



LSK President Mr. Isaac Okero receives the Scales of Justice from the outgoing President Mr. Eric Mutua as LSK CEO Ms. Mercy Wambua looks on

Reforms: Time to make LSK a body of Professionals for Professionals

Greetings, friends and colleagues.

It is now just over four months since the present Council of the Law Society of Kenya assumed office. During this period the Law Society of Kenya has re-established itself as a force for the promotion of the rule of law and the administration of justice. The renewed sense of unity and camaraderie is something we must strive to nurture and sustain.

The legal fraternity has observed repressive and excessive action on the part of the police against members of the public engaged in lawful protests, conduct reminiscent of difficult times long before

the 2010 constitution. The use of live rounds against citizens during and after demonstrations in parts of the country resulted the tragic loss of lives and in injuries to many including women and young children. The Kisumu chapter of the West Kenya Law Society is pursuing court action against the GoK and the police service on behalf of the victims and survivors.

More recently the country was rocked by the devastating news of the abduction and tragic and senseless murder of one of our members, young Willie Kimani who paid the ultimate price in the defence of his client's rights. The

torture and killing of the Mavoko Three by officers of the National Police Service has highlighted the threat to national security that extra-judicial executions represent. The Purple Ribbon campaign seen nationally was a powerful statement of the depth of anguish felt by the entire membership; the restatement of the advocate's oath during our demonstrations, an affirmation by all of our primary role: we are the anchors of the rule of law and the guardians of the constitution. The sense of outrage reverberated well beyond our borders with letters of sympathy and support and notes of protest received from bar associations all

over Africa, Europe and America. Our brothers in the judiciary stood with us during this very difficult time as did colleagues across the spectrum of various professions. Truly commendable is the prompt legal action on a habeas corpus petition by counsel lead by veteran senior John M. Khaminwa, Prof. Sihanya, Bernard Murumbi, Christopher Gitari and the firm of Ndegwa & Ndegwa Advocates representing the LSK and the families of the Mavoko Three. Continued pressure in this process has greatly sharpened the focus of the investigations culminating in the criminal proceedings against the suspects. The LSK has appointed counsel Stephen Ongaro to lead a team holding watching brief for the families of the deceased in the criminal case. LSK members generously contributed to a fund for the education of the three young children left fatherless by the murders. At the request of the families details will not be made public before the education trust to manage and disburse the funds is established.

The LSK continues to demand acknowledgement by the GoK of the existence or magnitude of what is evidently a serious problem and accountability from its officers in charge of the security system. They must bear responsibility for what is a systemic failure of a critical department of government. Our members must be applauded for remaining true to their oath even with increasing reports of harassment while in the course of their professional duties. Emergency helplines will soon be established at the LSK Secretariat in order that there is a quicker response to any member in distress. Special praise must be accorded to the Independent Police Oversight Authority (IPOA) lead by member Macharia Njeru, Esq. which remains a beacon of hope and the first recourse for many anguished members of the public. It is disappointing to hear in these times a senior government offi-

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cer reported to have pronounced 'shoot-to-kill' orders as a means of 'managing criminal activity in the run-up to the 2017 general elections'. In the face of all these difficulties the LSK shall not relent in our insistence that the rule of law and due process must be observed and that the fundamental rights of all citizens must be protected. And for each of us, there shall forever remain in our hearts a purple scar.

On a more positive note, in the time since the last general meeting of the society the Council has made great strides in transforming the manner of its engagement with the membership. I consider it appropriate to appraise the membership on the progress that has been made:

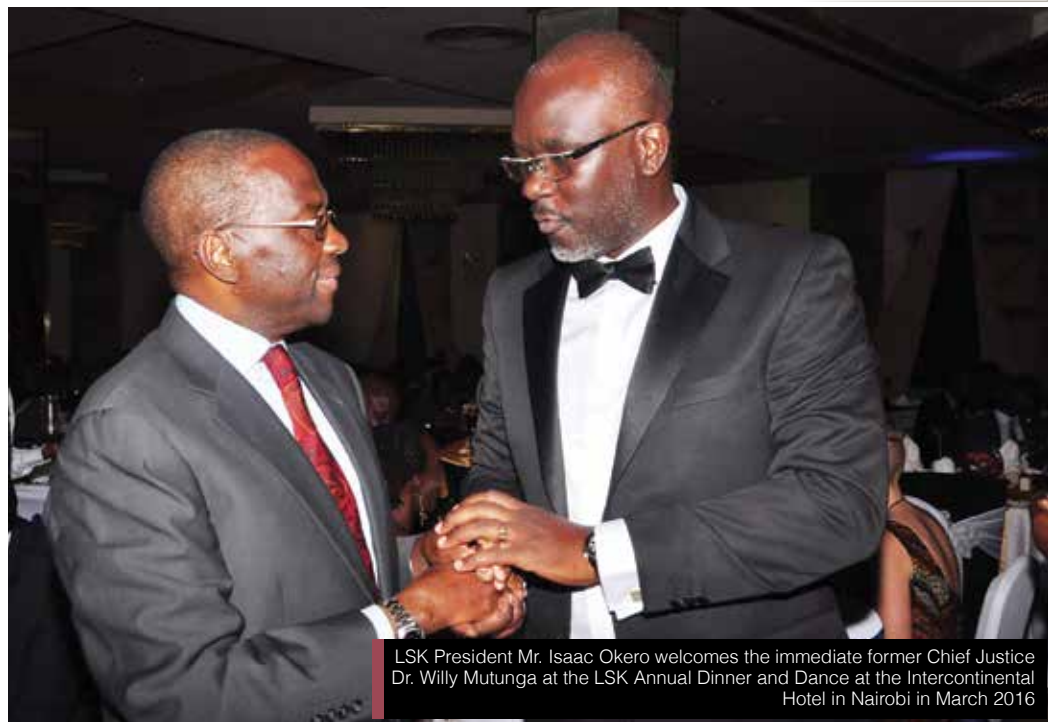
Representation on Statutory Boards and Committees: To ensure accountability and transparency in the appointment of members to various Boards, the Council has adopted a competitive nomination process where available vacancies are advertised. Members are encouraged to apply and selection will be done based on qualifications, skills, experience, gender and regional balance. There shall be more opportunities availed for which members shall be notified as and when they arise.

Online Database: The Council has set up an online database of its representatives to various statutory bodies to provide name of advocate, institution, date and nature of appointment and terms of service. Currently in the process is the collection of data and confirmation with institutions to facilitate the updating of the list of LSK nominees regularly. The layout of the database shall be reviewed to include dates and terms of appointment. A link to this database is available for nominated and elected representatives.

Through the database, the Council will be able to track its representatives for purposes of consultation and reporting.

Corporate Governance: Towards improving corporate governance substantial steps have been taken to transform operations to enhance efficiency:

The secretariat is undergoing restructuring with departments having been redesignated as directorates in accordance with the LSK Act. The Council is recruiting an *Audit and Risk Manager* who shall be reporting to the Council Sub-Committee on Audit. Related



LSK President Mr. Isaac Okero welcomes the immediate former Chief Justice Dr. Willy Mutunga at the LSK Annual Dinner and Dance at the Intercontinental Hotel in Nairobi in March 2016

to this development, a comprehensive review of all the contractual documentation, council decisions and financial transactions concerning the International Arbitration Centre Project is underway as pending cases pitting the society against its members are all being compromised bringing to a close an acrimonious chapter in the society's history. A full report on the review will be prepared and presented to the members after which any contemplation of a development project shall require full engagement with the entire membership and the securing of sound resolutions at every stage of the general meeting of the LSK.

Among the thematic committees reconstituted with a fresh injection of membership there is finally the promised Regulations Committee which has been constituted to draw up the regulatory framework for proper governance of the LSK. It has commenced work in creating inter alia all important regulations for the devolved structure of the LSK, on LSK representation to statutory bodies and committees, and generally on the mode and scope of governance. The Budget and Finance Committee under Section 40(2) of the Act has also finally been constituted and it is anticipated that with its creation prudent financial management and accountability shall be a permanent feature of the governance of the LSK. It is anticipated that with these developments the principles of the LSK shall be felt in the way it is governed and operated.

Practising Certificates: Complaints have been received regarding delays in issuance of Practising Certificates (PCs) by the Chief Registrar of the Judiciary (CRJ). The admission of a large

number of advocates into the bar in the first quarter of 2016 and the substantial increase in applications for PCs following the decision of the moratorium on back fees for all applications made in 2016 has

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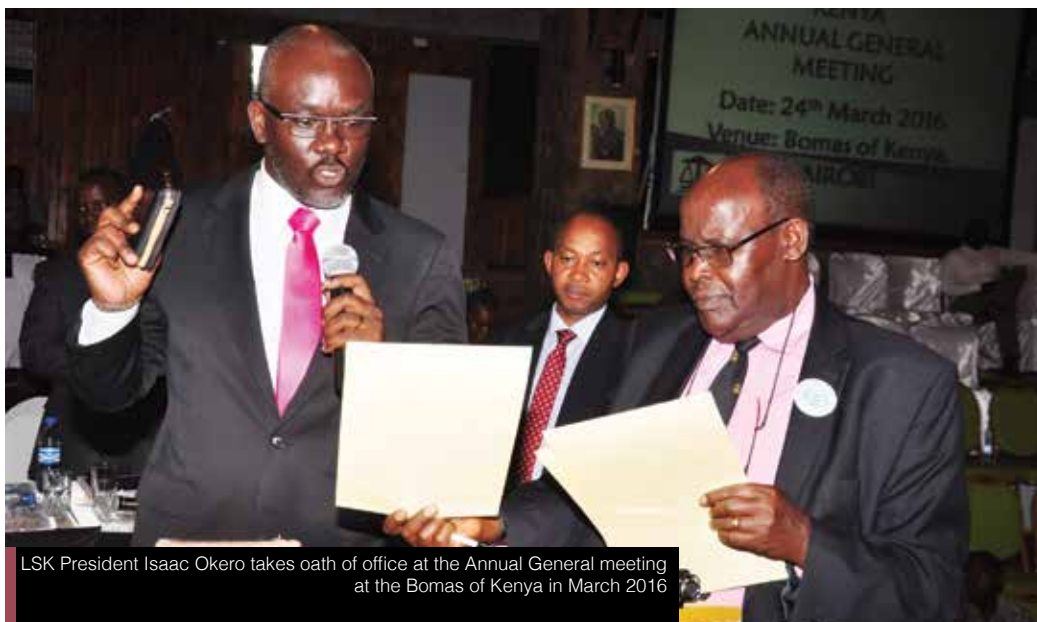
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LSK President Isaac Okero takes oath of office at the Annual General meeting at the Bomas of Kenya in March 2016

stretched the capacity of the office of the CRJ. The Secretariat has forwarded to the Office of the CRJ all applications for 2016 PCs (as submitted by members). The CRJ is statutorily mandated to issue PCs all of which must be signed by her. The Council has held consultations with the Chief Justice and the CRJ to ensure expeditious production of PCs.

The delay is understood to be a result of lean personnel at the Advocates Section of the Office of the CRJ which has also been dealing with admissions.

In order to mitigate the situation, the Council has negotiated with the Judiciary to fast track issuance of remaining PCs. The LSK shall offer personnel support to the office of the CRJ as formalisation of the new arrangement takes place. Going forward, the Council has come to agreement with the Judiciary to partner in the process so that the LSK will soon be printing the PCs at the secretariat for forwarding (together with the processed application forms) to the CRJ for execution. It is expected that delays will soon be a thing of the past.

The moratorium on PC back fees has seen a jump in the number of active members by 600 as at July 2016. Many members who had not maintained active status with current practising certificate for various reasons have taken advantage of this moratorium. It is the aim of the Council to have as many of the LSK's members compliant and active. Members shall of course remain personally responsible for any consequences of past non-compliance.

Heeding the pleas of many LSK members in government and exempt from the obligation to obtain PCs discussions have commenced with the Office of the Attorney General and the Office of the Director of Public Prosecutions with a view to achieving an arrangement for the payment of dues to the LSK to enable such members to be fully active in the affairs of the LSK.

Mentorship Programs: Following the successful launch of the Mombasa Law Society and Faculty of Law, University of Nairobi (Mombasa Campus) mentorship program in May 2016, the Council is supporting collaborative efforts between law faculties and LSK branches and bar associations in common areas to replicate this excellent endeavour. To this end discussions have commenced between the Kisumu chapter of the West Kenya Law Society in discussions with the Faculty of Law, University of Nairobi (Kisumu Campus) and between the LSK South West branch with the Faculty of Law, Kisii University on the development of mentorship programs. Many more shall follow.

Other collaborations: in the execution of the LSK mandate under Section 4 of the Act the Council has undertaken various collaborative engagements:

A Liaison Committee between the Council of Governors and the Council of the LSK is to be established to deepen engagement between the LSK and the County Governments in support of devolution. It is hoped that this will result in among other developments the involvement of LSK members

nominated by their respective branches and bar associations to serve in various levels of the county government structure in much the same way that the Council nominates members to statutory boards and committees. The framework for effecting engagement shall be developed by the Liaison Committee and will be reflected in the regulations drawn by the Regulations Committee.

A Liaison Committee between the Judiciary Elections Committee and the Council of the LSK is to be established to enable the LSK to support the process of preparations for the elections by both the judiciary and the bar.

Branch Visits: The Council unveiled its schedule and embarked on the 2016 Branch visits which is aimed at holding interactive sessions with members. The Council will take up issues raised by members during the said meetings. So far, the Council has visited the South Eastern Mt. Kenya and Coast Branches. Other visits have been slated for 2nd September (North Rift – Bungoma, Eldoret), 7th October (Rift Valley & West Kenya – Kisii, Kericho, Nakuru) and 11th November (West Kenya – Kisumu & Kakamega).

Members are requested to take note of the dates and liaise with the respective Branch Chairperson's in preparation for the sessions. The venues of the visits shall be announced in due course.

Chase Bank: The Council met the Central Bank of Kenya (CBK) Governor on Tuesday 14th June 2016 who assured us that Chase Bank has been operationalized and is currently on Phase II of its

recovery which will take 60 days to be fully financed. The Governor informed the Council that depositors are guaranteed 100% recovery of their funds, the first instance of an institution being placed under protective administration and projected to recover fully.

The Council has also held consultations with the Kenya Commercial Bank (Statutory Manager), Kenya Deposit Insurance Agency and Chase Bank representatives. The Council shall continue engaging with the concerned parties and work closely with the CBK to ensure those found liable of the systemic failures are prosecuted.

Public Interest: The Council continues the important role the LSK has played in public interest litigation:

The LSK has been enjoined as an interested party in Malindi HCC Petition No. 3/2016. The Council recognises that lack of clarity on jurisdiction is creating much delay in the hearing of land cases before the Environment & Land Court. All efforts are being made to secure the expeditious hearing and determination of the matter.

In the matter of the habeas corpus application Miscellaneous Cause No. 244 OF 2016 the LSK continues to pursue the proper investigation of the circumstances of the abduction and murder of the Mavoko Three. A second *habeas corpus* application in High Court petition No 311 of 2016 pursues the production of two young Kenyan men who disappeared on the 1st June, 2016 after being seen in the custody of AP officers from the Kawangware Chief's Camp.

The dispute over the retirement age of judges played out publicly with hard-fought litigation before the apex court marking the last appearance in the Supreme Court of the immediately former Chief Justice Dr. Willy Mutunga, SC after LSK's attempt to avert a public hearing by a mediation process failed. On balance there is an air of positivity in relations between the LSK and the Judiciary with the acknowledgement on both sides that both are partners in the administration of justice and remain siblings of the same family.

Land Control Boards and Land Registries: The dissolution of Land Control Boards paralyzed countrywide land transactions requiring consent. The Council has used two approaches – long and short term to seek resolution of this issue. The Council held a meeting with the Attorney General in June 2016 and briefed him

on the urgency of the matter. He has agreed to assist in obtaining an expeditious resolution to the matter. For the long term, the Council requested the AG to facilitate compliance with the decision of the High Court (Lenaola J) by ensuring appropriate amendments are made to the Land Act. In the meantime, the Land Control Boards are being reconstituted. The Council has also met with the Cabinet Secretary for Land, Housing and Urban Development in July 2016 following the announcement of the disruption of 13 land registries within the Republic for a digitization process the ministry is undertaking.

The Council was informed that the disruption process affects the Central Registry principally with registrars involved in a 2nd stage of verification process in which their involvement is essential.

The ministry has made arrangements for one Land Registrar to be left on duty with a team of other registrars available on call. Chief officers have been directed to respond to calls from and attend to members and the public with emergency registration needs. The Cabinet Secretary further directed for the reconstitution of a liaison committee comprising senior officers of the ministry and members of the LSK Conveyancing Committee last active over 5 years ago to enable practice challenges to be discussed and addressed immediately. Modalities of arrangements for urgent registration during the disruption period will be addressed by this committee as the Council continues to monitor the impact this exercise has on the membership and the public.

The Purple Ribbon It campaign seen nationally was a powerful statement of the depth of anguish felt by the entire membership; the restatement of the advocate's oath during our demonstrations, an affirmation by all of our primary role: we are the anchors of the rule of law and the guardians of the constitution.



LSK President Isaac Okero(second right) displays a symbolic ribbon in honor of the late Mr. Willie Kimani, Advocate to Mombasa Governor Hassan Joho (second left).

was agreed that the liaison committee shall facilitate closer cooperation with the Ministry of Lands so that there is better management in terms of prior notice and preparation of any adjustments deemed necessary by the government that may result in the disruption of services.

Judicial Appointments: In order to facilitate deeper engagement of the membership of the LSK in the process of judicial appointments the Council has constituted a Standing Committee On Judicial Appointments (“SCOJA”) chaired by the President and comprising of a total of 12 members who are Ms. Faith Waigwa, (Vice President LSK), Mr. Fred Ojiambo, SC (Chair, Senior Bar), Ms. Kagwiria Mbogori (Chair, Kenya National Commission on Human Rights), Ms. Josephine Wambua (Chair, FIDA Kenya), Mr. Antony Mulekyo (Chair, Kituo Cha Sheria), Mr. Zephania Yego (Chair, LSK North Rift branch) Prof. Patricia Kameri-Mbote (Dean, University of Nairobi Faculty of Law), Dr. Maurice Owuor Ajwang (Dean, Catholic University of East Africa), Mr. Cyril Wayongo (nominated by In-house Counsel Committee) and Ms. Natasha Ali Errey (nominated by Young Lawyers Committee).

The SCOJA shall receive views and concerns from the membership after framing the criteria and guidelines on best qualities for the occupants of judicial offices being considered; shall hold confidential discussions with any applicant opting to be heard the concerns that may have been raised before; and finally after analysis and evaluation of all material shall submit a report on each vacancy rating the candidates considered. The newly constituted Regulations Committee of the LSK shall for posterity develop comprehensive regulations on its composition, operations and terms

of reference.

And as I conclude this message the council welcomes members to the Annual Conference 2016 the theme of which is “Corporate Governance, Corruption and Failing Institutions”. This may seem a decidedly depressing theme but by this conference it is intended to attempt in the words of Eduard Shevardnadze to “thoroughly study the phenomenon and eliminate the foundations that allow

corruption to exist”. Corruption has often been likened to a dragon but it seems more appropriate to describe it as a virulent boil, so infectious and rank that a national low-grade fever shall give way to convulses and institutional failures. Are we able to find the boil, look at it squarely and lance it?#

Isaac Okero

LSK President

