

Rethinking the Use of Alternative Dispute Resolution in the Settlement of Maritime Cargo Claims in Tanzania

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Abstract:

Cargo claims for loss, damage and delay are among the most common disputes arising from maritime transportation, and Tanzania's ports serve both its own trade and that of its landlocked neighbours. Although Alternative Dispute Resolution (ADR) is internationally accepted as an efficient means of resolving such claims, yet its use for cargo claims in Tanzania remains limited. This article identifies and examines the challenges affecting the effectiveness of ADR mechanisms in resolving cargo claims, and explains how they arise from the structure of the legal and institutional framework. The article finds that access to ADR depends on the arbitration clause in the bill of lading, not on any statutory entitlement; that arbitration is disproportionately costly and slow for modest claims and has no simplified track; that Tanzania has no maritime arbitral institution or roster of maritime arbitrators; that no instrument coordinates the complaints procedure of the Tanzania Shipping Agencies Corporation, arbitration and the courts; and that insurance practice and documentary and language burdens add to the difficulty. These challenges are found to reinforce one another. The article concludes that the challenges are largely capable of institutional and regulatory solution, without wholesale reform of the Arbitration Act. The article recommends an expedited arbitration track, a maritime roster, clarification by regulation of the relationship between the complaint's procedure and arbitration, and judicial guidance on sequencing, with the domestication of the Hamburg Rules as a complementary measure.

Keywords: Arbitration, Disputes, Maritime cargo claims, Tanzania Ports Authority.

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1. INTRODUCTION

Maritime transportation carries the bulk of Tanzania's international trade, and cargo claims for loss, damage, delay and non-delivery are an inevitable consequence of that trade. Such claims involve carriers, port authorities, shipping agents, freight forwarders, cargo owners and insurers, and the value at stake in any one claim is often modest relative to the cost of pursuing it.¹

Alternative Dispute Resolution (ADR), principally negotiation, mediation and arbitration, is widely regarded as better suited to such claims than litigation because it is flexible, confidential and quicker. In Tanzania, however, ADR is not integrated into the maritime statutes, and cargo owners reach it only through the terms of their contracts, through the administrative complaints procedure of the Tanzania Shipping Agencies Corporation (TASAC) or through informal negotiation.²

This article identifies and examines the challenges affecting the effectiveness of ADR mechanisms in resolving cargo claims in maritime transportation in Tanzania. It argues that these challenges do not lie in the quality of Tanzania's arbitration statute, which is modern and supportive, but in the way access, cost, institutions and sequencing are arranged around it.³

The argument rests on a distinction between the legal availability of ADR and its practical reach. A mechanism that is well supported in law but reached only by parties who know of it, can afford it and have agreed to it in advance does not serve most cargo owners. The article proceeds by setting out the conceptual and legal framework, analysing the challenges, and then considering how targeted reform could respond to them before concluding and recommending.

2. LEGAL MATERIALS AND METHODS

This article adopts a doctrinal methodology. It examines the primary and secondary sources of legal materials on the subject matter of the article. In other words, it analyses the Arbitration Act, the Carriage of Goods by Sea Act, the Merchant Shipping Act, the Tanzania Shipping Agencies Act, the Complaints Handling Regulations and the international and regional instruments by which Tanzania is bound, together with decisions of Tanzanian courts on cargo claims and persuasive authority from other

¹ See generally Nyabunya, H. R. Y., & Gurumo, T. S. (2024). A study on the effectiveness of Tanzania's legal framework in resolving commercial maritime disputes. *Global Journal of Arts, Humanity and Social Sciences*, 4(11), 974-981.

² See generally Mugisha, E. J., Mwendapole, M. J., Ngongi, W. E., & Kiwia, D. (2025). Enhancing the viability of maritime arbitration for trade dispute resolution in Tanzania. *Transportation Research Interdisciplinary Perspectives*, 32, 101496.

³ See generally Mugisha, E. J., & Mwendapole, M. J. (2024). Strategic enhancements for maritime arbitration in Tanzania: A focus on legal and institutional barriers. *TIJER - International Research Journal*, 11(7), a118-a125.

jurisdictions where Tanzanian decisions do not reach the point. The sources of law are used to test the existing framework against the challenges the article examines.⁴

3. RESULTS AND DISCUSSION

Cargo claims and the contractual gateway to ADR

A cargo claim is a claim brought by a cargo owner, or by a party subrogated to its rights such as a cargo insurer, against a carrier, port authority or shipping agent for loss of, damage to or delay in the delivery of goods carried by sea.⁵ Because the maritime statutes are silent on the mode of resolution, access to ADR depends on whether the bill of lading or other contract provides for it. The contractual gateway, and not any statutory entitlement, determines which claims reach ADR.

Alternative dispute resolution: negotiation, mediation, and arbitration

Negotiation is a bilateral process in which the parties seek their own settlement. Mediation involves a neutral third party who facilitates a voluntary settlement without imposing an outcome. Arbitration is a consensual process in which a neutral arbitrator appointed by the parties renders a binding award.⁶ Effectiveness is assessed in this article by the principles of efficiency and commercial certainty: a mechanism should resolve a claim at the lowest reasonable cost and in the shortest reasonable time, and the parties should be able to predict the forum and the enforceability of the outcome.⁷ Cargo is distinctive because it continues to depreciate for as long as a dispute remains unresolved, so that delay itself compounds the loss the claim seeks to recover.

The Arbitration Act

The Arbitration Act is the general statute on domestic and international arbitration and the enforcement of foreign awards. It requires a court to refer parties to arbitration and to stay proceedings brought in breach of an arbitration agreement, applies the stay provisions to foreign-seated arbitrations, treats a clause incorporated by reference as an agreement in writing, and makes awards enforceable as decrees of the court.⁸ It contains, however, no maritime provisions, no provision on mediation or conciliation, no expedited

⁴ See generally Goldby, M., & Mistelis, L. (Eds.). (2016). *The role of arbitration in shipping law*. Oxford University Press; Mugisha, E. J., Mwendapole, M. J., Ngongi, W. E., & Kiwia, D. D. (2024). Optimizing maritime dispute resolution in Tanzania: A comprehensive assessment of arbitration's role. *Open Journal of Social Sciences*, 12(9), 330-340.

⁵ See generally Nyabunya & Gurumo (2024), above n 1.

⁶ See generally Ambrose, C., Maxwell, K., & Collett, M. (2018). *London maritime arbitration* (4th ed.). Informa Law from Routledge, pp. 1-4.

⁷ See generally Posner, R. A. (2014). *Economic analysis of law* (9th ed.). Wolters Kluwer Law & Business; Blackaby, N., Partasides, C., Redfern, A., & Hunter, M. (2015). *Redfern and Hunter on international arbitration* (6th ed.). Oxford University Press.

⁸ The Arbitration Act [CAP 15 R.E. 2023], ss. 7(2), 10, 11, 14, 15 and 83-84.

procedure and no maritime panel, and it operates only where the parties have already agreed to arbitrate.⁹

The Carriage of Goods by Sea Act and the Merchant Shipping Act

The Carriage of Goods by Sea Act gives domestic effect to the Hague Rules, as the Court of Appeal observed in *Reliance Insurance*, and discharges the carrier unless suit is brought within one year.¹⁰ Neither it nor the Merchant Shipping Act prescribes a mode of dispute resolution.¹¹ The result is that a claim goes to arbitration only if the bill of lading says so, to the courts if it is silent, and to a foreign court if one is designated, which Tanzanian courts will ordinarily respect by staying proceedings.¹²

The Complaints Handling Regulations

The Complaints Handling Regulations provide an administrative route against shipping agents, freight forwarders and clearing agents. A complaint goes first to amicable settlement within TASAC, then after seven working days to a Complaints Handling Committee, and finally to the Director General for determination, which is enforceable in the High Court.¹³ The procedure resembles regulatory conciliation but is not a full ADR mechanism: its first stage is conducted by TASAC's own officials, its later stages are adjudicative, and it does not state how a determination relates to a later suit or to an arbitration clause, or whether lodging a complaint stops time running.¹⁴

International and regional instruments

Tanzania acceded to the Hamburg Rules on 24 July 1979, and Article 22 would allow a cargo claimant to insist on arbitration at the port of discharge. The Rules have not been domesticated and, as *Reliance Insurance* confirms, cannot be invoked in Tanzanian courts.¹⁵ The New York Convention secures enforcement of whatever the arbitration clause provides but contains no comparable protection against a distant seat.¹⁶ Article 93 of the East African Community Treaty commits Partner States to ratify maritime

⁹ The Arbitration Act [CAP 15 R.E. 2023], ss. 2 and 5.

¹⁰ The Carriage of Goods by Sea Act [CAP 164 R.E. 2023], Schedule, art. III, r. 6; *Reliance Insurance Co T Ltd v CMA CGM SA*, Civil Appeal No. 179 of 2020, [2023] TZCA 205 (Court of Appeal of Tanzania).

¹¹ The Merchant Shipping Act [CAP 165 R.E. 2023].

¹² *Reliance Insurance*, above n 10; *Anadolu Anonim Turk Sigorta Sirketi v Tanzania Ports Authority*, Commercial Case No. 85 of 2023, [2024] TZHCComD 158 (High Court of Tanzania, Commercial Division).

¹³ The Tanzania Shipping Agencies (Complaints Handling) Regulations, 2018 (G.N. No. 338 of 2018), as amended by the Tanzania Shipping Agencies (Complaints Handling Procedures) (Amendment) Regulations, 2025 (G.N. No. 179 of 2025).

¹⁴ See generally Nyabunya & Gurumo (2024), above n 1, pp. 977-979.

¹⁵ The United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules), art. 22; *Reliance Insurance*, above n 10.

¹⁶ The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (New York Convention), arts. II, III and V.

conventions and to review national maritime law against them, but prescribes nothing on ADR.¹⁷

TASAC and the Tanzania Ports Authority

TASAC regulates shipping agents, freight forwarders and clearing agents and administers the complaints procedure, and it is the institution most easily reached by an ordinary cargo owner. Its orientation, however, is licensing and discipline, so that it can investigate a cargo complaint more readily than it can resolve one.¹⁸ The Tanzania Ports Authority manages the ports in which many cargo losses occur and is often both the custodian against whom a claim is made and the body that considers it in the first instance.¹⁹

Judiciary and Arbitral Institutions

Cargo disputes that reach litigation are heard in the Commercial Division of the High Court, a court of general commercial jurisdiction without specialist maritime expertise, which has been supportive of arbitration, as *Lamar Commodity Trading* shows.²⁰ Tanzania has no maritime arbitration centre; the Arbitration Act establishes a general Tanzania Arbitration Centre that keeps a list of accredited arbitrators and makes default appointments, but no maritime panel or rules.²¹

Challenges affecting the effectiveness of ADR in resolving cargo claims

Although arbitration is well supported in law and awards are enforceable, ADR is reached by relatively few cargo owners. The challenges examined below explain why and operate together.²²

Cost and delay relative to the value of cargo claims

The Arbitration Act states that arbitration should proceed without undue delay or unreasonable expense, but it supplies no mechanism for achieving this, prescribing neither a timetable nor a scale of costs.²³ The substantive time limits are short, since the one-year bar applies to arbitration as well as to suit, as *The Merak* shows, and nothing indicates that an informal complaint suspends it.²⁴ Cost is recognised abroad as relevant to a party's approach to ADR and, though it may found a challenge to arbitration, only on proof of the actual burden.²⁵ Foreign-seated arbitration, which the Act makes

¹⁷ The Treaty for the Establishment of the East African Community, 1999, art. 93.

¹⁸ See generally Mugisha et al (2024), above n 4, p. 336.

¹⁹ The Tanzania Shipping Agencies Act [CAP 415 R.E. 2023].

²⁰ *Lamar Commodity Trading DMCC v Prestige Investment SA and Others*, Misc. Commercial Application No. 8954 of 2025, [2026] TZhCComD 30 (High Court of Tanzania, Commercial Division).

²¹ The Arbitration Act [CAP 15 R.E. 2023], s. 82; Mugisha & Mwendapole (2024), above n 3.

²² See generally Mugisha et al (2025), above n 2.

²³ The Arbitration Act [CAP 15 R.E. 2023], ss. 5(a), 37(1)(b) and 66-72.

²⁴ The Carriage of Goods by Sea Act [CAP 164 R.E. 2023], Schedule, art. III, r. 6; *The Merak* [1965] P 223 (CA).

²⁵ *Halsey v Milton Keynes General NHS Trust* [2004] EWCA Civ 576; *Green Tree Financial Corp-Alabama v Randolph*, 531 US 79 (2000).

enforceable, compounds the burden for cargo owners who must engage foreign counsel and arbitrators.²⁶

Institutional and capacity constraints

Tanzania has no specialised maritime arbitral institution, and the Act neither requires the Tanzania Arbitration Centre to keep a maritime panel nor creates maritime rules.²⁷ A party wanting an arbitrator who understands bills of lading, general average and cargo survey evidence must often look abroad, most commonly to London or Singapore, which raises cost and puts arbitration out of reach for smaller owners.²⁸ TASAC's own capacity is also limited by staffing relative to the volume of complaints. Nothing in the law precludes a maritime roster: parties may lawfully specify the qualifications of their tribunal, as *Jivraj* confirms.²⁹

The Absence of a simplified procedure for low-value claims

The Act applies a single procedural framework irrespective of value. The tribunal has latitude to adopt suitable procedures and to decide procedural matters, so the gap is one of formal provision and not of power: a tribunal may streamline a small claim, but nothing obliges it to do so and nothing tells a cargo owner it may ask.³⁰ Documents-only arbitration is workable if each party has a fair opportunity to present its case, as *Wan Sern* shows, which supports a formally adopted expedited track in place of improvisation.³¹

Limited awareness and coordination between fora

No duty requires shipping agents or TASAC to tell a cargo owner what avenues exist, so awareness depends on the owner's own sophistication or advice.³² Under *L'Estrange*, a signatory is bound by its terms whether or not it has read them, and the incorporation provisions of the Act produce a similar result for clauses incorporated by reference in standard-form bills of lading, though *The Annefield* shows that general words do not incorporate a charterparty clause.³³ A cargo owner may therefore be bound by a clause it never saw.

The coordination problem is separate. No instrument sequences the complaints procedure, arbitration and the Commercial Division, so an owner must decide without

²⁶ The Arbitration Act [CAP 15 R.E. 2023], s. 7(2).

²⁷ The Arbitration Act [CAP 15 R.E. 2023], ss. 82 and 95(2)(c).

²⁸ Blackaby et al (2015), above n 7; Mugisha & Mwendapole (2024), above n 3.

²⁹ *Jivraj v Hashwani* [2011] UKSC 40.

³⁰ The Arbitration Act [CAP 15 R.E. 2023], ss. 37 and 38.

³¹ *Wan Sern Metal Industries Pte Ltd v Hua Tian Engineering Pte Ltd* [2025] SGCA 5.

³² The Tanzania Shipping Agencies (Complaints Handling) Regulations, 2018 (G.N. No. 338 of 2018), as amended by the Tanzania Shipping Agencies (Complaints Handling Procedures) (Amendment) Regulations, 2025 (G.N. No. 179 of 2025).

³³ *L'Estrange v F Graucob Ltd* [1934] 2 KB 394 (CA); *The Annefield* [1971] P 168 (CA); The Arbitration Act [CAP 15 R.E. 2023], ss. 10 and 11.

authoritative guidance which to pursue first and what each choice does to the time left for the others. English authority shows that courts elsewhere penalise unreasonable refusal of ADR in costs, but no Tanzanian provision does.³⁴

Insurance practice and language and documentary barriers

Many cargo claims are settled privately between insurers and carriers or their Protection and Indemnity Clubs, outside the formal framework. The two Tanzanian decisions on cargo claims were brought by subrogated insurers, and neither displaced the contractual terms on which the claim rested, so subrogation does not open an avenue closed to the cargo owner.³⁵

Neither the Act nor the Regulations fixes a language for arbitration or complaints; the tribunal decides the language and translations subject to the parties' agreement.³⁶ Language difficulties are best raised by procedural directions during the arbitration and not after the award, as *Sino Dragon* shows.³⁷ Translation of foreign shipping documents falls hardest on smaller freight forwarders.

These challenges reinforce one another. Owners least aware of their options and most exposed to disproportionate cost tend to settle informally, so the mechanism the law supports most strongly is reached mainly by repeat and commercially sophisticated users.³⁸

The Case for reform of ADR for cargo claims

An expedited track for low-value claims

An expedited or documents-only track directly answers the cost, delay and procedural challenges. The Act already gives the tribunal the necessary flexibility, so an expedited track can be adopted by institutional rules and practice directions, with the Chief Justice empowered to make rules and practice directions on the court's role.³⁹ It would retain a binding, enforceable outcome that the complaints procedure cannot provide, and would complement and not duplicate it.

A roster of maritime arbitrators

A roster of arbitrators with defined maritime qualifications is lawful and requires no novel powers. The Act already provides for a Centre that accredits arbitrators and empowers

³⁴ *Dunnett v Railtrack plc* [2002] EWCA Civ 303; The Arbitration Act [CAP 15 R.E. 2023], s. 15(2).

³⁵ See generally Goldby & Mistelis (2016), above n 4; *Reliance Insurance*, above n 10; *Anadolu*, above n 12.

³⁶ The Arbitration Act [CAP 15 R.E. 2023], s. 38(2)(b).

³⁷ *Sino Dragon Trading Ltd v Noble Resources International Pte Ltd* [2016] FCA 1131.

³⁸ See generally Cappelletti, M., & Garth, B. (1978). Access to justice: The newest wave in the worldwide movement to make rights effective. *Buffalo Law Review*, 27, 181-292.

³⁹ The Arbitration Act [CAP 15 R.E. 2023], ss. 37, 38 and 95(3).

the Minister to make regulations on accreditation.⁴⁰ Building specialised capacity within existing institutions is more feasible than creating a new maritime court, and it would reduce reliance on foreign seats.⁴¹

Sequencing, mediation and domestication of the Hamburg Rules

Clarifying by regulation the relationship between the complaints' procedure and arbitration, including whether lodging a complaint affects limitation, would close the sequencing gap without legislation. Mediation lacks a footing outside court-annexed mediation and the amicable settlement stage of the Regulations, and a mediated settlement is enforceable as an award only if recorded as an agreed award under section 58.⁴² Domestication of the Hamburg Rules would give cargo owners the carriage regime and the Article 22 option Tanzania has undertaken to provide.⁴³

4. CONCLUSION AND RECOMMENDATIONS

The effectiveness of ADR in resolving cargo claims in Tanzania is limited less by the quality of the law than by the framework around it. Access depends on the bill of lading; arbitration is costly and slow for modest claims and has no simplified track; there is no maritime arbitral institution or roster; no instrument coordinates the complaints procedure, arbitration and the courts; and insurance practice and documentary burdens add to the difficulty. These challenges reinforce one another.

Because the Arbitration Act already supplies the necessary flexibility, most of these challenges can be met through institutional and regulatory measures, without wholesale reform of the Act. Legislative reform, particularly domestication of the Hamburg Rules, remains a valuable complementary measure.

Recommendations

The Complaints Handling Regulations should state expressly how a complaint relates to arbitration and the courts, including its effect on limitation, and TASAC and shipping agents should adopt a reciprocal referral practice. Parliament should consider recognising mediation and conciliation in the Arbitration Act and give effect to the Hamburg Rules in domestic law by amending the Carriage of Goods by Sea Act.⁴⁴

The Tanzania Arbitration Centre and other arbitral institutions should develop a roster of arbitrators with demonstrated maritime expertise and adopt a documents-only or

⁴⁰ The Arbitration Act [CAP 15 R.E. 2023], ss. 82 and 95(2)(c).

⁴¹ See generally Mugisha & Mwendapole (2024), above n 3; Mugisha et al (2024), above n 4.

⁴² The Arbitration Act [CAP 15 R.E. 2023], ss. 15(2) and 58.

⁴³ The United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules), art. 22.

⁴⁴ The Tanzania Shipping Agencies (Complaints Handling) Regulations, 2018 (G.N. No. 338 of 2018), as amended by the Tanzania Shipping Agencies (Complaints Handling Procedures) (Amendment) Regulations, 2025 (G.N. No. 179 of 2025), (proposed amendment); The United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules), art. 22.

expedited track with a reduced fee scale below a defined value threshold, supported by training facilitated with the Tanzania Ports Authority.⁴⁵

The Commercial Division should develop internal guidance on whether prior recourse to TASAC bears on a stay in favour of arbitration, and judges handling maritime matters should receive training on maritime evidence. Practitioners and shipping agents should explain dispute clauses in plain language at the point of contracting.⁴⁶

⁴⁵ The Arbitration Act [CAP 15 R.E. 2023], ss. 82 and 95(2)(c).

⁴⁶ The Arbitration Act [CAP 15 R.E. 2023], s. 15(2) (proposed extension of practice).

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