

# The **DISPUTE RESOLUTION** NEWSLETTER

ISSUE  
03



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# From the Editorial's Desk.

Welcome to the second issue of our bi-annual corporate newsletter for the financial year 2023/2024.

In this edition, we have highlights of our activities that include the historic signing of an MOU with regional arbitral institutions to advance the cause of ADR in the region and globally.

We also have a story on the launch of the 3<sup>rd</sup> NCIA Journal and a report on the visit to the counties in the Mt. Kenya region by a team from the Centre.

In this issue, we also update you on the ongoing thought leadership breakfast meetings, this time in collaboration with the Institute of the Certified Secretaries -Kenya. We also have a story on the presidential initiative of environmental conservation where the staff has been able to plant 850 trees in support of this national endeavor.

As part of the Centre's webinar sensitization series, the Centre in partnership with the Kenya Institute of Supplies Management (KISM) hosted a free Webinar on 30<sup>th</sup> April 2024 targeting members of the Kenya Institute of Supplies Management (KISM) titled "Procurement Contract Management Through Effective Dispute Resolution."

Finally, we share a story on the staff team building held at the Lake Naivasha Resort where they participated in different indoor and outdoor activities to enhance staff social relations.

We wish you happy reading and thank you for the support offered in the financial year 2024/2025.



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# NCIA Signs a Historic MOU with Regional Arbitral Institutions



*NCIA CEO/Registrar Mr. Lawrence Muiruri with Heads of our Partner Institution during the signing Ceremony.*

On the 7th of March 2024, the Centre marked a significant milestone as we joined forces with the Cairo Regional Centre for International Commercial Arbitration (CRCICA), the Hamburg Chamber of Commerce and the Kigali International Arbitration Centre (KIAC) to sign a groundbreaking memorandum of understanding (MoU) in Nairobi, Kenya.

This collaboration, which began two years ago with the Hamburg Chamber of Commerce, has the objective of enhancing the international visibility and growth of arbitration in Africa. Our joint efforts have been focused on combining the principles of the rule of law and economics to create a conducive environment for international arbitration on the African continent.

Throughout the journey leading up to the signing, representatives from the Hamburg Chamber of Commerce and the LawCom Institute, our project consultants, visited KIAC in Kigali and NCIA in Nairobi. They engaged with a wide range of stakeholders, including government officials, the Judiciary, private sector players, Bar Associations, Law Societies, foreign development agencies, German foreign representatives, academic institutions, and other key players. These engagements were crucial in building awareness of the project and seeking collaborations to ensure its success.

The MoU covers various areas, including building awareness and visibility of our arbitral institutions in Germany, capacity building, promoting a sustainable pipeline of younger arbitrators, and strengthening the role of women in arbitration. This partnership signifies our collective dedication and commitment to creating an environment conducive to fostering the development of international arbitration and enhancing international business opportunities.



# Centre launches its 3rd NCIA Journal



*Panelist from 2nd left Job Owiro, SC John Ohaga and Ms. Pressy Akinyi. On the right is Eng. Aluoch the moderator.*

As part of its thought leadership and research in ADR practice, the Centre launched its 3rd Journal in a colourful ceremony held on 7th March 2024 at a Nairobi Hotel. The 3rd issue is part of the Centre's ongoing Journal series has articles articulating various emerging issues in ADR including the emergence, growth, and entrenchment of third-party funding (TPF) in international arbitration. Senior Counsel John Ohaga and Ms. Pressy Akinyi in their article titled

The Essar Case Effect in Kenya: Regulation of Third-Party Funding in Arbitration noted that the growth and eminence of international arbitration has seen tremendous benefits across States but has equally been met with manifold complexities owing to its exorbitant attendant costs and the increasingly overwhelming demand from its users. They noted that parties have to incur costs related to the arbitrator's fees, costs of hiring the venue of arbitration, stenography costs where contracted, legal fees of the advocates employed to provide counsel on legal issues and expert fees, costs of the awards, disbursements and other allowances.

They note that these costs tend to be exceedingly high to the extent that parties with meritorious claims are dissuaded from pursuing their claims in arbitral proceedings or fail to pursue the claims entirely and as a result, access to justice is impeded

and parties resort to innovative mechanisms of pursuing their claims.

Prof. Kariuki Muigua who authored a paper on Environment, Social and Governance (ESG) titled The Place of Environmental, Social and Governance (ESG) in Arbitration noted while making his presentation that ESG seeks to promote sustainable, responsible, and ethical corporate behavior by incorporating Environmental, Social, and Governance concerns in corporate decision making. He noted that the public scrutiny of corporations and the need to operate within socially acceptable standards have resulted in many corporations incorporating ESG commitments in commercial contracts.



*Prof. Muigua making his presentation during the meeting*

He added that ESG principles have become a model for sustainable business development through which a corporations' goal for solving environmental, social and governance problems is achieved. Prof Muigua argued that the public scrutiny of corporations and the need to operate within socially acceptable standards have resulted in many corporations incorporating ESG commitments in commercial contracts.

In his article titled Third-Party Funding in Africa: A Reality to Face not an Evil to Avoid, Mr. Juvenalis Ngowi notes that TPF remains controversial notwithstanding its increasing influence. He argues that it has been hailed as an innovative solution to dispute resolution financing noting that the legal and regulatory framework governing third party funding in international commercial arbitration and even litigation is a complex and evolving one. Arbitration has for a long time been the most viable mechanism for management of international commercial and investment disputes, adding that arbitrators play a significant role in shaping and adapting international law to respond to the climate crisis.

Another author Mr. Job Owiro in his article titled 'Arbitrability of Corruption Tainted Investor-State Contracts in International Commercial Arbitration, he argues that certain disputes brought before arbitration tribunals may involve sensitive public policy issues such as corruption. He adds that the presence of one or more red flags does not necessarily indicate the presence of corruption or fraud, but rather suggests that further investigation and scrutiny may be warranted.

Ms. Beth Michoma in her article titled 'Cross Border Enforcement of Foreign Arbitral Awards in the Context of Economic Sanctions' argues that each party in international arbitration bears the burden of the facts they rely on in support of their case.



*NCIA Board members with the Registrar during the launch.*

# Report on NCIA visit to Mt. Kenya Counties

As part of the Centre's mandate and the strategic initiatives of raising the awareness and adoption of ADR in the counties, a team from the Centre visited the counties of Nyandarua, Nyeri, Kirinyaga, Muranga and Kiambu from 15-20 April 2024. The initiative to enhance awareness about the Centre and ADR in general is driven by our commitment to creating awareness, fostering collaboration, and advancing the cause of Alternative Dispute Resolution (ADR) in various counties as we promote the devolvement and adoption of ADR in the counties.

Below is an update of the county visit;

Day  
1

**15th April, 2024: Nyandarua County**

## Meeting with the County Attorney of Nyandarua County Government – Hon. Joseph Gatore

### Discussions

The teams had discussions covering the functions of NCIA, partnerships, training initiatives, public participation (for the National ADR policy), and the utilization of NCIA facilities during ADR processes.



*Mr. Shadrack Gatore, the County Attorney, during the discussions. On his left is Hannah Waceke a legal counsel.*

The County Attorney noted that the County legal team has experienced several disputes including delayed payments to suppliers and contractors, pending bills and land disputes some of which can easily be resolved outside the traditional court system. He also expressed his appreciation for the timely visit by the Centre and informed the NCIA

team that the County legal team has plans to train its members of staff on ADR mechanisms before the end of the financial year. A training proposal for 10 officers in the lands, human resources, county attorneys and water departments were shared with the legal counsel for consideration as requested during the discussions.

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### Way forward

NCIA team to organize to train the selected members of staff of the County Government of Nyandarua on Mediation before the end of the financial year.

## Meeting with the County Attorney of Nyandarua County Government – Hon. Joseph Gatore

### Discussions

The teams had discussions covering the functions of NCIA, partnerships, training initiatives, public participation, and the utilization of NCIA facilities during ADR processes.



*The Nyandarua County Deputy Governor Mr. Hon. Mathara Mwangi and other county officials after the meeting.*



The Deputy Governor expressed his support to the NCIA team and the use of ADR as the first stop to the resolving disputes. He stated that the County Government of Nyandarua is keen on adopting ADR mechanisms to resolve disputes. He concluded that the doors are open to the Centre for collaborations in the advancement and adoption and use of ADR mechanisms to resolve disputes.

### Way forward

- NCIA team to hasten the process to training the County Government staff.
- The Deputy Governor displayed a cheerful outlook toward the ADR practice and expressed his eagerness to provide support to NCIA and the County legal team.

### Meeting with the Kenya National Chamber of Commerce and Industry, Nyandarua Chapter.

#### Discussions

The team later in the afternoon, had discussions with the KNCCI, Nyandarua Chapter which was represented by Ms. Jecinta Murimi a Director at the Chapter. The NCIA team presented the mandate and functions of the Centre and engaged on issues around partnerships, training and public awareness initiatives, adoption of the Centre's ADR services by the Chamber and the utilization of NCIA facilities during ADR processes.



*Ms. Jecinta Murimi, a Director of KNCCI Nyandarua Chapter poses for a photo with the NCIA team.*

Ms. Murimi stated that the visit by the NCIA team was timely noting that the Chapter's members were struggling with disputes which could be resolved through ADR mechanisms noting the costs and time requirements for litigation. She expressed her enthusiasm in utilizing NCIA's

services to save members time and money while pursuing justice in the traditional court system.

She stated that she will mobilize the KNCCI members to utilize NCIA's training services and promote the use of ADR services in Nyandarua Chapter of the Chamber. She observed that there was a serious dispute going on licensing between its members and the county government where members have disputed the high rate of increase. The other common dispute she noted was on construction contracts and boundaries disputes.

### Way forward.

- The NCIA team to facilitate training of the KNCCI Nyandarua Chapter 17 directors.
- The Center to share a copy of the MOU existing between the Center and the National Office.

### Meeting with the Head of Station, Ol-Kalou Law Courts – Hon. Judicaster Nthuku.

#### Discussions

The team held discussions with the Hon. Judicaster Nthuku, the Head of Station, Ol-Kalou Law Courts. During the meeting, the team presented the mandate and functions of the Centre, discussed on issues around partnerships and collaboration with the Judiciary in capacity building of judicial officers through training and public awareness initiatives including joint events with the judiciary with a particular emphasis on the judiciary open days.

Hon. Nthuku sought to know the point of convergence of NCIA services and the Judiciary. The team noted that the Judiciary and the Center are collaborating in the training of Judicial officers to support the use of arbitration and other forms of ADR in dispute resolution to ensure its adoption as a form of resolving disputes.

The team noted that the mediation certification it awards participants allows them to seek accreditation in the court annexed mediation which continues to support the decongesting of Courts. The NCIA team added that the Centre contributes to the functioning of the Judiciary by building the capacity of Judiciary officers on ADR mechanisms thus increasing the application of ADR in resolution of disputes. Hon. Judicaster appreciated the NCIA team for visiting the Ol-Kalou law courts noting that the collaboration of the two institutions is key in the dispensing justice to the public.



## Way forward

Hon. Judicaster invited Centre to the upcoming citizen sensitization drive in Nyandarua town scheduled to take place on April 25, 2024, with the aim of sensitizing the public on the functions of the courts including the different avenues for them to access justice.

Day  
2

**15th April, 2024: Nyandarua County**

### Meeting with the Assistant County Commissioner of Nyeri – Mr. Sammy Nyagah

#### Discussions

The team met the Assistant County Commissioner of Nyeri, Mr. Sammy Nyagah in the morning and held discussions covering the mandate and functions of NCIA, partnerships, training initiatives, public participation, and the utilization of NCIA facilities during ADR processes.



*Mr. Sammy Nyagah the Nyeri Assistant County Commissioner poses for a photo with the NCIA team.*

Mr. Sammy Nyagah the Nyeri Assistant County Commissioner poses for a photo with the NCIA team.

Mr. Nyagah noted that the visit by the NCIA team was timely noting that County Administration Officials have been combining the law and traditional methods to resolve disputes among the community to ensure that citizens live in harmony. Mr. Nyagah added that ADR is a game changer if fully embraced. He added that it is paramount for the administration officers to undergo training to adequately equip them to handle the disputes within the society. He observed that the common disputes experienced in the region included family affairs, succession, land, and criminal offences.

## Way forward

- NCIA team to plan to train administration officers on ADR, especially the chiefs who are the first officers to handle disputes within the society when they arise.
- The Assistant County Commissioner expressed the commitment of the county administration to collaborate with the Centre in promoting the use of ADR in dispute resolution and support for the public participation when the National ADR policy is adopted.

### Meeting with the County Attorney of Nyeri County Government – Hon. Kimani Rucuiya

#### Discussions

The team later met the County Attorney of Nyeri County Government Hon Kimani Rucuiya, who was joined by two legal counsels, Ms. Abigail Njoki and Ms. Timna Karanja. The team made presentations on the mandate and functions of NCIA, partnerships and collaboration in the promotion of ADR, training initiatives, and the use of NCIA facilities during ADR processes.

The County Attorney stated that the County Government of Nyeri has embraced the use of ADR noting that the County Government of Nyeri has an arbitration clause in all its contracts as the first stop to resolving any dispute arising from that contract. He noted that the clause does not specify where the matter is referred for settlement. The County legal team informed the NCIA team that they mostly encounter vendor contractual disputes, land, and labor disputes.



## Way forward

- Hon. Kimani stated that the Centre can collaborate with the County Attorney's office in areas of capacity building and public participation aimed at increasing the adoption of ADR in the County. This will include training of the County management team and selected staff.
- A proposal to train Nyeri County Government Legal team to be shared with the legal counsel.

## Meeting with the Kenya National Chamber of Commerce and Industry, Nyeri County

### Discussions

The team, later in the afternoon, had discussions with the KNCCI, Nyeri Chapter, which was represented by Ms. Wanjiku Mbutia, a Director at the Chamber Chapter and Managing Partner of G.W Mbutia Advocates, a law firm based in Nyeri. The NCIA team presented the mandate and functions of the Centre, discussed issues around partnerships, training and public awareness initiatives, adoption of the Centre's ADR services by the Chamber and the utilization of NCIA facilities.

Ms. Wanjiku informed the team that she has been involved in dispute resolution through the Judiciary Court Annexed Mediation and noted that there is a challenge in the perception of ADR by society which affects its usage in resolving disputes. Additionally, many people are not comfortable with ADR because its outcomes must again be enforced by the courts which in her view contributed to the slow uptake of ADR.

Ms. Wanjiku Mbutia, Director at the KNCCI Nyeri Chapter poses for a photo with the PCMO.

### Way forward

- NCIA to submit training proposals for KNCCI directors and members.



*Ms. Jecinta Murimi, a Director of KNCCI Nyandarua Chapter poses for a photo with the NCIA team.*

## Meeting with the CEO, Kieni Dairy Products LTD – Mr. Solomon Maina

### Discussions

The team held discussions covering the mandate and functions of NCIA, partnerships, training initiatives, and the utilization of NCIA facilities during ADR processes.

Mr. Solomon Maina, Chief Executive Officer, Kieni Dairy Products Limited poses for a photo with the NCIA.



*Mr. Solomon Maina, Chief Executive Officer, Kieni Dairy Products Limited poses for a photo with the NCIA.*

Mr. Maina informed the team that Kieni Dairy Products Limited was established in the year 1995 and was owned by farmers in the area who have given them the mandate to market their milk profitably. He noted that there were 7,000 farmers who own the organization, and they have a staff establishment of 38 employees. They process 20,000 liters of milk every day and process yoghurt (Highbridge brand) which is sold to retail outlets in Nyeri county.

He noted that the company had a tax dispute with the Kenya Revenue Authority which was eventually resolved through ADR. He noted that ADR is the best avenue for resolution of disputes to save on resources and relationships, adding that the company welcomes the collaborative proposal by the Centre.

### Way forward

- NCIA to consider training of Kieni Dairy management on Mediation and sensitizing farmers on ADR mechanisms.

## Meeting with Court Annexed Mediation and Environment and Lands Court – Hon. Marceline Lupia

### Discussions

The team held discussions with the Hon. Marceline Lupia the Head of the Court Annexed Mediation, Environment and Lands Court in Nyeri where the NCIA team presented the mandate and functions of the Centre, collaboration with the judiciary in the promotion of ADR, capacity building, training, and shared public awareness initiatives.

Hon. Marceline Lupia, Chief Magistrate and Head of Mediation Court Nyeri with the Court Administrator pose for a photo with the NCIA team.

Hon. Marceline was passionate about the services offered by the Centre and noted that she was familiar with ADR and the mandate of the Centre having worked at the OAG. She noted that the training on mediation has contributed positively to her work since it has equipped her with the skills to negotiate with litigants, including referring matters to the court annexed mediation court. She expressed her support in the efforts of the Centre in the promotion of ADR mechanisms in dispute resolution.

### Way forward

- NCIA to consider partnering with the Judiciary sensitizing chiefs on ADR to equip them with requisite skills to resolve disputes in a structured manner.
- NCIA to follow up on the proposal from Hon. Marceline to train chiefs in Nyeri County.



*Hon. Marceline Lupia, Chief Magistrate and Head of Mediation Court Nyeri with the Court Administrator pose for a photo with the NCIA team.*

Day  
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**17th April, 2024: Kirinyaga County**

## Meeting with the County Attorney, Kirinyaga County Government – Hon. Caroline Kinyua

### Discussions

The County Attorney was joined by Mr. Mwai Ngunyi, County Director for Lands, Survey and GIS, Mr. Tom Nyatieka, the County Director of Human Resource Management, Peris Muthoni, County Solicitor and Mr. Kelvin Gachire, a legal Intern. The teams had discussions covering the functions of NCIA, partnerships, training initiatives, and the utilization of NCIA facilities during ADR processes.

The County Attorney informed the team that the County Government has been facing disputes mainly concerning land succession and labor related disputes. She informed the team of a project to construct a fire station that had stalled due to a land dispute adding that ADR can be applied in such disputes to enable continuity of the project and for the project benefit to be accrued to the parties and the community that continues to be exposed to great risk in the event of a fire disaster. Mr. Mwai, who is a mediator with the Judiciary court annexed mediation, expressed his interest in joining the NCIA panel of mediators.

### Way forward

- The County legal team to pursue NCIA's training programs.
- County Government to incorporate NCIA's dispute resolution clause in their contracts. (To share the clause for inclusion in future contracts)
- The County Attorney expressed the commitment of the County Government to collaborate with the Centre in promoting the use of ADR in dispute. The Centre to share a training proposal for Lands, Human Resource, Medical and legal teams.



## Meeting with the CEC Member – Medical Services, Public Health & Sanitation, Hon. George Karoki

### Discussions

The team later had discussions with Hon. George Karoki, the County Executive Member in charge of Public Health and Sanitation. The NCIA team presented the mandate and functions of the Centre, discussed issues around partnerships, training and public awareness initiatives, adoption of the Centre's ADR services by the county and utilization of NCIA facilities.

Hon. Karoki noted that the health sector in the county was facing a huge challenge with the medical practitioners being on strike, thus affecting delivery of health services to the citizens. He noted that ADR is the only appropriate mechanism to be employed to resolve the stalemate in the health sector.

### Way forward

- The CECM expressed the commitment of the County Government to collaborate with the Centre in the promotion of ADR.
- The County Government to pursue NCIA's training programs. Centre to send out proposals through the County Attorney's Office.

## Meeting with the County Commissioner, Kirinyaga County

### Discussions

The County Commissioner was represented by Mr. Isaac Mugasia, Administrative Officer I (Deputy County Commissioner) and Ms. Veronica Njonja, Assistant County Commissioner I. The NCIA team presented the mandate and functions of the Centre, discussed on issues around partnerships, training and public awareness initiatives, public participation, adoption of the Centre's ADR services by the Chamber and the utilization of NCIA facilities during ADR processes.

Mr. Mugasia noted that the administration team uses ADR to resolve disputes within the community but added that capacity building through ADR training of the officers is key to improving their ability to resolve disputes. He added that most of the disputes arising in the county can be resolved through ADR and are predominantly land and domestic/family disputes.

### Way forward

- NCIA to organize training of administration officers with a focus on chiefs.
- Mr. Mugasia expressed the commitment of the county administration in support of the Centre in the promotion of ADR and during public participation once the National ADR policy is enacted.

## Meeting with the Chief Magistrate, Kerugoya – Hon. Grace Waithera Kinuthia

### Discussions

The NCIA team presented the mandate and functions of the Centre, opportunities for collaboration with the Judiciary which include training and capacity building of judicial officers and joint public awareness initiatives.

Hon. Kinuthia informed the team that the court registers a high number of land, succession, and domestic/family disputes. She expressed her interest in training as an Arbitrator with the Centre.

### Way forward

- NCIA to organize training of judicial officers and to follow up on the training of Hon. Kinuthia.
- Hon. Kinuthia committed to offer her support and that of her station in the Centre's effort in promoting the use of ADR to increase the uptake of ADR.

Day  
4

**18th April, 2024: Muranga County**

## Meeting with County Commissioner

### Discussions

The County Commissioner was represented by Mr. Muthoka Peter, Assistant County Commissioner I. The NCIA team presented the mandate and functions of the Centre, discussed on issues around partnerships, training and public awareness initiatives, public participation, adoption of the Centre's ADR services by the Chamber and the utilization of NCIA facilities during ADR processes.





*Mr. Peter Muthoka, the Assistant County Commissioner poses for a photo with the PCMO and the SCSO after the meeting.*

Mr. Peter Muthoka, the Assistant County Commissioner poses for a photo with the PCMO and the SCSO after the meeting.

Mr. Muthoka noted that the County faces numerous disputes related to land, boundaries and succession adding that the Centre can play a critical role in building capacity of administration officers especially ward administrators/chiefs to ensure fairness and a structured way of administering the mediation cases that are brought before them. He committed to supporting the Center with public participation initiatives when called upon.

### Way forward

- NCIA to organize training of administration officers in the county.
- Mr. Muthoka expressed the commitment of the administration team to support NCIA in the promotion and adoption of ADR by the National Government Administration Officers in the County.

### Meeting with the Kenya National Chamber of Commerce, Muranga County Chapter

#### Discussions

The Kenya National Chamber of Commerce and Industry (KNCCI), Muranga County Chapter was represented by Mr. Stephen Ngahu the Chapter liaison Officer and Ms. Esther. The teams had discussions covering the functions of NCIA, partnerships, training initiatives, public participation, dispute resolution clause and the utilization of NCIA facilities during ADR processes. Mr. Ngahu noted that the Chapter had 650 members and the goal was to increase its

membership to over 10,000 members, noting that there were over 200,000 registered businesses in the county. He added that the chapter had 15 Directors who were elected in 2023 and who had ambitious plans to grow the chapter through collaboration with the county government, the national government, and other stakeholders. Mr. Stephen Ngahu, the Chapter Liaison Officer accompanied by Esther Mwangi posing for a photo with the NCIA team after the meeting.



*Mr. Stephen Ngahu, the Chapter Liaison Officer accompanied by Esther Mwangi posing for a photo with the NCIA team after the meeting.*

Mr. Ngahu welcomed the visit by the NCIA team, noting that it is timely as members of the Chamber will benefit from NCIA's ADR services. He requested the availability of NCIA officers during the Chamber's Annual General Meetings and the contractors conference that is held annually to sensitize them on ADR mechanisms and how they can access them. He also expressed interests in the Centre's training programs and informed the team that he will initiate discussions with the Chapter Board of Directors to facilitate training of the officers.

### Way forward

- NCIA to train the KNCCI secretariat, Muranga chapter staff upon approval by its Board and facilitate sensitization of members on ADR and sensitize members.
- KNCCI, Muranga chapter to support the Centre during future public participation initiatives and in the promotion of ADR among its members.
- Meeting with the Chief Magistrate, Muranga – Hon. Maina Ndwiga Meeting with the Chief Magistrate, Muranga – Hon. Maina Ndwiga

## Meeting with the Chief Magistrate, Muranga – Hon. Maina Ndwiga

### Discussions

The team later had discussions with the Chief Magistrate, Muranga, Hon. Maina Ndwiga. The Chief Magistrate was joined by other magistrates who included Hon. Edwin Nyagah, Hon. Susan Mwangi, Hon. Durence Soy and Mr. James Soi, the Court Administrator. The NCIA team presented the mandate and functions of the Centre, explained existing collaboration with the Judiciary, capacity building partnership opportunities and public awareness joint initiatives during judiciary open days.



*The Muranga Chief Magistrate Hon. Maina Ndwiga during the meeting. On his right is the Court Administrator Mr. James Soi and Hon. Florence Soi the Head of the Small Claims Court.*

The Muranga Chief Magistrate Hon. Maina Ndwiga during the meeting. On his right is the Court Administrator Mr. James Soi and Hon. Florence Soi the Head of the Small Claims Court.

The NCIA team was informed that the judiciary has been facing challenges with local chiefs while trying to resolve disputes under the court annexed mediation program. He informed the team that the disputes registered at the court mainly revolve around land disputes and succession matters. He added that even criminal cases related to murder and assault have their root cause from land disputes. The NCIA team was informed that the court seems to be facing resistance from parties and their advocates whenever disputes are referred for resolution through mediation.

Hon. Maina noted that the chiefs are very instrumental to the court, but they need training on ADR for them to be structured in their approach when handling disputes at the grassroots level.

This he noted will aid in the dispensation of justice in the community.

The team noted that the approval of the ADR policy by the National Assembly will be important as it gives the Centre the powers to regulate the quality and curriculum of ADR training and practice in the country. Hon. Nyagah requested the Centre to expedite the training of chiefs and to scale-up the efforts on publicity and sensitization on ADR in the region. He added that the Mount Kenya region should be prioritized when it comes to training and sensitization, with a special focus on Muranga, since this was the region with the highest number of disputes that require resolution and community harmony. The NCIA was advised to use a caravan/roadshow to increase the effectiveness of its awareness raising programs as was done by the unclaimed assets committee. He added that the use of vernacular radio stations would also be effective in cascading the information to potential users of ADR.

### Way forward

- NCIA in collaboration with the Muranga Law Court to plan for an open day in the coming financial year.
- NCIA to organize for the training of chiefs in ADR mechanisms.
- Hon. Maina and his colleagues expressed their commitment to support the NCIA in creating awareness and increasing the adoption of ADR.

The visit by the team to the five counties of central Kenya was successful having achieved the objective of creating awareness about the services we offer with the collaboration initiatives with counties to deepen the use of ADR in the devolved units already bearing fruit.

# Centre hosts a Breakfast Meeting with Institute of Certified Secretaries



*The panelists from left, Prof. Kariuki Muigwa, Jacqueline Waihenya, Dr. Wyne Mutuma and Calvin Nyachoti.*

The Centre and the Institute of Certified Secretaries-Kenya held a joint breakfast on 28th March 2024 to raise awareness among its members on the significance and benefits of Alternative Dispute Resolution (ADR) in resolving governance disputes. The theme of the breakfast was **'The Place of ADR in the resolution of Governance Disputes'** and provided valuable insights on ADR in relation to governance to ICS(K) young members.

It is expected that this will enhance young practitioners understanding of ADR mechanisms and their potential in promoting efficient and cost-effective dispute resolution when settling governance disputes.

During the panel discussion, Prof. Muigwa noted that governance, in the corporate context, refers to the system through which a corporation is directed and controlled in order to protect the interests of all stakeholders and ensure reasonable return on investments.

He added that corporate governance has also been defined as the system through which a corporation is directed and controlled, and which specifies distribution of rights and responsibilities among various players in a corporation being the board of directors, shareholders and other

stakeholders and further sets out the rules and procedures for corporate decision making.

He further argued that Corporate Governance has become an issue of worldwide importance because corporations have a vital role to play in promoting economic development and social progress as it is the engine of growth and is responsible for providing employment, public and private services, goods and infrastructure. He noted that the efficiency and accountability of the corporation is now a matter of both private and public interest.



*The panelists from left, Prof. Kariuki Muigwa, Jacqueline Waihenya, Dr. Wyne Mutuma and Calvin Nyachoti.*



In his presentation, the NCIA Registrar and CEO Mr. Lawrence Muiruri observed that good corporate governance cannot thrive in an environment of conflicts and that governance conflicts are bound to occur in an organization due to the different players involved and the difference in ideas, principles and plans that such players may hold. He noted that the parties in an organization may have a conflict about the distribution of resources, or they may have a more fundamental conflict about the very structure of their organization and the basic nature of their interaction. She emphasized that most corporate governance disputes arise because of lack of communication, advising that internal dispute resolution mechanisms are necessary to address such disputes when they arise.

Prof. Kariuki Muigua while making his presentation noted that a corporation entails multiple personnel including the directors, the Chief Executive Officer, shareholders and employees. In their day-to-day interactions, these personalities are likely to differ leading to conflicts. He cautioned that if such conflicts are not addressed effectively and in a timely manner, they may pose a threat to business affairs and defeat the core purpose of good corporate governance.

He added that when a disagreement or dispute arises within an organization, it is in the best interest of the organization to have them managed effectively, expeditiously and efficiently adding that how such disagreements are managed determines whether the underlying issues can be resolved or whether the disagreement can ripen into a dispute that can have detrimental effects on the affairs of the organization including its financial performance and public image.

He noted that it is important for the organization to develop and adopt efficient dispute management mechanisms which is part of good risk management since it enables an organization to cushion itself against the adverse effects of disputes whenever they occur.

Corporate governance in general addresses some of the causes of governance conflicts and the need to have such conflicts managed in an efficient, effective and timely manner. There are benefits of using ADR in managing governance conflicts and the discussions proposed areas that can enhance good corporate governance through effective, efficient and timely conflict management.



*Participants follow proceedings during the breakfast meeting.*



# Centre plants trees in partnership with Kenya Forest Service



*Staff pose for a photo during the tree planting session.*

The Government on 22nd December 2022 launched a tree restoration program at Ngong Hills Forest in an effort to combat the effects of climate change in the country. The initiative, which aims to plant 15 billion trees by 2032, will work to reduce greenhouse emissions, stop and reverse deforestation, and restore 5.1 million hectares of deforested and degraded landscapes through the African Landscape Restoration Initiative. In addition to the tree planting efforts, the president also launched a program to distribute 1,000 tons of seeds to 18 seed centers across the country, which will produce 15 billion seedlings by 2032. These seedlings will be grown on 10.6 million hectares of degraded forests and rangelands, with the goal of increasing Kenya's national tree cover beyond 30%.

The initiative is expected to create 320,000 direct jobs in seedling production, tree planting and maintenance, and other related efforts. To further protect the environment, the President also commissioned a test run of biodegradable

potting tubing bags to replace plastic tubing bags, in fulfillment of the plastic pollution resolution adopted by the United Nations during UNEA 5.2 in Nairobi.

During this campaign, every Kenyan is encouraged to plant 30 trees per year, or 300 in 10 years, in order to reach the goal of planting 15 billion trees in two phases. The first phase which runs to the year 2027 will involve planting five billion trees, while the second phase, from 2027 to 2032, will focus on planting an additional 10 billion trees.

The Centre has actively been involved in supporting this national endeavor to contribute towards achievement of the government's directive with staff planting 300 trees on 16th May 2024. The activity was in partnership with the Kenya Forest Service at Ngong Forest, Lenana block. It was a collective effort where our dedicated team members together with representatives from the Community Association and the Forest Service's passionately planted over 300 trees being a follow up of 550 trees planted at the same forest block on 16th December 2023. The enthusiasm and commitment shown by the team was commendable and enabled the Centre to achieve the target of 850 trees set for the financial year 2023/2024.



This initiative is directly aligned with the national objective of achieving a 10% forest cover by 2032 and by supporting the initiative, the Centre has taken a significant step towards environmental preservation and restoration of our natural landscapes. The success of this initiative signifies our collective commitment to environmental sustainability and moving into the next financial year, we aim to continue with our effort in fostering a culture of environmental consciousness and participation in ecological preservation. The collective effort of planting 850 trees exemplifies our commitment to supporting the government's vision of planting 15 billion trees by 2032 and demonstrates our dedication to preserving our environment and contributing to the national goal of a sustainable future.



**15 Billion Trees  
by 2023**



# NCIA and the Kenya Institute of Supplies Management(KISM) Partner on webinar series

WEBINAR



## Theme: Procurement Contract Management through Effective Dispute Resolution

30th April 2024 | 02:00 p.m. – 04:00 p.m.

### Topics:

1. Nature of disputes in procurement in Kenyan public and private sectors (Trends and emerging issues).
2. The case for Arbitration in resolving procurement Disputes.
3. The case for Mediation in resolving procurement disputes.



**Samuel Nderitu**  
Director, NCIA  
Moderator



**Calvin Nyachoti**  
Advocate of the High Court of Kenya  
& Certified Corporate Secretary  
Panelist



**Mercy Okiro**  
Advocate & Accredited Mediator  
Panelist



**Idy Pembere**  
Head of Supply Chain Management,  
Office of the Prime Cabinet Secretary &  
Ministry of Foreign & Diaspora Affairs  
Panelist



**Macharia G. Kingori**  
Managing Partner, Ashitwa Advocates LLP  
Panelist

As part of the Centre's webinar sensitization series, the Centre in partnership with the Kenya Institute of Supplies Management (KISM) hosted a free Webinar on 30th April 2024 targeting members of the Kenya Institute of Supplies Management (KISM) titled **"Procurement Contract Management Through Effective Dispute Resolution"**.

The webinar attracted KISM Professional Members who included supply chain directors, managers, staff involved in contract management including procurement, finance, project managers, and administrators and was moderated by Director Samuel Nderitu, Mr. Calvin Nyachoti who is a Certified Public Secretary, Advocate of the High Court of Kenya and a Certified Corporate Secretary, Ms. Mercy Okiro-Advocate and Accredited Mediator, Mr. Idy Pembere, the Head of Supply Chain Management at the office of the Prime Cabinet Secretary and Mr. Macharia Kingori, the Managing Partner at Ashitwa Advocates LLP.

While making her case for mediation in settling procurement disputes, Ms. Mercy Okiro observed that it is important to consider the main

disputes surrounding parties before considering the applicability of mediation as a way of resolving the disputes. She noted that given the commercial landscape that parties operate within, parties frequently navigate various disputes. She noted that these conflicts often stem from misunderstandings, encompassing disagreements over contract terms, misaligned project expectations, or interpersonal clashes. Others she noted include divergent opinions, values, or objectives among involved parties which can precipitate disputes. Additionally, she noted that breaches of contract, instances of misrepresentation, or allegations of fraud may also contribute to the emergence of these conflicts.

She noted that mediation not only offers a collaborative and non-adversarial approach to conflict resolution, but it also offers a more lenient approach to dispute resolution as compared to other types of Alternative Dispute resolution mechanisms. She noted that by facilitating open communication, exploring mutually beneficial solutions, and fostering creative problem-solving, mediation can help SMEs address disputes in a constructive manner.

She concluded by noting that although mediation is ideal for resolving disputes, it still has its drawbacks. Firstly, she noted that a mediation is non-binding, meaning that parties are not bound to continue with the mediation process, according to all autonomy regarding the process to the parties. To ease the mediation process and to ensure the dispute is resolved as fast as possible, she noted it is important for parties to show their goodwill regarding the process and in doing so, the parties will also show their intention to resolve the conflict. Secondly, she noted that the issue of power imbalance and power dynamics are a pivotal consideration in mediation. When there exists a substantial power imbalance, there's a risk that one party could wield disproportionate influence over the process and consequently shape the outcome to primarily reflect their own needs and interests. Finally, she noted that mediation may lead to endless proceedings as a result of the lack of the binding effect and the lack of precedents in the process and as such, the process may be ideal when it comes to a dispute that can be solved through negotiation and not a dispute that may require protection such as injunction or a case where one of the parties may be seeking for damages for a breach of contract.

While making his presentation, Mr. Kingori observed that there are several techniques that are frequently used in the dispute resolution process and may include negotiation, mediation, arbitration, Fact-Finding and Mediated Arbitration adding that the term "alternative dispute resolution" encompasses all decision-making processes besides litigation, including negotiation, enquiry, mediation, conciliation, expert determination, arbitration, and others. He noted that the first ADR method to gain international acceptance was arbitration.

He observed that procurement disputes can significantly impact the operations and success of institution as they may result in the disruption of business activities, strained parties' relationships, damage reputation or even tedious legal battles. This he noted leads to wastage of time and a lot of expenses, especially for resource-constrained institutions. In this context, he noted that ADR emerges as a viable alternative for institutions seeking a timely and cost-effective resolution of procurement disputes.

During the discussions, there was a general agreement among the panelists that ADR mechanisms have many advantages over traditional litigation and should be applied whenever procurement contract disputes arise. Among the benefits mentioned include that the parties to the dispute define the issues, the process is consensual and controlled, it is private and that the dispute can be resolved expeditiously. Others mentioned include that the business relationship can be preserved with costs of litigation being avoided.



# NCIA Sponsors the 8th ICC Africa Conference



*Delegates pose for a group photo after one of the sessions.*

The ICC Kenya in partnership with ICC Paris hosted the 8th ICC Africa Conference, in Nairobi from May 29-31, 2024. The conference was the first of its kind in East Africa and brought together top international practitioners and academics to discuss the most pressing issues affecting the African dispute resolution landscape. The theme of the conference was “Emerging Trends in ADR in Africa” and featured several topics, including the future of construction dispute resolution in Africa, lessons learned from recent global disruptions to ADR, energy Transition in the spotlight, Analysis of African national ADR policies and ADR Landscape in Africa.

# Staff Team Building Retreat



The NCIA staff travelled to Lake Naivasha Resort for a team building session to bond and for fun activities. The team was led by the Registrar and Chief Executive Officer of the Centre Mr. Lawrence Muiruri. During the sessions, there were different activities to enhance staff social relations which were class based and were both outdoor.

There were sessions on financial management including retirement preparations, stress management and many others on staff wellbeing both at the workplace and away from work. The team building activity was timely and it is expected to improve the cohesion of the team and by extension our overall performance in as a team moving forward.

It is expected that with time, the following benefits will be realized.

1. **Increased Productivity:** When NCIA team members feel connected, they work more effectively toward common goals, reducing duplicated efforts and improving overall productivity.
2. **Encourage Creativity:** The team-building activity having taken place outside the usual work setting inspired fresh perspectives and creative problem-solving through fun activities that participants were involved in.

3. **Enhanced Communication:** It is expected that the team building effort will improve communication among team members, leading to better workflow and ideas sharing.
4. **Improved Morale:** It is evident that the fun team-building tasks that were undertaken though competitive in some cases helped to boost employee morale. It is expected that this will create a positive work environment, and foster appreciation among colleagues.
5. **Trust Building:** The activities conducted helped develop trust, especially in with the new staff and we look forward to the collaborations developed moving into the future.



*Team members during the outdoor activities.*



# Pictorial Moments





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