PROTECTING THE EYES AND THE EARS OF JUSTICE

Also Inside:
- How Kenyan Lawyers Charge Legal Fees.
- Court Injunctions and a Rogue Parliament; Thoughts on the Conflict.
- Corporate Governance in Kenya; a Need for Review.
Without Inspiration...

To the Kenyan Legal Team; that includes you the audience, the contributors and the editorial; I never shall have second thoughts on you commitment to see that we move forward, in Legal knowledge and information, for Knowledge is power and an informed nation is strong even on its knees, I wish to thank you for your continued support; Much appreciated. They say you never know what you got till its all gone; but we know we got you, and we appreciate your audience. Welcoming you to the fifth issue of The Kenyan Legal Magazine, hoping this finds you well. I mean it has been a great year so far, that’s if you look on the positive side, so it’s only logical that at every chance we thank the almighty this far.

Kenya is a much trying Nation, that much we must agree. Its what should constitute our pride, our diversity, our heritage; and even as we may want to dwell on the wrongs around, I subscribe to Murphy's Law that "Whatever was supposed to go wrong, definitely shall go wrong", and that wouldn't change much as to who holds the reigns of the government. Let’s accept pride ourselves in our successes, as well as our flaws, join hands and build this nation; not lying in wait to 'paint' it once 'others' are done.

In this issue we get the privilege of one on one with the Witness Protection Agency-Kenya, who so far has been on a steady rise with a mission "To promote the rule of Law by providing an effective and efficient Witness Protection Programme in Kenya" and a greater mission "To be the leading Protection agency in the world". So what exactly does the Witness Protection Agency-Kenya do to achieve its mandate, its structure and achievements so far? Do find out in this issue in the main feature.

Also introducing in this issue the "Scholar Section". Find out what it’s all about.

I finish up by quoting one Johann G. Von Herder who stated:

'Without inspiration, the best Powers of the mind remain dormant; they are a fuel in us that needs to be ignited with sparks.'


REGARDS,

Michael

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THE IRONY OF MARITAL RAPE

"But the Husband cannot be guilty of rape committed by himself upon his lawful wife, for by their mutual matrimonial contract and consent the wife hath given up herself in this kind unto her husband which she cannot retract" Hale, 18th Century

Family Law, like any other Laws based in morality has an underlying function to minimize evil consequences and maximize the good consequences. Marriage simply put is a convergence of characters; none is ever perfect and none shall ever be, I believe, but the prima facie right accorded to parties to a marriage is freedom of choice and thereby express consent, which on the contrary when it comes to rape, consent is the main element a victim is robbed of; how then comes that "Marriage" and "Rape" shall stand as par as in 'Marital rape'? Isn't agreement to marriage a form of a forever standing consent as long as the marriage is still on?

As it stands, the nature of marriage's main condition is voluntariliness of the parties to it, as in a classic definition in English Law by Lord Penzance in the case of Hyde vs. Hyde:
"I conceive that marriage, as understood in Christendom, may...be defined as the voluntary union for life of one man and one woman to the exclusion of all others."

Marriage as a contract as whether in civil or religions in essence is an agreement between a man and a woman to live together in effect giving personal consequences as, amongst others:
1-Use of Surnames;
2-'Marital Confidences', as echoed by Thomas J. in Argyll vs. Argyll
"There could hardly be anything more intimate or confidential than this involved in that relationship, of than in the mutual trust and confidences which are shared between husband and wife".
3- Right to Consortium and Sexual intercourse. This is the rights to the company, society and affection of a spouse in any matrimonial relationship.

With the above being personal consequences of marriage, I am of the stand that the belief that 'Marital rape' does exist is a poorly informed one, as in most cases, denial of the right to consortium is enough a reason to divorce.

Right to consortium in marriage is built on a premise that once contracting to it, there then commences a standing consent that rightly remains so till the end of that marriage in whatever way, but until then, "Neither a wife may make a vow of abstinence without consent of her husband nor the husband without the consent of his wife. "- (Decretum Guatiani)-

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