Is It Terrorism or Economic Sabotage?

KHRC’s 2014-2018 Strategic Plan:
"...The KHRC is permanent, irreversible and irrevocable."

Also Inside:
- The Truth about Marriage Bill; discussed by the Kenyatta University Legal Aid Clinic.
- The issue of Anglo-Leasing, By Mr. Joseph Agwata (KUSOL Alumni)
There’s more things in Heaven and Earth than what’s dreamt of in Philosophy, and on the other hand, Religion is what keeps the poor from killing the rich, but certainly, is there more to the Islam religion and the Salafi philosophy/ideology than to just killing in the name of ‘God’? and why Kenya in particular? What makes the other East African countries out of the premium? Find out in this issue.

Now, since the whole world is watching, we at Kenyan Legal want to always give you something special; something good, like a river glory, and in that spirit, I introduce to you our panel members of the Reviewer Feedback Programme, the Kenyatta University Legal Aid Clinic, and the strategic Plan 2014-2018 of the Kenya Human Rights Commission(KHRC), and as Prof. Makau Mutua once stated, “...The KHRC is permanent, irreversible and irrevocable.”, we share the same optimism.

Still progressing to give you nothing short of the best, this is Issue #8 of the Kenyan Legal Magazine; Real Kenya, Real Issues. Welcome.

REGARDS,

Michael

Michael Opondo O.

www.michaelopondo.wordpress.com

Managing Editor,

KENYAN LEGAL

The Kenyan Legal Team

The Secretariat

Michael O. Opondo: Managing Editor.
Sheila Mokaya: Assistant Editor.
Cindy Amuka: Associate Editor.
Patricia Ngare: Content Manager.
Dennis Gicheru: Director Partnerships
Anthony Mwangi: Co-Director Partnerships.
Arnold Odiembo: Director Communications.
Linda Wangui: Co-Director Communications.

The Branch Co-Ordinators

Kenneth Kimathi: Kenyatta University (School of Law)
Gabriel Pelu: J.K.U.A.T (School of Law)
Hamida Abass: Strathmore University (School of Law)
Duncan Ombo: Mt. Kenya University (School of Law)
Samuel Onyango: Riara University (School of Law)
Anita Simiyu: Kabarak University (School of Law)
Victor Kaula: Moi University (School of Law)
Bonventure Otieno: CUEA (School of Law)
To participate in the next issue, please send articles, with your personal details and picture to: kenyanlegal@gmail.com c.c mail@kenyanlegal.com

©Cover image courtesy of www.newrepublic.com

Disclaimer:
Whilst every effort has been made to ensure the accuracy of the information in this magazine, the authors, publisher and editor accepts no responsibility for any loss, financial or otherwise by any person using this publication.

All rights reserved. No part of this publication may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher, except in the case of brief quotations embodied in critical reviews and certain other noncommercial uses permitted by copyright law. For permission requests, write to the publisher, addressed “Attention: Permissions Coordinator,” at the address mail@kenyanlegal.com or kenyanlegal@gmail.com

Copyright protected by:

Creative Commons 2014

©Kenyan Legal 2014
All Rights Reserved.
www.kenyanlegal.com

Join the conversation facebook.com/kenyanlegal; twitter.com/The_Kenyan_Legal
The government of Kenya has found itself between a rock and a hard place on whether or not to make the Anglo-leasing payments or risk losing its internationally owned assets. The implication of failure to pay is that, the country cannot get money from the sovereign bond to fund its projects.

The problem is further compounded by calls by the Law Society of Kenya (LSK) for the resignation of the Attorney General because of the way he handled the matter. The LSK Chair accuses the AG of giving a wrong advice to the president that the country had lost the case in an England-based court and that the only option was to pay the money owed to a tune of 1.48 billion.

The LSK Chair Mr. Eric Mutua claims that by wrongly advising the president to pay the amount without putting a defense clearly demonstrated that the AG had an interest in the matter and therefore he should step aside to allow for investigation into the matter so as to bring to justice those behind the scandal.

The above claims have been refuted by the AG who argues that claims that the State Law Office failed to put a defense are misleading and unsubstantiated. He further contended that, the Anglo-leasing saga began long before he took office and that there was little his office could do to change the situation.

President Uhuru Kenyatta on his part defended the decision to authorize the payment by arguing that, he did this to save the country from plunging into further crisis since the England-based court had indicated that if the government of Kenya failed to pay the amount ordered; the same could have been recovered from the sovereign bond.

The president further reiterated that he has not changed his position on the issue on whether the amount had to be paid but he has been forced by circumstances to pay the amount. On the other hand, the ODM affiliated members of parliament have threatened to file a motion in National Assembly to impeach the president because of his decision to authorize the payments going against a report by a committee of the National Assembly faulting the payments.

Similarly, the ODM and their WIPER Counterparts have also threatened to call for a mass action upon the return from a two months visit from the USA of their party Leader Mr. Raila Odinga. Speaking in a political rally organized in Kamkunji Grounds, the ODM and Wiper affiliated legislators warned the president that he risks being impeached and subsequently charged for authorizing the payments. The same members also threatened to censure the treasury Cabinet Secretary Mr. Rotich if he made the payments.

The big Question is: should the country make the payments? The debate on whether the payments should be made seems to be divided with some arguing that since the government lost the appeal in the English-based court, then it’s only logical that payments be made. On the other hand, those against the payment argue that this will open the floodgate for other people with related claims to seek compensation.

Depending on which side of the debate you choose to support you realize that the country is likely to lose in one way or another...
likely to lose in one way or another. Failure to pay implies that the government has to look for an alternative source of income to supplement the budget whereas payment may open a floodgate for people with similar claims to bring them against the government.

When comparing the two options put forth, the first option of making the payment seems the better one compared to the two. This is because by paying the amount the country will avoid the possibility of the amount being recovered from the sovereign bond denying the country money to fund the budget. As for the possibility of a plethora of cases, the government conducts a fresh inquiry into the matter and put a strong defense to ensure that what happened in England does not happen.

Additionally, the allegation that the Advocate who represented Kenya in England didn’t have the capacity to represent the country can also be investigated to ascertain what actually conspired before the country was ordered to pay the amount. Until then the decision to pay appears to be the lesser evil.

Joseph Agwata is an Alumni of Kenyatta University School of Law (LL.B 2014).