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B M Musau & Co., Advocates LLP

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"We help businesses make the right decisions"

Quarterly Newsletter

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Legal Insights and Trends.

Dear Clients and Colleagues,

I extend my warmest greetings to you on behalf of the entire team at B M Musau & Co., Advocates LLP. It is both a privilege and a pleasure to welcome you to this edition of our quarterly newsletter, Legal Insights and Trends 2025.

At B M Musau & Co., Advocates LLP, our commitment to providing exceptional legal services is underpinned by our dedication to keeping our clients informed and empowered. In an era where legal landscapes are continually evolving, staying updated on key legal developments is essential for individuals, businesses, and organizations alike. This newsletter is part of our broader mission to be your trusted partner in navigating Kenya's dynamic legal environment.

In this edition, we delve into the pivotal legal developments achieved in 2025, offering expert analysis on legislative changes, judicial trends, and regulatory updates that may impact various sectors. From advancements in technology law and environmental regulations to updates in corporate governance and family law, we aim to provide insights that are not only relevant but actionable. As your legal advisors, we believe in the power of collaboration and communication. This newsletter is a reflection of our proactive approach to ensuring you are well-informed, well-prepared, and well-positioned to achieve your objectives.

We value your trust in us and remain steadfast in our commitment to excellence, integrity, and innovation. Whether you are a longstanding client or exploring our services for the first time, we invite you to engage with us, share your feedback, and let us know how we can better serve your legal needs.

Warm regards,

Dr. Benjamin Musau, PhD,
Managing Partner
B M Musau & Co., Advocates LLP



Your trusted legal partner for success



In this newsletter you can expect:

Corporate
Governance
Updates

Client Success
Stories & Case
Highlights

Upcoming
Legislative
Changes to
Watch in 2025

Upcoming
Community
Engagement &
CSR Initiatives

1. Corporate Governance Updates



Corporate governance remains a critical aspect of business success, accountability, and sustainability in Kenya. As organizations navigate evolving market dynamics, they must align with both global standards and local regulatory frameworks. This document highlights recent updates in governance best practices and regulatory changes affecting corporate clients in Kenya.

1.1 Best Practices and Recent Regulatory Changes

Companies are embracing Board Diversity and Independence. Companies are increasingly recognizing the value of diverse boards, including gender, age, skill sets, and professional backgrounds. The Capital Markets Authority (CMA) recommends at least one-third of board members be of either gender. Independent directors are being emphasized to ensure unbiased decision-making and effective oversight. Many firms aim to have a majority of non-executive directors on their boards.

Businesses are required to improve on Risk Management and Compliance. Boards are now required to implement robust enterprise risk management frameworks to address financial, operational, and reputational risks. Integration of environmental, social, and governance (ESG) principles is becoming a core component of risk management strategies.

Digital Transformation in Governance of businesses in Kenya is becoming a current trend in the Kenyan Market. Companies are leveraging technology for governance, including e-governance tools, automated reporting systems, and secure digital platforms for board meetings. Cybersecurity governance is now a key area of focus due to the rising threat of data breaches.

Ethical Leadership and Culture in the running of businesses is not to go unrecognized. Ethical leadership is being institutionalized through the adoption of codes of conduct, whistleblower policies, and mandatory ethics training for board members and employees. Companies are fostering a culture of transparency by openly disclosing executive remuneration, board activities, and conflict-of-interest policies.

Stakeholder Engagement is working very well for businesses in Kenya. Organizations are strengthening their engagement with stakeholders by providing regular updates and seeking input through annual general meetings (AGMs), surveys, and forums. Focus is being placed on ensuring shareholder participation in key decisions, such as mergers and acquisitions.



1.2 Recent Regulatory Changes in Kenya

The Companies Act, 2015, has undergone several amendments to address emerging issues. All companies are required to maintain and file a Register of Beneficial Owners with the Registrar of Companies. This is aimed at enhancing transparency in ownership structures and preventing illicit financial activities. The Act now allows for electronic filing and issuance of documents, simplifying compliance and reducing administrative burdens. Private companies can now waive AGMs if all shareholders consent, streamlining decision-making processes.

The Capital Markets Authority (CMA) Guidelines has introduced new guidelines under its Corporate Governance Code for Issuers of Securities to the Public. Listed companies must disclose their ESG practices in annual reports. This includes climate change mitigation efforts and social responsibility initiatives. Issuers are required to conduct and disclose annual board performance evaluations, emphasizing transparency and accountability. With the enforcement of the Data Protection Act, 2019 corporate clients must implement robust data governance frameworks to ensure compliance with data processing and privacy requirements. They must appoint Data Protection Officers (DPOs) where applicable. They must conduct periodic data audits to identify and mitigate risks.

The Employment (Amendment) Act, 2022 introduces governance implications for human resource practices. Companies must adhere to provisions on workplace diversity, equality, and inclusion. Mandatory sexual harassment policies must be implemented for organizations with 20 or more employees. Recent updates to Anti-Money Laundering (AML) regulations require corporate entities to conduct due diligence on customers, especially in high-risk sectors. Companies must report suspicious transactions to the Financial Reporting Centre (FRC) and they must train employees on AML compliance measures.

On Tax Governance and Compliance, the Finance Act, 2024, introduces stricter tax compliance requirements. Companies must maintain accurate financial records and provide detailed tax disclosures. The Act enhances the role of tax audits in governance by imposing penalties for non-compliance.

1.3 Implications for Corporate Clients

Corporate clients in Kenya must align their governance structures and policies with these best practices and regulatory changes to mitigate risks and seize opportunities. Adhering to new regulations may increase compliance costs, but its benefits include improved reputation and stakeholder trust, access to global markets and investors who prioritize ESG-compliant organizations and reduced risks of legal penalties and reputational damage.

Corporations will need for Professional Advice in their operations. Corporations should engage legal and governance professionals to conduct compliance audits, provide training for board members and staff on emerging governance trends and draft and review governance policies to align with regulatory changes.

Emphasis on ESG Integration is now a reality for businesses in Kenya. Firms must incorporate ESG principles into their strategies to meet regulatory expectations and enhance sustainability. This includes investing in renewable energy solutions and sustainable business practices and reporting on social impact initiatives.

Enhanced Stakeholder Communication should be leveraged by corporations operating in Kenya. Organizations should leverage digital platforms to keep stakeholders informed about governance changes and initiatives. This fosters transparency and strengthens stakeholder relationships.

Conclusion

Corporate governance in Kenya is undergoing significant transformation driven by best practices and regulatory changes. Companies must proactively adapt to these developments by fostering ethical leadership, implementing robust compliance frameworks, and integrating ESG principles into their operations. Doing so will not only ensure compliance but also position organizations as leaders in responsible and sustainable business practices. Staying informed and seeking expert guidance will be crucial for navigating this dynamic governance landscape effectively.

2. Client Success Stories and Case Highlights

2.1 Landmark Victory at the Court of Appeal in Arbitration Enforcement

We are thrilled to share with you a groundbreaking development in commercial arbitration law in Kenya, arising from a case in which our firm recently represented our client at the Court of Appeal. This landmark ruling sets a powerful precedent in the interpretation and application of the Arbitration Act in Kenya, significantly impacting future commercial disputes.

The dispute originated from a construction project involving 3 parties. The case revolved around the enforceability of an arbitral award published on March 27, 2023, in favor of our client. On 8th May 2024, the Hon.

Court delivered a winning ruling in favour of our client allowing enforcement of the arbitral award and dismissed the opponent party's application to set aside the award. This ruling was a significant victory for our firm and our client, establishing important principles in commercial arbitration law.

The opponent party proceeded to the Court of Appeal and sought leave to appeal against ruling, arguing that the High Court erred in finding Arbitration Agreement existed between them and our client. However, their arguments were fundamentally flawed and failed to meet the stringent criteria for granting leave to appeal under the Arbitration Act and as set by the Supreme Court in *Nyutu Agrovet vs Airtel Networks Limited*; Chartered Institute of Arbitrators - Kenya Branch (Petition No. 12 of 2016) 2019 [KESC 11] (KLR). In the resounding affirmation of our position, the Court of Appeal dismissed the opponent's application for leave to appeal with costs to our client.

This decision underscores several critical points:

1. The Court of Appeal unequivocally upheld that an arbitration agreement existed between the 3 parties, despite having no direct contract between them. This ruling expands the scope of what constitutes an Arbitration Agreement, providing greater certainty for businesses operating in Kenya.
2. The Court found that the arbitration clause in the subcontracts covered disputes arising from the employer's inaction, including failure to make payments. This interpretation reinforces the principle of party autonomy in arbitration, emphasizing the importance of carefully drafted arbitration clauses.
3. The Court of Appeal reinforced that it has narrow jurisdiction to entertain appeals from decisions made under Section 35 of the Arbitration Act. This ruling underscores the finality of arbitral awards and the limited grounds for challenging them.



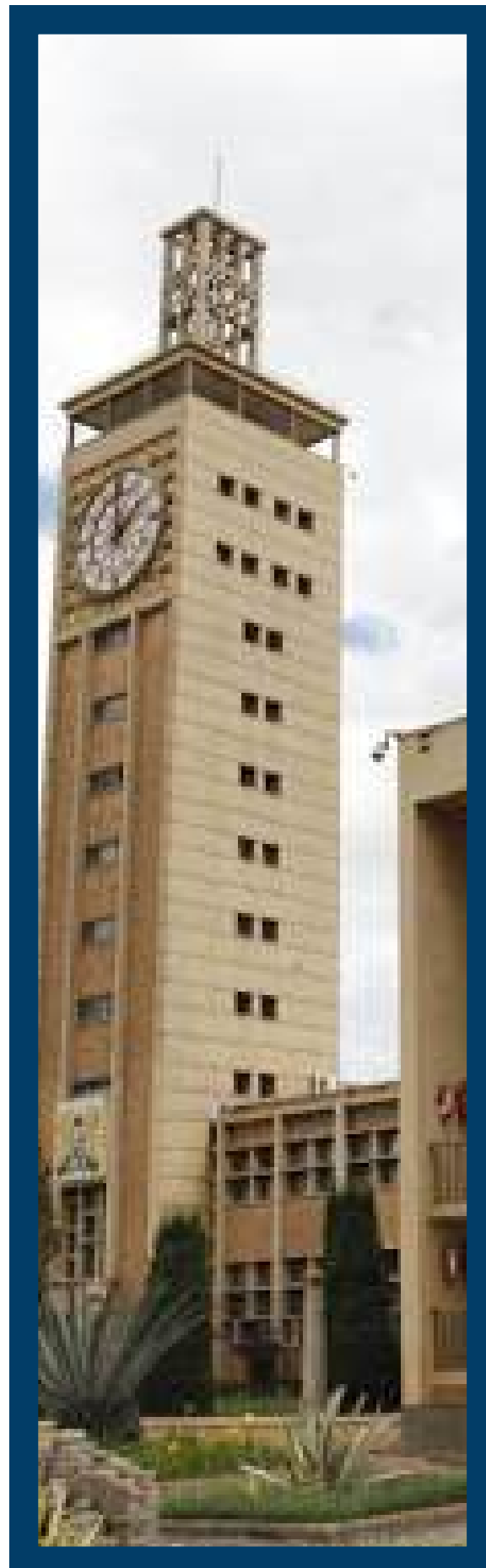
4. The Court emphasized that challenging factual findings of an arbitrator is improper, as the arbitrator is the master of facts. This principle strengthens the integrity of the arbitration process and reduces the likelihood of frivolous appeals.

This landmark ruling has far-reaching implications for businesses operating in Kenya:

- ***Even indirect contractual arrangements can give rise to arbitration agreements. This expands the scope of disputes that can be resolved through arbitration, potentially saving clients time and resources in dispute resolution.***
- ***Courts interpret arbitration clauses broadly, covering related disputes. This emphasizes the importance of carefully drafting arbitration clauses to ensure they cover all potential areas of dispute.***
- ***The courts continue to uphold the principle of minimal intervention in arbitral awards. This reinforces the reliability and efficiency of arbitration as a dispute resolution method.***
- ***The case highlights the critical role of accurate and comprehensive documentation in commercial agreements and dispute resolution processes.***

At B M Musau & Co., Advocates LLP, we successfully navigated this complex case, demonstrating our unparalleled expertise in interpreting and applying the Arbitration Act. Our team's strategic approach and deep understanding of Kenyan commercial law were instrumental in securing this victory for our client.

If you have any questions about this case or concerns regarding commercial arbitration or litigation, please don't hesitate to contact us. We're always here to assist you in navigating the complexities of Kenyan business law.



2.2 Update on Recent ODPC Decision: Victory for the Complainant Represented by B M Musau & Co., Advocates LLP

B M Musau & Co., Advocates LLP, has secured a major victory in a landmark decision made by the Office of the Data Protection Commissioner (ODPC). This decision is a game-changer for data privacy rights in Kenya, and we are thrilled to share the details with you.

Imagine waking up to find your inbox flooded with unsolicited emails, messages, and phone calls reminding you to renew your motor vehicle insurance.

These unwanted communications come from individuals you have never sought out assistance from and yet somehow they possess your personal data and your motor vehicle details. This scenario isn't just annoying but it is a stark reminder of the vulnerabilities we face in today's digital age.

That is exactly what had happened to our client when she instructed us to file a complaint against a leading bank in Kenya for egregious breaches of the Data Protection Act, 2019. Our team sprang into action, determined to protect our client's rights and set a precedent for all Kenyans.

The Complainant accused the bank of mishandling their personal data and put forth a strong case on improper use and unauthorized sharing of sensitive personal information. In particular our client had on diverse dates received unsolicited emails and calls from former employees of the bank claiming to be in a position to assist her with her motor vehicle insurance renewal. These third parties had somehow accessed her personal data, including her full name, mobile number, vehicle details, and motor vehicle insurance status. Coincidentally our client's insurance policy was due for renewal and the bank contacted her for renewal. As a result she promptly alerted the bank of the breach and asked them to rectify the data breach.

Following a meticulous investigation, the ODPC established that a violation of the client's privacy rights had occurred between May 2023 and June 2024 and during the period in question the third parties had stopped working for bank and were, therefore, not handling the client's personal data on behalf of the bank. Furthermore, the ODPC identified lapses in the bank's adherence to principles of integrity and confidentiality that are fundamental to the ethos of data protection.

The ODPC found the bank liable and ordered them to pay our client KShs.250,000 as compensation for the breach. The ODPC's orders were as decisive as they were necessary, sending a clear message to the banking sector and other data controllers and data processors

This decision is a monumental development in the enforcement of Kenya's Data Protection Act, 2019. It sends an unambiguous signal to all data processors and controllers that the era of unchecked data exploitation is over. By holding the bank accountable, the ODPC has fortified the rights of data subjects and demonstrated its capacity to enforce meaningful corrective action.



Financial institutions, in particular, must now re-evaluate their data handling practices and ensure strict compliance with the law. The ruling highlighted that negligence in data protection will attract severe regulatory scrutiny and tangible penalties.

Furthermore, this case illustrates the power of legal advocacy in effecting change. Our client's decision to pursue justice, supported by B M Musau & Co., Advocates LLP achieved not only personal vindication but also a broader victory for all data subjects whose rights are at risk of breach. This outcome should embolden individuals to assert their data protection rights and remind institutions of their duty to process data responsibly and transparently.

Our team played a pivotal role in securing this victory. By leveraging our expertise in data protection and privacy law, we ensured that the complainant's rights were firmly defended at every stage of the process. Our firm's dedicated advocacy was instrumental in bringing about this outcome, which we believe will have a lasting impact on how data protection obligations are interpreted and enforced in Kenya.

This case serves as a testament to the growing importance of legal representation in data protection matters. As data breaches and privacy violations become more prevalent, it is essential for individuals and organizations to seek experienced legal counsel to protect their rights and interests.

If you have any questions about this case or would like to understand how this determination may affect your rights or obligations under Kenya's Data Protection Act, 2019, please do not hesitate to reach out to us. Our team of seasoned legal experts is ready to provide the guidance you need.

2.3 Strict Adherence to Rules of Procedure in Realizing Substantive Justice

The general rule in law and as reiterated under the Kenya Constitution is that justice should be administered without undue regard to the rules of procedure, known as the oxygen principle.

However, to attain substantive justice, the rules of procedure must be strictly adhered to. We recently had a resounding win in a matter before the High Court where it was determined that the Magistrates Courts are not subject to Vacation Rules.

The brief facts, similar in both cases, are that the subordinate court gave parties directions on timelines within which to comply with court orders. The court order referred to payment, to our client, part of the decretal sum so as the party would secure leave to file an appeal out of time. This order coincided with the Christmas holiday of 2023. The intended appellant went into holiday and failed to comply with the Court order. Our auctioneers took over and proclaimed his vehicles in satisfaction of the decretal sum because the period within which he was required to make the part payment had lapsed and consequently the leave to appeal had lapsed. The intended appellant moved to court, after the holiday, and attempted to convince the High Court that the Christmas holiday, was part of the Court's vacation hence those days could not be counted for compliance with the subordinate court's order.

In agreeing with us that the subordinate courts are not affected by the Vacation Rules, the Hon. Judge ordered the NTSA to place a caveat on the intended appellant's motor vehicles pending the hearing and determination of the intended appeal noting that the decretal sum was a substantial amount and the failed interpretation of the statute by the intended appellant.

This resounding win demonstrates that rules of procedure are not just passive instruments for ignoring while quoting the oxygen principle. They are important principles of the law that should be adhered to in achieving substantive justice and reducing the risk of costs and penalties by the courts.



2.4 Highlighting a Win in a Claim for Adverse Possession against the Estate of a Deceased Person



One sad morning, our client woke up to find that a stranger had bought his homestead and farm and was in the process of fencing it. The notorious stranger fenced out the whole parcel so that our client had not exit from his home. He had lived in the property since 1980s during which period he married his wife, they established their matrimonial home, got their children and cultivated both food and cash crops.

The land was registered in the name of his cousin who died about 8 years before the dispute arose. Our client's father, an uncle to the registered owner of the land had assisted him in paying dowry for his wife and they wrote an agreement that if he was unable to refund the dowry paid on his behalf, he would compensate him with the land.

Time move and our client's cousin failed to pay back. He moved his family to a different land far away and they settled there. Our client started utilizing the land by farming and grazing cattle under his father's instructions. Later, his father died and according to customary law, our client took over the land and established his home.

The Environment and Land Court agreed with us that our client had acquired exclusive proprietary rights over the whole parcel of land and directed the land registrar to cancel all the encumbrances registered against the title by the defendants and issue a title to our client. The Court further awarded our client costs of the suit.

This demonstrates that the Courts are willing to pronounce themselves in solving land disputes promptly where all facts are established under the law. Having utilized the land openly for over 40 years, in the presence of the defendants and who never complained, our client had acquired all proprietary rights over the land as declared by the Court. This decision also demonstrates that intermeddling with the property of a deceased person is illegal and results in a void transaction as stated under the Law of Succession Act as read with the Land Act and the Land Control Act.

3. Leveraging AI in Legal Practice: Transforming the Legal Landscape

Artificial Intelligence (AI) is revolutionizing the legal profession, transforming how legal services are delivered and managed. From streamlining routine tasks to enhancing strategic decision-making, AI offers immense opportunities to improve efficiency, reduce costs, and drive innovation in legal practice.

Key Areas of AI Application in Legal Practice

- **Legal Research and Analysis**



Legal Research and Analysis

The practice of legal research, once a labor-intensive task requiring hours of sifting through case law, statutes, and judicial precedents, has been redefined by AI-powered tools. Platforms like LexisNexis, Westlaw, Notebook LM, Microsoft Co-Pilot and Phind utilize Natural Language Processing (NLP) to deliver precise, contextually relevant results in a matter of seconds. These tools analyze vast legal databases to identify the most pertinent case law, regulatory provisions, or scholarly articles. For example, Phind, an AI-driven search engine for technical and complex queries, offers precise insights, making it particularly useful in niche areas of law.

Similarly, Notebook LM, a Google-powered AI assistant, supports lawyers by summarizing complex documents and providing instant access to key legal knowledge stored in firm databases. These advancements save time, reduce research errors, and ensure advocates are equipped with the most up-to-date legal knowledge.

- **Document Automation**



Drafting legal documents, a time-consuming task prone to human error, has been streamlined through AI-powered document automation. Tools like Luminance, Kira Systems, and ChatGPT enable the swift creation of legal templates, including contracts, wills, leases, and pleadings.

For instance, ChatGPT, with its conversational capabilities, allows lawyers to draft initial versions of agreements based on inputs such as jurisdiction, governing laws, and key clauses. Similarly, Luminance uses machine learning to review and refine documents, ensuring consistency and compliance with legal standards. These technologies minimize drafting errors, enhance productivity, and allow legal professionals to focus on more complex aspects of client service.

- **Predictive Analytics**

AI's predictive analytics capabilities empower legal practitioners to forecast case outcomes with remarkable accuracy. By analyzing historical data, including similar cases and judicial decisions, they provide insights into the likely trajectory of legal disputes.

These systems evaluate patterns in judicial behavior, the strength of evidence, and prevailing legal trends to help advocates devise data-driven litigation strategies.



- **Virtual Legal Assistants**

AI-powered chatbots and virtual assistants have enhanced client engagement and streamlined administrative processes in law firms. Tools like LawDroid, ChatGPT, and DoNotPay interact with clients to provide answers to common legal queries, schedule appointments, and guide users through complex legal procedures.

For instance, a Kenyan client seeking guidance on filing documents via the Judiciary eFiling System can interact with a chatbot to receive step-by-step assistance. Such virtual assistants reduce the workload on legal professionals, allowing them to focus on substantive legal tasks while ensuring clients receive prompt and accurate support.



- **Litigation Support**

AI is reshaping litigation support by organizing case files, identifying key facts, and generating visual presentations for trials. Tools like Everlaw and Litigation Edge offer comprehensive litigation management, from document review to trial preparation.

For example, during a high-stakes fraud case, Relativity can help identify crucial evidence by analyzing thousands of emails, while Litigation Edge creates persuasive visual aids for courtroom presentations. These capabilities enable advocates to build stronger cases by leveraging data-driven insights and presenting arguments in a compelling manner.



AI Innovations in Kenya's Legal Practice

The Judiciary of Kenya has been implementing digitization programs that include AI-powered systems for case management and e-filing. Tools are being developed to streamline the backlog of cases by automatically categorizing, prioritizing, and scheduling hearings.

Startups like LegalDesk, LawQuery Kenya, M-Wakili and E-Sheria have begun integrating AI-powered chatbots to assist users with basic legal questions and guidance especially Kenyan users. These platforms are improving access to justice for individuals and small businesses that may not afford traditional legal representation.

Homegrown platforms such as LawAfrica are leveraging AI to enhance their legal research tools, enabling practitioners to quickly access case law, legislation, and commentary relevant to East African jurisdictions.

The Kenyan government, through partnerships with tech firms, is integrating AI into public legal services. Initiatives like the Huduma Kenya Program are leveraging AI to provide legal and administrative services more efficiently, such as document processing and citizenship applications.

Challenges of AI Adoption in Legal Practice.

1. Data Privacy and Security

Handling sensitive legal data with AI raises concerns about privacy and data breaches. Robust cybersecurity measures are essential to address these risks.

2. Ethical Considerations

The use of AI in decision-making processes raises ethical questions, such as bias in algorithms and accountability for AI-driven outcomes.

3. Resistance to Change

Traditional legal professionals may be reluctant to adopt AI tools due to unfamiliarity or fear of job displacement.

4. Regulatory Uncertainty

The regulatory framework for AI use in legal practice is still evolving, posing compliance challenges.

5. High Initial Costs

The implementation of AI systems requires significant investment, which may be prohibitive for smaller firms.



AI's Application in Our Firm's Operations

At B M Musau & Co., Advocates LLP, we have fully embraced AI as a cornerstone of our operations, ensuring we remain at the forefront of legal practice in Kenya. By integrating AI into our workflows, we have transformed how we deliver services, improving efficiency, accuracy, and client satisfaction across various aspects of our firm.

AI has revolutionized legal research, an essential pillar of our practice. With tools like LexisNexis, Westlaw, Kenya Law and M-Wakili, our advocates can access extensive databases of Kenyan case law, statutes, and judicial precedents within seconds. These platforms use natural language processing to interpret complex legal queries and provide precise, contextually relevant results.

AI also plays a critical role in predicting case outcomes. It enables us to analyze historical judicial data and predict case trajectories.

By studying patterns in Kenyan court decisions and trends in judicial reasoning, we can provide clients with actionable insights and develop robust litigation strategies.

Document management is another area where AI has significantly enhanced our operations. Tools like PC Law help us organize, tag, and retrieve vast amounts of case-related documents. Client communication has also benefited from AI integration.

AI has also streamlined our administrative functions with automated billing, time tracking, and resource allocation, ensuring that our processes remain transparent and efficient. By reducing the time spent on administrative tasks, we can dedicate more resources to addressing our clients' legal needs.

Through the integration of AI across our operations, we have redefined how legal services are delivered in Kenya. At B M Musau & Co., Advocates LLP, we remain committed to leveraging these technologies to uphold the highest standards of service, adapt to evolving client needs, and lead the way in innovative legal practice.

Conclusion

AI is no longer a futuristic concept but a transformative tool for reshaping the legal profession. By embracing AI, legal practitioners can enhance their productivity, deliver better client outcomes, and remain competitive in the evolving legal landscape.



4. Human Resource Development at B M Musau & Co., Advocates LLP

Training Opportunities

The advocates at the firm had the opportunity to participate in a training session on children's matters with a focus on parental responsibility agreements by Sian Rapei Sairo of Sairo Law Global. Parental responsibility agreements are agreements between the parents or legal guardians of a child and the court that prescribe how the child is to be raised and attended to as well as how parental rights and responsibilities are exercised. This is important to our practice as we have found that courts only cater to the basic needs of a child including food, shelter, clothing, medicine and schooling. This leaves a lacuna on areas such as visitation, religion and culture the child is raised around, which is vital to a child's development thus necessitating the use of parental responsibility agreements.

Our team was equipped through the training to guide clients on how to approach parental responsibility agreements right from initiation till the implementation of the same. We enhanced the firm's negotiation strategy to suit a non-adversarial approach which ensures a more amicable settlement between the parents thus ensuring that the child has the best environment available to them. We also noted that there have been recent developments in the use of parental responsibility agreements in instances away from the ordinary child maintenance suits such as: agreements between parents who live together but want to have their responsibilities written on paper.

We at B Musau are committed to easing the parenting journey for our clients. Keeping with the principles of Article 53 of the Constitution of Kenya we support our clients to exercise their parental rights over their children with minimal conflict and in line with how they would have parented had they been with the child or children around the clock.





Technicalities as a Graveyard for Justice

We had the pleasure of attending the talk by Senior Counsel Charles Kanjama of Muma and Kanjama Advocates on the rise and fall of the oxygen principle. This is a conversation of great importance to any litigator as it has the potential to affect your day-to-day practice. The talk examined the role of truth, justice and mercy in the application of oxygen principles. Law is seen as a synthesis of these three concepts. Each concept enhances and balances the others in creating a fair and compassionate legal system. This was analyzed from various philosophical schools which view this interconnection differently e.g.: the natural law scholar, Thomas Aquinas, argued that justice is a cardinal virtue which seeks the common good which flows from the truth. Further, mercy seeks the individual good of another and it pours itself out upon others whose weaknesses it seeks to rectify. Consequently, under this, true justice is neither merciless nor sentimental. With this background, our understanding of the need to balance procedural and substantive law was improved as both are required to achieve even-handed justice. The talk also looked at the codification of the oxygen principles in the Civil Procedure Act (CAP 21), the Appellate Jurisdiction Act (CAP 9) and the Constitution Of Kenya (Protection Of Rights And Fundamental Freedoms) Practice And Procedure Rules, 2013. However, jurisprudence has developed to bring further restrictions such as the doctrine of exhaustion, certification of appeals to the Supreme Court, res judicata amongst others. The key takeaway for us was that it is our duty as advocates to uphold access to justice and set aside short-sighted interests of litigants. This will encourage the growth of jurisprudence and enhance the objectivity of the court process.

Dispute Resolution in the Construction Industry

Our advocates participated in a training session carried out by Robert Gordon University on dispute resolution in the construction industry. The training session equipped our team with mechanisms that enhance conflict avoidance in the construction industry. We are focused on getting the contract right, maintaining client relations and easing dispute resolution in an industry sensitive manner.

Commercial contracts serve a multitier purpose in commercial transactions. This includes preservation of commercial relationships, providing legal protection and most importantly investments of partners. At B M Musau we seek to draft contracts that protect our clients from risks that are unique to the industry such as: specialists, technical issues, multiple supply chains, lots of unknowns in the project and ensuring there is lasting output. This was enhanced by this training on industry standard form contracts such as FIDIC contracts which are popular with major international scale contracting.

Another key part of the training was learning how to maintain the relationship between the parties. This is possible in the construction industry by conflict avoidance and capturing the desires of the parties in contract. Our team learnt to take a more collaborative approach in guiding parties towards finding the best alternative available to parties in a contract. That way parties have not only commercial incentives to fulfill the contract but also cater for the need to have longer-term relationships between them. The training encouraged the use of project management tools as an early warning system which enables parties to take proactive action to avert conflict with their partners.

This approach fosters mutual trust between parties and cooperation between parties as they can align their positions and needs with their commercial goals.

Like with all other relationships, disputes in construction agreements are bound. In our years in practice have found that litigation is insufficient for construction disputes. This is because it proves that it frustrates the deliverables of the contract such as the amount of time to be taken for the project and the cost of the same may weigh on the project's budget. The team at the firm was trained in assisting in a multi-tiered resolution process which is the recommended approach to dispute resolution. It starts with consensual/mediated processes followed by processes with interim binding outcomes and further escalation to private/public adversarial processes can be adopted.





Navigating Legal Framework in the Age of Artificial Intelligence: Challenges and Opportunities for Kenya

We had the opportunity to attend a workshop on Artificial Intelligence (AI) by Sheria Online which focused on the legal frameworks in place. The workshop looked at the use of AI in Kenya such as Mshule which is an application has been used to enhance learning for students by having exercises that test their comprehension, learning speed and modifies questions based on how the student responds to them. Such fetes amongst many others have been celebrated. However, on the other hand, several challenges have come up such as the sufficiency of the Data Protection Act, 2019 to protect users from AI specific challenges such as automated decision-making. The discussion also highlighted some of the opportunities that have come up from the use of AI such as its potential for it to enhance service delivery from the government to its citizens.

The workshop also entailed a comparative analysis of how different jurisdictions have regulated the use of AI. Jurisdictions such as Argentina, Austria, Bangladesh, China, Egypt amongst many others were compared to get a preview of the different approaches to legislation, its impact and what lessons can be learned. Our team found this very informative and engaging as this is a quick developing area thus equipping us better to advise our clients better.

At B M Musau & Co., Advocates LLP, we are committed to continuous professional development of human resources to ensure that we are up to date with current trends which has made us a market leader in providing efficient and effective legal services.

5. Community Engagement and CSR Activities: Highlights from Q4 2024 and Upcoming Initiatives

At B M Musau & Co., Advocates LLP we believe that giving back to the community is not just a responsibility but an integral part of our identity. As we look back at Q4 2024, we are proud to share the impactful initiatives we have undertaken and outline our plans for the future.

Highlights from Q4 2024

- **Publishing easy-to-understand guides on navigating legal issues for the public**

At B M Musau & Co., Advocates LLP, community engagement and Corporate Social Responsibility (CSR) are at the core of our values. As part of our CSR initiatives, we have launched a series of easily digestible, informative guides aimed at empowering the public with essential legal knowledge. Our commitment to this cause is evident in two recent publications that focus on critical legal reforms: the **Business Laws (Amendment) Bill, 2024** and the **Kenya Children (Guardianship) (Practice and Procedure) Rules 2024**.

The guide on Business Laws (Amendment) Bill, 2024 is designed to help the public—especially business owners, investors, and stakeholders—navigate the complexities of the proposed reforms and understand the implications for investment and trade. The published Article on the **Kenya Children (Guardianship) (Practice and Procedure) Rules 2024**, presents a clear and accessible executive summary of the newly gazetted **Kenya Children (Guardianship) (Practice and Procedure) Rules 2024**. The initiative aims to bridge the gap in understanding legal matters related to children's guardianship by offering a simplified overview of the complex legal language and technicalities involved in these procedures

- **Sponsoring Scholarships**

Our Firm has partnered with the **Elimisha Watoto Foundation** to sponsor scholarships for deserving students. Our involvement goes beyond mere financial support; we are deeply committed to ensuring that these students have access to the resources and guidance they need to excel academically.

We have consistently given 10 scholarships worth Kshs. 385,000 every year from 2023 to date at **St. John's High School Kangii**. **Additionally, we have consistently supported the Catholic Diocese of Machakos through the Diocesan Collection since 2000** to date. These efforts reflect our unwavering dedication to uplifting communities and fostering a brighter future for the next generation. Through this partnership, we provide financial assistance that covers tuition fees, school supplies, and other educational expenses, ensuring that these students can attend school without the burden of financial constraints. This enables them to focus entirely on their studies and work towards achieving their academic goals. The scholarships are awarded based on merit, need, and a commitment to succeeding in their studies.



• Pro Bono Legal Aid

Equal access to justice remains a challenge for most people in Kenya. Aside from the limited provision of state-funded legal aid, a large number of Kenyans have few options to access the judicial system with proper representation. As part of our corporate responsibility to our community, our advocates at B M Musau & Co., Advocates LLP throughout Q4, our team has taken advantage of these opportunities to be able to represent various persons.



• Supporting Legal Forms

Our Firm recognizes the importance of contributing to the intellectual and professional development of the communities we serve. As part of our commitment to corporate social responsibility (CSR), we actively engage in activities that promote education, the rule of law, and public discourse. One such initiative was our active participation in the Daystar University Public Lecture, held on Monday, December 2, 2024, featuring a distinguished lecture by Hon. Lady Justice Philomena Mwilu, the Deputy Chief Justice and Vice President of the Supreme Court of Kenya. The topic of the lecture was "Institutional Independence: Revolutionizing Constitutional Commissions and Independent Offices".



• Environmental Sustainability Drive

As part of our commitment to environmental conservation and reducing our corporate carbon footprint, B M Musau & Co., Advocates LLP has initiated a robust Environmental Sustainability Drive. This program aims to foster environmental awareness, encourage sustainable practices, and create a meaningful impact on the environment.

Demonstrating our dedication to addressing climate change, we have organized tree-planting activities at St. John's Kangii Primary School and St. John's Kangii Catholic Church. These efforts contribute to reforestation and underscore our commitment to biodiversity conservation.



6. UPCOMING LEGISLATIVE CHANGES TO WATCH IN 2025

The legislative landscape in Kenya is poised for significant changes in 2025, with new laws and amendments expected to impact various sectors. Businesses and organizations must stay informed about these changes to ensure compliance, adapt to emerging opportunities, and mitigate risks. This document provides an overview of critical legislative changes and their implications for corporate clients.

2025 will see legislative reforms aimed at enhancing governance, promoting economic growth, protecting consumer rights, and addressing emerging challenges such as climate change and technological advancements. Key sectors affected include finance, technology, labour, environmental protection, and corporate governance.



The proposed amendments to the Data Protection Act, 2019 aim to strengthen data privacy and security in response to rising cybersecurity threats and advancements in artificial intelligence (AI). The key provisions in the Act are enhanced regulation of AI-powered data processing, stricter penalties for data breaches, with fines up to Ksh 10 million or 2% of annual turnover, whichever is higher and mandatory periodic data audits for organizations handling sensitive personal data. Organizations must implement advanced data security measures and appoint Data Protection Officers (DPOs). It will lead to increased compliance costs but improved customer trust and data governance standards.

The government is intensifying its efforts to combat climate change by revising the Climate Change Act, 2016 to align with international commitments under the Paris Agreement. The key provisions of the Act are mandatory disclosure of carbon footprints for large corporations, introduction of a carbon credit trading system to incentivize green practices and stricter emission caps for industries such as manufacturing, energy, and transportation. Corporations will need to invest in green technologies and sustainable practices. Opportunities for businesses to participate in carbon credit trading will be increased. Non-compliance could lead to hefty fines and reputational damage.

The proposed Employment Relations Bill, 2025 seeks to modernize labor relations by addressing emerging workplace issues and promoting equitable treatment of employees. Its key provisions are mandatory provision of flexible working arrangements, including remote work policies, increased protections against workplace harassment and discrimination and expansion of parental leave, including mandatory paternity leave of 14 days. Businesses must review and update HR policies to align with the new requirements. It might result to potentially higher operational costs but improved employee satisfaction and retention.

It might lead to increased risk of litigation for non-compliance. The Taxation (Amendment) Act, 2025 introduces measures to enhance revenue collection while fostering economic growth. The focus is on expanding the tax base and simplifying compliance processes. Its key provisions are introduction of a digital services tax (DST) for global and local online platforms operating in Kenya, reduction in corporate tax rates for small and medium enterprises (SMEs) from 30% to 25% and revised VAT exemptions for essential goods and services to reduce the cost of living. Digital businesses must register for DST and file regular returns. SMEs stand to benefit from lower tax burdens, improving their cash flow. Corporates should analyze how the revised VAT regime affects pricing and profitability.



Amendments to the Public Procurement and Asset Disposal Act, 2015 by the Public Procurement and Asset Disposal (Amendment) Bill, 2025 are aimed at increasing transparency and supporting local businesses. Key provisions such as introduction of e-procurement systems for all public tenders, preference for local suppliers in tenders under Ksh 500 million and mandatory public disclosure of tender evaluation results will greatly affect business operations in Kenya. Local businesses will gain a competitive edge in public procurement. Enhanced transparency may reduce corruption but increase scrutiny of procurement practices. Corporates must ensure compliance with e-procurement processes.

With the rapid growth of e-commerce and digital services, the Consumer Protection (Digital Services) Bill, 2025 aims to protect consumers from unfair practices. Its key provisions are clear labelling of digital products and services, including pricing and terms of use, establishment of a dispute resolution mechanism for online transactions and penalties for false advertising and data misuse. E-commerce platforms must enhance transparency and adopt consumer-centric practices. There will be increased compliance requirements but improved consumer trust. Businesses should invest in robust customer support and dispute resolution systems.

The proposed changes to the Insolvency Act, 2015 by the Insolvency (Amendment) Act, 2025 aim to facilitate efficient debt resolution and business rescue processes. Its key provisions are streamlined procedures for out-of-court settlements, enhanced protections for creditors, including priority repayment frameworks and introduction of mandatory mediation for insolvency disputes. Companies in financial distress will have more opportunities for restructuring and recovery. Creditors will benefit from stronger protections and faster resolution timelines. Legal teams must prepare for increased use of mediation in insolvency cases.

Sector-Specific Implications

In the Financial Sector, compliance with data protection laws and DST will drive increased investment in cybersecurity and digital infrastructure. ESG reporting requirements under climate change legislation will become key metrics for financial institutions.

In the Manufacturing and Energy Sector, more strict emission caps and mandatory carbon footprint disclosures will necessitate investment in cleaner technologies. Opportunities exist for participation in carbon credit markets and green financing initiatives.

In Technology and E-Commerce, DST and consumer protection laws will impact pricing strategies and operational frameworks for digital businesses. Companies must adopt transparent practices and invest in dispute resolution mechanisms.

For SMEs, reduced corporate tax rates will provide financial relief, fostering growth and expansion. Simplified procurement rules and increased access to public tenders will create new opportunities

RECOMMENDATIONS FOR CORPORATE CLIENTS IN PREPARATION FOR 2025

- Assess current operations, policies, and procedures to identify gaps in compliance with upcoming legislative changes.
- Revise data protection, HR, tax, and procurement policies to align with new laws.
- Implement digital tools for compliance, such as e-procurement and ESG reporting software.
- Seek guidance from legal, tax, and governance experts to understand the implications of legislative changes and mitigate risks.
- Conduct training sessions to ensure employees understand their roles in complying with new laws.
- Educate stakeholders about changes to governance and operational practices.
- Explore green financing, public procurement, and carbon credit trading as potential growth areas.
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Position your organization as a leader in ESG compliance and sustainability

Conclusion

The legislative changes expected in 2025 will significantly impact businesses in Kenya. By staying informed, adapting to new requirements, and leveraging emerging opportunities, corporate clients can enhance compliance, foster growth, and strengthen stakeholder trust. Proactive preparation is essential to navigate this dynamic regulatory environment successfully.





Safeguarding Your Data: Our Comprehensive Data Protection Compliance Services

In today's data-driven world, protecting sensitive information has become a critical priority for individuals and businesses. With the rise of cyber threats, increasing regulatory requirements, and growing consumer awareness, ensuring data protection compliance is no longer optional—it is essential. At B M Musau & Co., Advocates LLP, we are committed to offering tailored, client-friendly strategies to help you navigate this complex landscape.

Why Data Protection Compliance Matters

Data protection laws, such as the General Data Protection Regulation (“the GDPR”), Kenya’s Data Protection Act of 2019, and others worldwide, impose strict obligations on businesses to safeguard personal data. Non-compliance may lead to hefty fines, reputational damage, and loss of customer trust. Beyond legal obligations, robust data protection practices foster transparency and accountability, which are vital to building lasting relationships with clients and stakeholders.

Our Comprehensive Data Protection Compliance Services

At B M Musau & Co., Advocates LLP, we have developed a holistic suite of services to help businesses achieve and maintain compliance. Our approach is rooted in practicality, ensuring that every solution is tailored to your unique operational needs.

Here is what we offer:

Data Protection Audits	Data Protection Impact Assessments (DPIAs)
1. We conduct thorough assessments to identify gaps in your current data handling practices. 2. Our team evaluates your policies, procedures, and IT systems against applicable regulations. A detailed compliance roadmap is provided, outlining actionable steps to address vulnerabilities.	1. For high-risk processing activities, we conduct DPIAs to evaluate potential impacts on data subjects. 2. This proactive measure helps you mitigate risks and demonstrate accountability.
Policy Drafting and Implementation	Cross-Border Data Transfers
1. We draft data protection policies, privacy notices, and consent forms tailored to your organization. 2. Our focus is on clarity and user-friendliness, ensuring compliance without overwhelming your stakeholders.	1. We advise on lawful mechanisms for transferring data across jurisdictions, such as Standard Contractual Clauses and adequacy decisions. Our solutions ensure your business operates seamlessly across borders while remaining compliant.
Training and Capacity Building	Key Client-Friendly Strategies
1. We empower your team with the knowledge they need to manage data responsibly. Our interactive training sessions cover key topics like data subject rights, breach management, and compliance best practices	We prioritize strategies that are practical, efficient, and client-focused: 1. Tailored Solutions: Every business is unique, and so are its data protection needs. We customize our services to align with your specific objectives and industry requirements. 2. Simplicity and Clarity: Legal jargon may be intimidating. We ensure that all our deliverables—whether policies, training materials, or compliance checklists—are clear, concise, and easy to implement. 3. Ongoing Support: Compliance is not a one-time effort. We offer continuous support, including periodic reviews and updates to keep you ahead of regulatory changes. 4. Risk-Based Approach: We focus on areas of greatest risk to your organization, optimizing resources and ensuring maximum impact.
Data Breach Response and Management	
1. Our experts assist in developing and testing data breach response protocols. 2. In the event of a breach, we provide legal guidance to minimize impact and ensure timely reporting.	



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"We help businesses make the right decisions"

Partner with Us

At B M Musau & Co., Advocates LLP, we are more than just legal advisors; we are your partners in safeguarding your data. Our team of data protection experts combines legal acumen with industry insights to deliver results that protect your business and enhance its reputation.

Let us help you transform compliance into a competitive advantage.

To learn more about our services or schedule a consultation, contact us at info@bmmusau.co.ke. Together, we can build a future where your data is secure, compliant, and empowering.

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