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MEDIATION:

Unlocking the country's wealth locked up in court battles



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MERRY
Christmas
AND
Happy New Year



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Editor's Note



As we break for Christmas, remember that though conflict is inevitable, it's what you learn from it that is important. In the last few years, the drive to promote fair and faster justice has been buoyed by employing alternative dispute resolution mechanisms. In our Christmas edition, we examine the strides made by the Court Annexed Mediation drive by the Judiciary and look at the year in review from the dispute resolution perspective.

The Data Protection Act 2019 has sparked conversation this year bringing into perspective the personal rights that arise

in the age of technology. More technology related subjects are also addressed in this edition of The Above Standard. We continuously write on emerging legal issues and our articles can be read on our website www.tripleoklaw.com.

To wrap it up, take a trip with us through the highlights of the past year in pictures and publications. Do let us know what you would want covered in our 2020 issues at editorialteam@tripleoklaw.com.

Happy Holidays.

Franklin Cheluget

Managing Partner's Note



It is said that great change is preceded by chaos. I must say, this year has seen great change at TripleOKLaw LLP albeit without the bullet of chaos. We have seen growth in our various teams and successfully taken the quality of our work to the next level. With our two new joint Deputy Managing partners and a stream of new tech forward team members, we are toasting to ushering in more efficient systems to aid in service delivery. At TripleOKLaw, we are continually disrupting ourselves in order to venture into a new set of metrics in relation to legal services delivery. This closing edition highlights the best of the year in words and images.

As we close the year, we would like to extend a big thank you to our esteemed clients for continuing to let us serve you and the entire TripleOKLaw family for staying in stride with the changes. Here's to another merry year of going over and above!

John M. Ojuga

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COMPARATIVE ADVERTISEMENT: Bare-knuckle tactic or a consumer protection tool?

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**Jinaro Kibet
Bryan Mylo
Kevin Njuguna**

Professor Ross Petty and Paul Spink in their scholarly article titled ‘Comparative Advertising in the European Union’ opine that comparative advertisement involves the explicit or implicit presentation of a well-known rival product and trademark in the context of an assertion of the superior qualities of the advertised product. This article seeks to delve into the legal implications that arise in relation to comparative advertisement.

The laws in Kenya do not expressly prohibit the utilization of comparative advertisement. Nevertheless, such adverts ought to be used by adhering to competition laws and advertisement rules. Section 55 of the Competition Act (CA) makes it an offence for one promoting supply or use of

goods to falsely represent that goods or services are of a particular quality or standard.

Section 3 of the Trade Descriptions Act (**TD**A) is also of great significance. It expressly prohibits applying false description of any good. False trade description

Comparative advertisement involves the explicit or implicit presentation of a well-known rival product and trademark in the context of an assertion of the superior qualities of the advertised product.

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is defined under Section 9 of the TDA to include any trade description which is false or misleading in a material respect. Further, Section 6 of the Act provides that it shall be an offence for a person in the course of any trade to make a statement they know to be false relating to the nature of services offered in the course of trade.

Further to these laws, companies should further be alive to the provisions of the Kenyan Code of Advertising Practice and Direct Marketing in Kenya (**the Code**). The Code is a *sui generis* document prepared through an initiative between the Marketing Society of Kenya and the Association of Practitioners in Advertising. It is tailor-made for the purposes of ensuring decorum and dignity reigns in the running of advertisements. The Code, under Part VI lists succinct basic principles that ought to form the benchmark of any advert. The highlights of the principles, especially of relevance to this discourse, include truthfulness and substantiation.

Against this background, any company or business that desires to partake in comparative advertising ought to be guided by the foregoing provisions of the law. It is abundantly clear that any comparisons in terms of the nature of services or goods being advertised, though not prohibited, ought to be factual. Failure to abide by these laws and rules may expose a company to unpleasant legal consequences.

Three such consequences suffice for consideration.

Firstly, a misleading comparative advert can attract penal consequences. The CA for instance under Section 70 prescribes a penalty of either imprisonment not exceeding 5 years or a fine of Kshs.

10 million for any offence committed under the Act. Section 15 of the TDA on its part prescribes a penalty of either imprisonment of 5 years or a fine of Kshs. 5 million or both for any offence committed under the Act. Section 16 goes further to impose culpability on the official of a body corporation found to have violated the provisions of the TDA. It is therefore prudent for any person or corporate body desiring to promote a comparative advert to ensure the veracity of the contents of such an advert.

Secondly, a false or misleading advertisement can subject the advertising entity to civil proceedings. Comparative advertisement can ignite allegations of defamation or infringement of intellectual property rights. By depicting the products of a competitor as defective, unsuitable or below the required standards, the reputation of the competitor may be negatively

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UNDER SECTION 70, THE COMPETITION ACT PREScribes A PENALTY OF EITHER IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE OF KES

10 MILLION

FOR ANY OFFENCE COMMITTED UNDER THE ACT

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SECTION 15 OF THE TRADE DESCRIPTIONS ACT PREScribes A PENALTY OF EITHER IMPRISONMENT OF 5 YEARS OR A FINE OF KES

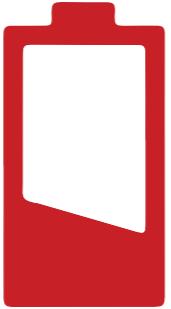
5 MILLION

OR BOTH FOR ANY OFFENCE COMMITTED UNDER THE ACT.

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GREEN IS ALWAYS CHARGED UP



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Council (SAC) created for purposes of determining appeals from the ASC. The ASC and SAC are empowered to deal with a variety of disputes that arise out of advertisements. It is however important to note that despite the fact the ASC and SAC were created for the special purpose of ensuring effective and timely resolution of advertisement disputes, courts have been reluctant to compel parties to submit themselves to these bodies. A party aggrieved by an advertisement can choose to seek redress before the ASC forum while the opposing party is at liberty to challenge the jurisdiction of the same.

Most cases in Court and decisions before the ASC reveal that most supporters of comparative advertisement, justify its usage by affirming that it promotes consumer protection. The Constitution of Kenya under Article 46 safeguards consumers' rights. Article 46(2) specifically provides that consumers have the right to information necessary for them to gain the full benefit of goods and services. This provision is rehashed under Article 35 (1) (b) of the Constitution. However, it is important to keep in mind that these rights are subject to limitations. The limitations include, but are not limited to, information that is false and misleading.

It is clear from the foregoing that nothing stops a person from promoting a comparative advert. Consumers can benefit from this form of advertising as they are offered salient information that guides them in purchasing a product. A party however who desires to use this form of advertising needs to be cautious and remain alive to the provisions of the law. Key among the considerations is ensuring the comparisons highlighted in the advert are truthful, not disparaging and capable of being fully substantiated.

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affected. Therefore, the competitor may seek damages on the basis that the comparative advert was calculated to injure its reputation and business. Such a suit would impose upon the advertising entity the burden of proving the comparison highlighted as being true. This is indisputably a herculean task especially considering that scientific or accountable proof must be rendered in discharging this burden.

Further, the intellectual property rights of the competitor that are the subject of the advertisement comes into play. In comparing products or services through an advert, the person advertising is likely to place reliance on the copyright or trademark of the competitor it is comparing its products or services to. The exploitation of the competitor's intellectual property rights in pursuit of the advertising entity interests may qualify as an actionable infringement.

Thirdly, The Code establishes the Advertisement Standards Committee (ASC) where a complaint may be lodged as a result of a comparative advertisement. The Code further creates the Standards Appeal



ICLG

The International Comparative Legal Guide to: International Arbitration 2019

16th Edition

A practical cross-border insight into international arbitration work

Published by Global Legal Group, in association with CDR, with contributions from:

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KYA

Jinaro Kibet

Interviewer: Emmerson Koome

Emmerson Koome took a minute to interview a man he greatly admires, a great teacher, commercial law practitioner and a man of purpose, Jinaro Kibet. Share in a few interesting thoughts from the man himself in this edition of Know Your Advocate.

Koome: Describe yourself in a few words?

Kibet: That's a very difficult question (*chuckles*). I don't know what to say... I am a very self-motivated person, very aware of where I have come from, and very focused on where I want to be, where I want to go, and what impact I have on other people.

Koome: Describe your life journey from a young age to date?

Kibet: I was brought up by my grandmother in Kapsisi village in Elgeyo Marakwet in very humble surroundings. I went to Chelingwa Primary School, I later joined St. Patrick's High School (*famous for athletes and volleyball*) and later UoN Law School.

Koome: If you were not a lawyer what would you have done instead?

Kibet: I would have been a priest. I went to a seminary after form 6 for a year to teach and also to grow spiritually.

Koome: I have noticed that you are very keen on spiritual matters, why is that?

Kibet: Yes, you have to balance life and its various demands. At every stage I pause to ask myself about my relationship with God and keep reflecting on that at every moment. In whatever we do, I believe we have to take cognizance of the fact that without that superbeing we can't do anything, and we must give glory to God every time.

Koome: As the team leader for the corporate and commercial law team what is your vision for the team?

Kibet: I started the team at the firm, although it is still very young. We are still finding our path and I am working very hard to ensure that the team is exposed to all the possibilities in the corporate world. I

always do my best to market the firm and the team through my networks and I think slowly we are getting there. My vision is to build a department as robust as the litigation department which we are well known for, and to place the firm as one of the leading firms in commercial law practice.

Koome: In a few weeks, the pupils here will be admitted to the bar. Looking back at your own experience when you were admitted to the bar in 1989, what would you advise them after 30 years in this business?

Kibet: One has to be realistic about the various changes and challenges that have come since that time.



When we got admitted we were very few, there were a myriad of opportunities, but there were not too many options in terms of the work we could do. Employment was either in private practice at a law firm, the state law office or the judiciary. Today, due to the changes in the ecosystem that the lawyers operate in, there are more opportunities. So, being a lawyer could be a springboard to other opportunities that are now open. My advice is keep your eyes wide open, stay focused, and learn to find the opportunities and possibilities that exist in the legal world.

Koome: We are in sporting season, Kipchoge, the Athletics Championships in Doha, the Rugby World Cup. How have been you been involved in sports?

Kibet: I have done so many things in the sports scene. While in School I was a national champion between 1981-1983 with the St. Patrick's Lawn Tennis team, I then later played for the UoN lawn tennis team and was a council member at Kenya Lawn Tennis Association. I am also an avid golfer, in fact I served as the chairperson of Karen Country Club in 2011-2012. I am Vice Chairperson of Athletics Kenya, and I also sit on a panel of the IAAF. I am also involved in motorsports serving as the chairperson of the AA Kenya.

Koome: Shifting gears, if you were stuck on an island with a person who is not a family member who would it be?

Kibet: Well... (*looks around as if he wants another question*) first, you don't want to be stuck anywhere. However, if I was completely stuck, I would rather be with someone friendly. (*I insist on a name*) (*again chuckling*) I have very many friends, I am unable to name one. Actually, I would not mind being stuck

with anybody as long as they are not a criminal. If it is someone who can talk, I am good with building relationships, I can build a relationship with that person and find a way out. That is one of the things I think I am good at, building relationships and bringing people together.

Koome: I can see your family pictures behind you.

Kibet: This is my family, and a picture of Jesus is there too. (*points to his daughter*) My daughter recently graduated from university and is currently working in London.

Koome: If you were to get her one book what would be?

Kibet: A book called "*Awaken the giant within*" by Anthony Robbins, that I have actually given her already. It is a wonderful book because it has a lot of reference towards the possibilities that are there in a person and how to realise them and at the same time you don't lose your spirituality. You should read that book Koome, I will actually get you a copy. It changed my view of life especially considering my background and it gives you a kick in the back and pushes you to find opportunities.

Koome: Parting shot for the readers.

Kibet: Stand tall for what you believe in life and do what the society and your family expect of you. Don't forget about what God also expects of you. One of my biggest motivations in life is *Jose Maria Escriva* the founder of the *Opus Dei* and the principle that Opus Dei stands on is the sanctification of work. That you can serve God by ensuring that whatever work you do is pure in spirit.

Also we can be all we want to be, we may not influence the environment we find, but we can use our decisions to make things better.

MEDIATION: Unlocking the country's wealth locked up in court battles



Marysheila Onyango-Oduor
Franklin Chelugut

What is Mediation anyway?

For anyone in the dispute resolution space, mediation is now a household term. It is about time that everyone understood what mediation is and the opportunities it presents. And why not? We are at a time where every major national dispute is referred to mediation. To mention a few; the doctors strike in 2017 and the recent deadlock between the National Assembly and the Senate were referred to mediation.



Mediation is a procedure in which the parties discuss their disputes with the assistance of a trained impartial third person(s), who is known as the mediator, who assists them in reaching a settlement. It may be an informal meeting among the parties or a scheduled settlement conference. The dispute may either be pending in a court or potentially a dispute which may be filed in court.

Cases suitable for mediation are disputes in commercial transactions, personal injury, construction, workers compensation, labor or community relations, divorce, domestic relations, employment or any other matters really. Attendance at the mediation conference is voluntary by the parties, except where governed by statute or contract clause.



Mediation is a procedure in which the parties discuss their disputes with the assistance of a trained impartial third person(s), who is known as the mediator, who assists them in reaching a settlement.

How is it different from Arbitration?

The main difference between arbitration and mediation is that in arbitration the arbitrator hears evidence and makes a decision. Arbitration is similar to the court process as parties still provide testimony and give evidence similar to a trial but it is usually less formal. In mediation, the process is a negotiation with

Mediators do not issue orders, find fault, or make determinations. Instead, mediators help parties to reach a settlement by assisting with communications, obtaining relevant information, and developing options.

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the assistance of a neutral third party. The parties do not reach a resolution unless all sides agree.

Mediators do not issue orders, find fault, or make determinations. Instead, mediators help parties to reach a settlement by assisting with communications, obtaining relevant information, and developing options. Although mediation procedures may vary, the parties usually first meet together with the mediator informally to explain their views of the dispute. The mediator will then often meet with each party separately. The mediator discusses the dispute with them, and explores with each party possible ways to resolve it.

Arbitration, on the other hand, is generally a more formal process than mediation. An arbitrator could be a retired judge, a senior lawyer or a professional such as an accountant or engineer. During arbitration, both parties are given an opportunity to present their cases to the arbitrator. Similar to a regular court proceeding, lawyers can also question witnesses from both sides. During arbitration, there are usually little if any out-of-court negotiations between parties. The arbitrator has the power to render a legally binding decision which both parties must honour and the award is enforceable in our courts and the courts of 142 countries.

The process of a mediation

Mediation is a multi-stage process designed to get results. It is less formal than a trial or arbitration, but there are distinct stages to the mediation process that account for the system's high rate of success.

The highlight of the stages involved is as follows:

Stage 1: Mediator's Opening Statement - Introduction, laying of ground rules, explanation of the goals and rules of the mediation, and encouragement of each side to work cooperatively toward a settlement.

Stage 2: Disputant's Opening Statement - Each party is invited to describe, in his or her own words, what the dispute is about and how he or she has been affected by it, and to present some general ideas about resolving it.

Stage 3: Joint Discussion - Get the parties talking directly about what was said in the opening statements. This is the time to determine what issues need to be addressed.

Stage 4: Private Caucuses - A chance for each party to meet privately with the mediator to discuss the strengths and weaknesses of his or her position and new ideas for settlement. There can be one round of caucuses or several from one party to the other depending on the need and the mediator's assessment of the situation.

Stage 5: Joint Negotiation - After caucuses. Bring the parties back together to negotiate directly taking into consideration their revealed interests in the caucuses. Guide them to a settlement having understood each party's interests.

Stage 6: Closure - This is the end of the mediation. If an agreement has been reached, the mediator may put its main provisions in writing as the parties listen. The mediator may ask each side to sign the written summary of agreement or suggest they take it to lawyers of their choosing for review. If the parties want to, they can write up and sign a legally binding contract. If no agreement was reached, the mediator will review whatever progress has been made and advise parties of their options.



Court Annexed mediations and their impacts on Court Disputes

Since the promulgation of the current constitution of Kenya 2010, new laws have been enacted and others amended to unify them to conform with Article 159 of the constitution which introduces the notion of justice being done to all irrespective of status and without delay. Further, alternative forms of dispute resolution including reconciliation, mediation and traditional dispute resolution mechanisms have been incorporated in the legal framework.

The law now requires reference to compulsory mediation of all suits, which in the court's opinion are suitable for mediation. Once cases are filed in court, they are screened by the Deputy Registrars of various divisions and if appropriate, referred to mediators accredited by the Mediation Accreditation Committee which falls under the Judiciary.

After screening, litigants are notified to appear before a mediator whose costs are borne by the Judiciary. Where parties agree, a mediator reduces the agreement into a written settlement agreement.

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In these cases, large sums of money are involved and often tied up by court orders. Delay in resolving those cases impacts negatively on the economic growth of our country. More than the money tied up, are the relationships destroyed by the antagonistic nature of disputes referred to court.

The agreement is forwarded to the court for adoption as a court order and that brings the court case to a close. Where parties fail to agree, a mediator files a report with the court to that effect and the case resumes hearing through the normal court process. To maintain the confidential nature of the mediation process, a separate mediation file is opened from that of the litigation file which shall be placed before the judge or magistrate. The Mediator does not make notes or record proceedings during the mediation session. A party will therefore not be victimized if a settlement is not reached.

AS AT APRIL THIS YEAR, THE TOTAL VALUE OF MATTERS REFERRED TO MEDIATION, AND IN WHICH SETTLEMENTS HAVE BEEN REACHED, IS KES

5.5 BILLION

The mediator however records a Certificate of Non-Compliance in an instance where a party frustrates the mediation process or fails or refuses to comply with the procedures set. The penalty for such non-compliance is that a party may risk having their pleadings struck out.

Court Annexed Mediation was first Piloted by a Taskforce within the Judiciary in Commercial and Family Divisions of the High Court from April, 2016 to May, 2017. The Taskforce led by Justice Fred Ochieng that was gazetted to oversee the implementation of Court Annexed Mediation has now seen the launch of the program in the various counties.

Registries have now been set up to receive mediation matters. Civil matters filed at the courts will now be subjected to mandatory screening and if found suitable, will be referred to mediation. It is expected that the implementation of court annexed mediation will increase efficiency at the Judiciary and enhance access to justice.

Noteworthy, in these cases, large sums of money are involved and often tied up by court orders. A delay in resolving those cases impacts negatively on the economic growth of our country. More than the money tied up, are the relationships destroyed by the antagonistic nature of disputes referred to court. The need to preserve relationships even as those disputes are resolved therefore cannot be overemphasized.

As at April this year, the total value of the matters referred to mediation has reached a staggering

22.78 Billion Kenyan Shillings. The value of those referred to mediation and in which settlements have been reached is at 5.54 Billion Kenyan Shillings. The Commercial Division, no doubt is leading with 3.1 Billion shillings. This is money released back into circulation helping with the economy as a result of mediation!

It is no surprise therefore, that the success of the mediation project in Kenya contributed to Kenya's ranking in the World Bank's report on Ease of Business Index 2017 at position three in Sub-Saharan Africa.

Place of mediation within organizations

The beauty about mediation is that it can be simply applied in every area of life, and especially within organizations. As a proven concept, organizations can tap into mediation as a form of dispute resolution to minimize and mitigate the costs associated with disputes. They can use them externally in terms of the contracts and engagements they have with the outside environment, as well as internally in managing employee-employer or employee-employee disputes.

What is it they say... one good turn deserves another? Then just how many turns do 5.5 billion good turns deserve?

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Did it Again!



THE LEGAL500 RANKINGS
2019



CHAMBERS AND PARTNERS
RANKINGS 2019



NAIROBI LEGAL AWARDS

Going over & above
...



DIGITAL TRANSFORMATION: THE FUTURE OF LEGAL PRACTICE IN KENYA: Embracing technology and Breaking away from Obsolescence



**Jinaro Kibet
Christopher Oyier**

There is no shortage of opinions on the question of the impact of technology on the evolution and future of legal practice in Kenya. Technology has been a driver of social change throughout history. To varying degrees, the mark of technology in human civilization has been shaped and restrained by social forces and moral considerations. In contrast, tradition is revered in the legal profession. The terminology and style of legal practice remains largely frozen in traditional forms and nothing much has changed despite sporadic efforts at reform. Consequently, the legal profession in Kenya has generally been slow in embracing information technology and at times resisted certain changes, but not for long. The real or feigned indifference to the technological advancements by some quarters of the legal profession already faces and is likely to face sustained disruption.



In many ways, the legal profession has surprisingly remained immune to changes brought about by the information age. Lawyers and court clerks are still deeply entrenched in the minute details of existing protocols and remain unconvinced that there could be another way of doing things. Many practitioners have adopted technology for personal use, but are reticent to embrace it professionally. What is certain, however, is that the wave of the rapid transformation brought about by digital technology has caused subtle yet sustained pressures on the Kenyan legal profession. This is not only evident as new advocates with relatively different sets of skills from their predecessors are churned into the market every year, but also in the novel ways of client service delivery, and the digital transformation in the workings of Kenyan courts, and key government services.

There are immense possibilities for the use of technology in legal practice. From the automation of certain routine processes such as preparation of legal documents, research, marketing, case management, file storage, disseminating information to clients or the public, to electronic billing and preparation of firm budgets, technology offers endless opportunities for lawyers in providing legal services as well as running the law firm.

file storage, disseminating information to clients or the public, to electronic billing and preparation of firm budgets, technology offers endless opportunities for lawyers in providing legal services as well as running the law firm. Smaller firms can also benefit from the reduced costs of technology and can no longer have an excuse for sticking to obsolete practice.

Relatedly, courts in Kenya have implemented technology with varying degrees of success in electronic filing, e-discovery and research. The most recent example of the proposed transition at the

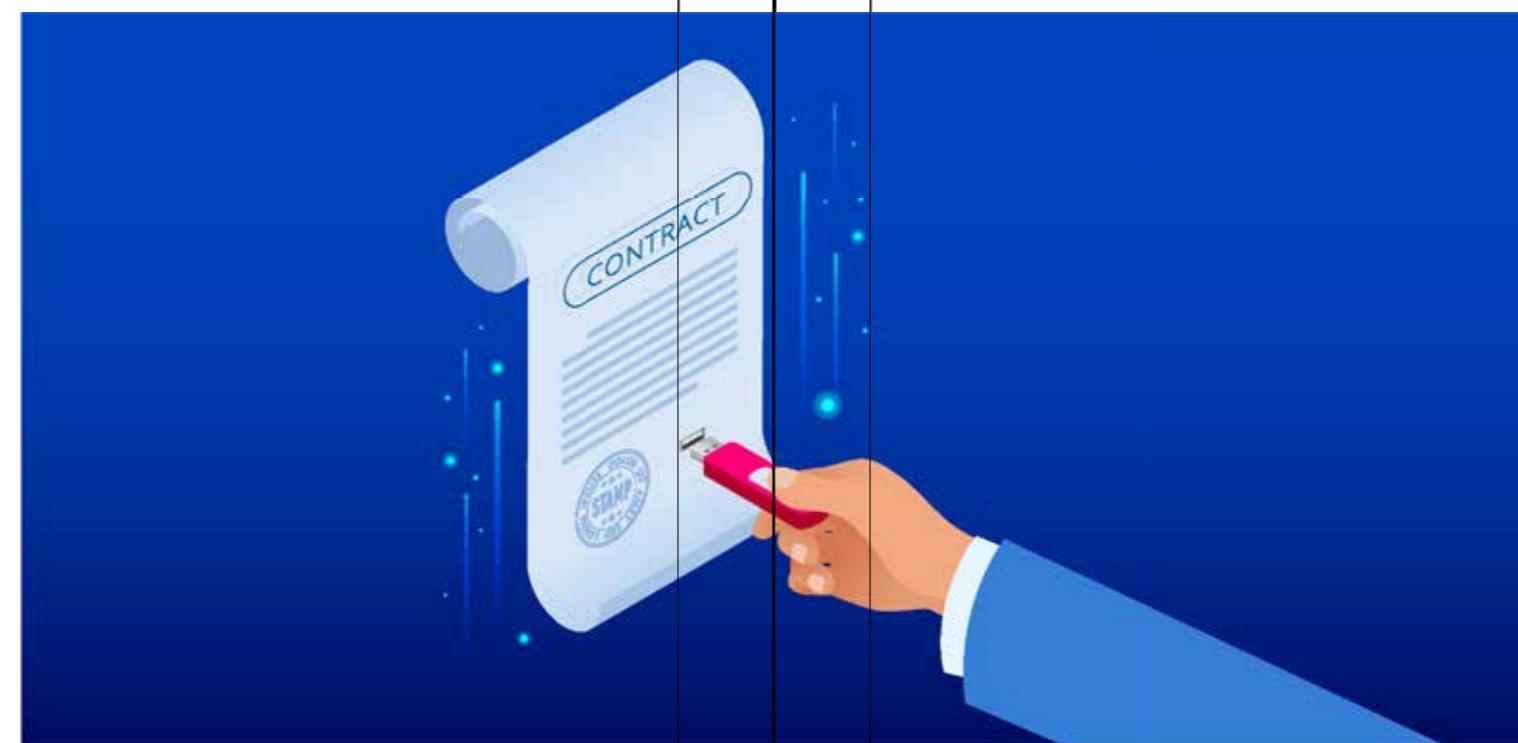
There are immense possibilities for the use of technology in legal practice. From the automation of certain routine processes such as preparation of legal documents, research, marketing, case management, file storage, disseminating information to clients or the public, to electronic billing and preparation of firm budgets, technology offers endless opportunities for lawyers in providing legal services as well as running the law firm.

High Court at Nairobi suffices by way of illustration in which by way of a notice dated 6th March 2019, the Commercial & Tax Division announced that it was set to be **fully automated** by 18th March 2019. The move aims to have registration of new cases, filing of pleadings, transcription of proceedings, assessment and payment of court fees, the court calendar, searches on the status of cases and serving of pleadings fully automated at the Division.

There are good examples of jurisdictions in the World in which courts that have fully transitioned to electronic services and from which the Kenyan Judiciary can learn from. In Singapore, IT support was effectively used to transform an old-fashioned, poor working Judiciary into a smooth functional organization. Turkey has successfully implemented a national electronic service across all its judicial functions. Lawyers and members of the public can peruse files, pay filing or application fees and submit their documents electronically to any court in the Country. Australia is seen by many as a global leader in how to manage digitized court documents.

Similarly, the Ministry of Lands and Physical Planning has through the National Land Information Management System (NLIMS) put in place digital

The High Court at Nairobi by notice dated 6th March 2019, the Commercial & Tax Division announced that it was set to be fully automated by 18th March 2019. The move aims to have registration of new cases, filing of pleadings, transcription of proceedings, assessment and payment of court fees, the court calendar, searches on the status of cases and serving of pleadings fully automated at the Division.



systems to improve land administration and management. Through the fully automated platform, both lawyers and non-lawyers will be able to conduct searches, land rent and rates clearances, obtain consents to transfer, conduct valuation assessments, endorsement and payment of stamp duty as well as title registration, online.

That is not all. Business incorporation and registration processes have been digitized on eCitizen with the consequential ease of setting up investment vehicles and statutory compliance, though not without its own challenges. The National Integrated Identity Management System (NIIMS) also known as **Huduma Namba** was launched by the government in early April 2019 with the aim to re-register all Kenyans, foreigners and refugees residing in Kenya, in a single portal and improve service delivery.

The foregoing examples are meant to buffer rather than distract from the main thrust of the discussion. What do the ongoing technological adjustments mean for Kenyan lawyers? Simple, they must shape up or ship out. Indeed, as Richard Susskind, IT advisor to the United Kingdom Lord Chief Justice, reckons in his book, **Tomorrow's Lawyers: An Introduction to**

Through the fully automated platform, both lawyers and non-lawyers will be able to conduct searches, land rent and rates clearances, obtain consents to transfer, conduct valuation assessments, endorsement and payment of stamp duty as well as title registration, online.

your Future, it is time for legal practitioners, both new and seasoned, to rethink some of their working practices.

Caution must however be exercised in integrating technology in the daily work of lawyers. Due to the ethical implications of new technology and the increased scrutiny on handling of data globally, law firms are under serious legal, ethical and professional obligations in protecting personal and confidential client information. To this end, practicing lawyers

must appreciate the security risks for law firms in this information age and have in place data protection policies, incident response systems using a combination of policies, employee training, and technology.

It is also worth remarking that despite the immense opportunities, the initial cost of technology has at times effectively become a major barrier to entry to the legal profession, especially for young lawyers who are yet to create a niche for themselves or accumulated sufficient capital resources to set up up-to modern legal facilities. However, once such investment is made, small law firms will conveniently and cost-effectively access more information and collaborate with large firms in the legal fraternity and compete at higher levels. Technological objectivity, or simply a high level of analysis, review and stakeholder engagement, is needed in the technology debate.

In the face of the foregoing challenges, opportunities and changing client needs, it is clear that times are rapidly changing and many lawyers who are disinclined to adapt may find the conservatism to be their bane. Accordingly, rather than being reactive to technological changes around them, Kenyan lawyers need to be in control of the change by being innovative and flexible. Towards the future, the ability to embrace new technology and to meet the evolving needs of clients are key determinants for a successful legal practice in Kenya.

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DON'T OPEN PANDORA'S BOX

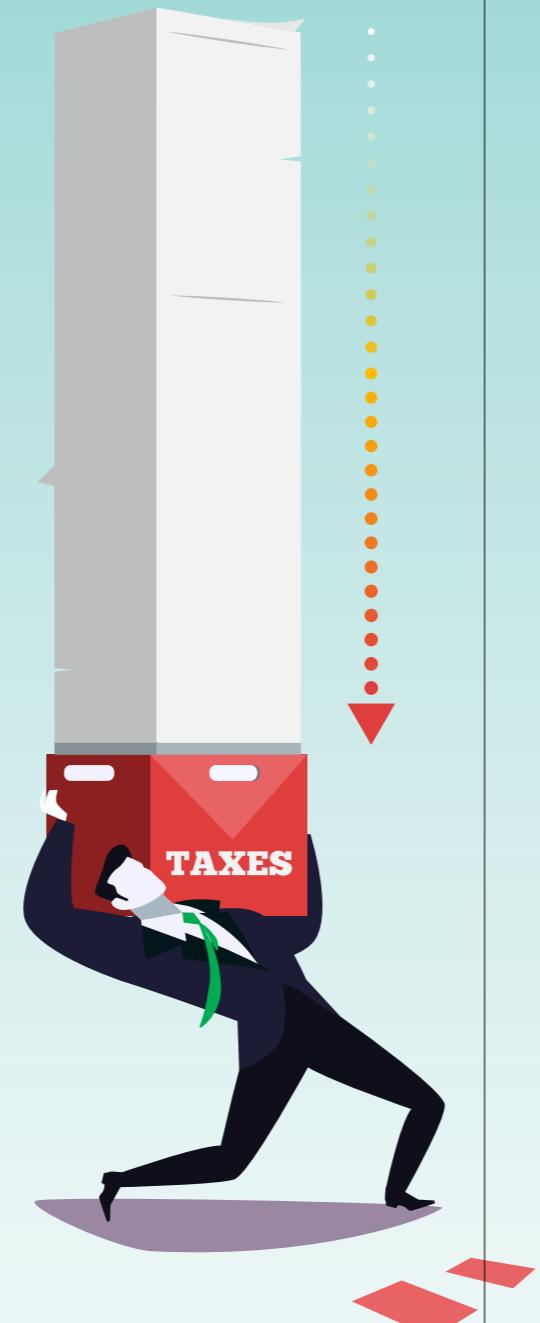
Why taking an aggressive tax stance against digital service providers in Kenya may prove to be a huge mistake



Ochieng Oduol
Isaac Kiche
Justus Obuya
Oscar Mbabu

Kenya's digital revolution

Leveraging on the ubiquity of mobile devices among the citizens of Kenya, tech companies have created a basket of digital products and services which have proliferated throughout Kenya's digital economy, generating unexpected positive net outcomes for the economy as a whole. The growth of Kenya's largely mobile-based digital revolution has been further fueled by the introduction of M-Pesa by Safaricom in 2007.



RELY ON THE M-PESA ECOSYSTEM

The retail electronic payments platform, originally designed to free the urban populace from the tedium of remitting money back to their rural homesteads, exponentially evolved into the preferred electronic medium for the payment of goods and services by both wholesale and retail market participants.

Due to the unprecedented and rapid growth of M-Pesa users in the Republic of Kenya, both digital and traditional brick-and-mortar businesses swiftly sought to fully integrate the M-Pesa platform into their business model. The latter propelled M-Pesa into the business stratosphere with over 1 million businesses and 25.5 million users relying on the M-Pesa ecosystem. Kenya's socio-economic gains by virtue of the M-Pesa platform are numerous; reduced poverty levels, efficient tax collection schemes, increased financial inclusion, and overall enhanced macroeconomic performance.

On the back of M-Pesa's success, other digital products continue to provide tremendous value to

Kenyan citizens in terms of affordability, employment and innovation. In 2017, Uber, the taxi hailing firm stated that Kenya was its second largest market with 363,000 active users and 5,000 Uber drivers plying their trade locally.

Today, prominent digital firms such as Glovo, a Catalonian on-demand, mobile-based courier firm, are making their way into Kenya's digital economy ardently seeking to make an impact.

Escalating Aggression:

Despite the immense socio-economic contributions of technology firms which have implemented digital products into the Kenyan economy, the Parliament seems altogether aloof to the evangelism which they have enjoyed from contemporary media houses and development institutions.

Seeing the value being derived from the Kenyan digital market, Parliament has introduced the following taxes against digital service providers:

- 01.** In 2013, the Finance Act of 2013 introduced a tax on mobile phone-based transactions through an excise rate of 10 percent.
- 02.** Through the Finance Act of 2018, the excise tax on money transfer services through mobile phones and through banks was increased from 10 percent to 12 percent and 20 percent respectively. Further, the tax on telephone services (airtime) was increased from 10 percent to 15 percent.
- 03.** In the Finance Act of 2019, the government saw it fit to clarify that supplies made through a digital market place are chargeable to VAT. A digital market place has been defined to mean "a platform that enables the direct interaction between buyers and sellers of goods and services through electronic means. Moreover, the Act has amended the Income Tax Act by introducing a new paragraph under the charging section which emphasizes that income accruing through a digital marketplace is chargeable to tax.

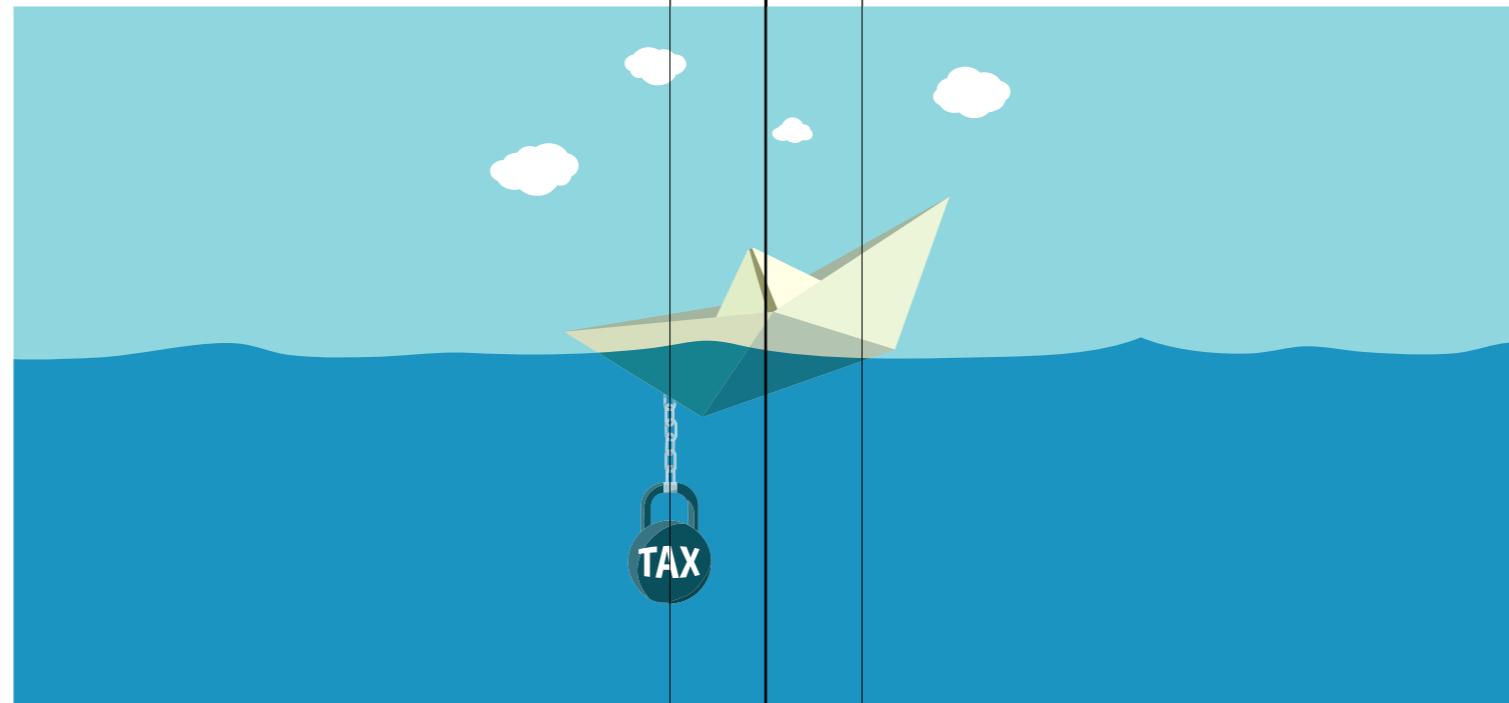
Kenya's socio-economic gains by virtue of the M-Pesa platform are numerous; reduced poverty levels, efficient tax collection schemes, increased financial inclusion, and overall enhanced macroeconomic performance.

The government's current aggressive stance on digital service providers plying their trade in Kenya may indeed be logical, as it is expected to raise taxes and broaden its tax base, but as the principles of economics often dictate, the results could prove to be counter-intuitive.

The Laffer Curve: The Nexus between digital services taxes and Kenya's Illicit Brew Menace

The fundamental premise of the imposition of excise taxes on certain goods is that prices are largely inelastic. However, Arthur Laffer, an American economist argued that changes in tax rates have two effects on revenues: the arithmetic effect and economic effect. The arithmetic effect is the intuitive result that is obvious to most minds; an increase in taxes is expected to generate more tax revenue. The economic effect is much more complex, as it considers the numerous disincentives and incentives which changes in tax can generate around related economic activities. It highlights that beyond an optimal tax rate, the imposition of a higher tax creates a distortion in a given market.

Most worrying is that digital ecosystems are by their nature so complex that such a distortion may cause the government to be embroiled in entirely new and unprecedented socioeconomic problems. As consumer behaviour and demand react to the new reality of increased taxes, the government in its counter-response may be forced to consider;



Despite the immense socio-economic contributions of technology firms which have implemented digital products into the Kenyan economy, the Parliament seems altogether aloof to the evangelism which they have enjoyed from contemporary media houses and development institutions.

the level of harm to mobile transactions, the strength of its current tax system, the time period of implementation, the ease of movement by users to underground activities, the level of tax rates already in place, the presence of legal and accounting-driven loopholes in e-commerce and the proclivities of numerous productive factors which might manifest themselves in innumerable ugly ways.

Indeed, former Governor of Central Bank of Kenya (March 2007-March 2015) Njuguna Ndung'u in his celebrated Article titled "Taxing Mobile Phone Transactions in Kenya: Lessons from Kenya" published by Brookings in August 2019 rightly

AS AT JANUARY 28, 2019, CENTRAL BANK OF KENYA (CBK) DATA SHOWED THAT MOBILE MONEY TRANSACTIONS IN KENYA STOOD AT \$.

38.5 BILLION

reminds legislators of the 2001 study and subsequent policy advice for the government to move away from taxing beer and other alcoholic beverages separately and devise a tax on the basis of alcohol content which would provide a progressive tax generating revenue and encouraging responsible tax behaviour. The Study warned that taxing beyond the optimal rate would change consumer behaviour with the rich upgrading their consumption to other alcoholic beverages that are taxed differently, whilst the poor would downgrade their consumption and create a market for illicit brew, whose products and standards ran unchecked.

Needless to say, the study proved to be accurate, and the consequences have been damning to date, with the youth in rural areas being ravaged by the illicit brew menace that has taken a grip of this great nation.

Conclusion

Kenya, sits in a particularly unique position in the global digital market. With a population of over 45 million people and over 30 million subscribers, our digital market boasts the single largest mobile money market in the world. As at January 28, 2019, Central Bank of Kenya (CBK) data showed that mobile money transactions in Kenya stood at Sh3.98 trillion (\$38.5 billion) last year, having increased by Sh346 billion (10%) from 2017. This translates to an average value of Sh10.92 (\$108 million) billion mobile cash transactions per day. The Kenyan mobile money market is a result of our innovation, visionary business leaders, enterprise and, though often understated, progressive tax legislation which formed the bedrock of Kenya's current device ubiquity. In June 2009, the Government recognized the importance of enhancing access to mobile telephony and exempted handsets from the VAT. This increased the affordability of mobile devices and made possible more than 200 percent increase in handset and a 50 to 70 percent increase in penetration rates. Consequently, mobile devices became ubiquitous among Kenyans and became the foundation upon which our digital revolution was built.

It is also important to note that Kenyans continue to show an immense proclivity towards piracy and an indifference for unregulated product sources. Digitally distributed products such as music, movies and mobile games are a prime example as they continue to suffer from depleted revenue due to society's apparent indifference to piracy. Similar to the illicit brew phenomenon, increased tax rates may create demand for a black mobile money transfer market which may run unregulated and untaxed, turning our crown jewel into nothing short of an economic nightmare.

For more information on this, contact
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Deleting...

THE RIGHT TO BE FORGOTTEN: Now that the Data Protection Act is enacted, could this be a new fundamental human right?



Catherine Kariuki
Janet Othero
Joyanne Njau

Kenya's digital revolution

The digital era has introduced the reality of the 'eidetic' memory - a new phenomenon, which keeps intact every detail of every event and can instantly recall them with the utmost accuracy. Whereas this alleviates access to information and the freedom of expression, it has equally posed a threat to the right to privacy guaranteed under Article 31 of the Kenyan constitution.

the question arises as to how this right to be forgotten will be applied and especially within the Kenyan context. A cursory look at the ruling reveals that the right to be forgotten is to be territorially applied. Further, it is not an absolute right.

Further, the recently enacted Data Protection Act no. 24 of 2019 expounds this constitutional right by enabling data subjects who are natural persons to exercise various rights related to their personal information, among them the right to be forgotten. This places compliance obligations on the relevant data controller. The provisions of the Data protection Act largely mirrors the EUGDPR as far as this right is concerned.

In the international scene, we have witnessed conflicts related to enforcement of this right and compliance thereof. In 2015, the French privacy regulator CNIL requested Google to globally remove links that contained damaging information about individuals. Google proceeded to censor such information in Europe, but resisted censoring search results for people in other parts of the world. The watchdog tried to impose a fine of €100,000 (£88,376) against the search engine company. It was against this backdrop that this matter was escalated to the Court of Justice of the European Union (the "CJEU") with Google arguing that were this rule to be applied outside of Europe, authoritarian governments would abuse this to cover up human rights abuses.

On 24th September 2019, in what is now a landmark case in the digital space, the CJEU ruled that Google does not have to apply the right to be forgotten globally. This right of erasure, as guaranteed in European Union General Data Protection Regulation ("GDPR") is therefore to be applied only within the confines of the 28 European Union (E.U.) member states. Further, the court implied that certain conditions have to apply before the right can be

enforced. In the opinion of Bert-Jaap Koops, this right is premised upon three variables; the right to have data deleted when such information expires; the right of a clean slate; and the right to be judged on present merits rather than on the past. This concept allows a data subject's personal data to be pulled down and no longer appear in search results thereby protecting one's reputation.

However, in the wake of the CJEU ruling, the question arises as to how this right to be forgotten will be applied and especially within the Kenyan context. A cursory look at the ruling reveals that the right to be forgotten is to be territorially applied. Further, it is not an absolute right. The CJEU concluded that if a search engine operator receives a de-referencing request related to a search of the requester's name that generates, in the results, a link and webpage displaying sensitive information, the operator must decide whether including that link in the search results is necessary to protect Internet users' freedom of information. With this, the right to be forgotten seems to be an incomplete right; one that cannot be achieved in its entirety.

What is the implication of this ruling in the Kenyan jurisdiction?

The essence of erasure is to ensure protection of an individual's personal information. The Data Protection

The right to be forgotten is closely related to the right of rectification which allows a data subject to have misinformation or inaccuracies about them corrected. This would require that previous untrue information be forgotten and the correct one be updated accordingly to ensure a true representation of the data subject's personal data.

Act provides for the right to erasure at Section 40 which in many respects mimics the right to be forgotten in the GDPR.

The right to be forgotten is closely related to the right of rectification which allows a data subject to have misinformation or inaccuracies about them corrected. This would require that previous untrue information be forgotten and the correct one be updated accordingly to ensure a true representation of the data subject's personal data. However, this Section fails to provide for the time limitations within which such information may be rectified as well as the reasonable steps which a data controller or processor must take to ensure that rectification is achieved. We are keen to see how courts will establish this in emerging jurisprudence.

This particular right is closely related to the obligation on limitation of retention of personal data by data controllers and processors. When it comes



to deletion and erasure, the obligation on the data controller or processor to act is at the expiry of the retention period.

Interestingly, the right to be forgotten, and especially where other existing legislation does not allow for deletion up until a certain period has passed, seems to be a tussle between two very fundamental rights and freedoms: the right to privacy versus the right of access to information both enshrined in our Constitution. Both rights seem to conflict in their realization as far as data privacy and data protection is concerned. It is therefore left to the courts to determine which right can override or displace the other and the required threshold.

There is a legitimate interest of the public in gaining access to the information sought. In fact, the CJEU in another related ruling held that the right to expression and information must be weighed carefully before deleting links related to certain categories of personal data. However, the right to privacy is seriously compromised if it is tested by any other pedestal other than the legitimate test of legality, necessity and proportionality. Any test set beyond this will by all means be a loophole and will create opportunity for infringement of this right.

While the effect of this ruling is still being deciphered worldwide, the European Court of Justice on 3rd October 2019 delivered a decision that individual countries can order Facebook to take down posts globally in a matter where a European politician had sued Facebook in an Austrian court for a post that was found to be defamatory. This exemplifies a situation where the right to be forgotten is implemented in its entirety. Whereas this enhances the right to be forgotten, it infringes on the right to fair comment which is embedded on the right to expression. The right to fair comment guarantees freedom to express statements on matters of public interest, so long as

The net effect of this decision in Kenya would subsequently be limitations to the freedom of expression guaranteed in the constitution. Applications such as twitter which is famous for the 'KOT' movement would certainly face a great challenge in censoring what its users say to ensure that an action for defamation is not levelled against it.

.....
the statements are not made with the intent to harm the subject of the comment.

The court's decision requiring Facebook to pull down posts globally suggests that citizens have a limited right to express their opinions especially regarding public interest issues which are relevant to them. What is considered fair comment seems to be based on the individual who feels that information published about them is either personal data or is defamatory information injurious to their reputation. The net effect of this decision in Kenya would subsequently be limitations to the freedom of expression guaranteed in the constitution. Applications such as twitter which is famous for the 'KOT' movement would certainly face a great challenge in censoring what its users say to ensure that an action for defamation is not levelled against it.

Given the somewhat conflicting decisions from the CJEU, the provisions of the EUGDPR and the Data Protection Act, we are keen to see how the Kenyan courts interpret the applicable laws in relation to breach of privacy, data protection, defamation and access to information against the backdrop of internet content in today's world where cybersecurity, data privacy and data protection are a daily legitimate expectation. In providing landmark judgements, courts will provide the necessary guidance to address grey areas and fit regulation to the contemporary circumstances around the existing law.

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THE PRODIGAL FILE: Leveraging Technology to Navigate Land Records



Tom Onyango
Janet Othero
Brian Onyango

The Bible records how the father received his prodigal son in a feast, after the same son had squandered his legacy and returned as a pauper. In a similar account, Jesus told the parable of a shepherd who had a hundred sheep, when he lost one of them, he abandoned the 99 to look for the one. When he finally found it, he rejoiced and celebrated. These two interesting accounts demonstrate the manner in which people, and things, can hold an important place in our lives; even more so when they get lost, misplaced, or destroyed.

When it comes to land or immovable property, records and title documents are of fundamental importance to the owner, and any party with a legitimate interest in a piece of land. As it stands, without an original title grant/deed, certificate of lease, lease, or any other title documentation, it is impossible to undertake any transaction or dealing over property. In Kenya, original title documents are maintained in hard copy only, and are therefore prone to loss, destruction, or misplacement as would any other tangible item. When documents of such importance go missing, one is apprehensive about circumstances surrounding the loss that evokes a feeling similar to being dispossessed of their land.

Under the Land Registration Act 2012, a certificate of title is conclusive proof that the registered proprietor therein is the legal owner of property. The land laws and regulations further contemplate the possibility of loss or misplacement of title documentation and provides for the procedure of procuring a replacement or reconstruction. This part of the procedure perhaps has been the cause of worry and desperation for most individuals as it took the assistance of an advocate to navigate.

A title owner who loses their title document or file is not necessarily required to wait for it or root about to find it. They are required to make a formal application for replacement of the file, to the registrar of titles,

The land laws and regulations further contemplate the possibility of loss or misplacement of title documentation and provides for the procedure of procuring a replacement or reconstruction. This part of the procedure perhaps has been the cause of worry and desperation for most individuals as it took the assistance of an advocate to navigate.

who is authorized to replace it if satisfied that the loss was not intentional.

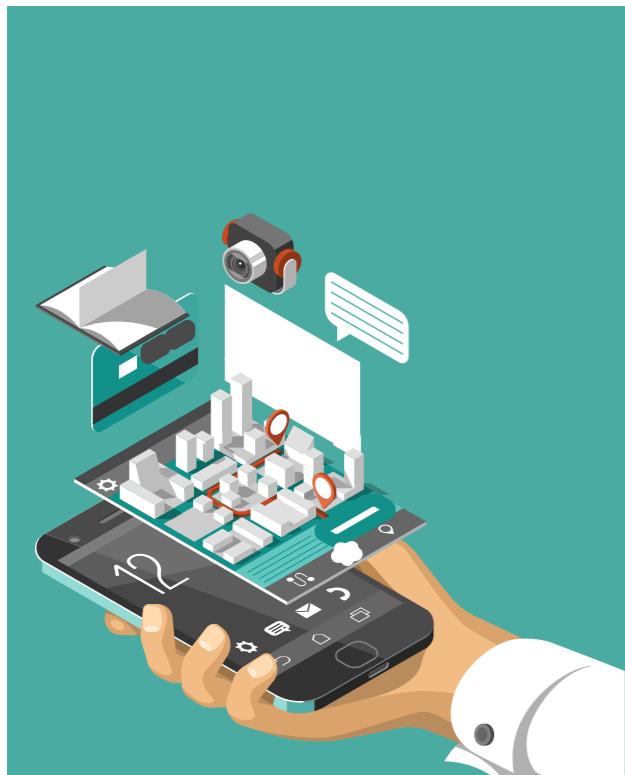
The application is made by presentation of a statutory form often accompanied by a declaration and other documents to prove the loss to the registrar's satisfaction. The documents include copies of the registered owner's identification documents, evidence of ownership, an official search over the property, an advertisement of the lost title in a newspaper of wide circulation, a recent police abstract as well as a guarantee that they shall return the document should they find it after another title has been issued.

Once the registrar is satisfied with the documentation provided, as well as fulfillment of any other administrative condition that may be proposed, they will recommend gazettlement of the lost title. They will issue a gazette notice and publish in two local newspapers of nationwide circulation an announcement of the loss to members of the public. The announcement will further stipulate that the registrar will issue a new title upon the expiry of 60 days in the absence of any objection. At the expiry of the notice period, the registrar will replace the document by issuing a certified provisional copy of the same and not an original replacement. This renders the old title useless and no transaction can be made using it.

When the loss concerns a register/deed file or title, the person applying for replacement would be required

THE ANNOUNCEMENT WILL FURTHER STIPULATE THAT THE REGISTRAR WILL ISSUE A NEW TITLE UPON THE EXPIRY OF

60 DAYS IN THE ABSENCE OF ANY OBJECTION



This process is often conducted cautiously and unhurriedly conceivably to prevent collusion or fraud, due to the mere fact that land records are chiefly available only on physical files or documents.

By the same token, other documents kept in hard copy, such as case files and certificates, when lost or misplaced can be recovered through the overwrought procedure of reconstruction and making up of skeleton files. All these are done more effectively if there are historically reliable records.

The Government is also in the process of maintaining a digital database of all its records, and this would save further anxiety. It is therefore very important for all stakeholders to leverage on technological developments lest the missing file stays lost forever.

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to indemnify the registrar and the Government of Kenya of any losses or claims emanating from the reconstruction, depending on the title regime. The registrar is required to obtain information from key offices, such as the Survey and Land Administration officers. If there is no objection, the registrar would issue a new title, or reconstruct the register. This also renders the old title useless and no transaction can be made using it.

This process is often conducted cautiously and unhurriedly conceivably to prevent collusion or fraud, due to the mere fact that land records are chiefly available only on physical files or documents. However, with the enactment of the Land Registration (Electronic Land Transaction) Regulations, 2019 the process will change as law firms, or advocates registered as users in the system can pursue any transaction through the digitized system which has already been rolled out in the Nairobi Registry. This would see this process, and other transactions (correction, rectification or variation in instruments) take a shorter time and run more efficiently, much to the delight of the owners.

REPORTS

THE LAW IN REVIEW



• **ICLG**

John Ohaga, Isaac Kiche & Leyla Ahmed

READ IT HERE

<https://iclg.com/practice-areas/international-arbitration-laws-and-regulations/kenya>



• **SLR**

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THE YEAR IN REVIEW 2019: Dispute Resolution Practice



**John Ohaga
Kenvine Odhiambo
Isaac Kiche
Cynthia Opakas
Ben Ongutu**

Introduction

The year has been full of positive advancements in the dispute resolution field. The practice area is handled by two teams in the TripleOKLaw LLP family headed together by powerhouses Senior Partner James Ochieng' Oduol and Managing Partner John Ohaga. With gains in the specialized practice areas of litigation and arbitration, the team reflects on the year that has been with an overview of the practice.

01. Litigation:

Money Matters have been a big part of the litigation space this year. The Central Bank of Kenya (CBK) won a landmark case on the move to demonetize old Kshs. 1000 notes in a drive to weed out hidden hoarders and boost the economy's liquidity. The case was based on a petition challenging the constitutionality of the new currency notes and coins issued by the CBK based on public participation, the imagery depicted on the notes and the process used for the withdrawal and demonetization of the old Kshs. 1000 notes.

Arguing on the mandate of the CBK in its execution of such a sensitive exercise, the designs and timelines of the plan were successfully defended with the key takeaway being that CBK was well within the constitutional and statutory mandate to guard the currency from being used for criminal activities such as money laundering, illicit cash flows, corruption, counterfeit, terrorism, and bribery. This role of the CBK is entrenched in Article 231 of the Constitution and Section 22 of the CBK Act.

In addition to this case, we saw the Courts giving clear guidance on the interpretation of tax statutes in determining tax disputes. Key among these cases was that of major local Bottlers against the Kenya Revenue Authority in Civil Appeal No. 164 of 2013 on the interpretation of section 127 C (3) (c) of the Kenyan Customs and Excise Act.



the designs and timelines of the plan were successfully defended with the key takeaway being that CBK was well within the constitutional and statutory mandate to guard the currency from being used for criminal activities such as money laundering, illicit cash flows, corruption, counterfeit, terrorism, and bribery.

This issue arose after the Parliament through the Finance Act, 2004 amended Section 127 C (3) (b) of the Customs and Excise Act by deleting the clause that excluded costs of returnable containers in computing the ex-factory selling price for purposes of levying excise duty. The High Court had upheld Kenya Revenue Authority's position that since the Finance Act deleted the said clause, by implication, costs of the returnable containers were to be included in determining the excise duty payable.

The Court of Appeal affirmed the hallowed principle in the interpretation of tax statutes: they must be interpreted strictly and that there can be no presumption, assumption, intendment, or implication as to tax. In a nutshell, the Court made it clear that if a tax statute does not provide for imposition of a particular tax, tax authorities are barred from imposing such a tax. The above general principle will have great bearing in resolving tax disputes centered on interpretation of tax statutes.

02. Arbitration:

Arbitration continues to gain acceptance in Kenya and across Africa as more and more parties appreciate the expeditious edge that it offers in resolving disputes. A key pointer to this trend has been the emergence of regional arbitral centers around the continent, the growth of arbitration associations within the continent as well as an increasing number of intra-African parties embracing arbitration.

However, a major concern in the development of arbitration in the continent has been a diversity gap marked by the under-representation of African arbitration practitioners in International Arbitrations on the backdrop of a steadily increasing number of cases from the continent. A 2018 survey by the University of London School of Oriental and African Studies (SOAS) attributed this to bias by appointers in favor of foreign counsel and poor perception of the arbitration practice in Africa. This calls for vibrancy among practitioners within the continent as well as the appointment and/or recommendation of African arbitrators and practitioners by African parties.

The increasing nature of disputes being referred

 **A 2018 survey by the University of London School of Oriental and African Studies (SOAS), attributed the under-representation of African arbitration practitioners in International Arbitrations, to bias by appointers in favor of foreign counsel and poor perception of the arbitration practice in Africa.**

.....

to arbitration points to a positive development as more and more disputes in finance, real estate, tax, telecommunication among others, are being referred to arbitration in addition to the traditional construction and natural resources disputes that have been the norm. With the projected increased injection of foreign direct investments and trade into, and within the continent, coupled with the opportunities available to arbitration practitioners for skill development and competence, arbitration in Kenya and Africa at large is definitely on a positive trajectory.

03. Young Arbitrators

For a long time, the practice of arbitration has been perceived to be the preserve of the senior practitioners. This trend is beginning to change, albeit slowly with more young lawyers developing an interest in arbitration as an area of career exploration and some senior arbitrators becoming keener in mentoring young arbitrators. Despite the increase of the number of young arbitrators training in the area and pursuing practical experience under the senior practitioners, winning the confidence of parties remains a live and thorny issue in the young arbitrators' community.

Most of the disputes being referred to arbitration are high level disputes with the subject matters being of significant values; the parties therefore tend to entrust the matters with senior arbitrators. There are however, young and upcoming arbitrators who have been trained, mentored, and are thriving in the practice of arbitration both as arbitrators and as counsel.

.....

have been trained, mentored, and are thriving in the practice of arbitration both as arbitrators and as counsel. The buck now stops with the senior practitioners to continue mentoring the younger generation and instilling the confidence of the parties in the younger generation.

TripleOKLaw LLP has purposed to be one of the organizations that strongly encourages and facilitates mentorship and training of young arbitrators. The firm's Managing Partner, Mr. John Ohaga, Chartered Arbitrator, continues to strengthen the mentorship structures within the firm and ensures that his mentees build a brand in arbitration both for the firm and for themselves. Recently, the firm hosted the International Chamber of Commerce Young Arbitrators Forum (ICC YAF) in which young arbitrators engaged and discussed the practice of international arbitration. The firm also sponsored students from the University of Nairobi School of Law in their participation in the 2019 HSF-NLU Negotiation Moot Competition.

From these initiatives, one thing is clear; that young people are the future and there needs to be steady concentration on their growth and improvement in arbitration.

In a nutshell:

The firm is proud to be a stakeholder in the legal space, understanding the opportunities that practitioners and clients go through, we can confidently note

 **Most of the disputes being referred to arbitration are high level disputes with the subject matters being of significant values; the parties therefore tend to entrust the matters with senior arbitrators. There are however, young and upcoming arbitrators who have been trained, mentored, and are thriving in the practice of arbitration both as arbitrators and as counsel.**

.....

that there has been a lot of growth in the promotion of expedient, fair and valuable dispute resolution services.

The team in their individual capacities have been recognized for their good work. With the practice heads being ranked in Chambers and Partners 2019 rankings Band 2 for Dispute Resolution and Marysheila Onyango-Oduol ranked as a notable lawyer in employment dispute cases. In addition to this, the Legal500 Rankings 2019 also noted TripleOKLaw LLP as a leading firm in the practice with James Ochieng Oduol, John Ohaga, and Elias Masika listed as recommended lawyers. John Ohaga was in addition listed in the elite Leading Lawyers list for Europe, Middle East and Africa region. Cynthia Opakas was nominated as a Young Lawyer of the Year at the 2nd Annual Nairobi Legal Awards.

We look forward to another year of pushing boundaries in innovation and professionalism in the entire legal practice.

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Leading Ladies of the Year



TripleOKLaw LLP marked another milestone when Marysheila Onyango-Oduor and Catherine Karuiki were announced as joint Deputy Managing Partners earlier this year. Marysheila heads the family law practice group, while Catherine leads the firm's fast-growing and highly visible telecommunications, media and technology practice. Congratulations to the two incredible ladies!

ICC YAF



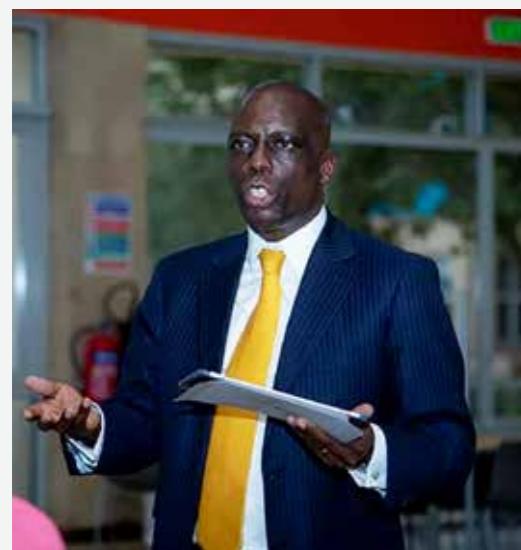
TripleOKLaw LLP sponsored this year's ICC YAF Nairobi session. Senior Associates Bryan Mylo, FCIArb., Isaac Kiche, MCIArb, Mediator and Associate Leyla Ahmed- MCIArb, Certified Professional Mediator are captured above, giving the participants advice on careers, positioning oneself for success and education on how the ICC International Court of Arbitration works.

Justice Cup



Captured above, our team participating at the 2019 Justice Cup. The team did exceedingly well and made it to the semi-finals for the first time. Well done team!

Mentorship Moments



One of the crucial aspects of the legal field is not only dealing with legal matters but also mentoring and developing young minds. Pictured above is Managing Partner John Ohaga speaking at the Yale Africa young scholars' program at the Mpesa Foundation Academy.

Students from the University of Nairobi School of Law who recently participated in the 2019 HSF-NLU Negotiation Moot Competition whom we are happy to have supported them with their trip. The students did exceedingly well and made us proud.

Forbes Africa



Receiving the Forbes Africa edition for November 2019 from Annika Craine, Country Director for Penresa, publishers of Forbes Africa.

EA Arbitration Conference



Jokes

01. What did the lawyer name his daughter? **Sue!**

02. Where there is a will there is a lawsuit. – Addison Mizner

03. A man sued an airline company after it mislaid his luggage. Sadly, he lost his case.

04. **Wife:** I love you!
Ordinary Husband: I love you too!

Lawyer: Do you have evidence to support your statement?



WORD SEARCH

Q	E	C	Y	C	I	U	G	Y	F	J	O	F	V	U	D	J	R	H	M
Y	J	Y	T	I	T	L	E	X	C	U	S	E	T	E	R	O	M	K	U
A	V	N	N	D	M	D	E	V	I	D	E	N	C	E	A	Z	D	Q	Y
Y	B	O	I	Z	E	G	E	A	O	G	E	R	N	I	F	Y	N	D	H
I	A	M	G	O	D	T	E	F	S	M	E	O	N	O	T	I	I	H	O
P	E	I	H	U	I	S	R	D	E	E	D	N	D	S	B	S	N	C	S
Y	Y	L	J	E	A	E	S	S	E	N	T	I	W	I	B	Q	U	E	F
O	C	A	B	S	T	R	A	C	T	T	S	M	J	U	L	E	X	J	H
V	H	Z	O	A	E	E	D	P	O	V	D	E	S	N	O	M	M	U	S
N	P	T	T	C	T	T	S	I	P	U	V	I	T	M	H	K	E	O	U
X	W	S	E	O	T	N	C	T	A	E	R	U	A	O	Y	T	Q	L	I
Q	E	I	N	A	L	I	A	S	I	N	A	T	S	I	H	B	E	Y	T
K	P	U	A	D	J	O	U	R	N	M	V	L	B	X	T	G	K	L	E
T	D	O	N	O	T	N	P	A	R	D	O	N	R	F	A	Q	M	B	L
U	D	O	T	E	C	E	L	L	I	A	T	N	E	C	O	Y	E	Z	F
V	B	J	O	U	R	I	J	I	E	E	W	I	Y	T	R	O	T	D	P
T	Z	Y	O	I	M	L	V	B	H	A	R	E	W	O	D	J	R	Y	F
X	X	V	V	Z	X	N	L	I	A	B	D	R	A	W	Y	H	U	P	T
K	J	L	W	H	H	Y	R	I	L	I	I	U	L	X	N	R	S	R	G
D	G	U	B	D	I	N	Z	V	W	T	U	F	W	G	Q	T	T	K	Y

Abstract	Dower	Lease	Tenant
Adjourn	Draft	Legacy	Testimony
Alias	Ease,emt	Lien	Tide
Alibi	Entail	Mediate	Tort
Alimony	Estate	Minor	Trust
Appeal	Evidence	Note	Ward
Bail	Excuse	Oath	Warrant
Bond	Fine	Oyez	Will
Brief	Guardian	Pardon	Witness
Case	Heir	Plead	Writ
Civil	Interest	Proof	
Court	Judge	Receipt	
Decree	Judgement	Rerieve	
Deed	Jury	Subsidy	
Defence	Justice	Suit	
Dogma	Lawyer	Summons	



EMPLOYEE QUARTERLY AWARDS

Julia Wataku

AWARD 1 TEAM PLAYER OF THE QUARTER

Victor Miseda

AWARD 2 FIRM BRAND AMBASSADOR (FBA) OF THE QUARTER



Kivindyo Munyao

AWARD 3 MOST APPROACHABLE EMPLOYEE OF THE QUARTER



Catherine Kariuki

AWARD 4 PROBLEM SOLVER OF THE QUARTER (OUTSIDE THE BOX THINKER)



Joyanne Wanjiru

AWARD 5 BEST NEW STAFF OF THE QUARTER



Collins Magak

AWARD 3 BEST NEW LESSON AWARD

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

Contact person: johaga@tripleoklaw.com

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.

Contact person: jochieng@tripleoklaw.com

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.

Contact person: dkagagi@tripleoklaw.com

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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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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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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