



# **LEGAL PRACTICE MANAGEMENT: ATP 106**

**COURSE INSTRUCTOR: MS. MARGARET MOUNDE**



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## **LECTURE 1: GENERAL INTRODUCTION AND COURSE OVERVIEW**



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## Purpose of the Subject:

- To inculcate the learner with skills and tools necessary to establish and manage a law practice.



## Core Reading Materials

- Kimari Mary; (2019); Legal Practice Management; Nairobi, Kenya; LawAfrica Publishing (K) Ltd.
- Kimari Mary; (2015); Accounting for Lawyers; Law Africa. Nairobi, Kenya; LawAfrica Publishing (K) Ltd.
- Frank Wood; (2012); Business Accounting; (Volume I) 12th Edition; Prentice Hall.
- Kimari Mary & Carol Mureithi; (2014); Office Practice Management; Nairobi, Kenya; LawAfrica Publishing (K) Ltd



## Recommended Reference Materials

- Kashindi, G. & Kashindi, I.; (2020); Kashindi's Digest of Employment Cases; Flamekeepers Publishing Limited
- Kimuda, D.; (2008); Financial Accounting; Nairobi, Kenya; East African Publishers
- Nzomo, N.D.; (2002); Basic Financial Accounting; Nairobi, Kenya; Kenya Literature Bureau
- Glautier, M.W & Underdown, B.; (2011); Accounting Theory and Practice; (8th edition); Trans-Atlantic Publications
- Mc Cauley, J.; (2005); Cyber Lawyer: Impact of the Internet on Law Practice [available online]
- LSK - Law Firm Management Manual [2018]
- Ogembo, G.; (2017); Employment Law Guide for Employers; Nairobi, Kenya; LawAfrica Publishing (K) Ltd



What is legal management?



Legal management is a cross between the study of law and management.

- Why should lawyers care about management?
- Why should law students learn about managing a law practice when in reality majority of their work will be geared towards catering to client needs?
- Why should partners in a law firm care about managing whereas they can hire MBA's or CPA's to cater for the managing perspective?
- Why should lawyers just be lawyers and leave managing to managers?



“Majority of the mistakes that advocates make are linked to management errors.”

Munneke, G.A.; (2013); Introduction to Law Practice: Organizing and Managing Legal Work; West Publishing Co (4th Edition) at page 2.

- The purpose of this unit is to furnish you with the necessary skills that will allow you to effectively run an office.



- Law practice management can be split into 3 aspects: -
  - Management of an organization / law firm / business; aka law firm management or law office management.
  - Management of the legal work product e.g. service delivery. Therefore we can rightly define advocates as managers irrespective of whether or not they are managing a law firm.
  - Acquisition and mastery of professional skills which enhance an advocate's managerial skills which crosscut different professions i.e. managing himself / herself as a professional person.
- Ultimately, management is key to success, thus effective practice managers are more likely to be successful.



## Expected Learning Outcomes:

- By the end of the subject, the learner should be able to:
  - Manage a general law practice.
  - Comply with the regulatory requirements of a law practice.
  - Apply the various statutes relating to business administration and management.
  - Develop and implement proper organizational structures and systems.
  - Apply business analysis and accounting skills.



## Components of Legal Practice Management:

- Term 1: Office Administration & Management
- Term 2: Human Resource Planning and Management
- Term 3: Conceptual Framework of Accounting



## Office Administration & Management

- Front Office Services
- Office Standards, Policies and Procedures
- Information and Communication Technology
- Record Management
- Procurement
- Safety, Security and Disaster management
- Discrimination and Sexual harassment at the workplace



## Human Resource Planning and Management

- Job Analysis and Design
- Recruitment and Selection
- Placement, Induction and Socialization
- Training and Development
- Career Development and Management
- Internal Mobility and Separation



## Conceptual Framework of Accounting

- Book Keeping and End Year Adjustments
- Bank Reconciliation Statements
- Cash Flow Statements Analysis
- Preparation of Final Accounts
- Cost Accounting and Budgeting
- Advocate and Partnership Accounts



## EVOLUTION OF MANAGEMENT

- Management has evolved as a result of a combination of accidents, incidents, initiatives, discoveries, pioneering, targeted activities and most importantly research.
- Do you think it is right to say that management started in the early days of man?



- The simple answer is YES.
- The minute that man saw the need to live in groups, the more authoritative of the group started organizing them.
- Sharing was done according to the masses' strength and / or intelligence (the only distinction is that back then humans were chasing animals but now they are chasing money.)





Were African societies organized pre-colonization?



Is it better to work smarter or work harder?



## THE SCIENCE OF MANAGEMENT

- It is better to work smarter rather than work harder.
- The scientific management movement can be credited to Frederick Winslow Taylor and his associates who undertook to observe the work process from a scientific perspective.
- Taylorism was widely practiced, however it eventually fell out of practice.
- Taylorism positively contributed to some of the practices in use today to wit; analysis, synthesis, logic, rationality, empiricism, work ethic, efficiency and elimination of waste, standardization of best practices.



## Classical theory of management.

- The industrial revolution significantly impacted management by altering how organizations / businesses / companies raised capital, organized labour and aligned the process of production .
- Professor Charles Babbage urged manufacturers to exploit mathematics and science as opposed to guesswork to increase capacities.
- Robert Owen introduced employee welfare and the concept of trade unions.
- Personalities like Emerson, F.W. Taylor, H.L Grant etc. emphasized on management cynosure (focus) more specifically on job content, standardization and labour division.



## Neo-classical theory or behavior approach.

- This focused more on employee relations within the work environment.



## Bureaucratic model of Max Webber

- Max Webber advocated for the aggregation of rules, division of labor in accordance with the employees' niche area, acceptance of legal authority and power and recognition of the hierarchy of authority.
- Management is consistently evolving and will continue to do so.



## Task

Come up with your firm's name, vision, mission and objectives



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## LECTURE 2: INTRODUCTION TO OFFICE ADMINISTRATION AND MANAGEMENT



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## HISTORICAL BACKGROUND OF LEGAL MANAGEMENT

- Law firms date back to the 19th century.
- Examples of professional organizations that assist lawyers / advocates in managing their practice.
  - American Bar Association - USA.
  - The Law Society (solicitors) – UK
  - The Bar Council (barristers) - UK. UK also has other recognized registered bodies e.g. Solicitors Regulation Authority, Bar Standards Board.
  - The Law Society of Kenya - Kenya



- Law Society was formed in 1948 by section 3 of the Law Society of Kenya Ordinance, 1949. This Act was repealed by the Law Society of Kenya Act, which came into force on 30th October, 1992.

As the Law Society was formed in 1948, does this mean that before colonialism, there were no laws that were in place?



- NO, there were traditional systems that were in place that governed the local communities.



## NATURE OF A LAW FIRM

- Advocates have started thinking about how organizations that offer legal services may be organized.
- Winslow inferred that advocates have been adopting Ronald Coase's thinking when trying to interpret the nature of law firms.

Winslow, E. C.; (2016); Nature of Law Firms – It's About the Client; Published on March 19, 2021 in The National Law Review (Volume XI, Number 78)





- Firms emerge because they are better equipped to deal with transaction costs compared inherent in production and exchange compared to their human counterparts.

Coase, R.; (1937); *The Nature of the Firm*

- Supporters for aforementioned arguments: -
  - Oliver Wiliamson {see Williamson, O. E.; (1981). *"The Economics of Organization: The Transaction Cost Approach"*; American Journal of Sociology. 87 (3): 548–577. }
  - Oliver Hart
  - Douglas North {see North, D. C.; (1982); *"Structure and Change in Economic History"*; London W W Norton (1st Edition)}



## Legal Education in Africa



### 1960 – Report of the Committee on Legal Education for Students from Africa (The Denning Committee)

- Genesis of provision of legal education in Africa.



### 1963 – Legal Education After Independence

- Operated as a department of the AG's office
- Offered basic clinical education to African judges, staff, administrative and police officers.
- University of East Africa established as an independent external college of the University of London.
- First generation of Kenyan lawyers went straight from form four to KSL (problem - regarded as being second tier).



### 1970 – EAC Break - up

- Genesis of UoN, Makerere University and University of Dar-es-Salaam.
- UoN accepted transfer students from KSL



## OFFICE DEFINED

### Cambridge dictionary,

“A room or part of a building in which people work, especially sitting at tables with computers, phones, etc., usually as a part of a business or other organization.....

or

A part of a company

or

A position of authority and responsibility in a government or other organization.”



### Saleemi N.A.;

“Any place set aside for work of a clerical nature.... consist of a room or building which is used for the work of a clerical, administrative or communicative nature. Its purpose is to serve as an administrative Centre of an organization comprising of departmental offices responsible for their respective functions.....office is a unit where relevant records for the purpose of the control, planning and efficient management of the organization are prepared, handled and preserved.”

Saleemi, N.A, (2015). Office Organization and Practice Simplified. Nairobi, Kenya: Devonshire College of Accountancy at page 20



### **Kapur, R.;**

“An important place or section or an area for the conduct of any works, jobs, businesses or transactions.....a place for the operation of business, the room or department, where the clerical work is done, or it can be stated that is a place where professional and commercial transactions are implemented, or it is a place where all sorts of activities within the organization are dealt with. Office is the centre of the organization.”

Kapur, R. (2018). Office Management; available at  
[https://www.researchgate.net/publication/323731787\\_Office\\_Management/citation/download](https://www.researchgate.net/publication/323731787_Office_Management/citation/download)  
last accessed 23/03/2022



## **ROLE OF AN OFFICE**

- Fulfilling an organization's functions (subordinate role - same organization sets up the office for routine work).
- Complementary to the organization e.g. manufacturing industry whereby the organization will require a factory which in turn requires an office to keep records
- Controlling function.



## IMPORTANCE OF AN OFFICE

- Communication centre
- Information centre or memory centre
- Administrative nerve centre
- Control centre
- Intermediary

One of the requirements during the registration process is that the physical address be provided, why is this?



- Note section 35 of the Advocates Act which require that all instruments drawn by an advocate be endorsed with the name and address of the advocate and failure to do so acquires a penalty.



## FUNCTIONS OF AN OFFICE

Divided into 2 main categories: -

- Clerical / basic / routine functions
- Administrative functions



## Clerical / basic / routine functions:

- receiving information
- recording information
- sorting information
- distributing information
- sending information
- preparing and processing information
- storing information



## Administrative functions:

- controlling and safeguarding company assets
- personnel functions
- developing and implementing policies and procedures
- forms design and control
- selecting office appliances
- preparation of budgets and forecasts
- preparation of financial and cost accounts



## OFFICE MANAGEMENT

- An office as a tool of management, also requires to be managed. office management can be defined to mean planning, organization, co-ordination and controlling the activities of an office.
- Elements of office management : -
  - purpose
  - environment
  - personnel
  - means

Saleemi, N.A, (2015). Office Organization and Practice Simplified. Nairobi, Kenya: Devonshire College of Accountancy at page 26



## TYPES OF BUSINESS ORGANIZATIONS

- Law firms can be registered as: -
  - sole proprietorship
  - partnership

Can a law firm in Kenya be registered as a company?



## SOLE PROPRIETORSHIP

- Trading business owned by a single person.
- No distinction between the business and the individual carrying on the business.
- An advocate can start a firm as a sole proprietorship by registering it under the Registration of Business Names Act.



## Requirements for starting a sole proprietorship

- name of the business (in our case, name of the law firm)
- nature of the business
- address of the principal place of business
- postal address
- nationality
- age
- gender
- usual place of residence
- other business occupation
- signature on the document
- copy of ID or passport
- copy of KRA PIN certificate
- recent passport photo

LSK Law Firm Management Manual (2018) at pages 7 and 8



### Registration steps:

- Step 1 Application of a business name
- Step 2 Kenya Revenue Authority Registration
- Step 3 Registration of the business name
- Step 4 Application for a business permit (does a law firm need this?)
- Step 5 National Social Security Fund Registration
- Step 6 National Hospital Insurance Fund Registration

**Social Health Insurance Fund (Social Health Insurance Act & Regulations 2023)?**





## PARTNERSHIPS

- Partnerships – normally formed due to the need to raise more capital with a view of making profits (Section 2, the Partnership Act 2012).
- See:
  - Fort Hall Bakery Ltd v Wangoe (1959) EA 494
  - Patel v National Contractors (1954) 21 EACA 39
  - M W K & 2 others v R K K [2018] eKJLR



## Types of partnerships

### **General partnership**

- There is statutory recognition of general partnerships in the Partnerships Act
- Simplest types of partnerships
- Easiest to form and the easiest to dissolve. Most often than not partners will not have official paperwork (see Smith v Anderson (1880) 15 Ch 247)
- May be oral, in writing, or implied by conduct



### Disadvantages of general partnerships:

- All partners face unlimited liability (Section 8(1), the Partnership Act.)
- There is no separation between the business and the partners (e.g. section 12(3) of the Partnership Act)
- If the partnership only consists of two parties, if one partner wants to exit or is declared bankrupt or dies, then the partnership ceases to exist (see Mohammed v Hussain (1950) 17 EAC 1)
- Partners are fully liable for each other's official actions (section 17, The Partnership Act)
- Official decisions have to be made in consensus by the partners (section 15(3), the Partnership Act, 2012)
- Profits have to be shared.



### Advantages of general partnerships:

- Generally benefit from pass-through taxation.
- Partners benefit from their partner's knowledge.
- There is less financial burden as expenses, losses etc. are split amongst the partners (section 12(1), the Partnership Act, 2012)
- Business partners share work allocation (section 15(1), the Partnership Act, 2012)
- There is less paperwork compared to LLP and companies.



## Limited partnership

- Offers more protection to the partners compared to general partnerships as one partner takes on the unlimited liability (section 56, the Partnership Act, 2012).
- To register, an application is delivered to Registrar of Companies.
- Application is accompanied by a statement that is signed by all the proposed general partners of the law firm (section 68, the Partnership Act).



The statement indicates:

- the name of the partnership
- the location and address of the partnership
- names of proposed general partners
- addresses of proposed general partners
- names of proposed limited partners
- capital contributions made by the proposed limited partners
- if the application relates to an existing general partnership, date of formation of the partnership.



### **Limited Liability Partnership**

- Coalesces the attributes of both a company and a general partnership
- Easier to register as there are less formalities
- Has all the advantages and disadvantages accrued by incorporation
- Income is taxed at an individual level
- Allows for the inclusion of body corporates as partners
- Requires a manager to be appointed



### Advantages of a Limited Liability Partnership

- All partners have limited liability
- There is no limit to the number of partners
- There are less formalities in terms of registration
- Partners can agree on their own structures and regulations



### Risks associated with limited liability partnerships:

- Partners are personally liable for their own negligence
- Partners are personally liable for the negligence of employees working under their supervision
- There is liability for debts incurred by the partnership



### Registration process:

- A Statement of Particulars is a requirement for registration of a limited liability partnership. This statement includes:
  - proposed business names for search and approval
  - business details
  - details of partners
  - details of the manager of the firm

See LSK Law Firm Management Manual (2018) at pages 9 and 10

- Registration of limited liability partnerships has been given statutory recognition in Part IV of the Limited Liability Partnership Act.

(sections 16 to 23 – Registration of Limited Liability Partnerships)



### Registration steps:

- Step 1            Application of a business name
- Step 2            Kenya Revenue Authority Registration
- Step 3            Registration with Registrar of Companies
- Step 4            Application for a business permit (does a law firm require this?)
- Step 5            National Social Security Fund Registration
- Step 6            National Hospital Insurance Fund Registration



## Partnership deed

- A partnership deed is an agreement between the partners of the law firm that outlines the terms and conditions that will guide the partnership.
- A partnership may be formed by a partnership deed signed by all the partners.
- sometimes be called a Partnership Agreement or Articles of Partnership.



### Contents of a partnership deed:

- the name of the firm
- the names and addresses of the partners
- the nature of the business
- the term or duration of partnership
- the amount of capital to be contributed by each partner
- the drawings that can be made by each partner
- the interest to be allowed on capital and charged on drawings
- rights of partners
- duties of partners



- remuneration to partners
- the ratio in which the profits or losses are to be shared among the partners
- usage of partnership property – ideally all partnership property should be used for the benefit of the firm
- the basis for the calculation of goodwill at the time of admission, retirement and death of a partner
- the keeping of proper books of accounts and the preparation of balance sheet
- right of inspection



- admission procedures for new partners (must include qualifications to be considered before admission of the partner)
- settlement of amount on the dissolution of the firm
- the procedure to be adopted in case of disputes among the partners
  
- The partners have to submit to the Secretary of the Law Society of Kenya; a copy of the firm's registration certificate and details of the firm no later than 30 days after executing the partnership deed.



Are Kenyan Law firms allowed to be publicly traded?

- There is no specific provision in law that prohibits law firms from being publicly traded. However, with the stringent requirements on transparency required for publicly listed companies, this will violate some of the requirements of the Advocates Act most notably the rules governing confidentiality.

How do companies raise capital?

- There are two types of capital that a company can use to fund operations: debt and equity. Prudent corporate finance practice involves determining the mix of debt and equity that is most cost-effective.





## COMPANY

- A company as an association of people for a common object or objects.
- The objects of a company extend beyond profit making.



## Types of companies

- chartered companies
- statutory companies
- registered companies
- limited companies (section 5, Companies Act)
- companies limited by shares (section 6, Companies Act)
- companies limited by guarantee (Section 7, Companies Act)
- unlimited company (section 8, Companies Act)
- private company (section 9, Companies Act)
- public company (section 10, Companies Act)



## Registration Process

- Incorporation and registration of companies is carried out via E-Citizen (<https://www.ecitizen.go.ke/>).
- To apply for registration, the applicant will fill in electronic forms available on <https://brs.go.ke/forms.php>



## Registration steps

- Step 1            Application of a business name
- Step 2            Kenya Revenue Authority Registration
- Step 3            Registration with Registrar of Companies
- Step 4            Application for a business permit (is this necessary?)
- Step 5            National Social Security Fund Registration
- Step 6            National Hospital Insurance Fund Registration



## LECTURE 3: ORGANIZATION



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## INTRODUCTION

- Element in management.
- Involves clustering activities in a form that encourages the achievement of the enterprise's set goals.
- The better the organizational structure, the more effective the execution of mandated roles.



- Organization chart
  - this is a visual diagrammatic representation of an entity's internal structure.
  - a.k.a organogram
  - usually a one page document
  
- Organization structure
  - this is the hierarchy of an entity's teams, leaders, managers, and individual contributors.
  - outlines how activities are directed in order to achieve the entity's goals
  - outlines rules, roles, and responsibilities.



## 15 minute task

- In your firms discuss the types of organizational structures stated below and their advantages and disadvantages:
  - Line / military
  - Staff / function
  - Line and staff
  - Organization by committee



## OFFICE ORGANIZATION

- Involves dividing the mandate of an organization among its employees in order to establish departments and sections.
- Involves obtaining, recording and analyzing information, planning office activities and communications with the concerned individuals.
- Includes having a proper physical layout and sufficient facilities.



## OFFICE PRACTICE

- Part of office organization that relates to the clerical activities that take place within the office.



## Features of an Organization:

- unity of objectives,
- division of work,
- plurality of persons,
- chain of command,
- effective communication and coordination,
- levels / hierarchy of authority / responsibility.



## Importance of a Well-Organized Office:

- facilitating effective administration;
- providing optimum use of resources without wastage or idleness;
- enhancing specialization of employees who are assigned duties in their area of talent;
- boosting workers' morale as their needs are well catered for;
- encouraging good industrial relations between employees and management;
- ensuring effective communication with employees and clients;
- effective coordination of activities to achieve company goals;
- promoting overall productivity;
- stimulating initiative and creativity.



## Symptoms of Poor Office Organization:

- poor industrial relations between workers and management;
- delays and wastage of time;
- poor quality of work due to lack of coordination;
- low morale of workers because their needs are not being met;
- misuse and mismanagement of resources due to poor leadership;
- unequal distribution of work due to poor delegation;
- low profits /huge losses due to inefficiency;



### Symptoms of poor organization cont....

- corruption and theft due to fraud and lack of control;
- poor communication among workers and management;
- stress in the office due to poor working conditions;
- poor office environment;
- Duplication errors,
- clerical errors,
- unqualified staff,
- lack of clear objectives.



## Steps Involved in Re-Organizing an Office:

- Obtain an organization chart. If one is not available, create one.
- Obtain the job description of each worker. If this is not available, list down the tasks performed by each worker by interviewing them.
- From the job description, analyze the duties that each worker performs e.g. time taken, degree of difficulty, documents needed etc.
- Identify the organizational faults from the organization chart e.g. unequal distribution of work, lack of clear authority, poor delegation of work, over employment etc.



Steps cont...

- Review the company objectives and assess if the activities and jobs are meeting the objectives.
- Consider alternative ways of re-organizing the office e.g. reducing the number of workers or introducing machines (lean management).
- Make recommendations to management for approval.
- Implement the changes by preparing a new organizational chart and job description.
- Communicate to the workers and conduct training where necessary. This reduces resistance to change.
- Review and evaluate in order to assess if the new policies are effective.





## ORGANIZATION STRUCTURE

- Defines the flow of authority in an organization from top to bottom.
- Describes the various functions and departments of an organization.



## THE ORGANIZATION CHART

- Visual / diagrammatic representation of the organization structure of a company



## Forms of Organizational Charts:

- vertical chart,
- horizontal chart,
- circular / spherical / concentric chart.
- matrix chart



## Vertical Chart

- A.k.a. hierarchical organizational chart
- Shows organization structure in the form of pyramid.
- Lines of command proceed from top to bottom in vertical manner.



## Horizontal Chart

- A.k.a flat organizational chart.
- Gives the lines of command from left to right in a horizontal format.



## Circular Chart

- A.k.a. spherical / concentric chart.
- The levels of responsibility and authority flow from the centre of the sphere outwards.



## Matrix Chart

- Utilized when employees have more than one manager.
- Example: an organization could have a team of engineers who all report to the head engineer. The engineers are also working on other projects that are likely headed by a separate project manager. In this case, the engineers will have two managers.



## Principles of Good Organizational Structure:

- Unity of objectives.
- Equal distribution of work.
- Plurality of persons.
- Chain of command.
- Clear lines of communication.
- Clear lines of authority.
- Span of control.
- Well defined responsibilities.
- Principle of unity of command.
- Principle of organization.
- Authority should be related to responsibility.



## TYPES OF ORGANIZATIONAL STRUCTURES:

### **Tall organization structure:**

- Characterized by a narrow span of management but with many levels of authority from top to bottom.
- Commonly found in large organizations.

### **Flat organization:**

- Characterized by a wide span of control and very few levels of authority.
- Commonly found in small organizations.



## Line Organization / Military:

- Traditional method.
- Authority and responsibility flow in a straight line from top to bottom.
- Each department is independent and autonomous and it's headed by a line manager who may / may not be a qualified specialist.



### Advantages:

- Easy to understand and operate the system.
- Easy supervision.
- There are clear cut lines of authority and responsibility.
- Delegation of work from manager to his / her employees.
- Faster and easier decision making
- Line managers are in direct control and coordination of departments without interference from outside.
- Each member of staff within the department, clearly understands his / her status and responsibility as well as the status of others.



### Disadvantages:

- Due to lack of expert managers, decisions may be poor.
- Encourages dictatorship and autocratic leadership of managers.
- Success / failure of department depends entirely on the manager.
- Encourages empire building.
- Lack of communication and coordination between departments.
- System is rigid and inflexible to organizational changes.
- Due to the independence of each department, employees may not get exposed to other work.
- The goals and objectives of the department are usually considered first before organization goals.



## Staff / Function Organization

- The organization is divided into specific functions and experts are appointed to manage or advise that function.
- The expert can also advise other departments.
- Examples are auditors, engineers and consultants.



### **Advantages:**

- Encourages specialization of work.
- High quality decision making.
- Employees are flexible and respond quickly to change.
- Better communication and coordination between departments.
- Employees are motivated because they are working under more professional leadership.
- Better training of employees.



### Disadvantages:

- The principle of the unity of command is violated because a worker may have two bosses.
- Authority and responsibilities are not well defined and this may cause confusion and duplication of work.
- It is difficult to supervise and control departments because there are no clear lines of authority.
- Expensive because function managers require very high salaries.
- In case of failure in the department, it is difficult to know who is to blame.
- Decision-making takes long.



## Line and staff Organization:

- Also known as matrix organization structure.
- line and staff organization are combined to get the benefits of both systems.





### **Advantages:**

- A good training ground for employees.
- Encourages specialization and division of work.
- High quality decision-making due to consultation between line and staff managers.
- Effective coordination and communication between line and staff departments.
- Encourages efficiency and high quality of work.
- Reasonably flexible to organizational changes.



### **Disadvantages:**

- Decision making can be slow due to consultation.
- Causes confusion to workers who report to 2 bosses.
- Activities of a line manager may be hindered due to interference by the staff managers.
- May cause friction and conflict between line and staff managers which may spread to junior workers.
- Expensive for the company to hire staff managers.
- Difficult to assign blame in case of failure.



## Organization by Committee:

- A committee is a group of people within an organization who are assigned to perform a specific task e.g. a finance committee / safety committee.
- A committee may be permanent or temporary or ad-hoc.



### Advantages:

- Promotes excellent communication between staff and management.
- Provides a good advisory function to management.
- Promotes good and democratic decision-making due to exchange of ideas by members.
- Promotes team work and unity in the organization because each department has a representative.
- Allows line and staff managers to concentrate on running their departments to promote smooth flow of work.
- In case of any failure, the committee takes full responsibility.
- A good training ground for managers who aspire to reach a higher level of management.



### Disadvantages:

- Expensive to manage a committee e.g. paying sitting allowance for every meeting.
- Decision making is slow due to many meetings.
- Decision making may be unrealistic because the members are not experts.
- Chairman of the committee has a lot of power to cast the votes in a certain direction.
- There may be conflict between committee members which may affect relationships.
- No individual accountability.



## LECTURE 4: FRONT OFFICE SERVICES



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## OFFICE LOCATION / SITE

- Factors to consider when selecting office location: -
  - security
  - accessibility
  - access to the market, utilities, auxiliary services, social amenities
  - good communication network
  - cost of rent, rates and tax
  - space
  - reduced noise
  - physical facilities
  - availability of skilled labour
  - ownership model



## OWNERSHIP MODEL

- It may be: -
  - freehold ownership
  - leasehold occupation
  - rental occupation



## Freehold ownership

### Advantages

- savings in terms of rent which the owner does not have to pay
- owner has freedom to design or modify the layout of the premises without interference.
- wise investment for the future
- suitability
- additional revenue revenue can be obtained by subletting
- the premise is an asset.
- privacy
- prestige



### Disadvantages

- expensive in terms of:-
  - construction or purchasing
  - rates
  - tax
  - maintenance and repair
  - insurance
- the owner may experience disputes with tenants
- there is a degree of inflexibility



## Leasing or renting a building

### Advantages

- savings in terms of
  - rates
  - tax
  - maintenance and repair of the building
- no need for very high capital to start business
- no problem of disputes with tenants
- flexibility if the tenant intends to move
- the tenant does not have to pay insurance for the building



### Disadvantages

- high cost of rent payable every month
- restriction by landlord in modifying the office
- the landlord may terminate the lease agreement at any time
- lack of privacy
- the office may be unsuitable in meeting the special needs of the organization
- the landlord may restrict the tenant from subletting hence no extra income



## OTHER CONSIDERATIONS:

- town or urban office: located within the central business district
- out of town offices: may be sub-urban or upcountry offices.
  
- ❖ What are the advantages and disadvantages of town / urban offices?
- ❖ What are the advantages and disadvantages of out of town offices?



HOW ARE ROOMS WITHIN AN OFFICE ALLOATED?



## OFFICE LAYOUT PLANNING

- This refers to the arrangement of furniture, equipment and other physical components of an office.
- ❖ What factors ought to be considered for good office layout?



## PHYSICAL COMPONENTS OF AN OFFICE

- The manager should ensure that there is a conducive working environment by providing physical components.
- ❖ What physical components ought to be considered?





## Lighting

➤ Office work requires a great deal of accuracy and therefore proper lighting is important because it promotes accuracy and reduces eye-strain. There should be natural well as artificial.

- ❖ What is the importance of good lighting?
- ❖ How can lighting be improved?
- ❖ What factors ought to be consider when selecting a lighting system?



## Noise Control

➤ It is important to control noise in order to enhance concentration of workers noise. This may be: -

- internal
- external

- ❖ How can internal noise be minimized?
- ❖ How can external noise be reduced?



➤ Cleanliness & Sanitation:

❖ What are the benefits of good hygiene?



Ventilation

➤ This refers to the circulation of air at the correct temperature & humidity.

❖ What are the benefits of a well-ventilated office?



## Decoration (décor)

- ❖ What are the benefits of having good décor?



## Temperature

- Temperature can be regulated through natural ventilation, heaters and air conditioners
- ❖ What are the benefits of good temperature?



## Office furniture

- It is important for the manager to provide suitable high quality furniture to enhance the comfort and safety as well as performance of workers and security of documents.
- Types of furniture: -
  - general purpose furniture
  - special purpose furniture
  - executive furniture
  - built in furniture
  - modular furniture
- ❖ What Factors need to be considered when buying office furniture?



## TYPES OF OFFICES

### Co-working spaces

- third-party providers offer this type of working space
- a single desk or multiple desks can be hired
- Advantage
  - depending on the space, the office might have access to state-of-the-art facilities, properly equipped break rooms and refreshments
- Disadvantages
  - inadequate privacy depending on the setup
  - might have poor security measures due to multiple enterprises co-sharing space



### **Enterprise suite**

- This is a managed office space that is usually customizable
- Can be considered to be some sort of co-working space or serviced office

### **Virtual office**

- Provides the services of a managed office but without the physical work space
- Has a provision of front – desk services and a business address
- Most suitable for business organizations who ordinarily work in the field



### **Home office**

- This is a space designated in an individual's residence for business purposes

### **Serviced office**

- Normally managed and supported by an on-site service team
- The office space as well as the communal areas are looked after by the service team
- Normally a dedicated receptionist is assigned to you
- Has flexible leases and easy billing procedures



## Private office

- comes in different sizes and can be rented exclusively
- the business entity picks out the size of the office depending on available budget
- there are different types of office plans that can be considered i.e.: -
  - closed plan office layout
  - open plan office layout
  - landscaped layout
  - workstation layout
  - modified layout
  - team clusters



## OFFICE LAYOUT PLANNING

- This refers to the arrangement of furniture, equipment and other physical components of an office.
- Types of office plans include:
  - closed plan office layout
  - open plan office layout
  - landscaped layout
  - workstation layout
  - modified layout
  - team clusters



## Closed plan office layout

- a.k.a. fully partitioned or private office
- Comes in different sizes and can be rented exclusively
- Subdivided into small rooms connected by corridors
- Suitable for businesses that are required to maintain confidentiality



### ***Advantages:***

- Private and confidential;
- Increased noise reduction;
- Prestigious;
- Reduced transmission of diseases;
- Safe and secure;
- Easier to differentiate and maintain authority;
- Fosters concentration;
- Has a personal atmosphere.

### ***Disadvantages:***

- Not flexible for modification;
- Hinders effective internal communication;
- Does not allow for easy flow of work;
- Supervision is not easy;
- Increases staff movement;
- Expensive to set up;
- Space is wasted;
- More office equipment is required;
- May be misused by employees.



## Open plan office layout

- Lacks partitions and cubicles
- Desks are arranged in rows or clusters

### *Advantages:*

- Maximum utilization of space
- Effective internal communication
- Faster decision making
- Increased work efficiency
- Affordable
- Enhances effective supervision
- Easy to set up
- Reduced movement of staff
- Easy flow of work
- Office machines can be share
- Common services can be shared
- Employees feel equally rated.



### *Disadvantages:*

- Increased level of noise
- Increased level of conflicts in the office
- Lack of privacy and confidentiality
- A lot of distraction
- Creates an impersonal atmosphere
- Reduces the states of seniors
- Spread / transmission of contagious diseases is high
- Office security is compromised
- There can be lack of meeting rooms





## Landscaped layout

- Introduction of green plants and flowers in the office to reduce its openness a.k.a. office panorama.

### *Advantages:*

- Prestigious and pleasing to the eyes
- Tidy and gives a serious business environment
- Motivates employees

### *Disadvantages:*

- Expensive to set up
- Occupies a lot of space
- A lot of distraction of employees
- Lack of confidentiality



## Workstation layout a.k.a. cubicle

- Subdivided into small working stations meant for one employee.
- Closed layout with small lockable rooms.
- Partitioning is half high.

### *Advantages:*

- Easy supervision;
- Increased security;
- Facilities can be shared;
- Easy flow of work;
- Easy communication;
- Space saving for big organizations;
- Good middle ground for privacy-collaboration spectrum.

### *Disadvantages:*

- Lack of privacy.
- Expensive to maintain equipment as well as partition.
- Uneconomical in terms of space.
- noisy.
- encourages a lot of employee movement;
- If not properly designed, it can lead to poor work-flow, clutter and noisy environment



## Modified layout

- Consolidates the advantages of both open and closed layout while avoiding their disadvantages.
- Partitioning is done using transparent material.

### *Advantages:*

- Confidentiality is enhanced;
- Security is increased;
- Reduces noise;
- Reduces transmission of pathogens.

### *Disadvantages:*

- Expensive;
- Uneconomical;
- Increases movement;
- Does not allow for easy flow of work.



## Team clusters

- This is when teams are grouped into clusters and designated zones.

### *Advantage:*

- Fosters communication.

### *Disadvantage:*

- Neglects importance of having meeting rooms



## Question 7, April 2022

### QUESTION SEVEN

Caroline and Anthony were discussing on the nature of the office layout and structure they would establish for their law firm upon completing their studies at Kenya School of Law.

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Caroline was of the opinion that COVID-19 pandemic has revealed that many firms can survive when employees work from home especially the non-essential ones. This therefore eliminates the need for front office as well as open office layout. Anthony on the other hand felt that an open office layout is especially critical now as the world navigates the pandemic.

Argue the case for having a front office in the law firm (10 marks)



## Question 1, July 2019

- (c) Ongil and Company Advocates is a large law firm located in the country of Euboria. The firm has over 2000 employees on a full time basis. It has a policy of training newly recruited employees on the specific core functions of the firm as well as client management. The partners however do not believe in training front office staff as they unanimously agree that front office is a non-core function of the firm.

A long serving front office manager recently left the organization and the firm replaced her with a recent graduate of Business Administration. They have since experienced many complaints from clients. In the words of one of their major clients "I called all day and when I miraculously got through, the lady on the other end hang up the phone instead of transferring me to my lawyer".

The firm was also recently in trouble when a client's file went missing. This was however not a surprise to the employees because in recent meetings they raised concern that it takes too long to retrieve clients' documents.

Advise the firm on five important functions of the front office in a large law firm. (5 marks)



## LECTURE 5: STANDARDS, POLICIES AND PROCEDURES



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## STANDARDS

### Definitions:

- “....general written limit, definition or rule approved and monitored by the authority as a minimum bench mark available.”

Kimari M.; (2019); Legal Practice Management; Nairobi, Kenya; LawAfrica Publishing (K) Ltd. at page 23

- “‘standardization mark’ means a mark which has been specified by the Council under section 10”

Section 2, Standardization Act

- “‘working standards’ means standards provided for under section 16.”

Section 2, Weights and Measures Act



“A written limit or rule that is approved and monitored by an agency as the minimum benchmark acceptable, or technical specification contained in a document that lay down the levels of quality, performance, safety or dimensions of a product.”

OR

“Stability, general recognition and conformity to establish practice. A type, model or combination of elements accepted as correct or perfect”

The Law Dictionary

- There seem to be a lacuna in the law when it comes to the definition of a standard.



## Classification of Standards

- Standards can be: -
  - National
  - International
  - Personal
- Standards can also be: -
  - Public
  - Private



## Standards in Kenya: A General Outlook

- The preamble to the Standards Act states,

“An Act of Parliament to promote the standardization of the specification of commodities, and to provide for the standardization of commodities and codes of practice; to establish a Kenya Bureau of Standards, to define its functions and provide for its management and control; and for matters incidental to, and connected with the foregoing.”



- Standards are utilized comprehensively
- Organizations have to comply with standards that are required by law e.g. manufacturers (KEBS)
- The grundnom is the Kenyan Constitution and every other law / standard has to adhere to the dictates of the Constitution e.g.
  - Article 43 which provides for economic and social rights and
  - Chapter 6 which is devoted to setting standards that govern public servants.



## Judicial Enforcement

- The Judiciary has a crucial role to play in ensuring compliance with standards.
- They do this by enforcing judgements that penalize those who fail to comply with standards.
- Examples:
  - R v. KEBS & 2 others ex parte Peter Mbwiri Ikamati [2014] eKLR
  - John Kinyua Munyaka & 11 others v. County Government of Kiambu & 3 others [2014] eKLR.
  - Kennedy Ogoro Nyoka v Republic [2020] eKLR.



## Prescription

- Parliament ensures that legislation has been put in place to guide standards
- Parliament's mandate is enshrined in article 94 of the Constitution, 2010.
- Standards are developed by technical committees which comprises of representatives of the various stakeholders.



- Standards can be broken down to six categories i.e.:-
  - glossaries or definition of terminology
  - dimensional standards
  - performance standards
  - standard method of test
  - codes of practice
  - measurement standards



- Examples of organizations that develop standards in Kenya include:
  - The Kenya Bureau of Standards;
  - The National Environment Management Authority (NEMA);
  - Council of Legal Education;
  - Federation of Kenyan Employers;
  - NGO Coordination Board;
  - Central Organization of Trade Unions;
  - Law Society of Kenya;
  - Commission for University Education;
  - Institute of Public Accountants Kenya etc.





## POLICIES

### Definitions:

“The general principles by which a government is guided in its management of public affairs, or the legislature in its measures.”

Blacks Law Dictionary

“Policy is a law, regulation, procedure, administrative action, incentive, or voluntary practice of governments and other institutions.”

The Centres for Disease Control’s office of the Associate Director for Policy and Strategy



“A documented general approach taken within the practice to the issue in question..... A policy is therefore the comprehensive and contemporary programme that aims at measuring an organization’s ability to provide efficient administrative support within the organization.”

Kimari M.; (2019); Legal Practice Management; Nairobi, Kenya; LawAfrica Publishing (K) Ltd. at pages 23 and 24

- A policy therefore provides some sort of governing structure within an organization or even a government.



## Objectives of a Policy

- The main objective is to regulate and guide operations. Policies also: -
  - provide guidance towards an organization's mission;
  - provide guidance on implementation of strategies;
  - provide controlling mechanisms of the organization's behaviour;
  - provide controlling mechanisms on employee conduct;
  - defines roles;
  - defines rules;
  - explains consequences of actions and behaviours.



## Formulation Process

- A problem is identified;
- An agenda is set;
- Research is conducted;
- Policy paper is drafted;
- Policy paper is presented to management;
- Policy is adopted by management;
- The policy is communicated to those it will affect;
- Sensitization on the policy is conducted;
- Policy is implemented;
- Monitoring, evaluation, reporting and learning from the outcome of implementation of the policy.



For a policy to mutate into law, it can take the below steps: -

- Stakeholders are consulted;
- Experts are engaged to research;
- The developed paper is adopted either by government or opposition side;
- The paper is popularized;
- A bill is introduced to parliament this has to be accompanied by a memorandum of objects and reasons;
- First reading;
- Second reading;
- Third reading;
- Presidential assent;
- Commencement.



## Composition

- The policy name;
- Effective date of the policy and date for any revisions;
- Purpose of the policy;
- Main policy statement;
- Definition of any key terms and concepts used in the policy;
- Scope of permissible exceptions and authoritative figure who can make these exceptions;
- Committee's (if need be) for ensuring compliance of the policy;
- Authoritative figure / office responsible for implementation and monitoring.



## Policy Implementation challenges

- Constraints can be experienced from: -
  - parent organization;
  - regulatory bodies;
  - government policies;
  - legislation.



- Implementation problems can be initiated by: -
  - corruption;
  - lack of continuity especially for government policies;
  - inadequate human resources;
  - inadequate material resources;
  - lack of legal framework to support implementation mechanisms;
  - poor participation by stakeholders thus poor uptake of the policy;
  - lack of learning from policy activities due to poor feedback mechanisms;
  - lack of public awareness;
  - ignoring input of target population thus poor uptake etc.



## PROCEDURES

### Definitions:

“The methods by which legal rights are enforced; the specific machinery for carrying on a lawsuit, including process, the pleadings, rules of evidence, and rules of Civil Procedure or Criminal Procedure.”

The Legal Dictionary

“....a set of actions that is the official or accepted way of doing something.”

The Cambridge dictionary



“....methods for accomplishing or implementing a policy”

McConnell, J.H.; (2004); Developing Essential Human Resource Policies and Procedures; VI; as cited in Kimari M.; (2019); Legal Practice Management; Nairobi, Kenya; LawAfrica Publishing (K) Ltd. at page 24

➤ It is imperative to have procedures in place as they ensure the successful implementation of policies.

❖ What attributes should good procedures have?



## Attributes of Good Procedures

- Good procedures are: -
  - Articulate;
  - Simple;
  - Accurate;
  - Consistent with: -
    - organizational objectives and policies;
    - public policy;
    - statutes.

❖ What is the formulation process for procedures?



## Formulation Process

- Identify the organization's need for a procedure;
- Obtain support and approval from senior management to draft procedures;
- Define the scope;
- Collect and document information available;
- Prepare a draft procedure;
- Obtain comments on draft procedure;
- Obtain authorization to use procedure;
- Distribute procedure;
- Sensitize the persons affected by the procedure on the procedure;
- Review periodically to ensure viability.



## LEGAL FRAMEWORK ON STANDARDS, POLICIES AND PROCEDURES

### Constitution of Kenya, 2010

- Article 2 of the Constitution of Kenya, 2010 embodies the supremacy of the constitution.
- The validity of the Constitution is supreme and unchallenged.
- All other laws must conform to the Constitution.
- The Constitution is the supreme guiding architecture of standards, policies and procedures.
  - See: Articles 43, 191, 232(1) and 244.



- The Standards Act, Chapter 496, Laws of Kenya.
- Legal Education Act
- Employment Act, 2007
- Labour Institutions Act, 2007
- HIV /AIDS Prevention and Control Act, Act 14 of 2006
- The Water Act; No 43 of 2016
- The Basic Education Act; No 14 of 2013
- The Consumer Protection Act No. 46 of 2012
- The Energy Act; 2019
- Ethics & Anti-Corruption Commission Act; Chapter 65A, Laws of Kenya
- Human Resources Management Professionals Act; 2012



### **Conclusion**

- Legal provisions are crucial in the creation of standards, policies and procedures.
- As the law is dynamic, these standards, policies and procedures have to be continuously reviewed not only to keep up with the changing laws but also to keep up with the challenges posed by globalization and changing social & economic needs.



## **STANDARDS, POLICIES AND PROCEDURES IN THE LEGAL PROFESSION**

### **Accounts management**

- Advocates provide legal advice and services to their clients and as such are paid for their professional services.
- The fees that advocates charge on the services offered are regulated by the provisions of the Advocates Act and the Advocates Remuneration Order.
- The advocate is separately instructed and separately rewarded by fees for each piece of work done for the client.





- Section 36(2) of the Advocates Act prohibits the charging of fees at a rate less than that prescribed by the Advocates Remuneration Order.
- Section 45 of the Advocate's Act; an advocate may exercise three options in charging fees;
  - by using the Advocates Remuneration Order
  - by entering into an agreement with the client as to cost.
  - By charging ex gratia.
- Management of client's money is strictly legislated by: -
  - Advocates Accounts Rules
  - Advocates Deposit Rules
  - Advocates Accounts (Certificate) Rules
  - Advocates Remuneration Order



## Standard

- There should be at least 2 accounts, one for the advocate's personal money and another for client's money. Every advocate should ensure proper books of accounts are kept with respect to all accounts that the advocate holds.



## Policy

- A policy should be available that provides for transparency and accountability.
- The advocate has to provide an accountant's certificate when applying for an annual licence; which certificate is provided after an audit of the accounts has been conducted.



## Procedure

- Section 36(1) of the Advocates Act makes it an offence to undercut (This is also envisaged under rule 3 of the Advocates (Practise) Rules).
- Section 46 of the Advocates Act invalidates some arrangements; the breach of which may subject the advocate to disciplinary proceedings



- If found guilty of professional misconduct, an advocate may be subject to the penalties prescribed under section 60 (4) of the Advocates Act which include: -
- Admonishment
  - Suspension from practice
  - Having the name struck off the roll
  - Payment of compensation or reimbursement to the aggrieved person
  - A combination of the above as the disciplinary committee deems fit.



## Question 1, November 2019

### QUESTION ONE

- (a) The country of Romani gained its independence five years ago. Joakim has recently been employed at the Judiciary of Romani. On his sixth month of employment, he suggested to his boss to allocate some funds in the next budget for automation of the judiciary system which is a manual system. His boss however suggested that they first develop an ICT policy that could guide the implementation process. He tasked Joakim with the responsibility of developing the steps that they needed to follow in developing the policy as well as the impact of ICT automation on the Judiciary and to make a presentation in the next meeting.
- i) Explain the steps that need to be followed in the development of an ICT Policy. (10 marks)



## Question 7, July 2019

### QUESTION SEVEN

Arthur apologized to the court one Tuesday morning after arriving late to represent one of the largest clients of Arthur & Artor Advocates firm, one of the largest law firms in Kenya. He needed to print an important document but the firm was in a crisis of printing paper that morning. From the onset of the formation of the firm, the partners had unanimously agreed that they did not need a purchasing department since they were not a manufacturing firm. With the growth of the firm however the rate of consumption of office supplies had overwhelmed the front office manager. The partners have decided to hold a crisis meeting to discuss this challenge and come up with solutions for the future.

- (a) Explain the importance of having a purchasing policy at Arthur & Artor Advocates. (4 marks)
- (b) Explain three main objectives of proper stock control at Arthur & Artor Advocates. (6 marks)



## LECTURE 6: INFORMATION COMMUNICATION TECHNOLOGY



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## INTRODUCTION

- Information Communication Technology is a term that is encompassing of all technologies that are utilized for the machination and communication of information.
- Information Communication Technology is commonly abbreviated as ICT.



“Information technology continues to have an ever-growing impact upon society and the way that society conducts its affairs. Information and communications technologies have permeated almost every professional, commercial and industrial activity and most organisations would find it difficult, if not impossible, to function without relying heavily on these technologies. As far as the law is concerned, computers and electronic communications networks have been a mixed blessing. They have become indispensable tools, allowing the use of massive information storage, processing, dissemination, searching and retrieval. On the other hand, information and communications technologies have posed and continue to pose novel and complex social and legal problems. Frequently, the law has been found wanting when dealing with the issues raised by these constantly evolving technologies, and legislators and the courts have often struggled to come to terms with the challenges raised by them.”

Bainbridge, D.; (2008); Introduction to Information Technology Law; (6th Edition); Pearson Education at page 1



“The acronym Information Communication and Technology includes all technical means that are used for handling information and facilitating communication, including computers, network hardware, communication lines and all the necessary software.”

Kimari Mary; (2019); Legal Practice Management; Nairobi, Kenya; LawAfrica Publishing (K) Ltd. pg 37

“Diverse set of technological tools and resources used to transmit, store, create, share or exchange information. These technological tools and resources include computers, the Internet (websites, blogs and emails), live broadcasting technologies (radio, television and webcasting), recorded broadcasting technologies (podcasting, audio and video players and storage devices) and telephony (fixed or mobile, satellite, visio/video-conferencing, etc.).”

United Nations Educational Scientific and Cultural Organization



## AUTOMATION

- Systems have to be put in place that are able to handle workload.
- Technology has come up with innovations that will solve issues borne by organizations due to globalization.
- IT automation has been defined as:

“...the use of instructions to create a repeated process that replaces an IT professional's manual work in data centers and cloud deployments. Software tools, frameworks and appliances conduct the tasks with minimum administrator intervention. The scope of IT automation ranges from single actions to discrete sequences and, ultimately, to an autonomous IT deployment that takes actions based on user behavior and other event triggers.”

Bigelow, S. (2019); IT Automation; available at <https://searchitoperations.techtarget.com/definition/IT-automation>



## Why automate?

- Incident management
- Application deployment
- Using IT automation, organizations can deploy their applications with confidence
- Security and compliance

❖ **What are the advantages and disadvantages of automation?**



## Advantages & Disadvantages of Automation:

### Advantages

- Cost reduction strategy
- Competitive strategy
- Speed
- Accuracy
- Governance
- Reduced costs
- Increased productivity
- Increased availability
- Greater reliability
- Better performance

### Disadvantages

- Errors and oversights can be codified into automated processes
- Intent
- Flexibility
- Integration and interoperability
- Implementing IT automation does not guarantee results



## LEGAL AND INSTITUTIONAL FRAMEWORK REGULATING ICT IN KENYA

### The Constitution of Kenya 2010

- There are various Articles in the Constitution that are geared towards protection of people that have a direct impact on ICT;
  - Article 11(2)(b & c): Culture
  - Article 31: Right to privacy
  - Article 33: Freedom of expression
  - Article 34: Freedom of the media
  - Article 35: Access to information
  - Article 46: Consumer rights



## Kenya Communications Act (KCA) of 2013

- Originally enacted in 2009 but was replaced by the 2013 Act as an amendment.
- KCA (2013) addresses traditional broadcast media considerations that emerged in ICT.
- KCA (2013) created regulatory, advisory and dispute resolution mechanisms to enhance the implementation of the National ICT policy.
- The purpose of the amendment was to strengthen the role of Communications Commission Kenya within ICT sector.
- The Act requires that each telecommunication provider gives the Kenyan Communications Authority (KCA) access to “its systems, premises, facilities, files, records and other data” for inspection.





## Kenya Information and Communications (Registration of SIM-Cards) Regulations (2015)

- These Regulations requires telecommunication providers to transmit SIM-card registration information to the Communications Authority.



## Science and Technology Act of 2012

- Originally science and technology was governed by the Science and Technology Act of 1977.
- The substratum of the Act is to ease the advancement, conciliation and regulation of the furtherance of science technology and innovation within the Kenyan jurisdiction.
- The Act establishes the National Commission Technology and Innovation, Kenya National Research Fund, Kenya National Innovation Agency and the National Research Fund.



## Kenya Broadcasting Corporation (KBC) Act of 2012

- The Act establishes the Kenya Broadcasting Corporation which is a government-sponsored institution.
- The duties of the Corporation have been enumerated in section 8



## Access to Information Act; 2015

- Defines:
  - Exempt information: information withheld by a public entity;
  - Information: records held by a public entity;
  - Personal information: information about an identifiable individual.
- Aspects of the Access to Information Act include:
  - access to full information
  - timely access of information
  - access to relevant information
  - access to information in a language that can be easily comprehend
  - access to information does not mean free of charge
  - access does not include access to sensitive information
  - information to be accessed / issued on request



## The Computer Misuse and Cybercrimes Act No. 5 of 2018

- PART III (Sections 14 – 46) provides for offences that can be considered as cybercrimes (cybersquatting, hacking, interception) and provides for the punishments.
- PART IV (Sections 47 – 56) provides for procedures to be followed in the investigation of cybercrimes
- PART V (Sections 57 – 65) facilitates international co-operation in dealing with computer and cybercrime matters.



## Penal Code

- Section 267 defines theft and what is capable of being stolen which includes information.
- Section 268 defines stealing to i.e. that a person who fraudulently takes or converts from the owner, something that is capable of being stolen
- section 265 prescribes the punishment for theft.



## Policies

### **National ICT Policy**

- Kenya has a National ICT Policy
- Main agenda is to ensure Kenyans are able to access efficient and reliable ICT services at a reasonable cost.
- Challenging to implement owing to the lack of appropriate resources and infrastructure.

### **The National Cybersecurity Strategy 2014 set up under the Ministry of Information, Communications and Technology specifies four goals:**

- Enhance the nations' cybersecurity posture.
- Build national capability
- Foster information sharing and collaboration.
- Provide national leadership.



### **The National Information, Communications and Technology Policy Guidelines 2020:**

- Acknowledges that cyber security is a vital pillar in national security
- Makes a policy recommendation to the government to fully implement the cybercrime legislation and address any gaps in the regulatory capacity.

### **The Kenya National Computer Security Incident Response Team – Coordination Centre (KE – CIRT/CC)**

- Set up by the CA as mandated by the KICA Act
- Is a multi-agency collaboration framework
- Responsible for the national coordination of cyber security as Kenya's national point of contact in cybercrime matters.



## International Instruments:

### **Universal Declaration of Human Rights 1948:**

- Article 12: No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks. This includes attacks on the cyberspace.

### **United Nations Development Programme:**

- Has the principle of transfer of technology.



### **United Nations Educational, Scientific and Cultural Organization) Declaration of 1978 on 'Fundamental Principles Concerning the Contribution of Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racism, Apartheid and Incitement of War':**

- See Article I.

### **African Charter on Human and Peoples Rights:**

- Part II of the Charter provides the scope of the right to access information as limited to information held by public bodies, relevant private bodies and private bodies that are obliged to create, keep, organize and maintain information in a manner that facilitates this right.



### **International Covenant on Civil and Political Rights (ICCPR):**

- Article 17 of the ICCPR dictates that any interference with someone's privacy must be in accordance with the law, necessary and proportionate to achieve a legitimate aim.
- Principles of right to information under ICCPR include:
  - maximum disclosure,
  - obligation to publish,
  - promotion of open government,
  - limited scope of exceptions,
  - processes to facilitate access,
  - costs,
  - open meetings,
  - disclosure takes precedence and finally,
  - protection for whistle blowers.



### **INSTITUTIONS THAT INFLUENCE KENYAN ICT POLICY FORMULATION AND IMPLEMENTATION**

- Ministry of ICT, Innovation and Youth Affairs (national ICT policy formulation function)
- National Communications Secretariat (advisory function)
- Parliamentary Committee on communication, information and innovation (oversight function)
- Communications Authority of Kenya (CAK) (regulatory function)
- Kenya ICT Authority (development and implementation function especially for government systems)
- Government Information Technology Service (under the treasury - technical services function)
- Directorate e-government (implementation function)
- Monopolies and Prices Commission (regulatory function)



## ICT APPLICATION IN OFFICE MANAGEMENT: AN ANALYSIS OF THE EFFECT OF ICT IN THE LEGAL PROFESSION IN KENYA

- Organizations are slowly moving away from the old school paper system to a modern digital system.
- Applicable in both public and private organizations.
- ICT has enhanced access to information, transparency and accountability.
- Stakeholders within the legal profession who have been impacted by ICT include:
  - Judiciary
  - Advocates
  - Paralegals
  - Law lecturers and law students



## JUDICIARY

- A study was conducted by the Judiciary Committee on Information Communication Technology at the Milimani Law Courts which had implemented a pilot ICT project.
- Judicial Information Communication Technology Committee was created with the mandate of having oversight on all ICT matters touching on the judiciary.
- This committee is guided by the judiciary's strategic plan.
  - So far the committee has managed to: -
  - digitize court processes,
  - create case management systems,
  - develop an ICT policy and strategic plan,
  - establish a communication infrastructure,
  - hardware and software acquisition, and
  - tele-presence court sessions.



- ICT Achievements within the Judiciary:
  - installed teleconferencing court system;
  - installed networking facilities;
  - created a data center and installed important ict devices;
  - leased ict hardware devices and barcoded purchased devices;
  - Trained staff on ICT.
- Effect of ICT on the Judiciary. ICT has enabled: -
  - the digitization of court records;
  - efficient records management;
  - efficient management of the court;
  - automation and diversification of revenue and deposits.



- Effect of ICT on Court Personnel:
  - enhanced research;
  - impacted the mode of service of court documents.
- Criticism:
  - ICT equipment is expensive;
  - There is a lot of wastage due to lack of proper training for purposes of utilization of the ICT equipment.





## ADVOCATES

- Application for e-practicing certificates online through the LSK website.
- Additional job opportunities online
- Advocates are now able to advertise
  - See: Okeyo Omwanza George & another v. Attorney General & 2 others [2012] eKLR
- Revolutionized research
- Effective communication
- Enhanced documentation and record keeping.
- Production of electronic recordings as evidence in court
  - See: section 106B of the Evidence Act



### **Advocates cont....**

- Easy confirmation of an advocate's eligibility to practice and niche areas.
- Criticism: work has been taken away from advocates as laypeople are able to generate legal documents online.



## LAW LECTURERS AND STUDENTS

- Law lecturers are able to record lectures, teach online classes, access online materials etc.
- Law students utilize ICT for research purposes.



## PARALEGALS

- Paralegals are tasked to be the researchers, analysts, typesetters, editors and rapporteurs; which work is performed through ICT utilization.
- Paralegals sit in with an advocate during client interviews for purposes of note taking; which is made easier through utilization of ICT.
- Automation has made it easy for the paralegal to manage records



## EMERGING ISSUES IN ICT

- Admissibility of electronic evidence
  - See section 106B of the Evidence Act
- e-government and its impact on advocates
- ICT and advocate advertising
  - See: Okeyo Omwanza George & another v. Attorney General & 2 others [2012] eKLR
- Digital migration
- Online defamation
  - See: Duncan Muriuki v. Baobab Resort (petition no. 223 of 2021)
- Electronic signatures:
  - See: The Kenya Communications (Amendment) Act



- Cybercrime
  - See: Kenya Information and Communication Act
  - section 67 of the Penal Code



## ADVOCATES LIABILITY FOR STATEMENTS POSTED ON SOCIAL MEDIA

### ❖ What is social media?

- It is important to discuss the ethical issues surrounding utilization of these social media platforms in relation to advocate-client relationship, relationship between advocates and judges and relationships with other professionals.
- LSK can take disciplinary action against advocates who misuse social media
- Advocates are bound by the International Bar Association Principles on Social Media Contact for the Legal Profession.



## ELECTRONIC DOCUMENT MANAGEMENT SYSTEMS

- This is an automated software solution utilized by organizations for organizing, securing, capturing, digitizing, tagging, approving, and completing tasks.
- Most document management systems store data in the cloud.
- Organizations customize their electronic data management systems to their specific needs.

**NOTE: additional information will be provided during record management lecture.**



## Considerations for the Best Electronic Data Management System:

- whether it can be supported by the major browsers;
- how user-friendly the system is, manageable and easy to learn;
- whether it has flexible pricing: per user, license, or subscription based;
- whether it comes with a cloud document management and / or on premise / server with its own IP address;
- whether the system can support integration without any development;
- whether the system is easily customizable through graphical user interface;
- ease of use of the cataloguing and searching features;
- whether the system accepts digital & electronic signatures;



### **considerations cont.....**

- whether the system supports mobile support applications – ios and android;
- the level of security: bit encrypted file repository



## Question 1, November 2022

- c. Jane was excited to secure a job after finishing her law degree prior to joining the Kenya school of law. Even though the job was in a law firm located in Alisoma town, a rural area in the country, she decided to take it up and gain some experience. Two month into the job, Jane became increasingly frustrated. The firm did not have formal filing system in place. Recently, a document that was needed in court urgently could not be retrieved with ease. Furthermore, there is no formal inventory management system either. The managing partner complained of a recent purchase of office supplies that was done before the previous stock got depleted. The partner also observed that the supplier used by the company was very expensive yet there were cheaper suppliers locally.
- i. Advise the firm on three benefits they would derive from adopting a computerized filing system. (3marks)
  - ii. Explain to the firm three important reasons for developing a proper record management system. (3marks)



## Question 7, July 2018

Ongiri and Ngendo have decided to set up a firm that deals with offering legal services as well as tax services. They both agree that front office department is an unnecessary expense to the firm and therefore they do not need one. They also agree that they would not invest on information communication technology as this would also increase the set-up costs unnecessarily. As much as possible, they would operate using manual systems. For non-core activities such as filing tax returns, they would outsource to another firm. New clients referred

Page 6 of 7

to them by their customers have complained recently that the two are mostly unavailable in the office and there is no one to leave message to.

- (b) Explain to Ongiri and Ngendo on the five (5) effects ICT has had on advocates today. (5 marks)
- (c) Critically analyse the use of outsourcing strategy in an organization. (5 marks)



## LECTURE 7: FILING AND RECORDS MANAGEMENT



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### Records Management Definitions:

“...field of management responsible for the efficient and systematic control of the creation, receipt, maintenance, use and disposition of records, including processes for capturing, and maintaining evidence of and information about business activities and transactions in the form of records”

Svärd, P.; (2017); Enterprise Content Management, Records Management and Information Culture Amidst e-Government Development; Chandos Publishing



“...the creation, management, storage and destruction of records.”

Kimari M.; (2019); Legal Practice Management; Nairobi, Kenya; LawAfrica Publishing (K) Ltd. at page 77

“...the efficient and systematic control of the creation, receipt, maintenance, use and disposition of records.”

The United Nations archives and Records Management Section



## Purpose of Maintaining Records:

- Future reference
- Legal evidence
- Planning and budgeting
- Evaluating performance
- Legal requirement
- Settlement of disputes
- General reference
- Comparison purposes
- Cross reference
- Policy and decision making





## Advantages of a good record management system:

- Improved accessibility of information
- Increased productivity as time is saved when retrieving records
- Improved accountability
- Proper preservation of information thus enhanced viability of the information
- Observance of legal obligations due to proper compliance



## Principles of Good Records Management:

- The Association of Records Management and Administrators (ARMA) International came up with principles that can be utilized to ensure proper maintenance of records. The standard is divided into two sections i.e.: -
  - ISO 15489 Part 1; General
  - ISO 15489 Part 2; Guidelines



- The principles of good records management include:
  - Principle of accountability
  - Principle of integrity
  - Principle of retention
  - Principle of protection
  - Principle of disposition
  - Principle of transparency
  - Principle of compliance
  - Principle of availability



## Factors to consider in Retention of Records:

- Importance / effectiveness of a record
- Need for future reference
- Need for legal reference
- Cost of storage
- Legal requirements
- Volume of records
- Frequency of reference
- Nature of documents
- Existence of duplicate records
- Company policy



## Methods of Records Disposal:

- The method utilized for destruction of a record is dependent on its sensitivity.
- Destruction of paper records:
  - Recycling
  - Shredding
  - Pulping
  - Incinerating
- Destruction of electronic records:
  - Deleting
  - Overwriting
  - Degaussing (magnetic media)
  - Physical destruction



## FILING

- Process of classifying, arranging and sharing records so that they can be retrieved as quickly as possible.
- Documents are stored in files or folders.
- Importance of filing:
  - Promotes the safety and protection of documents.
  - Ensures that records are available for future reference.
  - Promotes neatness in record keeping.
  - Enhances security of the information.
  - Ensures that records are quickly accessible when required.



## General Rules for Filing:

- All records should be authorized for filing
- File daily
- File neatly
- Properly punch the documents
- Avoid using bulky files
- Avoid removing records from a file but if necessary use an outguide
- If a whole file is removed from the shelf, there should be an "absent marked" to indicate where the file has been taken
- Label all the files clearly
- File correctly



## Steps to be Followed in Planning for a Filing System:

- Determine the period of storage
- Consider the cost effectiveness of the system
- Acquire storage space
- Plan the storage arrangement
- Decide on the appropriate location
- Consider the equipment necessary for filing
- Consider the safety of the documents
- Establish the classification system
- Train staff
- Ensure security of documents



## Measures to Put in Place to Ensure Proper Control and Handling of Filed Documents:

- Use of charge out system
- Limit access to cabinets and files to authorised personnel only
- Indicate the time limit for staying with a particular file
- Keep a resume to be utilized incase a file is misplaced
- Have a follow-up system
- Transfer inactive records and maintain only the active ones
- Record incoming mail
- Indicate the document folio number
- Use lockable cabinets



## FILING METHODS

- **Horizontal Method:** Documents are kept in a flat position on top of each other mostly using shelves.
- **Vertical Filing Method:** This is a system where files are kept in an upright position lying on their spines. The labels appear on the top edge of the file for easy identification.
- **Suspension Filing:** Similar to vertical filing, however, the filing cabinets have “packets” into which the files are suspended so that the spine of the file does not touch the bottom of the cabinet and this helps to preserve the files.
- **Lateral Filing Method:** Files are placed side by side with their spines facing out. Uses lateral filing cabinets or shelves.



## Principles/Characteristics of a Good Filing System:

- Economy
- Compactness
- Simplicity
- Accessibility
- Flexibility
- Classification
- Suitability
- Up-to-date
- Safety and security
- Cross referencing system
- Out guides



## FILING CLASSIFICATION SYSTEMS

- This is where records are grouped according to different titles or sections. These include: -
  - Alphabetical classification
  - Numerical classification
  - Alpha – numerical classification
  - Geographical classification
  - Subject classification
  - Chronological classification



## Alphabetical Classification

- Files are arranged according to the letters of the alphabet i.e. A-Z order.
- Rules for Alphabetical Filing:
  - Individual's names are filed according to their surnames. If the surname and the first name are the same, the middle name or initials are utilized
  - File short names / fewer names before long names / many names
  - Titles, decorations and degrees are ignored and are put at the end in brackets
  - A surname prefix is considered as part of the surname
  - A Hyphenated name has the hyphen ignored and the name treated as one



- The prefix st. is considered as saint and filed as though written in full and is always considered first
- Articles, conjunctions and prepositions are ignored when filing. When "the" is the first word in the name, it is usually written at the end
  - Companies with personal names are filed under the surname
  - If a company has several names, the name listed first as the surname is considered first
- Numbers in a company or in associations name are treated as though written in full
- Government departments and Ministries are filed under the key words



## Numerical Classification

- This is a system where filing is done according to numbers or a numerical code as illustrated below.
  - 001: Accounts
  - 002: Human Resources
  - 003: Production



## Alpha-Numerical Classifications

- Alphabets and numerals are combined so that each class has an alphabetic title and a number.
- Suitable for large organisations where neither the alphabet nor numerical classification is adequate.





## Geographical Classification

- This is where files are classified according to geographical location.
- Also known as geographical by alphabet.



## Subject Classification

- Records are classified according to a particular subject or based on origin.
- Records may also be sorted alphabetically.



## Chronological Filing

- Records are classified according to dates received with the most recent record appearing at the top.



## Factors to be Considered When Making a Decision on an Appropriate System of Classifying Office Documents:

- |  |   |
|--|---|
| ➤ Cost   | ➤ Training required to operate the system     |
| ➤ Accessibility and ease of reference                  | ➤ Suitability of the filing system            |
| ➤ Availability of space                                | ➤ Safety / security of records                |
| ➤ Flexibility  | ➤ Level of technology available in the office |
| ➤ Volume of records                                    |   |
| ➤ Ease of use  |   |
| ➤ Nature of records                                    |   |
| ➤ Availability of skilled labour to operate the system |   |



## INDEXING OF RECORDS

- An index is a separate list of records under different classifications utilized for ease of reference and retrieval.
- Importance of indices:
  - guides the user on where to get a record;
  - allows fast and easy access to records;
  - avoids misfiling of records;
  - acts as a guide to the filing clerks; and
  - provides training to new clerks/users



## Types of Indices:

- Page Index
- Loose Vertical Card Index
- Visible Card Index
- Strip Index
- Rotary Index
- Punched card Index / Computerized Index
- Micro-Filming



## APPLICATION OF MODERN TECHNOLOGY IN RECORDS MANAGEMENT

### Electronic Record Management

*"...consists of information or data files that are created and stored in digitized form through the use of computers and applications software."*

Kimari M.; (2019); Legal Practice Management; Nairobi, Kenya; LawAfrica Publishing (K) Ltd. pg 85

- Electronic records include numeric, graphic, audio, video and textual information.
- Electronic records systems require partnerships with information technology and records management fields to support requirements for data control and access.
- Modern technology aids in electronic record management.



## Access Criteria:

- Policies stipulating who has access to records and which records are restricted
- Assurance that access and retrieval are timely
- Assurance that records are retrievable by authorized users only
- Relevant metadata applicable to the captured record is maintained for the lifecycle of the record or until otherwise designated
- Recognition on privacy issues



## Controls on Records:

- Measures to monitor who has access to records
- Safeguard the records from unauthorized access
- Has an audit trail
- Ensures migration, system malfunctions, upgrades and regular maintenance of records systems will not infringe on integrity of the records
- Has methodologies to protect confidentiality, privacy and security of records
- Has validation / verification techniques
- Ensures records protection and preservation
- Has the ability to preserve records and their associated metadata
- Able to archive data



## Advantages of Electronic Record Management:

- |                                    |   |
|------------------------------------|---|
| ➤ Strengthens corporate governance | ➤ Increased internal and external collaboration |
| ➤ Reduces human resource costs     | ➤ Lower archiving costs                         |
| ➤ Increases efficiency             | ➤ Improved version control                      |
| ➤ Risk mitigation                  | ➤ Consistent content                            |
| ➤ Better accountability            | ➤ Improved task management                      |
| ➤ Reliable back-up                 |   |
| ➤ Less deterioration of records    |   |



## Challenges and Concerns Over Electronic Records:

- Some storage formats are not stable
- Documents created are dependent upon technology to interpret them
- Harder to authenticate thus giving room to corruption and fraud
- Requires institutional policies and guidelines addressing the management of electronic records
- Due to low cost of electronic storage, organizations are tempted to retain records whose lives have expired
- Greater risk for potential security breaches and damage via virus attacks and hacking
- Requires hiring of highly trained staff



## LEGAL FRAMEWORK FOR RECORDS MANAGEMENT

- **The Constitution of Kenya, 2010:**
  - Article 31: Privacy
  - Article 33: Freedom of expression
  - Article 227: Procurement of public goods and services
- **Records Disposal Act:** Gives provision for the disposal of court records. The Chief Justice must decide on which records to dispose of. This is done in consultation with the Chief Archivist (subject to the provisions of the Public Archives and Documentation Services Act).
- **Public Archives and Documentation Services Act:** Provides for archiving of public records. It also provides for management and destruction of national documents (see section 5A, 6 and 7)



#### Acts of Parliament cont:

- The Public Procurement and Asset Disposal Act: Section 127 gives provision to be utilized by public organizations for the disposal of unusable equipment.
  
- Kenya Information Communication Act (as read together with the Revision of Laws Act): This Act provides the legal basis for electronic publication of laws (section 27A & 102 A of the Kenya Information Communication Act).
  
- The Government Financial Regulations



#### ➤ **International Laws and Standards:**

- ILO Code of Practice on Protection of a Worker, 1997
- The United Nations Archives and Records Management Section
- International Financial Reporting Standards
- International Standard ISO 15489 & 9001
- Association of Records Management and Administrators



## Question 7, November 2019

### QUESTION SEVEN

Ongil and Company Advocates is a large law firm located in the country of Euboria. The firm has over 2000 employees on a full time basis. It has a policy of training newly recruited employees on the specific core functions of the organization as well as client management. The partners however do not believe in training front office staff as they unanimously agree that front office is a non-core function of the firm.

A long serving front office manager recently left the organization and the firm replaced her with a recent graduate of business administration. They have since experienced many complaints from clients. In the words of one of their major clients "I called all day and when I miraculously got through, the lady on the other end hang up the phone instead of transferring me to my lawyer".

The firm was also recently in trouble when a client's file went missing. This was however not a surprise to the employees because in recent meetings, they raised a concern that it takes too long to retrieve a client's documents.

- (a) Discuss three classifications of filing in a law firm. (6 marks)
- (b) Discuss the importance of an effective filing system to an organization. (4 marks)



## Question 1c, April 2022

- b) It is almost impossible to read through a news magazine without finding a reference to quality of work or working life. In search for improved productivity, managers and executives alike are discovering the important contribution that the quality of working life entails.

Discuss critical factors that will affect the quality of work life of employees in a modern and progressive law firm (6 marks)

- c) Discuss key methods a law firm can use to dispose- off old and obsolete records (7 marks)





## Question 6, March 2023

### QUESTION SIX

Okecha & Co. LTD. is a law firm that has been in operation for over twenty years but, still uses traditional methods of documentation. Due to competition and market demands, the firm has decided to recruit an IT manager to assist in implementation of electronic documentation systems.

- a) Explain six (6) benefits that may accrue to the firm for adopting electronic documentation systems. (6 marks)
- b) Discuss four (4) strategies that the firm may take into consideration when implementing digital documentation systems. (4 marks)



## LECTURE 8: SUPPLY CHAIN MANAGEMENT



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## SUPPLIES MANAGEMENT

- The term supply management refers to the act of identifying, acquiring, and managing resources and suppliers that are essential to the operations of an organization.
- Supply chain management draws heavily from:
  - operations management,
  - logistics,
  - procurement,
  - information technology.



## Supply Chain Management Process





- Strategic planning process: Involves strategic supply chain design and strategic sourcing.
- Demand planning: Involves forecasting, lifecycle planning, promotion, planning and consensus demand planning.
- Supply planning process: Involves safety stock planning, supply network planning, outsourcing, distribution planning, customer collaboration and supplier collaboration.
- Procurement process: Involves purchase order processing, receipt confirmation and invoice verification.
- Manufacturing process: Involves production planning / detailed scheduling and manufacturing execution.
- Warehousing process: Involves inbound processing, outbound processing, cross docking, warehousing, storage and physical inventory.
- Order fulfilment: Involves sales order processing and billing process.
- Transportation business process: Involves transportation planning, transportation execution, and freight costing process.



## STOCK CONTROL AND INVENTORY MANAGEMENT

- It is important for the manager to control the quantity of stock in the store in order to avoid:
  - overstocking,
  - under stocking.
- Lack of proper stock control leads to shortages and stock outs which interfere with the office operations.

❖ **What factors affect stock levels?**



## Factors Affecting Stock Level / Quantity:

- User demand / consumption rate,
- Cost of storage,
- Cost of items,
- Nature of items,
- Lead time (this refers to the time it takes to receive a delivery),
- Distance between supplier and the company,
- Availability of items in the market,
- Budget,
- Safety and security for the items in the store,
- Availability of space,
- Company policy regarding stock levels.



## PROCUREMENT

### Definitions

*“The process of purchasing goods and services”*

Oxford dictionary

*“The acquisition through purchase, rental, hire purchase, license, tenancy, franchise, or by any other contractual means of any type of works, assets, services and processing in the supply chain system.”*

Section 2, the Public Procurement and Asset Disposal Act

*“Public procurement is the acquisition of goods, services and works by a procuring entity using public funds.”*

World bank, 1995



## LEGAL FRAMEWORK

- Constitution of Kenya, 2010
- The Public Procurement and Asset Disposal Act, 2015
- International Trade Treaties and Interests



## International Trade Treaties and Interests

- Procurement has to recognise bi-lateral and multi-lateral trade agreements under: -
  - World Trade Organisation (WTO)
  - Regional Trading Agreements under the Economic Partnership Agreement (EPA) between the East and Southern African (ESA) Countries and the European Union (EU)
  - Common Market for Eastern and Southern Africa (COMESA)
  - East Africa Community (EAC)



## Constitution of Kenya, 2010

*“(1)When a State organ or any other public entity contracts for goods or services, it shall do so in accordance with a system that is fair, equitable, transparent, competitive and cost-effective.*

*(2)An Act of Parliament shall prescribe a framework within which policies relating to procurement and asset disposal shall be implemented and may provide for all or any of the following—*

- (a) categories of preference in the allocation of contracts;*
- (b) the protection or advancement of persons, categories of persons or groups previously disadvantaged by unfair competition or discrimination;*
- (c) sanctions against contractors that have not performed according to professionally regulated procedures, contractual agreements or legislation; and*
- (d) sanctions against persons who have defaulted on their tax obligations, or have been guilty of corrupt practices or serious violations of fair employment laws and practices.”*

Article 227



## The Public Procurement and Asset Disposal Act

- The Act applies in: -
  - procurement planning
  - procurement processing
  - inventory and asset management
  - disposal of assets and
  - contract management
- Public Procurement and Asset Disposal Regulations 2020
  - came into effect on 2 July 2020 through Kenya Gazette Supplement No. 53 Gazette notice of 22nd April, 2020.

❖Note : Law places user department as central in procurement process



### **Role of the user department - Reg. 34**

- prepare departmental procurement and asset disposal plans;
- initiating procurement and asset disposal requirements;
- participating in the evaluation committees’;
- appointments to committees are to the individual and cannot be delegated.
- manage and monitor contracts and report any departures from the terms and conditions to the Head of Procurement
- forwarding details of any required amendments or variations to contracts to the Head of Procurement for consideration and action;



- preparing any reports required to the Head of Procurement for submission to the Accounting Officer;
- undertaking conformity assessments of supplied goods, works and services;
- preparing technical specifications, bill of quantities, terms of reference etc.;
- making clarifications on tenders, request for quotes and any other matter through the Head of Procurement as may be required;
- maintaining and archiving copies of records of contract management.



## PROCUREMENT PRINCIPLES

- Accountability
- Competitive supply
- Consistency
- Effectiveness
- Efficiency
- Fair dealing
- Integration
- Integrity
- Informed decision making
- Legality
- Responsiveness
- Transparency



## Points to Note

- Planning (section 53)
- Eligibility of bids (section 55)
- Registration of suppliers
- Standard tender documents (section 70)
- Tender opening and evaluation
- Successful bids and awards
- Communication





# PROCUREMENT PROCESS

## 1. Budgeting

- The head of user department should ensure that all items to be procured are captured in the Budget.

## 2. Procurement planning (Reg. 40)

- the user shall prepare departmental procurement plan in the format provided for in the regulations
- procurement plan has to be linked to budgets
- procurement plan has to be take into account multi- year plans
- user shall submit their plans to head of procurement for consolidation
- accounting officers have to prepare quarterly reports on implementation of plan and submit said reports to the governing body



## • Contents of a procurement plan document include: -

- item description
- procurement method
- unit of issue
- quantity
- estimated total costs
- source of funding
- funds allocated
- time process



### 3. Requisition

- ensure availability of budget before raising requisition
- ensure that the requisition is complete by including: -
  - specifications
  - bill of quantities
  - statutory approvals e.g. nca, nema licenses, county government approvals, feasibility studies etc.
  - environmental and social impact assessment reports
  - evidence of completion
  - evaluation criteria
  - ensure the appropriate officer signs the requisition ( head of user department and approved by the accounting officer)



- Utilize the services of professionals / consultants in the development of specifications / terms of reference.
- Consultants can be obtained from Government Departments e.g. Ministry of Public Works etc.
- private consultants can be involved by utilizing the appropriate selection methods e.g. Quality and Cost based selection, Quality Based Selection, Single Source Selection.
- User should give Input in Bid Document Preparation



#### 4. Tender opening (sec 78)

##### **ad hoc tender opening committee**

- appointed by the accounting officer for the specific tender
- shall have at least three members
  - at least one of the members shall not be directly involved in the processing / evaluation of the tenders
- tender opening committee shall ensure that:
  - tender documents submitted / received are signed,
  - minutes and tender opening report is prepared.



#### **Tender evaluation - Reg. 29**

- at least three members appointed on rotational basis comprising heads of user departments or their representatives; and professional or consultant, where required.
- the accounting officer shall designate one of the members of the evaluation committee as the chairperson.
- the quorum should consist of at least three persons including the chairperson.
- the person in charge of the procurement function is normally the secretary of the ad hoc evaluation committee.



### **Functions / conduct of members of evaluation committee - Reg. 30**

- Conduct technical and financial evaluation of tenders / proposals in accordance with the criteria set
- Carry out evaluation or negotiation with due diligence
- Conduct evaluation within the specified periods (30 days)
- Not to communicate directly with tenderers
- Seek clarification through the head of procurement function.
- Prepare evaluation report with ratings and make recommendations to head of procurement function



### **Independent evaluation - Reg. 31**

- Each member to carry out an independent evaluation then share in a joint sitting.
- Upon sharing of individual evaluators ratings, the committee shall moderate the analysis to arrive at an average rating.
- In RFPs a technical report is prepared and shared with head of procurement to facilitate invitation of bidders for Financial opening function
- The individual score sheets shall be kept as records of a procurement proceeding.



## 5. Contract management – Reg. 137

- The accounting officer shall establish a contract implementation team to ensure right quality and quantity of goods, works and services are delivered;
- The team shall focus on:
  - procurement function,
  - requisitioner,
  - relevant technical department and
  - consultant where applicable
- Contract implementation shall be as per the project implementation plan agreed by the project evaluator and contractor;



## Inspection and Acceptance Committee – Reg. 35(1)

- Composition:
  - user department,
  - technical department,
  - head of procurement function
  - any other person as may be deemed fit
- Where capacity is lacking, support is obtained from another project evaluator or a consultant/professional is procured
- Technical person issues the certificate to the Accounting Officer
- I&AC issues interim or completion certificate of I&A considering prior certificates
- I&AC prepares reports to accompany interim or completion certificates, to head of procurement



## 6. Disposal

- User shall prepare departmental disposal plan
- User shall participate in disposal committee - reg. 177
- Composition:
  - a chairperson, who shall be a head of department;
  - the head of finance function;
  - at least three heads of user departments, of whom one shall be the head of the user department disposing off the stores or equipment;
  - the head of the procurement function as secretary or his / her designate.
- Quorum for the disposal committee is three members including the chairperson(reg.178)



## PROCUREMENT METHODS (PARTS VI AND VII OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT)

- Open tender
- Two-stage tendering (S99)
- Design competition (S100 & S101)
- Restricted tendering (S102 & S94)
- Direct procurement (S103 – S104)
- Request for quotations (S105 & S106)
- Low value procurement (S107 & S108)
- Force account (S109)
- Competitive negotiations (S132 & S133)
- Electronic reverse auction (S110 & S112)
- Request for proposals (S76 – S86)
- Framework agreements (S114)



## Open Tender:

This method follows the below steps:

- step 1: budgeting
- step 2: procurement planning (r40 & s53)
- step 3: requisition
- step 4: preparation of the invitation to tender (s74)
- step 5: preparation of the tender documents (s60, s70 & s75)
- step 6: advertisement (s96)
- step 7: submission and receipt of tenders (s77)



- step 8: tender opening (s78 & s79)
- step 9: tender evaluation (s74 & s80 and r29, r30 & r31)
- Step10: post-qualification, professional opinion and recommendation for contract award (s83, s84 & s85)
- step 11: notification of award of contract (s87(3))
- step 12: creation of a contract (r35(1), r137 and s87(1) & (2))

note: international tendering (s89 – fair competition)



## Two-Stage Tendering (S99):

- Similar to request for proposals.
- The technical and financial proposals are submitted separately, but one before the other, rather than simultaneously.
- Submission of proposals takes place in two stages.
- Bidders can assist in defining the technical requirement and the scope of work.



## Design Competition (S100 & S101)

- Used to obtaining competitive tenders for services which are creative in nature e.g. design for a corporate logo.
- Part of the services are already a part of the tender.





## Restricted Tendering (S102 & S94):

Used when:

- specialized goods or services need to be procured;
- it would be costlier to go through open procurement process;
- Suppliers are limited in number.
- an advertisement is placed, which states that this method will be used.



## Direct Procurement (S103 – S104)

Used when:

- only one person can supply and no alternative is available;
- goods or services are urgently needed;
- going through the tendering process would be impracticable;
- for purposes of standardization;
- Acquisition of goods and services is from another public entity.
- supplier or contractor has exclusive rights and no reasonable alternative or substitute exists;
- Used during war, invasion, disorder or natural disaster.
- need for compatibility with existing goods, equipment, technology or services;

The acquisition price has to be fair and reasonable.



## Request For Quotations (S105 & S106)

Used when:

- Goods / services being procured are readily available and the market has already been established;
- Estimated value of the goods is equal to or less than the amount indicated in the request for quotation prescribed in the Regulations;
- The procurement is for goods, works or services for which there is an established market.



## Low Value Procurement (S107 & S108):

- Estimated cost is below the applicable threshold matrix;
- Or the items being procured are not procured on a regular basis and are not covered in the framework agreement.



## Force Account (S109):

- Procuring entity uses own personnel and equipment;
- Or state or public officers and using public assets, equipment and labour which are competitive.



## Competitive Negotiations (S132 & S133):

Used when:

- there is a tie in the lowest evaluated price by two or more tenderers;
- there is a tie in highest combined score points;
- the lowest evaluated price is in excess of available budget; or
- there is an urgent need that can be met by several known suppliers.



## Electronic Reverse Auction (S110 & S112):

- Undertaken by a public entity with a procurement portal and appropriately secure software with electronic procurement capabilities approved by Public Procurement Regulatory Authority.
- Prices without identities are visible to all bidders;
- Tender is awarded to the bidder with the lowest price.



## Request For Proposals (S76 – S86):

Used when:

- procurement is for services or a combination of goods and services;
- services are advisory or of predominantly intellectual nature.



## Framework Agreements (S114):

- Legally-binding arrangements with suppliers to establish terms governing contracts that may be awarded during the life of the agreement.
- Covers supply of goods, works or service whose quantities and delivery schedules are not definable or determinable at the beginning.
- Agreement term is limited to three years
- A minimum of seven alternative vendors must be included for each category.



## Challenges in Public Procurement in Kenya

- Ineffective implementation of the act
- Hiring unqualified staff
- Lack of knowledge on procurement laws
- Corruption
- Expensive
- Long process cycle



## Administration of Procurement Disputes

### Public Procurement Administrative Review Board

- Request for review submitted (must be done within 14 days from the date of issuance of notification)
- Applicant completes requisite form which is accompanied by:-
  - a statement citing alleged violation or breach of law or procedure
  - grounds for review
  - applicable fees
- Lodging a review serves as a stay order
- Dispute has to be determined within 21 days



### High Court

- Applicant can challenge the decision of the Review Board here
- Completed through a judicial review process; seeking orders of certiorari, mandamus and / or prohibition.
- Application has to be made within 14 days from the date of the decision of the Review Board
- Dispute has to be determined within 45 days - (conflict of implementation – Civil Procedure Rules allow for determination within 6 months)



## Question 1c ,March 2023

C. Boke and Dengu advocates is a small law firm located in Nairobi central business district. The three-year-old firm has been relying on Pekee Supplies as a single source supplier for all its office supplies. Pekee Supplies is firm owned by Dengu's brother. Recent complaints by the information technology (IT) officer about faulty flash discs have prompted the partners to re- think about getting all their office supplies from Pekee supplies. The front office manager has also complained about fewer storage files compared to the requisition note issued to Pekee supplies.

Required:

- (i) Explain four (4) disadvantages that the law firm may be exposed to because of relying on a single supplier. (4 marks)
- (ii) Recommend to the law firm two (2) other methods of procurement they can adopt other than a single source method. (2 marks)



## Question 6, April 2022

### QUESTION SIX

The procurement officer of Kahindi and Ogutu Associates law firm was summoned by the managing partners on one Thursday morning. The firm was in a crisis that morning as the newly opened bundle of pens were unusable and the stock of printing paper was exhausted. On closer scrutiny, the managing partner realized that the firm did not have a formal procurement process.

Required:

- a) Suggest with reasons three methods of procurement that can ensure the delivery of quality products and value for money for the firm. (6 marks)
- b) Explain four benefits of an effective inventory management system (4 marks)



## Question 7, July 2019

### QUESTION SEVEN

Arthur apologized to the court one Tuesday morning after arriving late to represent one of the largest clients of Arthur & Artor Advocates firm, one of the largest law firms in Kenya. He needed to print an important document but the firm was in a crisis of printing paper that morning. From the onset of the formation of the firm, the partners had unanimously agreed that they did not need a purchasing department since they were not a manufacturing firm. With the growth of the firm however the rate of consumption of office supplies had overwhelmed the front office manager. The partners have decided to hold a crisis meeting to discuss this challenge and come up with solutions for the future.

- (a) Explain the importance of having a purchasing policy at Arthur & Artor Advocates. (4 marks)
- (b) Explain three main objectives of proper stock control at Arthur & Artor Advocates. (6 marks)



## LECTURE 9: SAFETY, SECURITY AND DISASTER MANAGEMENT



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## INTRODUCTION

- Safety and security go hand-in-hand;
- If there is a gap in security, risk is increased which reduces safety;
- It is the manager's responsibility to provide a safe and secure environment;



## SAFETY

*"...a state in which or a place where you are safe and not in danger or at risk."*

Oxford dictionary



## Types of safety hazards

- Accidents in the office can be caused by:
  - Physical causes
  - Mechanical causes
  - Physiological causes
  - Psychological causes
  
- ❖ **What safety measures can a manager provide?**



## Issues to be considered when developing a safety program

- Investigation process
- Review process
- Employee selection criteria
- Safeguarding hazardous machines
- Staff training and safety awareness programs
- Provision of:
  - insurance cover
  - safe working environment
  - safety rules and regulations
  - safety uniforms and tools
  - first aid kit



## SECURITY

*“...the degree of resistance to our protection from attack, harm or damage.”*

Kimari M.; (2019); Legal Practice Management; Nairobi, Kenya; LawAfrica Publishing (K) Ltd. at page 93

*“Protection of a person, building, organization or country against threats such as crime or attacks by foreign countries.”*

Cambridge Dictionary



## Types of security risks

- failing to check visitors carefully including their luggage;
- failing to check staff when they arrive / leave the office;
- allowing unauthorized people into the office;
- having unguarded entrances and exits;
- having too many workers with access to the cash box and safe;
- leakage of confidential information by employees;
- lack of control over the keys to the stores;
- the continuous threat of terrorism;
- sabotage by employees; and
- cybercrime;



## Security measures that a manager can take

- safeguarding the premises;
- ensuring visitors are checked;
- ensuring staff security;
- ensuring security of information;
- ensuring security of cash.



## IMPORTANCE OF SAFETY AND SECURITY

- Ensuring safety and security goes towards the realization of the mandate of the Constitution of Kenya 2010.
- Articulates the Bill of Rights amongst other articles which are geared towards ensuring safety and security in Kenya.
- Safety and security of a person is a fundamental right enshrined under the Bill of Rights
- Article 41 of the Constitution, dictates an employee's rights to fair labour relations.
- Chapter 14 of the Constitution of Kenya, 2010 deals with national security which provides the foundation of safety and security in Kenya.
- It is important to ensure safety and security of employees within organizations and of organizations as it impacts the socio-economic growth of our society, secures the right to life and the right to human dignity.



## LIMITATIONS ON IMPLEMENTATION OF SAFETY AND SECURITY

- Disconnect between security agencies which creates communication breakdown
- Corruption
- Poor implementation of standards, policies and procedures
- Too many unnecessary laws thus creating duplication and confusion
- Political interference



## SECURITY AND SAFETY OF THE INDIVIDUAL

*“... the promotion of human development and good governance, and, when necessary, the collective use of sanctions and force are central to managing human security. States, international organizations, non-governmental organizations, and other groups in civil society in combination are vital to the prospects of human security”*

Kimari M.; (2019); Legal Practice Management; Nairobi, Kenya; LawAfrica Publishing (K) Ltd. at page 95



- Whenever an individual's safety is threatened, it leads to insecurity.

*"...all people are entitled to 'security of person' this reinforces the freedom from physical harm and psychological harm."*

The Universal Declaration of Human Rights, 1948 (adopted by the General Assembly of the United Nations on 10 Dec. 1948)

*"The protection against internal and external threats to Kenya's territorial integrity and sovereignty, its people, their rights, freedoms, property, peace, stability and prosperity and other national interests."*

Article 238(1) of the Constitution on national security

- National security is vested in the national government.



## SAFETY AND SECURITY IN ORGANIZATIONS

- safety in the workplace;
- security in the workplace;
- job security / job tenure.



## NATIONAL SAFETY AND SECURITY

### Definitions

*"...the preservation of the norms, rules, institutions and values of society"*

Makinda, S.M.; (1998); Sovereignty and Global Security, Security Dialogue; Sage Publications; Vol. 29(3) 29: 281-292 as cited in Osisanya, S.; National Security versus Global Security; UN Chronical available at <https://www.un.org/en/chronicle/article/national-security-versus-global-security>

*"...the actions and policies taken by a nation against both internal and external threats to its borders and economic stability."*

Kimari M.; (2019); Legal Practice Management; Nairobi, Kenya; LawAfrica Publishing (K) Ltd. at page 97



## Why consider national safety and security?

- ensures proper service delivery;
- fosters economic growth;
- ensures private sector development;
- reduces poverty and under development by ensuring contributions to developmental outcomes.



## LAWS GOVERNING OCCUPATIONAL SAFETY AND SECURITY

- **The Constitution of Kenya 2010:**
  - The Constitution provides the platform for the framework for the Employment Act, Work Injuries Benefit Act, Occupational Safety and Health Act.
- **Employment Act, 2007 and Employment (Amendment) Act, 2021:**
  - S 4 - fundamental rights of employees
  - S5 & S6 - sexual harassment and discrimination
  - S27, S30, S31 & S32 - regulation for the hours of work, leave, housing, water, food and provision of medical attention
- **Work Injury Benefits Act, CAP 236 (WIBA):**
  - Any employee who acquires an occupational disease or is involved in a workplace accident that leads to either temporary or permanent disability or death to compensation from the employer.



- **Occupational Safety and Health Act, CAP 514 (OSHA):**
  - Proper safety measures should be in place
  - see: *Mghosi v Gayatri Engineering Works [1981] KLR 163*
- **Kenya Defense Forces Act, No. 25 of 2012:**
  - The Kenya Defense Forces is established under article 241 of the Constitution, 2010 and the Kenya Defense Forces Act.
  - Mandate: -
    - protecting the sovereignty and territorial integrity of Kenya
    - assisting in emergency and disaster management
    - reporting to the national assembly after deployment
    - restoration of peace





- **National Intelligence Service:**
  - See: article 242 of the Constitution
  
- **National Police Service (Amendment) Act, 2014:**
  - See: article 243 of the Constitution of Kenya
  - mandate:-
    - compliance with constitutional standards
    - staff training
    - integrity and professionalism
    - promotion of relationships with the broader society



## INTERNATIONAL SAFETY AND SECURITY

- **United Nations:** Article 1(1) of the United Nations Charter tasks the United Nations with the central mission of maintaining international peace and security, a task that is fulfilled via the United Nations Security Council.
  
- **The International Labor Organization:** ILO sets standards that aid in the protection of employees within the workplace.



## EMERGING ISSUES IN SAFETY AND SECURITY

- cybercrime
- community policing
- protection of vulnerable persons
- piracy
- extradition
- terrorism

## DISASTER MANAGEMENT



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## DEFINITIONS:

*“...a serious disruption of the functioning of a community or society causing widespread human, material, economic or environmental losses which exceed the ability of the affected community / society to cope using its own resources.”*

The Ministry of State for Special Programs, National Policy for Disaster Management in Kenya

*“...the systematic process of using administrative directives, organizations and operational skills and capabilities to implement strategies, policies and improved coping capacities in order to lessen the adverse impacts of hazards and the possibility of disaster.”*

Kimari, M. & Mureithi, C.; Office practice and Management, Artpoint Printing Solutions at page 251 as cited in Kimari M.; (2019); Legal Practice Management; Nairobi, Kenya; LawAfrica Publishing (K) Ltd. at page 119



## CLASSIFICATIONS:

- natural disasters
- man-made disasters



## DISASTER MANAGEMENT

- International Red Cross Society advises organizations coming up with a disaster management plan
- The society has categorized disaster management into four stages:
  - Stage I: discovery and notification
  - Stage II: evaluation and accident control initiation
  - Stage III: clean up and disposal
  - Stage IV: documentation



## DISASTER MANAGEMENT CYCLE

- Stage I: pre-disaster / preparation stage
- Stage II: disaster stage
- Stage III: response stage
- Stage IV: recovery stage



## LAWS GOVERNING DISASTER MANAGEMENT IN KENYA

- Currently, the law is fragmented and uncoordinated.
- With devolution, the mandate for disaster management falls on the county government through the County Governments Act, 2012.



## Statutes:

- **The Constitution of Kenya:** The Constitution is silent on issues of disaster management. However disaster management as a function has been devolved to the county government with the national government having oversight authority
- **Environment Management Coordination Act:** establishes the National Environmental Management Authority (NEMA) which has the main mandate of ensuring safeguards have been implemented when it comes to environmental issues.
- **The Grass Fires Act:** regulates burning of vegetation, constructing and maintaining fire breaks with the aim off stopping or preventing the spread of fire.



- **The Kenya Red Cross Society Act:** allows Kenya Red Cross Society to provide relief to victims of catastrophe and public disasters.
- **The Prevention of Terrorism Act:** regulates punishment and deterrence of perpetrators of terrorist activities.
- **Other Acts of note:**
  - The Water Act
  - The Contingencies Fund and County Emergency Funds Act
  - The Petroleum Act
  - The Explosives Act
  - The Factories Act
  - The Education Act



## Institutional framework:

- National Disaster Executive Committees
- District Disaster Management Committee
- National Disaster Operations Center
- Kenya Food Security Meeting
- National Drought Management Authority
- National Disaster Management Agency
- The National Platform for Disaster Risk Reduction
- National Climate Change Activities Coordinating Committee



## Government Plans, Policies and Organizations

- Sessional Paper No. 10 of 1965 on African Socialism and its Application to Planning in Kenya
- National Food Policies of 1981 and 1994
- Kenya Health Policy, 2012 – 2030
- Poverty Reduction Strategy Paper of 2001 – 2004
- Economic Recovery Strategy for Wealth and Employment Creation of 2003 – 2007
- The National Vision 2030
- The Strategy for the Revitalization of Agriculture 2004 – 2014
- The National Food and Nutrition Security Policy, 2007



## Organizations that make regulations, agreements and guidelines that impact disaster management on risk reduction:

- Hyogo Framework for Action
- Pan-African IDRL Forum
- African Working Group on Disaster Risk Reduction
- African Ministerial Conference on Disaster Risk Reduction
- African Union
- African Risk Capacity
- African Union Commission
- New Partnership for Africa's Development
- Kyoto Protocol
- United Nations Convention to Combat Desertification



## RECOMMENDATIONS

- Establishment of a disaster management body to facilitate faster response to disaster calls;
- Capacity building (infrastructure);
- People empowerment through training;
- Establishment of early warning systems;
- Government symbiosis between county and government plans;
- Implementation of information systems to maximize speed, efficiency and effectiveness of disaster response.



## Question 7, March 2023

### QUESTION SEVEN

Health, safety and security are important aspects that should be observed in an organization. It is one of the most vital factors persons look into in a work place before joining the firm. It is the duty and obligation of a firm to provide a secure and safe working environment to its employees.

- a) As a proprietor of Kimka and Kanyoni advocates, explain four (4) importance of health, security and safety measures in the firm. (4 marks)
- b) Discrimination at work place has become rampant at almost all business set-ups. As an officer in a law firm, discuss three types of discrimination at work place. (6 marks)





## Question 7, October 2022

### QUESTION SEVEN

Mutune & Mbithi advocates is a large law firm which recently changed its location to the upper hill area of the capital city of Kenya - Nairobi, in a newly constructed building. The law firm has occupied seven floors of the 12 floor building. Barely three months into the new premises, disaster struck. The building caught fire due to an electric fault and by the time the fire was put off, majority of the firm's property and records had been damaged. Mutune, one of the partners gave you a task as one of the employees to generate a report on the preparedness of the firm on disaster management. He further required you to include in the report other health and safety measures that the firm needed to put in place to mitigate against future occurrence of risk.

- a) Suggest to the firm actions they can take in order to reduce or avoid the potential losses from a risk occurrence and ensure there is business continuity. (6 marks)
- b) Suggest four health and safety measures that the firm can adopt to mitigate the loss in case of a disaster. (4 marks)



## Question 6, November 2019

### QUESTION SIX

Kamau and Muigai have been operating a law firm in Nairobi for the last three years. The law firm office is located in a popular mall at the heart of the city. Recently a threat was reported of unknown gun men who were forcing their way into the mall. This prompted a discussion between Kamau and Muigai on safety measures that they needed to put in place to secure their law firm as well as a need for a disaster management plan in order to deal with any potential disaster that would likely compromise their going concern.

- (a) Explain five health and safety measures that Kamau and Muigai need to put in place to secure their law firm. (5 marks)
- (b) Discuss two examples of disasters that are likely to affect a law firm. (2 marks)



# LECTURE 10: SEXUAL HARASSMENT AND DISCRIMINATION AT THE WORKPLACE



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# SEXUAL HARASSMENT



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## Depp v. Heard

<https://www.youtube.com/watch?v=1akm3Bql82I>



## Kenya's Hidden Epidemic - BBC Africa Eye documentary

<https://www.youtube.com/watch?v=8pwWiz8jJfY>



## Sexual abuse on Kenyan tea farms uncovered - BBC News

<https://www.youtube.com/watch?v=zHboEI1vvZ4>



## Anita Hill Statement (11th October 1991) alleging sexual harassment by Clarence Thomas while he was her supervisor at the Department of Education and the EEOC

<https://www.youtube.com/watch?v=wWD1Cce2AUo>



➤ It is a fallacy to say that only female employees suffer from sexual harassment, male employees can also be sexually harassed.

*“Sexual harassment may occur between persons of the opposite sex or same sex. Both male and females can either be victims or the offenders.”*

United Nations Secretary General’s Bulletin on prohibition of Discrimination, Harassment, including Sexual Harassment and Abuse of Authority

➤ Employers need to:

- ensure strict implementation of the mandatory legal provisions that curb sexual harassment.
- implement policies and guidelines.



## Definitions

*“Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that tends to create a hostile or offensive work environment.”*

legal dictionary

*“A form of discrimination that violates Title VII of the Civil Rights Act of 1964, which prohibits unfair employment practices and discrimination based on sex (including pregnancy, gender identity and sexual orientation), age (40 or older), color, national origin, race, religion, disability or genetic information. Sexual harassment specifically consists of unwelcome conduct and behavior of a sexual nature that creates an uncomfortable and often hostile work environment.”*

Equal Employment Opportunity Commission



*“(1) Any person, who being in a position of authority, or holding a public office, who persistently makes any sexual advances or requests which he or she knows, or has reasonable grounds to know, are unwelcome, is guilty of the offence of sexual harassment and shall be liable to imprisonment for a term of not less than three years or to a fine of not less than one hundred thousand shillings or to both.*

*(2) It shall be necessary to prove in a charge of sexual harassment that-*

*(a) the submission or rejection by the person to whom advances or requests are made is intended to be used as basis of employment or of a decision relevant to the career of the alleged victim or of a service due to a member of the public in the case of a public officer;*

*(b) such advances or requests have the effect of interfering with the alleged victim's work or educational performance or creating an offensive working or learning environment for the alleged victim or denial of a service due to the member of the public from a public office.”*

Section 23, Sexual Offences Act



➤ Further definitions have been provided by: -

- Section 6(1) of the Employment Act
- Law Society of Kenya, Draft Sexual Harassment and Bullying Policy 2019
- The Committee Convention Concerning Discrimination in Respect of Employment and Occupation, 1958 which lists examples of sexual harassment that may supplement Section 6 of the Employment Act .
- The 1988 General Survey of the Committee of Experts of the International Labour Organisation, conducted on the Application of ILO Convention 111 [Convention Concerning Discrimination in Respect of Employment and Occupation, 1958]
- P O v. Board of Trustees, A F & 2 others [2014] eKLR etc.



## FORMS OF SEXUAL HARASSMENT

### **Quid pro quo sexual harassment**

- Section 6 of the Employment Act.
- Meritor Savings Bank v. Vinson (1986) 477 US 62.
- P O v Board of Trustees, A F & 2 others [2014] eKLR
- Articles 1, 3 and 5 of the 1948 UN Universal Declaration of Human Rights
- An Outline of Recent Developments Concerning Equality Issues in Employment for Labour Court Judges and Assessors- [ILO 1997]



### **Hostile working environment in which the conduct creates conditions that are intimidating or humiliating for the victim.**

- To raise an issue of sexual harassment under this sub-heading, one must prove:
  - Harassment must be severe.
  - Bundy v Jackson 641 F.2d 934 (D.C. Cir. 1981)
  - Harassment must create substantial interference.
  - Harris v Forklift Systems Inc., 510 U.S. 17 (1993).
  - 'Reasonable woman' test is to be applied.
  - Robinson v. Jacksonville Shipyards (1991) 1486 M.D. Fla.



## Same-Sex Sexual Harassment.

- Definition of sexual harassment provided by the United Nations Secretary General's Bulletin on prohibition of discrimination, harassment, including sexual harassment and abuse of authority
- *Oncale v. Sundowner Offshore Services Inc* 523 U.S. 75 (1998)
- *Leonid Lenny Melnychenko & others 1 v. 84 lumber Company* 676 US N.E. 2ed. 45 (1997).



## Behaviour that qualifies as sexual harassment

- **PHYSICAL:** Physical violence, touching, unnecessary close proximity
- **VERBAL:** Comments and questions about appearance, life-style, sexual orientation, offensive phone calls
- **NON-VERBAL:** Whistling, sexually-suggestive gestures, display of sexual materials

❖ *What are some examples of sexual harassment?*





## CAUSES OF SEXUAL HARASSMENT

- socialization
- power games
- moral values, divorce and cultural differences
- credibility and victim blaming
- aggressiveness and bravado
- lack of company policy



## EFFECTS OF SEXUAL HARASSMENT

- emotional issues
- physical issues
- professional problems
- financial problems
- decreased company productivity
- lawsuits
- tarnished reputations



## LEGAL FRAMEWORK GOVERNING SEXUAL HARASSMENT

### Constitution of Kenya, 2010

- Chapter 4 of The Constitution of Kenya guarantees rights and freedoms of every person in Kenya
- Articles 27, 28, 29, 41, 43 and 47 of the Constitution.

### Sexual Offences Act

- The Sexual Offences Act is very clear in its definition of what constitutes sexual harassment.
- Scrutiny of section 23(2) imposes the burden of proof on the alleged victim. What significance does this have?
- See: section 5 of the Sexual Offences Act



### The Sexual Offences Rules of Court 2014

- These rules provide for special arrangements for vulnerable witnesses
  - A vulnerable witness is a child, an elderly person or a person living with disability who would normally need support. The court will consider the age of the survivor.
  - The court may permit a vulnerable witness to give evidence with special arrangements if that vulnerable witness informs the court of the desire to do so.
  - The court should seek the opinion of a vulnerable witness about any special arrangement that they may need to be able to testify.
  - The vulnerable witness may be accompanied by the parents.
  - In the alternative the courts at the request of the prosecutor may ask the court to appoint an intermediary to assess such a witness
  - The intermediary may be any person who has the capacity to represent such a person.
  - The intermediary may accompany such a witness when they are recording a statement in a case and during the hearing.



## Employment Act

- Section 6 of the Employment Act is very clear in its definition of sexual harassment.
- Employers need to ensure that adequate policies and guidelines are drafted and implemented.
  - The International Labour Organization sample policy document.
  - CAS v CS Ltd [2016] eKLR - the court found that the employee had been summarily dismissed in contravention of sections 42(1), 44(3) & (4) and 45(1) of the Employment Act. The claimant was awarded compensation of approximately KShs. 422,726.85/=.
  - SRM v GSS (K) Limited & another [2017] eKLR where the court held that the process outlined within the business ethics policy was not followed by the employer. Justice Abuodha found that the employee had been unfairly dismissed and awarded her compensation of Kshs 5,928,000/=.



## Victim Protection Act, 2014

- A victim under this Act means any natural person who suffers injury, loss or damage as a consequence of an offence.
- Every victim has a right to privacy, confidentiality, security and protection.

## Penal Code

- The Penal Code of Kenya is the main legislation in Kenya that provides for criminal offences. In relation to GBV, it outlines various offences.



### ➤ Overview of the Penal Code:

- Strengths:
  - Defines various forms of violence: Sections cover assault, causing bodily harm, rape and indecent assault.
  - Prescribes penalties: Offenses carry imprisonment and/or fines, potentially deterring perpetrators.
  - Provides for specific offences touching on GBV directly as well as indirectly.
- Limitations:
  - Limited scope: Many forms of GBV, particularly emotional and economic abuse, are not explicitly defined or addressed.
  - Discretionary sentencing: Judges have wide discretion in sentencing, leading to inconsistency and potentially lenient penalties.
  - Burden of proof on survivors: Proving GBV in court can be challenging, placing the burden on victims.
  - Cultural interpretations: Societal norms and traditions sometimes influence interpretations of assault and violence, impacting access to justice.



### ➤ Offences that touch on GBV either directly or indirectly include:

- Section 202 – Manslaughter
- Section 203 – Murder
- Section 250 - Common assault
- Section 251 - Assault causing actual bodily harm
- Section 251A - Insulting modesty by forcible stripping
- Section 252 - Assault on persons protecting wreck
- Section 253 - Other assaults



## Computer Misuse and Cybercrimes Act, CAP 79C

- This Act targets computer misuse and cybercrimes. Offenders can be convicted or fined or both.
- Section 27 criminalizes cyber harassment.
- Section 37 criminalizes the distribution of obscene or intimate images.

## National Cohesion and Integration Act of 2008

- Section 6 defines harassment on the basis of ethnicity to include instances where the perpetrator; on ethnic grounds; engages in unwanted conduct which has the purpose or effect of:
  - Violating that other person's dignity; or
  - Creating an intimidating, hostile, degrading, humiliating or offensive environment for a survivor.



## DISCRIMINATION



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## Definitions

*“To ‘discriminate’ against someone means to treat that person differently, or less favourably, for some reason..... employment discrimination because of your race, colour, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, disability, age (age 40 or older), or genetic information.”*

The United States Equal Employment Opportunity Commission



➤ *“distinction, exclusion or preference ... which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.”*

The International Labour Organization

➤ ILO provides further criteria that is incumbent in workplace discrimination, to wit when a person is treated less favorably than others because of characteristics that are not related to the person's competencies or the inherent requirements of the job.

➤ Also see section 3 of the National Cohesion and Integration Act.



## MANIFESTATIONS AND TYPES OF DISCRIMINATION

### Direct or indirect

- Direct discrimination is the treatment of a person less favourably than others in similar circumstances.
  - R. v. Birmingham CC ex parte EOC [1989] AC 1155; [1989] IRLR 173; [1989] AC 1155; 2 WLR 520; 1 All ER 769
- Indirect discrimination is indiscernible and often times inadvertent. It occurs when a specific practice, criterion or norm disadvantages a specific class of individuals.
  - David Wanjau Muhoro v. Ol Pajeta Ranching Ltd [2014] eKLR.



### Positive or negative

- Negative discrimination is unfavorable to a specific class of persons
- Positive discrimination is treatment of a specific class of people more favourably than others also known as affirmative action
  - Article 27(8) of the Constitution.
  - Mary Wangui Gakunju v. City Council of Nairobi [2013] eKLR

❖ *Why try and curb discrimination in the work-place?*



## Types of discrimination.

- Race and / or colour:
  - Section 5(3) of the Employment Act
  - Articles 22 and 23 of the Constitution 2010.
  - David Wanjau Muhoro v. Ol Pejeta Ranching Limited Industrial Court Case No. 1823 of 2011.
  - Charles Muthama v. Wananchi Group (K) Limited Industrial Court Case No. 1343 of 2010. Dr. Samson Gwer and 5 others v. Kenya Medical Research Institute & 3 others Industrial Court Petition No. 21 of 201.
  
- Age
  - Kinyua Felix v Ministry of Education & 2 others [2021] eKLR



- HIV / AIDS status
  - BNN v Christopher Mutua Musyoki [2019] eKLR
  - SNW v Asha Gulam [2019] eKLR
  - VMK v Catholic University of Eastern Africa [2013] Eklr
  
- Disability
  - Section 2, 12(1) & 15(1) of the Persons with Disabilities Act
  - Article 27 & 54 of the Constitution
  - Duncan Otieno Waga v Attorney General [2014] eKLR
  
- Sex:
  - Articles 27(1), (3) & (5) of the Constitution
  - section 5(3) of the Employment Act
  - Jane Wairimu Macharia v. Mugo Waweru and Associates [2012] eKLR.





- Nationality:
  - Article 6 of the Migration for Employment Convention (Revised), 1949 (No. 97)
- Sexual Orientation:
  - Section 165 of the Penal Code?
  - EG & 7 others v Attorney General; DKM & 9 others (Interested Parties); Katiba Institute & another (Amicus Curiae) Petition 150 & 234 of 2016 (Consolidated).
- Workers with family responsibility:
  - VMK v Catholic University of Eastern Africa [2013] eKLR,
  - DMV v. Bank of Africa Kenya Limited [2013] eKLR,
  - The United Nations Convention on the Elimination of All Forms of Discrimination Against Women (1979)



- Trade union membership and/or activities:
    - Article 36 of the Constitution 2010
  - Religion:
    - Rose Wangui Mambo v. Limuru Country Club [2014] Eklr, Constitutional Petition No. 160 of 2013.
    - Article 36 of the Constitution
  - Political opinion
    - Articles 33, 36 and 38 of the Constitution 2010.
  - National extraction
- ❖ *Where does discrimination occur?*



## HOW TO ADDRESS DISCRIMINATION IN THE WORK PLACE; LEGAL AND POLICY FRAMEWORK

### INTERNATIONAL LEGAL FRAMEWORK

- Kenya has ratified to numerous international and regional treaties:
  - United Nations Treaties
  - International Labour Organization (ILO) Treaties
  - Regional Treaties



### United Nations Treaties:

- Universal Declaration of Human Rights e.g. Articles 1 & 23 (2)
- International Covenant on Civil and Political Rights e.g. Article 26
- International Covenant on Economic, Social, and Cultural Rights (1966) e.g. Article 7
- International Convention On the Elimination of All Forms of Racial Discrimination (1965) e.g. Article 5
- International Convention On the Elimination of All Forms of Discrimination Against Women (1979) e.g. Article 11
- International Convention On the Rights of Persons with Disabilities (2006) e.g. Article 27.



### **International Labour Organization (ILO) Treaties:**

- The Equal Remuneration Convention (1951), No. 100 e.g. Article 1
- The Discrimination (Employment and Occupation) Convention (1958), No. 111



### **Regional Treaties:**

- These have been adopted under the auspices of the African Union. They include: -
- African Union Youth Charter (2006)
- Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (2005)
- Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and People's Rights (1998)
- African Charter on Human and People's Rights (1981)
- African Union Cultural Charter for Africa (1976)



## NATIONAL LAWS

### **The Constitution of Kenya, 2010**

- Preamble: lists equality as one of the 6 essential values.
- Article 10: National values and principles of governance.
- Article 20(4): Promotes equality and equity.
- Article 21(3): duty for State actors to address the needs on vulnerable people in society.
- Article 27: Provides for equal protection before the law.
- Article 33: Freedom of expression
- Article 54: Rights of disabled persons
- Article 55: Youth rights (between ages 15 and 35)
- Articles 22 and 23: Procedural aspects for instituting claims under the Bill of Rights



### **National Cohesion and Integration Act of 2008**

- This Act encourages national cohesion and integration by outlawing discrimination on ethnic grounds.
- Section 3
- Section 4 criminalizes discrimination by way of victimization.
- Section 6 defines harassment on the basis of ethnicity to include instances where the perpetrator; on ethnic grounds; engages in unwanted conduct which has the purpose or effect of:
  - violating that other person's dignity; or
  - creating an intimidating, hostile, degrading, humiliating or offensive environment for a survivor.
- Section 7



## **HIV and AIDS Prevention and Control Act 2006**

- Section 8 speaks to collaboration of local Authorities with the Ministry in conducting educational and information campaigns on HIV and AIDS.
- Section 13 prohibits and criminalizes compulsory HIV testing of survivors. The section recognizes that no one can compel another to undergo an HIV test as a precondition to, or for the continued enjoyment of employment
- Section 31(1)



- Persons with Disabilities Act; Section 15(1)
- The Employment Act; Section 5(3)
- The Sexual Offences Act, (2006); Section 23
- Policy Framework
  - Kenya Vision 2030
  - The National Policy on Gender and Development
  - Public Sector Workplace Policy on HIV and Aids



## Question 6, October 2022

### SECTION C: OFFICE PRACTICE

#### QUESTION SIX

Kairo Tea Plantation Ltd has big agricultural land stretching into 300 acres of land, three quarters of which is covered with tea plants. The firm employs over 1500 workers. In the year 2021, the managers of the plantation received many complaints from female workers alleging sexual harassment from their male co-workers and for a few cases, among the male supervisors. The management however took a defensive rather than a proactive approach in addressing the allegations. A local media house reported the incidence and highlighted that the firm did not have structures to prevent and address sexual harassment. When the media house probed the management for a comment, the spokesperson of the plantation said that while they did receive many reported cases of harassment and coercion, their own investigation found that most of these accusations were unfounded and malicious.

- a) Suggest to the firm two forms of sexual harassments that they needed to bear in mind as they carry out their investigations. (4marks)
- b) Recommend to the firm three steps they need to take in order to curb sexual harassment at the firm. (6marks)



## Question 6, July 2019

#### QUESTION SIX

May works for a large law firm employing over 3000 people both male and female in the capital city of the country of Aboria. She has confided in you, her lawyer, about the sexual advances she has been enduring from her immediate boss and she feels she does not have a way out because she desperately needs her job to support her siblings' education needs. You have probed deeper to understand the situation she is in and ascertain her best cause of action.

- (a) Explain two forms of sexual harassment that you may need to consider. (4 marks)
- (b) Explain three factors that you need to consider to ascertain that May works in a hostile work environment caused by sexual harassment. (6 marks)