

Role of ADR in Management of Disputes in the Financial Industry in Kenya

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Abstract

The paper seeks to critically discuss the role of Alternative Dispute Resolution (ADR) mechanisms in management of disputes in the financial industry. The paper argues that the financial industry has been slow in embracing ADR with litigation being the preferred mechanism of managing disputes in this sector. It analyses some of the reasons informing the reluctance to embrace ADR in the financial industry. The paper then discusses the progress towards adoption of ADR mechanisms in the financial industry. It further analyses both the advantages and concerns related to the use of ADR in the financial industry and proposes reforms towards enhanced uptake of ADR mechanisms in management of disputes in the financial industry.

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Table of Contents

| | |
|---|----|
| Abstract | 2 |
| 1. Introduction | 4 |
| 2. Nature of Disputes in the Financial Sector | 5 |
| 3. Progress towards Embracing ADR in Management of Disputes in the Financial Sector | 8 |
| 4. Concerns with the Use of ADR in the Management of Disputes in the Financial Sector | 12 |
| a) Lack of Summary Judgments and Interim Measures | 12 |
| b) Lack of Precedents | 13 |
| c) Costs | 13 |
| d) Transparency Concerns | 14 |
| 5.0 Way Forward | 14 |
| a) Conflict Avoidance | 14 |
| b) Structuring Effective Dispute Resolution Clauses | 15 |
| c) Case Management Procedures | 15 |
| d) Adopting ADR Mechanisms in Management of Financial Disputes | 16 |
| 6.0 Conclusion | 16 |
| References | 18 |

1. Introduction

Alternative Dispute Resolution (ADR) mechanisms have continued to be embraced in management of disputes in many sectors owing to their inherent advantages. These mechanisms which include arbitration, mediation, negotiation and traditional justice systems have been hailed for being efficient, flexible, confidential, promoting party autonomy and cost effective management of disputes¹. Further, ADR mechanisms can be less adversarial in nature and thus have the ability to reconcile parties and preserve relationships beyond the dispute management process². Due to these features, ADR mechanisms can effectively be applied in management of a wide range of disputes including family disputes, commercial disputes, natural resource based disputes among others³.

The importance of ADR mechanisms in Kenya has resulted in their recognition under the Constitution. The Constitution calls for promotion of ADR mechanisms including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms⁴. ADR mechanisms are thus critical in achieving access to justice as envisioned under the Constitution⁵.

With many sectors embracing ADR mechanisms, the paper seeks to critically examine the extent to which this has been achieved in the financial industry. The paper will analyse the nature of disputes in the financial industry and the general reluctance in embracing ADR in management of these disputes in the recent past. Further, the paper will discuss the recent uptake of ADR in the financial industry and factors that have necessitated this change. The paper will also analyse some of the concerns with the use of ADR in the

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

² Wambua. M., 'The Challenges of Implementing ADR as an Alternative Mode of Access to Justice in Kenya' (2013) 1 *Alternative Dispute Resolution*

³ Muigua. K., 'Heralding a New Dawn: Achieving Justice through Effective Application of Alternative Dispute Resolution Mechanisms (ADR) in Kenya.' (2013) 1 *Alternative Dispute Resolution*

⁴ Constitution of Kenya, 2010, Article 159 (2) (c)

⁵ *Ibid*, Article 48

financial sector and propose recommendations towards addressing these concerns and enhancing the role of ADR in management of financial disputes.

2. Nature of Disputes in the Financial Sector

The financial industry in Kenya comprises different players including the banking sector, the capital markets, the insurance sector, Savings and Credit Cooperatives (Saccos) and the pension sector. It has been asserted that financial disputes are not entirely different from other disputes in the commercial sphere since financial contracts are similar to other commercial contracts⁶. Thus, interpreting financial contracts requires no special expertise beyond that required for other commercial contracts⁷.

However, the operation of particular financial markets such as capital markets, banking and the insurance sector can be very technical and thus management of disputes in these sectors will require a certain level of understanding of their operation and the applicable legal rules⁸. Managing of disputes in the financial sector in Kenya thus necessitates an understanding of financial markets and products and investments in the markets such as shares, derivatives, bonds, treasury bills and mutual funds⁹. In most instances, expert evidence may be required to assist decision makers in management of disputes in the financial industry.

The financial industry in Kenya and across the globe is also highly regulated and this has an impact on management of disputes in this sector. Financial regulation entails the control of certain financial affairs of players in the financial industry including banks, capital markets, insurance companies, savings and credit cooperative societies and

⁶ Blair.W., 'Arbitrating Financial Disputes- Are they Different and What Lies Ahead?' available at <https://static1.squarespace.com/static/5fc4c63ed27ff856c265d945/t/61b72f776ae5c41e61c4bfe4/1639395191861/15th+Kaplan+lecture+2021+Sir+William+Blair+Arbitrating+financial+disputes.pdf> (accessed on 07/09/2022)

⁷ Ibid

⁸ Ibid

⁹ Central Bank of Kenya, 'Financial Markets' available at <https://www.centralbank.go.ke/financial-markets/> (accessed on 07/09/2022)

pension schemes in order to protect consumers and achieve soundness, transparency and accountability in the financial industry¹⁰. Financial regulation is aimed at enhancing the functioning of the financial system.¹¹ The financial industry is volatile in nature and without effective regulation, financial systems can become unstable, triggering crises that can devastate economies in their respective countries or even at the global stage as evidenced by the great depression and the global financial crisis of 2008¹².

Such crises have precipitated the need for sound financial regulation. Indeed, the World Bank and the International Monetary Fund among other international financial institutions have attempted to promote financial stability and economic development by urging countries to adopt and implement appropriate regulations and supervisory measures in the financial sector¹³. This is reflected in Kenya with the enactment of laws and institutions for the regulation of all the players in the financial industry. The banking industry is regulated by the Central Bank of Kenya established under the Central Bank of Kenya Act¹⁴. The capital markets sector is regulated by the Capital Markets Authority established under the Capital Markets Act¹⁵. Similarly, the insurance sector is regulated by the Insurance Regulatory Authority established under the Insurance Act¹⁶. It is thus asserted that unlike ordinary commercial disputes where the only consideration may be whether there was breach of contract, in managing financial disputes there is need to ascertain regulatory compliance as set out in the various laws and rules formulated by the regulatory entities¹⁷.

¹⁰ Armour, J. et al 'Principles of Financial Regulation' Oxford University Press, 2016

¹¹ Ibid

¹² Mwega, F., 'Financial regulation in Kenya: Balancing inclusive growth with financial stability' available at <https://assets.publishing.service.gov.uk/media/57a09dd4ed915d622c001be5/9279.pdf> (accessed on 07/09/2022)

¹³ Barth, J et al., 'Financial Regulation and Performance : Cross-Country Evidence' available at https://www.researchgate.net/publication/233720304_Financial_Regulation_and_Performance_Cross-Country_Evidence (accessed on 07/09/2022)

¹⁴ Central Bank of Kenya Act, Cap 491 Laws of Kenya, S 3

¹⁵ Capital Markets Act, No.17 of 1989 Laws of Kenya, S 5

¹⁶ Insurance Act, Cap 487 Laws of Kenya, S 3

¹⁷ Blair, W., 'Arbitrating Financial Disputes- Are they Different and What Lies Ahead?' Op Cit

It can thus be argued that financial disputes are of a unique nature when compared to ordinary commercial disputes. Consequently, the financial industry has generally been reluctant to embrace ADR mechanisms in management of disputes¹⁸. This reluctance has been attributed to a number of factors including a general respect for customs and certainty in the financial sector¹⁹. Players in the financial industry will thus be more willing to resort to dispute management mechanisms that result in consistency and predictability in decision making in order to ensure the stability of financial institutions²⁰.

Further, due to the unequal bargaining power between the parties such as a bank and a borrower, the party with the strong bargaining power especially banks usually impose their preferable dispute management mechanism in the contract²¹. In most instances, financial institutions prefer giving jurisdiction to the lender's national courts to manage disputes arising out of financial transactions²². Courts in major financial centres are seen by the financial industry as reliable and predictable²³. Parties are thus more comfortable in resorting to courts in major financial centres such as London and New York.

On this basis, it is argued that the future of ADR mechanisms such as arbitration in the financial sector depends on the expertise and commitment of arbitrator and the competence of state courts²⁴. Thus as long as national courts are more responsive to the needs of players in the financial industry, the financial industry will remain reluctant to embrace ADR²⁵. However, ADR mechanisms especially arbitration still remains a viable

¹⁸ Henriques. D., 'Arbitrating Disputes in Third Party Funding: A Parallel with Arbitration in the Financing Sector' available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3285723 (accessed on 07/09/2022)

¹⁹ Park. W, 'Arbitration in Banking and Finance' (1998) 17 Annual Review of Banking Law, 216, http://heionline.org/HOL/Page?handle=hein.journals/annrbfl17&div=6&g_sent=1&collection=journals# 219 (accessed on 07/09/2022)

²⁰ Ibid

²¹ Alamdari, B.H., 'The Emerging Popularity of International Arbitration in the Banking and Financial Sector- Is this a Fashionable Trend or a Viable Replacement' available at <https://sas-space.sas.ac.uk/6401/1/Hatami%20Alamdari,%20Bahar.pdf> (accessed on 07/09/2022)

²² Ibid

²³ Hanefeld. I., 'Arbitration in Banking and Finance' (2013) 9(3) New York University Journal of Law and Business 917 at 939

²⁴ Ibid

²⁵ Ibid

option for management of disputes in the financial sector. Indeed, there has been progress towards embracing ADR mechanisms such as arbitration in management of disputes in the financial sector.

3. Progress towards Embracing ADR in Management of Disputes in the Financial Sector

It is argued that there has been a rise in the uptake of ADR mechanisms in management of disputes in the financial sector since the 2008 financial crisis²⁶. This has been attributed to globalisation and the need for non-national forums to manage disputes²⁷. The rise of international finance which involves parties from different jurisdictions makes arbitration a preferred mode of dispute settlement due to the ease of enforcement of international arbitration awards. The *New York Convention*²⁸ ensures ease and certainty in enforcement of foreign arbitral awards across all jurisdictions. The New York Convention provides the legal framework for the recognition and enforcement of foreign arbitral awards which is essential in providing legitimacy to such awards despite jurisdictional differences between states.²⁹ Further, courts may lack neutrality when it comes to parties or assets within their jurisdiction at the expense of those from other jurisdiction. Arbitration thus allows parties to appoint neutral decision makers to manage their disputes³⁰. Further, due to the complexity of financial disputes, court may not effectively manage such disputes especially where judges lack expertise in financial matters³¹.

²⁶ Alamdari, B.H., 'The Emerging Popularity of International Arbitration in the Banking and Financial Sector- Is this a Fashionable Trend or a Viable Replacement' *Supra* note 21

²⁷ Dalhuisen, J.H., 'Arbitration in International Finance, The Emergence of P.R.I.M.E' (SSRN, 8 October 2012), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2158764 (accessed on 07/09/2022)

²⁸ United Nations Conference on International Commercial Arbitration, 'Convention on the Recognition and Enforcement of Foreign Arbitral Awards' United Nations, 1958

²⁹ Muigua, K., 'Promoting International Commercial Arbitration in Africa' available at <http://kmco.co.ke/wp-content/uploads/2018/08/PROMOTING-INTERNATIONAL-COMMERCIAL-ARBITRATION-IN-AFRICA.pdf> (accessed on 07/09/2022)

³⁰ *Ibid*

³¹ Petrovna et al., 'New trends in Developing Alternative Ways to Resolve Financial Disputes.' *J. Pol. & L.*, 13, 280, 2020.

Arbitration allows parties to appoint arbitrators with the requisite capacity in financial matters to manage their disputes.

Due to the increasing recognition of the importance role of ADR mechanisms especially arbitration in management of financial disputes, there has been growth of arbitral institutions offering specialised services towards management of financial disputes. The *Panel of Recognised International Market Experts in Finance (P.R.I.M.E) Finance* is a financial disputes centre based in the Hague, Netherlands which offers dispute resolution services in the financial sector including arbitration and mediation³². It is comprised of a panel of over 200 experts in legal and financial matters including sitting and retire judges, regulators, central bankers, academics and representatives from private practice³³. It conducts its arbitrations under the P.R.I.M.E Finance Arbitration Rules administered by the Permanent Court of Arbitration (PCA)³⁴. The Arbitration Rules provide for both procedural and substantial issues concerning the conduct of arbitrations by P.R.I.M.E Finance³⁵. On the issue of nominating and appointing arbitrators, the rules parties to consider appointing qualified, independent and impartial arbitrators and recommend parties to appoint arbitrators from the P.R.I.M.E Finance Panel of Experts³⁶. The rules also provide for expedited proceedings in financial disputes to be conducted within one hundred and eight (180) days within which an arbitral tribunal must render its final award³⁷. It can be argued that this provision is aimed at facilitating expeditious management of financial disputes in order to preserve the commercial interests of parties. The rules further grant an arbitral tribunal powers to issue interim reliefs such as security for costs³⁸. Another salient provision of the rules is that of emergency arbitration in cases

³² Panel of Recognised International Market Experts in Finance (P.R.I.M.E Finance), available at <https://primefinancedisputes.org/page/mission> (accessed on 07/09/2022)

³³ Ibid

³⁴ Ibid

³⁵ P.R.I.M.E Finance Arbitration Rules, 2022., available at <https://primefinancedisputes.org/files/2021-11/211111-Prime-booklet-for-web.pdf> (accessed on 07/09/2022)

³⁶ Ibid, Article 8

³⁷ Ibid, Article 17

³⁸ Ibid, Article 24

where parties need urgent interim measures that cannot wait the constitution of the arbitral tribunal³⁹.

Further, The *International Swaps and Derivative Association (ISDA)* has issued an arbitration guide which provides for arbitration for parties to derivatives transactions⁴⁰. The guide includes a range of model clauses which can be used with the ISDA Master Agreement⁴¹. The model clauses provide for seats in a number of major financial centres including New York, London, Singapore, Paris, Hong Kong and Zurich⁴². The guide sets out one of the major advantages of arbitration in financial disputes to be the avoidance of litigation in a jurisdiction whose courts a party does not have confidence while producing an award that has an advantage over a foreign judgment at the enforcement stage in many jurisdictions⁴³.

In addition, the *Financial Dispute Resolution Centre (FDRC)* of Hong Kong provides for the management of financial disputes through mediation and arbitration⁴⁴. It facilitates management of financial disputes by way of 'mediation first' and 'arbitration next'⁴⁵. Under this framework, where mediation does not yield in the management of the dispute, parties may decide to resort to arbitration⁴⁶. However, the scope of dispute management under FDRC is limited to disputes between an eligible claimant and a financial institution that was entered into or arose in Hong Kong⁴⁷.

Another body that offers management of financial disputes through ADR is the *Financial Industry Regulatory Authority (FINRA)* in the United States of America. FINRA's role is

³⁹ Ibid, Article 25

⁴⁰ International Swaps and Derivative Association (ISDA), 2018 ISDA Arbitration Guide, available at https://www.isda.org/bookstore-license/?redirect_to=https%3A%2F%2Fwww.isda.org%2Fa%2FfVWgE%2FISDA-2018-Arbitration-Guide-%E2%80%93Version-2.1-May-31-2022.pdf (accessed on 07/09/2022)

⁴¹ Ibid

⁴² Ibid, Article 1.9

⁴³ Ibid, Article 2.4

⁴⁴ Financial Dispute Resolution Centre, available at https://www.fdr.org.hk/en/html/aboutus/aboutus_welcome.php (accessed on 07/09/2022)

⁴⁵ Ibid

⁴⁶ Ibid

⁴⁷ Ibid

facilitating vibrant capital markets in the USA by protecting investors and safeguarding the integrity of the market⁴⁸. It provides for a framework of managing securities disputes through non-judicial proceedings including arbitration and mediation. Arbitrations by FINRA are conducted in accordance with the Code of Arbitration Procedure⁴⁹. FINRA has both a Customer Code that governs arbitrations between investors and brokers or brokerage firms and an Industry Code that governs arbitrations between or among industry parties only.

Finally, the *International Chamber of Commerce* (ICC) has also recognised the importance role of ADR mechanisms especially arbitration in the management of financial disputes. This resulted in the formation of a taskforce by the ICC on Financial Institutions and International Arbitration which released its report in 2017⁵⁰. The report found a general lack of awareness of the potential benefits of arbitration in banking and financial matters and some common misperceptions about the process⁵¹. The report reiterated the fact that financial institutions have preferred courts in key financial centres such as London, New York, Frankfurt and Hong Kong but have generally avoided courts in emerging markets⁵². The report however acknowledges the benefits of international commercial arbitration and international investment arbitration and recommends their increased adoption due to the changing nature of financial disputes⁵³. It recommends practical ways through which parties can tailor the process of arbitration to suit the needs of the banking and finance sector⁵⁴.

⁴⁸ Financial Industry Regulatory Authority (FINRA), available at <https://www.finra.org/about> (accessed on 07/09/2022).

⁴⁹ FINRA Dispute Resolution Services., 'Code of Arbitration Procedure' available at <https://www.finra.org/arbitration-mediation/code-arbitration-procedure> (accessed on 07/09/2022)

⁵⁰ ICC Commission Report., 'Financial Institutions and International Arbitration' available at <file:///C:/Users/King%20Sultan/Downloads/icc-financial-institutions-and-international-arbitration-icc-arbitration-adr-commission-report.pdf> (accessed on 07/09/2022)

⁵¹ Ibid, Paragraph 3

⁵² Ibid, Paragraph 4

⁵³ Ibid, Part III

⁵⁴ Ibid, Part II

In Kenya, management of disputes in the financial sectors has followed the traditional approach of litigation. However, there is tremendous potential for adoption of ADR mechanisms such as arbitration and mediation in the management of disputes in the financial sector in Kenya. The Credit Information Sharing Association of Kenya (CIS) recommends the use of ADR mechanisms in management of disputes in the credit markets⁵⁵. Further, there has been growth of institutions offering arbitration and mediation services including the Nairobi Centre for International Arbitration (NCIA), the Chartered Institute of Arbitrators Kenya Branch and the Mediation Training Institute East Africa. These institutions can tailor their services to incorporate provisions on management of financial disputes.

4. Concerns with the Use of ADR in the Management of Disputes in the Financial Sector

a) Lack of Summary Judgments and Interim Measures

One of the potential drawbacks in the use of ADR in management of disputes in the financial sector is the lack of expedited and summary judgments, interim measures and sale and seizure of assets among other powers available to state courts⁵⁶. This is one of the main reasons why financial institutions have often opted for litigation in courts in major financial institutions such as New York and London due to the ability to obtain summary judgments⁵⁷. Thus, where there is no factual dispute, a party may wish to quickly obtain a summary judgment in order to continue with its business interests⁵⁸. Further, a party may wish to obtain interim measures of protection such as the preservation of assets which powers may not be available under some ADR mechanisms. Parties in financial transactions who wish to manage their disputes through ADR

⁵⁵ CIS Kenya., 'Towards a more open credit market' available at <https://ciskenya.co.ke/vision-mission/> (accessed on 07/09/2022)

⁵⁶ Henriques. D., 'Arbitrating Disputes in Third Party Funding: A Parallel with Arbitration in the Financing Sector' Op Cit

⁵⁷ ICC Commission Report., 'Financial Institutions and International Arbitration' Op Cit

⁵⁸ Ibid

mechanisms such as arbitration and mediation may therefore need to tailor the dispute resolution clause in order to grant powers to arbitrators and mediators to address these concerns.

b) Lack of Precedents

One of the shortcomings of ADR mechanisms is lack of precedents⁵⁹. It has been asserted that the use of precedents is the most effective form of dispute prevention especially in commercial disputes where parties receive similar advice as to what the outcome of a dispute will be if litigation ensues⁶⁰. This enables parties to tailor their activities to avoid disputes or predict the outcome of disputes. However, this is not possible in ADR mechanisms such as arbitration and mediation since they do not adhere to the doctrine of precedents. It is argued that some financial institutions consider the lack of precedents to be a disadvantage of ADR mechanisms such as arbitration⁶¹. Precedents are important in this sector in order to enable financial institutions to tailor their affairs to a certain degree of predictability and certainty in cases of disputes.

c) Costs

One of the selling points of ADR mechanisms is cost effective management of disputes. However, it is argued that some ADR mechanisms such as arbitration may become too expensive in the long run in case of delays since parties have to pay arbitrators' fees, fee for the arbitration forum and legal fees where they are presented by lawyers⁶². Thus in some financial disputes where court proceedings are minimal and characterized by short hearings and no examination of witnesses, arbitration may be more expensive when compared to litigation⁶³. Where parties resort to ADR mechanisms such as arbitration to

⁵⁹ Bochner, K. (2019). Alternative dispute resolution and access to justice in the 21st century. *Adelaide Law Review, The*, 40(1), 343-352.

⁶⁰ Ibid

⁶¹ ICC Commission Report., 'Financial Institutions and International Arbitration' Op Cit

⁶² Muigua.K., 'Alternative Dispute Resolution and Access to Justice in Kenya' Op Cit

⁶³ ICC Commission Report., 'Financial Institutions and International Arbitration' Op Cit

manage financial disputes, they be required to adopt measures geared towards controlling time in order to minimize costs.

d) Transparency Concerns

The private and confidential nature of ADR mechanisms such as arbitration and mediation may raise transparency concerns and affect their suitability in management of financial disputes. It is asserted that the nature of these mechanisms may raise transparency and accountability concerns since proceedings and the outcome are not available to the public unless with the express consent of the parties⁶⁴. This is unlike in litigation where the public can attend court proceedings and judgments are published and can be accessed by everyone. Thus, parties to financial disputes may not be comfortable with ADR mechanisms such as arbitration especially where they are using them for the first time⁶⁵. There is need to address transparency concerns in ADR in order to enhance the effectiveness of these mechanisms in managing financial disputes.

5.0 Way Forward

ADR mechanisms raise some pertinent concerns that need to be addressed before they can be effectively applied in the managing of disputes in the financial sector. The following can be done towards addressing these concerns:

a) Conflict Avoidance

There is need for effective conflict in financial institutions in order to mitigate negative effects on customers and operational processes⁶⁶. Financial institutions should consider conflict avoidance strategies in order to prevent legal and financial challenges that may

⁶⁴ Biard. A., 'Monitoring Consumer ADR in the EU: a Critical Perspective' *European Review of Private Law*, 2-2018, 171-196

⁶⁵ ICC Commission Report., 'Financial Institutions and International Arbitration' Op Cit

⁶⁶ Pollack Peacebuilding Systems., 'Conflict Resolution for Banks & Financial Institutions' available at <https://pollackpeacebuilding.com/conflict-resolution-banks-financial/> (accessed on 08/09/2022)

arise if such conflicts escalate⁶⁷. They should adopt mechanisms such as conciliation at early stages of conflicts in addition to enhancing efficiency in order to limit incidences of conflicts⁶⁸. This allows the commercial life of all parties to proceed without affecting their legal rights should such processes fail.

b) Structuring Effective Dispute Resolution Clauses

From the foregoing discussion, it is evident that the financial industry has been slow to embrace ADR mechanisms due to concerns such as lack of summary procedures and interim reliefs in ADR mechanisms⁶⁹. Parties can address this concern by drafting effective dispute resolution clauses which give arbitral tribunals including powers to grant interim reliefs such as preservation of assets and powers to order joinder and consolidation of parties. These are essential in ensuring effective and effective management of disputes. Parties can also consider utilising institutional arbitration through institutions such as P.R.I.M.E Finance and the International Chamber of Commerce which have clear rules on aspects such as interim measures of protection, emergency arbitrations and joinder of parties⁷⁰.

c) Case Management Procedures

It is evident that ADR processes such as arbitration may end up being expensive especially in case of delays. Parties in financial disputes should consider adopting case management procedures in order to reduce the time and costs of disputes⁷¹. Through this, parties are able to agree on strict timelines on aspects such as filing and exchange of

⁶⁷ Ibid

⁶⁸ Blair.W., 'Arbitrating Financial Disputes- Are they Different and What Lies Ahead?' Op Cit

⁶⁹ Henriques. D., 'Arbitrating Disputes in Third Party Funding: A Parallel with Arbitration in the Financing Sector' Op Cit

⁷⁰ See for example article 24 of the P.R.I.M.E Finance Arbitration Rules, 2022 which provides for interim measures of protection.

⁷¹ ICC Commission Report., 'Financial Institutions and International Arbitration' Op Cit

pleadings and conduct of the hearing⁷². This will go a long way in reducing the time and costs of ADR processes.

d) Adopting ADR Mechanisms in Management of Financial Disputes

ADR processes such as arbitration and mediation present immense opportunities in the management of financial disputes. These mechanisms can be private and confidential, flexible, guarantee party autonomy and are able to promote expeditious and cost effective management of disputes⁷³. This is very critical in financial disputes where there is need to effectively and expeditiously manage such disputes in order to protect commercial interests at stake⁷⁴. Mechanisms such as International Commercial Arbitration further guarantee neutrality and address jurisdictional challenges when it comes to enforcement of decisions due to the New York Convention that provides the legal framework for the enforcement of international arbitral awards⁷⁵. Parties should thus consider adopting ADR mechanisms such as arbitration and mediation in management of financial disputes due to the advantages of these processes.

6.0 Conclusion

ADR mechanisms continue to be widely embraced in management of disputes across different sectors. This can be attributed to the advantages of ADR mechanisms. The important role of ADR mechanisms is finally being acknowledged in the financial industry which has hitherto been slow to embrace this concept. ADR mechanisms are very viable in management of financial disputes both in Kenya and across the globe. The concerns inherent in ADR mechanisms can be addressed in order to enhance their

⁷² Ibid

⁷³ Muigua.K., 'Alternative Dispute Resolution and Access to Justice in Kenya' Op Cit

⁷⁴ Blair.W., 'Arbitrating Financial Disputes- Are they Different and What Lies Ahead?' Op Cit

⁷⁵ Muigua. K., 'Promoting International Commercial Arbitration in Africa' Op Cit

viability in management of financial disputes. The use of ADR in management of disputes in the financial sector is an achievable dream.

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Hanefeld. I., 'Arbitration in Banking and Finance' (2013) 9(3) New York University Journal of Law and Business 917 at 939

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