AN INQUIRY INTO THE CHALLENGES FACING ARBITRATION PRACTICE IN THE CONSTRUCTION INDUSTRY IN UGANDA: A STUDY OF INDUSTRY PLAYERS IN KAMPALA

BY

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DECLARATION

This project is my own original work and to the best of my knowledge has not been presented for the award of a degree in this or any other university.

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DEDICATION

I dedicate this study to the Almighty Allah, my family, friends and the firm of Nyagah B. Kithinji & Co Advocates.

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ABBREVIATIONS / ACRONYMS

ACA	Arbitration and Conciliation Act
ADR	Alternative Dispute Resolution
CADER	Centre for Arbitration and Dispute Resolution
CIArb	Chartered Institute of Arbitrators
CIETAC	China's International Economic and Trade Arbitration Commission
DAAB	Dispute Avoidance / Adjudication Board
DB	Dispute Board
DRB	Dispute Review Board
EAIA	East Africa Institute of Architects
FIDIC	Fédération Internationale des Ingénieurs – Conseils
IBA	International Bar Association
ICAMEK	International Centre for Arbitration and Mediation in Kampala
ICC	International Chamber of Commerce
ICSID	International Centre for Settlement of Investment Disputes
ISU	Institute of Surveyors Uganda
KCCA	Kampala Capital City Authority
PPDA	Public Procurement and Disposal of Public Assets Authority
SCC	Stockholm Chamber of Commerce
SIAC	Singapore International Arbitration Centre

SIMC Singapore International Mediation Centre

UIPE Uganda Institute of Professional Engineers

UNABSEC Uganda National Association of Building and Civil Engineering Contractors

UNCITRAL United Nations Commission on International Trade Law

USA Uganda Society of Architects

ABSTRACT

This study is an inquiry into the challenges facing arbitration practice in the construction industry in Uganda. Its theme was to determine the extent to which arbitration is used to resolve construction disputes in the construction industry in Uganda, identify the challenges it faces, and identify possible strategies to address these challenges when resolving the disputes in Uganda. The study was executed using the cross-sectional descriptive research design. It then utilised simple random sampling to formulate the sample population, and relied on primary data, that was collected using the questionnaires administered to 88 respondents (4 developers, 10 contractors, 70 consultants, and 4 arbitrators) using email and WhatsApp platforms. The findings demonstrated that after negotiation, Arbitration is the second most successful alternative dispute resolution method used in the construction with 33% of the disputes encountered referred to arbitration. The main challenge faced is limited experience by the participants (arbitrators, party representatives, consultants, and parties to the contract). The study also identified concerns regarding perceptions of some respondents that were indicated as challenges. These included partiality of the tribunal, lengthy process, lack of training, lack of confidence in the proceedings, high-cost implication than earlier anticipated, incompetent party representatives, the unenforceability of the arbitral award, lack of immunity for the arbitrators, the ambiguity of the arbitration agreements and unsatisfactory outcomes. The possible strategies identified for overcoming the challenges include support from the arbitration institutions and professional bodies in the construction industry, training of arbitrators and professionals within the industry, cost and time management, support from the courts, training of practitioners to enlighten them on arbitration, correct interpretation of contract documents, among others. The study made the following recommendations; professional bodies should advocate for continuous professional development in the area of arbitration, parties should strictly follow the procedure of appointment of the tribunal and should perform due diligence on potential arbitrators, parties should follow the law when it comes to enforcement, appointment of trained and qualified arbitrators and party representatives, participants should use standard forms of contracts with clear clauses. The study identified that further research should be conducted to investigate the effectiveness of quantity surveyors as arbitrators in the construction industry in Uganda.

CHAPTER ONE

INTRODUCTION

1.1 Introduction

This chapter presents the background of the study, problem statement, objectives (specific objectives), the research hypothesis, research questions, significance, limitations, scope, organization of the study, and defines key terms that are relevant to this study.

1.2 Background of the study

According to Cakmak & Cakmak (2014), the construction industry is complicated and aggressive market whereby people with various perspectives, skills, and skills of design and build expertise collaborate. In Uganda, Katende et al. (2011) acknowledged that the industry has seen a surge in the activity due to the rise of the demographic, which is driving up demand for infrastructural facilities. The increased demand has triggered a rise in the number of participants on every project who have a major effect on the success or failure of a given project and the industry at large.

According to Jin et al. (2017), participants such as design consultants, clients, contractors, and project managers can either stymie or accelerate the development of a construction project. Shash & Habash (2021) also argued that each participant has aspirations and interests that hinder good collaboration to form a project. The person's attitude towards the project is likely to be affected by features like authority, enthusiasm, popularity, and their actual function in the project, scale, experience, length of time it was founded, and even its capacity to handle danger.

In their study, Patel & Patel (2017) reported that numerous challenges develop during project execution which can only be handled by the project team members. In addition, the projects are specific and have extensive documentation increasing the vulnerability to disagreements and disputes.

Furthermore, Shash & Habash (2021) discussed that project documentation, owners, and contractors are the sources of these disagreements. Incorrect specifications, uncertainty in

contract phrasing, conflicts across project records, unrealistic project timeframe, erroneous bills of quantities (BOQ), and contract language flaws all lead to the poor preparation of project documents. Additionally, large variation orders that surpass permissible limits, varying the item descriptions and amounts in the BOQ, meddling with the contract's operation, and delayed responses to information required or approvals are sources of disagreements caused by owners/clients. Poor contract management by contractors leads to disagreements.

Cakmak & Cakmak (2014), also argued that with multiple participants on construction projects, disputes are unavoidable due to differences in opinions amongst construction stakeholders. If these disagreements are not handled properly, they develop into disputes. These disputes then become some of the issues that prevent a building project from being completed properly, in time and within budget.

Patel & Patel (2017) stated that these growing disputes, claims and construction delays are as a result of the increased demand in the construction industry. Like in many developing nations, construction projects in Uganda experience widespread delays (Muhwezi et al., 2014), partly due to diverse specifications and client needs.

Mulolo et al. (2015) discussed that construction conflicts are among the global barriers to successful project implementation, frequently resulting in cost overruns and, in the worst situations, project stoppage. While Alshahrani (2017) deliberated that these disputes are often between the consultant, owner, and contractor of a given project.

According to Kiwanuka (2012), if these conflicts are not addressed in time, they swiftly devolve into contentious conflicts that are difficult to resolve. This creates the need to have dispute resolution methods incorporated in the planning phase of the project. Zack (1997) further discussed construction disputes are frequently complicated, making it extremely difficult to adequately articulate concerns to a non-technical judge and jury. As a result, the construction sector has been at the vanguard of developing alternate conflict resolution methods.

According to Gould (2004), the alternative dispute resolution methods are nonjudicial processes that entail selection and appointment of a neutral third party by the parties to facilitate

the dispute resolution process. These range from negotiation, conciliation, mediation, adjudication, dispute review by boards, and use of expert witnesses, among others.

Therefore, the construction industry has adopted the use of alternative dispute resolution (ADR) methods in settlement of disputes. Brown & Marriot (2012) elaborated that the well-established practice of including dispute resolution clauses in the standard forms of construction contracts has facilitated avoidance of disputes going to court. Thus, methods should be exploited before the parties take the matter to court.

Additionally, Kiwanuka (2012) discussed that the capacity to rapidly and efficiently handle contract disputes can frequently mean the distinction between projects being finished on time and a disastrous investment being finished after several years of delay. Therefore, one of the ways to mitigate delays on construction projects is by resolving disputes as quickly as possible using alternative dispute resolution methods.

According to Muigua (2018a) in Kenya, there is a pressing need for a fast and cheap technique of settling disputes. They should be handled using the least amount of money and time possible, so that these resources can be spent on more productive activities. Since construction is a commercial activity, it is prudent to adopt the best ADR method for the situation when resolving disputes to mitigate delays that lead to project overruns.

In Tanzania, Mashamba (1982) discussed that in the 1980s and 1990s, ADR was introduced into African judicial systems in terms of the globalization of African economies, which was supported by such conditions as a transformation of the justice and legal sectors as part of the structural adjustment programs.

Additionally, Kakooza (2010) reported that the Ugandan judicial system values worldwide business innovations as well as alternative conflict resolution procedures in the enforcement of the law that are quick, convenient, and less expensive. These ADR methods have consequently been adopted by the construction industry in Uganda. This goal has contributed to the widespread incorporation of provisions for dispute resolution within the standard forms of contracts used in construction. This guides the parties to use alternative dispute resolution methods among which include arbitration clauses that amount to an arbitration agreement.

Furthermore, Kakooza (2010), indicated that in Uganda Arbitration and Mediation are two ADR methods of wide application. Other methods in use include negotiation, conciliation, adjudication, arb-med, med-arb, and arb-med-arb. This study focused on the use of arbitration.

In South Africa, Rantsane (2020) indicated that historically, arbitration was to be a neutral means of resolving conflicts without going against the law. Therefore, arbitration is defined as an ADR method whereby parties submit their issue to a neutral third party called an arbitrator or arbitrators (more than one), who renders a binding award or ruling to settle the dispute.

Wolavert (1934) discussed that arbitration's origins are shrouded in mystery. It is unknown when or where man initially opted to present his grievances to his chief or friends for a resolution and agreement with his competitor, rather than resorting to violence and self-help, or the accessible public legal apparatus.

The International Arbitration Report (2019) explained that originally, judicial litigation has been used to resolve conflicts throughout Africa's civil and common law jurisdictions. However, arbitration has established a solid foothold throughout Africa, and recognition of arbitration as a credible method for resolving conflicts has grown in recent years, not just between private individuals but also among nations.

According to Vinod & Bolaji (2001), the growing importance of arbitration and dispute resolution in Africa reflects global expansion in international commerce. Less developed countries have increased their participation in arbitration since the 1970s. Lawyers and officials representing developing nations must consequently be aware of the challenges and problems that arise during the various rounds of international arbitration.

The Uganda Law Reform Commission (2017) reported that arbitration has now become the favoured method of resolving international conflicts as the world has become much more globalized. While Kakooza (2007) emphasized that arbitration is a popular technique for settling many disputes in Uganda. The issue of performance and cost come up to explain why it is preferred over court proceedings. Additionally, Fadhlullah Ng et al. (2019) stated that arbitration has grown in popularity and enhanced its prominence since, unlike litigation, the dispute may be resolved in a short period of time.

Nochta Tibor. et al. (2013) discussed that over time, three to four fundamental theories of arbitration have been formed. These include; jurisdictional theory, contractual theory, hybrid theory, and the autonomous theory. Altogether, the theories indicate the administrative and functional elements of arbitration. The administrative elements include; time, cost, rendering and enforcement of the arbitral award and immunity of the arbitrators. The functional elements include; independence and impartiality of the tribunal, confidentiality, experience of the arbitral tribunal, competency of the party representatives, and court intervention.

According to Fisher (2017) arbitration has several advantages, including being private, ensuring justice, and allowing control over the process with a final ruling. He also discussed that arbitration is expensive, difficult, and time-consuming, with procedures modelled after litigation. It is also prone to delays and lacks faith in arbitrators' conclusions. The most difficult aspects of arbitration are the cost and duration.

Despite the fact that arbitration is a recognised ADR method in the construction industry with proven advantages, it has not been utilised to its full potential. This study seeks to identify the challenges facing the use of arbitration as an alternative dispute resolution method in the construction industry in Uganda.

1.3 Statement of the Problem

Construction projects have become bigger, more complex, more expensive and require the participation of several persons with extensive educational qualifications and vocational skills. With numerous participants and stakeholders, sometimes with differing views and motivations employed in various trades and professions, disagreements and disputes are inevitable.

According to Ansary & Abdul (2017), dispute resolution is critical in the construction industry since large amounts of money are involved in the undertakings. Unresolved issues at the project level cause schedule delays, heightened tension, losses and the suffering of long-term corporate partnerships. Therefore, when disputes arise, the parties have to be vigilant in getting them resolved as soon as possible by utilising the available contractual provisions in the quickest and most economical manner.

Thus, the standard forms of construction contracts provide for one or more Alternative Dispute Resolution (ADR) methods to aid in quick dispute resolution when the need arises. These include negotiation, mediation, conciliation, adjudication and arbitration, to mention but a few.

Among the ADR methods, arbitration has been identified as one of the popular methods used in business disputes. According to the publication by Unctad (2005), arbitration is a form of private justice that is founded on the consensus of the parties. The parties prefer to handle their issues if any arise outside of court by incorporating arbitration agreements within their contracts so that if any disagreements arise, they are referred to arbitration.

In Kenya Ngotho Njung' (2018b), reported that as at 2018, arbitration as well as other forms of ADR have taken a significant influence in lowering massive outrage of caseloads in Kenyan courts. This alludes that some construction disputes are resolved in arbitration. However, most people have no assurance that the due process will be achieved because arbitration does have a few flaws.

Abwunza et al. (2021) discussed that because of its perceived speed, cost-effectiveness, and finality of the ruling, arbitration has been hailed as one of the best procedures for settling construction disputes. However, studies suggest that arbitration has lost favour, with numerous complaints about its effectiveness in terms of delays, expensive costs, and the high number of contested rulings, leaving many users dissatisfied.

Consequently, the popularity of Arbitration as the preferred ADR method especially within the construction industry in Uganda has also become uncommon. As a result, it is necessary to examine the challenges faced while using arbitration as a means of resolving disputes that arise within the construction industry in Uganda, as well as to consider potential approaches to overcoming the challenges in order to make arbitration a much more successful method of dispute settlement.

1.4 Objectives

1. To determine the extent to which arbitration is used to resolve construction disputes in the construction industry in Uganda.
2. To identify the challenges that arbitration faces in the construction industry in Uganda.

3. To identify possible strategies to address the challenges facing arbitration as a method of resolving construction disputes in Uganda.

1.5 Hypothesis

The use of arbitration in the construction industry in Uganda faces challenges. H_0

The use of arbitration in the construction industry in Uganda does not face challenges. H_1

1.6 Research Questions

1. To what extent is arbitration used as alternative dispute resolution method in resolving the construction disputes in Uganda?
2. What are the challenges facing arbitration in the construction industry in Uganda?
3. What possible strategies can be used to address the challenges facing arbitration as a dispute resolution method in the construction industry in Uganda?

1.7 Significance of The Study

The study aimed at making an inquiry into the challenges faced by participants when using arbitration as an alternative dispute resolution method in resolving disputes in the construction industry in Uganda and give possible strategies to address the challenges. The study is beneficial to the professionals in the construction industry mainly; quantity surveyors, architects and engineers. Additionally, developers and contractors would also benefit if the recommendations of this study help to address the challenges faced in using arbitration and lead to quicker resolution of disputes.

The study would also benefit arbitrators especially the panels of Centre of Alternative Dispute Resolution (CADER) and International Centre for Arbitration and Mediation in Kampala (ICAMEK) especially those dealing with construction disputes. Last but not least the study would benefit other stakeholders like lawyers, construction managers, contract administrators and other participants interested in pursuing arbitration within the construction industry in Uganda.

1.8 Limitation of The Study.

The researcher carried out the field study while in Nairobi. The fieldwork was also interrupted due to the containment lock-downs which were imposed in both Uganda and Kenya as a result of the Coronavirus Disease (COVID19) pandemic. The major limitation was in collecting data especially conducting face to face interviews with the interviewees because of the government standard operating procedures (SOPs) like social distancing. The researcher resorted to collecting data using online tools like google forms, and WhatsApp messaging platform where necessary.

Secondly, some of the pertinent information for this study was to be collected from government parastatals, which had very strict polices on release of government information and where the information could be availed, the bureaucracy for the required approval was long and tedious.

The study was also limited by time and resources.

1.9 Scope of the Study

The study investigated the challenges facing arbitration as a dispute resolution method in the construction industry in Uganda and was centred around the industry players in the city of Kampala. This was to establish the extent to which arbitration is used as an alternative dispute resolution method in the construction industry, the administrative and functional challenges facing the use of arbitration as a dispute resolution method and, to also identify possible strategies to address the challenges facing arbitration as a dispute resolution method for construction disputes in Uganda.

The study was executed using the cross-sectional descriptive research design. This is because the study focussed on the key players in the construction industry. It was started in May 2021 and completed in December 2021.

1.10 Organisation of the study

This study is presented in six chapters. Chapter one outlines the background of the study, statement of the problem, purpose of the study, objectives of the study, scope and limitations of the study and the organisation of the study.

Chapters two and three focus on the literature review in line with the objectives of the study. Chapter four details the research design, target population, sampling procedure and data collection methods used in the study.

Chapter five focuses on data analysis, presentation and interpretation according to the specific objectives of the study and Chapter six, which is the final chapter, details the summary of the findings, discussions, conclusions, recommendations and suggested areas of further research.

1.11 Definition of Key Terms

Alternative dispute resolution: This refers to any process used for resolving misunderstandings without going to litigation or the courtroom.

Arbitration: This is the procedure used by disputants to resolve any issues by submitting them to a third party called an arbitrator to make a binding decision.

Autonomous theory: This is a theory in arbitration that argues that the process should not be restrained by the law of the place.

Binding and Non-Binding Decision: A binding decision is a verdict that disputants must follow irrespective of whether they accept it or not, while a non-binding decision can be accepted or disregarded by the disputants.

Claim: A claim is a formal request over something due, typically presented as a formal document.

Contractual theory: This is an arbitration theory that elaborates that any arbitration process originates from the contract between the parties.

Dispute: A dispute is a conflict or confrontation amongst individuals or groups that are party to the same contract.

Hybrid theory: This is the mixed arbitration theory that guides that the arbitration process is governed by both the state and the contract between the parties.

Jurisdictional theory: This is the arbitration theory that emphasises that the state has the powers to supervise and oversee the arbitration process.

Proceedings: A lawsuit's systematic and orderly process, comprising all operations and events that occur between the time of submission and the entry of decision.

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

This chapter has analysed and discussed the theoretical review of the study, executed through reviewing the existing literature on the alternative dispute resolution methods especially those used to resolve disputes in the construction industry, the extent to which arbitration is used, and identify the challenges faced in using arbitration as a dispute resolution method. The reviewed literature was sourced from various sources that include; published books on ADR methods and Arbitration as well as online material like papers, reports, journals, including past studies; theoretically discussed.

2.2 Review of Theoretical Literature

2.2.1 Dispute

According to Ferdous (2014) in Bangladesh, most if not all, social relationships often experience disputes which is natural. The disputes arise when parties disagree. When there is a failure to come to mutual understanding or resolution, the aggrieved party will then feel the need to claim for compensation or damages by declaring a dispute.

Khoshnava et al. (2012) explained that compromised agreements, mismanagement, resource use, building works, business agreements, public affairs, debtor-creditor challenges, occupational concerns, and any other situation whereby stakeholders are at odds can result in disputes. When these disputes arise, they need to be resolved immediately to save time, money and business relationships.

2.2.2 Dispute Resolution

The use of quick dispute resolution in the construction industry is ideal to enable parties realise value from the contractual relationship (Khoshnava et al., 2012). There are only two ways to resolve a dispute. Either the parties to the dispute negotiate their own solution, or someone else decides the issue in conflict for the parties (Barkai, 2011).

According to Rovine (2016), parties may try and resolve the issue personally, by dialogue between themselves, or through the involvement of a third party, or by a hybrid of these methods. In any scenario, creating detailed documentation that can be used in the event of third-party aid or involvement is crucial. Therefore, parties to a contract need to foresee the possibility of a dispute or disputes arising, and if this occurs, they should incorporate a dispute resolution clause.

According to Nilgün et al. (n.d.), to resolve conflicts that arise during the course of operations, a range of dispute settlement techniques are available. Some of the techniques, such as litigation, are more popular among business people, whereas alternative dispute resolution techniques may be less popular. It is very vital for the parties to include a dispute resolution method they are familiar with and understand.

Rovine (2016) explained that there are a variety of legal or administrative concerns and various courses of action that must be carefully considered and selected when a conflict arises between the contracting parties. The first action is to go over the provisions of the contract that the parties are working within. Dispute resolution clauses may or may not be included in these terms. In most if not all contracts, there is a dispute resolution clause. The contract clause will guide the parties on how to address the procedural questions and the possible courses of action. For example, in the FIDIC Contract.

Brown & Marriot (2012), observed that contractual claims of every kind arise in majority of businesses, including construction. Thus, adoption of ADR systems has benefited both the public and private sector administration and management in settling disputes including construction disputes.

While Ndirangu (2014) in Kenya, acknowledged that construction projects are bound by time, scope and budgets hence it is very important to eliminate and manage any obstacle like disputes that may pull them behind. In case of disputes it is very crucial for all the parties involved to fully participate and contribute in the alternative dispute resolution process, an important role not found in the litigation process in the courts. The parties have to decide on whether to resolve the disputes on their own or engage a third party. Resolution of the disputes by third parties entails use of litigation or alternative dispute resolution methods. However, both parties must be aware of the consequences of the course of action selected.

According to Ruth (2019) in Uganda, disputes are unavoidable in commercial transactions therefore settlement of disputes is a very important issue. Court litigation was often considered as the inherent method of dispute resolution but with time more alternative methods have become very popular in resolving disputes especially in the construction business.

2.2.3 Disputes in the Construction Industry

In Thailand, according to Israngkura & Ayudhya (2011) "the construction industry is one of the key players in driving the economy, generating both employment and wealth. However, disputes have frequently been claimed to proliferate in the construction industry. Disputes often result in drawbacks and disharmonizations in the completion of the construction projects with considerable cost". More to that, in Kuwait, Sayed-Gharib et al. (2010) discussed that when the disputes arise in construction projects, they create burdens to the parties and participants especially in terms of loss of time and money.

In Turkey, Emre & Pinar (2014) stated that the construction environment is composed of various stakeholders among which include professionals alongside other participants who have different levels of knowledge, training, and talents hence have differing goals. Sayed-Gharib et al. (2010) argued that because of the wide array of stakeholders, there is a considerable chance of conflict, which, if not addressed early, can lead to long-term problems. Therefore, the difference in professional backgrounds and perceptions often results in conflicts and disputes.

In the Year Book on Arbitration and Mediation Volume 2 - 2010, The Pennsylvania State University Dickson School of Law., (2010), Hall 2011 who referenced Clark, stated that the construction business lends itself to multiple disputes in any given project, especially in projects that involve multiple parties and competing interests. The most common disputes in construction law involve claims regarding the design of a project, unanticipated work site conditions, owner-directed changes in project plans, and unreasonable delay.

According to Mohamed Nasir et al. (2018) in Malaysia, the construction industry's dynamic nature makes it nearly difficult to keep a project free of disputes. The financing concerns are regarded as the most crucial issue to be addressed in the building projects because there is no doubt that maintaining a steady financial position is critical to determining the project's success.

While, Stephenson (2001) also discussed that disputes relating to construction contracts often raise issues such as whether the ground conditions discovered could justifiably have been envisioned by an experienced contractor, given the subsoil knowledge provided to the construction company at the time of contracting. Also, if the issuance of the designs or instructions on specific dates caused delays in the works and, whether variations should be valued at contract rates or in some other way. This is to mention but a few.

Mulolo et al. (2015) argued that the competence to rapidly and efficiently handle any arising contractual issues might make an enormous difference between a profitable and a disastrous project. According to Ayupp & Latif (2017), the objective is to uncover the core causes of the disagreements and devise methods for resolving them quickly in a fair and win-win manner. Hence, the ADR methods can be used to settle the disputes quickly. These methods advocate for the use of experts or experienced professionals which is extremely advantageous to resolving disputes in the industry.

2.2.4 Alternative Dispute Resolution (ADR)

Mnookin (1998) explained alternative dispute resolution (ADR), as a collection of methods and processes formulated to allow legal and contractual issues to be determined outside of the courtroom. Whilst Brown & Marriot (2012) elaborated that the aggregation of dispute settlement techniques that serve as alternates to court proceedings' is what alternative dispute resolution refers to.

Carver & Vondra (1994) stated that “Back in the 1980s, experts and executives alike heralded alternative dispute resolution (ADR) as a sensible, cost-effective way to keep corporations out of court and away from the kind of litigation that devastates winners almost as much as losers. Over the next few years, more than 600 large corporations adopted the ADR policy statement suggested by the Center for Public Resources, and many of these companies reported considerable savings in time and money.” The level of success registered increased the popularity and use of ADR methods in the construction industry.

According to Wilcocks & Laubscher (2017) in South Africa, ADR procedures could be utilized instead of litigation, which is frequently expensive and time-consuming. Arbitration, mediation, negotiation, and adjudication are just a few examples of ADR, which, if properly understood and conducted, benefit all parties to the dispute.

Vinod & Bolaji (2001) in document 14 of the alternative dispute resolution indicated that a variety of criteria influence whether or not a method of alternative dispute resolution is available or used in a given situation. These include the alternative dispute resolution provision in the parties' contract, the availability of individuals knowledgeable about the procedures of ADR methods, the legal system of a country's endorsement for ADR methods, the national or international institutional framework for ADR, and the accessibility of needed infrastructure facilities.

2.2.5 Objectives of ADR

According to Chinedu (n.d.), in Nigeria, the major goal of the Alternative Dispute Resolution (ADR) system is to prevent vexation, expense, and delay while also promoting the concept of access to justice and exercising the right to select from a variety of dispute resolution procedures. Whereas in Uganda, according to Jemima (2019), the increasing caseload in the traditional courts has tremendously contributed to the rising popularity of ADR methods along with the perception of fewer costs, party autonomy and confidentiality.

Omondi & Wambugu (n.d.), in Kenya further acknowledged that where they have been implemented, ADR processes have proven to be effective in resolving disputes. The constitution recognizes their importance in the conflict continuum since they are tools that make it easier to get justice. Some techniques, such as mediation and bargaining, promote community inclusion and public participation in decision-making. Thus, their efficient implementation, as described here and in accordance with the constitution, will represent a paradigm shift in conflict resolution policy, expanding access to justice and resolving disputes quickly and without concern for procedural details.

According to the Office of Democracy and Governance Alternative Dispute Resolution Practitioners Guide Technical Publication Series (1998), the work for USAID in an effort to promote the rule of law in third world societies sparked interest in the use of ADR methods. This interest stems from a number of factors. ADR is promoted as a more efficient and effective means of fulfilling justice than the courts, more so in states where the judiciary has lost citizens' trust and respect. ADR has been seen as a strategy to facilitate access to justice for those unable or reluctant to use the judicial process. As ADR approaches spread across the developed and

developing countries, unique uses and concepts for ADR processes are becoming more common.

2.2.6 ADR Methods and Processes

In India, Sapkal (2015) stated that “methods of alternative dispute resolution (ADR) have increasingly become popular, relative to court litigation for a wide variety of disputes.” These methods are mainly used to resolve commercial disputes. Whilst Muigua (2018b) stated that “the phrase alternative dispute resolution refers to all those decision-making processes other than litigation including but not limited to negotiation, mediation, conciliation, expert determination, arbitration, and others”. Consequently, any method used to resolve disputes outside court is referred to as an ADR method.

Brown et al. (n.d.), in the Alternative Dispute Resolution Practitioners Guide 1998 identified the four types of ADR systems as negotiation, conciliation, mediation, and arbitration. While in New Zealand, Bercovitch & Jackson (2001) documented that states frequently use ad hoc dispute resolution methods, selecting from a wide range of tactics such as conciliation, negotiation, mediation, arbitration, and inquiry.

Reif (1990) stated that as far as the global system is concerned, negotiation, mediation, conciliation, arbitration, and judicial settlement are among the types of conflict resolution. Whereas Rogers (2020) indicated that ADR techniques such as arbitration, mediation, early neutral evaluation, and expert determination are available to assist in the resolution of trust problems amongst the parties. Furthermore, Suherman (2019) in Indonesia, identified that arbitration simply forms one part of the ADR methods aside from negotiation, mediation, conciliation and litigation.

2.2.6.1 Negotiation

Bercovitch & Jackson (2001) defined negotiation as a process through which individuals concerned discuss and share suggestions to reach an agreement on the terms of the conflict's resolution and subsequent connections. While Muigua (2018a) explained that negotiation is when parties decide to determine and debate matters in order to reach a satisfactory resolution alone minus the assistance of a third party. In negotiation, there is minimal need for a third party since the parties are actively involved in discussing possible solutions to the dispute.

According to Animashaun & Odeku (2014), the process of negotiation is an informal approach to conflict resolution that gives the participants the most power over the outcome. Whereas Gould (2007) in the UK acknowledged that the outcome is nonbinding and that each party has the freedom to use any outside expertise it considers appropriate, and sometimes stated as "assisted bargaining." As a result, the parties to a conflict frequently use or apply various strategies like confrontation, compromise, and attempt to resolve their differences as quickly as possible. Depending on what the parties apply, the negotiation process may be multi-lateral (many parties) or bilateral (between two parties).

Furthermore, Wertheim (n.d.) recognised that it is essential for the parties to always look for a win-win position in any negotiation, even when all odds are against one party. Consequently, most if not every negotiation involves some form of a win-win situation. Finding a win-win solution in any case is imperative to prosperous negotiations. If everything collapses, switch to a win-lose mode, but the parties must agree so that the solution can be accepted as binding to both parties.

According to Muigua (2018a), when parties are unable to reach an agreement using negotiation, they must examine other alternative method(s) of conflict settlement that would be appropriate for them to explore and resolve the dispute at hand.

2.2.6.2 Mediation

Love (2001) defined mediation as a process through which the neutral third party (the mediator) assists the disputants in articulating and understanding the underlying viewpoints, expectations, difficulties, principles, and sentiments that each individual brings to the dispute; generating and evaluating options to address the situation outlined and attainment of a mutually acceptable solution. The process is structured in such a way that it is very interactive, and the third party engages both parties concurrently until they arrive at a mutual agreement.

According to Lowe & Leiringer (2008), the neutral third party is referred to as the mediator whose main objective is to enable parties to the dispute reach an acceptable agreement or consensus. In Nigeria, Sule (2020) emphasised that the mediator's main responsibility is not to resolve or determine the issues, whether right or incorrect, the goal is to assist parties in reaching a jointly satisfactory solution to their issue. While in Uganda, Kakooza (2007)

suggested that the intervention by the mediator often improves the rapport amongst the parties and also facilitates the interactions so that the dispute is resolved as fast as possible.

Lowe & Leiringer (2008) discussed that mediation is conducted using the evaluative or facilitative approach. The evaluative approach is one through which the third party or mediator considers the case's legal merits, whilst, in the facilitative approach, the third party or mediator concentrates on supporting the parties in describing the issues. Upon conclusion of successful proceedings, including formulation of a written agreement, the parties can specify to make the agreement legally binding and enforceable. Nonetheless, Sule (2020) stated that the entire procedure is voluntary, informal, consensual, and confidential, and the parties are not bound by it except that they sign a mediated agreement.

2.2.6.3 Conciliation

According to Sule (2020) in Nigeria, conciliation is a method of dispute settlement within which the parties solicit for services of a third party or conciliator to help them create positive connections. Whilst in India, Shinde (2012) specified that conciliation is a non-binding dispute resolution technique in which an impartial third-party, assists disputing parties in obtaining a mutually agreed-upon resolution without litigations. The neutral party is appointed through mutual permission by agreement between the parties to bring about a settlement of their dispute through unanimity or other credible approaches.

Furthermore, Shinde (2012) acknowledged that in most cases, only one conciliator is hired to help the parties resolve their differences. By mutual agreement, the parties might designate the single conciliator. If the parties are unable to find a solution, they may seek the assistance of any relevant international or domestic agency to appoint a conciliator. The process can be initiated by either side to the dispute and it is said to have commenced when one party invites the other to resolve their issue through conciliation where the opposite side accepts the invitation.

Sule (2020) discussed that after reviewing the case and speaking to the parties, the conciliator presents terms of settlement for the parties to adopt. These are simply recommendations and the parties have the freedom to refuse or agree with them with amendments. The recommended settlement will only be binding if the parties agree and sign an agreement.

2.2.6.4 Adjudication

Gould (2017) defined adjudication as a 28-day brief dispute resolution technique that promises to settle differences minus the need for lengthy and expensive court proceedings, hence aiding cash flow. It is famously referred to as the "pay first, argue later" technique.

The neutral third party is referred to as the adjudicator. The usage of an adjudicator is provided for in various standard forms of contracts used in construction, for example the FIDIC Contracts, Construction and Regeneration Act 1996 and the Housing Grants among others. In construction cash flow is very important, therefore use of the adjudication promotes temporary dispute resolution as the parties wait to explore other methods.

Adjudication is taking up a prominent position in the construction dispute arena (Chapman, 1999). It is a fast and inexpensive 28-day process that can be exercised independently at any moment in a written contract. According to Uganda Institution of Professional Engineers Adjudication Guidelines August 2019 (n.d.), the FIDIC yellow book sub-clause 8.2, the main Dispute Adjudication Board (DAB) in Uganda is UIPE, which selects particular adjudicators for all engineering projects.

Unfortunately, in Malaysia, Mohamed Nasir et al. (2018) reported that due to interference from financial backers, notably the principal contractor or employers, who wield more authority and negotiation leverage, the adjudication clauses in contracts are becoming less important.

2.2.6.5 Dispute Boards

Ong & Gerber (2011) reported that dispute boards (DBs) have become much more well-known around the world, mainly for resolving disagreements and avoiding construction-related problems. The DB is a group of three impartial and knowledgeable professionals who have been selected and appointed mutually by the contractual parties at the start of a project.

According to OGU-JUDE (2020), if the parties want to use the default provision of appointing a dispute board, they can choose either a permanent or ad hoc dispute board. According to what has been decided by the parties and the nature of the project, the parties can choose a three-man board or a one-man board. The selected board should be actively involved in the project from inception to the end.

Like expert determination, dispute boards are usually made up of industry experts who understand details of the project (OGU-JUDE, 2020). The board must be familiar with the type of construction and have relevant experience so that they can understand the complexities of the project.

Chapman (1999) notably stated that the key difference between DRBs and most other ADR processes is that the DRB is recruited at the start of a project and is fully engaged during construction by making frequent visits to the site among others. It then becomes a part of the project and, as a result, has the ability to affect the contracting parties' performances over the contract period.

2.2.6.6 Expert Determination

Gould (2017) defined expert determination as a practice whereby the disputants appoint a third party to decide on a specific problem. Whilst Islam (2019) explained that the third party, who is also referred to as the expert, is a professional who is recruited for his or her competence in the dispute. Therefore, while making their selection, the parties must be keen when selecting the third party and ascertain that they have the required knowledge and expertise relevant and instrumental in guiding the parties to resolve the dispute.

Additionally, Saidov (2019) reasoned that the method of expert determination is practical. Its goal is to provide closure and prevent disagreements, as well as the expenses, and efforts that such differences usually entail. He further explained that it is a quick, low-cost, informal, discreet, and confidential whose procedure is concluded by someone with the requisite expertise.

2.2.6.7 Arbitration

According to Khandve (2015), arbitration is a process of resolving conflicts used as an alternative to the conventional judicial system, which is initiated by filing a lawsuit in a court of law. While in Uganda, Kakooza (2010) further explained that instead of submitting the case to the traditional courts of law, parties in conflict present their matter before a neutral third party and agree to abide by the outcome.

The neutral third party is known as the arbitrator. When it is one, he is called a sole arbitrator, and when it is more than one, it is called the arbitral tribunal. The tribunal should be trained in arbitral matters and have relevant proficiency in the field within which the dispute arises. For example, in construction-related disputes, it is prudent that the third party chosen has experience in construction matters and procedures.

The ICC Commission Report (2019) encourages parties to make careful considerations when selecting arbitrators because they will not only judge the facts of the case, but they will also have considerable authority over the arbitral proceedings, including how the information will be submitted and handled. As a result, it is critical that the tribunal understands which administrative instruments are appropriate, as well as how and when to use them. The tribunal's decision will be critical in ensuring a cost-effective arbitration and maintaining the parties' cohesiveness.

In India, Chauhan (2020) indicated that in recent years, arbitration as an ADR method has grown popular, especially the International Commercial Arbitration that has become increasingly important since the country has reduced trade restrictions and opened up trade. According to the ICC Guide on Effective management of Arbitration (2014), Arbitration guarantees a neutral forum for the parties, a standard system of enforceability, and procedural versatility, thereby allowing parties to design a process to their circumstances in every case. This level of flexibility makes it more attractive than the judicial system.

Zakaria (2016) discussed further that arbitration has been regarded as a speedier, more flexible, and less expensive alternative to lawsuits in resolving legal issues and is consequently recognized as the preferred means of dispute settlement for international transactions involving parties with differing legal and social environments. The parties are involved in the appointment of the arbitrators unlike in litigation where a judge is appointed to them. This enables them select persons with the relevant expertise and professional background that will enable them to resolve the dispute as fast as possible.

Arbitration is not right for every party in every situation (Guide to International Arbitration n.d.). Therefore, for the parties to present their matter to arbitration there must be an existing and valid arbitration agreement. According to the Arbitration and Conciliation Act (Chapter 4) (2000), an arbitration agreement is one where parties to a contract agree that they will submit

all or some of the disputes that have come up or may come up during the execution of the project to be resolved through arbitration.

Chauhan (2020) explained that the agreement maybe articulated as a clause in the main contract or the parties may choose to formulate a separate agreement altogether. Furthermore, Mustill & Boyd (1989) also mentioned that there are two types of arbitration agreements: those that submit a current issue to arbitration and those that pertain to issues which might emerge in the future. The Ad hoc filings are agreements that relate to current disputes while the second type of agreement usually takes the form of a phrase added into the contract that provides certain rights and obligations that, in the occurrence of a disagreement, the matter will be resolved through arbitration.

In accordance with the established theories of arbitration, that is the jurisdictional theory, contractual theory, hybrid theory and autonomous theory. Yu (2008) explained that the jurisdictional theory asserts that states have total supervisory powers over any international arbitrations that occur inside their jurisdiction, meanwhile the contractual theory contends that international arbitration arises from a valid arbitration agreement between the parties and that, as a result, arbitration must be implemented following their wishes. While the hybrid theory is a combination of the jurisdictional and contractual concepts. It claims that international business arbitration is both contractual and jurisdictional in nature. The autonomous theory, which has been formed lately, rejects the traditional method in favour of focusing on the goal of international business arbitration, contrary to attempting to incorporate arbitration into the pre-existing legal structure. In addition, he discussed that arbitration is defined by the autonomous theory as a self-contained institution that is not bound by the laws of the arbitration venue. As a result, the parties ought to have complete control over how the arbitration is administered.

Upon submission to arbitration, Yu (2008) further explained that in accordance with the autonomous theory, the parties will be given complete party autonomy enabling them to be actively involved in the process of choosing the law to rule the substantive issues, and the authority to decide the law guiding the procedural issues and the time and location of the arbitration.

Participants in Arbitration

Stephenson (2001) discussed that besides court procedures, arbitration hearings are not disclosed to national media or the general public. As a result, the sessions and discussions that are customarily required are only open to key stakeholders in the procedures. This is because of the level of confidentiality required in arbitration. Other parties often include pupils of the arbitrator or the representatives to grow their experience. Pupils are only permitted to attend after the parties' consent and they are sworn to confidentiality if the parties agree.

Therefore, participants or key stakeholders of arbitration proceedings include the disputants (claimant and respondent), their representatives or party representatives (these can be lawyers or non-lawyers), the chosen witnesses by the parties' representatives, the arbitral tribunal, and their pupils. This study focused on the disputants, party representatives, and the arbitral tribunal.

Parties to the Contract

Every building project is under a construction contract. According to Didace (2019), a contract is a lawfully binding arrangement amongst parties while Templin (2019), stated that a contract is a pledge or set of pledges under which the law provides a penalty or whose compliance the law recognizes as a responsibility in a certain way.

Fagbemi (2015) expounded on how arbitration agreement is the cornerstone of each arbitration process in Nigeria. The arbitration clause creates a contractual obligation for all parties to refer any issues that have arisen or may emerge between them to arbitration. This makes parties to the contract the most critical participants in arbitration. Though, without a contract or a valid arbitration agreement, arbitration cannot commence.

Additionally, Mustill & Boyd (1989) discussed that most of the arbitral proceedings are conducted between the parties to a substantive contract with an underlying arbitration agreement or clause from the onset or when they agree in writing. Brams et al. (1991) also argued that if the parties to the dispute cannot settle independently, arbitration may be mandated by law. This is as long as they have a valid arbitration clause in their contract.

According to the Arbitration and Conciliation Act (Chapter 4) (2000), an arbitration agreement must be written in the form of a clause or contract provision within the main contract or as a separate document altogether and signed by both parties. Thus, the agreement is recognised as written when included in the main contract between the parties, often done by inserting an arbitration clause. Nevertheless, the parties can decide to have a separate agreement that is deemed a contract addendum or make written communication by one party writing a letter or telex or telegram to the other party, suggesting the adoption of arbitration when a dispute arises, and when both parties agree, this constitutes a valid arbitration agreement.

Ugbeta (2020) also acknowledged how parties to business operations in several nations now want to include mandatory arbitration within contracts and contractual agreements, allowing future differences to be resolved through arbitration. These include construction contracts as well. Likewise, Stephenson (2001) explained that most of the standard forms of contracts in the construction industry incorporate an arbitration agreement in the form of a clause, for example, the FIDIC, JCT, ICE and JBC, among others. This obligates the parties to the contract to refer any disputes that may arise later to arbitration.

When a dispute arises between the parties to the contract, the aggrieved party will invoke its contractual rights and invite the other party to settle the matter through arbitration as guided by the contract agreement. Therefore, only a party to an arbitration agreement can make claims and be part of the arbitration proceedings.

In "***USAFI Market Vendors Association v Kampala Capital City Authority in Miscellaneous Application NO.647 of 2018***" the Applicant made an application to the High Court requesting an order from the court that the respondent be added to the arbitration proceedings and that the same respondent be ordered to file a statement of defence to the applicant's claim in the arbitration proceeding. The High Court ruled that:

> ***"****The respondent was never a party to the sublease agreement and is not bound either by the terms of sublease nor the arbitration clause…Arbitration has long been called a creature of contract, a dispute resolution mechanism that has no form or validity outside the four corners of the parties' arbitration agreement. Relying on an interpretation of arbitration as a contractual construct, if the parties to the arbitration do not agree to joinder or intervention, neither the courts nor the arbitral tribunal can order such measures****."***

Furthermore, Stephenson (2001) explained that it is permissible for another party to seek the courts to halt the court hearings if one of the parties to an agreement to arbitrate refuses to acknowledge the agreement and initiates judicial proceedings. Apart from when the law recognizes that the agreement is void and unenforceable, the courts must permit a stay. In contrast, Ocen (2019) emphasised that the ACA values the parties' decision to use arbitration as their preferred method of dispute settlement. Even after a contract with an arbitration clause is declared invalid, such as under section 16 (1) (a), the agreement remains in effect only if it is declared invalid for other reasons.

The Principle of Party Autonomy

According to Fagbemi (2015), the idea of party autonomy refers to the independence of parties to implement arbitration agreements in a mutually agreeable manner. This qualifies party autonomy to be the centre of all arbitration proceedings since the parties have the liberty to decide and agree on the applicable law to administer their dispute. However, they must be keen on ensuring that the chosen law doesn’t contradict any law on public policy. The parties also have the independence to appoint the arbitral tribunal, the language in which the proceedings will be conducted, the location, among other things. All in all, this principle allows the parties to determine the key elements of the arbitral proceedings.

According to Kadner (2013), the essence of the principle of party autonomy has become more significant and necessary especially now, during the COVID -19 pandemic. The parties have the freedom to adopt online proceedings as a way of keeping safe while adhering to statutory SOPs without stopping the arbitration.

The ICC Guide on Effective management of Arbitration (2014) explains that it is not intrinsically hard to fine-tune the method so that the arbitration is speedier and less expensive. The parties can agree on quicker and less costly procedures, and if they don't, the tribunal has the discretion to make them after consulting with the parties. Therefore, party autonomy is limited to the point where the parties fail to agree. They then apply to the arbitral tribunal to decide hence giving it the jurisdiction to make rulings and decisions on matters arising.

Furthermore, in Kenya, Muigua (2009) indicated that the concept of party autonomy is broadly accepted as a critical element for warranting that parties are content with arbitration endings.

It also assists in the accomplishment of arbitration's main goal, which is to provide an impartial settlement of disputes amongst parties without undue delay or expense.

Stephenson (2001) stated that "the parties should not abuse their powers of autonomy; they should exercise them with the guidance of the arbitrator so that the dispute is resolved as soon as possible". Therefore, parties being at the centre of the arbitration proceedings by firstly establishing an arbitration agreement and then having the freedom to exercise the principle of party autonomy throughout the proceedings, they must be vigilant in aiding the arbitral tribunal to resolve the dispute in a suitable and economical manner.

Party Representatives

The IBA Guidelines on Party Representation in International Arbitration International Bar Association (2013) recognizes that parties ought to be represented by a party representative and further states that:

> *'**Party Representative**' or '**Representative**' means any person, including a Party's employee, who appears in an arbitration on behalf of a Party and makes submissions, arguments or representations to the Arbitral Tribunal on behalf of such Party, other than in the capacity as a Witness or Expert, and whether or not legally qualified or admitted to a Domestic Bar:*

It further defines the domestic bar:

> *'**Domestic Bar**' or '**Bar**' means the national or local authority or authorities responsible for the regulation of the professional conduct of lawyers;*

In Nigeria, Taiwo (2020) explained that, the underlying premise of party autonomy enables parties in arbitration to independently appoint their own counsels or representatives, hence before selecting the headquarters of the arbitration proceedings, the parties often evaluate the legal structure of that jurisdiction. It is crucial to note that the parties' flexibility to exercise its right to choose its representative and that the selected person does not necessarily have to be a lawyer will affect other choices of the parties.

The party is still free to appoint a lawyer as its representative. This is elaborated in Article 4 of the United Nations Commission on International Trade Law (UNCITRAL) UNCITRAL Arbitration Rules (n.d.) which addresses representation and assistance and states that;

> "*the parties may be represented or assisted by persons of their choice. The names and addresses of such persons must be communicated in writing to the other party; such communication must specify whether the appointment is being made for purposes of representation or assistance*."

Therefore, it is the choice of the party, whether it appoints a lawyer or any other preferred professional or even an employee of the company. It is acting within its rights. This is also illustrated in Rule 27 of the ICAMEK Arbitration Rules that states that:

> "*A party may be represented by its authorized representative(s) including but not limited to the Advocate from Uganda or Jurisdictions outside Uganda in handling matters relating to the Arbitration. In such a case, a Power of Attorney specifying the matters and scope of authorization shall be submitted to the Centre*."

Upon appointment, both parties must notify each other accordingly as guided in Article 4 of the UNCITRAL Arbitration rules. The party representatives must make necessary introductions of themselves to the fellow representatives and the arbitral tribunal as well. This is for purposes of communication, information flow, and also to establish whether there may be any conflict of interest.

According to the IBA Guidelines on Party Representation in International Arbitration International Bar Association (2013), any alteration in such representation must be immediately communicated to the Arbitral Tribunal as well as the other Party or Parties. None of the parties must accept a representative that had or has a relationship with the tribunal, which will lead to potential bias. Except if neither of the parties opposes after total transparency. In the event of a violation of Guideline 5, the Arbitral Tribunal should take necessary actions to protect the procedures' credibility, which include barring the newly - elected Representative from partaking in all or some of the arbitration proceedings. The arbitral tribunal can also recuse itself from proceedings if it establishes that its relationship with any of the parties' representatives may compromise its integrity thereby compromising the arbitral proceedings.

Furthermore, the appointed party representative must at all times during the proceedings act in the best interest of the party it is representing. According to the IBA Guidelines on Party Representation in International Arbitration International Bar Association (2013), it established

that the guidelines are based on the fact the appointed representative should always act within the granted authority by the party and this includes the principle of honesty and integrity. Therefore, the party representative should never be engaged in acts of malpractice that compromise or abstract the success of the arbitral proceedings in any way. Since the representative is acting on behalf of the party, any acts of misconduct are deemed to be acts of the party itself and the party will have to face the consequences.

Parties should be keen while exercising this freedom so that they appoint a representative that will not only assist them in the arbitration but also do so while following the rules and regulations and not jeopardizing the party, tribunal, or the entire process at large.

In Hong Kong, Chau (2007) discussed that arbitration in resolving construction-related disputes has evolved into a replica of high court procedures where both parties are generally represented by senior legal professionals. The lawyers are frequently hired to represent parties because they are taught to be combative and utilize whatever method to prevail throughout the procedures. They believe the preservation of the involved parties' connection to be of limited relevance. Whilst arbitration was not designed to be formal in the beginning, in some situations, the national legal procedure may resemble a court, resulting in postponement and increasing costs.

Whereas Cole (2015) in USA, argued that as contractual disputes are becoming more and more common in arbitration, the responsibility and attention about who represents parties in arbitration must shift. The conventional approach of allowing non-lawyer counsel in legal claims arbitrations encourages the unlicensed practice of law.

In Nigeria, Wingate (2020) discussed that in Shell v Federal Inland Revenue Service (Shell v FIRS) the Nigeria Court of Appeal held that licensed lawyers can execute procedures for arbitration. FQLPs (foreign qualified legal practitioners) who are not licensed in Nigeria are not allowed to participate. This restriction, it is said, was extended to the performance of the parties' proceedings, and FQLP is barred from serving as arbitrators in which the arbitration agreement requires arbitrators to be legal professionals. Shell v FIRS, on the other hand, differs with Stabilini Visinoni v Mallinson, where the same Court of Appeal emphasized the arbitral process' flexibility (which is typical of judicial guidelines in any arbitration-friendly jurisdiction), especially acknowledging that lawyers and non-lawyers can both participate in

the arbitration. Hence, party representation by persons other than qualified lawyers should be recognised by the courts.

Therefore, as far as the Arbitration proceedings are concerned, parties can be represented by any person of their choice. The appointed representative can be a legally qualified person (lawyer or advocate) or not (non-lawyer).

Arbitrators

An arbitrator is the third party that conducts the arbitration proceedings and facilitates the dispute resolution process referred to as the arbitral tribunal. The number of arbitrators can vary from dispute to dispute depending on the preference of the parties. According to Bacon (2009), the selected arbitrator should have some basic logic or knowledge along with prevalent integrity; for if they would be wrong in a legal point or assertion, their institution would in many situations be set free.

According to Stephenson (2001), arbitrators are private special judges appointed by unanimous consent amongst parties to resolve disputes. Giorgetti (2014), also explained that arbitrators are the people who decide on almost all of the disagreements among the parties. They have the authority to make decisions on both substantive and procedural matters pertinent to the parties' disagreements. While Bacon (2009) expounded that arbitrators must render a single, comprehensive decision on all of the issues before them.

In addition, Stephenson (2001) discussed that parties have complete freedom in selecting an arbitrator under the principle of party autonomy, where they are given the freedom to appoint the arbitral tribunal. Despite having the liberty to select an arbitrator according to their preference, the parties should select a qualified person or professional.

Salomon (2002), has explained that the effectiveness of an arbitral proceedings is primarily determined on the competency of the arbitrators. Arbitrators render final award which is binding and have a great deal of freedom when it comes to deciding the damages. If the arbitrators fail to execute their responsibilities, the parties possess limited opportunity to dispute or appeal an arbitration award or ruling. Furthermore, the parties' trust in the entire system, as well as the components that determine arbitration so appealing in the very first

instance, like the affordability, timeliness, impartial platform, and enforceability, are all dependent on the authenticity of the arbitrator. It is thus very important to appoint a qualified arbitrator while adhering to the procedure outlined in the arbitration agreement/clause.

When formulating the arbitration agreement, the parties must establish the method through which they will appoint the arbitrator. This is elaborated in Section 11(2) of the Arbitration and Conciliation Act Chapter 4, 2000 which guides in appointment of one arbitrator or three arbitrators.

Upon failure to mutually decide on the arbitrator, any of the parties can apply to the appointing body indicated in the arbitration agreement to appoint one. This is provided for in Section 11(4) of the same act. It states that "…***any party may apply to the appointing authority to take the necessary measures, unless the agreement otherwise provides, for securing compliance with the procedure agreed upon by the parties."***. Furthermore, Section 11(5) provides that the choice of the appointing authority will be ultimate, binding and not subject to an appeal. Section 11(6), also provides that the appointing authority must put into consideration the qualifications specified by the parties in the arbitration agreement.

Furthermore, in circumstances where the parties agree to resolve their dispute under the ICAMEK arbitration rules, Rule 14 provides for the selection of a sole arbitrator. The parties, by agreement, may nominate and appoint a sole arbitrator and failure to, within 15 days from the date when the respondent received the claimant's request, or upon elapse of any additional time as awarded by the registrar, the Centre shall appoint the sole arbitrator. This is also elaborated in Rule 15 that provides for the appointment of three arbitrators.

According to Mentschikoff (1961), the institution's procedure of assigning arbitrators is to supply the parties with a shortlist of arbitrators from its panel of commercial arbitrators. The underlying lists contain any preferences the parties may have for specific professions or types of people as stated in their arbitration agreement. The parties then identify those names mentioned and group them into those they oppose and rank the rest in order of selection. The Institution then chooses the arbitrators from among the candidates that have not been rejected and, where practicable, adopts the parties' preferences. In this manner, the parties are allowed to utilize three lists. Once they agree, the Institute names the arbitrators without consulting the parties again.

The appointment of the arbitral tribunal can be challenged. Upon failure to follow the procedure of appointment, this will result in grounds for the challenge of that appointment. Section 12 and Section 13 of the Arbitration and Conciliation act elaborate the grounds and the procedure of challenging an arbitrator as well as the time limits. Rules 19, 20, and 21 of the ICAMEK arbitration rules also provide for the grounds, notice, and decision of challenging the appointment of an arbitrator.

Edmonson (2014) has argued that for the arbitral award to be duly recognised and enforced, the parties should endeavour to make the necessary appointment following the procedure outlined in the arbitration agreement. Therefore, parties must be keen on following the stipulated procedure so that no time is wasted in holding proceedings and rendering an award that will not be enforceable, worse still challenged on grounds of the wrongful appointment of the arbitrator.

Where the parties can agree upon a suitable person to be their arbitrator, so much the better: but notices to concur in an appointment sometimes give rise to a suspicion - usually unjustified - that the author of the notice seeks to gain some unfair advantage from the proposed appointment (Stephenson, 2001).

Lindström (2008) also reported that the secretariat of the SCC (Stockholm Chamber of Commerce) Arbitration institute receives numerous challenges concerning the choice of arbitrators. Any of the parties might challenge the appointment of an arbitrator if facts emerge on a particular instance that gives rise to reasonable suspicions about the arbitrator's fairness and extent of independence.

In England, Justin Williams et al. (2019) argued that it is still the fact that fruitful challenges to arbitrators are uncommon under English law. In ***Allianz Insurance Plc and another v Tonicstar Ltd [2018] EWCA Civ 434***, the Commercial Court's decision to remove an arbitrator whose appointment had been questioned on grounds of not meeting the requirement of the arbitral tribunal to be constituted of persons with not less than ten years of practice of insurance as specified in the arbitration agreement was overturned by the Court of Appeal on grounds that the arbitrator had the required experience in insurance and reinsurance law.

In ***Desnol Investments Ltd V EON Energy Ltd (2019) eKLR (MISC. CIVIL APP. NO. E 074 OF 2018)*** the applicant through its notice of motion made an application seeking that the court set aside the decision of the sole arbitrator, arguing that it was not involved by the respondent in the appointment of the arbitrator as per the procedure set in Clause 20(1) of the product supply agreement. The appointment had not been done under the procedure of the agreement. The Respondent challenged the application on grounds that it had followed the procedure but the Applicant had been scuttling the arbitration process from the word go and had also not responded to its numerous letters and emails. The High court held that:

> *"... the facts of this matter reveal an Applicant who is hell-bent on scuttling the Arbitration process despite having accepted the same by executing the Product Supply Agreement. The Applicant cannot be allowed to approbate and reprobate in this manner. The Arbitration clause was valid and enforceable. The Applicant declined to participate in selecting an arbitrator. As such the Respondents action in writing to the Chairman of the Chartered Institute of Arbitrators was proper and complied with clause 20(1) of their Agreement. I am satisfied that the Arbitral Tribunal was properly constituted and that the sole Arbitrator has jurisdiction to hear and determine this dispute."*

The challenge was unsuccessful.

Stephenson (2001) concluded that arbitration agreements included in most, if not all, of the typical forms of construction contract other than those relating to international contracts, are satisfactory in that they provide for the selection of the tribunal and proceed to name the authority or institution (the president of the relevant professional institution) empowered to appoint the arbitrator in the absence of agreed procedure or when the parties fail to appoint one. Hence no further agreement is needed where such forms apply.

While the parties decide on the method of appointing an arbitrator, they also have the liberty to agree and decide on the component of the arbitral tribunal in terms regarding the number of arbitrators. According to Edmonson (2014), the arbitrator may either act alone, as the sole arbitrator, or there may be a tribunal of arbitrators usually three, to hear the dispute. In Uganda, both the Arbitration and Conciliation Act 2000 and the ICAMEK Arbitration rules provide that the parties have the freedom to decide how many arbitrators are to make up the arbitral tribunal. (one or three arbitrators).

According to the ICSID Convention Regulations and Rules (2006), any tribunal shall be formed as quickly as practicable following the submission of a request according to Article 36. The request shall specify either one arbitrator or any unequal number of arbitrators designated by the parties. Suppose the parties cannot agree on the tribunals' composition or how they will be selected. In that case, the Tribunal will be made up of three arbitrators, one chosen by each party and the third, who will be the Tribunal's head, selected by the parties by consensus. Thus Article 37 recognises that the arbitral tribunal may be comprised of one or three arbitrators.

Whereas, article 4 of the United Nations Commission on International Trade Law (UNCITRAL) UNCITRAL Arbitration Rules (n.d.) states that "If the parties have not previously agreed on the number of arbitrators (i.e., one or three), and if within fifteen days after the receipt by the respondent of the notice of arbitration the parties have not agreed that there shall be only one arbitrator, three arbitrators shall be appointed. Therefore, the composition of the tribunal will be established in accordance to what the parties choose or what has been specified in the arbitration agreement."

According to Edmonson (2014), argued that a tribunal of three impartial arbitrators has gained in popularity. This would appear to imply an increase in the value of the disputes identified, or in the lengthy business contracts that necessitate the participation of more than one arbiter. Whereas Stephenson (2001) discussed that in circumstances of domestic arbitral proceedings for construction-related disputes, where English law serves as the arbitration procedural law, it is common practice to choose a single arbitrator. This saves so much time, and the parties are guaranteed of a reasonable and just outcome when an expert arbitrator is selected.

Conversely, following successful selection and appointment of the arbitral tribunal, executed following the procedure as set in the arbitration agreement, the arbitrators are tasked to utilise their arbitrary powers to facilitate the process of dispute resolution and make rulings on issues as applied and prayed for by the parties during the proceedings. They further conclude the process by rendering an arbitral award as the settlement for the disputes before them.

Training and attributes of Arbitrators

Giorgetti (2014) argued that the integrity and success of any arbitration process solely lie on the competency of the arbitrator. Thus, arbitrators must undergo the necessary training to enable them to apply their arbitrary powers and conduct the proceedings successfully.

Additionally, Edmonson (2014) reported that the arbiter is the main deciding factor in arbitration and the success of the process highly depends on his or her skills, expertise, and impartiality. Thus, the selection and appointment of an independent, professional and knowledgeable arbitrator is crucial to the success of the arbitration process. The training of an arbitrator is thus very important and the parties should put it into consideration when selecting one as well as his attributes.

Stephenson (2001) further discussed that to be considered for any appointment, judges must have earned substantial expertise usually after passing the bar. However, out of ignorance, some appointing authorities for arbitrators may go ahead and appoint arbitrators with insufficient credentials, skills and experience.

The Chartered Institute of Arbitrators London has set a benchmark for qualified Arbitrators. It provides three segments of training in each Route of ADR methods. However, this is after the introductory assessment and attainment of associate membership with the CIArb London. Thus, in Arbitration, the aspirants who pass Module 1 and its examination can apply at the member level (MCIArb). Aspirants who finish Modules 2 and 3, including the examinations and a competitive examination, can request for CIArb Fellow accreditation (FCIArb).

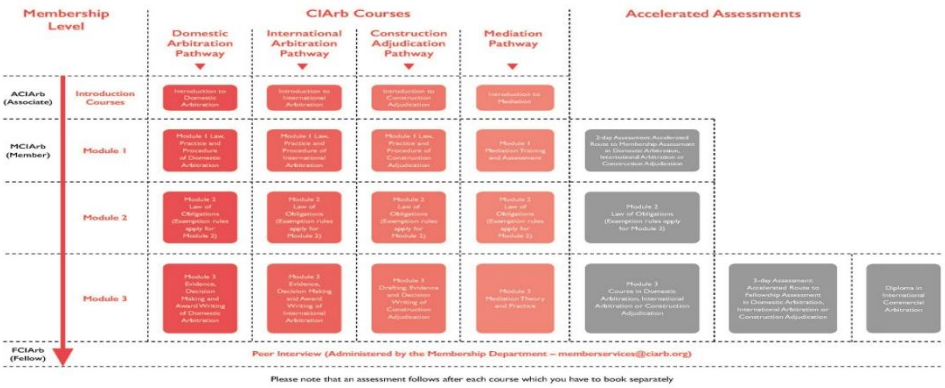

Figure 2. 1: Training Courses at the Chartered Institute of Arbitrators

Source: Training Manual of the Chartered Institute of Arbitrators (Kenya Chapter).

Stephenson (2001) also reported that several administering agencies now retain certified arbitrator panelists, but most of them demand aspirants for inclusion on such boards to first

qualify with the Chartered Institute of Arbitrators before taking the professional body's exams. Parties wanting to make selections by consensus should only nominate names of people who appear on the official registries and who appear to have had the required skills and experience, however, even these safeguards are not often adequate. The status ACIArb (Associate of the Chartered Institute of Arbitrators) is occasionally misinterpreted by lay parties and, unfortunately, certain selecting authorities as implying the ability to perform arbitrations. Associateship is earned by the successful completion of a weeklong training program, and it is only the beginning of a multi-year examination of arbitration methods and practices.

Nonetheless, even with the attained qualifications, the appointing authority must always monitor the proceedings to make sure that the arbitrators do not make errors that will jeopardise the entire process resulting in arbitration losing its credibility. In Pratt v. Swanmore Builders and Baker (1980) 15 BLR 37, the arbitrator who had been chosen by the Chartered Institute of Arbitrators was later dismissed by order of the High court section 23 of the 1950 Act after he exhibited that he was incompetent to successfully conduct the arbitration proceedings and the parties were unlikely to attain the desired justice. If the appointing authorities establish rigorous qualification examinations and strict criteria, some of these unfortunate situations will be eliminated.

According to Ugarte et al. (2010) who referenced Bellet 1992, stated that “the act of nominating an arbitrator constitutes an expression of confidence by the nominating party not only in that arbitrator’s fairness and neutrality but, in addition, in the arbitrator’s intelligence; educational, professional, and/or personal background or profile; knowledge or expertise on a particular legal or technical point; reputation, including particularly the view that the other co-arbitrators are likely to have of him or her and the degree to which that arbitrator’s views can be expected to be accorded weight by other members of the tribunal; or simply the arbitrator’s availability to devote adequate time to the matter in light of the arbitrator’s other ongoing professional commitments.” Therefore, under his appointment, the parties have exhibited utmost confidence and faith in the arbitral tribunal to assist in the amicable dispute resolution.

As far as disputes in relation to the construction industry are concerned, Stephenson (2001) argued that the appointed arbitrator should preferably be an engineer, quantity surveyor or architect, with knowledge, expertise and a proper understanding of all issues of both contractor and consultant tasks which are required to resolve the dispute at hand. If not, the parties should

name an appointing party that is a recognised statutory professional body in the construction industry.

Whereas for international arbitration, Salomon (2002) argued that technical expertise is only one factor to take into consideration when choosing an arbiter. The arbitrator's flexibility, communication style, organisational skills, and ethics should all be taken into account. Additionally, Bunni et al. (n.d.), recommended that the minimum qualification for the arbitral tribunal in case of construction disputes should be the experience on how international arbitration for construction disputes is conducted.

Ngotho Njung' (2018b) explained that after careful and detailed considerations based on the minimum requirements which include competency, skills, and impartiality, the appointing authority can reinforce the trust of the public in the arbitrators by publishing the list of the qualified arbitrators within the community and updating it regularly. The appointing parties and authority must be very sagacious and consider all these aspects on a case-to-case basis since these well-articulated and clear considerations will protect the parties' interests especially in attaining a fair hearing before an arbitrator who has vast experience and understands the construction processes.

Settlement in Arbitration.

According to Shahla (2011), the pursuit for a suitable venue of settlement in the perspective of arbitration has continued in recent years. This assessment takes place not just in local courts but also in arbitral processes in which the virtues, ideals, and settlements standards can be scrutinised from an intra- and inter viewpoint. Thus, as the arbitration proceedings commence, the parties and their representatives have been continuously encouraged to look out for opportunities for settlement.

The ICC Guide on Effective management of Arbitration (2014) argued that perceptions on the dispute and the interests of the parties may evolve as the arbitration advances, influencing the acceptability settlement. Also new information may become available, and a partial award could be issued. The parties should evaluate their position on a regular basis to see if there is a chance for a reasonable settlement at any particular time. Therefore, parties should attempt to agree among themselves and resolve issues to save time.

Mariottini & Hess (2020) further expounded that the tribunal will stop the substantive proceedings if the parties are willing to resolve their disputes when the arbitration process is still ongoing. Then, upon request by the parties and agreement by the tribunal, the tribunal will formulate a written resolution in a consent award. Hence, when parties reach an agreement concerning some or all issues under arbitration, they are known to have settled. If some are resolved, the parties notify the arbitrator, and the matters resolved are expressly removed from the arbitrator's jurisdiction, and a partial settlement is registered through consent or partial award by the arbitrator upon request of the parties. Whereas if all the disputes are resolved, the parties, through their representatives, will notify and request the arbitral tribunal to terminate the arbitral proceedings with consent award.

Furthermore, Section 30 of the Arbitration and Conciliation Act Chapter 4 (2000) provides for settlement between the parties and it shall be documented in the form of an arbitral award under section 31. This is also the case in the ICAMEK Arbitration Rules 2018 40 (13-14), which provide for settlement and a consent award be written or an arbitral award upon the application of the parties. Kryvoi & Davydenko (2015) also explained that when the arbitral tribunal records a settlement agreement at the request of the parties, this is referred to as the consent award.

The ICC Guide on Effective management of Arbitration (2014) advised parties to continuously watch for opportunities for solutions throughout the proceedings as this would save them a lot of time and money. Upon settling by the parties, the arbitral proceedings will end. This will result in discharge or termination of the proceedings and settlement of all arising costs concerning the Arbitration, including the arbitrator’s fees, venue or location fees and stenographer’s fees, among others.

Arbitral award

Cremades (2008) discussed that the core task of the arbitral tribunal is to settle the disputes that the parties mutually consented to be settled through arbitration. Its conclusions necessitate a written document known as the arbitral award, which is subject to specific requirements. As a result, an arbitral award is then described as the tribunal's ultimate and enforceable verdict that settles, in whole or in part, the dispute that has been presented to his or her authority.

Section 2(d) of the Arbitration and Conciliation Act Chapter 4 (2000) defines an arbitral award as “any award of an arbitral tribunal and includes an interim arbitral award;” whereas Rule 2(5) of the ICAMEK Arbitration rules 2018 recognises that arbitral award includes the interim award, partial award or the final award. Furthermore, Article 32(1) of the UNCITRAL Arbitration Rules also states that “In addition to making a final award, the arbitral tribunal shall be entitled to make interim, interlocutory, or partial awards.” These rules further go ahead to provide for an additional award in case there was an omission in the issues supposed to be addressed by the tribunal. This is done upon application by either party to the tribunal within the stated timeframe.

Nonetheless, once the tribunal renders a final award, the proceedings are terminated as per section 32 of the same act and the final award will be binding and enforceable unless the award is challenged by either party within the timeframe provided for in the laws applicable to the arbitration agreement.

Judicial Immunity of the Arbitrators.

According to Ruttenberg’ (2009), as a result of the growing usage of arbitration in the past decades, the idea of judicial immunity has also been expanded to incorporate arbitrators. Consequently, states are introducing arbitrator immunity statutes and seeking direction to implement them. Furthermore, Salahuddin (2017) argued that while arbitrators are executing their role in dispute resolution, they act as adjudicators. Their duty is similar to one of the arbitrators operating in a "quasi-judicial function". Thus, arbitrators in several significant jurisdictions are given immunity similar to that of the justices, termed as "judicial immunity."

Though Ruttenberg’ (2009) discussed that due to the blanket immunity extended to arbitrators, it is no longer prudent for the arbitrators to acquire professional insurance policies to mitigate risks in case of failure to execute the task at hand in the desired manner. This has left the parties exposed to circumstances where the arbitrator appointed is incompetent and lacks the necessary skills to conduct the arbitral proceedings in a timely and expeditious manner within the law.

The Uganda Law Reform Commission (2017) argued that rather than creating a positive incentive for individuals seeking arbitration, the provision of immunity is claimed to be a deterrent. The UNCITRAL Model Law covers arbitrator immunity, which is not provided in the Arbitration and Conciliation Act. The absence of immunity will indeed put people in danger

of being held liable for judgments made based on erroneous interpretations of the law. This, warrants professional bodies and the parties to be very vigilant while selecting and appointing the arbitral tribunal.

Exploration of other means of dispute resolution alongside Arbitration

Chapman (1999) argued that notwithstanding the aforementioned reforms in the UK under the Arbitration Act 1996 and the amended Civil Procedure Rules 1999, the expenses of arbitration and litigation remained extremely expensive. This prompted the business forces to promote new economic settlement possibilities that gave rise to methods like Med-Arb, Arb-Med, Arb-Med-Arb among others. These have been explored in circumstances where the disputants prefer to explore other means of dispute resolution alongside Arbitration.

Med-Arb

Goel (2016) discussed that when mediated discussions fail to produce a resolution, a process called Med-Arb, a combination of mediation and arbitration, may be utilised. According to Gould (2017), the parties make an effort to resolve the conflict cordially at the initial phase of mediation. If a compromise cannot be reached, the parties proceed to arbitration in the second phase. Hence it is referred to as Med-Arb process.

In addition, Gould (2017) explained that the parties' agreement to employ this method can be made in the form of a multi-stage dispute resolution provision in the contract, or they can agree to subject the dispute to Med-Arb once it arises. While Goel (2016) stated that “In those circumstances, the parties can agree for the mediator to become an arbitrator and issue a final and binding award on the outstanding matter(s)”. When all disputes have been resolved by means of mediation, the parties can further agree to form a binding settlement accordingly.

According to Nigmatullina (2016)**,** the employment of mediation and arbitration in tandem has arisen as a conflict resolution strategy that offers parties a variety of advantages. These include settling conflicts between parties in a cost-effective and timely manner, as well as getting a legally binding and internationally enforceable judgment.

Arb-Meb

Lu (2019) explained Arb-Med as a procedure where the parties conclude arbitration and deposit the arbitral decision and awards in a sealed envelope. They then proceed to mediation before knowing the content of the arbitral award. Once the mediation is not successful, the parties will then go back and open the arbitral award to settle the dispute. Upon reaching an agreement in mediation, the parties can sign an agreement to make the settlement binding and enforceable.

According to Gu (2019) in China, the Arb-med process entails a combination of the adjudicative process which is the arbitration and the non-adjudicative process which is referred to as the mediation.

Arb-Med-Arb

According to Pal (2019) in Singapore, the Arb-Med-Arb process is a mix of proceedings of Arbitration-Mediation-Arbitration (AMA) and was put forth by SIAC and SIMC in November 2014.

Pal (2019) discussed that it comprises primarily of the steps outlined: The claimant must first initiate arbitration and then submit a written notification of arbitration. The respondent then has the opportunity to submit a rebuttal. After that, an Arbitral Tribunal is formed, and the arbitral proceedings are quickly halted. Following that, the parties involved attempt to settle their differences through mediation. If the mediation is fruitful, the Tribunal ultimately publishes a consent award. If the mediation fails, the parties involved are returned to arbitration.

In Australia, Wolski (2013) argued that while using mediation, the process provides flexibility in terms of resolving the dispute in a non-adversarial manner. This leaves the parties exposed in terms of enforceability of the settlement agreement. It is against this background that disputants have become reluctant in use of mediation alone and in turn, have adopted the use of the Arb-Med-Arb method. This is for them to be able to amalgamate the elements of the processes for both mediation and arbitration among which include the element of enforceability of the arbitral award.

2.2.7 Factors that influence the choice of the ADR method to be used

Ogden & Finlay (n.d.) observed that when parties are selecting an ADR method to use in resolving their dispute, they should consider numerous factors. Thus, not every ADR can be applied to any dispute. Some disputes are more technical than others which will require the parties to be more cautious in the selection of the ADR method.

Brown & Marriot (2012) argued that it is extremely imperative to note that these processes are utilized because of the various pros among which include flexibility, less costly, fast and time saving. Yet, for the ADR methods to be efficient and effective, they must be applied in the recommended way as articulated by law in the given jurisdiction hence parties must be ready and willing to follow them. Thus, for the parties to choose the most suitable process, it is advised for them to know and understand the pros and cons of the different processes.

According to Brooker (1997), some of the factors that influence the choice of ADR method include; the type of the contract, financial size of the dispute, the technicalities of the method chosen in terms of procedure, flexibility, time and cost, the type of contractor involved as well as the perceived turnover. While Ogden & Finlay (n.d.) acknowledged some of the factors to include the levels of confidentiality, fairness, cost, speed, flexibility, degree of compliance, expertise of the neutral party, and maintenance of business relationships.

Still, Ogden & Finlay (n.d.) concluded in their research that some variables become more relevant than others in a specific disagreement, depending on the types of facts and the form of the dispute, thereby influencing the choice of ADR method used by the parties.

In South Africa, Wilcocks & Laubscher (2017) explained that the real-world issue is that construction experts do not adopt ADR procedures due to a lack of understanding about how to execute and take advantage of ADR. In his research, Brooker (1997) indicated that over the years, contractors are more inclined to use ADR for small monetary conflicts, and arbitration and litigation remain favoured for significant disagreements. Contractors' opinions of ADR's limits in construction disputes are likely to stifle its growth. Contractors believe that these ADR methods are inappropriate for disputes in which the parties have grown hostile and established in their positions, as well as problems that are regarded to be legal or highly technical.

According to Brown & Marriot (2012), the use of the ADR processes to resolve disputes will not only allow the participants to remain working on the project despite a conflict but will also provide for intermediate settlement by a person or group with project knowledge, ability, and expertise.

The Office of Democracy and Governance Alternative Dispute Resolution Practitioners Guide Technical Publication Series (1998) emphasised that it is also fundamental to comprehend the difference between mandatory and voluntary procedures since the parties could also be required to use ADR as part of the preceding contractual arrangement. Entrance of a dispute toward an ADR procedure is dependent on the parties' will.

Though, according to Lucas (2014), the methods for resolving disputes can be organized in a logical manner, on one hand, there are legal, strict, and confrontational procedures that rely on impartial third parties to determine the procedure's outcome, such as litigating in court, where a verdict is determined by a magistrate while on the other hand, methods like mediation and negotiation are becoming more open, agile, and agreeable. The parties to the disagreement have more power over the procedures in these methods, and the impartial party, if one exists, supports the process but does not decide the conclusion.

Some ADR methods are binding whereas others are non-binding. According to the Office of Democracy and Governance Alternative Dispute Resolution Practitioners Guide Technical Publication Series (1998), it is essential for the parties to apprehend the difference between both binding and non-binding methods. The negotiating process only serves as a foundation for facilitating and enabling direct discussion amongst disputing parties alone, without the involvement of a third party.

While mediation and conciliation are related in that they both involve the third person intervening between the parties, either to settle a particular conflict or to heal their relationship. The appointed mediators and conciliators can assist in steering and shaping a settlement or just promote discussion. The decisions are not binding unless the parties decide to sign a binding settlement. Whereas arbitration allows the third party to make a legally binding decision and the parties can agree to make the arbitration non-binding, meaning when the arbitrator makes the ruling, the parties will decide on whether it should be binding or not.

2.2.8 Application of ADR in the Construction Industry

According to Steen (1994), in every development venture, there will be disagreements. Minor concerns can quickly escalate into significant differences if they aren't addressed, with disastrous repercussions for project members. The disputes often result in major delays if not solved in a timely manner which result in loss of resources, especially time and finances.

Nazeem & Olanrewaju (2017) recognised that in the building business, the use of alternate means of dispute settlement seems to be on the rise. Raji et al. (2015) reasoned that they have been recognised mainly due to the general intricate nature of project disagreements, the massive cost of settling these issues through litigation, and the negative effect litigation processes have had on the parties' working relationship.

Furthermore, Steen (1994) argued that the increased delays, risks and costs of solving construction disputes in litigation have driven the industry to explore more effective alternatives to handle these issues outside of the courts. Therefore, the construction industry has made significant steps to avoid litigation by developing a variety of ADR processes that can be used at any phase of a project. These ADR approaches include everything from simple negotiation to mandatory arbitration.

In Kuwait, Sayed-Gharib et al. (2010) discussed that the construction industry is inventing and implementing numerous processes through which ADR may be adopted during practically any stage of a building project as a way of avoiding litigation and the delays associated with it.

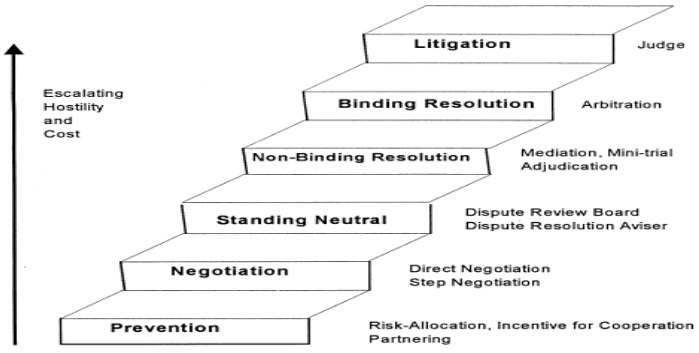

Figure 2. 2: Construction Dispute Resolution Steps Adapted from Cheung

Source: Sayed-Gharib et al. (2010) paper on Improving Dispute Resolution on Construction Projects in Kuwait.

According to Ong & Gerber (2011), ADR methods are broadly known and welcomed by construction practitioners as a normal and inevitable part of the dispute settlement process. While Bowmans (2016) emphasized that several commercial agreements include a dispute resolution process that specifies the method to be undertaken in the event of a disagreement. The contract will specify whether the parties should exploit more than one method before resorting to arbitration or even litigation.

2.2.9 Arbitration in the construction industry

Sobel (1996) acknowledged that disputes in the construction industry are increasingly being submitted to arbitration whereby, unlike judges, the appointed arbitrator always has vast construction knowledge. This has been influenced by the inclusion of arbitration clauses in standard forms of construction contracts.

According to FIDIC (2017a), for construction works (Red book), clause 21.1 states that "***Disputes shall be decided by a DAAB in accordance with Sub-Clause 21.4 [Obtaining DAAB's Decision]*** and clause 21.5 states that **"*Where a NOD has been given under Sub-Clause 21.4 [Obtaining DAAB's Decision], both Parties shall attempt to settle the Dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, arbitration may be commenced on or after the twenty-eighth (28th) day after the day on which this NOD was given, even if no attempt at amicable settlement has been made***." Therefore, by virtual of the contract clauses, the parties are guided on the ADR method to use when and where.

Furthermore, the JBC (1999) building contract in Kenya, clause 45 states that "***In case any dispute or difference shall arise between the Employer or the Architect on his behalf and the Contractor, either during the progress or after the completion or abandonment of the 43/47 Works, such dispute shall be notified in writing by either party to the other with a request to submit it to arbitration and to concur in the appointment of an Arbitrator within thirty days of the notice."***. This guides parties on how to commence arbitration.

Though, the FIDIC (2017b) for EPC Contracts (Silver book), clause 20.2 states that "***Disputes shall be adjudicated by a DAB in accordance with Sub-Clause 20.4 [Obtaining Dispute Adjudication Board's Decision]. The Parties shall jointly appoint a DAB by the date 28 days after a Party gives notice to the other Party of its intention to refer a dispute to a DAB in accordance with Sub-Clause 20.4."***. Parties are obligated by contract to first resolve their dispute through the adjudication board. Furthermore, with reference to Clauses 20.5 and 20.6 of the same contract, it is elaborated that when the parties are unable to reach an agreeable settlement, the dispute shall be settled through international arbitration.

The ICC Commission Report (2019) revealed that for the guided processes to work, the arbitrations must be cost-effective and expeditious. Since the tribunal is formulated of experts, they should be in a position to make decisions as fast as possible which the disputants will have confidence in.

In Nigeria Raji et al. (2015), also discussed that as a result of its costs and other factors, arbitration has recently been viewed as a last resort for settling conflicts in the construction sector, resulting in the emergence of various forms of alternative dispute resolution such as adjudication, mini-trials, as well as other mixed ADR methods.

2.2.10 Arbitration as the Ultimate ADR Method

Kakooza (2010) in Uganda argued that for centuries, arbitration has by far been the most popular technique for resolving commercial disputes around the world. It's worth is acknowledged by the court system and is regulated by legislation that empowers arbitrators and governs the processes. This has influenced several countries to establish functional Arbitration institutes and Arbitration acts that guide arbitration procedures.

While Ugbeta (2020) reported that one of the most notable merits of arbitration is the freedom of the arbitration proceedings, which allows the parties to own the selection of the persons who will decide the dispute and the controlling law. Since it is an ADR method, the parties select the tribunal as well as the jurisdiction within which the arbitration will be conducted.

Muigua (2016) also explained that due to its advantages over litigation, arbitration has grown in favor among members of the global business community throughout time. Among the most

notable advantages of arbitration over litigating is that it can be used in international disputes with minimal or no involvement from domestic courts, giving parties faith that justice will be served in the most efficient manner possible.

On the other hand, Mentschikoff (1961) in US argued that despite the fact that the benefits of arbitration are tempting to all businessmen because of the speed, reduced costs, more qualified decision, and high level of confidentiality not all businesses use it. It appears reasonable to conclude that these elements are more important in some trades than in others especially in the construction industry.

In Indonesia, Suherman (2019) argued that the most significant aspect of ADR methods is its efficiency and effectiveness in respect to the enforcement of the judgment in commercial disputes, particularly foreign arbitral awards. Furthermore, Muigua (2016) in Kenya, who referenced Kirtley (2009), who also argued that it has already been noted that one of the key benefits of international arbitration is its finality and the relative simplicity with which arbitral judgements can be enforced around the world. Therefore, the enforceability element of arbitral awards makes arbitration attractive to the disputants.

Still, Fadhlullah Ng et al. (2019) pointed out that the arbitral process often takes longer, resulting into adoption of expedited arbitration. Streamlined arbitration is intended to expedite the arbitration process, reducing the amount of time and money spent. The increasing number of construction disputes has greatly contributed to the need of employing fast track arbitration thus making arbitration a preferred alternative dispute resolution method.

According to the ICC Guide on Effective management of Arbitration (2014), most participants in arbitration have expressed significant concern regarding the lengthy time that is taken in arbitration as well as the cost since arbitration has become more sophisticated. The time delays can take over three to four years even more according to the established procedures.

In addition, the ICC Guide on Effective management of Arbitration (2014) report on decreasing time and expenses in arbitration in 2007 and the earlier study into a comprehensive range of ICC cases found that 82 percent of arbitration costs were party costs, such as legal team' fees and costs, and charges associated to witness and expert evidence. Other costs incurred included arbitrators' bills and expenditures, and the ICC secretarial charges. As a result, to cut

costs, a specific emphasis had to be made on lowering the costs associated with the parties' presentation of their claims.

Stephenson (2001) argued that many critics of arbitration contend that the total expenses in arbitration would certainly surpass those of litigation since in litigation, the judges and court premises are offered at no cost to the disputants, whereas in arbitration, both the arbitrator and the hearing amenities should be paid for by the parties. Therefore, using arbitration instead of litigation does not always result in cost savings, but it can if the parties choose their arbitrator, the format of the proceedings, and their legal representation wisely.

Furthermore, Muigua (2015) in Kenya indicated that several scholars have looked into challenges faced in arbitration and highlighted some of the difficulties that arbitral tribunals in Africa face, such as disclosure of confidential information about the dispute and proceedings to external parties through papers published unless the parties sign a confidentiality agreement that limits the release of information of their dealings. The intervention of the higher court with the arbitration procedure is another key obstacle which should be factored.

Muigua (2013) also discussed that the capacity of institutions to manage conflicts, and the supervision of the arbitration proceedings, are both issues. Most of these institutions, both in Kenya and across Africa, require additional resources to enhance the quantity and quality of arbitrator training, including more funding to facilitate administration.

According to Ngotho (2014), in his paper presented at the Chartered Institute of Arbitrators (Kenya Branch) & Centre for Alternative Dispute Resolution (CADER), he discussed other challenges identified by other writers to include lack of experience, lack of representation, the proliferation of regional arbitration institutes, language and jurisdiction barriers, corruption, lack of professional training and mentoring of arbitrators, open partiality, arbitrability, and implementation among others.

Therefore, for arbitration to be the ultimate choice of ADR, the parties to the dispute and the institutions supervising arbitration must be very vigilant in implementing the processes to detail while keeping track of the time and cost involved.

2.3 Conceptual Framework

This framework (figure 2.3) is developed from the discussions in the literature review. Upon identification of the common sources of disputes in the construction industry and the factors that influence the choice of ADR from the available methods which include negotiation, mediation, conciliation, arbitration, expert determination, adjudication and dispute review boards, this study focused on arbitration and the challenges it faces.

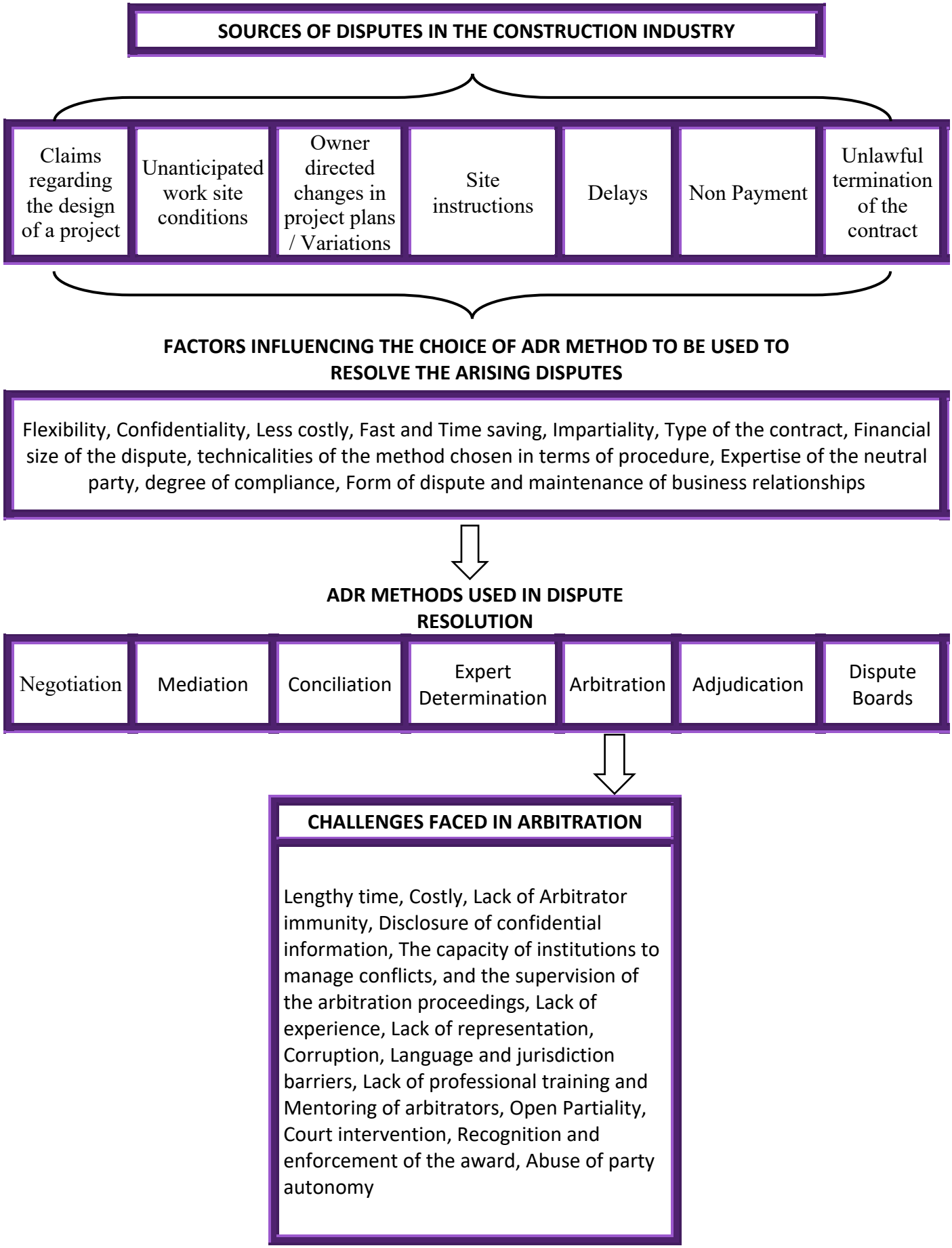

Figure 2. 3: Conceptual Framework

2.4 Theoretical Framework

The study identified mainly four theories in arbitration and these include; the jurisdictional theory, contractual theory, hybrid theory and autonomous theory. The theories have a significant bearing on the practice and implementation of arbitration. Thus, will guide the researcher in identifying the challenges faced as well as possible strategies to address them.

Table 2. 1:Theoretical Framework.

Item	Theories in Arbitration	How they Apply to this study
1	Jurisdictional Theory	Uganda is one of the member states of the UN that recognise the UNICITRAL Model law. This law is clear guide of the jurisdiction theory. Therefore, by amending the Arbitration and Concilliation Act (2000) to adopt Model Laws, the jurisdiction theory is hereby recognised by the state while administering the arbitration process.
2	Contractual Theory	There must have been valid contract for the dispute to have been submitted to arbitration. For example; the construction contract.
3	Hybrid Theory	There exists a valid arbitration agreement between the parties and the Arbitration and Conciliation Act (2000) was the law used to administer the process.
4	Autonomous Theory	The Parties to the contract had the freedom to exercise their right regarding the entire process, for example in the selection/appointment of the arbitrator and venue, among others.

2.5 Conclusion

Through establishing the extent to which arbitration is used to resolve construction disputes in the construction industry in Uganda, the study will identify the administrative and functional challenges that arbitration faced, as well as establish possible strategies to address them. This information was collected using open and closed-ended questionnaires from all the key players

in the Ugandan construction industry including developers, contractors, consultants and arbitrators.

CHAPTER THREE

ARBITRATION IN UGANDA

3.1 Introduction

This chapter presents the existing literature on the legal background on arbitration in Uganda, the Amended Arbitration and Conciliation Act Cap 4 (2000), the extent to which the international treaties and model law are applied in Uganda, the institutions tasked with proper implementation of ADR procedures, the key parties in arbitration proceedings, and the conceptual framework.

3.2 Background of arbitration in Uganda

3.2.1 Legal background

According to Christine (2010), arbitration was adopted in Uganda during the colonial period and adopted the use of the United Kingdom's Arbitration Acts of 1934 and 1950 for implementation. After attaining independence, the latter act was adopted as part of the constitution of Uganda as Cap 55.

Also, the Uganda Law Reform Commission (2017) reported that the Arbitration Act, Cap 55 of 1964, constituted Uganda's first component of arbitration legislation. Following that, in 2000, the Arbitration and Conciliation Act, Cap. 4 was enacted to pass an amendment subject to domestic arbitration, international commercial arbitration, and implementation of alien arbitral awards, and also to explain the laws about conciliation of disagreements, and consider other provisions concerning arbitration and conciliation affairs.

Moses (2018) discussed that the increased worldwide investments and global trade have resulted in significant increase in business conflicts, the majority of which are settled through arbitration. As a result, countries like Uganda have modernized their laws to adapt together inland and intercontinental business-related arbitration by ratifying the 1958 New York and 1965 ICSID Conventions, enacting state legislation modelled after the UNCITRAL Model Law, and signing Bilateral Investment Treaties (BITs) majority of which have dispute resolution provisions in most cases referring to the UNCITRAL Model Law.

This suggests that the amended act (the Arbitration and Conciliation Act, Cap. 4) was benchmarked on the UNCITRAL model law of 1985, the UNCITRAL Arbitration Rules of 1986, and the New York Convention of 1958. This was to improve the law and increase the extent of jurisdiction to cover both inland and intercontinental arbitration and enable enforceability of foreign arbitral awards hence giving parties more confidence in the act in terms of jurisdiction and enforceability.

3.2.2 UNCITRAL Arbitration Law

According to Nations Commission International Trade Law (n.d.), the significance of a better statutory structure for facilitating international trade and investment is widely recognised in an increasingly economically linked world. This resulted in the establishment of the United Nations Commission on International Trade Law (UNCITRAL) in 1966 by declaration 2205 at the United Nations General Assembly held on 17 December 1966 and in the years since its founding, UNCITRAL has established itself as the UN system's primary legal organization in the subject of intercontinental trade law. The role was to establish a standard legal framework to advance the pragmatic formulation and transformation of global trade law and encourage the use of the legislation in areas of commercial law like dispute resolution. This led to the establishment of the UNCITRAL Model Law on Commercial Arbitration.

The Commonwealth Secretariat (1991) also reported that in 1976, the UNCITRAL had provided a set of rules for conciliation and arbitration. These rules were followed by adopting the model law on 21 June 1985 on intercontinental commercial arbitration. The Model Law guides countries in changing and modifying current legislation on arbitration proceedings to replicate the exceptional characteristics and necessities of international commercial arbitration. It addresses the arbitration contract, the structure and prerogative of the arbitral tribunal, the extent of court participation, and the acceptance and implementation of the arbitral ruling. It further demonstrates global agreement on primary aspects of international arbitration practice, having been recognized by States from countless parts and with legitimate and economic structures.

Aliker & Mafabi (2020) discussed that Uganda has identified itself as an intending beneficiary of international investment in the past few years, and as a result of this, it has adopted the globally renowned guidelines of arbitral procedure, as demonstrated in the Arbitration and

Conciliation Act 2000. Furthermore, it has and considers the "UNCITRAL" Model Law, including the UNCITRAL Arbitration Rules and the UNCITRAL Conciliation Rules. . Therefore, Uganda used the UNCITRAL model law to amend its law on arbitration which Parliament adopted in September 2000.

The United Nations (2010) publication on the UNCITRAL Arbitration rules reported that upon comprehensive talks with several arbitral institutions and arbitration specialists, the United Nations Commission on International Trade Law adopted the UNCITRAL Arbitration Rules 1976. Furthermore, at the United Nations General Assembly in the same year, it was proposed that these Rules apply to the resolution of disputes emerging in international trade relations in its resolution 31/98. This advice was founded on the belief that establishing norms for ad hoc arbitration that were suitable in nations with diverse legal, social, and market economies would considerably aid the evolution of peaceful globalisation. Since then, there have been three versions of the UNCITRAL Arbitration rules, and these include the version of 1976, the revised version of 2010, and the most recent version of 2013.

The UNCITRAL Arbitration Guidelines are used for both ad hoc and structured arbitrations. They provide a comprehensive collection of legal frameworks that the parties might adopt to govern the arbitration. The Rules cover all the aspects of the arbitration proceeding, along with a standard arbitration agreement, set of rules for appointing arbitrators and administering arbitral proceedings, as well as rules governing the structure, impact, and explanation of awards. The Arbitration and Conciliation Act Cap 4 has since incorporated all these aspects.

According to Kaggwa (2020), in Uganda, the Arbitration and Conciliation Act, amended by the Arbitration and Conciliation (Amendment) Act of 2008, adopted the UNCITRAL Model Law with minor changes. Whereas, the report published by the (Uganda Law Reform Commission, 2017) argued that even though Uganda adopted a large number of sections of the 1985 UNCITRAL model statute and rules, UNCITRAL has since changed some clauses to reflect new technological trends and enhance international commercial arbitration. Therefore, to guarantee that Uganda becomes a credible arbitral hub for foreign conflicts, it must strengthen the legal framework.

3.2.3 New York Convention

Cutler et al. (2018) discussed that the United Nations Convention on the Acknowledgement and Execution of Foreign Arbitral Awards, generally called the New York Convention, is by far the most critical piece of intercontinental arbitration rule in history. It presently has 159 signatories, along with the United States, and serves as a universal authorised structure for intercontinental arbitration. The Convention has empowered both nationwide courts and arbitral tribunals to build sustainable, effective procedures for enforcing international arbitration agreements and verdicts, and has consequently encouraged the extraordinary expansion and progress of intercontinental arbitration over the past 50 years.

According to Jillani (1988), internationally, the community of the arbitration practice takes great pride in this convention and endeavours to make good use of it. The convention emphasises the acknowledgement and enforceability of non-domestic arbitral awards. It also requires the disputants to guarantee that international awards are accepted and substantially enforceable in every jurisdiction, just as domestic awards are. Furthermore, the convention forces parties' courts to give full impact to all arbitration clauses by compelling courts to prohibit parties' access to court if they have arranged to bring the dispute to an arbitral tribunal.

The Arbitration and Conciliation Act (Chapter 4) (2000) of Uganda, Part III further recognized Uganda as a party to the convention; hence the New York Convention award shall be recognized and enforced according to section 35 of the same Act.

3.3 Legal and Institutional Framework of arbitration in Uganda

3.3.1 The Judicature Act, Cap. 13

The Judicature Act Chapter 13 (2020), Part V, section 27 provides for trials by referees or arbitrators. According to Arnold (2013), the act permits the use of ADR methods under the supervision of the courts. Furthermore, Sections 26 to 32 provide for circumstances in which a professional judge or arbitrator might be appointed to conduct a case if such authority has been accorded High Court powers to investigate and report any cause or issue besides a criminal matter.

In addition, Ocen (2019) explained that the referee or arbitrator is assumed to be an officer of the High Court under Section 28 of the Judicature Act, who has been vested with court's duties

and is required to treat the issue in front of them as ordered by the High Court, according to the court's rules. Similar provisions are included in Article XLVII of the Code of Civil procedure.

3.3.2 Arbitration and Conciliation Act (Cap 4) of Uganda

Aliker & Mafabi (2020) argued that the Arbitration Act Cap 55 was replaced by the ACA 2000 because its provisions were old, complicated, and outdated. Also, the provision for recognition and execution of intercontinental arbitral awards was not explicit, among others. As a strategy to address these loopholes, Uganda established the Arbitration and Conciliation Act Cap 4.

The Uganda Law Reform Commission (2017) reported that the Legislature enacted the Arbitration and Conciliation Act, Cap. 4 on 19th May 2000, and it commenced on the same date. According to Kakooza (2010), the Act is significant because it integrates the UNCITRAL Model Law from 1985, the UNCITRAL Arbitration Rules 1976, and the UNCITRAL Conciliation Rules 1976. The purpose was to establish arbitration and conciliation procedures for all parties involved and address the loopholes, which included the evolving practices in international arbitration. Therefore, the Act is in accordance with the UNCITRAL model law of 1985 and the UNCITRAL Arbitration Rules 1976.

The Arbitration and Conciliation Act (Chapter 4), (2000) states that it is “an Act to amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards, to define the law relating to conciliation of disputes and to make other provision relating to the foregoing. Except as otherwise provided in any particular case, the provisions of this Act shall apply to domestic arbitration and international arbitration.” Therefore, the act is the main statute applied in arbitration proceedings in Uganda.

Furthermore, Kakooza (2010), explained that the act governs the conduction of arbitration and conciliation procedures and the performance of the arbitrator or conciliator during the process. He also observed that it doesn't provide for the arbitrator immunity, which is provided for within the UNCITRAL Model Law. While Salahuddin (2017) argued that since arbitrators fulfill a vital adjudicative duty, relieving domestic and international judicial systems of hundreds of disputes annually whilst issuing verdicts in a timely and economical way that meets client needs rather than requiring a prolonged judicial process. Considering the crucial

quasi-judicial responsibilities arbitrators play, it validates them having immunity in this capacity; else, arbitrators will not feel completely safe acting in this capacity.

Arnold (2013) discussed that the exploitation of arbitration as an ADR method since the 1930s, was very limiting until the Arbitration and Conciliation Act was enacted. It was mainly due to the lack of an effective regulatory mechanism and a comprehensive monitoring body over arbitrators, particularly concerning the fees imposed. This was addressed in Part VI of the act that allowed for the creation of the Center of Arbitration and Dispute Resolution (CADER) stating its functions.

In addition, CADER published arbitration rules in 1998 that provide guidance on how the proceedings will be conducted. According to the Arbitration Rules Cader (1998), Article one elaborates that the scope of application should be in accordance with the arrangement of the parties. Therefore, where the contracting parties agreed or have agreed in writing that any disputes arising out of that contract will be resolved through arbitration and in accordance with the CADER Arbitration Rules, such disagreements will be decided in accordance with these Rules, subject to any amendments approved to in writing by the parties. Save for where some of these Rules conflict with a provision of the Arbitration Law of the country, wherein the parties cannot disparage, in which case the regulation of the nation shall take precedence.

3.3.3. ICAMEK ARBITRATION RULES 2018

According to ICAMEK (ARBITRATION) RULES 2018 (2018), the International Centre for Arbitration & Mediation in Kampala (Arbitration) Rules 2018 were established in 2018 by the International Centre for Arbitration & Mediation in Kampala (ICAMEK). ICAMEK is recognised by the rules as the body responsible for administering these rules in case of any dispute resolution by request of parties that have entered into a contract to resolve their disputes in accordance with the ICAMEK Arbitration rules.

The Uganda Bankers Association, in collaboration with the Uganda Law Society, along with some other collaborators, founded ICAMEK on July 26, 2018. It is a legally recognized non-profit institution committed to the growth of ADR in Uganda and East Africa. ICAMEK is the first private institution committed to bringing global ADR methodologies and processes to commercial entities, professional groups, organizations, and regions.

The work of ICAMEK complements that of the Center for Arbitration and Dispute Resolution (CADER) Uganda in the endeavor to expedite business dispute resolution outside of traditional court procedures. Ocen (2019), argued that according to the bankers, the center will indeed assist them to avoid having their capital trapped in the court system, which is currently beset by a slew of issues that are unlikely to be resolved anytime soon. Therefore, through the Centre, they will help CADER resolve more disputes.

3.3.4 The Court System

Kiryabwire (2009) explained that across most commonwealth countries, like Uganda, the courts are divided into two categories: civil and criminal. The civil division hears all civil suits, while the criminal section hears all criminal proceedings. All non-criminal cases are considered civil cases for the reasons of identifying the cases. This grants the civil division broad jurisdiction over cases that are considered civil. The civil judge hears cases involving torts, land, household, agreements, companies, financial institutions, intellectual property, and other issues.

Therefore, matters concerning arbitration are civil cases and are addressed or resolved under the civil division in the Commercial Division of the High Court.

The High Court of Uganda

According to Kiryabwire (2009), the High Court of Uganda has several divisions, including the commercial court division under which the commercial courts were established specifically to deal with commercial disputes. The disputes in the construction industry are resolved in the Commercial division of the High Court.

The Retrospective Study of the Progress, Performance, and Impact of the Uganda Commercial Court 1996-2015 - Contents Volume 1: Report (2015) that referenced the Legal Notice No. 5 of 1996 stated that "The Commercial Court was established in 1996 and is formally a division of Uganda's High Court. The Commercial Court's jurisdiction covers civil (not criminal) cases including banking, insurance, securities exchange, maritime law, and arbitration issues."

Therefore, the court will address any issues arising in arbitration proceedings upon formal application by the aggrieved party.

Part IV of the Judicature Act Chapter 13 (2020) also recognises that the High Court will have free legal standing in all issues, any appeals, and other authority as may be imposed on it by the Constitution, this Act, or any other law, subject to the Constitution. This law includes the Arbitration and Conciliation Act Cap 4, among others.

According to the Arbitration and Conciliation Act (Chapter 4) (2000), any reference to "court" means "the High Court." So, any matter requiring the courts' intervention as allowed for in the Act shall be presented to the Commercial Division of the High Court of Uganda. Apart from where the Act expressly refers to the Court of Appeal.

Therefore, the High Court is instrumental in addressing law matters concerning arbitration proceedings. For example, Section 16 (6) and (7) elaborate on how an aggrieved party can apply to the High court to address matters regarding the extent of the authority of the Arbitral Tribunal.

The Court of Appeal

According to the Judicature Act Chapter 13 (2020), Constitution, the Act, or any other statute provides for an appeal to the Court of Appeal from decisions of the High Court. Therefore, the Court of Appeal must have all the powers, authority, and jurisdiction conferred by any written legislation in the court from the execution of the original jurisdiction wherein the appeal originated for the intention of examining and deciding an appeal.

Any party can appeal to the Court of Appeal only if the parties agree that the appeal shall lie and the court (High Court) grants the leave of appeal. This is elaborated in Section 38 of the Arbitration and Conciliation Act (Chapter 4) (2000). The application should be completed within the set time frame and in the prescribed manner. Therefore, the Court of Appeal will be engaged in arbitral proceedings when the disputants make the necessary applications.

Though, if any appeal is to be made, it should be done within the timelines set in section 16 of the ACA. In ***Roko Construction Ltd Vs Mohammed Mohammed Hamid, Civil Appeal NO.51 OF 2011*** the Court of Appeal stated that;

> *"…. the facts of the subject of the preliminary objection to the arbitrator, the arbitrator's decision on the same on 25.01.08, the application by the respondent to the High Court in Civil Application No.731 of 2009, the decision of the High Court (Kiryabwire J.) setting aside the award on 09.03.2011 and those of the preliminary objection to this appeal, all fall squarely within the ambit of section 16 of the Arbitration and Conciliation Act. To that extent we hold that where the procedures and timelines set under that section are complied with, there is no right of appeal against the decision of the High Court to this Court."*

On the same matter the Court of Appeal held that:

> *"…as a result of an illegality on the face of the record having come to our attention, the incompetency of the appeal notwithstanding, that there was never a competent application before the High Court upon which the learned trial judge could proceed to set aside the arbitrator's award of 30.06.09. The* ***Application No.731 of 2009*** *was time barred and thus a nullity in law. Accordingly the order setting aside the award was also a nullity and the same stands vacated. The arbitral award of 30.06.09 remains valid and enforceable."*

Therefore, the extent of Jurisdiction of the Court of Appeal in arbitral proceedings is limited when it comes to time.

Extent of court intervention

According to Ocen (2019), the commitment of domestic courts regarding arbitration in each jurisdiction has a significant impact on the procedures' effectiveness and, as a result, on its ability to assist the fast settlement of commercial matters, which are progressively desired to be decided using arbitration.

Mustill & Boyd (1989) discussed that despite the Court's broad legislative authority, its natural tendency is to utilise it exclusively to assist arbitration rather than to intervene in it. While the Commonwealth Secretariat (1991) guided that if there is a valid arbitration agreement between the parties, then Model Law mandates that the court orders the parties to arbitrate their differences. The courts have thus renounced themselves of any inherent jurisdiction outside what has been allowed for by statute.

Stephenson (2001) explained that arbitration is a voluntary process that can be used instead of litigating and is executable by the judiciary in cases where the parties have signed a valid arbitration agreement. In such situations, the judge will uphold any party's right to get the matter addressed through arbitration under section 9 of the Arbitration Act 1996 which requires the court to give a stay to a matter initiated in violation of an arbitration agreement. It is the first way the courts can show their support to arbitration proceedings in general.

Additionally, Section 5 of the Arbitration and Conciliation Act (Chapter 4) (2000), also makes emphasis that the court is authorised to halt any legal procedures taken before it. It should send the dispute back to arbitration unless the judge finds or the parties prove that the arbitration agreement is null and void or the matter brought before the court is not one of those that the parties agreed to take to arbitration.

In "***Yan Jian Uganda Company Ltd V Siwa Builders and Engineers under MISC APPLICATION No 1147 of 2014 arising from Civil Suit No 238 of 2014 ([2015] UGCommC 22)"*** the appellant made an application under Section 5 of the ACA seeking the court to order the stay of proceedings under civil suit number 238 of 2014 and that the dispute be sent back to arbitration and the Respondent, who was the Plaintiff in his suit opposed this application. The High Court held that:

> ***"****In the premises the Applicant's application has merit and is hereby granted.*
> *The dispute in this suit is sent for arbitration in accordance with clause 19 (2) and (3) of the agreement between the parties…. The dispute having been so referred for arbitration using the procedure chosen by the parties in the contract, the parties can only come back to court by way of any application enabled by the Arbitration and Conciliation Act and the stay of proceedings of the suit serves no useful purpose…"*

Furthermore, Section 9 of the Arbitration and Conciliation Act Cap 4 (2000) is very clear on the degree of court intervention and states that "*Except as provided in this Act, no court shall intervene in matters governed by this Act*." Also, Article 8(1) of the Model Law expressly forbids a court from interfering in matters controlled by the Law (model law) unless expressly provided. Therefore, courts are prohibited from interfering in any arbitral proceedings. The different ways through which the court's intervention is legally permissible and recognised are elaborated accordingly in the Act.

According to the Arbitration and Conciliation Act (Chapter 4) (2000), the extent of court intervention in relation to arbitration is recognised in sections 5 on stopping any legal proceedings, section 6 in requesting the court (high court) for Interim measures, section 16 (16(6) and 16(7)) that elaborate on competence-competence, section 17 on power of the arbitral tribunal in particular 17(3), section 27 on court assistance in taking evidence, section 34 on application for setting aside the arbitral award, section 35 on the acknowledgement and enforceability of the award, section 36 on the process of enforcement of the arbitral award, section 37 in case of Bankruptcy in particular 37(2), section 38 on Questions of law arising in domestic arbitration and section 40 on Power of judicial authority to refer parties to arbitration among others. These sections guide disputants in making applications and the time limits. This is illustrated in Section 16(6) which states that:

> *16(6)"Where the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party aggrieved by the ruling may apply to the court, within thirty days after having received notice of that ruling, to decide the matter.***"**

Occasionally, the arbitral tribunal may be accused of having no jurisdiction over some or all the matters before it. According to Bawah (2019) in Ghana, whenever it comes to matters of jurisdiction, the tribunal has broad authority. The doctrine of Kompetenz-Kompetenz or competence-competence illustrates that the tribunal can rule on its authority to proceed with an arbitral proceeding or hear a matter. This is also elaborated in Rule 34(1) of the ICAMEK Arbitration Rules 2018. The assessment of the tribunal's jurisdiction in the court system antecedent to arbitral proceedings may indeed be perpetual if an arbitral tribunal lacked this authority.

Furthermore, according to Muigua (2009) in Kenya, provision section 10 of the Arbitration Act 1995, that states ***"10. Except as provided in this Act, no court shall intervene in matters governed by this Act."*** henceforth restricts the power of the court to matters that have been specified in the Act. In addition, he argued that this gives rise to two scenarios in which the court can interfere in arbitration. One is when the Act allows the court to intervene. The second is in the interests of the public, where a significant unfairness is likely to occur despite the lack of a provision in the Act.

In "***Epco Builders Limited-v-Adam S. Marjan-Arbitrator & Another Civil Appeal No. 248 of 2005"*** where the appellant made a constitutional application to the high court arguing that the preliminary ruling by the tribunal had violated its constitutional rights to a fair arbitration according to sections 70 and 77 of the constitution of Kenya; section 3 of the Judicature Act and section 3A of the Civil Procedure Act of Kenya. The tribunal's refusal to allow the appellant's key witnesses (the project manager and quantity surveyor) to testify was unjust and would hinder them from making their case. The Application was opposed on the basis that the Court required authority to entertain it, so there was no cause of action. The representative from the Chartered Institute of Arbitrators Kenya, who was an intrigued party, argued that arbitration had to come to an end. If the appellant had been denied fair representation of his case, the proceedings may never come to an end. The Court held that the application will be heard by the High Court on merit.

According to Muigua (2018c), parties to arbitral proceedings have often undoubtedly utilized court interference to stall and impede arbitral procedures, whether they have yet to begin or are underway. This has resulted in lengthy and costly proceedings, yet arbitration is supposed to be fast and economical for the disputants. Nonetheless, Moses (2008) argued that, once the parties consent to have their disagreements arbitrated, they relinquish their prerogative to have them concluded by a judicial body. Instead, they agree to settle them confidentially outside the legal system.

Furthermore, Mustill & Boyd (1989) argued that if parties have entered into a contract and have agreed to resolve their disputes through arbitration, go ahead to select an arbitral tribunal and the rules to follow, and they are bound to accept the outcomes of the proceedings. Therefore, the parties should only utilise the courts as allowed in the Act.

According to Kaggwa (2020), arbitration, which is a faster means of settling disputes than litigation, requires the backing of the Ugandan judiciary to encourage economic growth. When the resolution of the disputes is executed more efficiently, Uganda's economic growth level will be boosted. To successfully achieve this, the Ugandan courts must promote arbitration since it can improve the court system's efficiency. It frequently saves money and effort while also increasing user happiness.

The courts have minimal jurisdiction when it comes to arbitration matters. According to Commonwealth Secretariat. (1991), Article 13 (appeal against unsuccessful challenge), and Article 34 of the Model Law provide for a specified and restricted court supervisory position regarding the procedure of setting aside an award. The shortlist of justifications in Article 34 is modelled after Article V of the New York Convention, while Article 34(2)(b) raises the question of 'public policy. Other grounds include incapacity, the arbitrator's agreement being unlawful, the arbitrator's jurisdiction being excessive, non-arbitrability, and similar issues. Hence domestic law will only be used to decide a case if the Model law does not cover that particular issue. Such issues include the parties' power to conclude arbitration agreements, the consequences of state exemption, transactional or other relationships among parties and arbitrators, the setting of charges and costs, and demands for payments and security; the arbitral tribunal's ability to adjust contracts; the implementation by courts of provisional actions of safeguard ordered by tribunals under Article 17; the timeframe for the enforcement of foreign arbitral awards; and the legal responsibility of arbitrators.

When each dispute throughout the arbitration method ends up in court, it becomes a failed procedure. Therefore, the parties should be very keen while formulating the arbitration agreement. The clause must be precise.

Challenge of aggrieved parties to go to court

At times court intervention will frustrate the parties. For example, in his paper, Muigua (2015) in Kenya explained that interference in the arbitration process by national court is often done by the litigators, who are almost always lawyers who also practice as advocates. They inject the arbitration process with superfluous demands for adjournments and interim injunction applications before national courts, such as court orders, which only drag down the process and increase the accompanying expenses.

According to Mustill & Boyd (1989), typically, compensatory damages regarding breach of contract are of very little use when enforcing the agreements against a party that has commenced an action regarding a dispute that should've been taken to arbitration. When a party to an arbitration agreement ignores it and immediately resorts to courts or any other process of dispute resolution before arbitration, it amounts to a breach of contract. However, it is hard for the other party to make claims concerning breach of contract.

Kaggwa FCIArb (2018) also argued that any application by the aggrieved party to set aside the arbitral award as elaborated in section 34 of the Arbitration and Conciliation Act Cap 4, can only be submitted on the following restricted premises that include; lack of competency of the arbitral tribunal, incapacity, invalidity of agreement, lack of notification, and when the award is given is outside the contract agreement. In addition, according to section 38, the disputants must agree to apply or appeal to the court. Thus, if the disputants preserved no agreement, there could be no route to the court, except as stated above, except for what is provided in Sections 34 and 38 of the Act, which forbids any court from intervening. Therefore, a party may petition the court to resolve any legal matter arising during the arbitration process or appeal to the court on any legal question arising from the award if the parties consented to such a course of action.

Furthermore, Muigua (2015) discussed that international arbitration has become more popular than litigation because of its global application in global disputes with little or no intervention from national courts, which boosts the participants' trust in achieving justice in the most efficient manner possible.

Therefore, whereas the Courts must support arbitration, this support and extent of intervention should follow the Act and the law at large. This should be respected by all parties partaking in the arbitral proceedings. These include the disputants, their representatives, the tribunal, the administering authority, and the courts.

Recognition and enforcement of awards

According to the Arbitration and Conciliation Act (Chapter 4) (2000), when an arbitral award is prepared as per section 31 of the act, and the time within which any party can apply for setting aside of the award expires as affirmed in section 36 of the same, the arbitral award will

be ultimate and binding to the disputants. The award will be recognised by the courts and regarded enforceable by Law.

Furthermore, the Arbitration and Conciliation Act (Chapter 4) (2000), recognises and provides for implementation of foreign or non-domestic awards in Uganda. As a signatory to the New York Convention and the ICSID Convention, the act recognises the New York Convention Award and the ICSID Convention Award. Therefore, any award made following Part III and Part IV of the Arbitration and Conciliation Act Chapter 4 (2000) is recognised and enforceable. Internationally, the Commonwealth Secretariat (1991) explained that Article IV of the Model Law is based on the practically and globally recognized New York Convention regarding recognition and enforcement of awards. It also strengthens and adds value to the Convention. Hence, awards granted under Model Law are deemed enforceable and binding regardless of the jurisdiction in which they were made.

The ICAMEK (ARBITRATION) RULES 2018 (2018) are also not silent on the recognition and enforceability of an arbitral award. Rule 59 elaborates that an arbitral award will be final and enforceable. However, this award must be made following the criteria detailed in Rules 43, 56, 57, and 58. Therefore, the award must be issued within the time limits, and it should address all matters concerning the disagreement at hand. The arbitral tribunal can also give a separate or interim award if the parties request one.

Muigua (2009) discussed that, unfortunately, to the prejudice of the party in whose favour the award is rendered, the recognition and enforcement of foreign arbitral awards in courts have frequently been degraded to a mere wait-and-see exercise. Furthermore, Kariuki (2015) also argued that international Arbitration could be adopted as the most appropriate ADR method in integrated regions like the East African Community. This is because it is fast, efficient, flexible, cost-effective, confidential, and binding; an arbitral award is issued, giving the successful party a right of enforceability across regions. The party will likely face monumental challenges when the states have not successfully standardised and harmonised their arbitration laws.

Since the act recognizes that an arbitral award is adopted as if it is a ruling made by the courts, the judiciary should be very vigilant in the recognition and enforceability of the arbitral award, be it domestic or foreign, as desired by the parties to the dispute.

3.3.5 Training and accrediting Institutions of arbitration in Uganda

Uganda has two training and accrediting institutions. The Center for Arbitration and Dispute Resolution (CADER) and International Centre for Arbitration and Mediation in Kampala (ICAMEK).

Centre for Arbitration and Dispute Resolution (CADER)

This is the central arbitral institution in the country (K. Muigua, 2015b). According to the Arbitration Rules Cader (1998), the Centre (CADER) was formulated with technical assistance as well as a grant from presto in June 1998. Likewise, Part IV section 67-70M of the Arbitration and Conciliation Act (Chapter 4) (2000) provides for the Centre for Arbitration and Dispute Resolution, commonly referred to as CADER.

Muigua (2015) discussed that regarding section 68 of the Act, the Centre is tasked with the mandate of developing appropriate rules, procedures, and structures for the efficient implementation of the arbitration, conciliation, and any other ADR process through establishing and enforcing ethical guidelines for arbitrators, conciliators, neutrals, and experts. Additionally, it is tasked with qualifying and accrediting arbitrators, conciliators, and professionals, providing institutional assistance and participants with the necessary skills, training, and support to employ alternative dispute resolution approaches.

In addition, Muigua (2015) recommended that as a way of promoting international arbitration in the country, Uganda should put efforts towards establishing other institutions so that there is improved dissemination of information. Thus, increased training.

International Centre for Arbitration and Mediation in Kampala. (ICAMEK)

ICAMEK was started to complement the work of CADER in the administration and application of Alternative Dispute Resolution methods in Uganda. Regarding arbitration proceedings, ICAMEK formulated the ICAMEK Arbitration rules 2018.

Rule 3 of the ICAMEK (ARBITRATION) RULES 2018 (2018) recognises ICAMEK as the institution mandated to administer dispute resolution by arbitration tribunals under the established rules. According to Rule 1, the rules are only applicable to arbitrations where the

parties provided in writing that when a dispute arises, the proceedings will be conducted following these rules or any amendment made by the Centre.

Furthermore, according to the objectives of ICAMEK, as stated in Rule 3(2) of the ICAMEK (ARBITRATION) RULES 2018 (2018), the complementary work done by ICAMEK includes the provision of information, training, and implementation of educational programs as a way of promoting the use of ADR methods in Uganda. Therefore, ICAMEK is a recognized training and accrediting institute for arbitration in Uganda.

Ngotho Njung' (2018b) argued that Lawyers must play a significant role in arbitration training. Since the arbitral institutions have a profound interest in the proper functioning of the arbitration proceedings, they should hold seminars, workshops, and training courses for practitioners and non-lawyers throughout the region. They should not limit the concentration to attorneys who want to serve as arbitrators but must include general counsel who ought to be familiar with the arbitration procedure. In addition, lawyers involved in the formulation of arbitration provisions would benefit from the training to ensure that the provisions can withstand objections in the beginning phases of arbitration. Therefore, the Uganda Law Society should also be actively involved in training and accrediting arbitrators and professionals from other fields like the construction industry.

3.3.6 Appointing and Nominating Institutions in Uganda

Arbitration proceedings cannot proceed without the appointment of a third party or the arbitral tribunal. According to Salomon (2002), appointment of the tribunal is the utmost step or decision that the parties will make in the arbitration procedure. Concerning the principle of party autonomy, the parties have the independence to select the procedure of appointing the arbitrator or nominate the institution to guide in the appointment.

According to section 11 of the Arbitration and Conciliation Act (Chapter 4) (2000), when the parties fail to appoint an arbitrator, they can make an application to the appointing authority. Section 2(1) (a) interprets an appointing authority to mean "an institution, body or person appointed by the Minister to perform the functions of appointing arbitrators and conciliators".

In her paper, Onyema (2008) argued that if Africa wants to become more aggressive on the global arbitration stage, then it should be more vigilant in the use of competent arbitration institutions as well as very keen on appointment of skilled and qualified arbitrators.

In Uganda, the recognised appointing institutions include the Centre of Arbitration and Dispute Resolution (CADER), the International Centre for Arbitration and Mediation in Kampala (ICAMEK), and the East African Institute of Architects.

In ***Roko Construction Ltd Vs Mohammed Mohammed Hamid, Civil Appeal NO.51 OF 2011*** it was established that;

> *"On 06.08.07 the appellant again pursuant to the building agreement referred the dispute to arbitration. The respondent was invited to consent to the said appointment within seven (7) days to a proposed arbitrator. The respondent did not respond. Thus on 22.08.07 the appellant, with a copy to the respondent, wrote requesting the President,* ***East African Institute of Architects****, to appoint an arbitrator pursuant to the building agreement. The said President, as well as the respondent did not respond. The appellant then applied to the* ***Centre for Arbitration and Dispute Resolution*** *through* ***Arbitration Cause No.11 of 2007*** *for the compulsory appointment of an arbitrator under* ***section 11 (4) (c) and Rule 13*** *of the* ***Arbitration and Conciliation Act, Cap.4.*** *The Centre, after affording an opportunity to the respondent to be heard, heard and determined the application by appointing Justice Alfred Karokora, retired Justice of the Supreme Court, as arbitrator."*

3.4 Conclusion

Uganda as a nation has thus adopted the use of Arbitration as an ADR in resolving commercial disputes including those within the construction industry. This is established from the progressive improvement of the legal and institutional framework that commenced with the enactment of the Arbitration Act Cap 55 in 1964, which has since undergone numerous amendments that subsequently resulted in the enactment of the Arbitration and Conciliation Act Cap 4 (2000).

This in turn resulted in the formation of the governing institution known as the Centre of Arbitration and Dispute Resolution, and the CADER Arbitration Rules. Additionally, with the

recent increase in the use of arbitration in Uganda, the International Centre of Arbitration and Mediation Kampala was also established with the main concentration of extending support to CADER. This also resulted in the establishment of the ICAMEK Arbitration Rules.

The recognised Act and Rules, have given sufficient guidance to participants in arbitration and also provided a baseline for trainings thereby promoting professional growth for potential arbitrators and the party representatives. Despite the recognised advancement, the use of arbitration in the construction industry has remained minimal.

Since Uganda is a developing country and has experienced significant population growth over the last two decades, it has become paramount for the state to become extremely vigilant regarding infrastructural development to support the growing population. This has resulted to a rise in demand from the participants in the construction industry to deliver quality and affordable products.

As discussed earlier that with the increased demand and increased number of participants in the industry, disputes arise and delayed resolution is costly to all parties. Thus, creating the need to resolve them as fast as possible by exploiting established ADR methods like arbitration because of the pros discussed in chapter 2 of this paper.

In his study, Albert (2021) established that the practitioners in Uganda's construction industry find arbitration to be unfair, thereby avoiding it as much as possible. Since the use is minimal despite the recognised pros, the study seeks to establish the challenges facing the use of arbitration thereby establishing strategies to promote its use in the construction industry.

CHAPTER FOUR

RESEARCH METHODOLOGY

4.1 Introduction

This chapter presents the research techniques that were used to conduct this research. It includes the research design, target population, sampling (sample size and procedure), data collection method, data collection instruments, data analysis, presentation, and ethical considerations.

4.2 Research Design

According to Obwatho (2014), the research design is the overall approach followed by the study and includes a research plan, framework, and tactic aimed at achieving the stated goals and obtaining answers to research questions while reducing variance. This study utilised the cross-sectional descriptive research design to determine the challenges facing arbitration as a dispute resolution method in the construction industry in Uganda.

Ihudiebube-Splendor & Chikeme (2020) discussed that the data from descriptive cross-sectional research can be used to determine the state of phenomena or the interconnections between them at a specific time. This design is usually employed to determine the prevalence of a phenomenon in populations at a given point in time and the participants are selected according to the study's eligibility criteria.

Therefore, this research design is very instrumental when the population is comprised of different groups of people with differing variables of interest but share other characteristics like education background and social economic status, among others. Thus, the population of this study was comprised of the key players in the construction industry that include the developers, consultants, contractors and arbitrators.

Additionally, it is relatively cheap and fast therefore the researcher was able to save on resources especially regarding time and cost. Furthermore, it enabled the researcher to study numerous characteristics of the prevailing population in the construction industry for the period of the study. This refers to the participants in dispute resolution processes in particular arbitration.

4.3 Target Population

According to Barnsbee et al. (2018), the study's target population refers to a fraction of participants with whom it will undertake research and develop findings. The target population of this study was the various key players involved in the execution of construction projects and specifically those involved in resolving disputes in the construction industry in Uganda.

First and foremost, the study population considered developers and main contractors who are the key stakeholders in any construction project. These are often the parties to the construction project and are often referred to as employer and contractor.

The study population also included Architects, Quantity Surveyors and Engineers (Civil and structural Engineers) who work as contract administrators. Last but not least, the study population included arbitrators who are actively involved in the resolution of the disputes.

The study population was subdivided into four categories that is to say the developers or employers, contractors (main contractors), consultants (Architects, Engineers and Quantity Surveyors) and the arbitrators.

Developers/Employers

The study considered commercial development facilities and compiled a list of the various developers for commercial facilities within Kampala city. According to the National Physical Planning Standards and Guidelines 2011 that were used by Kampala Capital City Authority (KCCA) to issue building and occupational permits for the 10 years, activities that are considered commercial and thus permitted in commercial areas include shops, wholesale shops, markets, services, offices, service industry, accommodation, entertainment and other facilities.

According to the above developments, since there is no established database of the developers in Uganda, the researcher picked information from various project signboards of ongoing construction projects in Kampala and information of owners of established developments within the commercial areas in Kampala. Through this, the researcher established a list of 75 developers both companies and individual developers with some having multiple developments all over the city. However, 26 of these developers employed their own construction workers, therefore did not follow procurement procedures that result in bilateral construction contracts.

These were dropped from the population, Therefore, the population of the developers considered for the study became 49 (**N1**).

Main Contractors

The population of the contractors was collected from the Uganda National Association of Building and Civil Engineering Contractors (UNABSEC). Zaribwende (n.d.) described UNABSEC as a non-profit organisation whose mission is to recognise, support, and protect the interests of Uganda's building and civil engineering construction companies, as well as associated suppliers. It also serves as a spokesperson for the members' contractors and suppliers.

There were 119 registered contractors which 11 are Multi-Billion Contractors while the other 108 belong to Class A-1, A-2, A-3, A-4 and A-5 of the local contractors. Therefore, the population of the contractors considered for the study was 119 (**N2**).

Consultants

The study also focused on consultants in the category of Architects, Engineers (civil and structural) and Quantity Surveyors. The population was got from gazettes established by various registration bodies as of 2021. According to the Architects Registration Board of Uganda, the registered and practicing architects as of 2021 were 205, while the Engineering Registration Board had 739 registered civil engineers as of 2021 and the Surveyors Registration Board had 70 registered Quantity Surveyors as of 2021. This is tabulated in table 4.1 below:

Table 4. 1: Registered Architects, Engineers (Civil and Structural Engineers), Quantity Surveyors and Lawyers

ITEM	**CONSULTANTS**	**REGISTERED POPN NO.**
1	Architects	205
2	Quantity Surveyors	70
3	Engineers (Structural and Civil)	739
TOTAL (N3)		**1014**

Of the established population of consultants, 193 are stationed outside Kampala, and since the study was focusing on Kampala, all these consultants were eliminated from this population. Thereby making a population of 821 participants (**N3**).

Arbitrators

According to CADER and ICAMEK, there are a total of 162 arbitrators of different professions. These include lawyers, medical doctors, architects, accountants, civil engineers, educationists and quantity surveyors. Of these, 42 specialise in construction-related disputes. Therefore, the study established the population of the arbitrators as 42 (N4).

Therefore, the total population of the study was 1031 participants (N). This is tabulated in table 4.2 below.

Table 4. 2: Total Population (N)

ITEM	CATEGORIES	NO
1	DEVELOPERS (N1)	49
2	MAIN CONCRACTORS (N2)	119
3	CONSULTANTS (N3)	821
4	ARBITRATORS (N4)	42
TOTAL (N)		**1031**

4.3.1 Inclusion criteria

- Participants actively involved in construction projects.
- Arbitrators that specialize in construction-related disputes.

4.3.2 Exclusion criteria

- Consultants located outside Kampala

4.4 Sampling

Turner (2020) discussed sampling as the process of determining a subgroup of the target population. This enables the acquisition of reliable data from a smaller portion of the target

population since it is impractical to enrol the full target population in research work. This renders collecting of data from the target population far more achievable. The data will be collected faster and at a low cost rather than attempting to contact everyone in the population. Similarly, Librero (2012) stated that "A sample reflects the characteristics of the population."

The study employed probability sampling techniques, namely stratified sampling and simple random sampling techniques. This was to ensure that all the key players in dispute resolution in the construction industry were adequately represented. Furthermore, Nur (2018) explained that in simple random sampling, the sample is chosen randomly from the target population or sampling frame, and every unit has an equivalent chance of being selected.

According to Taherdoost (2018) the target population was first separated into categories and a random sample was then obtained from each category while using stratified sampling so that the overall sample size for the study was established. Therefore, with reference to the several participants in the construction industry and dispute resolution, the study first applied stratified sampling through which the target population was categorised into subgroups namely the developers, contractors (main contractors), professionals (architects, quantity surveyors, and engineers), and arbitrators.

Since the total target population was known, the study adopted the following formula to determine the sample size from the population of 1031, and assumed also confidence level of 95%. The formula is as detailed below;

$$n = \frac{(z*z)\ (p*q)\ N}{e*e(N-1) + (z*z)\ (p*q)}$$

Where: n = sample size

z = standard deviation of 1.96 at 95% confidence level.

p = % target population assumed to have similar characteristics (say taken as 95%, the higher the % above 50% the higher the reliability)

q = 1-p (1-0.95=0.05)

N= population size

e = confidence interval (margin of error(say,0.05)

With reference to the formula above, and the known population (N) of 1031, the study established the sample size (n) as;

$$n = \frac{(1.96*1.96)\ (0.95*0.05)\ (1031)}{(0.05*0.05)(1031-1)+\ (1.96*1.96)\ (0.95*0.05)}$$

$$= \frac{188.133}{2.757}$$

= 68.226 respondents. This was rounded off to 68 respondents.

According to Lavrakas (2013b), since survey results are obtained from samples rather than entire data, they invariably differ from one survey to the next. Therefore, there should be a predicted deviation of estimation mostly around the true sample size to establish the error.

Though Frankfort-Nachmias et al. (2014) argued that to correctly size a sample, scholars must first assess the amount of precision that can be anticipated from their estimations, or the extent of the standard error. The issue of standard error (also known as deviation or sampling error) is crucial to sampling technique and establishing sample size. It's a statistical tool used to determine how accurately sample results match the authenticity of a parameter.

Lynn (2004) identified two prominent reasons for non-observation discrepancies in studies as sampling and non-response errors. First, according to Kruttschnitt et al. (2014), the failure to acquire a relevant response to all survey questionnaires from the study population generates non-response errors in studies. While Klofstad (2004) explained that when some respondents complete the interview and others decline to participate or are unreachable, the non-response errors will occur.

In an effort to correct the non-response error, the sample size was increased by 30% that is to say n*1.3 resulting in 88 respondents (n). The study then went ahead to ration the established sample to determine the number of participants to be engaged from each category using the formula; $n_r=(N_r/N)\ n$.

Where:

n_r was the established sample size for the study

Nr - the population size for the different strata/subgroup

N - the total population size.

This is elaborated in Table 4.3 below:

Table 4. 3: Total Sample Size n'

CATEGORIES	POPULATION SIZE	SAMPLE SIZE	PERCENTAGE %	ROUND OFF
DEVELOPERS	49	4.18	4.75%	4
CONTRACTORS	119	10.16	11.54%	10
CONSULTANTS	821	70.08	79.63%	70
ARBITRATORS	42	3.58	4.07%	4
TOTAL	**1031**	**88.00**	**100.00%**	**88**

With an established sample size of 88 and ratios of the different categories, the researcher went ahead to use random sampling to identify the participants that were furnished with the study questionnaire.

In the category of developers, the researcher took every 12th contractor from the list. The sampled contractors were therefore serial numbers 12, 24, 36, and 48.

In the category of contractors, the researcher developed ratios of the different classes of contractors and a selection criterion for each ratio. This is elaborated in table 4.4 below:

Table 4. 4: Selection Criteria for Contractor Respondents.

ITEM	CLASS OF CONTRACTORS	NO.	RATIO	SELECTION CRITERIA
1	INTERNATIONAL PROVIDERS	11	0.9	The first contractor on the list
2	CLASS A-1	16	1.3	The first contractor on the list
3	CLASS A-2	14	1.2	The first contractor on the list
4	CLASS A-3	15	1.3	The first contractor on the list
5	CLASS A-4	29	2.4	Multiples of 12 (12 and 24)
6	CLASS A-5	34	2.9	Multiples of 11 (11, 22 and 33)
	TOTAL	**119**	**10**	

Additionally, in the category of the consultants, the researcher also developed ratios of the different consultants and a selection criterion for each ratio. This is elaborated in table 4.5 below:

Table 4. 5: Selection Criteria for Consultant Respondents.

ITEM	CONSULTANTS	NO	RATIO	SELECTION CRITERIA
1	Architects	198	17	Multiples of 11
2	Quantity Surveyors	68	6	Multiples of 10
3	Engineers (Structural and Civil)	555	47	Multiples of 11
TOTAL (N3)		**821**	**70**	

Lastly, for the category of arbitrators, the researcher used multiples of 10 to select the 4 participants for data collection.

4.5 Data collection method

Kabir (2016) described data collection as the process through which the researcher systematically collects the required and relevant information to answer the research questions, address the research hypothesis and make the necessary conclusions. Abawi (2014) recognised that the data collection method is selected depending on the type of research. All in all, he identified questioning, document review, observation, measuring among some of the data collection methods. In some cases, a researcher may choose to use a combination of more than one method when the need arises.

According to Lavrakas (2008), the questionnaire is the most famous tool used for gathering data in a research study. It is, in principle, a series of structured questions, occasionally indicated as topics, that follow a fixed format to obtain relevant individual data on a particular respondent or even more specific themes. This study mainly relied on primary data, and the data collection method used was the questionnaire method.

4.6 Data collection instruments

According to Munir (2017), the data collection instruments are the tools a scholar uses to collect data. These include questionnaires, interview guides, observation, among others. Fundamentally, the scholar must make sure that the instruments he or she identifies will be both appropriate and dependable. The correctness of the instruments has a major impact on the validity and reliability of every study. Whichever data collection process is used, it should be rigorously assessed to see if it produces the desired findings.

The study used only the questionnaire instrument for collecting data. According to Munir (2017), this is a type of data collecting tool that is frequently used in standard studies. It is a template or record that has been logically formed with an assembly of questions purposely intended to evoke answers from the respondents for the goal of gathering relevant information.

The questionnaire for this study was formulated using the google form application accessed through the google drive of the researcher's google mail account (nasaaziamina@gmail.com) that had already been in existence. The formulated questionnaire comprised of both open and closed-ended questions and they were organised into four sections. Section one was populated with questions to establish general biodata for the respondents. Sections 2-4 were populated with questions to answer the specific objectives of this study.

The questionnaire was used to conduct a pilot survey to confirm that the researcher will collect the required data. It was then dispersed by email as a google link (https://docs.google.com/forms/d/e/1FAIpQLScdCfZpL2R47CVV38iVWjxQu3aQIuFm6c8MABudZydaCW444A/viewform?usp=sf_link) to various selected respondents following the established sample size of the study.

The study also utilised the WhatsApp messaging media platform for those participants that opted to receive the questionnaire on WhatsApp. This option made it easier for the researcher to disperse the questionnaire in a quick matter and also while making-up follow up communications as far as progress in filling the questionnaire was concerned, unlike on email where the level of response was much slower and delayed the process of receiving responses for the study.

4.7 Validity and Reliability

According to Mohajan & Mohajan (2017), the most significant and fundamental elements in the assessment of any measuring instruments or tools for a solid research include reliability and validity.

Validity

According to Heale & Twycross (2015), the degree wherein an idea is objectively measured is known as validity. While Salkind (2012) explained that validity is the magnitude whereby the items on an assessment are adequately reflective of the domain that it tries to measure.

Zamanzadeh et al. (2015) reported that CVR = (Ne - N/2)/(N/2) is the equation for content validity ratio, where Ne is the proportion of participants who marked "significant" and N represents the overall number of panellists. The study conducted a validation of the data collection instrument in Nairobi in particular the questionnaires and the interview guide. The content validity index measured and established was 0.7.

Reliability

Heale & Twycross (2015) stated that “reliability relates to the consistency of a measure”. The study utilised the Cronbach alpha Reliability test and One Sample t-test analysis to confirm the reliability of the data collected. According to Taber (2017), Cronbach's alpha is a statistic that researchers regularly use to show that tests and instruments created or used for research studies were appropriate, thereby giving reliable data.

The reliability of this data was then tested and the established extent of reliability for this study was 0.7.

4.8 Data Presentation and Analysis

According to Obwatho (2014), data analysis is the processes through which the researcher organises and presents the relevant information, and applies logical reasoning to make a decision on the data collected.

The use of the google form application to formulate the questionnaires for the study allowed for several options of responses for the researcher to select depending on the question. The options included the multiple-choice response that would allow the respondent to select only

one option, the check box option which permitted the respondent to give multiple responses (more than one), the drop-down option that would give the respondent a range of answers, the file upload option, the linear scale, multiple choice grid, check box grid, short answer, and paragraph responses.

The selected response would determine the method of data presentation and analysis depending on the particular question and the type of responses submitted by the respondent. These included graphs and pie charts, among others.

The shared link of the google form questionnaire allowed the participant or respondent to submit the completed questionnaire at the end. Upon submission, the data was automatically analysed by the google form platform and illustrated in graphs and pie charts. This was cumulative with every response submitted and captured by the system.

In the event of the responses that required short answers, the researcher formulated tables and lists, while identifying those responses that had been given by more than one respondent. The study then compiled and discussed the presented and analysed data from the platform in a report using a computer and appropriate language easily interpreted by the beneficiaries.

Table 4. 6: Ilustrates how each objective was Investigated.

Objective	Data Needs	Data Sources	Data Collection	Data Analysis	Data Output
To determine the extent to which arbitration is used to resolve construction disputes in the construction industry in Uganda.	Disputes in the construction industry and the ADR method used to resolve them	Developers, Contractors, Consultants (Architects, Engineers, Quantity Surveyors) & Arbitrators	Online Questionnaires (open and closed-ended questions)	Cronbach alpha reliability test	Tabulation, Pie Chart, and Graphs
To identify the challenges that arbitration faces in the construction industry in Uganda.	Construction disputes resolved in Arbitration			One Sample t-test	
To identify possible strategies to address the challenges facing arbitration as a method of resolving construction disputes in Uganda.				Qualitative data analysis - Narrative Analysis	

The data collected was qualitative data in nature and thus the study could not perform a statistical hypothesis test. In his article Chigbu (2019) elaborated on how it is very challenging and nearly impossible to conduct a statistical hypothesis test in qualitative studies. The researcher thus used discussions to make conclusions on the study hypothesis.

Finally, the study established conclusions drawn from the findings and made recommendations to the construction industry in Uganda at the end of the study.

4.9 Ethical Considerations

According to Parveen & Showkat (2017), the personal beliefs that guide a person's actions are known as ethics. Implementing whatever is ethically and politically correct in studies is related to research ethics. These are rules of conduct that discriminate between what is proper and what is improper; and what is permissible and what is entirely inappropriate.

Arbitration is a very confidential process and the study was very keen on observing and adhering to the guidelines regarding ethical consideration in research. Most of the information shared was confidential and had to be dealt with in a manner that would not violate the privacy of the respondents as well as the disputes they had encountered throughout their practice.

Furthermore, Parveen & Showkat (2017) argued that researchers must bear full accountability for their own research's ethical behaviour. In simple terms, integrity is the duty of the researcher. A study's first and most imperative job is to guarantee the respondents' confidentiality, decency, liberties, and well-being. The study addressed the aspect of confidentiality, decency, liberty, and well-being by formulating questionnaires that asked for minimal data from the respondents to protect their identities. Also, the link shared with respondents did not disclose the identities of the various respondents upon submission.

Dooly et al. (2017) also discussed that when evaluating the study data, researchers must aim towards being as ethical as possible. Researchers must make every effort not to over- or misinterpret findings, and to reflect relevant findings as precisely as possible. This study utilised the google form tool which accurately tallies all responses in real time without any bias.

CHAPTER FIVE

DATA PRESENTATION, ANALYSIS AND INTERPRETATION

5.1 Introduction

This chapter presents the data collected from the field, its analysis and also interpretation. It also generates the findings tallying with the objectives of the study

5.2 Data Presentation, Analysis and Interpretation

5.2.1 Response Rate

Frey (2018) discussed the response rate as the percentage of the respondents in the sample population that complete the questionnaire or interviews. Hence, the response rate is number of respondents that completed the questionnaires divided by the total sample size. Furthermore, Fincham (2008) argued that researchers should target to have at least a 60% response rate before they analyse their data. The goal of this study was to attain a response rate of 65%.

The data for this study was collected for a period of four weeks between 25th October 2021 and 10th November 2021. The tool used for information gathering was the questionnaire. The researcher distributed it to the respondents following the established sample size using email and WhatsApp messaging platforms. The field survey managed to attain 59 responses of the completed and submitted questionnaires, establishing a response rate of 67 %. The received responses from the subgroups are illustrated in table 5.1 below:

Table 5. 1: Responses from the subgroups.

CATEGORIES	SAMPLE SIZE	RESPONSES RECEIVED	PERCENTAGES OF RESPONSES RECEIVED
Developers	4	4	4.55 %
Contractors	10	10	11.36 %
Consultants	70	41	46.59 %
Arbitrators	4	4	4.55 %
TOTAL	**88**	**59**	**67.05 %**

Source: Data from the Field 2021

Since the 67% response rate attained was above 60% as argued by Fincham (2008), and also above the targeted rate for this study (65%), the researcher proceeded to analyse it and draw recommendations accordingly.

5.2.2 Bio Data

This was the first section of the questionnaire whose purpose was to collect general demographic information from the respondents. It included the professional background, years worked in or for the construction industry, the extent to which the participants were involved in the execution of construction projects, the capacity within which they participated, the standard forms of contracts they encountered, and the designated contract administrator for the various projects.

Professional background.

The construction industry is comprised of several participants with different professional backgrounds. The information collected is presented in Table 5.2 below.

Table 5. 2: Professional background

PROFESIONAL BACKGROUND	NO./59	PERCENTAGES OF 59
Architect	14	23.7%
Engineer	21	35.6%
Quantity Surveyor	14	23.7%
Lawyer	4	6.8%
Others	7	11.9%

Source: Data from the Field 2021

The data in table 5.2 of the professional backgrounds of all the respondents and percentages is further illustrated in the horizontal bar graph in figure 5.1 below.

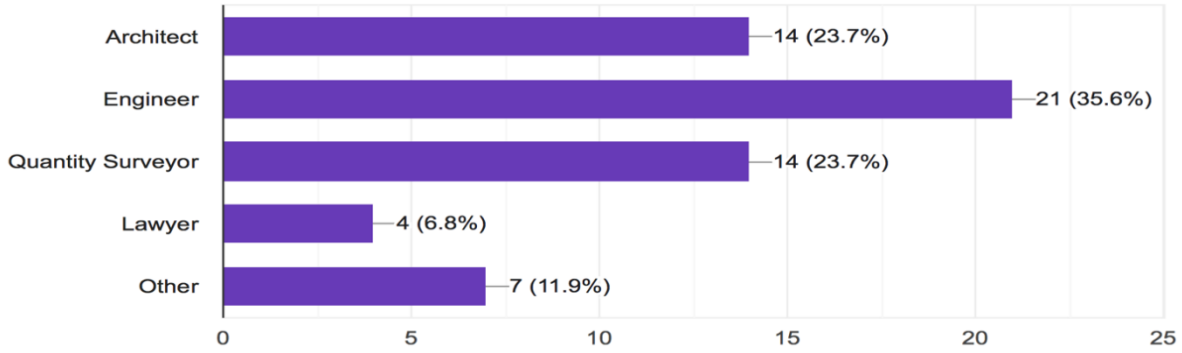

Figure 5. 1: Professional background of respondents.

Source: Data from the Field 2021

The majority of the respondents were engineers – 35.6% followed by quantity surveyors - 23.7%, Architects - 23.7%, Others - 11.9%, and lastly lawyers - 6.8%. Some of the quantity surveyors and engineers were employees of contractors, therefore, responded on their behalf, while others were representing consultants and some arbitrators. While the architects were mainly representing consultants and arbitrators. The lawyers were all arbitrators that specialise in resolving construction disputes. The category of others comprised of the developers and contractors whose professional backgrounds are in other fields.

Period worked in the construction industry.

The years of experience considered ranged from 5 to above 20 years of experience in the construction industry. Table 5.3 below includes the ranges and the participants within each range.

Table 5. 3: Years of Experience

YEARS OF EXPERIENCE	NO./59	PERCENTAGES OF 59
5-10 Years	16	27.1%
10-15 Years	13	22.0%
15-20 Years	16	27.1%
Above 20 Years	14	23.7%

Source: Data from the Field 2021

The data in table 5.3 above is illustrated in the pie chart in figure 5.2 below.

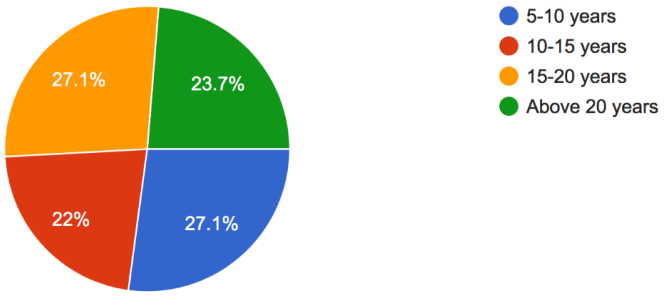

Figure 5. 2:Years of Experience

Source: Data from the Field 2021

The majority of the respondents had 5-10 years of experience of 27.1%, and 15-20 years making 27.1%, followed by more than 20 years of experience of 23.7%, and 10-15 years of experience with 22%

Level of involvement in the execution of construction projects.

The purpose of this section was to establish the level of involvement participants had in the execution of construction projects. The parameters used were; 1 – Very Low, 2 - Low, 3 – Moderate, 4 – High, and 5 - Very High. The different levels of involvement established from the data are in Table 5.4 below.

Table 5. 4: Level of involvement.

LEVEL OF INVOLVEMENT	NO./59	PERCENTAGES OF 59
1 - VERY LOW	1	1.7%
2 - LOW	0	0.0%
3 - MODERATE	3	5.2%
4 - HIGH	14	24.1%
5 - VERY HIGH	40	69.0%

Source: Data from the Field 2021

The data in table 5.4 is illustrated in the vertical bar graph in figure 5.3 below.

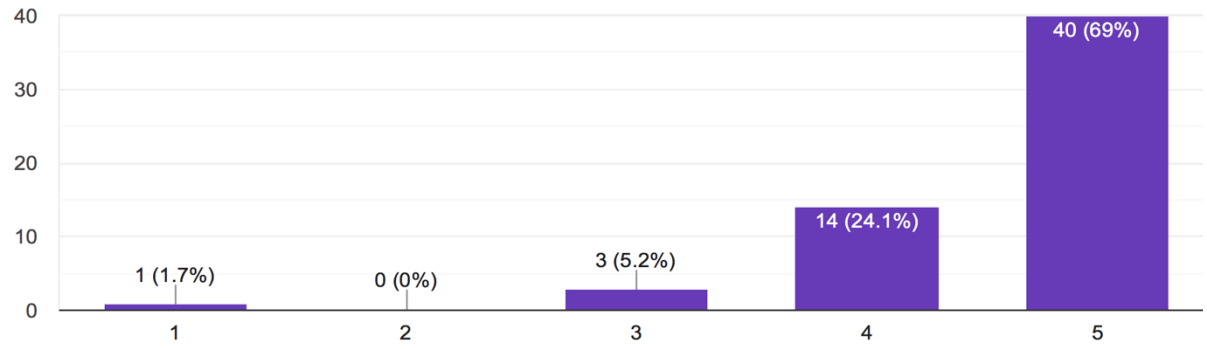

Figure 5. 3: Level of involvement

Source: Data from the Field 2021

Regarding the data illustrated in the figure above, the majority of the participants have been very highly involved in the execution of construction projects – 69%, followed by those highly involved at 24.1%, those moderately involved at 5.2%, and lastly 1.7% whose participation was very low. This shows that over 93.1% of the respondents have been highly involved in the execution of construction projects.

Capacity in which the participants were involved in the construction industry.

Participants in the construction industry can be involved in different capacities from project to project. The study focused on capacities or roles ranging from employer, contractor, architect, quantity surveyor, engineer, project manager, contract administrator, construction manager, consultant, lawyer, and arbitrator. The different capacities and roles involved by the respondents are summarised in table 5.5 below.

Table 5. 5: Capacities and Roles of the participants

CAPACITIES AND ROLES	NO.	PERCENTAGES OF 61
Architect	14	23.7 %
Quantity Surveyor	14	23.7%
Engineer	20	33.9%
Project Manager	40	67.8%
Contract Administrator	16	27.1%
Construction Manager	10	16.9%
Consultant	25	42.4%
Contractor	12	20.3%
Lawyer	4	6.8%
Employer/Client	9	15.3%
Arbitrator	11	18.6%

Source: Data from the Field 2021

The results in table 5.5 are illustrated in a horizontal bar graph in figure 5.4 below;

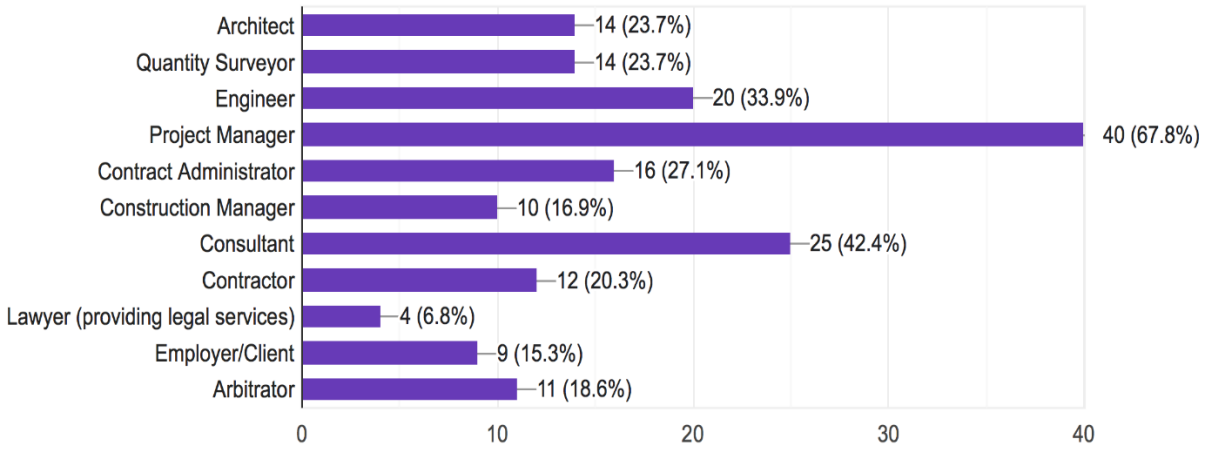

Figure 5. 4:Capacities and Roles of the participants

Source: Data from the Field 2021

The majority of the participants have participated as project managers – 67.8%, followed by consulting role – 42.4%, engineer – 33.9%, contract administrator – 27.1%, quantity surveyor – 23.7%, architect – 23.7%, contractor – 20.3%, arbitrator – 18.6%, construction manager –

16.9%, employer/client – 15.3% and lastly the lawyers – 6.8%. Thus, the results elaborate that several participants have taken on different roles from project to project, increasing their exposure to disputes and dispute resolution.

Standard contracts.

Whereas participants may be highly involved in the execution of the project and in various capacities, the contract used on a particular project guides on the method or methods to be used in resolving any dispute that may arise. Thus, the purpose of this section was to establish the various standard forms of contracts that the participants had used. These are summarised in table 5.6 below.

Table 5. 6: Standard Forms of Contracts.

STANDARD CONTRACT	NO.	PERCENTAGES OF 59
EAIA	31	52.5%
FIDIC	36	61.0%
PPDA	47	79.7%
WORLD BANK	29	49.2%
OTHERS	15	25.4%

Source: Data from the Field 2021

The information in table 5.6 is represented in the horizontal bar graph in figure 5.5 below.

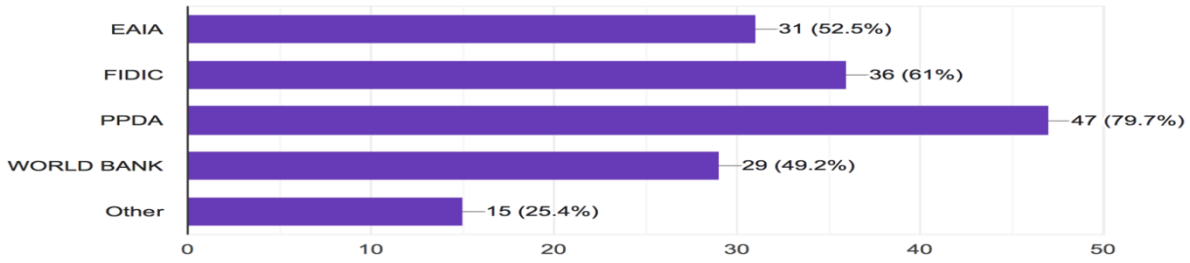

Figure 5. 5: Standard forms of Contracts.

Source: Data from the Field 2021

The majority of the participants have used the PPDA contract, followed by the FIDIC, the EAIA, the World Bank Contract, and other forms of contracts that may arise from different

developers or consultants. All the established contracts have dispute resolution clauses that often guide parties in the event of a dispute.

Contract Administrators.

A contract administrator plays a vital role in administering the contract for the project and thereby enabling the successful execution of the project. Having established the various standard forms of contracts, the purpose of this section was to find out who was the designated contract administrator for the projects. The data has been presented in Table 5.7 below;

Table 5. 7: Contract Administrators.

CONTRACT ADMINISTRATORS	NO./59	PERCENTAGES OF 59
Architect	42	71.2%
Engineer	31	52.5%
Quantity Surveyor	19	32.2%
Lawyer	4	6.8%
Others	5	8.5%

Source: Data from the Field 2021

The data in table 5.7 is illustrated in the horizontal bar graph below.

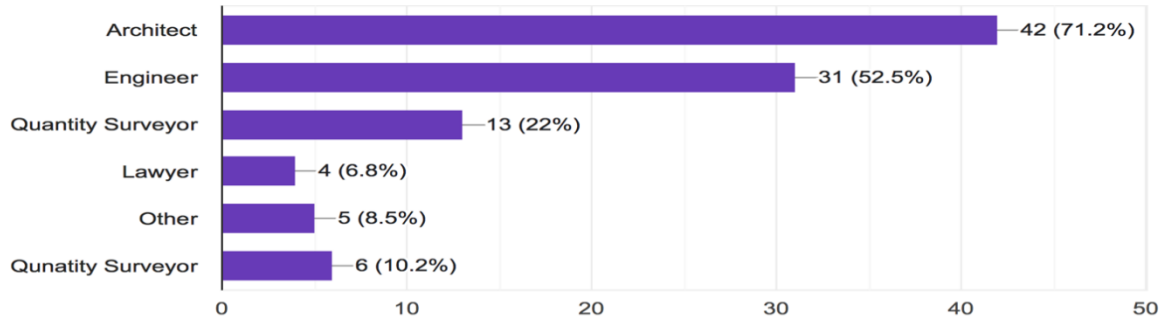

Figure 5. 6: Contract Administrators

Source: Data from the Field 2021

The majority of the participants have encountered architects as the contract administrators for the projects giving 71.2 %, followed by engineers at 52.5%, quantity surveyors at 32.2% (22%

+10.2%), lawyers at 6.8%, and lastly others (for example; client representative, accountants, construction manager among others) at 8.2%.

5.2.3 Disputes in the Construction industry and the extent to which arbitration is used to resolve them.

This section aimed to confirm that indeed disputes are arising on construction projects in Uganda and establish the extent to which arbitration is used to resolve construction disputes.

Participants encountering disputes.

All the participants confirmed that they encountered disputes on the various projects they have participated in, giving the study a result of 100%. It proves that there is a need for dispute resolution methods, and since construction is a commercial activity, alternative dispute resolution methods like arbitration take precedence.

Causes of the disputes.

The causes of disputes registered by the respondents are listed in table 5.8 below.

Table 5. 8: Causes of Disputes

CAUSES OF DISPUTES	NO. / 59	PERCENTAGES OF 59
Delays	48	81.4%
Non-payment	34	57.6%
Ambiguity of contract documents	19	32.2%
Site instructions	19	32.2%
Variations	44	74.6%
Slow progress of the contractor	36	61.0%
Abandoning site by the contractor	17	28.8%
Unlawful termination of the contract	7	11.9%

Source: Data from the Field 2021

The data in table 5.8 is illustrated in the bar graph in figure 5.7 below.

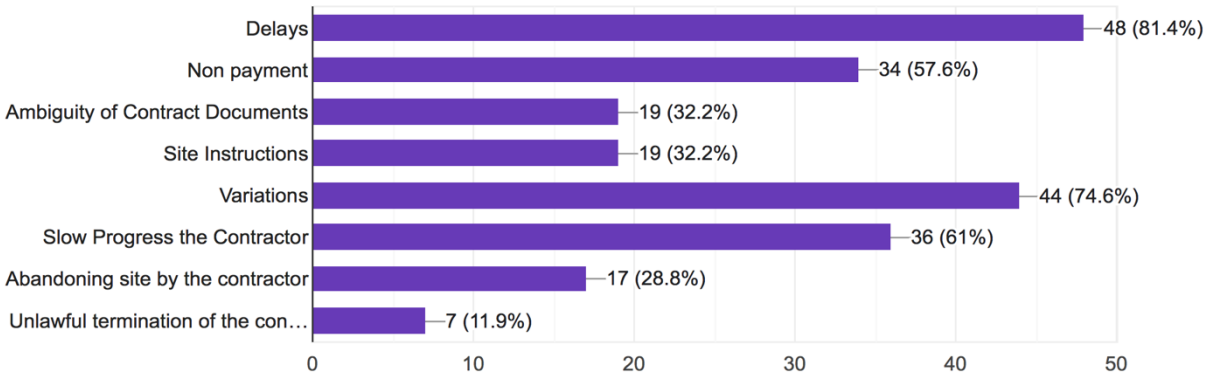

Figure 5. 7: Causes of Disputes

Source: Data from the Field 2021

The most common causes of the disputes are delays - 81.4%, followed by variations at 74.6%, slow progress of the contractor at 61%, non-payment at 57.6%, site instructions and ambiguity of contract documents at 32.2%, abandoning of the site by the contractor both at 28.8% and lastly unlawful termination of the contract – 11.9%.

ADR methods in standard forms of contracts.

The objective of this section was to determine the methods of dispute resolution provided for in the standard forms of contracts that the participants have used. These are listed in table 5.9 below.

Table 5. 9: ADR methods in standard forms of contracts.

ADR METHODS IN STANDARD FORMS OF CONTRACTS.	NO. / 59	PERCENTAGES OF 59
Negotiation	45	76.3%
Conciliation	7	11.9%
Mediation	25	42.4%
Arbitration	42	71.2%
Adjudication	22	37.3%
Dispute Review Boards	14	23.7%
Expert Witness	4	6.8%
Med-Arb	3	5.1%
Arb-Med	0	0%
Arb-Med-Arb	0	0%

Source: Data from the Field 2021

The data in table 5.9 of the ADR methods in standard forms of contracts is illustrated below in figure 5.8 as a horizontal bar graph.

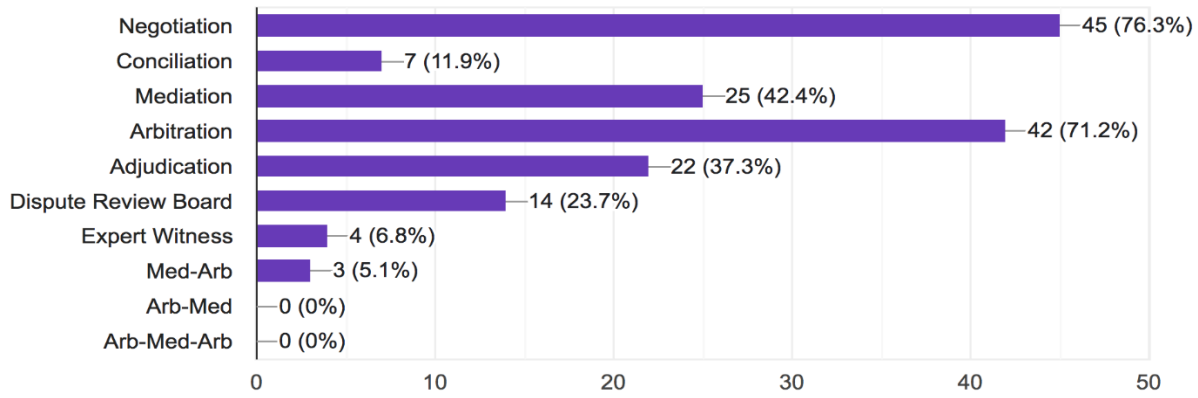

Figure 5. 8: ADR methods in standard forms of contracts.

Source: Data from the Field 2021

According to the responses the majority of the standard contracts used in the construction provide for negotiation, followed by Arbitration, then mediation, adjudication, Dispute Review

boards, Conciliation, Expert Witness, and Med-Arb. None of the contracts provide for Arb-Med and Arb-Med-Arb methods of dispute resolution.

ADR methods tried in resolving disputes.

When a dispute arises on a project, the parties will often refer to the contract provisions for guidance in terms of dispute resolution in an attempt to resolve the dispute as fast as possible. The objective of this section was to determine what ADR method, as guided by the contract provisions did the parties use in an attempt to resolve the dispute. The methods tried in resolving disputes are summarized in table 5.10 below.

Table 5. 10:ADR methods tried in resolving disputes.

ADR METHOD FINALLY USED	NO. / 59	PERCENTAGES OF 59
Negotiation	43	74.1%
Conciliation	9	15.5%
Mediation	25	43.1%
Arbitration	35	60.3%
Adjudication	15	25.9%
Dispute Review Boards	4	6.9%
Expert Witness	4	6.9%
Med-Arb	1	1.7%
Arb-Med	0	0%
Arb-Med-Arb	0	0%

Source: Data from the Field 2021

The data in table 5.10 of the ADR methods tried in resolving disputes is illustrated below in figure 5.9 as a horizontal bar graph.

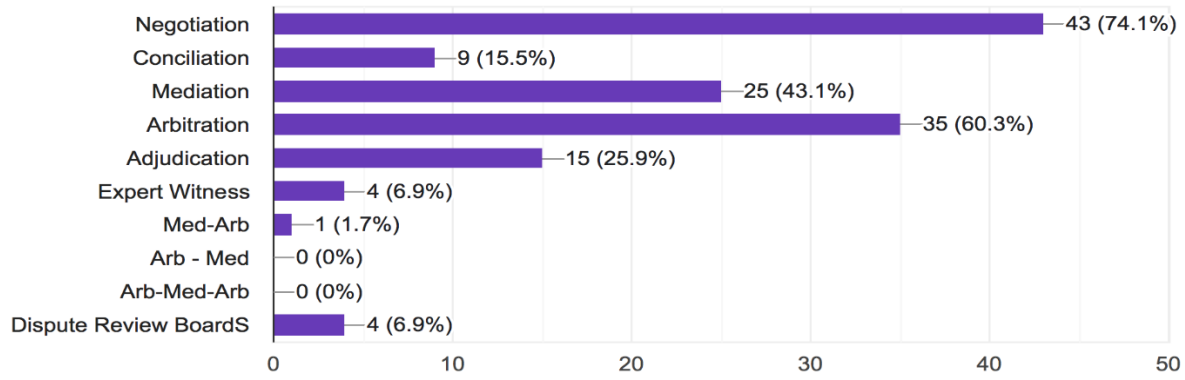

Figure 5. 9: ADR methods tried in resolving disputes.

Source: Data from the Field 2021

Majority of the disputes that arise, parties use negotiation, followed by arbitration, mediation, adjudication, dispute review boards, conciliation, expert witness and lastly Med-Arb. The data also shows that parties have never attempted to use arb-med and arb-med-arb to resolve their disputes. 0712005034

The ADR Method finally used to resolve the dispute.

Whereas the contract provisions provide for several methods, there is usually one that will enable the parties to resolve the dispute. This section aimed to establish which of the methods provided for in the contract helped the parties to resolve the dispute. The data is summarized in table 5.11 below.

Table 5. 11: The ADR Method finally used to resolve the dispute.

ADR METHOD FINALLY USED	NO. / 59	PERCENTAGES OF 59
Negotiation	40	69.0%
Conciliation	9	15.5%
Mediation	17	29.3%
Arbitration	22	37.9%
Adjudication	7	12.1%
Dispute Review Boards	5	8.6%
Expert Witness	3	5.2%
Med-Arb	1	1.7%
Arb-Med	0	0%
Arb-Med-Arb	0	0%

Source: Data from the Field 2021

The data in table 5.11 of the ADR method finally used to resolve the disputes at hand is further illustrated in figure 5.10 as a horizontal bar graph.

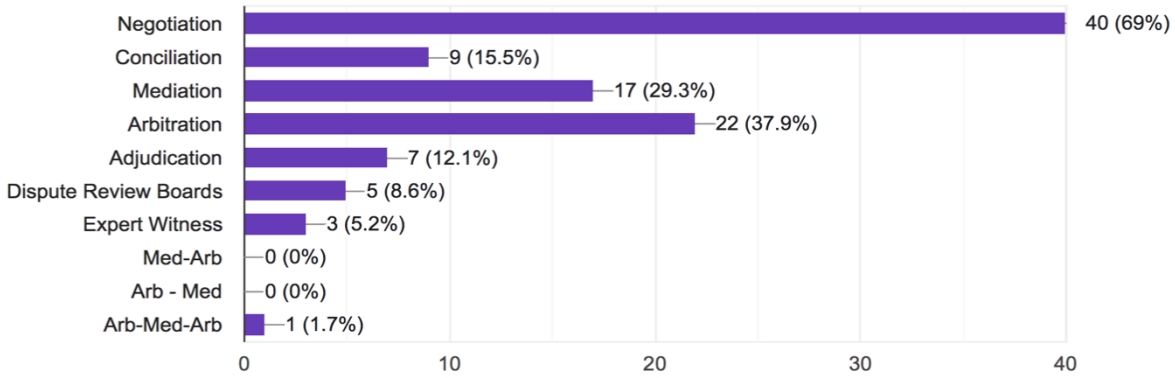

Figure 5. 10:ADR method finally used to resolve the disputes.

Source: Data from the Field 2021

The data elaborates that negotiation – 69% is the most common method that was finally used to resolve the dispute, followed by arbitration – 37.9%, mediation – 29.3%, conciliation –

15.5%, adjudication – 12.1%, dispute review boards – 8.6%, expert witness 5.2% and lastly Med-Arb – 1.7%.

Selection of ADR method to use where more than one method was in the contract.

In cases where the contract provided for more than one method to be used, the parties had to select or decide which one to adopt. The data is presented in Table 5.12 below.

Table 5. 12: Who selected the ADR Method.

WHO SELECTED THE METHOD	NO. / 59	PERCENTAGES OF 59
Mutual agreement between the parties	48	85.7%
Advice from Counsel or Advocate	11	19.6%
Advice from Consultants	20	35.7%
Advice from friends	1	1.8%

Source: Data from the Field 2021

The data in table 5.12 of the ADR method finally used to resolve the disputes at hand is further illustrated below in figure 5.11 as a horizontal bar graph.

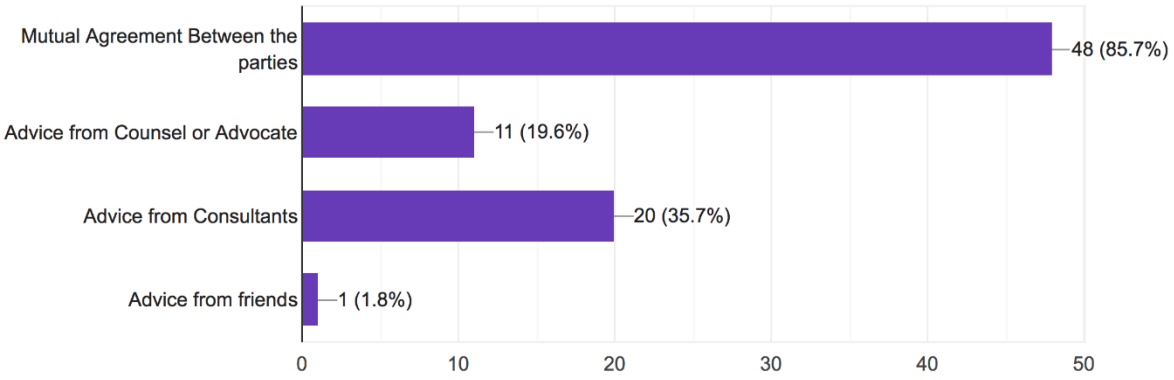

Figure 5. 11:Who selected the ADR Method.

Source: Data from the Field 2021

The ADR method used is selected by mutual agreement between the parties – 85.7%, followed by advice from the consultants on the project – 35.7%, advice from the counsel or advocates of the parties – 19.6%, and finally advice from friends – 1.8%.

Reasons for choosing the particular ADR method over others.

Whereas the selected method was through mutual agreement by the parties, this section aimed at determining the reasons of their choice. The data is presented in Table 5.13 below.

Table 5. 13: Reasons for choosing the particular ADR Method.

REASONS	NO. / 59	PERCENTAGES OF 59
Mutual agreement between the parties	45	77.6%
Advice from Counsel or Advocate	11	19.0%
Flexibility	24	41.4%
Confidentiality	15	25.9%
Advice from Consultants	20	34.5%
Advice from friends	1	1.7%
Cost effectiveness	21	36.2%
Timeliness	23	39.7%
Financial size of the dispute	5	8.6%
Technicalities of the method	6	10.3%
Technicalities of the dispute	12	20.7%
Form of the dispute	6	10.3%
The support of the legal system of the country	6	10.3%
Availability of persons well versed with the process of alternative dispute resolution	7	12.1%

Source: Data from the Field 2021

The data in table 5.13 of reasons for choosing the particular ADR method is illustrated in figure 5.12 as a horizontal bar graph.

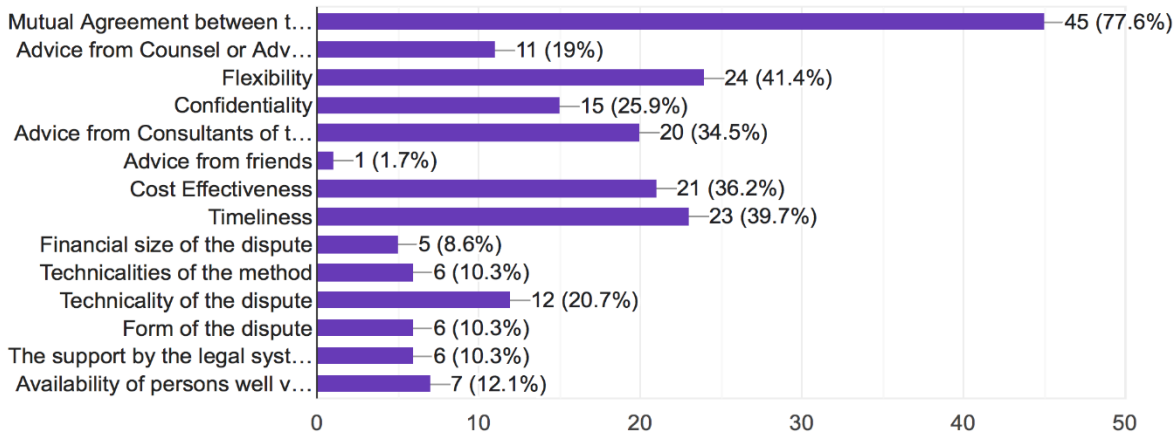

Figure 5. 12: Reasons for choosing the particular ADR Method.

Source: Data from the Field 2021

The majority of the time, the reason behind the selection of the ADR method used in dispute resolution is a mutual agreement between the parties – 77.6%, followed by flexibility – 41.4%, timeliness – 39.7%, cost-effectiveness of the method – 36.2%, advice from the consultants – 34.5%, confidentiality – 25.9%, technicality of the dispute – 20.7%, advice from the counsel or advocate – 19%, availability of the persons well versed with the ADR process – 12.1%, technicalities of the method, form of the dispute, the support of the legal system of the country – 10.3%, financial size of the dispute – 8.6%, and lastly advice from friends – 1.7%. Therefore, parties greatly influence the choice of the ADR method to be used in dispute resolution.

Familiarity with Arbitration.

Upon selection of arbitration as the ADR method, this section aimed at establishing how familiar the participants were with it. The data is illustrated in figure 5.13 below.

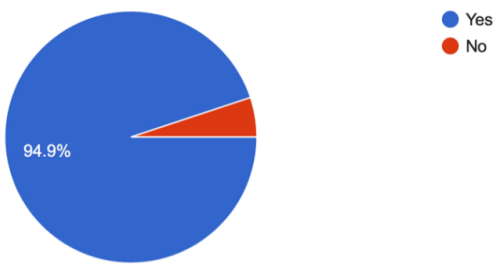

Figure 5. 13: Familiarity with Arbitration.

Source: Data from the Field 2021

The majority of the participants confirmed that they were familiar with arbitration – 94.9% and others - 5.1% are not familiar with arbitration.

Disputes resolved using arbitration.

This section was aimed at ascertaining the number of disputes the participants had been involved in and how many had been resolved using arbitration. The data is illustrated in figure 5.14 below.

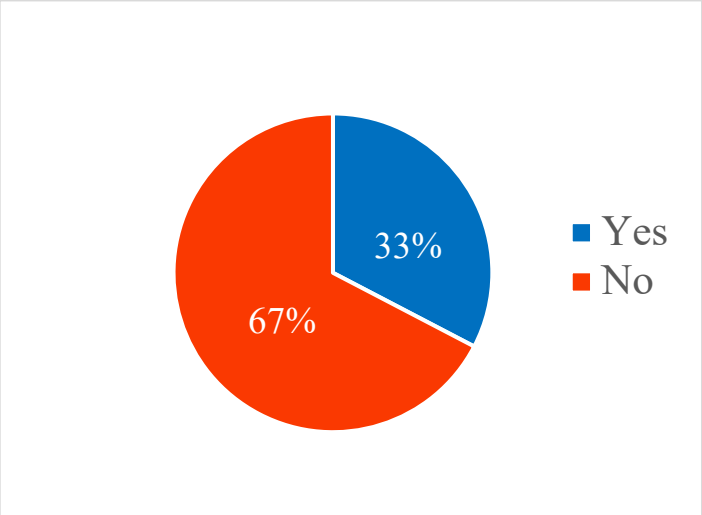

Figure 5. 14: Disputes that have been resolved using Arbitration.

Source: Data from the Field 2021

The study registered a total of 330 disputes, and of the 294, 96 were resolved using arbitration. Thus, the study established that 33% of the disputes were resolved through arbitration.

5.2.4 Challenges faced in using arbitration to resolve construction disputes in Uganda.

When a dispute arises, and arbitration is chosen as the ADR method to resolve the dispute, sometimes it is successful, and other times it may not be, thereby necessitating the parties to proceed to litigation or any other remedy as provided in the contract. This section thus, aimed at establishing the challenges faced while using arbitration as an ADR.

Involvement in any of the arbitration proceedings.

The purpose of this section was to establish the participants that had been involved in the arbitration proceedings. The data is presented in figure 5.15 below.

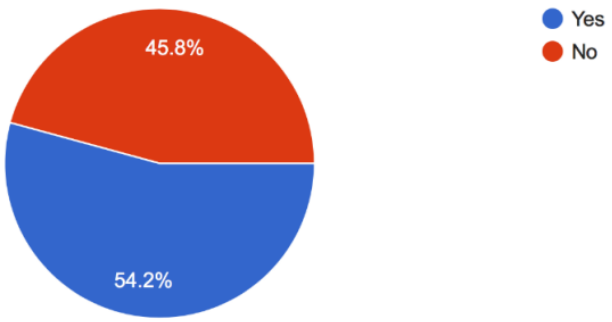

Figure 5. 15: Involvement in arbitration proceedings.

Source: Data from the Field 2021

The majority of the respondents have been actively involved in arbitration proceedings – 54.2% while 45.8 % have not been involved in any proceedings. This suggests that most respondents had some experience in the arbitration procedure.

Capacity to participate or get involved.

The objective of this section was to determine the capacity the participants had been involved in during the arbitration. The data is summarized in table 5.15 below.

Table 5. 14: Capacity to participate or get involved.

CAPACITY	NO. / 59	PERCENTAGES OF 59
Claimant	9	24.3%
Respondent	13	35.1%
Arbitrator	11	29.7%
Party Representative	9	24.3%
Expert Witness	8	21.6%

Source: Data from the Field 2021

The data in table 5.14 of the capacity to participate or get involved in arbitration is illustrated in figure 5.16 below.

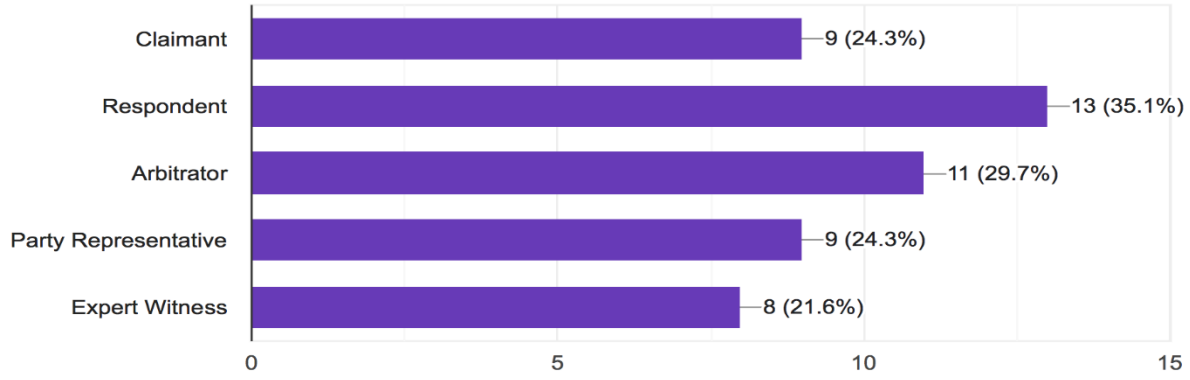

Figure 5. 16: Capacity to participate or get involved.

Source: Data from the Field 2021

The majority of the respondents that have been involved in arbitration have participated in the capacity of the respondent – 35.1%, followed by Arbitrator – 29.7%, Claimant and Party representatives – 24.3%, and lastly expert witnesses – 21.6%.

Confidentiality of the arbitration proceedings.

Confidentiality is a strongly recognized component of the arbitration process. Thus, the objective of this section was to establish whether the arbitration proceedings strictly uphold this component of confidentiality. The data is illustrated in the pie chart shown in figure 5.17 below.

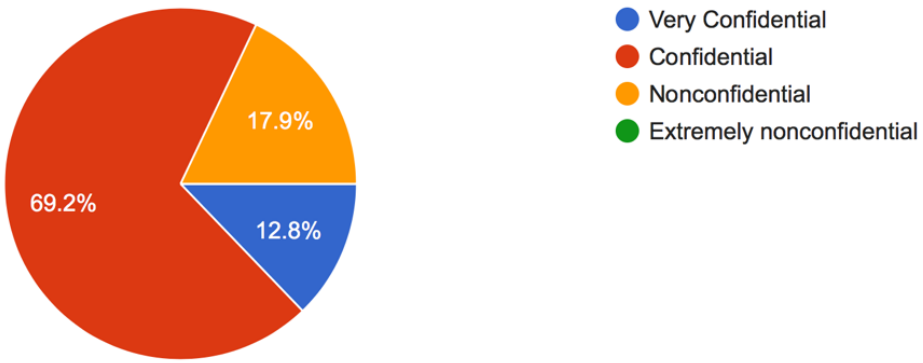

Figure 5. 17: Confidentiality of the arbitration proceedings.

Source: Data from the Field 2021

According to the data, the majority of the participants agree that the arbitration proceedings were confidential – 82% (69.2%+12.8%), while 17.9% of the proceedings were nonconfidential. This data suggests that confidentiality in some arbitration proceedings is breached and compromises the entire procedure at large.

Parties' satisfaction with the outcomes.

The objective of this section was to establish whether parties had been satisfied with the outcomes from the arbitration proceedings. The following parameters were used; Very satisfied, Satisfied, Dissatisfied, and Strongly Dissatisfied. The data is shown in Table 5.15 below.

Table 5. 15: Level of satisfaction from the outcomes of arbitration.

LEVEL OF SATISFACTION	NO. / 59	PERCENTAGES OF 59
Very Satisfied	5	12.5%
Satisfied	30	75.0%
Dissatisfied	10	25.0%
Strongly dissatisfied.	0	0

Source: Data from the Field 2021

The data in table 5.15 is illustrated in figure 5.18 below.

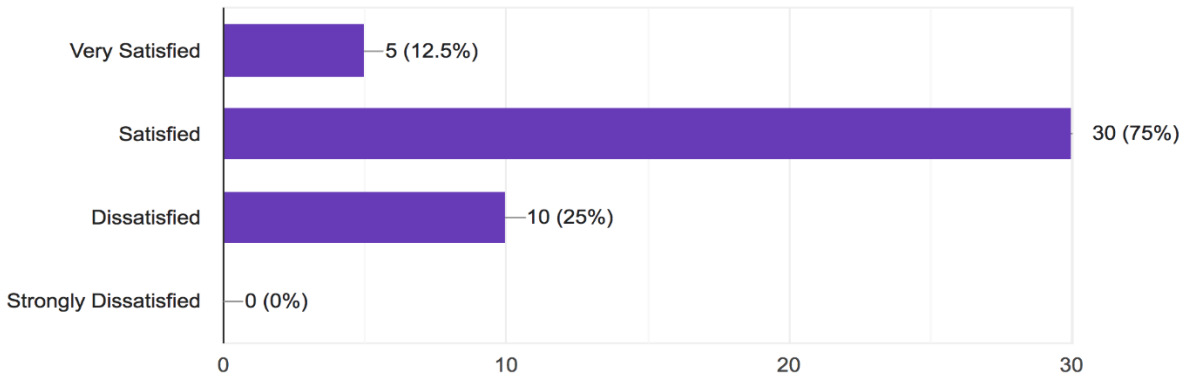

Figure 5. 18: Level of satisfaction from the outcomes of arbitration.

Source: Data from the Field 2021

According to the outcomes of arbitration, the majority of the parties were satisfied – 87.5% (12.5% + 75%), while 25% of the parties were dissatisfied. This suggests that the disputes were resolved successfully.

Time taken in arbitration.

This section aimed at establishing the average time taken by arbitration. The following parameters were used; short time (within months), reasonable time (within a year), long time (between one to two years), and very long time (more than two years). Table 5.16 summarizes the time taken in the arbitration.

Table 5. 16: Time taken in arbitration.

TIME TAKEN	NO. / 59	PERCENTAGES OF 59
Short Time	7	17.5%
Reasonable Time	25	62.5%
Long Time	10	25.0%
Very long time	5	12.5%

Source: Data from the Field 2021

The data in table 5.16 is illustrated as a horizontal bar chart as shown in figure 5.19 below.

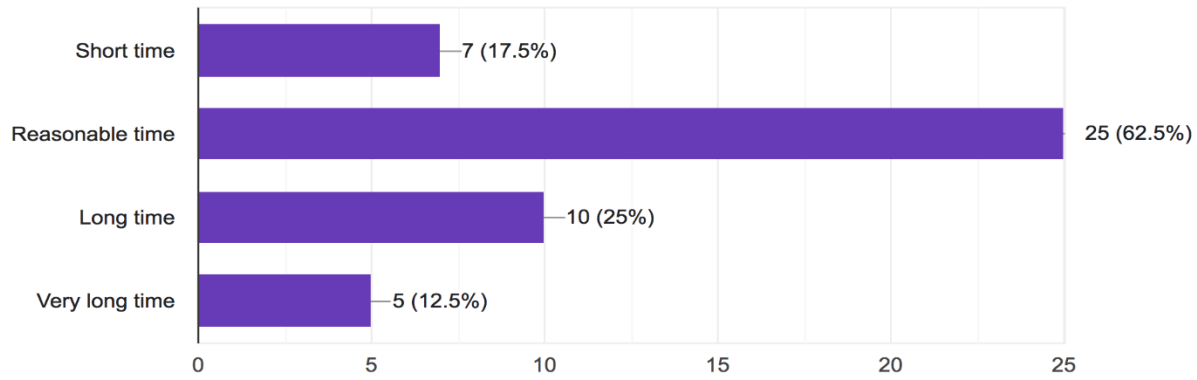

Figure 5. 19: Time taken in arbitration.

Source: Data from the Field 2021

Of the proceedings conducted and participated in, the majority – 62.5% were conducted within a reasonable time, that is to say, they are not short but also not too long either while 25% took

a long time, followed by 17.5% that were conducted within a short time and lastly 12.5% that took a very long time.

Competency of arbitral tribunal.

The objective of this section was to establish how competent the arbitration tribunal was in conducting the arbitration proceedings successfully. The study used the following parameters; Strongly Agree, Agree, Disagree, and Strongly Disagree. The data is summarized in table 5.17 below.

Table 5. 17: Competency of arbitral tribunal.

COMPETENCY OF ARBITRAL TRIBUNAL	NO. / 59	PERCENTAGES OF 59
Strongly Agree	8	20.0%
Agree	30	75.0%
Disagree	2	5.0%
Strongly Disagree	0	0.0%

Source: Data from the Field 2021

The data in table 5.17 is shown as a horizontal bar chart in figure 5.20 below.

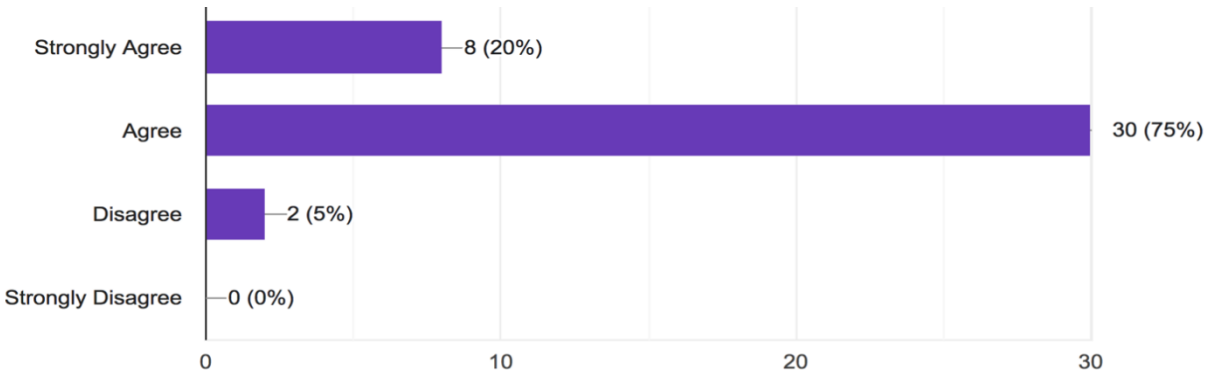

Figure 5. 20: Competency of arbitral tribunal.

Source: Data from the Field 2021

According to the data, the majority of the respondents - 95% (75% + 20%) agree that the arbitral tribunal was competent as far as conducting arbitration proceedings is concerned, while 5% disagree. The results suggest that, from the proceedings, the arbitral tribunals had the competency required to conduct the arbitration proceedings.

Partiality of arbitral tribunal.

The objective of this section was to establish whether the arbitral tribunal was partial while conducting the arbitration proceedings. The study used the following parameters; Strongly Agree, Agree, Disagree, and Strongly Disagree. The results are summarized in Table 5.18 below.

Table 5. 18: Partiality of arbitral tribunal.

PARTIALITY OF ARBITRATION TRIBUNAL	NO. / 59	PERCENTAGES OF 59
Strongly Agree	7	18.5%
Agree	16	44.7%
Disagree	13	34.3.0%
Strongly Disagree	1	2.6%

Source: Data from the Field 2021

The data in table 5.18 is illustrated as a horizontal bar chart as shown in figure 5.21 below.

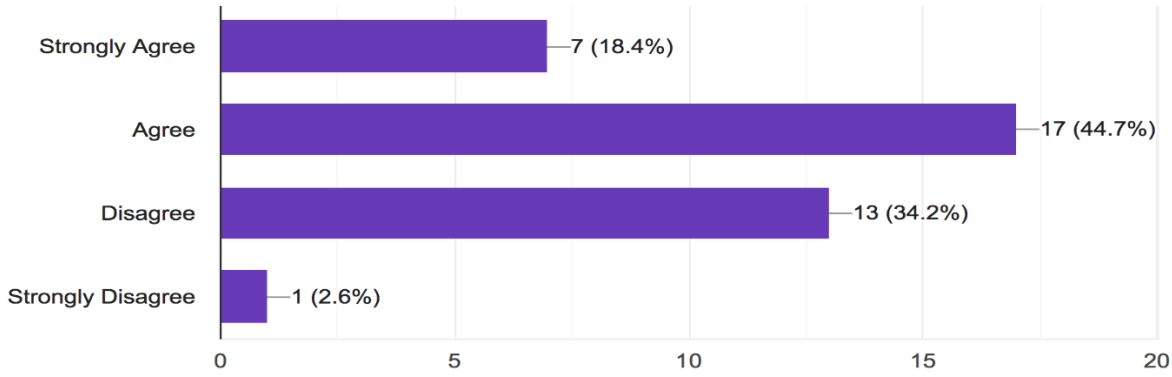

Figure 5. 21: Partiality of arbitral tribunal.

Source: Data from the Field 2021

According to the data, over 63.1% (18.4% + 44.7%) of the respondents agree that the arbitral tribunal was partial, while 36.8% disagree. The results suggest that the element of impartiality within the arbitration is in question. Thereby a potential challenge to arbitration as an ADR.

Other attributes of the arbitral tribunal.

The objective of this section was to determine other attributes of the arbitral tribunal apart from competency and partiality. The participants were required to list, and it has been summarized in table 5:19 below.

Table 5. 19: Other attributes of the arbitral tribunal.

Item	Other attributes of the Arbitral Tribunal	No.
1	Knowledge of the construction industry	7
2	Experience	2
3	Expeditiousness.	4
4	Knowledge of Contracts Law	1
5	Professionalism	4
6	Cost conscious to give satisfactory outcome	1
7	Resourceful	1
8	Contract management skills	2
9	Strong procedural skills and subject matter expertise	1
10	Confidentiality	2
11	Strictness	1
12	Patience	1
13	Transparency	1
14	Less formal	1
15	Advisory	1
16	Good time management	2
17	Insufficient knowledge of contract management	1
18	People management Skills	1
19	Legal knowledge	1
20	Bias since the respondent was their preferred contractor	1
21	Ethical	2

According to the participants, the arbitral tribunal exhibited several other attributes, as listed in table 5:19 above. Among these, knowledge of the construction industry is the most popular, followed by expeditiousness and professionalism.

Participation of the project team in arbitration.

Every construction project is executed by a project team. The purpose of this section was to establish whether the project team participated in arbitration proceedings. The data is illustrated as a horizontal bar chart shown in figure 5.22 below.

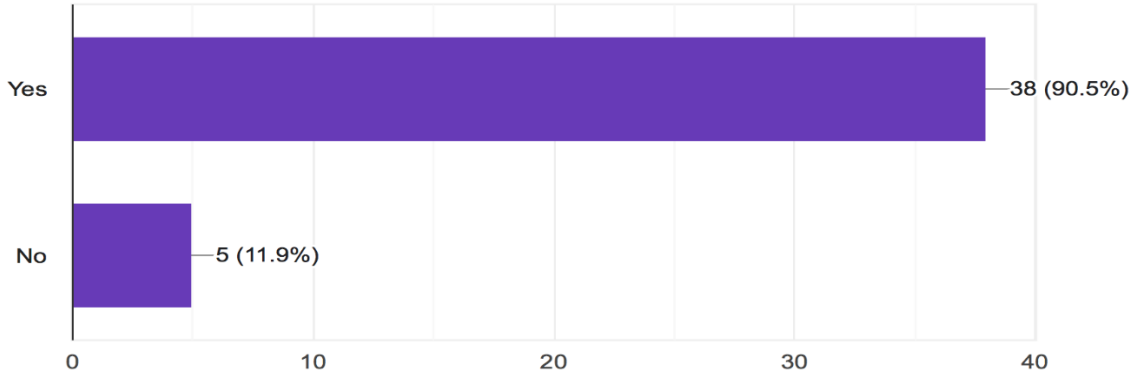

Figure 5. 22: Participation of project team in arbitration.

Source: Data from the Field 2021

According to the data, 90.5% of the arbitration proceedings had the project team participating, while 11.9% never had any project team participation. The data suggests that when a dispute arises and is taken to arbitration, the project teams are involved in the proceedings to help resolve the dispute as fast as possible.

Role of the project team in arbitration.

The objective of this section was to establish the roles the project team played while participating in the arbitration proceedings. The data is summarized in table 5.20 below.

Table 5. 20: Role of the project team in arbitration.

ROLE OF THE PROJECT TEAM IN ARBITRATION	NO. / 59	PERCENTAGES OF 59
Witness of Fact	18	48.6%
Expert Witness	12	32.4%
Party Representative	12	32.4%

Source: Data from the Field 2021

The data in table 5.20 is illustrated as a horizontal bar chart in figure 5.23 below.

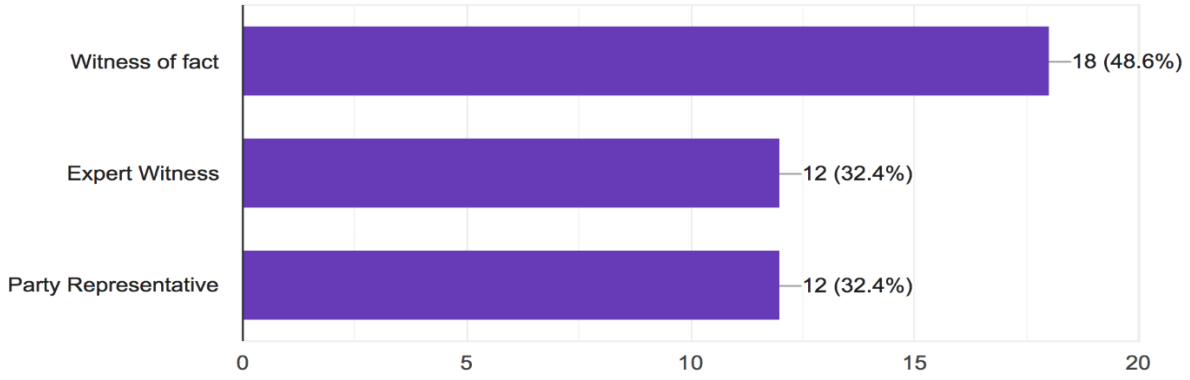

Figure 5. 23: Role of the project team in arbitration.

Source: Data from the Field 2021

In the arbitration proceedings, 48.6% of the project team members participated as witnesses of fact, 32.4% as Party representatives, and 32.4% as expert witnesses. This elaborates that the project team members are often involved as witnesses (witness of fact).

Conclusion of the Arbitration proceedings.

This section aimed to determine how the proceedings were concluded. The data is illustrated in the horizontal bar graph in figure 5.24 below.

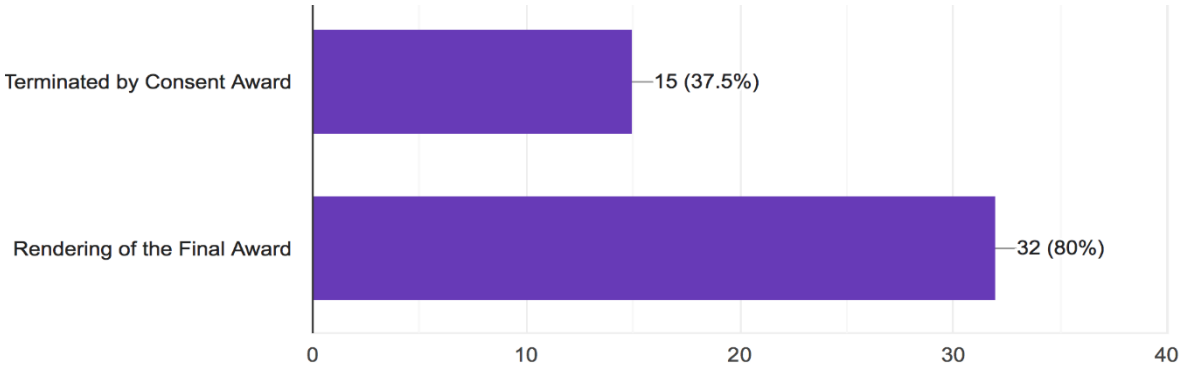

Figure 5. 24: Conclusion of the arbitration proceedings.

Source: Data from the Field 2021

According to the data, 80% of the proceedings were terminated when the tribunal issued the final award, while 37.5% were terminated by the consent award. This suggests that the majority of the proceedings are conducted until the end when the arbitrator renders an award. While some parties settle before the conclusion of the proceedings.

Enforcement of the arbitral awards.

Upon successful completion of the proceedings, enforcement comes into play. The objective of this section was to establish whether the awards were enforced or not. The results are illustrated in the horizontal bar graph in figure 5.25 below.

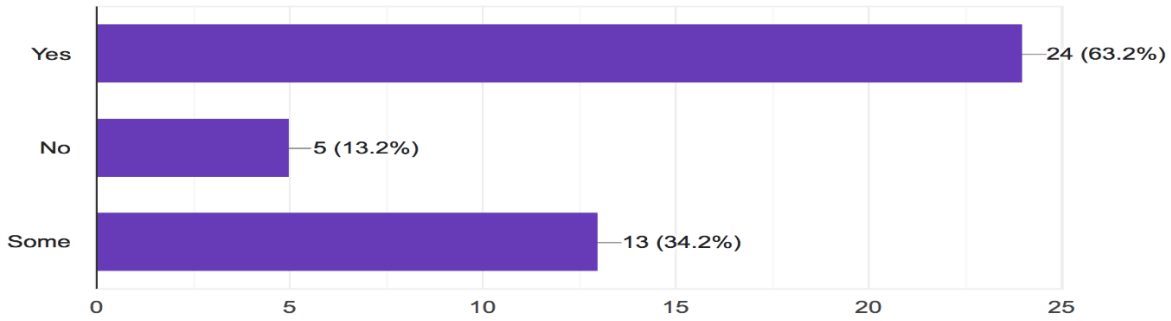

Figure 5. 25: Enforcement of the Arbitral Awards.

Source: Data from the Field 2021

According to the data, 63.2% of the awards rendered were enforced, while 34.2% were partially enforced, and 13.2% were not enforced at all. This suggests that some disputants do not adhere to the outcomes of the proceedings.

Court Intervention.

This section aimed to establish whether there was any court intervention in any of the arbitration proceedings. The results are illustrated in the horizontal bar graph in figure 5.26 below.

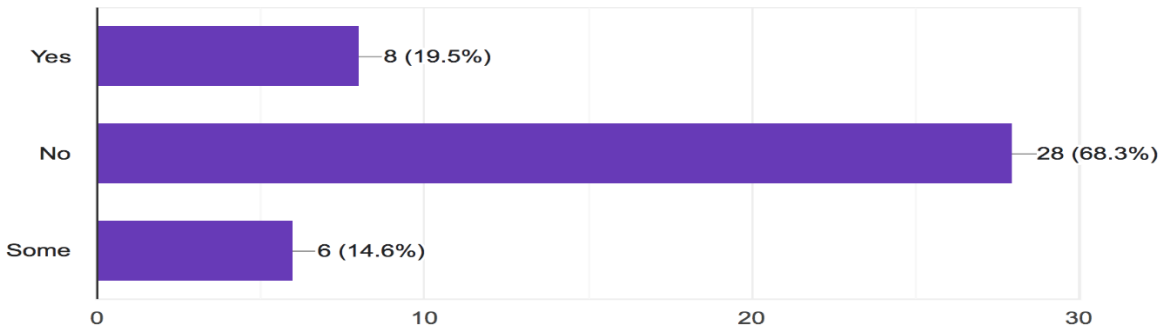

Figure 5. 26: Court Intervention.

Source: Data from the Field 2021

The majority of the arbitration proceedings - 68.3% did not experience any court interventions, while 19.5% had court intervention and 14.6% had partial court intervention. Thus, when the need arises, the court intervenes until the extent allowed for in the Act.

Reasons for court intervention.

This section aimed at establishing the reasons why the court intervened in the proceedings where the participants declared that it had. The participants were required to list the reasons why the court had intervened, and these reasons have been listed in table 5.21 below.

Table 5. 21: Court intervention.

Item	Reasons for Court Intervention	No.
1	Challenge to interim award	3
2	Award appealed	4
3	As a control process, the court was engaged at some point	1
4	Enforcement of the award interim measures	2

This elaborates that the court intervention is mainly when it comes to challenge of the awards.

Challenges in the use of arbitration in the construction industry in Uganda.

The objective of this section was for the participants to identify the challenges they had experienced while using arbitration in the construction industry in Uganda. The data is summarized in table 5.22 below.

Table 5. 22: Challenges in the use of arbitration in the construction industry in Kampala.

CHALLENGES	NO. / 59	PERCENTAGES OF 59
Lack of training	22	45.8%
Limited experience	29	60.4%
High cost implication	14	29.2%
Lengthy process	22	45.8%
Unenforceability of the arbitral award	9	18.8%
Unsatisfactory outcome	9	18.8%
Lack of confidence in the proceedings	15	31.3%
Incompetent party representatives	13	27.1%
Ambiguity of the arbitration agreement	6	12.5%
Lack of immunity of the arbitrator	8	16.7%

Source: Data from the Field 2021

The data in table 5.23 is illustrated as a horizontal bar chart in figure 5.27 below.

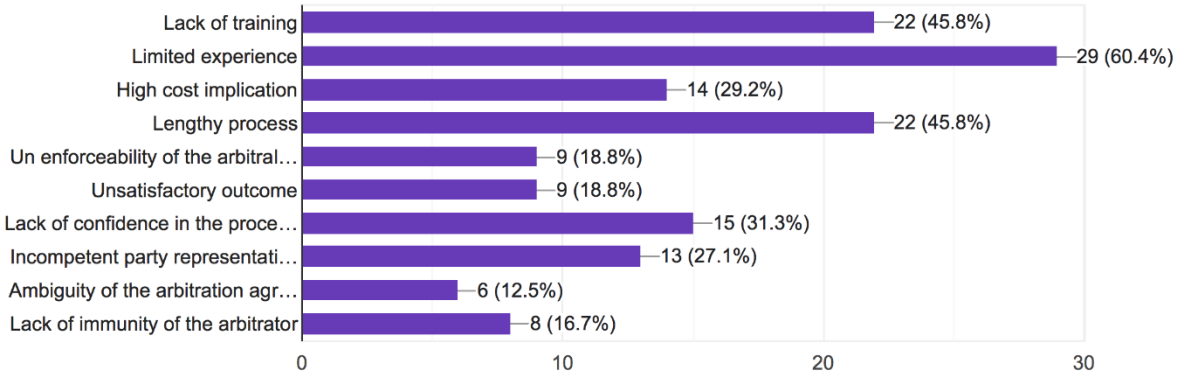

Figure 5. 27: Challenges in the use of arbitration in the construction industry in Kampala.

Source: Data from the Field 2021

According to the responses received, the participants have majorly encountered the challenge of limited experience – 60.4%, followed by the lengthy process and lack of training – 45.8%, lack of confidence in the proceedings – 31.3%, high-cost implication – 29.2%, incompetent party representatives – 27.1%, unenforceability of the arbitral award and unsatisfactory outcome – 18.8%, lack of immunity of the arbitrator – 16.7%, and ambiguity of the arbitration agreement – 12.5%. The responses suggest that the participants have encountered all the challenges that the researcher compiled from the literature review.

Participants' experience with arbitration.

This section aimed to establish the overall experience of the participants in arbitration. The following parameters were used: 1 = Very bad, 2=Bad, 3=Fair, 4 = Good and 5 = Very Good. The data is summarized in table 5.23 below.

Table 5. 23: Participants' experience in arbitration.

EXPERIENCE	NO./61	PERCENTAGES OF 61
1 - VERY BAD	4	9.1%
2 - BAD	5	11.4%
3 - FAIR	19	43.2%
4 - GOOD	12	27.3%
5 - VERY GOOD	4	9.1%

Source: Data from the Field 2021

The data in table 5.23 is illustrated as a horizontal bar chart in figure 5.28 below.

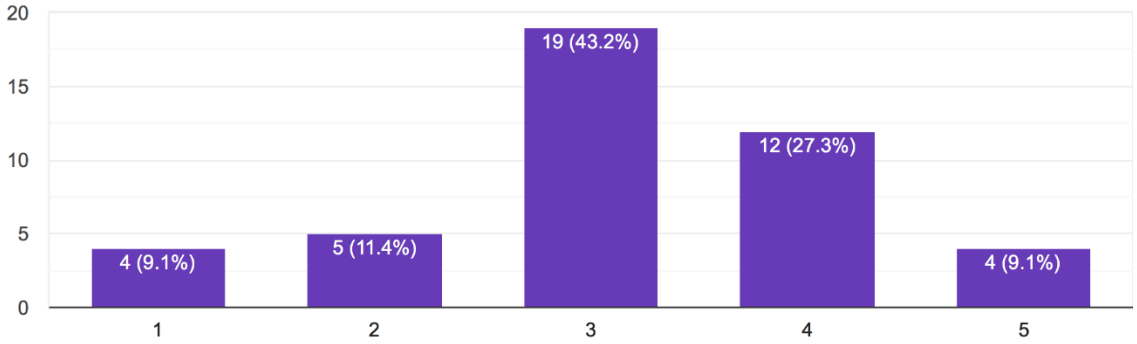

Figure 5. 28: Participants' experience in arbitration.

Source: Data from the Field 2021

The majority of the participants ranked their experience as fair – 43.2%, followed by good – 27.3%, bad – 11.4%, very bad and very good – 9.1%. The results suggest that the overall experience is not very good.

Reasons for the experience.

This section aimed at establishing the reasons the participants had for their experience. They were required to write short reasons, and these have been listed in table 5.24 below.

Table 5. 24: Reasons for the experience.

Item	Reasons for the experience	No.
1	Lack of knowledge of arbitration by public and lawyers	3
2	The disputes are solved amicably but with delays	5
3	Little experience in arbitration cases	4
4	Lack of legal training to reflect on the quoted cases	3
5	It is time consuming	6
6	High-cost implication than anticipated	5
7	More training is needed	4

Recommendation of Arbitration.

This section aimed at establishing whether the participants in the study would recommend the use of arbitration as an ADR method in the construction industry in Uganda. The data has been illustrated as a horizontal bar chart in figure 5.29 below.

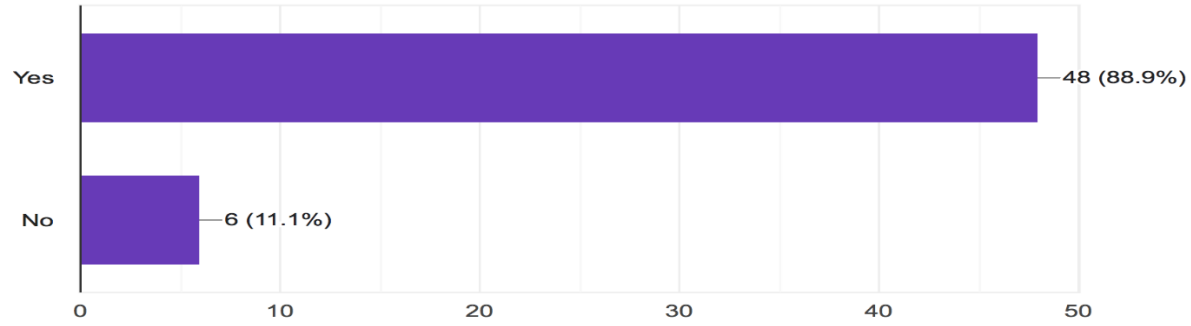

Figure 5. 29: Recommendation of arbitration.

Source: Data from the Field 2021

Despite the fair experience, the majority of the participants - 88.9% confirmed that they would recommend arbitration in resolving construction disputes, while 11.1% would not recommend it. This can be attributed to their bad or very bad experiences in general.

Reasons for recommendations or no recommendations.

This section required participants to select reasons why they would or would not recommend arbitration as an ADR method in resolving construction disputes. The study provided a list compiled from the literature review from which the participants could make multiple selections depending on the reasons as a result of their experience. The responses are summarized in table 5.25 below.

Table 5. 25: Reasons for recommendations and no recommendations.

REASONS	NO. / 59	PERCENTAGES OF 59
FOR RECOMMENDATIONS		
It is fast	24	46.2%
It is affordable	25	48.1%
Flexibility and confidentiality	29	55.8%
Party Autonomy	15	28.8%
Recognition and enforcement of the arbitral award	20	38.5%
It is supported by the legal system of the country	28	53.8%
Availability of training and accrediting institutions	7	13.5%
FOR NON RECOMMEDATIONS		
It is time consuming	3	5.8%
Parties do not understand it very well	1	1.9%
Arbitrators are not well trained	0	0
Abuse of party autonomy	1	1.9%
It is more costly	1	1.9%
Limited court intervention	5	9.6%
There are challenges in enforceability of the award	1	1.9%
Incompetent training and crediting institutions	1	1.9%

Source: Data from the Field 2021

The data in table 5.26 is illustrated as a horizontal bar chart as shown in figure 5.30 below.

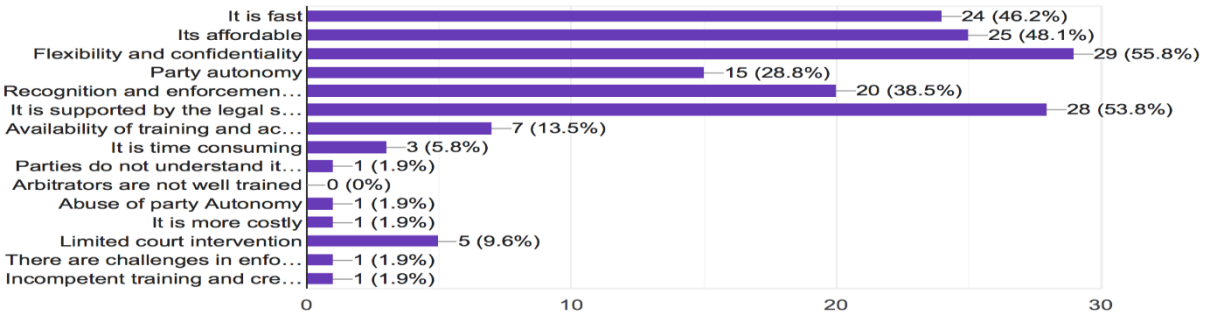

Figure 5.30: Reasons for recommendations and no recommendations.

Source: Data from the Field 2021

The majority of the participants would recommend arbitration as an ADR in resolving construction disputes for the following reasons. These have been listed in order of popularity as shown in the data. First, it is flexible and confidential – 55.8%, it is supported by the legal system of the country – 53.8%, it is affordable – 48.1%, it is fast – 46.2%, recognition and enforcement of the arbitral award – 38.5%, party autonomy – 28.8% and lastly because of the availability of training and accrediting center – 13.5%. The information suggests that the participants appreciate the purpose of arbitration as an ADR to disputants.

Other participants would not recommend it because of the following reasons. First, there is limited court intervention – 9.6%, it is time consuming – 5.8%, and lastly because the parties do not understand it very well, challenges in the enforceability of the award, the abuse of party autonomy, it is more costly, and there are incompetent training and crediting institutions – 1.9%.

5.2.5 Possible strategies to address the challenges facing arbitration in the construction industry in Uganda.

The main objective of this section is to establish possible strategies that can be used or implemented to address the challenges that have been identified by the participants while using arbitration as an ADR method when resolving disputes that arise in the construction industry in Uganda.

Institutions that support arbitration in Uganda

Two institutions in Uganda are actively supporting arbitration as an ADR for commercial activities, including the construction industry. This section aimed at establishing whether the participants knew of the existence of these institutions. The data is illustrated as a horizontal bar graph in figure 5.31 below.

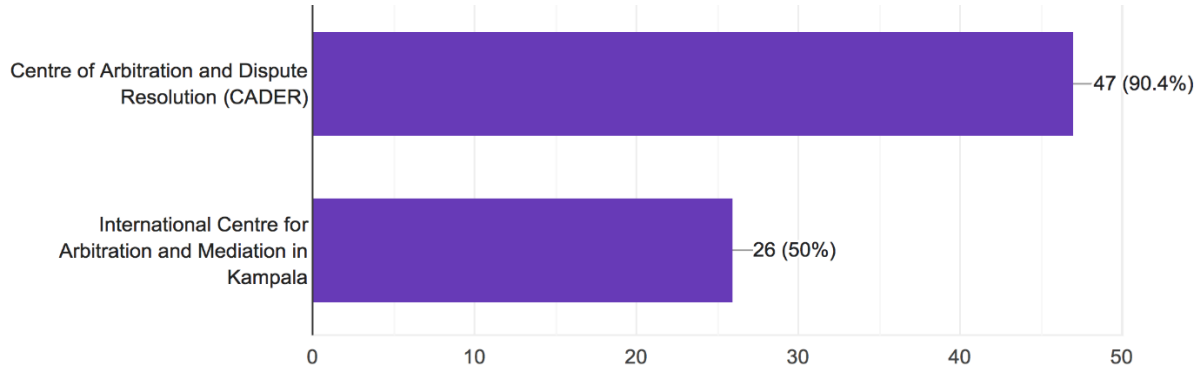

Figure 5. 31: Institutions that support arbitration in Uganda

Source: Data from the Field 2021

The majority of the participants - 90.4% know CADER, while know 50% ICAMEK, making it less popular.

Promotion of arbitration in the construction industry.

The use of arbitration as an ADR method should be promoted in the construction industry in Uganda to increase its popularity. This section aimed at establishing whom the participants think should take lead in promoting it. The data is summarised in table 5.26 below.

Table 5. 26: Promotion of arbitration in the construction industry.

PROMOTERS OF ARBITRATION	NO./59	PERCENTAGES OF 59
Institutions	47	81.0%
Project Managers	28	48.3%
Contract Administrators	27	46.6%
Parties to the Agreement	26	44.8%

Source: Data from the Field 2021

The data in table 5.26 is illustrated as a horizontal bar chart in figure 5.32 below.

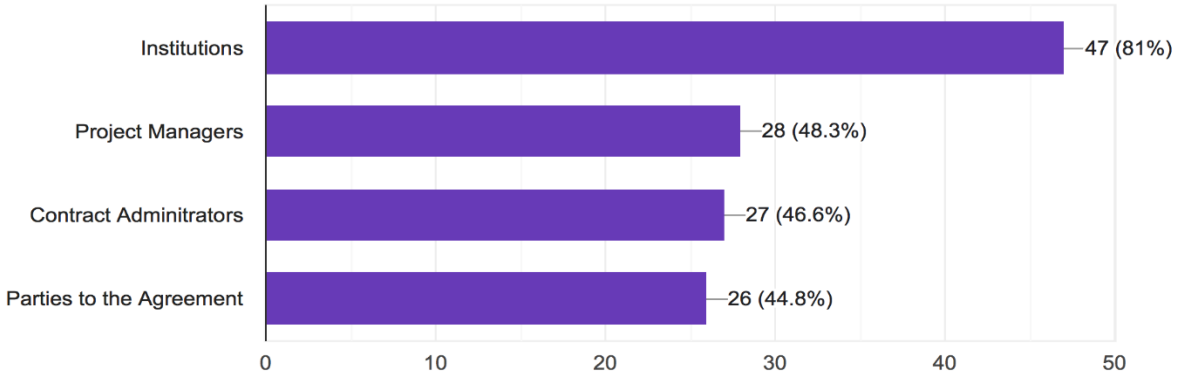

Figure 5. 32: Promotion of arbitration in the construction industry.

Source: Data from the Field 2021

According to the responses, the institutions – 81% should lead promotion of arbitration in the construction industry, followed by project managers – 48.3%, then contract administrators – 46.6%, and parties to the agreement – 44.8%. The information suggests that whereas the disputes are in the construction industry, the institutions should lead the promotion of arbitration.

Institution most suited to spearhead arbitration in the Construction Industry.

The objective of this section was to establish which institution should spearhead the promotion and implementation of arbitration while resolving disputes in the construction industry in Uganda. The data is summarized in table 5.27 below.

Table 5. 27: Institution most suited to spearhead arbitration in the construction industry in Uganda

INSTITUTION	NO./59	PERCENTAGES OF 59
CADER	38	66.7%
ICAMEK	23	40.4%
Uganda Society of Architects	20	35.1%
Uganda Institute of Professional Engineers	22	38.6%
Institute of Surveyors Uganda	17	29.8%

Source: Data from the Field 2021

The data in table 5.27 is illustrated as a horizontal bar chart in figure 5.33 below.

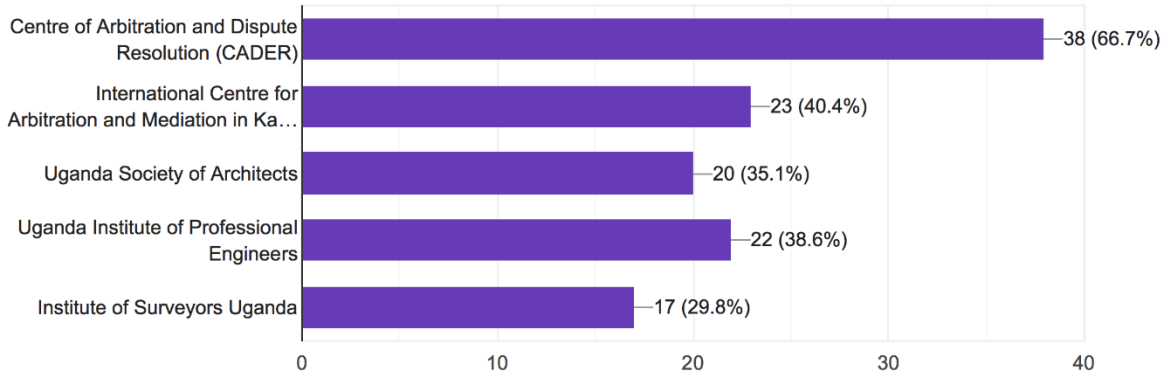

Figure 5. 33: Institution most suited to spearhead arbitration in the construction industry in Uganda

Source: Data from the Field 2021

According to the responses, CADER – 66.7% should spearhead arbitration, followed by ICAMEK – 40.4%, UIPE – 38.6%, USA – 35.1%, and lastly, ISU – 29.8%. The results suggest that CADER should be the institution to spearhead the promotion and implementation of arbitration while resolving disputes in the construction industry in Uganda.

Intervention that can be used to promote Arbitration as an ADR

Apart from the intervention of institutions promoting the use of arbitration as an ADR, this section aims at establishing other interventions that can promote the use of arbitration in settling disputes in the construction industry in Uganda. The data is summarised in table 5.28 below.

Table 5. 28: Interventions to promote arbitration in the construction industry.

OTHER INTERVENTIONS	NO./59	PERCENTAGES OF 59
Training of Arbitrators	48	84.2%
Constant Publication of Qualified arbitrators	31	54.4%
Close monitoring of the arbitration proceedings by the institutions and courts	30	52.6%

Source: Data from the Field 2021

The data in table 5.28 is illustrated as a horizontal bar chart in figure 5.34 below.

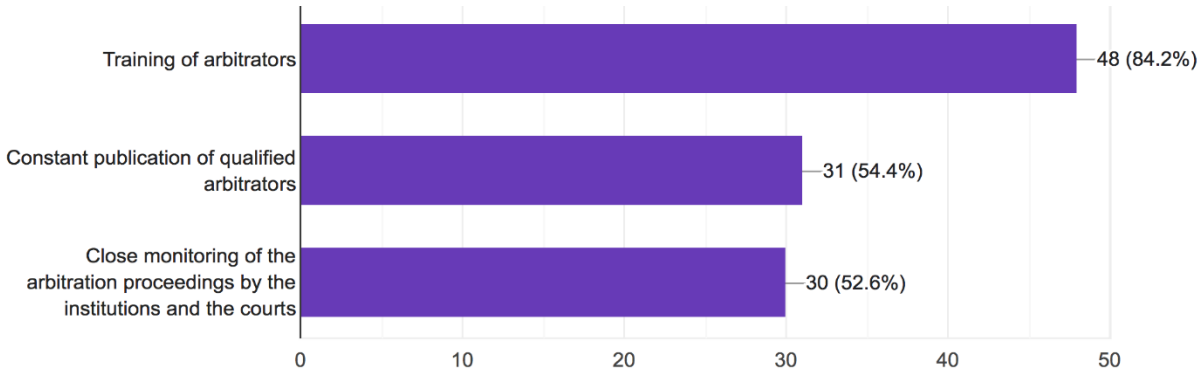

Figure 5. 34: Interventions that can be used to promote arbitration as an ADR in the construction industry.

Source: Data from the Field 2021

According to the participants, the majority of the interventions should be towards the training of the arbitrators - 84.2%, followed by the constant publication of qualified arbitrators – 54.4% and lastly, by close monitoring of the arbitration proceedings by the institutions and the courts – 52.6%. The information suggests that training arbitrators is a possible strategy towards addressing the challenges faced while using arbitration in dispute resolution.

Profession most suited to lead arbitration in the construction industry in Uganda

This section was aimed at establishing which profession is best qualified to lead arbitration in the construction industry in Uganda. The data is summarised in table 5.29 below.

Table 5. 29: Profession most suited to lead arbitration in the construction industry in Uganda.

PROFESSION	NO./61	PERCENTAGES OF 61
Architect	31	53.4%
Quantity Surveyor	38	65.5%
Engineer	28	48.3%
Contract Administrator	24	41.4%
Construction Manager	20	34.5%

Source: Data from the Field 2021

The data in table 5.29 is illustrated as a horizontal bar chart in figure 5.35 below.

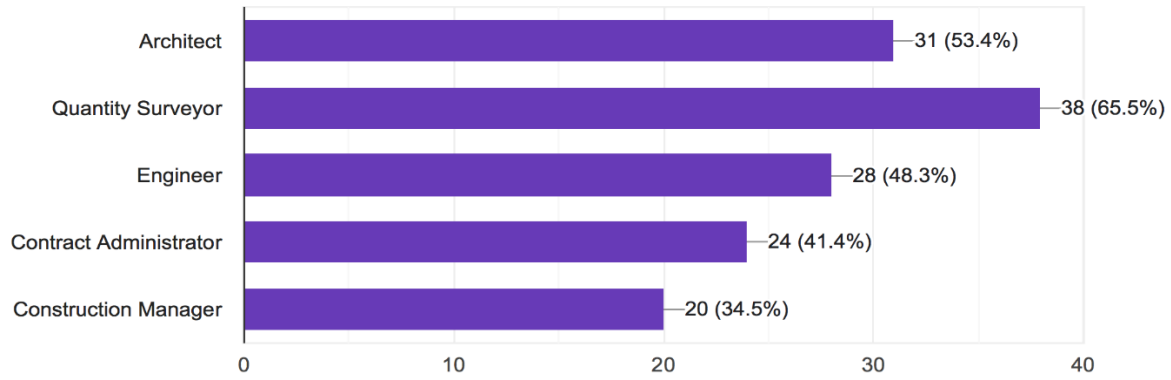

Figure 5. 35: Profession most suited to lead arbitration in the construction industry in Uganda.

Source: Data from the Field 2021

According to the responses, the quantity surveyor – 65.5% is most suited to lead arbitration in the construction industry in Uganda, followed by the architect – 53.4%, the engineer – 48.3%, contract administrator – 41.4%, and lastly, the construction manager - 34.5%. The results suggest that, among the key professionals in the construction industry, a quantity surveyor is most qualified to lead arbitration in the construction industry. Therefore, having quantity surveyors at the centre of the arbitration proceedings can be a possible strategy to address some of the challenges faced while using arbitration as an ADR in the construction industry in Uganda.

Support from the Courts

The use of ADR methods like arbitration needs the support of the court system of Uganda. This section aimed at establishing ways in which the courts can support the successful implementation of the arbitration proceedings while resolving disputes in the construction industry. The participants were required to list ways how courts can support arbitration while resolving disputes in the construction industry in Uganda. These have been listed in table 5:30 below.

Table 5. 30: Recommendations on how the courts can be more supportive towards use of Arbitration as an ADR

Item	Recommendations on how the courts can be more supportive towards use of Arbitration as an ADR	No. of participants
1	Refer all cases with arbitration clauses back to arbitration	13
2	Provide quick legal direction to the arbitration proceedings when called upon	4
3	Strengthening their access to technical expertise in the construction industry	1
4	Offer collaboration	1
5	Provide Contract Training	1
6	Interpretation of the law	1
7	Make arbitration process faster when it commences	3
8	Enforce awards instead of setting them aside	6
9	Strict approach to set aside applications	1
10	Training judicial officers to understand and appreciate arbitration	5
11	Provide avenues for court appeals if the final Arbitration decisions are deemed unreasonable and unjust by either party	1
12	Minimal interference to Arbitration proceedings	2

The majority of the participants recommended that the court should refer all cases with arbitration clauses back to arbitration.

Among the recommendations, the study further identified that some were not practical or wrong and these might have resulted from a misunderstanding of the practice and the process or from ignorance of the law governing arbitration. These included:

1. Formalising arbitration as a lower court. Arbitration is an ADR method. Hence dispute resolution should be outside the court.
2. Make the arbitration process faster when it commences. The courts cannot make the process faster since arbitration is independent of the courts. The appointed arbitrators have to conduct the proceedings in accordance with the act and the rules of arbitration.
3. Monitor the proceedings and ensure that the awards are upheld.

4. Enforce awards instead of setting them aside. Provided that the parties allowed for an appeal and also the challenge of the award is valid, the court, after carrying out the necessary assessment can set aside some awards.
5. No interference at all. This is impossible since the act provides limited court intervention upon application by any aggrieved party.
6. Ensuring that awards are enforceable. Since arbitration is independent of the courts, the courts have no say in the nature and kind of awards the tribunal gives. Since the parties appoint the tribunal, they believe that it will issue awards that are enforceable.
7. Promotion of Arbitration as one of the best forms of dispute resolution and discouraging Litigation.
8. Relying on arbitral awards in deciding cases escalated.

Cost and Time Management in Arbitration.

Cost and time management are crucial while conducting arbitration proceedings and often have a significant bearing on its success. The purpose of this section was to establish how best the time and cost can be managed while using arbitration as an ADR in resolving disputes in the construction industry. The data is summarised in table 5.31 below.

Table 5. 31: Cost and Time Management in Arbitration

COST AND TIME MANAGEMENT	NO./59	PERCENTAGES OF 59
Appoint qualified and experienced arbitrators	50	87.7%
Set time limits during the procedure and strictly follow them	38	66.7%
Close monitoring of the proceedings by the institutions	17	29.8%

Source: Data from the Field 2021

The data in table 5.31 is illustrated as a horizontal bar chart in figure 5.36 below.

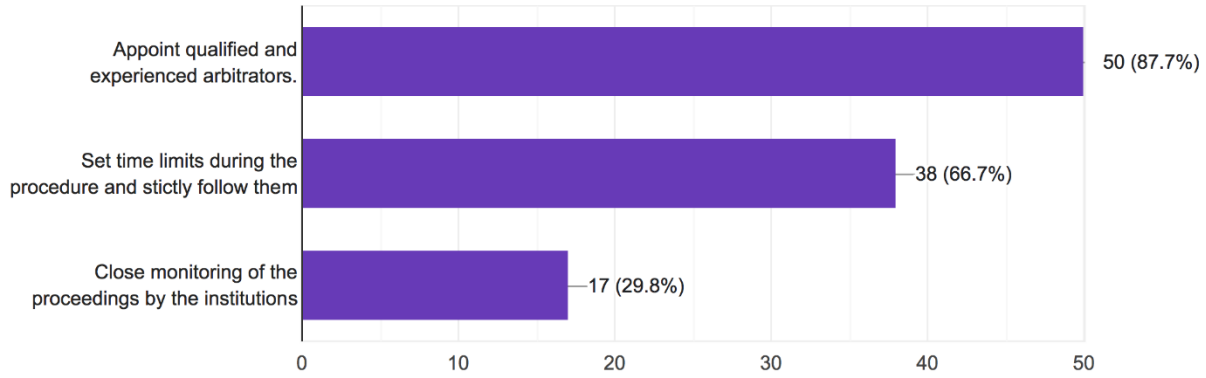

Figure 5. 36: Cost and Time Management

Source: Data from the Field 2021

According to the data, the best way to manage cost and time is to appoint qualified and experienced arbitrators – 87.7%, then set time limits during the procedure and strictly follow them – 66.7%, close monitoring of the proceedings by the institutions - 29.8%. The results suggest that a possible strategy to address the challenges facing arbitration in terms of time and cost is by appointment of qualified and experienced arbitrators.

Other strategies for mitigating the challenges faced by arbitration.

The objective of this section was to establish other strategies for mitigating the challenges faced by arbitration in the construction industry. The respondents were required to make recommendations, and these have been listed in table 5.32 below.

Table 5. 32: Other strategies for mitigating the challenges faced in arbitration.

Item	Other strategies for mitigating the challenges faced in arbitration.	No. of Respondents
1	Thorough preparation of Contract Documents	4
2	Create more awareness and sensitize the public on Arbitration as an ADR	6
3	Properly drafted arbitration clauses in contracts	3
4	Introducing virtual arbitration as a means of reducing costs attributed to the disputes	1
5	Companies should invest in themselves and train their technical staff in arbitration related courses so that in case of disputes these persons are readily available to support the company without incurring extra costs.	3
6	Matters involving professionals should be referred to the respective professional bodies.	1
7	Include arbitration in Engineering, Quantity surveying and architectural undergraduate courses.	1
8	Training arbitrators, young professionals and construction professionals in arbitration	12
9	Encourage parties to be less sentimental and be more open to amicable resolutions	1
10	Naming of appointed arbitrators within the contract	1
11	Awareness of institutions of arbitration	1
12	Appointment of qualified and competent arbitrators and have them renumerated appropriately	3
13	Educate construction personnel about alternative dispute resolution methods	2
14	Better contract management documentation	1
15	Make arbitration part of contract administration from start by appointing contract administrators that have experience in arbitration.	1
16	Encourage more professionals to engage in arbitration processes.	3

17	Encourage contractors that arbitration is efficient	1

Other recommendations that were based on wrong perceptions as well as misunderstandings of the practice and process or ignorance of the law governing arbitration included;

1. Making the arbitration process an independent lower court. Arbitration is an ADR method, therefore an alternative to litigation. Making it an independent court will result in modification of the proceedings to mirror those of the court.
2. Provision time limits for the arbitration process. Regarding the principle of party autonomy, it is mainly the parties to the arbitration that can guide on time limits.
3. Employment of a jury like in civil case court proceedings: Arbitration is very private and confidential. The employment of a jury will violate the parties' right to privacy.
4. Making the outcomes from the arbitration final. When parties get into an arbitration agreement, the consent that the award given by the tribunal will be final and binding. Unless they make a provision for it not to be binding and also allow room for appeal.

5.3 Hypothesis Test

The research null hypothesis was that the use of arbitration in the construction industry in Uganda faces challenges while the alternative hypothesis was that the use of arbitration in the construction industry in Uganda does not face challenges. The study dispersed 88 questionnaires to respondents and received 59 responses attaining 67% response rate.

According to the data collected, the study identified both administrative and functional challenges faced in the use arbitration. The administrative challenges included lengthy process, high-cost implication than earlier anticipated, the unenforceability of the arbitral award, and lack of immunity for the arbitrators. While the functional challenges included limited experience by the participants, partiality of the tribunal, lack of training, lack of confidence in the proceedings, incompetent party representatives, the ambiguity of the arbitration agreements, and unsatisfactory outcomes.

Therefore, the data supports the null hypothesis, that the use of arbitration in the construction industry in Uganda faces administrative and functional challenges, and consequently rejects the alternative hypothesis that the use of arbitration in the construction industry in Uganda does not face administrative and functional challenges.

CHAPTER SIX

DISCUSSION, CONCLUSION AND RECOMMENDATION

6.1 Introduction

This chapter presents the discussion on the findings, conclusion, and recommendations for the study concerning the research objectives. Furthermore, it suggests areas for further research.

6.2 Discussion on the Findings

The research objectives of this study included; determining the extent to which arbitration is used to resolve construction disputes in the construction industry in Uganda, identifying the challenges that arbitration faces in the construction industry in Uganda, and identifying possible strategies to address the challenges faced in arbitration while resolving construction disputes in the construction industry in Uganda. The summary of the findings following the research objectives are detailed in the following discussions.

6.2.1 Bio data.

The respondents were divided into four subgroups of developers, contractors, consultants, and arbitrators and according to the findings, their professional backgrounds encompassed architects, engineers, quantity surveyors, lawyers, and others. All the respondents had a minimum of 5 years experience and a maximum of over 20 years experience in construction, and had been highly involved in the execution of construction projects working in different capacities or roles. These include employer, contractor, architect, quantity surveyor, engineer, project manager, contract administrator, construction manager, consultant, lawyer, and arbitrator.

The capacity or role one was assigned established the level of involvement in that project. Having participated in different roles over the years on several construction projects, 100% of the respondents have encountered several disputes and participated in dispute resolution (Figure 5:15).

In an effort to direct practitioners in the construction industry, the standard forms of construction contracts have always guided them in dispute resolution. The standard forms of

contracts included the Public Procurement and Disposal of Public Assets Contract for Construction Works 2003 (PPDA), FIDIC, East African Institute of Architects (EAIA) contract, among others with the PPDA contract being most used (figure 5.5). The majority of these projects had a designated contract administrator to facilitate the execution of the project. Though the contract administrators' professional backgrounds varied from project to project, most were architects (figure 5.7).

6.2.2 Determining the extent to which arbitration is used in the construction industry in Uganda.

Objective One of this study was to determine the extent to which arbitration is used to resolve construction disputes in the construction industry in Uganda. The study established that all respondents had encountered disputes throughout their practice within the industry. This shows that there are many disputes in the construction industry.

While resolving these disputes, it is prudent to identify the causes, thereby giving guidance to the parties on what contract clause to refer to when resolving them. The construction disputes were mainly caused by delays, variations, slow progress of the contractors, non-payment by the employers, site instructions, ambiguity of contract documents, abandonment of site by the contractor, and unlawful termination of the contract. This is illustrated in figure 5.7.

The majority, if not all standard forms of contracts used in construction, have at least one provision or clause that guides the parties in resolving disputes if and when they arise. The study established that the most common methods provided in the different contracts include negotiation, arbitration, mediation, adjudication, Dispute Review boards, Conciliation, Expert Witness, and Med-Arb. This is illustrated in figure 5.9. However, none of the standard forms of construction contract provides for Arb-Med and the Arb-Med-Arb methods.

According to figure 5:8 of the findings, in the event of a dispute, arbitration is one of the alternative dispute resolution methods that the standard forms of contracts recommend and provide for use. Standard contracts like FIDIC and EAIA provide multi-tiered dispute resolution clauses that allow the parties to explore more than one method of dispute resolution, including arbitration. Thus, arbitration is a recognised ADR method in construction contracts and by the participants in the construction industry in Uganda.

In addition, the findings indicate that among the provided methods, negotiation has proved to be most successful for the majority of the parties (figure 5:10), thus no need to proceed to other ADR methods. Therefore, when a dispute arises, parties first attempt to use negotiation. These findings concur with those of Albert (2021) where he concluded that negotiation is deemed the most effective ADR in the construction industry in Uganda. When the negotiations fail, the parties can explore other ADR methods provided by the contract. According to the findings, arbitration is the second most successful ADR method used when negotiation fails.

The decision to use arbitration as the ADR method is dependent on several factors that include mutual agreement, advice from the consultants on the project, advice from the counsel or advocates of the parties, and finally, advice from friends. The study established that majority of the time, when disputes arise, the method is selected through mutual agreement between the parties, followed by the level of flexibility, timeliness and cost effectiveness, this is illustrated in figure 5:12.

The mutual agreement between parties is considered to have been reached during the contract documentation phase of the project, whereupon with the inclusion of an arbitration clause, the parties will have committed themselves to an arbitration agreement, that is to say, resort to arbitration in case a dispute arises. In cases where no arbitration clause was allowed for at contract signing, the parties can formulate an addendum to the main contract with an arbitration clause that will be binding.

Still, according to the findings, advice from consultants is a key factor in influencing the choice of the ADR method. This can also be solicited or given at the contract documentation phase, or when the dispute arises, thereby having a significant influence on the extent to which arbitration will be used for dispute resolution. The consultants will often benchmark on their previous experience with the arbitration process and how successful it can be in saving time, and costs, among other reasons.

Additionally, the decision to use arbitration as the ADR method is due to other reasons. These include; the confidentiality, advice from the counsel or advocate, the technicality of the dispute, form of the dispute, technicalities of the method, and availability of the persons well versed with the ADR process, financial size of the dispute, the support of the legal system of the country, and advice from friends.

Therefore, the extent to which arbitration is used to resolve construction disputes in the construction industry in Uganda starts when a dispute arises. This is followed by the establishment of the cause to determine whether it is arbitrable or not, and the existence of an arbitration agreement between the parties. If the contract provides other methods like negotiation before arbitration, the parties must use them. Only when they fail will the parties commence arbitration.

Despite the recognised parameters for selecting arbitration as the ADR for resolving construction disputes, figure 5:14 in the findings shows that only 33% of the disputes encountered by the respondents were resolved using arbitration in the construction industry in Uganda. Consequently, 67% were resolved using other methods like negotiation. This information suggests that arbitration is used to a lesser extent within the construction industry in Uganda.

6.2.3 Challenges faced in using arbitration in the construction industry in Uganda.

The second objective of the study was to identify the challenges faced in using arbitration to resolve construction disputes. The findings show that the majority of the respondents have participated in arbitration in various roles. These include claimant, respondent, arbitrator, party representative, expert witness, and others. The involvement in arbitration proceedings progressively equips the different participants with more knowledge of arbitration and dispute resolution.

Although arbitration is used to a lesser extent, the parties were satisfied with the outcomes. This suggests that there are challenges faced in using it as an ADR method, that have resulted into it being less utilized. This can be accredited to a number of factors that the study investigated and they are detailed in the forthcoming discussions.

Confidentiality.

Arbitration proceedings are anchored on confidentiality. Breach of confidentiality threatens the success of the arbitration. According to figure 5:17 in the findings, the proceedings observed and enforced confidentiality, thereby protecting the integrity of the proceedings at large. This was therefore ruled out as a challenge to arbitration in construction.

Time of the arbitration proceedings.

Arbitration is mainly favoured because it saves time as compared to litigation. According to table 5:16 in the findings, most of the proceedings took reasonable time. This illustrates that the time taken to conduct the proceedings is not a challenge faced in arbitration of construction disputes.

Competency of the arbitral tribunal.

The success of any arbitration is dependent on the arbitrator. The arbitrator must possess the necessary skills to conduct the proceedings successfully from appointment until termination. Table 5:17 of the findings show that the arbitral tribunals were competent. This information confirms that the competency of the arbitral tribunal is not a challenge.

Partiality of the Arbitral Tribunal.

The main components of an arbitral tribunal are independence and impartiality. According to figure 5:21 in the findings, the respondents reported that the tribunal was partial. This demonstrates that there was bias and prejudice exhibited by most of the tribunals during the proceedings. Thus, partiality is one of the challenges faced while using arbitration in resolving construction disputes. This is supported by the conclusion made by Albert (2021) that majority of the construction practitioners in Uganda find arbitration to be unfair.

Whereas the Act and rules are clear on the function of party autonomy especially in the appointment of the arbitral tribunal, meaning that the parties select their tribunal. The results suggest that the tribunals are partial or that parties perceive them as partial even when they are impartial This suggests further that the parties do not have faith in the arbitrators they choose or those that are appointed by the institutions.

Participation of the project team in the arbitration proceedings.

Since disputes arise from construction projects which are executed by the project team, it is prudent to have them participate in the dispute resolution. According to figure 5:22 in the findings, the project teams participated in the proceedings so as to facilitate the process of dispute resolution. They mainly participated as witnesses of fact, party representatives, and expert witnesses. Therefore, the findings show that lack of participation by the project team is not a challenge to the arbitration in construction.

Conclusion of the arbitration proceedings

Arbitration proceedings were concluded when the tribunal rendered the final award. Figure 5:24 in the findings illustrates that majority of the arbitration proceedings were terminated when the tribunal rendered the final award or the consent award. The information shows that majority of the proceedings were successfully concluded. Therefore, failure to conclude arbitration proceedings is not a challenge.

Enforcement of the arbitral award.

The enforcement of the award is a fundamental step in arbitration since it is the remedy that the parties were seeking when they agreed to submit their disputes to the arbitral tribunal. According to the findings, figure 5:25 shows that the awards rendered at the end of the arbitration were enforced. The results suggest that enforcement of the arbitration award is not a challenge.

Conversely, there are still concerns about the enforcement of the arbitral award. Whereas the act is very clear on the procedure of enforcement of arbitral awards and the New York Convention provides for enforcement across borders, some respondents still indicated that enforcement is a challenge. This could be a wrong perception or an expression of a fear of the court enforcement process by the respondents

Court Intervention in arbitration proceedings.

The Arbitration and Conciliation Act (2000) guides the extent of court intervention in arbitration. According to the findings in Figure 5:26, there were no court interventions in the arbitration proceedings. These results show that the court observes and adheres to the provisions of the Act and does not intervene in arbitration proceedings unless the need arises.

In addition, according to the findings, upon application by the parties, the court intervened in some cases because of the following reasons, application to appeal the award, application to challenge of the interim award, application for enforcement of the arbitration award, and guidance in the execution of the arbitration proceedings. All the established reasons are within the allowed provisions in the act. Thus, court intervention in the proceedings is not a challenge.

Participants' experience while involved in arbitration proceedings.

The respondents shared their experience while they participated in the arbitration proceedings, and figure 5:28 in the findings shows that the majority had a fair experience. The main reason established is that it is time consuming. Some acknowledged that the disputes were resolved but characterized with several delays and that the cost implication was higher than anticipated, other reasons reported were that the respondents had little experience in arbitration proceedings and lack of knowledge on arbitration by the public and some lawyers. While others lacked legal training to reflect on the quoted cases, and others expressed that the parties needed more training in arbitration proceedings. The results illustrated that the experience attained by the participants is a potential challenge to the use of arbitration in dispute resolution.

Recommendations of arbitration as an ADR.

Despite the kind of experience registered by the respondents for several reasons, figure 5:29 shows that 88.9% of the respondents reported that they would recommend arbitration as an ADR method. According to the findings, they stated that once the proceedings have been conducted well, arbitration is fast, affordable, flexible, confidential, aspect of party autonomy, recognition, and enforcement of the arbitral award, it is supported by the legal system of the country and, there are available training and accrediting institutions. This demonstrates that participants do recognize the pros of arbitration. Therefore, the lack of recommendation by the participants in the construction industry is not a challenge to arbitration.

Other challenges encountered while using arbitration in resolving disputes in the construction industry.

In addition to the factors investigated by the study, table 5:24 in the findings indicates other challenges respondents reported to have encountered while using arbitration that has resorted to their fair experience. These include limited experience, lengthy process, lack of training, lack of confidence in the proceedings, high-cost implication than earlier anticipated, incompetent party representatives, the unenforceability of the arbitral award, lack of immunity for the arbitrators, the ambiguity of the arbitration agreements, and unsatisfactory outcomes.

According to table 5:22 of the findings, the only challenge with a score above 50% was limited experience by the parties involved. The other challenges (below 50%) were qualified to be perceptions of the respondents. For example, under lengthy process, the act provides time limits

for the proceedings purposely to manage time and promote expeditious proceedings. Lack of confidence is also perception and could be because some respondent had not been involved in the arbitration proceedings. Concerning incompetent party representatives, parties have the freedom to choose anyone as their representative for the arbitration. Therefore, it is their mandate to select competent persons to represent them.

Regarding the unenforceability of the arbitral award, the act has clear provisions on the process of enforcement for both domestic and international awards under the New York Convention. Whereas lack of immunity of the arbitrators seems to be a perception, the Act is silent on the arbitrators' immunity.

Concerning ambiguity of the arbitration agreements, most if not all standard forms of contracts used in construction have clear standard clauses that qualify to be arbitration agreements. The challenge would be arising from interpretation of the clauses. In addition, parties are actively involved in formation of contracts and are guided by consultants, save that the consultants misguided the parties in some cases due to lack of experience.

Lastly, regarding unsatisfactory outcomes, whereas most respondents were satisfied with the outcomes, the findings show that some were not. This could be as a result of appointing incompetent representatives, wrong interpretation of the arbitration agreement among others.

Nonetheless, there are still concerns regarding these perceptions that is lengthy process, lack of training, lack of confidence in the proceedings, high-cost implication than earlier anticipated, incompetent party representatives, the unenforceability of the arbitral award, lack of immunity for the arbitrators, the ambiguity of the arbitration agreements, and unsatisfactory outcomes, since some respondents indicated them as challenges.

6.2.4 Possible strategies to address the challenges facing arbitration in the construction industry in Uganda.

The third objective of the study states; to identify possible strategies to address the challenges facing arbitration while resolving construction disputes in the construction industry in Uganda, the following strategies were identified from the findings.

Support from the Arbitration bodies and other construction institutions in Uganda.

Uganda has two recognised institutions that support arbitration, which include CADER and ICAMEK. Alongside these two, the construction industry has got several institutions like the UIPE, the USA, and ISU that support the execution of arbitration though to a smaller extent. According to the findings, CADER and ICAMEK should spearhead the promotion and use of arbitration in resolving disputes in the construction industry with CADER taking the lead, and bodies like UIPE, USA, ISU render support to CADER and ICAMEK.

The joint effort by all the professional bodies and institutions will not only promote the use of arbitration but will also actively engage in formulating reliable procedures that will increase the integrity of arbitration at large, for example, organise workshops, formulate training curriculum, close monitoring of the arbitration proceedings among others.

Identification of the profession most suited to lead arbitration in the construction industry

The construction industry is comprised of many professionals which include architects, engineers, quantity surveyors, construction managers, among others. When a dispute arises, all professionals on the project are required to participate in dispute resolution. This depends on the role they are taking on for that particular project.

According to the findings, there should be a designated profession to champion ADR processes in particular arbitration and others work alongside them. According to the findings, the quantity surveyor is best suited to take on this role especially in arbitration.

Training Arbitrators.

Arbitrators have the mandate of facilitating the arbitration proceedings from beginning to end. They therefore have a role to play in mitigating challenges that result from the proceedings. Training of the arbitrators was identified as a possible strategy to address the challenges that arise during the arbitration proceedings. It can be organised by institutions and other professional bodies within the construction industry. Having a trained arbitrator will reinforce the arbitration process in general.

Constant Publication of Qualified Arbitrators.

According to the findings, another possible strategy is the constant publication of qualified arbitrators. Upon completion of the required training, and receiving certification, the institutions should constantly publish qualified arbitrators and update the lists progressively. This will enable the parties to a dispute to have reliable data on who can be the best candidate for the appointment when selecting an arbitral tribunal.

Support from the Courts.

The courts of Uganda have a key role to play in terms of supporting arbitration as an ADR especially in the construction industry. According to table 5:30 in the findings, the courts can support arbitration in the following ways; referring all cases with arbitration clauses back to arbitration, providing quick legal direction to the arbitration proceedings when called upon, strengthening their access to technical expertise in the construction industry, formalizing arbitration as a lower court, offer continuous collaboration with the institutions, provide contract training, guide in the interpretation of the law, quickening of the arbitration process when presented with applications thereby reducing the time and monitoring the proceedings while ensuring that the awards are upheld.

Furthermore, the courts should make impartial rulings especially when setting aside an award, observe a strict approach when setting aside any application, ensure that the awards issued by the arbitral tribunals are enforceable, provide training to lawyers and other judicial officers so that they understand and appreciate arbitration, provide avenues for court appeals if the final arbitration decisions are deemed unreasonable and unjust by either party, minimize interference of the arbitration proceedings by not letting parties abuse the process of court intervention, actively promote arbitration by discouraging parties from pursuing litigation if the matter is arbitrable, and constantly rely and respect the jurisdiction of the arbitral tribunal especially in decisions and the awards taken.

Cost and Time management.

Affordability and timeliness are some of the main pros for referring disputes to arbitration hence must be managed and observed closely. Proper cost and time management are key strategies shown in the findings. This can be achieved by the appointment of qualified and

experienced arbitrators that strictly adhere to the time limits during the proceedings, and close monitoring of the proceedings by the institutions.

Other recommended strategies that can be implemented to mitigate the challenges faced in arbitration are listed and discussed below in order of ranking;

1. Promotion and training of more building construction industry professionals in arbitration.
2. Create more awareness and sensitise the public on arbitration as an ADR.
3. Thorough preparation of contract documents.
4. Educate construction personnel about alternative dispute resolution methods.
5. Ensure appointment of qualified arbitrators and provide appropriate renumeration
6. Companies should invest in themselves and train their technical staff in arbitration related courses so that incase of disputes these persons are readily available to support the company without incurring extra costs.
7. Introducing virtual arbitration as a means of reducing costs attributed to the disputes.
8. Matters involving professionals should be referred to the respective professional bodies.
9. Encouraging use of lawyers by parties
10. Make the arbitration process an independent lower court
11. Include arbitration in engineering, quantity surveying and architectural undergraduate courses.
12. Provide time limits for the arbitration process.
13. Encourage parties to be less sentimental
14. The employment of a jury like in civil case court proceedings.
15. Naming of appointed arbitrators within the contract.
16. Create awareness of institutions of arbitration
17. Better contract management documentation.
18. Make it part of contract administration from start.
19. Encourage more professionals to engage in arbitration processes.
20. Encourage contractors that arbitration is efficient.
21. Making the outcomes from the arbitrations' final.

6.3 Conclusions

As evidenced in the discussions and the summary of findings, arbitration is a viable method for resolving disputes in the construction industry in Uganda. It is in the best interest of all the stakeholders to resolve disputes as fast as possible hence arbitration which is viable as an ADR method.

Furthermore, as an ADR method, it is instrumental in resolving disputes in the construction industry in Uganda especially because of its pros like flexibility, confidentiality, timeliness, cost friendliness, among others. Nonetheless, it is not normally used, hence an inquiry into the challenges facing arbitration practice in the construction industry in Uganda, and identification of possible strategies to address the challenges.

The findings demonstrated that after negotiation, arbitration is the second most successful ADR method used in the construction with 33% of the disputes encountered referred to arbitration. The main challenge faced is limited experience by the participants (arbitrators, party representatives, consultants, and parties to the contract). Furthermore, the study identified concerns regarding perceptions of some respondents that were indicated as challenges. These included; partiality of the tribunal, lengthy process, lack of training, lack of confidence in the proceedings, high-cost implication than earlier anticipated, incompetent party representatives, the unenforceability of the arbitral award, lack of immunity for the arbitrators, the ambiguity of the arbitration agreements, and unsatisfactory outcomes.

The possible strategies identified for overcoming the challenges include support from the arbitration institutions and professional bodies in the construction industry, training of arbitrators and professionals within the industry, cost and time management, support from the courts, training of practitioners to enlighten them on arbitration, correct interpretation of contract documents, among others.

Arbitration as an ADR method is very instrumental in the construction industry since according to the findings, more often than not, it guarantees successful dispute resolution. However, it requires the contribution and participation of all the participants in the construction industry, these include the consultants, the parties to the contracts (developers and contractors), the party

representatives and the arbitrators. This is supported by the ICC Guide on Effective management of Arbitration (2014), which encourages all parties (the tribunal, disputants, and representatives) to be jointly committed to establishing, promoting, and implementing efficient procedures and management so that the disputes are resolved in a cost-effective manner and within record time.

The increased use of arbitration will resultantly address majority of the challenges arising. Therefore, with keen observation and consistent implementation of all the administrative and functional components of the arbitration process, arbitration will certainly attain the credibility it deserves. Additionally, it will be solidified as an attractive ADR method for parties to use when resolving any arising disputes in the construction industry in Uganda.

6.4 Research Hypothesis

The findings identified demonstrate both administrative and functional challenges of arbitration. The main challenge identified is limited experience by the participants which is a functional challenge. There are other perceptions by the respondents indicated as functional challenges and these include partiality of the tribunal, lack of training, lack of confidence in the proceedings, incompetent party representatives, the ambiguity of the arbitration agreements, and unsatisfactory outcomes.

Administrative challenges mainly included perceptions indicated by the respondents as challenges and these included lengthy process, high-cost implication than earlier anticipated, the unenforceability of the arbitral award, and lack of immunity for the arbitrators.

The research null hypothesis was that the use of arbitration in the construction industry in Uganda faces challenges whilst the alternative hypothesis was that the use of arbitration in the construction industry in Uganda does not face challenges. According to the challenges identified, the findings fully support the null hypothesis.

6.5 Recommendations

The recommendations that the study has suggested include the following.

1. Concerning limited experience by the participants, there is the need for professional bodies to advocate for continuous professional development in the area of arbitration. This is because construction professionals are at the center of arbitration. They can participate as arbitrators, party representatives, expert witnesses and witnesses of fact among others. Furthermore, they often take on roles like contract documentation, contract administration, and construction management among others. With experience in arbitration, when a dispute arises, the construction professionals will be instrumental at all fronts in resolving it as soon as possible.
2. Regarding partiality of the tribunal, the parties should strictly follow the rules when it comes to the appointment of the tribunal or use the arbitration institutions like CADER and ICAMEK to appoint one. Institutions should also provide track records of the recommended arbitrators to boost the parties' confidence in the tribunal. Furthermore, the institutions should monitor arbitrators and strictly implement disciplinary measures in the event of gross misconduct by the tribunal.
3. The lengthy process can be managed by strictly following the time limits provided for in the act and the rules used for arbitration. Furthermore, the appointment of experienced and trained participants will mitigate time wastage since they know the processes.
4. Regarding lack of training, professional bodies and arbitration institutions should organize regular training workshops open to all interested parties. The training content formulated should be in a position to equip the participants with the necessary knowledge and tools to take on any role in arbitration that is as an arbitrator, party representative, expert witness among others.
5. Concerning lack of confidence in the proceedings, the parties should appoint qualified and competent participants most especially the party representatives and arbitrators who know the process and will enable them to attain the desired results.
6. High-cost implications can be mitigated through conducting proceedings within the set time limits and avoiding delays as much as possible. This can be best implemented by qualified and trained arbitrators.
7. Concerning incompetent party representatives, parties should be keen when selecting them. It is important to request for the CV, make background checks in terms of track records, among others. Furthermore, the parties can have a minimum criterion, for example, the party representative must have ten years of experience in the construction field and have a certificate in arbitration.

8. Regarding the unenforceability of the arbitral award, when parties formulate an arbitration agreement, they consent that the award will be final and binding unless they provide for an appeal in the contract. Upon issue of the arbitral award, the act provides for enforcement of both domestic and international awards. Therefore, the participants should follow the law.
9. Concerning lack of immunity for the arbitrators, the Act does not provide for immunity of an arbitrator. However, they are recognised as officers of the High Court under the Judicature Act therefore they can be covered by the blanket immunity for the judges.
10. The ambiguity of the arbitration agreements can be addressed by using only standard forms of contracts and encouraging correct and uniform interpretation of contract clauses by all participants.
11. Lastly, unsatisfactory outcomes can be addressed through the appointment of qualified and experienced participants to spearhead the dispute resolution. It will mitigate the chances of mistakes or misconduct thereby, giving satisfactory outcomes.

6.6 Area for further research

According to the findings, the main challenge identified by the study is "limited experience by the parties involved". Therefore, a study should be conducted on how construction practitioners can leverage professional bodies and the governing institutions like CADER and ICAMEK to encourage the use of arbitration in resolving construction disputes. This will result into increased participation of practitioners overtime, thereby increasing the level of experience.

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8.0 ANNEXES / APPENDICES

APPENDIX I: CONSENT STATEMENT

Dear Respondent,

I am Nasaazi Amina, a student at the University of Nairobi pursuing a Master of Arts Degree in Construction Management. I kindly request you to answer the attached questionnaire for my research project.

The data collected will be used for academic purposes only and will be treated with the utmost confidentiality. Your participation is based on your will, and you have the right to withdraw at any time during the interview if need be. PLEASE NOTE THAT THIS QUESTIONNAIRE ALLOWS FOR MULTIPLE RESPONSES.

I will greatly appreciate your cooperation and assistance in answering the questions accurately.

Thank you.

Yours Faithfully,

Nasaazi Amina

B53/34944/2019.

APPENDIX II: UON LETTER OF INTRODUCTION

UNIVERSITY OF NAIROBI
DEPARTMENT OF REAL ESTATE & CONSTRUCTION MANAGEMENT & QUANTITY SURVEYING
P.O. Box 30197, 00100 Nairobi, KENYA, ***Tel: No. 020-491 3531/2***
E-mail: *dept-cmqs@uonbi.ac.ke*

Ref: B53/33697/2019 **Date:** 22nd September, 2021

To Whom It May Concern

Dear Sir/Madam,

RE: RESEARCH LETTER – NASAAZI AMINA

This is to confirm that the above named is a student in the Department of Real Estate, Construction Management & Quantity Surveying pursuing a course leading to the degree of M.A. Construction Management.

She is carrying out a research *entitled "**Challenges Facing Arbitration as a Dispute Resolution Method in the Construction Industry in Uganda – A study of industry players in the City of Kampala**"* in partial fulfillment of the requirements for the degree programme.

The purpose of this letter is to request you to allow her access to any kind of material she may require to complete her research. The information will be used for research purposes only.

CHAIRMAN
DEPARTMENT OF CONSTRUCTION MANAGEMENT AND QUANTITY SURVEYING
UNIVERSITY OF NAIROBI

Isabella N. Wachira-Towey, (PhD)
Chair & Senior Lecturer,
Department of Real Estate, Construction Management & Quantity Surveying

APPENDIX III: GENERAL QUESTIONNAIRE

SECTION ONE - BIO DATA

1. What is your professional background? (MULTIPLE RESPONSES ALLOWED) *Check all that apply.*

   - [ ] Architect
   - [ ] Engineer
   - [ ] Quantity Surveyor
   - [ ] Lawyer
   - [ ] Other

2. How long have you worked in or for the construction industry? *Mark only one oval.*

   - ◯ 5-10 years
   - ◯ 10-15 years
   - ◯ 15-20 years
   - ◯ Above 20 years

3. Have you been actively involved in the execution of construction projects? *Mark only one oval.*

	1	2	3	4	5	
Low	◯	◯	◯	◯	◯	High

4. In what capacity have you been involved in the construction industry? (MULTIPLE RESPONSES ALLOWED) *Check all that apply.*

- [ ] Architect
- [ ] Quantity Surveyor
- [ ] Engineer
- [ ] Project Manager
- [ ] Contract Administrator
- [ ] Construction Manager
- [ ] Consultant
- [ ] Contractor
- [ ] Lawyer (providing legal services)
- [ ] Employer/Client
- [ ] Arbitrator

5. Which of the following standard contracts have you used or encountered in your work in for the construction industry? (MULTIPLE RESPONSES ALLOWED) *Check all that apply.*

- [ ] EAIA
- [ ] FIDIC
- [ ] PPDA
- [ ] WORLD BANK
- [ ] Other

6. Who was the contract administrator in the projects you have worked on? (MULTIPLE RESPONSES ALLOWED) *Check all that apply.*

- [ ] Architect
- [ ] Engineer
- [ ] Quantity Surveyor
- [ ] Lawyer
- [ ] Other

SECTION TWO

Disputes in the Construction industry and the extent to which arbitration is used to resolve construction disputes. (NOTE: YOU CAN GIVE MULTIPLE RESPONSES)

1. Have you encountered disputes in the projects you have been involved in? *Mark only one oval.*

   ◯ Yes
   ◯ No

2. What was the source of the disputes? (MULTIPLE RESPONSES ALLOWED) *Check all that apply.*

   ☐ Delays
   ☐ Non payment
   ☐ Ambiguity of Contract Documents
   ☐ Site Instructions
   ☐ Variations
   ☐ Slow Progress the Contractor
   ☐ Abandoning site by the contractor
   ☐ Unlawful termination of the contract

3. What was the method of dispute resolution provided for in the contract? (MULTIPLE RESPONSES ALLOWED) *Check all that apply.*

- [ ] Negotiation
- [ ] Conciliation
- [ ] Mediation
- [ ] Arbitration
- [ ] Adjudication
- [ ] Dispute Review Board
- [ ] Expert Witness
- [ ] Med-Arb
- [ ] Arb-Med
- [ ] Arb-Med-Arb

4. Among the methods of dispute resolution provided for in the contracts that you were involved in, which one was used in resolving or attempting to resolve the disputes? (MULTIPLE RESPONSES ALLOWED) *Check all that apply.*

   - [ ] Negotiation
   - [ ] Conciliation
   - [ ] Mediation
   - [ ] Arbitration
   - [ ] Adjudication
   - [ ] Expert Witness
   - [ ] Med-Arb
   - [ ] Arb - Med
   - [ ] Arb-Med-Arb
   - [ ] Dispute Review Boards

5. Among the dispute resolution methods, which one finally resolved the dispute? (MULTIPLE RESPONSES ALLOWED) *Check all that apply.*

- [ ] Negotiation
- [ ] Conciliation
- [ ] Mediation
- [ ] Arbitration
- [ ] Adjudication
- [ ] Dispute Review Boards
- [ ] Expert Witness
- [ ] Med-Arb
- [ ] Arb - Med
- [ ] Arb-Med-Arb

6. Who selected the method of resolving the dispute where more than one method was specified? (MULTIPLE RESPONSES ALLOWED) *Check all that apply.*

- [ ] Mutual Agreement Between the parties
- [ ] Advice from Counsel or Advocate
- [ ] Advice from Consultants
- [ ] Advice from friends

7. What were the reasons for choosing the particular method over the other methods? (MULTIPLE RESPONSES ALLOWED) *Check all that apply.*

- [ ] Mutual Agreement between the parties
- [ ] Advice from Counsel or Advocate
- [ ] Flexibility
- [ ] ConFdentiality
- [ ] Advice from Consultants of the project
- [ ] Advice from friends
- [ ] Cost Effectiveness
- [ ] Timeliness
- [ ] Financial size of the dispute
- [ ] Technicalities of the method
- [ ] Technicality of the dispute
- [ ] Form of the dispute
- [ ] The support by the legal system of the country

Availability of persons well versed with the process of alternative dispute resolution

SECTION THREE

Challenges faced in using arbitration to resolve construction disputes. (NOTE- WHILE RESPONDING TO THIS SECTION, PUT INTO CONSIDERATION ALL THE DISPUTES YOU HAVE BEEN PART OF, THAT WERE RESOLVED USING ARBITRATION. THEREFORE, YOU CAN GIVE MULTIPLE RESPONSES)

1. Of the different alternative dispute resolution methods, are you familiar with Arbitration? *Mark only one oval.*

   ◯ Yes

   ◯ No

2. Of the disputes you have been involved in, how many have been resolved using arbitration? (GIVE A NUMBER OUT OF THE TOTAL FOR EXAMPLE: 3 OUT OF 10 OR 3/10)

3. Have you been involved in any of the arbitration proceedings for the disputes resolved using arbitration? *Mark only one oval.*

   ◯ Yes

   ◯ No

4. In what capacity were you involved? (MULTIPLE RESPONSES ALLOWED DEPENDING ON THE DIFFERENT DISPUTES) *Check all that apply.*

   ☐ Claimant
   ☐ Respondent
   ☐ Arbitrator
   ☐ Party Representative
   ☐ Expert Witness

5. Of the arbitration proceedings you have been pa# of, were the paties satisfied with the outcomes? (GIVE MULTIPLE RESPONSES) *Check all that apply.*

- [ ] Very SatisFed
- [ ] SatisFed
- [ ] DissatisFed
- [ ] Strongly DissatisFed

6. What was the time implication in the various proceedings? (MULTIPLE RESPONSES ALLOWED DEPENDING ON THE DIFFERENT DISPUTES) *Check all that apply.*

- [ ] Short time
- [ ] Reasonable time
- [ ] Long time
- [ ] Very long time

7. In your opinion, were the arbitrators or the arbitral tribunals competent? *Check all that apply.*

- [ ] Strongly Agree
- [ ] Agree
- [ ] Disagree
- [ ] Strongly Disagree

8. In your opinion, were the arbitrators or the arbitral tribunals patial? *Check all that apply.*

- [ ] Strongly Agree
- [ ] Agree
- [ ] Disagree
- [ ] Strongly Disagree

9. What other atributes did the arbitrators or the arbitral tribunals exhibit in the various disputes?

……..

10. Did any member of the di$erent project teams pa#icipate in the arbitration proceedings? *Check all that apply.*

- [ ] Yes
- [ ] No

11. If your response to the question above is YES, indicate the capacity they participated a (MULTIPLE RESPONSES ALLOWED) *Check all that apply.*

- [ ] Witness of fact
- [ ] Expert Witness
- [ ] Party Representative

12. Were the proceedings confidential? (YOU CAN GIVE MULTIPLE RESPONSES DEPENDING ON THE VARIOUS DISPUTES) *Mark only one oval.*

- ◯ Very Confidential
- ◯ Confidential
- ◯ Nonconfidential
- ◯ Extremely nonconfidential

13. How were these arbitration proceedings concluded? (MULTIPLE RESPONSES ALLOWED DEPENDING ON THE NUMBER OF DISPUTES YOU HAVE BEEN INVOLVED IN) *Check all that apply.*

- [ ] Terminated by Consent Award
- [ ] Rendering of the Final Award

14. Of these proceedings, were the awards successfully enforced? (MULTIPLE RESPONSES ALLOWED DEPENDING ON THE NUMBER OF DISPUTES YOU HAVE BEEN INVOLVED IN) *Check all that apply.*
    - [ ] Yes
    - [ ] No
    - [ ] Some

15. Were there court interventions amongst the proceedings you have been involved in? (MULTIPLE RESPONSES ALLOWED DEPENDING ON THE NUMBER OF DISPUTES YOU HAVE BEEN INVOLVED IN) *Check all that apply.*
    - [ ] Yes
    - [ ] No
    - [ ] Some

16. Give reasons for the response above.

17. What would you consider to be the challenges in the use of arbitration in resolving disputes in the construction industry in Kampala? (MULTIPLE RESPONSES ALLOWED DEPENDING ON THE DISPUTES) *Check all that apply.*
    - [ ] Lack of training
    - [ ] Limited experience
    - [ ] High cost implication
    - [ ] Lengthy process
    - [ ] Un enforceability of the arbitral award
    - [ ] Unsatisfactory outcome
    - [ ] Lack of conFdence in the proceedings
    - [ ] Incompetent party representatives
    - [ ] Ambiguity of the arbitration agreement
    - [ ] Lack of immunity of the arbitrator

18. How do you rank your experience while using arbitration to resolve construction disputes? *Mark only one oval.*

	1	2	3	4	5	
Very Bad	◯	◯	◯	◯	◯	Very Good

19. What are your reasons for the ranking above?

20. Would you recommend arbitration as a method of resolving construction disputes? *Check all that apply.*

- [ ] Yes
- [ ] No

21. Give reasons for your response to the above question. (MULTIPLE RESPONSES ALLOWED) *Check all that apply.*

- [ ] It is fast
- [ ] Its affordable
- [ ] Flexibility and conFdentiality
- [ ] Party autonomy
- [ ] Recognition and enforcement of the arbitral award
- [ ] It is supported by the legal system of the Country
- [ ] Availability of training and accrediting institutions
- [ ] It is time consuming
- [ ] Parties do not understand it very well
- [ ] Arbitrators are not well trained
- [ ] Abuse of party Autonomy
- [ ] It is more costly
- [ ] Limited court intervention
- [ ] There are challenges in enforceability of the award.

Incompetent training and crediting institutions.

SECTION FOUR:

Possible strategies to address the challenges facing arbitration while resolving construction disputes in the construction industry in Uganda. (NOTE- YOU CAN GIVE MULTIPLE RESPONSES)

1. Are you aware of the following institutions which support arbitration? (MULTIPLE RESPONSES ALLOWED DEPENDING ON THE DISPUTES) *Check all that apply.*

   - ☐ Centre of Arbitration and Dispute Resolution (CADER)
   - ☐ International Centre for Arbitration and Mediation in Kampala

2. Who do you expect to promote arbitration in the construction industry in Uganda? (MULTIPLE RESPONSES ALLOWED DEPENDING ON THE DISPUTES) *Check all that apply.*

   - ☐ Institutions
   - ☐ Project Managers
   - ☐ Contract Administrators
   - ☐ Parties to the Agreement

3. In your opinion, what intervention can be used in Uganda to promote the use of arbitration in settling disputes in the construction industry in Uganda? (MULTIPLE RESPONSES ALLOWED DEPENDING ON THE DISPUTES) *Check all that apply.*

   - ☐ Training of arbitrators
   - ☐ Constant publication of qualiFed arbitrators
   - ☐ Close monitoring of the arbitration proceedings by the institutions and the courts

4. Which profession do you find most suited to lead arbitration in the construction industry in Uganda? (MULTIPLE RESPONSES ALLOWED DEPENDING ON THE DISPUTES) *Check all that apply.*

   - ☐ Architect
   - ☐ Quantity Surveyor
   - ☐ Engineer
   - ☐ Contract Administrator
   - ☐

Construction Manager

5. How can the courts be more supportive towards Arbitration Proceedings?

6. How can the costs and time be managed in arbitration? (MULTIPLE RESPONSES ALLOWED DEPENDING ON THE DISPUTES) *Check all that apply.*

- ☐ Appoint qualiFed and experienced arbitrators.
- ☐ Set time limits during the procedure and stictly follow them
- ☐ Close monitoring of the proceedings by the institutions

7. What institution do you find most suited to lead arbitration in the construction industry Uganda? *Check all that apply.*

- ☐ Centre of Arbitration and Dispute Resolution (CADER)
- ☐ International Centre for Arbitration and Mediation in Kampala
- ☐ Uganda Society of Architects
- ☐ Uganda Institute of Professional Engineers
- ☐ Institute of Surveyors Uganda

8. Recommend other strategies that can be implemented to mitigate the challenges faced in arbitration.