Michael Murungi, Kenya Law Ex-CEO

‘As Much I Dream, I can

In This Issue:

• Marry a Lawyer? Proceed with caution
• The 2nd All Kenya Moot Competition
• Is Bigamy but a social problem; not legal?
  • Open Letter to Mr. President
The More we Change...

Comes a time when we must make a change; comes a time when we must be part of the best grains, when mediocrity shall no longer be allowed to fly, so say 'Bye' to the old and say 'Hi' to the new. Just a little while back the 2013 K.C.S.E results were released and many aced, and the obvious otherwise. But what strikes more is the fact that cheating is as prevalent as corruption and these are to male the next gen of leaders of this country: the more we try to change is the more we stay the same.

Moving on, as I welcome you to the 6th issue of Kenyan Legal Magazine, we give you an exclusive interview of one Mr. Michael Murungi, the outgoing Kenya Law Reports C.E.O and Chief Editor, whose leadership and team work skills has seen Kenya Law move from being just a Legal reporting institution to be 'Mwananchi' friendly where legal information is practically public knowledge. Also in this issue find Dr. Fiona's analysis of why Lawyers make the worst spouses in her article "Marry a Lawyer? Proceed with caution" Is it such a bad idea to marry/get married to a Lawyer? Find out.

Even as we progress to make generous successful steps, and growing as Kenyan Legal, challenges are abound; noting this, I, on the behalf of the Kenyan Legal Team, hereby appreciate your continued support so far. There's no 'Us' without you ('U'), quite literally. They say the Sequel is never as good as the Original, but I say, for Kenyan Legal, The best is yet to come!


REGARDS,

Michael

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To participate in the next issue, please send articles, with your personal details and picture to:
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With Complements:
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Correspondence & Feedback

APPRECIATION

I personally appreciate the hard work the Kenya legal team are putting to come up with the legal magazine. This is by something that is very important to students as they get to learn more of writing skills and also legal writing which is important for us as lawyers. We also get to learn the law from fellow students and the professionals that Kenyan legal teams have approached and contributed in writing of the available issues. It has also become a magazine where we can freely express our view which in one way or another can change someone else opinion and sure will contribute in the development of jurisprudence in Kenya. I, although a contributor in only one of the last five issues retain all the five for academic and other purposes and would encourage as many people to contribute by writing articles in the magazine. We all have knowledge and ideas that other people don’t have and would like to have, please share, dying with such great idea or story we never had that could have changed our lives must also be sin.

FROM Mr. Aira Godfrey Wambura, Via Mail

Dear Kenyan Legal

I have received your beautiful and comprehensive 43-page online magazine and I intend to share it with our Director and all the staff.

I am thankful that you decided to give WPA priority placement on cover page and as the main feature. You also captured a suitable illustration and slogan "THE EYES AND EARS OF JUSTICE" below the photograph of a presumed ‘mother-and-baby’. You have also managed to get some new columnists.

Overall, WPA is impressed with the quality of the magazine. Keep up the good work and continue to source authoritative/professional material.

Thank you and wish you well

FROM Mr. Dominic Nyawir, Liaisons Office WPA-Kenya, via mail

I would very much wish to be of assistance to this initiative. I have to say a big kudos to you and your team.

Regards,

FROM Prof. M.K Mbondenyi
LLB, LLM, LLD
Dean, Africa Nazarene University Law School
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WHO IS MOST ARMED?:
SEPARATION OF POWERS AND THE WAR BETWEEN THE ARMS

By Aira Godfrey Wambura
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The year 2012 marked the first government to work under a new constitutional system. We obviously expected myriad of intricacies since we had seen such in the government that preceded under which only implemented fraction of the provisions that would give leeway for full implementation of the other provisions in the new government. Also for the sake of interpretation we expected each article to be brought forth for interpretation especially the ones on bill of rights and composition of government, functions and system of corporation and separation between the two levels of government; the horizontal level comprising judiciary, executive and legislature and vertical level composing of county and national government.

In modern democracies, it is expected that for a government to work well there must be three arms independent of one another and as said by Louis Montesquieu who called it a tripartite system and this was to avoid arbitrary use of power and autocracy. This is what is known as separation of powers. When Montesquieu was talking about this the governments in Europe were mainly bipartite types the best example being the one we had immediately before 2012. Separation of powers can only work if there is the system of checks and balances because without that then the spirit of separation would just at waste resulting into creation of three more autocracies. So we came from a bipartite to a tripartite government and also we moved to a quasi-federal government or what we call the vertical separation of functions. I call it separation of function because the national government that is legislature and executive have alienated some legislative and executive functions to the county governments. The counties were mainly formed so as to involve the people in governance “bringing government to the people.” The systems that had preceded seemed to be ineffectual and insensitive in function.

You can’t talk about the constitution because somehow it was so ornamented and this was may be overdone and therefore we find ourselves in a government where the senate and county assemblies have very little duties and to retain some political supremacy usurpation of powers and scramble started. The other emerging fact is the arbitrary exercise of the little “what we have powers” so that we would remain relevant. The recourse for the aggrieved parties have always been the courts and for this reasons, the judiciary itself has been involved in the war. May be trying
to exhibit some independence that they did not have prior to the birth of the constitution and making them a formidable force to be reckoned in the system.

The result has been rancorous altercation within the system. From intra- arm war to inter arm war, every war the loser runs to the courts to make interpretation and whenever such are made, the court ultimately become a party to the war in as much as it is supposed to be a peacemaker. But why do we have that.

The constitution is revolutionary paper or letter. It gives and takes some powers it is for this and many reasons becomes the person in authority; it rules by itself and every person is under it and is guided by it. The legislature is all made up of politicians and will always do things like politicians and will always do politics from the on-set to off-set of government. The executive on the other hand is creation of politics, the president is an active politician that makes him closer to legislature and there by the fact that he appoints the members of the executive council, the decision must be one made at the political party level by the then anticipated legislature. The only independent body being judiciary not being politicians but professionals. What actually matters is how the constitution and the subsidiary laws are constructed.

We actually moved from a supreme and authoritative parliament and very imperial presidency to a more of a controlled presidency and legislature and from a servile judiciary to supreme judiciary. This is where the problem all long has been. We know we Kenyans have always recycled the members of parliament or people in government have always been recycled from department A to B and may be to the last alphabet and then back or the people in government were nurtured by the ex- supreme leaders and for that reason want to rule with the same mind set albeit the constitutional changes. The leaders therefore are surprised by the kind of government they find themselves in when business to them does not seem usual, they wallow in a powerless vacuum according to them even though by fact the powers are just controlled by the supreme law. Politicians do everything to see themselves retain some powers, the former constitution had a clause that allowed the parliament to amend the constitution and this made the constitution one good weapon on the hands of legislature. It could be used to assault anyone and any arm, where any arm was the judiciary because the executive was a composition of legislature itself and may be it was used to protect the executive in one way or another. The new system when it came into force really demarcated the branches and the constitution also became some kind of rigid on the parliamentarians they have no other means to beat it, most of the articles that aggrieve them or put them in bad position can only be amended by referendum.

The doctrine of separation of powers in ideal nature is one that every arm of government is supposed to be equal and independent but that as always not been so but just close to being so. The constitution although is like a person, will never be a person and it being a person is only effected by an effective judiciary which is its own creation. When judiciary becomes effective as seen in our system now, it actually goes above the other two arms; it has the powers to quash most decisions made and laws passed. We are also carried away to believing that some of those decisions are in right which might not be true but it still remains the law and the judiciary becomes a little more of an autocrat but they exercise it with a lot of professionalism unlike such powers however little they could be, given to politicians.
The problem that we are experiencing now is not insurmountable and the cross fire will cease. It is just a major challenge on the judiciary not to relinquish helping our politicians how to understand the law in force and also rehabilitate them from the old mindset that they were nurtured in in as much as it may not seem old. By around 2022 we might just be done we won’t have a speaker of national assembly making a blatant interpretation of article 1 or will we be thinking of legislating on immunities and powers of county assemblies when it is obvious that they have that by the fact they already have that role or will we have a parliamentary committee sitting down to discuss how we should reduce funding the judiciary without anticipating the impact it is going to be on course of justice for the people and zero impact to judges neither will we raising issues with who is to fly national flag on his car which is a symbol of nationalism and fighting over names which the citizens have forgotten due to the unhounarable office holders. To the MPs they should run to law schools, so that we might achieve it earlier than 2022 because at such a time we might just be a kinder late for the vision 2030. Someone asks me, what about the many lawyers in parliament, it seems they will change when the wave of changes unlock the brains than they are misusing or do away by them. The fact is that a government is by the people even though we know everyone cannot be a leader, we also expect corporation between the arms of government and not war. This is because to the people politics or interpretation of law does not really matter for us it is delivery of services adequately is all that we care about.

Aira Godfrey Wambura is a second year Law Student at Kenyatta University, Parklands Campus, and content manager of the Africa Law Times.

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