ciarb.
Kenya Branch

Effective Resolution For
A Better World

ADR COMPASS

Mapping Every Voice.
Navigating Every Profession

ADR COMPASS

About
ADR Compass

ADR Compass is a multidisciplinary magazine designed to bring together voices, insights, and innovations from every profession from the arts to science, from construction to counseling, from law to agriculture. Our goal is to create a platform where knowledge flows freely across industries, fostering understanding, inspiration, and collaboration.

We believe that every profession holds unique wisdom. By sharing stories, practices, and perspectives from across the vocational spectrum, ADR Compass aims to chart a course toward a more connected and informed world of work.

What We're Looking
To Archive Optimization?

We welcome contributions from professionals, practitioners,academics, and emerging voices in all fields. Specifically,

we're interested in

Insightful Articles –
Thought pieces, case studies, and reflections from your area of expertise.

Interviews –
Conversations with changemakers, unsung heroes, or everyday
professionals doing meaningful work.

Innovations & Trends –
Reports on new tools, methods, or breakthroughs in your profession.

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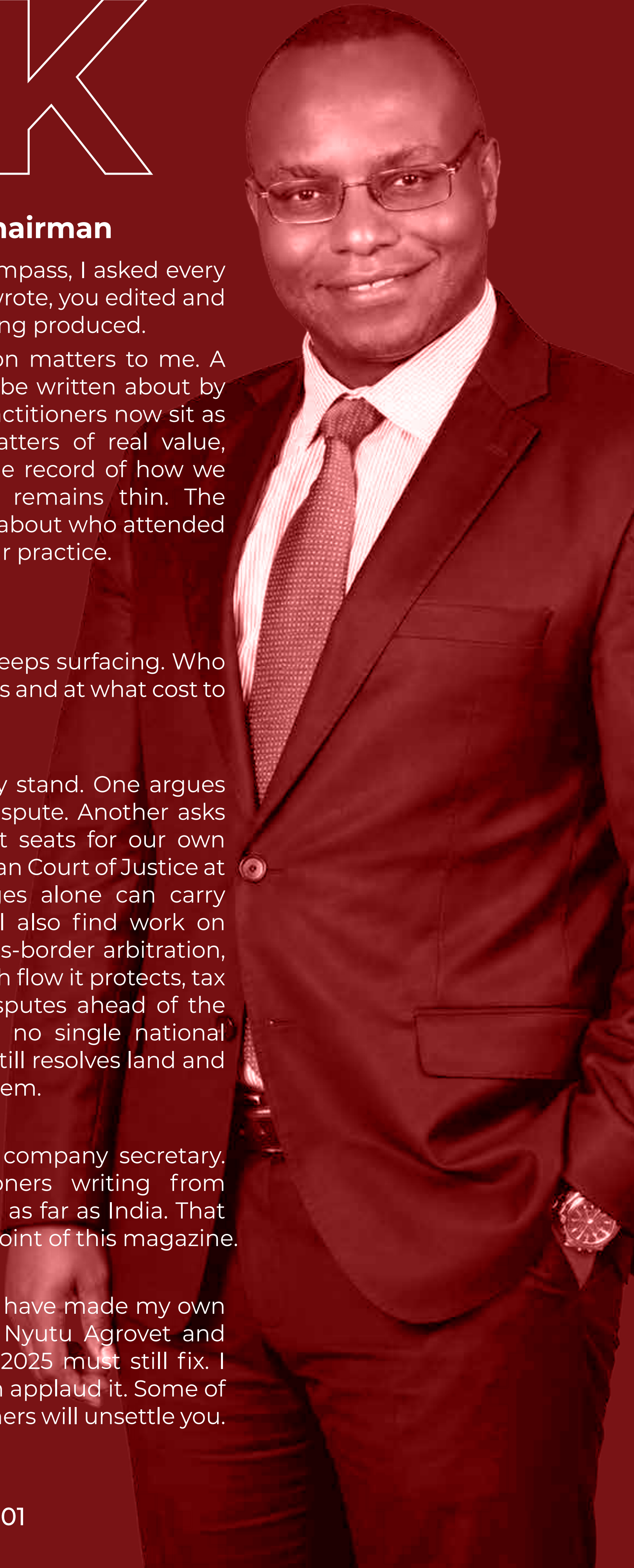
ADR COMPASS

CHAIRMAN'S DESK



A Message from the CIArb Kenya Chairman

When we put out the first issue of the ADR Compass, I asked every member to walk with us. Many of you did. You wrote, you edited and you shared. This second issue is what that walking produced.

I want to be honest about why this publication matters to me. A profession that does not write about itself will be written about by others. Our practice has grown fast. Kenyan practitioners now sit as arbitrators, adjudicators and mediators in matters of real value, across sectors that shape the economy. Yet the record of how we think, how we reason and how we resolve remains thin. The Compass exists to fix that. It is not a newsletter about who attended what. It is a record of the thinking that drives our practice.

What this issue carries

Read these pages together and one question keeps surfacing. Who resolves East African disputes, under whose rules and at what cost to the parties who carry the risk?

Our contributors answer it from wherever they stand. One argues that enforcement, not the award, is the real dispute. Another asks why our own cities should not be the default seats for our own commercial matters. A third takes the East African Court of Justice at its word and asks whether a bench of judges alone can carry technical disputes of this complexity. You will also find work on artificial intelligence and confidentiality in cross-border arbitration, statutory construction adjudication and the cash flow it protects, tax ADR in Uganda, sports and entertainment disputes ahead of the AFCON 2027 Pamoja bid, data disputes that no single national regulator can reach, and the elders' circle that still resolves land and family matters long before any court hears of them.

Look at who wrote them. A civil engineer. A company secretary. Quantity surveyors and advocates. Practitioners writing from Kampala, and comparative lessons drawn from as far as India. That mix is not an accident of submissions. It is the point of this magazine.

They do not all agree with one another. Good. I have made my own argument in these pages about finality after Nyutu Agrovet and about what the Arbitration (Amendment) Bill 2025 must still fix. I would rather members test that argument than applaud it. Some of the pieces here will settle a question for you. Others will unsettle you. Both outcomes are useful.

I thank every contributor who submitted, every reviewer who read carefully and the editorial team that held the line on quality when it would have been easier to publish anything and move on. Publications do not appear. People build them, often at night, often unpaid.

The Branch has been busy

Since our last issue we signed a Memorandum of Understanding with the Law Society of Kenya, hosted senior leadership from Ciarb London on a courtesy call to our Patron, the Hon. Lady Chief Justice Martha K. Koome, and joined the Judiciary and the LSK in training a second cohort of accredited mediators. Our webinars have kept running, most recently on in-house and cross-border realities. We congratulate Dudley Ochiel and Wanza Mavuti on completing the Diploma in International Arbitration.

Institutions are built this way. Slowly, in rooms that rarely make the news.

The road to Diani

In October, CIArb Kenya and the African Arbitration Association host the Joint Annual Conference, TAKUKA 2026, in Diani from 5 to 9 October. The theme is Africa Decides: Sovereignty, Innovation and the Future of Dispute Resolution.

Read that theme again, because it is a claim and not a slogan. Africa produces disputes of enormous commercial consequence. Who decides them? Under whose rules, at which seat, funded by whom and interpreted through whose jurisprudence? These questions are not academic. They determine whether an African party walks into a hearing as an equal or as a guest.

Diani gives us a room in which to answer. Policy makers, Practitioners, institutions, judicial officers, funders, academics and business leaders will sit in that room together for five days. The week opens with the Young AfAA and CIArb Kenya YMG Conference, which tells you exactly where we think the future of this profession sits. The conversations that begin in these pages should arrive in Diani sharpened.

Why conversation is the work

Some people treat conversation as the soft part of professional life, the bit that happens before the real work. I disagree. Rules change because somebody framed a question well enough that the drafters could not ignore it. Practice changes because a practitioner wrote down what went wrong and let the rest of us learn from it. Institutions change because members refused to accept that a thing must remain as it has always been.

That is the theory of change behind this magazine and behind our conference. We talk, we write, we test each other's reasoning and then we move. The Compass is where the conversation is recorded. Diani is where it becomes position.

So read this issue properly. Disagree with it in writing. Send us the piece you have been meaning to write since the last time you promised yourself you would. Bring the argument to Diani and defend it.

We are shaping the future of ADR in this region, and we are doing it in the open. Walk with us.

Prof. Kenneth Wyne Mutuma, MBS, C.Arb

Chairman, Chartered Institute of Arbitrators (Kenya Branch)

CIArb Kenya Branch · Nairobi, August 2026

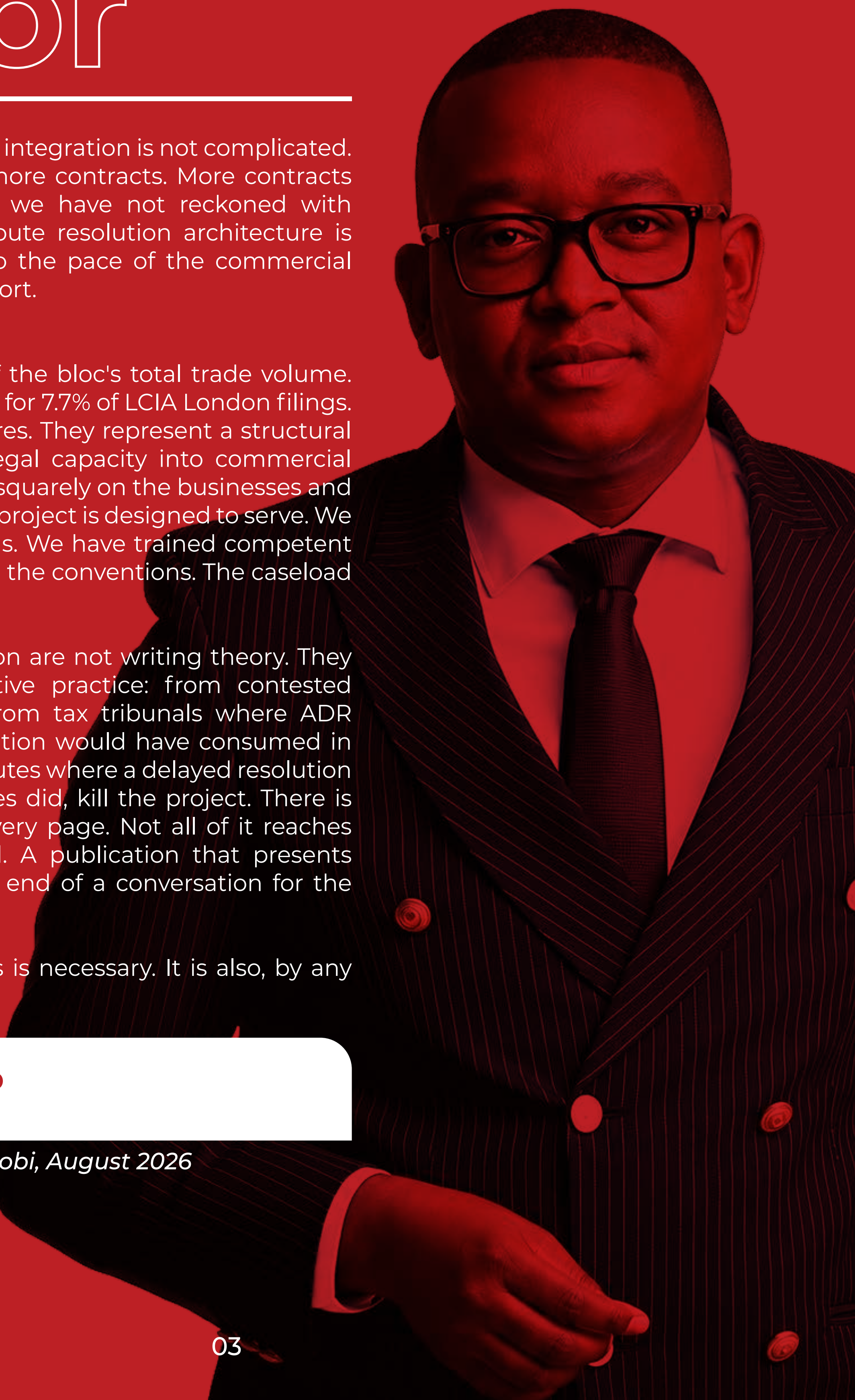
Note From The Editor

The arithmetic of East African integration is not complicated. More trade corridors mean more contracts. More contracts mean more disputes. What we have not reckoned with honestly is whether our dispute resolution architecture is growing at anything close to the pace of the commercial activity it is supposed to support.
It is not.

Intra-EAC trade sits at 12% of the bloc's total trade volume. Kenyan parties alone account for 7.7% of LCIA London filings. These are not incidental figures. They represent a structural failure to convert genuine legal capacity into commercial confidence and the costs fall squarely on the businesses and investors the EAC integration project is designed to serve. We have built credible institutions. We have trained competent practitioners. We have signed the conventions. The caseload does not reflect any of it.

The contributors in this edition are not writing theory. They are writing from inside active practice: from contested enforcement proceedings, from tax tribunals where ADR resolved in weeks what litigation would have consumed in years, from construction disputes where a delayed resolution could have and in some cases did, kill the project. There is operational experience on every page. Not all of it reaches the same conclusions. Good. A publication that presents consensus has mistaken the end of a conversation for the beginning of one.

The conversation that follows is necessary. It is also, by any honest measure, overdue.



David Onsare, FCIArb
Editor, ADR Compass

CIArb Kenya Branch · Nairobi, August 2026

Meet Our New

Board Of Directors

Chairman

Prof. Kenneth Wyne Mutuma, MBS, C.Arb

Prof. Kenneth has a distinguished extensive career specializing in Commercial Law, International Dispute Resolution, Corporate Governance and Construction Adjudication. He holds lead international credentials as a Chartered Arbitrator and Fellow of the CIArb London Institute. He has built an exceptional practice, marked by prestigious industry accolades including being named Africa Arbitrator of the year 2025, and is a two-time recipient of the LSK ADR Practitioner of the Year Award in 2023 & 2025.

Vice Chairman

David Njuguna Njoroge, FCIArb

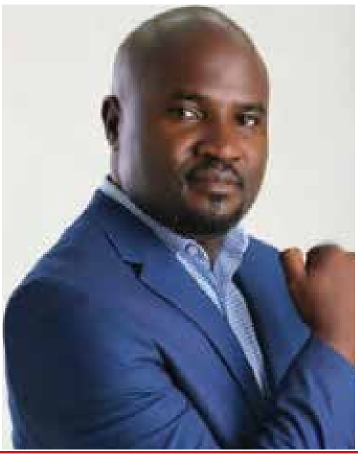
David Njuguna Njoroge, is an Advocate of the High Court of Kenya of Fifteen Years in good standing, an Arbitrator Fellow (FCIArb) of the Chartered Institute of Arbitrators, a MAC Accredited Certified Professional Mediator (CPM), and a Certified Secretary (CS) by KASNEB. David is the Senior Partner and Head of Dispute Resolution at Njuguna & Njuguna Co. Advocates, a boutique law firm based in Embu. He is an Adjunct Lecturer at the University of Embu, School of Law.

Hon. Treasurer

James Ngotho Kariuki, FCIArb

James is a distinguished ADR practitioner and advocate of the High Court of Kenya, currently practicing in the Dispute Resolution Practice Group at DLA Piper Africa, Kenya (IKM Advocates). He is a Fellow of the Chartered Institute of Arbitrators (UK) (FCIArb), the Malaysian Institute of Arbitrators (FMCiArb). He also holds a Master of Laws (LLM) in International Investment and Trade Law.

Hon. Secretary



Eng. Howard M'mayi, MCIArb

Howard is a Civil Engineer passionate in matters infrastructure planning, financing and development with over 19 years of experience in design and construction of Roads, water and energy projects. He is the vice president of IEK, and has interacted first-hand with handling infrastructure project planning, packaging, design, financial arrangements, and construction contracts including management of contractual disputes in infrastructure contracts.

Ass. Secretary

Christine Mwikali, LLM, MCIArb

Christine Mwikali Musau is a governance professional with experience in commercial and construction arbitration, stakeholder engagement, and institutional development. She is passionate about dispute resolution, leadership, and advancing professional excellence through service, integrity, and innovation.

Chair Legal Subcommitee

Peter Njeru, OGW, FCIArb

Peter Njeru is a Partner at Kaplan & Stratton Advocates, specializing in commercial litigation and arbitration with over 15 years of experience. Fellow of CIArb, Peter is a recognized arbitrator in commercial, construction, and tech-related disputes. He was awarded the Order of the Grand Warrior (OGW) by Kenya's President in 2022 for his service.

Chair, Education & Training

David Onsare, FCIArb

David Onsare is a Partner and Head of Dispute Resolution at Maina & Onsare Partners Advocates LLP. He chairs the CIArb-Kenya Young Members Group and was named Highly Impactful Young ADR Practitioner in 2024. David acts as counsel and arbitrator in complex domestic and cross-border disputes, especially in energy, mining, and telecoms.

Director

Jacqueline Waihenya, C.Arb, FCIArb

Jacqueline is an Advocate of the High Court of Kenya and Managing Partner of JWM Law LLP with specialized interests in commercial law. She is an ADR Expert, being a Chartered Arbitrator of the Chartered Institute of Arbitrators (C.ARB/FCIArb). Jacqueline is also a Governance Expert being a Fellow Certified Secretary Kenya and an accredited Governance Auditor at the Institute of Certified Secretaries (ICS) where she is the Vice Chairman.

Director

Prof. Kariuki Muigwe, SC, OGW, C.Arb

Prof. Kariuki Muigua, SC, is a distinguished law scholar, Environmental Consultant, an accomplished mediator, a Chartered arbitrator, a holder of 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.

Director

Charles Kanjama SC, FCIArb

SC Charles Kanjama is a Senior Counsel and Managing Partner at Muma & Kanjama Advocates with over 20 years of experience in commercial law, tax law, constitutional law, and legal ethics. He is a Fellow of the Chartered Institute of Arbitrators Kenya (FCIArb), a Certified Professional Mediator, and a Certified Secretary.

Director

Kananu Mutea, MCIArb

Kananu Mutea is a trained arbitrator, mediator, and negotiator with expertise in dispute resolution and risk advisory. She is the Founding Partner of KM Associates and Course Correct Consulting, advising on risk, restructuring, contracts, and property disputes.

Director

Eng. Odhiambo Aluoch, FCIArb

Eng. Aluoch has Masters of Science Degree in Construction Law and Dispute Resolution from Leeds Beckett University of UK, BSc. in Civil Engineering from the University of Nairobi. Engineer has a wealth of knowledge in matters of project designs and construction supervision, contract administration, construction and commercial disputes resolutions, claims presentation among other trainings..

Director

David Kaggwa, FCIArb

David Kaggwa is an International Arbitrator and Construction lawyer with over 18 years experience in representing clients in resolving complex disputes involving major Infrastructure and Construction projects. David is the Chairman of the Chartered Institute of Arbitrators – Uganda, a Senior Partner at Kaggwa & Kaggwa Advocates, a law firm specializing in International Construction Law and International Arbitration.

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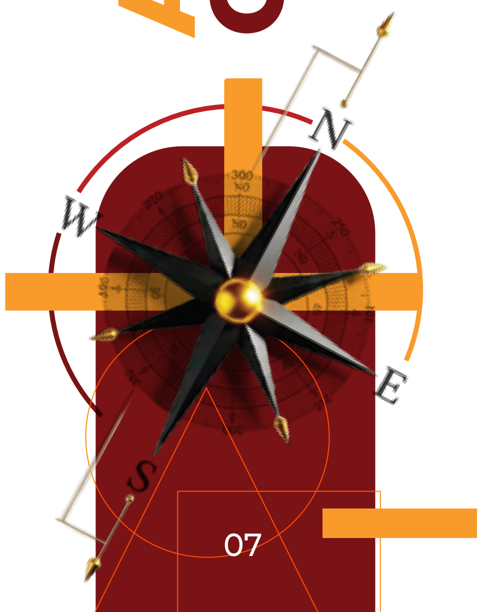

African Arbitration Association | ciarb. Kenya Branch

Present

TAKUKA 2026

CONFERENCE

AFRICA DECIDES:

Sovereignty, Innovation & the Future of Dispute Resolution

Diamond Leisure Lodge
Diani, South Coast, Kenya

9:00am To 3:00pm EAT
(East Africa Time)

CIArb Kenya Branch · Nairobi, April 2026
Registration@**takukaafaaciarbke**.com

Save The Date

5th to 9th October 2026

Takuka 2026 Conference Africa Decides.

African Arbitration Association | ciarb. Kenya Branch

Present

SCAN TO REGISTER

MONDAY 5 OCTOBER 2026	Young AfAA & Ciarb Kenya YMG Conference
TUESDAY 6 OCTOBER 2026	Who Decides? The Sovereignty Question In African Dispute Resolution
WEDNESDAY 7 OCTOBER 2026	Deciding Differently: Innovation, Technology And The Tools Of Tomorrow
THURSDAY 8 OCTOBER 2026	Deciding Together: Access To Justice AndThe African Adr Ecosystem

KIAC · ciarb. Rwanda Branch · Liebscher Dispute Management · MPOFU Law Chambers · MIAC · ciarb. Nigeria Branch

SOAS SADRC · ICAMA International Centre for Arbitration & Mediation Abuja · ciarb. Uganda Chapter · ACC Group · ciarb. Zambia Branch · Resolvia ADR · Promise of Leadership Institute

AfAA | ciarb. Kenya Branch

Present

TAKUKA 2026 CONFERENCE

AFRICA DECIDES:

Sovereignty, Innovation & the Future of Dispute Resolution

Diamond Leisure Lodge
Diani, South Coast, Kenya

5th to 9th October 2026

SCAN TO REGISTER

EARLY BIRD TICKETS ON SALE NOW

Members of AfAA	Kes. 33,250
Members of CIArb	Kes. 33,250
Young AfAA & CIArb YMG	Kes. 19,950
Non- Members	Kes. 39,900
Full-Time Student	Kes. 10,640

DEADLINE | 31ST AUGUST, 2026

Host@takukaafaaciarbke.com

AfAA | ciarb. Kenya Branch

Present

TAKUKA 2026 CONFERENCE

AFRICA DECIDES:

Sovereignty, Innovation & the Future of Dispute Resolution

Diamond Leisure Lodge
Diani, South Coast, Kenya

5th to 9th October 2026

EARLY BIRD TICKETS ON SALE NOW

Members of AfAA	$250.00
Members of CIArb	$250.00
Young AfAA & CIArb YMG	$150.00
Non- Members	$300.00
Full-Time Student	$80.00

DEADLINE | 31ST AUGUST, 2026

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Kenya Branch

Congrarulation!

Dudley Ochiel, FCIArb & Wanza Mavuti, MCIArb,

on successfully completing the Diploma in International Arbitration offered by the Africa Arbitration Academy.

Your commitment to excellence in arbitration is truly commendable. We are proud to celebrate this milestone with you and wish you continued success in your professional journey.

Ciarb Kenya

ciarb
Kenya Branch

ciarb
Young Members
Group, Kenya

CALL FOR ARTICLES

The TAKUKA Conference 2026

Date: 5th to 9th October 2026
Venue: Diamond Leisure Beach & Golf Resort, Diani, Kenya
Theme: Africa Decides: Sovereignty, Innovation & the Future of Dispute Resolution

Background

The TAKUKA 2026 Conference, jointly hosted by the Chartered Institute of Arbitrators (Kenya Branch) and the African Arbitration Association (AfAA), is set to become one of the most significant Alternative Dispute Resolution (ADR) gatherings on the African continent.

The conference brings together judges, arbitrators, mediators, adjudicators, legal practitioners, academics, policymakers, corporate counsel, government representatives, financiers, technologists, construction professionals and business leaders, providing a platform to shape the future of dispute resolution in Africa.

The conference will examine how Africa can strengthen its institutions, modernise dispute resolution systems, promote investment confidence and position itself as a preferred destination for resolving commercial and investment disputes. Further information about the conference is available at **https://ciarbkenya.org/takuka-2026-conference/**.

Call for Articles

The Conference invites the submission of original, unpublished articles addressing the Conference theme or any related sub-theme. Accepted articles will be considered for publication in a special issue of the ADR Compass, subject to the editorial and peer-review process.

Submission Guidelines

- The article shall not exceed 800 words.
- Article must be written in English.
- Submissions must be in Word format.
- The article must be original, unpublished and not under consideration for publication elsewhere.
- Articles must be prepared for anonymous (blind) peer review. The article must not contain the author's name, institutional affiliation, email address, acknowledgements, photos or any other identifying information. Such information should be contained in the body of the email.
- By submitting an article, authors confirm that the work is their original contribution and consent to its consideration for publication in a special issue of the ADR Compass, subject to the editorial and peer-review process.

Submission Deadline

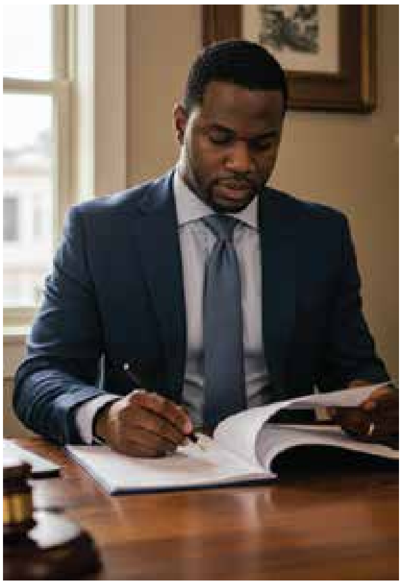
Authors are requested to submit their articles by **2nd September 2026**. Late submissions shall not be accepted under any circumstances.

Submissions should be sent by email to **compass.submission@ciarbkenya.org** with the subject line:**"TAKUKA 2026 Call for Articles – [Author's Name]"**

For any enquiries regarding the Call for articles, please contact **ymg@ciarbkenya.org**

Effective Resolution For A Better World



Mission

To be the leading cross professional Magazine that bridges the gap between disciplines, elevates diverse vocational voices, and foster a culture of mutual respect, lifelong learning and innovation.

Vision

To authentically share and celebrate diverse professional stories, fostering curiosity, empathy & dialogue across fields. We aim to inspire growth by providing a plstfoam for both experts and emerging voices to document and explore the world of work.

Values

- Promoting excellence in dispute resolution through insightful well-researched content.
- Upholding professionalism and ethical standards reflecting of CIArb's global reputation.
- Fostering dialogue and diversity by amplifying voice from across legal and ADR communities.
- Encouraging continous learning and innovation in the evolving field arbitration.

Cross-disciplinary Collaborations

Stories or projects where different professions intersect to solve real-world problems.

Profiles & Features

In-depth looks at industries or individuals shaping the future of work.

Advice Columns

Career, skill-building, or mentorship advice from experienced professionals.

Whether you're a doctor, artist, engineer, farmer, teacher, therapist, entrepreneur, coder, or tradesperson – your voice belongs here.

Reclaiming Finality as the Soul of Arbitration Post-Nyutu Agrovet in Kenya

Prof. Wyne Kenneth Mutuma C.Arb, FCIArb.

Finality is the soul of arbitration. Parties prefer arbitration to other forms of dispute resolution because they want their dispute resolved once and decisively, by a tribunal they had a hand in constituting. The arbitral award should signify a cul-de-sac, not the beginning of a peregrination through court corridors. The essence of arbitration risks being lost the moment the process turns litigious.

The Nyutu Agrovet Limited v Airtel Networks Kenya Limited [2019] KESC 11 decision is perhaps the most consequential decision on arbitration in Kenya. The decision, at the Supreme Court, might have been intended to open a narrow door for appeals against High Court decisions setting aside arbitral awards. In practice, however, it has opened loopholes that threaten to convert arbitration into an expensive prelude to protracted litigation. What was designed as a narrow judicial safety valve for manifestly unjust outcomes has, in its operation, undermined the very principles it was meant to protect.

Finality in arbitration is a foundational principle of arbitration. The UNCITRAL Model Law, from which most domestic arbitration legislation borrows significantly, recognises finality as a foundational value and restricts court intervention to a closed list of grounds: incapacity, invalidity of the arbitration agreement, lack of proper notice, excess of jurisdiction, procedural irregularity, non-arbitrability, and public policy. The New York Convention mirrors this restrictive framework for the recognition and enforcement of foreign awards.

Both instruments reflect the same philosophy that the losing party in arbitration should not be given a second opportunity to relitigate the merits of the dispute under the guise of setting-aside proceedings. The Court of Appeal in the Nyutu had held, correctly, that no appeal lay to it from a High Court decision on a setting aside application under Section 35 of the Arbitration Act 1995. The Act was silent on the point, the Court reasoned, and that silence was not accidental. The drafters had deliberately chosen to terminate judicial intervention at the High Court level in order to preserve the finality that makes arbitration attractive. The Supreme Court overturned this sound decision, holding that an appeal lay in exceptional circumstances. The majority grounded its reasoning in Article 164(3) of the Constitution, which vests the Court of Appeal with jurisdiction to hear appeals from the High Court, and observed that where a superior court's decision is manifestly unjust, the Court of Appeal should be available to correct it. In the majority's formulation, justice could not be sacrificed at the altar of finality.

The intentions of the Supreme Court might have been sound but the consequences were not. There has been a marked surge in challenges to arbitral awards. Unsuccessful parties who would previously have accepted the finality of a High Court ruling now face a calculus in which the cost of seeking leave to appeal is regularly justified by the prospect of overturning an unfavourable outcome. This frustrates finality as a cornerstone of arbitration. The problem is compounded by the Supreme Court's failure to define the 'exceptional circumstances' threshold with precision. In Kampala International University v Housing Finance Company Limited [2024] KESC 11, the Supreme Court clarified that leave will not be granted merely because a party believes the High Court was wrong. While that clarification was welcome, the standard remains sufficiently malleable that applications for leave are regularly filed and contested, adding time and cost to proceedings that arbitration was designed to resolve expeditiously.

These consequences also affect the credibility of Eastern African centres as arbitral seats.

When commercial parties select a seat for international arbitration, they look carefully at the degree to which courts in that seat support rather than upset the arbitral process.

A seat where finality is genuinely respected commands confidence in arbitration.Not so much for a seat where every award carries the prospect of multi-year appellate proceedings.

It must be said that the problem is not the courts. Kenyan courts have produced a substantial and consistent body of pro-arbitration jurisprudence affirming party autonomy, kompetenz-kompetenz, and the supervisory rather than interventionist role of the judiciary in arbitral proceedings. The problem is the institutional framework within which courts must operate, and on that front, the legislative process of reform has begun.

The Arbitration Amendment Bill 2025 represents the most comprehensive overhaul of Kenya's arbitration framework since the principal Act came into force in 1995. It codifies the leave requirement for appeals to the Court of Appeal, adds legislative clarity to the Nyutu standard, establishes a dedicated Arbitral Court for arbitration matters, introduces third-party funding for international arbitrations seated in Kenya, and creates a fast-track mechanism for domestic disputes.

The difficulty is that the Bill risks replicating, in new legislative form, the very problem it seeks to solve. The proposed provision under Section 35 introduces special reasons as the governing standard for granting leave to appeal, without defining what those reasons are. An undefined standard in a provision designed to cure the uncertainty of an undefined standard is anything but meaningful reform.

Unless Parliament inserts a statutory definition of special reasons, drawn from the existing jurisprudence of Nyutu, Synergy Industrial Credit Limited v Cape Holdings Limited [2019] eKLR, and Kampala International University, the provision will generate a fresh generation of litigation to determine what it means, and the parties who bear that cost will be the same parties whose confidence in Nairobi as an arbitral seat the Bill is designed to build.

To optimally achieve the gains of arbitration, courts and parties to arbitral proceedings must appreciate the core tenets of arbitration, including finality. Finality is a sound principle that distinguishes arbitration from other forms of dispute resolution. Legal and institutional frameworks should therefore be crafted in deference to the principle of finality. While it was tested in Nyutu, the Arbitration (Amendment) Bill 2025 has an opportunity to restore it.

Stop Calling It Alternative

How The Name Of A Discipline Shapes A Profession's Self-Understanding, And Why East Africa Cannot Afford To Let It

|| By David Onsare, FCIArb | Editor, ADR Compass

The word has been troubling me for some time. Not theoretically. In practice.

Alternative. As in Alternative Dispute Resolution. The second option. The fallback. The mechanism you reach for after the primary route has failed or taken too long or cost more than anyone can justify. Consider what that word does before a single clause is invoked or a mediator is contacted. It has already established a hierarchy: courts first, everything else when courts are not delivering. The entire field carries its own subordination in its name and most practitioners have never stopped to examine what that costs them, their clients or their commercial environment.

ADR's nomenclature has a specific history and understanding that history is necessary before we can move past it. The term was coined in the United States in the late 1970s and early 1980s to describe mechanisms being developed as pressure releases for court systems that were overwhelmed. Courts existed with two centuries of institutional weight behind them. Everything else was, accurately at the time, alternative. The name was honest. It described a particular legal problem in a particular historical context.

The East African Community in 2026 is not that context. The EAC's legal infrastructure is being constructed now, by practitioners and legislators who have the advantage of hindsight and the obligation to build it correctly. Professional habits are not yet fixed. Institutional culture is still forming. That is not a constraint. It is the kind of opportunity that most legal systems in the world would give a great deal to recover.

Why, then, is this profession still carrying a name that was invented to solve someone else's problem?

Legal nomenclature shapes professional behaviour. This is not an abstract proposition. When arbitration and mediation are consistently labelled as alternatives, they are treated as alternatives: the fallback for when the principal route fails, the preference of practitioners who operate outside the mainstream. ADR arrives late in the commercial conversation. By the time it is engaged, positions have hardened, lawyers have invested time and professional identity in an adversarial frame and the dispute has become substantially more expensive than it needed to be. The mechanism most effective at month two is being called in at month sixteen.

This pattern has structural causes. Junior lawyers default to litigation because their training pointed there and their supervising partners know nothing else. Senior practitioners do the same because years of practice have made it instinctive. Clients accept the sequence because no one with sufficient authority has challenged it. The word alternative grants permission for all of this without anyone having to argue the point.

East Africa is paying for this sequencing. Twelve percent of intra-EAC trade operating within a functioning dispute resolution architecture is not a legal statistic. It is a commercial failure with consequences that compound across every investment decision, every cross-border partnership and every infrastructure project in the region.

Singapore's position as an international arbitration hub is frequently cited and frequently misread. The success of the Singapore International Arbitration Centre is not simply a function of government investment or the attractiveness of Singapore as a neutral seat. It rests on a judicial culture that is consciously and consistently pro-enforcement. Singapore's courts give effect to arbitration agreements with minimal scrutiny. They set aside awards only in the narrowest circumstances permitted by the UNCITRAL Model Law and the International Arbitration Act has been progressively amended to reinforce that posture. The result is an environment where arbitration carries genuine legal certainty, where parties do not preserve parallel court options as a hedge and where the mechanism is the first choice rather than the contingency.

The DIFC in Dubai represents a deliberate decision of the same kind. Rwanda is making it now with KIAC and with the same urgency. None of these jurisdictions waited for their court systems to become overwhelmed before looking for relief. They decided what kind of dispute resolution environment they wanted and built it from the beginning.

Kenya has the Nairobi Centre for International Arbitration. Rwanda has KIAC. The New York Convention provides enforcement architecture across signatory states. The question is not whether East Africa has the tools. It does. The question is why it continues to export its most significant commercial disputes to London while the infrastructure sits underused.

Professor Kariuki Muigua has argued persistently that this field should be renamed Appropriate Dispute Resolution. The case is not semantic. Swap alternative for appropriate and the professional posture shifts entirely. Alternative positions ADR in relation to courts: it asks whether the primary route has failed. Appropriate positions ADR in relation to the dispute itself: it asks what mechanism this particular problem actually requires. Sometimes that is arbitration. Sometimes mediation. Occasionally, litigation is the right tool. But the decision derives from the nature of the dispute, not from an institutional reflex that courts have first priority by default.

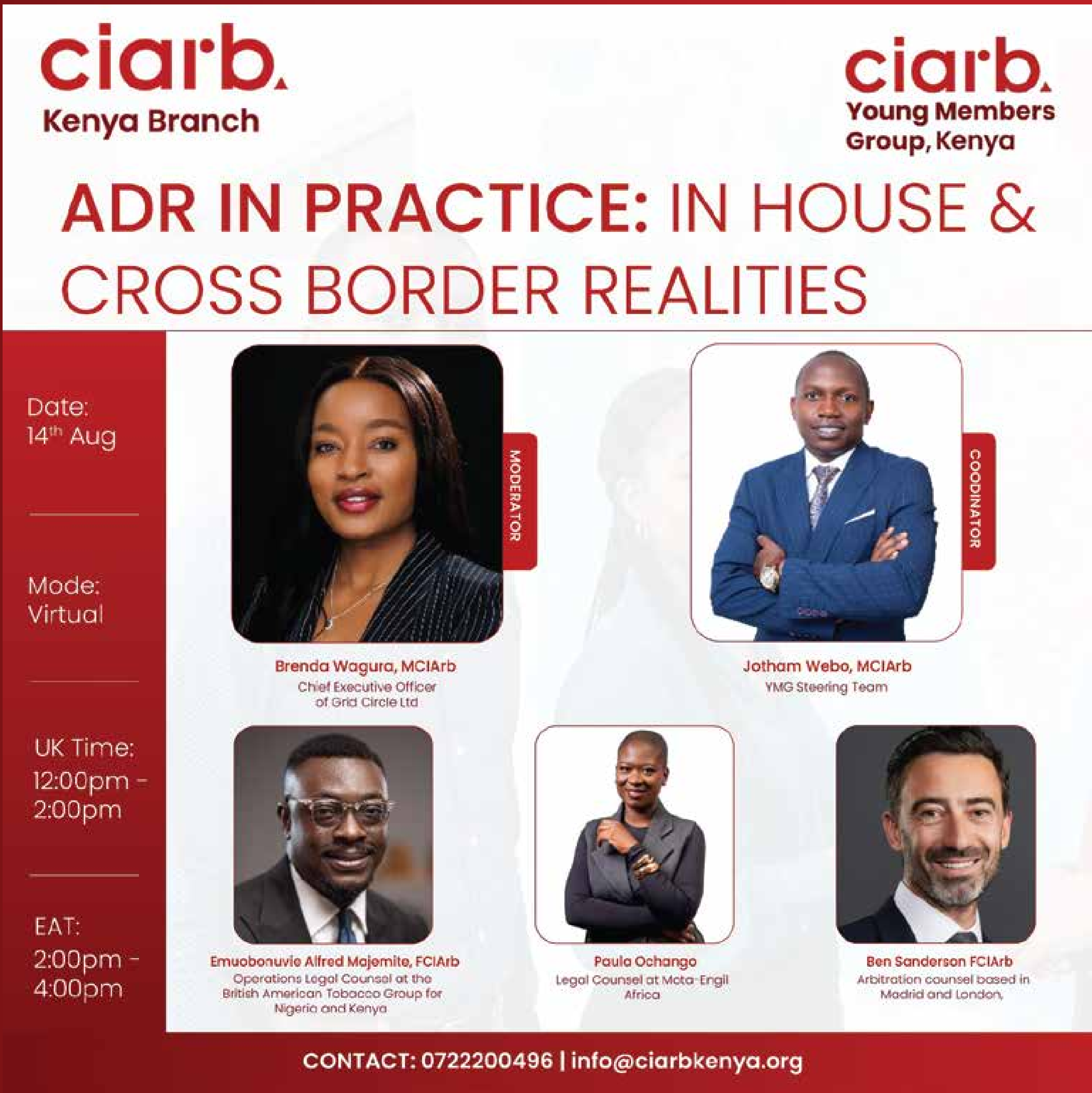
The structural changes that flow from this reframing are specific and achievable. Every government contract and public-private partnership across the EAC should carry a mandatory ADR clause requiring genuine engagement with mediation before any party may file in court. Not a procedural formality. A real threshold, enforced at the point of filing. Law schools must teach ADR as a core subject, not an elective for students with spare hours in their timetable. Law Societies should require demonstrated ADR competency as a condition of admission to practice, in precisely the same way they require competency in civil procedure and evidence.

Professional culture calcifies. Institutional habits, once entrenched, require extraordinary effort to shift. East Africa has a window that is genuinely open right now because the infrastructure is in place, the practitioners are trained and the frameworks exist. The choices being made in the next few years about how disputes are handled, what mechanisms are prioritised and how the profession is trained will determine the region's commercial reputation for a generation.

The word alternative was honest when it was coined. It described a specific moment in American legal history. That moment has no claim on East Africa's future.

Choose the word that reflects what we are actually building. Then build accordingly.

David Onsare, FCIArb, is the Editor of ADR Compass and a Fellow of the Chartered Institute of Arbitrators.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EAT:
2:00pm - 4:00pm
MODERATOR
Brenda Wagura, MCIArb
Chief Executive Officer of Grid Circle Ltd
COODINATOR
Jotham Webo, MCIArb
YMG Steering Team
Emuobonuvie Alfred Majemite, FCIArb
Operations Legal Counsel at the British American Tobacco Group for Nigeria and Kenya
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Award Without Borders

Jurisdiction, Enforcement and the Evolving Architecture of African Construction Arbitration

|| By Mark Oyieyo Oroko, MCIArb

Cross-border flows have made international construction disputes a defining feature of legal practice. Construction contracts are multi-party, capital-intensive and inter-jurisdictional by nature, requiring advanced knowledge of jurisdiction, applicable law and how arbitral awards can be recognised and enforced. In Africa, the landscape is further complicated because national legal systems coexist with regional frameworks such as the East African Community (EAC) and continent-wide harmonisation efforts under the Organisation for the Harmonisation of Business Law in Africa (OHADA). The success of dispute resolution depends on how these layers interact with globally accepted contract standards, all of which continue to evolve in response to the sector's specific demands.

The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards remains the foundation of international arbitration. This instrument binds 172 signatory states to recognise and enforce arbitral awards made in another contracting state, subject to narrow defences such as procedural irregularity or breach of public policy. Pro-arbitration jurisdictions apply these defences restrictively to preserve the finality of awards. The Convention's pro-enforcement bias offers commercial predictability, ensuring that a hard-earned arbitral award does not become a pyrrhic victory when the time comes to enforce it abroad. National courts act as gatekeepers but are deliberately limited from examining the merits, which preserves arbitration as a genuine alternative to litigation.

Africa's use of the New York Convention is mediated by powerful regional structures. OHADA, a union of 17 mainly West and Central African states, has established a single arbitration system through its Uniform Act on Arbitration and the Common Court of Justice and Arbitration (CCJA) in Abidjan. Its defining feature is enforcement authority: an arbitral award issued under the OHADA regime is immediately enforceable across all member states without the need for separate national litigation. A construction award issued in Guinea can be enforced with equal ease in Cameroon or Senegal, eliminating jurisdictional fragmentation and aligning with international best practice.

The East African Community presents a sharp contrast. Its member states, including common law jurisdictions such as Kenya and Uganda, have modernised their arbitration legislation by reference to the UNCITRAL Model Law and are signatories to the New York Convention. However, enforcement still runs through national courts, which introduces variability in judicial interpretation and performance.

Kenya is broadly pro-arbitration, but court delays and uneven judicial familiarity with complex international principles remain genuine risks to fair enforcement. The gap between OHADA's harmonised supranational architecture and the EAC's fragmented approach is particularly acute where state entities are involved, given the additional complexity of sovereign immunity.

The dispute resolution systems embedded in major construction contracts substantially determine outcomes. The FIDIC contracts suite is the recognised standard, offering a multi-tiered mechanism centred on the Dispute Avoidance/Adjudication Board (DAAB). This expert panel makes binding interim decisions designed to be transparent, technically sound and legally defensible. Current FIDIC guidance calls for DAAB decisions to cover all matters referred to it, with arbitral review available afterwards. The intent is to resolve disputes at project level, preserving time and resources.

The weakness lies in implementation. Where a party refuses voluntary compliance with a DAAB decision, the other side must pursue enforcement through full arbitration, which is expensive and slow, defeating the purpose of rapid-response adjudication. The 2024 UNCITRAL Model Adjudication Clause addresses this problem directly by introducing the concept of compliance arbitration. Under this mechanism, arbitral proceedings are confined solely to whether a party has failed to comply with an interim adjudication decision. There is no review of the merits. Combined with expedited rules, an award issues within 30 to 60 days and is enforceable under the New York Convention. This converts an interim DAAB decision into a final, bankable award. For future FIDIC contracts, this mechanism could close the enforcement gap that has long undermined the finality of adjudication decisions.

Cross-border construction dispute resolution in Africa operates at a dynamic intersection of international treaties, regional legal instruments, national laws and international contract standards. The New York Convention provides the envelope; OHADA demonstrates what a lean, harmonised regional enforcement framework can achieve; and FIDIC with the UNCITRAL compliance arbitration model shows how contractual design can drive enforcement certainty. For the EAC, where infrastructure investment is both urgent and deeply cross-border, developing a coherent regional enforcement framework is not merely a legal reform exercise. In construction, time and cash flow are paramount. The ability to transition swiftly from dispute to binding resolution is not just a legal milestone. It is a commercial necessity.

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Being Future Ready

The Role Of Young Counsel In International Commercial Arbitration In The 21st Century

|| By Daniel M. Nzeki, MCIArb

Unlike the courts, representation in arbitration proceedings is not restricted to legal practitioners only. Noting that party autonomy is the cornerstone of arbitration, it therefore follows that this extends to the freedom of choice of parties to counsel or party representative(s). Counsel play very notable roles before the commencement of arbitration as highlighted below.

The first basic but fundamental duty of counsel is to advice their client during contract negotiation on the most ideal form of dispute resolution. In doing so, counsel needs to take into consideration the diverse mixed business and legal considerations, which at times, may be seemingly opposed.

Unlike the parties, counsel ought to be aware that the business and legal needs of the client at the contracting stage are more often than not, diametrical. Therefore, there is a high possibility that the dispute resolution clause may not be given much thought at the time. This is often due to the fact that the contracting parties often assume that the blossoming “romantic” business relationship shall persist to eternity.

Subsequently, counsel has an unenviable but important duty to provide a reality check by highlighting potential areas of dispute, so as to protect the client’s business and strategic interests accordingly. Through this, counsel is in a position to provide advice on exit strategies that promote the client’s business interests on the one hand, while also protecting them from legal exposure on the other. As such, to make the most important contribution to the process of choosing the dispute resolution mechanism that best suits their needs, counsel must take into consideration, the client’s objectives and priorities.

It is the outcome of the above negotiations and considerations that result in a dispute resolution clause. This brings us to the second role of counsel in arbitration, drafting a proper dispute resolution clause. Considering the potential high stakes and complexities of cross-border commercial disputes, the gateway to effective commercial contracts lies in well-drafted dispute resolution clauses. It cannot be gainsaid that such clauses have a huge impact on the overall strategy to address a claim and the enforcement of favourable judgments or awards.

A poorly drafted dispute resolution clause (commonly referred to as a “pathological” or “terminally ill” clause) wastes the Tribunal’s and parties’ time; delays the resolution of the main dispute(s) by engaging parties in non-issues and more diligent drafting; make it either difficult or very costly to comply with the terms of the arbitration agreement, and in the worst case scenario, result in an invalid arbitration agreement incapable of enforcement all together.

The question that we must grapple with at this point is, how can young counsel in arbitration avoid pathological arbitration clauses? First and foremost, there is a dire need for proper training and mentorship of young counsel in arbitration. This will ensure that young practitioners with interest in ADR are in a position to comprehend and effectively apply complex principles of international commercial arbitration, without adherence and reference to the strict rules of litigation.

Secondly, young counsel in arbitration need to make a deliberate effort to undertake proper research and consultation while drafting contracts, and more so, dispute resolution clauses/agreements. This will play a pivotal role avoiding boilerplate agreements.

The great potential of ADR in commercial disputes can be more fully realized if counsel and clients all together understood that ADR clauses can be tailored to meet specific needs.

Subsequently, any young legal practitioner in arbitration, should always ask the question, whether an arbitration agreement embodies these two key issues: clearly delimit the scope of the arbitration, and, finality of the ensuing award.

Thirdly, it is without question that counsel have, in the words of Lord Reid in Rondel v Warsley "an overarching duty to faithfully and diligently defend their clients' interests without regard to any unpleasant consequences to themselves or any other persons."

Counsel have the same privileges as the client in asserting and defending the client's rights and liberty by rendering every ethical argument possible that can be legitimately advanced.

Aside from the above, there are other numerous roles of counsel in international arbitration, which include:

- Evaluating the suitability of arbitration for the specific dispute in order to avoid unnecessary preliminary issues such as arbitrability of the matter, or jurisdiction of the tribunal;

- Estimating costs and working together with the arbitral tribunal to develop effective strategies geared towards keeping the costs to a minimal as much as possible in conformity with the desire to ensure that arbitration remains affordable;

- Engaging in negotiation and discussions with the opposing party with a view to settle the matter amicably without having to resort to arbitration in the first place, and in the event such a settlement is reached during the arbitral proceedings, drafting settlement agreements in respect of the proceedings;

- Analyzing the documentation filed by the opposing party and developing necessary strategies to defend their client's interests, either by filing further evidence to counter the documentation produced, or advising their client on the way forward, depending with the probative value of the said documentation and its overall impact on their client's case;

- Analyzing final or partial awards to determine the way forward, such as whether to seek for recognition and enforcement, or apply for the awards to be set aside; and

- Overseeing the recognition and enforcement of the arbitral awards in different jurisdictions.

In conclusion, the vision for the future of international commercial arbitration therefore rests on young arbitration practitioners embracing mentorship, continuous learning, innovation, and adaptability, all this while remaining faithful to the values and ethical duties expected of the profession, in what can be summarized as "professionalism across professions."

Artificial Intelligence And The Future Of Dispute Resolution in the East African Community

Safeguarding Fairness and Confidentiality in Cross-Border Arbitration

|| By Ms. Wambui G. Muigai, FCIArb

The accelerating integration of Artificial Intelligence (AI) into legal practice presents a transformative moment for dispute resolution within the East African Community (EAC). As cross-border commerce deepens among EAC Partner States, arbitration has emerged as the preferred mechanism for resolving commercial disputes. AI promises efficiency and analytical power. It also introduces real risks to procedural fairness and confidentiality, the two pillars on which arbitration rests. The challenge for the region is not whether to adopt AI, but how to govern its use responsibly within existing legal frameworks.

Arbitration within the EAC is anchored in both regional and domestic instruments. Article 32 of the EAC Treaty confers jurisdiction on the East African Court of Justice (EACJ) in matters arising from arbitration clauses where parties have conferred such jurisdiction. The EACJ Arbitration Rules grant tribunals broad procedural discretion, subject to party agreement. At the national level, Kenya's Arbitration Act 1995 and Uganda's Arbitration and Conciliation Act both incorporate principles derived from the UNCITRAL Model Law. Enforcement of awards across borders is governed principally by the New York Convention, to which several EAC Partner States are signatories. These instruments collectively embed due process, party autonomy, confidentiality and enforceability as foundational norms.

AI tools can significantly enhance arbitral efficiency. Machine-learning platforms can review large volumes of documentary evidence, conduct legal research across multiple jurisdictions and assist with translation and transcription. In complex cross-border disputes, these capabilities reduce costs and shorten timelines. By lowering transaction costs, AI may also improve access to arbitration for small and medium enterprises engaged in regional trade. Predictive analytics can assist counsel in assessing litigation risk, encouraging earlier settlement and reducing caseload pressure on arbitral institutions.

The risks, however, are real. Large language models are known to generate inaccurate or fabricated legal citations. The English High Court in Mata v Avianca Inc underscored the

the professional dangers of relying on AI-generated authorities without verification, imposing sanctions for citing fictitious cases. While not an EAC decision, the reasoning establishes a universal duty of diligence that applies equally to arbitral counsel and tribunals across the region.

Confidentiality concerns are equally serious. Arbitration is valued precisely because proceedings are private. Uploading pleadings or evidence into third-party AI platforms may expose sensitive commercial data to external servers or algorithmic training processes. National arbitration statutes do not yet expressly regulate AI-mediated data processing. If confidential information is compromised, parties may challenge awards on public policy grounds under Article V(2)(b) of the New York Convention. The Kenyan High Court has recognised that public policy encompasses fundamental notions of justice and morality and a serious breach of confidentiality through reckless AI deployment could arguably fall within that scope.

AI also raises due process concerns. Section 19 of Kenya's Arbitration Act guarantees equal treatment of parties and a full opportunity to present one's case. If one party deploys advanced AI tools while the other lacks comparable resources, inequality of arms emerges. An arbitrator's undisclosed reliance on AI in drafting an award would be equally troubling. The legitimacy of arbitration depends on reasoned decision-making by a human adjudicator. Delegating core analytical functions to opaque algorithms undermines both transparency and accountability.

Several reforms are warranted to safeguard fairness and confidentiality. First, regional arbitral institutions and professional bodies should adopt harmonised guidelines on AI use in arbitration. The 2025 Chartered Institute of Arbitrators Guideline on the Use of AI in Arbitration provides a useful model, emphasising disclosure, data security and human oversight. EAC-specific guidance should align these principles with local statutory frameworks and data protection regimes.

Second, arbitration agreements and procedural orders should expressly regulate AI usage. Parties may require prior disclosure of intended AI tools, prohibit submission of confidential material into open-access systems and mandate that AI-assisted research be independently verified. This contractual clarity reinforces party autonomy while managing unforeseen risks.

Third, tribunals must retain ultimate responsibility for decision-making. Arbitrators may use AI as a research tool, but they must independently assess authorities, evidence and reasoning. The duty to provide a reasoned award, recognised as implicit in international arbitral practice, cannot be delegated to algorithmic systems without jeopardising enforceability.

Finally, capacity building is essential. Judicial officers, arbitrators and counsel within the EAC require training in AI literacy, including data governance, cybersecurity obligations and algorithmic bias. AI's emergence in cross-border arbitration is neither inherently beneficial nor inherently destructive. Its impact will depend on governance. By embedding transparency, human oversight and data protection within arbitral practice, the EAC can harness technological innovation without sacrificing the procedural integrity on which arbitration depends.

Pay Now, Argue Later

Why Statutory Construction Adjudication Is Critical for Kenya's Economic Stability

|| By Eng. Eric Njoroge, MCIArb, PE, MIEK, PMP

The construction industry is a cornerstone of Kenya's economic development, driving infrastructure delivery, employment creation, and private investment. Yet despite its significance, the sector faces a persistent challenge: delayed payments and the accumulation of pending bills. These payment failures trigger contractor insolvencies, stalled projects, and wider economic strain.

Against this backdrop, the proposed Construction Payments Adjudication Bill presents a timely opportunity to reform dispute resolution in the sector, improve cash flow, and strengthen economic resilience. Drawing on international experience, particularly from the United Kingdom, the Bill offers Kenya a practical mechanism to safeguard project continuity and financial stability. As East Africa deepens economic integration through cross-border infrastructure and investment, efficient alternative dispute resolution (ADR) mechanisms are increasingly critical to sustaining growth and regional confidence.

Delayed Payments and Their Economic Impact

Delayed payments in construction are not mere contractual inconveniences; they pose systemic risks. Contractors and subcontractors depend on interim payments to sustain operations, pay workers, and service credit facilities. When payments are delayed, even stable firms face liquidity challenges. For smaller contractors, prolonged non-payment frequently leads to insolvency despite successful completion of works.

In Kenya, the problem is compounded by persistent pending bills, particularly in public projects. Disputes over valuations, variations, certification, or administrative processes often leave contractors waiting months, sometimes years, for payment. The consequences are severe: projects slow or collapse, employment is disrupted, and confidence in the market declines.

Construction Adjudication Explained

Construction adjudication is a specialised form of ADR tailored to the industry's practical realities. It provides a fast-track process through which an independent adjudicator determines disputes, especially payment disputes, within a short timeframe.

A defining feature is that the decision is binding on an interim basis. Parties must comply immediately, even if they later challenge it through arbitration or litigation. This principle, commonly described as "pay now, argue later", preserves cash flow and ensures projects continue without paralysis.

Adjudication does not replace other mechanisms. Rather, it prevents disputes from halting projects while preserving parties' rights to seek final determination. Its purpose is practical continuity.

Kenya's Current Framework and Its Limitations

In Kenya, adjudication currently exists mainly as a contractual mechanism. Standard forms such as FIDIC provide for Dispute Adjudication Boards (DABs) or Dispute Avoidance and Adjudication Boards (DAABs). While effective where adopted, these mechanisms depend entirely on contractual agreement.

This creates gaps. Where contracts lack adjudication clauses, particularly in smaller projects, parties have no automatic right to swift dispute resolution. Contractors often lack the bargaining power to insist on such provisions, leaving them exposed to prolonged payment disputes. Access to timely justice therefore remains uneven.

The Construction Payments Adjudication Bill

The proposed Construction Payments Adjudication Bill seeks to address these shortcomings by establishing a statutory right to adjudication for construction payment disputes. By embedding adjudication into law, the Bill ensures access to a fast and effective remedy regardless of contractual wording.

The Bill proposes clear timelines, focuses on payment-related disputes, and provides for enforcement of adjudicators' decisions through the courts. Statutory enforceability is significant, transforming adjudication into a reliable remedy rather than a purely consensual process.

If enacted, the Bill could reduce payment delays, ease cash-flow pressures, and restore confidence across the sector. Contractors whose stability depends on timely payment would gain meaningful protection. Improved liquidity would also have positive spillover effects across supply chains and related industries.

Lessons From The United Kingdom

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Adjudication Within Kenya’s ADR Framework

Adjudication should complement, not replace, existing dispute resolution mechanisms. Mediation remains valuable for preserving commercial relationships, while arbitration is essential for final determination of complex disputes.

Adjudication fills a critical gap by providing immediate relief where delay would cause disproportionate harm. By resolving disputes quickly without extinguishing parties’ rights to pursue final determination, it strengthens Kenya’s multi-door approach to dispute resolution.

Lessons From The United Kingdom

Delayed payments and pending bills have long undermined Kenya’s construction sector and constrained economic growth. The proposed Construction Payments Adjudication Bill offers a practical solution grounded in international best practice. By introducing a statutory, enforceable adjudication regime, Kenya stands to improve cash flow, protect contractors, and enhance infrastructure delivery.

In an industry where time is money, adjudication ensures disputes do not derail progress. Enactment of the Bill would mark a significant step toward a fairer, more efficient, and more resilient construction industry.

Adjudication is not merely a legal reform. It is an economic safeguard.

Lessons From India

The Role of Arbitration in Strengthening Cross-Border Trade in East Africa

|| By Blessy G.K.

Regional economic cooperation in East Africa has expanded significantly in recent years. As trade between countries grows, businesses are entering cross-border contracts covering supply of goods, construction projects and service agreements at a pace that earlier years could not have anticipated. With increased commercial activity, disputes are inevitable. In such situations, an effective and reliable dispute resolution system becomes essential. Arbitration, as a form of Alternative Dispute Resolution (ADR), plays an important role in maintaining commercial stability and supporting economic growth.

Arbitration resolves disputes privately, outside traditional court systems. In cross-border trade, parties from different countries prefer it because it ensures neutrality. Rather than submitting a dispute to the national court of one party, both sides choose a neutral venue and an independent arbitrator. This choice increases trust between international business partners.

Confidentiality is another significant advantage. Commercial entities prefer to keep disputes private, protecting their reputation and ongoing business relationships. Arbitration proceedings are not open to the public, which makes them substantially more attractive than court litigation for most commercial disputes.

Enforceability completes the case. International arbitration awards are recognised and enforceable across many countries under the New York Convention. When businesses know that decisions will be upheld across borders, they are more willing to invest and engage in regional trade. A strong arbitration framework thus contributes directly to economic security and investment confidence.

Despite the growing importance of arbitration, challenges remain. Awareness about ADR mechanisms is still developing among small and medium-sized enterprises, with many businesses continuing to rely on traditional courts from sheer familiarity. Delays in enforcement and procedural uncertainties in some jurisdictions reduce confidence in the system even where the legal framework is sound. The region also needs more trained arbitrators and stronger institutional frameworks. Strengthening arbitration centres and investing in professional training are the most direct responses to these gaps.

India's experience over the past decade offers instructive lessons. India introduced a sustained programme of arbitration reform focused on reducing unnecessary court interference, promoting faster proceedings and building institutional arbitration capacity. The motivation was explicitly economic: India wanted to attract foreign investment and needed a credible dispute resolution reputation to support that ambition. The reforms worked. By clarifying legal procedures and securing judicial support for arbitration, India gradually strengthened investor confidence in its dispute resolution system.

East African countries can draw from this experience. Modernising arbitration laws, investing in institution-building and ensuring that courts support rather than slow down arbitral proceedings are practical reforms, not theoretical ones. Kenya and Rwanda have made meaningful progress. The task is to deepen what exists and extend it consistently across the region.

A strong legal framework gives businesses confidence that disputes will be resolved fairly and within predictable timelines. Countries with modern arbitration laws aligned to international standards are better placed to attract foreign investment. Where laws are outdated or courts unpredictable, parties either avoid the jurisdiction or price that risk into their commercial arrangements.

Regional cooperation amplifies the gains from individual state reforms. If neighbouring countries adopt compatible arbitration standards and recognise each other's enforcement procedures, cross-border trade becomes smoother for everyone involved. Harmonisation of legal systems across the EAC reduces uncertainty and builds the trust that commercial partners need. Developing strong arbitration institutions and investing in professional training will significantly accelerate East Africa's economic integration. Arbitration resolves disputes. Strong arbitration infrastructure builds the commercial confidence that prevents many of those disputes from arising at all.

Blessy G.K. is a law graduate with a focused interest in cross-border commercial law and institutional arbitration practice. She is building her career in Alternative Dispute Resolution.

Resolving Data Disputes Across Borders

ADR as the Missing Link in EAC Data Protection Harmonisation

|| By Quency Otieno ACIArb, CPM, CS(K)

In May 2025, Kenya's High Court ordered Worldcoin to permanently delete biometric data unlawfully collected from over 300,000 Kenyans and prohibited any further processing of such data in the country.1 The ruling was rightly celebrated as a vindication of data subject rights. Yet it also revealed a problem that no single national court can solve: Worldcoin's operations traversed entities in the Cayman Islands, the British Virgin Islands, and Germany, while collecting and transferring sensitive biometric data from Kenyan soil to foreign servers without authorisation.2 The affected data subjects had no regional mechanism through which to seek cross-border redress. As digital commerce deepens across the East African Community's eight Partner States, this gap between the velocity of cross-border data flows and the jurisdictional reach of national dispute resolution frameworks is becoming a structural impediment to regional integration itself.

The mismatch is not accidental; it is the predictable consequence of building a regional digital economy on nationally bounded legal infrastructure. The EAC's intra-regional trade exceeded USD 7.2 billion in 2023, mobile network penetration in Kenya alone reached 128.3 per cent by late 2024, and mobile money platforms now facilitate millions of cross-border transactions daily.3 The personal data underpinning these transactions moves regionally, yet the regulatory architecture governing it remains organised along strictly national lines. A December 2024 EARDIP workshop confirmed that only five of eight Partner States have established dedicated data protection authorities, with South Sudan yet to enact comprehensive legislation.4 Each national framework prescribes distinct rules on lawful processing, impact assessment requirements, and cross-border transfer mechanisms. The practical consequence is what scholars have termed 'regulatory arbitrage': multinational entities structuring operations to exploit jurisdictional divergences, precisely as the Worldcoin case demonstrated across multiple continents simultaneously.

Kenya's Office of the Data Protection Commissioner has taken a commendable first step by publishing an Alternative Dispute Resolution Framework grounded in Article 159(2)(c) of the Constitution and Section 9(1)(c) of the Data Protection Act 2019.6 The Framework recognises negotiation, mediation, and conciliation as mechanisms the ODPC may facilitate, establishes a 90-day resolution timeline, and provides for appointed facilitators.7 The early results are encouraging: by March 2025, the ODPC had received 7,128 complaints, issued 215 determinations, and resolved 39 matters through ADR.

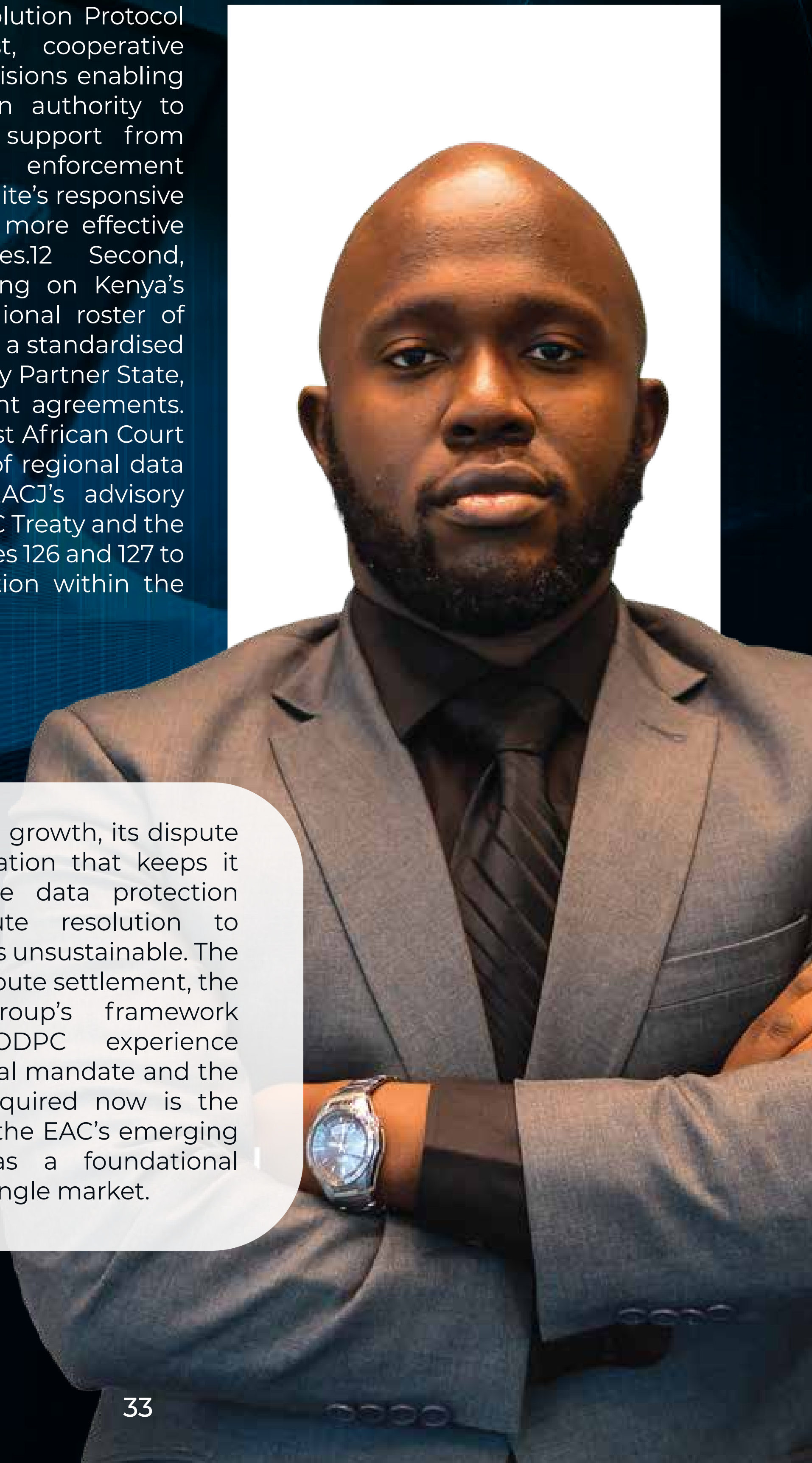
The limitation, however, is jurisdictional rather than conceptual. A Ugandan data subject whose information is unlawfully processed by a Kenyan controller must navigate Kenya's complaint mechanisms, engage Kenyan facilitators, and rely entirely on Kenyan enforcement. The Framework contains no provisions for mutual recognition of other Partner States' ADR outcomes, no protocol for cross-border facilitator appointments, and no mechanism for enforcing settlement agreements across jurisdictions. The paradox is clear: the disputes most urgently requiring efficient resolution are precisely those that fall beyond the reach of any single national framework.

The institutional conditions for addressing this gap are more favourable now than at any point in the EAC's history. In September 2025, the EAC's Technical Working Group on Data Protection under

EARDIP confirmed alignment among Partner States on enabling trusted cross-border data flows within a sovereignty-respecting regional framework.

The validated EAC Data Governance Policy Framework envisions harmonised data management standards.[10] At the continental level, the AU Assembly adopted all eight Annexes to the AfCFTA Digital Trade Protocol in February 2025, including the Annex on Cross-Border Data Transfers, and notably made the Protocol subject to the AfCFTA Dispute Settlement Body, ensuring a level of enforceability often absent in other digital trade frameworks.[11] The direction of travel is clear. What remains absent is the procedural connective tissue: a mechanism addressing not merely what data protection standards should apply across borders, but how disputes arising under those standards are to be resolved.

A pragmatic EAC Data Dispute Resolution Protocol could rest on three pillars. First, cooperative investigation: mutual assistance provisions enabling one Partner State's data protection authority to request and receive investigative support from another, reflecting the graduated enforcement architectures that Ayres and Braithwaite's responsive regulation theory demonstrates are more effective than purely punitive approaches.[12] Second, cross-border ADR facilitation: building on Kenya's ODPC model by establishing a regional roster of accredited data protection mediators, a standardised complaint process accessible from any Partner State, and mutual recognition of settlement agreements. Third, a referral mechanism to the East African Court of Justice for interpretive questions of regional data protection law, drawing on the EACJ's advisory jurisdiction under Article 27 of the EAC Treaty and the Court's existing mandate under Articles 126 and 127 to promote harmonised legal cooperation within the Community.



Conclusion

If the EAC is the engine of regional growth, its dispute resolution systems are the lubrication that keeps it running. Harmonising substantive data protection standards while leaving dispute resolution to fragmented national mechanisms is unsustainable. The AfCFTA's submission to binding dispute settlement, the EARDIP Technical Working Group's framework development, and Kenya's ODPC experience collectively provide both the political mandate and the operational blueprint. What is required now is the deliberate integration of ADR into the EAC's emerging data governance architecture as a foundational component of the region's digital single market.

Enforcement Is the Real Dispute

Making Cross-Border Arbitral Awards Work in the EAC

|| By Jeremiah Nyakundi

As the East African Community (EAC) advances toward deeper economic integration, cross-border commercial transactions have become the norm rather than the exception. Arbitration is now the preferred dispute resolution mechanism for regional infrastructure projects, investment agreements and international trade. The effectiveness of arbitration, however, ultimately depends not on the issuance of an award but on its recognition and enforcement. In East Africa, enforcement remains the real dispute. An arbitral award that cannot be enforced with certainty undermines investor confidence, weakens contractual trust and threatens the credibility of ADR as a driver of regional growth.

All EAC Partner States are signatories to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) and have enacted arbitration legislation influenced by the UNCITRAL Model Law. This shared legal architecture signals a regional commitment to arbitration-friendly dispute resolution. Yet despite this common foundation, enforcement outcomes vary significantly across the EAC. Courts in some jurisdictions have embraced a pro-enforcement bias while others continue to exercise intrusive judicial oversight, particularly through expansive interpretations of public policy.

Kenya has developed the most robust arbitration jurisprudence in the region, with courts consistently affirming the finality of arbitral awards. In Christ for All Nations v Apollo Insurance Co Ltd, the High Court warned that public policy is an 'unruly horse' to be invoked only in the clearest of cases. In Mall Developers Limited v Postal Corporation of Kenya, the court clarified that public policy 'must have a connotation of national interest' and cannot be reduced to general notions of fairness between the parties. In Pevans East Africa Ltd v Kenya Rugby Union, the court held that errors of law or fact cannot justify refusal to enforce. In Africare Ltd v Sitafalwalla, it enforced a foreign arbitral award by emphasising that courts must not revisit merits already determined by a tribunal.

Kenyan courts have also affirmed that enforcement is not automatic. In Narok County Government v Equity Bank Ltd, enforcement was declined where serious procedural impropriety had been established, illustrating the narrow but legitimate role of public policy review.

Ugandan courts have generally aligned with the New York Convention's pro-enforcement philosophy. In Kampala International University v Housing Finance Bank Ltd, the Commercial Court confirmed that foreign arbitral awards are enforceable notwithstanding parallel proceedings, provided the statutory grounds for refusal are not established. Tanzania's arbitration regime has historically been characterised by stronger judicial intervention and while recent reforms signal progress, uncertainty persists due to broader judicial discretion and procedural delays. Rwanda presents a contrasting picture: courts have demonstrated genuine willingness to uphold arbitral awards and limit intervention, positioning Kigali as a growing arbitration hub aligned with international best practice.

Public policy remains the most frequently contested ground for resisting enforcement across the region. Burrough J.'s warning in Richardson v Mellish remains instructive: 'Public policy is a very unruly horse and when you get astride, you never know where it will carry you.' International best practice demands a restrictive interpretation, confined to violations of fundamental principles of justice, morality or legality. Divergent interpretations of public policy across EAC Partner States encourage forum shopping and undermine the predictability that regional integration requires.

Predictable enforcement reduces transaction risk and attracts cross-border investment. For mega-projects spanning multiple jurisdictions, enforceable dispute resolution outcomes prevent costly delays that can derail entire infrastructure programmes. For small and medium enterprises, enforceable arbitral awards provide a faster and more accessible route to recovery than cross-border litigation, which is often financially out of reach.

Strengthening enforcement requires deliberate action on several fronts. EAC Partner States should prioritise establishing or strengthening specialised commercial and arbitration divisions within their superior courts. Kenya's Commercial and Tax Division demonstrates how judicial specialisation improves consistency and efficiency. Judges handling enforcement proceedings should receive targeted training on the New York Convention framework and the proper scope of public policy. Regular regional judicial dialogue on arbitration enforcement would promote convergence in interpretation, while publishing comparative enforcement decisions from Partner States would encourage jurisprudential consistency and reduce forum shopping. Partner States should also develop a shared interpretive understanding of public policy, confining it to violations of fundamental principles of justice, natural justice and due process. Streamlining enforcement applications by limiting interlocutory challenges and imposing strict timelines for recognition applications would address the procedural delays that most directly frustrate commercial parties.

Arbitration is no longer optional in East Africa's commercial landscape. Its legitimacy depends on enforcement. Without consistent and predictable recognition of arbitral awards, arbitration risks becoming an expensive advisory exercise rather than a reliable dispute resolution mechanism. Effective enforcement is not a peripheral issue. It is central to the EAC's integration project.

ENFORCEMENT IS THE REAL DISPUTE.

Negotiating Africa's Future

Natural Resources, ESG, and the Role of ADR in Rebalancing Power

|| By Samuel Baraka, CPM

|| Introduction: The African Dilemma

Imagine a farmer in a quiet village who owns a rare and extraordinary goose that lays golden eggs. Every morning, traders arrive at his gate. They weigh the eggs, quote their price, and leave with quiet smiles. The farmer, grateful for ready buyers, accepts their offers. He has never visited the city markets where the eggs are resold for many times the price he receives. He does not know the global demand for gold is rising. He has no advisers to negotiate better terms and lives unaware of his disadvantage, even when market values are soaring. And so, despite owning the golden goose, he remains perpetually short of wealth. Now, stop imagining, because this is the lived reality of many African states.

Africa holds about 30% of the world's mineral reserves, including cobalt, copper and other rare earth elements, used in technologies central to the global energy transition. Yet despite this wealth, many African states continue to negotiate unequal investment deals that favour foreign investors and leave public coffers and communities exposed to financial and environmental risk. The rise of environmental, social, and governance (ESG) frameworks and the global race for transition minerals presents Africa with unprecedented opportunity. However, without robust governance, transparent contracting, and technically sound dispute resolution mechanisms, the continent risks repeating the farmer's mistake of owning the goose, yet watching others profit most from its eggs.

In this context, Alternative Dispute Resolution (ADR), particularly negotiation, mediation and arbitration, has a vital role to play in shaping fair, transparent, and sustainable investment frameworks.

|| The Investor-State Imbalance and Its Roots

Bilateral Investment Treaties (BITs) are the main types of agreements used to govern investor-state relations in Africa. BITs typically grant foreign investors protections such as fair and equitable treatment, protection from expropriation, and access to international arbitration fora like the International Centre for Settlement of Investment Disputes (ICSID). These protections are meant to de-risk foreign direct investment (FDI) and provide neutral avenues for resolving disputes when investments are adversely affected by a host state's regulatory action.

However, many African states enter into BITs with limited technical capacity and visibly desperate for investment. While the global ESG concept ties investment to environmental performance, social benefit, and good governance practices, inconsistent application in African countries greatly reduces the potential for sustainable development outcomes from Africa's resource wealth. Without strong governance and proper regulatory enforcement, loose standards create room for unscrupulous investors to exploit loopholes by gaining political favour, claiming compliance while leaving states exposed to environmental liabilities and dangerous arbitration risk.

The prevalence of democratic leadership in African states also poses a double-edged sword, as it undermines long-term strategic planning necessary to manage resource wealth. BITs involving African states are often influenced by short political cycles that prioritise quick wins and benefits for the current elite at the expense of citizens who bear the brunt of poorly negotiated clauses, ambiguous and unrealistic guarantees, and costly arbitration claims arising when subsequent governments seek to amend or withdraw unfavourable terms.

Ciarb And Kenya Branch Leadership Pay Courtesy Call On The Chief Justice

The Chartered Institute of Arbitrators (Ciarb) Kenya Branch, together with senior leadership from Ciarb London, yesterday paid a courtesy visit to the Patron of the Kenya Branch, Hon. Lady Chief Justice Martha K. Koome, EGH, FCIArb.

The delegation from Ciarb London comprised Ms. Helen Waters, Director of Corporate Services, and Mr. Jonathan Moles, Director of Governance and Professional Standards. They were accompanied by Directors of the Ciarb Kenya Branch Led by Our Chair, Prof. Wyne Kenneth, C.Arb for a high-level engagement focused on strengthening collaboration in the advancement of Alternative Dispute Resolution (ADR) and Access to Justice in Kenya.

The EAC's Dual Identity

Leveraging ADR to Harmonize Regional Trade under the AfCFTA

|| By: Nicole Mathuri

The African Continental Free Trade Area (AfCFTA) has moved from a vision of integration to a tangible reality, marked by the 2022 Guided Trade Initiative and subsequent full scale implementation by 2026. This has placed the East African Community (EAC) at a crossroads. The EAC is Africa's most integrated bloc governed by the EAC Treaty and its Customs Union Protocol. However, with the emergence of the AfCFTA there exists a paradox. The paradox introduces a complex web of overlapping rules, varying tariff schedules, and competing legal jurisdictions. For East African businesses to thrive, the regional path to growth must be paved not with protracted litigation but with efficient Alternative Dispute Resolution (ADR).

Navigating The "Spaghetti Bowl" A Jurisdictional Dilemma

The "Spaghetti Bowl" effect refers to the entanglement of multiple overlapping agreements that a single country must navigate specifically in trade law, particularly when EAC's 35% value-addition requirement conflicts with the AfCFTA's broader 40% African-content threshold. For a Kenyan exporter, this means choosing between the rules of the EAC, COMESA and now the AfCFTA. The choice of forum by the Kenyan exporter becomes the most pressing challenge.

Article 3(4) of the AfCFTA stipulates that once a forum is selected it must be used to the exclusion of others. However, the "Spaghetti Bowl" creates a risk of conflicting rulings. In order to resolve this, ADR offers a third way by utilizing good offices, conciliation and mediation as mandated by Article 8 of the AfCFTA Protocol on Rules and Procedures on the Settlement of Disputes and Article 27 on arbitration of the same protocol. Parties can reach amicable settlements through ADR that respect both regional commitments and continental aspirations ensuring that integration does not become interruption.

Rules of Origin: The "Engine Room" of Integration

The application of ADR in Rules of Origin (RoO) disputes is well suited than traditional litigation which is often highly technical and time sensitive. RoO concerns itself with rules that determine the nationality of a product which ensures that goods benefit from preferential treatment when it comes to meeting specific value-addition criteria within a region. In the EAC, recent disputes such as the "Rice Wars" illustrate how easily technical disagreements over origin can devolve into non-tariff barriers (NTBs) that impede regional growth.

The EAC High-Level Dialogue that was held in February 2026 in Kigali emphasized that these limitations are becoming increasingly more operational. The chronically repeated problems such as duplication of inspecting and discriminatory taxes keep endangering seamless trade. As an illustration, the case of the traders being criminally punished in Rwanda due to the importation of rice without Certificates of Origin shows the dire consequences of the RoO misinterpretation. Technical mediation enables impartial professionals to inspect manufacturing lines within days, and verify value-addition and re-establish market circulation, before technicalities lead to market distortions or legal fines.

ADR, specifically, expert determination and technical mediation allows for regional growth. Expert determination works by appointing a neutral trade specialist to issue a binding technical ruling on value-addition percentages allowing businesses to resolve disputes in weeks rather than years. Technical mediation involves the appointment of a neutral expert who possesses deep knowledge of the matter who aids the parties focus on technical data in order to reach an amicable settlement.

ADR: Limitations and Opportunities

However, the AfCFTA Dispute Settlement Mechanism is presently suffering structural limitations in spite of this. The Protocol confines itself to state-to-state conflicts but not the very business entities that make trade happen. Moreover, there is no built-in mechanism of appealing outside the

Appellate Body and little monitoring of compliance is a challenge to enforceability. The EAC can be on the frontline to appeal to the expansion of the Protocol to enable the opportunity of the private party standing, so that ADR is beneficial to the real market participants which are the businesses.

CIArb Kenya: Cultivating the Next Generation of Trade Neutrals

Having reaffirmed the position of ADR in settling trade disputes, its success rests on the availability of "African-seated" dispute resolution. The Chartered Institute of Arbitrators (CIArb) Kenya Branch is building the infrastructure of trust required for regional investment by training arbitrators and mediators. In March 2026, it plans to roll out an advanced Investment Arbitration module in partnership with ICSID and the International Law Institute. ADR is not merely an alternative but is the appropriate mechanism for a continent that values relationship-building and consensus which is the very heart of African trade.

Conclusion

East Africa's path to growth is paved with the courage to integrate. By leveraging ADR to navigate the "Spaghetti Bowl" of jurisdictions and solve the technical puzzles of RoO, the EAC can ensure that the AfCFTA becomes an engine for shared prosperity. In the words of the EAC's own vision: one people, one destiny and now facilitated by one efficient system of resolution.

Beyond Litigation

ADR, Investor Confidence and the Architecture of East African Growth

|| By Sidney Lukhale

East Africa's ambition for deeper economic integration has become increasingly visible through expanding trade corridors, infrastructure projects and the progressive consolidation of the East African Community (EAC). Beneath this narrative of growth lies a foundational question: how should disputes be resolved in a manner that sustains, rather than disrupts, regional integration? Alternative Dispute Resolution (ADR) emerges not merely as a procedural alternative to litigation, but as a structural pillar for economic confidence and cross-border cooperation.

The EAC Treaty underscores the Partner States' commitment to cooperation in legal and judicial affairs as a means of strengthening integration. Regional commerce, from energy and construction projects to digital trade, inevitably generates disputes. The decisive issue is therefore not whether disagreements will arise, but whether they will be resolved efficiently, predictably and consistently with investor expectations.

Arbitration has become central to this conversation. Kenya's legal framework, particularly the Arbitration Act, reflects the influence of the UNCITRAL Model Law and affirms the principle of minimal court intervention. The Kenyan Supreme Court reinforced this pro-arbitration posture in Nyutu Agrovet Ltd v Airtel Networks Kenya Ltd, emphasising that judicial interference with arbitral awards must remain limited, thereby safeguarding finality while preserving constitutional oversight. This delicate balance between autonomy and supervision is essential to maintaining investor confidence.

The East African Community presents a sharp contrast. Its member states, including common law jurisdictions such as Kenya and Uganda, have modernised their arbitration legislation by reference to the UNCITRAL Model Law and are signatories to the New York Convention. However, enforcement still runs through national courts, which introduces variability in judicial interpretation and performance. Similarly, other East African jurisdictions have modernised their arbitration frameworks. Rwanda's Law on Arbitration and Conciliation aligns with international standards and its courts have demonstrated increasing receptiveness to arbitral finality. Tanzania and Uganda have also undertaken reforms aimed at strengthening arbitration regimes and promoting enforcement consistency. Such statutory convergence signals regional intent. The practical operation of ADR, however, depends on judicial culture and institutional competence as much as legislative design.

The enforceability of arbitral awards remains particularly critical. Most East African states are signatories to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), which obliges domestic courts to recognise and enforce foreign awards subject to limited exceptions. In theory, this ensures cross-border predictability. In practice, consistent judicial application determines whether the Convention's promise translates into commercial certainty.

Beyond arbitration, mediation offers an equally significant pathway. Kenya's introduction of court-annexed mediation under the Civil Procedure Act reflects recognition that consensual dispute resolution can reduce backlog while preserving commercial relationships. Mediation resonates deeply with African traditions of consensus-building and restorative dialogue, suggesting that modern ADR is not entirely foreign but rather a structured evolution of long-standing communal practices.

Growth-oriented ADR requires more than formal alignment with global standards. The Supreme Court's decision in Nyutu Agrovet demonstrates that while limited review of arbitral awards may be permissible in exceptional circumstances, excessive intervention risks undermining finality. The Court of Appeal in Anne Mumbi Hinga v Victoria Njoki Gathara similarly affirmed that courts must resist the temptation to reopen arbitral determinations under the guise of appeal. These decisions illustrate the judiciary's pivotal role in shaping East Africa's arbitration climate.

Technology also presents transformative possibilities. Virtual hearings and online dispute resolution mechanisms reduce geographical constraints and transaction costs, enhancing accessibility across borders. For a region characterised by youthful demographics and expanding digital infrastructure, technology-driven ADR may further entrench integration by making dispute resolution less burdensome and more inclusive.

Challenges persist. Uneven judicial capacity, occasional procedural delays and inconsistent enforcement practices may temper investor enthusiasm. Legal convergence without practical reliability creates only an illusion of harmonisation. As comparative scholarship consistently shows, institutional trust is cultivated not merely by adopting model laws but by demonstrating consistent adherence to them.

Ultimately, ADR should not be framed as competing with courts. It complements the judicial system. Courts safeguard constitutionalism and public policy; arbitration and mediation promote efficiency and party autonomy. Together, they form a dispute resolution ecosystem capable of supporting regional trade and integration. If East Africa is to consolidate its path toward growth, ADR must be understood as economic infrastructure. Just as roads and ports facilitate commerce physically, credible dispute resolution frameworks sustain it legally. Disputes are inevitable. Stagnation is not.

Sidney Lukhale is a third-year law student at Kabarak University with an interest in regional integration law and dispute resolution in East Africa.

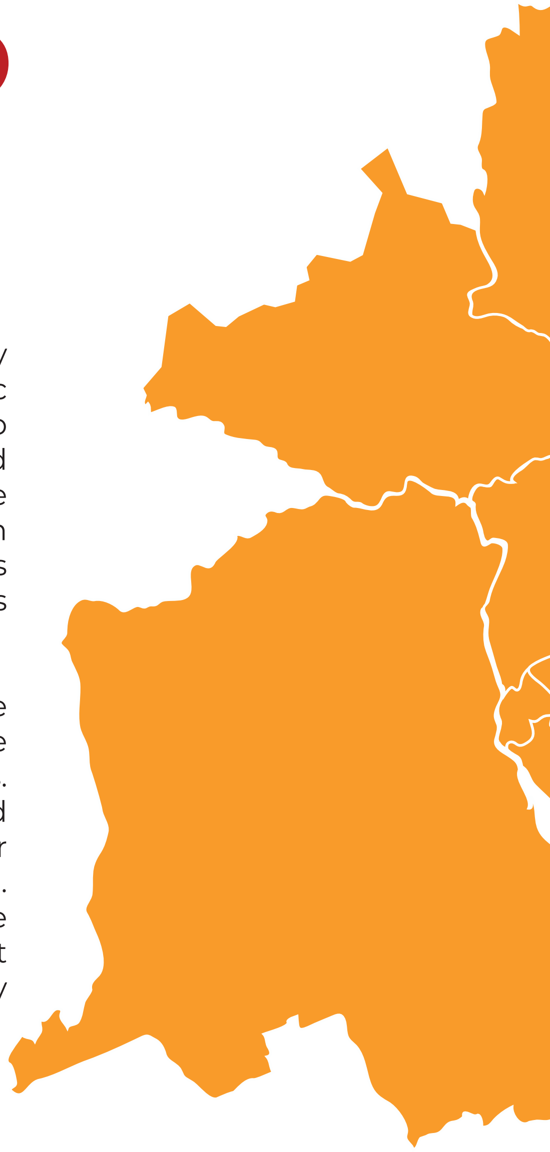
ONE REGION, MANY DISPUTES

Can Alternative Dispute Resolution Offer A Common Language For East Africa?

|| By Ann Mwendwa

The desire for greater economic union in East Africa has radically altered the commercial environment in the region. Economic interdependence among the Partner States has increased due to the growth of cross-border trade, regional infrastructure and increased labor and capital mobility under frameworks such as the African Continental Free Trade Area and the East African Community Common Market. However, this expansion has coincided with increased multi-jurisdictional commercial disputes usually unsuitable for resolution in a single national court system.

Varying legal procedures and enforcement strategies around the area run the risk of converting business conflicts from manageable growth episodes into structural trade and investment challenges. With the regional integration progressing more rapidly compared to judicial harmonization, the bone of contention is whether national courts can adequately assist to reach the integration goal. In this case, alternative dispute resolution offers more than mere procedural ease, it offers the prospect of a common language that allows parties to settle disputes faster and in a way that reliably promotes regional development and unity.



One Region, Disjointed Legal Frameworks

Notwithstanding the region's growing economic integration, the dispute resolution system is still mostly grounded in national borders. Every Partner State maintains its own legal systems and enforcement mechanisms. As these systems implement vital constitutional and sovereign roles, they frequently struggle with conflicts resulting from cross-border transactions involving multiple jurisdictions.

This fragmentation may cause uncertainty to commercial actors regarding legislation, jurisdiction and enforceability of outcomes. Protracted litigation, jurisdictional objections and concurrent actions result in increased costs and delays, particularly for small and medium-sized businesses that have an international scope. Investor trust and reliance on the region's capacity to offer reliable and effective dispute resolution procedures may be weakened by inconsistent court schedules and practices. Disagreements, therefore, run the risk of becoming sources of contention within the integration agenda, hindering regional trade and investments.

ADR As A Common Language For East Africa

Alternative dispute resolution allows for the reconciliation of disputes without requiring uniformity in a region marked by legal diversity. ADR offers a common procedural framework that allows parties to settle disputes amicably regardless of their jurisdiction. With its features being party autonomy, flexibility and confidentiality, it is appropriate for cross-border business interactions where maintaining business stability is equally as important as dispute resolution.

Arbitration is especially important in handling regional business issues. The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards has, to a great extent, improved cross-border enforceability of arbitral decisions. Mediation as well as other consensual approaches allow parties to get context-specific solutions instead of relying on strict procedural outcomes.

ADR provides a common language for resolving disputes when viewed through the prism of regional integration. It allows parties to work under diverse legal systems to interact through common standards of efficiency, predictability and justice. By doing this, ADR facilitates the settlement of specific conflicts as well as the overarching goal of fostering collaboration, trust and confidence within the evolving East African landscape.

From National Practice to Regional Lessons

National experiences throughout East Africa continue to demonstrate how ADR may address the intricacies of cross-border trade. Uganda, for example, has employed ADR to improve efficiency, decrease backlog and encourage collaborative results. In other partner states, comparable patterns are noted, especially in the growth of arbitration and mediation centers that assist with commercial and investment disputes. Despite the differences in scope, they agree that strict litigation is not enough to handle the complexity of contemporary regional business.

ADR, unfortunately, still grapples with challenges ranging from unpredictability due to inconsistent judicial attitudes regarding ADR results, capacity disparities as well as limited uptake of the practice, that prevents its complete geographical impact.

Just and confidence within the evolving East African landscape.

Conclusion

Rather than a failure, conflicts are a necessary part of development. The effectiveness of the approaches employed to resolve conflict will determine the region's prosperity more than the absence of conflict. ADR provides the region with a common language that allows for reliable and effective interaction. It ensures that disagreements shape growth by investing in institutional capacity, harmonizing standards and bolstering cooperation.

|| Ann Mwendwa

Online Dispute Resolution And Regional Integration In The Eac

|| By Omondi Cliphord

The East African region is undergoing rapid economic transformation, recording an average 5.1% GPD growth rate in 2024, in spite of facing several regional and global challenges. The community's digital economy is continually expanding, cross-border e-commerce is flourishing, and internet penetration rising. This economic dynamism stands in stark contrast to the region's justice infrastructure, which has struggled to keep pace with the demands of a growing, increasingly digital population.

Resolution of commercial disputes through formal dispute resolution mechanisms in the region is marred by several structural and institutional challenges. Resolving a commercial dispute in court takes approximately 450 days in Kenya, 500 days in Tanzania and 490 days in Uganda. The traditional alternative dispute resolution mechanisms are also hindered by challenges such as insufficient institutional frameworks, high probative costs, bias and perception of corruption within the EAC.

These inefficacies in formal dispute resolution mechanisms and traditional ADR mechanisms hinder trade and regional integration by contributing to a high cost of doing business, lowering investor confidence and disproportionately harming small and medium-scale enterprises in the region. This article proposes online dispute resolution mechanisms (ODR) not only as a solution to some of the persistent dispute resolution challenges in the community but also as an effective tool for promoting regional trade and integration within the EAC.

ODR is a mechanism for resolving disputes facilitated by electronic communications and other information and communication technologies. ODR encompasses a spectrum of processes, including online negotiation, e-mediation, online arbitration, and automated or AI-assisted resolution. It requires a technology-based intermediary, ODR Platform, to facilitate the generation, sending, receiving, storing, exchanging or processing communications relating to the dispute. The ODR platform is administered by an ODR administrator. The ODR proceedings may consist of three stages: technology-facilitated negotiations, facilitated settlement and a third stage whose nature is determined by either a neutral or the ODR administrator.

ODR combines traditional dispute-resolution mechanisms, principles, and technological tools. It leverages emerging technologies such as AI and blockchain to facilitate the resolution of disputes arising particularly out of cross-border, low-value e-commerce transactions. It can be adopted by EAC member states to facilitate the development of small and medium-sized enterprises in compliance with Article 44 of the EAC Market Protocol, as it offers a cost-effective mechanism for resolving trade-related disputes with a myriad of advantages discussed below.

ODR offers a cost-effective and accessible dispute resolution mechanism. It eliminates the need for travel, venue rentals and logistics costs, saving both time and costs for businesses and individuals. Further, virtual case management through an ODR platform enables member states to participate without incurring cross-border costs. Additionally, due to its exclusive online nature and with the proliferation of the internet, ODR can easily be accessed from the comfort of one's home or office. For SMEs, often with constrained budgets, a cost-effective and accessible dispute resolution mechanism allows them to participate in intra and extra-regional trade without the worry of a prohibitive and inaccessible dispute resolution mechanism.

ODR platforms facilitate faster scheduling and resolution timelines compared to traditional litigation and even some conventional ADR processes. Digital case handling and the ability to exchange documents electronically reduce delays associated with physical transfers of data. This efficiency supports the timely enforcement of commercial agreements, which is essential for perishable goods and time-sensitive contracts that are common in intra-EAC trade.

Additionally, ODR offers a viable mechanism for eliminating barriers to e-commerce and encouraging e-commerce uptake within the EAC in accordance with the EAC e-commerce strategy. ODR can facilitate the growth and uptake of e-commerce in the region by guaranteeing a faster, efficient and cost-effective conflict resolution mechanism to businesses and individuals. An effective dispute resolution mechanism boosts investor confidence, attracts foreign direct investments into the region and increases trade volumes within the EAC. This is because commercial relationships work within systems of laws, regulations and standards that enable transactions to take place efficiently and securely.

In conclusion, ODR offers an opportunity to enhance e-commerce and cross-border trade within the EAC. Its unique advantages, such as its effectiveness, affordability and efficiency, can support the development of strong commercial relationships within the EAC. Strong trade ties will eventually support a stronger regional integration within the EAC.

Quantifying Trust

How Efficient ADR Systems Reduce Economic Friction in the East African Community

|| By Shedrack Mwiine

A Kenyan contractor mobilises to Kigali for a road expansion project financed through a regional development facility. A Ugandan energy developer secures cross border power purchase commitments involving Tanzanian offtakers. A Rwandan logistics firm signs a long-term warehousing agreement with a Nairobi based distributor. In each case, contracts are signed in optimism. Yet the real test of regional integration begins only if something goes wrong. The East African Community continues to deepen trade and infrastructure linkages. However, integration is sustained not only by agreements and corridors, but by confidence in how disputes are resolved when commercial relationships strain.

When Disputes Test The System

Judicial Intervention and Predictability

East Africa has already confronted moments that tested confidence in arbitration. In Nyutu Agrovet Limited v Airtel Networks Kenya Limited, the Supreme Court of Kenya clarified the narrow scope under which courts may intervene in arbitral awards, emphasising that intervention must remain exceptional.[1] Before that clarification, uncertainty surrounding the finality of arbitral awards raised legitimate concern among commercial actors. If arbitration could be reopened through expansive judicial review, its value as a swift and final mechanism was undermined. That uncertainty influenced contract drafting, risk allocation, and the degree of reliance placed on arbitration clauses in major commercial transactions.

Infrastructure Disputes and Capital Exposure

The Dowans power generation dispute in Tanzania further demonstrated how infrastructure disagreements can escalate into prolonged arbitration and enforcement battles with significant financial implications.[2] Energy investors, engineers, and financiers across the region observed the proceedings closely. Large infrastructure projects often rely on complex financing structures and cross border guarantees. When dispute resolution becomes protracted or politically entangled, the exposure extends beyond the immediate parties. Capital allocation decisions across the region are affected. These cases reveal a simple truth. Disputes are not rare interruptions. They are stress tests of institutional reliability.

The Hidden Cost of Uncertainty

Liquidity, Cash Flow, and Project Continuity

For practitioners in construction and infrastructure, the consequences of uncertainty are immediate. Consider a highway project spanning multiple jurisdictions where interim payment certificates are disputed. If the contract lacks an effective adjudication mechanism and parties must rely on unfamiliar courts, months of uncertainty follow. Contractors experience liquidity pressure. Subcontractors' slow mobilisation. Lenders reassess risk exposure. What begins as a valuation disagreement can threaten project continuity.

Pricing Risk Into Regional Integration

From a financial modelling perspective, enforcement uncertainty carries measurable economic consequences. When parties doubt the predictability of dispute resolution, they price that risk into contracts. Contractors increase contingency margins. Investors demand higher expected returns. Financiers widen, credit spreads. Across a portfolio of regional infrastructure projects, these adjustments increase the aggregate cost of integration. Efficient Alternative Dispute Resolution reduces this hidden premium by compressing timelines, limiting escalation, and strengthening enforceability.

The Cross Border Practice Gap

Variations in Enforcement Culture

Although arbitration statutes exist across East African Community member states, enforcement culture and judicial familiarity vary. Differences in procedural experience and institutional capacity influence how confidently parties rely on ADR mechanisms across borders.

The Technical Expertise Deficit

There remains a limited pool of arbitrators and adjudicators who combine cross border experience with deep technical competence in engineering, construction valuation, and project finance. Engineers, architects, and quantity surveyors are often central to the identification and documentation of delay events, cost overruns, and performance claims. Yet dispute clauses are frequently drafted without structured technical input. By the time arbitration commences, technical disagreements have already hardened into adversarial positions. If regional integration is accelerating, dispute systems must evolve proportionately.

From Reactive Resolution to Institutional Design

Standardised Regional Clauses

Cross border infrastructure and energy projects within the EAC should adopt standardised dispute escalation clauses tailored to regional enforcement realities. Mandatory early neutral evaluation or adjudication within defined timelines can contain disputes before escalation to arbitration. Professional bodies across Kenya, Uganda, Tanzania, and Rwanda are well positioned to collaborate in developing model clauses grounded in regional experience rather than relying solely on imported drafting frameworks.

Performance Transparency

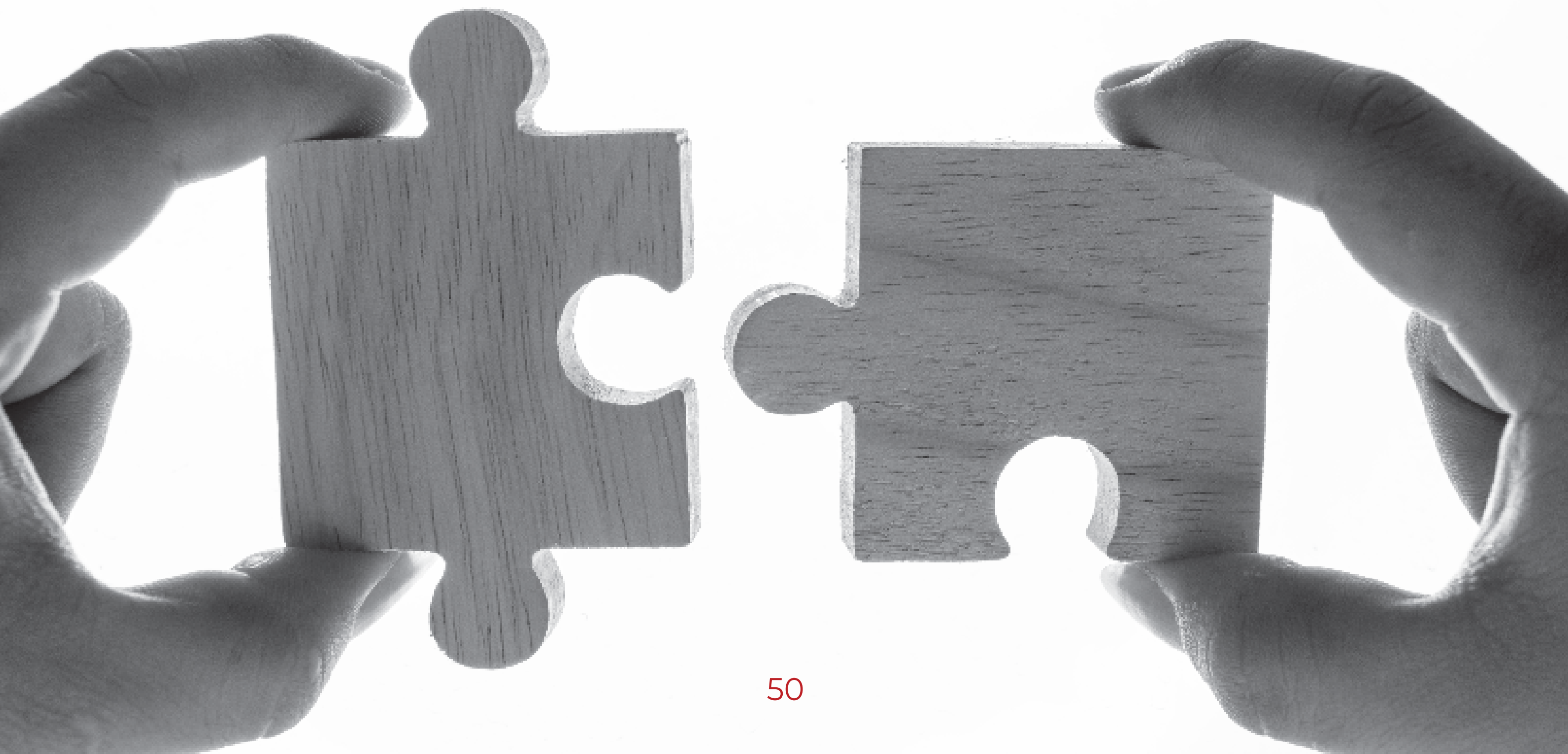
A publicly accessible regional performance index for ADR institutions would materially strengthen confidence. Metrics such as time to tribunal appointment, average duration to award, and enforcement timelines should be tracked and published annually. Predictability strengthens trust. Transparency reinforces predictability.

Integrating Technical Panels

Construction and energy disputes frequently turn on valuation methodologies, delay analysis techniques, and engineering standards. Establishing a regional roster of accredited technical arbitrators and adjudicators drawn from across East Africa would enhance the credibility and legitimacy of dispute outcomes. Cross border training initiatives that bring together lawyers, engineers, quantity surveyors, and financial professionals to simulate dispute scenarios common in regional projects would further align expectations before disputes arise.

Integrating Technical Panels

If East Africa is serious about deepening integration, dispute resolution cannot remain reactive. It must be designed intentionally into cross border commerce. Lawyers must draft escalation clauses that reflect regional enforcement realities rather than default templates. Engineers, architects, and quantity surveyors must insist on structured dispute avoidance mechanisms at contract formation stage. ADR institutions must publish performance data and strengthen technical panels that reflect the industries driving regional growth. Integration is ultimately a question of confidence. Confidence is sustained when professionals across Nairobi, Kampala, Kigali, and Dar es Salaam know that when disputes arise, resolution will be swift, competent, and enforceable. The work now is practical. Standardise. Measure. Train. Integrate. Trust will follow.



Expanding
The East African Court Of Justice Beyond A Judicialized Arbitration Centre

|| By Sarah Nashati, ACIArb and Kim Caesar

East Africa is one of the fastest-growing regions on the continent, with economies driven by mega-infrastructure projects, energy transition investments, public-private partnerships and rapidly expanding technology sectors. Agriculture, construction and digital services are all growing at pace. As these sectors grow, so do disputes surrounding them, including cross-border disputes of increasing complexity.

Arbitration has been recognised as the preferred mechanism for resolving such disputes, valued for its confidentiality, flexibility, finality and neutrality. Unlike litigation, arbitration enables disputing parties to control the process. In East Africa, the East African Court of Justice (EACJ) is uniquely positioned to play this role.

The EACJ is established under Article 9 of the Treaty for the Establishment of the East African Community as one of its principal organs and the Community's judicial arm. Its mandate is threefold: adjudicating disputes on the interpretation and application of the treaty under Articles 27 and 30, providing advisory opinions and acting as an arbitral tribunal in accordance with the treaty and its arbitration rules.

Article 32 of the Treaty defines the EACJ's arbitration jurisdiction. The court has authority over matters arising from arbitration clauses in contracts where the Community or its institutions are a party, matters between partner states submitted under a special agreement and matters arising from commercial contracts where the parties expressly designate the court as their arbitral forum. Arbitration at the EACJ is governed by the East African Court of Justice Arbitration Rules 2012, which bind all parties to the arbitration unless otherwise agreed in writing.

Party autonomy ordinarily means parties can identify and select arbitrators with the skill and experience most relevant to their dispute. The Arbitration Rules give parties some discretion, but it is limited: they can only select from the court's existing bench. On one hand, this model safeguards impartiality, ensures consistency and reinforces the institutional legitimacy of the court as the Community's judicial arm. On the other hand, the nature of disputes before the EACJ has evolved into high-stakes, transboundary and resource-intensive matters. Unlike other arbitral frameworks, parties referring disputes to the court are restricted to judges whose expertise is primarily legal. Can judges alone provide the depth required to navigate today's complex technical disputes?

Rule 26 of the Arbitration Rules provides a partial answer. It allows judges to appoint one or more experts to report to the tribunal on specific issues. The expert prepares a report shared with both parties, who are then invited to comment. The expert may participate in hearings where requested or where the tribunal deems it necessary. This creates transparency and ensures judges do not absorb technical advice in isolation.

The role of experts under Rule 26, however, remains advisory. Final decision-making rests with the tribunal, which is composed of judges. In highly technical disputes, judges may lack the baseline industry knowledge to challenge or contextualise an expert's conclusions. In practice, expert reports may carry substantial weight, to the point that the final award reflects the expert's findings more than judicial reasoning. The advisory role of experts, rather than their structural integration into the tribunal, leaves a gap.

To address this, the court should consider adopting a hybrid model in which tribunals consist of both judges and domain experts for relevant disputes, establishing a regional panel of arbitrators with specialised expertise in construction, energy, agriculture and technology, and investing in continuous judicial capacity building in these technical areas. These measures would preserve judicial oversight while embedding sectoral knowledge directly into the tribunal, creating a mechanism for appointing professionals with the right expertise and strengthening the bench's ability to engage with the evolving nature of disputes in East Africa.

Arbitration remains the preferred mechanism for resolving complex technical and cross-border disputes in the region, and the EACJ is uniquely positioned to serve as East Africa's arbitral hub. The framework exists. The reforms needed to make it fully effective, hybrid tribunals, regional expert panels and judicial capacity building, are neither radical nor unachievable. If the court embraces them, it can stand as a credible arbitral institution that reflects East Africa's rapid growth and meets the demands of its increasingly complex commercial landscape.

Sarah Nashati, ACIArb, and Kim Caesar are ADR practitioners with a focus on institutional arbitration reform and cross-border dispute resolution in East Africa.

Beyond Borders

ADR and the Future of East African Commerce

|| By Sharon Chepkwony, MCArb

There is a version of East Africa's future that is already being written, in the fine print of cross-border contracts, in the corridors of regional arbitral institutions and in the quiet offices where investors decide whether to commit capital to a market or walk away from it. That future depends, more than most people realise, on how well the region resolves its disputes.

The African Continental Free Trade Area (AfCFTA), the East African Community (EAC) common market and the steady expansion of intra-regional trade are creating commercial relationships at a pace the continent has never seen. With that growth comes friction: supply chain failures, payment disputes, cross-border contractual conflicts and investment disagreements that span multiple jurisdictions. The question is not whether those disputes will arise. They will. The question is whether the region has the infrastructure to resolve them quickly, fairly and in a way that keeps commerce moving. Investors do not just assess market size. They assess dispute risk. Where resolution is uncertain, capital goes elsewhere.

Across East Africa, overloaded court systems remain the default for commercial disputes. Cases drag for years. Costs accumulate. Relationships deteriorate. For a foreign investor entering a joint venture with a Kenyan, Tanzanian or Ugandan partner, the prospect of litigating a dispute through an unfamiliar national court is a genuine deterrent, not because those courts lack integrity, but because the timelines and procedural unpredictability create commercial risk that investors factor into their decisions before signing anything.

Alternative Dispute Resolution, arbitration, mediation and adjudication, offers a different proposition. Faster timelines, party-chosen neutrals and proceedings tailored to the dispute, crucially with awards enforceable across borders under the New York Convention. For the region to fully realise the promise of economic integration, ADR must move from being an option that sophisticated parties sometimes choose to being the default infrastructure that underpins regional commerce.

East Africa is not starting from scratch. The Nairobi Centre for International Arbitration (NCIA) has built a credible caseload and a set of modern rules that position Kenya as a genuine regional arbitration hub. The Kigali International Arbitration Centre (KIAC) has aligned itself with Rwanda's broader ambition to become a continental centre for investment and commerce. Tanzania and Uganda are developing their own institutional capacity. These institutions are not competing with each other, or should not be. They are collectively building the regional architecture that trade integration demands.

The opportunity now is to connect those institutions more deliberately: shared training standards, mutual recognition frameworks, coordinated approaches to enforcement and

The AfCFTA Investment Protocol changes the stakes significantly. It calls for structured dispute prevention and resolution mechanisms between investors and states, a framework that, if implemented well, could reduce the uncertainty that has historically made foreign direct investment in parts of the continent expensive to underwrite. For young ADR practitioners in East Africa, this is not background noise. It is the defining legal development of their professional generation.

Understanding the Protocol's dispute resolution architecture, its tiered approach to conflict, its provisions on mediation before arbitration and its alignment with ICSID and UNCITRAL frameworks, is increasingly a baseline competency for anyone advising on cross-border transactions in the region. The practitioner who can speak fluently to these mechanisms is not just more valuable to clients. They are part of the infrastructure that makes integration work.

None of this happens automatically. Regional ADR capacity is built practitioner by practitioner, institution by institution, case by case. For those entering the field, the contribution is concrete: train rigorously, join regional networks, take appointments even when they are small and write and speak about the disputes you see. The development of East African arbitral jurisprudence requires practitioners who are willing to document and share what they learn.

For more senior practitioners, the call is to mentor actively, to engage with policy processes around the AfCFTA and EAC dispute frameworks and to push institutions to collaborate rather than compete. The region does not need five versions of the same arbitration centre. It needs a network of institutions that together can handle the full range of disputes that regional integration will generate, from construction and infrastructure to technology, agriculture and cross-border investment.

East Africa's path to growth and integration runs through its ability to resolve conflict efficiently and justly. That path is being paved, one arbitration at a time. The practitioners reading this article are not observers of that process. They are its architects.

Sharon Chepkwony, MCArb, is an ADR practitioner with a focus on cross-border commercial dispute resolution in East Africa.

Smart Contracts with Ubuntu Governance

A Sui Generis Adr Model For East African Trade Disputes

|| By Wenshuo Zhang

As of 2023, the EACJ had received only 16 trade-related cases. As Gathii observed, this paucity reflects corporate preferences for administrative solutions, as government contractors fear adversarial litigation would damage commercial relationships. Human rights claimants, by contrast, face no such constraints. In Katabazi, they mobilised African Charter provisions endogenous to the region rather than European trade rules transplanted without local salience. Modern Holdings exemplifies procedural exclusion, as the EACJ dismissed claims against the Kenya Ports Authority for lacking jurisdiction ratione personae, one of 11 cases (68.8%) among the 16 trade-related cases dismissed without substantive review. These constraints of formal court adjudication hinder effective regional integration and demand novel ADR mechanisms for cross-border trade dispute resolution.

Limits of Conventional Mediation

Conventional mediation offers procedural advantages, yet efficiency does not translate into substantive outcomes. Anderson's regression analysis ($r = –0.68$, $p < 0.01$) indicated that EAC involvement reduced resolution time from 16 months to 3–6 months, for EACJ litigation. However, a World Bank report revealed a mere 32% settlement rate (23 of 72 cases) in trade-related cases. Against this backdrop, Kariuki argued that absence of a robust EAC mediation framework and non-ratification of the Singapore Convention produce structurally unenforceable agreements. The Kenya-Uganda dairy dispute exemplified this enforcement gap, where EAC-mediated settlement was nullified by protectionist trade war escalation. Effective mediation enforcement would have averted such escalation and prevented intra-regional trade decline from 16% to 14%.

Smart Contract Enforcement

Smart contracts operationalise agreement terms through conditional code deployment generating binding commitments via upfront asset escrow. Mnookin noted that conventional mediation produces unenforceable agreements. Such agreements remain vulnerable to post-settlement default, strategic manipulation and geopolitical interference.

In this regard, smart contracts embed execution within decentralised architecture. They execute automatically, ensuring timely fulfilment without partiality or political pressure. As Sun noted, commitment devices bind parties to performance by escrowing funds ex ante.

Smart contracts achieve this through pre-deposited funds, insurance and similar mechanisms, securing resources upfront and rendering performance automatic and irreversible regardless of later changes in circumstances. Furthermore, automation reduces monitoring and enforcement costs between agreement and performance whilst immutable record keeping enhances transparency.

Although empirical data from EAC contexts remains limited, studies of blockchain arbitration in comparable jurisdictions report execution success rates of 98.7% and resolution time reduced from 48 hours to 6.5 minutes. These findings suggest that smart contract mechanisms could similarly enhance mediation enforcement. Yet technical feasibility does not guarantee cultural legitimacy. The following section proposes Ubuntu-mediated governance to bridge this gap.

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Ubuntu-mediated Governance

Smart contracts are transformative for ADR, yet their operational constraints overlook African cultural contexts grounded in 'Ubuntu' philosophy. This section proposes a model embedding technological automation within these culturally resonant arrangements.

A culturally grounded model emerges by embedding Ubuntu principles into ADR rather than transplanting Western paradigms. Under this framework, traditional elders or chiefs serve as moral authorities and social guarantors, whereas regulated financial institutions hold escrow.

If a party breaches the mediation agreement, the chief may, at his discretion, lower that party's credit rating and flag the associated trading risk in the credit system, without disclosing the mediation content. This preserves procedural confidentiality while enabling community-based accountability through credit assessment.

When a smart contract condition is triggered, the chief verifies oracle inputs against factual accuracy to prevent erroneous execution, as oracle data may be unreliable or incomplete. The chief also conducts an ethical review to ensure the mediation settlement conforms to community moral standards, keeping participants within ethical boundaries and safeguarding public morality. Through this dual function, the chief educates the community to uphold social harmony and trade integrity.

The chief must verify both oracle accuracy and ethical compliance before the financial institution releases any funds or transfers assets. This model thus advances an Africanised 'one-stop' mediation framework that reconciles algorithmic execution with communal legitimacy through transparent governance.

Limitations

Decentralised enforcement offers procedural innovation, yet immovable asset realisation remains dependent on national courts. The model assumes parties have sufficient assets and voluntarily accept the chief's authority, but fails in the absence of either condition. Moreover, the aforementioned 98.7% rate derives from simulated arbitration, not EAC mediation practice. Nevertheless, such mechanisms suggest transferable potential. In contexts lacking EU-like enforcement capacity, this model 'serves as lubrication' for existing EAC frameworks, offering 'cost-efficient' ADR as a pragmatic adaptation to institutional immaturity. To move beyond provisional lubrication, sustainable efficacy requires legislative institutionalisation of mediation and an integrated financial architecture.

Conclusion

Ubuntu-embedded smart contracts have the potential to forge an Africanised ADR, securing enforcement through elder authority. This model aspires to bridge the EACJ's procedural exclusions and conventional mediation's enforcement gaps, yet requires legislative reform and financial integration to move beyond provisional lubrication.

Alternative Dispute Resolution

Strengthening Investor Confidence In East Africa

|| By Kibor Bundotich

Resolution of disputes outside conventional courts has become a preferred method globally. East Africa region is no exception and with the continuous opening up of trade within the region, the likelihood of conflict would extrapolate. This paper seeks to investigate the current standing of Alternative Dispute resolution with bias on Arbitration within the East Africa region and why the mode and effectiveness of dispute resolution has huge impact on investments and trade in the region. In most African cultures, resolution of disputes are not placed before a judge or a jury but traditional means and negotiations are explored at the first instance so as to keep relations together in the midst of business related conflicts.

Legal Framework

i) The Treaty for the Establishment of the East African Community

This treaty establishes the East Africa Community. Article 32 of the Treaty provide that the East Africa Court of Justice has jurisdiction to hear and determine any matter that arises from an arbitration clause contained in a contract or agreement which confers such jurisdiction to which the Community or any of its institutions is a party, or arising from a dispute between the Partner States regarding the Treaty if the dispute is submitted to it under a special agreement between the Partner States concerned; or arising from an arbitration clause contained in a commercial contract or agreement in which the treaty if the dispute is submitted to it under a special agreement between the Partner States concerned; or arising from an arbitration clause contained in a commercial contract or agreement in which the parties have conferred jurisdiction on the Court. Noting that most of the disputes arise from trade. The treaty establishes an East African Customs Union and a Common Market as transitional stages to and integral parts of the Community.

ii) Protocol on The Establishment Of The East African Community Common Market

This protocol is established pursuant to The Provisions of Articles 76 and 104 of the East Africa Treaty, it establishes the common market and cuts a section with preferential treatment with an objective of enhancing trade and business within the community. While this is enhanced, the issues of disputes would eventually arise and to satisfy this , Article 54 of the protocol provides that any dispute between the Partner States arising from the interpretation or application of this Protocol shall be settled in accordance with the provisions of the Treaty.

iii) The African Continental Free Trade Area (AfCFTA)

The agreement is aimed at opening trade of goods, services, and inter country transfer of person within the continent to which East Africa forms part of it. One of the objectives of the Protocol to the Agreement Establishing The African Continental Free Trade Area On Investment is providing a sound legal framework for the prevention, management and settlement of investment disputes. The protocol, however, does not cover disputes arising from breach of contact between a state party and a investor. Article 46 of the protocol provides that in the event of a dispute between an investor of a State Party and a Host State relating to an alleged breach of this Protocol, the investor and the Host State shall initially seek to resolve amicably the dispute through consultations, negotiations, conciliation, mediation or other amicable dispute resolution mechanisms available in the Host State. The recognition of alternative dispute resolution mechanisms is critical, and this encourages exploration of Arbitration by the member states and investors.

iv) Regional Institutional and Legal developments

There are notable institutional and legal developments in Africa and with specific focus, on the East Africa Community. The Nairobi Centre for International Arbitration (NCIA) and The Centre for Arbitration and Dispute Resolution (CADER) in Uganda are some of the leading institutions where they have exemplified best practices in the establishment and operation of ADR centers where the institutions have been offering guidance in the Alternative Dispute resolutions mechanisms including Arbitration effectively.

The Constitution of Kenya adopts the international law and practice by virtue of Article 2. Similarly Alternative Dispute resolution is entrenched under the Constitution of Kenya by encouraging and promoting reconciliation, mediation, arbitration, and traditional dispute resolution mechanisms, provided they do not contravene the constitution itself. To emphasize this, the enactment of the Arbitration Act (1995, revised 2009), the Mediation Accreditation Committee Rules, the Civil Procedure Act, with provisions of jurisprudential developments in courts, all to promote Alternative Dispute resolutions mechanisms. In Uganda the enactment of The Arbitration and Conciliation Act section 3 provides for the application of Arbitration in the resolution of conflicts and as an alternative to justice.

v) Recognition of arbitral awards

Collective recognition and enforcement of arbitral awards within the East Africa Region, faces similar challenges as all international law and principles. There has been inconsistency and unpredictability in the arena of recognition and enforcement of arbitral awards. Parties rely majorly on public policy to justify opposition to recognition and enforcement. Article 34 of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration being the regime which creates a background to which forms the basis of various national arbitration laws in Africa are able to stand together with Article V of the New York Convention provides for grounds to which a party may object to recognition and enforcement. These grounds are often sustained. The awards also lack inherent enforcement mechanisms, and the availability of judicial bodies tends to be subservient to national and municipal courts. In most instances the municipal courts tend to be unsupportive to international arbitration.

Conclusion

For a comprehensive promotion of Arbitration and Alternative Dispute resolution in the region there is need for the municipal courts to have an international outlook and enhance the enforcement and recognition of arbitral awards arising from trade related cross-border disputes. Where it is guaranteed that a recourse to investors as a result of trade gone sour it promotes free trade and investment which in return become a collective benefit to the whole region. This is what Alternative Dispute Resolution Players can do to contribute to meaningful trade and investment and encourage free integration within the region.

Ciarb Kenya and the Law Society of Kenya Sign Landmark Memorandum of Understanding to Advance ADR

The Chartered Institute of Arbitrators (Ciarb) Kenya Branch and the Law Society of Kenya (LSK) have taken a significant step towards strengthening the future of Alternative Dispute Resolution (ADR) in Kenya through the signing of a Memorandum of Understanding (MoU) at the Ciarb Kenya Secretariat.

The partnership reflects a shared commitment to enhancing professional development, expanding access to ADR, and fostering greater collaboration between the legal profession and dispute resolution practitioners in support of an efficient and accessible justice system.

Ciarb Kenya and the Law Society of Kenya Sign Landmark Memorandum of Understanding to Advance ADR: https://ciarbkenya.org/ciarb-kenya-and-the-law-society-of-kenya-sign-landmark-memorandum-of-understanding-to-advance-adr/

Home Advantage

Why East African Cities Must Become The Default Seats For Regional Disputes

|| By Tedy Munyau

There is an irony in East African entities resolving disputes in London, Paris or Dubai, thousands of miles from the contracts, the parties and the facts in question. The region's increasing efforts toward economic integration sit in direct contradiction with its continued reliance on foreign, often colonial-era, legal infrastructure for high-value commercial arbitration. This reliance reflects a trust deficit rooted in the assumption, never properly examined, that only Western institutions could provide the neutrality and institutional resilience required for high-stakes adjudication.

The legal landscape has shifted significantly. East African cities are no longer emerging contenders for dispute resolution. They have matured into credible, world-class seats. The Nairobi Arbitration Week 2025 and the ICCA-KIAC Conference in Kigali both drew the global legal community to the region's own doorstep. Yet the 2024 LCIA statistics tell a different story: Kenyan parties constituted one of the largest non-UK participant groups in London-seated arbitrations, accounting for 7.7% of all participants. Domesticating arbitration seats is not merely a matter of national pride. It is an economic necessity.

The historic hesitation to seat arbitrations in East Africa has stemmed largely from concern about judicial interference, the fear that local courts might overstep and review the merits of an arbitral award, thereby undermining the finality of the process. A close look at judicial trends in Kenya and Rwanda reveals a genuine shift toward a pro-arbitration stance, with courts now positioning themselves as supportive of the arbitral process rather than supervisory of it.

In Kenya, this shift is anchored in Article 159(2)(c) of the Constitution of Kenya 2010, which mandates courts and tribunals to promote alternative forms of dispute resolution including reconciliation, mediation and arbitration. The Supreme Court reinforced this direction in Nyutu Agrovet Ltd v Airtel Networks Kenya Ltd, establishing that there is generally no right of appeal beyond the High Court regarding the setting aside of an award except in very narrow, exceptional circumstances.

Rwanda's framework is defined by Law No. 005/2008 on Arbitration and Conciliation in Commercial Matters, modelled on the 2006 UNCITRAL Model Law. Article 18 incorporates the principle of Kompetenz-Kompetenz, allowing an arbitral tribunal to rule on its own jurisdiction. The KIAC Rules further permit the secretariat to suggest modifications to an award's form to prevent technical defects, reducing grounds for court intervention. Rwanda's Supreme Court has also moved to limit the principle of le criminel tient le civil en etat, preventing it from becoming a loophole for resisting enforcement of commercial awards.

Capital flight from Africa is estimated at over USD 50 billion per year, and a significant though underexamined portion represents legal spend on international arbitration abroad: international counsel fees, expert witnesses and tribunal costs incurred far from the disputes themselves. By domesticating arbitral seats in Nairobi or Kigali, the region can retain these financial flows within its own borders.

For micro, small and medium enterprises, the costs associated with London or Paris arbitration are often prohibitive and effectively deny access to justice. The Nairobi Centre for International Arbitration addresses this directly by offering transparent fee schedules in Kenya shillings for

Regional seats also bring the advantage of arbitrators who understand African business context, local trade usages and land tenure systems that may be entirely unfamiliar to a neutral based abroad.

Concerns about institutional independence and perceived susceptibility to corruption remain a genuine challenge. The response is to build integrity from within. The Chartered Institute of Arbitrators Kenya operates rigorous standards: Fellow status requires at least ten years of practical ADR experience. Its Code of Professional and Ethical Conduct mandates impartiality, reasonable fees and full conflict disclosure, enforced by a disciplinary tribunal with power to revoke or suspend membership. Institutions like the NCIA and KIAC have moved toward more transparent procedures, including publication of case statistics and adoption of rules that mandate arbitrator independence.

The home advantage for East African dispute resolution is now a viable reality. The irony of disputes between Nairobi-based parties being resolved in a London courtroom is being replaced by a sophisticated regional ecosystem. The seats are ready. The infrastructure is in place. East Africa's moment to reclaim its home advantage is now.

Mwaya Teddy Munyao is a law student at the University of Nairobi School of Law.

The East African Court Of Justice

Unlocking Its Potential as a Commercial Dispute Resolution Forum

|| By Mercy Akinyi

In the landscape of international commercial transactions, alternative dispute resolution (ADR) mechanisms have become the preferred pathway for resolving conflicts. Businesses across East Africa increasingly favor arbitration, mediation, and negotiation over traditional litigation, recognizing the efficiency, confidentiality, and specialized expertise these mechanisms offer. Among the available forums, the East African Court of Justice (EACJ) stands as a regional institution with significant yet underutilized potential for commercial dispute resolution.

Regional Institutional and Legal developments

Established under Article 9 of the Treaty for the Establishment of the East African Community, the EACJ serves the Partner States of Burundi, Democratic Republic of Congo, Kenya, Rwanda, South Sudan, Tanzania, and Uganda. The Court's mandate extends beyond interpretation of the Treaty to encompass commercial arbitration jurisdiction under Article 32. This provision grants the Court authority to hear matters arising from arbitration clauses in contracts involving the Community or its institutions, as well as commercial contracts where parties have expressly conferred jurisdiction upon it.

Despite this expansive jurisdiction, a troubling reality persists parties to commercial contracts rarely designate the EACJ as their seat of arbitration. This underutilization raises critical questions about the Court's effectiveness and the barriers preventing its emergence as a premier regional dispute resolution center.

Current Challenges Facing The Eacj

Several factors contribute to the EACJ's limited role in commercial arbitration. First, awareness among commercial practitioners remains surprisingly low. Many lawyers and business executives across East Africa are unfamiliar with the Court's arbitration capabilities, defaulting instead to more established institutions like the London Court of International Arbitration, the International Chamber of Commerce, or the Nairobi Centre for International Arbitration.

Secondly, enforcement mechanisms remain a concern. Although EACJ decisions should theoretically be enforceable across all Partner States, practical challenges in execution persist. Domestic courts sometimes exhibit reluctance in recognizing and enforcing EACJ awards, undermining confidence in the system.

Thirdly, resource constraints limit the Court's capacity. Insufficient funding affects case management systems, technological infrastructure, and the availability of specialized commercial law judges. These limitations create delays and inefficiencies that commercial parties are unwilling to tolerate.

The Untapped Potential

Despite these challenges, the EACJ possesses inherent advantages that, if properly leveraged, could transform it into a leading regional arbitration center. Its location in Arusha, Tanzania, provides neutral ground accessible to all Partner States. The Court benefits from regional understanding of East African commercial practices, legal traditions, and business culture—knowledge that foreign arbitration centers cannot replicate.

Moreover, the EACJ offers potential cost advantages. Arbitration in London, Paris, or Singapore involves substantial expenses related to travel, accommodation, and premium institutional fees. A functional EACJ arbitration system could provide comparable quality at significantly reduced costs, making justice more accessible to small and medium enterprises that drive East Africa's economy.

The Court also presents an opportunity for developing Pan-African arbitration jurisprudence. As African Continental Free Trade Area implementation progresses, demand for regionally sensitive commercial dispute resolution will intensify. The EACJ is strategically positioned to meet this need.

Recommendations for Enhancement

To realize its potential, the EACJ requires comprehensive reforms. Aggressive awareness campaigns targeting legal practitioners, chambers of commerce, and business associations across Partner States are essential. Regular training programs, conferences, and publications highlighting the EACJ's capabilities would increase visibility and understanding.

Partner States must demonstrate political commitment by ensuring effective enforcement of EACJ awards through domestic legislation and judicial cooperation. A protocol on recognition and enforcement could eliminate current uncertainties and build confidence in the system.

Finally, developing a roster of qualified arbitrators from across the region would provide parties with options while ensuring regional representation and expertise. This roster should include practitioners with diverse specializations covering sectors critical to East African economies.

Conclusion

The East African Court of Justice stands at a crossroads. With purposeful reforms and sustained commitment from Partner States, it can evolve from an underutilized institution into a vibrant commercial arbitration hub serving East Africa and beyond. The foundations exist; what remains is the collective will to build upon them. As regional integration deepens and commercial transactions multiply, the question is not whether East Africa needs a strong regional arbitration center, but whether the EACJ will rise to fulfill this essential role. The time for decisive action is now.

Levelling The Playing Field

Harmonising Sports and Entertainment Across East Africa Through ADR

|| By Ester Mwangangi

The East African Community (EAC) is not only a political and economic bloc. It is also a vibrant sporting region. From the renowned CECAFA championships to the growing cross-border movement of athletes and regional broadcasting rights, sports have become a significant driver of social cohesion and economic growth. Article 119 of the EAC Treaty recognises the role of sports in regional integration, positioning it as a common cause for the community.

The stakes have never been higher. East Africa is gearing up to host the AFCON 2027 'Pamoja' bid, which will be jointly hosted by Kenya, Uganda and Tanzania. Yet while regional integration is accelerating, dispute resolution systems in sports and entertainment remain fragmented, threatening the stability of a lucrative and growing industry. If East Africa is to compete in the global economic arena, it must replace the adversarial, winner-takes-all litigation model with a more efficient and collaborative alternative. By harmonising regional ADR frameworks, the region can transform sports disputes from full stops into tactical pauses.

The prevalent reliance on national courts to resolve sports and entertainment disputes is a bottleneck that hinders regional integration. Sports dispute resolution in East Africa is currently characterised by a patchwork of national approaches. Kenya stands out as a pioneer with its Sports Disputes Tribunal (SDT), established under the Sports Act of 2013. The SDT provides a specialised forum for appeals from national sports organisations and anti-doping violations. However, it faces real challenges: legal ambiguities, lack of finality due to court challenges and persistent funding issues.

In contrast, other EAC partner states often lack specialised sports tribunals, forcing athletes and federations into general courts that lack the necessary technical expertise and speed.

This inconsistency creates a jurisdictional lottery: the outcome of a regional transfer dispute or hosting agreement can vary dramatically depending on which national law is applied. For athletes, whose professional careers are typically short, a two-year court battle is not merely a delay. It can end a career.

The absence of a unified regional framework undermines the EAC's potential as a single sporting market. East Africa's sports economy requires not just physical infrastructure but a modern legal playbook. Specialised ADR is uniquely suited to deliver swift, confidential and cost-effective resolution that general litigation cannot match.

The AFCON 2027 'Pamoja' initiative provides the perfect catalyst for developing a harmonised framework. It should mandate specialised arbitration through homegrown institutions, the Nairobi Centre for International Arbitration (NCIA) or the Kigali International Arbitration Centre (KIAC), rather than defaulting to foreign tribunals like the Court of Arbitration for Sport (CAS) in Switzerland, which are both expensive and remote from the regional context.

A harmonised sports ADR framework would protect athlete welfare by establishing uniform standards for player transfers and disciplinary actions. It would boost investor confidence by providing a predictable and efficient legal environment for resolving commercial disputes, attracting major international sponsorship and media investment. It would also preserve sports integrity by creating a unified regional front against threats such as doping and match-fixing.

Strengthening the capacity of national bodies, including Kenya's Sports Disputes Tribunal, to handle cross-border cases through mediation would preserve relationships between clubs and federations, reduce legal costs and ensure that disputes are resolved by experts who understand the unique cultural and economic context of East African sports.

Closing the gaps requires deliberate action. The EAC Secretariat should encourage regional federations to adopt a Standard EAC Sports Arbitration Clause in all cross-border contracts, designating a specialised regional forum as the primary dispute resolution mechanism. Regional institutions including CIArb Kenya, CIArb Uganda, the NCIA and KIAC should collaborate to establish a regional roster of specialised sports arbitrators and mediators. National Olympic Committees and Football Federations must update their statutes to mandate mediation or arbitration, limiting reliance on slow general courts. Partner states should also adopt a specialised regional sports and entertainment arbitration protocol for the recognition and enforcement of sports ADR awards, following the model of the EAC Common Market Protocol. Investing in training local legal professionals in specialised sports arbitration will ensure that justice is not only accessible but also expert.

As the EAC continues its path toward deeper integration, sports must be at the forefront. Standardising ADR mechanisms for sports disputes is not just a legal necessity. It is a strategic investment in the region's youth and its creative economy. The EAC can ensure that its sporting talent and investments are protected, and in doing so, allow the region to truly compete on the global stage.

ADR
As The Software Of East African Integration

Sustaining Trade, Certainty and Regional Growth

|| By Francis Amukhoye

The idea of integration among the East African Community (EAC) Partner States has long dominated discussions on regional cooperation. Trade and investment are central to shaping the region's growth agenda. Intra-EAC trade reached USD 18 billion as of June 2025 while EAC trade with the rest of the world stood at USD 140 billion in the same period. This steady expansion of cross-border commerce, coupled with the pursuit of a common market, inevitably increases the likelihood of cross-border disputes. The region therefore needs an effective, harmonised and regionally coherent Alternative Dispute Resolution (ADR) framework to sustain and advance the integration vision. ADR must be repositioned as core institutional infrastructure for the EAC's economic integration project.

The EAC's Customs Union and Common Market Protocols have been focal in liberalising intra-regional trade and attracting investment, strengthening infrastructure, exports and industrial diversification. The region's expansion through Public-Private Partnerships and the growth of cross-border Micro Small and Medium Enterprises (MSMEs) trade have added to an already significant volume of investment and trade disputes.

The East African Court of Justice (EACJ), established under Article 9 of the EAC Treaty, has jurisdiction over disputes arising from arbitration clauses in contracts to which the Community or its institutions are a party, and has formulated its own Arbitration Rules in that spirit. Yet arbitration at the court has seen limited uptake, driven by low stakeholder awareness, personnel and funding shortages, and enforcement uncertainty at the national court level. The impact on the EAC economy is measurable: intra-EAC trade accounts for only 12% of total EAC trade. Investor confidence remains low and significant capital that could enter the EAC economy is going elsewhere. Homegrown arbitral institutions are frequently bypassed in favour of expensive arbitration in Europe. These patterns reflect structural weaknesses that require urgent remedy.

ADR can prevent this system strain and preserve integration through deliberate strategies. A Model EAC Arbitration and Mediation Framework, akin to the New York Convention, would address the policy fragmentation that complicates enforcement across different national laws. Such a framework could be built from the EACJ Arbitration Rules and should provide for automatic recognition of awards across Partner States, strict and realistic timelines such as ninety days for enforcement of awards and a narrow public policy exception.

Commercial diplomacy through mediation is particularly well suited to resolving cross-border SME disputes. Digital EAC Trade Mediation Panels, operating through online dispute resolution channels, could unlock customs valuation and payment disputes and prevent supply chain breakdown. Settlement agreements reached through these panels could be adopted as consent judgments by the courts, carrying the same authority as a court judgment.

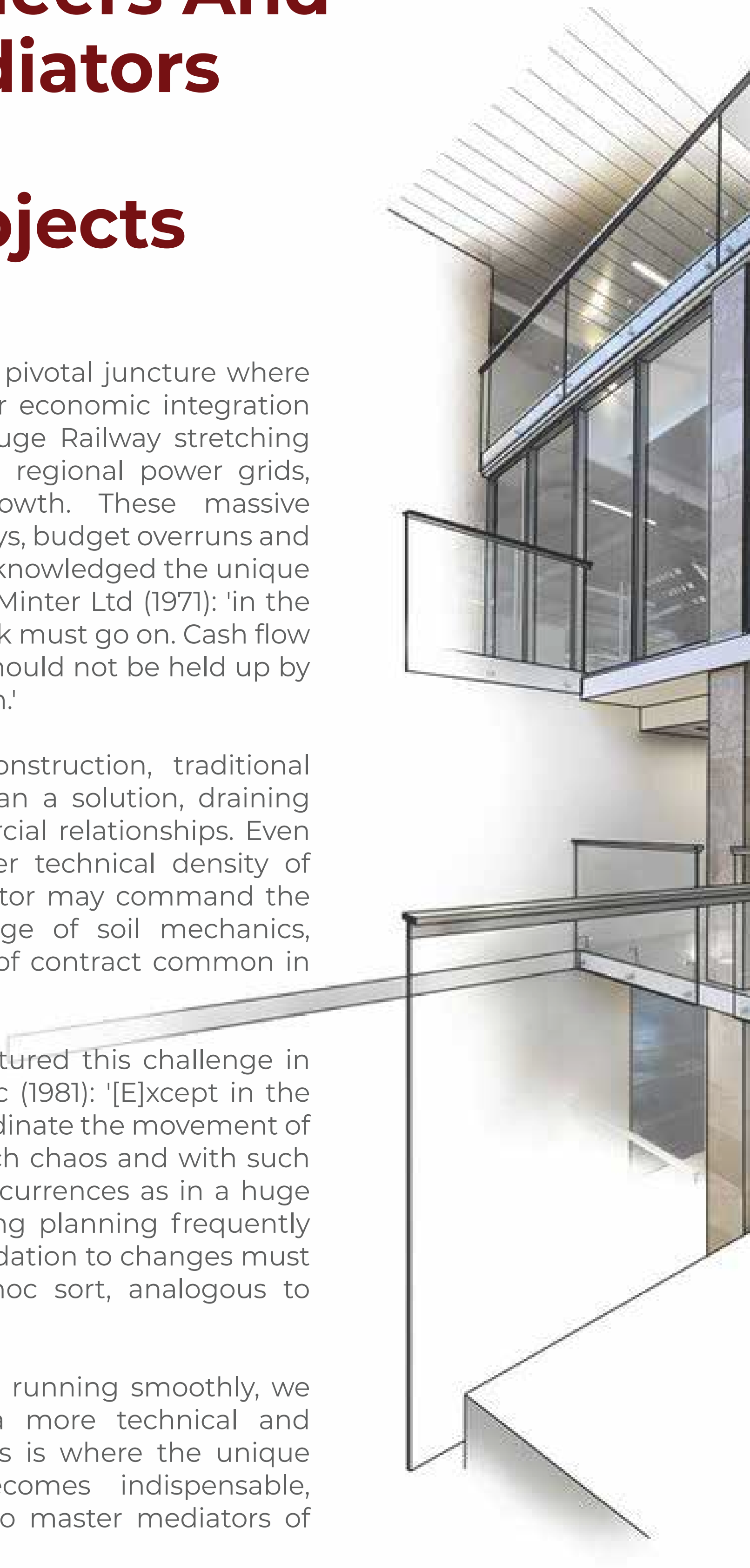
The EAC hosts strong institutions: the Nairobi Centre for International Arbitration (NCIA) and the Kigali International Arbitration Centre (KIAC) exemplify best practice. A scheme of EAC-accredited arbitrators sitting on regional panels across these institutions would build a body of regional jurisprudence, create ADR data repositories and retain financial resources within the regional economy as disputes are resolved locally. Funding could begin from subscription fees paid by accredited arbitrators and contributions pooled by Partner States.

Completing the picture requires judicial readiness. Judges and court officers need targeted training on ADR enforcement and their limited supervisory role within the process. Building expertise in drafting trade agreements that not only provide for dispute resolution but also anticipate and prevent disputes is equally important. The EAC must treat ADR as core economic infrastructure. While there is consensus on positioning the EAC as a major trading bloc, the focus must shift to the practicability and sustainability of that ambition.

Building Bridges

The Role Of Engineers And Architects As Mediators In Cross-Border Infrastructure Projects

|| By Antony Makau Irungu



The East African Community (EAC) stands at a pivotal juncture where physical connectivity is the primary catalyst for economic integration and shared prosperity. From the Standard Gauge Railway stretching across borders to transnational highways and regional power grids, infrastructure is the hardware of our growth. These massive undertakings are notoriously susceptible to delays, budget overruns and complex legal entanglements. Lord Denning acknowledged the unique character of construction in Dawnays Ltd v FG Minter Ltd (1971): 'in the ordinary way, in a construction contract, the work must go on. Cash flow is the lifeblood of the construction industry. It should not be held up by disputes which can be settled later by arbitration.'

In the high-stakes arena of cross-border construction, traditional litigation often acts as a bottleneck rather than a solution, draining resources and souring diplomatic and commercial relationships. Even formal arbitration can struggle with the sheer technical density of infrastructure projects. A judge or legal arbitrator may command the letter of the law but lack working knowledge of soil mechanics, structural integrity or the nuanced conditions of contract common in international engineering.

The District of Columbia Court of Appeals captured this challenge in Blake Construction Co Inc v C.J. Coakley Co Inc (1981): '[E]xcept in the middle of a battlefield, nowhere must men coordinate the movement of other men and all materials in the midst of such chaos and with such limited certainty of present facts and future occurrences as in a huge construction project. Even the most painstaking planning frequently turns out to be mere conjecture, and accommodation to changes must necessarily be of the rough, quick and ad hoc sort, analogous to ever-changing commands on the battlefield.'

To keep the engine of East African integration running smoothly, we must look beyond the courtroom toward a more technical and pragmatic approach to conflict resolution. This is where the unique expertise of engineers and architects becomes indispensable, transforming them from project designers into master mediators of regional progress.

One of the most significant advantages of technical mediation is speed. In construction, time is literally money: a month's delay on a multi-million-dollar project spirals into interest costs and idle machinery. Technical mediators, familiar with standard industry forms like FIDIC, can provide real-time intervention. Dispute Adjudication Boards (DABs) made up of architects and engineers resolve conflicts as they emerge on the ground rather than years later in a courtroom. For EAC projects spanning multiple sovereign states with different regulatory environments, this agility is not optional. A technical mediator can navigate the differing building codes of Kenya and Uganda with ease, finding a solution that respects both countries' safety standards while keeping the project on schedule.

Engineers and architects also bring a 'project preservation' focus that adversarial legal proceedings cannot offer. In a courtroom, the goal is to determine a winner and a loser through the lens of liability. In infrastructure mediation, the goal is to finish the project. Technical professionals understand that a stalled project fails everyone: the contractor, the government and the citizens awaiting the service. If a specific material becomes unavailable due to a border closure, a technical mediator can help both parties agree on a suitable alternative that meets the original design intent without constituting a formal breach of contract. This pragmatic approach preserves the commercial relationship between cross-border partners, ensuring that today's dispute does not prevent tomorrow's collaboration.

For this shift toward technical mediation to succeed across East Africa, professional cross-training is essential. Engineers and architects must be equipped with the soft skills of mediation, active listening, neutrality and interest-based negotiation, to complement their hard technical skills. Organisations like the CIArb Kenya Branch play a vital role here, bridging the gap between the technical and legal worlds.

The practical vision is clear: a Kenyan quantity surveyor, a Rwandan architect and a Ugandan civil engineer forming a regional panel of experts ready to be deployed to any project site in the bloc. This regional pool of technical mediators would accelerate dispute resolution and foster a deeper sense of shared professional standards across our borders. The bridges we build between our nations should never be broken by the weight of unresolved conflict.

Antony Makau Irungu is an LLB graduate from Africa Nazarene University currently completing the Advocates Training Programme at the Kenya School of Law. He is an intern at MWC Legal with a particular interest in the intersection of technical expertise and legal dispute resolution.

Adr As The Software Of Integration.

Strengthening Regional Growth through Dispute Resolution in the East African Community

|| By Magangi Anyega

The EAC's integration project seeks to establish a common market, a monetary union and a customs union for all member states. These goals generate dense networks of cross-border transactions, investment agreements and regulatory engagements. Integration produces disputes just as it produces trade, and if those disputes are not resolved efficiently, they undermine investor trust, deter investment and destabilise regional cooperation. ADR, and particularly arbitration and mediation, serves as the invisible operating system that sustains the integration framework.

Article 32 of the EAC Treaty gives the East African Court of Justice (EACJ) jurisdiction to hear disputes arising from arbitration clauses in contracts where the parties have conferred jurisdiction upon it. This provision moves the court from a purely adjudicative body into a real potential regional arbitral forum. Its significance is threefold: it offers a neutral regional forum for cross-border commercial disputes, it strengthens institutional autonomy within the EAC and it promotes a harmonised interpretation of regional commercial principles. Through the EACJ Arbitration Rules (2012), the court operationalises these mandates while aligning with international arbitral standards.

The court has consistently respected party autonomy and its own jurisdictional limits. In Yu Sung Construction Ltd v Attorney General of South Sudan (Reference No. 21 of 2019), the EACJ declined jurisdiction because the contractual arbitration clauses had not been exhausted. The court applied the principle of exhaustion of local remedies not as a technicality but as a strict substantive rule in cases where an arbitration clause exists and a party has moved to court as a first resort rather than a last. The decision affirmed two foundational principles: arbitration clauses are binding and the regional adjudication framework cannot override consensual ADR mechanisms that parties have agreed upon. This case demonstrated that ADR and judicial mechanisms within the EACJ are complementary systems, not competing ones.

Most EAC partner states are signatories to the New York Convention, which ensures the enforceability of foreign arbitral awards and strengthens regional predictability. Inconsistencies remain, however, in judicial interpretation, enforcement timelines and the standard for setting aside an arbitral award. These gaps are not negligible. They represent real friction in the regional commercial environment.

The East African region has been experiencing significant development in railways, oil pipelines and ports, projects that typically involve multi-state actors and foreign investors. Arbitration clauses in such contracts serve a function beyond dispute resolution: they depoliticise disputes, reduce diplomatic tensions and preserve long-term commercial relationships. A credible regional arbitration seat reduces reliance on foreign venues and retains expertise and jurisprudential development within East Africa. The Nairobi Centre for International Arbitration (NCIA) already provides a strong ecosystem for coordination and institutional capacity.

Deeper regional integration can only succeed if there are predictable, effective and efficient dispute resolution mechanisms. ADR reduces friction, protects investment and provides the confidence-based framework that the EAC's commercial growth depends on. Strengthening arbitral jurisdiction and building institutional capacity will ensure that the region's dispute resolution systems remain both credible and integration-enhancing. The EAC's economic ambition deserves dispute resolution infrastructure of equal seriousness.

Advancing Mediation Awareness and Skills:

Ciarb Kenya Joins the Judiciary and LSK in Capacity-Building Initiative

The Chartered Institute of Arbitrators (Kenya Branch) proudly participated in the opening of the 2nd Cohort of the Law Society of Kenya (LSK) Accelerated Training on Mediation, held at the Institute of Certified Secretaries (ICS) Building. The programme brought together 52 advocates committed to developing their skills in mediation and advancing alternative dispute resolution (ADR) in Kenya.

The training underscores the growing recognition of mediation as a vital mechanism for resolving disputes efficiently, preserving relationships, and improving access to justice.

https://ciarbkenya.org/ciarb-kenya-supports-the-next-generation-of-accredited-mediators-at-the-lsk-accelerated-mediation-training/

Bridging Justice

ADR for Growth and Regional Integration in East Africa

|| By Ivy Wangu Ngui, MCIArb

The East African Community (EAC) has made significant strides in promoting regional integration through trade liberalisation, infrastructure development and harmonised economic policies. Despite these advances, the legal and judicial landscape across East Africa remains fragmented, posing real challenges for cross-border commerce, investment and dispute resolution.

A key consequence of this fragmentation is the heightened risk and cost faced by companies and investors in cross-border transactions. Businesses encounter conflicting interpretations of contractual obligations, variations in judicial efficiency and uncertainties around enforcement of judgments or arbitral awards. For investors, concerns over prolonged litigation and the cross-border recognition of outcomes can discourage engagement and ultimately limit the region's economic potential.

This raises a critical question: can Alternative Dispute Resolution (ADR) serve as a unifying mechanism in a region marked by legal diversity? And what structural or institutional reforms are necessary to ensure that ADR processes are not only accessible but also effective across the EAC?

ADR mechanisms, particularly arbitration, mediation and conciliation, can be strategically deployed to bridge the gaps within the East African Community. ADR offers practical, flexible and party-driven solutions that navigate the rigidities of traditional court systems. Arbitration allows parties to select neutral forums, choose applicable laws and appoint expert arbitrators, reducing uncertainty. Mediation and conciliation provide structured avenues for negotiated settlements, preserving business relationships while offering faster and more cost-effective outcomes. By giving parties autonomy, ADR aligns dispute resolution with commercial realities and the dynamic nature of regional trade.

Concerns over jurisdiction, unfamiliar procedures and perceived bias in domestic courts continue to deter businesses and investors within East Africa. A Kenyan company contracting with a Tanzanian supplier may hesitate to rely on domestic courts due to uncertainty over procedural differences and enforcement risks. ADR addresses these concerns by providing neutral platforms and internationally recognised procedural safeguards, thereby strengthening trust in cross-border commercial relations.

The effectiveness of ADR within the EAC is reinforced by international instruments such as the UNCITRAL Model Law and the New York Convention, to which several EAC member states are signatories. These frameworks provide a legal foundation for the recognition and enforcement of arbitral awards, enhancing predictability and investor confidence in cross-border transactions.

ADR can ease many of the challenges inherent in East Africa's diverse legal environment, but its effectiveness depends on robust procedural, legal and institutional safeguards. Access to arbitration or mediation is not sufficient where awards are unenforceable or standards inconsistent. Institutional cooperation is therefore crucial. The East African Court of Justice, together with national arbitration centres, can play a complementary role in developing consistent standards, accrediting practitioners and promoting best practices. These institutions can strengthen oversight, ensuring that ADR processes adhere to established ethical and procedural norms while enhancing the enforceability of outcomes across the region.

A harmonised regional ADR framework under the EAC would enhance coherence and reduce jurisdictional inconsistencies. Such a framework could standardise procedural rules, provide uniform guidelines for enforcement of arbitral awards and create a regional platform for training and accrediting mediators and arbitrators. This approach would strengthen investor confidence, foster institutional collaboration, enable sharing of knowledge and reduce reliance on external arbitrators. It would also enhance the credibility of East Africa as a preferred forum for resolving complex commercial disputes.

Harmonised ADR mechanisms can equally be adapted to the commercial and cultural realities of the region. Mediation, for instance, aligns with traditional dispute resolution practices across many East African communities where consensus-building and negotiation are central to conflict resolution. Integrating these cultural dimensions into formal ADR frameworks makes dispute resolution more accessible and contextually relevant, while maintaining international standards of fairness and efficiency.

Effective ADR frameworks can also strengthen regional integration by reducing cross-border friction. When businesses are confident that disputes will be resolved efficiently and fairly, they are more likely to engage in trade, form partnerships and invest across borders. This advances the EAC's broader goals of economic integration, regional growth and global competitiveness. The promise of ADR in East Africa lies not merely in its flexibility, but in its capacity to create certainty across diverse legal systems. Realising this potential will depend on the region's commitment to coordinated implementation, supported by institutional strengthening and enforceable standards. If effectively implemented, ADR can evolve into a reliable mechanism for managing cross-border disputes and a cornerstone of deeper regional integration within the EAC.

Ivy Wangu Ngui is an Advocate of the High Court of Kenya with experience in litigation and alternative dispute resolution. She is a Principal Associate at Maina & Onsare Partners Advocates LLP and a member of the Chartered Institute of Arbitrators Kenya, the Law Society of Kenya and the East African Law Society.

HOPE FOR THE ELDERLY

THARAKA-NITHI COUNTY

|| By Brighton Nyaga

BHECO Homecare; Building Hope for the Elderly Community Organisation, is a registered Community Based Organisation. The CBO aims at maintaining cultural heritage through provision of a good home care for the elderly.

BHECO HOMECARE, led by CEO Franklin K. Mwathi and his team was launched on 26th July 2025. The ground breaking ceremony commenced at Nthaara, Tharaka South Sub County Tharaka-Nithi County where the homecare is to be initiated.

Father Deoson Tayebwa opened the ground breaking ceremony by cleansing the donated 3 acres of land at Nthaara. He congratulated CEO Franklin K. Mwathi and his team for the bravest idea to remember the elderly. Father Tayebwa promised his support towards the program and that of the Catholic Church.

The Administrative Representative at Nthaara cited that it was a great thought to uphold the elderly. He took charge after the ground cleansing to welcome the young ambitious team in his area. He assured the team present a maximum security around.

The office of the Governor Tharaka-Nithi County wasn't left behind at the ground breaking ceremony. The CS Tourism and Culture Tharaka-Nithi County, Madam CEO Nkirote Makarios was present.

CEO Nkirote embraced the idea and expressed her gladness. She reminded them that the art and culture of every community is in the elderly. CS Nkirote Makarios summarised her speech by mentioning that it is our christian duty to take care of our parents even at old age. She promised to be among the valuables in the program and also support from the county government as the project aimed at promoting the cultural values.

After the ground breaking at Nthaara, the team headed to Nkondi Ward Tharaka-Nithi County to wide up the event and refreshments at CEO Franklin K. Mwathi's home.

At home, Chairman CEO BHECO Homecare welcomed everyone including his esteemed guests and partners; BPAN CEO, Cooperative Bank- Meru-Makutano branch, Marafiki Boyz, Mr Kamundi (Principal Tharaka Boys High School), District County Commissioner Mr Josphat, Director TVET, Chief Manueli Njeru, Retired Senior Chief Makanya, Retired Senior Principal Mr Kaunanku, clergy, Dr. Francis Mutegi Kijogi Kabisani Economic Advisor of the Governor Tharaka-Nithi County, Tharaka businessman Benjamin Gitonga Mutugi, amongst others.

The Chairman BHECO Homecare narrated how the idea started as a nightmare. He barely had sleep upon realising how neglected the elderly were. After consulting various organizations, they all joined hands in his support; which appeared as a miracle.

Angeline Muthoni Mwathi, a health practitioner and vice chair BHECO Homecare, took lead on health education. Together with her team, they conducted quick health check to the elderly attendees.

It was really an honour to the elderly. They were the chief guests all through the event. "As we break the ground on this Community Based Organisation, we embark on a mission to improve essential health services, support and resources to those who most need it," Angeline Mwathi, health practitioner, said.

She went ahead and invited them to work together and create a compassionate community that values and supports its most vulnerable members. Madam Angeline ended her remarks with an inspirational quote that stated, 'Age is an issue of mind over matter. If you don't mind, it does not matter'.

The Economic Advisor of Governor Tharaka-Nithi County, Dr. Francis Mutegi Kijogi Kabisani, was eager to note that BHECO Homecare is the first ever initiative in Tharaka which will accommodate elderly from different communities and regions.

Dr. Francis Kabisani expressed his gratitude to the elderly who had attended. He was also thankful to the chairman for the great idea.Tharaka-Mombasa based businessman, Benjamin Gitonga Mutugi, was accompanied by his great friend; Wakili Miriti (Legal Officer Office of the Governor, Mombasa County).

Mr Benjamin Mutugi bowed in honour of the elderly present. He congratulated them for jointly supporting the idea. He breathed hope to them and assured that the journey to greatness had just began. Mr Elvis Mwangi, BHECO Homecare Digital Strategist, hinted on the plan to use their abilities and communicate with the world at large. He said that the strategy would not only benefit the elderly but also the whole county which would be on the limelight.

Mr Elvis Mwangi mentioned about BHECO Homecare merchandise. The merchandise was available in the market for purchase. Buying their merchandise, was a way of promoting the program. The event dimmed with the setting rays of the sun to allow the elderly get to their homes on time.

They (elderly) were gifted each with a 'maasai shuka' as a way of appreciation and ferried home.

CEO Franklin K. Mwathi and BHECO Homecare team were overwhelmed. Their determination to carry this program through successfully was evident in their smiley faces at the ground breaking ceremony.

The event was graced with honour and every attendee left joyfully.

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You Were Not Warned: The Real Cost of Building an ADR Practice in Africa

11:20 to 12:50 YMG SESSION 2

Qualified, Experienced and Still Waiting: The Structural Barriers Keeping Young African Practitioners Out of the Room - and the Solutions That Actually Work

14:00 to 15:30 YMG SESSION 3

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Cross-Border Contracts in East Africa

Choice of Law and Forum Matters

|| By Maryanne Kimani

In East Africa's growing cross-border market, a single clause can make the difference between a smooth deal and a costly dispute. Choosing the right law and dispute resolution forum is not legal jargon. It is your first line of defence against uncertainty.

Commercial relationships now routinely span borders, from Kenyan investors in Tanzania's port projects to Rwandan buyers sourcing goods from Uganda. Yet despite growing regional integration, cross-border contracts frequently trigger costly disputes because parties fail to address a fundamental question at the outset: which law applies, and where will disputes be resolved? Getting these clauses right is not merely technical. It is strategic. Clear drafting ensures predictability, enforceability and, ultimately, whether commercial relationships thrive or collapse.

The EAC aims to facilitate trade and investment across borders, but differences in national laws create friction for businesses. A contract signed in Kampala may encounter legal roadblocks when enforced in Nairobi, Dar es Salaam or Kigali if the parties have not agreed on the applicable law or dispute resolution forum. Failure to address these issues early results in jurisdictional battles, conflicting judgments or unenforceable awards. These delays cost time and money.

Many disputes arise from entirely avoidable drafting errors: the absence of arbitration or mediation clauses that leave parties in protracted court battles, assumptions that national courts will automatically step in or contracts that simply fail to specify the governing law.

In several East African infrastructure projects, disagreements over forum and applicable law have delayed payments and escalated costs. Strategic planning upfront is not a luxury. It is risk management.

Parties generally enjoy freedom of contract and may select the law that governs their agreement. Choice of law is driven by a combination of commercial and legal considerations. Parties may choose a system they know well to reduce interpretive uncertainty, favour laws from jurisdictions with strong records of respecting contractual autonomy or opt for a neutral legal system such as English law to avoid any home-court advantage and benefit from a well-developed body of commercial precedent. Mandatory statutory rules on consumer protection, tax or competition may also override contractual choices regardless of the governing law selected.

Deciding where disputes will be resolved matters as much as choosing the applicable law. Courts carry authority and coercive power, but they can be slow and procedurally complex. Arbitration provides neutrality, and awards are widely enforceable under international conventions, which makes it particularly attractive for cross-border transactions. Mediation encourages collaborative resolution and preserves commercial relationships. Where parties have contractually agreed on their own forum and dispute resolution process, the court steps aside and allows the parties to follow that mechanism.

Kenyan jurisprudence has consistently enforced this principle by emphasising that judicial restraint must apply to ADR processes. Decisions by Kenyan courts signal clearly that parties who design tiered ADR frameworks incorporating negotiation, mediation and arbitration can expect judicial support. This predictability strengthens the case for carefully drafted escalation clauses that encourage early settlement, especially in cross-border East African contracts.

Translating these principles into precise drafting requires discipline. Effective cross-border contracts should expressly state the governing law, clarify whether jurisdiction is exclusive or non-exclusive and identify the seat of arbitration, which determines the procedural framework and supervisory courts. A tiered dispute resolution structure that encourages negotiation or mediation before escalation to arbitration or litigation reduces both costs and adversarial risk. Clear drafting limits jurisdictional challenges, reduces interpretive disputes and enhances the enforceability of outcomes across borders.

Before signing any cross-border contract in East Africa, parties should explicitly state the applicable law, match the dispute resolution forum to the nature of the transaction, include ADR mechanisms such as mediation and arbitration, specify the seat of arbitration carefully, draft with enforcement in mind rather than copying boilerplate clauses and align all provisions with regional enforceability standards. When parties plan strategically, disputes are minimised, enforcement is smoother and East Africa's vision for integrated trade becomes a practical reality. Careful contractual design is itself a quiet but powerful driver of that integration.

From Assessment To Agreement:

How Tax ADR Is Changing the Dispute Landscape in Uganda

|| By By Otong Micheal Favour, ACIArb

When a business receives an unexpected tax assessment from the Uganda Revenue Authority (URA), the instinct is often to reach for a lawyer and head to court. In Uganda's tax landscape, however, a quieter revolution is underway, one that is settling disputes faster, cheaper and with far less animosity than traditional litigation. At the heart of this shift are two deceptively simple tools: mediation and negotiation.

Uganda's experience offers a compelling case study. At the Tax Appeals Tribunal (TAT), mediation resolved over 60% of tax disputes in 2024 before matters ever reached a formal hearing. At the URA itself, ADR cases surged from 1,303 in the 2022/2023 financial year to 2,370 in 2023/2024, a near-doubling in just twelve months, with projections exceeding 2,500 in 2024/2025. These are not abstract statistics. They represent thousands of businesses, engineers, contractors and professionals who found resolution without the cost and delay of a courtroom.

Uganda's tax ADR framework rests on solid statutory ground. The Tax Procedures Code Act Cap 343 establishes a self-assessment regime under Section 15, placing primary responsibility on taxpayers to compute and remit returns. The URA is empowered to issue additional assessments under Sections 24, 25 and 29, and it is from these assessments that disputes most frequently arise. The law provides a structured pathway out of the courts for exactly such moments.

The Tax Procedures Code (Alternative Dispute Resolution Procedure) Regulations 2023 formalised this pathway. Negotiation, meaning direct dialogue between a taxpayer and the URA, and conciliation, facilitated by an independent third party, are now recognised mechanisms with clear procedural rules. Participation is voluntary (Regulation 3), applications must be lodged within seven days of a tax decision (Regulation 4) and outcomes are binding and enforceable, capable of modifying assessments outright (Regulations 11 to 13). Cases involving fraud or deliberate non-compliance are appropriately excluded (Regulation 6).

At the TAT, the institutional commitment to ADR is equally clear. Upon assuming the Chairpersonship in April 2024, Ms. Crystal Kabajwara directed that all matters be initially handled through mediation, a directive that has already contributed to the Tribunal's dramatic case resolution rates. At the 2025 Tax Law Symposium organised by the Uganda Law Society, she observed that nearly 80% of TAT disputes could be resolved through conciliation alone.

For practitioners across disciplines, whether lawyers advising clients on tax exposure, engineers disputing withholding tax on construction contracts or quantity surveyors navigating VAT on project costs, the appeal of tax ADR is deeply practical. Litigation before the TAT, the High Court and beyond is expensive and slow. An ADR process that resolves a dispute in weeks rather than years preserves business relationships, reduces legal fees and allows both the taxpayer and the URA to move forward productively.

The courts have supported this direction. In Roofings Ltd v URA (TAT Application No. 08 of 2017), the Tribunal demonstrated how structured engagement grounded in proper documentation could achieve resolution without a full hearing. In URA v MFI Office Solutions Ltd (HCCA No. 14 of 2007), the High Court acknowledged the practical advantages of negotiated settlement over protracted litigation. Together, these decisions signal a judiciary comfortable deferring to ADR as a first resort, provided parties engage with it genuinely and in good faith.

The same growth that signals ADR's success also invites misuse. In Asiimwe t/a Assy Lodges v Uganda Revenue Authority (Miscellaneous Cause No. 21 of 2025), the TAT confronted a taxpayer who had pursued ADR not primarily to resolve the underlying dispute but in circumstances that effectively extended the statutory timeline for filing a review application. The URA argued, with some force, that the six-month limitation period had long expired. The Tribunal ultimately found in the applicant's favour by treating the ADR decision as the operative 'taxation decision' from which time ran, a significant and welcome clarification of the law. The case nevertheless exposes a pattern that, if it becomes habitual, risks turning a genuine resolution mechanism into a procedural tool for delay. ADR was designed to replace the adversarial process, not to extend it.

As the EAC deepens economic integration, the movement of goods, services, capital and people across borders brings an inevitable companion: disputes. Tax disputes in particular do not respect borders, and neither do the habits that shape how parties approach them. Uganda's experience is therefore not merely a domestic story. It is a regional signal. The infrastructure is in place. Statutory frameworks exist, institutional directives are being issued and a judiciary increasingly at ease with ADR is emerging. What the region now needs is a culture to match: one where ADR is understood not as a procedural option to be picked up when convenient and set down when it is not, but as a genuine commitment to resolution. When parties do exactly that, disputes that once consumed years in litigation resolve in weeks. In a region building toward integration, that may be one of the most important achievements of all.

Otong Micheal Favour is a legal professional and member of the Chartered Institute of Arbitrators (ACIArb), with a focused interest in alternative dispute resolution and tax law across East Africa. He can be reached at michealfavourotong@gmail.comone of the most important achievements of all.

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Case Note

Jaswinder Singh Virdi & Another v Sekandi Holdings Ltd & 2 Others

[2025] ELC No. 1221 of 2013 || By Alex Okware, MCIArb

Section 32B of the Arbitration Act of Kenya 1995 (as amended 2010) is a critical provision that allows arbitral tribunals to secure their right to unpaid fees, ensuring financial responsibility by parties during arbitral proceedings. It establishes a lien on the arbitral award: the tribunal holds the right to withhold delivery of an award until the parties settle any outstanding fees and expenses. The provision sits within a broader policy of ensuring that arbitration remains a self-sustaining, professionally viable process. An arbitrator who cannot secure payment for completed work is an arbitrator who cannot be expected to take on the next appointment.

On 8 June 2025, the Applicants, Jaswinder Singh Virdi and another, filed an application seeking to have a pending dispute, which had been referred to an arbitrator, recalled for hearing and determination by the court. The Respondents opposed the application, arguing that the Applicants had failed to pay their fair share of the arbitrator's fees, which justified withholding delivery of the award.

The background is straightforward. Through an application supported by the affidavit of the 1st Plaintiff, it was asserted that the arbitrator had determined one part of the dispute and ordered payment of Kshs 15,500,000, representing an amount paid toward an unsuccessful joint venture. The arbitrator elected not to deal with costs and interest at that stage, choosing instead to address them after finalising the remaining limb of the dispute, which involved construction works carried out by the Applicants.

The Applicants' case was that the arbitrator had refused to conclude the remaining part of the dispute despite several reminders. In the replying affidavit of the 3rd Respondent, it was maintained that costs had been agreed upon and that the question of interest remained pending before the arbitrator. Critically, the Respondents asserted that the Applicants had failed to pay the arbitrator's fee of Kshs 102,100. The arbitrator was therefore entitled to exercise the lien by withholding delivery of the award.

The single legal question before the court was whether it should recall the dispute for hearing and determination before itself.

The court found that the Applicants had not paid the arbitrator's fees. On that basis, the tribunal was entitled to exercise its right of lien as expressly provided for under the Act, and could not be faulted for withholding the award. The threshold for court intervention had not been met. The application was dismissed with costs to the Applicants.

The ruling rested on two provisions. Section 15 of the Arbitration Act outlines the grounds upon which an arbitrator may be found unable to act. Section 32B(2) and (3) expressly recognises the arbitrator's right of lien, protecting the tribunal's entitlement to fees before an award is released to the parties.

This decision carries practical importance for arbitral practitioners and parties alike. It restates the legal position clearly: an arbitrator is a professional exercising skill and experience, and is entitled to remuneration before delivering the product of that work. The court found the application premature because the Applicants had not fulfilled their financial obligations. To put it directly: 'the labourer is worthy of his hire.'

For parties, the lesson is equally clear. Failure to pay arbitrator fees is not a neutral act. It activates the lien mechanism and can delay access to an award that the non-paying party may actually need for enforcement or further proceedings. For practitioners managing arbitral proceedings, the decision underscores the importance of fee payment schedules agreed at the outset and enforced consistently. An award held under lien is an award that does no commercial work.

Alex Okware, MCIArb, is a member of the Chartered Institute of Arbitrators with a practice focus on construction and commercial dispute resolution.

HYBRID JUSTICE

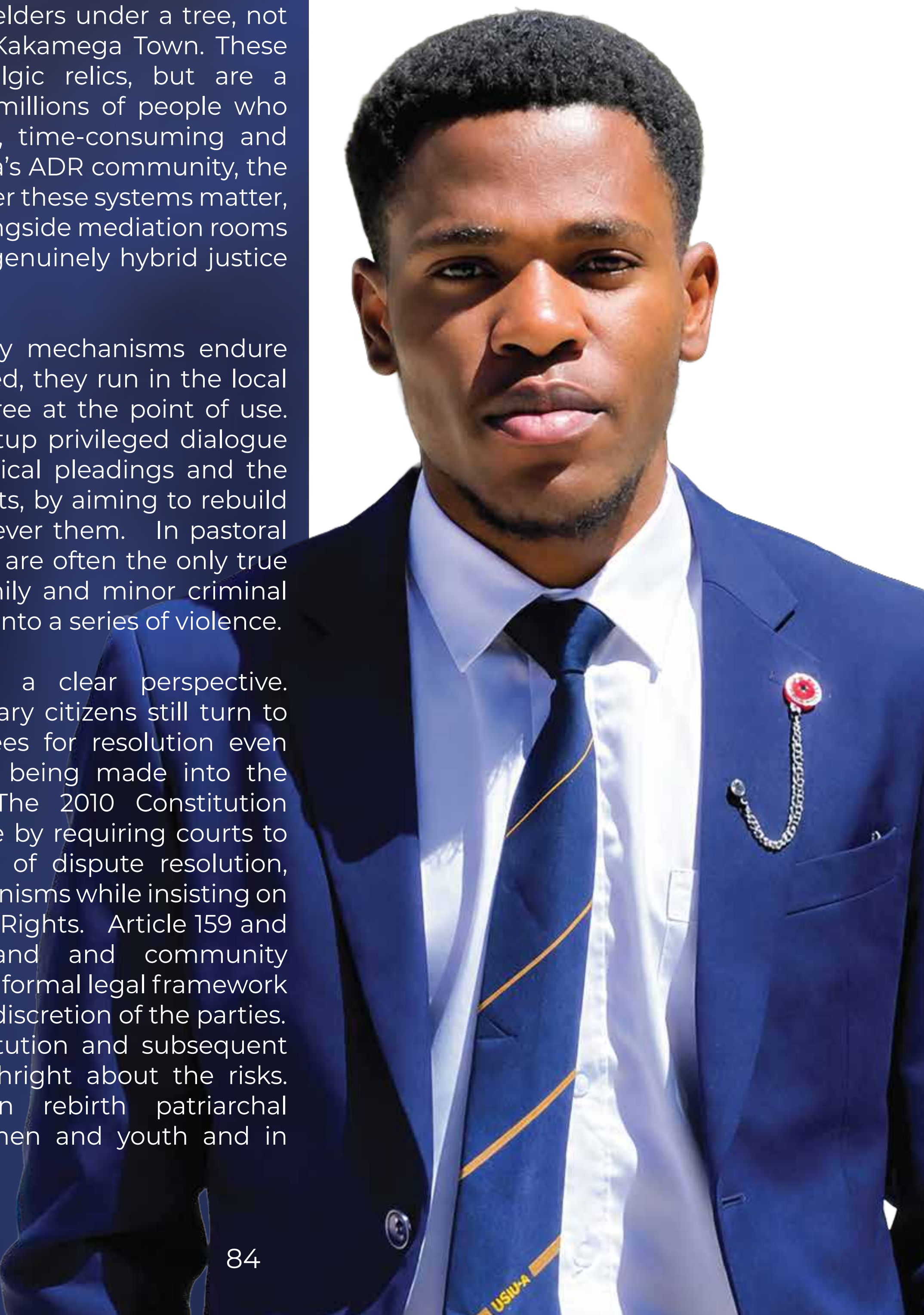
Lessons From Community And Customary Mechanisms For Africa's Adr Path

|| By Brillian Baraka

When a dispute breaks out in my village on the outskirts of Kakamega Town, the first step in solving it is often a small circle of elders under a tree, not the corridors of justice in Kakamega Town. These gatherings are not nostalgic relics, but are a primary justice forum for millions of people who find formal courts distant, time-consuming and intimidating. For East Africa's ADR community, the concern is no longer whether these systems matter, but how they can stand alongside mediation rooms and arbitral tribunals in a genuinely hybrid justice landscape.

Community and customary mechanisms endure because they are embedded, they run in the local dialect and are cheap or free at the point of use. The normal community setup privileged dialogue and restoration over technical pleadings and the "winner takes all" judgments, by aiming to rebuild relationships rather than sever them. In pastoral communities these forums are often the only true way to deal with land, family and minor criminal disputes before it develops into a series of violence.

Kenya's experience offers a clear perspective. Research shows that ordinary citizens still turn to elders and local committees for resolution even with the big investments being made into the formal justice system. The 2010 Constitution acknowledged this practice by requiring courts to promote alternative forms of dispute resolution, including traditional mechanisms while insisting on compliance with the Bill of Rights. Article 159 and related provisions on land and community initiatives embed this in the formal legal framework even as they remain at the discretion of the parties. Simultaneously, the constitution and subsequent policy documents are forthright about the risks. Customary platforms can rebirth patriarchal hierarchies, sidelining women and youth and in some communities



still tolerate habits like corporal punishment or settlement of serious offences in ways that clash with constitutional guarantees. The prohibitive outcomes that violate the Bill of Rights, morality and written law are a response to concerns. Still, they also carry the danger of halting systems under unclear external standards. Kenya's Alternative Justice Systems Framework and baseline policy try walking this line. Customary and community forums are now treated as legitimate justice institutions, not mere pre-court processes, but stress human rights-based minimum standards and voluntary participation by all parties. The framework forecasts courts deferring to or promoting community outcomes that meet those standards, intervening only when process or result openly clash with constitutional values.

From Kenya's lessons, lessons adaptable by the EAC rise. First, this type of hybrid justice starts from agency, where people should choose to submit disputes to elders, religious places, mediators or courts, while prosecutors maintain the gatekeeping role in serious crimes. When the participation is truly voluntary, customary mechanisms become a gate into a multi-way courtroom, not a compulsory stop. Second, this system works best when each forum plays to its relative strength. Elders and community panels are often better positioned to clarify local norms, manage collective responsibility for injury and build remedies that merge with communities. Courts, on the other hand, are stronger on procedural safeguards, equality and the communication of precedents in hard cases, challenging cases or where power imbalance is excess.

Conflicts in Kenya that involve natural resources in Kenya, Ethiopia and the neighboring states provides a view of this. Customary ways have long been used to broker grazing, water and boundary disputes across ethnic lines by the use of negotiated compensation and shared rituals to prevent the parties from going back on their word. When these processes are linked to statutory land commissions and courts that specify on land and environment, the outcome can be both locally legitimate and legally secure.

Third, acknowledging community justice that it's about dialogue and gradual evolution rather than a skeletal transplantation of formal procedure. Studies show that training elders on constitutional principles, women's rights and children's protection can shift norms without hollowing out the institution itself. Swamping these gatherings with lawyers and evidentiary rules risks destroying accessibility and trust that make them special. Compared experiences shared at regional forums suggest that this kind of light-touch foothold is emerging across East, Horn and southern Africa, though unevenly.

Ultimately, East Africa's ADR path will be shaped by political and resource constraints and by an elegant framework. Courts can be distant, customary leaders corrupt, processes underfunded or unequal while operating in a system that operates in societies marked by gender and class imbalances. Creating hybrid justice demands sustained investment at the community-level capacity, ethical protection and honest observance of who actually benefits from each gathering.

If ADR Compass is mapping the East African path, it's creating a landscape where circle, church halls, chiefs' barazas, mediation centers and superior courts all belong on the same map. The real huddle of this will be whether a widow in Kakamega, a herder in Narok or a trader in Gikomba can choose a pathway that feels safe knowing that whichever door they walk through, the law will walk with them.

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