

BOOK REVIEW by ENDOO DORCAS CHEPKEMEI*

Alternative Dispute Resolution and Access to Justice in Kenya.

Kariuki Muigua

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Alternative Dispute Resolution and Access to Justice in Kenya has been authored by Dr. Kariuki Muigua, a Chartered Arbitrator and an accomplished mediator. He seeks to offer a better understanding of the relationship between Alternative Dispute Resolution Mechanism (ADR) and Access to Justice, and all its relevant elements, in Kenya.

The book comprises of ten chapters. It commences with an introduction to conflict management and ADR, clarifying all the relevant concepts, so as to offer the relevant background to those who may perceive the book as an unfamiliar terrain. The relevance of the chapter is to enable the reader to understand the basis of the application of ADR in access to justice, as a means to an end. In this chapter, the author clearly explains the underlying components in conflict and how they influence conflict management. This fundamental understanding of the elements of social conflicts and conflict management mechanism informs the choice of conflict management, for the desired outcome.

Chapter two of the book provides a quick guide on the various ADR mechanisms and Traditional Dispute Resolution Mechanisms (TDR) and elaborates on the merits and demerits of each of the mechanisms. Thus, it offers a quick reference for ADR and TDR in Kenya to researchers and practitioners. This is an important chapter in the flow of the book as it helps in demystifying the various mechanisms, how they relate to each other, if at all, and their applicability in aiding access to justice.

Chapter three of the book offers the much needed discussion on understanding the foundations of ADR, generally. The chapter seeks to clarify the myth that ADR is alternative to litigation and also perceived inferiority of these mechanisms when compared to litigation. The author traces the application of ADR and TDR from indigenous communities in Kenya and around Africa in general. He highlights some of the common conflicts in these communities which were successfully, managed through ADR and TDR mechanisms. The discussion in this chapter culminates in affirmation of

the pluralistic nature and application of law on ADR and TDR, as far as formal and informal justice systems are concerned.

Chapter four builds on chapters two and three of this book, offering a more elaborative discussion on the legal and policy framework of ADR in Kenya. The chapter makes an attempt to trace the often elusive link between the formal court process and the application of TDR and ADR mechanisms. The chapter challenges the policy makers and legislators to actualize Article 159(2) of the Constitution of Kenya 2010 on ADR and TDR mechanisms.

Chapter five is equally and importantly an appropriate chapter as it critically analyses ADR under the court process, as conceived under most of the statutes in Kenya as well as the Constitution. In this chapter, the author also discusses some of the challenges that are likely to face legal implementation of the two main ADR processes, arbitration and mediation, as envisaged in law. It is probable that these challenges will affect the incorporation of ADR and TDR in Kenya. This chapter is, therefore, useful to the policymakers and legislators in ensuring that the help in capturing and realizing the aspirations of the Kenyan people as captured in the current constitution.

After taking the reader through ADR and TDR mechanisms, their merits and demerits as well as where they are to be found in law, the author introduces the topic which forms the crux of the book: *ADR and Access to Justice*. The chapter establishes the link between access to justice and each of the mechanisms under the rubric of ADR and TDR. Based on the discussion offered in chapters one, two and three of this book, chapter six convincingly demonstrates the relationship between the two concepts: ADR and access to justice.

Chapter seven is a discussion on whether ADR practice should be formally regulated and if so, how it should be done. The author further explores the various reasons as to why ADR practice, globally and Kenya in particular, should be regulated. While not expressly opposing regulation of ADR practice, the author makes a case for the need to strike a balance that ensures that the perceived advantages of ADR mechanisms are not lost and at the same time, ADR practitioners do not take advantage of the lacuna to perpetuate injustice through ADR.

One cannot gainsay the important and indispensable role that lawyers play in conflict management in any given society. While it is true that most of their work is mostly associated with courts, chapter eight of this book introduces the reader to the other face of the lawyer as a negotiator, mediator and pacemaker in society. For lawyer to remain relevant and key player role in all spheres of social conflict management, the author in

this chapter proffers relevant skills and competencies relating to ADR that lawyers should consider acquiring. The discussion in this chapter perceives a lawyer as the social engineer, in the context of the larger society and not just the immediate client.

Chapter nine is written against the background of Article 159 of the constitution of Kenya and the numerous statutes that seek to entrench the use of ADR and TDR mechanisms in Kenya. Thus, the chapter explores some of the key areas in the practice of ADR that should be looked into to secure efficacious application of ADR and TDR in Kenya, in future.

The book concludes at Chapter ten by offering a recap of the discussions in chapters one through chapter nine and affirms the need to undertake the use of ADR and TDR as a means facilitating realization of the right of access to justice for the Kenyan people.

Although this book adopts a simple and easy to understand approach that enhances the reader's grasp of the concept as discussed regardless of their backgrounds, this should not be confused with simplistic approach. The chapters in this book build on each other, offering a concrete understanding of the topic. The author takes the reader through this journey by adopting understandable language as opposed to a technical or legal approach. The use of case law and statutory provisions has helped in contextualizing the discussion in this book, thus, further enhancing the reader's understanding of the issues.

This book, therefore, offers a simple yet deep read on the subject of ADR and Access to Justice in Kenya, especially in light of the current Constitution of Kenya. It is a worthy piece of literary work for students, lecturers, practitioners, policymakers and researchers in the areas of ADR and access to justice in Kenya. Getting yourself a copy is definitely worth it.

* The reviewer holds LLB (Hons) from Kenyatta University and Diploma (HRM) from University of Nairobi. She has completed her Advocacy Training Programme from the Kenya School of Law and has enrolled for Masters Program. Her areas of interest include but are not limited to; ADR and Access to Justice, mootings, legal Research, women, governance and development, environmental law and international law. She has participated in several fora that touch on pertinent developmental issues affecting West Pokot County and Kenya at large.