



Kenya and the Singapore Convention on Mediation

Dr Kariuki Muigua and Ms. Beryl Ouma

Date: 19 August 2020 Time: 1:00pm CEST

Presentation Summary:

Dr Kariuki Muigua (Managing Partner at Kariuki Muigua & Co Advocates (Kenya)) and Ms Beryl Ouma (Founder and Managing Partner at B A Ouma & Associates Advocates) gave an enlightening presentation on the topic “Kenya and the Singapore Convention”.

Ms Ouma began the presentation by lauding the Singapore Convention on Mediation’s (“SCM”) ability to establish a harmonised legal framework for parties to invoke settlement agreements. This is something that practitioners and commercial parties in Kenya hope will be achieved when the country subsequently signs and ratify the SCM.

Although Kenya was late to the mediation scene, the country is quickly realising mediation’s benefits. Article 48 of the [Constitution of Kenya](#) expressly provides that access to justice is a right to all citizens. This is to be read alongside article 159 of the Constitution of Kenya whereby powers are vested in the tribunals and in the courts to utilise alternative dispute resolution methods and to observe the principles of justice. Mediation was further developed in Chapter 21 of the [Civil Procedure Act](#) where a mediation accreditation committee in the judiciary was established. The Civil Procedure Act also initiated court-annexed mediation which has achieved increased utilisation since its incorporation.

Although the increased use of mediation is largely positive, it also brought about some issues. For one, the increased demand for mediators has resulted in a decline of quality control. This has subsequently resulted in inconsistent mediated results. Another issue is the over-formalisation of the mediation process as court-annexed mediation does not have the same voluntariness or flexibility as an informal mediation.

Although Kenya has yet to sign the SCM, the [Institute of Chartered Mediators and Coucilliators \(ICMC\)](#) has been spearheading discussion sessions with the attorney general to get a delegation to sign the SCM in New York. If successful, this would make Kenya the second country after Uganda, in the continent of Africa, to sign the SCM.

Dr Muigua continued the presentation by explaining that the SCM should not be read in isolation to the other existing international legal instruments. Article 33 of the [Charter of the United Nations](#) stated that disputes relating to the endangerment of peace should first be settled through negotiation, mediation or other peaceful means of dispute resolution. Similarly, Article 159 of the Constitution of Kenya requires the promotion of mediation. This demonstrates an interest by the country to move towards meeting international standards of promoting mediation.

In the Kenyan context, the country is currently aiming to develop a mediation policy. A new [Mediation Bill 2020](#) was drafted and an invitation for the public's participation to share their views has been circulated. Dr Muigua shared that in order for the Mediation Bill 2020 to pass successfully, it should be modelled after the SCM and the [UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation](#).

Dr Muigua shared that mediation professionals in Kenya hope that the Mediation Bill 2020 would launch the promotion of mainstream mediation. H also cautioned against over formalising the process of mediation.

Currently, Kenya is putting efforts into mapping out the relevant stakeholders to the mediation process and have identified 77 institutions that conduct mediation domestically. However, as these institutions are currently operating independently, it is imperative that the promotion of

a harmonised framework for mediation is established. This is true not only for Kenya, but also in the cross-border context within the region. To benefit fully from the SCM's framework, Kenya would need to set up legal institutions on both the national and regional level, and to promote informal mediation as a legitimate dispute resolution process.

Q&A Discussion

Some questions addressed by Dr Muigua and Ms Ouma in the interactive question and answer discussion:

- Is court-annexed mediation in Kenya mandatory? And how has the new virtual court-annexed mediation help to promote it?
- How can professionals, academics and practitioners help to promote the upcoming mediation bill within Kenya?
- How has Kenyan rural villages utilised traditional informal modes of mediation to settle local disputes?
- Is the principle of confidentiality absolute in Kenya?

Links to other resources that came up during the session:

- [United Nations Convention on International Settlement Agreements Resulting from Mediation](#) (the “Singapore Convention on Mediation”)
- [Constitution of Kenya](#), 2010
- [Civil Procedure Act](#), Revised Edition 2012 [2010]
- [The Mediation Bill](#), 2020
- [UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation](#)

We invite you to listen to their answers to the questions from the video record of the session [here](#). As well as to catch up on his response to other questions not listed above.

The team at SIMI and IMI would like to express our gratitude to Dr Muigua and Ms Ouma for sharing their time to be a speaker at the Singapore Convention Seminar Series, and to participants for joining us live for the session.

About the Speakers



Dr. Kariuki Muigua is a law scholar, mediator, Chartered Arbitrator and holds Ph.D in law, University of Nairobi. He has training and experience in international and domestic commercial arbitration and mediation, policy formulation and the legislative process.

He is the (CIArb) Regional Trustee for Africa.

He was the Chairman (CIArb)-Kenya from 2012-2015. An Advocate of over 27 years at Kariuki Muigua Co. Advocates.

He is recognised nationally and globally and rated by Chambers and Partners as one of the best dispute resolvers in the country. He has a sterling background in commercial, constitutional and environment and natural resources matters.

He is a university of Nairobi law lecturer and has published in the areas of ADR and access to justice, environment and natural resources.



Ms. Ouma holds a B A Degree (Political Science) and an LLB Degree from the University of Kolapur (India). She is an Advocate of the High Court of Kenya with 24 years experience and currently serves as the Vice Chairperson of the Kenya Chapter of the Institute of Chartered Mediators and Conciliators (ICMC). She is also the founding and managing partner at the law firm of **B A OUMA & ASSOCIATES ADVOCATES** based in Nairobi Kenya.

Through her career as a practicing lawyer, Ms. Ouma has been a strong advocate for the adoption of Alternative Dispute Resolution (ADR) as a means of settling contested matters between parties. She has presided over and successfully mediated disputes in matters relating to Succession, Commercial, Labour & Employment, Intellectual Property, Religious Communities to mention a few.