

Influence of Perceived Benefits on the Adoption of Alternate Dispute Resolution Mechanisms by Trade Unions in Kenya

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Abstract

Alternative Dispute Resolution (ADR) are the methods of dispute resolution other than courtroom litigation. Reconciliation, mediation, arbitration, and traditional dispute settlement are all recognized ADR mechanisms under Kenya's constitution which is supreme. ADR mechanisms thus come into play in order to resolve disputes outside of court, such as arbitration or mediation. Trade Unions are associations of employees with the sole responsibility of negotiating for better conditions of work as well as social positions of employees through collective bargaining. Their approach can also be both constructive and destructive to organizational performance. (Kariuki, 2018). In Kenya, Alternative dispute resolution (ADR) mechanisms were formally recognized after the promulgation of the constitution in 2010 under Article 159(2)(C). The article prescribed that courts should be guided by the need to promote ADR. This was necessitated by delays in the resolution of employee complaints leading to poor organizational performance and failure by institutions to fully implement Collective Bargaining Agreements. There has also been a steady rise in labor disputes in Kenya, for instance, the rampant disputes and strikes witnessed from Universities Academic Staff, Kenya Medical practitioners and other unions. The study objective was to determine the influence of perceived benefits in the adoption of ADR mechanism by Trade Unions in Kenya. The study was done at Kenya National Union of Teacher Union in Kenya. Theoretically, the study was anchored on Reason Action Theory (TRA) and Social Influence Theory (SIT). The study found out that perceived benefits significantly influence adoption of ADR mechanisms in Trade Unions in Kenya. The study concluded that a policy document needs to be put in place to enlighten and guide the Trade Unions Officials on the adoption of ADR mechanisms in resolving industrial disputes. Since it was observed some respondents had less or no knowledge on the adoption of ADR by Trade Unions in Kenya. The study recommends Trade Unions should adopt the use of ADR mechanisms in resolving industrial disputes, ensure organizations are given more knowledge on the benefits of adopting ADR mechanisms, create policies on direction of ADR mechanisms, as well as investing in the right knowledge on adoption of ADR mechanisms to boost on adopting ADR mechanisms by Trade unions in Kenya. The study also gives suggestions for further research.

Key Words: Alternative Disputes Resolution Mechanism, Trade Unions, Workplace grievances, Perceived Benefits

Doi: 10.61250/ssmj/v1.i2.2

1. Introduction

There are numerous legal and illegal procedures to settle disputes in every community. Among the various potential dispute resolution options, litigation is the most common. According to (Muigua, 2020) access to justice through the legal system is significantly hampered by social, economic, legal, procedural, and institutional issues. Alternative Dispute Resolution (ADR) mechanisms thus come into play in order to resolve disputes outside of court, such as arbitration or mediation (Garner, 2019). ADR frameworks and methods have developed steadily through discussions, arbitration and mediation on account of their being less burdening than resorting to courts (Meadow, 2016).

In Kenya (A, 2020) carried out a study to examine the legal validity of introducing Penal Mediation as an ADR Mechanism Approach in the Indonesian Criminal Justice System. The study discovered that to adhere to the crime-solving ideal of quick, straightforward and affordable judicature; the parties involved in the litigation must agree to the settlement of criminal case(s) utilizing ADR mechanisms in adoption. However, suffice to note that adoption ADR mechanisms may be influenced by several aspects, including effectiveness, adaptability, customizing of outcomes, party empowerment, legitimacy and engagement of the parties. (Teff-Seker, 2020). The United Nations Convention on the Law of the Sea (UNCLOS) has advised parties to disputes to adopt ADR as the better option to court litigation.

The area of perceived benefits has been the subject of numerous studies, (Schneider, 2021) focused on the impact of viewed importance on the use of the ADR mechanism, a finding that may be explained by the lack of research on the determinants influencing Trade Unions in Kenya to adopt ADR mechanism. However, when examining other literature on change and adoption, viewed advantages have a significant influence on whether a mechanism, approach, or innovation is adopted (Mucheru, 2019).

Bhanot (2012) supports the claim that adoption focuses toward cost reduction thereby leading to the use of ADR mechanisms. This is in order to resolve disputes while building projects in the North-East India. Bharot specifically noted the need to reduce litigation expenses and those related to project cost overruns, which helped him decide to implement ADR for resolving construction project disputes (du Preez, et al., 2010). Similarly, Gharib (2017) found that the use of ADR in resolving disputes in building projects in both England and Wales, was highly influenced by the necessity to put in place mechanisms that would ensure costs are minimized in the event of disagreements. He argued that parties to construction contracts chose ADR primarily to avoid the expenses of litigation, lessen the likelihood of project cost overruns, and prevent project-related damages (Ayupp, 2020).

Ali (2019) discovered evidence, however, that tax payers' perceptions of the benefits of up taking ADR would affect their choice of adopting the usage of ADR. In order to avoid the inevitable contradiction of a more expensive mediation, (Keli, 2020) advised that the ADR procedure of settling tax conflicts be made free or that fees be adjusted to the minimum. He discovered from his study that perceived advantages had a harmful influence on the adoption of ADR. In view of the above observations, this research was motivated to determine whether perceived benefits have influence on the adoption of ADR mechanisms by Trade Unions in Kenya.

1.1 Statement of the Problem

Alternative dispute resolution is a core non-adversarial method that aims to settle disputes without using the conventional methods of arbitration or litigation (Amandong, 2020). Organization performance is the ultimate success of an organization (Shadrack Mutungi Simon, 2021). Asunah, (2020) recommended that ADR has been previously applied with the aim of identifying the gaps and make recommendations as how ADR could be used effectively. Nyamasi, (2021) recommended a link between ADR and conflicts arising within the auspice of Medium Small Enterprises (MSMEs) must be established to ensure expeditious resolution of conflicts. Muigua, (2020) Research recommended a comprehensive policy and legal framework to operationalize traditional dispute resolution mechanisms is needed. Kenya has seen an increase in industrial disputes that have led to almost 411,000 man-days lost between 2016 to 2020 with eight labour strikes during the same period (Abenga, 2021). The years between 2011 and 2015 have seen five labour strikes with about 280,000 man-days lost (Kamer, 2022). According to Kariuki (2018) some of these labour strikes could be attributed to appointment of dispute resolution boards. He goes on to portend that a dispute resolution board could impede the effectiveness of ADR mechanisms due to a number of reasons including the high cost it entails, the lack of trust in service neutrality, controversies in perception of analysis of ADR components of arbitration, mini trials, and even expert decision.

There is no policy structure in place to direct the adoption of ADR mechanisms by Trade Unions, and little is known about the factors that influence this acceptance (Muigua, 2020). Due to this gap, industrial disputes have been decided in a controversial manner without producing any resolution. A study by Oyuga (2017) focused on the variables of ADR mechanisms adopted by KUPPET officials in Kisumu County. The study findings established that clients are encouraged to use programs that are consistent to their needs and behaviors. However, no effort was made to find out determining factors in adoption of ADR mechanisms. This research therefore, undertook to close the identified research gap by examining the determinants of adoption of Alternate Dispute Resolution mechanisms by Trade Unions in Kenya.

2. Literature Review

2.1 Theoretical Review

The study was anchored on Reason Action Theory (TRA) and Social Influence Theory (SIT). Theory of Reasoned Action (TRA) serves as the theoretical foundation for this study's

measurement of the perceived benefits influencing ADR adoption by Trade Unions in Kenya. The theory which affects decision or potential action, predicts behavioral intention. It also predicts attitude (Ibid.). The theory emerged from earlier research (Marzouk & Moamen, 2009; Thakur, 2014; Collis & Hussey, 2014; (Saunders, 2019)); the findings of which were largely conceived as a result of displeasure with conventional attitude behavior research (Haq, 2021).

Attitude is the sum of beliefs about a certain activity, weighted by assessments of these beliefs (Mucheru, 2019). Subjective norms look at how people within one social environment impact the behavioral intentions of others. For instance, some union members actively participate in industrial activities and constantly encourage one another to do so. Other members, nevertheless, would like to be more informed and conscious of their behaviors. Ibrahim gives similitude of one's behavioral intention to exercise, and whether his/her decision to actually exercise or not, being influenced by the beliefs of other individuals and the weight one assigns to each of their thoughts.

According to SIT, different commitment processes change how people feel about their intended behaviors. When viewers of programs adopt actions as a result of content, it is known as internalization. Internalization is realized when intrinsic incentives that are consistent with one's own views, are discovered (Bharadwaj, 2021). Trade Unions are often keen on social control for recognition and enforcement as noted by (Ibrahim, 2021).

Recognition and enforcement Bharadwaj (2021) go on to retort, take into account social norms serving as the primary driver behind Trade Union's use of ADR mechanisms, as well as perceived benefits of ADR, such as social identity since the Trade Union approach to resolution of disputes can be accomplished via ADR mechanisms (Ibrahim, 2021). In this sense, if other Trade Unions employed the ADR approach and benefited from it, the ADR might become the standard, and theoretically, other Trade Unions will most probably follow suit bearing in mind perceived benefits (Bharadwaj, 2021). This argument therefore relates to objective one that endeavors to determine whether perceived benefits have influence on the adoption of ADR mechanisms by Trade Unions in Kenya.

2.2 Conceptual Framework

Perceived Benefits in the adoption of ADR plays a vital role in the Organization, which involved cost, accessibility and time. The study dependent variable was Alternative Dispute Resolution.

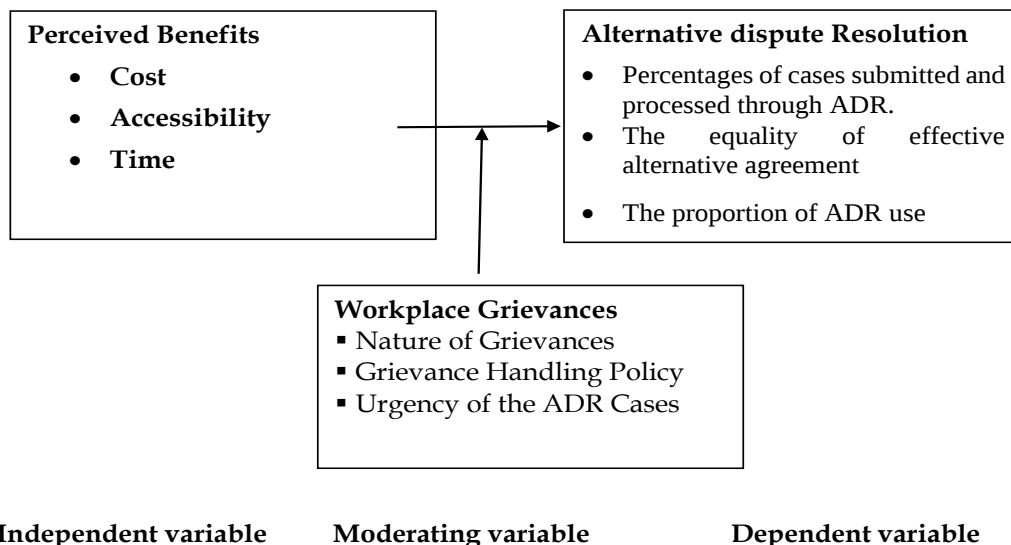


Figure 2.1 Conceptual Framework

Perceived Benefits and Adoption of Alternative Dispute Resolution Mechanisms

The area of perceived benefits has been the subject of numerous studies (Balzer & Schneider, 2021). Few researchers have focused on the impact of viewed importance on the use of the ADR mechanism, a finding that may be explained by the lack of research on the factors influencing Trade Unions in Kenya to adopt ADR. However, when examining other literature on change and adoption, viewed advantages have a significant influence on whether a mechanism, approach, or innovation is adopted (Mucheru, 2019).

Adoption of Alternative Dispute Resolution Mechanisms

Adoption of Alternative Dispute Resolution are the methods of dispute resolution other than courtroom litigation (GoK, 2010). Reconciliation, mediation, arbitration, and traditional dispute settlement are all recognized ADR mechanisms under Kenya's constitution which is supreme. However, different countries may give diverse weightage as to the appropriateness or inappropriateness in use of adoption of ADR mechanisms. For instance, Shwani (2021) in bringing to light a case in Philippine's, contends that the reason for adopting ADR mechanism in the resolution of industrial disputes arose in building projects which were seriously harmed by a lack of understanding. The adoption of ADR strategies for resolving construction industrial disputes was negatively impacted by the lack of mediation expertise, limited knowledge of conciliation, and inadequate understanding of arbitration.

2.3 Empirical Review

There are various investigations done on the effect of perceived advantages on strategy, change and adoption of technology (Bhanot, 2018). However, there are few studies that have been done to concentrate on the impacts of perceived advantages on the adoption of ADR

mechanisms. This is a fact that may be associated with the adoption of ADR by Trade Unions in Kenya in the beginning stages of implementation. When looked upon on other studies of adoption and change, the advantages have a great effect on the adoption of the acceptability of ADR mechanisms and innovations. A study was conducted by [Nyambura \(2013\)](#) in Kenya to find out the relationship between customer confidence, perceptions, perceived risks and the adoption of internet banking. The data was obtained from commercial banks' customers by the use of structured questionnaires. The findings showed good association between the satisfaction of customers, trust and internet banking acceptance. These revealed customers professing the use of internet banking if they trust the transactions carried out thus giving commercial banks more attention; the whilst increasing banks' profitability. [Nyambura \(2013\)](#) also noted that, the understanding of the Trade Unions about the accrued benefits, would affect their decision on whether to adopt ADR mechanisms or not.

2.4 Critique of Related Literature

Previous research works on adoption of ADR have not examined the determinant that influence the adoption of ADR by Trade Unions. [Gathumbi, \(2018\)](#) did a study on factors that influence adoption of ADR mechanism in the management of Tax among medium Tax Payers in Nairobi County. The research focus was on tax management specifically Nairobi County which did not take into account other areas and organization in Kenya in relation to adoption of ADR. Similarly, the research did not look at the factors that lead to the adoption of ADR by Trade Unions.

2.5 Research Gaps

Various researchers have previously studied ADR and the factors that determine its adoption. For instance, the study by [Ele \(2020\)](#) only focused on paperwork and communication and how they influence decisions to use ADR to settle construction industrial disputes in Peru. Similarly, [Katema and Hapunds \(2024\)](#) addressed the communication requirements of ADR such as confidentiality, privacy, minimal documentation. Although the two authors focused on the determinants of ADR adoption, they only limited their evaluation to one factor, communication. Since the adoption of the ADR process is influenced by numerous factors, it is noted that the researchers did not address the issue fully. There is a need to research the other factors. Other authors whose studies delved into the aspects of communication that are mostly factored before adopting ADR are [Amandong \(2017\)](#), [Ali \(2019\)](#), and [Goa \(2018\)](#).

3. Methodology

This section presents the structure of the study and how it was conducted. It includes research design, target population, sampling frame, sample and sampling techniques, data collection instruments, data collection procedure, pilot test, reliability and validity test. The chapter also discusses philosophy that the study adopted and the ethical issues that were taken into account when conducting the research. A descriptive survey design was adopted in this

study to gather information on factors influencing the adoption of ADR by Trade Unions in Kenya. The approach was appropriate because the study aimed to gather data on pertinent respondents' attitudes, perspectives, and behaviors regarding the adoption of ADR by Kenyan Trade Unions (Kathleen & Immy, 2020). The study adopted positivist ideology. According to (Midiwo, 2015), positivist studies are those in which data collection and interpretation use an objective approach. This is an approach that relied on information that is factual and had been obtained via measurement and observation. The results are observable and quantifiable (Midiwo, 2015).

The primary objective of the descriptive research design was to investigate the specific characteristics of the identified group in relation to both the present and an uncertain future. Descriptive research helped to determine relationship between collected data and observation in statistical analysis. According to (McCombes, 2020), descriptive research accurately and methodically describes the features of the population, situation and phenomena. This design was adopted due to its nature of integrating various components in a logical way for the purpose of effectively addressing the problem, thus constituting the blueprint for collecting, measuring and analyzing data. (Tashakkori, 2020). Tashakkori (2020), states that target population is made up of all the elements of a study area. Sekaran (2016) asserts that the target population is the group of people to whom the survey is applied and who draw inferences from it. The target population of the study comprised of 145 Kenya National Union of Teacher Union Officials (24 Secretaries, 50 Shop Stewards, 4 Chairman, 10 Treasurer, 40 Officials. Questionnaire was used as the main instrument for data collection. Prior to data collection the researcher obtained authorization letter from Technical University of Mombasa and a license to conduct the research from National Commission for Science, Technology and innovation (NACOSTI). The intended respondents were assured before to the questionnaire's administration, that their information would remain confidential. Qualitative and quantitative data was subjected to data analysis. Multiple regression analysis, normality test, multicollinearity, heteroscedasticity, linearity, autocorrelation and moderation effect were used to analyze quantitative data. Qualitative data was analyzed by the use of content analysis developing the codes, coding the available data and coming up with links between the discrete information. KMO, Bartlett's test was used to measure the sample adequacy. Hypothesis testing was conducted to establish the link between the variables.

The reliability of the tool was assessed by internal conformance testing. In this test, the reliability coefficient, or Cronbach's alpha, ranges from 0 to 1, with a reliability coefficient of 0 indicating a non-reliable test result. As a general rule, a coefficient greater than or equal to 0.5 is typically seen as suitable and a glaring indicator of building reliability of the tool.

4. Data Analysis & Presentation

4.1 Response Rate

The researcher distributed 150 questionnaires to the respondents and 136 were returned which translated to 90.66% response rate. This response rate was found to be acceptable as it is above the 50% response rate proposed (Theuri, 2015) and Duncan et al., (2015).

Table 1: Response Rate.

Response	Frequency	Percentage
Responded	136	90.66%
Non-response	14	9.34%
Total	150	100

Table 1 This study shows that the response rate was relatively high where responded rate was 90.66% and non-response was 9.34%, which might be attributed to the high level of training given to enumerators. The numerous call backs and many reminders sent to the respondents.

4.2 Descriptive statistics

The mean and the standard deviation of the response variable and independent variable were computed and results given by Table 2 and 3.

Table 2: Descriptive Results of Perceived Benefit

	SD	D	NS	A	SA	Mean	Standard deviation
ADR is a costly and resources depleting process	42.7	17.7	9.7	16.3	13.7	2.41	0.9995
ADR is cost effective compared to litigation in settling dispute	2.7	23	17	31.7	25.7	3.63	0.9177
It is faster to solve disputes through ADR mechanisms compared to legal proceedings	12.7	13.7	19.3	18.7	35.7	3.51	0.9338
ADR process has penalties and interest	13.3	19.3	14.3	33	20	3.27	0.9415
There is accessibility in ADR process	5.3	15.3	17.7	36.3	25.3	3.61	0.9173
One requires to hire experts in the ADR processes	10.7	27	21	20	21.3	3.14	0.9317
ADR gives room for negotiations till a dispute is found	6	17.3	9.7	23.7	43.8	3.81	0.9316
ADR is less confrontational and gives room for the employee and employer to maintain employment relationship	14	9.3	9.3	34.7	32.7	3.63	0.9386

Results from Table 2 show that on average the respondents were in agreement with the second, third, fourth, sixth, and seventh statements (with means of 3.55, 3.51, 3.61, 3.81, and 3.63 respectively) while somehow not sure with the fifth and eighth statements (with means of 3.14 and 3.37 respectively). On average, majority of the respondents agreed with the

statements that perceived benefits have an influence on the adoption of alternative dispute resolution mechanisms by trade unions in Kenya. The results above are in agreement with (Garner, 2019) who supported the claim that adoption focus toward cost reduction leading to the use of alternative dispute resolution (ADR) to resolve disputes in building projects in the North-East India. They specifically noted the need to reduce litigation expenses and those related to project cost overruns, which helped them decide to implement ADR for resolving construction project disputes (du Preez, et al., 2010). Further, Gharib (2017) found that the use of (ADR) in resolving disputes in building projects in both England and Wales was highly influenced by the necessity to put in place mechanisms that would ensure costs are minimized in the event of disagreements. They argued that parties to construction contracts chose ADR primarily to avoid the expenses of litigation, lessen the likelihood of project cost overruns, and prevent project-related damages (Ayupp, 2020).

Descriptive results of Adoption of ADR

Table 3: Descriptive results of Adoption of ADR

Statements	SD	D	NS	A	SA	Mean	Standard Deviation
Percentage of cases submitted and processed through ADR process affect the Reliability & Responsiveness of Trade Unions	29.3	22	13.7	20.3	14.7	2.69	0.9447
Adoption of ADR process affects the quantity of effective alternative	9.3	33.3	18.7	23.3	15.3	3.02	0.9248
Adoption of ADR process Proportion is high	22	23.3	13	24	17.7	2.92	0.9435
Use of ADR affects employee motivation	32.7	17.3	9.3	21	19.7	2.78	0.956

Results from Table 3 shows that on average the respondents were somehow unsure and/or disagreed with most of the statements with a mean ranging from 2.65 to 3.09. The majority of the respondents disagreed that the cases submitted and processed through ADR process affect the reliability and responsiveness of trade unions at 51.3% while 35% agreed. Further, 42.6% of the respondents disagreed that the adoption of ADR process has an effect on the quantity of effective alternative, and 38.6% agreed cumulatively. Lastly, 50% of the respondents disagreed that the use of ADR had any effect on the motivation of employees while 40.7% were in agreement. Therefore, on average, respondents did not agree with the three constructs on the adoption of ADR.

Uwazie, (2021) discovered evidence in research that pointed to a lack of comprehension that had a significant impact on adopting alternative dispute resolution for resolving disputes in Nigeria's building projects. They specifically mentioned how limited usage of these ADR methods for resolving disputes in building projects was caused by a lack of knowledge of conciliation, insufficient knowledge of negotiation, and poor knowledge of arbitration. Lack

of knowledge significantly affected decisions to use ADR in building projects (Kathpalia, 2020). They specifically claimed that limited utilization of this ADR approach for dispute settlement in construction projects was due in large part to insufficient award awareness.

4.3 Correlation Results

Pearson correlation coefficient was used to determine the nature of the relationship between perceived benefits and adoption of alternative dispute resolution. The results obtained are given by Table 4.

Table 4: Correlation Coefficients

		Alternative dispute	Perceived benefits
Alternative dispute	Pearson Correlation	1	.619**
	Sig. (2-tailed)		.000
	N	300	300
Perceived benefits	Pearson Correlation	.619**	1
	Sig. (2-tailed)	.000	
	N	300	300

** . Correlation is significant at the 0.01 level (2-tailed).

Table 4 shows that there is a positive significant strong relationship between Alternative disputes and perceived benefits with (correlation coefficient of 0.619 with a P value of 0.000).

The Objective of this study was to determine the influence of perceived benefits on Adoption of ADR mechanisms by Trade Unions in Kenya. To measure this objective a linear regression model was fitted between Perceived Benefits and Adoption of ADR mechanisms.

4.4 Regression Results

Model Summary

The model summary was obtained presenting predictive powers of the models

Table 5: Model summary

Mode	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	.771 ^a	.595	.590	.78226

a. Predictors: (Constant), Perceived benefits

Table 5 model 1 shows that R square (Coefficient of determination) is 0.595. This implies that the independent variable account for 59.5% of all the variations on adoption of ADR. Other factors not in the model accounts for 40.5% of variation in adoption of ADR.

The ANOVA Table was generated to verify if perceived benefits have significant influence on ADR.

Table 6: ANOVA Table

Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	91.206	1	91.206	185.049	.000 ^b
	Residual	146.876	298	.493		
	Total	238.082	299			

a. Dependent Variable: Alternative dispute

b. Predictors: (Constant), perceived benefits

Table 6 shows that the F statistics was 185.049 with a P value of 0.000. This implies that perceived benefits has significant influence on ADR.

Regression coefficients were obtained so as to help determine the nature of the influence of perceived benefits on ADR. The results obtained are presented by Table 4.2

Regression Model

A simple linear Regression model was fitted to determine the influence of perceived benefits on ADR. The results obtained are given in Tables 7 and 8.

Table 7: presents the model summary which gives the predictive of the model.

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	.619 ^a	.383	.381	.70205

a. Predictors: (Constant), perceived benefits

Table 7 shows that 38.3% of all the variations in ADR are explained by perceived benefits, other variables not in the model accounts for 61.7% of all the variations in ADR.

Table 8: Regression Coefficients

Model		Unstandardized Coefficients		Standardized Coefficients		Sig.
		B	Std. Error	Beta	t	
1	(Constant)	2.076	.103		20.127	.000
	perceived benefits	.452	.033	.619	13.603	.000

a. Dependent Variable: Alternative dispute

Table 8 shows that perceived benefits has significant positive influence on ADR. The resultant model is given by equation 1 as:

$$y_i = 2.076 + 0.452x_1 \quad (1)$$

Equation 1 shows that for every unit change in perceived benefits, ADR increases by 45.2% keeping other factors constant.

4.5 Hypothesis Testing

The null hypothesis was stated;

H_{01} : perceived benefit has no significant influence on the adoption of ADR.

The null hypothesis was rejected implying that perceived benefit has significant influence on adoption of ADR mechanism by Trade Unions in Kenya. This was tested using a regression model fitted in equation 1 where the P value (0.005) of the t test was found to be less than 0.05.

5. Conclusions and Recommendations

Conclusion

Perceive Benefits had significant influence on adoption of ADR mechanism by Trade Unions in Kenya. Creating awareness on the Perceived benefits at the Organization level would strengthen the use of ADR mechanisms in resolving industrial disputes and would make ADR mechanisms a viable method in coming up with resolution for the industrial disputes. Furthermore, improved efficiency, reliability and cost effective would make ADR effective in resolving industrial disputes and improving on Organization performance.

Recommendations

Trade Union official should focus in coming with Policy documents that would put a direction on how to adopt ADR as a mechanism in resolving industrial disputes. The Official should create awareness and more knowledge on ADR.

Conflict of Interest: *The author clarifies that the research was not exposed to any form of conflict of interest.*

Funding: *The author asserts that he did not receive any funding from any institution*

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