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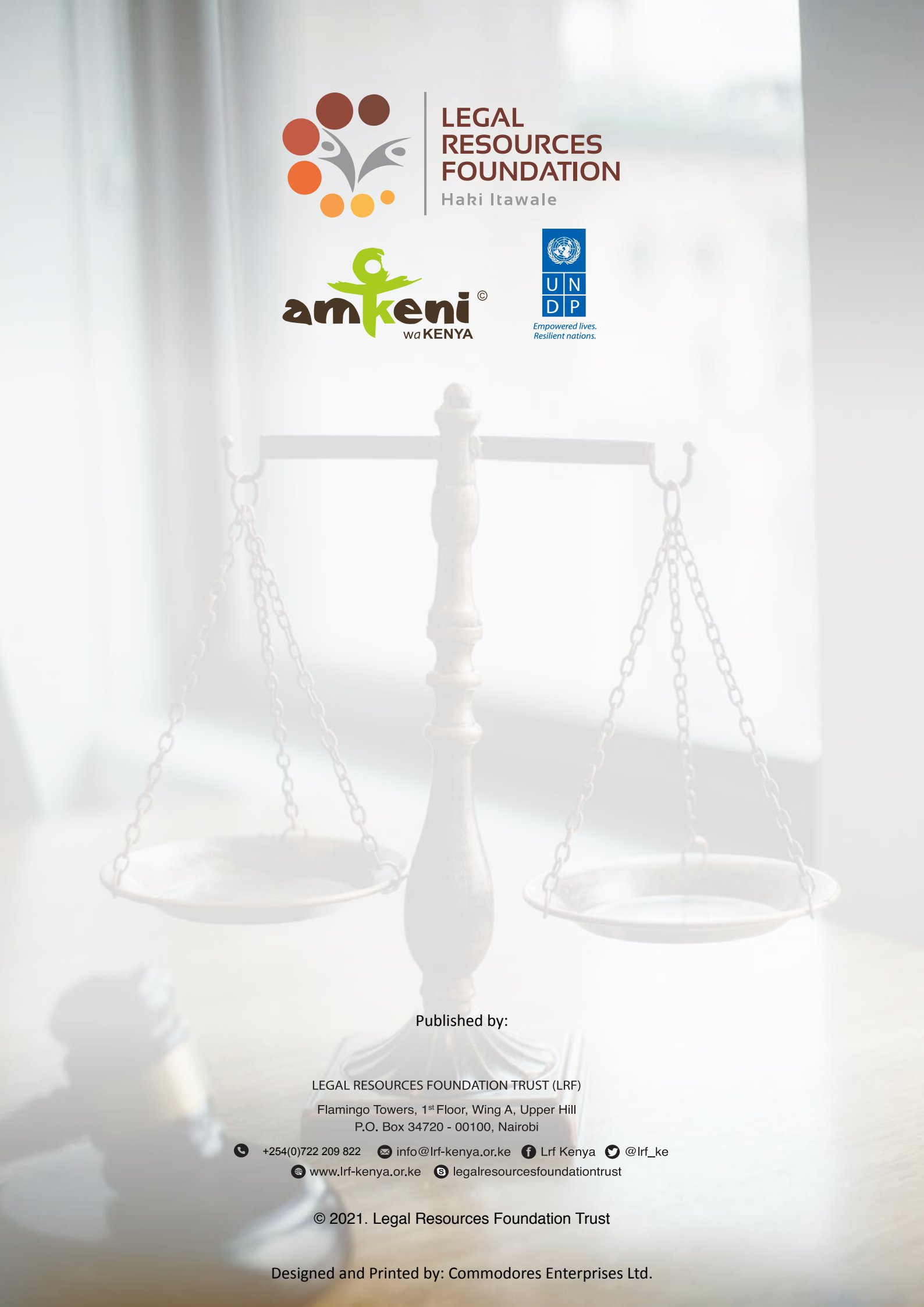

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EDITORIAL

Legal Resources Foundation publishes this first issue for 2021 amidst resurgence of COVID-19 which is in its second year.

In late 2020 and early 2021, LRF commissioned a research which addressed little discussed, yet fundamentally important aspect of legal technological transformation: the rise of digital justice in the courtroom. Against the backdrop of the judiciary's current programme of transformation amidst the Covid-19 pandemic, it examines the implications of advances in courtroom technology for fair and equitable public participation, and access to justice. This issue provides a snapshot into the research. Readers are urged to obtain the full version of the research for further information.

LRF responds to legal aid questions about change of names and implications thereof, custody and maintenance, divorce, succession, tenancy and contractual relationships these questions sometimes arise in diverse contexts requiring situation specific responses. These are legal concerns by Kenyans of different walks of life.

In our review we feature a collection of topical justice sector opinion pieces particularly on the evolving subject of radicalization and violent extremism. We examine the nexus between violent extremism and organized crime, explore radicalization and violence. Lastly, we delve into the subject of competition between religious identities and mobilization for violent extremism

As a contribution to expanding legal literacy LRF endeavors to breakdown legal concepts in a simplified way to enable the poor, vulnerable and marginalized understand and use the law to protect and advance their rights.

Editorial Team

Against the backdrop of the judiciary's current programme of transformation amidst the COVID-19 pandemic, it examines the implications of advances in courtroom technology for fair and equitable public participation, and access to justice

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HIGHLIGHTS OF THE RESEARCH REPORT ON THE INFLUENCE OF THE USE OF IT IN THE JUDICIAL SYSTEMS ON ACCESS TO JUSTICE IN NAIROBI COUNTY

The research addresses a little discussed yet fundamentally important aspect of legal technological transformation: the rise of digital justice in the courtroom. Against the backdrop of the judiciary's current programme of transformation amidst the Covid-19 pandemic, it examines the implications of advances in courtroom technology for fair and equitable public participation, and access to justice.

The research contends that legal reforms have omitted any detailed consideration of the type and quality of citizen participation in newly digitized court processes which have fundamental implications for the legitimacy and substantive outcomes of court-based processes; and for enhancing democratic procedure through improved access to justice.

The research holds that although digital court tools and systems offer great promise for enhancing efficiency, participation and accessibility, they simultaneously have the potential to amplify the scope of injustice, and to attenuate central principles of the legal system, including somewhat paradoxically, access to justice.

RESEARCH EXECUTIVE SUMMARY

Reforms of courts and judicial processes generally occur at a glacial pace. Not only is law inherently conservative, courts are complex systems. The implications of change need to be carefully considered to ensure relevant protections are maintained and cherished objectives promoted.

All of this makes the breakneck transition to 'virtual courts' in response to COVID-19 at once terrifying, thrilling, concerning and exciting. Necessity is forcing changes, particularly in the use of remote and online hearings that were impossible to imagine just last year.

The challenge in such a transition is to find the right balance in protecting both the short–and long-term rights and interests of parties and the public. Not only may bad practices adopted in emergency conditions be difficult to wind back later, but vital protections may be unnecessarily denied as pandemic continues. On the other hand, the intense period of forced innovation may reveal how technology can make courts better. Some changes may be worth keeping. This study, in general, sought to identify and discuss potential challenges and opportunities raised by the quick roll-out of courtroom technology amidst the COVID-19 pandemic. Specifically, this research sought to find out what the IT driven justice sector in Nairobi County looks like, the perceptions of key stakeholders and their clients on the technologies used. A particular focus was to determine the usefulness of these technologies as far as fostering access to justice is concerned and identify weak links if any. In addition, the study makes some recommendations on how the system can be improved upon to enhance access to justice in Nairobi County. COVID-19 pandemic has accelerated transformation from traditional courts to contemporary post-modern courts. Various stakeholders have resorted to using virtual meetings, as well as partner with the Judiciary

in piloting the e-court system. This transformation on one hand is perceived as a plan to improve on service delivery while on the other hand is seen as one of mitigation measures to help curb the spread of the disease.

Therefore, this research on the Influence of the Use of IT in the Judicial System on Access to Justice in Nairobi County, looks at whether the use of technology can help address the challenges of backlog of cases, overcrowding in courtrooms and even the cost of accessing justice. It provides relevant information to the judiciary, their clients and key policy makers within and without the Kenya's capital city.

Back to COVID-19, there is the progress in the search for a vaccine that couldn't have come at a better time. There are some promising successes with regards to development of vaccines with higher levels of potencies, ranging between 90 and 95%. Significantly, in the West, the U.S. pharmaceutical giant Pfizer together with Germany's biotechnology firm BioNTech are leading the charge, with approvals for their vaccine having been done in some jurisdictions. In December 2020, western countries have reported to have started vaccinations of their nationals to mitigate the scourge. On December 23, 2020, Health Canada approved Moderna's COVID-19 vaccine for use in the country, with 168,000 doses received by the end of the year 2019. The regulator announced the approval after completing a review of the Massachusetts-based biotechnology company's clinical trial data. Canada expects to receive 1.2 million doses from both Pfizer and Moderna by January 31, 2021. However, the economic devastation in Africa seems to slow the progress of most of its economies in acquiring and vaccinating people. Philanthropy coupled with bilateralism should ensure that weak economies are supported to ensure access to the vaccine. This is because countries need to leverage pandemic crises to build more inclusive and sustainable societies and move forward. LRF

"THERE ARE SOME PROMISING SUCCESSES WITH REGARDS TO DEVELOPMENT OF VACCINES WITH HIGHER LEVELS OF POTENCIES, RANGING BETWEEN 90 AND 95%"

SUMMARY OF RESEARCH FINDINGS

Common application software and tools used in the Justice sector

The common application software used in dispensation of justice in Kenya which participants of this research study identified and noted that they have at least interacted with them or used to access justice for themselves or on behalf of litigants and/ or used to deliver rulings on matters before court or utilized during virtual mediation sessions include Microsoft Teams, Zoom, GoToMeet, Skype, WhatsApp Video Call, and Google Meet for video conferencing. One participant uses Digital Voice Recorder as a tool for electronic recording of evidence.

Technology expedites access to justice

Justice delayed is justice denied. A significant number of participants stated that the judicial procedures are easier thanks to technology.

- The IT devices and procedures have made it easy to track cases through the e-Filing platform
- Easy to hold meetings as it is flexible enough to secure quorum for meetings unlike where physical attendance is required

It is possible to work remotely

The use of technology allows the Judiciary members of staff and other stakeholders to work remotely as they offer judicial services or seek justice in the courtrooms and correctional centres.

- Ability to work away from the office. One needs not be physically in the office to work as one can work from home.
- I am able to file documents in court registries in various parts of the country remotely
- You can handle cases remotely.

Minimize unnecessary movements

Unless litigants and advocates are required to appear in courtrooms in person, there is minimised movement removing tiresome journeys.

- Avoiding many road journeys since one can now connect to far away courts online.

Relaxed yet extended working hours

With the use of technology, the Judiciary employees, advocates and other key stakeholders are able to work for long hours provided that they are comfortable with that arrangement. This means an individual can find time to complete tasks not completed during the normal Judiciary working hours of 8a.m to 5p.m. This eventually leads to improved productivity if their performance is assessed in terms of tasks completed.

- Scattered working hours. With the use of IT, one is able to work outside the conventional 8a.m. to 5p.m. One can work even at night.

To read the full research findings obtain a copy from LRF offices

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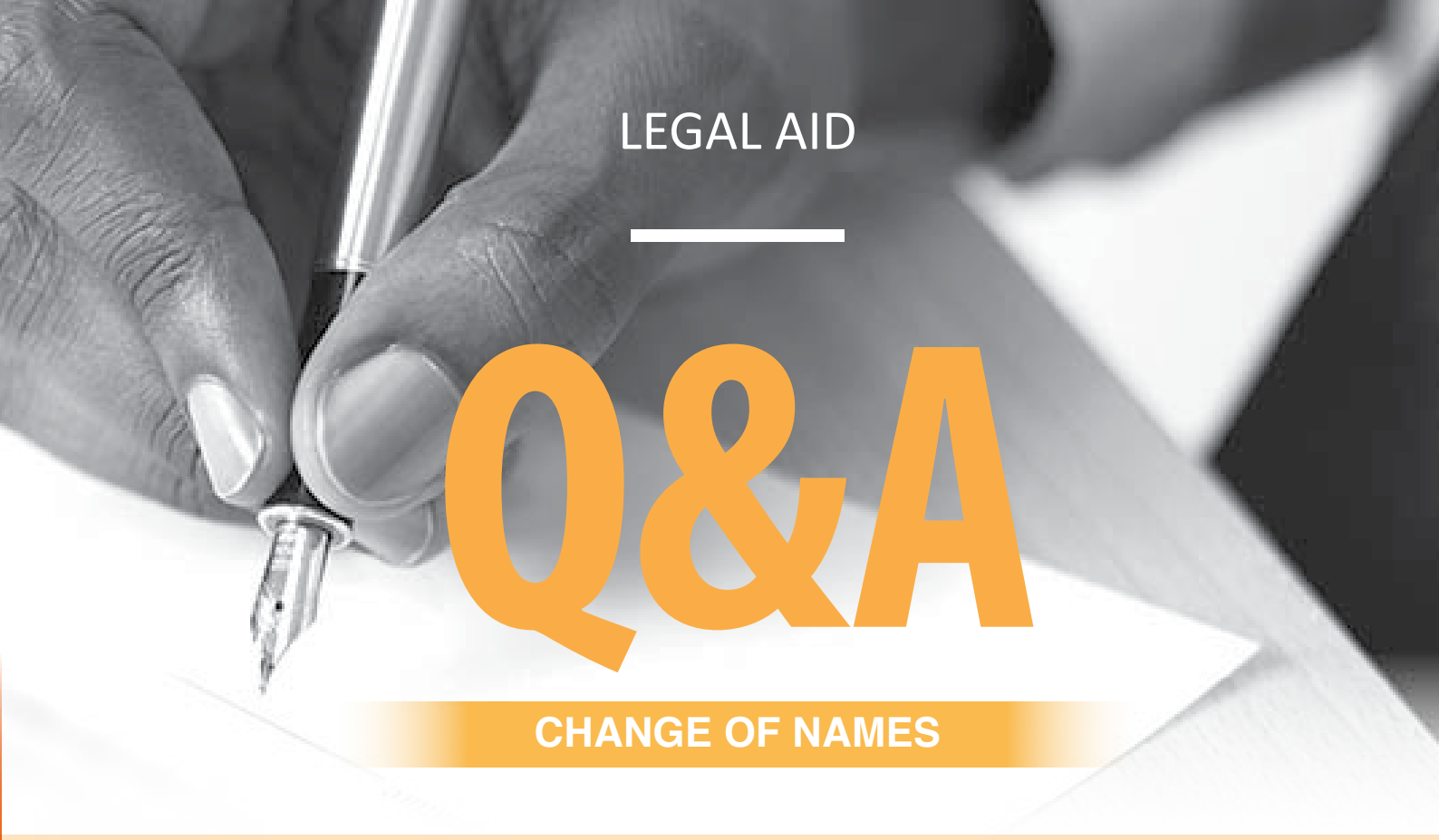
LEGAL AID
Q&A



LEGAL AID

Q&A

CHANGE OF NAMES

Can an adult change their name if they want to?

Key highlights of the case

- An adult has to go through the registrar of documents to change their name
- Once the name change is successful, you will assume the new identity, which by law demands acquisition of new documents

Question

Can an adult change their name if they want to? What is the procedure for doing so? Because I would like to get rid of my English name and fully adopt my middle and last name.

Answer

Hi Reader,

New year often presents us an opportunity to review the past and gauge our ability to face the future. In the language of many, it is a moment for resolution(s). Picking new, transitioning others, and dropping old unworkable ones. 2020 was unpredictably difficult, even as a few vaccines emerged to reduce suffering and death. For those who lost loved ones to COVID-19, let this conversation be the strength and motivation to confidently confront uncertainty. We have been tested and our resilience to get through difficulty enhanced. Despite these circumstances, your decision to change name in 2021 is on and the legal clinic so directs you on the how. Yes, it is possible for an adult to change their name. It is legally provided for and you have a right to do so. It should be appreciated that change of name by an adult is sometimes treated with hesitation. Since such actions alters part of a person's identity, and may lead to new legal documents, in particular replacement birth certificate, national identity card and traveling passport. Even further, concerns tend to be raised by law enforcement agencies who, in their line of duty get alarmed to modified identity. In the past we have had cases where people use pseudonyms to commit crime and lure unsuspecting innocent others into it.

An adult has to go through the registrar of documents to change their name. This is because, they are likely holding legal identity documents, bearing their old name. Following, you will require to complete a "deed poll", which is a binding declaration of intention by one or more persons to change name and is provided for at Section 3 of the Registration of Documents (change of name) regulations, pursuant to Registration of Documents Act (Cap 285).

There are many reasons as to why people change names, and the law anticipates this to the extent that some caveats have been cited. If the name being changed is impossible to pronounce. If the name includes symbols or punctuation marks. If the name is vulgar, offensive, or

blasphemous. If the name connotes criminal activities, use of controlled drugs or indicative of racial or religious hatred. If the name, on face value seem to ridicule groups, government departments, companies or organizations. If the name sought gives the impression of title conferment, inherited honour, or title and academic award such as Professor, Doctor, Knight, Sir and Baron amongst others. Despite some of these restrictions being ambiguous, the decision to reject or accept the name replacing the old one is a discretion of the Registrar.

Should your name meet the aforementioned standards, you will be required alongside the deed poll to present a certified copy of the original birth certificate, national identity card and a statutory declaration by a person who is resident in this country and has known you for at least ten years. Once the registrar accepts these documents, the deed poll will be registered, consequently allowing for the gazettement of the change of name in the Kenya Gazette for thirty days, awaiting any petition opposing or protesting such change. It is only after the expiry of the 30 days' notice, that the new name becomes legally recognizable and can therefore be used by the applicant.

Once the name change is successful, you will assume the new identity, which by law demands acquisition of new documents such as the birth certificate, national Identity Card, and passports. In case of academic certificates and other documents, there could emerge the need to swear an Affidavit of Discrepancy in names on the certificates, for continued use. Such an affidavit may only be acceptable in Kenya and documents such as passport may have to be replaced as well.

As I conclude, a bit of caution in this process of name change. People change their names for many reasons. It could be a desire to address past bitterness, bad experiences owing unloving parents, violent upbringing, childhood violations or simple dislike. While the new identity may mean new start, there is need for caution, since healing, reconciliation with self and transformation is required. Such people are advised to seek counseling services, it is professionally a better response to add onto the change of name. In your case getting rid of the English name. This reminds me of Mohamed Ali the famous pugilists, who once said, "Clay is the name that white people gave to my slave master. Now that I am free, that I do not belong to anyone, that I am not slave anymore, I gave back their white name, and I chose a beautiful African one." A person's name is the sweetest and most important sound in any language. Your two non-English names must be sweet.

How do I add the father's name to my sons' birth certificate?

Key highlights of the case

- Naming of a child, which administratively commences with birth notification, is parental business, irrespective of their circumstances
- It is in the best interest of your son to have the right parentage on his birth certificate

Question

Dear legal aid

Am Grace, our son would be reaching 3 years next month 2 February, I went today to apply his birth certificate, but they refused to include his dad's name in his names they just used the names used in his notification. We were been pressured when writing the notification back at the hospital and I didn't have his ID no. And his phone was off, thus I wrote am a single mom with hope Al be able to do the changes later, I need your help what should we do about it?

~ Grace

Answer

Hi Grace

Grace, the law is constructed to remedy most anomalies construed, created, promoted, and reinforced by human beings. In essence, the law anticipated the situation you find yourself in, where registration of your son's birth at the Registrar of Births seems to have hit a snag. Let us first remind each other that Section 11 of the Children's Act in operationalizing Article 53 (1-a) of the Kenyan Constitution gives every child the right to a name and nationality. Following and like any good parent you wish that your son grows with the right identity, which is partly foundational on how he will perceive his ancestral heritage and the world around him. With eloquence you state the predicament many encounter when seeking crucial legal identification documents. Though the situation you describe sounds simple, it raises multiple issues, not necessarily legal, but concomitant for a good law to be seen effective.

First, a review of the hospital experience. It was unethical and a contradiction of Maternity hospitals' Standard Operating Procedures, if the nurses or any medical staff in the

delivery facility pressurized you to omit the name of your son's father on the birth notification. This action injured Article 47 of the Constitution that calls for fair administrative actions, since birth notification is a quasi-legal document legal that alerts government administrators of the growing population in the country. Naming of a child, which administratively commences with birth notification, is parental business, irrespective of their circumstances and no one should interrupt or influence. Second, the employees of such a facility are by training to create an environment in which labouring mothers find peace and can keep sanity of mind, since some conditions such as peripartum depression (depression that occurs during pregnancy or after childbirth) could be exacerbated by uncertain and stressful moments. On a separate platform, the medics may have to address how the behaviour of maternity staff largely affects the state of delivering mums.

The application for your son's birth certificate is considered a late registration. Section 8 of the Births and Death Registration Act directs the registrar of births to register any such birth that is over six months old on receiving written authority that is guided by late registration rules and with evidence of prescribed fee payment from the Principal Registrar. Therefore, for your son to access a birth certificate you will be required to complete form 5 as provided for under the late registration rules. Further at Section 14 of the same Act, the Registrar is permitted to register a birth of any child, even with an altered name before the period of two years elapses. These two scenarios are viewed as first or original registrations. In your son's case the name is not only altered but the registration being sought is stretched outside the two-year period. This requires an additional process.

You and the father of your son will be required to complete a deed poll, which is a binding declaration of intention under oath to change name. The reason as to why you are filling a deed poll is informed by two things: one, you are adding the name of the father to the birth application documents: and two, it is being done after two years have lapsed. As parents, you will do this on behalf of your son because he is a minor. This process is guided by Section 3 of the Registration of Documents (change of name) regulations. Upon completing the deed poll, you will present it, together with certified copies of your national identity cards, birth notification, an affidavit from someone who knows you for at least ten years and therefore knowledge of the child, or a chief's letter acknowledging the facts of the parents and the child. On receiving these documents, the register may decline the added name, if he or she thinks it connotes vulgarity, use of prohibited drugs, offense, crime, ridicule to state agencies, departments or people, religious hatred, and racial discrimination, besides, falsely implying conferment of title, inherited honor, or academic award. However, should the registrar find favour including the ability to pronounce the name, he will direct that the name is gazetted in the Kenya Gazette for a period of 30 days before the name can be legally recognised and subsequently used by the applicant, in this case your son. It is after this process that you will now apply for a birth certificate to bear the names you prefer for your son, including the surname. Please remember that the law focusing on children is larger than their bearers. At Article 53 (2) of the Constitution, they have a right that directs every state, societal and individual action to be motivated by the principle of their best interests. It is in the best interest of your son to have the right parentage on his birth certificate.

What does change of name signify?

Key highlights of the case

- … the law does not bind the society but particularizes parental responsibility to individuals

Question

Dear Legal Aid,

One can change the name of a child but should consider other variables like what that child will feel on attaining adulthood. More important is many African ethnic groups attach names to living or dead parents or relatives. When names are changed there is what is called Child Identity Theft. I was particularly offended when my daughter in law changed my grandson's name (named after me) after she separated from her husband. She even denied that child the chance of knowing and meeting relatives of his father. The last straw is when she changed his name to make sure that the child will never be able to trace his roots, ever.

~ M.M.G

Answer

Hi M.M.G

Everyone has a right to change the name of their child. In some circumstances the consent of such a child is required. You are on point that considerations other than parents' whims be made, when renaming a child, including their feelings when they come of age. You single out the significance African societies place on naming children, because it is believed, they belong to the community. Your concerns are valid and timely, for they help readers understand how the law or lack dissects through customary naming processes to maintain right of children.

Section 11 of the Children's Act, which operationalizes Article 53, 1-a of the Constitution gives children right to a name and nationality. You have highlighted the need for child's consent in changing their name, besides, drawing attention to the role of age. The Birth and Death Registration Act at Section 8 and 14 provides how change of name is instituted. The first registration must be done before expiry of six months after the birth of the child. Anytime thereafter, within two years, the registrar must get written authority, known as late registration authority from the Principal Registrar before registering such a birth. Should the child be two years or below, and the name is to be altered, added, removed, or replaced altogether, then the Principal Registrar would provide written authority to facilitate change, for as long as the change initiator pays the prescribed fee and provides evidence such as original birth certificate to support the change sought.

It behooves the initiator of name change to process a deed poll by the parameters set in the Registrar of Documents (Change of name) regulations, if the change sought is after the second birthday. The deed-poll must then be gazetted for a maximum of 30 days, before the intended beneficiary can commence use. The gazettement is a window within which interested parties raise objections to motivate the Registrar's rejection of the proposed name change. You have not mentioned the age of the child, which shuts out the possibility of knowing whether the opportunity to offer reservations was missed. In case your grandson is fourteen years and above, the law demands his consent in effecting the changes. There is a legal presumption that a child of such age is able to form opinion, character, and identity to accept or reject any changes in his name.

"WITHOUT DISREGARDING THE IMPORTANCE OF AFRICAN CULTURE OF NAMING CHILDREN, THE LAW'S ARCHITECTURE INDIVIDUALISES ANYONE'S NAME"

Without disregarding the importance of African culture of naming children, the law's architecture individualises anyone's name. Similarly, the law does not bind the society but particularizes parental responsibility to individuals. Therefore, cultural aspects that occasion collective responsibility, irrespective of the benefits of social capital do not override individual rights. Article 53 (1-e) requires equal parental responsibility to care for and protect the child from various forms of harm and abuse, which includes naming. Your concerns are culturally valid, yet the law nullifies none of the parents to do what they deem right and relevant for their child. Likewise, cultural naming practices that intentionally or unintentionally negate the right of parents to undertake their role remain invalid to the extent defined by Article 2 (4) of the Constitution.

You have mentioned an offense known as Child Identity theft, and this requires clarification. It is an offense where an adult person uses a minor's personal information to commit fraud. This kind of theft could transmute into many forms such as criminal identity

theft, identity cloning and medical identity theft amongst others. This is not what you have described.

As emphasised before, many dangers just as benefits accrue when changing the name of a child. First, is the risk of such a child losing touch with the absent parent, in case of separation or poorly handled co-parenting. Second, the likely loss of inheritance, if any, besides severance of relations with half siblings, family, and relatives. Thirdly, and most perturbing is the probable creation of emotional turbulence in the child should the absent parent make claim in their life when instances of DNA testing are requested or required. Let us conclude with some advisory. If the intention is to totally severe blood relations between feuding parents, we must recall that the law demands we do everything in the best interest of the child. Please familiarise self with Article 53 (2) of the Constitution. Furthermore, name change should not be people's preferred means to severe the pain, loses and excesses of their past. Consulting a professional counsellor to help them understand and face historical mental discomfort is more important. Change of name sometimes reflects denial or physical escape from uncomfortable memories, but this denies peace to a tormented mind. Let us remember that no legal precision nor customary excellence can fulfill the interests of name givers, since they are not the end users, but the child.

Can I change my name after my spiritual rebirth?

Key highlights of the case

- All persons beyond the age of two are required to fill a deed poll ……. to amend their name
- The registrar places the name for gazettement for a period of 30 days, to await any formal complaint against the name change sought

Question

Hi Eric,

Am having trouble figuring out how to make a change to my name. I recently experienced a spiritual rebirth and I want to mark it with a change of name. Given contradictory information from online sites and blogs, I would very much like the opinion of a real lawyer and perhaps even a way of cooperating with one. What is your advice?

~ Dhana

Answer

Hi Dhana,

Spiritual rebirth is akin to newness, a refinement of who we are or a re-boot of old self with new direction. Rachel Cowan once said, "sometimes refinement of character happens naturally as we grow old, but for many people growth is fostered by spiritual practices adopted and followed in a disciplined way." Your spiritual journey is likely a reflection of discovering the beauty of faith in a course of life. You begin this by seeking to change name. Change of name is possible legally, socially, and religiously, despite the information hurdles you may have faced so far. Before responding to the direct question, a few indirect issues within your text require a bit of legal insight.

You remind us and our readers of the significance of religion, especially the right associated with it. Article 32 (1) of the Constitution, provides all people with a right to freedom of conscience, religion, thought, belief, and opinion. Part (2) of the same provision contextualises the right, by recognising how people manifest religion or belief, either through worship, practice teaching or observance of a day of worship. On your part such manifestation begins with adoption of a new name. Your decision helps readers to appreciate the power in their hands, for which the law has provided, if name change is required. You clearly provide the difference between an adult and a child under 14 who legally has no capacity to influence or stop change of name initiated by their parents or guardians.

Since you are an adult, no one should crucify me in assuming the following: that you already have legal identification documents such as the birth certificate, national identity card and passport: you are in possession of academic certificates bearing the name David: and you are able to tell conflicting information that is available on online blogs and sites. The Birth and Death Registration Act, which acknowledges arrival and demise of a life, considers your change of name as late registration. This is simply an acknowledgement besides recognition of a new person into the register of life after two years since his or her day of birth. Therefore, you qualify for a second registration, which basically creates a new identity, where an old name is to be removed or replaced. All persons beyond the age of two are required to fill a deed poll as provided for within the Registration of Documents (change of name) Regulations to amend their name. A deed poll is a declaration that binds an individual or group of people showing intention to change name.

"CHANGE OF NAME IS POSSIBLE LEGALLY, SOCIALLY, AND RELIGIOUSLY, DESPITE THE INFORMATION HURDLES YOU MAY HAVE FACED SO FAR"

Once a deed poll has been completely filled, it must be presented to the registrar together with support documents, which must include, the original birth certificate, copy of the national ID card, receipt evidencing payment of prescribed fee and a statutory declaration (sometimes referred to as an affidavit) by someone who has resided in this country and known you for more than ten years emphasising this fact and your desire to change name. Sometimes, a letter contextualising such change may be necessary, but not mandatory. In your case such a letter from the new spiritual leader or institution could suffice. The registrar's role in this case is to review the name change application and has powers to reject or accept the proposed name or the application altogether. The reasons that could occasion a rejection could include or be one of the following: if the name sought has within its spelling some punctuation marks, numbers, symbols, or it is difficult to pronounce. If the name connotes inherited or conferred title, award, honour or rank such as Dr. Prof. Lord, King, queen and so on. If the name seems to be ridiculing any state agency, person(s), companies, or if it is vulgar and offensive. If the name change is seen as an act of fraud besides seeming to encourage criminality, racial hatred, religious intolerance, and drug abuse.

Thereafter, the registrar places the name for gazettement for a period of 30 days, to await any formal complaint against the name change sought. If within 30 days, there is no petition filed with the registrar's office raising an objection to the proposed name change, you can be sure Dhana will now become your legal identity, going forward. From here on, David transforms into Dhana. Once complete name change has been done, you are obligated to commence a process of acquiring new identification documents to reflect the new status. This means, a new birth certificate, replacement national ID card and passport. However, for the academic certificates, you may be required to first swear an affidavit of discrepancy of names on certificates. With the risk of maligning some online sources of legal knowledge, may I congratulate you for seeking credible information from the legal clinic. Nation newspaper is honoured to be of help to you and many other readers, who may be experiencing similar challenges.

How do I add my husband's name to my national ID?

Key highlights of the case

- You could add your hubby's name through the procedure under the Registration of Documents (change of name) Regulations

Question

My name is Patricia.
I got your email address after reading an article in Daily Nation dated Wednesday 20th January 2021. I kindly request assistance in knowing the legal way to add my husband's name on my national I.D. card. Though we are legally married, my ID and certificates bear my maiden names, save for those acquired after marriage. All I require, is to add his name after my father's name, by putting a hyphen, to ensure all names appear on the I.D. to avoid confusion. Please advice me on steps required to do so. Thanking you in advance.

Yours faithfully,
~ Patricia Mwangi

Answer

Hi Patricia,
Stories of people are told and le17th arnt differently. The language of law sometimes narrates their journeys and growth. For instance, we can tell someone's academic travel by understanding the term Doctor (Dr.) or Professor (Prof.) when placed before their name. The law coins this distinction to recognise a person's identity and relevance. Yours is the transition from singlehood into marriage and the attendant new identity that emerges thereafter. The narrative in your question is how the law offers women platforms of identity, manifesting as daughters, spinsters, wives, or widows.

You have emphasised the legality of your marriage. May be this is signified by a valid marriage certificate or cultural story where the bride and bridegroom's family have exchanged, shared and finalised all ceremonies whose totality defines marriage. In any case, all customary marriages are now registrable by law. It is the right of everyone to have an identity, which basically begins with a unique name assigned to them, may be at birth. The law anticipates change of name and in its construction provides avenues to allow addition, removal, or replacement. Therefore, the liberty to undertake name change is universal, irrespective of the motivating circumstances for such change.

From your explanation, you hold the first registration in the form of the National ID card. As an already registered person, Section 9 of the Registration of Persons Rules provides a person who seeks to change their name owing changed marital status to complete (fill-in) a form known as Application for Change of Particulars, in your case for new ID Card. This form, which is presented to the Principal Registrar of Persons, must be supported with a valid marriage certificate and its copy or a document, especially an affidavit, to ascertain existence of the marriage, certified copies of the spouses' national identity cards and an affidavit declaring the desire to adopt husband's name.

At this time, you will be required to surrender your current national ID card with the Registrar, upon payment of some prescribed registration fee, and permit him or her to take you a passport photograph to the processing and issuance of new ID.

On the other hand, you could still add your hubby's name through the procedure under the Registration of Documents (change of name) Regulations. This directs that a person who seeks to undertake name change process, for as long as they are beyond their second birthday, must fill in a Deed poll. A deed poll, as mentioned before on this column is a public declaration by a person binding themselves to an intention. In this context, you publicly declaring your intention to add husband's name onto maiden details. A completed deed poll should carry your name in its current form, alongside the preferred one. Please note the compulsory support documents to accompany the deed poll as an application to the Registrar, which include: an affidavit sworn by someone resident in Kenya for at least ten years, who knows you and the story of your marriage, a copy of your national ID Card and marriage certificate besides a consent letter from your husband. This deed poll will be registered and gazetted for at least thirty days, to allow for any petition from the public contesting such name add. After the gazettment period, you will be free to use the name as requested and arranged in the deed poll. However, this approach requires that you engage Registrar of Persons to issue new ID.

While the process of adding name is allowable, certain situations or connotations invite rejection by the Registrar, who wields such discretional powers in law. This is when the proposed name incorporates symbols, numbers and punctuation marks, making it difficult to pronounce; when the said name connotes vulgarity and offense; when it incites or promotes criminality, racial, religious and ethnic intolerance, besides encouraging drug abuse; when its interpretation seems to ridicule people, agencies, and corporations: or when the name mistakenly or seemingly confers academic awards or inherited titles such as Professor, Lord, Baroness, Doctor and Princess amongst others.
The Kenyan government has made some made some of these services available at the various Huduma centres. This could be your first place of visit as you embark on your journey to become Mrs. Good luck Patricia.

I don't want my ex-hubby's name anywhere in my ID

Key highlights of the case

- You will be required to do a name change process, which allows removal, addition, and replacement of name
- The deed poll which announces the name you seek to renounce, will also reflect the one you prefer

Question

Hi, would like to know how I can remove my former husband's name from my ID, he is married to another wife and we are separated for 7 years.

Answer

Hallo Reader,

There are many encouraging stories about marriages, unfortunately the public mostly gets to hear of the less beautiful. Be that as it may, a response to your question is premature if preliminary issues that emerge from it remain unanswered. Though you seek to remove your former husband's name from your national identity card, there are four issues that need to be contextualised, before understanding the path for such removal. First is marriage. This is a legal concept where man and woman voluntarily come together in a registrable union that transforms them to husband and wife. This is found at Section 3 (1) and 6 (1) of the Marriage Act. It is appropriate to say that marriages are nuptial contracts which tether the parties therein to certain obligations celebrated and committed to, either in a civil registry, religious institution, or homesteads within the customary confines of such events.

Second, is the terminology you refer to as separation. This should be seen and understood as a legal construction that is offered as a relief by the court to feuding couples, who are likely experiencing effects of incompatibility, to stay away from each other for a specific period of time. Often, the court considers this to be an opportunity for married partners who may need time to reflect about the tenability of their union and may prefer reconciliation rather than divorce. Therefore, let it be noted that separation is only available if the court is moved by couples who are legally married. In the absence of a valid marriage, as provided for by law, living apart in a come we-stay-relationship is not a departure from singlehood. You have alluded to a seven-year separation period, and this is a significant ground for ending your marriage, because Section 73 of the Marriage Act flags this out among other reasons, that could occasion termination marriage.

Third is a short conversation on the issue of divorce. This is the official process by which married couples end their union. It is the moment, upon decision by the court when wife

and husband cease referring each other as so. It is the time that couples admit the difficulty of keeping up with each other as partners to a union whose goal many at times is creating happiness in good and bad times. Fourth is the question of your husband being married to another woman. Although, there is no way to tell what kind of marriage you were in, there should be a reality of Bigamy, if the union you had was monogamous. Should it happen that your husband had married in civil registry or took vows within the Christian church, and official divorce hadn't happened, he must be aware of the offense he has committed. Bigamy is marrying another person while one is still in undissolved marriage.

For the amendment of your national Identity card, which is the gist of the question, you will be required to do a name change process, which allows removal, addition, and replacement of name. Section 9 (2) of the Registration of Persons Rules., directs that you complete a form known as "Change of particulars" in this case in National Identity Card, where reason thereof will be dissolution of marriage. You will then present the form to the Registrar with support documents that must consist of the decree of divorce or an affidavit (if the marriage was customary and unregistered) indicating annulment of the so marriage, certified copy of your birth certificate and National Identity Card, upon payment of the required fee. This process is straight, short, and least bureaucratic.

Should it be that your marriage remained unregistered and the separation seems to date back to 2014 when the Marriage Act came into effect, then the pathway of name change by way of a deed poll will be the option for you. This process requires you visit the Registrar of Persons and complete a deed poll, provided under the Registration of Documents (change of name) Regulations. The deed poll which announces the name you seek to renounce, will also reflect the one you prefer. As you present this deed poll to the registrar, other support documents will be called for which include a certified copy of your birth certificate, current national Identity card and an affidavit (statutory declaration) by a person resident in Kenya, and who knows you by the name you seek. This should be gazetted for at least 30 days, and if no petition contesting the name change is received within that period, you will be allowed to drop your husband's name from your Identity card. As it has been said, "starting over is not a sign of failure, but a mark of courage, such as a willingness to give self another chance in life."

My friend owes me money but I don't have evidence

Key highlights of the case

- Contracts are either written or unwritten. Legal minds refer to the former as express and the latter as implied.
- An implied or assumed contract, is a legally binding covenant

Question

I have a mutual friend who owes me some money and we did not have any official documents, I would like to get legal advice from one, Eric Mukoya or his contacts perhaps. Thank you.

Answer

Hi Reader,

James Basford once cautioned that a man who never has enough money to pay his debts has too much of something else. How this applies to your friend may not be clear, but we imagine the many excuses he or she provides. Your friend is unable to repay the money he or she owes you, and the transaction preceding this situation is undocumented. No write up attests the exchange of the monies you claim. The fundamental question is whether, this debt is a lost gamble. Lenders, often experience unspoken frustration in their hearts, when borrowers, especially friends are unable to pay back, worse if it sounds and looks deliberate.

The law is an equaliser that rewards and reprimands equitably when invoked. As a tool to reduce and deal with instances of conflicts such as yours, the law should be seen to be fair, creative and apt. Those who understand justice relate with this notion, but there are as many who disagree. To reduce or remove instances of prejudice, crafters of law design principles of practice that define and operationalise the fairness intended by it. The textual impression of your question invites a conversation about contracts. Contracts are either written or unwritten. Legal minds refer to the former as express and the latter as implied. Contracts that address land matters and real estate must be written, but any other can be verbal and still stand the test of law. Both written and unwritten contracts exercise equal execution degree of terms within the frame, and therefore exhibit same legal force whether in breach or compliance. Your's is a classical model of unwritten contracts. Three issues emerge as critical in responding to your question. First, is to review the basics that qualify a contract of any nature: second, is to write about circumstances that construct an implied contract: and third is to examine dispute handling forums available to you, and the threshold required to facilitate recovery of your money.

Contracts by their formation and intention, are agreements between private parties made of specific terms which create mutual

performable obligations within a specified time frame, whose non-compliance may invite the wrath of law, upon invocation. An implied or assumed contract, is a legally binding covenant that originates from specific actions, conduct, behaviour, attitude and circumstances of the parties, to demonstrate existence of commitments between them. Express contracts differ since they are written and likely signed by both parties, indicating their clear duties and rights. It can therefore be concluded that both contracts emphasise commitments by the parties who form and inform them.

Any contract has four important characters that are foundational and operational in design. One party must offer to enter into an agreement, and the other party must accept the terms of the offer. In your case, the friend must have approached you with a request to borrow and a likely plan of repayment, for which you consented. There is consideration, which is something of value received or promised that convinced you to agree, in this scenario the money you lend. This is given legal force by parties' contractual capacity, which is the qualification to voluntarily enter into a contract, defined by attributes such as age of majority, adult of sound mind and believable decisions to remain faithful to the obligations set by the agreement. Further, is the legality of the subject from which the performable terms of the contract are drawn. It must not be against public policy.

Since this is unwritten contract, three pathways are contextualised as mechanisms to recover the money. First, is to directly negotiate, if you have not, with the borrower to find consensus on the recovery plan. This could be WhatsApp chats, short messages (SMs), M-pesa delivery messages, emails, recorded telephone calls or face to face meetings. If possible, involve a third party in your conversations, who can stand in as your witness should situation remain unresolved. This has a dichotomous purpose; to recoup the money, but important create evidence (if in the past non is available) and conversations that if reviewed would infer existence of a breached loan agreement. Second, is to invite a mediator agreeable to both of you. Mediator's role is to aid the parties arrive at debt settling plan. Thirdly, approach the court to intervene. Remember proving an implied contract is your responsibility, since you allege the existence of one. Take stock of every interaction between you and the borrower to build a case that can motivate believability of the magistrate who will listen to this matter. You can opt to work with a lawyer or paralegal in putting together documents required in court for such cases.

Be encouraged by the words of Anais Nin. Each friend represents a world in us, possibly not born until they arrive, and it is only by this meeting that a new world is born. Now you know how to deal with money lending to friends.

Employment contracts

Key highlights of the case

- Contracts are either written or unwritten. Legal minds refer to the former as express and the latter as implied.
- An implied or assumed contract, is a legally binding covenant

Question

Hello Legal Aid

Thank you for the good work you have been doing on this page. My issue is about our house help who is suing us for service charge and unfair dismissal. She accused my sister, mother, and myself of not giving her what was duly hers in terms of service charge for ten years yet ever since she came to our house, we have been treating her as family, have helped her pay school fees, bury her relatives and even gone for holidays with her.

My question is, does she really have a case against us now that we treated her so well? We have some evidence of MPESA transactions where we sent her money.

Answer

Hi Reader,

Employment is a legal term that applies to every person hired by another or business for compensation, subject to adherence of the hirer' directives and mechanism to execute assignments. Like any other employment, domestic workers in this context house-helps, are recognised for the services they offer and consequent rewards. On the overall, employers and employees have their individual rights protected and promoted by the Constitution. Your text points to three issues; terms of employment of domestic workers; process of termination; and benefits that may accrue consequent to termination. Every employment whether, registered or presented as so, requires that a contract of service be entered into, as Section 26 of the Employment Act provides. The contract of employment often stipulates the terms of reference, which obligates both the employer and employee. There is no indication that such a contract existed.

However, your situation presents a contract by conduct scenario since you inform readers that you have consistently rewarded her services. Yes, there is basis for her to launch a petition claiming breach of contract, as your interactions have demonstrated legitimate expectation as an employee. Article 41 of the Constitution provides tenets of labour relations in Kenya, in particular that every person has a right to fair labour practices.

Termination of employment is an administrative action as stipulated at Article 47 (1) of the Constitution. Such action must be expeditious, efficient, lawful, reasonable, and procedurally fair. Based on this, your former house-help may allege unfair termination from employment. Section 41 and 45 of the Employment Act, emphasises the fairness and justification of any termination, including time of notice. Similarly, Section 46 of the same Act, enumerates grounds that disqualify termination. If moved, the industrial Court will be required to determine whether: the termination procedure was fair; the conduct and capabilities of the worker invited such action; the employer complied with statutory requirements with regard to the sacked employee; the employer had used other mechanisms to address matters preceding the termination, such as warning letters: there existed decision by the labour officer, if at all the worker ever lodged a complaint: and the ample notice was provided, or the salary forfeited.

Remuneration of a worker is a major clause of any contract, and that of house-helps is provided for under the Regulation of Wages (General) Orders. The regulation particularly states different wages applicable in different regions. For Nairobi, Kisumu and Mombasa, the minimum wages are Kenya shillings 13, 572.90 per month, while in other places the range is between 12,522.70 and 7,240.95. it is not clear, where you resided when she was in your employ. Service pay on the other hand, are dues to an employee with no access to benefit of statutory deductions covered under section 35(5) and (6) of the Employment Act, 2007. The claimant in such case is likely without written contract, nor written statement of payments are submitted and essentially the respondent does not make any effort to demonstrate that as the employer they complied with statutory requirements and regulations to deduct and remit the applicable statutory dues to Kenya Revenue Authority, to the Kenya National Social Security Fund and to the National Hospital Insurance Fund as required by law. Failure to abide mandatory provisions of the law in this regard, the claimant is entitled to his claim for service pay. This position was taken by the court in the matter of Fredrick Juma Ogeda v. Prime Steel Mills Limited in 2016.

Following the scenarios painted in response to this situation, it is difficult to ascertain whether you stayed on the path of law for the more than ten years she worked for you. There seems to exist enough grounds for her to allege unfair dismissal and make claim for compensation. Nonetheless, there is no finality in this response since a lot of information is missing. As law expects, he who alleges carries the burden to proof the allegation. The burden of proof shall be her business and all you will have to do is amass evidence such as the M-Pesa transactions to rebut her claims and convince the court you met the obligations of the contract in question.

My futile search for a dependency pass from e-citizen

Key highlights of the case

- Any foreign national must first acquire an Alien Card or foreign certificate for identification and transaction(s)

Question

Dear Mr. Mukoya,

I have some questions that I hope you can provide me with the necessary assistance.

To request anything immigration related, Kenyan Government has required all to use the eCitizen platform, smart move, however when I try to access the system it says I already have a profile and requesting a password reset never provides a response and my phone calls to the support number are never answered by a real person and runs in a loop, no help there.

I am married to a Kenyan and having been seeking dependency pass. I often get in and out of Kenya severally. Since trying in July 2020, the system has demanded I should have Foreign Certificate Number, which I do not possess. I went to create the Foreign resident Account and I entered my ID number (which is different that other countries, even Kenya) and went on to complete the form, but the submit button gave me an X sign, then I noticed I had to validate the ID Number and First name information. When I clicked validate, I got the message, I "the provide ID Number was not found" Obviously I am now creating the account, therefore I am stuck from going forward. What I noticed at the top of the page is the caption "residents with a valid Foreigner Certificate" and here I am trying to get one through the creation of an account. If I try to create any account, alien Card, etc, it redirects me to the page create an account in eCitizen and the top area asks for ID number and first name and I cannot proceed any further, what am I to do then, As it stands, without the eCitizen account nothing can take place and all links to create any pass, ID Card or certificate returns you to this page as the entry point.

Your assistance would be greatly appreciated.

~ Terry

Answer

Hi Terry,

Your case depicts a "cart before the horse" scenario. You are absolutely right about a non-responsive e-citizen platform. If it were human, we would have simply concluded that such person is not only dismissive but exudes non-supportive attitude that is detrimental to government services charter. You have a right as enshrined in the Citizen and Immigration Act of

2011 to acquire a dependency pass. While not vouching for the system's efficiency nor its capacity to offer relevant responses to your efforts, there is a process you must follow for the e-citizen platform to serve you well. The frustration you face originates from the inability of the e-citizen platform to decipher your commands, due to its programmed chronological nature. Before applying for dependency pass, which is defined at Section 21 (1) of the Citizen and Immigration Regulations (2012), as a document issued to a person whose spouse, parent, or guardian is lawfully entitled to enter Kenya, any foreign national must first acquire an Alien Card or foreign certificate for identification and transaction(s).

To begin with, as a foreign national, there is need for the human and robotic Kenyan system to identify and recognised you. Part VII of the Citizen and Immigration Act at Section 56 (2) directs that any foreign national residing in Kenya for a continuous period exceeding three months be registered with an immigration officer and notify change of address, travelling or otherwise in such manner as may be prescribed. From the text of your question, this seems to be your real situation. For a foreign national to acquire the Alien card, which is equivalent to the Kenyan national Identity card in terms of functionality, the following must be provided: a dully filled, signed online application form 50 and presented to the Immigration office at Nyayo house, Nairobi accompanied or supported by; a) copy of a valid travelling passport, whose purpose is to proof the applicant's nationality and identity: b) two recently coloured passport size photographs pressed against a white background, taken not more than twelve months before date of application. For your case, it may be necessary to include the marriage certificate to attest that your wife is Kenyan. This will likely reduce opportunistic hindrances for someone wanting to know why you are to be in the country for a period exceeding ninety days. Once this process of registration is over, and as claimed by the Immigration department, you will receive notification to collect your Foreign Certificate, which will have a unique identification number recognizable by the Kenyan e-citizen platform. For step-by-step instructions including the creation of log-in account please visit https://fns.immigration.go.ke/infopack/fns/fns/.

"THE LEGAL PATHWAY FOR YOU TO ACQUIRE A DEPENDENCY PASS DEMANDS THAT YOU FIRST AND MUST HAVE A FOREIGN CERTIFICATE OTHERWISE KNOWN AS ALIEN CARD"

The legal pathway for you to acquire a dependency pass demands that you first and must have a Foreign Certificate otherwise known as Alien Card, which carries a unique identity number for all your government related services and transactions, such as e-citizen. Since you seem to understand how to navigate the e-citizen platform, reading from the crisp explanation given in your text, you can go ahead and apply for the dependency pass. However, this being a learning column, I will take a moment to enlighten others who may face similar challenges. For one to access dependency pass, they must first create a log-in account. On creation of this account, at the point it seeks identity, ne inputs the unique identity number on their foreign certificate. By this, you would have avoided the response of "the provide ID Number was not found", then the system will open up for you to proceed to the eFNS portal to commence application of the dependency pass.

Following successful access to e-citizen, a foreign national is required to complete (fill-in) and sign Form 28, an online Dependent Pass form. This form should be supported by; detailed and signed Cover letter from the applicant addressed to the Director of Immigration Services explaining the need to have the dependency pass: two recent coloured passport size photographs of the dependant: copy of a valid national passport / National ID (bio-data page) for both the applicant and the Dependent. In your case a copy of the foreign certificate will be required; evidence of the relationship between the applicant and the dependant such as duly certified copies of marriage certificate: proof of sufficient and assured income to sustain self and the dependant: if necessary, any other evidence necessitating the application of a dependency pass, in the form of medical condition, disability, age and other special circumstances. You have not mentioned whether you hold any work permit. Should that be case, then a valid copy of the work permit will also be required six moths prior to application. All these documents, if at all they are in a foreign language other than English must be translated by the respective Embassy, Public Notary, or authorized or legally recognized institution within the Kenyan jurisdiction. These services are provided for by the government and details and instructions can also be accessed through this link, https://fns.immigration.go.ke/infopack/passes/dependantpass/.

Many communities culturally consider man and woman who stay together as husband and wife, if at all a pre-stay-together process was conducted paving way for negotiations and consensus to recognise the particular pair as so. This may not necessarily be legal, since the Marriage Act at Section 6 (1-c) directs that any customary union be registered.

MARRIAGE AND DIVORCE

I'm ready to file for divorce but...

Key highlights of the case

- Presumption of marriage… is used to canvass the existence of a marriage where no certificate or legal document exists

Question

Dear Sir,

I have been separated from my wife since 2007 and have not spoken to one another since 2016.Our marriage was a civil one. However, we swore an affidavit so that she could get owner occupier house allowance. Iam unable to get a copy of the affidavit and would like to divorce her officially. She has reverted to her maiden name. Please assist.

I look forward to your reply.

~ George

Answer

Hi George,

This conversation begins on a sombre legal note. If the affidavit of marriage is the only document you rely on to motivate divorce, without any support of formal customary processes, then what you seek to dissolve is not marriage, although this does not mean that a union of two willing adults did not exist up to 2007. The Marriage Act of 2014 was enacted to rectify possible mischief found in the institution of marriage, in particular the violation of partners' rights. Yours comes through as companionship that is openly displayed in different forums such as churches, school records, gatherings of friends and family, besides being conducted to imply marriage and therefore considered to be so in social and cultural underpinnings. Following, our discussion should highlight four important concepts that emerge from the scenario you describe.

First, is to emphasise the legal definition of marriage in accordance with Section 3 (1) of the Marriage Act. It is as a voluntary union of a man and woman, in a monogamous or polygamous relationship that is registrable at the state law office. Upon registration, the union binds the formerly unattached pair into husband and wife. This does not in any way make lesser society perspectives, of what constitutes marriage. Many communities culturally consider man and woman who stay together as husband and wife, if at all a pre-stay-together process was conducted paving way for negotiations and consensus to recognise the particular pair as so. This may not necessarily be legal, since the Marriage Act at Section 6 (1-c) directs that any customary union be registered.

Second is your candid declaration that you and the woman referred to as your wife swore affidavits to prove marriage for her to access the

employment benefit that accrued from the owner-occupier housing tenure. Prior to the enactment of the Marriage Act (2014), many couples employed this approach to give legal meaning to their unions. This mostly served couples who had committed to each other as husband and wife in a come-we-stay arrangement or customary driven marriages. Affidavits of marriage acted as replacements of marriage certificates, nonetheless, in some common law jurisdictions, seen as independent proof of marriage. In the case of Kenya, this is arguable and could mean you have no marriage to occasion a divorce, since none exists. Third, is whether, the affidavit, qualified marriage in the eyes of the public, and so should interest the family court to consider claims one may seek before it. Since the Kenyan law provides a pathway to register customary marriages and only recognises five types, the court if moved, and in the absence of a marriage certificate may invite the legal concept of Presumption of marriage. This concept is used to canvass the existence of a marriage where no certificate or legal document exists. Often, it is when the court is forced to consider the rights and interests of a couple who have cohabited for a considerable period of time, that the public has assumed a marriage exists. The court employs the presumption of marriage concept if the lack of it broadens the likelihood of violation for both or one of the partners in a relationship of this nature. Presumption of marriage is invoked in most cases, when claims such as maintenance or share of an estate belonging to a deceased partner are made. The court often anchors their decision to invite this concept on Section 119 of the Evidence Act, where it considers the existence of any fact it thinks likely happened, regarding to the common course of natural events, human conduct, and public and private businesses. Further, where rights of children and women as dependants to a deceased person may be by-passed, the court will invoke Section 29 of the Law of Succession Act to support the section in the Evidence Act. Remember, presumption of marriage does not give rise to any marriage.

Fourth is the concept of divorce, which is a decree of the court to end a marriage recognised in and by law. Unsupported affidavit may mean you have no union to end, a context, lawyers can term as "no marriage Ab initio, meaning no marriage existed from the beginning. Culturally, you may require to adhere to traditional approaches of ending such unions, if at all such exists in your community. Specific recommendation on how to end this union is difficult because of the many aforementioned reasons, within this text.

What is the procedure for divorce?

Key highlights of the case

- In law every marriage is terminatable
- Divorce can be commenced when the marriage suffers irretrievable breakdown

Question

Dear legal advisor

I was married in a Christian marriage. then my husband left me some 2years ago, no communication and he lives with another woman. when I confronted him, he said he's not married, then he disappeared. He doesn't provide for us as he argues am working. How do I get myself out of this mess? How long does divorce cases take? do Christians, divorce? how much? give all and other Advises please.

Answer

Dear M/s Confused,

When marriages turn messy, we rue the purpose for which man and woman get into the institution in the first place. Keeping happiness and breathing love in each other's life is fast becoming difficult, an assignment that seem to end up with several silent violations. Since very few people tend to speak about their troubles, you have opened this discussion(s) by seeking legal avenues through which your trepidation can end.

In law every marriage is terminatable. Even in cultural settings, there exists processes to undo unworkable unions. With this assurance, let us explore and contextualize a few things you raise in your text with regard to the institution of marriage. First, you remain legally married, since every Christian marriage provides the couple with a marriage certificate. The Marriage Act at Section 6 considers Christian marriage registrable during the matrimonial ceremony in church. For the two, you and your husband to become single and available for any other relationship, if at all, there is required the marriage is deregistered. The deregistration of marriage is known as divorce, since dissolution of the union ends up with the records of the particular couple being reclassified to the original state of singlehood. The process of divorce, in the Kenyan context is fault based. One has to move the family court and provide evidence of matrimonial offense committed against them considered unbearable, in their opinion, to sustain the relationship going forward. This process can be acrimonious if either of the pair does not seem to understand the gravity of the matter on the petitioner's perspective and invite resistance. Sometimes the feeling is mutual, but not legally so, and things are handled so smoothly and silently to an amicable ending, with everyone happier apart.

The Marriage Act provides at Section 66 for a partner in a marriage to petition for separation or divorce. The section gives various reasons to justify such a petition. If mental or physical cruelty manifests in the union caused by either party; if there is exceptional depravity, remember men and women marry following mutual understanding to share love and, in the process, create certainty, negotiated guarantee and long-lasting emotional resilience; and when the marriage suffers irretrievable breakdown. The marriage is considered irretrievable when the spouse feeling short-changed claims adultery on the part of their partner, willful neglect for at least two-years, desertion for three years and separation of about two years. Based on the aforementioned contexts, we may wish to interrogate, whether your situation qualifies for dissolution? Yes, it does. You have been separated for two years. This separation if interpreted broadly provide diverse scenarios that we paint for you and the readers. Scenario one, is that your husband is an adulterous relationship with another woman and has therefore injured the value of trust, love, and commitment owed to you as per the tenets of a christian marriage. Scenario, two, is that your husband has neglected you and the children for at least two years which could suffice as cruelty, occasioning both mental and physical discomfort. Scenario three, is that of exceptional depravity on his part and the absence of communication as to why the many unfulfilled marital obligations.

Religious marriages carry a lot of difficult-to-question-baggage. Most of us have been made to believe that institutions founded and woven in and by religious principles are in context sacred and not required to invite interference, especially by actions of man. However, from a legal perspective it is right for one to resist certain tenets for when they fail to achieve the original purpose for which they were established. The application of Mathew 19:6 where it is stated "what God has joined, let no man put asunder, cannot be treated in isolation, since the book of Ephesians at 5: 25 commands husbands, to love their wives, just as Christ also loved the church and gave himself for her. In this context, we consider your marriage to be irretrievable. You, need to find a family lawyer to help navigate the process since there are enough grounds, including a claim of bigamy on the part of your husband, for the court to grant you a decree absolute to this union.

SUCCESSION

Is inheritance based on the number of wives or children?

Key highlights of the case

- The number of children or wives is largely immaterial for as long as there is proof of being rightful beneficiary

Question

My father had two wives both of whom are now dead. He had two farms measuring 140 and 150 acres, respectively. He lived in one of the farms with my mother where they are all buried. My stepmother lived in a plot in town which was bought by my father but registered in my stepbrother's name. My mother bore ten children and she is survived by nine. My stepmother on the other hand bore six children and she is survived by three. We are all adults of over 50 years old. Legally how do we subdivide our father's property in this case land? Do we subdivide according to the number of children or according to the number of wives? I read somewhere its according to the number of children.
Ever since our father died none of my sibling has been allocated any or part of the farms. Kindly advise its urgent, we are about to get the letters of administrations.

~ Kevin

Answer

Dear Kevin,

Land seems to be the most sought-after commodity in Kenya, making its access, use and control the most contentious and grievous issue in many families of polygamous nature. In no way are we implying that it is less controversial in monogamous ones. The value we place on land as a society often creates reasonable and unreasonable expectation among people, especially those who may entirely rely on its production for survival. Amidst this concern the Kenyan law is elaborate besides anticipates and applies in the many scenarios likely to emerge when succession calls. Legal understanding on matters land, is enshrined in chapter five of the Constitution. The law has provided, though not to everyone's satisfaction systems through which families balance interests and rights when apportioning land. Your situation is addressed by the process given at Section 29 of the Law of Succession Act, whose significance to ensure that genuine and rightful beneficiary is not disinherited. The Act proscribe the rules that determines what ought to happen to a person's estate after his or her death, as follows: i) identify the legal/rightful claimants of the deceased's property; ii) The procedure to be followed by the claimants to enable them to acquire the property of the deceased; and, iii) To provide tools of dispute resolution in the event of dispute amongst rightful

claimants. Persons deemed as rightful are categorised as: wife or wives, or former wife or wives and the children of the deceased whether or not they were maintained by the deceased prior to his death; deceased's parents, step-parents, grandparents, grandchildren, stepchildren, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased prior to his/her death; and where the deceased was a woman, her husband, if at all he was being maintained by her immediately prior to the date of her death. This last part of the husband being maintained is likely to change if the Law of Succession Bill of 2019 gets passed by Parliament.

While the law looks generous on how it views likely distribution of an estate intestate (an estate where the deceased has no will), priority is given to the immediate family of the deceased in this case the wife or husband and the children. The rest enter the distribution equation if at all the preferred dependents are non-existence. Further, let it be noted that the absence of all the dependants mentioned are missing, the property automatically devolves to the state as unclaimed assets, since no original owner or rightful heirs communicates interest in them over a period of time. Letters of administration are in the offing. This means that you already have filed a succession cause and administrator(s) has or have been identified. It should be known that such letters of administration will only be confirmed once an application of grant is made, supported with a subdivision schedule of the family land towards execution of the intended subdivision among the beneficiaries. Such application is made in a court of law after the elapse of six months since the letters of administration were acquired. However, the court may decline the grant if it finds imprudence in the process by which the family has approached the succession. Therefore, a clear estate management and distribution plan, less of resentment, doubts and which includes the parcel of land already in your stepbrother's name is a pointer to favorable court's decision. The number of children or wives is largely immaterial for as long as there is proof of being rightful beneficiary. The Constitution at Article 40 (2) (a) and (b), emphasises that Parliament shall not enact a law that permits the State or any person to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or to limit, or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27 (4). Let the wisdom that motivated you to ask this question guide the family to an amiable settlement of your late father's estate.

My sister is married to an abusive man. How can I help her?

Key highlights of the case

- Justice and love are two sides of a coin that must advance humanity
- "knowing alone is not enough: we must apply. Willing is not enough; we must do" J. W. Goethe

Question

Hello Eric,

My case does not involve me but my sister. She is married to an abusive man, and we have on countless times, filled P3 Forms only for her to retract her statements and refuse to push forward with the cases. My question is, is there anything we can do about it from a legal perspective? I am afraid he will kill her one day.

Answer

Hi concerned sibling,

The concern to liberate your sister from the manacles of domestic violence is not only commendable, but worthy to emulate. It resonates with the concepts of common good, public interest and individuals' accountability to tenets of social harmony. Justice and love are two sides of a coin that must advance humanity. The law anticipated this scenario. At Article 22 (1), every person has the right to institute court proceedings claiming that a right of fundamental freedom in the Bill of Rights has been denied, violated, infringed, or threatened. In this case, the right of your sister to violence-free life is violated, which contradicts Article 25 (a), which removes limitation on a person's right to be free from torture, cruel, inhuman, and degrading treatment, Article 29 (c and d), on the right not to be subjected to any form of violence, and any form of torture.

You demonstrate your sister's lack of capacity to proceed with matter against the husband. On several occasions, as mentioned, she has retreated or refrained from offering support that may have led to prosecution of the allegedly abusive man. Capacity in law is the ability, fitness, or competency to perform an act, especially one being able to understand the nature and consequences of their act(s). This is likely caused by what I may refer to as in-house dynamics that are not observable from outside their residence. Section 10 of the Protection

Against Domestic Violence Act, pursuant to Article 22 (2a), gives you the right to act on behalf of your sister and seek a protection order. This Section, in particular 10 (1-b) befits your sister, as it anticipates a person who is not a child with capacity to understand the nature, and foresee the consequences, of decisions in respect of matters relating to his or her personal care and welfare, but wholly lacks the capacity to communicate decision in respect of such matters. Your sister understands the consequences as given since she goes ahead to take P 3 forms, but unable to communicate the decision in this grievous matter.

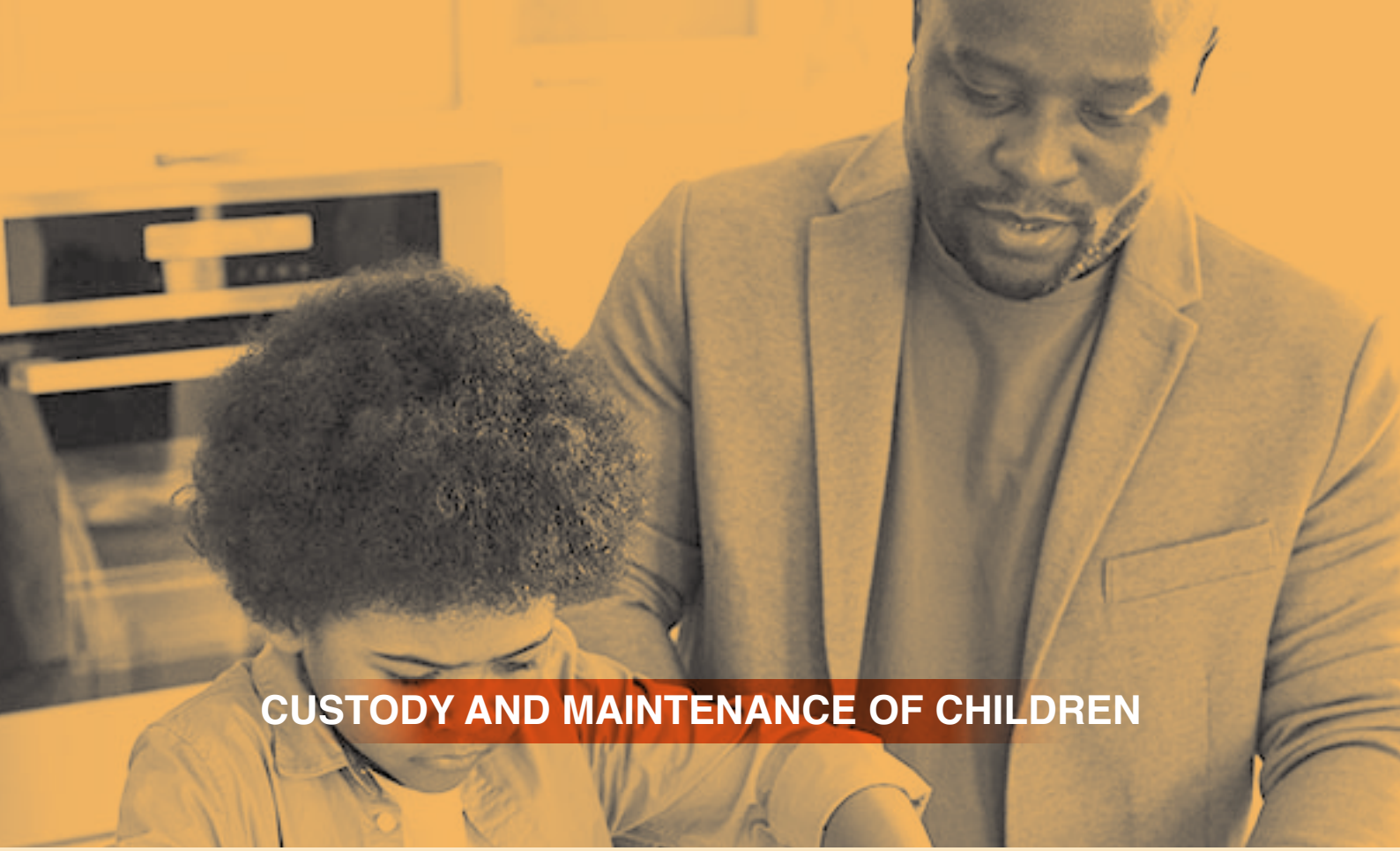
On the strength of Article 28 which emphasizes the right to inherent dignity of a person and further legitimacy found at Article in 22 (2a), you are guided by Section 10 (2-c), which by the permission of the court you may apply for a Protection Order on behalf of your sister. When seeking the leave of court, you may have to demonstrate the reason that informs your action, since you are not a police officer nor her representative. In moving the Resident Magistrate's court, where such matters are vested, with the application to procure the protection order, you will be required to make the court understand that your action is motivated by the best interest of her as a survivor of violence, especially creating an environment in which such violations cease. This means, that you articulately recall and regurgitate the violations your sister has been going through, considering your knowledge of the many retracted statements and P 3 forms to convince the court to find value in her lack of capacity. Similarly demonstrate that you have no any conflict of interest with the survivor, in his case your sister.

Your action may invite the court to do either of the following: a) if it concludes that the perpetrator (in this case the respondent) is likely to commit, threaten and assign domestic violence on your sister, it may pronounce an interim protection order: b) should the likelihood of violation be remote, it may request the alleged violator to show cause why a protection order is unnecessary. Let be known that a protection order was procured, remains in place till it is revoked or replaced by a competent, besides, the same may be reviewed from time to time as the circumstances may prevail. On the Protection Order, Section 19 outlines several prohibitions that the respondent is to refrain from, importantly barred from perpetrating any form of violence to the victim. Section 20 states that "non-contact" shall have effect except where the protected person lives in the same house with the respondent considering the vulnerability of the protected person.

"WHEN SEEKING THE LEAVE OF COURT, YOU MAY HAVE TO DEMONSTRATE THE REASON THAT INFORMS YOUR ACTION"

You purpose to act. Go forth as J. W. Van Goethe advised, "knowing alone is not enough: we must apply. Willing is not enough; we must do". The law is on your side if you decide to walk the talk. Good luck.

Question



CUSTODY AND MAINTENANCE OF CHILDREN

My ex stopped me from seeing my child because I don't provide

Key highlights of the case

- Article 53 (1-e) for equal parental responsibility ……. notwithstanding the couple's marital state

Hello Eric,

My ex and I share custody of our daughter. We were together for three years before she left. She is a successful career woman while I am a struggling businessman. I used to provide for them when she left but then with Covid-19, business opportunities dried up. I could barely afford to feed myself let alone my family. As such, she became hostile to me and refused to let me see our daughter. My question is: Do I have rights to demand to see her? She claims I have no rights because I have not been providing and even threatened to take me to court.

Answer

Dear Sir,

As a parent your concerns are valid. However, let us first disabuse a misconception that courts are dreadful places. It is not, and the public should view and understand them as dispute handling forums where the law is applied to solve issues. Let us debunk this impression. Anyone who seeks to take another to court demonstrates the desire to find a solution to an impending problem. There are enough stories in public purview to confirm how separated or divorced couples who hold disharmonized parenting preferences tend to evoke desperation, anger, frustrations and sometimes despair when dealing with child maintenance and custody.

We must again arrest your fear. The law is not against anyone, and its construction anticipates disagreements regarding custody and maintenance of children and prioritizes children's rights caught in such circumstances, through the best interest of the child principle provided for in the Constitution of Kenya at Article 53 (2). This principle demands from parents, guardians, schools, children's welfare driven state and nonstate agencies, courts, other despite handling platforms, or any persons dealing with children to act in a manner that primarily protects and immensely promotes their rights, interests, needs and contentment. In short, the law seeks to link a child to a place, or with a person who will afford him or her best chances of happiness manifesting as access to health, education, and shelter amongst others, expressed at Section 23 of the Children's Act.

Where couples on their own accord are unable to agree on the custody of the child, the court, if moved will employ section 81 (1) of the Children's Act through a custody order to assign parental rights and duties as to the best physical abode of the

child known as actual custody. As to whether, child support is required of either parent, the court declares legal custody. In balancing the right of the parent without actual custody, the court often confers access rights, to allow visitation, so that the child can in a structured find value and presence in both parents. Visitation rights can either be reasonable access which is about convenience to both parents, fixed or specified access, which means set in a known structure, supervised access, to indicate the visiting parent has to be monitored. In some circumstances, access can be denied, if there is proven child neglect or abuse on the part of such a parent. For a court to decide custody of a child the following grounds espoused at Section 83 (1) of the Children's Act are considered: wishes of the child: wishes of the parents, guardians, foster parents or any other person who is living with the child for three months prior to application; cultural and religious background of the child: best interest of the child: parent-child relationship bond, parenting abilities of each individual: each parent's mental, physical and emotional health: and available support systems of each parent, besides the court may wish to determine if historically either of the parents has caused some form of insecurity to the child.

In propagating the child's best interests' principle, the court applies Article 53 (1-e) for equal parental responsibility including the ability to support child development and growth, notwithstanding the couple's marital state. Despite this provision, the court sometimes applies equal but differentiated responsibility by considered weighting of monthly earnings of both parents against their financial obligations, in accordance with Section 76 (3-f) of the Children's Act before issuing a responsive maintenance order.

There is every reason for you to find an amicable solution with your ex regarding the issues raised. Article 159 (2-c) of the Constitution allows for Alternative Dispute Resolution. By law and courtesy of couple's understanding you have a right to visit and access your daughter, because you are her father, and has acted as so till COVID-19 disrupted. You can also agree on custody befitting your circumstances, BUT if the child is of very tender ages, and especially a girl, it is preferred that the mother be in actual possession. With this scenario, three options are before you. First is to get the mother of your daughter and have one-on-one talk regarding the issues raised. Second, if the first one fails is to invite family or third parties to mediate with assistance of County Children Officers, stationed in most of the sub-counties to find a solution. Third, is to file the matter of custody and maintenance in court, if the earlier on mentioned approaches yield no acceptable results, for a considered decision upon both of you submitting evidence to support the preferred relationship with your daughter. None of you has lesser rights.

I long to meet my biological parents, what should I do legally?

Key highlights of the case

- Children adoptees' have a right to know the identity of their parents, the parents' origin, and the existence, if any, of their siblings

Question

I am an adult man and recently learnt that the parents I have been calling mum and dad adopted me. They have been very good to me, I must say, but something in me yearns to get to know my birth parents. I do not want to hurt my adoptive parents. Is there anything I can do legally to begin the search for my parents and if possible, compel them to see me even for a few minutes?

~ Reader

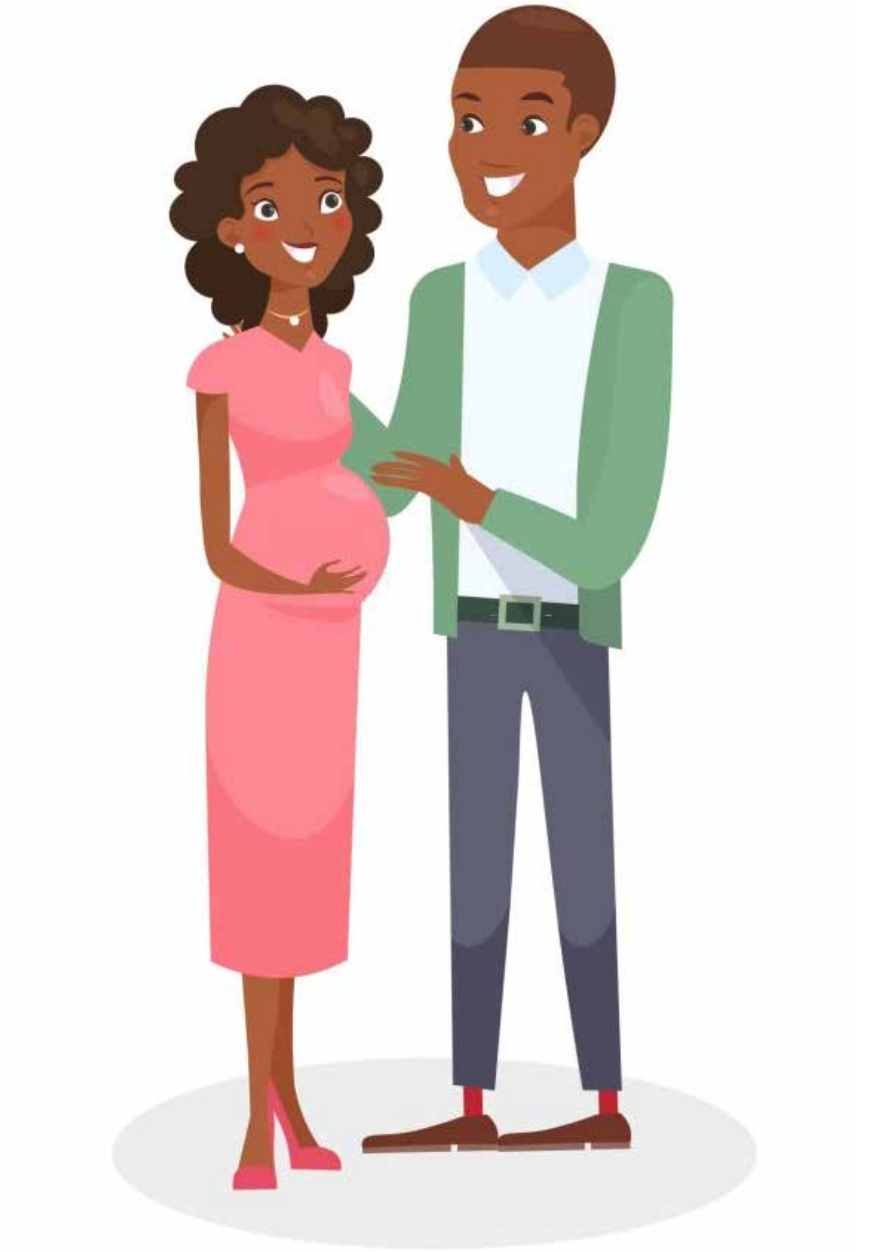
Answer

Hi Reader,

Truth is liberating but sometimes difficult to process. The love for your adopted parents seems to hold you back from pursuing your ancestry. You resemble the late, Steve Jobs, the Co-founder of Apple Computers who had a similar background. He, for the better time of his life emphasised how his adopted parents were 1000% his real parents. Steve Jobs' take, similar to yours confirms that adopted parents become real parents legally, since one parenting couple diminishes or replaces the other's parenting rights. The question you raise is difficult to many people, including drafters of the adoption law, however, it is an opportunity for emerging jurisprudence. To begin with, the law is silent on how, when, where and why an adopted individual should seek information about their origin or biological identity. The quest to find your biological parents is personal and cannot be curtailed by anyone or law. Since you are no longer a child, Article 53 of the Constitution will not be the entry point of this journey, but Article 35. You have a right to access information held by the state, another person and which may be required for the exercise or protection of any right or fundamental freedom. The information you seek regarding adoption is held by the state and adoption agency.

The silence of the Kenyan law, in particular the Children's Act of 2001, on this issue, behooves the employment of International legal

instruments that Kenya has ratified, and on the strength of Article 2 (5) and 2 (6) of the Constitution contextualise your childhood rights in addressing this matter. In the case of D.W.T versus B N T & 3 Others of 2018, which was petition No. 46 of 2016, a decision by Justice J. M. Mativo, demonstrates Children adoptees' right to know the identity of their parents, the parents' origin, and the existence if any of their siblings. The Convention on the rights of the Child (CRC. 1989) obligates state parties to it, to undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference. Moreover, the CRC, states, where a child is illegally deprived of some or all the elements of his or her identity, State parties shall provide appropriate assistance and protection with a view to re-establish speedily his or her identity. Article 30 of CRC strengthens your pursuit, since it provides that competent authorities of a contracting state shall ensure that information held by them concerning a child's origin, particularly which relates to the identity of their parents, including medical history be preserved. Should there arise an inquiry by the child or their representative, regarding aforementioned concerns, the state, must permit access to such information under the appropriate law.



As we transverse your childhood rights, it is stated that every action, decision, or program that is made regarding any child, must be done in their best interest. At this point, we advise that Article 53 (2) of the Constitution takes effect for your best interest, having demonstrated how CRC gives you the right to find information about biological parents. The state in these afore described circumstances must afford you the necessary support. Possible actions are as follows: first, information you seek is held by the adoption agency that transacted change of parentage. Such information is likely held by your adopted parents. A conversation is necessary for you to identify this agency: second, your adopted parents may likely know your biological parents, since the circumstances occasioning your adoption remains mysterious. A conversation again is necessary, although this could be the most painful interaction between you and them: third, the information you learn about your biological parents may not guarantee access to them, since their rights over you were relinquished by the adoption agreement. Should it be that your adoption is out of a scenario of abandonment, and biological parents remain unknown, your investigative journey would terminate at this point. Should you be lucky and find their contact, and personal efforts to reach and meet them remain unsuccessful, you may move the court for an injunction for them to see you. Such an application is also not a guarantee to access them unless the court finds merit in it.

As you go about this endeavour, recall what Barak Obama former President to the US once said, "what makes a man is not the ability to make a child, it's the courage to raise one". Be ready for disappointment, even as you gather strength for celebration.

TENANCY

How do I recover rent from a rogue tenant?

Key highlights of the case

- The Rent Distress Act allows landlords to hold tenants' belongings as lien pending payment of rent

Question

Hello Wakili,

Thanks for the good work in these pages. I saw you advise a tenant once. But sometimes tenants can turn out to be crooks! I had one in my house who refused to pay rent for a year. Or rather, made empty promises before eventually disappearing into the wind. He left a few household items in my house and refused to come and pick them even when I told him I was not going to compel him to pay rent. I had to incur the cost of moving the items to a store. Storage also comes at a cost. As a landlord, do I have the right to dispose of the goods as I so wish? And do I have hope of ever recovering the rent?

~ Reader

Answer

Dear Reader,

The dichotomy in law is found in its construction. Its applicative process is intended right, and the outcome assumed pure. While law is designed to serve parties distressed or linked by certain transaction(s), it is not obvious that both claim justice in the outcome. This context makes us critical to our excesses as people who sometimes undermine the import of law in our lives. We should never apportion blame, without considering our contribution to the status of any situation or incident. We will refer to four statutes, the Distress for Rent Act, Cap 293, Landlord and Tenant (shops, Hotel and Catering Establishment Act) Cap 301, Rent Restriction Act, Cap 296 and Limitation of Actions Act, Cap 22, to demonstrate the afore-described duality. It is unfortunate that many landlords and similar number of tenants often have their narratives choreographed in negativity, and against one another.

If you were to pursue legal action against your former tenant, then the Rent Distress Act, could be the foundation to the action of dealing with the few household items he or she left in your possession. The Act allows landlords to hold tenants' belongings as lien pending payment of rent. The Act empowers the Landlord to dispose off the household items to recover the likely lost rent income. The landlord is allowed to auction the items belonging to the tenant should the latter fail to remit the rent owed within fourteen days. It is assumed that before occupancy every landlord takes deposit, which is an amount of money that takes care of transitional

and parting arrangements, like repairs, should a tenant decide to move residence. In the absence of such concerns, it is refunded.

A closer look at Section 3 of the Rent Distress Act, points to existence of a contract. Such contract may not necessarily be written, since inference can be made from the relationship between a landlord and tenant, indicating contract by conduct, found in the consistency of structured money exchange in reward of occupation. It provides that any person having any rent in arrears which is due upon a contract shall have the same remedy by distress for the recovery of such rent or service as dictated by common law of England in a similar case. This is emphasized at Section 5 of this Act, that states rent in arrears may be distrained if any person having rent in arrears lease may be distrained for the arrears after demise, the ending or determination of a contract, in the same manner as he might have done if the lease or contract had not been ended or determined.

Our advice to you is measured and selectively short because your text lacks details for us to provide finality of legal thought. Approach the Rent Tribunal through a suit to help you navigate this situation. Section 32 of the Rent Restriction Act states "the Defendant (Tenant) shall be served with summons to notify him/her of the proceeding and will be required to enter appearance to defend his/her case.". To make your case you will have to prove the following. Your former tenant owes you one year rent, besides demonstrate to the tribunal that household goods in your possession do not have market value to match the rent owed. Similarly, you may also show the tribunal the urgency to find a solution, since you owe storage charges where the household items are stored. These allegations will have to be proved by you, as the general rule in law is whoever alleges must prove the claim they make. This could be easy, if your housing units fall under the Landlord-Tenant (shops, Hotel and Catering Establishment Act) Cap 301, where rent is above Kenya shillings 2,500 within a controlled tenancy lease agreement. This is so, as the Landlord in such housing arrangement is expected by law to keep a rent book which contains a record of parties to the tenancy, the premises, rent payable, all the payments made, and each entry shall be signed by the Landlord. From the evidence adduced the tribunal will be able to decide how you could recover the monies owed.

Our advice, however, should not remove you from three realities: one, there is a possibility that your former tenant will not be reached and serving him with summons could prove futile; two, your former tenant may be located, but not be in a position to pay the rent owed, despite any orders from the tribunal since his debts could be explained by the impact of COVID-19 or any other challenge, like lack of gainful economic engagement; and three your claim for this matter must be addressed within a period not exceeding six years as stipulated under the Limitation of Actions Act.

I want a refund for my four-year-old deposit

Key highlights of the case

- The law is silent on the deposit refund process, and such, this should be included in the tenancy contract
- Leasing agent should be duly registered as provided for at Section 13 of the Estate Management Act

Question

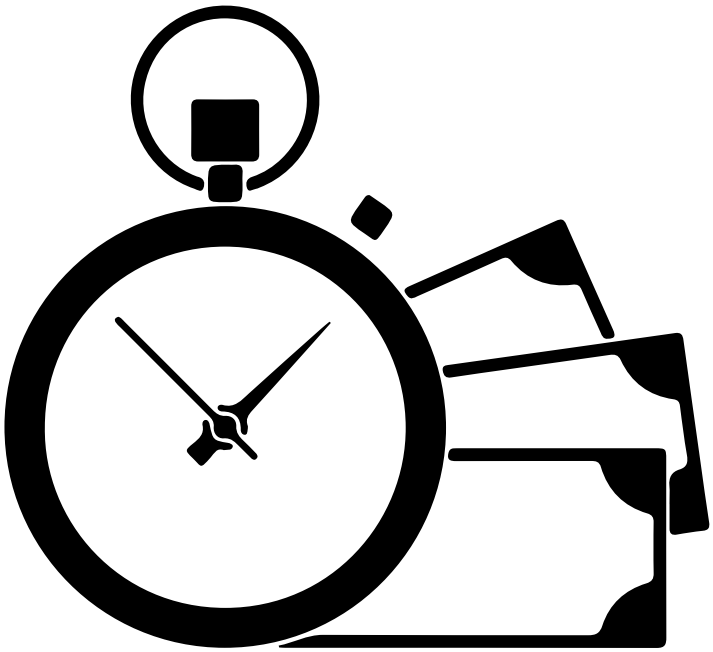
Almost 4 years ago, we paid a deposit to secure space at a mall. Before the mall was completed, the Anchor tenant pulled out. The mall also took longer than expected date of completion. After further assessment and negotiations, we decided to pull back. We were yet to sign the contract. We wrote to the leasing agent asking for a refund. They wrote that they would only refund after the space was taken. It is over 3 years now. We are worried we might lose our money. Kindly advise. Can I get a refund?

~ Pauline

Answer

Dear Pauline,

Your plight is not dissimilar from the many whose business ventures involve real estate management. Rumours indicate majority of those with similar experiences often choose to remain silent for not understanding the law and acceptable practices in the sector. You are not elaborate about your deal with the anchor tenant, but the absence of such information provides a broad plate to discuss several legal constructions, concerns and responses. First, there is the anchor tenant. Such is a tenant whose presence in a commercial space, building or shopping centre is likely to attract other businesses. This could be a supermarket, banks, and popular food chain amongst others. The other construction is the contract of lease, which is an agreement between a landlord and tenant stating duties of both parties in relation to the use of land or building owned by the former within a specified timeframe. Closely related, in and of law are the terms within a contract. These are binding and performable directions,



commitments, duties and demands besides remedies placed on the parties. The other concept originating from your seemingly failed business venture is sub-letting or subleasing. This is the re-renting of a property by an existing tenant to a third party, for a portion of the original tenant's lease contract.

Your situation gives rise to legal concerns. You paid deposit for a space in a mall as a third party and without a written contract, yet the cardinal rule in real estate transactions in Kenya, demands all such contracts of land and buildings thereon, be in writing. Our assumption is that the anchor tenant held the original tenancy lease, whose details remain unknown. Following, it is not clear, what benefits would have accrued if the sub-tenancy (re-renting) agreement had not terminated prematurely. In addition, there is no indication of whether, the said verbal contract contained an exit (contract termination) clause and direction on dispute handling. Complicating this situation is how the leasing agent with whom you did not enter contract, assumes legal responsibilities of the anchor tenant, who has since vacated.

On the foregoing several legal responses abound. The Law of Contract (Cap, 23) in Kenya provides for both verbal (oral) and written contracts but stipulates that any agreement for disposition of interests in real estate must be writing. This could defeat your claim of refundable deposit in case the party that owes you denies the existence of such contract. However, it should also be known that the law is silent on the deposit refund process, and such, this should be included in the tenancy contract. In contextualising the response of the leasing agent, their action may have been by the legal obligations found in the revised Estate Management Act of 2012 and Sectional Property Act of 1987. The latter recognises your rights and obligations as a tenant to a section of the Mall. The Estate management Act provides for registration of persons, who, by way of business, negotiate for or otherwise act in relation to the selling, purchasing, or letting of land and buildings erected thereon. Furthermore, it protects members of the public from exploitation or fraud. Our assumption is that the leasing agent is duly registered as provided for at Section 13 of the Estate Management Act, and their dealings with would-be tenants of the mall does not injure section 18 of the same Act.

Lastly, we identify mechanisms to address the outstanding dispute in order you recover the deposit. If the discussions between you and the anchor tenant did not provide for a dispute handling platform, Section 23 (1) of the Estate Management Act, directs the Estate Agents Registration Board to inquire a question brought before it, of omission or commission, manifesting as misconduct by an agent likely to harm public interest. The other forums are Rent Restriction Tribunal and Business Premises Rent Tribunal. Since we are not privy on the amounts of money involved, let it be known to you that the former deals with disputes whose rent is Kenya shillings 2,500 and below, while the latter deals with disputes with tenancies not reduced in writing, otherwise known as controlled tenancy. One may also approach the court. However, in all these you will be required to proof existence of a contract of lease, such as the communication between you and the leasing agent, indicating a refund, only upon occupation by a new tenant.

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FEATURE ARTICLES

WHAT'S THE NEXUS BETWEEN VIOLENT EXTREMISM AND ORGANIZED CRIME?

It is important to appreciate the fact that, criminality has been a part of humanity since before we had laws to govern the populace; case in point is the killing of Abel by his brother Cain as narrated by the book of Genesis. In a nutshell, laws have always played catch up to societal evolution and this is the case when it comes to crime vis-à-vis violent extremism. In many countries around the world, violent extremism became a global phenomenon long after bulk of legislations had been drafted criminalizing different forms of human interaction.

Though terrorism and violent extremism has existed for a long time, it took the 9/11 bombing in the United States – by then a dominant super power for the world to sit back and take notice. Institutions with global appeal and governments across dug deep into their knowledge reservoirs and weapon arsenal to understand and counter the threat. Notably, legislative and policy responses separated terrorism from what you would otherwise refer to as conventional forms of crime.

On another limb, organized crime as a concept seems to have developed over the same time as terrorism. While these two are distinct elements of criminal activity, it can be difficult to clearly distinguish the two. One might ask: Is terrorism form organized crime? Are members of organized criminal organizations terrorists?

"THOUGH TERRORISM AND VIOLENT EXTREMISM HAS EXISTED FOR A LONG TIME, IT TOOK THE 9/11 BOMBING IN THE UNITED STATES – BY THEN A DOMINANT SUPER POWER FOR THE WORLD TO SIT BACK AND TAKE NOTICE"

Prevention of Terrorism Act outlines several actions that may constitute a terrorist act. These actions include an act or a threat of action: which involves the use of violence against a person; endangers the life of people; creates a risk to the health or safety of the public; results in serious damage to property; involves the use of firearms or explosives; involves the release of toxins into the environment; among other variables. Where the above activities are carried out with the aim of: intimidating and causing fear among members of the public; intimidating or compelling the government or international organizations to do or refrain from any act or destabilizing the religious, political, Constitutional, economic or social institutions of a country; then the act is termed as terrorism.

Just like many jurisdictions Kenya has codified organized crime under Prevention of Organized Crime Act which define organised criminal activities to include: professing to be a member of an organised criminal group; knowingly recruiting another person to become a member of an organised group; being a member of an organised group and knowingly directs another person to commit a serious crime; among other activities. It so follows that, legislatively, organized crime and terrorism have been defined in isolation of the other. A 1993 United Nation Crime Commission report defined organised

crime as a form of economic commerce by illegal means, involving the threat and use of physical force, extortion, corruption, blackmail and other methods and the use of illicit goods and services. The United Nations Convention Against Transnational Organized Crime (much like our Prevention of Terrorism Act) leaves out this definition. Instead it describes an organized criminal group as a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences in order to obtain directly or indirectly, a financial or other material benefit. The United Nation Office of Drug Crime has captured the essence of organized crime, highlighting that it occurs as a continuing criminal enterprise that exists to profit primarily from illicit activity. Some of the most common organised crimes are drug trafficking, money laundering, arms trafficking, money laundering and human trafficking.

From the above definitions, one is able to pick out a few distinctions. The tactics employed are similar in that they involve the use of violence, threats to members of the public and destruction of property. On a broader scale, both sets of crime operate secretly and usually from an underground network. The control to the individuals involved is strong and both may use legitimate businesses or charities as a cover up for their activities. Membership to both set of groups is primarily drawn from similar sources (mostly ethnic youth gangs and petty criminals).

The most obvious difference is displayed in the motivation behind their actions. Terrorist groups are usually ideologically or politically motivated whereas organized crime groups are in the business purely for purposes of making profit. While some terror groups wish to compete with governments for legitimacy e.g. Al Shabaab in Somalia, this is never the case with organized crime groups. It is also commonplace for terror groups to seek media attention (Boko Haram in Nigeria on several occasions reached out to local and international media to share information on its activities). On the other hand, organized crime groups thrive in anonymity and therefore prefer to steer clear of media and public attention.

Terrorist groups generally meet the threshold for organized criminal groups save for the purpose for their existence. This confirms that terrorism is a form of 'organised' criminal behaviour.

"THE CONTROL TO THE INDIVIDUALS INVOLVED IS STRONG AND BOTH MAY USE LEGITIMATE BUSINESSES OR CHARITIES AS A COVER UP FOR THEIR ACTIVITIES"

Since the 1990s, there has been an increase in both organized crime and terrorist activities for various reasons. Previously it was assumed that the bulk of members in these groups were poor, uneducated and vulnerable members of society. This couldn't be further from the truth. As we have seen in the recent past, some members are highly skilled professionals. Furthermore, the advancement in the skillset of members has led to the development of more advanced crime methods and tactics. Globalization and internet connectivity further enhance these groups' activities.

In September 2003, the UN Security Council Resolution 1373 recognised the close connection between international terrorism and transnational organized crime. Interactions between terrorist groups and organised criminal groups may take different forms. Some coexist within the same territory and develop alliances based on their common interests. These alliances may facilitate business between the two such as the sale and purchase of firearms. Terrorist groups may also engage directly in criminal activities or benefit directly from them by imposing taxes on criminal groups operating in terrorist-controlled areas. Though it appears like terrorist groups engage in such business to gain profit, these funds are ploughed back into funding their activities and advancing their agenda. In Africa, any claims of organized criminal activity turn global focus towards West Africa. The East African Coast has largely been overlooked yet it may be just as vulnerable, if not more. The United Nations Office on Drugs and Crime has warned that East Africa is becoming a free economic zone for all sorts of trafficking – drugs, migrants, guns, hazardous wastes and natural resources. In Kenya, money laundering has been linked to persons suspected to be part of the Al Shabaab in Somalia (funds from Kenya end up in Somalia). The militants have taken advantage of the hawala system (an informal money transfer system) to move funds from one Country to another.

The convergence of terrorism and organized crime has paved way for the metamorphosis of terror groups into localized criminal groups that discreetly advance ideological agenda. A study on organized criminal gangs in Mombasa conducted by the International Peace Support Training Centre in 2019 shows that these gangs were already radicalized to violent extremism. They felt aggrieved by the state due to marginalization, lack of access to gainful employment and development opportunities, corruption, and excesses by law enforcement agencies. Although radicalization never mutated to joining terror groups, their vulnerabilities were easy to exploit. The report also suggests that, while

criminal gangs and terrorist groups continue to be distinct in Mombasa, it appears there is a slow merger of their social network and operational environment. Therefore, the risk of collaboration between the two groups is still a live threat.

From the foregoing, it is clear that organized criminal groups and terrorist groups are not only identical in many ways, but also symbiotic. This poses a serious threat that must be neutralized to protect national and international security. As a country, Kenya can take several measures to prevent and manage impending and real threats. First, law enforcement agencies must continue and enhance efforts to stem out organized criminal gangs. Second, is to enhance inter-state cooperation to curb trans-national organized crime. This may involve increased vigilance at border points and air and sea ports. Third, is to develop and introduce safeguards that will increase and improve monitoring system of the hawala owing to the fact that, the system's existence is anchored on trust and therefore stands a chance of infiltration by people intent on causing chaos. Lastly, having noted that prisons are a potential breeding ground for radicals and violent extremists, there is need to introduce de-radicalization programmes for convicts of terror related activities and further educate inmates on the dangers of radicalization. LRF

RADICALIZATION DOES NOT NECESSARILY LEAD TO VIOLENCE

Lindsay Clutterbuck PhD. attempts to look at 'radicalization' from an otherwise broad perspective as the process whereby, individuals (and even groups) develop, over time, a mindset that can – under the right circumstances and opportunities- increase the risk that he or she will engage in violent extremism or terrorism. It therefore follows that, the path towards radicalization must be well understood. According to Costanza's definition, radicalization path is the process or progression which enables better understanding of how an individual or a given group moves through time towards radical beliefs, in a volatile social environment which is constantly evolving.

The process however varies and is unique from one individual or group to another. Important to note however is that, some components of the process tend to involve a combination of shared cognitive and behavioural traits, structural grievances anchored on shared political ideology or a rallying cause that encourages a process of "de-pluralisation" – a concept that describes how an individual becomes increasingly narrow minded in relation to key political concepts and values. (Moskalenko, S., & McCauley, C., 2020). How then do individuals turn out to be violent extremists? This is a critical question that requires a lot of sobriety in its examination and interpretation considering the same runs a risk of being wrongly conceived. Sufficient grasp of elements of path to radicalization is important in developing strategies pertinent to detection, prevention and countering violent extremism at various stages of the chain.

"IN THIS CONTEXT HOWEVER, THOUGHTS ARE JUST THOUGHTS AS MOST PEOPLE NEVER END UP FORMING PLANS TO EXECUTE THEM"

The path never assumes a particular route and this is evidenced by the different theories different authors have used to approach and define the concept. For instance, radicalization may begin with an individual thinking about destroying property of, or hurting or even killing someone who represents a group or a cause that the individual finds objectionable. This is considered the mildest form of radicalization. It is very possible that at some point, many of us may have experienced some form of radicalization especially when it comes to opinion. An example is the manner in which, people get emotionally charged during elections owing to feelings of marginalization, rightly or wrongly so. Such thoughts can only be described as elements towards radicalization. In this context however, thoughts are just thoughts as most people never end up forming plans to execute them.

Many people become radicalized in their thoughts. Studies have shown that about 10 per cent of persons who profess Islam faith and live in the United States hold the belief that suicide bombing is "sometimes" or "often" justified. Calibrate this to the over one million adult Muslims who live in the United States; and the 10 percent translates to about 100,000 people harbouring radical thoughts. Further calibration shows that, less than the 1` per cent of those

harbouring "radicalized opinions" have been involved in any form of terrorist activity. The only logical conclusion is that, significant majority of those harbouring radical and extremist opinions or views never cross over from radicalization of opinion to the deep end of radicalization to violence. At this juncture, it is evident the path to radicalization is affected by a myriad of factors including personal choices which eventually determine the end product. Some people might progress to what can only be referred to as 'small" actions in support of a radicalized view, with others ending up as full-fledged terrorists. At this point, the former and the latter have moved past the radical opinion to radical action.

As alluded to above, radicalization to full-fledged violence is equally fuelled by personal choices. Take the late Osama bid laden for example whose trajectory in becoming the leader of the most feared terrorist organization in the world (Al-Qaeda) was not only largely informed by the environment he grew in, but also his personality. Osama lacked nothing while growing up considering he was the son of a multimillionaire. Many in his position would have opted for a life of opulence and grandeur. Osama chose to spend his money in fighting what he viewed as a holy war against apostate governments of Muslim countries and against the United States. This unwavering devotion to his cause, in addition to his wealth, won him admiration of jihadis worldwide and made him leader of Al-Qaeda.

What made bin Laden a terrorist is not unique. It was his own character-his piety, his willingness to live his beliefs to the fullest no matter the cost, and his steadfastness and devotion to the cause. These may be inborn personality traits. In addition, there is also the special way in which he was treated by his enemies such as the United States. He stood out as a target of powerful enemies, able to withstand attacks directed against him, becoming the international symbol of violent extremism.
On a more positive note, radicalization has been used as a rite of passage for men and women willing to serve the nation in the capacity of security operatives. Training for these categories of persons includes nurturing one's tolerance to face and participate in 'violence' for the right reasons. But for the services of these brave men and women, sovereign nations stand a chance against foreign infiltration. At this juncture, training or 'radicalization' becomes the necessary evil.

As we adjust to the fact that, radicalization is not always a bad thing, we cannot bury our heads in the sand and fail to admit it is dangerous. Just like a weapon, it can defend or protect, but it can quite easily be misused. This power that lies in radicalization can be taken advantage of and manipulated by cunning and calculating powers. For instance, Hitler's government comprised a ministry of propaganda, headed by Joseph Goebbels, whose goal was to radicalize the German populace. It succeeded first in radicalizing Germans against the Jews and other minorities in Germany and then against other nations that Germany fought in World War Two.

In conclusion, radicalization is a double-edged sword and the end result is determined by a myriad of factors which are both personal and environmental.

COMPETING RELIGIOUS IDENTITIES AND MOBILISATION OF VIOLENT EXTREMISM

Scholars, propagandists, war experts, military intelligentsia, theologists and religious practitioners are hamstrung to explain motivations for killing, maiming, and literally collapsing a socio-economic and sometimes political system that serves the best of the many. For instance, the period between January and May 2016 saw the death of almost 10,000 people either from direct actions of violent extremists or mitigation thereof. All these were attributed to either Al-Shabaab in the East and Horn of Africa, the Islamic State of Iraq and Syria (ISIS) and remnants of Al-Qaeda. Incrementally, many groups are emerging with violent extremist ideologies and preferences to sort out what in their own lenses is injustice or inadequacies that suffocate their courses. Such events of mass killings, alongside other acts of terrorism experienced globally but specific in Europe, US, select African countries and even sections of South Americas take many experts to the drawing board to unravel what seems like changed patterns of illicit militancy. We have those who argue that fundamentalism has become a powerful pathway to reach out to those who must resist causes they dislike and vice versa. Others have propagated a school of thought which emphasize progressive ideological graduation of fundamentalism to extremism, and the two as twin concepts of violence when indoctrination is unlikely persuasion to mass resentment of system(s). What is not in doubt is the ability for both to modify the sociology of the mind and value system of individuals to reject what is socially acceptable by the majority. Is fundamentalism only religious? Is it possible that fundamentalism could be derived from any other cause in the unpredictable realities of the modern world which rubbishes the liberal trends that seem impure to a known value system practiced for eons? The origination of fundamentalism is found in the traditional or conservative foundations of religiosity. Its obligation is to protect the chastity of religion and associated practices. Fundamentalism is a dual embodiment; first a symbol of purity: and second a movement against systems considered impure, wrong, unacceptable and digressive. As a movement it roams the world to indoctrinate, resist, reject, rebel and sometimes obliterate what it defines as contaminated. In the modern world, it invites religious rigidity and concocted interpretation of scripture into public spaces as motivation to cement philosophical justifications for unpopular works that would otherwise be condemned as baseless.

Extremism on the other hand is seen as a loose concept amalgamating beliefs, attitudes, feelings, actions and strategies whose manifestation(s) deviate from the ordinary character. There is no doubt to scholars such as Zichencko and Perelygina that extremism is a mechanism to protest what disadvantages certain groups in society from the mainstream of benefits. There is consensus that extremism is applied by groups who wear the hat of powerlessness and are unlikely influential, hence the resort to statement making though desperate, actions to achieve the attention required. Objective pundits argue that extremism is as subjective as the person who writes or speaks about it. The variations are shapes of the diverse moral lenses worn by the many different writers. For those who find and experience disgrace from system(s) sanctify their actions as valid and necessary to liberate the

oppressed. Dissimilar thoughts are provided by those who hold sway or power of the same systems and consider extremism as a practice of weirdos who are impatient with a system that serves good of the many. Nonetheless, it mirrors the consistency of marginalisation in the dichotomy of power and powerlessness.

The convergence of fundamentalism and extremism could be six fold and may at least explain the motivations for employing violence when the need to protest or register a significant message arises: first, both originate from the concept of the few against the many who seem blind to atrocities committed: secondly, there is the moralisation of actions with texts of religion and tendencies to employ unorthodox approaches to reject systemic interventions that speak less to their beliefs and values: thirdly, both pathways purpose to create an identity of resistance: fourth, the two concepts mobilise followers by resisting liberalism that seem to sanitise wrongs: fifth, those who oppose their actions view them as misguided bigots with a discriminative agenda against the good status quo: and sixth, is that both entrench their presence through a structured pattern of anti-establishment messaging.

Be it as it may, the widespread acts of terror seen in Africa, just as in Europe and other places of Asia points to deeper interrogation on the role of religious fundamentalism and extremism. It is necessary to draw lessons as to why the two groups seem to prefer utilization of violence in its many facets. Would it therefore be true to assert that fundamentalists and extremists have excessively utilized violence in pushing their agenda? Writers like Anthea Butler in the New York Times, in 2015 posited the notion that, terrorism can result from fundamentalist's beliefs. In the context of writers supporting Anthea's conviction are the writings of UNESCO (2017), whose persuasion is anchored on the danger posed by an extremist's belief system. Some authors have provided reasonable, in fact believable rationale for disproportionate importation of violence in illusionary courses of liberation as follows: a) the inflexibility of mainstream conflict transformation mechanism which necessitate the use of the violent alternative: b) the abscondment of the legally recognized dispute resolution platforms or measures: and c) the disdain held and propagated by the undefiled (fundamentalists and extremists) not to associate with filth represented by those they abhor. These three assumptions are informed by the general insurgency behavioural pattern of fundamentalists and extremists that purportedly despise soiling, corruption and pollution of socio-political and economic systems due to abandonment from God in unbelief, self-righteousness, pride and self-indulgence besides indifference.

While fundamentalism originated from the Christian faith, it has largely been associated with Islamic religion. This could be explained by one or more of the following. First, most Muslims believe the Quran to be the final and unchanged word of God and its inerrancy, a dynamic that essentially renders them "fundamentalists" (Sidahmed and Ehteshami 2018; see also Wood and Watt 2014). Secondly many studies consider manifestations of religiously inspired political activism as fundamentalism. For example, both Choueiri (2010) and Milton-Edwards (2013) effectively consider all forms of Muslim activism fundamentalist. There is very little in the world of modern Islam that is not underneath the concept of fundamentalism. Equating fundamentalism with politicization suppresses these political movements and ideas from their very political crux and tries to, ineffectively, understand them through religious reasoning. This, in itself is skewed hence a victim of constructive bias. Thirdly, fundamentalism by its own architecture is conservative and often disparages liberalism, thus fashioned as departure from the common good ((Esposito 1999; Sayyid 2004)). The liberalists thus label fundamentalism as dangerous and often offer prejudicial truths to serve and conserve their own from any other persuasion ((Ruthven 2007: 5). The lie is white, Islamic religion is clean, but those who practice it choose paths of convenience, often connived to suit certain narratives of injustice. As one Kenyan Imam said during a Swala in Kongowea, Mombasa, it is easy to defend Islam for its goodness and peace, but not a Muslim, who is human with as many flaws. People are fundamentalists, religion often is not.

"THE ORIGINATION OF FUNDAMENTALISM IS FOUND IN THE TRADITIONAL OR CONSERVATIVE FOUNDATIONS OF RELIGIOSITY"

The aforementioned dynamics have provided grounds for erroneous and sometimes problematic categorizations of Islamic groups as fundamentalist. From reformist Afghani to revivalist Hassan al-Banna, innovator Ayatollah Khomeini to Osama bin Laden, Nurcu groups to various Islamic non-governmental organizations, all groups engaged with Islamic activism are labelled as "fundamentalist" and analysed as such. Not only the clear-cut differences among these groups are stamped out (hence, better ways of making sense of these groups are ignored as a result), but also all of them are targeted as "fundamentalist threats" regardless of their tactics and intentions. LRF

IS EXTREMISM A STRETCH OF UNMITIGATED FUNDAMENTALISM?

No. From the onset, we have argued in this paper that extremism is dichotomous: on the one hand a protest, while on the other a reinforcement of significant expressions. Nonetheless, it is a pathway for those who seem to believe that the mainstream has intentionally removed them from reasonable spaces to discredit their disenfranchisement. Whether, it is an extension of unmitigated fundamentalism is subjective to the one opposed to its existence and use. However, it is fallacious to assert that it has the monopoly of illegal violence. It could be argued that sometimes intent of groups and individuals is to voice their opinions and form divergent schools of thought. This could be through a to protest, actions that harbour discontent, hatred and brood revenge, but the same doesn't qualify the invitation of violence. Such courses could be legitimate nevertheless, owing oppressive policies, values and norms considered unjust. While the ethics of employing violence against civilians as a weapon of choice is unsubstantiated, it is absurd that those who peddle acts of terror even celebrate the outcome of such heinous crimes.

Extremism can also be looked at as the opposite of that which functions as the normative truth of society. From this perspective, extremism is defined qualitatively but the emphasis is more cross-cultural than intra-cultural. For example, in the Soviet Union capitalism was frowned upon significantly more as an idea than as a practice. The leaders of the Soviet Union, most importantly Lenin and Stalin, believed strongly in industrialization, in economic growth, in capitalism without the capitalist class, in capitalist modes of raising worker motivation (higher wages, not contribution to some form of socialist common good served as an incentive for the workers). Capitalism was stigmatized because it contrasted with Communism and was one of the defining opposites of the socially-shared description of reality. (Kilp, A. 2011).

"WHETHER, IT IS AN EXTENSION OF UNMITIGATED FUNDAMENTALISM IS SUBJECTIVE TO THE ONE OPPOSED TO ITS EXISTENCE AND USE"

The specification of context is important because in different spheres of human action religious, political, economic, military, artistic, cultural; educational the definition of good is dependent on the particularities of the professional sphere. Concomitantly, professions not only have different conceptions of normality, undue excess and extremism, they also have varying professional reasons why behaviours and attitudes that are considered abnormal, extreme, abusive, discriminate or pathological in everyday life become normal for a professionally-defined period, reason and goal. Thus, a dentist may cause pain and drill your teeth in a way that no common man ever legitimately can. (Kilp, A. 2011). LRF

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FEATURE CASES

FROM JUSTICE ADVISORY CENTRES

FEATURE CASES FROM JUSTICE ADVISORY CENTRES

EASTLEIGH JUSTICE ADVISORY CENTRE RUN BY PEACE @HEART INITIATIVES-KENYA

Resolving rent dispute

The justice advisory centre handles myriad of cases including landlord tenant dispute such as highlighted in the case below.

Background information

The case was referred to the centre by a paralegal working directly with the centre involving Ken* and Mike* on a rent dispute. Mike is a Landlord in Ngei village Ngei Ward. Ken a 54-year-old pastor, is among the tenants in one of the single rooms.
On 25th March Mike sent letters to the tenants informing them that rent for the ten single rooms at Ngei 2 village would be adjusted beginning April 2021. Rent, they were informed, would be adjusted by kes 1,200. Following his information, the tenants met on the 26th of March to reflect on the developments and develop an action plan.

Prevailing situation

The tenants live in a plot which measures 80 by 50 which has two sets of dwellings. On one side are semi-permanent rooms built using iron sheets while the other side has permanent rooms, all of the same size. The plot belonged to a Mr. O, now deceased. He was married to two wives and each of the two had children. After his death the two families got into a conflict over management of the property which spilled over to the tenants who'd stayed in the plot for considerable time. Status of the houses is such that the walls of the houses are dilapidated, no sewerage, no water and roofs leaking.

The situation of the houses irked the tenants when notice of rent increases was issued compelling the ten appoint Ken, a pastor to spearhead an intervention aimed at reverting to status quo considering the prevailing economic situation. On this basis that Ken reported the matter to the Justice Advisory center for legal advice on 2nd April 2021.

Intervention by paralegals at JAC

Upon hearing the issues raised by Ken the paralegals at the centre referred the matter to the assistant chief to resolve the dispute between the, now two, land lords and establish the source of the letter and call in a mediation process with the tenants.

Resolution

Following hearing at the assistant chief's office it was resolved that the letter be revoked and status quo be maintained.

VICTIM OFFENDER MEDIATION IN CRIMINAL CASES: ROLE OF A PARALEGAL

Introduction

Victim offender mediation Victim-offender mediation (VOM) is a process that provides interested victims (primarily those of property crimes and minor assaults) the opportunity to meet their offenders in a safe and structured setting. The goal is to hold offenders directly accountable while providing important support and assistance to victims

Case Preamble

Sam is a male pretrial detainee held in custody in Remand prison having been charged for the offence of stealing contrary to section 275 of the penal code Act. Sam is alleged to have stolen one mobile phone a 'TECNO POP2' valued at Ksh. 7,600 the property of Mrs. Achieng', (the complainant)

On the morning of 20th February 2021, the complainant placed her phone at the verandah of her house and proceeded to buy mangoes in a nearby grocery shop opposite to her house. In a span of moment while buying the fruits, she saw a young man, whom she was able to physically recognize, passing by and in a hurry while looking suspicious. She immediately peeped at where she had left her phone and could not trace it. She screamed in a loud voice and the suspect, now the client dashed away in speed. Her scream attracted a mammoth of crowd who advised her to report the matter at police station. It was at this point, that the complainant reported the matter prompting police manhunt for the suspect.

"THE COMPLAINANT LOCKED HERSELF INSIDE THE HOUSE IN FEAR THE COMPLAINANT INFORMED THE POLICE ABOUT THE ASSAULT INCIDENT."

Surprisingly, two days later and on at around 1PM, after Sam went missing in both the village and his home, he appeared majestically, accompanied by his two (2) friends, walked to the complainant's home with an intension to assault her on the claim that the complainant is suspected of reporting him as a thief. It was reported that the Sam and his friends were extremely hostile and demanded to fish out the complaint from her house and give her a beating of its kind and, 'teach' her lesson. The complainant locked herself inside the house in fear
The complainant informed the police about the assault incident later on and at around 3PM Sam was arrested and booked to Changamwe police station.

Main issue

After the threat incident, the complainant refused to settle the matter at police station even though the Sam's mother walked to police station the following day with Ksh. 5,000.00 in cash to compensate the complainant and the balance to be settled on a later date in an agreement at the police station.
The complainant demanded the full compensation of Ksh.7,600.00. Sam's mother was unable to raise that moment having struggled to raise the Ksh. 5,000.00 only. She therefore went back home with the money and Sam was eventually produced in court the following day and held in custody at the Remand Prison.

Paralegal intervention

The paralegal conducted a legal aid clinic to remandees to equip them with legal knowledge. Sam, while focusing on the events of his case was informed about the possible penalty which includes imprisonment of up to three years in jail should the prosecution witness successfully prove their case against him. It was suggested to him the option of seeking reconciliation with the complainant and solve their matter outside court. This proposal shone a ray of hope for Sam and came as a relief.
The paralegal additionally, conducted a brief counselling and guidance session about the matter focusing on the importance of remaining calm and avoid controversies with the complainant to give her ample time and settle the matter outside court.

On 24th April 2021 at 4pm, the paralegal reached out to the complainant through a phone call. The complainant recalled the incident with deep fear. The paralegal consequently applied communication skills to calm the complainant down. Paralegal subsequently called Sam's mother and informed her the chronology of the events and the claims of threats to the complainant. She affirmed that she will responsibly take control of her for son and asked the complainant to forgive him.

Outcome

The complainant agreed to withdraw the matter from court and after the Sam's mother produces before the prosecutor Ksh.5,000.00 for compensation, earlier rejected by the complaint at police station courtesy of paralegal intervention and conciliation. The rest of the amount was to be paid later after an agreement during the plea with the prosecutor.

The complainant was asked to attend court on 4th May 2021 when the matter was due for mention.
The case demonstrates the role paralegals play in facilitating access to justice through victim offender mediation. This approach reduces time spent in custody for accused persons, reduces trial time for the court and prosecution and facilitates reconciliation between accused persons and complainant. LRF

**Names and some details have been changed to protect identity of the persons*

“ANYONE WHO SEEKS TO TAKE ANOTHER TO COURT DEMONSTRATES THE DESIRE TO FIND A SOLUTION TO AN IMPENDING PROBLEM.”


LEGAL
RESOURCES
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Haki Itawale