

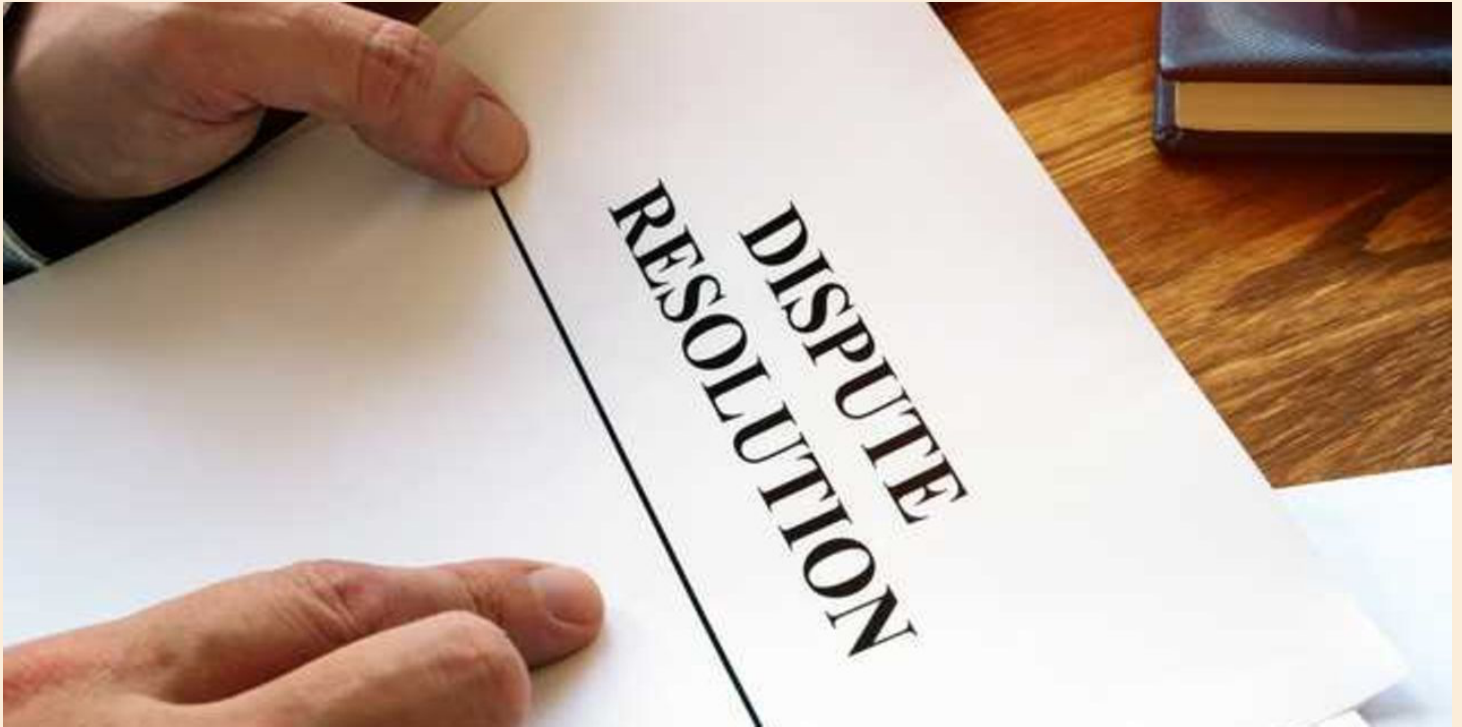
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Moving beyond reactive dispute resolution system

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Failure to resolve an escalating conflict fairly and timeously could lead to strikes and loss of business.

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Conflict is an inevitable feature of complex organisations, particularly in high-pressure, high-expectation working environments. Rather than defaulting to litigation, which may have long-term negative consequences, Kenyan law allows companies to opt for Alternative Dispute Resolution (ADR) mechanisms.

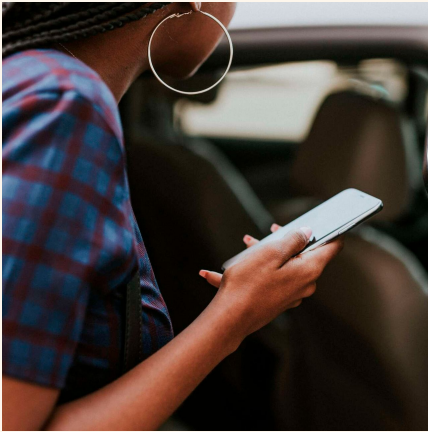
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Further to this, forward-thinking organisations are moving beyond reactive dispute resolution towards embedding ADR into governance structures to prevent escalation, restore trust and drive cultural change in what is described as a Dispute System Design (DSD).

Internal conflicts carry serious reputational, financial and governance risks.

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High-stakes issues such as sexual harassment, major disagreements between directors or unfair labour practices can carry devastating consequences, especially when that conflict escalates or goes public.

In today's increasingly litigious business environment, allowing internal conflicts to go unchecked or relying solely on knee-jerk legal reactions, can carry a high price tag. What starts as a relatively minor internal dispute can escalate quickly into a public relations crisis.

When organisational disputes reveal deeper structural or cultural weaknesses, isolated interventions such as one-off town hall meetings are rarely sufficient.

ADR offers a range of solutions, including systematic negotiation, mediation and conciliation processes. DSD turns these principles into practical action by embedding ADR into a company's governance, decision-making and accountability structures.

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The result is an intentional, system-wide approach that is designed to resolve disputes at the lowest, fastest and least adversarial level first. Given the role that DSD can play in avoiding lengthy court proceedings, and preventing long-term reputational damage and financial liability, it is as much a strategic imperative as it is a legal one.

Effective DSD is about preventing, managing and containing disputes, not only as a way of resolving internal conflict but as a matter of good organisational design.

Failure to resolve an escalating conflict fairly and timeously could lead to strikes and loss of business.

Above and beyond sound risk management, DSD can go a long way in helping companies to improve, strengthen and stabilise their governance structures.

Disagreements among directors – when prolonged and poorly managed, can lead directly to internal instability, a lack of confidence in leadership teams and operational disruption. ADR processes can play a role in strengthening governance and preserving organisational cohesion.

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Taking a DSD approach to corporate governance could also involve proactively appointing facilitators as objective, neutral third parties who can encourage collaborative decision-making and maintain focus on shared organisational objectives.

DSD also has its place in employee relations by providing a framework for building trust, addressing grievances constructively and fostering a positive, welcoming workplace culture.

Disputes between team members could lead to reduced morale, breakdowns in teamwork and decreased productivity. In the long term, this could in turn increase staff turnover, undermine organisational performance and ultimately have a negative

impact on the bottom-line.

Incorporating mechanisms like in-house or external Ombudspersons or peer-review panels could ensure power balance and impartiality, while encouraging the buy-in and cooperation of the affected parties.

In support of this, Chief Justice Martha Koome has highlighted the value of a multi-door approach to resolution of disputes, particularly through court-annexed mediation programmes, in resolving labour disputes efficiently and effectively.

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This success is reflected in a Judiciary report released in April 2024, which shows that 16,770 of the 18,162 cases referred to Court-Annexed Mediation were resolved, representing a settlement rate of 92.3 percent.

These results make a compelling case for the important role of ADR and DSD in fostering working relationships that can survive – and even thrive, in times of conflict.

The writer is a Partner, Cliffe Dekker Hofmeyr (Incorporating Kieti Law LLP).

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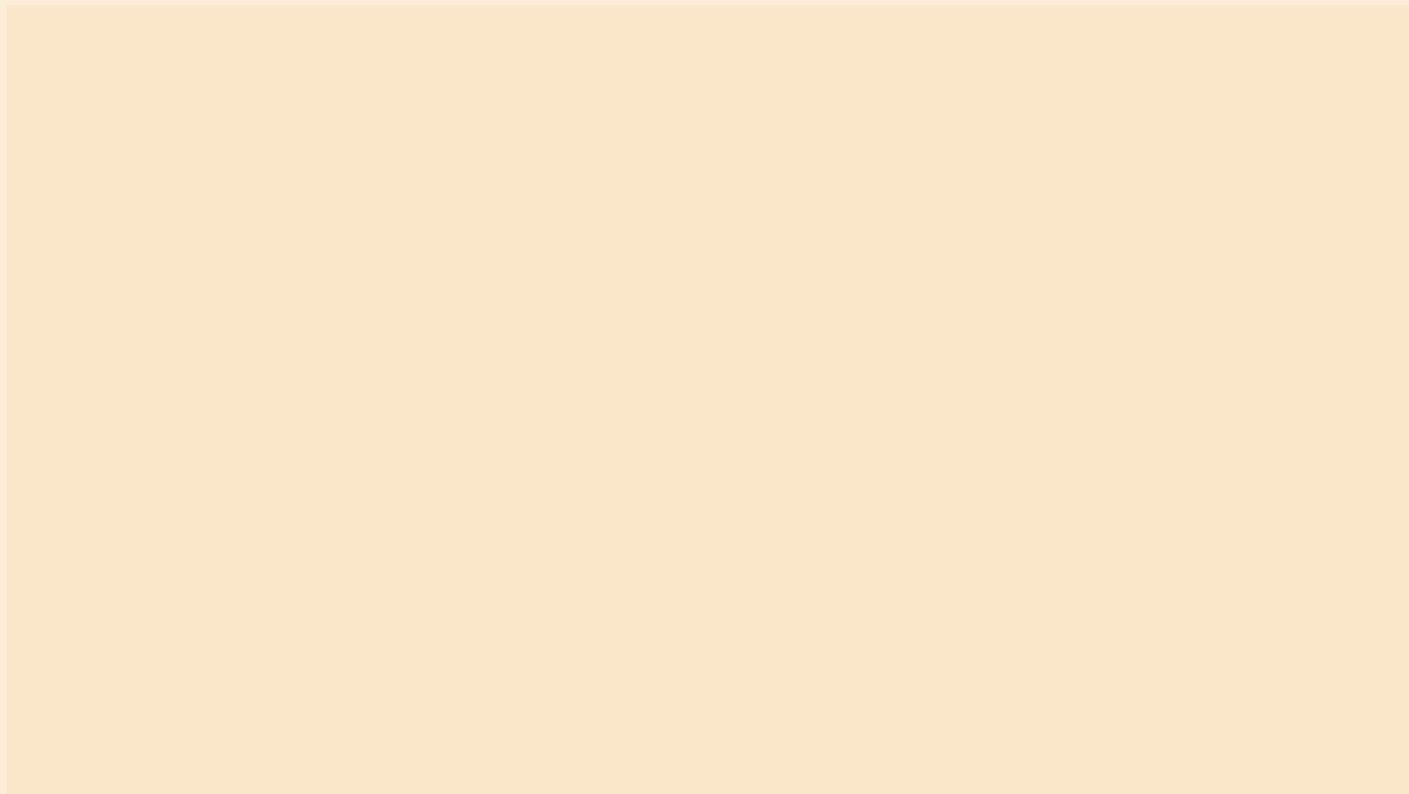
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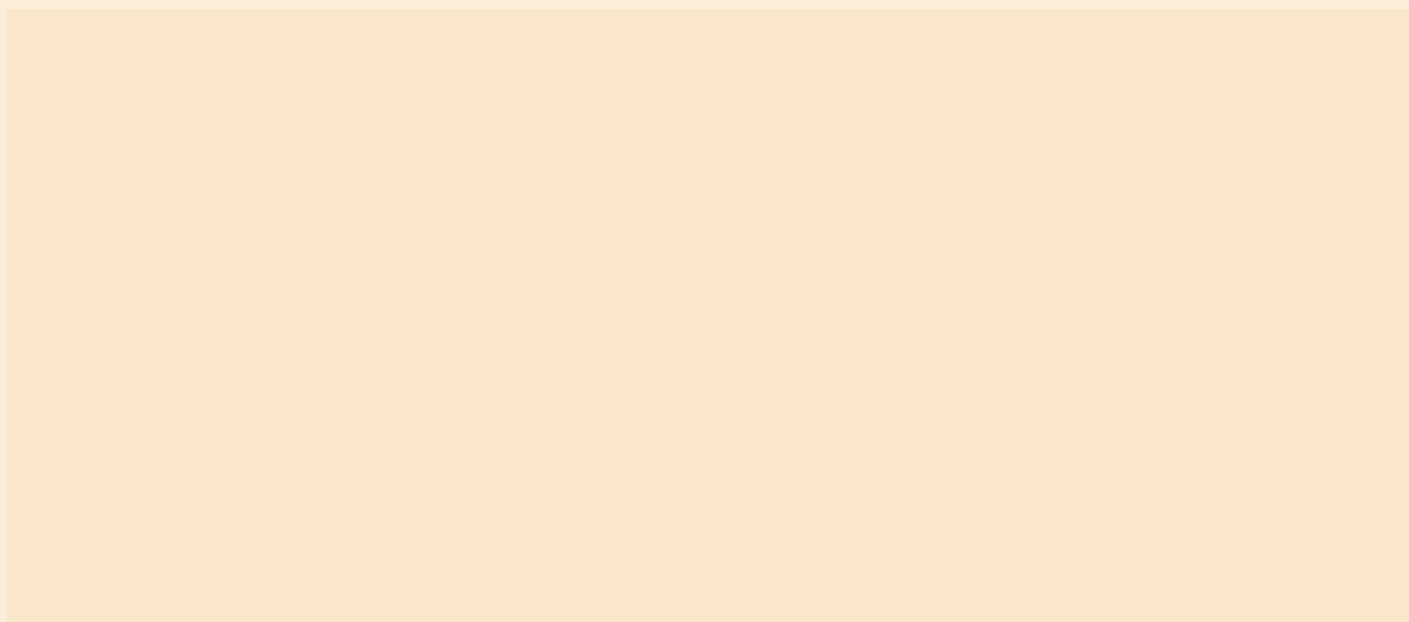
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