



PUBLIC INTEREST LITIGATION / COURT CASES 2020

1. **PETITION OF 78 OF 2020 LAW SOCIETY OF KENYA VS CS MINISTRY OF HEALTH AND 4 OTHERS**

Two weeks after China Southern Airlines suspended its direct flights to Nairobi amid the rising cases of the coronavirus, the airline resumed flights to and from Kenya, with 239 passengers touching down at the Jomo Kenyatta International Airport (JKIA) on 26th February 2020. The government issued a statement stating that the passengers were screened on board advised to “self-quarantine for 14 days.

Besides this event, the 1st Respondent also generally failed to prepare or enforce a functional public health emergency contingency plan to control, prevent and manage the importation, outbreak or spread of the corona virus in Kenya. The 1st Respondent failed to disseminate to the public information on risks, detection, prevention, response, or control as well as signs and symptoms, and health facilities to report to in cases of infections. There was also no hotline or other media for the public to seek, access, share or supply information concerning disease.

The Society moved to court to challenge this action by the Respondents since it amounted to a threat against Kenyan lives contrary to provisions under Article 19 of the Constitution.

The matter was consolidated with Petitions 79,80&81 and had its **ruling delivered on 3rd August 2020** by Judge A. Makau, who found that the Respondent’s application dated 8th April, 2020 was without merit, that the prayer to stay the implementation of the orders issued on 28th February, 2020 only to the extent that the same was in the form of a structural interdict compelling the 1st respondent to prepare and present to the court for security a contingency plan on prevention, surveillance and control and response system to corona (Covid - 19 outbreak in Kenya is declined

The court found that it has jurisdiction to grant a structural interdict at interlocutory stage pursuant to Article 23(3) of the constitution, and refused to set aside the orders previously granted in favor of the petitioner.

The matter is spent, and Counsel advised that the matter be marked as settled, having obtained all the interim orders sought.

Mr. Ochiel Dudley, Advocate was on record.

2. **PETITION NO. 120 OF 2020 LAW SOCIETY OF KENYA V HILLARY MUTYAMBAI INSPECTOR GENERAL NATIONAL POLICE SERVICE & 4 OTHERS ; KENYA NATIONAL COMMISSION ON HUMAN RIGHTS & 3 OTHERS (INTERESTED PARTIES) [2020] EKLK**

LSK moved the Court to challenge *The Public Health (Covid-19 Restriction of Movement of Persons and Related Measures) Rules, 2020 inter alia* on the grounds that they infringed Article 27 (4) of the Constitution in that they indirectly discriminate against the poor and vulnerable who could not afford to buy masks, the imposition of penal sanctions compounding the discrimination, and undermining the dignity of persons on the basis of their socio-economic status. The second ground for the Petition was the absence of Parliamentary approval as the Rules were published without being tabled before the National Assembly within 7 (seven) days.

The Court issued *inter alia* a declaration that the 1st Respondent’s unreasonable use of force in enforcing the Public Order (State Curfew) Order, 2020 is unconstitutional and an order of mandamus compelling the 2nd Respondent to amend the Schedule to the Public Order (State Curfew) Order, 2020 so as to include the 3rd Interested Party (IPOA) and the members of the Law Society of Kenya in the list of “**essential services**, personnel or workers.

Members may now perform their duties when necessary beyond the curfew time as stipulated under the directive.

Mr. Omwanza Ombati and Ms. Wakesho Kililo were on record for the Society.

3. **PETITION NO. 58 OF 2020 LSK VS ATTORNEY GENERAL, PS AND CS MINISTRY OF LANDS AND PHYSICAL PLANNING**

Via a Notice published in local dailies on 20th February, 2020 the Cabinet Secretary, Ministry of Lands and Physical Planning notified the general public of its intention to close the Nairobi District and Central Registries at Ardhi House for purposes of conducting an audit of records for a period of three weeks from 24th February, 2020 to 13th March, 2020. This directive was expressed without any consultation whatsoever with stakeholders and affected parties with pending/on-going transactions that may suffer prejudice through penalties and delays.

The Society, in part fulfillment of its mandate under Section 4 of the Law Society of Kenya Act, moved to Court to challenge the decision to close the registries for being unjustifiable, discriminatory and issued contrary to the law and observance of principles of natural justice. There was neither sufficient notice issued to members of the public or stakeholders to prepare in advance nor have there been measures put in place to mitigate the adverse effects of the closure on the pending land transactions.

The Court through **Hon. Justice W. Korir**, in agreement with the Society, issued the following orders on 24th February, 2020;-

1. THAT pending the *inter-partes* hearing and determination of this Application, a Conservatory Order be and is hereby issued in the nature of an Injunction restraining and staying 2nd and 3rd Respondents, their agents, officers or any persons from closing Nairobi and Central Registries at Ardhi House for auditing of records for three (3) weeks as per the Notice in the Daily nation and The Standard Newspapers dated 20th February, 2020.
2. THAT the Respondent to file and serve a response to the Application and Petition within 3 days from today's date.
3. THAT upon service, the Petitioner to file and serve Further Affidavits, if any, together with Submissions within 3 days.
4. THAT the Respondents will upon receiving the Petitioner's Submissions file and serve Submissions within 3 days.
5. THAT highlighting of submissions on the Application/Petition on 5th March, 2020.

On said date, State Counsel served a Replying Affidavit and LSK requested for more time to file a Supplementary Affidavit in response. Court ordered as follows;-

- i. Petitioner to file and serve Submissions within 7 days;
- ii. Respondents to file and serve Submissions within 7 days;
- iii. Petitioner file and serve supplementary submissions within 7 days of service;
- iv. Highlighting of submissions on 13th May, 2020;

The Advocate attended Court on 24th of June, 2020 for the mention of the matter. Court fixed the matter for hearing on the **28th of October 2020**. The matter proceeded and the judgment date was set for 25th February 2021.

On **25th February 2021** Judge Korir found that if there were any violations ,then the same were remedied upon the issuance of the conservatory orders suspending the 2nd and 3rd respondents 'decision and that no further remedies are therefore deserved in this matter. The petition was thus dismissed.

Mr. Felix Ogeta, Advocate is on record in the matter.

4. **PETITION 64 OF 2020 OKIYA OMTATAH & ANOR VS EXECUTIVE OF THE REPUBLIC OF KENYA & 2 OTHERS.**

The Petitioner moved to court challenging the recent action of the Executive taking over the functions of the Nairobi County Government through entering into an agreement to that effect with impugned Governor of Nairobi, H.E Mike Sonko as well as Devolution Cabinet Secretary, Eugene Wamalwa. The Petitioner alleges that this action is tantamount to dissolving a County Government without following due process to Article 192 of the Constitution.

The Law Society is an Interested Party in the matter due to the public interest nature of the case. On 10th November, 2020 Hon. Justice Ngaah certified the petitions as raising substantive questions of law deserving to be heard by an uneven number of judges as provided for in Article 165(4) of the Constitution. The Petitions were subsequently sent to the Chief Justice for empanelment of a bench. We wait to directions from the Chief Justice.

Ms. Carolene Kituku, Advocate is on record.

5. **PETITION NO. 4 OF 2020 JAVAN KICHE OTIENO VS THE CHIEF JUSTICE**

The Petitioner, a Kenyan national admitted to the Rwanda Bar, has moved to Court challenging the rejection of his Petition for admission into the Roll of Advocates. He contends that the Chief Justice's rejection of his application to be admitted based on the Court of Appeal decision in Civil Appeal No. 96 of 2014 was discriminatory.

The High Court in Nakuru (Justice Hillary Chemitei) delivered the Judgement on **25th February, 2021** dismissing the suit with no orders as to costs. The Court held that the Petitioner's recourse is to petition Parliament to reinstate the law that was struck down by the decision of the Court in Civil Appeal No. 96 of 2014.

Ms. Julie Soweto, Advocate was on record.

6. **PETITION NO 6 OF 2020 MWARUME MWADZUA & 7 OTHERS VS CHIEF JUSTICE & LSK**

The Petitioners, all Kenyans admitted to the Rwanda Bar, have moved to Court challenging the rejection of their Petition for admission into the Roll of Advocates by the Hon. Chief Justice on the advise by the Law Society of Kenya. They contend that the Chief Justice's rejection of their applications to be admitted based on the Court of Appeal decision in Civil Appeal No. 96 of 2014 was discriminatory. The matter comes up for mention on 1st March, 2021. Ms. Julie Soweto, Advocate is on record.

7. **PETITION 200 OF 2020 LAW SOCIETY OF KENYA V KENYA PORTS AUTHORITY & PUBLIC PROCUREMENT & REGULATORY AUTHORITY.**

As the Premier Bar Association with a statutory mandate under Section 4 of the LSK Act to advance and promote the rule of law and administration of justice the Law Society of Kenya examined the purport and contents of The Kenya Ports Authority tender set to be opened on *15th July, 2020*, and contends that the criteria set out offends article 227 of the Constitution, section 55, 60 & 70(3) of the Public Procurement and Disposal Act and the provisions set out under the Competition Act. The Society instructed Mr. Omwanza Ombati to represent the Society on a *pro bono* basis in instituting the above captioned petition as the said tender is primarily directed towards services offered by its membership. This matter has since been transferred to Mombasa High Courts to be consolidated with Petition No. 42 of 2020, which was filed and has subsisting orders against KPA on the subject matter. The matter is scheduled for hearing on the 15th July, 2020 in Mombasa.

Mr. Omwanza Ombati, Advocate is representing the Society in the matter.

8. **MISC APPLICATION 136 OF 2020 REPUBLIC V LSK AND 13 OTHERS**

The applicants the Hon. Attorney General Mr. Paul Kihara and the Hon. Solicitor General Mr. Kennedy Ogeto sought leave to apply for JR Orders of certiorari and prohibition, quashing the decision by the Law Society to move a motion at the Ordinary General Meeting of the LSK for their expulsion.

The applicants were granted leave to institute Judicial Review and stay of the proceedings. Highlighting submissions has been set for 30th July.

Meanwhile, the ruling was appealed via **CIVIL APPLICATION 275 OF 2020 CIVIL APPLICATION NO. 275 OF 2020-NELSON HAVI v PAUL KIHARA KARIUKI AND OTHERS** and is proceeding before the court of Appeal.

Matter was stayed by consent pending the determination of application 275 of 2020 before the Court of Appeal.

Mr. Ochiel Dudely, Advocate is representing the Society.

9. **PETITION NO. 215 OF 2020 LAW SOCIETY OF KENYA V THE NATIONAL ASSEMBLY, ATTORNEY GENERAL AND THE COMPETITION AUTHORITY**

In execution of its mandate under Section 4 (d) and (e) of the LSK Act, the Society instituted proceedings challenging the constitutionality of Sec 29 of the Competition Act, 2020. The Act seeks to introduce Sec 29 (A) which provides that if an association fails to apply for an exemption from the 3rd Respondent it shall have committed an offence punishable to imprisonment for a term not exceeding Kshs. 10M or both. The Petition and Notice of Motion Application were filed under Certificate of Urgency on 25th June, 2020. LSK filed a supplementary affidavit on 1st March 2021. We await further directions.

Mr. James Oduol, Advocate is representing the Society in the matter, on a *pro bono* basis.

10. **PETITION NO 55 OF 2020 INVESCO ASSURANCE COMPANY LTD VS AUCTIONEERS LICENSING BOARD**

On 20th May, 2020, Court issued Orders which for all intents and purposes gave a blanket moratorium and immunity in favour of Invesco Assurance Ltd shielding it from all executions whatsoever countrywide against all decrees arising -and whether emanating- from other High Courts or even in higher courts which orders were adverse to the interest of persons not enjoined in the proceedings. Justice Sergon on 23rd June, 2020 allowed LSK's application to be joined as the 2nd Interested Party and he also discharged the interim orders previously issued.

The matter is ongoing and members will be updated on the progress. The defence and Witness Statements were filed and parties await a hearing date.

Mr. Guandar Thuita, Advocate is representing the Society in the matter.

11. **CONSTITUTIONAL PETITION No. 40 OF 2020 ERIC KYALO MUTUA VS INSPECTOR GENERAL OF POLICE, DCI AND DPP.**

The Petitioner moved to Court seeking to stop an intended arrest, investigation and prosecution by the Respondents as well as a stay in any criminal proceedings to be instituted against the Petitioner. The Petitioner had transacted for his client in a conveyance involving sale of a parcel of land which has been made subject to a criminal investigation.

The Society is an interested party in the matter since it relates to member welfare.

Counsel attended Court on this day **9th February, 2021** before **Hon Justice A. C MRIMA** when this matter came up for Mention for purposes of compliance. The Firm of Miller & Co. Advocates had filed a Notice of Change of Advocates to take up the matter on behalf of the firm of Nzamba Kitonga & Co. Advocates for the Petitioner. However, the Court was of the view that this matter ought to be heard at the Anti-Corruption and Economic Crimes Division rather than at the Constitutional and Human Rights Division. The Court thus directed the parties to put in written submissions on the issue of the matter to be transferred to the Anti-Corruption and Economic Division. Counsel shall thus file and serve written submissions on the issue and further attend Court on the **29th March, 2021** for highlighting of submissions.

Mr. Paul Obura, Advocate is on record.



12. JUDICIAL REVIEW APPLICATION 114 OF 2020 O.M PARKASH AND 21 OTHERS VS THE LAW SOCIETY OF KENYA

The Applicants moved the Court seeking leave to file Judicial Review proceedings against the Respondent over its decision to revoke the recommendations made by the Committee on Senior Counsel on 26th August, 2019. The recommendations were made to confer the rank and dignity of Senior Counsel to the Applicants. Subsequently, the recommendations were revoked via decision made on 11th May 2020 and communicated to the Membership on 13th May 2020.

On 28th May 2020 Court granted the twenty-two Applicants who are advocates of the High Court of Kenya, leave to commence judicial review proceedings against the Law Society of Kenya. The Applicants' substantive Notice of Motion dated 8th June 2020 was heard virtually on **6th August 2020**.

The parties have filed their submissions and the matter comes up for judgment on **25th March, 2021**.

Mr. Omwanza Ombati, Advocate represents Law Society of Kenya in the matter.

13. MERU PETITION 8 OF 2020 CHARLES MWENDA V IGP ET AL

The Petitioner together with his close family members and entourage while heading to Meru County from Malindi County for his wife's burial were ordered by Police officers to abandon the procession. The family members were further ordered to leave the Petitioner with the casket on the road at night despite all of them having complied with all the health directives and obtained necessary permits.

The Petitioner moved the Court seeking declaratory and compensation orders against the respondents jointly and severally, for violating the petitioner's rights and freedoms as well as the provisions of the constitution under articles 3,4,10,19(2),19(3)(a)(b) &(c),22(1) &(3) 25(a),27,28,29(d), 50,165 &259.

The Law Society in execution of its mandate under Section 4 (d) of the LSK Act joined the matter as an interested party in the matter due to the Public Interest nature of the proceedings. The matter came up on 10th March, 2021 for mention before Hon. Justice Muriithi. Ms Wambulwa appeared for the Petitioner, Mr. Muchomba held Mr. Jamlick's brief for the 1st interested party i.e the Law Society of Kenya. Mr Munene appeared for the 2nd Respondent, the County Government of Meru while Ms Kung'u appeared for the AG on behalf of the 1st and 3rd respondents'

Mr. Munene requested for 7 days to put in his written submissions, the same was opposed but the court granted the same. Mention on **14th April 2021** for a Judgment date.

Mr. Jamlick Muriithi, Advocate is representing the Society in the matter.

14. PETITION 100 OF 2020 BENARD ODERO OKELLO V CABINET SECRETARY FOR INDUSTRIALIZATION, TRADE AND DEVELOPMENT AND OTHERS

Vide Gazette Notice no. 4244 of 22nd June, 2020, the CS for trade and enterprises announced the appointment of the 1st to 5th interested parties as appointees of the Business Premises Rent Tribunal for a period of 3 years with effect from 22nd June 2020.

The Petitioner moved the court to challenge the constitutionality of the appointments and contends that it was conducted without a proper, open, fair and competitive process. The Law Society in execution of its mandate under Section 4 (d) of the LSK Act has joined the matter as an interested party in the matter due to the Public Interest nature of the proceedings.

Mr. John Githui, Advocate for on record for the Society.

15. **PETITION 203 OF 2020 LAW SOCIETY OF KENYA V THE OFFICE OF THE ATTORNEY GENERAL, DR. JOSEPH KINYUA, HEAD OF PUBLIC SERVICE THE JUDICIAL SERVICE COMMISSION**

On 11th May 2020, the President of the Republic of Kenya issued an executive order No. 1 of 2020 titled *Organization of the Government of the Republic of Kenya* purporting to organize government and set out the Judiciary, commissions and independent offices as institutions under Ministries and government departments. The Society moved the Court to challenge the constitutionality of the said executive order, and sought a conservatory, staying and/or suspending and/or halting the further and continued implementation of the Executive Order No. 1 of 2020 dated 11th May, 2020 in respect of the Judiciary and the following independent institutions;- The Public Service Commission; Teachers Service Commission; The National Police Service Commission; Parliamentary Service Commission; Judicial Service Commission; Independent Boundaries and electoral Commission; Office of the Director of Public Prosecution; Ethics and Anti-corruption commission; Commission on Administrative Justice; The National Land Commission; The Office of controller of Budget ; Commission on Revenue Allocation; salaries and Remuneration Commission ; Kenya National Commission on Human Rights and National Gender and Equality Commission.

On 3rd August, 2020, Judge A Makau granted conservatory order staying/suspending and or halting the further and continued implementation of the Executive Order no 1 of 2020 dated 11th May 2020 in respect of the Judiciary, The Public Service Commission; Teachers Service Commission; The National Police Service Commission; Parliamentary Service Commission; Judicial Service Commission; Independent Boundaries and electoral Commission; Office of the Director of Public Prosecution; Ethics and Anti-corruption commission; Commission on Administrative Justice; The National Land Commission; The Office of controller of Budget ; Commission on Revenue Allocation; salaries and Remuneration Commission ; Kenya National Commission on Human Rights and National Gender and Equality Commission.

Mr. Manwa Hosea, Advocate and Arnold Oginga, Advocate are on record for the Society.

Matter set to proceed for hearing of the Petition on **25th February 2021**.

16. **JUDICIAL REVIEW E0045 OF 2020 REPUBLIC VERSUS PAUL KIHARA KARIUKI ATTORNEY GENERAL & OTHERS**

The *ex parte* Applicant, the Law Society of Kenya, aggrieved by a directive issued on 7th July 2020 by the National Development Implementation and Communication Cabinet Committee, of which the Respondents are members, and which requires Ministries, State Departments and State Agencies to withdraw court cases filed against any other state agency, not to contract external counsel without written approval of the Attorney-General, and terminate engagements with all external advocates who had been contracted without the express and prior grant of the concurrence of the Attorney General.

Nyamweya J on 22nd July 2020 granted orders *inter alia* that the *ex parte* Applicant's Chamber Summons application dated 21st July 2020 be certified as urgent, and that The *ex parte* Applicant is granted leave to apply for judicial review orders of Prohibition restraining the Respondents, their servants and agents from executing the National Development Implementation and Communication Cabinet Committee (NDICCC)'s directives (vii), (viii) and (ix) contained in Part A(1) of the Extract of Resolutions NDICCC 21 (2020) dated 8th July, 2020.

A virtual hearing to confirm compliance and to highlight submissions was scheduled before Hon. Mr. Justice Mativo on **6th October, 2020** on the said date the AG raised an objection against the consolidation of our application with that of the LSK Nairobi Branch. Oral submissions on the objections were made and ruling delivered by Mativo J striking out our application.

LSK sought to be joined as interested party in the matter filed by Nairobi Branch of the Law Society of Kenya HCJR E010: LSK Nairobi Branch -vs- AG. Our application for joinder was first mentioned on 18th January 2021 where the Court directed parties to file and serve both the submissions on joinder and the main motion. On 22nd February 2021 parties confirmed filing of submissions on both the LSK'S application for joinder and submissions on the main motion.

Ruling date is set for **26th March 2021**.

Mr. Omwanza Nyamweya and Ms. Barbara Kwanga are on record for the Society.



17. **PETITION 238 OF 2020 LAW SOCIETY OF KENYA - VS - THE ATTORNEY GENERAL, PRINCIPAL SECRETARY MINISTRY OF LANDS, CABINET SECRETARY TREASURY & ANOTHER.**

The Law Society in execution of its mandate under Section 4 of the LSK Act moved the Court to challenge the constitutionality of several provisions and Regulations of the Public Procurement and Disposal Act. The Petition seeks *inter alia*, an order of permanent injunction do issue permanently restraining and staying the operation and implementation of Section Sections 167 (2) and 175 (2) of the Public Procurement and Asset Disposal Act 2015 as read together with Regulations 203, 204 and 218 of the Public Procurement and Asset Disposal Regulations 2020.

The Attorney General filed a response, while the National Assembly filed none. The Court directed that the Petitioner file the supplementary affidavit together with submissions within 30 days and that the Respondents file their submissions within 21 days of service. The matter comes up on **10th March, 2021** for submissions and to take a judgment date.

Mr. Innocent Muganda and Mr. Kibaara Murithi are on record for the Society.

18. **NAKURU CONSTITUTIONAL PETITION NO. 11 OF 2020 HON SALUEL KIPKEMOI TONUI V KENYA FOREST SERVICE, THE ATTORNEY GENERAL ET AL**

The Law Society of Kenya in execution of its mandate under Section 4 (E) to protect and assist the public in Kenya in all matters touching, ancillary or incidental to the law; on 30th July, 2020 joined the above cited matter as interested party and seeks injunctive orders against the forceful, illegal and unconstitutional evictions of families in Nessuit, Mariashoni, Sururu, Likia, Terit and Sigotik settlement schemes by Kenya Forest Service and other State Agencies.

The Advocate attended Court on 30th July, 2020 and the court directed that parties exchange further affidavits and responses. On 2nd February 2021 the Court directed that all parties comply and that affidavits will be deemed as witness statement and proceedings by viva voce evidence. The matter was set for hearing from 26th to 30th July with a **mention on 20th June 2021.**

Mr. Simon Matiri, Advocate is on record.

19. **PETITION 229 OF 2020 PATRICK NGUNJIRI V CS TREASURY AND 4 OTHERS**

Via a Notice dated 29th April, 2020 the 1st Respondent announced the closure of the Nairobi District and Central Registries at Ardhi House having extended the closure which closure is contrary to the Constitution of Kenya 2010, the provisions of the Public Service (values and principles) Act 2015 and the Land Registration (General) regulations 2017. This was expressed without any consultation whatsoever with stakeholders and affected parties with pending/ongoing transactions that may suffer prejudice through penalties and delays.

Advocate attended Court on **Tuesday 18th August** 2020 for directions and was granted 14 days to file a supporting affidavit while the Petitioner was granted a corresponding 7 days to respond to the issues raised.

The Advocate has indicated that he will forward proposals on terms that parties can consider to consent upon, and the President advised that he is in consultations with the CS Lands. The matter has been stood over generally pending the outcome of the deliberations.

Linus Mwangi Advocate is on record for the Society.

20. **PETITION 139 OF 2020 MATATU OWNERS ASSOCIATION -VS- NCAJ AND OTHERS**

The petitioner moved to court seeking injunctive orders restricting the respondents from attaching and moving chattels and movables belonging to the applicant's members in execution of decrees during the covid-19 pandemic period. The matter was scheduled for mention on **23/9/2020** to confirm compliance and for issuance of directions on the filing of submissions.

The Petitioner withdrew the matter and the same was marked as closed.

Ms. Edna Arati, Advocate was on record for the Society.

21. **CIVIL APPLICATION 275 OF 2020 CIVIL APPLICATION NO. 275 OF 2020-NELSON HAVI v PAUL KIHARA KARIUKI AND OTHERS**

The Civil Application filed on 16th July, 2020 arises from Judicial Review No 136 of 2020 wherein the High court granted the 2nd and 3rd respondents leave to institute Judicial Review against a decision by the Council of the Law Society of Kenya and stay of the proceedings.

The application was certified urgent and the Applicant directed to file and serve written submissions within 7 days while the Respondent a corresponding 7 days to respond and file any other relevant documents, and serve all the parties on record.

The President of the Court of appeal directed that he shall constitute a 3 Judge Bench and further that matter will be disposed of by way of written submissions. The Court will notify parties of the date and the findings of the Court together with any orders where applicable via email.

The matter came up for hearing of application for stay on **26th January 2021. Mr. Ochiel Dudely, Advocate** is on record on behalf of the Society.

22. **APPLICATION FOR REVIEW OF THE ORDERS OF THE COURT OF APPEAL IN CIVIL APPEAL 102 OF 2020 LSK V BLOGGERS ASSOCIATION OF KENYA.**

LSK supported the Petition against the Computer Misuse and Cybercrimes Act, claiming that the Act limits freedom of expression. Aggrieved by the both the High Court and Court of Appeal decisions, the Society applied for review of the Court of Appeal decision issued on 7th August, 2020.

The review was filed on 11th August 2020. The application was certified not urgent. We filed a rule 47(5) reference to certify it urgent which was declined as well. It is awaiting a hearing date from the court.

Mr. Ochiel Dudely, Advocate is on record on behalf of the Society.

23. **ELRC PET /E025/2020 LAW SOCIETY OF KENYA V CS MINISTRY OF TOURISM AND WILDLIFE ET AL.**

On 7th August, 2020, vide Gazette Notice Vol. CXXII- NO. 150 No. 5462 Kevin Muasya, Alais Lenana Momoi, Isaac Muchiri Njangu and Pauline Njoroge, were appointed as members of the Tourism Board of Authority for a period of three (3) years with effect from 7th August, 2020.

The Society on 13th August 2020 filed a Petition contending that the said appointments were unconstitutional, unlawful, illegal, unprocedural, null and void ab initio as they were done in total disregard of substantive and procedural, constitutional and statutory requirements applicable in public service appointments.

Hon Lady Justice H. Wasilwa certified the matter as urgent, and admitted it for hearing during the court' summer vacation. She further ordered that pending the hearing and determination of the application interpartes that Gazette Notice Vol. CXXII- NO. 150 No. 5462 dated 7th August be suspended.

The matter came up for inter-parte hearing, the Hon. Attorney General filed his response to our Application and Petition, the 5th Interested Party requested for 14 days to file their reply. The matter will be mentioned on 17th of September to confirm compliance.

The Court J Mbaru on **4th February 2021** found no illegality in the actions of the 1st Respondent, as the petition was based on a law that was amended through the Statute law (Miscellaneous amendment). The matter was therefore dismissed with costs. The Law Society of Kenya has filed and appeal against the decision in the Court of Appeal.

Hosea Manwa, Advocate was on record for the Society.



24. **HIGH COURT PETITION E250 OF 2020 PATRICK KABUNDU AND OTHERS VS THE PUBLIC SERVICE COMMISSION AND OTHERS**

The Petitioner filed a petition on 20th August, 2020 challenging the appointment of the Registrar of Political Parties and 3 Deputy Registrars by the Public Service Commission as well as the Political Parties Amendment bill 2016. The Society was cited as interested party.

This matter was slated to come up for highlighting of submissions on 10th February 2021. Owing to failure by the Petitioners to serve all the Respondents with their amended petition and submissions within the timelines given by court, the Court granted all the Respondents 21 days to put in their replies to the amended petition as well as submissions. Matter slated for further mention on **24th March 2021**.

Ms. Barbara Kwanga Advocate is on record for the Society.

25. **HCC E 303/2020 IN THE MATTER OF XPLICO INSURANCE LTD**

The Petitioner moved to the High Court on 25th August 2020 seeking ex-parte orders that the Court do issue Conservatory Orders staying the proceedings against them- of claims- at various stages from any of the third party claims. The Court subsequently granted the orders, thereby depriving members of the public, policy holders, creditors and other affected persons the right to access justice, right to a fair hearing, right to property and right to fair administrative action as guaranteed under Articles 48 and 50(1) of the Constitution.

Mr. Samson Alosa Advocate is on record for the Society.

26. **MISC APPLICATION HC COMM MISC/E729/2020 O.S LAW SOCIETY ONLINE ANNUAL GENERAL MEETING.**

The Law Society instituted the matter seeking leave to hold the Annual General and Advocate's Benevolent Association meetings which were to be held on 28th March 2020 -but were postponed in light of the health directives issued by the Ministry of Health following the Corona Virus outbreak- virtually. The O.S. was allowed and leave granted to the Council of the Society to host an AGM via appropriate information communication and technology platform of its choice and on a date to be communicated to members within 7 days of judgment, and Notice to be issued to members by the Society within 7 days of judgment with sufficient notice as in the Act/Regulations, informing members of the date and mode of hosting the AGM. **Mr. Bryan Odongo, Advocate** and Ms. **Barbara Kwanga, Advocate** represented LSK on *pro bono* basis.

27. **ELRC PETITION E053/2020; LAW SOCIETY OF KENYA -VS- THE GOVERNOR COUNTY GOVERNMENT OF VIHIGA & THE COUNTY ASSEMBLY OF VIHIGA & 2 OTHERS**

The Law Society of Kenya in execution of its mandate under Section 4 of the LSK Act moved the Court in seeking a conservatory order restraining the 47 Governors from nominating and or gazetting persons into the office of the County Attorney where there are other persons employed by the respective County Public Service Boards to perform the functions of the office of the County Attorneys, except for persons already serving in similar positions before the commencement of the Office of the County Attorneys Act.

The Petition was initially filed at the Milimani Law Courts, with Ms. Melissa Ngania on record, where upon the Court directed that the matter be transferred to Kisumu, Mr. Brian Otieno Advocate was subsequently instructed and he has filed an application to set the orders aside and stay judgment wherein the matter has been dismissed for non attendance. Counsel has already filed submissions according to the court directions; the 1st Interested Party has served upon him their Replying Affidavit. This is in addition to the 2nd Respondent's Replying Affidavit. Ruling comes up on **5th May 2021**.

Mr. Brian Otieno Advocate, is on record for the Society

28. SUPREME COURT PETITION 11 OF 2020 JOSEPH OMBOGI O V S MARTHA BOSIBORI

The above captioned matter is a Supreme court petition(application) arising from an appeal that raised fundamental issues on division of matrimonial property at the Court of appeal and High Court touching on Public interest.

In exercise of its mandate under Section 4, The Society applied and was joined in the matter as *Amicus curiae* to assist the Court examine and address itself to the issues in contention.

Ms. Rose Mbanya Advocate is on record for the Society.

29. PETITION NO. 283 OF 2020 LAW SOCIETY OF KENYA VERSUS THE OFFICE OF THE ATTORNEY GENERAL, CABINET SECRETARY MINISTRY OF AGRICULTURE, LIVESTOCK, FISHERIES AND IRRIGATION

His Excellency the President of the Republic of Kenya and the Cabinet Secretary Ministry of Agriculture, Livestock, Fisheries and Irrigation have unilaterally purported to restructure and re-organize the Kenya Meat Commission and the Ministry of Defence thus altering and/or interfering with the Provisions of the Constitution of Kenya, 2010 and thus offending institutional and structural duties of Ministries.

The Society filed this case and contends that the said directive is unconstitutional, unlawful, illegal, un-procedural, null and void *ab initio* by reason that the executive arm of government cannot restructure or assign functions of a statutory body without such amendments of the Statute. The Petition is dated 16th September, 2020.

It was filed electronically on 17th September, 2020 together with an evenly dated Notice of Motion. The Motion was brought under certificate of urgency and sought some conservatory orders. Upon consideration by the Court, then sitting as a duty Court, the Notice of Motion was dispensed with *sue moto* and directions given towards the hearing and determination of the main Petition. Whereas the Petitioner admits that the President has the authority under Article 132(3) (b) of the Constitution to direct and coordinate the functions of the ministries and government departments, it is strenuously contended that such authority does not extend to transfer of government institutions established under a statute without having due regard to the established mechanisms in the said statutes or triggering amendments to the statute in issue.

Hon Mrima J on **15th February 2021** delivered a judgment granting sought by the Law Society of Kenya and quashed the executive decision to re assign the ministerial responsibility from the Ministry of Livestock, Fisheries and irrigation to the Ministry of Defence, for want of public participation.

Mr. Manwa Advocate was on record for the Law Society of Kenya.

30. NAIROBI HC CONSTITUTIONAL PETITION NO. E364 OF 2020 OKIYA OMTATAH OKOITI-VS-THE HONOURABLE ATTORNEY GENERAL & 5 OTHERS

On 13th November, 2020, the Independent Electoral and Boundaries Commission Act, 2011 was amended through the Independent Electoral and Boundaries Commission (Amendment) Act, 2020 (impugned Act). Parliament made the amendments to provide for the composition of the Selection Panel charged with the recruitment of the Commissioners (both chair and members) of the Independent Electoral and Boundaries Commission (IEBC). Parliament created a new composition of the selection panel, made up of a total of seven (7) members. The majority of those - four members - are to be selected by the Parliamentary Service Commission while two by the Inter-religious Council, and one by the Law Society of Kenya. Moreover, the impugned Act makes the Parliamentary Service Commission (PSC) the secretariat of the Selection Panel. The PSC is composed of eleven members: nine are sitting Members of Parliament, while the remaining two are individuals who are not MPs but are recruited and approved by the MPs. The Clerk of Senate heads its secretariat. The Petitioner is of the view that the impugned amendment is unconstitutional.

The Law Society in execution of its mandate under Section 4 of the LSK Act applied and joined as Interested Party. The matter comes up for hearing on **24th March, 2021** on Application by the 4th Respondent's Counsel.

Mr. Nelson Osiemo Advocate and Ms. Wacu Mwenja Advocate are on record for the Society.



31. **SUPREME COURT PETITION 1 OF 2018 (CDF PETITION) TISA -VS- NATIONAL ASSEMBLY**

The Law Society of Kenya joined the Supreme Court Appeal which arose from Petition 71 of 2013 filed on 6th February 2013 in Nairobi and Petition 16 of 2013 filed in Nakuru on 10th May 2013. Both Petitions were seeking declarations that the County Development Fund Act, Act No.30 of 2013 is unconstitutional. The matter proceeded before the High Court and the Court of Appeal. The Society joined the matter as Interested Party.

Ms. Edna Arati, Advocate is on record.

32. **PETITION E 392 OF 2020; LEGAL ADVICE CENTER (KITUO CHA SHERIA) VS CHIEF JUSTICE AND OTHERS**

The Law Society in execution of its mandate under Section 4 of the Law Society of Kenya Act, 2014 has been named as an interested party in the Petition **PT E392 of 2020; Legal Advice Center v Chief Justice and others** challenging the electronic court system that has affected many members of the society that have pending cases in court or intend to institute new ones. Directions have been given on the petition with **15 March, 2021** as the date of the hearing of the Petition. In the meantime, parties ought to file their responses and submissions on the petition.

Ms. Carolene Kituku Advocate is on record.

33. **JR NO.E1100 ALLEN GICHUHI -VS-COMMITTEE OF SENIOR COUNSEL &OTHERS**

The Petitioner through his Counsel, **Mr. Walter Amoko** filed the Judicial Review dated 14th September, 2020 under Certificate of Urgency pleading for leave to proceed to prosecute his appeal on grounds that The Law Society of Kenya had invited applications for persons seeking to be considered for the conferment of the rank of Senior Counsel in September 2020 whilst the Petitioners Application alongside those of other applicants who had submitted their applications previously had not yet been considered.

This was notwithstanding the lapse of time as provided for under the Senior Counsel Rules which provide that the same applications be determined within Six (6) months of their receipt of applications by the Committee on Senior Counsel, which case the same would be by **30th September, 2020**. Further, Counsel pleaded that the call for applications for conferment made by the Law Society of Kenya through notices published on the Newsletter on 2nd September, 2020 and on the Daily Nation edition of 3rd September, 2020, was made without the knowledge of the Committee on Senior Counsel; consequently, the same was illegal, null and void.

Granted leave, the applicants in compliance with the orders of the court served the pleadings on the parties, wherein Mr. Omesh Kapila SC filed a Replying Affidavit on behalf of the Committee on Senior Counsel dated 25th September, 2020, while also the firm of Nchogu, Omwanza & Nyasimi Advocates filed a Replying Affidavit signed by Mr. Nelson Havi, the President of the Law Society of Kenya and dated 30th September, 2020 for the Committee on Senior Counsel and the Law Society of Kenya and in response to the Notice of Motion dated 14th September, 2020 by the Petitioner.

The President through the firm of Nchogu, Omwanza & Nyasimi Advocates filed a Notice of Motion dated 5th October, 2020 and the Supporting Affidavit evenly dated on behalf of the 1st Respondent, the Committee on Senior Counsel and The Law Society of Kenya. The said Notice of Motion sought to have the matter as filed by the Petitioner referred to ADR as provided under the Law Society of Kenya (General) Regulations 2020 stating that the Petitioner had not exhausted the internal remedies available prior to filing the matter in Court.

The Petitioner filed a Notice of Motion alongside a Supporting Affidavit dated 26th October, 2020, seeking to have the pleadings and documents filed by the firm of Nchogu, Omwanza and Nyasimi Advocates be struck out for among other reasons, there had been no Council Resolution appointing the said firm of Advocates and that they had illegally filed the Notice of appointment and accompanying pleadings before the Court.

On 4th November, 2020, the President of the Law Society of Kenya filed a Replying Affidavit evenly dated on the Notice of Motion dated 26th October, 2020. Further, the President through the firm of Nelson Havi & Company Advocates filed a Notice of Change of Advocates, effectively transferring the matter from the firm of Nchogu, Omwanza and Nyasimi

to the firm of **Nelson Havi & Company Advocates**.

The Council of the Law Society of Kenya appointed the firm of Murgor & Murgor Advocates who filed their Notice of Appointment on the 3rd December, 2020. Through the firm of Nelson Havi and Company Advocates, the President, Mr. Nelson Havi filed a Notice of Motion and a Supporting Affidavit dated the 15th December, 2020, in which the President sought to have the pleadings filed by Kaplan & Straton Advocates; the pleadings filed by Murgor & Murgor Advocates and the Consent filed in court on the 3rd of December, 2020 struck out.

When the matter came before court for a mention and directions on 15th December, 2020 and 19th January, 2021, the Court noted the issue of Representation which had been pending ever since. It is apparent that there were more than one firm of Advocates appearing for the 1st Respondent and the 2nd Respondent. Notably, the matter was also taken at the Special General Meeting for the Law Society of Kenya held on 18th January, 2021 and in which the firm Ashioya & Nkatha Advocates, were appointed to handle the matter and represent the Law Society of Kenya.

The Resolutions have since been stayed by the High Court in Adrian Kamotho Versus the Law Society of Kenya and another, in the ruling of the Court on 3rd February, 2021. The Learned Judge, P. Nyamweya during the hearing in Court on 8th February, 2021 noted as much and listed the matter for a ruling on the 19th April, 2021 on the issue of representation.

34. **ELRC NO. E087 OF 202 IN THE EMPLOYMENT & LABOUR RELATIONS COURT IN NAIROBI MURIGI KAMANDE VERSUS NELSON ANDAYI HAVI, THE LAW SOCIETY OF KENYA AND MERCY KALONDU WAMBUA (INTERESTED PARTY)**

The Petitioner being an Advocate of the High Court and a member of the Law Society of Kenya, (the 2nd Respondent), moved to Court through a Petition to the Employment and Labour Relations Court; filed under a Certificate of Urgency, alongside its accompanying Notice of Motion and Supporting Affidavit on 26th November, 2020; pleadings evenly dated. The Petitioner being the Exparte Applicant in the Notice of Motion prayed for among others; -

- i. THAT this Application be certified urgent and heard expeditiously, ex parte in the first instance; pending inter parties hearing of the Application, an Injunction be issued restraining the Respondents from interfering with the Interested Party's appointment/tenure as the 2nd Respondents CEO by In anyway, moving/debating or passing motions/resolution on the Interested Party's appointment/tenure or advertisement of her position in the Special General Meeting intended to be conducted on 5th December 2020 or any other Special or Annual General Meeting;
- ii. THAT pending inter panes hearing of the Application. a Conservatory Order be issued staying the enforcement/ implementation of the 1st Respondent's letter dated 23rd November 2020 in so far as it calls for a Special General Meeting to move, debate or vote on matters about the Interested Party's appointment/tenure as the 2nd Respondents CEO. and to recruit a CEO, as further set out in Agenda 3 & 4 of the Notice requisitioning an SGM;
- iii. THAT pending inter-parties Hearing of the Application, the 1st Respondent either by himself, agents, or accomplices be restrained from interfering with the Interested Party's role as secretary to the Council of the Law Society of Kenya and from interfering with the Interested Party's position as the Chief Executive Officer of the Law Society of Kenya in the day-to-day administration, management of the Secretariat and the affairs and functions of the Law Society of Kenya or in any manner whatsoever interfering with her contract of employment with the Law Society of Kenya.

Notably, there had been a Requisition for a Special General Meeting filled with the Secretary in which the members of the Society were to discuss inter alia, the recruitment of a New CEO/Secretary for the Society. This followed after the Suspension of the CEO on 14th September, 2020, the hearing of her Notice for Removal on 6th October, 2020 and the decision taken on 16th October, 2020 by 9 Council members to reinstate the CEO/Secretary back to office. Subsequently, the President, Mr. Nelson Havi gave a statement to members dated the 19th October, 2020 on the Notice of Termination of the CEO, notwithstanding that the Council had voted 9/13 members to retain the CEO. Further, the Council members issued a clarification message which was meant to reinstate the CEO and a further statement dated the 23rd October, 2020 confirming the position that the CEO had not been terminated and that she was lawfully in office.



When the matter came up in Court on the 3rd December, 2020, the Court noted the issue of Representation wherein the Firm of Kimani Muhoro & Company Advocates had filed their Notice of Appointment acting for the Law Society of Kenya on appointment by eight council members while the firm of Kurgat, Kabata, Odongo and Alakonya LLP had filed their Notice of Appointment to act for the Law Society of Kenya as well having been appointed by the President. The firm of Prof. Tom. Ojienda & Associates is on record for the 1st Respondent, Mr. Nelson Havi Andayi.

Upon reading the affidavits on record on the issue of representation and hearing the parties on the same, the Court on the 17th of December, 2020 gave a ruling wherein it ordered that the Law Society of Kenya files a Resolution of the General Meeting in so far as representation of the Law Society of Kenya is concerned in both this matter as well as in Petition E090 of 2020, Gad Aguko Versus Nelson Havi and the Law Society of Kenya.

35. JUDICIAL REVIEW NO. 1146 OF 2020: GAD AGUKO VERSUS NELSON ANDAYI HAVI, MERCY KALONDU WAMBUA & LAW SOCIETY OF KENYA AND 12 INTERESTED PARTIES

The Ex-parte Applicant through the firm of Aguko, Osman & Company filed the Judicial Review dated 2nd December, 2020 under Certificate of Urgency seeking leave to proceed to institute judicial review proceedings on grounds that a campaign had been began to collect the names of members requisitioning for a Special General Meeting (SGM) pursuant to the Law Society of Kenya Act, 2014.

The Ex-parte applicant noted that the 1st Respondent, Mr. Nelson Havi had proceeded to authorize the convening of the Special General Meeting which was to be held on the 5th of December, 2020, yet the convening of the meeting ought to be done by the whole Council. He therefore sought leave to proceed to prosecute his matter and further to seek an injunction to restrain albeit temporarily pending the hearing and determination of the application the SGM of the 3rd Respondent, (the Law Society of Kenya).

The Learned Judge Hon. Justice Nzioki Wa Makau gave conservatory orders dated the 1st of December 2020 upon hearing the Counsel for the Applicant Ex-parte effectively staying the Special General Meeting that had been scheduled for the 5th December, 2020.

Consequently, learned Judge, P. Nyamweya, on 3rd December, 2020 gave a ruling with inter alia orders that the Ex-parte applicant be granted leave to file Judicial Review orders seeking to quash the 1st Respondent's letter dated 23rd November, 2020 directing that arrangements be made to enable the holding of the SGM, that the leave granted operates as stay and suspension of the SGM scheduled to be held on 5th December, 2020 or any other day as contained in the notices requisitioning the SGM pending the hearing and determination of the Ex-parte applicant's substantive Notice of Motion or further orders of the court.

The firm of Kurgat, Kabata, Odongo & Alakonya Advocates LLP filed a Notice of Appointment dated the 7th December, 2020 while the firm of Murgor & Murgor Advocates filed a Notice of Change of Advocates dated 14th December, 2020, taking over the matter from KKOAA Advocates initially on record for the Law Society of Kenya.

Further, Mr. Nelson Havi and Council Members Carolyne Kamende; Herine Kabita, Esther Ang'awa filed their respective Replying Affidavits to the suit while Carolyne Mutheu filed a Replying Affidavit on behalf of the Law Society of Kenya through the firm of Murgor & Murgor Advocates. Ms. Riziki Emukule filed a Replying Affidavit in the matter through the firm of Oraro & Company Advocates on behalf of other 8 Council Members also listed as Interested Parties, and dated 15th December, 2020. On her part, Ms. Mercy Kalondu Wambua filed her Replying Affidavit through the firm of Limo & Njoroge Advocates dated 16th December, 2020.

The matter has however not proceeded noting the ruling delivered by Justice James Rika in Petition Number E087 of 2020, Murigi Kamande Versus Nelson Havi and the Law Society of Kenya in which the court ordered on 17th December, 2020 that a resolution of the General membership be filed in Court to ascertain the issue of representation for the Law Society of Kenya in the suits noting that more than one Advocate (or firm of advocates) had filed their Notice of appointment to act for the Law Society of Kenya.

36. **PETITION NO. 44 OF 2018 LSK VS INSURANCE REGULATORY AUTHORITY AND 3 OTHERS.**

The Law Society of Kenya moved to Court to challenge statutory provisions of **Section 67** of the **Insurance Act** and the almost consistent issuance of moratoriums by courts in favour of unstable insurance companies thereby depriving members of the public, policy holders, creditors and other affected persons the right to access justice, right to a fair hearing and rights to seek the protection of the courts as guaranteed under Articles 48 and 50(1) of the Constitution.

Counsel on record for the Law Society of Kenya, met with officials from the Insurance Regulatory Authority with a view of settling this matter, and were informed that they would want to develop a Policy Paper which will ignite a change in the legal framework that governs unstable Insurance Companies. They requested LSK to send its input to that Policy Paper. That way, positive action may be taken by the regulator in the industry which will solve the problem that led matters to be filed in court and consequently, the matter may be settled amicably.

The matter shall be mentioned in Court on **24th March, 2021**.

The **Mr. Guandaru Thuita, Advocate** is on record for the Society.

37. **PETITION NO. 89 OF 2018 LSK VS DIRECTOR GENERAL COMMUNICATION AUTHORITY, MR. JOE MUCHERU CS ICT, MR. FRED MATIANG'I CS INTERIOR & AG.**

The Society moved to Court to seeking declarations that the decision/action of the Respondents whether jointly or severally to shut down four broadcasting stations of the 1st to 3rd Interested Parties from 30th January, 2018 was ultra-vires, unlawful and a violation of Articles 10, 33, 47 of the Constitution as read with Section 4 and 5 of the Fair Administrative Action Act and section 5A (2) Kenya Information and Communications Act.

The Petition was filed on 14th March, 2018 and mentioned on 21st May, 2018 to confirm compliance of the court's directions on filing of responses. None of the Respondents had filed their responses and they sought 14 days to comply. Court was of the view that the Petitioner should file its submissions even if Respondents haven't filed their responses. The Petitioner would thereafter be at liberty to file supplementary submissions.

Hearing was fixed for 19th November, 2018 but did not proceed. The 1st Respondent filed their response to the petition and requested for 7 days to file submissions. The matter was set down for hearing on 18th February, 2019 however did not proceed since Hon. Justice E. Mwita is on transfer. It has now been scheduled for hearing on 3rd July, 2019 before Hon. Justice Korir but was moved to 25th September, 2019.

The matter did not proceed on said date since the Judge was engaged in a 3-judge bench proceeding. The matter has been fixed for hearing on 23rd March, 2020.

Mr. Nani Mungai, Advocate and **Ms. Julie Soweto, Advocate** are on record for the Society.

38. **PETITION NO. 1178 OF 2007 INVESCO ASSURANCE CO. LTD VS THE COMMISSIONER OF INSURANCE AND 3 OTHERS.**

Invesco Insurance Limited initiated the proceedings herein seeking, *inter alia*, a declaration that the enforcement of decrees held by third parties in ancillary suits would contravene its rights under Sections 70 (a) (c), 75(1) (3) (6) and 76(1) of the repealed Constitution. When the Petition came up for hearing on 22nd June, 2010, Consent was recorded whose effect was to exclude the enforcement of some decrees held by third parties in the said ancillary suits.

Later, the Commissioner of Insurance applied and succeeded in setting aside the Consent Order on the ground that it was binding on parties that were not represented in the Petition. The Petition is thus supposed to be heard afresh but in the meantime Invesco Insurance has sought to amend it since it was filed under the repealed Constitution.

The Matter was mentioned on 18th December, 2017 for further directions and thereafter scheduled for a further mention on 20th March, 2018 to obtain directions on hearing of the Petition. The Court fixed the Petition for hearing on 31st July, 2018 to allow the Petitioner to file their amended Petition. The Petitioner was granted leave to file an Amended Petition within 14 days and the matter fixed for hearing on 11th December, 2018. The Judge thereafter directed that the matter be heard on 18th December, 2018 to take a judgment date.



However, Justice Chacha Mwita directed that the Petitioner files a bundle containing the Petition and all Further Affidavits in support thereof for expediency. The matter was set down for a mention on 19th February, 2019 for confirmation of compliance and taking of a judgment date.

However, the Petitioner had not filed their Petition and Bundle of Documents as directed. Court therefore directed that the matter be mentioned on 26th September, 2019 and again on 4th November, 2019 to get a judgment date. However, the judge was not sitting. The submissions were highlighted on 22nd February 2021 and judgment reserved for **22nd April 2021**.

Mr. Nabil Orina, Advocate is on record for the Society.

39. **CONSTITUTIONAL PETITION NO. 144 OF 2018 LAW SOCIETY OF KENYA - VS - THE ATTORNEY GENERAL, PRINCIPAL SECRETARY MINISTRY OF LANDS, CABINET SECRETARY MIN. OF LANDS & ANOTHER.**

On 4th April, 2018 the Principal Secretary for the Ministry of Lands issued a Public Notice on processing and registration of land transactions effectively discontinuing manual transactions at both Nairobi and Central registries. The Notice also effectively obliges all users to use electronic means for land transactions including applications for registrations of instruments. The Society through **Mr. Duncan Anzala, Advocate** moved to Court challenging the propriety and implementation of the said Notice.

The Petition was certified urgent on 17th April, 2018 and **Lady Justice A. Okwany** issued the following orders -;

1. A conservatory order in the nature of an injunction is issued restraining and staying the 2nd and 3rd Respondents from implementing electronic filing of conveyancing documents as per the Notice on e-filing dated 4th April, 2018.
2. The Petition and the Application be served upon the Respondents within 7 days.
3. The matter be mentioned on 2nd May, 2018 for further directions.

On said date **Mr. Anzala, Advocate** informed the Court that there were two other applications pending -:

1. An application by the 1st to 3rd Respondents seeking to review the conservatory orders issued; and
2. An application by Consumer Federation of Kenya (COFEK) to be enjoined in the suit as an Interested Party.

The Judge allowed the request made by parties for more time to engage in negotiations towards a settlement and issued the following directions, that by consent -:

1. COFEK be enjoined as an Interested Party,
2. The Case be mentioned on 9th May, 2018 to confirm if parties had reached a settlement and for directions; and
3. Interim orders be extended till then.

A Consent was filed in court on 22nd May, 2018 to the effect that -:

1. The 3rd Respondent do establish within seven days an all-inclusive Taskforce comprising of representatives of all relevant stakeholders to develop guidelines for implementation of the electronic land transactions.
2. Specific processes shall continue to run electronically.
3. Applications for registration, transfer, charge, lease, caution/caveat, court orders, consent etc. shall run concurrently on electronic and manual form.
4. Members of the Petitioner be granted unfettered access to the physical copies of land records.
5. A mentioned is set for 30 days for further orders.

On 6th June, 2018 the matter came up for mention with a view to having the Consent filed on 22nd May, 2018 adopted however, the National Land Commission opposed its adoption on the ground that the Ministry of Lands had usurped some of its mandates. The Court declined to adopt the Consent and directed that the Commission and Ministry of Lands hold further negotiations.

The matter was scheduled for 25th June, 2018 to confirm whether an agreement has been reached. In the interim, Court directed that if there will be no agreement:-

1. The Petitioner files and serves submissions to the Petition within 10 days;
2. The Respondents and Interested Party files and serves submissions within 14 days
3. Interim orders be extended.

The matter was mentioned on 26th September, 2018 to confirm status of progress of the Taskforce. It was confirmed before Court that the Taskforce had been gazetted and had begun executing its mandate before the rules are subjected to public participation. Court directed that the matter be mentioned on 4th December, 2018 to review progress.

The matter was then adjourned to 12th March, 2019 for mention. LSK informed court that the Taskforce had submitted its report to the A.G for review and comment and requested court for 30 days to obtain feedback on the same. Court granted the request and directed that the matter be mentioned on 8th May, 2019.

State Counsel informed Court that they are working on the draft regulations and required more time to finalize and have them published. Court allowed the request and directed that the matter be mentioned on 23rd July, 2019 to review the progress. However, the Land Registration (Electronic Land Transactions) Regulations, 2019 were subsequently gazetted on 28th June, 2019. However on 25th November, 2019 an Article was published indicating that the Parliamentary Committee on Delegated Legislation recommended annulment of the Regulations.

Matter was set down for 25th September, 2019 to review the progress and our advocate confirmed that he has received the draft report from the Taskforce and draft regulations but requested for more time to take instructions.

Matter was mentioned on 24th February 2020 where LSK requested Court to direct the AG to serve and file the final report by the Taskforce. The Court made the following Orders-;

- i. AG to file and serve the Report on or before 17th March, 2020;
- ii. Matter to be mentioned on 25th March, 2020.

Mr. Wambugu Wanjohi Advocate is currently handling the matter.

40. **HIGH COURT CRIMINAL CASE NUMBER 75 OF 2011 – R VS MOHAMMED ISMAEL MADLEY & 3 OTHERS (MURDER OF LAWYER ANTHONY NAHASHON NGUNJIRI).**

The matter came up for hearing on 22nd January, 2018 before **Justice Wakiaga**. However, it did not proceed since Counsel for the 1st and 2nd accused persons was handling an election petition in Migori and counsel for the 3rd and 4th accused persons was unwell. Prosecution was however ready to proceed with one witness who is a firearm's officer. The matter was adjourned and another hearing date given on the 20th and 21st February, 2018.

However it did not proceed on 20th February, 2018 because the Judge (Wakiaga, J) was writing a judgment for an election Petition that was due. The matter was subsequently adjourned to 17th and 18th April, 2018 where Counsel for the accused persons concluded their cross-examination. Court directed that the two remaining witnesses be heard on the 28th June, 2018.

The two witnesses were heard on said date before court directed that the proceedings be typed and the prosecution to confirm closing of case. The matter was given a further date on 15th November, 2018 for hearing and highlighting of submissions and hearing set for 14th February, 2019.



The defendants had not filed their submissions on said date and the matter was given further dates of 28th February, 2019 and 10th April, 2019 for highlighting submissions. The matter came up for mention on 17th September, 2019 where the court fixed three dates for the defence hearing – 15th, 16th and 17th October, 2019. On said dates the 1st and 2nd accused persons testified and were cross-examined. Matter was then adjourned on request of Counsel for the 2nd accused person for summons to issue to Safaricom Kenya for production of electronic evidence.

Matter was scheduled for defence hearing on 21st and 22nd January, 2020 but was adjourned to 22nd January, 2020 since Prosecution Counsel was unwell.

The matter slated for Further Defence Hearing on the **11th February 2021**. However, the same did not proceed as Justice Wakiaga was away on official duties. The matter was listed before Honourable Aganyo (DR) who was equally away on official duties.

Fresh dates will be issued by the Registry.

Mr. Joel Mbaluka, Advocate is on record for the Society and the deceased's family.

41. **PETITION NO. 171 OF 2018 ADRIAN KAMOTHO NJENGA VS REGISTRAR HIGH COURT & 2 OTHERS.**

The Petitioner moved to Court to challenge the application of Section 13 (1) (b) of the Advocates Act on requirements of admission as an advocate. The Society applied to be enjoined as an Interested Party which application was allowed. The matter was to be heard on 26th November, 2018 but was adjourned to 27th February, 2019. However the same could not proceed as the Council for Legal Education had not been enjoined in the matter to deliberate on interpretation of Section 13 of the Advocates Act.

The Court directed that Council for Legal of Education be enjoined and the matter will be heard on 22nd July 2019 but matter did not proceed since the judge was unwell. It shall now be heard on 5th December, 2019 however the matter did not proceed since the Petitioner was indisposed. It has been set down for 3rd March, 2020 for hearing. The matter was withdrawn with no orders as to costs.

Mr. Cohen Amany, Advocate is on record for the Society.

42. **PETITION NO 61 OF 2017 LAW SOCIETY OF KENYA VS THE HON. ATTORNEY GENERAL & 2 OTHERS.**

The Society moved to court seeking tax exemption since it is a non-profit making organization. The Petition is premised on discrimination. The Respondent was given 14 days to file their response and the matter was set down for highlighting submissions on 13th March, 2018.

The matter was fixed for mention on 4th July, 2018. Court directed the Society to file and serve submissions upon the Respondent within 14 days. Matter was to be mentioned on 10th October, 2018 which was subsequently gazetted as a public holiday so the matter was set down for mention on 20th October, 2018. The Judge having confirmed that the parties had filed their respective submissions, set down the 19th March, 2019 for highlighting of submissions.

The matter was taken out of the court list alongside all High Court matter scheduled on the said date as Judges were away on a conference. The matter was scheduled for a mention on 3rd December, 2019 and court directed parties to appear on 8th April, 2020 for highlighting of submissions. Madam Odede attended to the matter on Wednesday 21st October 2020 where the Court directed that Grounds of opposition and submissions by the 1st respondent be served upon the petitioner within 14 days. That the Petitioner to file replies/supplementary submissions thereafter. Matter was mentioned on 16/11/2020 before Hon. Mrima J for setting a date for highlighting of submissions. The date is yet to be established.

Mr. Evans Ogada, Advocate has been requested to Highlight submissions and take a judgment date for the Society.

43. **CONSTITUTIONAL PETITION NO.9 OF 2019 LAW SOCIETY OF KENYA VS ODPP, DCI, IG POLICE, AG AND CJ**

The Law Society has moved to court seeking the following reliefs;-

- i. declaratory order that the inhibition of an advocate's right to represent a client by the Respondents contravenes the rights and freedoms of the advocate and the client;
- ii. a prohibitory injunction against the Respondents from harassing or arresting advocates as relates to matters of advocates-client privilege,
- iii. A mandatory injunction compelling the Respondents to release advocates on Bail/Bond on the basis of personal cognizance upon arrests that are premised on their practice.

The matter had been scheduled for mention on 7th May, 2019 but did not proceed since Justice Korir was not sitting. It has now been scheduled for hearing on 13th July, 2020.

The Law Society of Kenya has complied with court directions by filing submissions in this matter. This particular petition was heard concurrently with its sister petition, Constitutional Petition number 8 of 2019. The matter comes up on **9th March 2021** for the highlighting of submissions. The ODPP is yet to comply with the requirement for submissions. They have the final chance to comply. Matter slated for **28th June 2021** for the highlighting of submissions.

Mr Borniface Akusala, Advocate and Mr Evans Ogada, Advocate are on record for the Society.

44. **PETITION 23 OF 2019 CHAMA CHA MAWAKILI VS AG, REGISTRAR OF COMPANIES**

A group of lawyers registered a company on 19th December, 2018 by the name Chama Cha Mawakili Limited (CCM) and on 8th January, 2019 the Society wrote to the Registrar of Business Registration Service to register reservations and objections to the registration of the company on grounds that it bears a similar name to the Law Society of Kenya.

The Registrar wrote to CCM on 9th January, 2019 directing them to change their name within 14 days or they would invoke Section 58 of the Companies Act and deregister the company. The Business Registration Service then wrote to both parties on 24th January, 2019 to convene a consultative meeting to resolve the issue but CCM moved to court and filed the Petition.

The Petitioner alleges that the Registrar of Companies violated their rights to fair hearing and fair administrative action as provided for in Articles 36 93) (b) and 47 of the Constitution. The Petitioner also contests the constitutionality of Section 58 (5) of the Companies Act because it does not give on a right to fair hearing before a registration is cancelled.

The matter is scheduled to come up for further directions on 15th March, 2019 but was set down for mention on 11th July, 2019 to confirm the Registrar's position on the impending registration. The status was confirmed as archived and during the mention of 29th August, 2019 the Petitioners' application seeking reinstatement of their status as active came up for directions.

Court directed parties to file responses within 7 days and the matter will be heard on 9th September, 2019. The same [proceeded with the Petitioners application seeking reinstatement of their status from archived to active. The Petitioners sought interim orders which were denied by court and the matter was scheduled for 4th October, 2019 for hearing.

Court directed the Society to file and serve responses and submissions to the Petitioner's application for conservatory orders by 7th October and directed the Status Quo to remain as is meaning no deregistration of the Petitioners should be undertaken.

Matter set down for 17th October, 2019 for mention and hearing for 8th November, 2019 but did not proceed, trial judge was not sitting. Matter to be mentioned on 2nd December, 2019 and court directed that the petition and highlighting of submissions be on 6th December, 2019. However, on said date, the Petitioners sought an adjournment which was



opposed by LSK. Court directed parties to file supplementary submissions and matter to be heard on 17th December, 2019.

On 3rd April 2020 the Court through Korir J faulted the Registrar for not affording the Applicants a right to be heard and quashed the decision to deregister them. He however held that the Registrar could begin the process de novo.

Mr. Cohen Amanya, Advocate was on record for the Society.

45. **CONSTITUTIONAL PETITION NO. 3 OF 2019 ODIRA ELVIS NANDA VS CHIEF JUSTICE AND JUDICIAL SERVICE COMMISSION.**

The Petitioner moved to Court citing failure by the Respondents, who are responsible for preparation of the Annual Judiciary calendar, to disclose dates for the judges' and magistrates' colloquium, workshops, seminars, trainings and the judicial service week for the year 2019. The Petitioner argues that the Respondents actions of giving short notices for these activities prejudices court matters and violates their rights to access to justice.

The Law Society is an Interested Party in the matter in support of the petition. The matter came up for directions on 5th March, 2019 and a mention on 9th April, 2019. The purpose of the mention was for the court sitting in Nairobi to issue directions having received an Order issued by **Hon. Ngugi J.** sitting in Nakuru, that the matter be transferred to Nairobi where the Respondents' headquarters are domiciled. The Court directed that the matter be mentioned on 24th July, 2019 before the **Hon. Justice Korir** for further directions.

The court directed as follows when the matter came up for directions;

1. That the Petitioner serves their submissions to all parties within 2 days.
2. That all other parties file and serve their responses to the petition together with their submissions within 21 days thereof
3. That the matter be mentioned on 23rd October, 2019 to confirm whether all parties have complied with the court's directions and to issue a date for judgment. Judgment has been reserved for 30th January, 2020.

It is noteworthy that while the court dismissed the petition, it made the following pertinent observations which may be noted by the society for future reference;

- i) That it is important for the Respondents to always ensure there is proper planning of the trainings and sufficient notice in regards to taking matters out is given in good time.
- ii) That in view of the fact that the respondents have the mandate and are administratively responsible for planning, preparation, circulation and coordination of the calendar for Judges and Magistrates colloquium, workshops, seminars, trainings and judicial service weeks, they should avoid giving hearing dates in court and at the registry only to have them taken out for the very same reasons that ought to have been pre-planned.
- iii) Whereas as emergencies may occur, causing disruption of the court's diary, the respondents are required to give information whenever sought as provided under Article 35 of the constitution.

Ms Mercy Mathai, Advocate was on record for the Society.

46. **CIVIL SUIT NO. 235 OF 2009 JOSIAH ABOBO VS STANDARD LIMITED**

The Claimant, an advocate, moved to court seeking general defamatory damages from the Defendant due to a notice published on its newspaper edition of 10th November, 2008. The Notice, sponsored by the Law Society Disciplinary Committee, listed the Plaintiff as suspended, among other advocates who were either suspended or struck off. The Defendant has thus applied to have the LSK enjoined as a third party with a view to having the Society indemnify the Defendant against any claim that would ensue.

The matter came up in court on 28th March, 2019 where the application was allowed and it was ordered that the

Defendant serves the Third Party Notice within fourteen days.

Mr Wilkins Ochoki, Advocate is on record.

47. **PETITION 160 OF 2016 ZAMZAM ABDI VS DPP, DCI AND TWO OTHERS.**

The Plaintiff, an advocate, moved to court citing harassment by officers of the DCI in the course of undertaking her professional duties. The Petitioner alleges that her fundamental rights and freedoms were violated after she was arrested and illegally incarcerated for over 80 hours without being arraigned in Court, contrary to Article 51 of the Constitution.

The Society has been enjoined as an Interested Party and the hearing of the application for joinder of two proposed interested parties – Mr. Salim Sheikh and Urban Solutions Limited will be heard on 23rd October, 2019.

The matter did not proceed as the second proposed interested parties – Urban Solutions – had not served their application to all parties. Court directed parties to file and serve responses within 21 days. Hearing of the application has been scheduled for 19th February, 2020 where court directed all parties files and serves their written submissions within 21 days. Mention on 22nd April, 2020.

The matter is scheduled for mention on 19th May, 2021 for further directions.

Mr. Henry Faraji, Advocate is on record for the Society.

48. **PETITION NO. 105 OF 2019 ALEX JOSHUA & 2 OTHERS VS KEN LUSAKA & 8 OTHERS.**

The Petitioner moved to Court citing violation of his right to a fair trial in Succession Cause 1287 of 2007. The Petitioner alleges that there were instances of collusion and professional misconduct between the lawyers on record and the judicial officers in the above-mentioned case. The Society is listed as the 6th Respondent.

The matter was mentioned on 19th June, 2019 and Court directed as follows:-

- a) That the Petitioners serve all, other, parties with the application dated **6th May, 2019**, within **seven (7) days**.
- b) That all Respondents who have not filed response to do so within **seven (7) days** from the date of service.
- c) That the Petitioners file their written submissions within **fourteen (14) days** from service of these responses.
- d) That the Respondents, in turn, file their submissions within **fourteen (14) days** of service.

Thereafter, the Honourable Court reserved highlighting of submissions for the **22nd October, 2019**.

However, this matter did not proceed to highlighting of submissions for the following reasons:

- a) The Petitioner together with the rest of counsel except for counsel for LSK and 1st, 2nd and 8th Respondents were absent.
- b) It appeared that most parties, save for those present in court, had not complied with the directions of the Honourable Court with regard to filing of responses, submissions and service thereof.

Consequently, the Honourable Court directed as follows:

- a) That all parties comply with the order of the court; and
- b) That that the Preliminary Objections filed on your behalf and that of the 1st and 2nd Respondents are given priority as to hearing; *to wit*, they shall be adjudicated upon and determined first.

Thereafter, the Learned Judge reserved mention, verification filing of responses and submissions on the 28th January, 2020.



Now, to advise that due to downscaling of the courts due to the Covid-19 directions this matter has remained in abeyance pending further directions.

Mr. Dennis Muyuri, Advocate is on record for the Society.

49. **PETITION 185 OF 2019 OKIYA OMTATAH VS PARLIAMENTARY SERVICE COMMISSION, PARLIAMENT OF KENYA AND 422 OTHERS.**

The Petitioner moved to court challenging the apparent actions of the 1st and 2nd Respondents to pay members of the National Assembly House Allowances in addition to the Mortgage Allowances they are entitled to per term. The Petitioner alleges that the 1st and 2nd Respondents have no Constitutional mandate to determine remuneration of Members of Parliament since that is solely vested in the Salaries and Remuneration Commission.

The Law Society is an Interested Party in the matter and the matter will be mentioned on 24th October, 2019 and directions were issued that hearing be on 5th December, 2019. Judgment was to be delivered on 16th March, 2020.

On **10th December 2020**, A 3 Judge Bench consisting of J Mativo, J Korir and J Nyamweya delivered a judgment quashed the decision the Parliamentary Service Commission to set, and approve the payment of an accommodation or house allowance to Members of Parliament contrary to the structure of Remuneration and Benefits of all State Officers in Parliament without the approval of the Salaries and Remuneration Commission in disregard of Article 230(4) (a) of the Constitution. The Bench additionally issued an order directing the Clerk of the Senate and the Clerk of the National Assembly to, within a period of twelve calendar months from the date of the order, recover in full from the salaries and allowances of each Member of Parliament the entire amount of monies paid as accommodation and/or house allowance to the Members of Parliament, pursuant to the illegal and unconstitutional decision of the Parliamentary Service Commission.

The late Mr. Nzamba Kitonga, SC was on record for the Society. The matter is now being handled by **Mr. James Ivia Kitonga, Advocate**.

50. **PETITION NO. 3062 OF 2019 JULIET KINITI VS LSK**

The claimant moved to Court alleging that the Society defamed her by issuing a publication on December 21st, 2018 in the local dailies listing her practice status as suspended. She is demanding that the LSK issues her an apology, amends and/or withdraws that publication as well as claiming general, aggravated and exemplary damages for defamation and libel.

The matter came up on 3rd December, 2019 for hearing of an application to set aside the default judgment and the same was allowed by consent of all parties. Court directed parties file their submissions and mention on 22nd January, 2020. The matter was mentioned on 9th March 2020 for purposes of confirming the status of negotiations between the parties. By consent the parties agreed to refer the matter to Court Annexed Mediation, However due to the ongoing Covid-19 pandemic, the parties were not able to start the mediation process as the Court had yet to appoint a mediator to handle the case. The advocate is following up with the Court for appointment of a mediator. **Mr. Cohen Amany, Advocate** is on record for the Society.

51. **PETITION NO. 337 OF 2018 FELIX KIPRONO MATAGEI VS ATTORNEY GENERAL.**

The Petitioners have moved to Court to challenge Section 8 as read with Section 9 of the Law Reform Act that provides that leave must first be obtained before an application for Judicial Review orders of *Certiorari*, *Mandamus* or *Prohibition*. The Petitioner alleges that the impugned sections of the Act contravene Articles 23 (2), (f), 48, 50, 159 and 259 of the Constitution of Kenya as read with Order 53, Rule 1 of the Civil Procedure Rules.

The matter was mentioned on 15th July, 2019 where parties were directed to file and serve pleadings by 15th August, 2019. Hearing scheduled for 25th September, 2019 however the hearing did not proceed since the judge was not available and it was given a mention date of 26th November, 2019. Court thereafter directed that hearing be on 9th April, 2020. The Law Society has been invited to join the proceedings as *amicus curiae*.

The matter was heard on 20th January, 2021 and judgment reserved for **25th March, 2021**

Ms. Florence Mwangangi, Advocate is on record for the Society.

52. **SUPREME COURT REFERENCE NO. 3 OF 2019.**

The Council of Governors moved to the Supreme Court to seek an Advisory Opinion as per Section 13 of the Supreme Court Act on the impasse regarding the annual Division of Revenue Bill. The Senate and the National Assembly have failed to agree on the Division of Revenue Bill for the financial year 2019-2020 and the mediation process provided for under Article 113 of the Constitution has failed. This situation threatens to cripple operation of counties thus directly affecting service delivery to the public.

The matter was eventually resolved after the proposed Court mediation process and the two Houses eventually agreed on the Division of Revenue allocation however the matter will be heard on 22nd January, 2020.

On **15th May 2020** an Advisory Opinion, was rendered by a Bench consisting of J Wanjala, CJ Maraga, J Njoki, J Ibrahim, conclusively disposed of the four issues in the manner determined; namely, the recommendations of the Commission on Revenue Allocation are not binding on Parliament; in the event of an Impasse over the Division of Revenue Bill, the solution prescribed in paragraphs 81 to 91 of this Opinion shall apply; the Supreme Court or any other court for that matter, is not the appropriate forum for setting timelines as to when the National Treasury must transfer the equitable share of revenue to counties; and Parliament cannot enact the Appropriation Act before the enactment of the Division of Revenue Act.

The Late Mr. Nzamba Kitonga, SC, Mr. Borniface Akusala, Advocate and Mr. Steve Ogolla, Advocate were on record for the Society.

53. **PETITION NO. 384 OF 2019 HILLARY MOKAYA, NICK KYUNUVE VS THE COMMITTEE ON SENIOR COUNSEL, ATTORNEY GENERAL, LSK AND CHIEF JUSTICE**

The Petitioners have moved to court to challenge the Senior Counsel Conferment process alleging that the composition of the Committee was illegal, unlawful; and unconstitutional. They allege the two members of the Committee were not representing the Law Society at the time of the first Notice calling for submissions for the Senior Counsel Conferment was sent because the LSK elects such representatives during its AGM.

The Petitioners also allege that Hon Justice Mohamed Ibrahim and Jacqueline Kamau were elected/appointed to sit in the Committee way after they had begun sitting meaning those sittings were being held while the Committee was not properly constituted. They add that these two persons sat in deliberations involving applicants who represented them during vetting of judges and did not declare potential conflict of interest.

Parties attempted to negotiate an out of court settlement, but such negotiations collapsed on 26th Feb 2020.

The matter comes up for a mention on 26th October 2020 for directions.

Mr. Elisha Ongoya, Advocate is on record for the Society.

54. **PETITION NO. 203 OF 2019 TEDDY OKELLO T/A PATRICK, TEDDY & PARTNERS VS CABINET SECRETARY MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING AND URBAN DEVELOPMENT & 2 OTHERS**

The Petitioner moved to court challenging the advertisement for **TENDER NUMBER KENHA/2172/2019 – REGISTRATION FOR PROVISION OF LEGAL SERVICES PROVIDERS FOR THE PERIOD ENDING 30TH JUNE 2021** where the 2nd Respondent invited law firms to bid for prequalification for registration of Legal Services Providers for the period ending 30th June, 2021, with the mandatory requirement that the Managing Partner of the law firm bidder must have at least Fifteen (15) Years post - admission experience among the terms of the tenders so advertised.

The Petitioner alleges that that requirement is discriminatory and restrictive and will result in selective participation



and unfair competition in provision of legal services to State Corporations in Kenya. Other advocates in Kenya, especially the young lawyers. The Law Society has applied to be enjoined in the suit since it relates to matters of general practice and welfare of members.

The matter was mentioned on 11th October, 2019 where he respondents in the KENHA matter served the petitioner with a preliminary objection on the basis of Sections 65 and 167 of the Public Procurement and Asset Disposal Act No. 33 of 2015; and also objected to our application to join the suit as an interested party.

The court directed that both issues be canvassed via written submissions. The respondents to reply to our application file and serve us within seven days from 9.10.2019 and we deal our part within the same time frame. The same directions were given on the preliminary objection.

The matter was mentioned on 11th December, 2019 but Respondents had not filed their submissions.

Matter was to be mentioned on 11th March, 2020 where respondents were given 7 days to file and serve responses. **Ms. Aluso Ingati, Advocate** is on record for the Society.

55. **PETITION NO. 6 OF 2018 PHILIP OKOTH (SUING AS NEXT OF KIN) AND 9 OTHERS VS BOARD OF MANAGEMENT ST. ANNE'S PRIMARY SCHOOL AHERO AND 3 OTHERS.**

The Petitioner moved to Court in his capacity as next friend of nine children who are all students of St. Anne's Catholic Primary School in Ahero. The Petitioner, one of the nine students in the school, had been expelled for refusing to attend the mandatory Friday morning Catholic Mass. The students had requested to be exempted from all inter-faith activities since they were all adherents of Jehovah Witness. The School's Board of Management declined that request and expelled one of the Petitioners in response. The Society was enjoined in the matter as a second Petitioner due to the public interest nature of the case.

The Petitioners moved to court seeking to enforce the rights of Jehovah Witness children not to be indirectly discriminated against through the enforced Friday Mass attendance and also a declaration that the action of the School's Board of Management to require all students to attend the mandatory Friday mass was a violation of the Petitioner's Constitutional rights to equality, freedom from discrimination and freedom of religion and association.

The Petition was filed in April 2018 and conservatory orders entered to allow the students to sit their KCPE examinations. The Court, in a judgment delivered on 30th September, 2019 by **Hon. Justice Fred Ochieng** dismissed the Petition holding that the Petitioners had originally accepted the School Rules and Regulations which included attending mass on Friday mornings. He added that the Petitioners had failed to prove how the rule which appears neutral had disadvantaged them.

In light of the recent court decision by **Hon. Justice E. Mwita** in **Petition 10 of 2019** the Society has instituted an appeal in the matter. LSK is waiting for submissions from St Annes and AG so as to proceed.

Mr. Ochiel Dudley, Advocate is on record for the Society.

56. **PETITION 369 OF 2019 ADRIAN KAMOTHO VS ATTORNEY GENERAL**

The Petitioner moved to court to challenge the apparent reluctance of the President of the Republic of Kenya to appoint judges who had been recommended by the Judicial Service Commission to fill positions in the Court of Appeal, Environment and Land Court and Employment and Relations Court.

The Petitioner claims that there has been inordinate delay that is hampering administration and access to justice. The Society is an interested party in support of the Petition and the matter was mentioned on 12th November, 2019. The Court directed as follows:

- a) That the file is to be forwarded to the Chief Justice for the empaneling of an uneven bench for this matter.
- b) That the matter be mentioned on the 20th November 2019 for purposes of a status update.

The Court informed the parties that the Chief Justice has empaneled a 3 Judge Bench to handle these matters. The judges are:

- a) Achode J - Presiding Judge
- b) Makau J
- c) Chacha J

The matter came up for directions on 4th December, 2019 where the court directed LSK to file submissions and responses by 9th December, 2019 and highlighting of submissions for 16th December, 2019. Judgment reserved for 6th February, 2020.

The Court, through **Hon. Justices L.A Achode, J.A Makau and E.C Mwita** in its judgment delivered on 6th February, 2020 agreed with the Petitioner and the Society in declaring that the President is constitutionally bound by the recommendations made by the JSC in accordance with Article 166 (1) as read with Article 172 (1) (a) of the Constitution on appointment of Judges, holding thus;

1. A declaration be and is hereby issued that the President is constitutionally bound by the recommendation made by the 1st Interested Party in accordance with Article 166(1) as read with Article 172(1)(a) of the Constitution on the persons to be appointed as Judges.
2. A declaration be and is hereby issued that the President's failure to appoint the persons recommended for appointment as Judges violates the Constitution and the Judicial Service Act.
3. A declaration be and is hereby issued that the continued delay to appoint the persons recommended as judges of the respective courts is a violation of Articles 2(1), 3(1), 10, 73(1)(a), 131(2)(a), 166(1), 172(1)(a) and 249(2) of the Constitution.

The decision was appealed against by the Respondents. Counsel for LSK were served with the record of appeal on **15th February 2021**.

Ms. Maria Mbeneka, Advocate and **Mr. Evans Ogada, Advocate** are on record.

57. **MERU ELC PETITION 25 OF 2019 JOSEPH LORUNYEI & 5 OTHERS VS CS MINISTRY OF DEFENCE & 5 OTHERS**

The Petitioners moved to Court challenging their proposed eviction from the land by the Ministry of Defence in Burat Ward, Isiolo County measuring 350 square miles. The Petitioners allege that the subject land is ancestral land of the members of the Turkana, Samburu, Borana, Somali and Ndorobo communities. Interim orders were granted on 24th September, 2019 as follows:

- i. An interim conservatory order be and is hereby issued restraining the Respondents by themselves, their agents and/or servants from evicting the applicants and the more than 20, 000 members of the Turkana, Samburu, Borana, Somali and Ndorobo Communities within Burat Ward, Isiolo County from their ancestral land measuring approximately 350 square miles.

The Law Society intends to be an Interested Party due to the public interest nature of the matter. The matter was mentioned on 29th October, 2019 for hearing of the Petitioner's Notice of Motion Application. Petitioner requested for 14 days to file a Supplementary Affidavit while Respondents sought 14 days to file and serve responses. Court directed the Respondents to file and serve their Replying Affidavit within 14 days and extended the interim orders. Highlighting was scheduled for 2nd December, 2019 where LSK canvassed its application for enjoinder dated 21st November, 2019. The 1st and 5th Defendants were not opposed but sought to get instructions from their clients on what position to take. The 2nd, 3rd, 4th and 6th Respondents were opposed and were given leave to file their replying affidavits. The Petitioner did not oppose the application.



The matter has been set down for hearing of LSK's application and directions on the Petitioner's application on 11th February, 2020.

Matter is fixed for hearing on **19th May, 2021**.

Mr. Victor Muriithi, Advocate is on record.

58. **PETITION NO. 425 OF 2019 LAW SOCIETY OF KENYA VS CS TREASURY, AG**

The Acting CS, Treasury issued a notice – Treasury Circular No. 14 A on 24th September, 2019. The Circular, addressed to all Cabinet Secretaries and Accounting Officers provides guidelines for the first revision of the Financial Year 2019/20 Estimates of Revenue and Expenditure. The Circular confirms drastic reduction on the Judiciary's Recurrent and Development budget by **Kshs. 1.493 B** and **Kshs. 1.404 B** respectively. This essentially has amounted to 50% reduction in the budgetary provisions that are essential to the Judiciary's operations.

The Law Society has moved to Court to challenge the legality and effect of this Circular. The Society received written confirmation from the Chief Registrar of the Judiciary pursuant to a circular issued today, that the Judiciary's recurrent and development budget for FY 2019/20 has been restored in the budget for the half year and been uploaded on IFMIS as approved by the National Assembly. Further to this, our petition came up on 6th November 2019 for mention for directions; we sought for the extension of the Court Orders pending the hearing and determination of the petition. The Court allowed our application and extended the orders as prayed. The matter comes up on 27th November 2019 for further directions where it was set down for a mention on 18th February, 2020. Court thereafter directed that respondents file and serve responses within 21 days and highlighting of submissions on 22nd April, 2020. **Ms. Aluso Ingati, Advocate** is on record for the Society.

59. **PETITION NO. 2 OF 2019 STANLEY KARANJA VS REPUBLIC**

This matter is a petition brought about by prisoners in Nakuru challenging the constitutionality of Section 46 of the Prisons Act that provides for remission of certain prisoners of up to one-third of their sentence for good conduct and industry. The section however provides that no remission is applicable for persons convicted for life or under Sections 296 and 297 of the Penal Code or those imprisoned under the President's pleasure.

The Society, exercising its mandate under Section 4 of the LSK Act applied to be enjoined as *Amicus Curiae*. This matter was scheduled for mention and hearing of our application on 28th October 2019.

However, the matter was taken out of the day's cause listed and scheduled to be place before Deputy Registrar for directions on 1st November 2019 since the presiding judge Hon. Lady Justice Teresia M. Matheka was not sitting since she is bereaved. When the matter came up before the Deputy Registrar on 1st November, 2019, he directed that the matter be mentioned on 23.1.20 for directions.

Two of the Petitioners have already been acquitted and they have abandoned the Petition and the one who is remaining has expressed the desire to abandon the Petition. This matter came up in Court on 20th February, 2020 where the court granted The Law Society of Kenya leave to be enjoined to the proceedings in the capacity of *Amicus Curiae*.

The Court further directed that;

- a. We put in our submissions within 14 days; and
- b. The matter be heard on 4th May, 2020.

On 4th May, 2020 the matter was not heard and the file was placed before the Honourable Judge for direction.

Mr. John Chigiti, SC is on record.

60. **PETITION 279 OF 2018 EDWIN MOTARI ONGUTI VS GEOFFREY NYAANGA, DPP, LSK AND ONE OTHER.**

The Petitioner moved to Court citing violation of his rights arising from assault causing bodily harm, robbery, harassment and unlawful imprisonment by the 1st Respondent and police officers in Mlolongo area. He also alleges that the Law Society was complicit in these crimes by ignoring his complaints about the conduct of the 1st Respondent who is an advocate.

The matter came up for hearing on **16th December, 2019** and LSK informed court of its application dated **13th November, 2019**, seeking that the Society ought to be struck out from the proceedings and we sought direction as to its prosecution. Similarly, counsel on behalf of the Attorney General addressed that they, too, would like to file an application to be struck out from the proceedings.

Consequently, the Honourable Court directed as follows:

- a) That the Attorney General is allowed **seven (7) days** to cause the application to be filed on his behalf.
- b) The Petitioner is allowed **fourteen (14) days** to file his response to both applications.
- c) That verification of these items shall be on the **3rd March, 2020**, when this matter shall be mentioned.

Matter was stood over generally and is awaiting issuance of fresh dates.

Mr. Dennis Muyuri, Advocate is on record.

61. **PETITION 209 OF 2019 DR. PIUS WANJALA VS EACC.**

The Plaintiff, an advocate, moved to court citing harassment and investigation by officers of the EACC as a result of performing his professional duties as an advocate and initiating a complaint against his employer. The Petitioner alleges that his fundamental rights and professional freedoms are being violated and that EACC have no authority to investigate him on account of advocate privilege.

The Society has been enjoined as an Interested Party in the matter with a view of protecting its overriding interests on member welfare and the matter was mentioned on 25th November, 2019 before the Hon. Mr. Justice Onsemus Makau. Due to the fact that the Respondent and the Interested Parties had not filed their respective responses, they sought and were granted time to file the same. The Respondent, the EACC, did also indicate that it was desirous of making an application to have the Petition transferred from the ELRC to the Anti-Corruption Court.

The Court made the following directions:

- a) The Respondent (EACC) and the 1st Interested Party (CS, Health) do file their responses within 14 days; the Respondent is at liberty to file an application seeking the transfer of the matter to the Anti-Corruption court as intimated within the said 14 days too;
- b) The 2nd Interested Party to file its response (if any) within 14 days of service by the Respondent and the 1st Interested Party;
- c) Matter to be mentioned on 20th January, 2020 before any other judge of the ELRC to confirm compliance and for further directions.

The matter was transferred to the Anti-Corruption Court, where Justice Mumbi Ngigi directed that Parties file responses and submissions to the main petition. Meanwhile, the petitioner was granted leave to file further affidavit within 21 days with liberty to the other Parties to file responses thereto within 21 days. The matter shall be mentioned on 2nd June, 2021 for directions on highlighting submissions.

Mr. Elias Masika, Advocate is on record for the Society.



a) **CRIMINAL CASE NO. 1809/2019 R VS SOLOMON KINUTHIA WAMBUI**

The Law Society of Kenya received reports of an assault against Ms. Angela Kagunyi, a young lawyer awaiting admission to the Bar and who works at the Kiambu County Assembly, on Friday 8th November, 2019. The two Members of Kiambu County Assembly – Mr. Solomon Kinuthia, MCA Ndenderu Ward and Ms. Njeri Bakari, MCA Nominated were alleged to have harassed, assaulted Ms. Angela Kagunyi while tearing into pieces a Court Order barring the Assembly from proceeding with an impeachment motion against the Youth & Sports County Executive.

Hon. Solomon Kinuthia MCA, was arrested and arraigned in Court on Wednesday 13th November, 2019 for plea taking. However, the other suspect was not present in Court. The advocate for the accused applied for a deferral of the plea taking for 14 days, an application which was opposed by the Prosecutor as well as the advocate representing the victim, Mr. Noel Okwach. The application was also opposed by the advocates representing the Law Society and FIDA, Ms. Mercy Kareithi and Ms. Joy Wakirama respectively. The Court in its ruling delivered on 14th November, 2019 by Hon. S Atambo, SPM denied the application to defer plea taking holding that Section 23 of the National and County Assemblies Powers and Privileges Act does not prevent a Court from prosecuting a criminal offence.

The suspect was charged with assault and also malicious damage to property and returned a plea of not guilty for both counts. He will be kept in custody for a period of 5 days pending a ruling on a bail application. Hearing for 5th March, 2020 but did not proceed since the advocate for the accused person requested an adjournment through an advocate holding brief since he was indisposed. The DPP also sought an adjournment to amend the charge sheet further.

The Court granted an adjournment while advising parties to seek an out of court settlement since the offence was a misdemeanor. Matter to be mentioned on 20th March, 2020.

The matter is set for hearing on the **18th and 27th May, 2021.**

Ms. Mercy Kareithi, Advocate is watching brief on behalf of LSK.

62. **ELC CASE 7376 OF 2019 BILAL KINUTHIA VS MWAJUMA MOHAMED**

The Petitioner has moved to court seeking eviction orders against the defendants over a parcel of land in Mihango area, Embakasi. The defendants have documentary evidence showing they lawfully acquired the properties through share ownership plans and are therefore being unlawfully harassed and evicted. The Society, exercising its mandate under Section 4 of the Act, instructed Mr. Bemih Kanyonge, Advocate to represent the indigent Defendants. This matter is coming up for hearing on **29th March, 2021**

Mr. Bemih Kanyonge, Advocate is on record.

63. **PETITION NO. 505 OF 2019 LAW SOCIETY OF KENYA VS FEDERATION OF KENYA EMPLOYERS**

The Federation of Kenya Employers put up an advertisement in July 2018 in a Billboard informing the public that they now offer legal services. The Society has moved to court seeking enforcement of Section 33 of the Advocates Act that precludes any unqualified person from practicing as an advocate or purporting to issue legal services.

The matter was heard under certificate on 17th December, 2019 before Hon. Justice Makau who directed that it be mentioned on 18th December, 2019 for directions. The Respondents requested for more time to file their responses while LSK applied for interim orders of injunction restraining the Respondent from charging legal fees to members for provision of legal services. Court directed that

- i. The Respondent file submissions in 21 days
- ii. Petitioner file and serve supplementary affidavit if need be within 14 days after receipt of Replying Affidavit
- iii. Matter be mentioned on 4th March, 2020
- iv. Interim orders declined since no urgency in the matter. Petitioner had raised concerns since 2018.

The Honorable Court (Makau J) upon confirming that both parties had put in their submissions directed that a Ruling on the same shall be delivered on **17th March, 2021**.

The Honorable Court (Makau J) dismissed the Respondent's Preliminary Objection and Grounds of Opposition with costs on account that the Petition does not raise issues on Article 41 of the Constitution and Section 12 of the Employment Act, but raises issues of breach of the Petitioner's fundamental rights as well as those of the public.

The further directed that:

- a) The Respondent to file its Response to the Petition within 21 days;
- b) The Petitioner to file its submissions within 14 days of service of the Response by the Respondent;
- c) The Respondent to also file and serve its written submissions within 14 days after service by the Petitioner; and
- d) The matter be mentioned on 29th June, 2021 to confirm compliance.

Ms. Irene Kashindi, Advocate is on record.

64. **PETITION 231 OF 2019 PRISCA WAMBUA VS IG, DPP, DCI AND TWO OTHERS**

The Plaintiff, an advocate, moved to court citing harassment by officers of the DCI in the course of undertaking her professional duties while transacting in a conveyance of L.R No. 1870/11/200 IR 65800. The Petitioner alleges that her fundamental rights and freedoms were violated due to harassment, victimization and investigation, contrary to Article 51 of the Constitution.

The Society was enjoined as an Interested Party with a view of protecting its overriding interests on member welfare but the matter was overtaken by events after a revision of the orders in the lower court. LSK has moved to have the matter marked as settled however the DPP contested the revision of the orders issued in Misc. Criminal Application No. 3796 of 2019 and court directed both matters Pet No. 231/2019 and Misc. 462/2019 be mentioned before Justice Kimaru on 28th April, 2020.

The matter proceeded before Hon Makau on 25th November, 2020. The Respondent was not present and had not put in their response. The Court granted the Respondent 14 days to file their response. The matter will be mentioned on **1st March, 2021**.

Mr. Samuel Mohochi, Advocate is on record.

65. **PETITION 187 of 2019 LAW SOCIETY OF KENYA NAIROBI BRANCH VS. THE REGISTRAR SMALL CLAIMS, AG AND 2 OTHERS**

The Law Society instituted the matter cited above as the Petitioner and moved court in seeking a declaration that Articles 25 (c), 27, 48, 50 (1) 159 (1) and (2) (e) of Constitution have been violated by denying a party proceedings before the small claims courts the right to legal representation among other orders.

Mr. Borniface Akusala, Advocate is on record.

66. **PETITION 235 OF 2019 OKIYA OMTATAH VS PUBLIC SERVICE COMMISSION, AG & 4 OTHERS**

The Petitioner moved to court challenging the appointment of Ms. Margaret Nyang'ate as Controller of Budget alleging that she does not meet the mandatory minimum qualifications contained in Articles 228(2) as read with Articles 250 (3) and 73 (2) (a) of the Constitution. The Society is enjoined as an Interested Party.

The matter proceeded for hearing and Judgement was rendered on 3rd July 2020; That declaration that the 1st, 2nd, 3rd and 5th respondents to forthwith consider an enactment to improve and fill the apparent and established lacuna in Section 4(1) of the Controller of Budget Act so as to expressly provide for and include a vacancy if or where the Controller of Budget leaves office by reason of lapsing of the prescribed term of tenure of 8 years per Article 228(3) of the



Constitution and as may be appropriate, such lapsing of of tenure being foresable, a procedure for timely transparent and competitive interviews, identification, nominations, approval for appointment, appointment and swearing into office of the next holder of the office of Controller of Budget as at the time of the lapsing of th tenure of the incumbent and whose term is foreseeably due to lapse by operation of Article 228(3) of the Cosntitution."

Mr. Wakesho Kililo, Advocate is on record.

67. **PETITION NO. 4 OF 2020 INVESCO ASSURANCE COMPANY AND ANOTHER VS ATTORNEY GENERAL, OFFICIAL RECEIVER & LIQUIDATOR**

The Petitioner moved to the High Court in Kisumu seeking the following ex-parte orders;-

That the application be certified urgent and be heard ex-parte;

- i. That the Court do issue Conservatory Orders staying the proceedings at any stage including Warrants of Attachment, Taxation, certificate of Taxations, Garnishee Order nisi or absolute and execution of Judgment and decrees subsisting or arising from any of the third party claims specifically cited under Schedule 'A', 'B' and 'C' pending the hearing and determination of the Application herein;
- ii. That the Petitioners do give notice ex-parte in the first instance of the institution of these proceedings by public advertisement in a newspaper of countrywide supply for the notification of the cited third parties in ancillary suits in schedule 'A', 'B' and 'C' and other affected persons;
- iii. That the Court do issue a Conservatory Order staying the proceedings at any stage including Warrants of Attachment, Execution Proceedings, Taxation, Certificate of Taxations, Garnishee Order nisi or absolute and execution of Judgment and decrees subsisting or arising from any of the third party claims against the 1st Petitioner or its insured and specifically cited under Schedule 'A', 'B' and 'C';
- iv. That in the alternative to Order 2 and 3 a Conservatory Order staying the proceedings at any stage including Warrants of Attachment, Execution Proceedings, Taxation, Certificate of Taxations, Garnishee Order nisi or absolute and execution of Judgment and decrees subsisting or arising from any of the third party claims specifically cited under Schedule 'A', 'B' and 'C' pending the Petitioners screening/validation of outstanding claims portfolio and only settle of bonafide validated claims upon reasonable terms and conditions;
- v. That the costs of the Application be in the cause.

The Court, through **Hon. Lady Justice T.W Cherere** on 27th January, 2020 ordered;

- i. That prayer 1 and 2 (relating only to Warrants of Attachment) and Prayer 3 are hereby issued pending directions on 12th February, 2020, that is;
 - a. That this application be certified urgent and be heard forthwith and service of the same on the parties to proceedings herein be dispensed with ex-parte in the first instance;
 - b. That this Honourable Court do issue a Conservatory Order staying the proceedings at any stage including Warrants of Attachment;
 - c. That the Petitioners do give notice ex-parte in the first instance of the institution of these proceedings by public advertisement in a newspaper of countrywide supply for the notification of the cited-third parties in ancillary suits in Schedule 'A', 'B' and 'C' and other affected persons.

The Society was enjoined in the matter as an Interested Party due to the public interest nature and the fact that it relates to practice matters. The Society applied and was enjoined in the matter as an Interested Party due to the public interest nature and the fact that it relates to practice matters. During the inter-partes hearing of 12th February, 2020 the Society opposed extension of the conservatory orders for failure to disclose to the court material facts by the Petitioners. The Petitioners had failed to disclose the existence of similar suits with similar prayers under Nairobi Constitutional Petition No. 394 of 2019 and Kisumu Constitutional Petition No. 27 of 2019.

The Court in its Ruling delivered on 12th February, 2020 by Lady Justice Cherere agreed with the Society and ordered thus, inter-alia;-

- 1) This petition be and is hereby transferred to Nairobi Constitutional and Human Rights Division for hearing and disposal;
- 2) The Conservatory Orders granted on 27th January, 2020 are hereby discharged.

The LSK was represented in the case in Kisumu by **Mr. Moses Omondi, Advocate**. Subsequently, the matter was transferred to Nairobi. The matter is presently before Korir J and will be mentioned on **24th March 2021** to confirm filing of submissions by all parties.

The Society is represented by **Mr. Guandaru Thuita, Advocate**.

68. **ELC SUIT NO. 51 OF 2010 PETER NDETO & 3 OTHERS VS ANTHONY KANGETHE.**

The Defendant, a registered bee-keeper in Limuru was forcefully and arbitrarily evicted from the subject parcel of land by the Petitioners who claimed ownership. The Defendant, who is elderly, had employed quite a number of indigent women and youth who depended on that activity for a source of livelihood.

The Petitioners, after filing suit and obtaining ex-parte orders proceeded to forcefully evict him and his employees from the parcel while also illegally and irregularly confiscating all his trees, hives and equipment. The Society, due to the public interest nature of the matter instructed **Mr. Godfrey Munene, Advocate** to represent the indigent defendant and the matter will be mentioned on 28th July, 2020.

69. **PETITION NO. 38 OF 2019 MIKE SONKO VS DPP, IG POLICE AND 4 OTHERS**

The Petitioner moved to court citing violation of his right to equality and freedom from discrimination after Hon. Justice D. Ogoti, while imposing bail terms on 11th December, 2019 in Chief Magistrates Case No. 31 and 32 of 2019 prohibited the Petitioner from accessing the office of Governor of Nairobi County, pending the hearing and determination of those matters.

The Society is an interested party due to the public interest nature of the suit and the matter was scheduled for mention on 3rd March, 2020 but the Judge (Hon. Justice Onyiego) was indisposed so it was rescheduled for mention on 11th March, 2020 where the judge was still indisposed. Matter scheduled for 17th March, 2020 to obtain directions.

On **27th January 2021** J Wakiaga delivered a ruling finding that the Petitioner raised substantial issues of law including the constitutionality of Section 62(6) of ACECA as read against the Constitution and ordered that a three Judge Bench be empaneled to determine the issues therein.

Mr. Edwin Saluny, Advocate is on record.

70. **CONSTITUTIONAL PETITION NO. 226 OF 2018 LSK VS ATTORNEY GENERAL.**

In June 2018 the President of the Republic of Kenya signed **Executive Order No. 1 of 2018** which effectively subjected independent constitutional bodies, envisaged under Chapter 15 of the Constitution, to the control and subordination of Government Departments. The Society thus moved to Court to challenge the constitutional validity of that Executive Order, with the following prayers-;

71. A declaration that Executive Order No. 1 of June, 2018 is unconstitutional for being inconsistent with and in contravention of Article 2(4), 10, 132(3), 157(10), 249 and 255 in so far as it purports to designate and appoint the Attorney General as Cabinet Secretary while placing under his portfolio the following institutions and agencies;-
 - i. Kenya Law Reform Commission
 - ii. Council of Legal Education
 - iii. Office of Registrar of Political Parties



- iv. Assets Recovery Agency
 - v. Kenya School of Law
 - vi. Kenya Copyright Board
 - vii. Victims Protection Board
 - viii. Office of the DPP
 - ix. Independent Elections and Boundaries
 - x. Kenya National Commission on Human Rights
 - xi. Commission on Administrative Justice
 - xii. Judicial Service Commission
 - xiii. Parliamentary Service Commission
72. A declaration that Executive Order No. 1 is unconstitutional in so far as it purports to designate and assign the CS Ministry of Interior and Government Co-ordination to direct and co-ordinate the National Police Service Commission, a constitutional commission under Article 248 (2).
73. A declaration that Executive Order No. 1 is unconstitutional in so far as it purports to designate and assign the CS Ministry of Treasury to direct and co-ordinate the following;-
- i. Commission on Revenue Allocation
 - ii. Salaries and Remuneration Commission
 - iii. Controller of Budget
74. A declaration that Executive Order No. 1 is unconstitutional in so far as it purports to designate and assign the CS Ministry of Education to direct and co-ordinate the Teachers Service Commission, a constitutional commission under Article 248 (2).
75. A declaration that Executive Order No. 1 is unconstitutional in so far as it purports to designate and assign the CS Ministry of Public Service, Youth and Gender to direct and co-ordinate the Public Service Commission, a constitutional commission under Article 248 (2).
76. An order of *Mandamus* directed at the President in accordance with Article 132(3)(c) of the Constitution to appoint, designate or assign a befitting Cabinet Secretary for the implementation of the following Acts of Parliament:-
- i. Law Reform Act
 - ii. Legal Education Act
 - iii. Kenya School of Law
 - iv. Judicial Service Act
 - v. Kenya National Commission on Human Rights ACT
 - vi. Victim Protection Act

Conservatory Orders were issued on 27th June, 2018 pending/staying the implementation of the Executive Order No.1 pending hearing and determination of the Petition. The matter came up on 16th July, 2018 before Lady Justice Okwany for determination and directions on the application by the Gender Commission to join the Petition. Upon concession by the Petitioner, the Gender Commission was joined as an Interested Party.

The matter came up for hearing on 2nd October, 2018 but did not proceed. The Attorney General had not filed a reply and sought fourteen days to file, citing delay in getting instructions. Accordingly, the Court Ordered the AG to file a Replying Affidavit in 14 days, and the Petitioner a similar period to file any Further Affidavit. The matter was set down for hearing on 4th December, 2018 but the Attorney General sought occasion to file submissions in the matter. The Court (Lady Justice Okwany) granted 21 days to do so, and hearing shall now be on 8th March 2019. That was the earliest date available. In the meantime, the Conservatory Orders continue in force.

The matter came up on said date but was moved to 4th February, 2020 when the matter did not proceed, for the reason, that the National Gender and Equality Commission the Interested Party was not present. The Judge allowed the application to join the Gender Commission as a party to enable them an opportunity to articulate their position.

The matter is slated for hearing (Highlighting Submissions) before Hon. Mr. Justice Makau on **1st March 2021**.

Mr. Miller Bwire, Advocate is on record for the Society.

77. **CONSTITUTIONAL PETITION NO. 215 OF 2018 ESTHER GATHONI VS DPP, DCI & IG.**

The Petitioner, an advocate, moved to Court on grounds of harassment and threats in the discharge of her lawful duties. The Society, by virtue of its mandate under Section 4 of the Advocates Act and since the issues raised in the Petition relate to matters of practice and independence of the legal profession, applied to be an Interested Party. The application dated 24th July 2018 was also allowed by consent of the parties and the LSK became the 4th Interested Party.

The Court, Hon. Lady Justice W. Okwany, proceeded to make the following directions;

1. The Petitioner to amend and serve the amended Petition within 7 days.
2. The Petitioner's replying affidavit to the application dated 4th July, 2018 was deemed abandoned.
3. The Respondents and the Interested Parties to respond within 14 days of service with corresponding leave to the Petitioner to file a Supplementary Affidavit within 14 days after service.
4. Mention on 31st October 2018 to confirm compliance and for further orders/directions.
5. The interim orders in favour of the Petitioner were also extended.

The matter was mentioned on 31st October, 2018 to confirm the filing of the Affidavits. The court directed that the case be mentioned on 5th December 2018 to confirm the filing of the responses and for further directions.

The matter was mentioned on aforementioned date and the other parties were afforded liberty to file any additional affidavits and submissions before the next hearing date fixed for 8th May, 2019 for purposes of confirming the filing of submissions. The Petitioner's advocates requested additional time within which to file a further affidavit and the submissions. The court allowed the request and allowed 14 days from the date of service to file and serve written submissions.

The Petitioner's advocates had in advance indicated that they would be filing an additional affidavit before the filing of submissions. The case will be mentioned on 23rd July 2019 for the highlighting of the submissions.

The matter came up for mention on said date and the Petitioner filed and served the submissions on 1st October 2019. The court granted leave for filing of submissions by the Respondents and the Interested Parties with a mention of the case on 12th October, 2019 to confirm filing and for further directions.

Matter set down for mention on 9th December, 2019 to confirm filing of submissions but DPP requested more time to file submissions. Court directed that matter be mentioned on 11th March, 2020 where the Respondents requested additional time to file their submissions while the Petitioner also requested additional time to file further submissions. Their requests were granted.

The highlighting of the submissions was to proceed on 16th June 2020.

Mr. Jackson Awele, Advocate is on record for the Society having taken over from Mr. Deynes Murithi, Advocate.

78. **ELRC NO. 547 OF 2018 NAIROBI ERASTUS GITONGA & 4 OTHERS VS NATIONAL ENVIRONMENTAL MANAGEMENT AUTHORITY (NEMA).**

The claimants, all employees of NEMA and members of the Law Society, moved to the Employment and Labour Relations Court seeking payment of non-practicing and prosecutorial allowance. The Society, exercising its mandate under Section 4 of the LSK Act, applied and was enjoined in the matter as an Interested Party due to the nature of the case touching on matters of professional practice and welfare of in-house counsel.

The application was allowed on 3rd December, 2018 and the court observed that since the dispute consisted of purely legal issues, the matter should be canvassed by way of written submissions. The claimants were therefore directed to file their submissions on or before 20th January 2019 while the Respondent and the Interested Party to file their submissions on or before 20th February 2019. The matter will be mentioned on 6th March, 2019 for purposes of confirming compliance with filing submissions and for further directions.

On said date the respondent was granted 14 days to file and serve submissions. The Court, in a judgment delivered on 10th April, 2019 by **Hon. Justice Byram Ongaya** found for the claimants and declared as follows:-

- i. That the Respondent's action of not paying the 1st to 5th claimants a non-practice allowance is unlawful, wrongful and unfair.
- ii. That the Respondent's action of not paying the 1st to 5th claimants a prosecutorial allowance is unlawful, wrongful and unfair.
- iii. That the Respondent subjected the claimants to unequal treatment amounting to discriminatory and unlawful labour practice by denying them the subject allowances.
- iv. That the Respondent to pay the claimants thus 1st claimant **Kshs. 2, 060, 000**, 2nd claimant **Kshs. 1, 760, 000**, 3rd claimant **Kshs. 1, 900, 000**, 4th claimant **Kshs. 860,000** and 5th claimant **Kshs. 540,000**
- v. The Respondent to pay non-practice allowance accruing to the claimants from the date of filing this claim and for the duration of service of the claimants. The rate of non-practice allowance shall be as issued by applicable government circulars or otherwise as may be set by a lawful competent authority.
- vi. In regard to prosecutorial allowance the Respondent to pay the 1st to 4th claimants thus 1st claimant **Kshs. 1, 830, 000**, 2nd claimant **Kshs. 1, 470, 000**, 3rd claimants **Kshs. 1, 470,000** and 4th claimant **Kshs. 1, 440, 000**.
- vii. The Respondent to pay I allowance accruing to the claimants from the date of filing this claim and for the duration of service of the claimants. The rate of prosecutorial allowance shall be as issued by applicable government circulars or otherwise as may be set by a lawful competent authority.
- viii. The amount already due to the claimants will be paid by the Respondents not later than 1st August, 2019 failing interest at Court rates will apply thereon from the date of this judgment until full payment.
- ix. The claimants shall serve this judgment upon the Public Service Commission, within 7 days from the date of this judgment, towards the Commission's consideration of issuing the relevant gazette notice under Section 98 of the Public Service Commission Act, 2017 to harmonize prevailing grading levels and to provide for equivalency of job groups, grades and ranks applicable in the public service or bodies under its constitutional and statutory functions and powers and in view of the serious issues which have emerged in the present case, the Commission to consider publishing the gazette notice not later than 1st February, 2020.
- x. The Respondent to pay the claimants' costs of the suit.

The Respondents have since filed an application seeking stay of execution of the judgment. LSK filed Grounds of Opposition to the stay especially of the policy aspects of the judgment, the Court considered the nature of application and the fact that stay lapses on 1st August, 2019 and ordered that there be an interim stay of execution of orders d, e, f, g, and h i.e. the monetary part of the Decree, conditional on the Respondent/Applicant depositing the decial sum and all payments due and accruing on a monthly basis in a joint interest earning account within 30 days.

The directive to the Public Service Commission to consider harmonization of job groups within the institutions under its mandate by 1st February, 2020 was not stayed.

The matter was mentioned on 14th October, 2019 for directions where the Court allowed the Appellant's request for an extension of time within which to deposit the decretal sums owing into a joint account to 16th October, 2019.

Matter was mentioned on 4th November, 2019 where the Court directed the Claimants and Respondents to dialogue and reach a compromise on the issue of the full decretal sums being deposited in the joint account as directed by the lower court.

The Court also directed that any interested parties in the appeal formally file applications for the same. The Matter was mentioned on 19th November, 2019 for directions on the Respondent's application seeking stay of execution of the decree and taxation of the Bill of Costs. The Respondent was yet to comply and parties were directed to continue negotiating on the same.

The AG and SRC had filed applications seeking to be enjoined as Interested Parties which was to be heard on 2nd December, 2019. The Society filed Grounds of Opposition to both applications. The Court directed the Claimant and Respondent to agree on the outstanding issue of stay of execution and further directed the proceedings to be typed to expedite the process.

Applications were mentioned on 2nd March, 2020 where LSK opposed the same.

The Court on 27th May 2020 granted parties more time to negotiate with a view to reaching a compromise on the modalities of remitting recurrent amounts and reaching an agreement.

On **11th February, 2021** the Court ordered that the Respondents deposit a sum of Kshs. 3,000,000 within 14 days failing which the stay orders granted would be rendered void.

Mr. Elijah Mwangi, Advocate is on record for the Society.

79. **PETITION NO. 46 OF 2018 EVERLINE SANDE, MARY WAMBUI AND GEORGE NJOROGE NJOKI VS KENYA URBAN ROADS AUTHORITY AND 7 OTHERS.**

The Petitioner moved to Court to challenge the proposed resettlement of persons living in Deep Sea informal settlements by the Kenya Urban Roads Authority via *Petition No. 263 of 2018 Ever line Sande Ngulam & Others vs. Kenya Urban Roads Authority*. The matter was then transferred to the Environment and Land Court Division as the aforementioned petition where LSK was enjoined as an Interested Party due to the public interest nature of the matter.

The matter, before Hon. Lady Justice Loice Komingoi, comes up for delivery of a ruling on 6th September, 2018 for grant of interim conservatory orders staying the implementation and enforcement of the decision made/communicated by the 1st Respondent but it was not ready on said date and it will be delivered on notice.

The Ruling delivery notice was issued for 18th October, 2018 where Lady Justice Komingoi dismissed the application for lack of merit. Following the dismissal, the Petitioners sought to go back to the community for fresh instructions while consultations and discussions with KURA on a way forward are held.

The matter was set down for 19th July, 2019 for mention to confirm if parties had filed their respective submissions. Matter was mentioned on 10th December, 2019 and was given a further date of 24th March, 2020.

The matter was last listed for mention before the DR on 19th November, 2020. However, during that period, it was done without notifying any of the parties. It has now been scheduled for a NTSC - Dismissal on **29th April, 2021**. before ELC Lady Justice Komingoi.

Mr. Lusaka Bemih Kanyonge, Advocate is on record for the Society.

80. PETITION NO. 334 OF 2018 LSK VS AG, SPEAKER NATIONAL ASSEMBLY AND COMMISSIONER GENERAL – KRA.

The Petitioner moved to court seeking conservatory orders suspending the coming into force of Sections 13, 32 (b) (i), 32 (b) (ii), 32 (b) (iv), 50, 85 and 86 of the Finance Act and a declaration that the said sections are unconstitutional due to violations of Articles 10, 94, 115, 118 and 201 of the Constitution on principles of public participation, legislative authority of Parliament and openness and accountability in financial matters.

The matter came up on 1st October, 2018 before **Justice Chacha Mwita** and he directed that the Petition be served on Respondents immediately and responses be filed within 7 days. Petitioner will have 7 days after service to file and serve a supplementary affidavit if any. The matter was set down for directions on 24th October, 2018 and hearing scheduled for 20th November, 2018.

The matter was coming up for hearing of the 1st Respondent's application dated 19th November 2018. The application is to consolidate this Petition with Petition 353/2018 and 366/2018 and stay the consolidated petitions. The Court was informed that in Petition 366/2018 a notice of appeal had been lodged at the Court of Appeal against a ruling issued by the Court, which ruling was yet to be delivered. Hearing of the application was thereafter adjourned to await the ruling from the Court of Appeal and the matter was set down for hearing on 5th December, 2018.

The matter came up for hearing of the 1st Respondent's application dated 19th November 2018. The application is to consolidate this Petition with Petition 353/2018 and 366/2018 which was dismissed by the court for want of merit. Court also ordered parties to comply with directions issued earlier on filing of submissions and marked Petition 437 of 2018 as withdrawn. The Petitioner in the said petition was enjoined as an Interested Party in this petition and the matter was set down for 15th February, 2019 for hearing.

However, Justice Mwita was transferred to Kajiado County and the matter was hence reserved for the incoming judge. It was scheduled for mention on for further directions on 6th March, 2019 where an application for consolidation was set down for hearing on 8th April, 2019. Court also directed that the application for conservatory orders to be heard after application for consolidation.

The Society applied under Certificate of Urgency on 18th April, 2019 for conservatory and injunction orders be issued prohibiting the respondents from affecting the housing levy pending the hearing and determination of this suit. The application was certified urgent and court directed that it be served before close of business on 23rd April, 2019 and inter-partes hearing on 29th April, 2019 before **Hon. Justice Makau**.

The Court, in a ruling delivered on 29th April, 2019 by **Hon. Justice J.A Makau** declared as follows ;-

1. **THAT** conservatory and injunction orders be issued prohibiting the respondents from affecting the housing levy pending the hearing and determination of this suit.
2. **THAT** parties are directed to put in all their responses and submissions.
3. **THAT** the Petitioner to file and serve their submissions within 7 days from the date of service of the Respondents response who are supposed to file and serve their responses 14 days from today.
4. **THAT** the Respondents do file their submissions and serve within 10 days from the date of the Petitioner's submissions.
5. **THAT** hearing shall be on 25th of June, 2019 before **Hon Justice W. Korir**.

Parties were to return for directions on 29th July, 2019 where Court directed that the matter be mentioned on 2nd October, 2019. It was then ordered that parties should return for a further mention on 3rd December for directions on hearing before Justice Korir. Matter set down for hearing on 30th March, 2020.

The matter was to come up for hearing on 4th January 2021. Given that on this date the court was still on recess, the matter was mentioned instead on 19th January 2021 for allocation of a new hearing date. Advocate for the Attorney General indicated that he needed more time to file his submissions before a hearing date could be set. The Court granted him fourteen days to do so and set a hearing date for **22nd February, 2021**. On 22nd February, 2021 the Counsel for the AG was yet to comply with previous orders issued by the Court. The matter was therefore adjourned. The AG

was directed to file written submissions. The matter will be mentioned on **24th March, 2021** to confirm compliance after which the Court will give a judgment date.

Ms. Mercy Mutemi, Advocate is on record for the Society.

81. **HCCC NO. 482 OF 2004 STEPHEN OKERO OYUGI VS LSK & SANJEEV KHAGRAM.**

The Plaintiff, a member, sued the Law Society for defamation after the Society allegedly wrote a letter dated 17th March, 2004 addressed to the City Council of Nairobi stating that he did not have a practicing certificate for the years 2003 and 2004. Mr. Kenneth Akide, SC was on record for the Society in the matter but due to potential conflict of interest owing to the fact that he served as a Chairperson for the Society for a term of 2 years, he applied to cease acting via Application dated 22nd October, 2015. The application was allowed on 20th June, 2017.

The parties were scheduled to take down a mention date at the Registry on 25th October, 2018. Court reserved 5th December, 2018 as a mention date and certified the matter as ready for hearing. 11th December, 2018 was set down for a further mention for purposes of setting a hearing date. Date was fixed for 14th February, 2019.

Court certified the matter ready for hearing and granted LSK leave of 14 days to file a formal response and the matter was fixed for hearing of the application on 3rd April, 2019. Counsel for the Plaintiff informed court that he was not ready to proceed but served both the Replying Affidavit and Grounds of Opposition.

Hon. Lady Justice Ceclia Githua directed that the matter be mentioned before Hon. Justice Thurania since the application seeks to set aside his orders. The matter was fixed for mention on 7th May, 2019 for directions but did not proceed since the judicial officers were away on official duties. The matter was set down for mention on 26th September, 2019 for hearing of LSK's application to set aside the interlocutory judgment and Court directed that it proceed by way of written submissions.

It was set down for mention on 24th October, 2019 for further mention where parties were directed to file their written submissions ahead of a further mention on 21st November, 2019 where Respondent requested for more time to file submissions. Matter set for mention on 22nd January, 2020 where court granted more time for parties to file submissions.

Matter set down for ruling on the application to set aside the interlocutory judgment on 13th February, 2020 where the court dismissed the application for being an abuse of the court process.

Mr. Henry Faraji, Advocate is now on record for the Society.

82. **CONSTITUTIONAL PETITION NO. 8 OF 2019 LAW SOCIETY OF KENYA VS ODPP, DCI, IG POLICE, AG AND CJ**

The Law Society has moved to Court seeking orders of **Mandamus and Prohibition** directed at the Office of the Director of Public Prosecutions and Director of Criminal investigations for among others, orders that the Respondents to grant cash bail/bond as of right to arrested citizens unless compelling reasons are given in writing to the arrested citizen, and they be prohibited from capriciously arresting citizens suspected of committing non-cognizable offences on Friday afternoons and/or periods that would deny them the opportunity to take plea within 24 hours and issuing press statements on accusations against citizens and publicizing the said allegations.

The matter came up for hearing of the application on 30th January, 2019 where the Court granted the Petitioner leave to amend the Petition to include more prayers and add supplementary affidavits.

The matter had been scheduled for mention on 7th May, 2019 but did not proceed since Justice Korir was not sitting. It has now been scheduled for hearing on 13th July, 2020.

The Law Society of Kenya has complied with Court directions by filing submissions in this matter. This particular petition was heard concurrently with its sister Petition, Constitutional Petition number 9 of 2019. The matter is coming up on **28th June 2021** for the highlighting of submissions

Mr Borniface Akusala, Advocate and **Mr Evans Ogada, Advocate** are on record for the Society.



PUBLIC INTEREST LITIGATION/ COURT CASES 2021

Public Interest and Advocacy Directorate

Specific objective; to protect public interest, maintain and advance constitutionalism, justice and the rule of law.

PUBLIC INTEREST LITIGATION CASE MANAGEMENT.

The department through the PIL Committee chaired by Ms. Faith Odhiambo continues to offer support to the society in PIL by identifying cases that warrant interventions and making case referrals to Advocates who handle the matters on pro bono basis. Full report attached. The cases are still in various stages, and members have been receiving updates periodically on progress through the newsletters.

2021 ORDERS /JUDGEMENTS DELIVERED.

1. NAIROBI CONSTITUTIONAL PETITION NO. 226 OF 2018 LSK VS ATTORNEY GENERAL

In June 2018 the President of the Republic of Kenya signed Executive Order No. 1 of 2018 which effectively subjected independent constitutional bodies, envisaged under Chapter 15 of the Constitution, to the control and subordination of Government Departments. The Society thus moved to Court to challenge the constitutional validity of that Executive Order, with the following prayers:-

A declaration that Executive Order No. 1 of June, 2018 is unconstitutional for being inconsistent with and in contravention of Article 2(4), 10, 132(3), 157(10), 249 and 255 in so far as it purports to designate and appoint the Attorney General as Cabinet Secretary while placing under his portfolio the following institutions and agencies:-

- Kenya Law Reform Commission
- Council of Legal Education
- Office of Registrar of Political Parties
- Assets Recovery Agency
- Kenya School of Law
- Kenya Copyright Board
- Victims Protection Board
- Office of the DPP
- Independent Elections and Boundaries
- Kenya National Commission on Human Rights
- Commission on Administrative Justice
- Judicial Service Commission
- Parliamentary Service Commission

A declaration that Executive Order No. 1 is unconstitutional in so far as it purports to designate and assign the CS Ministry of Interior and Government Co-ordination to direct and co-ordinate the National Police Service Commission, a constitutional commission under Article 248 (2).

A declaration that Executive Order No. 1 is unconstitutional in so far as it purports to designate and assign the CS Ministry of Treasury to direct and co-ordinate the following;

- Commission on Revenue Allocation
- Salaries and Remuneration Commission
- Controller of Budget

A declaration that Executive Order No. 1 is unconstitutional in so far as it purports to designate and assign the CS Ministry of Education to direct and co-ordinate the Teachers Service Commission, a constitutional commission under Article 248 (2).

A declaration that Executive Order No. 1 is unconstitutional in so far as it purports to designate and assign the CS Ministry of Public Service, Youth and Gender to direct and co-ordinate the Public Service Commission, a constitutional commission under Article 248 (2).

The prayers above were superseded and are now subject of Constitutional Petition 203 of 2020 Law Society of Kenya vs. Attorney General. The Society proceeded to make submission in respect to the residual prayers j, k and l.

On 2nd December Justice Makau issued an order of Mandamus directed at the President in accordance with Article 132 (3) (c) of the Constitution to appoint, designate or assign a befitting Cabinet Secretary for the implementation of the following Acts of Parliament:-

- Law Reform Act
- Legal Education Act
- Kenya School of Law
- Judicial Service Act
- Kenya National Commission on Human Rights ACT
- Victims Protection Act
- Mr. Miller Bwire, Advocate was on record for the Society.

2. **NAIROBI HC CONSTITUTIONAL PETITION NO. E364 OF 2020 OKIYA OMTATAH OKOITI-VS-THE HONOURABLE ATTORNEY GENERAL & 5 OTHERS**

On 13th November, 2020, the Independent Electoral and Boundaries Commission Act,

2011 was amended through the Independent Electoral and Boundaries Commission

(Amendment) Act, 2020 (impugned Act). Parliament made the amendments to provide

For the composition of the Selection Panel charged with the recruitment of the

Commissioners (both chair and members) of the Independent Electoral and Boundaries

Commission (IEBC). Parliament created a new composition of the selection panel, made up of a total of seven (7) members. The majority of those - four members - are to be selected by the Parliamentary Service Commission while two by the Inter-religious Council, and one by the Law Society of Kenya. Moreover, the impugned Act makes the Parliamentary Service Commission (PSC) the secretariat of the Selection Panel. The PSC is composed of eleven members: nine are sitting Members of Parliament, while the remaining two are individuals who are not MPs but are recruited and approved by the MPs. The Clerk of Senate heads its secretariat. Based on the grounds given in his pleadings, including in these submissions, the Petitioner is of the view that the impugned Act is unconstitutional.

The Law Society in execution of its mandate under Section 4 of the LSK Act joined as Interested Party and supported the petition. On 29/11/21 Justice Anthony Mrema delivered its Judgment today declaring Section 2 (2) (a) of the Independent Electoral Boundaries Commission (Amendment) Act No. 18 of 2020 as unconstitutional

Mr. Nelson Osiemo Advocate and Ms. Wacu Mwenja Advocate were on record for the Society.



3. **JUDICIAL REVIEW APPLICATION 114 OF 2020 O.M PARKASH AND 21 OTHERS VS THE LAW SOCIETY OF KENYA**

The Applicants moved the Court in seeking leave to file Judicial Review proceedings against the Respondent over its decision to revoke the recommendations made by the Committee on Senior Counsel on 26th August 2019. The recommendations were made to confer the rank and dignity of Senior Counsel to the Applicants. Subsequently, the recommendations were revoked via decision made on 11th May 2020 and communicated to the Membership on 13th May 2020.

On 28th May 2020 Court granted the twenty-two Applicants who are advocates of the High Court of Kenya, leave to commence judicial review proceedings against the Law Society of Kenya. The Applicants' substantive Notice of Motion dated 8th June 2020 was heard virtually on 6th August 2020.

The parties have filed their submissions and the matter comes up for judgment on 4th October 2020.

On 15th November Hon Justice A K Ndungu issued orders to quash the decision made by the Society contained in the letter dated 13th May 2020 and further prohibited the Society from acting on the decision of 13th May 2020 contained in the letter dated 13th May 2020 addressed to its membership.

4. **MACHAKOS HIGH COURT PETITION NOS. E005 OF 2021 (CONSOLIDATED WITH PETITION NO. 1 OF 2021 – STANLEY WAWERU AND 20 OTHERS VS THE NATIONAL ASSEMBLY AND 2 OTHERS.**

The Finance Act, 2020 made an amendment to the Income Tax Act (Cap 470) by

Inserting Section 12 D to the said Act which introduced a new tax known as Minimum Tax. This tax came into effect on the 1st of January 2021. The said tax is computed at 1% of gross turnover for entities making annual revenue of over 50 million Kenya Shillings and is paid where the minimum tax is higher than the installment tax due under the previous regime.

In light of the above, the Petitioners through the above cited Petitions No. E005 and No.1 of 2021 (later consolidated) moved the court to challenge the constitutionality of the impugned amendment Section 12D of the Income Tax Act as discriminatory against the petitioners and other traders. The Law Society on joined the matter as the 2nd Interested Party, in support of the Petition. On 20th September 2021 Hon. Judge JV Odunga found merit in the petitions and issued the following orders:

(1) A declaration that Section 12D of the Income Tax Act as introduced by the Finance Act, 2020 and amended by the Tax Laws (Amendment) (No. 2) Act, 2020 violates Article 201(b)(i) of the Constitution and as such null and void.

(2) A declaration that the failure by the Respondents to comply with the provisions of the Statutory Instruments Act renders the Minimum Tax Guidelines null and void and of no effect.

(3) An order prohibiting the 2nd Respondent whether acting jointly or severally by themselves, their servants, agents, representatives or howsoever otherwise from the implementation, further implementation, administration, application and/or enforcement of Section 12D of the Income Tax Act, Chapter 470 of the Laws of Kenya as amended by the Tax Laws (Amendment) (No.2) Act, 2020 by collecting and/or demanding payment of the Minimum Tax;

The Society thanks Mr. Bosire Nyamori, Advocate, Mr. Daniel Ngumy, Advocate and Mr. Eddy Thiongo Advocate, for representing the Society in the matter, on a pro bono basis.

5. **PETITION 203 OF 2020 LAW SOCIETY OF KENYA VS THE OFFICE OF THE ATTORNEY GENERAL, DR. JOSEPH KINYUA, HEAD OF PUBLIC SERVICE THE JUDICIAL SERVICE COMMISSION**

On 11th May 2020, the President of the Republic of Kenya issued an executive order No. 1 of 2020 titled *Organization of the Government of the Republic of Kenya* purporting to organize government and set out the Judiciary, commissions and independent offices as institutions under Ministries and government departments. The Society moved the court to challenge the constitutionality of the said executive order, and sought a conservatory, staying and/or suspending and/or halting the further and continued implementation of the Executive Order No. 1 of 2020 dated 11th May, 2020 in respect of the Judiciary and the following independent institutions;- The Public Service Commission; Teachers Service Commission; The National Police Service Commission; Parliamentary Service Commission; Judicial Service Commission; Independent Boundaries and electoral Commission; Office of the Director of Public Prosecution; Ethics and Anti-corruption commission; Commission on Administrative Justice; The National Land Commission; The Office of controller of Budget ; Commission on Revenue Allocation; salaries and Remuneration Commission ; Kenya National Commission on Human Rights and National Gender and Equality Commission.

On 3rd August 2020, Judge A Makau granted conservatory order staying/suspending and or halting the further and continued implementation of the Executive Order no 1 of 2020 dated 11th May 2020 in respect of the Judiciary, The Public Service Commission; Teachers Service Commission; The National Police Service Commission; Parliamentary Service Commission; Judicial Service Commission; Independent Boundaries and electoral Commission; Office of the Director of Public Prosecution; Ethics and Anti-corruption commission; Commission on Administrative Justice; The National Land Commission; The Office of controller of Budget ; Commission on Revenue Allocation; salaries and Remuneration Commission ; Kenya National Commission on Human Rights and National Gender and Equality Commission.

Mr. Manwa Hosea, Advocate and Arnold Oginga, Advocate were on record for the Society.

6. **NAIROBI CONSTITUTIONAL PETITION NO. 337 OF 2018 FELIX KIPRONO MATAGEI VS ATTORNEY GENERAL.**

The Petitioners have moved to court to challenge Section 8 as read with Section 9 of the Law Reform Act that provides that leave must first be obtained before an application for Judicial Review orders of *Certiorari*, *Mandamus* or *Prohibition*. The Petitioner alleges that the impugned sections of the Act contravene Articles 23 (2), (f), 48, 50, 159 and 259 of the Constitution of Kenya as read with Order 53, Rule 1 of the Civil Procedure Rules.

The matter was mentioned on 15th July, 2019 where parties were directed to file and serve pleadings by 15th August, 2019. Hearing scheduled for 25th September, 2019 however the hearing did not proceed since the judge was not available and it was given a mention date of 26th November, 2019. Court thereafter directed that hearing be on 9th April, 2020.

The Law Society joined the proceedings as *amicus curiae*.

The matter was heard on 20th January, 2021 and reserved for judgment on 25th March, 2021

The Court on 13th May 2021 held that sections 8 and 9 of the LRA and Order 53 of the CPR no longer serve any purpose as the FAAct has aligned judicial review of administrative action with the Constitution and their continued retention in our statute books will only serve to promote the wrong notion that Kenya has a two-tracked system for seeking judicial review against administrative action.

Ms. Florence Mwangangi, Advocate was on record for the Society.



7. PETITION NO. 120 OF 2020 LAW SOCIETY OF KENYA VS HILLARY MUTYAMBAI INSPECTOR GENERAL NATIONAL POLICE SERVICE & 4 OTHERS ; KENYA NATIONAL COMMISSION ON HUMAN RIGHTS & 3 OTHERS (INTERESTED PARTIES) [2020] EKLR OF NATIONAL GOVERNMENT AND 3 OTHERS

Pursuant to the directives issued by His Excellency the President Uhuru Kenyatta on 26th of March 2021, the 1st Respondent in the above cited matter issued Legal Notice No. 37 Public Order (State Curfew) Order, dated 29th March, 2021, imposing a curfew period between 8:00 PM and 4:00 AM in five counties during which time any movement within the counties is prohibited.

The Legal Notice omitted Advocates from the list of exempted essential services yet the Honourable court in its Judgment given on 16th April, 2020 (in Petition No. 120 of 2020(Covid 025) Law Society of Kenya v Hillary Mutyambai) noted that Advocates are instrumental in the protection of the rights guaranteed by Article 49 of the Constitution whenever called upon to do so, thus declaring that Advocates and (Independent Policing Oversight Authority) were essential service providers.

In light of the above, the Law Society instituted *NAIROBI HIGH COURT PETITION NO. E110 OF 2021 LAW SOCIETY OF KENYA vs. FRED MATIANGI AND OTHERS* on 6th April 2021 at Milimani Law Courts Constitutional and Human Rights Division seeking orders that;

The Application and Petition be certified urgent and heard ex parte at the first instance during the court's vacation.

Pending inter parties hearing of this Application, an order be and is issued restraining the Respondents from interfering with, arresting and harassing Advocates travelling to and from official business during curfew hours or outside the lockdown areas.

Pending hearing and determination of the Petition, an order be and is issued restraining the Respondents from interfering with, arresting and harassing Advocates travelling to and from official business during curfew hours or outside the lockdown areas.

Pending interparties hearing of this Application, a declaratory order be and is hereby issued declaring Advocates and the interested party exempt from the curfew hours and restriction of movement contained in the Public Order (State Curfew) Order, 2021 published under Legal Notice No. 37.

Pending hearing and determination of the Petition, a declaratory order be and is hereby issued declaring Advocates and the Interested Parties exempt from the curfew hours and restriction of movement contained in the Public Order (State Curfew) Order, 2021 published under Legal Notice No. 37.

Pending hearing and determination of the Petition, the Honourable court be pleased to issue a conservatory order compelling the Respondents to recognize the Petitioner's Members and Interested Parties as essential service providers and amend the Schedule to the Public Order (State Curfew) Order, 2021 issued so as to include members of the Petitioner and the Interested Party in the list of "services, personnel or workers" exempt from the curfew period and restriction of movement.

That the honourable court be pleased to issue further directions as may be expedient to secure the ends of justice.

On 7th April 2021, Justice AC Mrima having considered the Notice of motion dated 6th April issued orders that;

The matter is certified as urgent. The Petitioner shall serve the Application and the Petition upon the Respondents and Interested Party within 3 days

Upon service the Respondents and the Interested Party shall file and serve any responses to the Application and the Petition within 10 days

The Petitioner shall within 7 days of service file and serve any supplementary response, if need be together, together with written submissions on both the Petition and Application

The Respondents and interested party shall within 7 days of service file and serve written submissions to the Application and the Petition

The Petition and the Notice of Motion both dated 6th April 2021 are fixed for hearing on 5/5/2021

In the meantime, prayers 2 and 4 of the Notice of Motion dated 6th April 2021 are granted to wit:-

Pending interparties hearing of this Application, an order be and is issued restraining the Respondents from interfering with, arresting and harassing Advocates travelling to and from official business during curfew hours or outside the lockdown areas.

Pending interparties hearing of this Application, a declaratory order be and is hereby issued declaring Advocates and the interested party exempt from the curfew hours and restriction of movement contained in the Public Order (State Curfew) Order, 2021 published under Legal Notice No. 37

g) Orders accordingly

Ms. Wakesho Kililo, Advocate and Mr. Nick Omari, Advocate represented the Society in the matter, on a pro bono basis.

8. NAIROBI CONSTITUTIONAL PET NO. 283 OF 2020 LAW SOCIETY OF KENYA PETITIONER/ APPLICANT VS THE OFFICE OF THE ATTORNEY GENERAL CABINET SECRETARY MINISTRY OF AGRICULTURE, LIVESTOCK, FISHERIES AND IRRIGATION

His Excellency the President of the Republic of Kenya and the Cabinet Secretary Ministry of Agriculture, Livestock, Fisheries and Irrigation have unilaterally purported to restructure and re-organize the Kenya Meat Commission and the Ministry of Defence thus altering and/or interfering with the Provisions of the Constitution of Kenya, 2010 and thus offending institutional and structural duties of Ministries.

The Society contends that the said directive is unconstitutional, unlawful, illegal, un-procedural, null and void *ab initio* by reason that the executive arm of government cannot restructure or assign functions of a statutory body without such amendments of the Statute. The Petition is dated 16th September, 2020. It was filed electronically on 17th September, 2020 together with an evenly dated Notice of Motion. The Motion was brought under certificate of urgency and sought some conservatory orders. Upon consideration by this Court, then sitting as a duty Court, the Notice of Motion was dispensed with *sue moto* and directions given towards the hearing and determination of the main Petition. Whereas the Petitioner admits that the President has the authority under Article 132(3)(b) of the Constitution to direct and coordinate the functions of the ministries and government departments, it is strenuously contended that such authority does not extend to transfer of government institutions established under a statute without having due regard to the established mechanisms in the said statutes or triggering amendments to the statute in issue.

Hon Mrima J on 15th February 2021 delivered a judgment quashing the decision to re assign the ministerial responsibility from the Ministry of Livestock, Fisheries and irrigation to the Ministry of Defence, for want of public participation.

Mr. Manwa Advocate is on record for the Society.

CONSTITUTIONAL PETITION NUMBER 467 OF 2021; LAW SOCIETY OF KENYA, WILSON HASSAN NANDWA & ELVIGA BWIRE -VS- ATTORNEY GENERAL, DIRECTOR OF PUBLIC PROSECUTION, INSPECTOR GENERAL OF POLICE, SAFARICOM LIMITED AND INDEPENDENT POLICING OVERSIGHT AUTHORITY.

Following the mysterious disappearance of our member Prof. Wilson Hassan Nandwa P:105 /6804/08 on the evening of 28th October 2021 at the Central Police Station, the Law Society of Kenya wishes to institute proceedings under Article 51 (2) of the Constitution against the National Police Service and the Inspector General of Police.

On 4th November 2021, the Court issued the following orders;

A). THAT prayers 1 and 3 of the Chamber Summons dated 02/11/2021 do hereby issue. To wit:-

- i. THAT pending the hearing and determination of the Application, a writ of habeas corpus is issued for the production of 2nd and 3rd Petitioners before a court of law within 24 hours of the issuance of the order.
- ii. THAT pending the hearing and determination of this Application, an order is issued compelling Safaricom Limited to supply the 1st Petitioner and produce before Court the phone call records and BTS (Base Transmitting Station) records and logs of the 2nd Petitioner, Advocate [0723718084] from 9:00 a.m. on Thursday 28th October, 2021 to 2nd November, 2021 midnight.

On 08/11/2021 the court directed the Mr. Hillary Nzioki Mutyambai, nsc (AU) Inspector General of Police and the Attorney General Hon Paul Kihara Kariuki EGH to personally and physically appear in Court on Thursday at 11 a.m. to articulate their position on this matter, as well as explain their failure to enter appearance in the proceedings.

9. **NAIROBI HIGH COURT CASE NO. HCCRMISCAPPL/E072/2021 LAW SOCIETY OF KENYA VS THE DIRECTOR OF PUBLIC PROSECUTIONS AND 3 OTHERS**

Benson Njau Kayai an Advocate *trading as such in the name and style of Njau Kayai & Company Advocates* was reported missing on 7th February 2021 at around 5:30pm and his whereabouts remain unknown to date.

In light of the above, the Law Society 24th day of March instituted the matter cited at Milimani Law Courts Criminal Division as the Ex parte Applicant, by moving the Court through a Notice of motion (*Under Article 25(a), 35(1)(a) & (b) and 48 of the Constitution of Kenya*). The same was lodged under Certificate of Urgency (click for attachment) seeking orders;

1. THAT the Honourable Court be pleased to make an order the Director, IC3, to produce movement records captured for motor vehicle registration number KCP 283Z between 2nd February 2021, 8:00 am and 7th February 2021, 8:00 pm;
2. THAT the Honourable Court be pleased to make an order the officer In-Charge, Transportation Unit, Nairobi City County Director of Roads Transport and Public Works, Nairobi Metropolitan Services to produce movement records captured by Intelligent Traffic Management System (ITMS) cameras and Vehicle Number Plate Recognition System (VNPRS) cameras for motor vehicle registration number KCP 283Z between 2nd February 2021, 8:00 am and 7th February 2021, 8:00 pm;
3. THAT the Honourable Court be pleased to order the Director, IC3, to produce to the
4. Applicant movement records captured for motor vehicle registration number KCC 843F on 7th February 2021 between 3:00 pm and 7:00 pm;
5. THAT the Honourable Court be pleased to order the officer In-Charge, Transportation Unit, Nairobi City County Director of Roads Transport and Public Works, Nairobi Metropolitan Services to produce movement records captured by ITMS and VNPRS cameras for motor vehicle registration number KCC 843F on 7th February 2021 between 3:00 pm and 7:00 pm;
6. THAT the Honourable Court be pleased to make an order the Director, IC3, to produce movement records for all motor vehicles captured up to one minute after motor vehicle KCC 843F was captured on 7th February 2021 between 3:00 pm and 7:00 pm.
7. THAT the Honourable Court be pleased to make an order the officer In-Charge, Transportation Unit, Nairobi City County Director of Roads Transport and Public Works, Nairobi Metropolitan Services to produce movement records for all motor vehicles captured by ITMS and VNPRS cameras up to one minute after motor vehicle KCC 843F was captured on 7th February 2021 between 3:00 pm and 7:00 pm.
8. THAT the Honourable Court may be pleased to make an order that Safaricom Limited produces complete call data records for mobile subscriber number 0722 707701 between 2nd February 2021, 8:00 am and 7th February 2021, 8:00 pm.

9. THAT the Honourable Court be pleased to make any other Orders deemed expedient in the circumstances.

The application was based on the following grounds and supported by the annexed Affidavit of *Mercy Wambua* and other grounds adduced at the hearing thereof.

- A. A. THAT the Law Society of Kenya is empowered at sub-sections 4(b) and (h) of the Law Society of Kenya Act (2014) to:
- a. *uphold the Constitution of Kenya and advance the rule of law and the administration of justice ...*
 - b. *represent, protect and assist members of the legal profession in Kenya in matters relating to the conditions of practice and welfare"*
- B. THAT Benson Njau Kayai is a member of the Law Society of Kenya whose mandate includes protecting the rights and interests of all its members.
- C. THAT Benson Njau Kayai was abducted on *7th February 2021* or thereabouts and has since not been seen by family and friends.
- D. THAT the Respondents will not be prejudiced in any way if this Application is granted.
- E. THAT the wheels of justice tilt in favour of granting the prayers sought therein.

The Interim Orders above sought were granted (click) when the matter came up for hearing of the Application on 24th March 2021. Honourable lady Justice Grace L Nzioka further directed that pursuant to the Orders granted, the information sought be supplied within 7 days and if there be no good reason for non-compliance, the same be slated on oath.

So far, no arrests have been made, and orders previously issued by the Court have not been fully complied with.

Mr. Stephen Ongaro, Advocate is representing the Society in the matter, on a pro bono basis.