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NEW MONEY NEW RESPONSIBILITIES

TRIPLEOKLAW
ADVOCATES



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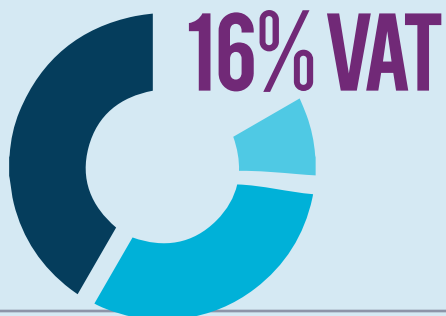


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Editor's Note

This is the finale issue in the first year of publication of Above the Standard.

In our final edition for the year we highlight issues arising from two landmark court decisions in the financial sector: VAT on commercial building and launching of new coins by the Central Bank of Kenya.

We also look at how positive legislation can impact ICT innovation in Kenya, the intricacies of project financing and a summary on some notable commercial ventures that have taken place in this year.

In our Know Your Advocate column we feature Tom Onyango, partner in charge of Real Estate and Banking, and find out what makes him tick.

Finally, TripleOKLaw LLP Advocates was the first law firm in Kenya to start operating as a limited liability partnership. We provide some insight as to why this remains a viable business strategy.

A big thank you to the editorial team for ensuring consistency in the publication as well as the TripleOKLaw staff and pupils for their contributions.

We trust that this will be an enlightening read and look forward to receiving your feedback on the articles or any future articles.

Thank you for your continued support.

Happy Holidays and Good Tidings For The New Year!

Janet Othero



Managing Partner's Note

I am proud to present our final issue of Above the Standard for this year.

This has been a year in which we have experienced significant growth both in terms of our practice areas and resources and we continue to be grateful for the trust and confidence that our valued clients bestow on us. Certainly, there have been challenges but these have been met and overcome with the same methodical resolve with which we approach every task entrusted to us by our clients.

All in all, we remain grateful for the unwavering support of our clients and other business partners as we look forward to 2019.

With best wishes for Christmas and the New Year.

John M. Othuga

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Commercial and Corporate Support Practice

THE YEAR IN REVIEW

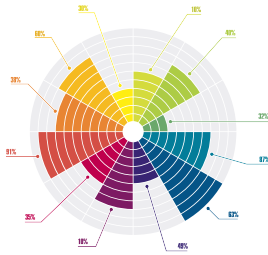


Jinaro Kibet
Maureen Mbaka

2 018 saw significant strides in the legal sphere that had a direct impact on doing business in the country. In line with the country's business environment's upward trend, Kenya increased its ranking in the World Bank Ease of Doing Business Index by 19 places moving up from its 2017 position of 80th place to 61st place out of the 190 economies surveyed.

Kenya increased its ranking in the World Bank Ease of Doing Business Index

61ST
190 OUT OF ECONOMIES SURVEYED.



Of concern and possibly likely to draw regulatory action in the coming year, was the shirking of corporate governance principles by publicly trading entities with actions such as deliberate incorrect financial reporting placing shareholders on the losing end.

Tax Changes

The adoption of the Finance Act 2018 saw changes to various existing tax laws in Kenya affecting, inter alia, Corporate income tax, Personal tax, VAT and Excise Duty. Application of its provisions will be staggered with some provisions taking effect mid-late 2018, others 1st January 2019 and some upon gazette of relevant regulations. Some of the highlights are: **Contributions to the National Housing Development Fund (NHDF)** - all employers and employees will each be required to contribute 1.5% of the employee's gross monthly earnings subject to a maximum limit of KES5k to the NHDF, effective upon gazette of relevant regulations. **Excise Duty:** 15% excise duty will be imposed on telephone and internet data services while 20% excise duty will be levied on fees charged on money transfer services by banks and other fees charged by financial institutions.

ALL EMPLOYERS AND EMPLOYEES WILL EACH BE REQUIRED TO CONTRIBUTE 1.5% OF THE EMPLOYEE'S GROSS MONTHLY EARNINGS

15% 

EXCISE DUTY WILL BE IMPOSED ON TELEPHONE AND INTERNET DATA SERVICES

20% 

WILL BE LEVIED ON FEES CHARGED ON MONEY TRANSFER SERVICES

Companies Registry Digitization

In line with the move to digitize government services, certain Companies Registry processes can now only be effected through the Registry's online e-citizen platform, Business Registration Service (BRS). The manual processing of other functions such as amendment of a company's Articles of Association, will slowly be phased out as the functions are uploaded onto the BRS system and physical counters at Sheria House are shut down.

Real Estate and Retail

As one of the four pillars of the government's Big Four Agenda, the government aims to build 1 million homes by 2022 made up of both affordable and social housing. The government will be looking to bridge the current housing deficit in the country by partnering with private entities to achieve this as well as providing regulations to facilitate acquisition of the housing units.

BIG FOUR AGENDA, PROJECTS TO BUILD

1MILLION

HOMES BY 2022 MADE UP OF BOTH AFFORDABLE AND SOCIAL HOUSING.



On the retail front, 2018 saw the setup of numerous shopping malls in the country as well as the entry of international flagship stores taking up the spaces. However, the influx of malls has led to an oversupply of retail space leading to slow uptake by lessees in Nairobi; 2019 may see the move of the bulk of construction of these centers from the capital to other county headquarters such as Mombasa.

Financial Sector

The financial sector experienced increased regulatory scrutiny following the collapse of two well known banks in the past two years as well as a focus on anti-money laundering as several banks were fined by the regulator for failure to adhere to the regulations requiring reporting of large transactions.

The sector also saw an increase in M&A activity with most recently and notably, NIC Group PLC and Commercial Bank of Africa (CBA) announcing the onset of merger discussions which will, should the consolidation succeed, establish the third largest lender by assets in the country behind only KCB and Equity.

3RD LARGEST LENDER BY ASSETS SHOULD THE NIC GROUP PLC AND COMMERCIAL BANK OF AFRICA (CBA) MERGER SUCCEED



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MAURITIAN BANK SBM HOLDINGS ACQUIRED 100% STAKE IN FIDELITY COMMERCIAL BANK

.....

CENTUM INVESTMENTS ACQUIRED 66% OF SIDIAN BANK'S SHARES 66%

In the last three years, the banking sector has seen seven other acquisition deals such as Mauritian Bank SBM Holdings acquiring 100 per cent stake in Fidelity Commercial Bank, and Chase Bank, I&M Holdings acquiring Giro Bank and Centum investments acquiring 66 per cent of Sidian Bank's shares. The coming year will likely see more banks rethink their strategies and take the consolidation route to take advantage of economies of scale by combining varied strengths to take on the larger existing institutions in the sector.

NSE Firms

Despite the positive outlook of the business environment, a number of listed companies across various sectors performed dismally with major companies placed under administration and others issuing profit warnings to shareholders. Lagged recovery from last year's political climate as well as high power costs have been cited as the cause for the drop-in profits. The now relatively stable governmental atmosphere (following "the handshake") may hopefully see a change of market conditions in the coming year.

Hospitality

The hospitality sector saw major growth with global hotel brands setting up shop in Kenya and gearing up to increase their hold on the market in the coming year. The big-name brands include Wyndham, CityBlue, Hilton, Marriot, Radisson, Accor, Dusit and Swiss International.

Capital Markets

Corporate governance guidelines in Kenya, found in the CMA Code of Corporate Governance Practices for Issuers of Securities to the Public, 2015 for listed companies and **Mwongozo** Code of Governance for state corporations, would require more stringent application to curb the current going-ons in corporations that have seen shareholders suffer losses and seemingly stable companies tumble.

According to the CMA's 2018 Report on the State of Corporate Governance of Issuers of Securities to the Public, majority of issuers scored a rating of "fair" with only 5% achieving the highest rank of

CMA 2018 Report on the State of Corporate Governance of Issuers of Securities to the Public

.....

5% ACHIEVED THE HIGHEST RANK OF "LEADERSHIP"

"leadership". As regards the Governance principle of "Transparency and Disclosure", the Banking, Energy & Petroleum, Insurance and Agriculture sectors were highlighted as needing improvement.

Many companies seem to have adopted a "tick-box" mentality as the prescribed codes do not explicitly provide for penalties for non-adherence.

With the misdeeds of various listed companies coming to light, public outcry has increased and more binding regulations may follow to ensure compliance, failure to which heavy fines or imprisonment terms may be imposed.

Private Equity

2018 saw increased Foreign Direct Investments in Kenya with investors optimistic of business prospects especially in SMEs, agribusiness and tech startups. The increase may be attributed to investor friendly policies such as tax incentives offered in SEZs (Special Economic Zones). The investors included South Africa's MTN and Intact Software, US's Microsoft, Oracle and Johnson & Johnson.

2019 will see even more investments attracted with regard to larger deals.

PPPs

Pursuit of projects through Public Private Partnerships increased in 2018 supported by the stable regulatory environment provided by the PPP Act. However, a hitch moving forward presents itself in form of the recent Government Support Measure Policy that may affect access to financing by investors. The policy limits the provision of government guarantees, issuance of letters of comfort and political risk covers

as this will only be issued. The policy limits the provision of government guarantees; Government Support Measures such as letters of comfort and political risk covers will only be issued "in very exceptional circumstances for projects that are considered strategic and that are of public interest, as approved by Cabinet."

Key PPP projects include the second Nyali Bridge project in Mombasa, the Nairobi-Nakuru-Mau Summit highway and the Likoni Cable Car project.

Energy

The country launched a strategy to provide energy access to all by 2022 in line with meeting the Vision 2030's development goals as well as delivery of the Big Four agenda pillars. 2019 will likely see increase in investment in this sector especially in "green energy" (wind and solar) in Kenya.

The sector also saw the commissioning of the Lake Turkana Wind Project lauded as the single largest private investment in Kenya's history which injected 310 megawatts into the grid promising to bring down the cost of power for the consumer.



LAKE TURKANA WIND PROJECT INJECTED
310 MEGAWATTS
INTO THE GRID

For more information on this, contact ...
@tripleoklaw.com

KYA

Tom Onyango

Interviewer: Mbula Nzuki

Mbula: Who is Mr. Tom Onyango in a few words?

Tom: A passionate lawyer, a father of two lovely daughters and a husband to an amazing wife.

Mbula: What led you to choosing a career in law as opposed to any other?

Tom: While choosing careers during A-levels, I naturally gravitated towards law and could not think of any alternative career. It's only now that I regret not carving out a career in Interior Design!

Mbula: Interior Design! *(In amazement)* Interesting... so are you happy that you chose the legal path?

Tom: Very much so! In fact, I struggle to think of an alternative career.

Mbula: You are a new addition to the crayon box, which colour would you be and why?

Tom: Orange.

Mbula: So that's your favourite colour!

Tom: *(In protest)* No, it's not my favourite colour. It is the colour I would be. *(thinking out loud)* I don't have anything in orange... *(We both chuckle as I point out the hints of orange on his tie and... the top to his water bottle is orange too!)*

Mbula: Being Head of Conveyance and Real Estate Department, what are some the developments or highlights in this practice area that stood out for you in 2018?

Tom: I think it is the move towards blockchain in registration of titles, which is something that I would like for us as a firm to lead in by incorporating the new legal technologies in all transactions in real property. The digitization of records and processes at the land's registry is a remarkable move bound to go a long way towards reducing fraud in land transactions and hopefully sort out the fake titles menace in the country.

Mbula: We hope 2019 will be grander than 2018, what should we anticipate from your department

and the firm generally?

Tom: We hope to streamline the department, so we can have specific people handle specific matters in a bid to ensure efficiency in our service delivery. We also hope to create greater awareness within our firm on the nature of work we do and our great emphasis on unrivaled client care in our service delivery.

As for the firm, I see growth and greater entrenchment of the idea of working in teams, diversification in our practice areas. Basically, TripleOKLaw will experience monumental growth in 2019 and be renown within the region and beyond as competitive full-service firm.

Mbula: If you were a book, which book would you be and why?

Tom: I read a lot, my reading interests are very varied too... the most interesting book I've read so far is *Catch 22* by Joseph Heller. The intricate web in the satire and the many things going in the book, which look separate and independent yet part of the whole story. I admire the author's ability to tell a story that seems complex yet so simple in the end.

Mbula: Three of your



pupils (Sherry, Chris and I) are getting admitted to the bar on 29th November. If we were to go back in time to 27th November 1987, what advice would you give your younger self through us?

Tom: Be patient with acquisition of knowledge. We tend to be in too much of a hurry to succeed but lasting success requires patience, hard work and consistency in giving great advice to clients.

Mbula: Thank you for the great advice, will definitely put it to good use.

Tom: *(Wearing a knowing smile)* I was given similar advice by Lady Justice Effie Owuor (Rtd) while still in Law School and looking back everything makes perfect sense... nowadays there's stiff competition amongst lawyers, so much go-getting, getting to go and going to get that people tend to forget that we are called to apply ourselves to the profession...

(Deep, reflective, compelling.)

Mbula: There are fears that lawyers could be replaced by Artificial Intelligence (AI); is this fear real or is it romanticized?

Tom: I don't have that fear, we just need to evolve and adjust accordingly. There's need for adjustment but there will always be need for interaction and value addition. Lawyers just need to adapt fast and keep abreast with new developments in legal technology.

Mbula: Hypothetically, a protégé of yours is doing really well and would love to gift you a watch of your choice. Which one would you pick and why?

Tom: (Giggling) Please tell that Protégé I would love me a Nicolas Rieussec by MontBlanc. MontBlanc watches are a piece of art! *(Dear Protégé of Mr. Onyango's kindly do the needful!!)*

Mbula: What's your spirit animal? Who would you be in the animal kingdom?

Tom: Definitely not an antelope! *(he quips)* It has to be the Lion. I would be a Lion.

Mbula: Hypothetically, one of your daughters is getting married, what advice would you give her on her wedding day?

Tom: Approach marriage with an open mind and enjoy the experience. I would advise her not to have too many expectations.

Mbula: If you were to give back to your primary school what gift would you give them?

Tom: I went to Homabay Primary School and I would gift them a fully equipped library.

Mbula: Excellent. If you won a fully paid trip to any place of choice, where would you go and which two people *(dead or alive)?* No family members.

Tom: I'd go back to Israel with Martin Luther King Jr. for the great man he was and his understanding of the Christian faith and journey. The second would be my late friend Sammy Muriuki. He would have enjoyed and been amazed by the whole experience.

Mbula: Favourite song?

Tom: *Oh Night Divine* by Celine Dion.

Mbula: Favourite restaurant locally?

Tom: *Furusato for the teppanyaki and portions.*

Mbula: Parting shot for our readers?

Tom: I really hope that the firm gets to commence its construction process, that way we get to have a place to call our 'home'. Secondly, I am excited about the next generation of leaders in the firm and it is exciting that we get to continually mold a crop of new futuristic professionals who can run the firm's affairs in years to come. Finally, I'd like to wish all our clients and their families blessed holidays and a prosperous 2019.

Mbula: This has been real fun and fruitful. Thank you so much for your time and answering all questions!!

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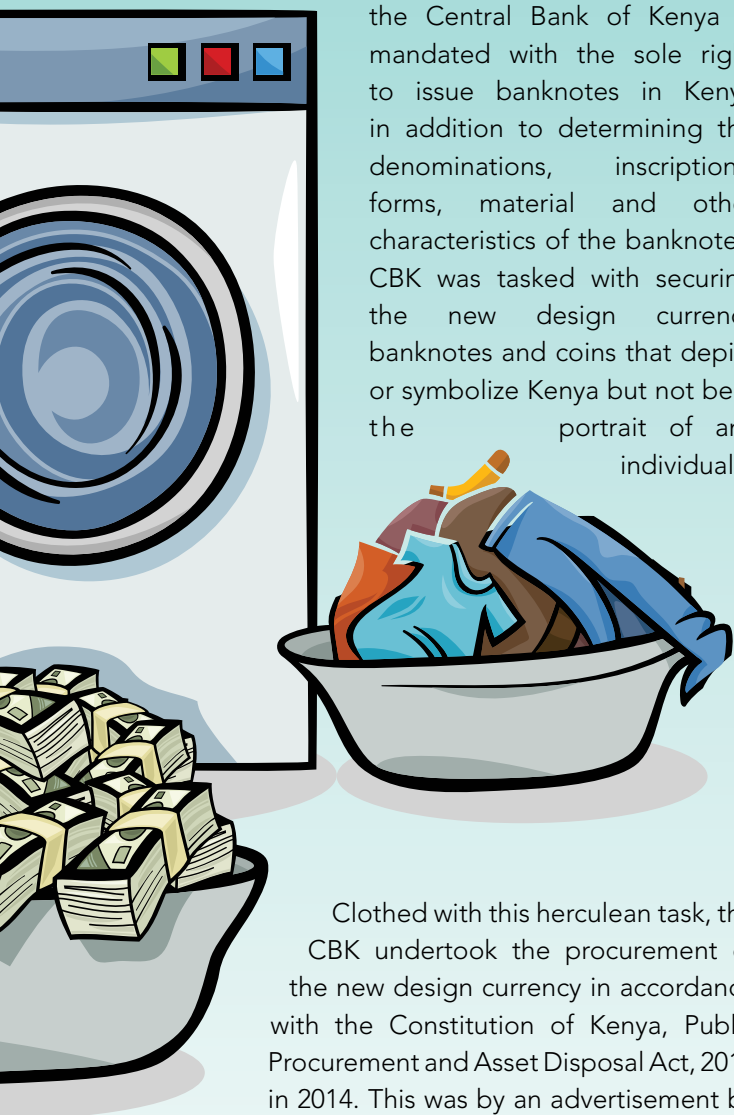
New Money New Responsibilities



James Ochieng Oduol
Kivindyo Munyao

T On the 11th December 2018, the President of Kenya announced the new faces of the Kenyan currencies. The Kshs 5 coin will bear the image of a rhino, Kshs 10 coin the image of a lion, while the Sh20 coin bears the image of an elephant.

this was pursuant to the Constitutional requirements laid in Article 231(4) where the Central Bank of Kenya is mandated with the sole right to issue banknotes in Kenya in addition to determining the denominations, inscriptions, forms, material and other characteristics of the banknotes. CBK was tasked with securing the new design currency banknotes and coins that depict or symbolize Kenya but not bear the portrait of any individual.



Clothed with this herculean task, the CBK undertook the procurement of the new design currency in accordance with the Constitution of Kenya, Public Procurement and Asset Disposal Act, 2015 in 2014. This was by an advertisement by the CBK for Prequalification of Suppliers for Production of Banknote Origination Material and Currency Printing Services. This was done both locally and internationally in Tender number CBK/043/2013/2014, published in two local dailies, a regional weekly paper and in the CBK's website.

That procurement process became a fully-fledged legal combat when the competing parties and other interested parties proceeded to court to challenge that procurement process. The parties involved litigated the procurement matters through the tough and strenuous battle grounds of courts culminating to the 12th October 2018 decision by the Court of Appeal which was the green light for CBK to execute its mandate under the Constitution.



the most affected parties will be those who are sitting with unaccounted cash or “mattress money” if you may. They will either have to extinguish it or find a way to bring it back to the system through income disclosures or money laundering.



The priceless experience of litigating this historic matter, coupled with the continuous strengthening of the money laundering regime in the country, granted our litigation team an opportunity to give a cursory look at the impact of the new currency will have on the financial economy of the country from a short-term, medium and long-term point of view.

In the short term, many businesses which are highly dependent on cash or the official currency such as the informal sector will have to move to the use of surrogates of official currency such electronic money or mobile money. As a result, mobile money platforms will gain more traction as the alternative mode of operation. This mainly because the 'old money' will be removed from the market and the 'new' money will be disseminated in a controlled manner.

In the medium term, as the excess supply of cash is eliminated in the market, it will have a positive effect on the inflation. The economy will eventually start picking up and the volume of transactions would increase over time. The legitimate money will be deposited in the financial institutions. The huge amount of deposits with financial institutions will bring about lowering of the interest rate another animal which has been a contentious financial point for a while.

However, the most affected parties will be those who are sitting with unaccounted cash or “mattress money” if you may. They will either have to extinguish it or find a way to bring it back to the system through income disclosures or money laundering.



Failure to comply with the laid-out procedures, the financial institutions are at a risk of attracting colossal amounts of penalties.

The money laundering option will be nearly impossible to use as various bodies have been tasked with flagging any suspicious or out of place transactions.

For instance, the CBK in March of 2018 issued guidance note on conducting Money laundering Financing Risk Assessment to all institutions licensed under the Banking Act and their foreign branches and subsidiaries. This Guidance Note sets the minimum standards that institutions should adopt to develop an effective money laundering risk assessment framework lead by the Money Laundering Reporting Officer appointed by the financial institution who will be the central point of contact with CBK for the purposes of issues to deal with money laundering.

Failure to comply with the laid-out procedures, the financial institutions are at a risk of attracting colossal amounts of penalties.

Additionally, the Ethics and Anti- Corruption Commission (EACC) established pursuant to Article 79 of the Constitution of Kenya has the mandate to investigate and recommend to the Director of Public Prosecutions (DPP) the prosecution of any acts of corruption, bribery or economic crimes or violation of codes of ethics or other matter prescribed under the EACC Act, the Anti-Corruption and Economic Crimes Act as well as the Bribery Act or any other law enacted pursuant to Chapter Six of the Constitution.

Thus, this does narrow the window of opportunity for any money laundering practice to take place because at the end of the day, each note or coin is a liability of the CBK and hence at all times the CBK ought to give an account of each given that it is the institution that procured the printing of the same coins and notes.

As Kenyans celebrate the dawn of new currencies and await with bated breath to use the new currencies, the level of accountability of both individuals and institutions in obtaining, handling and exchanging the 'new' money has just been raised to a whole new height.

Therefore, as a citizenry largely epitomized by the theme, cash rules everything around me, we will quickly come to learn that with new money comes new responsibilities.

For more information on this, contact
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A concise outlook on project financing

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Dr. Dan Kagagi

There is increasing demand for transactional advice by business entities when raising capital to either expand their businesses, or for specific development projects. This requires the business entities to develop strong working relationships with various financial partners and investors, both local and international, who are looking to invest debt or equity in suitable projects and companies.

When it comes to project financing the focus is to work closely with the parties involved to develop appropriate property strategies, identify the financial needs of the projects and package bankable projects for potential financiers and investors. To further ensure this comes off together seamlessly, market research & feasibility studies must be carried out to identify and mitigate risk. This should be coupled with solid project management for overall achievement of project deliverables.

It is advisable to ensure that parties secure proven expert advice on-property consulting, fundraising, project management, project finance and corporate finance when undertaking property development projects.

This combination of skills enables parties to effectively implement their strategies with bespoke professional support.

Market Research & Feasibility Studies

The first step in considering whether a project is viable for financing is to undertake detailed market studies of the location and general area of the development property. The study normally provides valuable insight into the prevailing demand, supply, market trends and dynamics of the property market in the area. It also brings to light what factors and features buyers or tenants are looking for in offices, malls, serviced apartments and residential homes. This further enables the parties involved to tailor the development to the needs of the market. The feasibility study analyses the results of the market research and cost of constructing the recommended development to confirm that it is a sound undertaking. The report will contain detailed assessment of the party's finances and sources of income and analyses their ability to meet the cost of financing the development through their own resources. Other recommendations that may be made are on any additional equity and/or debt that may be required to finance the development.



Property Development Strategy & Development Execution

There are property owners who have a lot of properties in their portfolio and often need professional assistance to develop a workable pipeline of projects, depending on the location of their properties. Best practice requires that one studies the property portfolio and undertakes suitable market research to enable them to craft an appropriate property development strategy. This strategy will consider the demand for different types of property developments, whether residential, commercial offices, retail, or warehousing; and their suitability given the location of the property and ease of securing finance for such developments. This informs the manner in which the project will be executed.

Other aspects involve identifying and advising on suitable project consultants, and once engaged, working with the consultants who prepare the concept drawings and project cost estimates. These are key to assessing the appetite from financial institutions and other investors in financing the projects and ultimately securing funding for the projects. A well-skilled



This combination of skills enables parties to effectively implement their strategies with bespoke professional support.



professional project management team should be capable of providing project management services for the development, that results in the project team bringing the project to a successful conclusion – on time and on budget.

Corporate & Project Finance

Various projects and companies require different forms of finance and investment. Debt finance will include term loans, mortgages, construction finance, pre-construction finance and overdrafts. For parties that require debt, their transaction advisors should help them prepare and submit detailed applications to financial institutions for consideration. They can further assist in making arrangements with the financial institution that offers the most suitable package that meets the client's needs; and thereafter assist in negotiations. It is also important to assist parties being financed to monitor drawdowns and disbursements of the facility to the project to ensure there is accountability of funds released.

In cases where parties require equity, one of the ways to approach financing is to present the investment propositions to institutional clients and high net worth investors, taking care to identify the most suitable investor for the client's project. Once the financial commitments are secured, the parties work together with the financial partners to ensure that the financial relationship is secured through suitable documentation drafted by their transaction advisors for the benefit of the project.

Project Management

Finally, as with most undertakings, project management services cannot be taken lightly. Project management includes project planning, contract

management, project and site meetings, construction management, cost control, risk management and project handover. It also entails the selection of the project consultants (architect, quantity surveyor, civil/structural engineer, mechanical & electrical engineer, physical planner) and contractor. Overseeing all aspects of a project and supervising a team of professionals to ensure timely deliverables on the parties involved is what leads to successful projects. This also reduces any incidences of disputes or setbacks that may cause delays that could adversely affect the financial arrangements a party has secured.

CONCLUSION

In rendering professional support to parties who are looking at this novel approach in solving their financing needs, one must fully understand the needs of the parties. One has to walk the financial journey with them, help them solve the challenges involved in raising finance and managing projects, hence contributing to the growth of their wealth.

This is aptly reflected in our financial services team motto: **Your Financial Growth. Our Business.**

For more information on this, contact

Dr. Dan Kagagi,

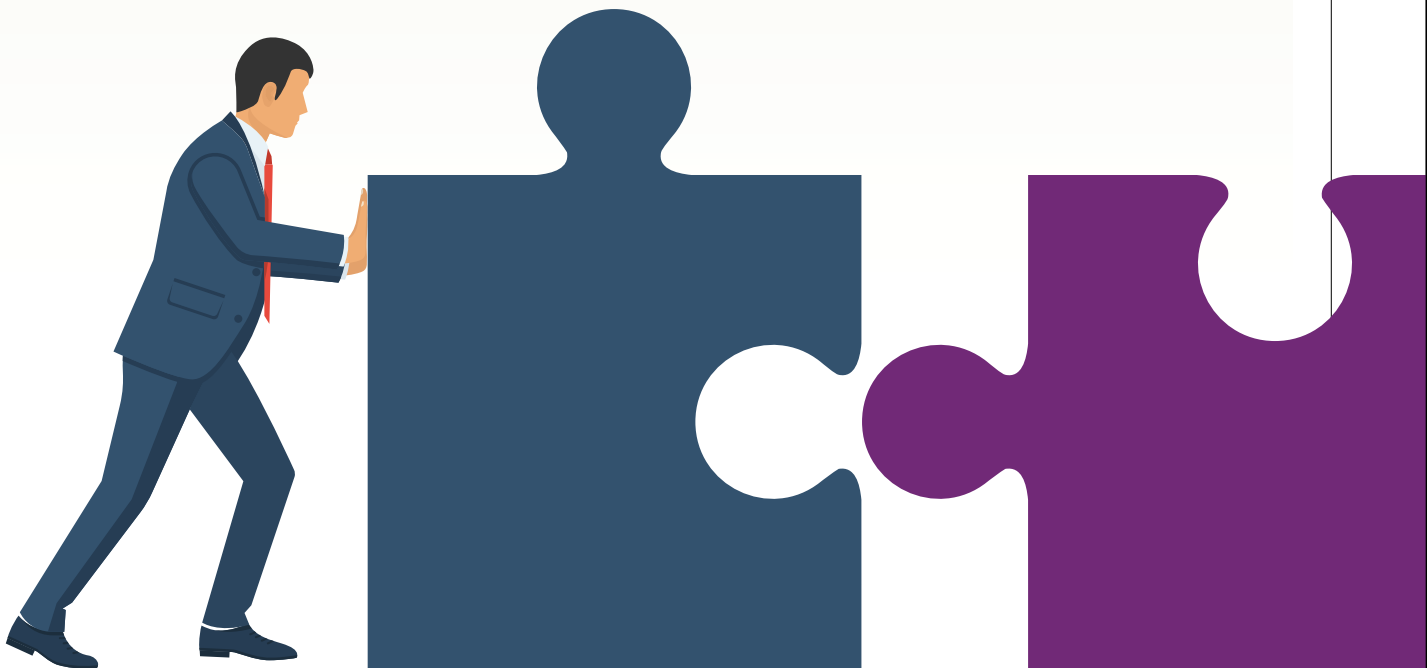
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The impact of limited liability partnerships on the legal practice in Kenya

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Tom Onyango
Renice Midar
Robert Dachi



A partnership embodies a relationship that exists between persons who carry on business in common with the view to making a profit. This position has been the mainstay in the formation of law firms in Kenya, which until recently have been general partnerships between advocates who agree to pool resources and practice law under a common name. Traditional partnerships as vehicles for practice came with the disadvantage of an unlimited, joint and several liability. The issue of sharing of risks and rewards are the bane of existence of most partnerships.

Limited Liability Partnerships Act 2011, which came into force in 2012 is the enabling statute of these entities. With the advent of the Limited Liability Partnerships ("LLPs") in Kenya, most law firms have abandoned standard general partnerships in favour of LLPs. This has had a ripple effect on practice as LLPs, by their very nature, do not conform to the norm and expectations of legal practice in Kenya as envisaged in the Advocates Act.

One challenge with this arrangement was that Rules 12 and 14 of the Advocates Practice Rules do not allow advocates to practice under any name other than the names of the advocates or the names of the past or present members of the firm unless waived by the Law Society of Kenya (LSK) Council. As this was becoming an issue that needed to be addressed, the LSK constituted a sub-committee on LLPs in 2013 to look into it.

LLPs vis a viz the Advocates Act

When it comes to LLPs, the question abound is whether indeed lawyers can practice in an LLP structure contrary to what is envisaged under the Advocates Act. Further to this, LLPs have a different legal character from the advocates practising under it noting that the LSK issues practising licenses to individuals.

The tenure and texture of the Advocates Act suggests that the term advocate refers to an individual and not a

legal person, for instance a company or LLP. The old model of legal partnerships had the partners in the firm registering the business in their personal names and using the same names to operate the firm. LLPs on the other hand deliver legal services as a legal entity independent of the partners. The Advocates Act does not in strict sense provide any regulation on the activities of such law firms.



LLPs have a continuing legal existence independent of the members such that a change in the partners does not affect the existence, rights or obligations of the partnership. LLPs can enter into contracts in their own name rather than through individual partners on behalf of the partnership.

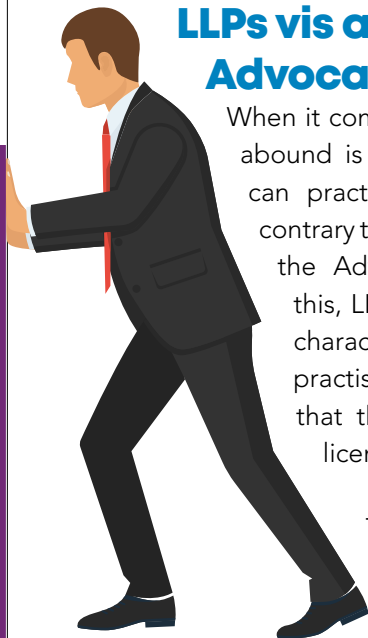
There is a school of thought who believe that conversion into LLPs is quite in order as the Advocates Act permits a partnership but does not specify the nature of the partnership. The only restriction is that one should not have as a partner anyone unqualified to be an advocate, as this would bring into play Sections 31(an unqualified person not to act as an advocate), 34(unqualified person not to prepare certain documents and 46(invalid documents) of the Advocates Act.

Further, some advocates have indicated their reluctance to accept undertakings from law firms operating as LLPs. The legal implication with such undertakings being from whom the undertaking is coming from and against whom is it binding, the advocate issuing it or the LLP.

What is a limited liability partnership

Unlike the traditional form of partnerships, an LLP is a hybrid business entity with the characteristics of both an unincorporated partnership and a formally structured corporate entity.

LLPs have a continuing legal existence independent of the members such that a change in the partners does not affect the existence, rights or obligations of the partnership. LLPs can enter into contracts in their own name rather than through individual partners on behalf of the partnership. The business acquires a corporate identity thus distinct from the partners



as opposed to other partnerships where property, for example, had to be held in the names of the partners jointly. With an LLP, title to property remains in the LLP regardless of change in partners.

There are also more financing options available to LLPs because the firm gives the guarantee or security thus reducing an investor's risks, compared to general partnerships where individual partners act as personal guarantors. Finally, just like a limited company, the liability of partners in an LLP is limited to what they put in at the time of formation.

The hybrid nature of LLP's makes them distinct and consequently they do not fall into the parameters under which law firms are intended to practice in Kenya. This has made them an anomaly existing in a grey area of law with regards to the regulation of law firms.

Benefits of converting into an LLP

The traditional business unit for lawyers has always been either a sole proprietorship or a general partnership. Some of the reasons that have necessitated the adoption of LLPs by legal practitioners are as follows:

a) Risk management and limitation of liability

As law firms take on more complex matters and transactions that attract an unprecedented amount of risk, it has become a matter of necessity to have lawyers indemnified from personally absorbing losses. This led to the adoption of LLPs which offer limited liability to the members of the partnership.

A limited liability partnership offers protection for all partners from claims against the LLP as opposed to a general partnership where partners have unlimited liability and are liable for the decisions of the other partners. An LLP being a body corporate entity, liability is only on the LLP and not of partners. Therefore, a person is not personally liable, directly or indirectly, for an obligation arising from contract or tort only because the person is a

partner of the LLP. The liability of the partner is only to the extent of your contribution to the entity.

b) Size

The massive growth of personnel in law firms has necessitated the adoption of a business unit that will accommodate and manage the multiple interests of different parties. LLPs offer a viable vehicle for sustainable growth of law firms as business units as opposed to sole proprietorships or general partnerships as LLPs afford an opportunity to break through the technical requirement of 20 partners as was the case in general partnerships.

c) Succession

The development of law firms into large business units with multiple interests has made it imperative that the firms survives the lifespans of its founders. Section 6(2) of the LLP Act provides that once registered, an LLP becomes "a body corporate with perpetual succession with a legal personality separate from that of its partners."

LLPs therefore provide lawyers with this avenue for succession as opposed to sole proprietorships and general partnerships that are wound up upon the demise of the founding members. This characteristic of LLPs has revolutionized the way law firms are viewed as business units as it is now possible for law firms to outlive their founders.

d) Branding

Traditionally, law firms were considered as an extension of the practicing lawyer and could only be registered in the practitioners' name. This position had been reinforced by the Law Society of Kenya through its regulations on the formations of law firms.

However, as LLPs are formed and registered as business entities under the LLP Act, there is more leverage allowed to lawyers to establish the identity of their firms and build brand recognition.

This has led to the rise of branded law firms which are tailored to address the interest of their founders as well as target a specific clientele. This branding has been made possible through the use of acronyms as special names to create brand recognition. The leeway in branding also comes with the advantage of de-ethnicising law firms.

e) Taxation

With regards to taxation, LLPs are a tax transparent, they file tax returns but are not a taxable entity. LLPs offer a unique advantage to lawyers as they are able to enjoy the benefits of having a corporate body without being subjected to corporation tax.

This is because partnership income is taxed (at individual level on their share of distributable profits) in the hands of the individual partners and not at the firm level. Partner dividends are reported on the partners' personal tax returns. This is different from companies where taxation is at the entity level and any dividends also taxed in the hands of shareholders.

Management of LLPs

An LLP must have at least two partners and one manager. It is an offence to carry on business as an LLP by one person for more than two years. All the partners have a right to take part in the management of the LLP.

The manager is personally liable for all penalties imposed for failure to discharge her duties unless she can prove that she is not liable. Further, an LLP must keep accounting records of the partnership. Decision making processes could be unanimous or as provided by the partnership agreement.

Indemnity and Professional Undertakings

Section 10 of the LLP Act indemnifies the partners in an LLP from any liability that may arise out of their actions in their ordinary course of business. The limitation of liability has given rise to a grey area in law in that advocates who would traditionally be sued in their professional capacity are now indemnified by their firms. This is contrary to the prevailing rule that an advocate is personally liable for acts committed in his professional capacity.

This development raises a question as to whether the partners in an LLP can be held accountable in a court of law for their actions and whether the indemnification offered by the LLP is absolute. Given that this is an evolving aspect, the arising issues are bound to be addressed through legislation and court decisions.





LLPs present a major development for the legal fraternity and may bring about a lot of good if properly regulated. However, as the Law Society is yet to recognize this paradigm shift the result is that the existing laws and regulations governing law firms fail to adequately address the emerging issues that have taken shape.



As regards undertakings, the reluctance by some lawyers to accept undertakings from LLPs has been due to the ambiguity on the enforceability of such undertakings. In **Harcus Sinclair LLP & Anor v. Young Lawyers Ltd (2017) EWHC 2900**, the case concerned allegations of professional misconduct on the part of a firm of solicitors in connection with an undertaking and allegations of breach of confidence in connection with the use of information produced under a non-disclosure agreement that had been signed by a partner. The question was whether the partner signed as a solicitor or as an agent of the Sinclair LLP. If indeed it was an undertaking, could it be enforced against the partner or the firm.

The UK High Court found that it did not have the supervisory jurisdiction over corporate bodies, such as Limited Liability Partnerships or Limited Companies, with regards to the enforcement of solicitors' undertakings. The court held that its supervisory jurisdiction with regards to undertakings is limited only to those issued by solicitors in their personal capacity as officers of the law. Therefore, a solicitor who gives an undertaking on behalf of his firm which is a corporate body, is not enforceable against the firm and as such an undertaking is moot.

The court further observed that parties dealing with solicitors practicing through recognized bodies, such as limited liability partnerships and companies, need to be careful to ensure that solicitor's undertakings are given personally by individual solicitors, rather than on behalf of the relevant recognized body.

From the foregoing case in England, it is evident that the common law position is that undertakings can only be enforced against a solicitor/advocate as an officer of the court and not a corporate body even if such an entity provides legal services as its core business.

Conclusion

It is evident from the foregoing discussion that the rapid adoption of LLPs by the legal profession is and continues to be unprecedented. LLPs have revolutionized the formation, structure and regulation of law firms as business units. For instance, the prevailing ambiguity in the term advocate as referring to an individual and not a legal person should be addressed to allow for practice in any form including LLPs and LLC (as is the case in the UK) so long as the activities of such bodies are regulated.

LLPs present a major development for the legal fraternity and may bring about a lot of good if properly regulated. However, as the Law Society is yet to recognize this paradigm shift the result is that the existing laws and regulations governing law firms fail to adequately address the emerging issues that have taken shape. The law follows a product, LLPs are here, the law should therefore be developed to meet up with the current developments.

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Shaping Kenya's digital future through positive legislation

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Robert Dachi
Fiona Makaka
Janet Othoro
Catherine Kariuki

"The internet is the first thing that humanity has built that humanity doesn't understand; the largest experiment in anarchy that we have ever had"

– Eric Shmit, Former CEO Google

The world is experiencing a technological revolution that is fundamentally altering the way people work, live and interact with each other. This technological leap is being referred to as the fourth industrial revolution due to the radical changes and developments that are being experienced in social and economic spheres.



Development of these new spheres has brought with it unforeseen vices as offenders move from traditional crime to the digital landscape.

Kenya (often referred to as the Silicon Savannah) has emerged as an innovation leader in technology and digitization in Africa. Developments such as blockchain, artificial intelligence, cryptocurrency, unprecedented processing power and widespread connectivity through mobile devices have created a myriad of opportunities for innovation, employment and empowerment that were previously not available to the masses. However, development of these new spheres has brought with it unforeseen vices as offenders move from traditional crime to the digital landscape.

There is an urgent need to govern rights, interests and obligations of stakeholders in the digital spectrum in order to ensure markets run effectively and protect consumers. Legislators need to ensure that the legislation enables rather than disables innovation.

Regulatory landscape in the past few years

Policy makers first started taking a keen note of the technology and innovation industry in 2011 with the introduction of mobile money into the financial markets. In 2012, parliament passed the Science Technology and Innovation Bill which was eventually assented to by the then President in 2013. The upshot of this legislation was to facilitate promotion, co-ordination and regulation of the progress of science, technology and innovation in Kenya and to entrench science, technology and innovation into the national production system.

The Ministry of Information Communication and Technology released the National ICT Policy in 2016. In its foreword it states that it is meant to provide

“a pro-active policy and regulatory framework that is not only in synch with contemporary technological realities and dynamics, but also expected to guide the orderly development of the ICT sector in such a way as to ensure maximum developmental impact for the benefit of all Kenyans.”

Since then, key legislations have been enacted to govern innovation and digitisation;-

a) Kenya Information and Communication Act, 2015 (KICA)

This Act was enacted in 1998 but revised in 2015. It established the Communications Authority of Kenya which has the task of facilitating the development of the information and communications sector and electronic commerce.

In consideration of the economic effects of digitization, this Act and its regulations for instance govern and license the marketing and promotional activities done through short codes (SMS) such as bulk SMS marketing. The Kenya Information and Communications (Consumer protection) Regulations 2010 for instance, address consumer protection issues and require that consumers must be able to opt in and accept to receive such messages and to opt out of the services.

b) National Payment Systems Act, 2011 (NPSA)

The unprecedented shift from traditional banking to mobile banking especially with the advent of mobile money technologies such as M-PESA, has necessitated regulation of Mobile Network Operators (MNOs). M-PESA managed to disrupt the financial market and went on to onboard a huge portion of the Kenyan population that was previously unbanked. The financial market had previously been dominated by entities that were licensed and regulated.

The NPSA was therefore enacted to govern the relationship between MNOs, consumers

and the Central Bank of Kenya (CBK). The Act also sets out the licensing obligations of payment service providers and further empowers CBK to issue guidelines on emerging practises in the payment systems sector to curb money laundering activities or facilitate disclosure of suspicious transactions.

c) Science, Technology and Innovation Act, 2013 (STIA)

STIA established the National Innovation Agency with the sole objective of nurturing innovation. The Agency's role was to assist young innovators with funding, mobilization of resources, connecting them with appropriate partners and intellectual property advice. It is rather questionable whether this objective has been achieved given that many innovators are not aware of the existence of the agency. Most innovators in Kenya still use private funding, business angels, debt & equity as the most common ways of funding their start-ups.

Recently, the Ministry of ICT and ICT Authority rolled out a digital white box which seeks to offer a safe space for innovators to test their products and receive mentorship. It also aids in identification of suitable ICT products that the government can procure.

d) Proceeds of Crime and Anti – Money Laundering Act, 2013

With the fast rate of disruption in the financial services industry and rise of a, cashless economy, it is expected that criminal activities in the sector will revolutionise. The Act places stringent obligations on financial institutions to report to the Financial Regulatory Centre any suspicious transactional activity, especially with money laundering becoming rampant and sophisticated.

e) Computer Misuse and Cybercrime Act

Technological innovation has proven to be a



double-edged sword. Cyber war, cyber security, cyber terror, cyber activism are emerging issues that have become synonymous with technology. As criminals adapt to technological advances, so must the law.

The above Act was enacted on 30th May 2018 with the purpose of enabling timely and effective detection, prohibition, prevention, response, investigation and prosecution of computer and cybercrimes and to facilitate international co-operation in dealing with computer and cybercrime matters.

If properly implemented, the Act provides an extensive regime for the prevention and prosecution of cybercrimes in the country. Previous legislation was insufficient and outdated especially in relation to collection



and presentation of evidence in court and international co-operation.

However, it is important to note that a host of provisions of the Act are currently suspended by an order of the High Court (Justice Mwita) in Constitutional Petition 206 of 2018 filed by the Bloggers Association of Kenya (BAKE), Article 19 and the Kenya Union of Journalists (KUJ). The basis of the case filed is that these sections infringe Article 33 of the constitution that guarantees freedom of expression.

Relevant bills currently in parliament

As legislation attempts to keep pace with technology, several Bills were tabled before parliament in the year 2018.

The Data Protection Bill reinforces the constitutional right to privacy (article 31) which is a key concern in a digital society where processes depend on sharing customer data. Many organizations are continuously making data driven decisions and hence the need to regulate use of this data and data subject rights.

The Financial Conduct Market Bill is also another proposed bill that was necessitated by the growth of the mobile credit lending industry. Even as financial innovation has positively contributed towards financial inclusion, the unregulated space has seen a rise in alternative lending products offered via Mobile loan applications. A recent newspaper article put the number of unregulated microlenders (majority being fintech start-ups) at 500 and these entities have disrupted commercial bank lending services.

Lenders use mobile based data to guide decisions to lend. With such an influx there is a likelihood of adoption of predatory lending habits which this bill seeks to address.

Laws that need to be amended

Even as new laws are enacted to catch up with innovation, some of the existing laws need to be reviewed in order to correspond with technological developments:

- c) **Income Tax Act:** It should be reviewed to recognise digital assets and digital currency. The Kenya Revenue Authority stands to collect a lot of revenue earned through trade in cryptocurrency;
- d) **Evidence Act:** It should be reviewed to recognize digital evidence. The provisions relating to collection, preservation and presentation of electronic evidence are not sufficient;
- e) **Penal Code:** In its current form it does not recognise modern technologically enhanced crimes;

The judiciary also needs to leverage on technology and innovation to disrupt the way it delivers its services. For instance, there is need to review its practice directions. Judicial courts were fitted with electronic equipment to expedite judicial processes. These were meant to replace the hand recording practise that judges used to collect evidence and testimonies. Most of the equipment remains unutilised in courtrooms and judges still record by writing. Although some courts like the Court of Appeal accept certain pleadings in soft copy (through a flash disk), there is still a requirement to present and file hard copies. The judiciary needs to wholly embrace technological disruption.

The Judiciary should also consider having specialized courts to handle ICT related matters. China recently rolled out the internet court to handle internet related disputes and UAE has rolled out the Abu Dhabi Global Market Courts' digital courtroom that will use its digital platform to conduct all its business.



Lenders use mobile based data to guide decisions to lend. With such an influx there is a likelihood of adoption of predatory lending habits which this bill seeks to address.

Investigation and prosecution of cybercrimes and banking fraud is a function of the Director of Criminal Investigations. It is therefore important for the law enforcement to keep up with the changing face of cyber crimes and invest in the necessary infrastructure.

Digitization and the “Big Four” agenda

The government has set out its agenda of improving the manufacturing sector, providing universal healthcare, creating affordable housing and food security in the country under the “Big Four” agenda. Digitization is the crux of realizing these objectives.

The Ministry of ICT has been charged with the overall responsibility of providing and maintaining any ICT infrastructure needed in any of these sectors. One of the first initiatives has been to digitize government agency functions for expedited services. This has been done in partnership with certain providers like IBM, Oracle and Microsoft.

For instance, through the E-Citizen platform the government has ensured that setting up of entities can be done online without the need of filing any documents at the government offices. This has enabled foreign investors and entrepreneurs to achieve corporate identity efficiently. The other major services on this platform include the registration of persons, application of work permits, the registration of motor vehicles and certain land transaction procedures.

The registrar of persons will be able to have precise

data on Kenyan citizens and their location to enable the health provision sector map out a strategic plan on provision of healthcare. The ability to process and package medical data and share it across various government facilities such as rural dispensaries and county hospitals would enable doctors to be available for patients without traversing long distances.

The information collected and maintained on land transactions by the revenue authority and the lands offices will enable the stakeholders identify areas in need of affordable housing and the uptake of financing from financial institutions.

Conclusion

While regulation is important to ensure markets run effectively and consumers are protected, it is important to note that it is not necessarily mutually exclusive to innovation and over regulation has the potential of stifling innovation and erecting too many hurdles for a free market equation.

Some Kenyan regulators seem alive to this risk and in some instances have adopted a softer approach in determining the regulatory environment such as issuing guidelines as opposed to binding regulations. Further, to balance innovation and regulation, some regulators have rolled out regulatory sand boxes where innovators can test new products in a controlled testing environment with or without ‘regulatory relief’.

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Is a Commercial building distinct from the land on which it stands?

VALUE ADDED TAX ON COMMERCIAL REAL ESTATE

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Tom Onyango
Hilda Njoroge

On 29th November 2018, Justice Kasango delivered a judgement in *David Mwangi Ndengwa v Kenya Revenue Authority* (Civil Suit 541 of 2015) in which she made the declaration that Value Added Tax (VAT) is not payable on a transaction for the sale or purchase of land whether or not the building thereon is residential or commercial.

The case turned upon the interpretation of paragraph 8 in Part II of the First Schedule of the VAT Act 2013 which provides that, **'supply by way of sale, renting, leasing, hiring, letting of land or residential premises'** are exempted supplies. The issue for determination in the case was whether VAT is payable on a transaction for sale of land on which stands a commercial building.

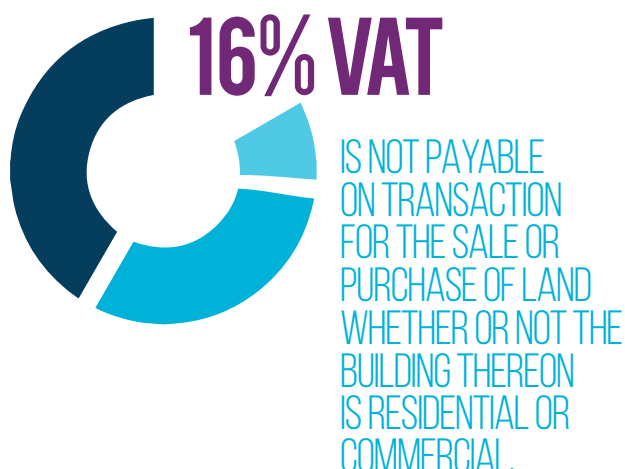
The Authority argued that paragraph 8 only applies to the sale of land and residential premises which have been specifically exempted stating that the plaintiff's purchase of commercial buildings was not VAT exempt.

The plaintiff argued that the Authority's reference to 'commercial premises' was not a legal term and that commercial premises also stand on land. The plaintiff argued that by stating that commercial premises are not exempt, the Authority was creating a legal distinction between land and the buildings that stand on land. The question for determination was, 'can one sell land without selling the building standing on that land?'

The court considered the definition of 'land' as provided by the Land Act 2012 and the Constitution

Justice Kasango Judgement

DAVID MWANGI NDENGWA VS
KENYA REVENUE AUTHORITY



of Kenya 2010. Article 260 of the Constitution defines land to include:

- The surface of the earth and the subsurface rock
- Any body of water on or under the surface
- Marine waters in the territorial sea and exclusive economic zone
- Natural resource completely contained on or under the surface' and
- The air space above the surface.

The court agreed with the plaintiff that the definition of land applies to what is on the surface of the earth and in the air space above the surface of the land.

The court noted that the VAT Act was ambiguous regarding the definition of land. The court's finding was that paragraph 8 exempts both land and residential premises and because what the plaintiff purchased was land, he was not liable to pay VAT on the purchase price. The court further considered the agreement for sale which referred to the sale property as 'land'.



the Authority's reference to 'commercial premises' was not a legal term and that commercial premises also stand on land.

The court noted that the ambiguity in paragraph 8 of Part II of the First Schedule of the VAT Act allowed for the presumption that the purchase of land where there is a commercial property is not exempt from VAT.

The court stated that the plaintiff's case was merited and that the Authority should seek clarity from the legislature on the exempt supplies. The court declared that VAT is not payable on transactions for the sale or purchase of land whether the buildings thereon are residential or commercial buildings. The court further ordered that the Authority should refund the VAT paid by the plaintiff with interest.

The case is of interest due to the complex nature of the application of VAT. As noted above the ambiguity in paragraph 8 allows for more than one interpretation. The drafters of the VAT Act 2018 did not consider the definition of 'commercial property' or of 'land' as provided for by the Constitution and the Land Act 2012. The ambiguity is worsened by the fact that 'taxable supply' is defined 'as a supply other than an exempt supply...'. There is no reference to commercial building or commercial property in the Act nor is it mentioned as an exempt supply. This also raises the question as to what a 'commercial building' is and who determines the definition of the same. Is it a commercial building based on past, current or future use? Is it a commercial building based on what the user in the title deed or land reads?

It is worthwhile to note that the repealed Value Added Tax Act 476 clearly exempted the 'sale of buildings' as distinct from 'residential buildings' (also exempt) from VAT. Did reference to 'sale of buildings' in the repealed Act refer to commercial buildings? The omission of the 'sale of buildings' from the exempt

supplies in the VAT Act 2013 could very well indicate that the intention of the new Act was to provide for VAT on commercial buildings. Clarity on what is VAT exempt or chargeable can only be provided by the legislature. It is likely that the issue will be tabled in parliament for consideration.

VAT on commercial buildings is generally applied subject to certain conditions in other jurisdictions such as Canada, Australia and UAE. In the United Kingdom, the general rule is that the sale or lease of a commercial property is exempt from VAT with certain exceptions to this rule i.e. VAT at the standard rate is applied to commercial property transactions where the property involved is new i.e. less than 3 years old, or where the vendor or landlord has elected to charge VAT. In the UK, commercial property owners are offered the option to charge VAT when selling or leasing their properties to enable them recoup VAT charged on acquisition or on any other costs related to the property, albeit the procedures are complex and subject to certain restrictions.

It should be noted that the court in *David Mwangi Ndengwa v Kenya Revenue Authority* made a pronouncement on the status of the law regarding VAT on commercial buildings by declaring that VAT is not payable on transactions for the sale or purchase of land whether or not the building thereon is residential or commercial. In order to rely on the decision to seek refunds on VAT on commercial property already paid, aggrieved persons would have to institute suits to rely on the decision as regards refunds on the properties affected.

It should be noted that the decision has been appealed by the Authority and it will be interesting to see how the Appellate court considers the same.

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TripleOKLaw Receives

CIO100

**BRONZE MARK IN RECOGNITION FOR EXCELLENCE
IN ENTERPRISE INFORMATION TECHNOLOGY
ADOPTION**



Francis Mwangi

Recently at the just concluded CIO East Africa 100 awards at Enashipai Resort and Spa in Naivasha, TripleOKlaw Advocates was awarded the Bronze mark in recognition for its exemplary adoption and use of Technology for various business processes. The sole aim of the awards is to recognise and celebrate organisations in both public and private sector that are adopting and using technology innovatively. TripleOKlaw's IT Director, Mr. Francis Mwangi sheds some more light on the firm's digital transformation journey.

Q. How did it feel to have your firm recognised for adoption and innovation at the CIO East Africa 2018 Symposium and Awards?

A. It was a great feeling getting the award and being recognised among the top 100 organisations within the East African region for leading the pack in using technology to offer legal solutions to our clients.

Q. Let's talk about the CIO awards, why TripleOKLaw and not any other law firm?

A. TripleOKLaw has been on a rigorous business process automation journey over the past couple of years. We have weathered the storm and overcome various obstacles in our journey to become a law firm that recognises IT as a strategic business partner and not just a mere operational function as has been the case over the years. This has enabled us to go a long way towards providing superior client service to our customers.

Q. How did you find out that TripleOKLaw had been nominated for the awards?

A. I was notified via email that our firm had been nominated for the CIO 100 awards. Naturally, I was ecstatic and together with my team, we romanticised the idea of winning. Of course we were required to have a representative at the gala awards to be held at Enashipai Resort and Spa in Naivasha.

Q. How would you describe the firm's adoption of Technology when you joined 8 years ago?

A. I joined the firm when they were just beginning an automation process that involved converting all manual processes to digital. Over the years the firm has been able to move to an inhouse client management solution that makes it easier for advocates to provide first class services through an efficient and improved workflow process. The firm, being alive to the ever-rising need for digital presence, tasked me to come up with an interactive website that is easy to navigate on various electronic devices, what is commonly referred to as responsive design. Considering the fast pace at which technology is advancing, there is a constant need to carry out regular training for our staff on how to use various



technology platforms for improved efficiency.

Q. What would you say are some of the milestones that the firm has achieved in terms of technology adoption?

A. Well, for starters, we have moved business operations from an on-premise platform to the cloud platform. This has resulted in a significant reduction on our software licensing costs. We have also invested a lot towards revamping our website by giving it a modern look. In addition, we have embarked on digitizing most of our data and records.

We also take the security of our data and infrastructure very seriously and that's why every year we invest in carrying out a rigorous cyber security audit. It is imperative for any organisation that hosts its operational functions on digital platforms to assess and identify its areas of vulnerability and procure the right security solutions that can help avert a potential security breach. In collaboration with our various partners, we also carry out cybersecurity awareness training for our staff to ensure that they are aware of the risks that exist and how to mitigate against them.

Q. What would you say has been a major contributor towards TripleOKLaw's rapid digital transformation journey?

A. I must say that the staff at TripleOKLaw led by



We are collaborating with different organisations locally and abroad to explore ways in which we can leverage on some of the disruptive technologies such as Blockchain and Artificial Intelligence to offer top notch services within the legal industry.

.....

the Partners, have been very supportive over the years especially when the team in IT propose various initiatives that require quite a bit of investment in Technology as well upgrading our skillset. When you have the backing of the policy makers then you can use IT as a business enabler.

Also, the fact that IT is not viewed as a cost centre, but a business enabler allows my team and I to explore different solutions that would be of value to the firm. Finally, the ability to communicate in the boardroom using business language to explain technical terms allows the business owners to buy into your vision as you show them how your IT strategy marries into the overall business strategy.

Q. What are some of the initiatives that you and your team are working on internally to ensure that you remain competitive within the legal industry and win more accolades in future?

A. We are collaborating with different organisations locally and abroad to explore ways in which we can leverage on some of the disruptive technologies such as Blockchain and Artificial Intelligence to offer top notch services within the legal industry. Our aim is to put our firm on the map as the pioneers! Consequently, we hope that by implementing such disruptive practices, our Telecommunications, Media & Technology department is able to appreciate this as they continue to make inroads in provision of legal support services for businesses in this area of practice.

Q. Where do you hope to see TripleOKlaw in the next 1 year?

A. I want TripleOKLaw to be a firm that uses Technology in a big way to revolutionize the way legal services are provided and to continue being the firm that breaks away from the conventional way of doing business. I hope that next year our firm can scoop the overall CIO award for the organization/ firm of the year.

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TripleOKLaw Quarterly Client Cocktail Held at Serena in November 2018 where the keynote speaker was Dr. Habil Olaka of KBA



TripleOKLaw at the Strathmore University Law School CB Madan Awards



TripleOKLaw at the Annual Stan-Chart Marathon



TripleOKLaw Nazarene University Career Day fair



TripleOKLaw at the first ever LSK Nairobi Branch quiz night held in December.





EMPLOYEES OF THE QUARTER



John Ohaga
PARTNER CATEGORY



Isaac Kiche
ASSOCIATE CATEGORY



Dominic Lumwaji
SUPPORT TEAM
CATEGORY



Daniella Gumo
OPERATIONS TEAM
CATEGORY

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

We advise corporates, listed companies and financial institutions on the various regulatory requirements for businesses in various sector specific regulations considering the dynamic legal and regulatory framework.

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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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