

Towards Effective Justice Delivery in East Africa: An Overview of the Institutional and Legal Framework for Alternative Dispute Resolution in the East African Common Law Jurisdictions

B.M. Magaji

Faculty of Law,

Islamic University in Uganda (IUIU) Mbale, Uganda

Abstract

This paper examines the current trends, successes and challenges facing the Alternative Dispute Resolution (ADR) institutions in East Africa in efficient delivery of justice. Due to the importance of ADR and its ever growing popularity across the world, it is important that the East African Community, being a key regional economic partner is not left behind in entrenching the practice of ADR (arbitration) in settling international commercial disputes. The author analyses focuses on the international arbitration institutions in the East African region with a view to highlighting the state of legal and institutional frameworks for the effective determination of international disputes through arbitration. The discussion highlights major ADR processes and some of the emerging trends with regard to the users of international arbitration in the region. The ultimate goal is to recommend ways of reawakening arbitral institutions for development of arbitration in the East African region and Africa as a whole. Negotiation, Mediation, Arbitration, conciliation.

Keywords: *Effective Justice, East Africa, Overview, Institutional And Legal Framework, Alternative Dispute Resolution, Law Jurisdictions.*

Corresponding Author: B.M. Magaji

Background to the Study

Access to justice is one of the most critical human rights since it also acts as the basis for the enjoyment of other rights and it requires an enabling framework for its realization.¹ The Constitution of all East African countries provides for the right of access to justice and obligates the state to ensure access to justice for all persons. Access to justice by majority of citizenry has been hampered by many unfavorable factors which include inter alia, high filing fees, bureaucracy, complex procedures, illiteracy, distance from the courts and lack of legal knowhow.² This makes access to justice through litigation a preserve of select few. Through providing for the use of ADR and TDR mechanisms to enhance access to justice, the Constitution of Kenya was responding to the foregoing challenge in order to make the right of access to justice accessible by all.³ It was in recognition of the fact that TDR and other ADR mechanisms are vital in promoting access to justice among many communities in Kenya. Indeed, a great percentage of disputes in Kenya are resolved at the community level through the use of community elders and other persons mandated to keep peace and order.⁴

Major APR Processes in East Africa

a. Negotiation

Negotiation is an informal process that involves the parties meeting to identify and discuss the issues at hand so as to arrive at a mutually acceptable solution without the help of a third party. It has been hailed as one of the most fundamental methods of conflict resolution, offering parties maximum control over the process.⁵

Negotiation has been used since time immemorial among African communities and it is still applied widely in Kenya today. It can be used as a powerful empowering tool to assist the Kenyan people to manage their conflicts effectively.⁶

b. Mediation

Negotiation leads to mediation in the sense that the need for mediation arises after the conflicting parties have attempted negotiation, but have reached a deadlock.⁷ Mediation is a voluntary, informal, consensual, strictly confidential and non-binding dispute resolution process in which a neutral third party helps the parties to reach a negotiated

¹See D.L., Rhode, "Access to Justice," *Fordham Law Review*, Vol. 69, 2001. pp. 1785-1819; See generally M. Sepúlveda Carmona and K. Donald, 'Access to justice for persons living in poverty: a human rights approach,' Ministry for Foreign Affairs, Finland. pp.8-9.

²J.B. Ojwang, "The Role of the Judiciary in Promoting Environmental Compliance and Sustainable Development," *1 Kenya Law Review Journal* 19 (2007), pp. 19-29 at p. 29.

³Article 159(2); Article 48.

⁴K. Muigua, *Resolving Conflicts through Mediation in Kenya*, (Glenwood Publishers, 2012). pp. 21-22; See generally J. Kenyatta, *Facing Mount Kenya, The Tribal Life of the Kikuyu*, Vintage Books Edition, October 1965

⁵Muigua, K., *Resolving Conflicts through Mediation in Kenya*, op. cit., p.11.

⁶Muigua, K., *Resolving Conflicts through Mediation in Kenya*, op. cit., chapter 2; Kenyatta, i., *Facing Mount Kenya: The Tribal life of the Gikuyu*, (Vintage Books, New York, 1965).

⁷Makumi, M., *Conflict in Africa: Theory Processes and Institutions of Management*. Op.cit. P. 15.

⁸Fenn, P., "Introduction to Civil and Commercial Mediation", In *Chartered Institute of Arbitrators, Workbook on Mediation*, (CI Arb, London, 2002), p. 10.

solution. It is also defined as a method of conflict management where conflicting parties gather to seek solutions to the conflict, with the assistance of a third party who facilitates discussion and the flow of information, and thus aiding in the processes of reaching an agreement.⁸

c. Traditional Justice Systems

It is noteworthy that there is an overlap between the forms of ADR mechanisms and traditional justice systems. The Africa communities in general, have engaged in informal negotiation and mediation since time immemorial in the management of conflicts. In addition, informal justice systems which constitute the most accessible forms of dispute resolution utilize localized norms derived from customary law.⁹ The traditional justice systems can effectively be used alongside the formal systems in giving people a voice in decision-making.

d. Arbitration

Arbitration is a process subject to statutory controls, whereby formal disputes are determined by a private tribunal of the parties' choosing. A third party neutral is appointed by the parties or an appointing authority to determine the dispute and give a final and binding award.¹⁰ Its advantages are that parties can agree on an arbitrator to determine the matter; the arbitrator has expertise in the area of dispute; any person can represent a party in the dispute; flexibility; cost-effective; confidential; speedy and the result is binding. Proceedings in Court are open to the public, whereas proceedings in commercial arbitration are private, accordingly the parties who wish to preserve their commercial secrets may prefer commercial arbitration.¹¹

e. Conciliation

Conciliation is a process in which a third party, called a conciliator, restores damaged relationships between disputing parties by bringing them together, clarifying perceptions and pointing out misperceptions. It has all the advantages and disadvantages of negotiation except that the conciliator can propose solutions making parties lose some control over the process. Conciliation is different from mediation in that the third party takes a more interventionist role in bringing the two parties together. Conciliation works well in labour disputes.¹² A conciliator who is more knowledgeable

⁸Fenn, P., "Introduction to Civil and Commercial Mediation", In Chartered Institute of Arbitrators, Workbook on Mediation, (CI Arb, London, 2002), p. 10.

⁹Kamau, W., "Customary Law and Women's Rights in Kenya." p. 1. Available at <http://theequalityeffect.org/wpcontent/uploads/2014/12/CustomaryLawAndWomensRightsInKenya.pdf> [Accessed on 27/02/2015].

¹⁰R. Stephenson, *Arbitration Practice in Construction Disputes*, (Butterworths, London, 1998), p.123.

¹¹Muigua, K., *Settling Disputes Through Arbitration in Kenya*. (Glenwood Publishers Ltd, Nairobi, 2012) 12

¹²International Labour Office, "Collective Dispute Resolution through Conciliation, Mediation and Arbitration: European and ILO Perspectives." High – Level Tripartite Seminar on the Settlement of Labour Disputes through Mediation, Conciliation, Arbitration and Labour Courts. Nicosia, Cyprus October 18th – 19th, 2007; S. 10 of the Labour Relations Act, No. 14 of 2007, Laws of Kenya.

than the parties can help parties achieve their interests by proposing solutions, based on his technical knowledge that the parties may be lacking in. This may actually make the process cheaper by saving the cost of calling any other experts to guide them. While conciliation is concerned with finding peace and harmony by putting an end to a conflict, reconciliation seeks to re-establish relations. As such, it can be said to be a restorative process which is desirable in building lasting peace and ensuring that competing interests are balanced. Conciliation and reconciliation can play a significant role in empowering parties to a dispute by giving them substantial control over the process.

Legal and Institutional Framework of ADR in East Africa

Kenya

The scope of the Kenya's Arbitration Act extends to cover both domestic and international arbitration. This is provided for under section 2 of the Act which provides that except as otherwise provided in a particular case the provisions of this Act shall apply to domestic arbitration and international arbitration. Section 3(2) defines what arbitration is domestic arbitration while section 3(3) stipulates the requisite conditions for an arbitration to qualify as an international one. Arbitration is domestic if the arbitration agreement provides expressly or by implication for arbitration in Kenya: and at the time when proceedings are commenced or the arbitration is entered into; where the arbitration is between individuals, the parties are nationals of Kenya or are habitually resident in Kenya; or where the arbitration is between bodies corporate, the parties are incorporated in Kenya or their central management and control are exercised in Kenya; or where the arbitration is between an individual and a body corporate firstly, the party who is an individual is a national of Kenya or is habitually resident in Kenya; and secondly, the party that is a body corporate is incorporated in Kenya or its central management and control are exercised in Kenya; or the place where a substantial part of the obligations of the commercial relationship is to be performed, or the place with which the subject-matter of the dispute is most closely connected, is Kenya.¹³

Arbitration is international if the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different states; or one of the following places is situated outside the state in which the parties have their places of business: firstly, the juridical seat of arbitration is determined by or pursuant to the arbitration agreement; or secondly, any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one state.¹⁴ The Arbitration Act 1995 generally provides for arbitral proceedings and the enforcement of the arbitral awards by national courts. Section 3(1) of the Act defines arbitration as contemplated in the scope of the Act to mean any arbitration whether or not administered by a permanent arbitral institution. There exist a few arbitral institutions in the country

¹³Sec. 3 (2) of the 1995 Act as amended by the Amending Act.

¹⁴7 Section 3(3) (Act No. 11 of 2009, s. 2)

that have been established under specific regimes and are therefore mandated with conducting arbitration under such laws. This is because the Arbitration Act, 1995 does not establish a sole arbitral institution and its provisions therefore apply to institutional and sole arbitrators operating under other Rules. However, other institutions exist under different regimes of law in Kenya.

Chartered Institute of Arbitrators-Kenya Branch (CIArb-K)

The Chartered Institute of Arbitrators (Kenya Chapter) was established in 1984, as one of the branches of the Chartered Institute of Arbitrators, United Kingdom which was founded in 1915 with headquarters in London. It is registered under the Societies Act.¹⁵ It promotes and facilitates the determination of disputes by arbitration and other forms of Alternative Dispute Resolution (ADR), which includes mediation and adjudication. The Kenya Branch, now with over 700 members, has a wide pool of knowledgeable and experienced Arbitrators and facilitates their appointment.¹⁶ The Institute also runs a secretariat with physical facilities for Arbitration and other forms of ADR. To further support the process of Arbitration and ADR, the Branch has published the Arbitration, Adjudication and Mediation Rules. The arbitrators are governed by the Chartered Institute of Arbitrators Arbitration Rules when conducting the arbitral proceedings.¹⁷

Nairobi Centre for International Arbitration (NCIA)

The institution was established under the Nairobi Centre for International Arbitration Act as seen earlier in this paper. Its functions are set out in section 5 of the Act as inter alia to: first, promote, facilitate and encourage the conduct of international commercial arbitration in accordance with this Act;¹⁸ second, administer domestic and international arbitrations as well as alternative dispute resolution techniques under its auspices; third, ensure that arbitration is reserved as the dispute resolution process of choice; fourth, develop rules encompassing conciliation and mediation processes. Further functions include: to organize international conferences, seminars and training programs for arbitrators and scholars; to coordinate and facilitate, in collaboration with other lead agencies and non-state actors, the formulation of national policies, laws and plans of action on alternative dispute resolution and facilitate their implementation, enforcement, continuous review, monitoring and evaluation;¹⁹

There is also an Arbitral Court established under section 21 of the Act which court has exclusive original and appellate jurisdiction to hear matters that are referred to it under the Act. Section 10 of the Act confers the Registrar with the powers to oversee the business of the court including enforcement of decisions of the Court. The Court has a President and two Deputy Presidents and the Registrar. The Court also has fifteen other members

¹⁵8 Cap 108, Laws of Kenya

¹⁶The Chartered Institute of Arbitrators Kenya Branch Website, available at <http://ciarbkenya.org/> [Accessed on 08/05/2015]

¹⁷Chartered Institute of Arbitrators (Kenya Branch) Arbitration Rules, December 2012

¹⁸S.5(a), No. 26 of 2013

¹⁹19 bid, S. 5(b)

all of whom are leading international arbitrators. The Centre has the capacity to handle domestic and international arbitration. It is hoped this potential will be exploited to its maximum in the years to come so as to prominently place Kenya on the global map of international arbitration.²⁰

Centre for Alternative Dispute Resolution (CADR)

The Centre for Alternative Dispute Resolution is another registered institution that is aimed at enhancing settlement of disputes through ADR Mechanisms. With the recognition of ADR in Article 159 of the current Constitution of Kenya, 2010, it is hoped that this Centre will enhance the services of ADR mechanisms in dispute settlement in Kenya. Its Membership is drawn from the Chartered Institute of Arbitrators (Kenya branch).²¹

Kenya National Chamber of Commerce and Industry (KNCCI)

The Kenya National Chamber of Commerce and Industry (KNCCI), is a non-profit, autonomous, private sector institution and membership based organization.²² It was established in 1965 from the amalgamation of the then three existing Chambers of Commerce: the Asian, African and European chambers, to protect and develop the interests of the business community. It works in close collaboration with the Government, stakeholders and business development organizations internationally. It is an affiliate member of the International Chamber of Commerce and Industry (ICC), the G 77 Chamber of Commerce and Industry, Pan African Chamber of Commerce and Industry (PACCI), the Common Market for Eastern and Southern Africa (COMESA), the East African Chamber of Commerce, Industry and Agriculture (EACCIA), and the East African Business Council (EABC), among others. KNCCI works towards promoting, protecting and developing commercial, industrial and investment interests of members in particular and those of the entire business community in general. They aim at influencing development policies, strategies and support measures so as to achieve the best economic climate for these varied interests.²³ It thus follows that the Chamber would be involved in effective mechanisms of handling business and commercial related disputes. The Chamber operates through a Committee form of management, with several Standing Committees, although the operations are essentially executed by the Chamber Secretariat. The Legislation and Local Authorities Committee is charged with inter alia, domestic and international arbitration and International Chambers of Commerce (ICC) matters.²⁴ The Chamber can therefore play a significant role in promoting institutional arbitration in the region.

²⁰ S. 22, No. 26 of 2013.

²¹ CIArb-K members become automatic members of CADR.

²² Kenya National Chamber of Commerce and Industry website, visit <http://www.kenyachamber.or.ke/> [Accessed on 9/05/2015].

²³ Kenya National Chamber of Commerce and Industry, 'Vision, Mission and Objectives,' available at <http://www.kenyachamber.or.ke/the-chamber/mission-vision> [Accessed on 9/05/2015].

²⁴ Kenya National Chamber of Commerce and Industry, 'Operations of the Chamber,' available at <http://www.kenyachamber.or.ke/the-chamber/chamber-operations> [Accessed on 9/05/2015]

Tanzania

The Tanzanian Arbitration Act³⁴ was enacted in 1931 to provide for arbitration of disputes. The Act has general provisions relating to arbitration by consent out of court³⁵ as well as provisions on court-annexed arbitration.²⁵ Further, provisions on arbitration are contained in the Arbitration Rules of 1957,³⁷ made under the Arbitration Act. It has been noted that the arbitration legislation in force (both the Arbitration Act and the Rules) predates the UNCITRAL model law and has never been changed to take into account its provisions. Tanzania is also a contracting state to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID) of 1965 since 17 June 1992. It has been argued that the arbitration system in Tanzania lacks active and competent arbitration institutions and practitioners to facilitate arbitration process for the construction disputes. It is noteworthy that there are two main institutions that carry out institutional arbitration and they are discussed herein below.²⁶

Tanzania Institute of Arbitrators (TIA)

The Tanzania Institute of Arbitrators (TIA) is a Non-Governmental Organization registered under the Societies Act (cap 337).²⁷ Together with the National Construction Council, TIA act as facilitators, enabling the parties (in consultation with their arbitrators) to set ad hoc rules on the procedures which will bind them. They also jointly arrange short professional courses and examination for arbitrators and then compile a list of arbitrators available for proceedings.²⁸

National Construction Council (NCC)

This is a statutory body created under the National Construction Council Act. The Council is mandated with inter alia; promoting and providing strategic leadership for the growth, development and expansion of the construction industry in Tanzania with emphasis on the development of the local capacity for socio-economic development and competitiveness in the changing global environment; and facilitating efficient resolution of disputes in the construction industry. The arbitration services of this institution are mainly available to persons in the construction industry although it also offers its services to persons outside the industry albeit at a lower scale.²⁹

For a vibrant institutional framework on international arbitration in Tanzania, much more needs to be done to project these two institutions into international arena and change the idea that they deal with arbitration on domestic matters only or even the perception that they are industry- specific. These way users of arbitration in Tanzania can confidently approach them for international arbitration services.

²⁵Tanzania's Civil Procedure Code (the Code) deals with arbitration where it arises in the course of court proceedings (see Schedule 2 of the Code).

²⁶ 'Tanzania', *Arbitration in Africa*, June 2007. p. 5. Available at <http://www.nortonrosefulbright.com/files/tanzania-25762.pdf> [Accessed on 27/04/2015].

²⁷ Cap 337, *Laws of Tanzania*.

²⁸ 'Tanzania', *Arbitration in Africa*, June 2007. Op cit p. 5

²⁹ National Construction Council (NCC) Functions, available at <http://www.ncc.or.tz/functions.html> [Accessed on 27/04/2015].

Uganda

Uganda's Arbitration and Conciliation Act was enacted to amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards, to define the law relating to conciliation of disputes and to make other provision relating to the foregoing.³⁰ Its provisions on arbitration apply to both domestic arbitration and international arbitration. The national Courts may assist in taking evidence, setting aside arbitral awards and recognition and enforcement of the arbitral awards.³¹

Centre for Arbitration and Dispute Resolution (CADRE)

Uganda's Arbitration and Conciliation Act establishes the Centre for Arbitration and Dispute Resolution (CADRE). This Centre is charged with inter alia: to make appropriate rules, administrative procedure and forms for effective performance of the arbitration, conciliation or Alternative Dispute Resolution process; to establish and enforce a code of ethics for arbitrators, conciliators, neutrals and experts; to qualify and accredit arbitrators, conciliators and experts; to provide administrative services and other technical services in aid of arbitration, conciliation and alternative dispute resolution; to facilitate certification, registration and authentication of arbitration awards and conciliation settlements; to avail skills, training and promote the use of alternative dispute resolution methods for stakeholders; and to do all other acts as are required, necessary or conducive to the proper implementation of the objectives of the Act. This is the main arbitral institution in the country. It is therefore necessary to have more institutions in Uganda as well as improve information dissemination in order to promote international arbitration in the country.

Rwanda

Rwanda has been a party since 1979 to the Washington Convention on the Settlement of Investment Disputes, which provides for protection for investors and direct arbitral recourse against the State. On November 3, 2008, Rwanda became the 143rd country to accede to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). The Convention entered into force for Rwanda on January 29, 2009. Rwanda Parliament enacted a law in February 2011 establishing Kigali International Arbitration Centre (KIAC) as an independent body which carries out mediation, adjudication and arbitration.³²

Kigali International Arbitration Centre (KIAC)

Kigali International Arbitration Centre (KIAC) was established as an independent body which carries out mediation, adjudication and arbitration. The Centre has a panel of domestic and international arbitrators. Parties to KIAC arbitrations are free to nominate

³⁰CAP 4, Laws of Uganda, Preamble.

³¹Ibid, ss. 35 &36.

³²Rwanda Accedes to UN Convention on Commercial Arbitration', UN NEWS CENTRE, Nov. 3, 2008, available at <http://www.un.org/apps/news/story.asp?NewsID=28799&Cr=Trade&CrI=Convention> [Accessed on 28/04/2015].

their arbitrators, subject to by the Centre in accordance with the KIAC Rules. However, when KIAC is called upon to appoint an arbitrator, it does so primarily from its panel of arbitrators. It is noteworthy that until the establishment of the Kigali International Arbitration Centre (KIAC), there was no formal mechanism for amicable dispute resolution, more so international commercial arbitration. KIAC holds a potent potential to promote development of international arbitration in the region and Africa as a whole.³³

Burundi

In 2007, the Burundian Government created a Centre for Arbitration and Mediation to deal with commercial and investment disputes.³⁴ In 2009, Investment Code of Burundi was enacted with its purpose being to encourage direct investments in Burundi.³⁵ This Investment Code allows the competence of international arbitration chambers for disputes arising over investments made in Burundi. In 2014, Burundi became the 150th state party to the New York Convention 1958. Burundi however made a “commerciality reservation” to the Convention, which means that the Convention will only apply to disputes characterized as commercial under municipal law. The Convention was to come in force in the country on 21 September 2014 thus enabling arbitral awards made in Burundi to be enforceable in all states that are party to the New York Convention, and awards made in other states to be enforceable in Burundi.³⁶ International commercial arbitration in Burundi is thus supported by the legal framework. The framework casts a ray of hope for arbitration in Burundi and beyond.

Challenges

A number of challenges affect the effectiveness of the East African regional international arbitral centres and thus affect their popularity amongst the users of their services in the region.

Confidentiality Requirements

The fact that arbitration is a private process makes it enjoy confidentiality, an important aspect in private matters. Unlike litigation where there is official law reporting, arbitral awards or proceedings are never published without the parties' approval. It has been argued that while confidentiality is an important aspect of international commercial arbitration, there should be adoption of a presumption that arbitral awards should be made publicly available, unless both parties object. This argument is based on the justification that the benefits of greater transparency in arbitration brought about by the publication of awards often outweigh concerns for confidentiality.³⁷

³³Kigali International Arbitration Center, Annual Report July 2012-June 2013. P.4

³⁴Law No.1/08 of 17 March 2005, Code on the Organization and Competence of the Judiciary.

³⁵Law No. 1/24 of 10 September 2008 Establishing the Investment Code of Burundi.

³⁶Herbert Smith Freehills Dispute Resolution, 'Burundi becomes 150th state party to the New York Convention'. Available at <http://hsfnotes.com/arbitration/2014/09/03/burundi-becomes-150th-state-party-to-the-new-york-convention/> [Accessed on 29/04/2015]

³⁷C.G. Buys, “The Tensions between Confidentiality and Transparency in International Arbitration,” *American Review of International Arbitration*, Vol. 14, No. 121, 2003. Available at SSRN: <http://ssrn.com/abstract=1330243> [Accessed on 27/04/2015]

Institutional Capacity

It has also been observed that there exists a challenge on the capacity of existing institutions to meet the demands for international commercial arbitration matters. Much more needs to be done to enhance their capacity in terms of the number and quality of arbitrators, adequate staff and finances to ensure that they are up to task in facilitation of international arbitration.³⁸

National Courts' Interference

It has been noted that even when an African state has become a party to the relevant treaties, there might still be the perception that its courts could not be relied on to apply the text correctly or in good faith, with a further argument that national legal frameworks are not conducive for the constitution of arbitral tribunals and to the conduct of arbitration, permitting the 'local court' to interfere unduly in arbitral proceedings. It has been argued that traditional litigation in a national court can be a costly, time-consuming, cumbersome and inefficient process, which obstructs, rather than facilitates, the resolution of business disputes. Parties to arbitration agreements have used court intervention to delay and frustrate arbitral proceedings whether yet to start or pending. This delays finalization of the matter as well as watering down the perceived advantages of arbitration and ADR in general. This can only be corrected through setting up tribunals or courts with finality in their decisions and operating free of national courts interference.³⁹

Way Forward

There is a need to employ mechanisms that will help awaken arbitral institutions in Africa and demonstrate the Continent to the outside world as a place with international commercial arbitrators with sufficient knowledge and expertise to be appointed to arbitrate international matters.

There is also need for putting up the relevant infrastructure which includes ICT and other physical structures. This should be coupled enhanced training for purposes of capacity building. Training should start at school level as opposed to institutional professional courses as is the case with most countries. A good example is the University of Nairobi School of Law which currently offers international commercial arbitration as a course in its Masters of Law Programme (GPR 625). The students who take this course can apply directly to become members of CIArb-K at Associate level. This not only boosts the number of persons eligible to pursue arbitration at a higher level but also helps in creating awareness in the country and the region, a powerful tool for awakening arbitral institutions and boosting the development and practice of arbitration.

³⁸K. Muigua, 'Making East Africa a Hub for International Commercial Arbitration: A Critical Examination of the State of the Legal and Institutional Framework Governing Arbitration in Kenya', page 14.

³⁹See generally, K. Muigua, Role of the Court under Arbitration Act 1995: Court Intervention Before, Pending and Arbitration in Kenya, Kenya Law Review (2010), Available at <http://www.kenyalaw.org/klr/index.php?id=82476> J.T. McLaughlin, "Arbitration and Developing Countries," op cit at p. 212.

Conclusion

Effective and reliable application of international commercial arbitration has the capacity to encourage investors to carry on business with confidence knowing their disputes will be settled expeditiously. This can enhance users' confidence in arbitral institutions in the African continent and consequently awaken the seemingly dull arbitral institutions and arbitration practice in Africa. There is hope for the future. Arbitral institutions and arbitration practice in Africa have the potential to grow and flourish. The time to awaken and nurture arbitration for a better tomorrow is now.

References

The constitution of Uganda, Art. 28

The constitution of Kenya, Art. 159 (2).

The constitution of Tanzania, Art 107A (2)

The constitution of Rwanda, Art. 159

The investment code of Burundi

*The Kenyan Arbitration Act of 1995
Treaties.*

The New York convention

Internet

Google scholar.com

MyLaw.com