

BROADENING ACCESS TO JUSTICE IN KENYA THROUGH ADR; 30 YEARS ON*

ABSTRACT

Access to justice is a core tenet of democracy and a basic Human Right. Article 48 of the Kenyan Constitution enshrines the right to justice as a fundamental right and requires that the same shall not be limited by time or scarcity of resources. Article 159(2)(c), enumerates Alternative Dispute Resolution (commonly abbreviated to ADR) as one way of accessing justice by granting the courts power to promote ADR as an alternative to the adversarial and overly technical method that is litigation.

Arbitration and Mediation are the two most preferred means of ADR by which parties seek to resolve disputes of a commercial nature. With globalization of commerce and multiplicity of commercial disputes, ADR has become the preferred mode of settlement of disputes in most jurisdictions.

Despite the growing popularity of ADR in Kenya as an alternative to court litigation, there are still serious challenges that face the practice of ADR. A sound and effective legal framework for ADR in Kenya is key to facilitation of commerce and attainment of Vision 2030. This paper examines the constitutional and legal basis of ADR in Kenya, and demonstrates that despite the expanded scope of accessing justice introduced by the provisions of ADR in the Constitution of Kenya 2010 (CoK 2010) there are still various challenges that face ADR, at the end the paper makes proposals for reform.