LAW SOCIETY OF KENYA

MARCH 2026 EDITION

THE ADVOCATE MAGAZINE

WHAT IS YOUR DUTY, MR. PRESIDENT?

From Resistance to Constitutional Guardianship

Elections, Integrity and the Criminalization of Political Opposition in Kenya

Public Finance as a Tool for Advancing Constitutionalism:

https://lsk.or.ke/

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WELCOME TO THE ADVOCATE MAGAZINE

Dear Colleagues,

This year's Annual General Meeting finds us at a pivotal moment. A moment where The Law Society of Kenya has just emerged from a fiercely contested election, one that was more than a change of guard but a referendum on the future of our profession. The race to succeed Faith Odhiambo brought to the fore a clash of generations, visions, and leadership styles, reminding us that bar politics are inseparable from the broader currents of national politics.

The outcome of the LSK elections is not confined to our corridors. It reverberates into Kenya's general elections, where the Society's stance on constitutionalism, rule of law, and accountability will inevitably shape public debate. Our leaders are not only custodians of professional integrity; they are also public intellectuals whose voices carry weight in national conversations. The choices we made as members, whether for continuity, reform, or fresh ideas, signal to Our country's values that we hold dear.

Leadership in the Law Society of Kenya is therefore more than an internal affair. It is a mirror of Kenya's democratic aspirations. As the general elections approach, the Society's new leadership led by Charles Kanjama SC will be called upon to defend judicial independence, safeguard electoral justice, and ensure that the rule of law remains the bedrock of our democracy.

Yet behind these political currents are human stories: advocates who campaigned tirelessly, members who debated passionately, and a profession that continues to wrestle with its identity in a changing Kenya. This edition of The Advocate Magazine is dedicated to those stories. It is about the courage to contest, the humility to accept outcomes, and the resolve to serve beyond self-interest.

As you read through these pages, may you find both challenge and inspiration along the way. May you see yourself not only as a participant in bar politics but as a guardian of justice whose vision and values matter, not just to the Society, but to the nation.

Happy reading!

Florence Muturi

Editor-in-Chief
The Advocate Magazine

Beyond the Ballot: Professional Identity and the Constitutional Stewardship of the Law Society of Kenya

BY DAVID N. NJOROGE, FCIARB, CPM, CS

The Presidency and leadership of the Law Society of Kenya occupy a position of significant institutional weight within the nation's constitutional and professional architecture. As a statutory body established under the LSK Act, the Society serves as the definitive professional association for all practicing advocates, tasked with ensuring the integrity, competence, and ethical standards of the legal fraternity. In a constitutional democracy, bar politics goes beyond a professional guild and reflects society's expectation that lawyers guard the Constitution and stand against executive overreach. Leadership at the Bar is not just administrative, but a duty to act as the Republic's conscience, keeping the rule of law a lived reality rather than a tool to justify authority.

The Nature and Character of Bar Politics

Bar politics within professional bodies is often a microcosm of the tensions present in the larger national discourse, reflecting a constant struggle between the status quo and the hunger for institutional renewal. Leadership is no longer assumed through seniority alone, but vigorously contested through ideas, accessibility, and member-centric promises. Within this sphere, political lawyering often manifests as a struggle for political justice, where the legal profession must navigate the complexities of economic and political marginalization. For the LSK, bar politics serves as a critical mechanism for the members to demand a leadership that is brave in confronting systemic challenges, bold in championing reforms, and boundless in its ambition to elevate the profession's role in society. However, to maintain its authority, the Society must remain independent and impartial, consciously delinking itself from government alignments that have historically impaired its capacity to drive a broad legal agenda.

Competing Leadership Visions in the Legal Profession

Leadership visions within the Bar often oscillate between two primary poles: the advancement of member welfare and the fulfilment of a wider public duty. One vision emphasizes the seemingly trade union aspect of the Society, focusing on bread-and-butter issues such as minimum remuneration standards, the protection of practice spaces from shrinking due to external encroachment, and the provision of welfare benefits like medical cover and financial independence for members. Conversely, another vision prioritizes the Society's role as the final bastion for the protection of Constitutionalism, human rights and the promotion of access to justice through strategic public interest litigation. A mature leadership vision recognizes that these priorities are interdependent. Irrefutably, a profession that cannot safeguard the welfare and mental health of its own members, especially young advocates facing unemployment and low remuneration, risks losing the moral authority to defend the public's rights.

The Constitutional and Statutory Mandate

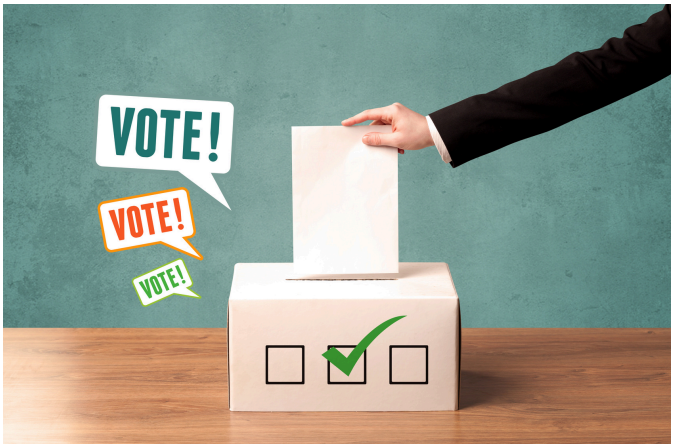
The functions of the LSK are grounded in the LSK Act and recognized by the Constitution of Kenya. Section 4 of the Act outlines a multifaceted mandate that includes assisting the government and courts in legislation and the administration of justice,

while simultaneously representing and protecting the interests of its members. The Society is legally required to uphold high standards of learning and professional conduct, including creating and enforcing a strict code of ethics. Constitutionally, the LSK is empowered to institute proceedings on behalf of the public when fundamental rights and freedoms are violated, fulfilling a transformative role that seeks to move the nation from a legacy of repression toward a rights-based governance system. This dual mandate requires the Society to act as both a regulator of its members and an active architect of national reform.

Institutional Identity and Stakeholder Expectations

The institutional identity of the LSK is defined by its unique position at the intersection of law, finance, and trust. Advocates are viewed as social engineers and opinion shapers tasked with shaping a just, transparent, and sustainable society, with expectations placed upon them by the judiciary, the state, and the general public. The public looks to the LSK as a beacon of hope that will challenge unconstitutional laws and government actions without fear or favour.

The judiciary expects the Bar to be an officer of the court that maintains the honour and dignity of the profession while facilitating the expeditious and affordable resolution of disputes. Furthermore, the state relies on the Society for advisory roles in law reform, although this relationship is often tested when the LSK must sound the alarm against executive excesses or judicial impunity. To meet these diverse expectations, the Society must foster a cohesive and accountable professional culture that transcends ethnic or political leanings.



Defending Legal Standards and Professional Discipline

A key aspect of Bar leadership is upholding professional discipline and protecting legal standards amid rising client complaints and misconduct. The Society, through the Advocates Disciplinary Tribunal (through the Compliance and Ethics Directorate and the Practice Standards and Ethics Directorate), is responsible for addressing issues such as the mismanagement of client funds, practising without a valid practicing certificate and the infiltration of unqualified persons masquerading as advocates. Leadership must be proactive in weeding out these masquerades to protect the exclusivity and dignity of legal practice. Moreover, the Bar has a duty to address contemporary challenges within its ranks, such as the need for robust sexual harassment and anti-bullying policies to protect junior associates, interns, and pupils. Upholding these internal standards is essential to preserving the collective reputation and public confidence upon which the profession's influence depends.

Looking into the future: Safeguarding Institutional Integrity

As the law evolves with the advent of technology and globalized legal services, the Society's leadership must anticipate and shape these changes rather than merely responding to them. LSK must commit to promote continuous professional development of its members, ensuring they remain competent in emerging areas like artificial intelligence, environmental justice, and anti-money laundering compliance. Furthermore, the membership has a shared responsibility to participate in the Society's democratic processes and to hold their leaders accountable to a standard of service rather than ego. The future of the Bar lies in its ability to model the same forward-looking, accountable governance that it demands from the state.

Conclusion

Leadership within the LSK demands a principled vision that honours the historical sacrifices of the legal profession while embracing the complexities of modern practice. As the legal profession continues to navigate its role in advancing democracy, its success will depend on maintaining a delicate balance

between representing its members and serving the wider public interest. Ultimately, the law is only as powerful as those who stand to uphold it, and the LSK must remain the unwavering guardian of justice, ensuring that constitutionalism and the rule of law remain the bedrock of the Republic of Kenya.

The Author is an Advocate of the High Court of Kenya.

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GUARDIANS OR GLADIATORS? THE LAW SOCIETY OF KENYA BETWEEN ADMINISTRATION OF JUSTICE AND PROTECTION OF THE RULE OF LAW AND INTERNAL POLITICAL SURVIVAL.

By Shamallah Marion

Introduction

The Law Society of Kenya (LSK) is a statutory body established under Section 3 of the Law Society of Kenya Act whose functions as established under Section 4 of the Act includes assisting the Government and the courts in matters relating to legislation, the administration of justice and the practice of law in Kenya as well as upholding the Constitution of Kenya and advance the rule of law and the administration of justice among other functions.

The multifaceted nature of the roles bestowed on the Society demands institutional neutrality, restraint, and principled leadership. Yet,Rising bar politics has placed LSK leadership at a critical crossroads. The Society is then forced to answer the question of whether leaders should act as neutral guardians of constitutional values, or as gladiators engaged in political combat both internally and externally to secure institutional and personal survival?

The Guardian Ideal: LSK as the Guardian of the Rule of Law and Administration of Justice.

The Constitution of Kenya, 2010 envisions professional bodies like the Law Society of Kenya as custodians of constitutionalism within their spheres. The Law Society of Kenya Act reinforces this, mandating the Society to assist in administering justice, protect the public interest, and promote adherence to the rule of law.

In this guardian role, LSK leadership is expected to rise above partisan and factional considerations. Constitutional interventions should be guided by legal principles, institutional memory, and the long-term interests of the justice system, rather than short-term political calculations. The Society's authority depends on its perceived neutrality and moral consistency.

In 2024, Kenya experienced a wave of decentralized mass protests beginning on 18 June in Nairobi, later spreading nationwide, against proposed tax increases in the Finance Bill. These demonstrations led to several deaths, injuries, and numerous detentions, despite being conducted in accordance with Article 37 of the Constitution. Reports also emerged of abductions, including that of the Kenya School of Law Student Council President.

The Law Society of Kenya, led by President Faith Odhiambo, acted decisively to uphold the rule of law. It provided pro-bono legal assistance to the unlawfully detained, issued statements on the abductions, and filed a habeas corpus petition in Law Society of Kenya & 3 others v Inspector General of Police & 4 others [2024] KEHC 10634 (KLR), addressing the incommunicado detention of three citizens by alleged police officers.

Such interventions reinforce judicial independence, uphold constitutional norms, and enhance the Society's respect and authority across government institutions and the public.

The Gladiator Reality: Bar Politics and Political Survival

Whereas the LSK is mandated to uphold the guardian ideal, contrasting sharply with the guardian ideal is the reality of internal political survival. Bar politics in Kenya has grown increasingly competitive and polarised. Leadership positions are contested through vigorous campaigns, strategic alliances, and ideological branding. Once in office, leaders operate under constant scrutiny from factions within the Bar, often facing pressure to maintain visibility, assert dominance, and defend legitimacy.

This environment encourages a combative approach, hostile public statements, aggressive court cases, and confrontations with the state. Although these actions are often presented as defending the Constitution, they can also be driven by internal political goals such as strengthening support, sidelining rivals, or staying relevant before future elections.

The risk is that constitutional debate becomes a tool for political survival rather than a genuine commitment to constitutional principles.

Blurred Lines: When Guardians Become Gladiators

The line between guardian and gladiator is often blurred. Defending the Constitution sometimes requires courage, public confrontation, and even conflict with powerful state actors. The problem arises when confrontational tactics are driven by internal political calculations rather than constitutional necessity.

When survival politics dictate action, leaders may focus on high-profile battles that appeal to factions while neglecting quieter but equally important constitutional issues. This selective advocacy risks inconsistency and invites accusations of opportunism or partisanship.

Public infighting also undermines institutional dignity and weakens the Society's authority, especially when constitutional obligations are ignored or court orders defied for political gain. Between 2020 and 2021, LSK experienced such infighting when the President led a 13-member council to suspend the CEO over alleged misconduct. The council later voted 9-4 to reinstate her. The dispute escalated, with the CEO filing an assault case, securing multiple court orders to prevent her removal, and the President attempting to replace her despite the orders. Police intervention was eventually required to manage rival factions and protect institutional processes.

prevent her removal, and the President attempting to replace her despite the orders. Police intervention was eventually required to manage rival factions and protect institutional processes.

Impact on Institutional Credibility

Institutional credibility is the cornerstone of LSK's constitutional effectiveness. Courts, policymakers, and the public are more likely to engage constructively with a Society perceived as principled and stable. When leadership appears driven by internal political survival, this credibility is compromised.

The perception of LSK as a battleground for personal or factional ambition diminishes its moral authority. Constitutional interventions risk being dismissed as political theatre rather than legal advocacy.

Reclaiming the Guardian Role

In light of the above, the Law Society of Kenya is under an obligation to restore and preserve its guardian role by consciously restraining gladiatorial impulses. Restoration of LSK's guardianship role does not mean that the society ought to be silent or passive in approaching issues related to the rule of

law as well as its mandate under Section 4 of the Law Society of Kenya Act. It simply means that that the approach needs to take a disciplined constitutional engagement approach anchored in institutional norms rather than individual leadership style.

Strengthening collective decision-making structures, insulating constitutional advocacy from electoral cycles, and fostering a culture of internal deliberation can mitigate the pressures of internal political survival. Leadership should be viewed as custodial rather than combative, with office holders accountable to the Constitution as much as to the electorate.

CONCLUSION

The question of whether LSK leaders are guardians or gladiators strikes at the heart of the Society's Identity. Whereas the demands of constitutional defence may sometimes necessitate confrontation, the transformation of constitutional advocacy into a tool of internal political survival threatens institutional credibility and constitutional fidelity.

It then follows that the Law Society of Kenya as the guardians ought to resist the temptation to equate visibility with effectiveness and confrontation with constitutionalism.

The Author is an Advocate of the High Court of Kenya.

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Public Finance as a Tool for Advancing Constitutionalism: Analysis of the judgment in *Law Society of Kenya v National Assembly of Kenya & 3 Others*

By Allan Meso

Public finance occupies a pivotal but often undertheorized role in constitutional governance. In Kenya, fiscal authority is deliberately constitutionalised, embedding the principles of participation, transparency, accountability, and constitutional supremacy into taxation and revenue policy. Drawing on the High Court's decision in *Law Society of Kenya v National Assembly of Kenya & 3 Others [2025] KEHC 5472 (KLR),* this article argues that public finance functions as a practical instrument for advancing constitutionalism. It contends that fiscal decision-making is not a technocratic exercise insulated from constitutional scrutiny, but a core arena through which democratic legitimacy, the rule of law, and constitutional supremacy are realised.

Constitutionalism is concerned with the control, justification, and limitation of public power.[1] While public law scholarship traditionally focuses on executive authority and judicial review, fiscal power - especially taxation - constitutes one of the most intrusive expressions of state authority. Kenya's Constitution departs from classical constitutional design by embedding public finance within the constitutional text itself, signalling that economic governance is inseparable from constitutional legitimacy.

The High Court decision in *Law Society of Kenya v National Assembly of Kenya & 3 Others (hereafter LSK v National Assembly)* provides a contemporary illustration of how fiscal policy operates as a constitutional site. The case demonstrates the judiciary's role in mediating between parliamentary revenue powers, popular sovereignty, and constitutional accountability.

Articles 201, 209, and 210 of the Constitution constitutionally regulate public finance by imposing principles of openness, accountability, equity, and public participation.[1] These principles recognise that fiscal power flows from the people and must be exercised in accordance with constitutional standards rather than pure legislative discretion.

In LSK v National Assembly, the Court reaffirmed that Parliament's authority to impose taxes under Article 209 is conditioned by Articles 10 and 118, which mandate meaningful public participation in legislative processes.[2] This reflects a constitutional understanding of public finance as an accountability-driven exercise rather than a purely budgetary one.

Taxation has historically been the locus of constitutional contestation due to its intimate connection with sovereignty and consent. Classical constitutional theory links taxation with democratic representation, expressing the concern that fiscal extraction without accountability undermines legitimacy.[3]

Kenya's Constitution institutionalises this principle through participatory obligations rather than relying solely on electoral representation. Although the High Court ultimately rejected the petitioner's challenge in LSK v National Assembly, it affirmed that taxation

derives democratic legitimacy not only from parliamentary enactment but from structured engagement with the public.[4] This reinforces constitutionalism by ensuring that fiscal sovereignty remains tethered to popular consent. The central dispute in LSK v National Assembly concerned whether a substantive amendment to a tax statute required a fresh round of public participation. Relying on Supreme Court authority, the High Court clarified that amendments arising directly from views expressed during public participation do not automatically require renewed consultation.[1]

However, the Court reaffirmed that public participation must be real and substantive, particularly where fiscal measures have wide economic and social consequences.[2] Public participation thus operates as a constitutional safeguard against arbitrary or opaque fiscal governance, ensuring that revenue policy remains democratically anchored.

The petitioner further argued that the impugned tax provision violated Kenya's international and regional trade obligations under Article 2(6) of the Constitution. The Court rejected this argument, reaffirming constitutional supremacy and the primacy of domestic law in Kenya's legal hierarchy.[3]

Drawing on Supreme Court jurisprudence, the Court held that international treaties form part of Kenyan law only to the extent that they are consistent with the Constitution and validly enacted statutes.[4]

Fiscal policy choices, even when intersecting with international trade regimes, remain subject primarily to domestic constitutional accountability. This position strengthens constitutionalism by preventing the displacement of democratic control through external economic governance norms.

Beyond procedural compliance, LSK v National Assembly illustrates how public finance may advance substantive constitutional objectives. The impugned tax amendment sought to protect domestic industry from unfair competition, implicating employment, economic justice, and national development. The Court accepted that fiscal tools may be legitimately deployed to advance public interest goals, provided constitutional processes are observed.[1] This aligns with Article 201(b)(i) of the Constitution, which requires public finance to promote equity. Fiscal policy thus emerges as an instrument through which constitutional values are materially realised.

The Court's restrained approach reflects a mature model of fiscal constitutionalism. Rather than interrogating policy wisdom, the judiciary confined its role to ensuring constitutional compliance - public participation, legality, and hierarchy of norms. This approach respects legislative autonomy while preserving constitutional discipline over fiscal power.[2] In doing so, the Court reinforces the judiciary's role as a guardian of constitutionalism without usurping the policy-making mandate of elected institutions.

Law Society of Kenya v National Assembly affirms that public finance is a central instrument in the advancement of constitutionalism. Taxation and revenue policy are not technocratic domains insulated from constitutional scrutiny, but arenas where sovereignty, participation, accountability, and rule of law converge.

By subjecting fiscal governance to constitutional norms, Kenyan courts are entrenching public finance as a practical tool for democratic legitimacy and constitutional supremacy. In this sense, economic governance becomes a lived expression of constitutionalism rather than a peripheral administrative function.

The Author is an Advocate of the High Court of Kenya.

DEFENDERS COALITION

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WHO WE ARE

Defenders Coalition is the National Coalition of Human Rights Defenders in Kenya, established in 2007 to promote the safety, security, and well-being of Human Rights Defenders (HRDs). We are a trusted and professional organization dedicated solely to the protection of HRDs through capacity building, advocacy, and legal support. Our membership includes both organizations and individual defenders, and we are part of key regional and global human rights networks, including Defend Defenders and CIVICUS.

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WHAT IS YOUR DUTY, MR. PRESIDENT?

By Susan Moraa Ondicho

"Who among us will pick your call at 1.00a.m?" What is my counter part's history with regards to upholding and fighting for the constitution's dictates and values?

The Law Society of Kenya operates as both a professional body for advocates and a statutory watchdog tasked with upholding the rule of law, constitutionalism, and the administration of justice in Kenya. In 2024–2025, for instance, the Law Society of Kenya was deeply involved in high stake bar politics that intersected with national political issues, ranging from defending judicial independence against executive pressure to opposing legislative changes that were against the will of the people of Kenya.

Section 4(b) of the Law Society of Kenya Act, Chapter 18, Laws of Kenya, entrusts the society with the mandate to uphold the Constitution, advance the rule of law, and in the administration of justice. Section 4(d) further mandates the society to protect and assist the members of the public in matters relating to ancillary or incidental to the law.

The Law Society of Kenya therefore does exist to maintain and promote the rule of law throughout Kenya by ensuring there is an independent and efficient legal profession that serves the People of Kenya. One of the core values of the society is the rule of law and administration of Justice. Before being the president of the Law Society of Kenya, one ought to be an Advocate of the High Court of Kenya. The latter is basic knowledge, right? As an Advocate of the High Court of Kenya, one has a duty towards; oneself as an advocate, clients, the court, the public, the profession and the other Advocates.

What have you stood for before? Do you remember the 2010 Kenyan Constitutional Referendum? What were the major grounds for the push towards the 2010 Constitution of Kenya 2010? The Constitution of Kenya 2010 provides for the freedom of conscience, religion, belief and opinion. Why do you associate yourself to that religious affiliation? I conclude that you will not protect their rights. Sarcastic, right?

You have the freedom of expression. Do you remember how I protected you? Why don't you vote me in to continue protecting you? Am I not the best candidate amongst us all?

Do you not know of the challenges that most of the Kenya School of Law Students go through? I will sponsor twenty of them this year as a genuine gesture and practical example of my intention to implement every promise in my manifesto once I become your president. Education is an important aspect.

There are some who are left out because of lack of school fees. This is my undertaking; I shall fulfil my duties to you and our upcoming colleagues.

A reliable, considerate, courageous, competent, tenacious and honest leader. Persuasion is an art. For instance, to the newly admitted advocates, class of 2025, do you remember the abduction of your colleagues during your Kenya School of Law journey?

We stood with, by and for you. They came back to you. We even made sure that they got medical attention before releasing them to you. Despite you being the youngest in the profession, you matter a lot, I see you and I wish to encourage you to take part in voting for me. I have your best interests at heart. The latter is not a fact in issue, right?

Throughout the campaign period, the candidates exhibited reliance on the constitution while putting their points across. For instance, a concern was raised concerning discrimination. Article 27 of the Constitution of Kenya,2010 provides that every person is equal before the law and has the right to equal protection and equal benefit of the law. A question was raised concerning one of the candidate's religious affiliation and whether that would be an hinderance to fulfilling his duties. One could then raise the question, do some rights and freedoms override other rights and freedoms? Think about it, Freedom of religion/conscience/belief/opinion versus equality/freedom from discrimination. A concern could also be raised as to whether the latter judgment was correct and/or fair. What if the candidate against whom the latter was raised believed in the harm theory despite the religious affiliation held?

Additionally, Article 29, 26 and 37 of the Constitution of Kenya, 2010 were raised. A reminder was tactically made. 2024 generation Z protests were discussed and the threatened rights thereto. The provision that; a person shall not be deprived of life intentionally, except to the extent authorized by the Constitution of Kenya, 2010 and/or written law ; every person has the right to freedom and security of the person which includes the right not to be deprived of freedom arbitrarily or without just cause, detained without trial, except during a state of emergency in which case the detention is subject to Article 58, subjected to any form of violence from either public or private sources, subjected to torture in any manner whether physical or psychological, subjected to corporal punishment or treated or punished in a cruel, inhuman or degrading manner; every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities; were raised and discussed extensively.

The bar politics have not only show cased candidates that understand; their responsibilities to the nation at large, the art of persuasion, the duty to respect their counter parts, the role of the law society and its core values, the attributes of a good lawyer, the duties of an advocate in the different sectors and professional ethics but also; candidates that are ready to protect the Constitution of Kenya 2010 as a whole. It is essential to elect a President who upholds the Constitution of Kenya, the values of the Society and one that can advocate for them. It is important that we vote candidates with a history of defending judicial independence and those with an understanding of the critical role of the Law Society of Kenya in maintaining constitutional checks and balances.

The Author is an Advocate of the High Court of Kenya.

The Bar at a Crossroads: Leadership, Legitimacy and the Courage to Mean Something

By Jennifer R. Wambugha

In Kenya, politics is never far away. It sits in matatus, at funerals, in boardrooms and occasionally in court corridors pretending to be neutral.

The Bar is no exception. The Law Society of Kenya (LSK) was never meant to be a polite club of black suits exchanging pleasantries over continuing professional development points. It was created by statute, anchored in the Constitution and entrusted with a mandate that is both professional and profoundly political: to assist the Government and the courts in matters relating to legislation and the administration of justice and to protect and assist members of the public in Kenya in matters touching on the law.

That mandate is not decorative. It is constitutional; and constitutional mandates are not designed for comfort.

When the Streets Became Constitutional Classrooms

Over the past year, Kenya has witnessed a generational shift in civic participation. Young people, many of whom cannot quote Article numbers but understand injustice instinctively, have demanded accountability with a clarity that has unsettled power. They may not all carry law reports. But they carry questions; and questions, when asked persistently enough, become constitutional arguments.

In moments of civic unrest, the country instinctively looks to the Bar. Not for press statements crafted in diplomatic prose, but for moral direction. For legal clarity. For courage that is audible. Silence, after all, can also be a position. It is simply not a very useful one.

Bar Politics or Politics at the Bar?

Every election season within the Law Society comes wrapped in familiar language: reform, independence, unity, service. Manifestos are written. WhatsApp groups multiply. Alliances are formed with the seriousness of national coalitions. This is not inherently problematic. Leadership contests are healthy. The danger lies elsewhere.

When Bar politics becomes a rehearsal for national politics, complete with factional loyalties and ideological rigidity, the Society risks shrinking its constitutional imagination. The LSK is not Parliament. It is not an opposition movement. It is not a branch of the Executive. It is an independent statutory body with a duty to defend the rule of law - even when doing so is inconvenient to friends. Especially then.

The credibility of the Bar does not come from the volume of its statements. It comes from consistency. A Society that speaks only when aligned with its preferences gradually loses the authority to speak when it truly matters; and in Kenya, it always eventually matters.

Leadership Beyond the Gavel

Leadership at the Bar is often mistaken for visibility. A well-timed press conference. A trending hashtag. A strongly worded letter. But constitutional leadership is quieter and harder.

The Crisis of Trust

Perhaps the most urgent issue of our time is not political rivalry. It is public distrust.

Kenyans increasingly question institutions - Parliament, the Executive, even the Judiciary. The legal profession cannot assume immunity from this skepticism. Advocates are often perceived as either too aligned with power or too selective in outrage.

Trust is earned in small, consistent acts. When the Bar defends due process for the unpopular, it builds legitimacy. When it speaks against unlawful force, regardless of who authorises it, it builds credibility. When it disciplines its own members transparently, it builds integrity.

In a country fatigued by performative outrage, principled steadiness is both radical and necessary.

A Generational Moment

The emerging generation of lawyers is different. They are digitally native, politically alert and impatient with ceremony for its own sake. They do not fear questioning leadership structures. They are less impressed by hierarchy and more concerned with impact.

This is not a threat to the Bar. It is an opportunity.

If harnessed, this energy can deepen the Society's engagement with technology, expand access to justice, and modernise its approach to civic education. If ignored, it will simply organise itself elsewhere.

History is unkind to institutions that underestimate youth. Kenya's recent civic awakening has demonstrated that clearly.

Reclaiming the Constitutional Centre

The LSK's mandate sits firmly within the Constitution of Kenya, 2010 - a transformative charter grounded in human dignity, equity, social justice and accountability.

The question before the Bar is not whether it will participate in politics. It inevitably will. The question is whether its participation will be anchored in constitutional principle or partisan instinct.

There is a difference. One defends systems. The other defends sides.

At this crossroads, leadership must choose the harder path: fidelity to the Constitution even when it isolates; defense of rights even when misunderstood; independence even when pressured.

The Bar must not become an echo of the loudest voice in the room. It must remain the conscience in it.

Conclusion: The Courage to Mean Something

Institutions are remembered not for their statements, but for their stance during defining moments. Kenya is living through one of those moments - economically strained, politically polarised and civically awakened.

The Law Society of Kenya cannot afford to drift.

Its constitutional mandate demands more than commentary. It demands courage; and courage, unlike campaign slogans, cannot be printed. It must be practiced.

The Bar stands at a crossroads.

The direction it chooses will determine not only its own legitimacy, but the strength of constitutional democracy in Kenya. In times such as these, neutrality is rarely neutral.

And leadership, if it is to matter, must be prepared to stand - even when standing is costly.

The Author is an Advocate of the High Court of Kenya.

BEYOND THE BALLOT: REFLECTIONS ON THE LSK ELECTIONS, PROFESSIONAL INTERGRITY AND THE DUTY OF LEADERSHIP

By Linda Kiendi

As the dust settles on the recently concluded electioneering season for a new Law Society of Kenya (LSK) Council, it behooves both members of the bar and the incoming leadership to reflect on both the gains made and the shortcomings revealed. The campaign period was marked by intensity, dedication and a commendable competitive spirit, a hallmark of democracy anchored on the rule of law. Candidates debated and traversedthe country engaging with practitioners articulating their manifestos and discussing challenges facing the legal profession. Social media platforms became vibrant arenas for intellectual engagement, rational arguments, critiques and advocacy, clearly demonstrating a maturing profession exercising its democratic rights.

However, amid the vibrancy, certain concerns emerged that warrant honest introspection. Allegationsof voter bribery whether proven or not, cast a shadow on nobility of our profession. This is a behaviour that must not only be addressed but completely shunned. Integrity is the cornerstone of legal practice and any conduct that undermines it must be firmly rejected and addressed.

Equally concerning was the low voter turnout. Out of approximately 18,000 registered and eligible voters only 8,506 voters turned out for the voting exercise. This apathy raises critical questions; are advocates sufficiently invested in leadership of the LSK council, or do logistical challenges such as physical voting discourage participation? These are issues the profession and the incoming leadership must confront to strengthen future electoral processes. Notwithstanding these challenges, there were no reports of compromised election results and the elections can be deemed free and fair. The will of the Bar was expressed and a new council was duly elected.

As the new council prepares to take office, it bears the responsibility of steering the Law Society of Kenya in strict fidelity to constitutionalism, democracy and the rule of law. Equally, members of the bar must remain vigilant and proactive in holding the council accountable for delivery of its manifesto commitments while building upon the foundations laid by the outgoing council.

It is now a moment to transcend political divisions and focus on the collective mandate of the Law Society of Kenya to serve its members and the public, safeguard the rule of law and enhance the welfare of members.

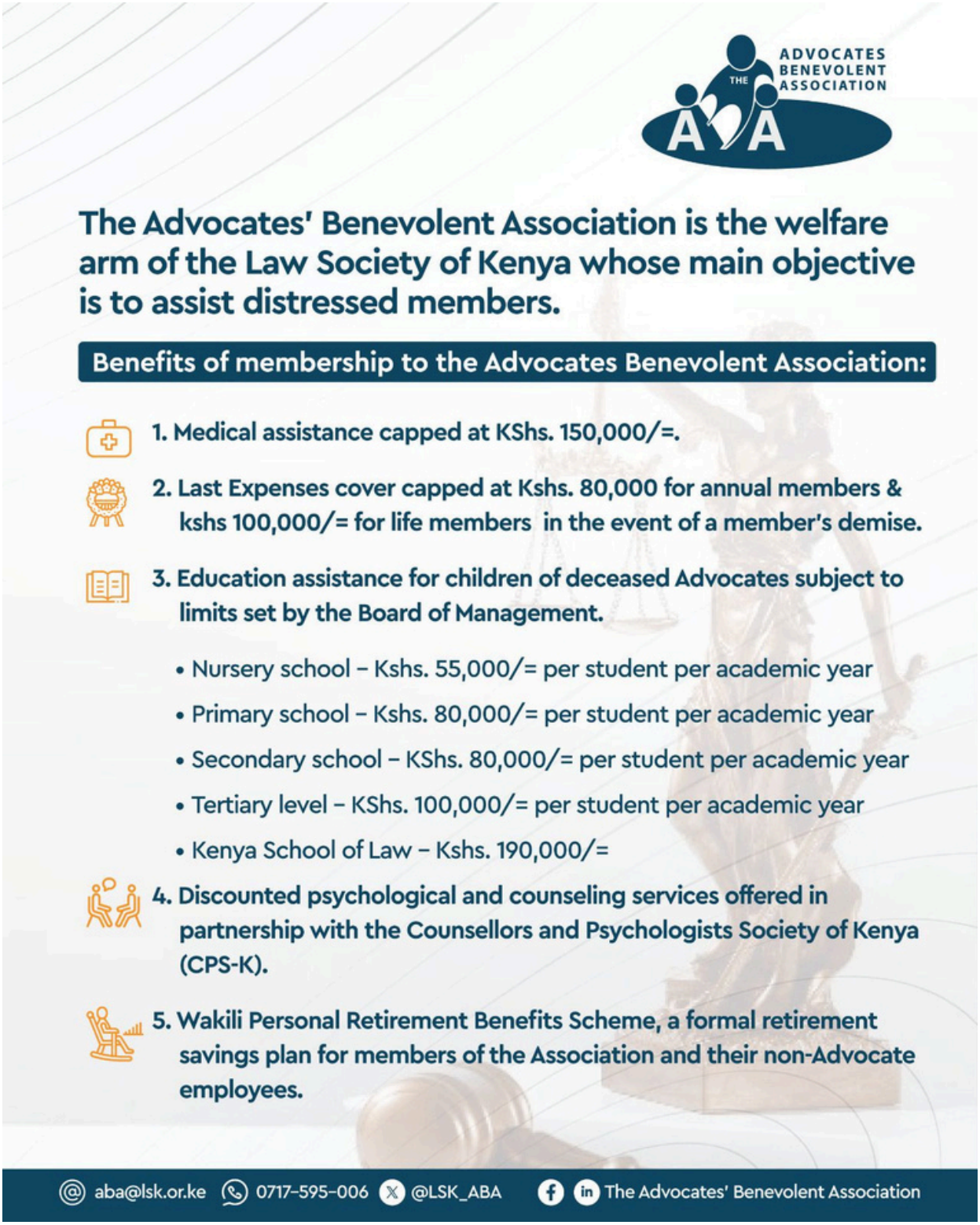
The words of Marcus Aurelius aptly capture the essence of leadership: “It is the responsibility of leadership to work with what is given and not waste time fantasizing about flawless people and perfect choices.” The bar has spoken decisively and unequivocally through a democratic process. There is now a legitimate expectation across the board, the young bar, the mid bar and the senior bar for principled leadership and excellence in delivery.

The timing of the new council is particularly significant as the nation approaches general elections. within the next year.Kenya’s history of electoral violence, police brutality, media suppression and governance excesses underscores the critical role of the LSK as a defender of constitutionalism and human dignity.

The council must therefore remain vigilant, objective and resolute in upholding, respecting and defending the rule of law..Democracy, good governance and constitutional fidelity must guide its advocacy for free, fair and peaceful elections.

Congratulations to the newly elected council; the Bar has entrusted you to deliver. We look forward to principled leadership, courageous advocacy and tangible progress for the profession and the nation.

The Author is an Advocate of the High Court of Kenya.



THE CONNECTION BETWEEN BAR POLITICS, LEADERSHIP VISIONS AND LSK'S CONSTITUTIONAL MANDATE

By Vivianne Mutheu Kombo

Many capable and deserving individuals aspire to run for office whenever positions fall vacant but a closer look at the current campaign landscape quickly explains why that ambition fades. It is striking that a Society entrusted with upholding the Constitution appears to be grappling with the same challenges as national politics: exorbitant campaign costs, a shrinking pool of candidates deterred by financial pressure, and an emerging culture of inducements and vote-buying. At the devolved level, these trends are steadily taking root, if they haven't already. Still, there is a silver lining within some branches and chapters, one can run a modest campaign and still have a real chance to serve.

The LSK (General) Regulations 2020 under Regulation 11 places obligations on Advocates such as the commitment to promote and help the Society realize its objectives and that of their Branch. Particularly, one of the objectives of the Society is to facilitate a transformed legal profession that is cohesive, accountable, efficient and independent. Therefore, the idea is for all of us as a collective to make the Society better for many others and ourselves who ought to benefit from the Society.

It behooves Advocates to establish mechanisms for the provision of equal opportunities for all legal practitioners in our bar politics to afford members a chance to vie for elective seats. The fact is that the way things are going, bar politics may just be a preserve for the "rich". The focus may shift from leadership visions to empty promises backed by expensive campaigns. Perhaps it is time for members to rethink the political process in the Society. Is there a way that bar politics and the elections generally, could be more inclusive, efficient and somewhat equalizing? With the advent of heightened technology, can we integrate methods to allow better systems for elections and campaigns? This discourse needs to deliberately had within the membership. The Society can initiate public participation to pick the views of members on how we can improve these systems and assure the fulfillment of the values and principles laid down in the Constitution. As Advocates, we know them by heart.

Constitutionalism is a culture that ought to be engrained in the structures of the Society. It needs to be practiced in every aspect which can be done. The values and principles espoused in the Constitution must truly flow within the veins of the Society, in order to fully achieve the mandate given to it. Who is the Society? It is us, Advocates. We are first Advocates before all else. Therefore, we should demonstrate what the Constitution is in our politics and our activities as a profession— a noble one at that.

The Society has a great onus to demonstrate the implementation of the Constitution because it is a key custodian of the law charged with a responsibility to advance the rule of law and administration of justice. It needs to be felt how the Society answers to the call to uphold the Constitution, even in politics.

Above personal ambition and institutional goals stands a greater ideal, the Constitutional vision. It is the only vision truly worth pursuing. What the Society has achieved so far is merely a fraction of its true potential. The incoming Council must rekindle this shared purpose and ground the Society in its founding vision. With clarity of direction comes discipline, and with discipline, our collective aspirations can be fully realized.

The Author is an Advocate of the High Court of Kenya.

Guardians or Gatekeepers?Reclaiming the Law Society of Kenya's Constitutional Mandate Through Purposeful Leadership

By Lilly Umazi

The Law Societyof Kenya was never intendedto be a ceremonial club, nor a ladderfor personal ambition.It is, constitutionally and historically, a guardian of justice,a professional body entrustedwith the heavy responsibility of defending the rule of law, protecting the independence of the legal profession, and standingbetween the citizenand the excesses of power. Yet, as bar politics continue to dominate our discourse, a difficultbut necessary question confronts us: are we still guardians of justice, or have we slowly become gatekeepers of privilege and convenience?

Section 4 of the LSK Act anchorsthe Society's mandate in public interest,professional integrity, and constitutionalism. LSK is requirednot merely to regulateadvocates, but to assistthe Government and the courtsin matters relatingto legislation and the administration of justice,and to uphold the Constitution and advancethe rule of law. This mandate is not passive.It demands courage.It demands institutional clarity. Most importantly, it demands leadership that understands that silence, in the face of injustice, is not neutrality, it is complicity.

When advocates are harassed for representing unpopular clients, when courts are undermined through budgetary strangulation or political intimidation, when citizens are brutalised under the guise of "law enforcement", the Law Societymust not issue timid press statements drafted for safety.It must act, decisively, unapologetically, and constitutionally.

Bar politics, like all politics,are not inherently evil. Leadership contests, ideological differences, and competing visions are healthy for any democratic institution. The problem arises when bar politicsbecomes an end in itself,rather than a means to strengthen the profession and serve the public. We must be honest with ourselves: internal divisions, personality cults, and transactional alliances have at times weakenedLSK's moral authority. Elections become louder than ideas.

Titles become more important than service. The result is a Society that riskslosing the confidence ofboth its membersand the public it is meant toserve.

True bar politics should be about vision,not vendettas. About policy,not popularity. About
service, not survival.

Leadership within the Law Society is not ownership. It is stewardship. Those who seek office must understand that they are not campaigning for relevance, but offeringthemselves for responsibility.

A leadership vision worthy of LSK must be grounded in three pillars:

- LSK must remain unwavering in defendingthe Constitution, regardless of whichpolitical regime is in power.Our loyalty is not to the State, but to the law.
- Young advocates, women in practice,and practitioners outsidemajor urban centresmust feel seen, supported, and protected. Leadership must translate policy into practical welfare, mentorship, and access to opportunities.
- The Law Society must reclaim its voice as the conscience of the nation, litigating, advocating, and mobilising in defence of rights, even when it is uncomfortable or unpopular.

History reminds us that the most respected bars across the world earned their staturenot through proximityto power, but throughprincipled resistance to its abuse.Kenya's legal profession has, in moments of crisis, risen magnificently to that challenge. Those moments must become the rule, not the exception. Leadership that is bold inspiresadvocates to be bold. A Societythat speaks clearly empowers its membersto practise fearlessly. Courage, once demonstrated at the top, becomes contagious.

The Law Societyof Kenya standsat a crossroads. We can continuemanaging decline through safe leadership and muted positions, or we can reclaim our historic role as a formidable institutional voice for justice.

This is not about individuals. It is about identity. Are we content to merely exist,or are we willing to lead? Are we gatekeepers of comfort,orguardians of justice? The Constitution demandsthe latter. Historywill judge us by what we choose today

The Author is an Advocate of the High Court of Kenya.

ARTICLE 159 WAS NOT AN AFTERTHOUGHT: WHY ADR IS A CONSTITUTIONAL OBLIGATION, NOT A CONVENIENCE

By David Achochi Onsare, FCIArb

Article 159 of the Constitution does not suggest alternative dispute resolution. It does not recommend it. It requires courts to promote it. That verb matters. The verb “promote” matters Promotion is an active constitutional duty, not a passive institutional courtesy.

Yet if you watch examine how arbitration jurisprudence has evolved over the past decade, you might think one might think finality was always meant to be negotiable. You might believe courts were always supposed to perfect arbitral awards through expanded appellate review. You might conclude that what parties agreed to resolve privately could always end up back in appellate corridors for further consideration.

You would be wrong. What we are witnessing is not constitutional compliance. It is constitutional drift.

Take ***Nyutu Agrovet Limited v Airtel Networks Kenya Limited. Nyutu Agrovet Limited v Airtel Networks Kenya Ltd (Civil Appeal (Application) 61 of 2012) [2024] KECA 523 (KLR)***

The Supreme Court in 2019 created an “exceptional circumstances” gateway allowing appeals from High Court decisions on setting aside arbitral awards under Section 35 of the Arbitration Act. The Arbitration Act deliberately restricts such appeals. The Court, believing it was serving justice, opened the door anyway. nevertheless opened the door.

What was meant to be final became appealable through interpretation.

Here is what quietly disappeared: not just arbitral autonomy but the constitutional promise that parties may structure their own justice without state substitution. When finality becomes negotiable, arbitration stops being an alternative justice system and becomes a rehearsal for litigation. Parties who chose arbitration to avoid delay and cost get dragged back into appellate corridors the statute deliberately closed. Small and medium enterprises that chose arbitration to avoid prolonged court battles often find themselves back in appellate corridors litigation. Employment parties seeking quick resolution face years of uncertainty. Time-sensitive commercial actors discover the finality they paid for was never guaranteed.

The problem is not that courts made a wrong decision. The problem is that courts stepped from supervision into substitution while believing they were doing justice. Finality was not eroded by Parliament. It was softened by interpretation.

And Nyutu Agrovet was not an isolated moment. In SBM Bank (Kenya) Limited v Afrasia Bank Limited, SMB Bank (Kenya) Limited v Afrasia Bank Limited (Civil Appeal E620 of 2022) [2025] KECA 386 (KLR), decided in February 2025, the Court of Appeal confronted whether parties could expand appellate jurisdiction through consent under Section 39 of the Arbitration Act. The question was fundamentally constitutional: who controls the boundaries of arbitration, contracting parties or supervising courts? The court was being asked to define the limits of party autonomy against institutional control, whether contracting parties or supervising courts ultimately determine what arbitration means in Kenya's constitutional order.

When courts must repeatedly determine the limits of their own jurisdiction over arbitration, Article 159's directive to promote ADR becomes increasingly theoretical.

Which brings us to a harder question. Where was the Law Society of Kenya during these interpretive shifts in arbitration jurisprudence??

Not every case requires LSK commentary. But when does the Society have a duty to speak? When judicial interpretation alters the balance between constitutional actors rather than merely resolving private disputes.

Three specific triggers should compel an institutional voice. First, when courts reinterpret Article 159 or constitutional provisions on access to justice. Second, when courts expand their own jurisdiction beyond statutory limits. Third, when judicial reasoning reshapes dispute resolution architecture nationally.

While the Law Society of Kenya Act does not explicitly mandate constitutional commentary on judicial decisions, the Society's role in maintaining standards of professional practice and protecting rule of law provides institutional standing for such engagement.

Nyutu Agrovet was not controversial because of who won. It mattered because it recalibrated who controls finality in arbitration. That shift engaged Article 159 directly. Silence at that moment was not neutrality. It was acquiescence.

The LSK represents all lawyers, litigators and arbitrators alike. The Society cannot be expected to take sides in every jurisdictional debate. But when courts interpret constitutional provisions that define their own powers over alternative dispute resolution, that is different. Article 159 is not a procedural provision. It is a constitutional directive about how justice gets delivered in Kenya.

Courts don't get to decide alone how much space arbitration occupies in our justice system. That decision belongs to the Constitution. The LSK's institutional silence treats Article 159 interpretation as a technical matter when it is actually a constitutional one.

Silence in moments of doctrinal shift is not neutral. It shapes the law.

Before anyone accuses this analysis of arbitration guild advocacy, let us be clear about three things.

First, courts have legitimate supervisory jurisdiction over arbitration. Second, that jurisdiction protects due process, legality and public policy. Third, arbitration does not exist in a constitutional vacuum.

All true. All important. All necessary.

But supervision is not correction. Support is not control. Oversight is not appeal.

The Constitution authorises courts to protect arbitration, not to perfect it. Jurisdictions with thriving arbitration practices like Singapore and England maintain clear boundaries between supervisory jurisdiction and merit review, treating finality as foundational rather than flexible. There is a difference between ensuring an arbitral tribunal stayed within its mandate and substituting judicial wisdom for arbitral judgment. The first protects the process. The second replaces it.

And yes, Kenyan arbitration is not immune from criticism. There are poorly reasoned awards. There are procedural shortcuts. There are practitioners who treat arbitration as private litigation without discipline.

But constitutional design does not permit courts to correct systemic weaknesses by collapsing institutional boundaries. The answer to flawed arbitration is better arbitration, not judicial takeover. If arbitration quality concerns justify expanded court intervention, then Article 159's promotion mandate becomes conditional on perfection. That is not what the Constitution says. So what should the LSK do differently?

The answer is not activism. It is institutional clarity.

The LSK should establish a standing Dispute Resolution Jurisprudence Committee mandated to issue periodic constitutional assessments of court decisions affecting arbitration, mediation and other ADR mechanisms. These assessments need not would not necessarily oppose courts. Their Its function would be to clarify constitutional boundaries and guide practitioners and judges alike.

Not every arbitration case needs LSK commentary. But when courts interpret Article 159, when they expand their jurisdiction over ADR, when their reasoning reshapes how Kenyans resolve disputes, that is when institutional voice becomes institutional duty.

Defending constitutional balance requires more than reacting to crises. It requires choosing where the line is and defending it consistently.

The Choice We Face

That said, Article 159 was not an afterthought in Kenya's constitutional design. The drafters understood something important i.e., namely that access to justice does not mean access to courts alone. It means access to effective dispute resolution mechanisms that parties trust and that deliver finality. Every time courts expand intervention into arbitration, they make a choice. They choose judicial certainty over party autonomy. They choose substantive review over procedural compliance. They choose perfection over finality.

Those might be defensible choices in individual cases. But cumulatively, they undermine what Article 159 promised. Alternative dispute resolution becomes preliminary dispute resolution. Party choice becomes subject to judicial second-guessing. Finality becomes a starting point for appellate advocacy.

The Constitution deserves better. Parties who choose arbitration deserve better. The Constitution drew a line between court supervision and arbitral substitution. That line matters not because arbitration is superior to litigation or because courts lack wisdom, but because constitutional obligations are not institutional conveniences. The LSK, as guardian of legal practice and constitutional compliance, should say so clearly. When we treat Article 159 as flexible rather than binding, we don't just weaken arbitration. We weaken constitutionalism itself.

That is the conversation the LSK's leadership should be having. The time to start is now.

The Author is an Advocate of the High Court of Kenya.

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THE JUNGLE OF JUSTICE

A FABLE OF GUARDIANS, GLADIATORS, AND GAS SUPPLIERS

By FCS Jeremiah N. Karanja, MBS

When Hyena Brings Fuel, Lion Brings Heat, and Fox Oxygen: The Unholy Trinity

In the Jungle of Justice, the elders taught that fire is never accidental. It never travels alone. It always arrives with three companions, that is, fuel, heat, and air. When all three converge, the jungle burns.

Yet whenever flames appear, the animals argue endlessly about who lit the match, even as they quietly supply the ingredients. Corruption, in this jungle, is not a moment of madness; it is a carefully choreographed arrangement.

The Hyena arrives first, laughing easily, pockets heavy with promise. He brings fuel in its most respectable form—money with manners. Coins are wrapped in courtesy, gifts disguised as goodwill, favours offered as friendship. Nothing is crude; everything is polite.

The Lion follows, majestic and authoritative. He brings heat cloaked as power with discretion. Decisions are framed as judgment calls, signatures as stewardship, authority as responsibility. He speaks often of order, yet decides selectively.

Then comes the Fox—clever, articulate, admired. He supplies the most dangerous element of all: oxygen disguised as legality with a smile. He interprets rules, frames decisions, and reassures everyone that the fire is not really fire at all. It is lawful. It is procedural. It is defensible.

Each insists innocence. The Hyena calls it business. The Lion calls it discretion. The Fox calls it legality. No one lights the match. Together, they guarantee combustion.

And then there were the Gladiators.

Loud, fearless, and ever-ready for combat. They fought elections, factions, rivals, and shadows—anything except the fire. The jungle echoed with their noise, their slogans, their righteousness. They claimed courage, but practised theatre. They mistook volume for virtue and conflict for conviction. While Hyenas supplied fuel, Lions applied heat, and Foxes explained, the Gladiators entertained. And in the noise of the arena, the fire burned unnoticed.

From Sanctuary to Supermarket: How Justice Was Priced, Packaged, and Put on Sale

Justice in the jungle did not collapse. It resigned quietly.

What was once a sanctuary slowly rebranded as a marketplace. Justice learned to wait. Files multiplied. Mentions replaced decisions. Urgency dissolved into scheduling. Delay became routine, defended as prudence, experienced as exhaustion.

As time stretched, structure thickened. Rules multiplied. Procedures layered upon procedures. What was once clear became technical; what was once accessible became specialised. Complexity turned into confusion as currency.

Then justice became expensive.

Access narrowed. Costs rose. Entry points hardened. Justice was not denied outright; it was excluded by invoice. The poor were not rejected; they were exhausted. The honest were not blocked; they were discouraged.

In this jungle market, shortcuts flourished. Where justice delayed, deals accelerated. Where procedure thickened, persuasion simplified. Fuel arrived politely, heat was applied selectively, and oxygen flowed freely through well-crafted explanations. Corruption did not destroy justice; it replaced it.

While the jungle echoed with the noise of Gladiators—swords clashing and slogans flying, attention fixed on the arena—justice was quietly losing its soul, being repackaged in silence.

One Fox. One Choice. One Breath Withdrawn: Why Personal Responsibility Still Matters

At this point, the story turns inward.

I am the Fox.

Not the Hyena who brings fuel dressed as generosity.

Not the Lion who applies heat cloaked in discretion.

I am the one who supplies oxygen through explanations.

For a long time, I told myself a comfortable lie: that I was not responsible; that I neither brought money nor wielded power; that I only interpreted and clarified. And while I spoke, the jungle burned.

But one night, heavy with smoke and silence, I had a dream.

I dreamed that I finally understood my power—not the power to command, nor the power to intimidate, but the power to withhold oxygen. I realised that while I cannot control greed or restrain power, I fully govern my own counsel.

In that dream, I returned to the fire. The Hyena still arrived with money. The Lion still radiated power with discretion. But this time, I stood silent.

Without my explanations, money looked like bribery.

Without my explanations, discretion looked like abuse.

Without my explanations, the fire struggled because it could not breathe.

I awoke to a simple, unsettling truth:

I am not required to save the whole jungle. I am required not to burn it.

Jungles are not destroyed only by those who bring fuel or apply heat, but by those who supply oxygen, those who cheer in the arena, and those who forget they were appointed as guardians.

Reform begins the moment one guardian withdraws oxygen and walks away from the applause.

The Author is an Advocate of the High Court of Kenya.

THE PARAMETERS OF LEADERSHIP – The Convergence of Bar Elections with Member Aspirations

By Paula Gatheru

Preface

"Leadership is not sitting in high places—it is about standing with the people, especially when it matters most" (Dr. Beatrice Maingi). Leadership entails governance while bearing the silent responsibility of the aspirations and hopes of the people.

Black's Law Dictionary defines leadership as the position in which one is given a platform to head or manage a group of people. The essence of leadership is shaped by the systems employed, the legal and regulatory framework within which it operates, and the accountability mechanisms that sustain it.

Articles 73 and 10 of the Constitution, the Law Society of Kenya Act, the LSK Code of Elections, and the Leadership and Integrity Act collectively establish the legal framework that governs bar leadership and electoral processes.

This paper examines the challenges in leadership, the regulatory framework governing it, the issues that leadership must address, the ethical dilemmas that arise, and the way forward in advancing accountability and sustainability.

Article 73 as the Custodian of the Electorate

In The Mandate of the People, Dr. Margaret Ogolla observes that hope is the powerful mental bridge between the present we face and the future we desire. In all forms of elections, voters participate with a silent hope for transformative change. Within the legal profession, these expectations are far-reaching and deeply rooted in the need for responsive and accountable leadership.

Article 73 of the Constitution gives effect to this hope. It provides that authority assigned to a leader must be exercised in a manner consistent with constitutional objectives, demonstrating respect for the people and bringing honour to the office.

Leadership, therefore, is not about ruling but about service. Leaders are entrusted with the responsibility of advancing the interests of the electorate through integrity, accountability, and selfless commitment.

These principles align with the broader standards governing public leadership, particularly given that bar leadership serves the wider legal profession. Consequently, statutes such as the Leadership and Integrity Act and the Public Officer Ethics Act are applicable.

Bar leaders must avoid the use of office for personal gain, declare conflicts of interest where they arise, and uphold the principles of good governance. Leadership demands restraint from abuse of power and a consistent focus on addressing the needs and concerns of members.

This raises a fundamental question: where should the line be drawn between transparency, governance, and sustainability? While leadership entails sustainable governance, the interests of the electorate must always take precedence. Sovereign power ultimately resides with the people under Article 1 of the Constitution, and leadership is grounded in their collective choice.

The Interface Between Political Rights and Social Rights

Political rights sustain the electoral process and ensure fairness, transparency, and participation. These include the right of every eligible member to participate in elections without interference, the right to peaceful elections, and the right to elect leaders of their choice.

Social rights, on the other hand, are shaped by the outcomes of these elections. They reflect the quality of leadership and the extent to which elected officials respond to the needs of members.

Within the Law Society of Kenya, members elect representatives to address the evolving needs of the profession. These include ensuring equal opportunities for legal practitioners, fostering conducive working environments, promoting accountability in the use of Society resources, maintaining welfare systems, supporting inclusivity, and upholding ethical standards in legal practice.

This raises an important question: have these rights been adequately implemented?

The march by members held on 13th February 2026 underscored that issues such as sexual harassment remain significant concerns within the profession. This prompts critical reflection: how are victims protected from entrenched power dynamics,

particularly where fundamental rights are implicated? Are there sufficient support systems in place?

Addressing these concerns requires more than policy formulation; it demands effective implementation. Practical measures, including the establishment of support systems and enforcement mechanisms, are essential in fostering meaningful and transformative change.

Principles and Initiatives that Create a Roadmap for Change

At the core of bar leadership lies the obligation to promote professionalism as officers of the court and to uphold democratic safeguards. In certain instances, engagement with the judiciary may serve to reinforce public confidence in the legal system.

Sexual harassment, as a case in point, highlights the gap between policy and practice. While mechanisms such as whistleblowing, reporting, and formal complaint processes exist, challenges persist in implementation and the assurance of fair due process—particularly where victims are vulnerable to prejudice.

Strengthening protection frameworks is therefore essential. This includes aligning local practices with international instruments, as well as leveraging statutes such as the Victim Protection Act. Effective strategies should incorporate capacity building, where trained personnel handle sensitive matters, and continuous sensitization to ensure that policies are understood, respected, and enforced.

Additional reforms should focus on enhancing public participation by integrating insights from advisory boards and consultative bodies. Equally important is the adoption of robust safeguarding policies that protect members and reinforce institutional integrity.

Conclusion

International instruments such as the Maputo Protocol, CEDAW, and the ICCPR, alongside the Constitution of Kenya (Articles 1, 10, 38, 43, 47, and 73), affirm the fundamental rights of legal practitioners.

Leadership within the Law Society of Kenya is therefore entrusted with the responsibility of safeguarding these rights. By doing so, it ensures that members enjoy fair social and administrative conditions, ultimately fostering dignity within the profession. The effectiveness of leadership is measured not merely by electoral success but by its ability to uphold rights, promote accountability, and sustain trust. In fulfilling this mandate, the Bar strengthens its role as a custodian of justice and a defender of constitutional values.

The Author is an Advocate of the High Court of Kenya.

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The Ideal LSK Candidates: Not Words, But Actions

By Anthony Wanyingi

The purity and integrity of the Law Society of Kenya (LSK) are under scrutiny, with the outcome of the February 19, 2026 elections poised to determine whether these values will be reinforced or weakened. History is a rich repository of lessons for those who seek its guidance. It is filled with promises made by leaders in the past who hoped to win favor with voters. However, the gap between these promises and their actual fulfillment is frequently vast. While such discrepancies are often excused in national politics, they must be rejected in the sacred elections of representatives of a prestigious body like the LSK.

Throughout history, the practice of law has been regarded as a noble profession, and those who hold the office of advocate are treated with reverence. Such nobility requires vigilant protection from both internal and external corruption. It is, therefore, the responsibility of strong and principled leaders—elected by the members—to safeguard the integrity of the profession. The strength of the Society is intrinsically linked to the character and capabilities of its leaders. Hence, before offering themselves as candidates, prospective leaders for LSK positions must engage in deep introspection. They must assess whether any flaws in their character could undermine the profession's integrity or invite the public to question the nobility of the legal field.

To elect the ideal leader for the distinguished society of advocates, voters must look beyond the superficial promises of manifestos and flowery speeches. They must scrutinize every aspect of a candidate's life. Voters must ensure that only those with stellar reputations—marked by integrity, wisdom, clarity of purpose, and who command the respect of their peers—are elevated to positions of power. While no candidate may be perfect, they must at least be beyond reproach.

In this regard, the LSK is in need of such a leader at its helm. However, the leaders we seek must possess more than just these qualities. They must demonstrate strong character, confidence, courage, and—above all—an unwavering and indispensable love for the profession and a commitment to the rule of law. The LSK serves as the guardian of constitutionalism, the rule of law, and democratic space, which are increasingly under threat from political partisanship and poor governance. Advocates are, therefore, the last line of defense for upholding the rule of law, inclusive politics, democracy, and adherence to constitutional principles by the state and other actors.

Much like a man courting a beautiful woman, candidates for various positions within LSK employ tactics carefully designed to ensure their success. Some of these tactics are evident in the manifestos they present, all aiming to win the support of advocates. Some promises are easily dismissed, while others warrant deeper scrutiny. While the field may contain quality candidates, a discerning advocate will weigh them carefully, evaluating where the scales ultimately tip.

A fitting biblical parable from Matthew 13:24–30 (NIV) reflects the current situation facing advocates during this election period. Jesus tells the parable:

"Jesus told them another parable: 'The kingdom of heaven is like a man who sowed good seed in his field. But while everyone was sleeping, his enemy came and sowed weeds among the wheat, and went away. When the wheat sprouted and formed heads, then the weeds also appeared.

The servants asked him, "Do you want us to go and pull them up?"

"No," he answered, "because while you are pulling the weeds, you may uproot the wheat with them. Let both grow together until the harvest. At that time I will tell the harvesters: First collect the weeds and tie them in bundles to be burned; then gather the wheat and bring it into my barn.'"

Some of the candidates vying for LSK positions may have ulterior motives, while others genuinely have the best interests of the Society at heart. Voters may struggle to distinguish between the two now, as candidates present themselves as paragons of virtue. However, the time of reckoning will come, and we shall know them by their actions, not their words.

Many candidates will make promises they have no intention of keeping. Some will make grand pledges, only to abandon them at the first opportunity. Others will put on a show, fully aware that their promises are merely a façade. Just as George H. W. Bush famously said, "Read my lips: no new taxes," only to later sign a budget in 1990 that included a tax increase, some candidates will make similar oaths and later renege. We must approach this election with discernment, guided by reason and our duty to protect constitutionalism, rather than being swayed by handouts, charisma, or empty promises. We must focus on electing the leaders who truly deserve to guide our Society.

A voice cries out in the wilderness: who will prepare the way for the restoration of the legal profession's revered reputation? We stand at a pivotal moment—an opportunity to either reclaim our respectable position or risk being diminished, subsumed into the state's influence. Yet, we are advocates who have sworn an oath to defend the Constitution and uphold the rule of law, without fear or favor.

In this election, the circumstances are different. Whomever is elected to the LSK Council, regardless of their intentions, will have no choice but to align with the sacrosanct duty of the LSK—to guard the profession and defend the rule of law. Therefore, the only path forward is a bold one: we must elect a strong and courageous Council, led by a determined president, supported by a resolute vice president and tenacious council members. That is the way we will preserve the proud legacy of the Law Society of Kenya.

The Author is an Advocate of the High Court of Kenya.

BEYOND ELECTIONS

RETHINKING BAR POLITICS AND DEMOCRATIC ACCOUNTABILITY WITHIN THE LAW SOCIETY OF KENYA

By Laura K. Voserah

Bar politics within the Law Society of Kenya (LSK) is often most visible during election season. Campaigns intensify, manifestos circulate, alliances form, and members engage with renewed energy. Debates on reform, representation, and institutional direction dominate professional discourse. For a time, the Society appears animated by democratic purpose. Yet once ballots are cast and leadership is installed, participation frequently recedes. Democracy at the Bar risks being reduced to an event rather than sustained as a culture.

This raises an important question: Is electoral competition alone sufficient to sustain democratic accountability within the LSK, or must the Society reimagine how it practices democracy between elections?

The LSK is not merely a voluntary association; it is a statutory body entrusted with assisting in the administration of justice and upholding the rule of law. Its governance standards thus carry both symbolic and practical weight. As advocates demand transparency, accountability, and constitutional fidelity from public institutions, the Bar itself must model these values internally. Democracy within the Society cannot be episodic.

Elections are undeniably vital. They legitimize leadership, encourage contestation of ideas, and allow members to shape institutional direction. Healthy competition reflects a vibrant professional community. However, when democratic engagement peaks during campaigns and wanes thereafter, a structural imbalance emerges. Electoral intensity without sustained oversight may result in leadership that is democratically chosen yet insufficiently monitored.

The accountability gap within professional bodies is rarely dramatic; it is gradual. Manifestos may outline ambitious reform agendas, yet mechanisms for tracking implementation are often informal or inconsistent. Reporting to members may occur, but without structured performance benchmarks or systematic evaluation, accountability becomes discretionary rather than institutionalized. In such circumstances, leadership changes may rotate authority without consolidating long-term policy continuity.

Democratic governance requires more than periodic voting; it demands continuous participation from members. Committees must function as substantive policy engines rather than symbolic structures. Financial transparency must be proactive rather than reactive. Member feedback should inform decision-making beyond moments of crisis. Young advocates, regional practitioners, and underrepresented segments of the profession must feel meaningfully included in governance processes—not merely mobilized during campaigns.

The consequences of reducing democracy to elections extend beyond internal management. The LSK occupies a unique constitutional position within Kenya's justice system. Its credibility in advocating for transparency, accountability, and institutional reform depends partly on its own governance culture. If the Society is to challenge executive overreach or defend judicial independence, it must demonstrate internally the democratic discipline it seeks externally.

Reimagining democratic accountability within the LSK does not require radical overhaul; it requires structural intentionality. First, leadership performance should be anchored in clearly articulated policy objectives, supported by periodic reporting frameworks accessible to members. Second, committees should be empowered with defined mandates and measurable outputs, ensuring that governance is distributed rather than centralized. Third, institutional memory must be preserved across electoral cycles so that progress is cumulative rather than cyclical.

Importantly, reform should not be framed as a critique of individuals. Democratic systems are strengthened not by suspicion, but by structure. Clear processes protect both leaders and members, reducing personality-driven tensions and replacing them with predictable governance rhythms. In doing so, they enhance stability and trust.

A mature democracy within the Bar must also cultivate civic responsibility among its members. Participation cannot be limited to voting and commentary; it must include service in committees, attendance at forums, constructive engagement with policy drafts, and a willingness to hold leadership accountable through institutional channels. Democratic culture is co-produced—it cannot be outsourced entirely to elected officials.

The long-term health of the LSK depends not on how fiercely elections are contested, but on how consistently the Society governs thereafter. Campaign rhetoric may inspire, but governance performance sustains legitimacy. When members can trace manifesto commitments to measurable action, trust deepens. When reporting is structured and predictable, suspicion diminishes. When participation extends beyond voting day, democracy matures.

The Constitution of Kenya enshrines accountability, transparency, and participation as national values. The LSK, as a professional body central to the administration of justice, must embody these values not only in its public advocacy, but also within its internal architecture. Elections are the beginning of democratic responsibility, not its conclusion.

If the Law Society of Kenya is to remain a credible defender of constitutionalism, it must ensure that its internal democracy reflects the standards it demands of the State.

Democracy at the Bar must be practiced daily: through governance structures, reporting mechanisms, and sustained member engagement—long after campaign posters fade. Only then will electoral legitimacy translate into institutional strength.

Congratulations to the newly elected leaders in the recently concluded elections. May their tenure build upon and advance the important work of the Law Society of Kenya.

The Author is an Advocate of the High Court of Kenya.

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THE FUTURE OF CROSS-BORDER LEGAL PRACTICE: LSK LEADERSHIP VISION IN A GLOBALIZING PROFESSION

By Wanambisi Walukhu

As LSK approaches its 2026 AGM, leadership choices will determine whether the Kenyan bar merely responds to global trends or shapes them, fulfilling its constitutional mandate while positioning members for the future. Bar politics often focuse on domestic survival amid economic pressures, yet the Law Society of Kenya Act, 2014, provides a broader vision: Section 6(e) explicitly lists the promotion of cross-border legal practice, inclusivity, and equity among its guiding principles. Visionary leadership must bridge internal bar dynamics with this outward-facing duty, ensuring the profession thrives regionally and globally rather than remaining inward looking.

Leadership and Vision for the Kenyan Bar

In my practice, I have I have engaged in and advised on transactions involving Ugandan and Tanzanian entities, from infrastructure joint ventures to EAC trade disputes. These cases reveal clients' seamless demands for integrated services, yet Kenyan advocates face fragmented rules, variations in ethical standards, and delayed mutual recognition. This gap highlights how leadership vision can elevate the bar: by prioritizing cross-border readiness, future LSK leaders can safeguard member livelihoods against domestic challenges like high taxation and market saturation, while advancing the constitutional role in upholding the regional rule of law and access to justice.

The LSK Strategic Plan 2023–2027 reinforces this position. It emphasizes preparing for a future that "broadens our scope beyond our borders" so Kenyan legal professionals "earn relevance, trust, and respect globally." The Plan calls for transformative member services enabling high-quality legal delivery "in Kenya and overseas," alongside collaborations, financial sustainability, and alignment with Vision 2030, the Constitution, and SDGs. In bar politics, leadership campaigns should champion this global outlook to counter perceptions of insularity and demonstrate fulfillment of the Act's mandate.

Cross-Border Practice: Opportunities and Bar Politics

Opportunities abound in East Africa's integration. The EAC Common Market Protocol (Article 11) commits to mutual recognition of qualifications, with a Mutual Recognition Agreement (MRA) for advocates negotiated and signed by competent authorities in 2017. However, implementation lags, unlike signed MRAs for accountancy, engineering, architecture, and veterinary science. The East Africa Law Society (EALS) continues advocating for full rollout, including harmonized CLE and ethical frameworks.

Kenya's context further amplifies this potential: AfCFTA-driven trade, digital economy growth, climate finance, data governance, and Nairobi's arbitration hub status draw international elements into local practice. From my experience, regional collaborations are rising in commercial and infrastructure sectors, but inefficiencies persist including additional examinations, restrictions, and regulatory barriers that hinder mobility. Bar politics intersects with this reality: domestic-focused advocacy

(e.g., protecting private practice from public sector threats) must evolve to include outbound opportunities, preventing talent drain and enhancing equity for young or rural advocates.

Recent developments underscore urgency. In January 2026, President Ruto urged EALS to fast-track MRA signing and legislative streamlining to ease cross-border frustrations, citing cases like those affecting senior Kenyan lawyers regionally. LSK leadership must seize this momentum to position LSK as a driver of integration.

LSK's Constitutional Mandate in Action

Section 6(e) is not merely aspirational; it mandates promotion of cross-border practice as part of LSK's core objects under Section 4: upholding the Constitution, advancing justice administration, and maintaining standards. Cross-border initiatives advance the rule of law regionally, facilitate access to justice across borders, and promote equity by enabling members to compete globally.

Practical actions illustrate progress. In December 2025, LSK's Cross Border and Immigration Committee signed an MoU with the Banadir Development Foundation to strengthen access to justice, human rights, and policy reforms across Kenya, Somalia, and the Horn of Africa [Insert: ,] supporting vulnerable communities and legal aid through meaningful collaboration. While focused on humanitarian aspects, this contributes to cross-border legal and institutional infrastructure. However, broader application is needed: extending such partnerships to commercial practice, arbitration, and trade law would align with the Strategic Plan's global vision and constitutional duty.

Challenges remain slow MRA rollout, competition from foreign firms, and competing domesticpriorities; However, leadership can reframe these challenges as opportunities. In AGM debates, candidates should articulate how fulfilling Section 6(e) strengthens the bar's independence and relevance.

Strategic Recommendations for Future Leadership

Strategic steps should include:

·Accelerate MRA implementation via EAC advocacy, joint CLE with EALS, and pilot reciprocal arrangements for commercial specialiExpand Continuing Professional Development (CPD): Offer training in international commercial law, arbitration, tech ethics, multilingual skills, AfCFTA compliance, and green finance to equip members inclusively.

Forge partnerships: Build on the Banadir MoU with agreements across Africa, Europe, and Asia; collaborate with the Nairobi Centre for International Arbitration; and advocate for Kenyan roles in AfCFTA mechanisms.

Promote inclusivity and equity Support young, female, and rural advocates in global exposure through scholarships, mentorship, and targeted programs.

Integrate into this agenda into bar politics Make cross-border readiness a core election issue, ensuring leadership balances domestic welfare with global positioning.

By embracing these strategies, LSK will fulfill its mandate while transforming challenges into growth. As the AGM nears, this vision should inform leadership discourse, ensuring the Kenyan bar not only survives globalization but leads in East Africa's legal future and regional integration agenda.

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The Imperative of the Law Society of Kenya in Public Legal Education in Kenya

By Prof. Wyne Kenneth Mutuma

Introduction

A legal system that is not understood by the people it governs cannot achieve its purposes. It becomes fragile and susceptible to abuse. When it is misunderstood or abused, it loses the very people it is meant to serve. The law is present virtually everywhere: in homes, schools, market centres, police stations, government offices, etc. It governs employment relationships, family arrangements, property transactions, etc. However, most citizens interact with the law in these setups without fully understanding its tenets. When people do not understand their rights and obligations, realizing the aims of the law becomes unattainable. Not so much when they do understand it, it becomes a powerful tool for order. However, when people understand the law, it becomes a powerful tool for order.

Public legal education is a constitutional imperative. The Constitution of Kenya 2010 provides for the rule of law as one of the values and principles of governance under Article 10. The Law Society of Kenya occupies a unique and indispensable institutional position in advancing public legal education to promote the rule of law. It is both a constitutional and a statutory role of

Why Legal Education Matters in Kenya

The legal system in Kenya is dynamic, incorporating both public and private law aspects of the law aspects of law. Many citizens interact with these areas daily without understanding their intricacies. Take in conveyancing, for instance, most people do not understand Take conveyancing, for instance; most people do not understand the difference between registered and unregistered interests in land, leasehold and freehold tenure or between administrative complaint mechanisms and judicial mechanisms. Others enter into binding agreements without understanding their enforceability or risks. Some do not enter into agreements at all where needed and when they do, they enter in the incorrect form fail to enter into agreements where necessary, and when they do, they often use the incorrect form. In family law matters, most people intermeddle in deceased's propertiesy without conducting proper succession. Sometimes cultures have permeated to the extent that some people are disinherited without their knowledge, as a result of not being aware of the law. In criminal matters, often, people do not fully grasp their rights upon arrest, or even the procedural safeguards that protect them thereafter.

The role of legal education is much more preventive than curative in addressing these challenges. The challenges highlighted generate preventable disputes. Public legal education prevents disputes before they arise, reduces liability, makes citizens understand their rights and obligations beforehand and empowers citizens to engage institutions properly. It also reduces procedural errors that clog courts, which occasion delays in the delivery of justice. This preventive role is an efficient form way of realizing achieving justice.

The Gaps in Public Legal Education

The LSK has done commendable work in advancing legal education in Kenya. Coordinating legal aid and awareness programs for example, has been instrumental in this mandate. However, in spite

of these achievements, there are still gaps that must be filled in order to optimally achieve the gains of public legal education.

From the onset, the language and accessibility of legal information is are a challenge as legal materials and commentaries are often written in technical language that presumes prior legal knowledge. When communication is unintelligible, it fails its civil purpose of passing information in its primary purpose of conveying information. Most of the legal information is in the English language. Especially for a multiethnic polyglot multilingual country like Kenya, this disadvantages communities and people who communicate in Kiswahili or native languages. When there is a disconnect between the communication and the audience, meaningful participation in the content of the information is fragmented. Confining legal information to one language excludes many citizens from engaging with it.

Due to language barrier, legal information is often limited in its geographical reach. Rural and marginalized communities often lack engagement. Most of them do not have access to the laws, and if at all, they access outdated ones. This creates another risk of misinformation, which opens loopholes for breaching the law, thereby causing immense disadvantage to the members of these communities.

Thirdly, there is a continuity problem. Outreach programmes often occur sporadically in isolated events rather than sustainably on a sustained basis. A one-off event would barely cause meaningful understanding of the law. Like all forms of education, legal literacy develops over time. The process of legal awareness should be sustained for a long period of time using diverse platforms for it to make impact.

Fourthly, there is little publicly available evidence showing the impact of legal education initiatives on public knowledge. Public legal education is hardly evaluated. It is difficult to say with precision whether citizens understand more about their rights than they did a few years back. Without assessment, it is difficult to measure the impact of public legal education.

Reconstructing Public Legal Education

The LSK is uniquely positioned to lead the shift toward a more elaborate public legal education because it brings practitioners across the country, each with their own specialties. The Society is an asset that can transform legal literacy and awareness if properly utilized.

Public legal education must be simpler and communicated in a way that embraces diversity in languages. Every major area of the law that touches on ordinary life should be explained in plain prose using native languages, where possible. The aim of these explanations should be to refine simplify their expression and not to reduce their substance. When citizens engage the law in a language that they understand, engagement becomes realistically achievable.

To boost community outreach, branches of the Society across the country should not function merely as administrative units for its members but as local anchors of legal education. Regular county-level, subcounty-level, or even community-level legal education forums create proper and more sustained engagement.

Thirdly, access to the internet across the country has increased exponentially. Digital and broadcast media have also permeated practically every community in the country, creating more reach. In that regard, short explanatory videos, audio briefings in native languages, and social media campaigns can bring legal literacy home. Digital legal education should be beyond a reaction to controversy but an ongoing conversation. It should be spontaneous, addressing different legal themes to improve legal awareness.

Fourthly, partnerships with forums where citizens interact daily can enhance legal education in communities. Schools, faith-based organizations and community organizations are natural sites for civil civic education. Integrating elementary legal literacy programs at secondary and tertiary levels can, at an early stage, increase an early understanding of the law understanding of the law at an early stage, with immense future benefits. Young people who understand the law and its processes are better prepared to participate responsibly in public life.

Finally, evaluation must be integral in the process of public legal education. Before engaging in its programs, assessments should be conducted to identify knowledge gaps. After sustained engagement, follow-up assessments can measure impact and show areas of improvement.

Conclusion

Public legal education is a systematic build-up process gradual and systematic process. Being a constitutional imperative, its benefits cannot be gainsaid. Just like any form of education, it takes time to yield fruit. Its impact accumulates slowly but exponentially. It requires a constant engagement with communities and an interaction that makes legal information accessible and understandable. continuous engagement with communities and sustained efforts to make legal information accessible and understandable

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From Resistance to Constitutional Guardianship: Leadership Vision, Bar Politics, and the Cost of Reactive Leadership

By Alex Wamalwa

The Law Society of Kenya has never lacked purpose. At different moments in the country's constitutional history, the Bar developed a shared understanding of what needed to be resisted, reformed, or defended. Leadership did not create these visions; it reflected and implemented what the profession itself had come to recognise as necessary. Where that alignment weakened, the Bar's institutional influence declined.

Leadership Vision Is Historically Contingent

The first defining vision of the Bar emerged under the repressive KANU regime. In the late 1980s and 1990s, political power was concentrated in the Executive, eroding the separation of powers and weakening constitutional safeguards. Detention without trial, persistent executive encroachment on judicial independence, and the narrowing of democratic space defined the period. The Bar responded through legal resistance and public advocacy. Advocates challenged arbitrary power in courtrooms, and through public advocacy in streets and civic forums, often at great personal risk.

This resistance was embodied in identifiable figures within the profession. Advocates such as Paul Muite, Gitobu Imanyara, Martha Karua, and Kiraitu Murungi, among others, stood at the forefront of legal and political contestation. Their prominence reflected the demands of the moment: institutional space was limited, and constitutional resistance required individual courage alongside collective effort.

As political space gradually opened, resistance evolved into reform and constitutional reconstruction. Advocates and scholars diagnosed the failures of the existing constitutional order and articulated alternatives. Professor Yash Pal Ghai, through his leadership of the constitutional review process, and Professor Okoth Ogendo, whose work on constitutions without constitutionalism shaped national debate, helped define the intellectual foundations of reform. Despite political undertones, the Bar's vision was clear. Kenya required a new constitutional dispensation, and the legal profession played an instrumental role in articulating it.

The promulgation of the 2010 Constitution marked a third vision: implementation, interpretation, and accountability. The task was no longer to demand constitutional change, but to give meaning to the text adopted by the people. Constitutional engagement became deliberately plural. The Law Society of Kenya provided institutional leadership, while advocates drawn from across the profession litigated constitutional questions before different courts and through varied constitutional procedures. Organisations such as Kituo cha Sheria operated alongside private practitioners and civil society actors. Constitutional litigation ceased to be personality-driven and became an open space defined by vigilance and guardianship.

The present moment is different. There is no single, settled vision that clearly defines the Bar's posture. Instead, the profession appears to be advancing multiple, and sometimes competing, priorities. What is evident,

When Vision Becomes Blurred by Bar Politics

Bar politics has always existed within the Law Society of Kenya. Elections, contestation, and internal debate are inevitable in a professional body of its size. In earlier periods, however, such politics operated within a clear institutional framework. Disagreement centred on how best to advance a shared purpose, not on what that purpose was.

That clarity has eroded. Contemporary Bar politics is increasingly shaped by personality, posture, and mobilisation rather than by enunciated institutional direction. Campaign discourse often prioritises visibility and confrontation, particularly in relation to the State, while giving less attention to what the Bar seeks to build, protect, or sustain internally. Political activity has intensified, but institutional direction has become less coherent.

Recent elections have exposed this shift with unusual candour. Campaigns are now visibly expensive, and debate has openly turned to the personal financial standing of candidates. Advocates speak, without irony, of the need to elect leaders who are financially secure in order to guard against the risk of misappropriation. This anxiety is revealing. It reflects a profession that has lost confidence in its internal safeguards and has begun to substitute personal wealth for institutional trust.

In this environment, legitimate professional concerns are easily drawn into electoral politics. Issues of welfare and professional insecurity resonate widely and therefore become effective rallying points. The problem is not that these concerns are raised, but that they are rarely connected to a clear institutional strategy. They mobilise support, but do not define direction. As a result, politics begins to displace vision.

The Cost of Reactive Leadership

Reactive leadership is leadership that engages after decisions have been made, rather than while policy, law, and administrative processes are still being shaped. It responds to outcomes instead of influencing design.

When the Law Society of Kenya intervenes at this stage, appointments have already been finalised, legislation enacted, and administrative frameworks implemented. The Bar is left contesting consequences rather than shaping process.

This matters because the Bar's constitutional role extends beyond litigation to consultation, policy engagement, and participation in legislative and administrative processes. Policy formulation, legislative drafting, and public participation are the stages at which constitutional compliance should be secured. When the Society is absent or inconsistent at these stages, litigation becomes a substitute for engagement rather than a considered strategic choice.

There was a time when the Law Society of Kenya was treated as a necessary consultative forum. When the Bar's vision was clear, public institutions understood that major governance decisions required its input. Engagement with the Society was part of process, not an afterthought. Today, the Bar increasingly encounters policies and decisions as a consumer rather than as a participant. Consultation becomes symbolic, and public participation proceeds without meaningful professional input from the Bar. The Society is then forced to challenge outcomes it ought to have helped shape.

Constitutional guardianship does not always require adversarial litigation. More often, it lies in shaping policy upstream, before it crystallises into dispute. Early technical input, principled consultation, and sustained engagement can prevent unconstitutional outcomes more effectively than confrontation downstream, after decisions have been taken and positions entrenched. Influence exercised upstream reduces the need for conflict downstream.

The deeper cost of reactivity is the gradual weakening of constitutional governance. A Bar that engages only after decisions have been made cannot meaningfully influence procedural choices, participatory processes, or outcomes. A profession confined to constant reaction cannot exercise authority with consistency. Guardianship becomes episodic rather than continuous, not because the mandate is unclear, but because leadership has failed to anchor

Conclusion

When the Law Society of Kenya had a clear vision, it was consulted. Its input shaped policy, legislation, and institutional design. Leadership acted with confidence because it spoke from a shared professional purpose. That clarity has weakened. Today, the Bar often encounters decisions after they have been made and responds through litigation after implementation.

What is required is not louder resistance, but clarity of purpose and direction. The Bar must reassert its place at the policy and consultation stage, where constitutional compliance is secured early and conflict avoided. Leadership must lead with vision rather than pressure. A profession that understands its constitutional role does not wait to be heard; it is consulted.

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Guardians of Justice: The Constitutional Mandate, Blockchain, and the Sanctity of Title

Khalid Abdalla Issa

At the heart of the Law Society of Kenya's (LSK) mandate lies a fundamental duty: the protection of property rights. This obligation is not merely professional; it is constitutional. Article 40 of the Constitution of Kenya, 2010 guarantees every person the right to acquire and own property, making secure land tenure a cornerstone of Kenya's legal and economic framework.

Yet, the lived reality remains deeply unsettled. Land disputes are widely acknowledged to constitute a significant proportion of civil litigation in Kenya, contributing to judicial backlog, undermining investor confidence, and constraining economic growth. The persistence of fraud, double allocations, and missing records continues to erode public trust in the land registration system.

For the guardians of justice, the integration of blockchain technology into platforms such as ArdhiSasa and the broader land registry framework presents not merely a technical upgrade, but a potential transformation of evidentiary standards and conveyancing practice. To restore the sanctity of title, Kenya must move beyond paper based systems and fragmented digital records toward secure, verifiable, and tamper resistant registries.

1. Beyond the Torrens System: Reframing Indefeasibility and Evidence

Kenya's land registration system is historically rooted in the Torrens system, which is premised on the mirror principle, that the register reflects the true state of title, and the doctrine of indefeasibility, which protects a bona fide purchaser for value without notice.

However, jurisprudence has progressively qualified this doctrine. In Dina Management Limited v County Government of Mombasa and Others (2023), the Supreme Court affirmed that title is not absolute where it is tainted by illegality. This position aligns with Section 26 of the Land Registration Act, which limits indefeasibility in cases of fraud, misrepresentation, or unlawful acquisition. The practical implication is that purchasers must increasingly investigate the root of title, often through fragmented and unreliable records.

Blockchain technology offers a complementary solution to this evidentiary challenge. By creating a chronological, tamper evident ledger of transactions, it enables a verifiable chain of title. Each transaction, whether transfer, subdivision, or charge, is recorded in a manner that is resistant to alteration, thereby enhancing transparency and traceability.

However, its legal utility will depend on statutory recognition. There is need to progressively align the Evidence Act (Cap 80) with emerging technologies by clarifying the admissibility and evidentiary weight of digitally secured records, including distributed ledgers, within existing frameworks on electronic evidence. Properly implemented, this could significantly reduce the time and uncertainty associated with due diligence.

2. Smart Contracts and Transactional Integrity

The LSK's advisory role to government should also extend to the careful adoption of smart contract technologies within land transactions. Smart contracts are self executing digital agreements in which predefined conditions trigger automatic performance.

In conventional conveyancing, a temporal gap often exists between payment of the purchase price and registration of the transfer. This gap exposes parties to risks such as fraud, competing claims, and delayed registration. Properly designed digital systems can help reduce these risks by improving coordination and transparency in transactions.

For example:

a) Conditional execution mechanisms can ensure that transfers are only effected upon confirmation of payment and compliance with statutory requirements.

b) Automated validation checks can flag inconsistencies such as existing cautions or restrictions, thereby reducing administrative errors.

That said, the deployment of such systems must be anchored in a clear legal framework. Kenya's evolving regulatory approach to digital assets and electronic transactions must ensure that digital signatures, electronic records, and automated processes are consistent with the Law of Contract Act (Cap 23), the Land Registration Act, and existing electronic transactions laws.

Importantly, automation should complement, not replace, legal oversight. Advocates remain central in ensuring legality, advising clients, and safeguarding public interest.

3. Data Protection and Responsible Digitisation

The digitisation of land registries raises important questions under the Data Protection Act, 2019. While transparency in land ownership is essential, it must be balanced against the right to privacy and protection of personal data.

Blockchain systems, particularly public ones, are inherently resistant to deletion or modification. This creates tension with principles such as data minimisation and the right to erasure.

A responsible approach to digitisation should therefore prioritise:

a) Permissioned systems, where access to sensitive data is controlled;

b) Data minimisation, ensuring only necessary information is recorded on chain;

c) Off chain storage of personal data, with secure referencing mechanisms.

Such safeguards are particularly important in rural and agricultural contexts, where smallholder farmers may be vulnerable to misuse of land related data. Protecting data sovereignty is therefore integral to protecting property rights and livelihoods.

4. Technology and Access to Justice

Digital land systems also hold promise for improving access to justice. While blockchain itself is not a dispute resolution mechanism, well designed systems can reduce the incidence of disputes by improving record integrity and transparency.

Additionally, digitisation can support alternative dispute resolution mechanisms such as Online Dispute Resolution, particularly for low value or administrative disputes. This can:

a)Reduce the cost and time associated with litigation;

b)Minimise reliance on physical records and in person appearances;

c)Enhance efficiency in resolving routine disputes such as boundary discrepancies or registry errors.

However, such innovations must operate within the existing legal framework for arbitration and dispute resolution, ensuring fairness, accountability, and the right to be heard.

Conclusion: Reaffirming the Constitutional Mandate

The legal profession cannot remain a passive observer in the face of rapid technological change. The constitutional mandate to protect property rights requires proactive engagement with innovations that enhance integrity, efficiency, and public trust.

Blockchain and related technologies, if carefully implemented within Kenya's legal framework, offer an opportunity to strengthen, not replace, existing land governance systems.

By supporting thoughtful reform, the Law Society of Kenya can play a pivotal role in restoring confidence in land ownership, improving conveyancing practice, and ensuring that a title deed, whether digital or physical, remains a reliable and enforceable guarantee of ownership under the law.

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The Dirty Laundry Technique in the LSK Elections Must Be Nipped in the Bud: Why Lawyers' Elections in the Country Must Be Exemplary

By Otieno Aluoka

Three things have recently stood out regarding trends in Kenya's bar politics and their ramifications across the country. At times, these developments resemble the rudimentary, run-of-the-mill campaigns often associated with the country's flawed political landscape. It is worth reflecting on some of these concerning aspects of the ongoing campaigns.

First, the Law Society of Kenya (LSK) elections have revealed troubling undercurrents of tribal affiliation and raw ethnic sentiment—an unfortunate reality in a profession that ought to rise above such divisions. At the same time, rival camps have traded serious allegations of corruption against the Society, yet without presenting clear evidence or proposing tangible solutions. Accusations have been made of candidates mishandling public interest litigation files, allegedly trading interlocutory gains for undisclosed benefits. There have also been claims concerning multimillion-shilling tenders, including the procurement of Enterprise Resource Planning (ERP) systems and the proposed construction of Wakili Towers. While these claims remain largely unsubstantiated, they have nonetheless cast a cloud of suspicion over the Society's operations.

Secondly, advocates have spoken out about poor working conditions within the profession. Notably, female lawyers have courageously highlighted cases of sexual harassment in law firms, as well as the failure by some employers to comply with statutory requirements—such as implementing anti-sexual harassment policies in workplaces with twenty or more employees. These revelations point to significant gaps in leadership and institutional responsiveness within the LSK. Clearly, the profession must do better.

The legal profession is both historic and esteemed. It has produced some of the world's most revered figures, including Mahatma Gandhi, Abraham Lincoln, and Nelson Mandela, among others. As a noble profession, it demands a collective commitment to uphold its dignity and shield it from mediocrity and declining standards.

Advocates play a central role in maintaining the rule of law. They advise, represent, and act as a check on excesses within government and society. The LSK remains one of the most respected bar institutions in the region, and doubts about its integrity or effectiveness should not arise lightly. Lawyers owe it to the public to preserve the credibility and honour of the profession at all times.

It is also widely acknowledged that lawyers, like other professionals, sometimes align themselves with ethnically inclined associations—often framed as welfare or cultural groups. While such associations may serve legitimate purposes, they can also foster divisions and subtle political loyalties. It would be deeply unfortunate if leadership within the LSK were to be determined along ethnic lines rather than merit, vision, and integrity.

This raises important questions: Should colleagues campaign against one another based on unproven allegations? Do ethnic considerations have any place in the leadership of a professional body? Have complaints of misconduct—whether relating to

corruption or sexual harassment—been formally reported and addressed through appropriate channels? If public discourse is driven by unverified claims circulated on social media, what does that suggest about the standards of the profession? And what confidence should clients have in advocates if such conduct becomes normalized?

Lawyers must instead appeal to higher ideals in seeking leadership. Elections within the LSK should be grounded in intellectual rigour, professional excellence, and a demonstrated commitment to constitutionalism and the rule of law. It is the vision and integrity of candidates—not theatrics or sensationalism—that should guide voters.

There is an old adage about not washing dirty linen in public. While transparency is essential, the LSK, as a premier professional body, must also safeguard its institutional dignity. Public infighting and sensational accusations risk undermining the Society's credibility, not only internally but also in the eyes of external institutions such as the National Police Service, the Independent Electoral and Boundaries Commission (IEBC), and the Ethics and Anti-Corruption Commission (EACC), which may observe these developments with interest. This is not to suggest that wrongdoing should be concealed. Rather, it underscores the need for structured, principled, and professional mechanisms for addressing grievances. The LSK may need to strengthen its codes of conduct and enforcement frameworks to ensure that campaigns remain respectful, issue-based, and aligned with the values of the profession.

Ultimately, the strength of the legal profession lies in its ability to self-regulate and uphold high ethical standards. Lawyers are trained not only to understand injustice but to actively challenge it. It would be contradictory for the profession to demand accountability from society while failing to uphold the same standards within its own ranks.

Clients place their trust in advocates not because they can independently assess the quality of legal services, but because they rely on the reputation of the profession as a whole. Preserving that trust is paramount. To avoid reputational harm and institutional decline, the leadership of the Law Society of Kenya must confront these challenges decisively and without delay.

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ELECTIONS, INTEGRITY, AND THE CRIMINALIZATION OF POLITICAL OPPOSITION IN KENYA

By Dr. Charles A. Khamala

To justify unequal private property holdings, Kenya's privileged classes and ruling elites have a vested interest in conducting credible multiparty elections. To promote political hygiene, the Election Offences Act (Chapter 66) criminalizes electoral violations, including acts by Independent Electoral and Boundaries Commission (IEBC) officials (Section 6), misuse of national security organs (Section 12), and election offences (Section 13). Yet, incumbents often manipulate the criminal justice system to discredit opponents, enabling the IEBC to reject candidates under Chapter 6 on "Leadership and Integrity," while public officials themselves are rarely prosecuted.

At the 2022 general elections, the outgoing President Uhuru Kenyatta's administration reportedly used criminal charges to suppress Deputy President William Ruto's supporters. Civil society activists petitioned the High Court in Okoiti & others v Attorney General [2022] to disqualify unethical candidates. Despite these hurdles, Ruto and the UDA party prevailed. Upon taking office, he dismissed key security and prosecutorial officials, including Inspector General Japhet Koome, DCI Director George Kinoti, and transferred DPP Noordin Haji. The new DPP, Renson Ingonga, subsequently withdrew high-profile corruption charges against the president's political allies.

Three examples illustrate this apparent criminalization of political opponents:

1. Former Finance Cabinet Secretary Henry Rotich faced charges for allegedly abusing office by contracting bankrupt CMC di Ravenna to construct two Rift Valley dams.
2. Former Deputy President Rigathi Gachagua was charged with six counts of economic crimes and money laundering between 2015–2019.
3. Cooperatives and MSMEs Development Cabinet Secretary Wycliffe Oparanya faced corruption charges linked to conflict of interest as Kakamega Governor.

The DPP justified withdrawals by claiming the evidence was false and illegally obtained. Despite shoddy investigations, public perception persists that the state weaponizes the criminal justice system against anti-establishment candidates. In June 2023, frustrated Gen-Z citizens disrupted social order through nationwide street protests, echoing grievances from 2022. This unrest contributed to a cabinet reshuffle, culminating in Gachagua's parliamentary impeachment. Clearly, public trust in the electoral process and elected leaders had eroded.

Assessing Elections

Holding public officers accountable for unlawful acts that undermine the electorate's will is essential for transformative change. Under the Rome Statute, the international community punishes those responsible for atrocity crimes, creating a deterrent against repressing social protest with brute force. However, corruption and crimes against democracy are outside ICC jurisdiction.

In "counterfeit democracies," incumbents fear the consequences of tolerating political competition, which could trigger revolution, as seen in mass protests that toppled governments in Bangladesh (2024), Nepal, and Madagascar (2025).

Modern elections in developing countries often reflect a precarious balance between repression and tolerance. Election petitions rarely succeed or deter future rigging, prompting incumbents to rely on "strategic rigging" to maintain the appearance of legality while minimizing protest risk. Prosecuting election offences under the Election Offences Act, however, can deter manipulation. Gerardo Munck (2009) outlines four principles for evaluating elections: inclusivity, fairness, competitiveness, and accessibility to major offices with unalterable results. The Act criminalizes returning officers who intentionally falsify primary forms (34A), reinforcing legitimacy.

Semi-Crimes for Disenfranchisement

Constitutional rights serve as a counterbalance against state overreach, limiting the exercise of political power. Through the Bill of Rights, legal systems protect political freedoms, judicial independence, and individual autonomy. Disenfranchisement whether by excluding candidates or voters,restricts expression and identity, effectively criminalizing dissent.

Kenyan electoral law imposes minimum qualifications for office: executive aspirants must hold a recognized degree, while MPs must demonstrate proficiency in Kiswahili, English, or Kenyan Sign Language. Failure to enforce these standards resembles a product liability issue: improper instructions or misleading information endanger the public. Currently, no law bars unsuccessful party nominees from defecting and spreading their ideologies via other parties.

To protect citizens' political rights under Article 38, a high threshold of proof beyond reasonable doubt must be met before restricting liberties. Yet, vague "integrity" violations under Chapter 6 lower this threshold. IEBC's integrity standards have been used to reject candidates impeached under Articles 75(3), 99(2)(h), and 193(2)(g), even though constitutional principles allow individuals to retain eligibility until appeals are exhausted. The state's strategy of prosecuting unpopular candidates often triggers "trial by media," leveraging disinformation to defame opponents.

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COURTS, CONSTITUTIONALISM AND PUBLIC DEBT IN AFRICA: A MOMENT OF RECKONING

By Wangari Kagai

Introduction: Where the Judiciary Stands When Institutions Strain

Across Africa, a troubling configuration of political power has taken shape. Executives continue to expand their influence, oversight institutions weaken, and public debt decisions grow increasingly opaque and detached from public participation. As these dynamics intensify, courts are increasingly thrust into their most demanding constitutional role. They emerge as the final institutional guardians between constitutional order and executive excess.

In Kenya, this responsibility is not accidental. Our constitutional design deliberately places sovereign power in the people through Article 1. It embeds governance in principles of accountability and the rule of law under Article 10. It empowers the courts to protect constitutional values under Article 159 and allows any person to contest unconstitutional conduct under Article 258. Together, these provisions construct a judiciary expected to act with courage when every other institution falters.

That expectation has been tested repeatedly. Cases such as Okiya Omtatah v President (2018) show the judiciary asserting its authority even in highly charged political moments. Yet this courage often unfolds in political terrain designed to undermine it. Courts operate with constitutional obligation while navigating environments that seldom welcome their interventions. This tension defines the present moment not only in Kenya but across the African continent.

The Battle for Term Limits: Beyond Technical Timeframes

Among the many fronts on which courts must defend the Constitution, none is more symbolically and practically significant than the enforcement of presidential term limits. These limits are not mere procedural formalities they are the very architecture of democracy. They exist to prevent personal rule, guarantee leadership rotation, and ensure that power remains accountable to the people.

The Kenyan Constitution underscores their importance by requiring a national referendum under Article 255 for any attempt to alter them. Yet, despite these stringent safeguards, efforts to dilute or circumvent term limits persist. Proposals to amend Article 136 to extend the presidential term from five to seven years alongside those of legislators and governors reflect a persistent gravitational pull toward prolonged incumbency.

Across the region, judicial responses to similar pressures have varied. In Uganda, the Constitutional Court upheld the removal of age and term limits, demonstrating how legal processes can be deployed to legitimize democratic erosion. In contrast, Zambian courts, particularly in eligibility disputes, have asserted themselves more robustly, illustrating the power of a judiciary that fully appreciates its constitutional role.

The lesson for Kenya is unmistakable: where courts treat term limits as foundational constitutional commitments rather than negotiable political conveniences, constitutionalism endures. Where they do not, the slide toward authoritarianism begins—quietly, but decisively.

Judicial Independence Under Political Gravity

Article 160 assures the independence of the judiciary. Yet, as every practitioner knows, independence on paper does not guarantee independence in practice. The process of judicial appointments under Article 172, the allocation of financial resources to the judiciary, and the Executive's willingness to respect unfavourable decisions all shape the environment in which judges must operate.

The decision in LSK v Attorney General (2016) reaffirmed that neither the Executive nor Parliament may interfere with the functioning of the courts. But political interference rarely announces itself openly. It manifests through delayed appointments, strategic financial constraints, public delegitimisation of judges or selective compliance with orders. These pressures leave courts walking a narrow path between constitutional duty and institutional survival.

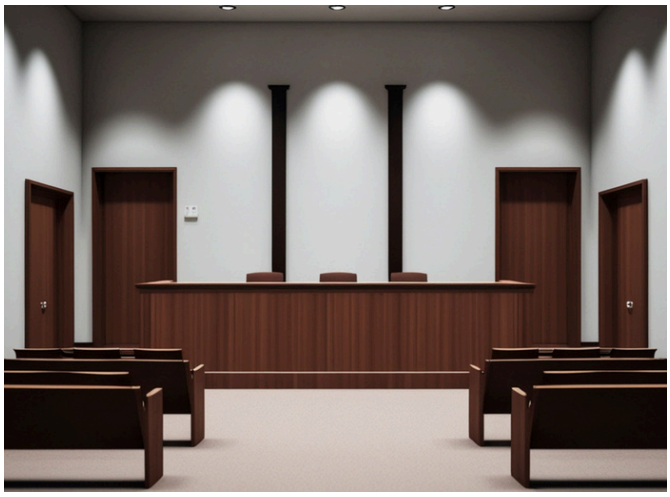
This is the quiet struggle within judicial independence. Courts often find themselves confronted with a binary choice: to enforce constitutional limits and endure backlash, or to moderate their decisions in the name of institutional stability. This delicate balancing act reveals how constitutionalism can weaken even without formal constitutional amendments.

Public Debt and the Right to Know: A New Frontline of Accountability

If term limits test the boundaries of political power, public debt tests the integrity of governance. It is one of the most urgent and complex challenges on the continent. As someone researching the relationship between public debt and the right to health, I have seen how borrowing decisions that occur behind closed doors ripple through every sector of national life. They affect the availability of medicine in rural clinics, the functionality of essential infrastructure, and the sustainability of social economic rights secured under Article 43.

Our Constitution treats debt as a matter of accountability, not merely fiscal policy. Article 201 demands transparency, public participation, prudence and equity. Article 214 defines public debt, and Articles 20(5) and 21(2) require the State to justify its use of resources. The Public Finance Management Act and the Access to Information Act convert these constitutional principles into enforceable duties.

Courts have demonstrated their importance in this space. In TISA v National Assembly, the judiciary affirmed the justiciability of Article 201. In the SGR litigation brought by Khalifa and others, the court compelled the disclosure of critical information on mega project borrowing. These decisions show that debt becomes unconstitutional not because of its size, but because of its opacity.Lack of transparency invites misuse of resources and undermines the social contract.



The Role of the Law Society of Kenya: When Oversight Institutions Fall Silent

From the vantage point of the Law Society of Kenya, the erosion of fiscal oversight is immediate and visible. Articles 3, 35, 22, 228, and 229 impose a duty on the public, institutions, and courts to uphold accountability, transparency, and the integrity of oversight offices. Where these mechanisms weaken, the LSK steps in. In LSK v Ministry of Health & 27 Others (2024), the High Court invalidated an irregular taskforce and issued orders restoring lawful governance. In the Adani matter (JR E199/2024), LSK challenged constitutional violations in a major public project. The aim was not political contestation but the reinforcement of transparency, accountability and fiscal responsibility. Beyond litigation, it uses access to information requests and parliamentary submissions to safeguard fiscal accountability.

The Constitutional Ecosystem: A Chain Reaction of Weaknesses

A clear pattern emerges when considering the interaction between term limits, executive power, public debt and judicial pressure. Weak term limits embolden executive dominance. Executive dominance encourages opaque borrowing. Opaque borrowing undermines social economic rights. As rights weaken, litigation surges. As courts become strained, the constitutional order itself begins to wobble.

This is not a series of isolated events but an interconnected ecosystem in which the weakening of one safeguard accelerates the collapse of others. Constitution making is rarely undone in a single moment. It frays at the edges, incrementally, as institutions fail to defend their mandates.

Conclusion: The Future of Constitutionalism Requires More Than Courts

Courts remain indispensable to the survival of constitutional democracy. Their courage under pressure keeps the constitutional project upright even when political forces attempt to bend it. But courts alone cannot sustain a constitutional order. The defence of constitutionalism requires strong oversight institutions, an engaged citizenry, political actors committed to constitutional boundaries and a profession of advocates who refuse to allow the rule of law to wither.

As we reflect during this Annual General Meeting, we are reminded that the Constitution is not self-executing. It depends on people who insist on its observance, institutions that uphold its principles and a society willing to defend its promises. Constitutionalism is a collective responsibility. Its endurance depends on our vigilance.

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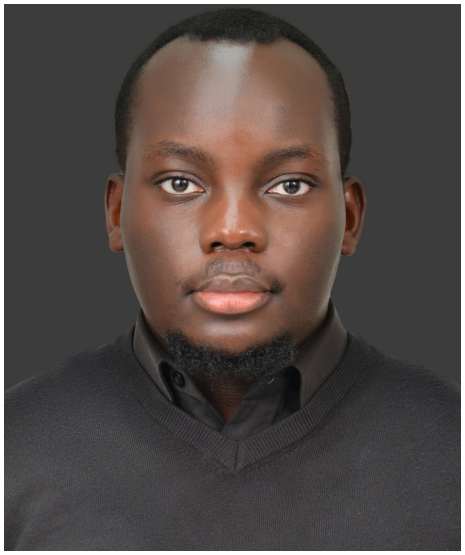
REFINING THE MANDATE: IS THE LSK ACT FIT FOR 2030?



By Jude Oundo

The Law Society of Kenya stands at a historic crossroads. As the legal profession approaches 2030, the Society must evaluate whether its foundinglegislation, the Law Society of Kenya Act (Cap. 18), remainsa robust enough vehicle to navigatea legal landscapeincreasingly defined by digital transformation and shifting constitutional demands. Under Section 4 of the Act, the LSK is mandatedto maintain and improve the standardsof conduct and learningof the legal profession while assisting the Government and the courts in all matters affecting legislation and the administration of law. This dual role as both a member-focused body and a public interestwatchdog is the bedrockof the guardianof justice identity. However, the 1962 Act, while revised in 2012, was conceivedin an era characterized by physical filing and manualresearch.

The digital disruption currently reshaping the world suggests that by 2030, the standard of learning will no longer be confined to mastery of the Law of Evidence or Civil Procedure. Instead,the modern advocatemust possess deep digitalliteracy and an understanding of the ethical use of Artificial Intelligence (AI). Current regulations focus heavily on physicalrequirements, such as naming administrators for firms in the event of death or disability, but there is a growing, urgent need for the mandate to expand into the realms of digital trust and AI ethics to prevent professional misconduct in an automated age. While the Act empowers the Council to regulatethe administration and practice of law, it currentlylacks specific frameworks for a fully decentralized, virtualBar where practiceconditions are no longer tied to physicalcourtrooms.

To address these gaps, the LSK mandaterequires a statutoryanchor that explicitly regulates the ethical adoption and use of AI and other legal technological innovations. This evolutionnecessitates broadening the definition of the practiceof law withinthe Act's interpretation section to explicitly include virtual legal services and automatedlegal advice provided via digital platforms. Such claritywould allow for the introduction of digital practice standards, including mandated"Digital Trust" auditsfor law firms. This alignment with the Data Protection Act (2019)would require advocates to implementrobust internal controls for algorithmic decision-making and data localization. Furthermore, the traditional requirement for naming a physicalfirm administrator must evolve into a mandatory digital succession plan to ensure that client data stored in cloud storageor digital vaultsremain accessible and protectedduring a lawyer'sincapacity.

Institutional reforms are equally vital for maintaining the Society's modernity and relevance. The mandateto protect and assistthe public has recentlyseen the LSK engage in significant strategic litigation against state overreach.

To sustainthis momentum into 2030, the Act requires refining through the devolution of servicesand the pursuit of financialsustainability. The existingAct centralizes power in a Nairobi-based Council, which is increasingly out of sync with a devolved Kenya. A 2030 vision requires a more decentralized structure that empowersbranches to handle disciplinary and member welfare issues autonomously. By increasing the mandatoryrepresentation
of branch leadership and formallyrecognizing Branch Chairpersons as ex-officio Council members,the Society can ensure true regional parity.Explicitly empowering branches to host their own Disciplinary Tribunals and Continuous Professional Development oversight would also reduce the administrative backlogin Nairobi and bring regulation closer to the practitioners.

Finally, the Society must rethink its financial foundations. Currently LSK israising money through subscriptions and CPDs andrequires a mandatethat explores diversealternative financing models to fund its heavy constitutional litigation docket without overburdening members with levies. Expanding the Council'spower to raise or borrow money could facilitate the establishment of a Legal Tech and Innovation Fund, potentially financed through partnerships with private sector Digital Asset Service Providers. Transitioning from mere annual audits to a resilience-based reporting model would require the Council to present long-term financial risk assessments, ensuring the Society can reliably fund its public interest litigation. The Law Society of Kenya Act has served the profession well, but to remain true Guardians of Justice in 2030, the Society must move from business as usual to business unusual. Refining the mandate is about ensuring the LSK remains a cohesive, accountable, and technologically adept defender of the Rule of Law for decades to come

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