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Journal Review by Mwati Muriithi*

Published in November 2022, the Alternative Dispute Resolution (ADR) Journal, Volume 10, Issue 4 is a publication by the Chartered Institute of Arbitrators (CIArb), Kenya that spearheads intellectual discourse on pertinent and germane issues in Alternative Dispute Resolution and other related fields of knowledge.

It is edited by the African Arbitrator of the Year 2022, Dr. Kariuki Muigua, PhD who was declared the first ever winner of the CIArb (Kenya Branch) ADR Lifetime Achievement Award, the highest honour given by the Institute to one member for his immense contribution to the growth of practice, research and scholarship of ADR in Kenya and across Africa. The award came barely a week after he had won the coveted Law Society of Kenya ADR Practitioner of the Year Award at the 4th Edition of the Nairobi Legal Awards for his outstanding practice in ADR and especially arbitration and his role as a mentor to many lawyers venturing into the area. He was also awarded the ADR Publisher of the Year for his scholarship, authorship and editorship of leading research and publications on ADR in Africa including the Journal of Conflict Management and Sustainable Development and the Alternative Dispute Resolution (ADR) Journal.

Dr. Kariuki Muigua has demonstrated his prowess and sound understanding of Environmental Conflicts Management in his article *'Role of State Agencies and Communities in Achieving Effective Environmental Conflicts Management'*. The paper discusses the role of state agencies as well as communities in management of environmental conflicts.

'Binding Effect of Arbitration Clauses on Third Party Non Signatories: The Supreme Court of India's Perspective' by Dr. Wilfred A Mutubwa notes that, in the dispute between Oil and Natural Gas Corporation (ONGC) and Discovery Enterprises, the Supreme Court of India stated that when holding that a non-signatory to an Arbitration Agreement is bound by it, the court ought to approach the matter by attributing a meaning consistent with the business sense to the transactions which was intended to be ascribed to them.

Jacqueline Waihenya in her paper *'The Nascent Blooming of ESG Disclosure into A Mega-Trend and Its Likely Impact on Alternative Dispute Resolution'* captures key ESG issues that are emerging and their anticipated impact on ADR.

'Valuing Energy, Price Reviews and The Role of Arbitration in Settling Energy Disputes' by Dr. Kenneth Wyne Mutuma discusses the causes of price fluctuations, and how these fluctuations can lead to disputes in the energy sector. The article analyzes the importance and features of price review clauses in contracts and how the parties

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should approach price adjustments. Finally, it espouses on the role of the arbitrator in settling disputes in the energy sector and the categories of disputes in which arbitration is usually applied.

Dr. Kariuki Muigua in his paper *'The Place of Environmental, Social and Governance (ESG) in Arbitration'* critically discusses the relationship between Environmental, Social and Governance (ESG) and arbitration. The paper argues that arbitration represents a viable mechanism for managing ESG related disputes while simultaneously promoting ESG tenets. It addresses some of the current concerns in ESG and the ability of arbitration to deal with these concerns. The paper further proposes recommendations towards embracing arbitration in management of ESG disputes for Sustainable Development.

'Privacy and Confidentiality in Investor-State Arbitration Proceedings: The Abaclat Case' by F. N. Masibili notes that Privacy in arbitration does not necessarily suggest confidentiality. The article uses a case study approach to explore how this controversial puzzle unraveled in the Abaclat Case, when anatomized through the lens of existing literature.

Peter Mwangi Muriithi and Lily Njeri Maina in their paper *'Ring-fencing Arbitration traits to enhance its growth and development'* advocates for deliberate efforts to ring-fence arbitration traits to prevent their erosion and infiltration. In advancing the necessity of ring-fencing arbitration traits, the paper offers practical measures that can be undertaken to ring-fence arbitration traits to uphold the salient nature of arbitration.

'Are Emergency Arbitrations Contemplated Under the Indian Arbitration Act? Some Reflections from Indian Courts' by Dr. Wilfred Mutubwa analyses the court's decision in the dispute between Future Coupons PVT. LTD and Future Retail Limited (FRL) and Amazon.com NV Investment Holdings. The article notes that the court confirmed that an order of the emergency arbitrator is binding upon the parties but not binding on any subsequently constituted arbitral tribunal. Subsequent tribunals have the power to reconsider, modify, terminate or annul the order/award of the emergency arbitrator as they hear the matter

Victor Kihika in his paper, *'Is Kenya Prepared to Be a Safe Seat for International Arbitration?'* explores the attractiveness of Kenya to transnational commercial parties as a place for resolving their disputes in the sense of a seat or a venue. The paper builds on the existing literature pertaining to making Kenya a preferred seat and compares what the popular seats do to gain the attractiveness they have, and the chances that Kenya has. The paper also considers whether the term seat encapsulates, or is different from, venue. Additionally, it assesses the degree of Kenya's satisfaction of the safe seat principles.

'Dispute Resolution as The Holy Grail of African Integration: Through The Lenses of Africa Continental Free Trade Area and The Belt and Road Initiative' Okoth Okumu Mudeyi and Dorcas Hillary Anyango critically explores the nature of disputes that will result from

the ratification of the African Continental Free Trade Area Agreement (AfCFTA) and its impact on the dispute resolution landscape in the continent and as the Holy Grail of establishing regional integration.

Lastly, Mwati Muriithi in his article '*Review: Journal of Conflict Management and Sustainable Development Volume 9 Issue 2*' notes that the Journal of Conflict Management and Sustainable Development Volume 9 Issue 2 is focused on disseminating knowledge and creating a platform for scholarly debate on pertinent and emerging areas in the fields of Conflict Management and Sustainable Development. The Journal analyses some of the current concerns and proposes interventions towards attaining Sustainable Development. It also discusses the role of Conflict Management in the quest towards Sustainable Development.