NR & CO. QUARTERLY

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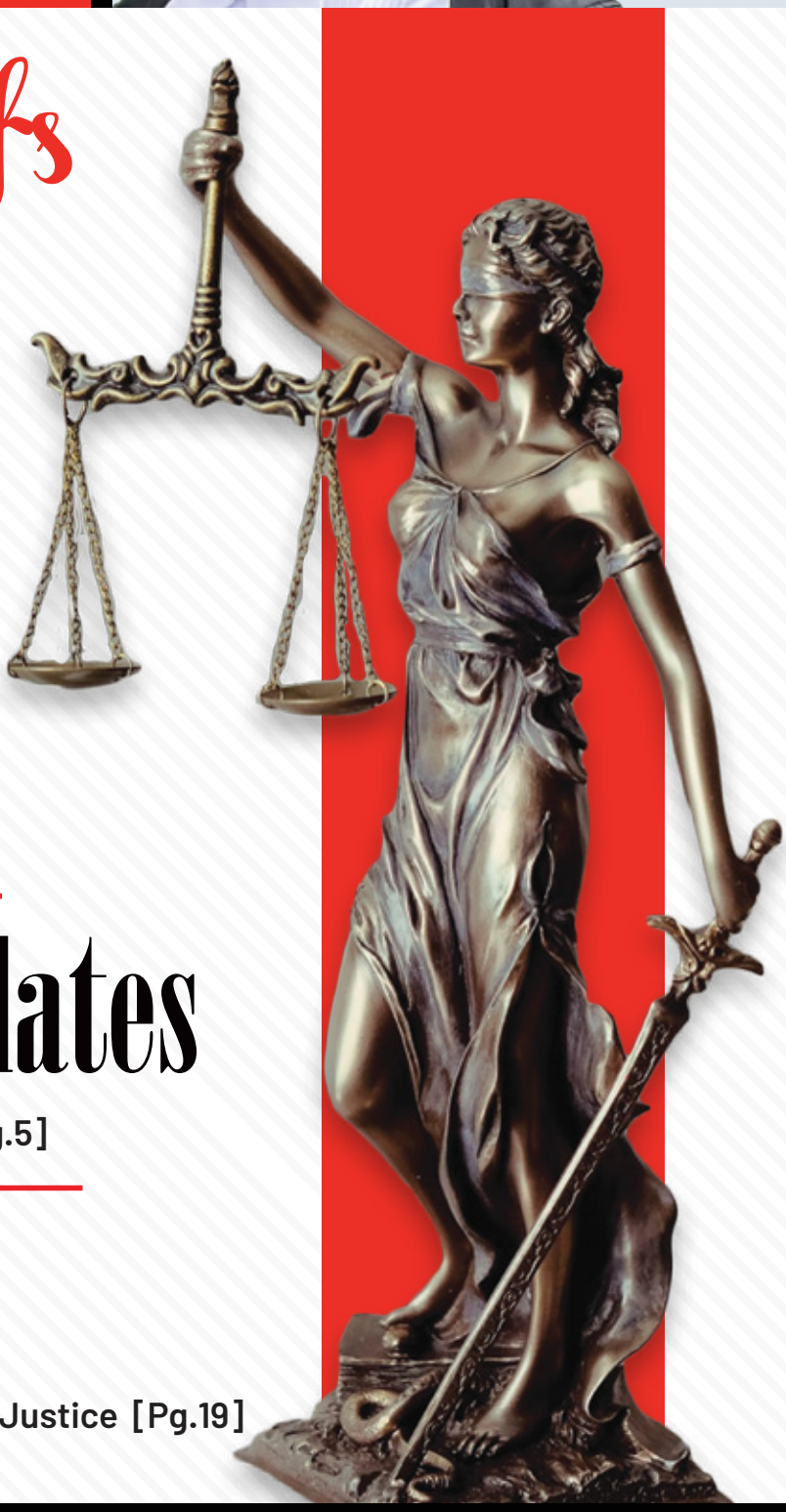
Legal Briefs



The Firm

Legislative Updates

Contributors

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Editorial Team

Disclaimer

EDITOR'S NOTE

Dear Reader,

Welcome to the quiet thunder of Q3 2025. Open this issue and you step into a season where law, technology and human lives meet at sharp, urgent crossroads. Regulators have rewritten rules; courts have spoken with clear practical rhythm; and the ordinary work of organisations, hiring, pricing, securing data, and deciding who stays and who goes, now carries new, immediate meaning. This edition is our handrail through that change: part map, part toolkit, and part invitation to think differently about risk, duty and care.

You'll find here stories that matter. On the regulatory front, lenders are learning to speak a new language of rates and reason, a move to KESONIA and borrower-specific pricing that asks boards to be architects as well as accountants. Banks and fintech companies are building a shared cyber watchtower: a sector-wide command that will change how incidents are seen, shared and solved. At the same time, market regulators are sharpening their gaze: being copied into a suspicious email is no longer an innocent oversight but a risk to be managed. And in workplaces, courts remind us that the timing and manner of a renewal letter can be as consequential as the law itself.

These pages carry casework that will shape practice: decisions on casualisation and conversion; the limits of remedial orders; and where procedural fairness becomes a constitutional demand. We listen to voices from inside the Firm, our interns who remind us that law is not only doctrine and precedent but a daily craft of words, filings and human judgment. Our contributors weigh policy and practice from health-fund reforms to how sports, contracts and governance can lift a nation's promise.

Read this issue not as news to archive but as a set of small instruments you can use tomorrow: a checklist for boards, a playbook for security teams, a short brief for HR, and a model clause for counsel. We do not offer comfort that the road is easy; we offer, instead, clear next steps, governance to finish, disclosures to draft, reporting channels to test, and conversations to have before the clock runs out.

So start here. Read the case highlights when you need legal clarity. Turn to the legislative updates when it's time to act. Drop into the contributors' pieces when you need to imagine a better policy, and when you close the newsletter, hold this: law is a practical art, it shapes what organisations do and who we become. May this edition give you both the courage to decide and the precision to do so well.

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The Firm

Introduction

During their time with us, they immersed themselves in the Firm's culture gaining hands-on experience and contributing fresh perspectives to our projects. In this edition, we share their reflections and insights, highlighting the valuable lessons learned and the innovative ideas they brought to the table. Join us in celebrating their contributions and the enriching experience they've had with us!

Esther Somba

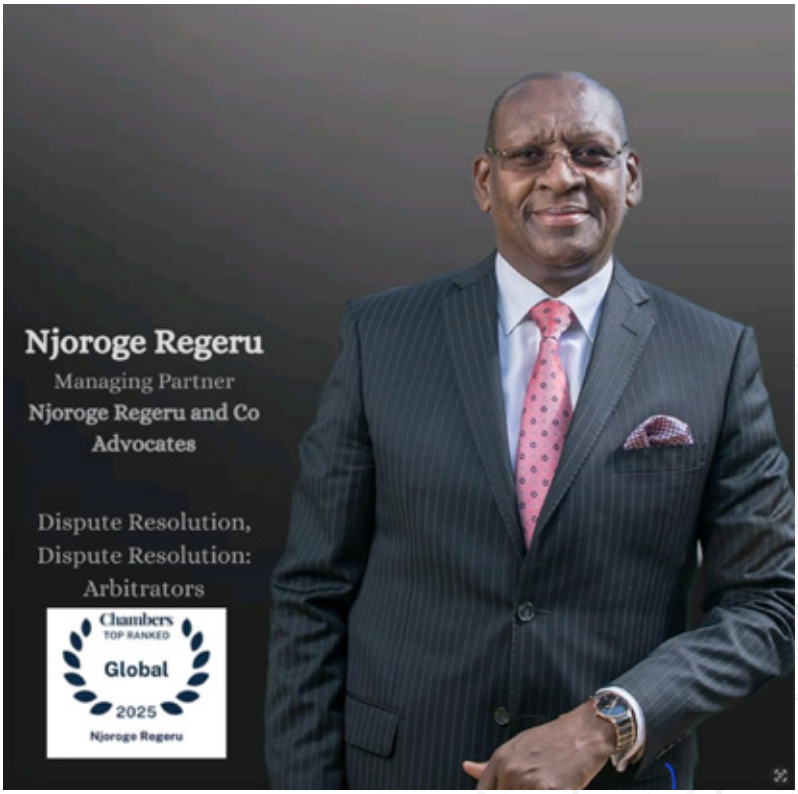
"My time at NR & Co. has been particularly insightful; it has taught me about the work culture and the activities that take place on a day-to-day basis. I've gained a clear understanding of the kind of tasks performed in the office, which has helped me form a better idea of the area of law I'd like to specialize in the future. I have had the privilege of working alongside some of the best legal professionals in the country who have taught me so much about the practice of law and what it has to offer. As an intern at NR & Co, I am more than satisfied with the new knowledge and skills I have acquired, and I've developed a newfound passion for a future in law."

Kelvin Karanja

"Interning at NR & Co has been an experience of immeasurable value to me. Being here has helped me gain a much more realistic understanding of the law and its procedures through hands-on learning. The Firm's focus on doing the most thorough work possible to the best of one's ability, values of always being open to learning something new and there being no limit to the amount of knowledge one can acquire will stay with me going forward as I pursue a career in law. I am very thankful for the opportunity to contribute to cases directly and to work with the highly experienced advocates and staff that were all so kind and open to sharing their knowledge; it has been amazing."

Rose Barbara

"My time at NR & Co. has been amazing; I've learnt a lot and have developed my legal knowledge as a result. I sincerely appreciate this opportunity and I'll be applying everything I've learned here to both my academic and professional endeavours moving forward. I just hope for the best for every single one of the people I've met here. I am thankful for everyone here; they have all been very kind."



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Legislative UPDATES

In this issue, we highlight the recent laws and guidelines or directives passed or issued during the Third quarter including the New Regulations by Central Bank of Kenya 2025.

THE REVISED RISK-BASED CREDIT PRICING MODEL (RBCPM)

In August 2025, the Central Bank of Kenya (CBK) published the final Revised Risk-Based Credit Pricing Model (RBCPM). The reform replaces the CBR-linked approach for variable-rate loans with a transaction-based overnight benchmark **KESONIA (Kenya Shilling Overnight Interbank Average)** and requires banks to price credit as **KESONIA and a documented, borrower-specific premium ("K") and fees/charges.** New variable-rate loans must use the model from **1st September 2025**; existing variable-rate loans must be migrated by **28th February 2026.** Below are the notable updates:

Key Provisions

1. **New reference benchmark for KESONIA CBK** has designated **KESONIA** (Kenya Shilling Overnight Interbank Average) as the standard market reference rate for variable-rate Kenyan-shilling loans. Where KESONIA is impractical, the Central Bank Rate (CBR) may be used as an alternative fallback. The move aligns Kenya with international practice of transaction-based overnight benchmarks.

2. **Pricing Formula and Full Decomposition** Lenders must express variable-rate lending as: **Total Lending Rate= KESONIA + Premium ("K")** and disclose the **Total Cost of Credit (TCC)** as: **KESONIA + Premium (K) + Fees & Charges.** Banks must now show the full breakdown to borrowers at point of sale and publish summary data publicly.

3. **Nature and Makeup of Premium ("K")** The premium must be individualized, justified and documented for each institution and where applicable, each borrower. CBK expects banks to demonstrate how "K" is derived commonly including: operating/lending costs, required return to shareholders, and borrower-specific credit risk from a robust credit-scoring model. Uniform, non-evidenced mark-ups are inconsistent with the RBCPM.

4. **Model Governance, Approval and Supervisory Engagement.** Each bank must develop a **Board-approved** risk-based pricing model with supporting policies and controls within **three months** of the final RBCPM, submit the approved model to CBK shortly after Board sign-off and be ready for post-implementation review by the regulator. The CBK will monitor adherence and may require remedial action.

5. **Implementation Timetable & Public Disclosures**
   a) New loans variable-rate, Kshs: effective **1st September 2025.**

   b) Existing variable-rate loans: Migrate to RBCPM by **28th February 2026** which is the transition window.

   c) During transition banks must publish on the TCC portal initially and then monthly: weighted average lending rate, weighted average premium (K), fees and the APR for each product.

Implications for Stakeholders

1. Banks & Financial Institutions
   - **Governance lift:** Boards must formally own and approve pricing models, assumptions and controls. Expect internal audit, model-risk units and compliance teams to be heavily engaged.

   - **Pricing engines & data needs:** Banks must implement or upgrade credit-scoring analytics, cost-attribution systems and loan-

pricing engines (including compounding KESONIA calculations, APR calculators and TCC reporting).

- Product Re-engineering: Existing loan products, term-sheets and pricing schedules will need revision; new product approvals should include RBCPM impact assessments.

2. Corporate Treasuries & Borrowers (Large Corporates, SME, Retail)
   - **Greater Transparency:** Borrowers will be able to compare lenders by published weighted rates documented premiums strengthening bargaining power for well-rated borrowers.
   - **Contract migration & communication risk**: Some legacy agreements may need variation clauses or customer consent for migration. Borrowers should review existing contracts and prepare for communication from banks.

3. Regulators & Market Infrastructure
   - **Monetary Policy Transmission:** CBK expects KESONIA to improve the pass-through of policy moves to retail and lending because it is transaction-based and responsive to interbank liquidity. Market surveillance and transparency obligations will be stepped up.

4. Legal, Compliance & Advisory Teams
   - **Contract Redrafting**: Legal teams must prepare standard customer notices, model Board resolutions, and migration/consent templates. Firms will face a mix of regulatory, contractual and consumer-protection issues during migration.

Potential Challenges

1. **Operational & System Readiness:** Many banks must update core banking and pricing engines to calculate compounded KESONIA rates and APRs automatically. Smaller institutions and MFIs may find the three-month model-build window tight; early prioritisation is essential.

   Mitigation: ring-fence project resources, use third-party price-engine vendors, and prioritise high-volume products.

2. **Customer Consent and Legacy-Contract Issues:**
   Migrating live loans may raise questions of contract variation and consent particularly where original agreements referenced CBR or set fixed margins.

   Mitigation: legal teams should segment portfolios, run a consent/communication plan, and where necessary obtain express waivers or rely on transitional regulatory relief.

3. **Compatibility Debates & Commercial Tensions over "K":**
   Banks will need to justify differing Ks. Public publication of weighted premiums may create reputational or competitive pressure and calls for regulatory harmonization.

   Mitigation: maintain rigorous model documentation, independent model validation, and transparent customer disclosures describing the components of "K."

4. **Data Quality & Model Risk:**
   Borrower-specific premiums demand high-quality credit data; weak scoring models produce mis-pricing and compliance risk.

   Mitigation: strengthen data governance, invest in analytics, and run back-testing and stress scenarios before Board sign-off.

5. **Short-term Market Volatility**
   KESONIA will be more sensitive to overnight liquidity conditions than the CBR. Lenders and borrowers should anticipate increased short-term rate volatility and consider product features caps and collars to manage customer impact.

   Mitigation: new product designs should include communication, shock-absorption mechanisms, and customer education.

Conclusion

The RBCPM is a material reform: it modernizes Kenya's loan-pricing architecture, embeds borrower-specific risk pricing and mandates unprecedented transparency of the Total Cost of Credit. For institutions, this is both a compliance obligation and a strategic opportunity: firms

that move early to strengthen governance, model validation, data systems and customer communications will reduce regulatory risk and position themselves competitively.

Immediate action checklist for boards and senior management:

1. **Approve a draft RBCPM model** and submit it to CBK within the mandated timetable.
2. **Audit legacy loan contracts** and prepare customer-notice templates for migration.
3. **Upgrade pricing engines** to support compounded KESONIA, APR and TCC publishing.
4. **Publish an internal migration plan** and a public communication timeline to preserve customer trust.
5. **Train credit officers and relationship managers** to explain the KESONIA + K structure and APR impact to clients.

THE ESTABLISHMENT OF THE BANKING SECTOR CYBERSECURITY OPERATIONS CENTRE (BS-SOC)

On 22nd September 2025 the Central Bank of Kenya (CBK) announced the creation of a sector-wide **Banking Sector Cybersecurity Operations Centre (BS-SOC)** to strengthen the banking system's cyber-defence, intelligence and incident-response capabilities. The BS-SOC sits within CBK's Cyber Fusion Unit and implements obligations under the **Computer Misuse and Cybercrime** Critical Information Infrastructure and Cybercrime Management Regulations, 2024 while the CBK harmonizes existing sector guidelines.

Key Provisions

1. **Creation and Mandate of the BS-SOC**
   CBK has established the BS-SOC to operate as the banking sector's central cyber-fusion and operations hub. Its core functions include: cyber threat-intelligence sharing, coordinated incident response, digital forensics, sector-level situational awareness, and support for criminal cyber investigations. The BS-SOC will act as the reporting point for regulated institutions and coordinate with national cyber agencies where criminality is suspected.

2. **Legal and Regulatory Basis**
   The BS-SOC is explicitly linked to the Computer Misuse and Cybercrime (Critical Information Infrastructure and Cybercrime Management) Regulations, 2024 (the "CII Regulations"), which require owners/operators of Critical Information Infrastructure (CII) including systemically important financial infrastructure to implement protective measures, report incidents and cooperate with designated response centres. CBK has positioned the BS-SOC as the sectoral operational arm for meeting those regulatory duties within the banking sector.

3. **Interim Harmonization of Guidelines**
   While CBK proceeds to harmonise the Commercial Banks Cybersecurity Guidelines (2017) and the Payment Service Providers Cybersecurity Guidelines (2019) with the 2024 Regulations, regulated entities are required to comply with both the older Guidelines and the new Regulations simultaneously. In practice this means dual-compliance until harmonized instruments are published. CBK has also mandated incident reporting to the BS-SOC within the timelines specified by the CII Regulations.

4. **Required Reporting and Information Sharing Protocols**
   The BS-SOC will receive timely incident reports from banks and payment service providers and will:
   i) coordinate containment and response, (ii) produce sector-level threat advisories, and
   ii) request additional technical artefacts for forensic analysis where necessary. CBK emphasises that the centre is a collaborative platform; information shared will be used for defence and, where warranted, for regulatory or criminal follow-up.

Implications for Stakeholders

1. **Banks and Regulated Financial Institutions**
   i) Operational Duty: Banks must ensure their internal security operations integrate with BS-SOC reporting channels and incident-handling workflows. That means technical log forwarding, agreed SLAs for escalation, and pre-designated liaison officers.

   ii) Governance & Compliance: Boards and senior management should review cyber-governance frameworks, ensuring the institution meets the CII Regulations' requirements (risk assessments, business-impact analyses, and incident response plans) and can fulfil CBK's data and reporting requests

2. **Payment Service Providers (PSPs) & Fintechs**

   PSPs must continue to comply with the 2019 PSP Cybersecurity Guidelines and the 2024 Regulations; they will also be required to plug into BS-SOC reporting and threat-sharing arrangements. Fintechs that partner with banks (or are hosted on bank infrastructure) should expect increased oversight and coordinated technical exercises.

3. **Customers and the Broader Market**
   a. **Better protection but also faster notifications:** The BS-SOC should shorten detection and containment times and enable sector advisories that reduce customer harm. However, customers may also see more frequent public advisories or mandatory notifications where incidents affect service delivery.

4. **Regulators and Law Enforcement Partners**

   BS-SOC will be the banking sector's focal point for all collaborative work with national cyber agencies and law-enforcement for example, on cross-border or criminal investigations. This centralization is likely to improve evidence collection and prosecution timelines for cybercrime affecting banks.

5. **Legal, Compliance and Audit Functions**

   A heavier load for compliance and legal teams is expected including: incident reporting, evidence preservation, regulatory disclosures, cross-agency data-sharing requests *(will require clear internal workflows) and documentation (to meet statutory timelines and preserve privilege where appropriate).*

Potential Challenges

1. Dual-Compliance and Regulatory Uncertainty

   Operating under the 2017/2019 Guidelines and the 2024 Regulations simultaneously raises potential conflicts (reporting formats, timelines, technical standards). Institutions must map the overlapping requirements and seek early clarification from CBK to avoid compliance gaps.

   Mitigation: create a cross-functional harmonization taskforce and engage CBK for interpretative guidance.

2. Information Sharing, Privacy and Confidential Concerns

   Sector-level threat-sharing requires exchange of potentially sensitive customer and commercial information. Data-protection obligations (Data Protection Act) and evidence-handling rules must be observed.

   Mitigation: ensure Data Processing Agreements, defined scope for information use, and legal clearances for cross-border forensic support.

3. Resource and Capability Gaps

   Smaller banks and fintechs may lack the technical capacity to provide real-time telemetry, forensic artefacts, or liaise with BS-SOC analysts.

   Mitigation: consider pooled services, industry-funded shared SOC tooling, or phased onboarding with CBK support and capacity-building programmes.

4. Rapid Escalation of Enforcement or Reputational Spillovers

   Faster detection and public advisories may expose institutions to immediate reputational harm and enforcement scrutiny.

Mitigation: prepare communication playbooks, legal sign-off processes, and customer remediation roadmaps before incidents occur.

5. Technical Integration and Standards Alignment.

   Banks must standardize log formats, telemetry feeds, and malware/sample submission methods. A lack of common standards could slow analysis.

   Mitigation: adopt sector standard formats such as STIX/TAXII for intel sharing), agree on SIEM connectors, and run joint tabletop exercises under CBK oversight.

Conclusion

The BS-SOC marks a major stepping stone in Kenya's financial-sector cyber resilience strategy. It centralizes detection, response and coordination which should materially shorten incident lifecycles and improve evidence-based follow-up. Success however depends on industry cooperation, clarity of harmonized rules and investment in technical and human capacity.

Immediate actions for boards and senior management checklist: -

1. Map regulatory obligations by undertaking an urgent gap analysis against the 2017 Guidelines, 2019 PSP Guidelines and the 2024 Regulations; document how your institution will meet BS-SOC reporting timelines.
2. Designate BS-SOC Liaisons by naming the technical and compliance contacts and test the reporting channels.
3. Harden evidence and data process to align logging, retention and forensic-artifact preservation with BS-SOC needs; ensure legal protections for sensitive data exchanges.
4. Plan capacity support for smaller partners and consider shared SOC services or vendor partnerships for PSPs and smaller banks.
5. Prepare public communication and remediation playbooks to anticipate coordinated advisories and customer notifications so response is timely and legally sound.

Why readers should care: BS-SOC's creation raises the baseline for cyber readiness in the banking sector, it increases regulators' visibility and the speed of coordinated response. Institutions that treat this as a compliance box-tick will struggle; those that take a strategic, collaborative approach will reduce risk, protect customers and preserve trust in Kenya's digital financial ecosystem.

case Highlights

In this segment, we highlight two decided cases, looking into the jurisprudence set by the apex courts in:

Ongwae v Kenya Civil Aviation Authority (Employment and Labour Relations Petition E206 of 2024) [2025] KEELRC 2585 (KLR)

Ms. Ongwae had worked at KCAA since 2016 on successive fixed-term contracts and by all accounts was a senior, trusted Flight Operations Inspector whose performance records were positive. Her last renewal cycle followed the internal HR timeline: she submitted a timely renewal request under **Clause 21 of Kenya Civil Aviation Authority (KCAA) Human Resources Manual on 22nd September 2023**, and internal minutes from the Human Capital Advisory Committee (HCMAC) recorded a recommendation in her favour. That internal endorsement created a legitimate expectation that the executive decision-maker would either renew or give a reasoned explanation if the recommendation were to be rejected.

Despite the HCMAC recommendation, no formal reply was issued before the contract expired on **31st December 2023**. Instead, the Director-General's office only communicated the non-renewal by letter dated **12th January 2024,** twelve (12) days after her employment had already ceased. No explanation was given for the non-renewal. The delay and silence left Ms. Ongwae in an uncertain position unable to plan financially or professionally and formed a central factual basis for her claim that the Authority's conduct was procedurally unfair and irrational.

Following the post-expiry letter, Ms. Ongwae filed her petition in the Employment & Labour Relations Court, seeking: declarations that KCAA's conduct breached her constitutional rights to fair labour practices under Article 41 and fair administrative action under Article 47, an order quashing the decision, an order of renewal and damages for the distress and financial loss caused by the Authority's handling of the renewal process.

KCAA defended itself on the basis that fixed-term contracts expire by effluxion of time and that there was no statutory duty to renew or to give reasons, relying on precedent to argue that no legitimate expectation arose absent an express promise. The Court's factual inquiry turned on the timing, the internal recommendation and whether, in the public sector context, those facts imposed a procedural obligation on the Authority to act fairly before the contract lapsed.

Issues

1. *Whether the Respondents conduct violated the petitioner's rights under Articles 41 and 47 of the Constitution on Fair Labour Practices and Fair Administrative Action, respectively.*

2. *Whether the delay and post-expiry communication were unreasonable, capricious or in bad faith.*

3. *Whether the remedies were appropriate if the court found a breach.*

In his judgment delivered on 25th September, 2025, Justice M. N. Nduma accepted that employers have discretion not to renew fixed-term contracts, but held that discretion must be exercised **fairly, reasonably and in good faith**, especially in public bodies governed by constitutional values and internal HR rules. The Judge gave a purposive reading to Clause 21 of Kenya Civil Aviation Authority (KCAA) Human Resources Manual on renewal procedure and concluded that, having received the petitioner's timely renewal request, the Authority was implicitly bound to communicate its decision within a reasonable time before the contract's expiry so the employee could plan and prepare particularly where the employee had mortgage obligations guaranteed on salary. Because KCAA failed to respond before expiry, failed to give reasons despite an internal committee's favourable recommendation, the Court found that it acted unreasonably and contrary to Articles 41 and 47.

The Court specifically held that where an internal committee recommends renewal, the decision-maker must explain any contrary decision.

Conclusion & Implications

The Court quashed the non-renewal letter dated 12th January 2024 and ordered KCAA to renew Ongwae's contract for three years from the date of judgment on similar or better terms if KCAA preferred, awarded **general damages equivalent to six (6) months' salary (KShs.2,221,104.00)** for the constitutional breaches. The Court additionally ordered payment of interest at court rates and costs in favour of the petitioner.

This judgment reaffirms three practical duties for employers and HR teams:

- **Timely communication:** Where a contract contains renewal procedures, employers should respond before expiry. Delaying a renewal decision to after expiry especially without explanation risks judicial intervention.

- **Explain departures from internal recommendations:** If a HR committee recommends renewal or any favourable outcome, any decision-maker who overrides that recommendation should record and communicate reasons. Failure to do so can give rise to a legitimate-expectation claim and a breach of Article 47.

- **Treat discretion as duty-laden in the public sector:** Discretion in public employment is not unfettered. Employers must act consistently with constitutional values fairness, reasonableness, transparency and their own policies.

Accurate Steel Mills Limited v Competition Authority of Kenya (Tribunal Case 006 of 2023) [2025] KECT 5 (KLR)

In a landmark decision rendered on 9th July 2025, the Competition Tribunal delivered judgment in a major cartel investigation involving Kenya's steel sector. The dispute arose from a Competition Authority of Kenya (CAK) investigation that began in 2020 into alleged price-fixing and output-restriction among several steel manufacturers. The investigations conducted by the CAK revealed that a number of firms had engaged in concerted conduct on CAK's account evidenced by internal emails and other communications uncovered during searches in December 2021 and imposed financial penalties on the companies it concluded had participated. Accurate Steel Mills was one of the firms penalized. It appealed the Authority's findings to the Tribunal.

Accurate Steel's core argument was that it was simply being copied into cartel-related emails. That, without more, could not constitute participation in a restrictive trade practice. The company argued it never requested to be included on the distribution lists, did not respond to the emails, took no pricing action afterwards and had not indicated consent to any collusive scheme. It challenged CAK's factual findings and the evidential basis for the penalty, arguing the Authority had not discharged the burden of proving active or tacit participation.

CAK in response argued that the email exchanges showed a pattern of coordinated behaviour across competitors and that a firm's silence and failure to publicly disassociate from clearly collusive communications amounted to tacit cooperation under the Competition Act. The Authority relied on comparative jurisprudence and competition law principles, including line authorities in EU cases, to show that "passive" involvement can nevertheless be part of a concerted practice where it tends to remove independent commercial decision-making.

The Tribunal therefore had to determine whether passive copying and silence, on the facts, met the statutory test for concerted practices under section 21 of the Competition Act.

Issues

The Competition Tribunal considered the following issues for determination;

1. Whether being copied into cartel-related emails without evidence of active participation can constitute "participation" in a restrictive trade practice under section 21 of the Competition Act.
2. Whether CAK met the evidential burden required for administrative competition investigations when it concluded Accurate Steel had engaged in a concerted practice.
3. Whether the penalties and other relief CAK imposed were lawful and proportionate.

Analysis

The Tribunal adopted a broad reading of "concerted practices." It emphasized that section 21 of the Competition Act, 2010 targets not only explicit agreements but also concerted behaviour that removes or suppresses independent commercial judgement and that such behaviour may be effected by tacit or passive cooperation as well as active collusion. On the facts, the Tribunal found the pattern of communications, the context in which they occurred, and the firms' conduct thereafter were sufficient to show concertation that had the object or effect of distorting competition. In brief, the Tribunal concluded Accurate Steel's failure to disassociate itself publicly from the collusive exchanges amounted to tacit participation on the evidence presented.

On evidential burden, the Tribunal reiterated that CAK's probe is administrative and investigatory in nature. That whilst findings must be founded on credible evidence, they are not judged by the criminal standard. The Tribunal was satisfied that CAK had amassed a coherent evidential narrative, emails, timing of communications, and market behaviour, that met the civil-administrative standard applicable in tribunal review. The Tribunal therefore dismissed Accurate Steel's appeal and upheld CAK's penalty and orders.

Conclusion & Implications

This Judgment by the Competition Tribunal is a clear signal that Kenyan competition enforcement will treat passive conduct including being copied on cartel communications without a firm, public renunciation as potentially culpable where the surrounding facts show a pattern of coordination.

The Tribunal's decision aligns CAK's practice with international competition thinking that tacit cooperation may be sufficient to infringe competition law in the right circumstances.

Accordingly:

- Companies must disassociate promptly and unambiguously from any exchanges that appear to concern pricing, output, market allocation or other sensitive commercial parameters. Silence is risky.
- Firms should document and preserve evidence of any steps taken to distance themselves from participating in unlawful practices within the meaning of the Competition Act.
- Robust competition law compliance programmes such as training, monitoring of staff communications, clear escalation paths and immediate reporting obligations, are now essential in concentrated sectors.

The Tribunal's judgement underscores an expanded practical reach of section 21 of the Competition Act, 2010. It affirms participation in the anticompetitive concerted practices can be established by a mix of documentary context, market conduct and a respondent's failure to repudiate collusive proposals. For suppliers, in-house counsel and compliance teams, the safe route is proactive disassociation and strong internal controls. Passive copying should not be assumed to be harmless. The Tribunal approach indicates Kenya will continue to adopt robust, internationally informed enforcement against cartels in key industrial sectors.

Publication highlight

INHERITING ASSETS ABROAD: A PRACTICAL GUIDE FOR KENYAN ESTATES

When a Kenyan with assets overseas dies, a favourable judgment or a clear will abroad is only the start. Turning international holdings into a smooth transfer for heirs requires careful navigation of differing legal rules, tax implications and local probate procedures. This one-page guide explains how Kenyan succession law interacts with foreign regimes and sets out the practical steps families and executors should take to secure cross-border estates.

Legal framework: what governs Kenya's succession code?

The Law of Succession Act (Cap. 160) governs distribution of estates in Kenya and sets formal requirements for wills and administration. A written will in Kenya must meet the statutory formalities to be valid (include signature and witnessing requirements).

Two international principles usually determine which law applies to particular assets: **lex situs** (the law of the place where immovable property is located) governs land and buildings; **lex domicilii** (the law of the deceased's domicile) commonly governs movable assets such as bank accounts, shares and personal effects. In practice this means a house in London is administered under UK rules, while a Kenyan bank account will be dealt with under Kenyan law.

Resealing foreign grants and probate basics

If a foreign court grants probate or letters of administration in respect of a Kenyan-connected estate, Kenyan courts permit resealing of Commonwealth and certain foreign grants so they become effective locally. The Law of Succession Act recognises duplicate or certified copies of foreign grants for local effect, but formal resealing procedures and certification are required. In non-reciprocal situations, executors may need to obtain fresh Kenyan grants (Letters of Administration or Probate) to administer Kenyan assets.

Tax and reporting considerations

Kenya does not currently impose an inheritance tax; beneficiaries typically do not pay tax simply because they inherit. However, the sale of inherited assets can attract Capital Gains Tax (CGT) currently charged on net gains at the statutory rate so heirs should factor tax on future disposals into planning and valuations. Foreign jurisdictions may impose estate or inheritance duties, so cross-border tax advice is essential.

Practical roadmap immediate steps for executors and families

- Inventory and documentation: compile a global list of assets (bank accounts, real estate, securities, pensions) and gather certified documents (death certificate, original will, ID).
- Local counsel & executor appointment: instruct local lawyers in each jurisdiction and consider naming an international executor or professional administrator.
- Reseal or obtain local grants: where Kenyan assets exist, apply for Probate or Letters of Administration; reseal foreign grants where statutory routes permit.
- Preserve value and manage tax: obtain valuations, freeze or manage assets to avoid unnecessary disposals, and consult tax advisers on CGT and foreign estate duties.
- Consider trusts and gifting carefully: certain pre-death transfers or trusts can avoid probate but require careful tax and legal analysis to prevent unintended consequences.
- Plan for timing and consular steps: apostille or certify Kenyan documents for use abroad; begin embassy/consulate processes early to prevent delays.

Common pitfalls to avoid

- Trying to use Kenyan probate to transfer immovable foreign property; local probate is typically necessary.
- Assuming no tax consequences; sale of inherited assets often triggers CGT or foreign estate duties.
- Delaying resealing or local grants time limits and local formalities can slow transfers and increase costs.

Conclusion

Cross-border estates are manageable with prompt action: assemble documents, instruct local counsel, and choose the correct procedural route (reseal foreign grants where possible; obtain Kenyan grants where necessary). With proper planning, wills tailored for each jurisdiction, clear executor instructions and coordinated tax advice, families can preserve value and reduce delay.

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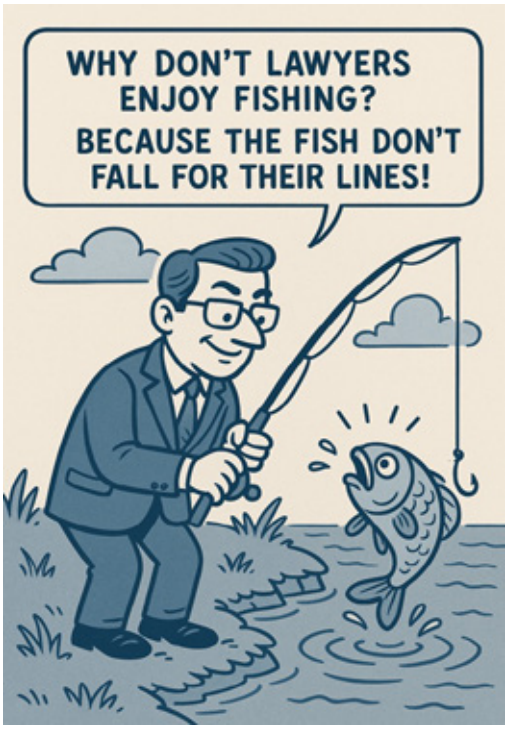
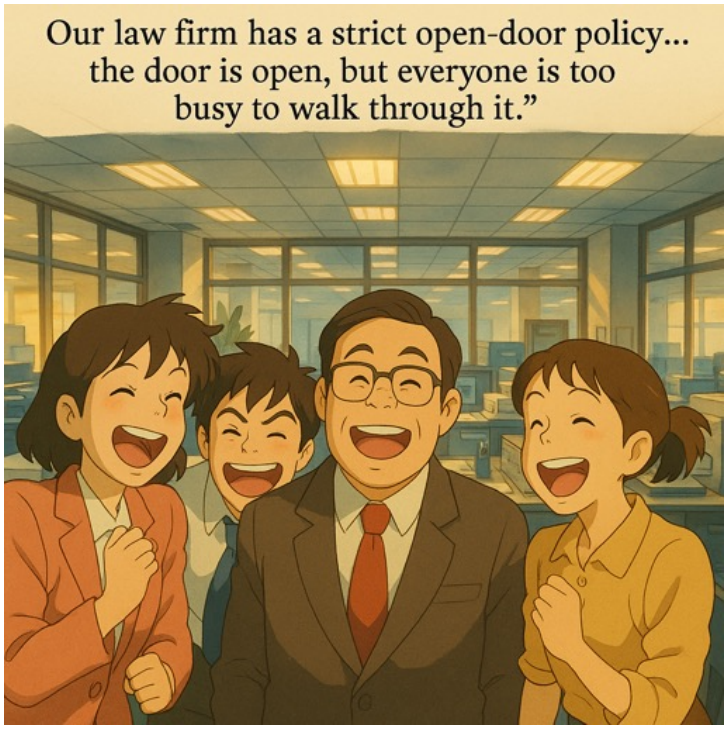

WHY DON'T LAWYERS ENJOY FISHING?
BECAUSE THE FISH DON'T FALL FOR THEIR LINES!


Our law firm has a strict open-door policy... the door is open, but everyone is too busy to walk through it."


Mr. Smith, do you have anything to say before I pass sentence?
Yes, Your Honor— if you're about to pass sentence, please make sure it's grammatically correct.

CONTRIBUTORS' PLATFORM

DISABILITY RIGHTS MEET CORPORATE RESPONSIBILITY: WHAT THE PERSONS WITH DISABILITIES ACT, 2025, MEANS FOR EMPLOYERS WITHIN THE PRIVATE SECTOR - by Wanjiru Gikungu

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Introduction

The enactment of the **Persons with Disabilities Act, 2025** ("PWD Act") in Kenya represents a pivotal development in the recognition and protection of the rights of persons with disabilities ("PWDs"). This legislation reflects Kenya's commitment to international human rights standards, particularly the United Nations Convention on the Rights of Persons with Disabilities (CRPD), while also addressing the specific challenges faced by PWDs in employment and social inclusion within the private sector.

The private sector plays an increasingly important role in Kenya's economic development, and ensuring that PWDs have equal opportunities in this sector is fundamental to inclusive growth and social justice. The PWD Act spells out detailed obligations for employers and clear rights for employees with disabilities. For corporate leaders, human resource managers, and the public, understanding this new framework is critical to ensuring compliance and fostering an inclusive workplace.

Keywords

Understanding the rights of PWDs begins with clear definitions as provided by the PWD Act and related legal instruments.

i. **Disability:** Includes any physical, sensory, mental, psychological, or other impairment, condition or illness that has or is perceived to have a substantial or long-term effect on an individual's ability to carry out ordinary day-to-day activities.

ii. **Person with Disability (PWD):** A person with disability is an individual who has any physical, mental, intellectual, developmental or sensory impairments, including visual, hearing or albinism, which in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others.

iii. **Reasonable Accommodation:** Any necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms. Examples include flexible working hours, assistive technologies, or physical changes to the workplace.

iv. **Discrimination:** Any distinction, exclusion or restriction based on disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.

Legal Framework Governing Rights of PWDs - The Persons with Disabilities Act, 2025

The PWD Act, 2025 repealed the earlier Persons with Disabilities Act of 2003, introducing stronger and more comprehensive provisions. Its key features relative to the private sector include: -

i) Employment Quotas:

Private sector employers with twenty or more employees are legally required to reserve at least 5% of their positions for PWDs. If taken literally, a company with 100 employees must hire 5 people with disabilities. This affirmative action aims to increase workforce participation by PWDs and combat systemic exclusion. Employers must now submit annual reports to the National Council for Persons With Disabilities (NCPWD) outlining the employment status of persons with disabilities in their organizations.

ii) Reasonable Accommodation:

Employers must provide reasonable accommodations to enable PWD employees to perform their jobs effectively. This might include physical modifications (ramps, adapted workstations, tactile signage), flexible schedules, provision of assistive technologies, or even reorganizing job tasks. The law explicitly classifies any unjustified refusal to provide such accommodations as discrimination. Notably, the Act now penalizes any form of employment discrimination. On conviction, a party would be liable to a fine of up to KShs.2,000,000.00 and/or 2 years imprisonment.

iii) Assistive Allowance:

The Act introduces a novel concept of an assistive allowance to offset additional costs incurred by PWDs, such as expenses for personal assistants, specialized transportation, or communication aids. This allowance recognizes the economic burdens uniquely borne by PWD employees.

iv) Retirement Age:

The PWD Act stipulates that PWDs enjoy an extended mandatory retirement age of five years beyond the standard retirement age. Essentially, where the statutory retirement age is 60 years, PWDs retire at 65 years. While this provision is explicitly stated for public servants, it serves as a recommended model for private sector employers to ensure fairness and avoid indirect discrimination based on disability

Additionally, the law expressly protects PWDs from wrongful dismissal or demotion on account of their disability. For instance, if an employee loses a limb or acquires a chronic illness, the employer cannot lawfully fire them just for that reason. If a PWD needs to change positions, the Act envisions reasonable measures, such as keeping them on a "supernumerary" post until a suitable role is available

v) Enforcement Rights and Remedies

Critically, the PWD Act provides PWDs with enforceable remedies if their rights are violated. A PWD can lodge a complaint with the NCPWD for issues like discrimination or denial of accommodation. The Council can investigate and issue an Adjustment Order requiring the employer to make necessary changes. PWDs may also apply directly to the High Court for redress (seeking injunctions, orders, or damages).

Key Next Steps for Employers

1. Update employment policies by revising HR manuals, contracts, and workplace policies to prohibit disability-based discrimination and include reasonable accommodation provisions.

2. Meet the 5% employment quota. Employers with 20 or more staff must ensure that at least 5% of their workforce comprises persons with disabilities and file annual reports to NCPWD.
3. Extend the retirement age for employees with disabilities by five years and avoid termination due to disability by offering reassignment where possible.
4. Improve physical accessibility by conducting accessibility audits and modify premises e.g. install ramps, accessible washrooms, and clear signage to meet legal standards.
5. Maintain accurate records of employees with disabilities and submit required annual inclusion reports to the NCPWD.
6. Provide reasonable accommodation by developing a clear process for granting workplace adjustments and budget for assistive devices or allowances where necessary.
7. Monitor compliance continuously. Establish internal monitoring systems to track adherence to the Act.

Financial Incentives to Employers

The PWD Act not only imposes inclusion obligations on employers but also promotes compliance through meaningful financial rewards. These incentives aim to reduce the cost of hiring and accommodating persons with disabilities, positioning inclusion as both a moral and economic benefit.

a) Tax Deduction on Wages

The Act provides employers who hire persons with disabilities (including regular employees, apprentices and trainees) with a 25% tax deduction on qualifying wages paid to those employees. In practice this means an employer may reduce its taxable income by an amount equal to 25% of the wages paid to qualifying PWD staff, thereby lowering corporate tax liability.

Practical caveats: The deductions operations depend on implementing tax rules and employers should confirm:

i) Whether employees must be certified by the National Council for Persons with Disabilities (NCPWD) or another body;
ii) Which elements of remuneration qualify (basic pay, allowances, bonuses, benefits in kind);
iii) Whether a per-employee cap or aggregate limit applies; and
iv) The documentation KRA will require for audit. Until tax guidance is issued, firms should document everything (payroll, contracts, certification, board approvals) to support any claim.

b) Tax Deduction on Accessibility Investments

Businesses that improve accessibility in their workplaces, by installing ramps, elevators, or accessible washrooms, or by offering special services or assistive devices, qualify for a **50% tax deduction** on the direct costs of those modifications or services. This measure encourages proactive efforts to create disability-friendly environments.

Conclusion

The Persons with Disabilities Act, 2025 represents an advancement in promoting equality and inclusion within Kenya's private sector. This article helps readers, particularly employers, to align their work practices with the law thus promoting an inclusive workplace

REDISCOVERING COMPASSION IN RETRIBUTIVE JUSTICE

- by Esther Somba

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Introduction- The balance between punishment and humanity

A justice system focused on proportionate punishment to wrongdoing remains a core principle in Kenya's criminal law. It answers the public's demand for accountability and the moral intuition that wrongs deserve consequences. Yet punishment alone often stops the legal story while the human one continues: victims carry grief and loss; offenders and their families face economic hardship and stigma; communities bear the social and fiscal costs of repeated offending. Rediscovering compassion within a retributive system does not mean abandoning accountability. Rather it means designing institutions and practices where punishment and repair coexist so that the system not only marks wrongdoing but also reduces future harm. This is provided for in the statutory context on non-custodial options discussed below. In this regard, the Probation of Offenders Act (Cap. 64) and the Community Service Orders Act (No. 10 of 1998).

Retribution: theory and the Kenyan practice

Retribution is built on three core ideas: that people who break the law should face proportionate consequences; that the State has the authority to impose those consequences; and that punishment must never be arbitrary or directed at the innocent. While traditional thinkers like Kant argued that punishment should strictly reflect what an offender "deserves," modern approaches soften this view with considerations of fairness, rehabilitation, and the need to prevent future harm.

In Kenya, courts still apply retributive principles when sentencing, particularly for serious offences. However, the Kenyan legal system also recognises that punishment alone is not always the most effective response. Statutory alternatives such as probation, community service orders, and diversion programmes allow courts to hold offenders accountable while also supporting rehabilitation and repairing harm. These non-custodial options are firmly grounded in legislation and administered through the Probation and Aftercare Service, which oversees their implementation across the country.

The emotional and social costs of "punish-only" systems

Punishment without repair leaves several gaps: -

a) Victims often seek explanation, recognition and reparation. Victim-impact processes and restorative conferencing can meet those needs in ways that a prison term cannot.

b) Offenders and families suffer collateral costs: incarceration erodes social ties, reduces employment prospects, and often increases recidivism risk. In Kenya the recurrent evidence base indicates reconviction and return-to-prison rates remain a policy concern (national studies commonly cite a roughly 47% recidivism benchmark used in academic literature). That figure points to the practical limits of punishment-only approaches.

c) Communities and public finances carry the cost of repeated incarceration: overcrowded prisons, lost productive labour, and repeated victimisation.

The upshot is straightforward: if the objective includes reducing future harm, the system must invest in programmes that repair harm and support reintegration not merely investing in enlarged prison capacity.

Restorative and rehabilitative tools already available in the law

Our statute and policy already create openings to blend retribution with compassion.

a) **Probation orders** *(Probation of Offenders Act, Cap. 64):* Courts may place eligible offenders under supervision for periods (commonly 6 months–3 years), attach conditions and require rehabilitative measures. Probation orders allow the court to impose supervision while avoiding custody.

b) **Community Service Orders** *(Community Service Orders Act, No.10 of 1998):* For offences carrying relatively short terms, courts can order unpaid work for the community as a structured sanction and reparative mechanism. The Act provides for supervision, review and variation mechanisms.

c) **Diversion and restorative settlement practices:** Kenyan jurisprudence recognises the limited role of restorative and traditional mechanisms in some contexts (notably through cases and commentary invoking *Republic v Mohamed Abdow Mohamed* and related decisions), and policy instruments such as the national Sentencing Policy Guidelines encourage consideration of non-custodial measures where appropriate.

Recent High Court orders and sentencing review decisions routinely show judges substituting probation or community service where proportionality and the facts permit; for example, the courts have on occasion set aside custodial sentences in favour of probation when mitigation and pre-sentence reports supported rehabilitation and supervision.

Evidence and limits-What the research says

Internationally, restorative and rehabilitative programmes reduce reoffending in selected cohorts (juveniles, low-to-medium risk adults) when properly resourced and linked to aftercare. In Kenya, pilot projects and academic evaluations show promising results, but national-scale implementation and consistent outcomes are limited by resource constraints and uneven capacity in probation and prison services. Empirical work urges caution: restorative justice is not a universal remedy and must be applied to cases where victim safety, offender acceptance of responsibility and community capacity exist.

Key cases and judicial practice that illustrate compassionate retribution

- **Republic v Mohamed Abdow Mohamed (2013) KEHC 3823 (EKLR):** The litigation and commentary around this decision show courts engaging with the possibility of traditional or restorative settlement mechanisms in appropriate circumstances, while also highlighting the legal boundaries and prosecutorial discretion in serious offences. The case is often referenced in scholarship and practice debates about restorative justice in Kenya.
- Probation and sentencing revisions: Recent High Court decisions illustrate judicial willingness to substitute or direct probation orders when pre-sentence reports and the favour community supervision over custody. Such circumstances would, for example, be where the subject is a first offender, is of low risk or has strong family support. for example, in **JMN v Republic (Criminal Revision E121 of 2023) KEHC 530 (EKLR)** a probation order was substituted. Such Court decisions show courts can, and do, exercise discretion to blend punishment with rehabilitative measures.

These precedents confirm two practical points:

i) Kenyan courts have legal and jurisprudential space to deploy non-custodial and restorative measures; and
ii) Successful use of those tools depends on reliable pre-sentence reporting, effective probation supervision and well-designed aftercare. These are the very areas where the system needs investment.

Operationalising compassion - The programmes and policy steps

To make compassionate retribution real, we should pursue a three-track strategy:

1) Scale community corrections and probation capacity. The Probation & Aftercare Service must be resourced for larger caseloads, with trained supervisors, reliable monitoring and data systems for compliance and outcomes. The Probation & Aftercare Service own mandate and reports set out these priorities.
2) Invest in prison-based rehabilitation that links to employment. Vocational training, cognitive-behavioural therapy, and structured reparative projects are effective only when employers and community partners accept and hire returning citizens. Pilot programmes should be rigorously evaluated and scaled where outcomes justify expansion.
3) Standardise data, Key Performance Indicators (KPIs) and evaluation frameworks. Policymakers must publish consistent recidivism measures (reconviction at 12 months, employment rates post-release, victim satisfaction) so interventions are evidence-led. Existing academic work highlights the current gap and the need for national reoffending registers.

These measures will not eliminate the need for sentences that incapacitate or deter; they make custody a last resort and ensure that when used, imprisonment is paired with clear rehabilitation and aftercare plans.

Practical checklist for practitioners

i. For defence counsel and prosecutors: prepare and present mitigation packages that include rehabilitation plans, community supervision arrangements and evidence of support (training certificates, employer letters, community sponsors); courts respond well to concrete proposals.
ii. For Victims, Complainants and their Families: Asking for a clear information about available remedies and support (medical, psychological, legal). Keep a written record of requests and responses from authorities. Where possible, participate in restorative processes or approved community programs with independent counselling and the option to withdraw to help rebuild trust and manage expectations.
iii. For policymakers and funders: Support capacity building for probation services, victims' assistance programs and community reintegration schemes so alternatives to custody are realistic and reliably implemented.

Conclusion

Retributive justice will, and should, remain central to criminal law: society must recognise wrongdoing and mark it with proportionate sanction. However, punishment that stops at pain often perpetuates harm. By using statutory tools such as probation and community service, operationalising restorative practices where appropriate and investing in probation, aftercare and data systems, Kenya can craft a justice that both holds offenders to account and reduces future harm. That is not laxity; it is strategic governance justice that marks the past while protecting the future.

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