

THE

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PARALEGAL

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**PARALEGALS PROMOTING
JUSTICE**

**NEW DAWN TO PARALEGAL
PRACTICE**

CHILD SAFEGUARDING

**ARRESTS AS GATEWAY TO
HUMAN RIGHTS**

Featured Personality

**COMMISSIONER
EMERITUS JEDIDAH
WAKONYO WARUHIU**

Jurist of the Year 2020

Founder - Paralegal Society



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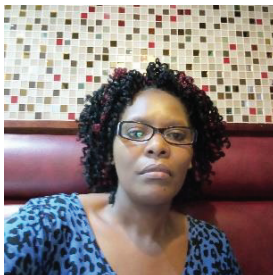
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A NEW DAWN AS PARALEGALS LAUNCHES MAGAZINE

Paralegal Society of Kenya (PSK), formerly Paralegal Support Network (PASUNE), is a Society registered under the Societies Act, for paralegals in Kenya. Since its inception in 2000, it continues to advocate for Paralegal practice in the country, and promotes visibility of paralegal model as legal aid tool. PSK's mission is to provide quality, efficient and coordinated paralegal services through training, legal aid, dispute resolution and policy advocacy in Kenya.

PSK continues to engage its membership across the country to track and monitor their work, experiences, challenges, best practices, skills, lessons as well as stories of change, while advocating for effective policies that make it easy for Paralegals to practice law and give legal aid with less challenges. Key milestones in PSK's work include the enactment of the Legal Aid Act, the key legislative document which has given recognition to Paralegals, thus addressing one of the most glaring limitation of the paralegal model; lack of recognition of paralegals.

In its outreaches to its membership and the public at large, PSK has devised a raft of strategies, including technology to disseminate information and stories of paralegal work in Kenya. The Paralegal Magazine, therefore, is a necessary addition to this strategy as it offers paralegals to tell their stories and experiences, while also promoting advocacy on the application of the model to address legal problems that their communities face. It would also accord them the opportunity to appraise Paralegal work in bridging gaps that hinder access to justice for the poor and the marginalised.

Consequently, the PSK Governing Council welcomes you to this novel Magazine, and indulge with the stories of the Paralegals as they tell them. Enjoy the read and feel free to also share your feedback through info@pasune.or.ke. We would sample your articles and publish some upon editorial team approvals for our next edition.

Karibuni!

USHERING IN A NEW DAWN TO PARALEGAL PRACTICE AND APPLICATION IN KENYA.

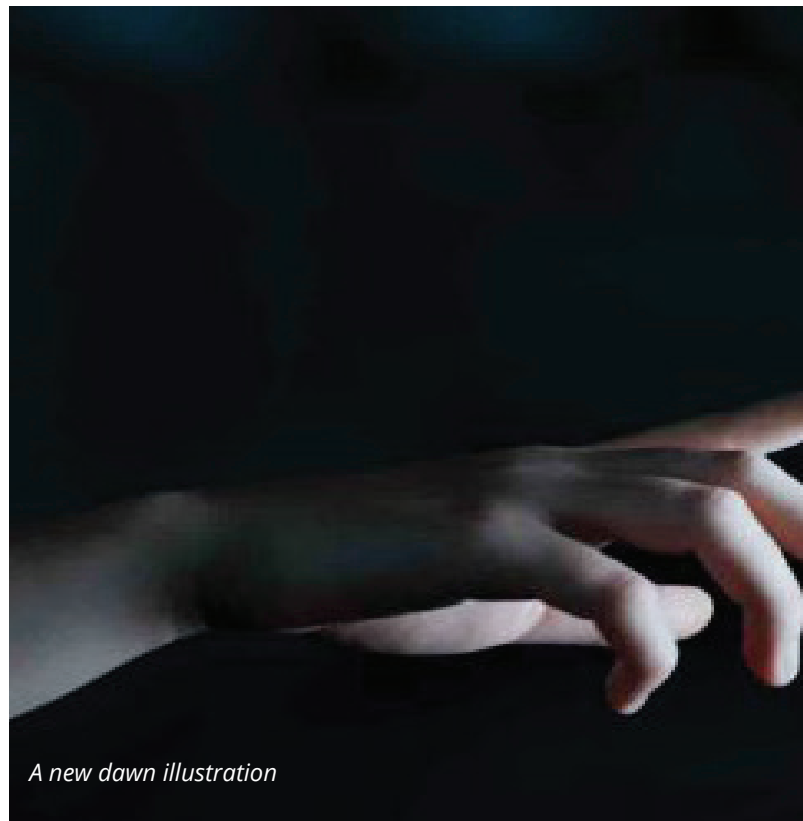


by **MARY AIRO**
Editorial Director, *The Paralegal Magazine*.

Allow me to invite you to engage with the paralegal community through the Paralegal Magazine which is one of the platforms that the Paralegal Society of Kenya (PSK) is pioneering to support exchange of information, ideas, innovations, and paralegal stories through their interventions across the country. For the uninitiated, paralegals are development workers who focus on providing practical solutions, including basic legal services to indigent persons in Kenya without the means to meet the costs for legal services in Kenya. PSK as the umbrella body of paralegals, has been a witness to the rapid growth and innovativeness of the paralegal model in bridging the gaps in access to justice that are experienced in both the formal and informal justice systems in Kenya.



A new dawn illustration



A new dawn illustration

Recognition of the model

Much work has been done to underscore the role of paralegals in supporting access to justice and legal aid service delivery in the country through trainings, capacity building and linkages creation to ensure paralegals find the space to operate and make interventions where their services are needed. The recognition of this work has been evidently captured under the recent legislations that have been passed that recognise the role of paralegals in legal aid service delivery. These include the Legal Aid Act and the Small Claims Act, both of which have created roles for paralegals in their architecture. Per the Legal Aid Act, paralegals operate in the broadly defined sphere of provision of legal advice and assistance in accordance with the Act, which aims at promoting access to justice by providing affordable, accessible and accountable legal aid services to indigent persons, providing a legal aid scheme to assist indigent persons to access legal aid, promoting legal awareness, supporting community legal services by funding justice advisory centres, education, and research and promoting alternative dispute resolution methods that enhance access to justice, thus making Paralegals the key pillars in the delivery of the objectives.

Ongoing paralegal application

In their different platforms, Paralegals continue to handle thousands of cases in their communities,



hence making access to legal aid accessible and achievable, while also transforming lives at the same time. Despite this, paralegals' good work is not known to many and simply remain in their documentation journals. Consequently, little stories as told of paralegals' work because much of their work remain in the inner sanctum of their journals. PSK's other mandate is to showcase the paralegal work and create spaces that allow paralegals to tell their stories and experiences. The Paralegal Magazine is the PSK's response to this need and would be the platform for paralegal engagement amongst themselves, stakeholders, and with their communities. Through this magazine, the Paralegal Society of Kenya creates a platform to showcase and celebrate some of the Paralegal interventions that have put smiles on the faces of the vulnerable and marginalised people they serve and have also bridged gaps within the justice systems.

Laying ground for realistic application of the paralegal model

Paralegal Society of Kenya, as the regulator of Paralegal practice in Kenya, is acutely aware of the challenges that paralegals undergo in the course of their work, and the genuine perseverance they endure in providing services to those who need it in their communities. This kind of resilience is what

defines paralegal practice and makes it the choice model for legal aid provision. Be that as it may, PSK is currently undertaking a needs assessment for paralegal model with the view to understanding the issues and formulating strategies to address some of the needs. PSK plans to launch and disseminate the report of this assessment with paralegals as well as agencies that support paralegal practice to enable them act on some of the proposed recommendation. Meanwhile, PSK calls upon NLAS to prioritise the establishment of the Legal Aid Fund as envisioned under the Legal Aid Act 2016 in order to expand access to legal aid in the country. PSK also wish to encourage NLAS to put in place the framework for accreditation of legal aid providers, including paralegals, which is long overdue. PSK pledges to work closely with NLAS to ensure the realisation of the twin ambitions to make legal aid access a reality in the country.

WHY CHILD SAFEGUARDING SHOULD BE A PRIORITY FOR HUMAN RIGHTS AND DEVELOPMENT WORKERS



by **FRED OTIENO**
Managing Editor, The Paralegal Magazine

Globally, terminologies such as safeguarding and mainstreaming have taken precedence in the development space, with organisations and development partners integrating the concepts into their institutional systems as a response to the development principle of, ‘Do No Harm!’. These organisations have not stopped there; they have insisted that organisations with whom they collaborate, partner or network with must, as a matter of principle, integrate safeguarding ideals in their own systems for them to be in these working relationships with them. But what underlies the concept of safeguarding? According to practitioners in Ireland and the UK where the model has gained traction within the development and labour space, safeguarding generally apply to measures that are desired to help protect the health, well-being, and human rights of individuals, which, consequently, allow people — especially children, young people, and vulnerable groups of people, including adults — to live free from abuse, harm, and neglect. Despite the broad definition, children safeguarding is pretty specific and deliberative in its application and is defined as working collaboratively and cooperatively to safeguard children from all harm to allow them to enjoy normal development and growth. Protecting children from maltreatment, preventing impairment of children’s health or development, and also ensuring that children are growing up in circumstances consistent with the provision of safe and effective care are all critical ingredients of child safeguarding.

Child protection as the epitome of safeguarding in children

Child protection underlie safeguarding of children. Principles of child protection such as prevention from harm, paramountcy, partnership, protection, as well as parental care and responsibility constitute critical elements of child safeguarding. Children need to be protected from substance abuse, lack of, or inadequate housing, lack of healthcare and education access, exposure to child labour and trafficking in children, security from parental incarceration in instances where criminal justice system requires that the parent be sent to jail and toddlers have to accompany their mothers to prison, security from child criminal exploitation, child sexual exploitation, including child pornography; domestic abuse/ violence, security from radicalisation and exposure to honour maiming or killings.

A case for child safeguarding

Susan Mapp and Shirley Gatenio Gabel in their article on the Journal of Human Rights and Social Work avers that, it is likely that, in every society, there are quotes by persons of vision and significance regarding the importance of caring well for our children as they hold our futures. The two academics cite the quote in the USA by the abolitionist leader and author, Frederick Douglass, who, in 1855, in dialogue with white-slave owners about the immortality of slavery, wrote, ‘It is easier to build strong children than to repair broken men.’ Although stated almost two centuries ago, this statement is a testament to how urgent the need to safeguard children is, and the call to incorporate the principles that underlie safeguarding in children in our systems.

That there exists the policy, legislative and legal architecture to support child protection and safeguarding should be something worth celebrating. In adopting an international legal framework—the United Nations Convention on the Rights of the Child (CRC) in 1989, the global family made a commitment to every child to protect and fulfil their rights. The convention makes clear that children are not just objects who belong to their parents and for whom decisions are made, nor are children merely adults in training, but children are human beings with their own rights, and it recognizes childhood as a separate stage in life from adulthood during which all children should

be protected, allowed to grow, learn, play, develop, and flourish with dignity. Indeed, this is the most widely ratified treaty, signed by all UN member states except for the USA. As if to take cue from the UN, the African Union also went ahead to buttress child protection and safeguarding by ratifying its own improved version, African Convention on the Rights and Welfare of the Child (ACRWC) which gives due consideration to the special needs and challenges of the African child. Kenya, as party state to the two treaties have gone ahead to provide provisions for legal safeguards of the rights of the child vide Article 53 of its Constitution, as well as Children Act, 2001 which is currently under review to ring-fence protection of children. Therefore, child safeguarding principles such as act of care, proportionality, prevention, empowerment, protection, accountability, and partnerships naturally find expression in our own legal systems and must be embraced by all duty bearers who work with children, including organisations.



Happy child

Figure: Safeguarding principles



Benefits of Safeguarding of children

Many benefits accrue as a result of mainstreaming of child safeguarding in our systems and practices. For example, it accords practitioners the ability to spot any signs of abuse, fear or neglect in children. Safeguarding also provides the tools to be able to communicate with children who are vulnerable. It also enables a practitioner to identify and understand children who are potentially vulnerable or at risk of harm, and also providing an avenue for reporting and recording safeguarding issues for interventions. Safeguarding also helps mitigate risks associated with harm to children so that children may be protected from such harm. It is noteworthy that any warning signs that are missed could lead to severe consequences and leave vulnerable children open to fear, abuse, neglect or exploitation.

Development agencies have spent considerable resources in the past 30 years to ensure that the work they do is not the basis why communities they work with are harmed in any way. This has been occasioned by incidences in which development work has been associated with some forms of abuse, including sexual exploitation of communities,

including children that such organisations work with. The most recent scandal involved a British Charity, Oxfam, which was accused of abuses in the aftermath of efforts to help Haiti rebuild after the 2019 massive earthquake. An investigative report concluded that the charity failed to listen to warnings - including from its own staff, that it repeatedly fell below standards expected on safeguarding, and did not meet the promises it made on the principle of ‘Do no harm’. To demonstrate how critical issues of safeguarding are viewed in the global space in the development world, senior staff members who failed to act on allegations, including staff members who were found culpable lost their jobs. A decision was also arrived at that every member of staff was to undergo basic safeguarding training to forestall such an occurrence in future. In the development job market and consultancy work, those recruited, including experts sign up to safeguarding policies to hold them to account should any allegations arise in the course of their engagement. Be that as it may, the emergence of COVID-19 pandemic in 2020, and its permanency in our daily lives makes it ever more urgent to prioritise safeguarding in a broader sense to deal with the new realities of child safeguarding in the development space.

Integrate child safeguarding in your systems or perish.

Demonstrably, safeguarding has taken the centre-stage in development work and is considered one of the best practices. Donors increasingly require beneficiaries of their funding to demonstrate that they have integrated safeguarding in their systems, including child protection policies. It is therefore critical that organisations, however small, start thinking ahead and put in processes that can achieve this objective. Clearly, this also applies to small Community Based Organisations (CBOs), Faith Based Organisations (FBOs) as well as networks for Human Rights Defenders (HRDs) and paralegals who may want to collaborate with other partners to support their interventions. It is the safeguarding time, and child safeguarding is the real deal in sustainable collaborations and partnership building.



Safeguarding generally apply to measures that are desired to help protect the health, well-being, and human rights of individuals

PARALEGAL MODEL SOLVING ACCESS TO JUSTICE CHALLENGES FOR INCARCERATED PERSONS IN KENYA



by **DOUGLAS MUTUMA**

Legal Resources Foundation

The introduction of the paralegal application in the country has seen great strides made in bringing justice to the unrepresented pre-trial inmates across the country. Such was the case of one Toyin Fakayode Seun, a Nigerian national who was languishing in prison, incarcerated at the Nairobi Medium Remand Prison on the charge of obtaining money with false pretence. The paralegal had interacted with the inmate while conducting the usual Paralegal Legal Clinics at the prison, being one of the many inmates seeking legal assistance. Apparently, Seun had been arrested on the 17th December 2020 and arraigned at Kibera Law Courts on 18th of the same month to plead to the charge of obtaining money with false pretence contrary to section 313 of the Penal Code from one Mr. Choji, a fellow Nigerian foreigner based in Nairobi.

As per paralegal inquiry, Mr. Seun had apparently arrived in Kenya earlier, staying in the country for almost a year and was a little familiar with life in Kenya. However, the complainant, Mr. Choji had newly arrived in Kenya and Mr. Seun was the person to induct him. According to Mr Seun, Choji wanted to have an online money transaction by converting Bitcoin worth KES 150,000/- on to liquid cash. Being familiar with the operators in the sector, Mr Seun contacted his online friend to assist on the same. Unfortunately, the transaction delayed for more than a week, leading Mr. Choji to lose his patience, believing that he had been defrauded by Mr Suen. Consequently, Choji reported the matter at Central Police Station leading to the arrest of Mr Seun on the 17th December 2020. However, the complainant had indicated that all he wanted was his money back. A week after the arrest, transaction was approved and monies were channelled to the complainant.

Upon receipt of his money, Mr. Choji flew back to his country, Nigeria, leaving Mr Seun in jail at Nairobi Medium Prison. The complainant was not there to affirm the payment to the court, hence the accused remaining in prison.

Upon sharing his plight, the LRF paralegal came up with a strategy on how to help Mr. Seun. The first step was finding out how the complainant who was already in Nigeria could be contacted. Fortunately, the accused had his number and plans on how he could facilitate acquisition of an affidavit and a send an attachment with a copy of his passport kicked off. The affidavit was to state his willingness to withdraw the case and that Mr. Suen had fully paid the whole amount and send a scanned copy to the court where the matter was filed, Nairobi Medium Security Prison where the accused was being remanded, and another copy to Legal Resources Foundation Trust where the paralegal following up on the matter is stationed. The necessary documentation was dispatched on the 4th February 2021, and duly verified by the court and the other agencies of justice.

The paralegal made an application for a special hearing in the second week of February 2021. However, as fate would have it, the accused infected with COVID-19 while in remand and was quarantined as per guidelines on incarcerating people with COVID-19 in prison. Upon receipt of a negative test result for COVID-19, the second application was made at Kibera Law Courts on the 22nd February 2021 requesting for a special hearing for either 23rd, 24th or 25th February 2021. For a second time, fate conspired against him as the court in which he was appearing went on recess, leading to further postponement to 2nd March 2021. A production order was duly issued for the same date, and he was brought before Principal Resident Magistrate, Madam Renee Kitagwa. And for the third time, fate would make sure that the matter is not concluded as the Investigation Officer failed to appear in court leading to a further postponement until 4th March 2021. The court petitioned the investigating officer to appear, which he did, leading to the successful withdrawal of the matter. The sweet aroma of freedom was too overwhelming for Mr Suen Fakayode, who expressed his gratitude to the paralegal for the support in helping him access justice despite being an indigent foreigner.

WOMEN AND VIOLENT EXTREMISM: ARE WOMEN THE KEY TO THE WAR AGAINST TERROR?

by **PAUL KAUKU**

Legal Resources Foundation

Gender conceptions differ from one society to another. Nonetheless, fundamental societal expectations on how women should carry themselves or behave have generally remained similar, modernity notwithstanding. For a while, women have been viewed as home managers, nurturers, caregivers, docile and meek counterparts in the human ecosystem. While these roles have expanded and evolved over time, they have essentially remained the foundational aspect of the gender discourse. This mind-set has clouded the realization that women can as well be involved in extremist endeavours as active or passive participants, as opposed to just mere victims.

Women have emerged as key players in violent extremism by exploiting the social construction of femininity to their advantage. Since female terrorists tend to be depicted as 'not actual' or 'active' terrorists, they have evaded detection, resulting in successful execution of violent extremist ideologies, including terror attacks. The unexpected turn of events has necessitated commissioning of studies to determine the extent to which women have been radicalized to violence.

Violent extremists tend to justify their actions as jihad—a holy war waged against the enemies of Islam. Traditionally, the role of women in jihad was limited to supporting their husbands, siring children, raising, and indoctrinating their children as the next generation of jihadists. This fact is largely attributed to their interpretation of Islamic religion and the societal norms that shaped their ideologies.

Scholarly debates on the role of women in extremist ideologies

For some time now, Muslim scholars within jihadist circles have debated, challenged, and adjusted their arguments for or against the idea of women taking part in combat. Despite failure to reach a consensus on this subject, women were not dissuaded from tossing themselves into combat. By the early 2000s, there was an upsurge in the number of women suicide bombers. Since then, the Islamic State and al-Sham (ISIS) has expanded the roles of women

in jihad significantly. The organization has gone as far as to state that women have an obligation to participate in combat. Some women have positively responded to this call to action.

A report titled "Behind the Veil: Women in Jihad after the Caliphate" was released in 2019 by the Lowy Institute in Australia. The report documents the story of Momena Shoma, a 24-year-old Bangladeshi woman living in Australia with an Australian host and his family. Two days into her stay, she stabbed her host while he was taking a nap with his young daughter. She was arrested and charged with engaging in a terrorist act and attempted murder. Shoma was the first woman in Australia to be directly involved in a jihadist terrorist attack. In Tunisia and Libya, focus has been shifted to women jihadists. The first terror attack by a woman in Tunisia took place in October 2018. According to the perpetrators' relatives and neighbours, she was radicalized online. Between 2011-2012, an Al-Qaeda affiliate in Tunisia (Ansar al-Sharia in Tunisia) was very active recruiting countless women who later travelled to Libya or Syria to join ISIS.

Women also take up supportive positions and supplementary functions. Generally, their contributions are classified into three (3) overlapping categories, i.e. plotters: those who design, attempt or carry out domestic attacks; supporters: those who garner material support, disseminate propaganda or conceal information about impending threats to advance the agenda of jihadist groups; and travellers: those who migrate in order to participate in the movement directly. They also play an active role in the recruitment of members.

Internet as the recruitment tool

The internet and social media have become instrumental tools that have enabled women to play these roles even from the comfort of their homes. They share videos displaying the violence their organizations perpetrate, openly lauding their counterparts and celebrating their actions, issuing threats to their 'enemies' and calling for supporters to carry out violent attacks wherever they are, around the world.

One may wonder what motivates these women to support or join violent extremist groups? For starters, most people from ethnic minority groups (particularly within western societies) experience some levels of verbal and sometimes, physical abuse owing to their ethno-religious identity. This

is very common for Muslim women, and especially those who choose to wear Hijab, Niqab and Burka in public. The feeling of social or cultural isolation motivated by a search for identity or sense of belonging especially during their adolescent years makes them easy targets for extremists. They may not be radicalized immediately, but because they are already vulnerable and sufficiently primed; their paths to radicalization tend to be very short once they come across violent extremists and exposure to their ideologies. Secondly, some of them feel that the international Muslim community is being violently persecuted, and that, there is a lack of international action in response to this persecution. This causes them a great deal of frustration. Empathy for victims of violence and resentment towards states that are alleged to have a role in the conflict are push factors that resonate particularly well with women. Lastly, misogyny, injustice and lack of dignity that some women experience in their own societies have been found to be unique factors in their radicalization to violence. Women sometimes seek an escape route from the gender conceptions of their family, community and/or their society in search of freedom and female empowerment. The above sums up the push factors.

Women as partners in addressing the challenge of violent extremism.

These factors build up a case that renders support to the fact that women are part of the problem that is violent extremism. However, just as much as they appear to be a threat, they are slowly being recognized as an integral part of the solution to preventing radicalization, first among themselves, but also amongst men. The United Nations Security Council Resolution 1325 (2000) on Women, Peace and Security was adopted and for the first time in history women were recognized as significant political actors in international security decisions. The resolution affirmed the role of women in

prevention of conflict related violence, including efforts to counter violent extremism. It further recognized that women's participation in countering violent extremism is crucial to shaping effective policies and practices.

This then begs the question; how do we get more women more involved in prevention and countering violent extremism?

Women Without Borders (WWB), an international non-profit organization conducted a study dubbed "Can Mothers Challenge Extremism?". The report's findings suggested that, mothers are often ignored yet, they are perhaps best placed to notice unusual behaviour in their children that may point toward the possibility of radicalization and involvement in violent extremism. All the mothers that took part in the study expressed their willingness to prevent their children from being involved in violent extremism. However, they expressed lack of confidence and skills to be effective in this role.

Female victims are also effective voices in campaigning against violent extremism. The report briefly documented the effect of terror and violent extremism on both male and female victims. It was observed that male victims tend to be more withdrawn and unable to express themselves. When asked of their professional aspirations, many seemed unsure. There was a sense that they were more occupied with taking responsibility to provide for their families. On the other hand, female victims were more vocal and were able to verbalize their trauma and emotions. They also shared their vision to pursue professional development with a view to building successful careers. One can therefore conclude that, female victims may be better placed to articulate messages that prevent others from joining extremist groups besides playing a key role in developing narratives against violent extremists, given conceptions around them.

Governments should also foster and fund innovative research to assess how gender dynamics can play a leading role in efforts towards prevention and countering violent extremism. Finally, women should be encouraged to take up active roles as security officials to deal with the scourge that is violent extremism.



**This then begs the question;
how do we get more women
more involved in prevention and
countering violent extremism?**

PARALEGALS PROMOTING JUSTICE, RECONCILIATION, AND RESTITUTION THROUGH ADR.



by LUCY ADHIAMBO

Mamboleo Information & Justice Centre (MIJC)

Mamboleo Information and Justice Centre promoting access to justice to assault victims in Kisumu City.

Mamboleo Information and Justice Centre (MIJC) has distinguished itself as a brave voice against violations and pushing for justice to victims of injustice. This was the case when on Friday 5th of February 2021 at 11am, when MIJC received an assault case. The victim was a 21-year-old lady with her 4 months old baby staying with her mother. The victim owns a stall where she sells groceries and at the sides, she fries bhajia that she sells to her clients. The stall is located near the perpetrators gate, who also rears a flock of sheep in his compound. The victim alleged that on many occasions, the flock of sheep pass near her stall and eat her groceries and fruits that she sells from her stall.

Interacting with the community to promote justice at the grassroots level.

MIJC was informed that on the 4th of February 2021, the victim went to fetch water, leaving behind some peeled potatoes, her jiko and cooking oil. On her way back, she noticed that the flock of sheep had raided her stall and were eating the peeled potatoes that she had left at her stall. The flock had also broken her jiko and spilled all the cooking oil. She raced to the stall and chased the flock away, then returned to the stall to pick up her daughter. As she picked up the baby, the perpetrator come from behind, grabbed her violently by the neck as if to strangle her. She screamed, and in desperation to save her life, she grabbed a stone and hit him on the forehead. Fortunately, she managed to disentangle herself from his tight chokehold. She reported the matter at Mamboleo Police Station, but little assistance was offered since the perpetrator had already reported

the same matter to the police station. She then reported the matter to Kondele Police Station, who referred her to the hospital first for treatment and pledging to issue her with a P3 form in her return to the police station. However, before the victim went back for the P3 form, on the 5th of February 2021, with the help of her uncle they sought help and direction from MIJC. We took up the matter and after hearing the victim's story, it was determined that Alternative Dispute Resolution (ADR) was the best way to solve the problem to foster harmony and understanding between them. The victim was also reluctant to go to court since such cases take long to be concluded, yet she had a small baby.

MIJC summoned the perpetrator to find out if he was okay with an ADR to help address their dispute. He signaled he didn't mind the process, hence leading to invitation between the two to address their dispute. After listening to their stories, it was noted that both of them were at fault, a determination that both accepted to be factual. However, there was an understanding that the perpetrator restitutes over what the victim lost, a decision that he accepted, and later that evening, the perpetrator dispatched a new jiko, salad and potatoes which were dropped at the victim's stall. As part of the settlement, the victim also agreed to move the bhajia stand so a safer location that the flock of sheep cannot interfere with the stock or materials offered for sale. She also agreed to fix a door to the stall that allows her to lock and keep her materials safe whenever she goes away. Both the victim and the perpetrator reconciled and went home as happy neighbours. This was one of those cases where paralegals had successfully engaged with ADR to promote reconciliation and justice to parties that were at loggerheads over something so mundane.

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justice legalism education
negotiating
bookshelf assistant
agency
firm
employed

INTERVIEW WITH COMMISSIONER

EMERITUS JEDIDAH WAKONYO WARUHIO

1. Please tell us about yourself

I am a daughter, sister, mother, wife, aunty, grandmother, human rights defender, mentor and institutional builder. I am a born-again Christian and professionally trained as a lawyer with membership at FIDA Kenya, ICJ-Kenya Chapter and LSK. I am currently the Chairperson at GROOTS Kenya and the Intersex Persons Society of Kenya (IPSK) and board member at Protection International-Africa, FIDA Kenya and Crime Si Poa. I have focused for over 20 years on access to justice, legal aid, migration, security, intersex and penal matters. I recently completed my call to duty with the Kenya National Commission of Human Rights (KNCHR) as a commissioner and previously worked with Diakonia Sweden, People Against Torture (PAT), Release Political Prisoners (RPP), and was a founder, board member and later the CEO with LRF for almost 10 years. At LRF is where I deepened my knowledge, understanding, focus and work on the paralegal approach in the administration of justice in Kenya and regionally.

2. How has the journey towards the growth and development of paralegal model in Kenya and Africa by extension been in your opinion?

The paralegal approach journey has been long, refreshing, bumpy, consistent and solid. This is because many individuals and institutions have given their time, technical knowhow, financial and in-kind resources towards the development of the paralegal approach. This process unfortunately is only 'documented' in many individual minds who pioneered this approach some before me like Justice Jackline Anam Mogeni, Ann Gathumbi-Masheti, Mburu Gitu, Alfred Ndamberi, Kagwiria Mbogori, Justice Monicah Mbaru-Mwangi, Jane Weru, Rhodah Igweta, Charity Ndegwa, Ann, Connie Ngondi, Wilfred Omariba, Hon. Tabitha Sei, Ann Amadi, Nicholas Ngige, Kuria Karanja, Janet Munywoki, Jeremiah Maroro, Dr. Wambua Kituku, John Gachie, Black Odonyiro, Hon. Lilian Mwaura, among others. A majority of these pioneers have worked or closely been associated with LRF, ICJ, Kituo Cha Sheria, FIDA-K, ECWD, among other institutions.



In the middle Com. Jedidah with the PS Ministry of Justice and Constitutional Affairs on the Small Claims Court 2005

The paralegal journey began with general legal awareness in communities, participatory theatre, street law, law clubs in schools and later the concept was concretized with developing and training a cadre of community human rights defenders. The idea was to equip these HRDs previously known as human rights or child monitors or activities with the basic law which then they would be able to use to engage, promote and protect community and individual rights. This then developed to be a systematic training that led to the PASUNE curriculum in an attempt to standardize and provide a wholistic training to the diverse communities.

It was during this developmental period in Kenya that contact with paralegals from other countries began with special focus on Malawi, South Africa, Tanzania, Uganda, Zimbabwe, Rwanda, Zambia, Ghana where there was exchange of ideas, lessons learnt and models. This is how the paralegal training, paralegalism, paralegal approach began and evolved to date.

3. What have been some of the highlights/ milestones towards this journey?

The key highlights and milestones towards this journey include;

- Formation of the Paralegal Support Network (PASUNE) 2000,
- Development and review of paralegal training materials in 2005, 2016 and 2018 – Curriculum, Handbook, Manual and Code of Conduct,
- Training, refresher trainings, mapping and clustering paralegals into regions across the country 2006 to 2016,
- Draft (2009) and adoption of the Legal Aid and Awareness Policy by the state in 2013,
- Enactment of the Constitution 2010, Advocates Act 2012, Small Claims Court Act 2014, Persons Deprived of Liberty Act 2014 and Legal Aid Act 2016 which provide for paralegal pathways through legal aid, access to and the administration of justice, alternative dispute

- resolution mechanisms, fair trial and intermediaries at the community, courts, police stations and prisons,
- Establishment and Gazettement of board members of the National Legal Aid Service (NLAS) 2016,
- Institutionalisation of PASUNE through the strengthening of the Governance Council and membership from 2002 to 2020, and
- Development of Paralegal Society of Kenya (formerly PASUNE) Strategic Plan 2020 to 2025 and registration.

4. What have been the most significant challenge in the realisation of paralegal practice in Kenya?

The paralegal practice has not been an easy journey. Some of the challenges include;

- The standardization of paralegal training based on the Paralegal curriculum, manual and handbook among the various CSO training and practicing organisations,
- Lawyers not understanding and appreciation the role and place of paralegals in the administration of justice
- Limited or no support for the paralegal practice within the administration of justice especially with policing, prosecution and judiciary.

5. What are some of the innovations in revolutionising the paralegal model?

The establishment and operationalisation of Paralegal Support Network (PASUNE) as the coordinating forum for paralegal practice which was and continues to be hosted at Legal Resources Foundation Trust (LRF) in 2000.

- The adoption of the Kenya Prisons Paralegal Project (KPPP) which brought together both state and non-state actors to pilot the paralegal approach in prisons in 2003 in Langata Women, Nairobi Industrial Area, Thika and Kamiti Mximum Prisons. This was spearheaded by the Kenya Prisons Service (KPS) and LRF.
- Redefining and expanding paralegalism into an approach known as the paralegal approach which is an integral mode of practice in the administration of justice to facilitate or trigger access to justice for the marginalised and vulnerable in the community, prisons and police



stations

- The development and launch of the Paralegal Curriculum in 2005.
- The graduation of paralegals with gowns, sashes and certificates after completing their training based on the PASUNE curriculum in the community witnessed by state and non-state actors
- The Ministry of Interior and the Coordination of National Government prioritising the recruitment of Assistant Chiefs who have paralegal certification.
- The development and use of the paralegal uniform – reflector coat in the prisons and community.
- The piloting of the National Legal Education and Awareness Project (NALEAP) by the Ministry of Justice and Constitutional Affairs which had a paralegal pilot in Western Kenya in 2006.
- Development and adoption of the National Legal Aid and Awareness Policy and the Legal Aid Act 2016

6. What are some of the lessons that have been learned over the years?

- When you have clarity of vision and that links to the wellbeing of the community and nation, then the vision is carried on from one person or one institution to another over time. The vision never dies but continues to grow.
- The paralegal journey is on course, however, it still needs to be natured by champions of justice



2009 training of provincial administration in Eldama Ravine

to ensure that the NLAS, CLE and LSK provide an enabling environment and ensure that paralegals become a respected profession just like lawyers similar to nurses and doctors.

- The paralegals are resilient and consistent in their paralegal endeavours. However, they need to be supported with training on emerging issues, provided a clear infrastructure in the administration of justice beyond the intermediary and enumerated in future.
- The judiciary and the prisons especially have appreciated the role and place of paralegals in the administration of justice especially in respect to those court users who are 'lost' in the criminal trial system or have require legal and social support.

7. What are some of the opportunities that exist for paralegal practice in Kenya?

a) NLAS provides the most robust environment to provide paralegal services through legal awareness, legal aid and dispute resolution through the Justice Advisory Centres (JAC). These interventions are augmented with the policies that the prosecution has rolled out in respect to sentencing, bail and bond, diversion, among others.

b) The Constitution also provides a number of specific and critical interventions that paralegals can utilise effectively. These include;

- Article 22 provides for any person including a paralegal to lodge a public interest case to protect the human rights and freedoms of anyone.

- Article 49(1)(c) provides for a person to communicate with an arrested person while they are in custody including at the police station, hospital or elsewhere.
- Article 50(7) provides for an intermediary approach, to support accused person or complainant in court.

c) The Alternative Justice Systems Baseline and Framework Policy 2020 provides a great opportunity for paralegals to work with ad support especially the Traditional Justice Systems in providing legal advice and technical support, and documentation of the cases.

d) The Small Claims Court Act 2016 also provides an opportunity for paralegals to provide their technical skills in legal awareness and also as clerks. It's unfortunate that the original intention of having paralegals as the adjudicators in these courts was revised.

8. Tell us about your award of the Jurist of the Year 2020?

The Jurist Award is given annually to a lawyer who has distinguished themselves over time in the courts of their practice and contributed significantly to humanity. This is a respectable and rare award where your peers evaluate and award you amongst other distinguished lawyers through the International Commission of Jurist – Kenya Chapter. It's important to note that ICJ has been a pioneer in the paralegal movement.



Commissioner Emeritus Jedidah Wakonyo Waruhiu receiving her award



It's indeed an honour that I was recognised, celebrated and awarded as the 2020 Jurist. This award came at a time when as a country we were wreathing from the negative economic impact and pain caused by the COVID 19. A therefore it was refreshing for me and my family and peers to celebrate the Human Rights Day with this award.



This award was awarded on 14th December 2020



I was celebrated as the 2020 Jurist due to the work I have undertaken since my student days on legal awareness, access to justice, policy reform and public interest litigation with special focus on the poor, vulnerable, marginalised and minorities. Some of the citations included my work the paralegal approach and more recently the advocacy and inclusion of the intersex in the 2019 household census.

9. What message do you have for paralegals who work in the grassroots to provide legal aid to indigent persons?

Paralegals are professionals. Paralegals must of necessity update themselves with the basic and emerging law so that they are able to provide quality and timely services to the people. Read, download and understand the Constitution of Kenya and the paralegal basic document – Legal Aid Act, Penal Code, Criminal Procedure Code, Small Claims Court Act, Civil Procedure Code, etc

Paralegals must work with and support the National Legal Aid Service in all the 47 counties through the Justice Advisory Centres. If the JACs are not there, organise and set them up, NLAS should ‘adopt’ and work with them.



Commissioner Emeritus Jedidah Wakonyo Waruhiu and former country director of Amnesty International Justus Nyang'aya Issuing a training certificate to a migrant Paralegal Said Abukar during their graduation Ceremony on 21st of April 2017 at Laico Regency

Finally, Paralegals must organise, coordinate and regulate themselves through the Paralegal Society of Kenya (PSK) before it is too late. Emulate other professional bodies like accountants, lawyers, doctors, nurses, counsellors and build your structures at both the national and county levels. Make PSK known in the 47 county assemblies, the National Assembly, The Senate, regionally and internationally. Only paralegals can create their brand and reputation not lawyers!

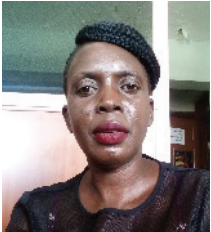
Featured Personality 2021



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Let us all be guided by the Constitution Article 3(1) that provides that everyone **MUST Respect, Uphold and Defend the Constitution 2010**. Let's be **R.U.D.** for our future generations.

LIFE TRANSFORMING OPPORTUNITY AFTER ENDURING CHALLENGES.



by **MARGARET MAKORI**
Paralegal Officer, Kisumu County

The concept of human rights has always fascinated me since I was a little girl, yet just a few years back, I knew quite little about human rights or laws. Consequently, I was forced to stay in a violent marriage for over 10 years and endure suffering. Nevertheless, when I finally gathered the courage to leave this relationship, I had no idea where I was going, until some ladies took me in. As fate would conspire against me, I found myself immersed into sex business as a means of survival. This was out of necessity as I had needs with no one to meet.

My name is Margaret Makori, and this is my story. During my time in the field, I met different organizations such as Family Health Options (FHO), Impact Research and Development Organisation and LVCT Health where I became a key population educator and did key populations programming respectfully. My main objective was to provide health education to girls on condom use, HIV testing and cervical cancer screening.

In the course of doing projects and still hustling, I met a total of twelve (12) ladies who come up with an idea of starting a SW lead organization in Kisumu. After many discussions and struggles, KISWA was formed, with me leading policy advocacy at the organization. KISWA came with a lot of opportunity, but none was as effective as the training I acquired as a paralegal by Legal Resource Foundation under Kenya Red Cross for 25 days.



A couple in disagreement

Considering the cases of violence, I have been a victim to in the past, the training could not have come at a better time. It is because of this that I can confidently say I have handled several cases of rape, violence and even extortion. For example, I had a victim who was raped severally during the night. I did not only raise concern; I followed every single procedure to make sure justice was served. Another case that I handled included a sex worker who was forced to engage in sexual activity without protection, beaten up and thrown outside at 3: am. Having sensitized the boda boda workers who were around, the perpetrator was captured and taken to the nearest police station.

Nevertheless, being a paralegal comes with a lot of responsibilities and challenges. Challenges like threats from clients and perpetrators being public figures with power to influence the laws enforcers. Despite mentioned and unmentioned obstructions, I am mostly proud of the fact that I can now solve cases inside and out of court. I could not help myself then, but I can help others now.

LITTLE EFFORTS THAT TRANSLATE TO ACCESS TO JUSTICE.



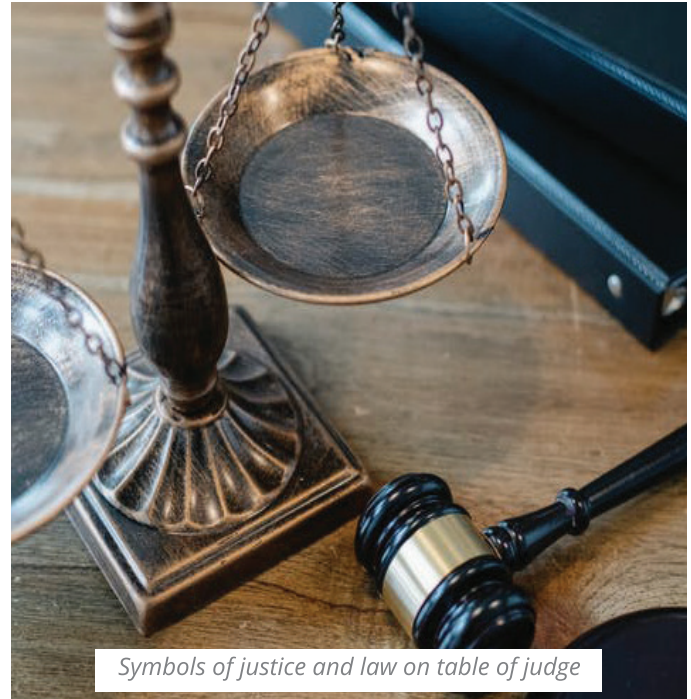
by **OKEMO BENARD**
Paralegal Officer, Mombasa County
Legal Resources Foundation

Paralegals continues to do actions that contribute to access to justice to people who would otherwise be left out owing to factors such as poverty and inability to meet costs of legal representation. This is one such story where the paralegal was able to catalyse access to justice to one such indigent person. The client in the instant case is a young lady, Christine Omai who is in her early twenties (20s). She was arrested on 21st Jan 2020, processed, and detained at Central Police Station Mombasa for the offence of stealing contrary to section 268 (1) as read with section 275 of the penal code Act. The facts of the case were that, on the 14th day of January 2021 at Mwembe Tayari area in Mombasa sub-county, Mombasa County, the client allegedly stole KES. 50,000.00 from Ms. Fatuma Hirsi Noor, her employer. The client by then was working as a house help. By the time of her arrest, she had been in employment for a period of two months.

On 14th Jan 2021, the complainant had gone to hospital for medical check-up leaving the client at her home to attend to household chores. According to the complainant's statement, she had left the amount at her children's bedroom. Upon arriving back from hospital at noon, she found out that her money was missing, and the house help (the client) looked tensed. When the complaint asked about the money, the client at first denied any knowledge of the money, but upon being taken to task to explain the mysterious disappearance of the money, she admitted having taken KES. 10,000 as opposed not KES. 50,000. The complainant felt slighted and reported the matter to Central Police Station three days later, culminating to the arrest of the client.

Main issue

At the police station, the client admitted through her statement to have taken only KES. 10,000. This was an admission of guilt and charges were preferred against her. While being screened by the paralegal, the client believed, she will admit to taking KES 10,000 as opposed to KES 50,000 from her employer. It was clear



Symbols of justice and law on table of judge

that the client lacked adequate legal grounding to comprehend the gravity of the situation.

Paralegal intervention

On the foregoing, the paralegal brought to the attention of the accused provisions of Article 159 (c) of the Kenyan 2010 constitution that promotes use of alternative forms of dispute resolution, and the possibilities of employing the same in her case. This piece of information brightened her face coupled with an organic smile. She dropped down on her knees and genuinely thanked the client.

On 25th March 2021, a day later, the paralegal contacted the complainant who insisted in being returned to the position she was before commission of the offence through full and total refund of KES. 50,000. The paralegal further contacted the accused's immediate family members including her mother, brother, husband, and sister with a view to finding ways of raising the money.

Outcome

The family is in the process of raising the money. The paralegal will afterwards take lead together with the prosecutor to move the process of officially withdrawing the case from the court once the matter comes up for mention on 27th April 2021. However, the family is yet to raise the amount. Meanwhile, through the paralegal, the accused physically met with the complainant, and she resultantly agreed to be paid half the amount and withdraw the case with an idea she opposed in the beginning.

INTEGRATING PARALEGAL SKILLS IN PURSUIT OF JUSTICE IN THE COMMUNITY.



by **ZULFIKAR ALI BHUTTOH**
Paralegal Officer, Maseno - Kisumu County

I, Zulfikar Ali Bhuttoh is a trained paralegal who graduated in 2000 after successful eight months training sponsored by the Catholic Archdiocese of Kisumu. Since then, armed with passion and vigour I harboured from my very able trainers, I have remained steadfast in undertaking paralegal work individually and with other like-minded civil society organizations and government departments. I have trained communities on the various topical issues, advised, and even linked/ refer the indigent persons to other departments for further attention in seeking justice.

Child rights and protection from violence

In my endeavour, I have specialized in training on Human rights, with a focus on Child rights protection and succession. I have worked with survivors of defilement and their parents to pursue trials against perpetrators, leading to convictions, hence justice to the survivors. Among such cases have successfully handled include the Seme Location chief case that on 7/06/2015 defiled a 14-year-old girl. I was notified of the incident by one of the boda boda riders whom I had trained on child protection sponsored by Plan International.

Immediately I was informed, we swung into action by asking the Boda rider to take the child to Kombewa Sub- County Hospital as I also coordinated with some of the health care workers with whom we had formed a Seme Gender Based Violence platform. They responded well and very fast the child was received by a trauma counsellor who did her part and handed over to a clinician who examined the girl through the process of securing evidence, preserva-



tion, and documentation. I notified the children department who immediately secured a safe space for the survivor as the police arranged for arrest and examination of the perpetrator before arraigning him in court.

Challenges while pursuing justice for a minor.

While following up on this matter, we experienced a lot of challenges, amongst them, allegations of bribery against the Children, Clinical, and the Investigation officers. Indeed, at some point, the court file went missing. Social media through Twitter saved the day when then Chief Justice Hon. Justice Dr. Willy Mutunga was tagged in one of the tweets, and within 30 minutes, the court clerks and staff produced the file, with instructions to the trial magistrate to ensure safety of the file until the matter is concluded. The other challenge was with regards to the refusal by the children officer to appear in court to testify despite him being the remaining key witness, the officer had attended court four times, but he was never



A group of happy children

given the opportunity to testify which infuriated him as he thought the court was not keen on listening to his testimony. Despite offering to facilitate his fuel to the court, the matter was once again adjourned as the accused's advocate failed to turn up citing engagement elsewhere. We were compelled to oppose this and after discussion, the accused's advocate was summoned to appear in court at 2.00pm, without which the witnesses would be cleared to testify in his absence. This forced the advocate to appear, and the hearing went on smoothly.

Justice so near yet so far.

The accused was sentenced to serve a 20-year jail term on 31/01/2018. The convict served a 16-month jail term, and I later learned that he had actually appealed, perhaps out of time as we were vigilant and monitoring the case and had been released on bond pending his appeal hearing. The appeal ruled that there should be a retrial in the matter, which started

in earnest. All the witnesses testified again except the Investigation officer who had by then been transferred to Makupa Police Station in Mombasa County. It was noted that the officer had had travelled twice to testify but failed to testify owing to unexplained reasons.

Unfortunate turn of events, but justice still within reach.

On December 22, 2020, I was surprised to be called by community members who informed me that there were celebrations at the home of the accused because the court had acquitted him. I confirmed this through a call to the executive officer at Maseno Law Courts who confirmed that he had been acquitted under section 87(a) of the Penal Code. The court, while discharging him, noted that the police file was missing. Despite my, and the community frustration over the turn of events, I am glad that through concerted and unrelenting efforts, the case demonstrated that even powerful people can be punished, even if for a short period, for infractions against indigent persons in the community. We will remain vigilant and pursue justice at whatever cost for the minor.

Extending support in succession cases

Besides this intervention, we have been able to train local communities on succession with a focus on inheritance. Three people in these cohorts were trained on writing of a will as a means to ring-fence protection of property during succession. Two weeks later, one of the three offered to be supported in drawing his own will, for which I was more than glad to offer my skills. As if taking the cue from their colleague, the other two also reached out and were supported to draw and file a will.

Indeed, the paralegal model is an innovation whose time has come. Training more people and equipping them with paralegal skills is key to promoting access to justice for the poor people in the communities in which they live. I am a proud paralegal.

WHO IS A WIFE?

The Marriage Act 2014 recognizes 5 kinds of marriages: Christian, Civil, Customary, Hindu and Islamic. An assertion made before a Court of any type of marriage has to be proved. A marriage certificate is prima facie evidence that a marriage took place.



by **DIANA RIGHA**
Programme Officer, Kituo Cha Sheria

Every lawyer or paralegal in practice has at one point in time asked themselves this question, especially when handling succession and maintenance matters. I know I have, and the answer is not as simple as ABC.

The Marriage Act 2014 recognizes 5 kinds of marriages: Christian, Civil, Customary, Hindu and Islamic. An assertion made before a Court of any type of marriage has to be proved. A marriage certificate is prima facie evidence that a marriage took place. However, in Customary marriages, certificates are not usually issued. Consequently, the Marriage Act, 2014 makes it mandatory for parties in a customary marriage to register their marriage with the Registrar of Marriages and to be given a marriage certificate. Parties who wish to contract customary marriages are required, 3 months after completion of the customary rites, to notify the Registrar who then issues them a certificate.

Section 9 of the Marriage Act provides that, a married person in a monogamous marriage cannot contract another marriage, nor can a married person in a polygamous or potentially polygamous marriage contract another marriage in any monogamous form. The Act clarifies that, a Christian, Hindu, or Civil marriage is monogamous, while a marriage celebrated under customary law or Islamic law is presumed to be polygamous or potentially polygamous.

In the cases of *Re Ruenji's Estate* [1977] K.L.R. 21, *Re Ogola's Estate*, [1978] K.L.R. 18 the deceased persons (Reunji and Ogola) entered into statutory marriages under African Christian Marriage and Divorce Act and subsequently contracted marriages to other women under customary law during the subsistence of the statutory marriages. In both, the High Court held that, by virtue of Section 37 of the Marriage Act (repealed), the deceased lacked capacity to contract other marriages under any system of law. The marriages were null, and void and the women were not wives for the purposes of succession or any other purpose.

These two decisions are considered to be unfair for the following reasons: first, the women and the children were innocent parties who should not been deprived of benefit from the estate of the person who maintained them during their lifetime. Secondly, polygamy is allowed under African Customary Law; and, lastly, conversion of family law systems only allows for conversion from African Customary Law to English Law and not vice versa.

Meaning of a Wife for Purposes of Succession

To reverse the unjust position taken by the courts in the cases of *Re Ruenji's Estate* and *Re Ogola's Estate*, parliamentarians passed the Statute Law (Repeals and Miscellaneous Amendments) Act of 1981 which added Section 3(5) into the Law of Succession Act. The Section protects "a woman married under a system of law which permits polygamy." This woman is to be considered a wife for purposes of succession even though her husband had entered a previous or subsequent monogamous marriage to another woman. Critics say that the section sanctions adul-



A married man & woman holding hands

tery and bigamy, undermines the institution of marriage, and encourages breach of the marriage contract.

Presumption of Marriage

Presumption of marriage is a question of fact. It is not dependant on any system of law except where, by reason of written law, it is excluded, for example, if any party lacks capacity to marry by having entered into a monogamous union already. Presumption of marriage is a concept born from an appreciation of the realities of life when a man and a woman cohabit for a long period of time without solemnizing their union.

One has to prove that indeed the relationship between the couple was a marriage and not a mere friendship. For the Court to presume a marriage, a party must establish qualitative and quantitative cohabitation. This means that, the parties should have cohabited for a long period of time and carried themselves as husband and wife and as a result, they acquired the reputation of being man and wife. This may be by bearing children, acquiring valuable property jointly, and performance of some ceremony of marriage.

Presumption of Divorce

A recent landmark decision by Hon. Justice R. Nyakundi in *Re Estate of Jecinter Njoki Okoth (Deceased)* [2020] eKLR, the court held that, divorce is not the procedure of filing for a decree nisi, but the intention and conduct of parties. A presumption of divorce just like a presumption of marriage is a question of fact. One has to show that they moved on with their life after abandoning the marriage, conducted themselves as unmarried persons, and that they had no intention of going back.

Conclusion

In conclusion, the best advice to couples or clients is that, they should get married in any of the 5 types of marriages provided in the Marriage Act and ensure that, they have a Marriage Certificate. When things do not work out, they should go to court for a decree nisi. Many avoid these formal processes and decide to “come we stay” until one party dies and then the widow is left at the court’s mercy, which as precedent shows, can go either way. However, it is commendable that the Courts are conscious of the real world when determining such cases.

NON-DISCRIMINATION PRINCIPLE IN CHILDREN MATTERS.



by **AGNES ROGO**
Special Features Editor, *The Paralegal Magazine*

The guiding principle for any court when deciding in children's matters is the "best interests" of the child. Whereas there is no single definition of "best interests", reference is made by States to overriding goals and purposes that draw out best interests. According to Child Welfare information Gateway, general considerations are given to:

- The importance of family integrity and preference.
- The well-being and general protection of the child.
- The crucial and timely sustainable decisions.
- The guarantee of care, treatment and ever abiding child removed from his/her home.

The doctrine of non-discrimination is integral to advancement of the best interests of the Child.

The concept of Best Interests of the Child in Judicial Processes

The concept of best interests may be viewed as a right, a principle, and a rule of procedure. The principle has its history in the 1959 Declaration on the Rights of the Child. The principle is aimed at ensuring the full enjoyment of rights and holistic development of the child. The safety and protection of a child is paramount when looking at the best interests.



A group of children in a classroom

The United Nations Convention on the Rights of the Child (UNCRC) Article 3 paragraph 1 obligates States to facilitate the incorporation of child best interests in all public institutions which deal either directly or indirectly with children. It is in the best interests of the Child that guidelines and child friendly procedures are used in judicial processes. The judicial procedures ought to take into consideration the evolving capacities of the Child. This will have the effect of taking care of the special needs of the child as well as give the court an objective outcome that is evidence based. In judicial decisions and legislation, states are obligated to demonstrate how best interests have been assessed and given weight in the decision. Unpacking the principle of Non-Discrimination Non-discrimination is a key principle in human morality. This is closely linked with the understanding that all humans are born free and equal as articulated in the Universal Declaration on Human Rights (UDHR). The place of the child in most societies is seen to be lesser than that of the adult. This makes the child vulnerable to discrimination. Discrimination for children can be seen when there is unjust or prejudicial treatment based on age; not forgetting that already face additional discrimination based on

their gender, disability, HIV Status, economic status, race, ethnicity, religion amongst others.

Until the adoption of the UNCRC in 1989, children were not seen as proper rights holders and were discriminated against adults. Tanaka J., in the West Africa Case noted that although the principle is widely recognized, its' content is not clear. The International Covenant on Civil and Political Rights (ICCPR) defines discrimination as:

“any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.”

Besson summarizes this definition to give the meaning that the principle of non-discrimination forbids treating differently alike circumstances without an objective justification. Non-discrimination can be understood from the following perspectives:

a) Differentiation of similar situations – the converse of this, same handling of different circum-

stances often described as “distinction” may be discriminatory in effect. The treatment of children like adults in judicial processes is prejudicial to their access to justice. In the first instance, they are treated like adults in the manner of questioning and type of questions put to them during the taking of evidence. Secondly, there is no differentiation of the ages. Courts ought to consider the evolving capacities of children.

b) Absences of legitimate ends – not all differential handling is discriminatory, only those that do not have an objective justification. In the differential treatment of child witnesses, there must be consideration for the “why” (aim) and the “so what” (the effect) of such measures. The measures must be well informed by other disciplines, like child development and psychology and herein lays the strength of courtroom collaboration with other disciplines towards a just end for the child.

c) Lack of proportionality of means to ends – there must be a reasonable connection between the difference in measures used and the end to be realized for a difference in treatment to be a justified distinction. Besson discusses the three settings for the proportionality firstly; the mechanism must be able to obtain the aim sought. Secondly, the means must be necessary and thirdly, be the least restraining towards achieving the goal.

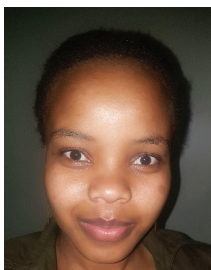
d) Suspect classifications – similar situations may be treated differently and vice versa for different reasons. To speak of discrimination, the treatment is based on a “suspect” or biased classification. The testimony of child witnesses when treated in a different manner on the basis that children are “prone to lying” or “easily coached” is premised on a pre-conceived perception that may be seen to be discriminatory. The starting point rather should be that children need special modification of the legal system to be protected and fully enjoy their rights. In the foregoing, the duty is upon the State and judicial authorities to put in place measures that will protect children from court room practises that are applicable to adults but discriminate children as they navigate the justice system – making Article 3 (1) of the CRC a reality.



A Young Child Living in Poverty



ARE THERE ADEQUATE LAWS PROTECTING WHISTLE-BLOWERS IN KENYA?



by **TRACY WACHIRA**
Legal Officer, Kituo Cha Sheria

On 23rd June 2021, Kenya joined the world in celebrating the World Whistle-blower Day 2021. Over the years, Kenyans have been fortunate to have courageous men and women bring to shine light on injustices that in most cases cause Kenyans to dig deeper into their pockets as cases of public resources mismanagement and looting take the upward trajectory.

Be that as it may, whistle blowing is a costly adventure as past cases attest. Those who make the conscious choice to blow the whistle on perpetrators risk losing their jobs and receive threats and, in some cases, go missing. The silence that accompany such risks help perpetuate a culture of impunity which contribute to systemic failures in public service delivery.

One such recent case is the highly publicized case of the Maasai Mara University where one of its internal auditors brought to light unethical financial reporting instances and in his interviews stated that he feared for his life. His employer also terminated his employment after the media covered his story. This is just one instance of how the impact of such exposure of evidence is often followed by reprisals, causing others to desist from whistleblowing.

Internationally, there are laws that protect whistle-blowers. One such instrument is the United Nations Convention Against Corruption that Kenya ratified in 2005. Article 13 of the Convention calls for the participation of society in the fight against corruption by making it possible for individuals within states parties to take an active part in fighting cor-

ruption through personal restraint or through reporting those who engage in corruption to the relevant authorities.

Regionally, The African Commission Convention offers protection to whistle-blowers. Among other things, it obliges state parties to protect whistle blowers of state frauds. Article 5 of the Convention deals with legislative measures and obligates parties to adopt legislative and other measures to protect informants and witnesses in corruption and related offences, including protection of their identities, protection from consequent reprisals. It also obligates state parties to adopt national legislative measures to punish those who make false and malicious reports against innocent persons in corruption and related offences.

In Kenya, we have the Constitution of Kenya 2010 that in Article 10 provides for National values and principles of governance, which includes participation of the people, social justice, good governance, integrity, transparency, and accountability. The constitution has an entire chapter dedicated to ensuring the integrity of leaders in Kenya and in Article 232 which provides for the principles that inform public service, including; high standards of professional ethics; efficient, effective and economic use of resources; responsive, prompt, effective, impartial and equitable provision of services; accountability for administrative acts; transparency and provision to the public of timely, accurate information all of which are binding on all state organs.



We have various laws in the country that in my opinion are insufficient either directly or indirectly. One such law is The Witness Protection Act which does not accord whistle-blowers protection until they are witnesses in the judicial process.

We have various laws in the country that in my opinion are insufficient either directly or indirectly. One such law is The Witness Protection Act which does not accord whistle-blowers protection until they are witnesses in the judicial process.

The Defamation Act in Section 16 provides for hefty fines on statements made and does not include whistleblowing that is done in good faith.

The Ethics and Anti-Corruption Commission Act does not include protection of whistle-blowers as part of its Commission's mandate.

We also do have The Public Officer Ethics Act which in my opinion discourages whistleblowing through its provision in Section 41 which states that; "A person who, without lawful excuse, divulges information acquired in the course of acting under this Act is guilty of an offence and is liable, on conviction, to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years or to both."

This in my view is an exceedingly punitive provision with the intention to punish public officials who disclose information they may come across in the course of their work. Surprisingly, this particular law was enacted to standardize ethical standards of public officials, yet it strips whistle-blowers of any protection.

I strongly believe that Kenyans would greatly benefit from a comprehensive whistle-blowers legislation that is thereafter operationalised speedily that would not only encourage whistle-blowers through protection of their families and livelihoods but also provide a reward system to encourage whistleblowing.

In the meantime, I wish to encourage all whistle-blowers to seek legal counsel before disclosing any information to the public not just for their safety but to also ensure that the information is assured admissibility in court and also consider using anonymous modes of reporting in the event, they wish to distance themselves with all that comes with publicly exposing themselves.

ESTABLISHMENT OF THE SMALL CLAIMS COURT: A STUPENDOUS VICTORY FOR PARALEGALISM.



by **THUKU MBURU**
Legal Consultant of African Origin

Critics of Kenya’s judiciary and the justice system have for long complained about the backlog of cases and the slow pace of the wheel of justice in the country. It is however worth noting that there have been significant steps towards clearing the backlog of cases in the recent years. 2016 was no exception and a few inroads were made, including, but not limited to various legislations that will without a doubt enhance the dispensation of justice. During this period, the Legal Aid Act was birthed, and most recently, the enactment and operationalisation of the Small Claims Court as a pilot. Additionally, there has been the implementation of the court-mandated mediation pilot program in both the commercial and family divisions of the High Court, which is a move towards fostering alternative dispute resolution (ADR) without necessarily severing business/ family relations as set out under Article 159 of the constitution. The establishment of the Anti-Corruption and



The Small Claims Court is established by the Small Claims Court Act of 2016. This is a subordinate court in the structure of the court system in Kenya under Article 169 (1) of the Constitution, with a monetary jurisdiction of matters not exceeding Kshs1 million.



“We found an institution so frail in its structures; so thin on resources; so low on its confidence; so deficient in integrity; so weak in its public support that to have expected it to deliver justice was to be wildly optimistic.



Acting Chief Justice Philomena Mwilu when she opened the Small Claims Court in Nairobi on April 26, 2021.

Image Courtesy of Capital FM

Economic Crimes Division of the High Court, and the inauguration of various courts such as the High Court stations at Narok, Kiambu and Baringo are all strategies to bring justice closer to the people. The Judiciary is in addition, fast-tracking old matters with a move to clearing the perennial backlog of cases.

Only four months into office, then Chief Justice, Dr. Willy Mutunga, on his progress report described the judiciary he found as follows;

“We found an institution so frail in its structures; so thin on resources; so low on its confidence; so deficient in integrity; so weak in its public support that to have expected it to deliver justice was to be wildly optimistic. We found a Judiciary that was designed to fail. The institutional structure was such that the Office of the Chief Justice operated as a judicial monarch supported by the Registrar of the High Court. Power and

authority were highly centralized. Accountability mechanisms were weak and reporting requirements absent. When we put people on a pedestal it is based on negative power and authority.”

That was the old order, but now we have experienced a paradigm shift. Litigants in Kenya can now breathe a sigh of relief as the Judiciary on the 26th of April 2021, through Acting Chief Justice Philomena Mwilu (as she then was) launched the Small Claims Court akin to the “People’s Court”. The court aims to enhance access to justice by providing a forum where disputes would be resolved through simple, less expensive, and highly flexible court procedures.

The Small Claims Court is established by the Small Claims Court Act of 2016. This is a subordinate court in the structure of the court system in Kenya under Article 169 (1) of the Constitution, with

a monetary jurisdiction of matters not exceeding Kshs1 million. The establishment of the courts is part of an initiative to enhance the ease of doing business in the country. The courts are intended to reduce backlog of cases by having disputes resolved through simple, inexpensive, and expeditious procedures, thus enhancing access to justice. The main objective of the court is to guarantee the right of access to justice as envisioned under Article 48 of the Constitution through simplicity of procedure, timely disposal of proceedings, fairness of process and reasonable court fees.

Court Officials.

The court is presided over by an adjudicator appointed by the Judicial Service Commission (JSC). Adjudicators are advocates with at least three years of experience.

A registrar appointed by the JSC oversees administration of the court. The registrar may be an advocate, or a paralegal trained by the Kenya School of Law (KSL). Hon. Stella Waigwe Kanyiri was appointed as the Acting Registrar of the Court for a period of one year with effect from 27th April 2021. Three adjudicators, including, Brenda Jaluha Ofisi, Susan Gakii Gitonga and Judith Patience Omollo were sworn in on the 26th of April, to work in the newly launched court.

How to file a claim before the court.

Claims are filed in the form of a statement of claim on the prescribed form signed or authenticated by the claimant or authorized representative. Parties may also present their claims orally to an officer of the court, who is required to reduce and produce the claim in writing in the prescribed form and asks the claimant to sign or authenticate it.

Claims to be determined by the court.

Section 12 of the Act provides that the court shall have jurisdiction to determine civil claims relating to:

- A contract for sale and supply of goods and services.
- A contract relating to money held and received.
- Liability in tort in respect of loss of damage caused to any property or for the delivery or recovery of moveable property.
- Compensation for personal injuries; and
- Set off and counterclaim under any contract.

The value of any claim to be entertained by the court shall not

exceed Kenya Shillings One Million (KES 1,000,000). Transfer of matters pending before other courts can only be done by a higher court.

Claims not to be entertained by the court. The Small Claims Court cannot entertain any claim for defamation, libel, slander, and malicious prosecution, a dispute over a title to or possession of land, employment, and criminal matters.

Procedures at the small claims court.

One of the unique aspects of the small claims court is that it is in full control of its procedures. The court is not tied down by the Civil Procedure Rules, 2010 or provisions of any other procedural law. The court may adopt a procedure that, in its opinion, would facilitate the objectives of the court and principles of natural justice. The court could also adopt Alternative Dispute Resolution Mechanisms (ADR) with the consent of the parties concerned. Further, the Act excludes strict application of the rules of evidence to proceedings in the court. Therefore, proceedings in this court could take a formal or informal approach as long as it is appropriate for the parties.

Timelines.

Amazing fact is that any matter filed before the Small Claims Court must be concluded within 60 days. This will greatly increase the ease of doing business in the country due to the speedy resolution of disputes. Further, the establishment of this court guarantees the right of access to justice and right to administrative action that is expeditious, efficient, lawful, reasonable, and procedurally

fair as envisioned by Article 47 and 48 respectively of the Constitution of Kenya.

Language of the court.

This court does not have a particular language which is unlike the other courts in Kenya. Parties to a suit in this court could use English, Kiswahili, or any other appropriate language in the circumstances. This means that parties can choose to use a native language, Kenyan sign language, Braille, or any other language appropriate for persons with disability. This is a great step in making justice accessible to people who do not understand any other language other than their native languages.

Representation in court.

Under section 20 of the Act, a party can appear in court in person or through a representative. The representative does not have to be an Advocate of the High Court of Kenya. The representative only needs to show that he/she has sufficient knowledge of the facts of the case and authority to bind the party he/she represents. If we conceptualize this, then it goes without saying paralegals can offer their services to the litigants of this court and not just by way of drafting documents and guiding clients through the process or offering advice, they can actually appear in the court and represent clients.

To meet the objectives of the court, the filing fees are affordable. The fee breakdown is as follows:

| Filing a Claim (KES) | Amount (KES) |
|-----------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| Less than 200,000 | 200 |
| Above 200,000 but below 500,000 | 400 |
| Above 500,00 but below 800,000 | 600 |
| Above 800,000 but below 1,000,000 | 1000 |
| | |
| Filing Counter Claim (KES) | Amount (KES) |
| Less than 200,000 | 200 |
| Above 200,000 but below 500,000 | 400 |
| Above 500,00 but below 800,000 | 600 |
| Above 800,000 but below 1,000,000 | 1000 |
| Filing All other Responses | 200 |
| Third Party Notice | 400 |
| | |
| Service Fee | Amount (KES) |
| Within 2 kilometres | 100 |
| Over 2 kilometres but below 10 kilometres | 300 |
| Over 10 Kilometres | 500 |
| Fee For each exhibit | 10 |
| Fees Payable to a witness per day | 200 |
| Fees recoverable on execution of a Decree or order of the Court | Not exceeding 10% of the aggregate value of the subject matter together with disbursements on account of the fees specified in this Schedule |

Reliefs that the court may grant. The court may grant the following orders in a claim before it:

- An order to pay money as a lump sum or in instalments.
- An order for the restitution of moveable property.
- An order for recovery of money relating to performance of a contract.
- An order dismissing claims in proceedings before it; and
- Any other consequential or ancillary order.

Conclusion.

The Small Claims Court will not only ensure that ordinary Kenyans with little claims that would otherwise have been lost owing to the complex systems involved in civil claims get justice but will also create job opportunities for paralegals to act as representatives, and also to young advocates willing to serve as adjudicators. It is our expectation that the Small Claims Court will be able to be responsive to the objectives for which it

has been created. It is our hope that more adjudicators will be appointed and have small claims courts across all the 47 counties, and eventually to the sub-counties. It’s worth celebrating the news shared by Hon. Stella during a radio interview in the month of June that since the operationalization of the SCCs on April 26, 2021, over 800 matters have been filed, out of which, more than 200 have been heard and determined.

Indeed, a huge percentage of the backlog of our court cases relate to the small and medium sized businesses and presumably below the 1 million shillings threshold that will now be the target of the small claims court. With the number of days cut, fees waived, and processes automated, we hope that those who are owed small amounts, and had no proper recourse in the past to recover them, shall find justice.

Disclaimer: The article is meant for general information and does not constitute legal advice. In case of any inquiries, or if you require any further information or advice on how the Court could affect your business or work as a paralegal, please feel free to contact Thuku Mburu.

DESPITE IMMENSE CHALLENGES, PARALEGALS CONTINUE TO MAKE INROADS IN THE JUSTICE SECTOR.



by **TINA KENDI**
Legal Resources Foundation

In Kenya, civil society organisations have taken up the role of training local volunteers as paralegals to act as a bridge between the professional legal aid space and the local community. They provide basic legal aid, give advice, and assist indigent persons in their communities by addressing their legal needs. Paralegals raise awareness on legal rights and procedures, and they mediate disputes. Be that as it may, paralegal practice in the country is at an early stage of development. Besides, there exists inappreciable research to assess the efficiency and effectiveness of paralegal practice in Kenya. This article seeks to explore two subjects that are particularly significant for prisoners' empowerment and the paralegals operating within the prison context. The article draws on empirical research on different guidelines on prison operations in prison institutions. It also develops a theoretical model for understanding how paralegal officers relate with the inmates (pre-trial and convicted inmates), and also how the society views paralegals who operate in these institutions. The potential of paralegals to facilitate access to justice for prisoners is widely acknowledged, and their contribution to criminal and civil legal aid is recognized universally. However, paralegals' effectiveness' has often been limited by a lack of official status and regulatory frameworks, power dynamics within community spheres, the potential for abuse of paralegals' role and functions, and limited funding capabilities. The issue of statutory recognition of



paralegals within the justice system remains partially resolved. This is partly because at an international level, there is no universally accepted definition of who a paralegal is, even as they have no formal status in international law. At the local level, tensions can arise through lack of acceptance or recognition of paralegals when such interventions clash with pre-existing local leadership structures. Paralegals also suffer from lack of recognition in professional legal spheres. Currently, none of the African countries have authorised paralegals to represent litigants in courts, despite this recommendation being made in the 2003 United Nations (UN) Principles and Guidelines on a Fair Trial and Legal Assistance in Africa. This notwithstanding we see institutions such as PSK (Paralegal Society of Kenya) who are trying to come up with a network of all paralegals in the country with the hope of enhancing access to justice, especially at the grassroots.

Majority of prison facilities have recognized the tremendous work that the paralegals do in penal institutions. Most of these facilities have had a decrease in the number of prisoners because of paralegalism.



Justice Scale

New concepts such as diversion, plea bargain, alternative justice systems and many others have been of great importance in speeding up the court process. For instance, at Kamiti YCTC, a boy who was accused to have stolen 30 oranges and went ahead to admit responsibility. The paralegals advised that the child be diverted, to which he agreed, leading to a diversion agreement with the prosecution, and with the support of the complainant. The paralegals recommended that the accused be put on a diversion programme involving counselling. Evidently, the simple way of its application is critical to reducing case backlogs in the justice system.

Paralegals have also assisted in upholding the dignity of prisoners. In their engagements, they emphasize the rights of these prisoners as enshrined in International Humanitarian law. The paralegals also sensitise and build the capacity of prison officers on humane treatment of prisoners in. Besides these, they also aid in the virtual court sessions where they freely give legal aid to prisoners to accord them the skills for self-representation in court. Paralegals also conduct follow-ups and monitors the progress

of cases on behalf of poor litigants and ensures the restoration of rights to fair trial and access to justice, including children.

Lastly paralegals also play a key role in rehabilitation and reintegration of prisoners by partnering with different organizations with whom they link inmates with for services such as counselling. Besides, talent days have been organised in the recent past to help nurture talents of inmates, with a promise from the prison head that inmates with talent would be allowed to face off with other artist in the industry so as to foster rehabilitation and reintegration.

Despite these, paralegals face a couple of challenges which include: The depiction of prisons to the public as a place for criminals and the 'the unwanted people in the society'. Indeed, prisons have been labelled as hell hole. Incidentally, paralegals who offer legal aid to the inmates are perceived by the society as traitors as they are 'responsible' for helping people who the community has condemned to be criminals despite the legal presumption of innocence until proven guilty.

Whereas prison officers are mandated to protect and uphold the rule of the law while discharging their duties, those who have been trained as paralegals and assigned paralegal duties sometimes become the objects of ridicule from their bosses who berate them for abandoning what they learnt about secure custody of prisoners and venturing in the paralegal roles which seem to contradict their oath of office.

Lack of facilitation to discharge duties remain a major problem for paralegals who expend their own resources in most cases to conduct case follow-ups and drafting of documents.

In conclusion, I posit that the paralegal model is the future of legal aid and legal safeguarding for women and children. Consequently, the government should provide the necessary resources to enable paralegals conduct their interventions in a safe space that guarantees their safety, and the safety of their services.

PARALEGALS HANDLING LAND & ENVIRONMENTAL RIGHT MATTERS IN KITET, MAIMAHU AND NARASHA KIDONG AREAS IN NAROK COUNTY.



by **DOUGLAS MUTUMA**
Legal Resources Foundation

The presence of paralegals within the Kenyan justice systems forms part of a decades-long, access to justice movement to make rights access effective, especially for the poor and marginalised in most parts of the country.

In the recent past, the Kenyan legal empowerment agenda by the government, but mostly by the civil society organisation such as the Legal Resource Foundation Trust (LRF) have increasingly embraced paralegals as a policy solution for facilitating access to justice in different counties with limited or no legal aid provision.

Through partnerships with justice actors, LRF train local volunteers as paralegals to act as a bridge between the professional legal world and the local community, to advise and assist their fellow citizens to address legal problems within the community, to educate and raise awareness on legal rights and procedures, and to mediate disputes.

The potential of paralegals to facilitate access to justice for poor and marginalised groups is widely acknowledged, and their contribution to criminal and civil legal aid is now recognised in the Legal Aid Act. Recently, in partnership with International Lawyers Project (ILP), a UK based charity, LRF

facilitated trainings on Land and Environmental Rights in Mai-Mahiu, Kitet and Narasha in Narok county targeting the local communities, including women. Key issues of women land rights, matrimonial property and spousal consent, property right in polygamous marriages (Section 8, Matrimonial Property Act) and other applicable laws on property access and dispute resolution around land and environment. The matters of land access and disinheritance by women featured prominently, seeing as cultural practices is seen as a barrier to women accessing their right to land. The disputes around land and environment rights, and the place of ADR in solving the problems also featured prominently during these trainings.

From these trainings, the project achieved promising outcomes, based on the feedback from the paralegals who helped coordinate the training with their communities. Mr Jackson Oleyapi, one of the beneficiaries of the Paralegal Champions training in Kitet in Narok County continues to conduct community conversations with local communities during events such as cultural or customary meetings and chiefs' barazas where he sensitises the local community on land and environmental rights. Jackson also reaches out to widows who are a risk of losing their property, including land after the demise of their spouses, assisting them in reclaiming land which had been grabbed by relatives who, retrogressively, still hold that women are forbidden from inheriting land in the event they lose their spouses. Many of these lose their only source of livelihoods and have their dignity taken away from them. This goes against the provisions of Article 40 of the Constitution which protects right to property, and Article 45(3) which guarantees equal rights to parties in a marriage at the time of marriage, during the marriage and at its dissolution. Equally, this is an affront to Article 60 (1) (f) of the Constitution which eliminates gender discrimination in relation to land and property and gives everyone, including women, the right to inheritance and unbiased access to land.

Navigating the rich cultural heritage within the context of the Constitution of Kenya 2010 remain the most pressing challenge in promoting constitutionalism and promoting equality and rights in



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Kenya's rich cultural diversities. However, Article 2 of the Constitution is explicit; it pronounces itself to the supremacy of the Constitution when the two are in contestation. It states under sub-article (4) that; Any law, including customary law, that is inconsistent with this Constitution is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid. It therefore follows that, even as Article 44 of

the Constitution guaranteeing the enjoyment of cultural diversity, this is only tenable to the extent that such practices do not offend the Constitution itself. This also finds affirmation from Article 159 which recognises the role of Traditional Dispute Resolution Mechanisms, but with a caveat under Article 159 (3) which states; Traditional dispute resolution mechanisms shall not be used in a way that; (a) contravenes the Bill of Rights; (b) is repugnant to justice and morality or results in outcomes that are repugnant to justice or morality; or (c) is inconsistent with this Constitution or any written law.

Consequently, it is time that proper messaging on rights and constitutionalism is driven in a manner that is beneficial to behaviour change so as to promote equity, fairness and non-discrimination in the enjoyment of rights. Paralegals, Human Rights Defenders (HRDs) and other community leaders should move with speed to disseminate the kind of information that are critical to promoting justice to marginalised and vulnerable communities in places where they live. This is the only way to catalyse change and transform communities by embracing change.

Parcel of land advertised for sale



EPJI-Founder Muraguri Brian M, addressing participants in a workshop .

END POVERTY WITH JUSTICE INITIATIVE (EPJI) PARALEGAL AND SOCIAL JUSTICE NETWORK

EPJI-Paralegal and Social Justice Network is a human rights and social justice-based medium-sized CBO, founded on Christian morals and values, with its main objective being the enhancement and capacity building of access to justice for vulnerable women and youth. It conducts its activities through advocacy, awareness creation, legal aid clinics, civic education, and capacity building, among others. EPJI-Paralegal is situated in Kajjido county and has networks throughout the 5 sub-counties and 25 wards within the county. The organization was founded by and made up of paralegals, associate lawyers, religious leaders, various community leaders, learning institutions, led by one Muraguri Michael commonly known as 'Brian'. The organisation's main thrust is anchored under Legal Aid Act 2016.

The CBO is founded on the premises of the urgent need to respond to the increasingly complex needs of today's human rights/ social justice and the ever-increasing legal aid demands across different communities for helping to build accessible infrastructure along the corridors of justice, bringing on board even the commercial law firms and local grass root social justice actors.



The organisation's main thrust is anchored under Legal Aid Act 2016.

History of the Organization

EPJI – CBO was established and founded in May 2009 and registered in 2011 by the ministry of Gender, Children, and social development at Kajiado North registrar's offices Ngong under certificate No. A6910 and Registration No. KJD/N/CBO/1800130/13 by a group of community and religious leaders led by Muraguri Michael Brian M.

Muraguri was also among the first CJPC commissioners who were commissioned in Ngong Catholic Diocese in the year 2001 at 'Watakatifu Wote Senta' (pastoral center) after an extensive training part of which was latter done by LRF. During that time Brian was among the civic educators trained under the NCEP 1 & 2 under the UNDP program carrying out civic awareness in readiness to the 2002 general elections. It was also during this time that we undertook the 2005 constitution referendum training and the 2010 constitution civic process up to promulgation. It was here that EPJI-Paralegal was born and about 5 commissioners came on board, some of whom left due to lack of funds and lack of motivation. EPJI-Paralegal chose to work with different organizations, including KEPSA and other CBOs and CSOs. At the same time, the organisation has been working with law students who study at CUEA, Nazarene University and Kenya School of Law (KSL) volunteering at our organization since inception. EPJI-Paralegal also decided to work closely with the National government coordination structure, thus bringing on board the County commissioner, DCCs, ACCs, Chiefs and Assistant chiefs including the police service, and this has always given us a conducive environment of carrying out our activities.

The organization is led by the programmes director, 1 programs officer and 3 volunteers, and has also established community representatives in various regions who also help with interventions.

Our Mission

To impact social justice, human rights, and access to justice advocacy programs through innovative capacity building activities, 2010 constitution community education and implementation, participatory good governance interventions and advocacy.

Our Vision

A just community living in live fulfilled and dignified lives.

Our Core Values

Our organization is founded on Christian morals and values. It is profound on four (4) thematic principles:

- Respect for Gender Equity, equality and participation.
- Respect for Human Rights and human development.
- Commitment and Solidarity with the poor, vulnerable and the marginalized.
- Action and Practical oriented Human Rights development interventions.
- Knowledge, facts, and Wisdom as our core pillar.

Our Main Objective

- Equipping the public especially the vulnerable and the marginalized with the basic legal awareness, social justice, economic justice, etc., and establishing human rights reports desks within the County and beyond.

ORGANISATION PROFILING



In the last ten (11) years, since EPJI-Paralegal Network inception, EPJI-Paralegal have been able to achieve the following among many more.

a) Train, lobby and advocate for human rights culture and practice, good governance, public participation and human development and such related advocacy programs especially among women and youth groups around Kajiado County and this has been attributed to the good working relationship with like-minded organizations and the county government of Kajiado.

b) EPJI-Paralegal Network has been working along with like-minded organizations, i.e., Legal Resource Foundation (LRF), IJM, ICJ, Kenya Human Rights Commission (KHRC), SOWED Kenya, Abantu for Development, Domus maria Radio, (IMLU) Independent Medico-Legal Unit, Kenya Episcopal Conference Catholic Justice and Peace Commission (CJPC -KCCB), Franciscan Justice and peace, Mother Earth Network, Endmundrice International, Kenya Movement of Catholic Professionals (KMCP), Action Now Kenya, UN-Women, AJAM, AMREF, CESPAD, UN-Women, among many others.

c) EPJI -Paralegal was formed mainly as a result of various human rights and injustices that were being brought to the CJPC desks established in various catholic parishes in Ngong Deanery where the

founder Brian' was the chairman then, and because of the challenges associated in addressing some of the reported social justice matters i.e, GBV matters, STI's/HIV related matters, separation and divorce matters which were on the rise then and due to the strict catholic doctrines, after long consultation, even with the church leaders, we had no choice other than to establish an independent offshoot of CJPC which became EPJI- Paralegal Network.

Support received.

We have not received any financial support from any donor or such assistance, but we have had local organizations working in partnership with us hence facilitating and enhancing implementation of our programs like, UN-Women (Women in leadership Advocacy), CESPAD (Budget champions), KEWAS-NET, URAIA/FODDAJ (constitution/public participation), SADES-K/FHI360 (Co-creating governance), AMREF (Grass root Advocacy and results harvesting strategies) CISP (Good governance/devolution), etc. We have had local individuals who in most cases supports some of the vulnerable victims of social injustices to access justice including taking them to the courts and taking care of the other personal needs, but in any case, we need to use police spaces or chief's offices, they have always been very supportive.



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WESTERN CENTER FOR MEN'S HEALTH (WCMH)

Western Center For Men's Health (WCMH) is a CBO founded in the year 2019 and legally registered in January 2021. It is a GBMSM/ MSW, and young adolescent led organization that primarily focuses on providing sexual reproductive health and wellbeing services, human rights and advocacy, HIV care and treatment, community empowerment and support to the targeted community.

It was formed by a group of Paralegals after a training by the Kenya Redcross and Legal resources Foundation.



Boaz Orango, Paralegal Officer responding to questions during a stakeholders meeting



Felix Kasanda, Director Western Centre for mental health attending Paralegal County Forum in Kisumu by PSK

The organisation is based in Kakamega Town MSW was founded with an aim of reducing stigma and discrimination among key populations by creating awareness and advocating for their rights to access health care, including STI/HIV and AIDS related care and treatment.

Although we haven't received any funding yet, we work hand in hand with other organizations such as Shiners CBO in Kisumu, Wanadada Self Help Group in Kakamega and SCOVUGA in Siaya. These partners have been key in supporting some of our activities periodically.

Currently the organization has two paralegal officers.

1. Boaz Ochuodho Orango ID 34379191 PHONE NO 0740313173
2. Phelix Kasanda Kimory ID 25080640 PHONE NO 0722968830

Cases Handled

- Stigma and discrimination
- Police harassment
- Security threats
- Abuse based on sexual orientation.

Through them we have been able to address various issues including Insecurity, forceful eviction and police harassment based on sexual orientation within the area.

A case is seen of one of our beneficiaries who dou-



Despite working as paralegals in reporting and doing case follow-up, we wish to be equipped with knowledge on conducting psychosocial and trauma counseling, mental health services and healing.

bles up as a paralegal Officer was recently evicted forcefully from three different houses by landlords and tenants upon realizing that he advocates for the rights of GBMSM/MSW community. He also experienced harassment from boda boda riders, stigma, and discrimination from fellow tenants. The incident was reported at Kakamega Central Police Station, and it is still pending hearing.

Challenges

Despite the fact that WCMH is in the fore front of advocating for the rights of the GBMSM/MSW community, we have also encountered a number of challenges which include:

- Security threats from the victims of violence – this come as a result whereby the victims are threatened by the perpetrators to withdraw the cases for their safety and security.
- Fear/fail of case follow-up—this mostly happens when the victim who has reported the case in a partner to the perpetrator hence, he/she fails to follow-up the case and at times even fail to appear in court claiming that they had used ADR to solve their case.
- Fear of reporting cases to police officers because of disclosure of orientation, this sometimes leads to a prolonged justice process and is time consuming.
- As paralegals, the knowledge we have is limited to the point of offering psychosocial and trauma counselling to our peers.

- Inaccessibility of the paralegal data base by the general population.
- Lack of funds to carry our day-to-day activities since we are an upcoming organization and all our activities are on voluntary basis.

Achievements

1. Through the support of partner organizations, we have been able to capacity build/sensitization of police officers, religious leaders, and other community members on the rights of GBMSM/MSW wellbeing.
2. Through the sensitization of the police, we can now freely report violence cases among the GBMSM/MSW in the county.
3. There is also improved follow up and linking cases to legal officers/pro bono lawyers who have a better understanding of GBMSM/MSW affairs.
4. We are also proud of winning the East Africa Human Rights defenders 2020 Award by one of our beneficiaries.

Support Required

Despite working as paralegals in reporting and doing case follow-up, we wish to be equipped with knowledge on conducting psychosocial and trauma counseling, mental health services and healing. We are looking forward to provision of funds to help us in conducting our advocacy activities.



Police sensitization forum/capacity building on MSW/GBMSM rights

QUESTION AND ANSWER



by **ERIC MUKOYA**
Executive Editor, *The Paralegal Magazine*

Hello Eric,

My wife and I have been divorced for a number of years, but we are now thinking of getting back together. Would a remarriage to a former spouse null and void the terms of a separation agreement from the first marriage? The divorce was nasty and I was just wondering about that.



A couple in disagreement

Maya Angelou once said, “my mission in life is not merely to survive, but to thrive; and to do so with some passion, some compassion, some humor, and some style.” You have commenced a fragile but important conversation that sets beauty of marriage and the imagined savagery of divorce in the shifting paradigms of people’s decision, culture, law and global assumptions on the idealness of unions. I suppose therefore, you are a Kenyan and of indigenous orient. This supposition, provides three placements, that you may have subscribed, to guide your views on marriage and divorce. You are either a traditionalist who adheres to customary laws and attendant rituals. You may also be of the faith of

Islam, Hinduism, Christianity or any other such as Buddhist or Bahai likely unmentioned in the Constitution but covered under the Right of Worship at Article 32 (1), where religious tenets of marriage and divorce apply: and you could also be a person whose motivation is neither religious nor cultural, similarly a representation of both and largely guided by civil law on marriage and divorce. The Marriage Act of 2014 at Part IX has opened each marriage for registration irrespective of its originality, and if the same was not prohibited or voided according to section 10 and 11 respectively. This means that divorce is given similar allocation of time, space and definition. Since you seek to remar-

ry your former wife, now a spinster, our assumption that your first marriage must have desisted owing grounds provided for at Section 66, 68, 69 and 70 of the Marriage Act. Some of the reasons why divorce is occasioned is when one or either spouse claim incidents of adultery, cruelty, desertion, exceptional depravity and irretrievable breakdown of the union. This is important, since you seek to begin a new life as husband and wife. At the point at which the court declared your former marriage null and void, a Decree Absolute was issued to bury this union. In essence this document (Decree Absolute), which is a final order given by competent court to a petitioner, does two things: first, it sets free the couple, separates them completely and terminates their marital obligations that existed therebefore; secondly, it creates a new identity, having been relieved of union commitments, of a bachelor and spinster. However, copies of this decree of divorce must be sent to the Registrar for recording in the appropriate register regarding dissolution of marriages. In the language of ordinary communication, the two, man and woman slip into life of singlehood. In law, as provided to at section 75 of the Marriage Act, you have just begun your new life to seek for a new wife. Nothing holds you back from remarrying your former wife, now the new girlfriend.

However, your former marriage likely ended with an accompanying Divorce Settlement Agreement (DSA), as an order of the court. This could be about

division of matrimonial property, sharing of parental responsibilities outside marriage, and custody of children if any, amongst the rights that accrue upon dissolution of a union. In seeking to engage a new relationship, as a married couple, both of you require to revisit the details of such an order to find space and mechanisms to denounce or affirm the obligations set in and by it. What both of you must remember is that the property that may have become personal following the divorce settlement shall remain so, as pre-nuptial assets and cannot be re-constituted as joint whatsoever. This will require that you go back to the same court or another of equal jurisdiction, situate at family division of the high court, and pray for the revocation of this order, so that you are freed to commence a new life. It is not automatic that the court would grant such a revocation, since the prerogative to do so lies with the judge. Should the newly declared fiancés, you and your former wife, reach this point, then the remarriage will be directed by the provisions of the Marriage Act at Sections 3 and 6. Now you know. Even as you engage this process, be aware; that there: is no guarantee that either or both of you will not renege the expectations or commitments of the proposed marriage. is no guarantee that the community around you, and especially if this is to be driven customarily, will entertain the new union. This is as much a personal decision, as it could be a community rejection. For your information, you now join the likes of Liz Taylor and Richard Burton, besides Elon Musk and Talulah Riley, who took the path of remarrying their once divorced spouses. In conclusion we share this quote from some anonymous source which says "I feel like everything in my life has led me to you. My choices, my heart breaks and my regrets. Everything. And when we are together, my past seems worth it. Because if I had done one thing differently, I may have never met you."



In essence this document (Decree Absolute), which is a final order given by competent court to a petitioner, does two things: first, it sets free the couple,





THE PARALEGAL MAGAZINE

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