



DEMYSTIFYING CONSTRUCTION ADJUDICATION IN TANZANIA



By Nuhu Mkumbukwa

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INTRODUCTORY REMARKS

1. Generally, the laws and policy in Tanzania favors Alternative Dispute Resolution (ADR) Mechanisms as one of the preliminary means of resolving disputes. See for instance and to mention just a few: a) Article 107 of the Constitution of the United Republic of Tanzania, b) section 13 of the Civil Procedure Code (CPC), 3) the Arbitration Act, 2020, and 4) The National Construction Council (NCC) Act, No.20 of 1979 as revised by Act No.162 of 2008
2. It is now mandatory for parties to a dispute to pursue ADR and or bonafide pre action settlement efforts before resorting to filing a suit in court of law. Any deviation from this requirement may lead to a suit being stayed or struck out.
3. There are many categories of ADR mechanisms that can be invoked in Tanzania eg Mediation, Negotiation, Arbitration, Adjudication, many hybrids etc. However, Adjudication is mostly preferred and very popular in the construction industry, usually as a first dispute resolution mechanism by a third party.

ADJUDICATION IN TANZANIA

1. There is no statutory definition of adjudication in our laws. One may boldly dare to state that Adjudication is a Cinderella mode of the ADR mechanisms practiced in Tanzania. Adjudication has been forgotten in the realm of statutory regulation. It is not mentioned in the recent enacted section 93 of the Arbitration Act, Cap 15 and amendments to the CPC which imposes the mandatory requirement of accreditation for arbitrators, negotiators, conciliators and mediators. There is no accreditation requirement for adjudicators.
2. Despite the above situation, Adjudication is popular in many established arbitration centres in Tanzania eg TI Arb and NCC. These centres have their own Adjudication Rules which can and are usually adopted by disputants. These are the NCC Adjudication Procedural Rules of 2017, and TIARB Adjudication (General Conditions & Procedural) Rules, of 2021. The other two flagship ADR centres, namely: the Tanzania Arbitration Centre (TAC) and Tanzania International Arbitration Centre (TIAC) have not promulgated Adjudication Rules yet.

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3. The NCC has explained the rationale to have its own adjudication rules nicely in its preamble to the NCC Adjudication Rules, 2017 as follows:

“One of the recent developments in dispute resolution in the construction industry is the introduction of Adjudication. National Construction Council (NCC) has **noted that resolution of disputes through adjudication has gained momentum but there are no published procedural rules to guide the process.**”
4. Similarly, TIArb has also explained the rationale crisply in its preamble to the TIArb Adjudication Rules, 2021 as shown below:

“The Adjudication of disputes is **the most recent and very successful form of alternative dispute resolution.** The decision of the Adjudicator is based on the merits of the case and principle of “value for money” approach: to achieve fair determination of disputes arising under the Contract in the shortest time with the minimum cost. **Due to its success dispute adjudication is a globally accepted dispute resolution method and a common practice in construction industry.**”
5. Before we proceed further, it is important to understand the meaning of construction adjudication in the first place. According to a definition gathered from **Google**: “Construction adjudication is a fast-track, statutory or contractual dispute resolution process designed for the construction industry, where an independent third party (adjudicator) provides a binding decision—typically within 28 to 84 days—on disputes like payment, delays, or defects. It allows projects to continue while maintaining cash flow. “
6. **The Construction Law Institute** simply defines the term thus: “Adjudication is a quick, interim dispute resolution process primarily used in construction contracts to resolve disputes on an ongoing project.”
7. **The ADR Institute of Canada** has the following definition: “Construction adjudication is an **expedited form of dispute resolution** which, typically, serves as a key adjunct to prompt payment provisions of legislation applicable to the construction industry. An adjudication determination is binding on the parties to the dispute unless the dispute is otherwise resolved by way of legal proceedings, arbitration, or agreement”
8. Having grasped the meaning of construction adjudication, we deem it imperative to highlight on the unique features of construction adjudication in the next paragraphs.

UNIQUE FEATURES OF CONSTRUCTION ADJUDICATION



1. **Interim Binding Nature:** Adjudicator's decision is immediately binding and enforceable, usually through court, but not necessarily final. It can be challenged later via arbitration or litigation.

See-**Bogeta Engineering Limited vs. Kampala International University (Civil Case no. 226 of 2018) [2023] TZHC 21672 (28 August 2023) – Malata J noted that;**

“It is trite law that adjudication is created for the purposes of settling small differences between the parties during execution of the contract. The rationale behind is to promote quickest disposition of differences during ‘execution of contract as opposed to arbitration which usually takes longer to come to an end. **If the adjudicator makes a decision on the dispute before him if not challenged by way of arbitration the same becomes final and binding to the parties.** This is echoed by Clause 28.2 of the GCC”.

2. **Terminologies:** it is noteworthy that Adjudication has its own parlance such as the Referring party, Responding party, Adjudicator and Decision.
3. **Pleadings** – No pleadings in the strict sense of the word. We have Referral, statement of case, response etc.
4. **Speed and Efficiency:** The process is designed to be faster and more cost-effective than litigation or arbitration, allowing project work to proceed without major interruptions, cost escalations or delays. The well known principle underpinning Adjudication is “Pay now argue later, if you have to”. The celebrated case of *Macob Civil Engineering Ltd v Morrison Construction Ltd [1999]* established that an adjudicator's decision is binding and must be complied with immediately, even if it contains errors of fact, law, or procedure.

Eg: At the NCC – there are strict timelines for filing of “pleadings”.

– There are strict timeline for the rendering the decision. Rule 7.1 provides:

“The Adjudicator shall reach a decision and notify the Parties within the time set out in the Contract. The Adjudicator may extend the period of making decision up to 14 days by notification to the parties. The adjudicator shall give reasons for decision.”

At the TIArb – There are strict timelines for filing of “pleadings”.

Also there are strict timeline for the rendering the decision. Rule 3.2 provides:

“Within 56 days or other period, as proposed by the Sole Adjudicator/Dispute Adjudication Panel and agreed by the Parties, the reasoned decision shall be given by Sole Adjudicator/Dispute Adjudication Panel.”

5. **Simplified Process:** in most cases, Adjudication is typically a paper-based procedure where the adjudicator reviews submissions from both sides without a formal hearing or witness cross-examination.
Note the powers of the Adjudicator – He may require further information or documents, may interview persons, may do a site visit etc. but this is not a hearing in the strict sense of the word.
6. **Scope:** While often used for payment issues, it applies to various construction contract disputes, including extensions of time, variations, correctness or compliance to specifications under the contract etc.
7. **Contractual vs Statutory Right:** In Tanzania, the right to opt for adjudication is usually contractual, while in many jurisdictions (e.g., UK), parties have a legal right to refer a dispute to adjudication at any time.
8. **Appointment of Adjudicator:** 1. A specific statute may specify manner of appointment as is the case in the UK. 2. In Tanzania, it is usually the contract or the institutions that the party appoint to oversee the process of adjudication that provides mechanisms for appointment, or 3) where parties have no contract containing an adjudication clause, an Adhoc / stand alone adjudication agreement can be concluded for that purpose after the dispute has arisen (eg. both the NCC and TI Arb Rules have sample agreements as appendix to the Rules)
Typically – the main contract will provide for an adjudication clause, adjudicator or mode of his appointment, applicable rules and fees etc.

ENFORCEMENT OF AN ADJUDICATOR'S DECISION

1. **The Adjudicator's decision is binding on the parties immediately** unless set aside on appeal or arbitration.
See- Tanzania Petroleum Development Corporation (TPDC) vs Kilimanjaro Oil Company Ltd (Miscellaneous Commercial Application No. 000007098 of 2025) [2025] TZHCComD 312 (17 November 2025)- where his Lordship **Gonzi J** drives this point home:
“Adjudication decisions are “final and binding”, and by this phrase it only means that upon being delivered, parties should promptly give effect to the adjudicator's decision and that it may be legally enforced in courts against the noncomplying party. However, it must be understood that the “finality and binding” nature of the adjudicator's decision is temporal and only lasts for the lifetime or duration of the construction contract. After the construction contract comes to an end, **the same dispute which earlier on**



formed basis for the adjudicator's decision, may properly and competently be referred to arbitration, amicable settlement or litigation and a different decision may be imposed in the place of the provisional and interim adjudicator's decision, thereby effectively replacing it by substitution. The decision of an adjudicator, upon being made and becoming final and binding, essentially, is deemed to be a contractual obligation on both Parties."

For a similar proposition, see also the case of **Tanzania Bureau of Standards (TBS) vs Chichi Engineering Company Limited (Misc. Civil Cause No. 024503 of 2024) [2025] TZHCComD 108 (23 May 2025)**

2. Option of filing a suit/claim to enforce the Adjudicator's decision

See **TPDC case** cited above. Further, His Lordship Malata, J. in **Bogeta's case** also reasoned as follows:

"The recourse to be taken in case of breach of adjudicator's decision will be the ones provided under the contract. In this case, plaintiff was to initiate the arbitration proceedings for breach of terms of contract arising from the adjudicator's decision which has become part of the contract. Had the plaintiff's taken such recourse, at the hearing the arbitration case will just be required to table before the arbitrator the adjudicator's decision which has become final and binding and demonstrate how the defendant has breached it. **The above position is not clearly featured under our laws**, however this court has borrowed experience from outside Tanzania in the FIDIC Conditions of Contract for Construction, 2017 which are commonly used in Tanzania in various contracts in particular those financed by the World Bank..."

3. Use it as evidence in a separately filed suit for breach of contract.

Again, His Lordship Malata, J. in **Bogeta's case** further reasoned:

"Moreover, the adjudicator's decision which became final and binding shall form part and parcel of the terms of the contract entered by the parties. Should there be any breach of the adjudicator's decision such breach' shall be a breach of contract. **In that context therefore, it is a breach of clause 62 of GCC which may lead to termination of the contract.**"

ADVANTAGES OF ADJUDICATION

1. Affordable and quick process. This process is critical for maintaining cash flow within the industry and is used when a swift resolution is needed to prevent project disruption and stoppages. **John Uff**, in his book titled "**Construction Law**", 11th Edn, at pg 67 drives this point home nicely:

“Statutory adjudication is **presently the most widely used form of dispute resolution in the UK construction industry**. The decision of an adjudicator is binding only until the dispute is finally resolved by other available means, **but it appears that well over 90 percent of decisions are either accepted or result in settlement and, in either event, do not lead on to further proceedings**”

2. Most adjudicators are experts in the area in which the dispute relates. So the key benefit here is that parties get a Decision by an expert in the field.
3. In most cases, Adjudication decisions are respected by parties as alluded to by the author **John Uff** quoted above.
4. Prevention/ avoidance of further escalation of the dispute: The decision in a way prevents further litigation or arbitration as it gives parties a preview of the potential outcome of the next process or some loose form of a “neutral evaluation “ of the dispute.
5. The absence of statutory accreditation mechanisms presents a double edged sword situation in that it increases the pool of selectable adjudicators and allows more flexibility and choice to the parties.

CHALLENGES OF ADJUDICATION

1. Shorter timelines and speedy resolution/outcome. This process may be challenging to pursue for time constrained disputants. Admittedly this feature represents a double-edged sword, in the sense that it is an advantage and a disadvantage at the same time, depending on which situation one finds himself in.
2. Lack of accreditation mechanism of adjudicators in Tanzania- hence the profession is largely unregulated. Though the named institutions (ie NCC and TIArb) have regulations or rather the profession has its core ethical principles, such as Impartially, conflict of interest, confidentiality, value for money, immunity. Code of conduct?
3. Adjudication is not very much known by parties.
4. No clear enforcement mechanisms/non enforceability status of adjudicator’s decision unlike arbitral awards or decrees.
5. Adjudication is not really final in the strict sense of the word. Decision can be set aside on appeal (arbitration) or suit on the adjudication decision or amicable settlement.



For example TIArb Adjudication Rules provides that If either Party is dissatisfied with Sole Adjudicator/Dispute Adjudication Panel decision, notice of dissatisfaction shall be given within 28 days to the other Party and **commence arbitration procedure**. If no notice of dissatisfaction is given by either Party within 28 days after the Sole Adjudicator/Dispute Adjudication Panel has given the decision, **then the decision becomes final and binding**. In **Higher Education Students Loan Board vs Adil Auction Mart Limited (Misc. Commercial Cause No. 375 B of 2017) [2018] TZHC 3845 (13 July 2018) - Songoro J reasoning drives this point home:**

“The court after perusing closely clause 43.3 it find and decide that, **if a party is aggrieved by decision of the adjudicator is under contractual bound to refer the said decision to Arbitrator** for further determination. Referring the decision of adjudicator to this court indeed the petitioner has jump his own contractual obligations which requires him to refer adjudicator’s decision to arbitrator. Since in the petition, the petitioner did not indicate that, he even referred a decision of adjudicator to arbitration or arbitrator whatever the case had been filed pre-maturely and contrary to clause 43 .3....

The finding and a court decision is based on the fact that, the petition and respondent are bound by their choice of settling disputes which was agreed upon in clause 43.3 of the General Conditions of Contract.”

6. Nature of the appeal from the Adjudicator’s decision is not very clear. Normally it is a “relitigation” (involving filing pleadings, witnesses, hearing, award/judgment etc). See - **Bank of Tanzania vs Galilea Company Limited (Commercial Case No. 000030499 of 2024) [2025] TZHCComD 137 (20 June 2025)- Gonzi J**. Stated as follow:

“I find, therefore, that in this matter, the Arbitrator properly treated the arbitration before him as a totally new process initiated by a party to resolve the whole dispute from beginning to an end. The reference to the Adjudicator’s decision made at paragraph 9.0 of the Award was simply a matter of record and historical value. No irregularity was committed by the Arbitrator for so doing. “

7. The Adjudication Rules issued by the NCC are skeletal, and do not cover many aspects eg settlements, appeals/challenges etc. By comparison, TIArb rules are relatively modern and detailed. Rules must be made to clarify such nagging issues such as whether the Adjudicator’s decision can be enforced as if it is just like an award or by pursuing a summary judgment. On this aspect, we note divergent opinions in the UK and Tanzania. As for England, *Macob Civil Engineering Ltd case* is a foundational decision on construction adjudication provides clarity. According to that cause celebre the court will enforce adjudicators’ decisions through summary judgment, refusing to let parties use technical arguments to avoid payment.

Despite the above challenges, still there is some words of solace from the Right Honourable Lord Mustill, who once delivered his monumental Goff Lecture in Hong Kong in 1996 titled “Too Many Laws” commencing by noting that the UK and many other countries are riddled with too many laws, thus making it difficult to follow them or comply. He thus urges parties to be **innovative and consider other options available in ADR**, noting that the usual indifference, grudging acceptance and active hostility of unfamiliar methods, has no place in the wake of the current ADR revolution. The LawLord also argues that the defects in ADR modes are largely of parties’ own making than the law, stating that the flexibility of the modes and diligence by the parties are needed. The comments and observations given by Lord Mustill are timeless and very relevant to Tanzania, which has also seen an everincreasing promulgation of laws, thus making litigation and dispute resolution at large a complex and costly affair.

CONCLUSION

There is undoubtedly a wind of change in the dispute resolution arena in Tanzania where ADR mechanisms are being more trusted and given priority and credence as a starting point to resolve disputes in Tanzania. We can therefore safely predict what the outlook of the disputes resolution scene in Tanzania will look like. We expect to see; First. A greater use or invocation of these ADR tools (including Adjudication) in our day-to-day work as legal professionals and dispute resolvers, Second, More contracts will have to be designed to incorporate these ADR options, and Third, New forms of ADR/hybrids will gain traction, much to the chagrin of **Van de Berg**, and most importantly, Fourth, We will see a proliferation of institutions or persons solely relying on or practicing ADR as a service area.

In the end, Tanzania still yearns for a permanent solution and way forward as regards the status of adjudication in Tanzania. Stakeholders are therefore advised to push for amendments or creating of fresh set of rules on adjudication, providing for the initiation, conduct, powers, ethics, recognition and easy direct enforcement of adjudication decisions. Clarity is important.

ENDNOTES

- i Section 13 of the Civil Procedure Code, Cap 33 RE 2023
- ii See presentation by his Lordship Abdallah Gonzi , titled : Timely Jusice : The Requirement to Take Bonafide Steps Before Litigation Uuder the Civil Procedure Code of Tanzania: Relevance And Challenges”. Available in <https://www.scribd.com/document/1029757011/Hon-GONZI-J-Section-13-of-the-CPC-Legal-Briefs-Presentation-Bonafide-Steps-Prior-to-Filing-the-Suit-in-Court-MD-Mendez>
- iii <https://www.google.com/search?client=firefox-b-d&q=%E2%80%9CConstruction+adjudication+is+a+-fast-track%2C+statutory+or+contractual+dispute+resolution+process+designed+for+the+construction+industry%2C+where+an+independent+third+party+%28adjudicator%29+provides+a+binding+decision%E2%80%94typically+within+28+to+84+days%E2%80%94on+disputes+like+payment%2C+delays%2C+or+defects.+It+allows+projects+to+continue+while+maintaining+cash+flow.+>
- iv See <https://constructionlawinstitute.com/what-is-adjudication/>
- v Accessible at <https://adric.ca/construction-adjudication-program/>
- vi See National Irrigation Authority (formerly the National Irrigation Board) v Satom SA [2025] KECA 1472 (KLR)
- vii CLC 739, BLR 93, 64 Con LR 1, 37 EG 173
- vii CLC 739, BLR 93, 64 Con LR 1, 37 EG 173
- ix See “The Goff Lecture, 1996: Too Many Laws”, (1997) 63 JCI Arb 4, pg 248- 262. Also Available at <https://www.randfonline.com/doi/abs/10.1080/18758444.1998.11788050>
- x Van de Berg is quoted to have once said: “*Suffice it to say that in my view mechanisms such as Early Neutral Evaluation, Rent a judge, shadow mediation and Partnering are the pop songs of the legal world: catchy but inevitably ephemeral. They are no more a threat to the future of arbitration than the spice girls are to Beethoven’s ninth.*”



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