

# JUSTICE

*Newsletter*



*Teamwork*

*&*

*Partnership*



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# From the Editor

The Kenya School Of Law through the Editorial Committee is elated to publish Volume 2 Issue 1 of the Justice Newsletter.

The Newsletter focuses on the theme “Teamwork and Partnership” which is one of the core values of the School. We are grateful to all the contributors who responded to our calls of articles and submitted them for review and consideration.

Accordingly, we have published various articles that have covered the milestones at the School together with events from different departments. We have also published insightful articles from the current students and alumni under the student's corner.

Lastly, we have articles on wide ranging legal topics including: A critique of the LSK Harassment and Bullying Policy and

Litigation around the HIV and Prevention Control Act.

The publication will indeed provide an opportunity for the school to showcase its activities and events to stakeholders.

We are grateful to the Board, the Management of the School and all staff members who contributed to the success of this publication particularly one of our lecturers, Nyokabi Njogu who provided valuable input in reviewing the articles.

Special gratitude goes to the members of the Editorial Committee whose effort and dedication made it possible to produce this publication.

**Enjoy the read!**

## The Editorial Team



*From Left Samuel Akhwale, Fredd Wakimani, Linnett Odawo, Christine Kungu, Phoebe Ndungu, Agnes Mwai and Stephen Okello*

# Word from the Chairperson, KSL Board



*Prof. Fatuma N. Chege*  
Chairperson  
Kenya School of Law Board

On behalf of the Kenya School of Law Board of Directors, I take this opportunity to thank the management for publishing Volume 2, issue 1 of the Justice Newsletter. The Newsletter collates the key events of the school throughout the year, notably the first inaugural Conference, the 3rd Graduation, the John H. Jackson Moot Court Competition, the launch of the KIPPRA report among other insightful articles from staff and students.

The theme is “Teamwork and Partnership” which is reflective of the spirit and attitude of the KSL family. I believe that teamwork and partnership is an appropriate theme as it is vital for KSL to bring together stakeholders as we

endeavor to take legal education to the next level.

This is also replicated in the KIPPRA report which recommends among other things the need for KSL and CLE to work together so as to improve the pass rate in the Bar exam. It is also captured in the student articles that emphasize the need for teamwork especially firm work. Team work is also seen in the CSR activities that KSL has been involved in like the Stan-chart marathon.

All this and more has been covered in the delightful articles that are not only enlightening but also educative.

# Word from the Director/Chief Executive



*Dr. Henry K. Mutai*  
Director / Chief Executive Officer  
Kenya School of Law

We hope to have greater participation by our former students in future graduation ceremonies.

The School’s Strategic Plan 2018 – 2022 was launched in January 2019 at a breakfast meeting attended by a number of our stakeholders. The Plan sets out the direction that the School wishes to take over the next four years in accomplishing its mandate. I would like to thank all the members of staff who participated in developing the Plan as well as all the stakeholders who gave their views regarding the draft. My thanks also go to all those who managed to attend the launch and to give us their feedback. We look forward to engaging closely with all of you in the course of implementing the Plan.

The School also held its Inaugural Annual Conference at the Karen Campus in April 2019. We were honoured to have the Chief Justice and President of the Supreme Court as our guest of honour. My thanks go to the Organizing Committee as well as all the presenters who made the Conference a success. We are planning to make this an annual regional conference where presenters from all over East Africa can come to share ideas on legal education.

In the same month we hosted the African Round of the John H. Jackson Moot Court Competition which attracted twenty teams from nine countries. This provided an opportunity for the school to

showcase its campus and ability to successfully organize and host a high level international event. We thank the organizers for having entrusted the School with this responsibility and congratulate all the participants for the effort they put into preparing and participating in the Moot Court Competition.

In discharging its mandate, the School has continued to train candidates undertaking the Advocates Training Programme(ATP) of whom 1625 were enrolled for the 2019/2020 academic year. As a means of enhancing the student experience, the School has continued to organize legal aid missions to various prisons around the country where students are able to apply some of the knowledge and skills learned to assist people in remand and those awaiting disposal of their appeals with the legal issues facing them.

The Diploma in Paralegal Studies programme had 162 applicants enrolling for the 2019/2021 cohort. These students undertake their programme at the School’s town campus where, despite space constraints, I am happy to note that the staff have been able to successfully implement the programme.

Finally, I would wish to thank the Editorial Committee for their tireless efforts in making sure the School was able to produce the third issue of the Justice Newsletter.



## The Launch of the KIPPRA Report

By Fredd Wakimani

Following concern on the performance of the Bar exam, the Kenya School of Law (KSL) engaged the Kenya Institute for Public Policy Research and Analysis (KIPPRA) to carry out an in depth study of the factors that affect the pass rate in the Bar exam. This came after KSL carried out its own internal study on the pass rate, and recommended among other things a more comprehensive study to be carried out with a wider scope and mandate involving the school's various stakeholders.

The culmination of the study was marked by a breakfast launch at the Laico Regency on the 23rd of October 2019, where KIPPRA shared its findings. The study identified several factors affecting the pass rate among them being, the structure of the Advocates Training Programme (ATP), the setting and marking of the Bar exam, lack of administrative resources as well as detrimental personal attributes among students.

The methodology used in carrying out the research included: reviewing relevant documents, collecting data for identified key indicators, conducting surveys and semi-structured key informant interviews with various stakeholders, and documenting case studies of performance in the bar exams from different countries around the world. The research team collected applicant data from 2009 to 2019 including applications received by the KSL and student transcripts. Random and snowball sampling were also used in capturing data, with about 200 former and current students being interviewed as well as 9 KSL lecturers.

Various stakeholders in the legal sector were also interviewed as key informants comprising of representatives in legal education, regulators, private practice, and public sector organizations.

The Reports findings and recommendations are summarized as follows:

*1. Admission criteria for the LLB at undergraduate level should be raised. This is due to the connection between high school grades and performance. Applicants need to demonstrate proficiency in the English language with a recommendation that an additional admission criteria assessing the English, language and comprehension skills (similar to the USA LSAT or the UK IELTS or the Pearson Test of English) is necessary.*

*2. The LLB and ATP admission criteria should be aligned, streamlined, clear and predictable as the current admission criteria does not guide applicants in knowing what to work towards so as to manage expectations.*



Participants at the launch of the KIPPRA Report at the Laico Regency

*3. The quality of legal education at undergraduate level should be maintained by Council of Legal Education (CLE) as a matter of priority, noting the increased number of Universities both public and private offering the LLB programme. In this regard, the report recommends the need for standards to be enforced from one centralized institution. CLE should also consult with universities on mode of setting examinations, the standards*

*of examinations and questions being set and the implementation of the curriculum. In addition to the above, the Commission for University Education should strictly enforce the requirements for lecturers.*

*4. There is need to control quality of students entering KSL by pre-screening before admission by mandatory application of the pre-bar examinations. This will examine basic legal knowledge and English skills.*

*5. The ATP Students lack sufficient contact-time with the material to develop a robust grasp of the relevant knowledge and skills. ATP also needs to open up opportunities for students to receive more diverse and experiential learning.*

*6. The ATP is not structured to achieve its intended objectives. There is need for greater innovation in the provision of legal training including reconfiguring the sequence of units in the Advocates Training Programme to ensure that students undertake and complete pupillage right before sitting for their examinations. Additionally, the current six (6) month period for pupillage is not sufficient*

7. KSL should embrace current and digital modes of teaching, striking a balance between the practical and technological changes in the world. Technological applications therefore should be fused with aspects on curriculum design and delivery.

8. Based on the high number of entrants in KSL and inadequate resources, the School should be decentralized. The Government needs to properly fund and strengthen KSL to deliver the ATP. The resources need to complement and accommodate the number of students being enrolled into the programme.

9. The student-lecturer ratio is too high. The study recommended the adoption of small classes of about 15-20 students per class.

10. KSL should invest in Lecturers who are experts in a particular area of specialization and practical training. Additionally, lecturers at KSL should undertake regular courses on pedagogy to upgrade their teaching skills. KSL ought to increase the number of lecturers engaged.

11. There are no scholarships or bursaries available at KSL for students undertaking the ATP. There is need to establish and operationalize a structured loan/sponsorship scheme at KSL to ease the financial burden on students undertaking the ATP.

12. There are inconsistencies between the examinations, the course curriculum, and the content taught. The curriculum should be aligned to what is to be tested through increased coordination between KSL and CLE. In addition, periodic evaluations could be carried out to assess the status of implementation of the syllabus.

13. Available past exam papers are not accompanied by marking schemes. CLE ought to provide students and lecturers with past papers accompanied by their respective marking schemes as is best practice in various jurisdictions.



KIPPRA Executive Director, Dr. Rose Ngugi at Launch of the report

14. There is insufficient continuous assessment during the ATP. It is recommended that CLE and KSL should introduce continuous assessments.



The Director, Kenya School of Law gives his remarks at the Launch of the KIPPRA report

15. There is need to develop clear guidelines for the oral examinations. The scope of coverage and parameters for the oral examination needs to be defined and students informed of the same prior to their examination. Further, the oral examinations ought to be restricted to topics in law within the ATP.

16. Most former students strongly agree that training and examination should be carried out by one institution, specifically the KSL. However, since the statutory mandate to examine remains with CLE, the two institutions should adequately consult and work closely.

17. A regulatory framework for the ATP prescribing the curriculum, structure, duration, content, teaching methods, class size, contact hours, student-lecturer ratio and recruitment criteria for lecturers should be developed by CLE. There is also need to revise the curriculum review time-lines from 5 years to 2 years.

In conclusion, it is clear that a lot needs to be done to improve the pass rate in the Kenyan Bar exam. However, with the findings setting out clear and specific recommendations, it is up to the identified stakeholders to oversee their implementation for the overall benefit of legal education in Kenya.

*Fredd Wakimani is an Advocate of the High Court of Kenya, the Ag. Personal Assistant to the Director, Senior Legal Officer and Lecturer at the Kenya School of Law*



# Hosting A Successful Regional Moot Court Competition

By Albert Simiyu Murambi



Prof. Githu Muigai, Dr. Henry Mutai and Prof. Patricia Kameri-Mbote arriving for the opening ceremony John H. Jackson Moot Court Competition

The Kenya School of Law (KSL) hosted the Sixth African Regional Round of the ELSA Moot Court Competition (renamed The John H. Jackson Moot Court Competition) on World Trade Organization (WTO) Law, at its Karen Campus from the 23rd to the 26th of April 2019 in Nairobi, Kenya. It was the first time KSL was hosting an international moot court competition. The Regional Round had 20 teams representing 9 different countries across the African continent.

Because of the logistical input required to successfully host the Round, the School assembled a planning committee comprised representatives from the different departments and sections of the School. The entire coordination team was overseen by Dr. Henry K. Mutai, the Director of KSL.

A group of ATP student volunteers supported the event as ushers and time keepers despite the fact that the competition was held when the School was on break. The volunteers who offered to help worked seamlessly and tirelessly to ensure the competition ran smoothly.

Team	Country	Name of Institution
1	Kenya	Egerton University Faculty of law
2	Nigeria	Nigerian Law School
3	Nigeria	University of Ibadan. Law
4	Lesotho	National University of Lesotho,
5	South	University of Witwatersrand,
6	Kenya	Catholic University of Eastern
7	Kenya	Kenyatta University School of Law
8	Tunisia	Faculty of Legal Political and Social
9	Kenya	Kabarak University Law School
10	Nigeria	Ekiti State University
11	Uganda	Cavendish University Uganda
12	Tanzania	University of Dar es Salaam, School
13	Uganda	Makerere University, School of Law.
14	Nigeria	Faculty of Law, Obafemi Awolowo
15	Ethiopia	Wollo University, School of Law
16	Kenya	Strathmore University - Law School
17	South	Rhodes University
18	Kenya	Moi University School of Law
19	Zimbabwe	Midlands State University Faculty
20	Kenya	Kenya School of Law

Teams from the different countries

More help was offered from Ms. Svetlana Chobanova and Ms. Kholofelo Kugler of the WTO and Advisory Centre of WTO Law (ACWL) respectively who assisted in identifying potential panelists for the Round. They connected the organizing committee with lawyers of international repute and knowledge in trade law from Argentina, Bulgaria, India, Italy, Kenya, Malawi, Nigeria, Sweden, Ukraine and Zimbabwe.

### Fundraising

The event received unqualified financial, material and technical support from the following organizations:-

NO.	NAME OF SPONSOR
1.	Robson Harris Advocates
2.	Kioko Kilukumi Advocates
3.	Mohammed Muigai Advocates
4.	Hamilton Harrison & Mathews
5.	Coulson Harney Advocates
6.	Lumumba & Lumumba Advocates
7.	Njoroge Regeru and Company Advocates
8.	National Council for Law Reporting
9.	Safaricom Limited
10.	African Trade Policy Centre
11.	World Trade Organisation
12.	King & Spalding
13.	Mayer Brown
14.	World Trade Institute
15.	Tralac
16.	University of Passau
17.	ACWL
18.	Tutwa
19.	Jurorbox
20.	Georgetown University
21.	Sidley
22.	Kenya School of Law
23.	Geneva Graduate Institute
24.	Hogan Lovells
25.	Steptoe
26.	White & Case
27.	ELSA
28.	UNECA

Preliminary pleadings by all teams took place on the 24th and 25th April, 2019. Each team pleaded for one side on each day, either as Complainant or Respondent. Team respective scores including memorial scores were then aggregated and the top four teams selected for the semi-finals.

The announcement of semifinalists was done at the sponsors' reception which took place on the evening of the 25th April 2019 at KSL. The event was graced by Professor PLO Lumumba who gave an inspiring keynote address to the gathering.

The semifinalists that included Strathmore University, Kenyatta University and Kabarak University from Kenya and Rhodes University from South Africa also secured a chance to compete in the global rounds in Geneva, Switzerland at the World Trade Organization (WTO) Headquarters that were held in June 2019.

The award dinner was held at the Weston Hotel, Nairobi where the winner of the Sixth African Regional Round, Strathmore University, was announced. The award dinner was graced by a representative of the Hon. Attorney General of the Republic of Kenya, Mr. Joash Dache the Executive Director of the Kenya Law Reform Commission. Also in attendance was Prof. Fatuma Chege, the Chairperson of the KSL board and the Director of KSL Dr. Henry Mutai.

It was an exciting experience hosting trade lawyers and academics from all over the globe to debate global contemporary trading system on Kenyan soil. The winning team from this round went on to represent Africa in the global round and emerged as the overall winner. Our capacity as a country and continent to participate and lead in international trade negotiations were enhanced by hosting this Round.

*Albert Simiyu Murambi is an advocate of the High Court of Kenya, the Manager of Legal Clinics and a Principal Lecturer at the Kenya School of Law*



*The winning team representing Strathmore University*



*Some of the judges in the competition*



*Left: Prof. PLO Lumumba addressing participants at the Sponsors' reception, Right: Participants during the award ceremony.*



# The 3rd Graduation Ceremony

By Annah Konuche



*A Section of graduands at the 3rd graduation Ceremony*

The Kenya School of Law held its 3rd graduation ceremony on 11th December, 2018 as mandated by the Kenya School of Law Act. The graduation was for the Postgraduate Diploma in Law and Diploma in Law Programme. The 3rd graduation was unique because it was awarding graduands from the 2015/2016 and 2016/2017 academic years. It was a colourful event held at the Karen Campus.

The Chief Guest, the Honorable Attorney General of the Republic of Kenya, the Hon. Mr. Justice (Rtd) P. Kihara Kariuki deputized the Deputy Solicitor General, Ms. Christine Agimba to deliver his key note address. The graduands were addressed by the Chairperson of the KSL Board, Prof. Fatuma Chege and the immediate former director of the school Professor PLO Lumumba.

The Director/CEO of the School, Dr. Henry K. Mutai gave the welcoming address to the elated group of graduands and guests.

Among other notable guests in attendance included KSL Board members, Professor Michael Wabwile, CS. Jacqueline A.O. Manani and Mrs. Emily Chweya.

In attendance were other distinguished guests including, Mr. Allen Waiyaki, President of the Law Society of Kenya, Ms. Mary Mugure representing the Secretary/CEO of Council of Legal Education, Mr. Long'et Terer, the CEO of National Council for Law Reporting and Mr. Mbage Ng'ang'a, the Chairperson of Kenya Law Reform Commission.

On behalf of the ATP and PTP, we wish to thank our partners and stakeholders who contributed to the success of the event. Special mention to the advocates and members of the legal Profession who gave awards to the feted students and they include Senior Counsel Paul K. Muita, Senator Mutula Kilonzo Jnr., Professor Edwin Abuya, Professor Tom Ojienda, Mr. Nelson Havi, and the law firms of Robson Harris Advocates and Iseme Kamau & Maema.



*A graduand receives an award from the President of Law Society of Kenya, Allen Waiyaki*

ATP had 116 graduands while the Diploma in Law had 17 graduands. The School for the very first time awarded the best performing students who included the best student in each course under ATP, the best student overall for both the 2015/2016 and 2016/2017 academic years and the best male and female student in the Diploma in Law Programme.

We are grateful to the Board, the management of the School and all the staff members who contributed to the success of the event and we look forward to the 4th graduation ceremony that will be held on the 6th December, 2019 at our Karen Campus.

*Annah Konuche is the Assistant Director, Advocates Training Programme at the Kenya School of Law.*



# The Kenya School Law Inaugural Conference on Legal Education, Training & Access to Justice

By Isaac S. Kuloba

The School is proud to have successfully held its Inaugural Conference, themed, Legal Education & Training in Kenya: Enhancing Access to Justice on 17th & 18th April, 2019.

The objective of the Conference was to discuss the existing legal and policy framework for legal education and training in Kenya, to identify gaps for the purpose of making recommendations for reform and to enhance the bigger picture of access to justice. Specifically, the Conference intended to, and did, achieve, in my view, the following objectives: to review the existing legal and policy regime for legal education and training in Kenya to align them with the Kenya Vision 2030; to identify and discuss legislative and policy gaps in Kenya's legal education and training framework; to identify the correlation between legal education & training and access to justice; to identify and discuss opportunities to reform legal education and training to address Kenya's socio-economic needs; and to isolate and discuss the status of legal aid services in Kenya.

The Conference attracted stakeholders of diverse backgrounds: Law schools, legal scholars & students, the Council for Legal Education, the Judiciary, Office of the Attorney-General, civil society, researchers, amongst others to share knowledge and experiences on the various aspects of legal education and training.

The keynote speech was delivered by The Hon. Mr. Justice David K. Maraga, Chief Justice & President of the Supreme Court (Chief Guest), who emphasized the role that legal education plays in the broader goal of access to justice. The other guests included Prof. Githu Muigai, SC, immediate former Attorney General of the Republic of Kenya, Ms. Christine Agimba, Deputy Solicitor General, Prof. Mwenda Ntarangwi, Chief Executive Officer of the Commission for University Education, and Ms. Mary Mugure, Director, Quality Assurance, Council of Legal Education.



*The Hon. Mr. Justice David K. Maraga, Chief Justice & President of the Supreme Court (Chief Guest) with other guests at the Conference*

They all gave very powerful speeches that largely guided the discussions, supported by scholars who presented papers on chosen thematic areas.

The School intends to publish the conference proceedings in due course for the purpose of informing reform of policy and where necessary, legislation.



It emerged during the Conference that there was opportunity for the School and stakeholders to address issues such as the role of the School, performance of students in examinations, the ideal model of legal education and training, the place of legal education and training in the Kenya Vision 2030, including the contribution of legal education and training to the Social Pillar of the Vision 2030 through promoting access to justice.

The Chief Guest emphasized the fact that the School was in a pole position to support access to justice initiatives, as buttressed by the enactment of the 2016 Legal Aid Act. He lauded the School, for offering legal aid through its legal clinics programme

When the curtain came down on the first ever conference by the School, it was clear that the Conference had engendered an aura of hope that indeed the School was destined to greater achievements through partnership with stakeholders.

I thank the Director, Dr Henry K. Mutai, for his able stewardship and support of the whole process. I also thank the Conference Committee and everybody else who participated in the preparation for the conference whether by handling editorials, logistics, marketing, writing articles, sponsoring participants, serving visitors or ushering in the guests.

I look forward to having the conference as part of the Schools Annual Calendar of Events.

*Isaac Kuloba is the Assistant Director CPD, Projects & Research and the Chair of the 2019 Conference*



# Perseverance and Patience: The Standard Chartered Marathon Experience

By Anastasia Otieno

It is said that all work and no play makes Jack a dull boy. The Kenya School of Law(KSL) appears to be a very serious place and most people would not believe that there is any play.

KSL has an active sports activity component in which both members of staff and students participate. The classes both at ATP and PTP, and members of staff have teams which participate in sports such as football, athletics, swimming and the marathon. The School has a sports facility which has a sports field, badminton field, a swimming pool and a sauna. The School encourages participation in sports activities and hosts soccer teams during the football season.

The School has been sponsoring members of staff to take part in the Nairobi Standard Chartered marathon as part of corporate social responsibility. I have been participating in it every year for the last seven years. The 2019 marathon was not an exception. After the 2018 marathon I felt inadequately prepared. I began to prepare early for the 2019 run. This I did by deliberately losing weight and running at least nine kilometers twice a week. Consistency was an issue but I tried. By the time the 2019 marathon registration began I felt confident that I would complete the twenty-one kilometers in one hour, 59 minutes and 40 seconds. After all Kipchoge had just run the marathon in 1 hour 59 minutes and 40 seconds.

When I looked at the list of colleagues registered to run the marathon, I was amused that some had registered for as little as five kilometres while others not at all. This laughter and their apparent wisdom would soon come back to haunt me.

On the day of the marathon I woke up early ready for the challenge. I arrived right on time and readied myself for the start. The race started at 8:20 a.m. I was confident as I was well prepared. Just before the race begun my colleague disappeared from my sight. At this time, I realized that even though we were in this as a team we sometimes have to run our own race.

The race was crowded at the beginning, with everyone trying to outshine the other. This went on for at least the first kilometer.



Part of KSL staff who participated in the Standard Chartered Marathon

By the time we reached the third kilometer mark, only a few of us were still running. I have always been convinced that this marathon was set on a “cheat” kilometer measure. The first three kilometers felt like five. Some people had by then dropped off to a walk while others had gone ahead of me. By the time I reached Museum Hill, as happens each year, my friends and colleagues were coming back from the other side and shouting my name with a lot of glee. Where do they get the energy from? I could barely look up or let alone sideways by now. It took every will power I had to stay on course and not give up.

By the twelve kilometer mark I was walking. All that mattered by this time was to finish. It did not matter whether I was last or not. At the seventeenth kilometer mark I begun wondering if the exercises and practices that I had so meticulously taken were of any use. I thought of the wisdom of my colleagues who had registered for the five and ten kilometers. I really envied them. Why, oh why, did I have to torture myself every year? As if on cue this time, the other members of staff who had registered for ten kilometers started calling, to say that they had completed the race. I told them that the next time they see me registering for the twenty-one kilometer marathon they should slap my hand. At the eighteenth kilometer mark I begun to meet and pass the walking wounded.

These are those people whose shoes had developed problems, or who were hurting at their soles and other parts of the body. I could read the agony on their faces. Some of them kept on while other gave up.

At nineteen kilometres, I was sure that I would finish the race. I knew I was making it. At twenty-one kilometres I was home and dry. I received yet another medal to don my sitting room wall. At the finish line my self talk had changed. Maybe just maybe, I will do it again next year.

Running a marathon like most thing in life is not easy. It is a very a lonely sport by the end of the day. It teaches values which are similar to those that are required when working with a team. These are preparation, execution, endurance and patience. Endurance in the face of pain. Patience because the number of hours of just putting one leg in front of the other whether you are running or walking. It needs a pact with yourself that no matter what, you will run the course. Commitment and integrity in that I kept the course even where there was nobody watching. Sometimes the preparation does not look like much but the impact is only felt later. In my case I realized that I was much stronger during this marathon than my previous marathon and my recovery was equally easy as I did not feel as much pain as the previous times.

*Anastasia Otieno is an Advocate of the High Court of Kenya, Principal Lecturer and the Co-ordinator of the Paralegal Training Program*



## ***An experience of a lifetime: Perspective from the Student President - 2019***

*By Timothy Thondu*

Most times, we choose where we want to be in life and work tirelessly to achieve what we have chosen. But as it is with life, choosing does not necessarily mean we get our choice. Most times, we end up being in places or with people we never chose and there, we have a choice of dwelling on what we had all along wanted, sobbing about it and making very little impact where we are or taking up the lemons life has thrown at us, blending them up and making lemonade. Its all a choice.

At the Kenya School of Law, choice is very limited. The choice of which class you will learn from, who you will sit with and most importantly which firm you will belong to, is not yours to make. You will find yourself in a class or firm you never had the privilege to choose and there you will have to adjust. With no other alternative, you will be forced to make merry where life has placed you and for you to succeed, teamwork and partnership will be your most important pillar.

Unlike the new University model of leadership where coalitions are voted into leadership, at KSL leadership stems from class level where one is elected and then escalates to the School level. The people you serve with at the council are not a cohort of friends you chose to run for leadership with, but an equally merited selection of leaders from the different classes. Teamwork and partnership is the only thing that will gel you together to deliver.

I have been privileged to serve alongside; Sonya Sigilai, Calvin Oira, Sylvia Akiso, Chrispin Bosire, Shadrack Omondi, Elizabeth Wangui, Pauline Kasiku, Pius Ntoogo, Diana Ndashiki, Kipkirui Kap Telwa and Mercy Macharia.

Together, we have achieved a lot. Our work included liaising with the ATP department to ensure classes ran seamlessly.

We put together teams and cheered our classes during interclass games. We constantly engaged the administration on matters concerning students and their welfare, and took part in drafting the Social Welfare Policy. We helped raise school fees for our classmates when hope was almost a mirage, mourned with those who lost their loved ones and even when we lost one of our own. We have had to make tough decisions in the course of our tenure, all in the pursuit of a better learning environment but in all that, amidst the various adversities that came with all those achievements, two things stood out, teamwork and partnership.

Time is very limited at the school. Nine months seem so short yet so long and without teamwork, those months seem even shorter for those who are never prepared. What is achievable in those nine months is unimaginable yet what can be lost within the same period is a paradox.

I write this as I prepare for my bar exam, and like I told my class on the 4th February, 2019 when we began, hardwork may have brought us to KSL but only teamwork would preserve and sustain our stay.

I conclude with this quote from Michael Jordan, after a very successful career in basketball and business;

***'I have learnt, in all my years of my career that Individual talent and hard work wins games, but teamwork and intelligence wins championships'***

*The writer is a Lawyer and the Current Students President*



## ***The role of KSLCF to Students in KSL***

*By Paul Macharia*

The Kenya School of Law Christian fellowship (KSLCF) is a community of students within the School who subscribe to the Christian faith. KSL has facilitated the enjoyment of freedom of conscience, religion, belief and opinion in line with Article 32 (2) of the Constitution of Kenya 2010. The School has provided a prayer room to enable members of the fellowship to observe their beliefs.

The KSLCF serves various purposes;

First, members are taught the value and place of selflessness, endurance, sacrifice among others. The fellowship provides an avenue where students can learn disciplines in the word of God to help them successfully endure various hurdles of life. Members are encouraged to do their best during orals and project work exams and also in the bar exams.

Secondly, the members receive counselling and mentorship from senior Christian advocates from the Kenya Christian Lawyers Fellowship (KCLF) who visit and provide inspiration and mentorship.

Furthermore, through various conferences and trainings, members of the fellowship are exposed to experiences that provide guidance on moral issues, help them prepare for family life as well as professional life. An example is the Advocates Africa Conference held at Sarova Whitesands in August 2019. This provided an opportunity for members of the fellowship to link with seasoned Christian lawyers.

Thirdly, social welfare wing of the fellowship has provided assistance to students in need of school fees, food and other essentials.

With the help of the Fellowship of Christian Unions (FOCUS) and our patron we are able to monitor spiritual growth of the members of KSLCF.

The fellowship also partners with the School in visiting Children's Home and with the student leadership where a need arise that require mobilization of all students.

Furthermore, KSLCF provides an opportunity for one to develop as a leader. Leaders are trained by both the Kenya Christian Lawyers Fellowship (KCLF) and by the Fellowship of Christian Unions (FOCUS).

Lastly, the fellowship gives back to the community using various platforms. Through mini-missions and annual missions, we are able to spread the gospel to the unreached, provide legal aid services, visit the less fortunate in the mission ground among others. This year, the fellowship will travel to Kitui County for its annual mission in December, 2019.

The practice of law demands that an individual gives their best in the various roles they serve.

Without being diligent, hardworking, disciplined, and selfless no justice shall be done.

As believers, our charged is in Ephesians 2:10 that states,

*"For we are God's workmanship, created in Christ Jesus to do good works which God prepared in advance for us to do." (NIV).*

*Paul Macharia Muchiri, is a lawyer and current student in the Advocates Training Programme. He is the current Chairperson of the KSLCF.*



## *Never give up*

*By Brian Wabala*

Life is a challenging mission. It never presents straight paths to anyone whether rich or poor. More often than not, life demands an effort that seemingly exceed our abilities in our respective contexts.

Without caring about our human weaknesses and how we feel, life places 'what seems like' undefeatable obstacles on our path to success. I deliberately place the foregoing words in quotes because that is how the obstacles appear to be: a mirage. That is not to suggest that challenges are not real. They are real and attempt to divert us from setting our eyes on the prize. Many times we get overwhelmed by the challenges and forget that the secret to success is never giving up. Vince Lombardi was right when he observed that winners never quit and quitters never win.

According to the Harvard Business School publication, "Working Knowledge: Business Research for Business Leaders" (Robbins, 2004) success has great connection with belief because belief brings about commitment and persistence. Therefore, with this knowledge, one cannot afford to give up on what they truly believe in.

At some point, some of us made a decision to pursue the legal profession. Over that period many experienced different challenges, some dropped out on the way while others have made it to the Kenya School of Law. For one dream shattering reason or another, some took a longer period to reach KSL. It does not matter, your presence in the School is evidence that you are here due to what you truly want and believe in.

Prospective students need to learn from their predecessors including their mistakes to avoid tumbling on the same. The challenges in KSL are real but can be defeated with the right mind set. Cutting down on your social life, enduring the pain of meeting tuition and exam fee obligations are some of the decisions you may have to make. In some instances colleagues have come together to assist one of their own facing financial challenges and for the first time in 2019, the Higher Education Loans Board has saved the dying hopes of many by extending loans for payment of the bar examination.

In addition to these hurdles, passing the bar examination still remain, more so for those who did not perform well in the project and oral examinations. Studying is undertaken using all manner of styles, and reading blocks become frequent. The pressure from family and friends may be too much to bear. All these can lead to despair. Do not give up.

One can only do their best and avoid the regrets later on. If you prepare well, in the unlikely event that things do not turn out as expected, you will not beat yourself up for you did all that you could.

No matter the outcome, life has to go on. If you pass, proceed on to the next stage with vigor mindful that your career has just unfolded. If you do not make it be reminded too that life rewards those who keep on pushing the tough tides that it presents. The more persistent you are, the more likely you are to achieve what you set out to do. So you have no justifiable reason to give up!

*The writer is a lawyer and a current student in the ATP Programme*



### ***The Synergy of students in the firms***

*By Susan Kihato*

The Kenya School of Law (KSL) is an institution that many law graduates are happy to be admitted to, as it marks an important step towards admission to the Bar. However, this excitement comes with an equal measure of apprehension of what lies within its walls and the whispers of “brace yourself, it’s a hard school” makes it all the more worth the admission. The vast lecture theatres hold the mystery that produces top lawyers in this country and beyond.

Students at the School obtain practical experience of legal practice beyond the University theoretical knowledge. At the School, the students are clustered into firms, comprising of ten to fifteen students. It is expected of students to deliver their practical assignments using this vehicle that mimics an actual law firm setup. The designers of this piece of engineering do not consult the students before placing random strangers into the firms. Indeed, they have an eye and skill to put together the most diverse students into one firm. Within a month of reporting, the students are expected to search and find their respective firm members. As they say, time waits for no man or woman, it is literally a race against the clock to find your fellow firm members before the assignments start coming in fast and furious!

I wish I was a fly on the wall to witness the initial meetings of firm members. In the recent times, the School has seen the diversity of students both in age, professions and cultural orientation.

This diversity translates into firms being composed of young and older students. The latter in some cases already have fulfilling careers under their belts.

We have medical doctors, engineers, bankers, teachers, entrepreneurs, finance and tax experts, surveyors and many more. As far as culture goes, KSL is rich, very rich! It is possible that every ethnic community in Kenya is represented and many more representing the East African Community and beyond. This also goes for the diversity in religious beliefs. The meet and greet and discover your firm members is a nerve wrecking exercise. The big question on everyone’s mind is “shall we gel?”. The bar of expectation on the firm members is very high, not only are they expected to complete their specific firm assignment, but their output should be of high quality.

I was assigned to a firm comprising of students with previous working experience and others straight from university. It was quite fascinating that the team was all ready and raring to go. During our first meeting, we laid down the modus operandi, that is everyone shall ensure full participation and completing the assignments shared out in time. Within this first meeting we exchanged contact details. As the term progressed, we soon came to discover the strength of each group member. This information is what guided our selection of who shall lead the project work in which subject. The goal was one, to attain the highest score in each subject. Some firms had difficulties gelling but had to stick it out because the administration did not change firm members mid-year.

In the end I believe it was all well as we learned to live with each other as firm members.

*The writer is a lawyer and a current student in the ATP Programme*



### ***The Value of Partnership in Legal Practice***

*By Chege Gakuhi*

Andrew Carnegie was a businessman of note because there is so much to draw from his wisdom. A century ago before his demise Carnegie was a Scottish American Industrialist who led the American Steel Industry to great heights.

He defined teamwork and partnership as “the ability to work together towards a common vision. The ability to direct individual accomplishments towards organizational objectives; It is this that allows common people to attain uncommon results.”

In the course of my legal practice, I have found this theory to be rather interesting. I have examined and discussed the various models of business existence with several senior advocates and wanted to understand the best model suitable for budding advocates.

Whereas some advocates prefer to practice as sole proprietors, a number of advocates are choosing partnerships as a preferred model of setting up their businesses.

A partnership can either exist as a general partnership or as Limited Liability Partnership. The choice of either model depends on what the business founder(s) has in mind. In my experience as a partner I have realized that it enhances teamwork and has the following benefits;

- Improves the firm’s outlook
- Enhancement of ideas between the two or more people who come up with the partnership;
- Empowerment through creation of network between the partners and
- Leads to improved finance mobilization and capacity.

However, it is important to tread cautiously along this path as it could be filled with terrible unforeseen potholes.

In my opinion, partnerships can help the business soar higher. Where an organization comes together for a common goal, it starts moving with ease like a well-oiled engine. The firm is able to withstand pressure of any form as well as expand its client base.

*The writer is an Advocate of the High Court of Kenya and a Partner at Gakuhi Chege & Associates Advocates.*



*A student making submissions during an inter-class moot court competition*



*Legal Aid clinic at Naivasha Maximum Security Prison*



*The 3rd Graduation Ceremony*



*Director's briefing for newly admitted ATP students*

# Departmental Briefs



## Private Law Firms take interest in CPD Courses

By Samuel Akhwale

The Continuing Professional Development (CPD) Department at the Kenya School of Law (KSL) was operationalized in the year 2009, following the report of the Muigai Ministerial Committee on the Development of a Policy and Legal Framework for Legal Education and Training in Kenya in 2005.

The CPD Department was mandated to implement Section 6 of the Council of Legal Education Act which included running courses for officers of the Government with a view to promoting a better understanding of the law and continuing legal education courses. Currently, the mandate of the CPD department is derived from Section 4 of the KSL Act, that is, to ensure continuing professional development for all cadres of the legal profession and to provide other specialized training in the legal sector.

Among the courses that have gained traction are Legal Audit and Compliance and Public Private Partnerships. The Legal Audit and Compliance which was first conducted in April 2010 is focused on identifying sources of compliance requirements, and giving the steps involved in carrying out a Legal Audit. The topics covered in the Introduction to Legal Audit include: What is Legal Audit; Making the Legal Audit proposal; Legal, regulatory & policy framework for Corporate Governance of Public Institutions, the Legal Audit Process and Data Analysis & Report Writing.

Whereas most of the participants in the Legal Audit and Compliance course have been legal officers, auditors and procurement professionals from state corporations, lawyers in private practice have started taking interest in this course.



*Legal Audit and Compliance Training at Gumbo & Associates in December, 2018*

One of the firms that took interest in this course was Robson Harris & Company Advocates, who in August 2018 engaged the CPD department for an in-house tailor-made course on Introduction to Legal Audit and Compliance. Fifteen lawyers ranging from partners in the firm to legal interns participated in the course.

Four months later, Gumbo & Associates engaged KSL to conduct the same course. Twenty lawyers were trained including those from firms that from time to time collaborate with Gumbo & Associates and lawyers from corporations that the firm provides legal services to.

In February 2019, Igeria & Ngugi Advocates engaged KSL for an introductory course on Public Private Partnerships (PPP) Seventeen lawyers were trained including those from Igeria & Ngugi advocates and from law firms that they collaborate with. The topics covered were: Effective conceptualization, development and planning of a PPP; Key Legal considerations in designing PPP contracts; PPP Contract Development, Administration and Monitoring; the PPP project cycle; Legal compliance issues in PPPs and Case Studies.

A characteristic of these courses is that they are held at the client firm's premises, which is convenient for in-house courses of that type as it requires fewer logistical arrangements leaving the training provider to concentrate on content delivery.

Another characteristic of these trainings is that they incorporate practical exercises that equip the participants with skills on how to carry out practical tasks in the subject areas. The trainings also provide a variety of presenters including experienced professionals from the public sector who give insights on compliance requirements when dealing with public corporations.

The KSL through the CPD department appreciates the confidence that lawyers in private practice have shown in the courses offered, by signing up to take them in an atmosphere that is conducive both to the trainers and the participants. We encourage more private practitioners to engage the CPD department for tailor-made courses specific to their needs.

*The writer is an Advocate of the High Court of Kenya, a lecturer at the Kenya School of Law who has participated in a number of Legal Audit assignments*



# Hospitality : Service at its best

By Linnett Odawo

Hospitality is the quality or disposition of receiving and treating guests or strangers in a warm, friendly and generous way. This friendly and generous reception involves a raft of efforts to achieve a pleasant customer experience.

The Hospitality industry has four main characteristics; these are intangibility, inseparability, perish-ability and variability.

Intangibility; unlike the purchase of physical goods, services consumed under hospitality are not tangible. They are experienced. Inseparability refers to the fact that the service are produced and consumed together. This experience is inseparable. Perish-ability refers to the fact that the service offered have to be provided in a timely manner. A missed opportunity in providing a service is lost not to be recovered. Variability refers to the manner in which the services are being offered. These vary from one establishment to another.

Due to the above characteristics there are key variables that play a part in the provision of quality service delivery. These may include shift work, training, skill-set assignment among others. It is important to take note of these variables and continuously act appropriately so as to maintain acceptable standards of service delivery.

The Kenya School of Law is advantaged to have hospitality facilities. The key objective of the Conference and Retreat Centre is to provide catering and accommodation facilities for the School ecosystem. In addition ,it aids in generating revenue which supplements the smooth running and provision of academic services at the School. Policies and strategies have been put in place to give clear guidance of its operations and to ensure that quality is maintained.

Other services offered in the hospitality section are; conference facilities, facilities for outdoor functions like weddings, sporting activities and laundry services.



Some of the guests at the John.H Jackson moot court competition

These are offered to staff, students and external customers at competitive rates. Moreover the School is located in a serene environment with well-manicured lawns and adequate space giving it a competitive advantage which should be harnessed and maintained.

Due to its exceptional hospitality standards, the Kenya School of Law Hospitality section was chosen to host the African Regional Round of 2019 “John H. Jackson Moot Court Competition “which took place in April 2019. In the same month the School held its Inaugural annual conference, bringing together more than 200 delegates and once again the School’s Conference and Retreat Centre met this need.



KSL Cafeteria

The School’s Conference and Retreat centre has also hosted guests from the International Development Law organisation, Kenya Revenue Authority, National Social Security Fund, Ahadi Kenya, Kenyatta National Hospital, Kenya Film Commission, Law Society of Kenya among others both as in-house guests and day conference guests.

To gain and maintain that competitive edge the section carries out frequent benchmarking activities and review international hospitality standards as well as emerging trends. This enables the School to continuously upgrade its facilities to be comparable with the other similar institutions hence attracting more customers.

The School invests heavily in staff training. The staff from the Conference and Retreat Centre have been taken through various refresher courses at Utalii College. This is in line with a key objective of the School of continuous staff improvement and also to ensure quality service delivery is provided. It has also been noted that this has really improved morale amongst staff members.

We are utilizing various marketing communication channels to attract customers. Some of these channels include to brochures, the Schools website, among others. We also encourage feedback and recommendation from our clients to help in marketing the Conference and Retreat Center.

All these have been embedded within the Integrated Marketing Communication Strategy which involves direct marketing, sales promotions, online marketing and marketing relations. This will in turn create brand awareness to a wider range of customers which will then enhance sales performance.

Teamwork and partnership amongst departments and sections together with key stakeholders will ensure the Conference and Retreat Centre reaches greater heights and becomes the preferred brand within the industry.

*The writer is the Hospitality Officer at the Kenya School of Law*



# Supply Chain Management in The Kenya School of Law

By Mariam A. Mahmud

The procurement function at the Kenya School of Law is handled by the Supply Chain department. It is our responsibility to procure goods, works and services competitively from the right source in compliance to Public Procurement and Asset Disposal Act 2015 and to carry out market surveys and research for goods to ensure that the School gets value for its money.

In this article, we will look at two aspects of Procurement:

- (i) AGPO facility
- (ii) Cost cutting.

## AGPO PROGRAM

One aspect that the Supply Chain function has implemented is the Public Procurement Reservations and Preferences for Youth, Women and persons with Disabilities popularly known as the AGPO program.

The aim of the AGPO Program is to facilitate the Youth, women and Persons with Disability-owned enterprises to be able to participate in government procurement. This in line with the implementation of the Presidential Directive that 30% of government procurement opportunities be set aside specifically for these enterprises

The reserved group, youth, women and persons with disability are registered at the National Treasury which serves as evidence to include the group in our suppliers' data base and invite them for quotations to complete among themselves when need arise.

For the purpose of benefiting from the preference and reservations schemes, an enterprise owned by youth, women or persons with disabilities shall be a legal entity by registering with the National Treasury

For the purpose of benefiting from preference and reservations schemes, an enterprise owned by youth, women or persons with disabilities needs to be a legal entity that is registered with the relevant government body and that has at least seventy percent membership of youth, women or persons with disabilities and the leadership has to be one hundred percent youth, women and persons with disability respectively.

The required documents are availed from the PPRA website.

The disadvantaged groups are only required to sign a tender security declaration form and not submit tender or bid security. They are included in the suppliers' data base upon submitting the required documents. When a need arises, they are expected to compete with other suppliers in the reserved category for request for quotations sent to them. For open tenders they are expected to meet the conditions set in the tender documents like the rest of the suppliers.

To increase the uptake of the disadvantaged groups and to address unfair competition, clear separation of tenders or quotations is undertaken and persons with disabilities awarded not less than 2% of the 30% set aside.

## COST CUTTING MEASURES

The Supply Chain department ensures that goods, works and services are procured at competitive prices and advise user departments where necessary to realize cost cutting in procurement. Examples of how this has been done at KSL include:

- Consultation with the Hospitality department which has led to procuring water dispensers and disposable cups to be used in the syndicate rooms and offices and so phase out the use of single use water bottles.



- Through partnership with suppliers, procuring goods using framework agreements and so manage to keep the prices for a whole year irrespective of price fluctuations
- Through negotiations, making savings for to the School, for example by being able to get very good facilities in the hotel industry at subsidized rates.
- Procuring consumables within prevailing market prices.

In conclusion, the Supply Chain Management Department is grateful to the Board, the management of the School and all stakeholders who have contributed to our operations and we look forward to increased cooperation and teamwork in the coming years.

*Ms. Mariam A. Mahmud is the Principal Officer Supply Chain Management at the Kenya School of Law and a Member of the Kenya Institute of Supplies Management.*



# Governance: Key to getting value from Information Technology

By Stephen Okello

Information Technology (IT) has become an important part of most businesses today and is critical for the continued existence of most organizations irrespective of their nature. However, most organizations do not realize this despite making huge investments in IT. If organizations are to reap maximum benefit from their investments in IT, it is important that they understand and invest in managing the constraints and risks of IT.

IT needs to be graduated from the server room to the boardroom. The strategic importance of IT needs to be a discussion initiated from the senior management and the boards of directors. Organizations need to have a framework for IT governance as part of the overall corporate governance.

IT governance, also defined as enterprise governance of IT or corporate governance of IT, is an area of corporate governance that is concerned with the oversight of IT assets,

their contribution to business value and the mitigation of IT-related risks. IT governance is important and relevant for all organizations irrespective of their type or size.

The primary focus of IT governance is to understand the issues and the strategic importance of IT so that the organization can sustain its operations and implement the strategies required to extend its activities into the future. IT governance will ensure that the organization's expectation of IT is met and that the risks associated with IT are mitigated.

In many organizations, IT expectations do not always match the reality and as a result organizations end up incurring losses, losing competitive advantage, getting little or no return from their IT investment or even investing in a wrong or inadequate technology.

With proper IT governance, organizations can avoid such incidences by discovering and addressing them before they occur. So, the following questions must be answered:

- Are we taking advantage of IT to improve on our operations?
- How important is IT to our growth and continued existence?
- Is IT a regular item in our agenda?
- What are our IT risks and what steps have we taken to mitigate the risks?

Just like other facets of governance, IT governance is an important part of corporate governance and is the responsibility of the board of directors. It involves providing leadership and ensuring processes and structures are in place for IT to support the business strategy. Like any other strategic agenda, IT should be part of the items discussed exhaustively by the board. The responsibility for aligning IT to the organizational strategy falls on the management and the board of directors. There should be a system in place to deliver on these responsibilities and measures put in place to address IT related risks, monitor performance and verify the value being derived from the use of IT across the organization.

*The writer is an ICT Assistant at the Kenya School of Law and a Certified Information Systems Auditor*



# How We Conquered

By Washington Bwire

The Transport department is an integral part of any organization as it plays a role in helping an organization fulfill its mission, vision and mandate by creating efficiency across different departments.

In Kenya, the transport sector contributes greatly to the GDP of the country. The impact of transport goes beyond its share in the economy as it serves as an intermediary service to all sectors and is therefore critical to economic growth. It is important to note that this sector serves society with adequate, effective and efficient services.

There must be sanity in the transport department in order to realise its benefits. Mismanagement of the transport function would result in disharmony between employees, the

slowdown of organizational operations and even loss of business. The allocation of duties associated with additional benefits is a major cause of conflict in most departments. There must be a mechanism to identify, correct and prevent the recurrence of events that may run counter to the objectives of the department. Strong analytical and problem solving skills are paramount to achieving efficiency.

In addition to the departmental and organizational values, it is important for the departments to uphold the national values of good governance, integrity, transparency and accountability in the overall discharge of its mandate.

In the Transport department, proper strategies should be adopted to address and harmonize emerging issues. These may include the implementation of a

duty roster that specifically addresses additional benefits. Furthermore, communication should be enhanced and the use of social media platforms like WhatsApp embraced to enhance transparency, unity and teamwork.

There is always room for improvement, and sharing of experiences with other organizations is necessary to establish baselines, define best practices, identify improvement opportunities and create a competitive environment within the organization as it sparks new ideas and practices.

Lastly, teamwork and partnership should be cultivated among officers through their being honest, transparent and accountable at all times.

*The writer is a Driver at the Kenya School of Law.*



## HIV & AIDS Tribunal: A Feather in Kenya's Cap

By Helen Namisi

The HIV & AIDS Tribunal of Kenya, established under Section 25 of the HIV & AIDS Prevention & Control Act, 2006, is the only HIV specific statutory body in the world that is mandated to adjudicate case relating to violations of HIV related human rights. Although the Act was enacted in 2006, it was only until 2012 that the Tribunal was operationalized and its first members sworn into office. Over the years, it has made great strides in the protection and advancement of human rights of persons affected with HIV. Its unique set-up, different from the ordinary courts, allows it to address the various barriers to access to justice by persons facing HIV-related stigma and other violations of their rights.

The Tribunal is a quasi-judicial body comprising of a Chairperson, two advocates, two medical Practitioners and two other persons having such specialized skills or knowledge necessary for the discharge of the functions of the Tribunal. The Tribunal has jurisdiction to hear and determine complaints arising out of any breach of the provisions of the Act, to hear and determine any matter of appeal as may be made as per the provisions of the Act and to perform other functions conferred upon it by the Act and any other written law that is in force. In hearing and determining cases before it, the Tribunal strives to protect the dignity of the parties before it by guaranteeing the right to privacy as enshrined in Section 3(b)(i) of the Act. Proceedings are heard in camera and the names of parties remain undisclosed.

The Tribunal is fairly flexible in its procedure and is not bound by rules of evidence. Proceedings before it can be commenced by way of a simple letter of complaint. Taking cognizance of the fact that a majority of the claimants are

indigent and vulnerable people, the Tribunal has endeavored to create partnerships with organizations that provide pro bono legal representation to the litigants.

Over the last seven years, the Tribunal has adjudicated matters relating to compulsory HIV testing, discrimination in various forms and subtleties against persons with or persons perceived or suspected of having HIV or AIDS, disclosure of one's status without consent, pre-test and post-test counseling and breach of other provisions of the Act. Through its decisions, the Tribunal endeavors to positively address and eradicate conditions that aggravate the spread of HIV infection, one of which is HIV-related stigma.

HIV/AIDS-related stigma can be described as a 'process of devaluation' of people either with or associated with HIV/AIDS. This stigma often stems from the underlying stigmatization of sex and intravenous drug use, two of the primary roots of HIV infection. Discrimination follows stigma and is the unfair and unjust treatment of an individual based on his or her real or perceived HIV status. Discrimination occurs when a distinction is made against a person that results in being treated unfairly and unjustly on the basis of belonging, or being perceived to belong, to a particular group.

In the 1980's, at the onset of the epidemic, the fear that HIV could be transmitted through ordinary, daily interactions with people living with HIV that involved no exchange of body fluids, was common. This fear led directly to stigma in form of isolation of persons living with HIV in all aspects of daily life.

Despite the tremendous strides in research and modern medicine, and better understanding of modes of HIV transmission, the stigma continues to

persist. Society continues to express fear of modes of casual transmission which carry extremely low, if any, risk of transmission. These fears then contribute to the nexus between HIV-related stigma, moral judgment, shame and blame.

Research has shown a wide range of consequences of HIV-related stigma. In October 2017, UNAIDS released a report showing how stigma and discrimination is creating barriers to accessing HIV prevention, testing and treatment services and putting lives at risk. The report, 'Confronting Discrimination; Overcoming HIV-Related Stigma and Discrimination in Health Care Settings and Beyond' which was launched at the Human Rights Council Social Forum, shows that people living with HIV who experience high levels of HIV-related stigma are more than twice as likely to daily enrollment into care than people who do not perceive HIV-related stigma. Addressing the issue of stigma and discrimination, therefore, would contribute greatly to the fight against the spread of HIV and its control. More people would be willing to be tested regularly in order to know their status. There would be greater acceptance of persons living with HIV, leading to higher enrollment on treatment plans, and subsequent prevention of new infections.

Indeed, the establishment of this unique Tribunal has gone a long way in addressing stigma and discrimination against persons based on their real or perceived status. Although the Tribunal may face numerous challenges, including but not limited to the lack of awareness by the public of its existence, it is still an achievement that Kenya ought to celebrate and showcase as a major accomplishment in its response to the HIV epidemic.

*The writer is an Advocate of the High Court of Kenya, who has taught at the Kenya School of Law and is currently the Chairperson of the HIV Tribunal*



# A Critique of the LSK Sexual Harassment and Anti-Bullying Policy 2019

By Jemimah Keli

“Are you a potential harasser?” This is a question I pose to my students in the Kenya School of Law Advocates Training Programme.

Sexual harassment and bullying in the legal sector thrives globally. Recognizing the presence of sexual harassment, bullying and sex based discrimination in the legal sector, the Law Society of Kenya (LSK) Council recently approved the LSK Sexual Harassment and Anti-Bullying Policy 2019.

The Employment Act(2007) requires any employer with over 20 employees to have a sexual harassment policy in place but it is doubtful whether all law firms have complied.

Studies have established that the legal profession provides a fertile ground for bullying and sexual harassment. Covert and hidden bullying are more commonplace in a law firm. Many individuals who experience bullying in a law firm blame themselves. They may feel that they deserve to be dominated, criticized, or figuratively pushed around.

Employers in the legal sector and their employees despite being predominantly lawyers remain woefully uninformed on what constitutes sexual harassment. Such misinformation has ancillary “backlash” effect of causing resentment among male advocates that they “can’t say anything nice to a woman” or “can’t have fun anymore”.

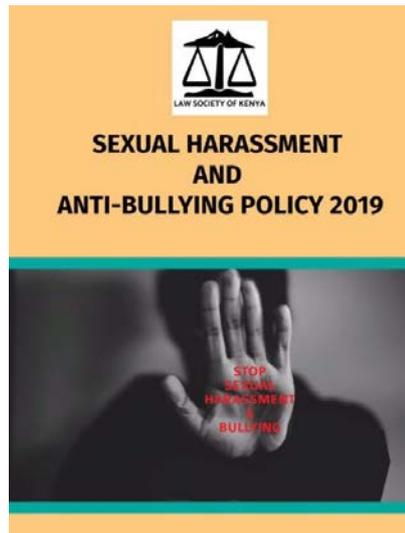
The policy must have implementation mechanism which must address among others the statutory requirement for a complaint mechanism. A mishandled harassment complaint not only has adverse legal implications for the employer but further isolates and demoralizes the victim who has spoken out. While we may dwell on general sexual harassment adverse actions taken against women due to their family obligations may constitute sex based discrimination.

The LSK sexual harassment and bullying policy is timely.

The number of advocates has swelled in recent years. The policy provides a complaint mechanism in the law firms and for LSK.

Whereas it is stated that privacy of victims will be maintained, the procedures provided are open to further victimize the complainant due to the governance structure of law firms especially where leadership falls under one or two partners. The Policy ought to have created a special committee within LSK to deal with complaints filed with LSK.

The Policy ought to address claims from law firms with less than 20 employees. The Employment Act does not oblige them to have such a policy. Complaints from such law firms ought to be dealt with under the LSK internal complaints mechanism.



The Courts have held that employers are responsible for ensuring sexual harassment complaints are investigated when made failing which the penalty is heavy. The Employment and Labour Relations Court at Nairobi in *S R M v G S S (K) Limited & another* [2017] eKLR considered an employment claim based on sexual harassment. Justice Abuodha found that the employer had failed or ignored to investigate expeditiously and impartially the claimant’s complaint over sexual harassment by its human resources director.

On the quantum of damages payable, the court upheld the case of *G.M.V.V Bank of Africa* [2013] Eklr where it was held that

*“gender violence cannot be adequately redressed through ceiling of 12 months’ salary given for unfair termination under the Employment Act. The court must therefore be careful not to see sexual harassment as just another unfair termination. The conduct violates the human rights of the person affected.”* Further the court held that, *“Money cannot adequately compensate wounded feeling but it can reasonably provide a convenient mechanism to assist the person affected pick up the pieces and move on with his or her life.”*

## Conclusion

The LSK Council has done well to have a Policy on sexual harassment and anti-bullying in place. This is commendable considering the increased growth of the population of lawyers in recent years.

As a way forward the LSK Council should come up with an implementation matrix for the Policy and a comprehensive internal complaints and investigation mechanism. Reference of such claims to the Advocates Disciplinary Tribunal or to the Advocates Complaints Commission exposes the victim to further victimization. Only the alleged perpetrator should be referred to Advocates Disciplinary Tribunal after investigations are complete for disciplinary.

There should be a monitoring and evaluation mechanism on the implementation of the Policy.

Finally, whereas there are gaps identified in the Policy, the document provides an opportunity for addressing the glaring problem of sexual harassment and bullying in the legal sector. There is need to review the policy after at least two years of implementation to address the gaps.

*The writer is an adjunct Lecturer at the Kenya School of Law.*



# An Insight into Intellectual Property in Kenya

By N. Katee David

The human mind is designed to be creative and that is why every other day we have new inventions and the older ones are rendered redundant. We live in an era where the desire for efficiency and instant solutions to problems is the booming business and that's basically why we have mobile phone applications for every human need.

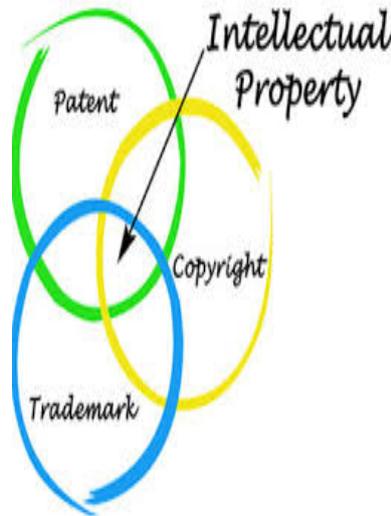
These technological advancements are created by the human mind due to the urge to do better and remain relevant. This is what is covered by Intellectual Property Law. Drawing from day to day encounters, I will discuss briefly about interactions with intellectual property.

We all love soda but do we know that the Coca Cola formula remains to be one of the best kept secrets in the world of beverages and soft drinks and will remain a mystery as it is protected as a trade secret? Other forms of trade secrets range from business models and marketing strategies. One does not need to register a trade secret to protect it.

The other branch of intellectual property is copyright which is brought out very well in the dynamic Kenyan music industry. However, we have seen the Kenya Film Classification Board banning some songs and some music videos from being aired on national TV and radio stations. Despite this happening, we cannot run from the fact that the performing artists, who create this music, also hold copyright to their compositions.

Therefore, Government needs to put more effort in ensuring that the musicians are paid their royalties as per Article 40 (5) of the Constitution of Kenya, 2010 which provides that the State shall support, promote and protect the Intellectual Property rights of the people of Kenya. Royalties are payments made to recording artists, songwriters, composers, publishers, authors, software developers and other copyright holders for the right to use their intellectual property.

Copyright lasts for the life of the author plus fifty years after their death.



Next, we have the patent as another form of intellectual property that gives its owner exclusive legal right to make, use or sell an invention for a period of twenty years. A patent is usually granted for new inventions or any new and useful improvements of an existing invention. One can patent a product such as a metal grinder, a chemical composition like a lubricant for metal grinders, an apparatus like a machine for making metal grinders or a process for instance the process of making a metal grinder. For a patent to be granted, the idea must be novel, useful and inventive. Periodic fees are required to maintain the enforceability of the patent.



Lastly, it would be important to briefly discuss trademarks. A trademark is a word or design or a combination of both, used to distinguish goods or services. When it is used for goods we call it a trademark and when it is used for services we call it a service mark. Examples include the bitten apple for iPhone, the big M for McDonald's, the white 'f' on a blue background for Facebook. A trademark can be protected for ten years, with ten-year renewal terms.

My experience with intellectual property has been inspired by the fact that apart from being a legal mind I am also a creative, an actor and a musician. In the University of Nairobi School of Law Professor Ben Sihanya lit the spark that propelled me into this area of law and from then, my interest has been cultivated by a lot of research and actual practice and the opportunity to work with some of the greatest musicians in Kenya.

At the Kenya School of Law (KSL), Intellectual Property law is addressed under the Commercial transactions unit and the School invites guest speakers to speak on this. This provides an opportunity for ATP students with interest in this emerging market.

Intellectual Property practitioners can represent musicians against corporates who infringed on their copyright. They can also represent aggregators against movie making companies for breach of license, and can have register trademarks and apply to become registered patent agents.

In conclusion, there are many opportunities in other branches of law and one should not be limited to the conventional practice areas as there is no limit to the development of jurisprudence for as long as there is conflict, then there is room for more research.

*The writer is an Advocate of the High Court of Kenya*

# Just for 'Lawghter'

A man in an interrogation room says "I'm not saying a word without my lawyer present."  
"You are the lawyer." said the policeman.  
"Exactly, so where's my present?" replied the lawyer

Q. How do you get a group of lawyers to smile for a picture?  
A. Just say "Fees!"

The lawyer tells the accused, "I have some good news and some bad news."  
"What's the bad news?" asks the accused.  
"The bad news is, your blood is all over the crime scene, and the DNA tests prove you did it."  
"What's the good news?"  
"Your cholesterol is 130."

*Lawyers are like rhinoceroses: thick skinned, short-sighted, and always ready to charge.*  
- David Mellor (b. 1949), British Conservative politician

A defendant isn't happy with how things are going in court, so he gives the judge a hard time.  
Judge: "Where do you work?" Defendant: "Here and there." Judge: "What do you do for a living?" Defendant: "This and that."  
Judge: "Take him away." Defendant: "Wait; when will I get out?"  
Judge: "Sooner or later."

*A lawyer opened the door of his BMW, when suddenly a car came along and hit the door, ripping it off completely. When the police arrived at the scene, the lawyer was complaining bitterly about the damage to his precious BMW. "Officer, look what they've done to my Beeemer!!!", he whined.*

*"You lawyers are so materialistic, you make me sick!!!" retorted the officer, "You're so worried about your stupid BMW, that you didn't even notice that your left arm was ripped off!!!"  
"Oh my gaaad....", replied the lawyer, finally noticing the bloody left shoulder where his arm once was, "Where's my Rolex????!!!!!"*

*Two lawyers went into a diner and ordered two drinks. Then they produced sandwiches from their briefcases and started to eat.*

*The owner became quite concerned and marched over and told them, "You can't eat your own sandwiches in here!"*

*The lawyers looked at each other, shrugged their shoulders and then exchanged sandwiches.*

*What do you call a priest that becomes a lawyer?- A father in law.*

*The lawyer's son wanted to follow in his father's footsteps, so he went to law school. He graduated with honors, and then went home to join his father's firm.*

*At the end of his first day at work he rushed into his father's office, and said, "Father, father, in one day I broke the accident case that you've been working on for ten years!"*

*His father responded: "You idiot, we could live on the funding of that case for another ten years!"*

THE KENYA SCHOOL OF LAW  
CONTINUING PROFESSIONAL DEVELOPMENT(CPD)

**CALENDAR OF COURSES/SEMINARS: JULY 2019-JUNE 2020**

NO.	COURSE TITLE	DURATION	DATE	FEE KSHS (VAT Incl.)	VENUE
1.	Legal Audit & Compliance	5 days	25-29 November, 2019	95,000/=	Mombasa
2.	Records Management: Law & Policy	3 days	27-29 November, 2019	35,300/=	Kenya School of Law
3.	Cross Border Legal Practice: Challenges & Opportunities	3 days	02-04 December, 2019	35,300/=	Kenya School of Law
4.	Legal Audit for Private Legal Practitioners: An Introduction	2 days	05-06 December, 2019	23,700/=	Kenya School of Law
5.	Alternative Dispute Resolution: Mediation of Land & Family Disputes	5 days	27-31 January, 2020	58,500/=	Kenya School of Law
6.	Fundamentals of Public Prosecutions	15 days	03-21 February, 2020	120,000/=	Kenya School of Law
7.	Understanding the Law and Practice in Real Estate Sector	3 days	19-21 February, 2020	35,300/=	Kenya School of Law
8.	Legislative Drafting	5 days	16-20 March, 2020	58,500/=	Kenya School of Law
9.	Banking & the Threat of Cybercrime: Legislative & Policy Options	5 days	23-27 March, 2020	90,000/=	Naivasha
10.	The Legal Clerk, Court Processes & Commercial Transactions: What to Know	5 days	06-10 April, 2020	58,500/=	Kenya School of Law
11.	Legal Audit & Compliance	5 days	20-24 April, 2020	95,000/=	Mombasa
12.	International Dispute Resolution: Opportunities in the Changing Global Environment	3 days	27-29 April, 2020	35,300/=	Kenya School of Law
13.	Immigration & Labour Legislation & Policies in the East African Community	3 days	06 - 08 May, 2020	35,300/=	Kenya School of Law
14.	County Planning & Financial Management	5 days	18-22 May, 2020	95,000/=	Mombasa
15.	Legal Audit of Public Listed Companies	3 days	27-29 May, 2020	35,300/=	Nairobi
16.	Regulatory Impact Assessment & Compliance Review	5 days	08-12 June, 2020	90,000/=	Naivasha
17.	Corporate Communication: Legal, Policy and Practice	5 days	15-19 June, 2020	90,000/=	Naivasha
18.	Patents & Copyright: Trends and Opportunities for Practitioners	3 days	24-26 June, 2020	35,300/=	Kenya School of Law
19.	Corporate Governance & the Law	5 days	22-26 June, 2020	95,000/=	Mombasa
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**Pre-requisites:** There are no prerequisites for attending a course. Prior legal training is an advantage but not a prerequisite.

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**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 Barclays Bank of Kenya, Barclays 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.

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For course enquiries, please contact Isaac Kuloba (Assistant Director, CPD, P & R), Ann 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](mailto:cpd@ksl.ac.ke) or visit our website: [www.ksl.ac.ke](http://www.ksl.ac.ke)



For **DR. HENRY K. MUTAI**  
**DIRECTOR/CHIEF EXECUTIVE OFFICER**

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Package	Rate Per Person (Kshs.)	Inclusive of
Full Day Conference - Non resident	2,500	<input type="checkbox"/> Plenary room <input type="checkbox"/> Stationery - A note pad and pen per participant <input type="checkbox"/> Two 1/2 lit. Bottles of mineral water per participant per day. <input type="checkbox"/> Meals: Two tea/coffee breaks, three course buffet lunch with a soft drink.
Full - Board Conference	6,500	
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Lunch/Dinner Buffet	1,000	

Hire of Grounds  
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