Q3 -2019

NR&CoQuarterly ...Legal Briefs

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KARIBU!

Editor's Note

Mwangi Karume, Partner
(Head of the Corporate, Commercial and Conveyancing Department)

Bienvenue all dear readers to our third quarter Newsletter.

In the months since our last Newsletter, several noteworthy events have taken place across the globe and within the Firm. We welcome back Rosemary Kamau, an Associate with the Firm who was away on study leave to pursue an LLM in International Law at the University of Bristol, United Kingdom.

Globally, the recent United Kingdom (UK)'s Supreme Court decision declaring the prorogation of the UK Parliament as "unlawful because it had the effect of frustrating or preventing the ability of Parliament to carry out its constitutional functions without reasonable justification" adds to the intrigues of the UK's Brexit plan. On tackling climate change, Norway recently announced a USD150 million (K.Shs. 15 billion) contract with Gabon to reduce Gabon's carbon emissions. The initiative comes under the Central African Forest Initiative (CAFI), a scheme launched by the United Nations (UN) to encourage Western help for cash-strapped forest custodians.

Closer home, Somalia and Kenya has been locked in a maritime border dispute for some time now. Both countries are actively engaging in negotiations over the disputed maritime border. Somalia maintains that its maritime boundary should run on a diagonal extending from its land border and not in the current flow parallel to the line of latitude. It would be interesting to follow the negotiation and resolve of the maritime boundary dispute. Further, the East African Community in a bid to promote our shared values, culture and the uptake of local textiles has announced Fridays as 'Afrika Mashariki Fashion Day'. We cannot wait to see the diverse splash of colour our ethnic clothes will bring to our work spaces.

The Kenyan flag continues to fly high internationally. We won the African Union vote to contend for the United Nations Security Council (UNSOC) non-permanent seat for the year 2020- 2021. Of course this is merely the preliminary round of voting and Kenya will require support from Asia, Europe and the Americas to win the seat in the final polls. All things considered, Kenya is a shoo-in for the seat.

In this Newsletter issue, we highlight several homegrown legislative developments such as the change in the mergers and acquisition framework which now permits a shareholder with 50% of shares in a company (as opposed to the previous 90% threshold) to make a take-over offer for the acquisition of additional shares within the company. Secondly, we see a return of the interest rate cap through the Finance Act, 2019.

Have a look inside for more informative updates and eye-opening articles. Enjoy!

THE FIRM

Rosemary Kamau
(Associate – Corporate, Commercial & Conveyancing Department)

1. Welcome back Rosemary, how does it feel to be back?
It is great to be back. I am savoring every minute of re-connecting with the members of the firm as well as the Firm's clients.

2. What were your areas of study and your general experience while undertaking your studies?
I pursued an LLM in International Law with a bias for International Commercial Arbitration, Migration Law and Policy as well as International Law and Use of Force at the University of Bristol.

I would say the experience was eye-opening especially in terms of different cultures, systems and governance. On the whole, I would say, the experience is unforgettable and I am honoured to have had such an opportunity.

3. Having been on hiatus and resumed work, what would you say is your biggest take away?
I would say maintain the networks you have and build on them. The relationship you have with people, no matter the dynamics, is key. It is what would serve as support and build your career.

4. How would you describe the Firm as an employer?
Supportive and values a strong work ethic.

5. Any comments on the Brexit Situation and the maritime border dispute
- Regional integration builds on the political and economic wealth of a people.
- Alternative dispute resolution mechanism such as negotiations and diplomacy are key in maintaining relationships and building on trust.

Interview by: Cindy Amuka

LEGISLATIVE UPDATES

In this section, we focus on the proposed amendments in the Statute (Miscellaneous Amendments) Act, No. 12 of 2019 on the acquisition of shares ("Offer Shares") and information relating to beneficial owners and the Land Value (Amendment) Act, No. 15 of 2019 on the assessment of compensation due on compulsorily acquired land. This section also highlights the return of the interest rate cap as per the amendments of the Finance Act, 2019.

1. THE STATUTE (MISCELLANEOUS AMENDMENTS) ACT, NO. 12 OF 2019

The Statute (Miscellaneous Amendments) Act ("the Amendments Act") assented to on 5th July, 2019 and commenced on 25th July, 2019 amends the Companies Act, No. 17 of 2015 ("the Companies Act") by introducing the concept of beneficial ownership as well as the various provisions on Offer Shares.

The Amendments Act introduces Section 93A which requires a company to keep a register of its beneficial owners. The personal information of beneficial owners such as their full names, personal identification numbers, national identity card or passport numbers, postal and residential addresses, current email address and phone number, occupation and the nature of ownership shall be included in the register pursuant to the Companies (Beneficial Ownership Information) Regulations, 2019 ("the Regulations"). The Regulations are yet to be gazetted. The aim of the register is to curb instances of money laundering. It however interferes with the principle of confidentiality.

It is worth noting that despite the Regulations' definition of who a beneficial owner is, the requirement on disclosure of such beneficial interest is based on whether the beneficial owner holds at least 10% of the issued shares or exercises any voting rights within the company. The Regulations define the phrase "beneficial owner" as a "natural person who ultimately owns or controls a legal person or arrangements or the natural person on whose behalf a transaction is conducted, and includes those persons who exercise ultimate effective control over a legal person or arrangement".

In relation to a Merger and Acquisition, the Amendments Act varies sections 611(2) & (4) to delete and substitute the ninety percent (90%) threshold for fifty percent (50%) in terms of shareholding. As a result, a shareholder with 50% of shares in a company may make an offer to other shareholders regardless of the class of shares.

(For more: http://kenyalaw.org/kl/fileadmin

2. THE LAND VALUE (AMENDMENT) ACT, NO. 15 OF 2019

The Land Value (Amendment) Act seeks to amend the Land Act, the Land Registration Act, the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act by providing for the assessment of land value index in respect of compulsory acquisition of land and for connected purposes. Section 4 of the Act introduces Section 107A to the Land Act which provides for the development of the land value index to aid in the assessment of compensation.

The Act further provides that the assessment of compensation due shall consider (a) the number of persons in actual occupation of the land for an uninterrupted period of six years immediately before the publication of the notice of intention to acquire the land; (b) the improvements done before the date of publication in the Gazette of the notice of intention to acquire the land; (c) damage sustained or likely to be sustained by the occupants of the land at the time of the Commission's taking possession of the land injuriously affecting other property, whether movable or immovable or in any other manner affecting the person's actual earnings; and (d) if, in consequence of the acquisition, any of the occupants in good faith of the land is or will be compelled to change residence or place of business, the payment of reasonable expenses to be determined by the Commission.

Additionally, the Act introduces section 111(1B) to the Land Act which provides that compensation for compulsorily acquired land may take the form of (a) allocation of alternative parcel of land of equivalent value and comparable geographical location and land use to the land compulsorily acquired; (b) monetary payment either in lump sum or in instalments spread over a period of not more than one year; (c) issuance of government bond; (d) grant or transfer of development rights as may be prescribed; (e) equity shares in a government owned entity; or (f) any other lawful compensation, on condition that the form of compensation under this section is completed within 24 months of the date of publication of the notice of intention to acquire the land.

(For more: http://kenyalaw.org/kl/fileadmin/pdfdownloads/AmendmentActs/2019/LandValueAmendmentAct2019.pdf)

3. FINANCE ACT, 2019

The Finance Act, which is yet to be operationalized repeals Section 33B of the Banking Act (CAP 488) by removing any ambiguity, vagueness, imprecise and indefinite words contained in Section 33B (1). It seeks to clarify that the interest rate under reference is to be computed or applied on an annual basis. The amendment further reaffirms that the maximum interest rate charged by banks and other financial institutions on loans should not exceed four percentage points above the rate set by the Central Bank of Kenya ("CBK"). This is to ensure that there is compliance with the Central Bank Act under section 36(4) that empowers the CBK in publishing the applicable interest base rate. As it stands the provision under the Banking Act is unclear as to whether banks should charge the maximum interest rate at four percentage points below or above the CBK rate.

In order to enhance effective compliance, the penalty under subsection (3) is amended to avoid discrimination against banks and financial institutions, and to hold the borrowers/customers liable as well. For purposes of consistency, the term "credit facility" has been replaced with the word "loan" in order to align its meaning under section 33 B (4) with the definition under Section 44A (5) of the Banking Act.

(For more: http://kenyalaw.org/kl/fileadmin/pdfdownloads/bills/2019/TheBanking_Amendment_Bill_2019.PDF)

CASE HIGHLIGHTS

This section considers recent court judgments delivered in the course of this quarter relating to the conclusive nature of search results on the registration of land, the exemption from VAT for the sale of land including commercial buildings and the legal procedure on the compulsory acquisition of land.

1. Elizabeth Wambui Githinji & 29 Others vs Kenya Urban Roads Authority & 4 Others Civil Appeal No. 156 of 2013 (Consolidated with Civil Appeal No. 160 of 2013 Cycad Properties Limited v the Hon. Attorney General & 4 Others)

The Appellants ("the Owners") are residents and own houses in Runda Mimosa Estate in Nairobi. In 2010, their houses were earmarked for demolition by the Respondents- Kenya Urban Roads Authority, the Ministry of Roads, the Ministry of Lands, the Kenya National Highway Authority and the Honorable Attorney General (hereinafter collectively referred to as KURA). KURA alleged that the Owners had built on a road reserve. The Owners contested the decision of KURA to the High Court claiming that they were legal owners of the property and that the process of compulsory acquisition was flawed and thus the suit properties was not conveyed to KURA.

The High Court ruled in favour of KURA. The High Court noted that it found no merit in the Owners' argument that the process of compulsory acquisition was flawed. In the Court's opinion, its role was only to determine whether KURA's action to recover 20 meters of the road reserve violated the Owners' right to property. The Court argued that it could not deliberate on the process of acquisition as the original proprietors of Runda Mimosa Estate (Runda Coffee Estate Limited, who had themselves purchased them from Edith Gladys Cockburn, Estav Limited and Mimosa Plantations Limited), who had sold the property to the Owners, were not a privy to the present suit and thus not privy to the contract between the original proprietors and KURA.

The Owners appealed to the Court of Appeal. They argued that the intended demolition violated their right to property under Article 40 and 64 of the Constitution of Kenya, 2010 as well as Section 27 of the Registered Land Act (Cap 300, now repealed). They alleged that based on the survey, the width of the road varied between 80 meters and 60 meters at different points and that according to the beacons placed near their properties, the width was 60 meters. Accordingly, the Owners rejected KURA's claim that they had acquired an extra 20 meters from the original proprietor of the suit properties, as there was no record that the process of compulsory acquisition complied with the law.

On the other hand, KURA argued that the intended demolition was justified as the Owners had encroached on the road reserve by 20 meters. KURA argued that in 1970 the Government had initially compulsorily acquired 80 meters of land for the purposes of constructing a road (now known as the Northern bypass). As such, KURA contended that the Owners cannot seek to enforce their right to property where they had been misled by their surveyors in purchasing the properties. The specific portions of the Owners' properties which encroached on the road reserved could not be protected under Article 40 (1) of the Constitution of Kenya, 2010.

Upon hearing the parties, the Court of Appeal considered the two issues raised, that is, whether procedure for compulsory acquisition was completed and whether their rights to property under Article 40 of the Constitution of Kenya, 2010 were threatened with violation. On the first issue, the court noted that a gazette notice was issued on 20th November, 1970 expressing intention to compulsorily acquire the suit property and a Notice of Inquiry was subsequently published. An initial survey was also conducted by a government-appointed licensed surveyor. Despite this, the Court of Appeal held that the Government failed to carry out a final survey as required under Section 17 of the Land Acquisition Act, Cap 295 (Now repealed and hereinafter referred to as "LAA") and consequently the acquired land was not marked as required under Section 7 of the LAA. This was confirmed by the government surveyor who noted that a final survey was not filed pursuant to Section 17 of the LAA and thus the process of acquisition was incomplete.

According to the Court, the essence of the final survey was to determine the exact particulars of the acquired land. In the present case, the final survey was important to determine whether the government acquired the contested 20 meters of land. As such, the Court noted that it is not sufficient to gazette notices of an intended acquisition, call for an inquiry meeting with a view to compensation, proceed to compensate those affected and then stop at that without compliance with the mandatory provisions of the LAA, which are necessary so as to put third parties on notice.

In regard to the second issue, the Court of Appeal found in favour of the Owners and stated that the doctrine of sanctity of title is anchored on the premise that the registered owner lawfully obtained certificate of title; and that the owner's title is indefeasible unless it is shown to have been obtained unlawfully.
(For more visit: http://kenyalaw.org/caselaw/cases/view/175302/)

2. David Mwangi Ndegwa v Kenya Revenue Authority Civil Suit No. 541 of 2015

David Mwangi Ndegwa, the Plaintiff, brought an action against Kenya Revenue Authority (KRA), the Defendants, seeking a declaration that Value Added Tax (VAT) is not payable on a transaction for the sale or purchase of land regardless of whether or not the buildings standing thereon are residential or commercial buildings and a refund of Ksh. 11,200,008.00 paid by the Plaintiff as VAT.

During the hearing of the case, the Plaintiff claimed that he was compelled to pay VAT at 16% of the purchase price amounting to Ksh. 11,200,008.00, to complete the transaction. In his argument, the Plaintiff relied on paragraph 8 of Part II of the VAT Act, 2013 which provides for an exemption from the payment of VAT for the purchase of land notwithstanding the nature of any buildings on the land.

KRA denied the Plaintiff's claim and noted that Paragraph 8 of Part II of the First Schedule provided that exempted supplies are "supply by way of sale, renting, leasing, hiring, letting of land or residential premises". According to KRA, the sale, letting, renting, leasing or hiring of commercial premises was not an exempted supply and was thus subject to payment of VAT. KRA further argued that the Plaintiff's claim is time barred by virtue of Section 30 of the VAT Act, 2013 which requires that a claim for refund should be lodged within 12 months from the date the tax became due.

The Court noted that the main issue for determination was whether or not VAT is payable on a transaction for sale of land on which a commercial building stands. The Court agreed with the Plaintiff noting that the definition of land in the VAT Act must be derived from Article 260 of the Constitution of Kenya, 2010 which defines land as including what is on the surface of the land and in the airspace above the surface. Pursuant to Clause 2A and B of the Agreement for sale, the court was satisfied that the Plaintiff entered into an agreement for the purchase of land and that such a purchase was exempted from payment of VAT negating any ambiguity as to the nature of land as being either residential or commercial; partly residential or partly commercial.

This decision has raised questions on the legality of the VAT levy for the purchase of commercial premises. It also casts doubt on KRA's age-old practice of levying tax on purchase of commercial premises. It is worth noting that KRA has applied for suspension of implementation of the decision pending the determination of its appeal.

(For more: http://kenyalaw.org/caselaw/cases/view/163642/)

3. National Land Commission v Afrison Export Limited & 10 Others ELC Reference No. 1 of 2018

The case related to compulsory acquisition of 5.727 Ha of L.R Number 7879/4 for the benefit of Ruaraka Secondary School and Drive In Primary ("suit property") at the request of the Ministry of Education. It was referred to the Environment and Land Court ("ELC") by the National Land Commission ('the Commission') pursuant to its mandate to seek legal opinions on dispute arising from a discharge of its mandate. The ELC was tasked with determining various questions raised by the Parties such as whether the suit property was pubic and or private land, if the suit property was public land, whether the Commission misappropriated funds through the process of compulsory acquisition and whether a Search Form obtained from the lands office is conclusive evidence of ownership of land, inter alia. During the hearing, it was established that the subject matter was in essence public land and therefore could not be compulsorily acquired by the Government of Kenya.

In the course of the analysis of the case, the court delved into the question of whether a search result is conclusive evidence of the ownership of land. In its holding, the court noted that the search system of land in Kenya is based on the Torrens System of registration and thus it is necessary for one to take further steps to ascertain the authenticity of the search and ownership of the land. Contemporaneously, it is important for one to also delve into the history of the title, extend the search to the register of public land maintained by the Commission as well as ascertain whether overriding interests affecting the land they wish to transact on exist. Accordingly, the court held that a search result is not conclusive evidence of ownership. "One needs to go further than a mere search.

(For more: http://kenyalaw.org/caselaw/cases/view/176580/)

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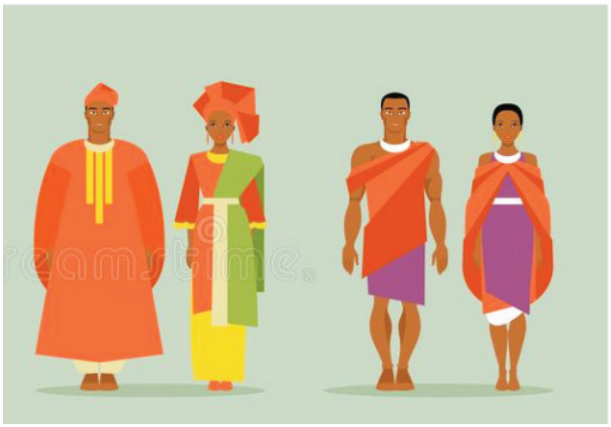
LAW GLOBAL

THE EAST AFRICAN COMMUNITY FASHION WEEK



News just in!

We now have an East African Community Fashion Week every first week of September with every Friday of the year as 'Afrika Mashariki Fashion Day.'

During this day it is expected that East Africans shall be donned in attires manufactured within the region. As a measure of controlling illicit imports of worn out or used textiles and garments, the Sectoral Council on Trade, Industry, Finance and Investment (SCTIFI) has also issued a directive to the Standards Committee to assess and advise on feasibility of the Pre-shipment Verification of Conformity (PVoC) of all imports of textiles and ready-made garments into the EAC. It is hoped that this move shall see the growth and protection of a ready market for the local textile manufacturers within the region.

The Afrika Mashariki Fashion initiative comes amid pressure from the local stakeholders within the manufacturing industry in Kenya pushing for the draft policy of "Buy Kenya Build Kenya" into law for a robust, diversified and competitive manufacturing sector as well as cutting down cheap imports into the country. However, this initiative being a culture in Rwanda, Kenya and her other East African counterparts should endeavor to have local content heavily promoted locally.

GABON AWARDED FOR ITS EFFORTS TO PRESERVE ITS RAIN FORESTS

Central African Forest Initiative (CAFI) announced on 22nd September, 2019, that Gabon has entered into a One Hundred and Fifty Million US Dollars (US$ 150 Million) agreement with Norway. The 10-year deal is the first to be awarded to an African country. Gabon has been lauded for its efforts to reduce greenhouse gas emission, deforestation and degradation. The aim of the award is to assist Gabon in conserving its rain forest. The award comes in the wake of a global climate crisis and pledges by member States of the United Nations General Assembly to address climate change.

CONTRIBUTORS' PLATFORM

Pitfalls to avoid when carrying out Redundancy

By Grishon Ng'ang'a Thuo
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(Mr. Thuo is a partner in the Firm attached to the Dispute Resolution department. He has more than 10 years' experience in employment and constitutional law.)

Introduction

I write this article in the background of recent media reports to the effect that several companies currently operating in Kenya intend to lay off hundreds of workers before the end of the year. In fact, one leading Kenyan newspaper has declared that there is "a wave of lay-offs". Several reasons have been given for the massive layoffs including poor performance of the economy, high cost of labour and production and mass adoption of technology.

These layoffs are happening in a society that is becoming increasingly litigious. The Employment and Labour Relations Court is one of the busiest courts as many labour disputes end up in court. It is therefore no surprise that many redundancy exercises lead to disputes which eventually end up in court. It is therefore critical for employers who wish to carry out redundancy to do so within the law and to avoid pitfalls which could lead to invalidation of the redundancy.

What is Redundancy?

Section 2 of the Employment Act Number 11 of 2007 defines "redundancy" to mean "the loss of employment, occupation, job or career by involuntary means through no fault of an employee, involving termination of employment at the initiative of the employer, where the services of an employee are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment"

Steps to take in Effecting Redundancy

Section 40 of the Employment Act stipulates the steps and conditions an employer is to comply with before effecting a redundancy. These are: -

1) Where the employee is a member of a trade union, the employer must notify the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of the reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy.

2) Where an employee is not a member of a trade union, the employer should notify the employee personally in writing and the labour officer.

   However, section 40 does not stipulate that an employee who is not a member of a union should be given a similar notice period. Nonetheless, the Courts have interpreted the section purposefully to mean that even an employee who is not a member of a union is entitled to at least a month's notification.

3) In the selection of employees to be declared redundant the employer must have due regard to seniority in time and to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy.

   To be safe, an employer who intends to carry out a redundancy would have to develop objective written criteria.

4) Where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy; the employer should not place the employee at a disadvantage for being or not being a member of the trade union.

5) Where leave is due to an employee who is declared redundant, the employer must pay off the leave in cash.

6) The employer should give an employee declared redundant not less than one month's notice or pay one month's wages in lieu of notice.
   In light of this requirement, it is important to distinguish this termination notice from the notification of intention to declare an employee redundant referred to herein-above.

7) Finally, the employer must pay an employee who is declared redundant severance pay at the rate of not less than fifteen (15) days' pay for each completed year of service.

Potential Consequences of Failure to comply with Section 40 of the Employment Act

In numerous cases, the Courts have emphasized that the conditions set out in section 40 of the Employment Act are mandatory. **In Hesbon Ngaruiya Waigi –vs- Equitorial Commercial Bank Limited (2013) eKLR** the Court held:

> **"These conditions outlined in the law are mandatory and not left to the choice of the employer".**

Similarly, in **Francis Maina Kamau –vs- Lee Construction (2014) eKLR** the Court stated: -

> **"Where an employer declares a redundancy the conditions set out in Section 40 of the Employment Act must be observed and where the employer fails to do so, the termination becomes unfair termination within the meaning of Section 45 of the Employment Act."**

Therefore, where a redundancy is not properly carried out, it is likely that an employer would be exposed to litigations with all their undesirable consequences including costs, damage to reputation and needless time wastage. The effect of this is that such redundancy being termed as 'unfair termination'. Consequently, and employee becomes entitled to remedies stipulated in section 49 of the Employment Act. These include compensation up to the equivalent of the employee's 12 months' salary, salary in lieu of notice and even reinstatement. However, as was held by the **Court of Appeal in Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others [2014] eKLR,** reinstatement will not be granted except in "very exceptional circumstances."

Harnessing the Socio-Economic Transformational Potential of Africa's Green Economy through Good Governance and Policy Development.

By Cindy Amuka

(Cindy is a pupil at the Firm. Sustainable Development and Public Policy Reform are part of her areas of academic interest. Her pupillage at the Firm has broadened both her theoretical and practical knowledge on this two disciplines.)

Introduction

Countries' dependence on non-renewable energy sources such as crude oil is the reason why headlines such as "After Saudi Attack, Oil Market Is on Edge: 'What if the Other Shoe Drops?" spell doom in every aspect of our lives. Renewable natural resources (RNRs) are a form of sustainable energy source that when coupled with proper management leads to impressive economic growth. RNRs are replenished over relatively short period of time and inexhaustible. Africa is vastly rich in RNRs ranging from solar energy, hydropower, geothermal energy, wind power, biomass and biofuels.

RNRs enhance energy supply security through additional capacity development and reduce dependence on imported fuels. Additionally, they mitigate impacts arising from volatility of global fuel prices and create employment opportunities. Moreover, RNRs mitigate climate change. According to a 2010 report by the United Nations Industrial Development Organization, a reduction of 26% of the total global carbon emission was attributed to the efficiency gains in RNRs. This is indicative of the wholesome benefits of energy from RNRs.

This article makes two assertions. Firstly, that the sustainable use of RNRs to foster socio economic transformation in Africa requires a multi sectoral approach. Secondly, this multi-sectoral approach is be pegged on two stilts; good governance and good policy development. This multi-sectoral approach is particularly relevant in view of the fact that the main challenges facing all energy resources in Africa result from weak bargaining power, corruption and lack of favorable sector-specific laws.

Prioritization of RNRs as a government agenda

The late Nelson Mandela once noted that, "our experience has taught us that with goodwill a negotiated solution can be found for even the most profound of problems." The presence of political goodwill by African leaders is imperative for continental green industrialization. Building a robust green economy agenda must be prioritized and form part of each State's overarching socio-economic working agenda.

Equally important is capacity building by States and investment in avenues that enables gain in perfect knowledge on the commercial viability of all proposed RNR projects. Further, accountability regulations demand that leaders only negotiate contracts that are likely to have a favorable return on investment. It is especially important for RNR projects provide an intersection of

solutions to specific African problems in need of immediate attention. For example, the use of RNR in rural electrification that in turn supports Agribusiness or job creation for women and youth allows for the killing of several birds with one stone.

Enactment of favorable policies and laws not limited to tax and energy laws

Offering attractive tax breaks to entities that offer services and sell equipment in respect to RNRs, VAT exemption, zero rating and wear and tear allowances on RNR equipment such as solar PV equipment are some of the tax initiates that may boost RNR growth.

The Kenyan Government with the assistance of the World Bank formulated the Feed-in-Tariff (FiT) Policy of December 2012 to encouraged greater renewable energy investment. The Policy allows all independent power producers to feed their (excess) power into the main electricity grid. This allows for relief on capacity constraint on the grid. Consequently, more Kenyans are able at lower costs.

Enhancing national ownership of RNRs

Large scale investment in RNRs has remained the preserve of large and often foreign multinational companies. The capital involved in setting up RNR businesses are forbidding. A collaboration between national governments, private sector players and regional development banks would ease access to finance for RNR projects. Moreover, African countries must invest in national hubs that offer technical training and business support to private sector RNR investors and offer on a priority basis shares in RNR companies to nationals in order to enhance a feeling of national ownership of RNRs. African States must not forget to invest in judicial mechanisms of dispute resolution with a bias for alternative means of dispute resolution in respect to RNR projects.

Lastly, the investment of portions of profit from RNR exploitation is crucial for sustainable development. One way of doing so would be to set up a Sovereign Wealth Fund (SWF). SWFs when managed in a transparent manner and with proper oversight provide an avenue for secure investment. As at 2018, Norway has the largest SWF globally worth over 1 trillion US dollars in assets.

Kenya has drafted a Sovereign Wealth Fund Bill of 2019. The Bill aspires to secure national interests by directing petroleum trade profits, royalties, bonus payments, licence fees and any other revenues from minerals towards saving and investing for the current and future generation as provided by the three components of the Fund.

Conclusion

The potential of Africa's green economy is undeniably massive and if pursued within these and other governance and policy parameters, is certain to ensure the prosperity of the present and future African generation.

Notes

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The editorial team would like to express its sincere gratitude to all those members of the Firm who, in one way or another, contributed to the conception, preparation and eventual production of this Newsletter. The dedication and input of the writers and contributors is appreciated and we look forward to continued support in the issues to follow.

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