SOUTH SUDAN CRISIS

“East Africa would not accept coup”

-President Kenyatta-

Also inside:

➢ Religious and racial profiling to fight terror? Not a bad idea
➢ Victims of prejudices and antiquity.
We all seek recovery from last year’s Westgate Mall attack, to the pro-repute of the Al Shabaab jihadist wing but thanks to the likes of the late 'Sheikh' Makaburi-as casual I regard him too much to state his real names-we now know we as a country greatly "deserved it" principled on an eye for an eye. Human Rights can never protect themselves without blemish; at the treasure of one comes trash of the other; time has proved again. I refer to the arbitrary search and arrests that of late has accosted the Kenyan Public mostly targeting persons of Somali origin, dubbed "Operation Usalama Watch". Is the operation too high handed that it beats necessity or is the patient rightly overdue: you decide.

As I welcome you to the 7th issue of Kenyan Legal magazine, I wish to take this chance to appreciate the committed team workmanship the Kenyan Legal Magazine’s support team has demonstrated this far-from the Secretariat to the Branch co-coordinators, you’ve been a great team. And even much more thanks to the audience at large; those who take time to read at least an article from every publication, to those who follow up with correspondence and feedback; really appreciated and we shall continue so. They say the Sequel is never as good as the Original, but I say, for Kenyan Legal, The best is yet to come!

This is for Kenya; it’s Real Kenya, Real Issues. Welcome.

REGARDS,

Michael

Michael Opondo O.
Managing Editor,
KENYAN LEGAL
Cover Photograph courtesy of Andreea Campeanu/Courtesy Reuters.

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With Complements

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A Legal Mystic of Exemption from a Right.

When the entire world seems to have found the sense of reason in the fight for women’s rights, there has been a great insistence of the same by the activists until the society has turned bigoted of the issue. Arising from the same issue is the reason why we give affirmative action. It is as a result of the understanding that man and woman are equal. In essence all persons are equal. However, the words of Baron De Montesquieu are also realized by the society to be true. In the state of nature, indeed, all men are born equal, but they cannot continue existing in this equality. Society makes them lose it, and they recover it only by the protection of the laws. The law being created by the people for the people has been molded to cater for women through affirmative action. The society through affirmative action has fought to promote social equity. It is by the above reason that the constitution of Kenya 2010 bears a great emphasis on the empowerment of women. The political and public office positions have a minimum requirement for the proportion of women to that of men. This is pursuant to articles 27(6 &8), and article 81(b). The two provide to the effect that the government will take affirmative and legislative measures to ensure that no more than two thirds of holders of public offices shall be of the same gender. With this regard, it is for the first time that somewhat Kenyans and generally the whole world has realized that social justice cannot be obtained at the state of nature. The knowledge of the discourse of inequality informs this conclusion. Albeit for the same insistence of activism of female rights, it needs be noted that there are the rules of natural justice. These rules of natural justice in practice are purely rightful entitlements to every human creature and should not be taken with adverse distinction. They include the rules of fair play and the rule of law. Their simple indication is that, when the laws apply, they should apply equally to all individuals regardless their being men or
women, and that all creatures be explicitly presumed equal regardless their gender.
The brass task of this issue is that the law that has not only failed to comply to the appeal of affirmative action for women but also has gone beyond the extreme of not treating them equals of all humanity to adversely distinguishing them on both grounds of gender and economic status. This area is the civil procedure law that provides the rights for everyone including paupers to hearing. Order 33 of the civil procedure rules 2010 provide to the effect that, even the poorest persons upon application can institute civil suits. This is a provision that ensures that social justice is accorded to all persons irrespective of the economic status. Rule 3 of the order further provides that “notwithstanding the provisions of the rules the application shall be presented to the court by the applicant in person unless the applicant is exempted from appearing before the court by section 82, in which case the application may be presented by an authorized agent who can answer all material questions relating to the application and who may be examined in the same manner as the party represented by him might have been examined had the party appeared in person”. This provision has the essence of exempting a woman from exercising the right she is entitled to. Section 82 of cap 21 worsens the issue providing that “women who according to the customs of their community ought not to be compelled to appear in public shall be exempt from personal appearance in court”. This provision is against section 27(4) of the Kenyan constitution 2010. It is an exemption to what is rightfully an entitlement to the women. Arguably this law can be said to be depraving the women of aright generally entitled to all people by the grounds of their being poor, women and belonging to a certain community that perpetuates gender discrimination. The solution to this is an amendment of the civil procedure rules and civil procedure act cap 21 laws of Kenya the provisions of order 33 rule 3 and section 81 variably be amended to mend the injustice.

**Dennis Maanzo** is a Third year Law Student at Kenyatta University, Parklands Campus, and the reigning winner of the 2nd All Kenyan Moot Court competition 2014. To comment on this and other articles please visit [www.kenyanlegal.com](http://www.kenyanlegal.com).

“Real Kenya, Real Issues”