



COUR DE JUSTICE

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COMESA



COURT OF JUSTICE

**COMESA: DISPUTE SETTLEMENT AND ARBITRATION
DEVELOPMENTS**

**PAPER PRESENTED BY
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DURING THE TRALAC ANNUAL CONFERENCE**

CAPE TOWN, SOUTH AFRICA

6 - 7 APRIL 2017

**Distinguished Guests and Delegates,
Ladies and Gentlemen,**

It is a tremendous pleasure to be here today in this beautiful city of Cape Town.

We would like to thank Tralac for the invitation to our delegation from the COMESA Court of Justice and for the privilege of making this short presentation about Dispute Settlement and Arbitration Developments in COMESA.

The COMESA Court is one of the 8 organs of COMESA. Its primary function is to uphold the Rule of Law in the operation of the Treaty establishing COMESA. Its general jurisdiction is to adjudicate upon all matters referred to it under the COMESA Treaty. The Court sits as a First Instance Division (with 7 Judges) and as an Appellate Division (with 5 Judges). The creation of this Court stems from the realization that a stable and effective integration process needs a sound judicial framework.

There are several provisions in the COMESA Treaty which make reference to the jurisdiction of the Court and perhaps the most important of these is Article 26 of the Treaty which provides as follows:

“Any person who is resident in a Member State may refer for determination by the court the legality of any act, regulation, directive or decision of the Council or Member State on the grounds that such act, directive decision or regulation is unlawful or an infringement of the provisions of the Treaty. Provided that where the matter for determination relates to any act, directive or decision by a Member State, such person shall not refer that matter for determination under the Article unless he has first exhausted local remedies in the national court or tribunal of the Member State”.

According to this Article, the Court has power to hear a reference from a person (legal or natural) who is a resident in a Member State concerning the legality of any act, regulation, directive or decision of the Council or of a Member State on the grounds that such act, regulation, directive or decision is unlawful or constitutes an infringement of the provisions of the Treaty.

However, access to the Court by individuals and legal persons is not without restriction as is clear from the proviso to Article 26 which requires the exhaustion of local remedies before a party comes to the Court. This principle is based on customary international law and its rationale is that domestic Courts and Tribunals understand better the context of disputes occurring in their jurisdictions. It also has to do with the issue of sovereignty in traditional international law which focused on relations between states rather than individuals and requires the state against which an allegation is levelled be given the opportunity to put right what is complained of before the international forum can be seized of the matter.

Ladies and Gentlemen,

Allow me to focus now on arbitration as another form of dispute settlement in the COMESA Legal System.

Article 28 of the Treaty, has accorded the Court specific jurisdiction to hear and determine any matter:

(a) arising from an arbitration clause contained in a contract which confers such jurisdiction to which the Common Market or any of its institutions is a party; and

(b) arising from a dispute between Member States regarding the Treaty if the dispute is submitted to it under a special agreement between the Member States concerned.”

It is important to mention that Article 28 has an inherent limitation to the arbitral jurisdiction in that only transactions involving COMESA or its institutions and third parties and disputes between Member States in which the arbitration clause or special agreement gives jurisdiction to the Court can be entertained. Therefore, commercial disputes between private parties cannot be brought to the Court for arbitration.

Success in the arbitration field is, of course, not only dependent on arbitration practitioners but also on qualified arbitrators. It is faced with such realization, that the Court's Medium Term Strategic Plan 2016- 2020 has identified as one of its main four strategic objectives, that of “**Institutional Strengthening**”. Towards this end, our Judges recently attended a specialized course on arbitration law & practice and alternate dispute resolution (ADR) from the **Chartered Institute of Arbitrators (Kenya Branch)**.

In addition, the Court is revising its Arbitration Rules. Our current Arbitration Rules date back to 2003, and do not incorporate the relevant changes brought to the 1985 Model Law on International Commercial Arbitrations which was amended and updated in 2006. This revision will ensure that our new Rules are at par with the best international practices and meet the needs of the international arbitration community.

Finally, I would like to emphasize that the aim of the COMESA Court is to play a central role in the broader process of the African economic integration through its resolution of disputes arising from the interpretation and application of the COMESA Treaty.

Once again, it was an enormous pleasure to participate in this great event and thank you for your attention.