THE ADVOCATE’S ROLE IN ARBITRATION & LITIGATION

ARTHUR K. IGERIA
SENIOR PARTNER - IGERIA & NGUGI ADVOCATES
WHAT IS ARBITRATION?

- REFERENCE of dispute between two or more parties for determination.
- Reference is to a THIRD PARTY NEUTRAL validly appointed by the PARTIES or by an APPOINTING AUTHORITY.
- Reference is for DETERMINATION of the dispute after consideration of evidence adduced and arguments of the parties.
CHARACTERISTICS OF ARBITRATION

- Consensual
- Party Autonomy-control of choice of arbitrator
- Confidential
- Flexibility and speed
- Less adversarial than litigation
- Arbitrators decision is final and binding
- Cheaper
WHAT IS LITIGATION?

- Reference of disputes to a court of law for determination.
- Neutral third party is a judicial officer employed by the State.
- Not consensual.
- Adversarial
<table>
<thead>
<tr>
<th></th>
<th>ARBITRATION</th>
<th>LITIGATION</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Type of Proceeding</strong></td>
<td>Civil</td>
<td>Civil or Criminal</td>
</tr>
<tr>
<td><strong>Selection of Third Party Neutral</strong></td>
<td>By consent of the Parties</td>
<td>Judge employed by State</td>
</tr>
<tr>
<td><strong>Formality</strong></td>
<td>Informal</td>
<td>Formal</td>
</tr>
<tr>
<td><strong>Appeals</strong></td>
<td>Decision of the Arbitrator is final and binding. Limited appeals</td>
<td>Appeals are allowed</td>
</tr>
<tr>
<td><strong>Speed</strong></td>
<td>Quicker to conclude</td>
<td>Longer to conclude</td>
</tr>
<tr>
<td><strong>Evidence</strong></td>
<td>Rules of evidence do not apply strictly.</td>
<td>Rules of evidence apply</td>
</tr>
<tr>
<td><strong>Interim Reliefs</strong></td>
<td>No provision for interim reliefs</td>
<td>Interim reliefs may be awarded</td>
</tr>
</tbody>
</table>
ADVOCATE’S ROLE IN ARBITRATION

- Recognize that arbitration results from a negotiated agreement.
- Recognize that parties’ willingness to trade off procedural protections available in court in return for a faster, binding and more efficient result.
- Be less adversarial and more conciliatory.
- Capitalize on the unique qualities that arbitration offers.
ADVOCATE’S ROLE IN ARBITRATION

- Select a good arbitrator.
  - good people skills, one who you know and will get along with;
  - good analytical and reasoning skills;
  - good communication, writing skills, able to deliver a reasoned and enforceable award;
  - expert in the field;
  - good standing in the profession, has integrity, discreet, incorruptible

- Find innovative ways to get to the heart of the dispute and end it quickly. Lengthy arbitrations can be very costly.
ADVOCATE’S ROLE IN ARBITRATION

1. Preliminary Meeting
   - Demonstrate willingness to cooperate with opposing counsel.
   - Avoid adversarial behavior.
   - Educate arbitrator on the parties, facts and issues.
   - Deal with issues relating to jurisdiction, arbitrability, provisional relief early.
   - Adhere to the rules agreed upon - timelines on filing and service of documents, communication, payment of arbitrators fees, etc.
   - Prepare the pleadings.
ADVOCATE’S ROLE IN ARBITRATION

2. Hearing

- Opening statement should be clear on the facts and applicable law.
- Manage time well
- Have a clear closing, state clearly relief sought
ADVOCATE’S ROLE IN ARBITRATION

3. Submissions and post-hearing
   - Be clear, and brief.
   - Deal with issues as framed.
   - Make it easy for arbitrator to read submissions and prepare the award.
   - Interpretation of the award to the client
   - Execution of the award.
ADVOCATE’S ROLE IN LITIGATION

- Advise client.
- Prepare pleadings and interlocutory applications.
- Adhere to the strict rules of court procedure.
- Present all facts of the case.
- Legal research, and presentation of the law.
- Utilize the adversarial system to client’s advantage.
CONCLUSION

- Advocates’ roles in arbitration and litigation are not similar.
- Advocate’s hat to be removed partially in arbitration.
- Similarity - Advocate must always act in client’s best interest.

THANK YOU