

Alternative Dispute Resolution Journal
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Journal Review by Mwati Muriithi*

Published in August 2022, The Alternative Dispute Resolution Journal Volume 10 Issue 3 covers pertinent and emerging issues across all ADR mechanisms including arbitration, mediation, negotiation, adjudication and traditional justice systems. It provides a platform for scholarly debate and in-depth investigations into both theoretical and practical questions in Alternative Dispute Resolution.

It is a publication of the Chartered Institute of Arbitrators, Kenya Branch and it is edited by the African Arbitrator of the Year 2022, Dr. Kariuki Muigua, PhD who has earned his reputation as a distinguished legal practitioner in Kenya and a leading environmental scholar in Africa and the world. It is now one of the most cited publications in the fields of ADR and Access to Justice in Kenya and across the globe.

The first article '*Evaluating the Role of ADR Mechanisms in Resolving Climate Change Disputes*' by Dr. Francis Kariuki and Vianney Sebayiga examines the conflicts and disputes that arise from the impacts of climate change and the various mechanisms for their resolution. It argues that litigation which has been traditionally used to resolve climate change conflicts has proven inadequate due to, *inter alia*, case backlogs and delays. The authors assess the appropriateness of Alternative Dispute Resolution (ADR) mechanisms in managing climate change conflicts and disputes. Finally, it highlights the opportunities presented by climate change to ADR practitioners.

Dr. Kariuki Muigua Ph.D has demonstrated his prowess and sound understanding of ADR in his article '*The Evolving Alternative Dispute Resolution Practice: Investing in Digital Dispute Resolution in Kenya*'. It makes a case for African countries to embrace digital dispute resolution mechanisms in addressing the emerging disputes related to digital commerce, in a timely and cost-effective manner, through putting in place responsive legal and institutional infrastructure.

'The Place of Mediation in Resolving Disputes in the Built Environment' by Dr. Kenneth Wyne Mutuma examines the use of mediation in the resolution of disputes in the built environment or otherwise referred to as the construction industry. It explores the nature and causes of disputes that arises from the contracting stage as well as those that occur during the implementation of the contract. It analyzes the place of Mediation in construction disputes and delves into its suitability for the same finally provides recommendations on the way forward with regard to the proper implementation of Construction Mediation in Kenya.

Dr. Wilfred A. Mutubwa in '*The Overriding Objective in English Arbitration Act: Some Key Lessons*' examines the case of *AIC Ltd v Federal Airports Authority of Nigeria*. With

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regard to this case, it analyses the basis on which the courts should review and vary judgments and orders made but not sealed and the application of the Denton Test on relief of sanctions.

'Alternative Dispute Resolution and Arbitrability of Public Procurement Proceedings Disputes in Kenya: A Feasibility or Pious Aspirations?' by Ibrahim Kitoo and Dr. Kariuki Muigua interrogates the provisions of the Public Procurement and Asset Disposal Act, 2015 on public procurement proceedings disputes and to what extent (if any) it encompasses and facilitates ADR/arbitration. It examines and gauges ADR's/arbitration efficacy, acceptability and applicability in resolving public procurement proceedings related disputes.

Austin Ouko in *'Exceptions to the Duty of Confidentiality in Arbitrations'* discusses the implied duty of confidentiality in arbitrations through a comprehensive review of the Constitution of Kenya, Legislations and Court decisions. It argues that the duty is not absolute and is subject to several exceptions under certain circumstances.

'Reflections on the Unfolding Significance of Sports Mediation' by Jacqueline Waihenya is a reflection on what sports mediation mounts to as well as some of its inherent dynamics in an evolving space. It notes that a quiet revolution has been occurring particularly at the Court of Arbitration of Sports (CAS) since the adoption of the CAS Mediation Rules in 1999 with statistical estimates indicating that almost 85% of CAS disputes are determined via mediation.

Dr. Kariuki Muigua in *'Promoting Professional Conduct, Ethics, Integrity & Etiquette in ADR'* discusses the need for promoting professional conduct, ethics, integrity and etiquette in Alternative Dispute Resolution (ADR). It critically addresses some of the ethical concerns in ADR that can potentially hinder the efficacy of the various mechanisms as well as attempts towards enacting rules of ethics in ADR by various institutions and national laws. It concludes by suggesting solutions towards promoting professional conduct, ethics, integrity and etiquette in ADR.

'Case Review: Alternative Dispute Resolution is an Imperative in Public Procurement Disputes Constitutional Petition No. E488 of 2021 Consolidated with Petition No. E465 of 2021' by Dr. Wilfred A. Mutubwa notes that the Constitution explicitly provides for Alternative Dispute Resolution and creates specialized bodies and entities to deal with specific disputes.

Jack Shivugu in *'A Critical Examination of the Doctrine of Public Policy and its Place in International Commercial Arbitration'* critically discusses the doctrine of public policy and its place in international commercial arbitration. The paper argues that there is ambiguity over the definition, nature and scope of public policy in international commercial arbitration. The paper argues that this ambiguity has hindered the growth of international commercial arbitration. It analyses various definitions and typologies of public policy in international commercial arbitration. The paper further discusses the judicial approach towards public policy as a ground for setting aside and refusal

of recognition or enforcement of arbitral awards. Through this discussion, the paper proposes a pro enforcement policy of arbitral awards in line with the spirit of the New York Convention with the doctrine of public policy being applied in limited circumstances.

'Disciplined Dissent - Distinguishing Arbitral Awards from Judgments' by Suzanne Rattray tracks the genesis of the dissenting opinion in international arbitration by examining the Model Law provisions. It analyses dissenting opinions and current African legislation by examining Uniform Laws adopted by Regional Groups. It discusses Current practice of dissenting opinions in commercial arbitration in Africa and offers suggestions for practitioners.

'Traditional Dispute Resolution Mechanisms in the Kenyan Justice System: Which Way Forward?' by Mwangi Patience and Kibet Brian explores the sustainability of Traditional Dispute Resolution Mechanisms (TDRMs) in Kenya. It seeks to examine the policies and innovations that courts have set in a bid to develop TDRMs as the go to form of dispute resolution. It highlights the need for an appellate process for TDRMs and attempt to devise one. The paper contends that if access to justice is to be attained in a diverse Republic like Kenya, a multi door approach to access justice must be availed. One of these doors is the TDRM that an individual may choose to adopt.

The last article, *'Mediating Workplace Conflicts'* by Maryanne Mburu examines the sources of conflicts in the workplace. It analyses the use of workplace mediation to resolve these conflicts. It interrogates the use of mediation in addressing workplace disputes, suggests the appropriate procedures for facilitating workplace mediation and discusses the benefits and limitations of using mediation at the workplace.