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KANSURU

Legal fraternity argues that time has come to place Kenya in tandem with other Commonwealth peers

In August 2004, a local daily ran a story on four young lawyers who had established a law firm after their former employer died in a road accident.

The four — Suzanne Muthaura, Muriuki Mugambi, Caroline Ayugi and Waringa Njonjo, had just lost their jobs at Mboya and Company Advocates. They set up Muthaura, Mugambi, Ayugi & Njonjo (MMAN) Advocates.

The story described the rising fortunes of the young law firm and the challenges the four had gone through in establishing the firm.

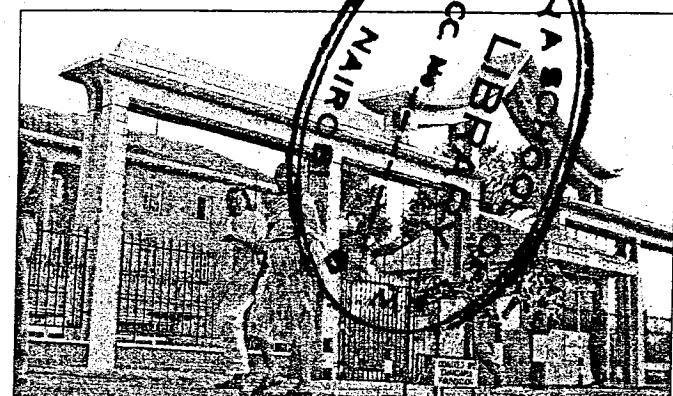
A few days later, the disciplinary committee of the Law Society of Kenya (LSK) summoned the four to answer touting, or advertising charges — an offence under the Advocates Act of Kenya. If found guilty, the law firm faced withdrawal of its licence or the removal of the lawyers from the roll of advocates.

Controversial subject

When it comes to advertising, lawyers in Kenya have it harder than their colleagues in other professions. Advertising of legal services remains a highly controversial subject with opponents arguing that it cheapens the profession.

Proponents on the other hand maintain that advertisements not only foster competition, but also help inform consumers of the available options.

Kenyan law prohibits the advertising of legal services in any form. All this is, however, set to change if the LSK Council approves



A lawyer being sworn in to the Bar (left) and pedestrians walk by the High Court precincts (above). Lawyers want the Advocates Act to be amended to allow for advertising of legal services. *B*

decade making it critical to add competitive pressure on the market.

This and the increase in the number of privately sponsored students pursuing law degrees is expected to move the profession into a new era of cutthroat competition.

Sue Omanga, the managing director of Exclamation Marketing — a marketing and advertising firm — reckoned that while advertisement of legal services is likely to level the market, it may not add much value in terms of revenue to advertising firms.

Internet loophole

While the proposals advocate that each law firm be allowed to post advertisements not larger than 5x5 inches in the print media and periodicals, the advertising market would still register some growth.

This size of advertisement is charged at an average rate of Sh12,000 each, which means that if each law firm posted one ad every month, it would translate into an extra Sh36 million in ad spend. The print media alone would increase its annual revenue base by a margin of Sh432 million.

In the recent past, the rapid growth of the Internet has given lawyers in Kenya a

set in motion the process of repealing the law prohibiting advertising.

If successful, the move will have great implications, not only in the legal fraternity, but also for advertisers and the general public.

Many young lawyers argue that it is high time the law was amended to place Kenya in tandem with its compatriots in the Commonwealth who have long been allowed to advertise their legal

These include; the United Kingdom, South Africa and India where lawyers freely advertise their services in the media.

The LSK register shows that Kenya has more than 3,000 law firms employing more than 6,000 advocates. And with the number of law schools set to increase with the setting up of two new ones at the Catholic and Kenyatta universities, this number could become even

market their legal services on a previously unheard of scale by setting up Web sites and announcing what they do best. This, strictly speaking, is against the Advocates Act, but the LSK has yet to act on any law firm for breaking the law.

If the current proposals had been passed in 2004, MANN Advocates would not be awaiting a judgment from the LSK about the 2004 story.

This is more so because it was not a paid advert, but a good story of success, but then, old ways die hard and this heralds a new beginning in the Kenyan legal field.

A break down of the ad spend

5x5 proposed ad size

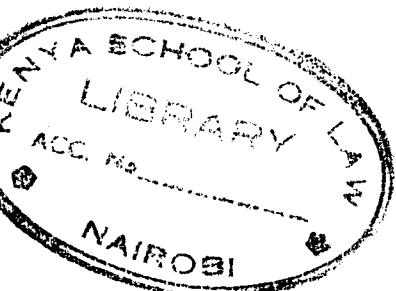
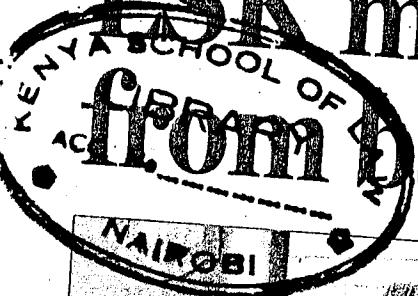
3,000 Number of law firms in the country

Sh12,000 Average cost of ad

Sh36 million Total ad spend if each law firm was to advertise once

Sh432 million Total annual ad spend if each law firm was to advertise once a month





Committee proposes repeal of law barring promotion of legal services in media

BY ALBERT MURIUKI

In what is likely to change the legal practice as Kenyans have known it since Independence, a committee of lawyers has made a ground-breaking proposal that if implemented would allow law firms to advertise their services in the media.

A member of the Law Society of Kenya committee told the *Business Daily* that the draft is the first step in

a process that aims at amending the law that prohibits advertisement of legal services, citing it as one of the oldest and most retrogressive clauses in the Kenyan law books.

Advertisement of legal services would not only tend to raise the level of competition among lawyers to a new level, but also open a new revenue stream for advertising firms and media houses.

It would mark yet another mile-

stone in the practice of law in Kenya and would open a protracted debate among lawyers themselves who are deeply divided over the subject.

Within the legal fraternity, advertising remains a highly controversial subject that has been debated for nearly a decade without much progress.

Opponents of advertising, mainly senior members of the bar, maintain that its impact would be to cheapen

the profession while proponents assert that advertisement would foster competition and help consumers make choices.

Mr Nzioka Waita, the head of legal and regulatory affairs at Safaricom, reckoned that the amendment is necessary to bring the law up to speed with recent developments in the profession.

"Legal practice has ceased to be an exclusive club

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BSK moves to free lawyers from ban on advertising

PROPOSALS

Lawyers to be allowed to advertise their legal services

- Size of advert: Not more than 5 x 5 inches
- Colour: Black and white
- Cost: Sh 12,000
- Frequency: A single insertion per month
- Number of law firms: Approximately 3,000 law firms locally
- The numbers: If all law firms advertise at least once a month

Sh36m per month

Sh432m per year

LSK moves to free lawyers from ban on adverts

»From Page 1 of a select few to one with thousands of participants," he said. "In other jurisdictions the rules are much more relaxed and in a country where justice is not easily accessible as ours, regulated form of advertising should not be frowned upon."

The LSK register shows that there are more than 3,000 law firms in Kenya with an average of 150 lawyers being admitted to the bar every year.

With the LSK proposing that each law firm be allowed to post advertisements not larger than 5x5 inches in the print media and periodicals, the advertising market would register significant revenue growth.

This size of advertisement is charged at an average rate of Sh12,000 each, which means that if each law firm posted one ad every month, it would translate into an extra Sh36 million in ad spend.

Bottomline

The bottomline is that the print media alone would increase its annual revenue base by a margin of Sh432 million.

Advertising spend has grown steadily in the past five years, nearly tripling at Sh15 billion last year from Sh6 billion in 2003.

Mr Nazima Malik, a member of the committee that helped draft the proposed amendments, said the plan would open an avenue through which lawyers can inform the public of their services without misleading them on what they can do before courts.

The proposed law specifies avenue channels that lawyers and law firms can use to advertise their services, besides limiting the size of the adverts. In



The LSK register shows that there are more than 3,000 law firms in Kenya with an average of 150 lawyers being admitted to the bar every year. FREDRICK OONYANGO

postal, telephone, fax, telex and other non-legal directories for example, advocates would only advertise their identity and the location of their offices. They would also be allowed to advertise their telephone numbers, fax, postal address and email/web-sites.

Electronic advertising would however remain illegal with advocates' appearance on TV limited to giving personal opinion on issues of general interest or in connection with professional matters in which they are

involved. Radio advertising would be restricted to provision of information on location of an advocate's office, telephones, fax, postal address and email/web-site address.

Advocates would also be allowed to inform the public on the working hours and language in which they conduct business.

The proposals however appear to give lawyers greater freedom to advertise on the internet where there are not significant restrictions. Advocates would not be allowed to post their charges for all categories of advertising.

Erroneous information

Also prohibited are promises to achieve results or to complete business in any particular time. Deceitful or erroneous information or persuasive, ideological, comparative advertising or phrases of self aggrandizement would not be allowed besides ads containing criticism of another advocate or professional.

Any ad that is of such a character as may reasonably be regarded as bringing the profession into disrepute would also not be allowed.

Where an advertisement of or by an advocate is deemed by the LSK to contravene any of the rules, the LSK may by written notice duly given to it, require the advocate from such date as the notice may stipulate, to withdraw, terminate or cancel the advertisement, as the case may require and not to repeat it during the currency of the notice.

Any advocate who fails to comply with the rules would be guilty of professional misconduct and may therefore be disbarred.

Advertising spending in Kenya

2003 and 2007 in billions of shillings

	2003	2004	2005	2006	2007	2008
Radio	40%	46%	44%	47%	49%	
Television	25%	22%	27%	28%	28%	
Cinema	1%	1%	1%	1%	1%	
Print	34%	32%	28%	23%	22%	
Total Sh Br	6.6	8.4	9.3	13.6	15.7	

SOURCE: STEADMANN