

# *Aluochier Dispute Resolution*

*Arbitral Institution | Arbitration | Mediation*

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Registration No: BN-BGCLBG7*

11<sup>th</sup> April, 2024

**Persila Akado Otinda**  
**Telephone: 0782454526**

Dear Ms Persila Akado Otinda

## **REQUEST FOR ARBITRATION**

### **CASE NUMBER 003 OF 2024: MARY KIKUNO v PERSILA AKADO OTINDA**

Aluochier Dispute Resolution (ADR) is an arbitral institution that administers arbitrations under the Aluochier Dispute Resolution Arbitration Rules, 2024 (ADR Arbitration Rules). Article 1(3)(c) of the Constitution of Kenya, 2010 provides that part of the sovereign power belonging to the people of Kenya, and that is to be exercised only in accordance with the said Constitution, is delegated to the Judiciary and independent tribunals, with the Judiciary and independent tribunals to perform their functions in accordance with the said Constitution. Article 159(1) reiterates that judicial authority is derived from the people and vests in, and shall be exercised by, the courts and tribunals established by or under the said Constitution. Article 159(2)(c) provides that in exercising judicial authority, the courts and tribunals shall be guided by principles including the mandatory promotion of alternative forms of dispute resolution including arbitration. Article 50(1) provides that every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body. Consequently, independent and impartial arbitral tribunals, just as the courts, have the constitutional mandate derived from the people's sovereign power to exercise judicial authority on their behalf in the resolution of disputes capable of resolution by the application of law. 10 20

Section 2 of the Arbitration Act, 1995 provides that except as provided for in a particular case, the provisions of the said Act shall apply to domestic arbitration and international arbitration. The Arbitration Act is itself subject to the Constitution of Kenya, 2010, as Article 2(1) of the Constitution provides that the said Constitution is the supreme law of Kenya and binds all persons and all State organs. And section 7(1) of the Sixth Schedule of the Constitution provides that all law in force immediately before the effective date of the Constitution – 27<sup>th</sup> August, 2010 – continues in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with the said Constitution. The Arbitration Act, an existing law at the time the Constitution became effective, is therefore to be construed to bring it into conformity with the Constitution, including allowing for, pursuant to Article 50(1) of the Constitution, the institution of arbitral proceedings, just as is the case with the institution of court proceedings, by any person without the consent or agreement of any other person, as it is the right of every person to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body. 30

Consequently, in the exercise of her right under Article 50(1) of the Constitution, Mary Kikuno has instituted arbitral proceedings under the administration of ADR against Persila Akado Otinda.

Pursuant to the ADR Arbitration Rules:

- 1 Rule 5.2.1 – **Claimant's Contact Details: Mary Kikuno, Kong'oma Sub-location, Paka Village, Kokach Clan, North East Kamagambo, Rongo. Telephone: 0706596744.**
- 2 Rule 5.2.2 – **Respondent's Contact Details: Persila Akado Otinda, Kong'oma Sub-location, Paka Village, Kokach Clan, North East Kamagambo, Rongo. Telephone: 0782454526.**
- 3 Rule 5.2.3 – The Claimant is relying on Article 50(1) of the Constitution of Kenya, 2010 that provides that every person has the right to have any dispute than can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body. The Claimant has therefore instituted these proceedings before an independent and impartial tribunal, being an arbitral tribunal administering arbitration under the ADR Arbitration Rules. 10
- 4 Rule 5.2.4 – Statement describing the nature and circumstances of the dispute giving rise to the claim, and the relief sought by the Claimant against the Respondent:
  - 4.1 The events the subject of this claim took place around the time of the Respondent's husband ailment, death and funeral.
  - 4.2 During the time of the Respondent's husband's funeral, she hurled all manner of abuse against the Claimant. There were several people in attendance at the Respondent's husband's funeral, and so the abuses that she hurled at the Claimant were heard by those present at the funeral. The abuses were hurled continuously from around 2pm to 7pm on the day. 20
  - 4.3 On 13<sup>th</sup> August, 2023 the Respondent alleged that the Claimant had killed the Respondent's black bull.
  - 4.4 On 14<sup>th</sup> August, 2023 the Respondent's husband was admitted at Homa Bay Hospital, where he later died. The Respondent then alleged in the hearing of several people that the Claimant was the one who had killed her husband.
  - 4.5 The Respondent also alleged that the Claimant had killed her brother-in-law.
  - 4.6 The Respondent also alleged that the Claimant had killed her grandchild.
  - 4.7 The Respondent also alleged that the Claimant had grown and nurtured a big snake in a big hole. 30
  - 4.8 The Respondent threatened the life of the Claimant, and proceeded to incite several people in their village to beat up the Claimant in the Claimant's home.
  - 4.9 The Respondent expressed a desire to burn up the Claimant's home and properties.
  - 4.10 These were the events that took place on 14<sup>th</sup> August, 2023.
  - 4.11 The Claimant intends to call upon the following witnesses to support her claim:
    - 4.11.1 Julius Otieno Ogindi Tel:
    - 4.11.2 Jared Omondi Tel: 0713 887272
    - 4.11.3 Catharina Olela Tel:
    - 4.11.4 Godfrey Juma Tel: 0759 158111 40
    - 4.11.5 Fred Benji Tel: 0743 426513
    - 4.11.6 Felix Okoth Tel: 0705 911093
    - 4.11.7 Milka Ochieng Tel: 0715 058600
  - 4.12 The Claimant wants the Respondent to provide evidence supporting all of her allegations and abuses against the Claimant.
  - 4.13 The reliefs that the Claimant is seeking from the Respondent are:
    - 4.13.1 A permanent cessation of hurling all manner of allegations and abuse against the Claimant.

- 4.13.2 Compensation for threatening the Claimant's life and property, and for defaming the Claimant's name, of a total amount of Kshs 120,000/-.
- 4.13.3 The costs of the arbitration.
- 5 Rule 5.2.5 – the Claimant proposes that the language of the arbitration be English and Luo.
- 6 Rule 5.2.6 – not applicable.
- 7 Rule 5.2.7 – the Claimant intends to serve the Respondent personally, with this Request for Arbitration and any supporting documents, as they currently reside in the same village.
- 8 Rule 5.2.8 – the Claimant on 11<sup>th</sup> April, 2024 paid a filing fee of Ksh 1,000/- by Mpesa, with Mpesa reference number SDB8TXH9VO.
- 9 Rule 5.3 – **the arbitration is deemed to have commenced on 11<sup>th</sup> April, 2024**, upon payment of the filing fees and receipt of the Claimant's documents in support of her claim in arbitration. 10
- 10 Rule 6.1 – The Respondent should send, electronically, by email or WhatsApp, her response to this request for arbitration within 30 days of service of this request for arbitration. The response should contain the information as provided for in ADR Arbitration Rule 6. The ADR Arbitration Rules can be downloaded at <https://www.aluochier.co.ke/ADR-Arbitration-Rules-20240129.pdf>. 20

Please go through the ADR Arbitration Rules to familiarise yourself with the arbitration process as administered by ADR, taking special note of dates by which any actions on your part are required. We look forward to receiving your response to facilitate progression of the arbitration proceedings in a manner in harmony with Article 50(1) of the Constitution.

**Yours faithfully**  
**For and on behalf of**  
**Aluochier Dispute Resolution**



**Isaac Aluochier**  
**Chief Executive**

cc **Mary Kikuno, Kong'oma Sub-location, Paka Village, Kokach Clan, North East Kamagambo, Rongo. Telephone: 0706596744.**