fairness, transparency, and accessibility.[59]

7.0. Towards a Comprehensive AI Governance Framework for Kenya's ADR Systems

7.1 Ensuring Representative and Unbiased Training Data

There is a need to minimise the risk of bias and ensure fair and accessible AI-driven legal tools and services. If not well implemented, AI can intentionally or unintentionally automate bias and magnify inequality, including racial, gender, and socioeconomic disparities.[60] Additionally, establishing liability frameworks to determine responsibility for AI-driven errors and biased decisions is essential.[61] AI systems used in ADR must be transparent and explainable to all parties involved. Developers should prioritise the design of Explainable AI (XAI) that can justify outcomes and decisions in a manner understandable to legal professionals and disputants alike.[62]

It is necessary to ensure careful design and implementation of AI systems and algorithms including through training on accurate and fair datasets to prevent bias or unfairness in administering justice.[63] AI should be used as an assistive tool to expand access to legal information and not merely as an avenue to replace human-led judicial reasoning. Through this, it is possible to eliminate potential biases that lead to unjust decisions.[64]

---

[59] UNCITRAL (n 11) para 12.

[60] Kariuki Muigua, 'Governing Artificial Intelligence in Africa: Law, Science, Ethics and Sustainable Development' (2026) 34; Virginia Eubanks, *Automating Inequality: How High-Tech Tools Profile, Police and Punish the Poor* (St Martin's Press 2018) 5–12.

[61] Amila Nayana Kanthi Kankanam Gamage, 'Algorithmic Fairness and Ethical Challenges in AI-Powered Dispute Resolution: A Framework for ADR in Construction Disputes' (2025) 4(2) *Advanced and Sustainable Technologies (ASET)* 40, 53 <https://doi.org/10.58915/aset.v4i2.2095> accessed 3 March 2026.

[62] Comfort Folasade Fasanya, 'Using Artificial Intelligence (AI) in ADR: Opportunities and Challenges' (unpublished manuscript).

[63] Kariuki Muigua (n 43) 34.

[64] ibid.

7.2 Strengthening Data Privacy and Security Frameworks

Policymakers ought to review cybersecurity laws as well as data privacy laws so as to cater to the growing need for AI.[65] It is also vital to ensure the protection of the right to privacy as enshrined in the Constitution.[66] It has been suggested that AI systems should be trained to identify and categorise data including text containing personal information (such as names, addresses, and contact information) from court documents and transcripts.[67]

There is a need for innovation of robust data protection mechanisms to prevent AI from compromising the efficiency it seeks to enhance.[68] Before implementing any AI system, it should be passed through the necessary steps to ensure it adheres to the various laws governing data privacy, such as the Data Protection Act.[69] Confidentiality and privacy are central to the legitimacy of ADR processes and must not be compromised by digital tools. Implementation of strong cybersecurity measures should be prioritised to ensure the same.[70]

7.3 Bridging the Digital Divide

This can be made possible through harnessing the transformative power of AI for enhanced access to justice and the rule of law by ensuring the accessibility, affordability, and quality of modern technologies and digital tools including AI systems to enable widespread adoption and use of these tools and services across multiple sectors, such as dispute resolution, for enhanced access to justice.[71] Further, investing in digital literacy programmes targeting marginalised groups including women and girls, rural residents, and the elderly can build the capacity

[65] Natasha Kahungi, 'Dawn of Artificial Intelligence in Alternative Dispute Resolution: Expanding Access to Justice through Technology' (2022) 2(2) *University of Nairobi Law Journal* <https://ssrn.com/abstract=4389547> accessed 25 February 2026.

[66] Constitution of Kenya 2010, art 31.

[67] Kariuki Muigua (n 43) 34.

[68] Amila Nayana Kanthi Kankanam Gamage (n 44) 53.

[69] Data Protection Act (No 24 of 2019, Kenya) (Cap 411C).

[70] Comfort Folasade Fasanya (n 45).

[71] Kariuki Muigua (n 43) 34.

of all individuals and societies to utilise AI and other digital solutions towards strengthening access to justice and the rule of law.[72]

Since many developing countries face challenges in implementing digitisation, organisations such as the European Union can assist such countries financially and help bridge the gap.[73]

7.4 Institutional Governance

Legislative reform alone is insufficient; robust institutional governance is equally essential. Kenya should establish an AI in ADR Regulatory Committee, potentially housed within the Judiciary or under the auspices of the Ministry of Justice, with a mandate to develop technical standards, certify AI tools for use in dispute resolution, and monitor compliance. This Committee should include representatives from the legal profession, technology industry, civil society, consumer advocacy groups, and marginalised communities.[74]

The Nairobi Centre for International Arbitration should develop and publish AI governance guidelines for practitioners using AI tools in NCIA-administered proceedings. Similarly, the Chartered Institute of Arbitrators (Kenya Branch) and the Mediation Training Institute should incorporate AI ethics and governance into their professional training curricula, ensuring that practitioners are equipped to use AI tools responsibly and to identify and mitigate algorithmic bias.

7.5 Cultural Integration

Kenya's AI governance framework should explicitly recognise and provide for the integration of cultural values and traditional dispute resolution wisdom into AI-driven ADR. This could be achieved through the inclusion of community elders

---

[72]Organisation for Economic Co-operation and Development, 'AI in Justice Administration and Access to Justice' (OECD 2023); United Nations Office on Drugs and Crime, 'AI and the Administration of Justice' (UNODC 2023) 22.

[73]Susan Schiavetta, 'Online Dispute Resolution, E-Government and Overcoming the Digital Divide' (20th BILETA Conference 2005) <http://www.bileta.ac.uk/default.aspx> accessed 25 February 2026; Graham Smith, *Internet Law and Regulation* (4th edn, Sweet & Maxwell 2007) 412.

[74]Nairobi Centre for International Arbitration Act (No 26 of 2013, Kenya), s 4.

and traditional dispute resolution practitioners in the governance of AI-powered ADR systems, the development of culturally specific datasets for training AI models, and the creation of hybrid processes that use AI for administrative functions while preserving culturally appropriate human-led resolution processes.[75]

The traditional dispute resolution systems of Kenya's communities are not antithetical to technology they are adaptive and resilient. Effective AI governance should harness this adaptability, enabling communities to participate in shaping the technological tools that will affect their access to justice, rather than having those tools imposed upon them from outside.[76]

7.6 International Cooperation and Harmonisation

Given the cross-border nature of many commercial disputes handled through ADR particularly at the NCIA Kenya's AI governance framework must be designed with international harmonisation in mind. Kenya should actively participate in UNCITRAL's Working Group III on dispute settlement reform, engage with the African Union's AI governance processes, and seek to align its domestic framework with emerging international standards without subordinating its specific developmental context.

Bilateral and multilateral agreements on mutual recognition of AI-driven ADR outcomes may become increasingly important as AI-powered dispute resolution becomes more prevalent globally. Kenya should proactively engage in these diplomatic processes to ensure that its interests and those of the African continent more broadly are reflected in emerging international governance standards.[77]

8.0 Conclusion

The integration of AI into Kenya's ADR systems is not a question of 'if' but 'how' and 'for whom.' Technology will inevitably reshape the landscape of dispute resolution. The critical question for policymakers, practitioners, and civil society

---

[75] Constitution of Kenya 2010, arts 44, 56; Kariuki Muigua (n 43) 36.

[76] Ethan Katsh (n 18) 6; Kariuki Muigua (n 43) 38.

[77] Gary Born (n 40) 2850; UNCITRAL (n 11) para 15.

is whether that reshaping will democratise access to justice or entrench existing inequalities in new, opaque, and technically complex forms.

This article has argued that Kenya stands at a governance crossroads. The country possesses the technological dynamism, constitutional vision, and legal infrastructure to develop a world-class AI governance framework for its ADR systems. What it requires is the political will to act proactively rather than reactively, the institutional capacity to implement governance mechanisms effectively, and the democratic commitment to ensure that the communities most affected by disputes and most at risk of exclusion from AI-driven ADR — are placed at the centre of governance design.[78]

The promise of AI in ADR is genuine and substantial.[79] Efficiency gains, expanded access, and enhanced consistency are achievable and desirable goals. But promise unrealised or, worse, promise that serves only the privileged is a form of injustice. Kenya's constitutional commitment to transformative justice demands a governance framework that ensures AI serves all Kenyans, not merely those with smartphones, reliable internet, and digital literacy.[80]

The time to act is now. The cost of regulatory delay is not merely inefficiency it is the systematic exclusion of vulnerable communities from the technological future of justice. Kenya has the opportunity to lead Africa in developing a governance model that demonstrates that innovation and inclusion are not opposing values, but complementary imperatives. Seizing that opportunity is an obligation of justice.[81]

[78]Kariuki Muigua (n 43) 40; Patrick Wambua (n 22) 55.

[79]John Zeleznikow (n 16) 36; Tania Sourdin (n 15) 1125.

[80]Constitution of Kenya 2010, art 48; Natasha Kahungi (n 48).

[81]Constitution of Kenya 2010, arts 48, 27, 50; Kariuki Muigua (n 43) 42.

Bibliography

A. Legislation

Arbitration Act (Cap 49, Laws of Kenya, 1995, as amended 2009)

Civil Procedure Act (Cap 21, Laws of Kenya)

Constitution of Kenya 2010

Data Protection Act (No 24 of 2019, Kenya)

Fair Administrative Action Act (No 4 of 2015, Kenya)

Kenya Information and Communications Act (Cap 411A, Laws of Kenya)

Nairobi Centre for International Arbitration Act (No 26 of 2013, Kenya)

B. European Union Legislation

Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on Alternative Dispute Resolution for Consumer Disputes [2013] OJ L165/63

Regulation (EU) 524/2013 of the European Parliament and of the Council of 21 May 2013 on Online Dispute Resolution for Consumer Disputes [2013] OJ L165/1

Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on Artificial Intelligence (Artificial Intelligence Act) [2024] OJ L2024/1689

B. Cases

Republic v Kenya Revenue Authority ex parte Yaya Towers Ltd [2008] eKLR (High Court of Kenya)

D. Books

Born G, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021)

Eubanks V, *Automating Inequality: How High-Tech Tools Profile, Police and Punish the Poor* (St Martin's Press 2018)

Katsh E and Rifkin J, *Online Dispute Resolution: Resolving Conflicts in Cyberspace* (Jossey-Bass 2001)

Pasquale F, *The Black Box Society: The Secret Algorithms That Control Money and Information* (Harvard University Press 2015)

Smith G, *Internet Law and Regulation* (4th edn, Sweet & Maxwell 2007)

Susskind R, *Tomorrow's Lawyers: An Introduction to Your Future* (2nd edn, Oxford University Press 2017)

Wahab MA, Katsh E and Rainey D (eds), *Online Dispute Resolution: Theory and Practice* (Eleven International Publishing 2012)

E. Journal Articles

Cortes P, 'A New Regulatory Framework for Extra-Judicial Consumer Redress: Where We Are and How to Move Forward' (2015) 35 *Legal Studies* 114

Dray MD and Baeyens J, 'Fairness and the Role of Arbitration' (2020) 36 *Arbitration International* 1

Gamage ANKK, 'Algorithmic Fairness and Ethical Challenges in AI-Powered Dispute Resolution: A Framework for ADR in Construction Disputes' (2025) 4(2) *Advanced and Sustainable Technologies (ASET)* 40 <https://doi.org/10.58915/aset.v4i2.2095> accessed 3 March 2026

Kahungi N, 'Dawn of Artificial Intelligence in Alternative Dispute Resolution: Expanding Access to Justice through Technology' (2022) 2(2) *University of Nairobi Law Journal* <https://ssrn.com/abstract=4389547> accessed 25 February 2026

Katsh E, 'Online Dispute Resolution: Some Implications for the Emergence of Law in Cyberspace' (2006) 10 *Lex Electronica* 1

Malgieri G and Comande G, 'Why a Right to Legibility of Automated Decision-Making Exists in the General Data Protection Regulation' (2017) 7 *International Data Privacy Law* 243

Sourdin T, 'Judge v Robot? Artificial Intelligence and Judicial Decision Making' (2018) 41 *University of New South Wales Law Journal* 1114

Stipanowich T and Lamare JR, 'Living with ADR: Evolving Perceptions and Use of Mediation, Arbitration, and Conflict Management in Fortune 1,000 Corporations' (2014) 19 *Harvard Negotiation Law Review* 1

Wambua P, 'Access to Justice in Kenya: The Role of Alternative Dispute Resolution' (2019) 12 *Strathmore Law Journal* 45

Zeleznikow J, 'Can Artificial Intelligence and Online Dispute Resolution Enhance Efficiency and Efficacy in Courts?' (2017) 8 *International Journal for Court Administration* 30

F. Official Documents and Other Sources

African Union, 'Data Policy Framework' (AU 2022) <https://au.int/en/documents/20220204/african-union-data-policy-framework> accessed 25 February 2026

Fasanya CF, 'Using Artificial Intelligence (AI) in ADR: Opportunities and Challenges' (unpublished manuscript)

Government of Kenya, 'Digital Economy Blueprint' (Ministry of ICT 2019)
Government of Kenya, 'National ICT Policy' (Ministry of ICT 2020)

Infocomm Media Development Authority (Singapore), 'Model AI Governance Framework' (2nd edn, IMDA 2020) <https://www.imda.gov.sg/resources/press-releases-factsheets-and-speeches/factsheets/2020/model-ai-governance-framework-second-edition> accessed 25 February 2026

International Telecommunication Union, 'Measuring Digital Development: Facts and Figures 2023' (ITU 2023)

Kenya National Bureau of Statistics, 'Economic Survey 2023' (KNBS 2023)
Muigua K, 'Governing Artificial Intelligence in Africa: Law, Science, Ethics and Sustainable Development' (2026)

Organisation for Economic Co-operation and Development, 'AI in Justice Administration and Access to Justice' (OECD 2023)

Schiavetta S, 'Online Dispute Resolution, E-Government and Overcoming the Digital Divide' (20th BILETA Conference 2005) <*http://www.bileta.ac.uk/default.aspx*> *accessed 25 February 2026*

UNCITRAL, 'Technical Notes on Online Dispute Resolution' (United Nations 2017) <*https://uncitral.un.org/en/texts/odr/explanatorytexts/technical_notes*> *accessed 25 February 2026*

United Nations Office on Drugs and Crime, 'AI and the Administration of Justice' (UNODC 2023)

World Bank, 'World Development Report 2021: Data for Better Lives' (World Bank 2021)

Resolving Carbon Credits and ESG Disputes: The Role of Mediation in Low-Carbon Infrastructure

By: Shadrack Chai Chivatsi*

Abstract

Kenya, one of the key hosts in Africa for carbon projects, is facing disputes over land tenure conflicts, inequitable benefit sharing, green grabbing, and technical issues in carbon accounting of renewable energy, forestry, and nature-based solutions. Conflicts often arise between global climate finance mechanisms, investors and local communities; these aggravate procedural injustices, displacements and distributional inequalities. This happens despite existing global frameworks like Article 6 of the Paris Agreement. This article explains how mediation mechanisms can be superior to litigation or arbitration for resolving carbon credits and ESG-related disputes. Mediation is cost-effective, preserves the long-term relationships necessary for project continuity, enables the engagement of technical experts in carbon MRV (monitoring, reporting, verification), and enhances the quality of the process by providing voice, neutrality, and favourable resolution, which also comply with the UN guiding principles on business and human rights and ESG standards.

With reference to the Kenyan cases of Ogiek and Endorois, the international examples of Great Bear Rainforest and Snake River. Kenya's Climate Change (Amendment) Act 2023, requires ADR as a first step to addressing disputes under carbon projects. This analysis highlights how mediation can help bridge epistemic divides, deal with power imbalances, and bring in tools such as blockchain to enable credible outcomes. Though confidentiality threats and enforcement issues are common, it would benefit all parties and create an equal and lasting low-carbon transition with the focus on rights-based justice and sustainable development of national carbon mechanisms.

* ***A final-year student at the University of Nairobi, Kenya. He is a Certified Professional Mediator, the current Research Director at Students Association for Legal Aid and Research (SALAR). Contact: +254799284787 Email: chaishadrack540@gmail.com.***

1.0. Introduction:

This article discusses carbon project disputes, justice, and mediation as means of access to justice, illuminating how local communities in environmentally vulnerable locations in Kenya perceive global and national climate action schemes. Kenya, a prominent African host for carbon offset initiatives, maintains a concentrated portfolio on clean technology and nature-based solutions such as renewable energy, forestry, and soil carbon projects.[1] However, these climate interventions often intersect with land tenure disputes and distributional inequalities.[2] This study investigates how communities experience and navigate the global climate finance mechanisms and their national implementation. By foregrounding situated knowledge from below, the analysis illuminates the gaps between international carbon market architectures and localised claims.[3] to procedural fairness, recognition, and redress.

Due to the climate change crisis, are we able to see that de jure regimes help shape the relationship between the developers and the community owning land rights and interests?[4] Though not the case with law, where there is a binary outcome, mediation can offer a flexible forum based on interests that can address the differing priorities of global investors, host governments and local stakeholders. "*Climate injustice and conflict reinforce each other. A fair and just energy transition is therefore not only a climate imperative but a peace strategy. It must also be a rights-based strategy. A transition that accelerates clean energy while deepening inequality will not endure. Governments have a duty to ensure that workers, communities, and vulnerable households are protected, that participation is meaningful, and that the benefits of the transition are shared fairly.*" Mary Robinson, Planetary Guardian, Former President of Ireland, former United Nations High Commissioner for Human Rights,

---

[1] Rasowo, J Nyonje, B Olendi, R Orina, P and Odongo, S, 'Towards environmental sustainability: further evidence from decarbonisation projects in Kenya's Blue Economy' (2024) *Frontiers in Marine Science* https://doi.org/10.3389/fmars.2024.1239862

[2] Borras S and Franco J, 'The challenge of locating land-based climate change mitigation and adaptation politics within a social justice perspective: towards an idea of agrarian climate justice' (2018) *Third World Quarterly* 39 1308–1325.

[3] Dittmer J, 'Valuing the Subterranean: The tunnels of Gibraltar in war and in peace' (2026) *Environment and Planning C: Politics and Space* (forthcoming).

[4] Brink E, Falla A and Boyd E, 'The law of the four poles: legal pluralism and resistance in climate adaptation' (2025) *Law & Society Review.*

buttressed this in her keynote address at Chatham House's Climate and Energy Summit 2026.

2.0. Taxonomy of Conflicts in Carbon-Related Projects

Whenever such projects are initiated, debates are generally sparked by the issue of protected area governance and the denial of local inhabitants' rights and access to their living landscapes.[5] The most immediate friction usually stems from a deep-seated clash between global climate goals and the lived reality of local communities. This "governance and social" layer of the taxonomy is where high-level financial mechanisms often collide with the sovereign rights of Indigenous Peoples and rural landholders. This transition requires 'rapid, far-reaching and unprecedented changes in all aspects of society',[6] leading to distributional impacts, trade-offs, and consequent social conflicts over the distribution of costs and benefits amongst communities and indigenous people.

Carbon projects usually operate at the intersection of multiple overlapping governance systems, generating jurisdictional and regulatory tensions at every level. They retroactively signed bilateral agreements, which generated carbon credits under Article 6.2.[7] Claiming ownership of credits that were already purchased. The national carbon registries that lack strength and coherence create conflicting, confusing and ambiguous situations with respect to the functioning of carbon markets. All necessary conditions for double funding. In the voluntary market, there are competing standards. Organisations such as Verra and Gold Standard use inconsistent methodologies.[8] At the same time, governments increasingly attempt to impose regulatory oversight that they are neither

---

[5] Souradip Pathak, Jenia Mukherjee, Amrita Sen and Anuradha Choudry, 'Whose habitat? Exploring human tiger conflict in the riskscapes of the Indian Sundarbans' (2025) 32 Journal of Political Ecology 3.

[6] Temper L and others, 'Movements shaping climate futures: A systematic mapping of protests against fossil fuel and low-carbon energy projects' (2020) 15(12) Environ Res Lett 123004, 9 https://doi.org/10.1088/1748-9326/abc197 accessed 26 March 2026.

[7] Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016).

[8] N Sasaki, 'Addressing Scandals and Greenwashing in Carbon Offset Markets: A Framework for Reform' (2025) *Global Transitions* https://doi.org/10.1016/j.glt.2025.06.003.

mandated nor equipped to handle.[9] Sub-national and private carbon accounting frequently diverges from national NDC reporting, creating gaps that undermine the overall credibility of the system.[10]

At the most fundamental level, carbon projects generate conflicts over who controls land and natural resources. Displacement and access disputes arise when indigenous and local communities are dispossessed of land to make way for REDD+ afforestation, or reforestation schemes, a phenomenon often described as "*green grabbing,*" where corporate or elite actors acquire land under the pretext of conservation.[11] Closely related are boundary and jurisdictional disputes, where project perimeters overlap with community territories, conservancies, national parks, or cross-border forest zones with contested sovereignty, leaving affected populations with no clear legal recourse.[12]

Carbon projects oftentimes engender social friction. This occurs even in contexts where land ownership itself is not directly contested. To some extent, these disputes often emanate from deficiencies in the project process and equitable distribution; it is worth noting that a common complaint involves a deficiency in securing free, prior, and informed consent (FPIC).[13] Communities, for which consultation was insufficient, find themselves bound by agreements. Benefit-sharing problems intensify this situation, for local communities absorb environmental and social impacts, yet most revenues, however, largely accrue to

---

[9] L Temper and others, 'Movements Shaping Climate Futures: A Systematic Mapping of Protests against Fossil Fuel and Low-Carbon Energy Projects' (2020) 15 *Environmental Research Letters.*

[10] B Mackey and others, 'Net Carbon Accounting and Reporting Are a Barrier to Understanding the Mitigation Value of Forest Protection in Developed Countries' (2022) 17 *Environmental Research Letters* https://doi.org/10.1088/1748-9326/ac661b.

[11] R Alusiola, J Schilling and P Klär, 'REDD+ Conflict: Understanding the Pathways between Forest Projects and Social Conflict' (2021) *Forests.*

[12] Masieyi & 2 others v Chebet & another [2025] KEELC 7439 (KLR).

[13] B Sovacool *et al*, 'Dispossessed by Decarbonisation: Reducing Vulnerability, Injustice, and Inequality in the Lived Experience of Low-Carbon Pathways' (2020) 137 *World Development* 105116.

developers and intermediaries.[14] Gender inequities further stratify these dynamics, as women are often excluded from governance structures and payment schemes. In the most severe cases, community members who resist or question projects face criminalisation and harassment.[15]

A distinct and technically complex set of conflicts emerges around how carbon savings are measured and verified.[16] Disputes over baseline setting what emissions would have occurred in the absence of the project are endemic, as baselines are inherently hypothetical and susceptible to manipulation.[17] Perhaps most consequential in the post-Paris era is double-counting, where the same carbon credit is claimed simultaneously by a host country toward its Nationally Determined Contribution and by a private buyer, an issue at the heart of ongoing Article 6 negotiations.[18]

The commercialisation of carbon generates its own layer of conflict, both between actors and within market structures. In revenue sharing between the community and the developer, and the pricing in terms of the contract between the broker and the project developer are a matter of difference.[19] At the structural level, voluntary and compliance markets compete for the same credit creation, resulting in price distortion. The price volatility affects projects in the long run. The increase of low-quality credits or *"zombie credits"* undermines confidence in the market as

[14] J A E Nielsen, K Stavrianakis and Z Morrison, 'Community Acceptance and Social Impacts of Carbon Capture, Utilisation and Storage Projects: A Systematic Meta-Narrative Literature Review' (2022) 17 *PLoS ONE.*

[15] Ellis Adjei Adams, Luke Juran and Idowu Ajibade, '"Spaces of Exclusion" in Community Water Governance: A Feminist Political Ecology of Gender and Participation in Malawi's Urban Water User Associations' (2018) 95 Geoforum 133.

[16] Lambert Schneider and others, 'Double Counting and the Paris Agreement Rulebook' (2019) 366 Science 180.

[17] Thales A P West, B Bomfim and Barbara K Haya, 'Methodological Issues with Deforestation Baselines. Compromise the Integrity of Carbon Offsets from REDD+' (2024) Global Environmental Change.

[18] L Schneider, A Kollmuss and M Lazarus, 'Addressing the Risk of Double Counting Emission Reductions under the UNFCCC' (2015) 131 Climatic Change 473.

[19] Jingye Lyu, Ming-Gui Cao, Kuang Wu, Haifeng Li and G Mohi-ud-din, 'Price Volatility in the Carbon Market in China' (2020) 255 Journal of Cleaner Production 120171.

a whole.[20] Corporate greenwashing is one of the most publicly visible and reputationally damaging conflicts, particularly in the Global South.[21] There is a tension symmetric to that just discussed about optimising land for maximum carbon storage or managing it for ecosystem diversity and resilience.[22]

Underlying many of the above conflicts is a deeper struggle over knowledge, evidence, and institutional trust. Scientific disputes about carbon accounting methodologies remain unresolved and are actively contested in academic and policy arenas.[23] Tensions also arise between community-held ecological knowledge and remote-sensing-based monitoring systems, where the latter often fails to capture local nuance and can be used to override or discredit local testimony.[24] These epistemic conflicts feed directly into broader crises of legitimacy that threaten the long-term viability of carbon markets as a climate instrument.[25]

3.0. Why Mediation? The Comparative Advantages of ADR over Litigation

As low-carbon infrastructure and ESG (Environmental, Social and Governance) disputes emerge, Alternative Dispute Resolution (ADR) mediation, specifically, is a procedural option that trumps litigation.[26] When it comes to complex issues, like

[20] George Nyanaro, 'Navigating Carbon Offset Projects and Trading Disputes in Africa: Assessing the Role of Appropriate Dispute Resolution Mechanisms' (31 May 2021) SSRN accessed 24 March 2026.

[21] Riccardo Torelli, Federica Balluchi and A Lazzini, 'Greenwashing and Environmental Communication: Effects on Stakeholders' Perceptions' (2019) Socially Responsible Investment eJournal, SSRN <https://doi.org/10.2139/ssrn.3470659> accessed 24 March 2026.

[22] Charlotte Hicks and others, 'The Relationship between Biodiversity, Carbon Storage and the Provision of Other Ecosystem Services: Critical Review for the Forestry Component of the International Climate Fund' (UNEP-WCMC 2014) accessed 30 March 2026.

[23] Julia Ingram, Damian Maye and Mark Reed, 'Contestations in the Emerging Soil-Based Carbon Economy: Towards a Research Agenda' (2025) 20 Sustainability Science 597 accessed 30 March 2026.

[24] Theo Stanley and George Cusworth, 'Legitimacy in the Making: Conservatism, Additionality and Natural Capital Accreditation in the UK's Woodland Carbon Code' (2025) 8 Environment and Planning E: Nature and Space 2018 accessed 30 March 2026.

[25] Ibid.

[26] Alana Knaster, 'Resolving Conflicts Over Climate Change Solutions: Making the Case for Mediation' (2010) 10 Pepperdine Dispute Resolution Law Journal 465.

the resolution of carbon credits and disputes concerning renewable energy installations, voluntary carbon credit programmes and 'sustainability', mediation offers many benefits,[27] including cost efficiency, relationship preservation, and technical expertise, all of which are vital in climate disputes. Mediation offers a structurally superior alternative not as a compromise, but as the mechanism best matched to what these disputes actually involve.[28]

The disparity in expenses, for instance, goes beyond mere mercantile pragmatism. This suggests a more fundamental architectural incongruity between the conventional architecture of adversarial legal proceedings and the inherent economic realities associated with financing low-carbon initiatives, and an underlying incompatibility exists, in this context, which constitutes, to some extent, the core issue. Mediation, in direct opposition, effectively eliminates numerous transaction costs. Critically, the often-extended preparation required for any actual hearing can significantly augment overall expenditures. These expenses habitually emanate from elements such as documentary disclosure (often referred to as 'service'), any subsequent procedural contestation, and the formal process of filing pleadings.[29] Diverting funds to prolonged dispute resolution in a volatile environment (carbon pricing, evolving regulations, and thin profit margins) will be an inefficiency that is at odds with the underlying financial rationale of each project.[30] Therefore, the case for efficient Alternative Dispute Resolution is part and parcel of the larger objective of financing large-scale, low-carbon infrastructure.[31]

[27] Emily Davies, 'Recommendations for Effectively Resolving Climate Change Disputes Against Investors' (2020) 14 Carbon and Climate Law Review 49.
[28] Jessica Crow and Wolf von Kumberg, 'The Development of Investor-State Mediation and Its Future in Supporting Energy Transition' (2022) 88(3) Arbitration: The International Journal of Arbitration, Mediation and Dispute Management 426-436.
[29] Adetoyese Latilo, Hendrickx Oreoluwa Imosemi and Queenette Anuoluwapo Imosemi, 'Contractual Challenges in Renewable Energy Projects: The Role of ADR in Managing Risks and Disputes' (2024) 2(1) Global Journal of Advanced Research and Reviews.
[30] Wenxue Lu, Lihan Zhang and Jing Pan, 'Identification and Analyses of Hidden Transaction Costs in Project Dispute Resolutions' (2015) 33 International Journal of Project Management 711.
[31] Anatole Boute, 'Investor Compensation for Oil and Gas Phase Out Decisions: Aligning Valuation Methods to Decarbonization' (2023) 23 Climate Policy 1087.

Mediation's relational aspect confers a second main benefit, and adversarial processes, broadly speaking, do not accord with this underlying relational framework; co-investors in a single utility-scale renewable project frequently become entangled in a carbon credit offtake agreement, joint regulatory reporting obligations[32] and ESG-linked financing covenants. Their relationships, it appears, are thus rendered detailed to some extent.[33] Litigation and arbitration generate a record, expose internal communications, and cast one party as the losing side; dynamics that cause lasting damage to exactly the commercial relationships on which project continuity depends.[34] Mediation, by contrast, is a confidential, interest-based process whose function is not to allocate fault but to assist parties in identifying outcomes that serve their underlying commercial interests.[35] Confidentiality is enforceable under the institutional rules of leading ADR bodies and under the domestic law of most major jurisdictions; Kenya is no exception to this fundamental right to privacy, [36] making mediation the only mechanism capable of resolving a dispute without generating a public record that complicates ongoing collaboration. Longitudinal empirical research in the energy sector confirms that parties resolving disputes through mediation report materially higher levels of post-dispute commercial engagement than those who proceeded to arbitration or litigation. A finding with direct implications for a sector where the pipeline of investable low-carbon projects remains insufficient relative to net-zero targets, preserving those relationships is a structural necessity, not a courtesy.[37]

The third advantage and the most technically distinctive in the context of carbon and ESG disputes is the ability of parties to appoint mediators with genuine

[32] Essi Ryymin and Outi Tahvonen, 'Navigating the Relational Dynamics of Carbon-Smart Urban Green Infrastructure (UGI) Projects' (2025) 9(7) Urban Science 242.
[33] Camilo Benítez-Ávila and others, 'Interplay of Relational and Contractual Governance in Public-Private Partnerships: The Mediating Role of Relational Norms, Trust and Partners' Contribution' (2018) 36(3).
[34] International Journal of Project Management 429.
[35] Ibid.
[36] Constitution of Kenya, art 31.
[37] Avri Eitan and Itay Fischhendler, 'The Architecture of Inter-Community Partnerships in Renewable Energy: The Role of Climate Intermediaries' (2022) 44 Policy Studies 572.

domain expertise in climate science, carbon accounting, and environmental measurement, reporting, and verification. Carbon credit disputes frequently turn not only on contested legal principles but also on contested scientific methodology: whether the polluter pay principle has been enforced, whether a project's baseline emissions were accurately calculated in accordance with IPCC guidelines,[38] whether permanence and additionality requirements were satisfied under Verra's Verified Carbon Standard or the Gold Standard, or whether leakage deductions were appropriately applied.[39] These are questions at the intersection of law, atmospheric physics, ecological science, and quantitative environmental modelling, a terrain on which courts and arbitral tribunals, absolutely reliant on adversarial deployed expert evidence, are structurally ill-equipped to navigate with confidence. Mediation disrupts this dynamic: the SIMC's[40] Green Mediation Protocol and analogous frameworks at the ICC[41] and PCA[42] permit the appointment of co-mediators combining legal expertise with scientific credentials in climate modelling or environmental assessment, enabling a technically informed, facilitated process that no adjudicative mechanism can replicate.[43] The International Bar Association has specifically recommended technically qualified neutral evaluators for climate-related commercial disputes precisely because the factual matrix of such disputes exceeds the conventional competencies of the legal profession.

The stated advantages are not merely conceptual. Instead, they demonstrate that the international dispute resolution community acknowledges that carbon and climate-related commercial disputes exhibit peculiar attributes. This suggests these demand bespoke procedural responses. Such specifics are often overlooked, and therefore, in this context, the question of mediation's suitability for carbon

[38] Intergovernmental Panel on Climate Change, *Climate Change 2023: Synthesis Report* (IPCC 2023) 15.
[39] Bíziková L, 'On Route to Climate Justice: The Greta Effect on International Commercial Arbitration' (2022) 39(1) Journal of International Arbitration 79.
[40] Singapore International Mediation Centre, '*SIMC Mediation Rules*' (SIMC 2025).
[41] International Chamber of Commerce, '*Mediation Rules*' (2014) art 5(1).
[42] Permanent Court of Arbitration, '*Optional Rules for Conciliation*' (1996) art 4(1).
[43] Pei-Fen Tsai, Istianah Zainal Asyiqin and M Fabian Akbar, 'Strategic Arbitration for Climate Change and Green Economy Dispute Resolution' (2025) 660 E3S Web of Conferences.

and environmental, social, and governance (ESG) disputes is no longer critical.[44] Rather, the present task involves shaping institutional frameworks, refining contractual drafting, and establishing professional training within this fluid domain, to get mediation operating with maximum effectiveness.

4.0. Mediation as a Catalyst for Environmental and Social Governance (ESG)

The relationship between mediation and ESG governance extends well beyond its utility as a cost-effective dispute-resolution mechanism. At a deeper level, mediation embodies the principles of *procedural justice,* which encompasses the social-psychological theory, developed extensively by Tyler and his collaborators, which holds that individuals and communities evaluate the legitimacy of outcomes not only by their substantive content but by the fairness of the process through which those outcomes were reached.[45] Four procedural criteria are central to this framework: voice, neutrality, respectful treatment, and trustworthiness of the decision-maker.[46] Mediation, structurally, satisfies all four. It gives participants a direct and meaningful opportunity to articulate their interests, submits the process to a neutral facilitator, operates without the hierarchical formalism[47] of judicial proceedings, and generates outcomes through consensual agreement rather than imposed adjudication and decisions.[48] In doing so, it offers something that litigation and arbitration, by design, cannot: a dispute resolution process whose legitimacy is grounded in participation rather than authority.

---

[44] Hon Kariuki Muigua (n 8).

[45] B Bradford, 'Policing and Social Identity: Procedural Justice, Inclusion and Cooperation between Police and Public' (2014) 24 *Policing & Society* 22.

[46] Maghami M, 'New Global Governance and Overarching Frameworks: Reimagining the Rule of Law, AI and ESG for the Betterment of the World' (2025) 33(1) The Denning Law Journal 177.

[47] Nancy A Welsh, 'Making Deals in Court-Connected Mediation: What's Justice Got to Do with It?' (2001) 79 Washington University Law Review 787.

[48] Ranjan DasGupta and Arup Roy, 'Firm Environmental, Social, Governance and Financial Performance Relationship Contradictions: Insights from Institutional Environment Mediation' (2023) 189 Technological Forecasting and Social Change 122341 <https://doi.org/10.1016/j.techfore.2023.122341> accessed 27 March 2026.

The significance of voice in mediation cannot be overstated in the ESG context. Adversarial litigation constructs a binary in which one party wins and the other loses, and in which the voices of affected local communities are filtered through the evidentiary rules and standing requirements of formal proceedings. This architecture is ill-suited to the multidimensional character of ESG disputes, which rarely reduce to a single legal question and frequently involve asymmetric power relationships between corporate defendants and the communities,[49] workers, or environmental interests that bear the costs of corporate conduct. Mediation disaggregates the binary.[50] By enabling affected parties to articulate their interests directly rather than through legal representatives translating those interests into pleadable causes of action, mediation surfaces the full range of concerns that ESG accountability and integrity demands, concerns about livelihoods, cultural heritage, environmental health, and intergenerational equity that are routinely invisible in adversarial proceedings.[51]

For corporations, the implications are equally significant. The adoption of mediation as an ESG tool, embedded in supply chain agreements, community impact frameworks, and sustainability-linked financing structures, signals a commitment to accountability that extends beyond legal compliance into the domain of sustainable business culture.[52] A corporation that resolves ESG disputes through mediation rather than litigation demonstrates, in procedurally concrete terms, that it regards affected stakeholders as legitimate participants in governance rather than obstacles to be managed through adversarial attrition.[53] This reorientation carries material implications for corporate reputation, investor confidence, and regulatory relationships at a time when ESG disclosure frameworks, from the TCFD to the GRI Universal Standards, increasingly require

---

[49] UN High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights* (HR/PUB/11/04, 2011) Principle 29.

[50] OECD, *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* (OECD Publishing 2023) 5.

[51] Kariuki Muigua, '
Infusing Environmental, Social, and Governance Tenets into Arbitration and Alternative Dispute Resolution
' (2024).

[52] Global Reporting Initiative, *GRI 1: Foundation 2021* (GRI 2021) 2.4.

[53] Task Force on Climate-related Financial Disclosures, *2021 Status Report* (FSB 2021) 1.

companies to demonstrate the quality and authenticity of their stakeholder engagement.[54]

The convergence of international human rights law, ESG regulatory frameworks, and institutional dispute resolution practice points in a consistent direction. The IFC Performance Standards and the Equator Principles require project finance borrowers to establish accessible grievance mechanisms as a condition of lending, standards that position mediation-style processes not as optional best practice but as baseline compliance requirements.[13] The growth of climate litigation, increasingly directed at corporate ESG commitments rather than state conduct,[12] is among the most significant legal developments globally. The legal community addresses these risks due to its fascination with ESG accountability, which appears in structured, participatory dialogue. The process involves mediation, properly designed and institutionally supported, and the procedurally legitimate outcomes reflect the idea of the connection between substantive justice and long-term relationships. The excellent and sustainable business culture contains various elements of governance, such as accountability and dialogue, as well as the principles, for instance, legitimacy and the long-term relationships on which a genuinely sustainable business culture depends.[55]

5.0. Technical Interventions: Integrating Mediation with Carbon Monitoring (MRV)

In the field of commercial conflict, carbon-accumulation disputes are located in an uncommon position; their format is legal, but their substance is scientific. The questions that generate them include whether a project's baseline emissions were correctly modelled, whether monitoring data accurately capture sequestration volumes, and whether leakage and permanence adjustments were applied in

[54] Kariuki Muigua, 'Linking Alternative Dispute Resolution (ADR) and Environmental, Social and Governance (ESG) Tenets for Sustainable Development' (2023) <https://kmco.co.ke/publications/linking-alternative-dispute-resolution-adr-and-environmental-social-and-governance-esg-tenets-for-sustainable-development/> accessed 28 March 2026.

[55] International Dispute Resolution Chambers, 'Using Mediation to Resolve ESG Disputes' (International Dispute Resolution Chambers Blog) <idrchambers.com> accessed 29 March 2026.

conformity with IPCC-approved methodologies. These are not questions of contractual interpretation in any conventional sense.[56] They are questions of measurement, inference, and scientific methodology, and they arise with increasing frequency as the voluntary carbon market scales and scrutiny of credited emissions intensifies.[57] The adversarial resolution of such disputes through competing expert witnesses is structurally inadequate, where the underlying disagreement is methodological[58] rather than factual, the presentation of conflicting expert opinions to a generalist adjudicator produces not clarity but a choice between opacities.[59]

This mechanism, designed to disaggregate disputes, is among the most significant frameworks in carbon accounting.[60] The system separates scientific questions due to a focus on the way expert determination resolves technical complexities. The process involves a rigorous examination of monitoring plans, and the interpretation of satellite-derived deforestation data reflects the parties' idea of the connection between scientific verification and commercial obligations. The robust and systematic resolution method contains various elements of assessment, such as third-party methodology, as well as the principles, for instance, interest-based discussion and contractual adjustments.[61]

The emergence of blockchain-based MRV systems and AI-assisted remote sensing data is transforming the evidentiary infrastructure available to neutral experts and mediators in carbon accounting disputes. Distributed ledger technology, applied to carbon registry architecture, creates immutable, timestamped records

[56] Ibid.
[57] Michael Mehling and others, 'The Role of Expert Determination in Carbon Credit Disputes' (2024) 18(2) Carbon & Climate Law Review 85, 92.
[58] United Nations Environment Programme, 'Scrutiny and Integrity in the Voluntary Carbon Market: A Legal Perspective' (UNEP Report, November 2024) 45.
[59] Lord Justice Haddon-Cave, 'The Judiciary and the Challenge of Science' (2025) 44(1) Civil Justice Quarterly 12, 15.
[60] Claudio Detotto and others, 'Experts and arbitration outcomes: Insights from public procurement contract disputes' (2024) 77(4) Kyklos 922, 930.
[61] Shyavara Aisyah, 'Konstruksi Hukum Peran Ahli dalam Forum Alternatif Penyelesaian Sengketa (APS) di Indonesia' (2025) 2(3) Jembatan Hukum: Kajian ilmu Hukum, Sosial dan Administrasi Negara 48.

of credit issuance, transfer, and retirement that are resistant to post-hoc manipulation and independently verifiable by any party to the dispute.[62] Initiatives such as the World Bank's Climate Warehouse and the Climate Chain Coalition's interoperability frameworks are developing the technical standards through which blockchain-recorded MRV data can function as a trusted evidentiary baseline in settlement proceedings.[63]

These technological developments are particularly consequential for mixed-mode ADR processes, and specifically for mediation-arbitration (Med-Arb), a hybrid mechanism in which the same neutral, or a panel operating under a structured protocol, first facilitates mediated settlement and, if agreement is not reached, transitions to a binding arbitral determination.[64] In the Med-Arb model, blockchain and remote sensing data serve a dual function: they provide the factual foundation for the mediator's facilitated dialogue in the first phase, reducing the scope of scientific disagreement and concentrating the parties' attention on commercially negotiable matters; and they constitute the evidentiary record upon which the arbitrator relies if the process transitions to adjudication. The Gold Standard's digital MRV requirements and the Climate Chain Coalition's recommended protocols for blockchain-recorded credit data are increasingly designed with this dual-use function in mind, anticipating that the same data infrastructure that supports project monitoring will, in the event of dispute, support structured ADR.[65] The integration of blockchain and AI in ADR processes thus represents not merely a technical convenience but a structural evolution in the relationship between carbon market infrastructure and dispute resolution, one

---

[62] Seong-Kyu Kim and Jun-Ho Huh, 'Blockchain of Carbon Trading for UN Sustainable Development Goals' (2020) 12(10) Sustainability 4021 <https://doi.org/10.3390/su12104021> accessed 30 March 2026.

[63] Segaran BR and others, 'Efficient ML technique in blockchain-based solution in carbon credit for mitigating greenwashing' (2025) 6 Discover Sustainability.

[64] Pelumi Oladokun and others, 'Enhancing carbon markets with fintech innovations: The role of artificial intelligence and blockchain' (2024) World Journal of Advanced Research and Reviews.

[65] Fan Yang and others, 'Blockchain and Machine Learning in the Green Economy: Pioneering Carbon Neutrality Through Innovative Trading Technologies' (2025) 72 IEEE Transactions on Engineering Management 1117.

that is likely to become a baseline expectation of sophisticated project finance documentation within the current decade.[66]

6.0. Case Studies: Successful Mediated Outcomes in Kenya and Global Natural Resource Projects

The theoretical advantage of mediation in natural resource disputes is better illustrated not by abstract argument, but through evidence of how it has worked in practice. The case of the *Ogiek*, adjudicated by the African Court on Human and Peoples' Rights, is among the most significant juridical victories globally. The *Ogiek* of Kenya are indigenous forest-dwellers who, for a long time, had been the target of repeated forced evictions from the *Mau Forest Complex* by successive governments, finally, came to the African Court on Human and Peoples' Rights following exhaustion of domestic remedies.[67] The Court's landmark 2017 judgment and the 2022 reparations order awarding the community the equivalent of approximately USD 1.3 million in material and moral damages[68] represent a significant juridical victory.[69] Yet they also illustrate the limits of adjudication as a mechanism for durable resolution,[70] by late 2024, Kenya had still failed to implement the judgments in full, continuing evictions had been documented, and the African Court was compelled to set a formal compliance deadline.[71] The *Ogiek* case is important not because litigation failed but because it demonstrates that adjudicated outcomes without a parallel structure for participatory implementation invariably stall. The procedural justice deficits that mediation is designed to address did not disappear with the judgment; they persisted through the implementation phase, precisely because the adversarial process had not equipped the parties with the relational and institutional architecture needed to give effect to the Court's orders.

---

[66] Ibid.

[67] *African Commission on Human and Peoples' Rights v Republic of Kenya* (merits) (2017) 2 AfCLR 9.

[68] Ibid.

[69] K Kamuvaka, 'The Ogiek Reparations Order: A Milestone for Indigenous Peoples' Rights in Africa?' (2023) 7(1) African Human Rights Law Journal 112.

[70] L Claridge, 'The Ogiek Case: Why Winning in Court is Only the Beginning' (Minority Rights Group International, 25 October 2024) minorityrights.org accessed 30 March 2026.

[71] J Gilbert and B Sing'Oei, 'Litigation as a Tool for Land Rights: Lessons from the Ogiek Case' (2024) 15(2) Journal of Human Rights Practice 345.

A closely analogous pattern characterises the *Endorois* case, in which the African Commission on Human and Peoples' Rights found in 2010 that Kenya had violated the rights of the Endorois community by evicting them from their ancestral lands around Lake Bogoria in the 1970s to create a tourist game reserve.[72] The Commission's decision was accompanied by a recommendation that the parties engage in dialogue for the effective implementation of its orders, with the Commission offering its good offices to facilitate that process.[73] The mediation-adjacent mechanism that eventually produced partial progress was not litigation but negotiation: the *Endorois* Welfare Council ultimately secured a Memorandum of Understanding with the Kenya Wildlife Service,[74] Baringo County Council, and the Kenyan Commission to UNESCO that recognised Lake Bogoria as *Endorois* ancestral land and embedded the community in land management structures.[75] Full restitution remains outstanding, but the incremental gains achieved through structured dialogue exceeded what enforcement of the formal judgment alone had produced in a decade.[76]

The Great Bear Rainforest Agreement in British Columbia[77] stands as the most frequently cited exemplar of multi-party consensus-building in environmental conflict resolution. The dispute that preceded it was structural and decades-long: from the 1990s, First Nations communities, environmental organisations, logging companies, and the provincial government were locked in a conflict over old-growth forestry on 6.4 million hectares of coastal temperate rainforest that generated international boycott campaigns, commercial disruption, and failed

[72] *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya* (2009) AHRLR 75 (ACHPR 2009).
[73] *Endorois Welfare Council v Cabinet Secretary Ministry of Environment, Climate Change and Forestry* [2026] KEELC 432 (KLR).
[74] S Nasirumbi, 'Revisiting the Endorois and Ogiek cases: is the African human rights mechanism a toothless bulldog?' (2020) 4 African Human Rights Yearbook 497.
[75] Home R and Kabata F, 'Turning fish soup back into fish: The wicked problem of African Community land rights' (2018) 9(2) Journal of Sustainable Development Law and Policy 1.
[76] Korir Sing'Oei A and Shepherd J, ''In Land We Trust': The Endorois' Communication and the Quest for Indigenous Peoples' Rights in Africa' (2010) 16 Buffalo Human Rights Law Review 57.
[77] *Great Bear Rainforest (Forest Management) Act* SBC 2016, c 14.

government-led planning processes. The decisive shift came when environmental groups and forestry companies moved away from adversarial confrontation and toward a facilitated two-tier negotiation process, in which mediators helped parties form small working groups, convene outside formal settings, and develop the relational trust necessary to produce shared recommendations on land use.

The 2006 Great Bear Rainforest Agreements resulted in protection for 85% of the forest area, recognition of First Nations governments as co-management authorities, and a $120 million conservation finance mechanism that aligned ecological, cultural, and economic interests in a single framework. It is widely regarded as the most complex multi-stakeholder conservation agreement ever reached, and, critically, it was an outcome that no court could have ordered.

The Snake River dam conflict in the Pacific Northwest of the United States[78] offers a further illustration of the utility of court-connected mediation in disputes that involve competing environmental, economic, and sovereign interests. Following decades of adversarial litigation over the impact of four federal dams on endangered salmon populations and tribal treaty rights, the Biden administration and plaintiff parties entered a formal mediation process in 2021, pausing litigation to allow time for a negotiated solution.[79] The resulting framework committed over $1 billion in habitat restoration and alternative energy investment, and produced a joint statement of collaboration between the US hydropower industry and environmental conservation associations, an outcome that the Stanford University Uncommon Dialogue process,[80] which facilitated a parallel multi-stakeholder engagement over two and a half years, had helped to make institutionally

[78] White House Council on Environmental Quality, 'Memorandum of Understanding between the United States and the Six Sovereigns for Columbia Basin Salmon Recovery' (14 December 2023), < whitehouse.gov> accessed 28 March 2026.
[79] US Department of the Interior, 'Tribal Circumstances Analysis: Historic and Ongoing Impacts of Federal Dams on the Columbia River Basin Tribes' (June 2024) <doi.gov> accessed 28 March 2026.
[80] Stanford Woods Institute for the Environment, 'Joint Statement of Collaboration on U.S. Hydropower: Uncommon Dialogue' (Stanford University, October 2020) <stanford.edu> accessed 28 March 2026.

conceivable.[81] Taken together, these cases suggest a consistent finding where natural resource disputes involve multiple sovereign or community stakeholders, long-term management obligations, and contested technical and cultural claims, mediated consensus-building consistently produces more durable and more comprehensively just outcomes than adversarial adjudication not because courts are unimportant, but because courts, acting alone, cannot build the relational and institutional infrastructure on which implementation depends.[82]

7. Challenges and Limitations of the Mediation Model

The advantages of mediation canvassed in this article do not exhaust its analytical picture. First, the confidentiality that protects parties in commercial mediation can, in the ESG context, function as a shield for greenwashing,[83] where a multinational corporation settles carbon performance claims in private; the absence of any public record forecloses the regulatory scrutiny and reputational accountability that the disclosure frameworks underpinning sustainable capital markets depend upon.[84] Second, and relatedly, power asymmetry between large corporate parties and local or indigenous communities raises legitimate concerns about whether consent to settlement is genuinely free or merely the product of resource disparity and attrition, a concern Owen Fiss[85] identified as the foundational critique of private settlement as a substitute for public adjudication. Third, mediated agreements, unlike court judgments and arbitral awards, generate no binding precedent. Each settlement resolves the immediate dispute without contributing to the normative development of carbon market law or clarifying the obligations that ESG commitments impose, an accountability deficit that the enforcement of mediation agreements under the 2019 Singapore

[81] 'Trump Revokes Presidential Memorandum on Columbia River Basin Salmon Restoration' (2025) 169(7) American Journal of International Law 412 (noting the revocation of the September 2023 MOU on 12 June 2025).
[82] Michael C Blumm and others, 'The Columbia River Salmon Litigation: A History of Legal Failure and Political Stalemate' (2024) 54(2) Environmental Law 285, 310–315.
[83] Chiara Macchi, *Business, Human Rights and the Environment: The Role of the European Union* (Springer 2022) 145–150.
[84] Ibid.
[85] Owen M Fiss, 'Against Settlement' (1984) 93(6) Yale Law Journal 1073.

Convention on Mediation[86] has partially but incompletely addressed. These limitations do not undermine the case for mediation.[87] They define the conditions under which it must be designed and supervised to function with integrity.[88]

8.0. The Future: Institutionalising ADR in National Carbon Frameworks

The most significant recent development in the institutionalisation of ADR within carbon trading legal frameworks was the enactment of Kenya's Climate Change (Amendment) Act, No. 9 of 2023, which is a subsidiary law that represents, to date, the most explicit legislative embedding of mediation as a first-instance dispute resolution requirement in any national carbon market regime. Section 23H[89] of the Act mandates that disputes arising under land-based carbon projects be submitted to the dispute resolution mechanism contained in the applicable Community Development Agreement within thirty days of being lodged,[90] while non-land-based disputes are directed to ADR in the first instance, before any referral to the National Environmental Tribunal is permissible.[91]

The global relevance of Kenya's Climate Change Act[92] is much greater than it is in terms of implementing a national climate law. As amended during a period when

[86] Menno T Kamminga, 'Company-Community Conflict Resolution: The Role of Mediation' in Jernej Letnar Černič and Nicolas Carrillo-Santarelli (eds), *The Business and Human Rights Landscape: Moving Forward, Looking Back* (Cambridge University Press 2017) 321.

[87] Menno T Kamminga, 'Company-Community Conflict Resolution: The Role of Mediation' in Jernej Letnar Černič and Nicolas Carrillo-Santarelli (eds), *The Business and Human Rights Landscape: Moving Forward, Looking Back* (Cambridge University Press 2017) 321.

[88] Danny Busch, 'The Future of the EU Sustainable Finance Disclosure Regulation' (2024) 15(1) European Company and Financial Law Review 1.

[89] Climate Change Act 2016 (as amended by the Climate Change (Amendment) Act 2023).

[90] Joseph Ouma Rasowo and others, 'Towards environmental sustainability: further evidences from decarbonization projects in Kenya's Blue Economy' (2024) 11 Frontiers in Marine Science 1239862.

[91] Benjamin Mutuku Kinyili, 'Forests for Prosperity: Integrating Carbon Markets with Rural Livelihoods in Kenya' (2025) 14(6) Agriculture, Forestry and Fisheries <https://doi.org/10.11648/j.aff.20251406.13> accessed 29 March 2026.

[92] Climate Change Act 2016 (as amended by the Climate Change (Amendment) Act 2023).

Kenya was set to host the first Africa Climate Summit in September 2023,[93] the Act is specifically referenced in relation to Article 6 of the Paris Agreement. [94]This sends a signal to the wider voluntary carbon markets that jurisdictions with some of the most active development of carbon trading legal regimes view Alternative Dispute Resolution (ADR) not simply as a negotiable contractual term, but rather as a key component of how they will govern their emerging markets. [95]While there have been legitimate criticisms of the Act, including that the required thirty days to resolve a dispute may not be sufficient time to address the technical complexities of many disputes, and secondly, that by mandating that all ADR referrals must go through a domestic tribunal, this creates rigidities around jurisdiction that could discourage foreign project finance investors from investing internationally. [96]

These are design deficiencies capable of legislative refinement; however, not objections to the underlying principle. Read alongside the SIMC's Green Mediation Protocol, the ICC's updated mediation rules, and the EU CS3D's grievance mechanism requirements,[97] the Kenya model is part of an emerging international consensus that the integrity and scalability of carbon markets depend, in part, on dispute resolution systems that are fast, accessible, and technically competent, qualities that ADR, properly institutionalised and supported by the enforcement architecture of the Singapore Convention on Mediation,[98] is uniquely positioned to deliver.

---

[93] TripleOKLaw LLP, 'Climate Change (Amendment) Act 2023 – An Overview' (4 July 2024).

[94] Bernard Baimwera and D Wangombe, 'A Reflection on the Role of Carbon Markets in Climate Governance in Kenya' (2018) 10 International Journal of Critical Accounting 70.

[95] Nunow A, 'Carbon Trading in Kenya: Challenges and Opportunities' (2025) 5(2) Journal of Environment 1.

[96] Meissy Janet Naeku, 'Climate Change Governance: An Analysis of the Climate Change Legal Regime in Kenya' (2020) 22(3) Environmental Law Review 170.

[97] Clarice Wambua, 'The Kenya Climate Change Act 2016: Emerging Lessons from a Pioneer Law' (2019) 13(4) Carbon & Climate Law Review 257.

[98] Okoli P and Abraham E, 'In Search of a Sustainable Future: A Comparative Assessment of Climate Change Regimes in Nigeria and Kenya' (2024) 33(2) Review of European, Comparative & International Environmental Law 276 <https://doi.org/10.1111/reel.12545> accessed 29 March 2026.

9.0. Conclusion: Redesigning Conflict for a Low-Carbon Future

This central proposition is the thesis of this article: the institutional paralysis driven by adversaries in carbon and ESG markets is not an inherent characteristic of the sector, but a design failure, one that the mediator, properly institutionalised, is capable of remedying. Where litigation closes off, mediation opens up. Where arbitration settles, mediation designs. The cost efficiencies, relational continuity, technical specialism or procedural legitimacy that mediation delivers are not just incidental virtues; they are structural requirements for collaborative governance to occur in low-carbon infrastructure. What remains to be determined is not whether we will redesign conflict resolution to accommodate a low-carbon future but how urgently institutional arrangements, regulators and practitioners will act to match the scale of transition itself.

Bibliography

[1] Rasowo, J Nyonje, B Olendi, R Orina, P and Odongo, S, 'Towards environmental sustainability: further evidence from decarbonisation projects in Kenya's Blue Economy' (2024) Frontiers in Marine Science https://doi.org/10.3389/fmars.2024.1239862

[2] Borras S and Franco J, 'The challenge of locating land-based climate change mitigation and adaptation politics within a social justice perspective: towards an idea of agrarian climate justice' (2018) Third World Quarterly 39 1308–1325.

[3] Dittmer J, 'Valuing the Subterranean: The tunnels of Gibraltar in war and in peace' (2026) Environment and Planning C: Politics and Space (forthcoming).

[4] Brink E, Falla A and Boyd E, 'The law of the four poles: legal pluralism and resistance in climate adaptation' (2025) Law & Society Review.

[5] Souradip Pathak, Jenia Mukherjee, Amrita Sen and Anuradha Choudry, 'Whose habitat? Exploring human tiger conflict in the riskscapes of the Indian Sundarbans' (2025) 32 Journal of Political Ecology 3.

[6] Temper L and others, 'Movements shaping climate futures: A systematic mapping of protests against fossil fuel and low-carbon energy projects' (2020) 15(12) Environ Res Lett 123004, 9 https://doi.org/10.1088/1748-9326/abc197 accessed 26 March 2026.

[7] Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016). [8] N Sasaki, 'Addressing Scandals and Greenwashing in Carbon Offset Markets: A Framework for Reform' (2025) Global Transitions https://doi.org/10.1016/j.glt.2025.06.003.

[9] L Temper and others, 'Movements Shaping Climate Futures: A Systematic Mapping of Protests against Fossil Fuel and Low-Carbon Energy Projects' (2020) 15 Environmental Research Letters. [10] B Mackey and others, 'Net Carbon Accounting and Reporting Are a Barrier to Understanding the Mitigation Value

of Forest Protection in Developed Countries' (2022) 17 Environmental Research Letters https://doi.org/10.1088/1748-9326/ac661b.

[11] UNFCCC, 'What is REDD+?' (UNFCCC) https://unfccc.int/topics/land-use/workstreams/redd/what-is-redd accessed 27 March 2026.

[12] R Alusiola, J Schilling and P Klär, 'REDD+ Conflict: Understanding the Pathways between Forest Projects and Social Conflict' (2021) Forests

[13] Masieyi & 2 others v Chebet & another [2025] KEELC 7439 (KLR).

[14] B Sovacool et al, 'Dispossessed by Decarbonisation: Reducing Vulnerability, Injustice, and Inequality in the Lived Experience of Low-Carbon Pathways' (2020) 137 World Development 105116.

[15] J A E Nielsen, K Stavrianakis and Z Morrison, 'Community Acceptance and Social Impacts of Carbon Capture, Utilisation and Storage Projects: A Systematic Meta-Narrative Literature Review' (2022) 17 PLoS ONE.

[16] Ellis Adjei Adams, Luke Juran and Idowu Ajibade, '"Spaces of Exclusion" in Community Water Governance: A Feminist Political Ecology of Gender and Participation in Malawi's Urban Water User Associations' (2018) 95 Geoforum 133.

[17] Lambert Schneider and others, 'Double Counting and the Paris Agreement Rulebook' (2019) 366 Science 180.

[18] Thales A P West, B Bomfim and Barbara K Haya, 'Methodological Issues with Deforestation Baselines. Compromise the Integrity of Carbon Offsets from REDD+' (2024) Global Environmental Change.

[19] L Schneider, A Kollmuss and M Lazarus, 'Addressing the Risk of Double Counting Emission Reductions under the UNFCCC' (2015) 131 Climatic Change 473.

[20] Jingye Lyu, Ming-Gui Cao, Kuang Wu, Haifeng Li and G Mohi-ud-din, 'Price Volatility in the Carbon Market in China' (2020) 255 Journal of Cleaner Production 120171.

21] George Nyanaro, 'Navigating Carbon Offset Projects and Trading Disputes in Africa: Assessing the Role of Appropriate Dispute Resolution Mechanisms' (31 May 2021) SSRN accessed 24 March 2026.

[22] Riccardo Torelli, Federica Balluchi and A Lazzini, 'Greenwashing and Environmental Communication: Effects on Stakeholders' Perceptions' (2019) Socially Responsible Investment eJournal, SSRN accessed 24 March 2026.

[23] Anand M Osuri and others, 'Greater Stability of Carbon Capture in Species-Rich Natural Forests Compared to Species-Poor Plantations' (2020) 15 Environmental Research Letters 034011.

[24] Grayson Badgley and others, 'California's Forest Carbon Offsets Buffer Pool is Severely Undercapitalized' (2022) 5 Frontiers in Forests and Global Change 930426.

[25] Charlotte Hicks and others, 'The Relationship between Biodiversity, Carbon Storage and the Provision of Other Ecosystem Services: Critical Review for the Forestry Component of the International Climate Fund' (UNEP-WCMC 2014) accessed 30 March 2026.

[26] Julia Ingram, Damian Maye and Mark Reed, 'Contestations in the Emerging Soil-Based Carbon Economy: Towards a Research Agenda' (2025) 20 Sustainability Science 597 accessed 30 March 2026.

[27] Theo Stanley and George Cusworth, 'Legitimacy in the Making: Conservatism, Additionality and Natural Capital Accreditation in the UK's Woodland Carbon Code' (2025) 8 Environment and Planning E: Nature and Space 2018 accessed 30 March 2026.

[29] Alana Knaster, 'Resolving Conflicts Over Climate Change Solutions: Making the Case for Mediation' (2010) 10 Pepperdine Dispute Resolution Law Journal 465.

[30] Emily Davies, 'Recommendations for Effectively Resolving Climate Change Disputes Against Investors' (2020) 14 Carbon and Climate Law Review 49.

[31] Jessica Crow and Wolf von Kumberg, 'The Development of Investor-State Mediation and Its Future in Supporting Energy Transition' (2022) 88(3) Arbitration: The International Journal of Arbitration, Mediation and Dispute Management 426-436.

[32] Adetoyese Latilo, Hendrickx Oreoluwa Imosemi and Queenette Anuoluwapo Imosemi, 'Contractual Challenges in Renewable Energy Projects: The Role of ADR in Managing Risks and Disputes' (2024) 2(1) Global Journal of Advanced Research and Reviews.

[33] Wenxue Lu, Lihan Zhang and Jing Pan, 'Identification and Analyses of Hidden Transaction Costs in Project Dispute Resolutions' (2015) 33 International Journal of Project Management 711. [34] Anatole Boute, 'Investor Compensation for Oil and Gas Phase Out Decisions: Aligning Valuation Methods to Decarbonization' (2023) 23 Climate Policy 1087.

[35] Marco Hacon, Alejandro Barcena and Margaret Kadiri, 'Low-Carbon Energy Infrastructure: Where Affective Relations Co-Evolve with Governmentality Projects' (2025) Geoforum.

[36] Essi Ryymin and Outi Tahvonen, 'Navigating the Relational Dynamics of Carbon-Smart Urban Green Infrastructure (UGI) Projects' (2025) 9(7) Urban Science 242.

[37] Camilo Benítez-Ávila and others, 'Interplay of Relational and Contractual Governance in Public-Private Partnerships: The Mediating Role of Relational Norms, Trust and Partners' Contribution' (2018) 36(3) International Journal of Project Management 429

[39] Constitution of Kenya, art 31.

[40] Avri Eitan and Itay Fischhendler, 'The Architecture of Inter-Community Partnerships in Renewable Energy: The Role of Climate Intermediaries' (2022) 44 Policy Studies 572

[41] Intergovernmental Panel on Climate Change, Climate Change 2023: Synthesis Report (IPCC 2023) 15.

[42] Bíziková L, 'On Route to Climate Justice: The Greta Effect on International Commercial Arbitration' (2022) 39(1) Journal of International Arbitration 79

[43] Singapore International Mediation Centre, 'SIMC Mediation Rules' (SIMC 2025). [44] International Chamber of Commerce, 'Mediation Rules' (2014) art 5(1).

[45] Permanent Court of Arbitration, 'Optional Rules for Conciliation' (1996) art 4(1).

[46] Pei-Fen Tsai, Istianah Zainal Asyiqin and M Fabian Akbar, 'Strategic Arbitration for Climate Change and Green Economy Dispute Resolution' (2025) 660 E3S Web of Conferences

[47] Hon Kariuki Muigua (n 8). [48] B Bradford, 'Policing and Social Identity: Procedural Justice, Inclusion and Cooperation between Police and Public' (2014) 24 Policing & Society 22

[49] Maghami M, 'New Global Governance and Overarching Frameworks: Reimagining the Rule of Law, AI and ESG for the Betterment of the World' (2025) 33(1) The Denning Law Journal 177. [50] Nancy A Welsh, 'Making Deals in Court-Connected Mediation: What's Justice Got to Do with It?' (2001) 79 Washington University Law Review 787.

[51] Ranjan DasGupta and Arup Roy, 'Firm Environmental, Social, Governance and Financial Performance Relationship Contradictions: Insights from Institutional Environment Mediation' (2023) 189 Technological Forecasting and Social Change 122341 accessed 27 March 2026.

[52] Integrity Next GmbH, 'UN Guiding Principles on Business and Human Rights' (Integrity Next, 2026) https://www.integritynext.com/resources/glossary/un-guiding-principles-on-business-and-human-rights accessed 27 March 2026.

[54] UN High Commissioner for Human Rights, Guiding Principles on Business and Human Rights (HR/PUB/11/04, 2011) Principle 29. [55] OECD, OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (OECD Publishing 2023) 5.

[56] Kariuki Muigua, ' Infusing Environmental, Social, and Governance Tenets into Arbitration and Alternative Dispute Resolution ' (2024).

[57] Global Reporting Initiative, GRI 1: Foundation 2021 (GRI 2021) 2.4.

[58] Task Force on Climate-related Financial Disclosures, 2021 Status Report (FSB 2021) 1. [59] Kariuki Muigua, 'Linking Alternative Dispute Resolution (ADR) and Environmental, Social and Governance (ESG) Tenets for Sustainable Development' (2023) accessed 28 March 2026

[60] International Dispute Resolution Chambers, 'Using Mediation to Resolve ESG Disputes' (International Dispute Resolution Chambers Blog) accessed 31 March 2026.

[62] Michael Mehling and others, 'The Role of Expert Determination in Carbon Credit Disputes' (2024) 18(2) Carbon & Climate Law Review 85, 92.

[63] United Nations Environment Programme, 'Scrutiny and Integrity in the Voluntary Carbon Market: A Legal Perspective' (UNEP Report, November 2024) 45.

[64] Lord Justice Haddon-Cave, 'The Judiciary and the Challenge of Science' (2025) 44(1) Civil Justice Quarterly 12, 15.

[65] Nicolas Bouchardie, 'The Case for the Technical Assistant to the Arbitral Tribunal' (2025) 42(4) Journal of International Arbitration 503.

[66] Claudio Detotto and others, 'Experts and arbitration outcomes: Insights from public procurement contract disputes' (2024) 77(4) Kyklos 922, 930.

[67] Shyavara Aisyah, 'Konstruksi Hukum Peran Ahli dalam Forum Alternatif Penyelesaian Sengketa (APS) di Indonesia' (2025) 2(3) Jembatan Hukum: Kajian ilmu Hukum, Sosial dan Administrasi Negara 48.

[68] Seong-Kyu Kim and Jun-Ho Huh, 'Blockchain of Carbon Trading for UN Sustainable Development Goals' (2020) 12(10) Sustainability 4021 accessed 31 March 2026.

[69] Segaran BR and others, 'Efficient ML technique in blockchain-based solution in carbon credit for mitigating greenwashing' (2025) 6 Discover Sustainability.

[70] Alotaibi E and others, 'Blockchain-Driven Carbon Accountability in Supply Chains' (2024) Sustainability accessed 30 March 2026.

[71] Pelumi Oladokun and others, 'Enhancing carbon markets with fintech innovations: The role of artificial intelligence and blockchain' (2024) World Journal of Advanced Research and Reviews.

[72] Fan Yang and others, 'Blockchain and Machine Learning in the Green Economy: Pioneering Carbon Neutrality Through Innovative Trading Technologies' (2025) 72 IEEE Transactions on Engineering Management 1117.

[74] African Commission on Human and Peoples' Rights v Republic of Kenya (merits) (2017) 2 AfCLR 9.

[76] K Kamuvaka, 'The Ogiek Reparations Order: A Milestone for Indigenous Peoples' Rights in Africa?' (2023) 7(1) African Human Rights Law Journal 112.

[77] L Claridge, 'The Ogiek Case: Why Winning in Court is Only the Beginning' (Minority Rights Group International, 25 October 2024) minorityrights.org accessed 30 March 2026.

[78] J Gilbert and B Sing'Oei, 'Litigation as a Tool for Land Rights: Lessons from the Ogiek Case' (2024) 15(2) Journal of Human Rights Practice 345.

[79] Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya (2009) AHRLR 75 (ACHPR 2009).

[80] Endorois Welfare Council v Cabinet Secretary Ministry of Environment, Climate Change and Forestry [2026] KEELC 432 (KLR).

[81] S Nasirumbi, 'Revisiting the Endorois and Ogiek cases: is the African human rights mechanism a toothless bulldog?' (2020) 4 African Human Rights Yearbook 497.

[82] Home R and Kabata F, 'Turning fish soup back into fish: The wicked problem of African Community land rights' (2018) 9(2) Journal of Sustainable Development Law and Policy 1.

[83] Korir Sing'Oei A and Shepherd J, ''In Land We Trust': The Endorois' Communication and the Quest for Indigenous Peoples' Rights in Africa' (2010) 16 Buffalo Human Rights Law Review 57. [84] Great Bear Rainforest (Forest Management) Act SBC 2016, c 14.

[85] White House Council on Environmental Quality, 'Memorandum of Understanding between the United States and the Six Sovereigns for Columbia Basin Salmon Recovery' (14 December 2023),< whitehouse.gov> accessed 28 March 2026.

[86] US Department of the Interior, 'Tribal Circumstances Analysis: Historic and Ongoing Impacts of Federal Dams on the Columbia River Basin Tribes' (June 2024) accessed 28 March 2026.

[87] Stanford Woods Institute for the Environment, 'Joint Statement of Collaboration on U.S. Hydropower: Uncommon Dialogue' (Stanford University, October 2020) accessed 28 March 2026.

[88] 'Trump Revokes Presidential Memorandum on Columbia River Basin Salmon Restoration' (2025) 169(7) American Journal of International Law 412 (noting the revocation of the September 2023 MOU on 12 June 2025).

[89] Michael C Blumm and others, 'The Columbia River Salmon Litigation: A History of Legal Failure and Political Stalemate' (2024) 54(2) Environmental Law 285, 310–315.

[90] Chiara Macchi, Business, Human Rights and the Environment: The Role of the European Union (Springer 2022) 145–150.

[92] Owen M Fiss, 'Against Settlement' (1984) 93(6) Yale Law Journal 1073.

[93] Menno T Kamminga, 'Company-Community Conflict Resolution: The Role of Mediation' in Jernej Letnar Černič and Nicolas Carrillo-Santarelli (eds), The Business and Human Rights Landscape: Moving Forward, Looking Back (Cambridge University Press 2017) 321.

[94] Menno T Kamminga, 'Company-Community Conflict Resolution: The Role of Mediation' in Jernej Letnar Černič and Nicolas Carrillo-Santarelli (eds), The Business and Human Rights Landscape: Moving Forward, Looking Back (Cambridge University Press 2017) 321.

[95] Danny Busch, 'The Future of the EU Sustainable Finance Disclosure Regulation' (2024) 15(1) European Company and Financial Law Review 1.

[96] Climate Change Act 2016 (as amended by the Climate Change (Amendment) Act 2023).

[97] Nunow AA, 'Carbon Trading in Kenya: Challenges and Opportunities' (2025) 5(2) Journal of Environment 1 accessed 29 March 2026.

[98] Benjamin Mutuku Kinyili, 'Forests for Prosperity: Integrating Carbon Markets with Rural Livelihoods in Kenya' (2025) 14(6) Agriculture, Forestry and Fisheries accessed 29 March 2026.

[99] Joseph Ouma Rasowo and others, 'Towards environmental sustainability: further evidences from decarbonization projects in Kenya's Blue Economy' (2024) 11 Frontiers in Marine Science 1239862.

[100] Climate Change Act 2016 (as amended by the Climate Change (Amendment) Act 2023).

[101] TripleOKLaw LLP, 'Climate Change (Amendment) Act 2023 – An Overview' (4 July 2024).

[102] Bernard Baimwera and D Wangombe, 'A Reflection on the Role of Carbon Markets in Climate Governance in Kenya' (2018) 10 International Journal of Critical Accounting 70.

[103] Nunow A, 'Carbon Trading in Kenya: Challenges and Opportunities' (2025) 5(2) Journal of Environment 1. [104] Meissy Janet Naeku, 'Climate Change Governance: An Analysis of the Climate Change Legal Regime in Kenya' (2020) 22(3) Environmental Law Review 170.

[105] Clarice Wambua, 'The Kenya Climate Change Act 2016: Emerging Lessons From a Pioneer Law' (2019) 13(4) Carbon & Climate Law Review 257.

[106] Okoli P and Abraham E, 'In Search of a Sustainable Future: A Comparative Assessment of Climate Change Regimes in Nigeria and Kenya' (2024) 33(2) Review of European, Comparative & International Environmental Law 276 accessed 29 March 2026.

Call for Submissions

Alternative Dispute Resolution is a peer-reviewed/refereed publication of the Chartered Institute of Arbitrators, Kenya, engineered and devoted to provide a platform and window for relevant and timely issues related to Alternative Dispute Resolution mechanisms to our ever growing readership.

Alternative Dispute Resolution welcomes and encourages submission of articles focusing on general, economic and political issues affecting alternative dispute resolution as the preferred dispute resolution settlement mechanisms.

Articles should be sent as a word document, to the editor (editor@ciarbkenya.org/ c.c.: admin@kmco.co.ke) and a copy to the editorial group (adrjournal@ciarbkenya.org). Articles should ideally be around 3,500 – 5,000 words although special articles of up to a maximum of 7,500 words could be considered.

Articles should be sent to the editor to reach him not later than Thursday 8th October, 2026. Articles received after this date may not be considered for the next issue.

Other guidelines for contributors are listed at the end of each publication. The Editor Board receives and considers each article but does not guarantee publication.

Guidelines for Submissions

The Editorial Board welcomes and encourages submission of articles within the following acceptable framework.

Each submission: -

should be written in English

should conform to international standards and must be one's original Writing

should ideally be between 3,500 and 5,000 words although in special cases certain articles with not more than 7,500 words could be considered

should include the author'(s) name and contacts details

should include footnotes numbered

must be relevant and accurate

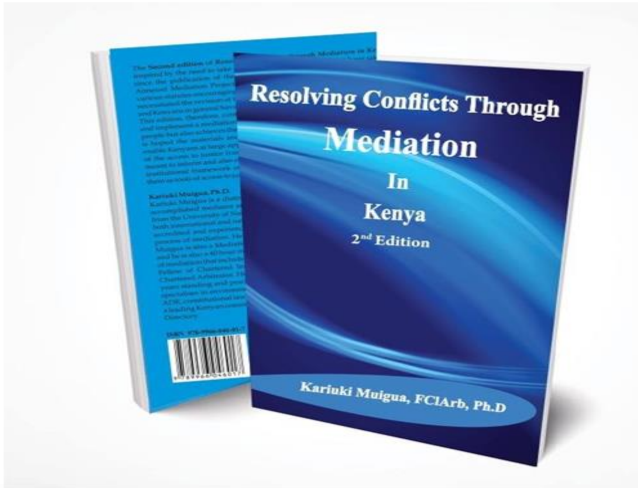
should be on current issues and developments.

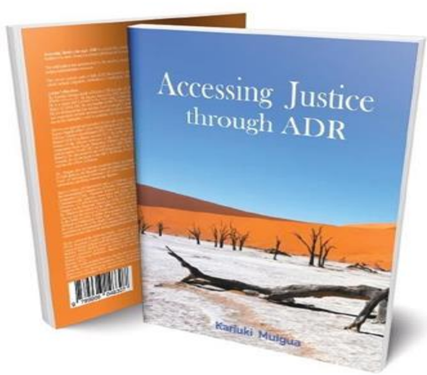

Securing Lasting Peace and
Justice in Africa
through
Appropriate Dispute Resolution
Kariuki Muigua
Securing Lasting Peace and Justice in Africa through Appropriate Dispute Resolution | Kariuki Muigua | 2025

Recent Conflict Management books by Kenyan authors

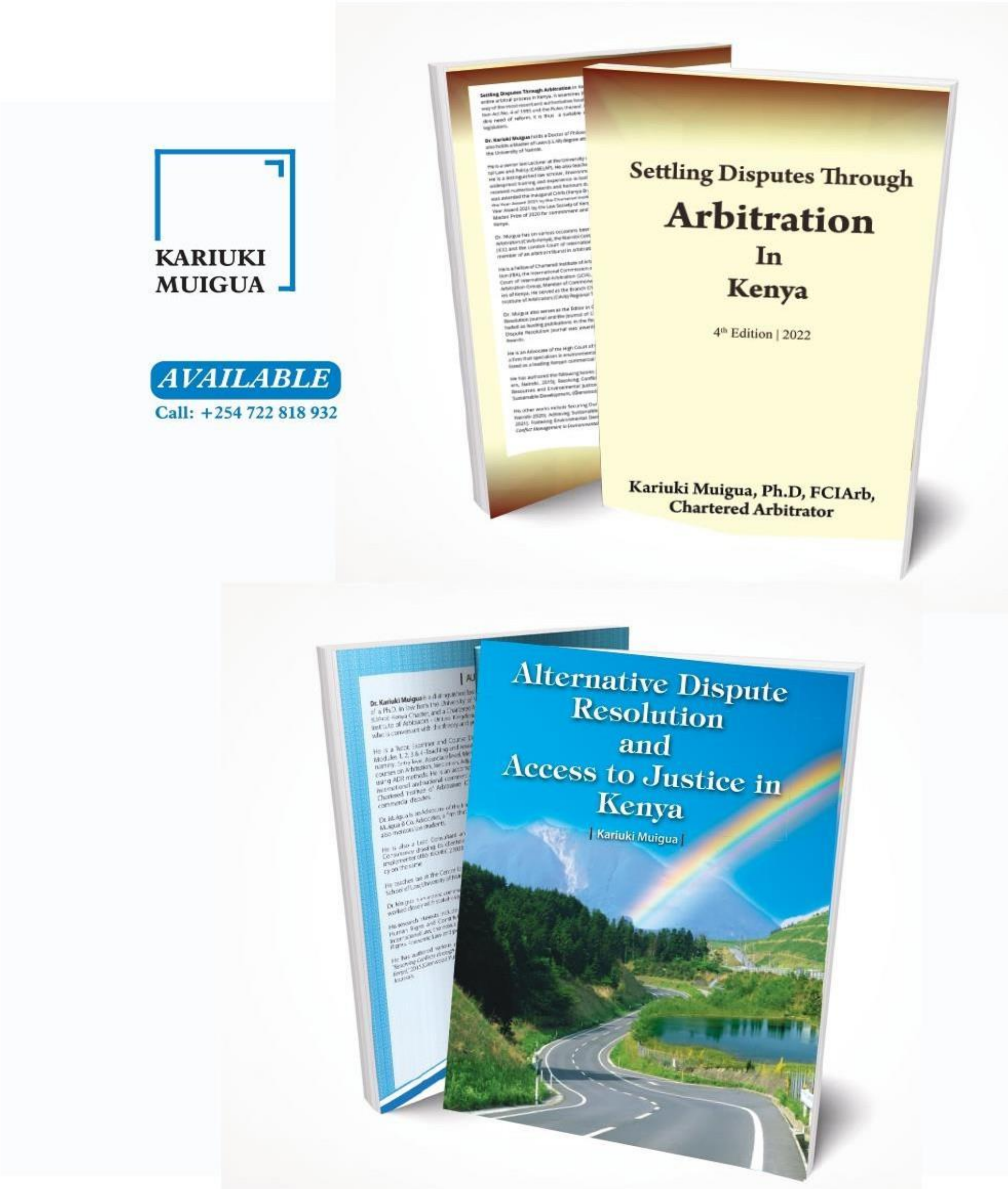
KARIUKI MUIGUA

AVAILABLE
Call: +254 722 818 932





Recent Conflict Management books by Kenyan authors



Recent Conflict Management books by Kenyan authors

ADR | ALTERNATIVE DISPUTE RESOLUTION

The Alternative Dispute Resolution Journal aims to provide original in-depth investigations of both theoretical and practical questions on international arbitration and ADR.

It covers all areas of international dispute settlement, including commercial and investment arbitration and all other modes of ADR, such as negotiation, adjudication, expert determination, and mediation. It captures all topics in relation to both private and public law, including public international law, and welcomes articles that take a variety of approaches including doctrinal, historical, comparative, sociolegal, philosophical, political analysis and economic analysis of law.

The ADR Journal is an essential reading for anyone involved in dispute resolution – whether as judge, international arbitrator, party representative, mediator, adjudicator, corporate advisor, government official, in-house, academic, or graduate/post-graduate student.

We welcome scholarly articles aiming to contribute to and advance the academic debate, as well as articles aiming to provide analysis of developments in case law, legislation, and practice in the field of Alternative Dispute Resolution.

For Marketing opportunities, contact:
marketing@ciarbkenya.org

Chartered Institute of Arbitrators, Kenya,
Flamingo Towers, Mara Road, Upper Hill, Mezzanine 1A
P.O. Box 50163-00200, Nairobi
Cell: +254 734-652205 or +254 722-200496
Email: info@ciarbkenya.org Website: www.ciarbkenya.org

ISSN 3078-2120

CIArb
evolving to resolve
Kenya Branch

3078-2120