



NR&Co Quarterly

...Legal Briefs



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KARIBU!

Editor's Note



Patrick Karanja
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It is with great pleasure that I welcome you to the 4th edition of our Quarterly Newsletter for the year 2017. As the editor this time round, my team and I are glad to have put together quite the literary spread for our readers and hope to keep you well informed and entertained. Since our previous edition, there have been quite a few changes for Kenya with a new government in place and a lot of hope for the country's future. Notwithstanding, the country has remained united in the difficulties faced getting there with our unwavering optimism.

Without giving too much away, we have had a number of interesting legislation passed this quarter both as amendments and proposed additions to the laws of Kenya. Interesting to note, following the recently concluded Presidential election held on 26th October,

2017, our legislators passed the Election Laws (Amendment Act) No. 34 of 2017 which along with the Energy bill, 2017 and the Petroleum (Exploration Development and Production) Bill, 2017 are a progressive step for Kenya's future in the coming year.

Similarly, not to downplay the role of the Courts in making leaps in the setting of precedents, we have one decision which has had an impact on the candidature of Presidential aspirants in the last election as well as another on conferment of jurisdiction of the courts.

Within the firm, our process servers have put together an article on the pilot e-filing system in the High Court. Further, our very own Office Administrator, Grace Wainaina has an interesting piece on accounting for lawyers. Lastly, from the editorial team, Alex Najjuka's feature on social media's interaction with the law as well as an account of the firm's engagement in social corporate responsibility this year.

It is our sincere hope that this Quarter's Edition brings informative, educative as well as entertaining discourse to our readership. We wish you a prosperous, peaceful and productive festive season and New Year!

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FIRM HIGHLIGHTS

In this quarter, on 24th September, 2017, the firm participated in the annual Nairobi Hospice Charity walk held in Ngong Forest, Karen. Nairobi Hospice is a registered charitable non-profit making organization that was established in 1988 and officially opened in February 1990. It supports patients facing chronic illnesses such as cancer and HIV/AIDS. Its services are provided at the Hospice on out-patient basis, in hospitals and at the patients' homes within a 20km radius.

It also holds various charity events such as the New Year Appeal, Easter Appeal, Golf Tournament and the Christmas Appeal. Such charity events are aimed at providing the much needed Palliative Care to the patients; putting life into their days not just days into their life.

On that bright and sunny Saturday morning of 24th September, 2017, we assembled at Hillcrest International School in Karen to embark on the trek. The event was kicked off by a hearty recital of the National Anthem played by a brass band, after which we were all encouraged to do a bit of stretching in preparation for the distance ahead. The excitement and anticipation in the air was at its peak ten minutes before we set off to the tune of the brass band playing ahead. The crowd was a mixture of the young, old and the young-at-heart. Much chatter and laughter (and much estimation of the distance and terrain we were to face) filled the conversation as we set off.

The second leg saw us get into the forest and this is the part where the most agile of us came to be known. The change from suburban surroundings to the more natural atmosphere forest brought out a few survival instincts in some of us. By midday we had circumnavigated the forest to return to the starting line and we were all very delighted with our feat.



By Alex Najjuka (Editorial team)

LEGISLATIVE UPDATES

With the nullification of the August presidential election by the Supreme Court on 1st September, 2017, this section has analyzed the Election Laws (Amendment) Act No. 34 of 2017 which has amended various electoral laws. Two (2) Bills which have recently been tabled in Parliament have also been analyzed hereunder.

1. Election Laws (Amendment) Act No. 34 of 2017 (“Amendment Act”)

This Act came into force on 2nd November, 2017 by virtue of Article 116 (2) of the Constitution. The Act seeks to amend six (6) key issues as discussed below:-

a) The Office of the Chairperson

The Amendment Act has amended section 7A of the Independent Electoral and Boundaries Commission Act, No. 9 of 2011 (“the IEBC Act”) by providing that whenever a vacancy occurs in the office of the Chairperson, the Vice-chairperson shall assume the duties of the Chairperson until such a time a Chairperson is appointed. Where the positions of the Chairperson and Vice-chairperson are vacant, then IEBC shall nominate one among themselves to act as Chairperson. A person acting as the Chairperson need not be a person who is qualified to hold the office of a Judge of the Supreme Court.

b) Quorum

The Amendment Act has amended the Second Schedule of the IEBC Act by reducing the number of members required for the conduct of business at a meeting of IEBC from five (5) to at least half of the existing members, provided that the quorum shall not be less than three members.

c) Transmission of results

The Amendment Act has amended section 39 of the Elections Act, 2011 by providing that IEBC must electronically transmit and physically deliver the tabulated results of an election for the president from the polling station to the constituency tallying centre and to the national tallying centre.

The amended provision further stipulates that where there is a discrepancy between the electronically transmitted results and physically delivered results, IEBC must verify the results and the result which is an accurate record of the results tallied, verified and declared at the respective polling will prevail.

In addition, the Amendment Act further provides that any failure to transmit or publish the election results in an electronic format shall not invalidate results as announced and declared by respective Presiding Officers and Returning Officers at the polling station or constituency tallying centre.

d) Complementary Mechanism

The Amendment Act has amended section 44A of the Elections Act, 2011 by providing that IEBC must put in place a complimentary mechanism for identification of voters that is simple, accurate, verifiable, secure, accountable and transparent.

e) Nullification of results of an election

The Amendment Act has also amended and deleted the word ‘or’ under section 83A of the Elections Act, 2011 and substituted it with the word ‘and’. The implication of this is that the non-compliance of any written law will not be a ground to void an election provided that the non-compliance did not affect the result of the election. This therefore raises the threshold for nullification an election as a Petitioner will have to prove both non-compliance and the effect of that non-compliance.

f) Duties of IEBC after invalidation of an election

The Amendment Act has introduced a whole new section 86A to the Elections Act, 2011 which now requires IEBC to publish in the Kenya Gazette within seven (7) days of invalidation of an election by the Supreme Court a notice indicating that the presidential election has been invalidated, the date of fresh elections and

also publish the names and political parties of the candidates to participate in the fresh election.

The Amendment Act has also introduced Section 86A(2) to the Elections Act, 2011 which stipulates that IEBC shall not conduct fresh nominations for a fresh election that is to be conducted after the nullification of a presidential election by the Supreme Court.

2. The Energy Bill, 2017

This Bill seeks to consolidate the laws relating to energy and align the legal and regulatory framework of the energy sector with the Constitution of Kenya, 2010. It does this by setting out with clarity the specific roles of the National and County Government in relation to energy. The Bill if passed, will repeal the Energy Act No. 12 of 2006 and the Geothermal Resources Act No. 12 of 1982.

Part II of the Bill which deals with the Energy Policy and Integrated Energy Plan proposes to place certain obligations on the Government to ensure that services in the energy sector are availed to the people of Kenya as guaranteed by the Constitution. Further, the Bill also provides that a consumer who permits unlicensed electricians to install electricity commits an offence. Such a consumer, will on conviction, be liable to a fine not exceeding Kenya Shillings Fifty Thousand (Kshs.50,000.00) or to a term of imprisonment not exceeding three (3) months or both.

A person who carries out any electricity undertaking without a licence will also have committed an offence and shall, on conviction, be liable to a fine of not less than Kenya Shillings One Million (Kshs.1,000,000.00) or to a term of imprisonment not less than one year or both.

The Bill also makes it illegal for any person to own or operate an unlicensed facility that produces energy using coal. Anyone

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who contravenes the law in relation to construction of such a facility will be liable to one year jail-term or a fine of Kenya Shillings One Million (Kshs.1,000,000.00).

The Bill has also established a number of National energy entities such as the Energy Regulatory Commission, the Rural Electrification and Renewable Energy Corporation, the Nuclear Power and Energy Agency and the Energy and Petroleum Tribunal.

Further, the Bill also seeks to include in the ERC Board a County Executive Committee member who has been nominated by the Council of governors.

3. The Petroleum (Exploration, Development and Production) Bill, 2017

The principal object of this Bill is to provide a framework for the contracting, exploration and development of petroleum together with production of petroleum discovered within licensed petroleum exploration blocks. The Bill also provides a framework for the safe cessation of upstream petroleum operations. The Bill if and when assented to law, will repeal the Petroleum (Exploration and Production) Chapter 308 of the Laws of Kenya.

Part I deals with preliminary issues such as definition of terms as used in the Bill, scope of the Bill and the supremacy of the Bill on matters relating to upstream petroleum operations by providing that the Bill once passed into law shall apply to all upstream operations being carried out in Kenya.

Part II deals with the National Upstream Petroleum Policy and Plan. This part provides that the Cabinet Secretary responsible for Petroleum shall develop, publish and review upstream strategic plan. This part also places obligations on the National Government to create a conducive environment for upstream petroleum investments while ensuring that the investments are carried out for the benefit the people of Kenya.

Part IV which deals with upstream petroleum rights and management of petroleum resources vests all petroleum existing in its natural condition on the National Government in trust for the people of Kenya.

Part VI deals with local content and training. Local content has been defined to mean the added value brought to the Kenyan economy from petroleum related activities through systematic development of national

capacity and capabilities and investment in developing and procuring locally available work force, services and supplies, for the sharing of accruing benefits. This part provides that a contractor and a sub-contractor of the contractor conducting petroleum operations shall among other things give priority to services provided and goods manufactured and ensure that priority is also given for the employment or engagement of qualified and skilled Kenyans at all levels of the value chain. The part also authorizes the Upstream Petroleum Regulatory Authority to monitor and enforce local content requirements in upstream petroleum operations. The part further provides for the training of Kenyans and the formulation of local content regulations in upstream petroleum operations.

CASE HIGHLIGHTS

Prior to the recently concluded elections, the Courts had the tedious task of making decisions regarding the names of the candidates contesting the position of President of the Republic together with the courts' jurisdiction to hear and determine employment, labour, environmental as well as land disputes.

1. EKURU AUKOT VERSUS INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION (IEBC) & 3 OTHERS [2017] EKLK

The Petitioner, Ekuru Aukot, contested for the seat of the Presidency during the 8th August 2017 general elections as a candidate for the Thirdway Alliance Party. The results of the said election were later challenged in the Supreme Court of Kenya in a Petition filed by the Hon. Raila Amolo Odinga, the presidential candidate for the NASA coalition and his running mate the Hon. Stephen Kalonzo Musyoka being Supreme Court Petition No. 1 of 2017. By a majority decision of the Supreme Court rendered on 1st September 2017, the Supreme Court invalidated the presidential election held on 8th August 2017 and ordered IEBC to organize and conduct a fresh presidential election under Article 140 (3) of the Constitution within sixty days from the date of the determination in strict conformity with the constitution and the applicable election laws.

By a Gazette notice dated 5th September 2017, IEBC directed that Raila Odinga and Uhuru Kenyatta will be the only participants in the fresh elections that was scheduled to take place on 26th October 2017. The Petitioner herein, after writing a letter to IEBC requesting for his name to be included in the ballot paper and thereafter not getting a response from IEBC, sought the intervention of the Supreme Court vide a Notice of Motion dated 6th September 2017 under certificate of urgency. On 21st September, 2017, the Chief Justice after noting that the Application sought an interpretation of Article 140 (3) of the Constitution as regards the meaning and

effect of "fresh elections" directed that the matter be heard by the High Court as the Supreme Court did not have jurisdiction to hear and determine the said Application.

When the matter was eventually heard by the High Court, the Honourable Mr. Justice Mativo held that the Constitution under Article 27, forbids against unfair discrimination and provides that a person shall not be discriminated directly or indirectly against another person on any ground. The exclusion of the Petitioner from the ballot was therefore a violation of his rights to political participation and hence was discriminatory. The Court further held that since the Petitioner participated in the presidential election Petition No. 1 of 2017 as an interested party, he could not be said to have conceded defeat. Consequently, the Court upheld the Petition and ordered IEBC and its chairman to issue a fresh Gazette notice or amend the Gazette notice dated 5th September, 2017 so as to reflect the Petitioner as a presidential candidate.

2. CIVIL APPEAL NO. 286 OF 2016- LAW SOCIETY OF KENYA NAIROBI BRANCH VERSUS THE MALINDI LAW SOCIETY & 6 OTHERS CONSOLIDATED WITH CIVIL APPEAL NO.3 OF 2017 -THE ATTORNEY GENERAL VERSUS MALINDI LAW SOCIETY & 4 OTHERS

The main question for determination in these consolidated appeals was whether it was within the power of Parliament to confer, by legislation, jurisdiction on magistrates courts to hear and determine disputes relating to employment and labour relations and the environment and the use and occupation of, and title to, land or whether the jurisdiction to determine such disputes is the preserve of the courts of equal status (specialized courts) established under Article 162(2) of the Constitution.

Upon conclusion of the hearing of the consolidated appeals the Court of Appeal held as follows:-

a) Under Article 162 (2) of the Constitution, Parliament is mandated to establish courts with the status of the High Court to hear and determine disputes relating to employment and labour relations and environment and the use and occupation of, and title, to land, that in itself does not confer an exclusive jurisdiction to those specialized courts to hear and determine the specified types of cases. However, as already stated, Article 165 (5) is clear that the High Court has no jurisdiction in respect of matters falling within the jurisdiction of the specialized courts. Whereas Parliament is empowered to enact legislation to confer jurisdiction to the Magistrates courts to hear and determine disputes stipulated under Article 162 (2) of the Constitution, it cannot establish a Superior Court or confer upon a Superior Court jurisdiction to hear employment and labour relations cases and environment and land cases.

b) On the issue of whether the Chief Justice can transfer judges from the High Court to the specialized courts and vice versa, the Court held that that issue had since been conclusively settled by the Supreme Court in Republic vs Karisa Chengo & 2 others whereby the Supreme Court was categorical in that a judge appointed to the specialized courts or courts of equal status "undertakes to perform stewardship of the particular office in respect of which he or she takes the oath, and not of a different office."

Consequently, the Court of Appeal ordered that:-

a) The Judgment and Order of the High Court declaring the provision in the Statute Law (Miscellaneous Amendments) Act, 2015 which gives Magistrates' courts authority to hear and determine disputes relating to employment and labour relations as unconstitutional, null and void be set aside.

- b) The order of certiorari issued by the High Court quashing Gazette Notice Numbers 1472 dated 1st March, 2016 and 14th March, 2016 by which the Chief Justice, in exercise of powers conferred by Section 26(3) of the Environment and Land Court Act appointed magistrates to preside over cases involving disputes relating to Environment and Land in their areas of jurisdiction be set aside.
- c) Each party should bear its own costs of the appeal.

3. REPUBLIC VERSUS CABINET SECRETARY FOR INTERNAL SECURITY EX PARTE GRAGORY ORIARO NYAUCHI & 4 OTHERS [2017] EKLK

By a Notice of Motion dated 28th June, 2017, the ex parte applicant herein, Gragory Oriaro Nyauchi, sought the following orders:

- a) That the Honourable Court issue judicial review orders in the form of a declaration that the 1st Respondent's omission to have the 10th day of October observed as a public holiday is an illegality and in contravention of section 2(1) as read with part 1 of the Schedule of the Public Holidays Act.

- b) That the Honourable Court issue judicial review orders in the form of mandamus directing the 1st Respondent to henceforth treat the 10th Day of October as a public holiday by taking all precautions and performing all acts necessary for the celebration of a Public Holiday as provided for in Article 9 of the Constitution of Kenya as read with the Public Holidays Act.

- c) Costs of this application be provided for.

The Court in its determination of the matter held that:-

- a) The matter revolves majorly around the interpretation of Article 9 of the Constitution as read with section 7(1) of the Sixth Schedule to the Constitution vis-à-vis the provisions of the Public Holidays Act;
- b) Article 9 (3)(4) and (5) of the Constitution provides that the national days are: (i) Madaraka Day, to be observed on 1st June; (ii) Mashujaa Day, to be observed on 20th October; and (iii) Jamhuri Day, to be observed on 12th December. The Constitution further stipulates that a national day shall be a public holiday and that Parliament may enact legislation prescribing other

public holidays, and providing for observance of public holidays;

- c) All legislation in existence prior to the date of promulgation of the Constitution are to remain in force save that they are to be construed with the alterations, adaptations, qualifications and exceptions necessary to bring them in conformity with the Constitution.

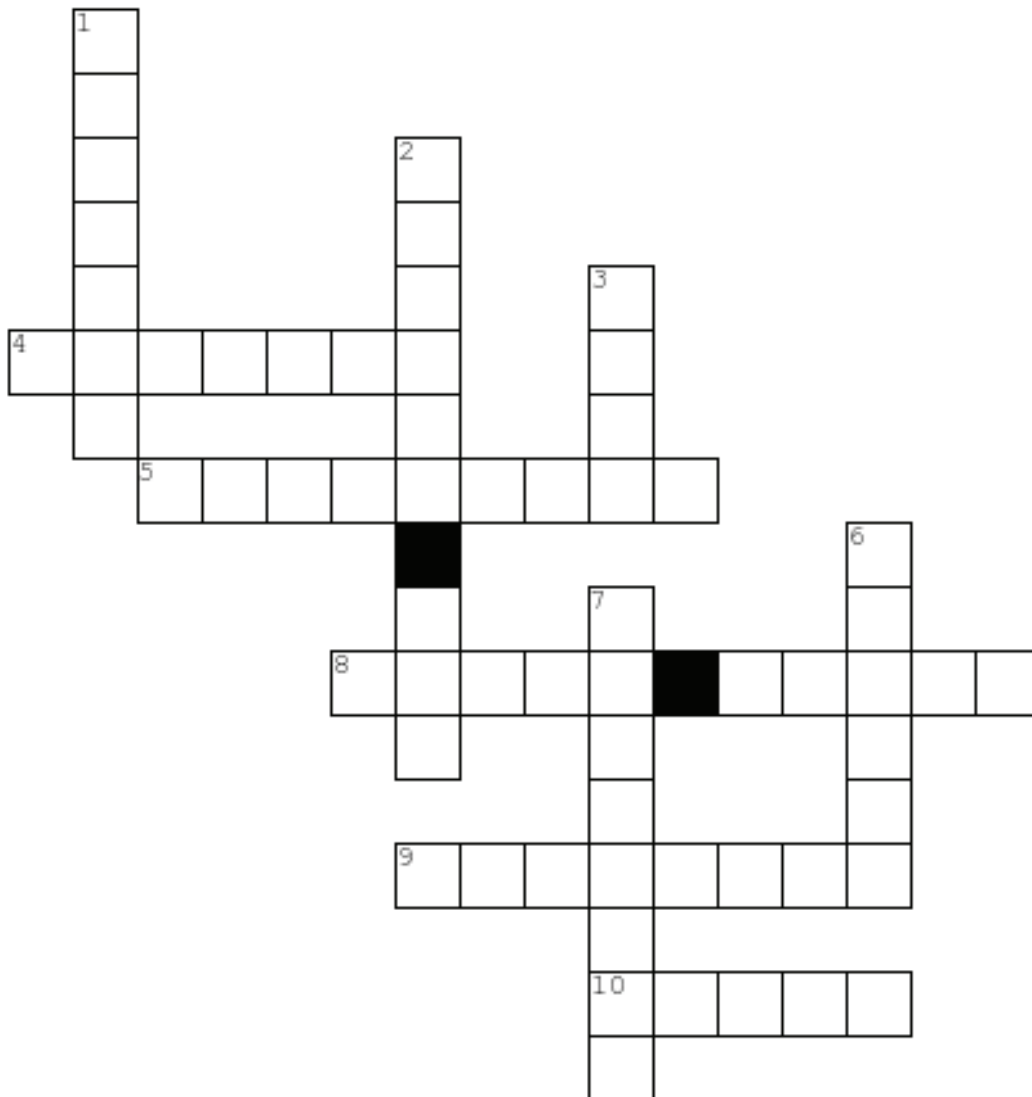
Consequently, the Court ordered as follows:-

- a) That the omission to have the 10th day of October observed as a public holiday is an illegality and in contravention of section 2(1) as read with part 1 of the Schedule to the Public Holidays Act.
- b) That unless and until Parliament amends Schedule I of the said Act or the Cabinet Secretary for Interior and coordination of National government substitutes the same for another date, the 10th of October in each year shall continue being a public holiday.



INTERLUDE.....

Complete the crossword below



Across

- 4. Republic
- 5. Steadfast adherence to a strict moral or ethical code.
- 8. one who brings gifts to well-behaved children on Christmas Eve
- 9. The minimum number of public holidays Kenya is expected to have in 2018
- 10. The only country with a city with a national park

Down

- 1. an extended period of leisure and recreation
- 2. A day to get rid of empty boxes from presents after Christmas
- 3. A thing given willingly to someone without payment
- 6. a period of the year characterized by a particular climatic feature or marked by a particular activity, event, or festivity.
- 7. Self-rule in Kenya



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From the Process Server's desk

E-Filing Pilot Project in the Commercial and Admiralty Division of the High Court of Kenya

The Judiciary in its quest and plan to go fully digital is undertaking a pilot project on E-Filing at the High Court of Kenya, Milimani. The said pilot project is spearheaded by the head of the said Division, the Registrar of the Commercial division, ICT team seconded to the judiciary from the ICT authority of Kenya, Staff in the Division and a bunch of law firms. Njoroge Regeru and Company prides to be part of the team in this Pilot Project.

In this write-up we seek to explain what E-Filing entails.

E-Filing means submitting court records for filing through electronic systems; either initiating a new case or routine filing of pleadings in an existing case. The E-Filing system is designed to enhance operations by increasing availability, reliability, transparency, and efficiency of services. The Judiciary Electronic Filing System (JEFS) once launched will ensure a countrywide access point for electronic access and transmission of court records to and from the Kenyan courts to all persons who file documents in court, whether lawyers or non-lawyers.

Electronic Records

Electronic records are records created, generated, sent, communicated, received, or stored by electronic means which can be printed, or transferred to archival media, without loss of content or material alteration of appearance. These court records may be created or converted to electronic formats by the one filing the documents and electronically filed in the registry using electronic case maintenance systems soon to be rolled out. These E-Portal services shall provide capability for a single uniform access point for all court E-Filings. The portal is accessible to

users with uniform authentication method at a single point of access with consolidated electronic notification sections. There is a process for validation and automated interface with other E-Filing systems. This said system is and shall be integrated with other established statewide systems and shall accept electronic forms of payments.

Registration

Before filing documents in court, the law firm, Advocate, organization or individual is required to sign up for the Judiciary E-Filing system by completing the on-line registration form. The registration permits filing and retrieval of documents. Upon confirmation of the e-mail address, the user's login and password will be sent by e-mail.

If a registered user believes the security of an existing password has been compromised, the user will be able to change the password immediately through the E-Filing system utility menu and thereafter will be required to immediately notify the Judiciary through the Deputy Registrar's office. Upon complying with these, Court users will be able to initiate the process of registration of new cases via Judiciary E-Filing system, submit case initiation documents online and make payments of court fees to complete the process.

Filing Fees

All filing fees for electronically filed documents will be paid in the JEFS System at the time of filing. The JEFS System currently accepts MPESA and Bank Payments; other forms of payment are work in progress. The required fees will be paid upon assessment of the submitted pleadings as this system is able to make assessment of various pleadings and

communicate back to the user the relevant filing fees.

Acknowledgement of Receipt

All submissions generate an acknowledgment message that is transmitted to the filer to indicate that the portal has received the document. At a minimum the acknowledgment should include the date and time the submission was received (which should be the court clerk's official date/time stamp), and a court assigned case number for new cases or document reference number for existing cases. Documents are deemed as received and filed upon payment of the requisite fees. An electronic receipt is thereon generated and issued through email on the Portals correspondence. Once a document is electronically filed, the system will not permit any user to change or remove the document.

If a submission is made in error, the user will be required to submit as soon as possible a Pleading with the correct information and contact the Judiciary through Deputy Registrar on correspondence via the same system as it is interactive. Every JEFS filer has to maintain a working email address for receipt of service. The filer is responsible for ensuring that the JEFS System has the correct email address and that the email address is functioning properly.

For purposes of determining timeliness, a document is deemed filed on the date and time the electronic filing is received at the portal. The portal's official file stamp date and time will be affixed in the upper left hand corner. A "Filing Received" receipt email will be sent to the filer. An electronic filing may be submitted to the portal at any time of the day or night, twenty four (24) hours a day seven (7) days a week. However,

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the filing will not be official information of record until it has been stored on the clerk's case maintenance system.

Filers who fail to maintain and check their email accounts may not receive service of documents, and may be barred from contesting the validity of service.

All documents are required to be in a portable document format (PDF) accessible by free PDF readers such as Adobe Acrobat Reader. All individual documents are submitted as separate PDF files. If documents are not originally in a digital format, the paper document shall be scanned as a PDF document.

Legislation

The Judiciary is in the process of ensuring that all the relevant legislations as regards the E-Filing system are in place. Meanwhile the legislations that support this process have been outlined and are summarized as shown below:-

- 1) Constitution of Kenya, 2010; Article 260
- 2) Kenya Information and Communication Act, No. 2 of 1998
- 3) Civil Procedure Act, Cap. 21
- 4) Evidence Act, Cap. 80
- 5) Legal Aid Act, No. 6 of 2016
- 6) Judicial Service Act, No. 1 of 2011

1. Constitution of Kenya, 2010

Article 260 (the interpretation article) of the Constitution provides that the word "document" includes electronic files. Article 25(c) further provides that the right to a fair trial cannot be limited. This right includes the right to have a trial begin and conclude without unreasonable delay as set out in Article 50(2)(e). One way of ensuring this would be through e-filing as the documents will not be misplaced/misfiled or lost once they are e-filed.

2. Kenya Information and Communication Act, No. 2 of 1998

Section 2 of the Kenya Information and Communication Act defines "e-Government services" as "public

services provided electronically by a Ministry or Government department, local authority, or anybody established by or under any law or controlled or funded by the Government". This section therefore permits the Judiciary to commence e-filing.

Section 83S provides for the use of electronic records and electronic signatures in Government and its agencies. In particular, paragraph (b) refers to "the filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the Government in a particular manner".

3. Civil Procedure Act, Cap. 21

Section 3 of the Civil Procedure Act, Cap 21 provides that "in the absence of any specific provision to the contrary, nothing in this Act shall limit or otherwise affect any special jurisdiction or power conferred, or any special form or procedure prescribed, by or under any other law for the time being in force." It can therefore be argued that sections 2 and sections 83S of the Kenya Information and Communication Act gives the Judiciary power to introduce electronic filing.

4. Evidence Act, Cap. 80

Section 106B of the Evidence Act, CAP 80 on admissibility of electronic records provides that "...any information contained in an electronic record which is printed on paper, stored (my emphasis), recorded or copied on optical or electro-magnetic media produced by a computer (herein referred to as "computer output") shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings..." This section thus supports electronic filing as information stored is recognized as a document.

5. Legal Aid Act, No. 6 of 2016

Paragraph (b) of subsection 2 requires the Legal Aid Service to ensure that the register of accredited legal aid providers is available

in electronic form or other accessible formats. This goes to show that electronic filing of case documents is an acceptable means for the Judiciary to keep its records in an accessible format.

6. Judicial Service Act No.1 of 2011

Paragraph 23 of part III of this Act provides that notes before a Tribunal set up for the purposes of removing a Judge may be electronically recorded.

The ball now rests in the public court and court users, and the entire legal fraternity to embrace this new dispensation and transit. Once the same becomes fully operational, lawyers will at the comfort of the offices or homes or even while on holidays be able to comfortably file and interact with the Courts. Indeed everyone, from a self-represented litigant to an appellate judge, will be able to track cases and case documents in nearly real time.

Advantages of Electronic Case Filing

With the ability to draft and file from anywhere, it's like having the court's registry at your fingertips. And your "fingertips" might just be in another city working or in another county on a holiday! What's in it for you? Glance through these few specific benefits:

- i) Full case information is available immediately to advocates and parties through the internet, including the ability to view the full text of all filed documents;
- ii) Advocates, parties, the judge and court staffs can review the case file simultaneously;
- iii) Advocates can file case documents from their offices or homes right up to the filing deadline;
- iv) Advocates filing over the Internet automatically create docket entries, and docket sheets are updated immediately when documents are filed;
- v) Advocates can be more responsive to clients due to 24/7 "anywhere" case document access, and clients have 24-hour access, too;

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vi) An automatic verification, in the form of a “Notice of Electronic Filing”

is sent by e-mail to the filer and case parties immediately after filing; and

vii) Document storage is automatic and secure, which means reduced paper document storage needs.

Social Media and the Law



By Alex Najjuka
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Usually when the term “social media” is mentioned what comes to mind are the blue, green, yellow or crimson icons on our personal devices which today make up our main forms of communication in this digital era. Facebook, Twitter, Instagram, Snapchat, Periscope...the list is ever growing and we keep on mastering the skill of their usage. Most of us have saddled ourselves with the idea that social media is here to stay and have tried (to different degrees depending on which generation one associates oneself) to acquaint ourselves with it. But do we really know what social media is? Legally speaking, how far does the law regulate our engagement with and on social media and to what extent?

Merriam-Webster defines social media as “forms of electronic communication (such as websites for social networking and microblogging) through which users create online communities to share information, ideas, personal messages, and other content (such as videos)”. Therefore, by this definition, all electronic platforms which are used for purposes of expressing

personal views with the online global community fall into this category. Social media being a relatively new and evolving concept not only in Kenya but in many jurisdictions, the law encompassing its use and misuse spans constitutional law, intellectual property law, media law, criminal law, defamation law, the law of evidence and many others.

In Kenya, the Supreme Law of the land is the Constitution which establishes fundamental freedoms and more specifically the freedom of expression in Articles 19 and 33 respectively. Article 19 further states the basis for the recognition and protection of these rights is to preserve the dignity of individuals and communities as well as promoting social justice and the realization of potential of all human beings. Categorically speaking, the use of social media in

Kenya should reflect the constitutional right allowing all the freedom of speech. Particular reference made in Article 33 (2) limits one’s freedom of expression when it comes to propoganda for war, incitement to violence, hate speech or advocacy of hatred.

In 2017 alone, the atmosphere in the country has been one of tension and uncertainty with more and more people drawing stark lines of separation based on tribal and religious affiliations. Many opinions have been shared on social media such as Facebook, Twitter and WhatsApp with different stories about different communities. Bearing in mind the aforementioned constitutional provisions, one is able to see the distaste as well as the danger that social media may create given the unfettered freedom of its use and operation. The Penal Code under Division III in Sections 134 to 138 provide for offences injurious to the public in general. These offences are listed as misdemeanors with the penalty being imprisonment for a term not exceeding two years or a fine or both.

In today’s world, technology is as accessible as our pockets are. Many of us use our handheld devices such a smart phone or a tablet as a main means of communication. This is regulated by the Kenya Information and Communications Act (KICA) which creates an offence under sections 29 regarding improper use of the system. Bearing in mind that most people access social media through their phones as a means of transmission, they can be found to be in contravention of this section and punished as such.



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Following the above, one can see how easy it is for social media use to be found offensive. Given the ever-increasing use and flexibility that social media provides, it has become

more and more important to mind the ways in which we use and interact on it. In the words of Michelle Obama at the inaugural youth leadership summit held by the Obama

Foundation in Chicago, USA this November, you should “think before you tweet!” Have a prosperous 2018.

Accounting for Lawyers



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As the saying goes “*Behind every good business is a great accountant*”. The law relating to advocates accounts’ is provided under the Advocates Act, Chapter 16 of the Laws of Kenya. The Act defines “client account” as: “*a current or deposit account at a bank or with a building society or a financial institution (as defined in the Banking Act) in the name of the Firm but in the title of which either the word “client” or the word “trust” appears*”

The Act also defines “client’s money” as: “*money held or received by the Firm on account of a person for whom the Firm is acting in relation to the holding or receipt of such money either as an advocate or, in connection with practice as an advocates as agent, bailee, trustee, stakeholder or in any other capacity, and includes-*

- a) Money held or received by the Firm by way of deposit against fees to be earned or disbursements to be incurred; and
- b) Money held or received as or on account of a trustee, whether or not the Firm is

sole trustee or trustee with others, but does not include—

- i) money to which the only person entitled is any advocate in person, or in the case of a firm of advocates, one or more of the partners in the firm; nor
- ii) money held or received by Firm in payment of or on account of an agreed fee in any matter”

From the foregoing, it is evident that each Firm receiving or holding client’s money must deposit the said monies in a client account. It is also possible for a Firm to have more than one client account held with a bank.

Where the Firm holds or receives a payment, whether in cash or cheque which includes client’s money, where practicable the payment shall be split and, if so, each part thereof shall be dealt with as if the Firm had received a separate cheque or payment in respect of that part or if the Firm does not split the payment, the same shall be paid into a client account. It is important to note that the Firm need not pay into a client account client’s money held or received by the Firm which—

- a) Is received by the Firm in the form of cash, and is without delay paid in cash in the ordinary course of business to the client or to a third party; or
- b) The Firm pays in, without delay, to the credit of a separate account opened or to be opened in the name of a client, trust or estate or of some person nominated by the client; or
- c) Is received by the Firm in the form of a cheque and is, without delay, endorsed over and delivered in the ordinary course of business to the client or to a third

party for or on behalf of or to the use of the client and is not cashed or passed through a bank account by the Firm.

Money deposited in a client’s account can only be withdrawn in the following instances:

- a) Money properly required for payment to the client;
- b) Money properly required for or towards a payment authorized by the client;
- c) Money properly required for or towards a payment on behalf of the client within the mandate of the Firm in the matter or any of the matters in which the Firm is acting for or on behalf of the client;
- d) Money which the Firm is transferring to a separate account opened or to be opened in the name of the client;
- e) Money properly required for or towards payment of a debt due to the Firm from the client or in reimbursement of money properly expended by the Firm for or on behalf of the client;
- f) Money properly required for or towards payment of the Firm’s costs where a bill of costs or other written intimation of the amount of the costs incurred has been delivered to the client.

In no circumstances will the Firm withdraw from a client account any sum in excess of the amount held for the time being in such account for the credit of the client in respect of whom the drawing is proposed to be made.

In conclusion, every law Firm requires an accountant who is conversant with Trust Accounting. Integrity is also an important element of the accounting profession; it requires accountants to be honest, candid and forthright with a client’s financial information.



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