DISPUTE RESOLUTION UPDATE

In This Edition

LACIAC'S ADR Personality Special

Swimming Against the Current: The Emerging Jurisprudence as Regards Right to Appeals of Arbitration Awards in Kenya

Virtual Dispute Resolution Proceedings in the New Normal: Its Evolution and a Review of Select International Texts

News Items

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Welcome to the First Edition of LACIAC's 2020 E-Newsletter

A lot has changed in the world since our last Edition. If there is anything that the last three months have taught us, it is that we live in a highly inter-connected world. But what does this mean in the context of Alternative Dispute Resolution (ADR)?

One effect is that the walls of jurisdiction are quickly thinning out, making it critical for ADR practitioners to align with global best practices. In this edition, we explore the fundamental skills ADR practitioners must hone irrespective of their jurisdictions to remain relevant.

We also examine a change in Case Law in Kenya where two supreme court cases overturn a long-established principle prohibiting appeals from the high court to the court of appeal in arbitration proceedings.

Finally, this edition discusses the relevant laws on virtual proceedings relating to ADR.

We hope this Edition provides you with some useful resources on ADR and that you enjoy reading it. If you have any feedback on the content of this Edition, please reach out to us.

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LACIAC'S ADR Personality Special

Tsegaye Laurendeau

Counsel, International Arbitration Practice, **Shearman and Sterling**

More than ever before, it has become evident that we live in an inter-connected world. As arbitrators, the idea of building an international arbitration practice and experience has become ever more significant. In this edition of LACIAC's ADR Personality Special, Tsegaye Laurendeau, takes on a journey that demystifies the secrets to breaking into the international sphere, taking us back to the foundational qualities and essence of arbitrators – thus bringing a different dimension to the conversation.

Experienced or new to arbitration, you will enjoy reading Tsegaye perspective on building an international career as he lays bare the 'tips for success' in a pragmatic fashion, guarantying each one a good read.

1. **Your experience includes international arbitrations under the ICC, ICSID, CRCICA, HKIAC, and UNCITRAL Arbitration Rules. What would you say is the single reinforcing feature for building a robust international-arbitration profile and why?**

Obviously, there is no single skill that is determinative of one's ability to build a successful career in international arbitration. Having said that, one particular attitude is key to success – namely, being committed to continuously straightening your command of the core skills that make a great arbitration lawyer. These include written and oral advocacy, strategic thinking (procedurally and on substance), ability to process vast amount of information, and case management.

Successful lawyers are guided by this principle. This is because when push comes to shove, it is your ability to successfully argue a critical request, have a baseless application denied or extract evidence from an obstructive witness, that will carry you through the day and move on to the next challenge. It is not what you project on a superficial level or how you have managed to get others to perceive you.

2. **Your career focus is on post-mergers and acquisitions, private equity, international financing and joint venture disputes in the oil & gas, power, mining, construction and telecoms sectors. Please tell us more about your story. What has been your career highs and lows? Are there any lessons from your journey would like to share?**

If you insist on hearing my story, here is the long and short of it! I had initially set out to become an economist and so delved into things like quantitative analysis and econometrics at university for a couple of years as an undergrad student. Towards the end of it, I had an 'on the road to Damascus' moment and heard the calling to study law during a 'Law 101' course.

As a lawyer, I started as a Project Finance lawyer before paying attention to the little voice inside me suggesting that I was more suited for litigation work, as opposed to advisory work. While I was extremely privileged to be able to switch to arbitration (for this, a shout out to my professional home, Shearman & Sterling's IA Group, and its captains in Paris!), coming to terms with the fact that I would no longer be directly involved in structuring and financing large infrastructure projects in Africa did require a bit of time. I often proudly point out that during my Project Finance days, I was involved for example in two innovative projects back home in Ethiopia!

It is probably for all these reasons that I was drawn to and progressively trusted with arbitration matters involving sophisticated transaction structures or corporate finance issues. I certainly enjoy being

dropped in the middle of a battlefield when those transactions go awry!

What I have come to appreciate over the years are my colleagues and the value of collaborative efforts. Irrespective of how brilliant an arbitration lawyer you might be, no achievement or battle won in an arbitration is a single man's achievement. Much like sports in which opposing teams compete to win, it is often the team whose members – at all levels – did their part to facilitate the shared objective that prevails.

3. *Who's Who Legal: Arbitration – Future Leaders*, lists you as one of the leading individuals aged 45 or under in the field of arbitration. The report refers to you as an "excellent and well-prepared" practitioner. 'Excellence' and 'preparation' are qualities that speak to ethos — a soft skill. How important is ethos when it comes to international arbitration and what are some 'simple' tips for developing professionalism.

We are all familiar with the saying that a good litigator comes prepared. In practice, however, unpredictable events will occur despite all of the advance preparation and planning. An application by the opposite side might turn the strategy you had carefully designed for the arbitration upside down. A cross-examination might reveal information you could not anticipate and backfire. It is simply impossible to prepare for all eventualities. That is why true 'excellence' is the ability to react strategically to unforeseen events and achieve the best possible outcome in the circumstances, with the available information. I was fortunate enough (and still am) to work with and learn from colleagues who operate at this level of excellence.

One ethos tip for international arbitration lawyers I can give is not to commit what I call the sin of intellectual cowardice. Our job as advocates is to get the Tribunal to side with our position by guiding it through a maze of facts, allegations and purported evidence. This requires selecting, organising and presenting the points of fact and law that are relevant to the issues in dispute and support our client's case. Instead, there is a practice that consists in raising every conceivable argument or objection and throw it in, probably because the legal team is unsure which arguments best support their client's case. A similar attitude is to discuss at length arguments that lend support to your case, and remain silent on those you are less comfortable with, even though the case is likely to turn on them. This type of behaviour is very frustrating for everyone else involved in the arbitration, particularly the tribunal. It is also a source of massive inefficiency, waste of time, waste of costs and inevitably damages the arbitration process itself.

4. Your international arbitration experience includes high profile disputes involving African states. What are some of the lessons peculiar to developing African arbitrators and arbitration you would like to share?

My experience in high profile disputes involving African states or interests is no different from arbitrations involving other parts of the world. Some went relatively smoothly, without major incidents; other cases struggled even to get off the ground, often because of procedural complications. It is often suggested, invalidly in my view, that developing arbitration in Africa requires a particular approach. Of course, each region or jurisdiction has its particularities. Within Africa itself, there are stark differences between countries stemming from their economic development, cultural specificities, and degree of support to arbitration.

Different arbitrations give rise to different challenges, without regard to the dispute's geographical location. Think of a party that refuses to produce documents ordered by the tribunal, a witness who fails to appear at the hearing, or your client instructing you not to file a memorial on the eve of its due date. The skills required to overcome these challenges, however, are always the same. Specifically, the core skills we discussed earlier. Remember that arbitration is a flexible mechanism, by design. This means that, in principle, only the legal team's creativity is the limit when it comes to crafting solutions to the difficulties that arise during the arbitration.

5. Is there any unique insight from your experience as an arbitrator you would like to share?

I was recently involved in a particularly acrimonious post-M&A dispute that gave rise to three related arbitrations, several court proceedings in various jurisdictions and the involvement of an army of law firms, with ours as lead counsel. I can honestly say that almost every day a new earth-shattering incident would erupt. The main challenge for me was to coordinate with team members located in various jurisdictions and co-counsel to attempt to put out each new fire, without losing track of the central issues in dispute in the process. This case helped me truly appreciate the value of teammates and the benefit of putting efforts into trying to bring

the best out of all involved. On multiple occasions, I was genuinely blown away by the quality of the work we were able to produce at breakneck speed and under extremely stressful conditions.

This experience has also given me solid confidence that in arbitration every problem has a solution, no matter how insurmountable the difficulty and the journey to get to the solution might seem.

Obviously, there is no single skill that is determinative of one's ability to build a successful career in international arbitration. Having said that, one particular attitude is key to success – namely, being committed to continuously straightening your command of the core skills that make a great arbitration lawyer.

Tsegaye Laurendeau

Brief about Tsegaye Laurendeau

Before to joining Shearman & Sterling, Tsegaye practiced as an associate in the Project Finance group of a magic circle firm, acting for financial institutions and sponsors (in relation to the financing, refinancing and development of large energy and infrastructure projects in sub-Saharan and Northern Africa).

Based in London, Tsegaye Laurendeau is counsel at *Shearman and Sterling*. His experience includes international arbitrations under the ICC, ICSID, CRCICA, HKIAC and UNCITRAL Arbitration Rules, with a focus on post-M&A, private equity, international financing and joint venture disputes in the oil & gas, power, mining, construction and telecoms sectors.

Tsegaye is featured in Who's Who Legal: Arbitration – Future Leaders 2020 and in The Legal 500 Private Practice Power list: African Specialists 2019. He was also nominated "Rising Star of the Month" by Africa Arbitration (February 2019). Tsegaye speaks four languages.

Swimming against the Current: The Emerging Jurisprudence as Regards Right to Appeals of Arbitration Awards in Kenya

Introduction

In Kenya, Arbitration is classified among the mechanisms commonly referred to as Alternative Dispute Resolution (ADR) and involves a neutral third party in the settlement of disputes. The Arbitration Act of Kenya, 1995[1] defines arbitration to mean —any arbitration administered by a permanent arbitral institution or otherwise.[2] This definition has been termed by some scholars as not being an elaborate one and hence regard has to be had to other sources.[3] Arbitration has been described as a private consensual process where parties in dispute agree to present their grievances to a third party for settlement.[4] However, it has also been argued that Kenya's Arbitration Act contemplates both institutional and ad hoc arbitration as seen in the definition.

Arbitration in Kenya is governed by various laws which include the Constitution[5], The Arbitration Act 1995[6], the Arbitration Rules, Civil Procedure Act[7] and the Civil Procedure Rules 2010[8]. Article 159(2) (c) of the Constitution provides that in the exercise of judicial authority, the Courts and tribunals must be guided by the principle of, inter alia, promotion of alternative forms of dispute resolution (ADR) including reconciliation, mediation, and arbitration. Traditional dispute resolution mechanisms shall be promoted, subject to clause (3) of the Constitution. Clause 3 prohibits the use of traditional dispute resolution mechanisms in a way that (a) contravenes the Bill of Rights; (b) is repugnant to justice and morality or results in outcomes that are repugnant to justice or morality; or (c) is inconsistent with the Constitution or any written law. This, therefore, means that to be valid, arbitration must be conducted in a way that is constitutional.

[1] No. 4 of 1995, Laws of Kenya ,Revised Edition 2012 [2010]
[2] Sec. 3, No. 4 of 1995 (2009)
[3] Muigua, K., Emerging Jurisprudence in the Law of Arbitration in Kenya: Challenges and Promises (Available at http://www.kmco.co.ke/index.php/publications/122- emerging-jurisprudence-in-the-law-of-arbitration-in-kenya-challenges-and-promises); Google Scholar
[4] Farooq Khan, Alternative Dispute Resolution, A paper presented Chartered Institute of Arbitrators-Kenya Branch Advanced Arbitration Course held on 8-9th March 2007, at Nairobi.
[5] The constitution of Kenya (2010)
[6] No. 4 of 1995(As amended in 2009)
[7] Cap 21, Laws of Kenya
[8] Legal Notice No. 151 of 2010, Rules under Section 81, Cap 21

Historical Background

The first Arbitration law in Kenya came in the form of the Arbitration Ordinance, 1914, which was a replica of the English Arbitration Act, 1889. This Ordinance accorded courts in Kenya ultimate control over the arbitration process in Kenya. Kenya acquired its first Arbitration Act in 1968.[9] The 1968 Act was another replica of the Arbitration Act 1950 of the United Kingdom. Similar to the Arbitration Act 1950 of the UK, this Kenyan Act permitted the court's intervention in arbitrations. Essentially, Courts were afforded too much intrusive powers and this affected the efficiency of arbitration as a dispute settlement mechanism.

The adoption of UNCITRAL Model Arbitration Law led to legal reforms repealing the 1968 Arbitration Act and replacing it with the Arbitration Act, 1995. The Act is based on the Model Arbitration Act of the United Nations Commission on Trade Law adopted in 1985 to encouraging arbitration and processes that would have global recognition.[10] Later, the 1995 Act was amended by the Arbitration (Amendment) Act 2009, assented to on 1st January 2010. The Arbitration Act 1995 applies to both domestic and international arbitration except as limited by its provisions.[11]

Intervention by Courts in Arbitration in Kenya

The Arbitration Act of Kenya outlines instances and the extent the courts' intervention can be triggered in arbitration proceedings.[12] It states that except as permitted in this Act, no court shall intervene in matters governed by this Act. On the face of it, the Act seems to minimize the courts' intervention in arbitral matters. However, there are exceptions under the Act permitting the courts' intervention either to determine issues where parties fail to agree or to assist the arbitral tribunal in some other way.

Although there are several exceptions under the Kenyan law, this article will focus on Section 35, which confers the High court with powers to set aside an arbitral award under the circumstances outlined in the section. Section 35(1) limits recourse to the High Court for setting aside an arbitral award to applications made under subsections (2) and (3). This implies that the Court will not act in such matters unless a discontented party invites it to do so. Subsection (2) sets out the grounds for setting aside an arbitral award as follows: incapacity of one of the parties; an invalid arbitration agreement; and lack of proper notice on the appointment of an arbitrator, or of the arbitral proceedings or where the applicant was unable to present its case. Other instances include where: the award deals with a dispute not contemplated by or either of the parties or outside the terms of reference to arbitration or matters beyond the scope of reference; the composition of the arbitral tribunal or the arbitral procedure was contrary to the agreement of the parties except where the agreement conflicts with provisions of the Act and the parties cannot derogate from such; or fraud, undue influence or corruption affected the making of the award.

Apart from the above, the High Court may also set aside arbitral awards where it finds that the subject-matter of the dispute is not capable of settlement by arbitration under the law of Kenya; or the award is in conflict with the public policy of Kenya.[13] The Act, however, limits the time frame a disgruntled party may lodge their applications with the High Court for setting aside arbitral awards. Section 35(3) of the Act states; where three months have lapsed since the award was made, the court will not entertain any applications to set aside the award. This limitation may serve to prevent applications for setting aside from being made in bad faith and also to ensure that were made, are put to rest. Hence in *Nancy Nyamira & Another v Archer Dramond Morgan Ltd*[14], the Kenyan Court observed that:

> Given the objectives of the Arbitration Act stated above, it is important that Courts enforce the time limits articulated in that Act – otherwise Courts would be used by parties to underwrite the undermining of the objectives of the Act.

Jurisprudential Developments

Two recent decisions by the Supreme Court of Kenya, have brought into criticism the extent of appeals on a challenge of an arbitration award in Kenyan courts. Both delivered by the Supreme Court of Kenya on 6 December 2019, the relevant cases are *Nyutu Agrovet Ltd v. Airtel Networks Kenya Ltd & Another* (2019) (Nyutu case) and *Syner-*

[9] the now repealed Arbitration Act (Cap. 49) Laws of Kenya.
[10] The Arbitration Agreement, Kenya Law Resource, Available at http://kenyalawresourcecenter.blogspot.com/2011/07/arbitration-agreement.html
[11] Section 2, No. 4 of 1195(2009)
[12] Section 10, No. 4 of 1195(2009)
[13] S. 35(2) (b), Act No. 4 of 1995
[14] Civil Suit 110 of 2009, [2012]eKLR

gy Industrial Credit Limited v. Cape Holdings Ltd (2019). The two petitions before the Supreme Court raised one significant legal issue namely: can a party appeal a High Court decision arising from an application seeking to set aside an arbitral award under section 35 of the Arbitration Act?

Nyutu case

Background

In this case, Airtel Networks Kenya Ltd, agreed with Nyutu Agrovet Ltd, to distribute Airtel's telephony products (airtime and scratch cards) in Nairobi. The agreement contained clauses including the manner orders for the goods would be placed and received. The parties also agreed that "…any dispute or claim arising out of or relating to the Agreement and/or breach thereof shall be determined by a Single Arbitrator to be appointed by agreement between the parties…"
A dispute arose over payments between the parties. This led to the termination of the Agreement followed by the appointment of a sole arbitrator, before whom both parties appeared, as per the agreement. The arbitrator delivered the award of ***Sh.526,720,698/50*** in favour of Nyutu. It was gleaned from the submissions and the award itself that the greater bulk of the award represented general damages which the arbitrator awarded on account of the tort of negligence on the part of Airtel.

The Decision of Court of Appeal

Accordingly, *Airtel* filed a notice of motion under section 35 of the Arbitration Act to set aside the award. In its ruling, the High Court set aside the arbitral award "purely on the ground that the award contained decisions on matters outside the distributorship agreement, the terms of reference to arbitration or the contemplation of the parties and for the reasons and deliberations above."

Nyutu filed a memorandum of appeal, to challenge the ruling and orders of the High Court. Airtel objected on the ground that under section 35 of the Arbitration Act of Kenya, an appeal cannot lie from the High Court to this court of Appeal, following a decision made under section 35 of the Act.
The Court of Appeal emphatically stated that no appeal lies to it from the High Court, where a party is appealing from a decision to set aside an arbitral award, or a decision affirming the award.

> **The adoption of UNCITRAL Model Arbitration Law led to legal reforms repealing the 1968 Arbitration Act and replacing it with the Arbitration Act, 1995.**

Synergy Industrial Credit Limited v. Cape Holdings Ltd (2019)

Background

The parties before the Court entered into a partly oral and partly written sale agreement where Synergy offered to purchase office blocks and parking spaces from Cape Holdings. Later on, a dispute arose and according to the terms of the agreement, a sole arbitrator was appointed to resolve it. At the time the dispute arose, Synergy had disbursed a significant amount of money to Cape Holdings, even though the office blocks and parking spaces were still undergoing construction.

By an award dated 30 January 2015, an Arbitrator ordered Cape Holdings to pay Synergy approximately Kshs. 1.7million, being the amount of money advanced to the Cape Holdings and accruing interest, loss of income opportunity, exchange fluctuations, and costs. Dissatisfied by the award, the Cape Holdings applied the High Court under Sections 35(1), 5(2)(a)(iv) & (b)(i) & (ii) of the Arbitration Act seeking to set aside the award. Synergy on its part filed an application at the High Court seeking to enforce the award.

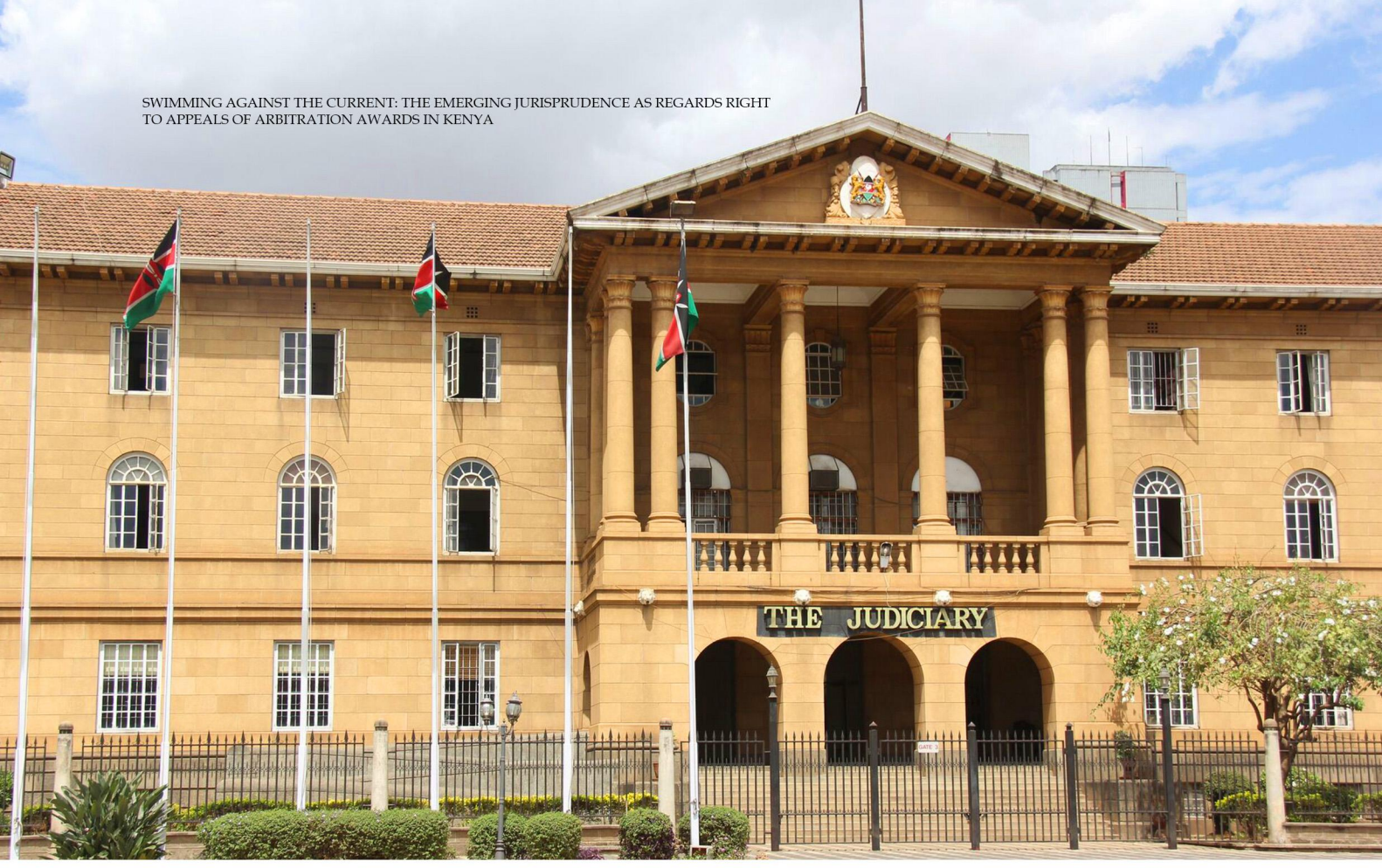
Upon considering the matter, the High Court found that the Arbitrator had acted outside the scope of his authority. Consequently, the High Court ruled that all the issues addressed by the Arbitrator fell outside the scope of the reference to him and so, it set aside the award in its entirety and dismissed Synergy's application for the enforcement of the award.

Dissatisfied by the High Court decision, Synergy filed an appeal at the Court of Appeal. In response, Cape Holdings sought to strike out the Petitioner's Notice of Appeal as well as the Record of Appeal on the grounds that there was no right of appeal from a decision of the High Court arising under Sections 10, 35, 36 and 37 of the Arbitration Act, 1995.

In its Ruling, the Court of Appeal (***Kariuki, Mwilu & Azangalala JJA***) upheld the Respondent's application and struck out the Notice of Appeal and the Record of Appeal. It specifically held that, save for what is provided in Section 39, there is no right of appeal from decisions of the High Court made under Section 35 of the Arbitration Act.

The Supreme Court

Both cases ended up in the supreme court of Kenya, which is the highest decision-making organ of the Kenyan judiciary. The main issue raised in both appeals was whether there is a right of appeal from decisions of the High Court made



under Section 35 of the Kenyan Arbitration Act, No. 4 of 1995 (the Arbitration Act).

The majority of the Supreme Court agreed with the petitioners in both cases stating that;

> We have in that context found that the Arbitration Act and the UNCITRAL Model Law do not expressly bar further appeals to the Court of Appeal. We take the further view that from our analysis of the law and, the dictates of the Constitution 2010, Section 35 should be interpreted in a way that promotes its purpose, the objectives of the arbitration law and the purpose of an expeditious yet fair dispute resolution legal system. Thus our position is that, as is the law, once an arbitral award has been issued, an aggrieved party can only approach the High Court under Section 35 of the Act for Orders of setting aside of the award. And hence the purpose of Section 35 is to ensure that Courts are able to correct specific errors of law, which if left alone would taint the process of arbitration. Further, even in promoting the core tenets of arbitration, which is an expeditious and efficient way of delivering justice that should not be done at the expense of real and substantive justice. Therefore, whereas we acknowledge the need to shield arbitral proceedings from unnecessary Court intervention, we also acknowledge the fact that there may be legitimate reasons seeking to appeal High Court decisions.
>
> Furthermore, considering that there is no express bar to appeals under Section 35, we are of the opinion that an unfair determination by the High Court should not be absolutely immune from the appellate review. As such, in exceptional circumstances, the Court of Appeal ought to have residual jurisdiction to enquire into such unfairness. However, such jurisdiction should be carefully exercised so as not to open a floodgate of appeals thus undermining the very essence of arbitration. In stating so, we agree with the High Court of Singapore in AKN and another (supra) that circumscribed appeals may be allowed to address process failures as opposed to the merits of the arbitral award itself. We say so because we have no doubt that obvious injustices by the High Court should not be left to subsist because of the 'no Court intervention' principle.[15]

Further, the majority went ahead to give recommendations that, the only instance that an appeal may lie from the High Court to the Court of Appeal on a determination made under Section 35 is where the High Court, in setting aside an arbitral award, has stepped outside the grounds set out in the said Section and thereby made a decision so grave, so manifestly wrong and which has completely closed the door of justice to either of the parties. This circumscribed and narrow jurisdiction should also be so sparingly exercised that only in

15 See Nyutu decision at Paragraphs 71 and 72- Majority decision of Ibrahim, Wanjala, Njoki & Lenaola, SCJJ

the clearest of cases should the Court of Appeal assume jurisdiction.[16]

The same was done in the Synergy case, where the Supreme Court majority stated that:

> Generally therefore, once parties agree to settle their disputes through arbitration, the arbitral tribunal should be the core determinant of their dispute. Once an award is issued, an aggrieved party can only approach the High Court for setting aside the award, only on the specified grounds. And hence, the purpose of Section 35 is to ensure that Courts are able to correct specific errors of law, which if left alone would lead to a miscarriage of justice. Therefore, even in promoting the core tenet of arbitration which is a quicker and efficient way of settling commercial disputes that should not be at the expense of real and substantive justice. In the interest of safeguarding the integrity of the administration of justice and particularly in the absence of an express bar we, like the House of Lords in Inco Europe Ltd & others (supra) hold that the Court of Appeal should have residual jurisdiction but only in exceptional and limited circumstances.

The Dissenting Opinion

Chief Justice and President of the Supreme Court of Kenya, David Maraga issued a dissenting opinion in the judgments, to which the authors of this article associate and agree with it entirely for reasons addressed in the preceding paragraphs.

The dissenting opinion begins by asking the pertinent question; What was the objective of the enactment of the Kenyan Arbitration Act No. 4 of 1995?[18] The historical background of the law answers the question perfectly.

The Parliamentary Hansard report of 20 July 1995 outlined the purpose of the law as follows: to repeal the outdated Arbitration Act of 1968 and enact a new legislation that adopts the UNCITRAL Model Law and thus thrusts the country into the current international arbitration practice. In his observations, while moving the motion for the passing of the Arbitration Bill, the then Attorney General stated that the proposed Act was intended to:

> … insulate … arbitration … from the process of the courts….[in order] … to deal with a dispute in a cost-effective manner and expeditiously as opposed to the courts where the procedures can be cumbersome and the dispute can go on for years. … If the arbitration law is such that the courts can interfere at will or at any stage in the arbitration proceedings, then the whole purpose of arbitration is completely defeated.

He further urged that:

> The arbitration process can only have advantage over the judicial process if … [it] results in expeditious and efficient handling of commercial disputes.

In answer to a question raised by Mr. Osogo, the then Assistant Minister for Commerce and Industry, the Attorney General explained that "the time limits and the finality of the High Court decision on some procedural matters [was] to ensure that neither party frustrates the arbitration process [thus] giving arbitration advantage over the usual judicial process."

> **In Kenya, Arbitration is classified among the mechanisms commonly referred to as Alternative Dispute Resolution (ADR) and involves a neutral third party in the settlement of disputes.**

The Arbitration Act No. 4 of 1995 was later amended in 2009. Explaining the purpose of the amendment, the Attorney General stated that it was to "further strengthen and insulate [arbitration]…from courts … [in particular the] 'constant interferences and misuse of arbitration by resorting to court on a matter which ought to be heard through the arbitration procedure."

A misguided majority

The majority in both cases try to justify, in a very whimsical manner, that other jurisdictions allow for further appeals. What they failed to do is distinguish the law in these comparative jurisdictions. We fully agree with the dissenting view, in that the majority failed to distinguish the application of the UNCITRAL Model law and the comparative case law. Firstly, the explanatory notes on the Model Law acknowledge that appeals may lie to a higher Court against decisions on arbitral proceedings in limited circumstances as may be determined by each State in its adaptive legislation. Under the Kenyan Arbitration Act, appeals are allowed only under Section 39 of Kenya's Arbitra-

[16] Ibid at paragraph 77
[17] Synergy Industrial Credit Limited v. Cape Holdings Ltd (2019) at paragraph 84.
[18] Ibid at paragraph 106

tion Act and by the consent of the parties.

Secondly, none of the arbitration legislations of the countries mentioned in the judgments of the majority is an exact pari *materia* with the Kenyan Arbitration Act 1995. The English, Canadian, and Singaporean Arbitration Acts permit appeals, albeit with leave, against High Court decisions setting or declining to set aside arbitral awards. For instance, Section 67 of the English Arbitration Act (similar to section 35 of the Kenyan Arbitration Act 1995) allows the setting aside of an arbitral award if, *inter alia*, the arbitrator acted without jurisdiction, permitting appeals from decisions made under it. (See sub-section (4)). Section 69(1) & (2) of that Act allows a party with the agreement of all the other parties to the proceedings, or with the leave of the court, to appeal to the court on a question of law arising out of an award made in the proceedings. Section 69(8) permits further appeals with leave of "the court considers that the question is one of general importance or is one which for some other special reason should be considered by the Court of Appeal."

Section 49 of the Singaporean International Commercial Arbitration Act is the same as Section 69 of the English Arbitration Act. It permits an appeal with leave against a High Court decision to set aside an award made under Section 24 of that Act and Article 34 of the UNCITRAL Model Law.

Under the Canadian Arbitration Act of 1996, challenges to arbitral awards are by way of appeal. Like the English Act, the Canadian Arbitration Act of 1996 also permits further appeals (with leave granted under Section 31(2) of that Act) from the High Court decisions setting aside an award on, *inter alia*, points of law of public importance.

In contrast, Section 10 of the Kenyan Arbitration Act, which is modelled on Article 5 of the UNCITRAL Model Law, is categorical: "*Except as provided in this Act, no court shall intervene in matters governed by this Act.*" Article 5 of the UNCITRAL Model Law provides that "*In matters governed by this Law, no court shall intervene except where so provided in this Law.*" The explanatory notes on this provision posit that its enactment was for purposes of "*protecting the arbitral process from unpredictable or disruptive Court interference*" especially in commercial disputes involving foreign parties. The notes conclude that "*Article 5 thus guarantees that all instances of possible court intervention are found in the piece of legislation enacting the Model Law, except for matters not regulated by it.*"

Like Section 10, Section 32A of the Kenyan Arbitration Act brought in by the 2009 amendment is equally categorical: "*Except as otherwise agreed by the parties, an arbitral award is final and binding upon the parties to it, and no recourse is available against the award otherwise than in the manner provided by this Act.*"

The Court intervention allowed after an award has been filed is by way of an application under Section 35 to set aside the award strictly on the grounds that (1) either party to an arbitration agreement was under some incapacity; (2) the arbitration agreement was invalid under the relevant laws; (3) there was a failure to give proper notice of the appointment of an arbitrator; (4) a party was unable to present his case during the arbitral proceedings; (5) the arbitrator went outside his mandate; (6)the agreement was not according to the Arbitration Act; or (7)the rendering of the award was tainted by fraud, bribery, undue influence, or corruption. The explanatory notes by the UNCITRAL Secretariat on Article 34, on which our Section 35 is based, states that "*the purpose of the provision was to provide only one way of attacking an award and that is through an application for setting aside.*" [Emphasis supplied].

The other intervention, premised on the parties' consent and only in domestic arbitrations, is by way of an appeal under Section 39 to challenge or confirm the award strictly on the grounds stated.

Under the Canadian Arbitration Act of 1996, challenges to arbitral awards are by way of appeal. Like the English Act, the Canadian Arbitration Act of 1996 also permits further appeals (with leave granted under Section 31(2) of that Act) from the High Court decisions setting aside an award on, inter alia, points of law of public importance.

[16] Ibid at paragraph 77
[17] Synergy Industrial Credit Limited v. Cape Holdings Ltd (2019) at paragraph 84.
[18] Ibid at paragraph 106

Conclusion

Since the Kenyan Arbitration Act of 1995 emphasizes the concept of finality in arbitration to promote arbitration as encapsulated in Article 159(2)(c), awards should be impervious to court intervention as a matter of public policy. The only exceptions are as stated under the Arbitration Act. Unwarranted judicial review of arbitral proceedings will simply defeat the object of the Arbitration Act. The role of courts should, therefore, be merely facilitative, otherwise excessive judicial interference with awards will not only be a paralyzing blow to the healthy functioning of arbitration in this country but will also be a clear negation of the legislative intent[19] of the Arbitration Act.

Regarded as a means of encouraging and facilitating international trade, arbitration is consensual. As Margaret Moses observes, "[a]rbitration is a private system of justice, made possible by the parties' consent. …"[20] To quote A. M. Gleeson once again, "[p]arties enter into arbitration agreements for the very reason that they do not want their disputes to end up in court…."[21]

Once parties have submitted their dispute to arbitration, "their arbitration agreement must be enforced according to its terms, just like any other contract." "The remedy for any flaws in the system", adds Dr. Katherine A. Helm "is having the parties choose better arbitrators, not to appeal arbitration awards."

As opined by Justice Maraga and rightly so,[23] Kenya's boasting as the arbitration centre in the East African region cannot hold, if Kenyan courts do not reflect on the effect of their decisions in arbitral proceedings. The words of Andrew P. Tuck, in his treatise, *The Finality Question: Appellate Rights and Review of Arbitral Awards in the Americas*[24] are particularly apposite concerning the appellate jurisdiction in arbitral proceedings. He observes that in selecting the seat of arbitration, parties often pay regard to, inter alia, the right of appeal and judicial review in that jurisdiction; and also finality of an arbitral award and whether the jurisdiction is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. This is because, in his view, the rights of appeal and review;

> can seriously frustrate the advantages of international arbitration … over the vicissitudes and uncertainties of international business litigation.[25]

As stated by Marga CJ, in the Synergy case and the Nyutu case, Kenya has backpedalled by allowing Article 164(3) of the constitution of Kenya to ipso facto grant both the jurisdiction and right of appeal against all High Court decisions, including those made in arbitral cases. This throws out of the window the principle of finality in arbitral proceedings. Hopefully, the Supreme Court, as it is not bound by its own decisions, will reflect on this issue in the future and make amends. Legislating to allow appeals under section 35 to the Court of Appeal, has led to worrying and bad interpretations.

[19] Katherine A. Helm (Dr.), 'The Expanding Scope of Judicial Review of Arbitration Awards: Where Does the Buck Stop?' Dispute Resolution Journal, vol. 61, no. 4, Nov. 2006-Jan. 2007, pp. 6 (separate reprint)
[20] Margaret L. Moses, 'Can Parties Tell Court What to Do? Expanded Judicial Review of Arbitral Awards' Loyola University Chicago, School of Law, 2004, pp. 429.
[21] A. M Gleeson (Hon., AC, QC,), 'Finality' Bar News, 2013, pp. 41.
[22] Margaret L. Moses, 'Can Parties Tell Court What to Do? Expanded Judicial Review of Arbitral Awards' Loyola University Chicago, School of Law, 2004, pp. 429
[23] See Synergy decision at paragraph 152
[24] Andrew P. Tuck, 'The Finality Question: Appellate Rights and Review of Arbitral Awards in the Americas' Law and Business Review of the Americas, Vol. 14, No. 3, 2008, pp. 569.
[25] Ibid

Author's Bios

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John has experience advising both governments and the private sector in relation to Energy and Natural Resources, Fraud, and Dispute resolution generally. He has represented several governments including Brunei, Tanzania, Nigeria, Ethiopia, Egypt, Kenya (Forensic Investigation), Sudan and Uganda and State corporations from India and China in both arbitration and litigation.

He acts both as a commercial arbitrator and a Mediator and as an expert under expert determination provisions. He has trained government officials from Somalia and Ethiopia in capacity building programmes and worked for the World Bank, making a diagnostic review of the Lesothan legal systems.

In the context of arbitration, he has appeared as a lawyer before Tribunals of the ICC in London, Paris, and Dar es Salaam, Tribunals of LMAA, LCIA, FOSFA and ad hoc in London and Tribunals in Stockholm, Dar es Salaam, Zurich and Geneva. He has appeared as a witness of fact before a Tribunal in Oslo and as an expert witness before a Tribunal in Rotterdam and a court in Rome.

John is the ICC Fraudnet member for East Africa and co-author of the book *Arbitration in Africa: A Review of Key Jurisdictions* (Sweet & Maxwell 2016).

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John Nyanje is an international lawyer with experience advising and acting for private clients and states in commercial; investment and public international law; and International Sports disputes in Africa and Europe. He advises private clients, international organizations and states on international arbitration (including wrongful termination of contracts, expropriation of investments), interstate dispute settlement, investment arbitration, International Trade disputes (including WTO Law and multilateral/bilateral treaties), forensic investigations and International Environmental compliance and regulations.

A member of the Kenyan Bar, John joined *Jmiles and Co* in April 2019. Before this, he trained with an international law firm in Geneva, Switzerland where he specialized in commercial and investment arbitration, International trade law, and Asset recovery.

Virtual Dispute Resolution Proceedings in the New Normal: Its Evolution and a Review of Select International Texts

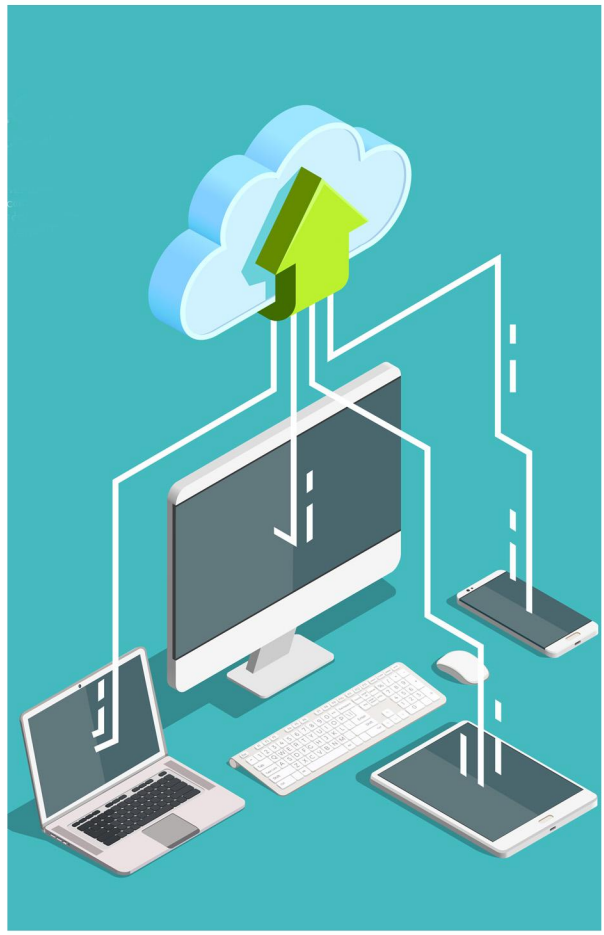
Introduction

The events of the 1st quarter of 2020 have left an indelible message— "normal" has changed. We have a new world to deal with courtesy of the COVID-19 pandemic.

One area that has benefited from this rude shock to our daily routine is the technology that allows us to bridge space and time to connect. So, while everything else seems to be headed south, technologies that promote virtual or remote human interactions have taken a northward leap.

As Chris Herd observed, "remote work has accelerated 10 years in 10 days"[1]. This is a reference to the speed with which businesses have had to implement remote working as a result of the COVID-19 pandemic. Businesses have been forced to shut their brick-and-mortar outlets and resort to remote work in record time.

This article looks at the impact of this shift on dispute resolution proceedings with emphasis on videoconferencing in arbitration. How can we keep dispute resolution on track in a virtual world? What are the best practices for maintaining fairness and due process in virtual proceedings? We will briefly review some of the international texts that can help in the quest to take dispute resolution to the virtual plane.



An Early Forerunner: The Hague Evidence Convention and the Guide to Good Practice on the Use of Video-Link under the Convention

While this paper focuses on virtual proceedings with specific reference to the use of videoconferencing technology to conduct arbitration proceedings, we shall start with a broader, somewhat historic look at virtual proceedings.

In litigation, the rules of most courts have for a long time provided procedures for obtaining evidence from witnesses who cannot be produced in Court. This would apply for instance to witnesses who are not within the territorial jurisdiction of the Court.

One of the first international documents to facilitate the process of taking evidence from witnesses in foreign countries is the Hague Conference on Private International Law (HCCH), Convention on the Taking of Evidence Abroad in Civil or Commercial Matters 1970.[2] "The Convention provides an effective means of overcoming the difference between Civil law and Common law systems via (i) letters of request, and (ii) diplomatic or consular agents and Commissioners".[3]

The HCCH in line with the emergence of videoconferencing technology set up an expert group that

[1] Chris Herd; accessed @ https://www.linkedin.com/pulse/remote-work-has-accelerated-10-years-days-chris-herd/ on 14/04/2020.
[2] Accessed @ https://assets.hcch.net/docs/dfed98c0-6749-42d2-a9be-3d41597734f1.pdf on 14/04/2020
[3] Outline of the Hauge Evidence Convention, Page 1. Accessed @ https://assets.hcch.net/docs/ec1fc148-c2b1-49dc-ba2f-65f45cb2b2d3.pdf on 14/04/2020

produced the Guide to Good Practice on the Use of Video-Link under the Convention approved in June 2019[4]. While this Guide was produced specifically for proceedings under the Convention, it contains the most comprehensive treatment of the subject of videoconferencing in dispute resolution. One of the greatest utilities of the Guides is its supplementary Country Profiles that describe restrictions or other procedural matters regarding video conferencing under the domestic law of different countries. Even though the Convention is not targeted towards arbitration, these Country Profiles could prove useful to arbitral tribunals as they highlight the limits of videoconferencing in the seat of the arbitration. This would prevent challenges to the award.

The Convention currently has 85 members.[5] Sadly, Nigeria is not a member. The convention has been used quite actively to secure evidence in proceedings between courts in the U.S and Israel.[6]

The Rise of Videoconferencing

The march of modern information technology leading to the current revolution has been on for quite a long time. As early as 1969, a Justice of the Nigerian Supreme Court remarked that: "The law cannot be and is not ignorant of modern methods and must not shut its eyes to the mysteries of the Computer."[7]

From the 1990s, videoconferencing technology began to grow, spurred on especially by the internet revolution and greater affordability of the technological infrastructure driving it. Paul E. Mason traces the advent of videoconferencing in dispute resolution to 2002 when it was used in mediations in the United States.[8]

Some First Responders

The ICC Court of Arbitration is reportedly one of the first dispute resolution institutions to respond comprehensively to the emerging trend of information technology including videoconferencing in dispute resolution. It set up a task force on the use of IT in international arbitration in 2002. The Task Force submitted its first report in 2004 covering the use of videoconferencing and other IT systems in international arbitration.[9]

Mason also describes some of the pioneering work of the AAA/ICDR with examples of procurement and deployment of videoconferencing facilities in international arbitration and mediation[10] as early as 2004.

The experience of the early adopters was not too positive as the technology for videoconferencing required expensive specialized equipment and the output quality was rather grainy. Erik Schaefer writing in 2005 concluded that video conferencing was a second-best alternative to live meetings.[11]

The Boom in Videoconferencing

As technology improved, videoconferencing became inexpensive and did not require large specialized equipment. With improved global internet connectivity, videoconferencing became ubiquitous as companies like Zoom, Skype, Facetime, etc. made videoconferencing available even on mobile phones. Despite these leaps, the 2017 ICC Report on Information Technology in International Arbitration noted that parties and arbitral tribunals remained reluctant to adopt video conferencing.[12]

However, a 2018 survey conducted by White & Case revealed that videoconferencing was gaining ground in arbitration. 43% of responders used videoconferencing "frequently", 17% "always", and 30% "sometimes". 89% said video conferencing should be used more often.[13]

The Challenges of Videoconferencing

While the hurdles of the cost and quality were easily surmounted by improvements in technology, the

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[4] Accessed @ https://assets.hcch.net/docs/569cfb46-9bb2-45e0-b240-ec02645ac20d.pdf on 18/04/2020
[5] Accessed @ https://www.hcch.net/en/states/hcch-members on 14/04/2020
[6] Zell Aron & Co. Accessed @ https://www.lexology.com/library/detail.aspx?g=40eead7c-9ddd-427a-9583-261cbac6358c on 14/04/2020
[7] Esso (WA) v. Oyegbola (1969) NSCC 350 @ 354
[8] Paul Mason, Videoconferencing in International Arbitration and Mediation Proceedings, Page 2 Accessed @ https://www.paulemason.info/articles/053-01530_01530-ch0053.pdf on 14/04/2020
[9] 2017 ICC Report on Information Technology in International Arbitration, Page 2. Accessed @ https://iccwbo.org/publication/information-technology-international-arbitration-report-icc-commission-arbitration-adr/ on 14/04/2020
[10] Paul Mason, [Ibid] Page 3
[11] Erik Schaefer, Videoconferencing in Arbitration, ICC International Court of Arbitration Bulletin, Vol. 14/No. 1, Spring 2003. (Quoted in Paul Mason, [Ibid] page 3)
[12] 2017 ICC Report, [Ibid] Page 3
[13] Reported on Page 1 in Jiyoon Hong & Jong Ho Hwang (KCAB Next), Safeguarding the Future of Arbitration: Seoul Protocol Tackles the Risks of Videoconferencing, published on Kluwer Arbitration Blog, accessed on 14/04/2020 @ http://arbitrationblog.kluwerarbitration.com/2020/04/06/safeguarding-the-future-of-arbitration-seoul- protocol-tackles-the-risks-of-videoconferencing/?print=pdf

> From the 1990s, videoconferencing technology began to grow, spurred on especially by the internet revolution and greater affordability of the technological infrastructure driving it.

adoption of videoconferencing still poses a challenge in dispute resolution.

Schaefer in his pioneering article identified some of the challenges to include difficulty in perceiving non-verbal cues, limitations as to what camera and microphone can capture, and possible violation of confidentiality by unauthorized eavesdropping.[14]

Other challenges of videoconferencing in dispute resolution include:

i. Due process issues
ii Fairness and impartiality
iii. Technical disruptions
iv. The possibility of unethical practices such as witness-coaching
v. Question of legal backing in the governing laws and the rules of dispute resolution bodies.

We will now address these challenges under different texts.

Surmounting the Challenges:

(1) The Seoul Protocol on Videoconferencing in International Arbitration

The Seoul Protocol on Videoconferencing in International Arbitration was unveiled at the Seoul ADR Festival, 2018. It was drafted by Kevin Kim (Peter & Kim), Tuyin Tay (Mayer Brown), Ing Loong Yang (Lamam & Watkins LLP), and Seong Min Lee (Shin & Kim)[15].

The Protocol is intended to serve as a guide to best practices for managing videoconferencing in international arbitration. It is a soft law that stakeholders can adopt to govern the use of videoconferencing for arbitration hearings.

Article 1 of the Protocol lays down guidance for witness examination by videoconferencing. To hedge against the challenge of witness coaching identified above, article 1.2 and 1.3 suggests that the videoconferencing equipment should show a reasonable part of the room where a witness is, without losing proximity. This ensures the Tribunal can spot any other person in the same room.

As technology improved, videoconferencing became inexpensive and did not require large specialized equipment. With improved global internet connectivity, videoconferencing became ubiquitous as companies like Zoom, Skype, Facetime, etc. made videoconferencing available even on mobile phones.

To secure fairness and impartiality, Article 1.7 allows the tribunal to terminate the videoconferencing if it deems it so unsatisfactory that it is unfair for either party to continue.

To mitigate against technical disruptions, the Protocol in article 2.1(1) mandates the presence of a technician to assist with technical issues. Article 6.1 and 6.2 requires at least two tests of the equipment before its use and the setting up of a backup system respectively. The Protocol also sets clear technical standards adopted from International Telecommunications Union recommendations, to assure the success of videoconferencing proceedings.

(2) ICCA/NYCBA/CPR Protocol on Cybersecurity in International Arbitration.

The cybersecurity risks associated with conducting private and confidential proceedings like arbitration and mediation online are enormous. As information technology has grown so has the skill and efficacy of cyber-hackers.

An example of these risks occurred during the 2015 Philippines-China territorial dispute. Hackers targeted the Philippines Department of Justice, the law firm representing the Philippines, and the website of the Permanent Court of Arbitration[16] in the Hague. In response to these types of risks, the International Council for Commercial Arbitration (ICCA), the New York City Bar, and the International Institute for Conflict Prevention and Resolution (CPR) published a Protocol on Cybersecurity in International Arbitration[17].

The objective of the protocol is twofold; first to provide a framework to determine reasonable information security measures for individual arbitration

[14] Quoted in Paul Mason, [Ibid] Page 3.
[15] Accessed at http://www.kcabinternational.or.kr/user/Board/comm_notice_view.do?BBS_NO=548&BD_NO=169&CURRENT_MENU_CODE=MENU0025&TOP_MENU_CODE=MENU0024 on 14/04/2020
[16] Reported on page 3, in Jiyoon Hong & Jong Ho Hwang (KCAB Next), [Ibid].
[17] 2020 Edition accessed @ http://documents.nycbar.org/files/ICCA-NYC-Bar-CPR-Cybersecurity-Protocol-for-International-Arbitration-Electronic-Version.pdf on 14/04/2020

matters, including procedural and practical guidance to assess security risks and identify available measures to be implemented. Secondly, the protocol aims to increase awareness of information security risks in arbitration matters and how this impacts stakeholder confidence.

Also, the Protocol lays down guidelines that facilitate compliance with data protection and privacy requirement like the GDPR, for example. This would be of importance especially to arbitral institutions as they warehouse a trove of personal data.

(3) Delos Checklist on Holding Arbitration and Mediation Hearing in Times of COVID-19

As the disruptions accompanied by COVID-19 continue unabated, parties to alternative dispute resolution proceedings may have to decide how to proceed with their matters. Going virtual using videoconferencing is an option. But it is easy for a Tribunal getting into such unchartered waters to fall into due process breaches if it does not adopt a thorough process of analyzing the steps it proposes to take. This is the utility of the Delos Checklists.

Delos Dispute Resolution published a helpful guide with detailed checklists on 20 March 2020[18]. The guide offers meticulous steps to help a tribunal decide how to proceed in these times of uncertainty. In the guidance on online hearing, the notes make an important point; The Tribunal and parties should agree before the hearing the rules to be observed if one party's connection fails. This would help to avoid allegations of *ex-parte* communications.

(4) Chartered Institute of Arbitrators Guidance Notes on Remote Dispute Resolution Proceedings[19]

The Chartered Institute of Arbitrators has set out a comprehensive Guidance Note that parties can adopt to ensure proceedings are not stalled indefinitely by the pandemic. The Notes are designed to equally promote remote proceedings even after the pandemic. The Notes advocate the use of video and audio conferencing as the most effective means for

[18] Accessed @ https://delosdr.org/index.php/2020/03/12/checklist-on-holding-hearings-in-times-of-covid-19/ on 14/04/2020
[19] Accessed @ https://www.ciarb.org/media/8967/remote-hearings-guidance-note.pdf on 14/04/202

remote proceedings.

The Guidance Notes has 3 parts and 1 Appendix. Part 1 makes recommendations on technology and logistical matters. The Guidance Notes cover issues including; agreement and pre-testing of the equipment and the software to be used; creation of a virtual break-out room for caucusing and panel deliberation; use of screen-share to highlight documents during proceedings; and also, confidentiality of the proceedings.

Part 2 treats legal and procedural arrangements including; the alignment of the dispute resolution clause with remote hearing, digital signatures for the execution of documents, and appointment of neutrals who are acquainted with remote conferencing technology.

Part 3 considers the requirements for adopting remote proceedings in institutional or ad hoc proceedings. It acknowledges that remote hearing should not be adopted without due compliance with institutional rules.

Appendix 1 contains a brief checklist of preliminary matters to be considered before adopting remote proceedings. The Guidance Notes equally acknowledge the other texts we had earlier considered including the Seoul Protocol, the ICCA/NYCBA/CPR Protocol, and the Delos Checklist.

Does Nigerian Law Permit Remote Proceedings?

While alternative dispute resolution is a party driven process, the proceedings cannot be conducted without due regard to the law of the jurisdiction. An important question therefore is, does the Nigerian law permit remote ADR proceedings? To answer this question, we will focus on Arbitration.

Looking at the Nigerian Arbitration and Conciliation Act (ACA)[20] and the Lagos State Arbitration Law 2009[21] both empower the arbitral tribunal to determine the place of the arbitration. In a similar vein, Article 24(2) of the Korean Commercial Arbitration Board (KCAB) Rules (a similar provision to the ACA) is interpreted by the commentary to the Rules to mean that this rule permits virtual arbitration proceedings. A Nigerian writer, Ekwenze seems to hold the view that Section 16 of the ACA empowers the Tribunal to hold proceedings by video conferencing . I agree with this argument noting that the word "place" in the laws mentioned above admits remote proceedings.

Conclusion

While we hope the disruptions brought by the COVID-19 will abate soon, the adoption of virtual or remote technology ought to endure. Some of the texts reviewed above were published presciently before the pandemic struck signifying the day for remote proceedings had fully dawned. The ADR community was not caught unawares by the sudden shift of business to the virtual world. What remains is for practitioners to take up the gauntlet and ensure that disputes are not left unresolved in this time of great uncertainties.

Practitioners must also utilize the efficiencies of remote proceedings to cut down on the cost and time of arbitration proceedings. However, we must pay attention to the issues addressed in this article to ensure the experience does not turn awry.

Author's Bio

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Marx is the Founder and Principal of Everlaw Associates, a full-service commercial law firm with offices in Abuja and Lagos, Nigeria. He has 12 years of practice experience in dispute resolution spanning litigation and arbitration. He is a member of the Chartered Institute of Arbitrators and is on the panel of neutral of the Lagos Court of Arbitration and the Federal High Court ADR Centre.

[20] Section 16
[21] Section 33

News Items

Group photograph of speakers at the 2019 Innovation and Tech Law Summit

Highlights from Major Events Organized by LACIAC

2019 Innovation and Tech Law Summit

The Lagos Chamber of Commerce International Arbitration Centre (LACIAC) in collaboration with the Innovation & Technology Lawyers Network organized the *2019 Innovation and Tech Law Summit* with the theme: "Ensuring an Enabling Environment for Digital Innovation". The Summit brought together key stakeholders within the ecosystem (technology, fintech, regulation, and law) to speak on how digital disruption can be used to transform the economy.

Training on Advanced Contract Drafting, Negotiation & Dispute Management

The International Institute of Business Intelligence (IIBI) partnered with LACIAC to deliver training on "Advanced Contract Drafting, Negotiation & Dispute Management". Participants at the training held in March 2020 honed their drafting and negotiation skills and mastered different dispute-resolution techniques.

Upcoming African ADR Events

International Arbitration Moot Competition

Organized by the Lagos Court of Arbitration and the Young Arbitrators Network (LCA-YAN), the Moot Competition will hold 23 – 24 July 2020. More information is available at https://afaa.ngo/event-3777526.

Africa-Asia Mediation Conference

Scheduled for 22 – 23 August 2020 in Dhaka Bangladesh, the Africa-Asia Mediation Conference will focus on mediation ethics, mediation advocacy and law; e-mediation; workplace mediation, peacebuilding, and negotiation. Stay up to date with the conference scheduling at http://www.africaasiamediation.org/.

Kigali International Arbitration Centre (KIAC) 2020 Conference

KIAC is hosting an International Arbitration Conference to examine the various legal frameworks that have contributed to the development of international arbitration in Africa. The Conference will include dynamic discussions on developments in trade and investment that will influence the future of international arbitration on the continent considering the *AfCTA*. This two-day conference will hold in Rwanda from 1-2 October 2020. For more details, visit https://afaa.ngo/event-3569910.

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