



LAW SOCIETY OF KENYA

---

# FUNDING THE JUDICIARY

PRESENTER: MR. COLLINS H. ODHIAMBO,  
ADVOCATE

DEPUTY SECRETARY, LSK

# THE ROLE OF THE LAW SOCIETY OF KENYA

- The Judiciary is an arm of state that exercises judicial authority derived from the people as espoused under Article 159 of the Constitution.
- Independence of the Judiciary is sacrosanct and non-negotiable
- The Law Society of Kenya (LSK) is mandated under Section 4 of the Law Society of Kenya Act to, among other functions, assist the Government and the courts in matters relating to legislation, the administration of justice and the practice of law in Kenya.
- To protect and assist the members of the public in Kenya in matters relating to or ancillary or incidental to the law.

# INTERVENTIONS BY THE LSK

- On the 24<sup>th</sup> September 2019, the Acting Cabinet Secretary National Treasury & Planning Hon. (Amb) Ukur Yatani issued circular No. 14A on the ~~proposed drastic reduction on the Judiciary's Recurrent and Development budget by Kshs.1.493 billion and Kshs.1.404 billion respectively.~~ This essentially has amounted to a 50% reduction in critical budgetary provisions that are essential to the Judiciary's operations.
- These has resulted into major crippling of the Judiciary's operations and mandate, to deliver on one of its key pillars which is access to Justice and timely disposal of disputes.

# INTERVENTIONS BY THE LSK

- On the 16<sup>th</sup> October 2019, the Council issued a press statement highlighting the consequences of the Circular Number 14A issued by the Acting Cabinet Secretary National Treasury. The Council called upon the Acting Cabinet Secretary to recall the Circular and suspend its implementation within seven days.
- The Law Society of Kenya also requested His Excellency the President of the Republic of Kenya to exercise his Constitutional mandate as required under Article 166 and formally appoint the judges to ensure more effective operation of the courts.

# INTERVENTIONS BY THE LSK

- On 25<sup>th</sup> October 2019 after the expiry of the 7 days' notice, the Council of the Law Society of Kenya instructed Ms. Aluso Ingati, Advocate of the firm of Ms. Aluso Ingati & Associates ~~Advocates together with Prof. Bernard Sihanya, Advocate~~ to file Constitutional Petition number 425 of 2019 Law Society of Kenya Versus Cabinet Secretary Treasury & others challenging the implementation of the circular No.14 A. The application was heard by Hon. Justice J. A. Makau on the 28<sup>th</sup> October 2019 and issued the attached orders.
- On 25<sup>th</sup> October 2019, the Law Society of Kenya, through Ms. Maria Mbeneka, Advocate of the law firm of Kimani Kabucho Mbeneka & Company Advocates together with Mr. Evans Ogada, Advocate filed an application seeking to have the Law Society of Kenya joined as an interested party in Constitutional Petition Number 369 of 2012 Adrian Kamotho Njenga Versus AG and others. The application will be heard on 12<sup>th</sup> of November 2019.

# IMPLICATIONS OF JUDICIARY BUDGET CUTS

- Severely impact our relationships with donors like the World Bank and other bilateral donors who will withdraw their funding. Of utmost concern is the Kshs. 11.5 Billion Judicial Performance Improvement Project funded by the World Bank that is in jeopardy. An extension of this project is critical. Consideration should urgently be given to all donor funded projects that need to be extended and prioritize their extension. GIZ funded projects will also be affected if bilateral extension agreements are not signed urgently. We pray that an urgent evaluation of all donor funded projects that will be impacted by the budgetary cuts and failure to extend any bilateral agreements be reviewed with utmost urgency within the next 7 days and a report be submitted to the public.
- The tax payer will be adversely impacted when contractors penalize the Judiciary for delayed payments. This dramatically escalates the cost of the incomplete projects some of which are more than 90% complete.
- The presidential directive that all pending projects must be completed will be jeopardized.

# PAUPER BRIEFS, PRO-BONO SERVICES AND COURT ANNEXED MEDIATION

- Public interest and access to justice by the indigent

## PAUPER BRIEFS AND PRO-BONO SERVICES

- ✓ Access to justice is a basic principle of the rule of law
- ✓ A major obstacle in accessing justice is the cost of legal advice and representation

## COURT ANNEXED MEDIATION

- ✓ cost effective
- ✓ Saves on time
- ✓ Reduces backlog

# APPOINTMENT OF MORE JUDICIAL OFFICERS

- ✓ The human capital should match the number of cases and the court rooms available

---

- ✓ Access to Justice
- ✓ Reduction of Backlog of Cases
- ✓ Remuneration of Judicial Officers: Pension, Medical Insurance Cover

# OPERATIONALIZATION OF SMALL CLAIMS COURT, MOBILE COURTS AND TRIBUNALS

- More public friendly:
- ✓ Circuit courts of appeal in Nairobi, Mombasa, Nakuru, Eldoret and Nyeri had been suspended and 53 mobile courts working in remote areas stopped working owing to lack of funds
- ✓ Most Tribunals suspended operations
- ✓ Affect the establishment of small claims courts that has the impact of reducing the backlog of cases dramatically. Majority of the small claims are below Kshs. 300,000 and the ordinary citizen will greatly benefit when such cases are determined within months of filing.

## **EFFECT:**

- ✓ Curtailing the Public Right to Access Justice
- ✓ Derail the clearance of case backlog
- ✓ The Judiciary will be unable to employ judicial officers and staff to operationalize these courts
- ✓ Inability to put-up Physical infrastructure.

## AUTOMATION AND DIGITIZATION OF THE JUDICIARY

- ✓ An Integrated Case Management Systems: Decline in the losses of files
- ✓ Expedite Trials; Justice must not only be done but seen to be done
  - faster, more transparent and more cost efficient
  - more accessible for those who live far from legal centers or who struggle to afford the costs of seeking justice.
  - Efficient, effective and a responsive Judiciary
- ✓ Training of Judicial officers and other Court Users on the technological advances
- ✓ With a technologically advanced system, the Judiciary in collaboration with the LSK, can strengthen practice through weeding out quacks and advocates who practice without valid licenses

# IMPROVEMENT OF JUDICIAL INFRASTRUCTURE

- ✓ Construction of more courts with facilities that support ICT infrastructure
- ✓ Completion of court buildings
- ✓ Refurbishment of courtrooms

# CONCLUSION

- The need for the independence of the Judiciary cannot be overstated.
- The recurrent expenditure is determined we need to focus on a progressive development budget
- Adoption of the Robin Hood Approach: A portion of the fines from courts should be used to finance the Judiciary