

# **Navigating the Digital Dispute Resolution Landscape: Challenges and Opportunities**

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## **Navigating the Digital Dispute Resolution Landscape: Challenges and Opportunities**

**Kariuki Muigua\***

### **Abstract**

*The paper critically interrogates digital dispute resolution. It defines digital dispute resolution and discusses the progress made towards embracing this concept. The paper highlights some of the platforms and processes that have fostered digital dispute resolution. It further explores the challenges and opportunities presented by digital dispute resolution. The paper also offers proposals towards enhancing the digital dispute resolution landscape.*

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## 1.0 Introduction

A dispute refers to a disagreement on a point of law or fact, a conflict of legal views or of interests between two or more people<sup>1</sup>. A dispute has also been defined as a disagreement by two or more people over issues or interests that are finite and divisible<sup>2</sup>. Disputes can be interest-based, rights-based or power-based<sup>3</sup>. Disputes often arise due to disagreement as to the existence or validity of a claim by one party<sup>4</sup>. They can also occur due to questions arising from the performance or nonperformance of certain obligations<sup>5</sup>. It has been observed that disputes involve the recognition by the parties that they are entitled to some kind of resolution or solution to the dispute<sup>6</sup>.

Dispute resolution refers the process of managing a dispute by meeting at least some of each side's needs and addressing their interests<sup>7</sup>. It has also been defined as the process of settling disagreements between parties<sup>8</sup>. The aim of dispute resolution is to manage disputes in an efficient manner by fostering a rapport, considering interests and values separately, appealing to overarching values, and indirect confrontation<sup>9</sup>. It has been pointed out that in dispute resolution, parties in the first instance often attempt to utilize informal mechanisms provided in the particular arena where the dispute arises then, as a last resort, disputants might take the controversy to a public forum being courts of law<sup>10</sup>. Thus, in managing disputes parties often start with informal processes such as

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<sup>1</sup> Mavrommatis Palestine Concessions (Greece v. Great Britain), Judgment of 30 August 1924, 1924 *PCIJ* (Ser. A) No. 2, at 11.

<sup>2</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Glenwood Publishers Limited, 2015

<sup>3</sup> Ibid

<sup>4</sup> Marshall. P., 'Would ADR Have Saved Romeo and Juliet?' *Osgood Hall Law Journal*, Volume 36 (1998)

<sup>5</sup> Interpretation of the Peace Treaties with Bulgaria, Hungary and Romania, Advisory Opinion of 30 March 1950 (first phase), 1950 *ICJ Rep.* 65, at 74.

<sup>6</sup> Mwagiru. M., 'Conflict in Africa: Theory, Processes and Institutions of Management, (Centre for Conflict Research, Nairobi, 2006), p. 42

<sup>7</sup> Harvard Law School., 'Dispute Resolution.' Available at <https://www.pon.harvard.edu/tag/dispute-resolution/> (Accessed on 03/08/2023)

<sup>8</sup> Moffitt. M., & Bordone. R., 'The Handbook of Dispute Resolution.' Available at [https://books.google.co.ke/books?hl=en&lr=&id=NYeZrfzBDVUC&oi=fnd&pg=PR11&ots=1Pde6J8OLC&sig=tHspP8Bf9aZ\\_SgRn8q9OIPqh7p0&redir\\_esc=y#v=onepage&q&f=false](https://books.google.co.ke/books?hl=en&lr=&id=NYeZrfzBDVUC&oi=fnd&pg=PR11&ots=1Pde6J8OLC&sig=tHspP8Bf9aZ_SgRn8q9OIPqh7p0&redir_esc=y#v=onepage&q&f=false) (Accessed on 03/08/2023)

<sup>9</sup> Ibid

<sup>10</sup> Sander. F., 'Alternative Methods of Dispute Resolution: An Overview.' *Florida Law Review*, Volume 37, Issue 1

negotiation, then move on to mediation if the negotiation process fails, and, if necessary, end in arbitration or litigation where the mediation process fails<sup>11</sup>.

Various dispute resolution mechanisms are recognized at the global, regional and national levels. These mechanisms are either public or private, mandatory or optional<sup>12</sup>. At the international level, the *Charter of the United Nations* enjoins parties to an international dispute, to first seek a solution to their dispute by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice<sup>13</sup>. The Charter of the United Nations thus recognizes various dispute resolution processes including Alternative Dispute Resolution (ADR) processes and judicial settlement. In Kenya, the Constitution enshrines various dispute resolution processes including courts and ADR mechanisms such as reconciliation, mediation, arbitration and traditional dispute resolution mechanisms<sup>14</sup>. It can thus be argued that dispute resolution generally entails the use of courts and ADR processes such as negotiation, mediation, conciliation, arbitration and traditional dispute resolution mechanisms.

The method of dispute resolution discussed above have their own advantages and disadvantages. Courts as an avenue for dispute resolution have been hailed for the ability to foster finality in dispute management, binding nature of decisions and ability to enforce such decisions, availability of interim measures of protection in case of emergencies and the availability of precedents thus creating certainty in dispute resolution<sup>15</sup>. However, use of courts in dispute resolution faces several challenges including high court filing fees, bureaucracy, complex legal procedures, illiteracy, distance from formal courts, backlog of cases in courts and lack of legal knowhow<sup>16</sup>. ADR

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<sup>11</sup> Harvard Law School., 'Dispute Resolution.' Op Cit

<sup>12</sup> Sander. F., 'Alternative Methods of Dispute Resolution: An Overview.' Op Cit

<sup>13</sup> Charter of the United Nations, 24 October 1945, 1 UNTS XVI., Article 33.1

<sup>14</sup> Constitution of Kenya, 2010, Article 159 (2) (c), Government Printer, Nairobi

<sup>15</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

<sup>16</sup> 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

processes on the other hand have been hailed for their advantages which include informality, privacy, confidentiality, party autonomy and the ability to foster expeditious and cost effective management of disputes<sup>17</sup>. However, it has also been pointed that some of these mechanisms have several drawbacks including power imbalances, lack of precedents, non-binding nature of some mechanisms, lack of formal recognition and inability to grant urgent protection such as injunctions<sup>18</sup>.

The landscape of dispute resolution has witnessed significant changes in the recent past. Technological developments such as block chain and Artificial Intelligence (AI) are not only disrupting the way we transact on markets and conclude contracts but are also fundamentally changing the processes and modes of law enforcement and dispute resolution<sup>19</sup>. Consequently, it has been asserted that technological revolution has ushered in a new era of dispute resolution in the form of digital dispute resolution<sup>20</sup>. The paper critically interrogates digital dispute resolution. It defines digital dispute resolution and discusses the progress made towards embracing this concept. The paper highlights some of the platforms and processes that have fostered digital dispute resolution. It further explores the challenges and opportunities presented by digital dispute resolution. The paper also offers proposals towards enhancing the digital dispute resolution landscape.

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<sup>17</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

<sup>18</sup> Ibid

<sup>19</sup> Eidemuller. H., & Wagner. G., 'Digital Dispute Resolution.' Available at <https://blogs.law.ox.ac.uk/business-law-blog/blog/2021/09/digital-dispute-resolution> (Accessed on 03/08/2023)

<sup>20</sup> Katsh. E., & Rabinovich-Einy. O., 'Digital Justice: Technology and the Internet of Disputes.' Available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3508311](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3508311) (Accessed on 03/08/2023)

## **2.0 Interpreting Digital Dispute Resolution**

Technology is a disruptive phenomenon that has the capacity to end traditional business models, to cast whole industries into oblivion, and to destroy traditional crafts, arts, and professions<sup>21</sup>. Rapid digitalization is affecting all aspects of life including the way we interact, work, shop and receive services as well as how value is created and exchanged<sup>22</sup>. Technology has impacted the nature and practice of the legal profession in Kenya and across the globe in the 21<sup>st</sup> century<sup>23</sup>. Despite its relatively slow progress in embracing technology, the legal profession has in the recent past been more adaptive to technology as a matter of necessity due to ascendancy of information technology, the globalization of economic activity, the blurring of differences between professions and sectors, and the increasing integration of knowledge<sup>24</sup>.

The expansion of digital trade and digitally enabled transactions has been tremendous in Kenya, and digitization has become a vital element of a wide range of daily activities and service delivery<sup>25</sup>. With more and more individuals throughout the globe engaged in immediate cross-border exchanges of digital commodities, and as the infrastructure that supports the Internet increases, obstacles of distance and cost that previously appeared insurmountable have begun to fall away<sup>26</sup>. This, therefore, calls for investment in institutional frameworks that will ably overcome the challenges that come with digital economy, as far as management of the digital trade disputes is concerned<sup>27</sup>.

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<sup>21</sup> Eidemuller. H., & Wagner. G., 'Digital Dispute Resolution.' Op Cit

<sup>22</sup> United Nations Conference on Trade and Development., 'Digital Economy Report: 2021.' Available at [https://unctad.org/system/files/official-document/der2021\\_overview\\_en\\_0.pdf](https://unctad.org/system/files/official-document/der2021_overview_en_0.pdf) (Accessed on 04/08/2023)

<sup>23</sup> Muigua. K., 'Embracing Technology for Enhanced Efficiency and Access to Justice in the Legal Profession.' Available at <http://kmco.co.ke/wp-content/uploads/2022/06/Embracing-Technology-for-Enhanced-Efficiency-and-Access-to-Justice-in-the-Legal-Profession-Dr.-Kariuki-Muigua.pdf> (Accessed on 04/08/2023)

<sup>24</sup> Ibid

<sup>25</sup> Kiriti-Nganga. T & Mbithi. M, 'The Digital Trade Era - Opportunities and Challenges for Developing Countries: The Case of Kenya' (2021), in book: Adapting to the Digital Era: Challenges and Opportunities (pp.92-109), World Trade Organization, at p.94

<sup>26</sup> Lund. S & Manyika. J, 'How Digital Trade Is Transforming Globalisation' (by International Centre for Trade and Sustainable Development (ICTSD) 7, 2016), at p.1

<sup>27</sup> Muigua. K., 'The Evolving Alternative Dispute Resolution Practice: Investing in Digital Dispute Resolution in Kenya.' Available at <http://kmco.co.ke/wp-content/uploads/2022/04/The-Evolving->

Digital transformation has also affected the resolution of disputes and the enforcement of claims<sup>28</sup>. The disruptions caused by the COVID-19 pandemic have brought to light, the impact of technology on modern legal practice and led to the adoption of practices such as virtual court sessions, electronic filing of pleadings and online delivery of judgments and rulings<sup>29</sup>. The use of technology has also permeated into the field of Alternative Dispute Resolution (ADR) with practices such as online mediation, online arbitration, smart contracts and block chain arbitration being embraced<sup>30</sup>. It has been argued that the traditional court system is incapable of administering justice on a large scale in light of the digital transformation and there is need to embrace digital dispute resolution in order to effectively manage technology related disputes<sup>31</sup>.

Digital dispute resolution has been described as the process of managing disputes on the internet through the use of suitable technology or platforms<sup>32</sup>. It involves the use of technology to facilitate the rapid, cost effective and specialised resolution of disputes involving digital technology including crypto assets, cryptocurrency, smart contracts, distributed ledger technology, and fintech applications<sup>33</sup>. Digital Dispute Resolution is often compared to Online Dispute Resolution (ODR) which refers to a set of processes

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[Alternative-Dispute-Resolution-Practice-Investing-in-Digital-Dispute-Resolution-in-Kenya-Kariuki-Muigua.pdf](#) (Accessed on 05/08/2023)

<sup>28</sup> Eidemuller, H., & Wagner, G., 'Digital Dispute Resolution.' Op Cit

<sup>29</sup> Muigua, K., 'Legal Practice and New Frontiers: Embracing Technology for Enhanced Efficiency and Access to Justice' available at <http://kmco.co.ke/wp-content/uploads/2020/06/Legal-Practice-and-New-Frontiers-Embracing-Technology-for-Enhanced-Efficiency-and-Access-to-Justice-Kariuki-Muigua-Ph.D-June-2020.pdf> (Accessed on 04/08/2023)

<sup>30</sup> Yeoh, D., 'Is Online Dispute Resolution the future of Alternative Dispute Resolution.' Available at <https://arbitrationblog.kluwerarbitration.com/2018/03/29/online-dispute-resolution-future-alternative-dispute-resolution/> (Accessed on 04/08/2023)

<sup>31</sup> Peters, S., "The evolution of alternative dispute resolution and online dispute resolution in the European Un." *CES Derecho* 12, no. 1 (2021): 3-17, at p.6

<sup>32</sup> Sadushi, M., 'The Theory And Practice Of Dispute Resolution In The Digital Age.' Available at <https://ejournals.org/gjplr/vol-5-issue-7-december-2017/theory-practice-dispute-resolution-digital-age/> (Accessed on 05/08/2023)

<sup>33</sup> AShurst., 'Digital Dispute Resolution Rules Published.' Available at <https://service.betterregulation.com/sites/default/files/digital-dispute-resolution-rules-published.pdf> (Accessed on 04/08/2023)

that allow for the resolution of disputes via online mechanisms such as the internet or some form of technology that allows for virtual communication<sup>34</sup>.

Technology has the ability to make dispute resolution more efficient<sup>35</sup>. It has been observed that technology is transforming the landscape of dispute resolution by generating an ever-growing number of disputes and at the same time challenging the effectiveness and reach of traditional dispute resolution avenues such as courts<sup>36</sup>. Technology holds the promise for an improved dispute resolution landscape that is based on fewer physical, conceptual, psychological and professional boundaries, while enjoying a higher degree of transparency, participation and change<sup>37</sup>. Technology could be used to ensure that every case has a single data set that can be used at every stage of the dispute resolution process in order to avoid the repetition of the same facts and issues in pleadings, witness statements, expert reports, skeleton arguments and opening and closing written submissions<sup>38</sup>.

The United Kingdom has made progress towards embracing digital dispute resolution by adopting the Digital Dispute Resolution Rules which are meant to facilitate the rapid and cost-effective resolution of commercial disputes, particularly those involving novel digital technology such as crypto assets, cryptocurrency, smart contracts, distributed ledger technology, and fintech applications<sup>39</sup>. The Rules must be agreed upon in writing by both parties, either before or after a disagreement arises<sup>40</sup>. The Rules provide language

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<sup>34</sup> Mania. K., 'Online Dispute Resolution: The Future of Justice.' *International Comparative Jurisprudence*, No. 1 of 2015, (pg 76-86)

<sup>35</sup> Ibid

<sup>36</sup> Rabinovich-Einy..O., & Katsh. E., 'Reshaping Boundaries in an Online Dispute Resolution Environment.' *International Journal of Online Dispute Resolution*, Volume 1, No. 1 (2014)

<sup>37</sup> Ibid

<sup>38</sup> Ashurst., 'Dispute Resolution in need of a "Digital Makeover?."' Available at <https://www.ashurst.com/en/insights/dispute-resolution-in-need-of-a-digital-makeover/#:~:text=Technology%20could%20be%20used%20to,opening%20and%20closing%20written%20submissions> (Accessed on 04/08/2023)

<sup>39</sup> United Kingdom, Digital Dispute Resolution Rules, April 2021 Available at [https://35z8e83m1ih83drye280o9d1-wpengine.netdna-ssl.com/wp-content/uploads/2021/04/Lawtech\\_DDRR\\_Final.pdf](https://35z8e83m1ih83drye280o9d1-wpengine.netdna-ssl.com/wp-content/uploads/2021/04/Lawtech_DDRR_Final.pdf) (Accessed on 05/08/2023)

<sup>40</sup> Ibid

for use in a contract, a digital asset (such as a crypto asset, digital token, smart contract, or other digital or coded representation of an asset or transaction), or a digital asset system<sup>41</sup>. Further, the United Nations Commission on International Trade Law in its Dispute Resolution in the Digital Economy Initiative recognizes the importance of technology in enhancing the efficiency of dispute resolution but with emphasis on the need to take into account the disruptive aspects of digitalization, in particular with respect to due process and fairness<sup>42</sup>. In Kenya, the Digital Economy Blue Print envisages the use of digital dispute resolution mechanisms such as Online Dispute Resolution to enforce contracts, resolve disputes and protect consumers<sup>43</sup>. These are some of the initiatives adopted towards embracing digital dispute resolution.

Some of the technological innovations that have enhanced digital dispute resolution include the use of block chain technology and Artificial Intelligence (AI) programs such as smart contracts and Chat GPT<sup>44</sup>. Blockchain technology has facilitated Block chain Dispute Resolution (BDR) which provides a platform for management of disputes arising out of block chain and smart contract transactions or for traditional disputes that are not related to block chain transactions<sup>45</sup>. Further, it has been contended that technologies such as AI could be used to quickly sift through the mass of complex facts to identify the key issues at the heart of each dispute thus enhancing the efficiency of dispute resolution<sup>46</sup>. Smart contracts have also been embraced in the field of digital dispute resolution<sup>47</sup>. These are programs stored on a block chain that run when predetermined

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<sup>41</sup> Ibid

<sup>42</sup> United Nations Commission on International Trade Law., 'UNCITRAL's Dispute Resolution in the Digital Economy Initiative.' Available at <https://uncitral.un.org/en/parisarbitrationweekdrde#:~:text=The%20UNCITRAL%20project%20on%20the,information%20with%20a%20view%20to> (Accessed on 05/08/2023)

<sup>43</sup> Republic of Kenya., 'Digital Economy Blueprint.' Available at <https://www.ict.go.ke/wp-content/uploads/2019/05/Kenya-Digital-Economy-2019.pdf> (Accessed on 05/08/2023)

<sup>44</sup> Ashurst., 'Dispute Resolution in need of a "Digital Makeover?" Op Cit

<sup>45</sup> Kumtepe. C., 'A Brief Introduction to Blockchain Dispute Resolution.' *John Marshall Law Journal*, Volume 14, No. 2 (2021)

<sup>46</sup> Ibid

<sup>47</sup> Ibid

conditions are met<sup>48</sup>. They are often used to automate the execution of an agreement so that all participants can be immediately certain of the outcome, without any intermediary's involvement or time loss<sup>49</sup>. Smart contracts can also automate a workflow, triggering the next action when conditions are met<sup>50</sup>. Smart contracts are versatile and can be embraced in digital dispute resolution in order to enhance speed, efficiency, accuracy, transparency and cost effectiveness<sup>51</sup>. Indeed, smart legal contracts are being adopted which execute automatically when conditions have been met<sup>52</sup>. These include digital wills and legal agreements between organizations<sup>53</sup>.

Further, it has been asserted that programs such as Chat GPT have the potential of enhancing efficiency and expeditiousness in dispute resolution in areas such as legal research and formulating legal opinions<sup>54</sup>. It can provide quick and convenient solutions to many legal research and contract analysis tasks<sup>55</sup>. Chat GPT can also foster dispute resolution mechanisms such as International Commercial Arbitration in areas such as language translation in disputes involving parties from different nationalities<sup>56</sup>. It can also be used in text summarization and production of relevant case notes thus aiding the process of dispute resolution<sup>57</sup>. Due to its ability to save time and effort by automating tasks and creating documents and communication quickly, Chat GPT and similar

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<sup>48</sup> IBM., 'Smart Contracts Defined.' Available at <https://www.ibm.com/topics/smart-contracts> (Accessed on 04/08/2023)

<sup>49</sup> Ibid

<sup>50</sup> Ibid

<sup>51</sup> Zebpay., 'Smart Contracts Vs Blockchain.' Available at <https://zebpay.com/blog/difference-between-smart-contract-vs-blockchain> (Accessed on 04/08/2023)

<sup>52</sup> Educative., 'Types of contracts in Solidity.' Available at <https://www.educative.io/answers/types-of-contracts-in-solidity> (Accessed on 04/08/2023)

<sup>53</sup> Ibid

<sup>54</sup> Flake. A., 'Chat GPT and Litigation Technology, Reprised.' Available at <https://www.theartofresolution.net/chat-gpt-and-litigation-technology-reprised/> (Accessed on 04/08/2023)

<sup>55</sup> Vinciullo. A., 'The Risk of Law Firms Relying on Chat GPT to Perform Contract analysis and Legal Research.' Available at <https://www.linkedin.com/pulse/risk-law-firms-relying-chat-gpt-perform-contract-legal-vinciullo/> (Accessed on 04/08/2023)

<sup>56</sup> ArbTech., 'Practical Implications of ChatGPT for Arbitration Practitioners.' Available at <https://www.arbtech.io/blog/practical-implications-of-chatgpt-for-arbitration-practitioners> (Accessed on 04/08/2023)

<sup>57</sup> Ibid

platforms will continue to have a significant impact on the legal landscape including dispute resolution<sup>58</sup>.

It is thus evident that there is immense potential for digital dispute resolution. However, despite its potential, digital dispute resolution raises several challenges.

### **3.0 Challenges facing Digital Dispute Resolution**

One of the fundamental challenges with digital dispute resolution relates to jurisdiction. The trans-national nature of technology such as the Internet and the cyberspace is that jurisdictional problems abound in dispute resolution since a dispute may involve parties from different nationalities<sup>59</sup>. One of the advantages of traditional dispute resolution mechanisms such as litigation and ADR processes including arbitration and mediation is that jurisdictional issues are well catered for through governing laws and parties' agreement<sup>60</sup>. However, the worldwide nature of the cyberspace may create the challenge of jurisdiction and governing law in management of disputes due to different approaches to these concepts across the globe<sup>61</sup>. It has been asserted that in order to address this concern, there may be need to develop a dispute resolution mechanism for a worldwide context<sup>62</sup>.

Further, it has been observed that digital dispute resolution may result in due process and fairness concerns<sup>63</sup>. Digital dispute resolution lacks the procedural safeguards

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<sup>58</sup> Monachino. C., 'Chat GPT: A Look into the Future (Litigation).' Available at <https://www.clemetrobar.org/?pg=CMBABlog&blAction=showEntry&blogEntry=91543#:~:text=Chat%20GPT%20and%20similar%20platforms,navigate%20the%20quickly%20changing%20environment>. (Accessed on 04/08/2023)

<sup>59</sup> Clark. E et al., 'Online Dispute Resolution: Present Realities, Pressing Problems and Future Prospects.' Available at <https://www.tandfonline.com/doi/pdf/10.1080/1360086032000063084> (Accessed on 05/08/2023)

<sup>60</sup> Ibid

<sup>61</sup> Ibid

<sup>62</sup> Rabinovich-Einy..O., & Katsh. E., 'Reshaping Boundaries in an Online Dispute Resolution Environment.' Op Cit

<sup>63</sup> United Nations Commission on International Trade Law., 'UNCITRAL's Dispute Resolution in the Digital Economy Initiative.' Op Cit

available in traditional dispute resolution mechanisms which ensure due process and fairness. For example, interim reliefs can be obtained without the need to prove irreparable injury or probable success on the merits and without a balancing of interests<sup>64</sup>. Further, aspects such as notice, discovery, collective action, live hearings, confrontation of witnesses, a neutral decision maker, and a transparent process which guarantee due process and fairness in traditional dispute resolution mechanisms may be absent in digital dispute resolution<sup>65</sup>. Thus, the decentralized and expeditious nature of the digital dispute resolution framework creates fundamental questions of how to safeguard fairness and due process to the emphasis on quick management of disputes and lack of control mechanisms in some instances<sup>66</sup>. There is need to address this concern in order to enhance the viability of digital dispute resolution.

It has also been contended that digital dispute resolution faces enforcement challenges<sup>67</sup>. Recognition and enforcement of outcomes in digital dispute resolution mainly depends on voluntary compliance by the parties a situation that create challenges especially in the cross- border context<sup>68</sup>. Although voluntary compliance is possible, an effective redress mechanism is needed to force compliance in case the final decision reached in the digital dispute resolution process is not voluntarily followed<sup>69</sup>.

Another pertinent concern in digital dispute resolution relate to security and privacy. The systems supporting digital dispute resolution may be subject to cyberattacks<sup>70</sup>. In such cases, unauthorized persons may access the system and engage in unwarranted practices

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<sup>64</sup> Thornburg. E., 'Going Private: Technology, Due Process, and Internet Dispute Resolution.' Available at <https://core.ac.uk/download/pdf/216915944.pdf> (Accessed on 05/08/2023)

<sup>65</sup> Ibid

<sup>66</sup> Koulu. R., 'Blockchains and Online Dispute Resolution: Smart Contracts as an Alternative to Enforcement.' Available at [https://web.archive.org/web/20180721214039id\\_/https://script-ed.org/wp-content/uploads/2016/05/koulu.pdf](https://web.archive.org/web/20180721214039id_/https://script-ed.org/wp-content/uploads/2016/05/koulu.pdf) (Accessed on 05/08/2023)

<sup>67</sup> Ibid

<sup>68</sup> Hanriot. M., 'Online Dispute Resolution (ODR) As a Solution to Cross Border Consumer Disputes: The Enforcement of Outcomes.' *McGill Journal of Dispute Resolution*, Volume 2, No. 1, 2015

<sup>69</sup> Ibid

<sup>70</sup> Muigua. K., 'Legal Practice and New Frontiers: Embracing Technology for Enhanced Efficiency and Access to Justice' Op Cit

such as stealing of information, deleting information or sending unwanted information to the detriment of some parties<sup>71</sup>. Thus, in digital dispute resolution the privacy and security of the user is susceptible to being compromised since technology can be hacked or exploited to steal information and spy on people among other malpractices<sup>72</sup>. There is need to address privacy and security concerns in digital dispute resolution in order to promote its viability.

Finally, the use of digital dispute resolution such as AI platforms can potentially result in errors. It has been observed that AI models are only as good as the data they are trained on and thus if the data is biased, incomplete, or inaccurate, the AI model's predictions and decisions will also be biased, incomplete, or inaccurate<sup>73</sup>. For example, when using platforms such as Chat GPT to analyze a contract , if a party misses a key provision, it could lead to costly legal disputes down the line<sup>74</sup>. Similarly, if Chat GPT is used to conduct legal research and the results are incomplete or biased, it could lead to incorrect legal advice being provided to clients<sup>75</sup>. Therefore, it is imperative to ensure that when using such platforms in dispute resolution, all safeguards are taken into account to ensure the accuracy, competence and completeness of results<sup>76</sup>.

There is need to address the foregoing problems in order to foster digital dispute resolution.

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<sup>71</sup> Ibid

<sup>72</sup> Blockchain Council., '7 Key Technologies That Are Powering the Metaverse.' Available at <https://www.blockchain-council.org/metaverse/technologies-powering-metaverse/> (Accessed on 05/08/2023)

<sup>73</sup> Vinciullo. A., 'The Risk of Law Firms Relying on Chat GPT to Perform Contract analysis and Legal Research.' Op Cit

<sup>74</sup> Ibid

<sup>75</sup> Ibid

<sup>76</sup> Eidemuller. H., & Wagner. G., 'Digital Dispute Resolution.' Op Cit

#### **4.0 Way Forward**

In order to foster digital dispute resolution there is need to foster digital literacy<sup>77</sup>. It has been correctly observed that with the emerging concepts of Artificial Intelligence, Block Chain technology there is need to enhance digital technology capabilities and potential and efforts must be made at all levels of education to upgrade digital skills<sup>78</sup>. Through digital literacy, people will be more ready to embrace digital dispute resolution since they will be familiar with the technology enabling the processes including Block chain technology and AI processes such as smart contracts and Chat GPT<sup>79</sup>.

In addition, there is need to address the privacy and security concerns in digital dispute resolution in order to enhance its viability<sup>80</sup>. It has been pointed out that privacy and security concerns in digital technology can be addressed through measures such as enforcing communication via secure channels, performing strong identity verification to ensure devices are not compromised, limiting the use of third-party software and browsing to unsafe websites and encrypting data on devices to protect against device compromise and theft<sup>81</sup>. Data privacy and security is essential in digital dispute resolution to prevent unauthorized people from accessing the system and obtaining information especially where such information relates to the dispute at hand<sup>82</sup>. Promoting data privacy and security is vital in enhancing digital dispute resolution.

It is also imperative to address the jurisdictional problems inherent in digital dispute resolution. It has been argued that the cross-border indifference of internet technologies has brought with it a plethora of jurisdiction and conflict of laws issues<sup>83</sup>. Territoriality based concepts of regulating have failed to adequately deal with these borderless

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<sup>77</sup> Republic of Kenya., 'Digital Economy Blueprint.' Op Cit

<sup>78</sup> Raizada S and Mittal JK, 'Structural Transformation and Learning Paradigms-Global Strategic Approach in Clinical Legal Education' (2020) 20 *Medico Legal Update* 188, 189.

<sup>79</sup> Ibid

<sup>80</sup> Blockchain Council., '7 Key Technologies That Are Powering the Metaverse.'

<sup>81</sup> Ebner. N., & Zeleznikow. J., 'Fairness, Trust and Security in Online Dispute Resolution.' *Journal of Public Law and Policy*, Volume 36, Issue 2 (2015)

<sup>82</sup> Ibid

<sup>83</sup> Clifford. D., & Van Der Sype. Y., 'Online Dispute Resolution: Settling Data Protection Disputes in a Digital World of Customers.' *Computer Law & Security Review.*, Volume 32, Issue 2 (2016)

challenges<sup>84</sup>. This problem can be addressed through the adoption of uniform laws and developing consistent dispute resolution mechanisms with uniform applicability across jurisdictions when dealing with similar disputes especially those that are commercial in nature<sup>85</sup>. This will address the jurisdictional concerns inherent in digital dispute resolution and further enhance the enforcement of outcomes arising from digital dispute resolution models.

Finally, there is need to ensure the appropriateness and accuracy of digital dispute resolution platforms in order to promote fairness, transparency and accuracy of results<sup>86</sup>. Parties should only adopt such systems once all the processes have been conducted to ensure their credibility and accuracy<sup>87</sup>. Further, when using AI platforms such as smart contracts and Chat GPT in dispute resolution, it is vital to ensure that the correct data, information and instructions are provided to ensure the credibility of results<sup>88</sup>. Through such measures, digital dispute resolution will become an ideal mechanism of managing disputes.

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<sup>84</sup> Ibid

<sup>85</sup> Rabinovich-Einy..O., & Katsh. E., 'Reshaping Boundaries in an Online Dispute Resolution Environment.' Op Cit

<sup>86</sup> Abedi. F., 'Universal Standards for the Concept of Fairness in Online Dispute Resolution in B2C E-Disputes.' Available at [https://kb.osu.edu/bitstream/handle/1811/101530/1/OSJDR\\_V34N2\\_357.pdf](https://kb.osu.edu/bitstream/handle/1811/101530/1/OSJDR_V34N2_357.pdf) (Accessed on 05/08/2023)

<sup>87</sup> Ibid

<sup>88</sup> Vinciullo. A., 'The Risk of Law Firms Relying on Chat GPT to Perform Contract analysis and Legal Research.' Op Cit

## **5.0 Conclusion**

The disruptive nature of technology has shifted the landscape of dispute resolution leading to the emergence of digital dispute resolution<sup>89</sup>. Digital dispute resolution has the ability to facilitate the rapid, cost effective and specialised resolution of disputes by embracing the use of suitable technology or platforms<sup>90</sup>. Consequently, technologies and platforms such as Block Chain, smart contracts and Chat GPT are increasingly being embraced in dispute resolution<sup>91</sup>. However, the practice of digital dispute resolution raises several concerns. These include jurisdictional problems, due process and fairness concerns, enforcement problems, security and privacy issues and the possibility of errors<sup>92</sup>. In order to address these problems there is need to foster digital literacy, promote data security and privacy, adopt uniform laws, develop consistent dispute resolution mechanisms with uniform applicability across jurisdictions and ensure the appropriateness and accuracy of digital dispute resolution platforms<sup>93</sup>. Through these measures, the digital dispute resolution landscape will be successfully navigated towards fostering efficient and effective management of disputes in the digital age.

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<sup>89</sup> Eidemuller. H., & Wagner. G., 'Digital Dispute Resolution.' Op Cit

<sup>90</sup> Sadushi. M., 'The Theory And Practice Of Dispute Resolution In The Digital Age.' Op Cit

<sup>91</sup> Ashurst., 'Dispute Resolution in need of a "Digital Makeover?' Op Cit

<sup>92</sup> Clark. E et al., 'Online Dispute Resolution: Present Realities, Pressing Problems and Future Prospects.'

<sup>93</sup> Rabinovich-Einy..O., & Katsh. E., 'Reshaping Boundaries in an Online Dispute Resolution Environment.' Op Cit

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