‘As Much I Dream, I can

In This Issue:

• Marry a Lawyer? Proceed with caution
• The 2\textsuperscript{nd} 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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Managing Editor,
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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
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NOVELTY SEEPS INTO THE SECOND ALL KENYAN MOOT COURT COMPETITION.

By Dennis Maanzo,
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The second all Kenyan moot court competition did not pass without traces of novelty. However this was with appreciation that cases in the Kenyan Legal system have judicial precedence as a common denominator from case to case.

"the jurisdiction of the High Court, the Court of Appeal and the subordinate courts shall be exercised in conformity with; subject thereto and so far as (those) written laws do not apply, the substance of common law, the doctrines of equity and statutes of general application in force in England on the 12th August 1897 and the procedure and practice observed in courts in England at the date"\(^{10}\).

The moot question involved a hypothetical state tagged Padma but similar to the legal and institutional framework of Kenya. After all, the All Kenyan Moot Court Competition is concerned with the practical application of the law of Kenya. The case involved contentions on direct appellate jurisdiction of the supreme court, the violation of the obligation to prosecute corruption by Director of Public Prosecution, violation of the citizen’s rights to assemble, demonstrate and picket and the derogation of the obligation to meet socio-economic rights of citizens. Precedent provoked recurrent references of the cases of Jasbir Singh Rai and Three Others V Tarlochan Singh Rai and Four others (2013) EKLR\(^{11}\), Githunguri V Republic (1985) EKLR\(^{12}\), Republic V the Judicial Commission of Enquiry into the Goldenberg Affair and another, expert Saitoti (2006) EKLR, and Michael Mutinda Musembi V the Permanent Secretary of the Ministry of Education and Two others (2013) EKLR.

Too novel to be estimated by everyone were the legal issues that were raised. Firstly is the unexpected question of whether the Supreme Court is bound by substance of common law. The Judicature Act only recognizes application of common law before High Court, Court of Appeal and the Subordinate Courts. The Constitution under Article 2 and Chapter ten does not indicate the effect of the common law before any Court. Competitors went deep to establishing that the application of the common law before the Supreme Court is an issue of Transitional and Consequential application of the Constitution as indicated by section 7 of part B to the sixth schedule of the Constitution. This establishes

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\(^{10}\) Section 3(1)(c) of the Judicature Act Cap 8 Laws of Kenya

\(^{11}\) On the review of Courts own decision to open grounds for litigation as applied by the House of Lords in the Pinochet II Case. This was cited in submitting that the Supreme Court reviews its grant of leave to hear the direct appeal on the grounds that the decision was unconstitutional and against common law.

\(^{12}\) On the discretion of the prosecuting authorities to initiate continue or withdraw criminal proceeding against the corrupt independently by lawfully.
that the existing laws and legislations shall during the transitional period apply subject to modifications and alterations made by the Constitution of Kenya 2010.

The second novel argument was a risk taken by the award winners to claim that there exists a constitutional crisis due to the conflict of the principles of independence of the prosecuting powers and the anti-corruption office against the principle of co-operation arising from harmonious motion of state institutions. This was a ground for amending section 11(1)(j) of the Kenyan Ethics and Anti-Corruption Commission Act which gives the commission prosecuting powers infringing on the independence of the Kenya’s director of public prosecutions.

For this tactical dovetail between the precedential common denominators and the novel peculiarity of the case, special applause goes to the award winners; Mr. Dennis Maanzo, Ms. Semeita Turere and Mr. Wycliffe Omwenga of Kenyatta University. Honorary congratulations also go to the best mae and female oralists, first and second runners up and other title owners. It is by mooting that the law student may develop the law and end up to building the nation as the Excellency judge of the Supreme Court Jeckton B. Ojwang, indicated during the event.

_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_

_“Real Kenya, Real Issues”_
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