Kluwer Arbitration Blog

The Dissolution of CADER: A Reflection on the Challenges Facing Public African Arbitral Institutions

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On 18 December 2024, His Excellency, the President of the Republic of Uganda, Yoweri Kaguta Museveni, signed into law the Arbitration and Conciliation (Amendment) Act, 2024. Among the key amendments was the dissolution of the Centre for Arbitration and Dispute Resolution (CADER) and its re-establishment as a department in the Ministry of Justice and Constitutional Affairs.

The dissolution of CADER, Uganda's sole public arbitral institution, represents a critical moment in Uganda's arbitration landscape and a moment of reflection on the status of arbitration on the continent.

This blog post discusses CADER's statutory mandate, its structure and financing models, and the challenges that plagued the institution for years, culminating in its eventual dissolution. It analyses the judicial response to the dissolution and concludes with suggestions for improving the efficiency of arbitral institutions in Africa.

Statutory Mandate of CADER

CADER was established in 1998 as a statutory body under Section 67(1) of Uganda's Arbitration and Conciliation Act, Cap 4 (now Cap 5). Its core function was to manage and provide technical and administrative support to arbitration proceedings in Uganda and appoint arbitrators where parties could not agree.

Its other duties, captured under Section 68 of Cap 4, included facilitating, certification, registration, and authentication of arbitration awards, enforcement of ethics, establishing and administering a schedule of fees for arbitrators, and other acts necessary and conducive to implementing the objectives of the Act.

CADER was headed by an Executive Director who was tasked with its general management and day-to-day operations as well as acting as its principal accounting officer. It was managed by a governing council, established under Section 69 of the Act, responsible for the formation and implementation of the Centre's policy.

Challenges Faced by CADER

Since its inception, CADER struggled with logistical, legitimacy, mismanagement, and funding shortfalls that made the execution of its duties near impossible.

Despite being mandated to operate as a self-regulating body under Section 75 of Cap 4, CADER struggled to receive direct government funding for over two decades. Instead, relying on external donor support, which was later withdrawn, further stifled the Centre's work.

CADER also struggled with a lack of governance structures. While presenting the report by the Committee on Legal and Parliamentary Affairs in Parliament, the Chairperson, Hon. Steven Bakka, Member of Parliament, justified the dissolution of the Centre, noting the reasons for mainstreaming it:

> ". . . There is a lack of a governing council. Whereas Section 69 of the Arbitration and Conciliation Act requires CADER to have a governing council, there is no council currently, and none has existed *before* . . . The third is lack of funding from the Government. CADER has not been receiving funding from the Government and therefore putting it back to the ministry is a way of effecting mediation in the justice process."

Challenge of CADER's Power to Act as Appointing Authority

CADER's woes were compounded by court decisions that exposed the institution's management and governance inadequacies.

In **International Development Consultants Ltd vs Jimmy Muyanja & Others (Miscellaneous Cause No. 133 of 2018)**, the Applicant challenged the power of the Centre's Executive Director to exercise the authority vested in the CADER Governing Council to appoint arbitrators.

In his defence, the Executive Director of CADER argued that he exercised the Governing Council's delegated authority, an argument that Justice Musa Ssekaana, Head of the Court Civil division of Uganda, rejected.

The court found that the Executive Director could not solely exercise the powers of the Governing Council under Section 69. This judgment rendered the Executive Director's unilateral appointment of arbitrators in the absence of the governing council ultra vires and subject to challenge by way of judicial review. The decision highlighted CADER's management and governance inadequacies and the need for realignment of its internal structure with the Act to attain the intention of the drafters.

In the absence of a Governing Council, the decision had the effect of stripping CADER of its power to act as an appointing authority under Section 2 of the Act.

On 23 April 2019, the then Minister of Justice and Constitutional Affairs, Hon. Kahinda Otafiire, gave the International Centre for Arbitration and Mediation Kampala (ICAMEK) appointing authority under Section 2 of the Act. An appointing authority is an institution, body, or person

appointed by the Minister to perform the functions of appointing arbitrators and conciliators. Although there have been challenges to the legality of ICAMEK and its powers, functions, and establishment, these have not been successful, and it remains the only institution in Uganda with appointing authority.

Today, in the absence of CADER, ICAMEK and other emerging arbitration centres, such as Praxis Conflict Centre and the Muslim Arbitration and Mediation Centre Uganda, continue to provide management and administrative services for arbitrations in Uganda.

During the pendency of Miscellaneous Cause No. 133 of 2018, the Executive Director of CADER and CADER filed a constitutional petition, **Jimmy Muyanja & Another Vs Attorney General (Constitutional Petition No. 0011 of 2019).**

This Petition sought, *inter alia*, to have CADER recognised as a constitutionally established subordinate court under Article 129 of the Constitution of Uganda 1995, as amended and a declaration that CADER's decisions are not subject to Judicial Review. In her lead Judgment, Justice Monica Mugyenyi dismissed the petition, distinguishing the mode of establishment, the appointment of judicial officers, and the composition of the court from that of the Centre from a subordinate court within the meaning of Article 129 of the Constitution..

In its unanimous decision, the Constitutional Court confirmed that CADER's functions are primarily administrative and should not be equated to the decision-making functions of the High Court and other tribunals exercising judicial authority. Relying on Article 42 of the Constitution, CADER's decisions were found to be in the exercise of quasi-judicial authority and subject to judicial review should that authority be exceeded or in the case of procedural impropriety in the decision making.

This decision clarified the Centre's powers and authority compared to that of established courts of judicature, placing it as an independent forum for providing dispute resolution management services. It juxtaposed the judicial functions exercised by the courts of judicature with the administrative roles that aid the arbitration and mediation of disputes exercised by CADER.

The court's decisions coincided with the government's Policy for Rationalisation of Government Agencies and Public Expenditure (RAPEX), which the Cabinet adopted on 22 February 2021.

The policy intended to curb public expenditures, improve government efficiency, and reduce administrative costs caused by the proliferation of government agencies, which led to mandate overlaps and jurisdictional ambiguities.

Judicial Response to CADER's Dissolution

Despite the dissolution of CADER, courts have remained reluctant to intervene in matters the parties had contracted to resolve through arbitration. While the judicial responses have varied, the courts have generally adopted a pro-arbitration stance and have had to interpret the law judiciously to breathe life into arbitration clauses where no appointing authority is named—a role previously exercised by the Centre under Sections 11, 51, and 68 (a) of the Act.

Therefore, courts require parties to abide by contractual terms to have their dispute resolved

through arbitration.

Justice Patricia Kahigi Asiimwe's decision in **Zhonghao Overseas Construction Engineering Company v Attorney General and 3 others,** choosing ICAMEK as the appointing authority in an arbitration that had stalled due to non-appointment, is a testament to the judicial activism employed to fill this legal lacuna left by CADER's dissolution.

Justice Boniface Wamala took a different approach in **Ambitious Construction Company Ltd v Uganda National Cultural Centre,** where he appointed another arbitral institution, Praxis Conflict Center, to assign a suitable arbitrator to the dispute.

The dicta of Justice Patience Rubagumya best capture the court's response in **Tumo Technical Services Ltd. v. China Railway 18th Bureau Group Co. Ltd.,** where the Respondent sought to circumvent the agreement to arbitrate citing, *inter alia*, CADER's legitimacy and constitution challenges. Taking judicial notice of CADER's challenges as an arbitral institution in Uganda, the trial judge stated, *inter alia*, that:

> *". . . I take cognizance of the current challenges in one of the arbitral institutions specifically CADER. However other arbitral institutions in the country can be considered by the parties as to set the arbitration in motion. In light of section 98 of the Civil Procedure Act which gives the High Court inherent powers to take decisions as may be necessary for the ends of justice, in the instant case and given the facts, justice demands that arbitration be undertaken in accordance with the intention of the parties as expressed in Clause 13 of the Subcontract Agreement.* ***The intention of the parties as clearly stated in the arbitration clause should be given effect."***

African Context of Arbitration

The dissolution of CADER highlights the challenges African arbitral institutions face, which have curtailed the growth of arbitration on the continent. Despite having nearly 100 arbitral institutions on the continent, the London Court of International Arbitration (LCIA) reported an increase of cases involving parties from Africa from 4% in 2022 to 8% in 2023.

This statistic should be compared to the sharp decline of arbitrations with Asian parties, which plummeted from 24% to 8% within the same period. Similarly, the International Chamber of Commerce's (ICC's) Court of Arbitration registered an increase in arbitrations from Africa from 6.8% in 2020 to 7.8% in 2023 despite the continent's arbitral institutions increasing from 91 in 2020 to over 100 today.

This contrast can be attributed to stronger arbitral institutions, like the Singapore International Arbitration Centre (SIAC) and the Hong Kong International Arbitration Centre (HKIAC), an adaptive legal framework, and continuous conclusion of intra-Asian bilateral investment treaties ("BITs") such as the Singapore-Indonesia BIT.

The increase has also been supported by China's and Japan's foreign direct investment ("FDI")

outflows, which have surged in the past 10 years, with China doubling its FDI outflow in the past decade.

According to the 2025 International Arbitration Survey by White & Case and Queen Mary University of London, SIAC and HKIAC rank among the top five most preferred arbitral institutions globally, each attracting 25% of respondents' votes. Singapore and Hong Kong also feature prominently as two of the top three most preferred arbitral seats, praised for their strong legal infrastructure, judicial support, and efficiency.

These findings reflect a broader trend of parties within and outside the Asia-Pacific region—increasingly favouring well-established Asian arbitral hubs, further solidifying Asia's emerging dominance in the international arbitration landscape.

Unfortunately, like CADER, many of Africa's arbitral institutions still face challenges in funding, legitimacy, rule of law, and expertise that derail progress of arbitration in Africa and prompt disputing parties to seek arbitral assistance from foreign institutions.

To arrest this, Africa can bank on its high population, the proliferation of digital services and trade, youthful entrepreneurship, and the Africa Continental Free Trade Area Agreement (AFCFTA) which offer the continent a competitive advantage to boost arbitration and Alternative Dispute Resolution (ADR) in the continent.

Opportunities for African Institutions

African institutions must invest in local dispute resolution systems and expertise to benefit from the increased international trade and disputes arising from the continent. This can be done through professional capacity building, judicial alignment, and the enactment of iron-clad supporting legislation, providing investors with much-needed confidence in local institutions.

African governments should invest in developing investor-friendly institutional frameworks that promote efficiency, transparency, and integrity of institutions that guarantee parties professional services and enforceable awards.

The 2024 SOAS Arbitration in Africa Survey Report also suggests addressing issues such as judicial delays, reducing interference, and ensuring arbitrator protections to enhance the potential of economically significant countries acting as key African arbitration venues.

With the signing of the AFCFTA in March 2018, 54 of the 55 countries have now signed the continental trade legislation; there is a prime opportunity for African countries to develop local institutions. The expected proliferation of trade among African States provides a platform for this.

Providing arbitration as the principal mode of dispute resolution, the AFCFTA offers an unmissable opportunity for growth, development, and expansion for African arbitral institutions and a strong legal basis for arbitration on the continent.

Conclusion

The dissolution of the CADER was a culmination of judicial decisions and the national policy on rationalising government agencies, which was intended to cut government spending and improve efficiency. However, it highlights broader issues affecting arbitration and the development of arbitral institutions in Africa, which require broader strategic interventions in legislation, national policy, rule of law, and judicial support to promote local dispute resolution on the continent.

As Africa continues to grow as a global economic player and with the signing of the AFCFTA, governments must invest in strengthening local arbitration frameworks. This calls for coordinated efforts from governments, the judiciary, and the private sector to create sustainable, effective institutions that will handle the complex disputes of the future.

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