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EDITOR'S NOTE

Dear Reader,

Welcome to the Q2 2024 edition of the NR & Co. Legal Briefs. This has been an eventful quarter with significant legislative updates, firm activities, and insights into various legal realms. As we navigate through the complexities of the legal landscape, we aim to keep you informed and engaged with the most pertinent developments.

In this issue, we highlight the pivotal training session on First Aid in the Workplace, organized by our firm in collaboration with Pacis Insurance Company Limited and Alpha Ambulance Service. We also analyze Public Finance Management Act and the procedural intricacies of the budget-making process in Kenya. With the President's recent decision to decline the Finance Bill 2024, understanding these procedures becomes crucial for all stakeholders. Our overview provides a comprehensive look at the legal frameworks governing public finance, equipping you with the knowledge to actively participate in civic engagements and public discourse.

Additionally, the implementation of the Public Benefit Organisations Act 2013 marks a new chapter for NGOs in Kenya. The transition from the NGO Co-ordination Act to this new regulatory framework presents both challenges and opportunities for not-for-profit organizations. We explore these changes and their implications, providing guidance on compliance and future steps. The Tax Procedures (Electronic Tax Invoice) Regulations 2024 introduce a new era of tax compliance with the eTIMS system. This system promises to streamline tax invoicing and reduce VAT fraud, but it also imposes new obligations on businesses of all sizes.

As always, our newsletter is crafted to provide you with valuable insights and practical advice. We hope that the articles within this edition not only inform but also inspire proactive engagement with the legal processes that shape our society.
Thank you for your continued support and readership. We look forward to bringing you more updates and insights in our next edition.

Warm regards,

Grishon Thuo
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The Firm

TRAINING ON FIRST AID IN THE WORKPLACE

In a bid to promote employee safety, our Firm organized a comprehensive first aid training session. The training was conducted by Pacis Insurance Company Limited in partnership with Alpha Ambulance Service, focusing on essential areas such as the rights of those with casualties, aims of first aid, and the roles of the person(s) administering the first aid ("first aider").

First aid was defined as the initial assistance (first help) given to a casualty using available materials and generally accepted principles before handing over to a more qualified person. A key takeaway from the training was that safety is always a priority; first aiders must ensure their own safety before assisting others.

This was a timely exercise considering that earlier this year the Cabinet Secretary for Labour and Social Protection gazetted the ***Occupational Safety and Health Act (First Aid in the Workplace) Regulations, 2023*** *("the Regulations")*. These Regulations apply in all workplaces during working hours to ensure adequate first aid arrangements.

The training delineated between the following emergency situations:

- Traumatic emergencies - are injuries caused by external forces, such as fractures, burns, or lacerations.
- Non-traumatic emergencies include medical conditions like heart attacks, strokes, or asthma attacks. Understanding these distinctions is crucial for appropriate response and care.

The training also focused on the rights of injured people which include the right to privacy, the right to be informed about their medical condition and treatment options, and the right to be treated with respect and dignity.

These rights ensure that the injured person is cared for in a manner that upholds their autonomy and humanity. Interestingly, one of the fundamental rights of an injured person is the freedom to refuse treatment.

A conscious injured individual may decline care and is required to sign a Patient Refusal Form. If unconscious and carrying a "Do Not Resuscitate" (DNR) tag or similar indication, implied consent applies, and the first aider will respect their wishes by not providing care.

Members of the Firm were able to engage in practical first aid scenarios using dummies to prepare for real-life emergency situations. The team was also introduced to various first aid equipment and taught how to use them effectively, enhancing their readiness and confidence in handling workplace emergencies.

In addition, the following are key regulatory requirements employers or owners of institution must be aware of:

Regulatory requirements

- **First aid box or cupboard** – provides minimum items required in relation to the number of workers in the workplace.
- **Information/ training** – all workers to be informed on the location of first aid kits and trained on first aid and the organisations emergency procedures.
- **First aid room** – organizations with more than five hundred (500) workers are required to have a room managed by a registered nurse, medical practitioner, or clinical officer.
- **First aid audit** – required to conduct examination of the workplace to ensure compliance with these regulations.

In conclusion, the first aid training session underscored the importance of being prepared for emergencies in the workplace as it is essential for employers and employees alike to be knowledgeable about how to handle such situations promptly and effectively. The training also met one of the key regulatory requirements and inadvertently served the dual purpose of highlighting the Regulations to equip employers and owners with information to ensure safety standards are met and maintained.

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Legislative UPDATES

This quarter saw the Country focus heavily on tax legislation and the rising cost of living. The notable legislation and regulations introduced in the second quarter of 2024 are as follows:

PUBLIC FINANCE IN KENYA

On 26th June, 2024, the President in an unprecedented move declined to sign the now infamous Finance Bill, 2024, into law. This is following the vote by members of Parliament to enact the legislation despite mounting pressure from the general public not to increase taxes.

In light of these developments, we have prepared a brief overview of the budget making process that gave rise to the Finance Bill and the supporting legal framework on public finance management that underscore the collection of taxes and use of public funds by those with requisite authority.

Hopefully, this update can equip our readers with the knowledge needed to better participate in the lawmaking process when it comes to matters of public finance and enhance civic engagement in the upcoming financial year. *This overview shall limit itself to public finance at the national level (as opposed to or in exclusion of public finance at the county level).*

Legislation	Description
Public Finance Management Act, 2012	Provides the law on management of public finances by both the national and county governments. Also provides the oversight role of the legislative arms of government when it comes to effective and efficient utilization of public finances.
Appropriations Act	This law provides the estimates of revenue and expenditure of the national government for the next financial year.
Finance Act	This law amends several tax laws including the Income Tax Act, Value Added Tax (VAT) Act, Tax Procedures Act, Excise Duty Act, among others with a view towards raising revenue for a financial year.

Every financial year begins on the 1st of July and ends on the 30th of June annually. This means that the period between 1st July, 2024 to 30th June, 2025 will be the financial year (FY) known as FY 2024/25. Every financial year the government must provide estimates of government spending by coming up with a budget and demonstrate ~~on~~ how they intend to the revenue ~~raise~~ for that period.
The stages in the budget process for the national government in any financial year are as follows:

Period	**Stages** *(section 35 (1) of the PFM Act)*	**Notable documents for public review**	**Key dates**
Formulation **First Quarter** 1st July to 30th September	**One:** integrated development planning process which shall include both long term and medium-term planning **Two:** planning and determining financial and economic policies and priorities at the national level over the medium term	The documents produced in the planning and policy formulation stage include: • Budget Circular • Budget Review and Outlook Paper (BROP) • Budget Policy Statement • Budget Estimates *The public is invited to submit their on the budget estimates tabled before the National Assembly before they establish the laws i.e appropriation bill.*	**Aug 15:** 4th quarter implementation report. **Aug 30:** Beginning of the Budget Making process. Cabinet Secretary directs all government departments to prepare their budgets.

Period	**Stages** *(section 35 (1) of the PFM Act)*	**Notable documents for public review**	**Key dates**
	Three: preparing overall estimates in the form of the Budget Policy Statement of national government revenues and expenditures **Four:** adoption of Budget Policy Statement by Parliament as a basis for future deliberations **Five:** preparing budget estimates for the national government		
Approval **Second Quarter** 1st October to 31st December	**Six:** submitting those estimates to the National Assembly for approval **Seven:** enacting the appropriation Bill and any other Bills required to implement the National government's budgetary proposals	At this stage the following proposed legislation is tabled before the National Assembly that is: The Appropriations Bill (proposed budget) Finance Bill (revenue raising measures.) *The public is invited to submit their views to the proposed legislation before the National assembly.*	**Oct 21:** Review of previous year's budget performance. **Nov 15:** 1st quarterly implementation report.
Implementation **Third Quarter** 1st January to 31st March	**Eight:** implementing the approved budget **Nine:** evaluating and accounting for, the national government's budgeted revenues and expenditures	The executive then implements the laws approved at the previous stage. The documents worth taking note of during this stage are the quarterly budget implementation review reports by the Controller of Budget.	**Jan 1:** County Allocation and revenue distribution recommendations **Feb 15:** 2nd quarterly implementation report. **Feb 15 to 28:** hearings to decide on revenue allocations giving rise to the Budget Policy Statement.
Audit **Fourth Quarter** 1st April to 30th June	**Ten:** reviewing and reporting on those budgeted revenues and expenditures every three months.	The Auditor General produces the Auditor General's Report that should be scrutinized by the public to determined how government is utilizing public funds and whether this has been done in accordance with the law and the budget.	**Apr 30:** Budget estimates tabled in the National Assembly. **May 15:** 3rd quarterly implementation report. **Month of May:** Public hearings on budget estimates. **June 30:** End of financial year, laws for the next financial year to be implemented.

This robust framework of laws and processes is meant to ensure transparency, accountability, equitable sharing of resources and to ensure that public money is used in a prudent and responsible manner. It is therefore important for the public to give their views in the law-making process of the above-mentioned legislation so as to ensure public funds are channeled to areas for maximum benefit to the Kenyan population, to ensure efficient use of public funds, and to impose reasonable revenue raising measures on the public

PUBLIC BENEFIT ORGANISATION ACT,2013

The Public Benefit Organisations Act, 2013 ("the Act"), came into effect on 14th May, 2024 ("the Commencement Date"). This marks the end of a prolonged process that began when the Act received presidential assent on 14th January, 2013. Due to delays in implementing the Act, the High Court issued an order on 31st October, 2016, compelling the Cabinet Secretary for Devolution and Planning to set the Act's commencement date within fourteen (14) days. Another ruling on 12th May, 2017 reinforced this, ordering the Act's commencement within thirty (30) days. Despite these mandates, the Act was only implemented following the recent Legal Notice.

The Act aims to establish the administrative and regulatory framework for the formation and operation of public benefit organisations (PBOs) in Kenya. A PBO is defined as a voluntary group, either membership or non-membership, of individuals or organisations that is autonomous, non-partisan, non-profit making, and:

- Operates locally, nationally, or internationally;
- Engages in public benefit activities as outlined in the Act;
- Is registered by the Public Benefit Organisations Regulatory Authority (the Authority).

The Act's commencement repeals the Non-Governmental Organisations Co-ordination Act, 1990 (the NGO Co-ordination Act), which previously governed the registration and coordination of NGOs in Kenya.

NGOs registered under the NGO Co-ordination Act are now considered registered as PBOs under the new Act. They have one (1) year from the Commencement Date to re-register as PBOs. NGOs previously exempt from registration have three months to apply. Failure to comply within these periods will result in the loss of PBO status.

Only organisations registered under the Act or granted PBO status by the Authority can claim PBO status and enjoy its benefits. Registration applications must include the PBO's constitution, founders' names and addresses, physical and postal addresses, public benefit and principal activities, the prescribed fee, and any other information requested by the Authority. The Authority will approve or reject applications, providing written reasons for any rejections. A certificate of registration confirms that a PBO has met all requirements, is duly registered under the Act, is a body corporate, and is authorised to operate throughout Kenya.

International organisations intending to operate in Kenya must apply for a certificate from the Authority. These organisations must ensure that at least one-third of their directors are Kenyan citizens residing in Kenya and maintain an office in Kenya. The Authority may exempt an international organisation from registration and issue a permit to operate in Kenya if the organisation does not plan to implement activities directly in Kenya or from Kenya and does not intend to raise funds in Kenya.

The Cabinet Secretary, in consultation with the Authority, is authorised to make regulations to implement the Act. These regulations may include the classification of PBOs, regulation of organisations with operating permits, and procedures for tracing and safeguarding assets upon the cancellation of a registration certificate, deregistration, or winding up of a PBO. At the time of publication, there are no regulations under the Act.

The enactment of the Act represents a significant milestone in the regulatory landscape governing not-for-profit organisations in Kenya. Despite delays in its commencement, the effective implementation of the Act will be crucial in fostering the growth and sustainability of charitable organisations, which play a significant role in promoting economic, social, and cultural development in Kenya. Given that the regulations are yet to be published, it remains unclear as to the immediate next steps that NGOs should take in terms of aligning their registration and their affairs with the Act. We expect that the Non-Governmental Organisations Co-ordination Board will issue practice directions in the coming days to guide all stakeholders as to the way forward.

TAX PROCEDURES (ELECTRONIC TAX INVOICE) REGULATIONS, 2024

In 2022, Kenya Revenue Authority was introduced Tax Invoice Management System (TIMS) as a way to enhance the ETR regime which came into force in 2005. TIMS was established to ensure all businesses are issuing valid tax invoices. All VAT registered taxpayers were obliged to onboard onto the TIMS system by purchasing hardware which was integrated with the i-Tax platform.

The following year, KRA introduced a software solution called Electronic Tax Invoice Management System (eTIMS). Whilst TIMS requires the taxpayer to purchase a new machine (hardware) to ensure overall compliance, eTIMS is a software-based solution that needs to be installed on the taxpayers' computers and mobile phones or may be accessed online thus making it more convenient and flexible for businesses to use.

From 1st January 2024, expenses not supported by TIMS or eTIMS invoices would not be eligible for income tax deduction, with some exceptions. Where a taxpayer is TIMS compliant, there is no requirement to register for eTIMS but they are required to ensure that all their sales are TIMS/eTIMS compliant.

On 25th March 2024, the Cabinet Secretary for the National Treasury and Economic Planning published, the Tax Procedures (Electronic Tax Invoice) Regulations, 2024. These Regulations are intended to provide a clear framework for the Electronic Tax Invoice Management System (eTIMS) regime and further provide more clarity on the administration of the same.

The Electronic Tax Invoice Management System (eTIMS) is a web-based software solution generated by Kenya Revenue Authority and which is integrated with the i-Tax system. Taxpayers are required to purchase the different eTIMS software available based on their needs as each software has salient features catering to different taxpayer demographics. Once the software is installed, the taxpayer is expected to issue their customers with standardized and authenticated tax invoices generated from the eTIMS software.

From the tax authority's perspective, this new system furthers general tax compliance as data is transmitted from the eTIMS software to the i-Tax system on a real time basis. This regime also minimizes VAT fraud through verification of invoice data i.e., a VAT registered Taxpayer cannot claim input tax for supplies which they did not receive a valid compliant tax invoice for.

These regulations apply to individuals and entities engaged in business activities irrespective of their VAT registration status, unless specifically exempted by the law. The import of this blanket application is that even small-scale income earners are now required to onboard eTIMS/ TIMS, unlike previously where the eTIMS/ TIMS regime only applied to VAT registered merchants. In this case, small-scale income earners, meaning those who fall below the Kshs. 5,000,000.00 annual turnover threshold required for compulsory VAT registration.

Certain transactions have been excluded from the electronic tax invoice requirement. These include: imports; emoluments; investment allowances including internal accounting adjustments; airline passenger ticketing; interest; fees charged by financial institutions; expenses subject to a withholding tax that is final; and services provided by a non- resident person without a Permanent Establishment in Kenya.

Additionally, the Regulations empower the Commissioner with authority, by way of notice in the Gazette, to exempt a person from the requirements of the use of an Electronic Tax Invoice and or to revoke an exemption granted. The Commissioner may exempt a person where the business income in relation to a transaction is received through a payment platform recommended by the Commissioner and the information is transmitted to the Authority's system. One such recommended payment platform is the e-citizen platform.

The Regulations provide that the user should:

1. Ensure availability of the system at the point of sale;
2. Ensure they issue a compliant tax invoice/ credit note/ debit note to their customers which should contain the following information: -
   - Seller's personal identification number (PIN)
   - Time and date on which the invoice was issued
   - Serial number of the invoice
   - Buyer's PIN if the buyer intends to claim the expense or the input tax
   - Total gross amount
   - Total tax amount, where applicable
   - Item code of supplies as provided for by the KRA
   - Brief description of the goods and services
   - Quantity of the supply
   - Unit of measure
   - Applicable tax rate
   - Unique system identifier
   - Unique invoice identifier
   - Quick response (QR) code
   - Any other information as may be specified by the KRA
3. Facilitate inspection of the system by an authorized officer;
4. Ensure regular maintenance of the system;
5. Keep and maintain a system ledger that Records the maintenance and update of the system's software with the name and address of the person maintaining the system and an entry for each time maintenance is undertaken on the system, describing the maintenance and name of the person performing the service; and
6. Comply with other requirements as may be specified by the KRA.

Taxpayers must always ensure the continuity of the system. If unable to use the system for any reason, notify the KRA within 24 hours and record sales using any other means specified by the KRA.

The regulations further stipulate the user of a system must provide written notice to the KRA within 30 days if the user intends to discontinue the use of a system due to change of business model, closure of business or any other reason. If the discontinuance was unplanned, a notice in writing shall be made to the KRA within seven days after discontinuance. KRA may provide a responding written notice and within 30 days after receipt of notification, retire the system.

A taxpayer commits an offence if that taxpayer:

- fails to comply with any provisions of these Regulations; or
- tampers with, manipulates or interferes with the proper functioning of the system including uninstallation and change of the device without notifying the KRA.

A taxpayer who commits an offence under these regulations is liable to pay a fine of Kshs. 100,000.00.

Unlike the previous regulations, these newly minted guidelines carry a significant alteration: the removal of the exemption clause for businesses falling below the Kshs. 5,000,000.00 turnover threshold. Consequently, businesses are compelled to engage exclusively with e-TIMS-compliant entities to avoid jeopardizing their tax deductibility status.

The monumental judgement set the record straight regarding the ultimate recourse courts could grant under such instances, given the existing constitutional and statutory provisions on property rights.

case Highlights

In this section we review several cases two of which relate to the banking sector. We will therefore focus on the following cases in this quarter:

STANBIC BANK LIMITED V SANTOWELS LIMITED (SC PETITION E005 OF 2024)

On 28th June, 2024 a five (5) judge bench the Supreme Court delivered its final judgment in the long-standing dispute between Stanbic Bank ("the Bank") and Santowels Limited ("Santowels") who had a bank-customer relationship.

The background of this case is that the Bank granted Santowels several facilities between the years of 1993 to 1997 ("the Facilities") at a rate of 3% above the Bank's base lending rate with the right to unilaterally vary the interest rate. Around the year 2002 Santowel frustrated with the continually varying interest rates paid the outstanding debts and closed its accounts. This case was first filed in the High Court around the year 2003 by Santowels having engaged the Interest Research Bureau (K) Limited ("the Bureau") to audit and verify the accuracy of interest charged to by the Bank under the Facilities. According to the Bureau the Bank had overcharged Santowels interest on the Facilities, however, the Bank disputed the computation of the Bureau.

The main issue before the Court was whether the Bank had overcharged Santowels and this whether these sums were recoverable. The High Court in making its final determination relied on the then section 39 of the Central Bank of Kenya Act that gives the Governor of the Central Bank the discretion to cap interest rates which at the time was 16.5%. The Court noted that the Bank had not sought the necessary approval to charge interest rates above what was prescribed. Further the Court noted that there was a violation of section 52(3) of the Banking Act that prohibited parties from entering into a contract outside the express provisions of the CBK and Banking Acts. However, the Court noted that there was no breach of contract on the part of the Bank however ultimately finding in favour of Santowels and awarded them almost nine million shillings.

Santowels however appealed this decision on the basis that they should have been awarded close to seventy million shillings as had been pleaded in the High Court. The Bank also filed a cross-appeal on the basis that the High Court should have distinguished between the rate of banking and the contractual rate of interest as set out in sections 44 and 52 of the Banking Act, respectively. The Court of Appeal largely agreed with the decision of the High Court and found in favour of Santowels while dismissing the Banks appeal. The Court however found that the sums due to Santowels should be varied upwards to about ten and a half million.

The Supreme Court addressed itself to several issues, however, of note are the following issues:

a. Whether Section 44 of the Banking Act restricts financial institutions from increasing the rate of bank or other charges except with prior approval of the Cabinet Secretary apply to interest rates?
b. Whether a bank customer can claim a refund on interest rates for a time-barred claim?

Based on the above the Supreme Court agreed with the findings of the lower Courts that the Bank was required to seek the Cabinet Secretary's approval prior to increasing the rate of interest. However, they departed from the lower Courts decision on their finding that the interest rate was capped at 16.5% due to the fact that the legal notice imposing the same had since been revoked thus at the time there was no capped rate of interest by the CBK Governor. The Supreme Court declined to award the prayer for refund noting that the sum awarded by the Court of Appeal had since been paid and dismissed both the Banks and Santowels appeals.

The implication of this judgment is that Banks are restricted from increasing interest rates on loans and facilities advanced by banks/ financial institutions without consent of the Cabinet Secretary.

AMANI RESIDENTS WELFARE ASSOCIATION/MIREMA (SUING ON BEHALF OF THE RESIDENTS OF MIREMA ESTATE, NAIROBI) V MARK SENTEU T/A COCORICO WINES & 9 OTHERS (ENVIRONMENT & LAND PETITION E031 OF2022) [2023]

The Amani Residents Welfare Association sued several businesses and a church in Mirema Estate, Nairobi, claiming their activities violated residents' rights to a peaceful environment. The estate was zoned for low-density housing, and residents enjoyed quiet living until the arrival of entertainment establishments (1st -3rd Respondents) and a church (4th Respondent).

Residents accused the businesses of playing loud music, exposing children to inappropriate content, and causing disruptive behaviour from patrons. The church's use of a sound system on weekends was also deemed excessively noisy and disruptive to learning in nearby schools. Additionally, raw sewage discharge from one establishment (1st Respondent) posed sanitation concerns. The lawsuit targeted both the businesses and relevant government agencies (5th and 6th Respondents) for failing to uphold regulations. The residents argued that the government bodies neglected their duty to ensure a clean and healthy environment and enforce noise pollution control measures.

The businesses countered that the area had changed and they had taken steps to mitigate noise, such as installing soundproofing equipment. The church claimed to have adjusted volume levels and conducted an environmental assessment. However, the court ultimately found these efforts insufficient. The government agencies argued they had fulfilled their responsibilities, but the court disagreed. They found the agencies failed to act on resident complaints and enforce environmental regulations regarding noise and licensing for businesses in residential areas.

The Court was then set to determine whether the Petitioners members right to peacefully enjoy their property and to live in a clean and healthy environment has been violated by the actions and inactions of the Respondents and whether NEMA and the County Government of Nairobi have abdicated their constitutional and statutory mandate leading to a violation of the Petitioner member's rights.
The court ruled in favour of the residents and found the activities of the respondents (1st - 4th) infringed upon residents' rights to a clean and healthy environment as guaranteed by the Kenyan Constitution (Articles 40 & 42). This included protecting children's well-being as outlined in the Children Act.

A key point was whether scientific evidence was the only way to prove excessive noise. The court, citing the Elizabeth Kurer Heier case, determined that other factors like time of day, proximity to residences, and intensity could be considered. Based on these factors, the judge ruled that the noise from the entertainment establishments (1st - 3rd Respondents) was unreasonably loud and disruptive.

The government agencies (5th & 6th Respondents) were also faulted for failing to uphold their legal obligations. These included enforcing environmental regulations and ensuring proper licensing for businesses in residential areas. The court highlighted that residents' complaints were ignored, and the 6th respondent even issued liquor licenses to the establishments despite zoning restrictions. This lack of responsiveness from public servants was deemed a violation of Article 232 of the Constitution, which emphasizes the importance of prompt and effective service delivery. While the court acknowledged financial limitations faced by government agencies, it stressed the basic expectation of addressing citizen concerns.

Ultimately, the court ordered the closure of the entertainment establishments, imposed a permanent injunction on excessive noise from the church, and revoked the businesses' liquor licenses. Residents were awarded compensation for the violation of their rights, with varying degrees of financial liability placed on all respondents to the tune of Kshs 5,000,000. This case sets a precedent for upholding environmental regulations and residents' right to peaceful living.

KINGDOM BANK V ALICE WANJA WANJOHI (HCAA 192 OF 2023)

The High Court recently directed a local bank to reimburse a client who mistakenly transferred funds to an account held with it. This decision has significant implications for the duty of care owed by banks and payment service providers.

In this case, the respondent (Alice Wanja) erroneously transferred funds via M-Pesa to an account at Kingdom Bank. Upon discovering the error, she requested Safaricom to reverse the transaction. Safaricom informed her that the bank had been notified, and advised her to follow up with them.

Kingdom Bank responded that by the time it was informed of the erroneous transfer, its customer had already withdrawn the funds. The account did not have sufficient funds to reimburse the respondent, and the bank could not debit the account without the customer's consent.

The respondent sued in the Small Claims Court, which ordered the bank to reimburse her. This decision was upheld by the High Court on appeal.

The Small Claims Court held that money paid by mistake is repayable, for the following reasons:

- A bank is not entitled to retain money which in common honesty it ought not to.
- Whether the bank will be liable for refunding the erroneous transfer depends on when it was informed and what actions had been taken. If the funds were withdrawn, accounts settled, or other actions taken
- before the bank was informed, it is likely inequitable to ask the bank to refund.
- Upon being informed of the erroneous transfer, the bank should have acted quickly to freeze the account as it sought clarity from its customer.

~~The bank, aggrieved appealed the decision in the High court.~~
The High Court, though agreeing there was no contractual relationship between the parties, dismissed the appeal. It made the following consequential findings:

- Electronic fund transfers are based on a good faith expectation that funds will reach their intended destination and that errors will be corrected.
- Erroneous transactions are inevitable, and the question is whether the bank acted in good faith. A bank must demonstrate it did not aid fraud and took steps to recall funds transferred in error.
- Crucially, the bank did not prove its customer withdrew the funds before it was notified of the erroneous transaction.

Banks are therefore obligated to put in place measures or systems to reverse erroneous transactions or risk legal liability being shifted to them, as opposed to the banking customer.

iNTERLUDE

PROTECTED AREAS IN KENYA

Did you know that there is a law known as the Protected Areas Act (CAP 204) that prohibits the entry of individuals without authority? The penalty for unauthorised entry is imprisonment for a maximum period of two (2) years, a fine of five thousand shillings (K.Shs. 5,000.00) or both. Some of the "Protected Areas" in Kenya include the following:

KENYA ARMY

KENYA AIR FORCE

KENYA NAVY

HUDUMA KWA TAIFA
NATIONAL YOUTH SERVICE

Kenya Defence Forces Facilities - Including the camps, barracks, sub-depots, aerodrome, airstrips, among others.

State House & Lodge – Nairobi, Mombasa, Kisumu

Kenya Police – Headquarters, Training Centers, workshops Sagana, Nakuru, Eldoret, Kisii sub-depots, hangers among others

Other protected areas include those that not only relate to national security, but also critical infrastructure sites such as those relating to rail, air, and energy. Examples include: sub-stations, Kenya Pipeline pumping station, Kenya Medical Research Institute (KEMRI), Times Tower Kenya Revenue Authority Head Office, Central Bank Head Offices, public water and sewerage works, Kenya Power National Control Centre and power stations just to mention a few of those listed in the various Protected Areas Order.

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CONTRIBUTORS' PLATFORM

HUMANS VS. MACHINES AS ARBITRATORS: THE LEGAL BATTLE OF THE NEW CENTURY

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Introduction: The Advent of Artificial Intelligence

In 1955, when John McCarthy coined the term 'Artificial Intelligence' (AI) he defined it as "the science and engineering of making intelligent machines". Almost seventy (70) years later, since the advent of AI in the various forms we interact with it today, has radically transformed our lives; including, through revolutionary telecommunication, improved healthcare, efficient service delivery, better transport systems, immersive education and entertainment experiences.

AI and Arbitration

The dispute resolution landscape is no different; AI will continue to impact it in unprecedented ways. Presently, according to Global Arbitration Review, AI has already unbundled various aspects of legal work in many jurisdictions where machine-appropriate legal tasks such as research, transcription, translation and certain drafting elements have been automated. Consequently, time spent on arbitrations is halved and associated costs significantly reduced.
In this regard, clerks and secretaries to arbitrators may soon be redundant.

Beyond basic administrative assistance, the debate on the AI subject as concerns arbitration ultimately turns on whether AI can act as arbitrators. Put differently, can disputing parties submit their matter to a programed robot or code together with all pertinent documents and information for adjudication?

Notably, litigators and adjudicators are already using AI predictive software to determine the chances of success of disputes. In these instances, AI explores and offers possible outcomes to a dispute, implicitly acting as a decision maker should its decision sway the litigators or adjudicators, as the case may be, and so the formal use of AI as the singular arbitrator is not a far-fetched thought.

Are AI-Arbitrators likely to supplant Human-Arbitrators?

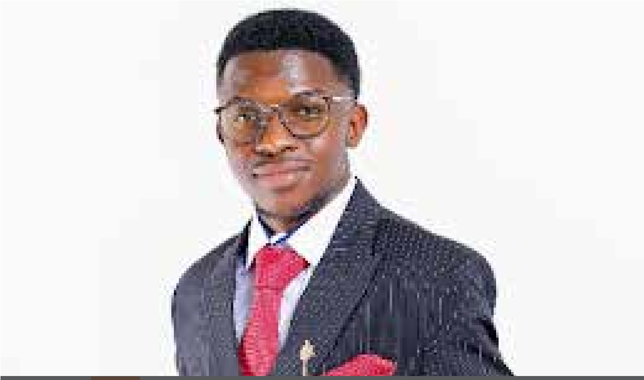
Nevertheless, the concerns with installing AI as arbitrator are readily appreciable and include, the risk of confidentiality and personal data protection. Lack of transparency over control of arbitral data and algorithm jeopardizes to the core, the sanctity of arbitrations. These risks coupled with the fact that arbitration is one of those nuanced practices that requires the exercise of niche skills inherently human such as emotional intelligence, the art of persuasion, intuition, sense of equity, diplomacy, discretion which are either lacking/underdeveloped in AI, lead the charge in the case against the total rise of AI Arbitrators. It has also been argued that AI has a tendency to perpetuate biases contained in the training data, has a propensity to mix up or invent information to fill knowledge gaps and is unable to identify the logic or sources of information used to produce given output.

Whilst AI regulation/legislation has been largely lacking, on 13th March 2024, the European Union passed the AI Act, the world's first comprehensive AI law. On 14th March 2024, the United Nation General Assembly unanimously adopted the first global resolution on artificial intelligence. Both laws take a protectionist approach seeking to limit AI's application within certain ethical boundaries. This approach, and the fact that strictly speaking, an AI-Arbitrator rendered award would likely face enforcement challenges in many jurisdictions, further informs the position that AI-Arbitrators are not a forgone conclusion.

Conclusion: What does a truce look like, then?

AI is certainly at a disadvantaged position in usurping human-arbitrations more so in high stakes arbitrations involving States and/or multinational enterprises. Nonetheless, as change is inevitable, a balanced approach needs to be taken on the matter, where human-arbitrators must advocate for universally recognized limits and minimum standards in the use of agile-tested AI in arbitrations. If anything is a win in this new century, it is everyday people-centred problem-solving technology; be it AI or a human being steering said solutions

FUELING KENYAN SPORTING GREATNESS: THE LEGAL EXPERTISE ADVANTAGE IN SPONSORSHIPS AND INVESTMENTS



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Introduction: Kenya's Untapped Potential

Kenya's vibrant sporting scene is a constant source of national pride. From the world-beating distance runners and record holders like Eliud Kipchoge, who dominate marathons, to the rising stars in rugby and volleyball, Kenyan athletes consistently capture hearts and medals on the global stage. This raw talent isn't just a point of national honour; it holds the potential to be a powerful economic engine, driving investment, tourism, and job creation.

However, beneath this surface of triumph lies a landscape ripe with untapped potential. While Kenyan athletes consistently punch above their weight, their journeys are not without hurdles. Unfair contracts, the threat of doping scandals, and a lack of legal protection can all impede progress. Successful athletes are also vulnerable to being taken advantage of, recently, Harambee Starlets star Marjolene Nekesa highlighted her plight where her agent squandered her dues.

Despite these challenges, the future of Kenyan sports gleams with promise. To truly unleash the full potential of Kenyan sports, two crucial elements need to come together: exceptional athletic talent and a robust legal framework. While Kenya boasts an abundance of the former, the latter remains wanting. The lack of legal expertise hinders Kenyan athletes and organizations from maximizing their success. Here's where the power of sports law comes into play. By providing a secure and well-defined legal environment, Kenya can unlock a new era of sponsorships, foreign investments, and ultimately, transform its sporting landscape into a true powerhouse.

The Power of Legal Expertise: Fuelling Kenya's Sporting Greatness

Sports law is a specialized field that governs the legal aspects of sports. It encompasses everything from athlete contracts and anti-doping regulations to sponsorship deals and intellectual property rights.

A strong sports law sector can be the game-changer Kenya needs by protecting athletes from unfair contracts and ensuring issues such as adequate compensation, misuse of image rights and protection from performance enhancing substances are taken care of. Sports lawyers, together with agents can work to unlock sponsorships and investments by assisting to navigate the legalities and ensuring brand protection through entering into strong mutually beneficial contracts.

These protections can enhance professionalism and ethical conduct, allowing Kenyan sports to flourish on the global stage. With a robust sports law sector as its backbone, Kenya can transform its sporting passion into a legacy of greatness.

The economic benefit of truly investing in sports by tapping into sponsorships are truly an area to be explored and exploited. From kit sponsors emblazoned across jerseys to stadium naming rights deals, these partnerships provide crucial financial backing for athletes and organizations.

The European sports industry is a massive and growing market, with estimates suggesting its value sits around US$ 153.7 billion in 2022 and expected to reach US$ 260.0 billion by 2030. Thus establishing the need to develop a strong legal framework underpins successful sponsorships and foreign investment. Here's how key legal aspects play a role:

- Contract Law: Watertight contracts drafted by sports lawyers ensure clear terms for both parties. This includes details like sponsorship duration, athlete/organization obligations, and compensation structure. A lack of clear contracts, as seen in some past disputes between Kenyan athletes and sponsors, can lead to disagreements and hinder future partnerships.
- Intellectual Property Rights: Sponsors invest in athlete or team image rights. Sports lawyers ensure these rights are protected, preventing unauthorized use of logos, trademarks, or athlete imagery. Imagine a situation where a sponsor's logo is misused on merchandise – a strong legal framework prevents such violations, protecting both sponsor and athlete.
- Marketing and Advertising Regulations: Athlete endorsements are subject to marketing regulations. Sports lawyers advise on these regulations, ensuring sponsorships comply with advertising laws and ethical practices. This protects consumers and fosters trust in the sponsorship ecosystem.
- Business Registration and Investment Laws: Foreign companies must comply with Kenyan business registration processes. Sports lawyers can guide them through the legalities of establishing a presence in Kenya or partnering with local entities.
- Taxation Laws: Understanding tax implications for sponsorships and investments is essential. Sports lawyers can advise on tax treaties, withholding taxes, and other relevant regulations to ensure foreign entities operate within the legal framework.
- Financial Regulations: Foreign currency exchange controls and repatriation of profits are governed by Kenyan financial regulations. Sports lawyers can navigate these regulations, ensuring smooth financial transactions and compliance with Kenyan law.

While legal considerations are important, the potential benefits of foreign investment include increased funding, improved infrastructure to build or upgrade sporting facilities, and technology transfer specifically in areas of sports science and training ultimately creating a fertile ground for Kenyan athletes to blossom on the global sporting stage.

Conclusion

In essence, sports law expertise acts as the catalyst that unlocks the true potential of Kenyan sports. It empowers athletes, protects their rights, and creates a secure environment for financial growth. With a vibrant sports law sector at its core, Kenya can transform its sporting passion into a legacy of greatness, leaving an indelible mark on the world stage.

STRATEGIC INTEGRATION: NAVIGATING CORPORATE STRATEGY AND CORPORATE DEFENCE STRATEGY IN MODERN BUSINESS

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In the realm of both corporate strategy and corporate defense strategy, this insightful quote by Seneca resonates profoundly. Much like the wise man, a company's strategic framework enables it to foresee possible problems, prepare responses, and navigate through uncertainties with foresight and resilience. This article entails comprehensive research on the concepts of corporate strategy and corporate defense strategy, with the aim of examining their respective definitions, applications, and the underlying reasoning behind their adoption.

The Concept of Corporate Strategy

Corporate strategy entails the proactive planning and anticipation of potential opportunities and/or challenges that an organization may encounter in its pursuit of long-term goals. By defining the organization's mission, vision, and goals, corporate strategy aligns efforts and resources towards common objectives, fostering coherence across different functions and departments. Moreover, it enables organizations to gain a competitive advantage by identifying unique value propositions and capitalizing on market opportunities.

Traditionally, the concept of corporate strategy was considered to be concerned with helping to ensure that the organization was capable of providing sustainable above average industry performance, thereby allowing it to perpetually deliver superior returns and help create wealth for its shareholders. The global financial crisis however clearly exposed systemic weaknesses in the prevailing corporate strategy on an international scale. The subsequent fallout from this seismic event has resulted in the reputation of the corporate world being severely tarnished in the eyes of many stakeholders.

In the current era, the corporate world now faces multiple pressures to reform the manner in which business is conducted and how individual organizations are managed. Stakeholders are now demanding higher standards of corporate citizenship in terms of integrity, ethics, and accountability.

The Concept of Corporate Defence Strategy

Corporate defence strategy specifically focuses on the measures an organization takes to protect itself from external threats. Many defence-related activities are employed by organizations to help to safeguard against, and to mitigate, risks, threats, and hazards.

In this era, there is a growing recognition that a more comprehensive, progressive, and proactive approach is now required in order to defend organizations and the interests of stakeholders. The corporate world is faced with unique challenges, including an ever-accelerating rate of change. The knock-on implications mean that knowledge must now be considered to be at best provisional, imperfect, or obsolete, as it is subject to change at any point of time. Thus the need to develop strategies to address these concerns.

Incorporating Corporate Strategy and Corporate Defence Strategy: The Amazon Case

A good example of an organization utilizing Corporate Strategy and Corporate Defence Strategy is the case of Amazon. In 2012, Amazon presented a patent for a system designed to reduce delivery time, by predicting what users will buy before they were actually buying it and shipping the products to their homes even before the sale has been made: "Method and System for Anticipatory Shipping Package". This patent, granted in 2013, pre-positions those products in fulfilment centres near the anticipated demand, reducing delivery times.

The Amazon delivery system was established as a quick and efficient method of delivering products to customers, thus creating value to the customer. However, overtime, this system has evolved thus creating the standard and expectations customers have when it comes to delivery of products. There are several legal challenges that come into play when adopting this approach, they include: Potential entrenchment of market power and deterrence of competitors due to the above-mentioned anticipatory shipping patent: anti-trust (competition) concerns; data privacy issues; intellectual property disputes; product authenticity and quality amidst marketplace expansion, presenting authenticity and Third-Party Seller Controversies.

These legal challenges underscore the complexities of operating a large-scale, technology-driven company like Amazon in a highly regulated and competitive environment. The company has implemented anticipatory defensive strategies to address these challenges proactively and mitigate potential legal risks.

Amazon employs anticipatory defensive strategies to mitigate the legal challenges it encounters in its daily operations. These strategies include proactive monitoring of regulatory changes, investing in compliance measures, and enhancing transparency in its business practices. Moreover, Amazon utilizes advanced technology and data analytics to identify potential legal risks and address them promptly. Additionally, the company fosters strong relationships with regulatory authorities and stakeholders to ensure alignment with legal requirements and industry standards. Overall, Amazon's anticipatory defensive strategies aim to safeguard its operations and maintain compliance in a dynamic regulatory landscape.

From the standpoint of shareholders, employees, customers, and creditors, corporate defence entails protecting their interests and investments from possible harm or loss. This includes activities like establishing strong financial controls, adhering to regulations, effectively managing risks, and maintaining transparency and accountability in corporate governance. In essence, stakeholders anticipate that the company will proactively address risks to safeguard their investments and interests.

Businesses can therefore utilize Corporate Strategy to set out clear objectives allocate resources effectively, and achieve sustainable competitive advantage. This involves analyzing market dynamics, identifying growth opportunities, and making strategic decisions regarding product development, market expansion, mergers and acquisitions, and other initiatives.

Corporate defense strategy in safeguarding businesses from risks and threats which include legal, financial, operational, reputational, cybersecurity, among others is a means of protecting the overall business and allowing for continuity. These defense strategies include risk management programs, insurance coverage, cybersecurity protocols, crisis management programs, insurance coverage, legal compliance measures and crisis management plans. This means that the concept of Corporate Strategy and Corporate Defense Strategy can be applied to the practice of law.

Law is an essential partner business can rely on to align their Corporate Strategy with their activities. This can be done through the following ways: understanding the industry, market position and the competitive landscape in which they operate. Law firms can therefore employ Corporate Defence Strategies to help clients mitigate risks, navigate regulatory challenges and protect their interest when entering into negotiations or when involved in legal disputes. This can include proactive programs or measures such as compliance programs, risk assessments, and disputes resolution tactics to minimize legal exposure, safeguard the client's assets and reputation and protect their clients' interests effectively

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