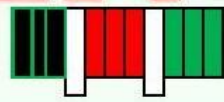




KENYAN LEGAL



real Kenya, real Issues



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 your 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 it's 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. It's 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.'

Its Real Kenya, Real Issues. Welcome.

REGARDS,

Michael

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THE ANATOMY OF DOUBLE-SEX: KENYAN LAW AND TRANSGENDERS



By Michael Opondo O.,
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Nature is its own consequence and no one, in his/her right mind would wish to be born with a deformity as critical as involving sexual orientation. Law is not a miracle, it's a result of man's views. When men agree on consensus, they form principles which are the basis of Law: so Law collectively is an accommodation of the society and changes from time to time to accommodate the changes in the society, but whether the slow but sure change in the growing number of transgender in Kenya is something the Law is ready to accommodate remains in doubt as the silence of the Law reflects the silence of the society on the matter.

A transgender is a person who fails to conform to gender norms associated with traditional male and female stereotypes; not conforming to a dominant gender mode and thus identifies her/himself as being of the opposite gender to his/her birth gender, and in contention with that is a transsexual who changes his/her sex, whether by surgery or hormone therapy, and this is mostly where the problem begins, but not always so. As Dewhurst and Gordon would right in *The Intersexual Disorders*:

"One can only attempt to imagine the anguish of the parents. That a newborn should have a deformity...(affecting) so fundamental an issue as

the very sex of the child...is a tragic event which immediately conjures up visions of hopeless psychological misfit doomed to live always as a sexual freak in loneliness and frustration."

As fate would have it, the Kenyan Legal scene found itself at the centre of such a case when one Audrey Mbugua, born Andrew Mbugua, sought the court's order to compel the national examiner, Kenya National Examination Council (KNEC), to issue her with a certificate reading Audrey Mbugua instead of Andrew Mbugua. She (Audrey Mbugua) explained to the court that she was diagnosed with Gender Identity Disorder (GID) leading to a gender transformation from male to female and was thus seeking identification reflecting her current status as female.

Even as the unprecedented case proceeds, it remains clear that even the Kenyan Law has a stereotypic stand on gender as you are either male or female and Audrey's case is not a stand alone case as probably there goes a lot other unreported cases for fear of consequences. Such discrimination is not only present in Kenya as beyond borders it is also shown as in the case of *Glenn vs Blumby et al*, Vandy Beth Glenn, a two year worker in the General Assembly's office of Legislative council as an editor and proofreader, privately struggling through years of distress as male was diagnosed with Gender Identity Disorder (GID). Her boss however fired her on spot on learning that she (Glenn) intended to undergo gender transition. The victory in Glenn sent a clear message to employers on discriminating against transgender employees.

So where exactly does the Kenyan Law stand on transgender persons as no person is "illegitimate" before the Law. The Kenyan Law recognizes and respects the diversity of persons' backgrounds, but unclear on diversity of persons' sexual orientation; at least as far as article 11(2)(a) of the Kenya Constitution provides. But even so, article (12) (1) (a) provides that every citizen is

entitled to the rights and privileges and benefits of citizenship, subject to the limits provided or permitted by this constitution. What therefore earns you the status of citizenship? By birth or registration (Article 13(2), Constitution of Kenya), that is, regardless of your sexual orientation. Further the Penal Code section 162(a) provides that:

"Any Person who has carnal knowledge of any person against the order of nature-is guilty of a felony and is liable to imprisonment for fourteen years."

So question remains, is being born with a sexual deformity, naturally, warrant one to be "against the order of nature" or does the so called "Order of nature" serve the popular and most prevalent "natural single sex" People? Kenya, Speak up

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To comment on this and other articles please visit www.kenyanlegal.com

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