

NR & CO.

QUARTERLY

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EDITOR'S NOTE

Dear Reader,

How time flies, just yesterday we were 2-3 feet tall, building castles in the air, believing all to be possible, believing that we could be anything, believing that we are enough, running through fields with our hands stretched out - feeling joy as the crop brushed against our fingertips, with the sun on our face and the wind in our hair.

Oh... and how we shared that love; neither creed, affiliation nor origin matters to tots.

Nonetheless, gone are the days of young. One can only hope, nay pray that there remains remnants of genuineness, generosity and humanity within us. One can only pray that such virtues are revived and consume one's heart, one's soul and one's being especially, when one is or when one witnesses another backed into a corner; torn into so many pieces that it appears futile to complete the puzzle and be whole.

It is apparent that we are all going through tough times; but it is WE, not he or she, WE. As such it is not a story of being trapped in one's head or being trapped in a barren land with our bodies crouched over our lost hopes and dreams. It is more of a story of finding the courage to lift our heads, be empathic and kind to others and realise that we are just vessels with an amazing potter and that if only we remembered to look beyond our differences, we'd realise that we really are fighting for the same thing. Remember, the scars we carry can only be described as badges of honour; they tell tales of our victories.

One might ask, how does the foregoing fit into this instrument we dub the 'Newsletter'? and to that we would respond, 'how does it not?'. Accordingly, for this second quarter Newsletter, we explore:

- the elements of the long-stretching road of learning
- the parameters of handing out personal data to third parties in job hunting
- the provision of explicit ratios for artistes with ring-back tunes in revenue sharing
- the right to be respected and simply feel safe whilst working
- the protection of the principled in capital markets in relation to whistleblowing
- the use of images in advertising and economic zoning

Have a lovely read!

Ruth Regero
Editor



The Firm

Year in, year out the Firm is blessed to interact with different sets of students, all undertaking their pupillage whilst eagerly awaiting their Admission to the Bar. At the end of the day, the wise amongst them, [happens to be most of them], realise that in reality, being admitted to the Bar is not the price, no, it is just a technicality. A procedural technicality to be celebrated but nonetheless, a technicality. The real price lies deep within oneself; it is the realization of who you are, what you are gifted in and how you can apply your gift and be of service to others.

Currently, there is in excess of 17,000 advocates in practice in Kenya but what sets one apart? It is not the fancy suits or the fancy language or the number of years one has practiced or even the number and type of clients. No, it is much simpler – it is the application of knowledge and experience acquired, the realization that one is not all-knowing, the willingness to learn, the willingness to listen, the strength to stand for what is right and speak with conviction and of course, the belief in oneself.

This 2nd quarter, we hear from the 2021/22 cohort of pupils as they reflect on their time at the Firm:



"At NR&Co, I have learnt to let go of the idea that anything is 'impossible', and that my attitude towards any challenges I encounter determines to a great extent how well I overcome them. Indeed, the training I have received has been the best any young lawyer starting out in their career could ask for."

~ Naomi Ngugi

"My experience at NR & Co. was wholesome in every aspect. I particularly loved that there was rotation in the two departments. Every assignment was unique & I'm grateful that our opinions were important as well. There was synergy as everyone in the Firm was always willing to assist and I must also say that the Pupil hour sessions were quite empowering."

~ Maryanne Awiti Ochieng



"During my time at the Firm I was exposed to career growth and providing timely solution for upcoming market needs at a remarkable tempo. This was achieved while utilizing available resources and sharing inspired visions with others in a team spirit."

~ Nondi Jimmy

"My Pupillage experience at NR & Co. was nothing short of extraordinary. It opened my eyes to the practicalities of being an Advocate, and the intricacies of an Advocate's day-to-day duties. We were very fortunate to work in a supportive environment where everyone was willing to help ease our journey through Pupillage. I am grateful for the opportunity that I was given to be a part of the Firm."

~ Wangu Gatonye



"The indispensable skills inculcated over the 1-year period can only equate to a 5-year period within the employment realm. It was interesting to learn that the Firm focused on individual value addition through proper apprenticeship as opposed to the conventional occurrence of paper-pushing."

~ Edwin Mwangi

"The hands-on experience and mentorship I received in the Firm was invaluable. I was given an opportunity to have a meaningful contribution when working on cases and offering my opinions on various matters. I am grateful to the entire NR&Co. team who either directly or indirectly have given me skills and practical knowledge I will use, potentially, throughout my career."

~ Ida Wambaa





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Legislative UPDATE

The 2nd quarter of this year has seen a number of legislation being enacted and/ or published. One such legislation is the Employment (Amendment) Act, 2022 which addresses requests by employers for clearance certificates from job seekers.

There is also the Finance Act, 2022 which undoubtedly has attracted major public scrutiny and the Copyright (Amendment) Act, 2022 which prescribes the formula for sharing of revenue in respect of ring back tunes. We look into the aforesaid Acts hereunder as well as one key regulation on whistleblowing for misconduct under the Capital Markets Act.

The Employment (Amendment) Act, 2022

The Employment (Amendment) Act, 2022 (“the Amendment Act”) was assented to on 4th April, 2022 and came into force on 22nd April, 2022.

It seeks to remove the requirement for those seeking employment to obtain and provide potential employers with clearance or compliance certificates. The Amendment Act particularly provides that: ‘an employer shall not require an employee to submit any clearance or compliance certificate unless such employer intends to enter into a contract of service with the employee’ [Emphasis ours].

Employers can thus only require an applicant to provide clearance or compliance certificates if they intend to enter into a contract of service with such applicant. Additionally, where such applicant does not satisfy the requirements, an employer can withdraw an offer of contract of service.

The foregoing however does not apply to those applying for state office positions. Accordingly, applicants for state office positions can be requested to provide clearance or compliance certificates in the recruitment or approval process, as when required to do so.

Additionally, the Amendment Act stipulates that public entities should not charge fees for the issuance of a clearance or compliance certificate if such certificate is requested for by virtue of the provisions of the Amendment Act. Public entities are further mandated to issue or reject the application for such certificates within seven (7) days of receipt of an application

On a separate note, it is vital to mention the Employment (Amendment) Bill, 2021, which, as of 23rd June, 2022, is awaiting the Committee of the Whole Stage.

The Bill seeks to address employee burnout and provide for employees’ right to disconnect from their employer outside of working hours.

Finance Act, 2022

The Finance Act, 2022 was assented to on or about 21st June, 2022. It introduces amendments to various laws, including the Income Tax Act (Cap 470) and Value Added Tax Act, 2013.

Some of the salient amendments to the Income Tax Act include (a) increasing of the capital gains tax rate from 5% to 15% and (b) provision of a withholding tax rate of 15% on gains by a non-resident from financial derivatives [by virtue of a financial derivative contract with a resident]. The said amendments are set out to be effective 1st January, 2023.

In respect of the Value Added Tax Act, 2013, the Finance Act offers several changes mainly aimed at providing clarity to online transactions subject to VAT. Accordingly, the Finance Act amends the definition of a digital marketplace by deleting the expression “sell or provide services, goods or other property” and substituting it with the words “sell goods or provide services” so as to read – “an online or electronic platform which enables users to sell goods or provide services”.

The Finance Act further amends the VAT Act by providing that the registration threshold provisions (annual turnover of Kshs.5,000,000.00) shall not apply to persons supplying imported digital services over the internet or an electronic network or through a digital marketplace.

Since the Finance Act came into effect on July 1st 2022, there has been a move by a Nairobi lawyer Mwaura Kabata to stop the implementation of the Act, by stopping the government from increasing excise duty on products including beer and alcoholic drinks. The case is still ongoing and awaiting the verdict of the Court on the same.

(Consolidated Petition No. 24, E403 and E491 of 2021.)

The Copyright (Amendment) Act, 2022

The Copyright (Amendment) Bill 2021 was published on or about October 2021 and assented to in April, 2022. The main objective of the Bill was provision of a fair formula for sharing of revenue from ring back tunes between the artists, copyright holders and telecommunication companies.

Prior to the Bill, revenues obtained from ring back tunes were reported to be shared in the following way: artistes would receive 16% of the revenue generated from their Skiza tune (ring back tunes) whilst 25% would go to the Kenya Revenue Authority and 51% retained by the telecommunication service provider.

By virtue of commencement of the Copyright (Amendment) Act, 2022 [commenced on 22nd April, 2022], there is now an express statutory provision that parties shall share revenue generated from sale of ring back tunes, net of taxes, in the following manner: -

- 8.5% - the premium rate service provider;
- 39.5% - the telecommunication operator;
- 52% or more - the artiste or owner of the copyright

Additionally, telecommunication operators are now mandated to directly remit to the artiste or owner of the copyright the ring back tune net revenue share allocated to them.

The Act further establishes a National Rights Registry (NRR), which is set out as an office within the Kenya Copyright Board. Functions of the NRR include inter alia, digital registration of rights holders and copyright works, authentication and authorisation of consumers and copyright works as well as media monitoring of registered copyright works.

The Capital Markets (Whistle-blower) Regulations, 2022

The Capital Markets (Whistle-blower) Regulations, 2022 (hereinafter the "Regulations") were published vide Legal Notice No. 65 of 2022. They seek to primarily provide for: reportable misconduct, action after reporting and rewards for whistle-blowers. Accordingly, the Regulations set out that reportable misconduct includes: -

- a) failure to comply with legal and regulatory obligations as required under the Capital Markets Act and Regulations thereunder;
- b) offences under the Capital Markets Act and Regulations thereunder; and
- c) capital markets fraud

They further define a whistle blower as 'any person who provides to the Capital Markets Authority (the "CMA"), either by themselves or acting jointly with another person, new and timely information relating to misconduct or contravention of laws relating to securities leading to the recovery of penalties or illicit gains.'

The information reported thus has to be (1) new and (2) timely. To this end and perhaps to provide clarity, the Regulations go further and describe 'new and timely information' as 'information that is not already known to CMA from any other source and which the whistle-blower obtained from their independent knowledge, experience, communication or observation during employment, business or social interactions'.

In reporting misconduct, a whistle-blower is required to act in good faith, have reasonable grounds for believing the alleged misconduct has or will occur and acknowledge awareness that it is an offence to submit false information.

After receiving a report, the CMA is then required, amongst other procedures, to take reasonable steps to maintain the confidentiality of the whistle-blower's identity. CMA is further required to exercise its discretion when determining the necessary information to accomplish the purposes of the Regulations and to protect investors.

Additionally, it is expressly set out that a confidentiality agreement in a whistle-blower's employment contract shall not prevent an employee from reporting sensitive information obtained during their employment to CMA.

Rewards

Rewards are set out to be payable upon receipt by CMA of the recovered sums of money and the Regulations actually provide a statutory form for application for a reward.

In echoing the Capital Markets Act, the Regulations provide that rewards payable shall be 3% of the amount recovered subject to a maximum of Kenya Shillings Five Million (Kshs.5,000,000.00).

Rewards are however not payable to a whistle-blower who: -

- a) at the time they acquired the original information submitted to CMA, they were a member, officer or employee of any government or self-regulatory entity under an obligation to report such misconduct;
- b) is convicted of a criminal misconduct or offence related to a judicial or administrative action for which the whistle-blower could otherwise receive a reward under the Regulations; or
- c) gains the information through the performance of an audit of financial statements required under capital markets laws.

case Highlights

This 2nd quarter, we look into employment matters, specifically those dealing with sexual harassment and employment policies.

Ooko & another v SRM & 3 others (Civil Appeal 195 & 197 of 2019 (Consolidated)) [2022] KECA 44 (KLR) (Civ) (4 February 2022) (Judgment)

Dominic Ooko and G4S Security Services (K) Ltd were both sued by SRM (pseudonymised reference) on the basis of unlawful termination after making of a claim of sexual harassment and discrimination.

The Employment and Labour Relations Court (ELRC) at Nairobi delivered a judgment on 28th April, 2017 in favour of SRM for Kshs.5,928,000.00 as damages for unlawful dismissal against Ooko & G4S jointly and severally. The ELRC also ordered Ooko & G4S to pay the costs of the suit.

Disgruntled with the ELRC judgment, Ooko & G4S lodged an appeal on the grounds that: -

- findings by the ELRC were not supported by sufficient and cogent evidence;
- the claim by the SRM of sexual harassment was not proved to the required standard; and
- the award of damages was manifestly excessive and contrary to decisions of the instant court on the appropriate measure of damages.

Ooko also filed a cross-appeal seeking review of the quantum of damages.

The Court analysed what constituted sexual harassment and determined that an employee is sexually harassed if an employer or a co-worker directly or indirectly requests an employee for sexual intercourse, sexual contract or any other form of sexual activity that contained or implied promise of preferential treatment in employment or threat of detrimental treatment. Sexual harassment could also be found where an employer or co-worker showed physical behaviour of a sexual nature which directly or indirectly subjected the recipient employee to unwelcome or offensive behaviour.

The Court further established that the standard of proof to determine sexual harassment was to be judged from the perspective of a reasonable person in the complainant's position, considering all the circumstances. This raised the question of whether the individual victim had made it clear that they found the conduct unacceptable and it was held that such question 'was not what the court or tribunal would or would not find offensive, but whether the individual victim had made it clear that he or she found the conduct unacceptable'.

Upon receipt of a sexual harassment complaint, a positive obligation fell on the employer to follow through with the complaint and ensure that sexual harassment was eradicated, redressed and does not occur again. If harassment continues even after a formal warning has been given to the harasser, the employer has to follow up that warning with a further disciplinary action.

In determining the appeal, the Court concluded that the employer's reasons for termination were outweighed by the harassment claim and as such, the subsequent termination was invalid. In arriving at this conclusion, the Court took specific note of the fact that the claim of poor performance only came after the complainant had made their claim of sexual harassment.

This case offers clarity on the actions to be undertaken by an employer upon receipt of a sexual harassment complaint. Employers must have in place policies of addressing such a complaint seriously and taking action to stop or dissuade such behaviour to maintain a good work environment for all.

Oyatsi v Judicial Service Commission (Petition E111 of 2021) [2022] KEELRC 3 (KLR) (Employment and Labour) (10 March 2022) (Judgment)

The facts of this case are that the Petitioner (Oyatsi) was appointed as Director of Finance in acting capacity for the Respondent. She served in the position in acting capacity for a period of six (6) years and as such, the Petitioner was unable to receive the full salary and benefits of the position. She later sued after not having been confirmed to the position or given any reasons thereof.

The Respondent contended that the Judicial Service Act allowed the judiciary to hire employees in acting capacity. The Judiciary Human Resource Policies and Procedures Manual however detailed the procedure to be used to determine how an employee should be treated. According to the Human Resource Policy and Procedures Manual, the Petitioner ought to have been confirmed to the position after eighteen (18) months.

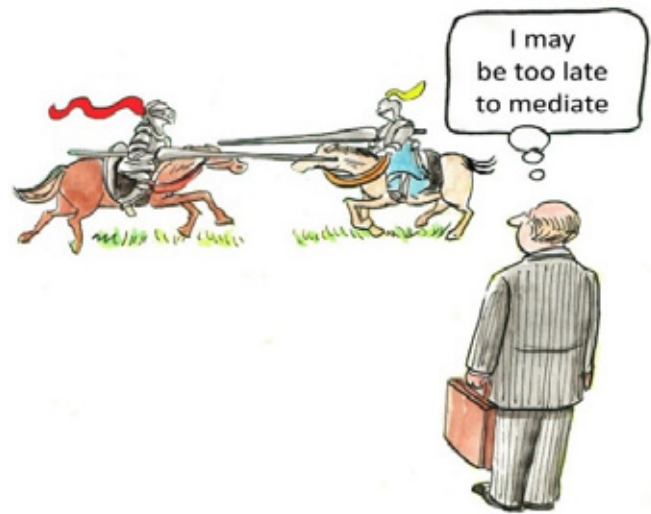
The Court determined that the Policies and Procedures Manual was an employment policy or labour practice recognized under the Employment Act, 2007. The manual was an internal mandatory guide, with statutory underpinnings and had the underpinnings of good corporate governance in a credible organization. The Respondent was therefore bound by its Human Resource Policies and Procedures Manual; in the same way that its employees were bound to abide by its terms in their daily work disposition and behaviour. Therefore, anyone who fell short of the policies and procedures would be subject to disciplinary action.

The Court therefore determined that the provisions of the Judiciary Human Resource Policies and Procedures Manual were impliedly incorporated in the contractual terms and conditions of service of all judiciary staff, including the Petitioner. The Court allowed the Petition on this basis and granted the Petitioner the salary she would have accrued as the director of finance after the lapse of the 18 months as provided for in the Human Resource Policies and Procedures Manual. In summary, the Court concluded that human resource policies and manuals form part of one's employment contract.

iNTERLUDE

A young lawyer, defending a businessman in a lawsuit, feared he was losing the case and asked his senior partner if he should send a box of cigars to the judge to carry favour. The senior partner was horrified. "The judge is an honourable man," he said, "If you do that, I guarantee you'll lose the case!"

Eventually, the judge ruled in the young lawyer's favour. "Aren't you glad you didn't send those cigars?" the senior partner asked. "Oh, I did send them," the younger lawyer replied. "I just enclosed my opponent's business card with them."



A surgeon, an architect and a lawyer are having a heated discussion at a local pub about which of their professions is actually the oldest. The surgeon says: "Surgery is the oldest profession. God took a rib from Adam to create Eve and you can't go back further than that."

The architect says: "Hold on! In fact, God was the first architect when he created the world out of chaos in 7 days, and you can't go back any further than THAT!"

The lawyer smiles and says: "Gentlemen, Gentlemen...who do you think created the CHAOS??!!"

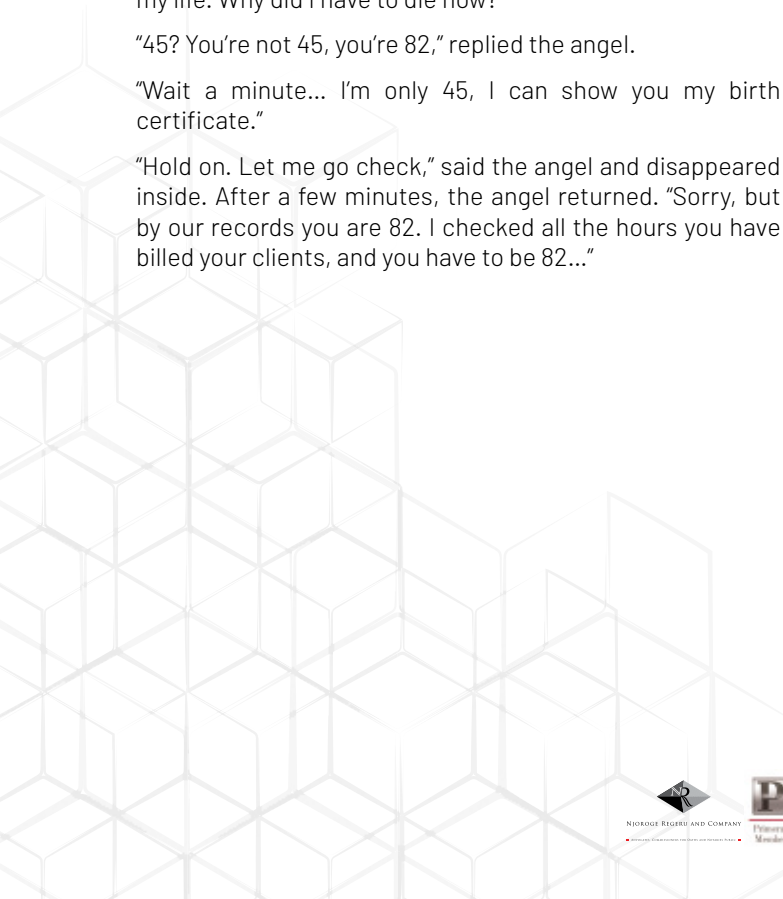
A lawyer suddenly died aged 45. He got to the gates of Heaven, and the angel standing there said, "We've been waiting a long time for you."

"What do you mean," he replied, "I'm only 45, in the prime of my life. Why did I have to die now?"

"45? You're not 45, you're 82," replied the angel.

"Wait a minute... I'm only 45, I can show you my birth certificate."

"Hold on. Let me go check," said the angel and disappeared inside. After a few minutes, the angel returned. "Sorry, but by our records you are 82. I checked all the hours you have billed your clients, and you have to be 82..."





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Is Data Protection the Breakthrough for 'Image Rights' Protection in Kenya?

The right of an individual to control the commercial use of their name, image, likeness or other unequivocal aspects of their identity or persona can collectively be referred to as 'image rights'. It is also sometimes referred to as the 'right of publicity' or 'personality right' and it extends to the protection against unauthorised publication of one's private information.

Image rights protection is seen in some jurisdictions as a combination of the right to publicity and the right to privacy. As a publicity right, it is the legal right to control commercial uses of one's identity or persona which has been classified as a property right. As a privacy right it is the right of the individual to have a private life, and protects dignitary interests.

In this article we interrogate how image rights are protected in Kenya and outline the legal basis our courts have applied to persons trying to have this right enforced; especially considering that Kenya is yet to have express legislative provisions protecting image rights.

We also analyse the impact of the now-enacted Data Protection Act, 2019 and related Regulations which provide for the constitutional right to privacy. In doing so, we examine the correlation between image rights protection and data protection.

Legal Framework for Image Rights Protection in Kenya

The Constitution of Kenya, 2010 provides for the right to human dignity and the right to have that dignity respected and protected whilst Article 31 provides for the right of an individual to privacy.

The Copyright Act, 2001, on the other hand, appears to have the closest recognition of image rights through the

recognition of moral rights of authors which translate to the protection of authors of artistic works. It however does not cater for the personal interests of subjects of images.

Additionally, the Code of Advertising Practice and Direct Marketing [being the guiding document of the Advertising Standards Body for Kenya] stipulates that: -

- a) Advertisements should conform to the four basic principles that all advertisements be legal, decent, honest and truthful;
- b) Advertisements should not contain or refer to any testimonial or endorsement unless it is genuine and related to the personal experience over a reasonable period of the person giving it and not on a third party's opinion'. This provision guards against false testimonials or endorsements;
- c) Advertisements should not portray or refer to, by whatever means, any living persons, unless the express prior permission of that individual has been obtained. Advertisers should also take care not to offend the religious or other susceptibilities of those connected in any way with deceased persons depicted or referred to in any advertisement (Emphasis ours)

The Rules thus provide for the requirement of consent in relation to exploitation of an individual's image. There are however exceptions to this rule such as where there is the use of crowd or background shots which do not have a defamatory or offensive context or where, in the opinion of the Advertising Standards Body of Kenya, the image does not constitute an unjustifiable commercial exploitation of an individual's fame or reputation.

It is also vital to note that the Competition Act, 2010 provides for consumer welfare whereby it is an offence to use false or misleading representations in trade in connection with the supply of goods or services.

Image Rights Protection

Based on the foregoing, Kenya has no express statutory instrument for image rights. However, time after time Kenyan Courts have enforced the protection of this right on claims based on violation of one's right to privacy and human dignity.

In the cases of **Jessica Clarise Wanjiru v Davinci Aesthetics & Reconstruction Centre & 2 others (2017)** and **N W R & another v Green Sports Africa Limited & 4 others (2017)** eKLR for instance, the Constitutional and Human Rights Court established a three (3) step test, as set out by Justice John Mativo (as he then was), to determine whether the use of a person's image amounted to a violation of their right to privacy and human dignity. The test is as follows:

- a) Whether the attribute is protected in law;
- b) Whether the image was used in exploitative or commercial purposes; and
- c) Whether there was consent to use the image.

Where the second and third elements seem fairly easy to establish and prove as a matter of evidence, the challenge lies in proving the first element of the test. Image rights are private rights and can thus only be enforced by the individual who is affected by the alleged infringement. It then follows that, in applying the first element of the test, a party who intends to be successful would need to establish whether the attribute (this is the person's name, image, likeness or other unequivocal aspects of one's identity or persona) is protected in law.

Up until now, parties have relied on constitutional provisions and other pieces of legislation (as set out in the legal framework above) to satisfy this first element. They have also relied on other intellectual property rights like trademark; however, such actions are limited to cases where the aggrieved person has already registered their intellectual property.

In cases where one has not registered such rights or does not find redress in any enacted legislation, this has proven challenging in fulfilling the elements to lodge a successful claim. The Kenyan Courts have frequently looked to other jurisdictions in determining matters on image rights and have on many occasions been guided or persuaded by the decisions of foreign courts. The challenge hence remains that there is no express statute or provision of law setting out the protection of image rights.

Data Protection

The constitutional right to privacy provides that every person has the right not to have personal information relating to their family or private affairs unnecessarily revealed. This also includes the right to not have the privacy of their communications infringed.

The preamble of the Data Protection Act, 2019 ("the Act") states that the purpose of the Act is to: give effect to the right to privacy, establish the Office of the Data Protection Commissioner (ODPC), protect the rights of data subjects and provide regulation protecting privacy rights when processing personal data. Provisions of the Act thus cater for image rights.

For instance: -

- a data subject is defined as an identified or identifiable natural person who is the subject of personal data;
- an identifiable natural person is then defined as 'a person who can be identified directly or indirectly, by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social or social identity' [Emphasis Ours]; and
- personal data is defined as 'any information relating to an identified or identifiable natural person'

Based on the foregoing, the definition of personal data is broad enough to include the attributes of an individual, as set out in the first test above.

The Act also explicitly provides that one can only use another person's personal data for commercial purposes if (1) the data subject's consent has been procured or (2) they have informed the data subject of the use where they are authorized by law to use such personal data for commercial use. Thus, satisfying the requirements for the second test. (Nonetheless and in either instance, one is required to anonymise the personal data such that the data subject is no longer identifiable.)

In respect of analysing the third test, the Act defines consent as 'any manifestation of express, unequivocal, free, specific and informed indication of the data subject's wishes by a statement or by a clear affirmative action, signifying agreement to the processing of personal data relating to the data subject'.

The Act further stipulates that, in determining whether consent was freely given, regard should be had to whether performance of a contract is conditional on consent to the processing of personal data that is not necessary for the performance of that contract. The personal data to be processed should thus be necessary for the performance of a contract. Additionally, where the data processing is for multiple purposes, it should be ensured that the consent given fully covers all intended purposes.

One thus has to question - with the enactment of the Data Protection Act, can the Office of the Data Protection Commissioner (ODPC) finally give those whose image rights have been violated some redress? The question remains one to be answered as the scope and powers of the Commissioner are put to the test. However, this legislation will definitely be instrumental for parties going to Court if the Courts apply the three (3) step test as established by Justice Mativo.

Following the publication of The Data Protection (Registration of Data Controllers and Data Processor) Regulations, 2021 that came into effect on 14th July 2022, any data controller and data processor processing (including collecting and storing data) of persons located in Kenya will be mandated by statute to register with the Office of the Data Protection Commissioner)

What You Should Know About Special Economic Zones (SEZ) in Kenya



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A Special Economic Zone (SEZ) is an area in which the business and trade laws are different from the rest of the country. SEZs are designated administrative areas within a country's borders that are accorded privileges which do not apply to other regions, territories or other areas within the country. Businesses located within such zones benefit from lower cost of operations and more conducive operating environment. SEZ aims include: increasing trade balance, employment, increased investment, job creation and effective administration.

Export Processing Zones (EPZs) are a form of SEZs, in that they have special laws from the rest of the country. However, they are different in that EPZs are created for the purpose of boosting the manufacturing industry and Allow for the production of more goods for export. EPZs are mostly established in developing countries while SEZs can be established anywhere.

The first SEZs appeared in the late 1950s in Shannon Airport in Clare, Ireland. They were designed to attract foreign investment from multinational corporations in industrialised countries. In the 1970s, SEZs were also established in Latin American and East Asian countries. A few African countries have successfully implemented the SEZs concept, leading to an increase in export earnings, diversification of manufactured goods, and linkages of various sectors of their economies.

SEZs are designed to attract investors, particularly in export-oriented industries, and to attract Foreign Direct Investment (FDI). To encourage businesses to set up in the zone, financial policies are introduced. These policies typically encompass investing, taxation, trading, quotas, customs and labour regulations. Additionally, companies may be offered tax holidays, where upon establishing themselves in a zone, they are granted a period of lower taxation. SEZs may also increase export levels for the implementing country and other countries that supply it with intermediate products.

In Kenya, the Special Economic Zones Act, 2015 (the Act) was adopted by Parliament on 12th February 2015 and came into operation on 15th December 2015. It provides for the establishment of "Special Economic Zones" ("SEZs"). The Act sets the legislative framework for the establishment of SEZs in strategic towns in Kenya. The Kenya Vision 2030 (which is a development blue-print by the Kenyan Government) envisions three (3) world-class SEZs for Kenya in: The Greater Mombasa, Lamu, and Kisumu. These SEZs are set to create millions of jobs.

The types of SEZs established under the Act include, among others: business service parks, free port zones, free trade zones, industrial parks, information communication technology parks, science and technology parks, agricultural zones, livestock zones and tourist and recreation zones. The implementation of the SEZs Act allows for a wider range of commercial ventures, including primary activities such as farming, fishing and forestry, and will not be restricted to the enclaves.

According to the Act, in order to qualify for an SEZ licence, the applicant must, in addition to such other criteria and requirements as may be prescribed:

- a) Be a company incorporated in Kenya for the purpose of undertaking SEZ activities;
- b) Have financial capacity, technical and managerial capacity, and associated track record of relevant development or operational projects required for developing or operating the SEZ;
- c) Own or lease land or premises within the SEZ as stipulated under the law.

The Act provides that all licensed SEZ enterprises, developers and operators shall be granted exemption from all taxes and duties payable under all the domestic tax legislations including the East African Community Customs Management Act. The benefits apply on all SEZ transactions. As a result, all licensed companies undertaking industrial activities within the zone shall be exempt from value added tax, income tax, custom and excise duties, stamp duty and work permit quota.

Under the Act, a licensed SEZ enterprise and its shareholders shall enjoy certain rights such as profit and capital repatriation, the full protection of its property rights against all risks of nationalisation or expropriation and industrial and intellectual property among others. The licensed SEZ enterprises, developers and operators shall also be entitled to work permits. However, on the recommendation of the Authority additional work permits may be obtained for specialised sectors.

Some notable SEZs in Kenya include Tatu City SEZ and Compact Free Trade Zone (FTZ) SEZ which have successfully registered several companies licenced by the SEZ Authority. One such company is Ziara SEZ that trades imported vehicles in the East and Central Africa Free Trade Zone. (More examples can be found on the SEZ Authority website <https://www.sezauthority.go.ke/business-directory>)

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