

Managing Governance Conflicts Through Alternative Dispute Resolution in Kenya

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**MANAGING GOVERNANCE CONFLICTS THROUGH ALTERNATIVE DISPUTE
RESOLUTION IN KENYA**

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Abstract

The paper critically analyses the suitability of Alternative Dispute Resolution (ADR) mechanisms in managing governance conflicts. It begins by giving an overview of governance and the importance of good corporate governance as a conflict avoidance strategy. The paper then discusses the nature, causes and underlying issues in governance conflicts to set the tone for the discussion that follows on ADR and governance conflicts. It gives a succinct overview of ADR mechanisms; their advantages and the difference between settlement and resolution in ADR. The paper then delves into the applicability of ADR in managing governance conflicts and highlights the shortcomings of ADR towards this course. Finally, the paper proposes recommendations aimed at ensuring good corporate governance through the use of ADR as a tool for managing governance conflicts.

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1. INTRODUCTION

Governance, in the corporate context, refers to the system through which a corporation is directed and controlled in order to protect the interests of all stakeholders and ensure reasonable return on investments.¹ Corporate governance has also been defined as the system through which a corporation is directed and controlled and which specifies distribution of rights and responsibilities among various players in a corporation being the board of directors, shareholders and other stakeholders and further sets out the rules and procedures for corporate decision making.² The Global Corporate Governance Forum in advocating the need for good corporate governance notes that:

“Corporate Governance has become an issue of worldwide importance. The Corporation has a vital role to play in promoting economic development and social progress. It is the engine of growth internationally, and increasingly responsible for providing employment, public and private services, goods and infrastructure. The efficiency and accountability of the corporation is now a matter of both private and public interest, and governance has, thereby, come to the head of the international agenda.”³

Good corporate governance is important in attracting investors, creating competitive and efficient corporations, enhancing accountability and performance in an organization and promoting

¹ Cadbury, A. (2002). *Corporate Governance and Chairmanship: A Personal View*. New York: Oxford University Press.

² Organisation for Economic Co-Operation and Development (OECD), *Principles of Corporate Governance*, available at <http://www.oecd.org/corporate/ca/corporategovernanceprinciples/31557724.pdf> (accessed on 06/07/2020)

³ Global Corporate Governance Forum, ‘Corporate Governance’ available at <https://www.ifc.org/wps/wcm/connect/0ca17952-3244-4801-a6c2-ee8b1896dc32/User%2BGuide.pdf?MOD=AJPERES&CVID=jtCxBar> (accessed on 23/07/2020)

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effective and efficient use of resources in an organization.⁴ On this basis, it is argued that good corporate governance is a prerequisite for national economic development.⁵

In order to give effect to the ideal of good corporate governance, several principles have been generally accepted as pillars of ideal corporate governance. The Constitution of Kenya enshrines national values and principles of governance which bind all persons. These include *inclusiveness, equality, non-discrimination, good governance, integrity, transparency, accountability and sustainable development* (emphasis added).⁶ The Organisation for Economic Co-operation and Development (OECD) identifies the principles of corporate governance to include: *equitable treatment of shareholders; disclosure and transparency; role of stakeholders in corporate governance and responsibilities of the board* (emphasis added).⁷

Good corporate governance cannot thrive in an environment of conflicts. Governance conflicts are bound to occur in an organization due to the different players involved and the difference in ideas, principles and plans that such players may hold.⁸ The parties in an organization may have a conflict about the distribution of resources, or they may have a more fundamental conflict about the very structure of their organization and the basic nature of their interaction.⁹ A corporation entails multiple personnel including the directors, the Chief Executive Officer, shareholders and employees. In their day to day interactions, these personalities are likely to differ leading to

⁴ Private Sector Initiative for Corporate Governance, 'Principles for Corporate Governance in Kenya and a Sample Code of Best Practice for Corporate Governance' available at https://www.ics.ke/wp-content/uploads/bsk-pdf-manager/Principles_of_good_corporate_Governance_Private_Sector_-_CS_Gabriel_Kimani_110.pdf (accessed on 07/07/2020)

⁵ Ibid

⁶ Constitution of Kenya, 2010, Article 10, Government Printer, Nairobi

⁷ Organisation for Economic Co-Operation and Development (OECD), Principles of Corporate Governance, Op Cit

⁸ Bercovitch, J., Conflict and Conflict Management in Organizations: A Framework for Analysis, available at <https://legacy.earlham.edu/~chriss/ConflictRes/pdf%20files/Conflict.Conflict%20Management%20in%20Organizations.pdf> (accessed on 16/07/2020)

⁹ Ibid

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conflicts. If such conflicts are not addressed effectively and in a timely manner, they may pose a threat to the business affairs of a corporation and defeat the core purpose of good corporate governance. The paper critically analyses governance conflicts and explores the use of Alternative Dispute Resolution in managing such conflicts. It addresses some of the causes of governance conflicts and the need to have such conflicts managed in an efficient, effective and timely manner. It highlights the benefits of using ADR in managing governance conflicts and proposes reforms aimed at enhancing good corporate governance through effective, efficient and timely conflict management.

2. ALTERNATIVE DISPUTE RESOLUTION (ADR) AND CONFLICT MANAGEMENT

Conflict has been described as a situation whereby two or more parties perceive that they possess mutually incompatible goals.¹⁰ A conflict relates to the needs and values shared by the parties whereas a dispute concerns interests or issues.¹¹ Conflict management involves the processes required for stopping or preventing overt conflicts and aiding the parties involved to arrive at durable peaceful settlement of their differences.¹²

Alternative Dispute Resolution (ADR) mechanisms refer to the set of mechanisms that are utilised to manage conflicts without resort to the often costly adversarial litigation.¹³ The *Constitution of Kenya* advocates for promotion of alternative forms of dispute resolution including *reconciliation*,

¹⁰ Demmers J., *Theories of Violent Conflict: An Introduction*, (Routledge, New York, 2012)

¹¹ Muigua. K., *Alternative Dispute Resolution and Access to Justice in Kenya*, Glenwood Publishers Limited (2015)

¹² Leeds, C.A., 'Managing Conflicts across Cultures: Challenges to Practitioners,' *International Journal of Peace Studies*, Vol. 2, No. 2, 1997.

¹³ *Ibid*

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mediation, arbitration and traditional dispute resolution mechanisms (emphasis added).¹⁴

Internationally, the *Charter of the United Nations* outlines various conflict management mechanisms and provides that the parties to any dispute shall, first of all seek a solution by *negotiation, enquiry, mediation, conciliation, arbitration*, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice (emphasis added).¹⁵ ADR mechanisms have been hailed for their advantages which include *inter alia* cost effectiveness, flexibility, expeditiousness, promoting party autonomy and preserving relationships among parties.¹⁶ These advantages make ADR a preferable mode of conflict management to the adversarial litigation.

Conflict management can result in settlement or resolution. Most of the ADR mechanisms seek to address the root cause of conflicts unlike litigation which concerns itself with reaching a settlement.¹⁷ Settlement mechanisms focus on interests of parties at the expense of human needs such as relationships, emotions, perceptions and attitudes.¹⁸ Consequently, the causes of the conflict in settlement mechanisms remain unaddressed leaving the possibility of conflicts reemerging in future.¹⁹ Settlement mechanisms include litigation and arbitration.

Resolution mechanisms on the other hand focus on outcomes based on mutual problem-sharing whereby parties to a conflict cooperate in order to redefine their conflict and their relationship.²⁰ This results in outcomes that are enduring, non-coercive, mutually satisfying, addresses the root

¹⁴ Constitution of Kenya, 2010, Article 159 (2) (c)

¹⁵ United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, Article 33

¹⁶ Muigua. K., *Alternative Dispute Resolution and Access to Justice in Kenya*, Glenwood Publishers Limited, 2015

¹⁷ Muigua. K., *Heralding a New Dawn: Achieving Justice Through Effective Application of Alternative Dispute Resolution Mechanisms (ADR) in Kenya*, available at <http://kmco.co.ke/wp-content/uploads/2018/08/Heralding-a-New-Dawn-Access-to-Justice-PAPER.pdf> (accessed on 07/07/2020)

¹⁸ Ibid

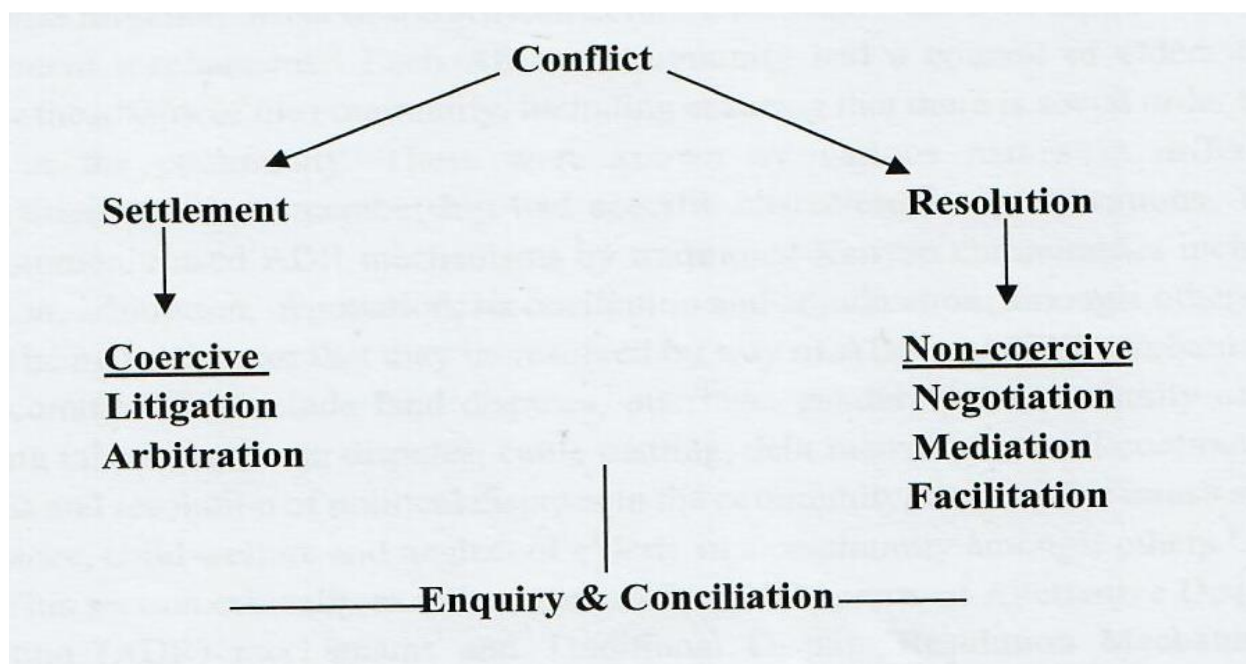
¹⁹ Muigua. K., *Resolving Conflicts Through Mediation in Kenya*, Glenwood Publishers, 2017

²⁰ Ibid

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cause of the conflict and rejects power based outcomes.²¹ Resolution mechanisms address the root causes of conflicts and are preferred to settlement mechanisms for their effectiveness in conflict management. These mechanisms minimise the likelihood of the same conflicts reemerging in future.²²

Figure 1: Methods of Conflict Management



***Source: The author**

Figure 1 shows that there are certain methods of conflict management that can only result in settlement. These are categorised as coercive methods where parties have little or no autonomy over the process. The coercive methods are litigation and arbitration. It also shows the non-coercive methods (negotiation, mediation and facilitation) which lead to resolution. In the non-

²¹ Kenneth Cloke, “The Culture of Mediation: Settlement vs. Resolution”, The Conflict Resolution Information Source, Version IV, December 2005, Available at <http://www.beyondintractability.org/bi-essay/culture-of-mediation> (accessed on 07/07/2020)

²² Ibid

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coercive conflict management methods, parties enjoy autonomy over the choice of the mediator or third party, the process and the outcome. Conciliation and enquiry can be classified as coercive (when the reports emanating from them are enforced) and non-coercive, for example, when the reports are used as the basis for negotiation between the parties.

3. GOVERNANCE CONFLICTS

It has been argued that most corporate governance conflicts arise because of how board members interact with each other in discharge of their duties.²³ Such conflicts could take the form of disagreements between directors and top management over corporate strategy or financial policy.²⁴ Boardroom conflicts are inevitable. Decision making within the boardroom results from a process in which directors consider all the information reasonably available to them and engage in a vigorous debate on issues such as company strategy, company control and financial policy.²⁵ This increases the likelihood of disagreements within the board. Indeed, it has been argued that a board that never argues or disagrees is most likely to be an inactive or passive board.²⁶

Governance issues, requirements and standards have been attributed as a fertile source of misunderstandings and disputes within an organization.²⁷ These can include; the relationship

²³ Agrawal. A., & Chen. M., Boardroom Brawls: An Empirical Analysis of Disputes Involving Directors, Quarterly Journal of Finance, Vol. 7, No. 3

²⁴ Ibid

²⁵ Jon Masters and Alan Rudnick, *Improving Board Effectiveness: Bringing the Best of ADR into the Corporate Boardroom* (Washington, D.C.: American Bar Association, 2005).

²⁶ Runesson. E., & Guy. M., Mediating Corporate Governance Conflicts and Disputes, available at http://documents1.worldbank.org/curated/en/969191468314989975/pdf/418270NWP0Foculion0321443B01PUBLI_C1.pdf (accessed on 01/07/2020)

²⁷ Omisore, B.O & Abiodun, A.R., 'Organizational Conflicts: Causes, Effects and Remedies' *International Journal of Academic Research in Economics and Management Sciences*, Nov2014, Vol. 3, No. 6

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between directors and the Chief Executive Officer; the interplay between oversight and management; and the balancing of an organization's short and long term interests. Further, governance disputes can also arise as a result of poor corporate performance or disputes involving stakeholders.

When a disagreement or dispute arises within an organization, it is in the best interest of the organization to have them managed effectively, expeditiously and efficiently. How such disagreements are managed determines whether the underlying issues can be resolved or whether the disagreement can ripen into a dispute that can have detrimental effects on the affairs of an organization including its financial performance and public image.²⁸ It is thus essential for an organization to develop and adopt efficient dispute management mechanisms. Efficient dispute management within an organization is part of good risk management since it enables an organization to cushion itself against the adverse effects of disputes whenever they occur.²⁹

4. APPLICABILITY OF ADR MECHANISMS IN MANAGING GOVERNANCE CONFLICTS

Well governed corporations are less likely to have conflicts.³⁰ However, where conflicts arise, there is need to have in place a suitable process and venue to manage the conflict in a timely and

²⁸ Ibid

²⁹ International Finance Corporation, Resolving Corporate Governance Disputes, available at https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+cg/topics/resolving+corporate+governance+disputes (accessed on 01/07/2020)

³⁰ Pondy, L., Reflections on Organizational Conflict, *Journal of organizational Behaviour*, Vol 13 (2) pp257-261

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cost-effective manner.³¹ A good corporate governance framework ensures availability of a reliable mechanism for managing emerging and existing disputes.

In managing governance disputes, there are several underlying issues that need to be addressed. It has been rightly pointed out that corporations hate to go public with their governance disputes.³² Such disputes if brought to limelight could affect public perception of an organization and ultimately its overall performance.³³ Further, if governance disputes are not managed expeditiously, much of the Board's resources and time will be diverted at the expense of the success of the organization. Litigation therefore cannot effectively deal with the underlying issues in governance conflicts. It has been pointed out that the court's role is dependent on the limitations of civil procedure, and on the litigious courses taken by the parties themselves.³⁴ Conflict management through litigation can take years before the parties can get justice in their matters due to the formality and resource limitations.³⁵ Litigation is often slow and expensive and it may at times lose the commercial and practical credibility necessary in the corporate world.³⁶

The shortcomings of litigation makes it a less viable mechanism of managing governance conflicts due to the need for expeditious results and continued working relations. These challenges can be effectively addresses through the suitable use of ADR solutions which can be tailored by the parties to deal with ongoing situations in a manner that allows the parties to continue working together.³⁷

³¹ Ibid

³² International Finance Corporation, Resolving Corporate Governance Disputes, Op Cit

³³ Ibid

³⁴ Ojwang', J. B. "The Role of the Judiciary in Promoting Environmental Compliance and Sustainable Development," 1 Kenya Law Review Journal 19 (2007), pp. 19-29: 29

³⁵ Muigua. K., Utilising Alternative Dispute Resolution Mechanisms to Manage Commercial Disputes, available at <http://kmco.co.ke/wp-content/uploads/2018/09/Utilising-Alternative-Dispute-Resolution-Mechanisms-to-Manage-Commercial-Disputes-Kariuki-Muigua-7th-September-2018.pdf> (accessed on 13/07/2020)

³⁶ Ibid

³⁷ International Finance Corporation, 'Resolving Corporate Governance Disputes, available at https://www.ifc.org/wps/wcm/connect/cdd4b694-32b2-4609-8adc-fdf9334cb90b/ADR_Toolkit_volume1.pdf?MOD=AJPERES&CVID=jtCvQIC (accessed on 14/07/2020)

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Indeed, most global and national corporate governance statutes, principles and codes advocate the use of ADR in managing governance conflicts.

The *OECD Principles of Corporate Governance* encourage equitable treatment of shareholders and the need to provide a framework through which shareholders can enforce their rights and initiate legal and administrative proceedings against management and board members.³⁸ Towards this end, OECD notes that “a balance must be struck between allowing investors to seek remedies for infringement of ownership rights and avoiding excessive litigation. Many countries have found that alternative adjudication procedures, such as *administrative hearings or arbitration procedures* organised by the securities regulators or other regulatory bodies, *are an efficient method for dispute settlement*, at least at the first instance level (emphasis added).”³⁹

*The King III Report on Corporate Governance for South Africa*⁴⁰ advocates the use of ADR as a tool of good corporate governance. It encourages directors to preserve business relationships. Consequently, when a dispute arises, in exercising their duty of care, directors should endeavour to *resolve it expeditiously, efficiently and effectively* (emphasis added).⁴¹ Further, in advocating the use of mediation, the Report notes that it enables novel solutions which may not be attained in litigation which is constrained to enforce legal rights and obligations.⁴² The Report correctly states that in mediation, the *parties’ needs are considered, rather than their rights and obligations*.

³⁸ (OECD), Principles of Corporate Governance, Op Cit

³⁹ Ibid

⁴⁰ King Report on Governance for South Africa, available at https://cdn.ymaws.com/www.iodsa.co.za/resource/resmgr/king_iii/King_Report_on_Governance_fo.pdf (accessed on 13/07/2020)

⁴¹ Ibid, Chapter 8 (Principles 8.6)

⁴² Ibid

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In Kenya, The *Code of Corporate Governance Practices for Issuers of Securities to the Public*⁴³ while providing the guidelines for managing internal and external disputes involving companies states that “Disputes involving companies are an inevitable part of doing business. Companies shall establish mechanisms for *resolving the disputes in a cost effective and timely manner. Mechanisms to avoid their recurrence shall also be established and implemented.* It is incumbent upon directors and executives, in carrying out their duty of care to a company *to ensure that disputes are resolved effectively, expeditiously and efficiently.* Further, *dispute resolution shall be cost effective and not a drain on the finances and resources of the company* (emphasis added).”⁴⁴

Further, The *Code of Governance for State Corporations in Kenya* advises the Board to ensure that disputes with and among stakeholders are resolved effectively, efficiently and expeditiously.⁴⁵ Under the Code, the Board is encouraged *to take reasonable steps towards managing disputes involving stakeholders through the use of Alternative Dispute Resolution Mechanisms* (emphasis added).⁴⁶ Board members are expected to *resolve issues in a fair and respectful manner which considers informal processes such as dialogue or mediation* (emphasis added).⁴⁷

ADR mechanisms especially mediation are viable in managing governance disputes. The King Report in while advocating the use of mediation in managing governance conflicts notes that “mediation is often more appropriate where interests of the disputing parties *need to be addressed and where commercial relationships need to be preserved and even enhanced* (emphasis

⁴³ Capital Markets Authority, Gazette Notice No. 1420, The Code of Corporate Governance Practices for Issuers of Securities to the Public, 2015, available at https://www.cma.or.ke/index.php?option=com_phocadownload&view=category&id=92&Itemid=285 (accessed on 13/07/2020)

⁴⁴ Ibid, Chapter 4.3

⁴⁵ Mwongozo, The Code of Governance for State Corporations, 2015‘ Chapter 6, Stakeholder Relationships’

⁴⁶ Ibid

⁴⁷ Code of Conduct and Ethics for State Corporations, 5

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added).⁴⁸ It has been noted that governance conflicts have at least three dimensions; emotional, legal and commercial.⁴⁹ Mediation is able to effectively manage such disputes since it considers all the three dimensions unlike litigation which only considers the legal dimension of a case. In *K.M. Patel and another v. United Assurance Company Ltd*⁵⁰, mediation was successfully used in managing a governance conflict. In the case, two shareholders filed a petition against the Respondent company on allegations that their 40-percent shares in the company had been wrongfully and illegally diluted during the company's restructuring and sale without prior notice. With the consent of both parties, the Commercial Court offered to mediate the case. In encouraging the parties to engage in the mediation process, the mediator stated that "Both parties should sit down as business partners and come to an amicable understanding because at the end of the day, you may find that no one has benefited if the company has wound up." Consequently, the mediation was successful and led to a consent judgement in which the company bought out the two shareholders and amicably resolved the dispute.

Arbitration is also a preferable mechanism of conflict management especially in conflicts between an organization and third parties. In Kenya, most organizations are using arbitration to manage conflicts with suppliers, dealers and other third parties.⁵¹ Most contracts governing business engagements usually contain arbitration clauses which provide for referral of any dispute arising under the contract to arbitration.⁵² Further, employment agreements between some corporations

⁴⁸ King Report on Governance for South Africa, Op Cit

⁴⁹ Runesson. E., & Guy. M., Mediating Corporate Governance Conflicts and Disputes, Op Cit

⁵⁰ Company Cause No 5 of 2005 (Commercial Court, Uganda)

⁵¹ Muigua. K., Emerging Jurisprudence in the Law of Arbitration in Kenya: Challenges and Promises, available at <http://kmco.co.ke/wp-content/uploads/2018/08/Emerging-Jurisprudence-in-the-Law-of-Arbitration-in-Kenya.pdf> (accessed on 21/07/2020)

⁵² Ibid

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and senior executives call for the use of arbitration in case of any employment related dispute. Even though closely related to litigation, there are certain salient features of arbitration which make it an important and attractive alternative to litigation in managing governance disputes. In arbitration the parties have autonomy over the choice of the arbitrator, place and time of hearing, and as far as they can agree, autonomy over the arbitration process which may be varied to suit the nature and complexity of the conflict.⁵³

Negotiation is also one of the most fundamental ADR mechanisms that can be effectively utilised in managing governance conflicts. It refers to the process where parties attempt to find mutually acceptable solutions to the issues at hand without the assistance of a third party.⁵⁴ Negotiation focuses on the common interests of parties over their relative power and positions.⁵⁵ This mechanism can be effectively applied in governance conflicts such as conflicts between board members or board members and shareholders. This is due to the underlying common interest at hand which is to promote success of the organization.⁵⁶ Parties will be more than willing to give up their individual positions and adopt a common position that is mutually acceptable and in the interest of the organization. Negotiation leads to mediation where parties have reached a deadlock.⁵⁷ An organization should thus endeavour to use negotiation in managing governance conflicts before resorting to mediation or other ADR mechanisms such as arbitration where the negotiation fails.

⁵³ Building Disputes Tribunal, New Zealand, available at <http://www.buildingdisputestribunal.co.nz/html>, accessed on 21/07/2019

⁵⁴ Fischer, R. & Ury, W., *Getting to Yes: Negotiating Agreement Without Giving In*, (Penguin Books, New York, 1981), p. 4

⁵⁵ Ibid

⁵⁶ Nisanasala, MBS, Win-Win Settlement: Applicability of Negotiation Principles for Dispute Negotiations in Construction Projects, available at <http://dl.lib.uom.lk/handle/123/13841> (accessed on 23/07/2020)

⁵⁷ Mwangi, M., *Conflict in Africa; Theory, Processes and Institutions of Management*, (Centre for Conflict Research, Nairobi, 2006), p 115.

5. SHORTCOMINGS OF ADR AS A TOOL FOR MANAGING GOVERNANCE CONFLICTS

Despite their inherent advantages, ADR mechanisms face certain challenges that could potentially hinder their suitability in managing governance conflicts. One of the cardinal principles of ADR is party autonomy. However, in the case of an organization, it may not be possible to get a common position due to the different players at stake. Most organizations have formal procedures for identifying the persons who are authorized to speak for them but such procedures are imperfect and merely designed to facilitate transactions between the organization and outsiders, rather than to insure that the members of the organization in fact agree with a particular decision.⁵⁸ Consequently the management of a corporation may settle a suit through ADR mechanisms to prevent embarrassing disclosures about its managerial policies when such disclosures might well be in the interest of the shareholders of the organization.⁵⁹

Unlike litigation, there is a lack of foundation for continuing judicial involvement in most of the ADR mechanisms such as mediation.⁶⁰ In litigation, judgment does not bring an end to a lawsuit and many other processes may follow. Parties may seek several remedies from the court which issued the judgment such as rectification of an order and review.⁶¹ A dissatisfied party can also appeal to a higher court to challenge a lower court's decision. These remedies are not available in some of the ADR mechanisms where the principle of finality is emphasised. Where parties have

⁵⁸ Fiss. O, 'Against Settlement' The Yale Law Journal, Vol. 93: 1073, 1984

⁵⁹ Ibid

⁶⁰ Ibid

⁶¹ Civil Procedure Rules, 2010, Orders 43 and 45, Government Printer (Nairobi)

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recorded a consent decree as in the case of mediation, there no basis through which a party can seek to modify or vary the decree.⁶²

ADR Mechanisms also impede vigorous enforcement measures.⁶³ In litigation, measures such as contempt powers and execution of decrees and orders are available in enforcing decisions. However, decisions in ADR mechanisms such as negotiation and mediation are non-binding and their enforcement depends on the goodwill of the parties.⁶⁴ This could be problematic for an organization especially in dealing with outside parties such as debtors who may refuse to comply with negotiated or mediated agreements.⁶⁵ The organization may thus be forced to seek the judicial process due to its ability to guarantee enforcement of decisions.

⁶² Fiss. O, 'Against Settlement' The Yale Law Journal, Op Cit

⁶³ Ibid

⁶⁴ Reza, S., The Shortcomings of Family Mediation and Restorative Justice Proceedings, 4 SOAS L.J. 73 (2017)

⁶⁵ Runesson. E., & Guy. M., Mediating Corporate Governance Conflicts and Disputes, Op Cit

6. RECOMMENDATIONS

6.1 Conflict Avoidance

The best conflict management strategy is conflict avoidance. It has been argued that in conflict management, individuals prefer avoidance to confrontation even at the risk of a financial loss, in the belief that confrontation might disrupt interpersonal harmony between the parties involved.⁶⁶ Organizations can endeavour towards conflict avoidance through simple techniques involving their day to day operations such as facilitating harmonious working relationships, Corporate Social Responsibility and adhering to principles of good corporate governance.

6.2 Adopting an Effective Conflict Management Strategy

The aim of conflict management is to help parties possessing incompatible goals to find some solution to their conflict.⁶⁷ To achieve this aim, it is necessary to identify the source of the conflict, the participants and the most appropriate conflict management mechanism for the particular situation.⁶⁸ It has been argued that there are three sources of organizational conflict; *structural conflict* arising out of the need to manage the inter-dependence between different organizational sub-units); *role conflict* arising from sets of prescribed behaviour and *resources conflict* stemming from interest groups competing for the resources of an organization.⁶⁹ Understanding the source of a conflict within an organization improves the probability of effective conflict management. An organization should thus adopt an effective conflict management strategy that is able to detect the

⁶⁶ Zhang. Z & Wei. X., 'Superficial Harmony and Conflict Avoidance Resulting from Negative Anticipation in the Workplace' *Management and Organization Review* 13:4, December 2017, 795–820

⁶⁷ Bercovitch. J., Conflict and Conflict Management in Organizations: A Framework for Analysis, available at <https://legacy.earlham.edu/~chriss/ConflictRes/pdf%20files/Conflict.Conflict%20Management%20in%20Organizations.pdf> (accessed on 16/07/2020)

⁶⁸ Ibid

⁶⁹ Robbins. S. P, *Managing Organizational Conflict: A Non-Traditional Approach* (EnglewoodCliffs, N.J.: Prentice-Hall, 1974).

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source of the conflict and recommend a suitable mechanism in handling such conflict. In large organizations, it is possible to find a committee or group tasked with conflict management. For small organizations, it is important to ensure availability of an individual skilled in conflict management. Organizations can also facilitate conflict management training skills such as negotiation and mediation to the management and board members.

6.3 Incorporating the use of ADR in an Organization's Policy Framework

The foregoing discussion has demonstrated that ADR mechanisms especially mediation and negotiation are effective in managing governance conflicts. Organizations should encourage their use by incorporating them in their policy framework. Further when entering into contracts with third parties such as creditors, clients and suppliers, it should be ensured that such contracts contain dispute resolution clauses which clearly stipulate the mechanism of conflict management. This prevents the uncertainties that might ensue in case a conflict arises and the possibility of such a conflict ending up in court due to absence of an ADR clause.

7. CONCLUSION

Governance conflicts are inevitable. However, what sets a good organization apart is the ability to manage governance conflicts in an effective, efficient and expeditious manner without prejudicing its core business. ADR mechanisms especially mediation and negotiation offer a channel through which this goal can be attained. Managing governance conflicts through ADR is an ideal that can be achieved to promote sound corporate governance.

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