

Harnessing Special Skills for Lawyers, Arbitrators, and Arbitral Institutions

Lilian Ngeresa & Kariuki Muigua

Table of Contents

Abstract.....	3
1.0 Introduction.....	4
2.0 Role of Lawyers, Arbitrators, and Arbitral Institutions in Arbitration.....	6
3.0 Special Skills for Lawyers, Arbitrators, and Arbitral Institutions	8
3.1 Lawyers.....	8
3.2 Arbitrators	10
3.3 Arbitral Institutions.....	13
4.0 Conclusion	14
References	16

Abstract

This paper critically examines the need to harness special skills for lawyers, arbitrators, and arbitral institutions in arbitration. It argues that lawyers, arbitrators, and arbitral institutions play a key role in the success of arbitration proceedings. The paper explores the roles of lawyers, arbitrators, and arbitral institutions in the arbitration process. It argues that by working in harmony, lawyers, arbitrators, and arbitral institutions can play a vital role in ensuring a smooth arbitration process. The paper discusses some of the special skills that can be harnessed by lawyers, arbitrators, and arbitral institutions to enhance the effectiveness of arbitration proceedings.

* LL.B (Hons) (University of Nairobi), Dip. In Law (Kenya School of Law, MCI Arb, CPM; Advocate of the High Court of Kenya

* PhD in Law (Nrb), FCI Arb (Chartered Arbitrator), OGW, LL. B (Hons) Nrb, LL.M (Environmental Law) Nrb; Dip. In Law (KSL); FCPS (K); Dip. in Arbitration (UK); MKIM; Mediator; Consultant: Lead expert EIA/EA NEMA; BSI ISO/IEC 27001:2005 ISMS Lead Auditor/ Implementer; ESG Consultant; Advocate of the High Court of Kenya; Professor at the University of Nairobi, Faculty of Law; Member of the Permanent Court of Arbitration (PCA) [May, 2024].

1.0 Introduction

Arbitration is one of the Alternative Dispute Resolution (ADR) techniques¹. The term ADR entails a set of mechanisms that are applied to manage disputes without resort to adversarial litigation². It covers all dispute management methods other than court proceedings³. ADR encompasses various processes including negotiation, mediation, arbitration, conciliation, adjudication, expert determination, early neutral evaluation, and Traditional Dispute Resolution Mechanisms (TDRMs) among others⁴. ADR techniques may be linked to but function outside formal court litigation processes⁵. These processes contain certain attributes that makes them ideal in enhancing access to justice. These attributes include privacy, confidentiality, flexibility, informality, efficiency, party autonomy and the ability to foster expeditious and cost effective management of disputes⁶.

ADR techniques have been recognized at the global level under the *Charter of the United Nations*⁷. The Charter provides that parties to a 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)⁸. At a national level, the *Constitution of Kenya*⁹ recognizes ADR mechanisms. It mandates courts and tribunals to promote ADR mechanisms including reconciliation, mediation, arbitration and TDRMs¹⁰.

¹ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Glenwood Publishers Limited, 2015

² Ibid

³ Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' *Africa Security Brief*, No. 16 of 2011

⁴ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

⁵ Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' Op Cit

⁶ Muigua. K & Kariuki. F., 'ADR, Access to Justice and Development in Kenya.' Available at <http://kmco.co.ke/wp-content/uploads/2018/08/ADR-access-to-justice-anddevelopmentinKenyaSTRATHMORE-CONFERENCE-PRESENTATION.pdf> (Accessed on 28/05/2024)

⁷ United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI

⁸ Ibid, article 33 (1)

⁹ Constitution of Kenya., 2010., Government Printer, Nairobi

¹⁰ Ibid, article 159 (2) (c)

Arbitration is a private and consensual process where parties in dispute agree to present their grievances to a third party for resolution¹¹. It has also been defined as a dispute management mechanism where parties through an agreement submit their dispute to one or more neutral third parties who makes a binding decision on the dispute¹². The attributes of arbitration including privacy, confidentiality, party autonomy, flexibility, and finality makes it an ideal process of managing disputes¹³. It also has a transnational applicability making it an ideal mechanism for managing cross border disputes¹⁴. It also guarantees enforcement of decisions through the *New York Convention*¹⁵ which provides a harmonized legal framework for the recognition and enforcement of foreign awards in arbitration.

It has been noted that the success of arbitration is dependent on a number of factors including the presence of regulations, rules and best practices among the various players in arbitration proceedings¹⁶. Lawyers, arbitrators, and arbitral institutions are therefore crucial for the success of arbitration¹⁷. This paper critically examines the need to harness special skills for lawyers, arbitrators, and arbitral institutions in arbitration. It argues that lawyers, arbitrators, and arbitral institutions play a key role in the success of arbitration proceedings. The paper explores the roles of lawyers, arbitrators, and arbitral institutions in the arbitration process. It argues that by working in harmony, lawyers, arbitrators, and arbitral institutions can play a vital role in ensuring a smooth arbitration process. The paper discusses some of the special skills that can be harnessed by lawyers, arbitrators, and arbitral institutions to enhance the effectiveness of arbitration proceedings.

¹¹ Muigua. K., 'Settling Disputes through Arbitration in Kenya.' Glenwood Publishers, 4th Edition, 2022

¹² World Intellectual Property Organization., 'What is Arbitration' Available at <https://www.wipo.int/amc/en/arbitration/what-is-arb.html> (Accessed on 26/04/2024)

¹³ Muigua. K., 'Settling Disputes through Arbitration in Kenya.' Op Cit

¹⁴ Moses, 'The Principles and Practice of International Commercial Arbitration' 2nd Edition, 2017, Cambridge University Press

¹⁵ United Nations Commission on International Trade Law., 'Convention on the Recognition and Enforcement of Foreign Arbitral Awards.' (New York, 1958)

¹⁶ Meadow. C., 'Ethics in ADR: The Many "Cs" of Professional Responsibility and Dispute Resolution' 28 *Fordham Urb. L.J.* 979-990 (2001)

¹⁷ Ibid

2.0 Role of Lawyers, Arbitrators, and Arbitral Institutions in Arbitration.

Lawyers play a key role in arbitration proceedings. It has been noted that the guidance of lawyers is essential when a dispute arises to enforce the existing agreements and proceed with the arbitration process¹⁸. The responsibilities of lawyers in arbitration include developing an effective strategy, selecting the most appropriate evidence and/or witnesses to present, and preparing the necessary documentation for the arbitration¹⁹. Lawyers also represent clients before arbitral proceedings by preparing for hearings, and defending their clients' interests²⁰. Further, it has been noted that where appropriate, lawyers can advise and assist their clients to negotiate an amicable solution with the opposing party²¹. Lawyers are vital in arbitration proceedings by helping to prepare and present the case, cross-examining witnesses, and arguing cases on behalf of their clients²². They also provide valuable guidance and advice on the strengths and weaknesses of the case, and they can help to negotiate settlements or other resolutions as appropriate²³. Further, at end of the arbitration proceedings, lawyers play a fundamental role in analyzing the compliance of the final or partial awards, enforce awards and ensuring that they are respected and recognized in the relevant national or international jurisdictions²⁴. In instances where one of the parties is not satisfied with the arbitral award, lawyers are vital in assessing the chances of challenging the award through appeal procedures²⁵.

Arbitrators also play a fundamental role in arbitration proceedings. They serve as impartial umpires in the arbitration process²⁶. Arbitral tribunals assess evidence, apply relevant laws, and issue binding decisions²⁷. It has been noted that the neutrality,

¹⁸ The Role of an International Commercial Arbitration Lawyer., Available at <https://www.boccadutri.com/the-role-of-an-international-commercial-arbitration-lawyer/#:~:text=Their%20responsibilities%20include%20developing%20an,hearings%2C%20and%20defe%20their%20interests>. (Accessed on 29/05/2024)

¹⁹ Ibid

²⁰ Ibid

²¹ Ibid

²² Understanding the Role of Arbitration Attorneys in Resolving Disputes., Available at <https://www.jlegal.org/blog/role-of-arbitration-attorneys-in-resolving-disputes/#:~:text=They%20help%20to%20prepare%20and,negotiate%20settlements%20or%20other%20re%20solutions>. (Accessed on 29/05/2024)

²³ Ibid

²⁴ The Role of an International Commercial Arbitration Lawyer., Op Cit

²⁵ Ibid

²⁶ Role of Arbitrator., Available at https://www.legalserviceindia.com/legal/article-13633-role-of-arbitrator.html#google_vignette (Accessed on 29/05/2024)

²⁷ Ibid

impartiality and expertise of arbitrators ensures effective management of disputes through arbitration²⁸. Arbitrators ensure the success of arbitration proceedings through ensuring proper conduct of arbitration proceedings²⁹; issuance of interim measures of protection³⁰; determining the admissibility, relevance, materiality, and weight of evidence presented; and issuing arbitral awards³¹.

Arbitral institutions are also key in ensuring the success of arbitration proceedings. It has been observed that Africa boasts well established, leading international arbitration institutions which offer specialised arbitral services for a full range of international disputes³². These institutions are playing an important role in developing regional centres, which will be key to meeting the growing need for dispute resolution services on the continent³³. There has been growth of arbitral institutions in Africa notably in jurisdictions such as Kenya, Nigeria, Ghana and South Africa³⁴. Arbitral institutions operating within the continent are contributing to the development of arbitration in Africa, promoting their practice through events attracting practitioners and arbitration users from the region and beyond³⁵. These institutions ensure the success of arbitration proceedings through development of institutional rules on arbitration, appointment of arbitrators, marketing arbitration, offering education and training programmes for arbitrators, and enforcing codes of ethics and conduct among arbitrators³⁶.

Lawyers, arbitrators, and arbitral institutions are therefore key in ensuring the success of arbitration proceedings. It is necessary for them to harness certain skills in order to effectively discharge their roles in arbitration.

²⁸ Ibid

²⁹ Muigua. K., 'Settling Disputes through Arbitration in Kenya.' Op Cit

³⁰ Ibid

³¹ Ibid

³² Ripley-Evans. J., & De Sousa. M., '2022 SOA Arbitration in Africa Survey Reveals a Thriving Market for Arbitration on the Continent.' Available at <https://hsfnotes.com/africa/2022/11/25/2022-soaarbitration-in-africa-survey-reveals-a-thriving-market-for-arbitration-on-the-continent/> (Accessed on 29/05/2024)

³³ Ibid

³⁴ Ostrove. M., Sanderson. B., & Veronelli. A. P., 'Developments in African Arbitration' Available at <https://globalarbitrationreview.com/review/the-middle-eastern-and-african-arbitration-review/2018/article/developments-in-african-arbitration> (Accessed on 29/05/2024)

³⁵ Ibid

³⁶ Muigua. K., 'Strengthening Ethics in Arbitration in Africa' Available at <https://kmco.co.ke/wp-content/uploads/2023/10/Strengthening-Ethics-in-Arbitration-in-Africa-.pdf> (Accessed on 29/05/2024)

3.0 Special Skills for Lawyers, Arbitrators, and Arbitral Institutions

3.1 Lawyers

Effective communication is a fundamental skill for lawyers in arbitration³⁷. A lawyer has to be a good communicator in both verbal and written communication in order to be successful in arbitration and enhance his/her client's case³⁸. Effective communication has been described as a lawyer's sword and shield in arbitration³⁹. Whether drafting a compelling arbitration brief or presenting an argument with conviction, a lawyer's ability to articulate complex legal concepts in a clear, persuasive manner can significantly influence the outcome of arbitration proceedings⁴⁰. It is therefore necessary for lawyers to harness effective communication skills in order to guarantee successful arbitration outcomes. This can be achieved by drafting and filing clear and concise pleadings before arbitral tribunals and presenting logical oral arguments supported by facts and evidence⁴¹.

It is also imperative for lawyers to harness analytical skills⁴². Arbitration often involves complex legal issues⁴³. A good lawyer should therefore have strong analytical skills that will enable him/her to assess the facts of the case, identify key legal issues, analyse the available evidence, and develop effective legal strategies⁴⁴. Analytical skills also enable a lawyer to look at the case from the opponent's point of view by identifying the opponent's strongest and weakest points in order to develop effective strategies⁴⁵. Analytical skills are integral to every stage of the arbitration process, from identifying legal issues to developing strategies, presenting arguments, and ultimately achieving

³⁷ Sheikh. T., 'Skills for Success in International Arbitration: What Young Lawyers Need to Know' Available at <https://www.linkedin.com/pulse/skills-success-international-arbitration-what-young-lawyers-sheikh-wmwye/> (Accessed on 30/05/2024)

³⁸ Ibid

³⁹ Ibid

⁴⁰ Ibid

⁴¹ Ibid

⁴² 5 Special Skills Successful Arbitration Lawyers Must Always Possess., Available at <https://lawyersadvise.mystrikingly.com/blog/5-special-skills-successful-arbitration-lawyers-must-always-possess> (Accessed on 30/05/2024)

⁴³ Ibid

⁴⁴ Ibid

⁴⁵ Courtier. E., 'The Top Four Skills for Lawyers' Available at <https://www.totallylegal.com/article/the-top-four-skills-for-lawyers> (Accessed on 30/05/2024)

favourable outcomes for clients⁴⁶. Lawyers should therefore harness analytical skills for successful arbitration proceedings.

Critical thinking is also a key skill that needs to be harnessed by lawyers in arbitration. This skill enables lawyers to think on their feet and develop creative and innovative solutions to address unique or complex legal challenges⁴⁷. It has been noted that arbitration proceedings can be unpredictable⁴⁸. Critical thinking enables arbitration lawyers to be flexible and able to adapt to changing situations such as when an opponent advances a line of argument that was not anticipated⁴⁹. Lawyers should therefore harness critical thinking skills in order to enhance the ability to think creatively and find innovative solutions to resolve disputes⁵⁰.

Research skills are also vital for lawyers in arbitration⁵¹. Good research skills enables lawyers to master the applicable law and develop sound and reasoned arguments in arbitration proceedings⁵². It has been noted that in order solidify their clients' case, arbitration lawyers have to conduct in-depth legal analysis and research under the applicable law and apply it to the factual issues in question⁵³. Lawyers should therefore harness research skills in order to be successful in arbitration proceedings.

It is also necessary for lawyers to harness organizational and time management skills⁵⁴. These skills are vital in ensuring that a lawyer meets deadlines and timelines set by the arbitrator⁵⁵. By harnessing organizational and time management skills, a lawyer ensures

⁴⁶ Ibid

⁴⁷ Ibid

⁴⁸ The Key Skills Every Arbitration Lawyer Should Have., Available at <https://belmontecrespoabogados.com/en/the-key-skills-every-arbitration-lawyer-should-have/> (Accessed on 30/05/2024)

⁴⁹ Ibid

⁵⁰ Ibid

⁵¹ What Do Arbitration Lawyers Do?., Available at <https://www.acerislaw.com/what-do-arbitration-lawyers-do/> (Accessed on 30/05/2024)

⁵² Ibid

⁵³ Ibid

⁵⁴ Fixed Deadlines in Arbitration Agreements: Pros and Cons., Available at <https://www.acerislaw.com/fixed-deadlines-in-arbitration-agreements-pros-and-cons/#:~:text=Time%20management%20is%20crucial%20to,and%20hinges%20on%20various%20factors.> (Accessed on 30/05/2024)

⁵⁵ Ibid

that pleadings and documents are appropriate and filed in time⁵⁶. Time management is vital in arbitration since one of its principles is to foster expeditious resolution of disputes. Prolonged disputes can result in higher costs to the parties⁵⁷. It is therefore necessary for lawyers to harness organizational and time management skills in order to enhance the efficiency of arbitration.

Finally, it is necessary for lawyers to harness negotiation skills. Negotiation skills enable a lawyer to develop mutual trust with the arbitrator and opposing counsel⁵⁸. They are also effective in resolving the dispute in the form of a consent award⁵⁹. Negotiation skills require lawyers to be respectful towards each other and address opponents in a courteous manner in order to arrive at mutually agreeable outcomes⁶⁰. Negotiation skills are vital in advocating for a client's interests and arriving at favourable settlements⁶¹.

3.2 Arbitrators

It is fundamental for arbitral and mediation tribunals to ensure that they remain impartial and neutral throughout the proceedings⁶². These skills are vital in preventing bias in management of disputes which could arise due to involvement by an arbitrator or mediator with the subject matter of the dispute or relationship between the arbitrator or mediator and either of the participants in the proceedings⁶³. Impartiality and neutrality are vital skills in line with the principles of natural justice and the right to a fair hearing⁶⁴. The International Bar Association (IBA) *Guidelines on Conflicts of Interest in International Arbitration*⁶⁵ require every arbitrator to be impartial and independent of the parties at the time of accepting an appointment to serve and to remain so until the final award has been

⁵⁶ Ibid

⁵⁷ Ibid

⁵⁸ 5 Special Skills Successful Arbitration Lawyers Must Always Possess., Op Cit

⁵⁹ Ibid

⁶⁰ Muigua. K., 'Strengthening Ethics in Arbitration in Africa' Op Cit

⁶¹ 5 Special Skills Successful Arbitration Lawyers Must Always Possess., Op Cit

⁶² Harding. K., 'Arbitration - The Role Of Ethics and its Nature.' Available at <https://kluwerlawonline.com/journalarticle/Arbitration:+The+International+Journal+of+Arbitration,+Mediation+and+Dispute+Management/64.3/AMDM1998013> (Accessed on 30/05/2024)

⁶³ Ibid

⁶⁴ Ibid

⁶⁵ International Bar Association., 'IBA Guidelines on Conflicts of Interest in International Arbitration.' Available at <https://www.ibanet.org/MediaHandler?id=e2fe5e72-eb14-4bba-b10d-d33dafee8918> (Accessed on 30/05/2024)

rendered or the proceedings have otherwise finally terminate. It is therefore necessary for arbitrators to ensure impartiality and neutrality for effective arbitration proceedings.

Further, it is necessary for arbitral and mediation tribunals to avoid conflict of interest⁶⁶. Conflict of interest in arbitration or mediation may arise from involvement by an arbitrator or mediator with the subject matter of the dispute or from any relationship between an arbitrator or mediator and any party, whether past or present, personal or professional, that reasonably raises a question of an arbitrator's or mediator's impartiality⁶⁷. Arbitral and mediation tribunals should therefore disclose all actual and potential conflicts of interest⁶⁸. They should refuse to act in instances where conflict of interest may arise⁶⁹. The IBA Guidelines on Conflicts of Interest in International Arbitration require an arbitrator to decline to accept an appointment or, if the arbitration has already been commenced, refuse to continue to act as an arbitrator, if he or she has any doubt as to his or her ability to be impartial or independent due to conflict of interest⁷⁰. It is therefore imperative for arbitrators and mediators to avoid conflict of interest. This is aimed at fostering confidence and integrity in the arbitral or mediation process⁷¹.

It is also imperative for arbitrators to ensure that the fundamental features of privacy and confidentiality in arbitration are upheld⁷². Arbitrators must keep the proceedings confidential and private⁷³. Only parties to the dispute may be permitted access to the hearing venue and the materials unless otherwise agreed⁷⁴. The features of privacy and confidentiality allow parties to freely engage in candid, informal discussions of their interests to reach the best possible settlement of their dispute without concerns of such

⁶⁶ Muigua. K., 'Strengthening Ethics in Arbitration in Africa' Op Cit

⁶⁷ Muigua. K., 'Promoting Professional Conduct, Ethics, Integrity & Etiquette in ADR.' Available at <https://kmco.co.ke/wp-content/uploads/2022/05/Promoting-ProfessionalConduct-Ethics-IntegrityEtiquette-in-ADR.pdf> (Accessed on 30/05/2024)

⁶⁸ Ibid

⁶⁹ Ibid

⁷⁰ International Bar Association., 'IBA Guidelines on Conflicts of Interest in International Arbitration.' Op Cit

⁷¹ Ibid

⁷² Muigua. K., 'Settling Disputes through Arbitration in Kenya.' Op Cit

⁷³ Ibid

⁷⁴ Ibid

information leaking to third parties⁷⁵. Arbitrators should therefore ensure that the proceedings remain private and confidential unless the parties agree otherwise.

It is also vital for arbitrators and mediators to uphold competence. Competence requires an arbitrator or mediator to know the limits of his or her ability; to avoid taking on disputes that he or she is not equipped to handle; and to communicate candidly with the parties about his or her background and professional experience⁷⁶. Competence is vital in ensuring that arbitrators and mediators have the requisite expertise and qualifications require to sufficiently discharge their duties⁷⁷. It is therefore necessary for arbitrators and mediators to ensure that they have competence to discharge their duties.

Arbitrators and mediators should also harness effective communication skills⁷⁸. It has been noted that a good arbitrator is patient, understanding, flexible and an honest listener⁷⁹. During arbitration proceedings, it is imperative for an arbitrator to give all the parties an equal chance to be heard and completely present their grievances and their part of the case⁸⁰. It has been noted that arbitration is more effective when an arbitrator has good communication skills⁸¹.

Decision making skills are also vital for arbitration and mediation tribunals⁸². It has been noted that as a master of procedure, the arbitrator must be firm and decisive and while at the same time giving parties an equal opportunity to represent their case⁸³. Arbitrators analyze facts, evidence, and applicable laws in order to determine the outcome of

⁷⁵ Muigua. K., 'Promoting Professional Conduct, Ethics, Integrity & Etiquette in ADR.' Op Cit

⁷⁶ Hoffman. D., 'Ten Principles of Mediation Ethics.' Available at <https://blc.law/wpcontent/uploads/2016/12/2005-07-mediation-ethics-branchmainlanguagedefault.pdf> (Accessed on 30/05/2024)

⁷⁷ Meadow. C., 'Ethics in ADR: The Many "Cs" of Professional Responsibility and Dispute Resolution' 28 *Fordham Urb. L.J.* 979-990 (2001)

⁷⁸ Qualities of an Efficient Arbitrator., Available at <https://viamediationcentre.org/readnews/MTMxNQ==/QUALITIES-OF-AN-EFFICIENT-ARBITRATOR> (Accessed on 30/05/2024)

⁷⁹ Ibid

⁸⁰ Ibid

⁸¹ Ibid

⁸² Ibid

⁸³ Muigua. K., 'Settling Disputes through Arbitration in Kenya.' Op Cit

disputes⁸⁴. Good decision making skills are necessary in ensuring that an arbitrator listens to both sides and weighing the relevant facts and evidence towards sound outcomes⁸⁵.

It is also necessary for arbitrators to harness research, analytical, and writing skills⁸⁶. These skills are key in helping an arbitrator determine the applicable law to a dispute, analyse complex legal and factual issues in line with the applicable law and to write sound, fair, and reasoned award arbitral awards⁸⁷.

3.3 Arbitral Institutions

It is necessary for arbitral and mediation institutions to harness training and education skills⁸⁸. Training and education is key to developing the requisite expertise and capacity for arbitrators, mediators, and lawyers⁸⁹. It has been noted that there is need for arbitral and mediation institutions in Africa to continue enhancing education, training, licencing and accreditation of arbitrators and mediators in accordance with universally accepted standards while also bearing in mind local circumstances and needs in order to ensure competence⁹⁰.

Further, it is imperative for arbitral and mediation institutions to harness marketing skills⁹¹. Marketing skills are key in demonstrating the capacity and competence of Africa as a hub for international arbitration and mediation⁹². Arbitral and mediation institutions should therefore strengthen their marketing skills in order to enhance the growth of arbitration and mediation in Africa⁹³.

⁸⁴ Ibid

⁸⁵ Ibid

⁸⁶ Qualities of an Efficient Arbitrator., Op Cit

⁸⁷ Ibid

⁸⁸ Ostrove. M., Sanderson. B., & Veronelli. A. P., 'Developments in African Arbitration' Op Cit

⁸⁹ Ibid

⁹⁰ Aloo, L.O. & Wesonga, E.K., 'What is there to Hide? Privacy and Confidentiality Versus Transparency: Government Arbitrations in Light of the Constitution of Kenya 2010,' *Alternative Dispute Resolution*, Vol. 3, No. 2 (Chartered Institute of Arbitration- Kenya, 2015).

⁹¹ Muigua. K., 'Promoting International Commercial Arbitration in Africa' Available at <https://kmco.co.ke/wp-content/uploads/2018/08/PROMOTING-INTERNATIONAL-COMMERCIAL-ARBITRATION-IN-AFRICA-EAIA-Conference-Presentation.pdf> (Accessed on 30/05/2024)

⁹² Ibid

⁹³ Ibid

Arbitration and mediation institutions should also strengthen their management skills⁹⁴. These skills are key in ensuring that arbitral and mediation institutions: develop efficient rules and guidelines on arbitration and mediation⁹⁵; have appropriate mechanisms and procedures on appointment of arbitrators and mediator⁹⁶; conduct supervisory functions in respect of mediation and arbitration proceedings⁹⁷; and are able to enforce codes of conduct and ethics among arbitrators and mediators⁹⁸.

It is necessary for lawyers, arbitrators, and arbitral institutions to harness the foregoing skills in order to enhance the efficacy of arbitration.

4.0 Conclusion

Lawyers, arbitrators, and arbitral institutions play a key role in arbitration. Lawyers have a duty to represent clients before arbitral tribunals and defend their clients' interests⁹⁹. Arbitrators act as impartial umpires in arbitration proceedings who assess facts, evidence, and applicable laws and issue binding decisions¹⁰⁰. Arbitral institutions ensure the success of arbitration proceedings through development of institutional rules on arbitration, appointment of arbitrators, marketing arbitration, offering education and training programmes for arbitrators, and enforcing codes of ethics and conduct among arbitrators¹⁰¹. In order to effectively discharge these duties, it is imperative for lawyers, arbitrators, and arbitral institutions to harness certain skills. For lawyers, it is vital to harness skills such effective communication, analytical skills, critical thinking, research skills, organizational and time management skills, and negotiation skills¹⁰². It is also vital for arbitral and mediation tribunals to ensure impartiality and neutrality, avoid conflict of interest, respect the principles of privacy and confidentiality in arbitration and

⁹⁴ Muigua. K., 'Promoting Professional Conduct, Ethics, Integrity & Etiquette in ADR.' Op Cit

⁹⁵ Ibid

⁹⁶ Ibid

⁹⁷ Ibid

⁹⁸ Ibid

⁹⁹ The Role of an International Commercial Arbitration Lawyer., Op Cit

¹⁰⁰ Role of Arbitrator., Op Cit

¹⁰¹ Muigua. K., 'Strengthening Ethics in Arbitration in Africa' Op Cit

¹⁰² Sheikh. T., 'Skills for Success in International Arbitration: What Young Lawyers Need to Know' Op Cit

mediation, and uphold competence¹⁰³. They should also harness effective communication, decision making, research, analytical, and writing skills¹⁰⁴. Arbitral and mediation institutions on their part should strengthen education and training, and harness marketing and management skills¹⁰⁵. It is imperative for lawyers, arbitrators, and arbitral institutions to harness special skills in order to strengthen arbitration and other ADR processes towards access to justice.

¹⁰³ Muigua. K., 'Promoting Professional Conduct, Ethics, Integrity & Etiquette in ADR.' Op Cit

¹⁰⁴ Qualities of an Efficient Arbitrator., Op Cit

¹⁰⁵ Muigua. K., 'Promoting International Commercial Arbitration in Africa'

References

- 5 Special Skills Successful Arbitration Lawyers Must Always Possess., Available at <https://lawyersadvise.mystrikingly.com/blog/5-special-skills-successful-arbitration-lawyers-must-always-possess>
- Aloo, L.O. & Wesonga, E.K., 'What is there to Hide? Privacy and Confidentiality Versus Transparency: Government Arbitrations in Light of the Constitution of Kenya 2010,' *Alternative Dispute Resolution*, Vol. 3, No. 2 (Chartered Institute of Arbitration- Kenya, 2015).
- Constitution of Kenya., 2010., Government Printer, Nairobi
- Courtier. E., 'The Top Four Skills for Lawyers' Available at <https://www.totallylegal.com/article/the-top-four-skills-for-lawyers>
- Fixed Deadlines in Arbitration Agreements: Pros and Cons., Available at <https://www.acerislaw.com/fixed-deadlines-in-arbitration-agreements-pros-and-cons/#:~:text=Time%20management%20is%20crucial%20to,and%20hinges%20on%20various%20factors.>
- Harding. K., 'Arbitration - The Role Of Ethics and its Nature.' Available at <https://kluwerlawonline.com/journalarticle/Arbitration:+The+International+Journal+of+Arbitration,+Mediation+and+Dispute+Management/64.3/AMDM1998013>
- Hoffman. D., 'Ten Principles of Mediation Ethics.' Available at <https://blc.law/wpcontent/uploads/2016/12/2005-07-mediation-ethics-branchmainlanguagedefault.pdf>
- International Bar Association., 'IBA Guidelines on Conflicts of Interest in International Arbitration.' Available at <https://www.ibanet.org/MediaHandler?id=e2fe5e72-eb14-4bba-b10d-d33dafee8918>
- Meadow. C., 'Ethics in ADR: The Many "Cs" of Professional Responsibility and Dispute Resolution' 28 *Fordham Urb. L.J.* 979-990 (2001)
- Meadow. C., 'Ethics in ADR: The Many "Cs" of Professional Responsibility and Dispute Resolution' 28 *Fordham Urb. L.J.* 979-990 (2001)
- Moses, 'The Principles and Practice of International Commercial Arbitration' 2nd Edition, 2017, Cambridge University Press
- Muigua. K & Kariuki. F., 'ADR, Access to Justice and Development in Kenya.' Available at <http://kmco.co.ke/wp-content/uploads/2018/08/ADR-access-to-justice-anddevelopmentinKenyaSTRATHMORE-CONFERENCE-PRESENTATION.pdf>¹
- United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI
- Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Glenwood Publishers Limited, 2015

Muigua. K., 'Promoting International Commercial Arbitration in Africa' Available at <https://kmco.co.ke/wp-content/uploads/2018/08/PROMOTING-INTERNATIONAL-COMMERCIAL-ARBITRATION-IN-AFRICA-EAIA-Conference-Presentation.pdf>

Muigua. K., 'Promoting Professional Conduct, Ethics, Integrity & Etiquette in ADR.' Available at <https://kmco.co.ke/wp-content/uploads/2022/05/Promoting-ProfessionalConduct-Ethics-IntegrityEtiquette-in-ADR.pdf>

Muigua. K., 'Settling Disputes through Arbitration in Kenya.' Glenwood Publishers, 4th Edition, 2022

Muigua. K., 'Strengthening Ethics in Arbitration in Africa' Available at <https://kmco.co.ke/wp-content/uploads/2023/10/Strengthening-Ethics-in-Arbitration-in-Africa-.pdf>

Ostrove. M., Sanderson. B., & Veronelli. A. P., 'Developments in African Arbitration' Available at <https://globalarbitrationreview.com/review/the-middle-eastern-and-african-arbitration-review/2018/article/developments-in-african-arbitration>

Qualities of an Efficient Arbitrator., Available at <https://viamediationcentre.org/readnews/MTMxNQ==/QUALITIES-OF-AN-EFFICIENT-ARBITRATOR>

Ripley-Evans. J., & De Sousa. M., '2022 SOA Arbitration in Africa Survey Reveals a Thriving Market for Arbitration on the Continent.' Available at <https://hsfnotes.com/africa/2022/11/25/2022-soasarbitration-in-africa-survey-reveals-a-thriving-market-for-arbitration-on-the-continent/>

Role of Arbitrator., Available at https://www.legalserviceindia.com/legal/article-13633-role-of-arbitrator.html#google_vignette

Sheikh. T., 'Skills for Success in International Arbitration: What Young Lawyers Need to Know' Available at <https://www.linkedin.com/pulse/skills-success-international-arbitration-what-young-lawyers-sheikh-wmwy/>

The Key Skills Every Arbitration Lawyer Should Have., Available at <https://belmontecrespoabogados.com/en/the-key-skills-every-arbitration-lawyer-should-have/>

The Role of an International Commercial Arbitration Lawyer., Available at <https://www.boccadutri.com/the-role-of-an-international-commercial-arbitration-lawyer/#:~:text=Their%20responsibilities%20include%20developing%20an,hearings%20C%20and%20defends%20their%20interests>

Understanding the Role of Arbitration Attorneys in Resolving Disputes., Available at <https://www.jlegal.org/blog/role-of-arbitration-attorneys-in-resolving-disputes/#:~:text=They%20help%20to%20prepare%20and,negotiate%20settlements%20or%20other%20resolutions>

United Nations Commission on International Trade Law., 'Convention on the Recognition and Enforcement of Foreign Arbitral Awards.' (New York, 1958)

Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' *Africa Security Brief*, No. 16 of 2011

What Do Arbitration Lawyers Do?., Available at <https://www.acerislaw.com/what-do-arbitration-lawyers-do/>

World Intellectual Property Organization., 'What is Arbitration' Available at <https://www.wipo.int/amc/en/arbitration/what-is-arb.html>

