

THE DISPUTE RESOLUTION BILL, 2025

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THE DISPUTE RESOLUTION BILL, 2024

A Bill for

AN ACT of Parliament to make provision for the settlement of disputes by alternative means of resolution including mediation and conciliation, to provide for the establishment of the National Dispute Resolution Council, and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

Short title.

1. This Act may be cited as the Dispute Resolution Act, 2024.

Interpretation.

2. In this Act unless, the context otherwise requires—

“arbitral tribunal” means a sole arbitrator or a panel of arbitrators and includes an emergency arbitrator appointed pursuant to the Rules of Arbitration agreed to or adopted by the parties;

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“Centre” means the Nairobi Centre for International Arbitration established under section 4 of the Nairobi Centre for International Arbitration Act;

“conciliation” means a voluntary process where one or more conciliators, facilitate communication between parties to a dispute with the purpose of assisting the parties in finding a solution;

“conciliator” means a person who is duly registered by a conciliation body accredited by the Council;

“conciliation body” means a body or institution established in accordance with section 67 of this Act;

“Council” means the National Dispute Resolution Council established under section 5 of this Act;

“community based practice” means dispute resolution within a geographic, social, religious, cultural or such other group of persons with shared or common interests, values, or customs.

“mediation” means a voluntary process in which parties to a dispute, with the assistance of a mediator, reach an acceptable agreement to resolve the whole or part of the dispute;

“mediation agreement” means an agreement by parties to refer the whole or part of a dispute between them for mediation;

“mediation body” means a body or institution established in accordance with section 80 of this Act;

“mediation session” means a meeting between the mediator and the parties to the dispute; and

“mediator” means a person who is duly registered by a mediation body accredited by the Council..

Object of this Act.

3. The object of this Act is to—

- (a) give effect to Article 159(2)(c) and 48 of the Constitution;
- (b) provide an effective mechanism for settlement of disputes through alternative dispute resolution including conciliation or mediation;
- (c) provide for the establishment of the Council;
- (d) facilitate accessibility of alternative means of dispute resolution;
- (e) facilitate access to justice; and
- (f) enhance individual participation in dispute resolution.

Principles.

4. The following principles shall apply to dispute resolution under this Act —

- (a) voluntary participation in dispute resolution process;
- (b) confidentiality of the dispute resolution process; and
- (c) expedient resolution of disputes.

PART II—NATIONAL DISPUTE RESOLUTION COUNCIL

Establishment of
the Council and
membership.

5. (1) There is established a council to be known as the National Dispute Resolution Council which is an unincorporated body.

(2) The Council shall consist of —

- (a) a chairperson, who shall be qualified to be appointed as a judge of the High Court, with expertise in Alternative Dispute Resolution, appointed by the Attorney-General;
- (b) a representative of the Judiciary;
- (c) a representative of the Attorney- General;
- (d) a representative of a faith-based organization;
- (e) a representative of the Kenya Private Sector Alliance;
- (f) a representative of an accredited consumer organization; and
- (g) four other members nominated by the following bodies—
 - (i) Law Society of Kenya;
 - (ii) Chartered Institute of Arbitrators (Kenya) Branch;
 - (iii) Architectural Association of Kenya; and
 - (iv) Kenya Bankers Association.

(3) Council members nominated under sub section (2) (b) (c), (d), (e), (f) and (g) shall be appointed by the Attorney-General.

Functions of the
Council.

6. The functions of the Council shall be to—

- (a) regulate persons and bodies offering services under this Act or any other written law;
- (b) accredit bodies offering services under this Act;

- (c) register persons offering services specified under this Act or any other written law;
- (d) promote the development of the legal and institutional frameworks supporting the alternative dispute resolution sector and its practice areas;
- (e) enhance the quality of dispute resolution services through the development of standards and enforcement of regulation;
- (f) establish and provide oversight over the Practice Area Committees established under this Act;
- (g) enhance and strengthen the coordination, the collaboration and linkage within the sector, and between the sector and the formal justice system;
- (h) enhance the quality, availability and accessibility of alternative dispute resolution services by strengthening sector governance and regulation;
- (i) develop and facilitate public education awareness and develop programmes on alternative dispute resolution;
- (j) provide advisory and consultancy services in alternative dispute resolution matters;
- (k) sensitize the public on alternative dispute resolution;
- (l) undertake research in alternative dispute resolution;
- (m) determine the fees and other charges payable with respect to services offered in relation to its mandate;
- (n) perform such other functions as may be conferred on it by this Act or any other written law.

Term of office.

7. The Chairperson or a member of the Council shall serve for a term of four years and shall be eligible for re-appointment for one final further term of four years.

Vacancy.

8. The office of the Chairperson or a member of the Council shall become vacant where the chairperson or member—

- (a) dies;
- (b) resigns from office by a notice in writing to the appointing authority;
- (c) is declared bankrupt or insolvent;
- (d) is convicted of a felony and sentenced to imprisonment for a term of not less than six months; and
- (e) is absent from three consecutive meetings of the Council without sufficient cause.

Conduct of business and affairs of the Council.

9. (1) The conduct and regulation of the business and affairs of the Council shall be as set out in the Schedule.

(2) Except as provided in the Schedule, the Council may regulate its own procedure.

Remuneration of the Council

10. The members of the Council shall be paid such remuneration, fees or allowances as may be determined by the Attorney-General in consultation with Salaries and Remuneration Commission.

Disclosure of interest.

11. (1) A member of the Council who has an interest in any matter in dispute shall, at the meeting, disclose the fact thereof and shall not take part in the consideration or discussion of or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A member of the Council who contravenes subsection (1) commits an offence and is liable to a fine not exceeding two hundred thousand shillings.

Secretary to the Council.

12. (1) The Registrar of the Centre shall be the Secretary to the Council.

(2) The Secretary shall be responsible for—

- (a) carrying out of the decisions of the Council;

(b) day-to-day administration and management of the affairs of the Council; and

(c) the performance of such other duties as may be assigned by the Council.

Protection from personal liability.

13. Nothing done by a member of the Council or by any person working under the instructions of the Council shall, if done in good faith for the purpose of executing the powers, functions, or duties of the Council under this Act, render such member or officer personally liable for any action, claim or demand.

Practice Area Committees.

14. (1) The Council shall establish committees to be known as Practice Area Committees in fields of dispute resolution that it determines to be necessary or as is required by this Act or any other law.

(2) Notwithstanding the generality of subsection (1), the Council shall establish the—

- (a) Arbitration Practice Committee;
- (b) Construction Adjudication Practice Committee;
- (c) Mediation Practice Committee;
- (d) Conciliation Practice Committee; and
- (e) Community-based Practice Committee

(3) The Council shall, in establishing the practice area committees, have regard to—

- (a) the maximum number of members necessary for the efficient administration and management of the functions of the committee who shall not be more than eleven and not less than five;
- (b) the professional expertise, competence and skills required for the practice area;
- (c) the composition of the committee of the elements of diversity in gender and age, and persons living with disabilities; and

- (d) the members nominated to the committee, shall comply with the requirements of Chapter Six of the Constitution on leadership and integrity.

Functions of
Practice Area
Committees.

15. The functions of the Practice Area Committees shall be to—

- (a) enhance the quality of ADR services in their area of practice, through the development and enforcement of tools of regulation and governance including codes of conduct; standard operating procedures; remuneration schedules; training curriculums and certification and accreditation mechanisms; and Continuous Professional Development (CPD) programs among other things;
- (b) promote public awareness of the respective dispute resolution practice and service;
- (c) promote coordination and collaboration with other practice areas and the court system;
- (d) promote policy and legislative development in their areas of practice in order to create alignment with the policy, and the proposed legislation, and to strengthen the practice.
- (e) promote knowledge development and the growth of a community of practice of the dispute resolution area of practice;
- (f) support the National Dispute Resolution Council in its oversight functions; and
- (g) perform such other functions as may be conferred to it by the Council, this Act or any other written law.

Report by the
Practice Area
Committee.

16. (1) The Practice Area Committee shall, at the end of every June of each year, make a report to the Council on the performance of its functions under this Act.

(2) The report referred to in subsection (1) shall be in the prescribed form and shall include such information as the Practice Area Committee considers appropriate or as the Council may from time to time direct.

(3) The Practice Area Committee may from time to time make other reports to the Council on the performance of its functions.

Codes of practice.

17. (1) The Council shall—

- (a) in consultation with the Practice Area Committee, prepare codes of practice to set standards for dispute resolution practice; and
- (b) approve guidelines for code of practice to be adopted by an accredited body.

(2) A code of practice referred to in this section may include provisions in relation to—

- (a) continuing professional development training requirements for dispute resolution practice, including mediation, conciliation and adjudication;
- (b) general guidelines for procedures to be followed for dispute resolution practice, including by accredited mediators, conciliators and adjudicators in the conduct of a dispute resolution process;
- (c) guidelines to be followed by an accredited dispute resolution practitioner, including a mediator, conciliator, or adjudicator in a process requiring consultation, by a mediator, conciliator, or adjudicator, with a child;
- (d) ethical standards to be observed by an accredited dispute resolution practitioner, including a mediator, conciliator, or adjudicator during a dispute resolution process;
- (e) confidentiality of an accredited dispute resolution practitioner, including a mediator, conciliator, or adjudicator;
- (f) procedures to be followed by a party for redress in the event of dissatisfaction with the conduct of a dispute resolution practitioner, including a mediator, conciliator, or adjudicator;

- (g) guidelines for determination of the fees and costs of a dispute resolution process and a practitioner, including a mediator, conciliator, or adjudicator;
- (h) standards for disclosure of information for educational, evaluation or research purposes; and
- (i) any other matters relevant to the conduct of dispute resolution process, including mediation, conciliation, or adjudication.

(3) The Council shall publish the codes of practice provided for in subsection (1) in the *Kenya Gazette*.

Annual meetings
by the Council.

18. The Council shall convene an annual forum for Practice Area Committees as the focal point for exchange of information regarding dispute resolution.

PART III– MEDIATION

Application.

19. (1) This Part applies to mediation conducted under a mediation agreement where —

- (a) the mediation is conducted wholly or partly in Kenya; or
- (b) the agreement provides that this Act or the law of Kenya is to apply to the mediation.

(2) This Part shall not apply to—

- (a) proceedings arising out of infringements under Chapter four of the Constitution of Kenya;
- (b) disputes falling within the Protection Against Domestic Violence Act and Sexual Offences Act; and
- (c) any other circumstance prescribed in this Act or by or under any written law.

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(3) Participation in mediation shall be voluntary.

Conduct of
mediation.

20. (1) The parties to a dispute may engage in mediation as a means of resolving the dispute.

(2) Despite the fact that Court proceedings have been issued in relation to any matter under dispute, parties may proceed with mediation process before or after the resolution of the dispute by the Court.

(3) A party may—

- (a) withdraw from the mediation at any time during the mediation;
- (b) be accompanied to the mediation, and assisted by, a person (including a legal advisor) who is not a party; or
- (c) obtain independent legal or other advice at any time during the mediation.

(4) Subject to subsection (4)(a), the mediator and the parties shall, having regard to the nature of the dispute, conclude the mediation expeditiously and at minimal costs.

(5) The fees and costs of the mediation shall not be contingent on its outcome.

Mediation
agreement.

21. A mediation agreement shall be in writing and shall contain information on—

- (a) the manner in which the mediation is to be conducted;
- (b) the manner in which the fees and costs of the mediation will be paid;
- (c) the manner of confidentiality of the mediation;
- (d) the manner in which the mediation may be terminated;
- (e) where the mediation is to be conducted; and
- (f) such other terms as may be agreed between the parties and the mediator.

Appointment of a
mediator.

22. (1) Unless the parties agree on the procedure for appointment of a mediator—

(a) in case of one mediator, the parties may jointly appoint one mediator; or

(b) in case of two mediators, each party may appoint one mediator.

(2) Despite the provision of subsection (1), parties may request a mediation body to appoint the mediator.

(3) A mediator appointed under this section shall, before acceptance of the appointment, disclose any conflict of interest.

Obligations of a mediator.

23. (1) A mediator shall—

(a) explain to the parties the role of the mediator in the mediation;

(b) be impartial and fair while mediating;

(c) complete the process of mediation expeditiously;

(d) inform the parties of the right to obtain independent advice before signing a mediated settlement agreement; and

(e) declare conflict of interest.

(2) In discharging the obligations under sub section (1), the mediator shall ensure that the outcome of the mediation is determined by the mutual agreement of the parties.

Withdrawal of the mediator.

24. A mediator may withdraw from a mediation at any time before a mediation agreement is reached by the parties.

Entitlement of fees of mediator after withdrawal.

25. Unless otherwise agreed by the parties or determined by the mediation body that appointed the mediator, a mediator who withdraws from the mediation, may, if prior notice has been given to the parties, apply to the High Court to make such order as the High Court thinks fit with respect to his entitlement (if any) to fees or expenses or the repayment of any fees or expenses already paid.

Stay of proceedings.

26. (1) Where a party to a mediation agreement institutes proceedings before a court against another party to the mediation agreement, the aggrieved party may apply to the court to stay the proceedings.

(2) The court hearing the application may make an order upon such terms or conditions as the court thinks fit.

(3) The court may, in making an order under subsection (2), make such interim or supplementary orders as the court thinks fit for the purpose of preserving the rights of the parties.

(4) For the purposes of this Part, a reference to a “party” includes a reference to any person claiming through or under such party.

Authentication of
a mediated
settlement
agreement.

27. (1) A mediated settlement agreement shall be in writing and signed by all the parties in the presence of the mediator.

(2) The mediator shall explain to the parties the legal significance of authentication of the mediated settlement agreement.

(3) The mediated settlement agreement shall be authenticated by the mediator by affixing their signature on the agreement and shall state the date when it is made.

(4) Subject to section 30, a signed copy of the mediated settlement agreement shall be delivered to each party and shall be binding on the parties.

Performance of a
mediated
settlement
agreement.

28. (1) The mediated settlement agreement shall be performed within thirty days from the date when the mediated settlement agreement was delivered to the parties unless a different time period is stipulated in the mediated settlement agreement.

(2) Where a mediated settlement agreement is not performed within the time referred to in subsection (1), a party to the mediated settlement agreement is entitled to apply to the High Court to register the mediated settlement agreement as a judgement of the court.

(3) A party to the mediated settlement agreement may, with the consent of all the other parties to the mediated settlement agreement, apply to a court to register the mediated settlement agreement as a judgement of court.

(4) A mediated settlement agreement that is adopted under this section as a judgment of the court may be enforced in the same manner as a decree of the court.

(5) The court may refuse to adopt a mediated settlement agreement as a judgement of the court—

- (a) where the mediated settlement agreement is void or voidable because of incapacity, fraud, misrepresentation, duress, coercion, mistake or any other ground for invalidating a contract;
- (b) where the subject matter of the mediated settlement agreement is not capable of settlement through mediation;
- (c) where any term of the mediated settlement agreement is not capable of enforcement as a judgement of the court;
- (d) where the subject matter of the dispute to which the mediated settlement agreement relates involves the welfare or custody of a child, one or more of the terms of the agreement is not in the best interest of the child; or
- (e) where the adoption of the mediated settlement agreement as a judgement of the court is contrary to public policy.

Disclosure to a third party.

29. (1) A person shall not disclose any matter relating to the mediation process to a third party.

(2) Despite subsection (1), a person may disclose any matter relating to the mediation process to a third party where—

- (a) the disclosure is made with the consent of —
 - (i) all the parties to the mediation; and
 - (ii) for a mediation communication that is made by a person other than a party to the mediation, the maker of the mediation communication;

- (b) the content of the mediation communication is information that is available to the public at the time of its disclosure;
- (c) there are reasonable grounds to believe that the disclosure is necessary to prevent or minimize —
 - (i) the imminent threat to the life, health, or property of a person; or
 - (ii) the abuse, neglect, abandonment or exploitation of a person;
- (d) disclosure is made for research, evaluation or educational purposes;
- (e) the disclosure is required by law or by court order; and
- (f) the mediation communication relates to the commission of any offence under any law or was made in furtherance of any illegal purpose.

(3) Despite subsection (1), a person may, with leave of court or an arbitral tribunal, disclose a mediation communication to a third party to the mediation —

- (a) for the purpose of enforcing or disputing a mediated settlement agreement;
- (b) for the purpose of establishing or disputing an allegation or a complaint of professional misconduct against a mediator or any other person who participated in the mediation in a professional capacity;
- (c) for the purpose of discovery or other similar procedures in any court proceedings or arbitral proceedings which have been instituted, where the person who is a party to those proceedings is required to disclose documents in the person's possession, custody or power; or
- (d) for any other purpose that the court or arbitral tribunal considers justifiable in the circumstances of the case.

(3) A mediation communication is not to be admitted in evidence in any court, arbitral or disciplinary proceedings except with the leave of a court or an arbitral tribunal under subsection (5).

(4) A court or an arbitral tribunal may, on application by any person, grant leave for a mediation communication to be disclosed under subsection (5) or admitted in evidence under subsection (2)—

- (a) where the mediation communication may be or has been disclosed under subsection (2);
- (b) where it is in the public interest or the interests of the administration of justice for the mediation communication to be disclosed or admitted in evidence; or
- (c) any other circumstances or matters that the court or arbitral tribunal, as the case may be, considers relevant.

(5) Where the mediation communication is sought to be disclosed or admitted in evidence in proceedings —

- (a) before a court, the application shall be made to the court before which the proceedings are heard;
- (b) before an arbitral tribunal, the application shall be made to the arbitral tribunal before which the proceedings are heard; or
- (c) in any other case, the application shall be made to the High Court.

(6) In this section “disclosure”, in relation to information, includes permitting access to the information.

Foreign mediated
settlement
agreement.

30. An international mediated settlement agreement to which this Act applies may be registered as a judgement of the court and shall be enforced in the same manner as an order of the court.

Appeal against
judgement on
settlement

31. No appeal shall lie against a judgment entered under section 28

PART IV —COURT ANNEXED MEDIATION

Referral to
mediation.

32. (1) This Part shall apply where a suit is filed in Court.

(2) Subject to the provisions of this Act or any other law on the suitability of mediation as a means of resolving the dispute, the court—

- (a) in all suits, shall within twenty-one days after close of pleadings, convene a scheduling conference with the parties or their counsels for directions; and
- (b) may on the request of the parties to the suit or where it deems it appropriate to do so, or where the law so requires, direct that any dispute presented before it be referred to mediation.

(3) Where a suit is referred to mediation under sub section (2), the mediation registrar shall convene the first scheduling conference within thirty days from the date of referral.

(4) The mediation registrar shall give notice to the parties indicating the date and time for the first scheduling conference and requiring the parties or their representatives to attend the scheduling conference.

List of court
annexed
mediators.

33. (1) The mediation registrar shall keep, maintain and update a list of persons qualified to serve as court annexed mediators.

(2) The mediation registrar shall make the list of court annexed mediators under sub section (1) available to all parties to whom this Part applies and the public.

(3) During or after the scheduling conference, the mediation registrar shall appoint a mediator.

(3) The mediator appointed under subsection (3) shall be—

- (a) a person chosen by agreement of the parties from the list of court annexed mediators; or
- (b) a person assigned by the mediation registrar from the list of court annexed mediators; or

(c) a person who is not named on the list of court annexed mediators if the parties' consent to his appointment.

(4) Every person appointed as mediator in subsection (3) shall comply with the provisions of this Act and with the code of ethics as may be prescribed by the Council from time to time.

Cap 21. (5) The list of court annexed mediators referred to in subsection (3) shall be the list compiled by the Mediation Accreditation Committee appointed under section 59B of the Civil Procedure Act and approved by the Rules Committee established under section 81 of the Civil Procedure Act from time to time.

Mediator's fees. **34.** The Chief Justice may, in consultation with the Rules Committee established under section 81 of the Civil Procedure Act, prescribe the remuneration of mediators appointed under this Part.

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Period for mediation. **35. (1)** A mediation shall commence on the date of appointment of a mediator and conclude within three months from the date of appointment of the mediator.

(2) The period given in subsection (1) may at the request of the parties, be extended by the court for two months.

Mandatory session. **36.** Upon a referral under section 31, the mediator shall within fourteen days convene a mandatory session.

Mediation session. **37. (1)** The mediator shall, immediately after the mandatory session, fix a date for the mediation and shall, at least fourteen days before the date, notify all the parties in the prescribed form stating the place, time and date of the mediation session and that their attendance shall be mandatory.

(2) The mediator shall file a copy of the notice in subsection (1) in court.

Procedure before mediation. **38. (1)** Every party shall, at least seven days before the mediation session—

(a) prepare a statement in the prescribed form and provide a copy of the statement to every party and to the mediator;

(b) identify the factual and legal issues in dispute and briefly set out the position and interest of the party making the statement; and

(c) provide documents in support of the statement in subsection (1)(a).

(2) Where it is not possible to conduct a mediation session because a party fails to comply with subsection (1), the mediator shall cancel the session and file a certificate of non-compliance with the mediation registrar unless he is satisfied that such non-compliance is for a good reason.

(3) Where the mediator is satisfied that the non-compliance is for a good reason, the mediator shall reschedule the session.

Attendance at mediation.

39. (1) The parties and their legal or other representatives, where the parties are represented, shall attend the mediation unless the mediator orders otherwise.

(2) Where the party is a company, corporation, partnership, government agency or entity other than an individual, an officer or director of sufficient rank with authority from such entity to settle the suit or matter, shall attend.

(3) Where it is not possible to conduct a scheduled mediation session because a party has failed without good reason to attend the mediation session within the first thirty minutes of the time appointed for commencement of the mediation session, the mediator shall cancel the mediation session and immediately file with the mediation registrar a certificate of non-compliance.

(4) Where the mediator is satisfied that the non-attendance under sub section (3) is for a good reason, the mediator shall reschedule the session.

Non-Compliance.

40. (1) Where a certificate of non-compliance is filed in accordance with sections 37 and 38, the mediation registrar shall within fourteen days summon the parties by notice specifying the time and place at which they are required to attend before the mediation registrar for further directions in the suit.

(2) Upon attendance by the parties, the mediation registrar may —

- (a) order that further mediation shall take place on such terms as the Court shall consider appropriate;
- (b) order that the suit shall proceed to trial;
- (c) make such orders as to costs as is appropriate in the circumstances; or
- (d) make such other orders as is appropriate in the circumstances.

Obligation of the court annexed mediator.

41. In addition to the obligations of the mediator under this Act, a court annexed mediator shall at the commencement of mediation, explain to the parties the statement of understanding on the role of the mediator in the prescribed form and shall require the parties to sign the Form:

Provided that where either or both of the parties fail to sign the Form, such failure shall not preclude the mediator from proceeding with the mediation.

Mediation settlement agreement.

42. (1) Where there is a mutual agreement of the parties resolving part or all of the issues in a mediation, the agreement shall be reduced into writing and signed by the parties and shall be filed in Court by the mediator within ten days after the mediation is concluded.

(2) Where the agreement settles the issues in the mediation;

(a) in whole, the Mediator shall file in Court a notice to that effect and the Court shall register the agreement and enter judgment in terms of the agreement; or

(b) in part, the mediator shall file in court a notice to that effect and the Court shall register the agreement and enter judgement in respect of the issues settled and the suit shall be set down for hearing and determination for issues which have not been settled.

(4) The judgment entered in this section shall be enforced in the same manner as a judgment of the court.

(5) Where no agreement is reached in the mediation, the suit shall be set down for hearing.

Mediator's report.

43. (1) Where a mediation concludes as a result of settlement of issues in whole or in part, failure due to non-compliance or non-attendance or where there is no agreement of the parties, the mediator shall prepare and submit to the court a written report.

(2) Despite subsection (1) the court may, where the parties to the proceedings concerned engage in mediation and subsequently apply to the court to re-enter the proceedings, direct the mediator to prepare and submit to the court a written report

(3) The report under this section shall set out—

(a) where the mediation did not take place, a statement of the reasons as to why it did not take place; or

(b) where the mediation took place—

(i) a statement as to whether or not a mediation settlement has been reached between the parties in respect of the dispute the subject of the proceedings; or

(ii) if a mediation settlement has been reached on all, or some only of the matters concerning that dispute, a statement of the terms of the mediation settlement.

(4) The mediator shall prepare the report under this section within ten days after the mediation is concluded.

(5) Except where otherwise agreed or directed by the court, a copy of a report prepared under this section shall be given to the parties at least seven days prior to its submission to the court.

No appeal against judgment on settlement

44. No appeal shall lie against a judgment entered under section 42.

Admissibility in court proceedings.

45. (1) Anything said during a mediation session shall be inadmissible in any legal proceedings as evidence.

(2) A mediator or any person present at the mediation shall not be summoned, compelled, or otherwise required to testify or

to produce records or notes relating to the mediation in any proceedings before any court of law.

(3) A mediation shall not be taped or transcripts of it be made.

(4) A record of a mediation under this Part shall not be admissible before any court of law unless the parties agree in writing.

(5) The provisions of this section shall not apply to—

(a) a mediated agreement; or

(b) the admission of factual evidence relating to the cause of action that would be admissible notwithstanding subsections (1) and (2).

Applications under section 59D of the Civil Procedure.

46. Applications under section 59D of the Civil Procedure Act shall be filed and served on the other party within 7 days of the filing.

Opposition to the agreement.

47. Where there is no opposition to the agreement within seven days of service, the agreement shall be registered as a judgment of the court.

Application for opposition to the agreement.

48. Where the application is opposed, it shall be heard and determined within twenty-one days.

Consent order for additional mediation.

49. (1) With the consent of the parties, the court may at any stage in the suit, make an order requiring the parties to participate in further mediation.

(2) The court may include any necessary directions in the Order.

PART V—CONCILIATION

Application.

50. (1) This Part applies to, or in relation to, any conciliation conducted under a conciliation agreement—

(a) where the conciliation is wholly or partly conducted in Kenya; or

(b) where the agreement provides that this Act is to apply.

(2) This Part shall not apply—

- (a) to proceedings in respect of alleged infringements of Chapter Four of the Constitution; and
- (b) to any other circumstance in this Act or under any other written law.

(3) Nothing in this Part shall be construed as replacing a conciliation provided for—

- (a) in any other law or instrument made under any other law; or
- (b) in a contract or an agreement.

Independence.

51. A conciliator shall be independent and impartial towards parties to conciliation.

Obligations of a conciliator.

52. A conciliator shall—

- (a) explain to the parties the role of the conciliator in the conciliation;
- (b) explain to the parties the nature and legal consequences of the conciliation agreement;
- (c) explain to the parties the conciliator's remuneration arrangements; and
- (d) declare conflict of interest.

Settlement of the issues in dispute.

53. (1) In discharging his mandate, a conciliator may offer alternative options for settlement of the issues in dispute in the conciliation.

(2) Despite sub section (1), the conciliator shall ensure that the outcome of the conciliation is determined by the mutual agreement of the parties.

(3) Notwithstanding subsection (1) and (2), where the parties have agreed by consent in writing before or at any time during the conciliation to be bound by a settlement proposed by the conciliator, the conciliator's settlement proposal shall be binding on the parties.

(4) Where the dispute is referred to any other dispute resolution in respect of a dispute that has been the subject of the conciliation, the conciliator shall not act as an arbitrator, as a representative or counsel of a party in an arbitral proceeding or a judicial proceeding.

(5) The conciliator shall not be a witness in an arbitration proceeding or judicial proceedings between the parties to the conciliation.

Appointment of a professional as a conciliator.

54. Where a professional is appointed to perform the duties of a conciliator by reason of his expertise, he shall in addition to the duty to observe independence and impartiality under section 51, comply with the requirements established by law or code of conduct which governs respective profession.

Conciliation agreement

55. A conciliation agreement shall be in writing and shall contain information on—

- (a) the manner in which the conciliation is to be conducted;
- (b) the manner in which the fees and costs of the conciliation will be paid;
- (c) the manner of confidentiality of the conciliation;
- (d) the manner in which the conciliation may be terminated;
- (e) where the conciliation is to be conducted; and
- (f) such other terms as may be agreed between the parties and the conciliator.

Initiation and invitation to conciliation.

56. (1) A party to a dispute to which this Act applies shall initiate conciliation by sending to the other party a written invitation to conciliate specifying the subject of the dispute.

(2) The conciliation shall commence when the other party accepts, in writing, the invitation to conciliate.

(3) Where the other party rejects the invitation, there shall be no conciliation.

(4) Where the party invited to a conciliation fails to give a reply within fourteen days from the date of receipt of the invitation by the other party, the aggrieved party may elect to treat the no reply as a rejection of the invitation to conciliate.

(5) A court may direct the parties to a suit to refer their dispute to a conciliator and the court shall fix such time as it thinks reasonable for the conclusion of the conciliation.

(6) Where the court refers the dispute for conciliation in accordance with sub section (5), the conciliator shall be appointed by—

- (a) the order of the court making referral;
- (a) the consent of the parties; or
- (b) referral to a conciliation body by the court or by agreement of the parties.

Conciliator panel.

57. (1) At the commencement of conciliation, the conciliation shall have one conciliator unless the parties agree otherwise.

(2) Where the parties agree to have more than one conciliator, the conciliators shall act jointly.

Appointment of
conciliator by
parties.

58. (1) Subject to section 58—

- (a) in conciliation with one conciliator, the parties may agree on the appointment of a conciliator;
- (b) in conciliation with two conciliators, each party shall appoint one conciliator
- (c) in conciliation proceedings with three conciliators, each party may appoint one conciliator, and the two conciliators shall appoint the third conciliator who shall act as the presiding conciliator

Appointment by a
conciliation body

59.(1) Parties may request a conciliation body to appoint a conciliator.

(2) Where the conciliation body to which a request for conciliation is made by the parties under sub section (1)

provides for a procedure for appointment of the conciliator, that procedure shall apply.

(3) Where the conciliation body to which a request for conciliation is made by the parties does not provide for a procedure for appointment of the conciliator, section 61 shall apply.

Application to a
conciliation body.

60. (1) A party may make a request, in writing, for conciliation to a conciliation body.

(2) The application made under subsection (1) shall state—

- (a) the name, address and other contact information of the parties;
- (b) the facts of the dispute; and
- (c) supporting documents relevant to the dispute.

Consideration of
an application.

61. (1) A conciliation body may—

- (a) admit the request for conciliation; or
- (b) reject the request for conciliation.

(2) A conciliation body may reject a request where—

- (a) the conciliation body is not competent to deal with the dispute;
- (b) where a final ruling has been made by a court in the dispute; or
- (c) any other sufficient ground.

(3) Where the conciliation body rejects an application for conciliation, the applicant shall be immediately informed of the dismissal of the application and of the grounds of the dismissal.

(4) The decision of the conciliation body under subsection (2) shall not affect the right of the parties to conciliate.

Duration of
appointment of
conciliator by a
conciliation body

62. Where the conciliation body admits a request under section 61(1)(a), the conciliation body shall appoint a

conciliator within seven days from the date of the decision and notify the parties.

Conciliation meetings by a conciliator appointed by parties

63. (1) The conciliator shall invite the parties to a conciliation to attend the first conciliation meeting in writing within seven days from the date of appointment of the conciliator.

Place of meeting

64. Unless the parties have agreed on the place where meetings with the conciliator are to be held, the place for meeting shall be determined by the conciliator, after consultation with the parties, having regard to the circumstances of the conciliation.

Conciliation meetings by conciliator appointed by a conciliation body

65. (1) The conciliator shall set the time and place of the meeting and send an invitation for attendance to the parties within one month from the date of the appointment of the conciliator by the conciliation body.

(2) Where appearance at the meeting is mandatory, the requirement to attend and the consequences of the failure to appear at the meeting shall be explained in the invitation.

(3) A representative may participate in the meeting only if they are authorized to execute a settlement agreement on behalf of the party they represent.

Experts and witnesses

66. (1) At the request of a party, and provided that the conciliator deems it necessary, an expert may be asked to provide an opinion to clarify the facts of the dispute.

(2) An expert and witness costs shall be paid by the parties in the conciliation.

(3) Unless agreed otherwise, the costs shall be paid by the party at whose request the expert or witness is called to participate in the conciliation.

Disclosure of communication

67. Information shared with a conciliator shall be confidential unless a party has consented to the information being shared with the other party.

Non-admissibility of conciliation proceedings

68. (1) A record of a conciliation shall not be admissible before any court of law unless the parties agree in writing.

(2) The provisions of this section shall not apply to—

- (a) a conciliated agreement; or
- (b) the admission of factual evidence relating to the cause of action that would be admissible notwithstanding subsections (1) and (2).

Settlement
agreement

69. (1) Where the parties agree to a settlement of the issues in the conciliation, the agreement shall be reduced in writing and signed by the parties.

(2) Where the parties fail to reach a settlement agreement the conciliator may present to each of the parties a settlement proposal.

(3) Where the conciliator presents to the parties a settlement proposal under sub-section (2), the conciliator shall give reasons for the settlement proposal to each of the parties.

(4) Each party shall in writing within fourteen days of receipt of the conciliator's settlement proposal under subsection (3)—

- (a) accept the conciliator's settlement proposal in whole or part;
- (b) reject the conciliator's settlement proposal; or
- (c) accept the conciliator's settlement proposal with modifications.

(5) Where a party accepts the conciliator's settlement proposal in part or with modifications, the conciliator shall give the opportunity to the other party respond.

(6) Failure by a party to respond under this section shall be deemed to be a rejection of the conciliator's settlement proposal.

(7) Where the parties accept a conciliator's settlement proposal, the parties shall adopt and sign the settlement agreement, and the settlement agreement shall be authenticated by the conciliator in accordance with section 70.

Authentication of
settlement
agreement

70. (1) A settlement agreement shall be in writing and signed by all the parties in the presence of the conciliator.

(2) The conciliator shall explain to the parties the legal effect of authentication of the settlement agreement.

(3) The settlement agreement shall be authenticated by the conciliator by affixing their signature on the agreement and shall state the date when it is made.

(4) Subject to section 68, a signed copy of the settlement agreement shall be delivered to each party.

(5) The authenticated settlement agreement shall be binding on the parties.

Termination of
conciliation

71.(1) Subject to subsection (2), the conciliation body may deem conciliation proceedings to have been terminated —

- (a) When the parties sign the settlement agreement;
- (b) where the conciliator discontinues conciliation in the cases specified in subsection (2) of this section.
- (c) when a party's conduct demonstrates an unwillingness to participate in the proceedings, including when the party —
 - (i) fails to provide a written reply to the conciliator within an established time period;
 - (ii) fails to carry out a required procedural step without a valid reason; or
 - (iii) otherwise impedes the conduct of conciliation proceedings;
- (d) where there is a rejection of a conciliator's settlement proposal referred to in section 68; or
- (e) where the conciliation body informs the parties of the termination of conciliation proceedings pursuant subsection (1)(a) and (b).

(2) The conciliator may discontinue the conciliation—

- (a) where in the opinion of the conciliator there is no likelihood of the parties reaching an agreement;
- (b) where the case is no longer suitable for conciliation;
- (c) where either party to the conciliation is incapacitated; or
- (d) where a conflict of interests arises due to new information arising during the conciliation.

(3) Where a person has been ordered by Court or other body to participate in conciliation proceedings pursuant to the procedure provided in this Part, the conciliation proceedings may not be terminated pursuant subsection (1) (a) and (b) before—

- (a) the conciliator has presented a settlement proposal pursuant to section 68; and
- (b) the conciliator has submitted to the Court or that other body a written report giving reasons for the termination.

Costs and fees.

72. (1) The parties to conciliation shall pay to the conciliator the agreed fees for conducting the proceedings.

(2) The conciliator may require the parties to make an advance payment on the conciliation fee.

(3) The parties to conciliation are jointly and severally liable for payment of the fees to the conciliator.

(4) Unless otherwise agreed by the parties, each party shall bear their own costs of the conciliation.

(5) Where conciliation is conducted by an order of Court or under rules of a conciliation body, any subsequent distribution of costs between the parties to such conciliation shall be determined by the Court or the Rules of the conciliation body, respectively.

(6) The conciliator may direct each party to deposit an equal amount as an advance for the costs referred to in subsection (2) which he expects to be incurred.

(7) Where the required deposits under subsection (1) are not paid in full by both parties within fourteen days, the conciliator

may suspend or may make a written declaration of termination of the proceedings to the parties, to take effect on the date specified in the declaration.

(8) Upon termination of the conciliation, the conciliator shall render an account to the parties of the deposits received and shall return any balance to the parties.

PART VI – GENERAL PROVISIONS

Accreditation of
bodies.

73. (1) For purposes of this Part, “body” includes mediation body, conciliation body, adjudication body or other body accredited or approved by the Council in accordance with the Act or other written law.

(2) The Council may, subject to section 76, grant accreditation or approval to a legal person to perform the services of a body for the purposes of this Act.

(3) The Council may by regulations give effect to this section.

(4) The council shall accredit or approve a body to offer mediation, or conciliation services as specified under the Act or such other services as may be necessary to give effect to the provisions of this Act or as may be required by other written law.

(6) No person shall act in proceedings commenced under this Act except where the person is registered by a body accredited or approved by the Council.

(7) Notwithstanding subsection 6 nothing in this Act precludes a person, who not being registered, acts as a mediator, conciliator, or such other community-based practice with the consent of parties in their dispute.

Suitability.

74. (1) In deciding whether an applicant is suitable, the Council shall have regard to—

(a) whether the applicant, or a person engaged or employed by the applicant, has been convicted or found guilty, in the last five years before the

application is made, whether in the Act or elsewhere,
of an offence including —

- (i) involving fraud or dishonesty; or
 - (ii) punishable by imprisonment for at least five years;
- (b) whether the applicant is bankrupt or insolvent;
- (c) whether the applicant, or a person engaged or employed by the applicant, at any time in the last five years before the application is made, was involved in the management of a corporation when—
- (i) the corporation became the subject of a winding-up order; or
 - (ii) a controller or administrator was appointed.
- (d) whether the applicant at any time in the last one year before the application is made—
- (i) had an accreditation to be a body under the Act cancelled, suspended, or withdrawn under this Act; or
 - (ii) had been refused accreditation to be a body under this Act or under any other law.

Terms of
accreditation.

75. (1) An accreditation under this section is effective for such period as the Council may prescribe

Suspension,
cancellation, or
withdrawal of
accreditation

76. (1) The Council may suspend for up to twelve months, or cancel a body's accreditation, if the Council is satisfied on reasonable grounds that—

- (a) the body has contravened this Act; or
- (b) the body is no longer suitable for accreditation, having regard to the matters listed in section 76.

(2) Where the body has contravened this Act, before deciding to suspend or cancel a body's accreditation, the Council shall have regard—

- (a) to the extent to which the conciliation body, or a person engaged or employed by the body, is responsible for the contravention; and
- (b) to the impact of the contravention on —
 - (i) the rights or entitlements of a person under this Act;
 - (ii) the integrity of the process under this Act;
 - (iii) any process undertaken by the body.

(3) Where the Council is satisfied that the body's accreditation should be suspended or cancelled, the Council shall, in writing—

- (a) inform the body that the Council intends to suspend or cancel the accreditation;
- (b) give the body reasons for the suspension or cancellation; and
- (c) give the body at least fourteen days, after the notice is given to the body, to make representations to the Council about the matter.

(4) The Council shall consider any representations made by the body within the time set out in the notice before making a decision to suspend or cancel the body's accreditation.

(5) The Council may withdraw the accreditation of a body where the Council is satisfied on reasonable grounds that information given to the Council by the body in relation to the body's suitability for accreditation was false or misleading.

Cost and expenses of a body.

77. (1) The Council may specify the reasonable amount that a body may charge for costs and expenses for any service provided by the body in relation to an application under the Act.

(2) A body may charge costs and expenses—

- (a) where the Council has specified the amount under section 77(1), up to the maximum amount for any service provided by the body in relation to an application under the Act; or

- (b) where the Council has not specified the amount under section 77(1) up to a reasonable amount having regard to the work done and expenses incurred by the body.

(3) The claimant and respondent are—

- (a) each liable to pay any costs and expenses charged by a body; and
- (b) each liable to contribute to the payment of any such costs and expenses—
 - (i) in equal proportions; or
 - (ii) if the conciliator decides a different proportion, the proportion decided.

Report by a body.

78. (1) A body shall, at the end of every June of each year, make a report to the Council on the performance of its functions under this Act

(2) A n body shall provide a report to the Council on request.

(3) A report referred to under subsection (1) shall include—

- (a) the activities of the body under the Act;
- (b) costs and expenses charged by the body for any service provided by the body in relation to a application made to the body under the Act; and
- (c) any other information determined, in writing, by the Council.

Certification scheme.

79. The Council may, by notice in the gazette, approve a certification scheme or accreditation administered by a mediation body.

Mediation body.

80. The Council may designate, by notice in the gazette, a body or institution to be a mediation body for the purposes of this Act.

Court Annexed Mediation Rules.

81. The Chief Justice may, in consultation with the Rules Committee established under section 81 of the Civil Procedure

Act, make court annexed mediation Rules under Part III of this Act.

Limitation.

82. (1) In regard to a period of time for the purposes of a limitation period specified by the relevant laws, the period beginning on the day on which a request for mediation is made or conciliation initiated and ending on the day which is thirty days after either—

- (a) seven days after service of the request for mediation or conciliation without response;
- (b) a mediation or conciliation settlement is signed by the parties, or

the mediation or conciliation is terminated, whichever first occurs, shall be disregarded.

(2) The mediator or conciliator in a mediation or conciliation respectively shall inform the parties in writing of the date on which the mediation or conciliation comes to an end.

Protection from liability for conciliators, mediators, conciliation body, and mediation body.

83. (1) A body, conciliator or mediator is not personally liable for anything done or omitted to be done in good faith in exercising a function under this Act or in the reasonable belief that the act or omission was in the exercise of a function under this Act.

(2) A conciliation body or a mediation body, and a person exercising a function relating to the business affairs of a conciliation body or mediation body under this Act, are not personally liable for anything done or omitted to be done in good faith in exercising a function under this Act in the reasonable belief that the act or omission was in the exercise of a function under this Act.;

General penalty.

84. A person who commits an offence under this Act for which no specific penalty is provided or who otherwise contravenes this Act shall, on conviction, be liable to a fine not exceeding five million shillings or to an imprisonment term not exceeding ten years, or to both.

Confidentiality.

85. Proceedings under this Act shall be confidential unless otherwise ordered by Court, required by law or with the consent of the parties to the proceedings.

Regulations.

86. (1) In performance of its functions under this Act, the Attorney-General upon recommendation of the Council, may make regulations.

(2) Notwithstanding subsection (1) the Council shall make regulations—

- (a) to provide for professional misconduct;
- (b) for fees chargeable under this Act;
- (c) for the conduct of trainings authorised or permitted under the provisions of this Act and for the carrying into effect of any scheme or curriculum for education in dispute resolution including mediation, conciliation, and adjudication. formulated under the provisions this Act;
- (d) for prescribing the procedure for accreditation;
- (e) for instructions and orders conducive to the maintenance and improvement of the status of dispute resolution practitioners including mediators, conciliators and adjudicators in Kenya;
- (f) for individual and corporate membership, convening and other conduct for a practice area committee;
- (g) prescribe anything under this Act that is to be prescribed, in the performance of any of its functions under this Act.

Consequential amendments.

87. The Civil Procedure Act is amended—

- (a) by repealing section 59B; and
- (b) by repealing section 59D.

SCHEDULE

(section 9)

CONDUCT OF BUSINESS AND AFFAIRS OF THE COUNCIL

1. The Council shall have at least four meetings in every financial year and not more than four months shall elapse between one meeting and the next meeting.
2. Notwithstanding subparagraph (1), the Chairperson may, and upon requisition in writing by at least five members, convene a special meeting of the Council at any time for the transaction of the business of the Council.
3. Unless three quarters of the total members of the Council otherwise agree, at least fourteen days' written notice of every meeting of the Council shall be given to every member of the Council.
4. The quorum for the conduct of the business of the Council shall be five members.
5. A meeting shall be presided over by the Chairperson or in his absence, by a person elected by the Council at the meeting for that purpose and the person so elected shall have all the powers of the Chairperson with respect to that meeting and the business transacted thereat.
6. Unless a unanimous decision is reached, a decision on any matter before the Council shall be by a majority of the votes of the members present and voting, and in case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.
7. No proceedings of the Council shall be invalid by reason only of a vacancy among the members.
8. Nothing in this paragraph shall prevent the Chairperson from authorizing a member to use live telephone conferencing or other appropriate communication or multimedia facilities to participate in any meeting of the Council where, prior to the meeting, the member, by notification to the Chairperson, has requested for such authorization.
9. Subject to the provisions of this Schedule, the Council may determine its own procedure and the procedure for any committee of the Council and for the attendance of other persons at its meetings and may make standing orders in respect thereof.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to provide for the settlement of disputes by alternative means of resolution including mediation and conciliation, to provide for the establishment of the National Dispute Resolution Council.

PART I (CLAUSES 1-4) of the Bill provides for the preliminary provisions, with Clause 3 setting out the objectives of the Act, which are *inter alia*—

- (a) to give effect to Article 159(2)(c) of the Constitution;
- (b) to provide an effective mechanism for settlement of disputes through conciliation;
- (c) to provide an effective mechanism for settlement of disputes through mediation;
- (d) to facilitate accessibility of alternative means of dispute resolution; and
- (e) to facilitate access to justice.

PART II (CLAUSES 5-18) of the Bill seeks to establish the National Dispute Council under Clause 5 whose functions include the promotion of the development of the legal and institutional frameworks supporting the alternative dispute resolution sector and its practice areas and to oversight the said practice areas. Further, the Bill proposes to establish the Practice Area Committees that will assist the Council in achieving its functions including the promotion of public awareness of the dispute resolution practice and service.

PART III (CLAUSES 19-32) of the Bill seeks to provide for the process of carrying out of a mediation under a mediation agreement. Clause 20 of the Bill proposes to provide for the conduct of a mediation. Further, Clause 22 provides for appointment of a mediator. Clause 29 of the Bill proposes to give a period within which performance of the mediation agreement is to be done. Clause 30 seeks to designate a body or an institution as a mediation body which is to carry out a mediation.

PART IV (CLAUSES 33-52) of the Bill seeks, under Clause 33, to provide for the referral of matters to mediation by the Court. Clause 41 provides for the role of a mediator in a mediation and Clause 48 of the Bill provides for the admissibility of mediation session in court proceedings.

PART V (CLAUSES 53-80) of the Bill seeks to provide for conciliation as an alternative dispute resolution mechanism. Clause 53 seeks to provide for circumstances where conciliation under the proposed law shall apply including where the agreement specifies as such.

Clause 59 of the Bill further provides for the appointment of a conciliator by the parties. Clause 66 of the Bill seeks to provide for circumstances under which conciliation proceedings may be terminated.

PART VI (CLAUSES 81-85) of the Bill, under Clause 81, seeks to empower the Chief Justice to, upon recommendation of the Rules Committee established under section 81 of the Civil Procedure Act, make court annexed mediation Rules. Clause 84 further proposes to mandate the

Attorney-General, under whose the custodianship of the proposed law falls, to make Regulations for the proper carrying out of the provisions of the Act.

Dated the.....2024.

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Attorney-General.