

Q3 - 2017

NR&amp;Co Quarterly | ...Legal Briefs

# NR&Co Quarterly

*...Legal Briefs*

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KARIBU!

## Editor's Note



Welcome to the third quarter newsletter as we gear up to the repeat presidential elections and inevitably, the political mood that is characteristic of the election season in Kenya. It is at times such as

these that we reflect on the words from the iconic and visionary leader, Nelson Mandela, to the effect that:-

No one is born hating a tribe, a race, a religion or a group of people. They are taught how to hate. So if people are taught and learn how to hate, they can be taught to love, for love comes more naturally to the human heart than its opposite.

In this Newsletter, we highlight some of the decisions handed down recently by our Courts, including the majority decision of the Supreme Court that has resulted in the impending repeat presidential elections and the Ruling that upheld

the ban of plastic bags, making Kenya one of the few African nations which has outlawed the use of plastic bags.

In acknowledgment of the fact that we belong to the learning profession, we have also shared one of the Firm's growing tradition dubbed "Learning Hour", which seeks to improve the Firm Members' know-how on various aspects of our legal practice.

We have also reviewed new legislation that has been passed recently namely the Parliamentary Powers and Privileges Act of 2017, the County Assembly Services Act, 2017 and the Health Act, 2017.

The Contributor's platform then addresses a decision emanating from a tender awarded for the printing and supply of electoral materials for the 8<sup>th</sup> August general elections to AL Ghurair Printing & Publishing LLC, the procedure pertaining to the opposition of trade mark registration in Kenya, and legal aid in the administration of justice.

We trust that you shall have an interesting and informative read!

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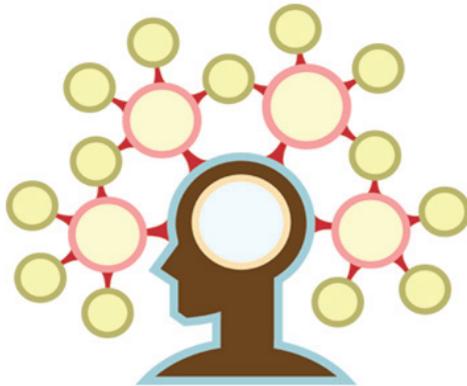
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In this Quarter's Issue, we take a look at one of the firm's internal activities; "Learning Hour".

The idea was introduced in 2015 and it has had a positive outcome since then. Learning Hour is a presentation session that is held every last Friday of the month from 7:30 a.m to 8:30 a.m. During every session, different staff members educate their colleagues on various topics that they consider will have a great impact on the Firm in its business as well as on the Firm's interaction with you; our distinguished readers and clients.

One of the presentations shared this year was by **Ms. Victoria Wahu**, on the *Power of Mindset*. During the presentation, we were informed that: *Mindset is a fixed mental attitude or disposition that predetermines a person's responses to interpretations of situations. It is the engine which runs our brains.*

Our mindset also determines the way we act and interact in our environment (work), and therefore we should not allow the environment to control what we think. Neither should we just go along with the flow and thus allow others to create our outcomes.



## THE POWER OF MINDSET

We are encouraged to have a growth mindset as opposed to a fixed mindset because a fixed mindset makes one's thinking limited while with a growth mindset, one becomes objective and is ready to get out of their comfort zone.

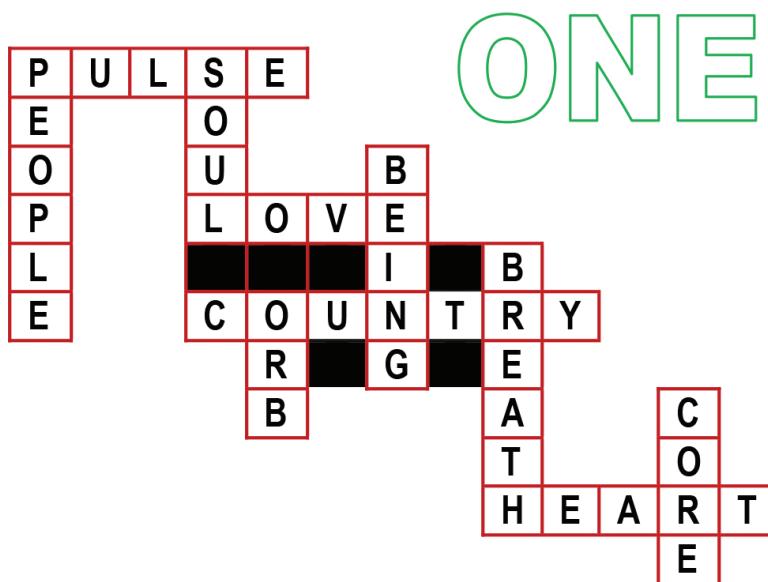
**“You’re born an original, don’t die a copy”.**



With the Judges of the Supreme Court by a majority decision, having declared that a fresh Presidential Election be held within 60 days from 1<sup>st</sup> September, 2017, we encourage you, our readers, to continue living in peace and harmony as we await the fresh Elections. It is through a positive mindset that we will view each person as a brother, a sister and be united as one nation living in peace and harmony.

Remember that our mindset can impact positively or negatively towards the society and thus we encourage you to be accommodative of divergent political views and opinions.

While invoking the famous words of Publius Syrus that “**where there is unity there is always victory**”, we wish you a peaceful and fruitful election going forward!



By Christine Wamaitha

## LEGISLATIVE UPDATES

This Issue's Legislative Updates center around Parliament and County Governments. Some of the Acts of Parliament reviewed include the Parliamentary Powers and Privileges Act of 2017, the County Assembly Services Act, 2017 and the Health Act, 2017.

### **1. The Parliamentary Powers and Privileges Act, 2017**

This is an Act of Parliament which gives effect to Article 117 of the Constitution and provides for the powers, privileges and immunities of Parliament, its committees, the leader of the majority party, the leader of the minority party and the chairpersons of committees and members. The Act also makes provisions for the regulation of admittance to and conduct within the precincts of Parliament.

The Parliamentary Powers and Privileges Act empowers Parliament to summon any person before it for the purpose of giving evidence or providing any information, paper, book, record or document. Once summoned, such person is under obligation to answer any question put to the person despite the fact that the answer may incriminate or expose the person to criminal or civil proceedings in a court of law.

Further, the Act, under the Fourth Schedule, provides for a Code of Conduct for Members of Parliament. Under the Code, every Member of Parliament is bound by the General Principles of Conduct which include: (a) selflessness, (b) integrity, (c) objectivity, (d) accountability, (e) openness, (f) honesty and (g) leadership.

The Act repeals the National Assembly (Powers and Privileges) Act.

### **2. The County Assembly Services Act, 2017**

The County Assembly Services Act makes further provisions on the County Assembly Service Board ("the Board") as well as the County Assembly Service ("the Service") as established by the County Governments Act, No. 17 of 2012. The object and the purpose of the County Assembly Services Act is to:

- a) provide a framework for the establishment and effective operation of the Service with respect to each county assembly;
- b) provide for further functions and powers of the Board pursuant to section 12(7)(e) of the County Governments Act;
- c) provide the procedure for the appointment of members of the Board under section 12(3)(d) of the County Governments Act;
- d) provide for the application of and give further effect to the values and principles of public service set out under Article 232 of the Constitution in respect of the Service;
- e) provide for the procedural functions of the Clerk and his or her functions as the secretary to the Board;
- f) provide for the execution of the functions of the Board; and
- g) provide for such other matters as may be necessary for the welfare, security and proper administration of the Service.

Accordingly, the County Assembly Services Act provides for the procedure for appointment of a member of the Board, under the First Schedule.

### **3. The Health Act, 2017**

The Health Act establishes a unified health system to coordinate the inter-relationship between the national government and county government health systems as well as provide for regulation of health care service and health care service providers, health products and health technologies.

The Health Act also makes provision for organ donation by way of wills. However, for the donation to be valid the donor must nominate an institution or a person contemplated under the Health Act as a donee.

Further, the Health Act provides that all employers shall establish lactation stations in the workplace which shall be adequately provided with necessary equipment and facilities including hand washing equipment, refrigerates or appropriate cooling facilities, electrical outlets for breast pumps, a small table, comfortable seats the standard of which shall be defined by the Ministry of Health responsible for matters relating to health. The lactation stations should not be located in the rest rooms.

## CASE HIGHLIGHTS

In this part, we highlight the majority decision of the Supreme Court as well as the dissenting decisions by the two Judges of the apex court. In this section, we also highlight the judicial authority that upheld the ban of plastic bags in Kenya alongside a judicial precedent set by the Court of Appeal in Family Law.

### **1. RAILA AMOLO ODINGA AND ANOTHER VERSUS INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION AND 2 OTHERS (ELECTION PETITION NO. 1 OF 2017)**

On 18<sup>th</sup> August, 2017, the Petitioners Raila Amolo Odinga and Stephen Kalonzo Musyoka filed a Presidential Election Petition against the Independent Electoral and Boundaries Commission (IEBC), the Chairman of the IEBC and the incumbent President, Uhuru Kenyatta. The Petitioners averred that the presidential election was not conducted in accordance with the governing principles laid down in the Constitution and the Electoral Laws. They also averred that the presidential election was so marred with irregularities that it did not matter who was declared the winner of the presidential election.

The 1<sup>st</sup> and 2<sup>nd</sup> Respondents in their Responses to the Petition averred that the presidential election had indeed been conducted in accordance with the Constitution, the Elections Act and the IEBC Act. The two Respondents further averred that the Petitioners' allegations of massive, systemic, systematic and deliberate non-compliance with the Constitution were misconceived and that the 3rd Respondent (Uhuru Kenyatta) was validly elected as the President of the Republic of Kenya.

The 3<sup>rd</sup> Respondent in his Replying Affidavit denied the allegations that he had contravened the rule of law and the principles of the conduct of a free and fair election through the use of intimidation and improper influence of voters.

On 1<sup>st</sup> September, 2017 the majority decision by the Court was rendered. In it, the Honourable Chief Justice David Maraga, the Honourable Deputy Chief Justice Philomena Mwilu, the Honourable Mr. Justice Smokin Wanjala and the Honourable Mr. Justice Isaac Lenaola declared the presidential election held on 8<sup>th</sup> August, 2017 null and void by finding that the Presidential Election was not conducted in accordance with the Constitution and the election laws.

They further held that the 1<sup>st</sup> Respondent committed irregularities and illegalities with regard to the transmission of results and that the irregularities and illegalities affected the integrity of the entire Election. The four Judges thereby ordered that the 1<sup>st</sup> Respondent conduct a fresh presidential election within sixty (60) days of the Court's determination as stipulated under Article 140(3) of the Constitution.

The Honourable Lady Justice Njoki Ndung'u, in her dissent, stated that the Petitioners had failed to present material evidence to the standard required to upset the results returned to the National Tallying Centre by the presiding officers in forms 34A. She further held that it was not proved that the voter's will during the conduct of elections was so affected by any irregularities so as to place the Court in doubt as to what the result of the election was.

In his dissent, the Honourable Mr. Justice Ojwang stated that there was not an iota of merit in invalidating the clear expression of the Kenyan people's democratic will which was recorded on 8<sup>th</sup> August, 2017 as no conclusive evidence with regards to irregularities and illegalities had been adduced to justify the invalidation of the election results.

### **2. KENYA ASSOCIATION OF MANUFACTURERS & 2 OTHERS VERSUS CABINET SECRETARY - MINISTRY OF ENVIRONMENT AND NATURAL RESOURCES & 3 OTHERS [2017] eKLR**

This case was a consolidated suit of a Petition filed in the High Court by Kenya Association of Manufacturers (the 1<sup>st</sup> Petitioner) challenging Gazette Notice Nos. 2334 and 2356, both dated 28<sup>th</sup> February 2017 and of a Judicial Review Motion which sought to quash the said Gazette Notices. The said Gazette Notices stated that the ban on the use, manufacture and importation of all plastic bags used for commercial and household packaging would take effect six (6) months from the date of publication. Alongside the Petition, the 1<sup>st</sup> Petitioner filed a Notice of Motion seeking a conservatory order staying the implementation of the Gazette Notice, pending the hearing and determination of the Petition.

The 1<sup>st</sup> Petitioner averred that:-

- (i) The 1<sup>st</sup> Respondent did not consult the relevant stakeholders and that there was no public participation prior to the issuance of the Notice.
- (ii) Section 86 (2) of the Environmental Management and Co-ordination Act which the 1<sup>st</sup> Respondent invoked in issuing the Notice did not grant her statutory powers to ban the manufacture and importation of plastic carrier and flat bags.
- (iii) The 1<sup>st</sup> Petitioner also contended that by failing to grant it an opportunity to present its case on the impact of the Gazette Notice, the 1<sup>st</sup> and 3<sup>rd</sup> Respondents were in violation of its right to fair administrative action under Article 47 of the Constitution of Kenya and Sections 5 and 6 of the Fair Administrative Action Act.

The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents strongly opposed the 1<sup>st</sup> Petitioner's plea for a conservatory order suspending the implementation of the Legal Notice. They argued as follows:-

- (i) That the Notice was properly issued under Sections 3 and 86 of the Environmental Management and Co-ordination Act, Cap 387.
- (ii) That prior to the notice, the State, through the 3<sup>rd</sup> Respondent had engaged stakeholders on the issue of plastic bags in numerous meetings totaling to 27 with the plastics sector players between 2006 and 2017.

The Court rejected the 1<sup>st</sup> Petitioner's Application seeking the stay of the implementation of the aforesaid Gazette Notices on the grounds that the Application did not satisfy the criteria for grant of a conservatory order within the framework of Article 23 (3) (c) of the Constitution and that the grant of a conservatory order would severely injure the public interest being the general environmental welfare of the Kenyan people, which requires recognition and protection; the totality of their natural environment in which they collectively and individually have a stake which requires state protection.

### 3. CIVIL APPEAL NO. 166 OF 2015- PKM VERSUS RPM [2017] eKLR

This was an Appeal against the Judgment of the Honorable Mr. Justice Kimaru in which the Appellant was ordered to pay the Respondent a lump sum of Kshs. 30,000,000.00 as maintenance and to provide a house in an upmarket area of Nairobi within 90 days.

In her Petition, the Respondent had inter alia, sought Orders for maintenance at the monthly sum of USD 6,000.00. She further stated that she was used to a very high standard of living and thus the Appellant was in a position to afford her maintenance and upkeep.

In response to the Petition, the Appellant stated that the house in which he lived in belonged to his father and that he could only afford Kshs. 40,000.00 as maintenance. He denied having lived an expensive lifestyle and stated that the amount of maintenance should be pegged on his standard and not when his father was the President.

During the hearing, Counsel for the Appellant submitted that the High Court Judge did not take into account Article 45(3) of the Constitution which provides for the equality of parties to a marriage and that the Respondent had voluntarily left her employment.

The Court while rendering its decision stated that no spouse who is capable of earning should be allowed to shirk his or her responsibility to support himself or herself or to turn the other spouse into a beast of burden. The Appeal was therefore allowed and the Orders made for the payment of maintenance were set aside. The matter was remitted back to the High Court with directions that the parties file comprehensive affidavits setting out their means, assets, income, expenditure and liabilities.



## INTERLUDE.....



*Two little boys were known troublemakers, stealing everything they could get their hands, even from the church.*

*One day a priest stopped one of the boys and asked, "Where is God?"*

*The boy shrugged and the priest repeated, "Where is God?"*

*The boy ran out of the cathedral crying to his home where he hid in a closet.*

*Eventually his brother found him and asked, "What's wrong?"*

*The crying boy replied, "We're in trouble now! God is missing and they think we took him!"*

<http://www.laughfactory.com/jokes/clean-jokes/7>



<https://gpuzzles.com/brain-questions/short-riddles/brainy/6>

*Q: How many seconds are there in one year?*

*A: 12 of them: January 2nd, February 2nd, March 2nd, April 2nd, May 2nd, June 2nd, July 2nd,*

*August 2nd,*

*September 2nd, October 2nd, November 2nd, December 2nd.*

<http://www.rd.com/jokes/riddles/>

*African parents are only humble when you are teaching them how to operate their smart phones.*

(<https://www.tuko.co.ke/225776-9-extremely-funny-jokes-2016-laugh-idiot.html>)



## CONTRIBUTORS' PLATFORM

# Analysis of Civil Appeal Case No. 224 of 2017- Independent Electoral and Boundaries Commission versus National Super Alliance and 6 Others



By Gloria Rono  
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The Independent Electoral and Boundaries Commission (IEBC) awarded a tender for the printing and supply of electoral materials for the General elections to AL Ghurair Printing & Publishing LLC on 29th May, 2017 and a contract was executed on 8<sup>th</sup> of June, 2017.

The 1<sup>st</sup> Respondent took issue with this award citing that the Appellant never consulted with the relevant stake holders or allowed public participation before making such a decision thereby flouting the constitutional precepts of transparency and accountability.

The 1<sup>st</sup> Respondent was convinced that the Appellant's decision was illegal and in contravention of the Constitution and Fair Administrative Actions Act and as a result the 1<sup>st</sup> Respondent filed Judicial Review proceedings seeking:

- An Order of Certiorari to quash the decision of IEBC to award the tender for the printing of election materials including ballot papers for presidential elections

- An Order of Mandamus to compel the IEBC to reconsider and award the tender for printing of election materials for the presidential elections scheduled for 8<sup>th</sup> August 2017
- An Order of Prohibition restraining IEBC from considering or awarding the tender and contract to the 2nd Respondent.

IEBC submitted that the tender process was completely above board and explained that cancellation of the contract would have far reaching financial consequences on the government which would have to pay the colossal amount by a Letter of Credit. Further, quashing the award would set back the scheduled general elections date and result in a constitutional crisis as they could not be altered.

The Court quashed the decision of IEBC awarding the tender for printing of election materials to Al Ghurair and issued an Order of Mandamus compelling it to commence the procurement process for the award of the tender afresh in accordance with the relevant legal provisions.

This decision prompted IEBC to file an appeal. In the said Appeal, the following were the issues for determination:-

- Whether the judges erred in law and fact by failing to correctly weigh and apply the principle of public interest; and
- Whether the learned judges erred in law in finding that public participation is a mandatory pre-condition in direct procurement

## Public Interest in Relation to Orders Made by the High Court

IEBC and the Honorable Attorney General urged the Court to find that the trial court erred in law in failing to take into account public interest when it granted the orders of certiorari and mandamus. The Honorable Attorney General argued that the trial court stands to plunge this country into an unprecedented constitutional crisis; that since the Constitution prescribes with exactitude the specific date on which the six elections are to be held, failure to do so on the day would lead to crisis . Further, he argued that the orders made by the trial court were erroneous as it failed to consider public interest.

The 1<sup>st</sup> Respondent rebutted stating that there would be no constitutional crisis if the orders granted by the High Court were implemented. The Court of Appeal held that the trial court erred in fact and law in considering timelines for the conduct of elections to be an operational issue to be generated by the IEBC and that the learned judges erred in their finding that there was sufficient time to start the Procurement process.

## Public Participation in Direct Procurement

With regard to public participation in direct procurement, IEBC submitted that the High court misdirected itself when it found in its judgment that public participation in direct tendering is a mandatory component of the principles of transparency and accountability and that the learned Judges misconstrued the nature of direct procurement as a method of procurement under the Public Procurement and Asset Disposal Act, 2015.

## CONTRIBUTORS' PLATFORM

They further submitted that the trial court failed to appreciate the fact that direct procurement by its very nature is only to be resorted to in specific circumstances including where there is an urgent need, it acts as a last resort, it is designed to prevent threat to the welfare of the Kenyan society and that the decision to proceed by way of direct procurement is an exceptional matter.

The Court of Appeal found that as a general principle public participation is a requirement in all procurement by a public entity and held that the High Court did not err in its reference to it.

However, the Court of Appeal noted that the High Court did not take into account

that there are exceptions to the general principles in which public participation in the procurement process is not mandatory. Section 103 and 104 of the Public Procurement and Asset Disposal Act, 2015 provides detailed procedures on when direct procurement may be used and the procedure for direct procurement so long as the purpose is not to avoid competition. The aforesaid Act under section 103(2) stipulates instances when direct procurement may be used.

Direct in itself is exclusive and only resorted to for urgency.

Section 103(2) of the Act does not provide for public participation as one of the conditions to be satisfied prior to adopting direct procurement.

Article 227(1) of the Constitution, does not impose a mandatory requirement for public participation prior to using, adopting or deciding to adopt direct procurement.

Upon reading the sections, the Court of Appeal concluded that the trial court erred in its decision to impose a requirement for public participation before adopting direct procurement.

The court held that public participation is not a mandatory requirement prior to a procuring entity making the decision to opt for direct procurement.

The Appeal was triumphant and the High Court Judgment was set aside.

## Opposition to Trade Mark Registration in Kenya



By Jackson Kamenju  
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Registration of Trade Marks in Kenya, though straight forward, is a delicate exercise. The process of registration starts with a search.

Accordingly, to conduct a search, one has to fill form TM27 found on the Kenya Industrial Property Institute (KIPI) website.

An application is then made through forms TM1 and TM2 also found on the said website. Thereafter, examination of the Trade Mark is conducted followed by publication and finally registration through the issuance of a certificate of proprietorship.

The common fallacy among most Trade Mark applicants is a mistaken belief that once you conduct a trade mark search and the search results confirm that the mark is available, you only need to apply for registration and in all circumstances the mark will be registered.

Section 2 of the Trade Mark Act (Cap 506) interprets a Trade Mark (except in relation to a certification trade mark) as a mark used or proposed to be used:-

*(a) in relation to goods for the purpose of indicating a connection in the course of trade between the goods and some person having the right either as proprietor or as registered user to use the mark, whether with or without any indication of the*

*identity of that person or distinguishing goods in relation to which the mark is used or proposed to be used from the same kind of goods connected in the course of trade with any person;*

*(b) in relation to services for the purpose of indicating that a particular person is connected, in the course of business, with the provision of those services, whether with or without any indication of the identity of that person or distinguishing services in relation to which the mark is used or proposed to be used from the same kind of services connected in the course of business with any other person.*

Opposition on the other hand, is the legal procedure that allows any individual to try and stop a published mark from becoming registered.

Section 15 of the Trade Mark Act provides that no Trade Mark shall be registered in respect of any goods or description of goods that is identical with or nearly resembles a mark belonging to another registered mark.

## CONTRIBUTORS' PLATFORM

The Act under section 21 further states that:-

*(1) When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions or limitations, the Registrar shall, as soon as may be after acceptance, cause the application as accepted to be advertised in the prescribed manner, and the advertisement shall set forth all conditions and limitations subject to which the application has been accepted.*

*(2) Any person may, within the prescribed time from the date of the advertisement of an application, give notice to the Registrar of opposition to the registration.*

*(3) The notice shall be given in writing in the prescribed manner, and shall include a statement of the grounds of opposition.*

*(4) The Registrar shall send a copy of the notice to the applicant, and within the prescribed time after receipt thereof the applicant shall send to the Registrar, in the prescribed manner, a counter-statement of the grounds on which he relies for his application, and, if he does not do so, he shall be deemed to have abandoned his application.*

*(5) If the applicant sends a counter-statement, the Registrar shall furnish a copy thereof to the person giving notice of opposition, and shall, after hearing the parties, if so required, and considering the evidence, decide whether, and subject to what conditions or limitations, if any, registration is to be permitted.*

*(6) The decision of the Registrar shall be subject to appeal to the court.*

Thereafter, the Trade Mark is examined. Trade Mark examination can be categorized into 2 stages, formal and substantive. In the formal application stage the examiner ascertains whether the applicant has filed the correct forms and filled them correctly including dating and paying the requisite fees.

The second phase which is the substantive examination stage can be categorized as the most technical part of the examination.

The examiner must ensure that the mark is registrable, it is not similar, identical, deceptive or likely to lower the reputation of another mark.

In circumstances where the Trade Mark passes the above tests, the examiner will issue a report approving the mark for registration. The approval may be conditional or unconditional, it will be conditional where the examiner directs the applicant to either disclaim some words or amend some features on the mark.

Once the mark is approved, it is published in the KIPI journal which is posted monthly on the KIPI website. The purpose of publishing is to open the mark to public for any intended opposition. The public or any intending opposer has sixty (60) days (which can be extended to a further one (1) month) to file a notice of opposition. The notice should be in writing and should include a statement of the grounds of opposition.

Once an intended Trade Mark is published in the KIPI journal, it is open for opposition by any interested party who has reasons to believe that the intended Trade Mark is infringing or confusing or similar to their registered mark.

The notice of opposition must be filed in form TM 6 within sixty (60) days of publishing in the KIPI journal. Any person who is unable to file the opposition within sixty (60) days can apply for extension of time which extension can only be granted for a time period not exceeding sixty 60 days. The extension of time is done through form TM 53.

The Trade Mark applicant must file a counter statement in form TM 7 within forty two (42) days of receiving the notice of opposition from KIPI offices.

The interested opposing party will then file an affidavit (which ought to contain evidence) within forty (40) days of receiving the counter statement (TM 7).

Subsequently, the Trade Mark Applicant will file an affidavit in response of the opposing party affidavit after which the opposing party will file a second affidavit within thirty (30) days responding to the trade mark applicant.

The Trade Mark Applicant is at liberty to respond to the opposing party's last affidavit. This response is optional and is only filed if the last affidavit of the interested party raises new matters.

The last affidavit of the opposing party/further response affidavit marks the close of pleadings (in strict sense) and the dispute moves to the Trade Mark Tribunal for hearing.

At the Tribunal stage, parties proceed through written submissions after which the Tribunal gives a ruling within sixty (60) days of receiving the written submissions. The decision of the Tribunal is final and can only be challenged in the High Court by way of an appeal.

The process of opposition takes approximately twelve (12) months. It is instructive that a Trade Mark Applicant whose mark has been objected to consider the grounds of opposition by the opposer and decide whether to withdraw his application. By doing this, the Applicant saves time and resources. In the event where the Applicant feels that the grounds of opposition by the opposer are baseless and they won't stand, he or she is at liberty to contest the opposition filed.

In the event that there is no opposition to the publication of intention to register the Trade Mark in the KIPI journal, the registrar of Trade Marks shall issue a certificate of registration in not less than three months.

## CONTRIBUTORS' PLATFORM

# Pro-Bono Services - Legal Aid in the Administration of Justice



By Maureen Syamba  
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The Black's Law Dictionary, 8<sup>th</sup> Edition defines *Pro-bono* as being or involving uncompensated legal services performed especially for the public good. Pro-bono services would constitute provision of legal aid and assistance to clients.

Pro-bono legal assistance is an important component in the administration of justice as it allows low income individuals to access quality legal services provided by qualified lawyers that they would otherwise not afford.

In Kenya, the Legal Advice Centre (Kituo Cha Sheria) has for a long time been the leading organization providing quality pro bono legal aid and assistance to the poor, marginalized and vulnerable persons in Kenya since October 1979. The Legal Advice Centre was established by a handful of young and enthusiastic lawyers from the University of Nairobi and the Law Society of Kenya (LSK) and was viewed purely as an act of charity as it gave back to the less privileged at no cost. The concept of legal aid is a vital ingredient in the administration of justice and it was a new idea for the lawyers participating in the voluntary

scheme. From this noble initiative sprung other similar initiatives like Amnesty International Kenya (AIK) in partnership with the LSK which continue to sponsor Pro-bono services throughout Kenya.

## Key Fundamentals of Pro-bono Services Rendered to the Society

The role of a legal services lawyer's work is determined by the dictates of that society and involves individual client contact, and often times requires them to take on cases in which a client's fundamental rights may be violated.

Some of the common cases handled by Pro-bono lawyers include:-

- (a) Family Law cases which often involve situations of domestic violence and child abuse. The cases can include divorces, custody battles, or advocating for protection of women;
- (b) Property rights cases which majorly involve protecting families or individuals in eviction defense, access to affordable housing as well as foreclosure cases; and
- (c) Employment Disputes which involve advocates working with employees on matters of wages withheld, health and safety conditions for employees as well as wrongful termination.

In Kenya today, the highest concern is with economic development, political stability and employment opportunities. The establishment of a viable and stable democratic process cannot be left solely to politicians. In this regard, the lawyer is an indispensable artisan to provide legal instruments necessary to express the wishes of society to overcome such challenges.

With the realization that the rule of law coupled with a yearning for legal literacy are a primary concern of Kenyans, the need for pro-bono services is at a peak. Legal literacy, legal education, group participation, para-legal training, rural mobile clinic on law and society, social justice, expanded role of legal aid, minority concerns, women's issues, health and safety and many more issues have made legal aid more of a necessity than a charity.

## Conclusion

Over the years, Kenya has seen various reforms that have embraced the concept of legal aid as a means to foster access to justice for indigent persons. The enactment of the Legal Aid Act No.6 of 2016 is a major achievement in this regard. However, LSK should work out the modalities for a broad based programme where as many stakeholders and partners as possible will all be represented in a joint effort at eradicating legal illiteracy in Kenya.

In view of the many challenges facing the poor, marginalized and vulnerable members in our community who cannot access quality legal services to redress their day-to-day challenges, it is clear that every lawyer in his or her capacity should find a way, however small, to volunteer their time (and resources) to advance access to justice through pro-bono legal aid.



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