
Kluwer Arbitration Blog

Challenges in Winning and Managing First Appointments

Sophie Davin (Gaillard Banifatemi Shelbaya Disputes) · Friday, May 28th, 2021 · Rising Arbitrators Initiative (RAI)

The Rising Arbitrator's Challenge Webinar Series, organized by the [Rising Arbitrator Initiative](#) (RAI), took place online, on 22 April 2021. The event, with a regional focus on Africa, was the fifth leg of the series, with previous instalments covering North America, South America, Europe and Asia. Under the guidance of Victoria Kigen (Nairobi Centre for International Arbitration) and following opening remarks by Joanne Lau (Allen & Overy), panellists discussed the many challenges faced by young arbitrators - from winning appointments to handling of unique issues posed by remote proceedings. The conference provided a unique platform for experienced practitioners to provide advice to arbitrators navigating their first appointments.

Handling Institutional v. *Ad Hoc* Arbitrations

Abayomi Okubote (Olaniwun Ajayi LP; Africa Arbitration Academy) kicked off the conference by reflecting on the state of the arbitration market and setting out the backdrop for young arbitrators to consider in preparing for and winning their first appointments. He presented data on the global value of disputes handled by institutions (USD 36 billion for the ICC, USD 8.2 billion for the ICDR, USD 8.1 billion for the SIAC, USD 6.5 billion for the LCIA, and USD 6.3 billion for the HKIAC) and acknowledged the difficulty in ascertaining the portion of the market covered by *ad hoc* arbitration. The panellists emphasized the competitiveness of the market and difficulty in winning first appointments (whether it be by institutions or by the parties themselves), backed up by data from the ICC showing an increase in the percentage of repeat appointments during the past years. Against this backdrop, attendees were reminded of the necessity, in addition to the development of their legal expertise and substantive knowhow, of honing and developing commercial sense and getting involved early on (with work as registrar or secretary to a tribunal) to gain experience and build a network.

Dealing With Inexperienced Counsel and Non-Participating Respondents

Young arbitrators that have managed to secure an appointment as arbitrator should

ensure that they are substantively prepared to handle the dispute within the framework agreed by the parties. However, as Kananu Mutea (Gikera & Vadgama) pointed out, they can never be fully prepared for the challenges posed by inexperienced parties. Various issues may arise, ranging from considerations of maintaining one's impartiality while assisting the parties and giving them enough specialized attention to ensure that their due process rights are not infringed due to their lack of mastery of the arbitral process. Considering how their actions would be judged in the event of future proceedings to set aside the award should provide the arbitrator with a barometer regarding the suitability of their actions. Circumstances are key - procedures must be adapted to the particular circumstances of the parties and there is no one-size fits all solution to most issues that arise during the course of the proceedings, but arbitrators should approach these challenges through the prism of fairness and impartiality.

The Challenges of Organizing Remote Proceedings

The young arbitrator's challenge in managing a first arbitration is further complicated these days by issues surrounding remote proceedings. Arbitrators must first consider whether they should proceed remotely at all, before considering the form that such remote proceedings will take. As discussed by Isaiah Bozimo (Broderick Bozimo & Company), from a legal perspective, the arbitrator must consider whether the parties have agreed to proceed remotely and whether there are any restrictions related to remote proceedings derived from the rules applicable to the procedure. If the decision is taken to proceed remotely, the arbitrator must then deal with certain technological and practical considerations. Technological considerations range from the number of screens needed to effectively conduct the proceedings, appropriate video-conference platform, managing trial-runs and back-up options etc. Practical considerations abound as well, including privacy and security concerns, questions related to the protection against witness tampering, designing rules for use of audio and visual set ups (Will all parties be on screen at the same time? Will parties be on mute and who will have the ability to unmute participants?). Suffice to say that the introduction of remote proceedings along with the lack of, for the time being, standard procedures, requires the arbitrator to make a lot of decisions regarding the conduct of the proceedings and adds to the young arbitrator's plate a whole host of issues to which young arbitrators must be prepared to respond.

The nature of the questions raised during the subsequent Q&As - ranging from interrogations regarding the potentiality of witness tampering in the context of remote proceeding, to ensuring the authenticity of documents relied upon by the parties - showed the keen interest of attendees in learning about concrete solutions with respect to legal, technological, and practical issues, which may arise during arbitral proceedings.

Overall, the Rising Arbitrator's Challenge Webinar Series provided a unique opportunity for young appointees to gain insight into how experienced arbitrators

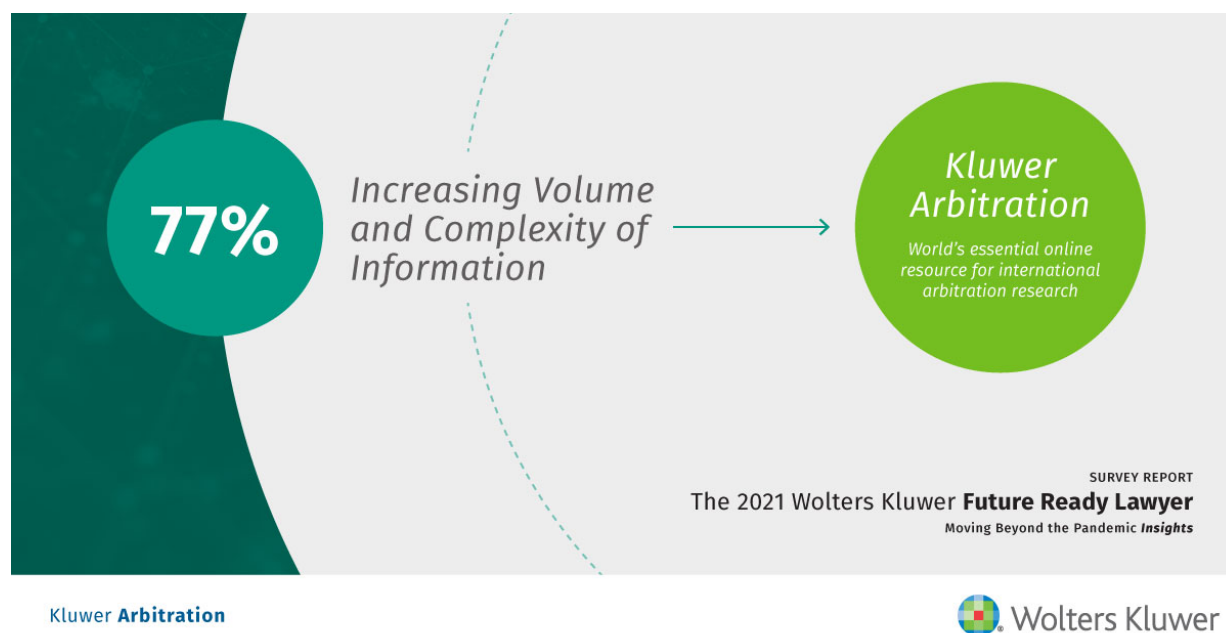
successfully manage to obtain appointments and overcome difficult situations, and the panel's comments were a timely reminder to be proactive, creative, while always maintaining high ethical and professional standards.

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