

# **EVALUATING ARBITRATION'S EFFECTIVENESS IN ALTERNATIVE DISPUTE RESOLUTION FOR COMMERCIAL DISPUTES**

**SARWA KUBIRA NAKAYIZA**

**CKS21B11/152**

**A DISSERTATION SUBMITTED TO THE SCHOOL OF LAW IN PARTIAL FULFILLMENT OF  
THE REQUIREMENTS FOR THE AWARD OF THE DEGREE OF BACHELOR OF LAWS OF  
UGANDA CHRISTIAN UNIVERSITY**

**May, 2025**



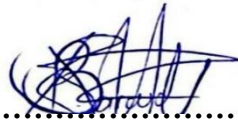
**UGANDA CHRISTIAN  
UNIVERSITY**

*A Centre of Excellence in the Heart of Africa*

## DECLARATION

I **NAKAYIZA SARWA KUBIRA** declare that this thesis is my original work. At the time of submission, this work has not been previously published or presented to any other institution for any other award. All sources relied upon have been gratefully acknowledged

Date this ..... 22 ..... Day of ..... MAY ..... 2025



.....  
**NAKAYIZA SARWA KUBIRA**

## **ABSTRACT**

This study evaluates the logicality of Alternative Dispute Resolution in facilitating the tenacity of commercial disputes in Uganda. The inspection was done through different case-studies as a diagnostic technique involving theoretical analysis of functioning literature, legislation and the cases adjudged by the courts in Uganda. With the aim of demonstrating how the Ugandan judiciary has assisted the growth of the process. This study observes that the courts in Uganda are naturally corroborative deploying the alternative dispute resolution mechanisms as explained by the liability to recognise a valid arbitration convention and unwillingness to examine evidence that is before an arbitral tribunal among others. It also considers some barriers that need to be addressed involving: a deep-seated trust deficit; the lack of an 'Africa focused' alternative dispute resolution practices; the lack of diversity, knowledge gaps among lawyers on how Alternative Dispute Resolution mechanisms operate and many others. The research discusses the challenges and problems while providing recommendations for the different key players in Uganda to scan regular steps in icing a prosperous domestic and international Alternative Dispute Resolution mechanisms.

## **DEDICATION**

I dedicate my dissertation to my family and numerous friends. A profound sense of appreciation to my devoted parents, Hajjati Nakalembe Zainab and Hajji Kubira Ahmed, whose encouraging words and insistence on perseverance resonate in my mind. My sister Fatumah, and brothers Amuruallah and Ashiraf, have consistently supported me and hold great significance in my life.

I dedicate this dissertation to my numerous friends who have provided unwavering support throughout the process. I will always be grateful for their contributions.

## ACKNOWLEDGEMENT

As I present this dissertation file, I express my sincere appreciation to all who contributed to its creation I would like to express my sincere gratitude to my supervisor, Counsel Ann Namukasa, for her invaluable guidance, feedback, and support throughout my research. Her extensive knowledge and experience were instrumental in the completion of this dissertation.

Appreciative of my family for their support throughout this research. Firstly, I extend my gratitude to my mother, hajjati Nakalembe Zainab, for her unwavering support, patience, prayers during this endeavour and financial support.

I feel my faith had a profound impact on my ability to complete my thesis. I am inclined to attribute any intellectual, semantic or typographical flaws in the study to those who provided guidance and inspiration, or to hold society accountable, of which I am but a product. Ultimately, consciousness does not dictate reality: rather, reality itself defines and has influenced our existence as conscious entities. I am forever thankful for the unconditional love and support throughout the entire thesis process and every day.

## APPROVAL

The research titled “Evaluating Arbitration’s effectiveness in Alternative Dispute Resolution for commercial disputes,” by Nakayiza Sarwa Kubira has been done under my supervision and it is submitted for examination with my approval

Dated this.....22..... Day of .....MAY..... 2025



---

**Ann Namukasa (Supervisor)**

## Contents

DECLARATION.....	i
ABSTRACT .....	ii
DEDICATION .....	iii
ACKNOWLEDGEMENT .....	iv
APPROVAL .....	v
LIST OF ABBREVIATIONS.....	viii
1. Introduction.....	1
2. The background to the study .....	2
3. Statement of the Problem.....	7
4. Objectives of the study.....	8
4.1 General Objectives .....	8
4.2 specific Objectives .....	8
5. Research questions .....	8
6. Significance of the research .....	8
7. Justification of the study. ....	9
8. Scope of the study .....	10
8.1 Temporal scope.....	10
8.2 Geographical Scope .....	11
8.3 Thematic Scope .....	11
9. Literature Review .....	11
10. Methodology .....	14
11.0 CHAPTER SYNOPSIS.....	15
2.0 The Law and Regulations Controlling Arbitration in Civil Proceedings in Uganda. ....	17
2.1 Arbitration .....	17
2.2 Types of Arbitration.....	18
2.3 Fundamental characteristics of arbitration.....	20
2.3 Uganda’s Legal Framework Governing Arbitration .....	22
Statutory authority.....	27
2.6 Contentious Legal Proceedings.....	29
2.7 Potential constraints on issues amenable to arbitration. ....	30
CHAPTER THREE.....	32

<b>3.0</b>	<b>The Relevance of Arbitration in the Settlement of Commercial Disputes in Uganda<sup>32</sup></b>	
<b>3.1</b>	<b>Forms of Arbitration in Uganda.....</b>	<b>32</b>
<b>3.2</b>	<b>Implementation of Arbitral Agreements: judicial interpretation of Section 5 of the Arbitration and conciliation Act.....</b>	<b>33</b>
<b>3.3</b>	<b>The Perspective of Ugandan courts to Arbitration. ....</b>	<b>37</b>
<b>3.5</b>	<b>The impact a party’s financial insolvency on Arbitral Proceedings.....</b>	<b>39</b>
	In this instance, there was an absence of adequate evidence to substantiate this claim. In <i>Oil Seeds (Uganda Limited) V Uganda Development Bank</i> , the question was whether the court might invalidate an arbitral award issued by an arbitrator. Justice Oder JSC, referencing section 11 ACA (since repealed), stated that; In my opinion, this provision grants the court the authority to review the award and return it to an arbitrator for revaluation. If the award is annulled, the arbitrator shall issue a new award unless otherwise instructed by the court. If the rulings of arbitrators were definitive and binding. Section 11 of the Act could not have conferred upon the court such discretionary authority to remit awards for reconsideration.	
	<b>3.6 Granting of interim measures in Arbitral proceedings .....</b>	<b>41</b>
<b>3.7</b>	<b>Setting Aside an Arbitral Award .....</b>	<b>42</b>
<b>3.8</b>	<b>The Doctrine of Competence- Competence .....</b>	<b>43</b>
<b>3.9</b>	<b>Bare Arbitration Clauses: The Vinci Coffee Case .....</b>	<b>44</b>
<b>4.0</b>	<b>Introduction.....</b>	<b>46</b>
<b>4.1</b>	<b>The Effectiveness of Arbitration as an ADR mechanism in Resolving Commercial Dispute.....</b>	<b>46</b>
<b>4.2</b>	<b>Disadvantages of arbitration.....</b>	<b>49</b>
<b>4.3</b>	<b>Challenges in the Implementation of Arbitration in Uganda for commercial disputes.....</b>	<b>50</b>
<b>4.4</b>	<b>Comparative Analysis of selected Jurisdiction.....</b>	<b>52</b>
<b>CHAPTER FIVE.....</b>		<b>55</b>
<b>5.0</b>	<b>Introduction.....</b>	<b>55</b>
<b>5.1</b>	<b>Principal Discovers .....</b>	<b>55</b>
<b>5.2</b>	<b>RECOMMENDATIONS.....</b>	<b>60</b>
<b>5.4</b>	<b>Suggested Areas for further Research. ....</b>	<b>62</b>
<b>5.5</b>	<b>Conclusion.....</b>	<b>62</b>
	<b>BIBLIOGRAPHY .....</b>	<b>64</b>
	<b>LEGISLATION AND TREATIES.....</b>	<b>68</b>

## LIST OF ABBREVIATIONS

ACA— Arbitration and Conciliation Act, Cap. 4

ADR— Alternative Dispute Resolution

AFSA— Arbitration Foundation of Southern Africa

ART— Award Review Tribunal

CADER— Centre for Arbitration and Dispute Resolution

CIAM— Centre for International Arbitration in Madrid.

CPA—Civil Procedure Act, Cap. 71.

CPR—Civil Procedure Rules, Statutory Instrument 71—1.

CRCICA— Cairo Regional Centre for International Commercial Arbitration

EAC—East African Community

EACJ—East African Court of Justice

FDI— Foreign Direct Investment

HKIAC— Hong Kong International Arbitration Centre

IBEACo— Imperial British East Africa Company

ICAMEK— International Centre for Arbitration and Mediation in Kampala

ICC— International Chamber of Commerce

ICDR—International Centre for Dispute Resolution

KIAC— Kigali International Arbitration Centre

LCA— Lagos Court of Arbitration

LCIA— the London Court of International Arbitration

NCIA— Nairobi Centre for International Arbitration

NRM—National Resistance Movement

PCA— Permanent Court of Arbitration

PCC— Praxis Conflict Centre

SIAC— Singapore International Arbitration Centre

SMEs— Small and medium-sized enterprises

SOAS— School of Oriental and African Studies

UNCITRAL— United Nations Commission on International Trade Law

WIPO— World Intellectual Property Organization

## CHAPTER ONE

### 1. Introduction

“It is by Allah’s mercy that you are gentle to them: and had you been harsh and hard-hearted. Surely, they would have scattered from around you. So, excuse them, and plead for forgiveness for them, and consult them in the affairs, and once you are resolved, put your trust in Allah. Indeed, Allah loves those who trust in Him.”<sup>1</sup>

The arts of reposeful resolution of disputes among people outstrips geography and rhythm. Condonation, alluding to has been a mechanism of accomplishing justice has a common ground traversing many ages and cultures around the universe. From the biblical roots<sup>2</sup> allowance for adjusting when debt comes due, Shakespeare’s prompt in “The Merchant of Venice” clemency can benefit both parties.<sup>3</sup> In the newer times, Rwanda and South Africa experience a pursuit of truth and reuniting after the ruinous genocide<sup>4</sup> and apartheid.<sup>5</sup>

This main thread notwithstanding, traditional approaches to discord resolution in Africa vary significantly from those in extant Western beliefs.<sup>6</sup> “Before getting to the particulars about this stark contrast and the reasons provided as a challenge to Western thinking about dispute resolution, it is fated to pause for a moment and

---

<sup>1</sup> Quran 3:159, The Holy Qur’an (Nazareth Catholic College Translation)

<sup>2</sup> Mathew 6:12 (Revised Standard Version) “...the Biblical tenet of debt forgiveness, as articulated in the Lord’s Prayer....” <https://www.studystack.com>

<sup>3</sup> William Shakespeare, 1564-1616. The Merchant of Venice. Harlow, Essex, England: (Longman,1994) Shylock, Play by Arnold Wesker, UK, 1976 <https://pure.ulster.ac.uk>

<sup>4</sup> Clapham, Christopher. “Rwanda: The Perils of Peace making. Journal of Peace Research 35, no.2(1998): 193-210.<http://www.jstor.org/stable/425520>

<sup>5</sup> Social Theory 96(2000):52-73

<sup>6</sup> Bruce D. Bonta “Conflict Resolution among Peaceful Societies: The Culture of Peacefulness. Journal of Peace Research 33, no.4 (1996):404-20. <http://www.jstor.org/stable/424566>.

acknowledge what comprises calm or calmness which are the pathways of the justice system.”<sup>7</sup> Advocate for harmonious and inclusive societies to ensure sustainable development, guarantee universal access to justice, and establish effective, accountable, and inclusive institutions at every level.<sup>8</sup>

Calm signifies tranquilly. “The English term peace originates from the Latin word pax, which possesses a more juridical connotation. The Oxford Latin Dictionary defines pax as a pact(to end or avert hostilities), settlement, peace”.<sup>9</sup> Peacefulness or calmness, is a state of human civilisation characterised by a significant level of interpersonal peace, with minimal or no physical violence among adults and between children and adults<sup>10</sup> between the sexes: workable strategies<sup>11</sup> for solving disputes and preventing violence; a devotion violence (such as warfare) with other peoples; and policies for raising children to adopt and continue these nonviolent ways.<sup>12</sup>

This commentary, seeks to hunt down the evolution of arbitration as a form of alternative dispute resolution in Uganda<sup>13</sup>. In endeavouring to cherish its challenges and opportunities in the Uganda context in the field of commercial, a preliminary assessment of arbitration is embraced.

## 2. The background to the study

---

<sup>7</sup> John Paul Lederach, *The Moral Imagination: The Art and Soul of Building Peace* (Oxford University Press 2005) 44.

<sup>8</sup> United Nations, ‘Goal 16: Peace, Justice and Strong Institutions’ (UN SDGs) <https://sdgs.un.org/goals/goal16> accessed 12 May 2025.

<sup>9</sup>Anderson Royce, ‘A Definition of Peace’ (2004) 10 *peace and conflict: Journal of peace Psychology* 101, pg. 4. See: <https://doi.org/10.1207/s15327949pac.1002-2>(Last Accessed on 12th March 2024) [www.tandfonline.com](http://www.tandfonline.com)

<sup>10</sup> Andrewhernoff.files.wordpress.com [www.coursehero.com](http://www.coursehero.com)

<sup>11</sup> Andrewhernoff.files.wordpress.com

<sup>12</sup> Bruce.D. BONTA. “Conflict Resolution among Peaceful Societies: The Culture of Peace” [www.coursehero.com](http://www.coursehero.com)

<sup>13</sup> [eprints.soas.ac.uk](http://eprints.soas.ac.uk)

## 2.1 The influence of customary law in shaping dispute resolution practices within pre-colonial African societies.

The significant richer aspect of recognizing customary law's influence in the community life for example conflict settlement, land tenure and other property lies in the discussion of the World Intellectual Property Organization (WIPO).<sup>14</sup> It is surely an embarrassing fact that the professorial toil surrounding the influence of commercial dispute resolution mechanisms in pre-colonial Uganda societies on contemporary commercial arbitration is still lacking.

With the outbreak of colonialism resulted in the introduction of formalised legal system<sup>15</sup> this arrangement was working as a boarder summon of de-culturalization (alongside education, language and other forms).<sup>16</sup> The scholarly work in this field directs that the traditional dispute resolution mechanisms highlight that the significance was not doom or due reward, but in the anima of Ubuntu<sup>17</sup>- the healing of breaches, the redressing of imbalances- and the restoration of a broken people and community.<sup>18</sup> Traditionally, in Botswana, the Kgotla- a public meeting ,community council or traditional law court was charged with the arbitration of civil

---

<sup>14</sup> World Intellectual Property Organisation 'Arbitration and Mediation' (WIPO) <https://www.wipo.int/amc/en/arbitration/>. Accessed 10 May 2025.

<sup>15</sup> Busingye Kabumba, 'Black Law Matter: Benedicto Kiwanuka's Legacy and The Rule Of Law in The "New Normal"' (Benedicto Kiwanuka Memorial Lecture, 3<sup>rd</sup> Lecture, High Court Grounds, Kampala, 21<sup>st</sup> September, 2020). Ebenezer Durojaye and Christi van der Westhuizen, 'African Customary Law and Human Rights in the context of South Africa's Constitutional Democracy' (2020) Dullah Omar Institute, University of the Western Cape <https://dullahomarinate.org.za> accessed 5 May 2025.

<sup>16</sup> *ibid*

<sup>17</sup> Global Harmony Association, 'Ubuntu: An African Philosophy of Harmony and Peace' (Peace from Harmony, 2015) <https://www.peacefromharmony.org/?cat=enc&key706> accessed 15 May 2025 M J Baloyi, 'Ubuntu and Justice a Characteristics of Human Conduct: A Theological Reflection' (2014) *Verbum et Ecclesia* 35(1) <https://doi.org/10.4102/ve.v35i1.776> accessed 14 May 2025.

<sup>18</sup> Refugee Law Project, *Compendium of Conflicts in Uganda* (School of Law, Makerere University 2024) 233 <https://www.refugeelawproject.org/files/others/Compendiumofconflictsfinal.pdf> accessed 10 March 2025

matters. This has kept its presence in the current justice system in Botswana with a well organised settlement set out by the justice department as follows;

To resolve the disagreement in a conventional court, it is imperative that the parties, or at least one party, visits the primary Kgotla to verbally present the dispute to the headman or chief of arbitration and request redress. The headman would consequently summon the relevant parties to participate in the hearing on a mutually agreed date. The parties would subsequently furnish the needed information, deliberating on the concerns with the assistance of the headman and family, until reaching a consensus to which all parties must comply.<sup>19</sup>

Even with the calamity and effect of globalization on these native means of resolving commercial disputes within our African communities. In my view arbitration in the formal legal justice system regarding commercial disputes derives from these informal approaches.

## 2.2 History of Arbitration

Arbitration's history origin remains obscure. As the failure to trace when man decided to submit to a friend or relative or leader a settlement regards a conflict instead of resorting to violent acts or self-aid, is still undivulged. However, any inquiry of this sort would belong more properly in the history of social growth and ethics than in either law or economics.<sup>20</sup> From the source England under arbitration, Earl S Wolaver jot down that;

---

<sup>19</sup> Isaac Nthoi, 'Th Kgotla as a Culturally Relevant Arbiter: Reflections on the Role of Traditional Dispute Resolution Mechanisms in Botswana' (2014) Open Journal of Political Science 4(3) 168 <https://www.scirp.org/journal/paperinformation.aspx?paperid=49276> accessed 15 May 2025

<sup>20</sup> Earl S Wolaver, 'The Historical Background of Commercial Arbitration' (1934) 83(2) University of Pennsylvania Law Review 132 <https://scholarship.law.upenn.edu/.pennlawreview/vol83/iss2/3> accessed 1 May 2025.

Early English guilds recognised the necessity for extrajudicial systems, frequently preferring the Law Merchant to common law courts.<sup>21</sup>

In spite of that, a consideration of the preliminary gave prominence to trace out peaceful resolution mechanism at variance communities making it safe to suggest that the introduction of arbitration is coeval to the origin of law itself.<sup>22</sup> Due to the wide range of justice approaches arbitration cycles they have been referred to as alternative dispute resolution (ADR), which also include mediation and conciliation.<sup>23</sup> With the increasing number of complaints regarding the injustices and slackness<sup>24</sup> of our traditional court systems. ADR refers to methods of negotiation resolving disputes outside of traditional court proceedings, often involving a neutral third party trained in ADR's techniques facilitate communication and reach a mutually acceptable resolution.<sup>25</sup>

### **2.3 Arbitration in Uganda Economic History.**

Omitting the examination of the economic background surrounding the evolution of commercial arbitration in Uganda is a considerable injustice to the topic. Ocen contends that national courts have been instrumental in influencing arbitration

---

<sup>21</sup>William Mitchell, *An Essay on the Early History of the Law Merchant* (CUP 1904) <https://www.trans-lex.org/104400> accessed 10 May 2025

<sup>22</sup> J.H.Cohen, *Commercial Arbitration and the Law* (New York and London, D Appleton and Company 1918)<sup>25</sup> <https://archive.org/details/.commercialarbit00cohegoog> accessed 1 May 2025. Roberta Kevelson, 'Lex talionis: Equivalence and Evolution in Legal Semiotics' (1990) 3(8) *International Journal for the Semiotics of Law* 99 <https://link.springer.com/article/10.1007/BF01104782> accessed 1 May 2025.

<sup>23</sup> Lambet, Kim A." Fundamentals of Alternative Dispute Resolution" *Franchise Law Journal*, vol.11, no.4,1992pp.99-103.

<sup>24</sup> Brian Z Tamanaha, *Legal Pluralism Explained: History, Theory and Applications* (Oxford University Press 2021) 44-46; see also Centre for the study of Culture and Society (CSCS), 'Informal Justice Systems and Legal Pluralism in the Global South' <https://www.cscsarchive.org> accessed 21 March 2025

<sup>25</sup> Hon Justice G.W M. Kiryabwe: *Alternative Dispute Resolution-A catalyst in Commercial Development: A case from Uganda*; in *Uganda Living Law Journal*, Vol3; No.2 December 2005, at p.145.

norms, especially via judicial review and enforcement.<sup>26</sup> Uganda was under the colonial rule from 1890 to 1962.<sup>27</sup> Driving you back colonialism at first was economic initiative by the British before it adopted a political approach. As the vehicle which was driven through it was a registered company known as the Imperial British East Africa Company (IBEACo)<sup>28</sup> The significance of the colonial industrial policy was assumed during the post-second World War period.<sup>29</sup> In the due course Uganda also had to attain its Independence in 1962 the state played a prepollent responsibility in what was referred to as ‘largely agrarian economy’. The mantle was played by ushering in a culture of correlated industrial development through strategic partnerships.<sup>30</sup>

Throughout this period, the private sector was still influenced by Asians mainly due to the unfair and unlevelled playing ground designed to promote foreign capital’s control over the economy, a practice which would embitter the African trader.<sup>31</sup> The later boost not just in the economy but also in the role of Africans and foreigners alike can be imputed to wilful trade policies adopted mainly in the post-conflict period of 1986. The trade policy reforms have been dived into two generations by the Scholars this include structural reforms which was agreed between the National

---

<sup>26</sup> Milton Fred Ocen, ‘The Role Of National Courts in Arbitration: An Examination of Uganda’s Legal Framework’ (LLM thesis, Uganda Christian University 2021) <https://repository.ucu.ug/handle/20.500.11951/837> accessed 30 March 2025

<sup>27</sup> Uganda Government, Report of the Constitutional Review Commission: Analysis of Colonial Administration 1894-1992 (2005)

<sup>28</sup> The Imperial British East Africa Company (Hansard, 3 March 1892), <https://api.parliament.uk/historic-hansard/commons/1892/mar/03/the-imperial-british-east-africa-company> accessed 19 March 2025

<sup>29</sup> Marios Obwona, et al, “The evolution of industry in Uganda” Working paper No.9, Brookings Institutions. [https://www.brookings.edu/wp-content/uploads/2016/07/L2C\\_WP9Obwona-et-al.pdf](https://www.brookings.edu/wp-content/uploads/2016/07/L2C_WP9Obwona-et-al.pdf). 20 March 2025

Jane Smith, The Political Economy of Legal Reform in Uganda (DPhil thesis, University of Oxford 2019) <https://ora.ox.ac.uk> accessed 12 May 2025

<sup>30</sup> Julius Kiiza, ‘Industrial Policy and State Business Relations in Uganda’ (UNU-WIDER Working Paper 2017/198) <https://www.econstor.eu/handle/10419/190520> accessed 5 May 2025

<sup>31</sup> Nic Cheeseman, ‘The Internal Dynamics of Power-Sharing in Africa’ (2011)49(2) Journal of Modern African Studies 203 <https://academic.oup.com> accessed 12 May 2025

Resistance Movement (NRM) and international institutions, which its objectives are to limit state emplacement and impose a free market set economy<sup>32</sup> open the international trade.<sup>33</sup> Even with the creation of structures<sup>34</sup> geared towards fostering a better economic environment for investors , there remains so much to do in assuring investors of a vigorous justice system that will be an enabler for trade. Due to all this commercial arbitration becomes a venture tool towards the private and public members of cast in Uganda.

### **3. Statement of the Problem**

The report addresses the obstacles preventing arbitration from expanding in Uganda. It offers a thorough explanation of why Uganda is still not included in the arbitration community. At this point, the study examines the suggested advantages and drawbacks. The use of arbitration as a means of resolving business conflicts. Proponents of arbitration and other alternative dispute resolution methods contend that they are most cost-effective, speedy and efficient way to address the issues affecting Uganda's traditional legal system. This paper examines if these arbitration guarantees are realistic given Uganda's situation. Among the issues this report

---

<sup>32</sup> Julius Kiiza,'Neo- Liberal Policy Reforms and the Ugandan State: Exploring the linkages' in J Kwame Sundaram and M V Mutukwa (eds), *The Role of the State in Development in the 21<sup>st</sup> Century: Lessons from Africa* (UNRISD 2013)67.

<sup>33</sup> Nir Jaimovich and Dick Kamuganga, 'Three Decades of Trade Policy in Uganda: Two Generations of Reforms in the Quest to Become Part of the Global Market'(FREIT Working Paper No 43, 2010) <https://friet.org/WorkingPapers/Papers/Development/FREIT43.pdf> accessed 26 March 2025.

<sup>34</sup> Benson Tumusiime, 'Museveni Appoints Nakalema Head of State House Investors Protectorate Unit' Dily Monitor (Kampala, 6 May 2023) <https://www.monitor.co.ug/uganda/.news/national/musenedi-appoints-nakalema-head-of-state-house-investors-protectorate-unit-4225444> accessed 1 March 2025

examines, the trust deficit stands out disputes between important parties in potential arbitral cases.

#### **4. Objectives of the study.**

##### **4.1 General Objectives**

The general objective of the study is to Evaluate Arbitration's effectiveness in Alternative Dispute Resolution for commercial disputes.

##### **4.2 specific Objectives**

- I. To evaluate the effect of arbitration on the Ugandan commercial court's resolution of business disputes.
- II. To examine the nature of Uganda's legal, procedural and institutional framework governing arbitration in commercial matters.
- III. To investigate the present obstacles preventing arbitration from expanding in Uganda.

#### **5. Research questions**

- i. To what degree has arbitration impacted the resolution of commercial dispute in Uganda's commercial court system?
- ii. What is the nature of Uganda's legal, procedural, and institutional framework regulating arbitration in commercial cases?
- iii. What are the principal legal, institutional, and practical barriers impeding the progress and broader adoption of arbitration as a mechanism for resolving business disputes in Uganda?

#### **6. Significance of the research**

This study is pertinent to Uganda's expanding commercial environment and its developing legislative framework for Alternative Dispute Resolution. The growth of

local and international trade has led to an escalating demand for effective, discreet, and commercially sensitive methods for resolving business conflicts. This research is important for several reasons:

a) Support for judicial and institutional Reform:

This will furnish essential insights for policymakers, the judiciary and institutions such as the Centre for Arbitration and Dispute Resolution regarding the operational efficacy of arbitration and its alignment with the requirements of commercial entities.<sup>35</sup>

b) Boosting investor confidence: A better understanding of arbitration's efficiency can promote Uganda as a business-friendly dispute resolution environment, gaining confidence from both local and international investors.

c) The study aims to address issues in enforcing arbitral awards in Uganda and provide recommendations to increase domestic enforcement and recognise international awards under the New York Convention, to which Uganda is a member.<sup>36</sup>

d) The study aims to align Uganda's arbitration system with global standards by comparing domestic and international practices, identifying gaps and anomalies.

e) The research will update the body of knowledge on ADR in Uganda by giving evidence-based findings on its strengths, flaws and areas for reform. This will benefit scholars and legal professionals.

## 7. Justification of the study.

---

<sup>35</sup> University of Nairobi, E-repository: Research on Arbitration and Dispute Resolution in East Africa <https://erepository.unonbi.ac.ke> accessed 12 April 2025

<sup>36</sup> New York Arbitration Convention, 'Contracting States: Uganda' <https://www.newyorkconvention.org/contracting-states/uganda> accessed 24 April 2025.

- Businesses in Uganda are increasingly using arbitration to avoid the delays and public character of litigation. However, it is still unclear if arbitration consistently provides the stated benefits of speed, confidentiality, and finality.
- Enforcement challenges: Despite being a signatory to the New York Convention,<sup>37</sup> Uganda has delays and resistance in enforcing domestic and foreign arbitral rulings, affecting commercial parties' confidence.
- Empirical and legal evaluations are needed to assess the effectiveness of arbitration in Uganda's legal and institutional framework, particularly from user perspectives. This paper addresses that gap by assessing the effectiveness of arbitration using legal analysis and practical experience.
- Policy and Institutional Reform: This study's findings can inform revisions to Uganda's arbitration rules and institutions, aligning them with worldwide standards and better serving commercial users.
- Uganda's international trade requires a trustworthy and enforceable arbitration mechanism to attract foreign investment and resolve cross-border disputes.

## **8. Scope of the study**

### **8.1 Temporal scope**

The study examines arbitration cases, laws and procedures in Uganda from the early 2000s to the present, with a focus on recent developments during a period of high growth in arbitration.

---

<sup>37</sup> Kaplan & Stratton, Effectiveness of Arbitration Institutions in East Africa' (KMCO, 22 February 2016) <https://kmco.co.ke/wp-content/uploads/2018/08/Effectiveness-of-Arbitration-Institutions-in-East-Africa-22-February-2016.pdf> accessed 11 May 2025.

## 8.2 Geographical Scope

The primary focus is on Uganda, with an examination of both the legal environment (the Arbitration and Conciliation Act and the Institutional framework (CADER). International arbitration and comparative practices, particularly the UNCITRAL Model Law and New York Convention, are used to provide insights and benchmarks for Uganda's arbitration system.

## 8.3 Thematic Scope

The research focusses on commercial disputes that arise from contracts, commerce, construction, financing and other business operations with a mechanism of arbitration. Other forms of alternative dispute resolution such as mediation or conciliation, are briefly explored for comparison. The scope excludes non-commercial conflicts, such as family law or labour disputes.

## 9. Literature Review

Numerous academics, researchers, and enthusiasts have undertaken extensive studies on alternative dispute resolution (ADR), especially arbitration, as a viable intervention to the current shortcomings of the justice delivery system.<sup>38</sup> The research on the potential legal and human rights concerns as well as the ways in which established ADR procedures might be applied to improve access to justice is also expanding. However, there is a dearth of research on the advantages and disadvantages of arbitration in Ugandan contexts.<sup>39</sup> There is a dearth of research on

---

<sup>38</sup> See for instance, "Arbitration to Solve Case Backlog" – Justice Geoffrey Kiryabirwe (1<sup>st</sup> August 2009), <https://geoffreykiryabirwe.com/2009/08/01/arbitration-to-solve-case-backlog/> accessed 20<sup>th</sup> March 2025

<sup>39</sup> Primrose ER Kurasha, 'Cross-Border Commercial Litigation: The Jurisdictional Challenges of Arbitration in Sub-Saharan Africa' (2018) *De Jure Law Journal* 5191) 123 <https://wwwq.dejure.up.ac.za/articles-vol-51-1-2018/Kurasha-p-e-r> accessed 18 April 2025.

the best ways to incorporate arbitration into Ugandan legal system, the investment industry, and the associated factors. The purpose of this thesis is to close this gap.

According to Benjamin J. Odoki, the effective administration of justice is a key sign of government's dedication to upholding and defending the fundamental human rights of its people.<sup>40</sup> Effective justice is equally important for Ugandan businesses and investment. According to a 2021 study on how the legal environment affects businessman investment in central Asia, a robust legal environment can boost private sector activity by providing property rights with security and predictability, establishing the regulatory stability required for long-term decision-making and making sure that there are no undue political, control, labour and capital inputs are used, more efficiently.<sup>41</sup> It is true that stakeholders in the business sector, who rely heavily on accuracy and prompt decision-making, might get frustrated by a court system beset by case backlogs.<sup>42</sup> American political scientist Austin Sarat has criticised this story of a "liability crisis", which is evident in problems like case backlog, as the basis for the adoption of arbitration.<sup>43</sup> According to him, the idea that arbitration and other ADR procedures are meant to enhance court performance is a misguided initiative that would probably lead to more issues for the legal system. Addressing the story of how the liability crisis has reportedly caused the courts to face an unsolvable judicial administration issue.

---

<sup>40</sup> Odoki.B.J. Reducing delay in the administration of justice: The case of Uganda Crim Law Forum 5,57-89 (1994). <https://doi.org/10.1007/BF01785849>

<sup>41</sup> OECD, 'Improving the Legal Environment for Business and Investment in Central Asia' 2021. Pp.17 <https://www.oecd.org/eurasia/Improving-LEB-CA-ENG%20April.pdf>

<sup>42</sup> 'Do More To Tackle Case Backlog/ Monitor' <https://www.monitor.co.ug/uganda/oped/editorial/do-more-to-tackle-case-backlog-4024150> accessed 20th March 2025

<sup>43</sup> Sarat, Austin." Alternative Dispute Resolution; Wrong Solution, Wrong Problem." Proceedings of the Academy of Political Science, vol.37, no.1,1988, pp.162-73. JSTOR, <https://doi.org/10.2307/1174062>. Accessed 20th March 2025

In countries like Uganda, Sarat's claim that an overly open legal system jeopardizes access to justice can be rather misguided. First of all, it fails to acknowledge the fact that the official legal system primarily excludes many Ugandans. According to a 2016 survey, only 5% of justice needs are met by the formal court system, and even it has a backlog of cases, despite being little.<sup>44</sup> According to Jjuuko, informal systems handle 95% of the justice system.<sup>45</sup> Consequently, while Sarat's "liability dilemma" may be a problem for American courts, it is not a problem for their Ugandan counterparts.

Additionally, scholars like Asozu have questioned the international nature of international law norms and standards as they pertain to commercial arbitration because many of them were created with little to no involvement from African states.<sup>46</sup> It is true that African nation's minimal involvement in the creation of the global investment protection framework is not an exception. African officials were not involved in the original creation and establishment of the Permanent Court of Arbitration (PCA) or in the conventional commercial forums like the London Court of Arbitration and the ICC's international Court of Arbitration, although they did take part in the World Bank-organised preparatory meetings for the negotiation and drafting of the 1965 ICSID convention and to a lesser extent, in the UNCITRAL Model Law and the UNCITRAL Arbitration and Conciliation Rules.<sup>47</sup> The perceived objectivity, stability, predictability, and independence from national political

---

<sup>44</sup> HiiL, Justice Needs in Uganda: Legal Problems in Daily Life (2016) <https://www.hiil.org/wp-content/uploads/2018/07/Uganda-JNST-Data-Report-2016.pdf> accessed 20th March 2025

<sup>45</sup> Jjuuko, supra pg.256

<sup>46</sup> AA Asouzu, International commercial arbitration and African states: Practice, Participation and Institutional Development. (Cambridge University Press 2001) <https://www.iisd.org> accessed on 11 March 2025

<sup>47</sup> Amne Suedi, 'The need for Africa- focused' Arbitration and Reform of Tanzania's Arbitration Act, "Investment Treaty News, (OCTOBER 5, 2020). <https://www.iisd.org/itn/en/2002/10/05/the-need-for-africa-focused-arbitration-and-reform-of-tanzanians-arbitration-act-amne-suedi/> accessed 28 March 2025

factors in its application of “international” law make international arbitration appealing to foreign investors.<sup>48</sup> Additionally, it is essential for Uganda to be guided by this fact in the reform of its domestic arbitration framework, it also remains critical for the country to remain true to the aim of continuing the decolonization agenda of foreign investments in Africa.

## **10. Methodology**

This study will use a qualitative research design that includes parts of doctrinal legal research and empirical analysis. It entails a thorough review of statutes, case law, institutional procedures and stakeholder viewpoints on commercial arbitration

The chosen approach is justified by the study’s nature and objectives, which are to assess both the legal framework and the practical efficacy of arbitration in resolving commercial disputes. Given that arbitration is both legal and practical process, the best way is to combine doctrine legal study with qualitative empirical methodologies.

---

<sup>48</sup>ibid

## 11.0 CHAPTER SYNOPSIS

Chapter 1: Background and introduction. The historical backdrop and justification for arbitration in Uganda. Are examined in this chapter too establish the study. It discusses how customary law affects traditional conflict settlement, the history of arbitration worldwide and in Uganda's economic development and the research challenge. It also includes the study's general and specific aims, research questions, significance, rationale and historical, geographical, and thematic scope. The chapter concludes with literature review and research technique.

Chapter two: Ugandan Arbitration Law and Policy Ugandan Civil arbitration law and policy are examined in this chapter. It defines arbitration, explains its categories and essential elements and analyses the 1995 Constitution, Judicature Act, Arbitration and Conciliation Act, LADASA, CPR, CPA, CADER and ICAMEK are also examined. Arbitrable matters are limited and distinguished from adversarial litigation in the chapter's conclusion.

Chapter three: Ugandan Commercial Applicability. This chapter examines Ugandan commercial arbitration. It discusses arbitration types, enforcement (particularly under Section 5 of the ACA), judicial attitudes, and non-interference and competence-competence concepts. Practical problems including party impecuniosity, interim measures and settling aside arbitral awards are considered. Vinci coffee shows how naked arbitration clauses affect it. -Challenges and Comparisons.

Chapter four: The evaluation of the effectiveness of arbitration, challenges faced in the implementation of arbitration as an alternative dispute resolution method in commercial disputes and the comparative analysis of selected jurisdiction.

Chapter five: results, advice and conclusion. This final chapter summarises the study's primary findings, makes practical recommendations to improve arbitration in Uganda, and finishes the dissertation by suggesting future research areas in the same field in Ug

## CHAPTER TWO

### 2.0 The Law and Regulations Controlling Arbitration in Civil Proceedings in Uganda.

In *Modern Engineering (Bristol) Ltd* <sup>49</sup>Vs *Miski*<sup>50</sup>n and Sons, Lord Denning stated, “Arbitration constitutes a pivotal domain within the justice administration system”.

#### 2.1 Arbitration

In total, Jan Paulsson<sup>51</sup> offers a fresh theoretical investigation of arbitration, seeking to resolve fundamental concerns rarely addressed systematically in English. He challenges the significance of arbitration in the judicial process and argues that it is essential enough to be viewed as a sui generis component of social life. Why do people, companies and states choose arbitration over litigation? Arbitration gives parties confidentiality, flexibility and arbitrator selection. But why would they trust an arbitrator instead of legal channels to resolve disputes? This section emphasises this.

##### 2.1.1 Definition of Arbitration

Arbitration is defined by the Arbitration and Conciliation Act as any arbitration that is governed by an arbitration agreement, regardless of whether it is conducted by a permanent arbitral institution.<sup>52</sup> This act was initially enacted by the Parliament of Uganda.

---

<sup>49</sup> [www.scrip.org](http://www.scrip.org)

<sup>50</sup> 1981 1 Llyods rep 135

<sup>51</sup> Jan Paulsson, “ The Idea od Arbitration “ Oxford University Press,21 Novemeber2013.pp.1 [https; doi-org.libproxy.york.ac.uk/10.1093/acprof:oso/9780199564163.001.0001](https://doi-org.libproxy.york.ac.uk/10.1093/acprof:oso/9780199564163.001.0001)

<sup>52</sup> Arbitration and Conciliation Act, Cap 4, section 2(1)

Jan<sup>53</sup> defines arbitration as the binding resolution of disputes, embraced with equanimity by those affected, due to their inherent trust in selected adjudicators.

Black's Law Dictionary defines it as the examination and resolution of disputes between opposing parties by one or more unofficial individuals selected by the parties, referred to as arbitrators or referees.<sup>54</sup> It is a mutually agreeable process for non-governmental adjudicators that results in a conclusive and binding award enforceable by national courts.<sup>55</sup> Additionally, it can be characterised as “the procedure through which a conflict or disagreement between two or more parties regarding their mutual legal rights and obligations is submitted to and resolved judicially, with binding effect, by the application obligations is submitted to and decided not by court of law but rather by one or more people (the arbitral tribunal) applying the law in a way that has binding effect.”<sup>56</sup>

## **2.2 Types of Arbitration**

Arbitration can be categorised as either ad hoc or institutional.<sup>57</sup> Generally speaking, parties have the right to choose the type of arbitration that best suits their needs given the circumstances and facts of their dispute.

### **2.2.1 Ad hoc Arbitration**

In this kind of arbitration, the arbitrators and the parties independently decide the process; an arbitral organisation is not involve.<sup>58</sup> Parties seeking to proceed ad hoc

---

<sup>53</sup> Chapter 4 of the Laws of Uganda.

<sup>54</sup> Section 2(1)b Chapter 4

<sup>55</sup> Bryan A Garner (ed), Black's Law Dictionary (11th edn, Thomson Reuters 2019) <https://www.lexisnexis.com> accessed 11 April 2025

<sup>56</sup> Cary B. Born, International Commercial Arbitration in the United States : Commentary and Materials ( The Netherlands: Kluwer law and Taxation Publishers, 1994), p.1.

<sup>57</sup> Halsbury's laws of England (Butterworths, 4th edition, 1991) para 601,332

<sup>58</sup> Supra, note 44 at p.1-55

without the necessity for tailored rules or formal administration may consider the following options: (i) adaption of the rules from an arbitral institution and (ii) incorporation of statutory procedures such as the Arbitration and Conciliation Act<sup>59</sup>(iii) implementing regulations specially designed for ad hoc arbitration, such as the UNCITRAL Rules<sup>60</sup>, applicable to both domestic and foreign conflicts, or choosing an alternative set of procedural regulations. For example, the ICC's arbitration rules are more extensive than the UNCITRAL Rules.<sup>61</sup>

### 2.2.2 Arbitration by Institutions

An arbitration that is administered by a mutually agreed-upon organisation and carried out in accordance with that organisation's arbitration regulations is known as an institutional arbitration.<sup>62</sup> An arbitral institution is a crucial component of institutional arbitration, typically defined as a permanent entity with its own set of arbitration rules governing the services it provides and other procedural matters.<sup>63</sup> The role of the arbitral institution in institutional arbitration generally encompasses, but is not limited to, receiving the arbitration request and forwarding it to the respondent; appointing the tribunal when stipulated by the arbitration agreement or when the parties are unable to do so; establishing and managing the financial arrangements for the arbitration; and assisting the tribunal with any issues that may

---

<sup>59</sup> 'Ad Hoc Arbitration' (Practical Law, Thomson Reuters) [http://uk.practicallaw.thomsonreuters.com/5-107-6360? transition Type=Default &contextData=\(sc.Default\) & first Page=true](http://uk.practicallaw.thomsonreuters.com/5-107-6360?transitionType=Default&contextData=(sc.Default)&firstPage=true) accessed 01 May 2025.

<sup>60</sup> United Nations Commission On International Trade Law (UNCITRAL), 'UNCITRAL Arbitration Rules' <https://uncitral.un.org/en/texts/arbitration/contractualtexts/arbitration> accessed 01 May 2025

<sup>61</sup> Avraham Azrieli, "improving Arbitration Under the US. - Israel Free Trade Agreement: A framework for a Middle East Free Trade Zone," 67 St. John's L. Rev. 187.

University of Athens, 'Comparisons of Arbitration Rules: UNCITRAL and ICC' (n.d.) <https://eclass.uoa.gr> accessed 20 April 2025.

<sup>62</sup> Institutional Arbitration-an introduction to the Key Features of Institutional Arbitration/Lehal Guidance/ LexisNexis' <https://www.lexisnexis.co.uk/legal/guidance/institutional-arbitration-an-introduction-to-the-key-features-of-institutional-arbitration> accessed 01 May 2025

University of Dundee, 'Fundamentals of International Arbitration (CP52065)' <https://www.dundee.ac.uk/module/cp52065> accessed on 11 April 2025

<sup>63</sup> Ugale Anastasiya & Li Eric, "institutional Arbitration," Jus Mundi,

arise concerning the arbitration's conduct.<sup>64</sup> These institutions comprise the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), the Hong Kong International Arbitration Centre (HKIAC), and the Singapore International Arbitration Centre (SIAC). The Arbitration in Africa Survey 2020 Report from the School of Oriental and African Studies (SOAS) indicates that the foremost five centres in Africa are the Arbitration Foundation of Southern Africa (AFSA) and the Cairo Regional Centre for International Commercial Arbitration (CRCICA), the Kigali International Arbitration Centre (KIAC), the Lagos Court of Arbitration (LCA), and the Nairobi Centre for International Arbitration (NCIA).<sup>65</sup>

### **2.3 Fundamental characteristics of arbitration**

Commercial arbitration is held in place by four basic features.

#### **2.3.1 The Agreement to Arbitrate**

Arbitration is a private dispute resolution mechanism.<sup>66</sup> The Act delineates an arbitration agreement as follows; An accord between the parties to refer all or specific disputes that have occurred or may occur between them regarding a specified legal relationship, whether contractual or otherwise, to arbitration.<sup>67</sup> There are two traditional types of arbitration agreements: the arbitration clause, which designates future disputes for arbitration. The other document is the submission

---

<sup>64</sup> *ibid*

<sup>65</sup> The school of Oriental and African Studies (SOAS) Arbitration in Africa Survey 2020 Report: Top African Arbitral Centres and Seats, authored by Emilia Onyema (a reader in International Commercial Law at SOAS), available at <https://eprints.soas.ac.uk/33162/>.

<sup>66</sup> A Redfern, M. Hunter, N. Blackaby and C. Part asides, *Law and Practice of International Commercial Arbitration*, 4th ed., London: Thomson, Sweet & Maxwell, 2004, pp.207-16

<sup>67</sup> Section 2 (1)c, Arbitration and Conciliation Act

agreement, typically established after a dispute arises, wherein the parties' consent to arbitration.<sup>68</sup>

### **2.3.2 Conclusive Nature: The Decision of the Arbitral Tribunal<sup>69</sup>**

The arbitral decision is conclusive and obligatory for the parties, as it is deemed so by their mutual consent rather than by the coercive authority of any state.<sup>70</sup> The global endorsement of this straightforward conflict resolution system is astonishing, given that it is embraced not only by people but also by significant organisations and nations as the recognised approach for settling disputes involving substantial stakes.<sup>71</sup>

### **2.2.4 The Implementation of the Award**

An arbitration award possesses the same effect as a court judgement<sup>72</sup>, rendering it enforceable without additional proceedings, akin to a court order. An arbitration award may undergo review but is not open to appeal.<sup>73</sup> The prevailing party must petition the court for enforcement and provide evidence of a valid arbitration agreement along with the original arbitral award or a properly authenticated duplicate thereof. Section 36 of the Act provides that;

---

<sup>68</sup> Katie Shonk, 'What Is an Arbitration Agreement? (PON-Program on Negotiation at Harvard Law School

<sup>69</sup> LexisNexis <https://www.lexisnexis.co.uk>

<sup>70</sup> Udechukwu Ojiako, "The Finality Principle in Arbitration: A Theoretical Exploration." *Journal of Legal Affairs and Dispute Resolution in Engineering and Construction* Volume 15, Issue 1. [https://doi.org/10.1061/\(ASCE\)LA.1943-4170.0000573](https://doi.org/10.1061/(ASCE)LA.1943-4170.0000573)

<sup>71</sup> In 2018, the average amount disputed in cases referred to the International Chamber of Commerce (ICC) by parties was US\$45 million. See: ICC at <https://iccwbo.org/media-wall/news-speeches/icc-arbitration-figures-reveal-new-record-cases-awards-2018/>.

<sup>72</sup> OAPEN Library: [library.oapen.org](http://library.oapen.org)

<sup>73</sup> This However should not be interpreted to interfere that arbitral bodies like CADER have a subordinate court status in Uganda. Indeed, the constitutional court has clarified in CEDER and Another v AG (Constitutional Petition No.11 of 2019[2023] UGCC 16

“... where the time for making an application to set aside the arbitral award under Section 34 has expired, or that application having been made, it has been refused, the award shall be enforced in the same manner as if it were a decree of the court.”

The Act characterises an arbitral award as any decision rendered by an arbitral tribunal, encompassing interim awards.<sup>74</sup> The award is conclusive and obligatory for all parties involved in the arbitration. It may only be annulled on restricted grounds as stipulated in Section 34 of the Act, all of which pertain to procedural irregularity. The rationale aligns with that outlined in Article 34 of the Model law.

### **2.2.5 The Choice of Arbitrators**

The parties may select their own arbitrators, who can be specialists in international arbitration or individuals possessing relevant commercial or industrial expertise related to the issue.<sup>75</sup> Section 11 of the ACA stipulates the selection of arbitrators by the parties are at liberty to concur on a method for appointing the arbitrator or arbitrators....”<sup>76</sup>

## **2.3 Uganda’s Legal Framework Governing Arbitration**

### **2.3.1 1995 Constitution of Uganda (As amended)<sup>77</sup>**

The Judiciary, as the arbiter of justice, is established under Article 126(1) of the 1995 constitution.<sup>78</sup> The constitution of the Republic of Uganda, Article 126(2)d,

---

<sup>74</sup> Steadman Handbook on Alternative Labour Disputes Resolution 21; read with ILO Collective Dispute Resolution through conciliation, Mediation and Arbitration, pp.21.

<sup>75</sup> Section 2 (1)d

<sup>76</sup> Section 11(2) of the Arbitration and Conciliation Act

<sup>77</sup> Article 10(1) of the Model law

<sup>78</sup> Section 119(2),ACA

mandates the judiciary to promote, reconciliation among individuals. The pertinent clause stipulates that; In adjudicating civil and criminal cases, the courts shall, in accordance with the law, apply the principles of reconciliation between parties. Be elevated;

### 2.3.2 The Arbitration and Conciliation Act (ACA)<sup>79</sup>

The ACA aimed to modify the legislation concerning domestic arbitration, international commercial arbitration, and the enforcement of foreign arbitral rulings. The Act delineates many mechanisms pertaining to arbitration in Uganda. These encompass the arbitration agreement's format<sup>80</sup>; interim measures by the court<sup>81</sup>; the demise of a party; the degree of court intervention<sup>82</sup>; the determination of the number of arbitrators<sup>83</sup>; the appointment of arbitrators<sup>84</sup>; the grounds for challenge<sup>85</sup>; and additional requisite conditions for a successful arbitral procedure.

Part III and IV of the ACA encompass the implementation of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention") and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID). The ACA is patterned after the UNCITRAL Model Law on International Commercial Arbitration and the UNCITRAL Rules of Arbitration. The High Court in *Dr. Alfred Otieno Odhiambo v Meduprof-S BV*<sup>86</sup> affirmed the applicability of the purpose of arbitration under the ACA, highlighting the conclusive

---

<sup>79</sup> Chapter 4 of the Laws of Uganda

<sup>80</sup> Section 3, ACA

<sup>81</sup> Section 6, Ibid

<sup>82</sup> Section 7, Ibid

<sup>83</sup> Section 9, Ibid

<sup>84</sup> Section 10, ibid

<sup>85</sup> Section 12, Ibid

<sup>86</sup> Miscellaneous Application No.665 of 2020

and obligatory characteristics of international arbitration as a dispute settlement mechanism.

### 2.3.3 The Judicature Act <sup>87</sup>

This Statute stipulates “... investigations and adjudications by referees, etc. and arbitrators.” The pertinent provision stipulates that, in any case or matter, excluding criminal proceedings

- (a) All interested parties who are not incapacitated consent;
- (b) The case necessitates extensive document examination or scientific or legal inquiry that, in the High Court’s judgment, cannot be efficiently conducted by its regular officers; or
- (c) The dispute involves accounts, the High Court may, at any time, mandate that the entire case or any factual question arising therein be adjudicated by a mutually agreed special referee or arbitrator, or by an official referee or an officer of the High Court.

It is essential to emphasise the necessity of the parties’ consent for arbitration to occur under this provision. Prior to issuing the ruling, the court must conduct an inquiry to ensure that the applicants were not subject to any types of handicaps. Kiryabwire says that this test imparted a negative connotation to the selection of arbitration, suggesting it should be avoided by individuals with sound judgement.<sup>88</sup>. In summary, arbitration has long been seen as “the darker brother” of combative

---

<sup>87</sup> Chapter 71 of the laws of Uganda

<sup>88</sup> Geoffrey Kiryabwire, <https://uculawlib.files.wordpress.com/201/09/alternativedispute-resolution-kiryabwire.pdf>

litigation, borrowing the image from the acclaimed American poet, Langston Hughes.<sup>89</sup>

Furthermore, the rule underscores that arbitration is not applicable in criminal procedure in Uganda. This is elucidated by the principle that arbitration relies on private conflicts, but criminal law seeks to curtail private sovereignty in the benefit of the public good. Secondly, criminal law constitutes the foundation of the state's compulsory legislation, whereas arbitration operates independently of the state.<sup>90</sup>

#### **2.3.4 Civil Procedure Act (CPA)<sup>91</sup>**

The CPA's lengthy title states that the Act was created "to provide for procedure in civil courts" in Uganda. The provision stipulates arbitration inside special proceedings acknowledged by Uganda's civil courts.<sup>92</sup> It stipulates that all referrals to arbitration in an action and all related proceedings will be regulated according to defined rules.

#### **2.3.5 Civil Procedure Rules (CPR)<sup>93</sup>**

The regulations contain comprehensive stipulations for the implementation of arbitration within the established procedures of civil courts. According to Order 12 Rule1, the court is required to convene a scheduling conference to clarify areas of consensus and contention, explore the potential for mediation, arbitration and alternative settlement methods.

---

<sup>89</sup> From the famous poem I, too by Langston Hughes. This poem in many ways highlights the place of arbitration in Uganda for long.

<sup>90</sup> Alexis Mourre, Arbitration and Criminal Law: Reflections on the Duties of The Arbitrator, Arbitration International, Volume 22, <https://doi.org/10.1093/arbitration/22.1.95>

<sup>91</sup> Anthony Conrad Kakooza, "Arbitration, Conciliation and Mediation in Uganda: A focus on the Practical Aspects" Uganda Living Law Journal, Vol.7 No.2December2009, pp.268-294. [https://papers.ssrn.com/sol3/Delivery.cfm/SSRN\\_ID175664\\_codel1067011.pdf?abstractid=1715664&mirid+1](https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID175664_codel1067011.pdf?abstractid=1715664&mirid+1)

<sup>92</sup> Chapter 71 of the Laws of Uganda

<sup>93</sup> Statutory Instrument

Furthermore, Order 47 stipulates the procedure for arbitration under the authority of a court. This includes the entitlement of parties to a lawsuit to request arbitration<sup>94</sup>, the designation of an arbitrator<sup>95</sup>, and stipulations concerning the arbitral ruling<sup>96</sup>, among other aspects.

### **2.3.6 Labour Disputes (Arbitration and Settlement) Act (LADASA)<sup>97</sup>**

Conflict resolution is crucial component of an effective labour market and industrial relations framework.<sup>98</sup> Arbitration is present in numerous nations as a vehicle for resolving workplace disputes; nevertheless, it is not frequently favoured or practiced.<sup>99</sup>

Section 6 of the LADASA stipulates the referral of such conflicts to conciliation and arbitration agreements. It offers ; “In instances where there exist arrangements for settlement through conciliation or arbitration within a trade or industry, involving a labour union and one or more employers, or between multiple labour unions and employers’ organisations, the Labour officer shall refrain from referring the matter to the industrial court and shall ensure that the parties adhere to the procedures for resolving the dispute as stipulated in the conciliation or arbitration agreement applicable to the matter.”

The Arbitration and Conciliation Act is inapplicable to any proceeding of the industrial court under this Act, or to any award issued by the industrial court.<sup>100</sup> In

---

<sup>94</sup> Statutory Instrument 71\_1.

<sup>95</sup> Order 1 Ibid

<sup>96</sup> Order 2 Ibid

<sup>97</sup> Orders 10,12,15 ibid.

<sup>98</sup> Statutory Instruments Supplement No.13

<sup>99</sup>International Labour office, Collective Dispute Resolution through Conciliation, Mediation and Arbitration: European and ILO Perspectives” Geneva Nicosia, Cyprus, October 18th-19th, 2007

<sup>100</sup> Ibid Well as the statistics in Uganda are not readily available, between 2000 and 2004 in Cyprus, only 10 collective disputes were referred to arbitration whereas 1072 cases were referred to mediation. Over the same time period in Romania there was a total of 558 collective disputes with only 18 of these being resolved

the context of collective bargaining compulsory arbitration may be regarded as one of the most logical types of government intervention.<sup>101</sup> Appropriately, to prevent industrial actions that could adversely affect the economy of the nation.<sup>102</sup>

## **Statutory authority**

### **2.4 The Centre for Arbitration and Dispute Resolution (CADER)**

CADER is a statutory entity created under the Arbitration and Conciliation Act to execute the responsibilities outlined in Sections 11,12,13,14,15 and 51 of the Act.<sup>103</sup> The actual standing of the entity under Uganda's judicial framework was the subject of dispute in the case Centre for Arbitration and Dispute Resolution (CADER) and Another v Attorney.<sup>104</sup> The Petitioners, CADER<sup>105</sup> and Mr. Jimmy Muyanja, the Executive Director of CADER, asserted that CADER is a subordinate court constituted under Articles 5,6, and 11 of the UNCITRAL Model Law on International Commercial Arbitration; sections 9,11 and 68(a) of the Arbitration and Conciliation Act; and Article 129(1)(d) of the Constitution.

In dissenting from the petitioners, Hon. Lady Justice Monica K. Mugenyi, JCC articulated the following; I contend that the First Petitioner is an administrative entity tasked with performing quasi-judicial tasks as outlined in section 68(a) of the Arbitration and Conciliation Act. The quasi-judicial position is emphasized by the adjudicative functions mandated by the statutory clause. Except for section 1(6) of the Act, which mandates the First Petitioner to consider the qualifications required

---

through arbitration. In Slovakia, only two disputes made it to arbitration out of 139 registered cases between 2000 and 2004

<sup>101</sup> Section 9 of the LADASA

<sup>102</sup> LO Collective Dispute Resolution through Conciliation, Mediation and Arbitration, pp.17.

<sup>103</sup> Oluto A Comparative Study of Dispute Settlement and Resolution in South Africa and Tanzania (2005)55.

<sup>104</sup> General (Constitutional Petition No. 11 of 2019) [2023] UGCC 16

<sup>105</sup> CADER is conferred with such legal personality under section 67 (2) of the ACA, which stipulates as follows:  
(2) The center shall be a body corporate with perpetual succession and a common seal and shall be capable of suing or being sued in its corporate may lawfully do.

of an arbitrator by the parties' agreement and factors that ensure the appointment of an independent and impartial arbitrator, the remaining functions specified in section 68(a) rely on the exercise of executive discretion rather than the rigid application of any law.<sup>106</sup>

In conclusion, the court determined that CADER, regardless of its execution of the functions outlined in Section 68(a) of the ACA, is not a subordinate court established under Articles 126,129(1)(d),139(2),150(1) and 257(1)(p) of the constitution, but is instead an administrative entity within the framework of Article 42 of the Constitution. Moreover, it was determined that the Second Petitioner does not qualify as a judicial official as defined by the Constitution, and hence, he is ineligible for immunity granted to judicial officers under Article 128(4) of the Constitution in relation to the duties specified in Section 68(a).

## **2.5 The International Centre for Arbitration and Mediation in Kampala (ICAMEK)**

### **The International Centre for Arbitration and Mediation in Kampala**

The International Centre for Arbitration and Mediation in Kampala is an appointing authority that received an instrument to appoint Arbitrators and Conciliators from the Minister on April 23, 2019, as stated on its web page.<sup>107</sup> The Centre is an autonomous, voluntary organisation. It advocates for arbitration inside the Ugandan corporate sector as a viable alternative to litigation, while positioning Uganda globally as an investment hub and a venue for international arbitration.<sup>108</sup> The body

---

<sup>106</sup> Constitution Petition 11 of 2019, pp.28.

<sup>107</sup> 'About Us -ICAMEK' < <https://icamek.org/index.php/about-us/>> accessed 01 May 2025.

<sup>108</sup> *ibid*

is governed by the ICAMEK arbitration rules, which meticulously outline the procedures and criteria to be adhered to during arbitration.<sup>109</sup>

## 2.6 Contentious Legal Proceedings

In common law jurisdictions, there was a conventional assumption that conflicts must be resolved through the adversarial system.<sup>110</sup> This seems to stem from the education of attorneys and judicial officials that in any conflict, there must be a victor or a vanquished party. The adversarial system is defined by a ruling favouring one party over the other, where any indication of surrender is perceived as a sign of weakness.<sup>111</sup> The most comprehensive elucidation of the system has been provided by Hon. Justice Stephen Mubiru in *Uganda v Okumu and 5 Ors*<sup>112</sup>; the adversarial trial system relies on opposing parties functioning as opponents, competing to persuade the judicial officer that their interpretation of the facts is the most compelling. The advocates possess the autonomy to select the problems to address, the evidence to introduce in support of their arguments, and the witnesses to summon. The judicial officer oversees the trial, adjudicates contested procedural and evidentiary matters, poses questions to witnesses solely for classification, and closes the trial by rendering a ruling based on the established facts. In adversarial system, the judicial officer cannot investigate beyond the facts and evidence presented by the opposing advocates, their role in selecting evidence for trial is predominantly passive; they serve as an impartial referee who adjudicates on legal matters. The judicial officer's job in this system is to maintain equilibrium between the opposing

---

<sup>109</sup> International Center for Arbitration and Mediation in Kampala (Arbitration) Rules 2018. <https://icamek.org/index.php/icamek-arbitration-rules/>

<sup>110</sup> J.A. Jolowicz, "Adversarial and Inquisitorial Models of Civil Procedure," *The International and Comparative Law Quarterly*, Vol. 52, No.2 (Apr. 2003), pp.281-295 (15 pages), Cambridge University Press. <https://www.jstor.org/stable/3663110> (last accessed 30 May 2025)

<sup>111</sup> Alternative Dispute Resolution-Kiryabwire. Pdf

<sup>112</sup> *Uganda v Okumu and 5 ors* (Criminal Revision 3 of 2018) [2018]UGHCCRD 206

parties without personally engaging in their factual disputes. This method of conflict resolution has long been prioritised over arbitration in Uganda. There were other objections to arbitration over the court's jurisdiction. Initially, there was the matter of judicial interference with the original award. The second issue was whether an arbitrated dispute constituted *res judicata* and if filing for arbitration violated the *lis pendens* requirement. Thirdly, there was the matter of removing the court's jurisdiction, as ensured by Article 139 of the Constitution of the Republic of Uganda.<sup>113</sup>

## **2.7 Potential constraints on issues amenable to arbitration.**

The Arbitration and Conciliation Act does not explicitly delineate the subjects that are arbitrable and those that are not. Consequently, only issues that satisfy the criteria for arbitration are eligible for arbitration, whereas all other matters that fail to meet these criteria are not subject to arbitration. For a dispute to be considered 'arbitrable', a valid arbitration agreement is required. The arbitration agreement must primarily satisfy all criteria for a legal contract. An arbitration agreement must be documented in writing, which include various forms of telecommunication that yield a record of the agreement. Article 7 of the UNCITRAL Model legislation encompasses the identical conditions.<sup>114</sup>

Secondly, a dispute must exist concerning issues that the parties have consented to submit to arbitration. Consequently, it is possible that the parties to a contract have consented to submit only particular problems arising from the contract to arbitration, rather than all disputes related to the contract. The dispute must

---

<sup>113</sup> Mohameded, S.S.M.(2016). "Powers of courts in granting arbitral interim measures in England ." International Academic Journal of Law and Society, 1 (1), 1-14 < <https://www.iajournals.org/articles/iajls>

<sup>114</sup> UNCITRAL Model Law on International Commercial Arbitration,1985(with amendments as adopted in 2006), united Nations, A/40/17, annex

pertain to the contractual topics that the parties have consented to submit to arbitration. With the exception of court-referred arbitration, the stipulation that a valid arbitration agreement must be present indicates that only contractual issues like as taxation, marital status, insolvency and criminal actions are hence not subject to arbitration. The Ugandan courts have affirmed that non-contractual subjects are not subject to arbitration, as demonstrated in the recent case of *Tullow Oil v Uganda Revenue Authority*.<sup>115</sup>an oil and gas agreement existed between Tullow Oil and Uganda, stipulating arbitration in the event of a dispute. A conflict emerged concerning taxes payable to the Uganda Revenue Authority. Tullow Oil sought to submit this disagreement to arbitration in London according to the contract; however, the Ugandan courts rejected this, asserting that, in principle, a contract concerning tax responsibilities between parties is not permissible, as tax obligations are mandated by the law and not subject to negotiation. Consequently, a legitimate arbitration agreement cannot exist about a subject adjudicated by law.

---

<sup>115</sup>*Tullow Oil v Uganda Revenue Authority*(TAT APPLICATION NO.4 OF 2011) [2011] UGTAT 1  
James G Stewart, 'The Turn to Corporate Criminal Liability for International Crimes: Transcending the Alien Tort Statute' (2014) 47(1) NYU Journal of International Law and Politics 121  
<https://academic.oup.com/jilp/article/47/1/121/1234567> accessed on 20 May 2025

## **CHAPTER THREE**

### **3.0 The Relevance of Arbitration in the Settlement of Commercial Disputes in Uganda**

This chapter examines and emphasises how courts in Uganda have adopted arbitration and their perspective on it. This document aims to elucidate several instances in which Uganda courts have construed and implemented the contentious arbitration provisions.

#### **3.1 Forms of Arbitration in Uganda**

This section discusses two forms of arbitration: court -ordered arbitration and party-to-party arbitration.

##### **3.1.1 Court-ordered arbitration**

Uganda's legislation stipulates that arbitration may occur either by court order or as an integral component of the judicial process. Legal requirements exemplified by the Judicature Act<sup>116</sup> stipulate circumstances under which the High Court may, at any time, mandate that the matter (in whole or in part be adjudicated before a special referee or an arbitrator mutually consented to by the parties.<sup>117</sup> This may occur in circumstances where (a) all relevant parties provide their informed consent; (b) the issue necessitates an extensive review of documents or a scientific or legal inquiry that, in the High Court's assessment, cannot be efficiently undertaken by its standard personnel; or (c) the matter in contention is entirely or partially comprised of accounts.

---

<sup>116</sup> Chapter 13, Laws of Uganda

<sup>117</sup> Section 27, *ibid*

According to section 28 of the Judicature Act, a referee or arbitrator is regarded as an officer of the High Court, endowed with the court's authority and required to manage the proceedings as instructed by the High Court, in accordance with the court's regulations. Order XLVII of the Civil Procedure Rules offer analogous provisions. It is significant that, even in this form of arbitration, the parties' agreement to the selection of the arbitrator is essential.<sup>118</sup> This also applies to cases or enquiries in which the government is a party, when consent is provided by the Attorney General.<sup>119</sup>

### **3.1.2 Party-to-party Arbitration**

the term party-to-party arbitration denotes the second category of arbitration, which relies on a commitment by the parties involved in a juridical affiliation, formalised in an arbitration agreement, to resolve all or part of any disputes that arise between them through arbitration. This form is executed based on the concept of party autonomy and is separate from the initial form utilised by the parties once the disagreement has arisen. In *Roo Construction Ltd V Kobusingye*, the court reaffirmed this when Mubiru J remarked that

“.... In arbitration, the autonomy of the parties is upheld as paramount.”<sup>120</sup>

## **3.2 Implementation of Arbitral Agreements: judicial interpretation of Section 5 of the Arbitration and conciliation Act**

Article 126(2)d requires the judiciary to foster reconciliation among individuals. Section 5 (1) of the ACA explicitly requires courts to prioritise and uphold the

---

<sup>118</sup> *ibid*

<sup>119</sup> Section 32 (a)

<sup>120</sup> [2022] UGCommC97, p.4

intentions of the parties involved in an arbitration agreement. It stipulates that; “...a judge or magistrate overseeing proceedings related to a matter governed by an arbitration agreement shall, upon application by a party after the submission of a statement of defence and following a hearing for both parties, refer the matter back to arbitration.” The specified section employs obligatory language using the keyword ‘must’. If a case presented before a judge or magistrate is governed by an arbitration clause, upon a party’s application after the defence has been submitted, the judge or magistrate shall refer the case to arbitration.<sup>121</sup> The aforementioned clause was contested in the case of Bayeti Farn Enterprises and Anor V Transition Grant Services<sup>122</sup>, which pertained to a request for the designation of a sole arbitrator. The respondent presented arguments opposing the application, referencing Section 6 of the Civil Procedure Act, which stipulates that no court shall entertain any suit that pertains directly and substantially to a matter already addressed in a previously instituted suit or proceeding involving the same parties or parties from whom they assert or derive their claims.

The presence of pending case in court does not invalidate the existence of an arbitration clause. Moreover, the court ought to endorse the arbitral procedure by assuming a supervisory function. Ultimately, pursuant to section 5 or 16(6) of the ACA, the matter of ongoing judicial proceedings is not pertinent until the court renders a conclusive decision on the validity of the arbitration clause or the jurisdiction of the arbitral tribunal.

---

<sup>121</sup> Arbitration and Conciliation Act. The provision to section 5 is in subsection 1(a) &(b); unless the agreement is null or void, inoperative or incapable of being performed or there is no dispute in fact.

<sup>122</sup> Bayeti Farm Enterprises &Anor v Transition Grant Services 9CAD/ARB/ 4 of 2009) [2009]

Furthermore, in the matter of East African Development Bank v Ziwa Horticulture Exporters Ltd<sup>123</sup>, the applicant extended a loan to the respondent. A conflict about the loan emerged between the two parties, promoting, the applicant to petition for, among other remedies, the winding up of the respondent company. The respondent thereafter submitted a request to send the issue to an arbitrator, invoking the arbitration clauses in their agreement.

Regarding the decision to refer the matter for arbitration, Okumu Wengi J. observed that,

“The Act aims to amend the law concerning domestic arbitration and the enforcement of foreign arbitral awards, to delineate the role pertaining to the conciliation of disputes, and to establish additional provisions related to the aforementioned.”

The scope of matters regulated by the Act is so extensive that section 10 appears to effectively eliminate the inherent jurisdiction of this court. Initially, it seems to render arbitration and conciliation procedures mutually exclusive from court proceedings, hence rendering court-based or initiated mediation or arbitration impractical. Secondly, it appears to limit alternative dispute resolution methods within court procedures. Thirdly, it significantly restricts the court’s inherent authority, which is essential in the judiciary. Consequently, the judiciary is effectively weakened in its oversight of arbitration and conciliation adjudication processes; its authority to grant prerogative orders of mandamus and certiorari is either neglected or overlooked. Empowering individuals to resolve their own issues

---

<sup>123</sup> East African Development Bank v Ziwa Horticultural Exporters Ltd (High Court Miscellaneous Application No. 1048 of 2000) [2000} UGCommc 7 (19 October 2000)

does not necessarily undermine the fundamental mandate and function of courts within governance.

The aforementioned situation concerning section 5 of the Arbitration and Conciliation Act was also examined in the case of Farmland Industries Ltd V Global Exports Ltd.<sup>124</sup> The court in arbitration is obligated to fulfil the parties' intentions. Section 5 of the Arbitration and Conciliation Act compels the court to honour the parties' agreement. It is well understood that the court does not formulate agreements for the parties but only enforces their objectives, provided they are not illegal.

Consequently, the Arbitration and Conciliation Act acknowledges the High Court's comprehensive jurisdiction while delineating the procedure for its exercise.<sup>125</sup>

Consequently, when the court is presented with the issue of the existence and validity of an arbitration agreement, and upon examination determines that the arbitration clause is valid, the court is obligated to refer the matter to the arbitral tribunal for further inquiry into other contractual issues between the parties. In *Vantage Mezzanine Fund II Partnership V Simba Properties Investment Co. Limited and Another*, the applicant challenged the validity of the proceedings and questioned the jurisdiction of the Honourable Court. The Applicant asserted that the lawsuit pertains to a dispute concerning the contractual provisions of the Mezzanine Term Facility Agreement (hereinafter referred to as the "Mezzanine Agreement" or the ("MTFA") executed on 11<sup>th</sup> December 2014 between the Applicant and the 1<sup>st</sup> Respondent. Clause 43 of the agreement includes a legal, binding, and enforceable

---

<sup>124</sup> (1991)HCB 72

<sup>125</sup> Anthony Conrad Kakooza `Arbitration, Conciliation and Mediation in Uganda: A focus on the Practical Aspects," pp.8 [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1715664](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1715664)

arbitration provision as stipulated in section 5 of the Arbitration and Conciliation Act.

The Hon. Justice Mr. Boniface Wamala deliberated on the appropriateness of referring the issues presented in HCCS No. 988 of 2019 to arbitration under the provisions of the Arbitration and Conciliation Act. The court determined that a valid and enforceable arbitration clause existed, and that an arbitrable dispute was present between the parties; therefore, it ordered the matter to be referred to arbitration in accordance with section 5 of the Arbitration and Conciliation Act.

### **3.3 The Perspective of Ugandan courts to Arbitration.**

Particularly the High Court, towards arbitration jurisprudence reflects a pro-arbitration position. In *Opec Prime Properties Ltd & Anor V Attorney General*<sup>126</sup>, the court examined the legality of an oral application to amend the applicant's Chamber Summons, which sought to include an additional request to prohibit the Attorney General (AG) from evicting the applicants from the project property until the arbitration concerning the dispute between the applicant and the respondent was heard and conclusively resolved. The Hon. Mr. Justice Richard Wejuli Wabwire stated that the revision neither contravened any existing laws or procedures before the court nor hindered them, but rather facilitated them. I am unaware of any legislation that this proposed modification contravenes. I have no grounds to suspect that the Applicants submitted the request to modify and the proposed change in bad faith; instead, it appears to be intended to attain a comprehensive resolution of the dispute with the Respondent.

---

<sup>126</sup> (HC Miscellaneous Application No. 201 of 2020)[2021] UGCommC 23

### 3.4 Judicial Non-intervention in Salable Arbitration in Uganda.

The allowable extent of court participation in the arbitral process is a very contentious topic in commercial arbitration. Hunter explicitly delineates the competing factors by stating; “... on one hand, there exists the parties’ interest in a prompt, cost-effective, and definitive resolution of their conflict. Conversely, the state has a vested interest in guaranteeing the justice, impartiality, and integrity of the arbitral process.<sup>127</sup> This principle of judicial non-interference, as posited by Gary Born, is critically crucial to the effectiveness of the international arbitral process, guaranteeing that arbitration can advance in accordance with the parties’ agreement or under the guidance of the tribunal, devoid of delays, second guessing and additional complications pertaining to interlocutory judicial review of procedural determinations.<sup>128</sup> Although arbitration must remain independent of courts to function effectively, it is equally acknowledged that it need the assistance of national courts to achieve efficacy.<sup>129</sup> Section 9 of the ACA stipulates that “... unless otherwise specified in this Act, no court shall intervene in matters regulated by this Act.” Justice Stephen Mubiru, in *Roko Construction Ltd v Kobusingye*<sup>130</sup>, remarked on this provision as follows section 9 of the ACA stipulates that “except as provided in this Act, no court shall intervene in matters governed by this Act,” so limiting the court’s involvement in arbitration. The provision exemplifies the acknowledgement of the principle of party autonomy that underpins the concept of arbitration. Thus, the Act delineates three categories of measures involving courts

---

<sup>127</sup> (Miscellaneous Cause No. 41 of 2018) [2018] UGCommc 84

<sup>128</sup> M. Hunter, *Judicial Assistance for the Arbitrator*, in *Contemporary Problems in International Arbitration* (ed. J. Lew) (London, Centre for Commercial Law Studies 1986) at pp. 195-196.

<sup>129</sup> GARY BORN, “The Principle of Judicial Noninterference in International Arbitral Proceedings,” Penn Law: Legal Scholarship Repository

<sup>130</sup> Redfern, A, *International Commercial Arbitration: Jurisdiction Denied: The Pyramid Collapse* (1986) JBL 15.

in arbitration: (i) measures that pertain solely to procedural steps which the arbitral tribunal is unable to order or enforce, such as issuing witness summons to a third party or staying legal proceedings initiated in violation of the arbitration agreement; (ii) measures designed to preserve the status quo, including the granting of interim injunctions or orders for the preservation of the arbitration's subject matter (interim measures of protection); and (iii) measures that facilitate the intended effect of the award by providing mechanisms for its enforcement or contestation.

Prior to Section 9 of the ACA, S.12 of the defunct Arbitration Act Cap 55 conferred upon courts the authority to intervene when "... an arbitrator or umpire has engaged in misconduct, or an arbitration or award has been unlawfully obtained; the court annul the decision."

The section was examined in *National Social Security Fund v Alcon International Ltd.*<sup>131</sup> The late Hon. Lady Justice M.S. Arach- Amoko, in addressing the court's extensive authority, asserted that; The courts have extensive authority under section 12 to annul an arbitral award. Generally, the courts are reluctant to intervene in arbitration awards, considering that the disputing parties have opted for this resolution method and consented to abide by the arbitrator's decision. However, the courts will intervene when necessary to uphold justice or if it is demonstrated that the arbitrator has reached a decision based on a flawed understanding or interpretation of the law.<sup>132</sup>

### **3.5 The impact a party's financial insolvency on Arbitral Proceedings**

---

<sup>131</sup> [2022] UGCommC 97, pp.4.

<sup>132</sup> *Ibid*, at p.4

In *Fulgensius Mungereza v Price Waterhouse Coopers Africa Central*<sup>133</sup>, the court deliberated. Whether a plaintiff's financial hardship is adequate justification for the High Court to exercise discretion in ordering a stay of arbitral proceedings. The appellant asserted that the respondent fundamentally breached the Agreement by dismissing him from the partnership and denying him access to leave passage, the reimbursement of his tax account balance, and his capital contribution to the firm. Consequently, the appellant determined that he could not afford to go to London for arbitration or to compensate his solicitors for representation during the arbitration. The presiding trial judge granted the motion, determining that the purported lack of funds did not render the Agreement unperformable, so excluding it from the exclusions outlined in Section 41 of the Arbitration and Conciliation Act. She mandated the suspension of the civil proceedings between the parties and the referral of the matter to arbitration pursuant to clause 29(2) of the Agreement.

On appeal, the appellant contended that he was financially incapacitated to cover the expenses of flying to London, which encompassed legal fees. Consequently, the learnt counsel argued that the arbitration agreement was rendered unperformable due to the appellant's financial destitution. The appellate court, disagreeing with the appellant, determined that the court of appeal correctly concluded that the appellant's poverty did not qualify him for any exceptions under section 41 of the ACA, thereby justifying the refusal to grant a stay of proceedings. To support the exercise of discretion in favour of the appellant, it was necessary to demonstrate that the appellant's financial hardship was a result of the respondent's actions.

---

<sup>133</sup> (Civil Appeal No.18 of 2002) [2004] UGSC9

In this instance, there was an absence of adequate evidence to substantiate this claim. In *Oil Seeds (Uganda Limited) V Uganda Development Bank*, the question was whether the court might invalidate an arbitral award issued by an arbitrator. Justice Oder JSC, referencing section 11 ACA (since repealed), stated that; In my opinion, this provision grants the court the authority to review the award and return it to an arbitrator for revaluation. If the award is annulled, the arbitrator shall issue a new award unless otherwise instructed by the court. If the rulings of arbitrators were definitive and binding. Section 11 of the Act could not have conferred upon the court such discretionary authority to remit awards for reconsideration.

### **3.6 Granting of interim measures in Arbitral proceedings**

Section 6 of the ACA stipulates that “A party to an arbitration agreement may petition the court, prior to or during arbitral proceedings, for an interim protective measure, which the court may grant.” This section underscores the connection between the civil procedure Act and the Civil Procedure Rules concerning arbitration as a procedural method in civil courts. In *Vantage Mezzanine Fund 11 partnership and Another V Simba Properties Investment Company Limited and others*<sup>134</sup>, is to preserve the status quo, status quo until the arbitration proceedings were finalised. The presence of an arbitration agreement is essential for the court to provide interim relief under this provision. This issue was emphasized in the case of *Pan Afric Impex(U) Ltd V Barclays Bank PLC and Anor*, presided over by the Honourable Mr. Justice FMS Engonda-Ntende. The application was submitted pursuant to Order 41 Rules 1 and 9 of the CPR and section 6 of the ACA. One of the primary bases for the

---

<sup>134</sup> [2000] E.A.536

application was the existence of ongoing arbitration proceedings in London that would adjudicate the disagreement between the parties. He decreed that;

“...it has not been suggested that the head suit is subject to any arbitral proceeding or ought to be stayed because of the existence of an arbitration agreement the parties to it. I am satisfied that there is no arbitral agreement between the applicant and the respondents in issue in this suit. For those reasons, I am satisfied that section 6(1) of the ACA is not applicable to the facts of this case.”

### **3.7 Setting Aside an Arbitral Award**

An arbitral award is not subject to appeal or any other remedy except as stipulated in ACA.<sup>135</sup> In *Roko Construction Ltd v Kobusingye*, the court articulated that “an appeal represents a challenge to the merits of the awarded and raises issues regarding errors of law, fact or a combination of both within the award’s content.”

Section 9 of the ACA explicitly limits the court’s jurisdiction to topics specified by the Act. Consequently, arbitral awards may only be contested on limited grounds. Subsection 34(2) of the ACA delineates the specific circumstances under which a party may petition to annul an arbitral award. The pertinent provisions of the Act state the following;

- a) The applicant provides evidence that the arbitral award was obtained by corruption, fraud or improper methods, or there was clear bias or corruption involving one or more arbitrators; or the arbitral award is inconsistent with the Act;

---

<sup>135</sup> Section 9,ACA

b) The court determines that the prize contradicts the state policy of Uganda. Consequently, it is essential to recognise that not every infraction of the Act would result in a denial of enforcement or annulment of the award. Mubiru, J has additionally articulated that; to annul an award, a party must demonstrate not only that a violation occurred but also two additional criteria(a) that the violation is linked to the issuance of the award, indicating a causal connection between the violation and the specific aspect of the award that the party contests; and (b) that the violation resulted in tangible prejudice to the party. While it is not necessary to demonstrate that the discrimination is significant, the violation must possess substance and cannot be trivial. An applicant is not required to demonstrate that the outcome of the proceedings would have certainly or even likely differed; nonetheless, it must establish that, in the absence of the breach, the arbitrator may have arrived at a different judgment than the one ultimately reached.

### **3.8 The Doctrine of Competence- Competence**

This argument emphasises that an arbitral tribunal possess the authority to ascertain its personal authority. The ACA adheres to this approach under Section 16, which empowers the arbitral the tribunal will adjudicate challenges to its jurisdiction as preliminary matters.<sup>136</sup> This aligns pursuant to the stipulations of Article 16(3) of the UNCITRAL Model Law. The phrase “existence or validity of the arbitration agreement,” as stated in section 16(1) of the Act, is absent from Section 5 of the Act. The wording in section 5 of the Act about the court’s authority over an arbitration agreement states,” ... that the arbitration agreement is invalid,

---

<sup>136</sup>Section 16(5)

ineffective or unable to be executed.” The court’s decision regarding whether the word “null and void” corresponds to “validity” remains ambiguous, considering the Respondents’ assertions that the arbitration agreement was obtained by duress and undue influence.<sup>137</sup>

### 3.9 Bare Arbitration Clauses: The Vinci Coffee Case

Bare arbitration clauses gained notoriety with the emergence of an agreement<sup>138</sup> between the government of Uganda, represented by the Ministry of Finance, Planning and Economic Development, and the Uganda Vinci Coffee Company Ltd in mainstream media.<sup>139</sup> An unadorned arbitration provision simply stipulates the referral of conflicts to arbitration without detailing the arbitration venue, the number of arbitrators, or the procedure for constituting the arbitral tribunal.<sup>140</sup> The arbitral practice in Uganda concerning these clauses was articulated by Mubiru J. in *Lakeside Dairy V International Centre for Arbitration and Mediation in Kampala v Midland Emporium*.<sup>141</sup>

The court determined that such a clause is legal and enforceable if the parties have demonstrated a direct intent to resolve any disagreement through arbitration.

The ACA establishes default provisions to elaborate on vague terms, contingent upon the parties demonstrating a clear purpose to resolve their issues through arbitration. If the arbitration clause does not indicate the numeral of arbitrators, the default provision of the ACA stipulates the nomination of a single arbitrator by an appointing

---

<sup>137</sup> Courts and Arbitration Tribunals Address Different Objections to Arbitration Agreements: Vantage Mezzanine Fund II Partnership V Simba Properties

<sup>138</sup> MoU-Btn-Finance-and -Vinci-Coffee. Pdf <https://response.cefroht.org/wp-content/uploads/2022/04/MoU-btn-finance-and-Vinci-coffee.pdf>

<sup>139</sup> The Independent, ‘Lawyers Petition Court to Quash Agreement between Gov’t, Vinci Coffee Company

<sup>140</sup> Phillip Karugaba, “The bare arbitration clause: why and how it works in Uganda: A study of the Vinci Coffee arbitration clause “

<sup>141</sup> High court Miscellaneous Cause No.021 of 2021

authority, either the International Centre for Arbitration and Mediation in Kampala or the Centre for Dispute Resolution, upon request from either party.<sup>142</sup>

The secondary stipulation is that the dialect of arbitration will be English.<sup>143</sup> The ACA authorises the arbitrator or arbitral tribunal to specify all additional elements, including procedural procedures, the location of arbitration and the applicable legislation controlling the dispute. Karugaba asserts that, when evaluated against the criteria for an arbitration agreement established in the Lakeside case the detailed Vinci Coffee clause is effective<sup>144</sup>

- a) It generates obligatory outcomes for the parties involved;
- b) It precludes judicial interference in the resolution of the dispute until the award is issued;
- c) It empowers the arbitrators to adjudicate disputes that may occur between the parties and
- d) It allows for the establishment of the arbitration procedure.

---

<sup>142</sup> Section 10(2) of the ACA provides that “if the parties fail to determine the number of arbitrators under subsection (1), there shall be one arbitrator.”

<sup>143</sup> Section 22 of the ACA

<sup>144</sup> Karugaba, Supra 62

## CHAPTER FOUR

### AN EVALUATION OF THE EFFECTIVENESS OF ARBITRATION, CHALLENGES FACED ITS IMPLEMENTATION AS AN ALTERNATIVE DISPUTE RESOLUTION METHOD IN COMMERCIAL DISPUTES.

#### 4.0 Introduction

This chapter delineates the efficacy of arbitration. It subsequently analyses the obstacles to the use of arbitration as an alternative dispute resolution process. The chapter commences with an exploration of the function of arbitration and its benefits as an alternative dispute resolution process. It subsequently examines the various issues associated with arbitration in commercial disputes.

#### 4.1 The Effectiveness of Arbitration as an ADR mechanism in Resolving Commercial Dispute

The implementation of arbitration as an alternative dispute resolution method has profoundly influenced the operations of the Ugandan commercial court system. Uganda, the interplay between arbitration and the commercial courts is both synergistic and, at times, adversarial, contingent upon the execution and endorsement of the legislative framework.

##### a) Privacy<sup>145</sup>

Arbitration is often a confidential process. This presents dual advantages: it prevents outsiders from accessing potentially sensitive material and mitigates the danger of adverse publicity for the parties involved. This confidentiality can assist the

---

<sup>145</sup> Arbitration, Conciliation and Mediation in Uganda: A Focus on the Practical Aspects

disputing parties in maintaining their personal and business connection post-resolution, in contrast to litigation.

In *Total (U) Ltd v Buramba General Agencies Ltd*<sup>146</sup>, the court upheld the arbitration clause and declined to exercise jurisdiction -reinforcing the policy of minimal interference.

#### **b) Enforcement**

Arbitration rulings are obligatory and enforceable numerous jurisdictions, including Uganda, pursuant to the Arbitration and Conciliation Act.<sup>147</sup> They are non-appealable, guaranteeing clarity and finality in commercial agreements.

Furthermore, the New York Convention, of which Uganda is a signatory, renders foreign arbitral rulings broadly enforceable in more than 170 nations, in contrast to domestic awards.

#### **c) Costs**

Arbitration can be cheaper than litigation if disagreements are handled promptly and without several levels of proceedings. Parties can limit hearings, witnesses and documents and agree on streamlined procedures to save expenses, compared to litigation which is more expensive due to many adjournments, appeals and procedural battles as well as hidden costs such as court filing fees, transcribing, expert fees and time lost due to delays.

#### **d) International Applicability and Neutrality.**

---

<sup>146</sup>Arbitration Application No.3/98

<sup>147</sup> Section 36

Arbitration is a neutral forum for cross-border disputes, especially when neither party wants to go to court. ICSID, ICC and LCIA offer international arbitration. The New York Convention<sup>148</sup> makes international arbitration rulings globally enforceable. Parties can choose arbitrators with international commercial law or industry expertise. In contrast cross-border litigation can generate national bias and forum shopping difficulties.

**e) Informality.**

Arbitration is less formal and more driven by the parties than judicial proceedings. Parties may select the regulations and protocols. concur on the language, venue and relevant legal jurisdiction. This procedural autonomy renders arbitration more flexible to commercial requirements and less daunting than litigation. Litigation distinction: court procedures are inflexible, intricate and slow to evolve. Litigants are required to adhere to prescribed civil procedure regulations, with less latitude for innovation of the process.

**f) Speed**

Arbitration is generally much quicker than taking case through the courts.<sup>149</sup> Where, however, one of the parties makes use of the available grounds to challenge an arbitration award, the prior costs of the arbitration will have been largely wasted.

**g) Alleviated Strain on commercial courts**

Alleviates congestion in Uganda's business courts by redirecting issues. Courts frequently remand issues to arbitration when an arbitration clause exists, in accordance with Section 5 of the ACA, In Total (U) Ltd V Buramba General Agencies

---

<sup>148</sup> Part III of the Act.

<sup>149</sup> International Journal of Management and Humanities

Ltd, the court reaffirmed this principle, underscoring the importance of arbitration clauses and party autonomy.

#### 4.2 Disadvantages of arbitration

- a. **Restricted Appellate Rights**<sup>150</sup>: In contrast to litigation, arbitral awards provide constrained grounds for appeal. The review scope of higher courts is typically constrained, potentially restricting a party's capacity to contest an adverse ruling.
- b. **Absence of Precedent**<sup>151</sup>: Arbitrary decisions don't establish enforceable legal precedents akin to court rulings. Each arbitration is regarded as a distinct case, implying that analogous conflicts may be adjudicated differently across many arbitrations. The absence of precedent may result in ambiguity and variability in legal interpretation.
- c. **Restricted Discovery**<sup>152</sup>: Arbitration procedures typically entail a more constrained discovery of evidence compared to litigation. This implies that parties may have diminished access to pertinent evidence or information, thus influencing the disputes' conclusion.
- d. Nonetheless the complete promise of arbitration to alleviate court congestion remains unfulfilled due to restricted adoption and erratic judicial enforcement.
- e. However, arbitration can in certain cases, be protracted and ultimately costly, with restricted authority of arbitrators limited arbitrators' power, lack necessary legal knowledge.

---

<sup>150</sup> *ibid*

<sup>151</sup> Arbitration: a useful tool to remedy private fund disputes by Megan Paget-Brown on 25 March 2024

<sup>152</sup> Arbitration and other Alternative Dispute Resolution for Commercial Dispute (Reviewed from the Strengths of ADR and Decision of Arbitration)' (April 2019) Brawijaya Law Journal.

- f. Nonetheless, courts have hindered arbitration by court meddling persists in Uganda, particularly during the enforcement phase or in the annulment of award. This undermines the conclusiveness and efficacy that arbitration is intended to provide, narrowly interpreting the justifications for annulling aside arbitral awards, focusing primarily on procedural issues rather than the merits of the case.

#### **4.3 Challenges in the Implementation of Arbitration in Uganda for commercial disputes.**

Notwithstanding the favourable legal framework, certain obstacles impede the proper execution of arbitration:

##### **a) Erratic judicial Endorsement**

Although courts often support arbitration agreements, certain judges overstep their authority by intervening in arbitral processes or postponing the implementation of verdicts. The absence of a specialised business or arbitration bench results in uneven rulings. Moreover, courts occasionally accept appeals on arbitral rulings, contravening the norm of finality and eroding party faith.

##### **b) Institutional Fragility**

The Centre for Arbitration and Dispute Resolution (CADER) is inadequately funded, lacks a prominent national presence, and has restricted outreach. In contrast to organisations like KIAC in Rwanda and CIArB in Kenya, CADER does not aggressively advocate for arbitration or disseminate regular reports on its operations.

##### **c) Implementation of International Judgements**

Uganda is a signatory to the New York Convention, facilitating the implementation of international arbitral awards. However, in practice enforcement is infrequent due to procedural ambiguity. Judicial hesitance to implement foreign rulings. Lack of explicit implementation regulations in national legislation. This undermines Uganda's position as a dependable arbitration jurisdiction for cross-border investors.

**d) Restricted Awareness and Arbitration Culture**

A significant number of business executives and legal practitioners in Uganda lack familiarity with arbitration or harbour distrust towards it. This leads to inadequate formulation agreements, frequent reliance on litigation, and insufficient use of institutions such as CADER.

**e) Insufficient Sector-Specific Integration in Industries.**

Such as oil and gas, telecommunications and construction, arbitration is increasingly favoured, particularly by international investors. However, the domestic legal framework fails to sufficiently incorporate arbitration within the regulatory structures of these sectors. Consequently, disputes in these industries frequently revert to litigation, despite arbitration being the more appropriate resolution method.

**f) Cost Barriers.**

While arbitration circumvents court expenses, the fees for arbitrators and institutional charges might be considerable. In complex or transnational issues, expenses are comparable to or surpass those of litigation. This renders arbitration unattainable for low and mid-value conflicts, especially for small and medium-sized organisations or individuals.

### **4.3 Implementation of International Awards.**

Uganda is a signatory to the New York Convention, facilitating the enforcement of foreign arbitral rulings. Nevertheless, in practice, enforcement is infrequent due to procedural ambiguity. Judicial hesitance to implement foreign rulings. Lack of explicit implementation regulations in national legislation. This undermines Uganda's position as a dependable arbitration jurisdiction for cross border investors.

### **4.4 Comparative Analysis of selected Jurisdiction.**

This examination examines the legal frameworks and their interpretation and implementation in court decisions across various jurisdictions. Special attention is directed into the overall experiences of several African nations like Burundi and Rwanda.

#### **i. Rwanda**

Rwanda was a signatory to the Washington Convention on Investment Disputes since 1979, offering investor protection and immediate recourse against the state. Rwanda joined the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the convention) on November 3, 2008, becoming the 143<sup>rd</sup> country to do so. The convention took effect for Rwanda on January 29, 2009.<sup>153</sup> In February 2011, Rwanda parliament established the Kigali International Arbitration Centre (KIAC) as an independent entity for mediation, adjudication, and arbitration.<sup>154</sup> Rwanda has a national law based on the Model Law, Law No.51/2010 of 10/01/2010, establishing the Kigali International Arbitration Centre and

---

<sup>153</sup> Rwanda Accedes to UN Convention on Commercial Arbitration', UN NEWS CENTRE, Nov.3, 2008, available at <http://www.un.org/apps/news/story.asp?NewsID=28799&Cr=Trade&Cr1=Convention>

<sup>154</sup> Law No 51/2010 of 10/01/2010, Laws of Rwanda

determining its organisation, functioning and competence.<sup>155</sup> This Act is a modern arbitration statute based on the UNCITRAL Model statute on international Commercial Arbitration.<sup>156</sup> Rwanda has a single independent arbitration institution with its own rules and facilities.

#### **A) Kigali International Arbitration Center (KIAC)**

The Kigali International Arbitration Centre is an autonomous organisation that handles mediation, settle and arbitration. The centre employs domestic and foreign arbitrators.<sup>157</sup> In KIAC arbitration, parties can choose their arbitrators according to the KIAC Rules.<sup>158</sup> O designate arbitrators KIAC largely uses its panel of arbitrators.<sup>159</sup> Prior to the KIAC, there was no institutional system for amicable conflict resolution, especially in international commercial arbitration.<sup>160</sup> KIAC has the potential to advance international arbitration in the region and Africa. The institution is operating yet its success in fulfilling its aim is uncertain.

#### **ii. Burundi**

In 2007, the Government Burundi established the Burundian Centre for Arbitration and Mediation to address business and speculation conflicts.<sup>161</sup> In 2009, the Investment Code of Burundi was ratified to promote direct investments in the country.<sup>162</sup> The Investment Code permits the jurisdiction of foreign arbitration tribunals for issues related to investments in Burundi. The Code ensures that foreign

---

<sup>155</sup> Official Gazette no 09 bis of 28/02/2011

<sup>156</sup> Oppong, R.F., *Legal Aspects of Economic Integration in Africa*, (Cambridge University Press,2011)240

<sup>157</sup> Kigali international Arbitration Centre, 'Arbitration Rules' <http://kiac.org.rw/spip.php?rubrique25>

<sup>158</sup> Kigali International Arbitration Centre, *Arbitration Rules, 2012*(KIAC 2015). Available at [http://www.kiac.org.rw/IMG/pdf/kiac\\_arbitration\\_rules.pdf](http://www.kiac.org.rw/IMG/pdf/kiac_arbitration_rules.pdf) accessed 12 May 2025

<sup>159</sup> *ibid*

<sup>160</sup> Kigali International arbitration Center, *Annual Report July 2012-June 2013*,4.

<sup>161</sup> Law No.1/08 of 17 March 2005, *Code on the Organisation and Competence of the Judiciary*. (Burundi)Art 12

<sup>162</sup> Law No. 1/24 of 10 September 2008 *Establishing the Investment Code of Burundi* Art 5

investors have recourse to international arbitration.<sup>163</sup> In 2014, Burundi acceded as the 150<sup>th</sup> state party to the 1958 New York Convention became effective in the country on 21<sup>st</sup> September 2014, so allowing arbitral awards issues in Burundi to be enforceable in all states that are signatories to the New York Convention, as well as awards issued within jurisdictions.

In conclusion Among the three countries Rwanda leads in arbitration infrastructure, legal clarity, enforcement and investor confidence. Uganda possesses a robust legislative foundation; nonetheless, it is deficient in judicial consistency, institutional robustness, and public involvement. Burundi advantages from OHADA's structure yet lacks local institutional backing and experiences systemic enforcement difficulties. To enhance arbitration in Uganda, insights might be gleaned from Rwanda's strategic governmental backing, institutional involvement and explicit judicial policy about enforcement.

---

<sup>163</sup> Ibid, Art.2

## CHAPTER FIVE

### FINDINGS, RECOMMENDATIONS AND CONCLUSION ON THE EFFICACY OF ARBITRATION FOR COMMERCIAL DISPUTES.

#### 5.0 Introduction

This chapter delineates the principal findings of the study regarding the efficacy of arbitration in adjudicating commercial disputes in Uganda structured around the research questions. This expands upon the assessment provided in Chapter 4 and examines the efficacy of arbitration as substitute for litigation. The chapter provides pragmatic suggestions for enhancing arbitration utilisation and finishes with a summary of the research's overarching conclusion.

#### 5.1 Principal Discoveries

- a) **Objective One:** The influence of Arbitration on the resolution of commercial disputes inside Uganda's commercial court system.

The primary aim of the study was to examine the impact of Arbitration on the resolution of commercial disputes in Uganda's commercial courts. To comprehend the influence of arbitration, the study examined the merits and demerits of arbitration in commercial disputes, whether it is substantial and favoured in comparison to combative litigation.

The research findings demonstrate that arbitration has profoundly influenced the resolution of commercial disputes inside Uganda's commercial court system, emerging as a favoured approach. In the case of *Smile Communications Uganda Limited V ATC Uganda Limited and Eaton Towers Uganda Limited*<sup>164</sup> stated that

---

<sup>164</sup> (Application Cause 4 of 2022)

Arbitration is frequently favoured over litigation due to its merits outweighing its demerits.

The survey determined that arbitration is the favoured method for resolving commercial disputes, as it caters to business individuals that prioritise time efficiency and expediency. The results from its efficacy, adaptability and impartiality. The courts in Uganda often endorse the arbitration process, frequently acknowledging legitimate arbitration agreements and restricting judicial interference.

Numerous problems impede the utilisation of arbitration in business disputes, such as insufficient awareness and trust, poor understanding of arbitration among legal professionals and justices and apprehensions regarding the enforceability of the awards. The lack of a strong institutional structure for arbitration and an emphasis on conventional legal remedies further exacerbate the problem.<sup>165</sup>

Arbitration, although a prevalent mechanism for settling business disputes, is not uniformly applicable. Arbitration is inapplicable not circumstances involving required national legislation, bankruptcy<sup>166</sup>, antitrust claims, and some types of intellectual property conflicts. Furthermore, arbitration may be unsuitable for conflicts when an amicable settlement cannot be achieved under applicable civil procedure regulations, or in circumstances where consensus on the selection of arbitrators is unattainable.<sup>167</sup>

---

<sup>165</sup> Anthony Conrad K Kakooza, *Arbitration, Conciliation and Mediation in Uganda: A Focus on the Practical Aspects*.

<sup>166</sup> Marie Berard and Anna Kirkpatrick, 'Arbitration Procedures and Practice in the UK (England and Wales): Overview' (Clifford Chance) <https://www.cliffordchance.com>

<sup>167</sup> Arbitration and Conciliation Act, Cap 4 Laws of Uganda 2000.

**b) Objective Two:** Nature of Uganda’s legal, procedural and institutional framework governing arbitration in commercial disputes.

The second purpose of the research existed to examine the nature of the legal framework of Uganda is procedural, and regulatory structure overseeing arbitration in commercial cases.

a) Legal Framework

The arbitration framework in Uganda is established by the Arbitration and Conciliation Act<sup>168</sup>, which was enacted in 2000. This Act integrates fundamental concepts of the UNCITRAL Model Law on International Commercial Arbitration, demonstrating a dedication to aligning Uganda’s arbitration legislation with international norms. It regulates both domestic and foreign arbitration. The Arbitration and Conciliation Act establishes the fundamental legal framework for arbitration and include essential elements such as:

- Party Autonomy<sup>169</sup>: parties own the liberty to select the processes, arbitrators, language, venue of arbitration and governing law. This enables parties to customise the process according to the characteristics of their commercial relationship.
- Restricted judicial intervention: Courts are mandated to suspend proceedings and direct parties to arbitration when a valid arbitration agreement is present.<sup>170</sup> Court assistance is permitted in matters like the appointment of arbitrators and the enforcement of awards.

---

<sup>168</sup> *ibid*

<sup>169</sup> *ibid*

<sup>170</sup> *ibid*

- Finality of Awards: Arbitral awards are conclusive and obligatory, subject to restricted grounds for contestation as delineated in Section 34 and 36 of the Act.<sup>171</sup> Merit-based appeals are prohibited.
- Recognition of Foreign Awards<sup>172</sup>: Uganda, is a signatory to the New York Convention, has enacted measures for the acknowledgement and implementation of international arbitral awards, however these are not substantially detailed in the Act.

Notwithstanding these merits, the Act exhibits deficiencies in clarity. For instance, there are no comprehensive procedural regulations or timelines for enforcement. The procedure for enforcing international awards is less developed in comparison to nations with more established systems.

- b) The Act delineates the procedures for initiating arbitration, appointing arbitrators, conducting hearings, and enforcing awards. Nevertheless, it is devoid of contemporary provision, such emergency arbitration and expedited procedures.
- c) Arbitration is institutionally endorsed by CADER, nonetheless, its influence is confined to Kampala with no regional offices, its public visibility is limited, caseload statistics are not easily accessible and it exhibits insufficient involvement with commercial sectors or government policy frameworks unlike Kenya's CIArb and Rwanda's KIAC.

Uganda lacks specialised arbitral institutions and does not aggressively endorse arbitration via state policy or coordinated public-private partnerships.

---

<sup>171</sup> *ibid*

<sup>172</sup> *ibid*

d) **Objective Three:** Obstacles preventing arbitration from expanding in commercial disputes.

The third purpose investigates the barriers hindering the expansion of arbitration in commercial disputes. Numerous legal, institutional, and practical obstacles impede the broader utilisation of arbitration in Uganda even as a method for settling business disputes as the following;

- a) Judicial interference<sup>173</sup> constitutes a substantial impediment. Judges occasionally annul or reassess arbitral verdicts on dubious grounds, undermining the finality of arbitration.
- b) CADER is inadequately funded<sup>174</sup>, insufficiently promoted, and poorly assimilated into Uganda's broader legal framework.
- c) Numerous legal practitioners<sup>175</sup> and commercial entities lack adequate training in arbitration, resulting in poorly constructed or misinterpreted arbitration clauses.
- d) Arbitration proceedings are regarded as costly, particularly for small and medium enterprises (SMEs), which hinders widespread acceptance<sup>176</sup>.
- e) There is a scarcity of public awareness<sup>177</sup>s and professional advancement in arbitration, especially in rural regions.

## Conclusion

The courts' progressive stance on suspending judicial processes in favour of arbitration has been shaped by the implementation of the Arbitration and

---

<sup>173</sup> <https://www.academia.edu>

<sup>174</sup> <https://ucudir.ucu.ac.ug>

<sup>175</sup> *ibid*

<sup>176</sup> The Growth and Evolution of Arbitration in India <https://www.linkedin.com>

<sup>177</sup> <http://makir.mak.ac.ug>

Conciliation Act, aligning along with UNCITRAL Model Bills. The courts have shifted from the predominantly interventionist stance of the previous Arbitration Act, which was misaligned with contemporary international trends and advancements in arbitration.

The uniformity of judicial decisions endorsing the arbitration process is a favourable advancement in Uganda. The corpus of existing rulings provide clarity regarding the court's attitude to applications for referral to arbitration. The courts' approach demonstrates a preference for arbitration as a method of conflict settlement.

In the absence of a coordinated and persistent effort to address these obstacles, arbitration in Uganda may remain underutilised, thus depriving economic entities of the advantages of an efficient, private and flexible conflict settlement mechanism.

## **5.2 RECOMMENDATIONS.**

### **a) Introduction**

The chapter elaborates on the recommendations proposed by the study concerning the established objectives. Ultimately, it proposes more domains that warrant exploration for future research.

- i) Policy review:** The existing legislative framework requires reassessment to align with contemporary societal developments. The new policy must elucidate the materiality of the arbitration operation, compliance by the parties and the enforcement of arbitration determinations, all of which encounter obstacles.
- ii) Budgeting:** Effective planning and allocation of resources for the arbitration initiatives at the commercial court are essential.

- iii) Commercial arbitration is specialised in building energy and investment disputes. Lack of competence can impact an arbitrator's impartiality and independence, which is a ground for appeal under the statute.<sup>178</sup> Arbitration is credible ADR if the method to reach the award is fair.<sup>179</sup> This is why Ugandan judiciary stakeholders must master domestic and international arbitration legislation, concepts and practise. They will boost public faith in institutions. Arbitrators in Uganda must complete regular refresher training. Some practitioners still make schoolboy blunders, justifying this guideline. Infinity Telecom (Ug) Ltd, Kinetic Telecom Ltd and Mukama Atukwase Enterprises V Orange (U) Ltd.<sup>180</sup> The hearing notice states "An Appeal from the Arbitral Award of Mr. S.W. W. Wambuzi (Chief Justice Emeritus) was submitted at the High Court registry as Civil Appeal No. 44 of 2016. Counsel apparently understood that a Miscellaneous Application was right method. The court annulled Civil Appeal No44 of 2016 and reclassified it as "Miscellaneous Application No.3 of 2017", without modifying the original application.<sup>181</sup>
- iv) There is a want for vigorous sensitisation of many stakeholders including litigants, clients and the public populace, regarding the utilisation and benefits of arbitration<sup>182</sup>. A method to achieve this is via outreach campaigns. The public must comprehend the concept of arbitration prior to recognising its significance.

---

<sup>178</sup> Section 12, ACA

<sup>179</sup> Leela Kumar, 'the Independence and impartiality of Arbitration in International Commercial Arbitration'

<sup>180</sup> Miscellaneous Application No. 03 of 2017 originating from arbitration No.24 of 2016

<sup>181</sup> <http://bspace.build.ac.ae>

<sup>182</sup> <https://ucudir.ucu.ac.ug>

- v) It is necessary to impose punitive fees on parties that intentionally obstruct the arbitration process or neglect to comply with arbitration notices without justifiable cause.
- vi) Benchmarking from other jurisdictions is necessary to identify best practices for example from Kenya and Rwanda.
- vii) Urge arbitrators to provide plaintiffs sufficient time, since they often require merely a receptive audience along with some psycho-social guidance.

#### **5.4 Suggested Areas for further Research.**

In light of the research findings, the report proposes the following areas for future investigation:

- a. Are the current sensitisation activities about arbitration effective? Are all individuals in various commercial transaction businesses cognisant of the availability of arbitration across all court levels?
- b. A quantitative poll to assess public satisfaction with arbitration as an alternative conflict method of resolution in commercial conflicts.<sup>183</sup>
- c. Besides arbitration, what alternative methods can be employed to address the case backlog in commercial disputes?
- d. The consequences of covid-19 global epidemic on arbitration.
- e. What strategies can be employed to encourage court business users to adopt arbitration as the preferable form of commercial conflict resolution?

#### **5.5 Conclusion**

---

<sup>183</sup> Review of the Arbitration and Conciliation Act, CAP.4 <https://ulrc.go.ug>

### **a) Introduction**

This outlines the principal conclusions of the study, referencing the precise objectives.

### **b) Conclusion of the Study.**

Investors can conduct business with assurance, knowing their conflicts will be resolved promptly. This can bolster consumers' faith in arbitral institutions across Uganda and subsequently revitalise the ostensibly stagnant arbitral institutions and arbitration practices in Uganda. Optimism exists for the imminent. Institutional arbitration bodies and arbitration practices within Uganda have the capacity for growth and development. The moment to initiate and cultivate arbitration for an improved future is now.<sup>184</sup>

---

<sup>184</sup> Kmco.

## BIBLIOGRAPHY

Andreson Royce, 'A Definition of Peace (2004) 10 Peace and Conflict: Journal of Peace Psychology 101. pg 4. [https://doi.org/10.1207/s15327949pac1002\\_2](https://doi.org/10.1207/s15327949pac1002_2)( Last Accessed on 20<sup>th</sup> April 2025)

Asante, S.K.B (1993). The perspectives of African countries on international commercial arbitration, Leiden Journal of International Law, 6(2) page 331-356

Asozu, A.A. (2001). International Commercial arbitration and African states: Practice, participation and institutional development. Cambridge University Press.

Arbitration, Conciliation and Mediation In Uganda: A Focus on the practical aspects. By Anthony Conrad K. Kakooza.

Arbitration procedures and practice in the UK (England and Wales): Overview Marie Berard and Anna Kirkpatrick [www.cliffordchance.com](http://www.cliffordchance.com)

Clapham, Christopher. "Rwanda: The Perils of Peacemaking." Journal of Peace Research 35, no. 2 (1998): 193-210. <http://www.jstor.org/stable/425520>

Cohn, E. J. "Commercial Arbitration and the Rules of Law a Comparative Study." The University of Toronto Law Journal 4, no. 1 (1941): 1-32. <https://doi.org/10.2307/823913>.

Dany Jaimovich and Dick Kamuganga, 'Three Decades of Trade Policy in Uganda: Two Generations of Reforms in the Quest to Become Part of the Global Market'. <https://freit.org/WorkingPapers/Papers/Development/FREIT437.pdf>

Earl S. Wolaver, "The Historical Background Of Commercial Arbitration," University of Pennsylvania, 1934. <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=8693&context>

Emilia Onyema, "Arbitration in Africa Survey 2020 Report: Top African Arbitral Centres and Seats," The School of Oriental and African Studies (SOAS). available at <https://eprints.soas.ac.uk/33162/>.

Flew T, "The Global Trust Deficit Disorder: A Communications Perspective on Trust in the Time of Global Pandemics," J Common. 2021 Apr 25. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8135436/19>.

Francisco Orrego Vicuña, "Arbitration in a New International Alternative Dispute Resolution System" Dispute Resolution Journal, Vol. 57, No. 2. <https://arbitrationlaw.com/library/arbitration-new-international-alternative-disputeresolution-system-dispute-resolution>.

Jan Paulsson, "The Idea of Arbitration" Oxford University Press, 21 November 2013. pp.1 <https://doiorg.libproxy.york.ac.uk/10.1093/acprof:so/9780199564163.001.001>

Katie Shonk, 'What Is an Arbitration Agreement?' ( PON-Program on Negotiation at Havard Law School, <https://www.pon.harvard.edu/daily/conflict-resolution/what-is-an-arbitration-agreement/>

Kigali international Arbitration Centre website available at <http://kiac.org.rw/spip.php?rubrique25>

Kigali Internationale Arbitration Centre Rules, 2012(KIAC 2015). Available at <http://www.kiac.org.rw/IMG/pdf/>

Kigali International Arbitration Centre website

Kigali International arbitration Center, Annual Report July 2012-June 2013,4.

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

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

Leela Kumar, 'The Independence and Impartiality of Arbitrators in International Commercial Arbitration' (24 April 2014) <https://papers.ssrn.com/abstract=2428632>

Mamdani Mahmood. Politics and Class Formation in Uganda. New York: Monthly Review Press. 1976.

Odoki, B.J. Reducing delay in the administration of justice: The case of Uganda. Crim Law Forum 5, 57-89 (1994). <https://doi.org/10.1007/BF01785849>

Olotu A Comparative Study of Dispute Settlement and Resolution in African countries <https://ucudir.ucu.ac.ug>

Refugee Law Project (RLP), "Compendium of Conflicts in Uganda," School of Law, Makerere University, pg233. [https://www.refugeelawproject.org/files/others/Compendium\\_of\\_Conflict\\_final.pdf](https://www.refugeelawproject.org/files/others/Compendium_of_Conflict_final.pdf) (Accessed on 1st May 2025)

Review of the Arbitration and Conciliation Act, CAP.4 <https://ulrc.go.ug>

Redfern, A, International Commercial Arbitration: Jurisdiction Denied: The Pyramid Collapse (1986) JBL 15.

Sarat, Austin. "Alternative Dispute Resolution: Wrong Solution, Wrong Problem." Proceedings of the Academy of Political Science, vol. 37, no.1, 1988, pp.162-73. JSTOR, <https://doi.org/10.2307/1174062>

Shakespeare, William, 1564-1616. The Merchant of Venice. Harlow, Essex, England: Longman, 1994

The Growth and Evolution of Arbitration in India <https://www.linkedin.com>

Udechukwu ojiako, “The Finality Principle in Arbitration: A Theoretical Exploration.”  
Journal of Legal Affairs and Dispute Resolution in Engineering and Construction  
Volume 15, Issue1. [https://doi.org/10.1061/\(ASCE\)LA.1943-4170.0000573](https://doi.org/10.1061/(ASCE)LA.1943-4170.0000573)

## **LEGISLATION AND TREATIES**

### **Domestic Legislation**

Arbitration and Conciliation (Amendment) Act, 2008

Arbitration and Conciliation Act Civil Procedure Act, Cap 71.

Civil Procedure Rules, Statutory Instrument No.71-1 of 2014.

Constitution of Uganda, 1995.

ICAMEK arbitration rules

Judicature Act

Labour Disputes (Arbitration and Settlement) Act, 2006

### **Other Legislation**

Contract Review Act

Natural Wealth and Resources (Permanent Sovereignty) Act, No. 3 of 2017

Natural Wealth and Resources (Review and Re-Negotiation of Unconscionable Terms) Act,  
No. 6 of 2017

Public Private Partnership (Amendment) Act, No. 9 of 2018.

### **International Law.**

Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“New York Convention”)

Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID)

UNCITRAL Arbitration Rules United Nations Commission On International Trade Law

UNCITRAL Model Law on International Commercial Arbitration,1985 (with amendments as adopted in 2006)

## JUDICIAL DECISIONS

Bayeti Farm Enterprises & Anor v. Transition Grant Services

Centre for Arbitration and Dispute Resolution (CADER) and Another v. Attorney East  
African Development Bank v. Ziwa Horticulture Exporters Ltd

Farmland Industries Ltd v. Global Exports Lt.d Fulgensius Mungereza v. Price Water  
House Coopers Africa Central

Lakeside Dairy v International Centre for Arbitration and Mediation in Kampala v.  
Midland Emporium

National Social Security Fund v Alcon International Ltd

Oil Seeds (Uganda Limited) v. Uganda Development Bank Opec

Prime Properties Ltd & Anor v. Attorney General

Pan Afric Impex (U) Ltd v. Barclays Bank PLC and Anor

Roko Construction Ltd v Kobusingye

Tonoka Steels Ltd v. The Eastern and Southern Africa Trade and Development Bank  
Tullow Oil v. Uganda Revenue Authority

Uganda v. Okumu and 5 Ors

Vantage Mezzanine Fund 11

Partnership and Another v. Simba Properties Investment Company