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PROGRAM

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African Women in ADR: The Trailblazers

By Paul Ngotho, L.L.M, Chartered Arbitrator.

Background

This is a sequel of my pictorial presentation titled Celebrating Kenyan Arbitral Women in the 2018 Arbitral Women Conference in Nairobi Kenya, where I showcased Njeri Kariuki, Eunice Lumallas, Joyce Aluoch, Jackie Kamau, Mercy Okiro and Chebett Koskei. It is my contribution to the Kigali 2022 EAIAC Arbitration Conference Session 9, dubbed The SHE panel: Fostering female leaders in Africa's International Scene.

Traditionally, the role of dispute resolution in Africa is a man's role along with that of warrior. Chinua Achebe devotes the whole of chapter ten of his novel Things Fall Apart to the arbitration of a matrimonial dispute by egwugwu, the nine greatest masked spirits, freshly emerged from the earth, each representing one of the nine sons of the first father of the clan. One of them walked with a spring like Okonkwo, who was, incidentally, missing from the seats reserved for the titled men like him. Achebe tells us that "it was clear from the way the crowd stood or sat that the ceremony was for men. There were many women, but they looked on from the fringe like outsiders."

Africa's legendary storyteller proceeds: "specially chosen women scrubbed and painted the outside of the egwugwu house at regular intervals but always under the supervision of men... Those women never saw the inside of the hut. No woman ever did... If they imagined what was inside, they kept their imagination to themselves. No woman ever asked about the most powerful and the most secret cult in the clan".

When the egwugwu appeared, women and children, unfortunately always more like women-and-children or women-cum-children in Africa, who were present in the open court "sent up a great shout and took to their heels. It was instinctive. A woman fled as soon as an egwugwu came in sight. Even Mgbafo took to her heels and had to be restrained by her brothers".

Mgbafo is the respondent in the case. She is represented, and most ably so, by Odukwe, one of her three brothers accompanying her. Uzowulu, her husband, is accompanied by his brothers but, being a man, speaks for himself. Mgbafo wins.

The Kikuyus of Kenya are less discreet. Any male, even a small boy, is welcome to attend a meeting of the council of elders but women are not allowed within a hearing distance. Their word for the female gender is "the outsiders" or "the people who remain outside" (andu a nja). This is duplicated all over Africa. Little wonder that the founders of arbitration in Africa north of Limpopo, Ahmed EL Kosheri of Egypt, Norman Mururu of Kenya and Chief Bayo Ojo of Nigeria are men.

Many African women have been trained in the basic levels like ADR units in university courses and the low to medium level Chartered Institute of Arbitrator courses. Relatively fewer women progress to higher courses. I have heard women moaning about family obligations slowing down their progression in arbitration. Do not give me that. It is negated by the fact that the same gender has been very successful as magistrates and judges and in other very demanding careers.

I suspect that the issue here is women's financial priorities, not scarcity. People create time and reserve money for the things they consider important. Women find time and money for other expensive academic and professional endeavours – LL.Ms, MBAs and PhDs, some of which require long travels and relocation for several years, in addition to motherhood



and spousal obligations.

Training as an arbitrator is very involving, while that of a mediator is shorter and less expensive. However, mediation is, at the moment, an uncertain and less financially rewarding as a career in many African jurisdictions.

While both gender practice both arbitration and mediation, many women take a bee line to the latter. Even those who opt for arbitration end up spending a lot of time in mediation. That choice must be respected but it should be taken into account when analysing data on diversity in arbitration. Furthermore, men and "the system" should not be blamed for women's choices.

The Traileblazers

Below is a short list of some of the leading women ADR practitioners in Africa. I have based it on my personal knowledge, not on empirical study. I apologise in advance for any deserving names I might have left out and invite corrections. The order in which the names appear does not signify seniority. Allow me to skip the Ms, Miss and Mrs. Thank you.

Dr Graca Machel is a Mozambican lawyer and human rights specialist, not a career ADR practitioner. In addition to a PhD from the University of Massachusetts, she has honorary doctorates from five other universities across the globe and was awarded Honorary Dame Commander of the Order of the British Empire in 1997. She was one of the international mediators or conciliators in Kenya following the 2007/8 post-election violence.

Dorothy Ufot SAN was the 2020 African Arbitrator of the year winner. She is a Chartered Arbitrator and has arbitrated numerous international commercial and investment disputes including one between a Kenyan constructor and a Tanzanian government entity where her dissenting opinion was subsequently vindicated courts in at least four jurisdictions. She has been a member of the several boards including the International Bar Association (IBA) and the International Court of Arbitration (ICC) of the International Chambers Commerce in Paris.

Olusola Adegbonmire of Nigeria is a Chartered Arbitrator and accredited by CIArb as a tutor of various courses including international arbitration. One of her many arbitrations was a co-arbitrator in a London Court of International Arbitration (LCIA) case arising from a steel production contract. She has successfully mediated over 100 cases including under the Lagos Multi Door Court. She has served as a Director of Kigali International Arbitration Centre (KIAC), Rwanda

Her contemporary is Njeri Kariuki, a Kenyan Chartered Arbitrator and arbitration trainer, who is in Tier 1 of Chambers & Partners, where she is described as an "accomplished lawyer with extensive experience sitting as arbitrator. She has broad-ranging expertise, with notable experience extending to the energy, banking and insurance sectors... a positive mentor

to others and very active in arbitration.” She is the current Kenya Representative in the ICC International Commission for Africa.

Dr. Rukia Baruti is a Tanzanian by birth. She is a solicitor in England & Wales with experience in litigation. She has arbitrated in international arbitrations. She founded the Africa International Legal Awareness (AILA) and is the Secretary General of African Arbitration Association (AfAA). She was listed in The Lawyer ‘Hot 100’ in recognition of her pro-bono initiative to train African lawyers on arbitration and international law.

Bernadette Uwicyeza was the first Secretary General of the Kigali International Arbitration Centre (KIAC) and a mediator. She laid a firm foundation for KIAC, which has experienced exponential growth since it was established. She is an ADR Advisor to the Judiciary of Rwanda, responsible for the design and implementation of a court-annexed mediation.

Ndanga Kamau served as the registrar of the Mauritius International Arbitration Centre (MIAC), which was affiliated with the LCIA in London. She is a Kenyan national and barrister of England and Wales, with experience as an arbitrator and in international law in London, Geneva, the US and Kenya. She has served as Vice President of the ICC International Court of Arbitration and President of the ICC Africa Commission.

Tinuade Oyekune was on the team which produced the UNCITRAL Arbitration Rules on International Commercial Arbitration. She co-authored, with Chief Bayo Ojo, the Handbook of Arbitration and ADR Practice in Nigeria (2019, LexisNexis). She is described by Hon Mr Justice Walter SN Onnoghen, the Chief Justice of Nigeria in the foreword to that book, as “the doyen of arbitration and ADR in Nigeria”. Her authorship is

notable because this is one area in which women African arbitrators have under-represented themselves.

Last, but not least are the Four EAIAC Masketeers: Agnes Gitau, Leyou Tameru, Elodie Dulac and Wairimu Karanja all from different professional backgrounds and from three very diverse countries. I have grouped them together because they work in unison, like Achebe’s *egwugwus*. EAIAC, which they founded ten years ago, immediately became the pace setter in arbitration conferences, of which this is their ninth.

The four ladies’ greatest innovation, contribution and legacy remains the introduction of the Africa Arbitration Awards, which are in their third year. Talking of those awards, this year no woman made it to the final list of three nominees, while one of the four Young Arbitration Practitioner of the Year nominees is a woman. I wonder why.

Epilogue

Dr James Kwegier Aggrey, a pioneer Ghanaian educationist, famously said that if you educate a woman, you educate the whole family. That is true. But the concealed message is that a man’s education is of lesser or nil utility to his family.

I am an economist. My observation is that if you empower a woman, especially an African one, a larger portion of the community benefits through an intricate web of distribution channels from the legit, unofficial to the patently subversive. Women are entitled to equal opportunity in all areas because they are qualified human beings, not because they can do more with those opportunities than men.

Long Live EAIAC!