



The Kenya School of Law

Volume 5 Issue 2

JUSTICE

Newsletter



Law, Ethics and Social Media : Navigating a Transition



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From the Editor

Welcome to Volume 5 issue 2 of the Justice Newsletter.

The theme for this issue is “Law, Ethics and Social media: Navigating a transition”. This theme is important as it reverberates with the transition that has occurred within our country and within the Kenya School of Law (KSL). As a country, we recently witnessed change of administration after the country held peaceful general elections on Tuesday 9th August 2022. This has significantly elevated Kenya’s democratic trajectory within the continent.

The launch of the KSL 6-year Strategic Plan (SP), held on 26th August 2022 is a key milestone for the School. The Plan runs from financial year 2022/2023 to 2027/2028. It articulates the vision, mission, core values and key result areas as the road map for the next six-year period. As we navigate through both transitions we have to reflect on what goals have been achieved and what can be prioritized or changed. This will enable us move forward as an institution from strategic planning to strategic action.

In this issue, we have highlighted various milestones attained by the School since the last publication. The key milestone in the period was the launch of the School’s 6-year Strategic

Plan (SP) as stated above. We have also featured an article on the inaugural legal aid day held by the Diploma in Paralegal Training Programme (PTP) students in the month of September at Voi Town.

The issue features Departmental Briefs and Events from the various School’s Departments and staff members including the customer care week and mentorship workshop under the Advocates Training Programme(ATP). Finally, we have covered insightful articles with a wealth of information on issues related to Cyber Bullying and Digital Etiquette, Social Media and the Legal Profession, Ethics and social media, Marketing or Advertisement by lawyers on social media and Why social media is the next frontier in E-sourcing.

We are grateful to the Board and the Management of the School for their continued support and to all of our authors and contributors specifically our staff and students who have contributed to the success of this publication over the last three years.

Special gratitude goes to the Editorial Committee for their dedication and effort in publishing this issue.

Enjoy the read.

The Editorial Team



From Left to right: Raphael Ogello, Caroline Marete, Anastasia Otieno, Agnes Mwai, Ruth Githaiga, Christine Kungu, Fredd Wakimani, Linnett Odawo, Ann Werimo and Sammy Makokha.

Word from the Chairperson, KSL Board



Prof. Joseph Mworira Wamutitu
Chairperson, Kenya School of Law Board

On behalf of the Kenya School of Law Board of Directors, I take this opportunity to congratulate the School Management for publishing Volume 5 issue 2 of the Justice Newsletter. The Justice Newsletter is one of our Information, Education and Communication (IEC) tools

that helps in communicating to all our stakeholders, both internal and external, about the School's activities that have taken place within a specific timeframe.

The theme for this issue is "Law, Ethics and Social Media: Navigating a Transition" This theme is timely as it resonates with the transition that has happened within our country and our institution. As a country, we recently had a change of government from the former President Uhuru Kenyatta's government to the current government of His Excellency Dr. William Samoei Ruto after the country held peaceful general elections on Tuesday 9th August 2022. Likewise, the School also transited from its previous 2018 – 2022 Strategic Plan

to the current Strategic Plan (SP) 2022/23-2027/28, which was launched on Friday 26th August 2022. The SP identifies five key result areas, namely: Quality Legal Training; Research and Consultancy; Financial Sustainability; Capacity Development; Customer Satisfaction; Corporate Leadership and Governance. The SP comprises five chapters capturing different thematic areas and two appendices. The application of law and ethics as well as use of the social media played a key role in enabling a smooth transition in various capacities. These are covered in the enlightening and informative articles published in this publication. It is our sincere hope that the articles will help in creating more awareness and serve as an avenue for further engagement.



The Kenya School of Law Board members, (Front row) and the Senior Management Team during a Board Annual Retreat in Mombasa.

Word from the Director/Chief Executive Officer Kenya School of Law



Dr. Henry Kibet Mutai
Director/Chief Executive Officer, Kenya School of Law

I would like to welcome you to this issue of the Justice Newsletter, Volume 5 issue 2 of 2022. This publication is aimed at providing our stakeholders with updates on notable activities that have taken place within the School. It also provides a forum where writers can share original articles on the chosen theme for that issue.

Since the last issue of the Newsletter was published, the School has managed to achieve a number of milestones and hold various events. The key milestone in the period was the launch of the School's 6 year Strategic Plan (SP), which was held on 26th August 2022. The Plan runs from financial year 2022/2023 to 2027/2028. The Plan articulates the vision, mission, core values and key result areas as the road map for the next six-year period. It also

provides strategic objectives, strategies and activities to be implemented over the Plan period. In this SP, the School has revised its vision, mission and core values. The School's new vision is "A centre of excellence in professional legal training, research and consultancy".

In discharging its mandate, the School has continued to train candidates undertaking both the Advocates Training Programme (ATP) and the Diploma in Law in Paralegal Training Programme (PTP). The ATP intake for 2023/2024 academic and the Pre - Bar applications for 2023 is ongoing and the deadline for applications is 30th November 2022. 148 students were enrolled in the latest PTP intake for the 2022/2023 academic year.

As a means of enhancing the student experience, the School has continued to organize legal aid missions for both ATP and PTP students. I am happy to note that the PTP group had their inaugural legal aid day in the month of September at Voi Town. The ATP group, on the other hand, had their latest clinic in the month of November at Kitui Prison. The legal aid activities help the students apply some of the knowledge and skills learned to assist people in the society and those awaiting disposal of their hearings and appeals with the legal issues facing them.

Apart from the academic activities, the students have also resumed extra curriculum activities after a very long break due to the Covid-19 pandemic that had restricted outdoor activities. In the last couple of months, our students have held a number of sports and games, the latest one being a tournament day between the KSL team and Uganda Law Development Centre team held on 22nd October 2022 at the School grounds. The tournament included the following games: soccer, volleyball, netball and chess.

On a separate note, the School saw an improvement in its Performance Contract (PC) composite score for the FY 2021/2022. The School attained a composite score of 3.0625 (Good) which is an improvement of +0.2737 from the FY 2020/2021 composite score of 3.3362. It is our hope that as a School we will continue offering best of our services to all our clients, which will lead to continuous improvement in the PC scores.

Finally, I would like to thank the Editorial Committee for their tireless efforts in ensuring that Volume 5 Issue 2 of the Justice Newsletter 2022 has been published.



The KSL Director Dr. Henry Mutai presenting a token of appreciation to KSL Board member Emily Chweya



Milestones

The Kenya School Of Law 2022/23-2027/28 Strategic Plan: The Value Of Creating Strategic Partnership

By Doreen Otieno



The KSL Board Chairperson Prof. Joseph Mworira Wamutitu(right) and KSL Board member Emily Chweya in a cake cutting session to mark the launch of the Strategic Plan.

The Strategy, Planning and Quality Assurance Department, is tasked with the responsibility of coordinating the development, implementation, monitoring and evaluation of the School's corporate plans. On the 26th of August 2022, the Kenya School of Law launched its next cycle of Strategic Plan (SP) for the period 2022/23-2027/28. The SP provides a 6-year roadmap that will guide the execution of the School's mandate and realization of its vision of being "a centre of excellence in professional legal training, research and consultancy". It presents 5 key result areas including: Quality Legal Education, Research & Consultancy, Financial Sustainability, Corporate Leadership & Governance, Capacity Development and Customer Satisfaction. It further highlights the

School's alignment to both the national and international development agenda; including, the Sustainable Development Goals, the Africa Agenda 2063 and the Kenya Vision 2030.

The launch of the SP meant a change of gear from the 2018/19-2021/22 SP to the new 2022/23-2027/28 SP. Though the implementation journey kicked off smoothly, it is evident that the SP resource deficit gap of about Ksh.2.5 billion is something to worry about. The gap is further worsened by the recent government directive on austerity measures highlighting the areas affected by the call for budget cuts. Budgetary constraints have become a norm in most institutions' corridors. Interestingly, no one talks of limiting the activities to the available resources, instead

institutions have to strive to implement the planned activities which at times are very ambitious. In such a tough situation, the big question is; how do we bridge the resource gap without compromising the SP implementation? The answer to this question lies in the identification and adoption of workable resource mobilization strategies.

The beauty of the School's recently launched SP is that it provides for resource mobilization strategies which include among others strengthening partnerships and linkages with potential strategic partners. As the going gets tough, all is for sure not lost. It is important to note that successful implementation of any plan is not entirely dependent

on an institution's resource muscle.

In a resource-constrained environment, the answer lies in the creation of strategic partnerships and linkages with potential partners as well as innovation. We can all agree that forming strategic partnerships is an effective way to achieve strategic goals, reach a wider market and expand revenue streams. The School has to as a matter of urgency identify potential strategic partners with common goals. The value of strategic partnerships cannot be wished away, however, as we look to and enter into strategic partnerships and linkages, the most important questions we need to ask ourselves among others are "what are our priority areas and goals?" and "do they complement each other?"

What then do we need to do to strengthen School's partnerships?

The answer lies in the broadening of the partnership framework and proactive cultivation of existing and potential relationship with the partners. The School should purposefully strive to bring on board new partners and enhance partner relations to enhance retention, engagement and investment. We strongly need to do partner mapping and categorization; this will enable us to know; i) where are we now? ii) who do we engage with now? and iii) who should we bring on board? Specifically, the School needs to continuously engage with partners through meetings and round table forums, conducting detailed partner profiling to understand the priority areas of new and potential partners. It also needs to aggressively and continuously network with new and potential partners and align proposed activities with partners' priorities. It is true that any institution that values and explores strategic partnerships eases its

implementation load by half since the partnerships allow institutions to build on each other's strengths and fill in gaps in areas of growth.

As we strive to get into partnerships, let's all be driven by the famous quote "Alone we can do so little; together we can do so much", by Helen Keller. At the end of it, when the achievement clearly unfold we will all be winners. We will be up celebrating the wins and appreciating the fact that we kept pushing through at such a time when we had all the reasons to give up and blame the unavailability of resources.

Doreen Otieno is a Senior Officer Planning, Monitoring and Evaluation at the Kenya School of Law



Members of the KSL Board, Director, staff and stakeholders during the launch of the KSL Strategic Plan



Legal Aid Clinic at Voi Community Social Justice Centre

By Shanice Wanjira

Introduction

In line with executing the learning objectives of the Paralegal Training Programme (PTP) the Kenya School of Law organized a Legal Aid Clinic in conjunction with Haki Africa, Voi Branch. The School was kind enough to allow forty-five students to participate in the clinic. The preparations for the trip took 2 weeks mainly to address learning areas of concern facing the Taita Taveta community, learning how to communicate to them and moreover being able to interact with different people from a different setting and background. This was made possible and easier through the guidance of our lecturers, Ms. Anastasia Otieno and Mr. Fredd Wakimani.

The date set for departure to Voi was on 23rd September 2022 whereby the School facilitated transport to and fro. We left Nairobi at 7:30 a.m. and had two stop overs along the way. The School provided lunch for each student. We arrived at the accommodation site at 3:00 p.m where we were to spend our weekend. We stayed at Vacani Resort in Voi. The views from the Resort were spectacular not to leave out how the accommodation rooms were very beautiful. The staff at the Resort were very welcoming and friendly. The Resort provided buffets for breakfast, lunch and dinner. We were free to use the Resorts facilities such as the gym and swimming pool during our stay.



Paralegal Training Programme (PTP) students attending to a participant(left) during a Legal Aid Clinic in conjunction with Haki Africa, Voi Branch.

The legal aid clinic

During the legal aid clinic, we were able to discuss with the community at the venue which was not far from the accommodation site. Transport from the Resort to the venue in Taita was provided by the School. The community had set up tents for us and the people who were attending the clinic. We were able to discuss about Gender based violence, early marriages, wildlife, land and succession with various members of the community. Overall, the community was really welcoming and we were able to have one on one sessions with them which made the experience interesting and educative. On the 25th September 2022 we were set to leave for Nairobi. At this point we had learnt so much and we were able to interact not only with one another but also with the community of Taita-Taveta. The experience gave each and every one of us something to take home from the clinic even

though we did not want to leave Voi and come back it was overall a beautiful experience.

Conclusion

This was definitely an experience that I would like to have again. The School should make arrangements to facilitate more legal aid clinics that can accommodate more PTP students to provide greater exposure outside of the regular school classroom. In future legal aid clinics, the School can leave. However, I would still like to thank the School for making this possible as it made me look forward to learning even more about our local communities and pushing my education to a higher level.

Shanice Wanjira is a student in the Paralegal Training Programme



Departmental Briefs

Advocates Training Programme: Learning by Doing

By Christine Kungu

In discharging its mandate, the School has continued to train students under the Advocates Training Programme (ATP). In the period between May and November 2022, ATP has continued to engage the students through clinical learning.

The School has had the opportunity to organize Legal Aid Missions within four counties at the Mombasa Mainland GK Prison, Kisumu GK Prison, Kakamega GK Prison and Kitui GK Prison. These legal aid clinics help the students to apply some of the knowledge and skills learned during the residential training at ATP. This enables them to assist people in the society and those awaiting determination of their cases in court. The Legal Aid forums invoke their minds towards research, critical thinking and solving legal problems.

ATP students participated in the Law Society of Kenya (LSK) Legal Awareness week from 24th to 28th October 2022 themed “Kenya’s Electoral Reforms: Building confidence for the future”. The event took place at the Milimani Law Courts in Nairobi. The students were able to offer legal aid and serve members of the public who have inadequate access to legal services and information. Some of the legal issues raised included land matters, family law, succession disputes, electoral disputes and employment matters. This activity was also attended by KSL lecturers and staff.

The 2022 interclass moot court competition was held on the 22nd and 29th October 2022. This was anchored on a moot question tackling state responsibility for deaths documented during occupation by a power. A total of 12 teams registered and participated in the competition. The competition was graced by various judges from the KSL Academic Department, alumni and stakeholders.

It is noteworthy to mention that the ATP successfully concluded term 2 in August 2022 and conducted the oral examinations which was concluded on the 29th September 2022. This ushered the final term of the academic calendar that concludes on the 16th December 2022 when the School will host a graduation ceremony for the ATP and PTP 2021/2022 cohorts.

Finally, the ATP conducted two mentorship workshops on the 24th June and 11th November 2022.

This workshop was attended by over 200 students who were mentored on various perspectives in the Legal Profession including; Getting it right in career transition from the KSL to Legal practice; Reflections on the pillars to a successful professional career, Career Path in ADR – Arbitration & Mediation; Reflections on how to package yourself as a professional and the discipline of hard-work.

Great strides have therefore been taken to achieve the objective of ATP through the approach of learning by doing. This has encouraged students to learn through experiences and apply the information to problem solving and putting law into practice.

Christine Kungu is an Advocate of the High Court of Kenya and a Senior Lecturer at the Advocate Training Programme.



The Advocates Training Programme students during a legal aid clinic at Kisumu GK Prison



KSL Mentorship Event

By Hezbon Ooko

In bid to implement the strategies for the period 2018/19 -2021/22, the Kenya School of Law (KSL) developed a student mentorship policy and guidelines, which was a follow up to the KSL's Mentorship luncheon geared towards enabling student's personal formation and proper career development.

In the spirit of cooperation, coordination and exposure, KSL sought strategic partnerships to obtain crème de la crème Advocates and Professionals within the Legal Profession as mentors.

KSL, on 22nd September 2021, executed a Memorandum of Understanding (MoU) with Kituo cha Sheria on enhanced Access to Justice and Mentorship. In this MoU, Kituo Cha Sheria committed to provide in-house externship, pupillage, voluntary and internship opportunities to students to expose them to practical experiences on the application of the law. Further, they promised to support the KSL Mentorship programme. The upshot was that KSL benefited by including Dr. Annette Mbogo, the Executive Director at Kituo Cha Sheria as a mentor.

KSL has also successfully signed a MoU with the Law Society of Kenya (LSK), Nairobi Branch which marked the official launch of KSL Mentorship Programme. In this MoU, LSK Nairobi agreed to provide the school with mentors for the quarterly mentorship workshops.



ATP Assistant Director, Ms. Annah Konuche delivers her opening remarks during the second mentorship workshop, Looking on are the panelists for the event. From right: Ms. Christine Agimba, Ms. Everlyne Njoroje, Mr. Ambrose Weda, Mr. Geoffrey Imende, Ms. Eunice Lumallas, Mr. Eric Kivuwa and Ms. Christine Kungu.

A Review of the 2nd KSL's Mentorship Programme

Hitherto, the school has successfully organized two mentorship programmes. This section highlights digests of the discussion by the speakers of the programme that occurred on the 10th day of November 2022.

Starting your Career Strong: A moment with Mr. Ambrose Weda

"Respect is about interests, it is Upwards, NOT, a two way Traffic" "Specialization is gradual/progressive"

We always start at an equal range or level, what goes wrong? Among others, the following are key decisions one need to make while starting their Career: Think Long term; choose a career path; Believe in the value of your dreams; Groom your personality- Decide to build a good name; Build credibility; build quality relationships; Advertise yourself; and, Partner with God.

Packaging yourself as an Advocate: A presentation by Mr. Erick Kivuwa

*"There is No substitute to Hardwork"
"It may not be strong to lose or too weak to win"
"You always look brilliant until you speak"
"Emerging areas of practice require courage and energy"*

There is always a roaming societal expectation of any legal profession. In order to meet these expectations, and equally uphold the standard of legal profession, one needs to consume the following etiquettes: Presentability; Pursue knowledge; Embrace Respect; Discipline; and Consistency;

On recruitment process, candidates can reengineer bias by choosing to stand out among fellow recruits. This entails having a grasp of the basics and aiming to do an extra.

Navigating through Pupillage: A sharing by Ms. Evelyn Njoroje

Your pupillage greatly defines your career path. It is the best chance we get to acquiesce ourselves with the skills and methods of practice of law. You need everything as a pupil to successfully complete this undertaking, greatest of them all, is your teach-ability. Below is a key underscored check-list towards realizing an effective and successful experience during pupillage programme: Have a passion to learn; Embrace humility; Pay attention to details; be a self-responsible person; Be courteous and a person of great respect to everyone; good inter-personality skills; and, Assassinate the spirit of procrastination.

Arbitration & Mediation: A talk by Ms. Eunice Lumallas

"Your thoughts take you where you want"

The following are action points and plans towards developing a brand and a niche in this sector of practice: Have teachable skills; Improve on your academic reputation and qualifications; Learn on effective communication; Build your name; Be tenacious in your actions; and, Build connections through gracing of relevant events and seminars.

Reflections on the Pillar of a Successful professional Career: A moment with Mr. Geoffrey Imende

"The difference between you and the elder people ahead is time and, what you do with that time."

"Live as if you will die tomorrow, learn as if you will live forever"

The Following are practicable considerations for a successful professional career: Find what you are good at and market accordingly but carefully; Know your substance, always choose to stand out and be the best person; Your success will always lie in your commitment to offer solutions to others' problems; Invest time on a thing to nurture perfection (Malcom Gladwell in his book 'Outliers', the doctrine of 10,000 Hours Rule); Know your emotional intelligence- appreciate and embrace the different levels of emotional intelligence from various person in your coexistence (be sensitive with the persons you interact with); and, Build relationships.

Gender Dynamics in the Legal profession: Ms. Christine Kungu

"If you fail to plan, you plan to fail"

Gender dynamics in the legal profession is so dynamic. It can be exhibited by various elements within the legal profession such as: Lack of conducive physical /mental working environment; Unequal pay for equal work; Career breaks/Maternity leave; and Sexual harassment.

Way forward?

- a. Changing our attitude
- b. Ensure there is equal pay for all employees with similar responsibilities and job descriptions irrespective of their gender.

- c. Strengthening the reporting mechanisms of sexual harassment cases
- d. Nurturing the spirit of speaking up
- e. Respecting ourselves.
- f. Dressing appropriately
- g. Believe in yourself.
- h. Maintain your relevance.

From the Private Sector to public Sector, Reflection & Experience: A presentation by Christine Agimba

In the legal professions, there are various opportunities available in the public sector. They include: opportunities in state corporations, office of the Public prosecution, Office of the Attorney General, Constitutional Commissions and Disciplined Forces such as National Police Service.

The secrets behind excelling in this realm are: building resilience; striving for extra knowledge and/or expertise; appreciate available online resources; and, seeking out from mentors.

Hezbon Ooko is a student at the Advocates Training Programme



THE KENYA SCHOOL OF LAW
MAIN ADMINISTRATION WING

KENYA SCHOOL OF LAW ADVOCATES TRAINING PROGRAMME

BACKGROUND

The Kenya School of Law (KSL) is established under the Kenya School of Law Act, 2012 which provides that KSL is a public legal education provider responsible for the provision of professional legal training as an agent of the Government. The Kenya School of Law (KSL) conducts a postgraduate training for law graduates which is known as the Advocates Training Programme (ATP). The ATP trains and prepares law graduates for the written Bar Examinations which are set, administered and marked by the Council of Legal Education (CLE). Therefore, Advocates Training Program (ATP) has the objective of training lawyers for entry into the legal profession. Training is conducted in 18 months; 12 months in-house and 6 months pupillage (internship).

ATP OBJECTIVE

To provide a technique-oriented training to complement the theoretical and intellectual approach towards law teaching imparted during undergraduate level.

ADMISSION REQUIREMENTS

- Having passed the relevant examinations of a university, university college or other institutions prescribed by the Council of Legal Education, holds or has become eligible for the conferment of the Bachelor of Laws Degree (LLB) in the grant of that university, university college or other institution
- Attained a minimum entry requirement for admission to a university in Kenya
- Obtained a minimum grade B (plain) in English Language or Kiswahili and a mean grade of C+ in the Kenya Certificate of Secondary Education or its equivalent

CLASSES

- Teaching in ATP is conducted on a clinical basis, practical for the purpose of equipping the learner with skills to practice law in the real-life situation.
- The classes are divided into "firms" which are study groups where legal problems and issues are thoroughly discussed.
- There are also moot courts which simulate actual law firms in practice before courts of law.
- The faculty is composed of both full time lecturers and adjunct lecturers who provide and impact the much needed practical and professional training of lawyers.
- Classes are held in the morning, afternoon and evening/Saturday.

EXAMINATION

For one to successfully complete ATP one has to pass (obtain a score of 50% and above) in all the 9 units: Civil Litigation, Criminal Litigation, Probate and Administration, Legal Writing and Drafting, Trial Advocacy, Professional Ethics and Practice, Legal Practice Management, Conveyancing, Commercial Transactions. Assessment of the programme is in four phases: project work (20%) (1st Term), Oral examination (20%) (2nd Term), Written examination (60%) (3rd Term) and Supervised pupillage (not graded but is compulsory) (4th Term).

COLLABORATIONS

The School has key linkages with other institutions which are, The Higher Education Loans Board (HELB), The Chartered Institute of Arbitrators, The Advocates Complaint Commission, and the Advocates Disciplinary Committee to mention but a few.

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Paralegal Training Programme Activities

By Anastasia Otieno



The Paralegal Training Programme (PTP) implements the School's mandate by training paralegals at the Town Campus which is currently housed in Development House within the CBD but has access to all the amenities at the Karen Campus. The PTP provides a two-year diploma in Law in paralegal studies. During the two-year period not only do we enhance the students' knowledge but also their experience within the School through various non-academic activities and where available facilitating opportunities for students for attachments, internships and jobs. The PTP students compete in sporting activities together with their counterparts at the Advocates Training Programme (ATP) at the Karen Campus sports facilities.

The PTP has just completed its second year of implementing the new curriculum and as such is completely phasing out the old curriculum. As a result of this, the School offered a one-off examination at the end of this first term for all the students who had any uncompleted units in the old curriculum. Any student who is unable to complete will then be transitioned to the new curriculum.

During the period in question, we began a new year and hence we had an intake of new first year students. This led to an inauguration session with the



Ms. Mariam A. Mahmud, the KSL Principal Supply Chain Management Officer addressing Paralegal students during orientation

new students graced by the School's Director together with members of staff who addressed and welcomed the new students.

The first year students had to choose their preferred class representatives who would then join the second year students in the student's council. This was done through a secret ballot election process, both for the class representatives and for those joining the paralegal student council. The student council ensures that the student leaders act as the link between the students and the management of the School and that all the issues are raised and dealt with appropriately. The School's student leadership attended the inaugural team-building session in Mombasa between the 4th and 6th November 2022.

During the Academic period, the PTP students had their first ever paralegal community legal aid. This was held in Voi town in conjunction with Haki Africa. The students shared their knowledge on legal matters with the

Voi community as they gave advise. They got to listen and deal with actual cases and legal issues facing the community.

Additionally, for the first time, the PTP outgoing second year students under the new curriculum are undergoing supervised attachment. This is part of the requirement to graduate as per the new curriculum. It is an added advantage to the PTP students as they get to apply their knowledge in practical scenarios. It allows them a chance to resolve legal challenges in their various places of attachment. This attachment is done in various institutions that require paralegals. These include law firms, law courts, tribunals, and judicial registries among other places.

Anastasia Otieno is an Advocate of the High Court of Kenya, Principal Lecturer and Coordinator of the Paralegal Training Programme at the Kenya School of Law.



KENYA SCHOOL OF LAW

PARALEGAL TRAINING PROGRAMME

BACKGROUND

The Kenya School of Law is an institution established under the Kenya School of Law Act, No 26 of 2012. In exercise of its mandate the School offers a two year Diploma in Law under its Paralegal Training Programme.

TARGET GROUP

- 1) Form four leavers who meet the below entry criteria.
- 2) The staff working in National Police Service, Kenya Prisons, the Judiciary, the State Law Office, the Bar, Non-governmental organizations, the corporate world and National & county Government departments among other stakeholders who meet the entry requirements.

OBJECTIVE

To train middle cadre to support legal professionals at the practicing Bar, the corporate world, government institutions and Non-governmental organizations.

ENTRY REQUIREMENTS

To be eligible for admission into the Diploma in Law in the Paralegal Training Programme at the Kenya School of Law an applicant must:

1. Have a mean grade of C (C Plain) in the Kenya Certificate of Secondary Education (KCSE) (or equivalent examination) and a minimum grade C+ (C Plus) in English.
2. At least one Principal pass at the Kenya Advanced Certificate of Education (KACE/A-Level) examinations.
3. A distinction or credit pass at Diploma level in a relevant field.

LOCATION


The Paralegal Training Programme is conducted at the Kenya School of Law town campus, which is situated at Development House, 5th Floor, Moi Avenue Nairobi.


CONTACT US


Kenya School of Law,
Langata South Road,
P.O Box 30369 – 00100 GPO,
Nairobi.
Telephone: 0202699581 /2/3/4/5/6
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Provision of Legal Information Materials

By Anne Njoki and Elphas Ngaira



Historical Symbolism

A book is a written (or printed) message of considerable length meant for public circulation and recorded on materials that are light yet durable enough to afford comparatively easy portability. Its primary purpose is to carry a message between people depending on the twin faculties of portability and permanence. As such, the book transcends time and space to announce, expound, preserve and transmit knowledge. Books have attended the preservation and dissemination of knowledge in every literate society. In addition, they serve as repositories of knowledge and record of history and hold deep symbolical meaning. In the literacy circles, books were both a textual medium through which truth, beauty and knowledge could be transmitted as well as material symbols of these higher values. They were also objects of power that people of diverse orders exchanged as expensive gifts. Books were also donated as humanist's gift from "closed" to "open" libraries. The early humanists perceived books as an emotional object, a "living" companion. This view resonates with the fifth law of library science 'library is a growing organism'.

The practice of donating books has roots in antiquity in the Roman and Byzantine models of honoring books as well as classical traditions of gifts exchange. In the present world books donation can be beneficial if the correct legal



KSL Director, Corporate Communication Officer and staff members of the Library Department acknowledging donation from the estate of the late Mukeshi Billing

and framework exist. The Constitution of Kenya 2010 Article 11 makes reference to culture and section 2 part a) and b) elicits on library. Article 35 (1) a) and b) pinpoints on information access. Further, Leadership and Integrity Act, 2012 section 14 on gifts or benefits in kind, outlines as follows:

- (1) A gift or donation given to a state officer on a public or official occasion shall be treated as a gift or donation to the state.
- (2)(a) the gift is within the ordinary bounds of propriety, a usual expression of courtesy or protocol and within the ordinary standards of hospitality.

Article 1 of United Nations Educational, Scientific and Cultural Organization (UNESCO) Book Donation Charter envisages that any book donation programme should have regard for; knowing and involving the partner body in all the stages of the programme; expanding the knowledge of the readerships to be served; fostering the development of a culture of writing; and, in the case

of donations of new books, cooperating with publishers and booksellers.

Recent donations to KSL library

The Kenya School of Law receives legal books donation from time to time. Mostly, the books are donated by local authors in the legal profession. Recently, the School has received the following books donation:

1. On 1st October 2022, a consignment of five boxes containing two hundred and ninety-two law books as a donation from the library of the late Mukesh Billing. The donation was facilitated by his widow (Patricia Hanaman Billing) and sons (Jason Hanaman Billing and Brandon Hanaman Billing) in his memory.
2. On 13th October 2022, twenty copies of 'Power, Politics and Law: Dynamics of Constitutional Change in Kenya 1987-2022' from the Githu Muigai Foundation.

3. In November 2022, ten copies of 'Exploring Conflict Management in Environmental Matters' by Kariuki Muigwa.
4. In November 2022, two copies of 'The Media Lawbook for Journalists in Kenya' by Joseph Kihanya Advocates. One copy is in braille format.
5. In April 2022, four titles of magazines from Civil Society Reference Group (CSRG).
6. In October 2021, nine copies of 'Commercial and Investment Arbitration: An African Perspective' from Dr. Wilfred A. Mutubwa of Mutubwa and Company Advocates.
7. In August 2021, thirty-nine books and one hundred and fifteen copies of 'The Bench Bulletin magazines' from the Kenya Law Reports
8. In August 2021, eighteen reports from KIPPRA on various areas of research.

Policies and Guidelines

Library policies for most institutions of higher learning have a one-line statement on donations and gifts. This leaves a big gap on book donation guidelines. Generally, librarians consider cost, appropriateness and relevancy before accepting any book donations. Solicited donations are those where the librarian has a say in their addition to the collection. The librarian is accorded the opportunity to select and evaluate the donation. Unsolicited donations comprise all such gifts for which the librarian does not have prior knowledge. Library professionals face difficulties in 'saying no' to accepting obsolete books by stakeholders. On the contrary, donors naturally think of donating books they no longer need to public, school, college, or university libraries. They are not fully aware of the reasons why libraries reject titles that donors view as perfectly good educational material. This renders the recipient library as an 'archive site' for old or obsolete stock. Libraries are perennially choked with the problem of accepting gifts

Way forward

What is the solution? Firstly, KSL Library should borrow a leaf from medieval era to the twenty-first century, through partnership with stakeholders, for a formal endowment for "new" book collection. Secondly, library can innovatively explore mechanisms of having a donation program for law books resource that offer donors other viable options as value addition service. Final solution is for individual libraries to come up with detailed method of finding home for weeded law materials. In addition, there is need for book donation guidelines for monitoring and evaluation of solicited and unsolicited donations in view of libraries' operating donation policies. Similarly, there is a possibility for collection management services as donation program for law books geared towards secondary schools' law clubs in Kenya.

*Elphas Ngaira is a Senior Library Assistant at the Kenya School of Law
Anne Njoki is a Senior Office Assistant at the Kenya School of Law*



The KSL Library Department staff during an appreciation ceremony for Mr. Joseph Madara who is proceeding on retirement



The School Takes the Lead in New Areas of Legal Consultancy and Training

By Isaac Kuloba

The School is continuously looking for ways to be ahead of the rest, by coming up with products that are unique and likely to be receptive to the customers of the School. Highlighted here are some of the products that are trending.

Data Protection Compliance Framework

The School is one of the few institutions in the region that offer a wide array of courses and consultancies in matters of law or relating to law. It is noteworthy to mention that as early as the year 2013, the School had penetrated the regional market in terms of offering expertise in specialized areas of law. The School has continued living up to its vision of being a 'center of excellence in professional legal training, research and consultation'.

With the enactment of the Data Protection Act (No. 24 of 2019) nearly three years ago, both private and public institutions found themselves struggling to understand and appreciate the meaning and impact of the new law on their operations, and also in terms of their legal compliance obligations. The regulations to operationalize the Act were gazetted less than a year ago, and it is now the responsibility of every institution to build its capacity to comply with the new data protection regime, which largely borrows from best



Participants during a CPD training on Legal Audit and Compliance for Young Lawyers held at the School

practices in data protection.

The School now assists institutions, through the CPD Department, in developing a data protection and compliance framework that enables them to know the structures and policies that are needed to be established. The School is currently not only providing consultancy services on data protection, but it is also training on the subject through *calendar courses* or *customer-tailored* courses.

Regulatory Impact Assessment

A regulatory impact assessment (RIA) is an analysis of the likely benefits and costs associated with the introduction of a new policy, a regulatory proposal or other statutory instrument. RIA helps an institution to understand the full consequences across society of each of the proposals it makes that has a substantial impact on the people, businesses, the environment and such.

The School currently offers RIA services and has been doing so since 2018. Training on regulatory impact

assessment is now regularly done by the School. It is ideal for persons working in institutions that prepare regulations or have oversight functions in the economy. Increasingly, the School has received inquiries on RIA training not only from the Eastern Africa region but also from Europe. The School takes pride in providing a lead role in this important technical service.

Legal & Governance Audit

In partnership with individuals and firms with relevant certification, the School provides both legal audit and governance audit services. Currently, the School is carrying out legal and governance audit for four (4) state corporations, and several legal audit consultancies. In matters of legal audit, the School was the pioneer of the course and is now the leading service provider in the region.

Training of Certified Secretaries

The School intends to roll out training of certified secretaries in January 2023, after receiving an

interim greenlight from KASNEB earlier in the year 2022. This is a big milestone - that finally lawyers have an institution that is associated with them and now additionally offering this course. There is a lot of excitement on the prospect of launching this course in January 2023.

Legal Auditor Certification Course

The mandate of the School under the Kenya School of Law Act (No. 26 of 2012) includes training and certification. In February 2022, the School launched its first certification course on legal audit and a total of 12 graduates were certified. The course takes 5 days (40 hours) of intense, practical, skills-based training, followed

by a project on auditing carried out and assessed individually. It takes on-site training and off-site follow-up. Once certified, a person is able to carry out a legal audit for a public institution or private institutions.

Training

In the period April to November 2022, the School offered several trainings under its CPD Department in accordance with the annual training calendar and based on customer requests: *Legal Audit & Compliance; Data Protection Law & Policy; Effective Board Operations & Procedures; Insolvency & Business Restructuring; Legislative Drafting; Investigation of Wildlife Crimes & Courtroom Skills (Ngorongoro Conservation Area Authority-Tanzania); Legal Audit & Compliance (in collaboration with the LSK Young Lawyers Committee); Monitoring And*

Management of Regulatory Compliance & Legal Auditor Certification Course.

Training Calendar & Other Notices

The School website has more information. Please visit our website through this link: <https://www.ksl.ac.ke/cpd-courses/> or send an email to: cpd@ksl.ac.ke

Isaac Simiyu Kuloba is an Advocate of the High Court of Kenya and the Assistant Director, CPD at the Kenya School of Law



Participants during a CPD training on Corporate Governance Legal Issues & the Emerging Challenges held in Mombasa

The Kenya School of Law Continuing Professional Development Calendar of Courses/Seminar for Financial Year July 2022 - June 2023



KENYA SCHOOL OF LAW CONTINUING PROFESSIONAL DEVELOPMENT(CPD)

ISO 9001:2015

CALENDAR OF COURSES/SEMINARS: JULY 2022 – JUNE 2023

NO.	COURSE TITLE	DURATION	DATE	KSHS. (INCLUSIVE OF 16% VAT)	VENUE
1.	LEGAL AUDIT AND COMPLIANCE (IN COLLABORATION WITH LSK YOUNG LAWYERS COMMITTEE)	4 DAYS	11 – 14 JULY 2022	34,000	KSL, KAREN
2.	ELECTION PETITIONS: A TO Z OF COURT PROCEDURES	3 DAYS	18 – 20 JULY 2022	35,300	KSL, KAREN
3.	LEGAL PRACTICE ESSENTIALS	4 DAYS	25 – 29 JULY 2022	46,900	KSL, KAREN
4.	BUSINESS TURN-AROUND: LEGAL AND PRACTICE ASPECTS	3 DAYS	22 – 24 AUGUST 2022	35,300	KSL, KAREN
5.	LEGAL AUDIT AND COMPLIANCE	5 DAYS	05 – 09 SEPTEMBER 2022	95,000	MOMBASA
6.	RIGHT TO INFORMATION AND MEDIA REGULATION	3 DAYS	19 – 21 SEPTEMBER 2022	35,300	KSL, KAREN
7.	CORPORATE GOVERNANCE: LEGAL ISSUES AND THE EMERGING CHALLENGES	5 DAYS	03 – 07 OCTOBER 2022	95,000	MOMBASA
8.	MERGERS AND ACQUISITIONS: EMERGING TRENDS AND ISSUES	4 DAYS	24 – 27 OCTOBER 2022	46,900	KSL, KAREN
9.	PROCUREMENT LAW AND PRACTICE	5 DAYS	07 - 11 NOVEMBER 2022	95,000	NAKURU
10.	DATA PROTECTION: LAW, POLICIES AND COMPLIANCE FRAMEWORK	4 DAYS	14 – 17 NOVEMBER 2022	46,900	KSL, KAREN
11.	LEGAL AUDITOR CERTIFICATION COURSE	5 DAYS	21 - 25 NOVEMBER 2022	105,000	NAKURU
12.	ANNUAL CONFERENCE	2 DAYS	28 - 29 NOVEMBER 2022	10,000	KSL, KAREN
13.	LITIGATION REFRESHER COURSE	5 DAYS	05 – 09 DECEMBER 2022	95,000	MOMBASA
14.	BOARD SECRETARIAL PRACTICES	5 DAYS	05 – 09 DECEMBER 2022	95,000	NAKURU
15.	LEGAL AUDIT AND COMPLIANCE (IN COLLABORATION WITH LSK YOUNG LAWYERS COMMITTEE)	4 DAYS	09 – 12 JANUARY 2023	34,000	KSL, KAREN
16.	PUBLIC PRIVATE PARTNERSHIPS - OPPORTUNITIES IN PUBLIC INVESTMENT	5 DAYS	16 – 20 JANUARY 2023	95,000	MOMBASA
17.	LEGISLATIVE DRAFTING	5 DAYS	23 – 27 JANUARY 2023	90,000	NAIVASHA
18.	PROCUREMENT LAW AND PRACTICE (IN COLLABORATION WITH LSK YOUNG LAWYERS COMMITTEE)	4 DAYS	30 JANUARY – 02 FEBRUARY 2023	34,000	KSL, KAREN

NO.	COURSE TITLE	DURATION	DATE	KSHS. (INCLUSIVE OF 16% VAT)	VENUE
19.	MEDIATION IN PUBLIC SECTOR DISPUTE RESOLUTION	5 DAYS	06 – 10 FEBRUARY 2023	95,000	MOMBASA
20.	INTRODUCTION TO INVESTIGATIONS AND COURT ROOM SKILLS	5 DAYS	13 – 17 FEBRUARY 2023	58,500	KSL, KAREN
21.	STATUTORY INSTRUMENTS AND REGULATORY IMPACT ASSESSMENT	5 DAYS	20 – 24 FEBRUARY 2023	95,000	NAKURU
22.	POLICY MAKING AND LEGISLATIVE PROCESSES	5 DAYS	06 – 10 MARCH 2023	95,000	MOMBASA
23.	PUBLIC SECTOR SUSTAINABILITY AND RELATED COMPLIANCE ASPECTS	5 DAYS	13 – 17 MARCH 2023	90,000	NAIVASHA
24.	MULTINATIONAL AND REGIONAL TRADE AGREEMENTS: EMERGING TRENDS AND ISSUES	3 DAYS	27 – 31 MARCH 2023	35,300	KSL, KAREN
25.	LEGAL AUDIT AND COMPLIANCE	5 DAYS	17 – 21 APRIL 2023	95,000	MOMBASA
26.	THE CONSTITUTION AND THE LAW IN PUBLIC FINANCE MANAGEMENT	5 DAYS	24 – 28 APRIL 2023	90,000	NAIVASHA
27.	PROCUREMENT LAW AND PRACTICE (IN COLLABORATION WITH LSK YOUNG LAWYERS COMMITTEE)	4 DAYS	02 – 05 MAY 2023	34,000	KSL, KAREN
28.	DATA PROTECTION IN THE ICT SECTOR: LAWS AND POLICIES	5 DAYS	08 – 12 MAY 2023	95,000	MOMBASA
29.	LAND TENURE AND ADMINISTRATION IN KENYA	3 DAYS	15 – 17 MAY 2023	35,300	KSL, KAREN
30.	LITIGATION REFRESHER COURSE	5 DAYS	12 – 16 JUNE 2023	95,000	NAKURU
31.	LEGISLATIVE DRAFTING	5 DAYS	26 – 30 JUNE 2023	58,500	KSL, KAREN

CUSTOMER-TAILORED COURSES

The School also offers courses that are developed at the customer's request, and which meet the peculiar needs of the customer. The fee payable in such courses shall be agreed. Some of such courses are:

- | | |
|--|---|
| a) Monitoring and Evaluation; | f) Data Protection Law and Policy; |
| b) Investigations and Courtroom Skills for Law Enforcement Agencies; | g) Anti-Corruption Strategies and Governance; |
| c) Legal Audit and Compliance; | h) Financial and Procurement Management; |
| d) Public Finance Management; | i) Legislative Drafting; |
| e) Human Resource Legal Risk Management; | j) Corporate Communication. |

Pre-requisites: There are no prerequisites for attending a course. Prior legal training is an advantage but not a prerequisite.

How to apply: Download Application Form at: http://www.ksl.ac.ke/wp-content/uploads/2018/04/CPD_REGISTRATION_FORM_.pdf

Tuition Fee: The applicants should confirm their participation with the School, register and pay for the course at least seven (7) days before the commencement of the course. Payment may be made directly to the School's CPD account (**Account No. 202 2029 110 ABSA, Absa Plaza Branch, Nairobi, Kenya**) and banking slips or evidence of electronic funds transfer presented to the Finance Office. The fees quoted are inclusive of all taxes, tuition, lunch, refreshments and conference facilities. Non-East Africans pay 25% above the quoted rates.

Accommodation: For courses conducted at the Kenya School of Law, Karen Campus, accommodation facilities are available within the Karen Campus. Please contact our Hospitality Department on telephone number 020 2699581/6 ext. 223/311 and note to make early reservations.

NOTE: Please note that for Calendar courses, we require a minimum of ten (10) participants (for training at the School) and fifteen (15) participants (for training out of Nairobi) for a course to be confirmed, and where this is not possible, the School reserves the right to reschedule the course to another date, or in exceptional cases, to cancel the course. If a participant has confirmed attendance and has paid, but decides to cancel attendance within 7 days to the date set for training, the School shall deduct from tuition fee cancellation charges of 25%.

CPD points will be awarded to members of the Law Society of Kenya (2 & 3 CPD points for a 2 or 3 days course, respectively). Maximum number of CPD points is 3 for any course of duration exceeding 3 days.

Customer-tailored courses: The Kenya School of Law also offers courses tailored to the customer's requirements upon request.

For course enquiries, please contact Isaac Kuloba (Assistant Director, CPD, P & R), Christine or Jacqueline at the Kenya School of Law, Langata-South Road, Karen, P.O Box 30369-00100, Nairobi on telephone number 020 2699581/6 ext. 300/301/302/303/312/317. You may also email us at cpd@ksl.ac.ke or visit our website: www.ksl.ac.ke



**ISAAC S. KULOBA
FOR DIRECTOR/CHIEF EXECUTIVE OFFICER**



Kenya School of Law Marks Customer Service Week 2022 in Style

By Ruth Githaiga

Customer Service Week (CSW) is an international celebration observed annually around the globe since the late 1980s in the first week of every October. It is a week when customer-oriented organizations around the world recognize the importance of Customer Service Excellence in their organizations. Organizations participate in the CSW as a way to highlight the importance of Customer Service, and of the people who serve and support customers on a daily basis. Participating in the CSW is an opportunity to show customers how an organization is dedicated to good customer service. It is also an opportunity where organizations leaders thank the staff for the role they play in improving customer service and reflect on what needs to be improved. It is during this week that organizations remind staff of the need to be a customer-centric organization as well as renew the organization's dedication to service excellence.

Organizations that participate in the CSW carry out various activities to highlight the importance of great customer experiences to the success of the organization. It is also during the same week that organizations also reinforce a customer-focused culture. This has been the practice in both government and , private sectors as well as non-governmental organisations. Some of the core goals of the CSW are to celebrate front-line staff who are the flag bearers of the organization and just like a saying by Tony Hsieh "Customer

service should not just be a department, it should be the entire company". Every staff in an organization should know that they play a critical role in serving the customer.

This year CSW was marked from 3rd to 7th October 2022. The Kenya School of Law celebrated the week through various activities. The initial activity was decorating the front section areas with arch balloons that consisted of the School corporate colours. This was meant to let the customer know that the School is joining the rest of the world in celebrating its customers and the staff who offer tireless services to them. This was done both at the Karen Campus and in the Town Campus. On Monday, the first day of CSW an email was sent to staff as well as an online message was posted on the School's social media platforms. The messages read as below:

Staff Message

Every employee of our organization is precious to us because each employee plays a critical role in the work we do.

External customer message

To all our customers, we promise to deliver to you the best of our services each time.

On the second day, School customers were treated with rose flowers and confectioneries. On the third day, there was a cake cutting session involving staff and some students. During the session, staff were again reminded the importance of a customer oriented organization, one of the KSL core values and how it plays a vital role in ensuring that KSL achieves its vision.

Day four of the CSW was the culmination where staff and lucky external customers got a gift of a beautiful branded mug and a best wishes personalized card signed off by the KSL CEO Dr. Henry K. Mutai. It was all smiles from staff and external customers for being appreciated.

'Thanks a lot for appreciating us during this year's Customer Service Week. This shows we are appreciated and valued as internal customers,' a member of staff wrote.

To wrap up the CSW and as a way of welcoming the long weekend, members of staff rocked African themed outfits with a touch of the School Corporate colours.

Ruth Githaiga is the Corporate Communications Officer at the Kenya School of Law



The Corporate Communication Officer Ms. Ruth Githaiga presents a gift to Mr. Kuony Yien, an ATP class representative, who won a raffle during the 2022 Customer Service Week.



Why Social Media is the Next Frontier in E-Sourcing

By Raphael Ogello

An obvious limitation, when used as the only form of advertisement, is that it can be challenged as discriminative, a blend of the use of traditional methods and technology is then important.

Do you know of any social media platforms? Certainly “YES”. Society and the world are presently saturated with technology earning the world the tag “Global village”. This is due to the role that technology presently plays, not only in networking (people interaction) but has also shaped how companies and institutions market their products and services. The whirlwind of technology in the use of the internet, emails, websites, and social media such as LinkedIn, Twitter, WhatsApp, and Facebook among others have also captured and shaped employee recruitment and selection.

The Kenya School of Law(KSL) has not been left behind and has adopted the use of both traditional and E-recruitment methods in its recent recruitment. In this piece, the main focus is on using social media for job advertising, E-recruitment and ethical concerns.

Using social media and technology in recruiting is cost-effective since E-recruitment is automated. On the contrary traditional methods are more expensive & manual-oriented. KSL has since adopted the use of both traditional and technological methods in recruitment. Whereas the use of social media is gaining sensation, it is still faced with both legal and ethical concerns hence employers can not embrace it fully despite being cost-effective.

Technology has brought about an extensive paradigm shift in every aspect of civilization. Recruiting and selection of potential job candidates are also gaining popularity through E-platforms. Social media platforms are widely accessed therefore when a job posting is done it can be accessed anytime and anywhere. Its wide reach has enabled organizations to use E-recruitment to attract a wider talent pool hence increasing chances of shortlisting the best candidates. Moreover, traditional methods are static and constrained by time and geographical location. In its recent job post, the School advertised on its website and through its E-recruitment portal, it was able to attract more than 900 applications. This is a more positive correlation compared to the traditional method where job applications were submitted manually, perhaps “FUZU” may have contributed to this increase. FUZU is a social media career platform where job seekers can interact with potential employers. The majority of the applicants reported having seen the advert on this platform. Consequently, relying only on social media can violate the principle of rights since one should not be disadvantaged because one cannot access social media.

Social media has been used as a tool to aid in background checks where employers have been able to monitor the activities of their staff and job applicants. Most people on social media have documented and displayed their information such as, marital status, political affiliation, sexual orientation, pregnancy and religious information. Job seekers, however, are protected and cannot be eliminated on the grounds of the above information and violation can only open an organization to a possible lawsuit. Therefore, it is unethical to evaluate anyone positively or negatively based on the internet. Gaining access to private content on job applicants' social media sites can be considered a violation of privacy. The School has been alive to this and no member of staff or prospective job seeker has ever been evaluated for a job or promotion based on the information on social media.

So, let us remember that the growth of social network sites has presented opportunities and challenges. Whereas, it is important to separate personal life from professional career it is equally important to be mindful of what you post on social media. Someone maybe, just maybe watching you.

Raphael Ogello is a Human Resource Assistant at the Kenya School of Law

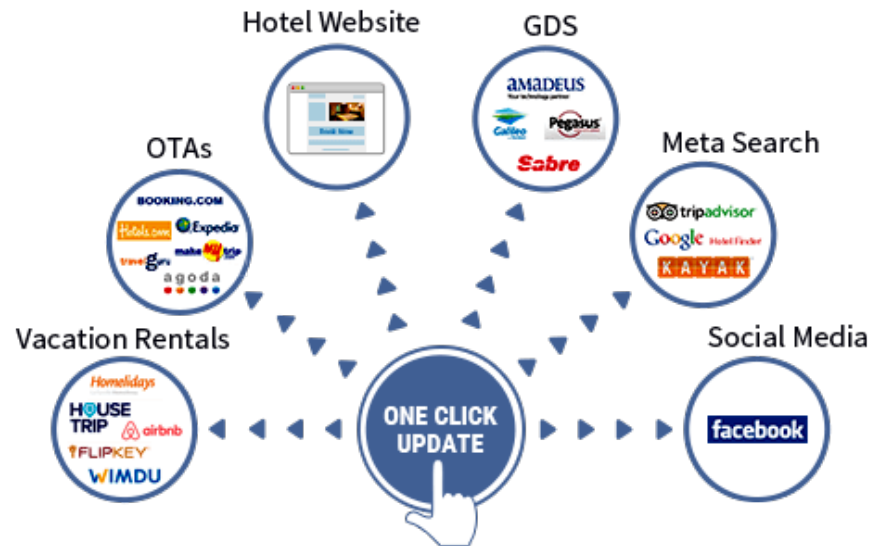




Transitioning to E-Hospitality

By Linnett Odawo

E-Hospitality is a collective term that integrates the entire range of information communication technology (ICT) applications in the hospitality area. Hospitality businesses need to implement a number of strategies so as to compete successfully in today's market. Among other tools, hospitality practitioners can use ICT in order to attract more guests, enhance service quality, deliver exceptional guest satisfaction and increase revenues, as well as market share.



Most of the hospitality guests prefer to use ICT tools to search, select and book a place to stay. This then calls for investment in these ICT tools to enhance competitiveness in the hospitality industry. Unless the current hospitality industry improves its competitiveness by utilizing emerging technologies and innovative management methods, there is a danger for other players to enter the market and jeopardize the position of the existing ones.

Mostly, organizations with hospitality units need to utilize the internet and their commitment to online systems should clearly be demonstrated in their strategic process from planning, training, and adoption of the ICT systems. This is very important as these technologies can enable them to improve their inventory management and develop their internal business processes. Creativity and innovativeness are

what will enable organizations to survive the competition in the new millennium.

There are several new technological trends emerging that hospitality also ought to embrace. These include:

1. Adopting Mobile Technology

A large number of consumers use their tablets or smartphones for hospitality bookings. However, it is time to take mobile technology a step further with the help of software solutions and adopt it in other aspects of hospitality's functioning. Some hotels and resorts have for example, have introduced keyless entry into the rooms through mobile devices. Guests simply need to register their mobile devices and they will receive their room number and other details on their smartphones. All it takes is one simple hotel mobile app and guests can enter their rooms without a key. That's not all, more hotels

are likely to allow mobile check-ins and point-of-sale payments through mobile devices.

2. Targeting tech-savvy guests on social media

From Wi-Fi in rooms and lobbies to touch screens in suites, organizations with hospitality units have upgraded to attract tech-savvy guests. In order to reach out to customers, they need to adopt social media to its fullest. From gorgeous food shots on Instagram to trending hashtags on Twitter, they need to step up their game to stand out on social media platforms.

Additionally, social media will help to build a brand's reputation and improve communication between the industry and guests. Tech-savvy guests tend to share their hospitality experience on social media and thus help in enriching customer service experiences. Furthermore, organizations that will brand

themselves distinctively will be able to attract the young generation of customers. They can achieve this by having interactive and engaging social media platforms to meet consumer demands. In order for organizations with hospitality units to stay relevant, they need to adopt and align with these technological changes and trends. This will provide them with a clear competitive advantage in the Industry and allow them to stay a cut above the rest.

3. Embracing Google, Amazon, and TripAdvisor

Online sites like Google, retail giant Amazon, and the review site TripAdvisor has been developing new products that help in expanding their reach in the travel sector. Google's hotel finder and Amazon Travel are gaining a lot of buzz in the social media and are

slated to be extremely popular among travelers. TripAdvisor has two products – Trip Connect and Instant Booking, both of which allow users to book rooms on their website. These new online products will push the hospitality sector to spend more on online advertising and they need to watch out for updates on these products.

At the Kenya School of Law (KSL), we have started our digital journey by automating some of our hospitality processes. While we are still very early in our journey, we are observing increased efficiency, improved integrity, and accountability, and enhanced service delivery among others. Some of the areas we have automated are the room booking process and the cafeteria management solution. Jointly, with the corporate communication team, we have also ramped up our social media platforms

in a bid to increase our visibility and get the much sought-after customer feedback.

The digital transformation journey has just begun and will only reach its intended destination with continuous investment by the KSL leadership. For KSL Conference and Retreat center to stay relevant, adoption of these new technological trends is not an option and should be part of the main organizations' objectives. These technological trends will provide a clear perspective, from service delivery to product differentiation, that will give KSL a competitive advantage amongst its peers.

Linnett Odawo is a Senior Hospitality Officer at the Kenya School of Law.





Kenya School of Law



Conferences

We have different conference rooms that are well suited for all levels of meetings from exclusive and executive board meetings, middle level manager retreats, trainings and strategic business meetings which can host up to 100 persons.

Hiring Per Day at Ksh. 20,000

Gardens

Our expansive and well-manicured gardens / lawns popular for outdoor functions such as weddings, corporate Fun days, Team Building events and Retreats where guests can host small or large gatherings.

Garden Hiring Per Day at Ksh. 55,000

Accommodation

Kenya School of Law offers high quality service in accommodation at very competitive rates. We have 50 single rooms and 8 luxurious suites - all ensuite. The Rooms are well served with Wi-Fi connection and global entertainment channels.

Ranges from Ksh. 2,500- 6,500

Restaurant

Our restaurant offers local and international dishes in menu and buffet options, while the bar serves champagne and other soft/alcoholic drinks. Meals and drinks can either be enjoyed at the restaurant or outdoor by the garden.

Other Auxiliary Services

Transport- Hire 62, 30, 14 Seaters. Range from Ksh. 13,000 - 39,000

Laundry Services available

Ironing Services available

Swimming Pool - Ksh 200

Sauna for Guests - Ksh. 300

Exclusive Hire of Pool by Group - Ksh. 15,000

Football Training session after workshop – Ksh. 2,000

Football Game Session - Ksh. 3,000

Photo sessions – Ksh. 10,000



- CONTACT US -

**The Kenya School of Law
Conference and Retreat Centre**
Langata South Road
P.O.Box 30369 - 00100
Nairobi, Kenya

Telephone : +254 020 – 2699581 /2/4/6

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Ethics in Procurement

By Mariam A. Mahmud



Does ethics mean....

- Only doing what we have to do?
- Only obeying the law?
- Getting away with as much as possible?
- No; this is compliance, not ethics.

Ethics are more than compliance. Ethics are:

- Doing what we know we should,
- Going beyond the legal minima,
- Acting in the interest of our organizations,
- The values that define us.

James P. Sterba in his book "What is Ethics?" Defines ethics as a field of study that we all need. This is because we all make choices, and ethics is about the general norms that govern how we should make those choices. Not surprisingly, there is disagreement over what the "norms" are, but by working through such disagreement, we can learn how to make better choices.

Ethics are guidelines or rules of conduct by which we aim to live by. Organizations like individuals have ethical standards and frequently ethical codes. The ethical standards of an organization are judged by its actions of its employees, not



by pious statements of intent put out in its name. The pressures which the market place exerts on procurement departments and on individual staff make it essential that management and staff involved in procurement recognize and understand both professional and ethical standards required in performance of their duties.

Ethics in procurement are simple BUT not always easy. The ground rules for good ethics in procurement are simple enough. Practice integrity, avoid conflicts of interest and personal enrichment. Ethical concerns in the contracting process:

1. Conflict of interest.... having a private, undisclosed interests which could interfere with your work or fiduciary obligations.
2. Moonlight for a company that gets a contract with your agency.
3. Sharing confidential information.
4. Treating suppliers differently.

Good ethics in procurement

The ground rules for good ethics in procurement are simple enough.

Treat suppliers equally and fairly, and comply with legal and other obligations

Correcting and Avoiding Procurement Ethics Problems.

A written procurement ethics policy remains the starting point for raising and maintaining standards in an organization. Employees at all levels involved in procurement need to know what is expected of them, and a written policy helps resolve any arguments. There are also further conditions if such a policy is to be effective:

1. The policy must be as clear and concise as possible, and should offer sufficient guidance. That means covering general principles and stating specific rules as appropriate. Employees need clear simple instructions that will let them determine immediately, for example will a gift such as an executive pen be

acceptable or not. The policy should be clear on the value of a gift to accept or declare.

2. Employees and stakeholders must be able to easily see and understand the policy.
3. The policy should be reviewed regularly for improvements.
4. Management must endorse the policy and act accordingly.
5. Training and continuous sensitization, refresher courses should be regularly conducted.

Reduce ethics risk by taking these five key steps:

1. Honestly assess your needs and resources.
2. Establish a strong foundation.
3. Build a culture of integrity from top to bottom.
4. Keep a "values focus" in various moments.
5. Re-evaluate and revise as needed.

In Conclusion

Ethics in procurement and supply operations are a moving goal post

that procurement professionals should ensure they keep up to date with. Legislations and standards can change frequently so it is significant to always follow the current version of the employer's code of ethics in order to ensure that procurement best practices are followed.

Mariam A. Mahmud is the Principal Supply Chain Management Officer at the Kenya School of Law





Internship Experience in the Strategic Planning and Quality Assurance Department

By Gilbert Kasee



I was privileged to serve as an intern at the Kenya School of Law (KSL) under the Department of Strategic Planning and Quality Assurance. The Department consisted of two officers; Senior Officer Planning, Monitoring and Evaluation, who was my supervisor, and the Risk and Quality Assurance Officer. I did not have much experience because I was a fresh graduate from Kenyatta University, where I pursued a diploma in project management.

From the beginning of my internship, I was treated with respect and understanding. I was treated as an employee, not just as an intern. There was always someone to ask for help if there was something I did not know. My main duty was to assist my supervisors in various activities in the department. Since the department has two sections, I was introduced to both risk management and quality management systems.

It was an enriching experience to be part of the department as I got to learn a lot of technical knowledge and gained valuable hands-on experience. During the internship, my supervisor

gave me a chance to join the technical team which was formulating the 2022/23 2027/28 Strategic Plan for the School. I was involved directly in the entire process and my inputs were taken into consideration. I was delighted to participate in the launching of the Strategic Plan on 26th August 2022 at the Radison Blu hotel.

The most memorable part of my internship was when my department collaborated with Kenya Bureau of Standard to conduct the Schools' audit. This was successful and I participated fully in the process as an observer. The experience was valuable in terms of exposure and knowledge.

The best part of my internship was during team building in Maanzoni, Machakos County in December 2021. We engaged in different fun activities and got the opportunity to interact with staff members of the School from different departments. I also had the chance to participate in numerous events of the School. I took part in the annual sports day in April 2022 where I played football in the staff team against the students' team. Most evenings after work, I spent time at the field exercising or at the

swimming pool. This attracted friendship with my colleagues and fellow interns.

What I learnt from my internship is that one should never be afraid to ask. It is only when you ask that you will learn more. The double exposure from working in both strategic planning and quality assurance has given me one of the biggest takeaways and has taught me various important lessons. For risk and quality assurance, I got to understand how important it is to identify the risks and how to mitigate them. For strategic planning, my career goal, I learnt how to develop work plans and performance contract, undertake annual review of the strategic plan and many more. With all these takeaways from the Kenya School of Law, I am more prepared for working life in the near future.

Gibert Kasee is a former intern in the Strategic Planning and Quality Assurance Department at the Kenya School of Law



Transport Section: Enhancing Good Governance

By Martin Kembero

Fleet management is characterized by legal obligations and highly fixed costs. When an institution fails to comply with the necessary laws and regulations of fleet management, there is a high risk for fines which can result to failure of an institution from achieving its vision, mission, objectives and goals. As an institution we are guided by the Traffic Act Cap 403 Laws of Kenya as well as the KSL Transport Policy that outlines rules and regulations on how vehicles need to be governed for a better service delivery.

The School Transport Section ensures that the School vehicles are in good condition, such that no danger is caused or likely to be caused to any person in or on the vehicle. The vehicles are subjected to an annual inspection at the National Transport Safety Authority to ascertain their roadworthiness.

It is my responsibility as the officer in charge to ensure the School's motor vehicles are checked on a regular basis which include daily, weekly checks and regular service intervals. All the School vehicles have the correct comprehensive insurance cover. This is to ensure government vehicles comply with the law, and that they are driven according to the required standards.

To ensure smooth operations, drivers are allocated specific vehicles based on their experience. This is important because driver competence and skills are crucial for the welfare and safety of our clients. Additionally, no driver should drive when under the influence of alcohol and drugs because it will be extremely dangerous to other road users and their property. That is why we have taken safety and security as a key objective in the provision of transport services.

Before any allocation, the driver has to check the condition of the vehicle and confirm that it is road worthy. The pre-checks consists checking the preliminary items like functional headlights and brakes, tires have the right pressure, fluids and power steering. This helps the drivers to report promptly and record any symptoms or defects that could adversely affect the safe operations of the vehicle because safety to our clients is key.

Maintaining a strong ethical culture is essential for our institution. With the laws and regulations, drivers are given the appropriate tools to align the institutional culture behavior and engage in ethical decisions making. Our drivers are ethically disciplined. They have been trained on customer care, office management skills, stress management, office etiquette and managing resources.

As a section we follow the principal of corporate ethics that has shaped the organization's good image. When

our drivers drive the School vehicles according to the accepted laws, it brings a sense of belonging. This increases the confidence to the public. The community at large feel a sense of pride working in such an organization that has order and decorum. Our drivers have shown personal responsibility, loyalty, respect to our clients and good customer service. The employee feels valued as a member of the team because of the mode of treatment and appreciation increases the confidence of working in the institution.

The principle of trustworthiness has cultivated good ethics internally and externally when services are being offered by our drivers. This has been achieved through honesty, transparency, openness and reliability because any time the drivers are required to execute their work, they are available and ready to perform their activity without fail.

A monthly airtime is provided to the drivers to facilitate their work. We also have a WhatsApp group for the Section for ease of communication in managing trips. This also helps to notify drivers on any emerging issue within the Section and any other communication that is useful in logistic matters. Further, it has assisted in handling complaints and hence enabled the school to achieve its mission, vision and core values.

Martin Kembero is an Assistant Administration Officer at Kenya School of Law

Although the guest teams displayed good skills and splendid sportsmanship in all the disciplines of competition, luck was not on their side as they lost narrowly to the hosts. There was celebrations when the results were announced by the Sports Committee Chairperson, Mr. Samuel Mwaniki, flanked by Committee Members in the presence of KSL Director Dr. Henry Mutai and Mr. Nathaniel Othembi, the LDC Director.

The sports Committee Chairperson assisted by Mr. Leonard Okoth led the award ceremony and called upon the KSL and LDC Directors to present the trophies and medals to the participants. KSL team won five trophies out of the six, leaving LDC with one to take home.

The LDC Director, while delivering his closing remarks of the sports day, sparked the crowd by quoting that *"the students just took the instructions right as I had earlier warned them not to humiliate the hosts for their own safety during stay in Kenya"*

Having lost in the games, the LDC students still had a reason to smile. They said that the hospitality services were very good, coupled with the warm welcome from their fellow students and KSL staff.

The KSL Sports Committee is now looking forward to incorporate Rwanda and Tanzania bar schools in future events. The LDC Director was in support of the idea and wished the plans be rolled out immediately.

Going forward, some of the issues that may need to be addressed include:

- Budget for the event
- Proper allocation of duties
- Preparing play field and equipment
- Coordination of participants and participating teams
- Discipline of competitors
- Event sponsorship
- Safety of the participants
- Provision of food and drinks for participants and officials
- Streamlining the awarding system

Leonard Okoth is the Sports Assistant at the Kenya School of Law



KSL Football team during a football tournament between KSL and LDC) held in Karen campus.



STUDENTS CORNER

Social Media, Legal Opportunities and the Thoughts of a Bullish Lawyer

By Charles Chebosi

Introduction

The recent COVID-19 pandemic did its number on the legal profession. With many advocates being retrenched and being forced to get alternative sources of income, the legal profession faltered. To date, we still feel the effects of the down period brought about by the pandemic, with most courts not working at full capacity, a very extensive backlog of cases and a plethora of issues that still ravage the legal profession.

With the world carrying on with their favourite pass times during the pandemic; baking, learning new skills and languages and unwinding in other ways, a section of advocates also got busy. Those active in the legal field could attest to the rise of groups on our favourite social media platforms; WhatsApp, Facebook and LinkedIn; with these groups filled by a target audience; advocates. These groups did not take the form of random forums to spread gossip, chatter and memes; rather they were set up by lawyers to network, engage in specific interests as well as provide training in the form of various webinars. To date, these groups have persisted, and with the increase in group members on a singular WhatsApp group, they have increased in size.

My Experience

As a lawyer with keen interests in cyber security and data protection. I could say it was inevitable to come across such platforms. I joined a similar group; Young Lawyers in

Tech, where the main focus was to exchange ideas and opportunities from the dissemination of the Data Protection Act No 24 of 2019. I found a number of my seniors, who chartered the course for my colleagues and me. We were offered trainings and webinars that allowed us to take in the act, identify the working points and career opportunities and have a clear vision with the same act. I could say that the learning I had, which was free, was quite resourceful, to which I made a couple of shillings.

Further, the networking I have done in these forums is, in my opinion, rather unmatched. The chance to meet up with mentors, senior advocates and lawyers who I could only dream to be in the same room with is not only humbling, but also worth savoring. With such a chance, comes the duty to carry oneself with the decorum and flair that would not only signify me meeting with these figureheads, but also showing that I have learnt and am a protégé.

Since then, I have come to appreciate the role social media is playing in exposing younglings like myself to a sea of opportunities. I have joined a number of groups that carry out trainings on Data Protection, Intellectual Property Law, Fintech and Cryptocurrency and Tax law. As much as I take keen interest in these factions of law, I appreciate the number of numerous facets in the law that offer training and exposure to other aspects of the legal profession. A close friend leads a masterclass that is in charge of explaining the rationale of massive cases such as the infamous

BBI 2022 case and the Raila v IEBC 2022.

Conclusion

During my time in the depths of social media legal forums, I came to notice a number of concerns. First, I noted that the spaces tend to be very cliquey in nature. An outsider, and in fact a lawyer who may not be as well versed with the fields being spoken would easily feel left out. Notably, most of these spaces started at the onset of the pandemic and thus, if someone recently joined with an aim to learn in them, they may easily feel left out as they may not fully understand the concepts. Moreover, the cliquey behaviour is noted in that not many people have a chance to join these spaces as they are rather tight knit. Using the example of a WhatsApp group, it is virtually impossible to join one without an invitation. Moreover, I asked a number of my friends and they averred that they do not have an idea that these forums exist and as such, they feel they are missing up on massive opportunities. The Law Society of Kenya, a body responsible for the conduct of advocates, does not necessarily have the power to control the posts made by its members. As such, it does not control these forums and thus, word getting to wider audiences is not simple. With a bubbling legal fraternity being helmed by the new generation, it is interesting to see the new ways in which knowledge in the field is being disseminated. With a few tweaks here and there, it would become a more cohesive and better place.

Charles Chebosi is a student in the Advocates Training Programme



Effective Advertising in the Modern Technological Era

By Mercy Owira

One of the greatest inventions of the modern times is the internet. With it came social networks such as Facebook, WhatsApp, Twitter and Instagram. All these collectively are referred to as social media. Social media has made communication faster and easier.

When the first COVID-19 case were announced in Kenya in 2020, the whole country went into a state of panic. No one had foreseen that our beloved country would be affected. Little did we know that was only a tip of the iceberg.

Learning institutions, offices and other service providers were later on ordered to close down. When all this was happening, I wondered what the impact of all this would be to the legal industry, considering that it was one of the few fields that had not embraced digitalization. For law firms, this was quite challenging as they needed to strategize so as to reach their clients. The only saving grace for law firms was to leverage on social media. by creating an online visibility. This is beneficial as it increases brand awareness, humanizes practice and enables one to stay informed.

In Kenya, advertising and marketing by advocates is governed by the Standard of Professional



Practice and Ethical Conduct and the Advocates (Marketing and Advertising) Rules. While advertising, the Advocates (Marketing and Advertising) Rules regulates the information advocates can advertise.

The Rules have forbidden advocates from providing the following information:

- i. The name and identity of the client of the advocate or the advocate's firm
- ii A picture of the advocate, the advocate's partner or partners or another advocate employed in the firm
- iii. Academic or professional positions held by the advocate before that advocate's admission to the roll of advocates
- iv. A promise by the advocate or the advocate's firm to achieve a particular outcome for clients or prospective clients or that failure to obtain that outcome shall constitute a waiver of the advocate's or the advocate's firm's legal fees.

On forms of advertising, the rules have stated that it may be in a non-legal or non-professional directory, in a legal or professional directory, in a website or other digital platform, in the print media and in the form of a plate or plaque at the entrance to the advocate's firm's ordinary place of business.

Marking a boundary between making public commentaries and creating unintentional advocate Advocates have been forbidden from advertising on radio, television or in the form of an illuminated billboard or placard. The rules further go on to provide that if any advocate fails to comply with these rules then the Law Society of Kenya shall have the duty to determine whether the advocate has committed a professional misconduct.

client relationships on social media has been quite a challenge to some advocates. In the process of innocently commenting on legal posts, some of them have found themselves soliciting for business.

How then are the boundaries marked?

Social media has made a lot of information available to people. This is due to the nature of it being interactive, efficient and immediate for the sharing of ideas, calls for action, campaigns and judgments.

In ensuring that as an advocate or as a blogger you do not find yourself in the trap, one needs to be careful that the information they provide is not construed as legal advice. This is done by making it clear to the reader that whatever you have given is not legal advice and should not be relied on for such purposes.

Antonin Pribetic, a Canadian lawyer and blogger has also written on the perils of 'flawging' your blog. This is technically

setting up a legal themed blog without any substantive legal content. Such blogs are usually created, monetized and promoted exclusively for profit. This can be said to be misleading to the general public. The Marketing and Advertising Rules have warned against giving misleading information while marketing as this could lead to one being held liable.

While trying to reach more clients, it is advisable therefore that an advocate expands his/her professional network. Looking at social media as a way of reaching more clients may lead to unethical practices.

The easiest way out is usually not to get involved at all. This strategy however presents a risk since professional and private life has moved online. When clients, experts and legal developments are operating on a virtual environment, can we even afford to pretend that it is not relevant at all?

The rules and guidelines are constantly evolving to keep up with technological advancements. If you or your firm sets up a blog, there must be some guidelines as to what is reasonable and what is not permitted. Thus, it is necessary to consider a social media policy at the same time as you consider your presence on the blog or any of the social media platforms. It is also advisable to always stay up-to-date with the rules while implementing the social media workplace policies. Firms should also provide training courses about ethical social media practices to their staff. Training helps in ensuring that the employees are kept abreast with the latest technological changes and it also increases employee motivation and engagement.

Mercy Owira is a student in the Advocates Training Programme in the Kenya School of Law



Legal Activism on Twitter



By Charles Chebosi

Introduction

On the 24th of October 2022, the algorithms of Twitter were taken by storm with the release of results of a survey that had been done in the previous weeks. An account, @mayardolin a well-known lawyer and prolific Tweep (common slang for a Twitter user) released the results to a poll she had posted a week prior, shedding light on what pupils went through in their quest to fulfil their requirements of the Advocates Training Programme in the Kenya School of Law. To the shock of 'many', we noted that pupils worked in harsh conditions, with pay that can only be described as peanuts and faced challenges such as sexual harassment, ridicule and tribal rhetoric. The talk on the platform on that day was tremendous, with the topic of pupils and law firms making it to the trending page. Most advocates gave their two cents on the topic, with calls for change and reform on the pupillage issue, as well as heartfelt pleas and promises to treat their juniors better and to 'break the trend'.

The same was witnessed in WhatsApp forums, with advocates, pupils, future pupils and even lecturers in the Kenya School of Law voicing their disdain over the report. One of my favourite quotes came from a current class - *'Your favourite law firm with an Ivy League website is offering Onyalo Biro (the strugglers) remuneration'*.

Why this Activism is not a new thing. The keen reader notes that I stated many people were shocked by the findings, with the words 'many' in quotes. The truth of the matter is; the legal profession has a history of activism all over social media platforms. As an avid user of Twitter, WhatsApp and Reddit, I can only speak to these applications, but I am no stranger to posts on Facebook with young advocates pouring their complaints.

As stated, the Twitter account responsible for the survey posted it some week prior to the results. That week prior had a senior advocate chastise a pupil for taking a cab within the Central Business District to serve documents to an opposing counsel. The source of the ridicule, for those who are not well versed with the city, is that the pupil paid a lump sum of three hundred Kenyan shillings for a distance of about 400 metres.

In the course of the year, there had been a case of a pupil who faced a boss who can only be described as overly eager in his training. He would call her to his chambers and have long conversations with her alone that would make her quite uncomfortable. He would also make her do odd tasks such as cook tea in the office and collect his laundry from the cleaners. She drew the line when he asked for something that I wish not to state on this paper, to which she aptly declined, filed her resignation and left the firm.

On Reddit, under the chat group R/Kenya, a pupil gave his report on pupillage at a rather well known law firm. He stated that the associates were constantly rude and he was often overworked.

Not only did he get to the office as early as 6.45am to deal with his briefs, but the pay was so outrageously low that he had to take loans from our favourite apps; Tala, Fuliza and the like.

As stated, for those with a keen eye, an apt memory and the time to scroll social media for every couple of minutes, mistreatment of pupils and interns is a well-known issue.

Brief thoughts on Activism and Social Media.

With social media becoming more prevalent in our day to day lives, it is quite common for people to vent their frustrations on these platforms. Though not official, it helps people feel better, and the various studies on the Effects of Social Media can support this averment. As such, pupils, interns and even employees are seen to take to social media to vent their frustrations. The infamous BBI case (2022) was synonymous with this, as it was noted that a number of senior advocates, some of high standing and others not, did raise their concerns on the judgement passed by the Supreme Court.

Notably, those going for pupillage are guided by the Kenya School of Law regulations. In case of any issues, they are required to report to the school through their supervisors. However, in reality, it is not all black and white. The process of getting a pupillage centre in itself is gruelling at best and disheartening at its worst. After placing tens of applications to the many firms in the city, receiving a significantly lower number of responses, mostly in regret, a pupil



shall jump on the chance when a firm decides that they are worthy to join their ranks as a lowly pupil. They are incentivized to work with the end in sight and not the experience with the firm. Thus, it will be difficult to complain about hostile treatment.

It is much better to voice concerns over social media as it is perceived to be your circle. These are people who understand your struggles and that like or upvote will provide a dopamine boost for you.

Further, you are incentivizing your circle not to work with these firms and employers.

In this way, social media activism plays its role; educating, informing and persuading the masses.

At the time of writing this article, the Law society of Kenya(LSK), through its President, has had a stakeholder's meeting with the affected parties. Though the results of the said meeting have not been released to the public, the current class of 2022 is hopeful that the conditions for pupillage will change.

The fact that such issues are being taken seriously is notable. It shows that the legal fraternity is open to listening to the grievances of its members, albeit with a bit of coaxing, harsh criticism, being tagged in posts etc. As the next generation of lawyers is coming to light, we ought to see what the future holds with regard to new avenues of complaints, social media regulation and watching things happen on the ground.

Charles Chebosi is a student in the Advocates Training Programme

Hate Speech, Legal Practice and Use of Social Media Technology

By Dominic Ndege



Beyond doubt, digital technology influences how the law is understood and applied. The digital media of the post-modern era have significantly altered how individuals around the globe interpret the law. This transition is demonstrated by legal changes, political reforms, digitization of legal materials and new technologies used in the practice of law today. This article examines the impact of social media, internet, law enforcement, and law reporting on hate speech in Kenya. This article explores the scope of such a legal transition.

In Kenya, ethnic tensions have been expressed on Twitter and Facebook, and the threat represented by online media as opposed to traditional media is not given enough consideration. In response to the post-election violence in 2007 and 2008, the conventional media made a concentrated attempt to suppress hate speech.

According to the Umati project (Kenyan online platform that monitors hate speech), this drove radicals online and resulted in an increase in incitement and threats on the networks. Since it would be hard to prosecute offenders, the National Cohesion and Integration Commission (NCIC) turned to collaborating with bloggers to have offending content deleted. Twitter has lost legal battles and been forced to reveal the identity of users who publish anti-Semitic and



other hate speech remarks on its platform.

Despite this, the Kenyan court system has not yet fully developed its competence to evaluate claims of hate crimes, particularly those involving social media. Only a few incidents have been publicized have resulted in justice, these are often people without much influence in society.

In light of this, a legal study is necessary to adequately examine how social media technology affects how hate speech law is understood and generally applied and its ethical implications.

According to the law, hate speech is any statement, action, publication, or exhibition that is prohibited due to the possibility that it would incite violence or other negative behavior, denigrates or threatens towards a protected group or individual. A protected group or person may be recognized by the law based on certain qualities. A hate speech victim may seek restitution under criminal law, civil law, or both in various nations.

Social media, in particular, offers the finest means of committing a crime in cyberspace. First instance of hate speech came from a Kenya National Human Rights Commission (KNHRC) study that was released following the ethnically charged propaganda that characterized the 2005 Constitutional referendum campaign.

The new media growth has been prompted by the expansion of the World Wide Web and the Internet. Online journalism has established itself, but social media stands out among these recent entrants. The prevalence of offensive speech on social media sites like Facebook, Myspace, Twitter, Instagram and many more has taken many jurisdictions off guard. The majority of regulations apply to conventional media, although comments published on Facebook, Twitter, YouTube, video games, internet sites, and other online platforms must be monitored.

Numerous conventions, accords and agreements have addressed hate speech on a global scale. According to the International Covenant on Civil and Political Rights (ICCPR):

“Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”.

Hate speech must be outlawed, and national laws must be adopted. This is one of the restrictions placed on free speech as part of its unique obligations and responsibilities. Countries are required under the Convention on the Ending of All Racial Discrimination Forms (ICERD) to designate racist remarks and incitement as offenses. Although the European Human Rights Court

(ECHR) has construed it that way in its application, the EU does not apply the European Human Rights Convention (ECHR) retroactively to censure the reduction or denial of atrocities like war crimes, genocide and human rights violations.

The goal of Australia's hate speech legislation is to eliminate racial persecution. The Anti-Racism Law of Belgium bars discriminations and hate speech and makes it unlawful to engage in activities driven by xenophobia or racism. The Belgian Center for Equal Opportunities is in charge of the prosecution. The Brazilian Constitution of 1988 forbids racism and other racialized hateful speech and goes further by forbidding suspects' release on bond. Hate-linked websites have come under heavy scrutiny in Argentina. To promote genocide or stir hate towards any recognizable group is illegal in Canada.

Hate speech crime in Kenya is defined as a language that disparages an individual or group based on their ethnicity, religion, sexual orientation or gender, plus disparaging remarks made towards racial, ethnic, or sexual groups or their members.

The present judicial reform paradigm fails to adequately meet the requirement for consistency and continuity of law in keeping with the most important moral norms. More significantly, players ought to take it upon themselves to completely familiarize themselves with this regulation.

Dominic Ndege is a student in the Paralegal Training Programme





Curing Unintended Retainers on Social Media

By Patricia Angaya

The Advocate's Act, Law Society of Kenya Act and its Code of Standards of Professional Practice and Ethical Conduct are among the laws regulating advocates' conduct and professional obligations. The legal profession is regulated in its various areas from conduct of advocates while carrying out their obligations, advocate-client relationship, advocate remuneration, retainer agreements, duties of the advocate to the court, client and the general public.

For an advocate to carry his or her duties, there has to be the establishment of an advocate-client relationship. This can be done in different ways:

- i. A client approaching an advocate in person and entering into an agreement for legal services.
- ii. Through the client's agents, trustees or representatives.
- iii. Through the common law position either expressly or by implication. This does not require any formalities for the advocate to be bound.
- iv. Through the advocate being paid legal fees by any person.
- v. Through retainer agreements which is where an advocate is retained by a client for provision of legal services.

Advocates are advised to have formal agreements with the clients before providing their legal services to ensure both

parties fulfill their obligations as part of the agreement.

In the current era, there has been widespread use of social media by many people for different purposes. Social media is a platform used to reach a wide group of people. It is mostly used for communication but can also be used for doing business, education and providing information of current news.

Advocates have not been left behind in social media use. They use it to market themselves and solicit work, recruit new staff, link to other members of the profession like judges, fellow advocates and clients, educate the public and fellow advocates, give information about their firms, doing research, get evidence that can help in their cases and improve the reputation of the legal profession.

Ethical issues that might arise with lawyer's use of social media is if they make posts that breach the rules of the profession. An advocate's post on social media can contain mistakes which are not easy to delete hence the lawyer will be perceived negatively. It is easy to breach confidentiality between the advocate and client if the advocate posts about the case. Others include interference with the advocate's duty to the court and creation of unintended retainers.

The LSK Code of Standards of Professional Practice and Ethical Conduct under part 10 outlines guidelines that advocates should follow while using social media. The rule of the thumb in the legal profession is to uphold its dignity.

Advocates are advised to not use social media in a way that breaches the rules of the profession while advertising their work.

Rules of advertising legal services are that the advertisement should not be offensive, false, misleading and against the law. To ensure they uphold the dignity of the profession, the high standards of conduct used by advocates in practice should be extended to their use of social media as they do their daily professional activities.

A retainer is a non-refundable payment made by a client to an advocate to guarantee the advocate's availability to perform legal services whenever called upon. In a retainer agreement, the duration and scope of the agreement is agreed upon which is dependent on the existence of an advocate-client relationship. An advocate is obligated to fulfill his obligations to the client failure of which results to professional misconduct.

In social media, it is usual for advocates to comment on their colleagues' posts or any other people on matters relating to the law. Most people assume that just because they are friends with an advocate on social media, a retainer exists. Some members of the public might adopt the advocate's opinion as legal advice to an issue they might be facing thus creating unintended retainers.



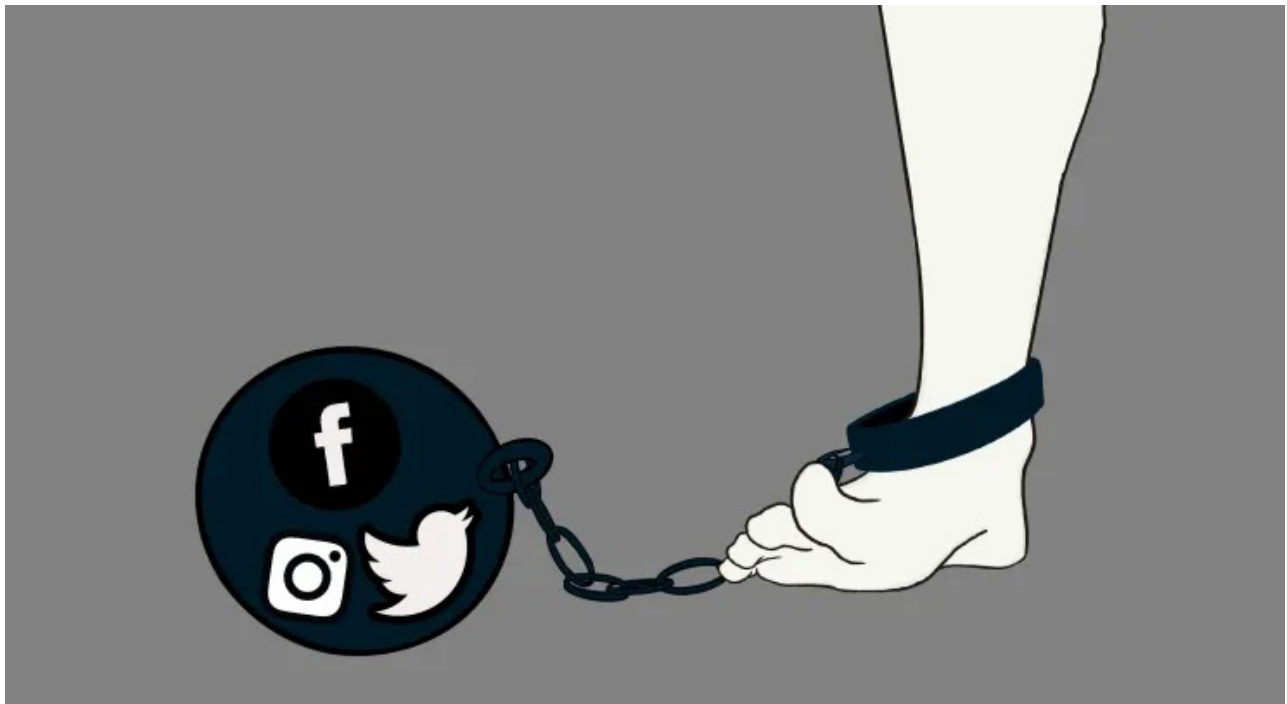
Implementing legal advice that does not apply to a problem one faces can create challenges. In worst scenarios, people that use the advice can hold the advocate liable. It is important for advocates to put a caveat that their comments should not be relied on a professional advice as this might create grounds of professional liability claims. With this, they should also clearly state that they do not intend to create a retainer because they do not have the necessary knowledge required. Before giving advice that has a

high likelihood to be acted upon, an advocate is obligated to exercise due diligence thus avoiding misrepresenting himself.

Social media retainers can be complicated due to the brevity of the exchange and not having a clear scope of the retainer. If an advocate does not intend to create a retainer through social media, they should refrain from posting legal responses. To help the potential client, they can advise him/her to create a formal retainer agreement and secure the legal services needed.

There should be more legal awareness to both the advocates and the general public on the use of social media as to the law. The public should be aware of how a formal retainer is created and encouraged to do so before implementing any legal advice received. On the other hand, advocates should also be careful to use social media in a way that is consistent with ethical professional conduct.

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Chapter Six of the Constitution vis-à-vis Presumption of Innocence: Which Should Prevail?

By Kenneth Njiri

We note that the purpose of Chapter Six of the Constitution of Kenya, is to set higher standards of integrity for persons seeking to serve as State officers. Integrity is the firm adherence to moral and ethical values in one's behaviour. Integrity is therefore not only about an individual's own perception about the correctness or appropriateness of their conduct, but also has a fundamental social and public quality to it. It is our view that as the society also expects certain values to be upheld, the integrity provisions of the Constitution demand that those aspiring to State office be like Caesar's wife: they must be beyond reproach.

International Centre for Policy and Conflict & 5 others v Attorney General & 5 others [2013] eKLR

The people of Kenya came up with the Constitution of Kenya 2010 with the hope that Kenya would become a better country than it was before. Many Kenyans celebrated its inception on 27th August 2010. Among the many things Kenyans desired was leadership that upholds integrity. Therefore, Kenyans decided to inscribe the value of integrity into chapter six of the Constitution. Little did they know that this would bring controversies thereafter. Many have tried to come up with theories to explain chapter six of the Constitution. These theories have led to confusion in the public sphere. Some have decided to drag the courts to deal with the mess but this has led to more confusion. The people of Kenya wonder why certain leaders are holding public offices yet they have

questionable character. They blame the courts for allowing these kinds of people and accuse them of propagating bad leadership in the country. The question that many Kenyans end up asking themselves is whether there is a need for elections in this country and yet bad leadership is voted in every five years.

The biggest problem in the country is the implementation of chapter six of the Constitution. This chapter governs the conduct of state officers. Article 73(1) of the Constitution observes that the authority assigned to a state officer is a public trust that is to be exercised in a manner that:

- (i) is consistent with the purposes and objects of the Constitution;
- (ii) demonstrates respect for the people;
- (iii) brings honour to the nation and dignity to the office; and
- (iv) promotes public confidence in the integrity of the office.

Article 75 of the Constitution requires a state officer to behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids:

- (a) any conflict between personal interests and public or official duties;
- (b) compromising any public or official interest in favour of a personal interest; or
- (c) demeaning the office the officer holds.

Irrespective of these provisions mentioned above, state officers find themselves in compromising situations that haunt them for the rest of their lives.

Luckily, these leaders clutch at the magic phrase 'presumption of innocence' to shield them from criticism and ridicule. The question that one may ask is whether chapter six acknowledges the presumption of innocence.

The principle of presumption of innocence acknowledges that every person is innocent until proven guilty. This principle safeguards the right of every suspect to a fair trial. The right to a fair trial is an absolute right entrenched under Article 25 of the Constitution. The Constitution prohibits any person from limiting the right to a fair trial. The right to a fair trial is not expressly provided for in chapter six of the Constitution and as such, some have argued that there is no nexus between the presumption of innocence and chapter six of the Constitution. However, this is a wrong interpretation. State officers are also human beings and hence are entitled to enjoy rights and fundamental freedoms enshrined in the Constitution. Article 19(3) of the Constitution provides that the rights and fundamental freedoms in the Bill of Rights belong to each individual. Similarly, Article 20(2) requires every person to enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom.

Therefore State Officers are entitled to enjoy without limitation the right to a fair trial. They have the right to defend themselves whenever there are allegations against them. They should neither be removed from office nor be denied employment

opportunities simply because their integrity is in question. They need to be heard first, otherwise this will amount to an infringement of their right to a fair trial. However, this should not act as a carte blanche for state officers to exploit this right. They ought to act with integrity and strictly adhere to Chapter six of the Constitution. They must be beyond reproach. They should shun any impropriety at all costs to ensure that they spur confidence in the citizens. Although the right to a fair trial safeguards the right of a

state officer, too many scandals reduce the trust and confidence of a state officer among citizens. Therefore, state officers ought to ensure that their conduct is beyond reproach.

In conclusion, the High Court in the case of *International Centre for Policy and Conflict & 5 others v Attorney General & 5 others* [2013] eKLR observed that “Impeccable moral and ethical standards on the part of state officers are important prerequisites in inspiring confidence in the citizens. They also influence, motivate, and enable others to

contribute towards the effectiveness and success of the public institutions in which state officers serve or lead.” Therefore, a good state officer guards his or her moral and ethical standards jealously. In case state officers do this, then issues about bad leadership will be a thing of the past.

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The Golden Rule

By Elsi Mayori

Becoming an advocate is more than just defending different clients. It is a calling to serve society by defending its interests in the best possible way. Advocates ensure that citizens get the justice they deserve by defending everybody including those who society believe do not deserve representation. The society would perceive such actions as advocates being liars and hence not like them. However, zealous representation goes beyond all that. The advocate's role, therefore, is to ensure that above all they are promoting what is good and just in the society we live in.

Advocates learn not only from years of studying in school but also from other advocates in the profession. That is why universities put their students through rigorous study, compulsory attachments and pupillage opportunities. Even after all the studying advocates do not automatically become the best. Advocates have to constantly practice their drafting and advocacy skills to perfect their craft. Learning practically strengthens the skills an advocate already has.

In this era of social media everybody is displaying every aspect of their lives online including their professional lives. Ethical regulations bar advocates in Kenya from

advertising their law firms to gain profits. This is to even the playing field for all advocates in the legal sphere whether they are young or seasoned advocates. This fact has not stopped advocates from posting other aspects of their professional lives. People post their legal successes, comment on legal political commentary and key issues that have continued to shape the legal space. Twitter has more than emboldened the modern advocate.

It is unfortunate that social media has been used to highlight negative aspect of an advocate's professional life. Social media spaces, especially Twitter, have been used to constantly criticize advocates. If an advocate for instance, drafts a plaint in which they have completely misapplied the law, the document will be doing rounds on social media with other advocates continuously making fun of their peer who drafted the document.

As fellow advocates why must we continue with such belittling cycle? Advocates learn from each other to become better at what they do. This profession is about learning practically whether by drafting or advocacy skills. Even when you have been practicing for some years you still have to rely on other colleagues in the profession because there is always something you can learn from someone else. Knowledge is better when it is shared. Sometimes people forget or are not in the right space of mind when drafting or defending clients in a courtroom. Everybody can have a bad day but it should not be a chance for you to make this advocate feel even worse on social media.

If you find that a fellow advocate has made a mistake, then you should not take a picture and post it on Twitter. You should call this advocate aside and tell them their mistake. Even as you tell them their mistake it should be in a calm way and show them the right way to do it. This will make you become a better advocate as you mentor. As advocates, we are taught to spread good to the society by upholding justice. Thus it should not be that hard to spread good and prevent other advocates from unfairly criticizing a fellow advocate.

No one takes the time to think about the psychological effect that criticism on social media can have on young advocates who are trying to make a living for themselves in the profession. Sometimes they make mistakes because of the pressures at the firm they are working in, being ill prepared or any other reason. Correction is better than public humiliation because the advocate will be more careful.

When seeing such posts, young advocates and advocates in training are learning that they are expected to be perfect all the time. This is a misguided notion. Even as an advocate is working, it is a continuous learning process. Advocates become better through professional courses which is also a space for learning from other advocates. No advocate is an island, we all need each other.

When it comes to an opponent in court, it is obvious you

capitalize on their mistakes to your advantage. What I am specifically highlighting in this article is that social media should not be a tool to highlight the flaws of fellow advocates. Instead of promoting criticism on social media, it is important to promote advocates working cohesively because in the long run it promotes the sanctity of the profession.

Looking out for each other speaks to the moral standard

that an advocate is expected to uphold so that society can look up to them as defenders of justice.

In conclusion, advocates looking out for each other is a high moral standard that ought to be upheld. Fellow advocates should not think of each other as incompetent in certain areas but help each other so that they become the best possible version of themselves. Advocates sometimes think of the profession as a competition but in real sense the profession is big enough to accommodate everyone to make an

honest living. Upholding justice for clients is one thing but being inherently good to others in the profession is nothing no School can teach you.

"Do unto others as you would like them to do unto you"

Elsi Mayori is a student in the Advocates Training Programme



Law, Ethics and Social Media in the Legal Profession

By Valary Karanja



In a fast-changing world, social media has become a more significant aspect of daily life, and it is becoming evident how it affects the law. There has been a large uptake of social media use by legal professionals over recent years, but with the embrace of the 21st-century lawyer comes an obligation to not only use social media but to do so ethically. Lawyers now use social media to network, acquire evidence, educate the public, and serve court documents.

Undoubtedly, social media presents several ethical challenges for the Legal Profession. As lawyers engage in these activities and exchanges online on a day-to-day basis, they seem fun and harmless but there is no saying how much a single post or comment can do to advance or damage one's career or the image of the Legal Profession.

The Law Society of Kenya (LSK), which serves as the regulating authority, has published some guidance documents as well as Laws, subordinate legislation, and a Digest of Professional Conduct and Etiquette to control the Legal Profession in Kenya. Competence, the obligation of confidentiality and legal advertising are all covered by existing norms of professional conduct, but none of them sufficiently address how these issues apply to social media use.

Nonetheless, the Code of Standards of Professional Practice and Ethical Conduct Code of Conduct and Ethics for Advocates regulates ethical standards in the legal profession. Specifically, the code discourages the use of social media in a manner that demeans the profession. Hence, rule 10 of the code provides that: *"Inappropriate use of social media, particularly in a manner that undermines the standing and dignity of the legal profession, is professional misconduct. Material and content drawn from social media sites may be taken into account by regulatory authorities in dealing with a charge of professional misconduct."*

Notwithstanding the above provision, the Constitution of Kenya provides for the freedom of speech and as a result, Kenya has become a country where people are not shy about voicing extreme positions on the internet and legal practitioners have not been left behind. They share photos, opinions, and stories about their daily lives without thinking about the impact they may have on their careers and the profession as a whole. Despite having very little regulation on how advocates conduct themselves online, they should think twice before making polarizing statements on the internet and apply common sense in their online interactions.

is done in the course of the legal practice or their personal lives, practitioners need to be aware of the risks involved in the use of social media, and the higher standard expected of officers of the court when engaging on social media platforms. Pursuant to Section 55 of the Advocate's Act, an advocate is an officer of the court and shall remain beholden to their ethical duties in the same way that they are in any other forum. This ought to be the backdrop against which all of the advocates' interactions are based on.

In conclusion, the sooner legal practitioners distinguish between using freedom of speech and expression as a guarantee for democracy and not as a green light for unruly ethical conduct, the sooner they stop facing ethical dilemmas in their online activity. Moreover, the LSK needs to come up with rules that address ethical social media usage and add them to the existing Model Rules of Professional Conduct. This can be accomplished by addressing competent social media usage, confidentiality when using social media, and disciplinary measures for any such breach of the rules. This will ensure that advocates do not face the ethical pitfalls that currently plague the Legal Profession.

Regardless of whether an engagement

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"I think there should be regulations on social media to the degree that it negatively affects the public good."
Elon Musk.

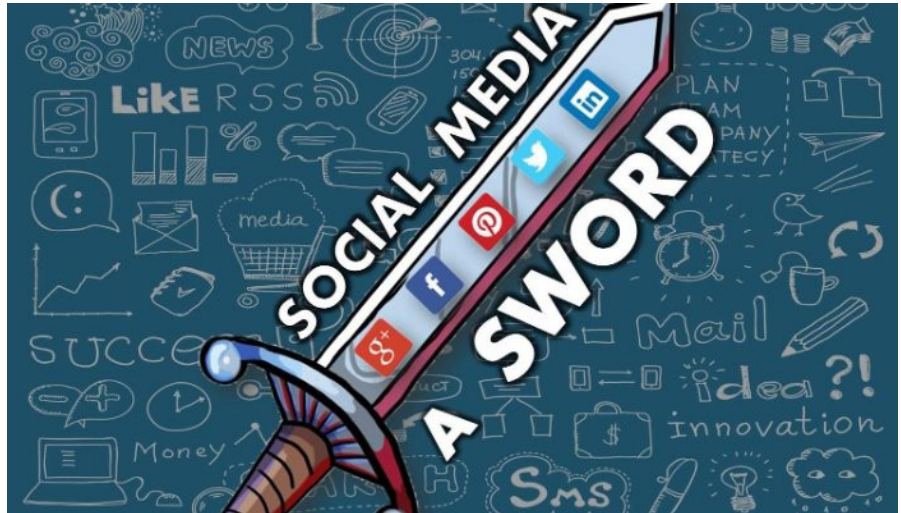
Elon Musk is one of the most liberal social media users out there. Even so, the above quote by him is of sentimental value, perhaps in the realm of the legal profession. In recent years, social media usage has elicited mixed reactions within the legal profession. Safe to say, the furore is indeed warranted.

The conduct of legal profession in Kenya is governed by the Law Society of Kenya. The Code of Standards of Professional Practice and Ethical Conduct (SOPPEC) provides some guidelines on the usage of social media by members of the profession. Rule 10 thereof prescribes as follows: *"Inappropriate use of social media, particularly in a manner that undermines the standing and dignity of the legal profession, amounts to professional misconduct."* It further takes cognizance of the fact that social media can be used in ways which potentially can undermine the standing of the profession. Thus, in using social media, advocates should be mindful of the obligation to uphold the dignity and standing of the profession, and should apply the same high standards of conduct to online activity in their professional life.

In addition to this, the LSK previously published a draft Advocates Social Media Usage

Social Media in the Legal Profession: The Double-Edged Sword

By Muyavila Donald Watson



Code, intended to give guidance to advocates on matters relating to the professional conduct and use of social media platforms. This code did not augur well with members of the profession. It must be noted, and rightly so, that social media usage by advocates is both personal and professional depending on the context. The use of social media by advocates outside the official social media accounts of their firms is predominantly a personal rather than a professional endeavor.

Professor Ojienda observes that advocates should restrict their official communications in the context of the advocate-client relationship to official letters and emails to clients, opposing parties, opposing counsel, judicial officers and the courts. Therefore, private social media accounts operated by advocates may be categorized into two kinds, whereby some private social media accounts embody the professional profile of advocates and some others embody the personal profiles of advocates. He opines that the Code purports to

impose a blanket gagging of social media usage by advocates, in turn violating their fundamental constitutional rights that go to the very core of their personalities. These rights include the freedom of opinion under Article 32, and the freedom of expression encapsulated in Article 33 of the Constitution. The fate of this Code remains unknown.

However, only recently, Chief Justice Martha Koome had imposed a gag order on litigants, especially lawyers, from commenting on the merits of the Presidential Election Petition on social media. This stemmed from the Building Bridges Initiative (BBI) case filed at the Supreme Court where she cautioned 3 advocates from criticizing the Courts on social media as it interfered with the integrity and independence of the Courts. The directive was subsequently declared unconstitutional for want of public participation, in addition to limiting the freedom of expression.

The foregoing then begs the question, where do we draw the dividing line between regulating social media usage and the ethical issues arising therefrom, and curtailing the fundamental freedoms under the Constitution?

The above sentiments notwithstanding, this discourse will focus on the general perception of social media platforms within and outside the legal profession. Perception is everything, especially in relation to social media use. What social media users see, is often times than not, what they believe. In light of this, lawyers can use social media to portray intellect, attract attention, show accomplishments and put good things in their personality out there for consumption by the general public. For all intents and purposes, social media is a literal gold mine for marketing. However, like the proverbial double-edged sword, social media can also damage your

reputation. It is a tool for self-sabotage, if not put to good use.

In line with the foregoing, social media poses real pertinent issues in relation to this noble profession. It is often alluded that the legal profession is not a trade but a noble calling. Social media marketing thus poses more questions than answers. The Advocates (Marketing and Advertising) Rules, 2014 provides for restrictive marketing. It abhors solicitation. However, it is not uncommon to find legal practitioners soliciting the general public in the social media space, while masquerading it as advertising. The thin line between advertising and solicitation within this space leads to obscurities and poses a threat to the noble profession.

Social media poses a threat to confidentiality. There is a habit by lawyers of posting their clients' information online. Perhaps, it has become commonplace to find pleadings all over the social media space. Leaking documents on social

media platforms is unethical and a blatant violation of the rubrics of confidentiality. Most of these documents are presumably posted without the permission of the clients.

Nobel laureate Liu Xiaobo wrote that, "Freedom of expression is the basis of human rights, the source of humanity and the mother of truth. To block freedom of speech is to trample on human rights, to strangle humanity and to suppress the truth." In line with this discourse, this paper argues that social media use is a delicate balance. On the one hand, curtailing its use limits freedom of expression. On the other hand, its use could rightly demean the profession. It is therefore imperative that inasmuch as one is free to engage on these platforms, they should be wary of the contents of those engagements so as not to violate the ethical standards.

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Informing To Misinform: How Unethical Use of Social Media during the 2022 General Election almost placed Kenya on the brink of Anarchy

By Dominic Elema

My Media and Law lecturer, Prof. Peter Wasamba, used to remind us that the media plays the antipodal role of informing and misinforming the society. At no other recent time has Prof. Wasamba's reminder become a reality than during Kenya's August 2022 General Election. On one hand, the media were crucial in updating the public on the election processes. On the other hand, the media were trapped in the complex mesh of misinforming the public in the process of producing information that only favoured their preferred candidates.

Social Media and the 2022 General Election

Social media effectively played both the informing and misforming role during the elections. The misinforming role was, perhaps, juicier. Take, for instance, how the Kenya Kwanza and Azimio outfits used social media to propagate their respective 'victory' barely hours after the polls closed.

Dennis Itumbi, the self-proclaimed Hustler Nation spokesperson, posted presidential provisional results on 11th August, 2022.

He claimed that this percentages were based on 99.79% forms verified. He then went ahead to 'declare' the results, a function vested in the Chairperson of IEBC only by Article 138(10)

(a) of the Constitution of Kenya, 2010. He has since deleted his tweet containing the clip showing him 'declaring' the results.

In the Azimio outfit, something similar was cooking. Edwin Sifuna, the ODM Secretary-General, tweeted the following results on 11th August, 2022.

Raila Odinga: 7, 015, 963 or 50.13%
William Ruto: 6, 766, 843 or 48.35%

Just to underscore the power of social media, Itumbi has 2 Million followers while Sifuna has 742,800 followers. Sifuna's tweet alone received 2,562 tweets and 16, 700 likes. Itumbi and Sifuna's tweets are just but a screenshot of many other misleading social media posts regarding happenings around the 2022 General Election. Such posts had the potential to plunge the country into anarchy. This is further exacerbated by the mainstream media's failure to provide alternative reliable information about the Presidential Election results.

Spreading false information is also unethical since it amounts to lies and contravenes Section 22 of the Computer Misuse and Cybercrimes Act, which prohibits publication of false information and provides a maximum penalty of Ksh. 5,000,000 or 2 years imprisonment or both for any breach.

The final Presidential results for the two front-runners according to IEBC were:

William Ruto: 7,176, 141 or 50.5%
Raila Odinga: 6, 942, 930 or 48.8%
Relying on the above results, IEBC declared William Ruto the

President-Elect. This declaration was highly disputed and the parties brawled over the same in the Supreme Court partly because both sides were relying on their misleading results to claim their 'victory'.

Social Media and the 2022 Presidential Election Petition

It is the kind of unethical use of social media that prompted the Chief Justice, Martha Koome, to gag advocates from commenting on the Presidential Election Petitions. Through a Legal Notice No. 79 dated 5th May, 2022, the Chief Justice, amended the 2017 Presidential Election Petition Rules, barring advocates and litigants from commenting on Presidential Election Petitions outside the Court. Any breach of the foregoing amounted to contempt of the Court.

These Amendment Rules came at the backdrop of the Supreme Court's citing of some advocates during the BBI Judgment for inappropriate use of social media. In obiter, training its gun on Advocates Ahmednassir Abdullahi, Nelson Havi and Esther Ang'awa, the Court decried the lawyers' use of social media to prosecute the BBI appeal while it was before the Supreme Court terming their act professional misconduct and unethical conduct

The Court drew all advocates' attention to the Code of Standards of Professional Practice and Ethical Conduct (SOPPEC) No. 10 that makes inappropriate use of social media by advocates professional misconduct.

The Amendment Rules were later quashed by Justice Mugure Thande of the High Court on the grounds that they amounted to usurpation of the role of Parliament to legislate on contempt and failed to adhere to public participation requirements.

Non-lawyers were not left behind in the rush to represent their preferred sides in the court of public opinion. Social media platforms were awash with half-truths and false information about the petition. Inappropriate use of social media was so immense during the entire electioneering period.

The Way Forward

Inappropriate use of social media by Kenyans almost plunged the country into anarchy. If it were not for the decision of the Supreme Court, whose *raison d'être* is to determine Presidential Election disputes, today we might not have a country to call home.

Going forward, anyone who spreads false information held responsible in scrupulous accordance with the law. This should be so especially during transitions if we want to protect our beloved Motherland. It is ludicrous that no one has been held responsible for the avalanche of misinformation

that lingered on our social media space during the 2022 General Elections, almost 4 months later!

Social media platform owners should also mete out severe punishment on those who spread false information with no option of getting another account on the platform concerned ever again. Finally, professional bodies, such as Law Society of Kenya (LSK), must tame their members who spread false information through their disciplinary mechanisms.

Dominic Elema is a student in the Advocates Training Programme.





17 Years of God's Promise

By Benjamin Odhiambo

Isaiah 60:22-The least one shall become a clan, and the smallest one a mighty nation; I am the LORD; when the right time comes, I will make it happen.

After completing my form four studies in 2003 I thought of applying for a teaching course in a Public University here in Kenya. The only problem I faced was that the course was too expensive that my parents could not afford it. During this time, we were living in Busia District (now Busia County).

One day as I was walking in town I got wind of Busoga University in Uganda and how many Kenyans were going for studies across the border. The sole reason was that education was cheap in Uganda as compared to Kenya. In December 2005 I applied for a law Degree in Busoga University. They didn't offer me direct entry. I was admitted in January 2006 for a foundation course for one year. In Uganda, if you don't go through Form 5 & 6 known as "A' Level" you don't get direct admission.

After successful completion of the foundation course, I got enrolled to pursue an LLB course in January, 2007 in year one with the hope that by the year 2010 I will be through. In 2008 in second year, I deferred my studies for three years for lack of school fees then I came back to Kenya. I got employed as an untrained teacher in our village

school to teach C.R.E & History, earning Kshs. 4,500 per month and I worked until 2011.

By 2011, I had gathered enough school fees through the help of friends and family members to pay for the remaining two years. I went back to the University, studied and Graduated in 2013. While at the verge of completing my studies in 2013, news emerged that Busoga University was not accredited to offer law. I could not discontinue again. I made a decision to complete my studies. Many students left for other Universities in Uganda while some of my Kenyan counterparts came back to Kenya to "start afresh".

In 2014, Law Development Centre(LDC) advertised for Bar examination in Uganda, I applied however I was not successful and I did not give up.

In 2018 I got enrolled for Post Graduate Diploma in Law at Institute of Legal Practice and Development (ILPD) in Rwanda for one Year from which I later graduated in 2019.

I came back to Kenya with anticipation that I would be admitted to practice as an advocate of the High Court of Kenya as it is done to those who get admitted to the Bar in Uganda and Tanzania. I was not successful as I was informed that Rwanda is neither a member of the commonwealth country nor has a reciprocity protocol with Kenya in matters of legal practice.

In December, 2021 I got wind of good

news, that Uganda Law Council which is an equivalent of Council of Legal Education(CLE) here in Kenya had approved admission of Graduates of Busoga University specifically those who Graduated in 2012 and 2013 to be admitted into respective Advocates Program in Uganda and Kenya. I then inquired from CLE here in Kenya whether this information was true and yes they confirmed.

CLE further instructed me to travel to Busoga University in Uganda and have my LLB Degree certified and obtain a certified graduation list as evidence that I graduated between 2012-2013. Additionally, I was to obtain a letter from LDC in Uganda addressed to the CLE in Kenya confirming that Busoga University had a temporary charter between 2012 and 2013. I was successful in acquiring all the requirements.

I came back to Kenya and submitted the documents to the CLE. They checked my LLB transcript to confirm whether I had done the compulsory 16 core units. I had all the required 16 Units. They sent me to Kenya National Examination Council to have my form four K.C.S.E certificate authenticated, which I did. They further checked if I got the minimum university entry requirement of C+ (Plus) and B plain in English or Kiswahili, which I had. I did not have to sit for Pre Bar Examination.

In January 2022, I applied for admission to the Kenya School of Law (KSL) and I received my admission letter in February, 2022, classes were beginning in

March, 2022. A volunteer, whom I approached for financial help paid my entire school fees of Kshs. 145,000/=.

Lessons learnt:

1. Gaining entry to KSL is not easy. I can relate it to the road that leads to Heaven in the Book of Mathew 7:14. 'for the Gate is narrow and the way in is hard'. Those who have tried and are not successful don't lose hope. God will not delay any longer (Ezekiel 12:28).

2. We all have a story to tell. In Exodus 13:14 the Bible states "And when in time to come to your Children asks you, what does this mean? You shall say to them; by the strength of hand, the Lord brought us out of Egypt, from the House of Bondage".

3. Our God is faithful and what He begins He brings to a conclusion. (Hebrews 10:23) read with (1 Thessalonians 5:24) Let us hold fast the confession of our hope without wavering, for He who promised is faithful and what He began will bring to completion.

4. God has put in me a new song in my mouth, a song of praise. (Psalms 40:3) many will see, read and put their trust in the Lord. That the long journey has come to conclusion.

5. Finally, God is before all things, and in Him all things hold together. He will hold your Degrees, Masters, Ph. Ds, Jobs, family and all that belongs to you. Satan will not buffet it.

Benjamin Odhiambo is a student in the Advocate Training Programme and the Secretary of the Kenya School of Law Christian fellowship



Abraham Sang an ATP student making his submissions during the 2022 inter-class moot competition



The Perils of Navigating Social Media Use in Legal Education

By Naserian Sitelu

Social media is fairly recent and can be traced back to the early 2000. The first social media platform to reach up to a million users monthly was Myspace in the year 2004. Myspace now sounds like a distant memory given the rapid increase of other social media platforms. It is reported that as of January 2022 the current social media users in Kenya stands at 11.8 million. That is a significant number of the adult population living in Kenya. To put it in context, 11.8 million users is about 21.1% of the entire population of Kenya.

Social media has revolutionized everything including the teaching and practice of law. The most pertinent issues that arise are the ethical standards to be upheld in this expansion of the freedom of speech. In its own right, legal education in Kenya is adapting to the changes in technology and means of communication.

The nature of social media communication is that it exposes one's attitudes, opinions and character to the public. The right to privacy in this new era is a dream of the past, where social communication was largely private. A social media communication could turn into a sensation overnight. Where otherwise innocent communication could be turned into a meme or a mock song or a phrase for use and jeer by netizens. The original user usually has little to no control

over what other social media users can or cannot do with their communication.

Whereas there are indicators of what content is likely to trend, in actual sense, there is no telling the actual reach of a communication. We have all heard the word 'breaking the internet' or 'going viral'. This could happen at an unpredictable moment of the lifecycle of a social media content, which, if the past is anything to go by, is forever! The real complexity is that there is no means of predicting the likelihood of misinterpretation of a communication by for example application in the wrong context. At all times past communication may become relevant in a new political environment and what seemed neutral or harmless in the past would now be interpreted as bigotry and lead to what is now referred to as 'cancelling'. With the expansion of the personal liberties, social media is a landmine where it is a nightmare trying to navigate the various political correctness standards in communication.

We have not even gotten to the deep fakes and fake news and the use of social media to perpetrate hate, propaganda and bullying. Unfortunately, this happens with little supervision or control of the social media platforms. Nonetheless, there are some developments in the attempt to introduce controls. This again leads to hilarious outcomes, where otherwise engaging users end up in 'social media jail' having been wrongly interdicted. Social media court is not as democratic as the

formal judicial system. A jail term is meted out swiftly without prior hearing and determination. The right to a fair trial is a mirage as there is no separation of power; the judge and the prosecutor are one and judgment is instant. Any attempts to seek a review of a social media sentence is slow and tedious and often, one has to serve their term before a review may be implemented.

For the law student, the main task is to transform from a young professional and morph their use of social media to reflect their changing professional identity. The job market is particularly tough and hard to navigate in Kenya. Not to mention unforgiving. Within the era of YouTube, Twitter, Facebook, and Instagram, a few key strokes can sink a career for all times to come. Since, as they say, the internet never forgets! Social media missteps for the young and old can lead to devastating outcomes and jeopardize both employment prospects and professional standing.

On the other side of the spectrum, social media presence contributes to credibility and is a powerful visibility platform for one's professional skills. It carries the potential to boost one's prospects considerably where utilized to the optimum level. Further, in the context of legal education, social media could be utilized in legal research.

Law schools must begin to instruct learners on basic and fundamental social media skills. This would include professional communication skills on social media and legal and ethical considerations in the use of social media. Social media could be integrated in experiential learning such as in externships. Social media skills could also be taught through various seminars and be systematically integrated in the teaching of investigation

and discovery in the criminal justice system.

It is imperative that a curriculum be developed to encompass the developments in the use of social media in legal education and legal practice. At the heart of the matter is the risk of breaching the duty of confidentiality towards the client. Additionally, to inculcate in the learner competency with emerging technologies and impart communication skills on social media.

Lastly, the law student must be equipped with the tenets of e-professionalism. The law in Kenya needs to follow the progress made in the international space and promulgate guidelines and standards of professional ethics in the use of social media

Naserian Sitelu is an Advocate of the High Court of Kenya and a Lecturer at the CPD, Kenya School of Law





Social Media Influence in Communication

By Ruth Githaiga

Social media plays an important role in communication, but just like everything it has its pros and cons. This applies to the impact that social media has in communication. In the past decades, there has been numerous changes in the area of communication due to the advancement of technology around the world.

Communication is one of the most important activities in an organization or at a personal life. With the advancement of technology, internet communication has contributed a lot to how individuals communicate as well as how organizations function. The function of organizations is based on efficient relations between individuals and groups, which coordinate the activities in order to achieve their goals. This is of great importance during socialization, problem-solving, decision-making, timely reaction and adapting to changes. Through communication processes, individuals and groups give meaning to the organization and the helps in making the organization better.

Social media is a powerful communication channel, with widespread influence around the globe. Digital transformation has influenced organizations and how people communicate. It has also made the world more accessible and has brought information

to people and audiences that previously could not be reached. Social media has also increased awareness among people on what is happening in other parts of the world. In the current times, almost all organizations rely on social media to create brand awareness as well as to promote and sell their services and products. This is because social media allows the organizations to reach customers, irrespective of the geographical boundaries. No wonder it has become a critical section of digital marketing, since it helps organizations to go beyond demographic and geographic boundaries.

Social media has influenced the way organizations communicate essential business strategy. In the current times, everything is just a click away and includes everything from news to buying personal items. The ease of access that social media has provided has taken over the traditional methods of doing things such as reading news on a physical newspaper to a digital newspaper format which is just by a click of a button.

Another positive impact that social media has brought is increased civic awareness. Social media has changed how people are governed by making the process more transparent. Many leaders across the globe have utilized social media to voice their opinions and priority issues, giving citizens a better understanding of the government they have elected or they would want to elect. This was experienced during campaign period. Social media has also limited the influence of political stakeholders over what information should reach citizens. Before social media's entry

into the digital age, traditional media and the government were the only sources of information. However, this has now changed for the better. The disadvantage of this is that some organizations may misuse the power of social media to influence citizens negatively. Thanks to the improvement of many social media platforms, which have come up with means of restricting what users can post, more so when it comes to negative information communicated to a wider community.

The use of social media has enhanced communication about social justice. Social media has brought people face-to-face with humanitarian issues. Many social work organizations are also taking to social media to create awareness about the issues of society. This is because it brings together activists, allows people to raise their voice against injustice and make it easier for people to come together for social causes, for example, the #saynotodesticviolence among others. Social media's influence has given rise to a different genre of communication, where conversations are quick and information is easily communicated. It has also presented a number of employment opportunities due to its rapid growth as a business function.

Ruth Githaiga is the Corporate Communication Officer at the Kenya School of Law



Security and Social Media

By Charity Njoki

Security is the protection of life, property, and information against potential harm, damage, and other unwanted coercive change. According to English Dictionary, security is the condition of not being threatened especially physically, psychologically, emotionally or financially.

There is not a single institution or organization that can exist and operate as expected if security is not considered. Security plays a vital role in ensuring the safety of individuals and their properties in a particular environment at a particular time.

Kenya School of Law is one of the institutions that give security a priority when it comes to decision-making at any level. At the School, enforcement of security is domiciled in the Administration section. The core role of the security office is to ensure the safety of all the institutions' assets, occupants i.e., staff, students, and visitors, and their properties as well. Another role is to detect, deter and manage any security threat within the institution.

Social Media is an indispensable tool and any institution that fails to integrate it, does so at their own risk. A large number of people use social media to share their experiences both negative and positive and this makes these

platforms a valuable source of real-time information about security incidents.

When it comes to security, many perceive social media as a tool for propelling threats among people. Criminals and terrorists in many occasions have used social media as a communication and recruitment platform into criminal and terror groups. Extremists also use social media as a platform for creating and spreading propaganda and manipulative content. Cyber espionage has become a threat to almost all institutions and cyber users courtesy of social media. Yes, social media possess threats to social security but it also has many advantages to institutional and national security that should not be given a blind eye.

First and foremost, it provides fast and effective means of communication. When threats to security emerge, those affected can share unlimited information with emergency response services. This facilitates quick response to security threats emerging within our surroundings.

Secondly, social media is used by security agencies to inform and educate the general public on security issues in the country. They use social media to educate people on how to identify possibly perilous situations and how to act in case of security threats such as terrorist attacks, fire outbreaks, floods, and many others.

The networking capability of social media has enabled security agencies

to engage with citizens in ways that were not possible before. For example, the DCI and other security agencies in Kenya nowadays use Twitter to update the general public on the security status in the country. By doing so, they build public trust and reduce unnecessary tension among people.

Furthermore, social media has promoted monitoring and intelligence gathering. Security agencies can use social media to identify and intercept any attempted information sharing between extremist groups. Social media has also made it possible to geo-locate cohorts of radical ideologies on social media and inciters of violence through the content shared online.

Personally, I find social media as a vital tool that can be used to identify and monitor security threats in Kenya School of Law and the world at large. The social media users act as whistle blowers and the contents shared in social media platforms serve as red flags. If in any case it can be disbanded or suspended, many institutions may suffer crimes and violence that otherwise would have been identified and stopped before happening.

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Data Integrity on Social Media Platforms

By Sammy Makokha

The main aim of the formation of social media platforms is to connect people to communities of interest and sharing of cultures. Data integrity refers to consistency, accuracy and completeness of information. Where regulation is concerned it can be referred to as the safety of data.

Most of these networks provide a stage for free expression to anyone. Unfortunately, these platforms can be used maliciously by individuals and organizations for misinformation, selling illegal drugs, promoting prostitution and indoctrinating gender-bending ideologies.

The social networks have structured a way of reducing violation by updating their terms of use. There has been a ban on social media users, commonly known as 'cancel culture' for those who violate their policies. The challenge is the diverse languages spoken all over the world that might be used to pass across messages to a target audience across different geographical locations. The technical challenges arise because deciding whether a post is violating can be extremely subtle and depends on a deep understanding of the cultural context.

Companies also face a backlash when it comes to negative and false information on social media that may impede or slow the organization from achieving its objectives. Hacking and impersonation have always been a threat caused by sharing of login credentials online, not signing out of social media sites

and enabling browsers to store passwords. Some organizations have embraced the use of frequent changing of passwords for their social media sites, conducting regular internal audits and changing permissions to restrict changes to information by unauthorized parties.

Companies also face a backlash when it comes to negative and false information on social media that may impede or slow the organization from achieving its objectives. Hacking and impersonation have always been a threat caused by sharing of login credentials online, not signing out of social media sites and enabling browsers to store passwords. Some organizations have embraced the use of frequent changing of passwords for their social media sites, conducting regular internal audits and changing permissions to restrict changes to information by unauthorized parties.

Social network users have had instances of having their accounts hacked as a result of not enabling a two factor authentication: signing in once and confirming identity of the user trying to access the account.

As an unofficial way of vetting potential employees, companies carry out background research on the posts shared. To access the digital footprints, an email is what an organization needs, then using a tool called MOSINT all social media accounts from the internet that are linked to the email will be displayed. A few individuals use pseudo accounts from the beginning to access social networks to avoid being detected. Employees working for an organization can be monitored and in some instances fired in case of misrepresentation through spread of hate, fear and propaganda in social media. Street corners that were used by people for selling illegal drugs have moved online in social media platforms disguised as closed group or a member

only groups using code names to prevent attention from government authorities. This exposes under aged social media users to an early use of drugs. Caretakers of under aged social network users can block access to harmful social media sites using firewall and encourage alternative ways of interactions.

Some organizations have regulated and blocked employees from accessing social media sites using the company network during working hours on the basis of increasing productivity. At an individual level, social media is a time wasting tool that can consume valuable time through continuous flow of numerous clout chasing and attention seeking information. This limits hours that would have been used for gaining knowledge. However, generation Z argue that the presentation of educational materials on social media, are not so appealing thus leading to consumption of junk media in social networks.

Diverse cultural exposure in social media has enabled users around the world adopt positive and negative attributes. Individuals intending to move to a different continent would acquaint themselves with the cultures of the region beforehand. However, gender bending ideologies have been introduced by the western countries in Africa through social media. This has conflicted with the African belief systems and religion. The subtle adoption of gender bending remains a threat to African cultures even as governments reject the perceived negative western culture. In China, western social media networks are banned, having their Chinese alternatives that embrace their culture. Organizations should have a policy when it comes to social media matters.

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Lawyers and the Internet: The Prescriptive Limits on the Use of Social Media

By Cyril Kubai

On the 30th March 2022, the Supreme Court delivered its Judgment in Petitions Nos. 11 and 13 of 2021, *Attorney-General & 2 others v Ndi & 79 others; Prof. Rosalind Dixon & 7 others (Amicus Curiae) (Petition 12, 11 & 13 of 2021 (Consolidated) [2022] KESC 8 (KLR), (the Judgment)*. While the Judgment settled key constitutional questions on the process of the constitutional amendment in Kenya, it also exposed the dicey role of social media in the administration of justice. The judges were irked by comments made by some advocates on social media (Twitter) to “cast aspersions” on the Court” while the Judgment was pending. The court lamented the conduct of those advocates as follows; -

“using social media to disparage the Court with the intention of lowering the dignity and authority of the Court or influencing the

outcome of a case pending before the Court trespasses the bounds of legitimate advocacy and moves to the realm of professional misconduct”.

This is not the first time that a court has raised an issue with commentaries made by counsels or parties on ongoing court cases. A decade ago, the High court castigated a renowned Professor of law for publishing articles in anticipation of a Judgment that was pending before that court.

This article looks at the prescriptive limits of the use of social media by advocates and the effect that such usage has in the administration of justice.

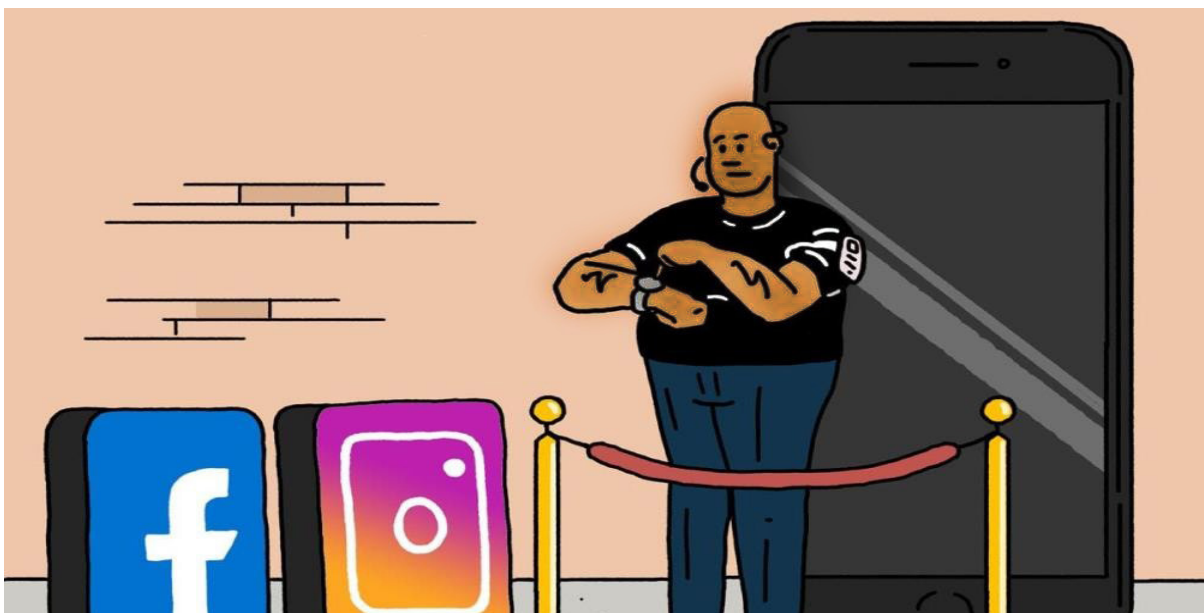
Prescriptive professional limits of use of social media

The Code of Standards of Professional Practice and Ethical Conduct, (the Code) is used for the regulation of the ethical conduct of Advocates in Kenya. It applies to all members of the Law Society of Kenya (the LSK)

and is underpinned by ten principles including professionalism, which calls upon lawyers to conduct themselves with professionalism when dealing with among others, the judiciary.

It is no doubt that social media has attracted many users. It is estimated that, the total number of social media users globally will to grow upto 3.29 billion users by 2022, which is about 42.3% of the world’s population. The Code recognizes this reality, by providing that “social media offers access to wide audiences ... and has grown dramatically in recent years including by and among professional persons.”

Given its potential, social media can undermine the standing of the legal profession. Accordingly, Advocates are warned, to be mindful of the obligation to uphold the dignity and standing of the profession. The Code also prohibits them from inappropriate use of social media. It is suggested that the use of social



media to make comments on matters before the court as well as making personalized attacks on the judicial officers may amount to a violation of the Code. These are discussed below.

The Subjudice Rule - Commentaries on matters pending before the court

At its most basic level the subjudice rule, which means “under judicial consideration” prohibits the publication of statements which may prejudice court proceedings. It is part of the common law practice on the contempt of court for acts committed outside the courts.

The Supreme Court published the Supreme Court (Presidential Election Petition) (Amendment) Rules, 2022. These Rules, according to the Chief Justice, intended to “to codify the traditional legal practice on sub-judice and to protect judges from external influence and interference from being influenced by discussions outside the courtroom hence infringing on the independence of the court. The constitutionality of the Rules was challenged in court, and the Rules quashed in a Judgment delivered in August 2022. The court established that the Rules were never subjected to public participation, hence unconstitutional. However, the attempt by the Supreme Court

to have the Rules in place is indicative of the struggle and dilemma that the Court finds itself in during the Presidential Election Petitions.

Advocates should therefore avoid making comments on social media on the merits or otherwise of cases pending before courts and especially where such comments have the potential of indirectly attempting to influence the decisions of the courts. In its Judgment, the Supreme Court cautioned advocates to be wary of the impact that their statement may have, whenever they are tempted to utilize social media to advance their cause.

Personalized attacks on the Court

Personalized attacks on the person and character of the judicial officer before whom a matter is pending or after the delivery of Judgment is yet another case of misconduct. Such comments may be attributed to the ethnicity of the judicial officer resulting in a perception of bias, and the ultimate judgment from the court. Similar attacks were made on social media towards the judges in the just concluded Presidential Election petition. This prompted the Judiciary to issue a warning to Kenyans to cease sponsored attacks on social media aimed at the judges, noting that “an unfortunate trend of isolating individual judges and attributing the Judgment to them” had developed after the delivery of the Judgment.

The Supreme Court was confronted

with a similar issue in the case of Republic v Ahmad Abolfathi Mohammed & another [2019] eKLR. The Respondents’ counsel, in his written submissions, wrote in part that; -

“Again, from the onset, we wish to state in the most emphatic manner that the Court is biased against the respondents, lacks impartiality, and the very minimum ingredient of independence from the State and its agents in this case is absent....”

Conclusion

Social media allows people to freely interact with others and offers multiple ways for information sharing. However, for the members of the legal profession, the increased use of social media calls for a lot more caution on their part as their practice is concerned and in particular regarding their duty to the court. As stated by Richard Du Cann “the duty of an advocate to the court is one of allegiance to a cause that is higher than serving the interests of his client.” In that regard, an advocate must at all costs avoid the use of social media for activities that would otherwise amount to professional misconduct.

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Social Media, Law and People Living with Disability

By Victor Malombe Mutiso

Social Media is a tremendous innovation of our age, growing from a tool extensively used by only university students to a revolutionizing technology consumed in our day-to-day interactions. Social media participants are people engaging in interpersonal communication mediated by the various diverse platforms. Around 5.27 billion people worldwide own a mobile phone, and approximately 85 percent use social media. Social media has infiltrated almost all facets of our lives. It has revolutionized traditional business practices because of its disruptive technology. As opposed to face-to-face interactions, social media enables interconnection and communication without geographical or time barriers.

Platforms propagating this form of media have had the effect of posing as a great competition to mainstream media. The major challenges occasioned by these platforms is the lack of verifiability of data and news present on these sites. These sites churn out zillions of bits of data and information per minute that can mislead and misrepresent facts to consumers. A good instance to illustrate just how misinformation is a scourge, is the prevalence of social media interference in the political discourse of countries and unions. Evidence has been

adduced indicating the use of target campaigns in influencing voters' decision that culminated in the United Kingdom's exit from the European Union. These forms of manipulation are akin to subverting the will of the people, even though the people participate in democratic processes, they do so from an uninformed and or misinformed perspective.

Public relations, advertisement and marketing have been extremely simplified. Businesses can easily reach a wider scope of users and potential customers. The challenge of crafting messages to reach a wide array of consumers with diverse cultures and backgrounds is however still prevalent. Firms are continuously faced with the task of ensuring that their advertisement do not in any way appear offensive to any of their consumers across these platforms. Offensive advertisements risk running a firm into suits that are both time – consuming and a costly affair. Among the myriad of challenges faced by firms in navigating this volatile field of social media lies the constant tasks of ensuring that their products adhere to copywriting laws, foster positive media relations, and constantly maintain their reputation by tackling negative publicity and social media slander. Amidst all these, firms must ensure that their social media marketing and public relations strategies comply with a specific platform's terms and conditions of use. The concern for firms involved in social media, public relations and advertisement campaigns is to ensure that their employees operate within the law and desist from acts that

infringe on privacy, defamation, harassment and other prohibited conduct. Unethical practice by an employee of the firm might spell doom for the entire firm resulting in a costly suit that could have been easily avoided by establishing a social media and communications code of conduct.

Due to its wide reach, social media may be used as an avenue to advocate for an inclusive society for persons living with disabilities (PWDs). The use of the expansive social media forms an easy avenue for the physically impaired to generate a livelihood in an avenue free from discrimination and stigmatization. A certain study in China revealed that without social media most of the PWDs in China would be extremely marginalized and disadvantaged. To this end, social media has been a key element in attaining the economic inclusion of PWDs.

Social media platforms also serve as avenues for collecting evidence to defend clients' position. The challenge posed by the use of evidence obtained through the social media is the general admissibility of it.

In the matter of *Vasquez-Santos Vs Mathew in Appellate Division of the Supreme Court of New York, First Department*, the justices determined that social media evidence can be admissible if

it “contradicts or conflicts with a claimant’s alleged restrictions, disabilities, and losses, and other claims”.

This case calls for the advocate to scrupulously dissect the evidence presented before them before proceeding to table the same in court.

It is also worth noting that some social media platforms do not incorporate disability inclusion in their universal design. Limited use of contrasting colors font

customization and lack of voiceovers greatly impact on the ability of PWDs to access and use social media platforms. Limited accessibility makes it impossible for advocates who are PWDs to independently gather information on matters touching on the use of such platforms.

In conclusion, social media as an innovation presents a cutting-edge transformation in our day-to-day interactions. The platforms present an opportunity to establish worldwide interconnected networks as well as benchmark from best practices both in law and other spheres of life.

Further, a mechanism should be developed to curb the menace of misinformation and hate speech. Additionally, standard procedures of admissibility of evidence adduced from such media needs to be established. Inclusive designs should be adopted for social media platforms on the onset to ensure maximum participation by PWDs.

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Cyber Bullying and Digital Etiquette (Netiquette)

By Nicholas Kikonde Mwamburi

Just as the use of technology itself has evolved, so has the ability to bully. Bullying that was once constricted to physical social spaces and engagements, has currently transformed into the online digital world, referred to as cyber bullying. It is the use of various forms of technological/digital devices/digital social media spaces to constantly & intentionally harass, hurt, embarrass, humiliate or intimidate another digital/social media user/person.

“Cyber bullying is bullying that takes place over digital devices like cell phones, computer, and tablets. Cyber bullying can occur through SMS, Text, and apps, or online in social media, forums, or gaming where people can view, participate in, or share content. Cyber bullying includes sending, posting or private information about someone else causing embarrassment or humiliation. Some cyber bullying crosses the line into unlawful or criminal behavior.” As defined by www.stopbullying.gov.

Cyberbullying happens in various forms including; harassment, impersonation, inappropriate images, website creation, video shaming etc.

Impersonation: This happens when a user/person impersonates another online. The aim is to access the SM platforms/spaces via hacking the accounts & then post inappropriate things such as sexual, racist etc. to ruin the target's social standing and reputation. Or

they might chat with other people in pretense of being the victim, to the extremes of falsely extorting money from them. This has been a popular scam in Kenya. They will phrase and share offensive words with the purpose of offending and angering the target's friends/acquaintances. If they can't access the person's/user's account, they use pseudo accounts similar to the original/target accounts the post rude/hurtful remarks while pretending to be the target, some cases actual photos of the victim maybe used to make the account look authentic.

Inappropriate photographs: Cyber bullies can also use images to bully other users or people. These photos include embarrassing/inappropriate images that were either shared privately with them or were taken without the target or victim knowing (without their consent). They use the photos as weapons and share them on various social media platforms. Sexting is one avenue they explore to bully the victims by sharing very intimate photos and ultimately controlling and blackmailing them. Some navigate to the extremes of slut shaming engagements most often than not women users.

Video shaming: Cyber baiting is mostly one of the things they do to their victims, where they record the victims vulnerable, humiliating or intimate incidences and share them to the public to shame them. Some will record and share bullying incidences to shame and bully the target or victim.

Harassment: Harassing someone is a common method of online bullying. This type of cyber bullying occurs when someone uses technology to

torment another person. Sometimes, cyber bullies' approach online will be subtle and involve sub-tweeting and vague booking, which involves posting mean words about someone without naming them directly. Other times, they will be very overt in their harassment, using text messaging, instant messaging, and email to harass, threaten, or shame the target.

While all bullying is characterized by intentional, often repetitive, hurtful behavior against another person or group, there are distinguishing elements when it happens within the digital spaces.

Cyber bullying can easily cause harm, as digital tools and spaces provide or facilitate an illusion of reality. This creates a real experience gap as the cyber bully doesn't get in touch with the victims. It obscures the depth of the harm and pain caused by their digital choices intentionally or otherwise. It can sometimes be difficult to detect as it is mostly done covertly with digital devices and can end up being super deceiving in cases where fraud in form of extortion is orchestrated against the victims.

Cyber bullying can be done anonymously. Those being bullied might not even know who is perpetuating the behavior, which makes it easy for a cyber-bully to hurt another and not be held accountable. Another peculiar character of cyber bullying is that once something is shared on the internet, it is often available to everyone and everywhere within the digital spaces. It can be challenging to completely delete information once it is on the internet, besides how shared information to

a potentially larger online audience can be easily and quickly shared, which makes it difficult to contain or stop negative messages once they are posted online.

Digital etiquette describes an individual's/users' conduct online and their use of digital technologies and cyber space. The virtual structures and functions of digital spaces while using the digital gadgets can compel some users to do inappropriate things while navigating the cyberspace that they would not do in person. Digital

conduct beyond the screen, such as how and when individuals use their devices around others in different social settings. Consent is a very controversial, ignored and abused aspect of navigating through the digital or cyber space. Most users of technological gadgets and digital/cyber space do not seek consent from victims of cyber-bullying/harassment. They mostly target users who are vulnerable and use them as weapons to harm them in various ways. Some cases are maliciously intended, however some do it with the intention of sharing good moments or events of or with loved ones and/or friends, hence exposing themselves to malicious online users.

Digital safety surrounds identifying and taking measures of protection against potential risks when using devices, apps, and the internet. Sharing personal information online can put users' such as children and teens at risk for the misuse of personal data, cyber-bullying, and exposure to harmful content that may contain violence, suicide, and racist and adult material. To reduce such risks, users such as parents can guide their children set the privacy controls on their devices and accounts to ensure their children's content is not shared with the public.

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Transitioning from a Law Student to a Professional Advocate

By Margaret Mounde

The transition from a law student to an advocate presents numerous challenges. Most students transitioning to work-life experience have numerous doubts. “Will I get employment? Will I like my job? Will my colleagues like me? Am I ready?”, are some of the questions that plague the minds of these new entrants into the profession. As an advocate, I have seen many newly admitted advocates facing difficult psychological challenges especially when they have doubts about whether they belong at the ‘grownup table’. This can be very detrimental when advocating for clients as an attorney is expected to be assertive and able to present a position persuasively both within and outside of the courtroom. Ideally, there are several things that a new advocate should have done before completing studies; if not, they have to pursue them after school in order to stave off this self-doubt.

It is important that law students participate in clinical or externship programmes while still in school. There are numerous opportunities provided during their studies for this such as legal aid clinics, prison visits and moot competitions etcetera. Students are well aware of the many benefits of experiential legal education such as enriching the curricula vitae value. Less obvious, are the opportunities it creates by fostering a good professional identity.

The benefits of comprehensive preparation cannot be overstated. It

is notable that adequate preparation gives the incumbent advocate numerous advantages irrespective of professional age. Therefore, it is crucial for these new advocates to be adequately prepared for any briefs allocated to them. I have witnessed experienced counsel acknowledging how much a pupil knew about the law and facts of a case. In litigation, preparation must include immersing oneself in the relevant legal principles and rehearsing or mooting arguments as well as practicing trial advocacy.

It is important that the advocate seeks a trusted mentor who can encourage, support, guide in research, aid in building a professional network and provide feedback. If mentorship is properly broached, inevitably it makes the advocate a better professional. It is unfortunate that most young advocates in today’s society believe that a mentor ought to be a friend. This propagated thought is a fallacy that, if left unchecked, can be extremely detrimental as it overlooks the basic role that a mentor ought to fulfil, to wit, making the advocate a better professional. Consequently, it will be remiss not to highlight the qualities that a young advocate should look for in a mentor. At the bare minimum, a good mentor should be a professional who is willing to invest time and resources in this young advocate. The mentor must be a person who has earned the respect of the community. The African proverb “it takes a village to raise a child” rings true when speaking about mentorship. It is important for these young advocates to find their ‘village’ including parents, siblings, extended family members, neighbours, teachers, professionals and community members; as this is where they will be provided with the safe environment that they need while trying to develop into an experienced advocate. It is worth considering the advice of this

‘village’ as they, most likely, will provide appropriate support as the young advocate strives to be a better professional

Last but not most importantly, it is imperative that a young advocate creates a personal brand. Allen Gannett, the author of ‘The Creative Curve’, explains; “... the most effective personal branding strategy these days is to build a true narrative - single character monologues are boring in Tinseltown, and even more boring for your personal brand.”

This statement speaks to the importance of creating a story surrounding a personal brand that allows the public to engage with it. No matter how astute a young advocate is, it is all nought if there is no engagement from potential clients. It is with this in mind that the young advocates are encouraged to create a personal brand that is focused, genuine, consistent and positive. The use of social media is encouraged to disseminate the personal brand message. However, this use must be carefully crafted so as to reduce any situation that may negatively impact the personal brand.

In conclusion, the transition from a law student to an advocate is a journey and just like any other journey, it takes courage and willpower to make the first step. After the first step has been taken, there is no looking back, one must keep on stepping. As we progress through our careers it is important that we walk in such a way that everyone learns from each of our steps. If these tenets are followed, then success is inevitable.

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Law, Ethics and Social Media Centered in Nation Building

By Ann Nekesa



Law, according to the urban dictionary, is defined as a body of binding rules and regulations, customs and standards established in a community by its legislative and judicial authorities. Basically, law is a set of rules created and enforced by a social or governmental institution to regulate behavior. The precise definition of law is a matter of long standing debate.

In Kenya, the legislature has been bestowed with the powers to create and amend laws while the judiciary has the mandate to enforce the law without fear or favor.

The Kenyan Constitution 2010, has eighteen chapters, Chapter six on Leadership and Integrity is the most talked about. It gives a clear distinction between state officers and public officers. This helps in curbing conflicts of interest such as foreigners taking up state offices like cabinet secretaries even if they are also Kenyan citizens. This does apply to Judges or members of Commissions.

Chapter six also envisages that the Ethics and Anti-Corruption Commission will enforce the chapter and set up policies and procedures for its implementation. Created by an



Act in 2011 and now under the leadership of Rtd. Archbishop Eliud Wabukala, it has the mandate to prevent corruption, economic crime and unethical conduct in Kenya through law enforcement, prevention and public education, promotion of standards and practices of integrity, ethics and anti-corruption. Its core values include innovation and integrity. Not only are ethics a confine of people holding public offices but also each and every person's mandate.

Recently, *Twitter* has been flagging posts as 'misleading' or 'unconfirmed' in an attempt to curb hate speech or the spread of misinformation. The political class in Kenya should always lead the path in promoting cohesion among Kenyans. With their huge following, they can rally masses to destruction or unity. Some people tend to follow them blindly this could be very perilous if not well managed. In some cases, accounts have been pulled down regardless of who the holders are, such as the official account of former US President Donald Trump who had his twitter account flagged down as 'misleading'. This was during

the election period in his country.

We have also seen security agencies use social media to create awareness and platforms where people can report cases in anonymity. Such include the Directorate of Criminal Investigation Kenya (DCI) which has a way of reporting crime using a hash tag '*Fichua Kwa DCI*' which can be loosely translated to 'reveal to DCI'. Not only in Kenya but also in developed states like the USA, social media is being used by security agencies such as Federal Bureau of Investigation (FBI) and Criminal Intelligence Agency (CIA) who have embraced social media by sharing images of most wanted criminals and people suspected of war crimes. Above all we have humanitarian organizations that have also embraced social media. Mainly to take up cases of injustices meted on individuals and condemning them at the same time. They also rally and vouch for justice on the oppressed.

The recent transition has showed how woke our democracy is. The peaceful handover in Kenya from the former head of state to the current is a lesson many African countries have learnt. That there is an office and an office bearer. An office stays but the office bearer changes, and that's the beauty of modern democracy. There are expectations economically, socially and politically. Navigating the various hurdles might be daunting where the government of the day and its people are not in tandem.

The economy affects all sectors in a nation. A country with a weak economy mainly relies on debts to fund its day to day running. Productivity would also go down due to the high prices of commodities hence making investors flee as a result of high taxations to cater for the debt settlement. A proper understanding of how the economy runs and whatever economic model is used ought to be cognizant of the nature and financial ability of its people.

Each time a new regime gets into office there are always expectations that they would curb issues such as rampant unemployment among graduates. Facts are, not all can be absorbed into employment in one go, but creating a conducive status for innovation could help curb unemployment.

It is also in a transition where policies are either introduced or dropped. These might be educational policies or social policies. They are meant to act as a cushion during tough times. Recently the government proposed a credit score rating which would help in businesses that have a good debt payment record, as opposed to existing Credit Reference Bureau listing.

The education sector has also been experiencing various hurdles, from exam leakages to the burden parents have on the Competence Based Curriculum (CBC) and now the potential milestone of the twin transition into secondary school. Having the first cohort of CBC transition into junior secondary, the government has had to deal with a people divided on whether to keep or scrap CBC. This could be very

engaging in order to find an amicable solution. It is also a difficult time for those whom their preferred candidate did not clinch the seat they vied for. They have had to come to terms with the new leadership for it is the symbol of national unity and the will of the majority. Our leaders have the sole responsibility of making all Kenyans feel represented and not sidelined. This would build a healthy nation where each person feels proud to be Kenyan and not vengeful.

All the same, we should always stay focused and committed to nation building. This means respect for legal institutions and having ethics that would not conflict the stipulations in our constitution. With that in mind we will all look back during our grey years and say 'that is the nation we so wanted' and it lives on.

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Marketing and Advertisement by Lawyers on Social media

By Oriri Onyango

The world has seen remarkable transformation with the advent of social media. Nowadays, many people rely on social media for information and services. This trend is not expected to slow down soon especially with the ever-increasing globalization.

Associated to this phenomenal growth of social media is the fact that it has allowed people who sell goods and services to leverage on it to advertise and market to larger audiences. The legal profession has not been left behind in this regard. Increasingly, we have seen lawyers take advantage of the social media to advertise or market their legal practice in many creative ways.

This article will however restrict itself to the now very common practice amongst lawyers, of sharing favorable decisions from the courts on social media platforms gushing about how the court agreed with their submissions and agreed with their clients.

Two critical issues arise from this practice which merit interrogation. Firstly, whether such conduct amounts to marketing or advertising and if so, whether the same is permissible under the rules or standards and guidelines in place and secondly, whether it should be permissible for lawyers to share the decisions without the clients' consent.

The lawyers who engage in the said practice only highlight cases in which their clients got favorable decisions. It is common knowledge however that clients lose cases almost as much as they win them. How come these lawyers never publicize those cases which their clients lost? There are no prizes for guessing why.

It is obvious that it as a marketing or advertising gimmick aimed at creating the illusion amongst their lay followers on their social media platforms that they are consummate lawyers who win all their cases. The effect on the consumers of legal services is increased faith in the said lawyers' abilities hence more work and more money!

Since the obvious objective of this practice is to attract more business, it is difficult not to consider it as marketing or advertisement strategy as contemplated under the Advocates (Marketing and Advertising) Rules, 2014 ("the rules").

This practice falls afoul of the rules in several senses. Firstly, its intended or unintended consequence is that it leaves the illusion that the lawyer who won a particular case is better than the next one who lost. Marketing or advertising on the basis of this problematic premise is unfair because cases are never for lawyers' but for clients. To the extent therefore that advertising or marketing on this basis produces an unfair result against fellow lawyers, the same falls afoul of the rules.

Secondly, Rule 5 (2) of the rules expressly prohibits revealing of the

name or the identity of a lawyer's client in an advertisement. In advertisements of this nature, it is extremely difficult for one to conceal the identity of their client. Thirdly, by its very nature, this kind of advertisement in itself amounts to a promise to achieve a particular outcome for clients or prospective clients. To this extent it violates the rules in terms of Rule 5 (2) (d) of the Rules.

Where a lawyer fails to market or advertise in accordance with the rules, the same amounts to professional misconduct in terms of Rule 10 (a) of the Rules. The final issue to be interrogated is whether or not it should be permissible for a lawyer to self-promote using a client's case without the client's consent.

The Advocates Act, Cap. 16 of the Laws of Kenya does not define with specificity what 'Professional Misconduct' is. Section 60 of the Act however states that "the expression professional misconduct" includes disgraceful or dishonorable conduct incompatible with the status of an Advocate."

As acknowledged under Part C, Rule 11 of the Code of Standards of Professional Practice and Ethical Conduct, GN No. 5212 of 26th May, 2017 ("the code"), the concept of Professional Misconduct is wide and the categories of behavior that would be considered as amounting to misconduct not closed. Rule 12 of the code states further that generally, professional misconduct is breach of the rules, standards and ethics of the profession.

A distinction between 'professional misconduct' and 'unsatisfactory professional conduct' has been provided at Rule 13 of the code. For a claim of professional misconduct to arise, the rules and standards governing the behavior ought to be captured in text first, that is either in statutes, rules or standards and guidelines issued by the Law Society of Kenya. For instance, the provision against Marketing and Advertising otherwise than in accordance with the rules providing for the same has been specifically proscribed under the said rules.

For unsatisfactory professional conduct on the other hand, the threshold is lower. It is defined at Rule 13 of the code basically as conduct which falls below the standard of behavior that is expected of a practicing Advocate.

Using a client's case to self-promote without the client's prior consent is morally offensive. By all standards, it can't be said to be the right or proper thing to do in the conduct of an Advocate's duties. By reason of this therefore, the practice of sharing the details of a client's case and using the same to self-promote is not proper.

In view of the developments highlighted in this article, time has come for the Marketing and Advertising Rules, 2014 to be updated to regulate advertisement via social media, which many lawyers have pursued with enthusiasm and verve.

Oriri Onyango is an Advocate of the High Court of Kenya, Chairperson of the Advocate Benevolent Association and an Adjunct Lecturer at the Kenya School of Law.





By Stephen Mallowah and Frank Raudo

There was a period in history when Amenhotep III ruled Egypt at a period considered Egypt's golden age. He was considered the ultimate role model by monarchs who took over leadership reigns from him. During his rule, the world witnessed best of Egyptian diplomacy, craftsmanship and construction works. However, his grandson Tutankhamun and a handful of other pharaohs became more famous than he ever did.

The reality of the world we live in is that history is not necessarily written by the victors but by those with a bigger following backing them. Great leaders like Alexander the Great, Prophet Muhammad, Genghis Khan, William the Conqueror and Jesus Christ are considered great because of the immense numbers they commanded.

Humanity has evolved from a simple creature concerned with their immediate needs to a complex organism with specialist skills and an unprecedented ability to impact the world by merely using words. This subtle social skill was augmented by the internet and suddenly millions of people worldwide became an audience to the conversations of a few amid their own idle chatter.

What is social media?

Social media took the world by a storm in the late 1990's because it enabled creating unique personal profiles, sharing photos, ideas and other

media with friends and strangers online and remains a sensation to date. The Code of Standards of Professional Practice and Ethical Conduct defines social media as web-based and mobile technologies that turn text communication into active dialogue. Social media is also defined as a platform supported by the internet allowing unaltered and indiscriminate cross-border interaction between subscribers. Unlike print or legacy broadcast media, social media is open for anyone with an internet enabled device.

In Kenya alone, around 11.8 million Kenyans currently use social media, up from the 3.6 million users in 2014. This has been accelerated by access to cheap internet connectivity, rising literacy levels, proliferation of mobile telecommunication technology, and globalization.

How the Legal Profession Interacts with social media

Businesses, academia, professionals, personalities, and politicians have thronged social media to guarantee an online presence. For the first time, professionals such as lawyers, doctors, accountants, and entrepreneurs can give their opinions to their followers for free. Advocates naturally flourish in this environment, but they operate and do business in a highly regulated field.

In a short period, many Kenyan lawyers have joined social media platforms. Law firms maintain a social media platform where they post articles and legal alerts and showcase their events. Despite the perceived benefits it remains an area of ethical concern in a regulated profession.

Kenyan Rules Governing the Use of Social Media Sites by Advocates

The Law Society of Kenya (LSK) exercises regulatory authority over advocates derived from the Law Society of Kenya Act and the Advocates Act. In realization of this duty, the LSK has issued the Code of Standards of Professional Practice and Ethical Conduct (hereinafter referred to as "SOPPEC"). Among its dictates is the responsible use of social media by advocates in Kenya. SOPPEC-10 defines professional misconduct to include inappropriate use of social media, in a manner that undermines the standing and dignity of the profession. Furthermore, it approaches the issue of social media use by advocates in four dimensions. It can (1) pose a danger to the profession by undermining judicial independence, (2) damage an advocate's reputation, (3) be a loophole to bypass stringent advertising laws and (4) open the profession to disrepute due to the massive audiences that these platforms host.

This code of standards does not expressly bar advocates from specific online activities. However, Article 33 of the Constitution guarantees all Kenyans freedom of expression and so it is a tough balancing act to midwife a satisfactory solution for all. Kenyan practice is also guided by the IBA Principles on Social Media Conduct for the Legal Profession. These principles are merely suggestions to bar associations such as LSK on how to best promote responsible social media use by advocates in a manner that conforms to relevant rules of professional responsibility and civility.

The IBA came up with six principles that may deter various threats that social media can pose to the legal profession. These principles protect the independence of advocates from external pressures, their disrepute, the veracity of their legal advice online, their client's confidentiality, public confidence in the profession, and the continuous development of policies to pre-empt future problems. The IBA principles are similar to the SOPPEC with the only difference being that it outlines some activities that have not been expressly mentioned in SOPPEC. It lists acts such as conducting private affairs online, giving unsound legal advice over social media, leaking, or posting clients' sensitive information and other uncharacteristic content as dangers that can damage the public perception of the legal profession.

For unwary advocates, social media platforms have professional risks. Recent developments in social media technology are exposing the tensions inherent in older ethical rules while also provoking difficult questions for lawyers seeking to take advantage of this new technology.

Social media and clients

The use of social media by advocates in their professional interactions with clients and other stakeholders is regulated by the Advocates Act and its subsidiary legislation, SOPPEC, the Civil Procedure Act and Civil Procedure Rules; and the Penal Code and the Criminal Procedure Code

SOPPEC 3 provides that an advocate has a duty to provide legal services competently, diligently, and ethically. The standard of competence is predicated on possession of knowledge and skills and thus mandates attendance of continuous

professional development programmes. This implies that competence entails more than keeping up with current statutory developments or common law changes, but also requires having sufficient familiarity with and proficiency in technology, which may impact both the substantive area of legal practice itself and how the lawyer delivers these services. Mastering use of social networking sites is essential for effective lawyering.

For example family law practitioners may only claim they meet the competence standard if they search the Facebook pages of both the client and the adverse spouse, given the incriminating content likely to be obtained from social networking sites. While SOPPEC 3 is silent on the specifics of competency derived from social media use, the sheer pervasiveness of social media in our modern society and relative ease of use demonstrates that an advocate who ignores social media fails to provide competent representation.

Another area with potential ethical pitfalls is client communications and maintenance of client confidentiality. SOPPEC 7 provides that advocates have a duty to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client. Given the popularity of social media and its ease of sharing and publicizing information, there is a risk that advocates can easily fall afoul of this duty. This may be by:

- a. inadvertent disclosure of confidential information (such as when an email is sent to the wrong person);
- b. access of confidential information without authority through data security lapse by a third-party hacking into an

- advocate's email account or private network; and
- c. when advocates' staff or other personnel release it without authority.

While not all instances of advocates' online ethical lapses necessarily involve breaches of confidentiality, there is one recurring theme: poor judgment in a rush to excite followers to update their statuses and receive as many "likes", "retweets" or "status shares" as possible.

An instance was when on 12th October 2022, a Twitter user posted a tweet in reference to an intern in her office who took an Uber to serve some documents. Angry netizens attacked her on Twitter, pointing out to her insensitivity to the plight of suffering interns, leading to the Twitter user deleting her tweet and locking her Twitter account. The law firm she represented experienced the Twitter backlash; it was down-voted by scores of people, relegating it to a one-star rating, down from a solid five stars on the Google Platform, causing severe reputational damage for both the firm and advocate.

The above example shows that advocates must be conscious of their online activity; what may seem innocent and harmless can have tremendous, negative impact on a professional careers and affect the ability to attract and retain clients.

Social media and litigation

Advocates frequently encounter social media during the trial and discovery phases of a case. One significant ethical concern for advocates in this phase is gathering information about a party or a witness. There generally

is not an ethical issue in looking at the publicly viewable portion of an individual's social networking profile; however, what about Facebook pages with privacy restrictions that allow only friends to view such non-public content? Can an advocate, or someone working for that advocate, attempt to become someone's friend in order to gain such access?

On this, the law is silent; however, SOPPEC-8 requires an advocate not to communicate with an opposing party or witness who is professionally represented without the prior consent of that party's advocate. has not been tested in our jurisdiction but it will be interesting to see how the courts handle this issue. Emerging case law in other commonwealth jurisdictions appears to imply that advocates must obtain consent from opposing counsel before accessing a represented party's restricted social media site.

Another area with ethical quandaries during the litigation phase is preservation of evidence. During discovery, advocates have an ethical duty to preserve and disclose all information that is relevant to a lawsuit, a duty that extends to social networking profiles. Therefore, advocates must exercise caution when instructing their clients to remove content or delete their social media accounts that may be subject to a duty to preserve, to avoid such deletion or removal being considered professional misconduct.

Social media can also be used maliciously to denigrate or threaten judicial officers or tribunal members. Fair criticism of judicial officers is integral to democracy. The judiciary can also benefit from helpful criticism. To some extent, the public expects that judicial officers will receive some negative feedback because of the

nature of their position,. However, there is a clear difference between the public venting and a member of the public making malicious or contemptuous comments.

As officers of the court, Advocates must show fidelity to the law and due processes. However, advocates have become increasingly vocal on social media sites, which can be construed as weighing in on the merits and demerits of a case or attempting to influence, intimidate, or scandalize the court. For example, the Chief Justice Martha Koome in Kenya in 2022 expressed her displeasure with a group of senior lawyers in the country making social media comments during a live Supreme Court matter. She deemed such conduct as undermining the dignity and public confidence in the Courts. Opponents of the CJ's position contend that the court must embrace freedom of expression and that courts should not interpret Article 33 of the Constitution restrictively. Constitutional Division of the High Court however recently declared revised Supreme Court rules gagging commentaries on cases pending before the court as unconstitutional.

Advocates must strike a delicate balance when exercising their freedom of speech in commenting on social media upon matters that are still pending in court to avoid being found to be in contempt of court.

The Law Society of Kenya (LSK) Draft Advocates Social Media Usage Code (hereinafter also 'the Draft Code')

In 2020, the LSK Council introduced The Draft Code to regulate the interactions of LSK members in respect of the private and public content and comments posted through their social

media accounts. The Code postulates professional misconduct to extend to *'Inappropriate use of social media, particularly in a manner that undermines the standing, integrity and dignity of the legal profession, amounts to professional misconduct.'*

SOPPEC distinguishes 'professional misconduct' under section 60(1) of the Advocates Act with 'unsatisfactory conduct'. On the one hand, professional misconduct entails conduct that is in breach of the rules, standards and ethics of the legal profession found in various legal texts such as the Advocates Act and the attendant rules, regulations, and orders in its subsidiary legislation, and standards and guidelines issued by LSK. On the other hand, unsatisfactory conduct is 'conduct which falls below the standard of conduct or behaviour that is expected of a practicing Advocate, particularly when rendering legal services.

It has been argued that the proposed code offends the rights and fundamental freedoms of advocates as it contradicts the freedoms of expression and media and association as outlined in Chapter Four (Bill of Rights in the Constitution).

Tips on how to prudently navigate Social Media

1. Privacy is important.

An advocate is not allowed to disclose information about a client's representation unless the client has given informed consent. this rule should be applied to all postings and blog entries that an advocate may make on their social media profiles.

2. Be cautious when marketing.

Advocates' communications must be truthful, cognizable as a service advertisement, include the name and contact information of the advocate or law firm, and not use phrases that are deceptive when describing their services. The Advocates (Advertising and Marketing) Rules 2014 apply whenever an advocate is actively seeking clients, which includes any communications that touch on legal services. Although it might be difficult to distinguish between a post and an advertisement, it is advisable to be on the safe side and provide all necessary disclosures to prevent any breaches.

3. Leave no space for ambiguity regarding representation and status

An advocate needs to avoid saying anything that can inadvertently create an advocate-client relationship or offer legal advice that inadvertently forms such a connection. This is because failing to uphold the inadvertent advocate-client relationship may result in an advocate being held liable for professional misconduct. This can be avoided when an

advocate expressly mentions that the posted information is not meant to create an advocate-client relationship.

4. Pick your contacts carefully.

To prevent the impression of a conflict of interest, advocates should be cautious about who they allow as "friends" or contact on their social media accounts.. The same reasoning holds true for judges who want to avoid any real or perceived bias and favouritism

5. Keep personal information private and refrain from disclosing too much.

Advocates should keep their personal profile secret if they want to avoid the major ethical problems that may occur on social media. The holder of the privilege and his or her attorney must protect the privileged communication; otherwise, it will be waived and advocates should filter people who may have access to their profiles and uploaded information.

6. Advocates' staff must adhere to social media ethics.

Since an advocate may be held liable for the material they provide,

the accounts of an Advocate's key employees or clients must also be monitored. Any perilous postings should be flagged, and the concerned user held accountable. The danger of ignoring such postings is that the advocate may be held accountable for these activities if they fall short of the standards of SOPPEC-10. Policies should also be implemented to prevent such offenses in the future.

Advocates should not instruct their employees to perform any actions on social media that they are not permitted to perform themselves. For example, instructing their staff to view restricted content or virtually approaching a judicial officer while conducting legal business.

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An Advocate's Dilemma in the Age of Social Media



By Alex Wang'oma

The 18th Century French philosopher Jean Jacques Rousseau termed civilization as 'unnatural' and believed that people were corrupted by this 'unnaturalness.' Unfortunately, he lamented, the gains of civilization could not be reversed but could only be regulated through a social contract. Part of human civilization has seen enormous growth in technology. The exponential growth in technology has brought with it; unparallel changes in human interactions and people close together. Information is now available at the touch of a button, and different people, seated in diverse places in the world can, in real time, 'efficiently' receive and share information through different platforms, including social media.

This 'efficiency' in interactions brings legal and moral concerns for advocates. Firstly, the sacred duty of confidentiality is always at risk of being sacrificed at the altar of free speech and free interactions on social media. It is indeed common to see court documents with personal data shared on social media. This is a direct infringement of a client's privacy and sometimes this may be injurious. It is a golden rule of practice that "an advocate should not disseminate information relating to the representation of their client unless the client gives consent." Even though this rule is not codified in Kenya, its significance cannot be overstated

and indeed, it has been taught to all law student in all universities. Yet, there is always a possibility that an advocate or their employees and associates may share personal information with third parties, who may also end up sharing it with others. It must be pointed out that the Data Protection Act did not envisage the complexities presented by social media in the modern age.

Secondly, social media has made it easy to publicize court proceedings. This is obviously good for the public and goes a long way in building public confidence in our courts. However, when advocates engage in public campaigns and making of unmeasured statements on matters before the court, it becomes easy to prejudice the mind of the public so bad so that in case a different verdict is reached, the courts and tribunals are likely to be seen as compromised. Secondly, judicial officers are also on social media and whenever they consume statements made in respect of matters they are handling, the likelihood of them being influenced cannot be wished away. An advocate, as an officer of the court, is thus enjoined to avoid making such statements to the public through social media that could potentially influence the outcome of judicial proceedings. To do otherwise, will not only be to break the subjudice rule, but even worse, an exercise in subverting justice.

Thirdly, social media has made it easy for advocates to share their opinion with the public on diverse range of issues. While an advocate wears the big hat of being a champion of civil education, it should not be lost that the public is likely to rely on such opinion in their personal and business engagements. An advocate exposes

themselves to all forms of claims if the opinion is shared without a disclaimer. Indeed, it is common to see those learned in the law providing unsolicited legal advice on public posts on social media and with a huge following cheering them on with 'well said wakili' or 'excellent analysis counsel.' While it is not common for advocates to be informal in their address of issues, its vitally important that an 'opinion' given by an advocate includes disclaimers. Alternatively, advocates need to learn the art of general discourse with informal address of issues.

I fully agree with the great Rousseau that the 'unnatural' gains of civilization cannot be reversed but can be regulated. It is therefore necessary, on the subject of law, ethics and social media, that we move at the same exponential speed by taking deliberate steps to codify rules that shall regulate the conduct of advocate vis-à-vis their sharing of information, be it legal opinions or personal client information. This must however not be made in a manner that shall gag advocates' free speech. Students of law and advocates must constantly be reminded that even with the best of intentions, they are likely to run afoul of their ethical obligations and which may attract dire legal consequences including disciplinary actions.

Alex Wang'oma Mola is an Advocate of the High Court of Kenya and a Partner at Mola Kimosop and Njeru Advocates



Interview with Mr. Josephth Okoth Madara

By Ruth Githaiga

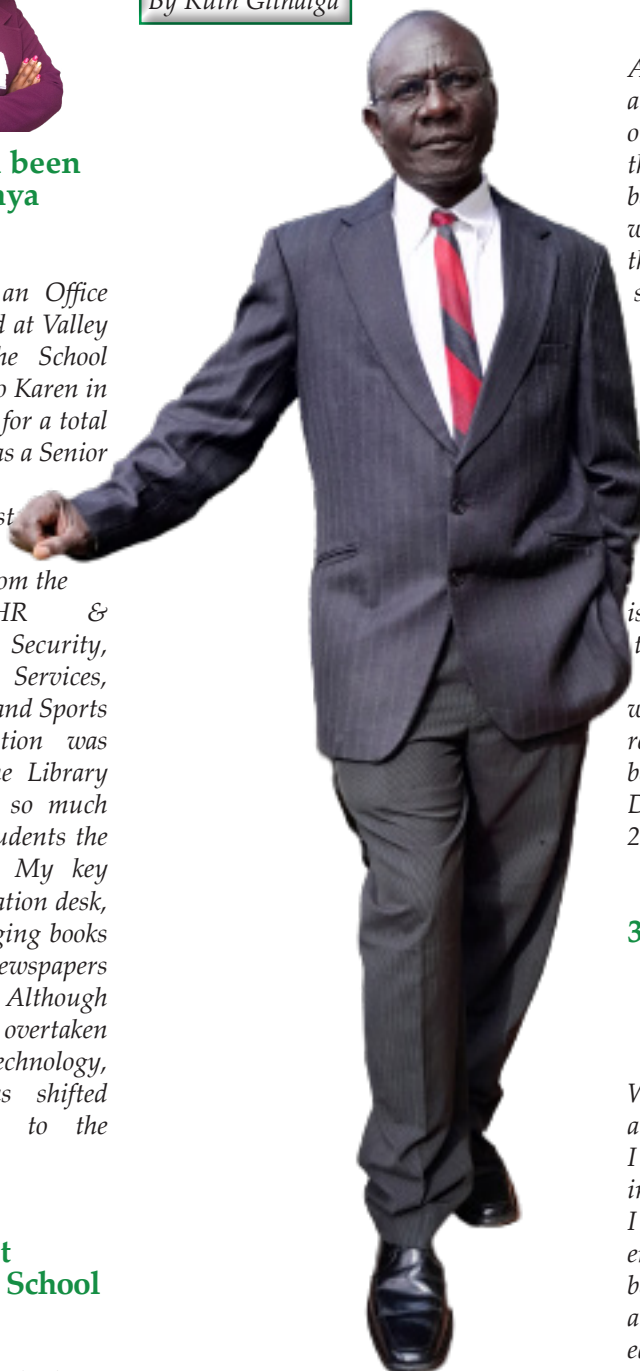
1. How long have you been working at the Kenya School of Law?

I joined KSL in 2004 as an Office Assistant, when it was based at Valley Road. After one year, The School relocated from Valley Road to Karen in 2005. I have worked in KSL for a total of 18 years and I am exiting as a Senior Assistant Officer. In the line of my work, I have almost worked in all departments / sections within the School from the Director's Office, HR & Administration, Internal Security, Laundry Services, Library Services, Finance, Audit Department and Sports Section. My favorite station was my current workstation the Library Department. I have learnt so much such as how to deal with students the so-called 'learned friends'. My key tasks have been at the circulation desk, document movement, arranging books and furniture, binding newspapers and filling the newspapers. Although the last two tasks have been overtaken due to advancement in technology, nowadays the School has shifted from physical newspaper to the E-newspaper.

2. What was your best experience at Kenya School of Law?

My best experience that I take home is the trainings that I have attained during my time at KSL. This is because the trainings have enabled me to gain many skills and expanded my knowledge. In terms of skills and knowledge, I am a better person than the way I was before I joined the School. These skills and knowledge will be of great importance to my next life of non-formal employment. The courses and workshops I have attended included Public Relations & Customer Care,

Record Management, Pre – Retirement, Customer Care & Attitude Formation, Quality Management Awareness training based on Quality Management Systems ISO 9001: 2008, Hospitality Skills development course, Team Building, Customer Service & Care Training Workshop, Certificate in Microsoft Word 2010.



Apart from the training, I have also gained a lot of knowledge on legal issues, considering that this is the mandate of KSL. I am better versed with how to deal with legal issues that arise in the

society such as family, property, and land among many others. I may not be a learned friend by having done the formal education that requires one to acquire such a title but being in KSL for nearly two decades, I have gained a lot of exposure and experience in legal issues. I am so grateful to God and to the KSL

family at large. Another wonderful experience was the recognition I received for as the best employee in the Library Department during the year 2014/2015.

3. What have you been able to achieve from your working years at KSL?

When I take stock of my life at KSL, I confidently say that I have gained a lot from an individual level to family level. I say that KSL is indeed a great employer. It may not be the best but I am confident that if all employers were to be ranked equally in the public sector, it will definitely appear in the list among the best. I have been able to educate my kids to the best level that God has enabled me. Some of my kids are at college level while others at University level. I believe that by educating my kids that is the best gift I can give to them as a parent. George Washington said, "Education is the key to unlock the Golden door of Freedom."

I believe that being educated puts someone in the best place to have a secure future for self. Education helps someone to think outside the box to come up with productive ideas, which add value to the society and helps improve people lives.

Likewise, someone educated has a chance of getting a good paying job. I always tell my children that I may not have reached at the level of education that they have, but my greatest desire and joy is to see them getting to the best level of education. I am able to offer so that their life can be better than my life as a parent. Another thing I have achieved while at KSL is the exposure and opportunity to network due the nature of KSL. In the line of my duty, I have served very senior and prominent people in the society, which is a plus for me because even as I leave KSL I will keep those great relationships that I have built. The relationships I believe they will help me in my next phase of my life. For instance, I have plans to serve in my society a position like a chairperson of a certain group. In these forums, the contacts I gained at KSL will come in handy depending on the projects we will be working on.

4. What are some ways in which you would say technology have been used negatively?

In terms of the negative aspects of technology, I think I have nothing to say but I would prefer talking about the positive aspects. The mobile phones are used to keep records and as a mean of reference. Gadgets like computers have made typing work

easier and fastened the process of communication unlike the old days where organizations relied on Fax machines and typewriters. CCTV has made tracking of events easier and has also helped in reducing theft from offices or even at home.

5. What would you advise the upcoming generation in regard to ethics at the work place?

Good ethics is key in any working environment. My advice would be that staff should be accountable and transparent, embrace team work and partnership as our core values in the work environment, which are some of our core values as a School. In addition, in the work place there are protocols and procedures to be followed which are well outlined so staff should adhere to them since work environment is a different set up from home.

Staff should observe office manners, they are simple things but they make a lot of difference. For instance before getting into an office, it is courtesy to knock, when you get into an office just mind what have taken you to that office avoid perusing or looking on people documents unless it concerns you, reduce gossip and make proper use of time remember times wait for no man.

Something also I want to say is on these simple but magical words, I am sorry, excuse me, thank you and please. Please remember to use them when necessary. They mean a lot not only at work places but also in any other set up.

In addition, staff should try to achieve

their set targets in the right way since they are all working towards achieving a common goal. In addition, every staff should have a customer -centric culture on how to handle customers be it internal or external customer in a good manner because this helps in promoting the School brand. Lastly, in everything you do always strive to go an extra mile to do your best and give the best despite looking at your position or job group.

6. As you transition soon from employment at KSL, what are you looking forward to doing?

I am retiring from KSL but this is not the end because I will continue working in non-formal set up. I want to start farming both crop and animal farming. I have registered a company to start doing maize the business, which I was doing before getting into formal employment. I also want to start a catering business because my daughter has done a hospitality course; I believe she will come in handy in managing the business since she already has some basic skills.

Joseph Okoth Madara is an Office Assistant at the Kenya School of Law Library

Interview with the President of Advocates Training Programme Students Governing Council 2022/2023



Q&A

By Raphael Ogello



1) Please tell us about yourself.

My name is Bill Clinton Oyoo and I am a member of Class C, where I am also the class representative. I also serve as the president of the Students' Governing Council.

2) Why were you interested in serving as the president of the ATP student council?

I have been a student leader from back on campus. I have always wanted to champion the welfare of students. I wanted to use the skills gained and my ability to champion the welfare of the students at Kenya School of Law (KSL).

3) Do you consider being a student leader a fulfilling responsibility in KSL?

Yes, it has been a very fulfilling experience. One thing that I have liked about KSL is that every time I approach a relevant officer with the needs of the students, I get a positive response KSL gives priority to students' needs. When the student's needs are met I feel that my work is done.

4) How are you able to navigate between your studies and attend to your leadership responsibilities?

Leadership is something that I have always desired. I know when I'm supposed to have classes and the

particular times when I need to dedicate myself to serving the interests of the students. We have a weekly council where we collect the views of the students and discuss them at the council level. I share responsibilities as a leader among 14 other members. The problems that in the classes are settled at the class level, we only deliberate on them when we meet as a council.

5) What is the composition of the ATP Student Council?

It consists of the president, a deputy president, a secretary general, a representative to the disciplinary committee, a representative in the sports committee. We have another member who is in charge of mentorship. We have yet another representative in charge of mootings. We have a student in charge of the general welfare of students. The other members are class representatives who do not necessarily have other positions. We have recently added a representative for persons living with disabilities, and her

role is to bring together students living with disabilities and also to advocate for programs that could enable them to interact with other students.

6) What are some of the achievements or significant changes that you have made as a Students Council?

We have come up with a system whereby students get access to opportunities within the School, for example, mentorship opportunities. We have made sure that there is a criteria to be followed when choosing students to attend school activities. We also partnered with Karl Mediation and Arbitration to offer mediation training to the students at a subsidized rate. We also maintain a close working relationship with the Council of Legal Education to make sure that students get notices in good time. We also had a good working relationship with the Schools administration.



7) How has the KSL administration supported the Student Council?

The School has been very supportive in the mentorship program that was organized between the students and the Law Society of Kenya Nairobi branch. The School has sponsored students to travel for sporting activities, which has helped students to improve their talents. KSL also took the student council for induction to Mombasa. We also intend to have a cultural day the school has been very supportive of.

8) What is the most challenging situation you encountered as a Student Council?

It was an instance where we were to break for a holiday and we were allowed to make a decision about the length of time to take. Some

students wanted to continue with their studies so as complete the year, they did not want things that would keep them in school for a longer time than they expected. On the other hand, there were students who wanted a longer holiday so as to take a break. As a student council, we have to represent all interests of the students. At the end of the day, we had to make decisions based on what will be helpful to the entire student body. Having to choose between two conflicting sides of students is actually the hardest thing, especially if it's almost on a 50-50 basis.

9) What do you want to see improved in the Student Council?

We need a furnished office to enable us to have our meetings, we also need a notice board around the office that will enable us to disseminate information and also to receive students' requests.

10) What advice would you give to students aspiring to

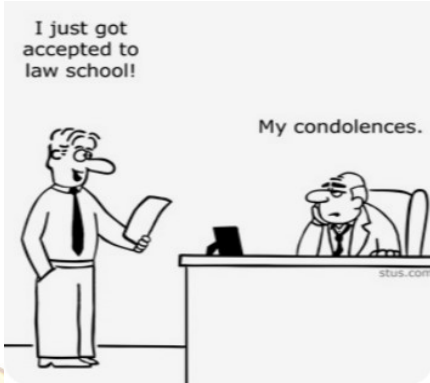
be student leaders?

It has to be something that you do because it is fulfilling to help the students. They should not come into it with the idea of getting some benefit. It should come from deep down in your heart. Try as much as possible to represent the interest of the students. In a democratic society, they should go with what the majority want.

11) What are your final words to the CEO and KSL Management?

I would like to appreciate the CEO of the Kenya School of Law because one of the major differences is that I have realized that the School actually responds to the needs and interest of the students. This is something that is a luxury in some of the public institutions so I would like to urge him to continue with that and to improve on it by also considering the views of student leaders.

Just for 'Lawghter'



**Be courteous
to criminals.**

**Let them finish
their sentences.**

- "Where there is a will there is a lawsuit" — Addison Mizner
- A man asks his lawyer: "If I give you Ksh 10,000, will you answer two questions for me?" The lawyer replies: "Absolutely! What's the second question?"
- Two lawyers were talking along negotiating a case. "Look," said one, "Let's be honest with each other." "Okay, you first," replied the other. That was the end of the discussion.
- A lawyer got her last name changed to Demenor, so now everyone in the law office calls her Miss Demenor.
- Why wasn't the convicted law student able to go back to his apartment? Because he didn't get re-leased.

Compiled by Fredd Wakimani

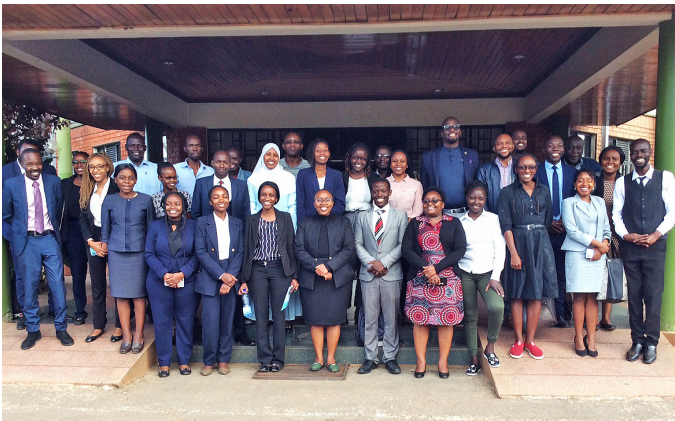
KSL Events Highlights



Second year Paralegal Training Programme students during a legal aid clinic in Voi.



Participants during a CPD training on Legal Auditor Certification course held in Nakuru



The Judges and ATP students who participated in the inter class moot court competition held on 29th October 2022



The women's netball team which participated in the School's sports tournament between the KSL and LDC held on 22nd October 2022



The Advocates Training Programme students during this year's LSK Legal Awareness Week held the Milimani Law Courts in Nairobi.



The Official Receiver in Insolvency, Mark Gakuru, (second left) when he visited the School as a guest lecturer. He is flanked by Senior Lecturer, Fredd Wakimani(left), Registrar of the MPSR, Shighadi Mwakio, (middle), Deputy Official Receiver, Beatrice Osicho, (second right), and Iddy Pembere (right) of the BRS



CPD participants at a training on "Corporate Governance, Legal Issues & the Emerging Challenges" in Mombasa



KSL staff members who participated in this year's Standard Chartered Marathon in Nairobi.



ATP students during a Legal Aid Clinic at Mombasa Mainland GK Prison



Principal Lecturer, Ms. Anastasia Otieno, with the PTP students during a cake cutting session to mark this year's customer service week



The School Corporate Communication Section display their gifts during the Customer Service Week.



Ms. Christine Kungu, a Senior Lecturer at the School receives a token of appreciation from the KSL Director Dr. Henry Mutai, during the Advocate Training Programme mentorship session.

TRIBUTE TO KENNEDY OYATSI

By Martin Kembero



The family of the late Kennedy Oyatsi's, children, beloved wife, family members and friends

Sorrow fills our hearts this sad moment. As the Officer in charge of Transport at the Kenya School of Law it is a sorrow that is deep and personal. Kennedy has silently closed the door of his life and departed from us. Our lives will be empty in the moments that he had brightened for us.

Albert Einstein said 'the value of a man should be seen in what he gives and not in what he is able to receive' in one word Kennedy was a man who gave much to his work committed and determined. That is why ladies and gentlemen as we are gathered here to say goodbye to him I could like to speak in celebration of his life.

Here was a life that demanded notice, a life that inspired, emulated, a life that burned so that others paths were lit.

I have known Kennedy for 11 years since 2010 when he joined the School under the Transport division as a Driver. He was brilliant, innovative, strategic thinker, visionary and creative in his work. He was a man you cannot pin down without substantive

evidence, defender, authoritative and ready to substantiate his defence all matters without fear.

Kennedy was living proof of how a fine person can be, he was a good friend to many guys and a great colleague. A man who accepted his nickname as 'Njaa' meaning he was hungry because he did not have enough to purchase food.

He had as with moustache around the upper and lower cheek absence of humour and a gentle demeanor. Kennedy was logical and systematic in thinking.

In his career as a driver he worked with passion, integrity and energy (Okoa Jaazi) until his death. He was gentlemen, a vibrant individual with a rare friendliness and charm of personality.

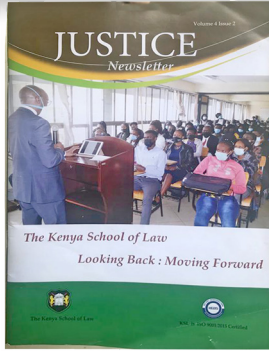


Until his death, Kennedy can be characterized as sincere, earnest and loyal.

The nickname 'Njaa' I remember was a cheerful in himself but who gave much cheerfulness to others.

He will be greatly missed.

May God comfort the family in their darkest moment.



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