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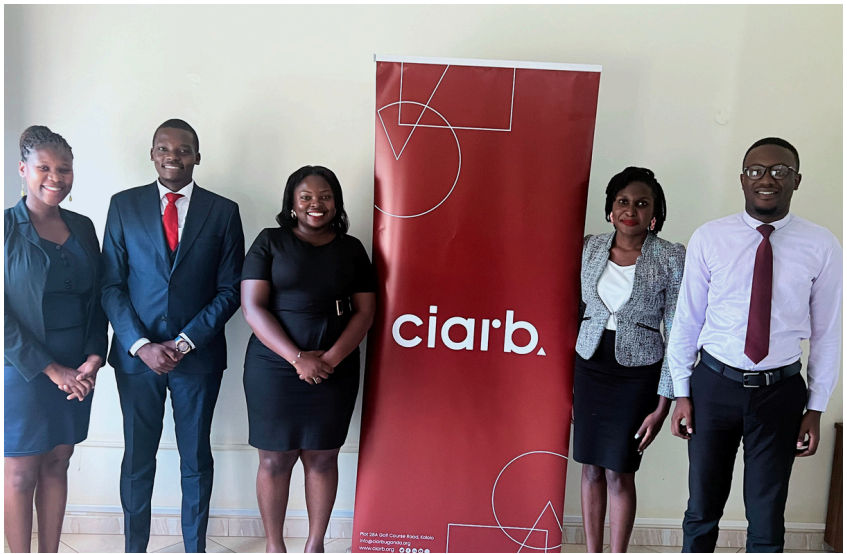
Uganda Chapter

YEAR IN REVIEW NEWSLETTER-2024

Reflecting on Milestones and Charting the Future



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WORD FROM the Chairman

David Kaggwa, FCIArb, FICCP

Dear Members,
Greetings from the Chartered Institute of Arbitrators – Uganda Chapter.

It is my utmost pleasure to present to you the fourth and Final Volume of our quarterly newsletter for the year 2024.

On a sad note, on the 26th of November 2024, we got news of the demise of Dr. Wilfred Mutubwa, FCIArb, C.Arb, the immediate past Chairman of our mother branch; CIArb-Kenya. Dr. Mutubwa was very instrumental in the process of setting up the Uganda Chapter. His legacy shall forever remain indelible to us.
2024 has been a remarkable year for the Chapter, with tremendous growth and evident progress. Together, we have achieved remarkable milestones, and I thank each of you for your support.

At the end of 2023, the Chapter Steering Committee undertook to you our members to conduct a number of activities in 2024 as we continue to grow membership and add value to it. We undertook to, among others, conduct more pathway courses and other professional development webinars, partner and take part in International Arbitration Conferences, collaborate with professional organizations with the major objective of ensuring that the message of alternative dispute resolution as the most viable form of dispute resolution is spread and implemented and develop a strategic plan for the Chapter.

I am happy to report that we have achieved over 95% of our goals.

For the first time since its inception, the Chapter conducted two pathway trainings on Introduction to Arbitration. A total of forty-five participants were assessed for this entry membership to the Chartered Institute of Arbitrators.

We also conducted the Accelerated Route to Membership, where a total of twenty-seven participants sat the exam for the second level of membership to the Chartered Institute of Arbitrators.

This year, the Chapter has conducted four webinars. The first was "The Enforcement of Foreign Arbitral Awards," which was conducted on 03rd May 2024. The Panelists were the Chapter Chairman, Mr. David Kaggwa FCIArb, Mr. Albert Mukasa FCIArb, Mr. Kirunda Robert MCIArb, and Ms. Mariam Nansamba Iga MCIArb. The second webinar was conducted on 07th August 2024 in conjunction with our strategic partners, African Women in Arbitration, and the theme for the same was "Understanding Arbitration: The Arbitration Agreement". The panelists were Ms. Angela Kobel FCIArb, Mrs. Olivia Kyarimpa Matovu MCIArb and Ms. Patience Akampurira MCIArb.

The third webinar was conducted on 11th October 2024 by the Young Members Committee of the Chapter under the theme "Opportunities for Young Emerging ADR Professionals". It was facilitated by Mr. Muleba Joseph Chitupila FCIArb; Chairman Young Members Group CIArb Zambia Branch, Ms. Amina Nasaazi MCIArb; the Vice Chairperson of the Chapter's Young Members Committee, Ms. Elizabeth Suubi MCIArb; a member of the Chapter's Young Members Committee and Mr. Edgar Alema MCIArb; Vice Chairman Young Members Group, Kenya Branch.

The fourth Webinar was conducted on 07th November 2024 in conjunction with Uganda National Chamber of Commerce and Industry, under the theme "The Fundamental Principles of Arbitration." The facilitators were Ms. Lilian Kiiza FCIArb, Mr. Isaac Ssekabanja MCIArb, and Mr. Okwalinga Moses, the Secretary General of Uganda National Chamber of Commerce and Industry. All these webinars were well attended, drawing participants from diverse sectors, including members of the business community.

On 19th April 2024, at the invitation of the Arbitration Fund for Students(AFAS), we were privileged to join the Fund as they held an ADR Student Connect Training with Students from Makerere University School of Law. The major objective of AFAS is to advance education in the knowledge, skills, techniques, use and methods of arbitration as a dispute resolution mechanism for young African Arbitration Practitioners. This invitation to the Chapter marked the beginning of a most critical relationship between AFAS, Makerere University School of Law and the Chapter.

We were honored to join our Mother Branch CIArb-Kenya Branch between 15th-17th May 2024 as they celebrated 40 years of existence. It was a great learning curve for us as we gleaned from the shoulders of the giants who carried the Branch from inception with a handful of members to their current membership of over 1000 members.

Between 29th and 31st May 2024, the first ever International Chamber of Commerce (ICC) Africa Conference was held in East Africa. Shortly thereafter, on the 03rd and 04th of June 2024, Africa Construction Law held its Annual Conference in Nairobi and finally, the East Africa International Arbitration Conference was held between 19th-20th September 2024 in Addis Ababa Ethiopia where the Chapter was a strategic partner. In all these conferences, globally trending topics in Arbitration, Construction, ESG, Dispute Resolution & Avoidance were discussed and the Chapter was ably represented at all the conferences.

On the 2nd of July, 2024 we signed a Memorandum of Understanding with the African Women in Arbitration (AWA). This collaboration strengthens our ties with AWA and furthers our shared goals of promoting diversity and inclusivity in the arbitration profession. Together, we are working on creating more opportunities for women to take active roles in the arbitration space, both regionally and globally.

On 10th September 2024, the Chapter successfully launched its Young Members Committee. This initiative marks a crucial step in ensuring the sustainability of arbitration in Uganda by nurturing the next generation of arbitrators as well as contributing towards our efforts to transition into a branch.

On 06th September 2024, we conducted a mediation training for the staff of the Uganda Revenue Authority. The training was conducted by our members; Ms. Olivia Kyarimpa Matovu MCIArb, Ms. Asmahaney Saad MCIArb and Ms. Nakiganda Belinda MCIArb. We were also privileged to conduct a similar mediation training for the Tax Appeals tribunal staff with a team comprised of Mariam N. Iga MCIArb, Isaac Ssekabanja MCIArb and Belinda Nakiganda MCIArb, our Hon. Deputy Secretary on the 29th of November, 2024. They further set the stage for the pathway training on mediation that the Chapter shall conduct in 2025.

On the 21st and 22nd November 2024, the Chapter held its first ever non pathway training on "The Art of Drafting Arbitral Awards." This Master Class unpacked the Arbitration Clause all through to the appointment of the Arbitrator, the Preliminary Meeting, the drafting of all necessary Procedural Orders, the hearing of the Arbitration, and finally, the writing of the Award. It was conducted by Mr. Phillip Aliker FCIArb, C.Arb and the Chapter Chairman; Mr. David Kaggwa FCIArb. By the end of the training, the participants were well equipped with all the necessary tools to enable them to write an enforceable award, both domestic and international.

Regarding our strategic plan, the Chapter has commenced preparation, and it will be ready by the end of the First Quarter of 2025.

The Chapter has also maintained active communication with its members through its quarterly newsletters, a steady increase of information on social media, and a vibrant WhatsApp group.

Because of all the engagements and programs, Our membership now stands at 117 Members up from 80 Members at the end of 2023.

In 2025, we intend to ensure that the growth trajectory achieved in 2025 only goes higher. We shall maintain the pathway trainings for Module 1 and Member respectively. We shall also conduct the pathway training for Mediation and the pathway training for Fellow. Further, we shall continue to conduct joint trainings with our strategic partners, webinars and more non pathway trainings on issues which are critical to the ADR Environment. We shall in addition continue to keep you updated on the Chapter's Activities and thought leadership through our quarterly newsletter. Finally, the first ever Arbitration Conference organized by the Chapter is scheduled for the Third Quarter of 2025. We shall keep you updated on the dates for all these activities through our Newsletter and Social Media Handles respectively.

I would like to thank the Steering Committee for their continued effort in ensuring the success of the Chapter.

I would like to especially thank the Education and Training Committee of the Chapter that was launched in January 2024. This Committee is in charge of not only preparing our yearly activity calendar but also ensuring the planning, coordination and success of each and every activity and event of the Chapter. To them we owe a very successful and growth filled 2024.

Finally, I would like to reiterate my thank you to you our members for your vote of confidence in us, for all the feedback and support. Without you, we would not be able to achieve anything.

I wish you a very amazing and restful Christmas Holiday and a Blessed 2025.

A Tribute to the Late Dr. Wilfred Mutubwa, C.Arb, FCIArb

It is with heavy hearts that we pay tribute to Dr. Wilfred Mutubwa, C.Arb, FCIArb, President Emeritus of the CIArb Kenya Branch, whose recent passing has left a void in the arbitration community across East Africa.

Dr. Mutubwa was a pillar of support and a friend to the Chartered Institute of Arbitrators Uganda Chapter. From the very beginning, he was instrumental in our formation, offering his guidance, expertise and belief in our potential. His efforts were pivotal in helping us establish a strong foundation and grow into the vibrant Chapter we are today.

Over the years since our inception, he stood with us as a mentor and has been a consistent presence in our journey in many ways. He was always ready to lend his expertise, whether by facilitating our trainings or sharing his insights with the Chapter's leadership. His passion for arbitration and his work continue to inspire those who were fortunate to learn from him.

He has left an indelible mark on our Chapter and on all who had the privilege of working with him.

As we mourn his loss, we also celebrate his extraordinary legacy and would like to take a moment to honour him for being a big part of our journey. Dr. Mutubwa's contributions to the arbitration community in East Africa will be remembered for generations to come.

Rest in peace, Dr. Mutubwa. You will always remain in our hearts and in the story of the CIArb Uganda Chapter.

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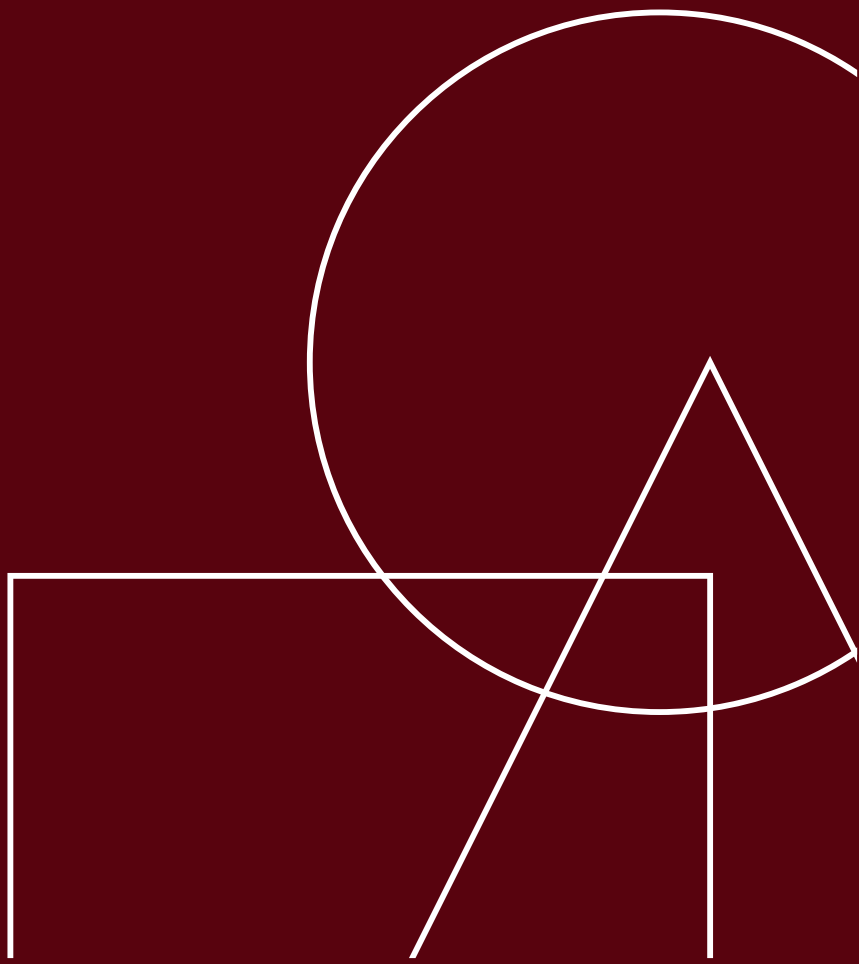
Highlights of the Year



ICC YAAF 2024

The ICC Young Arbitration and ADR Forum (YAAF) partnered with the Law Development Centre to organise an online event dubbed “ICC YAAF: Energy Disputes: Current trends and challenges in Africa”.

The event constituted a panel discussion which had; Kaggwa David, FCIArb, Chairman CIArb-Uganda Chapter, Senior Partner, Kaggwa & Kaggwa Advocates (Panelist) Nanza Iga Mariam, MCIArb, ESG Expert (Panelist), Denis Kakembo, Managing Partner Cristal Advocates (Panelist), Dr. Susan Nakanwagi, Natural Resources Governance and Rights Specialist, Regenerate Africa (Panelist)

CIArb Kenya 40-year Anniversary

Our mother branch CIArb Kenya celebrated 40 years of excellence in Arbitration and ADR and commemorated the event by holding a two day anniversary conference filled with enriching discussions, networking opportunities and celebrations.

We congratulate our mother branch on this special milestone and we were happy to have been included in the festivities.

ICC Conference on International Arbitration

The 8th ICC Africa Conference on International Arbitration took place on the 29th to the 31st of May 2024 in Nairobi, Kenya. This conference brought together leading practitioners, academics and industry experts to discuss key trends and developments in arbitration across Africa.

Africa Construction Law Conference

Building Resilience in Africa's Construction Sector" was the theme of the Africa Construction Law Conference which was held from the 3rd to the 4th of June, 2024 in Nairobi, Kenya. This premier event featured comprehensive discussions on critical topics such as infrastructure development and financing, procurement strategies and the use of FIDIC contracts within the African context.

The Chapter Chairman, Mr. David Kaggwa engaged in a Oxford style debate on the topic "This house believes that liquidated damages clauses are a fair and efficient way of allocating risk in construction contracts."

Albert Mukasa, FCIArb, was honoured with a prestigious award at the conference for his exceptional contribution to Construction Law and Practice in East Africa.

AFAS Roundtable discussion

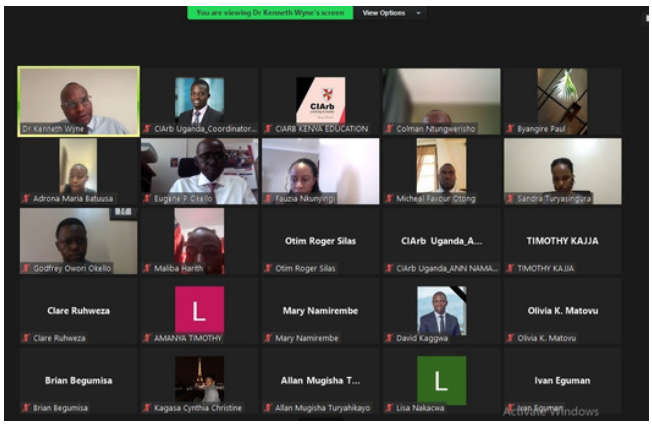
On the 19th of April, 2024, CIArb Uganda was invited by the Arbitration Fund For African Students to participate in a roundtable discussion.

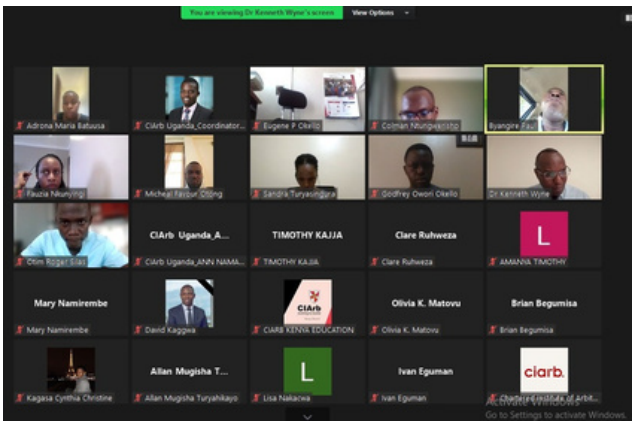
The Chapter was represented by its Chairman Mr. David Kaggwa FCIArb, Mr. Jeffrey Kaddu MCIArb, Mr. Isaac Ssekabanja MCIArb, Ms Nansamba Mariam Iga MCIArb and Mr. Alexander Ssensikombi ACIArb. Other panelists included Prof. Chrispas Nyombi.

Introduction to Arbitration training (First cohort)

The Introduction to Arbitration Training for the first cohort, held on April 17, 2024, was a highly successful and enriching learning experience.

We extend our heartfelt gratitude to the CIArb Kenya Branch for their invaluable support in coordinating and facilitating this training. Their expertise ensured seamless and impactful sessions, equipping participants with practical skills and theoretical insights to advance their interest in arbitration.





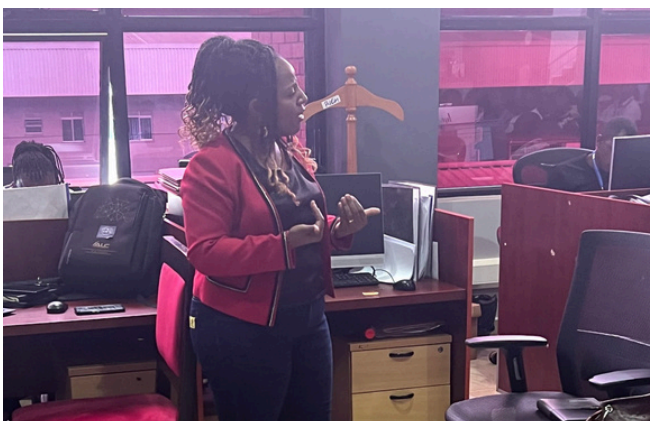
MoU signing with Africa Women in Arbitration

On the 2nd of July, 2024, the Chartered Institute of Arbitrators - Uganda Chapter and African Women in Arbitration signed a Memorandum of Understanding (MoU) to promote gender diversity and equality within the Alternative Dispute Resolution (ADR) community.
This partnership marks a significant step towards a more inclusive and supportive ADR community.

URA mediation training

The Chapter conducted a mediation training at the Uganda Revenue Authority offices on the 6th of September and it was led by Olivia Kyarimpa Matovu, MCIArb, Asmahaney Saad, MCIArb and Nakiganda Belinda, MCIArb.

The session focused on enhancing dispute resolution skills, emphasizing the practical aspects of mediation.



Launch of Young Members Committee (YMC)

The Young Members Committee (YMC) of the CIArb Uganda Chapter was officially launched on the 10th of September at the Chapter offices by the Chairperson of the Steering Committee, David Kaggwa, FCIArb.

The event was graced by the Coordinators of the YMC, Albert Mukasa, FCIArb, Isaac Ssekabanja, MCIArb and Hon. Secretary of the Steering Committee, Kenneth Akampurira, MCIArb.

The newly launched Young Members Committee is comprised of; Chairperson Charles Gavamukulya, MCIArb; Vice Chairperson Amina Nassazi, MCIArb; Secretary Alexander Ssensikombi, ACIArb; and members Jeffrey Kaddu, MCIArb; Kisakye Martha Agatha, ACIArb; and Ssubi Elizabeth, ACIArb.

International Arbitration Conference (EAIAC)

The East Africa International Arbitration Conference (EAIAC) 2024 took place in Addis Ababa, Ethiopia from the 19th - 20th of September. The conference was action-packed with sessions on Green Growth in Africa, Regional Integration, Building and Growing an Arbitration Practice in a New Era and so much more. They also had an Oxford debate with the motion, "The Seat believes that Africa would be better off without investment treaties".

Our Chapter was honored to have collaborated with them as their strategic partner for this conference and we congratulate them on an incredible two days of pivotal discussions that will shape the future of arbitration in Africa.

Accelerated Route to Member training

The Accelerated Route to Member Training, held on October 21st and 22nd, 2024, successfully brought together professionals from diverse fields, emphasizing the importance of alternative dispute resolution (ADR). The training was conducted in a hybrid format, with day one hosted in person at the prestigious Emin Pasha Hotel and day two conducted virtually.

The training was facilitated by our mother branch CIArb Kenya and attracted professionals from various fields, including law, engineering and construction, who are actively involved in dispute resolution.

Arbitral Award writing training

On November 21st and 22nd, 2024, we successfully hosted an intensive two-day training at the Protea Hotel, Kololo, under the theme "The Art of Drafting Arbitral Awards." This program was designed to enhance participants' expertise in crafting enforceable and well-reasoned arbitral awards, a critical skill in arbitration practice.

The training was led by two highly esteemed facilitators: Philip Aliker, FCIArb, C.Arb, and Chapter Chairman David Kaggwa, FCIArb, FICCP.

Tax Appeals Tribunal training

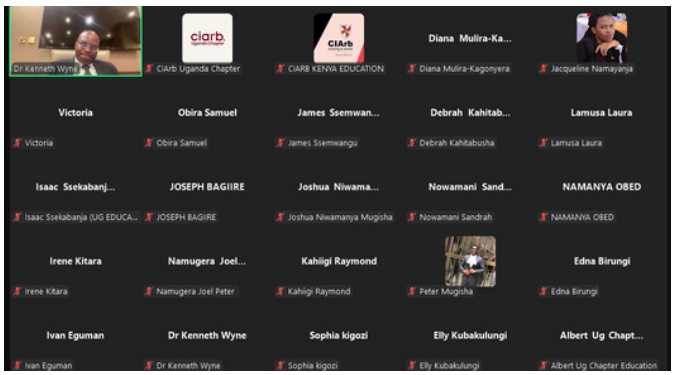
On 29th November 2024, we conducted an Introduction to Mediation training for the Tax Appeals Tribunal. The session was led by Mariam N. Iga, MCIArb, Isaac Ssekabanja, MCIArb, and Belinda Nakiganda, MCIArb, the Hon. Deputy Secretary of the Chapter.

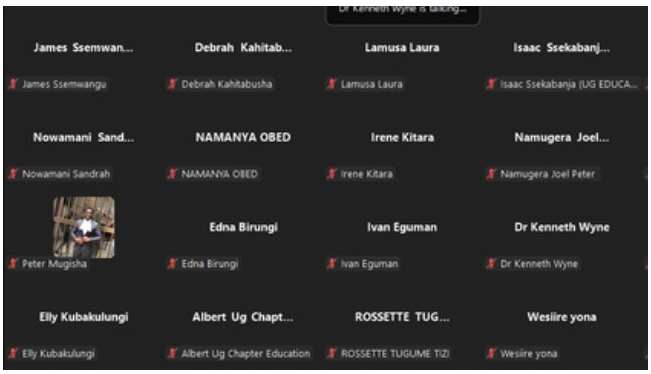
The session also emphasized the Institute's commitment to advancing alternative dispute resolution (ADR). Participants were encouraged to deepen their knowledge and skills in ADR through CIArb's initiatives and training programs.

Introduction to Arbitration training (Second Cohort)

On 4th December 2024, we successfully conducted an Introduction to Arbitration training in collaboration with the CIArb Kenya Branch.

This training brought together participants from diverse professional backgrounds, aiming to enhance their understanding of arbitration as an effective alternative dispute resolution mechanism. The session covered foundational concepts, the arbitration process, and its practical applications in resolving disputes.





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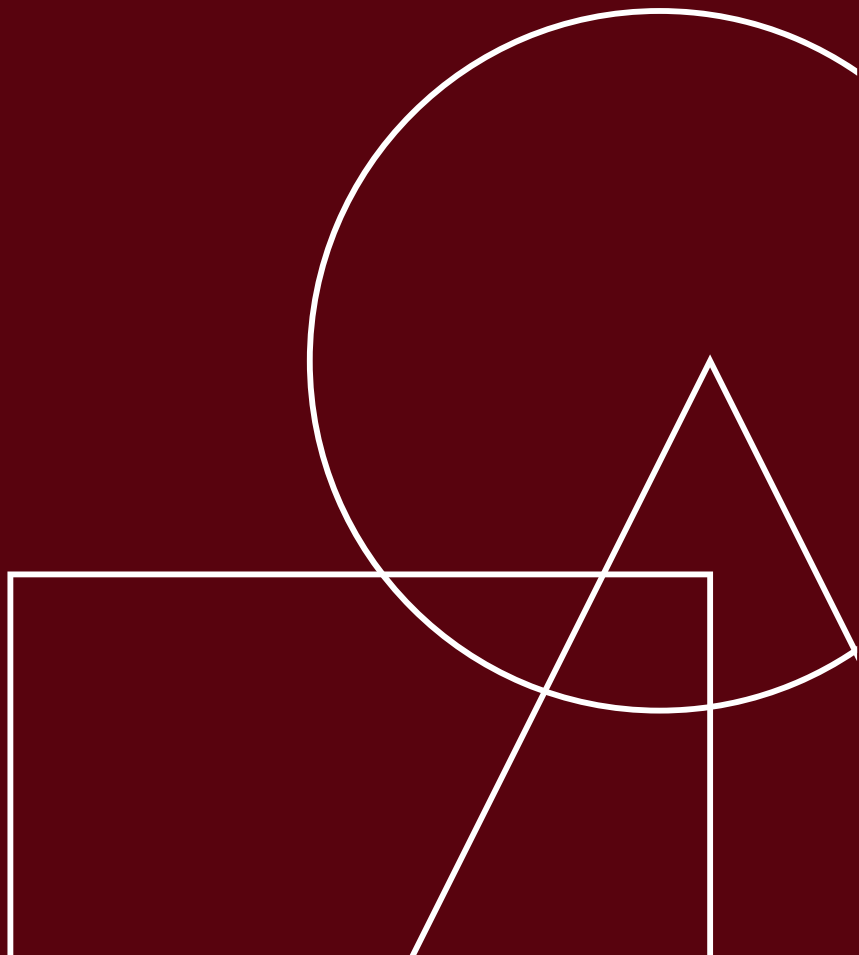
Thought Leadership



Navigating Conflicts of Interest in Ugandan Seated Arbitrations; The Role of the New IBA Guidelines

The growth of arbitration in Uganda has given rise to many issues, including an increasing concern that arbitrators must be seen to be and actually be independent and impartial. Arbitration is largely a private process but the adage that justice must not only be done but be seen to be done holds true just as much as in litigation. It is because of such adage that as a general prerequisite, most arbitration rules require that an arbitrator should be independent, or impartial, or both. Thus, by way of example, SIAC Rules 2016", the ICC Arbitration Rules 2021, the LCIA Arbitration Rules 2020 and DIAC Arbitration Rules 2022 provide that all arbitrators shall be and remain at all times impartial and independent of the parties and none shall act in the arbitration as advocate for or representative of any party.

Besides arbitral institutional rules, most national laws in virtually all jurisdictions impose requirements of impartiality and independence.

For instance, in New York, under the Federal Arbitration Act a party may challenge an arbitration award on the ground that there was 'evident partiality or corruption in the arbitrators'; in UAE (onshore) under its Federal Law on Arbitration an arbitrator can be removed 'if there are circumstances that are likely to give rise to serious doubts regarding his impartiality or independence'; in Singapore under the International Arbitration Act, an arbitrator can be challenged if 'there are circumstances giving rise to justifiable doubts as to the arbitrator's impartiality or independence'; in London under the English Arbitration Act, a party may challenge an arbitrator in the courts if circumstances give rise to justifiable doubts as to his or her impartiality.

In Uganda, s.12(1) of the Arbitration and Conciliation Act ("ACA") is to the same effect.

Whilst the law of the seat and the institutional rules are the primary sources for rules concerning treatment of of issues of arbitrators' impartiality and independence, there are other sources. For example, an arbitrator may be a professional (such as a lawyer) with professional rules to avoid conflicts of interest and anything that may bring the profession into disrepute. There is also 'soft law', being guidance and rules generated by industry or professional bodies which are not mandatory, but which parties either choose to follow or which are taken to reflect best practice and so may be consulted when determining whether there is a conflict of interest.

For example, the International Bar Association Guidelines on Conflicts of Interest in International Arbitration ("the IBA Guidelines") stipulate that "Every arbitrator shall be impartial and independent of the parties at the time of accepting an appointment to serve and shall remain so until the final award has been rendered or the proceeding has otherwise finally terminated."

ABOUT THE AUTHOR

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- *Head of Subject of Alternative Dispute Resolution at Law Development Centre*

These guidelines provide specific potential "conflicts" which are intended to indentify circumstances in which doubts about an arbitrator's impartiality and independence may arise. I will revert to this later on in this article.

How do you determine Independence and Impartiality of an arbitrator in Ugandan seated Arbitration?

Whilst there seems to be universal agreement on the exitence of the arbitrators' obligation of independence and impartiality, there is substantial contraversy and divergence in approaches as to the precise content of these obligations. Are similar standards of impartiality/independence applicable when a court (or arbitral institution) considers whether to: (a) appoint or confirm an arbitrator; (b)remove an arbitrator at the commencement of an arbitration; (c) remove an arbitrator during the course of the arbitral proceedings; and (d) annul or refuse to recognise an arbitral award because of an arbitrator's alleged lack of independence or impartiality?

Although there have been steps in the direction of international standards (e.g., under IBA Guidelines, the New York Convention and the UNICITRAL Model Law), substantial differences continue to exist among national laws in the treatment of issues of impartiality and independence. S.11(6) of the ACA provides that, "The appointing authority in appointing an arbitrator shall have due regard to any qualifications required of an arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator. S.12 (2) of the ACA further provides that the appointment of an arbitrator may be challenged where "circumstances exist that give rise to justifiable doubts as to his or her impartiality and independence".

The above is also reflected in the ICAMEK Arbitration Rules 2018 which provide under rule 19 that "An arbitrator whether or not nominated by the parties conducting the arbitration under these rules shall be and remain at all times independent and impartial and shall not act in arbitration as advocate for any party".Besides the requirement of impartiality and independence, we do not have set rules in Uganda under the arbitral law or enabling rules on how to determine conflict of interest that may give rise to lack of impartiality and/or independence of an arbitral tribunal.

Recently, there have been court cases in Uganda trying to determine independence and impartiality in arbitration. In the case of ***Smile Communications Uganda Limited versus ATC Uganda Limited and Another*****,** the applicant filed an application seeking an order setting aside the arbitral award among other grounds that the award was procured by evident partiality in favour of the respondents.

In interpreting s.12 of the ACA, Court reasoned that when a person is approached in connection with his possible appointment as an arbitrator, it is his/her duty to disclose in writing any circumstances which are likely to give rise to justifiable doubts as to his independence or impartiality. Court interpreted "Independence" to mean that an arbitrator must be free from any involvement or relationship with any of the parties. Court stated that "Impartiality" on the other hand deals with the arbitrator's mental predisposition toward the parties or the subject matter or controversy at hand. Court further opined that impartiality requires that "the arbitrator should not sit in a proceeding in which he or she is interested, or is perceived to be interested financially, personally or otherwise. Partiality encompasses both an arbitrator's explicit bias toward one party and an arbitrator's inferred bias when an arbitrator fails to disclose relevant information to the parties. Evident partiality may be manifested by: (i) "actual partiality or bias;" or (ii) an "appearance of partiality;" or a "reasonable impression of partiality."

Court further reasoned that one of the most crucial aspects of the arbitrator's role is neutrality and lack of independence may create an imperfect arbitration and prejudgment which renders the process "a sham formality, an unnecessary social cost". Court further opined that *"upon appointment, an arbitrator has the duty to run a conflict check prior to the commencement of the arbitration and disclose the results to the parties. This enables the parties to make an informed decision as to the arbitrator's partiality, thereby minimising the risk of the award being set aside later on account of the arbitrator evident partiality. Any connection or relationship an arbitrator has -*

with the parties or the subject matter of the dispute that might give rise to an impression of possible bias must be disclosed. Thus, knowledge of a potential conflict triggers either the duty to investigate or the duty to disclose."

Similarly, in the case of ***Pearl Marina Estates Limited versus Roko Construction Limited*** Court guided that advocates or other professionals who are nominated to act as arbitrators should consider what steps should be taken to ensure early disclosure at the time of appointment, bearing in mind all relevant obligations of confidentiality. Further doubts as to independence or impartiality of an arbitrator are justifiable if they give rise to an apprehension of bias in the eyes of an objective, reasonable observer. Appearance and perception often triumph over substance and reality. The concept of "bias" or "partiality" concerns the inclination of an arbitrator, either in favour of one of the parties or in relation to the issues in dispute. Court stated that it must be demonstrated that the arbitrator had an inclination, either in favour of one of the parties or in relation to the issues in dispute, or a direct and definite interest in the outcome of the arbitration. Court guided that an arbitrator;-

1. is under a continuing duty to disclose any circumstances which, from the perspective of a reasonable third person, are likely to give rise to justifiable doubts as to his or her impartiality or independence;
2. is under a duty to disclose all circumstances which may reasonably call into question his or her independence in the mind of the parties and should particularly inform the parties of any relationship which is not common knowledge and which could be reasonably expected to have an impact on his judgment in the parties' eyes.
3. must, as a general rule, disclose three sets of circumstances: (i) a prior involvement in the dispute in some other capacity; (ii) any direct or indirect financial interest in the outcome of the dispute; and (ii) any past or present relationship with a party, an affiliate of a party, counsel to a party, another arbitrator, a witness or expert.
4. must disclose any anticipated future relationships during the course of the proceedings.

Once an arbitrator makes a disclosure, there are two possibilities: a party must either promptly challenge the arbitrator, within a period of 15 days after becoming aware of the circumstances, or be deemed to have waived any future objection based on the facts and circumstances covered by that disclosure. The duty of disclosure is premised in the arbitrator's overriding duty to be impartial and independent of the parties, and to remain so throughout the proceedings. The duty is triggered when a person is approached in connection with his or her possible appointment as an arbitrator, and then continually throughout the proceedings if new facts and circumstances emerge.

Depending on the circumstances, it therefore becomes imperative for the party to ensure that an objection is raised at the appropriate timing, especially where the arbitrator has not disclosed or circumstances relating to the arbitrator's impartiality or independence have arisen. It is critical to consider the different procedural contexts in which objections to the arbitrator's independence or impartiality may be made. Such objections may be made: (a) in an objection or challenge to an arbitrator at the outset of the arbitration, before any work is performed; (b) in an objection or challenge to an arbitration during the course of arbitration, but before an award has been made, or (c) in an action to annul/set aside or deny recognition of an arbitral award, after the arbitration has been concluded.

The Court in the two cases cited above tried to lay ground rules of circumstances that can impact on the arbitrator's impartiality or independence. However, the circumstances are not exhaustive.

The Role of the IBA Guidelines on Conflict of Interest

Whilst Courts in Uganda have been instructive on the issue of independence and impartiality, the arbitral law does not provide detailed guidance on what needs to be disclosed and the extent of disclosure of conflict of interest. The intricate nature of social, business and professional relationships might blur the conflict of interest or disclosure lines. Most institutional arbitral rules address conflicts of interest.

However, parties do not have to use an institution to help manage the arbitration process notwithstanding the significant benefits using an institution brings. It can therefore be challenging to adhoc arbitrations to navigate conflict of interest issues that can affect determining the arbitrator's impartiality or independence.

Thus, it can be helpful to adopt the IBA Guidelines. They are the leading global soft law standards to assist the parties, counsel, arbitrators, institutions and courts to indentify and manage conflict of interest to safeguard impartiality and independence of arbitrators. Intially introduced on 22 May 2004 and updated on 23 October 2014, the IBA Guidelines received a refresh on 25 May 2024. The 2024 edition offers additional clarification, context, and examples to the existing Guidelines, while keeping the substance and spirit of the earlier versions.

The IBA Guidelines though non-binding, reflect a multinational consensus and therefore have been used as reference for handling issues related to conflicts of interest in international arbitration. They have become quite influential in the face of increasing challenges to international arbitrators and awards based on arbitrator conflicts. The Guidelines are frequently viewed by courts and arbitral institutions as providing relevant criteria for assessing the impartiality and independence of a challenged arbitrator.

Below are key aspects of the IBA Guidelines that can help arbitration process in Uganda in dealing with conflict of interest issues that can affect the independence or impartiality of an arbitrator;

Determining conflict of interest.

Part I of the Guidelines provide for General Standards Regarding Impartiality, Independence and Disclosure. It contains seven principles that must always be considered. For instance, General Standard 2 sets out the circumstances and the test in which an arbitrator should decline an appointment or resign if already appointed. The test is whether the situation, "from the point of view of a reasonable third person having knowledge of the relevant facts and circumstances, would - give rise to justifiable doubts as to the arbitrator's impartiality or independence." Under this standard, if: (i) an arbitrator has doubts as to his or her own independence; or (ii) facts or circumstances exist which, from a reasonable third person's point of view, would give rise to justifiable doubts as to the arbitrator's independence, the arbitrator should decline or resign the appointment.

The explanatory guidance in the Guidelines has now been updated in the 2024 version to clarify that "justifiable doubts" should be considered by reference to the objective test set out in article 12(2) of the UNCITRAL Model Law on International Commercial Arbitration, offering a clearer benchmark for determination of this issue.

Duty of the Parties and the Arbitrator-Traffic Lights System

Part II of the IBA Guidelines provide important guidance on identifying, assessing and disclosing possible conflicts of interests through a "traffic light" system, which stipulate examples of situations that may or may not constitute conflicts of interest and the level of disclosure required in each situation. The Guidelines divide possible conflicts into three traffic light categories:

a) **Red list items**, being situations where there is clearly a conflict. This is divided further into 'Red Non-waivable' situations which result in automatic disqualification of the arbitrator, and 'Red Waivable' situations which require notification of the parties and their express consent to be given (i.e., a specific waiver provided) for the arbitrator to act.

The difference between these two lists is that the former includes "...situations deriving from the overriding principle that no person can be his or her own judge" and therefore such conflict cannot be waived, whereas the latter includes situations which can be waived if the parties being aware of such conflict agrees to the waiver." In other words, if the situation is the same or similar to a situation in the Non-Waivable Red List, then to comply with the IBA Guidelines, the arbitrator cannot act. The 2024 version of the amended Guidelines draws a distinction between circumstances that are described in the Non-Waivable Red List in Part II of the Guidelines (where an arbitrator should -

decline or refuse to act) and circumstances falling within the Waivable Red List (where an arbitrator can make a disclosure).

b) **Orange List** sets out, "'...specific situations that, depending on the facts of a given case, may, in the eyes of the parties, give rise to doubts as to the arbitrator's impartiality or independence" and therefore, the arbitrator has a duty to disclose such situations. These require notification of the parties and an invitation to the parties to make an informed decision whether to request that the arbitrator be disqualified on the basis that there is an objective, justifiable doubt as to an arbitrator's impartiality and/or independence.

c) **The Green List** sets out "...specific situations where no appearance and no actual conflict of interest exists from an objective point of view" and thus, the arbitrator has no duty to disclose such situations. This for instance, includes a situation where the arbitrator has expressed a view on an issue that arises in the arbitration but this opinion does not focus on the specific dispute. No obligation to disclose arises or a limit to disclosure applies based on reasonableness.

General Standards; Disclosures by arbitrators

Of central procedural and practical importance to the IBA Guidelines is the requirement for disclosures by the arbitrators and the Guidelines' treatment of this obligation.

General Standard 6 concerns relationships which may constitute a conflict of interest or require disclosure and contains the following clarifications:

1. the organisational structure and mode of practice of an arbitrator's law firm or employer should be taken into account when considering conflicts;
2. any legal entity or natural person over which a party has a "controlling influence" may be considered to bear the identity of that party;
3. third-party funders and insurers may be considered to have the same identity as a party for the purposes of assessing an arbitrator's independence, when the funder or insurer exercises a "controlling influence" over the party, or has influence over the conduct of proceedings, including the selection of arbitrators; and
4. in arbitrations involving states, the explanatory notes encourage arbitrators to consider disclosing relationships with potentially related entities, such as regional authorities or autonomous agencies, regardless of whether those entities are private, or legally and politically independent from the central government.

General Standard 3(a) of the IBA Guidelines provides that:

"If facts or circumstances exit that may,in the eyes of the parties, give rise to doubts as to impartiality or independence, the arbitrator shall disclose such facts or circumstances to the parties, the arbitration institution or other appointing authority (if any and if so required by the applicable institutional rules) and to the co-arbitrators, if any, prior to accepting his or her appointment, or, if thereafter, as soon as he or she learns about them."

The above formulation is broad, requiring disclosure of facts that "may" give rise to "doubts" in the "eyes of the parties". This standard omits any express objective limitation and reduces the requirement of materiality of potential conflicts ("doubts" rather than "justifiable doubts") and focuses on the parties possible subjective reactions ("in the eyes of the parties"). Thus, the arbitrators should take account of all facts and circumstances known to them when considering whether to make a disclosure. General Standard 3 seems to impose sweeping disclosure obligations, requiring prospective arbitrators to "stretch their minds" to indentify possible conflicts or grounds for suspecting partiality.

Further, General Standard 3(e) clarifies that if an arbitrator should make a disclosure but is prevented from doing so by professional secrecy rules, or other practice or conduct rules, the arbitrator should not accept the appointment or should resign; and a failure to disclose can give rise to justifiable doubts as to an arbitrator's impartiality.

With the new 2024 revision, General Standard 7(a) now states that a party shall inform the arbitrator, the tribunal and all other parties (as well as any administering or appointing authority) of any relevant direct or indirect relationship between the arbitrator and 'the party (or another company of the same group -

of companies or an individual having a controlling influence on the party in the arbitration), or between the arbitrator and any person or entity with a direct economic interest in the award to be rendered in the arbitration' (i.e. a third-party funder or insurer).

The UNCITRAL Code of Conduct for Arbitration in International Investment Disputes, 2023, like the IBA Guidelines, mandates that arbitrators disclose circumstances that are "likely to give rise to justifiable doubts." This ongoing disclosure obligation includes:

1. relationships with any party, counsel, arbitrators, experts, or interested parties, including third-party funders;
2. interests in the proceeding's outcome;
3. appointments as counsel, arbitrator, or expert for the past 5 years that relate to international investments or involve a party or their counsel;
4. prospective parallel counsel or expert appointments in other international investment disputes or related proceedings.

The duty to disclose does not only concern the arbitrators but also the parties themselves. Indeed, parties are required to disclose any relationship with an entity or person "it believes an arbitrator should take into consideration when making disclosures", as well as the identity of all counsel advising on the dispute, not only those appearing in the proceedings as used to be the case.

Advocates and Law Firm issues

Many arbitrators today come from global legal practices and law firm set up. Regardless of structure, this increases the likelihood of conflicts.

General Standard 6(a) clarifies that arbitrators are, in principle, considered to bear the identity of their law firm and that when considering potential conflicts or disclosure, the activities of the arbitrator's law firm and the relationship of the arbitrator with the firm should be considered in each individual case.

If the activities of an arbitrator's firm involve one of the parties, this will not necessarily constitute a source of conflict or a reason for disclosure, but it must be considered as a fact or circumstance that could do so.

To mirror the fact that arbitrators may not only work for law firms but also be employed by a company or any other kind of organisation, The 2024 revision has tweaked General Standard (6, which now includes the possibility for an arbitrator to bear the identity of an "employer", and not only of a law firm. Indeed, the term employer has been added throughout General Standard 6, indicating notably that "a) The arbitrator is in principle considered to bear the identity of the arbitrator's law firm or employer".

Some additional details on what constitutes a law firm have been added in the explanation of the General Standard, "As a general proposition, a law firm for these purposes is any firm in which the arbitrator is a partner or with which the arbitrator is formally associated, including in the capacity of an employee of any designation, as counsel, or of counsel.Structures through which different law firms cooperate and/or share profits may provide a basis for deeming an arbitrator to bear the identity of such other firms. Similarly, although barristers' chambers should not be equated with law firms for the purposes of conflicts, disclosure may be warranted in view of the relationships between and among barristers, parties, and/or counsel."

A new scenario has been added to the waivable Red List where an arbitrator or his or her firm regularly advises the party or an affiliate of the party, and the arbitrator or their firm derives significant financial income therefrom.

Waiver by the Parties

Central to the IBA Guidelines is the concept of waiver. General Standard 4 provides that if "within 30 days after receipt of any disclosure by the arbitrator or after a party learns of facts or circumstances that could constitute potential conflict of interest for an arbitrator, a party does not raise an express objection with regard to that arbitrator... the party is deemed to have waived any potential conflict of interest by the arbitrator based on such facts or circumstances."

According to the Guidelines, a substantial number of potential conflicts are waivable – in particular all of the conflicts indentified in Orange List. General Standard 4(a) includes a presumption of knowledge in relation to any fact or circumstance which the parties could -

have uncovered at the outset or during proceedings through a "reasonable enquiry". If relevant facts and circumstances are readily ascertainable and not on the Non-Waivable Red List, then parties may be deemed to have waived a right to object to them after 30 days from the date when reasonable enquiries would have yielded the relevant facts and circumstances (constructive knowledge).

The only material change to General Standard 4 under the 2024 revision is that parties are now deemed to know facts or circumstances that could constitute a potential conflict of interest for an arbitrator that would be revealed by a reasonable enquiry at the outset or during proceedings.

This creates an obligation on the parties to "do their homework" at the outset. This ought to reduce the scope for some of the cynical attacks on arbitrator independence/impartiality that parties sometimes deploy for tactical reasons during the course of proceedings. It also creates a clear incentive for parties to conduct their own inquiries into any potential conflicts of interest concerning potential or current arbitrators.

However, can such waivers of conflicts of interest supersede the mandatory right of challenging an arbitrator? There exists limited guidance in terms of the validity and enforceability of such waivers and its ultimate impact on the right to have an impartial and independent arbitral tribunal. The IBA Guidelines only recognizes the use of waivers. The Guidelines do not take any conclusive position on the validity of the waiver, and leaves this question to be determined by the specific text of the waiver, the applicable rules and law.

Conclusion:

The IBA Guidelines are helpful and worthy of adoption in Ugandan seated arbitrations. In ***Sierra Fishing Company versus Farran,*** for example, the English Court relied heavily on the IBA Guidelines when it held that there were grounds to conclude a real possibility of bias given the fact that the arbitrator had previously acted as a legal advisor to one of the parties, and had taken the challenge personally.

Conversely, there has equally been some criticism of the IBA Guidelines and in particular, of the non-waivable red list items. The **W Ltd versus M Sdn Bhd case** concerned an arbitrator who worked for a law firm which regularly acted for a client who shared a corporate parent with one of the parties to the arbitration. As per the IBA Guidelines, this scenario would have fallen squarely under the Non-Waivable Red List. However, the English Court held it instead to be a case requiring case-specific judgment to be applied, thus rejecting the IBA Guidelines' categorisation. Whilst this case did not decide the matter of the usefulness or otherwise of the IBA Guidelines in general, it does illustrate the fact that care must be taken when applying them to the specific facts of the matter, and that they remain non-binding guidelines.

By adhering to these guidelines, arbitrators and arbitration practitioners, can uphold the integrity of the arbitration process and promote trust in the outcome. It will be important to clarify in the agreement to arbitrate that parties have incorporated the IBA Guidelines in addition to other matters relating to determining the independence and Impartiality of the arbitrator(s).

Quantifying Claims: The Quantity Surveyor's Role in Arbitration

Construction projects have become bigger, more complex, more expensive and require the participation of several persons with extensive educational qualifications and vocational skills. With numerous participants and stakeholders, sometimes with differing views and motivations, employed in various trades and professions, disagreements and disputes are inevitable.

Most if not all, standard forms of construction contracts provide for one or more Alternative Dispute Resolution (ADR) methods to aid in quick dispute resolution when the need arises. These include negotiation, mediation, conciliation, adjudication and arbitration, to mention but a few.

Among the ADR methods, arbitration has been identified as one of the popular methods used in commercial disputes. According to the publication by Unctad (2005), "Arbitration is private justice born out of the parties' will. By including an arbitration clause in a contract, the parties choose to settle their disputes –in the event any arise– out of court. Those disputes will be submitted to arbitrators." Hence, when the parties agree to resolve any arising disputes outside court, they will often incorporate a dispute resolution clause. Consequently, once the clause singles Arbitration as one of the preferred ADR methods, then the clause will form the foundation of an arbitration agreement between the parties to the contract. Therefore, if any disagreements arise, the parties are bound by the arbitration clause/agreement to refer their dispute to arbitration.

According to Fisher (2017) arbitration has several advantages, including being private, ensuring justice, principle of party autonomy, and is concluded with a final award that upon registration is enforceable under the law.

Construction Claim.

A claim in a construction contract law refers to a formal request made by either party to the contract as a request for compensation for damages caused by failure of the other party to fulfil their contractual obligations as specified in the contract. Claims arise from various issues that are supported by contractual provisions, project conditions, or external factors that affect the execution of the work and typically involve financial compensation, extensions of time, or changes in project scope of work.

Quantity Surveyors are specialized professionals who provide expert guidance on the financial and contractual aspects of construction projects. Their responsibilities encompass a wide range of activities, from initial cost estimation to final account settlement. They further carry out cost planning and estimation, budget management, tendering and procurement, contract administration, site measurement and valuation, financial reporting, value engineering, sustainability and risk management.

ABOUT THE AUTHOR

Amina Nassazi, MCIArb

Vice Chairperson of the CIARB Young Members Committee.

This expertise is vital in the context of dispute resolution particularly through ADR methods like arbitration, where clear and precise quantification of claims can determine the outcome of disputes.

During arbitration, their responsibilities include preparation of claims and appearing as expert witnesses. They further support by providing essential financial, contractual, and technical expertise. They ensure that disputes are resolved based on accurate cost assessments, proper contract interpretation, and clear evidence, making them invaluable in arbitration proceedings. By offering expert advise, preparing construction claims, and providing impartial analysis, the QS helps to bring clarity and fairness to the resolution process.

Preparation of Claims

It is important to note that when an aggrieved party realises the need to launch or serve a claim, they are fundamentally guided by the contract agreement. Numerous construction contracts support a number of claims. The most common include; delay claims, change order claims, price escalation claims, payment claims, loss of profit claims, disruption claims, wrongful contract termination claims, and variation claims, among others.

Preparation of any claim is a meticulous process that requires attention to detail, strong analytical skills, and an in-depth understanding of contract law. Therefore, effective claim preparation not only supports the financial interests of the claimant but also helps maintain professional relationships among stakeholders. When a QS is actively involved in all construction phases and processes, they play a vital role in the preparation of claims in arbitration. A valid and well-supported claim that effectively communicates one's position will enhance the party's chances of a successful resolution outcome.

Subsequently, effective claim preparation relies on a robust set of records and documents. These are classified into pre contract documents (contracts, specifications, and any pre-contract correspondence), communication records (all written and verbal communication related to the project, including site instructions, revised drawings, emails, letters, and meeting minutes), progress report and work programme information (project schedules, weather reports, accidents and any changes to the project timeline), post-contract documents (amendments, change orders, and any post-contract correspondence), cost information (invoices, receipts, cost estimates, and financial reports related to the project), and site records (daily logs, site photos, inspection reports, and any other on-site records). Therefore, any successful claim will require thorough documentation and the essential documents required are highly dependent on the nature of the claim or dispute.

Construction claims can be complex and vary by jurisdiction, but several universal principles typically govern them. A valid construction claim should clearly identify the specific contract terms being violated and provide a detailed account of the events leading to the claim, including but not limited to timelines and actions taken by all parties. It must include proof of timely "Notice of Claim" to the other party, thus, the claimant should precede its claim with a "Notice of Claim" that is presented or raised within the specified time frame according to the contract provisions. For example, within the FIDIC Red book 2017, sub clause 20.2.1 requires that "Notice" must be given to the engineer "as soon as practicable and no later than 28 days after the claiming Party became aware, or should have become aware, of the event or circumstance ". Failure to adhere to this clause will render the claim invalid.

A valid claim should also outline the specific reasons for the claim such as breaches of contract, scope of work changes, delays, or unforeseen circumstances and present comprehensive supporting evidence like photographs, correspondence, change orders, and invoices. Additionally, the claim should include a clear calculation of damages, demonstrate how the other party's actions caused these damages, and document any efforts made to mitigate losses. It's essential to comply with relevant legal and contractual requirements and to clearly state the desired relief, whether it be monetary compensation or specific performance.

In a nutshell, navigating construction claims effectively requires a good grasp of these principles and careful management of contractual relationships throughout the project.

Upon collection of all documents, the QS can proceed to prepare a valid claim while being guided by these principles. Therefore, the claim must address the background of the project, share detailed description of the issue as well as supportive evidence, cite the supporting contractual provision, provide evidence to support the claim, share the damages suffered and detailed calculations, and the relief sought by the party.

Expert witness

The arbitral tribunal often requires help in understanding technical aspects of any dispute. This is often provided by an expert witness. Thus, the role of the expert witness in construction disputes is indeed pivotal, as their specialised knowledge and opinion can be crucial in clarifying complex technical issues, helping the arbitration panel, or other adjudicating body understand the facts of the case. These technical issues might relate to contract interpretation, industry standards, project management practices, cost estimation, building defects, or engineering matters, among others.

The expert's primary role is to provide a professional opinion that helps the decision-maker understand the relevant facts and issues in a way that is both clear and supported by industry standards, practices, and regulations.

The QS, as an expert witness, starts by thoroughly reviewing all relevant documents, including contracts, project plans, cost estimates, and previous correspondence, to gain a comprehensive understanding of the dispute. They analyze financial data, cost reports, and project timelines to evaluate the claims or counterclaims, focusing on factors such as delays and cost overruns. The QS then prepares a detailed report that clearly presents their findings, methodology, and conclusions, addressing the critical issues raised during the arbitration.

When called upon, they provide expert opinions on aspects like cost reasonableness and project valuation, ensuring their testimony remains impartial and grounded in factual analysis. They may also undergo cross-examination by the opposing legal team, necessitating a composed defense of their views. Throughout the arbitration, the QS collaborates closely with legal teams to clarify issues and refine arguments, aligning their testimony with the broader legal strategy. Finally, they adhere to high ethical standards, maintaining integrity and impartiality to uphold their credibility as an expert witness to the tribunal.

In a nutshell, the QS executes their role as below:

1. Understanding the Case: The QS reviews all relevant documents, including contracts, project plans, cost estimates, and any prior correspondence. This helps them grasp the context and specifics of the dispute.
2. Data Analysis: They analyze financial data, cost reports, and project timelines to assess the claims or counterclaims made by the parties involved. This might include evaluating delays, cost overruns, and the financial implications of various project decisions.
3. Preparation of Expert Reports: The QS prepares a detailed report outlining their findings, methodology, and conclusions. This report must be clear, concise, and backed by evidence, addressing the key issues raised in the arbitration.
4. Providing Expert Opinion: During the arbitration process, the QS presents their expert opinion on specific matters, such as the reasonableness of costs, valuation of works, and adherence to industry standards. They must ensure their testimony is impartial and based on factual analysis.
5. Cross-Examination: The QS may be cross-examined by the opposing party's legal team. They need to defend their opinions and methodology, remaining composed and professional under questioning.
6. Collaboration with Legal Teams: Throughout the arbitration, the QS works closely with the legal teams to clarify issues, refine arguments, and ensure that the expert testimony aligns with the legal strategy.

7. Adherence to Ethical Standards: The QS must maintain impartiality and integrity, adhering to professional standards and ethical guidelines, ensuring that their role as an expert witness is credible and respected.

Consequently, the expertise of a QS is invaluable in resolving disputes in construction arbitration. By providing objective, detailed, and well-documented claims, and by acting as an expert witness, the QS ensures that financial disputes are addressed based on solid evidence, contractual obligations, and fair assessment. In essence, the QS helps to ensure that the arbitration process is fair, efficient, and results in a balanced resolution.

The role of the QS in arbitration is thus multifaceted, involving the preparation of well-supported claims, expert analysis of complex financial and contractual issues, and providing testimony that can guide the tribunal's understanding of the case. Given the often technical nature of construction disputes, the QS's input can be the key factor in achieving a successful outcome for the party they represent.

In conclusion, the QS is an essential figure in the arbitration process, acting as both a financial expert and a technical advisor, helping the tribunal navigate the complexities of construction disputes and ensuring that claims are substantiated, fair, and aligned with contractual terms.

A FIRE SIDE CONVERSATION WITH VICTOR ODONGO

From building grass thatched houses to magnificent modern infrastructure and managing mega projects in the region

With:
Nanza N. Iga, MCIArb MCIPS, IP3

I had the privilege of sitting down for a one-on-one conversation with Victor Odongo. I determined beforehand not to "google" him but instead go with a blank canvas to get to know the man of many distinguished titles. Setting up the meeting was the easy part and I noticed from the moment I made the request for this interview on behalf of CIArb, Uganda-Chapter, Victor was all in.

We set up a meeting date and time then I let Victor choose the venue. **As a true reflection of who Victor is, he opted for an old Club house in the center of the city where I now see his attachment to old yet willingness to transition to new and futuristic ideology is got not just professionally but personally in the "built environment".**

Please join in for the insightful and heartwarming conversation I had with Victor and I will let you be the judge of whether or not the title of "poster child" for the multi-dimensional nature of ADR is befitting.

Good afternoon Victor, my name is Nanza the Vice Chairperson of the Education and Training Committee of CIArb Uganda-Chapter. Thank you for accepting to be our first feature personality for our quarterly newsletters.

Thank you very much Nanza, happy to do this with you.

In this interview we really would like to get to know you from a personal perspective because when we meet in professional spaces usually it is the titles especially academic or professional qualifications that precede us. Who is Victor without titles, if there is such a thing?

Victor (smiling for a moment) just a normal 56-year-old I would say, I have a family I have been married for over 30 years now. We have three sons, the eldest is a lawyer, the second one is a QS like myself and the last one is still a student. Like most people, my generation really grew up surrounded by family from normal backgrounds went through the education system and ended up in the professional spaces we now operate. Outside work, I'm very interested in sports and travel.

When you spoke about family the focus was on the current family, what about the family of origin?
My father passed away in 1977 when I was nine. We are three girls and four boys in my family. I happened to be in the middle of the pack and fourth of seven. So, growing up I found myself with a bit of "dispute resolution" between the ones who were bigger than me and the ones who were smaller than me. It simply happened that I would find myself having to step in because I could somehow understand the older ones and I also understand the younger ones in case of disagreements.

Oh! that's interesting. Thank you for telling us about that because it helps in knitting the tapestry of this conversation leading to your professional choices growing up. Please tell us more about how your early childhood shaped this career choice.

I was born in Kenya though I am a Samia from the Busia area in Uganda. I went to a regular government school Busia in Kenya. For my high school I went to a school called Maseno School. As much as I was interested in sciences from early in school, I didn't like biology. I was more into mathematics and physics so naturally I gravitated towards what you call physical sciences and not biological sciences or humanities.

Growing up we had to be creative you had to make your toys, balls and all other play stuff. In the village we lived in huts and at certain age you had to leave your parents and build your own with your hands. That was what gave me hands on experience in building things. However, even at that level, there was a need for developing special skills like thatching huts. That was a rare and prestigious skill we all aspired to. These revered skills were paid for through money and other privileges like special meals which made it a very admirable role.

As I grew older, I started visiting bigger cities outside my home. I went to Nairobi and started seeing structures which were bigger and fancier than my community huts. I would come home and see the differences in the strength of the structures. Occasionally you would come and see somebody's iron sheet hooks flying off the structure due to poor workmanship unlike the tall and sturdy structures I saw in the city. This sparked in me a curiosity in the built environment.

Do you remember your 1st project?
My first project after graduating? yes, I do interestingly. I finished Uni and was employed by a consultancy practice and my first project was to do with a lecture hall at the same University. I was the Project Quantity Surveyor.

How then did you start the professional ADR journey?
My first experience with CIArb was in 1992. There was a training for entry course of arbitrators in Kenya and my employer paid for us to attend the course though I did not sit the entrance exams. This alerted me to the fact that I needed to acquire Dispute Avoidance as well as Dispute Resolution skills. The training also made me aware that all Standard Contract documents used on Construction and Infrastructure projects always have mandatory dispute resolution clauses.

Quantity Surveyors primarily handle Contracts and Costs on Construction & Infrastructure projects and they are always at the center of resolving conflict on projects and possession of dispute resolution would make me a better Quantity Surveyor. Consequently, I eventually sat for the Entry Exams in Nairobi in 2005 and became an Associate of the Institute. I later on sat for the membership course in Kigali in 2017 and qualified to become a Member of the Institute. Later. In between I had been registered with CADER and I had also been registered as a Mediator.

In 2000, I went into Private Practise as a Quantity Surveyor and Project Manager when I formed Buildcost Associates and Later on Buildcost Project Management Ltd. . At this point, I started getting actively involved in ADR taking on different roles like expert witness, adjudicator, supporting with claims preparation and more.

What other ADR skills do you possess outside of Arbitration?
I also got registered and got training for mediation, there after I trained as an adjudicator. I've also served on a number of Dispute Avoidance Boards and been part of various arbitration panels in the built environment and also served as expert witness.

This is indeed a fireside conversation. The only difference is a there is no actual fire but you have coffee at least. Back to the multi-dimensional world of ADR and I can now refer to you as the poster child because there is the myth that arbitration or ADR is for lawyers. We now to get into your experience as a non-lawyer in the ADR space. Please share your experience in this regard.

When it comes to contracts, I believe that there's two aspects of a contract and there's the legal side and the psychological side of the contract. A lot of disputes come not because of the legal but many a time disputes arise because of the psychological aspects of the contract. Even to date a lot of documented disputes in construction industry are due to the same. Meaning that in order to effectively resolve the dispute, there is a need not just for legal expertise but also other interpersonal and professional skills. While the ADR space is largely occupied by lawyers, it is possible as a non-lawyer to prove yourself and bring some tangible value to the whole ADR table as a collective.

The jury is still out on whether or not lawyers and not legal professionals are the most preffered ADR practitioners in dispute resolution. What is your view?

By preference, it is normal for clients to want lawyers in their dispute resolution. However, over the years I've realized a very interesting thing and it is something that whoever is managing the ADR processes must take into consideration the other realities of a dispute. This calls for a delicate balance in the skill sets between the legal and non-legal to attain both the expected construction industry as well the legals thresholds that will lend credibility to any award. The balance requires an objective and fair process that focuses on both the legalities and the realities of the dispute. In the construction industry there are times where the experience of construction professional(s) have helped parties resolve the dispute faster compared to when the dispute is handled by only Lawyers. It is also increasingly clear that multidisciplinary panels have been more effective in resolving disputes conclusively.

You highlight the importance of distinction between legalities and realities in the process of dispute resolution. Why is this critical especially in the enforceability of arbitral awards?

In my vast experience in ADR, realities do matter as much as legalities in any dispute resolution. The tendency to focus on just the legal aspects may result in an award that is set aside. And in the construction space, especially in adjudication, once a process is challenged, enforcement is suspended. Unlike in other known jurisdictions like the UK where you "pay now and appeal after" the same is not true here.

This is further complicated in the public sector where interests of the public must be protected. A good ADR decision will be made ineffectictive just because Accounting Officers, Attorney General or other authorities want to put public interest considerations of expenditure and accountability instead of the merit of the decision. It is therefore important for ADR practitioners to have this at the back of their minds when making decisions.

We cannot have this discussion and not mention Sustainability and ESG issues. Where in your view is the confluence between ADR and ESG?

This largely depends on the form of contract document used. Currently, all forms of contact, have made compliance with ESG a mandatory condition and failure to comply is punished. In the case of Uganda, we have been thrust into the Oil and gas sector in the recent past and this has also highlighted the importance of complying with ESG requirements in order to protect both the environment as well as the human beings engaged in the sector. Basically, the terrain is changing very fast and ADR practitioners must ready themselves to also handle disputes that might arise primarily from ESG issues. It is a fact that disputes will certainly emerge from these mega projects and they will need to be resolved in real time due to the severity of possible consequences on both the Environment and people.

Victor, you have done an awesome job of bringing as through the ADR journey of 3 decades from your front row seat as a seasoned practitioner. We appreciate that. As we conclude, what recommendations do you have for CIARB Uganda if we are to ably prepare to take up space in the fast-growing world of ADR?

CIArb Uganda has a pool of qualified members. What CIArb Uganda should focus on is to continually improve the skill sets of its members and ensure that it becomes relevant in the dispute resolution space in Uganda.

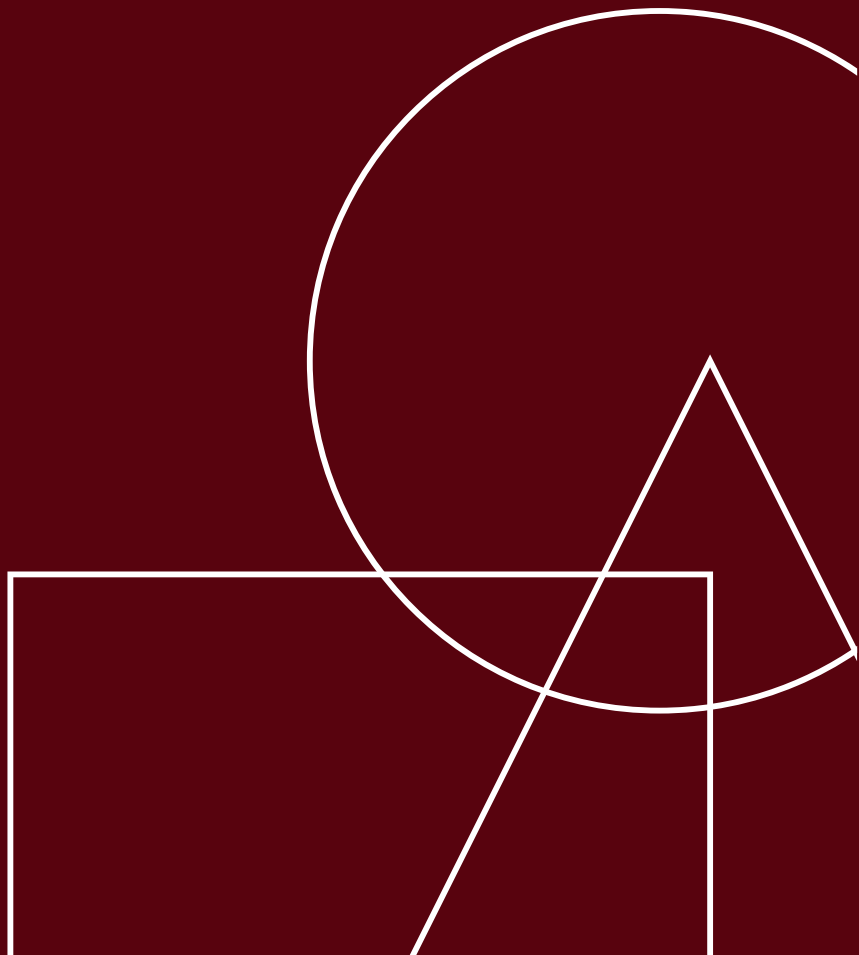
CIArb Uganda should aspire to set up a credible International Dispute Resolution Center in Uganda. This will ensure that we have a trained pool of arbitrators of international repute. The membership will have to acquire skills, competences and exposure to the global ADR standards and this will give our members the opportunity to handle international disputes and consequently make Uganda a favorable ADR destination.
CIARB Uganda should also seize the opportunity to build capacity. We have a lot of young people who are very enthusiastic about ADR. Our experienced professionals should therefore be ready to give back to society by offering mentorship and opportunities .to the young professionals.

Thank you very much Victor. Thank you for your time and for these informative insights. See you at the meet and greet event.

Fun Facts about Victor

- He describes himself as a digital migrant as opposed to his sons who are digital natives.
- He started dispute resolution at a young teen age since he was a middle child and believes he understood the complexities of both his younger and older siblings.
- Victor doesn't want to get involved in politics.
- Victor has lots of grand projects to his name in the EA region but won't name drop at all.

03
Appreciation



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