



**Kamau Karori, *MBS, C.Arb***

Senior Partner & Head, Dispute Resolution Practice  
DLA Piper Africa, IKM Advocates

[kkamau@ikm.co.ke](mailto:kkamau@ikm.co.ke)

IKM Place, Tower A, 1<sup>st</sup> Floor, 5th Ngong Avenue Off Bishops Road  
P. O. Box 11866-00400 Nairobi  
T: +254 20 2773 000 F: +254 20 2773 111 M: +254 722 898393

## SUMMARY PROFILE

Kamau Karori qualified as an Advocate of the High Court of Kenya in 1996. He has since been involved in the resolution of many ground-breaking and high profile commercial disputes in the High Court, Court of Appeal and Supreme Court of Kenya.

Karori is also a renowned arbitrator. In recognition of his experience and status in both domestic and international arbitration, he was recently conferred the status of Chartered Arbitrator by the Chartered Institute of Arbitrators, UK. He is an active member of the Chartered Institute of Arbitrators, the Nairobi Centre for International Arbitration (NCIA), the Kigali Centre for International Arbitration (KCIA) and the Africa Arbitration Association (AfAA).

Based on his extensive experience in the dispute resolution field, Karori has been retained by several multinationals, State Law Office, State Corporations and high-ranking individuals to advice and/or act in numerous matters.

Karori has received accolades both from clients, peers and also from leading International directories including Chambers Global where he has been consistently ranked in tier 1 in dispute resolution and is recognized as one of the leading lawyers and arbitrators in Kenya. In

## CREDENTIALS

### Education

Chartered Arbitrator, February 2020

Fellow, Chartered Institute of Arbitrators, November 2013

Kenya School of Law: Diploma in Law (1994 – 1995)

University of Nairobi: Bachelor of Laws (LLB) Degree (1990 – 1993)

Certified Public Secretary (CPS)

### Professional Qualifications

Chartered Arbitrator, Chartered Institute of Arbitrators

Post Admission experience: 24 years

Law Society of Kenya

Institute of Certified Public Secretaries of Kenya

Fellow, Chartered Institute of Arbitrators

a recent edition of the Chambers Global Guide he is described as being “*revered for his outstanding litigation and arbitration skills*” and “*for the prominent work*” he undertakes.

Karori’s expansive practice covers a wide range of matters that include complex corporate and commercial disputes, tax disputes, constitutional petitions and finance amongst a multitude of other areas. In recognition of his status and expertise, Karori has been invited by the Judicial Training Institute to train researchers, magistrates and Judges of the High Court and Court of Appeal.

Karori is often invited to speak and train in various domestic and international arbitration conferences and has participated in conferences organised by diverse institutions including the Chartered Institute of Arbitrators (CIARB), the German Arbitration Institute (DIS) and the Nairobi Centre for International Arbitration (NCIA). He has also served as Attorney and as Arbitrator in several high-profile domestic arbitrations.

Amongst his most notable matters is the multi-billion dollar investment arbitration claim filed against the Government of Kenya at the International Centre for Settlement of Investment Disputes (ICSID) in which he successfully represented the Government of Kenya as one of the lead counsels. Karori also authored a chapter in the book titled ‘*Rethinking the Role of African National Courts in Arbitration*’ which was published by Kluwer Law International.

## KEY EXPERIENCE

### Sample of Dispute Resolution matters

- Successfully represented a leading Kenyan bank in a dispute resolution matter where a chargor had challenged the bank’s right to appoint receivers over the chargor company as well as the bank’s rights to exercise its statutory power of sale in a bid to recover a debt in excess of Kshs.643 Million (approx. USD7.7 Million).
- Representing Kenya Breweries Limited at the Supreme Court of Kenya in a dispute over distribution of beverages by Kenya’s leading beer manufacturer. The novel issue arising is whether the Supreme Court can entertain an appeal challenging the decision by the Court of Appeal to refer a suit. The indicated value of the business is about USD 30 million.
- Represented an airline in a matter where the KRA had raised an assessment in which it claimed VAT in the sum of US\$ 16,455,203.78 from the airline on account of payments made to Central Reservation System providers for air ticket reservation services.
- Represented a client in a matter where KRA sought payment of the sum of US\$ 3,208,116.58 from the client, being the tax allegedly due to it on account of undeclared income earned by a company registered in Britain and also sought payment of the sum of US\$ 8,813.55 relating to withholding tax on foreign exchange differences resulting from payment of commissions to a third party.

- Represented a client in a dispute involving the refusal by the Kenya Revenue Authority (“**KRA**”) to pay VAT refunds on grounds that it did not have funds. The Court issued an order of mandamus and directed KRA to pay the client approximately US\$ 421,686.00 being the unpaid VAT refunds. This was a landmark decision as no tax payer had previously successfully sued KRA to compel payment of VAT refunds.
- Currently representing a company in a suit where Kenya Revenue Authority (**KRA**) is asserting the right to charge Directors of a company on account of a tax dispute. Although the dispute is yet to be determined in accordance with the Tax Procedures Act, the amount in dispute is in excess of 300,000,000 (USD 3 million). The novel issue arising is whether the tax authority can issue the departure prohibition order before tax has been ascertained as being due and whether the same violates the right to movement guaranteed under the Constitution.
- Currently representing a leading Bank in defending a tax assessment demand made by Kenya Revenue Authority on VAT on Merchant Services, Card issuing services, excise duty on merchant service fee, exported services and other fees and commission earned by the Bank. The main issue for determination is whether VAT and excise duty is payable on the said services. The amount in dispute is Kshs 1.7 Billion (USD 17 Million).
- Represented Kenya’s electoral body, the Independent Electoral and Boundaries Commission (IEBC) and its Chairman before the Supreme Court of Kenya in the Petitions that resulted from the March 2013, August, 2017 and October 2017 Presidential Elections where various Petitioners had sought to challenge the presidential election results as announced by the IEBC.

## Arbitration

- Was engaged as co-counsel and successfully defended the Republic of Kenya in investment arbitration proceedings filed by Cortec Mining Kenya Limited at the International Centre for Settlement of Investment Disputes (ICSID). The claim arose from the cancellation of mining licenses which the Claimant asserted was done in violation of the 1999 UK- Kenya Bilateral Investment Treaty (BIT) and consequently claimed compensation for alleged unlawful expropriation and violation of various BIT protections regarding fair and equitable treatment. The Tribunal rendered its Award on 22<sup>nd</sup> October, 2018 in which it upheld the objections raised by the Republic of Kenya and dismissed the claim with costs. The amount claimed was in excess of US\$2.58 Billion. The claim (Cortec Mining Kenya Limited, Cortec (Pty) Limited and Stirling Capital Limited v. Republic of Kenya (ICSID Case No. ARB/15/29) remains the highest value and most strategically important investment treaty claim Kenya has ever faced.
- Was part of the legal team that advised and represented the Republic of Kenya in relation to a Petition for enforcement of the arbitral awards filed in the Southern District of New York. The enforceability of the awards was successfully challenged on the basis of the Kenyan law and the proceedings in New York were consequently stayed on the grounds that the Kenyan Courts were already seized of the matter. The

High Court of Kenya ultimately issued orders staying the enforcement of the awards other than in accordance with the laws of Kenya, essentially restraining Spencon (Kenya) Limited from pursuing the New York proceedings.

- Represented the Chartered Institute of Arbitrators in the Supreme Court in the case of Nyutu Agroviet Limited and Airtel Networks Kenya Ltd, where the Supreme Court finally settled the question as to whether there is a right of appeal from a decision of the High Court on an application for setting aside of an arbitral award under Section 35 of the Arbitration Act and provided for a limited right of appeal.
- Represented Pevans East Africa Limited in proceedings at the Tax Appeals Tribunal involving claims by the Kenya Revenue Authority of Withholding Tax in excess of Kshs 2.5 Billion. The decisions of the Tribunal set out the process to be followed in making a claim for tax against a tax payer and thereby clarified important aspects of tax laws.
- Leading the team comprising three counsels that is defending a leading hotel in arbitration proceedings filed by a contractor in which the Contractor is alleging that the hotel breached the terms of the construction agreement. The Contractor is claiming payment in excess of USD 7.5 Million. The hotel has filed a counterclaim for breach of contract, delay in completion and cost of taking over the works and is claiming compensation in the sum of USD 13 Million.
- Successfully represented National Oil Corporation of Kenya in defending an award arising from the failure by a supplier to deliver a consignment of fuel within the period contracted. The value of the subject matter was approximately US\$5,000,000.
- Representing a client in an Appeal pending before the Court of Appeal which seeks to resolve the issue of the scope of intervention by the High Court when determining an application for setting aside an arbitral award. In the impugned decision, the High Court held that it is not bound by the grounds for setting aside an award under Section 35 of the Arbitration Act and that it has an expanded jurisdiction to confirm whether the award is in conformity with the Constitution and all the laws of the land. The case seeks to resolve the question whether arbitrations, both international and domestic are autonomous or subject to local courts.
- Advised and successfully represented a State corporation in an application before the Court of Appeal seeking leave to institute an appeal from a decision of the High Court. The legal question for determination is whether the Court of Appeal can in certain instances allow a party to prefer an appeal against a decision of the High Court made under Section 35 of the Arbitration Act.
- Acted as Sole Arbitrator in a claim between Madison Insurance Company Limited and Kenya Institute for Research and Development. The resulting award was upheld by the High Court and contains the guiding principles on terms that can be implied into insurance contracts.
- Acted as Sole Arbitrator in a dispute involving Rwama Coffee Farmers Co-operative Society and Thika Coffee Mills Limited. The claim was for an amount in excess of US\$1,000,000. The resulting award was

upheld by both the High Court and Court of Appeal and is a leading authority on the power of an arbitral tribunal and the limited scope of intervention by the High Court in arbitration awards.

#### EXPERIENCE RECORD

April 2002 to-date	Partner in charge of Dispute Resolution Department, Iseme, Kamau & Maema Advocates
Jul 1996 - to March 2002	Partner, Kamau Karori & Co. Advocates
Jan 1996 to July 1996	Legal Assistant in the Litigation Department of Kariuki Muigua & Co. Advocates

#### LANGUAGES

	Speaking	Reading	Writing
English	Excellent	Excellent	Excellent
Kiswahili	Good	Good	Good

#### PUBLICATIONS AND RECENT CONFERENCES

- “The Attitude of Kenyan Courts towards Arbitration”, in E. Onyema (Ed.) *Rethinking the Role of African National Courts in Arbitration*, Kluwer Law International, 2018.
- Promoting Professionalism in ADR Practice, Chartered Institute of Arbitrators Journal. Vol 3 Issue 1, 2015.
- *Emerging Perspectives and Challenges in Arbitration Practice*, Chartered Institute of Arbitrators Journal 2014.
- “A Momentous Step: Kenya establishes international arbitration centre”, *International Arbitration Newsletter* 20<sup>th</sup> December 2013.
- Has consistently attended the annual International Bar Association (IBA) Conferences over the last four (4) years.
- Invited as Speaker and moderator in many conferences organized by regional arbitration Centres.
- Listed as one of the Speakers for an upcoming Chartered Institute of Arbitrators (CI Arb) International Arbitration Conference scheduled for 8- 10 November 2018.