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BY THE RIVERS OF KENYA

REGULATION OF RIPARIAN ZONES

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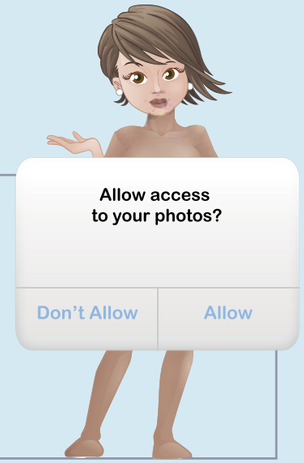
IN THIS ISSUE

24 **KEEPING UP WITH PRIVACY POLICIES AND SECURITY**
DATA GOVERNANCE AS THE NEXT COMPETITIVE EDGE

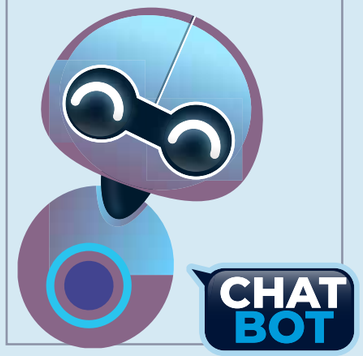


06 **THE DISCOVERY OF OIL IN KENYA**
A LOOMING RESOURCE, CURSE OR MANNA FROM HEAVEN?

21

ROBIN HOOD TAX,
A POISONED CHALICE?

31 **LOOKING AHEAD**
LEGAL TECHNOLOGY AND THE ROLE OF THE LAWYER



IN THIS ISSUE

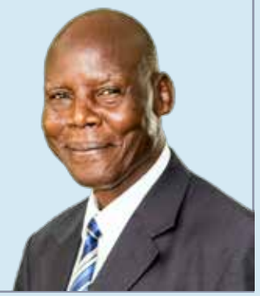
COVER STORY

16 **BY THE RIVERS OF KENYA**
REGULATION OF RIPARIAN ZONES

27 **BORA UHAI**
A REVIEW OF THE LAW AND PROCESS ON THE DEATH PENALTY

REGULARS

10 **KYA**



12 **SETTING UP AN ONLINE FOREX TRADING ENTITY IN KENYA**

Editor's Note

How time flies, we are already in September!

The second issue of our quarterly newsletter is here with us. As usual, we bring you an array of articles on topical issues. Kenyans were at it again after the recent comments by a Governor when he remarked ***'…instead of the demolitions, the river should be moved'*** regarding demolitions of buildings erected on riparian land and the same had caused a frenzy in the country. The question we posed was how many people had any idea of what exactly riparian land was before this? Our dedicated writers look into the long overdue protection of riparian land in Kenya. In addition, we bring you articles on topical issues such as; a review of the law and process on the death penalty; data governance as the next competitive edge; the Robin Hood tax; setting up an online trading forex; the discovery of oil in Kenya and what that means for Kenya and last but not least legal technology and the role of the lawyer.

We divert from our usual ***'Know your advocate'.*** and instead we chose to spend a few minutes with Charles Odungu, who shares his time at TripleOKLaw and his best moments at the firm as he prepares to retire.

On a sad note, we recently lost our colleague, Gloria Gakii Mwika. While most of us at TripleOKLaw, our clients and the legal fraternity are yet to come to terms with her death, we choose to remember the fond memories we shared with her and thank the Almighty for the time spent with such a beautiful soul. We give you a glimpse of her life, ***the shining star amongst us!***

Enjoy the read and let us have your feedback through editorialteam@tripleoklaw.com

Leyla Ahmed.

Managing Partner's Note

As we release our second issue of ***'the Above Standard',*** I want to thank our clients and business partners for continuing to entrust our firm with their most challenging legal needs. As Managing Partner, it is my privilege to ensure that our firm serves the needs of our clients by continually going over and above!

John M Shaga

the discovery of oil in Kenya

A LOOMING RESOURCE CURSE OR MANNA FROM HEAVEN?

Elias Masika
Mbula Nzuki

Following the upheaval that arose in the country as a result of the disputed Presidential elections of 2007, three important developments with a potential of making or breaking the country were witnessed:

1. The launching of Kenya's long-term development blueprint, Vision 2030 "that aims to transform Kenya into a newly industrializing, middle-income country providing a high quality of life to all its citizens by 2030 in a clean and secure environment."
2. The signing of the Four-Point-Agenda constituting the National Accord and Reconciliation which eventually culminated into the promulgation of the Constitution of Kenya, 2010.
3. The discovery of oil in *Ngamia*, Turkana and subsequently in a number of other areas by Tullow Oil.

The three events above have an interesting interlinkage: The political pillar of Vision 2030 envisages *"a democratic political system that is issue based, people-centred, result-oriented and accountable to the public in which equality is entrenched, irrespective of one's race, ethnicity, religion, gender or socio-economic status and a nation that not only respects but also harnesses the diversity of its peoples' values, traditions and aspirations for the benefit of all"* (emphasis added), recurrent themes in the Constitution of Kenya, 2010. On the other hand, the key driving force towards the achievement and realisation of Vision 2030 is energy and the discovery of oil, therefore, constitutes a key ingredient towards achieving economic independence and the improvement of the lives of all Kenyans. The discovery of oil in Kenya could not, therefore, have come at a better time!

Yet, the country has not moved much since that initial discovery of oil circa 2012. Why? There are a number of challenges that this discovery has faced. This article will briefly examine the three challenges.

Lack of Policy, Legal and Institutional Preparedness

From the then existing policy, legal and institutional framework, it is clear that the country was not prepared for the oil discovery. In 2012, Kenya's Energy Policy was contained in Sessional Paper No. 4 of 2004 and its Chapter on Fossil Fuel stated simply that *"Kenya has no known commercial reserves of petroleum, coal and natural gas although exploration is in progress..."* The Policy referred to an even greater lack of preparedness in the existing legal framework, the Petroleum (Exploration and Production) Act, which regulated the upstream (exploration) petroleum operations in a not very optimistic tone.

The Petroleum (Exploration & Production) Act was enacted in 1986 with the main objective of regulating the negotiation and conclusion by the Government of petroleum agreements relating to the exploration for, development, production and transportation of, petroleum and for connected purposes. The downstream operations (refining of crude oil and the purification of natural gas) were regulated by the Energy Act with the Energy Regulatory Commission (ERC) being the main institution charged with the regulation downstream petroleum prices.

A major issue that thus needed to be addressed (and was not adequately addressed within the existing legal framework was the manner of compensating the entity responsible for making a commercially viable discovery? Regulation 2(1) the Petroleum (Exploration and Production) Regulations provides for a 'Product Sharing Agreement (PSA)' which, essentially, is a contract between a contractor making the discovery and Kenya where the contractor has provided capital investment, in exchange for control over an oilfield, and access to a large share of the revenues from it. And this poses the first major problem: what are the exact terms of the PSA between Tullow and the Government of Kenya? And how were these terms negotiated? A typical PSA has a *Stabilisation Clause* to hedge the contractor against possible interference with its benefits under the PSA should its economic benefits be substantially affected by the promulgation of new laws and regulations, or of any amendments to the applicable laws and regulations of Kenya.

In a country whose legal, policy and institutional framework was ill-prepared for a viable discovery of oil, is it possible that it got a good bargain out of these discoveries? And what were the terms of these agreements? They are still shrouded in a mystery, possibly because of the confidentiality clause emphasized in Regulation 37 and which limits the sharing of the information that the contractor (corporation) may supply to the government in

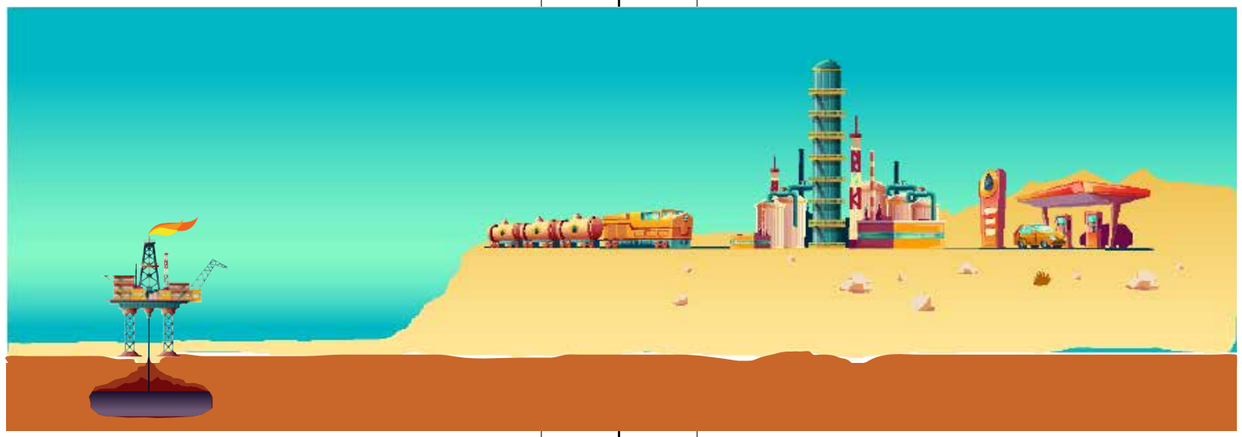
relation to the product sharing agreement. In a country where transparency and accountability have been expressly declared to be national values and principles of governance under Article 10 of the Constitution, this is potentially problematic.

Legitimate Expectations vs The Reality

Having been discovered in a region that is patently marginalised, the Community living within the area where oil was discovered saw a chance to finally grow out of their marginalised status. The locals had the legitimate expectation that their lives would be instantly transformed by the riches and so immediately went on a 'demand' spree for benefits associated with the discovery. Such demands included the clamour for jobs. This has seen various standoffs between the community, the government and the Tullow Oil, the Company that discovered the oil and is undertaking the production thereof.

The country was clearly not prepared for this sudden discovery of oil and so, belatedly, began to push for legislation that would also help the locals secure opportunities within the industry by enacting the Local Content Bill which remains a Bill to date! The definition of who is a 'local person" under s. 2 of the Bill as *"a person, firm or entity performing works, services or supplying goods and materials to an operator, whether as a subcontractor or otherwise, whose business enterprise is incorporated under the Laws of Kenya and whose principal place of business is in Kenya and which is effectively owned and controlled by a Kenyan national"* is potentially problematic especially given the views of the majority of the inhabitants in the areas where the discoveries were made and who, in their own way, regard themselves as the bona fide 'locals'.

Along with the Local Content Bill was was the enactment of the Natural Resources (Benefits Sharing) Bill, 2014 that has not been enacted into law to date. The formula for sharing oil revenue between the county of Turkana and the national government has been a major stumbling block to the commencement of the commercial exploitation of the resource. It was recently reported in the Nation that the Governor



"there is need for an effective legal, policy and institutional framework that is well thought-out and is a product of wide consultations and public participation and, most importantly consensus. This has to be arrived at in an environment of transparency and the highest regard for accountability.

of Turkana County, Josephat Nanok and President Uhuru Kenyatta had amicably agreed that the thorny issue was capping of the share from oil receipts to the county, which was not supposed to exceed the national government's budget allocation to the county. It remains a mystery how sustainable such an 'amicable settlement' can be if the legal framework, the Natural Resources (Benefits Sharing) Agreement remains unenacted.

The Question of Ownership

Article 62 (1) (f) of the Constitution of Kenya, 2010 classifies Public Land to include *all minerals and mineral oils as defined by law* which, under Article 62(3), shall vest in and be held by the national government in trust for the people of Kenya and shall be administered on their behalf by the National Land Commission. Further, s. 4 of the Petroleum (Exploration & Production) Act provides that all petroleum existing in its natural condition in strata lying within Kenya and the continental shelf is vested in the National Government.

Yet, under Article 185 (4) of the Constitution, a county assembly may receive and approve plans and policies for the management and exploitation of the county's resources; and the development and management of its infrastructure and institutions. These two Articles present the first point of conflict between the national government and the county government of Turkana where viable deposits of oil have been discovered in the management and exploitation of the said resource.

Things are made even more complicated when Article 186 of the Constitution spells out the functions and powers of the national government and the county governments, respectively in the Fourth Schedule with international trade being a function for the national government. Oil is a commodity for international trade and it can, therefore, be safely argued that the national government would have a virtual monopoly, excepting the provisions of Article 185 above, in the exploitation of the resource.

With these kind of legislative overlaps as regards who between the national and county government owns (and should therefore administer) the oil resource becomes a simmering cauldron for potential future clashes such as was witnessed between the Ogoni people and Shell Oil, Nigeria.

In a devolved system of Government, recent stand-off between Tullow Oil, a leading oil exploration and production company and the Turkana Community residing in areas of Turkana County where oil was discovered, and Base Titanium Limited which temporarily suspended titanium exploration activities in parts of Kwale County serve to highlight the volatility of the resource issue.

While the agreement between President Kenyatta and Governor Nanok is a welcome move, there is need for an effective legal, policy and institutional framework that is well thought-out and is a product of wide consultations and public participation and, most importantly consensus. This has to be arrived at in an environment of transparency and the highest regard for accountability.

The threat of an apocalyptic nihilism where the regulatory framework governing such a volatile and 'emotive resource' is real; the pre-emptive measures thereof wanting. Are we staring at a probable resource curse?

For more information on this, contact
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THE ABOVE STANDARD

KYA

Charles Odungu

Interviewer: Cherop

When Charles Odungu first began his career as a litigation clerk, he did not foresee the transformation that would would occur in the firm. As he prepares to retire, Charles gives us a glimpse into his life.

Cherop: I have heard people call you Mzee, just to set the record straight, how old are you?
Charles: I was born in 1954, that should make me sixty-four this year.

Cherop: how long have you been with the firm?
Charles: Since it was born.

Cherop: and when was that?
Charles: May 2002. But I have worked with TripleOKLaw's senior partner Mr. James Ochieng' since 1993. Where were you then?

Cherop: Crawling. *(we both laugh).* Speaking of crawling, were all your children born when you were at firm?
Charles: At the firm? *(amused)* None of them. My youngest was born in 1997, by then TripleOkLaw was non- existent.

Cherop: How did TripleOKLaw come to be? I understand it is a merger of three firms.
Charles: There were two mergers. Initially, Ochieng Oduol and Company Advocates merged with Onyango Ohaga Advocates. Soon thereafter, the new firm merged with Kibet and Company Advocates.

Cherop: Did you have any fears concerning the mergers?
Charles: Most of us did. *(pauses to think).* We were worried about losing our jobs and in the event that we were retained, what the new terms would be.

Cherop: What new things came with the mergers?
Charles: The benefits of pooling together resources were now evident. *(grins).* The pay improved HR department, where those of us who were afraid of the "big four" *(laughs)* could channel our grievances, was set up.

Cherop: Any challenges with the Technology?
Charles: A little bit. Over the years, when new technology is introduced within the firm, it always takes a while to get used to. For instance, when Synchrony (our internal network operating system) was first introduced, I had a bit of a challenge accepting it or wanting to use it, but now I don't see myself not using it.

Cherop: Do you follow the firm on any of its social media platforms? Twitter @tripleoklaw, Facebook (TripleOKLaw Advocates LLP) or LinkedIn (Tripleoklaw Advocates LLP)?
Charles: I don't know what those are though I think I would if I am taught how to *(hands me his phone so that I can set him up).*

Cherop: This firm runs a successful one-year pupillage program. Do you play a part in training pupils?
Charles: Yes. Many of whom I proudly say have risen well in the legal profession. I trained Marysheila Oduor, a Partner in the firm. I remember her as being very industrious. Other notable lawyers such as Njenga Nyanjua, Nelson Ashitiva, Victor Arika, Charles Kanjama and his Partner Andrew Mumma, Willis Echessa , Miller Bwire among others, were also pupils in the firm.

Cherop: Do you have any embarrassing moments at the firm that you would want people to forget?
Charles: Utanilipa pesa ngapi nikikuambia? *(laughs),* No. I will not share those. But I will tell you of my most memorable moment which taught me great lessons from the speaker. I will never forget when the firm took us to Naromoru for a weekend team building exercise. The speaker, Dr. Achoki spoke to us about financial freedom which made a big impact on my approach to managing my finances. I picked two things from him; first to invest early in life and to keep my rent at a maximum of 4% of what I earn. Of course I wish I had the information earlier in life, but I have since passed on his words of wisdom to my children.

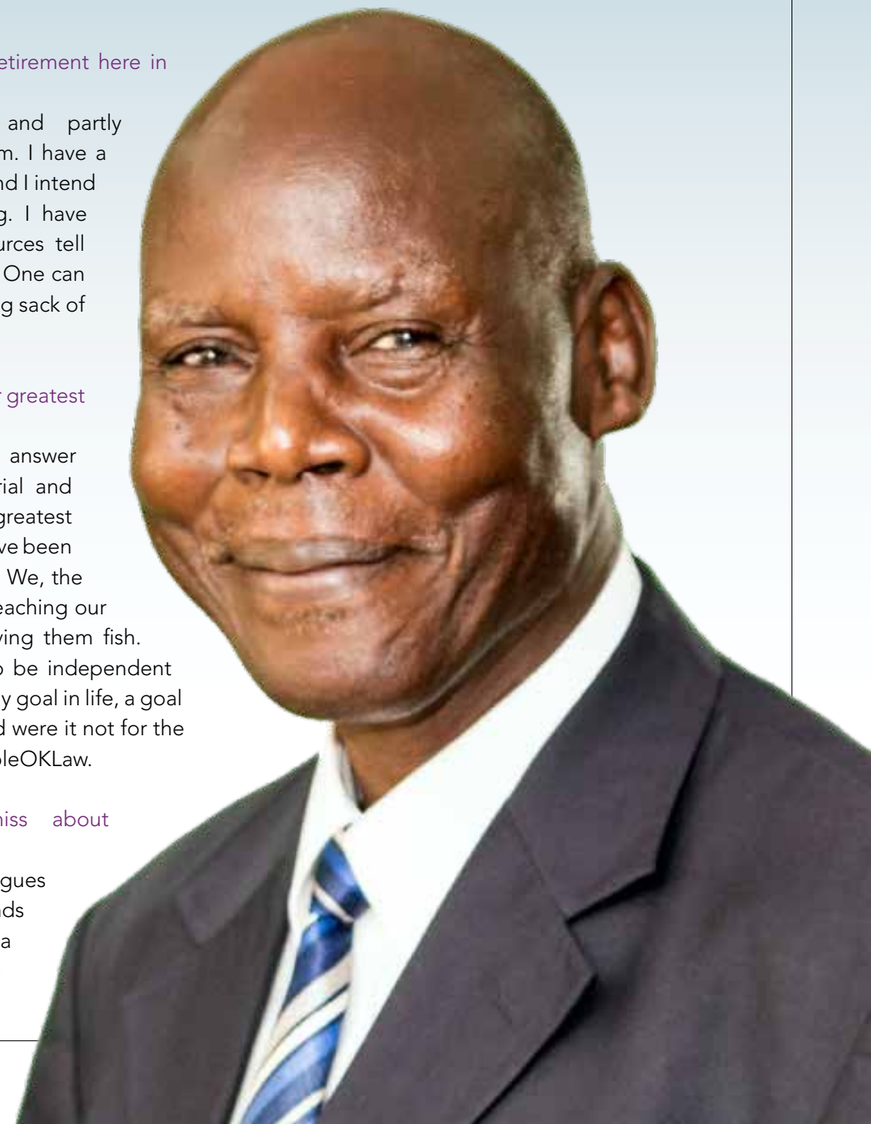
Cherop: what are your plans post TripleOKLaw? Join politics maybe?
Charles: *(laughs)* No politics for me. Now that I am a grandfather, I would like to spend time with my grandchildren.

Cherop: Will you spend your retirement here in Nairobi?
Charles: Partly in Nairobi and partly Karachuonyo where I come from. I have a parcel of land in Karachuonyo and I intend to go into groundnuts farming. I have done my research and my sources tell me that it's a lucrative business. One can earn up to Kshs. 15,000 on a 90kg sack of groundnuts.

Cherop: What do you feel is your greatest achievement at TripleOkLaw?
Charles: The conventional answer would be to talk about material and career growth. However, my greatest accomplishment in life was to have been able to educate all my children. We, the people of lakeside, believe in teaching our own how to fish instead of giving them fish. Giving my children the tools to be independent and no one's burden has been my goal in life, a goal which I would not have achieved were it not for the opportunity I had to work at TripleOKLaw.

Cherop: What will you miss about TripleOKLaw?
Charles: I will miss my colleagues who have been more than friends to me. TripleOKLaw gave me a family that is irreplaceable, and I cherish very much. I will miss walking to the smiling face of the receptionist. I will miss the newpaper reviews we had with my collegaues at the Clerks Administration Centre. I will miss the urgency of filing pleadings. I will miss answering questions from pupils about the registries. I will miss Rita's tea.

Cherop: Without a doubt, we at TripleOKLaw will definitely miss you as well.



Setting up an online forex trading entity in Kenya

Fidel Marabu
Christopher Oyier

Online trading of foreign currency has become an investment avenue that internet-savvy Kenyans are using to make money from the comfort of their homes and offices. Despite the growing number of participants in Kenya, the regulation of online forex trading has been non-existent until recently. Additionally, most Kenyans engage in online forex trading through foreign registered brokers who provide the link to clearing centres in Europe, Asia and America.

With the latest amendments to the Capital Markets Act, new regulations have come into force to regulate this grey area. This article discusses the salient requirements for setting up an online forex trading entity in Kenya with special focus on the constitution of the company for this type of business in line with the new regulations.

'Online foreign exchange trading' is defined as the internet-based trading of foreign exchange and includes trading in contracts for difference based on a foreign underlying. Online forex trading in Kenya is regulated under the Capital Markets Act (the "Act"), and the Capital Markets (Online Foreign Exchange Trading) Regulations, 2017 ('the Regulations'). To engage in online forex business in Kenya, one must be licensed by the Capital Markets Authority (CMA). An "online forex broker" is defined as a ***body corporate*** duly licensed by the Authority to engage in the business of online trading in foreign exchange as an agent of investors in return for a commission and on its own account. The business must be a company incorporated in Kenya and limited by shares.

Types of licences

Under the current Regulations, CMA is empowered to grant three categories of licences;

(a) The first category is for money managers, where the company engages in the business of managing the online foreign exchange portfolio of an individual or institutional investor in return for a fee based on a percentage of assets under management;
(b) The second category is for dealing online foreign exchange brokers – where the company engages in the business of online foreign exchange trading as principal and market maker;
(c) The third category is for non-dealing online foreign exchange broker- where the company acts as a link between the foreign exchange market and a client in return for a commission or mark-up in spreads and does not engage in market making activities.

The Application Process and Requirements

An application for a licence is to be made to the CMA in the prescribed form. The application must be accompanied by;

(a) in the case of an application for a dealing online foreign exchange broker or a non-dealing online foreign exchange broker licence, a letter from a recognized online foreign exchange trading platform stating that the applicant meets all the relevant requirements of that platform and that the platform will admit the applicant if licensed by CMA;
(b) in the case of a money manager, an agreement with an online foreign exchange broker who is licensed by CMA;
(c) client on-boarding policies;
(d) business plans;
(e) individual risk assessments;
(f) Anti-money laundering and know your client checks;
(g) product sensitization framework including client appropriateness assessment;
(h) internal dispute resolution mechanisms to be adopted to resolve customer complaints and disputes;
(i) all relevant service level agreements with other online foreign exchange market service providers, where applicable; and
(j) the fees as follows:

Application fees for licence - Kshs. 2,500/-. Annual fees of Kshs. 250,000/- for dealing broker; Kshs. 100,000/- for non-dealing broker and Kshs. 100,000/- for money manager.

Fit and Proper Tests

In addition to the above requirements, the company must have a chief executive officer who has experience of not less than five years in the business of buying, selling, managing, or dealing in foreign exchange, foreign exchange futures or futures contracts; is a member of a professional body; and is a fit and proper person in accordance with the provisions of the Act.

For a dealing online foreign exchange broker, the person in charge of trading must have at least three years' experience in foreign exchange trading and in possession of certificate from the Association Cambiste Internationale-Financial Markets Association (ACIFMA) or its equivalent.

Finally, the company's directors, substantial shareholders and key personnel, must be persons who are fit and proper in accordance with section 24A of the Act.

The considerations by the regulator specified under section 24A include but are not limited to the financial status or solvency of the company, its ability to carry on the online forex activity competently, honestly and fairly, the reputation, character, financial integrity and reliability of the company chairperson, directors, chief executive, management and all other personnel including all duly appointed agents, and any substantial shareholder of the company.

Further, CMA may in reviewing a licence application consider whether the applicant:

(a) has contravened the provision of any law, in Kenya or elsewhere, designed for the protection of members of the public against financial loss due to dishonesty, incompetence, or malpractice by persons engaged in transacting with marketable securities;
(b) was a director of a licensed person who has been liquidated or is under liquidation or statutory management;
(c) has taken part in any business practice which, in the opinion of the Authority, was fraudulent prejudicial to the market or public interest, or was otherwise improper, which would otherwise discredit the person's methods of conducting business; or
(d) has taken part or has been associated with any business practice which casts doubt on the competence or soundness of judgment of that person; or
(e) has acted in such a manner as to cast doubt on the person's competence and soundness of judgment;

The considerations by the regulator specified under section 24A include but are not limited to the financial status or solvency of the company, its ability to carry on the online forex activity competently, honestly and fairly, the reputation, character, financial integrity and reliability of the company chairperson, directors, chief executive, management and all other personnel including all duly appointed agents, and any substantial shareholder of the company.

The Act grants CMA vast discretion in considering the suitability for a licence. This means that the vetting of the company's financial history and the personal character of the directors is a key consideration to the granting of a licence. The section also allows the company to consider other information not provided by the applicant in determining whether to grant the licence, such as the proposed employee information, established internal control procedures and risk management systems and the state of affairs of other businesses of the company.

The company must have the necessary infrastructure including office space, equipment and staff, to effectively discharge its activities;

Prudential requirements

The applicant company must further have an unimpaired minimum paid up capital of;

(a) Kenya shillings fifty million, in the case of a dealing online foreign exchange broker;
(b) Kenya shillings thirty million, in the case of a non-dealing foreign exchange broker; or
(C) Kenya shillings ten million, in the case of a money manager.

At all times the company must further undertake to maintain liquid capital of;

(a) Kenya shillings thirty million or eight per cent of total liabilities whichever is higher in the case of a dealing or a non-dealing foreign exchange broker; or
(b) Kenya shillings five million or eight per cent of total liabilities whichever is higher; in the case of a money manager.

Corporate governance

The Company must comply with the Capital Markets (Corporate Governance) (Market Intermediaries) Regulations, 2011 that provide for the constitution of the company's board of directors, management, employees, internal controls, risk and compliance, information use, confidentiality and other aspects of good corporate governance.

Grant of the licence and further conditions

A licence is only granted if the applicant meets and continues to meet such minimum financial and other requirements as may be prescribed by CMA. CMA may additionally, at any time by written notice to a licence holder, vary any condition or restriction or impose further conditions.

Once licensed, the company cannot change its shareholders, directors, chief executives or key personnel except with the prior confirmation in writing by CMA that it has no objection to the proposed change. The CMA may require the company to comply with further conditions before effecting the proposed change.

There are continuing obligations placed on the company that include the requirement to submit to CMA within fifteen days of the end of every month, in the prescribed form, a certified copy of:

(a) the details of any customer complaints and resolution status;
(b) evidence of daily reconciliations;
(c) for the money-manager, reports on the total funds under management;
(d) a full set of monthly management accounts; and
(e) risk-based capital adequacy returns.

Further, CMA requires that the company submits on a monthly basis or at such other specified intervals, a summary of traded volumes per currency, in the prescribed form.

An online foreign exchange broker is further required to determine and obtain adequate professional indemnity insurance for its key personnel. Alongside these requirements, the company must submit to inspection by CMA upon reasonable notice.

Setting up of the Company

From the review of the applicable laws and regulations in Kenya, a proposed online forex trading company must first be established in Kenya as a company limited by shares under the Companies Act, 2015. The Company must also adhere to the requirements under the Capital Markets Act, and the Capital Markets (Online Foreign Exchange Trading) Regulations, 2017 on its composition, capital and corporate governance. Once the company is duly registered, an application can be made to the CMA for an online forex trading licence under the licencing regime described above.

There are no established statutory timelines for the issuance of a licence once the application has been made. However, given the elaborate statutory compliance and vetting requirements, the licensing process is vigorous and may take a considerable period.

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By the Rivers of Kenya

REGULATION OF RIPARIAN ZONES

Tom Onyango
Janet Othero
Linda Nnanguttu

The definition of riparian land is anchored in different legislation as shall be explored. Although riparian land is mentioned in the Constitution of Kenya 2010, the concept traces its origins to common law. The term riparian means relating to the bank of a watercourse and is derived from the word ripa meaning a bank. A riparian landowner is the owner of land that is next to a watercourse or has a watercourse running through or beneath it. Riparian water rights (or simply riparian rights) is a system for allocating water among those who possess land along the path of a river. Riparian water rights exist in many jurisdictions with a common law heritage, such as England, Canada, Australia.

The term riparian means relating to the bank of a watercourse and is derived from the word ripa meaning a bank. A riparian landowner is the owner of land that is next to a watercourse or has a watercourse running through or beneath it.

Riparian rights may be distinguished from ***littoral*** rights, which relate to static water bodies such as seas, lakes and dams. The *littoral* zone is the part of a sea, lake or dam that is close to the shore of the water body. In coastal environments the *littoral* zone extends from the high-water mark, which is rarely inundated, to shoreline areas that are permanently submerged. One can however extend the meaning of "littoral zone" to beyond the intertidal zone. Therefore, littoral rights are rights concerning properties that are abut static water like an ocean, bay, delta, sea or lake, rather than a flowing river or stream (riparian).

The basis of these regulations is that person using water bodies, be they rivers, or static bodies like dams, affect other person using the same rivers. Such use must therefore be regulated for the common good. The fact that a river crosses through one's land does not entitle one to use to the exclusion of others downstream, and vice versa. The same considerations apply to the use of static water bodies such as lakes and dams. To protect the public, some activities such as discharge of sewerage and toxic substances into water sources anywhere near riparian zones are strictly prohibited.

Some countries and cities have regulations that allow for far closer use of waterways so long as the activities do not interfere with the flow of the river. Cities such as London, Paris, Amsterdam and Venice are all built along major waterways and allow for construction right along the river, with seemingly no riparian reserve but in a manner that does not hamper water flow.

In Kenya, the 2010 Constitution in Article 62 defines all land between the high and low water marks as **public land** which shall vest in and be held by the national Government in trust for the people of Kenya and shall not be disposed or otherwise used except in the terms of an Act of Parliament specifying the nature and terms of that disposal or use.

The Land Act, 2012 defines **riparian reserve** as ***the land adjacent to the ocean, lake, sea, rivers, dams***

and water courses and as further provided for under any written law. The Act then proceeds to stipulate that the National Land Commission (NLC) shall ensure that it does not allocate public land along such areas that include watersheds, rivers, stream catchments or riparian areas as may be prescribed.

The recent demolitions of buildings that were constructed on riparian land and water ways have caused a frenzy in the local scene and subsequently brought to light the inadequacies or lack of harmonised environmental management and conservation laws and regulations.

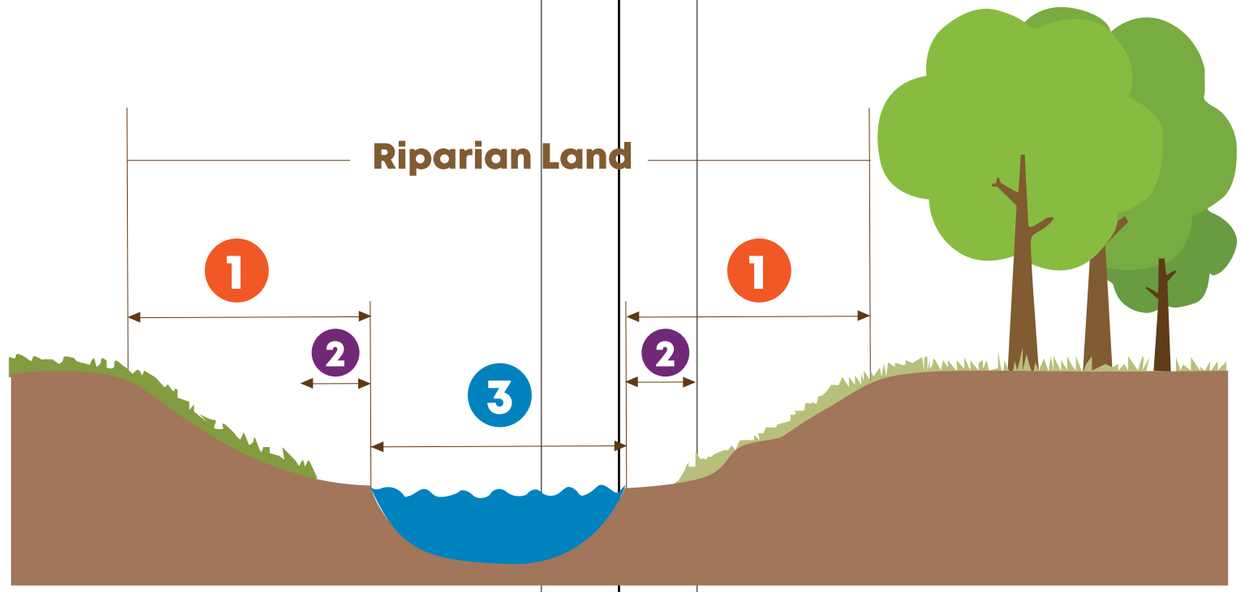
The Land Act as read in conjunction with Survey Regulations, 1994 made under the Survey Act provides that any survey to be done on all tidal rivers or lakes must reserve no less than thirty meters in width above the high-water unless the relevant Cabinet Secretary directs that it shall be less in special circumstances.

Another important legislation is the Environmental Management and Co-ordination Act (EMCA) of 1999. Section 42 of EMCA provides that *no person shall, in relation to a river, lake or wetland in Kenya construct, reconstruct, place, alter, extend, remove or demolish any structure or part of any structure in, or under or tunnel a river, lake or wetland without prior written approval of National Environmental Management Authority (NEMA).* So, this provision allows for such structures provided that they are approved. The approval shall only be given after an environmental impact assessment. EMCA goes on to further state that river banks shall be gazetted from time to time as protected areas by the Cabinet Secretary in charge of environmental matters. NEMA shall assist the Cabinet Secretary with formulation of regulations and guidelines for management of these areas.

The recent demolitions of buildings that were constructed on riparian land and water ways have caused a frenzy in the local scene and subsequently brought to light the inadequacies or lack of harmonised environmental management and conservation laws and regulations.

In its amended 2015 regulations, EMCA gives its definition of riparian land ***to include areas of water, whether natural or artificial, permanent or temporary, with water that is static or flowing, including areas of marine water the depth of which at low tide does not exceed 6 meters.*** Further, the EMCA Water Quality Regulations of 2006 prohibit any development activity within full width of a river or stream to a minimum of six meters and a maximum of thirty meters on either side based on the highest recorded flood level.

In addition to the above, there is the Water Act No. 8 of 2002, which defines riparian habitat as the dynamic complex of plant, animal and micro-organism communities and their non-living environment adjacent to and associated with a watercourse. Water resource is defined to mean any lake, pond, swamp, marsh, stream, watercourse, estuary, aquifer, artesian basin or other body of flowing or standing water, whether above or below ground. Section 6 expressly prohibits the conveyance, lease or effecting of any instrument that may convey, demise, transfer or vest any property rights in any in any water resource unless that right is acquired as provided for under the Act. Clearly, this presents a conflict of regulations with what the EMCA prescribes when it comes to proprietary rights over riparian areas.



It is necessary to obtain approvals and waivers from any statutory body charged with any responsibility on use and management of riparian zones as a way of ensuring that the development is not at risk of demolition.

The Water Act, 2002 has created statutory bodies to assist in implementing and enforcing its guidelines, one of which is the Water Resources Management Authority (WARMA). The Water Resources Management Rules of 2007 (the Rules) define riparian land as ***land in respect of which management obligations are imposed on the owner by the Water Resources Management Authority due to its proximity to a water body.*** The Rules apply to all water resources and water bodies in Kenya. Again, the law does not prohibit development and use of these riparian lands but requires anybody doing so to obtain approval, in this case from WARMA.

The conclusion that can be made from the various provisions of the sampled legislation is that there is no singular legislation governing use and management of riparian land. While some of the legislation and regulations attempt to provide a description of what riparian land, others provide the extent, in measurement, of what it includes. The common disparity in all legislation and regulation is that the various statutory bodies created by the legislation all have mandates to undertake management of riparian land separately from all the other bodies. This causes confusion as to who, first and foremost can declare such areas as protected water bodies and consequently issue approvals on any developments on them.

When one is undertaking a construction project in Kenya, there is need to register your development with the National Construction Authority under the National Construction Authority Regulations of 2014. Some of the requirements in getting an approval for a construction project include NEMA approval and county government approvals. There is no mention or special provisions to provide mappings that exclude the area as a riparian zone or waivers from a second regulatory body to add on to NEMA's approval for such developments. The absence of this secondary provision is what has occasioned construction of buildings on riparian zones as the various agencies have different thresholds for licensing and approving

when dealing with land that is considered protected as a riparian zone one ought to be aware that there is a high probability that it is public land. Although your land may abut a river, your use of it affects others and therefore must be regulated for the common good. One therefore one cannot undertake private activities on such land to the detriment of public interest and without government approvals.

such developments.

It is necessary to obtain approvals and waivers from any statutory body charged with any responsibility on use and management of riparian zones as a way of ensuring that the development is not at risk of demolition. This is in the absence of any harmonized set of laws.

It should be borne in mind that in looking at what is appropriate riparian zone regard must be had to topography, soil type, water levels, landscape position and vegetation species, the idea being to protect those who use the waterway so as not to expose them to dangers such as flooding. This would assist in establishing a sole statutory body to oversee the protection and management of riparian zones.

In conclusion when dealing with land that is considered protected as a riparian zone one ought to be aware that there is a high probability that it is public land. Although your land may abut a river, your use of it affects others and therefore must be regulated for the common good. One therefore cannot undertake private activities on such land to the detriment of public interest and without government approvals.

So where one is undertaking development on land that abuts a water body and is therefore likely to be a riparian zone, one has to take into account the distance of the property from the water body to establish whether there is enough space to develop. The development must not be contrary to the regulations in place.

Finally, in addition to the above there are zonal demarcations by the county governments on development and permitted user on the property to be considered when developing land.

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A POISONED CHALICE?

Isaac Kiche
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The Cabinet Secretary National Treasury & Planning Henry Rotich in his budget speech of 14th June 2018 to the Parliament for the fiscal year 2018/2019, proposed introduction of various taxes. Key among these was the excise duty on money transferred by banks, money transfer agencies and other financial service providers. This tax is commonly known as the 'Robin Hood Tax.'(" the Tax").

The introduction of the tax was to enable the Government to get fair share of revenue from the financial activities in the financial sector and to finance its programs.

On 19th June 2018, Finance Bill, 2018 ('the Bill') was presented to the National Assembly and sought among others to amend First Schedule of the Excise Duty Act, 2015 and introduce Robin Hood Tax at the rate of 0.05 per cent of the amount transferred in case of money transfer of Kenya shillings five hundred thousand or more.

The Cabinet Secretary National Treasury & Planning in order to fastrack collection of tax revenues from the Bill pending its enactment by the National Assembly, employed the provisions of section 2 of the Provisional Collection of Taxes & Duties Act and ordered by Kenya Gazette Supplement No. 79 and authorized the National Treasury to collect Robin Hood Tax with effect from 1st July 2018. Section 2 of the Provisional Collection of Taxes & Duties Act provide that:

> *'If a Bill is published in the Gazette whereby, if such Bill were passed into law, any tax or duty, or any rate, allowance or administrative or general provision in respect thereof, would be imposed, created, altered or removed, the Minister may, subject to this Act and notwithstanding the provisions of any other written law relating to taxes and duties, make an order that all or any specified provisions of the Bill relating to taxes or duties shall have effect as if the Bill were passed into law.'*

The introduction of the Tax was opposed by among others, the Kenya Bankers Association ('KBA') who subsequently filed a suit in the High Court against the Attorney General & the Kenya Revenue Authority and obtained an order suspending its implementation. The case is still pending in Court.

Challenges on implementation of the Robin Hood Tax

Notwithstanding the possible increase in revenue from collection of the tax, there are myriad of issues likely to bedevil the implementation of the tax in its current form.

First and foremost, the Bill has not defined the term transfer. What does transfer entail? Does it entail cheque, cash, or deposits and loan transactions?

Secondly, the Bill is not clear on whether statutory payments such as stamp duty shall be subject to the tax or qualify as transfer. Application of the tax on statutory payments is likely to be challenged as constituting double taxation.

The other hurdle to be faced during the implementation of the tax is on whether the tax shall apply only on transfer between banks, different accounts within the same bank or within different accounts held by the same person.

The ambiguous nature of the law on the tax will present significant challenges on its implementation. It is accepted principle of interpretation of tax laws that a person is not taxable by inference or by analogy, but only by the plain words of a statute applicable to the facts and circumstances of his or her case.

The tax will result into practical challenges to the ongoing conveyancing transactions during completion when the balance of the purchase price is to be released to the vendor or its advocates as the buyer will be obligated to bear the tax.

Application of the Robin Hood Tax in other jurisdictions

In other jurisdictions where the tax has been implemented, they have generally prior to its implementation, conducted competent analysis before deciding on its application.

For instance, in the United States of America under the proposed FTT Bill, the Inclusive Prosperity Act of 2017, there is a clear demarcation of the transactions that are subject to the application of the tax procedures. The drafters of the Bill have demarcated FTT to be imposed on the purchase and/or sale of financial securities only with exempted areas being well articulated.

The European Union ('EU') has the tax designed in a manner that insulates businesses and households by ring-fencing day-to-day financial activities, such as lending and borrowing, from the scope of the tax. This is to prevent the cascade effect being passed down to final consumers. A minimum rate of 0.1% is levied on non-derivative transactions, including sovereign debt securities, and a minimum rate of 0.01% on the notional value of derivative transactions applicable to most trading in equity, sovereign debt, corporate debt, repurchase agreements (repo) and derivatives. Thus, there is a deliberate and meticulous crafting of how and where the FTT will be applicable.

Robin Hood Tax at the moment puts "sand in the wheels" of the whole economy, discourages saving, distorts productive activity, affects the income of taxpayers, makes credit more expensive, promotes the use of cash.

It is accepted principle of interpretation of tax laws that a person is not taxable by inference or by analogy, but only by the plain words of a statute applicable to the facts and circumstances of his or her case.

To be effective, the National Assembly ought to amend the Bill to clearly define the scope of Robin Hood Tax in order to avoid the discussed hurdles above on implementation of the tax.

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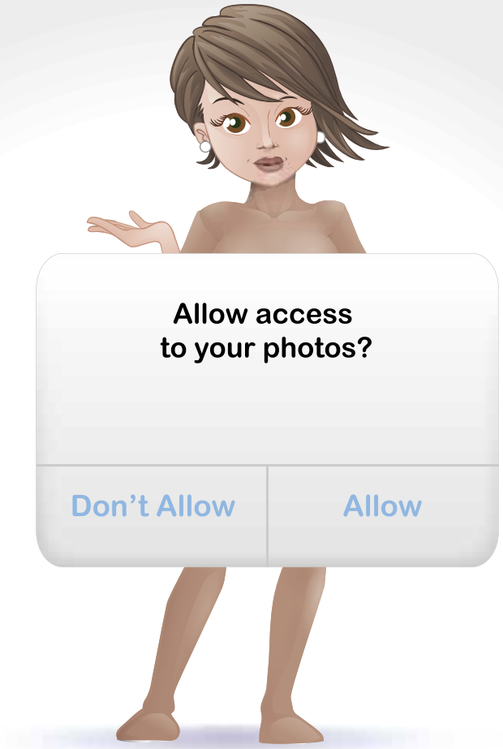

Keeping up with privacy policies and security

DATA GOVERNANCE AS THE NEXT COMPETITIVE EDGE

Catherine Kariuki
Janet Othero
Fiona Makaka
Cheptoo Langat

Data is an integral part of any entity’s operations and strategic growth. An organization may harness and analyze volumes of data in its possession for various purposes. This is known as data analytics. The source of data processed by an organization may be generated internally from the various business units or received from external parties for instance, in the course of a contractual arrangement. When this processed data includes personal information, the issue of privacy and data protection arises.

Many organizations, especially in the financial sector, are major consumers of big data analytics. The value of data held informs use of predictive analysis to offer cutting edge fintech services and products. This trend is expected to transcend to the Kenyan health and insurance sectors. Government has even set up infrastructure to support centralized collection of different categories of data from its citizens.

Given the rising consumer awareness on data collected, the increased focus on data quality and the obvious force of data in driving businesses, data governance is becoming increasingly important for organizations.

Data governance refers to the process that ensures data meets precise standards and regulations as it is used by an organization. Organizations are required to ensure that collecting, analyzing, utilizing, accessing, storing, disclosing and disposal of data is done with utmost attention paid to consumer privacy. Adoption of good data governance practices mitigates legal and related risks. We expect to see more organizations turning data protection and privacy into a competitive advantage and perhaps even reporting data as an asset in their balance sheets.

Whereas there is no single legislation governing data protection in Kenya, there are various laws that touch on aspects of data protection ranging from Article 2 and 31 of the constitution of Kenya, 2010, The Kenya Information and Communication Act (consumer protection) regulations 2010, The Consumer Protection Act 46 of 2012, Access to Information Act 31 of 2016 and various laws governing medical data.

Adoption of good data governance practices mitigates legal and related risks. We expect to see more organizations turning data protection and privacy into a competitive advantage and perhaps even reporting data as an asset in their balance sheets.

There is currently a data protection law tabled before parliament in 2018.

Adoption of good data management practices should be encouraged at a board level to ensure alignment of board governance and data governance. Organizations need to treat data as they would their business assets. Sound data governance and management calls for a data governance policy.

Data Governance Policy

A sound data governance policy should provide guidelines on how data should be collected, processed, stored, accessed and disposed of. Ideally it should be for internal use but can be shared with customers, business partners, service providers and generally any person who has access to the data. In some instances, it may be necessary to require business partners and service providers to maintain the same degree of governance in relation to customer data.

A good data governance policy helps in mitigating data breach. Some of the things to consider in coming up with such a policy include:-

(1) **Definition and classification of data:** It is important to define what personal data is and classify different types of data into different categories depending on level of sensitivity. Classification of such data may be done using different criteria and through use of technological infrastructure. Examples of such classifications may be pseudonymized personal data, anonymous data, factual data (for example, a name, email address, location or date of birth), transactional data and KYC data.

(2) **Accessibility structures:** Once data has been classified, it is then important to establish level of accessibilities. A good data governance policy must specify the persons who have access to the different levels of data to simplify the evidentiary procedure in a breach. It also ensures proper accountability.

(3) Storage procedure, retention and disposal: personal data must be accurate and, where necessary, kept up to date. It must be corrected or deleted without delay when inaccurate. Data minimization dictates that personal data should not be stored in an identifiable form for longer than is necessary for the purposes for which the data is processed. Institutions should have retention policies and procedures to ensure personal data is deleted after a reasonable time for the purposes for which it was being held, unless a law requires such data to be kept for a minimum time.

(4) Collection procedure and usage: The policy should explicitly provide the legitimate purposes why the personal data is collected. The collected data should be adequate, relevant and limited to what is necessary in relation to the purposes for which it is processed.

(5) Procedure for sharing: A good governance policy should provide for instances where sharing of data is permissible and necessary, and the manner through which the data may be shared.

(6) Rights of the data subject: The data subject must be made aware of the rights they have over their personal information.

Further, other aspects to consider include appointing a data protection officer who will work with the regulatory authorities in cases of compliance and breaches; carrying out regular training awareness programmes and promptly reporting any breaches to the relevant stakeholders.

In promoting good data governance and management, an organization must invest in regular data compliance audits and impact assessments. Periodic audits should be carried out to establish compliance and assess efficiency. An audit will be able to establish whether the procedures and controls put in place are sufficient.

Currently, financial service institutions licensed under the Banking Act stand guided by the Central Bank of Kenya Prudential Guidelines on outsourcing of certain services for instance information system management. Such institutions are required to demonstrate that they have taken steps to ensure that any third parties outsourced to perform activities on behalf of the institutions employ high standard of care and as if it were the licensed institutions itself carrying out the service. One such step would be ensuring they agree contractually to adhere to the data governance policy along similar lines that the institution has in place.

The risk of data breach is significantly reduced if an entity has in place sound data governance policies which manage their daily use of data. Further, these policies must not be on paper only, but must also be implemented and inculcated into the culture of the entity. The policy gives life to other related documentation such as contracts for supply of services, terms and conditions and privacy policies.

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Bora Uhai?

A REVIEW OF THE LAW AND PROCESS ON THE DEATH PENALTY

Kenvine Ouma
Robert Dachi

The debate regarding capital punishment has been an on going one with divergent views on the topic. The proponents of the death penalty argue that capital punishment is necessary as a sufficient form of retributive justice as well as a deterrent to crime. The opponents of capital punishment on the other hand argue that it violates the most intrinsic of human rights, the right to life and that the death penalty amounts to cruel and inhumane treatment.

This article will address the legal position of capital punishment in Kenya and ultimately attempt to provide an informative elucidation of this topic.

The basis of capital punishment

Capital punishment in Kenya is set out in The Penal Code. The Penal Code provides a mandatory death penalty for five crimes; murder, robbery with violence; attempted robbery with violence, treason and administering and oath purported to bind a person to commit a capital offence. These capital offences were inherited from our colonial masters at independence. However, the relevance of these sentences in this day and age is to be questioned keeping in mind that Great Britain abolished the death penalty in 1965, a year after Kenya attained its independence.

Current legal position of capital punishment

The mandatory death penalty for the five offences listed hereinabove is still part of the legal regime and offenders are still sentenced to death by the Courts.

However, Kenya is applying a *de facto* moratorium on capital punishment as per its international obligations under The Protocol to the African Charter on Human and Peoples' Rights on the Abolition of the Death Penalty and United Nations General assembly resolution A/65/206.

Both the resolution and the protocol call for *"states that still maintain the death penalty to progressively reduce the number of offences for which it may be imposed, and to establish a moratorium on execution with a view of abolishing the death penalty."*

The current trend in international law on Capital Punishment is shifting towards abolition. With international law and customs forming part of the Laws of Kenya, the country is being forced progressively re-valuate its position on the death penalty least it falls foul of its international obligations.

This change is best illustrated in the recent judicial decisions on the same which demonstrate how the judges are exercising their judicial mind on the matter.

Judicial developments on the death penalty

The most prominent decisions regarding the death penalty to date are the cases of **Godfrey Ngotho Mutiso v Republic Cr. Appeal No. 17 of 2008** and the case of **Francis Karioko Muruatetu & another v Reoublic (2017) eKLR.**

In both these cases the Court of Appeal and the Supreme Court have analysed the question of capital punishments under the Penal Code and have made damning remarks in relation the mandatory nature of the death sentence as it stands in the law.

In both cases the court egged the judicial position towards abolition of capital offences. In the Mutiso case the Court of Appeal held that the mandatory nature of the death sentence as prescribed in Section 204 of Penal Code is inconsistent with the letter and the spirit of the Constitution to the extent that it provides that the death penalty is the only sentence for murder.

According to the report by the National Crime Research Centre on the review of the mandatory death sentence 56.9% of the public opposing the death sentence and 43.1 % support its retention. This is an almost even split of opinion and as such the instruments of governance must take centre stage and take lead to ensure that this delicate issue is properly addressed.

The Supreme Court in the Francis Karioko Case went further and ruled that the mandatory nature of the death sentence as provided for in the Penal Code is unconstitutional.

The court held that in its current form, the provisions on the Penal Code on capital punishment deprived the offender of an opportunity for an individualized sentence that took into consideration factors relating to the offender and prohibited the offender from presenting mitigating evidence to the court thereby depriving the offender of his right to fair trial.

Furthermore, it was held that the mandatory nature of the death penalty limits judicial discretion on sentencing and thus is an affront to the principle of checks and balances as well as the separation of the powers as articulated in Chapters 9, 10 and 11 of the Constitution as the sentence is set by the legislature. With the legislature failing to address this issue, the Supreme Court took the initiative and issued an order instructing the Attorney General, the Director of Public Prosecutions and all relevant agencies to review the current laws on capital punishment and recommend the necessary amendments to make the Penal Code compatible with the Constitution.

It is important to note that the Supreme Court decision did not disturb the validity of the death sentence but limited its interrogation of the same to its mandatory nature. This decision was not satisfactory to opponents of the death penalty as they sought its abolition under human rights grounds.

The Human rights aspect

The opponents of the death penalty continuously point out the very nature of the sentence offends human rights principles. This position has been adopted by the majority of states internationally through United Nations resolutions or the resolutions of regional bodies such as the Protocol to the African Charter on Human and Peoples' Rights on

National Crime Research Centre

56.9% OF THE PUBLIC OPPOSE THE DEATH SENTENCE

43.1% SUPPORT ITS RETENTION

the Abolition of the Death Penalty and European Convention on Human Rights.

The argument against capital punishment on human rights are based on the grounds that the execution of a person curtails his right to be free from cruel, inhumane and degrading treatment and most importantly violate the right to life.

The human rights aspect challenging the death sentence has not yet been brought up for judicial determination and in the absence of any legislative framework on the same, the law remains silent in whether the capital punishment in Kenya violates an offender's rights under the bill of rights.
The debate regarding the validity of capital punishment in Kenya is at its infancy and has a long way to go before a definite conclusion can be reached.

According to a report by the National Crime Research Centre on the review of the mandatory death sentence, 56.9% of the public opposing the death sentence and 43.1 % supporting its retention. This is almost an even split of opinion and as such the instruments of governance must take centre stage and lead to ensure that this delicate issue is properly addressed.

This process has already begun with numerous strides being taken in the development of jurisprudence to form a concrete and relevant position on capital punishment in the country.

Hopefully, at the end of the debate the country will arrive at a position that reflects the principles, beliefs and values of the 21st century.

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Looking Ahead

LEGAL TECHNOLOGY AND THE ROLE OF THE LAWYER

Hilda Njoroge
Leyla Ahmed

Technology has over the past few years disrupted and revolutionized many industries and its impact in the legal services industry is growing with "legal-tech" becoming a recent buzzword.

For centuries, lawyers have relied on their learned skills of painstaking research and analysis of case law and strategic and complex argument structuring to perform their trade to the exclusion of others. Advances in technology serve to close inefficiency gaps in various industries and the legal industry, which some view as inherently inefficient, has been long ripe for disruption.

Proliferation of easily accessible legal information through online statute and caselaw databases and online legal fora have created an environment where clients demand seamless and premium quality services, as well as transparency and competitive billing from legal service providers many of which are traditional law firms.

Publications are awash with discussions on the looming technological revolution in the legal industry which paint a bizarre mental picture of lawyer-bots rendering lawyers jobless and slowly obliterating the profession. While AI- powered legal tools present the extreme on the legal technology spectrum, there are less complex technologies which lawyers and law firms can equip themselves with to ensure that they continue to play a key role for clients and society. Over the past few years several legal technology products that combine legal competence and understanding of data structures have been developed and have served to replicate a lot of law firm work at a fraction of the time and cost.

ultimately technology may not be able to replace the intuitive, experience-based, abstract skills and knowledge of lawyers. Lawyers will continue to be called upon to defend the rule of law. Technology will however ultimately change the role of the lawyer and shift the legal job market.

In aiming to continue to playing a key role for clients and society even in the wake of a legal technology revolution, lawyers as the gatekeepers to the law, must examine their value proposition. Lawyers must critically examine and appreciate their role in enhancing their clients' goals and needs. They must be more business focused and appreciate that the client, and not the lawyer, is king. The client's world is increasingly changing due to technological development such as self-driving cars, financial technology, block chain, virtual reality, internet of things, e-commerce which brings with it with an increasing level of regulatory burden and operating costs. Clients are insistent that the delivery of legal services mirror the efficiencies brought about by technology and demand that lawyers provide more efficient and cost-effective services.

Lawyers must further examine the heavily self-regulated legal sector and query whether the measures of control aimed at protecting the profession effectively enhance client needs. Lawyers must appreciate that as technology infiltrates the sector, technologists, entrepreneurs, data analytics professionals and machines will exceedingly play a major role in an otherwise exclusive and highly regulated sector.

Sophisticated legal applications such as smart contracts and online services have developed the capacity for consumers to create their own legal documents and forms at a fraction of the cost of hiring a lawyer. Some of these technological platforms have been created by non-lawyers but empower people to achieve the same deliverables that many law firms promise. Consumers can now access templates of wills, contracts, leases and company incorporation documents. Furthermore, in Kenya there have been ongoing digitization exercises at the lands and companies' registries and if the same is ran on blockchain technology, the role played by the traditional lawyer will be fundamentally re-defined as the effect is to utilize big data technology to make information and services accessible to the public and in the process ease and lower the cost of transactions.

Does the foregoing spell the end of the legal profession? No, ultimately technology may not be able to replace the intuitive, experience-based, abstract skills and knowledge of lawyers. Lawyers will continue to be called upon to defend the rule of law. Technology will however ultimately change the role of the lawyer and shift the legal job market.

As lawyers ponder the impact of technology in the sector, they must also be wary of the entry of the big four accountancy firms into their territory. Some of the core business of the legal arms of these accountancy firms are employment, immigration, tax and regulation and they have significantly embraced technology in their ventures.

What can lawyers do to prepare for the future? Lawyers must critically examine and understand their clients needs in the modern era of fast business and speedy deliverables. They must appreciate that their relationships with clients will become more collaborative and technology will facilitate this. Law firms must also take up technology in a considered and targeted way and not just for the sake of it: proposed technology must improve efficiency and client service more than marginally.

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GLORIA GAKII MWIKA

the Shining Star amongst us

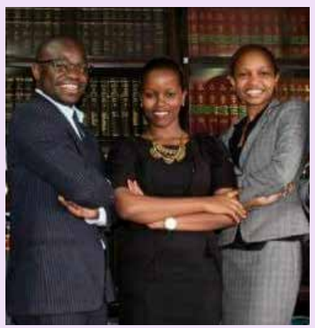
There are special people who never leave us even when they are gone. You remember the best times shared with them, the laughter, the good life they lived and their everyday smile. For us, that special person is Gloria. Gloria departed from us on the 8th of June, 2018 after a short illness; a day that will forever be engraved in our hearts.

We have known Gloria since 2015 when she joined the firm as a pupil and was later retained as an Associate in the Dispute Resolution Department. Gloria was deeply passionate about her work and clients and she was very keen to ensure that all she did was perfect. The character of the life she lived might be summed up in a few words: she was brilliant, she was sincere, she was earnest, she was loyal and of course it goes without saying, she was a hardworker!

Margaret Lee Runbeck, an American author said, 'Happiness is not a station you arrive at, but a manner of traveling'. Indeed, the manner in which she travelled through her short life on earth espoused a great sense of happiness! She loved people and she loved life. She enjoyed keeping fit and would wake up early mornings to exercise. Gloria enjoyed traveling and meeting new people; she participated in races all over Africa and enjoyed her life.

It is not the years in a life that counts; it is the life in the years. Gloria lived. We are better for having known this beautiful soul.

Gloria loved pictures, and she took lots of them. We leave you with pictures that depict her life without having to say much!



AFBA Conference In Nairobi

Justice Cup 2018

TripleOKLaw LLP and Strathmore Business School- Data Management Conference in August

The 1st National ADR Conference convened by the National Centre for International Arbitration

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Practice Areas

ALTERNATIVE DISPUTE RESOLUTION

This Team is dedicated to the Alternative Dispute Resolution (ADR) practice. Our aim is to always offer business solutions customized to our clients' interest. We understand the importance of settling disputes where possible before formal proceedings are commenced

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CORPORATE AND COMMERCIAL

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FINANCIAL SERVICES

Our Financial Services team of advocates support individual and corporate clients, financial institutions and SMEs in undertaking various investment projects in liaison with other professionals in the financial services sector. We provide wealth management services, project management and finance, environmental scanning for projects among others.

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BANKING AND REAL ESTATE

We handle a substantial amount of banking and real estate transactions. The practice area has grown rapidly in tandem with disruptive technologies and the real estate sector in Kenya. The firm handles transactions relating to property acquisition and disposal, due diligence on property, bank securitization and financing arrangements.

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DISPUTE RESOLUTION

We have a team of experienced Advocates who have handled numerous landmark cases over the years and contributed immensely to the development of jurisprudence in Kenya. Over time we have a proven track record of excellence and diligence, providing timely legal service and support to our clients in various sectors.

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TELECOMMUNICATIONS, MEDIA AND TECHNOLOGY

The firm has a practice area dedicated to Telecommunications, Media and Technology. As organizations continue to digitize their operations, we offer innovative legal solutions that not only ensures compliance but also mitigates exposure to associated risk.

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