



KENYAN LEGAL



real Kenya, real Issues



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 ached, 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!

Its Real Kenya, Real Issues. Welcome.

REGARDS,

Michael

Michael Opondo O.
Managing Editor,
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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.

Overally, 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 Mbondenji

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WHO NEEDS CRIMINAL LAW



By Michael Opondo O.,
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“We have to know what we are doing, protecting an order that doesn’t exist, to make a security that cannot exist...it is not possible to change anything until you understand the substance you wish to change...to change something you do not understand is the true nature of evil.”

-Winterson 1991:93,138-

Criminal punishment

By all means Criminal Law in practice seems to have no particular victim but a shadowy figure in the disguise of the defendant/offender, as the offender is punished while the claimant is not as much compensated. Over time memorial, consequentialist justifications have put forward that Criminal punishment is justified on a balance that to an extent it brings about “good consequences”-which in this case would mean reduced criminal practices-or rather labeled sometimes as ‘reductivist’ theories of punishment. The other set of justifications to Criminal punishments, known as “deontological”-duty based or rights oriented theories-which propose that in every sense, human beings are of inherent worth and dignity whose rights demand

respect from individuals and the state, and punishment is to ensure this is achieved. This, in every sense, is controversial and won’t be taken further.

Purpose of Criminal Law

Well then, what really is the objective of Criminal Law? Devlin, in *The Enforcement of Morals* {Oxford University Press,1965} describes the function of Criminal Law as:

“...the Criminal Law exists for the protection of individuals...But the true principle is that the Law exists for the protection of society. It does not discharge its function by protecting the individual from injury, annoyance, corruption, and exploitation...”

In a nutshell, the purposes of Criminal Law are:

- ∅ To give fair warning of the nature of the conduct declared to be an offence;
 - ∅ To safeguard conduct that is without fault from condemnation as criminal;
 - ∅ To resolve disputes;
 - ∅ To maintain order in the society;
- and
- ∅ To differentiate on reasonable grounds between minor and serious offences.

How far much these purposes are fulfilled by Kenyan Judicial system is however disputable.

Criminal Law is Victimless

Now comes the question of who is the real victim in Criminal Law. The plaintiff seeks the court’s redress for robbery with violence; all facts brought forward prove the defendant guilty of the aforesaid crime; then by application of the Kenyan Penal Code, is sentenced to not less than 10 years imprisonment. So Criminal Law here has

served to help the initial victim {plaintiff} to make a second victim {offender}, as the offender is sent to jail. If this is it, then ‘an eye for an eye” Law in place of Criminal Law would be better off, isn’t it?

This double jeopardy type of Law should at least take into account the Retributive Punishment as the official response to Criminal wrongdoing whereby the offender/defendant is encouraged to feel guilty for their actions, while the Claimant’s rights are vindicated, and if possible, their well being restored, that, Kenyans, would be Justice served.

Have an informed Endeavour.

Michael Opondo O. Is a second year Law Student at Kenyatta University, Parklands Campus, and managing editor of The Kenyan Legal Magazine.

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