

Emergency Arbitration: Aspiring to Secure Urgent Relief, Bypass Court Delays and Preserve Assets

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Emergency Arbitration?: Aspiring to Secure Urgent Relief, Bypass Court Delays and Preserve Assets

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Abstract

This paper critically appraises the doctrine of emergency arbitration. The paper defines emergency arbitration and discusses its salient features. It observes that emergency arbitration is an appropriate process towards harnessing the key attributes of arbitration including speed and efficiency. Despite its efficacy, the paper notes that the practice of emergency arbitration also faces several concerns. The paper examines some of the key challenges in emergency arbitration. In addition, the paper suggests how emergency arbitration can be effectively utilised by securing urgent reliefs, bypassing court delays and preserving assets towards promoting expeditious, effective and efficient management of disputes through arbitration.

1.0 Introduction

Arbitration is a dispute management mechanism where parties through an agreement submit their dispute to one or more neutral third parties who make a binding decision on the dispute¹. In addition, arbitration has also been defined as a private and consensual process where parties in dispute agree to present their grievances to a third party for settlement². Arbitration can also be described as an Alternative Dispute Resolution (ADR) process through which parties, by an agreement, agree to submit their possible disputes to the decision of an impartial and independent third party called an arbitrator³. Arbitration usually arises pursuant to an arbitration agreement which may be stipulated within the contract in the form of a clause or be signed by the parties independently and even after a dispute arises⁴.

It has been observed that arbitration is one of the most fundamental and appropriate management mechanism that is available to parties in both domestic and international disputes⁵. Arbitration is renowned for its key features including privacy, flexibility and party autonomy which allow

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¹ World Intellectual Property Organization., 'What is Arbitration' Available at <https://www.wipo.int/amc/en/arbitration/what-is-arb.html> (Accessed on 22/09/2026)

² Muigua. K., 'Settling Disputes through Arbitration in Kenya.' Glenwood Publishers, 4th Edition, 2022

³ What is arbitration and how does it work?., Available at <https://www.arbitrajeccl.com.pe/en/noticia-1/> (Accessed on 22/09/2026)

⁴ Ibid

⁵ European Court of Arbitration., 'What is Arbitration' Available at <https://cour-europe-arbitrage.org/faq/what-is-arbitration/> (Accessed on 22/09/2026)

parties to engage in an efficient, confidential and fair process leading to a final, binding and enforceable award⁶. In addition, it has been observed that in the face of globalization, the need for effective and reliable mechanisms for management of commercial disputes as well as other general disputes involving parties from different jurisdictions has not only become desirable but also invaluable⁷. At the international level, arbitration has a transnational applicability and guarantees neutrality in the determination of disputes by addressing differences that may arise because of multiple legal systems⁸. Further, at the global level, arbitration guarantees enforcement of awards from different jurisdictions pursuant to the *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)*⁹.

Arbitration is therefore an appropriate process for managing disputes at both global and national levels. In order to realise this objective, the *Charter of the United Nations*¹⁰ urges states to utilise arbitration among other ADR processes towards peaceful management of conflicts for international peace and security¹¹. In addition, at a national level, the *Constitution of Kenya*¹² mandates courts and tribunals to promote ADR mechanisms including reconciliation, mediation, *arbitration* and Traditional Dispute Resolution Mechanisms (TDRMs)¹³ for enhanced access to justice (Emphasis added). It has been observed that various processes have been adopted towards enhancing the efficiency, speed and effectiveness of arbitration at both the global and national levels¹⁴. Among these processes is the practice of emergency arbitration¹⁵.

This paper critically appraises the doctrine of emergency arbitration. The paper defines emergency arbitration and discusses its salient features. It observes that emergency arbitration is an appropriate process towards harnessing the key attributes of arbitration including speed and efficiency. Despite its efficacy, the paper notes that the practice of emergency arbitration also faces several concerns. The paper examines some of the key challenges in emergency arbitration. In addition, the paper suggests how emergency arbitration can be effectively utilised by securing

⁶ What is Arbitration?., Available at <https://www.hkiac.org/arbitration/what-is-arbitration> (Accessed on 22/09/2026)

⁷ Muigua. K., 'Promoting International Commercial Arbitration in Africa.' Available at <http://kmco.co.ke/wp-content/uploads/2018/08/PROMOTING-INTERNATIONAL-COMMERCIALARBITRATION-IN-AFRICA.pdf> (Accessed on 22/09/2026)

⁸ Moses, 'The Principles and Practice of International Commercial Arbitration' 2nd Edition, 2017, Cambridge University Press

⁹ United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958), Available at www.newyorkconvention.org/english (accessed on 22/09/2026)

¹⁰ United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI

¹¹ Ibid, article 33 (1)

¹² Constitution of Kenya., 2010., Government Printer, Nairobi

¹³ Ibid., article 159 (2) (c)

¹⁴ Alnaber. R., 'Emergency Arbitration: Mere Innovation or Vast Improvement.' *Arbitration International*, Volume 35, Issue 4 (2019)

¹⁵ Ibid

urgent reliefs, bypassing court delays and preserving assets towards promoting expeditious, effective and efficient management of disputes through arbitration.

2.0 Emergency Arbitration: Prospects and Challenges

Emergency arbitration has been defined as a mechanism that permits a disputing party to request an urgent interim relief before an arbitral tribunal is formally constituted¹⁶. In addition, emergency arbitration has been described as a special procedure whereby an arbitrator is appointed to hear applications for urgent interim relief(s) prior to formal constitution of an arbitral tribunal to hear the merits of the case¹⁷. The International Bar Association (IBA) observes that while emergency arbitration is still a relatively recent development, it has become an essential procedural feature for parties seeking urgent interim relief before the constitution of an arbitral tribunal¹⁸.

Emergency arbitration has emerged as a key procedural feature towards ensuring effectiveness, efficiency and justice in both international and domestic arbitration. For instance, this process allows parties to request immediate though short-term reliefs before the process of appointment of an arbitral tribunal is completed¹⁹. It has been observed that through emergency arbitration, urgent reliefs are sought upon the filing of the arbitration demand and may be compared to motions for injunctive relief or a temporary restraining order in court proceedings²⁰. In particular, emergency arbitration allows parties to secure prompt interim reliefs especially in situations where waiting for formal constitution of the arbitral tribunal would result in irreparable harm or immediate danger in relation to the subject matter of the dispute²¹. Emergency arbitration has been described as an effective remedy towards preventing irreparable harm during the early stages of a dispute especially where such harm could impact the course of arbitral proceedings²².

It has been observed that emergency arbitration usually arises when an emergency arbitrator is appointed to hear and decide applications for emergency interim relief filed by parties before the

¹⁶ Emergency Arbitration: Balancing Urgency and Fairness., Available at <https://www.acerislaw.com/emergency-arbitration-balancing-urgency-and-fairness/> (Accessed on 23/09/2026)

¹⁷ Singapore International Arbitration Centre., 'Emergency Arbitration.' Available at <https://siac.org.sg/emergency-arbitration#:~:text=The%20Emergency%20Arbitrator%20procedure%20is,the%20constitution%20of%20the%20Tribunal> (Accessed on 23/09/2026)

¹⁸ International Bar Association., 'Emergency arbitration: A practical guide for young arbitration practitioners' Available at <https://www.ibanet.org/document?id=Emergency-arbitration-guide-2025> (Accessed on 23/09/2026)

¹⁹ American Arbitration Association., 'ADR: What's Your Emergency?' Available at <https://www.adr.org/blog/ADR-Whats-Your-Emergency> (Accessed on 23/09/2026)

²⁰ Ibid

²¹ Emergency Arbitration: Balancing Urgency and Fairness., Op Cit

²² Is Emergency Arbitration ICSID's Achilles Heel?., Available at <https://adra-advocates.com/is-emergency-arbitration-icsids-achilles-heel/> (Accessed on 23/09/2026)

constitution of the tribunal²³. However, the person appointed as emergency arbitrator does not go on to become a member of the arbitral tribunal²⁴. Consequently, the powers of the emergency arbitrator lapse as soon as the tribunal is constituted²⁵. In emergency arbitration, urgent measures of protection usually take the form of an order²⁶. It has been observed that such orders may be later revisited by the arbitral tribunal once it is formally constituted²⁷. Urgent reliefs in emergency arbitration are key towards securing integrity, fairness and justice in arbitration including through protecting evidence from being destroyed²⁸. Further, it has been observed that orders made in emergency arbitration are key in preserving assets especially where such assets are directly related to the dispute²⁹. In instances where assets relating to the subject matter of the dispute are sold or transferred, the integrity and fairness of arbitral proceedings may be jeopardized therefore undermining access to justice. It has been observed that when parties agree to arbitrate their dispute, there is a risk they might find themselves stuck waiting for the constitution of an arbitral tribunal, or trying to seek interim relief in national courts, a situation that can lead to irreparable harm in relation to evidence, assets and subject matter of the dispute³⁰.

Emergency arbitration is therefore a key process towards ensuring integrity, fairness, expediency and justice in arbitration. In particular, it has been observed that emergency arbitration is important since parties, especially claimants, may find themselves in a factual situation where they are in need of urgent interim relief, but the tribunal has not yet been appointed³¹. Recourse to emergency arbitration is therefore important when considering the amount of time the process of constituting a tribunal can take³².

Due to its vital importance in enhancing access to justice through arbitration, emergency arbitration is being widely embraced in both international and domestic arbitration with arbitration institutions developing rules towards enabling parties to secure urgent reliefs, bypass court delays and preserve assets. For example, the *International Chamber of Commerce (ICC)*

²³ Emergency Arbitrators in Singapore., Available at <https://www.nortonrosefulbright.com/en/knowledge/publications/0c310fce/emergency-arbitrators-in-singapore> (Accessed on 23/09/2026)

²⁴ Ibid

²⁵ Ibid

²⁶ International Chamber of Commerce., 'Emergency Arbitrator' Available at <https://iccwbo.org/dispute-resolution/dispute-resolution-services/arbitration/rules-procedure/emergency-arbitrator/> (Accessed on 23/09/2026)

²⁷ Ibid

²⁸ What are emergency arbitrators, and what do they do?., Available at <https://www.mololamken.com/knowledge-what-are-emergency-arbitrators-and-what-do> (Accessed on 23/09/2026)

²⁹ Ibid

³⁰ Ibid

³¹ Emergency Arbitrators in Singapore., Op Cit

³² Ibid

*Arbitration Rules*³³ provide that party that needs urgent interim or conservatory measures that cannot await the constitution of an arbitral tribunal (*Emergency Measures*) may make an application for such measures³⁴. The ICC Arbitration Rules allow the appointment of an emergency arbitrator to make orders for urgent reliefs³⁵. However, the ICC Rules note that the emergency arbitrator's order shall not bind the arbitral tribunal with respect to any question, issue or dispute determined in the order³⁶. Consequently, the arbitral tribunal may modify, terminate or annul the order or any modification thereto made by the emergency arbitrator³⁷.

The *London Court of International Arbitration (LCIA) Arbitration Rules*³⁸ also allow for the use of emergency arbitration. The LCIA Rules provide that prior to the formation of the arbitral tribunal, any party may apply to the LCIA Court for the immediate appointment of a temporary sole arbitrator to conduct emergency proceedings³⁹. The Rules provide for the appointment of an emergency arbitrator within 3 days of application⁴⁰. In addition, the Rules provide that upon appointment, the emergency arbitrator shall decide the claim for emergency relief as soon as possible, but no later than 14 days⁴¹. Under the LCIA Rules, an emergency arbitrator is required to make an order in writing, with reasons⁴². The Rules further provide that such an order may be confirmed, varied, discharged or revoked, in whole or in part, by order or award made by the arbitral tribunal upon application by any party or upon its own initiative⁴³.

Arbitration institutions in Africa have also made progress towards embracing emergency arbitration. For instance, the Nairobi Centre for International Arbitration (NCIA) provides for emergency arbitration via its *Arbitration Rules*⁴⁴. The NCIA Arbitration Rules provide that at any time prior to the formation or expedited formation of the arbitral tribunal, a party may make an application for emergency measures⁴⁵. According to the NCIA Arbitration Rules, the emergency arbitrator shall make an order or award within fifteen days from the date of appointment, which

³³ International Chamber of Commerce., *Arbitration Rules in force as from 1 January 2021.*, Available at <https://iccwbo.org/wp-content/uploads/sites/3/2020/12/icc-2021-arbitration-rules-2014-mediation-rules-english-version.pdf> (Accessed on 23/09/2026)

³⁴ Ibid, article 29 (1)

³⁵ Ibid, article 29 (3)

³⁶ Ibid

³⁷ Ibid

³⁸ London Court of International Arbitration., 'Arbitration Rules.' Available at <https://www.lcia.org/media/download.aspx?MediaId=955> (Accessed on 23/09/2026)

³⁹ Ibid., article 9.4

⁴⁰ Ibid., article 9.6

⁴¹ Ibid., article 9.8

⁴² Ibid., article 9.9

⁴³ Ibid., article 9.11

⁴⁴ Nairobi Centre for International Arbitration., 'Arbitration Rules, 2015' Available at https://beta.ncia.or.ke/wp-content/uploads/2021/03/arbitration_rules_2016-1.pdf (Accessed on 23/09/2026)

⁴⁵ Ibid., rule 28 (1)

period may be extended by agreement of the parties⁴⁶. Further, the Rules state that an order or award made by the emergency arbitrator shall be binding on the parties upon being issued⁴⁷. The NCIA Arbitration Rules further state that upon the formation or expedited formation of the arbitral tribunal, the emergency arbitrator shall have no further power to act in the dispute⁴⁸. The Rules also provide that the arbitral tribunal may upon application by a party or on its own motion confirm, vary, discharge or revoke, in whole or in part an order or award of the emergency arbitrator⁴⁹.

Emergency arbitration has therefore emerged as a key practice that is being embraced by institutions both globally and in Africa. However, despite its role in ensuring integrity, efficiency and fairness in arbitration, emergency arbitration raises several risks and concerns that can undermine the appropriateness of arbitration in the access to justice discourse. For instance, balancing urgency and fairness is a key concern in emergency arbitration since the desire to obtain urgent reliefs can undermine the right to provide parties with a sufficient opportunity to present their case⁵⁰. In addition, enforceability is a key concern in emergency arbitration. For instance, it has been correctly observed that while many arbitration institutions provide that orders in emergency arbitration are binding, they do not offer clear procedures for compliance and recourse in cases of non-compliance thus creating uncertainty in enforcement of such orders⁵¹. It has been observed that most jurisdictions require an award to be '*final and binding*' on the substance of the dispute between the parties before it may be recognised and enforced⁵². However, an order by an emergency arbitrator is intended to deal only with the application for interim relief thus not '*final and binding*' as envisaged in most jurisdictions⁵³. Since most institutional rules allow the arbitral tribunal to modify, terminate or annul orders in emergency arbitration, there are challenges in relation to enforceability of such orders. In particular, it has been observed that while an order by an emergency arbitrator is legally enforceable in certain jurisdictions, it does not enjoy the status and near global enforceability of an arbitral award under the New York Convention⁵⁴.

Another key concern in emergency arbitration is uncertainty. For instance, it has been observed that there is no specific criteria for determining urgency and granting interim reliefs under emergency arbitration⁵⁵. This can lead to varying and inconsistent orders across jurisdictions

⁴⁶ Nairobi Centre for International Arbitration., Emergency Arbitration Rules, rule 14

⁴⁷ Nairobi Centre for International Arbitration., Arbitration Rules, 2015., rule 28 (6)

⁴⁸ Ibid., rule 28 (4)

⁴⁹ Ibid., rule 28 (8)

⁵⁰ Emergency Arbitration: Balancing Urgency and Fairness., Op Cit

⁵¹ Ibid

⁵² Alnaber. R., 'Emergency Arbitration: Mere Innovation or Vast Improvement.' Op Cit

⁵³ Ibid

⁵⁴ Emergency Arbitrators in Singapore., Op Cit

⁵⁵ Emergency Arbitration: Balancing Urgency and Fairness., Op Cit

potentially undermining harmony, consistency and predictability especially in international arbitration.

It is therefore necessary to embrace emergency arbitration while addressing its risks and concerns in order to enhance access to justice through arbitration.

3.0 Revamping Emergency Arbitration towards Expediency, Efficiency, Fairness and Justice

The emergence of emergency arbitration is a key development towards enhancing access to justice through arbitration. Through this process, parties can secure urgent reliefs, bypass court delays, and preserve assets. For example, emergency arbitration is key mechanism that allows parties to secure urgent interim relief even before the constitution of an arbitral tribunal so that the very purpose of parties opting for arbitration does not get defeated⁵⁶. This is especially crucial when there is need to secure evidence, stop an imminent confidentiality breach, preserve assets or prevent destruction of the subject matter of the dispute in order to allow the tribunal to have a holistic view of facts and evidence towards fairness, integrity, speed and finality in arbitration⁵⁷.

Further, emergency arbitration allows parties to bypass court delays when in need of urgent reliefs. It has been observed that prior to emergence of this practice, parties to both international and domestic arbitration had to rely on courts to preserve the status quo, conserve assets or evidence, or seek other provisional relief until a tribunal had been constituted⁵⁸. This situation exposed parties to delays associated with court processes while also threatening some of the key features of arbitration such as privacy, confidentiality and efficiency which may be lost if a party is forced to pursue provisional reliefs in open court⁵⁹. Consequently, in addition to enabling parties to bypass court delays, emergency arbitration also plays a vital role in promoting the agreement of parties to arbitrate disputes by ensuring that the grant of interim measures of protection is conducted within the confines of arbitration and not by national courts⁶⁰.

Emergency arbitration therefore plays a key role in safeguarding the key attributes of arbitration including privacy, confidentiality, party autonomy, efficiency and expediency. It is therefore necessary to widely embrace this practice in order to enable parties to secure urgent reliefs, bypass court delays and preserve assets for enhanced access to justice through arbitration. However, while aspiring to secure urgent reliefs, bypass court delays and preserve assets, it is imperative to ensure that emergency arbitration does not come at the expense of due process and

⁵⁶ Kumar. S., 'Emergency Arbitration-Its Advantages, Challenges and Legal Status in India.' Available at <https://www.scconline.com/blog/post/2022/03/26/emergency-arbitration/> (Accessed on 23/09/2026)

⁵⁷ What are emergency arbitrators, and what do they do?., Op Cit

⁵⁸ Hanessian. G, & Dosman. A., 'Songs of Innocence and Experience: Ten Years of Emergency Arbitration.' Available at http://arbitrationlaw.com/sites/default/files/free_pdfs/aria_-_songs_of_access.pdf (Accessed on 23/09/2026)

⁵⁹ American Arbitration Association., 'ADR: What's Your Emergency?' Op Cit

⁶⁰ Hanessian. G, & Dosman. A., 'Songs of Innocence and Experience: Ten Years of Emergency Arbitration.' Op Cit

fairness requirements under the rules of natural justice. In particular, emergency arbitrators have been urged to act promptly in order to secure urgent reliefs and preserve assets while at the same time respecting the rights of both parties to present their case⁶¹. Emergency arbitrators should therefore use the grant of interim measures to protect the integrity and fairness of the arbitration process without overstepping or causing undue harm including through deferring orders of interim reliefs to the tribunal when there is no imminent danger or irreparable harm in respect of assets, evidence or the subject matter of the dispute. Further, it has been observed that the tribunals' review of orders by emergency arbitrators is a key safeguard towards ensuring fairness, due process and justice in arbitration⁶².

Ensuring enforcement of orders in emergency arbitration is also key towards strengthening this practice. In particular, developing a universal legal instrument and guidelines, as appropriate, is necessary towards addressing the challenge of recognition and enforceability of orders in emergency arbitration by ensuring that such orders are recognized and enforced across jurisdictions⁶³. In addition, it has been observed that courts can support the growth of emergency arbitration through expedited procedures for recognition and enforcement of orders⁶⁴.

4.0 Conclusion

The development of emergency arbitration is a key step towards strengthening access to justice through arbitration. This process enables parties to secure urgent reliefs, bypass court delays and preserve assets. However, while embracing emergency arbitration, it is imperative to balance urgency with fairness, due process and justice⁶⁵. It is also necessary to strengthen enforceability of orders in emergency arbitration⁶⁶. Embracing emergency arbitration is a key solution towards reinvigorating access to justice through arbitration towards Sustainable Development.

⁶¹ Emergency Arbitration: Balancing Urgency and Fairness., Op Cit

⁶² Ibid

⁶³ Alnaber. R., 'Emergency Arbitration: Mere Innovation or Vast Improvement.' Op Cit

⁶⁴ Umeh. O., 'The Emergence of Emergency Arbitration in International Arbitration.' Op Cit

⁶⁵ Emergency Arbitration: Balancing Urgency and Fairness., Op Cit

⁶⁶ Alnaber. R., 'Emergency Arbitration: Mere Innovation or Vast Improvement.' Op Cit

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