

25TH APRIL 2023 ISSUE 6

# THE LEGAL INSIGHT—

The Official LSK Weekly Newsletter- EID EDITION

## PEACEFUL PROTEST AND PRESS BRIEFING ON NANDI MINING BLAST CASE

The LSK, in partnership with the Kenya Human Rights Commission (KHRC) and the Victims of the Karebe Gold Mine tragedy, held a peaceful march on **Thursday**, **20th April 2023** to the Director of Public Prosecutions (DPP) to present a petition seeking for justice.

The Peaceful march started at 11:00 am at the KMA Building, Mara Road to the Office of the Director of Prosecutions (ODPP), where a few Advocates had the opportunity to speak to the ODPP representatives.

Thereafter, the LSK President, Mr. Eric Theuri, and KHRC Officials addressed the media at the LSK Offices along Gitanga Road. The full statement can be accessed below:

https://drive.google.com/file/d/1p4b\_JaAMeuWlN6nyjPp\_qsPRn0 06EvsX/view?usp=share\_link

In attendance were LSK Vice President, Ms. Faith Odhiambo, and Council members Prof. Michael Wabwile, Lindah Kiome, Chrysostom Akhaabi, Cohen Amanya, Ochieng' Gor, Mwaura Kabata and Vincent Githaiga.









# PICTORIAL: THE YOUNG ADVOCATES MENTORSHIP PROGRAMME LAUNCH

























# THE MOTHERS OF VICTIMS AND SURVIVORS NETWORK (MVSN) MEET WITH THE PIL COMMITTEE

The Law Society of Kenya through the PIL Committee convened by Council Member Mwaura Kabata held a meeting with the Mothers of Victims and Survivors Network (MVSN) at the LSK Offices on 20th April 2023.

The meeting saw the MVSN present documentation to the PIL Committee where they had been collating data relating to possible Extrajudicial Executions (EJEs) and enforced disappearances of their children.

At a press briefing, the LSK President, Eric Theuri officially received the documentation and indicated that the Society agreed to examine the documentation in order to determine whether the complaints are sufficiently substantiated to implicate State actors in the death(s) of the missing/deceased individuals in a class action suit.

The LSK in collaboration with other partners, intends to deploy multipronged approaches of tackling complex issues on EJEs, establish accountability mechanisms through Public Interest litigation and Advocacy and improve access to justice in a holistic and effective manner.











## THE LSK TEAMS UP WITH CSO FOR A VALIDATION MEETING ON KEY ELECTORAL REFORM

The Law Society of Kenya together with various Civil Society Organizations (CSOs) held a meeting on Thursday 13th April 2023 to discuss the various issues surrounding the electoral processes in Kenya and to come up with recommendations on key electoral reforms in Kenya.

Some of the thematic areas of focus highlighted from the draft matrix of the previous meeting were: Election administration and management, participation of special interest groups (SIG's), Elections and media coverage, hate speech, fake news and mis/disinformation, Electoral technology, Election peace, Cohesion, Leadership and Integrity, Elections, voter education and voter registration, Election, security and Human Rights, Political parties' processes and Campaign financing.

Upon deliberation, the following recommendations among others were made by the Organizations and stakeholders to be submitted to the committee appointed to oversee the Reforms of the Independent Electoral and Boundaries Commission.

- Proposed reforms on institutions- A proposal from members on the need to make reforms to the IEBC with the overall goal of securing the credibility and validity of polls. The need to strengthen institutions and build trust among voters by focusing on the vulnerability of individuals in the institutions and through continuous voter education. There is also need to strictly enforce Chapter Six of the Constitution of Kenya on persons appointed to hold public offices. A proposal to come up with better systems of electoral management and administration of elections.
- Role of Social Media- ELGIA proposed that there is need for considering the role of social media in the electoral process considering that a lot of people rely on social media for information. Hence the need to incorporate the use of social media in the electoral process especially in aspects of voter education and in relaying information to voters before, during and after elections and also its role in voter education.
- Special Interest Groups- A proposal from members that there is need for more involvement of Special Interest Groups persons in elections. Women's and PWDs' meaningful participation, involvement and inclusion in political parties are crucial to the electoral system.
- High Cost of Elections The need for the IEBC to come up with better procurement mechanisms to
  enable the commission to get the best electoral technology at the best price hence reducing the high
  cost of elections in Kenya. The IEBC also needs to make timely procurement of electoral technology
  to be used to avoid the last-minute rush of procuring such technology which results in failure on
  elections day.

The Key stakeholders and various Civil Society Organizations included; Electoral Law and Governance Institute for Africa (ELGIA), Transparency International, Constitution and Reform Education Consortium Kenya (CRE-CO) and Center for Multiparty Democracy Kenya.



# COCKTAIL RECEPTION BETWEEN LSK, ALN KENYA AND CENTER FOR REPRODUCTIVE RIGHTS

The Law Society of Kenya and Center for Reproductive Rights organized a cocktail held on 17th April 2023. The Event was held under the theme "Creating a Culture of Service: Pro Bono Practice in Kenya."

"You make a living by what you get. You make a life by what you give-Winston Churchill," noted the LSK Vice President, Faith Odhiambo at a Cocktail Event between the LSK, ALN Kenya and the Center for Reproductive Rights Kenya.

The LSK Vice President further noted that the LSK was looking forward to learning from Center for Reproductive Rights on new, exciting and responsive techniques of mainstreaming Pro Bono services. She opined that the Law Society of Kenya was eager to ensure that the membership embraces the best practices for the ultimate goal of enhancing access to justice.

The event also saw the welcoming of a section of Pro Bono Practitioners from the New York Bar who shared some insights into the evolution of Pro Bono practice and the Clearing House concept which is an access-to justice matchmaking service for Bar Associations and Pro Bono lawyers. The event was aimed at forming strong networks for Pro Bono matters and resources.











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#### Proudly brought to you by the Tech & Intellectual Property Committee of the LSK

You know how someone throws in some Tech word in a conversation and in that one short moment you decide that they are just showing off? Actually, they are not. But it is not in the legal DNA to admit that we don't know, no way. I mean we could choke on our own ego, now why would we wanna do that? Ha..ha...I've gotchu. Yes, Counsel, I'm here with some spicy tech words which you can sprinkle on a conversation and sound like you just walked off the gates of Harvard Tech. Let's go.

- API- Application Programming Interface. The API allows software components to interact with each other. Think Mpesa when you are trying to install automated Mpesa payments on your website. The API gives you codes and authorizations which will enable your website be responsive to Mpesa payments.
- Big Data-Like the name suggests, there is largesse to Big Data. It refers to large sets of data that can be analyzed to display patterns, trends, and associations especially as it pertains to human behavior and interactions. An algorithm is used to determine the patterns and trends. Think internet searches. Depending on what you search for on the internet, through big data, it will be easy to deduce your lifestyle, where you live, where you shop, your level of education, whether you are married or not and interestingly, whether you are in love or not. That's where the Big Data algorithm is at currently, and you have no secrets.
- Cloud-It would be great if cloud storage were actually up in the clouds where nobody could reach it, but it does come close. Cloud computing refers to shared computing resources to store information. The system utilizes networks of servers to deliver storage and applications over the internet rather than having local servers handle them and this allows for advanced security and larger storage space managed offsite.
- Dashboard-A dashboard is a user interface that organizes and presents information in a way that is easy to read. This is typically a configurable home page for a software system that gives you visibility into the areas that you access the most.
- Encryption-Encryption is the mathematical scrambling of data so that it is protected from hackers. This translation of data is the most effective way to hide private information from anyone who does not hold the key/password that enables the reader to view the decrypted information. Think of the green app.
- Firewall-Firewalls are all about your safety. They provide a barrier of security against hackers
  and viruses that could take over your computer system or access private data. This can be
  installed as hardware or software, and are most often used to prevent any unauthorized users
  from accessing private networks.



#### **TECH NEWS**



### CONTD...

- Web Hosting- A service that enables you to have a place where your website sits. In 2023 we are keeping things simple. For web hosting, a provider may offer shared hosting or dedicated hosting of service to customers depending on their individual requirements.
- IoT (Internet of Things)-This is the ability to transfer data independently over a network connecting people, objects, wearable devices, animals, and machines. Wouldn't it be nice for your door to open itself for you and notify the coffee maker to brew you some piping hot drink? And then as you sit your coffee, the cup senses your mood and sends a signal to the radio to play exactly the kind of songs that suit that mood. Wouldn't that be nice? Yea?
- Malware- Malicious software. This is any program or file that is specifically designed by hackers to damage or disrupt a system such as a virus, Trojan Horse, spyware, or programming that gathers information about a computer user without permission. Malware, malpractice, same wozzap.
- SaaS- Software as a Service. SaaS is a cloud computing model that allows users to access all features and functionality without the need to invest in the hardware installation, set-up, daily upkeep, and maintenance issues that arise with complete ownership. You only pay for what you use. You can choose modules within the software that you want to use and pay for. Think of it as renting software services and paying for them as a subscribed service or a month-to-month, quarter-to-quarter basis.
- UI- User Interface. This is the interaction between a user and technology. It refers to how easy it is to use the outlook of a technology service. Some UI elements would be fonts, colors, icons, menu options, the layout of the screen, and buttons as a way for the user to communicate what they want their system to do for them. The best platforms on the internet are 'foolproof', where the user does not have to think while using the service. Because you see, thinking is a distraction you don't want your users to engage in when they are on your website, especially not if you are trying to get money off their pockets. The UI ensures that your user never has to ask: "Why I'm I here, again?" or "Don't I have a job and three kids? Or "Why on earth I'm I struggling with a non-responsive button? Heh? Julia, why?"
- UX-User Experience. We are not as logical as we think we are. With the advent of e-commerce, every software developer aims for a UX that makes the user feel good. We are all about feelings. We love whom we love because of how we feel. We buy this car and not that other one because (other than the moolah?), it is about how it enhances our UX. User experience is king. And cash, of course, he..he.
- Cyber security- This refers to security measures on the internet, online and offline. Cyber security refers to the processes and protocols that ought to be in place to protect you against Internet-based security threats. For instance, your ATM has several security features embedded, which are cyber security measures. Again, when you are logging in to your Google account, several verification methods are applied. And the way it is going, Gmail is going to ask for tongue and corneal identification, you wait.
- Digital signature Also known as a dry signature, which means a secure, unique, and verifiable mark that can authenticate documents, usually contracts, and is unique to the person signing. Digital signatures are legally recognized in Kenya under the Business Laws Amendment Act which came to force in the year 2020. The Act recognizes dry signatures (electronic) as valid signatures as equally as wet (ink) signatures. The only exception to this rule is the execution of Wills and Negotiable Instruments like bills of exchange, promissory notes, and cheques. This provision leaves a wide playing field for lawyers to digitize and innovate, seeing that most legal documents do require execution at one point or the other.

So, there you have it, ladies and gentlemen. Go impress those techies now, will yah?!



# NOTICE FOR COMMENTS ON THE COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT (CEPA) BETWEEN KENYA AND UNITED ARAB EMIRATES (UAE)

The Government of Kenya commenced discussions with the United Arab Emirates (UAE) on possible negotiation and signing of a Comprehensive Economic Partnership Agreement (CEPA) between the two parties. One of the Chapters to be considered in the anticipated CEPA, is Trade in Service which is inclusive of Legal Services.

The Partnership Agreement will hopefully yield substantial sectoral coverage and provide for the reduction of restrictions or substantial elimination of market access limitations as well as National Treatment limitations in the Legal Services sector.

The Ministry of Investment, Trade and Industry, State Department for Trade, has thus reached out to the Law Society of Kenya (LSK) as a key stakeholder in relation to Legal Services. LSK is therefore expected to make its contribution to the process in the following manner:

- 1. Consider Legal Services Sector Specific Initial UAE offer already made to Kenya for purposes of advising whether the offer is acceptable and to possibly point out areas of possible improvement in the offer.
- 2. Prepare and submit a Memorandum on Kenya's Legal Services Sector specific requests to UAE. The offer should state the modes of supply of Legal Services that Kenya is willing to liberalize while specifying conditions or limitations attached to the offer.

Members are hereby invited to submit their comments, views, submissions, specific offers or specific responses to the initial conditional offer already made to Kenya by UAE to Ms. Winnie Tsuma via winnie.tsuma@lsk.or.ke not later than Thursday, 27th April, 2023. The UAE initial conditional offer, Kenya GATS Schedule and UAE GATS Schedule to help guide your input can be accessed by clicking on this link.







#### **ADVERTISEMENT**

#### LEGAL ASSOCIATES POSITIONS

Muthoga Gaturu & Company Advocates, a medium-sized Law Firm wishes to recruit two Advocates for its Commercial & Conveyancing Department at its Head Office in Nairobi.

The successful candidates should have the following minimum attributes:-

- Advocates of the High Court with current year's practicing certificate
- Practical experience in commercial law and conveyancing practice of up to three (3) years post-admission
- Specialized training, qualifications, or demonstrable skillset in the relevant field will be considered an added advantage.

The Firm desires to employ persons of integrity, initiative and attention to detail. In addition, the candidates should be team players and should be capable of delivering results under pressure.

Interested and qualified candidates are asked to forward their application letters, testimonials and updated CVs to info@mgmail.co.ke not later than Tuesday, 2nd May 2023. Only shortlisted candidates will be notified.

#### RECEPTIONIST POSITION

The Firm is recruiting a qualified person with experience in handling Clients' Reception and related office duties. Interested applicants may forward their applications through hr.admin@mgmail.co.ke not later than Tuesday, 2nd May 2023. Only shortlisted candidates will be notified.

### **PUPILLAGE POSITIONS**

The Firm has historically prided itself in extending opportunities to upcoming lawyers. Interested applicants are required to forward their applications expressing interest, with testimonials and CVs, to pupilage@mgmail.co.ke for consideration not later than Wednesday 10th May, 2023, after which shortlisted applicants will be notified.







### THE INTERNATIONAL BAR ASSOCIATION (IBA) ANNUAL CONFERENCE 2023

Established in 1947, the IBA was born out of the conviction that an organization made up of the World's Bar Associations could contribute to global stability and peace through the administration of justice. The present membership is comprised of more than 80,000 individual International Lawyers from most of the World's leading Law Firms and some 190 Bar Associations and Law Societies spanning more than 170 countries.

The International Bar Association (IBA) Annual Conference is the leading conference for Legal worldwide **Professionals** to meet. share knowledge, build contacts and develop business. It serves to advance the development of international law and its role in business and society, to provide members with world-class professional development opportunities to enable them to deliver outstanding legal services.

The IBA Annual Conference will be held at the Palais des Congrès de Paris from 29th October to 3rd November 2023.

This conference is open to both members and nonmembers of the IBA, with lawyers from over 130 jurisdictions and all parts of the Legal Profession attending, including Lawyers in private practice, In-house Counsel, Human rights Advocates, Judges, Bar leaders, Regulators and Government Representatives.

## NOTICE FOR COMMENTS ON THE DRAFT CERTIFIED GOVERNANCE SECRETARIES BILL, 2023

The National Treasury and Economic Planning in conjunction with the Institute of Certified Secretaries have finalized developing the Draft Certified Governance Secretaries Bill, 2023 which seeks to repeal the Certified Public Secretaries of Kenya Act, 1988.

The Draft Certified Governance Secretaries Bill, 2023 proposes to provide quality assurance for the practice of the certified governance secretaries to train, certify and ensure continuous professional development. It establishes the Institute of Certified Governance Secretaries which shall have powers to issue guidelines, standards, codes of practice and conduct in the certified governance secretary profession and set levy fees and subscriptions.

In accordance with Article 10(2) (a) of the Constitution that highlights national values and principles of governance including participation of the public, Members are hereby invited to submit their comments on this Bill, which can be accessed through this <u>link</u>, to Ms. Winnie Tsuma via winnie.tsuma@lsk.or.ke not later than Friday, 21st April, 2023.



#### LET US MENTOR AND BE MENTORED

This week the Judiciary of Kenya under the Office of the Chief Justice in collaboration with the Law Society of Kenya and the Senior Counsel Bar, launched the Young Advocates Mentorship Programme. This is a novel initiative seeking to transform Society to enhance the practice of law by ensuring access to justice for all.



Society's perception of lawyers is usually met with both admiration and caution. This perception has been in existence since the seventeenth century according to the works of Plato. In his publications, Plato noted that attorneys are depicted as greedy, manipulative persons who overzealously act in their own best interest to oppress the less educated and weak in society. This kind of perception unfortunately has met a number of prospective young advocates in Kenya who have shown the intention to pursue the noble profession. It is this first obstacle that many law schools in Kenya have tried to bridge by incorporating mentorship programs in the training calendars. This approach has however not been embraced previously by the Institutions within the industry hence creating a gap, especially during the formative years after an advocate into the practice of law. This becomes a problem where the aforementioned perceptions have been the subject of countless surveys, books, jokes and even memes protracted to the current 21st Century.

To counter this negative perception mentorship programs have been launched within professional bodies and institutions. These programs have relied on the fact that both human beings and organizations have a common -to do better agenda. In order to achieve this a mutually beneficial relationship is needed. It has been documented that strategic mentoring programs transcend hierarchy, creating relationships and interactions to build individual and organizational value.

According to career developers mentoring is considered a special partnership between two parties based on common goals and expectations; focus; and mutual trust and respect. In addition, mentorship success relies on two factors. One is that there is a commitment to the process by both mentors and mentees and it serves as an important career advancement mechanism for both.



#### WEEKLY BITES BY SECRETARIAT



#### CONTD...

Mentorship



Two is that mentors provide guidance and promote a mentee's achievement in any or all the following areas: academic pursuits, apprenticeship, life/professional goals, and work-life balance. Ultimately the underlying intention to enter into the program will be the measure of success that results from the experience.

To capitalize on this success, the legal profession in Kenya has to be prepared to face the dynamic issues arising from continued globalization coupled with the developmental agendas adopted by states that have led to continuous reform in custom, policy and law. Over the years Kenya has changed a lot of customs and rules to adapt to emerging issues such as technological advancement, terrorism, global pandemics, climatic changes, and an amorphous democratic space. These issues are part of the dynamism that young advocates will be facing in the practice of law hence the critical need to steer a mentorship program pitting the seasoned advocates who have navigated the transformation landscape.

The recently launched mentorship is also important because young advocates are usually trained on a wide array of laws and procedures which they need to practice in the real world. The job market, therefore, becomes a learning arena whereby their formative practice years will be characterized by frequent job searches and inductions into new workplaces. At that stage, most young advocates have not settled on a specific legal career path and are most likely to adapt to experiences shared by their mentors. It is also at this stage that the reality of the application of their academic learning vis a vis the practical aspects of the law presents itself. This then calls upon their own decision-making process to present itself for the benefit of their clients, profession, and the organization they are working within. The pressure to perform and maintain a collegial working relationship within the organization and its social circles may be a tipping point during the initial stages. Therefore, the need to emphasize and encourage the collective responsibility to stand up and support the mentorship programs.



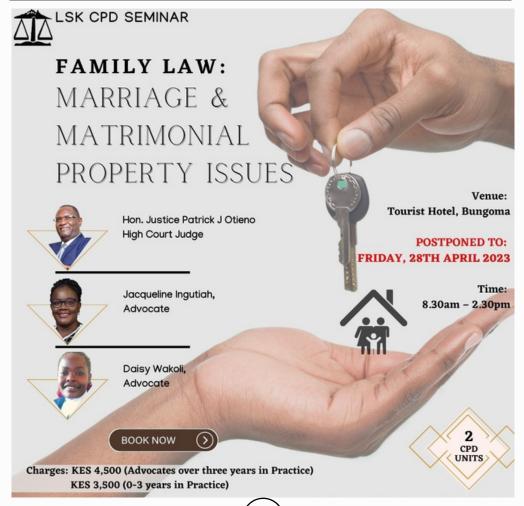
WRITTEN BY:
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Director, Practice Standards





#### UPCOMING EVENTS & WEBINARS













### KSL COURSE: BOARD SECRETARIAL PRACTICES

DATE: 5TH to 9TH DECEMBER 2022

**VENUE: NAKURU** 

#### ABOUT THE COURSE

Boards of directors have a direct impact on shaping the success of the organizations they govern. In order to be effective, they ought to have a thorough grasp of their authority, mandate, roles and responsibilities as well as the organization's operational environment and regulation.

The Board Secretarial Practices training is designed to equip participants to understand and implement sound policies and ongoing procedures for effective governance in a manner that complies with set legislation and various guidelines. The aim of the training is to equip participants with an in-depth appreciation of the operations and processes of boards. It will similarly explore a practical application of how boards and management can work together to enhance board operations within the organization's operational environment and regulation.

The outcome of the training will be that participants will gain practical insight into how to set up structures, policies and procedures for governance, leadership, authority, decision-making accountability and transparency.

By the end of the course, the participant will be equipped to:

- 1. Relate corporate governance theory and corporate governance in practice;
- 2. Describe a typical board structure, operation and processes;
- 3. Demonstrate an understanding of the roles and responsibilities of the board, its committees and the individual members, on the one hand, and the management, on the other hand;
- 4. Explain the rationale and purpose of the Mwongozo Code;
- 5. Apply the knowledge and skills gained to their respective organizational demands:
- 6. Help their respective organizations to establish effective strategies and systems for board operations and processes and their interface with the management;
- 7. Manage the challenges attendant to the interaction between the board and the management of an organization.

YOUR INVESTMENT: Ksh. 95,000 inclusive of VAT and registration fee (covers tuition fees, course materials, stationery, lunch, and refreshments). Non-East Africans pay USD 1,250.

CPD POINTS: Members of the Law Society of Kenya who attend and complete the training will be entitled, on payment of an extra Kes. 1,000.00 to be awarded 3 CPD points. Payment of this sum shall be effected during the training, as will be directed by the organizers of the training.

Application Process Application form may be obtained from the Kanya Saboel of Laxy CDD Department at Karan or be

Application Process Application form may be obtained from the Kenya School of Law CPD Department at Karen or be downloaded from our website http://www.ksl.ac.ke/wpcontent/uploads/2018/04/CPD\_REGISTRATION\_FORM\_.pdf

Money should be deposited in the School's account: (Account No. 202 2029 110 Barclays Bank of Kenya, Absa Bank Kenya PLC, Plaza Branch, Nairobi, Kenya) and the bank slip or evidence of electronic funds transfer presented to the Finance Office. Please note that we would wish to have your duly completed application form and proof of payment (or confirmation of participation) one week before the commencement of the course to enable us to adequately prepare for the course. For any queries, contact Course Coordinator Ms Naserian Sitelu at msitelu@ksl.ac.ke, or Jacqueline jacqueline@ksl.ac.ke; Christine cmwanza@ksl.ac.ke or cpd@ksl.ac.ke.