



ciarb.
Uganda Chapter

Digest 2023

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Chairman

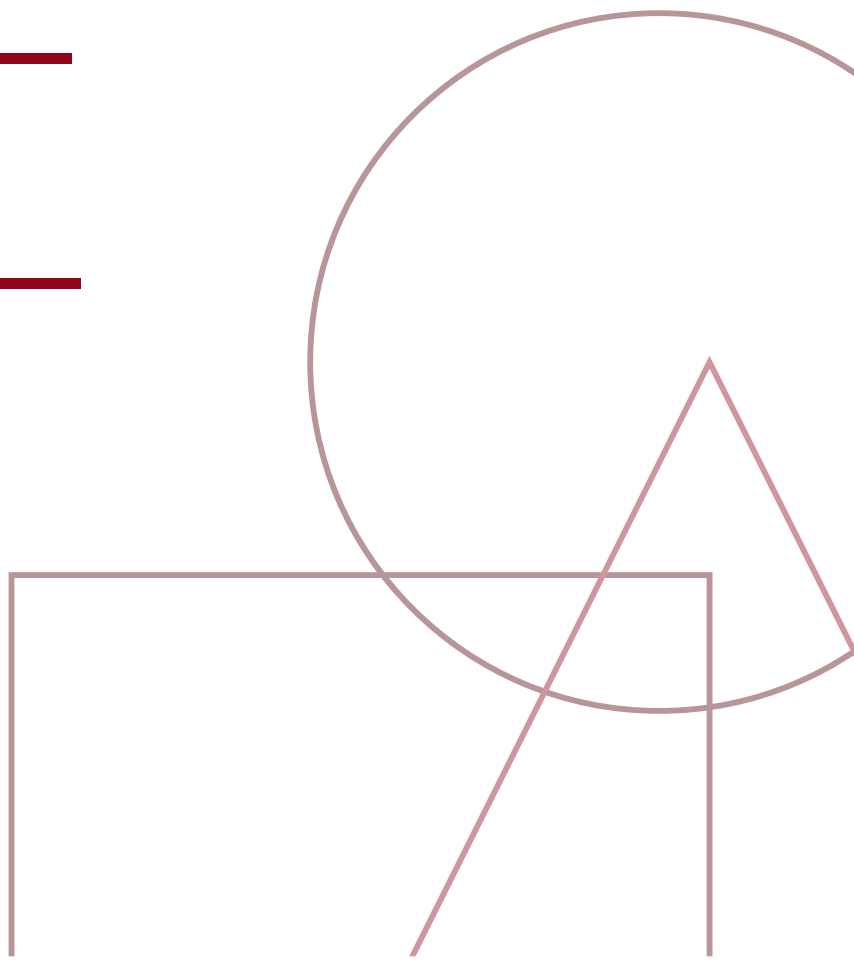
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Word from the Chairman



David Kagawa, FCIArb, FICCP



Our laws should align with the developments in the international ADR space.

BACKGROUND:

The Chartered Institute of Arbitrators (CIArb) is the world's leading qualifications and professional body for dispute avoidance and dispute management. CIArb was founded on 1st March 1915 and was granted a Royal Charter in the United Kingdom in 1979.

CIArb is passionate about promoting a harmonious society and helping people and organisations avoid, manage, and resolve conflict through our global network of over 19,000 members.

It has been a fruitful year since we launched as a Chapter on 23rd September 2022. Our core mandate is to conduct trainings and pathway courses towards internationally recognized qualifications for ADR practitioners. A CIArb qualification is the gold standard, worldwide, for dispute resolvers.

Our journey to Chapter Status began in 2019 when a team from the International Center for Arbitration and Mediation in Kampala (ICAMEK) headed by Past Presidents; Moses Adriko SC, Francis Gimara SC, Ms. Norah Kagwa (Registrar ICAMEK), Mrs. Olivia Kyarimpa Matovu, the Head of Training and Accreditation, partnered with CIArb Kenya and conducted the first training of members.

The objective of this training was to ensure that Uganda gets at least 15 paid up members; a prerequisite to establishing a CIArb Chapter.

Following the successful conclusion of that training, by January 2020, we were 25 members; over and above the required minimum.

In the same year, following the guidance of Mr. Samuel Nderitu, the then CIArb Kenya Branch Chairman, we applied to CIArb UK to establish a Chapter in Uganda.

On 24th January 2022, we received a letter from the Chartered Institute of Arbitrators – Kenya Branch (CIArb Kenya) informing us that the establishing of CIArb Uganda Chapter had been approved by CIArb UK.

On 23rd September 2022, CIArb Uganda was launched.

From the inception of CIArb Uganda to date, we have held two trainings for the Accelerated Route to Member programme, two trainings for the Introduction to Arbitration Course, two Meet and Greet events for our members and ADR practitioners and three webinars.

ACTIVITIES FOR 2023

On 2nd January 2023 we opened our Secretariat at Plot 28 Golf Course Road, Kololo, Kampala Uganda. One of our members, Ms. Jacqueline Lule, FCIArb, donated 50 ADR textbooks to our library. Currently, we have 80 members and are fully fledged to become a Branch in 2024.

On 4th August 2023, we conducted a webinar in conjunction with Uganda Law Society under the theme, Recent Decisions on Setting Aside Arbitral Awards in Uganda. The Webinar was Moderated by Mr. Robert Kirunda, the Chairman of the Uganda Law Society Arbitration Cluster. The Speakers were; Mr. David Kaggwa, the Chapter Chairman, Mr. Mohamed Mbabazi, Mrs. Robina Shonubi and Mrs. Ann Namara Musinguzi. The webinar was attended by approximately 180 participants and so far, it has over 250 views on the YouTube Channel of Uganda Law Society; and statistically, it garnered the largest audience both in terms of attendance and viewership.

On 7th September 2023 we conducted a webinar in conjunction with Women in Arbitration under the theme, Empowering Women in Arbitration through Collaboration and Education. The Webinar was moderated by Ms. Edith Twinamatsiko the Founder of Women in Arbitration. The webinar was attended by 83 participants.

On 8th September 2023, we conducted a webinar on mentorship series for the Young Arbitrators under the theme, Domestic Arbitration. The Webinar was moderated by our member Eng. Charles Gavamukulya and the speaker was Mr. Albert Mukasa. The webinar was attended by 51 participants.

On 27th October 2023, we collaborated with Eng. Gavamukulya's Resolve 360 and conducted the first ever inter university moot competition. I thank you Eng. Gavamukulya for setting up a strong foundation for our Young Members Group, which we plan to launch in 2024.

On 28th and 29th November 2023, we held a tutorial and examination for 25 participants for the Accelerated Route to Member (ARM). On the 6th December 2023, we held an Introduction Course for 14 members. By March 2024, we estimate that our membership shall have grown to over 100 members from different professions. To note that our membership is already comprised of different professions that is; Engineers, Valuation Surveyors, Quantity Surveyors, Land Surveyors, Procurement Specialists and Lawyers.

PLANNED ACTIVITIES for 2024

On the 13th December 2023, our Transition Committee, Chaired by Past Chairman, Mr. Samuel Nderitu, submitted an application to the CIArb Kenya Board for approval of our conversion from Chapter to Branch. The final approval will come from London by December 2024. Subsequent to this shall be a launch of the Branch in Uganda.

We will continue to deliver training and courses to drive professional standards and increase our membership to at least 150 members by December 2024. We will do this through continuing to conduct pathway courses such as the Introduction Course, Module 1 for Membership, the Accelerated Route to Membership, the Fellowship course and other professional development webinars.

In 2024, we will further partner with CIArb Kenya for their Conference in May 2024, to celebrate their 40 years of success. We will also take part in the East Africa International Arbitration Conference and the International Chamber of Commerce Conference for Africa respectively; both scheduled to take place in Nairobi; Kenya.

We plan to collaborate with professional organisations such as Uganda Law Society, the Center for Arbitration and Dispute Resolution (CADER), the International Center for Arbitration and Mediation in Uganda (ICAMEK), Uganda Institution of Professional Engineers, Uganda Society of Architects, the Institution of Surveyors of Uganda with the objective of -

ensuring that the message of arbitration as the most viable form of alternative dispute resolution is heard and implemented by all professional bodies and their membership.

We will engage with stakeholders such as the Uganda Law Reform Commission and provide members' views about the planned amendment of the Arbitration and Conciliation Act, 4. Our laws should align with the developments in the international ADR space for example; In Nigeria, they passed the Arbitration and Mediation Act, 2023 which allows 3rd Party funding for International Arbitration, there are companies on the stock exchange in UK such as Burford Capital that fund International Arbitration.

This is a sharp contrast to our laws which criminalize 3rd party funding. An amendment of the Arbitration and Conciliation Act and the Advocates Act legalizing 3rd party funding would greatly develop our practice and increase our revenues.

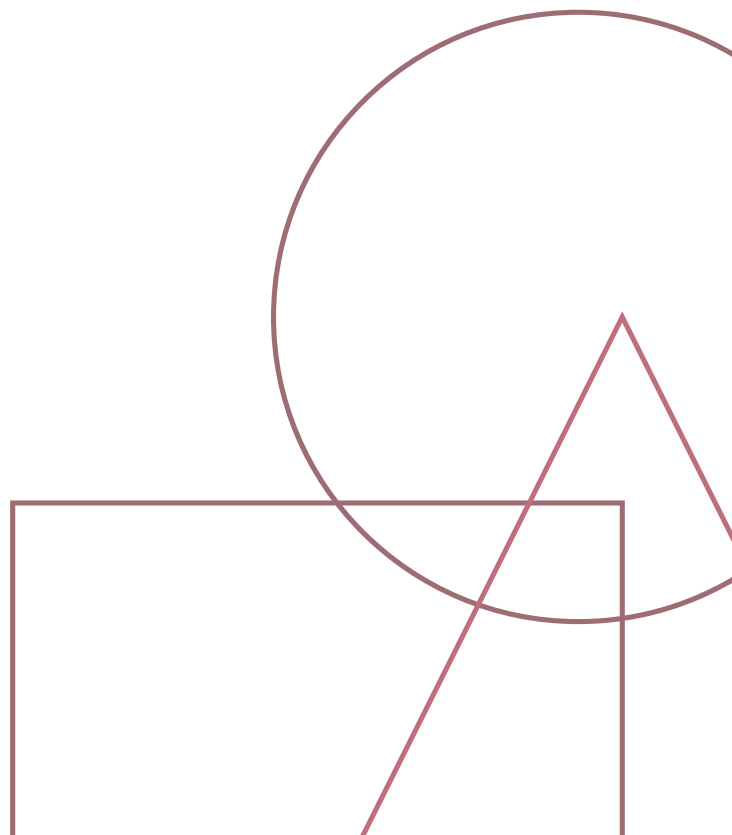
In 2024, we will develop our strategic plan in consultation with the members and come up with strategies for growth and sustainability.

We would like to specially thank Mr. Samuel Nderitu, the Chairman of the CIArb Uganda Transition Committee and Past Chairman CIArb Kenya. Mr. Nderitu's commitment to the growth of ADR in the region is relentless. We thank the Chairperson CIArb Kenya, Ms. Jacqueline Waihenya for her support and guidance towards the growth of our governance structures. We appreciate Past Chairman, Dr. Wilfred Mutubwa, Dr. Kenneth Wyne Mutuma and Mr. Simon Ondiek.

Without them, we would not have successfully conducted the trainings we have had since inception.

It is an honour and privilege to serve CIArb Uganda and I look forward to a vibrant 2024. I thank you.

*Thank
you!*



The Journey sofar



2019

First ever Accelerated Route to Member (ARM) training to be held in Uganda. The training was conducted by the International Centre for Arbitration and Mediation (ICAMEK)



2021

Chapter Approval. London approves Chapter in Uganda

2022

- Launch of CIArb Uganda- Chapter
- ARM in Sep. 2022
- Introduction to Arbitration course in Dec 2022
- Meet and Greet event in Dec 2022

2023

- ARM in Nov 2023
- Introduction to Arbitration course in Dec 2023
- Meet and Greet event in Dec 2023



Gratitude

The CIArb Uganda Chapter extends its heartfelt appreciation to the CIArb Kenya Branch for the steadfast support received since the inception of our chapter. Your continuous guidance, shared resources, and collaborative spirit have been instrumental in our growth.

In the spirit of the African proverb, 'If you want to go fast, go alone; if you want to go far, go together,' we are grateful for the shared journey and look forward to achieving great heights together in the realm of alternative dispute resolution.

“ Asante Sana

CIArb Uganda Chapter extends a heartfelt 'Asante Sana' to the CIArb Kenya Branch for being the roots that nourish our growth.



Jacqueline Waihenya, C.Arb, FCIArb



Dr. Kenneth Wyne Mutuma C.Arb, FCIArb

In a distinctive manner, the CIArb Uganda Chapter extends warm congratulations to Jacqueline Waihenya, C.Arb, FCIArb, on her well-deserved appointment as the new Chairperson of CIArb Kenya Branch. Likewise, we celebrate the appointment of Dr. Kenneth Wyne Mutuma, C.Arb, FCIArb, as the Vice Chairperson.

We also express our sincere appreciation to both Jacqueline Waihenya and Dr. Kenneth Wyne Mutuma for their invaluable support in facilitating the recently concluded Introduction to Arbitration Assessment 2023 in Uganda.

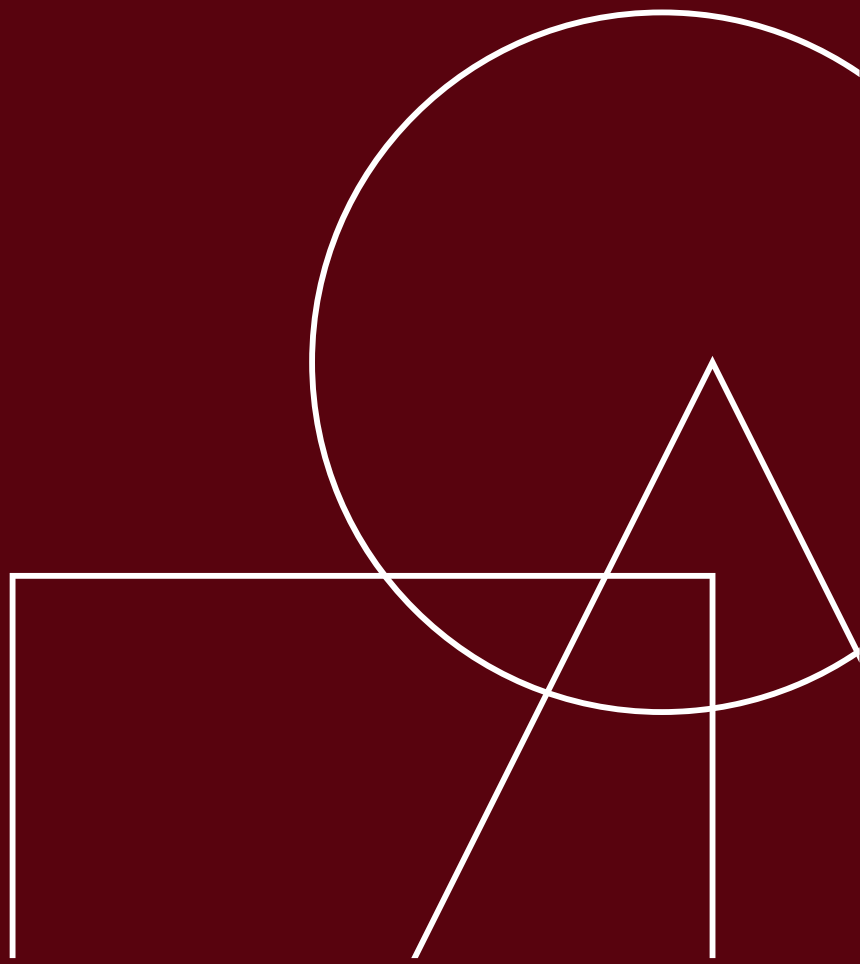


We express our heartfelt appreciation to the former Chairman, Mr. Samuel Nderitu, FCIArb, for his exceptional leadership in heading the Transition Committee. Under his adept guidance, the realization of the CIArb Uganda Chapter became a resounding success.



We extend our sincere recognition to the immediate Past Chairman, Hon. Dr. Wilfred Mutubwa FCIArb, for his unwavering support throughout the pivotal process leading to the establishment of the CIArb Uganda Chapter. Under his astute leadership, Uganda achieved the coveted CIArb Chapter status,

01 Events





Launch of CIArb-Uganda Chapter 2022

On the 23rd of September 2023, history was made in the realm of Alternative Dispute Resolution (ADR) as the Chartered Institute of Arbitrators (CIArb) proudly inaugurated its Uganda Chapter. The distinguished event, graced by the presence of the Minister of Justice and Constitutional Affairs, Hon. Nobert Mao, marked a transformative leap for the ADR community in Uganda.

The CIArb Uganda Chapter, now officially affiliated with the CIArb Kenya Branch, stands as a testament to collaborative regional efforts in advancing ADR practices. The strategic alignment under the Kenya Branch signifies a commitment to cross-border cooperation, knowledge exchange, and a unified approach to enhancing the quality of dispute resolution services in East Africa.



"There is no better time than now to establish a preeminent Alternative Dispute Resolution (ADR) education institution, akin to CIArb. Our counterparts in Kenya boast a robust membership exceeding 1200, while the Nigerian branch, as the eldest son, commands an impressive 2000 members. The time has come for Uganda, our esteemed nation, to pursue this endeavor, requiring a mere 40 members for membership." - David Kaggwa, Chairman



The Dream Team Behind CIArb-Uganda's Inception.

- Francis Gimara SC
- Ms. Norah Kagwa
- Mr. Simon Ondiek
- Ms. Olivia Kyarimpa Matovu
- Mr. Matovu Samuel Nderitu

Together, the Dream Team's collaborative spirit, expertise, and unwavering commitment laid the foundation for CIArb-Uganda to emerge as a hub for excellence in dispute resolution.



The President of CIArb-Kenya, Hon. Dr. Wilfred Mutubwa giving his remarks at the launch of CIArb-Uganda Chapter.

The strategic alignment under the Kenya Branch signifies a commitment to cross-border cooperation, knowledge exchange, and a unified approach to enhancing the quality of dispute resolution services in East Africa.



The Chairman Mr. David Kaggwa introducing the CIArb-Uganda Chapter Committee members during the launch.

The establishment of the CIArb Uganda Chapter not only signifies a milestone in the local ADR landscape but also opens doors to a global network of best practices and resources, reinforcing Uganda's position on the international stage.

THE LAUNCH IN THE PRESS

Scan QR Code to watch the news bulletin on the launch.





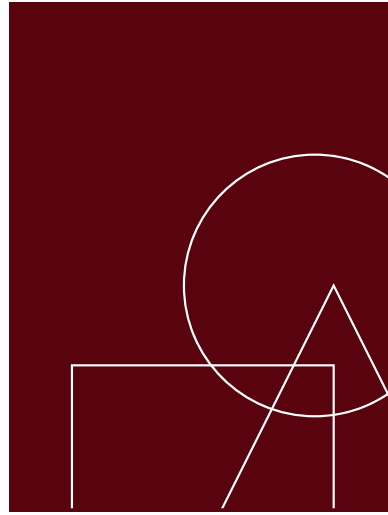
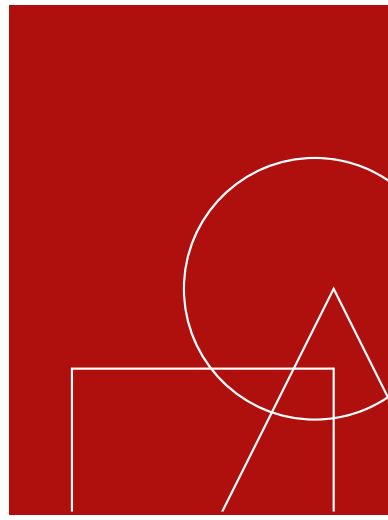
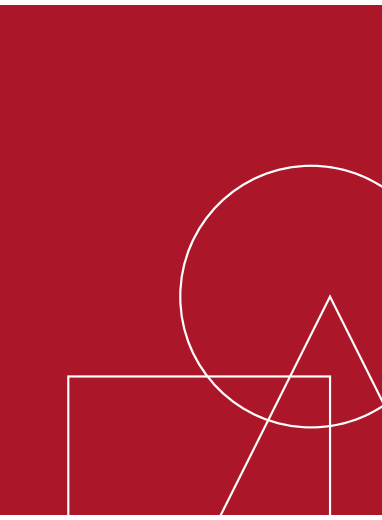
The Meet & Greet 2022

In the waning days of 2022, following the triumphant launch of the CIArb Uganda Chapter, the year reached its crescendo with a memorable Meet and Greet event. The gathering served as a vibrant convergence point, drawing numerous Alternative Dispute Resolution (ADR) practitioners from every corner of the country.

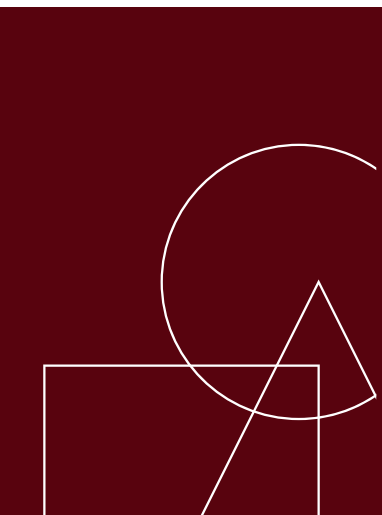
The ambiance was charged with enthusiasm as professionals, brought together under the banner of CIArb, engaged in a rich tapestry of networking and idea exchange.

In the spirit of collaboration and shared goals, ADR practitioners from diverse backgrounds found common ground, weaving a fabric of unity within the burgeoning chapter.





Light moments at the Meet & Greet 2022



Evolve To Resolve

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The Panel Discussion

The Meet and Greet event featured an engaging panel discussion on the Future of Arbitration Practice in Uganda. The distinguished panel included Lady Justice Monica Mugenyi, FCIArb, Hon. Justice Geoffrey Kiryabwire, FCIArb, Moses Adriko, S.C, FCIArb, Francis Gimara, S.C, MCIArb, Mr. Cyrus Titus Aomo, FCIArb, and Mr. Victor Odongo, MCIArb. Their insights illuminated the evolving landscape of arbitration, providing a valuable perspective for attendees and reinforcing the commitment of the CIArb Uganda Chapter to excellence in ADR.



“

Arbitration should not be looked at as just "Alternative Dispute Resolution". It should be looked at as "Appropriate Dispute Resolution" because it is on record that Arbitration is an appropriate mode of dispute resolution.

Hon. Justice Geoffrey Kiryabwire



“

I earnestly urge the leadership of CIArb not to overlook the offspring they have brought into existence. Our strides in the field of Alternative Dispute Resolution (ADR) are palpable, and we derive immense joy from our affiliation with the CIArb Uganda Chapter.

Lady Justice Monica Mugenyi, FCIArb



“

While Uganda may have entered the arbitration arena late, let us wholeheartedly embrace and extract maximum benefit from it. We now find ourselves here, and the feast before us holds the promise of abundance for all. Let us savor the opportunities that arbitration brings.

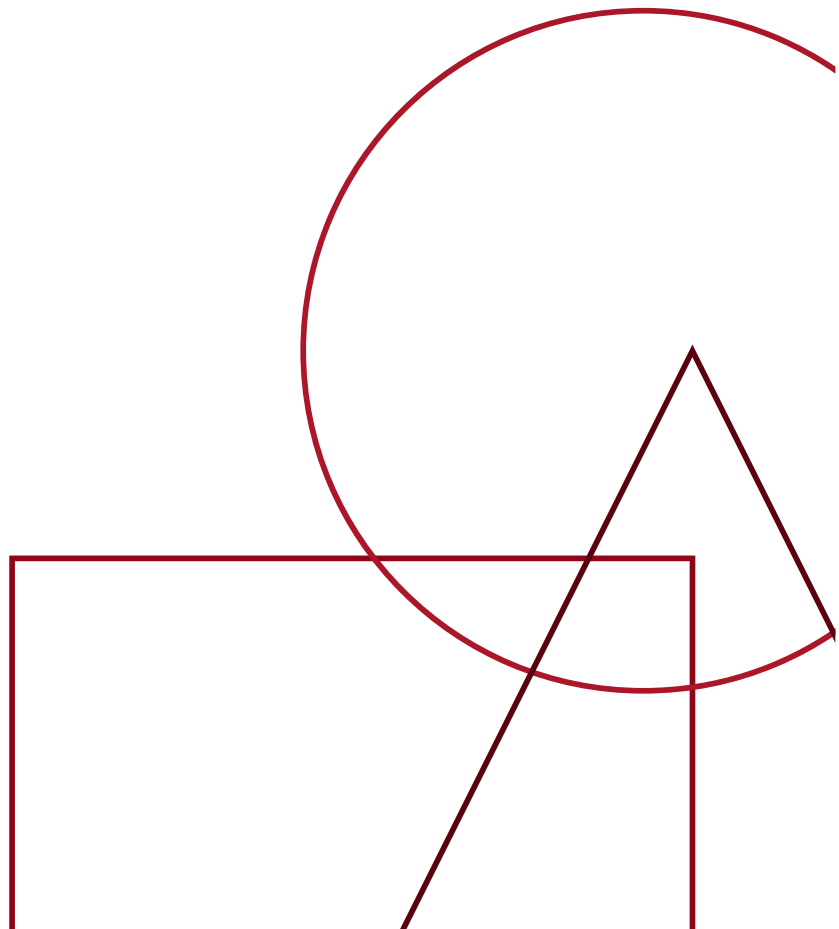
Francis Gimara, S.C



“

I am genuinely pleased with the exceptional work done by the team behind CIArb in propelling arbitration practice forward in Uganda. Their concerted efforts have truly outshone any other initiatives in the country, and I commend them for their remarkable contributions to advancing the field of arbitration

Moses Adriko, S.C





7th CIArb Kenya International Conference

The 7th International Arbitration Conference, impeccably organized by the CIArb Kenya Branch, drew in distinguished arbitration practitioners from across the East African region. Notably, two esteemed committee members of the CIArb Uganda Chapter, Mr. David Kaggwa and Ms. Olivia Kyarimpa Matovu, took the stage as speakers, contributing their insights to this influential conference.

Mr. David Kaggwa, Chairman CIArb Uganda Chapter made a presentation focused on the vital role that ESG plays in shaping corporate conduct and investment decisions, ensuring they align with long-term sustainable goals.

During a Panel Discussion on the diverse landscape of arbitration institutions in Africa, exploring the challenges and opportunities in the ever-expanding alternative dispute resolution (ADR) market, Ms. Olivia Kyarimpa highlighted the efforts made by Uganda to enhance its arbitration landscape





CIArb-Uganda Chapter Committee members participate at the First High-Level National ADR Summit

Members of the CIArb-Uganda Chapter Committee, including Ms. Norah Kaggwa, Ms. Olivia Kyarimpa Matovu, and Mr. Kenneth Akampurila, actively participated in the inaugural High-Level National ADR Summit.

This groundbreaking event united Court Justices, Judges, legal professionals, policymakers, academics, and Alternative Dispute Resolution practitioners nationwide, with the aim of revolutionizing effective conflict resolution. During this historic summit, participants engaged in lively discussions, shared insights, and exchanged best practices in ADR, marking a significant step toward enhancing the efficiency of conflict resolution mechanisms across the country.



The Chapter Treasurer, Ms. Olivia Kyarimpa Matovu sharing light moments with the Minister for Justice and Constitutional Affairs, Hon. Nobert Mao at the First High-Level National ADR Summit 2023 at Mestil Hotel, Kampala

7th PRE-AGM Conference AGM 2023

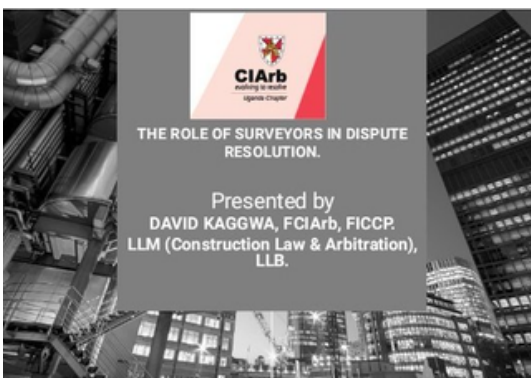


The Role of Surveyors in Dispute Resolution

In a compelling address to members of the Institution of Surveyors of Uganda at their 7th Pre AGM Conference 2023, the Chairman of the Chartered Institute of Arbitrators (CIArb) Uganda Chapter, Mr. David Kaggwa highlighted the paramount importance of surveyors in the realm of dispute resolution.

The presentation, centered on "The Role of Surveyors in Dispute Resolution," underscored the critical role played by surveyors in navigating disputes arising from construction, infrastructure, and energy projects.

The Chairman shed light on the pivotal role that surveyors play in resolving disputes stemming from various domains such as buildings, roads, and energy projects.



Surveyors emerge as the beacon of expertise when disputes arise, offering their unique insights and technical acumen to unravel complex issues. Their role is not just confined to the field; it extends to the hallowed halls of the Courts and Arbitration, where their testimony serves as a cornerstone for fair and just resolutions.



Preparation for the Accelerated Route to Member Assessment 2023.

On the 28th of November 2023, the CIArb Uganda Chapter, in collaboration with the CIArb Kenya Branch, orchestrated a one-day preparatory session for the Accelerated Route to Member Assessment 2023. This collaborative effort aimed at equipping participants with the necessary knowledge and insights was a testament to the strong regional partnership between the two branches.

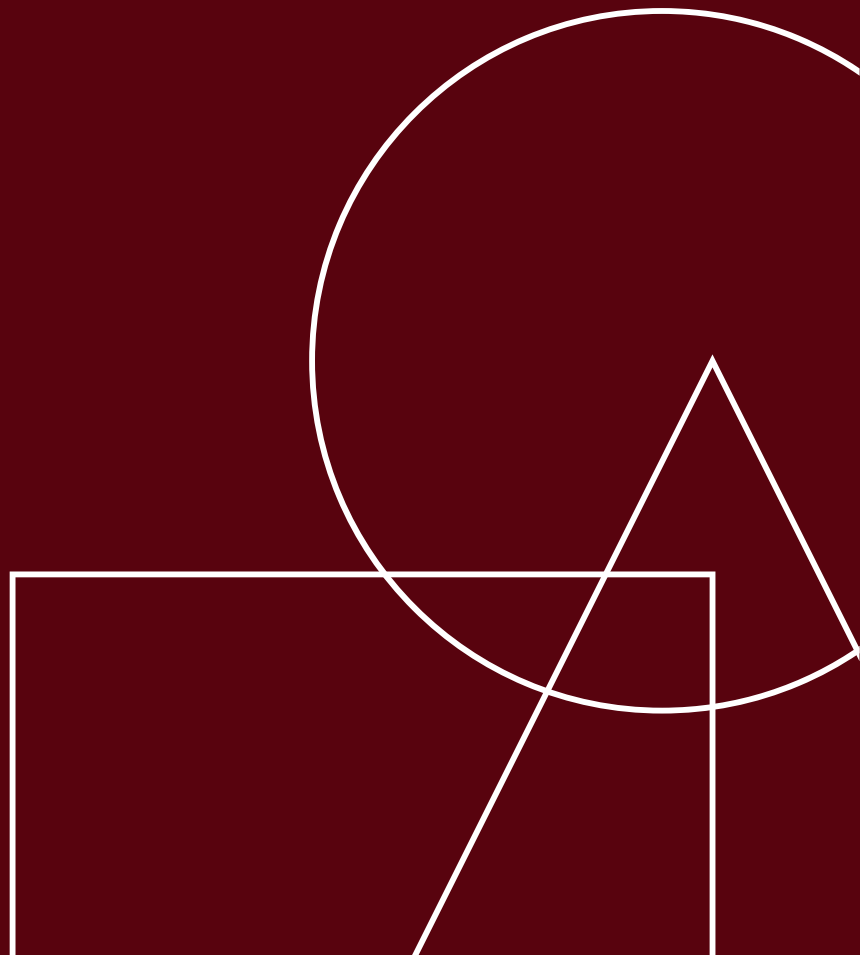
The session featured insightful presentations facilitated by esteemed members of the CIArb Kenya Branch, including the distinguished Hon. Dr. Wilfred Mutubwa, Mr. Samuel Nderitu, and Mr. S. Ondiek.

Their expertise and commitment to the development of ADR professionals contributed significantly to the success of the preparatory session.



02

Professional Development





In 2019, the inaugural Accelerated Route to Membership (ARM) training, facilitated by the International Centre for Arbitration and Mediation (ICAMEK) was held.

Participants underwent specialized instruction, contributing to the expansion of skilled professionals in the field of alternative dispute resolution.



On September 22nd and 23rd, 2022, the CIArb Uganda Chapter conducted the Accelerated Route to Member Training, training and examining 28 participants. The training, led by CIArb Kenya Branch officials, including Dr. Wilfred Mutubwa, Mr. Samuel Nderitu, Mr. Simon Ondiek, and Ms. Evelyn Kimani, aimed to enhance participants' understanding of arbitration concepts.

The training was wrapped up with the official launch of the CIArb Uganda Chapter.



Online assessments, overseen by Dr. Kariuki Muigua, were conducted to evaluate participants' comprehension of arbitration principles. Subsequently, written assessments were submitted to CIArb London for marking. Results were released on February 25th, 2023, with successful participants receiving Membership Certificates from CIArb London.

As of December 31st, 2022, CIArb Uganda had 47 members registered with CIArb UK. With new members admitted in 2023, the total has increased to 52. Having surpassed the required 40 members, CIArb Uganda is poised to become a Branch under the guidance of CIArb Kenya Branch, marking a significant milestone in its organizational development.

Some of the Participants attending the Tutorial towards the Accelerated Route to Member examination.



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In 2022, the CIArb Uganda Chapter organized its third event, the Introduction to Domestic Arbitration training, a two-day online session in collaboration with the Chartered Institute of Arbitrators – Kenya Branch. Seventeen participants engaged in the training, tailored for professionals aspiring to qualify as Associate Members of CIArb.

Facilitated by Dr. Wilfred Mutubwa FCIArb C.Arb and Mr. Calvin Nyachoti FCIArb, the two-day training featured Mr. Simon Ondiek FCIArb, the Education & Programs Manager at CIArb Kenya, as the moderator. Participants had a 28-day window, from December 15, 2022, to January 12, 2023, to complete their online assessments, enhancing their understanding of domestic arbitration principles.



The Arbitration Cluster of Uganda Law Society in Conjunction with the Chartered Institute of Arbitrators Uganda Chapter present:

RECENT DECISIONS ON SETTING ASIDE ARBITRAL AWARDS IN UGANDA
 WEBINAR DISCUSSION

Speaker	Speaker	Speaker	Speaker
 David Kaggwa, FCIArb Chairman, CIArb Uganda Chapter	 Mohmed Mbabazi Partner, Nyanzi, Kibonika and Mbabazi Advocates	 Robina Shonubi Arbitrator (ICSD)	 Anne Namara Musinguzi, MCIArb Managing Partner, Namara Musinguzi & Co. Advocates

Moderator:
 Robert Kirunda
 Chairperson, Arbitration Cluster.

4th August 2023
 3:00pm-5:00pm

zoom Webinar ID: 827 9846 8502
 Passcode: 934760

In pursuit of fostering professional collaboration within the legal sphere in Uganda, the CIArb Uganda Chapter, in collaboration with the Uganda Law Society, organized a webinar discussion on "Recent Decisions on Setting Aside Arbitral Awards in Uganda." Guided by prominent ADR practitioners in Uganda, including David Kaggwa, Mr. Mohamed Mbabazi, Mrs. Robina Shonubi, and Ms. Ann Namara Musinguzi, the session provided insights into key legal developments.

The discussion was skillfully moderated by Mr. Robert Kirunda, Chairperson of the ULS Arbitration Cluster, ensuring a focused exploration of the nuanced aspects surrounding the setting aside of arbitral awards in Uganda.

This collaborative initiative exemplifies the commitment to advancing knowledge and engagement within the legal and ADR communities in the region.

In collaboration with:

RESOLVE 360

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Uganda Chapter

Mentorship series on:

Domestic Arbitration.



8th September 2023 | 7:00PM

zoom Meeting ID: 910 0492 8470
Pass code: 353940

Speaker



Albert Mukasa, FCIArb
Partner, M&K Advocates
Executive Director, African
Center for Effective Dispute
Resolution

Moderator



Gavamukulya Charles,
MCIArb, AICCP
Team Lead, Resolve360

In another dedicated effort to advance excellence in arbitration practice, the CIArb Uganda Chapter, in collaboration with RESOLVE 360, conducted a mentorship series session focused on Domestic Arbitration. Mr. Albert Mukasa, FCIArb, a Committee member of the CIArb Uganda Chapter and Partner at M&K Advocates, served as the key speaker.

The session, moderated by Mr. Gavamukulya Charles, MCIArb, and Team Lead for Resolve 360, provided a valuable platform for mentorship and knowledge-sharing in the field of domestic arbitration.

This collaborative effort underscores the commitment to nurturing expertise and promoting excellence within the arbitration community in Uganda.

In collaboration with:

Women in Arbitration Initiative

ciarb.
Uganda Chapter

Exploring New Horizons: Empowering Women in Arbitration through Collaboration and Education



Speaker



David Kaggwa, FCIArb, FICCP
Chairman, Chartered Institute of Arbitrators (CIArb) - Uganda Chapter

Speaker



Olivia Kyarimpa Matovu, MCIArb
Hon. Treasurer, Chartered Institute of Arbitrators (CIArb) - Uganda Chapter

Moderator



Edith Twinamatsiko
Founder, Women in Arbitration Initiative

7th September 2023 | 3:00pm

zoom Meeting ID: 945 8671 8591
Passcode: 548411

The CIArb Uganda Chapter, in collaboration with the Women in Arbitration Initiative, hosted an online session themed "Exploring New Horizons: Empowering Women in Arbitration through Collaboration and Education." Ms. Edith Twinamatsiko, Founder of the Women in Arbitration Initiative, skillfully moderated the session.

Distinguished speakers included David Kaggwa, FCIArb, Chairman of the CIArb Uganda Chapter, and Ms. Olivia Kyarimpa Matovu, FCIArb. The session aimed to foster collaboration and education to empower women in the field of arbitration, reflecting a commitment to gender inclusivity and professional advancement in the legal and ADR communities.

This initiative reflected a commitment to fostering diversity and inclusivity within the legal and ADR communities while advancing the professional development of women practitioners.



Organized by:
CIArb Uganda Chapter in conjunction
with CIArb Kenya Branch

Accelerated Route to member Training & Assessment

Qualify to become a Member of the
Chartered Institute of Arbitrators
(MCIArb).

29th-30th November 2023
Book now
+256 789 519 111
+256 700 597 888

Fee: 650 dollars

info@ciarbuganda.org
Plot 28, Golf Course Road, Kololo

On November 28, 2023, the CIArb Uganda Chapter, in collaboration with the CIArb Kenya Branch, organized a one-day preparatory session for the Accelerated Route to Member Assessment 2023 at Protea Hotel, Kampala. Esteemed members of the CIArb Kenya Branch, including Hon. Dr. Wilfred Mutubwa, Mr. Samuel Nderitu, and Mr. S. Ondiek, conducted insightful presentations during the session.

On November 29, participants underwent an online assessment facilitated by officials from the CIArb Kenya Branch.

The assessment serves as a pivotal gateway for participants, offering them the opportunity to qualify as Members of the Chartered Institute of Arbitrators (MCIArb).



Organized by:
CIArb Uganda Chapter in conjunction
with CIArb Kenya Branch

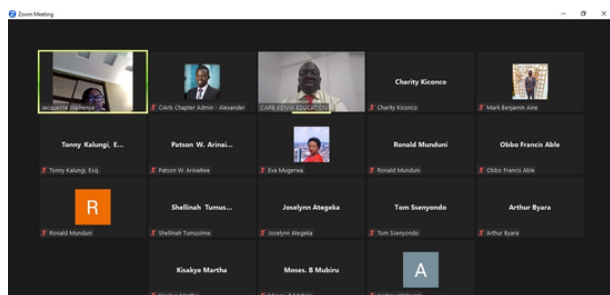
Introduction to Arbitration

Qualify to become an Associate of
the Chartered Institute of Arbitrators
(ACIArb)

6th December 2023
Book now
+256 700 597 888
+256 789 519 111

The CIArb Uganda Chapter organized its second Introduction to Arbitration assessment on December 6, 2023, adopting an online format for participants' convenience. Professional facilitators from the CIArb Kenya Branch led the assessment, which was carefully structured to assess participants' knowledge and competence in arbitration principles.

The primary objective of the assessment was to enable participants to qualify for Associate membership with the Chartered Institute of Arbitrators (CIArb). By successfully completing this evaluation, participants not only demonstrated their understanding of arbitration concepts but also took a significant step toward formal recognition within the esteemed professional community of arbitrators.

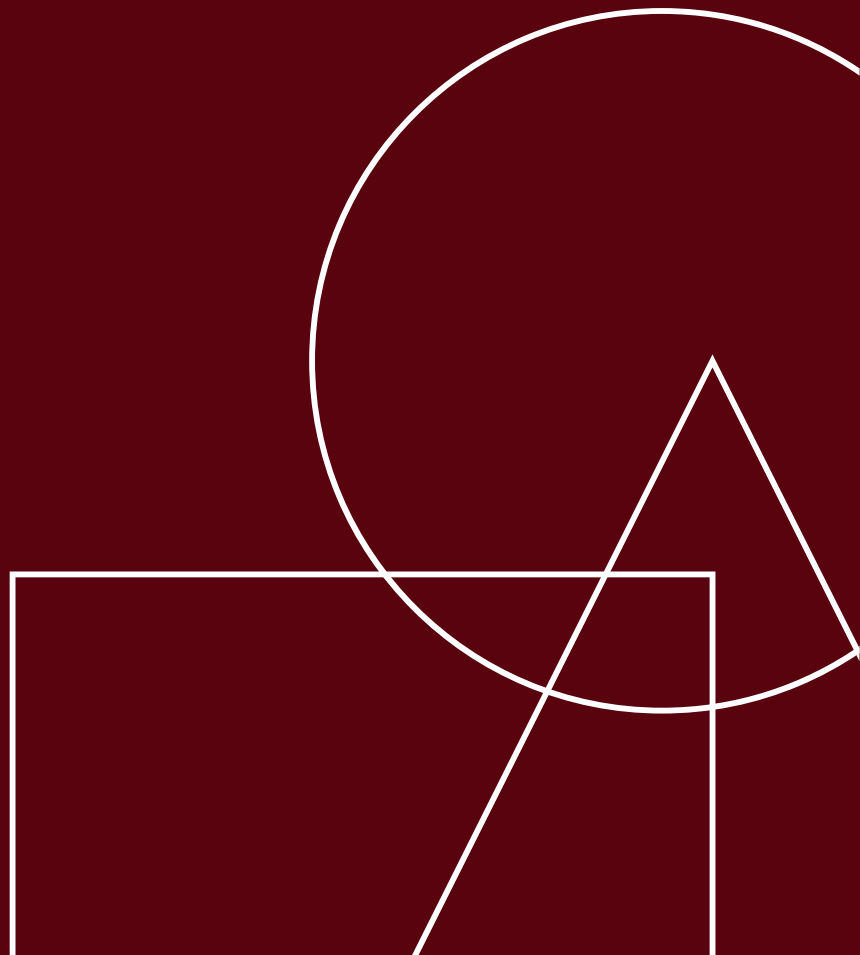


Participants during the online assessment

The initiative underscores the commitment of the CIArb Uganda Chapter to fostering education and professional development in the field of arbitration.

03

Thought Leadership



Arbitrability of Emerging Disputes: Trends in Uganda's Construction Industry

The Construction Industry in Uganda contributes over 12% of Uganda's Gross Domestic Product (GDP) with steady growth over the last twenty years. Like most industries, there are common areas of contention in the industry that call for dispute resolution and more recently, disputes like non adherence to Environmental, Social and Governance (ESG) standards have attracted global attention. It is also common knowledge that arbitration is generally the preferred dispute resolution method in most construction contracts because of its numerous industry specific advantages. In this article, we discuss the merits of construction arbitration and emerging trends in construction disputes with a brief analysis of whether these can be amenable to arbitration.

Arbitration as a preferred dispute resolution approach

Arbitration has been lauded for its benefits and suitability to commercial disputes over litigation. This is why an arbitration clause is often included in most construction contracts as best practice. Construction matters often involve scrutiny of large volumes of contracts, the testimonies of expert witnesses and technical processes that are best understood by industry experts. In most cases standardized contracts such as the FIDIC are used to govern construction relationships. As such, the presence of industry experts on a panel of arbitrators is considered to be invaluable.

Arbitration is also preferable to litigation in construction disputes because of time implications that are characteristic of construction law matters.

Due to case backlogs in the courts, litigation has attained notoriety for taking considerably long periods of time within which disputes are concluded. In this grim picture, arbitration becomes the preferable choice of dispute resolution presenting additional benefits such as flexible procedures that are adopted according to the wishes of the parties.

The support of the courts in favour of arbitration also makes it preferable to litigation. Numerous cases that have been referred to the courts in a bid to circumvent arbitration have been referred back to arbitration on principle. The courts have also been supportive of arbitration where the other party, often the Respondent, does not cooperate or respect arbitration proceedings.



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This was the case in **Ambitious Construction Company Limited v Uganda National Culture Center (Miscellaneous Application 441 of 2020) [2022] UGCommC 83 (26 September 2022)**, where court enforced the arbitration clause in a contract for the renovation of the National Theatre premises and went on to appoint an arbitration center which would then appoint a suitable arbitrator. This was after the Respondent had ignored all attempts to commence arbitration proceedings in contempt of their arbitration agreement.

Amenability to arbitration

Arbitration typically arises out of a clause in a contract that provides for reference of disputes between the parties to arbitration. In disputes where there is no initial contract between the parties and therefore no arbitration clause, it poses a challenge as to whether the dispute in question is arbitrable.

Emerging construction disputes' trends and their amenability to arbitration

Structural damage in construction works

In Uganda, legislation such as the Building Control Act 2013, which establishes the National Building Review Board were enacted to monitor and ensure compliance with the law in construction matters. However, a 2021 survey by the NBRB revealed that 78 percent of buildings do not comply with provisions in the Building Control Act, 2013.

There has generally been a surge in building collapses over the past five years with some experts blaming it on various reasons such as weak foundations, substandard construction materials, and poor mixing of material among others.

Whereas contractual liability is easily amenable to arbitration due to the existence of an arbitration clause in a construction contract between the employer and contractor, tortious and negligence claims due to personal injuries or damage to property are not arbitrable. This is because the claimants often do not have any contractual relations with the contractor or the developer from which an arbitration clause would arise.

Most claimants take to litigation under common law or national statutes. For instance, Section 45 of the Building Control Act, 2013 Act places liability on any person whose negligence, commission or omission causes or leads to the occurrence of an accident on a building construction site, which results in the injury or death of another person, or the destruction of property.

Variations of contracts

Construction contracts are often complex with various provisions governing anticipated activities throughout the performance of the contract. Often the circumstances surrounding the performance of construction contracts may necessitate alterations with regard to the changes in the contract price, completion date or scope of work thereunder. This often sparks disputes with regard to the time and financial implications of the said variations, interpretation of the variation contracts and their validity. Since variations of contracts are often envisaged in the construction contract, such disputes are easily amenable to arbitration where there is an arbitration clause.

Land and Environmental, Social, and Governance (ESG) concerns

Globally, ESG compliance standards are being used to assess businesses including the construction industry on the social and environmental impact of their operations. Factors such as the usage of building materials, how raw materials are harvested, the level of greenhouse emissions, and overall environmental impact are considered.

In Uganda, the National Environmental Management Act (NEMA) requires that an Environmental Impact Assessment be obtained by every developer to protect the environment from uncontrolled exploitation and ultimate destruction. Where environmental damage is anticipated, most construction projects are either totally disrupted or considerably delayed.

The recent decision of the European Union (EU) to censure the East African Crude Oil Pipeline project (EACOP) is one of many impending environmental disputes related to the pipeline construction works. The 1,445-kilometer heated-

pipeline project is expected to transport crude oil from the Albertine Graben in Uganda to the coastal port of Tanga in Tanzania for onward shipment to the international market.

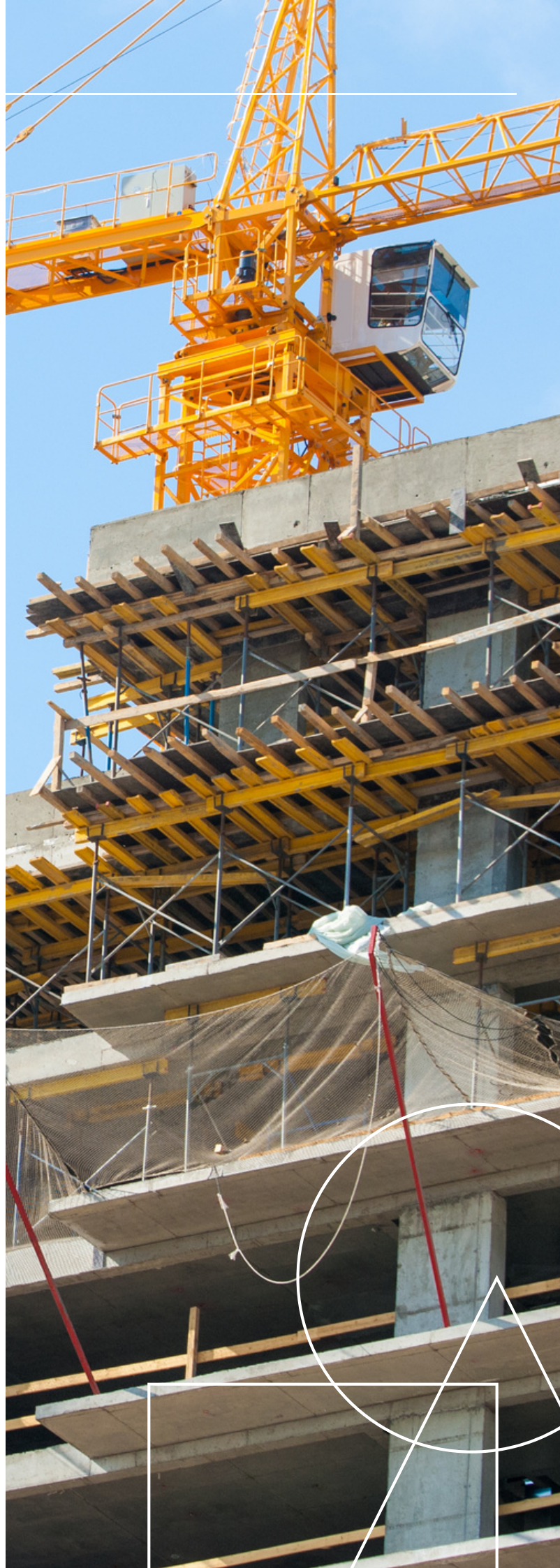
The EU's major concern is that the pipeline is a threat to climate and biodiversity located along its current route. It is also concerned that the pipeline is responsible for eviction of hundreds from their land without fair and adequate compensation.

Environmental disputes are not typically arbitrable and are often only challenged before the courts. For instance, environmental disputes involving the obligations of a state under international treaties have for long been only challenged before international courts like the International Court of Justice (ICJ), the European Court of Justice (ECJ) among others.

However, there have been more recent efforts to incorporate arbitration into international environmental dispute resolution procedures. It has also been observed that environmental disputes may be amenable to arbitration where it is specifically provided for in commercial contracts between the parties, in investment treaties or Multilateral Environmental Agreements (MEA).

Parties may therefore refer disputes to arbitration under commercial contracts like the Paris Agreement on Climate Change, 2015 or through international agreements such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1973 (CITES), the Vienna Convention on the protection of Ozone Layer, 1985 and the Convention on Biodiversity among others.

With the growing preference for arbitration of most commercial disputes, it is easy to predict that the scope of arbitration will soon be extended to cover even disputes previously considered to be unarbitrable. This will ultimately involve policy changes in the national and international front.





7 Common Construction Disputes and their Solutions.

The most popular standard construction contracts like FIDIC, NEC, JCT, ICE include well drafted tiered Arbitration clauses. The framers of these contracts and others in the Oil and Gas sector, envisage that disputes are likely to occur during and after the performance of those contracts. Through my experience as an Arbitrator and a Construction Lawyer, I have identified the most common construction disputes and their solutions

The contractual provisions have been drawn from the FIDIC Red Book.

1 Errors in Designs and Specifications.

The FIDIC Contracts attempt to draw a balance between the Employer and the Contractor by providing that both parties bear parts of the risks associated with implementation of the project.

The project risks are allocated to the party that is in the best position to control them. Errors in designs and specifications usually lead to claims for additional money and time.

In the FIDIC Red Book, the design responsibility lies with the Employer, therefore any risk that arises from errors in designs falls squarely on the Employer.

Whereas the Contractor has the responsibility to correctly position all parts of the Works, the Employer bears the responsibility for any errors in the designs. In case of an error in the designs, which has the effect of delaying the Contractor's works and he incurs costs, the Employer is liable to pay those costs subject to the Contractor complying with the claim procedure. To avoid the design risk, some Employers have adopted the FIDIC Yellow and Silver Contracts which place the design responsibility and risk upon the Contractor.

2 Unforeseen Conditions.

Most construction projects are built on green fields, where there is little or no data about the ground conditions. Usually, the weather patterns are unpredictable, all these are breeding grounds for disputes.



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The Contactor is duty bound to notify the Engineer once he encounters adverse unforeseeable physical conditions

The Employer will bear this risk and is liable to pay the Contractor for any costs he may incur and for extension of time. The cause for a dispute arises when a Contractor makes a claim arising from unforeseeable ground conditions like weak soils. Some Employers reject such claims and maintain that the site was available for inspection at the time of the tender, therefore the Contractor ought to have investigated and discovered the ground conditions. To avoid such a claim, the Employers must inform the Contractors who wish to tender for the works, to inspect the site for ground conditions and include any costs in the tender price.

3 Delays and Disruption.

The Employer bears the risk for delays or disruption in the works due to failure to issue any design or instruction to the Contractor or for delays caused by Authorities. Where such delays occur, and the Contractor has complied with the claim procedure, the Employer is obliged to extend time for completion of the contact and pay costs plus reasonable profit. However, in case the delay is occasioned by the Contractor, and it affects the time for completion, he is liable to pay the Employer delay or liquidated damages subject to making a claim to the Engineer. However, the Employer will be denied delay damages if he has engaged in any act of prevention such as preventing the Contactor to complete the works, delayed payments, delayed Certification etcetera.

The prevention principle is born out of common law, that a party will not enforce a contractual obligation against another where it has prevented the other party from performing their obligation.

Simply put, one cannot benefit from their own breach. Once the Employer engages in any act of prevention, then time is deemed to be at large and the Contractor is no longer bound to complete the works on a specific date but within a reasonable time. Employers should always act in good faith and if necessary, extend time for completion to preserve their entitlement to delay damages.

4 Extension of Time.

The Contractor is obliged to complete the works by the date of completion[^[i]] unless the Engineer extends the time for completion.[^[ii]] The Contractor is entitled to Extension of Time for Completion if he demonstrates that: there was a variation to the works, there were exceptionally adverse climatic conditions, unforeseen shortages in availability of personnel or Goods caused by an epidemic or government actions or any delay, impediment or prevention by the Employer. In case of concurrent delay, put differently, delay events caused by both the Employer and the Contractor, the Contractor would nevertheless be entitled to the full extension of time but not additional payment for prolongation costs.

5 Variations.

A variation is any change to the Works, which is instructed or approved as a variation by the Engineer. A dispute arises when an instruction is given by the Engineer verbally or during site meetings and it is implemented by the Contractor without a Determination and or a Variation Order issued by the Engineer. In some cases, Employers have refused to pay the Contractor for such works for lack of a Variation Order. The Courts have applied the law of restitution and rejected this argument, they have allowed Contractors to recover money under quasi-contract based on the principle of unjust benefit.

6 Failure to Issue Notices.

The requirement to issue contractual notices within the prescribed time, is a condition precedent to any right of payment or remedy. The Notice prior to presentation of a claim should be issued within 28 days if, the Contractor considers himself entitled to a remedy and the time starts to run after the Contractor became aware of the event or should have become aware of the event or circumstance.

If the Contractor fails to issue the Notice, he loses his right to claim for a relief and the Employer is discharged from any liability. The ambiguity in this clause has led to disputes arising from interpretation.

Some Courts in Dubai have struck down this clause for being a penalty and therefore unenforceable.

Contractors should comply with the Notice provisions since Engineers and Adjudicators are bound to enforce the contractual provisions.

7

Practical Completion.

When the works have been completed, the Contractor is entitled to a Taking-Over Certificate. Disputes arise as to whether a building has achieved practical completion. Engineers should take note, that even in the absence of a Taking-Over Certificate, a Contractor achieves practical completion of a project where it is fit for occupation by the Employer. The Contractor would be obliged to correct any defects during the defects liability period and thereafter he would be entitled to any outstanding sums of the contract price plus the retention.

Conclusion

Construction claims and disputes are an everyday occurrence. 50% of construction involves building and the other 50% are contractual problems. We can only deal with these problems but not to avoid them. Employers must act in good faith; Contractors must comply with their contractual obligations and the Engineers must effectively administer the contract.

References

- FIDIC Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer, 1999.
- FIDIC Sub-Clause 20.1 (Contractor's Claims).
- FIDIC Conditions of Contract for Plant & Design Build, 1999.
- FIDIC Conditions of Contract for EPC/Turnkey Projects, 1999.
- FIDIC Sub-Clause 4.12 (Unforeseeable Physical Conditions).
- FIDIC Sub-Clause 1.9 (Delayed Drawings or Instructions).
- FIDIC Sub-Clause 8.7 (Delay Damages).
- FIDIC Sub-Clause 2.5 (Contractor's Claims)
- Holme v Guppy (1838) 2 N&W 387.
- Wells v Army & Navu Cooperative Society Limited (1902) 86 LT 764.
- Alghussein Establishment -v- Eton College [1988] 1 WLR 587
- Shawton Engineering Limited v DGP International Limited (2005).
- Percy Bilton Limited v Greater London Council [1982] WLR 794 HL
- FIDIC Sub-Clause 3.5 (Determinations)
- Henry Boot Construction (UK) Ltd v Malmaison Hotel (Manchester) Ltd [1999] 70 Con. L.R
- Walter Lilly & Co Ltd v Mackay [2012] EWHC 1773 (TCC)
- FIDIC Sub-Clause 1.1.6.9 (Other Definitions)
- Moses v Macfarlane (1760) 2 BURR at page 10.
- FIDIC Sub-Clause 20.1 (Contractor's Claims)
- FIDIC Sub-Clause 10.1.
- Skanska Corporation v. Anglo-Amsterdam Corporation (2002).



Is Dispute Avoidance the Future?

On 3rd July 2023, the International Chamber of Commerce Commission on Arbitration and ADR released a “Guide on Effective Conflict Management and the “Report on Facilitating Settlement in International Arbitration” to assist parties in resolving their disputes before escalation to arbitration.

The guide highlights critical moments when the parties should be able to manage any dispute or conflict that might arise. For instance, before conflicts have emerged, parties may consider setting in place conflict management policies and drafting the dispute resolution clause or where the conflict has emerged but has yet to result in the filing of a request for arbitration or in cases where arbitration proceedings have been commenced. The parties should explore opportunities to settle at any of these stages.

Parties are encouraged to be proactive through developing and implementing internal company policies and procedures for early dispute management, drafting and deploying effective dispute resolution clauses, and increasing internal awareness of conflict management.

The Arbitration tribunal equally plays a vital role in facilitating settlement between the parties without losing the essence of the arbitration process. Suppose parties are interested in pursuing a settlement.

In that case, the tribunal should create the environment for this to happen by creating mediation windows where the tribunal stays the arbitral proceedings to allow parties to attempt mediation.

FIDIC, similarly, on 27th November 2023, published a "Practice Note 1 on Dispute Avoidance- focusing on Dispute Boards" which comes against the backdrop of the 2017 Edition of the FIDIC rainbow suite, which enhanced the Avoidance role for the Dispute Boards.

The Note provides five best practice techniques and tasks, which include Raising the parties' awareness of the dispute board's dispute avoidance role as early as possible; Building and maintaining trust with the parties; Determining when/where dispute avoidance should ideally take place; Identifying and communicating to the parties examples of matters that are appropriate for dispute avoidance; and Identify the best form for dispute avoidance.

Conclusion

These initiatives reflect the shift from dispute resolution to dispute avoidance. The parties are at the centre stage, playing a proactive role and, where possible, with the assistance of the dispute resolvers, whether the Tribunal or the Dispute Board. This allows the parties to focus on their core business while maintaining a solid working relationship and only escalating disputes they cannot resolve.



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Latest in Arbitration Series: The High Court has the discretion to issue a post-award protective measures under Section 98 of the Civil Procedure Act

Section 6 of the Arbitration and Conciliation Act Cap 6 is not a bar to Court exercising its inherent powers under section 98 of the Civil Procedure Act Cap 71 and section 33 of the Judicature Act Cap 13 to grant post award protective measures

Vantage Mezzanine Fund II Partnership & Another v. Commissioner Land Registration & 7 Others, Misc. Application No 2484/2023

Background to the case

This was an application for an interim protective measure made pursuant to section 6 of the Arbitration and Conciliation Act (ACA) Cap 6 and Rule 6 of the Rules thereunder. Briefly, it sought an order restraining the 1st Respondent from taking any actions in respect to the certificates of title that the 2nd to 7th Respondents had mortgaged to the Applicants.

They also sought an order restraining the 8th Respondent from registering any alterations to the company documentations of the 2nd to 5th Respondent because the company documentation constituted further security as share pledges.

This application was premised on Arbitration Cause No. 72/2023 which the applicants had filed for recognition and enforcement of the arbitral award rendered in their favour against the 2nd to 7th Respondents.

It was the applicant's contention that in the event that the interim protection measure was not granted, then their application for recognition and enforcement, if granted, would be rendered moot because they would have no security to enforce. The Respondents opposed the application and one of the major grounds of objection raised was that arbitration proceedings between the applicants and 2nd to 7th Respondents had since terminated and it therefore followed that the Applicants could not obtain interim protective measures.

The High Court (Thomas Ocaya, J) in granting the application held *inter alia* as follows:



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- Section 6 of the ACA provides for the grant of interim protective measures before and during arbitration proceedings. It does not extend to after arbitration proceedings have been closed and an award delivered.
- Notwithstanding the limitation encapsulated in section 6 of the ACA, the High Court has the discretion to invoke its inherent powers under section 98 of the Civil Procedure Act (CPA) and section 33 of the Judicature Act to grant any order necessary to ensure that the ends of justice are met.
- It therefore followed that in the instant application, the Court could invoke its inherent powers and grant the interim protective measure pending the determination of the application for recognition and enforcement of the arbitral award.

Effect of the Judgment

The Court departed from its earlier decision of *Great Lakes Energy Company NV v MSS Xsabo Power Limited & 4 Others, Misc. Application No 1041/2023 (arising from Misc. Cause No. 0017/2021)* wherein when faced with an application for variation of interim orders of protection until the determination of the Applicant's appeal against the dismissal of its application for recognition & enforcement of its arbitral award stated that whilst Court should ensure that it stays within the confines legally permissible for it to intervene in arbitral proceedings, the London Court of International Arbitration (LCIA) Rules provided for determination of arbitral proceedings once a final or additional award was issued.

It therefore followed that an arbitration would only be considered "determined" after the expiration of time stated in the LCIA rules for the application of the correction of a final award and rendering additional awards.

Both decisions fundamentally departed from the Supreme Court decision in the case of *Babcon Uganda Limited v Mbale Resort Hotel Ltd, SCCA No. 6/2016* where the Supreme Court considered the intention behind the drafting of the ACA, in dismissing the appeal which was premised on dissatisfaction of a decision arising from section 34 of the ACA.

The Supreme Court emphasized that the intention, as contained in Mr. Justice Harold Platt's Commission of Inquiry Report was the need to incorporate into our international instruments and introduce radical provisions which will give arbitration the importance it plays in other jurisdictions. One of the "radical provisions" was *Section 34 of the ACA* which provides for specific grounds for setting aside an arbitral award and limits appeals from arbitral awards to only instances where the parties have consented to the appeal and Court subsequently grants leave to appeal.

The overarching effect therefore is that interim protective measures can now be extended past the finality of an arbitral award on the basis of Court's exercise of its discretion as discussed herein. This introduces the concept of "post award protective measures".

Concluding Observations

Whereas it is most pertinent that Court orders when rendered are not rendered in vain and should therefore be enforceable, Section 9 of the ACA provides for limited interference of Courts in arbitral matters save for instances that are specifically listed in the ACA. The ACA provides for the finality of an arbitral award and does not clothe the Courts with the discretion to issue post award protective measures. Further, there is lack of clarity from the two High Court decisions discussed herein on what amounts to a final arbitration award and the specific powers of the Court.

There is a high likelihood that the non-interference of Courts, as envisaged by the ACA, is now subject to its discretion as stated in the CPA. This shall completely compromise the sanctity of arbitration and its finality.

