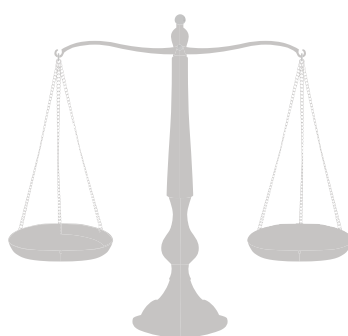


# State of the Judiciary and the Administration of Justice

**Annual Report, 2017 - 2018**



# STATE OF THE JUDICIARY AND THE ADMINISTRATION OF JUSTICE

ANNUAL REPORT  
2017 -2018

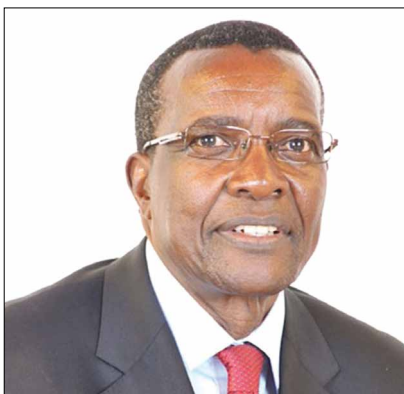


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**F**or the last seven years, the Judiciary has tracked and reported to the public on its progress and challenges in carrying out the reform agenda in pursuit of its constitutional mandate. Through the State of the Judiciary and Administration of Justice annual reports, a statutory report provided for under section 5(2)(b) of the Judicial Service Act, the Judiciary informs the public on efforts, progress and challenges in pursuing the reform agenda. The report also includes activities, achievements and challenges as noted from other state and non-state agencies in the justice sector, thereby providing a broad overview of the progress in the administration of justice.

In order to pursue and achieve objectives and purposes of the Judiciary as set out in the Constitution, I launched the Judiciary blueprint titled Sustaining Judiciary Transformation: A Service Delivery Agenda 2017-2021, (SJT) on January 26, 2017. Through the SJT blueprint, the Judiciary hopes to enhance access to justice in all its forms put in place measures and strategies to clear the case backlog, enhance integrity and ethics, embrace and utilize technology, and provide leadership and governance. In summary, the SJT builds on the previous blueprint, Judiciary Transformation Framework (2012-2016) and focuses on accelerated service delivery.

## Foreword

It is in the above context that I made an undertaking to Kenyans, during the launch of the SJT, that the courts will clear matters that were five years and above as the end of 2018. Indeed, case backlog continues to be one of the major challenges facing the Judiciary. During the year under review, we put in place special and general measures to ensure that this target was achieved. The measures included judicial service weeks which targeted court stations with the heaviest backlogs, court and practice directions aimed at expediting disposal of matters, performance measurement and management to ensure progress towards targets, and initiatives such as justice@last that focused on clearance of case backlog. I am glad that these efforts have led to some early results.

As this report reveals, there has been substantial progress in the backlog clearance. At the time I made the undertaking to Kenyans, there were 170,186 cases that were older than five years. At the end of the reporting period, a total of 80,654 such cases had been resolved, leaving a total of 102,773, the additional cases being those that attained the 5 year mark subsequent to the announcement on 26th January, 2017.

We have also seen significant progress in the other pillars that undergird the SJT. The digital strategy in the SJT has ensured that over 80 courts are now connected to the internet. We will continue with these efforts until all courts have a steady, reliable internet connection. This is important as the Judiciary is also at an advanced stage of digitizing most of the court processes.



In order to ensure a steady progress in the implementation of the SJT, I put in place an Implementation and Monitoring Committee (IMC) of the SJT blueprint, which is chaired by the Deputy Chief Justice. The IMC has put in place measures to ensure that the SJT is executed through a bottom-up approach and in a manner that best serves service delivery requirements of each implementing unit within the Judiciary.

Even as we continue with the reform agenda set out in the SJT and other policy documents, we are in a process of constant reflection on how to improve our institutional structures. During the period under review, a report on organizational review and restructuring was submitted to the Judicial Service Commission for adoption. This, together with other ongoing reforms, will ensure that the Judiciary operates at its optimum and that the resources at our disposal (financial and human) are utilized in the most efficient manner.

However, we also realise that overall effectiveness in the administration of justice requires collaboration and cooperation among the agencies and players in the justice sector. The reports from agencies in the justice sector are also covered in this report. More importantly, the National Council for the Administration of Justice (NCAJ), which I chair, brings together all the agencies under the sector. It is my hope that we will make use of these channels in order to address all the issues that require a collaborative approach by all of us.

Finally, I understand the effort and energy that has gone into all the activities covered in this report. Justice sector institutions have overcome varying challenges and produced results that make a positive impact in the administration of justice. I therefore extend my appreciation to the Judiciary and indeed all other agencies whose activities are covered in this report.

I thank you all.

**Hon. Justice David Kenani Maraga, EGH  
Chief Justice and President of the Supreme  
Court of Kenya,  
Chairman of the National Council for the  
Administration of Justice**

**28th February 2019**



**T**he Office of the Chief Registrar is tasked with coordinating and providing support that is necessary for the courts to deliver services in an effective manner. Accordingly, the Office of the Chief Registrar is the bridge between the Administration of the Judiciary and the management and Staff on one hand, and the Judicial Service Commission on the other hand. The Chief Registrar is also the Secretary to the National Council for the Administration of Justice (NCAJ) and thereby provides an important link between the Judiciary and the justice sector institutions that come together under the umbrella of the NCAJ.

The main focus of the Judiciary during the year in review was to provide and put in place measures and systems to facilitate the implementation of the Judiciary's policies, which include: Strategic Plan, the Strategic Blueprint (the SJT) among other institutional policies. Accordingly, we were able to undertake many activities (most of which are highlighted in this report) and these include: the initiation and completion of court infrastructure which comprises the construction of new courts, rehabilitation of old and dilapidated courts, provision of transport for Judges and courts, installation of Wi-Fi and cable internet connectivity to over 80 courts, and the recruitment and appropriate deployment of judicial

## Note from the Office of the Chief Registrar

officers and judicial staff across all courts and spending units.

While we have clearly laid out the vision and plans of the Judiciary in the different policy documents, the institutional arrangements that we have put, or continue to put in place, provides a practical means through which these aspirations can be achieved. It is with this in mind that the Judiciary undertook an organizational review in order to reflect on how best to arrange our institutional structures in order to ensure even better delivery of services.

There is no doubt that our collective efforts have seen an impact in the delivery of justice. The report shows a marked and sustained increase in the case clearance rate, reduced distance to the courts through the establishment of new courts, mobile courts and sub registries, reduced revenue leakage through the automation of the payments and adoption of the cashless payment modes, We have also seen improvement in the quality of decisions through the colloquia, exchange programs and extensive trainings that have been attended by our judges, judicial officers and judicial staff. These are encouraging results and we shall continue to confront the existing challenges and obstacles in pursuit of our vision.

Thank you.

**Anne A. Amadi, CBS**  
**Chief Registrar of the Judiciary, and**  
**Secretary, National Council on the**  
**Administration of Justice**

**28 February 2019**

## Acknowledgment

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**T**he State of the Judiciary and the Administration of Justice Report (SOJAR) is published annually and contains a report of activities undertaken by the Judiciary and other agencies in the justice sector. The annual exercise of preparing this report takes the collective effort of the different agencies whose activities are covered here. We therefore thank the leadership in the different institutions for participating in this process. We specifically thank the officers from the different agencies for compiling and submitting institutional reports.

The SOJAR Committee was constituted by the Honourable Chief Justice and tasked with the responsibility of preparing the report. We thank the following members who participated in drafting the main chapters of the report: Dr. Conrad Bosire (Chairman), Irene Omari (Secretary), Isaac Wamaasa, Mundia Muchiri, Hon. Joseph Were, Dr. Freda Githiru -Mugambi, Moses Maranga, Martin Astiba, Lucy Njaramba, Dominic Maina, Dr. Masha Baraza, Fred Nyinguro, John Muriuki, Sophie Kaibiria, George Balozi, Jackie Mulwa, Mercy Mwirigi, Hon. Moses Wanjala, Lewis Butaki, Mercy Masese, and Anthony Sissey. We also thank the editorial team that went through the various drafts to produce the final report.

Finally, we thank the leadership of the Judiciary for providing support and facilitation that enabled us to go through all the steps and activities that went into the preparation and finalization of the report.

Thank you.

**Dr. Conrad Bosire,**  
**Chief of Staff**  
**Chairman, State of the Judiciary Report Committee**

**28th February 2019**

## Executive Summary

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**T**his report covers the activities of the Judiciary and other justice sector institutions for the period 2017/18. The Judiciary blueprint, *Sustaining Judiciary Transformation: an agenda for service delivery (2017-2021)*, which was launched during the previous year (2016/17) informed the activities of the Judiciary that are covered in this report. The SJT Implementation Monitoring Committee (IMC), which was established to monitor and oversee implementation, has put in place measures and systems that facilitated the implementation of the SJT pillars during the reporting period.

There were changes and transition in the leadership of the Judiciary, in the Court of Appeal (Office of the President), the High Court (Office of the Principal Judge), and the Office of the Principal Judge of the Employment and Labour Relations Court. The transition came at a time when the Judiciary initiated a process of reviewing its institutional and organizational structure with a view of ensuring an optimal allocation and alignment of its human resources. The Organizational Review was completed and submitted to the Judicial Service Commission (JSC) for consideration and adoption. These events, together with the implementation of the SJT, provide the Judiciary a sustained opportunity to reshape and recast its operations in order to ensure an effective pursuit of achievement of its constitutional mandate.

Indeed, the August 2017 General Election, which took place in during the period under review, provided an avenue to test the SJT's pillars. The Judiciary Elections Committee (JCE) led the preparations and strategies for readiness of the Judiciary. After the election, the Supreme Court heard and determined the Presidential election petitions, which resulted in the nullification of the Presidential election of 8th August 2017. The Court subsequently upheld the repeat election that was conducted on 26th October 2018. All the other election petitions were also heard and determined within the statutory timelines and this was testimony to the adequate preparations of the Judiciary.

The chapters in this report provide highlights of activities, challenges, and progress in areas of operations of the Judiciary and other justice sector institutions. The inclusion of the other justice sector institutions provides a broad view of the activities and achievements of the justice sector. The Constitution calls on state agencies and other institutions in the justice chain to embrace cooperation and collaborative approaches in order to ensure the

effective administration of justice. This report provides information, and an initial basis to support coherence and harmony.

**Chapter one** of the report focuses on leadership and management. The chapter notes the progress and challenges in the specific areas of focus in the implementation of the SJT. Starting with backlog clearance, the chapter details the progress in the undertaking by the Chief Justice to clear cases that are five years or older. At the time the Chief Justice made the undertaking, there was a backlog of 170,186 cases in the entire Judiciary that were over 5 years old. As at 30th June 2018, total case backlog of cases over five years in age stood at 83,468, details of which are covered in Chapter two. The Chapter also notes the significant growth in donor funding and partnerships during the period under review, with the major highlight being the launch of the Programme for Legal Empowerment and Aid Delivery in Kenya (PLEAD). The PLEAD Programme is a Euro 34 Million Programme for the Kenya Justice system which focuses on 12 counties and whose programme seeks to strengthen the rule of law and effectiveness in the criminal justice sector for a period of five years.

The Chapter also details the number of documents (institutional, policy and legislative) that were developed during the reporting period, as well as the committees and taskforces that the Judiciary established or participated in establishing.

One of the pillars of the SJT is to strengthen the Office of the Judiciary Ombudsman. The Chapter indicates that during the reporting period, a total **3515** complaints were lodged. Out of these, **2324** complaints were processed and closed successfully. This represented 66 per cent of the total complaints received.

**Chapter two** is on the theme of access to justice and is divided into two parts. The first part analyses backlog and statistics of cases before the different courts. The chapter provides quantitative and qualitative information from the courts and provides a picture of how courts are performing. In the FY 2017/18, a total of **402,243** cases were filed in the Judiciary out of which **283,788** were criminal cases while 118,455 were civil cases. In the same period, a total of 370,488 cases were resolved in all courts, which comprised **243,821** criminal cases and 126,667 civil cases. Figure 2.1 gives the trend for filed and resolved cases in the Judiciary from FY 2014/15 to FY 2017/18. Cases filed in the Judiciary rose from **344,180** in the FY2016/17 to **402,243** cases in the FY 2017/18, which is a 15 per cent increase, which is a likely indicator of the rising level of public confidence in the Judiciary. By the end of the FY 2017/18, there were **553,187** pending cases in the Judiciary, which comprised **219,686** criminal cases and **333,501** civil cases.

Effective administration of justice requires strategies beyond the courtroom. Accordingly, the second part of the Chapter describes the various strategies and efforts that have been put in place to broadly enhance and improve access to justice. The initiatives detailed in the chapter include: reduction of case backlog;

digitization of Judiciary processes and enhancement of human resource capacity. Other measures are: improvement of court infrastructure, implementation of performance management and measurement, and entrenchment of alternative dispute resolution mechanisms.

**Chapter three** covers the activities of tribunals. The Constitution places tribunals under the Judiciary, therefore making the bodies a critical part of the Judiciary's broader structure. Previously, the different tribunals were under the respective ministries. There are about 60 tribunals in Kenya. The chapter reports that five tribunals transited to the Judiciary during the reporting period bringing the cumulative figure of those that have been transited by the National Treasury to 20. During the period under review, **5,615** cases were filed while **2,530** cases were resolved. At the close of the financial year, there were 11,100 cases pending in all tribunals. The chapter also contains jurisprudence from the decisions of the tribunals.

**Chapter four** reviews jurisprudence that emerged from the courts during the period under review. Courts at various levels made several ground breaking decisions in various areas of law including electoral laws, constitutional law, criminal law, family law, land and environment, and employment and labour matters among others, which advanced the course of justice and development of jurisprudence. Decisions covered under this chapter include those from the High Court, the Employment and Labour Relations Court, the Environment and Land Court, the Court of Appeal, and the Supreme Court. The Chapter also includes a list of laws that were declared unconstitutional by the courts during the period under review.

**Chapter five** reports on the development and status of human resource in the Judiciary. The goal of the Judiciary is to ensure that there is adequate human resource to support the operations of the Judiciary. During the period under review, the Judicial Service Commission (JSC) concluded a recruitment process for various officers whereby 67 people were appointed. 49 of the new employees (representing 73 per cent) are female, while 18 of them (27 per cent) are male. 42 Resident Magistrates were appointed, 10 Law Clerks and 15 others in different positions of service. The Judiciary had of **5,698** employees as at the end of the reporting period. The Judiciary is composed of 155 Judges (2.8 per cent); 513 Magistrates and Kadhis (9.2 per cent) and 4,930 (88.1 per cent) Judicial Staff. There are 2,728 female employees representing 48.7 % and 2,870 are male, representing 51.3% of the Judiciary workforce. 91 members of staff are Persons living With Disabilities (PWDs), representing 1.6 per cent of the Judiciary workforce.

The Chapter reports a number of policy development during the reporting period, all aimed at ensuring an effective and optimal human resource outlay in the Judiciary. These include the successful conclusion of the Judiciary Organizational Review, and the Judiciary Training Policy and the Records Management Curriculum.

**Chapter six** provides an update on the Judiciary's training and capacity development, a mandate that is executed through the Judiciary Training Institute. The JTI led various activities focusing on innovativeness in learning, research, and training. In this regard, JTI oversaw the production of various publication and studies that continue to assist in research and capacity development. The publications focused on areas such as backlog clearance, and election dispute resolution. The JTI also assisted in carrying out capacity and training needs assessment, which formed the basis of the training calendar for the Judiciary.

The JTI also supported the development of various policy and institutional document, including the Judicial Code of Conduct, and the Judiciary Training Policy. Other activities included regional and international partnerships and collaboration in the area of judicial education and capacity development.

**Chapter seven** provides updates on the progress with the Judiciary's physical infrastructure across the country. In total, there are 102 court construction and rehabilitation works are at various stages of progress and measures have been put in place to complete the projects within the stipulated timeframe and budgetary provisions while maintaining good quality of finishes. Once completed, these courts will provide adequate infrastructure that will improve physical access to courts and reduce the distance travelled in search of justice.

During the period under review, there were **54** courts that were undergoing construction and rehabilitation and tender evaluation for construction was going on in one court. There were **13** new construction and rehabilitation initiated during the period under review. The chapter reports that there was drilling and equipping 13 boreholes, shelving works at 10 courts, and provision of furniture for 11 courts. Policy developments reported include the development of a long-term Judiciary Infrastructure Master Plan to guide the development of physical infrastructure in the Judiciary.

**Chapter eight** highlights the Judiciary's developments with regard to ICT and implementation of the digital strategy. The Chapter highlights the progress with the implementation of the Judiciary operation support system comprising various components of digitisation (electronic filing and case tracking). Currently, the solution is under pilot testing phase at the Commercial and Tax Division in Milimani where **333 cases** have been filed online and payment of Ksh **1.9 million** made through the KCB Mpesa solution. More than 14 law firms are participating in the pilot project. The chapter also reports that a total of 147,789 have been captured in the Case Tracking System. Other planned services include court recording and transcription services, speech to text technology, Enterprise Resource Planning (Judiciary Financial Integrated Management Information system, Judiciary Integrated Performance Management and Accountability System, ICT Online Desk, and the Ombudsman online desk). The ICT Department also developed and concluded the Judiciary ICT Policy and Master Plan



**Chapter nine** presents an analysis of the Judiciary's financial performance covering areas such as funding within the national context, including a comparative analysis of overall budgetary allocation for the arms of government and public institutions. The Chapter also provides information on revenue and deposits from courts. The overall national budget has been growing steadily over the years, from Kshs. 1.5 trillion in the FY 2015/16 to Kshs 1.7 trillion in the FY 2016/17 and Kshs 2.0 trillion in the FY 2017/18. However, Judiciary's budget has not grown in tandem with the overall national budget. While the Executive has been receiving an average of 97 per cent, the Judiciary's share has remained below 1 per cent of the national budget over the years. In the FY 2017/18, the budget went down to 0.7 per cent, negatively impacting on the achievement of planned targets and consequent realization of the Judiciary's mandate. Other matters covered in the chapter include: automation of revenue, expenditure and deposits; delinking of court station accounts from the sub-county treasuries, and the progress realized in the operationalization of the Judiciary Fund. The Judiciary finalised and submitted draft Judiciary Fund Regulations to operationalize the Judiciary Fund.

**Chapter 10** contains reports from the justice sector agencies as well as a report of activities of the various organs and committees of the National Council for the Administration of Justice. The institutions whose reports of activities are covered under Chapter 10 are: the National Council for the Administration of Justice (NCAJ), Office of the Attorney General and Department of Justice (OAG&DOJ), Office of the Director of Prosecutions (ODPP), the National Police Service (NPS), the Kenya Prisons Service (KPS), the Probation and Aftercare Services, the Community Service Orders Programme (PAS), the Ethics and Anti-Corruption Commission (EACC), the Council of Governors (CoG), the National Council for Law Reporting (NCLR), the Kenya Law Reform Commission (KLRC), the Commission on Administrative Justice (CAJ), the Independent Police Oversight Authority (IPOA), the National Transport and Safety Authority (NTSA), the Kenya National Commission on Human Rights (KNCHR), the Kenya Human Rights Commission (KHRC), the Council for Legal Education (CLE), the Federation of Women Lawyers in Kenya (FIDA-K), the Department of Children Services, the CRADLE, and Legal Resources Foundation (LRF).

The Chapter provides specific reports of the institutions above, thereby giving a broad view of the progress and challenges of the main actors in the justice sector. A number of multi-agency activities were undertaken under the aegis of the NCAJ, the main ones being preparedness for elections and multi-donor programmes and activities aimed at various justice initiatives. A review of the reports also demonstrates that the inadequacy of resources continues to be a major challenge among justice sector institutions, the Judiciary included. However, the institutional reports also demonstrate a willingness to collaborate and overcome this and other challenges highlighted in the report.



# Table of Contents

<b>Foreword</b>	<b>iv</b>
<b>Note from the Office of the Chief Registrar</b>	<b>vi</b>
<b>Acknowledgment</b>	<b>vii</b>
<b>Executive Summary</b>	<b>viii</b>
<b>Table of Content</b>	<b>xiii</b>
<b>List of Acronyms</b>	<b>xviii</b>

## **CHAPTER 1 Leadership and Management**

<b>1.0</b>	Introduction	2
<b>1.1</b>	Judiciary Transformation	3
<b>1.2</b>	The 2017 General Election	5
<b>1.3</b>	Transition and new leadership	6
<b>1.4</b>	Tributes	6
<b>1.5</b>	Judiciary donor programmes	7
<b>1.6</b>	Institutional publications, policies and legislative developments	8
<b>1.7</b>	Key events presided over by the Judiciary Leadership in 2017/18	8
<b>1.8</b>	Awards and recognitions	9
<b>1.9</b>	Delivery of Speeches by the Chief Justice	9
<b>1.10</b>	Admission of Advocates and swearing in of commissioners	10
<b>1.11</b>	Other highlights for the period	10
<b>1.12</b>	Office of the Judiciary Ombudsman	12
<b>1.13</b>	Public Complaints Resolution and Referral Mechanism	13
<b>1.14</b>	OJO Outreach and Partnerships	15
<b>1.15</b>	Monitoring Compliance with Practice Directions and Service Charters	15

## **CHAPTER 2 Access to Justice**

<b>2.0</b>	Introduction	18
<b>2.1</b>	Overall Judiciary Caseload Statistics	19
<b>2.1.1</b>	Filed and Resolved Cases in the Judiciary	19
<b>2.1.2</b>	Pending Cases in the Judiciary	20
<b>2.1.3</b>	Case Backlog in the Judiciary	22
<b>2.1.4</b>	SJT Implementation Status on Reduction of Case Backlog in the Judiciary	23
<b>2.1.5</b>	Case Clearance Rate for Courts	24
<b>2.2</b>	Supreme Court	24
<b>2.2.1</b>	Filed and Resolved Cases in the Supreme Court	24
<b>2.2.2</b>	Pending Cases in the Supreme Court	25
<b>2.2.3</b>	Case Backlog at Supreme Court	26
<b>2.3</b>	Court of Appeal	26
<b>2.3.1</b>	Filed and Resolved Cases in the Court of Appeal	26
<b>2.3.2</b>	Pending Cases in the COA	28
<b>2.3.3</b>	Case Backlog in COA	29
<b>2.3.4</b>	SJT Implementation Status on Reduction of Case Backlog in COA	31
<b>2.4</b>	High Court	31
<b>2.4.1</b>	Filed and Resolved Cases in High Court	31
<b>2.4.2</b>	Pending Cases in High Court	34
<b>2.4.3</b>	Case Backlog in High Court.	37
<b>2.4.4</b>	SJT Implementation Status on Reduction of Case Backlog in High Court	39
<b>2.5</b>	Employment and Labour Relations Court (ELRC).	40
<b>2.5.1</b>	Filed and Resolved Cases in ELRC.	40
<b>2.5.2</b>	Pending Cases in ELRC.	42
<b>2.5.3</b>	Case Backlog in ELRC.	44
<b>2.5.4</b>	SJT Implementation Status on Reduction of Case Backlog in ELRC	45
<b>2.6</b>	The Environment and Land Court (ELC)	45
<b>2.6.1</b>	Filed and Resolved Cases in ELC.	45
<b>2.6.2</b>	Pending Cases in ELC.	48
<b>2.6.3</b>	Case Backlog in ELC.	49
<b>2.6.4</b>	SJT Implementation Status on Reduction of Case Backlog in ELC	50
<b>2.7</b>	Magistrate Court	51

2.7.1	Filed and Resolved Cases in Magistrates Courts	51
2.7.2	Pending Cases in Magistrate Court	53
2.7.3	Case Backlog in Magistrate Court.	55
2.8	Kadhis' Courts	55
2.8.1	Filed and Resolved Cases in Kadhi's court.	55
2.8.2	Pending Cases in Kadhis' Court	58
2.8.3	Case Backlog in Kadhis' Court	59

### **CHAPTER 3 Access to Justice - Tribunals**

3.0	Introduction	65
3.1	Tribunals under the Judiciary	66
3.1.1	Industrial Property Tribunal	66
3.1.2	Political Parties Disputes Tribunal	66
3.1.3	Energy Tribunal	67
3.1.4	State Corporations Appeals Tribunal	67
3.1.5	Legal Education Appeals Tribunal	67
3.1.6	Standards Tribunal	67
3.1.7	Competition Tribunal	68
3.1.8	Competent Authority	68
3.1.9	HIV and AIDS Tribunal	68
3.1.10	Rent Restriction Tribunal	68
3.1.11	Cooperative Tribunal	69
3.1.12	Business Premises Rent Tribunal	69
3.1.13	National Environment Tribunal	69
3.1.14	Micro & Small Enterprises Tribunal	69
3.1.15	Communication and Multi Media Appeals Tribunal	70
3.1.16	National Civil Aviation Administrative Review Tribunal	70
3.1.17	Education Appeals Tribunal	71
3.1.18	Sports Disputes Tribunal	71
3.1.19	Public Partnership Private Petitions Committee	72
3.1.20	Transport Licensing Appeals Tribunal	72
3.2	Caseload Statistics for all tribunals	72
3.2.1	Filed and resolved cases in tribunals	72
3.2.2	Pending cases in tribunals	73
3.3	Staff distribution in Tribunals	75
3.4	Tribunal Chairpersons and Locations	75
3.4.1	Induction Training for Tribunals Secretariat Staff	76
3.4.2	Induction Training for New Tribunal Members	76
3.4.3	Institutionalizing performance management	76
3.4.4	Staff Performance Appraisal	77
3.4.5	Assessment of Tribunal Registries and Records Appraisal	77
3.4.6	Launch of Service weeks at the Cooperative Tribunal	77
3.4.7	Disposal of Obsolete Records at the Cooperative Tribunal	77
3.4.8	Assessment of Staff Working in Tribunals (Staff Mapping)	78
3.4.9	Operationalization of New Tribunals	78
3.4.10	Development of Service Delivery Charters	78
3.4.11	Development of Strategic Plans	78
3.4.12	Capacity building retreats	78
3.4.13	Public Awareness Initiatives	79
3.5	Jurisprudence from Tribunals	80

### **CHAPTER 4 Jurisprudence**

4.0	Introduction	118
4.1	Supreme Court	118
4.1.1	Constitutionality of the Death Penalty provided for under Section 204 of the Penal Code	118
4.1.2	Procedure for Filling Vacancy in the Office of Deputy Governor	120

4.1.3	Recusal of a Supreme Court Judge	123
4.1.4	Grounds for nullification of an election	124
4.2	Decisions Emanating From The Court of Appeal	139
4.2.1	The Jurisdiction of Magistrates' Courts to hear and determine Employment and Labour Relations Claims and Environment and Land Matters	139
4.2.2	Whether a Judge can be sued in a course of action arising from the lawful performance of his or her judicial functions and whether judicial immunity is absolute	142
4.2.3	Article 45(3) of the Constitution on equality of spouses at the time of marriage, during the marriage and at the dissolution of marriage does not translate to equal matrimonial property entitlement	147
4.2.4	Can a resulting trust arise where property is transferred in circumstances in which the transferor did not intend to transfer the beneficial interest to the transferee?	149
4.3	Jurisprudence Emanating From The High Court During The Reporting Period	152
4.3.1	To what extent are consumers entitled to the Right to Nutritional Information and Storage directions under Article 46 of the Constitution	152
4.3.2	Whether a Kenyan by birth can lose his/her citizenship by acquisition of another country's citizenship	154
4.3.3	The Right of an Adopted Child to know the Identity of his/her Biological Parents	156
4.3.4	Whether or not the decision of the Government of the Republic of Kenya to disband the Department of Refugees Affairs and appoint a Task Force to implement the closing of the Dadaab Refugee Camp Complex and repatriation of the refugees of Somali origin to Somali violates the constitutional right of the refugees.	163
4.3.5	Requests for extradition and legal assistance by the International Criminal Court (ICC) Should be In conformity with the laws of Kenya	167
4.4	Cases From The Environment And Land Court	171
4.4.1	Who has the locus standi to bring an action on the right to a clean and healthy environment?	171
4.4.2	Customary law trusts are not subject to limitation periods under the Limitation of Actions Act.	172
4.4.3	The Effect of Death of a Donor of a Power of Attorney to a Suit Instituted by the Donee of the Power Attorney	174
4.5	Decisions From The Employment and Labour Relations Court	176
4.5.1	Poor performance of an employee per se is not sufficient reason for termination of employment	176
4.5.2	The Salaries and Remuneration Commission is required to observe fairness and adherence to the dictates of the Constitution while undertaking a job evaluation	179
4.5.3	A court can only interfere with an internal disciplinary action where there is a breach of the process and with a view to setting that process right	180
<hr/>		
<b>CHAPTER 5 Human Resource Management &amp; Development</b>		
5.0	Introduction	185
5.1	Key milestones	185
5.1.1	Human resource manual review taskforce	185
5.1.2	Performance appraisal system	186
5.1.3	Organisation review	187
5.1.4	Recruitment	187
5.2	Authentication of certificates	189
5.3	Career Progression and Promotions	190

5.3.1	Promotion of Judicial Officers	190
5.3.2	Promotions of Judicial Staff in PLS 9 and above	190
5.3.3	Promotions of judicial staff in PLS 8 and below	190
5.4	Confirmation in appointment	191
5.5	Separation of Employees	192
5.6	Disciplinary control	194
5.6.1	Complaints /petitions against Judges	194
5.6.2	Disciplinary Matters for Judicial Officers	194
5.6.3	Disciplinary matters for judicial staff, pls 9 and above	195
5.6.4	Disciplinary matters for judicial staff, pls 8 and below	196
5.6.5	Analysis matters carried over and finalized in FY 2017/2018	196
5.6.6	Disciplinary Matters Finalized In FY 2017/2018	197
5.6.7	Disciplinary actions on disciplinary matters received in fy 2017/18	198
5.6.8	Disciplinary Actions Carried Over From FY 2016/17	198
5.7	Training and Development	199
5.7.1	KSG Courses Conducted In FY 2017/18 per School	200
5.8	General Attachment and Pupillage	203
5.9	Judicial Attachment	203
5.10	Declaration of Assets and Liabilities	204
5.11	Employee Wellness Programmes	204
5.12	Transport	205
5.13	Judiciary Establishment and Employee Composition	205
5.14	Employee composition	211

## **CHAPTER 6 Training and Capacity Building within The Judiciary: The Judiciary Training Institute**

6.0	Introduction: Establishment and Mandate of JTI	230
6.1	Activities Held Towards Implementation of the Sustaining Judiciary Transformation (SJT) Blueprint	231
6.2	The Judiciary Training Master Calendar 2017/2018	232
6.2.1	The 2017/2018 Annual Judges Colloquium	234
6.2.2	Annual Magistrates and Kadhis Colloquium	235
6.3	Regional Programs	236
6.3.1	The Africa Judicial Education Network on Environmental Law: AJENEL	237
6.3.2	HIV/TB Sub Committee on Judicial Education	237
6.3.3	East African Judicial Education Committee (EAJEC)	237
6.3.4	Benchmarking visits	238
6.4	Research and Policy Programs Undertaken	239
6.4.1	Judiciary Training and Development Policy	239
6.4.2	Justice Needs and Satisfaction Survey	239
6.4.3	Training Needs Assessment	239
6.4.4	Development of the Judicial Code of Conduct.	239
6.4.5	Alternative Justice System (AJS)	240
6.4.6	Study on Clearing Case Back Log	240
6.4.7	Development of Kadhis Handbook and Rules of Practice for Kadhis Courts	240
6.4.8	Development of Court Administrators Handbook	240
6.4.9	Study on Performance Evaluation Tools for Judicial Officers	240
6.4.10	Development of a Bench book on Environmental Law	241
6.5	Training Innovations	241
6.6	Digitization at JTI	241
6.7	Publications	242

## **CHAPTER 7 Infrastructure**

7.0	Introduction	244
7.1	Achievements	244

## **CHAPTER 8 Digital Strategy**

8.0	Introduction	275
8.1	Judiciary digital strategy	275
8.1.1	Judiciary operation support system	275
8.1.2	The electronic filing (e-filing) system	276

8.1.3	Case tracking system (CTS)	277
8.2	Court management systems	278
8.2.1	Court Recording and Transcription Solution (CRTS)	278
8.2.2	Speech to text solution	278
8.3	Enterprise Resource Planning	278
8.3.1	Judiciary Financial Management Information System (JFMIS)	278
8.3.2	Judiciary Asset Management System (JIAMS)	279
8.3.3	Judiciary integrated performance management and accountability system (JIPMAS)	279
8.3.2	Judiciary ombudsman online service desk	280
8.3.3	Automated ICT support desk	280
8.4	Document and archive management	280
8.5	ICT Infrastructure	281
8.6	Judiciary ICT policy and master plan	284

## **CHAPTER 9 Finance And Accounts**

9.0	Introduction	287
9.1	Funding the Judiciary within the national context	287
9.1.1	Overall budgetary allocation for the three Arms of Government	287
9.2.1	Budget Requirements in the Governance Justice Law and Order Sector (GJLOS)	290
9.3	Judiciary budget requirements versus the allocated Budget	292
9.4	Approved budget estimates	293
9.5	Expenditure Analysis and Absorption Levels	293
9.6	Court Revenue	295
9.7	Court Deposits	300
9.8	Automation of revenue, expenditure and deposits management	303
9.9	Operationalization of Judiciary Fund	303
9.10	Financial Challenges	303

## **CHAPTER 10 The State of the Agencies and Collaboration in the Justice Sector**

10.0	Introduction	305
10.1	Bail And Bond Implementation Committee	306
10.2	Ncaj Special Taskforce On Children Matters	309
10.3	Criminal Justice Reform Committee	309
10.4	Court Users Committee (Cuc) Program	309
10.5	Office Of The Attorney General	315
10.6	Office Of The Director Of Public Prosecution	318
10.7	National Police Service	323
10.8	Kenya Prisons Services	327
10.9	Probation And After Care Services	330
10.10	Community Service Orders	332
10.11	Community Services Order Programme	338
10.12	Ethics And Anti-Corruption Commission	340
10.13	Council Of Governors	345
10.14	National Council For Law Reporting	346
10.15	Kenya Law Reforms Commission	355
10.16	Commission On Administrative Justice	359
10.17	Independent Police Oversight Authority	362
10.18	Witness Protection Agency	368
10.19	National Transport And Safety Authority	373
10.20	National Crime Research Centre	376
10.21	Kenya National Commission On Human Rights	377
10.22	Kenya Human Rights Commission	380
10.23	Council For Legal Education	387
10.24	Federation Of Women Lawyers In Kenya	391
10.25	Department Of Children Services	394
10.26	The Cradle	397
10.27	Legal Resources Foundation	398
10.28	Judiciary	405
10.29	Reports From Court Users Committees	408

## Acronyms

<b>AACs</b>	Area Advisory Councils	<b>IACD</b>	International Anti-Corruption Day
<b>ACECA</b>	Anti - Corruption and Economic Crimes Act	<b>IAU</b>	Internal Affairs Unit
<b>ADR</b>	Alternative Dispute Resolution	<b>ICMS</b>	Integrated Court Management System
<b>AG</b>	Attorney General	<b>ICT</b>	Information Communication and Technology
<b>APP</b>	Africa Prison Project	<b>ICTA</b>	ICT Authority
<b>CAJ</b>	Commission on Administrative Justice	<b>IEC</b>	Information, Education and Communication
<b>CARPS</b>	Capacity Assessment and Rationalization Programme	<b>IJS</b>	Informal Justice Systems
<b>CDF</b>	Constituency Development Fund	<b>IPOA</b>	Independent Police Oversight Authority
<b>CIC</b>	Case Intake Committee	<b>JATS</b>	Judiciary Automated Transcription System
<b>CJS</b>	Community Justice System	<b>JFMIS</b>	Judiciary Information Management Information System
<b>CKL</b>	Child Line Kenya	<b>JIAMS</b>	Judiciary Information Asset Management System
<b>CMA</b>	Capital Markets Authority	<b>JICA</b>	Japan International Cooperation Agency
<b>CMS</b>	Content Management System	<b>JIPMAS</b>	Judiciary Information Performance Management System
<b>CMS</b>	Case Management System	<b>JPIP</b>	Judicial Performance Improvement Project
<b>CPC</b>	Criminal Procedure Code	<b>JSC</b>	Judiciary Service Commission
<b>CPIMIS</b>	Child Protection Information Management System	<b>JTF</b>	Judiciary Transformation Framework
<b>CRTS</b>	Court Recording and Transcription System	<b>KCA</b>	Kenya Children Assembly
<b>CSO</b>	Community Service Order	<b>KDF</b>	Kenya Defence Forces
<b>CTS</b>	Case Tracking System	<b>KHRC</b>	Kenya Human Rights Commission
<b>CUC</b>	Court Users Committee	<b>KIP</b>	Kenya Integrity Plan
<b>CVPT</b>	Crime and Violence Prevention Training	<b>KLRC</b>	Kenya Law Reform Commission
<b>DCRT</b>	Daily Court Return Template	<b>KPS</b>	Kenya Prisons Service
<b>DDD</b>	Digital Divide Data	<b>KPS</b>	Kenya Prisons Services
<b>DIALS</b>	Declarations of Income, Assets and Liabilities	<b>LAN</b>	Local Area Network
<b>EACC</b>	Ethics and Anti-Corruption Commission	<b>LRF</b>	Legal Resources Foundation
<b>EFT</b>	Electronic Fund Transfer	<b>MDAs</b>	Ministries/departments/ agencies
<b>ERP</b>	Enterprise Resource Planning	<b>MTI</b>	Mediation Training International
<b>FGM</b>	Female Genital Mutilation	<b>MUHURI</b>	Muslims for Human Rights
<b>FIDH</b>	International Federation on Human Rights	<b>MVI</b>	Motor Vehicle Inspection
<b>GAA</b>	Government Advertising Agency		

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<b>NCAJ</b>	National Council on the Administration of Justice	<b>PSVs</b>	Public Service Vehicle
<b>NCCJR</b>	National Committee on Criminal Justice Reforms	<b>RODI</b>	Resources Oriented Development Initiatives
<b>NCCS</b>	National Council for Children Services	<b>RTGS</b>	Real Time Gross Settlement
<b>NCRC</b>	National Crime Research Centre	<b>SCC</b>	Sector Coordinating Committee
<b>NGOs</b>	Non-Governmental Organisations	<b>SIDA</b>	Swedish International Development Cooperation Agency
<b>NLAS</b>	National Legal Aid Service	<b>SIL</b>	Strategic Impact Litigation
<b>NPS</b>	National Police Service	<b>SJT</b>	Sustaining Judiciary
<b>NPSC</b>	National Police Service Commission		Sustainability
<b>NTSA</b>	National Transport and Safety Authority	<b>TOT</b>	Training of Trainers
<b>OCS</b>	Officer Commanding Station	<b>UNGASS</b>	United Nations General Assembly Special Session
<b>ODPP</b>	Office of the Director of Public Prosecution	<b>UNICEF</b>	United Nations Children's Fund
<b>ORMS</b>	Offender Records Management System	<b>VAC</b>	Violence Against Children
<b>OVC</b>	Orphans and Vulnerable Children	<b>VEOs</b>	Violent Extremist Offenders
<b>PEV</b>	Post-Election Violence	<b>VISA</b>	Visitors International Stay Admission
<b>PMERL</b>	Planning and Reporting Template	<b>VPN</b>	Virtual Private Network
		<b>WPA</b>	Witness Protection Agency

# Chapter 1

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LEADERSHIP AND MANAGEMENT



# LEADERSHIP AND MANAGEMENT

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## 1.0 Introduction

**T**he Judiciary, like all other State organs and institutions of governance, draws its primary power and authority from the people of Kenya. The Constitution provides, under Article 1 (3), that all authority emanates from the people and is vested collectively in the Judiciary and independent tribunals, together with the other arms of government (the Legislature and the Executive). The Constitution further provides for the objects, purpose and manner in which judicial power and authority is to be exercised. In this regard, Article 159 of the Constitution provides that the exercise of judicial powers should ensure equality in the administration of justice, expeditious delivery of justice, employment and embracement of justice systems, and upholding of the substance of justice above technicalities and processes in the administration of justice. The Constitution is clear that the exercise of judicial power and authority should enhance and promote the purposes and principles enshrined in the Constitution. These principles provide guidance to the leadership of the Judiciary as well as a normative basis that binds all exercise of judicial power and authority.

The Chief Justice heads the Judiciary and is, by virtue of his position, the Chair of the Judicial Service Commission (JSC), the principal body that oversees the operations of the entire Judiciary. The Chief Justice is the President of the Supreme Court and is assisted in this role by the Deputy Chief Justice, who is the Vice President of the Supreme Court. The Chief Justice also chairs the National Council for the Administration of Justice (NCAJ), and the National Council for Law Reporting (NCLR). The year under review, 2017/18, was also the first full year under the new leadership in the Judiciary comprising of Chief Justice Hon. Justice David Kenani Maraga, and Hon. Lady Justice Philomena Mbete Mwilu, the Deputy Chief Justice.

The Office of the Chief Registrar is charged with overall coordination of departments in the Judiciary and general administration. Under Article 161(2) (c) of the Constitution, the Chief Registrar of the Judiciary is the chief administrator and accounting officer of the Judiciary, the Secretary to the JSC and the NCAJ. Responsibilities of the Chief Registrar include the overall administration of the judiciary, overseeing the preparation and presentation of the Judiciary budget to the National Assembly for approval, overall management of judiciary resources (revenue, human resources and physical resources) and the procurement process, and facilitation of efficient judicial services.

The Constitution and other enabling provisions of the law establish the Offices of Judges of the Supreme Court, Judges of the Court of Appeal, Judges of the High Court, Judges of the Employment and Labour Relations Court and Judges of the Environment and Land Court. There are heads of each of these courts that complement the Judiciary leadership. The Office of the President of the Court of Appeal (PCoA) is in charge of the Court of Appeal while the Principal Judge (PJ) heads the High Court. Both offices are established by the Constitution.

The positions of Presiding Judge of the Environment and Land Court (ELC), and the Principle Judge of the Employment and Labour Relations Court (ELRC) are established via legislation.<sup>1</sup> The heads of the different courts form part of the Judiciary leadership and they assist the Chief Justice and the chief registrar of the Judiciary in the efficient administration of justice and generally ensuring that the various courts live up to expectations of the Constitution. Below the leadership described above is a management and administration structure that comprises registrars, directorates, departments, units, and semi-autonomous agencies.

### **1.1 Judiciary Transformation**

The current blue print for the Judiciary, Sustaining Judiciary Transformation: A Service Delivery Agenda (SJT) 2017-2021, which was launched in the previous financial year (2016/17), continued to lead and guide service delivery and enhancement of judicial services for the reporting period. The strategic blueprint provides for a new and specific focus on enhancing service delivery, which seeks to consolidate the gains realized during the implementation of Judiciary Transformation Framework (JTF), 2012-2016 whose focus was mainly institutional and capacity building.

The SJT blue print contains the Judiciary's promise of a new deal for the Kenyan people. It specifically focuses on enhancing service delivery through targeted improvement of work methods and a dynamic corporate culture that emphasizes integrity reimagined while reinforcing measurable performance standards. The five main pillars of SJT are: Enhanced Access to Justice, Clearance of Case Backlog, Integrity and the Fight Against Corruption, the Judiciary Digital Strategy and Institutional Leadership and Governance.

The Chief Justice established an Implementation and Monitoring Committee (IMC) of the SJT strategic blueprint, which is chaired by the Deputy Chief Justice. The implementation of the strategic blueprint is executed through a bottom-up approach where each unit, court station, and directorate is required to contextualize the strategic blueprint in a manner that best serves their particular service delivery requirements. The key task of the IMC is to monitor and assist each unit and court station in the implementation of their comprehensive action plans and strategies towards the realization of the wider objectives of the SJT.

During the launch of the SJT on January 26, 2017, the Chief Justice made an undertaking to Kenyans that the Judiciary will clear the backlog of cases that are five year or older by the end of 2018. At the time, there were 170,186 cases older than five years. At the end of the reporting period a total of 80,654 such cases had been resolved, leaving a total of 102,773. This difference in figures was as a result of cases that were not five years old at the commencement of the exercise but which attained 5 years during the reporting period.

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<sup>1</sup> Section 6 of the Environment and Land Court Act 2011 and Section 5 of the Employment and Labour Relations Act 2011, respectively.

The SJT Implementation Monitoring Committee (IMC) continues to monitor the pace and progress of the clearance of backlog. Courts at all levels continue to undertake extra measures, such as, organizing service weeks in stations that have higher backlogs numbers, prioritization of resources towards backlog clearance, and engagement with stakeholders in the justice chain to reduce obstacle to the clearance of case backlog.

Along with case backlog clearance, the other top priority has been the ICT transformation, which entails the digitization of court files and court proceedings and automation of registry and administrative processes. Pilot projects for the digitization of court records were undertaken at the Commercial Division of the High Court during the year under review. This entailed the testing of an online case tracking system that enables online filing, digital file searches, status of the case and cause listing, among others. The pilot project also entailed electronic filing of cases (e-filing), automated fee assessment, e-payments, and e-service.



**Launch of the commercial Justice Sector Steering Committee Meeting**

During the reporting period, the IMC met with technical support experts, registrars, deputy registrars, directors and tribunal heads with the aim of enhancing understanding of SJT pillars and key result areas and the development of harmonized, implementable and measurable service charter targets for all units.

The IMC is mandated to monitor SJT implementation and this entails the review of activities; support to the Leadership and Management Teams (LMT) to boost station-based implementation strategies and enhance the flow of information between leadership units and court stations; LMT capacity building and change management workshops to ensure substantive understanding of the SJT pillars and Key Result Areas and that LMTs take ownership of SJT implementation at court station level; team building exercises; change management workshops with directors, and their staff to deepen appreciation of

the role of directorates in supporting and facilitating courts to deliver quality services and implementation of a communication strategy that will enhance the flow of information and exchange of ideas both within the Judiciary and externally with the institutions' clients, stakeholders and members of the public.



*Unveiling of the State of the Judiciary and the Administration of Justice Report 2016 – 2017 (SOJAR). December 15, 2017*

## **1.2 The 2017 General Election**

As part of its strategy for the preparations of the 2017 elections, the Judiciary established the Judiciary Committee on Elections (JCE) in August 2015 to guide the Judiciary's work in electoral dispute resolution. The preparations in the period leading to the August 2017 General Election entailed policy and legislative amendments in election matters, revision of rules relating to petitions, monitoring of the handling of election petitions, training of judicial officers, and stakeholder engagement and consultation. A number of meetings were undertaken, under the auspices of the National Council for the Administration of Justice (NCAJ), which brought together various agencies (the Police, the Independent Electoral and Boundaries Commission, Judiciary, Civil Society Organisations, development partners, and the media) to discuss and gauge preparedness for the elections.

The Presidential election petition that was filed on 18th August 2017 led to the nullification of the presidential election results by a majority of the Supreme Court on September 1, 2017 and the ordering of fresh elections. The Supreme Court subsequently upheld the repeat presidential election results on November 20, 2017. Election petitions increased from 188 in the 2013 General Election to 391 in 2017. There were three presidential election petitions, 35 petitions against Governors, 15 petitions senators, 98 against Members of the National Assembly, 12 against Women Representatives, 139 against Members of County Assemblies, 80 Party List petitions at Magistrates' Courts, and nine Party List petitions at the High Court.





*The full Supreme Court bench led by the Hon. Chief Justice, David Maraga, during the hearing of the Presidential Election petition.*

### **1.3 Transition and new leadership**

During the 2017/18 Financial Year, various courts conducted elections. The Court of Appeal judges elected Hon. Justice William Ouko as the President to succeed Justice (RTD) Paul Kihara Kariuki was appointed the Attorney-General. Judges of the High Court elected Hon. Lady Justice Lydia Achode as their Principal Judge, while Hon. Justice Maureen Onyango was elected the Principal Judge of the Employment and Labour Relations Court.

### **1.4 Tributes**

During the reporting period, the Judiciary was unfortunate to lose Hon. Mr. Justice Joseph Louis Onguto of the High Court Civil Division and 13 staff.



*The Late Hon. Mr. Justice Joseph Louis Onguto*

### 1.5 Judiciary donor programmes

Over the years, the Judiciary has enjoyed a good relationship with various development partners. Judiciary donors and development partners include United Nations agencies such as UNODC, UNDP, UNICEF, Embassies (Denmark, United Kingdom, United States, Germany, Netherlands and Sweden), the World Bank, and the European Union. Donor agencies and implementing partners include the International Development Law Organisation (IDLO), Ford Foundation, GiZ, IJM, Space for Giants, among others.

On March 9, 2018, the Chief Justice launched the Programme for Legal Empowerment and Aid Delivery in Kenya (PLEAD), a five-year programme that seeks to strengthen the rule of law by enhancing delivery of justice and alternatives to imprisonment in the criminal justice system. This is in accordance with Goal 16 of the 2030 Agenda for the Sustainable Development Goals (SDGs). This project will address factors that hinder efficient delivery of justice in the various institutions in the criminal justice sector. The PLEAD project is co-financed by the European Development Fund (EDF), UNDP and UNODC with a budget of EURO 34,150,000 and complements investment in similar areas by the Government of Kenya. The programme will focus on 12 counties – Wajir, Mandera, Lamu, Tana River, Marsabit, Isiolo, Garissa, Kisumu, Nairobi, Mombasa, Uasin Gishu and Nakuru.



*The Hon. Chief Justice, David Maraga, 3rd left, during the launch of the PLEAD program on 9th March, 2018.*

## **1.6 Institutional publications, policies and legislative developments**

As an institution, the Judiciary constantly reflects on how to ensure that its institutions, processes, and systems remain aligned with its Constitutional mandate. This has led to the development and review of laws, regulations, rules and policies that ensure that the Judiciary's operations are congruent with its broader mandate and responsibilities. The following policy and legislative developments were undertaken during the period under review:

### **Institutional publications**

- Revised Presidential Elections Rules, 2017 by the Supreme Court.
- Civil Appeals & Applications Practice Directions for the Court of Appeal
- ELRC Bench book
- Presidential Election Petition Compendium
- Compilation of Decisions on Bail and Bail
- Election Dispute Resolution (EDR) Bench Book
- Justice Needs Survey Report
- Performance Management and Evaluation Report
- Inheritance Law Booklet

### **Policy documents**

- Judiciary Library Services Guidelines
- ICT Policy
- ICT Masterplan
- Judiciary Fund Regulations
- The Organizational Review of the Judiciary was submitted to the JSC for adoption.

### **Judiciary committees and taskforces**

- The Taskforce on Alternative Dispute Resolution mechanisms was gazette vide Gazette Notice number 6869 of 21st July 2017.
- The Judiciary joined the Taskforce on the Mandatory nature of the death sentence formed by the Hon. Attorney General.

## **1.7 Key events presided over by the Judiciary Leadership in 2017/18**

During the year under review, the Judiciary leadership engaged in a number of key events, all of which are geared towards enhancing its constitutional mandate.

The main activities involved court visits to inspect ongoing constructions works, engage with Judges, Judicial officers and staff, assess the working environment and also engage with key stakeholders in the counties including county and national Government leaderships.



*The Hon. Chief Justice, David Maraga accompanied by the Hon. Lady Justice Jackline Kamau during a registry inspection.*

### **1.8 Awards and recognitions**

**Various honours and awards were conferred upon several members of the Judiciary.**

The Chief Justice was named by the *The NewAfrican* as one of the “Most Influential Africans of 2017”. In addition, the Chief Justice received the distinguished service award from the Law Society of Kenya On March 24, 2018, the 5th CB Madan Award at Strathmore University on 7th December 2017 and the Jurist of the Year Award from the Kenyan Chapter of the International Commission of Jurists on December 11, 2017. Supreme Court Judge, Justice Smokin Wanjala, received an honorary doctorate degree from the Commonwealth University in London in March 2018.

### **1.9 Delivery of Speeches by the Chief Justice**

The Chief Justice delivered a keynote speech at the 9<sup>th</sup> Annual African Development Conference at the Harvard Law School in March 2018. The theme of the speech was ***“The role that justice, good governance, and rule of law play in efforts to eliminate poverty and attain inclusive development.”***





**The Hon. Chief Justice David Maraga, 5th right, accompanied by Justice Joel Ngugi, 2nd left and then Chief of Staff, Dancun Okello, 4th left after delivering a Keynote address at the Harvard Law School on the theme “The Role that Justice, good Governance and the Rule of Law plays in an effort to Eliminate Poverty and Attain Inclusive Development”**

The Chief Justice also delivered a keynote speech at the 2018 Annual Kenya Diaspora Conference in Dallas, Texas in May 2018. The theme of the Conference was *“The Diaspora Renaissance: Optimising engagement with Motherland.”*

#### **1.10 Admission of Advocates and swearing in of commissioners**

During the year under review, the Chief Justice admitted to the Bar a total of 793 advocates.

**Table 1.1 Number of Advocates admitted to the Bar, 2017/18**

DATE OF ADMISSION	NUMBER OF ADVOCATES ADMITTED TO THE BAR
19 <sup>th</sup> July 2017	101
17 <sup>th</sup> October 2017	98
18 <sup>th</sup> December 2017	53
27 <sup>th</sup> June 2018	268
28 <sup>th</sup> June 2018	273
<b>TOTAL</b>	<b>793</b>

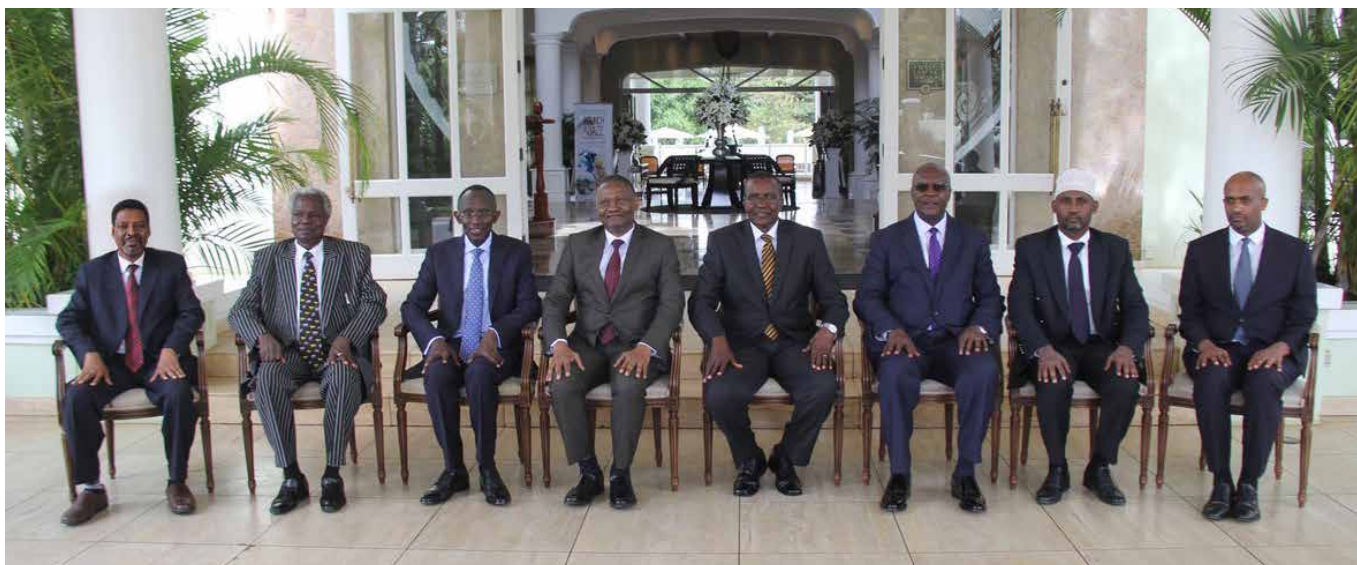
#### **The Chief Justice also swore in members of various bodies, including:**

- i. The Deputy Inspector-General of Police
- ii. The Deputy Inspector - General Administration Police
- iii. The Director of Criminal Investigations,
- iv. A member of the Board of the Kenya Revenue Authority, and
- v. Members of the National Construction Appeals Tribunal.

#### **1.11 Other highlights for the period**

- The Deputy Chief Justice Delivered a Lecture Titled *“The Role of the Judiciary on 12th January 2018 at the National Defence College Nairobi.”*

- The Judiciary hosted Chief Justices from the East African region in Nairobi from May 9 to May 12, 2018. The meeting was part of efforts to revive and revamp the East African Chief Justices Forum, a platform that brings together the East African judiciaries.



*The Hon. Chief Justice, David Maraga, fourth left, with the Chief Justices from the East African region during the inaugural meeting of held in Nairobi between 9th to 12th May, 2018.*

- The Deputy Chief Justice represented the Chief Justice at the second High Level Meeting of Chief Justices of Constitutional and Supreme Courts in Cairo, Egypt from February 18 to 25, 2018
- The Deputy Chief Justice was the guest speaker at the 12th Parliament Post-Election Seminar for members of the National Assembly on March 5, 2018.



*The Hon. Deputy Chief Justice, Philomena Mwilu addressing the Post Election Seminar for Members of the National Assembly held at Pride Inn Hotel, Mombasa between the 4th to 8th March, 2018.*



- The Chief Justice addressed the Global Judicial Integrity Network meeting in Vienna, Austria on April 10, 2018
- The Chief Justice delivered a keynote speech at the 5th Annual Conference on Devolution held in Kakamega on April 25, 2018.
- Chief Justice David Maraga paid a courtesy call on Hon. John G. Roberts Jr., Chief Justice of the United States at the Supreme Court in Washington DC on 21st May 2018



*Chief Justice David Maraga paid a courtesy call on Hon. John G. Roberts Jr., Chief Justice of the United States at the Supreme Court in Washington DC on 21st May 2018.*

### **1.12 Office of the Judiciary Ombudsman**

The Office of the Judiciary Ombudsman (OJO) is an accelerated grievance management mechanism in the office of the Chief Justice. Its primary mandate entails assisting the Chief Justice in carrying out the preliminary process of exercising disciplinary powers vested in the office of the Chief Justice under Section 15, Part IV of the Third Schedule of the Judicial Service Act (JSA). The Office is further charged with with restoration of public confidence and improvement of transparency and accountability within the Judiciary and encouraging public participation and engagement. Through various outreach activities, the Office endeavours to restore public confidence in the Judiciary. This is achieved by providing the public with a mechanism for lodging their dissatisfaction through a real time online complaint system and a team of employees who receive and attend to walk-in clients. The Judiciary Ombudsman is the Hon. Deputy Chief Justice.

During the reporting period, the office sensitized members of public on its role as an avenue for receiving and resolving complaints relating to their matters in court or relating to misconduct of Judiciary employees. The online real time complaints management system was upgraded with enhanced features so as to improve its performance. The office continued to carry out its activities to ensure delivery of the Sustaining Judiciary Transformation service delivery agenda.

### 1.13 Public Complaints Resolution and Referral Mechanism

In the FY 2017/18, the Office of the Judiciary Ombudsman received a total 3515 complaints. Out of these, 2324 complaints were processed and closed successfully. This represented 66 per cent of the total complaints received. A total of 149 cases were closed with workaround, meaning that there were chances that the cases would come up again as the matter was not fully resolved. Another 55 cases were merged, implying that they were similar complaints lodged multiple times. Table 1.2 presents information on processing of complaints in OJO

**Table 1.2: Data on Complaint Processing in OJO**

STATE OF COMPLAINT PROCESSING	2016/2017	2017/2018
Closed successful	2235	2324
Closed unsuccessful	4	4
Closed with workaround	90	149
Merged	2	55
New	236	514
Open	438	469
<b>Total</b>	<b>3005</b>	<b>3515</b>

From Table 1.2, there was a 17 per cent increase in total complaints that were processed. Information on most prevalent complaints is highlighted in Table 1.3.

**Table 1.3: Data on Prevalent Complaints registered at OJO**

TYPE OF COMPLAINT	2016/17	2017/18	CHANGE
Slow Service	141	198	57
Missing File	122	136	14
Poor Service	79	181	102
Referral cases to Stakeholders	2	66	64
Corruption	37	71	34
Delayed Rulings/Judgements	44	60	16
Date allocation	3	4	1
Delayed Orders	23	71	48
Cash Bail Refunds	8	10	2
Cannibalized files	3	8	5

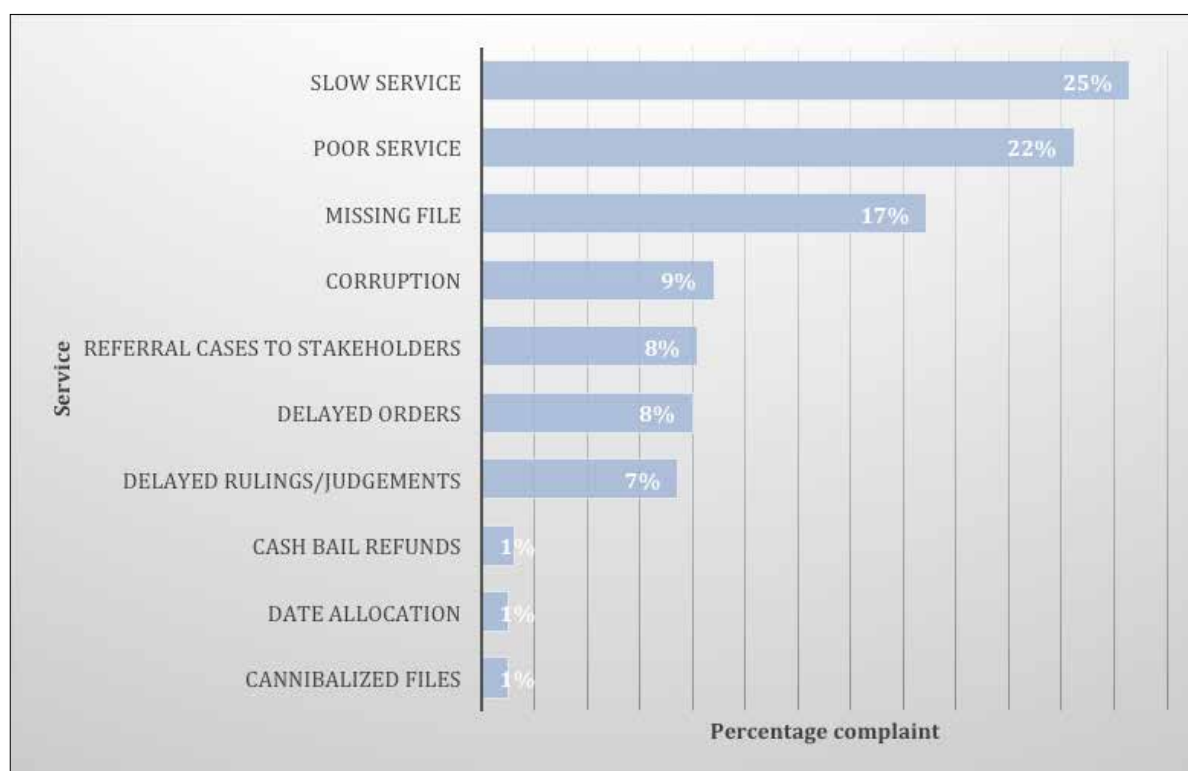
From Table 1.3, there was an increase in complaints in the various categories. Complaints on poor service went up by 129 per cent while those on slow service went up by 40 from the previous financial year. This may be attributable to greater public awareness of their right to complain to the Office once dissatisfied with the Judiciary services.

The Honorable Chief Justice was at the forefront in the fight against corruption among Judiciary employees. This could have contributed to the rise of corruption-related complaints from 37 cases in FY 2016/17 to 71 cases in 2017/18. The increase is an indication that not only

has the institution continued to act with speed to ensure acts of employee misconduct were brought to book, but also a renewed confidence from the public that swift action would be taken against any employee implicated in unethical/ corrupt behavior.

Increase in the referral service category was attributed to the increased public confidence in the Judiciary Ombudsman, therefore bringing forward complaints that could not be handled directly by the office. Referral complaints were forwarded to the respective stakeholders to handle accordingly.

**Figure 1.1 provides a reflection of the prevailing complaints that were processed during the reporting period.**



**Figure 1: Percentage complaints handled by OJO, FY 2017/18**

Training on the enhanced features of the upgraded complaints system was undertaken for the Ombudsman secretariat staff along with liaison officers in a number of courts. This aimed at ensuring continued timely and accurate response to complaints from the public. Table 1.4 outlines the trend of the various categories of complaints that were received and processed over the past four years.

**Table 1.4: Trend on complaints processed by OJO ( FY 2014/15 to FY 2017/18)**

COMPLAINT PROCESSED	2014/15	2015/16	2016/17	2017/18
Slow Service	155	242	141	198
Missing File	149	281	122	136
Poor Service	13	81	79	181
Referral cases to Stakeholders	14	12	2	66
Corruption	29	32	37	71

COMPLAINT PROCESSED	2014/15	2015/16	2016/17	2017/18
Delayed Rulings/Judgements	28	94	44	60
Date allocation	8	12	3	4
Delayed Orders	11	21	23	71
Cash Bail Refunds	8	17	8	10
Cannibalized files	4	9	3	8
	419	801	462	805

From Table 1.4, there has been a general increase on the number of complaints that were processed by OJO over time. This demonstrates a rising confidence by the public on Judiciary internal complaints handling mechanisms. The percentage change in the number of processed complaints is provided in Table 1.5.

**Table 1.5: Trend on percentage complaints processed by OJO ( FY 2014/15 to FY 2017/18)**

COMPLAINT PROCESSED	2014/15	2015/16	2016/217	2017/18
Slow Service	37%	30%	31%	25%
Missing File	36%	35%	26%	17%
Poor Service	3%	10%	17%	22%
Referral cases to Stakeholders	3%	1%	0%	8%
Corruption	7%	4%	8%	9%
Delayed Rulings/Judgements	7%	12%	10%	7%
Date allocation	2%	1%	1%	1%
Delayed Orders	3%	3%	5%	8%
Cash Bail Refunds	2%	2%	2%	1%
Cannibalized files	1%	1%	1%	1%

**Fig.:Comparative Complaint trends FY 2014/2015 to FY 2017/18**

#### 1.14 OJO Outreach and Partnerships

The mandate of OJO entails, among other things, to educate the public on the Judiciary and the redress mechanisms available to them.

This is realized through undertaking of various activities such as participation in the Agricultural Society of Kenya shows and holding public clinics. During the reporting period, the office participated in eight ASK shows and undertook 23 clinics in various court stations which was informed by the outcomes from the 2016/17 Customer Satisfaction Survey. Stations that recorded a less than 65 per cent customer satisfaction index were visited with the aim of identifying the customer concerns and addressing them. The office partnered with a development partner to foster engagements with the public and sensitize them through printing and distribution of IEC materials and holding public clinics.

#### 1.15 Monitoring Compliance with Practice Directions and Service Charters

The office is entrusted with monitoring court compliance, review corruption indicators and mal-administration in the Judiciary. The role is undertaken through scheduled and in some cases, impromptu visits to court stations. It ensures that court stations are adhering

to timelines set out in their service charters as well as sensitize the staff and the public on the Judiciary processes. During the reporting period, the office undertook spot checks in 36 court stations, compared to 19 undertaken in the last financial period. This 89 per cent increase in spot checks is attributed to the aggressive exercise the office undertook towards the last two quarters of the financial year in collaboration with development partners to ensure compliance in court stations. The corresponding effect of these spot checks can be seen in the complaint trends highlighted in Tables 1.4 and 1.5. Over time, there has been an increase in complaints lodged with OJO whenever the office relentlessly engages the public through participation in diverse activities.

# CHAPTER 2

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## ACCESS TO JUSTICE



# ACCESS TO JUSTICE

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## 2.0 Introduction

**T**he enhancement of access to justice has remained a fundamental goal of the Judiciary as enshrined in the Constitution. This is spearheaded by a system of courts that are required under the Constitution, to dispense justice to all, without delay and undue regard to procedural technicalities. The courts are supported by the Judiciary leadership and administrative structure that guides on policy and organizational environment for proper functioning of courts. As enshrined in the current Judiciary blueprint, Sustaining Judiciary Transformation (SJT) (2017-2021) and the Judiciary Strategic Plan (SP) (2014-2018), promotion of access to Justice is a focal area for continuous Judiciary transformation. The need to promote access to justice has necessitated the Judiciary to undertake and sustain policy, legal and administrative reforms using diverse strategic initiatives.

In this Chapter, access to Justice has been explicated in two parts. The first part presents the status on dispensation of justice by courts. This information is presented using caseload statistics that cover filed cases, resolved cases, pending cases and case backlog. Caseload statistics provide factual quantitative information on service delivery by courts. These statistics provide a platform for; tracking progress of Judiciary programmes and projects earmarked under the SJT and SP, performance management and measurement, promotion and placement of Judges and judicial officers and resource allocation to courts. Caseload data is collected in court rooms, registries and chambers by court assistants using Daily Courts Returns Template (DCRT) under the supervision of Judges and Judicial officers. The data is then collated within court station and submitted to the Directorate of Planning and Organization Performance (DPOP) for analysis and generation of various statistical reports and policy briefs.

The second part of the Chapter elucidates the strategic efforts and initiatives that aimed at improving access to justice. These efforts and initiatives included but not limited to the following; Reduction of case backlog; Digitization of Judiciary processes; Enhancement of Judiciary human resource capacity; Development of court infrastructure; Implementation of performance management and measurement; and Entrenchment of alternative dispute resolution mechanisms.

# PART 1:

## ACCESS TO JUSTICE:

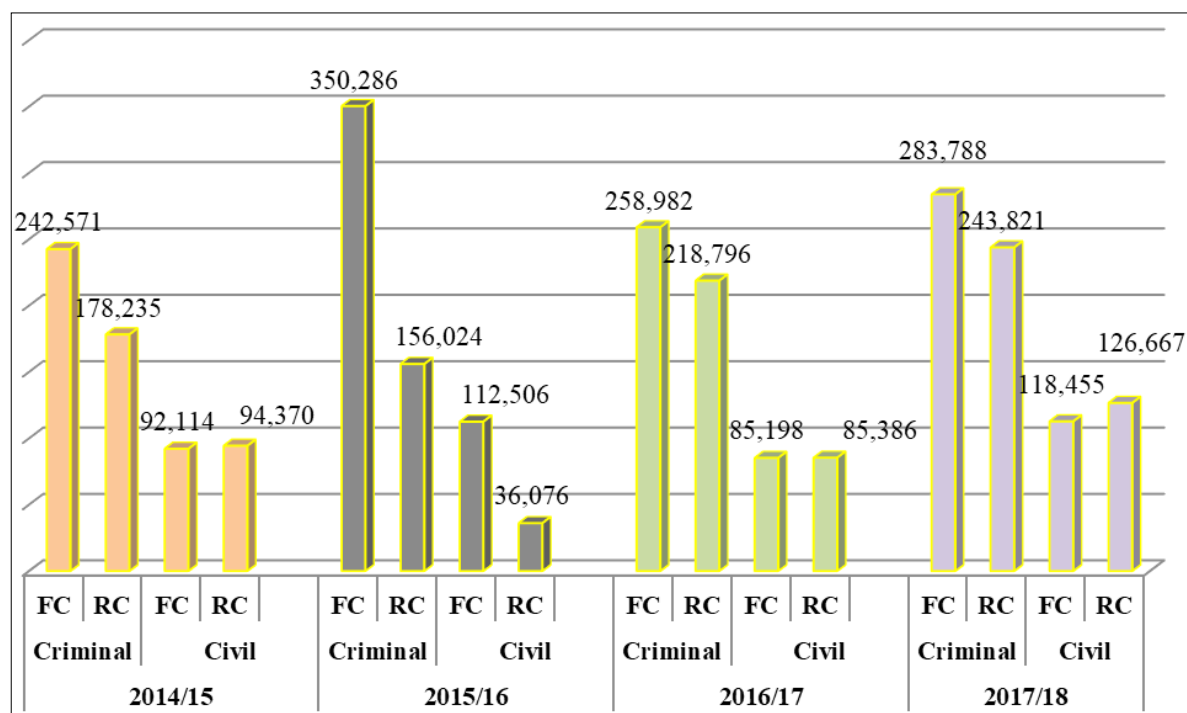
### CASE LOAD STATISTICS AND ANALYSIS

#### 2.1 Overall Judiciary Caseload Statistics

##### 2.1.1 Filed and Resolved Cases in the Judiciary

Filed cases (FC) refers to cases that are registered or initiated in a court for resolution. The number of filed cases provides quantitative information about the extent of judicial services that the public seeks from the Judiciary. Filed cases therefore shows the demand for judicial services by the public and the litigants. To serve its customers, the Judiciary is constitutionally bound to resolve cases and hence facilitate accessibility of justice to Kenyans. Resolved cases (RC) are cases where a judgment, final ruling or consent (including through mediation and arbitration) closing the case has been made. Hence, cases that are resolved by the Judiciary depicts the extent of supply of justice by courts. Analysis of the twin phenomena therefore provide critical information on efficiency and productivity by courts.

In the FY 2017/18, a total of **402,243** cases were filed in the Judiciary out of which **283,788** were criminal cases and **118,455** were civil cases. In the same period, a total of **370,488** cases were resolved in all courts which comprised **243,821** criminal cases and **126,667** civil cases. Figure 2.1 gives the trend for filed and resolved cases in the Judiciary from FY 2014/15 to FY 2017/18.



**Figure 2.1: Filed and Resolved Cases in the Judiciary by broad Case Type, 2014/15 to 2017/18**

From Figure 2.1, criminal cases remained the bulk of both filed and resolved cases over the years as compared to civil cases. In the FY 2017/18, the total resolved civil cases were more than the filed civil cases which points out that overall pending civil cases were reduced. However, more criminal cases were filed than resolved implying that by the end of the period under review, pending criminal cases increased. The specific information on filed and resolved cases for different court types for the last two FYs is given in Table 2.1.

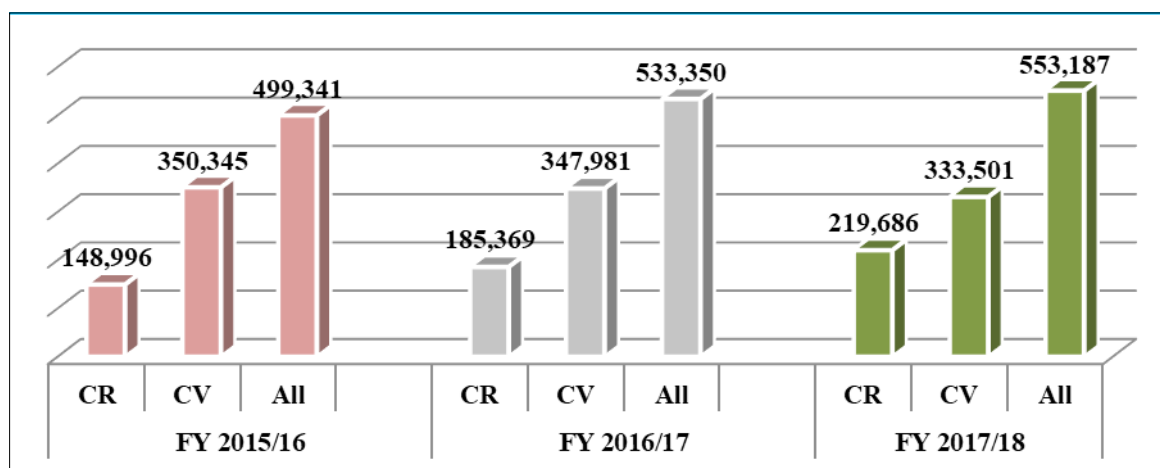
**Table 2.1: Trend on filed and resolved cases by court and broad case type**

COURT	2016/17		2017/18					
			Criminal		Civil			
	ALL FC	ALL RC	FC	RC	FC	RC	ALL FC	ALL RC
Supreme Court	38	16	N/A	N/A	61	39	61	39
Court of Appeal	1,578	1,052	485	166	1,528	1,029	2,013	1,195
High Court	20,553	27,987	11,898	8,179	13,151	29,503	25,049	37,682
ELRC	6,082	3,668	N/A	N/A	5,645	3,661	5,645	3,661
ELC	9,770	6,307	N/A	N/A	5,834	7,887	5,834	7,887
Magistrate Court	300,655	260,319	271,405	235,476	84,680	77,886	356,085	313,362
Kadhis' Court	5,504	4,833	N/A	N/A	7,556	6,662	7,556	6,662
<b>All Courts</b>	<b>344,180</b>	<b>304,182</b>	<b>283,788</b>	<b>243,821</b>	<b>118,455</b>	<b>126,667</b>	<b>402,243</b>	<b>370,488</b>

From Table 2.1, Filed cases in the Judiciary rose from **344,180 cases** in the FY 2016/17 to **402,243** cases in the FY 2017/18. This marked a 15 per cent increase demonstrating rising confidence by the public in the Judiciary as an institution for resolving their disputes.

### 2.1.2 Pending Cases in the Judiciary.

Pending cases refer to unresolved cases or cases where the final judicial decision in the case has not been made at the end of a given period. By the end of the FY 2017/18, there were **553,187** pending cases in the Judiciary, which comprised **219,686** criminal cases and **333,501** civil cases. The trend for pending cases in the Judiciary for the past three FYs by broad case type is illustrated in Figure 2.2.



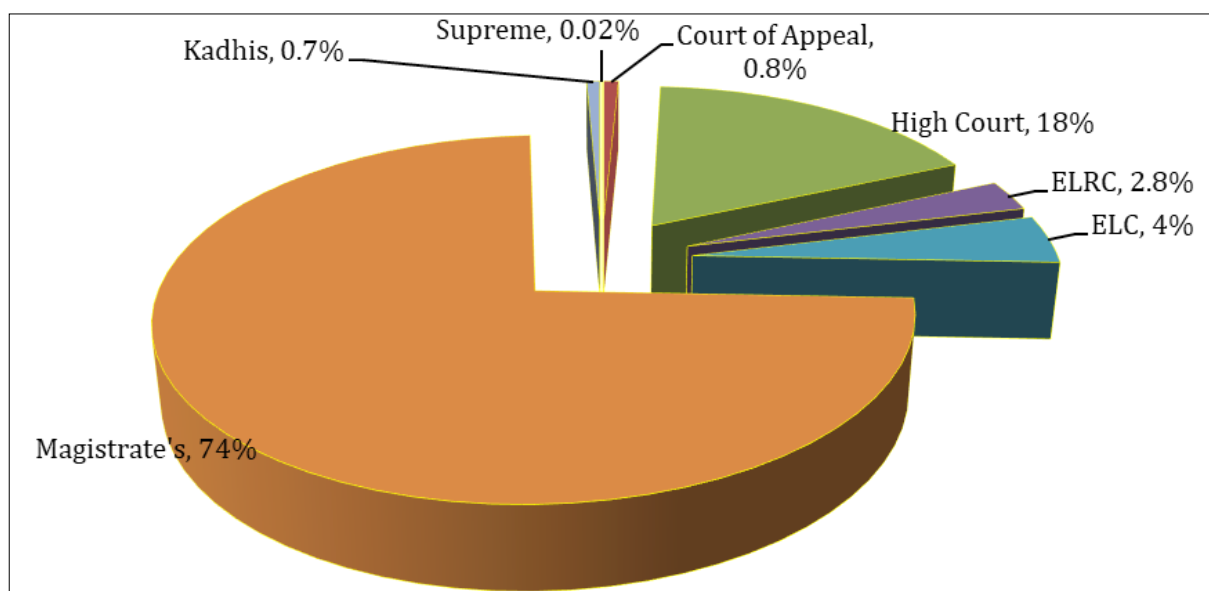
**Figure 2.2: Pending cases by broad case type, 2015/16 to 2017/18**

From Figure 2.2, the total pending cases rose by 4 per cent from the 533,350 cases at the end of 2016/17 FY to 553,187 cases at the end of FY 2017/18. The growth was at a decreasing rate since the rise that was recorded between the FYs 2015/16 and 2016/17 was 7 per cent. Civil cases remained the bulk of the pending cases for the past three reporting periods. Detailed statistics on the trend for pending cases by court and case type is provided in Table 2.2.

**Table 2.2: Pending cases by court and broad case type, 2016/17 -2017/18**

COURT TYPE	FY 2016/17			FY 2017/18		
	CR	CV	All	CR	CV	All
Supreme Court	N/A	73	<b>73</b>	N/A	95	95
Court of Appeal	1,074	2,313	<b>3,387</b>	1,393	2,812	4,205
High Court	16,888	102,889	<b>119,777</b>	20,329	76,998	97,327
ELRC	N/A	13,723	<b>13,723</b>	N/A	15,733	15,733
ELC	N/A	27,242	<b>27,242</b>	N/A	24,380	24,380
Magistrate Court	167,407	198,726	<b>366,133</b>	197,964	209,667	407,631
Kadhis' Court	N/A	3,015	<b>3,015</b>	N/A	3,816	3,816
<b>All Courts</b>	<b>185,369</b>	<b>347,981</b>	<b>533,350</b>	<b>219,686</b>	<b>333,501</b>	<b>553,187</b>

Majority of the pending cases were in the magistrate court at 407,631 cases followed by high court at 97,327 cases. The least number of pending cases were in the supreme court at 95 cases. The percentage pending cases by court type is provided in Figure 2.3.

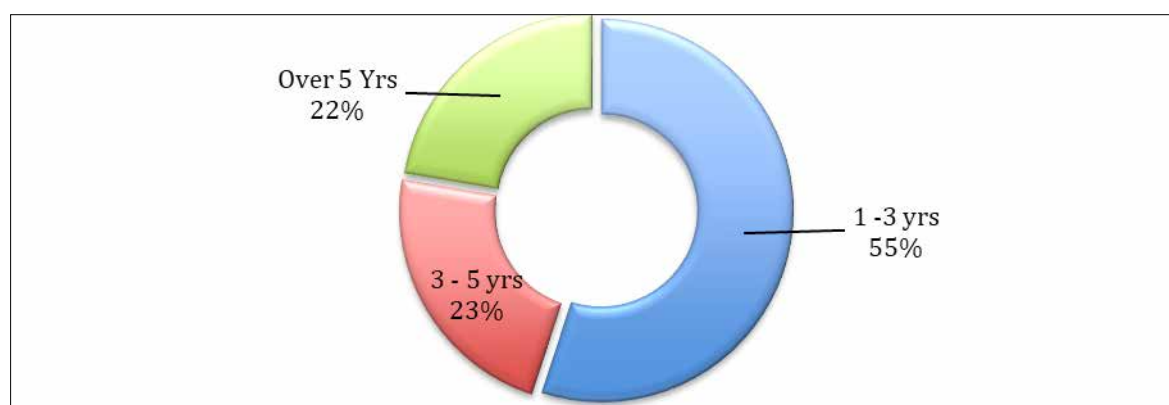


**Figure 2.3: Percentage Pending cases by Court Type, 2017/18**

Out of all pending cases, 74 per cent were in Magistrate Courts, 18 per cent in High Court, 4 per cent in ELC and 2.8 per cent in ELRC. The other courts shared 1.52 per cent.

### 2.1.3 Case Backlog in the Judiciary

Case backlog refers to unresolved cases after the expiry of the set timelines. In Kenya, the maximum desirable timeline that a case ought to have been finalized from the date of filing is 1 year. At the end of the period under review, the total number of cases classified as backlog stood at **327,928** cases. Out of these cases, 55 per cent were aged between 1 and 3 years, 23 per cent between 3 and 5 years and 22 per cent were over 5 years. This is illustrated in Figure 2.4.



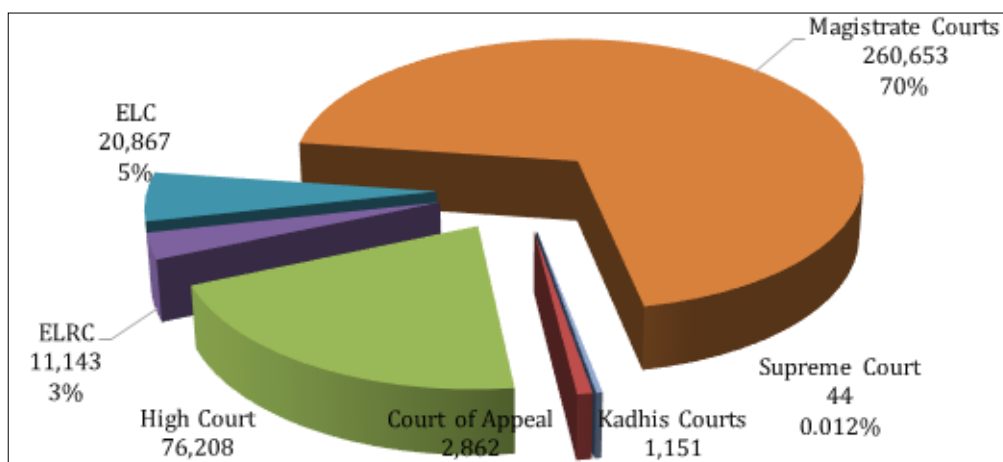
**Figure 2.4: Percentage case backlog by age in Judiciary, 30<sup>th</sup> June 2018.**

The number of backlog cases aged between 1 and 3 years were 205,762 those between 3 and 5 years were 84,671 while those aged above five years were 82,495. The distribution of case backlog by age as at 30<sup>th</sup> June 2018 for different court types is detailed in Table 2.3.

**Table 2.3: Case backlog by age and court, 30<sup>th</sup> June 2018**

Court Type	1-3 years	3-5 years	5 years and above	All Ages
Supreme Court	38	6	0	44
Court of Appeal	1,377	755	730	2,862
High Court	33,380	20,605	22,223	76,208
ELRC	8,079	2,310	754	11,143
ELC	8,802	6,751	5,314	20,867
Magistrate Court	152,935	54,244	53,474	260,653
Kadhis' Court	1,151	0	0	1,151
All Courts	<b>205,762</b>	<b>84,671</b>	<b>82,495</b>	<b>372,928</b>

The Magistrate and High Court had the highest case backlog at 260,653 and 76,208 cases respectively. By the end of period under review, the Supreme Court and Kadhis' court had no case backlog aged over 5 years. The percentage case backlog by court is provided in Figure 2.5.



**Figure 2.5: Percentage distribution of case backlog by court type, 30<sup>th</sup> June 2018**

From Figure 2.5, the bulk of case backlog was in the magistrate court at 70 per cent followed by those in High Court at 21 per cent. Figure 2.5 further shows that the case backlog in Kadhis' court and Supreme Court was less than 1 per cent at 0.31 and 0.012 per cent respectively.

#### 2.1.4 SJT Implementation Status on Reduction of Case Backlog in the Judiciary

Under the current Judiciary blueprint the SJT strategy, reduction in case backlog is a key focal area. The target has been to finalize cases that have been in court for a period of over 5 years. At the onset of SJT, there were 170,186 cases in the Judiciary which were over 5 years old. As at 30<sup>th</sup> June 2018, total case backlog of over five years in age stood at 82,495. Details on reduction of case backlog reduction by court type under the SJT are provided in Table 2.4.

**Table 2.4: SJT implementation status on reduction of case backlog by court**

Court Type	SJT target on reduction of case backlog than 5 years and above as at 1 <sup>st</sup> Jan 2017	Resolved backlog cases 5 years and above between 1 <sup>st</sup> January 2017 and 30 <sup>th</sup> June 2018	Case backlog 5 years and above as at 30 <sup>th</sup> June, 2018	% reduction in case backlog 5 years and above between 1 <sup>st</sup> January 2017 and 30 <sup>th</sup> June 2018
Supreme Court	0	0	0	N/A
Court of Appeal	648	294	730	13%
High Court	58,487	24,921	22,223	-62%
ELRC	771	956	754	-2%
ELC	4,146	4,756	5,314	28%
Magistrate Court	106,134	49,727	53,474	-50%
Kadhis' Court	0	0	0	N/A
<b>All Courts</b>	<b>170,186</b>	<b>80,654</b>	<b>82,495</b>	<b>-52%</b>

The overall percentage reduction in case backlog older than 5 years between 1st Jan 2017 and 30th June 2018 was 52 per cent. The bulk of the reduction was in the High Court at 62 per cent followed by the magistrate court at 50 per cent.

### 2.1.5 Case Clearance Rate for Courts

To cope with the increasing demand for justice as confirmed by the increase in filed cases over the years in Section 2.1.1, the Judiciary also increased the number of resolved cases to 370,488 from 304,182 in FY 2016/2017. This translated into an efficiency level, calculated using the case clearance rate (CCR), of 92 per cent. The CCR for various courts is elaborated in Table 2.5.

**Table 2.5: Case clearance rate by court and broad case type, 2017/18**

<b>Court Type</b>	<b>Criminal</b>	<b>Traffic</b>	<b>Civil</b>	<b>Overall</b>
Supreme Court	N/A	N/A	64%	<b>64%</b>
Court of Appeal	34%	N/A	67%	<b>59%</b>
High Court	69%	N/A	224%	<b>150%</b>
ELRC	N/A	N/A	65%	<b>65%</b>
ELC	N/A	N/A	135%	<b>135%</b>
Magistrate Court	87%	91%	92%	<b>88%</b>
Kadhi Court	N/A	N/A	88%	<b>88%</b>
<b>All Courts</b>	<b>86%</b>	N/A	<b>107%</b>	<b>92%</b>

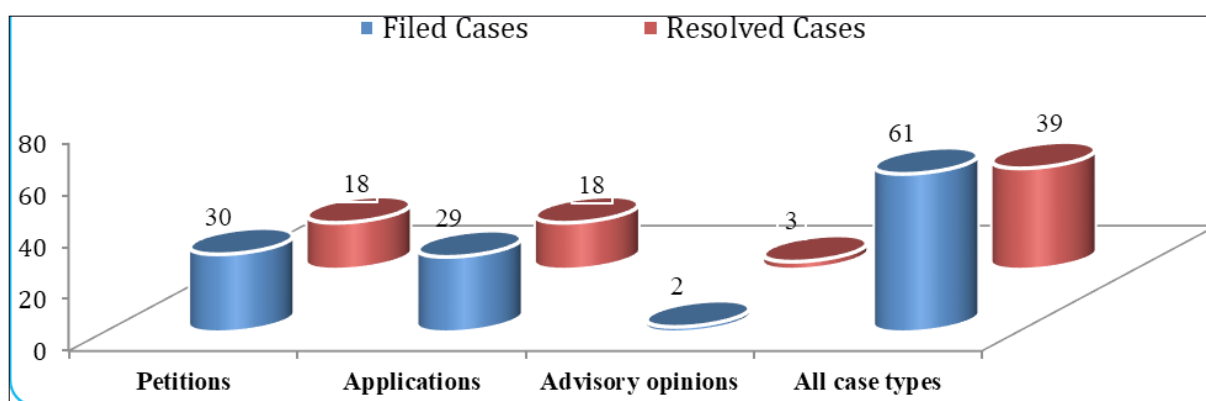
The High Court and ELC registered the highest CCR at 150 and 135 per cent respectively. The CCR for civil cases was greater than 100 percent which depicted declining pendency of civil cases. The CCR for criminal cases was 86 per cent which pointed to an increase in pending criminal cases at the end of the period under review.

## 2.2 Supreme Court.

The Supreme Court is established under Article 163 of the Constitution of Kenya and operationalised by the Supreme Court Act, 2011. The court has exclusive original jurisdiction to hear and determine disputes relating to the election of the President as well as appellate jurisdiction to hear and determine appeals from the Court of Appeal. The Supreme Court also gives advisory opinions at the request of the National Government, State organ, or county government. It is composed of 7 judges, headed by the Chief Justice and President of the Supreme Court.

### 2.2.1 Filed and Resolved Cases in the Supreme Court

In the FY 2017/18, 61 cases were filed while 39 were resolved in the Supreme Court. Figure 2.6 provides details on the types of cases that were filed and resolved in the Supreme Court.

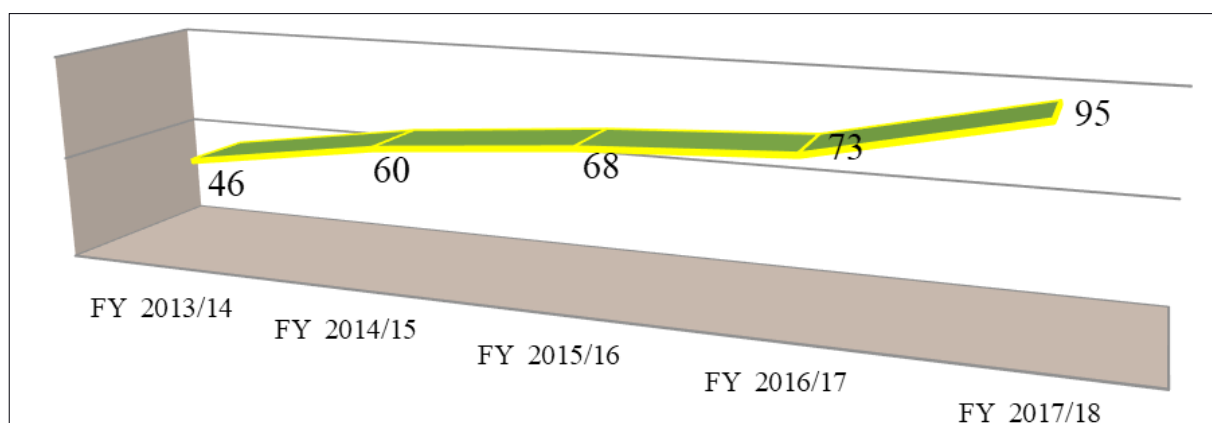


**Figure 2.6: Filed and Resolved Cases by type, Supreme Court**

As illustrated in Figure 2.6, majority of the filed cases were petitions followed by applications. For resolved cases, petitions and applications were the majority while advisory opinions were the least.

### 2.2.2 Pending Cases in the Supreme Court

By the end of FY 2017/18, there were 95 cases pending in the Supreme Court. The growth in pending cases in the Supreme Court for the last five years is highlighted in Figure 2.7.



**Figure 2.7: Growth in pending Cases in Supreme Court, 2013/14 - 2017/18**

Between the FY 2016/17 and 2017/18, there was a 30% increase in the number of pending cases in the Supreme Court. This could be attributed to an upsurge of filed cases from 38 cases recorded in the FY 2016/17 to 61 cases at the end of the period under review. Details for the growth of pending cases by specific case types for the Supreme Court is expounded in Table 2.6.



**Table 2.6: Pending Cases by Type, Supreme Court**

Case Type	FY 2013/14	FY 2014/15	FY 2015/16	FY 2016/17	FY 2017/18
Petitions	27	42	44	40	52
Applications	17	14	18	29	40
Advisory opinions	2	4	6	4	3
<b>All case types</b>	<b>46</b>	<b>60</b>	<b>68</b>	<b>73</b>	<b>95</b>

From Table 2.6, petitions were the bulk of pending cases at 52 followed by applications at 40 while advisory opinions were 3 at the end of FY 2017/18. The trend for the specific case types compared across the years covered in Table 2.4 with no significant deviation.

### 2.2.3 Case Backlog at Supreme Court

At the end of the FY 2017/18, there were 44 backlog cases in the Supreme Court. These cases are detailed in Table 2.7.

**Table 2.7: Case backlog by age for Supreme Court, 30<sup>th</sup> June 2018.**

Case Type	FY 2016/17	FY 2017/18	% Change in Backlog
1 – 3 Years	36	38	6%
3 – 5 Years	22	6	-73%
Over 5 Years	0	0	N/A
<b>All Backlog</b>	<b>58</b>	<b>44</b>	<b>-24%</b>

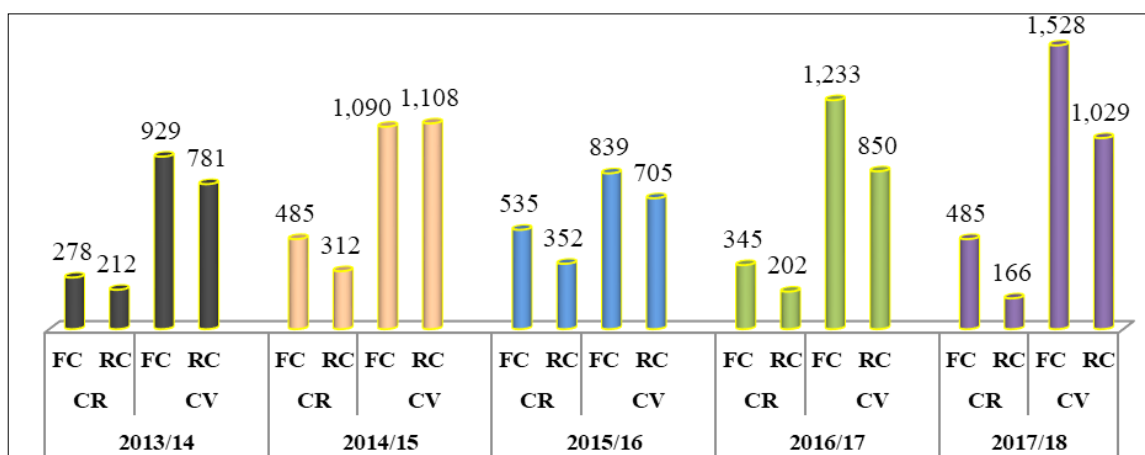
The Supreme Court reduced its case backlog by 24 per cent from 58 cases at the end of the 2016/17 FY to 44 cases at the end of 2017/18 FY. Out of the 44 cases, 38 were aged between 1 and 3 years while the remaining 6 were aged between 3 and 5 years. There was a 73 per cent reduction in case backlog by Supreme Court for cases aged between 3 and 5 years between the FYs 2016/17 and 2017/18.

## 2.3 Court of Appeal.

The Court of Appeal (CoA) is established under Article 164 (1) of the Constitution of Kenya and administered under the COA (Organization and Administration) Act of 2015. The jurisdiction of the Court is provided under the Appellate Jurisdiction Act (Cap. 9) while its practice and procedure rules are regulated by the Court of Appeal Rules, 2010. Currently, there are 4 Court of Appeal stations namely Kisumu, Malindi, Nairobi and Nyeri.

### 2.3.1 Filed and Resolved Cases in the Court of Appeal

In the FY 2017/18, a total of **2,013** cases were filed in the CoA. During the same period, **1,195** cases were resolved. Out of the **2013** cases that were filed, **485** cases were criminal in nature while **1,528** were civil in nature. Further, out of **1,195** cases that were resolved, **166** cases were criminal in nature while **1,029** were civil in nature. Figure 2.8 highlights the trend for filed and resolved cases in the CoA since 2013/14 FY.



**Figure 2.8: Filed and resolved cases by broad case type for CoA, 2013/14 - 2017/18**

In general, the number of filed and resolved cases have been increasing over the years for the COA. Detailed analysis on filed and resolved cases in COA stations is provided in Table 2.8.

**Table 2.8: Filed and Resolved Cases by COA station and broad case types**

COA	2015/16				2016/17				2017/18			
	CR		CV		CR		CV		CR		CV	
	FC	RC	FC	RC	FC	RC	FC	RC	FC	RC	FC	RC
Kisumu	205	111	180	165	98	36	147	90	201	31	165	111
Malindi	46	90	213	145	94	47	178	138	48	34	237	124
Nairobi	173	45	274	309	122	60	621	557	118	58	767	613
Nyeri	111	106	172	86	31	59	287	65	118	43	359	181
<b>All</b>	<b>535</b>	<b>352</b>	<b>839</b>	<b>705</b>	<b>345</b>	<b>202</b>	<b>1,233</b>	<b>850</b>	<b>485</b>	<b>166</b>	<b>1,528</b>	<b>1,029</b>

From Table 2.8, the bulk of the cases were filed in Nairobi COA followed by Nyeri COA. On resolved cases, Nairobi COA had the bulk at 658 cases. The filed cases by specific case types are detailed in Table 2.9.

**Table 2.9: Filed cases by type and COA station, FY 2017/18**

COA station	Criminal Appeal	Criminal Application	All Criminal Cases	Civil Appeal	Civil Application	All Civil Cases	All cases
Kisumu	199	2	201	105	60	165	366
Malindi	48	0	48	150	87	237	285
Nairobi	109	9	118	460	307	767	885
Nyeri	105	13	118	207	152	359	477
<b>All</b>	<b>461</b>	<b>24</b>	<b>485</b>	<b>922</b>	<b>606</b>	<b>1528</b>	<b>2013</b>

Table 2.9 shows that civil appeals were the bulk of the filed civil cases at 922 in the entire COA followed by civil applications at 606 cases. For criminal cases, appeals were the majority

filed cases at 461. The resolved cases by specific case types are detailed in Table 2.10.

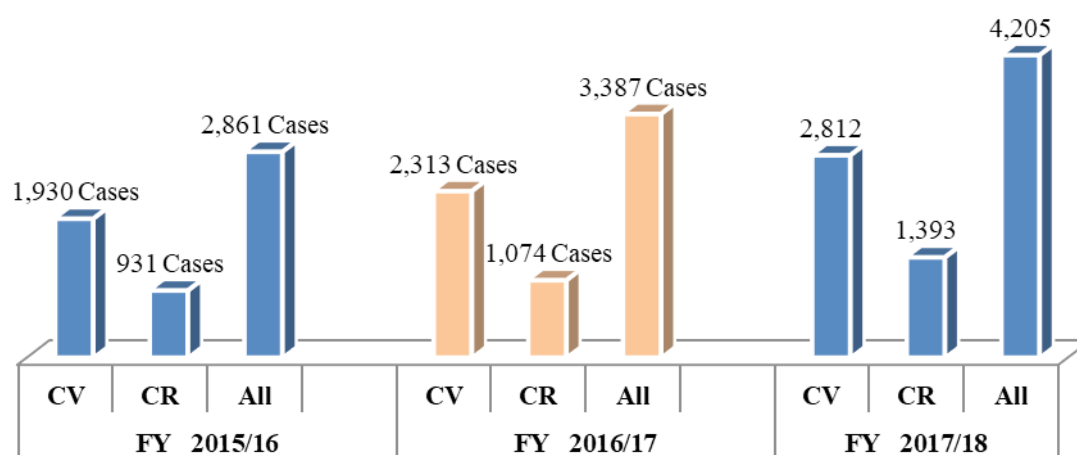
**Table 2.10: Resolved cases by type and COA station, FY 2017/18**

COA station	Criminal Appeal	Criminal Application	All Criminal Cases	Civil Appeal	Civil Application	All Civil Cases	All cases
Kisumu	30	1	31	73	38	111	142
Malindi	34	0	34	98	26	124	158
Nairobi	54	4	58	459	154	613	671
Nyeri	43	0	43	104	77	181	224
<b>All</b>	<b>161</b>	<b>5</b>	<b>166</b>	<b>734</b>	<b>295</b>	<b>1,029</b>	<b>1,195</b>

Table 2.10 shows that Civil appeals were the bulk of the resolved civil cases at 734 followed by civil applications at 295. Criminal Appeals comprised the majority of resolved criminal cases at 161 in the FY 2017/18.

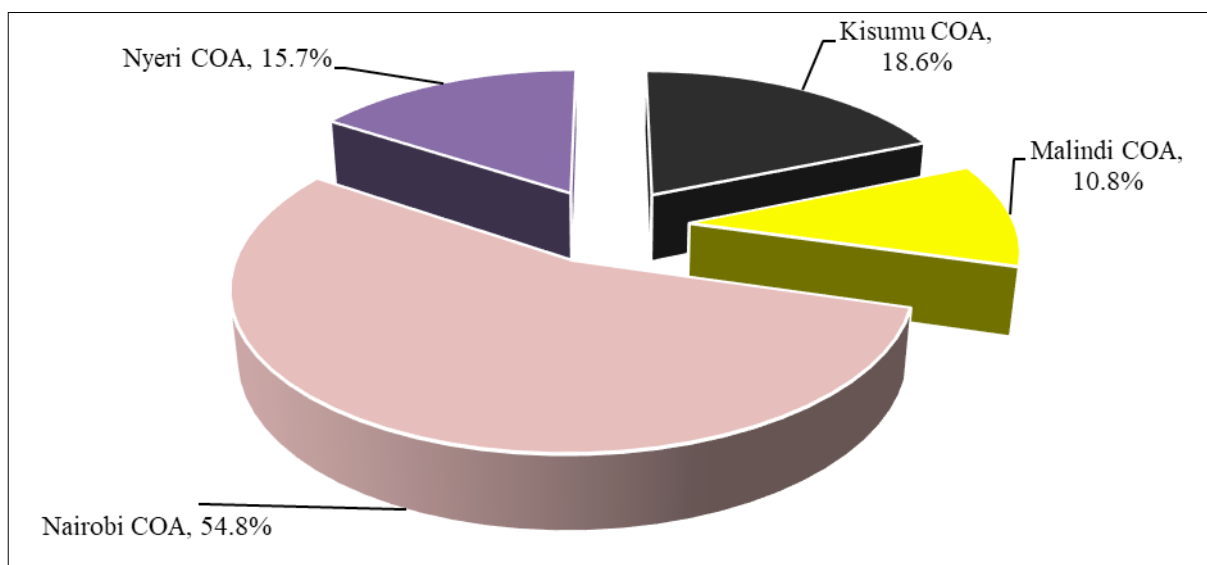
### 2.3.2 Pending Cases in the COA

There were **4,205** pending cases in COA at the close of 2017/18 FY. The growth in pending cases in COA by broad case type for the past three years is highlighted in Figure 2.9.



**Figure 2.9: Pending cases by type for COA, FY 2015/16 – FY 2017/18**

From Figure 2.9, pending cases in COA increased by 24 per cent from 3,387 cases recorded at the end of 2016/17 FY to 4,205 cases recorded at the end of 2017/18 FY. The percentage pending cases by COA station at the end of the FY 2017/18 is summarized in Figure 2.10.



**Figure 2.10: Percentage pending cases by COA stations**

Most of the pending cases in the COA were in the Nairobi COA at 54.8 per cent followed by Kisumu at 18.6 per cent. Malindi COA station had the least pending cases at 10.8 per cent. Details on pending cases by broad case type and COA stations are given in Table 2.11.

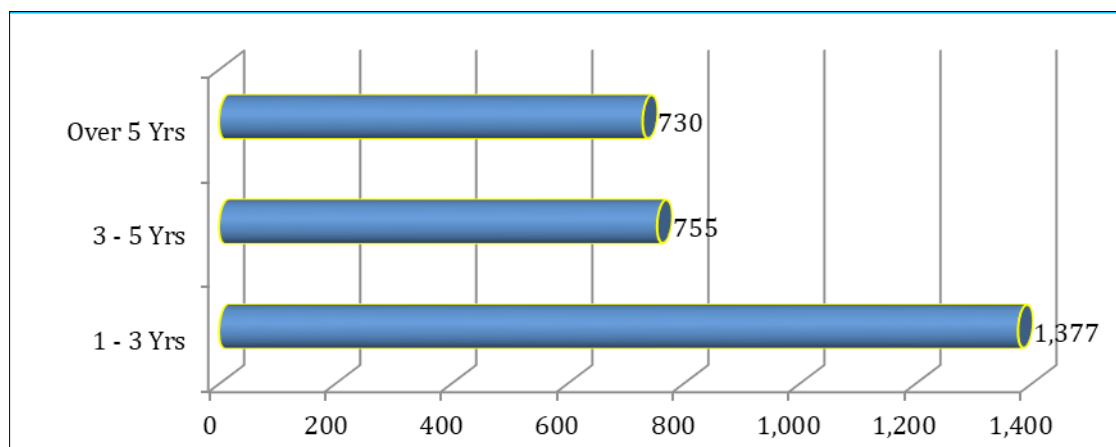
**Table 2.11: Pending cases by type and COA station, 2017/18**

	Criminal Appeal	Criminal	All Criminal Cases	Civil Appeal	Civil	All Civil Cases	Total Pending
Kisumu	476	4	480	242	62	304	784
Malindi	176	1	177	175	103	278	455
Nairobi	571	5	576	1,392	338	1,730	2,306
Nyeri	138	22	160	300	200	500	660
<b>All Stations</b>	<b>1,361</b>	<b>32</b>	<b>1,393</b>	<b>2,109</b>	<b>703</b>	<b>2,812</b>	<b>4,205</b>

As evidenced in Table 2.11, majority of pending cases were civil in nature at 67 per cent. A total of 1,361 criminal appeals were pending in all COA stations by the end of review period. Nairobi COA had the highest number of pending cases at 2,306 while Malindi had the least at 455 cases.

### 2.3.3 Case Backlog in COA.

Out of the 4,205 pending cases in the COA, **2,582** were backlog. Figure 2.11 gives the case backlog in the COA by age.



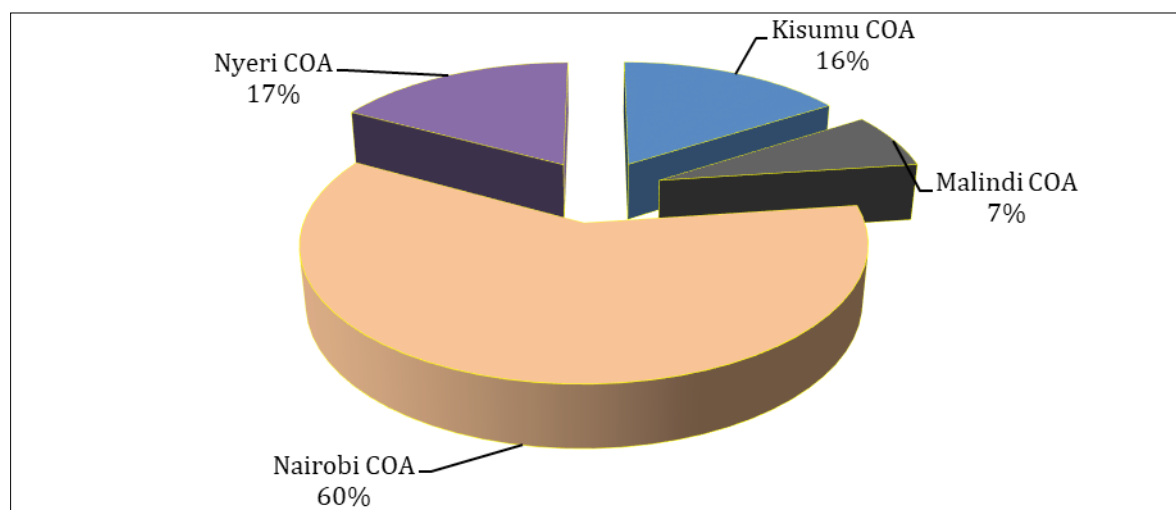
**Figure 2.11: Case Backlog by age in COA, 2016/17**

At the end of review period, most backlog cases were aged between 1 and 3 years at 48 per cent where 730 cases were aged 5 years and above representing 25.5 per cent of the total case backlog. The case backlog by age for different COA stations is detailed in Table 2.12.

**Table 2.12: Case backlog by age and COA station, 30<sup>th</sup> June 2018.**

COA station	1 - 3 years	3 - 5 years	Over 5 years	All Ages
Kisumu	325	130	0	455
Malindi	140	45	15	200
Nairobi	704	423	592	1719
Nyeri	208	157	123	488
<b>All stations</b>	<b>1,377</b>	<b>755</b>	<b>730</b>	<b>2,862</b>

From Table 2.12, Nairobi COA station had the highest case backlog at the end of the review period at 1,719 cases while Malindi had the least at 200 cases. The percentage distribution of case backlog by COA stations at the end of the review period is presented in Figure 2.12.



**Figure 2.12: Percentage distribution of Case Backlog in COA, FY 2017/18.**

From Figure 2.12, the Malindi COA had the least backlog cases at 7 per cent followed by Kisumu at 16 per cent. Nairobi had the highest share of case backlog at 60 per cent.

#### 2.3.4 SJT Implementation Status on Reduction of Case Backlog in COA

At the end of review period, the COA had 730 cases of the five years and above. Details on these cases are elaborated in Table 2.13.

**Table 2.13: SJT Implementation status on reduction of case backlog.**

COA station	SJT target on reduction of case backlog 5 years and above as at 1st Jan 2017	Resolved backlog cases 5 years and above (1st Jan 2017 and 30th June 2018)	Case backlog 5 years and above as at 30th June, 2018	% reduction in case backlog 5 years and above between 1st Jan 2017 and 30th June 2018
Kisumu	11	20	0	-100%
Malindi	12	11	15	25%
Nairobi	619	202	592	-4%
Nyeri	6	61	123	1,950%
<b>All</b>	<b>648</b>	<b>294</b>	<b>730</b>	<b>13%</b>

From Table 2.13, Kisumu finalized all its case backlog of over 5 years in age. Nairobi COA station reduced its backlog aged of over 5 years by 4 per cent.

### 2.4 High Court.

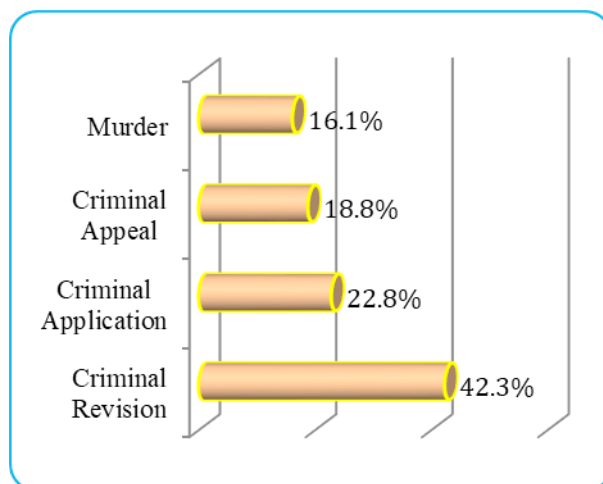
The High Court of Kenya is established pursuant to Article 165 of the Constitution of Kenya and is administered and organized under the High Court (Organization and Administration) Act No. 27 of 2015. The court enjoys unlimited original jurisdiction in criminal and civil matters, as well as on constitutional matters relating to rights and fundamental freedoms. In addition, the court has appellate and supervisory jurisdiction over subordinate courts and tribunals.

#### 2.4.1 Filed and Resolved Cases in High Court

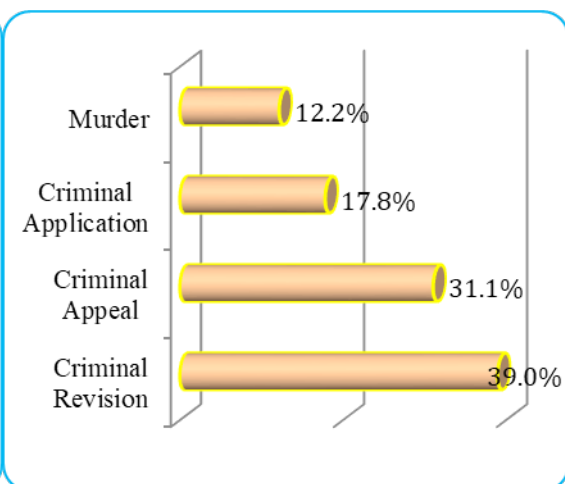
In the FY 2017/18, a total of **25,049** cases were filed in all High Court stations. This comprised **11,898** criminal cases and **13,151** civil cases. In the same period, **37,682** cases were resolved which comprised **8,179** criminal cases and **29,503** civil cases. The distribution of filed and resolved criminal cases by case type are summarized in Figure 2.13.



### Filed Criminal Cases



### Resolved Criminal Cases

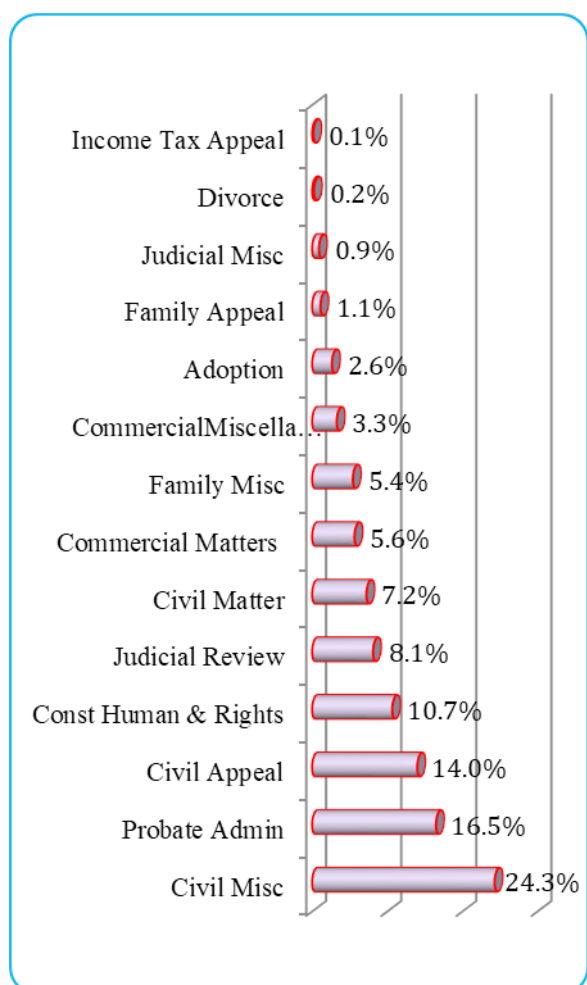


**Figure 2.13: Percentage distribution of filed and resolved criminal cases by type in High Court,**

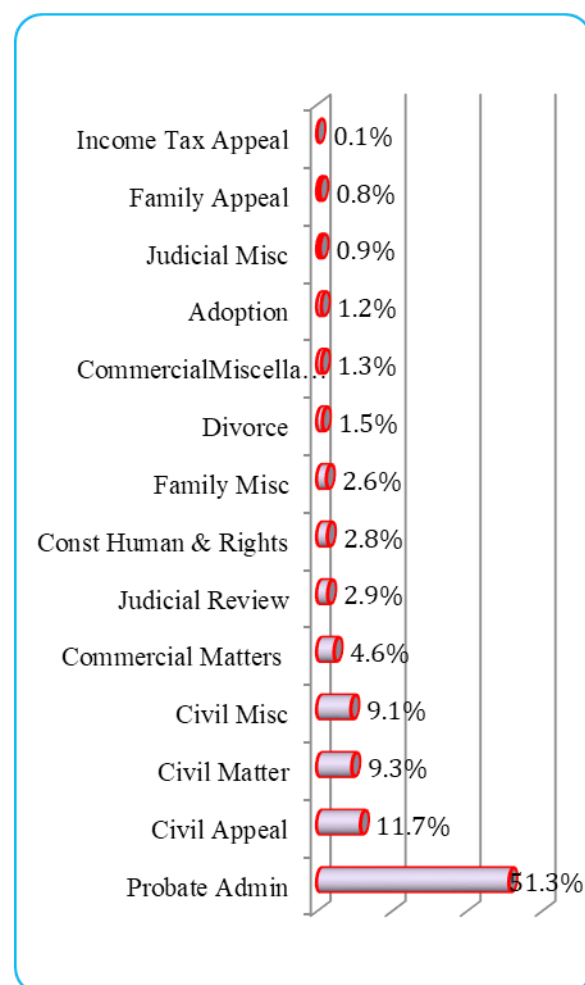
**FY 2017/18.**

Criminal revisions comprised 42.3 per cent of filed criminal cases while murder cases were the least filed at 16.1 per cent. On resolved cases, criminal revisions were the majority at 39 per cent with murder cases taking the least percentage at 12.2 per cent. The distribution of filed and resolved civil cases is given in Figure 2.14.

### Filed Civil Cases



### Resolved Civil Cases



**Figure 2.14: Percentage Distribution of filed and resolved civil cases in the High Court, 2017/18**

From Figure 2.14, miscellaneous civil cases were the majority filed cases at 24.3 per cent followed by Probate and Administration cases at 16.5 per cent. Income Tax appeals were the least filed cases at 0.1 per cent. On resolved cases, Probate and Administration cases had the highest share at 51.3 per cent while Income Tax appeals had the least at 0.1 per cent. Details on filed and resolved cases for individual High court stations and broad case type are given in Table 2.14.

**Table 2.14: Filed and Resolved cases by broad case type, High Court**

High Court Station	Filed cases 2017/18			Resolved cases 2017/18		
	Criminal	Civil	All	Criminal	Civil	All
Bomet	87	92	179	38	81	119
Bungoma	108	184	292	310	111	421
Busia	96	126	222	291	102	393
Chuka	78	75	153	139	77	216
Eldoret	394	210	604	304	389	693
Embu	230	439	669	78	271	349
Garissa	237	91	328	177	71	248
Garsen	13	3	16	18	6	24
Homabay	222	88	310	206	277	483
Kabarnet	222	40	262	206	9	215
Kajiado	103	126	229	109	74	183
Kakamega	345	45	390	158	279	437
Kapenguria	57	14	71	93	38	131
Kericho	271	74	345	132	353	485
Kerugoya	133	124	257	105	107	212
Kiambu	785	780	1,565	530	309	839
Kisii	476	234	710	439	1,210	1,649
Kisumu	349	640	989	233	1,738	1,971
Kitale	1,010	85	1,095	355	77	432
Kitui	184	184	368	45	137	182
Lodwar	27	10	37	13	7	20
Machakos	549	932	1,481	135	715	850
Makueni	237	197	434	195	276	471
Malindi	132	260	392	107	305	412
Marsabit	54	46	100	47	36	83
Meru	1,146	471	1,617	648	1,621	2,269
Migori	178	494	672	144	608	752
Milimani Anti-corr. Div.	33	0	33	36	0	36
Milimani Civil Div.	0	223	223	0	2,635	2,635
Milimani C. & Tax Div.	0	1,144	1,144	0	1,228	1,228
Milimani Const. Div.	1	537	538	0	371	371
Milimani Criminal Div.	1,384	0	1,384	859	0	859
Milimani Family Div.	0	1,810	1,810	0	10,903	10,903
Milimani Jud. Rev. Div.	3	686	689	0	496	496
Mombasa	767	1,209	1,976	296	2,571	2,867
Muranga	285	343	628	192	453	645

High Court Station	Filed cases 2017/18			Resolved cases 2017/18		
	Criminal	Civil	All	Criminal	Civil	All
Naivasha	101	184	285	83	98	181
Nakuru	232	386	618	324	919	1,243
Nanyuki	264	60	324	216	45	261
Narok	53	21	74	61	13	74
Nyamira	93	28	121	81	24	105
Nyandarua	261	167	428	147	72	219
Nyeri	219	206	425	211	296	507
Siaya	347	50	397	221	34	255
Voi	132	33	165	197	61	258
<b>All Courts</b>	<b>11,898</b>	<b>13,151</b>	<b>25,049</b>	<b>8,179</b>	<b>29,503</b>	<b>37,682</b>

Out of the 25,049 cases that were filed in all High courts, Mombasa station recorded the highest number at 1,976 followed by Milimani Family Division where 1,810 cases filed. Milimani Anti-Corruption Division recorded the least number of filed cases at 33 followed by Lodwar station where 37 cases were filed. Out of the 37,632 cases that were resolved by all High courts, Milimani Family Division recorded the highest number at 10,903 cases followed by Mombasa High court where 2,867 cases were resolved. The huge resolution of cases at Family Division was attributed to continuous case backlog reduction exercises over the review period. Details on filed and resolved cases for all High court stations by specific case types are provided in the appendices.

#### 2.4.2 Pending Cases in High Court

At the end the FY 2017/18, there were **97,327** pending cases in the High Court. These comprised **20,329** criminal cases and **76,998** civil cases. The trend in pending cases in the High Court for the last five years is shown in Figure 2.15.

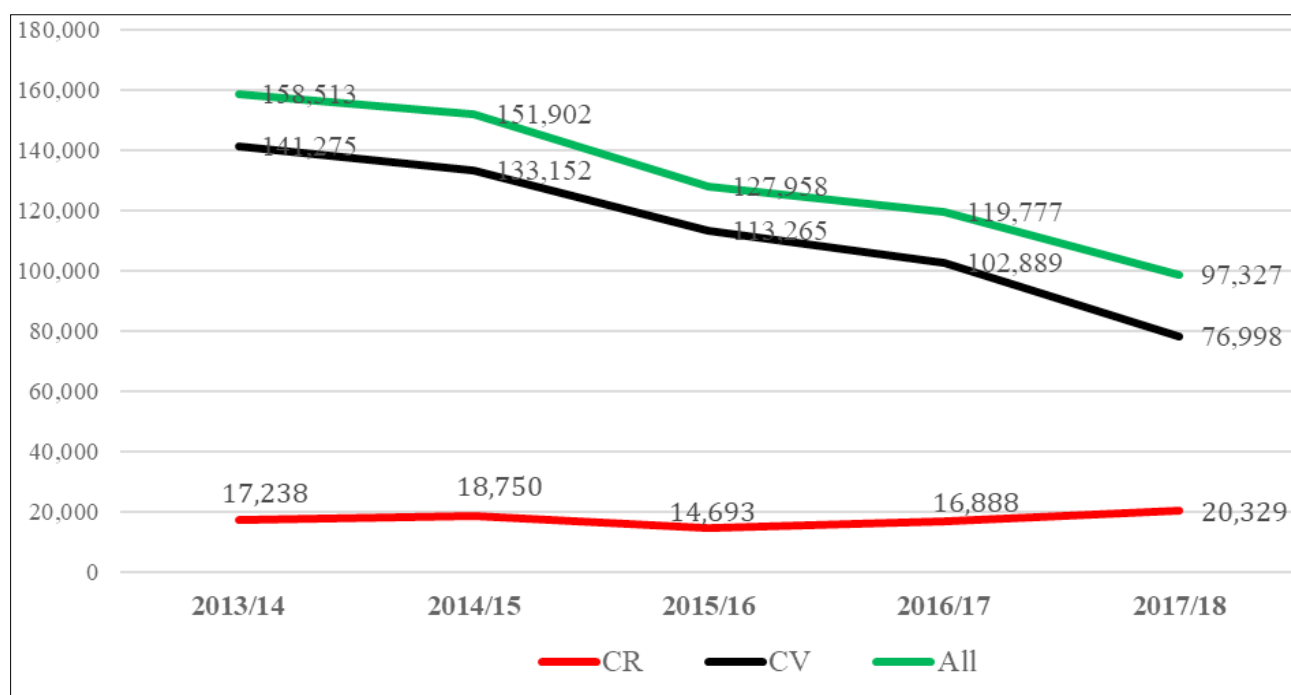
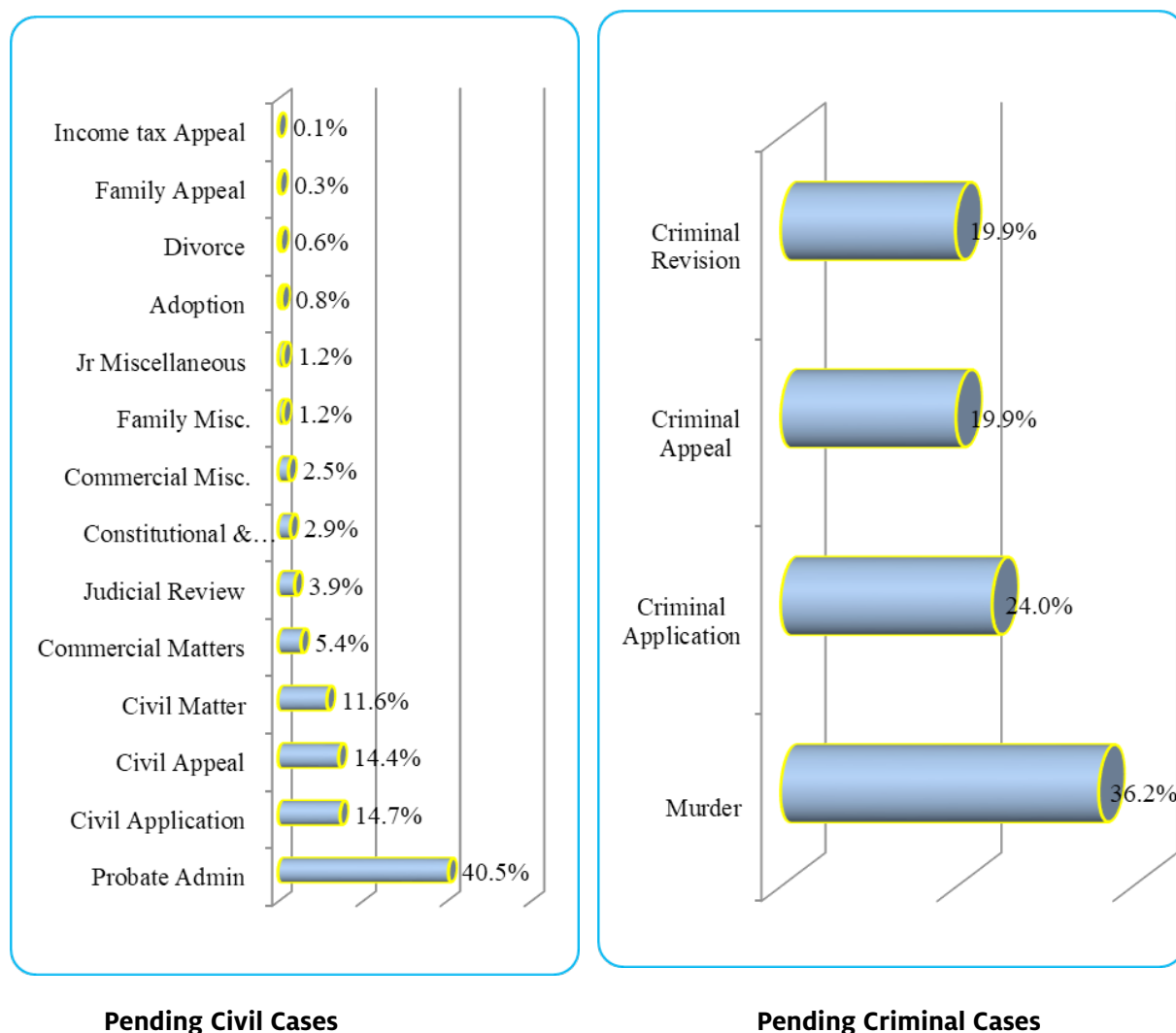


Figure 2.15: Pending cases in High Court, FY 2013/14 – FY 2017/18

The overall pending cases in the High Court show a declining trend. However, pending criminal cases rose 17.93% from 17,238 cases recorded at the end of 2013/14 cases to 20,329 cases at the end of the current reporting period. The trend line for civil cases mimics that for the overall pending cases. The percentage pending cases by specific case types for the High Court is shown in Figure 2.16.



**Figure 2.16: Percentage distribution of pending cases in High Court, FY 2017/18**

From Figure 2.16, probate and administration cases comprised the bulk of pending civil cases in all High Court stations at 40.5 per cent followed by civil applications at 14.7 per cent. For criminal matters, murder cases were the bulk of pending cases at 36.2 per cent which suggests that murder cases are having the longest time to disposition. Table 2.15 gives information on pending cases in all High Court stations at the end of the FY 2017/18.

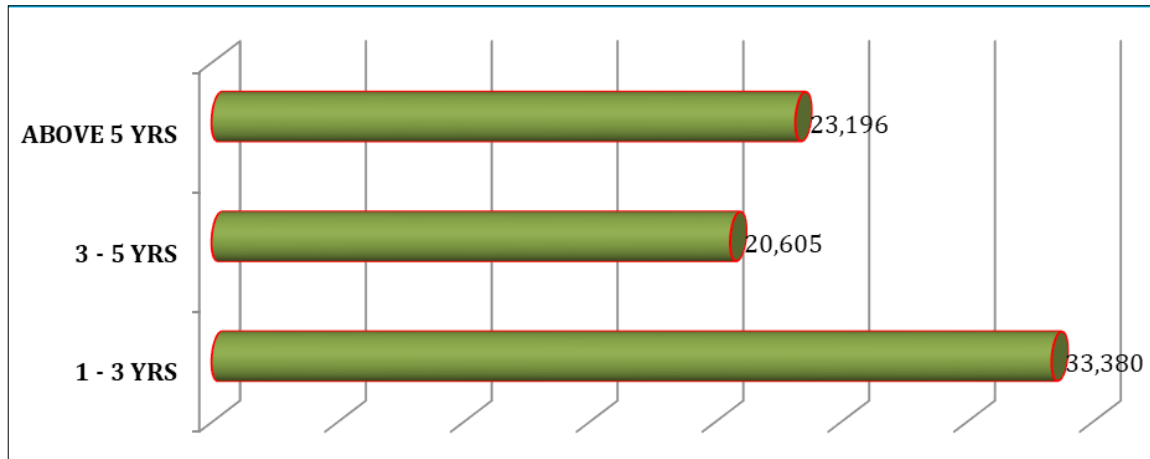
**Table 2.15: Pending cases by broad case type, High Court**

High Court Station	Criminal	Civil	All
Bomet	128	285	413
Bungoma	452	2,523	2,975
Busia	154	1,800	1,954
Chuka	34	629	663
Eldoret	1,616	2,990	4,606
Embu	512	2,516	3,028
Garissa	333	251	584
Garsen	52	75	127
Homabay	140	712	852
Kabarnet	163	35	198
Kajiado	92	130	222
Kakamega	796	3,988	4,784
Kapenguria	29	11	40
Kericho	337	1,723	2,060
Kerugoya	165	2,276	2,441
Kiambu	382	549	931
Kisii	495	1,135	1,630
Kisumu	401	1,352	1,753
Kitale	1,136	994	2,130
Kitui	268	244	512
Lodwar	24	6	30
Machakos	538	3,126	3,664
Makueni	70	45	115
Malindi	111	758	869
Marsabit	23	31	54
Meru	1,255	2,951	4,206
Migori	156	653	809
Milimani Anti-corr. Div.	44	0	44
Milimani Civil Div.	0	6,464	6,464
Milimani C. & Tax Div.	0	5,705	5,705
Milimani Const. Div.	0	1,030	1,030
Milimani Criminal Div.	3,694	0	3,694
Milimani Family Div.	0	7,112	7,112
Milimani Jud. Rev. Div.	0	1,174	1,174
Mombasa	1,961	9,539	11,500
Muranga	892	2,415	3,307
Naivasha	310	620	930
Nakuru	1,475	7,473	8,948
Nanyuki	525	94	619
Narok	64	72	136
Nyamira	125	402	527
Nyandarua	131	123	254
Nyeri	462	2,593	3,055
Siaya	569	211	780
Voi	215	183	398
<b>All Courts</b>	<b>20,329</b>	<b>76,998</b>	<b>97,327</b>

From Table 2.12, Mombasa High Court had the highest number of pending cases at 11,500 followed by Nakuru High Court at 8,948 cases. Lodwar High court had the least pending cases which stood at 30 cases followed by Kapenguria High Court at 40 cases. Information on pending cases by specific case types for all High Court stations is provided in the appendices.

### 2.4.3 Case Backlog in High Court.

Out of the **97,327** pending cases in the High Court, **76,208** cases were backlog. Figure 2.17 summarizes the case backlog in High Court by age.



**Figure 2.17: Case backlog in the High Court, end of 2017/18**

Out of the **76,208** backlog cases, 33,380 cases were aged between 1 to 3 years, 20,605 cases were aged between 3 and 5 years while 22,223 cases were above 5 years in age. The distribution of case backlog across the High Court stations is presented in Table 2.16.



**Table 2.16: Case backlog by age for High Court, 30<sup>th</sup> June 2018.**

High Court Station	1-3 years	3 - 5 years	Over 5 years	All
Bomet	181	96	2	279
Bungoma	374	920	1,530	2,824
Busia	411	690	768	1,869
Chuka	521	-	-	521
Eldoret	1,659	1,419	1,295	4,373
Embu	742	637	278	1,657
Garissa	361	128	84	573
Garsen	84	26	9	119
Homabay	242	223	111	576
Kabarnet	155	-	-	155
Kajiado	79	-	1	80
Kakamega	647	1,982	1,919	4,548
Kapenguria	21	-	-	21
Kericho	330	404	1,015	1,749
Kerugoya	598	1,015	637	2,250
Kiambu	613	-	-	613
Kisii	853	234	157	1,244
Kisumu	359	84	322	765
Kitale	855	399	453	1,707
Kitui	284	-	-	284
Lodwar	9	1	-	10
Machakos	845	846	272	1,963
Makueni	2	1	-	3
Malindi	325	127	87	539
Marsabit	6	-	-	6
Meru	1,046	474	209	1,729
Migori	210	92	293	595
Milimani Anticorruption & Econ. Crimes Division	22	-	-	22
Milimani Civil Division	2,302	1,768	1,950	6,020
Milimani Commercial & Admiralty Division	1,174	1,395	2,178	4,747
Milimani Con. Law & Human Rights Division	470	138	11	619
Milimani Criminal Division	1,606	476	176	2,258
Milimani Family Division	1,785	620	3,097	5,502
Milimani Judicial Review Division	424	91	111	626
Mombasa	7,054	1,516	987	9,557
Muranga	1,037	1,138	737	2,912
Naivasha	437	234	2	673
Nakuru	3,109	2,402	1,835	7,446
Nanyuki	390	49	14	453
Narok	54	24	-	78
Nyamira	207	159	79	445
Nyandarua	27	-	151	178
Nyeri	569	729	1,353	2,651
Siaya	596	-	-	596
Voi	305	68	-	373
<b>All stations</b>	<b>33,380</b>	<b>20,605</b>	<b>22,223</b>	<b>76,208</b>

Mombasa High Court had the highest number of case backlog which stood at 9,557 cases followed by Nakuru High Court at 7,446 cases.

#### 2.4.4 SJT Implementation Status on Reduction of Case Backlog in High Court

Since January 2017, High Court reduced case backlog aged 5 years and above by 62 per cent. Detailed information on this reduction per station is given in Table 2.17.

**Table 2.17: SJT Implementation Status on reduction of case backlog**

High Court Station	SJT target on reduction of case backlog 5 years and above (1st Jan 17)	Case backlog 5 years and above as at 30th June 2018	Resolved backlog cases 5 years and above (1st January 17 to 30th June 2018)	% reduction in case backlog 5 years and above
Bomet	2	2	-	0%
Bungoma	1,664	1,530	267	-8%
Busia	728	768	112	5%
Chuka	-	-	26	N/A
Eldoret	1,404	1,295	396	-8%
Embu	1,295	278	156	-79%
Garissa	109	84	61	-23%
Garsen	6	9	2	50%
Homabay	345	111	24	-68%
Kabarnet	-	-	-	N/A
Kajiado	7	1	-	-86%
Kakamega	1,739	1,919	205	10%
Kapenguria	1	-	1	-100%
Kericho	1,232	1,015	304	-18%
Kerugoya	355	637	80	79%
Kiambu	-	-	-	N/A
Kisii	634	157	816	-100%
Kisumu	1,193	322	840	-73%
Kitale	1,381	453	985	-67%
Kitui	-	-	8	N/A
Lodwar	-	-	-	N/A
Machakos	5,480	272	1,039	-95%
Makueni	-	-	16	N/A
Malindi	160	87	175	-46%
Marsabit	-	-	-	N/A
Meru	2,415	209	1,442	-91%
Migori	304	293	62	-4%
Milimani Anti-corr. Div.	-	-	2	N/A
Milimani Civil Div.	9,071	1,950	2,262	-79%
Milimani C. & Tax Div.	2,747	2,178	849	-21%
Milimani Const. Div.	28	11	47	-61%
Milimani Crim Div.	867	176	416	-80%
Milimani Fam Div.	15,593	3,097	9,368	-80%
Milimani Jud. Rev. Div.	119	111	66	-7%
Mombasa	2,480	987	3,422	-60%

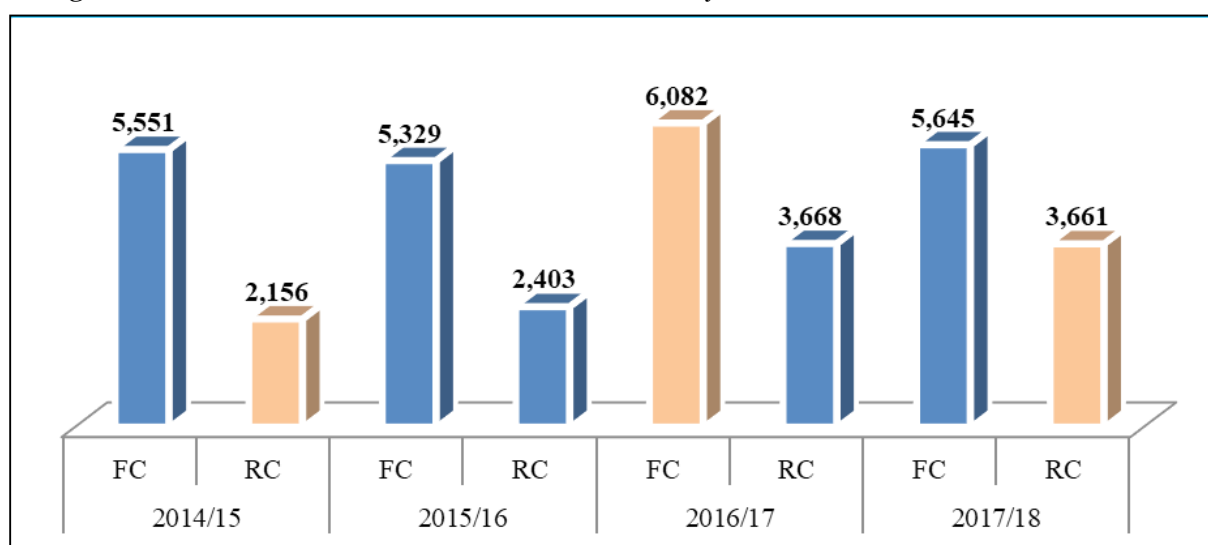
High Court Station	SJT target on reduction of case backlog 5 years and above (1st Jan 17)	Case backlog 5 years and above as at 30th June 2018	Resolved backlog cases 5 years and above (1st January 17 to 30th June 2018)	% reduction in case backlog 5 years and above
Muranga	161	737	154	358%
Naivasha	-	2	-	100%
Nakuru	3,631	1,935	680	-20%
Nanyuki	11	14	-	27%
Narok	-	-	-	N/A
Nyamira	17	79	1	365%
Nyandarua		151	-	N/A
Nyeri	3,307	1,353	635	-59%
Siaya	-	-	-	N/A
Voi	1	-	2	-100%
All Courts	<b>58,487</b>	<b>22,223</b>	<b>24,921</b>	<b>-62%</b>

## 2.5 Employment and Labour Relations Court (ELRC).

The ELRC is established pursuant to Article 162(2) of the Constitution and administered under the Employment and Labour Relations Court, Act No. 20 of 2011. It has jurisdiction over employment and labour disputes. There are six ELRC stations in Kenya located at Nairobi, Kericho, Kisumu, Mombasa, Nakuru and Nyeri. In addition to the six stations, ELRC has sub-registries in Meru, Bungoma, Eldoret, Malindi, Machakos and Garissa.

### 2.5.1 Filed and Resolved Cases in ELRC.

During the reporting period, **5,645** cases were filed while **3,661** cases were resolved. Figure 2.18 gives the trend for the filed and resolved cases by ELRC station.



**Figure 2.18: Filed and resolved cases by ELRC station**

During the period under review, a total of 5,645 cases were filed in all ELRC stations, down from 6,082 cases that were filed in the previous period. The court resolved a total of 3,661

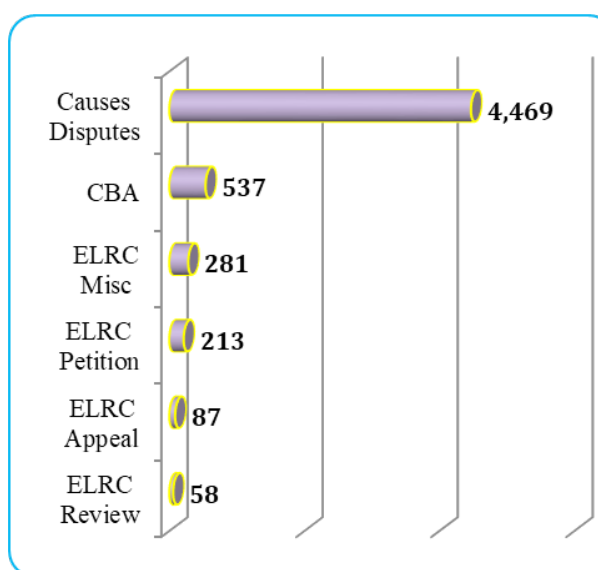
cases down from 3,668 cases that finalized in the FY 2016/17. The trend for filed and resolved cases over the past four FYs for ELRC stations is given in Table 2.18.

**Table 2.18: Trend on filed and resolved cases by ELRC station, FY 2014/15 – FY 2017/18**

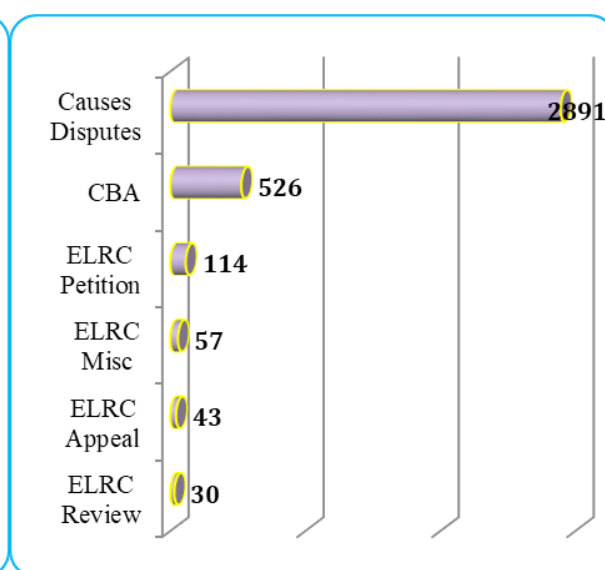
ELRC Station	2014/15		2015/16		2016/17		2017/18	
	FC	RC	FC	RC	FC	RC	FC	RC
Kericho	206	13	225	75	116	105	124	180
Kisumu	330	51	476	56	499	179	581	227
Mombasa	878	276	700	249	1,045	646	861	455
Nairobi	3,184	1,428	3,160	1,518	3,631	1,980	3,114	2,324
Nakuru	737	228	463	231	391	285	360	182
Nyeri	216	160	305	274	400	473	605	293
<b>All ELRC</b>	<b>5,551</b>	<b>2,156</b>	<b>5,329</b>	<b>2,403</b>	<b>6,082</b>	<b>3,668</b>	<b>5,645</b>	<b>3,661</b>

Table 2.14 shows that the resolved cases by the ELRC has been generally increasing over time. In FY 2015/16, 2,156 cases were resolved which increased to 3,661 in the FY 2017/18. Information on filed and resolved cases by case type is illustrated in Figure 2.19.

#### % Filed cases, ELRC



#### % Resolved cases, ELRC



**Figure 2.19: Percentage Distribution of Filed and Resolved Cases in ELRC, FY 2017/18**

In the FY 2017/18, cause disputes were the bulk of filed and resolved cases in ELRC while ELRC reviews were the least. Information on filed and resolved case types is given in Table 2.19 and 2.20 respectively.

**Table 2.19: Filed cases by type and ELRC station, FY 2017/18**

ELRC Station	CBAs	Causes Disputes	ELRC Petition	ELRC Misc..	ELRC Appeal	ELRC Review	All Cases
Kericho	0	85	14	2	17	6	124
Kisumu	0	451	68	28	27	7	581
Mombasa	4	791	5	54	5	2	861
Nairobi	533	2,262	109	157	12	41	3,114
Nakuru	0	325	7	6	21	1	360
Nyeri	0	555	10	34	5	1	605
<b>All stations</b>	<b>537</b>	<b>4,469</b>	<b>213</b>	<b>281</b>	<b>87</b>	<b>58</b>	<b>5,645</b>

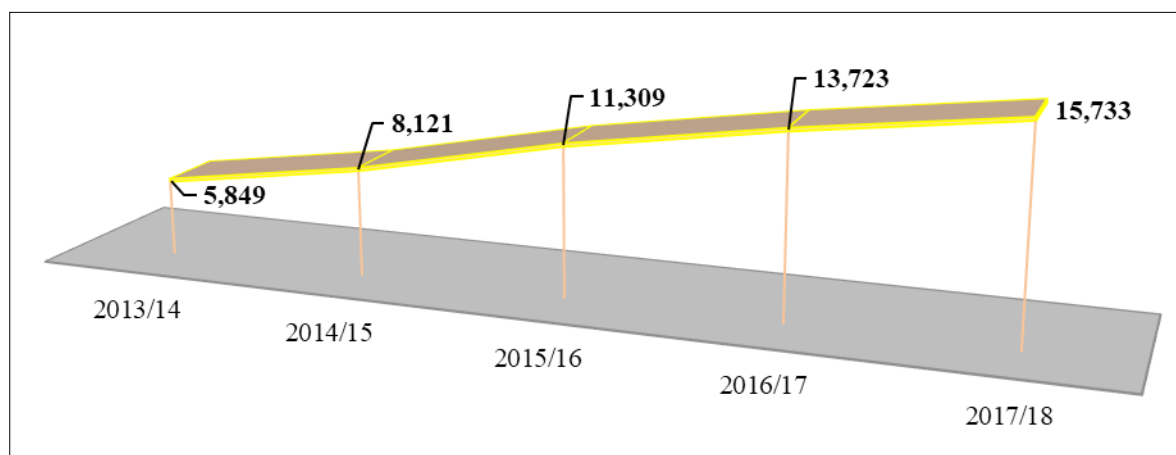
**Table 2.20: Resolved cases by type and ELRC station, FY 2017/18**

ELRC Station	CBAs	Causes Disputes	ELRC Petition	ELRC Misc.	ELRC Appeal	ELRC Review	All Cases
Kericho	0	150	12	1	13	4	180
Kisumu	0	210	9	5	3	0	227
Mombasa	1	436	5	5	8	0	455
Nairobi	525	1,671	66	33	6	23	2,324
Nakuru	0	154	11	5	11	1	182
Nyeri	0	270	11	8	2	2	293
<b>All stations</b>	<b>526</b>	<b>2,891</b>	<b>114</b>	<b>57</b>	<b>43</b>	<b>30</b>	<b>3,661</b>

Majority of the filed and resolved cases were recorded in Nairobi ELRC station followed by Mombasa ELRC. The least number of filed and resolved cases were recorded in Kericho ELRC.

### 2.5.2 Pending Cases in ELRC.

As at 30<sup>th</sup> June 2018, 15,733 cases were pending in ELRC up from 13,723 cases that were recorded at the end of 2015/16 FY indicating a 15 per cent rise. The trajectory of pending ELRC cases for the past 5 years is demonstrated in Figure 2.20.



**Figure 2.20: Trend on pending cases in ELRC court, FY 2013/14 – FY 2017/18**

Pending ELRC cases gradually rose from 5,849 cases recorded at the end of 2013/14 FY to

15,733 cases that were recorded at the end of 2017/18 FY. Details on the growth of pending cases by ERLC station are provided in Table 2.21.

**Table 2.21: Trend on pending cases by ELRC Station, FY 2015/16 – FY 2017/18**

Court Name	2015/16	2016/17	2017/18
Kericho	299	310	254
Kisumu	862	1,182	1,544
Mombasa	1,418	1,817	2,233
Nairobi	7,416	9,067	9,857
Nakuru	1,046	1,152	1,338
Nyeri	268	195	507
<b>All ELRC Stations</b>	<b>11,309</b>	<b>13,723</b>	<b>15,733</b>

Nairobi and Mombasa ELRC have over the years had the largest number of filed cases. In 2017/18, the least pending cases were recorded in Kericho and Nyeri ELRC stations. The number pending cases for ERLC by case type are highlighted in Figure 2.21.



**Figure 2.22: Distribution of pending cases in ELRC, 30<sup>th</sup> June 2018**

From Figure 2.21, cause disputes constituted the bulk of the pending cases in the ELRC followed by miscellaneous cases and petitions. The annual pending cases in ERLC station by case type are provided in Table 2.22.

**Table 2.22: Pending cases by type and ELRC Station, 30<sup>th</sup> June 2018.**

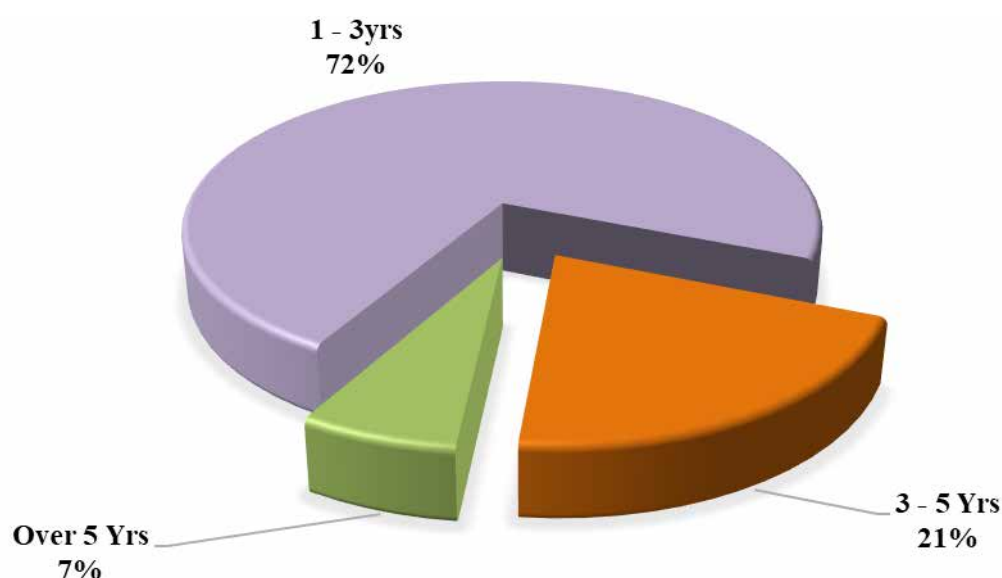
ELRC Station	CBAs	Causes Disputes	ELRC Petition	ELRC Misc.	ELRC Appeal	ELRC Review	All Cases
Kericho	0	242	4	1	5	2	254
Kisumu	0	1,334	109	57	27	17	1,544
Mombasa	3	2,105	23	88	12	2	2,233
Nairobi	8	9,320	226	224	47	32	9,857
Nakuru	0	1,294	4	23	16	1	1,338
Nyeri	0	445	16	35	8	3	507
<b>All stations</b>	<b>11</b>	<b>14,740</b>	<b>382</b>	<b>428</b>	<b>115</b>	<b>57</b>	<b>15,733</b>
<b>% Distribution</b>	<b>0.1%</b>	<b>94%</b>	<b>2%</b>	<b>3%</b>	<b>1%</b>	<b>0.4%</b>	<b>100%</b>



Cause disputes constituted 94 per cent of pending ELRC cases followed by ELRC miscellaneous cases at 3 per cent. The remaining case types accounted for the remaining 3 per cent.

### 2.5.3 Case Backlog in ELRC.

Out of the 15,733 pending cases in ELRC, 11,143 (71%) cases were backlog. Figure 2.22 shows the age and percentage of case backlog in ELRC.



**Figure 2.22: % Case Backlog, ELRC**

As illustrated in Figure 2.22, 73 per cent of case backlog was aged between 1 and 3 years, 21 per cent between 3 and 5 years and 6 per cent were above 5 years. Case backlog for ELRC stations as at 30<sup>th</sup> June 2018 is given in Table 2.23.

**Table 2.23: Case backlog by age and ELRC station, 30<sup>th</sup> June 2018.**

Court Name	1 - 3 Years	3 - 5 Years	Over 5 years	All Backlog
Kericho ELRC	59	108	0	167
Kisumu ELRC	710	221	72	1,003
Mombasa ELRC	1,125	250	21	1,396
Nairobi ELRC	5,433	1,333	651	7,417
Nakuru ELRC	592	388	10	990
Nyeri ELRC	160	10	0	170
<b>All ELRC stations</b>	<b>8,079</b>	<b>2,310</b>	<b>754</b>	<b>11,143</b>

Nairobi ELRC had the highest case backlog at 7,417 followed by Mombasa at 1,396 cases. The least backlog was recorded in Kericho ELRC at 167.

#### 2.5.4 SJT Implementation Status on Reduction of Case Backlog in ELRC

The ELRC managed to reduce case backlog aged 5 years and above by 5 per cent from 771 cases recorded at the onset on SJT strategy to 754 cases at the end of 2017/18 FY. Table 2.24 provides detailed information for each ELRC station.

**Table 2.24: SJT Implementation Status on reduction of case backlog.**

ELRC Station	SJT target on reduction of case backlog 5 years and above (1st Jan 17)	Resolved backlog cases 5 years and above (1st Jan 17 - 30th Jun 18)	Case backlog 5 years and above 30 June, 18	% change in case backlog 5 years and above (1st Jan 17 30th Jun 18)
Kericho	0	0	0	N/A
Kisumu	43	26	72	67%
Mombasa	1	14	21	2000%
Nairobi	717	908	651	-9%
Nakuru	10	1	10	0%
Nyeri	0	7	0	N/A
<b>All cases</b>	<b>771</b>	<b>956</b>	<b>754</b>	<b>-2%</b>

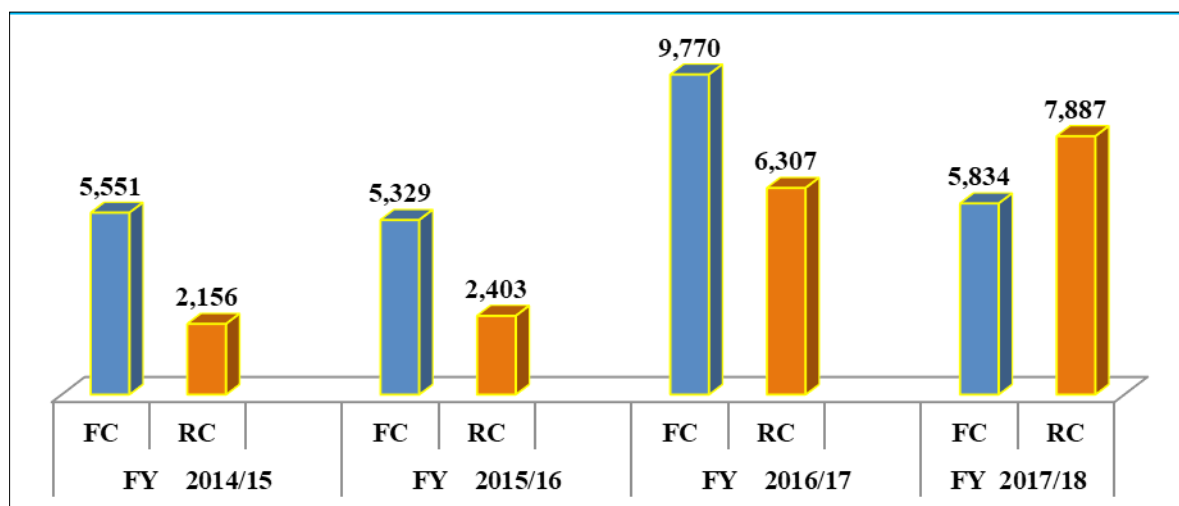
Nairobi ELRC had the highest reduction of 9 per cent.

#### 2.6 The Environment and Land Court (ELC)

The ELC is established pursuant to Article 162 (2) of the Constitution. The ELC Court is administered under the Environment and Land Court Act, No. 19 of 2011. The court enjoys the same status as the High Court and has exclusive jurisdiction to hear and determine environment and land related disputes as determined by the Act..

##### 2.6.1 Filed and Resolved Cases in ELC.

During FY 2017/18, a total of **5,834** cases were filed in all ELC stations while **7,887** cases were resolved. Information on filed and resolved cases in ELC for the past four FYs is given in Figure 2.23.



**Figure 2.23: Trend on filed and resolved cases in ELC, FY 2014/15 – FY 2017/18.**

During the period under reference, a total of 7,887 were resolved in ELC courts up from 6,307 cases that were resolved in the previous period. Save for the FY 2016/17, the total filed cases in ELC averaged at 5,571 cases for the 2014/15, 2015/16 and 2017/18 FYs. Detailed statistics on filed and resolved cases for all ELC stations over the past 4 FYs is given in Table 2.25.

**Table 2.25: Filed and resolved cases in ELC, FY 2014/15-FY 2017/18**

ELC Station	2014/15		2015/16		2016/17		2017/18	
	FC	RC	FC	RC	FC	RC	FC	RC
Bungoma	180	57	112	144	263	436	107	195
Busia	47	104	144	14	267	209	140	65
Chuka	-	-	-	-	464	78	85	311
Eldoret	113	190	521	68	473	234	232	270
Embu	341	5	130	9	54	15	282	136
Garissa	-	-	-	-	62	32	68	24
Kajiado	-	-	-	-	201	18	88	177
Kakamega	544	41	262	10	117	16	294	600
Kericho	23	93	332	10	116	38	84	360
Kerugoya	85	62	875	217	308	190	125	154
Kisii	264	76	601	462	563	975	212	223
Kisumu	109	35	174	33	483	422	154	626
Kitale	65	32	193	98	388	307	89	175
Machakos	-	-	-	-	149	1,502	374	526
Makueni	-	-	-	-	327	2	92	167
Malindi	227	151	295	170	552	292	278	240
Meru	80	102	155	50	512	322	233	694
Migori	-	-	-	-	793	7	190	164
Milimani	1,788	2,340	1,437	141	936	428	991	963

Mombasa	305	66	408	250	445	474	494	521
Muranga	-	-	-	-	145	14	185	204
Nakuru	161	17	191	31	199	10	259	226
Narok	-	-	-	-	526	28	85	76
Nyandarua	-	-	-	-	418	22	107	59
Nyeri	592	20	329	129	318	220	163	587
Thika	-	-	-	-	691	16	423	144
All stations	4,924	3,391	6,159	1,836	9,770	6,307	5,834	7,887

-ELC station was not operational by then

During the period under review, Milimani ELC had the highest number of filed and resolved cases. Overall, ELC registered a case clearance rate of 135 per cent. Detailed statistics on types of cases that were filed and resolved in all ELC stations during the period under review are given in Table 2.26.

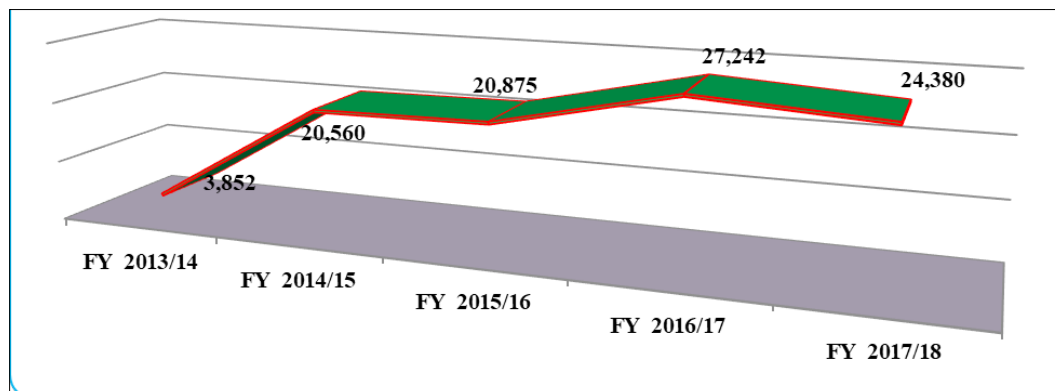
**Table 2.26: Filed and resolved cases by type and ELC station, FY 2017/18**

ELC Station	ELC matters		ELC Misc.		ELC Appeals		All Case Types	
	FC	RC	FC	RC	FC	RC	FC	RC
Bungoma	95	146	10	38	2	11	107	195
Busia	127	52	13	13	0	0	140	65
Chuka	74	220	7	15	4	76	85	311
Eldoret	216	256	15	5	1	9	232	270
Embu	240	123	32	6	10	7	282	136
Garissa	60	20	5	1	3	3	68	24
Kajiado	77	157	11	20	0	0	88	177
Kakamega	214	520	20	23	60	57	294	600
Kericho	76	348	6	11	2	1	84	360
Kerugoya	102	133	11	4	12	17	125	154
Kisii	191	186	13	25	8	12	212	223
Kisumu	131	568	10	49	13	9	154	626
Kitale	85	168	4	7	0	0	89	175
Machakos	303	464	41	34	30	28	374	526
Makueni	78	138	5	25	9	4	92	167
Malindi	261	192	16	32	1	16	278	240
Meru	172	432	22	62	39	200	233	694
Migori	170	129	16	32	4	3	190	164
Milimani	816	832	121	100	54	31	991	963
Mombasa	437	479	37	28	20	14	494	521
Muranga	163	192	8	9	14	3	185	204
Nakuru	252	217	6	7	1	2	259	226
Narok	78	72	2	1	5	3	85	76
Nyandarua	100	46	1	1	6	12	107	59
Nyeri	132	546	21	16	10	25	163	587
Thika	377	129	30	15	16	0	423	144
<b>All Courts</b>	<b>5,027</b>	<b>6,765</b>	<b>483</b>	<b>579</b>	<b>324</b>	<b>543</b>	<b>5,834</b>	<b>7,887</b>

From Table 2.21, ELC matters were the bulk of filed and resolved cases followed by ELC miscellaneous cases. The least filed and resolved cases were ELC appeals.

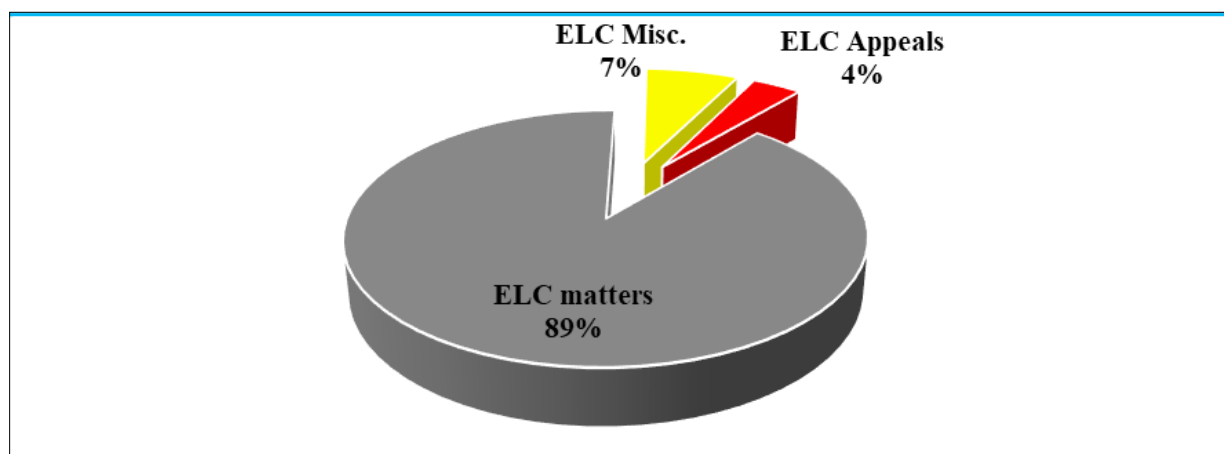
### 2.6.2 Pending Cases in ELC.

As at 30<sup>th</sup> June 2018, there were 20,211 pending cases in the ELC court. Figure 2.24 gives the change in pending cases in ELC over the past four years.



**Figure 2.24: Growth of pending cases in ELC, FY 2013/14 to FY 2017/18**

Between FY 2016/17 and 2017/18, there was a 7 per cent drop of pending cases from 27,242 pending cases to 24,380 pending cases. This is attributed to the case clearance rate of 135 per cent that was achieved during the period under review thereby guaranteeing non-increase in pendency of cases. The percentage pending cases by type for ELC as at 30<sup>th</sup> June 2018 is given in Figure



**Figure 2.25: Percentage distribution of pending cases by type in ELC, FY2017/18**

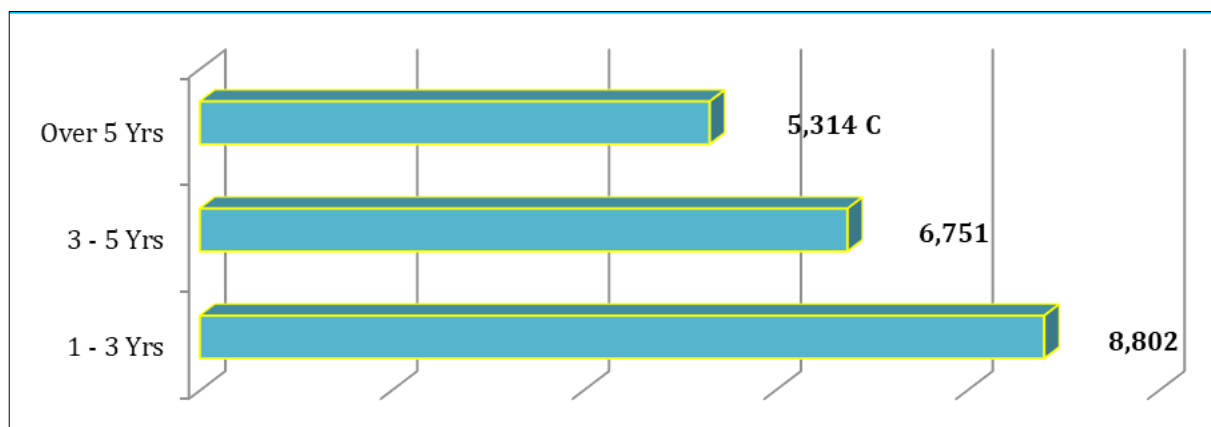
Out of all pending cases, 89 per cent comprised ELC matters followed by miscellaneous matters at 7 per cent while appeals were the least at 4 percent. The number of pending cases for the ELC stations is given in Table 2.27.

**Table 2.27: Pending cases by type in ELC, FY 2017/18**

ELC Station	Pending cases as @ 30 <sup>th</sup> June 2017	Pending cases as at 30 <sup>th</sup> June 2018			
		ELC matters	ELC Misc.	ELC Appeals	All case types
Bungoma	851	621	98	16	735
Busia	504	518	14	10	542
Chuka	386	182	3	76	261
Eldoret	2,132	1888	42	47	1977
Embu	702	646	23	2	671
Garissa	30	57	11	4	72
Kajiado	183	18	13	2	33
Kakamega	809	412	5	6	423
Kericho	648	373	4	2	379
Kerugoya	968	644	96	154	894
Kisii	1,969	1582	148	129	1859
Kisumu	2,247	1411	44	45	1500
Kitale	900	810	0	4	814
Machakos*	442	965	84	43	1092
Makueni	325	171	16	6	193
Malindi	1,148	1071	16	9	1096
Meru	583	319	109	174	602
Migori	786	411	4	3	418
Milimani	4,833	3954	570	90	4614
Mombasa	1,936	1441	390	58	1889
Muranga	131	308	4	19	331
Nakuru	1,862	1681	3	1	1685
Narok	498	237	5	3	245
Nyandarua	396	361	9	2	372
Nyeri	1,298	763	30	25	818
Thika	675	820	27	18	865
<b>All cases</b>	<b>27,242</b>	<b>21,664</b>	<b>1,768</b>	<b>948</b>	<b>24,380</b>

### 2.6.3 Case Backlog in ELC.

The case backlog in ELC stood at 20,867 cases at the end of the 2017/18 FY. The distribution of these cases by age is given in Figure 2.18.



**Figure 2.26: Percentage distribution of case backlog in ELC, 2017/18.**



Most of the backlog cases were aged between 1 and 3 years at 8,802 cases. A total of 5,314 cases were over 5 years in age. The distribution of the case backlog by age in ELC stations is given in Table 2.28.

**Table 2.28: Case backlog by age for ELC, 30<sup>th</sup> June 2018.**

ELC Station	1-3 years	3-5 years	Over 5 years	All backlog
Bungoma	106	230	318	654
Busia	220	194	2	416
Chuka	208	0	0	208
Eldoret	575	677	558	1810
Embu	272	301	5	578
Garissa	14	0	0	14
Kajiado	21	5	3	29
Kakamega	43	140	171	354
Kericho	201	12	114	327
Kerugoya	477	285	101	863
Kisii	532	542	656	1730
Kisumu	572	432	438	1442
Kitale	433	176	128	737
Machakos	390	171	220	781
Makueni	96	4	11	111
Malindi	657	157	126	940
Meru	165	195	144	504
Migori	189	41	6	236
Milimani	1,499	1,800	832	4131
Mombasa	557	292	600	1449
Muranga	120	80	63	263
Nakuru	270	554	622	1446
Narok	181	14	7	202
Nyandarua	250	104	98	452
Nyeri	348	304	74	726
Thika	406	41	17	464
<b>All courts</b>	<b>8,802</b>	<b>6,751</b>	<b>5,314</b>	<b>20,867</b>

Form Table 2.23, the ELC courts that had the highest number of backlog cases were Milimani, Eldoret, Eldoret and Kisii. Garissa and Kajiado had the least case backlog.

#### **2.6.4 SJT Implementation Status on Reduction of Case Backlog in ELC**

On reduction of case backlog of above 5 years in age, a total of 5,314 backlog cases older than 5 years have been resolved between January 2017 and June 2018. Detailed information on resolution of backlog cases older than five years is given in Table 2.29.

**Table 2.29: Distribution of case backlog by age for ELC, 30<sup>th</sup> June 2018.**

ELC Station	SJT target on reduction of case backlog 5 years and above as at 1st Jan 2017	Resolved backlog cases 5 years and above between 1st Jan 2017 and 30th June 2018	Case backlog 5 years and above as at 31st June, 2018
Bungoma	372	203	318
Busia	34	43	2
Chuka	0	170	0
Eldoret	611	176	558
Embu	11	26	5
Garissa	0	29	0
Kajiado	0	2	3
Kakamega	67	148	171
Kericho	199	143	114
Kerugoya	55	60	101
Kisii	150	366	656
Kisumu	144	188	438
Kitale	208	133	128
Machakos	0	961	220
Makueni	0	3	11
Malindi	158	180	126
Meru	145	673	144
Migori	0	24	6
Milimani	988	559	832
Mombasa	452	537	600
Muranga	0	0	63
Nakuru	547	75	622
Narok	0	0	7
Nyandarua	0	0	98
Nyeri	5	33	74
Thika	0	24	17
<b>All Courts</b>	<b>4,146</b>	<b>4,756</b>	<b>5,314</b>

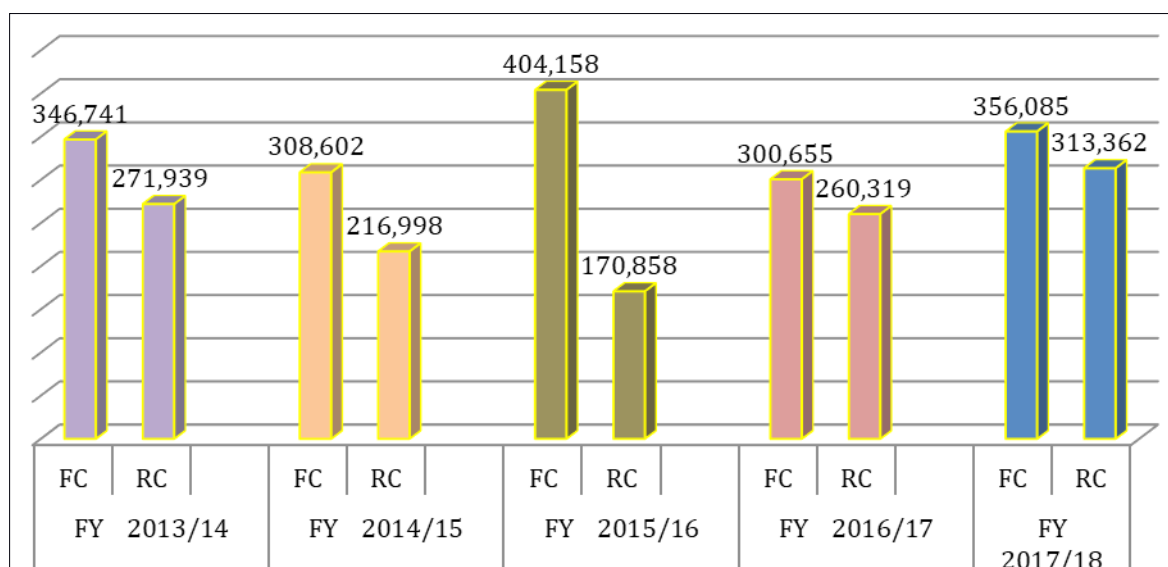
The rise in case backlog depicted in Table 2.24 could be attributed to case transfers from High courts to ELC stations.

## 2.7 Magistrate Court

Magistrate's courts are established pursuant to Article 169 of the Constitution of Kenya, 2010. The Magistrates Courts Act, Act No. 26 of 2015 provides the general jurisdiction and administration of the Court. There were 123 magistrate court stations during the period under reference.

### 2.7.1 Filed and Resolved Cases in Magistrates Courts

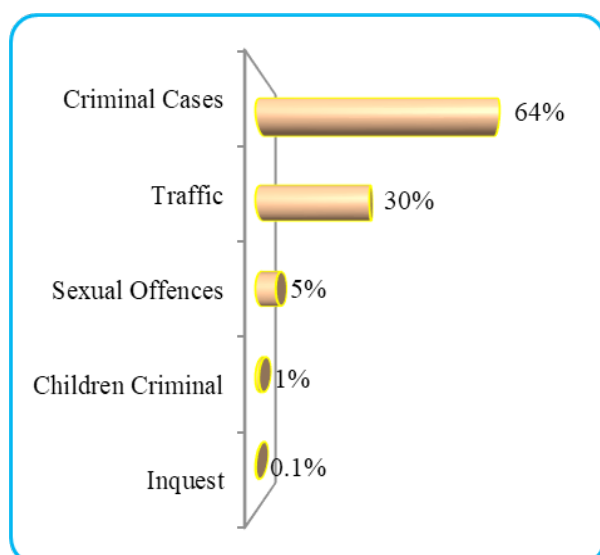
During the FY 2017/18, a total of 356,085 cases were filed in magistrate's court while 313,362 cases were resolved. Statistics on Filed and Resolved cases in the magistrate court for the last five FYs is highlighted in Figure 2.19.



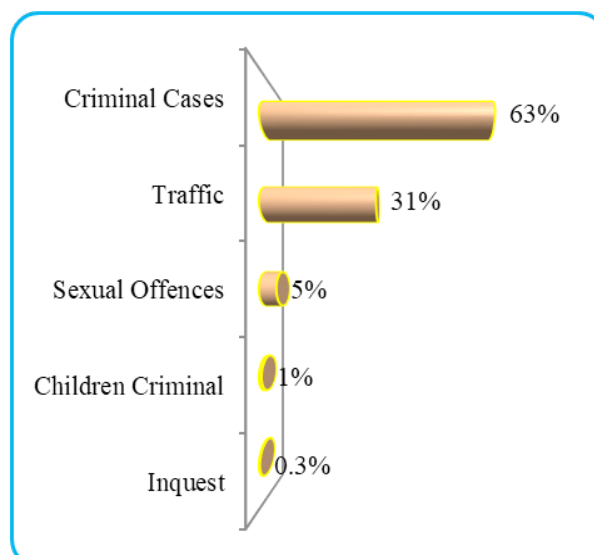
**Figure 2.27: Trend on filed and resolved cases in Magistrate Court, FY 2013/14 -FY 2017/18**

During the FY 2017/18, there was a 18 per cent increase in filed cases in magistrate court as compared to the previous reporting period. The total resolved cases increased by 20 per cent from the previous period. The percentage filed and resolved cases in magistrates' courts is given in Figures 2.28 and 2.29.

#### Criminal Cases Filed

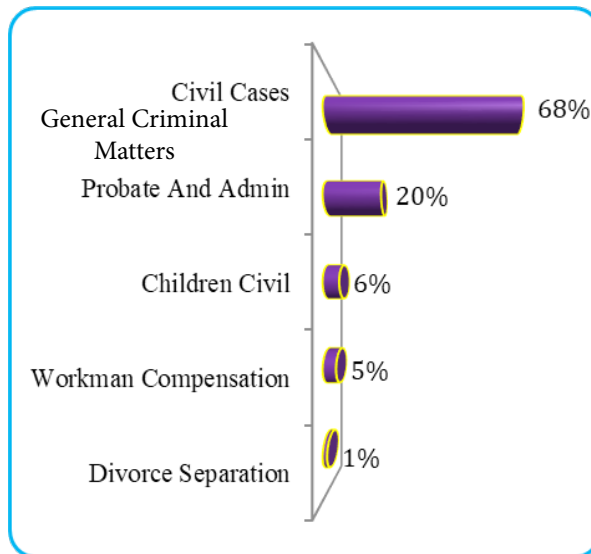


#### Criminal Cases Resolved

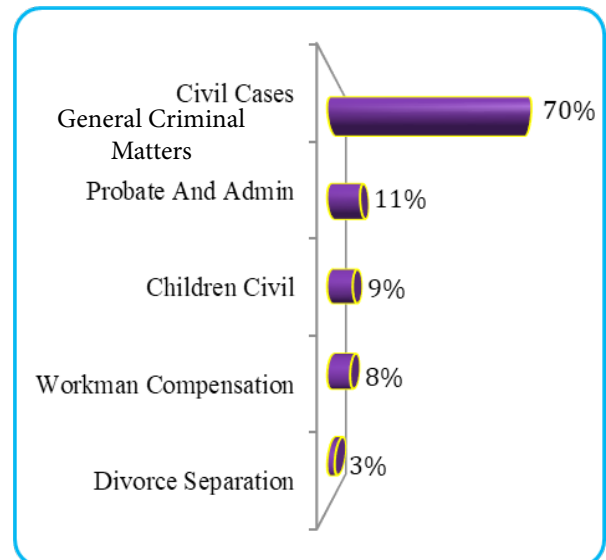


**Figure 2.28: Percentage filed and resolved criminal cases in Magistrate Court, FY 2017/18**

### Filed Civil Cases



### Resolved Civil Cases

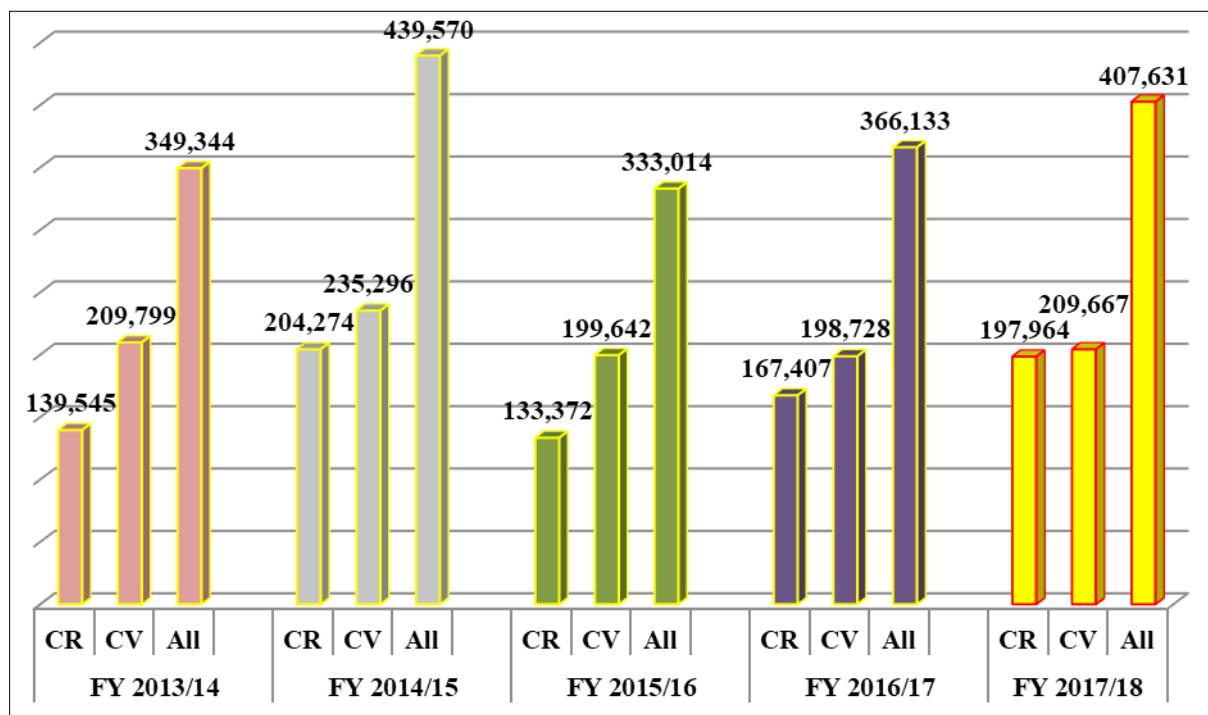


**Figure 2.29: Percentage filed and resolved civil cases in Magistrate Court, FY 2017/18**

From Figure 2.28, General criminal matters comprised the bulk of the filed and resolved cases at 64 and 63 per cent respectively. Inquest were the least filed and resolved criminal cases at 0.1 and 0.3 per cent respectively. From figure 2.29, General civil matters were the most filed and resolved cases at 68 and 70 per cent respectively. Divorce and separation matters were the least filed and resolved civil cases at 1 and 3 per cent respectively. Detailed information on filed and resolved cases by case type and magistrate court station is provided in the appendices.

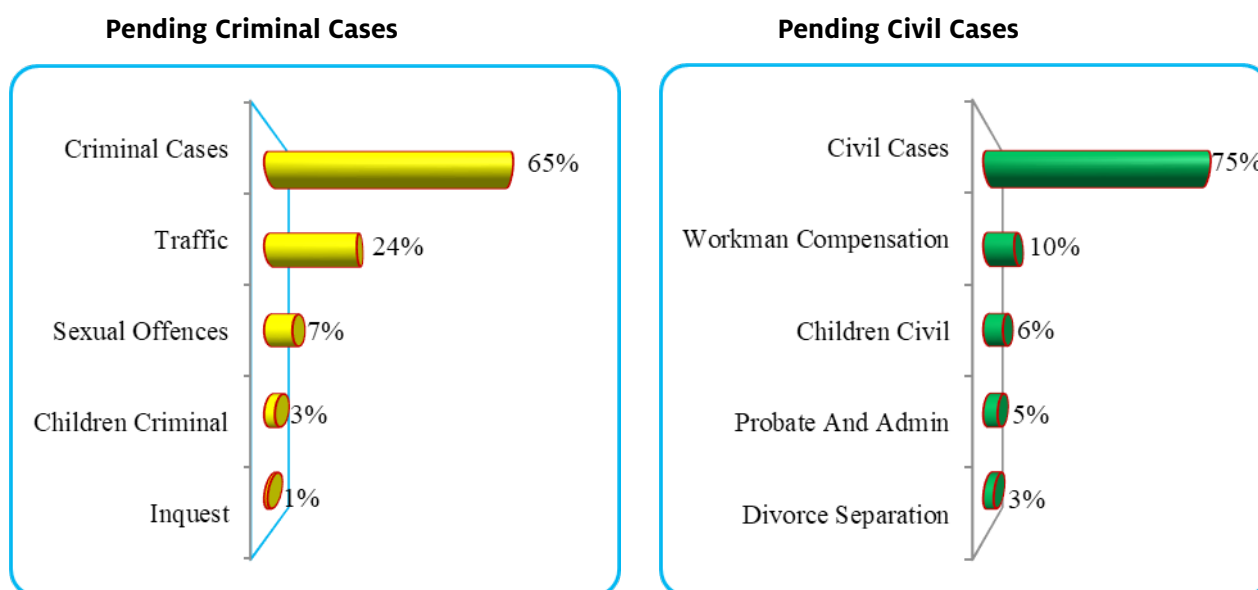
#### 2.7.2 Pending Cases in Magistrate Court

At the end of the FY 2017/18, there were **407,631** pending cases in magistrate court comprising **197,964** criminal cases and **209,667** civil cases. The change in pending cases in magistrates' court for the last five years is highlighted in Figure 2.20.



**Figure 2.30: Trend on pending cases in Magistrate Court, FY 2013/14- FY 2017/18**

There was a 11 per cent increase in pending cases between 2016/17 FY and 2017/18 FY. The percentage pending criminal and civil cases by type is given in Figure 2.31.

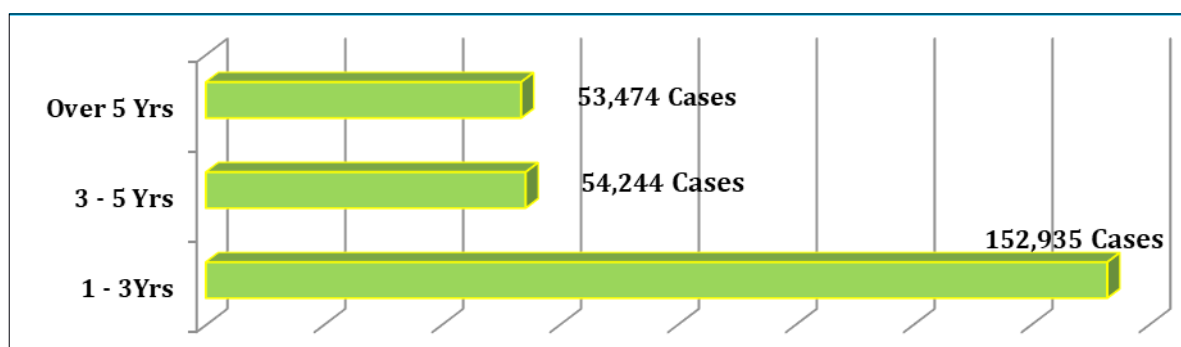


**Figure 2.31: Percentage Pending Criminal and Civil Cases, Magistrate Court**

From Figure 2.31, majority of pending criminal cases were general criminal matters at 65 per cent followed by traffic cases at 24 per cent. Inquest were the least pending criminal cases at 1 per cent. General Civil matters were the highest pending civil cases accounting for 75 per cent of total pending civil matters. Detailed statistics on pending cases for all magistrate court stations and case type have been provided in the appendices.

### 2.7.3 Case Backlog in Magistrate Court.

Out of the **407,631** pending cases in Magistrates' Court, a total of **260,653** cases were backlog. The distribution of case backlog in Magistrate Court is illustrated in **Figure 2.32**.



**Figure 2.32: Distribution of case backlog by age in Magistrate Court, 30<sup>th</sup> June 2018**

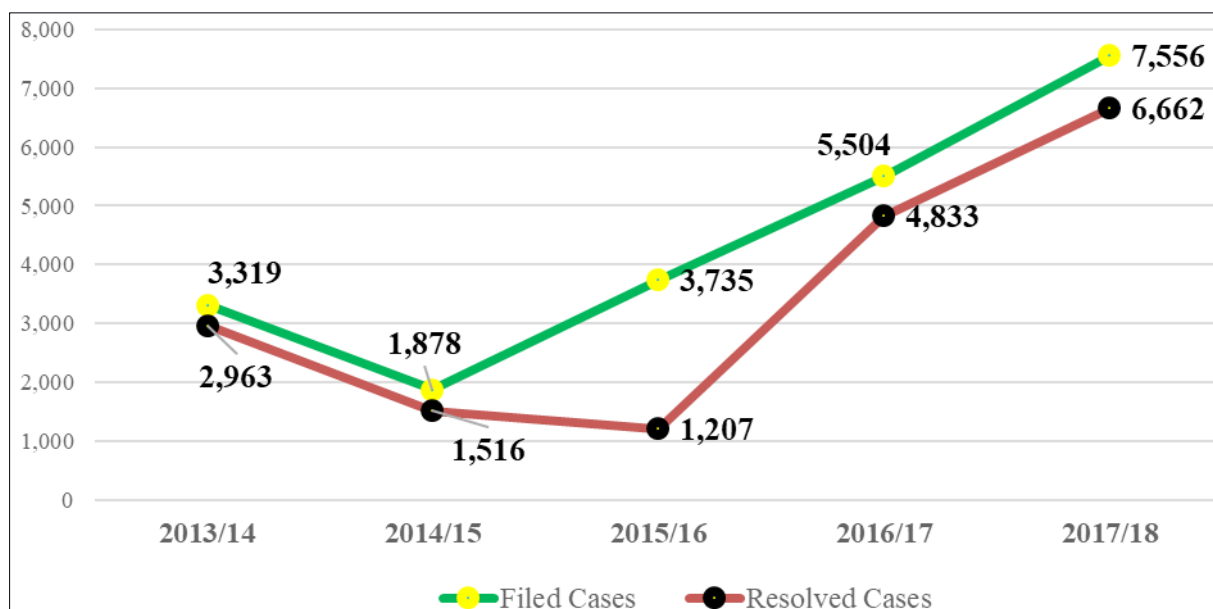
A total of 152,935 cases were aged between 1 and 3 years, 54,244 cases between 3 and 5 years while 53,474 cases were over 5 years in age. Detailed statistics on case backlog for all magistrate court stations and on backlog reduction under SJT Have been given in the appendices.

## 2.8 Kadhis' Courts

Kadhis' Courts are established under Article 170 of the constitution. It has limited jurisdiction to determine cases relating to personal status, marriage, divorce and inheritance in proceedings where both parties are profess islam.

### 2.8.1 Filed and Resolved Cases in Kadhi's court.

During the period under review, a total of **7,556** cases were filed in Kadhis' court while **6,662** were resolved. Figure 2.23 shows the number of filed and resolved cases for the last five FYs.



**Figure 2.33: Trend on filed and resolved cases in Kadhis' Court, FY 2013/14 -FY 2017/18**

The filed matters in the Kadhis' court has been increasing over time as shown by the uppermost curve in Figure 2.33. The court has also been able to respond to the increasing demand for justice by resolving cases at an increasing rate, though slightly less than those filed. Table 2.30 gives statistics on filed and resolved cases in Kadhis' court stations for the period under review.

**Table 2.30: Filed and resolved cases by Kadhis' court station, FY 2017/18**

Court Name	Filed cases	Resolved cases
Balambala	43	38
Bungoma	40	29
Busia	42	39
Bute	52	43
Daadab	110	149
Eldas	31	13
Eldoret	54	48
Elwak	149	148
Faza Island	81	72
Garbatulla	80	70
Garissa	465	391
Garsen	68	30
Habaswein	14	11
Hamisi	58	54
Hola	62	61
Homabay	34	27
Ijara	91	93
Isiolo	163	180
Kajiado	45	44
Kakamega	34	25
Kakuma	31	16
Kericho	84	76
Kibera	36	45
Kilifi	99	81



Kisumu	174	178
Kitui	29	31
Kwale	333	345
Lamu	133	140
Machakos	51	25
Malindi	148	136
Mandera	103	91
Mariakani	95	61
Marsabit	104	47
Maua	15	10
Merti	83	49
Migori	12	4
Mombasa	1,554	1,364
Moyale	103	122
Mpeketoni	42	34
Msambweni	80	70
Muranga	20	2
Mwingi	19	19
Nairobi	1,757	1,504
Nakuru	88	73
Nyeri	59	33
Takaba	141	132
Thika	23	19
Voi	29	29
Wajir	395	361
<b>All courts</b>	<b>7,556</b>	<b>6,662</b>

The highest number of filed and resolved cases in Kadhis' court were recorded in Nairobi and Mombasa stations. Overall, the Kadhis' court achieved a case clearance rate of 88 per cent.

## 2.8.2 Pending Cases in Kadhis' Court

At the end of the FY 2017/18, the pending cases in the Kadhis' court were **3,816** cases. The trend on pendency of cases at Kadhi court is highlighted in Table 2.31.

**Table 2.32: Trend in Pending Cases in Kadhi Courts for the Period 2013/14 – 2017/18**

Station	2013/14	2014/15	2015/16	2016/17	2017/18
Balambala	-	-	-	4	5
Bungoma	28	25	38	3	14
Busia	-	-	-	13	16
Bute	-	-	32	1	9
Dadaab	-	-	102	157	118
Eldas	-	-	-	32	50
Eldoret	-	-	55	5	6
Elwak	-	-	-	15	1
Faza	-	-	-	8	17
Garbatulla	-	-	-	14	31
Garissa	-	-	252	206	280
Garsen	31	40	67	73	111
Habaswein	-	-	23	57	60
Hamisi	-	-	-	45	49
Hola	28	50	54	33	7
Homabay	-	-	28	43	50
Ijara	-	-	20	28	26
Isiolo	29	29	138	54	33
Kajiado	8	8	5	15	16
Kakamega	-	0	32	127	136
Kakuma	-	0	140	10	25
Kericho	-	-	26	11	8
Kibera	-	0	39	27	18
Kilifi	22	26	23	10	28
Kisumu	-	-	55	102	34
Kitale	12	13	2	-	-
Kitui	-	7	5	9	4
Kwale	312	434	154	52	40
Lamu	79	90	120	34	8
Machakos	3	10	14	7	33
Makindu	-	321	-	-	0
Malindi	107	104	126	80	36
Mandera	68	73	117	110	122
Mariakani	-	-	15	3	37
Marsabit	121	121	96	21	78
Maua	-	-	-	2	7
Merti	-	-	-	3	37
Migori	-	12	6	7	15
Mombasa	1,246	1,106	894	1,081	1,271
Moyale	61	61	48	86	67
Mpeketoni	-	-	-	4	12
Msambweni	-	-	-	30	40
Murang'a	1	1	6	15	33
Mwingi	-	-	-	8	8

Station	2013/14	2014/15	2015/16	2016/17	2017/18
Nairobi	185	219	192	57	663
Nakuru	-	-	41	152	12
Nyeri	20	20	25	9	35
Takaba	-	-	-	13	9
Thika	5	6	2	3	7
Voi	6	12	51	5	5
Wajir	4	4	213	131	165
<b>Total</b>	<b>2,376</b>	<b>2,792</b>	<b>3,256</b>	<b>3,015</b>	<b>3,816</b>

### 2.8.3 Case Backlog in Kadhis' Court

At the end of the period under reference, case backlog at the Kadhis' court stood at 1,137 cases up from 1008 cases that were recorded at the end of the previous reporting period. Information on case backlog by age for the Kadhis' court stations is elaborated in Table 2.33.

**Table 2.33: Trend in Pending Cases in Kadhi Courts for the Period 2013/14 – 2017/18**

Court Name	1-3 years	3-5 years	Over 5 years	All backlog
Balambala	1	0	0	1
Bungoma	2	0	0	2
Busia	5	0	0	5
Bute	1	0	0	1
Daadab	34	0	0	34
Eldas	31	0	0	31
Eldoret	2	0	0	2
Elwak	0	0	0	0
Faza Island	0	0	0	0
Garbatulla	8	0	0	8
Garissa	81	0	0	81
Garsen	67	0	0	67
Habaswein	21	0	0	21
Hamisi	44	0	0	44
Hola	1	0	0	1
Homabay	17	0	0	17
Ijara	1	0	0	1
Isiolo	10	0	0	10
Kajiado	5	0	0	5
Kakamega	73	0	0	73
Kakuma	7	0	0	7
Kericho	2	0	0	2
Kibera	0	0	0	0
Kilifi	8	0	0	8
Kisumu	34	0	0	34
Kitui	1	0	0	1
Kwale	12	0	0	12
Lamu	1	0	0	1
Machakos	4	0	0	4
Malindi	10	0	0	10
Mandera	104	0	0	104

<b>Court Name</b>	<b>1-3 years</b>	<b>3-5 years</b>	<b>Over 5 years</b>	<b>All backlog</b>
Mariakani	2	0	0	2
Marsabit	20	0	0	20
Maua	1	0	0	1
Merti	2	0	0	2
Migori	6	0	0	6
Mombasa	386	0	0	386
Moyale	2	0	0	2
Mpeketoni	1	0	0	1
Msambweni	9	0	0	9
Muranga	6	0	0	6
Mwingi	3	0	0	3
Nairobi	53	0	0	53
Nakuru	3	0	0	3
Nyeri	8	0	0	8
Takaba	3	0	0	3
Thika	3	0	0	3
Voi	1	0	0	1
Wajir	55	0	0	55
<b>All courts</b>	<b>1,151</b>	<b>0</b>	<b>0</b>	<b>1,151</b>

## **PART II:**

### **ACCESS TO JUSTICE: STRATEGIC INITIATIVES TO IMPROVE ACCESS TO JUSTICE**

Judiciary has continued to adopt a strategic approach to enhance access to justice. Drawing from the Sustaining Judiciary Transformation (2017–2021): A Service Delivery Agenda policy document and the Judiciary Strategic Plan (SP) (2014–2018), diverse strategic initiatives were prioritized to reduce barriers to justice and hence enhance access to justice for Kenyans. This section provides information on the achievements that were realized in the FY 2017/18 on enhancement of access to justice, out of these strategic efforts and initiatives.

#### **1. Reduction of Case Backlog**

In Kenyan Judiciary, a case is classified as backlog if it remains unresolved for over one year since its date of filing. Therefore, case backlog depicts an accumulation of unresolved cases over time thus pointing to existence of inefficiencies in the justice chain. It is an undesirable phenomenon that has prompted the Kenyan Judiciary to earmark its reduction as a focal area in its strategic agenda. To reduce case backlog, finalization of cases that had remained unresolved for over 5 years since the date they were filed in court was made a deliberate target under the SJT strategy. During the period under review, all courts undertook diverse initiatives aimed at reducing case backlog. The efforts by courts yielded a 51 per cent decrease in case backlog of over 5 years from 170,186 cases at the beginning of SJT blueprint to 83,468 cases by end of June 2018. It is envisaged that more reduction in case backlog will be realized during the FY 2018/19.

#### **2. Digitization of Judiciary Processes**

Across the world, judicial systems are continuously harnessing technology in court and registry operations to realize high efficiency levels and to create linkages with litigants, lawyers, government agencies and other court users. The SJT earmarks improvement in Information Communication Technology (ICT) as an enabler of dispensation of justice. The Judiciary ICT masterplan spells out areas for digitization that are expected to revolutionize service delivery by courts, directories and registries. Consequently, Judiciary embarked on technological path aimed at supporting the broad mandate of dispensation of justice and access to justice. During the period under review, great strides were made on the use of case tracking system (CTS) for automation of registry processes, court recording transcription system (CRTS) for digitization of court proceeding, E-filing for digitization of court files, enterprise resource planning (ERP) for supporting administrative functions, and provision of internet to courts to ease communication across court stations and with external stakeholders. The CTS had been rolled out in 24 stations at the end of the FY with more courts expected to be connected to the platform in the next reporting period. The CRTS was piloted in Supreme Court, COA Nairobi and Milimani Commercial Division.

### **3. Enhancement of Judiciary Human Resource Capacity**

The quantity and quality of labour in public organizations such as Judiciary is of paramount importance for realization of high efficiency levels in provision of public good. The Kenyan Judiciary thrives in an environment where its key output, the dispensation of justice, is heavily reliant on quantity and quality of its labour force comprising judges, judicial officers and staff. An appropriate mix of this labour force coupled with optimal physical infrastructure of courts drives the performance of courts in improving access to justice. To enhance access to justice, deliberate efforts to improve the quality and capacity of judiciary employees through training was undertaken. A total of 130 magistrates were trained on continuous judicial education (CJE), 400 Judiciary staff were trained on customer care, communication and integrity, 450 magistrates were trained on management in civil matters, 70 judges and 90 magistrates trained on transcription, 70 Judges, 95 Magistrates and 40 Deputy Registrars were trained on handling of elections disputes. The key areas of training included making justice pro-poor, dealing with **prose** litigants, active case management, bail and bond among others. It is envisaged that the execution and use of knowledge and skills learnt will impact on service delivery rendering justice more accessible to Kenyans. More information on enhancement of human resource capacity is given in Chapter 5.

### **4. Development of Court Infrastructure**

Enhancement of access to justice in Kenya requires physical infrastructure in form of court buildings with enough court rooms, registries, chambers and offices. The spread of courts across geographical areas is equally important in making justice more accessible to Kenyans through the reduction of physical barriers to court users in accessing court services. To ensure that Judiciary maintains a positive trajectory on growth and development of courts, construction and refurbishments of courts was undertaken. During the period under review, a total of 66 courts were undergoing construction. Out of these, 8 courts were completed. For the completed courts, 2 of them had been funded through JPIP and 6 through GOK. For the 62 courts that were undergoing construction at the end of FY 2017/18, 36 of them were under GOK funding while 26 were under JPIP funding. The total contract sum for all the ongoing constructions at the end of the period under review was Ksh. 9.8 billion. Detailed analysis on the courts constructions that were undertaken is provided in Chapter 7 of the report.

### **5. Implementation of Performance Management and Measurement**

Performance management and measurement continues to be institutionalized in the Judiciary with focusing on Courts, Directorates, Registries and Judiciary semi-autonomous agencies. The ultimate objective of performance management is to support dispensation and access to justice through performance measurement and evaluation. The institutionalization cuts across all courts and administrative units in the Judiciary, with the scope covering the

entire Judiciary mandate as explicated in SJT and SP. Access to justice is a broad performance indicator for all courts comprising numerous sub-indicators that aim at ensuring that justice is dispensed expeditiously and made more accessible. The key performance indicators that laid emphasis on access to justice were enhanced case clearance rate, reduced case backlog, resolved cases within set timelines, timely delivery of judgments and improved courts' productivity. During the period under review, performance of courts and administrative units was assessed against the targets that had been set on these indicators in the previous period. The evaluation report was launched in April 2018. In the FY 2017/18, a total of 257 implementing units signed performance management and measurement understanding (PMMU) obligating them to work towards the realization of desirable results that would consequently enhance access to justice. The performance report for the period under review will be finalized and launched during the next reporting period.

## **6. Entrenchment of Alternative Dispute Resolution Mechanisms**

During the period under review, Judiciary enhanced access to justice by upscaling the use of Court Annexed Mediation (CAM) process. Court Annexed Mediation, which had only been in operation at Milimani High Court Family and Commercial Divisions the previous year, was extended to cover Milimani Civil Division, Milimani ELRC, Milimani ELC, Milimani Chief Magistrate Court and Milimani Childrens Court. In the FY 2017/18, 117 mediators were accredited bringing the total number of mediators to 229. In the FY 2017/18, a total of 705 matters, with a monetary value of 20.8 billion, were referred to mediation hence enhancing access to justice. Out of the 705 matters, 404 matters were concluded while in the remaining 176 matters, parties failed to reach an agreement. Out of the concluded matters, 228 matters had settlement agreements with a monetary value of 2.6 billion. In the 228 matters with settlement agreements, full settlements were 181, partial settlements were 20 while settlements via consent were 2. Overall, CAM matters were finalized within an average of 90 days. This range was low in comparison with the average time to disposition of 673 days for cases that went through the normal court process. This affirmed that CAM was efficient in the disposal of cases leading to enhanced access to justice.



# Chapter 3

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ACCESS TO JUSTICE - TRIBUNALS

# INFRASTRUCTURE

## 3.0 Introduction

Article 1(3) (c) of the Constitution recognizes the Judiciary and independent tribunals as State organs to which sovereign power is delegated by the people of Kenya. According to Article 159 (1) of the Constitution, judicial authority vests in and is to be exercised by courts and tribunals established by or under the Constitution. The Constitution of Kenya requires the Judiciary to undertake effective measures that enhance access to justice for the people of Kenya. In this regard, the Judiciary has over the last six years been implementing major transformation initiatives geared towards enhancing the delivery of justice among them transitioning of tribunals into the Judiciary. Tribunals are established by different Acts of Parliament and are mandated to resolve disputes in a fast, simple and speedy manner. Article 169 (1) of the Constitution defines subordinate courts under the Judiciary to include local tribunals as may be established by an Act of Parliament.

Under the constitutional framework, tribunals are part of the Judiciary and therefore critical players in the justice system. This is a departure from the previous constitutional regime in which tribunals operated under their respective line ministries. The purpose of transitioning tribunals is to ensure they are delinked from the executive and integrated in the court system. The Judiciary, upon full transition shall therefore, have an obligation to manage tribunals including their staff in order to effectively and efficiently render services to users.

There are about 60 tribunals in Kenya. Five tribunals transitioned to the Judiciary during the reporting period bringing the cumulative figure of those transitioned by the National Treasury to 20 as tabulated in table 3.1 below.

**Table 3.1: Trend on transition of tribunals to the Judiciary**

FY 2015/16	FY 2016/17	FY 2017/18
1. Political Parties Disputes Tribunal (PPDT)	1. Competition Tribunal	1. Competent Authority
2. Sports Disputes Tribunal (SDT)	2. Public-Private Partnership Petition Committee (PPPPC)	2. Legal Education Appeals Tribunal
3. National Environment Tribunal (NET)	3. Transport Appeals Licensing Board (TLAB)	3. Communications and Multi Media Appeals Tribunal
4. HIV and AIDS Tribunal	4. State Corporations Appeals Tribunal (SCAT)	4. Micro and Small Enterprises Tribunal
5. Education Appeals Tribunal		5. National Civil Aviation Appeals Tribunal
6. Business Premises Rent Tribunal (BPRT)		
7. The Standards Tribunal		
8. Industrial Property Tribunal		
9. Cooperative Tribunal		
10. Energy Tribunal		
11. Rent Restriction Tribunal (RRT)		

The Communications and Multi Media Tribunal, the Micro & Small Enterprises Tribunal, and the National Civil Aviation were among those transitioned into the Judiciary during the reporting period; however, their development budgets remained with the line Ministries.

### **3.1 Tribunals under the Judiciary**

#### **3.1.1 Industrial Property Tribunal**

It is a specialized court for resolution of disputes in different areas of intellectual property which include: patents, industrial designs, utility models, technovations and semi-conductor technologies. The Tribunal is established under the Industrial Property Act, 2001 and comprises a Chairperson and four members who hear and determine matters filed at the Tribunal. Administrative functions of the tribunal are undertaken by the Tribunal's Secretary.

The Tribunal has both original and appellate jurisdiction and thus receives applications on infringement of industrial property rights, applications on validity of such rights as well as applications for determination of rights transferred or to be transferred through licensing or other similar agreements or through government intervention.

The Tribunal's appellate jurisdiction involves hearing appeals from the decisions taken by different agencies responsible for the administration of industrial property rights such as Kenya Industrial Property Institute (KIPI), the Minister responsible for matters relating to industry as well as the relevant Arbitration Board under the Act. The Tribunal's mandate also involves advising government ministries and departments on exploitation of intellectual property in specified circumstances under the Act.

#### **3.1.2 Political Parties Disputes Tribunal**

It is established under Section 39(1), of the Political Parties Act 2011 Laws of Kenya. It resolves disputes between members of a political party, member of a political party and a political party, among political parties, an independent candidate and a political party and among coalition parties and also hears appeals from decisions of the Registrar of Political Parties under the Act. The tribunal's members are appointed by the Judicial Service Commission (JSC) and consist of: a chairperson who should be a person qualified for appointment as a judge of the High Court and six other members, three of whom should be advocates of the High Court of at least seven years standing. The Chairperson and members serve on part-time basis for a non-renewable term of six years. The Tribunal had six members in the year 2017/18.

### **3.1.3 Energy Tribunal**

It is established under Section 108 of the Energy Act, Cap 314 Laws of Kenya. Its mandate is to hear and determine appeals from decisions of the Energy Regulatory Commission. Under this Act, the Tribunal may, on its own motion or upon application by an aggrieved party review its judgments and orders. The tribunal consists of the Chairperson and Vice-Chairperson, both appointed by the President and three members appointed by the Cabinet Secretary. The tribunal is fully constituted with 4 members sitting.

### **3.1.4 State Corporations Appeals Tribunal**

It is established under Section 22 of the State Corporation Act Chapter 446, Laws of Kenya. It is tasked to handle matters involving any person who is aggrieved by a disallowance or surcharge by the Inspector-General of State Corporations, and to remit the case to the Inspector-General with such directions as the Tribunal thinks fit for giving effect to the decision on appeal. The tribunal consists of a Chairperson appointed by the President, two (2) members appointed by the Cabinet Secretary and the Secretary appointed by the Attorney General. No case has been registered since 2013 because it relies on the Inspector of State Corporations to forward disputes, and it has not received any.

### **3.1.5 Legal Education Appeals Tribunal**

It is established under Section 29(1) of the Legal Education Act No.27 of 2012 to determine appeals made in writing by any party or a reference made to it by the Council (of legal education) or by any committee or officer of the Council, on any matter relating to the Act. The tribunal has all powers of the High Court to summon witness, take evidence on oath or affirmation and to call for the production of documents. The tribunal consists of a Chairperson, one advocate, three persons who have demonstrated competence in the field of legal education and a Registrar. The tribunal had five members and a Registrar but had not registered any case during the period under review.

### **3.1.6 Standards Tribunal**

It is established under Section 16A of the Standards Act Cap 496 Law of Kenya to hear and determine appeals from a decision of the Kenya Bureau of Standards (KEBS) or the Council. Upon an appeal under the Act, the Tribunal may confirm, set aside or vary the decision or act in question and may make such other order as the Tribunal considers appropriate, including an order with respect to the payment of costs. The tribunal consists of a Chairperson, four members and a Secretary. During the period under review, the Tribunal was fully constituted.

### **3.1.7 Competition Tribunal**

It is established under Section 71 of the Competition Act No. 12 of 2010 Laws of Kenya to hear and determine appeals against decisions made by the Competition Authority. Further, the Tribunal has jurisdiction to review the Authority's decision and determination in relation to a proposed merger. The Tribunal consists of the Chairperson and not less than two and not more than four other members. The Tribunal had three members and registered one case in the year 2017/18.

### **3.1.8 Competent Authority**

It is established under the Copyright Act Cap 130 (Revised 2009). According to the Act, the "Competent Authority" should have not more than three persons appointed by the Attorney-General for the purpose of exercising jurisdiction under the Act, whenever any matter requires to be determined by it. The Tribunal had four members appointed in the month of February 2018. The Authority has not had any case.

### **3.1.9 HIV and AIDS Tribunal**

It is established under Section 25 the HIV Prevention and Control Act No 14 of 2006 [Rev. 2012] The Tribunal has jurisdiction under Section 26 to hear and determine complaints arising out of any breach of the provisions of this Act; to hear and determine any matter or appeal as may be made to it pursuant to the provisions of this Act; and to perform such other functions as may be conferred upon it by this Act or by any other written law being. The jurisdiction conferred upon the Tribunal excludes criminal jurisdiction. The Tribunal can award costs as per Section 27 (which are enforced by the High Court). The tribunal consist of seven members appointed by the Attorney-General under Section 25(1) and serve for a term of three years. The quorum for a meeting of the Tribunal is five, the chair and four other members.

### **3.1.10 Rent Restriction Tribunal**

It is established under Section 4 of the Rent Restriction Act Cap 296 of the Laws of Kenya. The mandate of the tribunal includes making provisions for regulating the increase of rent, the right to possession, the exaction of premiums and fixing standards rents in relation to controlled premises and for other purposes incidental or connected thereto, with the relationship of a landlord and tenant of a dwelling house. Its headquarters is in Nairobi with ten regional offices based in Mombasa, Kisumu, Nakuru, Nyeri, Kakamega, Eldoret, Embu, Lamu and Garissa. The Tribunal consists of the Chairperson, Vice Chairperson and a panel of members who are appointed by the Cabinet Secretary Ministry of Land, Housing and Urban Development. The Tribunal had a total of 10 members during the year FY 2017/18.

### **3.1.11 Cooperative Tribunal**

It is established under Section 77 of the Cooperative Societies Act No.490 (Revised in 2012), Laws of Kenya. The mandate of the Tribunal is to resolve disputes among members of cooperative societies, past members and persons claiming through members, past members and deceased members; or between members, past members or deceased members and the society, its committee or any officer of the society; or between the society and any other co-operative society. The tribunal consists of the Chairperson, Vice Chairperson and four members who are appointed by the Cabinet Secretary, Ministry of Industrialization and Enterprise Development.

### **3.1.12 Business Premises Rent Tribunal**

It is established under Section 11 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, Chapter 301, Laws of Kenya. Its mandate is to determine disputes between landlords and tenants in business premises within the limits set out in the Act. The Tribunal consists of persons appointed by the Minister. The Tribunal has powers to determine a range of issues such as whether or not any tenancy is a controlled tenancy and determine or vary the rent to be payable in respect of any controlled tenancy. Under Section 11 of the Act, The Tribunal consists of a person or persons (number not specified) appointed by the Cabinet Secretary.

### **3.1.13 National Environment Tribunal**

It is established under Section 125 of the Environmental Management and Coordination Act (EMCA) of 1999 and comprises a chairperson nominated by the JSC, and four members appointed by the Cabinet Secretary responsible for environmental matters. Appeals to the Tribunal are by any person who is aggrieved by a refusal to grant a license or to the transfer of his license under the Act or regulations, the imposition of any condition, limitation or restriction on his license under the Act or regulations, the revocation, suspension or variation of his license under the Act or regulations, the amount of money which he is required to pay as a fee under the Act or regulations made thereunder, the imposition against him of an environmental restoration order or environmental improvement order by the Authority under the Act or regulations. The Tribunal has four board members. During the period under review, the tribunal elected Chairperson and Vice-Chairperson on 31<sup>st</sup> May, 2018; refurbished tribunal offices and held training of the Chairperson in Sweden and training of staff in Arusha and Kisumu.

### **3.1.14 Micro & Small Enterprises Tribunal**

It is established under Section 54 of the Micro and Small Enterprises Act, 2012 Laws of Kenya. The Chairperson and the Vice Chairperson are nominated by JSC but appointed by the Cabinet Secretary and five members also appointed by the Cabinet Secretary. The Tribunal

has jurisdiction to determine any dispute concerning the micro and small enterprise arising (a) among members, past members and persons claiming through members, past members of associations and or administrators of estate of deceased members of the associations; (b) between members, past members or administrators of estate of deceased members of the association, and the Micro and Small Enterprises Authority, or any of their officers or members; (c) between the Authority and an association. The Tribunal has not registered any case and does not have secretariat staff. During the reporting period, the Tribunal's key achievements were: appointment of the Chairperson and the Law Society of Kenya representative; finalization of the Service Delivery Charter and preparation of draft regulations.

### **3.1.15 Communication and Multi Media Appeals Tribunal**

It is established under Section 102(1) of the Kenya Information and Communication (Amendment) Act 2013 for the purpose of arbitrating in cases where disputes arise between the parties under the Act and such matters as may be referred to it by the Minister. The Tribunal consists of: a Chairperson who should be a person who holds or has held a judicial office in Kenya or who is an advocate of not less than seven years standing and entitled to practice before any of the courts of Kenya; and two other members who should possess expert knowledge of the matters likely to come before the Tribunal and who are not in the employment of the Government or the Corporation and two other members who shall be nominated by the Media Council established under the Media Act, 2007 (No. 3 of 2007), and appointed by the Minister. The chairman and other members of the Tribunal are appointed by the Minister in consultation with the Attorney-General. The tribunal has not registered a case since its establishment.

### **3.1.16 National Civil Aviation Administrative Review Tribunal**

It is established under Section 66 of the Civil Aviation Act No.21 of 2013 (Revised in 2014). The Tribunal consists of the Chairperson, a Deputy Registrar and four other persons with management and technical experience of not less than ten years in the field of civil aviation. The Chairperson of the Tribunal is appointed by the JSC. The Cabinet Secretary, through a competitive process, selects three and eight suitable nominees for the positions of a chairperson and members respectively, and forwards their names to the JSC for appointment.

The jurisdiction of the Tribunal is to hear and determine complaints or appeals arising from: any refusal to grant a license, a certificate or any other authorization by the Kenya Civil Aviation Authority or transfer of a license under the Act or regulations No. 21 of 2013 Civil Aviation [Rev. 2014] [Issue 3] C16A – 40, the imposition of any condition, limitation or restriction on a license under the Act or regulations, any revocation, suspension or variation of a license, any amount of money which is required to be paid as a fee, the imposition of any order or direction by the Authority, consumer protection compliance and enforcement of activities related to areas such as right violations, unfair and deceptive practices and



unfair competition by air carriers and travel agents, deceptive airline advertising including fare, on-time performance, schedule, code sharing, and violations of rules concerning denied boarding compensation, ticket refunds, baggage liability requirements, flight delays and charter flights or any exercise of powers to make decisions, but not powers in respect of staff employment, granted to the Director-General or the Authority under this Act or regulations. The Tribunal registered and determined one case in the year 2017/18.

### **3.1.17 Education Appeals Tribunal**

It is established under Section 93 of Basic Education Act No. 14 of 2013 (Revised 2017). The Tribunal handles complaints from those dissatisfied with decisions made by educational institutions. It listens to petitions from teachers, students, parents, ministry staff, proprietors, sponsors, boards of management and school management committees. The Tribunal consists of the Chairperson and four members who are mandated to hear and resolve disputes brought before it. The Tribunal is chaired by a chairperson who is appointed by the Education Cabinet Secretary and has all the powers of the High Court to summon witnesses, to take evidence on oath or affirmation and to call for the production of books and other documents. During the review period, the tribunal members had not been gazetted. According to the Basic Education Act, the Board members are drawn from the following offices: The Director General, Chief Executive Officer Teachers Service Commission, Director of Quality Assurance and Standards, Chief Executive Officer Kenya Private Sector Alliance (KEPSA), Office of the Attorney General, and National Council of Nomadic Education in Kenya, NACONEK.

### **3.1.18 Sports Disputes Tribunal**

It is established under Section 55 of Sports Act No.15 of 2013 Laws of Kenya. The Tribunal draws its mandate from the Sports Act 2013 and Anti-Doping Act no 5 of 2016. In Sports related matters, the Tribunal determines:

- a) appeals against decisions made by national sports organizations or umbrella national sports organizations, whose rules specifically allow for appeals to be made to the Tribunal in relation to that issue including appeals against disciplinary decisions and appeals against not being selected for a Kenyan team or squad;
- b) other sports-related disputes that all parties to the dispute agree to refer to the Tribunal and that the Tribunal agrees to hear; and
- c) appeals from decisions of the Registrar under the Act.

In doping cases, the Tribunal hears and determines all cases on anti-doping rule violations on the part of athletes and athletes support personnel and matters of compliance of sports organisations as per the Anti-doping Act. The Tribunal does not have jurisdiction over national crimes related to doping. The tribunal consists of nine members including the Chairperson and had all the members on board during the Financial Year 2017/18. The Tribunal may, in determining disputes apply alternative dispute resolution methods for sports disputes and

provide expertise and assistance regarding alternative dispute resolution to the parties to a dispute.

### **3.1.19 Public Partnership Private Petitions Committee**

It is established under Section 4 of the PPPPC Act No. 15 of 2013, (Revised in 2015). It comprises of a Chairperson and twelve members. Its functions involve overseeing the implementation of policies formulated, requisition of any information from any party to a project on any matter relating to a public private partnership and custody of a project agreement made under the Act, and monitoring compliance with the terms and conditions of the agreement. The Tribunal had six members and did not register cases in the financial year.

### **3.1.20 Transport Licensing Appeals Tribunal**

It is established under the National Transport and Safety Authority Act No. 33 of 2012 (Revised in 2014) under the Ministry of Transport, Infrastructure, Housing and Urban Development. The Tribunal hears appeals against decisions of the NTSA. The appeals board may, on any appeal affirm or reverse the decision of the Authority, or make such other order as the Board considers necessary and fit. It also hears appeals filed against any tax decision made by the Commissioner. The Tribunal consists of five members including the Chairperson.

In the past year, the Board handled diverse cases brought in by individuals, matatu sacco operators and bus companies. The issues for determination were on the following areas: de-registration of motor-vehicles from NTSA portal without due process; failure of the NTSA to give complainants audience; impounding of motor-vehicles, removal of number plates and removal of the Road Service License (RSL); technical, and long process set by the authority while seeking license registration of company, sacco, RSL (both short term and normal RSL); revocation and downgrading of class A driving license to class C; lack of written guidelines relating to route extension; detention of vehicles and confiscation of driver's license and RSL and eventual black listing of vehicle despite driver paying the required court fines; de-registration of Saccos; intrusion by unregistered operators and failure by NTSA to punish school buses operating and ferrying passengers other than school students.

## **3.2 Caseload Statistics for all tribunals.**

### **3.2.1 Filed and resolved cases in tribunals**

During the period under review, 5,615 cases were filed while 2,530 cases were resolved. Details on filed and resolved cases are shown in Table 3.2

**Table 3.2: Cases filed and resolved in the tribunals during the FY 2017/2018**

<b>Name of Tribunal</b>	<b>Cases filed between 1st July 2017 and 30<sup>th</sup> June 2018</b>	<b>Cases resolved between 1st July 2017 and 30<sup>th</sup> June 2018</b>
Business Premises Rent Tribunal	569	543
Standards Tribunal	2	2
Cooperative Tribunal	682	410
State Corporations Appeal Tribunal	0	0
Education Tribunal	4	0
Transport Licensing Appeals Board	42	40
Rent Restriction Tribunal	3,620	889
Energy Tribunal	1	0
National Environment Tribunal	18	19
Competition Tribunal	2	0
Public Private Partnership Petition Committee	0	0
Micro & Small Enterprises Tribunal	0	0
Competent Tribunal	0	0
Sports Tribunal	50	35
HIV & Aids Tribunal	50	9
Industrial Properties Tribunal	5	15
Communication & Multi-Media Appeals Tribunal	0	0
National Civil Aviation Tribunal	1	0
Legal Education Tribunal	0	0
Political Parties Disputes Tribunal	569	568
<b>All Tribunals</b>	<b>5,615</b>	<b>2,530</b>

Rent Restriction Tribunal had the highest number of filed cases followed by Cooperative Tribunal and Business Premises Tribunal. Five tribunals were newly transited hence there were no matters filed in the year under review. The case clearance rate for the period under review was 45%.

### 3.2.2 Pending cases in tribunals

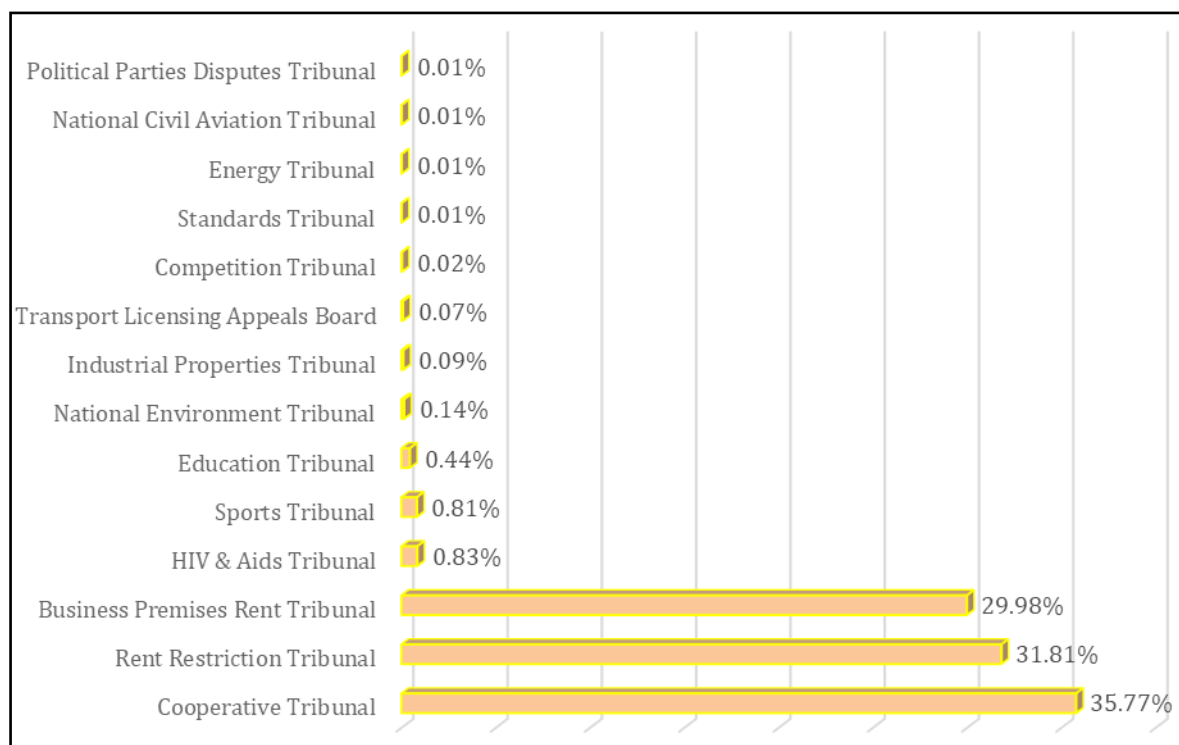
During the period under review, 11,100 cases were pending in all tribunals. Details on pending cases are shown in Table 3.3

**Table 3.3: Pending cases in tribunals during the FY 2017/2018**

<b>Name of Tribunal</b>	<b>Pending Cases as at 30<sup>th</sup> June 2017</b>	<b>Pending Cases as at 30<sup>th</sup> June 2018</b>
Business Premises Rent Tribunal	3,302	<b>3,328</b>
Standards Tribunal	1	<b>1</b>
Cooperative Tribunal	3,699	<b>3,971</b>

Name of Tribunal	Pending Cases as at 30 <sup>th</sup> June 2017	Pending Cases as at 30 <sup>th</sup> June 2018
State Corporations Appeal Tribunal	N/A	0
Education Tribunal	45	49
Transport Licensing Appeals Board	6	8
Rent Restriction Tribunal	800	3,531
Energy Tribunal	N/A	1
National Environment Tribunal	16	15
Competition Tribunal	N/A	2
Public Private Partnership Petition Committee	N/A	0
Micro & Small Enterprises tribunal	N/A	0
Competent Tribunal	N/A	0
Sports Tribunal	75	90
HIV & Aids Tribunal	51	92
Industrial Properties Tribunal	20	10
Communication & Multi-Media Appeals Tribunal	N/A	0
National Civil Aviation Tribunal	N/A	1
Legal Education Tribunal	N/A	0
Political Parties Disputes Tribunal	N/A	1
All Tribunals	<b>8,015</b>	<b>11,100</b>

In the period under review, Cooperative Tribunal had the highest number of pending cases at 3,917 followed by Rent Restriction Tribunal at 3,531 and Business Premises Rent Tribunal at 3,328. The percentage pending cases is illustrated in Figure 3.1



**Figure 3.1: Percentage pending cases by Tribunal, F/Y 2017/2018**

From Figure 3.1, 98% of pending cases were in 3 tribunals namely Cooperative Tribunal, Rent Restriction Tribunal and Business Premises Tribunal. 11 tribunals shared the remaining 2% of the pending cases while 4 tribunals did not have any pending cases.

### 3.3 Staff distribution in Tribunals

During the period under review, a total of 197 staff comprising both Ministry and Judicial employees were working in tribunals. Similarly, there were 89 board members across all tribunals. Details of staff distribution are indicated in Table 3.4.

**Table 3.4: Staff distribution in tribunals in the FY 2017/18**

Name of Tribunal	Board Members	Judicial Staff	Ministry Staff	Total
Business Premises Rent Tribunal	1	4	25	30
Standards Tribunal	5	0	7	12
Cooperative Tribunal	10	7	10	27
State Corporations Appeal Tribunal	0	1	6	7
Education Tribunal	4	1	3	8
Transport Licensing Appeals Board	5	3	4	12
Rent Restriction Tribunal	10	4	59	73
Energy Tribunal	4	0	3	7
National Environment Tribunal	4	3	4	11
Competition Tribunal	3	1	1	5
Public Private Partnership Petition Committee	6	3	3	12
Micro & Small Enterprises Tribunal	5	0	0	5
Competent Tribunal	4	0	2	6
Sports Tribunal	9	2	5	16
HIV & Aids Tribunal	8	0	21	29
Industrial Properties Tribunal	5	1	4	10
Communication & Multi-Media Appeals Tribunal	5	0	1	6
National Civil Aviation Review Tribunal	5	0	1	6
Legal Education Tribunal	5	0	1	6
Political Parties Disputes Tribunal	7	7	0	14
<b>All Tribunals</b>	<b>89</b>	<b>37</b>	<b>160</b>	<b>302</b>

From table 3.4 above, the majority of staff working in tribunals (52%) were employees seconded from various ministries.

### 3.4 Tribunal Chairpersons and Locations

Physical access to tribunals is a key component of access to justice. During the period under review, tribunals were operating from various offices with majority being housed in premises

within their parent ministries. In regard to the leadership of the tribunals, 19 tribunals had chairpersons while State Corporations Appeals Tribunal did not have a chairperson. Details of all tribunals' location and names of the chairpersons are contained in **Annexure 3.1**.

## **Key Achievements and Developments in Tribunal Administration in the Financial Year 2017/2018**

### **3.4.1 Induction Training for Tribunals Secretariat Staff**

The Judiciary Human Resource Policies and Procedures Manual provides that induction and orientation of newly appointed staff should be conducted within the first three months of employment. The overall objective of induction is to familiarize the employees with the mandate, vision, mission and operations of the Judiciary and how their roles aligned to fit in their respective offices. In this regard, the secretariat staff were taken through an induction program whose objectives were to enable the participants develop realistic expectations, reduce uncertainty and ensure that there is some clarity of performance expectation in addition to equipping them with requisite knowledge, skills and attitude to enable them quickly settle down and deliver on their duties and responsibilities. The program was conducted by facilitators drawn from various directorates in the Judiciary and covered to a large extent the structure of the Judiciary, roles and functions of various directorates and the functions of the secretariat staff.

### **3.4.2 Induction Training for New Tribunal Members**

During the reporting period, three Tribunals were transited to the Judiciary. An induction training was conducted targeting 36 participants comprising the Chairpersons, Members, and Secretaries/CEOs of the following Tribunals: Communications and Multimedia Appeals Tribunal, Legal Education Appeals Tribunal, Competent Authority, National Civil Aviation Administrative Review Tribunal, Micro and Small Enterprises Tribunal and Public Private Partnerships Petition Committee. The trainers comprised internal and external facilitators as well as Judicial Officers who were carefully selected to share their experiences. The training program was tailor made to cover important aspects on Judiciary policies, judgement writing, functions of various directorates and roles and conduct of tribunal boards in dispensation of justice.

### **3.4.3 Institutionalizing performance management**

Performance management and measurement is an integral part of the judicial systems that is aimed at ensuring that both individual and team objectives are drawn and aligned to those of the organization. The Secretariat signed a PMMU for the reporting period to guide the secretariat in its programs and activities. The targets were drawn from the SJT and the Judiciary's Strategic Plan.

#### **3.4.4 Staff Performance Appraisal**

Performance Appraisal (PA) is a formal, structured system of measuring and evaluating an employees' job, related behavior and outcomes to discover how the employee is presently performing on the job and how the employee can perform more effectively in the future so that both the employee and the employer reap the desired benefits. Following the signing of the PMMU, 13 tribunal staff negotiated targets and signed their performance appraisal system forms.

#### **3.4.5 Assessment of Tribunal Registries and Records Appraisal**

The Tribunals secretariat is committed to enhancing efficiency in service delivery in all tribunal registries. During the reporting period a comprehensive analysis of registries and records in Cooperative Tribunal and Rent Restriction Tribunal was conducted. The activity involved going through all records in the archives and the registries to weed out expired records, organize and arrange files in the registries, reconstruct case registers and movement registers, records survey and appraisal to establish cases due for disposal.

Moving forward, it will be very critical to continuously train registry staff on Record and Registry practices to maintain the structures and standards that have been put in place. A phased approach has been adopted to appraise other tribunal registries and assist them align their operations to the Judiciary Registry manuals and eventually adopt Information Technology in Record Management.

#### **3.4.6 Launch of Service weeks at the Cooperative Tribunal**

The SJT places emphasis on clearance of backlog and in adherence to this strategic direction, the first service week for Tribunals was launched during the reporting period. The launch of the Cooperative Tribunal Service week provided an avenue for creation of public awareness about the existence of tribunals and their commitment to not only resolve disputes in a speedy manner, but to also clear backlog in line with the SJT. The event brought together internal and external stakeholders and ushered in the disposal of **1,497** cases that had previously been classified as backlog.

#### **3.4.7 Disposal of Obsolete Records at the Cooperative Tribunal**

The disposal of records at the Judiciary is guided by the Public Archives and Documentation Service Act (CAP 19), The Records Disposal Act (CAP 14) and the Judiciary Records Retention Disposal Schedules. During the reporting period, the Cooperative Tribunal obtained authority and disposed off records which were obsolete and due for disposal. This created space in the Tribunal archives and registries.



### **3.4.8 Assessment of Staff Working in Tribunals (Staff Mapping)**

Usually, tribunals' staff are seconded from parent ministries while a few clerical officers are from the Judiciary. In order to establish the actual number of staff deployed to tribunals, a staff mapping exercise was conducted to establish the number of staff in the twenty (20) tribunals that have transited to the Judiciary, their designations/cadres, terms and length of service, identify staffing gaps in tribunals, and provide recommendations on the staffing needs of the tribunals. This report is instrumental in guiding the staffing decisions

### **3.4.9 Operationalization of New Tribunals**

During the reporting period, the secretariat facilitated swearing in of members of PPPPC, Legal Education Tribunal, Communication and Multi-Media Appeals Tribunal, Micro and Small Enterprises Tribunal, Competition Authority and Competition Tribunal. The secretariat also facilitated their meetings, sittings, workshops, retreats and supported them with secretariat services.

### **3.4.10 Development of Service Delivery Charters**

The SJT lays emphasis on efficiency in the delivery of services. In this regard, through a consultative process, nine tribunals and the secretariat developed their service delivery charters.

### **3.4 .11 Development of Strategic Plans**

In order to cascade Judiciary's strategic goals, by the close of the reporting period, the Strategic Plans for Industrial Property Tribunal and Standards Tribunal were in the final stages while for Cooperative Tribunal and Sports Disputes Tribunals were in draft form. These are the only your tribunals that had begun the process.

### **13.4.12 Capacity building retreats**

During the reporting period, the under listed activities were undertaken with the aim of skills and competency development of tribunal members and staff, knowledge and experience sharing and establishing linkages and partnerships:

- Capacity building training for RRT and Cooperative Tribunals on the organization of the Judiciary, Judiciary policies and procedures, customer care and the role of tribunals in delivery of justice;
- study tour by TLAB in Canada on Tribunal Administration, induction of newly transited Tribunals' Chairpersons and CEOs/Secretaries; and
- training of all Tribunals on Performance Management and data collection, management and reporting;

- study tour by JSC to Canada to benchmark and share experiences on running of tribunals; and
- a joint working retreat for Tribunals' secretariat and JSC secretariat for peer review and establishing areas of collaboration and mutual interest.

#### **3.4.13 Public Awareness Initiatives**

To increase awareness on tribunals to the public, tribunals organized programs to reach out to the public and disseminate information on their existence, mandate, locations, rules and procedures among others. During the period under review, tribunals exhibited for the first time in the National ASK shows held in Nairobi, Mombasa, Kitale and Nyeri. Similarly they engaged in activities within their sectors aimed at sensitizing the public as well as strengthening stakeholder relationships.

### 3.5 Jurisprudence from Tribunals

**IN THE INDUSTRIAL PROPERTY TRIBUNAL  
AT NAIROBI  
IPT CASE NO. 71 OF 2016**

**Evans Mwene Kereina.....Requestor**

**Vs.**

**Faulu Kenya Limited.....1st Respondent**

**Airtel Kenya Limited.....2nd Respondent**

**Safaricom Kenya Limited..... 3rd Respondent**

#### **Ruling**

#### **Introduction**

The applications by the three respondents, Faulu Kenya Limited, Airtel Kenya Limited and Safaricom Kenya Limited, though filed separately sought for the Revocation of utility model No. 106 registered on 12/1/2016 under Registration No. KE/U/2012/258. They are all lodged against Mwene Kerina. The requestor had sought relief against the alleged infringement of utility model 106. These applications are brought under Section 103(1) of the Industrial Property Act.

The issues for determination by the tribunal were:

- a. Is what has been registered as utility model 106 a utility model as envisaged by Section. 2 of the Industrial Property Act.
- b. Is the requestors innovation new or it is obvious and comprised in the prior art as contended by the respondents.
- c. Should utility model 106 be Revoked
- d. Who should bear the cost of the applications for Revocation proceedings.

These Revocation proceedings had been brought under Section 103(1) of the Industrial Property Act 2001. That section allows an interested person to request the Tribunal Revoke or Invalidate the patent, Utility Model or Industrial Design registration in proceedings instituted either by him against the owner of a patent, registered utility model or industrial design or against him by the owner of a patent registered utility model or industrial design. The Claimant instituted proceedings against the three Respondents on 18<sup>th</sup> February, 2016 for relief from alleged infringement of his utility model. The revocation applications in the present case fall under the second limb of Section 103(1) of the Industrial Property Act.

#### **Arguments**

The three applications were canvassed together on 22/3/2018 with Ms. Nganga appearing for the Requestor and Mr. Njenga, Mr. Sikei and Mr. Gitau appearing for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents respectively.

### Analysis and Findings

At the centre of this dispute is the question whether utility model No. 106 should be revoked or not. The Respondents have urged us to do so primarily on the grounds that it does not meet the requirements of Section 2, Section 34(1), Section 25, Section 82 and regulation 16 and 17 of the Industrial Property Regulations. In particular that it is not a utility model as contemplated under Section 2 of the Act, in that it contains mere descriptions of a process of disbursing loans and is thus not “a form, configuration or disposition of elements of some appliance or other object or any part of the same....”.

The second limb of the challenge on utility model is on the novelty of innovation registered as utility model 106. The Respondents contends that it is not a utility model properly so called and is anticipated by prior art. Thus it is not worthy of protection and should be revoked.

The claimant is of a contrary view. He said that the utility model 106 not only fits the statutory definition of a utility model but is unique to him and was not anticipated by the prior art as contended by the respondents.

As earlier indicated in this ruling the primary issues for determination are whether the utility model 106 fits the definition of a utility model as contemplated by section 2 of the Act, whether utility model 106 is anticipated by prior art or is new, novel and unique to the claimant. If the utility model 106 does not fit the description of a utility model under the Act then it is incapable of Registration. So is the case if it is found to be anticipated by prior art and therefore not new or novel. Under Section 82 of the Act an invention only qualifies for a utility model certificate if it is new and industrially applicable.

It is a common ground that what the claimant presented for registration and protection as a Utility Model was a description of a process of acquiring/ disbursing loans through a mobile phone. What is disputed is whether that process constitutes a utility model as envisaged by a Section 2 of the Industrial Property Act (2001). That section is the interpretation section of the Act and where material a “utility model” for purposes of the Act means any form, configuration or disposition of element of some appliance, utensil, tool, instrument, handcraft, mechanism or other object or any part of the same allowing a better or different functioning, use or manufacturing of the subject matter or that gives some utility, advantage , environmental benefits, saving or technical effects not available in Kenya before and includes microorganisms or other self-replicable material products of generic resources, herbal as well as nutritional formulations which give new effects.”

From the plain reading of that text, it is clear that a utility model must unlike a patent disclose more than just a description of a process. This finding alone would suffice to dispose off the question as to whether E-Moby i.e. Utility model No. 106 is a utility model as contemplated by the Act. The simple answer is that it is not because the description in the abstract is not a form, configuration or disposition of elements of some appliance utensil, tool, instrument,

handcraft, mechanism or another object. We are persuaded that a utility model has one of its characteristics a physical form. Besides a mere presentation of information is not an invention and is to be excluded from patent protection – ( see Section 21(3) d).

The next question is one of newness, novelty and industrial application of utility model 106. Put differently, is the idea of disbursing loans through a mobile phone platform unique, new and informal? The claimant contends that it is not under the Act and invention qualities for utility model certificate are new and industrially applicable (see Sect. 82(1). To qualify as new, the utility model must not have been available in Kenya before. (See section 2 of the Act).

Utility model 106 was challenged both on account of newness and industrial applicability. On newness, the respondent contended that the idea of disbursing loans using a mobile platform was already in use both in Kenya and abroad. At the international level, the US was quoted while in the Kenyan context M-Kesho, M-Shwari and Kopa chapa were highlighted as instances of using the mobile phone platform to disburse loans/credit.

As regards, industrial applicability it was contended that the claimant's utility model 106 consists of a mere description of information and has not been industrially applied anywhere as it lacks sufficient details to enable any independent application and performance by a person skilled in the art. There is no material to show how the claimant's description in the abstract could work out in practice. The claimant, in fact, appears to acknowledge that something more was required to move his idea from an idea to something practical and implementable.

It would have been necessary to develop software to implement the idea which does not appear to have been done at the time of registration or at all. The mere description of the idea and information is thus not sufficient to make it implementable. In addition, the three Respondents appear to have quite independently of the claimant, rolled out their own mobile phone loan/credit disbursement platforms.

### **Jurisdiction to Revoke**

Under Section 103(3) of the Industrial Property Act, the Tribunal is clothed with jurisdiction to revoke or invalidate the registration of a patent, utility model and industrial design provided that any of the grounds set out thereunder is satisfied. One of those grounds is that the invention is not new in terms of Section 23 of the Act. Under Section 23(1) an invention is new if it is not anticipated by prior art. And this includes everything made available to the public anywhere in the world by means of written or oral disclosure, use of exhibition or either other non-written means. Such disclosure is to be considered as prior art, so long as such disclosure occurred before the date of the application.

The question is looked through the lens of this prior art is E Moby whose date of filing

application is said to be 11/1/2012 and date of priority 10/1/2012 new in terms of Section 23 of the Act. We answer the question in the negative for the simple reason that all the claimed prior art both in Kenya and in the US predate the E-Moby date of application and priority date.

In the upshot, we find that Utility model 106 was not capable of registration for being merely a description of information and being anticipated by prior art, which was already in the public domain both in and elsewhere in the US. Consequently, we find that the applications for Revocation are merited and are allowed. The Utility model 106 otherwise known as E-Moby is hereby revoked.

This finding necessarily affects the infringement proceedings instituted by the claimant/requestor against the three respondents seeking relief for alleged infringement of the utility model 106. The same are hereby dismissed with the cost to the Respondents.

**IN THE NATIONAL ENVIRONMENT TRIBUNAL AT NAIROBI**

**TRIBUNAL APPEAL NO. 100 OF 2012**

**ELIZABETH KATISYA.....1<sup>ST</sup> APPELLANT**

**CAROLINE KATISYA..... 2<sup>ND</sup> APPELLANT**

**VERSUS**

**NATIONAL ENVIRONMENTAL MANAGEMENT AUTHORITY.....1<sup>ST</sup> RESPONDENT**

**CARNEVAL VILLAGE APARTMENTS.....2<sup>ND</sup> RESPONDENT**

**Judgment of the Majority**

1. The appeal herein was filed on 25<sup>th</sup> September 2012 by *Anthony John Dickinson & Others*, by way of Notice of Appeal dated 21<sup>st</sup> September 2012 against NEMA's approval and issuance of an Environmental Impact Assessment License (Registration No. 0011390) dated 2<sup>nd</sup> August 2012 permitting the construction of a five (5) storey residential block for Carneval Village on L.R. No. MN/1/7664 along Tudor Creek in Mombasa to Coconut Cave Limited. The said Appeal was filed against the Director General of NEMA and Carneval Village Apartments. The grounds of Appeal were set out, verbatim, as follows:-
  - Limited Space to Build
  - Inadequate Parking Space
  - Lack of Access
  - Non-Compliance with Zoning / Building Regulations
  - Air/ Noise/ Water Pollution
  - No Riparian Reserve
  - Limited Water Supply
  - Sewage – Mombasa City has no functional sewage system
2. The Appellant asked the Tribunal to grant the following orders:
  - a. Cancellation of “the fresh license” that had been issued by NEMA;
  - b. Stoppage of the Continued Construction;
  - c. Costs; and
  - d. NEMA to enforce its own Orders.

**Analysis and finding**

3. The Tribunal has carefully considered all the issues raised by the Parties and the evidence tendered by the witnesses during the hearing held on 1<sup>st</sup> February 2017 and set out in their pleadings, the documents submitted by the parties and the applicable law, including the National Environmental Tribunal Procedure Rules, 2003, the Environmental Management and Co-ordination Act (EMCA of 2009), the Environmental (Impact Assessment and Audit) Regulations 2003 and of particular significance the



Environmental Management and Coordination (Wetlands Riverbanks, Lakeshores and Seashores Management) Regulations 2009 which governs developments on the sea front.

4. The first issues to be determined by the Tribunal are whether the Appellants have been properly enjoined in this matter and whether the amendment of pleadings was appropriately done by the Appellants. Rule 16 of this Tribunal's Rules states as follows:

*"If it appears to the Tribunal, whether on the application of a party or on its own motion, that it is desirable that any person be made a party to the proceedings, the Tribunal may order such person to be joined as a respondent and may give such directions relating thereto as may be just, including directions as to the delivery and service of documents."*

5. The Katisyas' sought to continue the appeal without making a formal application to the Tribunal. To avoid dismissing the Appeal summarily, the Katisyas were granted an opportunity to be enjoined with a timeline of 9<sup>th</sup> February 2015 clearly set for compliance.
6. The matter was adjourned on several occasions thereafter after the parties indicated they were pursuing negotiations. Even after the resumption of the hearing, nothing more was said by either party about the amendments or the substitution of Appellants or effect of failure to prosecute the filed application for that purpose. The parties proceeded on the basis that the appeal had been properly amended and that the Appellants had been substituted.
7. As earlier stated, the law on amendment of pleadings is clear (*Rule 10 (1) of the National Environmental Tribunal Procedure Rules 2003*). Since the hearing had already commenced, the party seeking the amendment was obliged to seek the Tribunal's leave to this effect in terms of Rule 10(2). This was not done. It was important to note that Caroline Katisya and Elizabeth Katisya were not parties in the proceedings as at 18<sup>th</sup> December 2014 or at the time of filing her application in January 2015. At that stage she could not have sought to amend an appeal which did not belong to her.
8. Despite making an application on 26<sup>th</sup> January 2015 seeking to substitute and amend the pleadings, the Appellants did not wait for their application to be heard and determined by the Tribunal. Instead they proceeded on their own accord to file an amended Notice of Appeal substituting the parties and making substantial amendments including the introduction of three new grounds of appeal.
9. In this appeal however, the Tribunal considered that the Appellants were joined by conduct of the parties since the Appellants and Respondents proceeded to hearing on this basis without any objection being raised.

10. In the interest of justice and fairness to the parties and owing to the time taken since the appeal was filed the Tribunal overlooked this irregularity.
11. On the initial license dated 5<sup>th</sup> October 2009 granted by the 1<sup>st</sup> Respondent to the 2<sup>nd</sup> Respondent (which was eventually cancelled), no appeal was filed by the 2<sup>nd</sup> Respondent. The Tribunal was also not provided with the comprehensive report, nor the resolutions in MIN. 3/21/10/2011, to show the basis for the initial cancellation, except for the fact that it was done upon recommendation of the SERC and the reasons stated in the letter of cancellation.
12. The Appellants nonetheless maintain that by virtue of the cancellation of the previous license, the 2<sup>nd</sup> Respondent ought not to have been granted the second EIA license as there was still in existence failure to rectify irregularities and illegalities, and failure to consider the Appellants' complaints during the period the EIA license was being considered. The letter of cancellation (NEMA/CP/PR/1/1/0041) dated 16<sup>th</sup> December 2011 states in part as follows:

*“...that you are implementing the project in contravention of condition 6, 12 and 19 of the license and the information or data you gave in support of your application for an environmental impact assessment license was intended to mislead the Authority by not clearly indicating the site location...  
Based on the SERC resolution MIN. 3/21/10/2011, the Authority hereby cancels the license for the project NEMA /CP/PR.1/1/0041 with immediate effect.”*
13. The 2<sup>nd</sup> Respondent proceeded to apply for another license for the same project, under the same project consultant, who also happened to be the developer, one Mr. Josef Bruhlner, under whose consultation and direction the previous license was cancelled for providing misleading data.
14. The Tribunal notes that first and second reports prepared by the 2<sup>nd</sup> Respondent have not been submitted as evidence. No reports from the architects, the Ministry of Water and some of the leading agencies were submitted either.
15. The only documents submitted as evidence by the parties include forms of opposition of the project for the previous license, the cancelled license, ruling delivered in HCCC No. 9 of 2010, minutes of the public hearing, the advertisement for the second license and the license itself issued on 2<sup>nd</sup> August 2012, etc. No reports had been tendered from the Architects, Lead Agencies and all other relevant institutions necessary for such projects.
16. The parties however had relied on their documents tendered to present claims and allegations and similarly to contest and defend the claims, respectively.

17. The 1<sup>st</sup> Respondent, in its submissions dated 26<sup>th</sup> November 2014 sought to confirm the difference in documents, stating that the former license indicated as CP/PR.1/1/0041 was granted at the Project Report stage, while the subject of the current appeal, was granted after the full EIA study hence the use of initials “EIA”. However, the 1<sup>st</sup> Respondent filed a statement taking the strange position of not opposing the appeal (in essence, disowning its own EIA license) and leaving the decision of whether or not to cancel the secondary EIA license to the Tribunal.
18. Although the 2<sup>nd</sup> Respondent’s defence seemed to be premised on the position that it fully complied with all the necessary requirements, it failed to do so. A careful look at the second License issued (dated 2<sup>nd</sup> August 2012), and the conditions stated therein shows that the 2<sup>nd</sup> Respondent has disregarded several of the conditions, as below indicated;

a. ***General Condition 1.1 states that the Project is for construction of a five storeyed residential block.***

The License allowed for a five storey residential block. The Project which is currently 70% complete shows that there will be a total of six floors making it a six storey building. Indeed, even at cross examination the 2<sup>nd</sup> Respondent’s witness DW1 stated that the project would have a total of 6 floors, in contravention of the license.

A look at the minutes of the public hearing also indicates that there is a contradiction as to what was presented by one Prof. Justice Mwanje on behalf of the 2<sup>nd</sup> Respondent with regard to the proposed project, and what was stated during cross examination of the 2<sup>nd</sup> Respondent’s witness. During that meeting Prof. Mwanje made a presentation using a 3D model of the proposed project. The layout purported to show a three storey construction with 2 floors underneath, expected to house 33 studios and 5 one bedroom apartments.

However, the Tribunal noted that during cross examination, the witness stated that the building would have 29 studios and 5 one bedroom apartment, with one floor yet to be completed, which would total 6 storeys as opposed to the 5 storeys allowed under the license.

b. ***General Condition 1.1 states that the proponent shall ensure that records on conditions of licenses/approvals and project monitoring and evaluation shall be kept on the project site for inspection by NEMA’s Environmental Inspectors.***

During the site visit, members of the Tribunal could not identify any board with details of the Project on the site. Upon cross examination, DW1 confirmed that several of the approvals required had also not been obtained. In particular he was unable to exhibit the approved plans by the County Government of Mombasa.

- c. ***Construction Condition 2.1 states that the Proponent shall scale down the project to leave out a 60 metre riparian reserve from the highest water mark and rehabilitate the site to the approval of NEMA.***

The Water Resources Management Rules, 2007, Regulation no. 116 (c) states,

*“The riparian land adjacent to the ocean is defined as a minimum of two metres vertical height or 30 metres horizontal distance from the highest water mark.”*

However during cross examination, the 2<sup>nd</sup> Respondent confirmed that the riparian reserve for the project would be 5 metres from the corner of the building to the shore. The Tribunal also measured the distance and found it to be 18 metres, although it was uncertain whether this was the high water mark or if the tide had receded at the time of the visit.

- d. ***Construction Condition 2.2 states that the proponent shall ensure that the design drawings of the waste water treatment system are approved by the Mombasa Water Sewerage Company and the District Public Health Officer and evidence of the same submitted to NEMA before installation.***

In disregard to the above condition, no approvals had been obtained by the 2<sup>nd</sup> Respondents. In fact, during the hearing of the appeal the 2<sup>nd</sup> Respondent’s witness confirmed that they had not submitted any approved plan for the waste water treatment plant and its exact location, seeking instead to rely on statements he made at the hearing.

- e. ***Construction Condition 2.3 states that the proponent shall develop and implement a traffic management plan, including expansion of the road, to the approval of the Municipal Engineer, before commencement of the project.***

At the hearing of the appeal, no evidence was tendered by the 2<sup>nd</sup> Respondent to show a plan in place for the project, nor a Traffic Assessment Report and proposed mitigation measures, contrary to the above condition. It was also not clear how the 2<sup>nd</sup> Respondent, would ever manage to expand the road as privately developed properties abutted the narrow access road on either side.

- f. ***Construction Condition 2.7 states that the proponent shall put up a signboard as per the Ministry of Public Works standards indicating the NEMA EIA license number among other information.***

A visit to the site by the Tribunal confirmed that no signboard had been put up to identify the necessary details for the project.

- g. ***Operational Condition 2.2 states that the proponent shall ensure that all solid waste is handled in accordance with the Environmental Management and Coordination (Waste Management) Regulations of 2006.***

No evidence was produced of an approved plan forwarded to NEMA for solid

waste management. During cross examination, the 2<sup>nd</sup> Respondent's witness, again relying only on his statements, identified that they intended to install a bio-digester which would be stationed at the front of the project or the back of the project.

It is a fact that under the minutes of the public hearing submitted and relied on by the 2<sup>nd</sup> Respondent, the Mombasa Sewerage and Water Company had specifically pointed out concerns with regards to the supernatant that would remain after the sludge had been removed, but nowhere has the developer addressed the same.

19. The Waste Management Regulations are meant to streamline handling, transportation and disposal of various types of waste, with the regulations set in place to protect human health and the environment with emphasis on waste minimization, cleaner production and segregation of waste at source.
20. The Tribunal takes the position that without sufficient identification and articulation of measures and methods for management of waste water treatment and solid waste handling and without an adequate environmental management plan for it, there is real threat of discharge and disposal by means that will cause further damage than anticipated particularly because of the surrounding marine environment and the dependent ecological system within it.
21. The 2<sup>nd</sup> Respondent in his reply has alleged that it would set up a bio-digester unit. The 2<sup>nd</sup> Respondent's witness at the site visit attempted to point out where the bio digester would be located within the development. However, this was not supported by any evidence or approved plans for provision of the same. At the trial the 2<sup>nd</sup> Respondent's witness was at pains to explain why such an important item was omitted and reasons for their inability to present the same to the Tribunal. Unfortunately, despite being pressed on the issue, the 2<sup>nd</sup> Respondent's witness was unable to provide any direct evidence to support the contention that a bio-digester had been provided for. This allegation was once again speculative and the Tribunal cannot in the absence of such evidence find to the contrary.
22. The Tribunal also notes that despite having the second license approved, the 2<sup>nd</sup> Respondent continued with works on the project, which is currently at its last floor, in contravention of all the above described conditions and contrary to the laws. It was also clear that the development plan continued to change after NEMA approval without the Authority's input on the changes made.
23. In addition to the above deficiencies, the Tribunal also notes that several concerns by lead agencies had been disregarded by the Authority when it proceeded to grant the second EIA license in contention. For instance:-
  - a. **Fisheries Department** which had reiterated the project resulted in damage to

mangroves that act as breeding grounds for fish (thus confirming fears of the Appellants), that the construction had projected into the ocean and that the 30 metre high water mark regulation had not been met.

- b. **Forest Department** had raised concerns that the project was massive and that the cleared mangroves ought to be replaced in order not to hurt the environment.
- c. **KWS** no report had been submitted to the agency.
- d. **Ministry of Water** was concerned about the proposal of water harvesting and urged that the 2<sup>nd</sup> Respondent consider alternative sources of water, in addition to concerns as to septic tanks and its location.
- e. **Ministry of Lands – Physical Planning Department** was concerned that no plans had been submitted for the verification and approval of the 30 M high water mark which needed to be observed during project implementation.

- 24. The condition of a 60m riparian reserve was also not addressed by the 2<sup>nd</sup> Respondent, who sought instead to rely on their 5m reserve allowance, in contravention of the license and other related laws including the Constitution that recognizes shoreline set-back space. In the Tribunal's view this indicated that the developer did not intend to fully comply with the law in its development plans, and the result of such defiance ought to have led to an unequivocal denial of development approval and EIA license.
- 25. Having considered the evidence tendered, and the above conditions under the license, the Tribunal finds that the 2<sup>nd</sup> Respondent has proceeded contrary to key requirements that go to the core of the project, and has further deliberately failed to appreciate that development controls through EIA processes are not meant to hinder development but to harmonize activities under such development with environmental concerns.
- 26. During the site visit before hearing commenced, the Tribunal was able to observe the single access road to the project, another concern of the Appellants in this appeal. In addressing the issue of access road, the 2<sup>nd</sup> Respondent's witness claimed that there was parking provision for 18 spaces and that there was adequate parking space as most of the buyers did not own cars since they came from out of town. No plan was shown to assist the Tribunal determine parking spaces provision. The brochure supplied to the Tribunal at the site visit did not even show the availability of at least 1 parking per unit, at the very least. The Tribunal notes that there may have been about 15 parking spaces, at most. In addition, the 2<sup>nd</sup> Respondent witness stated that not all unit residents would have cars in need of parking. That is speculative, and the logical conclusion is that in the event of cars in excess of parking space available, residents or their guests will be forced to park on the narrow access road thus potentially posing a risk to the smooth ingress and egress of the residence.
- 27. The Tribunal also notes that the road access was clearly too narrow to permit heavy traffic. The Appellant resides at the end of this road. Her concerns as to the effect of traffic on her right to access her property are well founded. The 2<sup>nd</sup> Respondent in



his EIA report stated that he was aware that the Council (as it was then) had plans to expand the road. Eight years later the County Government has yet to expand this road. Once again this appears to have been a speculative statement that has now been proven erroneous. It is the Tribunal's finding that the road access cannot and does not support heavy traffic, nor would it adequately cater for the proposed development of the 2<sup>nd</sup> respondent.

28. The Appellant in her Appeal expressed her concerns with regard to the disturbance of wildlife in the area, with the allegation that the habitat was populated by monitor lizards and other flora and fauna that have disappeared since the construction begun. Even though no evidence was led to prove this allegation to the Tribunal, it is noteworthy that the property is on Tudor Creek which is known for its rich flora and fauna on the waterfront. The same concern was also raised by the Forest Department as a government agency. In addition, and more worthy to note, is that the riparian reserve normally set by KWS is 30m but for this particular project, the EIA Licence conditions had set a reserve of 60m. None of these set back distances were adhered to.
29. Although already addressed, the riparian reserve is crucial for preservation and protection of eco systems, bio systems and general protection of aquatic environments and the Tribunal notes that this is another instance where the 2<sup>nd</sup> Respondent has exhibited blatant disregard of the concerns raised.
30. In addition, the 2<sup>nd</sup> Respondent has also failed to state the likely impact of the proposed development and any mitigation measures at all for likely negative impacts of the projects on such wildlife during the construction and operational phase. It would appear that such impacts were not part of the concerns because it did not address them during the planning stage of the project. This is contrary to Regulation 7 (f) of the Environmental (Impact Assessment and Audit) Regulations which specifically requires a statement of proposed mitigation measures to be undertaken during and after the implementation of any project. In addition, it is also contrary to the requirements of the EMCA and the Constitution, in particular Section 3 and Article 42, on environmental protection in light of human activities with potential impacts.
31. The collapse of the Appellants' wall and security threat and resulting interference of privacy has also concerned the Appellants. The wall was said to have collapsed out of the 2<sup>nd</sup> Respondent's constructions. The Tribunal had the occasion to witness the collapsed and weakened wall. It posed a serious threat to the Appellant. It is clear that the construction has affected the wall's stability. The fact that the construction had stopped contributed to the weakness of the wall. However, this does not absolve the 2<sup>nd</sup> Respondent from responsibility and impact on the structural soundness of the Appellant's wall when constructing its building. In fact it is clear that the 2<sup>nd</sup> Respondent had an opportunity to take mitigating steps at an early stage. Yet it proceeded to construct its building up to the 4<sup>th</sup> floor while ignoring the obvious risk

it had exposed its neighbor to.

32. In previous cases before this Tribunal, including NET/23/2007 **Hon. Beth Mugo & 7 others v. Director General, NEMA and Silver Crest Enterprises Ltd**, the Tribunal has had occasion to consider NEMA's approval of developments on the basis of project reports alone and stated the need for NEMA, in such circumstances, to consult with potentially affected persons.
33. In such cases as the one cited above, the Tribunal has stated that the purpose of the EIA procedure stipulated in Environmental (Impact Assessment and Audit) Regulations, is to assess the potential impacts of a proposed project on the environment. As part of that assessment, NEMA considers the views of potentially affected persons and of equal importance the input from agencies, before the EIA study report is then considered.
34. However, in this particular instance, the Tribunal observes that even though there was compliance with the requirement for publication in the gazette and holding of a public hearing for comments, objections and or reviews, there was total failure to comply with Section 17 of the Environmental (Impact Assessment and Audit) Regulations 2003. Section 17 states inter alia:

*"17. (1). During the process of conducting an environmental impact assessment study under these Regulations, the proponent shall in consultation with the Authority, seek the views of persons who may be affected by the project.*

*(2). In seeking the views of the public, after the approval of the public, after approval of the project report by the Authority, the proponent shall –*

*a. publicize the project and its anticipated effects and benefits...*

*b. hold at least three public meetings with affected parties and communities to explain the project and its effects, and to receive their oral or written submissions."*

35. The Environmental (Impact Assessment and Audit) Regulations 2003, under Regulations 21 and 22 contain provisions which state that once the study report has been received by the Authority, another invitation to the public ought to be made, seeking the public's oral or written comments on the report. A second publication in the Kenya Gazette thus ought to be published for two consecutive weeks notifying the public to bring forth their views and concerns. Lastly, Regulation 22 (1) states that upon receipt of both oral and written comments as specified by Sections 59 and 60, the Authority may hold a public hearing, with all conditions and requirements for such public hearings being clearly laid out under Section 22.
36. The Tribunal notes that no second gazettelement was made contrary to the above provisions as indicated. The Tribunal notes firstly, that only one public hearing took place, which was held on the 20<sup>th</sup> of June 2012, and secondly, several concerns were



raised by lead agencies at the public hearing and yet, despite the irregularities and non-compliance, NEMA still proceeded to authorize the development.

37. Accordingly the Tribunal finds that for the foregoing reasons the Appeal is merited and allows the same. The 2<sup>nd</sup> Respondent has already constructed its development to a substantial level. It should consider a variation of its plans and resubmit a proposal to the relevant authorities with due regard and compliance with the law and address the plethora of concerns raised to avoid demolition.

**IN THE NATIONAL ENVIRONMENTAL TRIBUNAL AT NAIROBI**

**TRIBUNAL APPEAL NO. NET 198 OF 2016**

**AFRICAN BIOSAFETY STAKEHOLDERS' FORUM (ABSF).....APPELLANT**

**Versus**

**NATIONAL ENVIRONMENT**

**MANAGEMENT AUTHORITY (NEMA).....RESPONDENT**

**Judgment**

1. This Appeal was filed on 16<sup>th</sup> December 2016 by way of a Notice of Appeal dated 14<sup>th</sup> December 2016 together with Supporting Affidavit against NEMA's failure to issue a Record of the Decision on the Environmental and Social Impact Assessment (ESIA) project for the entry of insect-pest protected (Bt) candidate maize varieties into National Performance Trials (NPT) at the Kenya Plant Health Inspectorate Services (KEPHIS) designated sites (ESIA Project Report) submitted by the Kenya Agricultural and Livestock Research Organisation (KALRO) and the African Agricultural Technology Foundation (AATF).

**Issues for determination**

6. Both the Appellants and the Respondent attempted to frame issues for determination by this Tribunal. However, following presentation of the submissions by the parties and on review of the pleadings before this Tribunal, the Tribunal considered the following preliminary and paramount issues, which had not been addressed by either party:
  - a. What is the scope of the Tribunal's jurisdiction?
  - b. Is the Appeal properly before the Tribunal?

**Determination by the tribunal**

**What is the scope of the Tribunal's jurisdiction?**

7. This Tribunal is a creature of statute pursuant to Section 125 of the EMCA. The scope of its mandate is governed by statute and it cannot escape the clutches of the statutory provisions creating and empowering it. Section 129 of the EMCA, as amended from time to time, sets out the scope of the National Environment Tribunal's jurisdiction.

**Is the Appeal properly before the Tribunal?**

8. To answer this question, it is important to determine whether the matter falls within the scope of the Tribunal's jurisdiction and whether this is an appeal under section 129(1) [*the licencing provisions*] or 129(2) [*the Director-Generals decisions*] of EMCA. In either situation the twin questions of time-limits for filing the appeal and the Appellant's *locus standi* to lodge the appeal would have to be considered.

**a. Time-frames for filing of appeal**

9. Appeals under Section 129(1) and (2), from a decision of the Respondent would have to be filed within 60 days of the date of the decision under challenge. The difference in the two being that under Section 129(1) the time within which an appeal ought to be lodged is incapable of extension by the Tribunal while the time within which an appeal under Section 129(2) ought to be lodged may be extended by the Tribunal pursuant to the provisions of Rule 7 of the National Environmental Tribunal Procedure Rules 2003.
10. Since the appeal filed by the Appellant seeks to challenge either a refusal to grant a licence under Section 129(1)(a) ; then in both instances it was clear that this is an appeal under Section 129(1) of EMCA which is governed by strict time limitation for filing of an appeal.
11. The provisions of Section 129(1) in so far as the time for filing of an appeal is concerned is uncompromising. An appeal has to be filed within 60 days after the occurrence of the date against which the person appealing is dissatisfied. It is incapable of extension.
12. In the present appeal, the decision which is the centre of the grievance is the decision contained in the letter of 5<sup>th</sup> October 2016 by the Respondent. Sixty (60) days begun running from that date and expired on 4<sup>th</sup> December 2016.
13. This appeal was filed on 14<sup>th</sup> December 2016, after the time permitted for filing of an appeal.

**b. Does the Appellant have locus to bring this appeal?**

14. The difficulty with the Appellants case is that despite advancing serious arguments on the sensitive issues of whether or not to allow testing and research in the area of biotechnology, it appears to do so on behalf of parties (the proponents) who are not part of these proceedings.
15. In Nairobi Judicial Review Miscellaneous Application Number 111 of 2008– **Republic vs. National Environmental Tribunal & 3 Others ex-parte Ol Keju Ronkai Ltd & Another** the court held as follows:–

*“” There is no dispute that the 1<sup>st</sup> Interested Party did not participate in the EIA study process for the development in question, in NEMA’s process of approval of the development or complaint to the PCC. It cannot be said that it was aggrieved by this entire process which led to the issuance of the licence as it did not participate in it and no decision was made against it that would have led to a challenge by way of appeal to the Respondent. There is no way one can read Section 129 of EMCA to make the 1<sup>st</sup> Interested Party “an aggrieved Party”...Although that decision of NEMA is capable of being the subject of appeal to the Respondent Tribunal , the decision*

cannot however be the subject of appeal; by the 2<sup>nd</sup> and 3<sup>rd</sup> Interested Parties. The 2<sup>nd</sup> and 3<sup>rd</sup> Interested Parties are not parties being or aggrieved by any decision referred to in Section 129(1) (a-e) or in Section 129(2) of the Act. They are incapable of pleading either a refusal to grant a licence or the transfer of a licence, the imposition of conditions, limitation or variation of their licence or the amount of money required to be paid as a fee under the Act, they cannot also plead on appeal the imposition against them of an EIA Improvement letter by the authority for the same reasons the decisions of NEMA cannot be the subject of an appeal by the 2<sup>nd</sup> and 3<sup>rd</sup> Interested Parties under Section 129(2) of the Act...and whereas I agree that strict locus standi requirement has been vacated in Kenya... I do not however agree with the contention that the right of locus standi includes or means the right to bring action or appeal before any forum or put differently, the requirement of locus standi have not been vacated in every forum. The strict requirement has been vacated in respect of only one forum, namely the High Court of Kenya, and on specific grounds. The strict requirement of locus standi has not been vacated in respect of the Respondent Tribunal which has a specific jurisdiction under EMCA namely appeals... the 2<sup>nd</sup> and 3<sup>rd</sup> Interested Parties have no locus standi or rights to bring any appeal before the Respondent Tribunal and that said Tribunal has no jurisdiction to entertain any action or appeal from the said interested parties...”

16. The clear dicta in the case above has been cited with approval and applied in subsequent cases of the High Court (e.g. **MILIMANI LAW COURTS JR MISCELLANEOUS APPLICATION NO.217 OF 2015: REPUBLIC vs THE NATIONAL ENVIRONMENT TRIBUNAL ex parte Athi Water Services Board**)
17. From the evidence before us and submissions of the parties it is clear that the Appellant was not the proponent of the intended project and has laid no evidence before us to show a nexus between itself and the proponents or the intended project. We have also not been informed about the reasons why the proponents of the intended project did not file the appeal themselves and whether they are at all aggrieved by the decision made by the Respondent.

## **POLITICAL PARTIES DISPUTES TRIBUNAL JURISPRUDENCE**

In the year 2017/2018, the PPDT dealt with the following categories of complaints, namely-

### **a) Party list petitions**

#### **PPDT Complaint No. 424 of 2017**

##### **Henry Wanyoike Wahu vs. Jubilee Party**

The Claimant has a visual disability. He applied for nomination to the Kiambu County Assembly. His name was initially included in the list initially forwarded to the Independent Electoral and Boundaries Commission by the Respondent, but was eventually omitted. He was never informed of the decision to exclude his name.

The Respondent contended that nominations were guided by the law and were fair and justifiably in line with party regulations. The Claimant was simply not among those whose applications were successful. That the Respondent has the discretion to determine the criteria to use in nominating candidates. In particular, it is stated that the Respondent was not chosen because of the hundreds of qualified applicants jostling for limited nomination slots.

In making its determination, the Tribunal observed that it must, under Section 11 of the Fair Administrative Action Act, always grant the most appropriate reliefs in every dispute before it. The Tribunal must not only vindicate the rights of the aggrieved party before it, but also remedy any violation of the Constitution. It allowed the Complaint and ordered that the Complainant's name be included in the Jubilee Party's Party list for Kiambu County.

### **b) Disputes arising from ordinary political party activities**

#### **PPDT Complaint No. 1 of 2018**

##### **Angela Gathoni Wambura & Another vs. Hon. Musalia Mudavadi & 3 Others and Amani National Congress & Another as Interested Parties**

The Claimants in this matter sought to have the activities and subsequent actions by the Special National Executive Council, of the Amani National Congress nullified on the basis that the persons gazetted as the party officials, were not duly elected. The Respondents filed a preliminary objection on the grounds that the parties had not exhausted the internal disputes resolution mechanisms, pursuant to Section 40(2) of the Political Parties Act, 2011.

In determining the objection, the Tribunal found that the Complainant had attempted to effect Internal Disputes Resolution Mechanism but was frustrated. As such, the Complaint was properly before the Tribunal and was heard on merit.

**REPUBLIC OF KENYA**  
**IN THE HIV AND AIDS TRIBUNAL AT NAIROBI**  
**HAT CASE NO.009 OF 2015**  
**M. M.....CLAIMANT**  
**VERSUS**  
**INTERNATIONAL HIV/AIDS ALLIANCE.....RESPONDENT**

**JUDGMENT OF THE TRIBUNAL**

**Introduction**

This suit was commenced vide a statement of claim dated and filed on 24<sup>th</sup> September 2015. On 19<sup>th</sup> November 2015, the claimant further filed an amended statement of claim of an even date in which she sought judgment in the following terms;

- 1) A declaration that the Respondent's discriminative acts are unlawful and contrary to HAPCA.
- 2) A declaration that the Respondent's actions constituted discriminatory acts within the meaning of Section 31(1) (a) and (b) of the HIV and AIDs Prevention and Control Act
- 3) Damages for emotional and psychological distress
- 4) Costs and interest on 3(a), (b) and 4 above at court rates until payment in full.
- 5) Any other or further relief that this Honorable Court may be pleased to grant until full payment.
- 6) Any other or further relief that this Honorable Tribunal may be pleased to grant.

**Brief**

The Claimant was an employee of Ray Drop Clinic where she worked as a community mobilizer under the Respondent's Ray project from 16<sup>th</sup> December 2009 to 30<sup>th</sup> April 2011. The Respondent is a national membership network of over 1000 Organizations comprising of Non-Governmental Organizations, Community Based Organizations and Faith Based Organizations, Private Sector, Research and Learning Institutions responding to HIV/ AIDS and Tuberculosis in Kenya. It is also accredited as a Linking Organizations with the International HIV/AIDS Alliance.

The Claimant's cause of action is founded on a photograph posted on the Respondent's website which contained some explanatory statements which without the knowledge and/ or consent of the claimant misrepresented that she was a client of the Respondent (implying that she was an HIV Positive sex worker) who was waiting to be attended. The Claimant alleged that the said statement falsely and maliciously misrepresented that;

- a) She was a sex worker
- b) She was a client at the Respondent's clinic
- c) She was a person living on the earnings of prostitution
- d) The Claimant further maintained that the statement albeit indirectly by way of

innuendo published her HIV status in contravention of the provisions of the of the HIV and AIDS Prevention and Control Act.

#### **Analysis and issues for determination**

The Claimant entered into an agreement with the Respondent for the use of her Photograph. By the terms of the said agreement, consent was given for the use of the Claimants photograph strictly for educational, promotional and fundraising purposes. The Photograph was used by the Respondent as per the terms of the agreement BUT with a narrative which was both defamatory and demeaning to the Claimant and which was published without her knowledge and/or consent.

The Claimant alleges that the Photograph together with the narration defamed, demeaned and disclosed her HIV status in violation of her rights under Section 22 of the HIV and AIDs Prevention and Control Act and further invaded her privacy and confidentiality and as a result, she sought compensation.

The Respondent's response was that the publication was done within the terms of the consent granted by the Claimant. That the agreement did not in itself restrict the use of the photograph. The Respondent further alleges that the claimant had gone public regarding her status anyway and accordingly the publication was not a violation of her rights to privacy and confidentiality. The Respondent therefore maintains that the Claimant's case is frivolous and ought to be dismissed.

The Tribunal found the following issues fall for determination;

- 1) Whether the claimant actually consented as alleged by the Respondent
- 2) Whether the narrative was capable of violating the Claimant's rights
- 3) Whether the narrative fell within the terms of the so-called consent
- 4) Whether the Respondent has a good defence

#### **Whether the claimant actually consented to the publication of the narrative**

It is not enough to argue that the Claimant consented to the use of her photograph. There is need to examine whether what was given by the Claimant and which the Respondent understood to be consent actually met the threshold of consent as in law conceived. Secondly there is need to examine exactly what using the Photograph for educational, promotional and fundraising purposes meant.

As this Tribunal has held several times, not every consent counts. The only consent that count within the meaning of Section 22 of the HIV and AIDs Prevention and Control Act is **"informed consent."** Informed consent has two elements: 'Knowledge /Information' and 'Consent.'

Neither element on its own is sufficient to satisfy the legal requirement of informed consent. It must be proved that the Individual alleged to have given consent had been fully informed of

all the relevant information and that she fully understood the information and consequently agreed freely to give the consent. Where what is being consented to is vague, ambiguous and unclear or where no information whatsoever was given to the individual alleged to have consented prior to the giving of the consent, then the consent given is not informed consent within the meaning of Section 22 of the HIV and AIDs Prevention and Control Act.

In this case, the Respondent contended that the Claimant consented to **“the use of the Photograph for educational, promotional and fundraising purposes.”** What exactly does this mean? Did the *Ipsa Facto* authorize the disclosure of the claimants HIV status alongside the Photo?

We hold and find that the Phrase, “use of the Photograph for educational, promotional and fundraising purposes” was vague and the claimant could not have consented to what she did not understand. Besides, the phrase “using the photograph” means just that; “using the Photograph.” It does not authorize the unlawful disclosure of the claimant’s HIV Status alongside the Photo.

It was held in the case of **Diav V Botswana Building Society [(2003) 2 BLR 409]** that the person must not just give consent but must give informed consent, meaning that before the person may give consent, he or she must be made to fully appreciate the consequences and implications of his or her consent. The justification for the insistence on informed consent being given prior to testing or disclosure of test results was given in the following terms by the South African Supreme Court in the case of **Van Vuuren V Kruger [(1993) 4 SA 842]**:

*“There are in the case of HIV and AIDs special circumstances justifying the protection of confidentiality. By the very nature of the disease, it is essential that persons who are at risk should seek medical advice and treatment. Disclosure of the condition has serious personal and social consequences for the patient. He is often isolated or rejected by others which may lead to increased anxiety, depression and psychological conditions that may tend to hasten the onset of the so-called full blown AIDs.”*

We therefore find and hold that there was no consent to the publication of the narrative beneath the Photo.

#### **Whether the narrative was capable of violating claimants rights**

The Claimant pleaded that the contents of the narrative violated her rights to privacy and confidentiality. It is common ground that the Claimant has the right to privacy with regards to HIV related information and that the same is deserving of legal protection. It is also apparent by the said narration, the Respondent did disclose the Claimants HIV information to the Public thus subjecting her to unwarranted public scrutiny and exposure.

The Right to Privacy of HIV related information is founded on Section 22 of the HIV and AIDs



Prevention and Control Act, which states that

*“No person shall disclose any information concerning the results of an HIV test or any related assessments to any person except –*

**(a) With the written consent of that person**

What emerges is that the Respondent was under an obligation not to release the Claimant’s information without her knowledge and/or consent. The narrative in question reads:–  
“Mildred Macharia, a community mobilization worker at Ray Clinic, **waiting to learn her current CD4 Count** “. The phrase, “**waiting to learn her current CD4 Count**” counts as medical information which ought to have been brought to the Claimant’s attention and her consent sought by the Respondent prior to the publishing of such information.

The Respondent did not produce evidence of a written consent allowing the release of the claimant’s medical information. In the absence of such written consent explicitly allowing the narration to be published on the Respondent’s website, consent cannot be said to have been granted. The Tribunal therefore found that the publishing of the narration by the Respondent without her prior consent is unjustifiable and the same is a violation of the Claimant’s rights to privacy and confidentiality.

**Whether the narration fell within the terms of the so called written consent**

It is the Respondent’s defence that the Claimant consented to the use of the photograph for educational, promotional and fundraising through all media including printed documents and that the same was granted without any limitations or restrictions as to the use of the Photograph.

The Agreement between the Claimant and the Respondent purportedly allowed the Respondent to “use the images in a sensitive way and in accordance with the charitable objects”. The scope of the word “use” is however not indicated in the Contract.

The Respondent alleges that parties did not agree on the wordings to be utilized to caption the said photographs and that the same was left to the Respondent and its agents who employed creative liberty in coming up with the narrations. The contract if strictly interpreted does not give the Respondent the right to develop and publish captions without consent. Even if that was the case, the Respondent had a responsibility not to use statements that were capable of violating the Claimant’s rights or those that were defamatory and demeaning in nature.

The Claimant has adequately proved that the Clinic’s clientele largely comprised of sex workers. By publishing the said narration, the Respondent defamed and further demeaned the Claimant in that the narration implied that she a sex worker being that the clinic majorly attends to sex workers.

### **Whether the respondent has a good defence to the claimants case**

The Respondent's case is that the publication was within the terms of the consent and further that there were no restrictions on the use of the photograph. These two responses have been adequately dealt with above. The Respondent also claims that the Claimant's HIV status is a matter of public knowledge and therefore, no violation of her rights can arise from the said publication or narration.

The claimant does not deny the fact that she had gone public regarding her HIV status. She however says that in all the instances she had gone public, she made sure that her close relatives and friends could not access such information. The Tribunal has considered all these arguments and finds the Respondent's defence untenable in light of the express provisions of Section 22 of the HIV and AIDs Prevention and Control Act.

Section 22 of the Act imposes a duty not to disclose medical information of any person regardless of whether their HIV status has been made public. This provision expressly prohibits one from disclosing HIV related information regarding any person without their written consent. The republication of such information by a person must therefore follow an express written consent of the person likely to be affected. It is therefore not an adequate defence to say that a person had already gone public. The claimant still reserves the right to choose who can access information regarding her HIV status regardless of the fact that she had previously made her status public

In the United States of America, the Court of Appeal in **Doe V City of New York [IS F.3d 264]** recognized a right to confidentiality with respect to one's HIV status as part of a constitutional right to privacy; after the Plaintiff's status was made public by a city agency in the following words.

*"Individuals who are infected with the HIV virus clearly possess a constitutional right to privacy regarding their condition.....there is a recognized constitutional right to privacy in personal information. More precisely, this right can be characterized as "Confidentiality" to distinguish it from the right to autonomy and independence in decision-making for personal matters."*

What the law protects is the right of the HIV infected person to choose who will have access to his/her medical information. The mere fact that the HIV infected individual has volunteered that information to a section of the community does not take away his/her right to restrict or control access to that same information by any section of the community that may not have gained access to it. This point was made in the following words in the aforesaid case of *Doe V City of New York*:

*"Extension of the right to confidentiality to personal medical information recognizes that there are few matters that are quite so personal as the status of one's health, the dissemination of which one would prefer to maintain greater control. Clearly, an individual's choice to inform others that she has contracted what is at this point invariably and sadly fatal, incurable disease, is one that*

*she should normally be allowed to make for herself. This would be time for any serious medical condition but is especially true with regard to those infected with HIV and living with AIDs, considering the unfortunately unfeeling attitude among many in this society towards those coping with the disease. An individual revealing that she is HIV seropositive potentially exposes herself not to understanding or compassion, but to discrimination and intolerance further necessitating the extension of the right to confidentiality over such information,”*

In view of the above, the Tribunal finds the Claimant’s case not frivolous as the Claimant has sufficiently proven her case against the Respondent. Based on the quantum of damages normally awarded by this Tribunal, the Claimant is hereby awarded general damages in the sum of Kshs. 1,500,000/= for emotional and psychological distress suffered.

**REPUBLIC OF KENYA**  
**IN THE HIV & AIDS TRIBUNAL AT NAIROBI**  
**HAT CASE NO. 007 OF 2017**

**J.M.M.....CLAIMANT**

**VS**

**AGA KHAN HOSPITAL KISUMU.....1<sup>ST</sup> RESPONDENT**

**AVERY (EAST AFRICA) LIMITED.....2<sup>ND</sup> RESPONDENT**

**RULING**

**Brief Facts:**

The claimant herein, commenced these proceedings vide a Statement of Claim dated 4<sup>th</sup> October 2017 seeking the following reliefs:

- (i) Severance pay for unfair termination
- (ii) Exemplary damages
- (iii) General damages
- (iv) A public apology by the respondents to the claimant
- (v) Costs of this suit
- (vi) Any other or further remedy that this tribunal shall deem fit to grant.

**The main issues for determination in this matter may therefore be summarized as follows:**

- (a) Whether the Honourable Tribunal has jurisdiction to entertain this matter owing to the provisions of Section 4(2) of the Limitation of Actions Act (cap 22 Laws of Kenya)
- (b) Whether the claimant had capacity to sue under Order 32(2)(1) of the Civil Procedure Act (cap 21 Laws of Kenya)
- (c) Whether the Honourable Tribunal has jurisdiction to adjudicate over the claim for severance pay for unfair termination in spite of the provisions of Section 12 of The Employment and Labour Relations Court Act, as read together with Section 90 of the employment act 2007.
- (d) Whether the tribunal has jurisdiction to determine alleged violations of the constitutional rights as set out under Articles 27, 28 and 31 of The Constitution of Kenya, 2010.

## Determination:

### (A) Whether this suit is statute-barred

The 1<sup>st</sup> respondent maintains that the claimant's suit herein is statute barred because the claimant was tested for HIV in 2011 and his employment with the 2<sup>nd</sup> respondent was also terminated on 2011, yet this suit was filed in 2017 which is outside the three year period prescribed by Section 4(2) of the Limitation of Actions Act. According to the 1<sup>st</sup> Respondent therefore, all the causes of actions disclosed herein are tortuous in nature and should therefore have been filed within three (3) years.

It is our view that a distinction must always be drawn between the “events” giving rise to a cause of action and the “cause of action” itself. In the case of *DRUMMOND JACKSON V BRITAIN MEDICAL ASSOCIATION* (1970) WLR 688 OF 616, *Pearson J* defined cause of action as follows: “A cause of action is an act on the part of the defendant which gives the plaintiff his cause of complaint”

Similarly, in *Read V Brown* (1889 22 QBD 128 Lord Esher M. R. defines cause of action in the following words: “Every fact which if would be necessary for the plaintiff to prove if traversed, in order to support his right to judgment of the court”

Finally Lord Diplock, in *Letang V Cooper* (1964) 2 ALL ER 929 at 934 defined cause of action as follows: “A cause of action is simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person”

From these definitions, it follows that several events which are widely separated from each other in time, space and distance, may well give rise to one course of action, or several causes of action. Where for example two events giving rise to the same tortuous cause of action are separated by a period of more than three years, then it becomes unclear when the cause of action accrued. Where for example an employee is made to work in conditions that expose him to the risk of contracting cancer and where the employee contracts cancer fifteen years after leaving his employment then, can it be said that the employee has a valid cause of action against the employer? And if so when does the limitation period start running?

If cause of action means, as *Esher M.R.* says in *Read V Brown* (supra) “those facts which a party must prove to succeed in a case”, then it follows that a cause of action does not accrue until ALL the events giving rise to the cause of action have occurred, and UNTIL the person is in possession of ALL the facts which he/she needs to sustain that particular cause of action. In the illustration given above the cause of action against the employer does not therefore accrue until the employee contracts cancer, and until the employee becomes aware that his ailment is attributable to the exposure to noxious working conditions fifteen years earlier by his employer.

In this case, the claimant sued the employer not just for terminating his employment for any other ground but for “terminating his employment on grounds of his HIV status.” This means that the facts showing that the employer knew of his HIV status, facts showing and that the employer illegally acquired that information in violation of a statute and finally facts showing that the employer used the claimants HIV status as a ground for terminating his employment are *ALL* comprised within the cause of action. The cause of action does not therefore accrue until all such facts have come to light. Such facts were in this case only revealed to the claimant on 25<sup>th</sup> May 2015. Accordingly, while the cause of action founded upon termination of employment “on any other ground” accrued in 2011, the cause of action founded on termination of employment “on grounds of HIV status” accrued only on 25<sup>th</sup> May 2015.

The three year period prescribed in *Section 90 of the Employment Act*, therefore started running on 25<sup>th</sup> May 2015. Consequently, the suit against the employer was brought within the period limited by the Limitation of Actions Act.

Moreover, the claimant’s suit disclosed more than one course of action. In addition to the cause of action founded upon termination of the claimant’s employment on grounds of HIV status, this suit also raises other distinct causes of action which include the following;

- (i) subjecting the claimant to non-consensual HIV-testing
- (ii) Subjecting the claimant to HIV –testing in violation of the provisions of the HIV and AIDS prevention and control Act
- (iii) Disclosure of the claimants HIV status without his written consent
- (iv) Alleged violation of the claimant’s privacy and confidentiality rights.

All these causes of action are not specifically provided for in the Limitation of Actions Act. Accordingly, we find that Section 4(1)(e) of the Limitation of Actions Act apply in relation to them. The said section provides as follows:

*4(1) the following actions may not be brought after the end of 6years from the date on which the cause of action accrued--- (e) actions (including actions claiming equitable reliefs) for which no other period of limitation is provided by this Act or by any other written law.*

It follows therefore that all the above causes of action could be brought within six years from the date when the cause of action accrued, which in our judgment, means six years from 25<sup>th</sup> May 2015.

#### **(B) whether the claimant had the requisite mental capacity to institute this suit**

Lastly, the respondents questioned the mental capacity of the claimants to file this suit. In our view, capacity refers to a person’s mental state at the time of filing suit.

No evidence has been furnished with regards to the claimant’s mental capacity at the time of filing this suit. The argument that the claimant has suffered mental illness sometime in

the past, in our view, is irrelevant.

Besides, the question as to whether the claimant had the requisite mental capacity to institute this suit at the time when the suit was filed is a factual rather than legal question, and accordingly, a preliminary objection cannot be taken out on it. In the case of Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 696 Sir Charles Newbold JA stated thus:

*“The first matter relates to the increasing practice of raising points, which should be argued in the normal manner, quite improperly by way of preliminary objection. A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop.”*

We therefore find and hold that a preliminary objection cannot be anchored on the claimant’s mental status.

In addition to the above, a distinction must always be drawn between medical insanity and legal insanity. Although he may have been medically insane, the claimant’s ability to realize his claim and put together the facts giving rise to his cause of action proves legal sanity. In the High Court Miscellaneous Civil Application No. 51 of 2015 MMM vs AMK Honourable Justice Mativo in reference to Order 32 Rule 15 held that;

*“I have given the above rule complete system of thought and in my considered opinion and interpretation, five principles outlined below can be discerned from this rule. These principles are designed to protect people who lack capacity to make particular decisions, but also to maximize their ability to make decisions, or to participate in decision-making, as far as they are able to do so. These are:-*

- (i) a person must be assumed to have capacity unless it is established that he/she lacks capacity*
- (ii) a person is not to be treated as unable to make a decision unless all practicable steps to help him/her to do so have been taken without success*
- (iii) a person is not to be treated as unable to make a decision merely because he/she makes an unwise decision*
- (iv) an act done, or decision made, under the above rule for or on behalf of a person who lacks capacity must be done, or made, in his/her best interests*
- (v) Before the court is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as affectively achieved in a way that is less restrictive of the person’s rights and freedom of action.*

Therefore, the issue of the capacity remains live and is left for the courts determination, during the hearing of this suit.

**(C) whether this court has jurisdiction to hear the claimant's suit owing to section 12 of the employment and labour relations courts act**

The 2<sup>nd</sup> Respondent argues that Section 12 of the Employment and Labour Relations Courts Act (Hereinafter referred to as ELRC Act) denies this tribunal jurisdiction to entertain the claimant's suit, which jurisdiction, it is argued, is reserved to the Employment and Labour Relations Courts (hereinafter called ELR Courts).

As was said in the celebrated case of Owners of Motor Vessel Lilian "S" V. Caltex Oil (1989) KLR 1 jurisdiction derives from statute. In this case, Section 26 of HIV & AIDS Prevention and Control Act (hereinafter called HAPCA) vests in this tribunal jurisdiction to hear and determine disputes relating to ALL violations of HAPCA, including violations which would also fall within the jurisdiction of ELR Courts. Termination of employment on grounds of HIV status clearly falls within the jurisdiction of this tribunal under Section 26 of HAPCA. Both HAPCA and ELRC Act are legislations passed by Parliament. None of them is superior to the other.

Besides, as was held by the Court of Appeal in *Law Society Of Kenya Nairobi Branch V. Malindi Law Society & Others* (2017) eKLR, the mere fact that ELR Courts are given by the constitution the original and appellate jurisdiction to hear and determine employment related disputes does not mean that Tribunals or other subordinate courts cannot handle the same disputes.

On that issue, the Court of Appeal pronounced itself in the following words:

*"We are unable to construe that Article as limiting the power of Parliament to confer jurisdiction, on the courts already established by the Constitution under Article 169(1) (a), (b) and (c). Article 169(2) provides that Parliament shall enact legislation conferring jurisdiction, functions and powers on the courts established under clause 169(1). A distinction should thus be drawn between the power given to Parliament under the Constitution to establish courts. Which in this case is restricted, and the power to confer jurisdiction on courts. It is acknowledged in the preamble to the Magistrates Courts Act, that it is an Act of Parliament to give effect to Article 169 (1)(a) of the Constitution" to confer jurisdiction, functions and powers on the magistrates' courts". We do not consider that in doing so, Parliament in any way exceeded its mandate or acted ultra vires".*

The Court of Appeal therefore concluded that parliament has power to confer jurisdiction on courts created under Article 169 of the Constitution which includes local tribunals to deal with matters reserved for the specialized courts under Article 162 of the Constitution. The court stated thus:

*"In our view, conferring jurisdiction on magistrate's courts to hear and*



*determine matters reserved for specialized Courts under Article 162 of the Constitution does not diminish the specialization of the specialized courts considering that appeals from the magistrates courts over those matters lie with the specialized courts. As urged by Mr. Kanjama, under the doctrine of judicial precedent, the decisions of the specialized courts would bind the magistrate's courts and the specialized courts would therefore undoubtedly imprint the "specialized jurisprudence on the magistrate's courts".*

Accordingly we hold that Parliament properly conferred jurisdiction upon this tribunal to deal with matters that would ordinarily be dealt with by the ELR Courts.

Finally, we agree with the following statement from the Supreme Court of Uganda in *Habre International Co. Ltd V. Kassam & Others* (1999) 1EA 125:

*"The tendency to interpret the law in a manner that would divest a court of law of jurisdiction too readily unless the legal provision in question is straightforward and clear is to be discouraged since it would be better to err in favour of upholding jurisdiction than to turn a litigant away from the seat of justice without being heard; the jurisdiction of courts of law must be guarded jealously and should not be dispensed with too lightly and the interests of justice and the rule of law demands this".*

We therefore find and hold that this tribunal has jurisdiction to entertain a claim for severance pay in spite of the provisions of Section 12 of ELRC Act.

**(D) whether this tribunal has jurisdiction to deal with alleged violations of fundamental rights and freedoms**

The second respondent argues that this Tribunal has no jurisdiction to redress alleged violations of fundamental rights. They rely on the decision of the High Court in *Royal Media Services Ltd Vs. Attorney General & 6 Others* (2015) eKLR where the Hon. Justice Mumbi Ngugi ruled that since the legislation contemplated by Article 23(2) of the Constitution has not been enacted, subordinate courts still do not have jurisdiction to redress violations of fundamental rights. The said decision is binding upon this tribunal. Accordingly, we agree with the 2<sup>nd</sup> Respondent's argument that we have no jurisdiction to redress violations of fundamental rights. The said decision is binding upon this tribunal. Accordingly, we agree with the 2<sup>nd</sup> Respondent's argument that we have no jurisdiction to redress violations of fundamental rights.

We note however that the claimant's suit herein raise issues that go beyond mere violation of fundamental rights. The claimant complain inter alia about termination of his employment on grounds of his HIV status, being subjected to non-consensual HIV testing, and unauthorized disclosure of his HIV status. If the claimant's allegations are true then his

complaints would fall squarely within the jurisdiction of this tribunal, in which case we will deal with the issues as violations of provisions of HAPCA rather than as constitutional violations.

The upshot of the above is that this Honourable tribunal has the jurisdiction to entertain this matter and that the Preliminary Objections filed by the respondents have no merit.

**SPORTS DISPUTES TRIBUNAL**

**APPEAL No. 1 OF 2018**

**KHAALIQA NIMJI.....APPELLANT**

**-versus-**

**KENYA SQUASH RACQUETS ASSOCIATION.....RESPONDENT**

**DECISION**

**Hearing:** 8<sup>th</sup> March, 2018

**Panel:** John Ohaga Chairperson  
Gabriel Ouko -Member  
Mary Kimani -Member

**Appearances:** Mr. Arnold Kwesiga for Applicant  
Mr. David Ngunjiri Theuri for Respondent  
Mr. Billy Jusa -Interested Party  
Mr. Ndirangu Gakuo - Interested Party

1. The Appellant challenged the selection by the Respondent of the players to represent Kenya at the Commonwealth Games in Gold Coast, Australia. It is the Appellants contention that the selection of the team as presently constituted was unfair and was not in accordance with the criteria previously published by the Respondent.

**Jurisdiction**

2. The Tribunal has undoubted jurisdiction to hear and determine this dispute in view of the provisions of Section 58(a) of the Sports Act, 2013 which states as follows:

*The tribunal shall determine –*

**(a)** *appeals against decisions made by national sports organizations or umbrella national sports organizations, whose rules specifically allow for appeals to be made to the Tribunal in relation to that issue including –*

- (i) *Appeals against disciplinary decisions*
- (ii) *Appeals against not being selected for a Kenyan team or squad*

3. Indeed, the policy reason for Parliament giving the Tribunal jurisdiction to determine matters of selection readily appears from the spirit in which the Sports Act, 2013 was promulgated. Without doubt, the purpose of selection of a team to an international event is to ensure that the country is able to send its very best competitors who would represent the country on the international stage. Once it is understood that the country expends funds to send sportsmen and women to international events, it becomes clear that such expenditure must be expended

on the basis of the criteria that can be verified, that is ascertainable and objective, and this is in keeping with the Constitutional Principles set out at Article 10 (2) (c) which states that National Values and Principles include good governance, integrity, transparency and accountability.

#### **Discussion**

4. We have carefully considered the submissions made by the parties as well as the documents made available to us relating to the criteria for selection and the various decisions of the Association relating to this issue.
5. The Association was informed in good time by NOCK regarding participation of squash in the Commonwealth Games and therefore given sufficient time to prepare. Indeed, the Association very wisely requested all players who were interested in participating in the games to declare their interest and received from approximately 25 players.
6. The Association further went ahead in September 2017 to set out the criteria by which the selection would be carried out using trials as the basis amongst other requirements. This was fair and equitable to all the interested participants. This provided a transparent and verifiable process that would be agreeable to ALL players.
7. However, in December 2017, when the Committee found out that the number of members had been reduced, they decided to change the selection to rankings from the initial process which was based on trials. This was done without any consultation of the members and it was Mr. Ngunjiri's view that this was a valid and proper decision which fell within the discretion of the Executive Committee.

#### **Decision**

8. The Sports Act has introduced a new era of transparency, accountability and good governance in the management of sports organizations and sporting facilities for the benefit of the sportsman. Unfortunately, many sports organizations have not woken up to this reality.
9. The purpose of a criteria is to enable both players and officials to have an objective and verifiable basis upon which selection decisions can be made. Whilst the Tribunal is alive to the difficulties that Sports organizations face when the number of places available to send players to international events are reduced, this does not change the principal which requires the criteria be followed unless there are extraordinary circumstances which militate against strict adherence to the criteria. Contrary to the Association's position that the selection decision is within the discretion of the Executive Committee, the position articulated by this Tribunal is that the Executive Committee is required to be guided by the criteria in making its selection decisions, and where there is a change

in the criteria, this must be brought to the attention of the players and coaches, and the rationale for the change properly explained to the interested parties. Officials of Sports Organizations can no longer arrogate to themselves the power to run associations at their whim and without consultation with their members. Indeed, it is for this reason that the Sports Act requires every sports organization to have a constitution and that selection of athletes to national teams be based on verifiable criteria.

10. Whilst it may appear on the face of it that the selection based on rankings is justifiable, it is questionable that this in fact produces the best talent to participate on the international arena. As a matter of fact, the Tribunal notes that the Executive Committee decided to exclude some tournaments on the basis that some certain band individuals had attended those tournaments. The rankings cannot therefore be said to be completely objective. In any event, as was explained by counsel for the Appellant the rankings do not tell us which player would indeed be the best when two players have to compete against each other despite Mr. Ngunjiri's attempt to explain that rankings are in fact adopted internationally, he did not explain why it is then that the Association published a criteria which required trials to be held. Having determined that the Executive Committee did not follow its own published criteria, the Tribunal is impelled to the conclusion that the selection by the Association of the players and coach to the Commonwealth Games must be set aside.
11. We hereby Order the Executive Committee of the KSRA to come up with a transparent and verifiable trials program for both men and women and which will be placed before the tribunal on Tuesday, 13 March 2018. The program should have a timetable which must be finalised by latest Monday, 19 March 2018. The final team list should be presented to the Tribunal by Tuesday, 20 March 2018.
12. The program should include players plying their trade out of the country and who had shown interest. It should also include all players who are on indefinite suspension, since the cases have not been finalised to the Tribunal's satisfaction.
13. As For the coaches we want a fair and transparent process to be carried out showing a verifiable and transparent process. All coaches who are interested should be asked to apply through the usual communication channels. The process to be used to choose should also be presented on Tuesday, 13 March 2018 and finalised by Monday, 19 March 2018. The final choice should be presented to the Tribunal by Tuesday, 20 March 2018.
14. As we observed at the beginning of this decision, there are many issues which plague the Association and we were alarmed to hear that the Association is not in fact registered with the Sports Registrar and is therefore in fact not a recognized sports organization. The legal effect of this would in fact be that the Association cannot even nominate players to participate in an international event. However, as the Tribunal has observed time and

again, players are at the apex of the sporting pyramid and to enforce this legal position would be to deny the players the opportunity to play at the Commonwealth Games. The Tribunal however will investigate this matter further in consultation with the sports registrar in order to ensure that the sport of squash takes its rightful place within the sporting fraternity. This ruling therefore presents the first step in this journey.

- 15.** The Tribunal reserves the determination on costs until it has dealt with all the other issues that have arisen in the course of hearing this matter.

### **3.8 Challenges Facing Tribunals**

#### **1. Delayed Operationalization of Tribunals**

Tribunals are operationalized through the appointment and gazettelement of members which is a critical component of registration, hearing and determination of cases. During the period under review, the Communication and Multimedia Tribunal, Micro and Small Enterprises Tribunal, Legal Education Appeals Tribunal, National Civil Aviation Administrative Review Tribunal, Competent Authority and Education Appeals Tribunal were not operational either due to lack of board members or operational budget or office space. The Sports Disputes Tribunal and HIV and AIDS Tribunal had developed rules which were awaiting gazettelement.

#### **2. Lack of an organizational structure**

The SJT blueprint identified Judiciary Organizational Structure as a key indicator for the institution to effectively promote integrity and eradicate corruption. The lack of a structure has been a major weakness in addressing the issues of optimal staffing levels, reporting lines and relationships, duties and responsibilities and accountability.

To address this, the JSC benchmarked Tribunal Administration with the United Kingdom and Canada and observed that in these two jurisdictions, tribunals are operationalized through a centralized system of administration under one roof, whereby tribunals have shared services, facilities and resources including Human Resources.

Recommendations have been made to engage a consultant to develop the organizational structure for the Tribunal secretariat and individual tribunals in order to identify the key functions and employees for supporting expert, registry and corporate services, develop a detailed matrix of optimal staffing levels and job descriptions and provide the timelines for engagement of staff.

#### **3. Disparity in terms and conditions of service**

The varying terms and conditions of service between tribunal board members and staff has continued to raise concerns on equity and fairness for equal work done and as such a challenge to effectively run the tribunals. As majority of tribunals staff are from Ministries, the implementation of performance appraisal systems in the tribunals has been difficult due to the dual-reporting relationship to the Ministry and the Judiciary. It is therefore essential to fast-track the transition process to determine the need for absorption of the Ministerial staff into the Judiciary or re-calling them back to their respective ministries.

#### **4. Insufficient funding**

The budget cuts experienced during the last financial year, affected effective delivery of services. Planned Tribunal programs like capacity building and trainings of both members and staff, programs to enhance registry operations and leverage ICT in the registries and case management could not kick off due to insufficient funding.

It was observed that tribunals have inadequate ICT equipment and furniture hence affecting service delivery, storage and security of records, accessibility of information and accountability.

#### **5. Lack of office space**

In the long term, as more tribunals transit to the Judiciary there is need to consider shared facilities for all the tribunals. Tribunals identified to have low caseloads and their sittings are not held on daily basis should be housed centrally and share office space facilities and human capital while Tribunals with regional offices such as RRT, BPRT and Co-operative should be allocated office space in court stations. This is in view of the expansion and improvement of court facilities across the country.

#### **6. Lack of training**

The tribunals reported performance gaps as a result of lack of training. Ministerial Staff cited challenges in obtaining approvals from the Judiciary to undertake courses notwithstanding that the training programs having been approved at the Ministry level. Training Needs Analysis should be undertaken to guide on formulation and implementation of the training strategy and programs. In-order to develop or extend the skill base, it is recommended that some of the staff be trained to undertake a wide range of duties to avoid a bloated workforce in tribunals.

#### **7. Lack of public awareness on the existence of Tribunals**

Generally, there is inadequate information on tribunals to the public. This is evident from the few cases registered in tribunals and matters that could be dispensed with by tribunal being registered in the courts. This continues to increase backlog in the main stream courts while on the other hand tribunal boards and staff are underutilized particularly in regard to the core mandate. Adequate strategies should be put in place to enhance public awareness on tribunals.



# Chapter 4

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JURISPRUDENCE

# JURISPRUDENCE

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## 4.0 Introduction

Article 159 of the Constitution of Kenya 2010 provides that judicial authority is derived from the people and vests in and exercised by the Courts and Tribunals. It provides that the Courts and Tribunals shall be guided by the following principles:

- (a) Justice for all;
- (b) Justice without undue delay;
- (c) Alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted;
- (d) Justice shall be administered without undue regard to procedural technicalities; and
- (e) The promotion of the purpose and principles of the Constitution.

During the year under review, the Judiciary made numerous ground breaking decisions in various areas of law including electoral laws, constitutional law, criminal law, family law, land and environment and employment and labour matters among others. These advanced the course of justice and the developement of jurisprudence.

In this chapter, we report some of the cases determined by the High Court, the Employment and Labour Relations Court, the Environment and Land Court, the Court of Appeal and the Supreme Court which made an indelible mark on Kenya's jurisprudence.

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## 4.1 Supreme Court

### 4.1.1 Constitutionality of the Death Penalty provided for under Section 204 of the Penal Code

***Francis Karioko Muruatetu & Another vs Republic***

***Petition No. 15 of 2015***

***Supreme Court of Kenya***

#### **Brief of the Case**

The appeal raised a fundamental legal issue that had engaged other comparative jurisdictions in a seemingly unending controversy: Whether or not the mandatory death penalty was unconstitutional.

The petitioners and others had been charged in the High Court with the offence of murder. Upon conviction, they were sentenced to death as provided by Section 204 of the Penal Code.

Their appeal to the Court of Appeal against both conviction and sentence was dismissed. The Petitioners subsequently filed separate appeals in the Supreme Court, which were consolidated.

Their contention was that the mandatory death sentence imposed upon them and the commutation of that sentence by an administrative fiat to life imprisonment was unconstitutional and therefore null and void. They therefore submitted that they were entitled to damages, quantum of which the Supreme Court was to assess.

The Petitioners averred that the mandatory nature of the death penalty under Section 204 of the Penal Code limited the discretion of the trial court, compelling it to hand down a sentence predetermined by the Legislature thus violating the doctrine of separation of powers.

They submitted that the sentencing process was part of the right of a fair hearing enshrined in Article 50(2) of the Constitution and the death penalty under Section 204 of the Penal Code violated that right as it denied the trial judge discretion in sentencing.

The Petitioners further argued that whereas Article 50(2) (q) of the Constitution entitled any person who had undergone a criminal trial to appeal or seek review from a higher court including a second appeal, Section 261 of the Criminal Procedure Code limited second appeals to convictions only if not set by the first appellate court. The Petitioners therefore contented that the mandatory nature of the death sentence would violate their right to a fair hearing under this Article.

**Issues for determination:**

1. Whether the mandatory death sentence and commutation thereof to life imprisonment are unconstitutional,
2. Whether the mandatory death sentence under Section 204 of the penal code limits the discretion of the trial court in sentencing the accused,
3. Whether the sentencing process was part of fair hearing as enshrined in Article 50(2) of the Constitution, and
4. Whether Section 251 of the Criminal Procedure Code limited second appeal to conviction only.

**Held:**

1. The trial process did not stop at convicting the accused person. Sentencing was also a crucial component of a trial as it was during sentencing that the Court heard submissions that impacted on sentencing. The mandatory sentence therefore denied an accused person the right to a fair trial.
2. Under Section 216 and 329 of the Criminal Procedure Code, mitigation was part of the trial process, as the Court ought to take into account the evidence, the nature of the offence and the circumstances of the case in order to arrive at an appropriate sentence.
3. A person facing the death sentence most deserved to be heard in mitigation because of the finality of the sentence.
4. Mitigation was an important element of fair trial and the fact that it was not expressly mentioned, as a right in the Constitution did not deprive it of its necessity and essence in the process of a fair trial.

5. The right to fair trial was not just a fundamental right but also one of the inalienable rights enshrined in the Universal Declaration of Human Rights.
6. Article 25(c) of the Constitution elevated the right of fair trial to a non-derogable right which could not be limited or taken away from a litigant and that the right to fair trial was one of the cornerstones of a just and democratic society without which the rule of law and public faith in the justice system would inevitably collapse.
7. Section 204 of the Penal Code deprived the court of the use of judicial discretion in a matter of life and death and was therefore harsh, unjust and unfair.
8. Any Court dealing with the offence of murder was allowed to exercise judicial discretion by considering any mitigating factors in sentencing an accused person found guilty of that offence.
9. The petition was remitted back to the High Court for pre-sentence hearing on priority basis.
10. The Attorney General was directed to set up a task force to establish rules that would guide the pre-sentencing hearing for all the death sentenced convicts and report to the Court.

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#### **4.1.2 Procedure for Filling Vacancy in the Office of Deputy Governor**

##### ***In Re Speaker, County Assembly of Embu***

##### ***Reference No 1 of 2015***

##### ***Supreme Court at Nairobi***

##### **Brief of the case:**

On January 28, 2014, the Embu County Assembly approved an impeachment motion against the Embu Governor and forwarded the resolution to the Senate for approval. The governor successfully challenged the impeachment proceedings and obtained a judgment from the High Court, which was affirmed at the Court of Appeal. The judgment did not bar the County Assembly or Senate from conducting future impeachment proceedings provided that those proceedings were conducted in accordance with the law.

In April 2014, fresh impeachment proceedings were commenced against the Governor. On May 13, 2014, the Speaker of the Senate published Gazette Notice No. 3222 of 2014, which contained the Senate's decision to impeach the Governor. The impeached Governor went to the High Court to challenge the constitutionality of his impeachment.

After unsuccessfully trying to seek advice from the Independent Electoral and Boundaries Commission and the Attorney General, the Applicant filed a reference seeking the Supreme Court's advisory opinion for the purpose of guiding the functioning of the constitutional sphere of devolved government.

The Applicant, the Speaker of the County Assembly of Embu, sought advice on the following issues:-

1. Assumption of office of Governor by the Deputy Governor after the impeachment of the Governor;
2. How the oath for assumption of office would be administered;
3. The filling of the vacancy in the Office of the Deputy Governor after the Deputy

Governor assumed the Office of Governor; and

4. The timelines applicable to the assumption of the Office of Governor after the impeachment of the Governor.

The applicant submitted that the matter did not replicate the High Court petition, and that all it did was seek guidance on specific grey areas in the law.

**Held:**

1. The Reference met the constitutional threshold for the exercise of the Supreme Court's Advisory-Opinion jurisdiction under Article 163(6) of the Constitution. This was because the matter concerned a County Government, the applicant being the Speaker of Embu County, hence his office was a State organ under Article 178 of the Constitution. Secondly, the issues raised were not a subject of proceedings in a lower Court and that the applicant had sought an opinion from the Office of Attorney-General to no avail.
2. That the issues raised in the Reference were of great public importance, especially at a time when the Country had just had a General Election
3. That the Constitution had contemplated certain scenarios, when a vacancy in the office of the Governor may occur: first, where the office of the Governor falls vacant, and the Deputy Governor assumes that office; secondly, where a vacancy occurs in both the office of Governor and Deputy Governor, and the Speaker of the County Assembly assumes office as Governor for 60 days, within which an election is to be held; thirdly, where a vacancy occurs in the office of the Governor, and the Deputy Governor is unable to hold an acting capacity. In such an eventuality, the Speaker of the County Assembly assumed office and acted as Governor for 60 days, during which time an election was to be held. Based on this, it emerged that Article 182(2) of the Constitution created a pecking order whereby, if a vacancy in the office of the Governor occurred, the first to take over was the Deputy Governor, and in his absence, the Speaker of the County Assembly takes up the position for a limited period of 60 days, pending the conduct of an election. The court however recognized that the Constitution was silent on how to fill the position of a Deputy Governor, in the event of a vacancy.
4. That the Office of Governor and that of Deputy Governor were so intimately linked, that the latter is dependent upon the election of Governor. This is in accordance with the Constitution as an incoming Deputy Governor is nominated by a person vying for the position of Governor; and upon the candidate for Governor being elected, the IEBC declared the nominee as Deputy Governor, in accordance with the provisions of Article 180(5) and (6).
5. That the Constitution also expressly dispensed with the detached election of a Deputy Governor who assumed office upon the election of the Governor that nominated him or her, hence the supposition that, the Constitution did not contemplate the filling of a vacancy in the office of Deputy Governor through a direct election to that office.
6. Under the provisions of Article 179(1), (4) and (5) of the Constitution, as read together with Section 32 of the County Government Act, the Deputy Governor was the Deputy Chief Executive of the County; was a member of the County Executive Committee; and acted as the Governor, in the absence of the Governor. So crucial were these roles to the operations of County Government that it was inconceivable that, constitutionally, they could remain fallow until the next cycle of a General Election. The Court was

therefore, of the opinion that the office of Deputy Governor ought not to remain vacant until the next General Election. A differing interpretation to this, in the eyes of the Court would be inconsistent with the vital objects of the Constitution, which had to be upheld.

7. Under Article 259 of the Constitution, every provision of this Constitution shall be construed according to the doctrine of interpretation that the law is always speaking. This principle, the court averred, called for a reading of Article 182 of the Constitution alongside Article 149, which made provision for the procedure and timelines for filling a vacancy in the Office of the Deputy President.
8. According to Article 149 of the Constitution, and in the absence of any applicable legislative provision, the Court held that the following procedure would be followed:-
  - i. Where a vacancy occurs in the Office of the Deputy Governor, the Governor shall within 14 days, nominate a person to fill such vacancy;
  - ii. The County Assembly shall vote on the nomination within 0 days after receiving it;
  - iii. Where a vacancy occurs in both the offices of Governor and the Deputy Governor at the same time, the office of the Deputy County Governor shall remain vacant until the election of a new Governor;
  - iv. The new Governor shall nominate a person to fill the vacancy within 14 days after assuming office; and
  - v. The County Assembly shall vote on the nomination within 0 days after receiving it.

The Court stated that the holding shall obtain in all circumstances pursuant to which the Office of the Deputy Governor may become vacant as contemplated by the Constitution, i.e. death, resignation or impeachment.

As regards the administration of the oath of office to a Deputy County Governor who assumed office under Article 182(2) of the Constitution, the court relied on the provisions of Article 74 of the Constitution and Section 30(1) of the County Government Act which provides respectively that “Before assuming a State office, acting in a State office, or performing any functions of a State office, a person shall take and subscribe the oath or affirmation of office, in the manner and form prescribed by the Third Schedule or under an Act of Parliament.” And “The Governor shall take and subscribe to the oath or affirmation as set out in the Schedule to this Act before assuming office.”

The Court therefore held that the provisions of Article 74 of the Constitution and Section 30 of the County Government Act were applicable to a Deputy County Governor who assumed the Office of Governor under Article 182(2) of the Constitution. The new Governor would take and subscribe to the oath or affirmation set out in the Schedule to the County Government Act before assuming office.

#### **4.1.3 Recusal of a Supreme Court Judge**

##### ***Gladys Boss Shollei vs Judicial Service Commission and Another [2018] EKLR***

##### ***The Supreme Court of Kenya***

##### **Brief of the case:**

The Employment and Labour Relations Court upheld the petitioner's claim that the Judicial Service Commission had violated her fundamental rights and freedoms in removing her from office without any basis in law.

The JSC challenged the decision of the Employment and Labour Relations Court at the Court of Appeal, which in turn reversed the decision.

The petitioner was dissatisfied with the judgment of the Court of Appeal and filed this petition at the Supreme Court.

Before the petition could proceed to hearing, the petitioner filed an application by way of Notice of Motion seeking orders that most of the Supreme Court judges, namely: Hon Justice David Maraga, Chief Justice and the President of the Court, Hon. Philomena Mwilu, Deputy Chief Justice and Deputy President of the Court, Prof. Jackton Ojwang and Justice Njoki Ndung'u should recuse themselves from hearing of the petitioner's appeal, among other prayers.

Article 163(2) of the Constitution of Kenya provides that the Supreme Court shall be properly constituted for the purposes of its proceedings if it is composed of five judges, and the granting of the orders sought would have left only two judges available to hear the appeal, and the petitioners appeal would not have proceeded to full hearing.

The grounds for the petitioner's application for recusal were:-

- (a) Chief Justice Maraga and Deputy Chief Justice Mwilu were members of the JSC (first Respondent) and they were therefore conflicted;
- (b) Hon. Justice Ojwang had three pending disciplinary proceedings before the JSC; and
- (c) Justice Njoki Ndung'u had an active pending litigation against the JSC in which she was challenging the disciplinary mandate of the Commission.

##### **Issues for Determination:**

1. Whether Chief Justice Maraga and Deputy Chief Justice Mwilu who were members of the JSC were conflicted.
2. Whether Justice J.B Ojwang' who had pending disciplinary proceedings before the JSC would be biased in favour of or against the Commission.
3. Whether Justice Ndung'u who had a pending litigation against the JSC would be impartial.

## Held

In dismissing the application, the Supreme Court held: -

- a. The Supreme Court has a special mandate, which cannot be delegated, to any other forum in the entire governance setup;
- b. The matter before the Court did not call for the recusal of any of the Supreme Court Judges as they were committed to their oath of office and would pronounce themselves unbiased, and that they were ready and willing to own up to their constitutional mandate of dispensing justice in all matters falling within their jurisdiction;
- c. A judge of the Supreme Court has a duty to sit and recusal should not be used to impede a judge from exercising that right;
- d. Judges like other individual persons enjoy the protection of the law to approach the High Court where they feel that their rights have been violated and the exercise of such right cannot be ground for recusal; and
- e. The recusal and inability of the five bench to hear and determine the petition meant that the Court of Appeal judgment remained in force until the Supreme Court is reconstituted.

**The application dismissed.**

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### 4.1.4 Grounds for nullification of an election

***Odinga & Another v Independent Electoral and Boundaries Commission & 2 others [2017] eKLR***

***Presidential Election Petition No 1 of 2017***

***Supreme Court of Kenya***

#### **Brief of the case**

On August 8, Kenya held the second general election under the Constitution of Kenya, 2010). It was the first time that a general election was held under Article 101(1) of the Constitution which decreed the holding of General Elections every five years on the second Tuesday of August in the 5th year. The General Election was also held for the first time under an elaborate regime of electoral laws which included the amendments to the Elections Act made to introduce the Kenya Integrated Electoral Management System (KIEMS), a new device intended to be used in the biometric voter registration, and, on the election day, for voter identification as well as the transmission of election results from polling stations simultaneously to the Constituency Tallying Centre (CTC) and the National Tallying Centre (NTC).

On August 11, 2017, the second Respondent, exercising its mandate under Article 138(10) of the Constitution, as the Returning Officer of the Presidential election, declared the 3rd Respondent, Uhuru Muigai Kenyatta, the winner of the elections with 8,203,290 votes and the first Petitioner, Raila Amolo Odinga as the runner's up with 6,726,224 votes. On August 18, 2017, the Petitioners, Raila Amolo Odinga and Stephen Kalonzo Musyoka, who were the presidential and deputy presidential candidates respectively of the National Super Alliance (NASA) coalition of parties, filed the petition challenging the Presidential results.



The Petition was anchored on the grounds that the conduct of the 2017 presidential election violated the principles of a free and fair election as well as the electoral process set out in the Constitution, electoral laws and regulations and that the respondents committed errors in the voting, counting and tabulation of results; committed irregularities and improprieties that significantly affected the election result; illegally declared as rejected unprecedented and contradictory quantity of votes; failed in the entire process of relaying and transmitting election results as required by law; and generally committed other contraventions and violations of the electoral process.

The Petitioners argued that the IEBC committed massive systemic and systematic irregularities which went to the very core of holding elections. It was the Petitioners' case that the election was marred and significantly compromised by intimidation and improper influence or corruption. The main claim was non-compliance with the law, the argument being that the first Respondent announced results on the basis of Forms 34B before receiving all Forms 34A. It was also alleged that the results announced in Forms 34B were different from those displayed on the first Respondents' Public Web Portal.

The petitioners similarly claimed that the IEBC deliberately inflated votes cast in favour of the 3rd Respondent. As a consequence, they further argued, it was impossible to determine who actually won the election and/or whether the threshold for winning the election under the Constitution was met.

The petitioners' further case was that the results that were streaming in from August 8, 2017 to August 11, 2017 showed a consistent difference of 11 per cent between the results of Mr. Kenyatta and Mr. Odinga. According to the Petitioners, such a pattern indicated that the results were not being streamed randomly from the different polling stations but that they were being held somewhere and adjusted using an error adjustment formula to bring in a pre-determined outcome. Inter alia they claimed that the electronic system of transmission was compromised by third parties who manipulated it and generated numbers for transmission to the NTC. The Petitioners also took issue with the large number of rejected votes accounting for at least 2.6 per cent of the total votes cast arguing that that had an effect on the final results and the outcome of the election.

The first and second Respondents filed a joint response, while the 3rd Respondent filed a separate rejoinder to the petition. They all opposed the petition and urged the Court to find that IEBC conducted a free, fair and credible election. It was the Respondents' case that the presidential election was conducted in accordance with the Constitution, the IEBC Act, the Elections Act, the Regulations thereunder, and all other relevant provisions of the law. The Respondents claimed that, contrary to the allegations of the Petitioners, the process of relay and transmission of results from the polling stations to the CTC and to the NTC, and from the CTC to the NTC was simple, accurate, verifiable, secure, accountable, transparent, open and prompt as required by Article 81 (e) (iv) and (v) of the Constitution.

The Respondents submitted that the alleged inaccuracies and inconsistencies in Forms 34A and 34B were minor, inadvertent and in their totality did not materially affect the declared results. They urged the court to find that the petitioners had not substantiated the claim that the said irregularities affected at least 7 million votes.

According to the first and second Respondents, the rejected votes did not account for 2.6

per cent of the total votes cast as contended by the Petitioners. They submitted instead that the total number of rejected ballots was 81,685 as declared in Form 34C, a percentage of 0.54 per cent of the votes cast. They thus argued that the rejected ballots were properly excluded from valid votes in accordance with the law.

The 3rd Respondent in addition to the above argued that a party seeking the nullification of a presidential election bears the burden of proving that not only was there non-compliance with the election law but that the non-compliance also affected the results of the election. He thus submitted that the only way the Petitioners could impugn the results reflected in Forms 34A and 34B was by demonstrating either that legal votes were rejected or that illegal votes were allowed and that this had an effect on the election.

Following the Petitioner's application at the pre-trial stage, the Court granted an order for scrutiny and access on terms that the Petitioners and the 3rd Respondent were to attain read only access to the certified photocopies of the original Forms 34As 34Bs and 34Cs prepared at and obtained from the polling stations by Presiding Officers and used to generate the final vote tally; to the Forms 34A, 34B and 34C from all 40,800 polling stations; and to the scanned and transmitted copies of all Forms 34A and 34B.

The scrutiny process was conducted under the supervision of the Registrar of the Supreme Court and a report was filed.

The Registrar made the following observations:

- a) Certain forms 34As appeared to have been duplicated;
- b) Certain forms 34As and 34Bs appeared to be carbon copies;
- c) Certain forms 34As and 34Bs appeared to be photocopies;
- d) Some of the forms had no evidence of being stamped or signed.

It was recorded that out of the 291 Forms 34B scrutinized, 56 forms bore no watermark, five forms had not been signed by the returning officer, 31 forms had no serial numbers, 32 forms had not been signed by the respective party agents, "hand over" Section of 189 forms had not been filled and the "take over" Section of 287 forms had not been filled. Further, a random scrutiny of 4,299 Forms 34A across five Counties was undertaken to check and confirm, whether the forms bore the watermarks and the serial numbers; whether the forms had been signed and stamped by the presiding officers; whether there was involvement of the party agents.

Some of the issues emanating from the scrutiny of Forms 34A were that:

- a) some forms were carbon copies;
- b) others were the original Forms 34As but did not bear the IEBC stamp;
- c) other forms were stamped and scanned while others were photocopies; and
- d) others had not been signed.

The report further indicated that out of the 4,299 Forms 34As, 481 were carbon copies, but signed, 157 were carbon copies and were not signed; 269 were original copies that were not signed; 26 of the Forms were stamped and scanned. One form was scanned and not stamped; 15 had not been signed by agents, 58 were photo copies of which 46 were not

signed; and 11 had no watermark security feature.

The petitioners contended that the report had proved beyond reasonable doubt, that the election process was not free and fair. They contended that the Form 34C which was used to announce the presidential results had no security feature and hence the authenticity of the results could not be guaranteed.

Issues by Majority (D Maraga; P Mwilu; Wanjala, & I Lenaola)

- i. What amounts to the burden of proof in a presidential election petition?
- ii. To which party does the burden of proof lie and what are the circumstances under which the evidential burden of proof shifts?
- iii. What is the standard of proof required in an election petition?
- iv. What is the meaning of the words “votes”, “cast” and “ballot papers?”
- v. The place of valid versus rejected votes in a Presidential Election in Kenya.
- vi. The meaning of “votes cast” to be taken into account in the computation to determine the threshold of 50percent +1 under Article 138(4) of the Constitution.
- vii. What was the proper interpretation of Section 83 of the Elections Act; whether the two limbs in the provision (compliance with the law on elections, and irregularities that may affect the result of the election) were conjunctive or disjunctive?
- viii. What are the principles of free and fair elections?
- ix. Whether the 2017 Presidential Election was conducted in accordance with the principles laid down in the Constitution and the written law relating to elections.
- x. Whether the Court of Appeals’ decision in the case of Maina Kiai provided a justification for declaring the results of the election of the president by the National Returning officers without reference to Forms 34A.
- xi. Whether the Court of Appeal’s decision in the case of Maina Kiai relieved the first Respondent from its statutory responsibility of electronically transmitting in the prescribed form, the tabulated results of an election for the president from a polling station to the CTC and to the NTC in accordance with Section 39(1C) of the Elections Act.
- xii. Whether there were irregularities and illegalities committed in the conduct of the 2017 Presidential Election and if in the affirmative, what was their impact, on the integrity of the election?
- xiii. What is the meaning of the term ‘undue influence’ in the context of an electoral malpractice and particularly as used under Section 10 of the Election Offences Act?
- xiv. Whether the Supreme Court could adjudicate on an issue which was still the subject of judicial determination at the High Court.

**JB Ojwang (Dissenting)**

- i) Whether the Petition was based on facts; whether the petitioners discharged the burden of proof and whether the respondents discharged the evidential burden.
- ii) Whether the Presidential election was so badly conducted, administered and managed that it failed to comply with the governing principles established under the Constitution and the electoral laws.
- iii) Whether the presidential election contravened the principles of free and fair elections under Article 81(e) of the Constitution as read with Section 39 of the Elections Act.

- iv) Whether the petitioners' claims in the petition formed a basis for annulling the outcome of the Presidential election held on August 8, 2017.
- v) Did the applicable electoral laws affect the Presidential election differently from the manner in which it affected the other five sets of elections held on the same date?

#### **N S Ndungu SCJ (Dissenting)**

- i. Whether election petitions are right centric or form centric.
- ii. Whether the 2017 Presidential Election was conducted in accordance with the principles laid down in the Constitution and the law relating to elections.
- iii. Whether the 3rd Respondent was validly and properly elected to the office of President of the Republic of Kenya.
- iv. What was the import of Section 39, 44 and 44A as far as transmission of election results was concerned?
- v. Whether technology was a mandatory component of Kenya's electoral transmission process.
- vi. What is the distinction between the legal burden and the evidentiary burden of proof in election petitions?
- vii. Whether there was an express statutory requirement that imposed an obligation on the first Respondent to avail forms 34A and 34B.
- viii. What is the effect of reversing the electoral jurisprudence already settled by the Supreme Court and applied across the country at all levels of Kenya's judicial system?
- ix. Where there is a conflict between constitutional fundamental freedoms and the directive principles in the Constitution, which one prevails?
- x. What is the proper test for verification of an electoral process?

#### **The holding of the majority**

1. The common law concept of burden of proof (*onus probandi*) is a question of law which can be described as the duty which lies on one or the other of the parties either to establish a case or to establish the facts upon a particular issue. The law places the common law principle of *onus probandi* on the person who asserts a fact to prove it. Section 107 of the Evidence Act, Cap 80 of the Laws of Kenya, legislates that principle in the words: "Whoever desires any Court to give Judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist."
2. An applicant who seeks to annul an election bears the legal burden of proof throughout. Thus, a petitioner who seeks the nullification of an election on account of non-conformity with the law or on the basis of irregularities must adduce cogent and credible evidence to prove those grounds to the satisfaction of the court.
3. Though the legal and evidential burden of establishing the facts and contentions which will support a party's case is static and remains constant throughout a trial with the plaintiff, however, depending on the effectiveness with which he or she discharges that, the evidential burden keeps shifting and its position at any time is determined by answering the question as to who would lose if no further evidence was introduced.

4. Once the Court is satisfied that the Petitioner has adduced sufficient evidence to warrant impugning an election, if not controverted, then the evidentiary burden shifts to the respondent, in most cases the electoral body, to adduce evidence rebutting that assertion and demonstrating that there was compliance with the law or, if the ground is one of irregularities, that they did not affect the results of the election.
5. In electoral disputes, the standard of proof remains higher than the balance of probabilities but lower than beyond reasonable doubt and where allegations of criminal or quasi criminal nature are made, it is proof beyond reasonable doubt. Electoral disputes are not ordinary civil proceedings, hence reference to them as *sui generis*. It must be ascertainable, based on the evidence on record, that the allegations made are more probable to have occurred than not.
6. It was imperative that the meaning of the phrase “votes cast” in Article 138(4) be clearly understood. The meaning of the word ‘cast’ was not disputed. In elections, the term refers to the ballot papers inserted into ballot boxes. There was however a dispute as to the correct meaning of the term “votes.” Neither the Kenyan Constitution nor the Elections Act defined the term “vote.” The Elections Act, however, defined the term “voter” to mean “a person whose name is included in a current register of voters
7. From the definitions, particularly the one in the Black’s Law Dictionary referring to a vote as “the expression of one’s preference or option”, the distinction between a ballot paper and a vote is clearly discernible. A ballot paper is the instrument in which a voter records his choice, while a vote is the actual choice made by a voter. A ballot paper does not become a vote by merely being inserted into the ballot box, as it may later turn out to be rejected.
8. There was nothing in the Constitutional Review Commission’s Report or in the Parliamentary Hansard Report giving the basis for the change from “valid votes cast” in Section 5(3)(f) of the Constitution of Kenya, Repealed to “votes cast” in Article 138(4) of the Constitution of Kenya, 2010. Consequently, the Court’s view in the 2013 Raila Odinga case would be maintained.
9. The Court in the 2013 Raila Odinga case, did not render an authoritative interpretation of Section 83 of the Elections Act as read together with the relevant provisions of the Constitution.
10. There were clearly two limbs to various provisions from comparative jurisdictions that were similar to Section 83 of the Kenyan Elections Act: compliance with the law on elections, and irregularities that may affect the result of the election. The issue in the interpretation of the provisions was whether or not the two limbs were conjunctive or disjunctive. It was unequivocally clear that, the use of the term ‘and’ in the cited English provisions rendered the two limbs conjunctive under the English law. Save for minor changes, the conjunctive norm in the two limbs of the provision as captured in the two English provisions appeared to have been borrowed lock, stock and barrel by many Commonwealth countries, notably Nigeria, Ghana, Zambia, Tanzania and Uganda to mention but a few. However, under both the repealed National Assembly and Presidential Elections Act (Section 28) and the current Elections Act (Section 83) the term used was “or” instead of “and” that appears in the English Acts. The use of the word “or” clearly made the two limbs disjunctive under the Kenyan law. It was,

therefore, important that, while interpreting Section 83 of the Kenyan Elections Act, that distinction is borne in mind.

11. Section 83 of the Kenyan Elections Act was different from other countries in two other fundamental aspects. First, the Kenyan Act did not have the word ‘substantially’ which was in many of the provisions of other countries. Secondly, and fundamentally, in 2011, the Elections Act (No. 24 of 2011) was enacted and repealed the National Assembly and Presidential Elections Act. Section 83 of the new Elections Act, to harmonize it with the Constitution of Kenya 2010, added that to be valid, the conduct of the elections in Kenya must comply ‘with the principles laid down in the Constitution.’ That addition was purposive given that the Repealed Constitution of Kenya, did not contain any constitutional principles relating to elections. In interpreting the Section therefore, the Court had to first pay due regard to the meaning and import of the constitutional principles it envisaged.
12. Guided by the principles of statutory interpretation, and given the use of the word “or” in Section 83 of the Elections Act, as well as some of the Supreme Court’s previous decisions, the Court could not conjunctively apply the two limbs of that Section and demand that to succeed, a Petitioner must not only prove that the conduct of the election violated the principles in the Constitution of Kenya, 2010 as well as other written law on elections but that he must also prove that the irregularities or illegalities complained of affected the result of the election.
13. The issue as to how Section 83 of the Elections Act ought to be interpreted by a court of law in determining the validity or otherwise of an election was authoritatively settled by the Supreme Court in *Gatirau Peter Munya v. Dickson Mwenda Githinji and 2 others (2014) eKLR*. An election should be conducted substantially in accordance with the principles of the Constitution, as set out in Article 81(e). Voting is to be conducted in accordance with the principles set out in Article 86. The Elections Act and the Regulations thereunder, constitute the substantive and procedural law for the conduct of elections. If it demonstrated that an election was conducted substantially in accordance with the principles of the Constitution and the Election Act, then such election is not to be invalidated only on ground of irregularities. Where, however, it is shown that the irregularities were of such magnitude that they affected the election result, then such an election stands to be invalidated. Otherwise, procedural or administrative irregularities and other errors occasioned by human imperfection are not enough, by and of themselves, to vitiate an election. Where an election is conducted in such a manner as demonstrably violates the principles of the Constitution and the law, such an election stands to be invalidated.
14. Section 83 of the Elections Act applied to the presidential election petitions as it did to all other election disputes. Guided by the principles in Articles 10, 38, 81 and 86 of the Constitution of Kenya, 2010 as well as the authorities referred to, the two limbs in Section 83 of the Elections Act could not be given a conjunctive interpretation. The two limbs of Section 83 of the Elections Act should be applied disjunctively. In the circumstances, a Petitioner who is able to satisfactorily prove either of the two limbs of the Section can void an election. In other words, a Petitioner who is able to prove that the conduct of the election in question substantially violated the principles laid down in the Constitution as well as other written law on elections, will on that ground alone, void an election. He will also be able to void an election if he is able



to prove that although the election was conducted substantially in accordance with the principles laid down in Kenya's Constitution as well as other written law on elections, it was fraught with irregularities or illegalities that affected the result of the election.

15. An election such as the one at hand, has to be one that is both quantitatively and qualitatively in accordance with the Constitution. It is one where the winner of the presidential contest obtains more than half of all the votes cast in the election and at least twenty-five per cent of the votes cast in each of more than half of the counties, as stipulated in Article 138(4) of the Constitution. In addition, the election which gives rise to that result must be held in accordance with the principles of a free and fair elections, which are by secret ballot, free from intimidation, improper influence, or corruption, and administered by an independent body in an impartial, neutral, efficient, accurate and accountable manner as stipulated in Article 81. Besides the principles in the Constitution that govern elections, Section 83 of the Elections Act required that elections be 'conducted in accordance with the principles laid down in that written law. The most important written law on elections was the Elections Act itself.
16. Having considered the opposing positions, the contentions by the first and second Respondents ignored two important factors. One, that elections were not only about numbers as many, even prominent lawyers, would like the country to believe. Even in numbers, to arrive at a mathematical solution, there is always a computational path one has to take, as proof that the process indeed gives rise to the stated solution. Elections are not events but processes. Elections are not isolated events, but are part of a holistic process of democratic transition and good governance.
17. The polling station is the true locus for the free exercise of the voters' will. The counting of the votes as elaborately set out in the Act and the Regulations, with its open, transparent and participatory character using the ballot as the primary material, means, as it must, that the count is clothed with a finality not to be exposed to any risk of variation or subversion.
18. Neither the first nor the second Respondent had offered any plausible response to the question as to whether all Forms 34A had been electronically transmitted to the National Tallying Center (NTC) as required by Section 39 (1C) of the Elections Act. What remained uncontroverted however was the admission that as of 14th August 2017, three days after the declaration of results, the first Respondent was not in a position to supply the Petitioner with all Forms 34A.
19. The understanding of the process was that the figures keyed into the KIEMS corresponded with those on the scanned images of Forms 34A. it was therefore difficult to understand why those figures, which counsel referred to as mere "statistics" that did not go into the determination of the outcome of the results, differed. In the circumstances, bearing in mind that IEBC had the custody of the record of elections, the burden of proof shifted to it to prove that it had complied with the law in the conduct of the presidential election especially on the transmission of the presidential election results and it failed to discharge that burden.
20. IEBC, in particular failed to allow access to two critical areas of their servers: its logs which would have proved or disproved the Petitioners' claim of hacking into the system and altering the presidential election results and its servers with Forms 34A

and 34B electronically transmitted from polling stations and County Tallying Centers (CTCs). Those were the Forms that Section 39(1C) specifically required to be scanned and electronically transmitted to the CTCs and the NTC. In other words, the order of scrutiny was a golden opportunity for IEBC to place before Court evidence to debunk the Petitioners' said claims. If IEBC had nothing to hide, even before the Order was made, it would have itself readily provided access to its ICT logs and servers to disprove the Petitioners' claims. However, the IEBC contumaciously disobeyed the Order in the critical areas.

21. Failure to comply with a lawful demand, leave alone a specific court order, left the Court with no option but to draw an adverse inference against the party refusing to comply. The Petitioners claimed that while 15,558,038 people voted for the presidential candidates, 15,098,646 voted for gubernatorial candidates and 15,008,818 voted for Members of Parliament (MPs) raising questions as to the validity of the extra votes in the presidential election. No satisfactory answer was given and the first Respondent was responsible for that unexplained yet important issue.
22. The transmission of results was done in a manner inconsistent with the expectations of Section 39(1C) of the Elections Act. The principles in Articles 81 and 86 of the Constitution had the expectations of transparency, accountability, simplicity, security, accuracy, efficiency and especially, verifiability of the electoral process.
23. Verifiability must have had strong significance in the 8th August Election, because the presiding officers were required to verify the polling station's results in the presence of polling agents before sending them to the CTC and NTC using the KIEMS KIT. The Maina Kiai decision, made it clear that Form 34A being the primary document, became the basis for all subsequent verifications.
24. The critical element under Article 138 (3) (c) of the Constitution was the duty placed upon the Commission to verify the results before declaring them. To ensure that the results declared were the ones recorded at the polling station. Not to vary, change or alter the results.
25. The duty to verify in Article 138 was squarely placed upon the first Respondent. That duty ran from the polling station to the constituency level and finally, to the National Tallying Centre. There was no disjuncture in the performance of the duty to verify. It was exercised by the various agents or officers of the first Respondent, that is to say, the presiding officer at a polling station, the returning officer at the constituency level, and the Chair at the National Tallying Centre.
26. The verification process at all those levels was elaborately provided for in the Elections Act, and the Regulations thereunder. The simultaneous electronic transmission of results from the polling station to the Constituency and National Tallying Centre, was not only intended to facilitate that verification process, but also acted as an insurance against, potential electoral fraud by eliminating human intervention/ intermeddling in the results tallying chain. The system did this by ensuring that there was no variance between, the declared results and the transmitted ones.
27. In the presidential election of August 8, 2017 however, the picture that emerged, was that things did not follow that elaborate, but clear constitutional and legislative road map. It had been established that at the time the second Respondent declared the final results for the election of the President on August 11, 2017, not all results as tabulated in Forms 34A, had been electronically and simultaneously transmitted



- from the polling stations, to the National Tallying Centres. The second Respondent could not therefore be said to have verified the results before declaring them.
28. The said verification could only have been possible if, before declaring the results, the second Respondent had checked the aggregated tallies in Forms 34B against the scanned Forms 34A as transmitted in accordance with Section 39 (1C) of the Elections Act. Given the fact that all Forms 34 B were generated from the aggregates of Forms 34A, there could be no logical explanation as to why, in tallying the Forms 34B into the Form 34C, the primary document (Form 34A), was completely disregarded.
  29. The failure by the first Respondent to verify the results, in consultation with the second Respondent, before the latter declared them, therefore went against the expectation of Article 138(3) (c) of the Constitution, just as the failure to electronically and simultaneously transmit the results from all the polling stations to the National Tallying Centre, violated the provisions of Section 39 (1C) of the Elections Act. Those violations of the Constitution and the law, called into serious doubt as to whether the said election could be said to have been a free expression of the will of the people as contemplated by Article 38 of the Constitution.
  30. The Maina Kiai case did not restrain the first Respondent from verifying the results before declaring them, or relieve the former from the statutory duty of electronically transmitting the results. What the second Respondent was barred from doing by the Court of Appeal and the High Court was to vary, alter, or change the results relayed to the National Tallying Centre from the polling stations and Constituency Tallying Centres, under the guise of verifying.
  31. Article 86 of the Constitution placed upon the first Respondent the onerous responsibility of devising and deploying election systems that the voter could understand. The first Respondent must further be expected to provide access to crucial information that could enable either a candidate or a voter to cross check the results declared by it with a view to determining, the integrity and accuracy thereof. In other words, “the numbers must just add up” even where Parliament found it necessary to make provision for a complementary system, it would not escape from the dictates of Article 86 of the Constitution, hence Section 44A of the Elections Act.
  32. The Petitioners had discharged the legal burden of proving that the second Respondent, declared the final results for the election of the president, before the first Respondent had received all the results from Forms 34A from all the 40,883 polling stations contrary to the Constitution and the applicable electoral law. The second Respondent, declared, the said results solely, on the basis of Forms 34B, some of which were of dubious authenticity. The first Respondent in disregard of the provisions of Section 39 (1C), of the Elections Act, either failed, or neglected to electronically transmit, in the prescribed form, the tabulated results of an election of the president, from many polling stations to the National Tallying Centre.
  33. The 2017 presidential election was, therefore, not conducted in accordance with the principles laid down in the Constitution and the written law on elections in that it was, inter alia, neither transparent nor verifiable. On that ground alone, and on the basis of the interpretation given to Section 83 of the Elections Act, the Presidential election had to be nullified.
  34. The first Respondent had submitted that the question whether he was allegedly sponsoring the advertisement of the government’s achievement in the print and

electronic media was pending at the High Court and the Petitioners did not contest that averment. The Supreme Court could not adjudicate on an issue which was still the subject of judicial determination at the High Court. Accordingly, Section 23 could not be found unconstitutional.

35. A number of conclusions/observations could be made from the scrutiny exercise ordered by the court: First, the Form 34C, that was availed for scrutiny was not original. Whereas the copy availed for scrutiny was certified as a copy original, no explanation was forthcoming to account for the whereabouts of the original Form. Regulation 87(3) obligated the second Respondent to tally and complete Form 34C and to sign and date the forms and make available a copy to any candidate or chief agent present. That regulation presupposed that the Chairman retained the original. The second Respondent was required to avail the original Form 34C for purposes of access and to that extent the second Respondent did not.
36. Second, Not every irregularity, not every infraction of the law is enough to nullify an election.
37. IEBC did not conduct the August 8, 2017 presidential election in conformity with the Constitution and electoral law. Irregularities and illegalities were also committed in a manner inconsistent with the requirement that the electoral system ought to be inter alia simple, verifiable, efficient, accurate and accountable. Although the Petitioners claimed that various electoral offences were committed by the officials of the first Respondent (IEBC) no evidence was placed before the court to prove this allegation. What was in evidence was a systemic institutional problem and there was no specific finger prints of individuals who may have played a role in commission of illegalities. It was therefore not possible to impute any criminal intent or culpability on either the first and second Respondent, or any other commissioner or member of the first Respondent. There was also no evidence of misconduct on the part of the 3rd Respondent.

**Petition allowed.**

- (i) A declaration issued that the Presidential Election held on 8th August, 2017 was not conducted in accordance with the Constitution and the applicable law rendering the declared result invalid, null and void;
- (ii) A declaration issued that the irregularities and illegalities in the Presidential election of 8th August, 2017 were substantial and significant that they affected the integrity of the election, the results not- withstanding.
- (iii) A declaration issued that the 3rd Respondent was not validly declared as the President elect and that the declaration is invalid, null and void;
- (iv) An Order issued directing the first Respondent to organize and conduct a fresh Presidential Election in strict conformity with the Constitution and the applicable election laws within 60 days of the determination of first September 2017 under Article 140(3) of the Constitution.
- (v) Each party to bear its own costs.

**Dissenting opinion of J B Ojwang, SCJ:**

1. Under Article 20(4) (a) of the Constitution, the Supreme Court, just like the other Courts, was under obligation to promote the values that underlay an open and democratic society based on human dignity, equality, equity and freedom. The Supreme Court, just like the other Courts, in the course of performing its safeguarded interpretive mandate, was under obligation to be guided by the principles; that justice should be administered without undue regard to procedural technicalities, and that the purpose and principles of the Constitution should be protected and promoted.
2. The Constitution enjoined all courts, in the exercise of their interpretive mandate, to adhere to certain well-defined paths:
  - (a) a manner that promotes the Constitution's purposes, values and principles;
  - (b) a manner that advances the rule of law, the human rights and fundamental freedoms in the Bill of Rights;
  - (c) a manner that contributes to good governance.

The foregoing prescriptions, in the context of the exercise of the people's electoral rights as took place on August 8, 2017, were the firm foundation upon which the dissent opinion from the majority was founded. The majority decision had not only done short shrift to the governing terms of the Constitution, but also failed to adhere to the clear path of the law which had evolved, including the Court's precedents on electoral law.

3. The judicial approach in the sphere of electoral law is obviously inseparable from the Constitution's values and the principles of democracy. It thus behoves the Court to pay due deference to the fundamentals of the sets of cases that have, in the last several years, been determined by the Supreme Court, on the subject of elections – including Presidential elections. Such is, quite conclusively, the most dependable course of the law that Kenya's lawyers should engage, in the first place.
4. The relevant clause of the Constitution must be taken through an analytical process, and subjected to definite categorizations which crystalized the specific concepts and elements said to have been violated. By that criterion, most of the contentions of the Petitioners in the instant case, on account of their broad generality, would not stand. The interpretive task, as it related to the adjectival essence of the law, was inherently professional – and was reflected in the concept of jurisprudence, which dealt with thought about law.
5. The Court, in the normal performance of its role under the Constitution, is engaged in the specialized process of jurisprudence. It follows that the more immediate, urgent and primary motions of basic policy-making, inherently devolves to the political arms of the State, rather than the more specialized entity which is the Judiciary.

**Dissenting opinion of S.N Ndungu SCJ.**

1. Evidence is the epicenter of any trial. The nature of a presidential election petition does not displace the basis of the law of evidence outlined in the Law of Evidence

Act, Section 80 of the Elections Act, 2011 expressed that among the powers of an election court in exercise of its jurisdiction was: summoning and swearing in witnesses in the same manner, or as nearly as circumstance admitted, as in a trial by a Court in exercise of its civil jurisdiction. As per Article 163 (3)(a), the proceedings before the Supreme Court, although regulated by the Supreme Court Act, 2012 and the attendant Presidential Election Petition Rules, 2017 allowed reliance on affidavit evidence. In order for that evidence to bear cogent value, it had to meet the demands of proof.

2. Electoral processes have assumed a fair presumption of correctness. To rebut the presumption, one requires proof, to a high degree, that the resulting declaration is not trustworthy. That is drawn from the democratic legitimacy accorded to elections by the Constitution. The test of invalidating an election has to be a clear one. A new election ought to be conducted only when voters have been completely prevented from accurately registering their intended preference in numbers sufficient to affect the outcome. A determination to hold a fresh election in terms of Article 140(3) should only be made if the following questions are considered, analyzed and determined conclusively:
  - (i) Was the final outcome of the election the result of fraud, mistake or omission which precluded the certified vote total from correctly aggregating all voters' independent, non-coerced and non-procured preferences?
  - (ii) Is the outcome incapable of being trusted to reflect the will of the people?
  - (iii) Can a reliable outcome be determined in a manner other than holding a fresh election?
3. The majority based their decision on an interpretation of Section 83 of the Elections Act and in doing so they had read-in the provisions of Articles 81 and 86 of the Constitution. They stated that the electoral process had not met the requirements as listed in those Articles. That was a narrow and restrictive interpretation of the law. The majority in doing so, limited itself to operational and aspirational constitutional principles but failed to address the substratum of the issue at hand, the grund norm of the Constitution, the sovereignty of the people and the centrality of the people in the entire architecture of the 2010 Constitution, but secondly used a restrictive test in assessing whether a claim that the right to vote had been violated in any way had been made.
4. In interpreting and applying any provision of the Constitution, the Elections Act and Regulations, the Supreme Court must adopt an interpretation that promotes the grund norm in Article 1 and the right to vote in Article 38.
5. A reading of the majority decision appeared to presume that the only test for ascertaining the credibility of the election process, or more correctly for assessing any violation of the rights under Article 38, lay in Articles 81 and 86. That was not

the case. Articles 82 and 83 also went to the specifics of the electoral process that supported the right under Article 38. Article 82 and 83 addressed the registration of voters and 83 underlined the requirements of the voting exercise itself as simple, accurate, and taking into account those with special needs. Article 83(3) provided clearly that administrative arrangements for the registration of voters and the conduct of elections had to be designed to facilitate and would not deny, an eligible citizen the rights to vote or stand for election. The upshot being that the test for assessing a violation claim under Article 38 had to be more comprehensive than the aspirational guidelines set under Articles 81 and 86. Cherry-picking constitutional provisions to determine a right-centric cause on the basis of formal considerations the choice of form over rights undermined a purposive approach to the interpretation and application of the Constitution.

6. A proper test for verification of an electoral process must always prioritize the primary instrument for declaration of the result or outcome of the voters' choice. The voter is identified at the Polling station, he votes at the polling station, ballots are counted at the polling station. The agents, candidates, observers are allowed access into the polling stations to verify the inner sanctum of the voice of the electorate, the altar of the voter's choice. What happens there is what determines the parameters of verification. Any doubt as to the credibility or integrity of the election has to be tested against the various layers of verification, including the election material in the custody of the Returning Officer. A single want of form in the elaborate scheme of verification could not be a basis for nullifying a Presidential Election.
7. The first and second Respondents satisfactorily demonstrated that the electoral process was conducted in accordance with the directions of the Court of Appeal in *the Maina Kiai case*. Processes that had been put in place before the determination by the Court of Appeal declaring Section 39(2) and (3) of the Elections Act, 2011 and Regulation 87 (2)(c) unconstitutional were adjusted to:
  - (a) eliminate "provisional results" and
  - (b) adjust Form 34C to reflect a collation of Forms 34B from the Constituency Returning Officers who had verified and tabulated the final results from the polling stations in Forms 34A.

The declaration by the second Respondent of the results of the election per County was in keeping with the constitutional requirement that the candidate declared elected as President received at least twenty-five per cent of the votes cast in each of more than half of the Counties.

8. Where a petitioner imputed electoral offences on the part of the returned candidate, the burden of proof lay on the petitioner to prove the commission of the electoral offences by the returned candidate or by his agents or by other persons with his consent, which claim had to be supported by cogent evidence,

bare allegations, without more, that the offence was committed would not suffice. If the evidence supplied failed to meet the set standard the petition had to fail.

9. The petitioner made did not discharge the onus of proof in most of the allegations. The first and second Respondents were not in contempt of the Supreme Court's orders and there was no basis to nullify the presidential election on the basis of any information revealed or otherwise in the report. The allegations of inconsistency in forms 34A and 34B was verifiable using the existing paper-trail, which was also in the possession of the petitioner having requested the Court vide a letter dated August 23 2017 and the entire set of primary records provided in scanned form on August 24 2017. As such, an order for nullification based on this exercise that was merely based on controvertible and speculative grounds, and is well below the standards set for nullifying an election, especially, where other remedies, such as inspection of ballots, exist.
10. The petition contained numerous allegations of irregularity, illegality and electoral offences, which, if proved, to the required burden and standard, and if it affected the result to void the Presidential election. The allegations were however not proved. Where evidence was adduced, there was sufficient evidence to rebut the allegations.
11. The majority nullified the conduct of the Presidential elections solely on the basis that some forms 34A and 34B lacked security features, which were elected by the Commission and spread in different versions across most forms. The majority, in the aftermath of the registrar's report did not even attempt to peruse the enormous evidence deposited by the first and second Respondents bearing certified copies of Forms 34A and 34B of the Constitution and against which they ought to have checked the alleged irregularities. By subjecting the integrity of the election to considerations of design, that were neither statutory nor regulatory, the Majority had not only threatened the people's belief in the electoral system, it had overburdened and in fact, negated the electorate's right to franchise.
12. In election causes, the majority ought to have disengaged the mechanical gear of appellate jurisdiction and fully considered the evidence against the dictates of the burden and standard of proof. The absence of time is not a sufficient excuse. The Court had a competent institution of research and was well facilitated to be able to perform the role of an election Court as a final verifying agent in cases of monumental importance such as the present Petition.
13. Had the majority been engaged in the mode of a Court of exclusive original jurisdiction, it would have found that each and every allegation in the petition was addressed to a satisfactory standard and where and if, the burden of proof shifted, the Commission discharged it satisfactorily.

**Petition should have been dismissed with costs.**



## **4.2 DECISIONS EMANATING FROM THE COURT OF APPEAL**

### **4.2.1 The Jurisdiction of Magistrates' Courts to hear and determine Employment and Labour Relations Claims and Environment and Land Matters**

***Law Society of Kenya, Nairobi Branch vs Malindi Law Society & 6 others [2017] eKLR***

***Civil Appeal No 287 of 2016***

#### **Brief of the case:**

The Statute Law (Miscellaneous Amendments) Act, 2015 introduced several amendments, which were challenged on grounds of unconstitutionality. It amended the Environment and Land Court Act No. 19 of 2011 by allowing the Chief Justice to transfer judges from the Environment and Land Court to the High Court and vice versa. Additionally, the Statute Law (Miscellaneous Amendments) Act, 2015, introduced amendments to Section 101 of the Land Registration Act and Section 150 of the Land Act, allowing subordinate Courts to have jurisdiction in environment and land matters.

The Magistrates' Court Act No. 26 of 2015 was also the subject of a challenge on the constitutionality of some of its provisions. Section 9 vested Magistrates' Courts with the jurisdiction to deal with environment and land matters as well as employment and labour relations claims.

Generally, it was argued by the Malindi Law Society that environment and land matters as well as employment and labour relations claims were within the exclusive jurisdiction of specialized Courts which were of the same status as the High Court and were provided for under Article 162(2) of the Constitution. The specialized Courts included the Environment and Land Court and the Employment and Labour Relations Court. The High Court's judgment was to the effect that the provisions that allowed for transfer of judges from specialized Courts to the High Court and those that granted subordinate Courts jurisdiction to handle environment and land matters and employment and labour relations claims were unconstitutional.

Aggrieved by the decision of the High Court, the Law Society of Kenya Nairobi Branch, filed an appeal at the Court of Appeal. During the hearing of the appeal, a preliminary issue arose. The Malindi Law Society wanted the notices of appeal filed by branches of the Law Society of Kenya struck out on grounds that those branches had no right of appeal as they were not parties to the High Court proceedings.

#### **Issues for Determination:**

1. Whether Respondents who were not party to High Court proceedings had the *locus standi* to challenge the High Court's decision at the Court of Appeal.
2. Whether provisions in the Statute Law (Miscellaneous Amendments) Act, 2015 which allowed the Chief Justice to transfer judges from the Environment and Land Court to the High Court and vice versa, were constitutional.
3. Whether Parliament, through legislation, could confer jurisdiction upon Magistrates' Courts to hear and determine environment and land matters and also employment and labour relations claims.

## Held

1. The Law Society of Kenya was a party to the High Court proceedings but its branches were not. Section 24 of the Law Society of Kenya Act introduced branches as organs of the Law Society of Kenya. The branches were semi-autonomous, if not autonomous. Sections 15 and 24(2) of the Law Society of Kenya Act did not suggest that they did not have autonomy. The issues that the branches sought to raise in the appeal were in line with Section 24(2) (a) of the Law Society of Kenya Act.
2. Under Article 3(1) of the Constitution, every person had the obligation to respect, uphold and defend the Constitution. Article 260 of the Constitution defined a person as including a company, association or other body of persons whether incorporated or unincorporated. The right to institute proceedings to enforce fundamental rights and freedoms was guaranteed under Article 22(1) of the Constitution and the right to institute proceedings in order to defend the Constitution was guaranteed under Article 258(1) of the Constitution. Article 258(2) allows for the institution of proceedings by a person acting on his own behalf, or as a member of or in the interests of a group or class of persons, or in public interest or as an association acting in the interests of one or more of its members.
3. *Locus standi* before a court of law would be possessed by any aggrieved party. Under rule 75 of the Court of Appeal Rules, any person who desired to appeal to the court had to give notice in writing, lodged in duplicate with the Registrar of the court. The rule specifically dealt with a person who wished to appeal and not a party to the impugned decision.
4. The provisions of rule 75 of the Court of Appeal Rules and Articles 22, 258 and 260 of the Constitution were to the effect that a person, association, body corporate or an unincorporated body, had the *locus standi*, not only to institute original proceedings but also appellate proceedings provided that such a party was aggrieved by the decision they intended to challenge. The Respondents fell within the provisions as they asserted that the impugned decision negatively affected legal practice and the welfare of their members. Article 259 of the Constitution provided that the Constitution ought to be interpreted in a manner that promoted its purposes, values and principles, advanced the rule of law and human rights and fundamental freedoms in the Bill of rights, permitted the development of the law and contributed to good governance. The Constitution ought to also be interpreted in accordance with the doctrine that the law is always speaking.
5. The Court was unable to interpret Article 162(2) of the Constitution as a provision which limited the power of Parliament to confer jurisdiction on subordinate Courts which were established under Article 169(1) (a), (b) and (c). Article 169(2) provided that Parliament had to enact legislation conferring jurisdiction, functions and powers on the subordinate Courts. A distinction ought to be drawn between the power granted to Parliament under the Constitution to establish Courts, which was restricted, and the power to confer jurisdiction on Courts. In enacting the Magistrates' Court Act, as stated in its preamble to give effect to Article 169(1) (a) of the Constitution, to confer jurisdiction, functions and powers on the Magistrates' Courts, Parliament did not exceed its powers or act ultra vires.



6. Considering that appeals over the certain matters would lie with the specialized Courts, conferring jurisdiction on Magistrates' Courts to hear and determine those matters would not diminish the specialization of specialized Courts. The doctrine of judicial precedent would bind the Magistrates' courts and would undoubtedly imprint specialized jurisdiction on magistrates' courts.
7. Devolution, access to services and access to justice are critical pillars of Kenya's constitutional architecture. Article 48 of the Constitution demanded that the State had to ensure access to justice for all persons. One facet of that was the geographical location of Courts and their proximity to the people that would be served by the Courts.
8. Kenya had more Magistrates' Courts than specialized Courts or High Court stations. The close proximity of Magistrates' Courts to the people ensured efficiency and access to justice at a reasonable cost. It would be illogical and unreasonable to prohibit Magistrates' Courts from determining land and employment disputes, when it was undeniable that their reach to the citizenry was wider than that of specialized courts.
9. Had the framers of the Constitution intended to restrict Parliament's power to enact legislation conferring jurisdiction on magistrates' courts with respect to disputes relating to employment and labour relations and the environment and land matters, the restriction would have been provided for expressly.
10. Under Article 165(5) of the Constitution, the High Court would not have jurisdiction in respect of matters reserved for the exclusive jurisdiction of the Supreme Court under the Constitution or those falling within the jurisdiction of the specialized Courts contemplated in Article 162(2) of the Constitution. The provision did not say that the matters, in the case of specialized Courts were reserved to the exclusive jurisdiction of those Courts, it stated that the matters fell within the jurisdiction of the specialized Courts.
11. Although Article 162(2) of the Constitution mandated Parliament to establish Courts with the status of the High Court to hear and determine disputes relating to employment and labour relations and environment and the use and occupation of, and title to land, that in itself did not confer exclusive jurisdiction to those specialized Courts to hear and determine the specified types of cases.

**Appeal partly allowed.**

#### **4.2.2 Whether a Judge can be sued in a course of action arising from the lawful performance of his or her judicial functions and whether judicial immunity is absolute**

***Bellevue Development Company Ltd vs Hon. Mr. Justice Francis Gikonyo, Hon. Mr. Justice Charles Kariuki & 6 Others Civil Appeal No. 239 of 2016***

##### **Brief of the case**

Bellevue Development Company (the applicant) appeared before Hon. Mr. Justice Charles Kariuki J, seeking review of orders of Hon. Mr. Justice Francis Gikonyo J. which held that its arbitral proceedings with Vinayak Builders (the Respondent) before an arbitrator Mr. Norman Mururu (Deceased) were terminated and that the subsequent appointment of another arbitrator Mr. Paul Mwaniki Gachoka was proper in accordance with the Arbitration Act, No.4 of 1995 (Cap 49).

The application was opposed by the respondent on the grounds that the matter was *res-judicata* and that the court was divested of such jurisdiction as the learned Judge Kariuki J, could not sit on an appeal on the decision of a fellow judge (Gikonyo J) with a concurrent jurisdiction. The learned Judge (Kariuki J) agreed with the respondent and dismissed the application as incompetent for lack of jurisdiction.

Aggrieved by the decisions of the two Judges, the applicant filed Petition No. 371 of 2016 before the High Court Commercial & Admiralty Division (Ochieng J) suing the two Judges, Hon. Mr. Justice Francis Gikonyo J and Hon. Mr. Justice Charles Kariuki J, alleging among others that:

- i. The two Judges acted in bad faith and unlawfully in rendering their Rulings on 18th March 2014, 08th April 2014 and 8th April 2016 respectively in High Court at Nairobi, Milimani Commercial & Admiralty Division, Civil Suit number 571 of 2011 (O.S) and to that extent are not clothed with the immunity granted under Article 160 (5);
- ii. By their collective rulings, the two judges breached the petitioner's Right, to have its dispute with the respondent, determined by the application of law in a fair and transparent manner;
- iii. That the cumulative actions of the two judges breached the respondent's right to equal protection and benefit of the law;
- iv. That the Judges' individual and collective actions effectively took away the respondent's property unlawfully thus breaching its rights under Article 40 of the Constitution of Kenya;

The Court from the onset observed that both of the Judges had been sued in their capacities as Judges of the High Court and that the petition made it clear that the foundation upon which the Judges had been sued were their respective rulings, which they pronounced in the case *Bellevue Development Company Limited Vs Vinayak Builders Limited & Another, HCCC No. 571 Of 2010 (O.S)*. In the circumstances the suit against the judges arose out of the judicial functions.

On that basis, and before the matter was set down for hearing, the two Judges raised a

preliminary objection contending that the petition could not stand as its very prosecution would constitute a violation of the judicial immunity of the two Judges. Specifically, the judges argued that the petition was incompetent, as it sought to question why and how judges carried out their respective judicial functions.

In opposing the objection, the respondent' admitted that it was aware of the judicial immunity accorded to the judges by the Constitution but countered that such immunity is only available when judges perform lawful functions. According to the respondent, it is only when a judge acts lawfully and in good faith that he would enjoy constitutional immunity from being sued.

The relevant provision of the constitution is Article 160 (5) of the Constitution, which stipulates as follows;

“A member of the Judiciary is not liable in an action or suit in respect of anything done or omitted to be done in good faith in the lawful performance of a judicial function”.

After hearing the rival legal submissions on the question as to whether the Judges acted lawfully or and good faith, the learned Judge (Ochieng J) first expressed himself on the Jurisdiction limits and competency constraints he faced in this case by stating thus:

Para:

- [11] In practical terms, when the court is called upon to determine whether or not a Judge had acted lawfully and in good faith, the court would have to analyse both the decision and the conduct of the Judge
- [12] Both Judge Gikonyo and Judge Kariuki have jurisdictions concurrent to mine. It would therefore follow that if I purported to arrogate to myself the authority to review their decisions, the decision which I would make, would be a nullity.... I have no jurisdiction to make a finding concerning the correctness or otherwise of their decisions.

The Judge in this quest also considered the local jurisprudence in this case and carried out a comparative analysis of the various scholarly writings and comparable judicial experience in other commonwealth jurisdiction. Taking que from these sources and citing the cases of *G.B Kariuki vs Fred Akwasi Apaloo* , Civil Appeal No. 122 of 1994, *Lord Esher MR in Anderson vs. Gorrie* [1895]1QB 668 at 671, *Lord Tenderden C,J in Garnett vs. Ferrand* [1824-1834] ALL ER 244, *Lord Denning MR in Sirro vs. Moore & Others* [1974] 3 ALL ER 776 at 789, *Lord Bridge Mc C vs. Mullan & Others* [1984] 3 ALL ER 908 at 916, the judge expounded on the principal of judicial immunity in the following terms:-

Para [13] In my considered view, the task of ascertaining whether or not a Judge of concurrent jurisdiction had acted in good faith or had acted lawfully, constitutes an evaluation, which violates the judicial immunity conferred by the Constitution. The privilege is not conditional, as suggested by the petitioner; it is absolute.

In his own words, the learned judged while dismissing the petition gave both a factual, practical and legal reasons for judicial immunity by stating that:

“The rationale for the judicial immunity is to be found in the need for judicial officers

to make determinations without fear. I so hold because if a Judge was to be liable to being sued for rendering decisions, he would always be scared that whatever decision he makes, may lead to him being found liable if the decision was later challenged. Yet, the whole world recognizes that Judges are not infallible. Indeed, it is for that very reason that the legal systems worldwide have structures for appeals. And in many jurisdictions it is also recognized that the highest Court in the appellate structure, can make mistakes. Therefore, those courts have liberty to depart from their own precedents. By setting up appellate structures or even by allowing the highest appellate courts to depart from precedents, does not encourage courts to make mistakes. It is simply a recognition of human fallibility.”

The petition was struck out as incompetent and fatally defective for violating the Judges’ judicial immunity and that the learned Judge had no jurisdiction to enquire into the decisions of the Judges or otherwise supervise the Judges who had equal status and jurisdiction.

Aggrieved by the decision of the High Court (Ochieng J), *Bellevue Development Company (herein the Appellant)* proffered an appeal before the Court of Appeal faulting the learned Judge, for among others:

- i. Misinterpreting and misapplying the Constitution in relation to his jurisdiction, the petition before him and the preliminary objection;
- ii. Failing to hold that the rights and freedoms of the Bill of Rights can only be subject to the limitations contemplated in the Constitution;
- iii. Impairing (sic) the supremacy of and failing to defend and uphold the Constitution in letter and spirit over other law;
- iv. Limiting and impairing the nature and scope of his jurisdiction to entertain the petition; and
- v. Determining that judicial immunity is absolute even when judges act dishonestly.

At the hearing of the appeal, counsel for the appellant submitted that the central question was whether judicial immunity under Article 160(5), is absolute, and he answered the question in the negative. It was counsel’s contention that a suit can properly be instituted against a judge if either or both of the two elements of good faith and lawfulness are lacking from the act or omission complained of. He added that in the instant case, it was manifestly clear that there was lack of good faith.

Opposing the appeal, joint counsels for the learned Judges and Vinayak Builders characterized the petition as a direct attack on the independence of the Judiciary. They argued that the real motive for the petition against the Judges was an attempt to create a basis for the re-litigation of the award by the arbitrator in favour of the appellant. They pointed out that the Judges were impleaded in their capacity as judicial officers but the appellant never pleaded the particulars of the alleged bad faith in the entire petition. They urged that judges can and do make mistakes and that is precisely why there exists an appellate process. It was their argument that the petition was improperly inviting the learned Judge to supervise fellow judges of equal status and jurisdiction.

**Issues:**

1. Whether a judge has jurisdiction to enquire into or review the propriety of the decisions of a Judge who has concurrent jurisdiction.
2. Whether a Judge can be sued in the course of action arising from his/her judicial work and whether Judicial Immunity is absolute.

**Held:****Per Kiage JA, in the lead judgment:**

1. A judge of the High Court had no jurisdiction to enquire into or review the propriety of the decisions of the Judges, who were of concurrent jurisdiction as himself;
2. In our system of courts, which is hierarchical in nature, judges of concurrent jurisdiction do not possess supervisory jurisdiction over each other. No judge of the High Court can superintend over fellow judges of that court or of the superior courts of equal status. That much is plain common sense;
3. The learned Judge reasoned, correctly in Justice Kiage's view, that an enquiry into the complaints in the appellant's petition against the Judges called upon him to determine the lawfulness or good faith basis of both their decisions and their conduct, and he could not purport to arrogate to himself the power to review their decisions over which he had no authority.
4. It would be a strange aberration for a judge to embark on what is essentially an examination of the judicial conduct and pronouncements of judges of the same status as himself, a task that is left to courts and judges of higher status in the hierarchy, by way of appeals.
5. Justice Kiage no difficulty whatsoever in holding that judicial officers are under Article 160(5) immunized from any action or suit on account of their performance of a judicial function. I do not apprehend that the words "good faith" and "lawful" in the sub-Article are a qualification or limitation of the immunity for the rather obvious reason that so long as a judge is acting in a judicial capacity and exercising his usual jurisdiction, there is a commonsensical presumption that he is acting lawfully and in good faith. There exists an implicit covenant of good faith binding judges. That has to be the a priori position to hold otherwise would lead to the absurd position of the good faith bases of judges' actions being debatable points and open to an intolerable deluge of litigation, each unhappy litigant suing judges left right and centre as wounded *pride dictates*. Citing Gikonyo J in the case of *Moses Wamalwa Mukomari vs. John O. Makali & 3 Others* [2012]eKLR and *Matavo J in the case of Maina Gitonga vs. Catherine Nyawira Maina & Another* [2015],
6. Even though judges are fallible human beings like everybody else, a mechanism does exist in our laws for correcting whatever errors they may commit in the discharge of their juridical functions. Aggrieved parties are at liberty to appeal as a matter of course and that appellate system suffices to deal with ordinary errors of law and fact so that in the end justice is served. I also harbour no doubts that where a judge's conduct consists in egregious illegalities, violation of the judicial oath or outright illegalities and criminality, a mechanism for removal does exist and can be triggered in appropriate cases. I am satisfied that those mechanisms suffice to guard the integrity of the

judicial process and to protect the rule of law and the rights of litigants. They ensure that judicial immunity, which is laudable and necessary for the protection of judicial independence does not morph into judicial impunity or some form of Frankensteinian tyranny against the law and the people.

**Per M’noti JA, in his concurring judgment:**

1. The use of the phrases “action” and “suit” in Article 160(5) means that the provision addresses itself to the civil liability of a judicial officer for good faith acts or omissions in the lawful performance of his or her judicial functions.
2. Contrary to what the Appellant suggests, the purposes of the immunity provided by that provision is not to visit upon the citizens of Kenya. In its true character, immunity is never the father of impunity. The judicial immunity conferred by Article 160(5) is an important pillar or prop of the independence of the judiciary, a core tenet of the Constitution of Kenya. The immunity is not for the personal benefit of judges; like the contempt power, it was never intended for the ego or personal interest of judges. The true intention is protection of the administration of justice. Judicial immunity is founded on public interest considerations that, while determining cases, judges should be free from external pressures and in particular, the anxiety of having to personally defend suits and actions at the instance of parties who believe that the outcome of their cases should have been different from what the judge decreed.
3. For it is a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself. Liability to answer to everyone who might feel himself aggrieved by the action of the judge, would be inconsistent with the possession of this freedom, and would destroy that independence without which no judiciary can be either respectable or useful citing *Bradley v. Fisher* 80 U.S. (13 Wall), 335, 351 [1972],
4. Where a judge acts in bad faith or omits to act in good faith in the lawful performance of his or her judicial function, that fundamentally raises questions of his or her integrity and fidelity to the judicial oath of office, and in my view, the remedy under the Constitution is not an action or suit against such judge, while allowing him or her to continue wreaking havoc from the hallowed seat of justice. Such a judge is a threat to the entire constitutional edifice and in particular it’s values, principles and the judicial oath of office which demands of a judge discharge of the duties of the office diligently, without, among others, favour, bias, affection, ill- will prejudice or undue influence. In that eventuality therefore, the Constitution has provided, in Article 168, a specific and elaborate procedure for dealing with that kind of judge.
5. I would accordingly read Article 160(5) to be saying that judicial immunity is not available to a judge who acts in bad faith or omits to act in good faith in the lawful performance of his or her judicial function when he is subjected to the appropriate mechanism prescribed by the Constitution.

**Appeal dismissed.**

**4.2.3 Article 45(3) of the Constitution on equality of spouses at the time of marriage, during the marriage and at the dissolution of marriage does not translate to equal matrimonial property entitlement.**

***PNN vs ZNN [2017] eKLR***

***Civil Appeal No. 128 of 2014***

**Brief of the case:**

The Appellant (husband) and Respondent (wife) were married under the African Christian Marriage and Divorce Act Cap 157 (Repealed) in 1961. At the time of their marriage, they were both gainfully employed; P earning Ksh 350 per month and Z Ksh 270 respectively. They respectively earned promotions and salary increments until their retirement in 1990 when they continued to earn pensions. The marriage enjoyed considerable bliss and they had seven children whom they educated and brought up through adulthood. They made sizable investments in real and movable property until 1987 when the marriage hit the rocks and P (husband) left the matrimonial home for several years returning briefly in 1999 only to leave again in 2001 to cohabit with another woman.

Z thereafter moved to court and sought a declaration that P held several movable property in his name in trust and that the trust be terminated and the property be apportioned between them as the Court deems fit and just. She contended that the property had been acquired jointly during coverture and that she had contributed directly and indirectly towards its acquisition and development.

P resisted the claims on the basis that he was the registered proprietor of the property, which he solely acquired and developed. He denied voluntarily leaving the matrimonial home instead blaming Z for harassment and cruelty towards him and his parents who later died.

The trial judge evaluated the evidence on acquisition of each of the property, considered and applied the Constitution 2010 and other relevant International Instruments ratified by Kenya, made findings of fact and issued several final orders and specifically that some of the identified property were matrimonial property to be shared equally by both parties.

Aggrieved by the decision of the High Court, P filed an appeal at the Court of Appeal challenging the trial judge's finding that Z had made direct and indirect contribution towards the acquisition of any of the property.

P contended that the trial judge had failed to follow or be guided by the Court of Appeal decision in *Echaria vs Echaria [2007] 2 EA 139* and holding that Z was entitled to 50 per cent of the property registered in P's name without firstly determining how much Z had contributed towards the acquisition of the property, whether direct or indirect.

**Held:**

1. The Constitution ought to be given a broad and purposive interpretation that enhances the protection of Fundamental Rights and Freedoms.
2. Z had more than a passing interest in the management and operations of the property as the couple jointly held a bank account in which the proceeds from the commercial



activities of the farm were banked.

3. Z requested for leave from her job in order to manage the farm and P donated a power of attorney to Z to enable her do anything and everything that he would do in his own name as the proprietor of the farm.
4. The Constitution declares marriage as a partnership of equals and no spouse is superior to the other. None should ride rough shod over the rights of the other.
5. Equality of parties does not translate to equal proprietary entitlement. Distribution of matrimonial property must be preceded with on the basis of fairness and conscience and must be decided after weighing the particular circumstances of each case.

**Per Kiage JA.**

6. A spouse may be so uncooperative, so wasteful, so distant, so all-over that he or she has hardly provided the warmth of companionship on the basis of which it might be said they made a non-monetary contribution to matrimonial property. In such instance it may well be that the one spouse achieved all they did and acquired not because, but rather in spite of their lazy, selfish, wasteful, wayward, drunken or draining mate. In such circumstances, an assessment of the inauspicious party's non-monetary contribution may well turn out to be in the negative, the account in debit. No fifty-fifty philosophy would grant such a party any right to property acquired without their contribution and notwithstanding their negation or diminution of the efforts towards its acquisition.

**Appeal dismissed.**

**4.2.4 Can a resulting trust arise where property is transferred in circumstances in which the transferor did not intend to transfer the beneficial interest to the transferee?**

***Juletabi African Adventure Limited & another vs Christopher Michael Lockley [2017] eKLR***

***Civil Appeal No. 75 of 2016***

***Court of Appeal at Mombasa***

***November 23, 2017.***

**Brief of the case:**

The first Appellant was incorporated on June 28, 2006; The Respondent held 60per cent of the shareholding while the second Appellant held 40 per cent. Both the second Appellant and the Respondent agreed that the second Appellant would take charge of the business operations as well as management of the first Appellant. It was further agreed that the Respondent would provide the initial capital of running the company, which he did by depositing the amount into the second Appellant's wife, bank account.

In the year 2007, the second Appellant informed the Respondent that the first Appellant was in need of a four wheel drive vehicle in order to conduct its business properly. The Respondent credited 15,500 into the first Appellant's account at Imperial Bank Limited for the said purchase. The said sum was advanced to the first Appellant and it was agreed that it would be offset by the first Appellant paying him 50per cent of its profits until the same was paid in full. It was pursuant to the said advance that motor vehicle registration number KAM 634J was purchased and registered in the first Appellant's name. Nevertheless, no payments were ever made to the second Respondent.

Still in 2007 the first Respondent requested the second Appellant to help him identify a suitable parcel of land in Diani to purchase. The second Respondent made substantial deposits into the first Appellant's account for that purpose and requested the second Appellant to undertake the transaction on his behalf. However, when the purchase was completed the first Appellant registered the parcel in his favour second Respondent.

Thereafter, the Respondent learnt that the second Appellant and his wife had opened a parallel competing company and that the vehicle, which had been purchased for the first Appellant's purposes, had been converted to the said competing business. The Respondent requested the second Appellant to release the logbook of the vehicle and the title deed of the parcel with a view of facilitating the transfer of the said properties to him. Despite the second appellant agreeing to do so, he failed and refused to honour his word.

Perturbed by the second Appellant's actions, the Respondent filed a suit in the High Court claiming among others that the first Appellant was holding the properties in trust for him. The Trial Court in a judgment dated August 21 2015, allowed the Respondent's suit. Aggrieved by the decision the Appellants filed the Appeal.

### Issues for Determination:

- i. What were the circumstances where one could institute a derivative suit?
- ii. What were the circumstances where a court could presume a constructive trust?
- iii. Whether a resulting trust arose where property was transferred under circumstances which suggested that the transferor did not intend to confer a beneficial interest upon the transferee
- iv. What was the distinction between a constructive trust and a resulting trust?
- v. What was the effect of not listing particulars of a claim in a plaint?

### Held:

1. Whether or not the Respondent had the requisite standing turned on the nature of the claim before the Trial Court. By dint of the rule in *Foss vs. Harbottle*, there was no argument that the proper plaintiff in any proceedings or action in respect of a wrong done to a company was the company itself. That was based on the principle that a company was a legal personality distinct from its directors and shareholders. However, there were exceptions to the rule which allowed a person to sue on behalf of the company.
2. A derivative suit was basically brought on behalf of a company for wrongs committed against it or in other words for the benefit of the company. The nature of the suit instituted by the Respondent was not a derivative suit.
3. The Respondent did not institute the suit on behalf or for the benefit of the first Appellant for perceived wrong(s) against it. Rather, he filed the suit for his own benefit for wrongs committed against him by the Appellants, to wit, breach of trust. The Respondent did not require leave before instituting the suit.
4. What led the Defendants to submit that the Plaintiff's claim did not have particulars as required under order 2 rule 10 of the Civil Procedure Rules, 2010 was because the Plaintiff did not draw out the Plaint as traditionally done by practitioners, where certain paragraphs were clustered together under the heading 'particulars'. That practice had indeed become the norm form of usage but it did not mean that if one did not draw his claim in that manner his claim failed.
5. The onus lay on a party relying on the existence of a trust to prove it through evidence. The law never implies, the Court never presumes a trust, but in case of absolute necessity. The Courts could not imply a trust save in order to give effect to the intentions of the parties. The intention of the parties to create a trust had to be clearly determined before a trust would be implied.
6. The first Appellant held the vehicle in trust for the Respondent. There was a detailed account and paper trail of the funds the Respondent had transferred to the first Appellant's account in respect of the motor vehicle and parcel of land. It was clear that the Respondent's intention with respect to the funds transferred for the car was that the same was to be paid back by the first Appellant. The Respondent had purchased

the parcel of land for his own benefit. The fact that it was later registered in favour of the first Appellant didn't divest him of his interest thereon.

7. In the absence of an express trust, there are trusts created by operation of the law. They fell within two categories; constructive and resulting trusts. Given that the two were closely interlinked, it was pertinent to look at each of them in relation to the matter at hand.
8. A constructive trust was an equitable remedy imposed by the Court against one who had acquired property by wrongdoing. It arose where the intention of the parties could not be ascertained. If the circumstances of the case were such as would demand that equity treats the legal owner as a trustee, the law would impose a trust. A constructive trust would thus automatically arise where a person who was already a trustee took advantage of his position for his own benefit.
9. Proof of parties' intention was immaterial in constructive trusts, for the trust would nonetheless be imposed by the law for the benefit of the settlor. Imposition of a constructive trust was thus meant to guard against unjust enrichment.
10. A resulting trust was a remedy imposed by equity where property was transferred under circumstances, which suggested that the transferor did not intend to confer a beneficial interest upon the transferee. That trust could arise either upon the unexpressed but presumed intention of the settlor or upon his informally expressed intention.
11. Unlike constructive trusts where unknown intentions could be left unexplored, with resulting trusts, courts would readily look at the circumstances of the case and presume or infer the transferor's intention. Most importantly, the general rule is that a resulting trust will automatically arise in favour of the person who advanced the purchase money. Whether or not the property was registered in his name or that of another, was immaterial.
12. All indications were that a resulting trust arose as between the Respondent and the first Appellant. A resulting trust automatically arose in favour of the person who advanced the purchase money. Whether or not the property was registered in his name or that of another, was immaterial. It was common ground that all the purchase money for both the vehicle and the parcel was advanced by the Respondent. The parcel and vehicle were therefore held in trust for the Respondent by the first Appellant.

**Appeal dismissed.**

### **4.3 JURISPRUDENCE EMANATING FROM THE HIGH COURT DURING THE REPORTING PERIOD**

#### **4.3.1 To what extent are consumers entitled to the Right to Nutritional Information and Storage directions under Article 46 of the Constitution.**

***Mark Ndumia Ndung'u vs Nairobi Bottlers Ltd & Coca Cola Central, East & West Africa Ltd [2018]***

***eKLR***

***Petition 325 of 2015***

***High Court at Nairobi Constitutional and Human Rights Division***

#### **Brief of the case:**

Nairobi Bottlers Limited and Coca Cola Central, East and West Africa Limited (the Respondents) manufacture soft drinks under the brand names Coca Cola, Krest, Fanta, Sprite and Stoney, and package them in glass bottles as well as plastic bottles. Mark Ndumia Ndung'u (the Petitioner) preferred consuming Coca Cola found in glass bottles but he stopped consuming the drink upon being diagnosed with ulcers by a doctor. The doctor advised him to stop consuming products with acidic content. That advice sparked his curiosity relating to the ingredients and nutritional value of foods and drinks, which he consumed.

The Petitioner later discovered that the Respondents' soft drinks in plastic bottles, unlike those in glass bottles, had the nutritional content listed as well as the Respondents' contact details for its customers and storage information.

He argued before the High Court that the omission of such information in the glass bottles violated consumer rights as provided for in Article 46 of the Constitution. The Petitioner argument was that the nutritional information would enable customers to know of the benefits of consuming the drink and the contact details would help them give feedback including complaints that would enable them to derive optimum benefit from the products. He added that knowing information on storage would help the consumers retain the drink's freshness and other qualities. The Petitioner added that due to the price difference in the soft drinks packaged in glass bottles as opposed to those packaged in plastic bottles, low-income earners would opt for the glass bottles. In his view, the information gap would therefore be discriminatory against the consumers of the glass bottle soft drink.

To buttress his argument on the critical importance of nutritional information on beverages, the Petitioner highlighted the global commitment by the Coca Cola Company and its global and regional partners in the sustainability plans to provide nutritional information on an ongoing basis. He also noted that the Respondents have provided nutritional information on the labels of the Dasani water processed and bottled by the Respondents.

The Petitioner sought among others a mandatory order compelling the Respondents to display the nutritional value, storage directions, customer care email address and phone number on the Coca Cola, Fanta, Krest, Stoney and Sprite glass bottles.

In response, the first Respondent explained that the Coca Cola crown glass bottle caps bore the physical and postal address of the manufacturer, brand of trade name, as well as optional ingredients such as carbonated water, sugar, colour, caramel, acidulant, phosphoric acid,

flavoring and caffeine. It further explained that the price difference in the soft drinks packaged in glass bottles as compared to those in plastic bottles was based on the fact that glass bottles were re-usable.

The second Respondent on its part asserted that it had complied with the food labelling and specification requirements under the Food, Drugs and Chemical Substances Act and the Standards Act. Further, it stated that the Petitioner wrongly assumed that there was a legal obligation on a manufacturer, packer or distributor of soft drinks to display the nutritional information, email address and storage directions on the food label.

**Issues for Determination:**

- i. Whether a person who was unable to consume a soft drink for medical reasons had the *locus standi* to institute a suit to enforce an alleged breach of consumer rights in relation to the soft drink.
- ii. Whether consumers of soft drinks had a right to nutritional information, storage directions and customer service mobile number and email address.
- iii. Whether provision of beneficial information only to a certain portion of consumers of a given product was a form of discrimination.

**Held:**

1. The Petitioner did not have to show that he was affected by the alleged violation in order to have standing to sue under Article 22 of the Constitution. Nothing prevented a non-consumer of a product with a well-established right to sue under Article 22 of the Constitution, from alleging that any consumer right or fundamental freedom in Article 46 of the Constitution had been denied, violated or infringed or threatened.
2. Nutritional information contained in food labels, guaranteed consumer rights provided for in Article 46 of the Constitution, in three ways: It assured them of products of reasonable quality, it provided information necessary for them to gain full benefit from goods and services and finally, it ensured the protection of consumers' health, safety, and economic interests.
3. Providing information to consumers, on ingredients, nutrition claims and declaration of potential allergens as well as nutrition or health claims, food warnings and labels inform consumption by enabling consumers to make informed decisions. Under Article 46 of the Constitution, nutritional information provided on labels ought to be truthful and not misleading to consumers. Food ought not to be described or presented in a manner that was false, misleading or deceptive. Therefore, the Respondents had an obligation to provide nutritional information on their beverages to enable consumers to gain full benefit from the beverages.
4. Information on safe storage, preparation and handling of food products was of critical importance to consumers and had to be provided by the suppliers on the food label. It would assure consumers of food products of reasonable quality, protect their health and safety, and safeguard their economic interests. The Respondents had an obligation to supply consumers with the storage directions.
5. There would be no specific legal obligation to provide an email or phone address to

consumers. The Food, Drugs and Chemical Substances Act, as well as the Standards Act, merely required the name and address of the manufacturer of beverages. The Respondents' glass bottles and crown bottle caps were in compliance as they contained the Respondents' address.

6. The Respondents supplied their mobile phone number on their beverage's plastic bottles and omitted it from the glass bottles. It would be discriminatory to supply customer service mobile numbers and email addresses to a class of consumers while denying the same to a different class of consumers of the same product. Where a supplier opted to avail its customer service mobile number and email address to consumers of a product, it had to do so uniformly to all consumers of that product without distinction.

**Petition partly allowed.**

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#### **4.3.2 Whether a Kenyan by birth can lose his/her citizenship by acquisition of another country's citizenship**

***E W A & 2 others vs Director of Immigration and Registration of Persons @ another***

***Petition No 352 of 2016***

***High Court at Nairobi***

***Constitutional and Human Rights Division***

***February 22, 2018***

##### **Brief of the case**

The Petitioners were born as Kenyan citizens at hospitals in Nairobi, Kenya. They were adopted by two British citizens. Their adoption orders did not state that they would be presumed to be Kenyan citizens and pursuant to the adoption, they acquired British citizenship.

The Petitioners sought to regain Kenyan citizenship and applied for Kenyan passports but the first Respondent declined to issue the passports. The Petitioners said that the denial of the passports was a violation of their rights guaranteed by the Constitution under Article 14 and 27 and they wanted the Court to declare that they were Kenyan Citizens. The Respondents stated that the petition was premature and that the Petitioners needed to follow the procedure provided for in Section 10 of the Kenya Citizen and Immigration Act in order to regain citizenship.

##### **Issues for Determination:**

- i. What legal procedure was applicable to a person who was a Kenyan citizen by birth and was seeking to regain Kenyan citizenship after having lost it by acquiring foreign citizenship?
- ii. Under what circumstances was a person entitled to a Kenyan passport?



**Held:**

1. Any existing law which was inconsistent with the Constitution would be invalid to the extent of the inconsistency. Any provisions of the Immigration Act (repealed) that were inconsistent with the provisions of the Constitution of Kenya 2010 would be invalid to the extent of the inconsistency.
2. Given that the Petitioners were Kenya citizens by birth, their citizenship could not be revoked or lost merely because they acquired citizenship of another country. Under Article 14(5) of the Constitution, a person who was a Kenyan by birth, on the effective date, but ceased to be a Kenyan by acquiring foreign citizenship, was entitled upon application to regain Kenyan citizenship. The Petitioners fell within the terms of Article 14(5) of the Constitution and they were entitled to regain citizenship after making an application.
3. The Petitioners were only required to do was to apply to regain their citizenship. The provisions of Article 14(4) of the Constitution and Section 9 of the Kenya Citizenship and Immigration Act would not apply to the Applicants because those provisions applied to children who were apparently under the age of 5 years with unknown parents.
4. A person born in Kenya with at least one Kenyan parent would enjoy Kenyan citizenship by birth under the terms of Article 14(1) of the Constitution. That citizenship could not be lost or revoked under any circumstances. The rights and privileges of citizenship under Article 12(1) of the Constitution, included the issuance of passports, documents of registration or identification issued by the State to its citizens. Such documents could only be denied, suspended or confiscated in accordance with an Act of Parliament which satisfied the criteria set out in Article 24 of the Constitution.
5. Nationality or citizenship by birth meant nationality that an individual was automatically attributed by law from the moment of birth rather than citizenship acquired as an adult or following any administrative process. The determination of citizenship would be a basic element in obliging the state to protect its citizens and to let them enjoy certain constitutional rights which were related to citizenship, for example, the right to vote.
6. Section 10 of the Kenya Citizenship and Immigration Act provided that a person who had been a Kenyan citizen by birth but lost Kenyan citizenship after acquiring foreign citizenship could apply in the prescribed manner to the Cabinet Secretary to regain citizenship. The requirement was that such an application would be accompanied by proof of the Applicant's Kenyan citizenship. The application would have to be accompanied by proof of Applicant's previous Kenyan citizenship and proof of citizenship of the foreign country.
7. There was no basis for the first Respondent to refuse to grant the Petitioners Kenyan passports. Under Article 14(5) of the Constitution, the Petitioners were entitled to regain citizenship upon making an application and under Section 10 of the Kenya Citizenship and Immigration Act, the Cabinet Secretary was enjoined to issue the requisite certificate in the prescribed form.

8. The High Court was empowered to fashion appropriate reliefs for purposes of the enforcement of fundamental rights and freedoms pursuant to Article 23(3) of the Constitution. Such relief would take various forms and it could include fashioning new reliefs that the circumstances of the case required.

**Petition allowed.**

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#### **4.3.3 The Right of an Adopted Child to know the Identity of his/her Biological Parents**

***D W T vs B N T & 3 others [2018] eKLR***

***Petition No. 46 of 2016***

***High Court at Nairobi***

***April 18, 2018***

##### **Brief of the case:**

The Petitioner, a male adult, was an adopted son of the first and second Respondents. He sought to know his biological parents and circumstances of his adoption from the 3rd Respondent. The Petitioner claimed that his rights under Articles 27, 28 and 35 of the Constitution had been violated in that the adopting parents adopted him under circumstances unknown to him, yet they had denied him parental compassion, love, care and support.

The Petitioner claimed that he lived with the first and second Respondents until he was 17 years when he was compelled by adverse treatment to leave their home. He stated that sometimes in 2011, he was charged, tried and convicted of the offence of violently robbing the second Respondent. His appeal against the said conviction was pending in the Court of Appeal.

The Petitioner sought a declaration that despite not being their biological son and regardless of criminal proceedings against him, he was part of the first and second Respondents' family, and was consequently eligible to parental care, love and support and was entitled to enjoy the right to dignity, security of person, family and equality like other members of the family to the greatest extent possible. The Petitioner had also enjoined the fourth Respondent, the British High Commission in the instant Petition.

##### **Issues for Determination:**

- i. Whether an adopted child had a right to know his or her biological parents
- ii. Whether a right to the information of the child's background and the identifying information about his/her biological parents could be articulated as a fundamental 'right' guaranteed in the Bill of Rights
- iii. Whether the Petition was bad for misjoinder of parties and for raising several causes of action

##### **Held:**

1. Whereas the law in Kenya merely provided for adoption, it did not address any concerns or the rights of adopted children to know the identity of their biological parents, the circumstances that led to their adoption, and the suitability of the adopting parents.

2. Whereas pertinent questions were determined by the court handling the adoption, there was no provision stating that such information was to be provided to the child either during minority or upon attaining the age of majority. Part XI of the Children's Act lay down parameters as to who could adopt and under what conditions, but other than parental rights, it did not address pertinent rights of the adopted child such as: the right to identity, the right to be informed about his or her biological parents, the right to be informed of the circumstances leading to his adoption, and the right to know the whereabouts of her/his biological parents or the suitability of the adopting parents.
3. Every person had the right to know where they came from and their family lineage. A big dilemma however arose in adoption cases. Adoption processes throughout the world were shrouded in secrecy, perhaps due to the sensitive nature of the relationship that was being severed or created out of the adoption exercise. The Children's Act was silent on the question of whether or not adopted children had a right to know their origin. Further, the Act was also silent on what information the children could or could not access and at what age. The information on the origin of the child was in the custody of the government and adoption agencies and the court handling the adoption. That lacuna in Kenya's law led the Court to resort to international law as a source of law in Kenya.
4. Article 8 of the Convention on the Rights of the Child provided that states parties were to undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference. It further provided that where the child was illegally deprived of some or all of the elements of his or her identity, States Parties had to provide appropriate assistance and protection, with a view to re-establishing the child's identity. Article 30 of the same convention provided that the competent authorities of a contracting state were to ensure that information held by them concerning the child's origin, in particular information concerning the identity of the child's parents, as well as the medical history, was preserved. It required state parties to ensure that the child or his or her representative had access to such information, under appropriate guidance, in so far as was permitted by the law of that state.
5. The law in the United Kingdom provided that children could apply for a copy of their original birth certificate and for information about their birth family from the adoption agency, which arranged the adoption. Adult adoptees and birth family members could also apply to the Registrar General for entry of their names on the Adoption Contact Register which included the names of adopted persons and the relatives of adopted persons. In other Jurisdictions, the right was guaranteed once one reached the age of majority.
6. From the child study report, one would be able to gather information as to who were the biological parents of the child, if the biological parents were known. There could be no objection in furnishing to the adoptive parents particulars in regard to the biological parents of the child taken in adoption, but it was to be made clear that it was to be entirely at the discretion of the adoptive parents whether and if so when, to inform the child about its biological parents. But if after attaining the age of maturity,

the child wanted to know about its biological parents, there could not be any serious objection to the giving of such information to the child because after the child had attained maturity, it was not likely to be easily affected by such information and in such a case, the adoptive parents could, in exercise of their discretion, furnish such information to the child if they thought fit.

7. In Kenya, when issues of the need for the child to know the biological parents arise, the court could refer to the Constitution for reference and guidance. Article 35 of the Constitution provides that every citizen had the right of access to information held by the state, information held by another person and required for the exercise or protection of any right or fundamental freedom. Information regarding adoption of children in Kenya is held by the State and adoption agencies. Article 35 enabled the child either during the age of minority through her legal guardian or after attaining the age of majority to apply to be furnished with information about their biological parents.
8. Article 31 of the Constitution provides that every person had the right to privacy, which includes the right not to have information relating to their family or private affairs unnecessarily required or revealed. This provision brings about a competition of rights and interests. The biological parents of the child have the right to have their matters kept in secrecy but the child on the other hand had the right to the information and to know their true identities. Article 53 of the Constitution provides that the best interest of the child is of paramount importance in all matters affecting the child. Children adoptees have a right to know the identity of their parents, the parent's origin and the existence if any of their siblings. In pursuing the right to know one's origins as a fundamental right, the three interests that emerge are – medical, legal and genetic. Furthermore, when enjoying the right, one had to strike a balance between the need for one to know the biological parents, and protection of confidentiality/privacy of the biological and adopting parents.
9. The need to know one's parentage and background is crucial to children and adults who did not have that information. That right to know one's origins means having the information and identity of one's biological parents and conditions of birth. The right to know stemmed from the desire to know the identity of self. Social scientists had considered the meaning of identity to be determined by three main aspects: – self-definition, coherence of personality and a sense of continuity over time.
10. Identity is thus, seen as essentially 'self-in-context.' This means that identity is often determined by social changes and one's definition of self was affected by how a relationship was seen in the social context. Adoption transgresses the notions of identity and the journey of identity development in Kenya is complex and problematic for adopted persons. Adoption was governed by different kinds of social arrangements; those arrangements had implications on the development of the identity of the child.
11. Many adopted persons feel the need to know information about their birth parents. That need translates to an assertion of the right to know one's origins. There are three main needs to have that information –
  - a. There is often the desire to know one's medical and health history and for that

purpose, knowing the medical history of one's parents and ancestors became important.

- b. One's legal interest in property, which blood relationship could confer on children. These two interests are subsidiary interests.
  - c. The primary interest is a psychological need for identity. The psychological need to know one's roots or identity was found to be the most important reason as to why adoptees want to know about their biological parents since it underlay the need to know and could shape the identity of an adopted person.
12. Adopted persons who do not have information about their roots often had difficulty establishing a personal identity. Problems with identity formation are particularly acute during adolescence and at crisis points in adulthood. A diminished sense of self was also related to genealogical bewilderment. Genealogical bewilderment could occur when children either did not have any knowledge of their biological parents or possessed only uncertain knowledge and the resulting state of confusion and uncertainty fundamentally undermined children's sense of security, thus affecting their mental health. In addition to the psychological need, medical crises also often precipitated the need for information about biological relatives. Ranging from allergies to searches for transplant donors, medical needs could have left adoptees without sufficient information to get proper treatment. Short of a crisis, impending marriage and childbearing leads to concerns about genetic disease and hereditary traits. Other reasons for open records advanced by adoptees included inheritance rights, religion, and simply a longing to meet their birth parents.
13. It is beyond doubt that there is an international recognition of the child's Right to identity as a fundamental right. That psychological need to know one's identity has been articulated as a right in the Convention for the Rights of the Child 1989 (CRC) in Articles 7 and 8. The CRC had gone on to protect several rights of the child, such as the right to identity that were not recognized as fundamental human rights before, a recognition that it was a right worthy of international recognition. "Identity" was not defined under the CRC and only instances of identity such as nationality, name and family relations are listed.
14. Article 8 was particularly meant to address unusual conditions such as natural parents versus adoptive parents and other such conditions. Article 8, therefore imposed an obligation on the State to not only preserve the identity of a child i.e. to preserve all the information relating to the biological parents of the adopted child, but also not to deprive the child of such information and to assist the child in getting such information.
15. The CRC, thus, affirmed that an adoptee could seek a right against the State or any person for providing him/her information about her identity and about her biological parents. In addition to the CRC, the child's right to know her identity was also protected in the Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption. In Article 30, it required State authorities to ensure that information held by them concerning the child's origin, in particular information concerning the identity of his or her parents, as well as the medical history, was preserved and that the child or his or her representative had access to

such information, under appropriate guidance, in so far as it was permitted by law in that State.

16. The child's right to know his or her origin is derived from the general right to privacy guaranteed under Article 17 of the International Covenant on Civil and Political Rights 1966. The right to privacy would include the right to know and receive information of one's family and private life and guaranteed against arbitrary interference with the same. The right to privacy and family life was also guaranteed under Article 8 of the European Convention of Human Rights.
17. That need of the child to know about her background was also recognized in the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally in Article 9 which states that the need of a foster or an adopted child to know about his or her background was to be recognized by persons responsible for the child's care, unless that was contrary to the child's best interests.
18. The competing rights such as the right to privacy for the biological parents and the adopting parents all had to be balanced. With those competing interests, courts were obligated to ensure that the best interests of the child where the child was still a minor, had to prevail over all interests of all other parties. On the other hand, where the child has attained the age of majority as in the instant case, the reasons for refusal to supply the information had to satisfy the limitations test under Article 24 of the Constitution.
19. The law in Kenya is in favour of the disclosure. First, the adopted person had a constitutional right to dignity and privacy, which included right to know their biological parents. By insisting on the information, the person is seeking to exercise a fundamental right recognized in Kenya's Constitution and international Instruments discussed above. Article 35 of the constitution provided that every citizen has the right of access to information held by the state, information held by another person and required for the exercise or protection of any right or fundamental freedom.
20. Information regarding adoption of children in Kenya is held by the State and adoption agencies. The only limitation in the case of a minor would be the best interests of the child contemplated under Article 53 (2) of the Constitution. For an adult, as is the case here, the reasons for refusal could only pass constitutional muster if they satisfy limitation of rights under Article 24. For example, the need to ensure that the disclosure did not prejudice the rights and fundamental freedoms of others. Examples here would include: the right to privacy of the biological parents and the adoptive parents, but even then, the burden lay on the person who sought to justify the limitation to demonstrate to the court that the requirements of Article 24 of the Constitution had been satisfied.
21. There is no material before the court to demonstrate that the 3rd Respondent handled the adoption in question or had in its custody, care or control the information sought. The adoption is done in court. The Petitioner did not avail the court proceedings, judgment and documents produced in court in the adoption proceedings to demonstrate that indeed the 3rd Respondent was involved in the adoption.



22. All cases are decided on the legal burden of proof being discharged (or not). No Judge likes to decide cases on the burden of proof if he could legitimately avoid having to do so. There are cases, however, in which, owing to the unsatisfactory state of the evidence or otherwise, deciding on the burden of proof was the only just course to take. Whether one liked it or not, the legal burden of proof was consciously or unconsciously the acid test applied when coming to a decision in any particular case. The court's decision in every case depends on whether the party concerned has satisfied the particular burden and standard of proof imposed on him.
23. It is a fundamental principle of law that a litigant bears the burden of proof in respect of the propositions he asserts to prove his claim. Decisions on violation of constitutional rights were not to be made in a factual vacuum. To attempt to do so had the impact of trivializing the Constitution and inevitably result in ill-considered opinions. Decisions on violation of constitutional rights could not be based upon the unsupported hypotheses.
24. There is also no evidence that the Petitioner ever requested the information in question from the 3rd Respondent or any of the Respondents and was denied. There had to be a request for information before a party entitled to that information could allege a violation. Even where a citizen is entitled to seek information under Article 35(1), he or she was under an obligation to request for it. It is only if it is denied that a party approach the court for relief.
25. Failure by the Petitioner to adduce evidence to link the 3rd Respondent with the adoption led the court to the irresistible conclusion that there was no material for the court to conclude that the 3rd Respondent handled the adoption in question or had in their custody, control or power the information sought. Consequently, the answer to the issue under consideration is in the negative.
26. The first and second Respondents cited provisions of the Civil Procedure Rules and heavily relied on decisions rendered in civil cases. They over looked the fact that the case was a constitutional Petition seeking to enforce fundamental rights and that the same was expressed under the provisions of the Constitution. The proceedings are governed by the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013.
27. It was evident both from the Constitution and the rules which required that substantive justice be done that the joinder, misjoinder or non-joinder of a party was not sufficient to defeat a constitutional Petition. Those rules were in accord with the requirements of the Constitution that in exercising judicial authority, the court seeks to do substantive justice, hence the provisions of Article 159 (2)(d) of the Constitution which provide that justice is to be administered without undue regard to procedural technicalities. In the circumstances, the objection which premised on the alleged misjoinder of parties failed.
28. While elegance in a pleading was not a precondition to its legitimacy, it is an aspiration which, if achieved, could only but advance the interests of justice. A poorly drawn pleading, on the other hand, which does not tell a coherent story in a well ordered structure, would fail to achieve the central purpose of the exercise, namely



communication of the essence of case which was sought to be advanced.

29. Pleadings are not to be dismissed as a lost art. It had an important part to play in civil litigation conducted within the adversarial system. Crafting a good pleading calls for precision in drafting, diligence in the identification of the material facts marshalled in support of each allegation, an understanding of the legal principles which were necessary to formulate complete causes of action and the judgment and courage to shed what was unnecessary.
30. Although a primary function of a pleading is to tell the defending party what claim it has to meet, an equally important function is to inform the court or tribunal of fact precisely what issues are before it for determination.
31. The function of a pleading in civil proceedings is to alert the other party to the case they need to meet and hence satisfy basic requirements of procedural fairness and further, to define the precise issues for determination so that the court can conduct a fair trial. The cardinal rule is that a pleading has to state all material facts to establish a reasonable cause of action (or defence). The expression “material fact” is not synonymous with providing all the circumstances. Material facts were only those relied on to establish the essential elements of the cause of action. The instant pleading is not so prolix that the opposite party is unable to ascertain with precision the causes of action and the material facts that were alleged against them. The issues raised in the Petition were not confusing. The objection based on the said ground thus failed.
32. The Petitioner is an adult in his late thirties or thereabout. He should not be heard to say he has a fundamental right to receive financial support from his parents or even to be facilitated to travel abroad as of right as he alleged. Failure to visit him in prison could have been distressing but the victims of the crime are his parents. They could have been distressed too.
33. The apprehension that the adoptee could have been disinherited are a mere apprehension. Courts do not deal with hypothetical situations. Put differently, whether or not the Petitioner’s fear of his right to inherit his parents could be canvassed in the instant petition raises common law principles in relation to what were called abstract, academic or hypothetical questions. The principle is called ripeness; it prevents a party from approaching a court prematurely at a time when he/she has not yet been subjected to prejudice, or the real threat of prejudice, as a result of the conduct alleged to be unconstitutional.
34. The essential flaw in the applicants’ case is one of timing referred to as ‘ripeness’. The doctrine of ripeness serves the useful purpose of highlighting that the business of a court is generally retrospective; it deals with situations or problems that have already ripened or crystallised, and not with prospective or hypothetical ones.
35. It has always been a fundamental feature of Kenya’s judicial system that the courts decided disputes between the parties before them; they did not pronounce on abstract questions of law when there was no dispute to be resolved. It is true that usually the court did not solve hypothetical problems and abstract questions and declaratory actions could not be brought unless the rights in question in such action had actually

been infringed. The requirement of a dispute between the parties is a general limitation to the jurisdiction of the court. The existence of a dispute is the primary condition for the court to exercise its judicial function. Ripeness asked whether a dispute existed, that was, whether the dispute had come into being.

36. In the instant case, a dispute on the alleged inheritance rights does not exist. Before the Court was a constitutional Petition seeking declarations premised on alleged violation of constitutional rights but not a succession dispute. A dispute premised on alleged inheritance right is a matter primarily to be determined in succession proceedings where beneficiaries are identified and their rights over the property, if any, determined.
37. On the question of ripeness, the court is being asked to make a declaration on an issue whether the petitioner was part of the first and second Respondents family, despite not being their biological son and regardless of criminal proceedings against him. The Petitioner had however not demonstrated that a dispute existed. There was nothing on record to show that the parents had denied, disowned the Petitioner as their son.
38. Courts decide disputes between the parties before them; they do not pronounce on abstract questions of law when there is no dispute to be resolved. The court does not solve hypothetical problems and abstract questions and declaratory actions could not be brought unless the rights in question in such action had actually been infringed. The declaration sought if granted in the instant Petition, owing to the peculiar circumstances of the case, would have been tantamount to determining succession rights or property rights or declaring the Petitioner a beneficiary which would have had far reaching consequences because it would have amounted to encroaching in to the mandate of the succession court in the event of a succession dispute.

**Petition dismissed with no orders as to costs.**

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**4.3.4 Whether or not the decision of the Government of the Republic of Kenya to disband the Department of Refugees Affairs and appoint a Task Force to implement the closing of the Dadaab Refugee Camp Complex and repatriation of the refugees of Somali origin to Somali violates the constitutional right of the refugees.**

***Kenya National Commission on Human Rights and Another vs Attorney General and 3 others***  
**[2017] eKLR**

**Facts:**

The petition brought into sharp focus Kenya's obligation under International Law and Regional Conventions, the Refugee Act and the application of the Bill of Right to persons enjoying refugee status within the Republic of Kenya and circumstances under which refugee status can legally cease to exist.

On 6th May 2016, Dr. Karanja Kibicho issued a directive through a press release stating that the government had disbanded the Department of Refugee Affairs (DRA) and was working on mechanism on the closure of Kakuma and Dadaab refugee camps within the shortest possible time due to what he described as national security.

On 10th May 2016, he issued another press statement confirming the disbandment of the department of refugee affairs and gazettment of taskforce to implement repatriation of refugees to Somalia.

He also confirmed that the Dadaab Refugee complex would be closed by November 2016 and that the Task Force had until May 2016 to furnish him with a plan of action.

On 29th April 2016, Dr. Kibicho (third Respondent) revoked the *prima facie* status of refugees of Somali origin vide Gazette Notice No.46.

The Petitioners filed the petition challenging Dr. Kibicho's action stating that it violated the provisions of Article 47 of the Constitution as he failed to take into consideration the country of origin information and denied the refugees reasonable and fair administrative action.

The petitioners averred that the threatened closure of the camps, and the repatriation of the refugees, offended various International legal Instruments protecting refugees as well as those prohibiting torture, cruelty, and degrading and inhuman treatment.

The Petitioners contended that blanket condemnation and labelling refugees of Somali origin as terrorists is discriminatory and violates the principle of "individual criminality"

The Petitioners further argued that the decision to disband the Department of Refugees Affairs, did not take into account the fact that Kenya hosts refugees from other countries, that asylum seekers will have no access to asylum procedures in contravention of Kenya's obligation under the 1951 Convention, that the refugees whose identification documents have expired will have nowhere to renew their documents, that the decision would undermine protection of refugees and that the acts violate Articles 10(2) (1) , 94(5) , 129(1) and 73 of the Constitution.

The petitioner contended that Article 259 of the Constitution must be interpreted in the manner that promotes its purposes, values and principles and advances the rule of law, human rights and fundamental freedoms in the Bill of Rights and permits the development of the law and contributes to good governance.

The Respondent opposed the Petition and stated that the scope of governments past and present affairs are guided by the Constitution, the law, and the country's international obligations, that the government was a signatory to a number of international and regional obligations on refugee affairs and that Kenya has hosted refugees from Uganda, Somali, South Sudan, Ethiopia, Eritrea, Rwanda, Burundi, Democratic Republic of Congo as a result of political instability in those countries.

The Respondents averred that the decision complained of was informed by the cessation of the circumstances giving rise to the refugees in Somalia and the justifiable emergent challenges that render Kenya incapable of continued hosting of refugees, and that conditions stated in Section 3 of the Refugee Act (namely persecution for reasons of race, nationality, membership of a particular social group or political opinion, external aggression, occupation, foreign domination or events disturbing public order) are no longer in existence in Somali and that the situation in Somali, Uganda, Congo, and Burundi has normalized.

The respondents cited justification under Article 24 of the Constitution, overcrowding in the camps, terrorist attacks, huge economic costs, human trafficking, and proliferation of arms, strained government resources and insecurity.

The Respondents cited the Tripartite Agreement on repatriation of Somali refugees signed in November 2013 with UNHCR and Federal Republic of Somalia, which had to be implemented in three years terminating on 13 November 2016 under which a commission was formed with the membership drawn from the three actors. The Commission, according to the respondent, was mandated to develop and oversee implementation of a comprehensive repatriation plan to guide the process and that as a result more than 14,000 refugees had since been repatriated to Somalia.

The Respondent contended that due to dishonesty on the part of the international community, the government had been forced to reconsider the implementation mechanisms of the repatriation hence the decision to appoint a task force to come up with modalities, timelines and costs of the repatriation while ensuring safety and human dignity.

The petitioner countered the Respondent's contentions and stated that the government was employing draconian and oppressive measures, which will expose the lives of innocent, helpless refugees to the danger of trauma, torture, harm and the possibility of loss of life.

The petitioner stated that Somalia was still volatile as evidenced by a report prepared by the Amnesty International which highlighted blatant violation of International law and high level of insecurity in many parts of Somalia and that it was the government's duty to provide security to its citizens and non-citizens and that the responsibility cannot be reverted to refugees and asylum seekers who are seeking protection.

The Petitioner further averred that it was the government's duty to screen all persons entering the country and that the insinuation that refugee camps had become breeding grounds for terrorists and smugglers, is an admission of failure by the government to fulfil its function under the Refugee Act (2006) and other laws and that there was no evidence linking any particular refugee or asylum seeker to particular criminal activity.

The Petitioner averred that the restriction of refugees ought to be rational and justifiable and proportionate and that the principle behind the Tripartite Agreement was that the refugees would return voluntarily and without undue influence or pressure.

#### **Issues for Determination**

1. Whether a state officer has powers to disband a body created by statute.
2. Whether the decision by the Government of Kenya to repatriate Somali refugees against their will to their country of origin violated Article 47 of the Constitution and Fair Administrative Act.
3. Whether the action by the Kenyan Government violated the principle of non-refoulement.

#### **Held**

The Court held:-

- a. The fourth Respondent did not have any powers to disband a body created by an Act of

Parliament and therefore acted outside his powers (*ultra vires*).

- b. To comply with international law and practice, it must be shown that a durable solution to the circumstances that led to the refugee status is in place.
- c. The decision complained of violated the provisions of the Article 47 of the Constitution and Fair Administrative Act.
- d. The Government's decision complained of violates the principle of *non-refoulement* and is therefore in breach of International Law, Conventions and the country's obligations under various conventions under which it is a signatory.
- e. Refugees can exceptionally be returned on grounds of being a threat to national security of the host country or their proven criminal nature and record which constitute a danger to the community.

**The petition was allowed.**

#### **4.3.5 Requests for extradition and legal assistance by the International Criminal Court (ICC) Should be In conformity with the laws of Kenya**

***Republic of Kenya (through the Cabinet Secretary, Ministry of Interior and Coordination of National Government) vs Paul Gicheru & Another***

***Misc. Criminal Application No. 193 of 2015***

***High Court at Nairobi***

***November 16, 2017***

##### **Brief of the case:**

The facts of this case are that on April 1, 2015, the Applicant received a joint request from the International Criminal Court (ICC) for the arrest and surrender of the Respondents. The Respondents had been indicted by ICC for offences against the administration of justice and warrants of arrest issued against them. In furtherance of the request by the ICC, the Applicant applied for the Court to; issue a warrant of arrest against the Respondents and thereafter determine the eligibility of the Respondents to be surrendered to the ICC to face the charges for offences against the administration of justice; to issue an order for the seizure of any relevant evidence from the Respondents; to grant permission to the investigators from the Office of the Prosecutor of the ICC to be present during the execution of such searches and seizures; and to direct that such evidence that shall be seized be transmitted to the ICC. The Applicant contended that he was satisfied that the request was valid and should be presented to the Court for appropriate consideration.

On May 28, 2015, the court, issued some orders, including orders of arrest, search and seizure. On July 30, 2015, the court inter alia directed that the warrant of arrest issued be stayed pending the hearing and determination of the application.

The Respondents objected to the application on the grounds that it was unconstitutional, that the Applicant had no jurisdiction to apply to the court for the surrender of the Respondents without first satisfying the conditions precedent stipulated in Articles 10, 24, 27, 28, 29, 47 and 50 of the Constitution and Sections 18, 29, 172 and 173 of the International Crimes Act (ICA) , that their rights to fair trial and due process as protected by the Constitution had first to be adhered to before the Applicant could purport to present an application for their surrender to the ICC. Further, the first Respondent filed an application seeking for orders, inter alia, quashing of the warrant of arrest issued against him, staying of the request by the ICC for his arrest and surrender unless and until the Applicant made the necessary regulations.

##### **Issues for determination**

In this case, the Court was faced with the following issues for determination, that is:-

- i. Whether the request for assistance by the International Criminal Court (ICC) was in conformity with the Kenyan laws.
- ii. Whether the ICC satisfied the preconditions on the admissibility of a case before the ICC (prove that the state itself is not investigating or prosecuting, or has prosecuted, but also where the state decided not to proceed with a prosecution, unless the decision

was due to the inability or unwillingness of the state) set out in Article 17 of the Rome Statute in seeking the arrest and surrender of the Respondents.

- iii. Whether absence of regulations which, were to be made by the Applicant pursuant to Sections 172 & 173 of the ICA prescribing procedures for dealing with requests by ICC, invalidated the proceedings by the Applicant.
- iv. Whether the Respondents were eligible for arrest, surrender and eventual trial before the ICC.
- v. Whether the court had jurisdiction to try offences against the administration of justice that the ICC had indicted the Respondents.
- vi. Whether the court had jurisdiction to inquire into the validity or otherwise of the order issued by the Pre-trial Chamber of the ICC.
- vii. Whether the court had jurisdiction to quash the warrant of arrest, issued by a court of equal jurisdiction.

#### **Held**

1. Kenya is a signatory to the Rome Statute of the ICC. The preamble and Article 1 of the Rome Statute of the ICC provides that the ICC as established and in exercise of its jurisdiction would be complementary to national criminal jurisdictions. Article 17 of the Rome Statute set out the circumstance under which the ICC could admit a case in its jurisdiction.
2. The ICC, in seeking the surrender of the Respondents, was exercising a complementary jurisdiction to that of the court as provided in the preamble and Article 1 of the Rome Statute, and this was in respect of an alleged offence against the administration of justice. Before the ICC exercises that jurisdiction, it has to satisfy itself of the precondition set out in Article 17 of the Rome Statute particularly Article 17(2).
3. The Pre-trial Chamber of the ICC is aware of complementary jurisdiction when it considered the application made by the Prosecutor of the ICC seeking the issuance of the warrant of arrest of the Respondents. However, the Pre - trial Chamber held that based on the information availed before the Chamber, an effective national prosecution was unlikely to take place in the particular circumstances of the case. That the size and extent of organization of the alleged criminal effort to corruptly influence witnesses of the Court, as well as the related concerns for witness protection, were reasons overwhelmingly militated in favour of the exercise of the jurisdiction of the court. The Chamber did not consider that there was a need to consult with any State Party that may have jurisdiction over the offences allegedly committed.
4. The Pre-trial Chamber of the ICC assumed jurisdiction in the case involving the Respondents after it had been moved in an application filed by the Prosecutor of the ICC. The application was made ex-parte without reference to any other concerned party, including Kenya which was a State Party, and which it was expected it would comply with the request for assistance to secure the surrender of the Respondents.



5. The Pre-trial Chamber was aware under the paragraph 10 of the preamble, Articles 1, 17, 70 of the Rome Statute of the ICC and rule 162 of the Rules of Procedure and Evidence of the ICC, the court with the primary jurisdiction to hear and determine any charges relating to offences against the administration of justice is a national court of a State Party, hence the requirement for the ICC to consult with the State Party that may have jurisdiction over the offence.
6. For the Pre-trial Chamber to base its decision on available information before the Chamber that an effective national prosecution was unlikely to take place in the particular circumstance of the case without first consulting Kenya as a State Party on whether it was willing to prosecute the Respondents on the basis of the evidence that the Prosecutor of the ICC had, was contrary to Article 17 of the Rome Statute of the ICC where the court was required to defer to a State Party unless the state was unwilling or unable genuinely to carry out the investigation or prosecution.
7. In making the decision, the Pre – Trial Chamber denied Kenya, a State Party, the primary opportunity to investigate and prosecute the Respondents as provided under Section 18 of the ICA. The Court shuddered to imagine that the Pre – Trial Chamber chose not to consult Kenya because it had determined, without input from Kenya, that the state felt in the category of states defined in Article 17(3) of the Rome Statute, that is that Kenya’s criminal justice system suffered from total or substantial collapse or unavailability of its national judicial system.
8. The Respondents justifiably complained that the Applicant, the Director of Public Prosecutions (DPP) and the Attorney General (AG) shirked and abdicated their responsibilities as State Officers to uphold the national value and principles of governance as provided under Articles 10 and 259(1) of the Constitution. Those officers, when confronted with the request made by the ICC, firstly, for the arrest, and secondly, for the surrender of the Respondents, instead of making inquiry whether the Pre-trial Chamber of the ICC had jurisdiction to issue such orders without consulting Kenya as a State Party to the Rome Statute or considering whether to assume jurisdiction as provided under Section 18 of the ICA and in accordance with the Constitution of Kenya and the Rome Statute of the ICC, filed the instant application.
9. The Respondents fundamental rights and freedoms to fair trial as enshrined under Article 25(c) of the Constitution, which could not be limited or abridged under any circumstances would be breached if the court allowed the application made by the Applicants.
10. The position taken by the Applicant that the court had no jurisdiction to inquire into the validity or otherwise of the order issued by the Pre-trial Chamber of the ICC was not only unconstitutional but in breach of the self-same Rome Statute that provided procedure to be adopted under Articles 17 and 70 of the Rome Statute of the ICC in regard to offences against the administration of justice.
11. The Respondents, as Kenyan citizens, are entitled to exercise the right to citizenship as provided under Article 12(1) (a) of the Constitution. That right included the benefit of the rights and fundamental freedoms in the Bill of Rights and the right to be tried before a court established under the Constitution if it was alleged he had committed

an offence within the jurisdiction of the court. State officers, such as the Applicant, the AG, the DPP and the Inspector General of Police cannot abdicate the mandate delegated to them by the constitution particularly, Article 21(1). Unless the contrary was established, the Respondents were entitled, as a matter of their rights and fundamental freedoms, to be tried in Kenya.

12. The ICA, which domesticated the Rome Statute of the ICC was assented to on December 24, 2008. That Act was subject to the Constitution which was promulgated on August 27, 2010 by virtue of Section 7(1) of the Transitional and Consequential Provisions (Sixth Schedule) of the Constitution. Section 7(2) decreed, inter alia, that the provisions of the Constitution would prevail to the extent of the conflict between the Constitution and that law.
13. The request for inter alia, the search of the properties of the Respondents, in the presence of investigators from the ICC, with a view to obtaining evidence in form of cell phones, computers, diaries, notes or recordings of meetings or conversations, financial or banking records from the Respondents is in breach of Article 50(2) (b) of the Constitution that requires every accused person to be informed of the charge that he would face with sufficient details to answer to it. It was also in breach of Article 50(2) (j) of the Constitution that required every accused person to be informed in advance of the evidence that the prosecution intended to rely on, and have reasonable access to that evidence.
14. The application is devoid of the evidence that the ICC intended to rely on in the prosecution of the Respondents. The Applicant's application is in breach of Section 23(2) of the ICA that mandated any request for assistance by the ICC be in conformity with the Kenyan laws. It was apparent that the requests made to the Court indicated that the Prosecutor of the ICC was still gathering evidence to prosecute the Respondents, yet charges had already been laid against them before the ICC. In so far as the ICA provided that an application for the surrender of the Respondents to the ICC could be made without the Respondents being supplied with evidence in support of the charge against them, such application is not sustainable and is not within the threshold mandated by the Constitution.
15. The Applicant's application in purported exercise of its mandate to cooperate with the ICC could not be allowed unless and until the ICC and the Applicant complied with the conditions precedent, in compliance with the Constitution of Kenya 2010, and the ICA, the Rome Statute of the ICC and the Rules of Procedure and Evidence of the court.
16. The warrant of arrest issued by the court against the Respondents is lifted. Hence ,the Applicant is not to take any action in furtherance to the request made for the surrender of the Respondents, unless and until there was compliance with the orders of the Court.

**The Application was dismissed.**

#### 4.4 CASES FROM THE ENVIRONMENT AND LAND COURT

##### 4.4.1 Who has the locus standi to bring an action on the right to a clean and healthy environment?

***Elizabeth Kurer @ Detler Heir (Suing on their behalf and on behalf of aggrieved residents of Watamu within Kilifi County) vs County Government of Kilifi & 4 Others***

***Petition No 23 of 2016***

***Environment @ land Court at Malindi***

##### **Brief of the case:**

Kioko Enterprises Ltd (The 4th Respondent), is the registered proprietor of land in Watamu town on which Marval Limited (5th Respondent) operates a restaurant known as Comeback Restaurant, Lounge and Disco. The Petitioners (Elizabeth Kurer & Detler Heir (Suing on their behalf and on behalf of aggrieved residents of Watamu within Kilifi County) complain that since the year 1998, the restaurant played very loud music which caused residents of Watamu sleepless nights. They also argue that that the restaurant was interfering with learning activities for children whose schools were situated less than 300 metres away from it. Generally, their case is that the restaurant interferes with their peaceful and quiet enjoyment of property and therefore it violated their right to a clean and healthy environment.

The Petitioners' complaint against the first Respondent, the County Government of Kilifi was that it failed to implement the Kilifi County Liquor Control Act which was being breached at the restaurant. Their grievance against the second Respondent, the Officer Commanding Police Division Kilifi, was that he declined to stop the activities of the fourth & fifth Respondents and violated Article 35 of the Constitution, by declining to supply information regarding the owners of the restaurant.

##### **Issues for Determination:**

- i. What is the extent of *locus standi* in actions founded on the right to a clean and healthy environment?
- ii. Who is legally authorized to make measurements to determine whether noise and vibration levels exceeded what was legally permissible?

##### **Held:**

1. Section 3 of the Environmental Management and Coordination Act, No. 8 of 1999 (EMCA) provides for *locus standi* concerning actions founded on the right to a clean and healthy environment. A person alleging a violation or threat to the right to a clean and healthy environment, while acting on his behalf or on behalf of a group or class of persons, members of an association or in public interest, is allowed to seek redress at the Environment and Land Court. Such a person did not have to demonstrate personal loss or injury arising from the offending conduct in relation to the environment.
2. Section 147 of EMCA vests NEMA power to make regulations for purposes of discharging its duties. In exercise of those powers NEMA enacted the Environmental Management and Coordination (Noise and Excessive Vibration Pollution) (Control) Regulations,

2009. The Regulations define noise pollution as the emission of uncontrolled noise that was likely to cause danger to human health or damage to the environment. Regulation 3(1) outlawed the making of or causing to be made any loud, unreasonable, unnecessary or unusual noise, which annoys, disturbs, injures or endangers the comfort, repose, health or safety of others and the environment.

3. Even if there were NEMA guidelines to measure noise and vibration levels, the Petitioners are not authorized by NEMA to conduct measurements nor did they have knowledge of the proper use of the equipment as provided by the regulations.
4. The measurement of noise levels and vibration levels to determine whether they exceeded permissible levels, under the regulations, are to be done by a lead agency. Under the regulations, a lead agency means any Government Ministry, department, parastatal, State Corporation or local authority, in which any law vested functions of control or management of any element of the environment or natural resources. Measurement of noise levels could be done by NEMA after issuance of a reasonable notice to NEMA, where there was no lead agency available to take the measurements or where a lead agency had failed to take action.

**The Petition was dismissed.**

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#### **4.4.2 Customary law trusts are not subject to limitation periods under the Limitation of Actions Act.**

***James M'Ngaruthi M'Rintari & another vs Muguna M'Rintari***

***ELC Suit No 35 of 2002***

***Environment and Land Court at Meru***

***November 22, 2017***

##### **Brief of the case;**

The Defendant, a brother to the Plaintiffs, is the registered proprietor of the suit land. The Plaintiffs filed the suit to claim a share of the land on the basis of a customary trust. In the course of the suit, the second Plaintiff died and court orders were issued to the effect that the suit for the second Plaintiff had abated and the Defendant was entitled to half the costs of the suit from the legal representative of the deceased's estate.

The Plaintiffs' claim was that the land belonged to their family but it was registered in the name of the Defendant because their father was dead at the time of registration. At the time, there was a policy against registering land in the name of a mother who was a widow.

##### **Issues for Determination:**

- i. Whether there is a limitation period applicable to claims relating to customary law trusts.
- ii. Under what circumstances is a person deemed to be holding land under a customary law trust?

**Held:**

1. Trusteeship would exist by virtue of the existence of the title as long as it was proved. Section 20(2) of the Limitations of Actions Act would not apply to a trust existing under customary law. Customary law trusts are not subject to a limitation period.
2. The question concerning whether a trust in existence is a question of fact to be proved by evidence. The evidence showed that the allocation of the land was not an individual affair but it was based on a clan ensuring that families were not left without land. The plausible conclusion was that the Defendant was registered as a proprietor on behalf of the family and the Defendant acquired the land in trust for his brothers.
3. Under Section 28 of the Land Registration Act, all land would be held subject to overriding interests. The overriding interests included customary law trusts.

**Judgment entered for the Plaintiff against the Defendant.**

#### **4.4.3 The Effect of Death of a Donor of a Power of Attorney to a Suit Instituted by the Donee of the Power Attorney**

***Loice Wanjiru Meru & 3 others v John Migui Meru [2017] eKLR***

***E.L.C Appeal No. 3A of 2017***

***Environment and Land Court at Murang'a***

***November 23, 2017***

##### **Brief of the case:**

On May 4, 2015 the Respondent filed a suit in Murang'a as an attorney of his mother through a general Power of Attorney registered at the Lands Office on the April 8, 2015 as 408/4/2015. The Power of Attorney *inter alia* empowered and authorized the Respondent to demand, sue and recover monies due and owing to her. The Respondent filed the suit in his own name seeking among other things, the refund of the share of the rental income due to his mother that had been unlawfully deducted by the Appellants as unpaid costs of the upkeep of the building that they co-owned together.

The Respondent's mother passed away on the June, 2015 and the Respondent was issued with limited grant of letters of administration *ad litem* as the personal representative but limited only to the purpose of substitution in the PMCC No 167 of 2015 at Murang'a.

On June 17 2015, the Appellants filed a Notice of Motion seeking orders that the suit be struck out on the grounds *inter alia* that the stratum of the suit collapsed upon the death of the donor of the Power of Attorney to the Respondent. On the November 2, 2015 the Trial Court dismissed the Application. Aggrieved by the dismissal the Appellants filed the Appeal.

##### **Issues:**

- i. Whether a suit abated on the death of a donor of the power of attorney.
- ii. Whether a donee of a power of attorney could substitute himself as the Plaintiff in a suit filed in his own name instead of the donor's name upon the death of the donor.
- iii. Whether grant of letters of administration *ad litem* could save a suit instituted by a donee of a power attorney upon the death of the donor from abating.
- iv. What was the extent to which a power of attorney could be used after the death of the donor of the power of attorney?

##### **Held**

1. Section 75 of the Civil Procedure Act read together with order 43 rule 1 (b) of the Civil Procedure Rules provided for appeals that accrued by right.
2. In principle, every person who is a party in a civil proceeding is entitled to represent himself personally or through an agent. Order 9 rule 2 of the Civil Procedure Rules provides for recognized agents.

3. In the instant case the Plaintiff had a proper Power of Attorney to act for his mother in the suit. Therefore, he was acting for a disclosed principal. This was disclosed both in the Plaint and the registered Power of Attorney on record. There was no uncertainty as to whose Attorney he was acting for. There were sufficient disclosures to put the Defendant on notice as to the party on the opposite side and her claim against the Defendant. The fact Plaintiff filed the suit in his name and not in the name of his mother however, that was a procedural defect that was not fatal to the case.
4. The test on whether a suit had abated or not depends on whether the suit is considered personal to the party. Causes of action relating to contracts and property are viewed as independent of the party and do not abate when the party dies. However, in suits that were personal to a party such as injuries, libel, slander and malicious prosecution, the suits abated on the death of the party. The suit involved property and therefore is not personal to the party. Suits have to be prosecuted by and against living persons.
5. Order 24 rules 1 to 3 of the Civil Procedure Rules states that the death of a Plaintiff can not cause the suit to abate if the cause of action survives or continued. Where a sole Plaintiff died and the cause of action survives, the court on application made in that behalf caused the legal representative of the deceased to be made a party and proceed with the suit. The substitution had to be done within a period of one year. However, the court is clothed with discretion to so extend the time for substitution on good reasons.
6. A Power of Attorney is extinguished on the death of the donor. It is plainly clear on record that upon the death of the Deceased, the Power of Attorney donated to her son, the Respondent, stood extinguished by operation of law. That was the effect of her death on the Power of Attorney. However, her demise does not extinguish the cause of action. It being not personal to the party, the cause of action survived the donor of the extinguished Power of Attorney. Upon her death, the Respondent applied for letters of grant of administration *ad litem* which were duly granted by the Court permitting him to so substitute the deceased party. The Respondent is appearing as the personal representative of the deceased party and not as an Attorney.
7. The wording of the grant of letters of administration *ad litem* state the purpose as for substitution in the Murang'a case. There was no reason advanced by the Respondent why he did not file the suit in his mother's name. However, taken that the Plaintiff brought the suit in his capacity as a holder of a Power of Attorney on behalf of his mother and not on his own, and noting that the cause of action survived her, he is right to apply for substitution of the deceased party, in whose authority he had filed the suit in the first place. Any procedural defect could and had to be cured by Article 159 (2) (d) of the Constitution in the interest of the substantive justice of the case.
8. There is no reason to fault the Trial Court in holding that the suit did not abate.

**Appeal dismissed with costs to the Respondent.**



## **4.5 DECISIONS FROM THE EMPLOYMENT AND LABOUR RELATIONS COURT**

### **4.5.1 Poor performance of an employee per se is not sufficient reason for termination of employment.**

***Banking Insurance and Finance Union (Kenya) vs Barclays Bank of Kenya Limited and Another Cause 95 of 2014***

***Employment and Labour Relations Court of Kenya at Nairobi***

***August 29, 2016***

#### **Brief of the case**

The claimant is a registered trade union and represents unionisable employees in the banking industry. The Respondent is a commercial bank registered under the Banking Act and the Interested Party is the Association under which the Respondent is a member. The Claimant had a Recognition Agreement with the Respondent and a Collective Bargaining Agreement with the Interested Party. The claim is that the Respondents arbitrarily and unlawfully changed the terms and conditions of employment when they introduced Performance Development Plans (PDPs) as one of the offences which could lead to loss of employment. According to the claimant, unionised employees had received warning letters and some had final warning letters for 'non-performance'. The issue in dispute was that the Respondent violated the Collective Bargaining Agreement by un-procedurally and unlawfully intending to terminate the services of unionisable employees who were issued with final warning letters. The remedy sought to counter the alleged violation was that the Claimant be fully involved in the development of the Performance Development Plans, Performance Improvement Plan and the capability hearing and that the warning letters issued to unionisable employees pursuant to the Performance Development Plans be declared null and void including the 2008 employment contracts.

#### **Issued for Determination: -**

- i. Whether Performance Development Plans, Performance Improvement Plans and Capability hearings as management tools replaced the set legal requirements that addressed termination of employment due to poor performance or any other ground.
- ii. Whether Performance Development Plans, Performance Improvement Plans and Capability hearings as management tools negated agreed terms and conditions of employment between the parties with reference to the Recognition Agreement or Collective Bargaining and Agreement.
- iii. Whether the Claimant could participate in an internal management process initiated against its members by the employer.
- iv. Whether the introduction of Performance Development Plans, Performance Improvement Plans and Capability hearings in the employment contracts since 2008 violated Section 10 of the Employment Act.
- v. Whether the Claimant had the right to register with the Court their dispute despite the fact that the matter had been reported to the minister and there were issues that were not addressed then.

**Held:**

1. Both parties agree that the Performance Development Plans and the Performance Improvement Plan were management tools and part of management methods. Since 2008 when those tools were introduced by the Respondent, new contracts were issued to the employees including the Claimant members. No complaint was raised since and or with regard to the terms of the contracts. The parties had agreed that as a management tool/practice the Performance Development Plans and Performance Improvement Plan were the prerogative of the employer and as agreed under clause 17 of the Recognition agreement, there was a list of non-negotiable items. Those included management methods. Those terms were agreed on in 2000 and the procedure to make any changes was well set out, which the claimant had not addressed since. There was no merit to change what the parties had agreed as binding between themselves.
2. Most contracts of employment referred to the employer's right to terminate on the ground of poor performance. That right had other set rights due to an employee such as the right to give notice before termination and such rights demanded responsibility. With regard to poor performance, an employer is required by the law, other than the employment contract, to give the employee notice, give a hearing, and give reason(s) for termination on such a ground. It was not only a contractual requirement.
3. There exists a legal requirement that before termination on grounds of poor performance, there has to be genuine, valid and fair reasons. The subject employee had to be given a hearing in the presence of the employee's representative and most fundamentally, there had to be a written notice stating the reasons upon which the employer intended to terminate employment to enable the employee give their defence. That notice had to be issued before an employer made a decision to terminate employment. Upon the issuance of the written notice, the employee where unionised was at liberty to notify their union.
4. There are various levels of performance assessment. There is the general requirement of all employees of the Respondent to have a Performance Development Plans annually with two (2) reviews. Where upon any review the employee is found not to have satisfactorily achieved their plans, a reasonable plan was agreed upon. Upon further review and the employee had not improved and is found to be of ineffective performance, remedial action is taken, which included disciplinary action, capability and grievance mechanisms.
5. The internal management system of the Respondent is such that the Performance Development Plans ensures that employees met their business objectives and each employee performed in accordance to their role. Where there is a lapse, there are internal systems to address the same and ensure each employee 'own' their performance and upon review, a reasonable plan was agreed upon. The Performance Development Plans and the Performance Improvement Plan are good productive tools. Up and until the capability hearings, there were clear steps the employer/Respondent could follow internally. The Respondent global performance development has an elaborate mechanism for training employees and line managers to ensure they understood and appreciated Performance Development Plans purpose, aims and objectives.

6. The decision to terminate upon capability meeting was only made after the final written warning and the employee had been given sufficient and reasonable time to improve on their performance to the required level. Where the Respondent had not followed those procedures in any given individual case, the Claimant could pursue the same setting out the lapses and the unfairness of the same where there was such evidence. Such cases could not be generalised for a blanket order. Each case had to be on its merits.
7. Performance Development Plans and Performance Improvement Plan as well as the capability hearings are internal and management prerogatives of the employer/ Respondent. Even where the employer allows the employee to call their representative at the capability hearing, the steps leading to and subject of the capability hearings relate to internal mechanisms. At that point, the claimant union is not involved with what the employer had put in place to ensure that all its employees had performed to the required standards and that they are trained, coached and supported so as to achieve the set goals. In addition, the Respondent as the employer has put the employee whose performance was below expectation on a reasonable plan and given coaching, support or training for effective performance of their duties. Also, where there is a capability hearing, the employer considered other measures to ensure the employee had sufficient and reasonable time to be able to improve on their performance.
8. The right under Section 41 of the Employment Act and Article 41 of the Constitution, as read together with Article 47 of the Constitution on fair administrative action required a person faced with an adverse action to be supplied with any relevant materials, coaching, training, time and resources necessary to be able to prepare their defence, improve on their performance, and build on their skills. An employer can not just rely on the grounds of poor performance to terminate an employee. Such an employee had been hired and found fit for the job and any deterioration in performance had to be interrogated and effort made to address it. It can not be simply claimed that the Claimant suddenly became a poor performer when all his quarterly performance appraisals were in the positive. The Respondent has the duty to demonstrate that from the October 2015 evaluation, the Claimant's good performance deteriorated so fast that it led to substantial loss.
9. The performance evaluation process has to be applied to enhance productivity of employees. Where an employee performs poorly and was not productive as a result, the matter is addressed in law, and Section 41 of the Employment Act procedures would apply. Poor performance at work can be a ground for dismissal but the employer is required, by law, to take the employee through the motions of the law before there is a genuine, valid or just reason for termination.
10. Where the process of performance evaluation results in disciplinary action, the Respondent having addressed the administrative part, the Recognition Agreement and Collective Bargaining and Agreement between the parties requires that the Claimant participates in such proceedings as that was their role to represent their employee/ member. The separation of roles had to come to bare as the parties had agreed to be bound by terms and conditions that required the participation of the Claimant in any disciplinary process against their member with the Respondent. That was also the

essence of Section 41 of the Employment Act.

11. It was not sufficient for an employer to cite poor performance as the reason for termination. The employer had to demonstrate what measures had been put in place to support a poor performing employee. That despite support, the poor performing employee had not made effort to improve and hence the reason for termination.
12. The grounds that could have led to misconduct or gross misconduct under the policy of the Respondent had not included poor performance. The Respondent as the employer had the duty to demonstrate to the court that upon appraisal of the employee and a finding that the Performance Development Plans was not met, sufficient and reasonable plans were put in place. In addition, where there was still no improvement, the capability hearing was put in motion before the notices envisaged under Section 41 of the Employment Act came to bare.

**Claim partly allowed.**

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**4.5.2 The Salaries and Remuneration Commission is required to observe fairness and adherence to the dictates of the Constitution while undertaking a job evaluation.**

***Kamau Aidi & 47 others vs Salaries and Remuneration Commission (SRC)***

***Constitutional Petition No 6 of 2017***

***Employment and Labour Relations Court at Nyeri***

***June 4, 2018***

**Brief of the case:**

The Respondent undertook a job evaluation whose outcome was that the Petitioners were placed in a lower job group with lower remuneration. The Petitioners complained that the evaluation was done without their participation and was contrary to fair trade practices and was also a breach of their right to fair administrative action. They asserted that under Section 138 of the County Governments Act 2012, no employee could be evaluated with the resultant outcome being that the employee would earn less or have his benefits diminished. The Petitioners also said that under Article 230(5) of the Constitution, there was need to ensure transparency and fairness in job evaluation.

**Issues for Determination:-**

- i. Whether the job evaluation for the Clerks of County Assemblies was conducted in accordance with constitutional provisions on the right to fair labour practices, the right to fair administrative action and transparency and fairness.
- ii. Whether the persons affected by a job evaluation were afforded an opportunity to participate in the job evaluation.
- iii. What remedies were appropriate

**Held:**

1. As a constitutional body, the Respondent was bound to undertake its duties while following the dictates of the Constitution. Key dictates included fairness and application of the law. The SRC had a constitutional mandate but it was not allowed to act wantonly and where there was a breach of legal principles courts would not hesitate to step in and correct the error.
2. The County Government was a microcosm of the National Government. The County Assembly's character mirrored that of the National Government. The Clerk of the County Assembly was not a middle level management role but in the band of senior specialists and top executives. The Clerk of the County Assembly would fit into band E of the Patterson Banding and not D.
3. As the CEOs of the County Assemblies and the Clerks of the County Assemblies could not be deemed to be in a subordinate position. The Salaries and Remuneration Commission erred in banding a Clerk of the County Assembly in band B and D of the Patterson classification instead of B and E3.
4. In the job evaluation, the Petitioners were afforded an opportunity to participate and the extent of their involvement was as required. They were not expected to key in or be present during the keying in of specifications.
5. The Respondent was a public body executing a constitutional mandate. The fact that it fell into error was a misstep for which an order of costs would be an additional blow. Therefore, each party ought to bear its costs.

**Petition allowed.**

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**4.5.3 A court can only interfere with an internal disciplinary action where there is a breach of the process and with a view to setting that process right**

**Thomson Kerongo & 2 others v James Omariba Nyaoga & 3 others**

**Petition No. 32 of 2017**

**Employment and Labour Relations Court at Kisumu**

**November 24, 2017**

**Brief of the case:**

In this case, the court considered the circumstances under which an employer could send an employee on compulsory leave and the procedure for doing so. The court had occasion to consider the circumstances under which it could interfere with an internal disciplinary process and the extent of doing so. The Brief of the case of the case were as follows:-

The first and second Petitioners were members of the 3rd Petitioner, an organisation registered under Section 10 of the Non-Governmental Organisation Coordination Act. The first Petitioner was the Chairman of the 3rd Petitioner. The petition was filed against James Omariba Nyaoga, the first Respondent who was the Clerk of the County Assembly, Kisii County and the Ethics and Anti-Corruption Commission, the second Respondent, a constitutional commission established under Article 79 of the Constitution of Kenya 2010 as

read with Section 3(1) of the Anti-Corruption and Economic Crimes Act, 2003 and the Ethics and Ant-Corruption Commission Act, 2011, with the mandate to investigate corruption and related matters either on its own motion or upon receipt of a complaint.

The first Respondent was deployed as an interim clerk of the Kisii County Assembly by the Transition Authority on secondment by letter dated February 25, 2013. He was appointed as a substantive Clerk of the County Assembly on April 24, 2013 by the County Assembly Service Board (the Board) subject to approval by the County Assembly, which approval was given on April 29, 2013 by unanimous vote.

The former Speaker of the County Assembly of Kisii sent the first Respondent on compulsory leave together with the Director of Finance, an action that they unsuccessfully challenged in court through Kisumu ELRC Petition No. 12 and 18 of 2015 but which was resolved when the two of them were cleared and their suspension lifted by the Board which reinstated them.

On July 5, 2017 the former Speaker authored a letter and handed it to the first Respondent on July 17, 2017 sending him on compulsory leave. His compulsory leave was deliberated upon by the Board at its meeting held on the same day whereupon a decision was made to reinstate the first Respondent.

The Petitioner moved to the instant court on the grounds that the first Respondent was in office unconstitutionally as he was sent on compulsory leave and the compulsory leave had not been lifted, that the first Respondent was not fit to hold public office as he was under investigation for misappropriation of public funds among other grounds

**Issues for Determination:**

- i. What were the circumstances under which an employer could send an employee on compulsory leave?
- ii. What was the procedure to be followed when a state officer had committed a breach of the Leadership and Integrity Code?
- iii. What were the circumstances in which a court could interfere with a disciplinary action by an employer against an employee?

**Held:**

1. An authorised officer acting under lawful authority could take interlocutory action against an officer working under his supervision before substantive action was taken at a formal meeting to deliberate on the matter. That was because convening meetings of disciplinary bodies could take time and circumstances could arise when immediate action was necessary to address certain situations.
2. There was no law prohibiting an employer from sending an employee on compulsory leave where the circumstances warranted it and provided it was an interim measure. Compulsory leave had the effect of only removing an employee from the workplace temporarily without interfering with his terms of service. An action was only illegal if it was prohibited by law. Not all lawful matters were prescribed by law. On the contrary it was only that which was prohibited by law that was illegal or unlawful.
3. The Speaker, as Chairman of the County Assembly Service Board, had authority to



send the first Respondent on compulsory leave pending the convening of a formal meeting of the Board to deliberate on appropriate action to be taken against him.

4. The County Assembly Service Board undertook its business through formally constituted meetings. In the instant case, two members of the County Assembly Service Board met and nullified the letter of the Chairman sending the first Respondent on compulsory leave on the very day that the letter was written. Unlike the Chairman who was in office permanently, the other members could only act in a formally convened meeting called by either the Chairman or the Secretary. Since no minutes had been presented to the court to prove that there was a properly convened meeting at which the Chairman's letter to the first Respondent was discussed and a resolution passed by the board, the nullification of the letter of the Chairman was unlawful because there was no lawful authorised or regular meeting to discuss the issue.
5. The County Assembly Service Act, 2017 was assented to by the President on July 6, 2017 and came into force on July 27, 2017. The Act was not in force on July 5, 2017 when the first Respondent was sent on compulsory leave and could not have been breached.
6. The first Respondent had not expressly denied the specific allegations of questionable integrity and malfeasance against him. He cited the sour relationship between him and the former speaker of the County Assembly as the reason for the letters sending him on compulsory leave and the instant petition. He left almost all the allegations against him unchallenged with the result that the court was left with the impression that there had to be some validity in the allegations against him and valid reason for the Petitioners to invoke the jurisdiction of the Court.
7. Under Section 42 of the Leadership and Integrity Act, a person who alleged that a state officer had committed a breach of the Leadership and Integrity Code was required to lodge a complaint with the relevant public entity. Such public entity was the second Respondent who was required to inquire into the complaint and determine whether the state officer had contravened the Code of Leadership and Integrity. Section 43 provided that where the investigations disclosed that civil or criminal proceedings ought to have been preferred against the state officer, the public entity had to refer the matter to the Attorney General with respect to civil matters and to the Director of Public Prosecutions with respect to criminal matters or to any other appropriate authority.
8. Section 52 of the Leadership and Integrity Act extended the provisions of Chapter Six of the Constitution and the Act to public officers, like the first Respondent. The primary Act under which the second Respondent ought to have investigated public servants was the Anti-Corruption and Economic Crimes Act, 2003. Under Section 64 of the Act there was provision for disqualification of a person convicted of an offence under the Act from holding public office. Section 62 of the Act provided for disciplinary action against such an officer.
9. The only valid authority which could remove a public officer from office was the employer of such an officer, after taking them through due process as provided in Article 236 of the Constitution.



10. The first Respondent's case could be addressed by the County Assembly Service Board as the employer or the County Assembly which had oversight authority over all matters in the County including the County Assembly Service Board. That was the procedure that had been codified in the County Assembly Service Act, 2017.
11. The Court could not act directly and remove the first Respondent from office as that would contravene the first Respondent's constitutional rights to due process as provided under Article 236. Due process was an internal disciplinary process to be exercised by an employer. The Court was not expected to enter into the boardrooms of the employers to micro manage their affairs.
12. The Employment Act did not intend that courts take away managerial prerogatives from employers. To give the interim order would have had the effect of stifling the management prerogative in staff administration. It would have meant the employer did not have any more say in the contract of employment it had authored. That would be contrary to the intention of the Employment Act.
13. The court could only interfere where there was breach of the process only with a view to setting the process right. In the instant case the Petitioners had not alleged that the relevant bodies being the County Assembly Service Board and the County Assembly had been moved and had failed to take action. Neither had it been shown that the Petitioners filed a complaint with the second Respondent which it had failed to act on.
14. The courts could order the second Respondent, the County Assembly Service Board and the County Assembly, all of whom had the obligation to supervise and investigate the first Respondent to perform their role of investigation. However, the Petitioners had not prayed for those orders. They had not enjoined the employer of the first Respondent who had failed to take disciplinary action against him and although the second Respondent had been joined, no prayers were sought against it.

**The petition was dismissed with an order that each party bears its own costs.**

# Chapter 5

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HUMAN RESOURCE  
MANAGEMENT & DEVELOPMENT

# HUMAN RESOURCE MANAGEMENT & DEVELOPMENT

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## 5.0 Introduction

**D**uring the year under review, the Judiciary strived to ensure that there was sufficient human resources in courts, and that the staff possessed the relevant skills to discharge their duties. It therefore continued to recruit for various posts and to carry out transfers, promotions and deployment of staff to various court stations and directorates. Staff training and capacity building programmes were also conducted to improve effectiveness in job performance, along with attachments and pupilages.

Significant achievements were recorded in the year, the major ones being the successful conclusion of the Judiciary Organizational Review, the Judiciary Training Policy and the Records Management Curriculum.

In the FY2017/18, a consultant was hired to carry out a comprehensive Training Needs Assessment for the Judiciary. The consultants have developed tools for collecting data and have started engaging with the stakeholders. The process will be concluded in the next financial year.

As part of the process of ensuring compliance with the values and principles enshrined in the Constitution, various statutes and other human resource policies and regulations, the Judiciary conducted a wealth declaration exercise for Judges, Judicial officers and staff. (It also continued to implement the Values and Principles of Article 10 and 232). Compliance was equally observed in internal processes by enforcing the Public Finance Management Act (2012), Public Officer Ethics Act (2003), the Employment Act, (2007), the Occupational Safety and Health Act, (2007) the NHIF Act, NSSF Act, Pensions Act, among others.

All these activities were achieved despite challenges of deficits in financial and human capital resource allocations. In the next financial year the Judiciary will conclude the ongoing activities and continue implementing the recommendations of the Organizational Review exercise.

## 5.1 Key milestones

The highlights of the judiciary's human resource management achievements during the year include the following:

### 5.1.1 Human resource manual review taskforce

The Human Resource Policies and Procedures Manual Taskforce was constituted to carry out a review of existing Human Resource Policies and Procedures Manual and identify gaps and capacity weakness in relation to best practices and the public service management standards. The Task force has conducted various activities including collecting views from judges, judicial officers, judicial staff and other stakeholders. It will continue with its activities in the next financial year

### 5.1.2 Performance appraisal system

The Performance Appraisal System (PAS) was piloted in FY 2015/16 and the launch took place in the last quarter of 2016. The primary objective of performance management is to ensure quality of service delivery as anchored in the Judiciary blueprint and Sustaining Judiciary Transformation (SJT) is attained. The SJT focuses on enhancing individual accountability, enhancing institution accountability and entrenching performance measurement, monitoring and evaluation.

This report is the second since the launch of SJT and the third cycle of performance appraisal since its launch. In the FY 2017/18 significant milestones were noted. First, PAS was institutionalised in every court station, directorate, administrative units and offices. A total of 156 court stations out of 164 had their staff set targets, and 3,582 employees out of 4,945 – constituting 72.4 per cent as at December 2017 – had set their targets. Secondly, Judges, head of stations, judicial officers, and judicial staff were sensitised about the need to embrace PAS. Thirdly, there has been continuous monitoring of the process which has resulted in recommendations for review and improvement of the PAS tools. Fourthly, the PAS process has enhanced interventions on various HR processes such as training, deployment and job rotations. Fifth, there is top management support as PAS is one of the strategies addressed in SJT. And finally, the continuous rollout and sustainable monitoring by various stakeholders and demand for individual and institutional accountability have made PAS a living reality. However, limited funding posed a serious threat for timely annual implementation of PAS activities and programmes.

The screenshot shows the JIPMAS (Judiciary Information Processing and Management System) interface for the Performance Appraisal System (PAS). The user is logged in as MR NJERU, DAVID MURIUKI. The page displays a 'REQUEST FOR APPRAISAL' form with the following fields:

Field	Value
Full Name	Mr Njeru, David Muriuki
Reason for Appraisal	End of Year
PJ Number	45880
Period From	Select date
Period To	Select date
Unit	HR AND ADMINISTRATION
Job Group	
Current Designation	HRM Assistant II
With Effect From	Select date
Section	
Acting Appointment	

The page also features a sidebar with 'MY APPRAISAL REQUESTS' and a top banner indicating 'ANNUAL LEAVE 40 DAYS TO TAKE'. The footer shows the year 2019 and the JIPMAS logo.

**The Performance Appraisal System (PAS) home page.**

### 5.1.3 Organisation review

A consultant was engaged in the FY 2016/17 to review the Judiciary Structure. The consultancy has been completed and a report submitted to the Judicial Service Commission, which was adopted and is awaiting launch and implementation in the FY2018/19.

### 5.1.4 Recruitment

The Judiciary is committed to attracting, developing and retaining highly skilled and motivated professionals to implement its mandate. During the year, the Judiciary conducted a recruitment exercise to fill vacancies in critical areas in its establishment.

#### 1. The Deputy Chief Registrar

The JSC undertook interviews for the position of Deputy Chief Registrar of the Judiciary. The process will be completed in the following year.

#### 2. Judicial Officers, Chairpersons of Tribunals, Law Clerks

The Judicial Service Commission (JSC) concluded a recruitment process for various officers whereby 67 people were appointed. Of these, 49 of them – or 73 per cent – were female and 18 – or 27 per cent – were male. Some 42 Resident Magistrates were appointed, 10 Law Clerks and 15 others in different positions as indicated in table 5.1.

**Table 5.1: Judicial officers and legal researchers/clerks**

	Position	No. of Vacancies	No. of Applicants	No. Interviewed	No. Appointed	
1	Resident Magistrate	50	310	89	42	31 Female 11 Male
2	Chairperson Corporative Tribunal	1	10	6	1	Male
3	Chairperson, Tourism Tribunal	1			1	Male
4	Law Clerks		126	20	10	6 Female 4 Male
5	Legal Researchers	100	256		13	12 Female 1 Male
Total					67	49 Female 18 Male

#### 3. Judicial staff

Due to the review of the Organization Structure that was ongoing during the reporting period, the Judiciary froze recruitment of most of the positions previously declared vacant in financial year 2016/17. However, renewal of contracts for four Law clerks and twenty 27 Legal Researches was concluded during the period under review. Recruitment of the Chief

of Staff and Domestic workers to Chief Justice and Retired Chief Justice were filled during the year.

#### 4. Advertised positions

The recruitment of 283 judicial staff was put on hold awaiting completion of the Organization Review process. Some 31 positions of judicial officers and 12 members of Tribunals was at various stages of recruitment as indicated in Tables 5.2, 5.3 and 5.4.

**Table 5.2: Advertised positions: judicial officers**

	Position	No. of positions	Status
1	Registrar, Environment Court	1	Ongoing
2	Resident Magistrates	30	Ongoing
	<b>TOTAL</b>	<b>31</b>	

**Table 5.3: Advertised positions: tribunals**

S.NO	POSITION	NO. OF POSITIONS	STATUS
1	Registrar Tribunals	1	Pending
2	Chairman, National Environment Tribunal	1	Pending
3	Chairperson Cooperative Tribunal	1	Concluded
4	Deputy Chair Person, Cooperative Tribunal	1	Pending
5	Chair Person, Sports Tribunal	1	Pending
6	Chair Person, Tourism Tribunal	1	Concluded
7	Nominee of the Judicial Service Commission to SRC	1	Concluded
8	Chairperson, Micro and Small Enterprises Tribunal	1	Cancelled
9	Vice-Chairperson, Micro and Small Enterprises Tribunal	1	Cancelled
10	Re-advertisement: Chairperson of the National Civil Aviation Administrative Review Tribunal	1	Pending
11	Member, Political Parties Dispute Tribunal	1	Pending
12	Chairperson, Communications and Multimedia Appeals Tribunal.	1	Pending
	<b>TOTAL</b>	<b>12</b>	

**Table 5.4: Pending advertised positions of judicial staff as at 30th, June 2018**

S/NO.	POSITION	NO. OF POSITIONS
1	Law Clerks	5
2	Legal Researchers	100
3	Director, Human Resource & Administration	1
4	Deputy Director , Talent Management	1

S/NO.	POSITION	NO. OF POSITIONS
5	Deputy Director, Human Resources Management	1
6	Executive Officers	68
7	Personal Secretary III	25
8	Personal Secretary II	25
9	Secretarial Assistants II	30
10	Court Interpreters	20
11	Transport/Fleet Manager	1
12	Monitoring and Evaluation Officer (JTI)	1
13	Partnerships and Linkages Officer (JTI)	1
14	Policy Analyst (JTI)	2
15	Finance Officer (JTI)	1
16	Supply Chain Officer 1 (JTI)	1
<b>TOTAL</b>		<b>283</b>

## 5.2 Authentication of certificates

With the increased number of staff recruited during the last three reporting periods, and in line with regulations to ensure that all staff held authentic certificates, the Judiciary continued to undertake authentication of professional and academic certificates presented newly appointed staff and those seeking career advancement through promotions/ re-designations. A total of 1,655 certificates were presented to the various examining bodies for authentication and the outcome is as indicated in table 5.6 below.

**Table 5.5: Authentication of certificates f/y 2017/2018**

S.NO.	CERTIFICATES	NUMBER OF CERTIFICATES VERIFIED	COMMENTS / ACTION
1	KCSE	836	824 were genuine. 12 KCSE Certificates were forged. Disciplinary action is ongoing
2	KNEC Secretarial certificates	305	305 verified as genuine
3	Degree Certificates	279	275 were genuine; Four (4) were forged. Disciplinary action is ongoing
4	Diploma Certificates	235	235 verified as genuine
	Total	1,655	

Out of the 1,655 professional and academic certificates presented for authentication, sixteen (16) were found not to be authentic. Appropriate disciplinary action has been instituted



against the affected employees.

### 5.3 Career Progression and Promotions

#### 5.3.1 Promotion of Judicial Officers

During the reporting period, the Commission conducted suitability interviews for the promotion of Magistrates and Kadhis. The promotion process will be concluded in the next financial year.

#### 5.3.2 Promotions of Judicial Staff in PLS 9 and above.

Promotion of staff by the Judicial Service Commission is meant to boost morale and improve productivity as well as guiding the succession plan of the Judiciary and the Commission. During the year under review, the Commission promoted 131 judicial staff in the Secretarial Staff and Executive Assistant cadres who had undergone suitability interviews in the previous financial year as indicated in Table. 5.6.

**Table:5.6 Judicial Staff promoted during the 2017/2018 Financial Year**

S/NO.	CADRE PROMOTED	NO. OF STAFF PROMOTED
1	Principal Executive Secretary	4
2	Senior Executive Secretary	8
3	Executive Secretary	11
4	Senior Personal Secretary	14
5	Personal Secretary I	3
6	Personal Secretary II	12
7	Senior Secretarial Assistant	17
8	Principal Executive Assistant	1
9	Chief Executive Assistant	5
10	Senior Executive Assistant	14
11	Executive Assistant	42
	<b>TOTAL</b>	<b>131</b>

#### 5.3.3 Promotions of judicial staff in PLS 8 and below.

The Commission ratified promotion of 189 judicial staff in PLS 8 and below whose cases of promotion fall within the purview of the Judiciary Human Resource Management Selection Board (JHRMSB) as shown in Table 5.7

**Table 5.7: Promotions for judicial staff in PLS 8 and below.**

S.NO.	PREVIOUS POSITION	PROMOTED TO	NO. OF STAFF
1	Archives Assistant III	Archives Assistant II	2
2	Artisan III	Artisan II	1
3	Cleaning Supervisor II	Cleaning Supervisor I	5
4	Support Staff Supervisor	Cleaning Supervisor II	8
5	Driver II	Driver I	2
6	Driver III	Driver II	19

7	Clerical Officer	Higher Clerical Officer	74
8	Process Server II	Process Server I	1
9	Secretarial Assistant II	Secretarial Assistant I	3
10	Security Guard III	Security Guard II	5
11	Higher Clerical Officer	Senior Clerical Officer	35
12	Senior Driver II	Senior Driver I	3
13	Driver I	Senior Driver II	3
14	Process Server I	Senior Process Server	1
15	Security Guard I	Senior Security Guard II	2
16	Storekeeper	Senior Storekeeper	5
17	Storekeeper II	Storekeeper I	1
18	Support Staff II	Support Staff I	6
19	Senior Support Staff	Support Staff Supervisor	12
20	Telephone Operator II	Telephone Operator I	1
	<b>TOTAL</b>		<b>189</b>

#### 5.4 Confirmation in appointment

In line with the staff regulations and Employment Act Cap 226 No. 11 of 2007, Section 42(2) which requires that an employee be confirmed in appointment after six months from the date of appointment, the following 791 judicial staff were confirmed in appointment during the reporting period.

**Table 5.8: Staff confirmed in appointment**

S/NO.	DESIGNATION	NO. OF STAFF CONFIRMED
1	Accountant I	14
2	Accountant II	6
3	Assistant Director – Finance	1
4	Assistant Director – ICT	1
5	Assistant Director - Performance	2
6	Asst. Director - Public Communication	2
7	Chief Accountant	1
8	Chief HRM Officer	5
9	Chief Internal Auditor	1
10	Chief Procurement Officer	1
11	Deputy Director - Administration	1
12	Deputy Director - Performance	1
13	Deputy Registrar	1
14	Executive Officer	1
15	Executive Officer I	1
16	Executive Officer II	3
17	HRM Officer II	2
18	ICT Officer I	3
19	ICT Officer II	4
20	Internal Auditor I	1
21	Personal Secretary II	5
22	Principal HRM Officer	1

S/NO.	DESIGNATION	NO. OF STAFF CONFIRMED
23	Principal Risk & Internal Systems Auditor	1
24	Procurement Officer I	1
25	Procurement Officer II	14
26	Programme Officer	2
27	Public Communications Officer II	1
28	Regional Assistant Director – Finance	6
29	Regional Assistant Director-HR & Admin	5
30	Regional Principal Accountant	2
31	Registrar	1
32	Senior Accountant	3
33	Senior Archives Assistant	1
34	Senior Executive Secretary	1
35	Senior ICT Officer	3
36	Senior Internal Auditor	2
37	Senior Procurement Officer	2
38	Senior Secretarial Assistant	1
39	Supplies Officer 1	4
40	Archives Assistant 2	34
41	Archives Assistant 3	4
42	Archivist 3	19
43	Auditor II	4
44	Clerical	238
45	Clerical Officer	7
46	Clerical Officer	199
47	Clerical Officer 2	15
48	Court Bailiff	6
49	ICT Officer 1	1
50	ICT Officer 2	13
51	ICT Officer 3	11
52	Internal Auditor 1	3
53	Personal Secretary 2	15
54	Personal Secretary 3	46
55	Process Server 2	16
56	Secretarial Assistant 2	52
<b>TOTAL</b>		<b>791</b>

## 5.5 Separation of Employees

During the year under review, 113 employees exited from the Judiciary due to retirement, resignations or death. Others exits were due to dismissals, expiry of contracts and lapsing of leave of absence. Sixty one officers retired from the Judiciary on attainment of the mandatory retirement age. Table 5.9 below provides a breakdown of employee separation during the period.

**Table 5.9: Employees separation cases**

S/No.	NATURE OF CASES	NUMBER
1	Hon. Judge appointed to State Office (Attorney General)	1
2	Hon. Judge deceased	1
3	Contract Expiry	7
4	Dismissal (JSC & HRMAC decisions)	13
5	End of Secondment	1
6	Resignation	14
7	Normal Retirement	61
8	Voluntary Retirement at 50 years	1
9	Retirement under Public Interest	1
10	Death	13
	Total	113

Employees transfer is normal and a good Human Resource practice, which is in line with the Judiciary's policy of providing public services to all parts of the country. The Human Resource Directorate is tasked with implementing transfer of employees as per the Judiciary Transfer Policy and Guidelines as well as provisions of the service charter. In implementing the transfers, the employees are given at least one month to enable them prepare to move to new stations. Transfers can either be initiated by the management or by the member of staff.

During the 2017/2018 reporting year, the Directorate effected 578 transfers. Of these, 458 were management-initiated and 120 were staff-initiated. Some 67 requests were declined.

**Table 5.14: Management initiated transfers**

S/NO.	MONTH	NUMBER OF TRANSFERS
1	July 2017	41
2	August 2017	52
3	September 2017	38
4	October 2017	62
5	November 2017	25
6	December 2017	28
7	January 2018	54
8	February 2018	32
9	March 2018	43
10	April 2018	41
11	May 2018	17
12	June 2018	26
	TOTAL	458

**Table 5.15: Approved employee-initiated transfers**

S/NO.	MONTH	APPROVED REQUESTS
1	July 2017	5
2	Aug 2017	9
3	Sept 2017	2
4	Oct 2017	12
5	Nov 2017	13
6	Dec 2017	19
7	Jan 2018	14

8	Feb 2018	15
9	March 2018	5
10	April 2018	7
11	May 2018	10
12	June 2018	9
	TOTAL	120

## 5.6 Disciplinary control

### 5.6.1 Complaints /petitions against Judges

In the year under review, the Judicial Service Commission received 74 Complaints and petitions against Honourable Judges, which were considered and were at various levels of investigations as at the end of the reporting period.

**Table 5.16: Summary of complaints examined by JSC FY 2017/18**

S.NO.	DETAILS	NUMBER
1.	Complaints pending as at 30th, June 2017	26
2.	Complaints received during the year	74
3.	Total Complaints	100
4.	Complaints concluded	71
5.	Complaints pending as at 30th, June 2018	29

### 5.6.2 Disciplinary Matters for Judicial Officers.

In the FY 2017/18, the Judicial Service Commission received a total of fifteen (15) cases against judicial officers. Out of these, three (3) were fresh disciplinary cases while twelve (12) were pending cases from the previous year including three appeals/reviews. A total of five (5) cases were heard and concluded. This represents 33.3% of the total cases. 10 disciplinary cases were pending as at the end of the reporting period as shown in Table 5.17.

**Table 5.17: Disciplinary Matters for Judicial officers Handled in FY 2017/18**

PARTICULARS	NO OF COMPLAINTS
Discipline cases pending as at 30th June, 2017	12
New discipline cases received	3
Appeals/Reviews received	0
Total complaints	15
Total discipline concluded in FY/2017/2018	5
Discipline cases pending as at 30th June, 2018	10

The Judicial Service Commission dismissed one judicial officer, retired one on medical grounds and reinstated one, while one review was allowed during the FY 2017/18 as indicated in the table 5.18.

**Table 5.18: Classification of cases for Judicial Officers concluded by Outcome FY 2017/18**

OUTCOME	NUMBER
Dismissal	1
Appeal disallowed	1
Reviews disallowed	1
Retirement on medical grounds	1
Reinstated	1
Total complaints concluded	5

**5.6.3 Disciplinary matters for judicial staff, pls 9 and above.**

The Judicial Service Commission receives and considers disciplinary matters involving Judicial Staff. It has, however, delegated disciplinary matters for staff in PLS 8 and below to the Human Resource Management Advisory Committee (HRMAC). During the year under review, the Commission received 40 disciplinary matters against judicial staff in PLS 9 and above. Out of these, nine were fresh cases while 10 were pending cases from the previous year. There were 21 appeals. A total of 19 cases were heard and concluded. This represents 47.5 per cent of the total cases. Some 21 disciplinary cases were pending as at the end of the reporting period as shown in Table 5.19.

**Table 5.19: JSC Disciplinary Matters for Judicial Staff Handled in FY 2017/18.**

PARTICULARS	NO OF COMPLAINTS
Discipline cases pending as at 30 <sup>th</sup> June, 2017	10
New discipline cases received	9
Appeals/Reviews received	21
Total complaints	40
Discipline cases concluded in FY/2017/2018	19
Discipline cases pending as at 30 <sup>th</sup> June, 2018	21

**Table 5.20: Classification of cases for judicial staff concluded by outcome FY 2017/18**

OUTCOME	NUMBER
Dismissal	1
Appeal disallowed	13
Reviews disallowed	5
Appeals /Reviews allowed	0
<b>Total complaints concluded</b>	<b>19</b>

**Table 5.21: Summary of disciplinary matters handled by JSC in FY 2017/18.**

PARTICULARS	FY2015/16	FY2016/17	FY 2017/18
Matters brought from previous year	18	18	25
New Matters received	4	21	12
Appeals/Reviews received	16	20	21
Total	38	59	58
Total concluded	20	31	24
Number of matters pending at end of year.	18	28	34

In the financial year 2017/18 the Judicial Service Commission received 58 disciplinary matters against judicial officers and staff in PLS 9 and above. There was a marginal decrease of 1.7 per cent in the disciplinary matters handled compared to the previous year. The number of pending disciplinary matters, however, increased by 21.4 per cent for the period under review compared to the previous year.

#### 5.6.4 Disciplinary matters for judicial staff, pls 8 and below.

Discipline matters in PLS 8 and below are presented before the Human Resource Management Advisory Committee (HRMAC). Under the Labour Laws, staff discipline matters are supposed to be finalized within six months of commencement.

In FY 2017/2018, the HRMAC received 94 fresh disciplinary matters of which five were pending in court. 30 matters were deliberated by the Committee and finalized within six months. Some 36 matters carried over from the previous financial year were also deliberated by the committee and finalized within the reporting period.

**Table 5.22: Disciplinary Matters Registered during appraisal year 2017/2018**

S/NO.	CADRE	DISCIPLINARY MATTERS REGISTERED	RESOLVED DISCIPLINARY MATTERS	PENDING DISCIPLINARY MATTERS
1.	Judicial Staff	94	66	28

**Table 5.23: Registered Disciplinary matters by cadre in FY 2017/18**

S/NO.	CADRE	NUMBER
1	Support Staff	9
2	Accountants	6
3	Clerical Officers	48
4	Archivist	2
5	Drivers	5
6	Secretaries	7
7	HR	1
8	ICT	2
9	Security Guard	4
10	Procurement/storekeeper	4
11	Legal Researcher	1
12	Executive Officers/Assistants	5
<b>Total</b>		<b>94</b>

#### 5.6.5 Analysis matters carried over and finalized in FY 2017/2018

A total of 36 matters carried over from the previous financial year were also deliberated on by the committee and finalized within the reporting period as indicated in table 5.19 below.



**Table 5.24: 36 Disciplinary matters carried over from FY 2016/17**

S/NO.	CADRE	NUMBER
1	Support Staff	2
2	Accountants	7
3	Clerical Officers	18
4	Archivist	1
5	Drivers	2
6	Secretaries	1
7	HR	1
8	Process server	2
9	Telephone Operator	1
10	Executive Officers/Assistants	1
<b>Total</b>		<b>36</b>

**5.6.6 Disciplinary Matters Finalized In FY 2017/2018**

Thirty disciplinary matters were deliberated by the Human Resource Advisory Committee and finalized within six months and various disciplinary actions taken as indicated in table 5.20 and 5.21 below.

**Table 5.25: Finalized Matters in FY2017/18**

S/NO.	CADRE	NUMBERS
1	Support Staff	4
2	Accountants	1
3	Clerical Officers	17
4	Archivist	1
5	Drivers	1
6	Secretaries	2
7	HR	1
8	ICT	1
9	Legal Researcher	1
10	Executive Officers/Assistants	1
<b>Total</b>		<b>30</b>

Six members of staff were interdicted out of the 30 freshly-concluded matters within the six months. Twelve were placed on suspension and another 12 issued with show-cause letters as indicated in the table below.

**Table 5.26: Case type and action**

S/NO.	NATURE OF CHARGE	NO. OF CHARGES	SHOW CAUSE	SUSPENSION	
1	Absenteeism	15	5	10	0
2	Forgery/Interference with court records	2	2	0	0
3	Gross misconduct/misuse of public vehicle/negligently mishandling files	13	5	2	6
<b>Total</b>		<b>30</b>	<b>12</b>	<b>12</b>	<b>6</b>

### 5.6.7 Disciplinary actions on disciplinary matters received in fy 2017/18

Twenty five interdictions were effected out of the 94 disciplinary matters registered in the FY 2017/18 accounting for 26 per cent of disciplinary action. Some 53 of them were placed on suspension and another 16 issued with show-cause letters as indicated in Table 5.21 below:

**Table 5.27: Registered Disciplinary Matter as per action taken**

S/NO.	NATURE OF CHARGE	NO. CHARGED	ACTION TAKEN		
			Interdiction	Suspension	Show Cause
1	Absenteeism	34	1	30	3
2	Bribery/Soliciting for bribes	3	3	0	0
3	Careless driving/Traffic offense, Misuse of vehicle	3	3	0	0
4	Defilement	1	1	0	0
5	Document/Illegal Preparation of sureties/Interference with court record/making documents without authority	12	4	7	1
6	Giving false information/Gross misconduct/ Insubordination/ Misplacing files/Use of abusive	39	12	16	11
7	Misappropriation of funds	2	1	0	1
	<b>Total</b>	<b>94</b>	<b>25</b>	<b>53</b>	<b>16</b>

### 5.6.8 Disciplinary Actions Carried Over From FY 2016/17

Some 23 members of staff out of the 36 whose disciplinary matters were carried over from the previous financial year were placed on suspension, accounting for 64 per cent. Three were interdicted, while four were issued with show-cause letters and one had salary stoppage as indicated in table 5.28 below.

**Table 5.28: Analysis of disciplinary matters carried forward from FY 2011/17 and action taken in FY 2017/18.**

S/NO.	NATURE OF CHARGE	NO. CHARGED	INTERDICTION	SALARY STOPPAGE	SHOW CAUSE	SUSPENSION
1	Absenteeism	19	1	1	3	14
2	Gross misconduct	11	4	0	1	6
3	Conspiracy to defeat justice	3	2	0	0	1
4	Misappropriation of funds/loss of funds	3	1	0	0	2
	<b>Total</b>	<b>36</b>	<b>8</b>	<b>1</b>	<b>4</b>	<b>23</b>

## 5.7 Training and Development

To ensure efficient delivery of services, the Judiciary provided various training opportunities to more than 725 officers. There was a sharp decline in training opportunities constituting 49 per cent compared to the previous year as indicated in table 5.29. The training offered included induction programmes, career progression courses and continuous development Programs to equip officers with the requisite skills and competencies. It also offered pupillage and attachments to 542 students, while 3,089 law students were offered judicial attachments in various courts during the period under review.

**Table 5.29.**

S.NO.	TRAINING AREA	TARGET GROUP	FY 2016/17	FY 2017/18
1	Pre-retirement training	Judicial Officers and Judicial Staff	45	0
2	Strategic leadership development program (in collaboration with JTI)	Judicial officers, Deputy Registrars, Directors and those in top leadership positions	6	15
3	Senior Management Course (in Collaboration with JTI)	Executive Officers, Executive Assistants, Accountants	38	52
4	Supervisory Skills Development Course (in Collaboration with JTI)	Executive Assistants, head of section, clerical officers	36	104
5	Induction of newly recruited Staff (in collaboration with the JTI)	Newly recruited clerical officers, ICT officers, Archivists and secretaries	1,137	409
6	Defensive driving course for drivers (in Collaboration with JTI)	Drivers	30	0
7	Facilitation of members to attend professional workshops and Membership renewal	IHRM Annual conference for registered members	30	20
8	Team building activities	Team building activity for the HR department members	53	75
9	Capacity building for HR staff	All HR staff	55	50
		<b>TOTAL</b>	<b>1430</b>	<b>725</b>

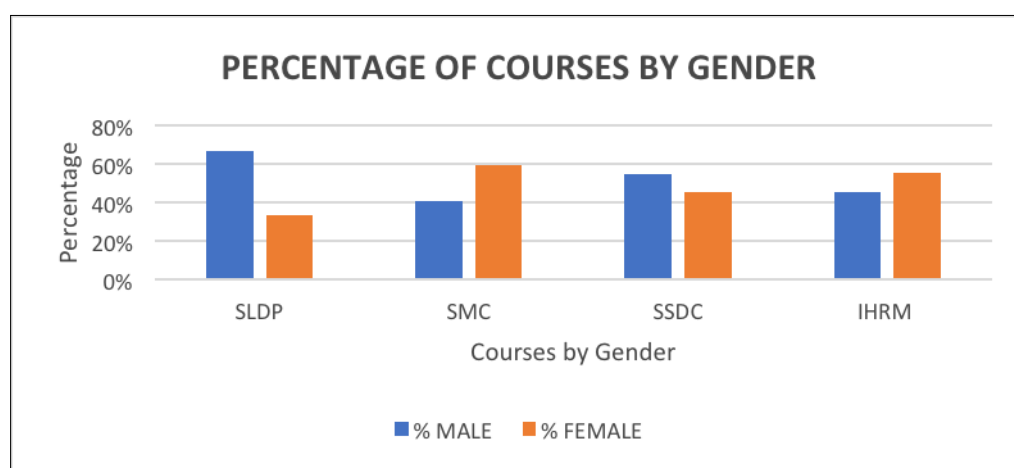
Career progression courses were conducted at the Kenya School of Government. They included Strategic Leadership Development Program (SLDP), Senior Management Course (SMC) and Supervisory Skills Development Course (SSDC). The Continuous Development

Programs were conducted by the IHRM in form of conferences. The total number of training sessions conducted per course and gender are shown in the table 5.30 below:

**Table 5.30: Summary of courses for FY 2017/18 by Gender**

S/NO.	COURSE	MALE	FEMALE	TOTAL
1	SLDP	10	5	15
2	SMC	18	26	52
3	SSDC	55	46	104
4	IHRM	9	11	20
	<b>TOTALS</b>	<b>85</b>	<b>81</b>	<b>191</b>

**Figure 5.1: Percentage of Courses by Gender**



**Figure 5.2: Distribution of Courses by Course Type**

#### 5.13.1 Nomination Criteria

The trainees were selected from their respective Court stations, Directorates and Functional Units and each of these were required to submit their nominees using the criteria below:

**The training committee had set out the following selection criteria:**

1. Registrars and Directors nominate two participants for the KSG courses from their respective units.
2. That the Registrar of the Magistrates Courts communicates to all head of stations to nominate two participants and forward the names to their respective Regional HR officers for compilation and forwarding to Director HR.
3. The Kenya School of Government (KSG) courses being considered include; Supervisory Skills Development Course (SSDC), Senior Management Course (SMC), and Strategic Leadership Development Programme (SLDP).
4. The nomination criteria should take into consideration the gender and skills gap.
5. Priority was to be given to those who had not attended any courses.

#### 5.7.1 KSG Courses Conducted In FY 2017/18 per School

The table below indicates the courses that were conducted and the school in which they were conducted.

**Table 5.31: Courses completed in the FY 2017/18**

S/NO.	SCHOOL	COURSE	NUMBER
1.	NAIROBI – LOWER KABETE	SLDP	15
2.	MOMBASA	SMC	13
		SSDC	18
		SSDC	31
4.	BARINGO	SMC	39
		SSDC	1
5.	EMBU	SSDC	54
6.	IHRM		20
<b>TOTAL</b>			<b>180</b>

Table 5.25 above shows courses conducted per school and course. A total of 160 courses were conducted in various schools while 20 people attended the continuous development programs bringing the total to 180.

The tables below show the summary of the courses by Designation and gender.

**Table 5.32: SLDP Courses FY 2017/18**

DESIGNATION		NO. TRAINED BY GENDER		
		Male	Female	Total
1	Registrar	1		1
2	Assistant Registrar	0	1	1
3	Director	1	0	1
4	Assistant Director	4	0	4
5	Chief Magistrate	0	1	1
6	Senior Principal Magistrate	0	1	1
7	Principal Magistrate	1	1	2
8	Senior Resident Magistrate	1		1
9	Deputy Registrar	1	1	2
10	CPCO	1	0	1
	<b>Total</b>	<b>10</b>	<b>5</b>	<b>15</b>

**Table 5.33: SMC Courses FY 2017/18**

DESIGNATION		NO. TRAINED BY GENDER		
		Male	Female	TOTAL
1	Senior Personal Secretary	0	3	3
2	Executive Secretary	0	1	1
3	Accountant	5	3	8
4	ICT officer 1	0	2	2
5	Executive Assistant	6	4	10
6	Senior Executive Assistant	3	0	3
7	Personal Secretary	0	3	3
8	Senior Resident Magistrate	1	0	1
9	Assistant Accountant	0	1	1
10	Executive Officer	1	2	3

11	Senior Clerical Officer	1	2	3
12	Higher Clerical Officer	0	1	1
13	Senior Accountant	0	1	1
14	HRM Officer	1	0	1
15	HRM Assistant 1	0	1	1
16	Archivist	0	2	2
	<b>TOTAL</b>	<b>18</b>	<b>26</b>	<b>44</b>

**Table 5.34: SSDC Courses FY 2017/18**

S/NO.	DESIGNATION	NO. TRAINED BY GENDER		
		Male	Female	Total
1	Executive Officer	3	0	3
2	Senior Executive Assistant	2	3	5
3	Executive Assistant	17	9	26
4	Procurement Officer	2	1	3
5	Chief Librarian	1	0	1
6	Library Assistant	1	0	1
7	Procurement Assistant	0	1	1
8	Senior Archivist Assistant	0	1	1
9	HRM Assistant	2	1	3
10	Accountant	1	1	2
	Accounts Assistant	1	0	1
11	Storekeeper	4	1	5
12	Senior Store Keeper	1	2	3
13	Personal Secretary	0	5	5
14	Secretarial Assistant		8	8
15	Senior Clerical Officer	14	4	18
16	Higher Clerical Officer	5	7	12
17	Clerical Officer	0	2	2
18	Support Staff Supervisor	1	0	1
	<b>TOTAL</b>	<b>55</b>	<b>46</b>	<b>101</b>

**Table 5.35: Total number trained per Cadre in the FY 2017/18**

IHRM PROGRAMMES		NO. TRAINED BY GENDER		
		MALE	FEMALE	TOTAL
1.	Ag. Director	0	1	1
2.	Deputy Director	0	1	1
3.	Senior Assistant Director	0	1	1
4.	Assistant Director	7	2	9
5.	Principal Human Resource Management Officer	0	2	2
6.	Chief Human Resource Management Officer	2	4	6
	<b>TOTAL</b>	<b>9</b>	<b>11</b>	<b>20</b>
	<b>GRAND TOTAL</b>			<b>180</b>

The above tables confirm that all cadres were represented when selecting participants. Some 180 participants were trained for both Career progressive courses and continuous development programs against a target of 200. This represents 90 per cent outreach. This

was a great achievement given the austerity measures imposed by the National Treasury during the implementation period.

## 5.8 General Attachment and Pupillage

In FY 2017/18, the Judiciary offered 542 opportunities for pupillage and general attachment as indicated in table 5.36 below.

**Table 5.36: Pupillage and Attachment FY 2017/18**

S/NO.	DESCRIPTION	INSTITUTION	OFFICE ATTACHED	NO.
1	Pupillage	Kenya School of Law	Supreme Court, Court of Appeal, High Courts and Magistrates courts.	152
2	Industrial Attachment	Various Learning Institutions	Respective directorate and court stations	
			HR & Admin	72
			Accounts	73
			DBS	4
			DPAC	6
			PMD	18
			Finance	4
			Library	12
			ICT	71
			DSCM	71
			Various Courts	58
			JTI	1
GRAND TOTAL				542

## 5.9 Judicial Attachment

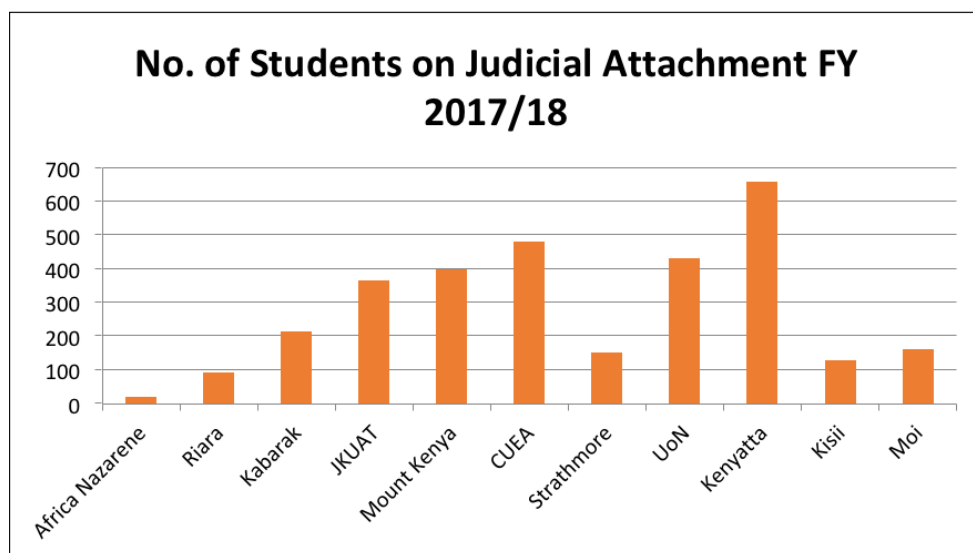
In the FY 2017/18, the Judiciary was able to place 3,089 students on judicial attachment. The universities and the number of students attached from each university are as shown in the table 5.37 and figure 5.3 below:

**Table 5.37: Judicial Attachment FY 2017/18**

S/No.	UNIVERSITY	JULY TO DEC 2017	JAN TO APRIL '18	MAY TO AUGUST '18	TOTAL
1	Africa Nazarene	0	18	0	18
2	Riara	0	90	0	90
3	Kabarak	0	214	0	214
4	JKUAT	121	100	143	364
5	Mount Kenya	128	104	165	397
6	Catholic University	135	156	187	478
7	Strathmore University	0	151	0	151
8	University of Nairobi	253	177	0	430
9	Kenyatta University	487	0	170	657
10	Kisii University	66	0	63	129
11	Moi University	161	0	0	161
	<b>TOTAL</b>	<b>1,351</b>	<b>1010</b>	<b>728</b>	<b>3,089</b>



**Figure 5.3: No. of Students on Judicial Attachment**



### Attachment and Pupillage

**Table.5.38. Attachments and Pupillage FY 2015/16 – FY 2017/18.**

S.NO.	CATEGORY	2015/16	2015/17	2017/18
1.	Clinical attachments	841	2,306	3,089
2.	Pupillage	48	87	152
3.	Other areas of specialization	113	493	390
	Total	1,002	2,886	3,631

There was an increase of 25.8 per cent in the number of students seeking attachment and pupillage opportunities as indicated in table 5.38 above. This can be attributed to the unique position of the Judiciary as the lead institution offering judicial and clinical attachment and the nature of programmes offered. However, there has not been a corresponding increase in the number of courts and magistrates who are expected to supervise the students and increased enrollment in the Law faculties of the respective universities.

### 5.10 Declaration of Assets and Liabilities

In line with the provisions of Part IV of the Public Officers and Ethics Act, 2003, the Judiciary administered the biennial Wealth declarations to all employees. It also administered initial declarations to all employees joining the Judiciary and exit declarations for employees leaving employment exiting the Judiciary.

### 5.11 Employee Wellness Programmes

The Judiciary implemented various staff welfare programmes. The medical scheme for Judges, Judicial officers and staff was renewed with effect from January 18, 2018. A group Life Insurance for all Judges and Group Personal Accident insurance for all employees is also in place. Other benefits which have enhanced staff welfare include the staff car loan and Mortgage scheme which the staff continued to enjoy during the year.

## 5.12 Transport

During the period under review, the Judiciary had 405 serviceable vehicles assigned to Court stations, Judges and other units and offices. Fifty vehicles were grounded.

## 5.13 Judiciary Establishment and Employee Composition

As at 30th June, 2018, the Judiciary had 5,598 employees against an approved establishment of 9,568. This means the judiciary is operating at 58.5 per cent of its optimum staffing levels as indicated in table 5.39

**Table. 5.39 Judiciary Establishment.**

S.NO	DESIGNATION	PLS	APPROVED	INPOST	VARIANCE
			POSTS		
1	Chief Justice		1	1	0
2	Deputy Chief Justice		1	1	0
3	Judge of Supreme Court		5	5	0
4	Judge of Appeal Court		30	19	11
5	High Court Judge		200	82	118
6	Environment and Land		30	34	-4
7	Industrial Court Judges		15	12	3
8	Chief Registrar		1	1	0
9	Deputy Chief Registrar		1	0	1
10	Registrar-SC, COA, High Court, SUB. Courts & JSC		6	6	0
11	Deputy Registrar		61	17	44
12	Chief of Staff		0	1	-1
13	Chief Court Administrator	16	1	0	1
14	Chief Magistrate	16	60	45	15
15	Senior Principal Magistrate	15	117	55	62
16	Principal Magistrate	14	100	64	36
17	Senior Resident Magistrate	13	180	151	29
18	Resident Magistrate*	12	230	144	86
19	Assistant Registrars	14	2	2	0
20	Law Clerks	15	16	22	-6
21	Chief Legal Officer	8	0	5	-5
22	Legal Counsel (Head of the Legal Unit)		1	1	0
23	Legal Counsel (Deputy Head of the Legal Unit)		1	0	1
24	Legal Counsel		3	0	3
25	Legal Researcher	11	88	50	38
26	Assistant Legal Researcher	9	0	1	-1
27	Chief Kadhi	16	1	1	0
28	Senior Principal Kadhi	15	2	1	1
29	Principal Kadhi	14	56	51	5

S.NO	DESIGNATION	PLS	APPROVED	INPOST	VARIANCE
			POSTS		
30	Senior Resident Kadhi	13			0
31	Resident Kadhi				0
32	Director of Human Resource Mgt	17	1	0	1
33	Deputy Director of Human Resource Mgt	16	2	1	1
34	Senior Asst. Director of Human Resource Mgt	15	2	1	1
35	Asst. Director of Human Resource Mgt.	14	16	14	2
36	Deputy Director-Admin	16	1	2	-1
37	Principal Human Resource Mgt. Officer	13	6	4	2
38	Principal Admin. Officer	13	1	2	-1
39	Chief Human Resource Mgt. Officer	12	9	7	2
40	Senior Human Resource Management Officer	13	6	1	5
41	Human Resource Development Officer 1	10	2	0	2
42	Human Resource Management Officer I	10	8	7	1
43	Human Resource Management Officer II	9	13	7	6
44	Chief Human Resource Mgt. Assistant	12	1	0	1
45	Senior Human Resource Mgt. Assistant	13	3	1	2
46	Human Resource Mgt. Assistant 1	10	5	0	5
47	Human Resource Mgt. Assistant 11	9	10	33	-23
48	Human Resource Management Asst. III	8	38	2	36
49	Deputy Director of Human Resource Development	16	1	0	1
50	Senior Asst. Director of Human Resource Development	15	1	0	1
51	Asst. Director of Human Resource Development	14	1	0	1
52	Principal Human Resource Development Officer	13	1	0	1
53	Chief Human Resource Development Officer	12	1	0	1
54	Senior Human Resource Development Officer	13	1	0	1
55	Human Resource Development Officer 11	9	13	0	13
56	Director Performance Management	17	1	0	1
57	Administrator General	16	0	0	0
58	Head Of Secretarial Services	16	1	0	1
59	Senior Principal Executive Secretary	15	2	0	2
60	Principal Executive Secretary	14	10	6	4
61	Senior Executive Secretary	13	30	17	13
62	Executive Secretary	12	35	14	21
63	Senior Personal Secretary	11	50	42	8
64	Personal Secretary 1	10	60	61	-1

S.NO	DESIGNATION	PLS	APPROVED	INPOST	VARIANCE
			POSTS		
65	Personal Secretary 11	9	102	44	58
66	Personal Secretary 111	8	169	63	106
67	Secretarial assistant 11/1& senior	7,8,9	461	247	214
68	Director of Finance	17	1	1	0
69	Chief Finance Officer	16	1	1	0
70	Deputy Chief Finance Officer	15	2	0	2
71	Asst. Director finance/Senior Principal Finance Officer	17	7	11	-4
72	Principal Finance Officer	13	1	0	1
73	Senior Finance Officer	12	2	1	1
74	Finance Officer 1	11	2	0	2
75	Finance Officer 11	10	2	1	1
76	Finance Officer 111	9	5	2	3
77	Director Audit & Risk Management	17	1	0	1
78	Deputy Director Audit & Risk Management	16	1	0	1
79	Senior Asst. Dir. Audit & Risk Management	15	2	0	2
80	Asst. Director Audit & Risk Management	14	2	0	2
81	Senior Risk & Internal System Auditor	8	0	3	-3
82	Deputy Director- Efficiency Monitoring	8	0	1	-1
83	Deputy Director -External Aid Resources	8	0	0	0
84	Chief Risk & Internal System Auditor	8	0	1	-1
85	Principal Internal Auditor	13	3	0	3
86	Principal Internal Auditor (ICT)	13	1	0	1
87	Chief Internal Auditor	12	5	0	5
88	Chief Internal Auditor (ICT)	12	1	0	1
89	Senior Internal Auditor	11	7	0	7
90	Senior Internal Auditor (ICT)	11	2	0	2
91	Internal Auditor I	10	7	4	3
92	Internal Auditor (ICT)	10	2	0	2
93	Internal Auditor II	9	10	0	10
94	Auditor II	8	0	4	-4
95	Architech I	8	0	1	-1
96	Quantity Surveyor	8	0	0	0
97	Building Technicial I	8	0	1	-1
98	Building Technicial II	8	0	2	-2
99	Director of Planning	17	1	0	1
100	Chief Economist/Chief Statistician	16	1	0	1
101	Deputy Chief Economist/Deputy Chief Statistician	15	1	1	0

S.NO	DESIGNATION	PLS	APPROVED	INPOST	VARIANCE
			POSTS		
102	Principal Economist/Principal Statistician	17	1	0	1
103	Senior Economist 1/Senior Statistician 1	13	1	1	0
104	Senior Economist 11/Senior Statistician 11	12	1	1	0
105	Economist 1/Statistician 1	11	2	0	2
106	Economist 11/Statistician 11	10	3	0	3
107	Chief Accounts Controller	17	0	1	-1
108	Senior Principal Accounts Controller/ Deputy Director Accounts	16	1	1	0
109	Principal Accounts Controller	15	1	0	1
110	Accounts Controller	17	1	0	1
111	Principal Accountant	13	5	0	5
112	Chief Accountant	12	6	7	-1
113	Assistant Accountant I & II	11	10	17	-7
114	Senior Accounts Assistant	10	67	12	55
115	Senior Accountant	11	20	13	7
116	Accountant 1	10	40	63	-23
117	Accountant 11	9	69	25	44
118	Accounts Assistant 1	9	60	37	23
119	Accounts Assistant 11	8	81	14	67
120	Director of I.C Technology	17	1	0	1
121	Deputy Director of I.C Technology	16	1	0	1
122	Assistant Director of I.C Technology	15	3	2	1
123	Senior Principal .I.C Technology Officer	17	1	0	1
124	Principal .I.C Technology Officer	13	3	3	0
125	Chief .I.C Technology Officer	12	10	0	10
126	Senior I.C. Technology Officer	11	20	13	7
127	I.C Technology Officer I	10	68	18	50
128	I.C Technology Officer II	9	72	27	45
129	I.C Technology Officer III	8	112	17	95
130	Computer Operations Assistant II	8	0	2	-2
131	Director of Public Communication	17	1	0	1
132	Deputy Director of Public Communication	16	1	1	0
133	Senior Asst. Director of Public Communication	15	2	0	2
134	Senior Principal/Assistant Dir. Public Communication Officer	14	1	1	0
135	Principal Public Communication Officer	13	1	1	0
136	Chief Public Communication Officer	12	1	1	0
137	Senior Public Communication Officer	11	1	0	1
138	Public Communication Officer 1	10	3	3	0
139	Public Communication Officer 11	9	3	0	3
140	Photo Journalist	8	0	1	-1

S.NO	DESIGNATION	PLS	APPROVED	INPOST	VARIANCE
			POSTS		
141	Chief Film Officer	8	0	0	0
142	Assistant Director Protocol	14	1	0	1
143	Principal Protocol Officer	13	2	0	2
144	Chief Protocol Officer	12	2	0	2
145	Senior Protocol Officer	11	2	0	2
146	Protocol Officer I	10	4	0	4
147	Protocol Officer II	9	6	0	6
148	Directory of Library Services	17	1	0	1
149	Deputy Directory of Library Services, Archives & Documentation	16	1	0	1
150	Senior Asst. Director of Library Services	15	1	0	1
151	Asst. Directory of Library Services	17	1	0	1
152	Principal Librarian	13	2	1	1
153	Chief Librarian/Principal Library Assistant	12	5	5	0
154	Senior Librarian	11	10	10	0
155	Librarian I/II	10,9	40	6	34
156	Senior Principal Library Assistant	12	1	1	0
157	Chief Library Assistant	10	20	12	8
158	Senior Library Assistant	10	10	0	10
159	Library Assistant I/II	8,9	120	1	119
160	Senior Principal Executive Officer	15	1	0	1
161	Principal Executive Officer	14	3	3	0
162	Chief Executive Officer	13	10	4	6
163	Senior Executive Officer	12	30	8	22
164	Executive Officer I	11	50	21	29
165	Executive Officer II	10	100	13	87
166	Director of Supply chain Management	17	1	1	0
167	Senior Principal Procurement Officer	14	1	0	1
168	Principal Procurement Officer	13	2	0	2
169	Chief Procurement Officer	12	2	2	0
170	Senior Procurement Officer	11	5	1	4
171	Procurement Officer I	10	10	9	1
172	Procurement Officer II	9	20	16	4
173	Supplies Officer I	8	0	6	-6
174	Principal Archivist	14	1	0	1
175	Chief Archivist	13	1	0	1
176	Senior Archivist	12	2	0	2
177	Archivist I	11	8	3	5
178	Archivist II	10	16	1	15
179	Archivist III	9	32	25	7
180	Senior Archives Assistant I	12	1	0	1

S.NO	DESIGNATION	PLS	APPROVED	INPOST	VARIANCE
			POSTS		
181	Senior Archives Assistant 11	11	1	0	1
182	Senior Archives Assistant III	10	0	12	-12
183	Archives Asst. I	9	30	14	16
184	Archives Assistant III/II	7,8	107	51	56
185	Principal Telephone Supervisor	13	1	0	1
186	Chief Telephone Supervisor	12	1	1	0
187	Senior Telephone Supervisor	11	1	1	0
188	Telephone Supervisor 1	10	1	1	0
189	Telephone Supervisor 11	9	1	5	-4
190	Senior Telephone Operator	8	20	12	8
191	Telephone Operator 1	7	83	7	76
192	Telephone Operator II	6	35	6	29
193	Principal Executive Assistant	12	5	0	5
194	Chief Executive Assistant	11	10	6	4
195	Senior Executive Assistant	10	106	69	37
196	Executive Assistant	9	304	206	98
197	Chief Procurement Assistant	11	1	0	1
198	Senior Procurement Assistant	10	6	0	6
199	Procurement Assistant	9	10	2	8
200	Principal Driver	9	5	4	1
201	Senior Driver 1	8	20	10	10
202	Driver 11/11/1/Senior Driver II	4,5,6,7	179	145	34
203	Security Guard	2,3,4	296	102	194
204	Assistant Security Officer	8	1	0	1
205	Security Warden (Ushers)	7	24	1	23
206	Senior Security Guard	8	0	25	-25
207	Security Officer II	8	0	13	-13
208	Senior Court Bailiff	10	36	9	27
209	Court Bailiff	9	44	45	-1
210	Senior Chargehand	9	1	0	1
211	Superintendent of Works	8	0	2	-2
212	Chargehand (Electrical)	8	1	0	1
213	Plumber Grade 111	6	2	0	2
214	Electrical Grade	5	1	0	1
215	Senior Storekeeper	8	20	26	-6
216	Storekeeper 1	7	30	52	-22
217	Storekeeper 11	6	60	5	55
218	Refrigeration(Mechanic 11/111	5,6	1	0	1
219	Motor -Vehicle Mechanic	5,6	2	0	2
220	Machine Operator	7	2	0	2
221	Process Server 11/1/Senior	6,7,8	220	40	180

S.NO	DESIGNATION	PLS	APPROVED	INPOST	VARIANCE
			POSTS		
222	Artisan I/II/III	4,5,6	1	3	-2
223	Receptionist	5	12	0	12
224	Chairman of the Co-Operative Tribunal. of the PPDT		1	0	1
225	Sec. of the PPDT		1	0	1
226	Programme Officer	11	1	4	-3
227	Programme Officer 1	9	4	0	4
228	Asst. Director, Performance Mgt	14	8	7	1
229	Deputy Director Performance Mgt	16	1	1	0
230	Princ. Planning & Budgeting officer	13	1	0	1
231	Princ. Monitoring & Evaluation officer	13	1	1	0
232	Legal Counsel (Deputy Chief of Staff)	16	1	0	1
233	Inspectorate Officer		1	0	1
234	Deputy Director Budgeting/Planning	16	0	0	0
235	Clerical/Higher/Senior Clerical officer	6,7,8	3589	2301	1288
236	Subordinate staff/Senior Subordinate, supervisor/Cleaning Supervisor I & II/ Messenger I	2,3,4, 5,6,7	866	594	272
<b>GRAND TOTAL</b>			<b>9,568</b>	<b>5,598</b>	<b>3,970</b>

#### 5.14 Employee composition

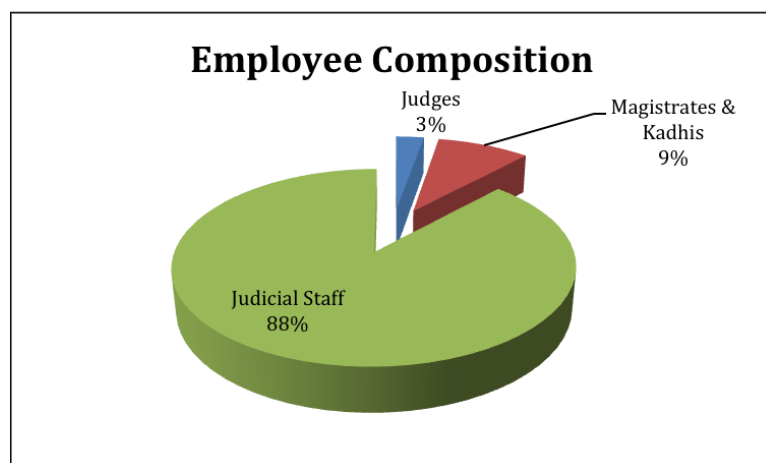
During the reporting period, the Judiciary had 5,598 employees, out of 155 Judges (2.8%). and 513 were Magistrates and Kadhis (9.2%). There were 4,930 or 88.1 per cent judicial staff as reflected in Table 5.33. In terms of gender composition, 2,702 – 49.2 per cent – were female, while 2,896 – 51.7 per cent were male. Some 91 employees – 1.6 per cent – were Persons living With Disabilities (PWDs). The distribution of members of the Judiciary by gender and designation is as shown in Table 5.33.

**Table. 5.33 Employee composition by gender**

CADRE	MALE		FEMALE	
	No.	Percent	No.	Percent
Judges	91	58.7%	64	41.3%
Magistrates and Kadhis	298	58.2%	215	41.8%
Judicial staff	2,507	50.8%	2,423	49.2%
<b>Total</b>	<b>2,896</b>	<b>51.7%</b>	<b>2,702</b>	<b>48.3%</b>



**Figure 5.4 Employee composition**



**Table 5.34: Employees with disability by cadre**

DESIGNATION	NO.	PERCENTAGE
Accountant	6	6.6 %
Archivists	4	4.4 %
Magistrates/Kadhi	7	7.7 %
Clerical Officers	42	46.2 %
Support Staff	11	12.1 %
Executive Officers	8	8.8 %
Judges	2	2.2 %
Human Resource Officer	2	2.2 %
Secretary	3	3.3 %
Process Server	1	1.1 %
Telephone	3	3.3 %
Stores	2	2.2%
<b>Total</b>	<b>91</b>	<b>100%</b>

**Table 5.35: Judges FY2017/18**

DESIGNATION	NO.	PERCENTAGE
Accountant	6	6.6 %
Archivists	4	4.4 %
Magistrates/Kadhi	7	7.7 %
Clerical Officers	42	46.2 %
Support Staff	11	12.1 %
Executive Officers	8	8.8 %
Judges	2	2.2 %
Human Resource Officer	2	2.2 %
Secretary	3	3.3 %
Process Server	1	1.1 %
Telephone	3	3.3 %
Stores	2	2.2%
<b>Total</b>	<b>91</b>	<b>100%</b>

**Table 5.36: Judges FY2017/18**

DESIGNATION	AGE BRACKET						TOTAL
	40-44	45-49	50-54	55-59	60-64	65-69	
Chief Justice						1	1
Deputy Chief Justice					1		1
High Court, ELRC and ELC Judge	4	23	51	33	11	7	129
Judge of Appeal		1	1	10	3	4	19
Supreme Court Judge			2	1	1	1	5
Chief Registrar			1				1
<b>Total</b>	<b>4</b>	<b>24</b>	<b>55</b>	<b>44</b>	<b>16</b>	<b>13</b>	<b>156</b>

Table 5.36: Judicial staff FY 2017/18

DIRECTORATE	DESIGNATION	STAFF BY GE BRACKET									
		20-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-64	TOTAL
COMMUNICATION OFFICERS	Asst. Director - Public Affairs & Communication						1				1
	Chief Public Comm. Officer						1				1
	Deputy Director - Public Affairs & Communication						1				1
	Director- Public Affairs & Communication								1		1
	Photojournalist			1							1
DBS	Principal Public Comm. Officer				1						1
	Public Communications Officer 1			2	1						3
	Architect					1					1
	Artisan III			1	1				1		3
	Building Technical II							1	1		2

DIRECTORATE	DESIGNATION	STAFF BY GE BRACKET									
		20-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-64	TOTAL
	Building Technician 1					1					1
	Chief Architect							1			1
	Senior Architect						1				1
	Superintendent of Works				1	1					2
FINANCE	ACCOUNTANT 1		1	18	27	7	3	3	3	1	63
	Accountant 2			4	7	4		5	5		25
	Accounts Assistant 1			11	12	8	3	2	1		37
	Accounts Assistant 2			5	5	1	1	2			14
	Assistant Accountant				1	7	2	3	3	1	17
	Auditor II		3		1						4
	Chief Accountant				4	2			1		7
	Chief Accounts Controller							1			1
	Chief Risk & Internal Systems Auditor				1						1

DIRECTORATE	DESIGNATION	STAFF BY GE BRACKET									
		20-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-64	TOTAL
	Deputy Chief Economist					1					1
	Deputy Director of Accounts							1			1
	Director Finance						1				1
	Finance Officer 3		1	1							2
	Finance Officer 2				1						1
	Internal Auditor 1		1	2	1						4
	Principal Risk & Internal Systems Auditor					1	1				2
	Regional Assistant Director - Finance				1	2	5	3			11
	Regional Principal Accountant				3		2				5
	Senior Accountant			1	5	4	1	1	1		13
	Senior Accounts Assistant				2	4	1	4	2		13
	Senior Economist/Statistician 2					1	1				2

DIRECTORATE	DESIGNATION	STAFF BY GE BRACKET									
		20-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-64	TOTAL
	Senior Finance Officer						1				1
	Senior Risk & Internal Systems Auditor			3							3
HUMAN RESOURCE & ADMINISTRATION	Archives Assistant 1				3	2	3	4	1	1	14
	Archives Assistant 2		13	13	16	5					47
	Archives Assistant 3					2			2		4
	Archivist 1					1	1	1			3
	Archivist 2						1				1
	Archivist 3		10	10	4	1					25
	Chief Executive Assistant						1		4	1	6
	Chief Executive Officer						2	1	1		4
	Chief Finance Officer							1			1
	Chief HRM Officer				2	1	3	1			7
	Chief Librarian/ Principal Lib. Asst					1	2	2			5
	Chief Library Assistant				1	7	3			1	12
	Chief of Staff				1		1				2

DIRECTORATE	DESIGNATION	STAFF BY GE BRACKET									
		20-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-64	TOTAL
	Chief Telephone Supervisor								1		1
	Cleaning Supervisor 1					1	2	4	2	1	10
	Cleaning Supervisor 2			5	9	16	12	10	23	4	79
	Clerical Officer 2	159	661	462	93	92	41	30	11		1549
	Court Bailiff			2	6	5	6	11	9	6	45
	Deputy Director - Administration					1		1			2
	Deputy Director-HRM					1					1
	Driver 1				2	1	2	5	1		11
	Driver 2		2	9	21	23	10	3	3		71
	Driver 3		3	7	21	23	5	4			63
	Executive Assistant				29	40	31	47	56	3	206
	Executive Officer 1			3	4	2	1	1	7	3	21
	Executive Officer 2			2	1	2	1	1	5	1	13
	Executive Secretary					10	2	1	1		14
	Higher Clerical Officer		13	100	98	81	36	14	11	6	359
	HRM Assistant 3				1			1			2

DIRECTORATE	DESIGNATION	STAFF BY GE BRACKET									
		20-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-64	TOTAL
	HRM Assistant II			16	11	4	2				33
	HRM Officer 1			1	2	1	1		1	1	7
	HRM Officer 2		1	2	2		1		1		7
	Librarian					3	1	1		1	6
	Library Assistant I								1		1
	Messenger Grade 1			1		1	2				4
	Personal Secretary 1	1	2	2	6	16	11	8	13	2	61
	Personal Secretary 2		1	4	23	12	1	2	1		44
	Personal Secretary 3		7	17	19	18			2		63
	Principal Administration Officer					1	1				2
	Principal Driver							1	3		4
	Principal Executive Officer								2	1	3
	Principal Executive Secretary						1	1	3	1	6



DIRECTORATE	DESIGNATION	STAFF BY GE BRACKET									
		20-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-64	TOTAL
	Principal HRM Officer					1					1
	Principal Librarian						1				1
	Principal Library Assistant					1		2			3
	Process Server 1				1		3	1	6	1	12
	Process Server 2		1	9	5	6	4	1	1	1	28
	Regional Assistant Director-HRM						6	5	3		14
	Regional Principal HR &Adm Officer				1	2	1				4
	Secretarial Assistant 1			6	13	24	14	6	9		72
	Secretarial Assistant 2		20	32	4	11	5	4	8		84
	Secretary / CEO - Tribunal						1				1
	Security Guard 1		1	2	6	4	1	1	1		16
	Security Guard 2		3	8	10	11	6	4	2		44
	Security Guard 3		1	10	12	10	6	3			42

DIRECTORATE	DESIGNATION	STAFF BY GE BRACKET									
		20-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-64	TOTAL
	Security Officer 2					3	6	3	1		13
	Security Warden						1				1
	Senior Archives Assistant					2	6	1	3		12
	Senior Archivist								1		1
	Senior Assistant Director HR & Admin								1		1
	Senior Clerical Officer			57	107	103	48	45	10		370
	Senior Court Bailiff				1	3		1	3	1	9
	Senior Driver				1	2	2	1	4		10
	Senior Executive Assistant				1	1	5	14	29	19	69
	Senior Executive Officer					1	2		5		8
	Senior Executive Secretary					5	5	4	3		17
	Senior HRM Assistant						1				1
	Senior HRM Officer								1		1

DIRECTORATE	DESIGNATION	STAFF BY GE BRACKET									
		20-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-64	TOTAL
	Senior Librarian					2	5	2	1		10
	Senior Personal Secretary					11	11	6	13	1	42
	Senior Principal Library Assistant							1			1
	Senior Process Server				5	4	7	8	10	5	39
	Senior Secretarial Assistant				14	29	19	7	21	1	91
	Senior Security Guard			7	8	5	2	2		1	25
	Senior Support Staff		6	24	32	40	24	18	9		153
	Senior Subordinate					1	2	2			5
	Senior Telephone Operator				1	4	3	3	1		12
	Senior Telephone Supervisor									2	2
	Support Staff 1		8	21	25	16	8	1			79
	Support Staff 2	1	6	19	14	7	5	4	1	4	61
	Support Staff Supervisor		9	41	40	37	23	18	17		185
	Telephone Operator 1				3	2			2		7

DIRECTORATE	DESIGNATION	STAFF BY GE BRACKET									
		20-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-64	TOTAL
	Telephone Operator 2				1	2	2	1			6
	Telephone Supervisor 1					1					1
	Telephone Supervisor 2								4	1	5
	Assistant Director – ICT				1	1					2
ICT OFFICERS	Computer Operations Assistant 2				2						2
	ICT Officer 1		4	10	2	2					18
	ICT Officer 2		7	6	12		2				27
	ICT Officer 3		6	11							17
	Principal ICT Officer				3						3
	Senior ICT Officer			2	10		1				13
	Assistant Legal Researcher			1							1
	Assistant Registrar					1		1			2
MAGISTRATES & OTHER OFFICERS	Chief Kadhi								1		1

DIRECTORATE	DESIGNATION	STAFF BY GE BRACKET									
		20-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-64	TOTAL
	Chief Legal Officer			2			1				3
	Chief Magistrate					4	18	9	13	1	45
	Deputy Chief Kadhi									1	1
	Deputy Registrar					1	1				2
	Kadhi 1			3	6	6		2	2		19
	Kadhi 2			5	7	9	1				22
	Law Clerks			8	13	1					22
	Legal Counsel					1					1
	Legal Researcher		9	25	16						50
	Principal Kadhi					1	4		4		9
	Principal Magistrate				2	30	21	7	4		64
	Registrar					1	5				6
	Resident Magistrate/Deputy Registrar		5	42	73	20	4				144
	Senior Legal Officer							1			1
	Senior Principal Kadhi						1				1
	Senior Principal Magistrate					22	23	6	3	1	55
	Senior Resident Magistrate			10	89	34	13	4	1		151

DIRECTORATE	DESIGNATION	STAFF BY GE BRACKET									
		20-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-64	TOTAL
PERFORMANCE MANAGEMENT											
	Assistant Director - Performance Management				2	2	1		1	1	7
	Deputy Director - Performance Management								1		1
	Deputy Director-Efficiency Monitoring							1			1
	Principal Monitoring & Evaluation Officer					1					1
PROCUREMENT	Programme Officer			2	2						4
	Chief Procurement Officer					2					2
	Director-Supplies Chain Management Services							1			1
	Procurement Assistant			2							2
	Procurement Officer 1			6	1	1	1				9
	Procurement Officer 2		2	10	1	1			2		16

DIRECTORATE	DESIGNATION	STAFF BY GE BRACKET									
		20-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-64	TOTAL
	Senior Procurement Officer			1							1
	Senior Store Keeper		2	5	14	3	2				26
	Store Keeper 1		11	26	8	6	1				52
	Store Keeper 2		3		1	1					5
	Supplies Officer 1			2		2	2				6
	TOTAL	161	823	1120	1020	923	550	384	386	76	5,443

**Table 15.34: Education level by Gender FY 2017 / 18**

LEVEL OF EDUCATION	MALE	FEMALE	TOTAL
Doctorate Degree (PhD)	6	2	8
Master's Degree	110	99	209
Bachelor's Degree	549	564	1,113
Post Graduate Diploma	105	90	195
Higher Diploma	17	57	74
Certificate Courses	131	103	234
Diploma	424	404	828
High School Certificate	1,417	1,327	2,744
Primary School	118	75	193
<b>Total</b>	<b>2,877</b>	<b>2,721</b>	<b>5,598</b>

### Conclusion

The Judiciary will continue to work closely with other State agencies and other key stakeholders to address emerging human resource issues in an effort to meet the expectations of Kenyans. In order to improve the execution of its mandate and enhance productivity, the Judiciary will focus on the following key interventions:

1. Engage Parliament, the National Treasury and Salaries and Remuneration Commission to address the human resource and compensation challenges facing the Judiciary;
2. Implement recommendations of organizational review exercise to ensure the administrative function is aligned to the judicial function to expeditiously deliver justice and that the courts and administrative offices are optimally staffed for effective service delivery;
3. Conclude the review of the Judiciary Human Resource Management policies and procedures and guidelines and align them to the Constitution and other legislative frameworks;
4. Conclude review of the Performance Appraisal System tool and introduce a rewards and sanction framework.



Table 5. 45. Details of furniture projects.

## STATUS REPORT OF FURNITURE PROJECTS FUNDED BY WORLD BANK (THROUGH JPIP) AS AT 30TH JUNE 2018

PROJECT	COURT STATION	CONTRACTOR'S NAME	CONTRACT SUM (KSH)	START DATE	COMPLETION DATE	ORIGINAL CONTRACT PERIOD (WKS)	% COMPLETE		STATUS REPORT
							FY 2016 -2017	FY 2017-2018	
FURNITURE CONTRACTS									
1	Muhoroni Law Courts (Tamu)	Timsales Ltd	6,912,678.00	08/01/2018	08/04/2018	13	0%	2%	Fabrication On-Going
2	Oyugis Law Courts		10,032,713.00	08/01/2018	08/04/2018	13	0%	2%	Fabrication On-Going
3	Nyamira Law Courts		10,041,068.00	08/01/2018	08/04/2018	13	0%	2%	Fabrication On-Going
4	Vihiga Law Courts		10,096,853.00	08/01/2018	08/04/2018	13	0%	2%	Fabrication On-Going
5	Nyando Law Courts		10,020,678.00	08/01/2018	08/04/2018	13	0%	2%	Fabrication On-Going
6	Kigumo Law Courts		7,962,567.00	08/01/2018	08/04/2018	13	0%	2%	Fabrication On-Going
7	Molo Law Courts		9,514,658.00	08/01/2018	08/04/2018	13	0%	2%	Fabrication On-Going
8	Chuka Law Courts		9,713,206.00	08/01/2018	08/04/2018	13	0%	2%	Fabrication On-Going
9	Engineer Law Courts		6,907,822.00	08/01/2018	08/04/2018	13	0%	2%	Fabrication On-Going
10	Makindu Law Courts		9,766,190.00	08/01/2018	08/04/2018	13	0%	2%	Fabrication On-Going
11	Kibera Law Courts		14,404,530.00	08/01/2018	08/04/2018	13	0%	2%	Fabrication On-Going

# Chapter 6

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**TRAINING AND CAPACITY BUILDING  
WITHIN THE JUDICIARY:**

**THE JUDICIARY TRAINING INSTITUTE**

## 6.o Introduction: Establishment and Mandate of JTI

**T**he Judiciary Training Institute (JTI) was established in 2008 to provide training for Judges and magistrates. Since then, the institute has grown into a formidable institution in the Judiciary, particularly following the promulgation of the 2010 Constitution. The JTI exercises its mandate for and on behalf of the Judicial Service Commission (JSC). **Article 172 (1) (d)** of the Constitution provides that one of the functions of the JSC is to prepare and implement programmes for continuous education and training of Judges and judicial officers. **Section 47 (2) (e) of the Judicial Service Act** vests power upon the Commission to make Regulations for orientation and training of judicial officers and staff.

In accord with the JSC constitutional obligation, JTI exercises its mandate as advised and directed by the Commission. This mandate includes:

- a) Providing and coordinating provision of continuous judicial education to Judges and judicial officers;
- b) Coordinating the preparation and implementation of the Judiciary training master calendar;
- c) Coordinating the induction and training of judiciary staff in consultation with the Directorate of Human Resource, registrars;
- d) Conducting regional training programs;
- e) Conducting Monitoring and Evaluation (M&E) to determine the impact of the Institute's training programs;
- f) Conducting research and developing draft policy on various aspects of administration of justice as advised and required by the Commission;
- g) Sensitizing Judges, judicial officers and judiciary staff on judiciary policies and circulars;
- h) Coordinating the development and publication of bench books and other publications relevant to enhancing skills and competence of Judges and judicial officers; and
- i) Spearheading on behalf of the Judiciary, constructive engagement and feedback with stakeholders and other arms of government.



*Director JTI Justice Prof. Otieno Odek receiving a certificate of very good performance from The Hon. Chief Justice at the Performance Management awards ceremony.*

## 6.1 Activities Held Towards Implementation of the Sustaining Judiciary Transformation (SJT) Blueprint

During the financial year under review, the following programs and activities were undertaken towards supporting the implementation of SJT in the Judiciary.

**Table 6.1: training Programmes carried out.**

SJT Pillar	Programme under SJT	Activities carried out
<b>Access to Justice and Clearing Case Backlog</b>	Citizen centric services and customer care Making justice more pro poor	<ul style="list-style-type: none"> <li>400 judiciary employees including clerical officers, secretaries, court interpreters, archivists and internal auditors underwent training on customer care, communication and integrity</li> </ul>
	Implementation of Bail and Bond Policy/Sentencing guidelines	<ul style="list-style-type: none"> <li>40 newly recruited magistrates were inducted on principles of sentencing, the bail and bond policy and its application</li> </ul>
	Active Case Management [ACM]	<ul style="list-style-type: none"> <li>40 newly recruited magistrates were inducted on ACM and handling pretrial conference</li> <li>450 magistrates were trained on practical aspects of case management in civil matters including the overriding objective of Order 11 CPC during June 2018 Colloquium.</li> </ul>
	Mainstreaming of Alternative Justice Systems (AJS)	<ul style="list-style-type: none"> <li>The Task Force visited various counties in the country to collect views. Counties visited include Isiolo, Nyeri, Lodwar, Kericho, Eldoret, Kisumu, Mombasa, Garissa, Meru, Marsabit.</li> </ul>
	Improving the work methods of judicial officers in the judiciary	<ul style="list-style-type: none"> <li>Coordinated development of a comprehensive Training Needs Assessment tool for the judiciary.</li> </ul>
	Use of technology to enhance work methods and individual accountability	<ul style="list-style-type: none"> <li>Developed a training database that can be accessed for verification of specific data/information regarding training</li> <li>Trained 70 judges and 90 magistrates on transcription</li> </ul>

<b>Integrity, Fight Against Corruption and Reorganization of the Judiciary Complaints Handling Mechanisms</b>	Institutionalize transparency, accountability and integrity	<ul style="list-style-type: none"> <li>• 40 newly recruited magistrates trained on judicial independence, accountability and the Official Secrets Act.</li> </ul>
	Institutionalize the Official Secrets Act	<ul style="list-style-type: none"> <li>• 400 employees including clerical officers, secretaries, court interpreters, archivists and internal auditors trained on integrity and professionalism.</li> <li>• 70 legal researchers inducted on conduct, ethics and integrity for Legal Researchers</li> </ul>

## 6.2 The Judiciary Training Master Calendar 2017/2018.

The Judiciary Master Calendar aids in coordinating and synchronizing all training activities within the Judiciary and to ensure that as far as possible, training programs do not interfere with the court diary and the core mandate of the Judiciary which is adjudication of disputes. To ensure that this is achieved, all units within the Judiciary indicate in advance their projected training programs in a financial year hence ensuring the institution has a panoramic view of all training activities and there is minimal interruption of court business.

The 2017 training master calendar was developed in a consultative process, involving internal and external stakeholders. The same was approved by the JSC for implementation during the period under review.

One of the major challenges faced during the implementation of the 2017 Master Calendar was the austerity measures introduced on Government institutions vide Treasury Circular No.11/2017. The austerity measures and subsequent slash in budgetary allocation necessitated a revision of the calendar. The affected programmes by the budget reduction were training workshops for the various courts, staff trainings at the Kenya School of Government, as well as holding of the judiciary sports day.

A summary of the activities that were carried out in the reporting period are provided in the table:

**Table 6.2: Summary of activities undertaken by JTI.**

Training/Activity	Explanation	No. Trained
Election Dispute Resolution (EDR) Related Trainings	<ul style="list-style-type: none"> <li>• Debrief for High Court Judges who handled appeals from the Political Parties Dispute Tribunal before the August 2017 elections</li> </ul>	31
	<ul style="list-style-type: none"> <li>• Training for the Special Benches (Judges and Magistrates) gazetted to hear petitions after the 2017 August elections</li> </ul>	70 Judges, 95 Magistrates and 40 Deputy Registrars
	<ul style="list-style-type: none"> <li>• EDR training and pre-petition meeting for Supreme Court</li> </ul>	7
	<ul style="list-style-type: none"> <li>• EDR training for Court of Appeal Judges</li> </ul>	21
	<ul style="list-style-type: none"> <li>• EDR training for newly appointed legal researchers</li> </ul>	58
	<ul style="list-style-type: none"> <li>• EDR training for Deputy Registrars</li> </ul>	40

Training/Activity	Explanation	No. Trained
Induction for judicial officers and staff	<ul style="list-style-type: none"> <li>Newly recruited Magistrates</li> <li>Newly recruited staff including clerical officers, secretaries, court interpreters, archivists, internal auditors</li> <li>Legal Researchers</li> </ul>	40 400 58
Specialized trainings/ working retreats	<ul style="list-style-type: none"> <li>Supreme Court</li> <li>Court of Appeal</li> <li>ELRC</li> <li>ELC</li> <li>High Court</li> </ul>	7 21 22 34 59
Colloquiums	Annual Judges Colloquium Annual Magistrates and Kadhis Colloquium session 1 Annual Magistrates and Kadhis Colloquium session 2	155 230 230
Continuing Judicial Education (CJE) for Magistrates	CJE 1 for magistrates CJE 2 for magistrates CJE 3 for magistrates	50 40 40
JTI Staff training and team building retreat	Training on change management, report writing, rapporturing and minute taking skills undertaken in August 2018 in Mombasa.	32
Judiciary Sports Day Technical Committee	Retreat to debrief on 2016/2017 annual sports day and strategize on way forward, undertaken in May 2018.	20





**The Chief Justice Hon. DK Maraga, JSC Commissioner Warsame and Director JTI Prof Otieno-Odek during the swearing in of newly appointed magistrates, December 2018.**



**Training on EDR at the Judiciary Training Institute**

### **6.2.1 The 2017/2018 Annual Judges Colloquium**

The highlight of the Judiciary training master calendar is the colloquiums. The annual event provides a platform for introspection and sharing of knowledge and experiences.

The theme of the 2017 Annual Judges Colloquium was *Introspection and Sharing Experiences: Sustaining Judicial Transformation in a Digital Environment and Electioneering Period*. The colloquium was held in Mombasa from 3–7 July 2017. The topics focused on the SJT blue print and particularly on the digital strategy of the judiciary. There were topics on *Progress of SJT*

*Implementation, eFiling and Electronic Case Management, Election Technology Law and Digital Evidence.* There were topics that focused on emerging jurisprudence such as *Reproductive Health Rights, Thoughts on Transgender and Intersex Persons and the '3<sup>rd</sup> Gender', Practice in Extradition and Human Trafficking.* In readiness for the electioneering period, topics like *Verification, Accuracy and Transparency, Scrutiny and Recount, Legislative Amendments in EDR, Practical Forms and Tools (demonstration), Benfords Law* as well as *Gender Based Violence; Ground for Nullification of Elections?* were included so as to refresh the Judges memories.

The presentation touching on the Environment and Land Court was titled *The Missing Link: Jurisdictional Mandate of the Environment Court* and that on the Employment and Labour Court was titled *Emerging Jurisprudence on Economic Disputes.*

The introspection and reflection session was a period of feedback from the Bar, the Commission on Administrative Justice as well as other key stakeholders. Finally, the Judges welfare sessions focused on *Psycho Socio Support in Work Related Stress* as well as *Change Management and Culture Change.*



**Annual Judges Colloquium July 2017**

### **6.2.2 Annual Magistrates and Kadhis Colloquium**

The third Magistrates and Kadhis Colloquium was held in two sessions running between 18–20 June 2018 and 27–29 June 2018 at the Great Rift Valley Lodge Naivasha. The theme of the colloquium was *Access to Justice; a Judiciary Service Agenda*, also in line with the SJT blueprint.

The topics on family law related to *marriage, divorce and succession* matters, and interrogated the new family law legislation. On the subject of commercial law, the discussion was on *Corporate and Partnership Structures under the Companies Act 2015.* In civil litigation the discussions were on *Case Management and Order 11 of the Civil Procedure Act* as well as *Exercising Diligence in Granting Temporary Injunctions in Civil Matters.* On emerging issues,



the discussion centered on *Energy Law* and on land law was the topic on *the End of the Cujus Maxim*. Finally the topics touching on Kadhis court related to *Sources of Law and Evidentiary Issues in Kadhis Courts*, *Jurisdictional Issues Relating to Personal Status*, and in particular *Children Matters* and finally on *The Overlapping Jurisdiction of Kadhis Courts in Children Matters*. A plenary discussion provided a forum for the Magistrates and Kadhis to share experiences on different issues. Further, the participants also held a discussion on *Essentials of Management and Leadership*.



**The Hon Chief Justice and Director JTI, with Magistrates and Kadhis at the Annual Magistrates and Kadhis Colloquium, 2018.**

### **6.3 Regional Programs.**

Kenya has maintained a comparative advantage in continuous judicial education training and a strong regional tradition in adjudication of disputes. Deliberate steps have been taken to leverage Kenya's comparative advantage to promote regional cooperation, networking and collaboration in judicial education and training. Through regional collaborative efforts, the Judiciary has created opportunities for conceptual and methodological competency, jurisprudential knowledge synthesis and exchange of judicial personnel as participants in regional training programs. The ensuing benefits promotes networking and enriches comparative aspects of jurisprudential development in the region. Some of the regional initiatives undertaken in the 2017 financial are highlighted in the following subsections

### **6.3.1 The Africa Judicial Education Network on Environmental Law: AJENEL**

The idea of a network whose focus is continuing training in environmental law for Judges and magistrates, was conceptualized through a regional symposium held in Johannesburg South Africa in January 2017 bringing together over 45 African countries. The Institute represented Kenya at the symposium and was nominated as a member of the working group. The key achievements of the working group during the 2017 financial year was the negotiation of draft rules and regulations for the network as well as the preparation of a regional training curriculum and manual on environmental law. It was envisaged that once adopted, the curriculum and manual would be tailored by each country to suit their specific needs and systems.

### **6.3.2 HIV/TB Sub Committee on Judicial Education**

This is an initiative of the Africa Regional Judges Forum (ARJF), on HIV/TB and Human Rights issues with the support of UNDP. The Forum began as an implementation response to the findings and recommendations of the 2012 report of the Global Commission on HIV and the Law and has been held since 2014. The Steering Committee oversees the activities of the Forum. The Judges Forum held a round table in Johannesburg South Africa in January 2018, which was attended by Judges, magistrates and judiciary training institutions from various African countries, including Kenya. The main objective was to examine ways of integrating HIV/TB and human rights topics into judicial training. The roundtable welcomed the idea of sustainable capacity building for Judges and magistrates in a subject little thought about during training.

In the end, a Judicial Education subcommittee was established to implement this agenda. It was further resolved that a regional curriculum on HIV/TB and human rights would be developed and adopted by countries according to their circumstances. Kenya currently holds the Chairmanship of the subcommittee and also serves as the secretariat of the subcommittee through JTI.

### **6.3.3 East African Judicial Education Committee (EAJEC)**

The East African Judicial Education Committee (EAJEC) began its operations in 1996 under the auspices of the secretariat of the permanent Tripartite Commission for Cooperation of the Republic of Uganda, the Republic of Kenya and the United Republic of Tanzania. It is a forum that brings together the Directors of judicial training institutes of the East African Community partner states. The main goal of EAJEC is to agree on common standards and principles for judicial education for

judicial officers at both national and regional levels. The EAJEC also coordinates and organizes trainings for Judges and magistrates at a regional level on areas of concern to the Community.

During the FY 2017/18 , JTI played a critical role in the negotiation and finalization of the Memorandum of Understanding between the EAJEC Countries. The Institute also provided a resource person during the EAJEC training sessions in Nairobi and South Sudan. Kenya will be hosting the regional EAJEC meeting in the FY 2018/19.

#### **6.3.4 Benchmarking visits**

On the 8<sup>th</sup> of March 2018 the Judiciary played host to a delegation of Somali criminal justice practitioners. The purpose of the visit was to benchmark on the establishment, mandate and organization of JTI as well as the running of trainings for Judges and magistrates. The team also took part in a moot session on terrorism which was held at the Supreme Court. They also called on the Attorney General and visited the Kenya School of Law. Other notable guests who visited or held benchmarking discussions during the FY included the Chief Justice of Gambia and the Judges of the Supreme Court of Zambia.



***Somali Criminal Justice Practitioners Benchmarking Visit.***

## **6.4 Research and Policy Programs Undertaken**

The Judiciary through the Institute has over the last two years running into the FY under consideration undertaken policy initiative to strengthen the Directorate of Policy and Research. A guideline on policy research was developed and is operational. A positive aspect of the guideline is that the framework, steps and methodology for judicial policy research and public participation is well laid out. This has enabled policy research to be focused and issue specific. The guidelines clearly distinguish between academic research and institutional policy research methodology. During the period under review, the following research and policy programs were undertaken:

### **6.4.1 Judiciary Training and Development Policy**

During the reporting period, several sessions including stakeholder review and validation sessions were held to review the Training and Development Policy for the Judiciary. The draft was presented to the Commission for approval.

### **6.4.2 Justice Needs and Satisfaction Survey**

The Justice needs and satisfaction survey project aimed at establishing the actual justice expectations of the Kenyan citizens and to assess the impact of judiciary transformation on consumers of court services. The survey was carried out by The Hague Institute for the Internationalization of law with the institution offering secretarial support. The report was launched in March 2018 in a ceremony presided over by the Hon. Lady Justice Philomena Mwilu, the Deputy Chief Justice of the Republic of Kenya. The study was disseminated to inform policy and decision making.

### **6.4.3 Training Needs Assessment**

The need for Training Needs Assessment (TNA) is founded on the realization that the training in the Judiciary should be demand driven and that curriculums must respond to the identified needs, competence and skills gap in the judiciary. The objective of the TNA was to identify skills and competence gaps as well as training needs within the institution. In order to ensure that a comprehensive training needs assessment was prepared, an expert was brought on board. As at the end of the reporting period, the TNA process was ongoing and the expert had prepared a tool for data collection.

### **6.4.4 Development of the Judicial Code of Conduct.**

The Public officers Ethics Act, 2016 Sections 5 and 6 provides for the establishment of a specific code of conduct and ethics for officers to achieve this requirement, a consultant was

brought on board to assist the Institute develop and draft the judicial code of conduct and ethics. During the period under review the draft document was subjected to stakeholders to get their views and thereafter a validation exercise was done. The document awaits final approval by the Commission.

#### **6.4.5 Alternative Justice System (AJS)**

During the reporting period, the taskforce on Alternative Justice System held committee meetings and consultative engagements in the various regions in the country namely Isiolo, Nyeri, Lodwar, Kericho, Eldoret, Kisumu, Mombasa, Garissa, Meru and Marsabit. The final output of the committee will be a framework for mainstreaming of AJS into the Justice system.

#### **6.4.6 Study on Clearing Case Back Log**

In line with Pillar 2 of the SJT framework, an expert was engaged to carry out interviews within selected stations throughout the country to gather information on reduction of existing case backlog in the Judiciary. A stakeholders' engagement was held during the FY 2017/18 and the consultant submitted a draft report. A stakeholder validation engagement is scheduled for the financial year 2018/19.

#### **6.4.7 Development of Kadhis Handbook and Rules of Practice for Kadhis Courts**

The Kadhis handbook and rules of practice are meant to facilitate Kadhis courts by streamlining their procedures and processes to ensure seamless and efficient dispensation of Justice under the Kadhis court. The Draft of the handbook and the rules of practice were developed and an expert has since been engaged to help finalize these Rules and come up with the final document.

#### **6.4.8 Development of Court Administrators Handbook**

The Court Administrators' handbook is a document envisaged to be a quick reference document for court administrators to help them deliver their mandate as expected in line with Judiciary's mission and vision. A draft handbook was prepared during the reporting period and is due for stakeholder validation scheduled for the next financial year.

#### **6.4.9 Study on Performance Evaluation Tools for Judicial Officers**

Information gathered from the daily court return template (DCRT) is crucial in the performance evaluation of Judges and Judicial officers. However, this information is currently not sufficient as it only captures the quantitative aspect of the performance.

In order to address this shortcoming, work is ongoing to develop a tool to capture qualitative aspects.



#### **6.4.10 Development of a Bench book on Environmental Law**

The development of the Bench book on Environmental Law aims at providing members of the ELC Bench and other officials who preside over environment and land matters with the tools for the resolution of disputes that come before them. The book is expected to provide a summary of the legal framework, processes and procedures applicable in the Environment and Land cases and to distill and present the prevailing jurisprudence on selected environment and land disputes as well as provide a quick reference of key resources and authorities for selected environment and land cases. A consultant was engaged and has developed an outline of the bench book which has been validated by stakeholders. A draft bench book will be ready during the financial year 2018/19.

#### **6.5 Training Innovations**

In order to systematize the training framework and programs and integrate service innovation in delivery of judicial education programs, an electronic database on foreign travels for Judges and judicial officers taken from the year 2013 onwards was introduced. The database also captures trainings attended by individual Judges and judicial officers also from 2013 onwards and shows the list of facilitators, topics facilitated and the programmes for all trainings undertaken in every financial year. An electronic compendium of all papers presented at the continuous judicial education training sessions and colloquiums from 2016 onwards are also made available through an electronic database.

Through the compendium, there has been a development of electronic institutional memory of the training programs. The databases have made it easier to retrieve information and will also be useful in ensuring equitable distribution of training opportunities to Judges and magistrates. The information will eventually be made available to all Judges and magistrates through an online portal.

#### **6.6 Digitization at JTI**

In line with the SJT goal of harnessing technology for service delivery, the Institute took deliberate measures to leverage on digitization as a means of enhancing efficiency in the exercise of its functions. Following the digitization, there has been positive service delivery outcome, increased efficiency and verifiable institutional memory and record. The following initiatives were completed during this period:

- i. Introduction of a JTI e-Newsletter: The newsletter hosted in the main judiciary website gives updates and details of activities at the Institute.
- ii. Application of the judiciary (JIPMAS) e-leave management system: Staff were trained on the various functionalities of the system and began using the same during the period under review.

- iii. Introduction of an e-requisition system: The system combines various modules such as requisition, finance and AIE.

## 6.7 Publications

In collaboration with development partner's, the publication of the following texts was made possible.

- i. Kerkering C and Mbazira C (eds) *Justice Needs and Satisfaction Survey Report* (2017).
- ii. Odek JO *Friend of the Court & the 2010 Constitution: The Kenyan Experience and Comparative State Practice on Amicus Curiae* (2017).
- iii. Odek JO *Election Technology Law and the Concept of "Did the Irregularity Affect the Result of the Elections?"* (2017).

The following publications were sourced and distributed to Judges and magistrates in specific courts in order to enhance their knowledge of contemporary and emerging areas of law.

- i. **Distributed to all ELC Judges**
  - Okidi CO, Kameri-Mbote P and Aketch M *Environmental Governance in Kenya* (2008).
  - Kenya Law Reports *Case Law on Land and Environment* – CD (distributed to all ELC Judges.)
- ii. **Distributed to all judges of the Superior Courts**
  - Capital Market Authority and Kenya Law *Digest of Decisions on Capital Market* (2017)
  - Katiba Institute *Fair Administrative Action* (2018).
- iii. Training Manual on Environmental Law for Judges and Magistrates in Africa (2017) (Manual developed in collaboration with KMJA.)

# Chapter 7

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## INFRASTRUCTURE



# INFRASTRUCTURE

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## 7.0 Introduction

**I**nfrastucture development is a major pillar in the transformation of the Judiciary as articulated in the Sustaining Judiciary Transformation (SJT) blueprint. Currently, 102 court construction and rehabilitation works are at various stages of progress and measures have been put in place to complete the projects within the stipulated timeframe and budgetary provisions while maintaining good quality of finishes. Once completed, these courts will provide adequate infrastructure that will improve physical access to courts and reduce the distance travelled in search of justice.

To initiate and guide new infrastructure projects, the Institution developed a long-term Judiciary Infrastructure Master Plan. This masterplan maps out the areas the institution envisages to establish and build new courts in the coming 10 years. It also provides basic expectations in a standard court that guides the Directorate of Building Services in the designs. Through the involvement of the Court Users Committees, specific court building design specifications are improved. Planning is undertaken to ensure that all new buildings are disability friendly, ICT infrastructure is integrated, drilling of a borehole is incorporated where necessary and there is provision of furniture, among others.

A strict monitoring mechanism has been established to forestall delays and substandard work in construction projects. It is further anticipated that the capacity of DBS will be enhanced through the recruitment of additional appropriate experts to enable them manage construction projects in a timely and effective manner.

## 7.1 Achievements

During the period under review, the following achievements were made:

- i). Ongoing construction and rehabilitation of 54 courts (see tables 7.1 and 7.2).
- ii). New construction and rehabilitation of 13 courts (see tables 7.1 and 7.2).
- iii). Tender evaluation for construction of 1 court (see table 7.1).
- iv). Drilling and equipping of 13 boreholes (see table 7.3)
- v). Shelving works at 10 courts (see table 7.4)
- vi). Provision of furniture for 11 courts (see table 7.5)

### **a) Ongoing construction and rehabilitation of 54 courts (see tables 7.1 and 7.2)**

The construction and rehabilitation works included construction of court rooms, public waiting sheds, cells, masonry perimeter walling, and office partitioning works among

others. During the period under review, the following 13 construction and rehabilitation projects were completed; Kigumo, Bomet, Nyando, Molo, Engineer, Othaya, Nkubu, Makindu, Competitions tribunal, Mpeketoni, Ukwala, Siaya and JSC offices. On average the remaining 41 projects are 73% complete.

The projects that had large scopes of works were not completed on time due to various challenges that included delayed payment, lengthy procedure for approvals of variations, unfavorable weather conditions, poor performance by contractors and budgetary cuts. A few examples with their specific challenges are as follows:

**i. Embu Law Courts.**

This involved construction of a five storey building that was to have 11 court rooms, 11 chambers, segregated cells, registries, and several offices. The main building is partially completed on the ground and first floor. ICT facilities, electrical fittings, plumbing facilities, lift and generator are in place. The project experienced delay in timely completion due to lengthy process of approval of variations, delayed payment to the contractors and budgetary cuts in the GoK funding.

**ii. Prefabricated courts – Garsen, Runyenjes, Tawa, Marimanti, Wanguru, Bomet and Othaya.**

These were timber prefabricated buildings that comprised of two court rooms, two chambers, cells, registries, and several offices. The projects were delayed by court cases in relation to procurement process. The matters have since been determined and works are complete or ongoing. Garsen, Othaya and Bomet are now complete and handed over. Runyenjes, Tawa and Wanguru should be completed in the coming financial year.

**iii. Murang'a Law Courts.**

The project entailed the addition of four court rooms and library to the existing building. Progress has been very slow actuated by delayed payment to the contractor due to austerity measures.

**iv. Mandera Law Courts**

During the reporting period, the management initiated the following interventions to mitigate on the delays witnessed;

- Meetings with the contractors to develop new strategy on timely completion of the projects.
- Elaborate engagement with Treasury to allocate and release more development funds.
- Appointment of Contract Implementation Committees and Inspection and Acceptance committees closer to the projects to unlock the contractual bottle necks.
- Streamlining and fast tracking of payment processing.

**b) New construction and rehabilitation of 10 courts (see tables 7.1 and 7.2).**

During the period under review, the Judiciary commenced construction of new buildings in order to bring justice closer to the people. The buildings are based on the model designs developed by our Directorate of Building Services officers in-house and will have eight court rooms and 12 chambers for the High Court model and four court rooms and five chambers for the magistrate court model. Other features for both models are registries, service bays, lactation rooms, ramps, gender separated cells, public washrooms, advocates lounge and offices. The following new constructions commenced in the reporting period.

**1. Habasweini Law Courts**

The construction commenced on 28<sup>th</sup> September 2017 with a planned construction period of 12 months. The new building is a magistrate court model that will have four court rooms, five chambers and other associated facilities as mentioned above. The project is funded through the GOK development fund at a contract sum of Ksh. 143,192,198. The work is being undertaken by M/S E-World International Ltd. It has registered a progress of approximately 7%. The main challenge was the necessity to change the foundation design due to unfavorable soil conditions.

**2. Isiolo Law Courts**

The project commenced on 4<sup>th</sup> October 2017 and has a contract period of 18 months. It is a five storey building that will have eight court rooms and 12 chambers. It will also have registries, lounges, cells and several offices. This is a World Bank funded project with a contract value of Ksh. 378,082,160 and the main contractor is M/S Dallo Holdings Ltd and as at the reporting period it was 46% complete.

**3. Wajir Law Courts.**

This project commenced on 27<sup>th</sup> September 2017 and has a contract period of 18 months. It is a World Bank funded project and is modelled on the High Court design. The project value is Ksh. 369,567,057 and the main contractor is M/S Anole Construction Ltd. The works are 6% complete as at the end of the reporting period.

**4. Ol- Kalou Law Courts.**

The project commenced on 18<sup>th</sup> September 2017 has a contract period of 18 months. On completion it will comprise of 8 court rooms, 12 chambers and other associated facilities. The new building is funded by the World Bank at a contract sum of Ksh. 399,323,129. The main contractor is M/S Neliwa Builders Ltd. The foundation stone for the project was laid on 11<sup>th</sup> October 2018. The works are at 16% completion.

**5. Kakamega Law Courts**

The Construction of the Kakamega Law courts commenced on 21<sup>st</sup> September 2017 and has a contract period of 18 Months. It's a World Bank funded project and is modelled on the High Court design with a project value is Ksh. 387,664,343. The main contractor is M/S Hashit Construction Ltd. The project was 20% complete.

**6. Mukurweini Law Courts.**

This project is World Bank funded and modelled on the magistrate court design. It will comprise of four court rooms and five chambers. It commenced on 19<sup>th</sup> September, 2017 with a contract duration is 12 months. The contract sum is Ksh. 158,978,307 and the main contractor is M/S One Source Ltd. The works are 20% complete.



*(The Chief Justice, Hon. Justice David Maraga (third right) assisted by the Governor for Nyandarua, H.E. Francis Kimemia (Second left) laying the foundation stone for the Ol Kalau High Court complex on the 18<sup>th</sup> October, 2018.)*

**7. Mombasa Law Courts.**

The construction of the Mombasa Law Court (Justice Towers) is a World Bank funded project modelled on a High Court design. Its construction commenced on 28<sup>th</sup> September 2017 with a contract period of 18 months. The project value is Ksh. 445,173,322 and the main contractor is M/S Bashash Ltd. As at the reporting period, the works are 20% complete.

**8. Makueni Law Court**

This is a World Bank funded project modelled on the High Court design with a contract period of 18 months. It commenced on 25<sup>th</sup> September 2017. The project value is Ksh. 410,099,717 and the main contractor is M/S Admo Construction Ltd. As at the reporting period, the works are 20% complete.

**9. Kangema Law Courts**

The construction of Kangema Phase II commenced on 20<sup>th</sup> September 2017 with a contract period of 18 months. On completion it shall have one court room, one chamber, a registry and a lounge. It is a World Bank funded project with a value of Ksh.42,992,271. The main contractor is M/S High Octane Ltd and the works are 38% complete.

#### **10. Kajiado Law Courts**

Kajiado Law courts is a World Bank funded project modelled on a High Court design. It commenced on 15<sup>th</sup> March 2018 with a contract period of 18 months. The project value is Ksh. 398,404,995 and the main contractor is M/S Misbah Networks Ltd. The works are 8% complete as at the reporting period.

#### **c) Tender evaluation for construction of 1 court**

The tender and proposed construction of Kapsabet Law Courts, (JPIP/NCB/WORKS/05/2017-2018) was advertised on 26<sup>th</sup> April 2018. The tender was opened and is under evaluation.

#### **d) Drilling and equipping of 13 boreholes (see table 7.3)**

Under the ongoing World Bank supported projects, contracts for the drilling and equipping of 13 boreholes were awarded. The purpose was to ensure reliable and continuous supply of clean water in these courts. The works were carried out in the stations listed below.

##### **1. Tamu Law Courts (Muhoroni).**

The drilling works commenced on 12<sup>th</sup> March 2018 with a contract period of 26 weeks. They were carried out by M/S Ziyale Investments Ltd at a contract value of Ksh. 4,610,866. As at the reporting time, this project was 100% complete.

##### **2. Oyugis Law Courts.**

The works commenced on 13<sup>th</sup> March 2018 with a contract period of 26 weeks. The works are being carried out by M/S Ziyale Investments Ltd at a contract value of Ksh. 4,610,866. The works are 60% complete.

##### **3. Nyamira Law Courts.**

The project was carried out by M/S Ziyale Investments Ltd with a contract value of Ksh. 4,610,866. The works commenced on 14<sup>th</sup> March 2018 with a contract period of 26 weeks. The works are 100% complete.

##### **4. Vihiga Law Courts.**

The drilling works commenced on 14<sup>th</sup> March 2018 with a contract period of 26 weeks. The works are being carried out by M/S Taxan Investments Ltd at a contract value of Ksh. 3,921,700. The works are 90% complete.

##### **5. Nyando Law Courts**

The works commenced on 14<sup>th</sup> March 2018 with a contract period of 26 weeks. The works were carried out by M/S Taxan Investments Ltd at a contract value of Ksh. 3,921,700. The works are 100% complete.

**6. Siaya Law Courts**

The drilling works are being carried out by M/S Taxan Investments Ltd at a contract value of Ksh. 3,921,700. The works commenced on 14<sup>th</sup> March 2018 with a contract period of 26 weeks. The works are 90% complete.

**7. Molo Law Courts**

The drilling is being carried out by M/S Wotech Ltd at a contract value of Ksh. 4,825,660. The works commenced on 14<sup>th</sup> March 2018 with a contract period of 26 weeks. The works are 70% complete.

**8. Nakuru Law Courts**

The drilling works are being carried out by M/S Wotech Ltd at a contract value of Ksh. 4,825,660. The works commenced on 14<sup>th</sup> March 2018 with a contract period of 26 weeks. The works are 20% complete.

**9. Engineer Law Courts**

The works are being carried out by M/S Wotech Ltd at a contract value of Ksh. 4,825,660. The works commenced on 14<sup>th</sup> March 2018 with a contract period of 26 weeks. The works are 20% complete.

**10. Makindu Law Courts**

The project is being carried out by M/S Iconic Drillers and Construction Company Ltd at a contract value of Ksh. 4,178,730. The works commenced on 22<sup>nd</sup> May 2018 with a contract period of 32 weeks. The works are 60% complete.

**11. Garissa Law Courts**

The drilling works were to commence on 22<sup>nd</sup> May 2018 with a contract period of 32 weeks and are to be carried out by M/S Iconic Drillers and Construction Company Ltd at a contract value of Ksh. 4,178,730. The works have however not commenced.

**12. Kigumo Law Courts**

The works were to commence on 22<sup>nd</sup> May 2018 with a contract period of 32 weeks and were carried are to be carried out by M/S Iconic Dillers and Construction Company Ltd at a contract value of Ksh. 4,178,730.. The works have however not commenced.

**13. Chuka Law Courts**

The drilling works commenced on 22<sup>nd</sup> May 2018 with a contract period of 32 weeks. The works are being carried out by M/S Iconic Dillers and Construction Company Ltd at a contract value of Ksh. 4,178,730. The works are 60% complete.



**e) Shelving works at 10 courts (see table 7.4)**

Judiciary identified the need to have reliable and safe facilities where court documents and files can be stored. As a result, 40ft metal containers were fabricated with metal plates and tubes to create functional registries. In some courts timber was used to produce shelves that will be installed in registries.

The following courts will have metal shelving when the shelving projects are complete **Kisii Law Courts, Kitale Law Courts, Meru Law Courts, Kabarnet Law Courts, Marsabit Law Courts, and Homabay Law Courts.**

The six containers for each court will be installed by M/S Stockmart Ltd. The contract sum for each container is Ksh 1,224,962. The project commenced on 4<sup>th</sup> November 2017 and was to be completed on 4<sup>th</sup> May 2018. Two containers for Kisii and Homa Bay have since been delivered. The others are yet to be delivered. The delay was necessitated by the need to change the designs due to different user requirements and prevailing climate conditions.

The courts that will have timber shelving for their registries are; **Bomet Law Courts, Kisumu Law Courts, and Busia Law Courts.** The above courts will have timber shelving fabricated by M/S Tawash Construction Company Ltd at a contract sum of Ksh. 29,825,478. The contract commenced on 24<sup>th</sup> October 2017 and was expected to be complete by 24<sup>th</sup> April 2018. Works at all the courts are 20% and the contractor has been urged to expedite on the completion of the works.

Milimani Law Courts will also have timber shelving and this is being fabricated by M/S Glennsteam Engineering Works Ltd. The contract also entails construction of a customer care and record centre. The Contract sum is Ksh. 50,348,410. The contract commenced on 18<sup>th</sup> October 2017 and was expected to be complete by 18<sup>th</sup> June 2018. The works are at 30%.

**f) Provision of furniture for 11 courts (see table 7.4)**

The supply and delivery of office furniture contract was awarded to M/S Timsales Ltd at a contract sum of Ksh. 105,372,963. The contract commenced on 8<sup>th</sup> January 2018 and was expected to be completed by 8<sup>th</sup> April 2018. The period was extended to 31<sup>st</sup> December 2018. The initial completion date was not achieved because the Main Contractor had difficulty in getting raw materials for fabrication due to the ban on timber logging.

It is envisaged that Furniture will be delivered to the new buildings when the fabrication is complete. The assorted office furniture include; office chairs, filing cabinets, office desks, chairs, lockable shelving, coat hangers, wooden tables, sofa sets, work stations, white boards, carrels, credenza, trolleys, book shelves and lecterns

## **Completed projects**

These projects were funded by the World Bank, through the Judicial Performance Improvement project (JPIP) and the Government of Kenya. The projects are at various stages of construction, while some have been completed and handed over to Judiciary.

The following eight new court buildings were completed during the review period.

### **1. Kigumo Law Courts**

The Kigumo Law Court building was constructed at a cost of Sh74.8 million. The construction started in September 2015 with an initial completion date of September 2016, which was later revised to December 2018. It consists of three court rooms, separate registries for each division, new cells which have separate holding facilities for men, women and juveniles complete with toilets, client consultation rooms near the holding cells, a well-stocked library for judicial officers and advocates together with a lounge, and three chambers for judicial officers. Ramps for the disabled have been included in the construction. In addition, a borehole will be installed at a cost of Ksh. 4.2 million to ensure there is steady supply of water. Its construction was undertaken by Ms Marimo Building Contractors and funded under the JPIP programme.

### **2. Makindu Law Courts**

This is a one storey building that comprises four court rooms, five chambers, gender segregated cells, registries and several offices. The building also has a waiting area and washrooms for Judiciary clients. Ramps have been incorporated in the building. The World Bank funded this project at a cost of Ksh 96,855,446 and the contract was executed by M/S Gracan Construction Ltd. The construction commenced on 8<sup>th</sup> March 2016 with a planned completion date of 8<sup>th</sup> March 2017 which was extended to 30<sup>th</sup> May 2018.

### **3. Bomet Law Courts**

The building is made of pre-treated well-seasoned timber. It has two court rooms, two chambers, cells (made of masonry blocks), registries and several offices. The project was funded through the GOK development budget and was envisaged to be completed in five months but encountered difficulties because of court cases on the procurement process. The contract was awarded to M/S Economic Housing Group Ltd at a cost of Ksh. 81,664,580. The project commenced on 15<sup>th</sup> January 2013 and was expected to be completed by 31<sup>st</sup> May 2013. After determination of the issues by the court, the contract period was extended to 31<sup>st</sup> December 2018. The building is complete and is being used by the court.

### **4. Nyando Law Courts**

The new building comprises three court rooms, three chambers, cells, registries and several offices. Other features include a public waiting area, washrooms, generator house and sentry block. This was a World Bank funded project which was executed by M/S Philmark System Services Ltd at a contract sum of Ksh. 74,827,121. The



construction commenced on 4<sup>th</sup> September 2015 with an initial completion date of 2<sup>nd</sup> September 2016, which was extended to 6<sup>th</sup> March 2018.

**5. Molo Law Courts**

The building comprises of four court rooms, four chambers, cells, registries, library and several offices. It also has a public waiting area, washrooms, generator house and sentry house. The project was funded by the World Bank at a cost of Ksh.99, 910,995. The contract was executed by M/S Atlas Plumbers Ltd. The construction commenced on 19<sup>th</sup> May 2015 with an expected completion date of 17<sup>th</sup> May 2016. The period was however extended to 24<sup>th</sup> May 2018.

**6. Engineer Law Courts**

The building comprises two court rooms, two chambers, cells, registries, library and several offices. It also has a public waiting area, washrooms, generator house and sentry house. It was funded by World Bank at a cost of Ksh.78, 615,579 The contract was executed by M/S Yomason Contractors Ltd. The construction commenced on 8<sup>th</sup> June 2015 and was expected to be completed on 8<sup>th</sup> August 2016, however, the period was extended to 21<sup>st</sup> March 2018.

**7. Nkubu Law Courts**

The building consists of five court rooms, five chambers, cells, library and several offices. A ramp was also constructed to cater for people with physical disability. The building was constructed using funds from GOK development budget at a cost of Ksh. 85,958,760. The main contractor was M/S Just in Time. The construction commenced on 12<sup>th</sup> January 2015 and was completed on 30<sup>th</sup> December 2017.

**8. Othaya Law Courts**

The building is made of pre-treated well-seasoned timber that has two court rooms, two chambers, cells (made of masonry blocks), registries and several offices. The project was funded through the GOK development budget and was envisaged to have been completed in five months from 15<sup>th</sup> January, 2013 but it encountered difficulties because of court cases. The contract was awarded to M/S Economic Housing Group Ltd at a cost of Ksh. 81,664,580. After determination of the issues by the court, the time was extended to 31<sup>st</sup> December 2018. The building is complete and is being used by the court.

Six new court buildings were partially completed during the reporting period and are in use. These are:

**1. Chuka Law Courts**

The building comprises six court rooms, six chambers, cells, registries, library and several offices. It also has a public waiting area, washrooms, generator house and sentry house. It is funded by the World Bank at a cost of Ksh. 98,106,543 The contract was

executed by M/S Philmark System Services Ltd. The construction commenced on 5<sup>th</sup> June 2015 and was expected to be completed on 13<sup>th</sup> June 2016. The period was extended to 23<sup>rd</sup> July 2018.

**2. Muhoroni Law Courts**

The building comprises 2 court rooms, 2 chambers, cells, registries, library and several offices. It also has a public waiting area, washrooms, generator house and sentry house. It is funded by the World Bank at a cost of Ksh. 74,879,919 The contract was executed by M/S Philmark System Services Ltd. The construction commenced on 6<sup>th</sup> September 2015 and was expected to be completed on 8<sup>th</sup> June 2016. The period was extended to 30<sup>th</sup> September 2018.

**3. Vihiga Law Courts**

The building comprises of two court rooms, two chambers, cells, registries, library and several offices. It also has a public waiting area, washrooms, generator house and sentry house. It is funded by World Bank at a cost of Ksh. 74,879,919 The contract was executed by M/S Philmark System Services Ltd. The construction commenced on 6<sup>th</sup> September 2015 and was expected to be completed on 8<sup>th</sup> June 2016. The period was extended to 30<sup>th</sup> September 2018.

**4. Nyamira Law Courts**

The building comprises of four court rooms, five chambers, cells, registries, library and several offices. It also has a public waiting area, washrooms, generator house and sentry house. It was funded by World Bank at a cost of Ksh. 118,305,748. The contract was executed by M/S J.N. Investments Ltd. The construction commenced on 18<sup>th</sup> June 2015 and was expected to be completed on 17<sup>th</sup> June 2016. The period was however extended to 21<sup>st</sup> September 2018.

**5. Tawa Law Courts**

The building is made of pre-treated well-seasoned timber. It has two court rooms, two chambers, cells (made of masonry blocks), registries and several offices. The project was funded through the GOK development budget. The contract was awarded to M/S Timsales Ltd at a cost of Ksh. 99,959,218. The project commenced on 23<sup>rd</sup> January 2013 and was expected to be completed by 31<sup>st</sup> May 2013. After determination of the issues by the court, the contract period was extended to 31<sup>st</sup> December 2018. The building is practically complete and is being used by the court.

**6. Oyugis Law Courts**

The building comprises three court rooms, two chambers, cells, registries, library and several offices. It also has a public waiting area, washrooms, generator house and sentry house. It was funded by World Bank at a cost of Ksh. 109,731,080 The project is being executed by M/S Sasah Contractors Ltd. The construction commenced on 29<sup>th</sup> June 2015 and was expected to be completed on 28<sup>th</sup> June 2016. The period was extended to 14<sup>th</sup> November 2018.

Table 7.1. Details of projects funded by World Bank through JPIP

STATUS REPORT OF PROJECTS FUNDED BY WORLD BANK (THROUGH JPIP) AS AT 30TH JUNE 2018											
No.	Project	Court Station	Contractor's Name	Contract Amount	Start Date	Initial Completion Date	Revised Completion Date	Initial Contract Period (Wks)	% Completeness FY 2016 -2017	FY 2017-2018	Status Report
Ongoing projects											
1	Kigumo Law Courts	Kigumo	Marimo Construction Limited	94,160,933.00	29/06/15	29/06/16	18/9/2018	52	98%	100%	Complete
2	Chuka Law Courts	Chuka	Philmark System Services Limited	96,881,316.00	05/06/15	13/06/16	23/7/2018	52	78%	87%	On-going
3	Engineer Law Courts	Engineer	Yomason Contractors Limited	78,615,579.00	08/06/15	08/08/16	21/3/2018	52	98%	99%	Practically complete
4	Vihiga Law Courts	Vihiga	Lunao Enterprises Limited	78,476,529.00	16/09/15	14/09/16	14/11/2018	52	88%	96%	On-going
5	Nyando Law Courts	Nyando	Philmark System Services Ltd	74,827,121.00	04/09/15	02/09/16	06/03/18	52	84%	99%	Practically complete
6	Molo Law Courts	Molo	Atlas Plumbers Limited	99,910,995.00	19/06/15	17/06/16	24/5/2018	52	98%	98%	Practically complete
7	Oyugis Law Courts	Oyugis	Sasah Contractors Limited	109,731,080.00	29/06/15	28/06/16	21/9/2018	52	88%	95%	On-going
8	Nyamira Law Courts	Nyamira	JN Investments Limited	118,305,748.00	18/06/15	17/06/16	18/9/2018	52	65%	90%	On-going
9	Muhoroni Law Courts (Tamu)	Tamu	Philmark System Services Limited	74,879,919.00	06/09/15	08/06/16	30/9/2018	52	75%	97%	On-going
10	Nakuru Law Courts	Nakuru	Diwafa Investments Limited	347,765,950.00	18/02/16	18/08/17	18/10/2018	110	80%	80%	On-going
11	Siaya Law Courts	Siaya	Nanchang/GL Williams JV	342,751,951.00	21/03/16	21/09/17	22/11/2018	110	60%	70%	On-going
12	Garissa Law Courts	Garissa	Inshallah Limited	351,323,457.00	22/01/16	22/07/17	11/05/18	110	40%	72%	On-going
13	Makindu Law Courts	Makindu	Gracan Construction Limited	96,855,446.00	08/03/16	07/03/17	30/5/2018	52	90%	100%	Complete
14	Nanyuki Law Courts	Nanyuki	Pinnie Agency Limited	318,559,759.00	10/03/16	10/09/17	12/10/18	110	60%	76%	On-going

15	Kibera Law Courts	Nairobi	Havi Construction	137,649,133.00	13/04/16	13/04/17	30/6/2018	52	40%	65%	On-going
16	Voi Law Courts	Voi	Concordia Building & Eng. Limited	347,582,674.49	29/03/2017	29/09/2018		78	5%	45%	On-going
17	Kapenguria Law Courts	Kapenguria	County Builders Ltd	400,880,621.00	21/03/2017	21/09/2018		78	5%	40%	On-going
18	Maralal Law Courts	Maralal	Debroso Construction Limited	378,745,872.00	23/03/2017	23/09/2018		78	8%	35%	On-going
19	Kwale Law Courts	Kwale	Inforserve Networks Limited	389,998,592.00	05/06/17	11/06/18		78	5%	32%	On-going
<b>New projects</b>											
20	Isiolo Law Court	Isiolo	Dallo Holdings Limited	379,082,160.90	04/10/17	10-10-18		78	8%	46%	On-going
21	Wajir Law Courts	Wajir	Anole Construction Co. Limited	369,567,057.00	27/9/2017	27/3/2019		78	0%	6%	On-going
22	Ol-Kalou Law Courts	Ol-Kaluo	Nelliwa Builders	399,323,129.00	18/9/2017	17/3/2019		78	0%	16%	On-going
23	Kakamega Law Courts	Kakamega	Hashit Construction & General Sup. Limited	387,664,343.33	21/9/2017	21/3/2019		78	0%	20%	On-going
24	Mukurweini Law Courts	Mukurweini	One Source Company Limited	158,978,307.00	19/9/2017	18/9/2018		52	0%	20%	On-going
25	Mombasa Law Courts	Mombasa	Bashash Ltd	445,173,322.65	28/9/2017	28/3/2019		78	0%	20%	On-going
26	Makueni Law Courts	Makueni	Admo Ltd	410,099,717.10	25/9/2017	25/3/2019		78	0%	20%	On-going
27	Kangema Law Courts (Phase II)	Kangema	High Octane Engineering Ltd	42,992,271.57	20/9/2017	18/9/2018		52	0%	38%	On-going
28	Kajiado Law Courts	Kajiado	Misbah Networks Ltd.	398,407,995.00	15/3/2018	15/9/2019		78	0%	8%	On-going
<b>Tender evaluation</b>											
29	Kapsabet Law Courts	Kapsabet						120	0%	0%	Tender evaluation

Table 7.2. Details of borehole projects.

## STATUS REPORTS OF BOREHOLE PROJECTS FUNDED BY WORLD BANK (THROUGH JPIP) AS AT JUNE 30, 2018

No.	Project	Court Station	Contractor's Name	Contract Amount (Ksh)	Start Date	Initial Completion Date	Initial Contract Period (Wks)	% Completeness	Status Report
1	CLUSTER-D CONTRACTS							FY 2016-2017	
a)	Muhoroni Law Courts, Tamu	Tamu	Ziyale Investments Ltd	4,610,866	12/03/2018	12/08/2018	26	0%	Practically complete
b)	Oyugis Law Courts	Oyugis		4,610,866	13/03/2018	13/08/2018	26	0%	On-going
c)	Nyamira Law Courts	Nyamira		4,610,866	14/03/2018	14/08/2018	26	0%	Practically complete
2	CLUSTER-C CONTRACTS								
a)	Vihiga Law Courts	Vihiga	Taxan Investment Ltd	3,921,700	14/03/2018	14/08/2018	26	0%	Complete
b)	Nyando Law Courts	Nyando		3,921,700	14/03/2018	14/08/2018	26	0%	Complete
c)	Siaya Law Courts	Siaya		3,921,700	14/03/2018	14/08/2018	26	0%	Complete
3	CLUSTER-B CONTRACTS								
a)	Molo Law Courts	Molo	Wotech Ltd	4,825,660	14/03/2018	14/08/2018	26	0%	On-going
b)	Nakuru Law Courts	Nakuru		4,825,660	14/03/2018	14/08/2018	26	0%	On-going
c)	Engineer Law Courts	Engineer		4,825,660	14/03/2018	14/08/2018	26	0%	On-going
4	CLUSTER-A CONTRACTS								
a)	Makindu Law Courts	Makindu	Iconic Drillers & Construction Co. Ltd	4,178,730	22/05/2018	22/01/2019	32	0%	On-going
b)	Garissa Law Courts	Garissa		4,178,730	22/05/2018	22/01/2019	32	0%	Not commenced
c)	Kigumo Law Courts	Kigumo		4,178,730	22/05/2018	22/01/2019	32	0%	Not commenced
e)	Chuka Law Courts	Chuka		4,178,730	22/05/2018	22/01/2019	32	0%	On-going

Table 7.3. Details of shelving projects.

## STATUS REPORT OF SHELIVING PROJECTS FUNDED BY WORLD BANK(THROUGH JPIP) AS AT 30TH JUNE 2018

Project	Court Station	Contractor's Name	Contract Amount (Ksh)	Start Date	Initial Completion Date	Initial Contract Period (Wks)	% Completeness	Status Report
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<b>SHELVING – (FABRICATED CONTAINER)</b>									
1	Kisii Law Courts	Kisii		1,224,962.00	04/11/2017	04/05/2017	26	FY 2016 -2017	FY 2017-2018
2	Kitale Law Courts	Kitale		1,224,962.00	04/11/2017	04/05/2017	26	0%	100%
3	Meru Law Courts	Meru		1,224,962.00	04/11/2017	04/05/2017	26	0%	0%
4	Kabarnet Law Courts	Kabarnet		1,224,962.00	04/11/2017	04/05/2017	26	0%	0%
5	Marsabit Law Courts	Marsabit		1,224,962.00	04/11/2017	04/05/2017	26	0%	0%
6	Homabay Law Courts	Homabay		1,224,962.00	04/11/2017	04/05/2017	26	0%	100%
<b>TIMBER SHELVING REGISTRIES - KISUMU, BOMET, BUSIA, MILIMANI</b>									
1	Bomet Law Courts	Bomet		29,825,478.00	24/10/2017	24/04/2018	26	0%	20%
2	Kisumu Law Courts	Kisumu			24/10/2017	24/04/2018	26	0%	20%
3	Busia Law Courts	Busia			24/10/2017	24/04/2018	26	0%	20%
4	Milimani Law Courts	Milimani		50,348,410.00	18/10/2017	18/06/2018	26	0%	30%

**Table 7.4. Details of furniture projects.**

STATUS REPORT OF FURNITURE PROJECTS FUNDED BY WORLD BANK(THROUGH JPIP) AS AT 30TH JUNE 2018									
Project	Court Station	Contractor's Name	Contract Amount (Ksh)	Start Date	Completion Date	Initial Contract Period (Wks)	% Completeness		Status Report
							FY 2016 -2017	FY 2017-2018	
FURNITURE CONTRACTS									

1	Muhoroni Law Courts (Tamu)	Tamu	Timsales Ltd	6,912,678.00	08/01/2018	08/04/2018	13	0%	2%	Fabrication on-going
2	Oyugis Law Courts	Oyugis		10,032,713.00	08/01/2018	08/04/2018	13	0%	2%	Fabrication on-going
3	Nyamira Law Courts	Nyamira		10,041,068.00	08/01/2018	08/04/2018	13	0%	2%	Fabrication on-going
4	Vihiga Law Courts	Vihiga		10,096,853.00	08/01/2018	08/04/2018	13	0%	2%	Fabrication on-going
5	Nyando Law Courts	Nyando		10,020,678.00	08/01/2018	08/04/2018	13	0%	2%	Fabrication on-going
6	Kigumo Law Courts	Kigumo		7,962,567.00	08/01/2018	08/04/2018	13	0%	2%	Fabrication on-going
7	Molo Law Courts	Molo		9,514,658.00	08/01/2018	08/04/2018	13	0%	2%	Fabrication on-going
8	Chuka Law Courts	Chuka		9,713,206.00	08/01/2018	08/04/2018	13	0%	2%	Fabrication on-going
9	Engineer Law Courts	Engineer		6,907,822.00	08/01/2018	08/04/2018	13	0%	2%	Fabrication on-going
10	Makindu Law Courts	Makindu		9,766,190.00	08/01/2018	08/04/2018	13	0%	2%	Fabrication on-going
11	Kibera Law Courts	Kibera		14,404,530.00	08/01/2018	08/04/2018	13	0%	2%	Fabrication on-going

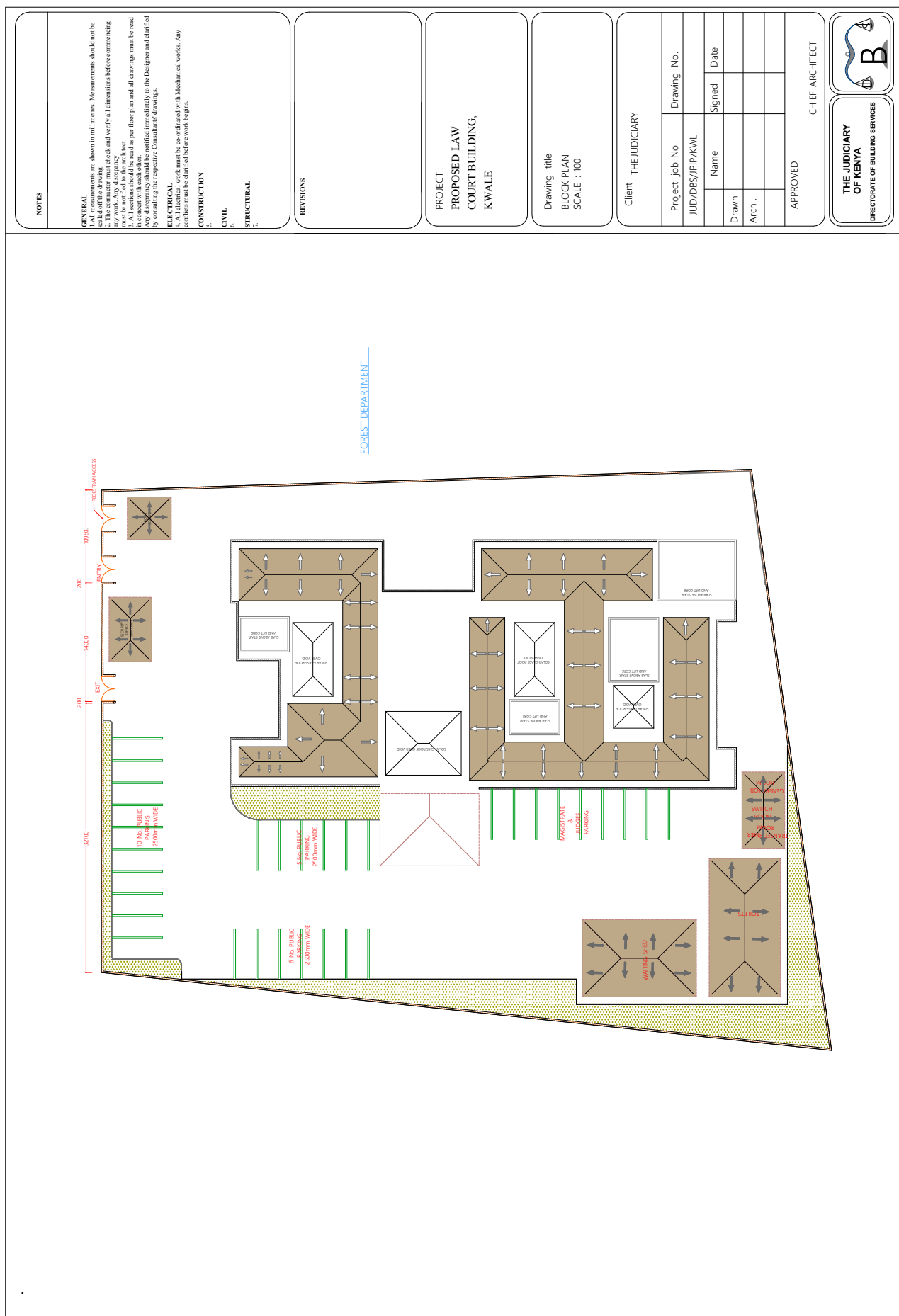
**Table 7.5. Details of projects funded by Government of Kenya**

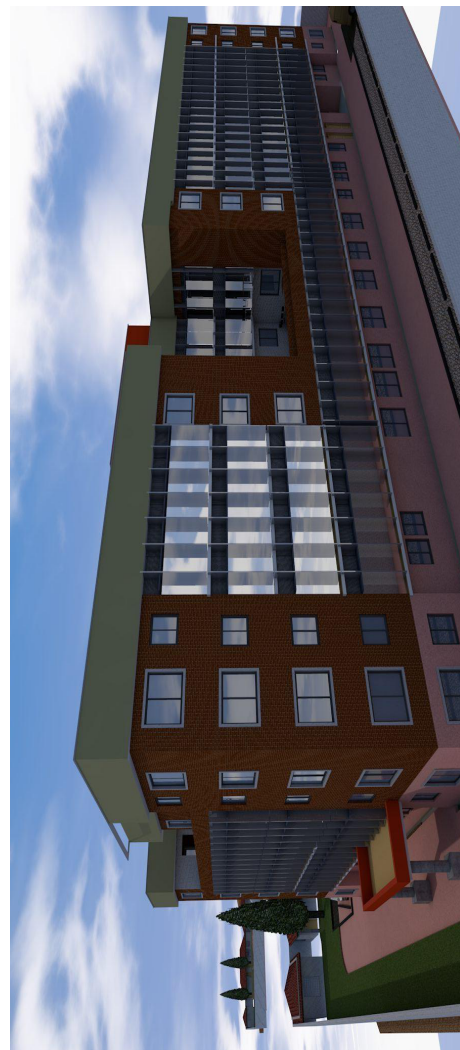
STATUS REPORT OF PROJECTS FUNDED BY GOK AS AT 30TH JUNE 2018										
Project	Court Station	Contractor's Name	Contract Amount (Ksh.)	Start Date	Initial Completion Date	Projected	Initial	% Completeness FY 2016 -2017	% Completeness FY 2017 -2018	Status Reports
Ongoing projects										
1	Homabay Law Courts	Pepeta Holdings Limited	367,308,473.46	13/03/17	30/07/18		72	4%	26%	Contractor on site, slow progress
2	Kabarnet Law Courts	Badole Construction Limited	366,798,387.60	17/03/17	17/09/18		72	6%	15%	Contractor not on site, slow progress
3	Marsabit Law Courts	Dido and Sons Limited	370,222,599.79	17/03/17	17/09/18		72	6%	18%	Contractor on site, good progress
4	Amagoro Law Courts	Sow Contractors Limited	137,988,040	13/03/17	13/03/18	13/03/19	54	1%	15%	Contractor on site, slow progress
5	Githongo Law Courts	Nash Investments Limited	130,895,657.00	04/05/17	04/04/18	04/04/19	54	5%	26%	Contractor on site, slow progress
6	Kandara Law Courts	Microsoft Construction Limited	137,817,417.00	04/03/17	04/04/18	17/03/19	54	8%	22%	Contractor on site, good progress
7	Machakos Law Courts	Manyota Ltd	34,084,690.00	18/05/17	18/11/17	18/05/18	24	20%	65%	Contractor on site, good progress
8	Marsabit Law Courts	Precision Civil Eng. Limited	10,888,254.42	02/05/17	17/10/17	13/03/19	72	20%	75%	Contractor on site, good progress
9	Supreme Court	Dapalk Contractors Limited	21,538,285.00	04/04/17	04/10/17	15/1/-18	16	90%	98%	Completed and awaiting handing over.
10	Kiambu law Law Courts	Outlet Branding Limited	7,510,360.00	31/05-17	08/01/18	08/07/18	24	55%	95%	Contractor on site, good progress
11	Mbita Law Courts	Derow Construction Limited	148,325,073.00	15/03/17	14/03/18	14/03/19	52	10%	29%	Contractor on site, slow progress
12	Hamisi Law Courts	Pendeza Contractors	55,199,905.00	04/12/15	03/11/16	11/04/18	48	85%	95%	Contractor on site, slow progress



13	Embu Law Courts	Embu	Manyota Limited	178,932,022.32	15/01/15	15/09/16	18/10/17	84	97%	100%	Contractor on site, slow progress
			Jufex-Auto Hardware Co. Limited	9,555,546.40	15/01/15	15/09/16		84	87%	100%	Contractor on site, slow progress
			Masterpiece Electricals Limited	8,058,350.00	15/01/15	15/09/16		84		100%	Completed
			Muga Electrical Contractors Limited	19,279,228.00	15/01/15	15/09/16		84	90%	100%	Completed
			Manyota Ltd (Lift installations)	13,500,000.00	15/01/15	15/09/16		84	90%	100%	Completed
14	Nkubu Law Courts	Nkubu	Pluton Ltd (ICT installations)	23,578,502.00					60%	100%	Contractor on site, slow progress
			Just In Time Africa Limited	85,958,760.80	12/01/15	30/12/16		78	98%	100%	Completed and handed over to Client on 1st Nov. 2017.
15	Muranga Law Courts	Muranga	Volcanic General SC Limited	62,086,413.20	19/05/15	20/02/16	17/08/18	36	70%	75%	Contractor on site, poor progress
16	Mandera Law Courts	Mandera	El-Yumo Contractors	107,034,445.00	19/05/15	20/02/16	30/12/18	52	60%	65%	Contractor on site, slow progress
17	Narok Law Courts-Phase II	Narok	Resjos Contractors Limited	65,194,539.00	26/10/15	04/07/16	30/12/18	36	70%	80%	Contractor not on site.
			The Insta-Pumps Engineering	6,496,900.00	26/10/15				70%	70%	
18	Butali Law Courts	Butali	PowerPoint Systems Limited	2,330,270.00	26/10/15				0%	0%	
			Dynamic Green Technologies	32,690,725.60	09/03/15	04/03/16	18/10/18	52	80%	83%	Contractor on site, good progress
19	Eldama Ravine Law Courts	Eldama Ravine	Green Heights Ventures	81,882,269.70	04/02/15	03/03/16		52	80%	95%	Practically complete
20	Port Victoria Law Courts	Port Victoria	Nolads Engineering Limited	46,529,557.00	12/02/15	12/02/16	27/06/18	52	85%	93%	Poor progress.
21	Eldoret Law Courts	Eldoret	Sudafric Group Limited	38,095,640.00	23/02/15	27/06/16		18	85%	85%	Contractor not on site

22	Othaya Law Courts	Othaya	Economic Housing Group	81,664,580.00	15/01/13	31/05/16	30/12/18		70%	95%	Practically complete
23	Wanguru Law Courts	Wanguru		81,664,580.00	15/01/13	31/05/16	30/12/18		70%	70%	No progress
24	Marimanti Law Courts	Marimanti		81,664,580.00	15/01/13	31/05/16	30/12/18		80%	80%	No progress
25	Bomet Law Courts	Bomet		81,664,580.00	15/01/13	31/05/16	30/12/18		90%	100%	Complete
26	Runyenjes Law Courts	Runyenjes	Timsales Limited	99,959,218.00	23/01/13	31/05/16	30/12/18		85%	90%	Contractor on site, slow progress
27	Tawa Law Courts	Tawa		99,959,218.00	23/01/13	31/05/16	30/12/18		85%	90%	Contractor on site, slow progress
28	Mombasa Court of Appeal	Mombasa	Dantax Enterprises	33,940,580.00	19/11/14	19/03/15	29/06/18	16	75%	85%	Contractor on site, slow progress
			Kaminara Agencies Limited	11,465,680.00	19/11/14	19/03/15	29/06/18	16	75%	85%	Slow progress
			HotPoint Appliances Limited	6,385,539.00	19/11/14	19/03/15	29/06/18	16	75%	85%	Slow progress
29	Nyeri Court of Appeal	Nyeri	Thwama Building Services Limited	18,482,123.00	17/04/14	02/10/15	30/12/18	24		95%	Contractor on site, slow progress
30	Siaya Law Courts	Siaya	Nyobu Enterprises Limited	9,720,800.00	03/11/15	03/05/16		26	90%	100%	Completed and handed over to Client.
31	Karatina Law Courts	Karatina	Web Commercial Systems Limited	6,911,255.00	04/05/17	15/09/18		54	60%	65%	Contractor on site, slow progress
<b>New projects</b>											
32	Habasweini Law Courts	Habasweini	E-world International Limited	143,192,128.00	28/9/17	27/09/18		52	0%	7%	Contractor on site, slow progress
33	JSC offices	Nairobi	Gracan Limited	13,748,982.00	18/08/17	15/11/17		24	0%	85%	Contractor on site, slow progress
34	Makadara Law Courts	Makadara	Automark Engineering Limited	9,895,300.00	23/07/17	13/10/17	23/06/18	16	0%	60%	Contractor not on site.
35	Competitions Tribunal	Nairobi	Ready Go Limited	4,694,150.00	23/07/17	23/09/17		8	60%	100%	Complete
36	Mpeketoni Law Courts	Mpeketoni	Centurion Eng. Limited	34,327,784.00	01/04/15	30/10/15		24	95%	100%	Complete
37	Ukwala Law Courts	Ukwala	Ambe General Merchants	4,590,833	30/05/17	26/09/17		16	75%	100%	Complete
38	Competitions Tribunal	Nairobi	Ready Go Limited	4,694,150.00	23/06/17	18/8/17		8	60%	100%	Complete





#### NOTES

**GENERAL**  
1. All dimensions are shown in millimeters. Measurements should not be scaled off the drawing.  
2. The contractor must check and verify all dimensions before commencing work.  
3. All sections should be read as per floor plan and all drawings must be read in conjunction with the Bill of Materials.  
4. Any discrepancy should be notified immediately to the Designer and clarified by consulting the respective Consultant drawings.

**ELECTRICAL**  
4. All electrical work must be co-ordinated with Mechanical works. Any conflicts must be clarified before work begins.

#### CONSTRUCTION

5.

#### CIVIL

6.

#### STRUCTURAL

7.

#### REVISIONS

PROJECT:  
PROPOSED LAW  
COURT BUILDING,  
KILELESHA

Drawing title  
PERSPECTIVES

Client: THE JUDICIARY

Project Job No. Drawing No.

JUD/DBS/JPI/KWL

Name Signed Date

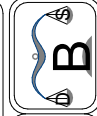
Drawn

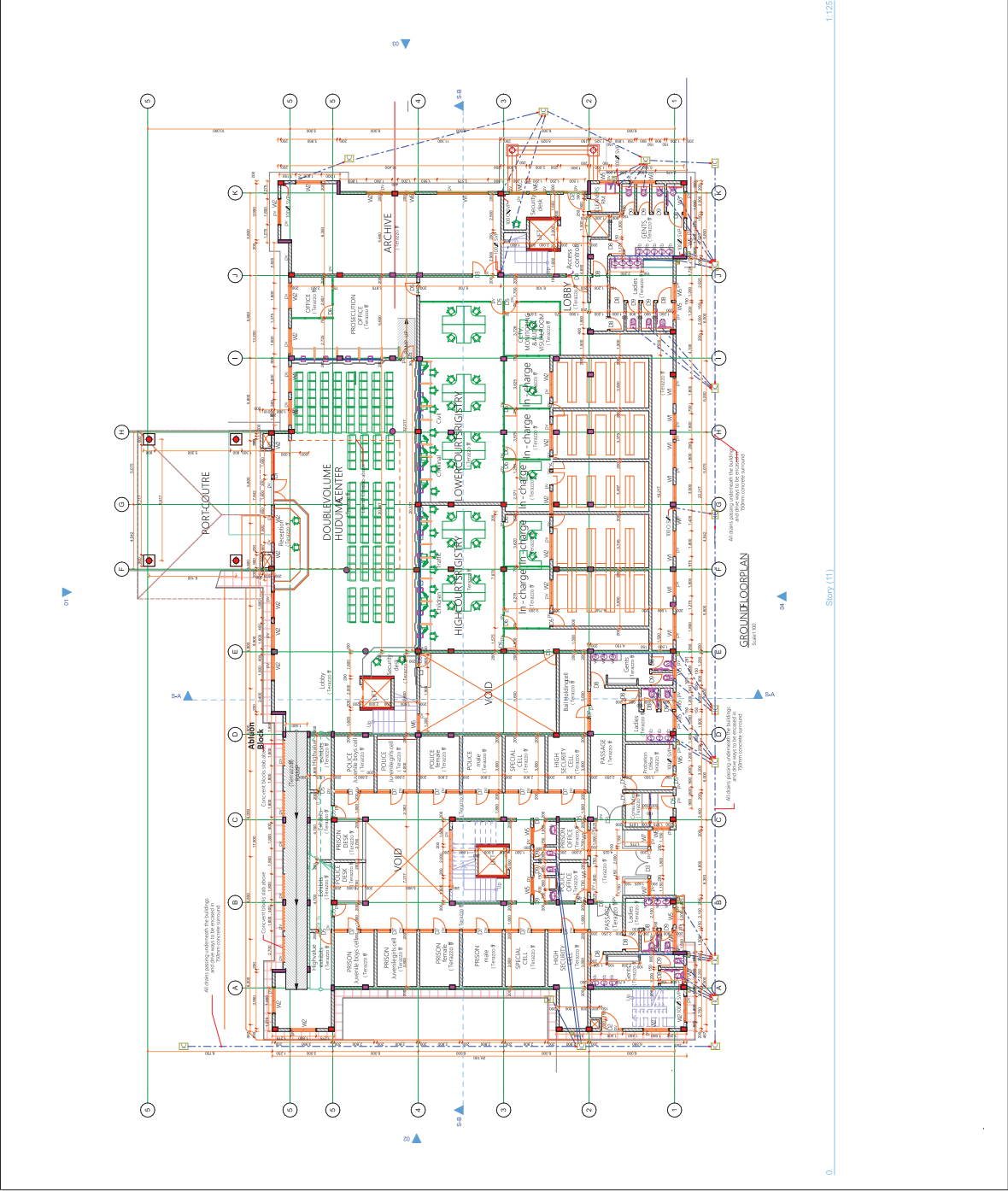
Arch.

APPROVED

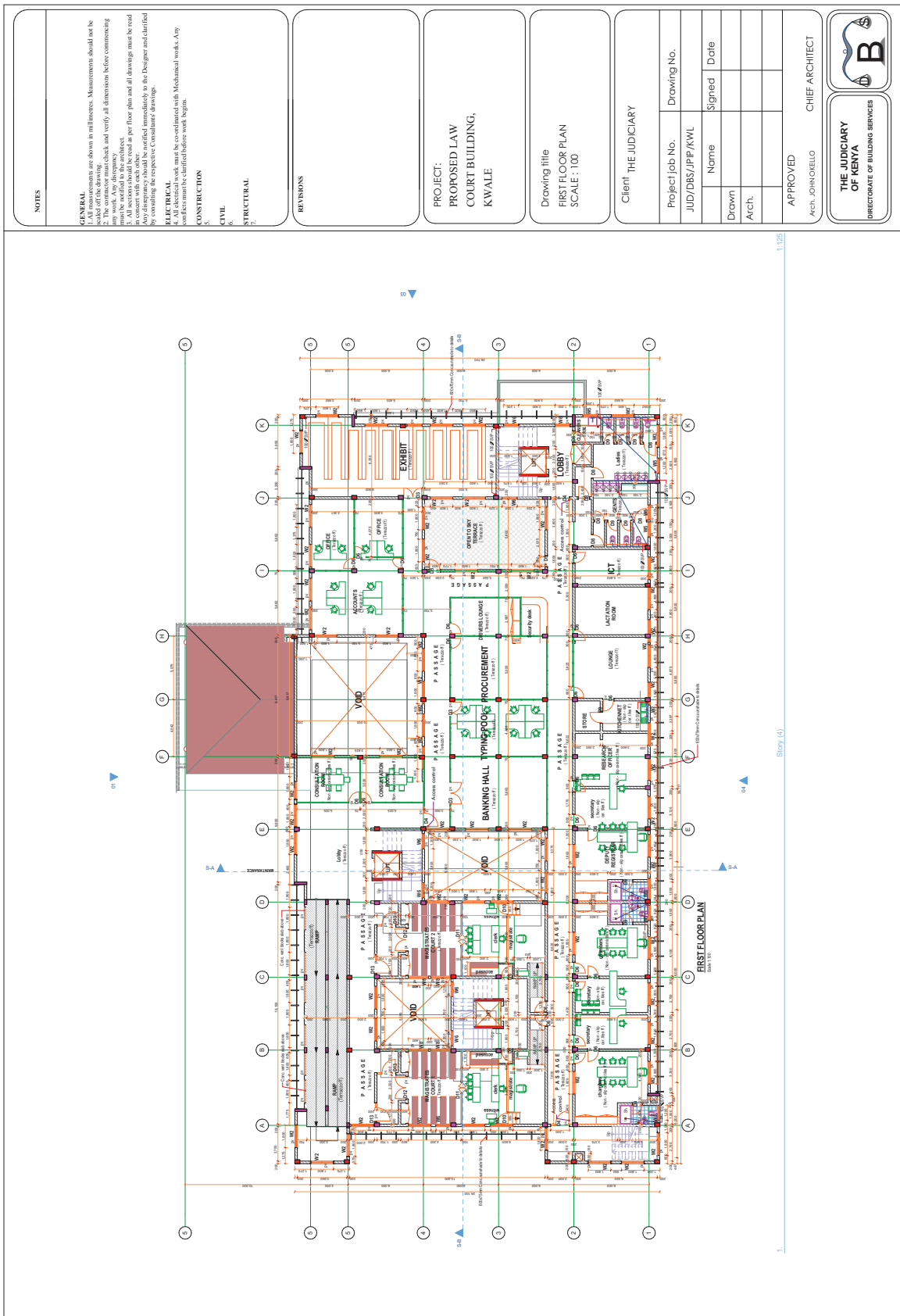
CHIEF ARCHITECT

THE JUDICIARY  
OF KENYA  
DIRECTORATE OF BUILDING SERVICES

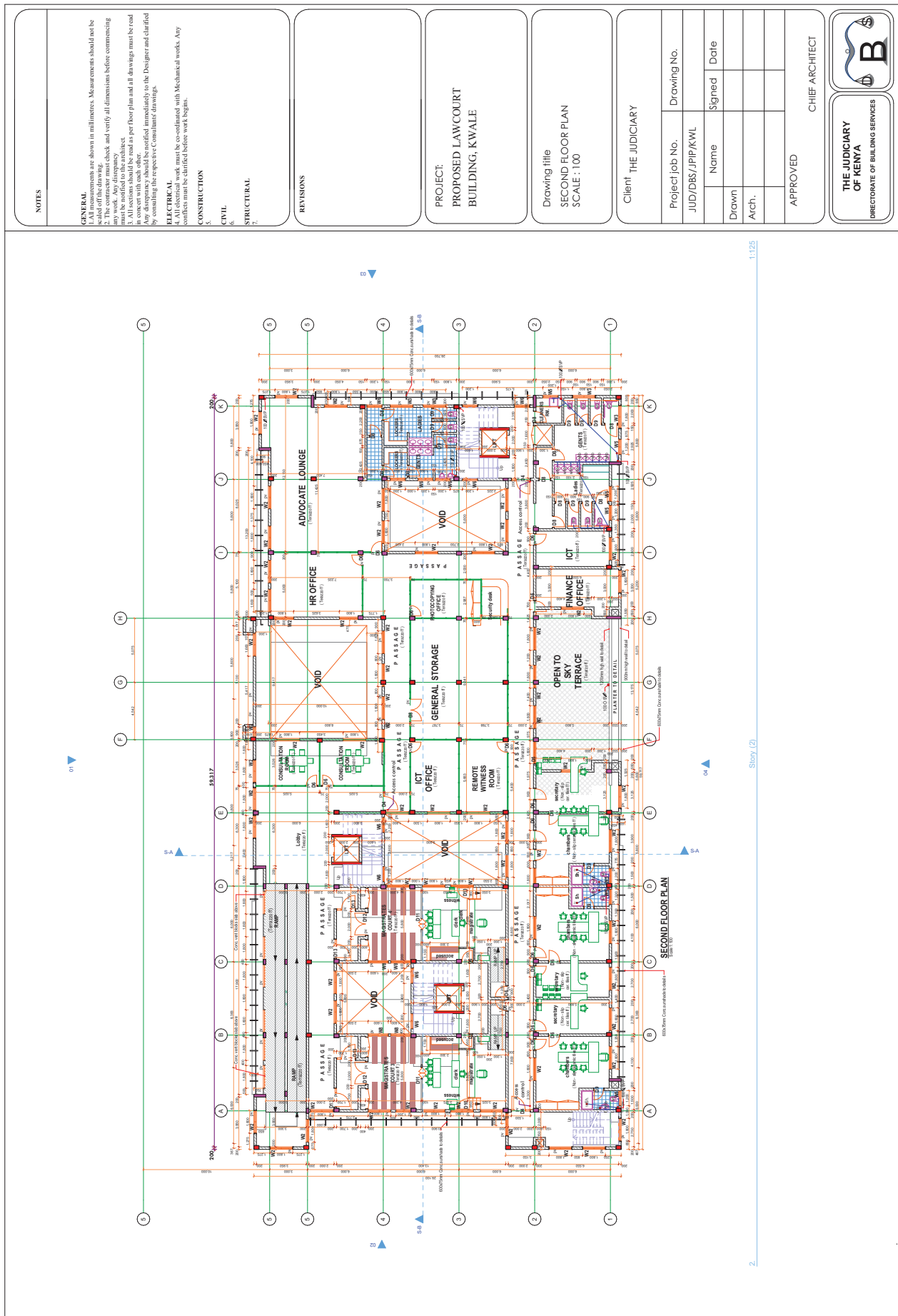


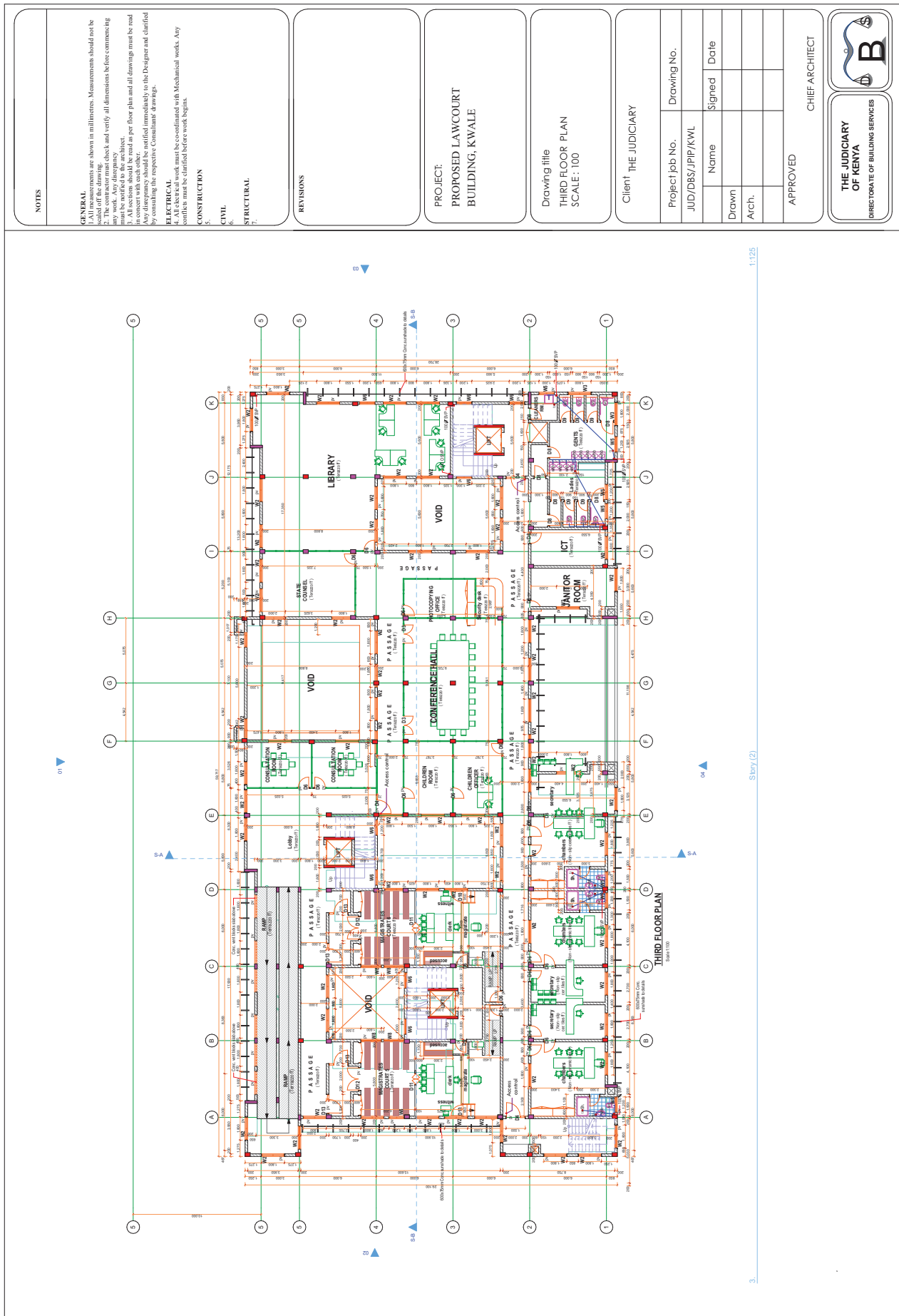


<div>NOTES</div> <div><p><b>GENERAL</b></p><p>1. All measurements are shown in millimeters. Measurements should not be taken from the center of a wall or column unless otherwise specified or noted on the drawings.</p><p>2. The contractor must check and verify all dimensions before commencing any work. Any discrepancy must be reported immediately to the Designer and must be notified to the architect.</p><p>3. All sections should be read as per floor plan and all drawings must be read in conjunction with the drawings and specifications.</p><p>Any discrepancy should be notified immediately to the Designer and clarified by consulting the respective Consultant drawings.</p><p><b>ELECTRICAL</b></p><p>1. All electrical work must be co-ordinated with Mechanical works. Any conflict must be clarified before work begins.</p><p><b>CONSTRUCTION</b></p><p>1. All construction work must be in accordance with the specifications.</p><p><b>CIVIL</b></p><p>1. All civil work must be in accordance with the specifications.</p><p><b>STRUCTURAL</b></p><p>1. All structural work must be in accordance with the specifications.</p></div>									
<div>REVISIONS</div>									
<div><div>PROJECT :</div><div>PROPOSED LAWCOURT BUILDING, KWALE</div></div>									
<div><div>Drawing title</div><div>GROUND FLOOR PLAN</div><div>SCALE : 100</div></div>									
<div><div>Client</div><div>THE JUDICIARY</div></div>									
<div>Project job No.</div> <div>JUD/DBS/PIP/KWL</div>		<div>Drawing No.</div>		<div>Name</div> <div>Signed</div>		<div>Date</div>			
<div>Drawn</div>				<div>Arch.</div>					
<div>APPROVED</div> <div>CHIEF ARCHITECT</div>									
<div><div>THE JUDICIARY OF KENYA</div><div>DIRECTORATE OF BUILDING SERVICES</div></div>									

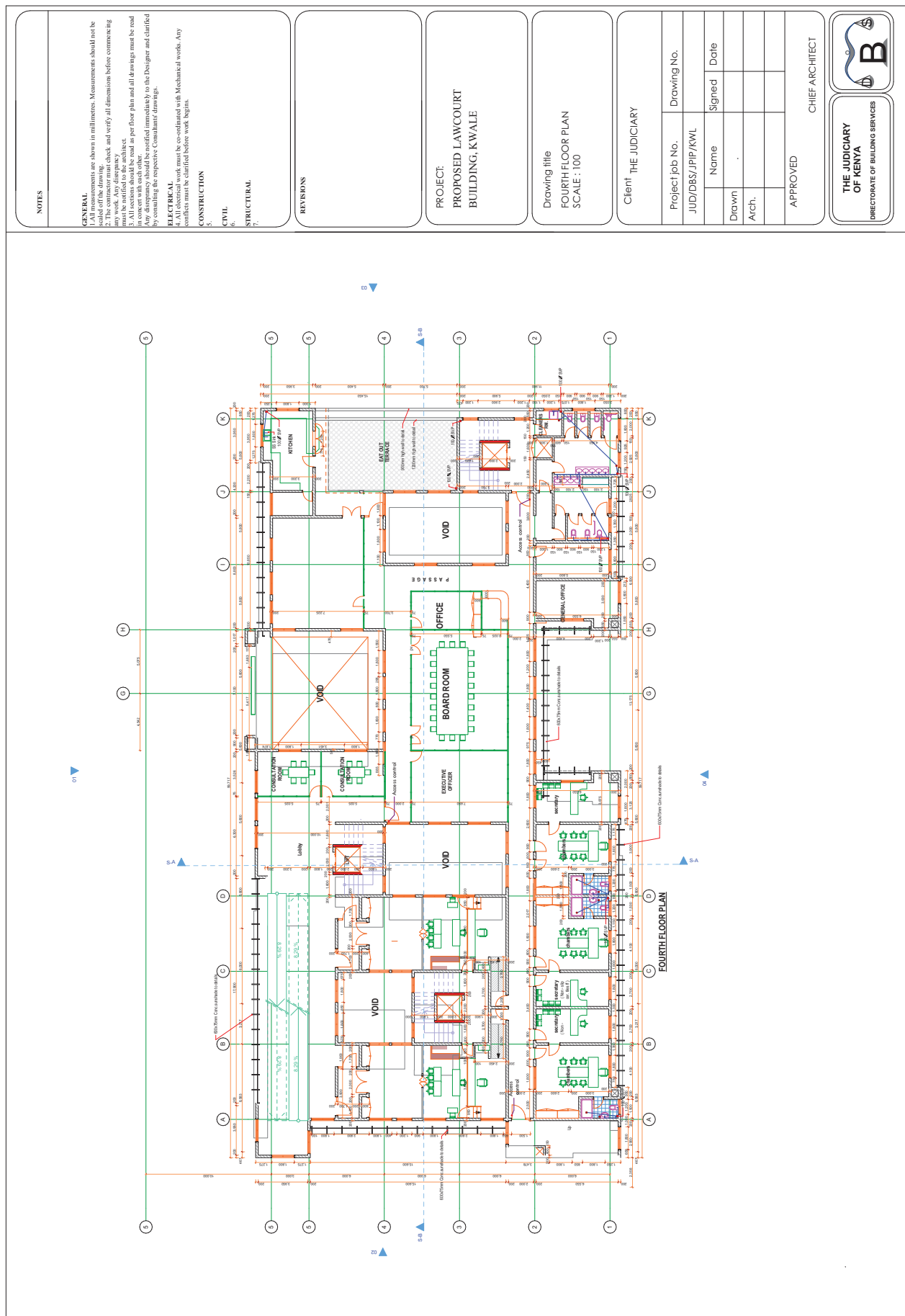


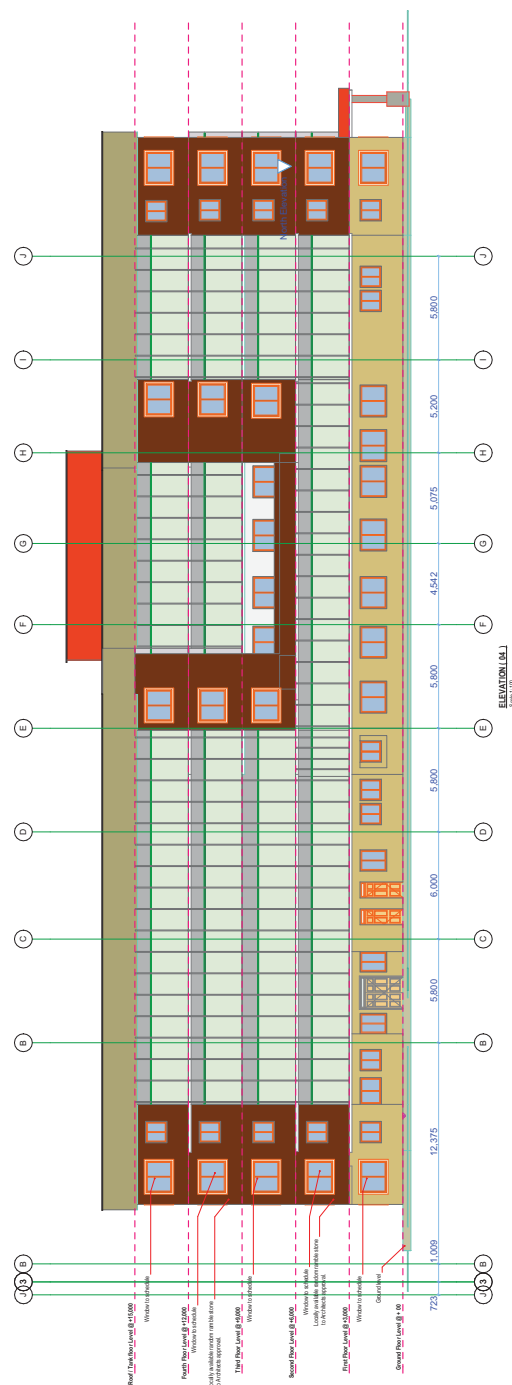
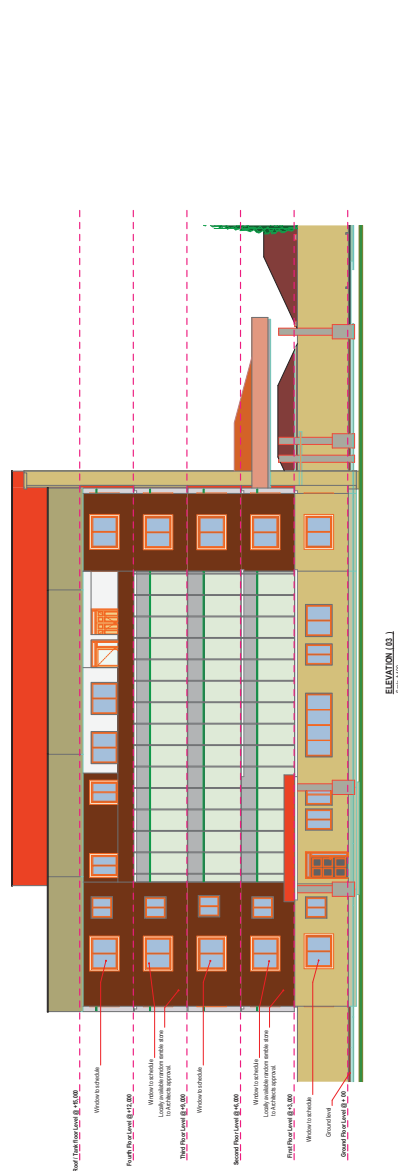












West Elevation

## NOTES

GENERAL.

- GENERAL:** All measurements are shown in millimetres. Measurements should not be scaled off the drawing.
1. The contractor must check and verify all dimensions before commencing any work.
  2. Any discrepancy must be notified to the architect.
  3. All sections should be read as per floor plan and all drawings must be read in concert with each other.
  4. Any discrepancy should be notified immediately to the Designer and clarified by consulting the respective Consultants drawings.

## ELECTRICAL

4.4. All electrical work must be co-ordinated with Mechanical works. Any conflicts must be clarified before work begins.

## CONSTRUCTION

5.

CIVIL.

6.

### STRUCTURAL.

7.

## REVISIONS

PROJECT:  
PROPOSED LAW COURT  
BUILDING, KWALE

Drawing title  
ELEVATIONS  
SCALE: 100

Client THE JUDICIARY

Project job No.		Drawing No.	
JUD/DBS/JIP/KWL			
	Name	Signed	Date
Drawn			
Arch.			

CHIEF ARCHITECT



THE JUDICIARY  
OF KENYA



## ASSORTED PROJECT PROGRESS PHOTOGRAPHS

### A. COMPLETED PROJECTS



**1. Kigumo Law Court.**



**2. Nyando Law Court.**





**3. Nkubu Law Court**



**4. Makindu Law Court**



## B. ONGOING PROJECTS



**1. Wajir Law Court**



**2. Ol kalou Law Court**

# Chapter 8

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## DIGITAL STRATEGY

# DIGITAL STRATEGY

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## 8.o Introduction

**T**he emerging trends in technology have opened possibilities of immense innovations in the public service. The Information and Communication Technologies (ICTs) have the potential to improve the administration of justice, as well as ensure institutional efficiency and effectiveness.

The fourth pillar of the Judiciary Transformation Framework (JTF) (2012–2016) identified ICT as a key result area that would facilitate speedier trials and enhance administrative efficiency. JTF has been very successful in meeting its objectives, guided by its underlying philosophy of laying the foundations of Judiciary transformation. The launch of Sustaining Judiciary Transformation; A Service Delivery Agenda 2017–2021 (SJT), built on the foundation laid by JTF. SJT has outlined a roadmap in adoption of new technologies under the Digital Strategy to automate court processes and deliver judicial services efficiently and effectively. The Digital Strategy provides for ICT solutions that are citizen-centric, aimed at easing access to and interaction with judicial services and make all citizen-directed services mobile-friendly and put all services online.

The Integrated Court Management System (ICMS) Committee was mandated to coordinate the implementation of the Digital Strategy for administrative and judicial management systems for the Judiciary. The Committee, chaired by Court of Appeal Judge, Hon. Mr. Justice Gatembu Kairu has its membership drawn from various stakeholders within the Judiciary and representation from the ICT Authority.

Currently, the Committee implements its mandate through three subcommittees which are transcription, e-filing, and case management. During the reporting period, the Judiciary embarked on the implementation of the Digital Strategy as outlined in the SJT Blueprint. The progress made under each of these categories is discussed further in this chapter.

## 8.1 Judiciary digital strategy

SJT provides a Digital Strategy that outlines the ICT programmes and projects planned for implementation across the Judiciary under five categories. These are Judicial Operations Support Systems, Court Management Systems, Enterprise Resource Planning, Document and Archive Management, and ICT Infrastructure. The programmes aim to automate all functions of the institution by 2021.

### 8.1.1 Judiciary operation support system

The automation of the court registry function is critical to achieving improved delivery of justice, transparency and accountability that will significantly accelerate the disposal of



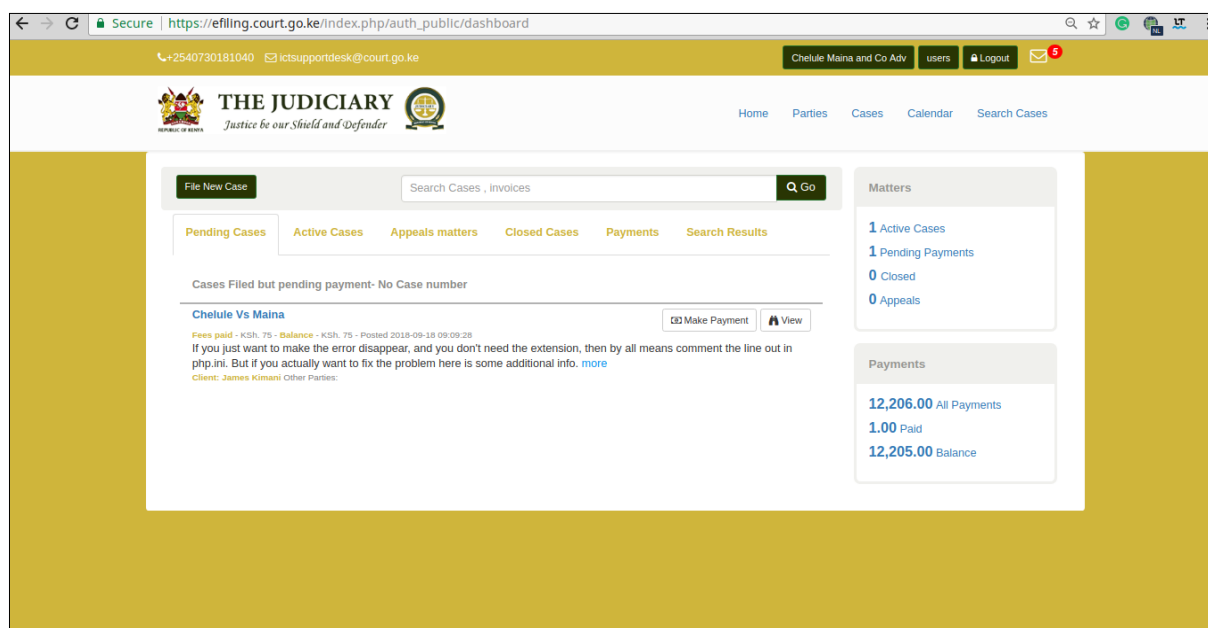
cases to benefit all actors in the justice sector. Key projects to be implemented over this period include E-filing and a Case Tracking System for selected registries in Nairobi and Mombasa as described below;

### 8.1.2 The electronic filing (e-filing) system

The e-filing system is the preparation and submission of case documents electronically (online) to the registry either for a new case or filing in an existing case and making electronic payments for the documents filed. The e-filing system provides a platform for law firms, lawyers and non-lawyers to initiate and complete the process of filing cases remotely.

The development of the first e-filing prototype application was completed towards the end of 2017, and the review on the improvement of the application continued until February 2018. The main functionalities of the e-filing system are; e-case registration, automated fee assessment, and e-payment. The solution is under pilot phase at the Commercial and Tax Division in Milimani where 333 cases have been filed online and payment of Ksh 1.9 million made through the KCB Mpesa solution. More than 14 law firms are participating in the pilot project.

The project has incorporated various service providers and stakeholders which include the Law Society of Kenya (LSK), advocates, the Milimani Business Court Users Committee, Kenya Commercial Bank (KCB), Safaricom and eCitizen to develop an environment for an e-filing process.



**E-filing system home page.**

### 8.1.3 Case tracking system (CTS)

The Case Tracking System (CTS) is a Management Information System that tracks all activities in the lifecycle of a case from case initiation to final disposal. CTS has the following key features: electronic case registration, court fees management, case activity management, cause listing, daily court returns template (DCRT), and reporting modules that automate the key functions of the court registries.

The pilot test of CTS was completed in September 2017 at the Milimani High Court, Commercial and Tax Division. Thereafter, the solution was deployed at registries in Nairobi and Mombasa, Supreme Court, Milimani High Court, Milimani Environment and Land Court, Employment and Labour Relations Court, Milimani Chief Magistrates Court and Mombasa Law Courts in November 2017.

**The status of the cases captured in the system is as shown below;**

**Table 8.1 Cases Captured in the Case Tracking System as at June 30, 2018**

SN	COURT STATION	DIVISION/COURT RANKS	CASES
1	Supreme Court Building	Supreme Court	104
2	Court of Appeal	Court of Appeal	616
3	Milimani Environment and Land Court	Environment and Land Court	6,205
4	Milimani High Court	High Court Anti - Corruption and Economic Crimes Division	242
5	High Court	High Court Civil Division	15,229
		High Court Commercial and Tax Division	14,186
		High Court Constitution and Human Rights Division	1,796
		High Court Criminal Division	3,756
		High Court Family Division	29,593
		High Court Judicial Review Division	2,033
6	Milimani Children's Court	Magistrate Court - Children Division	9,114
7	Milimani Magistrate Court	Magistrate Court - Anti -Corruption Court	114
		Magistrate Court - Criminal Court	4,735
		Magistrate Court - Traffic Court	1,471
8	Naivasha High Court	High Court Naivasha	4,856
9	Milimani Court	Employment and Labour Relations Court	4,107
10	Mombasa	Mombasa High Court	9,588
		Mombasa ELC	3,534
		Mombasa ELRC	2,624
		Mombasa Magistrates Court	21,969
11	Mombasa Kadhi's Court	Mombasa Kadhi's Court	1,028
12	Tononoka Law Courts	Tononoka Children's Court	3,785
13	Shanzu Law Courts	Shanzu Law Court	1,720
14	Kiambu Law Courts	Kiambu Magistrate Courts	5,384
15	Total Cases Captured		147,789

## **8.2 Court management systems**

This program includes all the in-court and chambers' systems that support the determination of cases and includes transcription, legal references and searches, note taking support and document composition, security and distribution. Examples of these systems include the audio and video recording of court proceedings, the production of transcripts, and speech to text solution for ruling and judgment writing. Some of the projects undertaken are outlined below;

### **8.2.1 Court Recording and Transcription Solution (CRTS)**

In June 2018, The ICMS Committee approved and adopted for implementation the Court Recording and Transcription System (CRTS) model to be rolled out in the Judiciary. The system will have live recording of proceedings in all courtrooms and on-demand production of transcripts from the recording. The system is currently being implemented at the Supreme Court and was used during the Presidential Petition<sup>1</sup> where all the recordings were transcribed. The solution is also currently running at two courtrooms of the Commercial and Tax Division of the High Court at the Milimani Law Courts.

### **8.2.2 Speech to text solution**

Writing judgements is a key function for judges, magistrates, Kadhis, and Tribunal members, that can be facilitated by a speech-to-text solution. The solution provides a device and software that takes audio content and automatically transcribes it into a written form in a word processor. In September 2017, the Judiciary issued the speech to text devices to 20 judges and magistrates.

## **8.3 Enterprise Resource Planning**

The Enterprise Resource Planning (ERP) system is a business process management software that allows an organization to use integrated applications to manage the business and automate all back-office functions related to technology, services, and human resources. The main objective of the ERP is to automate the administrative units to improve on internal service delivery. The areas that have been planned for automation include budgeting, planning, resource management such as AIE, deposit management, expenditure, delinking of the court stations accounts from sub-county treasury among others. The ERP will also be critical in the financial management of the Judiciary Fund<sup>2</sup>.

During the reporting period, several projects have been initiated as discussed below;

### **8.3.1 Judiciary Financial Management Information System (JFMIS)**

The main objective of JFMIS is to automate and digitally document all payment transactions done at the court stations so as to enhance transparency and accountability. The system has enhanced the court stations' accounting functions under the expenditure, revenue and

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<sup>1</sup> Presidential Petition No. 1 of 2017; and Presidential Election Petition 2 & 4 of 2017

<sup>2</sup> Judiciary Fund Act No. 16 of 2016

deposit modules. The Judiciary improved the system in May 2018 to enhance its functionality for digital payments and electronic receipting. The use of the system has improved financial reporting and has delinked a total of (50) court stations from the district treasury thus improving service delivery.

### **8.3.2 Judiciary Asset Management System (JIAMS)**

Asset Management is an important administrative function of the Judiciary under Finance, Human Resources and Administration, and the Supply Chain Management functions. The system was developed to capture all assets in the Judiciary and to facilitate the of an asset register. As at June 30, 2018, the system had documented about 60 per cent of its fixed and movable assets aimed at providing an accountable record of ownership of the institution's property. The system captured 7,933 assets within the reporting period.

### **8.3.3 Judiciary integrated performance management and accountability system (JIPMAS)**

The Judiciary introduced a Performance Management and Measurement Understanding (PMMU) tool aimed at institutionalizing performance management under the guidance of the Performance Management and Measurement Steering Committee (PMMSC). The committee uses a manual process of evaluation and appraisal process to assess all court stations and individuals. To improve the process, it was necessary to automate the procedure of performance management, targets setting and evaluation. The development of JIPMAS was finalized in October 2017 with functionalities that include court and implementing unit's performance (PMMU), individual performance appraisals (PAS) and Leave Management. The system was piloted in eight court stations and online leave management commissioned in three directorates, namely ICT, HRA and Performance Management.



***Judiciary integrated performance management and accountability System home page.***

### 8.3.2 Judiciary ombudsman online service desk

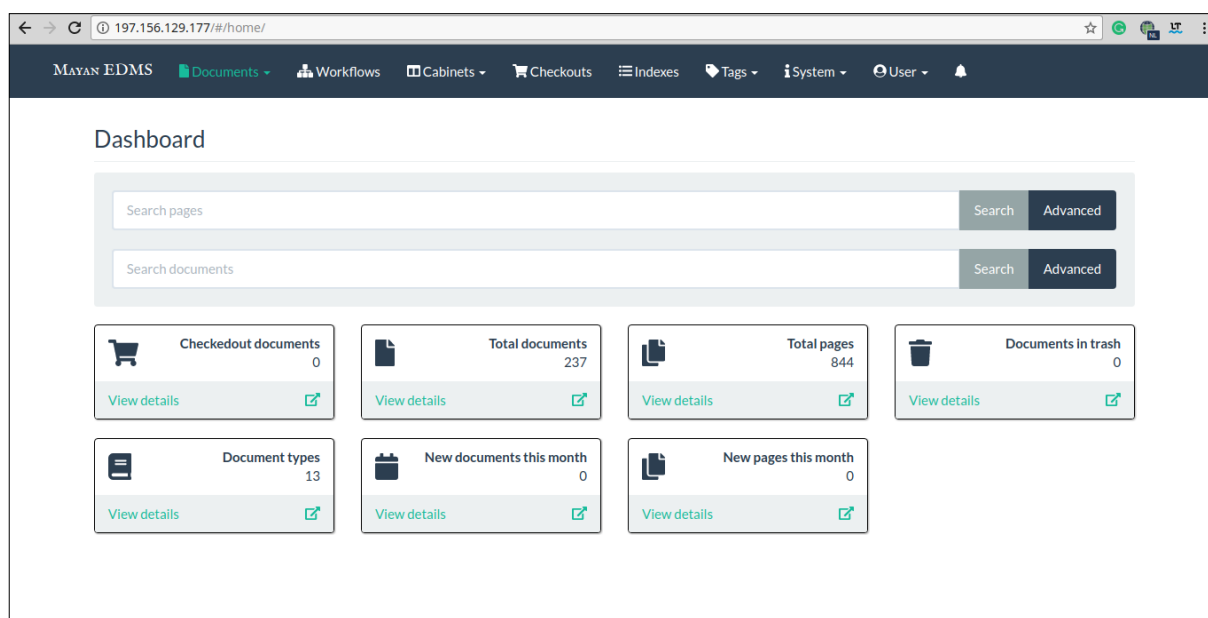
In 2012, the Judiciary deployed a web-based service desk solution (service.judiciary.go.ke) to manage complaints received in the Office of the Judiciary Ombudsman. The main objective of this platform was to provide an automated channel for our clients to submit any requests or complaints to the Judiciary. The system provides the client with clear timelines for resolution of complaints. In November 2017, the system was upgraded to include new features such as improving the accuracy of the ticket counter, providing ticket status report, enhancing the reporting features, and improving the general performance of the system.

### 8.3.3 Automated ICT support desk

The ICT Support desk system was developed in November 2017 to manage all incidences, issues and service requests through an online ticketing system. The system will ensure that ICT services issues are tracked and resolved in an efficient and effective way.

## 8.4 Document and archive management

With the many automation projects, the Document and Archive Management system is necessary to manage the digital content being generated. A rudimentary content management system has been developed as part of the e-filing system during the year under review. Development efforts are ongoing to improve on the system to manage all digital content including the court recordings, court documents filed online and scanned documents from existing court files. This refers to digitization, archiving, duration, publication and distribution of extant legal documents.



**Document and Archive Management System home page.**

## 8.5 ICT Infrastructure

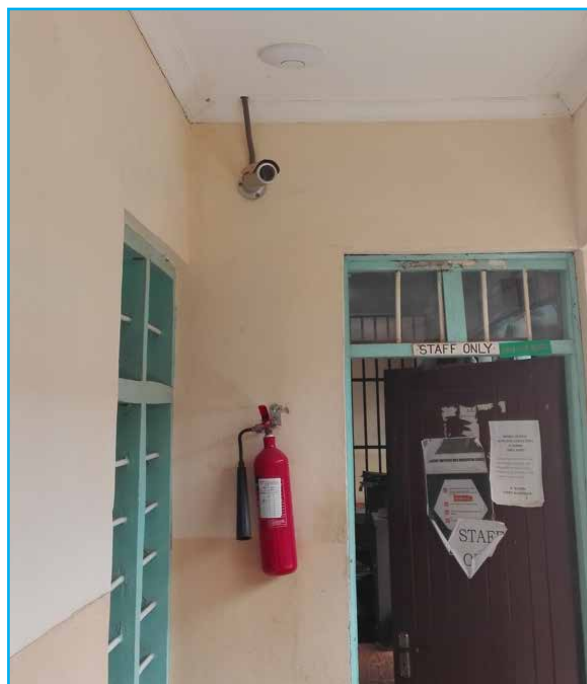
The connectivity, data centre and ICT equipment are the foundation of the ICT Solution and the Judiciary has prepared a robust plan to have the infrastructure in place to ensure the solutions are reliable and scalable. The Judiciary has outlined Data Centre enhancement, business continuity and disaster recovery plan, structured cabling, WiFi Connectivity, internet connectivity and equipment delivery. In this reporting period the Judiciary provided WiFi and other internet facilities to 80 Court Stations out of the 139.

### Stations Connected to Internet as at 30th June 2018

SN	COURT STATION	BW	ISP
1	BARICHO LAW COURTS	8	Safaricom
2	BOMET LAW COURTS	8	Viakom Ltd
3	BONDO LAW COURTS	8	Mimajo Ltd
4	BUTALI LAW COURTS	8	Safaricom
5	BUTE KADHIS COURTS	4	Celex Ltd
6	BUTERE LAW COURTS	8	Safaricom
7	CHUKA LAW COURTS	8	Swiftsync Ltd
8	ELDAMA RAVINE LAW COURTS	8	Telkom Kenya
9	ELDAS KADHIS COURTS	4	Koricha Inv
10	GARSEN LAW COURTS	6	Telkom Kenya
11	GATUNDU LAW COURTS	8	Gener Ltd
12	GICHUGU LAW COURTS	8	Telkom Kenya
13	GITHONGO LAW COURTS	8	Telkom Kenya
14	GITHUNGURI LAW COURTS	8	Caption Ltd
15	HABASWEINI KADHIS COURTS	4	Koricha Inv
16	HOLA LAW COURTS	8	Telkom Kenya
17	HOMA BAY LAW COURTS	8	Glop Ent
18	ITEN LAW COURTS	8	Telkom Kenya
19	JKIA LAW COURT	8	Access Kenya
20	KABARNET LAW COURTS	8	Telkom Kenya
21	KAJIADO LAW COURTS	8	Bowen Ltd
22	KALOLENI LAW COURTS	8	Telkom Kenya
23	KANDARA LAW COURTS	8	Telkom Kenya
24	KAPENGURIA LAW COURTS	8	Telkom Kenya
25	KARATINA LAW COURTS	8	Telkom Kenya
26	KEHANCHA LAW COURTS	8	Telkom Kenya
27	KEROKA LAW COURTS	8	Telkom Kenya
28	KERUGOYA LAW COURTS	10	Telkom Kenya
29	KIGUMO LAW COURTS	8	Telkom Kenya
30	KILIFI LAW COURTS	8	Telkom Kenya
31	KIMILILI LAW COURTS	8	Telkom Kenya
32	KITHIMANI LAW COURTS	8	Telkom Kenya
33	KWALE LAW COURTS	8	Telkom Kenya
34	LAMU LAW COURTS	8	Telkom Kenya
35	LIMURU LAW COURTS	8	Telkom Kenya

SN	COURT STATION	BW	ISP
36	LODWAR LAW COURTS	8	Telkom Kenya
37	LOITOKTOK LAW COURTS	8	Telkom Kenya
38	MARALAL LAW COURTS	8	Telkom Kenya
39	MARIAKANI LAW COURTS	8	Telkom Kenya
40	MARIMANTI LAW COURTS	8	Safaricom
41	MASENO LAW COURTS	8	MTN
42	MAVOKO LAW COURTS	8	Access Kenya
43	MBITA LAW COURTS	8	Cyber Soft
44	MIGORI LAW COURTS	8	Telkom Kenya
45	MOLO LAW COURTS	8	Bemoz Ent
46	MOYALE LAW COURTS	8	Iftu Ltd
47	MPEKETONI LAW COURTS	4	Telkom Kenya
48	MUKURWEINI LAW COURTS	8	Access Kenya
49	MUMIAS LAW COURTS	8	Safaricom
50	MURANGA LAW COURTS	10	Movers Tech
51	MUTOMO LAW COURTS	8	iWay Africa
52	MWINGI LAW COURTS	8	Telkom Kenya
53	NAKURU CHILDRENS COURT	3	Telkom Kenya
54	NANYUKI LAW COURTS	8	Telkom Kenya
55	NDHIWA LAW COURTS	8	Glop Ent
56	NKUBU LAW COURTS	8	Amroreenz Ltd
57	NYAHURURU LAW COURTS	8	Telkom Kenya
58	NYAMIRA LAW COURTS	8	Telkom Kenya
59	NYANDO LAW COURTS	8	Britcom Ltd
60	OGEMBO LAW COURTS	8	Telkom Kenya
61	OTHAYA LAW COURTS	8	iWay Africa
62	OYUGIS LAW COURTS	8	Glop Ent
63	SIAYA LAW COURTS	8	Telkom Kenya
64	SIRISIA LAW COURTS	8	Safaricom
65	SOTIK LAW COURTS	8	Viakom Ltd
66	TAMU LAW COURTS	8	MTN
67	TAVETA LAW COURTS	8	Telkom Kenya
68	THIKA LAW COURTS	10	Access Kenya
69	TIGANIA LAW COURTS	8	Polaris Ltd
70	TONONOKA LAW COURTS	8	Telkom Kenya
71	UKWALA LAW COURTS	8	Moscom Ltd
72	VIHIGA LAW COURTS	8	Safaricom
73	VOI LAW COURTS	8	Telkom Kenya
74	WAJIR LAW COURTS	8	Celex Ltd
75	WANG'URU LAW COURTS	8	Telkom Kenya
76	WEBUYE LAW COURTS	8	Digi Capital
77	WINAM LAW COURTS	8	Britcom Ltd
78	WUNDANYI LAW COURTS	8	Telkom Kenya
79	MILIMANI LAW COURTS	50	Access Kenya
80	SUPREME LAW COURT	30	Access Kenya



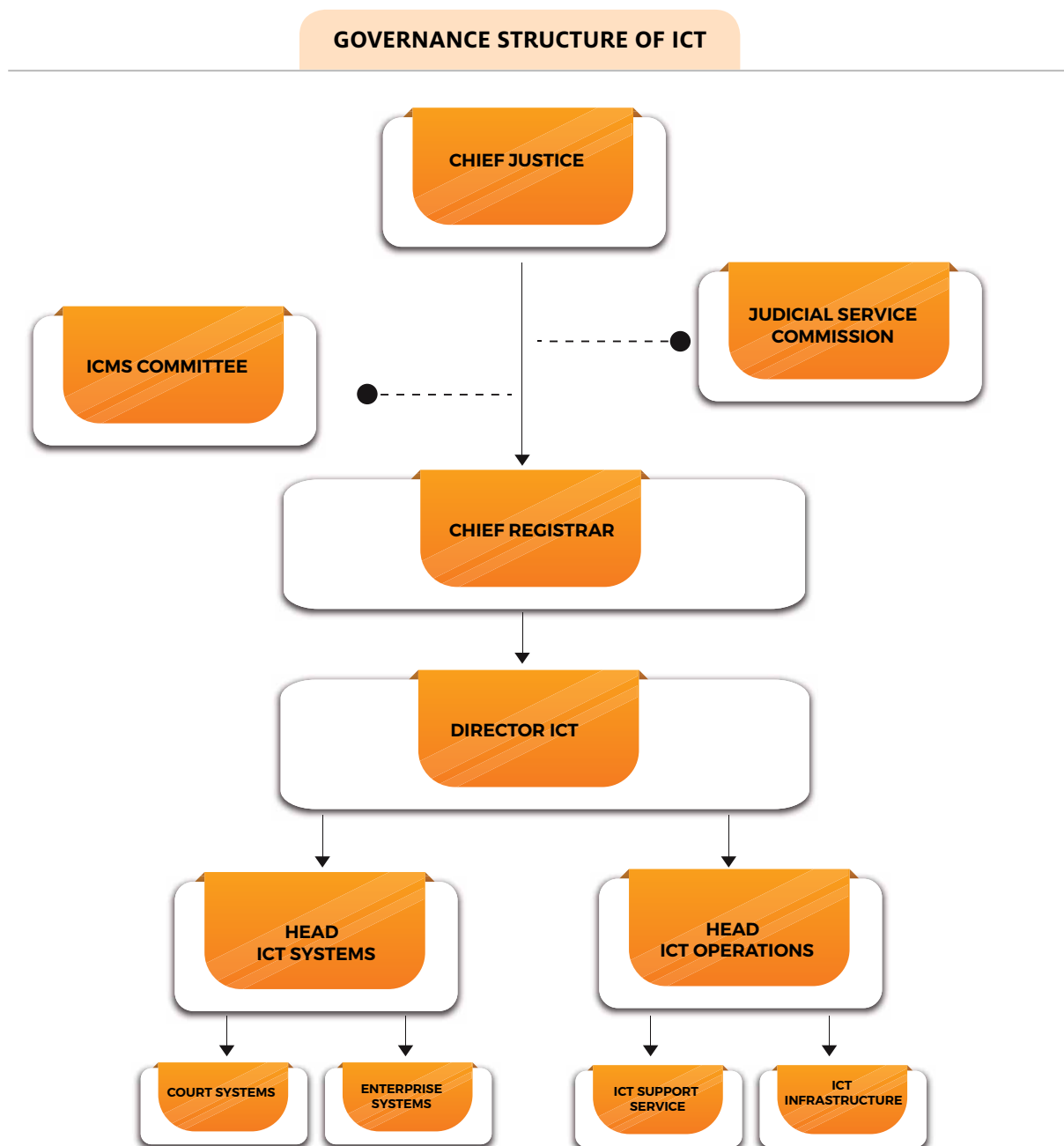


**Sample Photo Gallery from Garissa Law Courts with WIFI system Installed**



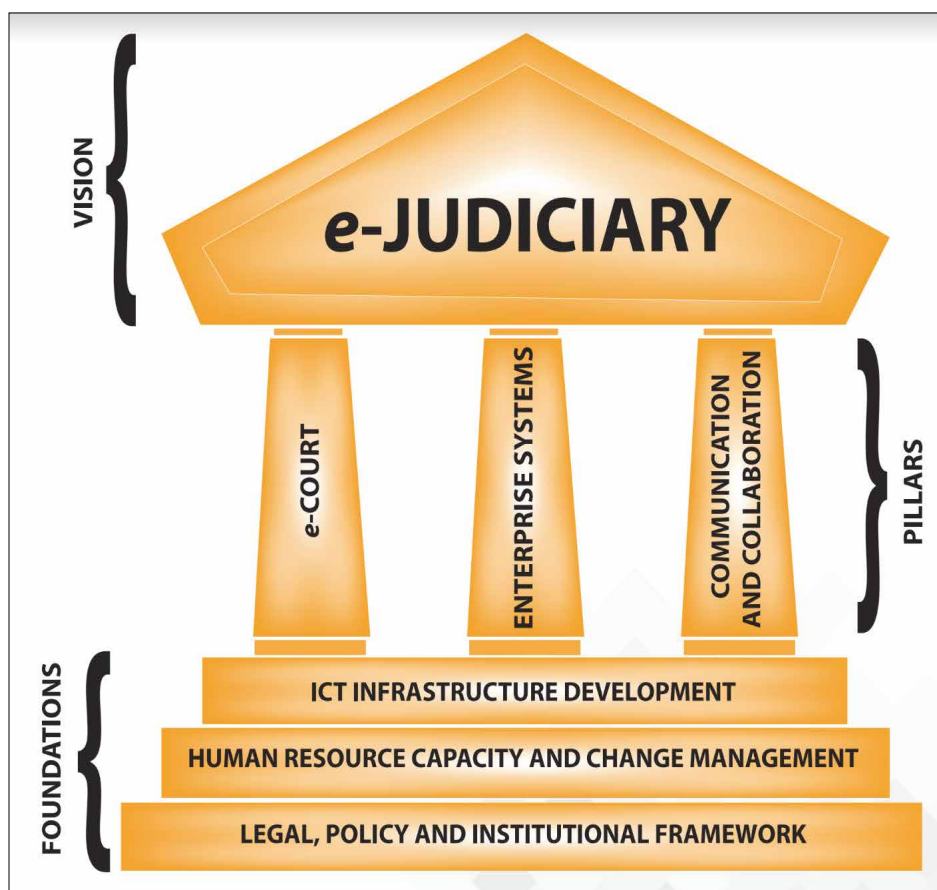
## 8.6 Judiciary ICT policy and master plan

The ICT Policy and ICT Master Plan 2018–2022, was developed by the ICMS Committee and approved by the Judicial Service Commission in September 2017. The two documents will govern the implementation of ICT in the Judiciary. It seeks to achieve efficiency, productivity and timeliness in the implementation and use of ICT solutions in the achievement of the strategic objectives of the Judiciary. The policy is deemed critical in governing and coordinating the use of ICT in the Judiciary to ensure that it is well regulated and leveraging its use to meet the objectives of the organization. The policy document will facilitate users as it outlines the standards, guidelines and procedures to ensure safe, effective and secure use of ICT. It further outlines the rights and obligations of users while using ICT solutions. The key policy areas covered in this policy include ICT governance, infrastructure, equipment management, software and information systems, business continuity and disaster recovery and ICT security. The policy has outlined the governance structure of ICT in the Judiciary as illustrated below:



The ICT Master Plan has incorporated all the programs of the Digital Strategy in the SJT and outlined implementation timelines with an integrated approach to ensure all the projects result into an e-Judiciary.

The e-Judiciary has three pillars namely; Pillar 1 - E-Court Systems, Pillar 2 -Enterprise Resource Systems – ERP and Pillar 3 – Communication and Collaboration. These are anchored on three foundations namely Integrated ICT Infrastructure, Human Resource Capacity, Change Management and Policy, and Legal and Institutional Framework. The illustration of the ICT Master Plan is as shown below:



## Conclusion

The year under review, laid the foundation for the implementation of the five programmes as outlined in the SJT and discussed in detail above.

In this coming year, review of the legal and regulatory framework to support automation will be critical. The use of digital technology as part of the court process will need to be anchored in law.

The Court Recording and Transcription Solution (CRTS) and Case Tracking System (CTS) will be rolled out in all court stations with priority for stations with a Court of Appeal, High Courts including courts of equal status. The expected deliverables to the public will be increased access to online case information; performance reporting of judicial matters; communication to litigants and their legal teams by email and SMS; and effective and efficient methods of making payments to the Judiciary.

# Chapter 9

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## FINANCE AND ACCOUNTS

# FINANCE AND ACCOUNTS

## 9.0 Introduction

**T**his chapter presents an analysis of the Judiciary's financial performance covering areas such as funding within the national context, including a comparative analysis of overall budgetary allocation for the three Arms of Government and also within the Governance Justice Law and Order Sector (GJLOS, the Judiciary's resource requirements versus the allocation, and the approved budget estimates and expenditure analysis. In addition, the chapter provides information on revenue and deposits from courts; automation of revenue, expenditure and deposits; delinking of court station accounts from the sub-county treasuries, and the progress realized in the operationalization of the Judiciary Fund. The last section examines the financial challenges faced by the Judiciary.

## 9.1 Funding the Judiciary within the national context

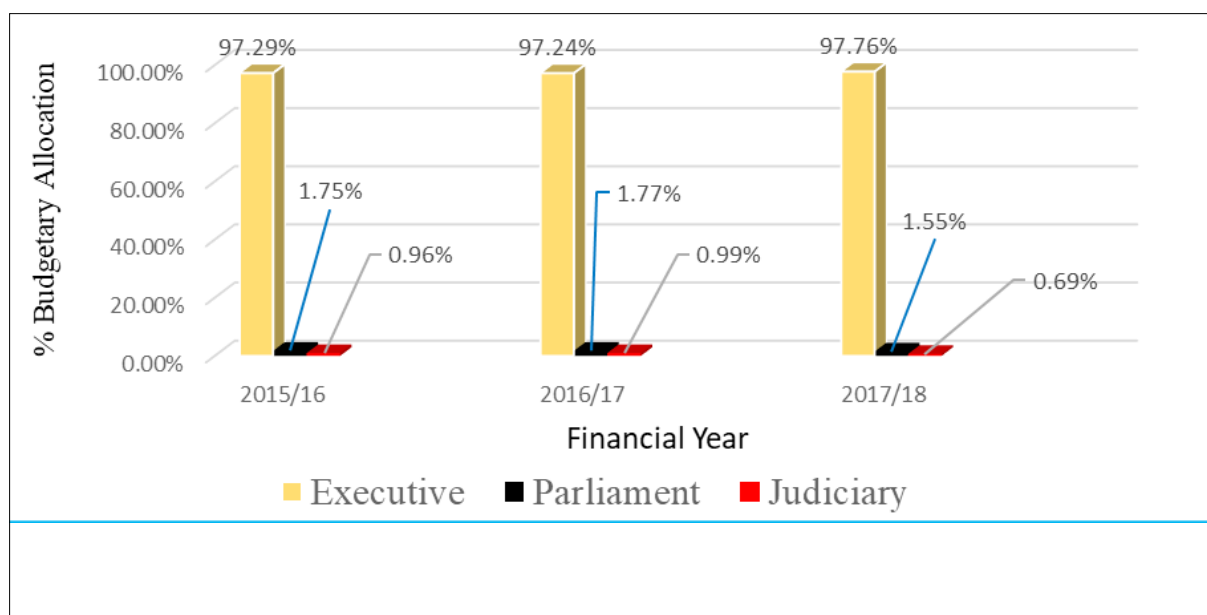
The Judiciary prepares its budget estimates in accordance with the Constitution and the Public Finance Management (PFM) Act. The PFM Act requires all Government entities to prepare their budget estimates through the Medium-Term Expenditure Framework (MTEF) process. The MTEF is a programme-based budgeting process that requires an entity to set its key strategic objectives and expected outputs for the MTEF period and further identify performance indicators that are used to measure the achievement realized. During the financial year under review, the strategic objectives were drawn from the Strategic Plan (2014-2018) and Sustaining Judiciary Transformation (SJT) Blueprint (2017-2021). The outputs identified were implemented through a programme entitled "Dispensation of Justice" which comprises two sub-programmes, namely:

- (i) Access to Justice
- (ii) General Administration Planning and Support Services.

The Access to Justice sub-programme took the largest share of resources as it focuses on the core mandate of the Judiciary.

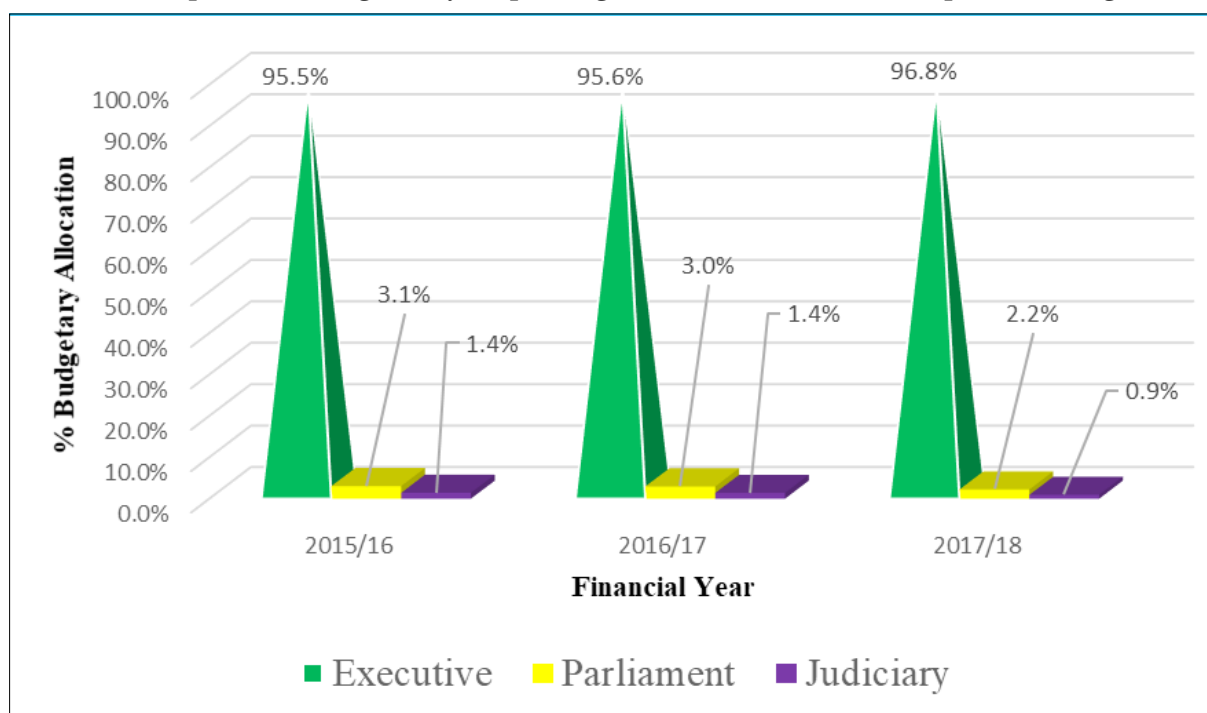
### 9.1.1 Overall budgetary allocation for the three Arms of Government

The overall national budget has been growing steadily from Kshs. 1.5 trillion in the FY 2015/16 to Kshs 1.7 trillion in the FY 2016/17, and Kshs 2.0 trillion in the FY 2017/18. However, Judiciary's budget has not grown in tandem with the overall national budget. Figure 9.1 provides an analysis of the overall budget allocation within the three Arms of Government namely the Executive, the Judiciary and the Legislature.



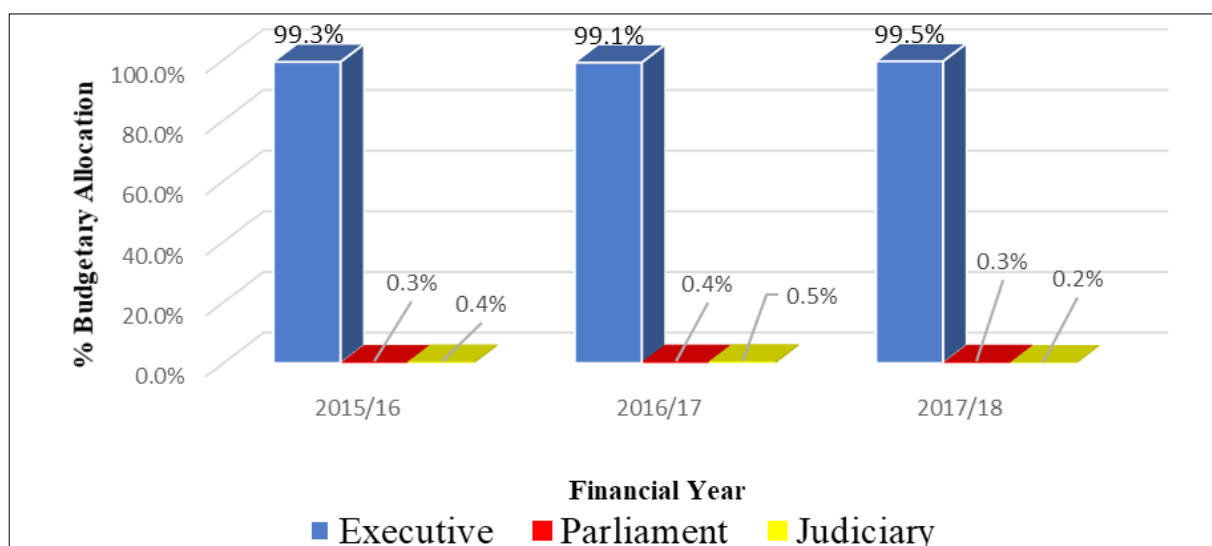
**Figure 9.1: Budget allocation trend among the Arms of Government**

Figure 9.1 shows that the Judiciary has over time been allocated the least amount of money compared to the Executive and the Legislature. The Executive has been receiving the lion's share of the National Budget at an average of 97 per cent. The Judiciary budget has remained below 1 per cent of the national budget over the years. In the FY 2017/18, the budget went down to 0.7 per cent, negatively impacting on the achievement of planned targets and



**Figure 9.2: Percentage recurrent budget allocation for the Arms of Government**

Figure 9.2 shows that allocation for the recurrent budget for the Executive improved from 95.6 per cent in FY 2016/17 to 96.8 per cent in FY 2017/18. The allocation for the Judiciary reduced from 1.4 per cent in FY 2016/17 to 0.9 per cent in FY 2017/18. This affected the financing of key enablers for justice in the Judiciary. The expectation was for an increment in Judiciary budget to fund critical emerging issues notably the hearing and finalization of election disputes. This led to accumulation of recurrent pending bills amounting to Kshs. 246 million at the end of the financial years. A comparison of budgetary allocation within the Arms of Government for the development budget is elaborated in Figure 9.3.



**Figure 9.2: Percentage development expenditure allocation for Arms of Government**

Figure 9.3 shows that the development budgetary allocation for the Judiciary's reduced from 0.5 per cent in FY 2016/17 to 0.2 per cent in FY 2017/18. The budget for the Executive grew from 99.1 per cent to 99.5 per cent over the same period while that for Parliament it slightly reduced from 0.4 to 0.3 per cent. Reduction in development budget for the Judiciary impacted negatively on the financing of the ongoing infrastructural projects such as courts and ICT projects. This resulted in failure to complete some of the capital projects since some of the payment certificates could not be honoured. This resulted in pending bills amounting to Kshs 282 million. Consequently, this impacted negatively on the Judiciary's determination to enhance access to and expeditious delivery of Justice. Details of recurrent and development budgets for the three arms of the Government for the MTEF period 2015/16 – 2017/18 are given in Table 9.1.

**Table 9.1: Trend on Recurrent and Development Expenditure Allocation FY 2015/16–2017/18 (Kshs Million)**

FY		Executive	Parliament	Judiciary	Total
2015/16	Recurrent	776,700	24,813	11,684	813,197
	Development	720,051	2,100	3,115	725,266
2016/17	Recurrent	884,914	27,434	12,956	925,304
	Development	794,228	3,150	4,153	801,531
2017/18	Recurrent	1,301,256	29,878	12,706	1,343,840
	Development	724,362	2,188	1,568	728,118

#### **9.2.1 Budget Requirements in the Governance Justice Law and Order Sector (GJLOS)**

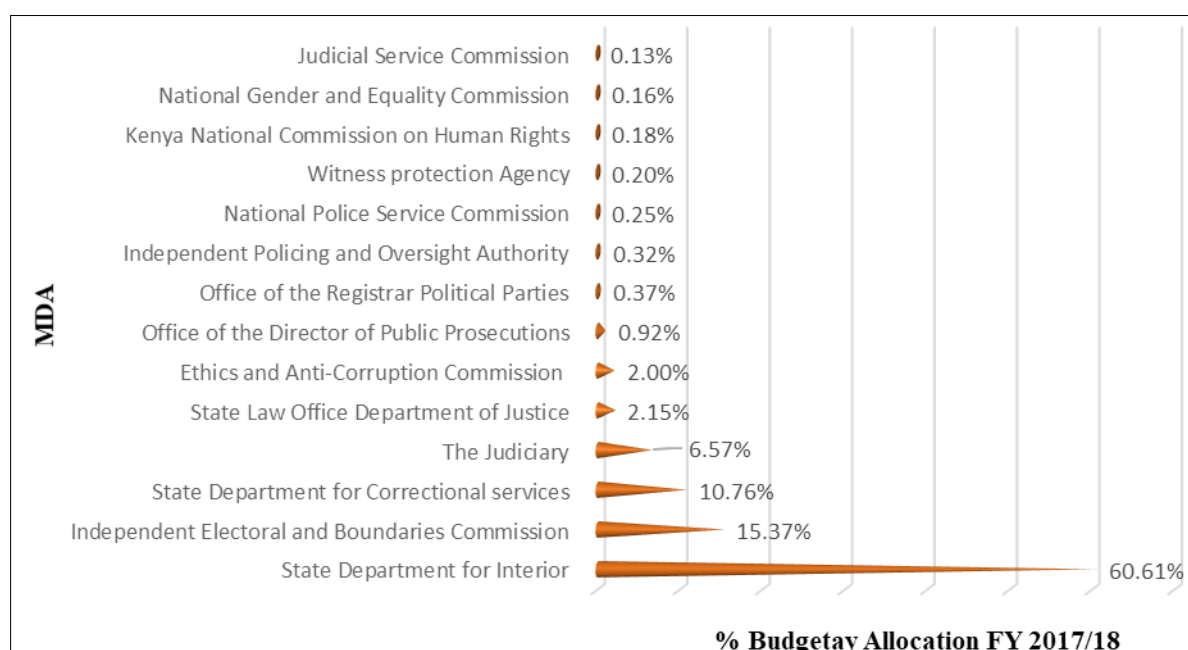
The GJLOS sector comprises 14 Government Ministries, Department and Agencies (MDAs). Table 9.2 presents a comparative analysis of the budgetary allocation for the GJLOS institutions in the MTEF period FY 2015/16 – FY 2017/18.

**Table 9.2: Governance Justice Law and Order Sector (GJLOS)**

MDA	Recurrent Approved Allocation			Development Approved Allocation			Overall Budget			Allocation in %		
	2015/16	2016/17	2017/18	2015/16	2016/17	2017/18	2015/16	2016/17	2017/18	2015/16	2016/17	2017/18
1. State Department for Interior	100,225	107,935	116,258	13,578	27,946	15,331	113,803	135,881	131,589	69.1	64.2	60.6
2. State Department for Correctional services	17,120	20,227	22,798	611	525	553	17,731	20,752	23,351	10.8	9.8	10.8
3. State Law Office Department of Justice	4,430	5,040	4,536	379	239	132	4,809	5,279	4,668	2.9	2.5	2.2
4. The Judiciary	11,684	12,956	12,706	3,115	4,153	1,568	14,799	17,109	14,274	9.0	8.1	6.6
5. Ethics and Anti-Corruption Commission	2,957	3,230	3,069	300	250	1,268	3,257	3,480	4,337	2.0	1.6	2.0
6. Office of the Director of Public Prosecutions	2,384	2,115	1,994	73	98	5	2,457	2,213	1,999	1.5	1.0	0.9
7. Office of the Registrar Political Parties	534	827	809	0	0	0	534	827	809	0.3	0.4	0.4
8. Witness protection Agency	370	388	442	0	0	0	370	388	442	0.2	0.2	0.2
9. Kenya National Commission on Human Rights	459	421	399	0	0	0	459	421	399	0.3	0.2	0.2
10. Independent Electoral and Boundaries Commission	4,878	23,065	32,660	27	552	712	4,905	23,617	33,372	3.0	11.2	15.4
11. Judicial Service Commission	472	450	284	0	0	0	472	450	284	0.3	0.2	0.1
12. National Police Service Commission	476	435	548	0	0	0	476	435	548	0.3	0.2	0.3
13. National Gender and Equality Commission	310	387	346	18	18	0	328	405	346	0.2	0.2	0.2
14. Independent Policing and Oversight Authority	396	485	696	0	0	0	396	485	696	0.2	0.2	0.3
SUM TOTAL	146,693	177,961	197,545	18,101	33,781	19,569	164,794	211,742	217,114	100.0	100.0	100.0



For the past three FYs, the allocation for the Judiciary averaged at 7.9 per cent. The allocation for the Judiciary has been on a downward trend from an allocation of 9 per cent in FY 2015/16 to 8 per cent in FY 2016/17 to 6.5 per cent in FY 2017/18 within the GJLOS. Figure 9.4 presents the share of resource envelop in the GJLOS for the FY 2017/18.



**Figure 9.4: Percentage budgetary allocation within the GJLOS for FY 2017/18**

Figure 9.4 shows that in the FY 2017/18 the State Department for Interior was allocated more than half of the entire budget allocated to the GJLOS. The Independent Electoral and Boundaries Commission (IEBC) received 15.37 per cent of budget, State department for Correctional Services received 10 per cent while the Judiciary received 7 per cent of the total GJLOS budget.

### 9.3 Judiciary budget requirements versus the allocated Budget

Table 9.3 provides a comparison of the Judiciary's resource requirements and resource allocation over the past three fiscal years.

**Table 9.3: Judiciary resource requirements versus allocation**

Financial Year	Requirement (Billion Kshs)	Allocation (Billion Kshs)	Percentage Allocation	Percentage shortfall
2015/16	26.609	14.799	56%	44%
2016/17	23.366	17.109	73%	27%
2017/18	35.951	14.274	40%	60%

Table 9.3 shows that there was a huge budget deficit of 60 per cent in the FY 2017/18. Total budget allocation declined by 17 per cent from 17 billion in FY 2016/17 to 14.2 billion in FY 2017/18. This led to an accumulation of overall pending bills amounting to Kshs 528 million.

## 9.4 Approved budget estimates

Total approved budget for the FY 2017/18 amounted to Kshs 14.27 billion which comprised of Kshs 12.70 billion recurrent and 1.57 billion development. Out of the allocated funds for development vote 78 per cent (Kshs. 1.23 billion) was from World Bank under JPIP programme. Hence, only 22 per cent (Kshs 340 million) of the development budget was from GOK.

## 9.5 Expenditure Analysis and Absorption Levels

The Judiciary budget allocations in FY 2015/16 was Kshs. 14.79 billion which grew by 16 per cent to stand at Kshs. 17.1 billion in FY 2016/17 and declined by 17per cent to Kshs. 14.27 billion in FY 2017/18. The actual expenditure attained in FY 2015/16 was Kshs. 12.95 billion which is 87 per cent of the year's allocation. In the FY 2016/17 the actual expenditure was Kshs. 15.3 billion which was 89.7 per cent of the years' allocation. In FY 2017/18 the actual expenditure was Kshs. 13.5 billion representing 94per cent of the allocation. Therefore, Judiciary has over time realized a high absorption rate to the tune of 90 per cent over the past three years. This means that the average absorption rate was 90 per cent. Details on the recurrent expenditure by economic classification are expounded in Table 9.4.

**Table 9.4: Analysis of Recurrent Approved Budget Vs Actual Expenditure (Kshs. Million)**

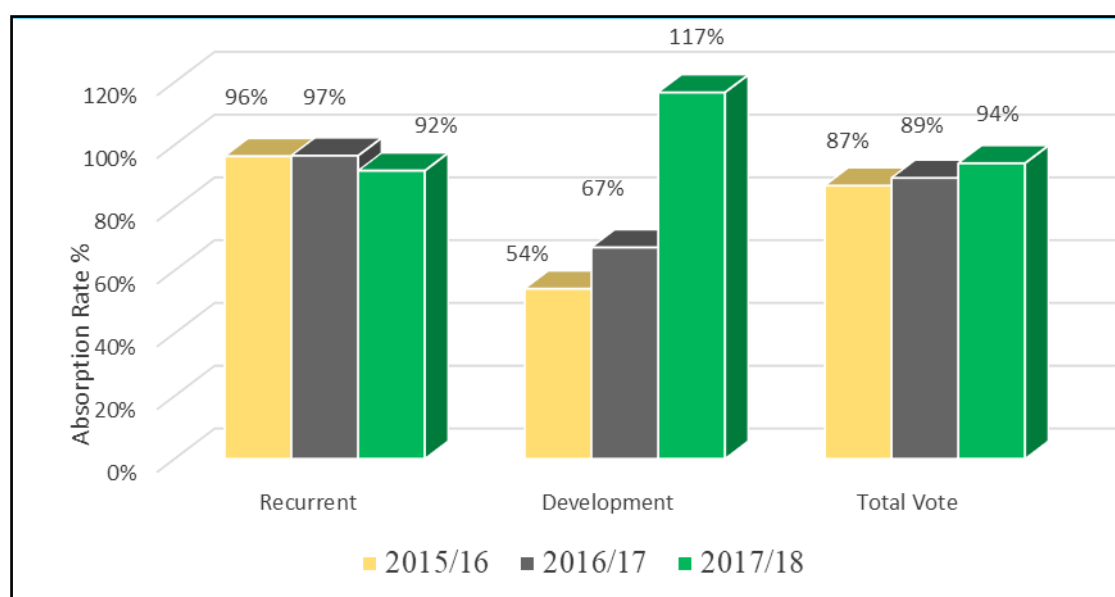
Economic Classification	Approved Allocation			Actual Expenditure		
	2015/16	2016/17	2017/18	2015/16	2016/17	2017/18
Gross	11,684	12,956	12,706	11,259	12,506	11,659
AIA	-	-	-	-	-	-
Net	11,684	12,956	12,706	11,259	12,506	11,659
Compensation to Employees	6,442	7,409	7,683	6,325	7,266	7,280
Transfers	842	772	934	770	771	818
Other Recurrent	4,400	4,775	4,089	4,164	4,470	3,561
	11,684	12,956	12,706	11,259	12,507	11,659

Table 9.4 shows that recurrent budget allocation increased by 11 per cent between the FY 2015/16 and FY 2016/17 and then dropped by 2 per cent in FY 2017/18. The share of compensation to employees over the total recurrent budget increased from 56 per cent in FY 2015/16 to 60 per cent in FY 2017/18 while that of 'other recurrent' declined from 37 per cent and 32 per cent over the said fiscal years. Transfers rose by 11 per cent from Kshs 842 million in FY 2015/16 to Kshs 934 million in FY 2017/18. The actual expenditure attained under the recurrent vote was 96 per cent, 97 per cent and 92 per cent in the three Financial Years respectively. Absorption under compensation to employees was at 98 per cent in FYs 2015/6 and 2016/17 but dropped to 95 per cent in FY 2017/18. On other recurrent, absorption was 95 per cent in FY 2015/16, 94 per cent in FY 2016/17 then dropped to 87 per cent in FY 2017/18. On the transfers, the absorption was 91 per cent in FY 2015/16, 100 per cent in FY 2016/17 and 87.5 per cent in FY 2017/18. Table 9.5 shows trend analysis of approved and actual development expenditure by source of funding.

**Table 9.5: Analysis of approved development budget Vs actual expenditure (Kshs Million)**

Economic Classification	Approved Allocation			Actual Expenditure		
	2015/16	2016/17	2017/18	2015/16	2016/17	2017/18
Gross	3,115	4,153	1,568	1,687	2,795	1,829
GOK	776	1,450	340	603	536	306
Loans	2,259	2,600	1,228	1,082	2,251	1,523
Grants	80	103	-	2	8	-
Local AIA	-	-	-	-	-	-
Net	3,115	4,153	1,568	1,687	2,795	1,829
Totals	3,115	4,153	1,568	1,687	2,795	1,829

From Table 9.5, development budget allocation increased from 3,115 million in the FY 2016/17 and then reduced by 62 per cent to 1568 million in FY 2017/18. The share of GOK funding over the total development budget was 25 per cent in FY 2015/16 and increased to 35 per cent in FY 2016/17 then declined to 22 per cent in FY 2017/18. During the period under review, there were no grants. The aggregate share of donor funds was 75 per cent, 65 per cent and 78 per cent in the three fiscal years respectively. The percentage expenditure analysis is explained in Figure 9.5.

**Figure 9.5: Percentage absorption rate for the recurrent and development budget (2015/16-2017/18)**

The actual expenditure attained under the development vote was 54 per cent, 67 per cent and 117 per cent in the three FYs respectively. Absorption under GOK was at 78 per cent in FYs 2015/16, 37 per cent in FY 2016/17 and rose to 90 per cent in FY 2017/18. Donor funds' absorption was 46 per cent in FY 2015/16, 84 per cent in FY 2016/17 and 124 per cent in FY 2017/18. The over absorption under the development vote in FY 2017/18 is attributed to the reclassification of donor funding method from Revenue to Appropriations –In-Aid (AIA) during the fourth quarter. This effect, compounded by budget reduction during the supplementary budget revision, caused negative balances due to existing commitments. The analysis of approved and actual budget by programme and sub-programme is highlighted in Table 9.6.

**Table 9.6: Analysis of Programme/Sub-Programme expenditure (Kshs Million)**

	Approved Budget			Actual Expenditure		
	2015/16	2016/17	2017/18	2015/16	2016/17	2017/18
<b>Programme 1: Dispensation of Justice</b>						
Sub-Programme 1: Access to Justice	9,592	11,309	10,462	8,195	10,094	9,990
Sub-Programme 2: Administration and Support Services	5,207	5,800	3,812	4,752	5,207	3,498
<b>Total Programme</b>	<b>14,799</b>	<b>17,109</b>	<b>14,274</b>	<b>12,946</b>	<b>15,301</b>	<b>13,488</b>

Table 9.6 above outlines expenditure for the two main its sub-programs, Access to Justice and Administration and Support Services, for the FY 2015/16 – 2017/18. Access to Justice Sub-program received a larger portion of the total budget allocation at 65per cent, 66 per cent and 73 per cent respectively for the period under review. Information on programme expenditure by economic classification is given in Table 9.7.

**Table 9.7: Programme Expenditure by Economic Classification (Kshs. Million)**

<b>Economic Classification</b>	<b>Approved Budget</b>			<b>Actual Expenditure</b>		
	2015/16	2016/17	2017/18	2015/16	2016/17	2017/18
<b>Programme 1: Dispensation of Justice</b>						
Current Expenditure			<b>12,706</b>			<b>11,659</b>
Compensation to Employees	<b>6,442</b>	<b>7,409</b>	<b>7,683</b>	<b>6,325</b>	<b>7,266</b>	<b>7,280</b>
Use of goods & Services	<b>2,702</b>	<b>2,529</b>	<b>3,023</b>	<b>1,791</b>	<b>2,301</b>	<b>2,373</b>
Grants and Other Transfers	<b>842</b>	<b>772</b>	<b>934</b>	<b>770</b>	<b>771</b>	<b>818</b>
Other Recurrent	<b>1,807</b>	<b>2,246</b>	<b>1,065</b>	<b>2,397</b>	<b>2,168</b>	<b>1,188</b>
Capital Expenditure						
Acquisition of Non-Financial Assets	<b>3,006</b>	<b>4,153</b>	<b>1,568</b>	<b>1,663</b>	<b>2,795</b>	<b>1,829</b>
Capital Grants to Govt. Agencies	<b>20</b>	-	-	<b>20</b>	-	-
Other Development	<b>89</b>	-	-	<b>4</b>	-	-
<b>Total Program</b>	<b>14,908</b>	<b>17,109</b>	<b>14,274</b>	<b>12,970</b>	<b>15,301</b>	<b>13,488</b>
<b>Total Vote 1261</b>	<b>14,908</b>	<b>17,109</b>	<b>14,274</b>	<b>12,970</b>	<b>15,301</b>	<b>13,488</b>

Allocation for compensation to employees increased from Sh6.4 billion in FY 2015/16 to Sh7.7 billion in FY 2017/18 being 54 per cent and 60 per cent of the total recurrent allocation. The approved budget on use of goods and services decreased marginally by 6 per cent in FY 2016/17 but increased by 20 per cent of the total recurrent allocation in 2017/18. Allocation for grants and other transfers to Semi Autonomous Government Agencies (SAGAs) increased by 21 per cent between FY 2016/17–2017/18 as more tribunals joined the Judiciary.

## 9.6 Court Revenue

The Judiciary is a receiver of revenue on behalf of the National Government. Its revenue comprise court fees, fines, forfeitures and other charges paid directly into the Treasury accounts as revenue through a resolution by Parliament on April 14, 2010, requiring that all court fees and other Appropriations-in-Aid received by the Judiciary be transferred directly to the Treasury. The Judiciary has a policy on non-collection of cash hence all revenue is

received in all court stations through cashless systems mainly direct banking, M-Pesa and through agency banking. These avenues have minimized the risks associated with the handling of cash and boosted revenue collections and accountability.

All the revenue collected is then paid to the Treasury account at the Central Bank of Kenya. The total revenue collected in FY 2017-18 amounted to KShs 2.075 billion compared to KShs 1.972 billion in FY 2016-17. The increase was as a result of improved cash collection methods.

Table 9.8 shows the comparative figures for revenue collection for the three financial years.

**Table 9.8: Revenue collections over the last three financial years**

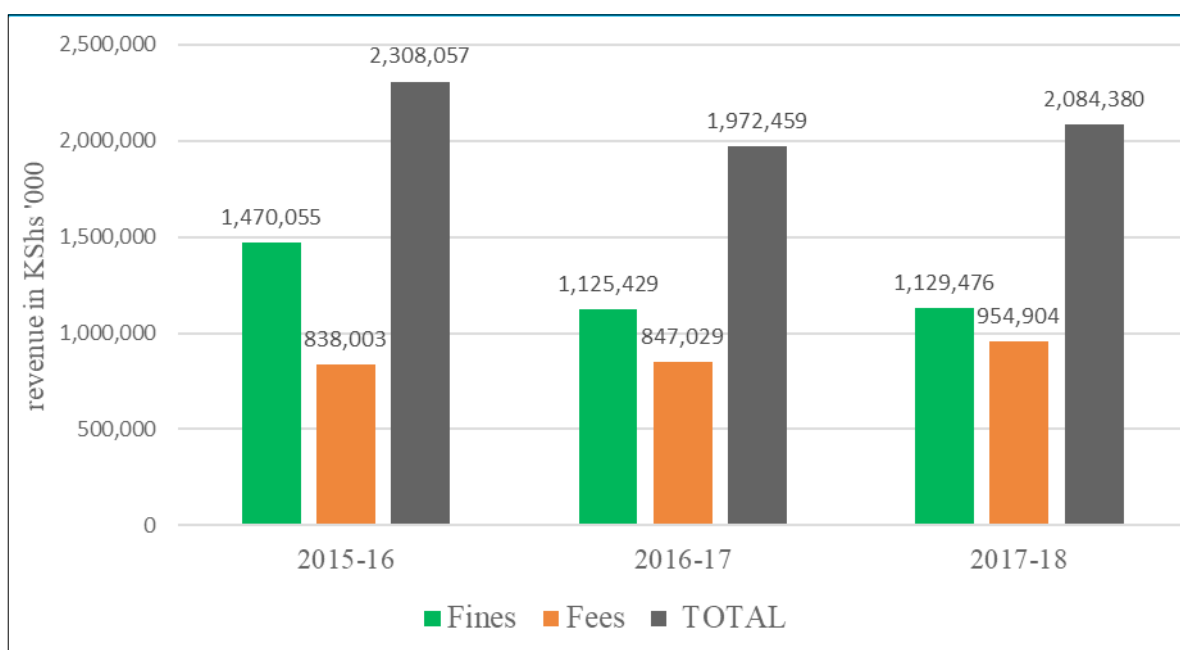
Year	FY 2015-16	FY 2016-17	FY 2017-18
	KShs'000	KShs'000	KShs'000
Fines	1,470,055	1,125,429	1,123,836
Fees	838,003	847,029	954,904
TOTAL	2,308,058	1,972,458	2,078,740

As shown on Table 9.8, there was a decrease in fines collected by less than 1 per cent from KShs 1.125 billion in FY 2016-17 to KShs 1.124 billion in FY 2017-18. Fees grew by 13 per cent from KShs 847 million in FY 2016-17 to KShs 954 million in FY 2017-18. The growth in revenue could be attributed to increase in filed cases that increased by 52,355 cases from 344,180 cases in FY 2016/2017 to 396,535 cases in FY 2017/2018. The Judiciary continued its policy of not collecting any cash payment. Table 9.9 gives comparative figures of revenue collections and estimates for the last three financial years.

**Table 9.9: Analysis of actual revenue collection against the estimated revenue**

Year	Revenue Estimate	Actual	Difference	Realization
	KShs	KShs	KShs	
FY 2017/2018	2,907,508,135	2,078,739,966	-828,768,169	71%
FY 2016/2017	1,610,597,206	1,972,458,573	361,861,367	122%

During the period under review, the Judiciary realized 71 per cent of its revenue collection estimates, although there was an actual increase in the amount of money collected. The slight decline in fines was due to various factors, including refund of fines upon successful appeals. The comparative growth in fees could be attributed to growth in filed cases from 344,180 cases filed in the FY 2016/2017 to 402,243 cases filed in FY 2017/2018, and increase in the number of cases resolved from 88 per cent in FY 2016/17 to 92 per cent during the review period. Revenue control measures have been tightened and enhanced to cap revenue leakages within the Judiciary. In the FY 2017/18, the Judiciary introduced a revenue sweeping policy whereby revenue collected by court stations across the country is auto-transferred to the Judiciary's main revenue collection account every month to minimize the amount of revenue held by court stations.



**Figure 9.6: Trend on fines and fees, FY 2015/16 – FY 2017/18**

Total revenue declined from KShs 2.3 billion in FY 2015/2016 to KShs 1.97 billion in FY 2016/2017. This was followed by a recovery to KShs 2.08 billion in FY 2017/2018. Table 9.10 provides information on court fines and fees for the three financial years.

**Table 9.10: Court Fines and Fees for FY 2016/17 – FY 2017/18**

	Station	2017/2018	2016/2017	2015/2016	2017/2018	2016/2017	2015/2016
No.		KShs	KShs	KShs	KShs	KShs	KShs
1	Balambala	-	-	-	54,850	20,050	-
2	Baricho	11,559,742	8,300,049	15,409,754	3,061,877	3,158,946	2,575,798
3	Bomet	7,777,852	7,728,306	9,528,665	2,453,942	2,092,675	2,297,998
4	Bondo	4,399,572	2,000,748	3,702,798	2,138,464	1,911,635	1,267,418
5	Bungoma	8,896,812	13,441,274	18,758,150	10,336,655	9,770,887	11,590,882
6	Busia	3,449,592	4,787,009	8,612,362	3,667,616	4,783,841	7,115,183
7	Butali	3,055,135	4,491,097	5,733,669	2,562,323	1,746,631	1,631,763
8	Butere	2,856,854	3,478,221	5,705,152	1,899,467	1,787,957	1,256,005
9	C.O.Appeal	-	-	-	18,397,849	11,022,192	11,763,385
10	Chuka	7,385,783	6,581,054	5,477,563	4,290,571	4,188,572	4,077,945
11	Dadaab	-	-	-	165,325	126,750	-
12	E.L.R.C.	300,000	30,000	600,000	9,677,311	10,664,951	8,691,598
13	EldamaRavine	8,683,066	6,963,645	5,731,817	1,941,507	1,333,537	1,551,102
14	Eldoret	30,540,115	36,175,725	27,746,539	27,280,162	16,445,320	16,527,259
15	Embu	9,134,220	8,115,457	10,010,363	7,868,042	6,942,084	8,254,116
16	Engineer	4,580,295	1,678,535	3,018,745	2,477,438	2,378,234	2,393,403
17	Garissa	10,917,894	24,131,572	26,504,231	2,091,871	1,947,938	1,381,199
18	Garsen	295,225	761,979	1,059,272	687,655	1,202,365	721,589
19	Gatundu	6,165,286	5,302,404	6,148,695	4,812,082	3,034,557	3,520,313
20	Gichugu	3,234,902	2,370,283	4,338,983	1,305,169	1,859,756	1,234,710
21	Githongo	3,574,648	3,247,416	5,227,668	1,819,220	1,558,523	921,503
22	Githunguri	4,470,978	4,307,749	2,567,379	2,536,948	1,663,758	1,938,607
23	Hamisi	1,874,635	697,846	1,523,216	397,377	279,405	447,083
24	Hola	340,348	516,653	110,162	460,487	544,164	89,267

	Station	2017/2018	2016/2017	2015/2016	2017/2018	2016/2017	2015/2016
No.		KShs	KShs	KShs	KShs	KShs	KShs
25	HomaBay	3,539,085	3,200,600	4,846,136	3,834,461	2,376,125	4,918,612
26	Ijara	-	-	-	138,675	107,650	-
27	Isiolo	3,487,534	3,075,400	5,611,919	2,309,156	1,919,772	1,143,096
28	Iten	5,251,808	3,816,259	6,902,432	771,755	346,653	502,840
29	JKIA	18,173,330	19,630,996	-	94,715	63,305	-
30	Kabarnet	3,352,460	1,881,717	5,939,648	1,402,157	568,791	549,881
31	Kajiado	14,149,349	18,848,727	18,611,380	11,767,257	8,655,831	5,814,390
32	Kakamega	10,620,776	6,509,159	13,088,374	10,533,879	8,024,388	9,376,617
33	Kakuma	2,008,560	820,120	3,053,132	53,785	47,030	128,710
34	Kaloleni	1,171,768	1,030,738	1,744,722	1,938,073	1,508,485	962,065
35	Kandara	3,756,927	2,805,272	3,183,317	3,017,744	1,857,761	1,986,111
36	Kangema	3,854,660	3,376,720	5,745,112	1,376,360	813,373	811,685
37	Kangundo	9,412,182	8,185,520	4,519,328	4,250,657	1,993,824	1,767,623
38	Kapenguria	4,835,038	5,943,402	6,894,384	965,340	927,958	909,061
39	Kapsabet	17,379,383	10,429,779	26,073,741	3,676,905	2,575,845	3,515,425
40	Karatina	2,965,059	2,485,539	2,584,676	2,935,850	3,038,439	1,959,448
41	Kehancha	2,071,086	1,965,304	2,599,843	446,506	535,745	292,793
42	Kericho	14,151,421	17,837,094	24,583,290	7,625,100	6,823,520	8,649,877
43	Keroka	3,348,445	6,724,573	6,697,805	2,082,304	2,384,099	1,932,759
44	Kerugoya	3,554,429	4,826,834	6,301,752	7,013,484	7,078,643	9,328,950
45	Kiambu	11,772,219	11,734,990	10,855,351	13,160,388	11,383,702	7,069,469
46	Kibera	68,744,528	63,815,620	60,818,189	688,533	425,465	527,980
47	Kigumo	7,197,597	5,722,516	7,373,280	4,036,603	2,079,607	2,612,938
48	Kikuyu	8,038,864	12,729,379	11,037,713	6,561,873	6,490,985	6,095,562
49	Kilgoris	7,644,045	5,492,755	5,208,330	732,002	527,779	932,307
50	Kilifi	2,073,800	1,485,726	3,285,802	5,307,749	2,833,588	4,202,767
51	Kilungu	17,536,908	10,933,971	10,276,605	4,719,496	2,281,250	2,477,407
52	Kimilili	3,097,432	4,303,376	6,285,355	1,422,050	1,113,880	1,327,676
53	kisii	14,117,704	16,899,275	17,670,121	13,469,506	11,757,356	16,322,031
54	Kisumu	10,449,127	14,752,603	14,588,154	23,509,222	22,018,392	24,630,463
55	Kitale	18,723,884	22,601,835	38,191,630	10,089,226	10,700,507	9,634,705
56	Kithimani	5,660,490	8,577,669	13,939,398	3,827,285	3,998,264	3,403,327
57	Kitui	6,262,481	4,868,443	8,574,372	6,073,352	4,589,133	4,212,405
58	Kwale	7,286,087	4,689,376	13,225,116	6,066,911	4,012,300	4,245,971
59	Kyuso	3,853,690	1,766,278	3,337,826	258,349	308,108	723,173
60	Lamu	504,499	758,758	1,115,684	542,420	477,695	317,595
61	Limuru	7,377,405	7,412,844	9,226,081	5,939,998	5,618,380	5,380,505
62	Lodwar	2,820,422	3,134,317	2,357,254	846,664	448,067	320,958
63	Loitokitok	3,169,394	636,380	-	410,878	25,110	-
64	Machakos	20,261,995	13,909,827	13,971,531	30,231,812	15,513,858	20,427,445
65	Makadara	43,549,124	31,999,783	86,868,516	562,730	265,160	271,467
66	Makindu	11,327,357	12,037,156	19,550,771	5,655,808	4,053,518	5,526,035
67	Makueni	2,978,379	1,033,478	2,759,338	4,761,288	1,099,840	1,217,754
68	Malindi	6,047,675	5,994,854	9,263,703	14,651,034	12,039,754	15,593,633
69	Mandera	7,599,807	2,901,130	8,661,920	1,189,813	428,565	511,897
70	Maralal	2,437,096	2,264,344	2,839,402	331,430	376,870	339,432
71	Mariakani	13,029,019	10,621,644	49,888,567	5,113,389	4,256,690	4,073,210
72	Marimanti	876,135	1,422,168	3,633,446	441,125	-	556,871
73	Marsabit	3,054,035	1,311,496	2,595,811	1,409,761	472,480	1,053,789
74	Maseno	2,362,302	4,974,238	12,355,109	1,168,992	1,130,823	1,472,597
75	Maua	2,949,447	5,844,829	10,030,025	3,464,190	2,713,461	2,844,529



	Station	2017/2018	2016/2017	2015/2016	2017/2018	2016/2017	2015/2016
No.		KShs	KShs	KShs	KShs	KShs	KShs
76	Mavoko	42,192,369	12,854,392	35,543,712	18,134,536	7,519,059	8,950,481
77	Mbita	1,893,458	1,316,897	596,055	468,899	581,138	687,465
78	Meru	10,013,235	3,661,290	13,850,522	17,028,045		
79	Migori	2,366,291	3,247,434	4,052,322	6,243,179	5,023,911	7,122,286
80	Mil. C.C	80,000	520,000	2,600,000	206,522,238	199,093,665	190,634,529
81	Mil. L.C.	129,877,604	129,899,260	169,031,114	115,715,525	156,410,790	114,134,311
82	Molo	9,389,786	21,536,895	25,811,843	4,198,040	4,367,220	3,646,814
83	Mombasa	33,923,326	66,205,557	102,964,098	61,749,362	59,772,375	58,033,637
84	Moyale	1,274,586	1,816,435	2,410,255	369,354	304,556	298,991
85	Mpeketoni	743,856	1,061,342	-	431,307	158,925	-
86	Mukurweini	1,594,323	2,218,513	1,156,557	883,154	676,581	716,221
87	Mumias	4,040,482	5,327,858	2,488,519	2,895,115	2,869,105	1,737,558
88	Muranga	6,340,812	4,832,802	6,902,223	9,186,998	8,602,905	7,229,229
89	Mutomo	3,095,079	3,352,217	2,981,476	650,574	500,997	593,628
90	Mwingi	4,877,336	6,566,737	11,150,133	2,207,167	1,710,236	1,573,638
91	Naivasha	33,966,687	41,805,104	61,212,800	14,591,885	9,605,610	14,539,206
92	Nakuru	22,184,261	16,369,036	24,046,084	22,726,943	22,355,826	28,851,291
93	Nanyuki	14,897,084	14,788,321	11,546,110	4,612,873	2,898,544	3,130,606
94	Narok	5,286,075	5,329,881	9,765,054	6,193,519	3,170,340	4,404,495
95	Ndhiwa	829,761	694,336	2,151,095	1,328,755	1,730,485	1,223,844
96	Ngong	15,756,768	8,569,020	-	5,101,350	1,036,553	-
97	Nkubu	7,354,839	971,816	1,551,088	2,449,356	870,204	795,836
98	Nyahururu	7,849,929	10,677,387	23,530,552	8,389,036	5,101,200	4,443,069
99	Nyamira	5,082,021	5,299,731	8,579,033	2,714,409	2,629,904	2,527,181
100	Nyando	2,485,839	3,126,120	7,074,850	1,796,635	1,615,170	1,820,863
101	Nyeri	10,643,674	35,073,522	16,749,132	17,115,040	16,844,675	17,986,595
102	Ogembo	12,580,851	1,532,880	584,934	2,703,544	1,126,831	468,692
103	Othaya	2,339,322	1,737,763	3,054,680	1,387,576	1,005,648	493,910
104	Oyugis	4,082,668	4,426,304	5,663,967	2,838,215	2,396,587	2,151,366
105	Rongo	2,490,129	4,077,292	3,417,998	4,203,708	1,505,158	3,144,543
106	Runyenjes	3,761,788	1,794,596	3,019,769	1,453,694	1,336,817	1,336,992
107	Shanzu	29,885,351	24,412,879	-	-	-	-
108	Siakago	3,058,522	3,040,412	3,762,231	2,002,942	1,239,950	915,748
109	Siaya	2,489,969	3,389,389	4,927,192	3,039,357	2,277,442	2,058,199
110	Sirisia	4,193,784	3,730,557	6,467,970	427,305	274,654	288,179
111	Sotik	3,977,554	2,885,104	5,302,230	2,322,973	1,372,616	2,625,047
112	Tamu	1,676,407	769,573	1,773,782	892,998	260,953	738,720
113	Taveta	4,754,867	4,600,148	5,038,766	472,942	168,919	406,773
114	Tawa	1,351,754	1,604,654	2,422,012	1,944,370	2,409,338	1,970,590
115	Thika	31,900,353	33,143,576	39,643,987	23,436,534	17,900,708	17,709,630
116	Tigania	7,981,440	9,919,587	10,767,204	1,616,252	931,181	1,807,193
117	Ukwala	3,797,641	2,461,060	2,514,596	1,216,950	784,862	851,599
118	Vihiga	5,731,901	10,344,780	4,844,569	2,148,587	1,923,706	1,916,425
119	Voi	11,830,405	12,444,948	11,595,198	4,938,696	4,366,409	4,029,983
120	Wajir	5,227,610	2,972,097	2,229,497	1,444,239	494,492	392,958
121	Wanguru	8,226,145	6,288,875	10,113,054	2,688,943	1,857,618	1,668,307
122	Webuye	6,394,519	9,706,710	10,175,974	2,263,641	2,095,378	1,698,989
123	Winam	5,058,975	4,712,062	4,321,772	1,995,393	1,919,529	2,378,291
124	Wundanyi	5,265,966	3,180,156	4,388,097	499,629	275,745	750,928
	Total	1,129,476,603	1,125,429,138	1,454,644,926	954,904,031	846,724,458	819,008,800



## 9.7 Court Deposits

Deposits have in the past been an issue of major financial management concern. Streamlining the management of these deposits and funds held in trust is core to the Judiciary's transparency and accountability agenda. Therefore, the Judiciary has made the necessary arrangements to ensure a robust, efficient and effective deposit management system is in place across all courts and the headquarters. Reconciliation of deposits in the Judiciary is an ongoing exercise to ensure that outstanding deposits are reconciled to the bank balances. The process of refunding the deposits has been improved and complaints about delays in payment have reduced. This is as a result of decentralization of deposit refunds to all court stations.

By June 30, 2018, the Judiciary held court deposits and other funds held in trust for third parties amounting to KShs. 5,126,896,135. This was an increase from the KShs 4,367,834,191 that was held at the end of FY 2016/17. Court deposit includes funds retained for construction projects. The funds are refundable as and when court orders are issued or after six months liability period for retention monies. Table 9.11 details the amount of deposits held by court stations at the end of FY 2017-18.

**Table 9.11: Court deposits held by court stations**

S/No	Station Name	Balance B/F	Collections	Payments	Balance C/F
		KShs	KShs	KShs	KShs
1	Baricho	6,390,220	4,930,000	5,896,000	5,424,220
2	Bomet	8,947,775	5,146,182	3,779,500	10,314,457
3	Bondo	1,634,050	2,257,725	1,741,225	2,150,550
4	Bungoma	27,890,530	10,332,388	12,458,125	25,764,793
5	Busia	17,198,530	14,252,255	12,468,443	18,982,342
6	Butali	4,220,227	2,362,091	2,634,416	3,947,902
7	Butere	1,725,209	1,891,021	1,770,030	1,846,200
8	Chuka	6,758,615	9,963,525	836,900	15,885,240
9	COA (Nairobi)	235,062,269	471,801,137	139,243,284	567,620,122
10	Eldama Ravine	10,449,605	6,228,000	5,382,500	11,295,105
11	Eldoret	64,063,914	32,011,341	27,614,268	68,460,987
12	Embu	30,932,457	19,044,961	22,921,020	27,056,398
13	Engineer	7,839,030	12,059,465	6,651,500	13,246,995
14	Garissa	23,392,050	18,674,034	23,019,097	19,046,987
15	Garsen	956,430	3,214,146	1,038,241	3,132,335
16	Gatundu	9,660,637	11,427,550	7,832,050	13,256,137
17	Gichugu	3,703,326	4,166,500	4,257,937	3,611,889
18	Githongo	605,475	2,297,000	1,745,000	1,157,475
19	Githunguri	3,182,334	4,914,500	4,152,000	3,944,834
20	Hamisi	1,940,330	1,867,500	1,580,900	2,226,930
21	Hola	734,670	142,000	117,450	759,220
22	Homa Bay	7,737,817	10,964,634	4,318,995	14,383,456
23	Isiolo	13,439,350	14,160,095	9,017,754	18,581,691
24	Iten	4,543,501	2,860,000	1,843,010	5,560,491
25	JKIA	7,764,500	4,589,675	4,417,675	7,936,500

S/No	Station Name	Balance B/F	Collections	Payments	Balance C/F
		KShs	KShs	KShs	KShs
26	Kabarnet	1,344,000	13,323,860	12,850,833	1,817,027
27	Kajiado	14,365,380	8,561,150	10,951,324	11,975,206
28	Kakamega	17,346,880	30,368,566	19,550,547	28,164,899
29	Kakuma	2,476,000	420,000	1,529,000	1,367,000
30	Kaloleni	1,599,135	1,008,000	663,000	1,944,135
31	Kandara	13,187,313	7,564,836	5,749,336	15,002,813
32	Kangema	3,753,067	3,955,500	4,410,000	3,298,567
33	Kangundo	11,783,558	6,841,500	9,990,576	8,634,482
34	Kapenguria	3,338,450	5,525,821	4,844,186	4,020,085
35	Kapsabet	8,440,858	4,422,249	3,430,201	9,432,906
36	Karatina	6,478,000	4,437,047	3,826,500	7,088,547
37	Kehancha	2,245,500	5,125,500	3,484,517	3,886,483
38	Kericho	23,222,158	10,447,961	9,158,920	24,511,199
39	Keroka	1,988,791	3,370,575	3,353,500	2,005,866
40	Kerugoya	20,284,450	7,899,815	14,764,251	13,420,014
41	Kiambu	60,262,016	55,916,250	39,050,798	77,127,468
42	Kibera	227,370,284	64,801,144	61,033,445	231,137,983
43	Kigumo	9,883,977	8,273,089	7,116,804	11,040,262
44	Kikuyu	18,636,139	18,510,433	15,650,722	21,495,850
45	Kilgoris	4,904,030	7,217,460	3,054,249	9,067,241
46	Kilifi	16,897,443	7,265,554	7,202,744	16,960,253
47	Kilungu	8,943,048	5,919,359	11,205,081	3,657,326
48	Kimilili	5,848,000	3,055,832	3,417,871	5,485,961
49	Kisii	28,598,791	15,047,387	6,875,539	36,770,639
50	Kisumu	22,590,268	57,054,460	39,102,462	40,542,266
51	Kitale	19,772,830	16,954,703	14,074,843	22,652,690
52	Kithimani	11,893,742	6,233,500	6,152,500	11,974,742
53	Kitui	24,500,995	19,472,221	8,543,957	35,429,259
54	Kwale	19,232,796	16,997,388	9,951,488	26,278,696
55	Kyuso	806,000	1,302,000	1,284,000	824,000
56	Lamu	8,976,813	1,026,814	781,814	9,221,813
57	Limuru	12,761,325	30,917,881	9,439,500	34,239,706
58	Lodwar	2,965,700	5,307,000	4,112,000	4,160,700
59	Loitokitok	515,000	1,092,500	577,500	1,030,000
60	Machakos	67,467,053	24,726,672	20,836,516	71,357,209
61	Makadara	291,537,875	76,770,500	74,489,327	293,819,049
62	Makindu	9,472,684	2,720,000	1,985,162	10,207,522
63	Makueni	3,188,825	4,233,040	3,845,000	3,576,865
64	Malindi	60,354,136	40,296,470	25,045,823	75,604,783
65	Mandera	1,396,337	4,120,235	2,518,220	2,998,352
66	Mararal	3,021,227	3,310,000	3,578,500	2,752,727
67	Mariakani	10,256,940	6,594,068	5,170,098	11,680,910
68	Marimanti	2,149,500	2,208,000	1,792,000	2,565,500
69	Marsabit	2,764,837	6,024,840	3,158,130	5,631,547
70	Maseno	4,580,100	2,772,484	2,548,000	4,804,584
71	Maua	1,500,000	15,725,885	15,771,088	1,454,797
72	Mavoko	60,040,291	17,567,400	21,669,912	55,937,779
73	Mbita	2,223,000	2,369,000	1,476,000	3,116,000

S/No	Station Name	Balance B/F	Collections	Payments	Balance C/F
		KShs	KShs	KShs	KShs
74	Meru	51,828,847	18,812,705	20,683,126	49,958,426
75	Migori	5,280,062	4,830,784	4,583,268	5,527,578
76	Milimani C.C	241,624,596	72,801,431	49,503,158	264,922,870
77	Milimani L.C	1,443,414,663	552,285,523	386,507,992	1,609,192,194
78	Molo	20,189,739	6,988,606	10,281,512	16,896,833
79	Mombasa	201,539,589	102,422,283	122,716,271	181,245,601
80	Moyale	1,183,225	3,502,020	4,739,020	53,775
81	Mpeketoni	395,000	775,075	408,575	761,500
82	Mukurweini	775,500	1,205,823	952,823	1,028,500
83	Mumias	6,855,544	5,504,878	5,889,006	6,471,417
84	Muranga	32,152,093	24,566,001	11,004,053	45,714,041
85	Mutomo	1,780,698	1,795,500	1,835,500	1,740,698
86	Mwingi	5,329,251	3,911,500	2,678,500	6,562,251
87	Naivasha	84,206,173	32,527,078	26,196,743	90,536,508
88	Nakuru	226,238,626	60,383,735	48,825,683	237,796,678
89	Nanyuki	19,954,200	18,383,245	13,957,745	24,379,700
90	Narok	18,875,146	14,052,132	12,072,402	20,854,876
91	Ndhiwa	1,171,605	1,877,616		3,049,221
92	Ngong	13,564,700	18,129,000	9,477,000	22,216,700
93	Nkubu	9,907,824	3,605,000	3,288,500	10,224,324
94	Nyahururu	24,579,935	11,494,187	11,121,368	24,952,754
95	Nyamira	9,252,862	10,742,362	3,040,940	16,954,284
96	Nyando	2,592,000	1,469,500	1,489,784	2,571,716
97	Nyeri	45,962,130	18,534,571	21,415,874	43,080,827
98	Ogembo	7,955,070	7,633,000	6,467,727	9,120,343
99	Othaya	1,921,312	2,324,000	2,597,000	1,648,312
100	Oyugis	3,020,200	2,185,500	2,220,500	2,985,200
101	Rongo	1,184,925	1,156,600	1,040,250	1,301,275
102	Runyenjes	2,015,200	2,499,500	1,853,200	2,661,500
103	Shanzu	24,355,030	45,859,135	14,239,050	55,975,115
104	Siakago	6,671,084	5,172,910	2,934,610	8,909,384
105	Siaya	6,977,161	5,283,324	5,588,523	6,671,961
106	Sirisia	2,103,994	2,069,226	1,236,531	2,936,689
107	Sotik	3,174,045	467,500	523,000	3,118,545
108	Tamu	652,000	1,500,000	1,524,000	628,000
109	Taveta	1,778,125	374,000	336,000	1,816,125
110	Tawa	3,188,825	1,271,000	401,000	4,058,825
111	Thika	109,373,029	57,408,305	45,590,365	121,190,969
112	Tigania	15,213,003	4,513,500	5,248,500	14,478,003
113	Ukwala	1,147,366	1,949,314	2,209,918	886,762
114	Vihiga	3,431,391	4,278,650	2,916,650	4,793,391
115	Voi	15,311,355	7,638,540	8,956,841	13,993,054
116	Wajir	1,553,000	5,511,852	4,736,180	2,328,672
117	Wanguru	10,425,834	6,736,000	9,192,000	7,969,834
118	Webuye	10,123,348	4,826,010	5,010,424	9,938,934
119	Winam	7,791,892	10,688,094	3,699,126	14,780,859
120	Wundanyi	1,874,600	1,763,900	2,286,800	1,351,700
Total		4,367,834,190	2,510,344,089	1,751,282,142	5,126,896,137

## **9.8 Automation of revenue, expenditure and deposits management**

The Judiciary's Strategic Plan 2014–2018 stipulates that judicial reforms seek to improve efficiency, effectiveness and prudence in the utilization of available and acquired resources to bridge the resource gap. The Judiciary will achieve higher accountability levels through acquisition of best practices, and by eliminating bottlenecks in its systems and processes. A key element of this is to improve the financial management system by embracing technology. This has also been affirmed in Chapter 5 of the Sustaining Judiciary Transformation (SJT) blueprint. An automated financial system (JFMIS) was rolled out in all court stations. The system aided in revenue, deposits and expenditure management and reduced losses occasioned by weak systems in courts. In addition, the Judiciary has implemented Q-pay services which is an on-line payment platform (Electronic Funds Transfer) provided by Kenya Commercial Bank. Q-pay has been implemented in 59 court stations. The platform allows users to make secure online payments.

## **9.9 Operationalization of Judiciary Fund**

Section 173 of the Constitution establishes the Judiciary Fund to be administered by the Chief Registrar of the Judiciary. The objectives of the Fund are to safeguard the financial independence of the Judiciary, ensure accountability of funds allocated and ensure that the Judiciary has adequate resources for its functions. Further, sub-article 5 requires Parliament to enact legislation to provide for regulation of the Fund. The Judiciary Fund Act 2016 was assented to in May 2016 with a commencement date of 12<sup>th</sup> June 2016. The Act in Section 14 provides for the Chief Justice to make regulations for the proper management of the fund. Consequently, Judiciary Fund Regulations that were developed through a consultative process were gazetted on May 31, 2018. By the end of the period under review, the regulations were awaiting parliamentary approval to commence operations.

## **9.10 Financial Challenges**

### **1. Insufficient resources**

The Judiciary has continued to receive low funding over the years. This has affected the development and completion of physical infrastructural especially construction of courts in sub-counties and counties, digitization of judiciary processes through full roll out of the ICT infrastructure, human resource capacity improvement especially the hiring of optimal number of judges and magistrates and continuous education, and sufficient finances for the recurrent budget.

### **2. Lands Registration**

Lack of land ownership documents in some courts has hampered the undertaking of infrastructural projects.

# Chapter 10

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THE STATE OF THE AGENCIES  
AND COLLABORATION IN THE  
JUSTICE SECTOR

# THE STATE OF THE AGENCIES AND COLLABORATION IN THE JUSTICE SECTOR

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## 10.0 Introduction

**T**he NCAJ is established under Section 34 of the Judicial Service Act (Cap 185B). It is a high-level policymaking, implementation and oversight coordinating mechanism as reflected in its membership that is composed of State and Non-State Actors from the justice sector.

Inter-agency coordination in the justice sector is the core mandate of the NCAJ. The coordination for the reporting period focused on improvement of service delivery and institutional strengthening through collaboration. The agencies under NCAJ realised great achievements on service delivery and improved access to justice. This is attested by various surveys and statistics in this report that give an empirical view of the factors affecting access to justice. The chapter also provides trends reported as well as policy and legislative initiatives that will affect the administration of justice. In summary, the mandate of the NCAJ is to ensure a coordinated, efficient, effective and consultative approach in the administration in justice and reform of the justice system.

The NCAJ was formally launched on 11<sup>th</sup> August 2011, and has so far held 19 Council meetings. NCAJ has witnessed tremendous growth programmatically, institutionally and financially. Through enhanced fundraising strategies by the Secretariat, the NCAJ budget has increased significantly, from Ksh. 25 million annually to an average of 200 million from both GoK and development partners. Donor confidence in NCAJ has increased steadily, which is evidenced both by the fact that a number of donors have supported the institution including GIZ, IDLO, World Bank; and also that, during the review period, NCAJ was appointed the coordinating institution for the Program on Legal Aid and Empowerment Delivery (PLEAD) – a five-year Euro 34 million grant for the Kenya Justice System financed by the European Union (EU) in partnership with UNODC and UNDP.

For the last two years, the World Bank invested about Kshs. 100 million through the Judiciary Performance Improvement Programme (JPIP) Small Grants Programme that enabled the full operationalization of 128 Court Users Committees (CuCs) countrywide. These funds were been used for holding public Open Days, court improvements, purchase of equipment, CuC meetings and trainings, all geared towards access to justice.

The NCAJ occupies a unique and strategic place in the administration of justice in Kenya. It provides the singular most important institutional platform for achieving justice sector-wide reform. In the Sustaining Judiciary Transformation (2017 – 2021), the Judiciary aims at fully institutionalizing NCAJ and strengthening it with its own fully-fledged secretariat and office space during the review period. Premises for the secretariat were identified and the offices were unveiled by the Chief Justice

The NCAJ carries out its core mandate through the 7 NCAJ Committees that have a general mandate to review and propose legislative and policy changes for the effective administration of justice. In this regard, the NCAJ has developed numerous justice sector Bills and developed several policies. These include the Bail and Bond Policy Guidelines, Handbook on Combating Illicit Trade, and the Sentencing Policy Guidelines. The Committees are currently undertaking various processes that are meant to positively impact on the administration of justice.

#### **10.1 BAIL AND BOND IMPLEMENTATION COMMITTEE**

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##### **Activities and Achievements**

The Committee was established in July 2015 to oversee, monitor and evaluate implementation of the Bail and Bond Policy Guidelines, and Recommendations of the Taskforce on Bail and Bond. The Chief Justice extended the Committee's tenure for a period of 1 year to June 2019. During the FY 2017/18, the Committee held several consultative forums to entrench the guidelines and build consensus on common issues by stakeholders; undertook sensitization and awareness programs targeting judges and other judicial officers, prosecutors, the police, and other officers in the criminal justice sector.

A survey to establish level of awareness and usage of the Policy Guidelines among advocates and prosecuting counsels was also undertaken. The survey was useful in identifying areas requiring attention of the Committee and effective outreach approaches. The committee also developed various IEC materials including Bail and Bond Charters, illustrative posters, and FAQ Brochures, all of which were distributed to the public. The Committee also initiated a process of developing a legislative proposal to streamline the application of bail and bond by the police and courts.

#### **10.2 NCAJ SPECIAL TASKFORCE ON CHILDREN MATTERS**

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##### **Activities and Achievements**

The Judiciary Special Task force on Children has conducted several service weeks since 2016 in order to reduce backlog of children cases in court. During the service weeks, the Judiciary, together with the court user's committees (CUCs), set one week aside to conduct children matters with the aim of reducing back log of children cases in court. In line with this, November of every year has been declared service week for children. With the support of the US Embassy and the International Development Law Organization, special service weeks in various courts were conducted throughout the year.

Colour coding of children's files using white colour has continuously been encouraged so as to identify children's files when stored in the registry or when matters are being heard. The task force conducted circuit visits on children institutions and holding facilities, which include: children remand homes, rehabilitation schools, rescue centres, reception centres, probation hostels, Borstals and women's Prison children wing, Child Protection Units (CPUs), children's court. The purpose of these visits was to look at the infrastructure, programmes, and pending matters, among other issues and make recommendation on the same

The Taskforce also developed a Protection and Care (P & C) form (Form 1) to be used in court



for children in need of care and protection, which replaced charge sheets that were used previously. In order to allow children to testify freely, the Taskforce introduced witness protection boxes in children's court. For instance, Makadara court introduced services such as day care unit for children, counseling services, lunch for children's, and play therapy.

**The Taskforce took part in developing the following new pieces of proposed legislation;**

1. Children Bill 2018 – provided membership to the national steering committee and technical support through the entire process. There were regional consultations across the country in regions namely central, upper and lower Eastern, Western, North Eastern, Coast, North and South Rift.
2. Through Care Guidelines 2013, recommendations were made which outlined the Juvenile Justice System that a child goes through from the moment they are apprehended, and committed to the institution until they exit.

**The following challenges were experienced during the period under review:-**

1. Inadequate number of prosecutors in Courts.
2. Court, parties and prosecutors did not have adequate notice of service week, making it difficult to bring forward case dates and obtain parties/witnesses who often travel large distances.
3. Little awareness of plea-bargaining.
4. Court Users Committees (CUC) had not convened legal aid committees.
5. The bulk of Children cases involved defilement.
6. Lack of legal representation for the children in Court, both for victims and witnesses
7. In some courts children are held together with adult remandees.
8. Poor living conditions in some remand homes
9. Inadequate funding. Some Police officers reported to have used their own money to pay for water and electricity, and build a Child and Gender Unit Desk.
10. Officers are untrained on children's matters.
11. Children officers were not made aware of service week.
12. Understaffing at the police stations.
13. Children Institutions receive little funding from the Government for the children's medical care. Children at some of the remand homes did not have any shoes on.
14. Some magistrates/ courts do not understand the nature of children matters and end up committing children to institutions where the children cannot attend school.
15. Some courts do not also understand the purpose of the remand, as a result will commit underage children to the remand home.

### **The Taskforce made the following recommendations**

1. There is need for managers of rehabilitation school to link with neighbouring schools so that children can be attending schools at the locality, as in the case of Kisumu Boys Rehabilitation School.
2. There should be timely release of funds for maintenance of building, purchase of beds and beddings and kitchen utensil plus cooking sufurias.
3. Staffing/cadres should be commensurate with the needs of the institutions.
4. There should be adequate funds to carry out home tracing and reintegration.
5. There should be strong collaboration amongst all the stakeholders to ensure that children cases are fast tracked.
6. Build a Children Remand Facility in Machakos and Makueni counties as well as a Child Protection Unit (CPU) in every police station.
7. Recruitment of prosecutors to expedite the handling of children's matters.
8. Allocation of specific budget for children at every police station
9. Training of personnel (magistrates, police officers, prosecution) on children matters.
10. Collaboration with Court User Committees (CUCs) and local leadership (e.g. chiefs) to create awareness and facilitate service week.
11. Greater partnership with County Government to provide funding to cater for the best interests of the child (medical care, remand/CPU, food supplies).
12. Provision of psychosocial support for child victims and offenders at all stages in the justice system.
13. Civic education and awareness creation for parents and community especially on the best interest of the child, namely in cases of sexual abuse and children with disabilities.
14. Creation of a separate Children's Register at every court and police station.
15. Mandatory use of Case and Protection form in dealing with cases of children in need of care and protection.
16. Development and implementation of a policy to ensure children's institutions receive a complete copy of the child's file upon committal.

### 10.3 CRIMINAL JUSTICE REFORM COMMITTEE

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#### Activities and Achievements

The National Council on Administration of Justice Committee on Criminal Justice Reform (NCCJR) was established to lead the review and reform of the criminal justice system and to oversee the full implementation of the audit report. The Committee comprises of key players in the criminal justice system including the police, courts, prosecution, probation officers, prisons officers, and advocates. The mandate of the Committee entails a review of the criminal justice system and make recommendations for a better functioning criminal justice system and ensure that it conforms to the dictates of the Constitution. The committee also identify barriers that impede the efficient running of the system and areas where inter-agency corporation and corroboration may make the criminal system more efficient, reviewing especialy penal laws. The activities undertaken by the Committee during the review period were as follows:

1. The Committee held various sensitization meetings with actors in the Criminal Justice System. These included meetings with: the Attorney General, the Forensic Pathologists, ICI, KNCHR, KHRC, Mathari Mental Hospital supervisor, Kenya Defence Forces.
2. The Committee participated in validation of the International Commission of Jurists (ICJ) Kenya's research on the law and policy on the petty offences and practices affecting populations at the national level as well as those in Kisumu, Mombasa and Nairobi counties. This research by ICJ Kenya was vital to the Committees objective to decriminalise and reclassify petty offences. This report identified the gaps in legislative and policy frameworks on petty offences and practices that result in human rights abuses. The report further identified the offences that the Committee should consider for reclassifying or decriminalisation.
3. The Committee trained members on the various legislation and international instruments that relate to incarceration and the minimum requirements of a detention facility.
4. The Committee has developed a prisons assessment tool, for use in reference of relevant law, and the shortcomings in detention facilities detailed.

### 10.4 COURT USERS COMMITTEE (CUC) PROGRAM

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#### Activities and Achievements

The Court Users Committee are stakeholders' forum that convene at every court station. They are further established at different levels to ensure an accountable, coordinated, efficient, effective and consultative approach in the delivery of justice.

#### These levels include:

- i. The High Court Station
- ii. The Magistrate Court Station
- iii. Special Courts (Environment and Land Court, Employment and Labor Relations Court, Children's Court, County Municipal Courts, Milimani Commercial Court, Kadhis Court, and Mobile Courts);

- iv. Tribunals;
- v. The County

During the reporting period, the NCAJ, under the CUCs program was actively involved in enhancing the capacity of CUCs in the various stations. The Special Working group for CUCs, which sits at the National level, reviewed the CUC Guidelines. The guidelines have been in existence since 2013 and required updating. The committee also facilitated targeted CUC workshops in Nairobi to enhance synergies in the criminal justice sector. The workshops addressed various concerns that were raised from the court stations. The table shows the activities that were undertaken during the report period by the various CUC

**Table 10.1: Summary on CUC activities undertaken 2017/2018**

ACTIVITY	Number
CUC Meetings	88
ICT Equipment including computers for registry and customer care desks, photocopying machines, power back ups etc.	64
Training of chiefs, IO, CO, CUC members etc. on various acts through workshops	56
Works including partitioning, rehabilitations, construction	45
Furniture including chairs, workstations, filing cabinets, benches etc.	32
Purchase and installation of Water tank	21
Witness expenses	21
Visits to prisons/Remand homes/Schools	19
Stationery and office supplies including printing papers, toners, cartridges and furnishing children rooms	11
Purchase and installation of Solar panels	10
Legal aid clinics, service week and RRI	6
Signage	5
PA System and Bulk SMS system	4
CSO project	3
Service charter and Grey Books	3
Interpreter expenses	2
Canvas tent to be used as makeshift courts	1
Electrical works	1
Metal detectors	1
Radio talk shows	1



**NCAJ Special Working Group for CUCs Retreat  
At Simba Lodge Naivasha 27th - 30th June 2018**

2018.06.28

The continued support of CUCs through the JPIP funding under its small grant program which saw 105 CUCs out of 128 get direct funding for their activities enumerated in their individual proposals. The funding has seen improvements in access to justice by court users answering to the key mandate of the NCAJ. Apart from the aforementioned the NCAJ has had greater impact from the segments of CUC. Particularly, the Kisumu CUC and the Business Court Users Committee at Milimani both of which have had secretariat support through IDLO. The key milestones for these CUCs are reported below.

#### **Reports from Selected CUCS**

The NCAJ has a vibrant CUC in Kisumu and its environs where there is secretariat support through the auspices of IDLO. Consequently, the Kisumu Station CUC has had these notable achievements geared towards stakeholder participation and inclusion.

**Restructuring the CUC:** The Kisumu Law Courts and the High Court Kisumu have changed the composition and structure of CUCs to ensure a thorough and vibrant approach in addressing matters affecting all courts users, and with an overall goal to promote access to justice and enhance justice delivery. This was borne out of need to accommodate the many actors and users of the Kisumu Courts as well as to ensure that the new divisions now in existence, such as the Environment and Land, Employment and Labour Relations and family are represented. The separation is done thematically. Therefore, in addition to having a Kisumu County CUC and the Station CUC, there is now the Employment and Labour CUC, the Environment and Lands CUC, the Criminal Division CUC and the Family Division CUC.

**Partnerships and inclusion:** where there has been a move to ensure that stakeholders involved in particular interests and values among the courts users have been incorporated into the CUCs. These partnerships include the Kisumu County Gender Technical Working Group, the Kenya Wildlife Service, Kenya Forests Service, National Environmental Management Authority and the Women Concern Centre. These partnerships have in turn reinforced the image and impact of CUCs on their focus areas.



**Capacity Building:** Kisumu CUCs have undertaken several capacity building activities focused on topical issues of Alternative Dispute Resolution, Sexual and Gender Based Violence, the Law of Succession in light of the rights against disinheritance of widows, orphans and vulnerable children, Alcoholic Drinks Act, anti-corruption laws, children rights and reproductive health. The target groups have included local area administrators such as chiefs, deputy county commissioners and elders, key community based organizations and civil society groups, religious leaders, prison in-mates, widows and the general public. This is aimed at reduction in reported cases on abuse and violations.



*An inmate at Kibos Maximum Prison addressing the Kisumu CUC members on 29<sup>th</sup> May 2018*

The Commercial and Tax Division of the High Court convened its quarterly Business Court User Committee (BCUC). This is a specialized CUCs currently at the National level. The BCUC was established in 2015 as a special CUC under the aegis of the NCAJ. The BCUC handles issues affecting business organizations that arise from the Commercial and Tax Division. The BCUC provides a platform for the public, the business community, and other stakeholders, to understand the processes and systems of the Judiciary.

In 2018, The Commercial and Tax Division with the support of International Development Law Organisation (IDLO) was able to establish its secretariat. This has led to several achievements for the BCUC as follows:

**Capacity building and training for judges:** The Judges of the Division held two trainings. The first one was on July 2017 on the matters courtesy of the Association of Kenya Insurers, Kenya Association of Manufacturers and PricewaterhouseCoopers especially in the application of the law and development of jurisprudence. The second one was held in January 2018 on the Movable Property Security Rights Act 2017, organized by the Kenya Bankers Association.

**BCUC Meetings:** The BCUC had meetings that were well attended with representation from the Judges and Deputy Registrars of the Commercial and Tax Division, Business Member Associations such as Kenya Private Sector Alliance, Kenya Association of Manufacturers, Association of Kenya Insurers, The Law Society of Kenya, Kenya Bankers Association, Petroleum Institute of East Africa, Retail Traders Association of Kenya, Kenya Copyrights Board, IBM Research and International Development Law Organization. The meetings focused on:

- Automation projects undertaken by the Judiciary through the Commercial and Tax Division viz E-filing and E-payment, Case Management and Transcription
- Clearing of case Backlog
- Emerging areas of Law and need for Capacity Building/ Trainings
- Information sharing and outreach to members
- The Court Annexed Mediation in the Commercial and Tax Division.



*The Former BCUC Chairperson, Hon. Mr Justice Fred Ochieng presiding a BCUC Meeting.*

The BCUC members attended and presented the strides that each of their sectors had made in using Alternative Dispute Resolution during the ADR Stakeholder forum that was organised by the Judiciary ADR Taskforce and the Nairobi Centre for International Arbitration (NCIA) with the support of IDLO. The National Stakeholder Forum on Alternative Dispute Resolution (ADR) under the theme Cultivating a Robust, Coordinated ADR Framework in Kenya Towards Sustained Economic Growth and Access to Justice took place on April 12<sup>th</sup> and 13<sup>th</sup>, at the Crowne Plaza Hotel, Nairobi, Kenya.





*During an ADR Stakeholder Engagement.*

### **Launch of The Commercial Justice Sector Project and showcase of the various ICT Initiatives**

The Hon. the Chief Justice Hon. Justice David Maraga launched the Commercial Justice Project on the 17<sup>th</sup> May 2018. The launch showcased the Commercial Court Automation project components: e-filing, e-payment and case tracking system, the Court Annexed Mediation and The Business Court User Committee. This Project seeks to strengthen Kenya's business climate through improvement of court structures and processes for commercial matters; enhance electronic case management systems for commercial cases; and availing alternative dispute resolution methods for commercial matters .



*(L-R) Enid Muthoni- Regional Manager, Africa, IDLO, Dr. Chris Kiptoo- Principal Secretary State Department for Trade, Hon. Mr. Chief Justice David Maraga, Hon. Ambassador Frans Makken- Netherlands Embassy, Hon. Lady Justice Lydia Achode – Principal Judge of the High Court and Hon. Mr. Justice William Ouko – President of the Court of Appeal during the launch of the Commercial Justice Sector Reforms on 17th May 2018.*

## 10.5 OFFICE OF THE ATTORNEY GENERAL

The Office of the Attorney General is established under Article 156 of the Constitution of Kenya and governed by the Office of the Attorney General Act No. 49 of 2012. The duties of the Office are outlined in Executive Order No. 1 of 2018. The mandate of the Office of the Attorney General and the Department of Justice (OAG & OJ) is to provide legal advice to the Government, represent the National Government in court civil proceedings and matters before foreign courts and tribunals; promote the rule of law and protect public interest; promote and protect human rights; promote good governance, transparency, accountability, ethics and integrity; and facilitate implementation of the Constitution. The office further spearheads policy, legal and institutional reforms in the administration of justice, electoral reforms, legal education and legal profession; provide national integration services for businesses, marriages and societies; act as public trustee; and enhance access to justice through the provision of legal aid. The activities and Achievements in the Office of the Attorney General are given in Table 10.2. During the reporting period, the Office undertook various activities as listed below:

**Table 10.2 : Activities undertaken by Office of the Attorney General.**

NO.	OUTCOME	KEY ACTIVITIES	KEY ACHIEVEMENTS FOR THE PERIOD 2017/18
1	Constitution of Kenya effectively implemented	Draft Bills for the harmonization of existing Laws with the Constitution	10 Bills finalized – to be provided by Kenya Law Reform Commission
		Draft 10 other prioritized bills	10 Bills finalized – to be provided by Kenya Law Reform Commission
		Conduct civic education in 5 counties	Conducted civic education in Kericho, Bomet, Uasin Gishu, Baringo and Isiolo where 2900 opinion leaders were sensitized
		Review the Victim Protection Act	Victim Protection Act under review
		Operationalize the Victim Protection Board	Victim Protection Board published in the Kenya gazette
		Develop Victims' Rights Charter	Victims' Rights Charter finalized in April 2018 awaiting launch
2	Legislative and Policy framework for the fight against corruption strengthened	Facilitate the development of Anti-Corruption Laws (Amendment) Bill	Bribery Act, Access to Information Act, Whistle Blower Protection Bill, and Anti-Corruption Law (Amendment) Bill developed
		Facilitate implementation of the Task Force Report on the legal policy and institutional framework for the fight against corruption in Kenya	National Ethics Anti-Corruption Policy finalized
3	Access to justice enhanced	Establish and operationalize the Legal Aid Board	Legal Aid Board published in the Kenya gazette and members inducted
		Provide legal aid to indigent persons	13000 persons provided with legal aid in 5 pilot locations
		Map out legal aid providers in Kenya	113 legal aid providers identified during the exercise and a database created

NO.	OUTCOME	KEY ACTIVITIES	KEY ACHIEVEMENTS FOR THE PERIOD 2017/18
4	Human rights and fundamental freedoms fulfilled	Coordinate the formulation of a Draft National Policy on Public Participation Bill	Draft National Policy on public participation developed and the Public Participation Bill, 2018 is currently before the Senate.
		Coordinate the formulation of a Draft National Policy Action Plan on business and human rights	Stakeholder consultations undertaken. Action plan in the process of being drafted.
		Draft Whistle Blower Protection Bill	Whistle Blower Protection Bill drafted and is currently before the Cabinet.
5	Electoral and political processes reformed	Facilitate legal and institutional reforms of the electoral process	
	To promote respect for rule of law and protection of public interest	Represent the Government in cases filed against the Attorney General	1027 cases filed against the Attorney General finalized.
		Provide legal advice and opinions to MDCAs within 3 days upon receipt of necessary documents	Opinion and legal advice being given within 3 days
6		Provide legal advice to MDAs on Bilateral, Regional and International Law matters within 7 days	Legal advice given within 5 days
		Undertake to defend the Republic of Kenya in International Arbitration and litigation matters	Represented the Government of Kenya in various matters (see annex)
		Develop a Mutual Legal Assistance Bill	Mutual Legal Assistance Act enacted
	Compliance with trusteeship services enhanced	Reduce time taken to draw final accounts of Estates from an average of 20 to 15 days	Time reduced to 15 days
	Access to National Registration services enhanced	Draft rules for the Hindu, Islamic and Customary Law Marriages	Marriage (Muslim Marriage) Rules published in the Kenya gazette
7	To promote discipline and competence in the legal profession	Reduced number of days taken to file charges at the Disciplinary Tribunal from 4 to 3	Days reduced to 3
		Digitize complaints files	1225 files digitized
8		Conduct Dispute Resolution programs in Counties	Programs undertaken in 15 Counties

NO.	OUTCOME	KEY ACTIVITIES	KEY ACHIEVEMENTS FOR THE PERIOD 2017/18
10	Enhanced access to quality legal education	Create awareness to the public, advocates and other stakeholders on legal ethical issues	4
		Training students on the advocates Training Programme	1635 students were trained
		Increase the number of paralegal professionals	208 paralegal students were trained
11	Nairobi Centre for International Arbitration	Conduct bar examinations for lawyers	5526 candidates were examined
		Gazette qualified candidates for admission into the Roll of Advocates	1158 successful candidates gazetted
		To ensure the start of operations for the Nairobi Centre for International Arbitration (NCIA)	NCIA was operationalised
		Develop an Alternative Dispute Resolution Policy	Draft Alternative Dispute Resolution Policy developed

**Key challenges encountered by the OAG&DOJ in the execution of its mandate and proposed interventions.**

**Key challenges encountered include the following:**

The OAG and DOJ has had notable achievement over the years. However, various constraints and challenges hampered effective and efficient service delivery, key among them:

1. High turnover and poor retention of professional staff due to uncompetitive remuneration.
2. Inadequate funds for training of State Counsel/lawyers in emerging specialized areas of law.
3. Limited modernization and automation of services hampering of operations in key departments such as civil litigation, Public Trustee, Legal Advisory and Research Division and Business Registration Services.
4. Lack of modern functional library to facilitate research.
5. Inadequate motor vehicles to facilitate counsel to travel to courts spread in vast counties, ultimately affecting the quality of services offered.
6. Inadequate resources to sustain the fight against corruption and to effect fundamental changes against the culture, behavior, practices and attitudes by Kenya's towards corruption; and
7. Lack of awareness by the public hampers effective public participation in Government projects and programmes.

**Proposed interventions**

1. Given the unique mandate of OAG&DOJ in the provision of legal services to the government and the public, there is need to increase budgetary allocation to enable it fund the following programme.

- a. Decentralization of services to the counties
  - b. Automation of operations
  - c. Capacity building, policy formulation and implementation, and
  - d. Operationalization of new institutions
2. Enhance public awareness and participation in line with the principle of good governance in the Constitution.
  3. Create awareness on the use of alternative dispute resolution in order to enhance cohesion and integration and reduce backlog of cases in the Judiciary and the associated economic costs.
  4. Develop a collaborative framework for MDAs/Counties to enhance information sharing, service delivery and efficiency.
  5. Empower the Administration, Planning and Support Service programme.

#### **10.6 OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTION**

The Office of the Director of Public Prosecutions is (ODPP) the charged with the responsibility of exercising state powers of prosecutions as provided in Article 157 of the Constitution and the Office of the Director of Public Prosecutions Act 2013. This includes; undertaking criminal prosecutions in subordinate and superior courts, directing investigations, offering criminal legal opinion to government ministries and departments, processing extradition and mutual legal requests from both within and outside Kenya, facilitating witness protection and victim's participation in criminal justice.

ODPP plays an integral role in the administration of justice. In fulfillment of its constitutional obligation, ODPP is required to periodically accounts for its performance. Thus, below is a detailed exposition of the activities, achievements and challenges that the ODPP faced in the fiscal year 2017/2018.

#### **Achievements of the Office of the Director of Public Prosecutions - FY 2017/18**

**During the reporting period, the ODPP undertook a number of activities as highlighted under the following sub-themes:**

##### **1. Enhance Access to Justice**

The ODPP strives to enhance access to justice through a variety of strategic activities which included, decentralization of prosecution services, redress of public complaints, enhancing capacity of prosecutors and focusing on key crimes, which have a multiplier effect such as corruption. In line with the Constitutional imperative for ODPP as a National Government organ, to decentralize prosecution services the ODPP continued to improve its presence in all the 47 Counties of the Republic, as well as all the 121 court stations by deploying more



Prosecutors to serve and thereby ease case backlog. Addressing public complaints either regarding ODPP services or those of related agencies such as the National Police Service, is critical to promoting accountability, transparency and ultimately access to justice. In this regard, the ODPP therefore has a public complaints redress mechanism. The ODPP's Complaints and Compliments Section has, since inception in January 2012, processed 14,007 public complaints, including 1,616 complaints in FY 2017/18. ODPP has also adopted the use of social media platforms to receive complaints and inform the public on actions taken. ODPP also stepped up its drive towards enhanced capacity development and professionalization of prosecution services by increasing specialized training of Prosecutors in various thematic areas.

During the reporting period, combating corruption continued to be a major subject of national discourse. During the fiscal years of 2014/15, 2015/16, 2016/17 and now 2017/18 ODPP continued to ramp up its contribution to the fight against corruption by prosecuting the highest number of high profile corruption cases ever in Kenya's legal history. New cases filed in courts on anti-corruption involved over KES 2billions. The cases involved senior national and county governments officials on trial for looting or misappropriation of public funds. The ODPP continued to deploy the "follow-the-money" and "full-range of the law" approaches resulting in more cases of economic crimes, abuse of office, money-laundering and organized crime.

The ODPP also invested in infrastructural development to ensure that the Office is better placed to serve the citizens. This includes acquisition of additional office space, refurbishing and equipping of the newly opened sub-county offices.

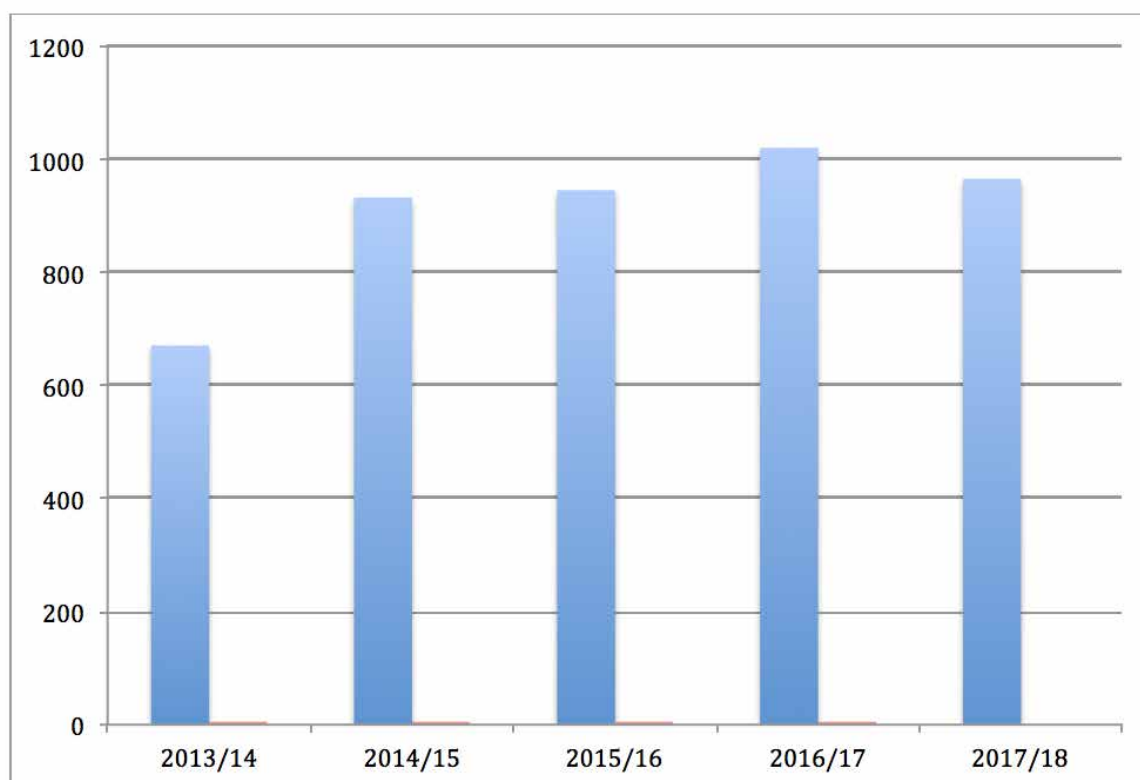
## 2. Institutional Reforms and Restructuring

The ODPP's thematic divisions, sections and units were improved by various leadership changes and deployment of more Prosecution Counsel. The institution's Human resource complement improved by recruiting more new staff of whom 50.9% were Prosecution Counsel and 49.1% were Central Facilitation Staff. Growth in staff is critical for the ODPP's overall commitment towards rendering of improved prosecution services.

**Table 1: ODPP Human Resource Capital**

Current staffing levels					
Total No. of Staff	671	933	946	1021	966
Growth					

**Source: ODPP records**

**Table 1: Total Number of Staff**

ODPP's strategic focus on professional skills development continued during the FY 2017/18, by mounting more **inter-agency** trainings which not only benefited Prosecutors but also officers from key partner agencies, including the Judiciary, National Police Service, Ethics and Anticorruption Commission, Communication Authority, Kenya Wildlife Service, Kenya Revenue Authority, Kenya Airports Authority, NEMA, amongst others. These trainings focused on Trial Advocacy, Active Case Management, Anti-corruption, Money-laundering, Terrorism, Wildlife Crime, SGBV, Cybercrime and human-trafficking.

### **3. Professionalization of Prosecution Services:**

The ODPP developed tools such for centralized case in-take, daily review of charge sheets and active case management in line with the existing prosecutorial policies and guidelines. Prosecutors have been continually sensitized on these issues and case audit operations have been established. This is in the wider effort to ensure that standards set out in the National Prosecution Policy are enforced.

### **4. Promote Inter-Agency Cooperation and International Collaboration:**

The ODPP operates within the NCAJ framework state and non-state actors. To foster collaboration efforts with various agencies, the ODPP developed Standard Operating Procedures (SOPs), MoUs and Reference Manuals/ Guides and Digests for internal and inter-agency capacity building efforts. These tools covered anti-corruption, wildlife crimes, terrorism, hate-speech, international crimes, piracy, narcotics and SGBV. Moreover, ODPP improved its regional and international collaboration efforts by hosting various forums of the East Africa Association of Prosecutors [EAAP] including its Annual General Meeting. The ODPP also participated in various prosecutorial regional and international conferences/ trainings of the Africa Prosecution Association and International Association of Prosecutors.



It also contributed prosecutors who served in various national delegations to various state parties' forums on various international legal instruments of which Kenya is a party to. Part of ODPP's collaboration goals is to establish regional prosecutorial networks to enhance international legal cooperation formal and informal mechanisms.

## **5. Strengthen Policy and Legislative Frameworks**

The ODPP contributed to the development and implementation of a number of criminal justice sector policies and legislative initiatives. For instance, ODPP contributed to the much anticipated review of Anticorruption laws including the enactment of the Bribery Act, 2016. The Office was involved in Inter-agency taskforces including the IDPs Taskforce, Taskforce on Traditional Dispute Resolution Mechanisms, Victims of Crime Board and various NCAJ technical Committees and CUCs. ODPP contributed to discussions that led to the formation of the Anti-Corruption High Court Division by Judiciary. During the reporting period, which partly covered the election period for the 2017 General Elections, the ODPP established an Elections Offences Prosecution Team with a 24-hour Secretariat which collaborated with other stakeholders such as the IEBC and the National Police Service in ensuring that these agencies were in a good state of election preparedness. The ODPP also collaborated with various justice agencies in the fight against corruption through the Multi-Agency Team (MAT) framework whose interventions have resulted in expeditious prosecution-guided investigations of major graft cases and increased both convictions and case conclusion rate of corruption and economic crimes. Indeed, for the first time corruption cases have been registered and successfully tried within a year, which is a remarkable achievement.

The ODPP was involved in various law reform initiatives, which include the Access to Information Act 2016, Anti-Doping Act 2016, Elections Offences Act 2016, Forest Conservation and Management Act 2016, Legal Aid Act 2016, National Coroners Service Act 2017, and Prevention of Torture Act 2017. The Office also initiated the development of Plea-bargaining Rules and Guidelines, Cybercrime Bill 2016, Wildlife Management & Conservation (Amendment) Bill 2017.

## **6. Facilitation of Witnesses and Victims of Crime**

In realization of the role of victims in the criminal justice system, the ODPP has a specialized thematic Division on Children, Witness and Victim Support. The Division has modalities for the support of and facilitation of witnesses and victims including, a collaborative framework with Witness Protection Agency. Through this Division, ODPP undertook in collaboration with the Judiciary, a successful plea-bargain initiative that has significantly reduced case backlog in the Children's Court.

## **7. Prosecution Performance**

During the reporting period, ODPP recorded a decrease in the total number of matters it handled compared to FY 2016/2017. Consequently, the overall conviction rate dropped to 90.3% in 2017/18 from 92.3% in 2016/17.

**Table 10.3: Matters handled by ODPP**

DESCRIPTIONS		
Appeals, judicial reviews and misc. applications	4,309	1.39
Criminal Trial	300,327	97.20
Advice Files	2,719	0.88
Complaints	1,616	0.52
<b>Total</b>		<b>100</b>

**10.6.2 Challenges facing the ODPP in FY 2017/2018**

1. **Low conclusion rate in criminal trials:** Despite ongoing investments and efforts towards addressing low case conclusion rates, there is still a significant backlog of cases, which affects ODPP's prosecutorial performance. Such backlog and low case conclusion rate particularly in major cases, results in loss or deterioration of evidence, change of Investigating Officers, witness fatigue/intimidation/memory loss and attrition.
2. **Inadequate infrastructural capacity:** The Office lacks adequate infrastructural facilities and capacity in terms of vehicles, legal resources, furniture, equipment and office space, both at the headquarters and the County Offices.
3. **Limited training on emerging crimes:** Due to the low budgetary allocations for training by Treasury and lack of an institute to train Prosecutors, ODPP has inadequate capacity to train Prosecution Counsel in sufficient numbers in new, emerging and complex forms of crime such as money laundering, cybercrime and other transnational crimes.
4. **Archaic Case-file and mail management process and procedures:** Due to limited resources, ODPP has not sufficiently improved its operational ICT environment to facilitate better information management and optimization of its core business processes.
5. **Inadequate witness and victim facilitation:** There continues to be significant challenges for Prosecution Counsel to conduct necessary pre-trial sessions due to limited resources and facilities for pre-trial facilitation of witnesses and victims of crime. This results in inadequate witness preparation, witness fatigue and eventual collapse of otherwise meritorious cases.
6. **Inadequate human resource:** The ODPP staff optimal level is 1297 staff, comprising 927 counsel and 360 central facilitation staff. The ODPP has not been able to attain the desired level due to uncompetitiveness in the job market. The annual staff attrition rate keep increasing. The NCAJ should give greater voice for the urgent need for harmonization of terms and conditions of service within the justice sector
7. **Archaic and unresponsive laws:** The existing criminal laws are not sufficiently applicable to new and emerging crimes and technological advancements. The current episodic band-aid approach to review of criminal laws often leads to more dissonance in the legal framework. There is therefore an urgent need for a multi-agency led comprehensive review and revision of key procedural, evidential and substantive criminal laws in order to respond to the complex and ever mutating forms of criminality.

8. **Capacity constraints within other criminal justice agencies:** A number of critical justice agencies such as; the National Police Service, and the Government Chemist, Probation and Aftercare Service and Kenya Prisons Service, whose work feeds the ODPP, suffer acute capacity constraints, which inevitably affect services delivery. For instance, insufficient use of modern investigation techniques due to the lack of a modern National Forensic Crime Laboratory and inadequate forensic investigation skills have greatly hampered the ability of the investigative agencies to investigate complex and emerging crimes. This greatly impacts on the ability of the ODPP to offer effective and efficient prosecution services. There is need to modernize and enhance capacity of investigative agencies so as to improve quality of investigations, and in turn impact positively on the effectiveness of prosecution.
9. **Security and safety of staff:** In carrying out the mandate, Prosecutors are faced with threats from the suspects and nefarious agents during trial and when out on bail and bond. In addition, ODPP offices, both at the headquarters and the Counties are housed in rented insecure premises, thus exposing officers to vulnerable and unsecure working environment. The Security of personnel need not be over-emphasized in these days of increased insecurity.
10. **Budgetary constraint:** The ODPP continues to suffer acute financial constraints due to inadequate budgetary allocations. Critical activities and operations remain pending due to disparity between the requisitions and the actual allocations from the exchequer. These include hiring of staff, improvement of the ICT infrastructure and acquisition of offices/equipment in the Counties.

#### **10.7 NATIONAL POLICE SERVICE**

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The National Police Service (NPS) is established under Article 243. of the Constitution. The NPS is further regulated by the National Police Service Act 2011, and the National Police Service Commission Act 2011. The National Police Service consists of: The Kenya Police Service, the Administrative Police Service, and the Directorate of Criminal Investigations.

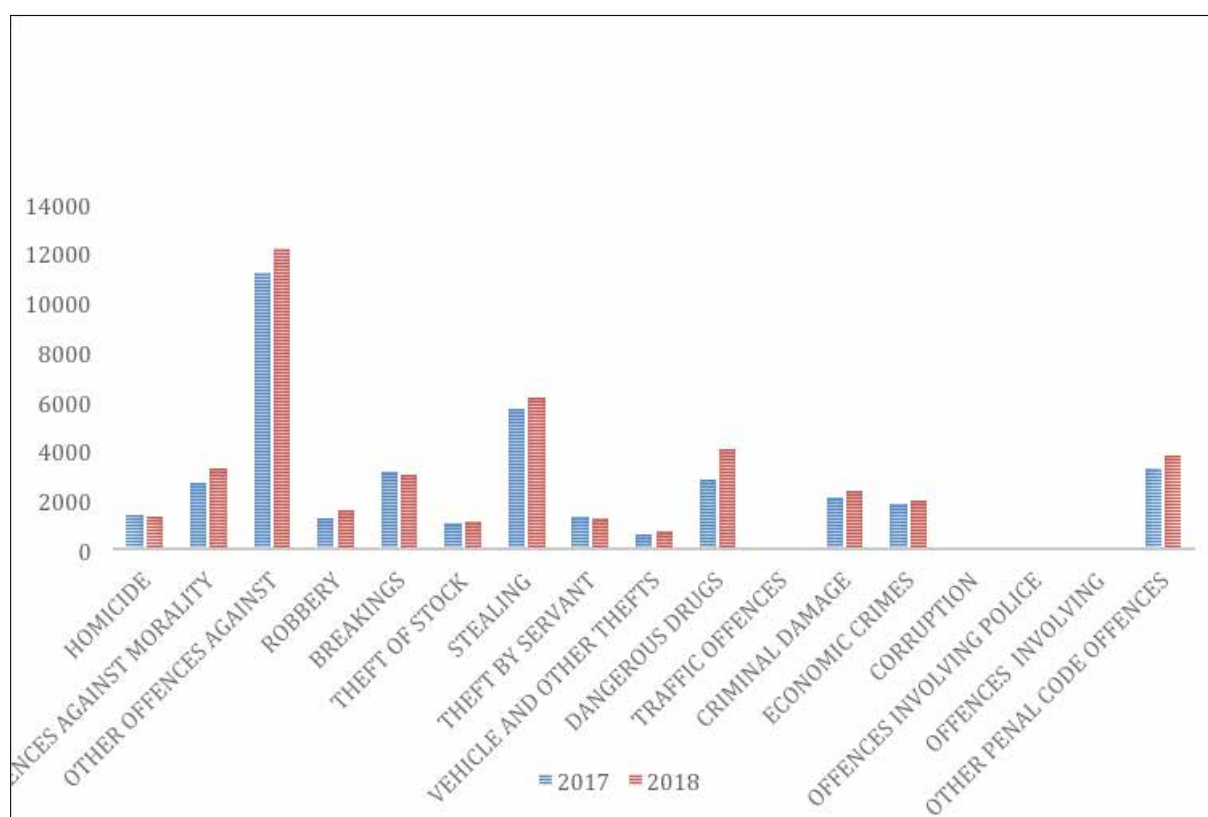
##### **Crime analysis**

In the period under review a total of 42,898 cases were reported to police as compared to 38,421 cases reported in the same period in 2017. This represented a 12% increase. This increase was as a result of increases in cases under the categories of Offences against Morality by 616 cases or 19%, Robbery 301 cases or 19%, Dangerous Drugs 1213 cases or 30%, Criminal Damage 202 cases or 9%, Economic Crimes 155 cases or 8% and other Penal Code Offences 505 cases or 13%.

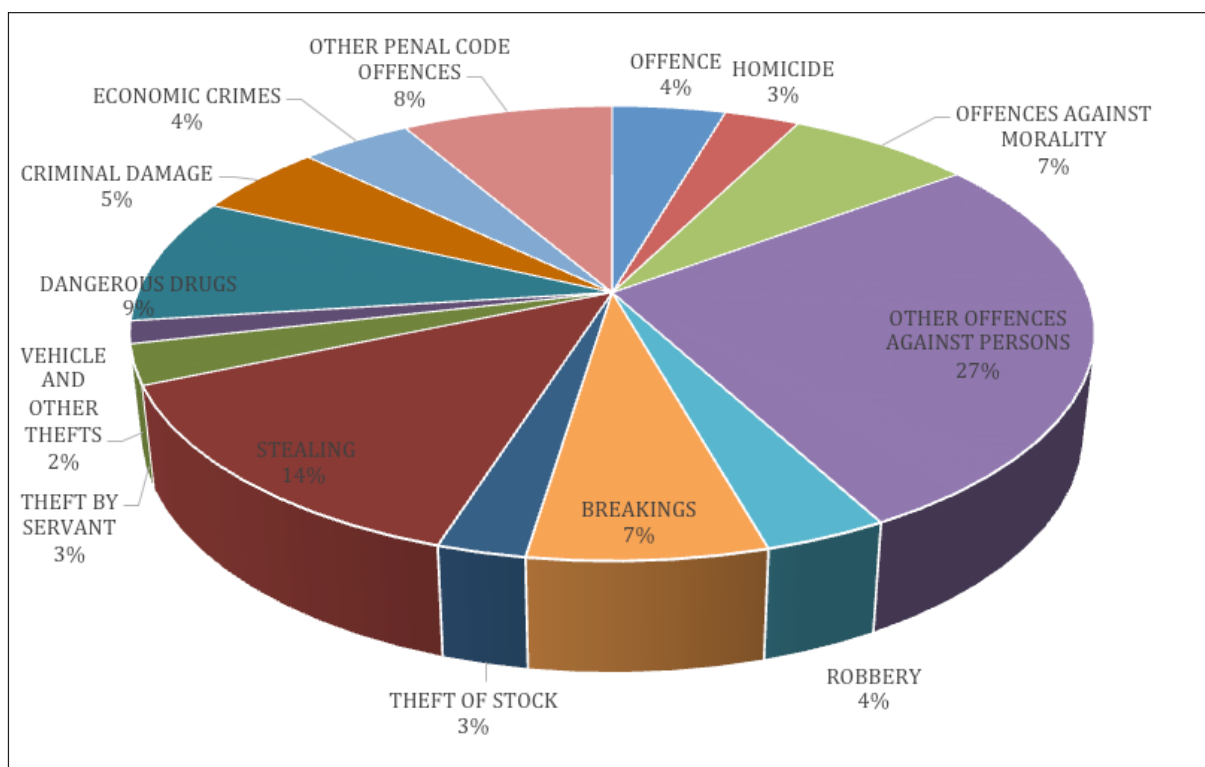
Decreases were however noted in the following categories of offences Homicide 36 cases or 3%, Breakings 76 cases or 3%, stealing by Servant 38 cases or 3% and Offences involving Police Officers 13 or 57%.

**Table 1: Comparative crime figures for the years 2016, 2017 and 2018**

S / NO	OFFENCE	2016	2017	DIFF.	% DIFF	2017	2018	DIF.	% DIFF
1	Homicide	1382	1373	-9	-1	1373	1337	-36	-3
2	Offences Against Morality	3037	2684	-353	-12	2684	3300	616	23
3	Other Offences Against Persons	11135	11232	97	1	11232	12181	949	8
4	Robbery	1383	1272	-111	-8	1272	1573	301	24
5	Breakings	2861	3113	252	9	3113	3037	-76	-2
6	Theft Of Stock	992	1058	66	7	1058	1130	72	7
7	Stealing	4933	5652	719	15	5652	6103	451	8
8	Theft by Servant	1155	1304	149	13	1304	1266	-38	-3
9	Vehicle and Other Thefts	636	609	-27	-4	609	718	109	18
10	Dangerous Drugs	3183	2807	-376	-12	2807	4020	1213	43
11	Traffic Offences	67	39	-28	-42	39	56	17	44
12	Criminal Damage	2029	2124	95	5	2124	2326	202	10
13	Economic Crimes	1667	1822	155	9	1822	1977	155	9
14	Corruption	31	33	2	6	33	70	37	112
15	Offences Involving Police Officers	29	36	7	24	36	23	-13	-36
16	Offences Involving Tourist	13	10	-3	-23	10	23	13	130
17	Other Penal Code Offences	3551	3253	-298	-8	3253	3758	505	16
	<b>TOTAL</b>	<b>38084</b>	<b>38421</b>	<b>337</b>	<b>1</b>	<b>38421</b>	<b>42898</b>	<b>4477</b>	<b>12</b>



**Figure 10.1: Comparative Bar Graph Of Crime Figures For The Periods Jan-Jun 2017/2018**



**Figure 10.2: Percentage of Crime by type**

### Activities undertaken by the National Police Service

#### Key activities undertaken by NPS during the period under review included:-

1. Maintenance of law and order, detection and investigation of crimes, apprehension of offenders and prevention of crime
2. Crackdown on illicit brews and illegal gaming machines
3. Security coverage during the electioneering period
4. Sensitization of the public through community policing forums on police roles and promotion of good relations with the broader society.
5. Seminars and trainings aimed at making the Police Service more professional
6. Implementation of the Bail and Bond Policy Guidelines

#### Achievements in the review period

1. Good working relations amongst law enforcement agencies, the Judiciary and correctional agencies that together constitute the criminal justice system.
2. Improved handling of cases by police officers and courts effectively reducing backlog
3. Reduced crime rates and incidences
4. Increased public trust in the police service
5. Fair administration of bail and bond measures
6. Service oriented discharge of police mandate made has the public more willing to help curb crime.

7. Through the Court Users Committees, the Service constructively contributed to the overall success in the administration of justice.

#### **Challenges experienced in the period under review**

1. Shortages of prosecution counsels leading to delays in prosecuting cases
2. Lack of proper coordination between prosecutors and investigation officers: investigating officers views are not considered in fixing hearing dates, grant of discharges and bail/bond
3. Inadequate court rooms at some courts stations that necessitates sharing between magistrates and therefore inconveniencing court users
4. Inadequate exhibit storage facilities at court stations compromising the security and the integrity of exhibits
5. Delayed results from government chemists and pathologists
6. Failure by judicial officers to consider grounds of opposition to applications for bail and bond for suspects of serious offences
7. Leniency by courts on bail and bond terms leading to truancy and consequentially, unexecuted warrants of arrest
8. Insufficient and or insecure holding facilities for suspects/remandees at various court premises
9. Truancy and lateness by some judicial officers that unnecessarily prolongs cases
10. Tendency to allow unnecessary adjournments that eventually affects litigation time
11. Multiplicity of court orders in matters that gives rise to perplexity and the risk of contempt proceedings.
12. Reluctance to follow-up on complaints and/or interference of witnesses in criminal cases that has led to discharges and acquittals that would have otherwise not been granted
13. The inadequacy of investigation time consequent to the 24 hours rule in which suspects are to be brought before court
14. Un-notified relocation of court cases in different courts thereby creating confusion amongst litigants
15. Withdrawal of cases by the prosecution without the involvement of investigations officers
16. Cultural practices have in some areas vitiated law enforcement efforts particularly in sexual related offences
17. Lack of proper documentation on sureties' thereby encouraging truancy.
18. Levy of charges on the P3 form (medical report) by health facilities has hindered access to justice for poor Kenyans unable to pay the requisite KShs.1,000/=.
19. Improper exercise of discretion in granting stay orders

## 10.8 KENYA PRISONS SERVICES

### Introduction

The Kenya Prisons Service (KPS) is a department within the Ministry of Interior and Coordination of National Government. It is established and governed by the Prisons Act (Cap 90) and Borstal Institutions Act (Cap 92) Laws of Kenya. It contributes to public safety and security by ensuring there is safe custody of all persons who are lawfully committed to prison facilities, as well as facilitating the rehabilitation of custodial sentenced offenders for community reintegration.

As part of the national criminal justice system, the Kenya Prisons Service plays a vital role of effective containment of persons held in lawful custody which guarantees protection to citizenry and to a large extent contributes to security, which is critical for economic stability.

There are 129 gazetted Penal Institutions spread across the country. Nine (9) facilities are categorized as Maximum Security prisons with prisoners sentenced to 10 years and above, life or death penalty while 46 of them are classified as main prisons holding categories of inmates as those found in maximum security units. The remaining 70 are classified as Open Prisons with prisoners assessed to be of minimum security risk serving up to a maximum of five years. We also have three borstal institutions and a youth corrective training centre. The prisons also contain ordinary and capital remand prisoners. The daily average prisoners' population is 55,000 (30,000 convicted and 25,000 awaiting trial) against an accommodation capacity of 29,000 prisoners. This implies that the prison facilities are over 100% overcrowded. Furthermore, in average, there are about 300 children aged 4 years and below accompanying their mothers in prison.

Overcrowding continues to place a huge burden on the management, control and rehabilitation of prisoners. In addition, the Service is currently holding a significant number of offenders charged with and/or convicted for terrorism related offences (including violent extremism), cybercrime and other transnational crimes which pose a gross security threat.

### **During the year under review, the KPS undertook various activities;**

1. Kenya Prisons Service in collaboration with the Community Service Orders Coordination Board and the Judiciary carried out a joint exercise where resident Judges issued revisionary orders that placed petty offenders on community service with a view of easing overcrowding in prison facilities.
2. Office of the Director of Public Prosecutions in partnership with Kenya Prisons carried out a review of remand cases throughout the country with an aim of fast tracking the backlog of cases as well as to encourage the use of alternative dispute resolution mechanisms (ADR).
3. Implementation of sentencing guidelines.
4. Educating and enlightening inmates on the bail/bond terms and their application.

### **Achievements**

In line with the government's agenda on transforming the security institutions, KPS has achieved significant milestones in the following areas:



## **1. Infrastructural development**

To address the huge number of prisoners population, the department since 2013 to date has constructed and gazetted new prisons including Makueni, Kwale, Mwingi, Rachuonyo, Kaloleni, Bomet, Vihiga, Yatta, Marimanti, Kehancha, Chuka, Kilgoris, Sotik, Loitoktok, Maara, Nyamira and Mutomo as well upgraded existing facilities in more than 70 prisons. More significantly, the construction of Kamae Girls Borstal Institution, which began in 2014, is aimed at contributing to effective rehabilitation of youthful female offenders and minimizing chances of them being contaminated by adult female prisoners. In addition, Kamiti Juvenile Home was established to prevent contamination of male juveniles by adult offenders.

## **2. Rehabilitation of offenders**

Since 2013, more than 26,000 inmates have gone through our vocational training programs while 5,000 of them completed their trade tests. Majority of these prisoners have since been released and reintegrated back to society where they are making a positive contribution to the development of our economy.

## **3. Staff Housing**

A total of 942 staff housing units were constructed in the period under review year 2017. The department has been included in Police and Prisons housing program where 5,000 new units are expected to be constructed for Prisons staff. Towards that end, 350 units are at an advanced stage of completion at Kamiti, Shimo la Tewa and Ruiru prisons.

## **4. Staff strength**

There has been consistent expansion of uniformed staff strength to the current establishment of 23,600. This is due to the recruitment exercise conducted in May 2017 which enabled the department to increase its staff personnel. In doing so, KPS has ensured its commitment to provide equal opportunities to both genders in line with the affirmative action.

## **5. Capacity Building**

In a bid to promote professionalism, a number of prison staff have undergone capacity building including training both locally and internationally. This has enabled them to familiarize themselves with best practices. The department has standing agreements with some international organizations like JICA, SIDA, African Prisons Project among others for our officers to participate in their annual trainings.

## **6. Implementation of Audit on Criminal Justice System**

Through NCAJ, the Kenya Prisons Service in liaison with the Legal Resources Foundation conducted an audit of Kenya's Criminal Justice System with focus on pre-trial detention. The research team visited several prisons, police stations and courts. The report was launched and a Committee was constituted to implement its recommendations.

## **7. Review of Legislation governing Kenya Prisons Service**

Kenya Prisons Services, in liaison with stakeholders who are part of NCAJ, reviewed its legislations (Prisons Act, Chapter 90 and Borstal Institutions Act, Chapter 92) Laws of Kenya in order to align them with the Constitution of Kenya 2010 and International Instruments. The Bills were forwarded to Attorney General's office for onward transmission to Parliament for approval.

## **8. Establishment of Human Rights offices and Justice Centres (Paralegal offices) in all Penal Institutions**

Kenya Prisons Service in liaison with stakeholders such as APP, RODI-Kenya, Legal Resources Foundation (LRF) has established human rights offices and paralegal offices in all penal institutions. Further, the department has trained prison officers as human rights officers who handle human rights issues for prisoners and officers.

## **9. Legal Aid Services to prisoners**

The Directorate of Legal Aid in Kenya Prisons Service (advocates) in liaison with other stakeholders such as Kituo Cha Sheria, Christian Lawyers among others render pro-bono services to prisoners who cannot hire private advocates to represent them in court.

## **10. Survey on Child Care Institutions**

Kenya Prisons Service in liaison with NCAJ and the Department of Children Services is conducting a survey in all institutions holding children to establish whether they attain the internationally required standards.

## **Challenges**

### **1. Overcrowding**

The department continues to experience overcrowding in our institutions. The current holding capacity has been exceeded by over 100%. The impact of overcrowding is evident in terms of poor service delivery due to overstretched resources and a rise in various risks that include spread of communicable diseases as well as security threats among many others.

### **Overcrowding could be attributed to the following;**

- a. Rise in crime rate:** The country continues to experience high rates of crime. With a high rate in crime leading to many offenders being committed to prisons. This is exacerbated by long periods of pre-trial detention.
- b. Ignorance of law:** Majority of the inmates in our institutions are detained due to lack of information as pertains the law in regard to pleas, bail and bonds.
- c. Inadequate legal representation:** Majority of the inmates cannot be able to secure the services of an advocate or legal representation because they cannot afford the legal fees.
- d. Death penalty:** Inmates sentenced to death stay for long periods on death row

before their sentences are commuted to life or definite sentences. Currently, the department holds approximately 109 inmates sentenced to suffer death.

**2. Inadequate/Lack of Infrastructure**

Existing infrastructure is inadequate vis-a-vis the number of inmates they are supposed to serve. These include inmates' accommodation, training workshops and health facilities among others.

**3. Inadequate vehicles/transport**

Inadequate and unserviceable vehicles impact negatively particularly on timely production of inmates to courts which ultimately slows down the dispensation of justice.

**4. Inadequate funding**

The National Treasury provides inadequate allocations to the prison department requirements leading to accumulated pending bills and inability to provide essential services to the prisoners.

**5. Implementation of the bail and bond policies**

The issue of petty offenders being subjected to pay high bail is still a challenge, as majority of the offenders cannot afford to pay which leads them to prison. Therefore, Judiciary should fully implement the bail, bond and sentencing policies developed as a way of reducing overcrowding in prisons.

**6. Non-custodial sentences**

Encourage Judiciary to use non-custodial sentences to reduce congestion.

**7. Implementation of Article 49 (2) of the Constitution**

There is need for the courts to implement Article 49 (2) of the Constitution by ensuring that a person who has committed an offence punishable by a fine only or by imprisonment for not more than six months is not remanded in custody.

**8. Land Encroachment**

Members of the public have encroached on prison land making it difficult to establish new institutions and expand existing ones.

**10.9 PROBATION AND AFTER CARE SERVICES**

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**Introduction**

Probation and Aftercare Service endeavours to enhance the administration of justice, community safety and public protection through provision of various advisory social inquiry reports, supervision and reintegration of non-custodial offenders, victim support and social crime prevention efforts. It is also key in the enforcement of various non-custodial Court orders under the probation of offenders Act and the Community Service Orders Act, which are the primary legislation, geared towards reduction of penal overcrowding. The mandate of the department is expanding rapidly owing to the increasing role it plays in the administration of criminal justice, which now included preparing Victim Impact Statements,

Reports for Plea Agreements, and Bail Information Reports.

#### **Activities and Achievements:**

**Probation Court Work:** Probation court work revolves around preparation of various advisory reports related to sentencing (committal of young offenders to institutions), bail decision making, victim statements, plea agreements and the breach action arising from the supervision orders made by the court.

During the period under review, the department provided Pre-sentence Advisory Reports, which are instrumental in making court decisions to place offenders on any of the community sentences of probation orders or community service orders. Bail Information Report made pursuant to Article 49(1) (h) of the Constitution, Section 123A of the Criminal Procedure Code and the Bail and Bond Policy Guidelines (2015). Victim Impact statements are made pursuant to section 329 of the CPC and the Victim protection Act of 2014. Plea Agreement reports although relatively new have also become a feature of Probation court work in some court stations. Probation officer also provided reports on select criminal matters requiring alternative dispute resolutions besides holding consultations and case conference with magistrates especially on matters involving child offenders.

These invaluable reports resulted in courts making supervision orders in accordance with the Probation of Offenders Act and Community Service orders Act as shown here below.

#### **Probation Orders**

Probation orders are issued by courts in the case of low risk offenders deemed suitable for community supervision without any form of punishment. During the reporting period, 14,814 enquiries/presentence reports were made on for adult offenders and **2,133** for juvenile offenders. As a result **8,643** probation supervision orders were made in lieu of imprisonment for adult offenders and **1,986** for juveniles. As at the end of June 2018, a cumulative **14, 9697** probationers were under supervision countrywide.

**Table 10.4: Probationers under supervision**

2017/18	COURT INQUIRIES POR		SUPERVISION ORDERS		
	MALE	FEMALE ADULTS	MALE ADULTS	FEMALE ADULTS	
July	1231	271	654	196	12812
August	790	147	463	114	12812
September	1165	248	656	195	12126
October	1014	219	547	150	14106
November	933	181	437	148	13236
December	959	193	515	138	12924
January	1078	275	568	186	12601
February	1156	290	618	216	12419
March	1003	263	548	201	12471
April	630	169	365	149	10234
May	1134	232	662	198	11482
June	1008	225	548	171	12474
<b>TOTAL</b>	<b>12101</b>	<b>2713</b>	<b>6581</b>	<b>2062</b>	<b>14,9697</b>

**Table 10.5: Probation Juvenile's Cases**

2017/18	COURT INQUIRIES		SUPERVISION ORDERS	
	MALE	FEMALE juveniles	MALE	FEMALE juveniles
July	131	25	125	25
August	132	34	125	33
September	130	30	129	28
October	129	28	108	26
November	128	23	116	20
December	141	39	107	37
January	178	20	162	18
February	205	23	198	20
March	116	18	109	17
April	109	19	102	15
May	225	22	213	21
June	202	26	208	24
<b>TOTAL</b>	<b>1826</b>	<b>307</b>	<b>1702</b>	<b>284</b>

#### 10.10 COMMUNITY SERVICE ORDERS

Community service orders is an order of the court requiring an offender to perform unpaid public work for a specific length of time as a punishment and as an alternative to imprisonment. During the reporting period, 33,594 enquiries/presentence reports were made on for adult offenders for purposes of making community service order (CSO). Consequently 30,736 community service supervision orders were made in lieu of imprisonment. As at the end of June 2018, a total of 51,900 probationers had serviced CSO in the year under supervision countrywide. It should be noted that most offenders on CSO are given a very short sentences mostly one day meaning that probation/community service officers do not have adequate time to address their criminal behaviour. Arresting those who do not comply with community service work especially in urban slums is still a challenge.

**Table 10.6: Community Service Orders**

2017/18	COURT INQUIRIES		SUPERVISION ORDERS		CASELOAD
	MALE ADULT	FEMALE ADULT	MALE ADULT	FEMALE ADULT	CUMULATIVE
July	1256	164	1168	161	4931
August	1458	368	1029	192	4630
September	1745	236	1670	226	4014
October	1230	247	1156	278	1659
November	2195	418	2133	405	4001
December	2068	292	1998	251	4879
January	3363	479	3223	433	4505
February	2999	513	2840	560	4016
March	2617	491	2436	428	3946
April	2089	373	1818	335	4051
May	4797	702	3975	647	5894
June	3035	459	2924	450	5374
<b>TOTAL</b>	<b>28852</b>	<b>4742</b>	<b>26370</b>	<b>4366</b>	<b>51900</b>

#### Community Service Orders in juvenile Cases

Community service orders Act does not state clearly whether children can be placed on community service much as the children Act does. However, the National CSO Committee developed guidelines on how CSO can be applied to children aged 16 years and below 18 years. In the year under review, there were 106 cares inquired into with a view to having then placed on CSO and all were placed.

**Table 10.7: CSO Juvenile Cases**

2017/18	COURT INQUIRIES		SUPERVISION ORDERS	
	MALE Juveniles	FEMALE juveniles	MALE juveniles	FEMALE juveniles
July	9	0	9	0
August	7	3	7	3
September	6	6	6	6
October	4	6	4	6
November	5	1	5	1
December	6	0	6	0
January	5	0	5	0
February	6	1	6	1
March	4	6	4	6
April	7	5	7	5
May	6	3	6	3
June	10	0	10	0
<b>TOTAL</b>	<b>75</b>	<b>31</b>	<b>75</b>	<b>31</b>

#### **Bail information reports**

Bail information report or pre-bail reports as they are commonly referred to, are vital tool for decision-making in bail matters. These reports are prepared at the court's request either at the initial point after plea taking or as a means to review already given bail terms and where the accused person has remained in prison custody and unable to meet the said terms and, has requested for such review. The department was able to prepare a total of 6,619 reports during the prion under review.

**Table 10.8: Bail Information Reports**

2017/18	Reports
July	632
August	553
September	645
October	707
November	541
December	530
January	767
February	722
March	683
April	547
May	292
June	0
<b>TOTAL</b>	<b>6,619</b>

#### **Community Service Orders Driven Prison Decongestion Sentence Review**

Prison decongestion exercises were carried out with probation officers providing Sentence review reports for the High Courts that participated in the exercise. Sentence review is undertaken by the High Court judges as a measure of enhancing the utilization of Community Service orders pursuant to the CSO Act and the Criminal procedure code and as a means to reduce prison overcrowding. It targets convicted prisoners imprisoned to three years and below or those whose sentences have reduced to below three years.

During the year under review, there were two CSO prison decongestion sentence review exercises. A total of 16,240 prisoner's cases were forwarded to the CSO Secretariat from Prison HQs for sentence review with view to decongest prisons. 12,435 remained after removing from the list those whose sentences would expire before May 2018. All prison stations in 39 high court stations were involved in the exercise. The following were the results

- **7181** High Court revision files were opened and sentence review reports filed by community service officers.
- **5913** revision orders were made by the respective revision Judges of the High Court
- **4746** release orders issued (CSO, Probation or immediate release)
- **1167** imprisonment terms were not varied

The remaining **5,575** cases had their sentences expired before the revision could be made, had lodged appeals hence could not be reviewed, refused to be interviewed by community service officers or declined review of their sentences preferring to complete their imprisonment terms.

Although the decongestion reduced the number of convicted prisoners in the various prisons, a majority of them were given short CSO supervision period.

#### **The challenges experienced in the decongestion exercise were**

1. A large number of inmates included in the list had short imprisonment period remaining. Sentence review requiring a probation officers report needs time to undertake inquiries yet little time was availed. As such all prison sentences expiring before 15<sup>th</sup> of May 2018 were not considered because the review was to begin in the second week of May 2018. Hence deserving prisoners were not included in the list for possible review of their sentences.
2. Retrieval of lower court files for the probation officers to peruse and to open High court Revision files is still a challenge in some courts
3. Resistance to sentence review is still a challenge in a few areas among stakeholders. Probation officers were denied entry to some prisons to conduct interviews but intervention from prison HQs resolved the problem
4. Some prisoners decline interviews by probation officers, opting to complete sentences.
5. Continued downward trend in referral and placements of offenders to CSO
6. Training for CSO work agency supervisors and magistrates should be continuous yet funds are not enough.
7. Unable to achieve our target in training of 150 magistrates. Authority to train from JSC



was not obtained from the judiciary

There was a great improvement in the manner in which the sentence review was conducted. 15 judges participated in the exercise. Delays in retrieval of lower court files and submission of sentence review reports were greatly minimized. There were minimal postponements of sentence review dates. There is need to form a committee to vet prisoners so that more deserving prisoners can be targeted for decongestion.

#### **Challenges related to administration of Community Service Orders**

1. The National CSO Committee is yet to be constituted through gazette notice. Their term expired and new members were proposed for gazetement.
2. There is a marked decline in placement of offenders on CSO. Many work agencies who have always relied on offenders for labour are feeling the loss and some tasks remain undone due to lack of workers.
3. Transport remains a thorny issue for field stations. It hampers ability to generate reports and monitor offenders at work sites.

#### **Financial Resource Allocation**

In the FY 2017/18, the department received **Ksh. 411,910,975/-** for the both developed and recurrent expenditures but less personnel emolument. Out of this, 301,110,975 was for recurrent expenditure (to cover court work, offender supervision, office supplies, and running of Probation Institutions) while 110,800,000/- was for development expenditure. There was thus, an increment in both recurrent and development expenditure allocation.

**Table 10.9: Financial Allocation to Probation and Aftercare Department**

Item	FY 2016/17	FY2017/18	Variance
Recurrent Budget	236,9598,984/-	301,110,975/-	+ 64,150,991/-
Development	92,100,000/-	110,800,000/-	+ 18,700,000/-
Totals	329,059,984/-	411,910,975/-	+ 82,850,991

#### **Human Resource**

There was an increment in the number of probation officers with the recruitment of **305** fresh graduate staff. However, this is far less than the optimum number that the government initiated programme of human resource Capacity Assessment and Rationalization Programme (CARPS) that capped required probation officers at 3000. We hope that the appeal to increase the number of probation officer will bear fruit so as to accommodate increased work demands from the courts and increased number of magistrates and judges, work created by the Power of Mercy Committee and the Psychiatric Offenders at Mathari Mental Hospital.

**Table 10.10: Human Resource**

ITEM	2016/17	2017/18	VARIANCE
Probation officers	609	837	+228
Other staff	353	350	-3
	962	1,187	+ 225

#### **Infrastructure and Office Construction**

There is no project that was initiated in the department in the period under review as all infrastructural development projects were carried forward from the previous year. As can be noted above, there was a massive reduction in development expenditure by over 63%. Siaya Girls Probation Hostel is the second such facility for females other than the one in Nakuru while others for males are in Nairobi, Mombasa and Eldoret

**Table 10.11: Developments Projects Implemented By Probation Department In FY2017-18**

	CONSTRUCTION/PROJECT TITLE AND LOCATION	PERCENTAGE COMPLETION	1 <sup>ST</sup> HALF ALLOCATION 2017/18	CUMULATIVE ACTUAL EXPENDITURE UP- TO (JUNE2018)	ESTIMATED COST OF THE PROJECT
1	Siaya Probation Female Hostel	(69.6%)	-	106,809,743.00	153,300,000
2	Muranga East Probation Office	(46.25%)	4,000,000.0	15,150,000.00	32,750,000.00
3	Makueni Probation Office	(100%)	1,548,750.00	12,750,000.00	12,951,300.00
4	Nyeri Central Probation Office	(89.9%)	1,991,250	8,940,104.00	9,940,104.00
5	Kapsabet(Nandi) Probation Office	(81%)	1,106,250.00	9,106,250.00	11,200,000.00
6	Bungoma East (Webuye) Probation Office	(46.8%)	2,000,000.00	2,000,000.00	4,270,000.00
7	Nairobi Boys Probation Hostel	(8%)	3,123,059.00	3,123,059.00	30,000,000.00
8	Nakuru Girls Probation Hostel.	(16%)	4,660,000.00	4,660,000.00	29,060,000.00
9	Runyejes Probation Office	(43.6%)	1,548,750.00	1,548,750.00	3,548,750.00
11	Narok Probation Office	(44.25%)	1,770,000.00	1,770,000.00	4,000,000.00
12	Busia Probation Office	(22.7%)	1,327,500.00	1,327,500.00	5,827,500.00
13	Kericho Probation Office	(50%)	1,100,000.00	1,100,000.00	2,200,000.00
14	Kilifi Probation Office	75%	1,850,000.00	1,850,000.00	2,500,000.00
15	Tana Delta Probation Office	(47.6%)	1,548,750.00	1,548,750.00	3,248,750.00
16	Gatundu Probation Office	(45.76%)	885,000.00	885,000.00	1,993,750.00
17	Isiolo Probation Office	(44.2%)	1,991,250.00	1,991,250.00	4,500,000.00
18	Malindi Probation Office	(50%)	750,000.00	750,000.00	1,500,000.00
19	Mariakani Probation Office	(50%)	500,000.00	500,000.00	1,000,000.00
20	Kiambu Probation Office	(46, 9%)	1,770,000.00	1,770,000.00	3,770,000.00
21	Refurbishment of office block at Mombasa Probation office.	(50%)	1,500,000.00	1,500,000.00	3,000,000.00
22	Residential building and other civil works at Makadara boys' Hostel		-	12,000,000.00	23,000,000.00

## Information Communication and Technology

- a) The department is progressively embracing ICT to improve on service delivery. The probation stations have at least one or two computers which is till few considering the need for automation and the number of staff required to use the computer. Some of the computers used the department are more than 10 years old. There is thus, serious need for more computers to ease court work and generally improve on case management practices
- b) Offender Record Management System was developed couple of years to address offender record management challenges. However, the system has continued to experience challenges mostly associated with internet service provision, capacity and it also requires a comprehensive systems review and upgrade.

## Challenges

Most of the challenges which were experienced in 2017/2018 persisted into the current period under review.

1. Inadequate transport/vehicles to carryout supervision of offenders' service non-custodial orders is still with the department as no vehicle was purchased or allocated to the department in the year under review. Not all probation stations have a vehicle and unserviceable 1978 Land Rovers, which are uneconomical to run with the meager resources, are still in use in some stations.
2. There is greater increase for demand for probation officers by the Judiciary (particularly with Bond and Bail Policy implementation) and for community supervision of offenders yet only 837 probation officers are in post. A significant number of officers have left the service to join Constitutional Commissions while others have exited due to natural attrition. This has left the department with a deficit, which poses a serious challenge in succession management and service delivery as there is no immediate replacement.
3. Generation of social advisory reports to courts and other penal release organs is greatly hampered by inadequate funding in spite of increased workload especially in the field stations. This greater in stations where there are mobile courts.
4. Weak offender supervision and rehabilitation practices occasioned by transport and competency gaps especially with new officer recently employed.
5. The Kenyan Society is so vindictive and in some instances do not appreciate non-serious offenders to serve non-custodial measures in the community thus always demanding harsh penalties even for petty offences placing high demand on courts.
6. The Probation Service Offender Records Management System (ORMS) is not in operation owing to technical problems and internet connectivity. The inability to complete LAN installation as a result of lack of funding for ICT compounds this problem.
7. No clear Law to anchor new functions-bail reports and supervision of bailees,-supervision of offenders released on Presidential Power of Mercy Pardon,-Preparation of Bail information reports and Plea Agreements reports -Prison Decongestion through CSO

## Policy and Legislation:

The current legislative framework (the Probation of Offenders Act Cap 64 and that of the Community Service Orders Act No 10 of 1998) requires a comprehensive but this has not been done. This draft Amendment Bills (proposals) were presented for consideration in 2015. The amendments of the two pieces of legislation were to align the sector's laws with the Constitution. The amendments are also proposed to address other operational challenges including legal anchorage for new functions. Nevertheless, there are a few amendments, which have been proposed, in the miscellaneous amendment Bill 2018 for both probation of Offenders Act and CSO Act, which hopefully will address some of the immediate challenges. In the same line, the Hon. Chief Justice gazetted rules/direction related to CSO Act that will see courts hopefully making use of SCO as an alternative to imprisonment as intended in the penal code

Draft Rules for probation of offenders Act and CSO Act have been developed internally. This is yet to be subjected to internal validation and stakeholder participation.

### 10.11 COMMUNITY SERVICES ORDER PROGRAMME

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The Community Service Orders (CSO) Programme derives its mandate from the CSOs Act and it is mainly geared towards offenders whose imprisonment sentences attract three (3) years and below. It targets mainly non-serious offenders who pose no threat to themselves, the victim or the community. Offenders placed on community service engage in un-paid public works for a specified period within the community.

The structure of the programme entails a combination of Judicial and Probation Officers where the Chairman of the National Community Service Orders Committee and of the National Executive Committee is a Judge of the High Court appointed by the Chief Justice. The programme runs a Secretariat headed by the National Community Service Orders Coordinator who is a judicial officer, where Probation Officers are also referred to as Community Services Officers.

## Activities, Achievements And Challenges

### 1. Sentence Review

A list of 16,240 prisoners was forwarded to the CSO Secretariat from Prison Headquarters for sentence review with view to decongest prisons. 12,435 offenders remained after removing from the list those whose sentence would expire before May 2018. The exercise was conducted in all prison stations in 39 High Court stations between 26<sup>th</sup> to 29<sup>th</sup> March 2018 in Nairobi, and 7<sup>th</sup> May to June 24<sup>th</sup> 2018 Countrywide.

The main **achievement** noted from this exercise was that 7181 revision files were opened and sentence review filed. Out of this, 5913 revision orders were made and 4746 release orders issued (CSO, Probation or immediate release). 1167 were not varied. It was noted that 5,575 were either repeated on the list, sentences expired, lodged appeals, refused to be interviewed or declined review of their sentences

A **challenge** noted was a large number of inmates included in the list had short sentences remaining. Sentence review requiring a probation officers report needs time to undertake inquiries. As such, all prison sentences expiring before 15<sup>th</sup> of May were not considered

because the review was to begin in the second week of May. It was uneconomical to focus on such cases. The challenge here is that deserving prisoners were not included in the list for possible review of their sentences. A number of prisoners had their names repeated in subsequent lists. Retrieval of files from the lower court files is still a challenge in some courts. There was also resistance to sentence review in a few areas among stakeholders. Probation officers were denied entry to some prisons to conduct interviews but intervention from the Prison Headquarters resolved the problem. In some instances, some prisoners declined interviews by probation officers, opting to complete their remaining sentences.

There was a great improvement in the manner in which the sentence review was conducted. 15 Judges participated in the exercise. Delays in retrieval of lower court files and submission of sentence review reports were greatly minimized. There were minimal postponements of sentence review dates. There is need to form a committee to vet prisoners so that deserving prisoners can be considered for decongestion.

## **2. Referrals and Placements of offenders to CSO**

This was a countrywide exercise that took place from between 1<sup>st</sup> July 2017 to 30<sup>th</sup> June 2018. **33,808 cases** were referred to CSO amongst them 31,881 offenders were placed on community service orders by courts countrywide. There is a continued downward trend in referral and placements of offenders to CSO. The CSO programme requires strengthening in order to reduce congestion in prisons.

## **3. Training of CSO Supervisions**

This was done in Kilungu, Mwingi, Thika, Mbeere, Naivasha, Molo, Kehancha, Moyale, Marsabit during the last financial year where 210 supervising officers were trained. The objective was to strengthen compliance, work supervision and promote rehabilitation. Training for supervisors ought to be continuous but funds are not enough.

Supervisors are the backbone of CSO programme. More should be trained to improve on supervision and rehabilitation of offenders

## **4 Sensitization of magistrates**

This was done in Mombasa between November 2017 where 11 magistrates were sensitized on CSO. They were unable to achieve the target in training of 150 magistrates since the authority to train from JTI was not obtained. It is very important to sensitize magistrates on CSO in order to reduce prison congestion by using more of CSO as a sentence.

## **5 Training case committee members**

This was done in Mombasa, Taveta, Loitokitok, Narok, Keroka, Nyamira, Moyale Marsabit. February to June 2018 121 members trained Inadequate funds to train all members  
Need to ensure members take control of CSO management in the field stations

## **6 Implementation of Environmental Management Act**

A total of 20,461 trees were planted by prisoners released to serve non-custodial sentences in various counties between 1/7/16 to 30/6/17. The greatest challenge is inadequate funds to purchase tree seedlings for planting. A programme to increase tree seedlings production countrywide needs to be put in place to utilize offenders in forest regeneration.

## General challenges

1. Some members of the National CSO committee are yet to be gazette by the Cabinet Secretary. Their term expired in 2016 and new members were proposed to the Cabinet Secretary.
2. There is a marked decline in placement of offenders on CSO. Many work agencies who have always relied on offenders for labour are feeling the loss and some tasks remain undone due to lack of workers.
3. Transport remains a thorny issue for field stations. It hampers ability to generate reports and monitor offenders at work sites.

## 10.12 ETHICS AND ANTI-CORRUPTION COMMISSION

### Introduction

The Ethics and Anti-Corruption Commission (EACC) is a statutory body established under the Ethics and Anti-Corruption Commission Act, 2011 pursuant to Article 79 of the Constitution. Its mandate is to combat and prevent corruption and economic crime in Kenya through law enforcement, preventive measures, public education and promotion of standards and practices of integrity, ethics and anti-corruption. The Commission has initiated a number of programs in line with its mandate namely: Law enforcement; Corruption prevention; public education and awareness creation, and Partnerships, Networks and Coalitions against Corruption.

### Achievements in FY 2017/18

The Commission achieved the following in the FY 2017/18

**Table 10.12: Law Enforcement**

PARTICULARS		ACHIEVEMENTS
1.	Complaints and allegations received and processed	6,235
2.	Reports on Ethical breaches	426
3.	Complaints taken up by the Commission	2,898
4.	Completed Investigations (Files) submitted to DPP	183
5.	Value of Illegally Acquired and Unexplained Assets Traced	Kshs. ,320,140,000
6.	Proactive Investigations – Averted loss approximately	Kshs. ,702,004,878
7.	Civil Proceedings – value of assets recovered	Kshs. 352,185,804
8.	Applications for Preservation of assets made	26
9.	Cases filed against the Commission	67

### 1. Strengthening Laws in the Fight against Corruption

The following measure was undertaken with a view to strengthen laws in the fight against corruption.

### 2. Recommendations towards Review of the Legal, Policy and Institutional Framework for Combating Corruption in Kenya

The Commission supported the development and strengthening of Legal Anti-Corruption framework by implementing the recommendations of the Report of the

Task Force on Review of the Legal, Policy and Institutional Framework. The Report was adopted in 2016. The Legal Bills progressed during the year were the Anti-Corruption Laws (Amendment) Bill 2017, the Whistle Blower Protection Bill, 2017 and the False Claims Bill, 2017. In addition, draft Corruption Prevention Guidelines and Regulations under the Bribery Act, 2016 were developed.

**Table 2: Achievements on promotion of Ethics and Integrity through implementation and enforcement of Chapter Six of the Constitution**

PARTICULARS	ACHIEVEMENTS
Cases on ethical breaches finalized in court	2
Entities supported in development of specific Leadership and Integrity Codes for State officers	9
Notices issued to public entities and persons in violation of Chapter Six and LIA	36
Cautions issued to public entities and persons in violation of Chapter Six and LIA	41
Advisories given on chapter 6 of the Constitution and LIA	136
Developed generic administrative Procedures for management of Declaration of income, assets and liabilities for County Public Service Boards.	47
Developed generic administrative Procedures for management of Declaration of income, assets and liabilities for County Assemblies Service Boards.	47

### 3. Corruption prevention

The Commission finalized and released a report on the examination of systems, policies, procedures and practices of work at the Ministry of Lands and Physical Planning. The examination reviewed the technical and support areas of the Ministry and covered the Ministry Headquarters, selected County Governments departments in charge of land and physical planning and other stakeholders.

Further, The Commission undertook and presented reports of Corruption Risk Assessment (CRAs) into the systems, policies, procedures and practices of Nakuru and Kajiado County Executives and Assemblies.

The Commission reviewed and provided feedback on quarterly reports submitted by Ministries, Departments and Agencies under the Corruption Eradication Indicator for Performance Contracting Period, FY 2017/2018. A total of 478 reports from 224 institutions were analyzed and feedback provided

### 4. Public Education and Awareness Creation

The Commission undertook public Anti-Corruption Outreach clinics in various forms. These forums included; county forums, markets, village barazas and cultural festivals, among others. Through this outreach, approximately 7,300 people were reached with the Anti-Corruption message on a face-to-face encounter.

The Commission also reached an estimated 27 million people through media programmes; sensitized 10,117 state and public officers; and disseminated 18,500 IEC materials. Moreover, 619 Community Based Anti-Corruption Monitors were sensitized and 8 Civil Society organizations were engaged.

In addition, School Outreach programmes were undertaken in 227 institutions of learning, 1374 students sensitized and 106 Integrity Clubs established. A total of 1,124



Integrity Assurance Officers from 137 institutions were also trained in addition to 1,318 Corruption Prevention Committee members from 81 institutions drawn from the National and County Governments. The Commission also conducted training and sensitization for Board members and officers from Independent Commissions. A total of 322 participants from 9 Institutions were trained.

## **5. Partnerships, Networks and Coalitions against Corruption**

The Commission continues to build partnerships, networks and coalitions in the fight against corruption and unethical conduct. This is spearheaded through the Kenya Leadership and Integrity Forum which is a national integrity system set up to coordinate a unified sector-based strategy for preventing and combating corruption.

The Forum incorporates fifteen (15) sectors namely: The Legislature, Judiciary, Executive, EACC, Education, Watchdog Agencies, County Governments, Private Sector, Media, Enforcement Agencies, Professional Associations, Labour, Civil Society, Religious Sector and Constitutional Commissions.

During the reporting period Kenya Leadership and Integrity Forum implemented the following programmes:

### **i) Implementation of the Kenya Integrity Plan (KIP 2015-2019)**

The Kenya Integrity Plan (KIP) provides a strategy for promoting integrity and ethical conduct through partnerships and collaborative networks for the period 2015-2019. The Plan takes into account the Constitution, Kenya Vision 2030 and other legal and policy instruments in the fight against corruption.

Achievements in the implementation of KIP include:

- Implementation of the Sector Action Plans for the FY 2017-2018
- Production of the Implementation Progress Report for the period 2015-2017
- Capacity building of the Sector Coordinating Committee (SCC) on anti-corruption, ethics, integrity and good governance

### **ii) Commemoration of the International Anti-Corruption Day**

Kenya commemorates the International Anti-Corruption Day (IACD) pursuant to the UN General Assembly Resolution 58/4 of 2003 to raise awareness on how corruption undermines democracy and the rule of law; leads to human rights violations; distorts markets; erodes quality of life; and allows organized crime, terrorism and other threats to human security to flourish.

On 9<sup>th</sup> December 2017, the Forum spearheaded the commemoration of the International Anti-Corruption Day through a Media Campaign with the theme: “United Against Corruption”.

### **iii) KLIF National Coordinating Committee Meetings**

The Forum hosted three high level National Coordinating Committee Meetings to provide policy direction, mobilize resources and leverage on synergies in the fight against corruption. The meetings chaired by the Hon. Attorney General, hosted Accounting Officers from all the Sectors.

## 6. Research Programmes

The EACC undertakes both diagnostic and thematic studies on an annual basis to establish the nature; magnitude, loopholes and processes prone to corruption and unethical conduct. This guides policy and anti-corruption programme development. In this regard, the Commission conducted the following studies during the year in review:

- i) An Assessment of Project Implementation in Kenya: A Case Study of County Revenue Fund and Constituency Development Fund Projects, 2017
- ii) National Ethics and Corruption Survey, 2017

### **i) An Assessment of Project Implementation in Kenya: A Case Study of County Revenue Fund and Constituency Development Fund Projects, 2017**

The overall objective of the study was to identify the existing loopholes and processes prone to corruption in the implementation of CDF and County projects and propose measures to seal those loopholes.

#### **The findings of the Assessment suggest the following:**

- a) Companies doing business with CDF offices have a higher chance of winning public tenders compared to those doing business with Counties (increased odds of winning by 2.02 times).
- b) Those companies that were not involved in the development of project specifications had their chances of winning public tenders reduced to 22 percent compared to those that were involved in the development.
- c) Companies that benchmark their price with other suppliers bidding for the same tender had a higher chance of winning tenders compared to those who use the prevailing market prices. The same was deduced for those companies that quoted market prices but factored in big profit margins as their odds of winning a tender was increased by 1.14 times compared to those who quoted market prices.
- d) Companies getting information on bidding opportunities from friends, procurement officers, County and CDF officers and other suppliers had higher chances of winning public tenders compared to those relying on newspapers.

### **ii) The National Survey on Corruption and Ethics, 2017**

The overall objective of the Survey, conducted between 18th September and 24th October 2017, was to provide data that would inform the anti-corruption strategy in the country. A mixed design methodology was adopted and involved utilization of questionnaires for face-to-face interviews; key informant discussion guides and a systematic review of literature. The Survey covered all the 47 counties with a sample of 5,977 household respondents and 15 key informants. The Survey covered the following areas;

### a) Seeking of Government Services

The Survey sought to find out if the respondents had interacted with government agencies and their experiences therefrom. The findings revealed that there was no significant change in the proportion of those seeking services in public offices between 2016 (63.6%) and 2017 (63.5%).

### b) Level of Corruption and Unethical Conduct

The Survey sought to know how respondents perceived the level of corruption and unethical conduct in Kenya and the basis of their rating. The findings revealed that the level of corruption and unethical conduct dropped to 70.4 percent from 79.4 percent recorded in the 2016 Survey. This is a significant reversal since 2012.

## 2.8 The Commission Strategic Plan 2018-23

The Commission developed the Strategic Plan 2018–2023 through a consultative process, taking into account the challenges, constraints and lessons learnt during the implementation of the previous Strategic Plan. In the next five years, the Commission will pursue the following five strategic objectives to achieve its mandate and desired vision. These are to: strengthen policy, legal and regulatory framework; enhance law enforcement against corruption and unethical conduct; enhance public education, communication and awareness; enhance the prevention of corruption and unethical practices, and to enhance institutional capacity of the Commission.

### Challenges:

The Commission experienced a number of **constraints and challenges** which impacted negatively on the execution of EACC mandate during the reporting period. These include:

- a. Inadequate technical staff;
- b. High staff turnover;
- c. Inadequate support on anti-corruption efforts from accounting officers;
- d. Inadequate legal and regulatory framework for enforcement of: Chapter Six of the Constitution; Leadership and Integrity Act; Declarations of Income, Assets and Liabilities (DIALs); Integrity verification by the Commission; Amnesty (Section 25 (A) of ACECA); Plea bargaining (Section 137A–137N of CPC); and implementation of system review recommendations;
- e. Adverse judicial decisions;
- f. Lenient penalties meted not commensurate with gravity of offences
- g. Delay in obtaining evidence from other jurisdictions.
- h. Numerous Constitutional references and judicial review applications filed against the Commission that impede execution of the Commission's mandate;
- i. Lack of enforcement mechanisms for regulatory breaches and implementation of prevention advisories;
- j. Public apathy on governance issues;

- k. Politicization and ethnicization of the fight against corruption; and
- l. Expansive public service against the staff outlay of the Commission.

### **10.13 COUNCIL OF GOVERNORS**

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Administration of justice has improved significantly since the inception of devolution. The citizens of Kenya in the county level are now able to access courts or dispute resolution mechanisms. Though judicial functions are not devolved, the Judiciary has made significant reforms within the context of devolution.

During the Financial Year 2017/18, there were achievements and challenges in the justice sector at the County level as elaborated below;

#### **Highlights Of Activities And Achievements**

##### **1. Establishment of Courts**

Due to an increase in the number of Court cases within Counties, County Governments have relinquished its premises for use as Court rooms and in other cases, for example in Kajiado, they have availed land for construction of the main Law Courts.

##### **2. Participation in the Court Users Committees (CUCs)**

Counties have been actively engaged in the CUCs which they have embraced as a forum to address in an open consultative approach, a broad range of administration of justice matters both precautionary as well as responsive.

##### **3. Legal Aid**

National Legal Aid service has had discussions with the Council of Governors to role out legal aid services to all the Counties in order to increase access to justice by citizens even at the grass root level.

##### **4. Favorable Judgments**

The Counties appreciate the favorable judgments that support devolution especially on the 14 devolved functions as provided for in the 4<sup>th</sup> schedule of the constitution.

#### **Challenges and Recommendations**

##### **1. Revenue Allocation**

Currently, all revenue accruing from Court cases arising out of violation of County legislation is collected by the Judiciary and remitted to the Consolidated Fund. Through the coordination of NCAJ, the Council together with other stakeholders are in the process of convening a meeting to look into modalities on how fines accruing from County legislation can revert directly to Counties.

##### **2. Legislative Drafting**

Whereas the Constitution and the devolution laws have assigned executive and legislative authority to the County Governments, there has been a lacuna in developing

County legislation, which has been occasioned by lack of capacity to develop the required legislation. As a result, most of the devolved functions remain unlegislated and where legislation has been developed, they fail to meet the required standards. The Council, through the support of development partners is planning for a legislative and policy drafting training in order to improve the capacity of Counties to develop sound legislation, which is key in the implementation of devolved functions.

### **3. Ignorance of Alternative Dispute Resolution (ADR) mechanisms**

Despite the fact that the Constitution has identified ADR as one of the means of solving disputes in the administration of justice, authorities have not fully embraced ADR as a mechanism of solving disputes. There are claims of a party being compromised in one way or the other.

### **4. High cost of litigation**

As a result of lack of capitalizing on ADR, Counties continue to face heavy bills by external lawyers on litigating county matters.

### **5. Lack of a legal framework**

There is lack of a clear framework for the establishment of the legal office and understaffing. Currently, there is no legal framework establishing the office of the County Attorney. In addition, most Counties have two officers charged with dealing with legal matters in collaboration with external lawyers.

### **6. Reluctance in the implementation of County Laws**

The Judiciary should prioritize the implementation of County Laws since these County laws are not by-laws but laws with full legal force. In some instances the County Laws overrides the National legislation.

### **7. Lack of County Courts**

Counties look forward to the transformation of municipal courts to County courts dealing with county matters whereby the judiciary and County Governments shall partner in the establishment of rules and procedures to be applied in enforcing County legislation.

### **8. Issuance of ex parte orders**

In most circumstances, Courts have issued ex parte orders without a fair hearing on the part of County Governments and some of these orders have hindered development at the Counties. In addition, due to the backlog of cases, most applicants tend to ride on conservatory orders for a prolonged period to the disadvantage of the other party.

## **10.14 NATIONAL COUNCIL FOR LAW REPORTING**

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The mandate of the National Council for Law Reporting (Kenya Law) is outlined in the Act No. 11 of 199 as: the preparation and publication of the reports known as the Kenya Law Reports, which shall contain judgments, rulings and opinions of the superior courts of record; undertake such other publications as in the opinion of the Council are reasonably related to the preparation and publication of the Kenya Law Reports; and perform any other functions conferred on the Council by or under the provisions of any other written law

In the Financial year ended 2017/2018 Kenya Law undertook the following activities in these key result areas towards the realization of its mandate.

## **PROVISION OF PUBLIC LEGAL INFORMATION**

### **a. Kenya Law Reports**

Kenya Law is charged with the task of tracking Kenya's jurisprudence by assembling the contents that constitute the Kenya Law Reports. This is done through two modes of publication: online publication through Kenya Law's website ([www.kenyalaw.org](http://www.kenyalaw.org)); hard copy publication in the form of actual printed books. In the period under review, Kenya Law prepared the following publications:

#### **Specialized Products Printed and delivered**

1. Presidential Election Petition Vol. 1

#### **KLR Manuscripts Ready for Print**

1. Kenya Law Reports: 2013 vol 1
2. Kenya Law Reports : 2013 vol 2
3. Kenya Law Reports : 2013 vol 3
4. Kenya Law Reports : 2015 vol 1
5. Kenya Law Reports : Devolution vol. 1
6. Kenya Law Reports : 1995
7. Kenya Law Reports : 1996
8. Kenya Law Reports : Election Petition Vol. 6
9. Presidential Election Petition Vol. 2

### **b. Case Law Database**

Kenya Law received 16,290 judicial decisions from all the Courts of record in Kenya in this period and all of these decisions have also been uploaded online and can be accessed at [www.kenyalaw.org](http://www.kenyalaw.org).

### **c. Laws of Kenya**

Kenya Law maintains a database of all the Laws of Kenya. There were 493 chapters of the laws as at 31<sup>st</sup> June 2018, which contains the full text of Acts of Parliament (statutes) and regulations (subsidiary legislation) made under those Acts. The laws of Kenya also include county legislation and as such the organisation also maintains a separate database of this legislation.

### **d. Revision of Laws**

The laws of Kenya (national legislation) were continuously revised and updated throughout the year. Revision and Consolidation of newly enacted laws, amendments and repeals to Laws passed by Parliament was done through the daily amendment of laws based on the supplements published every Friday in the Kenya Gazette. In the last one year the organisation was able to revise and update 442 pieces of legislation thus ensuring that the laws of Kenya database was 89% updated. Kenya Law was therefore

able to provide affordable, reliable and timely access to updated legal content.

#### **e. County Legislation**

County Legislation is an integral part of the laws of Kenya. Article 260 of the Constitution provides that the Laws of Kenya includes legislation enacted by Parliament and an assembly of a county government. In furtherance of this, Kenya Law maintains a portal dedicated to the online publication of county legislation from all the 47 Counties of the Republic. This is segregated into the various Counties so as to ease access to this data.

In the period under review the organisation ensured the collection of County legislation (acts, bills and legal notices) from all the Counties by actively engaging the leadership of the Counties and the County Assemblies (Governors and County Speakers respectively). The County Legislation database now contains 1,200 pieces of legislation that have been dealt with by the various Counties.

#### **f. Treaties Database**

The Constitution of Kenya provides that any treaty or convention ratified by Kenya shall form part of the law of Kenya. Kenya Law maintains a database that is dedicated to all the treaties and agreements that Kenya has taken any action on. This online resource contains treaties, agreements, conventions and other international instruments to which Kenya has taken any action in such as ratification, accession and declaration. In addition to this the database also contains 500 major multilateral instruments sourced from mainly the United Nations Treaties Repository and African Union Treaties Database (including those that Kenya is not a signatory to). This database is routinely updated to incorporate new content as new treaties and agreements are continually deposited with the Secretary-General of the United Nations and other regional international organizations. The main purpose of this resource is to provide access to information to legal practitioners and the public at large in compliance with articles 2 (5), 2(6) and 35 of the Constitution of Kenya, 2010.

#### **g. Laws of Kenya - Print Publications**

Kenya Law also provides access to the laws of Kenya through various print publications. The following publications were printed, with the support of the Judiciary Performance Improvement Program (JPIP), in this period:

1. The Grey Book
2. The Grey Book Service Issues
3. Commercial Volume Service Issues
4. Public Finance Service Issues
5. Land Law Service Issues
6. Electoral Volume

Kenya Law was also able to finalize and prepare in readiness for print the following Laws of Kenya manuscripts:

1. Commercial Law Volume
2. Devolution Law Volume
3. Election Volume
4. Grey Book



## **h. Tribunal Decisions**

The Constitution provides that all tribunals exercise judicial authority on behalf of the people of Kenya. It is therefore important to give access to these decisions in light of the fact that they determine the rights of citizens. Kenya Law partnered with all the tribunals (through their association) so as to ensure the publication of their decisions on the Kenya Law website. A special database was created to host these decisions and 401 tribunal decisions were made available to the public through the website.

## **i. Publication of Specialized Digests**

Kenya Law seeks to provide legal information that is relevant and convenient to legal professionals and as such prepares various digests to cater for niche legal practice areas. The following specialised publications were developed during the financial year:

### **1. Presidential Election Petitions**

Following the conclusion of the determination by the Supreme Court of the presidential election petition that was lodged after the elections that were held on 8<sup>th</sup> August 2018, Kenya Law prepared a Presidential Election Booklet that summarised all the rulings and final decision that was issued by the Court in September 2017. This is the second series of this publication as the first was published after the presidential election petition that was lodged in the year 2013.

The Presidential Election Petition Vol. I was printed and Presidential Election Petition Vol. II had been finalized and will be printed in the FY 2018/2019.

### **2. Compendium of Rulings on Bail and Bond**

The Kenya Law, with the support of and in collaboration with the Judiciary's Committee on the implementation of Bail and Bond chaired by Justice Jessie Lesiit, developed a Compendium of Rulings on Bail and Bond under the Constitution of Kenya, 2010. The Digest tracks decisions on the implementation of the Bail and Bond Policy Guidelines which are intended to guide police and judicial officers in the application of laws that provide for bail and bond. The Compendium has been modelled as a quick and ready guide to track the emerging jurisprudence on bail and bond matters in Kenya. The publication is useful to judicial officers, legal practitioners and players in the criminal justice system that, on a day to day basis, interact with the Bail and Bond Policy guidelines.

### **3. Case Digest of Decisions on Capital Markets**

Kenya Law developed a case digest on Jurisprudence in the area of Capital Markets in order to aid the legal fraternity and other interested persons in identifying the current developments in litigation affecting capital markets. This was a request from the Capital Markets Authority (CMA), which is keen on developing jurisprudence in the area of capital markets.

The Digest draws together decisions from the Courts in Kenya that provide guidance on the interpretation of capital markets laws and procedures as well as inform the range and exercise of administrative powers vested in the Capital Markets Authority

(CMA) under the Capital Markets Act, Chapter 485A. The Digest is expected to serve as a critical reference point in guiding all players in the capital markets, especially legal practitioners, Judges and Judicial Officers on how disputes arising from regulation of Capital Markets have been dealt with by our Courts.

**j. Monitoring Law Reform Issues from the superior Courts of Record**

Kenya Law undertakes case analysis and reviews of legislation that has been assented to and in the process is able to compile all the law reform issues that arise from this set of legal data. These law reforms are compiled and transmitted to the Office of the Attorney for their consideration and further action. Kenya Law therefore prepared a compilation of law reform issues, as raised by the courts in their judgments and as noted in various legislation, for all the quarters of the FY 2017/2018 and forwarded the same to the Attorney General's office and the Kenya Law Reform Commission. Some of the major law reform issues that have been highlighted during this financial year include:

- a. Court rules that section 44(8) of the Elections Act which provides for the establishment of the Technical Committee to oversee elections is unconstitutional (Kenneth Otieno v Attorney General & Independent Electoral & Boundaries Commission Petition No 127 of 2017)
- b. Court rules that sections 39(2) and (3) of the Elections Act and regulations 83(2) and 87(2) (c) of the Election (General) Regulations are unconstitutional, null and void (Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others [2017] eKLR Court of Appeal at Nairobi, Appeal 105 of 2017)
- c. NEMA needs to introduce rules and regulations on the operation of dumpsites as the provisions of the Environment Management and Co-ordination Act are in violation of the right to a clean and healthy environment (African Centre for Rights and Governance (ACRAG) & 3 others v Municipal Council of Naivasha Petition 50 of 2012)
- d. Court declares sections [45(2) (3) and (6), 46(1) (b) (ii) and (c) and 48] of the Elections Act and [27(2), (3) and (6) and 28(1)(b)(ii) and (c)] of the County Governments Act that Provide for the recall of an elected Member of Parliament and Member of County Assembly unconstitutional in (Katiba Institute & another v Attorney General & another Constitutional Petition No. 209 of 2016)
- e. Court rules that the mandatory Nature of the death sentence provided under section 204 of the Penal Code is unconstitutional (Francis Karioko Muruatetu & another V Republic Petition No. 15 of 2015)
- f. Section 7 And 10 (4) Of the Work Injuries Benefits Act 2007 Declared Unconstitutional (Attorney General v Law Society of Kenya & another Civil Appeal No 133 of 2011)
- g. Court declares that Parliament Should amend the County Governments Act to provide for the removal and appointment of Deputy Governors (Mwamlele Tchappu Mbwana v Independent Electoral & Boundaries Commission & 4 others

Election Petition No. 5 of 2017)

- h. Court Declares Sections 3(3) and 11(2) of the Auctioneers Act unconstitutional (Josephat Musila Mutual & 9 others v Attorney General & 3 others [2018] eKLR Petition No 120 of 2017)

**k. Monitoring Local and International Jurisprudence**

Kenya Law continues to monitor and report on international jurisprudence from various international and regional courts (East Africa Court of Justice, United Kingdom Supreme Court, South African Constitutional Court, Supreme Court of India) and these decisions are edited and posted on a weekly basis on the Kenya Law Blog Wakilishare. During the year under review, a total of 32 decisions from the selected courts were reported, especially those that bear a relevance to the Kenyan legal system. Some of the issues highlighted include:

- 1) It is improper to detain children at the prisons before or after a finding of liability against them. This was decided by the High Court of Malawi in *Republic and Children in Detention at Bvumbwe and Kachere Prisons Review Case* No. 21 of 2017.
- 2) Expelling citizens from their Own Country infringes Article 12(2) of the African Charter on Human and Peoples' Rights. This was decided by the EAST African Court of Justice in *Anudo Ochieng Anudo v. The United Republic of Tanzania African Court on Human and Peoples' Rights Application* No. 012/2015.
- 3) Discrimination against goods of a partner state contravenes the Treaty and the Protocols made thereunder. This was decided by the *East African Court of Justice in British American Tobacco (U) LTD v the Attorney General of the Republic of Uganda*, Application No.13 of 2017
- 4) Village councils incorporated as body corporates have legal capacity to institute a case before the East African Court of Justice. This was decided by the East African Court of Justice in *Ololosokwan village council & 3 others v the Attorney General of the United Republic of Tanzania*
- 5) An occupier's right to human dignity includes housing with basic human living conditions, a decision of the *Constitutional Court of South Africa in Daniels v Scribante and Another* CCT 50/16
- 6) Nursing care by a registered nurse in a care home is funded by the National Health Service and includes all social care decided by the Supreme Court of the United Kingdom in *R (on the application of Forge Care Homes Ltd and Others) v Cardiff and Vale University Health Board and Others* 2017 UKSC 56
- 7) Deportation of foreign criminals before their appeals are heard is a violation of their fundamental Rights decided by the *United Kingdom Supreme Court in R (on the application of Kiarie) & Another (Appellants) v Secretary of State for the Home Department (Respondent)* [2017] UKSC 42
- 8) Detention of Illegal foreigners arbitrarily without automatic judicial intervention and appearance in person before a court is unconstitutional, decided by the

Constitutional Court of South Africa in the case of Lawyers for Human Rights v Minister of Home Affairs and Others Case CCT 38/16

- 9) Kenya's decision to Evict the Ogiek community from the Mau Forest was in violation of its rights as an indigenous community that it ought to have protected and effected as under the African Charter on Human and Peoples' Rights decided by the *African Commission on Human and Peoples' Rights v Republic of Kenya*, Application No. 006/2012

## **1. Knowledge Sharing**

Kenya Law is passionate about dissemination of legal information and has been able to support various other institutes to benchmark with its standards. The following knowledge sharing events were undertaken:

- 1) *South Sudan* – Hon Justice James Alala, Justice of the Supreme Court of South Sudan on May 11, 2018. The Judiciary of South Sudan is setting up a directorate to handle their law reporting function that will be headed by Justice Alala. The Judge was taken through a training session on law reporting, law revision and legal publishing.
- 2) *Ghana*– Mr Eric Apeadu, the Coordinator for Ghana LII visited and benchmarked with Kenya Law between 27<sup>th</sup> and 29<sup>th</sup> June. He was taken through all the technical departments as part of his knowledge sharing experience. Ghana LII is an NGO that undertakes the compilation of the Ghana's public legal information.
- 3) *Tanzania* – Kenya Law together with African LII participated in a training session for Tanzania's judiciary on law reporting and the compilation of legislative databases. This was undertaken between 3<sup>rd</sup> and 5<sup>th</sup> June 2018 in Dares salaam.

## **2. Policy and Legal Framework**

Kenya Law periodically undertakes the formulation, review and updating of its policy documents to ensure conformity to all Government law, rules, regulations, policies and circulars. In the financial year ended 2017/2018, Kenya Law has reviewed the following policy documents:

### **a. Strategic Plan**

A working draft of the Strategic Plan for the next period (2018 – 2022) has been developed with input from management and all staff members. Kenya Law commenced the process of sourcing for a consultant to finalize the Strategic Plan, prior to Kenya Law undertaking stakeholder participation for the Plan.

### **b. Copyright License Regime**

Kenya Law undertook a review of its copyright licensing regime with a view of updating it to make it suitable and accommodative of the unique nature of content provided by Kenya Law. This review ensured that the licences being deployed across all of Kenya Law's products and services enable it to secure its rights while facilitate the sharing and dissemination of public legal information.

### **c. Kenya Law Policy and Procedure Manuals**

Kenya Law developed, reviewed and updated several of its policies and procedures manual. These are:

- The ICT Policy and Procedure Manual
- The Research and Development Policy and Procedure Manual
- The Human Resource and Policy Manual
- The Disaster Recovery and Business Continuity Plan

### **d. Legal Compliance and Corporate Governance**

Kenya Law facilitated for the training of all management staff on Corporate Governance by the Kenya Institute of Management so as to update and continually improve the capacity of management staff in good corporate governance practices in all their actions.

Kenya Law also begun the process of sourcing for a Legal and Governance Audit consultant to undertake and review the levels of compliance of Kenya Law to the legal and compliance requirements of the organization. This shall be finalized in the FY 2018/2019.

### **e. Review of the National Council for Law Reporting Act (No. 11 of 1994)**

The National Council for Law Reporting Act has not had comprehensive amendments effected on it since its passage in the year 1994. Kenya Law therefore commenced the review of the Act and has generated initial proposals through staff members and the management. The process will be finalised in the next reporting period.

## **3. Institutional Development**

Kenya Law is committed to the continuous improvement and development of the organizations capacity to generate, allocate and use human and financial resources effectively towards the achievement of its mandate. In the financial year ended 2017/18 Kenya Law undertook the following activities towards this:

### **a. Quality Management System**

Kenya Law committed to undertake the development of a Quality Management System (QMS) within its Strategic Plan and the organization has engaged a consultant to develop and deploy a QMS system. This activity commenced in July 2016, and will culminate in Kenya Law being certified as being ISO 9001:2015 compliant. All the systems and procedures of the organization have been documented and validated and their implementation is on-going. Both an Internal Audit and a Management Review meeting were undertaken in the FY 2017/18. Based on the results of the Management Review Meeting, it was determined that there was need for changes to the processes and procedures of various departments. Kenya Law shall undertake a second internal quality audit of departments prior to inviting surveillance auditors to review and audit the organization for ISO 2001:2015 certification.

## **b. Performance Management and Measurement Understanding**

Kenya Law continues to track and report on its achievement of targets under the Performance Management and Measurement Understanding that was signed with the Judiciary. The reports for all four quarters were submitted to the Judiciary within the financial year. The results for the financial year 2015/2016 were announced on June 8, 2017 Kenya Law once again achieved a “Very Good” score. On achieving its core mandate, which includes the tracking of jurisprudence from the superior courts of record and the revision and consolidation of the Laws of Kenya, Kenya Law achieved 99 per cent and scored 100 per cent in all other perspectives, including customer relations and innovation and learning.

## **c. Partnerships and Donors**

Kenya Law is keen on maintaining good relations with all its donors and stakeholders. In the year under review, Kenya Law partnered with the following institutions towards achieving its mandate:

- 1) **Judicial Performance Improvement Project (JPPI):** Kenya Law has in the past year worked closely with JPPI towards the provision of various goods and services. These included: Provision of office premises for Kenya Law; Procurement of a premium case law database and Online Editor; Printing for various Kenya Law publications; Purchase of server and heavy duty printer; Simplification and Translation of Laws. Kenya Law was one of the best performing intuitions in terms of absorption of its budget under the project.
- 2) **Digital Divide Data (DDD):** Kenya Law entered into a partnership with the Digital Divide Data (DDD), an organisation that delivers digital content, data and research services to clients worldwide for digitization of Reports from Parliamentary Committees Votes, Petitions and Proceedings and reports from Commissions of Inquiry. The process involved:
  - a) Scanning of hard copy documents into PDF format in black and white.
  - b) Indexing of all the scanned documents
  - c) Upload the digitized documents into a Content Management System (CMS).

This was a bid by Kenya Law to enrich its website by providing public legal information in a digital format. The information was uploaded onto the Kenya Law website. Based on this partnership a total of 230,000 pages of Reports from Parliamentary Committees, Votes Petitions and Proceedings and Reports from Commissions of Inquiry were digitized and made available on the Kenya Law website.

## **d. Kenya's National Assembly**

Kenya Law partnered with the National Assembly to develop the National Assembly Factsheets and other resources for use during the induction of legislators in September 2017 and also as resources for general use by staff. The documents included Speaker's Rulings for the 10th (2008–2012) and 11th (2013–2017) Parliaments, resources on



procedure, general factsheets on the workings of parliament, information on law making and budget processes, the roles and functions of key directorates and departments of the National Assembly and departmental manuals among others. The National Assembly decided to partner with Kenya Law owing to the high standards it has set in publishing.

#### **4. Infrastructure Management**

Kenya Law relies on ICT to catalyse the dissemination of public legal information. There is therefore a need to always maintain and replace ICT equipment which host and disseminate all of Kenya's public legal information. In this regard the organisation purchased assorted hardware & corresponding software in line with industry best practices of phasing out machines that were obsolete.

Kenya Law also upgraded its internet bandwidth from 10Mbps to 20Mbps so as to ensure faster access to online services. This has also enabled staff members to work smarter as a majority of Kenya Law's system are web based.

#### **5. Challenges and Risks In The FY 2017/2018**

The challenges and risks faced by Kenya Law in the year included:

1. Lack of adequate human resource to effectively carry out various Kenya Law functions
2. Lack of adequate infrastructural resources
3. Inadequate training for its members of staff based on the staff training needs assessment In order to ensure that we keep up with the changes in the industry
4. Limited financial allocation. Thus not all activities that were planned for were carried out due to financial constraints
5. Delays in the procurement
6. Sourcing and collection of County legislation: Counties are yet to establish a County Gazette as required by the County Governments Act which causes delay in publishing the County Legislation.
7. Sourcing for funding for projects such as the translation of the Laws into Kiswahili.
8. Following up with the layout issues for the outsourced books. External partners proved a challenge in observing timelines for products outsourced to them especially in layout services.
9. Lack of Proper Offsite Backup – There is need for Kenya Law to have an offsite backup solution especially for its critical data. This will ensure that service provision is not interrupted in case of any downtime.

#### **10.15 KENYA LAW REFORMS COMMISSION**

The Kenya Law Reform Commission (KLRC) has a statutory and ongoing role of reviewing all the law of Kenya to ensure that it is modernized, relevant and harmonized with the



Constitution. Following the promulgation of the Constitution in 2010, KLRC has an additional mandate of preparing new legislation to give effect to the Constitution.

In addition, both the County Governments Act, No. 17 of 2012 and the Kenya Law Reform Commission Act, No. 19 of 2013 require KLRC to assist county governments and ministries/ departments/ agencies (MDAs) in the preparation and reform of their legislation respectively. In satisfying this mandate, KLRC recognises that the Constitution requires new laws to ensure that county governments have adequate support to enable them to perform their functions and MDAs have the requisite legal frameworks under which they may effectively execute their mandate.

**During the period under review, KLRC was able to achieve the following:**

1. The KLRC, Pursuant to its mandate under Clause 5(6)(b) of the Sixth Schedule of the Constitution, continued to develop legislation required to implement the Constitution.
2. Assisted a number of MDAs with the review and harmonization of their respective legislative frameworks with the Constitution.
3. Provided technical assistance to a number of county governments with regard to the reform or amendment of their laws.
4. Gave advisory opinions to Parliament, MDAs and county governments.
5. Proposed amendments to various laws after receiving reports from the National Council of Law Reporting on court judgments touching on law reform.

**Challenges**

1. Undertaking proper public participation/stakeholder consultation in view of limited funding.
2. Late submission of instructions from MDAs and county governments.
3. Lack of understanding on scope of devolved functions at both levels of government.
4. Inadequate financial resources to enable KLRC deliver on its mandate.
5. Occasional tight timelines by MDAs and county governments.
6. Strict timelines pegged on the date of the general elections during the review of electoral laws.

**The Table below sets out the draft legislation and policies that KLRC worked on in the FY**

**2017-2018:**

**Table 1: Draft legislation and policies that KLRC worked on in FY2017/18**

NO.	BILLS	STATUS
1.	<b>A. BILLS DEVELOPED OR REVIEWED (NATIONAL)</b>	
2.	Energy Bill, 2018	Completed
3.	Social Protection Bill, 2018	Completed
4.	Older Persons Bill, 2018	Completed
5.	National Crime Research Centre Bill, 2018	Completed

NO.	BILLS	STATUS
6.	Kenya Institute of Special Education Bill, 2018	Completed
7.	Community Groups (Registration) Bill, 2018	Completed
8.	County Attorney Bill, 2018	Completed
9.	Nurses (Amendment) Bill, 2018	Completed
10.	Law of Succession (Amendment) Bill, 2018	Completed
11.	Income Tax (Amendment) Bill, 2018	Completed
12.	Insolvency (Amendment) Bill, 2017	Completed
13.	Library Services and Amendments Bill, 2018	Completed
14.	Statute Law (Miscellaneous Amendments) Bill, 2018	Completed
15.	Traffic (Amendment) Bill, 2018	Completed
16.	Public Order (Amendment) Bill, 2018	Completed
17.	Employment (Amendment) Bill, 2018	Completed
18.	Narcotic Drugs and Psychotropic Substances (Control) (Amendment) Bill, 2018	Completed
19.	Kenya Medical Training (Amendment) Bill, 2017	Completed
20.	Victim Protection (Amendment) Bill, 2018	Ongoing
21.	National Volunteerism Bill, 2018	Ongoing
22.	Social Assistance Bill, 2018	Ongoing
23.	Slum Upgrading and Prevention Bill, 2018	Ongoing
24.	Water Towers Bill, 2018	Ongoing
25.	Kenya Food and Drug Authority Bill, 2018	Ongoing
26.	National Basins Development Authority Bill, 2018	Ongoing
27.	Data Protection Bill, 2018	Ongoing
28.	Parliamentary Service Commission (Amendment) Bill, 2018	Ongoing
29.	Intergovernmental Relations (Amendment) Bill, 2018	Ongoing
30.	County Government (Amendment) Bill, 2018	Ongoing
31.	Forest Conservation Management (Amendment) Bill, 2018	Ongoing
32.	Labour Institutions (Amendment) Bill, 2018	Ongoing
33.	Employment (Amendment) Bill, 2018	Ongoing
34.	Labour Relations (Amendment) Bill, 2018	Ongoing
35.	Forests Conservation and Management (Amendment) Bill, 2018	Ongoing
	<b>B. SUBSIDIARY LEGISLATION DEVELOPED OR REVIEWED (NATIONAL)</b>	
36.	Controller of Budget (Approval of Withdrawal of Funds) Regulations, 2018	Completed
37.	Inter-governmental Relations (Alternative Dispute Resolution) Regulations, 2018	Completed
38.	Micro and Small Enterprises (Association) Regulations, 2018	Completed
39.	Micro and Small Enterprises (Worksite) Regulations, 2018	Completed
40.	Supreme Court (Presidential Election Petition) Rules, 2017	Completed
41.	Radiation Board Regulations, 2018	Completed
42.	Insolvency (Amendment) Regulations, 2017	Completed
43.	Public Service Commission Regulations, 2017	Completed
44.	Elections (Parliamentary and County Elections) Petition Rules, 2016	Completed
45.	Court of Appeal (Election Petition) Rules, 2017	Completed
46.	Political Parties Dispute Tribunal Regulations, 2017	Completed
47.	Elections (Party Primaries and Party Lists) Regulations, 2017	Completed
48.	Election (Voter Education) Regulations, 2017	Completed

NO.	BILLS	STATUS
49.	Elections (Technology) Regulations, 2017	Completed
50.	Election (Voter Registration)(Amendment) Regulations, 2017	Completed
51.	Election (General) Regulations)(Amendment) Regulations, 2017	Completed
52.	Small Claims Courts Rules, 2017	Completed
53.	Victim Protection Regulations, 2017	Completed
54.	Victim Protection Fund Regulations, 2017	Completed
55.	Intergovernmental Dispute Regulations, 2017	Completed
56.	Kenya National Commission for UNESCO Act Regulations, 2018	Completed
57.	Nurses Regulations, 2018	Ongoing
58.	Companies (Beneficial Ownership Information) Regulations, 2018	Ongoing
59.	HIV & AIDS (Privacy Guidelines), Regulations 2018	Ongoing
60.	HIV & AIDS (Prevention and Control) Model Legislation	Ongoing
	<b>C. Bills Developed or Reviewed (County)</b>	<b>STATUS</b>
61.	Kitui County Investment Corporation Bill, 2018.	Completed
62.	Migori County Health Services Bill, 2018	Completed
63.	Nairobi City County Corporations Bill, 2018	Completed
64.	Nairobi City County Child Care Facilities Bill, 2018	Completed
65.	Nairobi City County Revenue Administration Bill, 2018	Completed
66.	Nairobi City County Licensing Bill, 2018	Completed
67.	Nyamira Water Resources Bill, 2018	Completed
68.	Taita Taveta County Sand Harvesting (Amendment) Bill, 2018	Completed
69.	Nakuru County Revenue Allocation Bill, 2017	Completed
70.	Meru County Agriculture Bill, 2018	Ongoing
71.	Nairobi City County Betting, Gaming and Lotteries (Amendment) Bill, 2018	Ongoing
72.	County Solid Waste Management Model Bill, 2018	Ongoing
	<b>D. Subsidiary Legislation Developed or Reviewed (County)</b>	
73.	Public Finance Management (Bomet County Mortgage State and Public Officers Scheme) Regulations, 2018	Completed
74.	Public Finance Management (Kakamega County Youth and Sports Fund) Regulations, 2018	Completed
75.	Public Finance Management (Trans Nzoia County Executive Mortgage Fund) Regulations, 2018	Completed
76.	Public Finance Management (Kitui Car Loan and Mortgage Regulations) 2018	Completed
77.	Public Finance Management (Makueni Bursary Fund) Regulations 2018	Completed
78.	Public Finance Management (Baringo County Micro and Small Enterprises) Regulations, 2018	Completed
79.	Public Finance (Makueni Bursary Fund) Regulations, 2018	Completed
80.	Bomet Car Loan Regulations, 2018	Completed
81.	Trans Nzoia Car Loan Regulations, 2018	Completed
82.	Kericho Trade Regulations, 2018	Completed
83.	Kericho Cooperative Regulations, 2018	Completed
84.	Kericho County Trade Licenses Regulations, 2018	Completed
85.	Kisii County Bursaries Fund Regulations, 2018	Completed
86.	Kitui County Health Insurance Cover Regulations, 2018	Completed
87.	Nyamira County Co-operative Development Fund Regulations, 2018	Completed
88.	Busia County Co-operative Enterprise Development Fund Regulations, 2018	Completed

NO.	BILLS	STATUS
89.	Tharaka Nithi County Assembly Car Loan Fund Regulations, 2018	Completed
90.	Tharaka Nithi County Assembly Housing Fund Regulations, 2018	Completed
91.	Tharaka Nithi County Bursaries (Amendment) Bill, 2018	Completed
92.	Tharaka Nithi County Emergency Fund (Amendment) Bill, 2018	Completed
93.	Tharaka Nithi County Trade Fund Regulations, 2018	Completed
94.	Taita Taveta County Sand Harvesting (Conservation and Utilization) Regulations, 2018	Completed
95.	Kitui County Climate Change Fund Regulations, 2018	Completed
96.	Bungoma County Assembly (Employees' Mortgage Scheme Fund) Regulations, 2018	Completed
97.	Public Finance (Bungoma County Disaster Management Fund) Regulations, 2017	Completed
98.	Public Finance (Bungoma County Youth and Women Empowerment Fund) Regulations, 2017	Completed
99.	Public Finance (Bungoma County Trade Loan Fund) Regulations, 2017	Completed
100.	Public Finance (Nandi County Assembly Car Loan and Mortgage (Members Scheme Fund) Regulations, 2017	Completed
101.	Public Finance (County Assembly of Nyeri Car loan and Mortgage (Members) Scheme Fund (Amendment) Regulations, 2017	Completed
<b>E. POLICIES REVIEWED (NATIONAL)</b>		
102.	National Policy on Culture	Ongoing
103.	National Maritime Transport Policy	Ongoing
104.	Kenya Food and Drugs Authority Policy	Ongoing
105.	Kenya Water Towers Coordination Policy, 2018	Ongoing
106.	Human Rights Business Approach Policy	Ongoing
107.	Uniform Citation System Policy	Ongoing
<b>F. POLICIES REVIEWED (COUNTY)</b>		
108.	Turkana County Agricultural Sector Policy, 2018	Completed
109.	Isiolo County Disaster Management Policy, 2018	Ongoing
110.	County Solid Waste Management Model Policy, 2018	Ongoing
<b>G. GUIDELINES REVIEWED (NATIONAL)</b>		
111.	Handbook on Police Reforms	Completed
112.	Popular version of the Political Parties Act	Completed
<b>H. RESEARCH</b>		
113.	Research paper on Articles 2(5) and (6) of the Constitution	Completed
114.	Marrakesh Treaty National Plan of Action, 2018	Completed

\*Completed” refers to draft legislation or policy finalized by KLRC and submitted either to the Attorney-General, an instructing MDA or a county government.

#### 10.16 COMMISSION ON ADMINISTRATIVE JUSTICE

The Commission on Administrative Justice (CAJ) also known as the “Office of the Ombudsman” is a Constitutional Commission established under Article 59 (4) and Chapter Fifteen of the Constitution, and the Commission on Administrative Justice Act, 2011.

The Commission has a mandate, inter-alia, to investigate any conduct in state affairs or

any act or omission in public administration in any sphere of Government and complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct.

**The following activities here undertaken during the reporting period.**

1. Handled 54,207 complaints out of which 49,938 were resolved which represented a resolution rate of 92%. The complaints related to service issues such as unfair treatment, administrative injustice, abuse of power, inefficiency, delay, manifest injustice and unresponsive official conduct. Through this, the Commission was provided a platform to the public for resolution of their grievances.
2. Conducted legal aid clinics with a view to providing free legal and advisory services to the poor and needy who cannot afford the services of a lawyer for the conduct of their cases thereby enhancing access to justice. The clinics were conducted in Makueni, Elgeyo Marakwet, Narok, Nandi and Nyeri counties and were attended by over 600 participants.
3. Enhanced public administration through training of public officers and provision of technical assistance in the development of effective complaint management system and access to information infrastructure. Specifically, the Commission trained 2,633 officers drawn from 220 institutions across diverse sectors. The training targeted complaints officers, senior managers and frontline officers, and focused on, inter alia, best practices in complaints management, principles of public administration and access to information.
4. Issued four advisory opinions and proposals on matters relating to good governance and public administration. The advisories provide an avenue to the Commission to recommend preventive measures (an early warning system) to address maladministration before it happens. The advisories deal with a variety of issues with the objective of improving public administration and promoting good governance. Notably, the Commission issued an advisory on the handling of employees of county governments by Governors following media reports of intimidation, threats, suspension and dismissal of some county employees by some Governors on the perception that the employees had not supported the governors' political bids during the 2017 elections.
5. Visited five remand facilities to receive complaints from in-mates and provide advisory services in line with section 51 of the Commission on Administrative Justice Act. These were Nakuru Women Prison, Kakamega Women Prison, Kapenguria Prison (Men and Women), Langata Maximum Prison (Women) and Manyani Maximum Prison (Men). The Commission received a total of 202 complaints and provided legal advice to the inmates on various issues. The Commission also interacted with Prison Officers on their role in facilitating the prisoners' right to seek redress of their grievances.
6. Enforced the Access to information Act through review of 39 applications against decisions of certain public and private bodies. In addition, the Commission mainstreamed access to information requirements in its Guidelines under the Performance Contracting system for implementation by public bodies. The Guidelines

were also shared with different county government for adoption. This ensured an exponential development of access to information infrastructure and processing of a total of 2,572 requests for access by public bodies. Further, the Commission sensitized various publics, including over 2,000 public officers drawn from the national and county governments and thousands of members of the public during various outreach fora. Additionally, the Commission developed tools on access to information such a handbook on best practices, guide on proactive disclosure, citizen guide on the Act as well as various templates for full operationalization of the Act.

7. Created awareness on administrative justice and access to information through media engagements, Ombudsman Mashinani (community structures in informal settlements) and development of Information, Education and Communication (IEC) materials.

**In spite of the above milestones, the Commission encountered the following challenges:**

1. Budgetary constraints: Inadequate funding continues to be a major challenge to the Commission. The funds allocated by the Exchequer is not sufficient to cater for all the needs of the Commission particularly in light of the increasing number of complaints thereby overstressing its capacity to render services efficiently.
2. Delays in releasing the revised estimates and exchequer: This hindered timely implementation of some of the planned activities hence affecting the absorption rate. This is further exacerbated by the frequent downtime of the IFMIS and e-Procurement which affected and delayed the procurement of goods.
3. Pooling of publicity and awareness budget to Government Advertising Agency (GAA): The Commission encountered challenges is accessing the funds held by the GAA since the National Treasury did not indicate how much was earmarked for the Commission.
4. Inadequate staffing: Whereas approved staff establishment is 336, the Commission has only 70 members of staff. This shortage continues to cause a strain on effective service delivery to the public and hinders decentralisation of the Ombudsman services.
5. Unresponsiveness from public institutions: Impunity remains the biggest obstacle to quick resolution of complaints. A number of public institutions and officers were cited for unresponsiveness in the period under review.
6. Enforcement mechanisms and high public expectations: The mechanisms for enforcing the Commission's decisions, determinations and recommendations are inadequate. While the Commission's mandate is derived from the Constitution and the Act, there is minimal goodwill from public institutions to comply with the same.

## 10.17 INDEPENDENT POLICE OVERSIGHT AUTHORITY

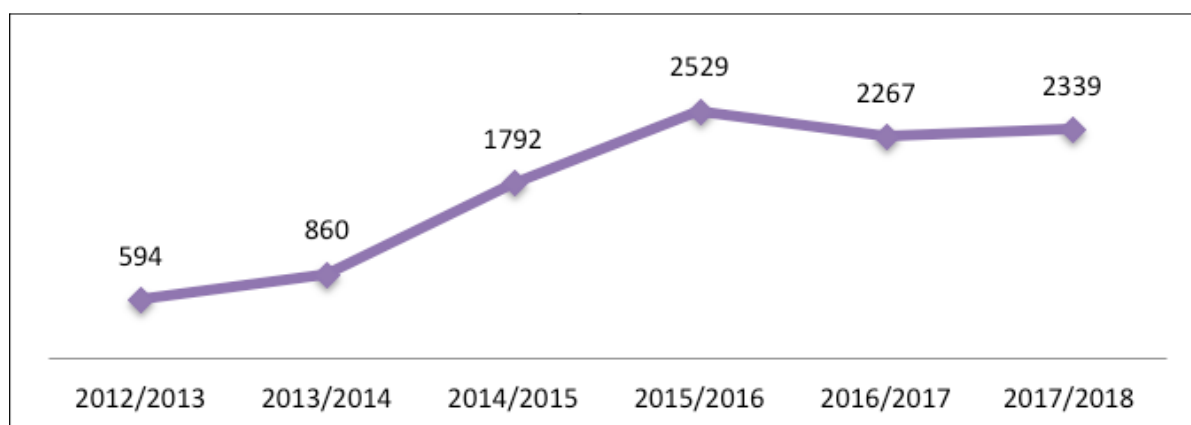
### Introduction

#### Background

The Authority was established on 18<sup>th</sup> November 2011 through IPOA Act No. 35 of 2011 to provide for civilian oversight over the work of the police in Kenya.

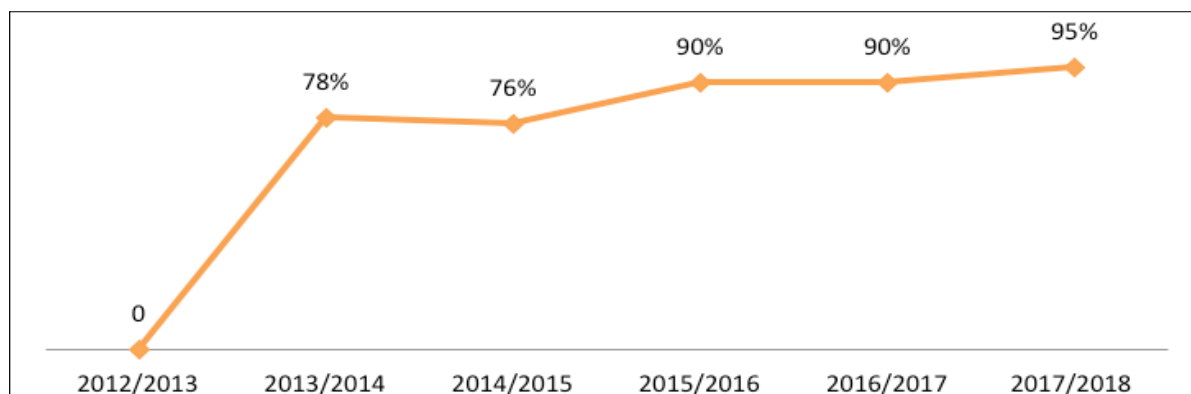
#### Complaints Management

Between July 2017 and June 2018, two thousand three hundred and thirty nine (2,339) complaints were received and cleared through the Complaints Intake Committee. Out of the received complaints, 20.6 per cent (482) complaints were recommended for investigations by the Authority, 119 were referred to IAU, 90 to National Police Service Commission (NPSC) and 385 to NPS. Five hundred and forty one (541), 23.1 per cent complaints did not have adequate information and were referred back to the complainants to provide the information while 391 complaints (16.7%) were resolved with the respective police facilities. Cumulatively, since the Authority's inception, ten thousand three hundred and eighty one (10,381) complaints have been received as shown in figure 1:



**Figure 1: Trend on number of complaints received per year**

Trend on clearance<sup>1</sup> rate on complaints received by the Authority has been improving over the years as illustrated in figure 2 below. The Authority is committed to improve the rate to 100% in FY 2018/2019.



**Figure 2: Trend on clearance rate of complaints over the years**

<sup>1</sup> Refers to the point at which recommendations and subsequent referral is made for complaints appraised by the CIC (Case Intake Committee).



## Source of the Complaints and Admission Status

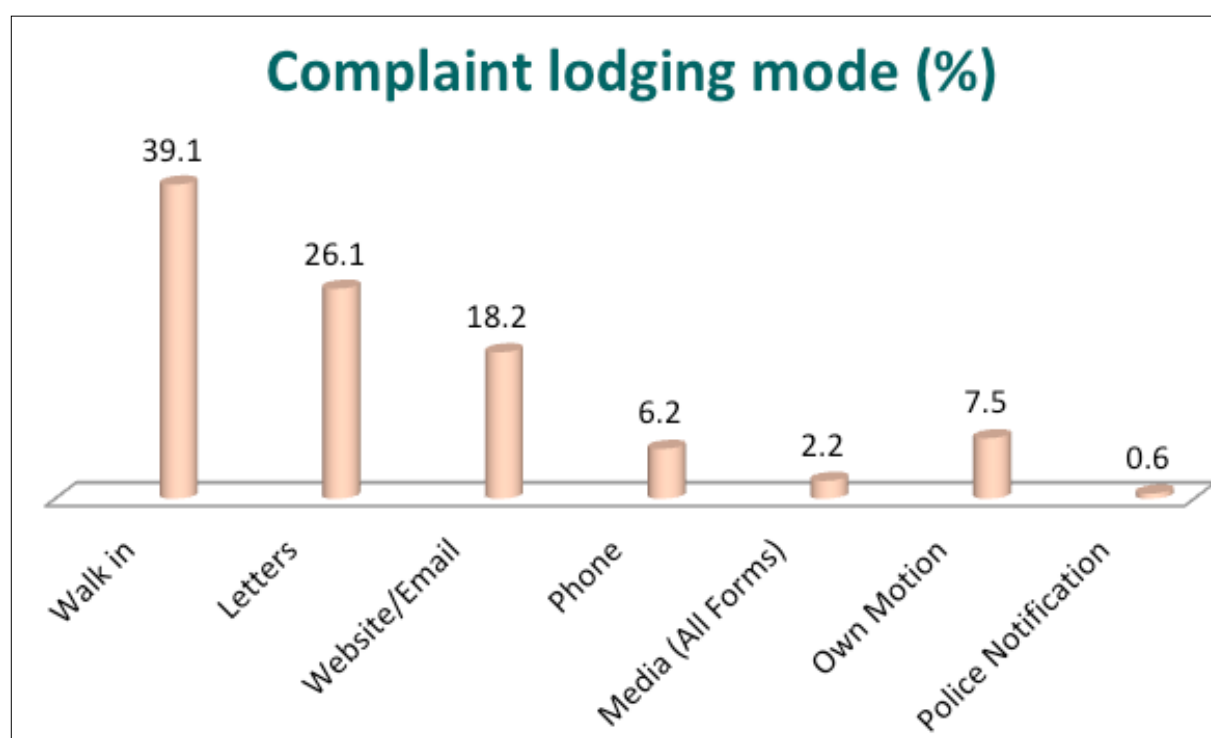
During the report period, complaints were received from various sources as shown in table 1 below. It is clear that the largest proportion of the complaints is directly from the public and the least (4.2%) from the police. It is worth noting that the 11.8 % from the state and non-state agencies were on behalf of aggrieved members of the public.

**Table 1: Sources of Complaints**

SOURCE	NUMBER	PROPORTION (%)
Complaints by the public	1742	74.5
Complaints by police officers	98	4.2
Complaints by non-state actors	166	7.1
Complaints by state actors	110	4.7
Complaints from IPOA's Own Motion	223	9.5
Total	2,339	

## 2.2 Complaints Lodging Modes

During the FY 2017/18, complainants who lodged complaints directly in the IPOA offices (walk-ins) remained dominant at 39.1% followed by letters and website/email at 26.1% and 18.2% respectively while police notification lagged at 0.6% as shown in figure 3 below.



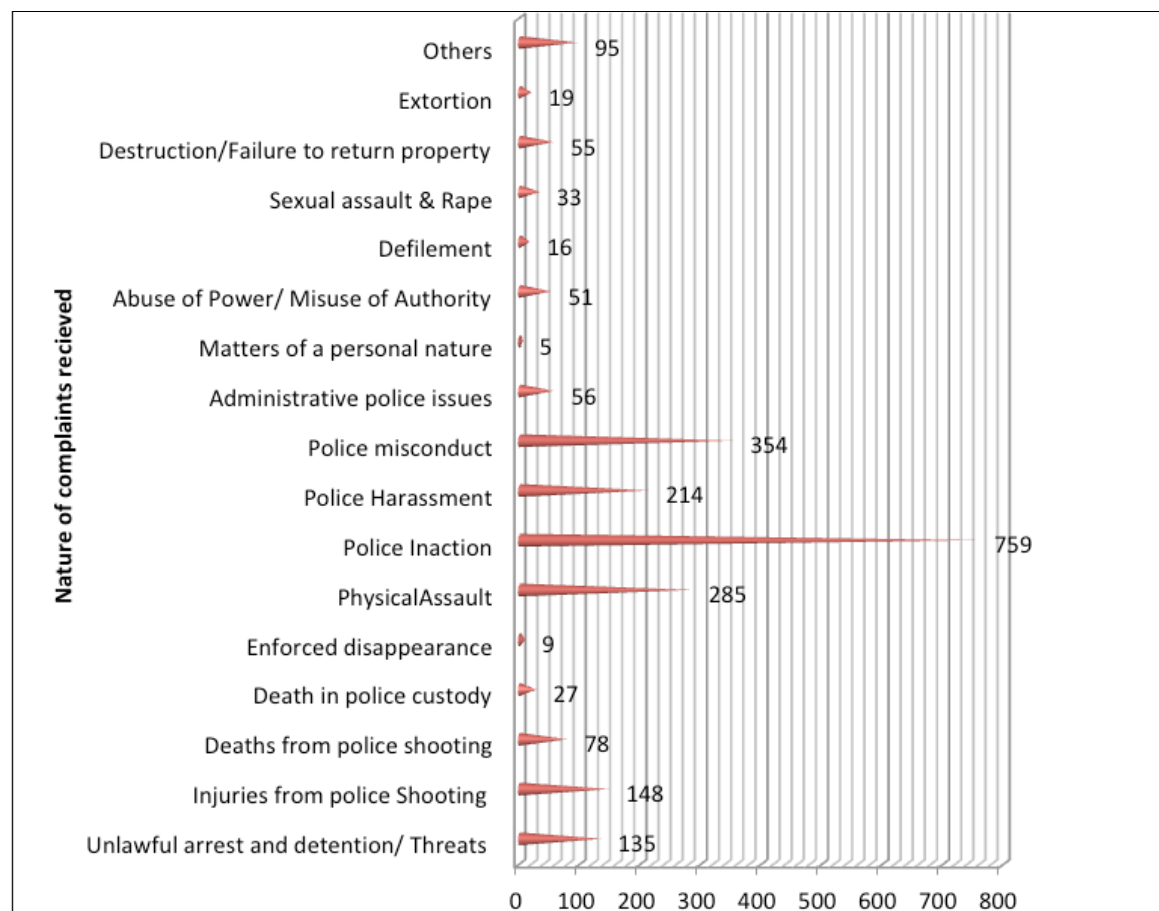
**Figure 3: Level of complaints lodging modes**

**Table 2: Complaints lodging mode**

Complaint lodging mode	Walk-in	Letters	Website/ Email	Phone	Media (All Forms)	Own Motion	Police Notification	Total
Proportion (%)	39.1%	26.1%	18.2%	6.2%	2.2%	7.5%	0.6%	100%
Total	914	611	426	145	52	176	15	2,339

### Nature of Complaints Received

During the period under review, the Authority received complaints whose nature varied as shown in the figure 4 below. Since inception the number of complaints on police inaction keeps increasing. As at 30<sup>th</sup> June 2018 there were 759 complaints on police inaction followed by 354 complaints on police misconduct. These would require deliberate interventions by all stakeholders in policing to address the challenges. The summary is illustrated in Figure 4.

**Figure 4: Nature of complaints received**

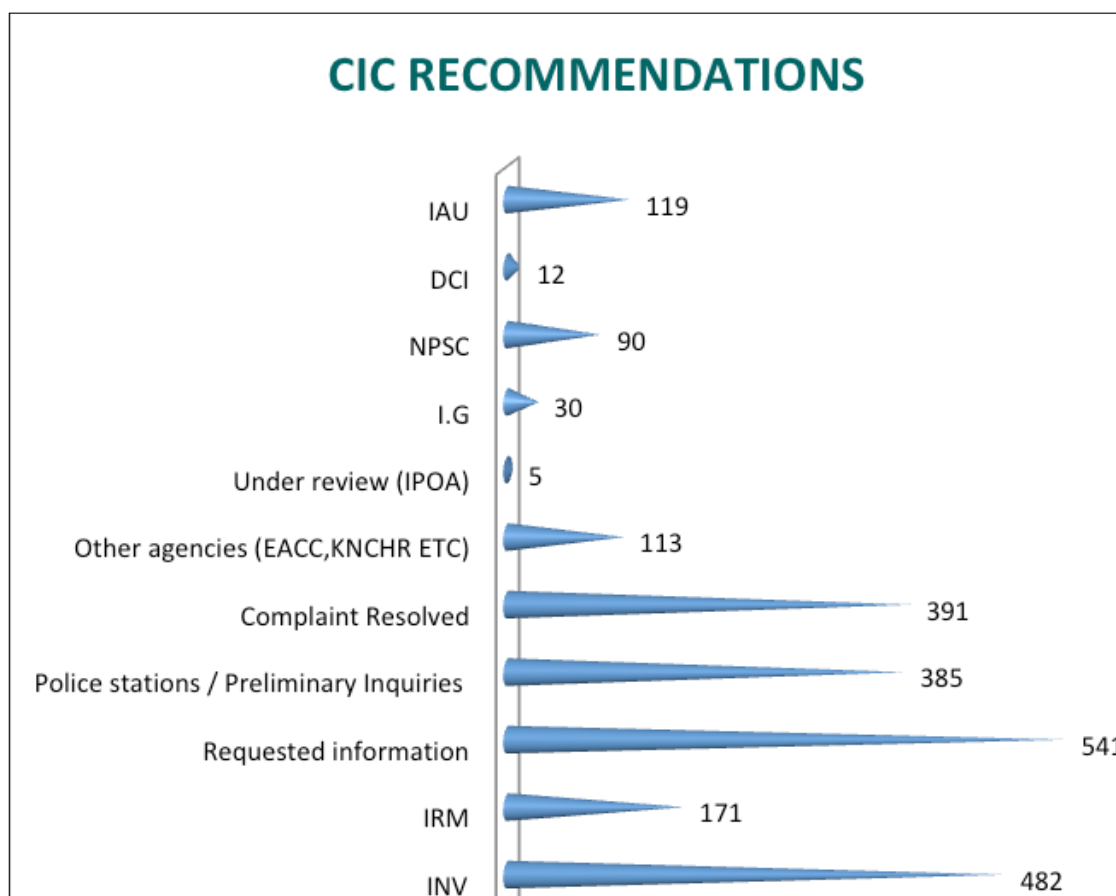
### Recommendations on Complaints by IPOA Case Intake Committee

During the year, the Case Intake Committee<sup>2</sup> (CIC) appraised the complaints received and recommended 482 for investigations by IPOA, 119 referred to IAU and 90 to NPSC. One

<sup>2</sup> CIC is IPOA's internal structure that appraises the received complaints and recommends for subsequent action to IPOA and other Agencies

hundred and seventy one (171) complaints were referred to the inspection and monitoring directorate within the Authority to undertake inspections of the police facilities in question as well as monitor police operations on the subjects mentioned by the complainants.

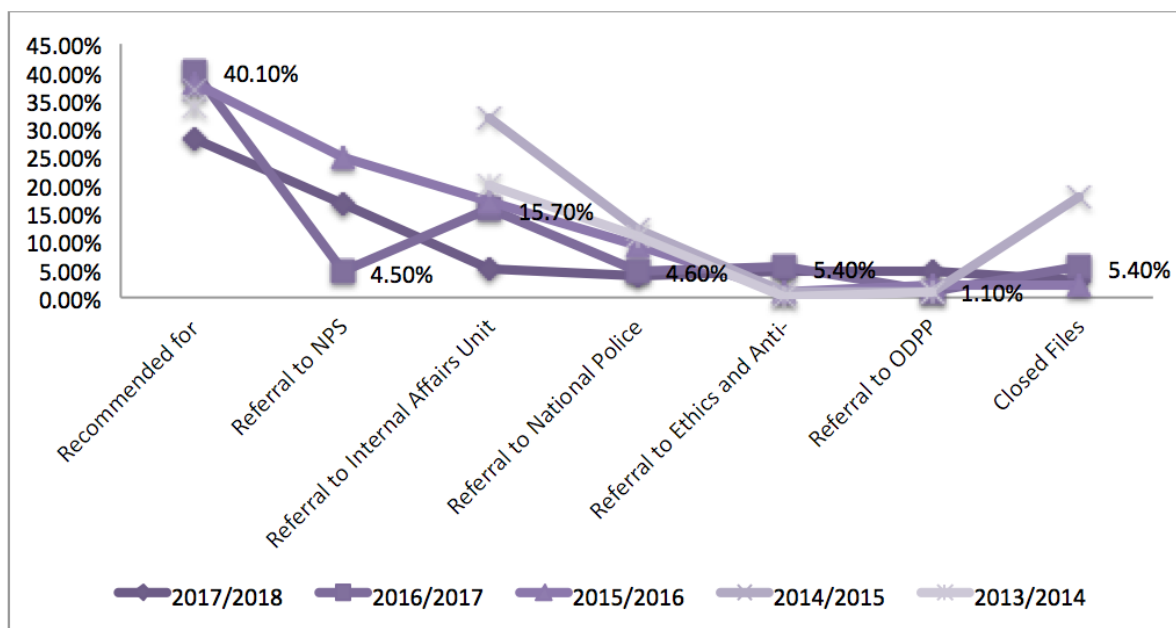
**Figure 5 below illustrates the recommendations made by CIC.**



**Figure 5: CIC recommendations**

**Table 2: CIC recommendations**

ENTITY	2017/18	2016/17	2015/16	2014/15	2013/14
Recommended for Investigations and Inspections within the Authority	28.1%	40.1%	38%	37%	34%
Referral to NPS	16.5%	4.5%	25%		
Referral to Internal Affairs Unit	5.1%	15.7%	17%	32%	20%
Referral to National Police Service Commission	3.8%	4.6%	9%	12%	11%
Referral to Ethics and Anti-Corruption Commission	4.8%	5.4%	1%	1%	0%
Referral to ODPP	4.5%	1.1%	2%	1%	1%
Closed files	3%	5.4%	2%	18%	



**Figure 6: Proportion of complaints actioned to various entities**

### Investigations Management

During the financial year 2017/18, one hundred and ninety seven (197) investigations were completed covering 35 counties. In the same period, twenty-seven (27) files were forwarded to the ODPP. The nature of cases submitted to the ODPP varied but mainly included criminal charges murder, assault, and use of excessive force. There were also cases, which were non-criminal in nature such as public inquest.

As at 30<sup>th</sup> June 2018, a cumulative number of 53 cases were in court; forty eight (48) active court cases whose investigations were initiated by IPOA and five others, which IPOA was monitoring because they involved police misconduct. Forty nine (49) case files were closed without the need for further action owing to various reasons namely; cases which were being investigated by another agency or cases where police have already instituted criminal action against a police officer or civil proceedings were ongoing in relation to the subject matter. Cases were also closed without need for further action where the complainant withdrew the complaints and the withdrawal accepted by the Authority or due to lack of cooperation from the complainant or victim. Closure of cases also occurred due to lack of evidence, resolution reached through other means such as arbitration or negotiation or no misconduct or criminal offence was identified.

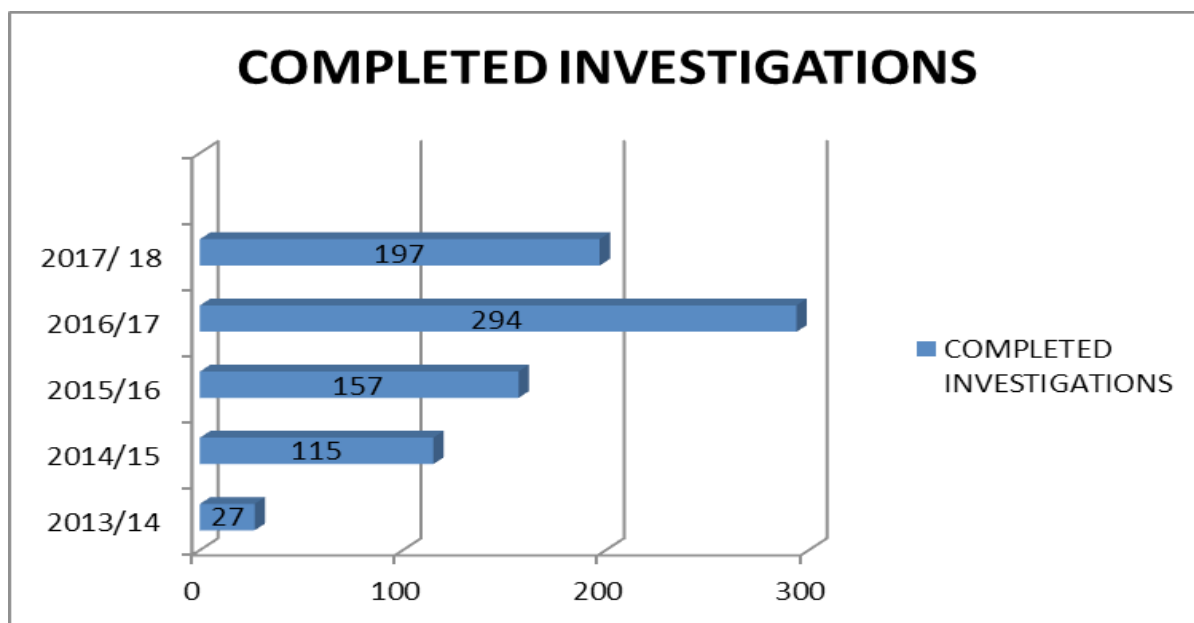
### Status of Cases

The breakdown given table 4 below shows the status of investigations since the establishment of IPOA as at 30<sup>th</sup> June 2018.

**Table 3: Status of cases since inception**

STATUS	NO. OF CASES
Cases currently under investigations	1,476
Completed investigations	790
Cases under initial assessment	2929
Cases forwarded to ODPP	105
Cases in court	53

Completion of investigations is as shown in figure 7 below:



**Figure 7: Trends in completed of investigations since Inception of IPOA**

#### Challenges And Recommendations

Key challenges experienced by the Authority during the reporting period included lack of cooperation from some Officers Commanding Station (OCSs) and county commandants during inspections of police premises and investigations, delay in handling of complaints referred to IAU among others. The challenges and recommendations are stipulated in Table 5.

**Table 4: Challenges and recommendations**

CHALLENGES	RECOMMENDATIONS
<ul style="list-style-type: none"> <li>Non-cooperation from some OCS and County commandants continues to impede the progress of IPOA investigations, monitoring and inspections of police premises</li> </ul>	<ul style="list-style-type: none"> <li>NPS leadership should hold the individual officers accountable on non-cooperation. Disciplinary measures should also be taken on such officers.</li> <li>IPOA should sensitize the police officers on its mandate to enhance cooperation during investigations, monitoring and inspection activities.</li> </ul>
<ul style="list-style-type: none"> <li>Delay in processing of complaints referred to IAU</li> </ul>	<ul style="list-style-type: none"> <li>The Inspector general of police should enhance the IAU capacity so that complaints can be dealt with in time.</li> </ul>
<ul style="list-style-type: none"> <li>Police proceeding to undertake investigations and recommending inquests before informing the Authority and thus legally barring IPOA's investigations</li> </ul>	<ul style="list-style-type: none"> <li>Stakeholder's engagement (IPOA, ODPP and NPS) to resolve the matter</li> </ul>

<ul style="list-style-type: none"> <li>▪ Failure to have MoUs with critical stakeholders such as mobile telephone service providers, Government chemist and ODPP to assist with investigations and prosecution</li> </ul>	<ul style="list-style-type: none"> <li>▪ IPOA to initiate the process of signing MOUs with respective stakeholders for successful investigations</li> </ul>
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## 10.18 WITNESS PROTECTION AGENCY

### Introduction

The Kenya's Witness Protection Agency (WPA) is a Body Corporate established under the Kenya Witness Protection Act, 2006 (Cap 79 Laws of Kenya) amended by the Witness Protection (Amendment) Acts No. 2 of 2010 and No. 45 of 2016. The object and purpose of the Agency is to provide special protection, on behalf of the State, to persons in possession of important information and who are facing potential risk or intimidation due to their co-operation with prosecution and other law enforcement agencies.

Witness protection is a fundamental human right. Article 50 of the Constitution of Kenya, provides for the protection of witnesses and vulnerable persons in the interests of fair hearing before courts and tribunals. It also provides for enactment of legislation providing for the protection, rights, and welfare of victims of offences. The Witness Protection Agency provides the framework and procedures for giving special protection to such persons to ensure an effective and efficient administration of justice in the country.

### Status Summary

The WPA continues to play a key role in offering security to witnesses as a basic human right in line with the constitutional dispensation and the National Development Agenda. The Agency adopts a reformist approach in the discharge of its mandate with the increasing emergence of complex crimes and public awareness about their fundamental rights. The Agency hence plays a significant role in enhancing the administration of justice. The implementation of the Programme is covert in nature. It is premised on strict confidentiality and executed as per Standard Operating Procedures (SOPs) designed in accordance with internationally recognised practices.

### Referral Partners

The Agency receives referrals for witness protection from various stakeholders in the administration of justice including; National Police Service, Office of Director of Public Prosecutions, Kenya National Commission on Human Rights, Kenya Prisons Service, Women Rights Awareness Programme, Federation of Women Lawyers, Coalition on Violence Against Women, Commission on Administrative Justice, Ethics and Anti- Corruption Commission, Independent Policing Oversight Authority, International Justice Mission, International Commission of Jurists, and Equality Now, among others.

### WPP Operations

Pursuant to the provisions of section 4(a) of the Witness Protection Act, the Agency has established and maintains a witness protection programme to protect the safety and

welfare of the protected persons. The following measures are employed depending on the circumstances of each case, the danger and threat involved among other considerations:

1. Physical and armed protection
2. Relocation
3. Change of identity
4. In - camera hearings
5. Use of pseudo names
6. Redaction of identifying information
7. Use of Video Link
8. Employing measures to obscure or distort the identity of the witness.
9. Use of witness box

#### **Current status of witness protection**

During the FY 2017/18 period, the Agency received a total of 227 new applications into the Witness Protection Programme compared to 210 during the FY 2016/17 period. The total number of applications for admission to the programme increased from 210 during the previous periods to 227 applications in the period under review.

**Table 1: Comparative growth summary of Witness Protection Programme Hesitate**

DESCRIPTION	2009/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	TOTAL
Applications received for witness protection	60	72	130	207	217	210	227	1123
Applicants admitted into WPP	10	18	55	97	105	102	100	487
Total number of dependants	44	76	242	198	266	360	187	1373
Applications closed - interventions made and advice given on the right authority to report the matter	50	54	75	110	112	108	127	636
Witnesses who have been discharged	5	8	34	39	72	104	102	360
Witnesses harmed in the programme	0	0	0	0	0	0	0	0
Witnesses who have fallen out of the programme	0	2	1	6	0	0	0	9
Applicants who have successfully testified	9	11	29	14	82	110	54	309
Witnesses who have died due to natural causes	0	0	1	1	1	0	0	3

During the period under review, 11 cases involving witnesses who are protected were concluded and judgment made compared to eighteen (18) cases during the 2016–2017. Convictions in the period under review were obtained in 8 cases compared to five (5) cases in 2016–2017.



The convictions ranged from death sentence, life imprisonment to a number of years in prison representing a 73 % conviction rate when compared to 28 % conviction rate for 2016–2017. A summary of the comparative growth of the Witness protection programme since inception is outlined in table 1 and the regional spread shown in table 2 below:

**Table 2: Regional spread of admitted witnesses**

REGION	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18
Nairobi	5	11	22	46	19	29
Coast and North Eastern	9	15	38	29	36	36
Nyanza and Western	2	10	4	25	39	34
Rift Valley	2	1	4	27	22	15
Central and Eastern	0	6	10	29	23	13

### **Witness Protection Programme summary**

The status of witnesses in the Witness Protection Programme as at 30th June 2018 was as follows:

**Table 3: Witness Protection Programme & witness Protection Summary**

No.	Description	No. of witnesses
1	Safe house	45
2	In court	76
3	Children home	6
	Total	127

### **Key Achievements**

#### **1. Stakeholder Partnership forums**

The Agency managed to network with other stakeholders and partners in the justice sector. This included participation in various CUC forums held in Milimani, Kibera, Kakamega, Kajiado, Homabay, Hamisi and Butali. The Agency also participated in the LSK Awareness Week and the KNCHR Referral Partners network.

#### **2. Regional sensitization campaigns**

In a bid to reach out to key stakeholders of the Agency, regional sensitization campaigns were conducted regionally in various counties to sensitize Judges/Magistrates, ODPP and Police Commanders. The counties visited included Nakuru, Nyeri, Meru, Embu, Uasin Gishu, Kakamega, Bungoma, Kisii, Nyamira, Migori, Machakos, Makueni and Kitui.



*Deputy Director in charge of Corporate Affairs sensitizes Police Commanders at Eldoret Police station in Uasin Gishu County during the regional sensitization campaigns carried out by the Agency.*

### **3. International Conferences and seminars**

Strong international partnerships saw the Agency participate in the Conference for the Development of Children's Social, emotional survival and wellbeing from 28<sup>th</sup> – January – 18<sup>th</sup> February 2018 in Haifa, Israel; and 19<sup>th</sup> Europol Conference in Maryland USA from 16<sup>th</sup> – 17<sup>th</sup> May 2018. The Director/Chief Executive attended the sixteenth session of the Assembly of States Parties to the Rome Statute of the International Criminal Court held at the United Nations Headquarters in New York, from 4<sup>th</sup> – 14<sup>th</sup> December 2017. The Assembly provided an opportunity for engaging on matters critical to the strengthening of the international criminal Justice system and the building of a stronger and responsive International Criminal Court.

### **4. Review of the Witness Protection Act**

The Agency with the help of an expert from the Kenya Law Reform Commission reviewed the Witness Protection Act 2006. The outcome of the review was a draft bill with proposals for future amendments. The review was a follow up to the 2016 amendments, to make proposals for further amendments to Act in line with the ever changing trends in witness protection.

### **5. Guidelines on reciprocal arrangements**

Guidelines were drafted to aid the operationalization of Section 29A of the Witness Protection Act. The section makes provision for reciprocal witness protection arrangements with competent foreign authorities. The guidelines are intended to guide the making of regulations to give full effect to the provisions of the Act on reciprocal arrangements with foreign authorities. The guidelines will be finalised in the next reporting period.

## **6. Development of curriculum for training of stakeholders**

A curriculum for witness protection course and another one for training of external stakeholders was developed. The development of the curricula was informed by the need to have a standardized reference point for the training of witness stakeholders. The Agency appreciates the diversity of its stakeholders and need to a common training reference point for specialized training of stakeholders while appreciating the role each stakeholder plays in helping execute the unique mandate of the Agency.

## **7. Application of court orders.**

The Agency maintained its commitment of timely preparation and filing of court papers and upheld the commitment of 100% court attendance for all matters. The protection orders were obtained in accordance with section 14 of the witness protection act.

## **8. Promotion of National Cohesion and Values**

The Agency organized an awareness and capacity building workshop on national values and principals of governance. The Agency continued to take measures and to make progress to realize National values by upholding public participation, inclusiveness equality, non-discrimination and protection of the marginalized in the provision of Witness Services.

## **Challenges**

The Agency continues to face challenges in its operations. Key among them are:

### **1. Lack of appropriate infrastructure in the courtroom:**

Most courtrooms lack appropriate architecture such as witness protection boxes and screens to safeguard and conceal witnesses under protection when they are giving their testimony. There are also no separate entry alleys to courtrooms which endanger the protected witnesses since they access the courtroom using the same entry as the accused.

### **2. Lengthy trials:**

The slow pace of trials contributed immensely to the exorbitant costs of sustaining witnesses and their dependents in the Witness Protection programme.

### **3. Release of prior evidence to the accused:**

Article 50 (2) (j) of the constitution requires the accused person to be informed in advance of the evidence the prosecution intends to rely on and to have reasonable access to the evidence. This exposes witnesses to danger and scares them from testifying.

### **4. Bond and/or bail policy:**

Article 50 (1)(h) provides that a person arrested can be released on bond or bail, on reasonable conditions pending a charge or trial, unless there are compelling reasons not to be released. This provision makes many witnesses fear to give evidence.

### **5.**

The limited budget from National Treasury had an effect in both human resource capacity and operational targets. For instance, the continued admission of witnesses in the programme without corresponding increase of enabling facilities such as

vehicles hindered smooth movement of Protection Officers to visit witnesses in the programme.

**6. Devolution of witness protection services:**

Article 6 of the Constitution provides for the devolution of services to all counties. Currently, the Agency is in only 3 counties; Nairobi, Mombasa and Kisumu and expansion has been hampered due to funding challenges.

**10.19 NATIONAL TRANSPORT AND SAFETY AUTHORITY**

The National Transport and Safety Authority (NTSA) was established through an Act of Parliament; Act Number 33 on 26th October 2012. The objective of forming the Authority was to harmonize the operations of the key road transport departments and help in effectively managing the road transport sub-sector and minimizing loss of lives through road crashes.

In the FY2017/18, the total number of traffic victims stood at 2957, marking an increase from 2834 in the FY2016/17. As shown in Table 4.8, the month of May recorded the highest traffic casualty rate, closely followed by August, November, and December. As Table 1 shows, pedestrians form the bulk of traffic victims, accounting for nearly 50 per cent of victims, followed by passengers and motorcyclists, in that order.

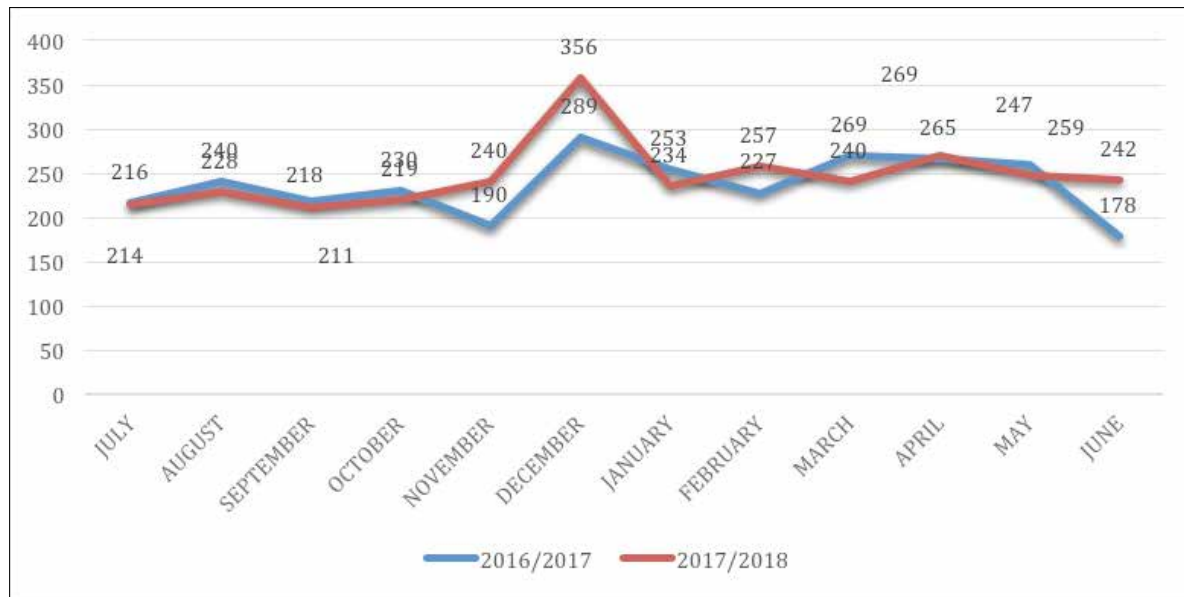
In the period under review, NTSA has been engaging in a number of activities to streamline operations in the transport sector. This has entailed partnership with the Judiciary and the Police. Consequently, significant achievements have been realized including improvement on speed limit enforcement on Nairobi-Naivasha Highway and other key roads; and reduced drunk-driving among motorists.

**Table 1: Categories of fatal Victims FY2016/17 and FY2017/18**

MONTHS	2015/2016	2016/2017	VAR	%VAR
July	216	214	-2	-0.9
August	240	228	-12	-5.0
September	218	211	-7	-3.2
October	230	219	-11	-4.8
November	190	240	50	26.3
December	289	356	67	23.2
January	253	234	-19	-7.5
February	227	257	30	13.2
March	269	240	-29	-10.8
April	265	269	4	1.5
May	259	247	-12	-4.6
June	178	242	64	36.0
<b>TOTAL</b>	<b>2834</b>	<b>2957</b>	<b>123</b>	<b>4.3</b>

**Source: NTSA**

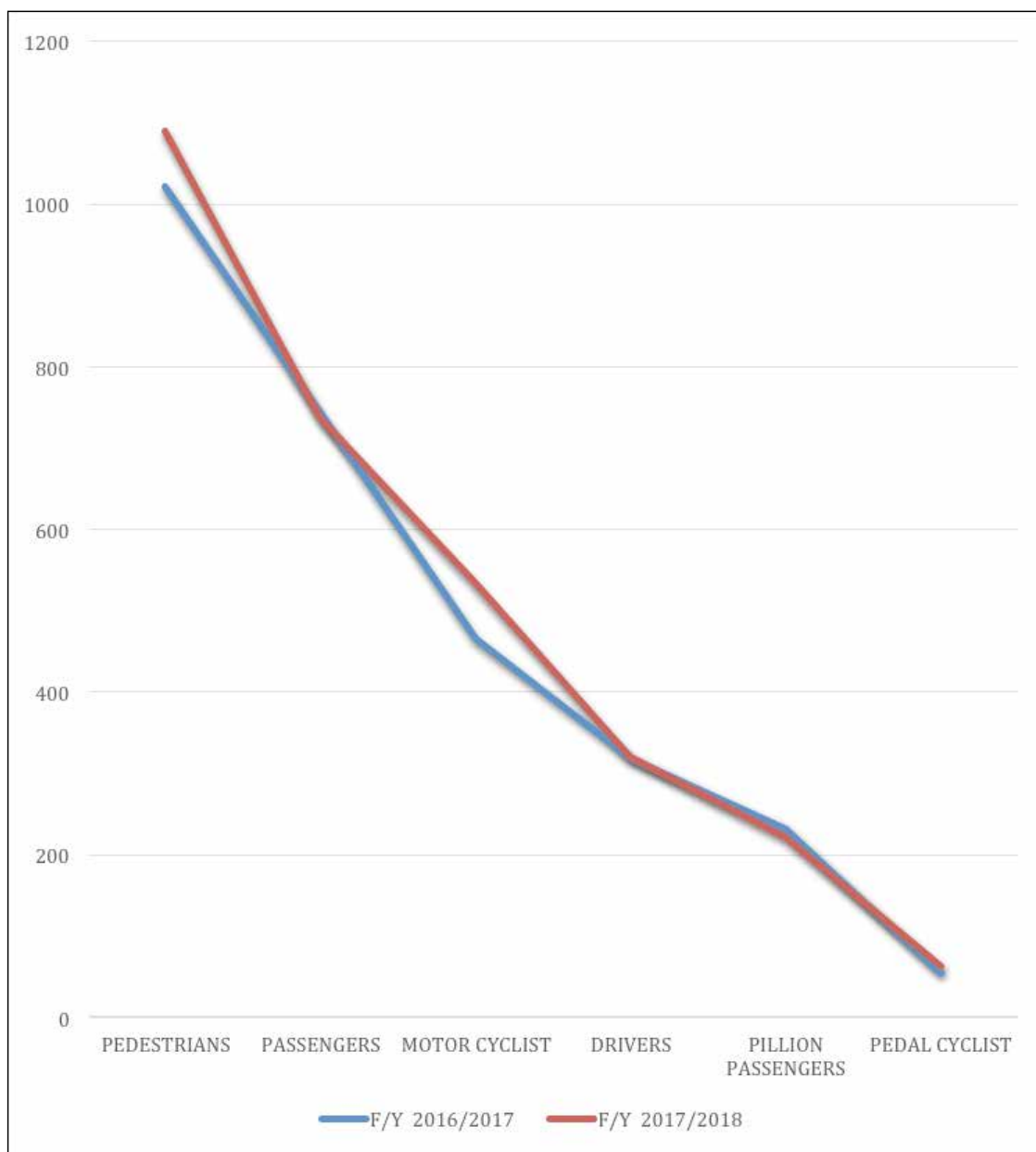
**Figure 1: Categories of Traffic Victims**



**Table 4.8: Categories of Traffic Victims**

CATERGORIES	F/Y 2015/2016	F/Y 2016/2017	VAR	%VAR
Pedestrians	1021	1088	67	6.6
Passengers	743	735	-8	-1.1
Motor Cyclist	465	532	67	14.4
Drivers	319	319	0	0.0
Pillion Passengers	232	221	-11	-4.7
Pedal Cyclist	54	62	8	14.8
TOTAL	2834	2957	123	4.3

**Source NTSA**



**Figure 2: Categories of Traffic Victims**

#### **Challenges facing NTSA**

1. Court injunctions Traffic Act (Minor Offences) Rules were Gazetted on 23<sup>rd</sup> September, 2016. Implementation was challenged by Kenya Union of Co-operatives being Nairobi HCJR where *ex parte* orders were granted. Similarly, driving Schools and Instructor rules which are yet to be gazetted have been challenged *vide* Nakuru Petition 9 of 2016.
2. Motor Vehicle Inspection (MVI) reports should be adopted by the courts since this is expert witness. The courts have been issuing orders to revoke enforcement of the opinion by MVIs.
3. Harmonization of penalties to traffic offenders in regard to revocation and suspension of driving licenses. NTSA revokes licenses for drunk driving offender and after a while court demands for the same license for cancellation.
4. Corruption among traffic enforcement officers and court prosecutors.

5. Court outcomes on traffic offences that do not serve to deter traffic offenders.
6. Standardization of court judgment on traffic offences across the country. Different courts have been disposing off traffic offences cases differently encouraging repeat offenders e.g. drunk drivers, drivers causing fatal crashes.

#### **10.20 NATIONAL CRIME RESEARCH CENTRE**

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The National Crime Research Centre (NCRC) is a State Corporation under The Ministry of Interior and Coordination of National Government established by an Act of Parliament, the National Crime Research Act 1997 CAP 62 Laws of Kenya.

The Centre is mandated to carry out research into the causes of crime, its prevention and to disseminate the research findings and recommendations to Government Agencies concerned with the administration of criminal justice, NCRC's stakeholders and the public. The establishment of NCRC is in line with the International best practice where research has provided critical information on what works to impact on crime and disorder and has helped to generate programmes that can assist criminal justice agencies.

The Centre's activities, achievements and challenges in the last FY 2017/2018 are outlined here below.

#### **Activities and achievements**

##### **a. Study Report on "Borderland Crimes and Security Threats in Kenya, 2018"**

The study was carried out in randomly selected sites in all the 21 border counties in Kenya. The specific objectives were to: map out real and potential crimes in borderlands; ascertain the factors which promote borderland crimes; identify the perpetrators and victims of borderland crimes; identify the modus operandi of perpetrators of borderland crimes; appraise the consequences of borderland crimes; and assess mitigation responses to borderland crimes.

##### **b. Study Report on "Boda Boda Motorcycle Transport and Security Challenges in Kenya, 2018"**

The study was carried out in 24 counties and was focused on the: prevalence of boda boda motorcycle related crimes; root causes of boda boda motorcycle related crimes; perpetrators and victims of boda boda motorcycle related crimes; mode of operation of perpetrators of boda boda motorcycle related crimes; consequences of boda boda motorcycle related crimes; existing control measures and their effectiveness in addressing boda boda motorcycle related crimes; and challenges and recommendations in addressing boda boda motorcycle related crimes.

##### **c. Study Report on "Mombasa and Isiolo Counties Crime and Violence Prevention Survey, 2017"**

The objective of the study were to: promote policy and public discussion discourse on crime and violence prevention in Counties in Kenya; explore strategies, tools and methods of crime and violence prevention in Counties; train the respective stakeholders with adequate skills to conceptualize, design, implement and monitor Crime and Violence Prevention Training (CVPT) Programmes at county level; and facilitate engagement of state and non-state actors in crime and violence prevention.



### **Other achievements**

1. Continuous collation and analysis of crime-related data from NCAJ member agencies.
2. Continuous collection of data through NCRC's Crime Reporting Mobile Application and analysis of the data to inform policy on crime prevention.
3. Dissemination of crime research information through mass media platforms, stakeholder fora, crime research issue briefs and policy briefs.

### **Challenges**

1. Understaffing which contributed to slowed implementation of activities.
2. Insufficient funding, which resulted in reduced programmes, shortage of necessary equipment, inability to train members of staff, delay in establishing Crime databank and inadequate publicity of the role of NCRC.

### **10.21 KENYA NATIONAL COMMISSION ON HUMAN RIGHTS**

The Kenya National Commission on Human Rights (KNCHR) is an independent constitutional Commission established under article 59(4) of the Constitution of Kenya and Section 3 of the KNCHR Act No. 14 of 2011 with the core mandate of enhancing the protection and promotion of human rights in Kenya. The KNCHR is further mandated to promote and protect all human rights – economic, social, and cultural rights as well as civil and political rights.

The KNCHR has its functions stipulated under Section 8 of its Constitutive Act which include among others to receive and investigate complaints of alleged human rights violations and take steps to secure appropriate redress where rights are violated.

The KNCHR has put in place complaints management systems and investigation procedures and standards to ensure effective delivery of service by the Commission. Complaints are lodged using different modes including telephone; Short Text Message (SMS), website, email, letters, physical visits to the KNCHR offices as well as KNCHR desks at Huduma Kenya Centres. The department also receives complaints through referrals various partners and agencies. The Commission convenes the Complaints Handling and Referral Partnership Network and is a member of the Integrated Public Complaints Referral Mechanisms (IPCRM) and case resolution and instil a culture for respect of human rights in public and private sphere.

In the 2017/2018 financial year, the KNCHR received a total of 297 complaints that related to the Judicial processes. Violations of child rights were 57 while family matters were 39. Violation of labour rights were 34 while complaints related to the freedom from Torture, cruel, inhuman or degrading treatment were 30.

During the period under review, the KNCHR provided legal advice for 145 complaints received. Eight matters were referred to the Advocates Complaints Commission; three matters were also referred to the Commission on Administrative Justice. The KNCHR also referred two matters to the High Court Registrar while five (5) matters were referred to

the Kituo Cha Sheria. The Department of Child Services received 11 matters while IPOA received ten matters. Follow-up actions geared towards addressing the complaints received and recommendations were also undertaken on previously referred cases. 47 matter were concluded and files closed upon undertaking various interventions.

**Below is a breakdown of the complaints that KNCHR that related matters in the Judiciary.**

NATURE OF COMPLAINT	COUNT	PERCENTAGE
Access to Justice		
• Right to effective judicial protection	33	11.11%
• To have matter dealt with expeditiously	28	9.43%
• Police Inaction	21	7.07%
• Complaint Against Advocate	16	5.39%
• Non-compliance with court orders	12	4.04%
<b>SUBTOTAL</b>	<b>110</b>	<b>37.04%</b>
Access to information		
• Information for exercise/protection of rights	2	0.67%
• Information held by state	1	0.34%
<b>SUBTOTAL</b>	<b>3</b>	<b>1.01%</b>
Freedom from discrimination		
• Fair opportunity	1	0.34%
<b>SUBTOTAL</b>	<b>1</b>	<b>0.34%</b>
Freedom from slavery /forced labour		
• Prohibition of forced/compulsory labour	1	0.34%
<b>SUBTOTAL</b>	<b>1</b>	<b>0.34%</b>
Freedom from torture and cruel treatment		
• Right to Freedom from Cruel, Inhuman or Degrading Treatment.	21	7.07%
• Right to Freedom from Torture	9	3.03%
<b>SUBTOTAL</b>	<b>30</b>	<b>10.10%</b>
Freedom of conscience, religion, belief and opinion		
• Freedom of religion	1	0.34%
<b>SUBTOTAL</b>	<b>1</b>	<b>0.34%</b>
Freedom of movement		
• Trafficking/Distress call	1	0.34%
<b>SUBTOTAL</b>	<b>1</b>	<b>0.34%</b>
Right of arrested persons		

NATURE OF COMPLAINT	COUNT	PERCENTAGE
• Be brought to court	2	0.67%
• To communicate with an advocate/person	2	0.67%
• Informed reason of arrest	1	0.34%
• Right to bail or bond	1	0.34%
• To be charged or informed of reason for detention	1	0.34%
<b>SUBTOTAL</b>	<b>7</b>	<b>2.36%</b>
Right to assemble, picket and petition		
• Right to demonstrate	1	0.34%
<b>SUBTOTAL</b>	<b>1</b>	<b>0.34%</b>
Right to fair trial		
Malicious prosecution	3	1.01%
Equality before the law and the court	1	0.34%
To adduce and challenge evidence	1	0.34%
Subtotal	5	1.69%
Child rights		
• Parental Support	35	11.78%
• Custody	5	1.68%
• Protection from abuse	4	1.35%
• Protection from neglect	4	1.35%
• Sexual Abuse	4	1.35%
• Free and compulsory basic education	3	1.01%
• Basic nutrition, shelter and healthcare	2	0.67%
<b>SUBTOTAL</b>	<b>57</b>	<b>19.20%</b>
Family rights		
• Family dispute	23	7.74%
• Succession/inheritance	10	3.38%
• Spouse maintenance	6	2.02%
<b>SUBTOTAL</b>	<b>39</b>	<b>13.13%</b>
Labour rights		
• Withheld salaries /Wages	34	11.45%
<b>SUBTOTAL</b>	<b>34</b>	<b>11.45%</b>
Consumer rights		
• Protection of health, safety and economic interest	4	1.35%
<b>SUBTOTAL</b>	<b>4</b>	<b>1.35%</b>
Corruption		
• Bribery	1	0.34%
<b>SUBTOTAL</b>	<b>1</b>	<b>0.34%</b>
Evictions		
• Right to own property	2	0.67%
Subtotal	2	0.67%
Human Wildlife Conflict		

NATURE OF COMPLAINT	COUNT	PERCENTAGE
• Destruction of Farm Produce/Crops	1	0.34%
Subtotal	1	0.34%
<b>TOTAL</b>	<b>297</b>	<b>100%</b>

## 10.22 KENYA HUMAN RIGHTS COMMISSION

The Kenya Human Rights Commission (KHRC) is a premier Non-Governmental Organization which was established in 1992 with a mandate of enhancing human rights-centered governance at all levels. The KHRC envisions human rights states and societies, which in practical terms, aligns very well with the Republic envisaged in Article 5 of our Constitution, i.e., “...a multi-party democratic state founded in the national values and principles of governance referred to in Article 10”.

It is on that basis that we espouse a very holistic concept of human rights that straddles civil and political rights (as fundamental to political democracy); economic and social rights (as critical building blocks for social democracy); and equality and non-discrimination (both as integrated and specific interventions in programming). To this effect, we remain committed in deepening our political and policy leadership on the key human rights and governance issues in the country.

Most of these are the public matters the KHRC and partners have been working on through research, monitoring and documentation, policy and legal interventions. The Constitution of Kenya (2010) and other national, regional and international policy instruments remain our main governance and accountability frameworks around those issues for they espouse very detailed and progressive guidelines on the management of the same.

Such include: Electoral Governance; Corruption-Theft and Waste of Public Resources; Civic Space and Protection of Civil Liberties; Security Governance; Ethnic Exclusion; Devolved Governance; Labour Rights and Industrial Democracy; Women’s Inclusion in Governance; Citizenship, Statelessness and Universal Registration of Births; Violence and Discrimination on Grounds of Sexual Orientation and Gender Identity and Expression; Historical Injustices and Gross Human Rights Violations; Land Rights and Injustices; Business and Human Rights-Corporate Accountability in Investments; Resource Rights and Other Key Governance Issues<sup>3</sup>.

### 1. Legal Advice and Other Supportive Services

- a. Through its online complaints platforms, we handled a total of 70 complaints, 23 through its SMS Platform number 22582 and 33 complaints on the email platform at [violations@khrc.or.ke](mailto:violations@khrc.or.ke) and 14 through the [admin@khrc.or.ke](mailto:admin@khrc.or.ke)
- b. KHRC participated in this year’s Law Society of Kenya Legal Awareness Week held on the 25<sup>th</sup> to the 29<sup>th</sup> September 2017 at the Milimani Law courts grounds where over 2,000 members of the public were sensitized on human rights,

<sup>3</sup> Mainly: Enhancing Accountability in Mega Infrastructural Projects; Respecting the independence of State Commissions and Independent Offices; Pursuing a people and human rights centred foreign policy, and Protecting and Supporting other Disadvantaged Groups.

institutions' mandates and complaints handling procedures. Around 43 complaints were received and documented by KHRC and comprehensive legal aid provided. Out of the 43 clients attended to 10 were referred to KHRC for mediations. KHRC intervened in a case where a student in her final year of studies was expelled from the school on unclear grounds and ensured that the student was re-admitted to the school so as to sit for her final exams while residing in the school premises.

- c. KHRC has offered comprehensive legal aid and advice to 786 clients. An increase in the number of client's attended to in the financial year is attributed to expansion of platforms of reporting violations to include SMS and an email platform as well as partnership and collaboration with the universities.

**Table 1: Nature of Client and Actions Taken**

	July 2017	Aug 2017	Sep 2017	Oct 2017	Jan 2017	Feb 2017	Mar 2018	Male	Female	Total
<b>TOTAL CLIENT ATTENDANCES</b>	<b>111</b>	<b>83</b>	<b>122</b>	<b>100</b>	<b>100</b>	<b>120</b>	<b>150</b>	<b>425</b>	<b>361</b>	<b>786</b>
New client attendances	78	59	72	80	70	88	80	292	235	527
Subsequent clients (appointments)	21	19	30	20	30	32	70	120	102	222
Clients referred to like-minded partners	12	5	20	2	40	20	15	61	52	114

**Table 2: Complaints handled through the Social Media Platform**

	July
SMS Platform number 22582	43
email platform at <a href="mailto:violations@khrc.or.ke">violations@khrc.or.ke</a>	33
Email platform at <a href="mailto:admin@khrc.or.ke">admin@khrc.or.ke</a>	14
<b>Totals</b>	<b>70</b>

**Table 3: Complaints handled through the Mobile Legal Aid Clinics**

	July
New Clients during LSK Legal Awareness Week	43
<b>Totals</b>	

#### Mediation:

Article 159(2) (c) of the Constitution explicitly provides for the use of alternative dispute resolution as a means of delivering expeditious people-driven justice. In line with the promotion of ADR as a form of dispute resolution, KHRC is implementing a mediation programme to enable persons whose rights have been violated to access justice. Mediation has during this financial year proved to be economical, flexible and accessible to the people.

It therefore forms one of the most succinct interventions to access to justice. Through mediation, KHRC was able to assist 20 clients access justice and get paid compensation for unlawful termination to the tune of Kshs. 248,015.16. In the case of DM and IK, both parties accepted to share parental responsibility equally for their child aged 2 years. DM agreed to assist IK to secure gainful employment.

## Public Interest Litigation

KHRC instituted several ongoing Public Interest Litigation cases on behalf of clients; KHRC represented these clients as a petitioner, an interested party and/or a friend of Court (Amicus Curiae). Out of the 10 cases filed 4 have been concluded.

### ***Petition No. 492 Of 2016, KHRC Vs. The Principal Secretary, Ministry Of Foreign Affairs and 2 Others.***

The petition challenged the detention and incarceration of the four Kenyans in South Sudan on ground that the rights of the arrested persons under the Kenyan Constitution, African Charter on Human and Peoples Rights and the International Convention on Civil and Political Rights has been grossly violated by the Government of South Sudan and more specifically that the arrest and incarceration in military installation of the four Kenyans is oppressive and a transgression of fundamental right of equality before the law and equal protection of the law. As a result of the advocacy by KHRC the four Kenyans were released in December 2017 and united with their families as a result, the matter was withdrawn with no orders as to costs.

### **Petition No. 404 of 2017, KHRC V. NGO Board and LSK**

The petition challenged the decision of the NGO Board to deregister KHRC. The matter was determined on 24<sup>th</sup> of February 2018 where the court issued a declaratory order that the action by the NGO board to deregister KHRC, order the freezing of its bank accounts and order the recover of none-existent taxes is unconstitutional and null and void. An order of certiorarie was issued quashing the deregistration letter dated 14<sup>th</sup> August 2017 and the NGO board was further ordered to make payments of general damages to the tune of Kshs. 2,000,000.

### ***Petition No. 86 Of 2017, Kenya Human Rights Commission (KHRC) –Vs- Ag***

The petition challenges the move by the Communications Authority of Kenya to spy Mobile networks by installing a device. Judgment was entered in favor of the petitioners stating the the directive on installation of the DMS is unconstitutional

### ***East African Court of Justice Application No. 12 of 2017 (Arising from Reference No. 12 of 2016), KHRC & 2 others vs. Forum Pour Le Renforcement De La Societe Civile @ 4 others, Ag. Burundi @ Anor.KHRC***

Filed the Application seeking leave of court to intervene as amicus curiae in Reference No. 16 of 2016. The Reference raises questions concerning the permissible limits on the right to freedom of association and expression and of how these freedoms relate to the Treaty-

protected principles of democracy, the rule of law, accountability, transparency, social justice, and the promotion and protection of human rights. These issues are central to the mandate of KHRC hence KHRC seeks to utilize its expertise towards assisting the Court in its interpretation and application of the Treaty.

***Petition No. 39 Of 2016, Legal Advice Centre & 3 Others –Vs- The County Government Of Mombasa & 2 Others***

The CSO's faulted a project proposed by the County Government of Mombasa dubbed, "Mombasa Urban Renewal and Redevelopment of old estates" as being in violation of the right to housing and public participation on grounds that the County government did not involve the public, the residents of Mombasa and the concerned tenants in the conceptualization, formulation and implementation of the programme. The judgment was delivered on 23<sup>rd</sup> of December 2016 and held that the evidence given by the County Government was sufficient to qualify as public participation. The county government was however required to ensure the continuity of public participation and adhere to the provisions of Art. 10 at every level of furthering the programme. The design of a robust continuing plan, for public participation should be made and furnished to the court and the same communicated to the public for any input.

***Petition No. 87 of 2017, Kenya Human Rights Commission (KHRC) –Vs- AG***

The petition challenges the impugned Act as an affront to the Human Rights and Fundamental freedoms of the many Kenyans who are affected as it was passed surreptitiously and without public participation. The petition argues that the entire scheme of the contempt of court act is inconsistent with the constitution and it requires drastic amendments and or to repeal.

**2. Protection of Civic Space and Civil Liberties<sup>4</sup>**

During this period, KHRC continued to provide leadership in the core conversations towards expanding and consolidating civic space in the society as documented below;

- a. In collaboration with other partners, we successfully challenged and effectively repulsed the irregular and illegal attempts by the government through the NGO Board to deregister and freeze the operations of the Commission, AfriCOG, MUHURI, Ni Sisi Ltd, Kura Yangu Sauti Yangu among others between January and November 2017.
- b. KHRC has been part of the policy and legal actions to ensure the gazettment of the Public Benefits Organizations Act. In this regard, follow up was undertaken to seek implementation of the favourable judgment that ordered commencement of the PBO Act). During this period, KHRC in collaboration with partners went ahead to seek implementation of this judgment which has to date not been acted upon by the Executive arm of government despite being issued in October 2016. On 13th May 2017 KHRC as part of the legal team that has been undertaking this litigation obtained favourable judgment in an application that was filed for contempt of court against the CS in charge of the Ministry of Interior compelling him to gazette the commencement date of the Act within 30 days of the ruling thereof.

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<sup>4</sup> See full document with detailed recommendations by ICNL, KHRC & CSRG titled "Civil Society Agenda for the State and Political Leadership in the Context of the 2017 General Elections and Beyond".



### 3. Security Governance

The security and safety of all Kenyan citizens is a an obligation that is solely vested in National Security Organs like the Kenya Defence Forces, the National Intelligence Service and the National Police Service<sup>5</sup>. Constitutionally these organs are mandated to discharge their obligations in compliance with the law, respect for the rule of law, democracy, human rights and fundamental freedoms<sup>6</sup>.

Despite an abundance of resources being invested in security sector reforms, human rights violations at the hands of security agencies persist alongside low levels of accountability for culpable security officers. In August 2017 ahead of the General Elections, KHRC and the International Federation on Human Rights (FIDH) published an authoritative report entitled, “Kenya’s Scorecard on Security and Justice: Broken Promises and Unfinished Business,” which served as an audit of Kenya’s reforms in the Justice and Security sectors ahead of the elections and against the backdrop of manifestos issued by political parties contesting the election.<sup>7</sup> Painting a picture of significant gains and losses by way of legislation, policy and practice, the report concluded with pointed recommendations to the Executive, Parliament, Judiciary, Civil Society and fellow NGOs working in the security and justice sector.

KHRC, together with grass root human rights defenders were able to identify over fifty victims of 2017 Post-Election Violence within Nairobi County alone. Of these, 11 victims were unlawfully killed/ succumbed to injuries from bullet wounds after the Police employed the use of live ammunition in dealing with the demonstrations within Nairobi. KHRC referred several victims to the Kenya National Commission on Human Rights, Independent Policing Oversight Authority and the Internal Affairs Unit to file complaints of alleged human rights violations by Police Officers from the National Police Service.

KHRC was enjoined in Petition No 379 of 2017- Katiba Institute and the African Center for Open Governance (AFRICOG) V Hon Attorney General and the Inspector General of the National Police Service. This petition seeks to challenge the unconstitutionality of the amended sixth schedule to the National Police Service Act on the premise that it violates the right to life guaranteed under the constitution of Kenya.

### 4. Historical Injustices and Gross Human Rights Violations

KHRC kept the issue of reparations for victims of historical injustices and gross violations of human rights high on the public agenda and maintained a platform to advance reparations for victims of historical injustices and gross human rights violations. Towards this, KHRC facilitated the submission of a petition by 12 communities to the Taskforce on Land Leases in Kenya outlining historical injustices for resolution.<sup>8</sup> This has since borne further engagement with the National Land Commission who are currently undertaking public hearings on

<sup>5</sup> Article 239 (2) of the Constitution of Kenya 2010.

<sup>6</sup> Article 238 (b) of the Constitution of Kenya 2010.

<sup>7</sup> The report can be accessed here: <https://www.khrc.or.ke/publications/166-kenya-s-scorecard-on-security-and-justice-broken-promises-and-unfinished-business/file.html>

<sup>8</sup> A photo gallery of a meeting convened by KHRC to facilitate an interaction between community representatives from Kakuzi as well as the Asian community is accessible here: <https://www.flickr.com/photos/135533708@N03/sets/72157686040540756> while media coverage on the same can be accessed here: <https://www.capitalfm.co.ke/news/2017/07/taskforce-nlc-engage-public-contentious-land-leases/>. The petition can be availed as an annex to the report.

historical injustices in furtherance of their mandate under the Constitution and NLC Act. Other communities have since approached KHRC for assistance with similar petitions.

### **5. Business and Human Rights-Corporate Accountability in Investments**

KHRC's database also points to a rise in human rights violation by corporations. This is affirmed also in the "Dumisha Haki na Uongozi Mwema Kenya": A Status Brief and Peoples Manifesto for Political and Policy Engagements, publication which posits that corporate activities are closely connected to the most basic human rights violations, namely the rights to work, to adequate standard of living, health and access to a clean environment, among others. Towards this, KHRC has initiated various disputes in the labor relations court and constitutional petitions on various violations by corporations.

### **6. Human Rights Reports and Urgent Actions**

- a. KHRC in implementing its interventions reported a lot of emerging and systemic violations targeting poor people and HRDs in Kenya that demand urgent action-policy, legal, political. During this reporting period, KHRC conducted a successful advocacy intervention to pressurize the government to restore broadcasting by national television networks, following an illegal and unconstitutional media shut down. KHRC together with partners ignited public discussion and debate on issues around media freedom and freedom of information, following the media shutdown experienced around the country in January-February 2018. On 2<sup>nd</sup> February 2018, KHRC in collaboration with partners convened a press conference at Methodist Guest House, Kileleshwa, to address this issue. The partners issued a comprehensive press statement that raised constitutional and legal concerns surrounding the shutdown. This action was followed by a peaceful protest on 5<sup>th</sup> February 2018. On the same day of the peaceful protest, 2 of the major television stations, KTN and NTV were restored, marking the end of the unconstitutional action by the government.
- b. Achieving successful results from the intensive nationwide campaign dubbed #FreeSSudan4. Following our intensive campaign and intervention on the South Sudan 4 matter, on 5<sup>th</sup> December 2017, the four Kenyan who had been wrongfully jailed were finally released from imprisonment in South Sudan by way of a presidential pardon. This was done after. President Uhuru Kenyatta intervened and held discussions with the president of South Sudan. Throughout the year, KHRC facilitated an intensive nationwide campaign which targeted the public, as well as the presidents of both Kenya and south Sudan through the use of mainstream and social media, lobbying meeting, vigils, and peaceful protests among others. The campaign finally caught the attention of the leaders, who mutually agreed to intervene on the issue<sup>9</sup>.
- c. KHRC was one of the few organisations that exposed and documented the gross human rights violations committed by the state to protestors after the announcement of the presidential elections in August 2017. Protests that began in various informal settlements in Nairobi and Kisumu were violently quelled by security agents following which several protestors and by standers lost their lives while many others were

<sup>9</sup> <http://www.nation.co.ke/news/Four-Kenyans-released-from-South-Sudan-jail-expected-home-today/1056-4216622-tr5v9o/index.html> <https://www.standardmedia.co.ke/article/2001262355/four-kenyans-freed-from-prison-in-south-sudan-arrive-home> <https://citizentv.co.ke/news/emotional-reunion-as-four-kenyans-freed-from-south-sudan-prison-arrive-at-jkia-184546/>

injured. On 18<sup>th</sup> and 25<sup>th</sup> August, KHRC in collaboration with its local networks visited the affected areas to obtain first hand information on the impact of the police brutality in these areas. Specifically, areas visited were Mathare, Baba Dogo, Kibra, and Dandora. The information collected will inform KHRC's documentation on human rights abuses and violations during the election period.

- d. KHRC undertook continuous documentation of and advocacy against gross human rights violations and governance malpractices in Kenya. The data for this purpose was collected from mainstream media, reports from HURINETS and partners, cases reported to KHRC through the legal aid scheme among others.
- e. Using data and information collected from our monitoring and documentation work to advise our engagement at the regional level. During the 60<sup>th</sup> and 61<sup>st</sup> Session of the African Commission on Human & People's Rights (ACHPR) held in May 2017 and October 2017 respectively, KHRC was represented in several panel discussions which provided a platform for KHRC to discuss findings of emerging human rights issues in Kenya, and also discuss strategies for the advancement of rights, especially in the context of shrinking civic space as well as the upcoming elections.
- f. Through this platform, KHRC was able to discuss and share information on the status of human rights in Kenya, and particularly, issues of human rights in vis a vis shrinking civic space and the upcoming elections to the African Commission Special Rapporteur on Human Rights Defenders in Africa. Out of these discussions, KHRC and other Kenyan teams secured a commitment from Madame Reine to propose an ACHPR resolution on Kenyan upcoming elections<sup>10</sup>.
- g. Convening the sector to spearhead the drafting of a report on the state of Human Rights in Kenya to be forwarded to the Human Rights Council: As a co secretariat and member of the steering committee of the Kenya CSO UPR<sup>11</sup> coalition<sup>12</sup>, KHRC spearheaded the drafting of a report on the state of Human Rights in Kenya The coalition is co.convened by other key human rights actors namely the UPR Infor, KNCHR, Lutheran world Federation, ICJ-Kenya Chapter and the Office of the High Commissioner on Human Rights. KHRC's contribution to the report is influenced largely by our monitoring and documentation data collected with support from this grant.
- h. The KHRC has continued to publish topical and omnibus human rights reports. For instance, the July 2017 report entitled: "Dumisha Haki na Uongozi Mwema: A Status Brief and Peoples Manifesto for Political and Policy Engagements" serves as the baseline for understanding the human rights situation in Kenya, monitoring progress and deepening accountability from the time the new President and political system are voted in August 2017. This will be complimented by the UPR Status reports we are developing in partnership with other human rights organizations.

**10** See attached Annexure 3 for a copy of the joint CSO resolution to the African Commission on human & Peoples Rights.

**11** The universal periodic review (UPR) established through the United Nations General Assembly is a state driven, inter-governmental interactive and cooperative process that reviews the performance of all states in fulfillment of their human rights obligations every four years.

**12** This is coalition of Key CSO actors that will oversee collaborative CSO monitoring of the government's implementation status with regards to the recommendations issued to Kenya by the UN Council during the last cycle of the Universal Periodic Review

## 10.23 COUNCIL FOR LEGAL EDUCATION

The Council of Legal Education has been re-established under the Legal Education Act, No.27 of 2012 with the duo primary purposes of: promoting legal education and training, through maintenance of the highest possible standards in legal education, Licensing legal Education Providers, administration of the Bar Examination, the recognition of Foreign Legal Qualification for enrollment to the Bar in Kenya. The Bar examination is ran in two series, the resit series in July of every year and the regular main sitting in November of every year.

As a member of NCAJ, the Council has made progress in the fulfilment of its mandate under the Legal Education Act 2012 as amended by the Statute Law (Miscellaneous) Amendment Act 2014, as follows:

### A. Administration Of The Bar Examination

**Table 1: Data on candidates who sat for resits in July 2017 series**

	ATP 100	ATP 101	ATP 102	ATP 103	ATP 104	ATP 105	ATP 106	ATP 107	ATP 108
Candidates present	842	226	104	548	38	274	188	1151	1284
Percentage pass	69	47.5	74	33	68.5	68	68.5	78	37.5
Percentage fail	30.5	52.5	26	67	31.5	32	31.5	22	62.5
Total Qualified	797								
Percentage qualified	40%								

**Table 2: Data on candidates who sat the Bar Examination in July 2017 series**

	ATP 100	ATP 101	ATP 102	ATP 103	ATP 104	ATP 105	ATP 106	ATP 107	ATP 108
Candidates present	43	48	48	50	48	47	47	47	50
Percentage pass	58	69	77	34	75	68	70	57.5	28
Percentage fail	42	31.5	23	66	25	32	30	42.5	72
Total Qualified	14								
Percentage qualified	22%								

**Table 3: Data on candidates who sat the Bar Examination in November 2017 series**

	ATP 100	ATP 101	ATP 102	ATP 103	ATP 104	ATP 105	ATP 106	ATP 107	ATP 108
Candidates present	1916	1926	1931	1923	1933	1934	1925	1916	1915
Percentage pass	69.5	59	86.5	50.5	96	92.5	71	62	53.5
Percentage fail	30.5	41	13.5	49.5	4	7	29	38	46.5

<b>Total Qualified</b>	<b>479</b>
Percentage qualified	25%

**Table 4: Data on candidates who sat for resist during the November 2017 series**

	ATP 100	ATP 101	ATP 102	ATP 103	ATP 104	ATP 105	ATP 106	ATP 107	ATP 108
Candidates present	390	156	67	454	36	172	148	420	966
Percentage pass	46.5	47	45	22	83.5	75	11.5	34.5	25.5
Percentage fail	53.5	53	55	78	16.5	24.5	88.5	65.5	74.5

<b>Total Qualified</b>	<b>323</b>
Percentage qualified	24%

Council gazetted 1204 students between 1<sup>st</sup> July, 2017 and 30<sup>th</sup> June, 2018 to facilitate petitions for admission to the Bar as follows:

**Table 5: Data on Candidates Gazetted**

	GAZETTMENT DATE	NUMBER OF CANDIDATES
1	4 <sup>th</sup> August, 2017	18
2	19 <sup>th</sup> October, 2017	52
3	8 <sup>th</sup> December, 2017	139
4	26 <sup>th</sup> January, 2018	390
5	16 <sup>th</sup> March, 2018	291
6	23 <sup>rd</sup> March, 2018	40
7	11 <sup>th</sup> May, 2018	228
8	8 <sup>th</sup> June, 2018	46
	TOTAL	1204

## B. LICENSING OF LEGAL EDUCATION PROVIDERS

**Table 6: Data on Licensed Institutions - LL. B. and Diploma Programmes**

	NAME OF INSTITUTION	STATUS
1	Riara University School of Law (Main Campus)	Licence valid until 09.11.2021 subject to satisfaction of terms and conditions.
2	Africa Naarene University School of Law (Main Campus)	Licence valid until 29.05.2019
3	University of Nairobi School of Law (Parklands Campus)	Licence valid until 07.08.2019
4	University of Nairobi School of Law (Mombasa Campus)	Licence valid until 19.01.2021
	University of Nairobi School of Law (Kisumu Campus)	Licence valid until 31.07.2023
5	Kabarak University School of Law (Main Campus)	Licence valid until 08.09.2020
6	Egerton University School of Law (Nakuru Town Campus)	Licence valid until 12.02.2021

	NAME OF INSTITUTION	STATUS
7	Strathmore University School of Law (Main Campus)	Licence valid until 9.11.2021 subject to satisfaction of terms and conditions.
8	Kenyatta University School of Law (Parklands Campus)	Licence valid until 14.12.2021 subject to satisfaction of terms and conditions.
9	Jomo Kenyatta University School of Law (Karen Campus)	Licence valid until 16.09.2021 subject to satisfaction of terms and conditions.
10	Catholic University of Eastern Africa School of Law	Licence valid until 16.09.2021 subject to satisfaction of terms and conditions.
11	Mt. Kenya University School of Law (Parklands Campus)	Institution on 31 <sup>st</sup> July, 2023 subject to satisfaction of terms and conditions.
12	Daystar University School of Law	Institution on 31 <sup>st</sup> July, 2023 subject to satisfaction of terms and conditions.
13	Kisii University School of Law (Main Campus)	Institution Inspected on 26 <sup>th</sup> July, 2018. Status pending final determination and approval by Council.
14		Institution inspected on 27 <sup>th</sup> July, 2018.

**Table 7: List of audited institutions**

	NAME OF INSTITUTION	STATUS
11	Kenya Institute of Management	Institution audited on 16 <sup>th</sup> July, 2018.
DIPLOMA		
	Kenya School of Law (Para-Legal Studies)	Institution has applied for licensing. Awaiting Inspection.
MASTERS		
	Strathmore University School of Law	Institution has applied for licensing. Awaiting inspection.

**Table 8: Schedule of fees**

SERVICE	FEES CHARGEABLE (KSHS)
Licensing process	
Certificate Programme/renewal	500,000.00
Diploma Programme/renewal	900,000.00
Undergraduate Programme/renewal	1,600,000.00
Master's Degree Programme/renewal	1,600,000.00
Doctor of Philosophy, Doctor of Laws Programme/renewal	800,000.00
Examination fees	
Examination fee per unit	5,000.00
Examination re-sit	10,000.00
Examination remark	15,000.00
Recognition of approval of foreign qualification in law	
Recognition of approval fees	10,000.00

There has been no increment in fees since the 2016/2017 fiscal year. Licensing fees are payable once every five (5) years which is the equivalent of the period of the licence.

No changes have been made to the Bar examination regulations as applied by Kenya School of Law before Council took over the mandate. The Council of Legal Education is in the process of developing the Legal Education (Bar Examinations) Regulations, 2018.

The Pre-bar examination was introduced by the Statute Law Miscellaneous Amendments Act, 2014. This is the exclusive mandate of the Kenya School of Law.

### C. RECOGNITION AND APPROVAL OF FOREIGN LEGAL QUALIFICATIONS

**Table 9: Data on Applications received for Recognition and Approval of Foreign Legal Qualifications**

	Number of Applicants
Application for Recognition & Approval of Foreign Legal Qualifications	398
Appeals	191
High School Qualifications	194
Clearance after Remedial Programme	71
<b>TOTAL</b>	<b>854</b>

#### Achievements

- 1. Licensing of Legal Education Providers:** Council has licenced three (3) Institutions in 2018, i.e. Mount Kenya University, Daystar University and University of Nairobi (Kisumu Campus).
- Council processed 398 applications for recognition and approval of Foreign Legal Qualifications for purposes of admission to the Advocates Training Programme at the Kenya School of Law.
- Council conducted a study that culminated in the recognition and approval of qualifications obtained by Open and Distance E-Learning (ODEL) and degrees with a different nomenclature.
- Council has been releasing Bar Examination results within two (2) months of the examination.

#### Challenges

- The biggest challenge remains the exponential growth in the number of candidates taking the Bar Examination. This has strained training resources. There is need to increase the number of Legal Education Providers offering the Advocates Training Programme currently a preserve of the Kenya School of Law.

#### Work in Progress

Council has embarked on the development of policy and regulatory framework in the following areas:

- The Bar examination
- The Bar Curricula
- Review of the Legal Education (Accreditation and Quality Assurance) Regulations, 2016.
- Bar Examination Regulations.



## 10.24 FEDERATION OF WOMEN LAWYERS IN KENYA

The Federation of Women Lawyers (FIDA) – Kenya is a non-profit membership and premier women’s rights organization in Kenya established in 1985. Its vision is creation of a society that respects and upholds women’s rights with the mission to promote of women’s individual and collective power to claim their rights in all spheres of life. FIDA-Kenya programs include working with the courts (through the CUC) in selected regions to promote access to justice, working with parliament to enhance gender responsive legislative and oversight functions. Through its work with Informal Justice Systems (IJS), FIDA-Kenya has been able to nurture respectful relationships that have facilitated these mechanisms; and to question and reflect on how unequal power relations and stereotypes are drivers of injustices and rights violations. FIDA-Kenya has been able to promote a culture of respect for women’s rights particularly where courts affirm women’s rightful claims in rulings and judgments. FIDA-Kenya remains highly committed towards transforming and expanding the legal and institutional spaces to respond to the ever-increasing demand for its services from women who are economically disadvantaged and other vulnerable groups such as the children.

### **Activities and Achievements by FIDA**

**1. Legal Advice and Litigation:**

The organization provided legal advice to 9878 clients. 1064 cases were taken and filed in court while others were handled through other interventions. 79 cases filed in court were concluded with a 90% success rate.

**2. Strategic Impact Litigation (SIL):**

FIDA – Kenya has been engaged in a number of public interest litigation cases in various courts across the country. Some of the issues that the organization litigated on during the reporting period were: The nurses’ strike, women’s participation in enforcement of the two thirds gender rule and reinstatement of use of guideline in safe abortion.

**3. Pro bono Lawyers Scheme:**

FIDA Kenya has been able to mobilize and enrol over 450 lawyers into the scheme whereby both male and female lawyers in private practice countrywide have volunteered to take up cases on behalf of FIDA Kenya clients. The organization recruited 47 additional lawyers and referred 383 clients to various pro bono lawyers during the reporting period. To enhance the pro bono lawyers’ capacity and as an incentive FIDA Kenya offers the pro bono lawyers’ training on new and emerging legal issues.

**4. Self-Representation:**

The organization provided training to 467 clients and filed 427 cases in court, 77 clients completed their cases through self-representation.

**5. Alternative Dispute Resolution:** 1459 mediation invitations were sent out and 562 mediations conducted where 402 were successful.

**6.** During the reporting period, FIDA Kenya partnered with Mediation Training International (MTI) and conducted 6 mediation trainings at Nairobi, Mombasa and Kisumu regions. This initiative has increased the number of professionally trained mediators to take up cases both at FIDA offices and the judiciary.

**7. Engagement with Informal Justice Systems:**

FIDA Kenya recognizes the role played by IJS in delivering justice to local communities and is keen to ensure that the systems uphold the principles of human rights in their adjudication and work under legal provisions in the Constitution. FIDA Kenya has developed an informal justice systems strategy manual and currently engages with

over 20 IJS across Kenyan communities by enhancing their capacity to provide access to justice on issues within their mandate and to ensure referral of sexual and gender based violence cases to relevant authorities for litigation. FIDA-K held 6 trainings for Elders on the current provisions of the Constitution and women land and property rights. 39 cases were referred to various council of elders during the reporting period with 11 cases being concluded successfully.

**8. Psychosocial Support:**

FIDA Kenya realizes that for a woman to realize her rights she must have the mental well being. Through this program the organization has assisted women who suffered mental and emotional trauma due to the infringement of their rights whether physically, economically or emotionally. 458 clients were given counselling services of which 214 were new clients. A total of 41 couple therapy session were held with 31 being successful.

**9. Partnerships and Linkages:**

FIDA Kenya continues to partner with other like-minded institutions to advance justice for women. During the reporting period, FIDA held trainings for 3 CuCs (Vihiga, Tana River and Othaya) on Bail Bond Policy and Evidence issues with regard to SGBV cases. FIDA Kenya is also participates in court users committee meetings to represents issues that affect clients in family, land and labor divisions.

**10. Referrals:**

1429 cases were referred to other partners and agencies like the children's department, the Police, hospitals, Huduma Centers among others.

**Synopsis of significant cases during the period:**

**1. PETITION 401 OF 2017; FEDERATION OF WOMEN LAWYERS IN KENYA VS THE SPEAKER THE NATIONAL ASSEMBLY AND 3 OTHERS(2/3 Gender Rule).**

FIDA Kenya in following up on the 2/3<sup>rd</sup> gender rule on 16<sup>th</sup> August 2017 filed a suit against the Speaker of the National Assembly seeking a declaration the current Parliament has failed to meet the 2/3<sup>rd</sup> principle and is thus, an unconstitutional parliament. FIDA is also seeking an Order of Mandamus requiring the Speaker to present a list of nominees in numbers sufficient to bring the Parliament in Conformity with the Constitution.

The matter is ongoing as FIDA Kenya continues to challenge the constitutionality of the current Parliament.

**2. NAIROBI PETITION NO. 67 OF 2017: FEDERATION OF WOMEN LAWYERS IN KENYA VS THE NATIONAL UNION OF NURSES& 5 OTHERS**

FIDA Kenya filed a suit against KNUN and 5 others seeking a solution during the Nurses' strike in July 2017. In this suit FIDA Kenya sought a declaration that health services are essential services and that strikes in this sector ought to be regulated.

The matter was dismissed for the reason of being Res Judicata. The Judge (L.J Onyango) however recognized that FIDA's case had merit.

Achievement: The ministry of health is in the process of drafting rules and regulations on medical practitioners strike. The rules are a replica of FIDA Kenya's arguments

“Part of the medical staff must remain on duty when any strike is called”. FIDA Kenya will continue to engage in this process.

**3. PETITION 266 OF 2015 FIDA KENYA VS AG, CABINET SECRETARY, MINISTRY OF HEALTH AND DIRECTOR OF MEDICAL SERVICES**

FIDA Kenya seeks the Ministry of Health to restore the National Guidelines on Post Abortion Care.

*The case is ongoing.*

**4. CONSTITUTIONAL PETITION NO. 164B OF 2016: FIDA KENYA VS. ATTORNEY GENERAL & ANOTHER**

FIDA sought to challenge the constitutionality of Section 7 of the Matrimonial Properties Act on the basis that it offended Articles 27, 40, 45 (3), 60 and 68 of the Constitution which provides for equality in marriage, right to property and right against discrimination. The Court held that the impugned section did not offend any of the provisions of the Constitution or contradict it hence dismissed the petition with no orders as to costs.

**5. MACHAKOS PETITION NO. 8 OF 2017: DR. TATU KAMAU VS. THE HON. ATTORNEY GENERAL AND ANTI-FEMALE GENITAL MUTILATION BOARD**

The petition was filed on the 24<sup>th</sup> of July, 2017. The Petitioner’s main contention is that female circumcision ought not to be prohibited since it forms part of culture. Also, she contends that the ANTI-FEMALE GENITAL MUTILATION BOARD is not legally constituted.

FIDA –Kenya filed an application to be enjoined in the matter as an interested party. The matter is now coming up for ruling on the 17<sup>th</sup> of January 2018.

**Challenges:**

The following were the challenges that the organization faced in the administration of justice during the period:

1. Political unrest affected the in-flow of clients to the legal aid clinics. Mobile legal aid clinics could also not be held between August 2017 – February 2018.
2. Lack of proper documentation from the women. Most of the reported that their male partners are ones who kept legal documents like Title Deeds, Sale Agreements etc.
3. Ignorance – the community is largely not aware of some of the amendments in the laws of succession and property rights as regards to women and inheritance.
4. Distance – some clients have to travel long distances to make a follow up on their matters or seek legal aid. This is because the organization is only serviced by regional offices. Mobile legal aid camps help to mitigate this.
5. There was a challenge in training of judges due to the CJs directive of putting on hold any training for the judiciary. The prioritization of the hearing of election petition also hampered this.

## **10.25 DEPARTMENT OF CHILDREN SERVICES**

The Department draws its mandate from Section 38 of the Children Act 2001. Its main mandate is to safeguard the rights and welfare of children, in regard to the establishment, promotion, coordination and supervision of services and facilities designed to advance the wellbeing of children and their families.

### **Achievements**

#### **1. NCAJ Task force on Children matters**

Under the Chairperson of NCAJ Task force on children matters and the Director Children services who co-Chair the National Steering Committee under the National Council for Children Services (NCCS) the Children's bill 2018 underwent successful validation and is currently at the Attorney General waiting to be tabled in Parliament.

#### **2. Child Protection**

The Department conducted sensitization on Violence Against Children (VAC) and conducted capacity building for Area Advisory Councils (AACs) in thirteen (13) counties. A protocol on Kenya Violence against Children survey and questionnaire was developed.

To further deliver on its mandate, the Department undertook the process of costing child protection and came up with a costing model besides other child protection interventions that were initiated as mentioned below; -

- A technical working group on missing children was formed and there is a concept paper that has been developed on the same.
- A baseline survey on children of imprisoned mothers was carried out.

Draft guidelines on Child on-line protection were developed during the review period. This is to ensure that children are protected from cyber bullying. It is expected that in the next financial year the guidelines will be validated and subsequently implemented.

#### **3. Child Protection Information Management System (CPIMIS)**

The CPIMS is a digital system, which is used to capture and store data on various categories of children. The Department has successfully rolled out this programme in fifteen counties following the coverage of an additional four counties i.e Bungoma, Busia, Vihiga and Kisii with the support of partners. UNICEF has taken up nine (9) counties starting with Turkana and Mombasa. The department is engaging with partners for the coverage of the remaining twenty-four (24) counties.

#### **4. Strategic Interventions**

Department sensitized 21 Children County Coordinators on Alternative Dispute Resolution (ADR) so as to assist in diverting civil cases such as maintenance and custody of children from the courts in pursuant to section 159 (c) of the Constitution. It is anticipated that the balance of 26 County heads will be sensitized in the next financial year.

## **5. Community Child Protection**

The Department gave bursaries to 27,408 Secondary school children (14,061 boys and 13,347 girls) under the Presidential Bursary scheme for Orphans and Vulnerable Children (OVC), this is an increase from the previous year where 22,000 children were awarded under the same scheme.

The child helpline 116 is a Government phone service that links children in need of care and protection to essential services and resources. Currently Kabete and Eldoret are operational. During the year under review, the Department began the process of transiting operations of the two helplines from Child Line Kenya (CKL) to the Department. This is designed to take place in two phases. Phase one 2018–2020 and the second phase 2020–2022. In order to improve service delivery to clients, the helplines are also being upgraded so as to receive more calls, process data faster and give feedback real time.

## **6. Development of Guidelines**

Guidelines for Case Management and Referral Training Manual was developed and finalized during the period under review. This was to standardize case management procedures among key stakeholders working with children and strengthen referral for children cases. In order to standardize the training, 23 officers were trained as Training of Trainers (TOT).

Mentorship for officials for the Kenya Children Assembly (KCA) at the County level to enhance child participation.

Draft Guidelines on Diversion were developed and handed over to the office of Department of Public Prosecution.

## **7. Counter Trafficking in Persons**

Counter trafficking in persons secretariat continued to provide advisory services to the Government on issues of counter trafficking in persons especially women and children. The National Referral Mechanism Guidelines for assisting victims of trafficking were disseminated in 10 counties. The National Assistance Trust Fund for assisting victims of Trafficking is operational. So far, 31 victims were rescued and referred for assistance or voluntary return. During the year under review, the process of reviewing the miscellaneous amendment of the Counter Trafficking in Persons Act was initiated. A delegation went to UNGAS, New York to present the position of the country in combating Human Trafficking.

## **8. Children's Institutions.**

The Department currently runs 30 statutory children institutions categorized as; Rehabilitation Schools which are nine (9), Children Remand Home which fourteen (14) Rescue Centres these are five (5) and two (2) Reception and Classification Centres. During the year under review, there was a marked reduction of overstayed cases of Children in Remand Homes and this is greatly attributed to fast tracking of cases during Court Service Weeks.

The statutory children institutions in the country gave custody and rehabilitation

services to a total of 6,782 children during the year under review. The Rehabilitation Schools served 1,205 children (912 boys and 293 girls). The Children Remand Homes handled 4,982 children (3,592 boys and 1,390 girls). The Rescue Centres provided care and protection to 595 children (344 boys and 251 girls). Currently there are 1,602 children at the statutory children's institutions under the Department of Children's Services with a holding capacity of 2,500.

There was a circular issued by the Cabinet Secretary for Labour and Social Protection barring registration of new Charitable Children's Institutions. This was occasioned by reports of various malpractices and cases of child abuse in some of those institutions. A number of forums were held to sensitize stakeholders on the need to bring up children within the family set up as against institutionalization.

#### **9. Alternative Family Care**

The Department with support from UNICEF carried out a pilot programme on Alternative Family Care in Kisumu County. Key stakeholders including managers and CCIs social workers and opinion leaders were trained on various forms of alternative family care and the need to bring up children within the family unit. The second phase of the programme is community sensitization.

#### **Challenges**

1. Lack of legal aid or legal representation of children charged in conflict with the law despite the launch of the legal Aid Act 2016
2. Poor prosecution of defilement cases resulting in the defeat of justice
3. Frequent cases of teenage children having non-consensual sex resulting in the boy child being discriminated against.
4. Delay in cases where children have committed capital offences.
5. Radicalization of children and lack of skills to handle such cases.
6. Children being held in same facilities with adults especially at court cells or during escort to and from court.
7. Delays in disbursement of funds especially in the institutions causing children to be denied basic services.
8. Old dilapidated infrastructure in statutory children's institution as most of them were constructed during colonial period.
9. Low staffing levels in both field and institutions.

### Introduction

The CRADLE – The Children’s Foundation is a non-partisan, non-profit making and non-governmental organization committed to the protection, promotion and enhancement of the rights of the child through court representation, advocacy and law reform. The organization exists to protect and promote the rights of the child and see a just society for children. It works with numerous stakeholders and collaborators such as governmental departments, international organizations, other NGOs and communities to raise awareness on child protection and child rights, provide legal aid to children in contact and conflict with the law, and trafficked children, protect child rights and strengthen policy and legislative advocacy for legal frameworks. The CRADLE operations are categorised under the following programmes namely; Access to Justice; Child Rights Awareness; Policy and Legislative Advocacy; and Research, Monitoring and Documentation;

During the period 2017/2018 The CRADLE offered legal aid to over 523 children through its offices in Nairobi, Lodwar and Malindi. There were 319 girls and 204 Boys.

The CRADLE advocates handled matters of defilement and children in conflict with the law while Legal aid was offered to assist children access justice and safeguard their welfare through self-representation scheme and referrals to other partner organizations to ensure effective response to the various legal issues raised by clients.

One of the highlights of the year was being awarded a judgment on behalf of a minor who we sued the AG and the National Police service for infringement of her rights as she was stripped while in the custody of the police and pictures of her circulated around in social media. This judgment set precedent on the duty of care and protection of minors while in the custody of the police.

There is still a continued demand for legal aid in child maintenance and custody matters. The CRADLE actively participated in the children’s service week in different courts around the country notably Nairobi, Ngong, The CRADLE was also able to offer legal representation to children in conflict with the law utilising the concept of plea bargaining that has been rolled out by the judiciary during the children service week. We were able to resolve five cases using plea-bargaining. The CRADLE observed the high number of child abuse matters especially defilement in Busia and Bungoma counties where we still continue to receive numerous calls for assistance from grass root organisations. This is still an ongoing observation from last year where our clients complain of the lack of prosecution of this matters, interference from the police and perpetrators, and subsequently the perpetrators go scot free. This is an area that needs sensitization on the laws that protect children from abuse, and training and retraining of judicial officers in handling matters of abuse.

The CRADLE runs a Probono Lawyers Scheme. A total of 10 cases were referred to pro bono lawyers countrywide. The matters referred to the pro bono lawyers were maintenance suits and protection and care matters. Three matters in this case were successfully concluded

During this period The CRADLE offered psychosocial support to over 136 children in contact and conflict with the law, and child survivors of abuse there were 93 boys and 43 girls.



The CRADLE engaged paralegals especially in Lodwar where there are no lawyers (there are only two resident lawyers) to offer legal support. The CRADLE linked the paralegals to a pro bono lawyer support and guidance when on cases that they might not be able to handle. This creates sustainability for our program. This has gone a long way in enhancing child protection in the region.

In policy and advocacy, The CRADLE participated in the NCAJ Taskforce on children's matters, NCAJ special committee on the sexual offences and the NCAJ Committee on Criminal Justice Reform and continued to influence policies that affect children especially within the judicial system. This period saw the CRADLE participate in the validation of the Children's bill that will be soon tabled in parliament. The CRADLE is a member of the National Steering Committee of The Children's Bill. The CRADLE has also been an active member of different court users committees where we have been driving the children's agenda. The CRADLE is a member of the Taskforce on Policy, Legal, Institutional and Administrative reforms regarding intersex persons in Kenya under the office of the Attorney General. This period the CRADLE was involved in the data collection of intersex persons in the country. This data will influence the policies and law enacted on the welfare and protection of intersex persons in the country

#### **Challenges:**

One of the major challenges that The CRADLE faced in its work was the slow progress of the children's matters where The CRADLE is watching brief for child victims. One of the main reasons is there is the low capacity of magistrates and prosecutors to deal with children matters. Prosecutors are frequently changed and the rapport that was developed with the previous prosecutor is no longer there, thereby the child victims are not comfortable being guided by the replacements. The CRADLE suggests further thorough training of both the magistrates and prosecutors on how to handle children in contact with the law. The component of psychosocial support through counseling should also be encouraged as this prepares the child mentally and emotionally to give his or her testimony. We have observed that children who go through pre-trial counseling are better equipped to testify before court.

The CRADLE has also observed that the different contradictory judgments on the sexual offences act has influenced judgment where the perpetrators of sexual offences have been let free. This is a worrying trend as it defeats the purpose for which the sexual offences act was enacted. The call for the review and amendment of the sexual offences act should be considered but always considering the protection and best interests of the child.

#### **10.27 LEGAL RESOURCES FOUNDATION**

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The Legal Resources Foundation (LRF) is an independent, human rights organization that promotes access to justice through human rights education, research and policy advocacy initiatives. LRF's mission is to be a resource for justice, equity and resilience in communities through holistic participatory interventions and strategic partnerships. In this regard, LRF partners with both State and Non State actors at national and regional levels to promote

exchange learning for purposes of learning and experience. LRF further is an active member of the National Council on the Administration of Justice (NCAJ), both at the Council and Technical Committee Level.

LRF has continued to work in partnership with the NCAJ, its Constituent CUCs around the country, the Kenya Prison Service, the National Police Service, the Probation department, among other actors in the justice sector to enhance the space for access to justice and human rights in Kenya.

The Kenyan criminal justice system has undergone tremendous transformation in the recent past. The provisions of the 2010 Constitution further affirmed the transformation. We have witnessed a committed justice agency that is thirsty of transforming itself to an institution that delivers quality justice to all. This is witnessed by the various efforts e.g.: the JTF 2012/16; NCAJ Strategic plan 2012/16; Correctional services reform agenda; Vetting of judges and judicial officers; vetting of police officers; NCAJ/LRF audit of the criminal justice system among other initiatives. Due to these reform efforts, we have witnessed an improvement in public perception of various institutions.

### **Operating context (Successes, challenges and lessons learnt)**

#### **Success/ Improvements**

##### **1. Operationalization of the National Committee on Criminal Justice Reforms**

There has been notable successes aimed at enhancing justice. Key among these reform efforts are the formation, gazettment and operationalization of the National Committee on Criminal Justice Reforms (NCCJR), the continued implementation of the provisions of the bail and bond policy, the continued assignment by the special taskforce on children among others.

The Judiciary in its endeavor to enhance justice delivery among the rights holders continue to implement the performance management and measurement system towards enhancing efficiency in justice delivery. LRF's part contribution to this process was assisting NCAJ develop the CUC planning and reporting template (PMERL) which was adopted in the annual national CUC bi-annual conference and later confirmed by the NCAJ Council. The NCAJ Chair who is also the Chief Justice gave a practice notice that the PMERL tools should remain the official working tools for all CUCs nationally.

Prior to this SOJAR period NCAJ commissioned LRF and RODI - Kenya to undertake an Audit of the criminal justice system in Kenya in 2015. The audit ended in Dec 2016, and the Chief Justice launched it on the 23<sup>rd</sup> of January 2017 where he also committed to gazette a CJS committee to implement the audit recommendations. Towards this, the NCAJ Director formed the NCCJR, which was eventually gazetted by the Chief Justice on 23<sup>rd</sup> June 2017 through gazette notice 5857.

The NCCJR a multi-agency initiative is mandated to spearhead the comprehensive review

and reform of Kenya's entire criminal justice system, and oversee the full implementation of the findings and recommendations of the Criminal Justice System in Kenya: An Audit.

The NCCJR has been able to develop an elaborate work plan on how to implement the recommendations of the audit conducted. Towards this, the committee has been able to achieve a number of targets namely:

1. **Development and adoption of the monitoring and accountability tool in places of detention** as guided by the international standard minimum rules on treatment of prisoners (Mandela rules). This tool was founded on the background of the findings made by the CJS audit, which established that, our places of detention as deplorable and fall short of the minimum requirements. The tool shall assist in monitoring the conditions, analyze conformity to national and international standards and recommend improvements required. It was also suggested there be established an independent body for the protection of conditions of detention and those therein (An equivalent of IPOA in prisons), or the mandate of IPOA be expanded to the prison system.
2. **Baseline meeting between the Directorate of Criminal Investigations and the ODPP.** This meeting was aimed at establishing the issues affecting the dispensation of justice where the two institutions are required. The meeting established there exists frosty relationship between the two institutions especially at the station levels. It was then recommended the need for a liaison officer from the NPS who is senior in rank (preferably a senior superintendent of police –SPP) to act as a go between the DCI and DPP at the station level. This officer is required to coordinate in a simulated manner all correspondences and files to court and from court between the two institutions.

**Other successful initiatives by LRF include:**

1. **Capacity building/ training for CUCs in different regions.**

This was for Nakuru, Kericho, Baringo, Machakos, Meru, Isiolo and Nairobi Counties. LRF responded to needs assessments of the various CUCs, and the capacity development was in the fields of: Provisions of recently enacted legislations and policies; forensic investigation, packaging of evidence, preservation and presentation of evidence (the unit increased the appreciation and use of forensic science in determination of criminal matters; people focused administration of stations (police, courts, prisons e.t.c.); the standard minimum rules on treatment of prisoners (Mandela Rules) among other topical areas. The outcome of this has been improved service delivery to litigants coupled by an improved reaction to the needs and rights of both accused and victims of crimes.

LRF was also able to support operations and initiatives of child focused court users committees (CCUCs) at the Milimani children's court, the Nakuru Children's Court and the Tononoka Children's Court. The outcome of these children courts that are more responsive to the needs and rights of children.

2. **Capacity Building for Judicial Officers**

Two (2) magistrate-training sessions were conducted in October 2017. The aim of the

training was to enhance utilization of non-custodial sentences by the courts, empower magistrates on how to handle and manage stress that come with the work they do to promote objective decisions during trials and assess the implementation of the Bond & Bail and Sentencing Policies. From the training, it was noted that magistrates require psychosocial support, which will be advocated for in the next phase. Magistrates appreciated the stress management training and recommended that there should be more training on facilitating them as human beings and not on the law, they deal with on a daily basis. Fifty-three (53) judicial officers (28 Males & 25 females out of which 20 were youth) benefitted from the training. Magistrates underwent group therapy to help them relieve their stress and learnt skills on how they can remedy piling stress on their own

### **3. The strengthening of security sector**

Through capacity building of community policing units in Nairobi, Nakuru and Kericho. The various member of the community policing units were trained on their role, reporting mechanisms and implementations of their decisions. LRF has noted an increased confidence of the public in the Nyumba Kumi initiative resulting to improved security in the catchment areas.

### **4. The strengthening of gender and children protection units**

In Kilimani, Kayole, Kangemi, Bondeni, Nakuru central, Kisumu central and Kondele police stations was conducted during the reporting period. The support included training of officers operating the children and gender desks, physical improvement of the units and making the units more child friendly. Because of this, the police are now able to safeguard the best interest and welfare of any child who encounters the law in any way.

### **5. Informing the operationalization of the Small Claims Court Act**

LRF since 2009 has been piloting the use of small claims courts in Turkana County. With the Act now in place and need for regulations being forefront, LRF has been working closely with the rules committee of the judiciary in providing information and lessons learnt in order to come up with watertight regulations for the small claims court that would serve access to justice and longevity of time.

LRF has also been training the Turkana CUC, the elders, chiefs and paralegals on the provisions of the act so that even with the rules being operationalized the court can take off quickly and strongly to serve justice issues for local communities.

### **6. Informing realization of policy on Alternative Justice Systems in Kenya**

Following the post-election violence (PEV) in 2008 LRF participated in peace restoration process in Kericho, which led to establishment of community justice systems. LRF carefully selected Community Justice System (CJS) actors and community Paralegals from the three major communities in Kipkelion were trained on relevant topics such as human rights, land law, conflict management and alternative dispute resolution mechanisms, transitional justice, peace building, among other relevant topics. The trainings were undertaken in order to appropriately capacitate the selected individuals

for their role. This has been replicated in Baringo, West Pokot counties Pursuant to TOR on bench-marking existing models of Alternative Justice Systems, to capacitate them and observe them, AJS Taskforce has made visits to Kericho to document their functioning and to glean best practices. Kericho and West Pokot systems provide good lessons for autonomous AJS models.

Following the engagement with elders in the three counties of Baringo, Kericho and West Pokot LRF has in 2018 produced and distributed registers for documentation of cases handled in the autonomous AJS. LRF intends to share the registers with the Judiciary at the appropriate time.

#### **7. LRF has been supporting the Special Taskforce on Children**

LRF is a substantive member of the taskforce and has been ploughing back information harnessed from its program work/ initiatives to inform the realization of the taskforce's mandate. Through its, paralegals LRF engages the local communities on what should be included in the review of the child justice regime and inform the review process. LRF also supported a retreat of the taskforce to finalize on the children's' act review process. This saw the taskforce realize a comprehensive Children Bill 2017 that will comfortably be exposed to public participation.

#### **8. Support to the Sexual Offences Special Taskforce**

LRF supported a retreat for the taskforce. At the meeting it was established that there serious issues that needed to be addressed for the committee to realize its mandate. These include loss of membership, inadequate resources, the lack of clear mandate and lost committee momentum. As such, the meeting mapped an action plan that includes need to redefine the mandate of the committee, develop new terms of reference, constitute a strengthened committee with a judge as its chair person, gazette the committee and allocate adequate resources to the committee.

#### **9. Decongesting case backlog through plea agreements and mediation**

LRF paralegals have been spearheading. The paralegals and trainers have been building the capacity of pre-trial inmates and justice actors on the use of plea agreements to fast track trial of cases. This has been through partnership with the office of DPP and support from the US Embassy. Through the use of plea agreements especially during the children service weeks we have seen hundreds of cases fast tracked. Further, the paralegals have been conducting victim offender mediation for those caught up in the justice chain. This has seen numerous cases amicably resolved and withdrawn from the justice system. There is need to popularize the use of plea agreements among the state counsels, judicial officers, advocates, litigants and the general public for it to have a major output in reducing the national burden of case backlog.

#### **10. The establishment of the court counsel office**

In Makadara Law Courts which uses civilian paralegals to provide first instance legal aid and/or assistance to litigants who do not understand court processes and the criminal trial procedure. This has seen hundreds of litigant navigate the justice system adequately equipped to safeguard their rights.

Despite the efforts made within the CJS, a few challenges persist that predisposed the weak and indigent in our society to frequent interact with the CJS. These challenges must be addressed if we are to transform the justice system.

### **Challenges within the Community Justice System:**

The 2010 Constitution of Kenya ushered in a new dawn especially on matters human rights. An elaborate and progressive chapter on bill of rights is therein provided with emphasis on access to justice. Article 47 (1) provides for the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair, while article 48 is on right to access justice. Further, Article 49 and 50 of the Constitution enunciates safeguards to pre-trial detention by placing time limit spent in police custody<sup>13</sup>, cautioning arrested persons against self-incrimination<sup>14</sup>, placing time limit on production in court<sup>15</sup>, making all offences bail able subject to compelling reasons<sup>16</sup>, classifying offences to which one cannot be remanded in custody<sup>17</sup>, going short to placing time limit on the time cases take before conclusion<sup>18</sup> and provision of legal representation<sup>19</sup>. The Constitution further operates in cognizance of presence of general rules of international law and treaty or conventions ratified by Kenya<sup>20</sup>.

Despite the promise and safeguards made by the constitutional provisions, numbers and persons finding their way to pretrial detention continue to adopt an upward trajectory. The CJS Audit report established that Kenya's prison system has an official population capacity of 26757, yet the current remand population is approximately 23,000, which translates to 85% of the official capacity. The audit further confirmed that, 70% of offences being subjected to the criminal justice system are petty offences, which therefore means, safe guards to pretrial detention are not working as they were envisioned.

The criminal justice system has been audited as wanting in respect to some aspects of the quality of legal provisions, prosecution, judgment, and conditions of detention as outlined below:

### **Police Stations**

A key finding from the audit study is that the flow of the people deprived of liberty, and cases through the criminal justice system, follows an inverted pyramid shape. At the police station, 68% of the entries in police cells are cases related to drunk and disorderly behavior, property offences; state regulated offences, loitering, disturbance and nuisance, and cases involving children in need of care and protection. The audit further established that, 45% of the police arrest were effected during the weekends, with the highest rate of release from police cells equally being effected during weekends.

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**13** Article 49(f) i, ii

**14** Article 49(d)

**15** Article 49(f) i,ii

**16** Article 49 (h)

**17** Article 49(2)

**18** Article 50(1) (e)

**19** Article 50(g) (h)

**20** Article 2(5)(6)



A disturbing fact is that 64% of pre-trial detainees in police cells had no reason for release recorded in the cell register, or the occurrence book, raising questions about their manner of release. The audit further finds that only 32 % of police entries were converted to charges; of which 70% were petty offences.

The audit further indicates that large numbers of people are arrested and detained in police cells in Kenya, suggesting around 5,000 people per police station per year on average<sup>21</sup>. This number does not include people accosted or harassed by the police but not ultimately detained in police cells.

As Kenya is a demographically young country, these numbers are likely to represent a large proportion of the adult population being arrested and detained in cells each year. While it may be argued that this is appropriate in a relatively high-crime country, analysis reveals that a large proportion of these arrests and detentions are not in relation to common law crimes which concern the public, such as theft. The largest categories are offences defined by the state relating to the regulation of commercial activity, whether it is sales of alcohol or other contraband, and the protection of state forests or wildlife, and the like. Such offences do not have “complainants “or victims, other than the state itself. The high volumes of these offences are suggestive of a high degree of policing, as they only come to detention through the exercise of police action.

#### **10.27 DIRECTORATE OF PUBLIC PROSECUTION (DPP)**

The study establishes that appeal matters at the high court recorded high overturn rate with 45% of the appeals lodged resulting in either liberty, reduced or increased sentence, retrial or change of conviction. This raises serious questions into the quality of prosecution in Kenya.

The audit establishes a very low rate of prosecution of more serious offences e.g. Violent offences 11%, sexual offences 2%, drug offences 2%,<sup>22</sup> This could be due to arrests occurring without sufficient cause, or because of withdrawals of complaints or because of unwillingness to prosecute difficult cases.

On the magistrates’ courts, a relatively low rate of convictions for serious offences is observed. This raises the need for the police and director of public prosecutions (DPP) to work in harmony so as to ensure proper prosecution of cases.

With the current revamp of the ODPP, there has been massive recruitment of advocates to become prosecutors. Most of the advocates recruited are young and didn’t have prerequisite experience. This has raised serious questions on the quality and outcome of prosecuted matters. There is thus need for the ODPP to initiate a rapid mentorship programme for the prosecutors, as he also prepares to start a prosecution academy.

It has also been observed that prosecutors do not have facilities where they could conduct pre-trial conferences. This is so serious especially when it comes to prosecution of matters involving children as victims of crime or as witnesses.

**21** *Criminal Justice System in Kenya: An Audit (Understanding pretrial detention in relation to case flow management and conditions of detention)*

**22** *Criminal Justice system in Kenya: page 102 and 103*



The audit further suggests that, 70% of cases being referred to court are petty offences<sup>23</sup> with 32% being state regulated offences<sup>24</sup>. This therefore means too much pressure is placed on judicial officers to preside over matters which would otherwise have been dealt with through alternative means and more emphasis placed in dealing with serious offences. The audit further suggested the said matters took an average of 2.9 years to be completed, with an average of 15,000 being the available cash bail an amount which is way too high to a normal Kenyan bearing in mind the average income is Kshs 12,000.

In respect to right to bail as per Article 49 (1) (h) Constitution of Kenya, where it provided that an arrested person has right to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released; the audit established that bail occurred only on 8% of the cases in the magistrates' courts. Breaking it down further, only some 15 % of violent offences and 11% of property offences were granted bail. Data also indicated that those who get bail are less likely to result into a guilty verdict.

On sentencing audit findings indicate high use of fines and/or imprisonment at 48%; imprisonment alone at 20%, while alternatives to detention were used minimally (community service orders at 19%, probation at 9% and suspended sentence at less 1%). Yet data indicates that lesser offences (which would otherwise attract non-custodial sentences) are more likely to attract guilty verdicts as compared to serious offences.

The audit findings also indicated there exists the problem of a great deal of variation amongst the magistrates' courts surveyed here, in terms of all trends interrogated, implying that Kenya's can expect to face very different justice depending on where they are located. There is evidence to suggest that while almost two-thirds of the cases are resolved relatively quickly, very long durations between plea and judgment may apply to a third of cases, with more serious cases generally taking longer to resolve.

In respect to children matters, those in conflict with the law continue to pursue their cases without the representation of advocates, as fewer advocates are willing to pick up cases on pro bono basis. It was also established that there are more children in prison on remand rather than in children remand home as required by the law as a matter of last resort.

Children matters delay in court for an average of 2 years, limiting their right to education and development as a child. If as a country we can limit election petition to strictly 6 months, the same should apply to children if we are serious in ensuring the 'best interest and welfare of the child'.

Most Courts have courtrooms that are unfriendly to children. There are no witness protection boxes in majority of the courtrooms in the country.

**23** *Offences classified as not serious*

**24** *A category of some prominence in Kenya (as opposed to similar studies in Malawi, Zambia and Mozambique in which they were all but absent) was the category of "state offences", which arose out of analysis of the data. Grouped into this category are all offences where the offence has been defined by the state in terms of legislation, mostly in legislation outside of the Penal Code. These offences typically do not have a complainant other than the state itself and typically relate to the regulation of formal or informal economic activity, where a particular state interest is being protected, such as regulation of alcohol use and protection of the environment.*

### **On subordinate courts:**

In the Court Martial it was observed that the right to public hearing is infringed on since members of the public are barred from attending the hearings. There is also no option of cash bond/bail during trial, and convictions are generally without an option of a fine.

All the aforementioned problems are finally cascaded downwards to the Prison system.

### **Prison**

It was a finding of the audit<sup>25</sup> that 75% of pretrial are ordinary Kenyans between the ages of 18- 35 years. This therefore means, three quarters of the total population of pretrial detainees are at the peak of their earning potential. The holding of so many possibly productive persons who may never be found guilty on remand is counter-developmental and costly for the Kenyan state. The audit further found that, most of the pretrial will spend exceptionally long time in detention; of which is by no means a guarantee they will ever be convicted, with only 53% of pretrial detainees being found guilty. Indeed, the most serious offences for which people are held the longest on remand has the lowest conviction rates i.e. 5% for sexual offences and 13% for robbery with violence cases. Furthermore, in relation to far more serious offences, even if convicted, many of these will eventually succeed on appeal.

Another issue, which this audit brings fore, and which should be of great concern, is the interface between children and the criminal justice system. The data shows that more children are admitted to prisons in remand than are admitted in children's remand homes.

On conditions of detention, it was an overall finding that, facilities holding persons deprived of liberty are generally old, limited in space and majority were constructed during the colonial era. Their architecture negates against compliance with domestic and international law standards pertaining to conditions of detention.

There exists variation in the responses describes how deaths in custody are investigated, as such deaths arising from torture becomes very difficult to establish<sup>26</sup>.

### **Recommendations**

As a stakeholder in the CJS we make the following recommendation based on our experience in the criminal justice coupled by the findings of the CJS audit report:

1. AG/KLRC Fast track the courts of petty sessions; amend the provisions of the small claims court especially on the place of paralegals replacing the advocates in court; enact the bail act.
2. AG: Operationalization of the National Legal Aid Service (NLAS) and development of the legal aid regulations
3. JUDICIARY: Operationalization of the small claims court once amended.
4. NPS and DCS: To review of the national police act and children's act to provide for child protection units; the NPS to review the police service standing orders to provide for legal aid units.

<sup>25</sup> *Criminal Justice System in Kenya: An Audit (Understanding pretrial detention in relation to case flow management and conditions of detention)*

<sup>26</sup> *Criminal Justice system in Kenya: An audit- page 300.*

5. NCAJ: Finalization of the AJS policy guidelines and its operationalization.
6. NCAJ: Implementation of the sentencing policy guidelines
7. NCAJ: Sensitization of the public on the provisions of the various policies: Bail and bond; sentencing; amongst others.
8. AG & KLRC: Take administrative action on state regulated offences by reviewing the law to allow them be dealt with
9. administratively, rather than criminalising the same.
10. NCAJ: Conduct a national research on the social economic impacts of subjecting state regulated offences to the criminal justice system.
11. NCAJ: Conduct a national audit on the effects of the CJS to the victims and witnesses of crimes.
12. NCAJ to conduct a national audit of the state of children in the criminal justice system.
13. Judiciary/JTI and DPP: to conduct sensitization forums for judicial officers and prosecutors on case management.
14. NCAJ/ TREASURY: Boost the financing of state department which are under-funded, namely: probation, children and prisons department.
15. TREASURY: To increase legal aid fund.
16. NCAJ: Lobby for the placement of the department of children services under Home Affairs Ministry.
17. PRISONS/ KLRC/ AG: Fast track the review of Cap 90 prisons Act and Cap 92 on Borstal Institutions Act.
18. NATIONAL AND COUNTY GOVERNMENT: To develop societal interventions to address the plight of children in conflict with the law and at risk of committing crime.
19. NCAJ: To develop an Integrated data management system for the whole CJS.
20. NCAJ/ LRF: To conduct a research on best desirable approach to adolescent's sexuality without having to resort to criminal proceedings.
21. CORRECTIONAL SERVICES/ KPS/NPS/ Ministry of health/ department of children services: To conduct significant investment to address the infrastructural shortcomings at the police stations, prisons, children remand home, Mathare mental hospital and court holding cells to meet the minimum standards.
22. NCAJ/ JUDICIARY: Set up clear administration standard guidelines to address court holding cells.

## 10.29 REPORTS FROM COURT USERS COMMITTEES

COURT	MEETINGS HELD	ACHIEVEMENTS	CHALLENGES
<b>BARICHO</b>	4	<ol style="list-style-type: none"> <li>1. Good working relationship between the court and the stakeholders</li> <li>2. Enabled the areas of improvement</li> <li>3. Renovation of customer care service desk</li> <li>4. Fixation of signages for direction</li> <li>5. Achieved the minimum number of quartely meetings</li> </ol>	<ol style="list-style-type: none"> <li>1. No funding for two quarters</li> <li>2. Time Factor</li> <li>3. Inconsitent attendance of CUC meetings due to effects of transfers and leave of absence</li> </ol>
<b>BOMET</b>	8	<ol style="list-style-type: none"> <li>1. Co-operation with stakeholders which has seen smooth running of Court operations generally</li> <li>2. Reduction of case backlog</li> <li>3. Reduced adjournment of cases</li> </ol>	<ol style="list-style-type: none"> <li>1. There is a need to have the fence of Bomet G.K. Prison reinforced so as to accomodate capital offenders who are held currently at Kericho G.K. Prison about 70kms away</li> <li>2. No women prison in Bomet and the female remandees are held in Kericho Women Prison about 70kms away</li> <li>3. No holding area for children at the Bomet police station</li> </ol>
<b>BONDO</b>	4	<ol style="list-style-type: none"> <li>1. Better working relationship between the courtand the stakeholders</li> <li>2. Easier identification of problems hence quick response in resolving them</li> <li>3. Needs for the stakeholders were catered for in a timely manner</li> <li>4. Expeditious delivery of justice due to coordination with stakeholders</li> <li>5. Prison issues as regards welfare and court attendance were addressed.</li> </ol>	<ol style="list-style-type: none"> <li>1. 1.Insufficient funding</li> <li>2. Late rease of funds especial-ly for the first quarter</li> <li>3. Inconsistent membership and attendance</li> <li>4. Some members do not perform agreed tasks.</li> </ol>
<b>BUNGOMA</b>		<ol style="list-style-type: none"> <li>1. Improved understanding and cooperation between court users.</li> <li>2. Improved efficiency in service delivery</li> </ol>	<ol style="list-style-type: none"> <li>1. Lateness</li> <li>2. Inconsistency in attendance by individual members</li> <li>3. Lack of adequate funds to support the C.U.C activities</li> </ol>

COURT	MEETINGS HELD	ACHIEVEMENTS	CHALLENGES
<b>BUSIA</b>	4	<ol style="list-style-type: none"> <li>1. Benches had been placed at the corridors to assist litigants and members of public to sit and they wait to be served.</li> <li>2. The court had ordered for quality folders yet to be supplied by the supplier</li> </ol>	<ol style="list-style-type: none"> <li>1. No waiting place where litigants and members of public can sit while waiting for their cases to be mentioned or be served in any way.</li> <li>2. No provision or a room set aside for nursing mothers. They are forced to nurse their babies in public as they wait to be served.</li> <li>3. No children friendly environment where children who come to court can play, relax or even read books as they wait for their parents or guardians.</li> <li>4. No quality folder which results to being torn and some documents or pages of proceedings go missing</li> </ol>
<b>BUTALI</b>	1	<ol style="list-style-type: none"> <li>1. Sensitize members of public on ADR</li> <li>2. Basic traffic rules.</li> </ol>	<ol style="list-style-type: none"> <li>1. Insufficient funding.</li> <li>2. Reimbursement of fare for participant.</li> </ol>
<b>BUTERE</b>	12	<ol style="list-style-type: none"> <li>1. Increased awareness by local administration on topical issues of concern, in particular, the Succession process as well as reintegration of offenders back into society.</li> <li>2. Increased awareness among offenders on the importance of reintegration back into society upon completion of sentences.</li> <li>3. Increased awareness among boda boda operators on road safety, traffic laws as well as the Sexual Offences Act.</li> <li>4. Access to witness statements by remandees.</li> </ol>	<ol style="list-style-type: none"> <li>1. Delay in receiving monies for CUC activities during the 1st quarter.</li> <li>2. Sustained provision of printing paper and toner for the photocopier.</li> <li>3. Lack of facilitation (allowances) for CUC members.</li> </ol>
<b>CHUKA</b>	4	<ol style="list-style-type: none"> <li>1. Creating awareness by holding judicial open and morning briefings.</li> <li>2. Prison visits twice in a month.</li> <li>3. Displaying of customer service charter to litigants and members of public.</li> </ol>	<ol style="list-style-type: none"> <li>1. Lack of financial resources</li> <li>2. Untrained members of CUC</li> <li>3. Lengthy cause lists</li> <li>4. Absconding of suspects</li> <li>5. Failure to avail witnesses</li> <li>6. Ignorance of litigants</li> <li>7. Lack of policy amongst stakeholders</li> </ol>

COURT	MEETINGS HELD	ACHIEVEMENTS	CHALLENGES
<b>ELDAMA – RAVINE</b>	6	<ol style="list-style-type: none"> <li>1. Chiefs were sensitized on the Law of Succession Act and Anti FGM Act</li> <li>2. Litigants, accused persons and the public have been sensitized on their rights under the constitution i.e court processes and procedures .</li> <li>3. Enhanced stakeholders engagement</li> <li>4. Revenue has increased due to increased litigation</li> <li>5. There is a reduction of complains from remandees</li> </ol>	<ol style="list-style-type: none"> <li>1. Delay in disbursement of funds</li> <li>2. Rigid cultural practices such as FGM</li> <li>3. Most of the court users lack information and knowledge of the law</li> <li>4. Exclusion of married daughters from succession</li> </ol>
<b>ELDORET</b>	3	<ol style="list-style-type: none"> <li>1. Reached out to the public</li> <li>2. Reached out to staff and advocates instantly</li> </ol>	<ol style="list-style-type: none"> <li>1. Limited funding for meetings</li> <li>2. Late disbursements of funds</li> </ol>
<b>EMBU</b>	3	<ol style="list-style-type: none"> <li>1. Began construction of the child protection unit.</li> <li>2. Embu prison de-congestion carried out</li> <li>3. Completion of new court building (First floor and Ground floor 100%) and lift installation.</li> </ol>	<ol style="list-style-type: none"> <li>1. Lack of government analyst reports.</li> <li>2. Lack funding for training of CUC.</li> <li>3. Lack of consumables.</li> </ol>
<b>GARISSA</b>	4	<ol style="list-style-type: none"> <li>1. Facilitated witness attendance to court through funding of transport</li> <li>2. Trained prosecutors and other CUC members on enhanced coordination in handling sexual offences cases</li> <li>3. Purchase of Photocopier and printer for printing of witness statements</li> <li>4. CUC meetings were conducted in every quarter</li> </ol>	<ol style="list-style-type: none"> <li>1. Insufficient funding for witness expenses occasioned by the vastness of the county</li> <li>2. Constant need for training and awareness on the sexual offences law</li> <li>3. Lack of funds for repair and maintenance of the printer and photocopier together with related accessories</li> <li>4. Limited funding for CUC members</li> </ol>
<b>GATUNDU</b>	4	<ol style="list-style-type: none"> <li>1. Holding 4 meetings without any funding whatsoever from JPIP</li> <li>2. Decongestion of prisons by reviewing bail terms and encouraging mediation</li> <li>3. Conclusion and clearance of many matters</li> </ol>	<ol style="list-style-type: none"> <li>1. Lack of funds to run the activities</li> <li>2. Low turnout for the members</li> <li>3. Police swoops that lead to serious congestion of prisons by remandees facing minor charges</li> </ol>
<b>GITHONGO</b>	4	<ol style="list-style-type: none"> <li>1. The 2 tanks were installed</li> <li>2. Signage erected</li> </ol>	<ol style="list-style-type: none"> <li>1. Insufficient funds</li> </ol>

COURT	MEETINGS HELD	ACHIEVEMENTS	CHALLENGES
<b>GITHUNGURI</b>	4	<ol style="list-style-type: none"> <li>1. Construction of resting bay for court users</li> <li>2. A visit to a children's home</li> <li>3. Sensitization for the local community on court progress and procedures</li> <li>4. Plea-bargaining has increased leading to withdrawal of many cases</li> <li>5. Capacity building training for prosecutors and investigating officers</li> <li>6. Held open days</li> </ol>	<ol style="list-style-type: none"> <li>1. Lack of finances to enable visits to the local community or purchase gifts</li> <li>2. Negative attitude towards the court</li> <li>3. Poor attendance</li> </ol>
<b>HAMISI</b>	4	<ol style="list-style-type: none"> <li>1. Demystify the court operation amongst community members; students and pupils.</li> <li>2. The community attained knowledge on the Sexual Offences Act and the procedures to be followed when a sexual offence occurs within the community.</li> <li>3. The law enforcers gained knowledge on how to handle sexual offences victims</li> <li>4. Development of linkages and improved coordination between various agencies within the criminal justice system.</li> </ol>	<ol style="list-style-type: none"> <li>1. Lack of funding for the Court Users Committee during the period under review.</li> <li>2. Lack of adequate fuel to enable the team to effectively carry out the outreach program within the community</li> </ol>
<b>ITEN</b>	2	<ol style="list-style-type: none"> <li>1. Remandee sensitization.</li> <li>2. Erection of Signage, Notice board and Water Tank.</li> <li>3. Backlog reduction.</li> <li>4. Fostering strong inter agency working relationship</li> </ol>	<ol style="list-style-type: none"> <li>1. Inadequate funding of CUC activities.</li> <li>2. Lack of stipend allowance to members of CUC.</li> </ol>
<b>KAJIADO</b>	5	<ol style="list-style-type: none"> <li>1. Construction of new ablution facilities for members of staff and members of the public</li> <li>2. Excellent working relationship with other stakeholders in the justice system</li> </ol>	<ol style="list-style-type: none"> <li>1. Lack of enough sitting space for members of staff</li> <li>2. Insufficient resources to attend to infrastructural challenges</li> <li>3. Lack of enough secretaries and other cadres of members of staff</li> </ol>



COURT	MEETINGS HELD	ACHIEVEMENTS	CHALLENGES
KAKAMEGA	5	<ol style="list-style-type: none"> <li>1. CUC members paid a visit to divine providence children's home where donations were made to the children and members sensitized on child protection matters on 30.10.2017</li> <li>2. Public forum on and the ground breaking event for the high court construction project in October, 2017</li> <li>3. Public form on stone laying of the high court building under construction by the CJ on 12.2.2018</li> <li>4. Courtesy meeting with ICJ-K and CUC Kakamega as follow up on civic education held in July, 2017. "Reflection forum on ICJ-K engagement with the Judiciary and CUC on election dispute resolution." Output information sharing and proposal made on further engagement with CUC/ICJ-K</li> <li>5. Special CUC meeting to address the plight of the child in the criminal justice system process on 18.12.2017</li> <li>6. On 16.11.2017 crime prevention, land and succession sensitization program to offenders serving community sentences (Probation/CSO) jointly with prison inmates who were engaged in self-reflection and theater as an offender trauma healing process. The open forum presided over by the presiding judge courtesy probation officer Kakamega central.</li> <li>7. Civic education forum at golf hotel on 27.7.2017 where political aspirants, public members, teachers, IEBC, ICJ-K, CUC Members attended. Stake holders sensitized on lection preparedness and election legal requirements</li> </ol>	<ol style="list-style-type: none"> <li>1. Non-prioritization of CUC activities by custodian</li> <li>2. Delayed and under funding of projected activities/budget precipitates none performed tasks by the CUC</li> <li>3. Secretariat operations limited due to non funding</li> <li>4. Justice delivery hampered by resource inadequacies of other CJS partners and judiciary itself especially delay in witness statements, mobile court in Navakholo ceased to operate, follow upto CSO work sites not implemented, capacity building of stakeholders- chiefs, CSO supervisors</li> <li>5. Inadequate staff in CJS stakeholders e.g children services, Judiciary</li> </ol>

COURT	MEETINGS HELD	ACHIEVEMENTS	CHALLENGES
<b>KALOLENI</b>	3	<ol style="list-style-type: none"> <li>1. The chairlady managed to visit three schools; Chanagande, Kizurini and Kinani primary schools and the pupils and their teachers greatly benefited from the sensitization programme.</li> <li>2. A bond and bail booklet was created by the chairlady and her staff members to help guide the stakeholders and litigants in the bond and bail process in both English and Kiswahili.</li> <li>3. Payment through M-Pesa has made work easier thus alleviating the risk of cash loss.</li> </ol>	<ol style="list-style-type: none"> <li>1. Insufficient Fuel funds to ferry the chairlady and her team to more schools within the region.</li> <li>2. Most of the litigants are illiterate thus cannot read and comprehend the contents of the booklet.</li> </ol>
<b>KANDARA</b>	8	<ol style="list-style-type: none"> <li>1. There is harmony and motivation of staff through team building hence improved output</li> <li>2. Through meetings the LMT made decision on purchase of various station needs and addressed issues concerning staff</li> <li>3. Reduction of backlog on children matters as a result of the service weeks</li> <li>4. Through Google calendar communication to lawyers has become efficient and effective</li> <li>5. Reduction of backlog as matters are handled through ADR as per the constitution.</li> <li>5. Smooth running of the station and proper utilization the available resources.</li> </ol>	<ol style="list-style-type: none"> <li>1. Heavy workload for the 2 Judicial officers</li> <li>2. Insufficient ICT equipment</li> <li>3. Lack of adequate furniture</li> <li>4. Lack of sufficient enough funds for station needs</li> <li>5. Lack of enough working space</li> <li>6. Power outages in the area</li> <li>7. Lack of training among staff</li> <li>8. Lack of gender balance with more female staff at the station</li> <li>9. Slow progress of construction of new court building with an uncooperative contractor</li> </ol>
<b>KANGEMA</b>	4	<ol style="list-style-type: none"> <li>1. 1. The CUC has brought stakeholders together enhancing delivery of justice</li> <li>2. Smoothens communication among agencies</li> <li>3. The CUC demystifies the operations of the judiciary</li> <li>4. The CUC promotes Alternative Justice System</li> </ol>	<ol style="list-style-type: none"> <li>1. Financial constraints</li> <li>2. Compliance of the Government Financial Regulations</li> <li>3. Apathy of some stakeholders.</li> </ol>

COURT	MEETINGS HELD	ACHIEVEMENTS	CHALLENGES
KANGUNDO	4	<ol style="list-style-type: none"> <li>1. Sufficient provision of water at the station</li> <li>2. Reaching to the community</li> <li>3. Sensitizing the public on the court process</li> </ol>	<ol style="list-style-type: none"> <li>1. Limited funding by Government of Kenya and JPIP</li> <li>2. Low turning of members</li> <li>3. Limited finance</li> </ol>
KAPENGURIA	2	<ol style="list-style-type: none"> <li>1. Street children census conducted successfully conducted CUC open day at Makutano</li> <li>2. Inspected GK prison and made recommendations</li> <li>3. Conducted CUC Trainings and Trained prosecutors, police, prisons, medical officers and local elders on filling medical documents, collection and preservation of evidence, execution of warrants, ADR among other issues</li> <li>4. Procured and installed water tank and pump</li> <li>5. Procured and installed customer care and waiting bay tent</li> <li>6. Met the Governor West Pokot County regarding land, presented the proposal. He promised to provide land</li> </ol>	<ol style="list-style-type: none"> <li>1. Funding of the CUC meetings. The amount of Ksh 20,000 allocated was not sufficient for conducting quarterly CUC meetings</li> <li>2. Lack of fund to facilitate the CUC activities.</li> <li>3. JPIP Guidelines did not permit payment of facilitators and reimbursement of transport to trainees. The trainees were drawn from the entire West Pokot divisions and incurred travel expenses.</li> </ol>
KAPSABET	3	<ol style="list-style-type: none"> <li>1. Acquired the High Court Building Plan.</li> <li>2. The vice has considerably gone down having employed.</li> <li>3. Reshuffles and transfers of staff have been initiated thus bringing calm; corruption allegations have immensely gone down.</li> <li>4. All proposed projects were carried out, That is: Roofing of the Male cells, Acquiring a multi functional printer, Toners and photocopying papers were well utilized for the witness statements, Witnesses were paid in immediately, The training of prosecutors and Investigating officers was carried out well,</li> </ol>	<ol style="list-style-type: none"> <li>1. Interference by the county officials as a result of coordination on their part (Which led to encroachment/ Introduction of a road and removal of beacons.)</li> <li>2. Lack of cooperation by the police in ensuring the police files are brought to court for trials.</li> <li>3. The funding was minimal.</li> <li>4. The funding was minimal.</li> </ol>
KARATINA	3	<ol style="list-style-type: none"> <li>1. Enhanced stakeholders' engagement.</li> <li>2. Capacity building amongst CUC members.</li> <li>3. Awareness creation on SOA Act.</li> <li>4. CUC challenges addressed.</li> </ol>	<ol style="list-style-type: none"> <li>1. Time constraints hence rushing through topics.</li> <li>2. Lack of follow-up on implementation.</li> <li>3. Insufficient funds</li> <li>4. Lack of motivation for facilitators.</li> </ol>

COURT	MEETINGS HELD	ACHIEVEMENTS	CHALLENGES
KEHANCHA	3	<ol style="list-style-type: none"> <li>1. Visit to Komotobo Rescue Centre Research by CUC members the integration of Female Genital mutilation victims to the institution and school. To know how the Institution is handling the victims or rescued girls and their approach towards the vice. Educating members of public not engaging in FGM activities. Visit to Migori GK Prison - The inmates were counseled by CUC stakeholders on the importance of not breaking the Law. They were given life social skills on how to live harmoniously with other community members, Adoption of CDF Solar Floodlight at the Gate premise. - Security lighting that is solar powered guaranteed light at the Court gate. Non Governmental Organization called ADRA to step up its sensitization with support from stakeholders. Proper investigations for the perpetrators by the Police to have a water tight case. Ministry of Health to develop youth friendly centers so as to sensitize the public of the vice and to train clinicians on how to fill forms relating to fgm cuTo Organized more sensitization meetings against the vice through Chiefs barazas,</li> </ol>	<ol style="list-style-type: none"> <li>1. Inadequate funding.</li> <li>2. Late reimbursement of CUC funds.</li> </ol>
KERICHO	3	<ol style="list-style-type: none"> <li>1. Managed to repossess the Judiciary land at Kipkellion</li> <li>2. Managed to curb deforestation in the water catchment</li> <li>3. Improvement on the issuance of witness statements to accused persons.</li> <li>4. Through the cuc the land at Sosit was recovered and the county government agreed to donate land in other areas within the county</li> <li>5. Conducted an exercise to decongesting of the prison.</li> <li>6. Sensitisation of the the public on the process and the requirements of filing succession matters.</li> </ol>	<ol style="list-style-type: none"> <li>1. Lack of photocopy machine (forces the court to use its machine and toner meant for the station work)</li> <li>2. Challenge in availing witness statements due to lack of photocopying papers</li> <li>3. Lack of enough funds to organize prison visits.</li> <li>4. Some chiefs did not attend and therefore miss the opportunity to learn.</li> <li>5. Limited funds led to having less comprehensive trainings</li> </ol>

COURT	MEETINGS HELD	ACHIEVEMENTS	CHALLENGES
KERUGOYA	3	<ol style="list-style-type: none"> <li>1. Drastic reduction in complaints of missing files and office of Judiciary Ombudsman.</li> <li>2. Increased work output.</li> </ol>	<ol style="list-style-type: none"> <li>1. Delays to get government chemist reports</li> <li>2. No womens prison within Kirinyaga County</li> <li>3. No childrens remand home within Kirinyaga County.</li> <li>4. Pro bono advocates do not visit murder suspects in prison. However the issue was addressed in the Bar/ bench meeting.</li> </ol>
KIAMBU	2	<ol style="list-style-type: none"> <li>1. Training of Chiefs-training had been organized for all the chiefs within the jurisdiction of the court on the succession law and procedures. It had been facilitated by Hon. Justice David Majanja. This will lead to reduction of case backlog when the chiefs are trained on the relevant information expected from the chiefs' letters on succession.</li> <li>2. Due to involvement of court users there has been an improved production of witness statements to accused persons. Some departments had donated reams to facilitate the availability upon request namely; Kiambu Court, Kiambu County, Kiamumbi Police, Kiambu Prison and Kiambu Police.</li> <li>3. Prevalent cases of child abandonment had been appropriately handled through the involvement of the police, the court and the children office.</li> <li>4. Quarterly reports from various departments on issues which they should action on had led to the fulfillment of the court CUC Agendas and matters arising in the county.</li> </ol>	<ol style="list-style-type: none"> <li>1. Funding There are no children and women cells at Kiambu Law Courts for the children in conflict with law. There is need to facilitate the availability of the same through new construction or partitioning the existing building for the cells.  There is need for an archive store where finalized case files will be kept. A canopy for the holding areas in the cells is required so as to prevent the offenders to be rained on.</li> </ol>

COURT	MEETINGS HELD	ACHIEVEMENTS	CHALLENGES
<b>KIBERA</b>	8	<ol style="list-style-type: none"> <li>1.Improvements by some police stations on bonding of witnesses and bringing police files to court on time</li> <li>2. More non-custodial sentences noted</li> <li>3. Most accused persons have now been requesting for Plea Bargaining of their cases</li> <li>4. Participants learnt about small claim, when to institute them, how much, period from filing to judgment</li> <li>5. Introduction of new forms to facilitate prosecution of sexual offences cases</li> </ol>	<ol style="list-style-type: none"> <li>1. Substantive officers rarely attend meetings</li> <li>2. Chief's reluctant to supervise CSO</li> <li>3. Lack of legal counsel for accused during plea bargaining</li> <li>4. Lack of society understanding of the law</li> </ol>
<b>KIGUMO</b>	4	<ol style="list-style-type: none"> <li>1. Acquisition of JPIP funding for LCD screen for dissemination of information to clients.</li> <li>2. Realization of SJT strategy at station</li> <li>3. Involvement of stake holders in reduction of case</li> <li>4. Involvement of stake holders in attaining service timelines and attaining a zero corruption score</li> <li>5. Involvement of station commanders and investigating officers in follow up on the exhibits</li> </ol>	<ol style="list-style-type: none"> <li>1. Non representation of both the Govt. analyst and police surgeon at regional level</li> </ol>

COURT	MEETINGS HELD	ACHIEVEMENTS	CHALLENGES
KIKUYU	5	<ol style="list-style-type: none"> <li>1. Improved working relations and prioritising of station activities.</li> <li>2. Held three successful trainings.</li> <li>3. Improved stakeholders engagement.</li> <li>4. Improved work methods.</li> </ol>	<ol style="list-style-type: none"> <li>1. Lack of a station motor vehicle.</li> <li>2. Very poor drainage system.</li> <li>3. Lack of a water tank</li> <li>4. Lack of a title deed for the judiciary land</li> <li>5. Inadequate working space (small registry and no room to serve as court 3)</li> <li>6. Few number of judicial officers (we have two permanent and one visiting)</li> <li>7. Jurisdiction issues (we serve 2 sub counties (Kikuyu and Kabete and parts of another two (kiambaa and dagoretti) and we have a principal magistrate and a resident magistrate.</li> <li>8. Out of service 20kva and 2pcs of 5kva ups and unserviced generator.</li> <li>9. Lack of enough furniture and equipments.</li> <li>10. Late release of funds.</li> <li>11. Poor status of the child protection unit at kikuyu police station.lack of police lorry to transport remandees to and from remand centres.</li> </ol>
KILGORIS	3	<ol style="list-style-type: none"> <li>1. Appreciation from the public on the openness of the Judiciary</li> <li>2. Constructive engagement resulting to cordial work relations</li> <li>3. A tool of awareness on the performance of the judiciary and the stakeholders</li> </ol>	<ol style="list-style-type: none"> <li>1. Lack of Finances to cater for CUC members transport expenses</li> </ol>
KILIFI	5	<ol style="list-style-type: none"> <li>1. Successful installation of the PA System thus improving the audibility and communication between the Court Officers and clients.</li> <li>2. Having a fully operational customer care tent thus improving Court - Customer relations.</li> </ol>	<ol style="list-style-type: none"> <li>1. Late disbursement of the allocation as it came in the last quarter.</li> </ol>



COURT	MEETINGS HELD	ACHIEVEMENTS	CHALLENGES
<b>KILUNGU</b>	2	<ol style="list-style-type: none"> <li>1. Able to sensitize the supervisors</li> <li>2. Created a central supervisory area to collaborate with other supervisors and to oversee needy areas.</li> <li>3. Members visited various schools, hospitals and chief's office to see the achievements of CSO projects</li> <li>4. Water tank cover sheds were constructed and the tanks are now protected</li> </ol>	<ol style="list-style-type: none"> <li>1. Failure by CUC members to attend CUC meetings because of lack of transport to venue of the meeting</li> <li>2. Supervisors did not know their role as CSO Supervisors</li> </ol>
<b>KIMILILI</b>	4	<ol style="list-style-type: none"> <li>1. Promote ADR</li> <li>2. Improve case determination through timely communication to witnesses</li> </ol>	<ol style="list-style-type: none"> <li>1. Inadequate funds for meetings.</li> <li>2. Lack of funding from both GOK &amp; JPIP</li> <li>3. Budget</li> <li>4. Lack of adequate funding</li> <li>5. Delay in funding</li> </ol>
<b>KISII</b>	4	<ol style="list-style-type: none"> <li>1. Purchase of Computers and stationeries have assisted in typing, photocopying of statements of accused persons.</li> <li>2. The prison visits have made it easier for the CUC members to interact with prisoners and address their concerns.</li> </ol>	<ol style="list-style-type: none"> <li>1. Incharge prisons do not provide monthly remandees reports on time.</li> <li>2. Lack of proper documentation on the part of JPIP has made funding to be inconsistent it is hard for us to undertake some planned projects</li> </ol>
<b>KISUMU</b>	6	<ol style="list-style-type: none"> <li>1. Better Case Management</li> <li>2. Less land fraud cases reported</li> <li>3. Broadened CUC network with more actors</li> <li>4. More prtnerships with thecourt participating in activitiesand trainings organised by other organisations</li> <li>5. Greater interest among the stakeholders to embrace ADR</li> </ol>	<ol style="list-style-type: none"> <li>1. Attendance of meetings by some stakeholders disrupted due to long distances covered without transport reimbursement</li> <li>2. Lack of statinery to prepare appeal records</li> <li>3. Warrants of arrest not being executed yet there were sureties in the case causing withdrawal of cases</li> <li>4. Lack of proper accounting of children in thejuvenile justice system</li> <li>5. Dissapearance of exhibits andcourt files</li> <li>6. Mistrust between theJu-diciary and the pro bono lawyers</li> </ol>

COURT	MEETINGS HELD	ACHIEVEMENTS	CHALLENGES
<b>KITALE</b>	4	<ol style="list-style-type: none"> <li>1. Resolution Training of stakeholders of emerging issues in the administration of justice</li> <li>2. Resolution of conflict as it arises</li> <li>3. Training of stakeholders in the thematic areas, clinical officers in filling P3 forms, Investigating Officers in handling victims of sexual violence</li> <li>4. Successful children service weekend remandees service</li> <li>5. Coordination with actors in the administration of justice</li> <li>6. Successful outreach programme in Kiminini sub-county</li> <li>7. Launch of Kachibora mobile court</li> <li>8. Purchase of multifunctional printer</li> <li>9. Purchase and installation of two 10,000 litres tanks</li> <li>10. Erection of signage</li> </ol>	<ol style="list-style-type: none"> <li>1. Frequent transfer of head of departments caused delay in resolution of issues</li> <li>2. Lack of Communication of policy directions to all stakeholders by CAJ leads to delay in implementation of policies e.g the establishment of sexual offenders register</li> </ol>
<b>KITHIMANI</b>	2	<ol style="list-style-type: none"> <li>1. Completion of building of women and children cell</li> <li>2. Improved issues of sanitation and waiting bay capacity</li> <li>3. Pro bono services have been initiated with appointment of 3 advocates to handle the matters</li> <li>4. Enhanced stakeholder collaboration.</li> </ol>	<ol style="list-style-type: none"> <li>1. Inadequate funds to fit the women and children cell with a toilet</li> <li>2. Lacks of funds to establish a mobile court</li> <li>3. Funding challenges in within the justice sector</li> <li>4. Increased need to fund pro bono cases</li> <li>5. Cases of minors being compromised are being reported</li> </ol>
<b>KYUSO</b>	4	<ol style="list-style-type: none"> <li>1. Abandoned /neglected minors have a safe haven within the</li> <li>2. Disputes are now resolved amicably within the community through ADR</li> </ol>	<ol style="list-style-type: none"> <li>1. Lack of funding hampered implementation of some of the activities in the workplan</li> <li>2. Request for mobile court was still awaited.</li> </ol>

COURT	MEETINGS HELD	ACHIEVEMENTS	CHALLENGES
LAMU	3	<ol style="list-style-type: none"> <li>1. Held community sensitization on the role of the court in the justice system through a radio programme on Sifa FM</li> <li>2. Procured 7 office chairs for various offices in the court</li> </ol>	<ol style="list-style-type: none"> <li>1. The radio coverage is limited to the island only. Far-flung areas like Faza are not reached. Long distances to get to the station which demoralises participants</li> <li>2. Low attendance to CUC meetings by members due to vastness of the island. Members from remote areas like Kiunga find it hard to attend meetings regularly.</li> </ol>
LIMURU	3	<ol style="list-style-type: none"> <li>1. Well attended meetings</li> </ol>	<ol style="list-style-type: none"> <li>1. Lack of funds</li> </ol>
LODWAR	3	<ol style="list-style-type: none"> <li>1. Held 3 CUC meetings for the Financial year under review</li> <li>2. Visited GK prison Lodwar and were able to initiate criminal review of various cases</li> <li>3. Enhanced production of remandees in court</li> <li>4. Charters and notices have been displayed on the notice board and suggestion box erected in front of the administration block 5</li> <li>5. A construction of a rescue centre by the County Government is ongoing</li> </ol>	<ol style="list-style-type: none"> <li>1. Lack of funds to finance the venue for holding meetings</li> <li>2. Lack of sufficient vehicles to transport remandees to court</li> <li>3. Low literacy levels inhibit free flow of information to stakeholders</li> <li>4. Slow construction of the rescue centre</li> </ol>
LOITOKTOK	2	<ol style="list-style-type: none"> <li>1. Better appreciation of the work of the CUC by the members of public</li> </ol>	<ol style="list-style-type: none"> <li>1. Lack of funding</li> </ol>

COURT	MEETINGS HELD	ACHIEVEMENTS	CHALLENGES
<b>MAKADARA</b>	5	<ol style="list-style-type: none"> <li>1. Improved working relations by setting up of procedures, processes and practices.</li> <li>2. Setting goals as a CUC through multi-agency collaboration on reduction of backlog led to improved coordination within departments.</li> <li>3. Efficient and effective service delivery by Multi-Agency reports Setting up of pro bono committee.</li> <li>4. Launch of Makadara CCUC.</li> <li>5. Purchasing of children Toys and snacks for children clients during the community outreach at Mukuru kwa Reuben Introduction of Plea bargaining.</li> <li>6. Streamlined communication through creation of forms to be utilized by remandees and respective court</li> <li>7. Conducting of children Service week.</li> <li>8. Prison Visits by CUC members.</li> </ol>	<ol style="list-style-type: none"> <li>1. Number of police stations covered by the court.</li> <li>2. Frequent transfers of police officers.</li> <li>3. Volume of caseload</li> <li>4. Funding of CUC activities.</li> <li>5. Photocopying of statements for accused persons in remand</li> </ol>
<b>MAKINDU</b>	4	<ol style="list-style-type: none"> <li>1. Stakeholders were more informed of their roles</li> <li>2. Improved issuance of witnesses statement to accused persons in custody</li> <li>3. Availability of police files and witnesses during hearings.</li> <li>4. Reduced adjournments.</li> </ol>	<ol style="list-style-type: none"> <li>1. Lack of sufficient funds and allowance to members</li> </ol>

COURT	MEETINGS HELD	ACHIEVEMENTS	CHALLENGES
<b>MANDERA</b>	4	<ol style="list-style-type: none"> <li>1. Judiciary has been demystified: people harbour no fear of the court system: they would prefer coming to court if and when arrested by police.</li> <li>2. Smooth working relationships between stakeholders</li> <li>3. A mobile court has been established to cover areas of Rhamu and Elwak sub counties</li> </ol>	<ol style="list-style-type: none"> <li>1. Cases of (VAWG) violence against Women and Girls are still prevalent</li> <li>2. Some sections of the society still prefer the traditional Maslaha system which is injurious to the victims and does not protect the rights of the victim</li> <li>3. The large geographical area means that many people cannot access justice because of the distance they have to travel to reach the court or the police</li> <li>4. Legal representation is lacking in this area where most victims are illiterate and do not understand the court processes</li> </ol>
<b>MARALAL</b>	2	<ol style="list-style-type: none"> <li>1. Successful capacity training for our CUC members on how to fill the CUC quarterly reporting templates by CUC agencies.</li> <li>2. Training on the enforcement of Wild-life Conservation and Management Act 2013, the place of Mediation in the Judiciary, use of Identification Parades and Doctrine of recent possession in criminal trials and the enforcement of the Forest Conservation and Management Act 2016.</li> <li>3. A Whatsapp group was formed for effective communication among CUC members.</li> <li>4. Expansion of the Committee to include Administration Police Service</li> <li>5. Reduction of case backlog through prioritization of hearing/dismissal of old cases. Procurement of an additional leased printer for use in provision of witness statements to accused persons.</li> </ol>	<ol style="list-style-type: none"> <li>1. Lack of funding.</li> </ol>
<b>MARIAKANI</b>	4	<ol style="list-style-type: none"> <li>1. Inmates gain knowledge and get to</li> </ol>	<ol style="list-style-type: none"> <li>1. Insufficient funds</li> </ol>

COURT	MEETINGS HELD	ACHIEVEMENTS	CHALLENGES
<b>MARIMANTI</b>	4	<ol style="list-style-type: none"> <li>1. Construction of Exhibit Stores</li> <li>2. Construction of Children Protection Unit (CPU)</li> <li>3. Purchase of Power Generator 6.5KVA</li> <li>4. Purchase of Photocopier and issuance of accused statements</li> <li>5. Purchase of photocopying papers</li> <li>6. Purchase of two 5000ltrs water tanks</li> <li>7. Promotion of Alternative Dispute Resolution (ADR)</li> <li>8. Promotion of Alternative Justice System (AJS)</li> <li>9. Prison visits with detergents / cleaning materials for remandees.</li> </ol>	<ol style="list-style-type: none"> <li>1. Lack of funding on CUC meetings from Judiciary Hqtrs.</li> <li>2. Stringent World Bank timeliness on JPIP Funding</li> <li>3. Failure to get bill of quantities on time from M.O.P.W and Judiciary headquarters</li> </ol>
<b>MARSABIT</b>	3	<ol style="list-style-type: none"> <li>1. Had training on child protection through the watotot we project that increased understanding and knowledge on child rights</li> </ol>	<ol style="list-style-type: none"> <li>1. It was sponsored by EACH-Right organisation</li> </ol>
<b>MASENO</b>	4	<ol style="list-style-type: none"> <li>1. Effective customer service after the construction of the customer care block</li> <li>2. Remandees are produced in court in time unlike in the past</li> <li>3. Unnecessary adjournment reduced</li> <li>4. Backlog has reduced greatly</li> <li>5. Filing of P3 forms has improved</li> </ol>	<ol style="list-style-type: none"> <li>1. Poor attendance to meetings at times due to the long distance travelled by members</li> <li>2. Lack of funds for transport reimbursement</li> </ol>
<b>MAVOKO</b>	5	<ol style="list-style-type: none"> <li>1. Mavoko land acquisition 3 acre</li> <li>2. Trained CUC members</li> <li>3. Improved relationship between stake holders</li> </ol>	<ol style="list-style-type: none"> <li>1. Lack of funding</li> </ol>

COURT	MEETINGS HELD	ACHIEVEMENTS	CHALLENGES
<b>MBITA</b>	4	<ol style="list-style-type: none"> <li>1. Trained CUC members on their roles, case management and on child protection</li> <li>2. Sensitized students on the danger of drugs and on sexual offences</li> <li>3. Increased reporting on sexual offences cases attributed to sensitisation on the reporting procedures</li> <li>4. Continuation of mobile court in magunga due to networking with world vision</li> <li>5. The spirit of teamwork has increased among stakeholders</li> </ol>	<ol style="list-style-type: none"> <li>1. Existence of social vices like sexual and gender based violence which need continual sensitization</li> <li>2. Inadequate knowledge on ADR and AJS</li> <li>3. Existence of many islands within the area which are many kilometers away from the main court hence the delay in finalization of cases from these</li> <li>4. Delay in disbursement of CUC funds</li> <li>5. Lack of funds for CUC open days</li> <li>6. Lack of CUC secretariat for coordination of CUC activities</li> <li>7. Inadequate personnel in the office of the prosecution to serve the two courts</li> <li>8. Delay in repairing the Judiciary vehicle</li> </ol>
<b>MERU</b>	4	<ol style="list-style-type: none"> <li>1. Several cases have been referred to AJS</li> <li>2. ICT equipment have reduced backlog and delay in providing proceedings.</li> <li>3. We provide copies of witness statement without delay.</li> <li>4. A portion has been identified to construct the children cell.</li> <li>5. Organized Service week.</li> </ol>	<ol style="list-style-type: none"> <li>1. Members of the public and litigants not embracing AJS/ADR due to lack of sensitization.</li> <li>2. There are no funds to maintain ICT equipment (computer and printers.)</li> <li>3. Low participation of advocates in organizing Children service week.</li> <li>4. Inadequate funds for pro-bono briefs</li> <li>5. Inordinate delay for approval of design for construction of the children cells.</li> </ol>



COURT	MEETINGS HELD	ACHIEVEMENTS	CHALLENGES
<b>MILIMANI LAW</b>		<ol style="list-style-type: none"> <li>1. Held regular CUC meetings. Active stakeholders engagements.</li> <li>2. Adopted Kangemi Primary School for necessary assistance as part of co-operate social responsibility and community outreach. Members made individual contributions bought desks for the school and also planted trees.</li> <li>3. CM Milimani CUC with the a grant from JPIP bought a photocopying machine for use by stakeholders.</li> <li>4. Witness statements are now readily provided to accused persons hence enhance to access to, and expeditious delivery of justice.</li> <li>5. Deputy Registrars have taken up hearing of cases in the magistrates Court thereby assisting reduce case backlog. Now we operate 19 Criminal Courts including DRs and Traffic Courts.</li> </ol>	<ol style="list-style-type: none"> <li>1. Inadequate Funding for CUCs: There are 7 High Court Divisions, one ELC and 5 Magistrates' sections - Criminal, Children, Anti-corruption City Court each requiring independent funding but only one allocation made.</li> <li>2. Delayed disbursement of CUC funding leading to delays in holding meeting and activities.</li> <li>3. No customized toilets facilities for Persons with disabilities</li> </ol>
<b>MILIMANI CRIMINAL</b>	4	<ol style="list-style-type: none"> <li>1. Held regular CUC meetings. Active stakeholders engagements.</li> <li>2. Adopted Kangemi Primary School for necessary assistance as part of co-operate social responsibility and community outreach. Members made individual contributions bought desks for the school and also planted trees.</li> <li>3. CM Milimani CUC with the a grant from JPIP bought a photocopying machine for use by stakeholders.</li> <li>4. Witness statements are now readily provided to accused persons hence enhance to access to, and expeditious delivery of justice.</li> <li>5. Deputy Registrars have taken up hearing of cases in the magistrates Court thereby assisting reduce case backlog. Now we operate 19 Criminal Courts including DRs and Traffic Courts.</li> </ol>	<ol style="list-style-type: none"> <li>1. 1. Inadequate funding for the CUC</li> <li>2. Delayed disbursement of CUC funding leading to delays in holding meeting and activities.</li> <li>3. No customized toilets facilities for Persons with disabilities</li> </ol>

COURT	MEETINGS HELD	ACHIEVEMENTS	CHALLENGES
<b>MILIMANI CHILDREN</b>	7	<ol style="list-style-type: none"> <li>1. Painting works and drawings for the children court</li> <li>2. Paid a visit to Kamiti juvenile prison</li> <li>3. Held a training for probono advocates which was sponsored by Pendekezo Letu Organization. 76 advocates qualified and were admitted to the scheme.</li> <li>4. Several cases have been resolved through the mediation process and thus reducing backlog Paid a visit to Gitathuru rehabilitation centre and delivered donations by members of the CUC</li> <li>5. Advocates donated mattresses, clothes and cash to the children holding unit</li> </ol>	<ol style="list-style-type: none"> <li>1. Lack of funds to implement some activities</li> </ol>
<b>MOLO</b>	4	<ol style="list-style-type: none"> <li>1. Brings all court users together where issues of mutual concern are addressed</li> <li>2. It creates a smooth running of court processes</li> <li>3. Clients are served better as a result of addressing the challenges</li> <li>4. Members get to know each other one on one.</li> <li>5. Reduction in the number of S.O cases</li> <li>6. Reduced case of FGM as a result of sensitization of the public</li> <li>7. Reduced cases of burglary and illicit brewers.</li> </ol>	<ol style="list-style-type: none"> <li>1. Inconsistent members</li> <li>2. Poor participation of stakeholders in contribution to committee matters</li> <li>3. There is the issue of non performing sub-committees on allocated tasks</li> <li>4. Lack of follow up on resolved issues</li> <li>5. The chair is overwhelmed with other judicial duties</li> <li>6. Abrupt convening of CUC meetings</li> <li>7. Lack of enough stationary for CUC activities</li> <li>8. The area under our jurisdiction is vast and has poor road network thus hindering our services</li> <li>9. There is no other charitable organization to support our efforts</li> </ol>
<b>MOYALE</b>	4	<ol style="list-style-type: none"> <li>1. Purchase and installation of water tank.</li> <li>2. Purchase of furniture for Sololo under Moyale Mobile Court.</li> </ol>	<ol style="list-style-type: none"> <li>1. Power outage in Moyale almost halt office activities.</li> </ol>

COURT	MEETINGS HELD	ACHIEVEMENTS	CHALLENGES
<b>MUKURWEINI</b>	4	<ol style="list-style-type: none"> <li>1. Accused persons can now be supplied with witness statements. This has reduced the number of adjournments made due to lack of witness statements leading to an increase of number of fresh cases heard on the first day when cause listed.</li> <li>2. Our clients can now access clean drinking water. This has created conducive environment to those members of public seeking our services making the court friendly.</li> <li>3. Refurbished Waiting bay is friendly to our customers.</li> <li>4. Children cannot be mixed with adults and the children's lounge is also friendly to minors in conflict with the law.</li> <li>5. The contractor undertaking construction of the new court building was able to start the project as scheduled due to facilitation of NEMA lead expert conduct an Environmental &amp; Social Impact Assessment by the CUC.</li> </ol>	<ol style="list-style-type: none"> <li>1. Lack of proper funding in all CUC activities proposed e.g. holding of public barazas, funding of pro-bono services and CSR.</li> </ol>
<b>MUMIAS</b>	4	<ol style="list-style-type: none"> <li>1. Has held all meetings successfully</li> </ol>	<ol style="list-style-type: none"> <li>1. Inadequate courtrooms for all themagistrates</li> <li>2. Frequent power</li> <li>3. Lack of security structures such as perimeter wall and CCTV cameras</li> <li>4. Lack of vehicles for the children department to manage their work. Inadequate children officers serving the county</li> <li>5. Not driver available for the probation department</li> <li>6. Limited capacity by Investigating officers and prosecutors in prosecuting defilement, child trafficking, cyber crime, witness protection and transborder cases</li> </ol>

COURT	MEETINGS HELD	ACHIEVEMENTS	CHALLENGES
<b>MWINGI</b>	2	1. Construction of women and children holding in the court compound.	1. Inadequate funding 2. Judicial officers overwhelmed by court work 3. Non-attendance by some key stakeholders 4. None or slow implementation of the CUC resolutions by some stakeholders
<b>NAIVASHA</b>			
<b>NAKURU</b>	4	1. Capacity building achieved 2. Improved stakeholder interaction 3. Cases of missing police files has reduced 4. Improvement in handling of children cases since we have a Children's CUC which is a sub-committee which brings together all the stakeholders dealing with Children's cases. 5. Improved working relationship between the ODPP and the police	1. Limited funding 2. Shortage of prosecutors 3. Lack of Mediators to deal with cases for Alternative Dispute Resolution 4. Time constraints for effective discussions
<b>NANYUKI</b>	4	1. Reduction in case backlog 2. Enhanced cooperation with stakeholders 3. Better service delivery 4. Reduction in number of people in custody 5. Sensitization on children matters 6. Special treatment of persons with disabilities 7. Public engagements and prison visits by the CUC 8. Removal and placement of street children	1. Failure by police to bond witnesses and avail police files 2. Failure to produce statements to accused persons on time 3. Challenges in availing pre-bail reports 4. Frequent and unnecessary adjournments by the prosecution 5. Lack of co-ordination by various security agencies especially on wildlife and environment related matters 6. Lack of cells for children and women 7. Lack of witness protection board
<b>NAROK</b>	4		1. Lack of funding 2. Lack of space 3. Lack of facilities

COURT	MEETINGS HELD	ACHIEVEMENTS	CHALLENGES
<b>NDHIWA</b>	2	<ol style="list-style-type: none"> <li>1. The request for construction of the children's remand home has been forwarded to the Homa bay County offices</li> <li>2. More police officers have been trained on gender based violence 3</li> </ol>	
<b>NGONG</b>		<ol style="list-style-type: none"> <li>1. Customer Care Tent.</li> <li>2. 1 Container which is being used as registries (criminal, traffic)</li> <li>3. Purchasing of few benches.</li> </ol>	<ol style="list-style-type: none"> <li>1. Lack of holding cells</li> <li>2. Lack of enough space.</li> <li>3. Lack of furniture, benches.</li> <li>4. Lack of store for keeping exhibits</li> <li>5. Lack of library.</li> </ol>
<b>NYAMIRA</b>	2	<ol style="list-style-type: none"> <li>1. 45 chiefs trained on ADR, Succession matters, children matters.</li> <li>2. Disposal of cases through ADR has increased.</li> <li>3. Backlog of cases in court has reduced due to ADR.</li> <li>4. Number of complaints against chiefs has reduced.</li> <li>5. 30 CUC members trained on court activities</li> </ol>	<ol style="list-style-type: none"> <li>1. Funding</li> <li>2. Getting experienced trainers.</li> <li>3. Low turnout of CUC members.</li> </ol>
<b>OGEMBO</b>	2	<ol style="list-style-type: none"> <li>1. Improved accessibility of our court through the erection of signages</li> <li>2. Improved efficiency amongst members of staff.</li> <li>3. Reduction of case backlog.</li> <li>4. Improvement in availing of police files to court.</li> </ol>	<ol style="list-style-type: none"> <li>1. Late disbursement of funds from JPIP to fund our CUC meetings.</li> <li>2. Non attendance of some key stakeholders.</li> </ol>
<b>OTHAYA</b>	5	<ol style="list-style-type: none"> <li>1. Students enlightened on Court Procedures and applicable laws during school sensitization programme</li> <li>2. Reduction in criminal activities that the youths engage in such as Arson, Sexual offences and drugs abuse</li> <li>3. Purchase of photocopier and court furniture</li> <li>4. Adoption of Alternative Dispute Resolution thus clearing backlog</li> </ol>	<ol style="list-style-type: none"> <li>1. Lack of funding to support programs</li> <li>2. Lack of adequate funding to procure Photocopying papers, Tonners and more Furniture</li> <li>3. Lack of legal framework to guide the ADR process</li> <li>4. Lack funds to support ADR programmes</li> </ol>
<b>OYUGIS</b>	4	<ol style="list-style-type: none"> <li>1. Improvement in awareness of court procedure</li> </ol>	<ol style="list-style-type: none"> <li>1. Lack of funding of our station 2017/2018 financial year</li> <li>2. Lack of our own facilities</li> </ol>

COURT	MEETINGS HELD	ACHIEVEMENTS	CHALLENGES
<b>RONGO</b>	2	<ol style="list-style-type: none"> <li>1. Cases are heard on the 1st day fixed for hearing</li> <li>2. Statements given to the accused people on date of plea</li> <li>3. Witnesses are reimbursed transport.</li> <li>4. Warrant of arrest reduced</li> <li>5. Pre trial are held before hearing</li> <li>6. Able to get JPIP funds</li> <li>7. Old civil matters dismissed for want of prosecution</li> <li>8. Cases adjournment minimized</li> <li>9. Good relationship created with the stakeholders.</li> </ol>	<ol style="list-style-type: none"> <li>1. Inadequate funds to held a meeting</li> <li>2. Some members do not attend due to lack of transport</li> <li>3. Uncooperative members from district treasury to release funds in advance for payment of hotel functions</li> </ol>
<b>RUNYENJES</b>	4	<ol style="list-style-type: none"> <li>1. Has actively tackled the broad CUC workplanstrategic issue 3 that majorly defines the Operationalization Framework Of The CUC</li> <li>2. Core expected outputs and activities have been formulated and measured against the set performance indicators; gauged annually through (PMMU), the station has managed a base line score of 100% against a set target of 100% in the last financial year.</li> </ol>	<ol style="list-style-type: none"> <li>1. Delayed disbursement of funds hence delayed undertaking of all slotted CUC activities.</li> <li>2. Lack of facilitators allowances so as to ensure better training to the participants and motivation on the facilitators for CUC meetings</li> <li>3. Reduced timeframe for implementing/undertaking of the CUC activities thus full realization of set goals, to have funding allocations for all the 3 quarters factored in the 1st quarter of each financial year.</li> <li>4. Lack of transport allowances on need be basis for stakeholders/participants when attending trainings so as to ensure full attendance.</li> <li>5. Low budgetary allocation since capping of some vote items is constraining the full operationalization of the CUC framework.</li> </ol>

COURT	MEETINGS HELD	ACHIEVEMENTS	CHALLENGES
<b>SIKAGO</b>	7	<ol style="list-style-type: none"> <li>1. Bigger truck provided by the OCS</li> <li>2. Proposal for making shelves at the registries was done and approved by all members. Metal shelves were made.</li> <li>3. We also purchased two computers and a printer/photocopier which are kept in our court registry</li> <li>4. Identified liaison officers who are able to fill the sexual offences data</li> <li>5. PDP document sent to physical planner to make a follow up for title deed for the court at Nairobi</li> </ol>	<ol style="list-style-type: none"> <li>1. Lack of adequate transport for remandees</li> <li>2. Our registries are squeezed and we have limited space</li> <li>3. There are police stations which are very far away from Sikaogo so they take time to return stakeholders forms</li> <li>4. Prison is around 27 kilometres away and sometimes we have exhausted AIE for travelling allowance</li> <li>5. Insufficient funds to cater for procurement committee allowances</li> </ol>
<b>SIRISIA</b>	3	<ol style="list-style-type: none"> <li>1. A fully functional solar energy system installed to stand in case of black outs, photocopy of statements not interrupted.</li> <li>2. Fully furnished board room with 30 chairs, 4 tables and curtains for the newly renovated boardroom.</li> <li>3. Increase in number of witnesses attending court as a result of facilitation hence increase in court clearance rate of cases.</li> </ol>	<ol style="list-style-type: none"> <li>1. Delays in funding for performance of activities.</li> <li>2. Station is not delinked and the Sub-County has one District accountant who is mostly absent and not committed to the Sustaining Judiciary Transformation. He occasions delays in committing funds and disbursing funds and surrender of funds as well as returns.</li> </ol>
<b>SOTIK</b>	2	<ol style="list-style-type: none"> <li>1. Construction of a waiting bay was constructed and water tank purchased and commissioned.</li> </ol>	<ol style="list-style-type: none"> <li>1. Lack of funds for training Chiefs and Investigating officers.</li> </ol>



COURT	MEETINGS HELD	ACHIEVEMENTS	CHALLENGES
<b>TAMU</b>	4	<ol style="list-style-type: none"> <li>1. Ability to hold all quarterly meetings</li> <li>2. Purchasing of Laptop for the station for DCRT backup</li> <li>3. Training the investigating officers and Chiefs</li> <li>4. Creating awareness and open interaction by different stakeholders</li> <li>5. Visiting Achego children's home and donating assorted items.</li> </ol>	<ol style="list-style-type: none"> <li>1. Lack of adequate funding</li> <li>2. Lack of conference facilities in the locality for holding meetings</li> <li>3. Lack of adequate funding for witness reimbursement</li> <li>4. Lack of sign language interpreter</li> <li>5. Lack of modern customer care bay and toilets (under construction)</li> <li>6. Poor road network connecting court to the highway</li> <li>7. Lack of housing and social amenities for staff</li> <li>8. Lack of resident lawyers in Muhoroni</li> </ol>
<b>TAVETA</b>	4	<ol style="list-style-type: none"> <li>1. High level of customer/stakeholder satisfaction.</li> <li>2. Improved services to our stakeholders.</li> </ol>	
<b>TAWA</b>	4	<ol style="list-style-type: none"> <li>1. The accused person and the police can easily acquire witness statements.</li> <li>2. The police undertook the responsibility of maintaining the copy machine when need arises.</li> <li>3. Community sensitization to access to justice</li> <li>4. Promotes people- focused delivery to justice</li> <li>5. Reduction of case backlog through ADR</li> <li>6. Promoting inter-agency co-operation</li> </ol>	<ol style="list-style-type: none"> <li>1. Inadequate funding</li> <li>2. Inconsistency in attendance affected mostly by member transfers</li> <li>3. Lack of motivation for members</li> <li>4. Lack of interest by some stakeholders</li> <li>5. Prosecution challenges; one of the State Counsel is under severe substance abuse of alcohol. Due to his many criminal cases are yet to be concluded, and hence affecting the criminal cases returns.</li> </ol>
<b>UKWALA</b>	6	<ol style="list-style-type: none"> <li>1. Promoted cordial working relationship</li> <li>2. Solved the problems of power outages used in typing of proceedings and court orders.</li> <li>3. People sensitized on court procedure and alternative dispute resolution.</li> <li>4. Able to get feedback from remandees/inmates</li> </ol>	<ol style="list-style-type: none"> <li>1. Insufficient funds</li> <li>2. Delay in disbursement of funds</li> <li>3. Lack of facilitation – transport and lunch</li> <li>4. Non commitment/laxity among some members</li> </ol>

COURT	MEETINGS HELD	ACHIEVEMENTS	CHALLENGES
<b>VIHIGA</b>	6	<ol style="list-style-type: none"> <li>1. Training of various stakeholders on Case Administration</li> <li>2. Launch of Vihiga County CUC and public engagement</li> <li>3. Training of investigating officers on Sexual Offences Act and evidence gathering</li> <li>4. Sensitization of bodaboda operators on traffic rules, bail and bond administration and on discrimination towards people with disabilities.</li> </ol>	<ol style="list-style-type: none"> <li>1. Lack of funding</li> </ol>
<b>VOI</b>	4	<ol style="list-style-type: none"> <li>1. Through the training of CUC members on investigation and prosecution led to improved standard of investigation and prosecution.</li> <li>2. Improved case hearing certainty due to prompt and timely supply of witness statements to accused persons through the purchase of photocopier.</li> <li>3. Enhanced efficiency in service delivery and timely submission of DCRT and other necessary data through the installation of solar power.</li> <li>4. Improved legal awareness.</li> <li>5. Improved the lives of less fortunate via voluntary service. This was done by putting up of a gate and sentry box at Tumaini Children's Home as the Committee CSR activity.</li> </ol>	<ol style="list-style-type: none"> <li>1. Financial constraint and conditionality hence inability to source for trainers</li> <li>2. Inconsistency in members attendance impacting on follow up.</li> <li>3. Limited finances impacting on the capacity of the alternative power source.</li> <li>4. Illiteracy impacting on the absorption of the legal knowledge.</li> <li>5. Institutional failure to fund charitable activities limiting the extent of CSR activities</li> </ol>
<b>WAJIR</b>	12	<ol style="list-style-type: none"> <li>1. Regular supply of water within the court premises through the purchase of water tanks</li> <li>2. Improved sanitation by the refurbishment of public toilets</li> <li>3. Purchase of metal detectors has ensured the Security of staff and court users guaranteed</li> </ol>	<ol style="list-style-type: none"> <li>1. Repatriation of aliens has been a challenge</li> </ol>

COURT	MEETINGS HELD	ACHIEVEMENTS	CHALLENGES
<b>WANG'URU</b>	6	<ol style="list-style-type: none"> <li>1. Drastic reduction in the number of missing</li> <li>2. Increased confidence by the public to the court</li> <li>3. Constant availability of water for running court hygiene</li> <li>4. Witness statements produced in time thus reducing the number of days spend in remand by the accused</li> <li>5. Constitution of a probono committee</li> <li>6. Speedy determination of cases through Alternative Dispute Resolution</li> <li>7. Received a donation of chairs from the business community which have helped a lot in the registry</li> </ol>	<ol style="list-style-type: none"> <li>1. Lack of funding to acquire land for the mobile court in Karaba</li> <li>2. Poor road network to Karaba</li> <li>3. There is no women's prison in Kirinyaga county</li> <li>4. There is no children's remand home in Kirinyaga county</li> <li>5. Delays in payment of probono advocates</li> <li>6. There are no cells for holding children and female remandees due to lack of funds and space.</li> <li>7. Court Two building belongs to the county council and is used at night to keep goats. Thus, the court stinks.</li> </ol>
<b>WINAM</b>	3	<ol style="list-style-type: none"> <li>1. Improved infrastructure (public toilet) Renovation of the prosecutor's office</li> <li>2. Improved registry efficiency through the purchase of 2 computers and a laptop</li> </ol>	<ol style="list-style-type: none"> <li>1. Non-attendance by some of the members</li> <li>2. Lack of funding</li> <li>3. Delay in funding</li> </ol>

COURT	MEETINGS HELD	ACHIEVEMENTS	CHALLENGES
WUNDANYI	3	<ol style="list-style-type: none"> <li>1. Accused are well served with the statements on time for them to prepare for their defence</li> <li>2. People with disabilities are catered for but still need a well constructed ramp.</li> <li>3. We have already received funds for the 1st quarter.</li> <li>4. Through CUC we managed to identify most of the activities named above.</li> <li>5. Witnesses have now gathered courage of coming to court when required or when bonded.</li> <li>6. Issuing notices, we managed to reduce backlog.</li> </ol>	<ol style="list-style-type: none"> <li>1. Persons with disabilities cannot access the registry as the concrete slab caters for the open court. Inadequate funds for constructing a ramp.</li> <li>2. The amount received caters for 3 court officials and 2 securities where applicable excluding prosecutor. Due to poor roads, officers will be forced to use longer routes.</li> <li>3. Despite paying the witnesses on time, the police have continued delaying justice by not bonding the witnesses on time and producing the police files when required.</li> <li>4. Doctors not attending court as required due to shortage of personnel therefore causing delay in finalizing SOA matters.</li> </ol>

# ANNEX

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## Activities presided over by the Judiciary leadership for the Period 2017/ 18

	DATE	ACTIVITY
1.	1 <sup>st</sup> to 8 <sup>th</sup> July 2017	Kenya Women Judges Association and Judges Colloquium - Mombasa
2.	30 <sup>th</sup> June 2017	Milimani Magistrates' Criminal Courts Open Day
3.	2nd -5 <sup>th</sup> July 2017	Annual Judges Colloquium
4.	11 <sup>th</sup> July 2017	Senior Counsels Luncheon
5.	13 <sup>th</sup> July 2017	Launch of the State of the Judiciary and Administration of Justice (SOJAR) Annual Report
6.	26 <sup>th</sup> July 2017	Independent commissions breakfast meeting
7.	3 <sup>rd</sup> August 2017	Launch of EDR Bench Book – CJ's Garden
8.	7 <sup>th</sup> Aug. 2017	Meeting with Election Observers
9.	25 <sup>th</sup> -29 Aug. 2017	Commonwealth Magistrates and Judges Association Conference-Dar-e-salaam
10.	12 <sup>th</sup> September 2018	Swearing in-Chair and members (CMAT)
11.	21 <sup>st</sup> September 2018	Swearing in of the Tax Appeals Board (KRA)
12.	8 <sup>th</sup> to 10 <sup>th</sup> September 2017	Kenya Women Judges Annual Conference
13.	10 <sup>th</sup> October 2018	Swearing in of the Transport Licensing Appeals Board Members (TLATB)
14.	17 <sup>th</sup> October 2017	Admission of Advocates
15.	18 <sup>th</sup> October 2017	Meeting with Commonwealth Advocates
16.	30 <sup>th</sup> October 2017	Meeting with Supreme Court Judges
17.	6 <sup>th</sup> November 2017	Inauguration of the new Employment and Labour Relations Court Principal Judge at Milimani Commercial Courts
18.	14 <sup>th</sup> Nov	National coordinating Committee meeting
19.	15 <sup>th</sup> -17 <sup>th</sup> November 2017	Court visit (Makueni and Kitui)
20.	27 <sup>th</sup> November 2017	Association of Law Reform Agencies of Eastern and Southern Africa ALRAESA Conference (KLRC)
21.	5 <sup>th</sup> December 2017	Swearing in-New Magistrates
22.	8 <sup>th</sup> December 2017	Nakuru Law Courts visit to inspect ongoing construction of the new High Court
23.		Opening of the Kenya Magistrates and Judges Conference
24.	11 <sup>th</sup> December 2017	Delivery of the presidential election petition judgment
25.	15 <sup>th</sup> December 2017	SOJAR Report Launch
26.	19 <sup>th</sup> December 2017	Meeting with Kenya Magistrates and Judges Association Leadership
27.	2 <sup>nd</sup> January 2018	Meeting with the Principal Judge of the High Court
28.	15 <sup>th</sup> January 2018	Launch of National Committee on Criminal Justice Reforms
29.	19 <sup>th</sup> January 2018	Swearing Ceremony of the Deputy Inspector General and Director of Criminal Investigations.
30.	22 <sup>nd</sup> January 2018	Opening of the Law Society of Kenya Colloquium.
31.	26 <sup>th</sup> January 2018	Official opening of the Parliamentary JLAC retreat
32.	28 <sup>th</sup> -31 <sup>st</sup> January 2018	CJ's visit to see progress with the court constructions in the Coast region (Mombasa, Kwale, and Voi)
33.	2 <sup>nd</sup> February 2018	Launch of the Judiciary Integrated Financial Management System (JIFMAS)
34.	2 <sup>nd</sup> February 2018	Admission of new Advocates
35.	2 <sup>nd</sup> February 2018	Meeting with the Sports Tribunal
36.	7 <sup>th</sup> February 2018	Swearing in of the Council Legal Education Tribunal members
37.	10 <sup>th</sup> to 14 <sup>th</sup> February 2018	Court visit to western (Kakamega, Siaya and Kisumu)
38.	9 <sup>th</sup> February 2018	Meeting with the Environmental Tribunal
39.	12 <sup>th</sup> February 2018	Kakamega Law Courts visit- Laying foundation stone of the new High Court building.
40.	13 <sup>th</sup> February 2018	Siaya Law Courts visit- Inspection of the Siaya Court
41.	15 <sup>th</sup> February 2018	Meeting with Advocates.
42.	18 <sup>th</sup> February 2018 to 25 <sup>th</sup> February 2018	2 <sup>nd</sup> Cairo High Level Meeting of Chief Justices of Constitutional and Supreme Courts
43.	19 <sup>th</sup> February 2018	Swearing in of the Public Private Partnerships Petitions Committee Members
44.	20 <sup>th</sup> February 2018	Chairperson forum meeting

	DATE	ACTIVITY
45.	23 <sup>rd</sup> February 2018	Meeting with International Foundation For Electoral Systems (IFES) and Independent Electoral and Boundaries Commission (IEBC)
46.	24 <sup>th</sup> Feb-7 <sup>th</sup> march	Executive leadership program for courts & tribunals (Singapore)
47.	5 <sup>th</sup> March 2018 to 8 <sup>th</sup> March 2018	Guest Speaker – 12 <sup>th</sup> Parliament Post Election Seminar for members of National Assembly
48.	7 <sup>th</sup> March 2018	AWAK - Speaker at the 3 <sup>rd</sup> Leadership & Accountability Conference 2018
49.	8 <sup>th</sup> March 2018	Remarks - Launch of the Justice Needs & Satisfaction Survey Report
50.	9 <sup>th</sup> March 2018	NCAJ Council meeting and launch of PLEAD programme
51.	12 <sup>th</sup> March 2018	Elections of the Principal Judge
52.	23 <sup>rd</sup> March 2018	Launch of Co-operative Tribunal Service Week
53.	27 <sup>th</sup> -28 <sup>th</sup> march 2018	Admission of new Advocates
54.	28 <sup>th</sup> March 2018	Meeting with Performance and Management Committee on PMMU field evaluation report.
55.	9 <sup>th</sup> April 2018	Swearing in- Insurance Appeals Tribunal.
56.	10 <sup>th</sup> April 2018	Meeting with PAC
57.	12 <sup>th</sup> April 2018	Visit to the Kadhis court, Upper Hill
58.	15 <sup>th</sup> -21 <sup>st</sup> April 2018	Supreme Court Retreat
59.	22 <sup>nd</sup> April 2018 to 26 <sup>th</sup> April 2018	Election of Principal Judge & Annual Judges Conference
60.	25 <sup>th</sup> April	National Centre Terrorism stakeholder Meeting at NCTC Karen
61.	25 <sup>th</sup> April 2018	Induction training for newly transited tribunals to the Judiciary
62.	25 <sup>th</sup> April 2018	High Court Judges Retreat
63.	26 <sup>th</sup> April 2018	Invitation to the Judicial Performance Improvement Project Steering Committee
64.	26 <sup>th</sup> April 2018	Meeting with JPIP Steering Committee
65.	27 <sup>th</sup> April 2018	Launch of the Performance Management & Measurement Understandings Evaluation Report, 2016/2017
66.	27 <sup>th</sup> April 2018	Official Launch of PMMU Evaluation Report 2016/17
67.	4 <sup>th</sup> May 2018	Open day, Milimani Commercial Court
68.	11 <sup>th</sup> May 2018	Swearing in of the Power of Mercy Advisory Committee
69.	15 <sup>th</sup> May 2018	Installation ceremony for Principal Judge
70.	15 <sup>th</sup> May 2018	Installation ceremony of the Principal Judge of the High Court.
71.	16 <sup>th</sup> May 2018	Justice and legal Affairs committee
72.	17 <sup>th</sup> May 2018	Stakeholder committee round table meeting
73.	17 <sup>th</sup> May 2018	Launch of Commercial Justice Sector Reform Project.
74.	22 <sup>nd</sup> May 2018	Meeting with the National Assembly Public Accounts Committee Meeting
75.	26 <sup>th</sup> June 2018	Inauguration Ceremony of Hon. Mr. Justice William Ouko, PCA
76.	6 <sup>th</sup> June 2018	Official opening of the Environment and Land Court Judges Annual Conference
77.	8 <sup>th</sup> June 2018	Signing of MOU with Governor KTL
78.	17 <sup>th</sup> June 2018	Opening Ceremony at the Annual Magistrates & Kadhis Colloquium
79.	21 <sup>st</sup> July - 2 <sup>nd</sup> June	CJ's visit to Nyando Law Courts
80.	26 <sup>th</sup> June 2018	Swearing in ceremony for the President of the Court of Appeal.
81.	27 <sup>th</sup> -28 <sup>th</sup> June 2018	Admission of Advocates.
82.	3 <sup>rd</sup> August Thursday –	Launch of EDR Bench Book – CJ's Garden
83.	8 <sup>th</sup> to 10 <sup>th</sup> September – Simba Lodge – Naivasha	KWJA Conference



Annex 2.1 Filed civil cases by type and High Court Station, FY 2017/18

	Adoption	Civil Appeal	Civil Misc.	Civil Matter	Commercial Matters	Commercial Miscellaneous	Const Human & Rights	Divorce	Family Appeal	Family Misc.	Income Tax Appeal	Judicial Misc.	Judicial Review	Probate Admin	All Civil cases
Bomet	1	10	37	2	0	0	3	0	0	3	0	0	3	33	92
Bungoma	4	40	90	10	5	0	24	0	0	1	0	1	3	6	184
Busia	0	11	82	13	0	0	7	2	0	0	0	0	11	0	126
Chuka	0	8	17	6	0	0	1	0	0	28	0	0	0	15	75
Eldoret	2	50	53	22	0	0	13	0	0	5	0	2	7	56	210
Embu	17	132	17	18	0	0	8	0	0	232	0	0	4	11	439
Garissa	0	16	0	2	0	0	19	0	0	0	0	0	2	52	91
Garsen	0	0	0	0	0	0	3	0	0	0	0	0	0	0	3
Homabay	0	24	30	6	0	0	11	0	0	1	0	3	8	5	88
Kabarnet	0	8	3	7	0	0	2	0	0	1	0	0	1	18	40
Kajiado	5	12	32	17	0	0	7	1	0	5	0	5	11	31	126
Kakamega	0	7	12	10	0	0	4	0	0	1	0	1	1	9	45
Kapenguria	0	1	3	2	0	0	0	0	0	2	0	2	2	2	14
Kericho	1	15	23	13	0	0	8	0	0	0	0	0	4	10	74
Kerugoya	0	37	44	13	0	0	0	0	0	11	0	0	0	19	124
Kiambu	29	165	338	37	0	2	77	0	0	7	0	0	31	94	780
Kisii	8	73	56	58	1	0	20	2	0	1	0	0	4	11	234
Kisumu	15	100	223	35	32	0	85	0	0	3	0	5	15	127	640
Kitale	0	16	30	14	0	0	4	1	0	1	0	0	1	18	85
Kitui	1	17	10	7	0	0	4	0	0	0	0	0	130	15	184
Lodwar	0	0	0	8	0	0	2	0	0	0	0	0	0	0	10
Machakos	28	166	572	36	0	0	33	0	0	3	0	7	15	72	932
Makueni	0	56	105	11	0	0	9	0	0	0	0	1	1	14	197
Malindi	1	55	38	60	2	10	29	5	0	12	0	7	12	29	260

	Adoption	Civil Appeal	Civil Misc.	Civil Matter	Commercial Matters	Commercial Miscellaneous	Const Human & Rights	Divorce	Family Appeal	Family Misc.	Income Tax Appeal	Judicial Misc.	Judicial Review	Probate Admin	All Civil cases
Marsabit	0	13	12	3	0	0	7	0	0	0	0	0	2	9	46
Meru	10	132	142	75	1	0	32	0	0	42	0	1	9	27	471
Migori	1	78	328	12	0	0	3	0	0	2	0	1	50	19	494
Milimani Anticorr. Div.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Milimani Civil Div.	0	66	68	76	0	2	3	0	0	0	0	0	8	0	223
Milimani C. & Tax Div.	0	1	0	20	688	416	0	0	0	0	19	0	0	0	1,144
Milimani Const. Div.	0	0	0	3	0	0	454	0	0	0	0	14	66	0	537
Milimani Criminal Div.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Milimani Family Div.	177	0	0	9	0	0	0	14	120	281	0	0	11	1,198	1,810
Milimani Jud. Rev. Div.	0	0	0	84	0	0	75	0	0	0	0	42	485	0	686
Mombasa	11	210	309	135	9	0	331	0	17	31	0	22	108	26	1,209
Muranga	5	66	159	15	0	0	47	0	3	9	0	3	10	26	343
Naivasha	2	61	80	13	0	0	6	0	2	2	0	0	5	13	184
Nakuru	14	35	120	26	2	0	14	1	1	14	0	0	19	140	386
Nanyuki	3	10	8	10	0	0	9	1	0	1	0	1	8	9	60
Narok	0	0	2	7	0	0	2	0	0	1	0	0	2	7	21
Nyamira	0	14	7	1	0	0	3	2	0	0	0	0	0	1	28
Nyandarua	4	42	47	16	0	0	11	0	0	7	0	0	8	32	167
Nyeri	6	57	86	25	0	0	14	0	1	4	0	0	3	10	206
Siaya	0	20	9	8	0	0	7	0	0	1	0	0	2	3	50
Voi	0	15	1	4	0	0	10	0	0	0	0	0	3	0	33
<b>All High Courts</b>	<b>345</b>	<b>1,839</b>	<b>3,193</b>	<b>949</b>	<b>740</b>	<b>430</b>	<b>1,401</b>	<b>29</b>	<b>144</b>	<b>712</b>	<b>19</b>	<b>118</b>	<b>1,065</b>	<b>2,167</b>	<b>13,151</b>

**Annex 2. 2 Resolved civil cases by type and High Court station, FY 2017/18**

Court Name	Adoption	Civil Appeal	Civil Misc	Civil Matter	Commercial Matters	Commercial Misc.	Const Human & Rights	Divorce	Family Appeal	Family Misc	Income Tax Appeal	Judicial Misc	Judicial Review	Probate Admin	All civil Cases
Bomet	1	2	5	2	0	0	3	0	0	0	0	0	5	63	81
Bungoma	0	15	2	9	1	0	7	0	0	1	0	0	1	75	111
Busia	0	28	15	9	0	0	5	1	0	2	0	0	2	40	102
Chuka	0	3	6	0	0	0	2	1	0	13	0	0	1	51	77
Eldoret	0	122	104	54	1	0	9	0	0	1	0	0	4	94	389
Embu	1	84	53	48	0	0	7	0	0	45	0	1	3	29	271
Garissa	0	16	3	6	0	0	5	0	0	0	0	0	4	37	71
Garsen	0	0	1	1	0	0	1	0	0	0	0	1	1	1	6
Homabay	0	36	14	5	0	0	8	0	0	2	0	1	6	205	277
Kabarnet	0	1	0	2	0	0	3	0	0	1	0	0	1	1	9
Kajiado	6	4	21	8	0	0	8	0	1	1	0	0	7	18	74
Kakamega	1	20	5	13	0	0	1	0	0	0	0	0	0	239	279
Kapenguria	0	7	4	2	0	0	1	0	0	2	0	2	2	18	38
Kericho	19	136	12	112	3	0	1	0	0	0	0	1	2	67	353
Kerugoya	0	26	6	19	0	0	10	1	2	3	0	0	11	29	107
Kiambu	9	91	120	14	1	0	19	0	0	0	0	0	21	34	309
Kisii	18	249	111	60	1	0	65	28	0	1	0	1	19	657	1,210
Kisumu	18	224	558	105	12	0	30	0	0	1	0	1	13	776	1,738
Kitale	0	3	3	5	0	0	0	0	0	2	0	0	0	64	77
Kitui	0	106	15	7	0	0	1	0	0	0	0	0	4	4	137
Lodwar	0	0	0	5	0	0	1	0	0	0	0	0	1	0	7
Machakos	6	115	348	29	0	0	7	1	0	0	0	0	2	207	715
Makueni	1	42	88	3	0	0	4	0	0	0	0	1	1	136	276

Court Name	Adoption	Civil Appeal	Civil Misc	Civil Matter	Commercial Matters	Commercial Misc.	Const Human & Rights	Divorce	Family Appeal	Family Misc	Income Tax Appeal	Judicial Misc	Judicial Review	Probate Admin	All civil Cases
Malindi	1	48	24	48	3	0	27	5	0	6	0	6	12	125	305
Marsabit	0	16	7	5	0	0	1	0	0	0	0	1	2	4	36
Meru	5	307	176	68	1	0	51	2	0	121	0	3	14	873	1,621
Migori	0	69	313	5	0	0	7	0	0	0	0	0	0	214	608
Milimani Antiocorr. Div.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Milimani Civil Div.	0	1,172	287	1,164	0	0	3	0	0	0	0	0	9	0	2,635
Milimani C. & Tax Div.	0	1	0	23	816	371	1	0	0	0	16	0	0	0	1,228
Milimani Const. Div.	0	0	0	3	0	0	287	0	0	0	0	29	52	0	371
Milimani Criminal Div.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Milimani Family Div.	227	0	0	6	2	0	3	359	232	533	0	0	11	9,530	10,903
Milimani Jud. Rev. Div.	0	0	0	8	0	0	83	0	0	0	0	34	371	0	496
Mombasa	8	240	162	771	521	1	74	38	3	14	0	172	221	346	2,571
Muranga	3	94	11	7	0	0	6	0	0	2	0	1	3	326	453
Naivasha	0	12	38	4	0	0	2	0	1	0	0	0	4	37	98
Nakuru	24	50	86	73	0	0	72	1	1	3	0	1	26	582	919
Nanyuki	2	6	4	9	0	0	2	6	0	0	0	0	6	10	45
Narok	0	7	0	2	0	0	1	0	0	0	0	0	0	3	13
Nyamira	0	6	1	4	1	0	1	1	0	0	0	0	4	6	24
Nyandarua	0	4	5	9	0	0	1	0	0	0	0	0	9	44	72
Nyeri	7	49	66	20	0	0	6	0	0	1	0	1	4	142	296
Siaya	0	8	10	3	0	0	0	0	0	0	0	0	0	13	34
Voi	0	20	2	7	1	0	6	0	0	0	0	0	0	25	61
<b>All High Courts</b>	<b>357</b>	<b>3,439</b>	<b>2,686</b>	<b>2,757</b>	<b>1,364</b>	<b>372</b>	<b>832</b>	<b>444</b>	<b>240</b>	<b>755</b>	<b>16</b>	<b>257</b>	<b>859</b>	<b>15,125</b>	<b>29,503</b>

## Annex 2.3 Filed and resolved criminal cases by type and High Court Station, FY 2017/18

High Court Station	Filed cases					Resolved cases				
	Murder	Criminal Application	Criminal Appeal	Criminal Revision	all CR cases	Murder	Criminal Application	Criminal Appeal	Criminal Revision	All CR cases
Bomet	28	29	25	5	87	15	3	14	6	38
Bungoma	33	25	17	33	108	63	14	183	50	310
Busia	43	16	1	36	96	19	20	83	169	291
Chuka	21	25	7	25	78	7	15	8	109	139
Eldoret	147	26	23	198	394	15	23	24	242	304
Embu	36	25	25	144	230	20	3	51	4	78
Garissa	21	44	86	86	237	13	14	108	42	177
Garsen	6	5	2	0	13	2	2	14	0	18
Homabay	65	40	36	81	222	20	48	58	80	206
Kabarnet	35	58	59	70	222	21	44	52	89	206
Kajiado	26	28	19	30	103	23	18	22	46	109
Kakamega	88	69	60	128	345	29	51	77	1	158
Kapenguria	9	11	13	24	57	21	12	28	32	93
Kericho	44	35	16	176	271	12	20	27	73	132
Kerugoya	19	9	6	99	133	5	17	64	19	105
Kiambu	80	214	102	389	785	28	76	96	330	530
Kisii	72	151	86	167	476	37	55	51	296	439
Kisumu	73	98	102	76	349	108	35	79	11	233
Kitale	66	36	206	702	1,010	9	17	176	153	355
Kitui	63	61	37	23	184	5	11	28	1	45
Lodwar	12	0	15	0	27	2	0	11	0	13
Machakos	71	131	108	239	549	17	25	88	5	135
Makueni	43	34	29	131	237	1	8	32	154	195
Malindi	18	35	13	66	132	12	49	43	3	107
Marsabit	12	8	14	20	54	9	2	15	21	47
Meru	173	256	177	540	1,146	82	77	133	356	648
Migori	29	57	29	63	178	41	25	30	48	144

High Court Station	Filed cases				all CR cases	Resolved cases				
	Murder	Criminal Application	Criminal Appeal	Criminal Revision		Murder	Criminal Application	Criminal Appeal	Criminal Revision	All CR cases
Milimani Anti-corr. Div.	0	32	1	0	33	5	28	3	0	36
Milimani Civil Div.	0	0	0	0	0	0	0	0	0	0
Milimani C. & Tax Div.	0	0	0	0	0	0	0	0	0	0
Milimani Const. Div	0	0	0	0	0	0	0	0	0	0
Milimani Criminal Div.	114	521	190	564	1,389	92	405	128	234	859
Milimani Family Div.	0	0	0	0	0	0	0	0	0	0
Milimani Jud. Rev. Div.	0	0	0	0	0	0	0	0	0	0
Mombasa	78	163	148	378	767	22	40	79	155	296
Muranga	98	40	94	53	285	13	14	51	114	192
Naivasha	27	24	17	33	101	15	9	46	13	83
Nakuru	65	99	61	7	232	123	43	152	6	324
Nanyuki	23	66	82	93	264	20	33	81	82	216
Narok	19	27	3	4	53	18	5	32	6	61
Nyamira	14	21	50	8	93	6	41	18	16	81
Nyandarua	43	26	99	93	261	5	1	91	50	147
Nyeri	13	57	36	113	219	17	28	59	107	211
Siaya	78	38	106	125	347	13	53	113	42	221
Voi	12	73	35	12	132	10	73	92	22	197
All High Courts	1,917	2,713	2,235	5,034	11,899	995	1,457	2,540	3,187	8,179

Annex 2.4 Pending civil cases by type and High Court station, 30<sup>th</sup> June 2018.

	Adoption	Civil Appeal	Civil Application	Civil Matter	Commercial Matters	Commercial Misc.	Constitutional & Human right petition	Divorce	Family Appeal	Family Misc.	Income tax Appeal	Jr Miscellaneous	Judicial Review	Probate Admin	All pending civil
Bomet	0	21	47	11	0	0	6	0	0	3	0	0	0	197	285
Bungoma	5	582	522	196	4	0	27	0	1	2	0	4	6	1,174	2,523
Busia	0	52	398	62	1	0	10	3	5	2	0	0	48	1,219	1,800
Chuka	0	12	27	24	0	0	1	1	2	44	0	0	171	347	629
Eldoret	5	616	611	213	1	0	69	30	1	5	0	5	51	1,383	2,990
Embu	17	229	219	58	0	0	36	5	0	213	0	1	2	1,736	2,516
Garissa	0	4	38	106	0	0	24	2	0	0	0	0	1	76	251
Garsen	0	33	1	6	0	0	2	0	0	2	0	1	1	29	75
Homabay	1	6	14	3	1	0	6	0	1	0	0	2	18	660	712
Kabarnet	0	6	3	6	1	0	1	0	0	0	0	0	0	18	35
Kajiado	1	12	19	28	11	0	8	1	1	4	0	5	17	23	130
Kakamega	1	247	320	266	0	7	32	11	2	3	0	1	162	2,936	3,988
Kapenguria	0	2	1	2	0	0	1	0	0	1	0	1	1	2	11
Kericho	10	78	93	90	119	0	24	0	0	0	0	13	17	1,279	1,723
Kerugoya	3	107	100	103	0	0	5	2	2	35	0	0	11	1,908	2,276
Kiambu	24	94	228	35	2	2	70	0	0	7	1	0	19	67	549
Kisii	7	448	326	194	7	0	32	12	1	0	0	11	19	78	1,135
Kisumu	13	34	171	410	31	0	101	1	0	2	0	17	66	506	1,352
Kitale	10	241	157	26	0	0	27	2	0	3	0	0	24	504	994
Kitui	2	72	10	6	0	0	8	1	0	0	0	0	129	16	244
Lodwar	0	0	2	2	0	0	1	0	0	0	0	0	1	0	6
Machakos	62	1,072	678	186	2	2	51	3	0	0	0	6	109	955	3,126
Makueni	1	5	7	4	5	0	5	0	0	0	0	0	0	18	45
Malindi	2	83	166	110	2	11	46	27	0	7	1	1	14	288	758
Marsabit	0	5	7	1	1	0	8	0	0	0	0	1	1	7	31



	Adoption	Civil Appeal	Civil Application	Civil Matter	Commercial Matters	Commercial Misc.	Constitutional & Human right petition	Divorce	Family Appeal	Family Misc.	Income tax Appeal	Jr Miscellaneous	Judicial Review	Probate Admin	All pending civil
Meru	9	438	396	1,288	1	0	14	18	1	58	0	17	522	189	2,951
Migori	1	90	66	9	0	31	1	0	0	2	0	1	50	402	653
Milimani Anti-corr. Div.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Milimani Civil Div.		1,990	1,671	2,803	0										6,464
Milimani C. & Tax Div.	0	0	30	3	3,783	1,854	7	0	0	0	28	0	0	0	5,705
Milimani Const. Div	0	0	0	10	0	0	894	0	0	0	0	15	111	0	1,030
Milimani Criminal Div.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Milimani Family Div.	353			455	0			49	116	271				5,868	7,112
Milimani Jud. Rev. Div.	0	0	0	91	59	0	18	0	0	0	0	32	974	0	1,174
Mombasa	26	2,463	2,557	927	136	12	510	215	91	125	16	769	195	1,497	9,539
Muranga	18	533	404	91	2	0	81	5	5	39	0	7	28	1,202	2,415
Naivasha	4	218	99	59	8	0	19	1	4	3	0	0	23	182	620
Nakuru	40	974	1,405	870	4	0	20	14	8	50	2	0	227	3,859	7,473
Nanyuki	2	10	11	9	0	0	8	1	3	2	1	1	4	42	94
Narok	0	12	19	14	5	0	3	0	0	1	0	0	2	16	72
Nyamira	1	141	6	2	11	0	6	2	22	25	0	0	3	183	402
Nyandarua	4	45	38	12	2	0	11	0	0	8	0	0	1	2	123
Nyeri	27	226	646	282	0	1	44	24	1	10	0	1	39	1,292	2,593
Siaya	1	27	12	13	1	0	9	1	0	2	1	0	3	141	211
Voi	0	37	4	10	57	1	11	0	0	0	0	1	4	58	183
<b>All High Courts</b>	<b>650</b>	<b>11,265</b>	<b>11,529</b>	<b>9,096</b>	<b>4,257</b>	<b>1,921</b>	<b>2,257</b>	<b>431</b>	<b>267</b>	<b>929</b>	<b>50</b>	<b>913</b>	<b>3,074</b>	<b>30,359</b>	<b>76,998</b>

\* Family and Civil divisions of Milimani High Court and Machakos High court carried out joint case audit with PMD to ascertain the correct status of pending cases.

**Annex 2.5 Pending criminal cases by type and High Court station, 30<sup>th</sup> June 2018.**

High Court Station	Murder	Criminal Application	Criminal Appeal	Criminal Revision	All cases
Bomet	31	30	67	0	128
Bungoma	126	66	232	28	452
Busia	84	17	53	0	154
Chuka	20	14	0	0	34
Eldoret	580	180	856	0	1,616
Embu	140	47	126	199	512
Garissa	60	110	116	47	333
Garsen	10	4	20	18	52
Homabay	98	0	0	42	140
Kabarnet	89	45	29	0	163
Kajiado	39	19	0	34	92
Kakamega	289	40	333	134	796
Kapenguria	21	8	0	0	29
Kericho	124	26	78	109	337
Kerugoya	30	0	28	107	165
Kiambu	99	140	84	59	382
Kisii	183	208	91	13	495
Kisumu	91	88	106	116	401
Kitale	124	51	244	717	1,136
Kitui	99	56	91	22	268
Lodwar	13	3	8	0	24
Machakos	122	92	255	69	538
Makueni	44	26	0	0	70
Malindi	37	5	0	69	111
Marsabit	13	9	0	1	23
Meru	446	290	327	192	1,255
Migori	42	70	10	34	156
Milimani Antiocorr. Div.	0	14	30	0	44
Milimani Civil Div.	0	0	0	0	0
Milimani C. & Tax Di.	0	0	0	0	0
Milimani Const. DiV	0	0	0	0	0
Milimani Criminal Div.	446	1,240	1,054	954	3,694
Milimani Family Div.	0	0	0	0	0
Milimani Jud. Rev. Div.	0	0	0	0	0
Mombasa	310	275	1,006	370	1,961
Muranga	211	77	604	0	892
Naivasha	99	43	120	48	310
Nakuru	333	303	812	27	1,475
Nanyuki	52	110	139	224	525
Narok	17	47	0	0	64
Nyamira	75	9	41	0	125
Nyandarua	48	25	12	46	131
Nyeri	98	140	200	24	462
Siaya	131	46	151	241	569
Voi	14	66	29	106	215
<b>All Courts</b>	<b>4,888</b>	<b>4,039</b>	<b>7,352</b>	<b>4,050</b>	<b>20,329</b>

**Annex 2.6 Filed, Resolved and Pending Cases in Magistrate Court, FY 2017/18**

MC Station	Filed Cases			Resolved Cases			Pending Cases as at 30 <sup>th</sup> June 2018		
	Criminal	Civil	All	Criminal	Civil	All	Criminal	Civil	All
Baricho	2,279	377	2,656	2,090	277	2,367	1,128	918	2,046
Bomet	2,306	152	2,458	2,203	145	2,348	512	545	1,057
Bondo	1,165	378	1,543	1,163	566	1,729	207	314	521
Bungoma	3,831	895	4,726	4,334	1,338	5,672	981	1,127	2,108
Busia	3,410	846	4,256	2,751	344	3,095	3,785	860	4,645
Butali	1,082	393	1,475	875	312	1,187	699	700	1,399
Butere	1,026	547	1,573	895	443	1,338	342	758	1,100
Chuka	1,681	422	2,103	1,471	230	1,701	1,133	1,107	2,240
Eldama Ravine	2,018	177	2,195	2,265	241	2,506	190	356	546
Eldoret	8,655	3,068	11,723	6,204	2,452	8,656	7,559	3,409	10,968
Embu	2,134	445	2,579	1,570	1,125	2,695	1,567	580	2,147
Engineer	1,400	11	1,411	1,259	142	1,401	623	311	934
Garissa	1,880	54	1,934	1,462	24	1,486	1,308	193	1,501
Garsen	423	6	429	347	19	366	401	19	420
Gatundu	1,683	671	2,354	1,396	687	2,083	849	1,003	1,852
Gichugu	1,297	238	1,535	1,255	282	1,537	337	474	811
Githongo	1,580	257	1,837	1,313	107	1,420	398	190	588
Githunguri	1,693	209	1,902	1,681	496	2,177	525	417	942
Hamisi	1,498	99	1,597	1,472	121	1,593	923	21	944
Hola	294	68	362	228	51	279	222	39	261
Homa bay	1,566	723	2,289	1,234	259	1,493	867	783	1,650
Isiolo	1,284	18	1,302	846	87	933	918	193	1,111
Iten	1,339	36	1,375	2,008	147	2,155	481	31	512
JKIA	324	0	324	246	0	246	106	0	106
Kabarnet	1,215	96	1,311	1,159	101	1,260	142	35	177
Kajiado	2,770	637	3,407	2,516	471	2,987	1,627	2,457	4,084
Kakamega	4,411	1,049	5,460	3,036	481	3,517	4,372	2,157	6,529
Kakuma	405	8	413	289	4	293	210	15	225
Kaloleni	329	329	658	232	290	522	197	428	625
Kandara	2,123	266	2,389	1,661	257	1,918	1,074	604	1,678
Kangema	1,145	257	1,402	1,007	102	1,109	345	264	609
Kangundo	2,009	331	2,340	1,792	304	2,096	905	252	1,157
Kapenguria	2,029	51	2,080	1,601	67	1,668	1,249	17	1,266
Kapsabet	4,227	590	4,817	3,524	250	3,774	1,928	1,643	3,571
Karatina	884	580	1,464	737	394	1,131	702	1,268	1,970
Kehancha	1,316	35	1,351	1,093	22	1,115	244	13	257
Kericho	4,808	658	5,466	4,453	706	5,159	2,041	1,850	3,891
Keroka	1,548	219	1,767	1,420	569	1,989	629	24	653
Kerugoya	1,119	589	1,708	870	498	1,368	526	1,175	1,701
Kiambu	1,453	320	1,773	1,140	508	1,648	1,105	1,169	2,274
Kibera	6,088	1	6,089	4,990	2	4,992	12,452	0	12,452
Kigumo	2,528	245	2,773	2,347	400	2,747	2,520	201	2,721
Kikuyu	2,191	899	3,090	1,730	555	2,285	1,756	1,706	3,462
Kilgoris	1,074	21	1,095	1,202	99	1,301	949	288	1,237
Kilifi	1,030	541	1,571	930	627	1,557	1,068	169	1,237
Kilungu	1,770	372	2,142	1,620	410	2,030	480	302	782
Kimilili	2,175	303	2,478	1,899	188	2,087	1,127	430	1,557
Kisii	3,508	2,452	5,960	3,269	1,506	4,775	1,893	3,407	5,300
Kisumu	2,591	2,420	5,011	1,969	1,260	3,229	5,023	4,132	9,155

MC Station	Filed Cases			Resolved Cases			Pending Cases as at 30 <sup>th</sup> June 2018		
	Criminal	Civil	All	Criminal	Civil	All	Criminal	Civil	All
Kitale	5,765	1,025	6,790	4,202	908	5,110	3,860	1,749	5,609
Kithimani	1,927	689	2,616	1,693	275	1,968	836	544	1,380
Kitui	2,011	1,051	3,062	1,361	506	1,867	2,583	4,543	7,126
Kwale	1,945	646	2,591	1,592	504	2,096	1,396	1,430	2,826
Kyuso	423	55	478	359	131	490	90	163	253
Lamu	488	49	537	326	49	375	403	0	403
Limuru	1,854	834	2,688	1,534	527	2,061	1,065	1,393	2,458
Lodwar	1,180	66	1,246	790	39	829	765	51	816
Loitoktok	723	79	802	644	25	669	149	54	203
Machakos	2,807	1,480	4,287	2,692	2,083	4,775	1,838	2,903	4,741
Makadara	18,265	4	18,269	18,707	6	18,713	8,828	0	8,828
Makindu	2,211	331	2,542	1,713	747	2,460	3,468	1,471	4,939
Makueni	698	179	877	739	253	992	495	424	919
Malindi	1,677	175	1,852	1,630	651	2,281	2,011	503	2,514
Mandera	808	19	827	712	19	731	89	10	99
Maralal	1,084	9	1,093	539	25	564	996	24	1,020
Mariakani	2,049	538	2,587	1,840	540	2,380	627	1,040	1,667
Marimanti	831	65	896	743	46	789	373	89	462
Marsabit	787	54	841	627	52	679	478	5	483
Maseno	1,106	154	1,260	988	339	1,327	964	752	1,716
Maua	4,265	132	4,397	3,899	1,643	5,542	2,962	693	3,655
Mavoko	2,417	1,904	4,321	2,123	1,446	3,569	1,251	3,262	4,513
Mbita	925	21	946	688	40	728	649	103	752
Meru	3,267	1,009	4,276	3,297	2,533	5,830	1,265	4,747	6,012
Migori	873	996	1,869	692	503	1,195	947	2,818	3,765
Mil. Anti-corruption	104	0	104	52	0	52	148	0	148
Mil. Childrens	429	1,396	1,825	1,552	4,046	5,598	2,283	6,841	9,124
Mil. Commercial	0		10,924	0	6,608	6,608	0	47,546	47,546
Mil. Magistrate	20,979	0	20,979	17,967	0	17,967	19,141	0	19,141
Molo	3,306	366	3,672	2,633	257	2,890	2,327	1,045	3,372
Mombasa	6,649	8,071	14,720	4,453	7,057	11,510	17,736	27,062	44,798
Moyale	604	48	652	550	29	579	248	51	299
Mpeketoni	327	21	348	129	22	151	244	3	247
Mukurwe-ini	465	412	877	510	129	639	68	323	391
Mumias	2,299	147	2,446	1,935	334	2,269	908	61	969
Murang'a	2,481	1,436	3,917	2,097	506	2,603	1,368	4,199	5,567
Mutomo	666	50	716	516	69	585	452	11	463
Mwingi	986	171	1,157	705	353	1,058	878	597	1,475
Nairobi City	1,648	9,032	10,680	1,726	8,904		705	130	835
Naivasha	4,975	1,386	6,361	4,311	1,239	5,550	4,006	3,586	7,592
Nakuru	3,919	2,264	6,183	3,149	3,180	6,329	8,287	19,658	27,945
Nanyuki	2,714	283	2,997	2,389	275	2,664	1,527	1,962	3,489
Narok	2,903	495	3,398	2,869	265	3,134	879	1,447	2,326
Ndhiwa	421	227	648	296	129	425	327	350	677
Ngong'	1,843	95	1,938	1,179	81	1,260	1,046	15	1,061
Nkubu	1,318	272	1,590	1,214	540	1,754	806	327	1,133
Nyahururu	1,957	1,018	2,975	1,880	507	2,387	2,225	2,251	4,476
Nyamira	1,798	210	2,008	1,237	123	1,360	1,001	788	1,789
Nyando	1,473	518	1,991	1,258	268	1,526	1,386	2,461	3,847
Nyeri	1,692	1,406	3,098	1,449	886	2,335	903	2,211	3,114

MC Station	Filed Cases			Resolved Cases			Pending Cases as at 30 <sup>th</sup> June 2018		
	Criminal	Civil	All	Criminal	Civil	All	Criminal	Civil	All
Ogembo	2,866	335	3,201	3,179	537	3,716	1,375	1,346	2,721
Othaya	1,255	88	1,343	1,119	136	1,255	393	19	412
Oyugis	1,651	440	2,091	1,488	464	1,952	677	103	780
Rongo	548	706	1,254	571	282	853	848	790	1,638
Runyenjes	1,012	124	1,136	801	142	943	419	37	456
Shanzu	4,421	19	4,440	3,860	12	3,872	2,793	0	2,793
Siakago	1,230	172	1,402	895	436	1,331	1,191	596	1,787
Siaya	1,278	493	1,771	1,215	508	1,723	638	655	1,293
Sirisia	1,509	67	1,576	1,284	50	1,334	474	50	524
Sotik	2,090	333	2,423	2,076	481	2,557	289	678	967
Tamu	654	103	757	558	112	670	229	87	316
Taveta	686	37	723	597	10	607	271	149	420
Tawa	424	91	515	275	190	465	311	75	386
Thika	10,019	3,457	13,476	6,890	2,221	9,111	2,251	9,315	11,566
Tigania	1,993	36	2,029	2,376	95	2,471	1,882	710	2,592
Tononoka	369	311	680	316	241	557	584	978	1,562
Ukwala	771	133	904	718	276	994	389	21	410
Vihiga	2,117	475	2,592	1,451	259	1,710	857	1,170	2,027
Voi	2,613	462	3,075	2,529	303	2,832	504	989	1,493
Wajir	952	25	977	752	25	777	453	30	483
Wang'uru	1,871	545	2,416	1,721	523	2,244	584	413	997
Webuye	1,805	293	2,098	1,561	222	1,783	994	612	1,606
Winam	1,456	644	2,100	1,248	588	1,836	1,408	690	2,098
Wundanyi	879	120	999	756	110	866	238	104	342
<b>All Courts</b>	<b>271,405</b>	<b>84,680</b>	<b>356,085</b>	<b>235,476</b>	<b>77,886</b>	<b>313,362</b>	<b>197,964</b>	<b>209,667</b>	<b>407,631</b>

**Annex 2.7 Filed criminal cases by type and Magistrate Court Station, FY 2017/18**

MC Station	Criminal Cases	Sexual Offences	Inquest	Children Criminal	Traffic	All Criminal Cases
Baricho	1,726	114	1	5	433	2,279
Bomet	1,629	84	1	2	590	2,306
Bondo	987	84	0	2	92	1,165
Bungoma	1,899	232	5	9	1,686	3,831
Busia	2,686	245	1	29	449	3,410
Butali	768	103	0	8	203	1,082
Butere	718	106	0	94	108	1,026
Chuka	1,308	41	1	9	322	1,681
Eldama Ravine	1,539	121	1	13	344	2,018
Eldoret	5,499	677	2	11	2,466	8,655
Embu	1,327	119	1	83	604	2,134
Engineer	1,123	45	0	6	226	1,400
Garissa	1,150	90	0	3	637	1,880
Garsen	287	63	0	4	69	423
Gatundu	1,485	98	0	2	98	1,683
Gichugu	1,223	55	4	8	7	1,297
Githongo	1,483	71	0	5	21	1,580
Githunguri	1,494	52	1	0	146	1,693
Hamisi	1,259	170	0	1	68	1,498
Hola	224	48	0	9	13	294
Homa bay	1,099	58	7	2	400	1,566
Isiolo	1,102	61	5	1	115	1,284
Iten	983	114	2	8	232	1,339
JKIA	226	0	0	0	98	324
Kabarnet	1,016	93	1	3	102	1,215
Kajiado	1,565	79	0	14	1,112	2,770
Kakamega	3,556	243	5	103	504	4,411
Kakuma	340	58	0	0	7	405
Kaloleni	182	89	0	1	57	329
Kandara	1,768	176	0	23	156	2,123
Kangema	859	79	1	2	204	1,145
Kangundo	1,522	131	2	18	336	2,009
Kapenguria	1,700	143	2	78	106	2,029
Kapsabet	3,823	305	1	19	79	4,227
Karatina	616	70	4	3	191	884
Kehancha	1,082	97	0	10	127	1,316
Kericho	3,466	273	6	22	1,041	4,808
Keroka	1,174	119	1	4	250	1,548
Kerugoya	723	58	10	1	327	1,119
Kiambu	1,180	94	0	5	174	1,453
Kibera	2,631	173	3	6	3,275	6,088
Kigumo	1,860	131	0	6	531	2,528
Kikuyu	1,521	101	5	26	538	2,191
Kilgoris	853	91	0	40	90	1,074
Kilifi	520	259	0	7	244	1,030
Kilungu	857	133	3	19	758	1,770
Kimilili	1,560	257	4	5	349	2,175
Kisii	2,540	223	7	0	738	3,508
Kisumu	1,301	82	9	21	1,178	2,591
Kitale	4,461	490	1	27	786	5,765

MC Station	Criminal Cases	Sexual Offences	Inquest	Children Criminal	Traffic	All Criminal Cases
Kithimani	1,480	94	0	12	341	1,927
Kitui	1,635	235	0	15	126	2,011
Kwale	1,163	337	4	13	428	1,945
Kyuso	359	23	3	5	33	423
Lamu	414	61	2	0	11	488
Limuru	1,009	67	7	7	764	1,854
Lodwar	917	207	1	1	54	1,180
Loitoktok	587	48	2	1	85	723
Machakos	1,660	128	1	38	980	2,807
Makadara	10,081	381	4	2	7,797	18,265
Makindu	1,213	154	1	6	837	2,211
Makueni	479	47	1	4	167	698
Malindi	1,103	173	6	2	393	1,677
Mandera	540	46	0	0	222	808
Maralal	960	48	1	8	67	1,084
Mariakani	945	152	2	5	945	2,049
Marimanti	702	72	0	17	40	831
Marsabit	638	59	0	0	90	787
Maseno	864	116	3	0	123	1,106
Maua	3,821	187	3	12	242	4,265
Mavoko	630	47	0	2	1,738	2,417
Mbita	702	71	0	0	152	925
Meru	2,363	103	4	43	754	3,267
Migori	662	100	0	11	100	873
Milimani Anti	104	0	0	0	0	104
Milimani Childrens	27	16	0	386	0	429
Milimani Commercial	0	0	0	0	0	0
Milimani CM	2,139	42	16	2	18,780	20,979
Molo	2,016	230	0	15	1,045	3,306
Mombasa	2,672	142	8	0	3,827	6,649
Moyale	531	26	1	0	46	604
Mpeketoni	289	31	0	0	7	327
Mukurwe-ini	292	27	1	2	143	465
Mumias	1,708	92	3	3	493	2,299
Murang'a	1,714	27	3	22	715	2,481
Mutomo	551	76	0	1	38	666
Mwingi	641	60	0	0	285	986
Nairobi City	1,636	4	0	0	8	1,648
Naivasha	1,623	163	6	232	2,951	4,975
Nakuru	2,621	337	1	199	761	3,919
Nanyuki	1,975	151	5	56	527	2,714
Narok	1,596	179	2	30	1,096	2,903
Ndhiwa	296	57	0	0	68	421
Ngong'	912	87	0	10	834	1,843
Nkubu	1,090	94	0	0	134	1,318
Nyahururu	1,450	183	15	40	269	1,957
Nyamira	1,458	174	4	3	159	1,798
Nyando	882	92	1	18	480	1,473
Nyeri	1,294	88	8	88	214	1,692
Ogembo	2,494	246	0	1	125	2,866
Othaya	1,000	50	3	10	192	1,255



MC Station	Criminal Cases	Sexual Offences	Inquest	Children Criminal	Traffic	All Criminal Cases
Oyugis	1,028	102	1	19	501	<b>1,651</b>
Rongo	424	82	1	0	41	<b>548</b>
Runyenjes	812	46	0	3	151	<b>1,012</b>
Shanzu	2,173	223	2	7	2,016	<b>4,421</b>
Siakago	1,033	100	4	7	86	<b>1,230</b>
Siaya	1,080	115	0	2	81	<b>1,278</b>
Sirisia	1,223	117	4	23	142	<b>1,509</b>
Sotik	1,863	73	3	0	151	<b>2,090</b>
Tamu	507	58	2	10	77	<b>654</b>
Taveta	563	57	2	3	61	<b>686</b>
Tawa	304	60	0	0	60	<b>424</b>
Thika	8,423	89	1	39	1,467	<b>10,019</b>
Tigania	1,836	32	0	8	117	<b>1,993</b>
Tononoka	325	17	0	27	0	<b>369</b>
Ukwala	624	78	1	0	68	<b>771</b>
Vihiga	1,464	121	6	33	493	<b>2,117</b>
Voi	1,192	55	5	8	1,353	<b>2,613</b>
Wajir	713	88	0	1	150	<b>952</b>
Wang'uru	1,316	96	2	49	408	<b>1,871</b>
Webuye	871	108	4	38	784	<b>1,805</b>
Winam	1,115	109	1	0	231	<b>1,456</b>
Wundanyi	716	75	0	5	83	<b>879</b>
<b>All Courts</b>	<b>173,443</b>	<b>14,429</b>	<b>258</b>	<b>2,381</b>	<b>80,894</b>	<b>271,405</b>

**Annex 2.8 Resolved criminal cases by type and Magistrate Court station, FY 2017/18**

MC Station	Criminal Cases	Sexual Offences	Inquest	Children Criminal	Traffic	All Criminal
Baricho	1,602	56	1	3	428	2,090
Bomet	1,564	78	5	2	554	2,203
Bondo	983	95	2	4	79	1,163
Bungoma	2,143	209	16	14	1,952	4,334
Busia	2,149	147	12	9	434	2,751
Butali	592	80	1	20	182	875
Butere	615	101	1	71	107	895
Chuka	1,099	40	2	7	323	1,471
Eldama Ravine	1,466	76	0	123	600	2,265
Eldoret	4,014	220	11	8	1,951	6,204
Embu	936	76	3	58	497	1,570
Engineer	1,043	48	1	11	156	1,259
Garissa	740	77	2	1	642	1,462
Garsen	229	50	0	2	66	347
Gatundu	1,199	92	0	0	105	1,396
Gichugu	1,191	48	2	7	7	1,255
Githongo	1,277	15	0	2	19	1,313
Githunguri	1,479	57	1	0	144	1,681
Hamisi	1,247	163	3	1	58	1,472
Hola	181	32	0	8	7	228
Homa bay	812	68	11	1	342	1,234
Isiolo	722	29	0	0	95	846
Iten	1,197	139	6	8	658	2,008
JKIA	159	1	1	0	85	246
Kabarnet	957	85	1	4	112	1,159
Kajiado	1,339	95	1	14	1,067	2,516
Kakamega	2,453	163	4	31	385	3,036
Kakuma	223	60	0	0	6	289
Kaloleni	152	28	0	0	52	232
Kandara	1,330	167	0	13	151	1,661
Kangema	733	63	2	1	208	1,007
Kangundo	1,367	88	3	13	321	1,792
Kapenguria	1,378	83	5	34	101	1,601
Kapsabet	3,297	134	2	4	87	3,524
Karatina	486	65	7	0	179	737
Kehancha	899	73	0	4	117	1,093
Kericho	3,131	265	12	9	1,036	4,453
Keroka	1,099	98	1	3	219	1,420
Kerugoya	564	53	4	0	249	870
Kiambu	884	74	6	5	171	1,140
Kibera	2,091	93	4	0	2,802	4,990
Kigumo	1,614	153	12	4	564	2,347
Kikuyu	1,120	71	2	15	522	1,730
Kilgoris	891	92	3	37	179	1,202
Kilifi	431	225	9	6	259	930
Kilungu	799	121	4	9	687	1,620
Kimilili	1,271	285	19	4	320	1,899
Kisii	2,335	218	4	0	712	3,269
Kisumu	849	60	5	17	1,038	1,969
Kitale	3,025	301	0	19	857	4,202

MC Station	Criminal Cases	Sexual Offences	Inquest	Children Criminal	Traffic	All Criminal
Kithimani	1,303	71	5	4	310	1,693
Kitui	1,113	126	0	0	122	1,361
Kwale	911	277	7	3	394	1,592
Kyuso	285	39	1	3	31	359
Lamu	272	40	3	0	11	326
Limuru	741	33	2	20	738	1,534
Lodwar	644	102	1	2	41	790
Loitoktok	511	47	0	0	86	644
Machakos	1,536	139	7	30	980	2,692
Makadara	10,942	481	21	5	7,258	18,707
Makindu	915	49	4	5	740	1,713
Makueni	497	63	3	6	170	739
Malindi	991	127	19	1	492	1,630
Mandera	502	16	0	0	194	712
Maralal	495	31	0	5	8	539
Mariakani	800	101	15	2	922	1,840
Marimanti	645	44	0	13	41	743
Marsabit	500	56	0	0	71	627
Maseno	782	96	0	0	110	988
Maua	3,514	169	20	18	178	3,899
Mavoko	544	15	1	0	1,563	2,123
Mbita	521	46	1	0	120	688
Meru	2,317	150	11	36	783	3,297
Migori	544	62	1	2	83	692
Milimani Anti	52	0	0	0	0	52
Milimani Children's	1,313	10	0	229	0	1,552
Milimani Commercial	0	0	0	0	0	0
Milimani CM	2,295	36	8	1	15,627	17,967
Molo	1,593	104	1	28	907	2,633
Mombasa	1,736	124	27	0	2,566	4,453
Moyale	487	21	1	1	40	550
Mpeketoni	117	9	1	0	2	129
Mukurwe-ini	339	22	2	2	145	510
Mumias	1,425	72	3	2	433	1,935
Murang'a	1,421	25	3	2	646	2,097
Mutomo	438	43	0	0	35	516
Mwingi	425	42	0	0	238	705
Nairobi City	1,713	2	1	0	10	1,726
Naivasha	1,287	97	13	210	2,704	4,311
Nakuru	1,913	185	14	74	963	3,149
Nanyuki	1,755	92	8	52	482	2,389
Narok	1,293	116	6	23	1,431	2,869
Ndhiwa	211	22	0	0	63	296
Ngong'	347	6	0	12	814	1,179
Nkubu	1,017	97	0	0	100	1,214
Nyahururu	1,358	242	8	12	260	1,880
Nyamira	1,026	56	0	3	152	1,237
Nyando	756	76	5	9	412	1,258
Nyeri	1,070	79	29	54	217	1,449
Ogembo	2,736	231	47	2	163	3,179
Othaya	896	34	4	2	183	1,119

MC Station	Criminal Cases	Sexual Offences	Inquest	Children Criminal	Traffic	All Criminal
Oyugis	872	122	7	5	482	<b>1,488</b>
Rongo	410	114	0	5	42	<b>571</b>
Runyenjes	630	24	0	0	147	<b>801</b>
Shanzu	1,935	156	5	6	1,758	<b>3,860</b>
Siakago	749	68	5	4	69	<b>895</b>
Siaya	1,040	100	0	1	74	<b>1,215</b>
Sirisia	1,059	65	3	18	139	<b>1,284</b>
Sotik	1,829	84	10	0	153	<b>2,076</b>
Tamu	433	41	1	7	76	<b>558</b>
Taveta	492	40	2	2	61	<b>597</b>
Tawa	194	26	0	0	55	<b>275</b>
Thika	5,570	132	6	58	1,124	<b>6,890</b>
Tigania	2,205	41	7	7	116	<b>2,376</b>
Tononoka	292	10	0	14	0	<b>316</b>
Ukwala	587	54	4	0	73	<b>718</b>
Vihiga	1,018	49	2	8	374	<b>1,451</b>
Voi	1,026	39	3	5	1,456	<b>2,529</b>
Wajir	551	56	0	0	145	<b>752</b>
Wang'uru	1,247	51	13	16	394	<b>1,721</b>
Webuye	685	130	28	15	703	<b>1,561</b>
Winam	931	85	0	0	232	<b>1,248</b>
Wundanyi	609	57	1	5	84	<b>756</b>
<b>All Courts</b>	<b>148,565</b>	<b>10,977</b>	<b>591</b>	<b>1,655</b>	<b>73,688</b>	<b>235,476</b>

### Annex 2.9 Filed civil cases by type and Magistrate Court station

MC Station	Civil Cases	Probate and Admin	Divorce and Separation	Workman Compensation	Children Civil	All Civil Cases
Baricho	171	164	0	0	42	377
Bomet	107	1	9	0	35	152
Bondo	158	217	2	0	1	378
Bungoma	692	140	6	52	5	895
Busia	353	479	2	5	7	846
Butali	100	49	2	234	8	393
Butere	266	171	5	2	103	547
Chuka	251	143	6	0	22	422
Eldama Ravine	120	50	0	3	4	177
Eldoret	2,592	356	18	15	87	3,068
Embu	249	140	30	0	26	445
Engineer	7	0	0	0	4	11
Garissa	29	0	0	1	24	54
Garsen	3	0	0	1	2	6
Gatundu	288	324	6	45	8	671
Gichugu	56	154	9	1	18	238
Githongo	190	41	8	2	16	257
Githunguri	84	110	3	10	2	209
Hamisi	17	51	1	10	20	99
Hola	61	2	1	0	4	68
Homa bay	215	464	10	0	34	723
Isiolo	13	5	0	0	0	18
Iten	27	6	0	2	1	36
JKIA	0	0	0	0	0	0
Kabarnet	79	7	0	2	8	96
Kajiado	251	90	4	282	10	637
Kakamega	298	682	16	5	48	1,049
Kakuma	4	0	4	0	0	8
Kaloleni	175	29	0	124	1	329
Kandara	168	80	0	4	14	266
Kangema	83	159	4	3	8	257
Kangundo	234	88	5	4	0	331
Kapenguria	12	24	0	3	12	51
Kapsabet	390	167	9	7	17	590
Karatina	199	360	6	0	15	580
Kehancha	25	6	1	0	3	35
Kericho	366	182	25	26	59	658
Keroka	203	8	0	6	2	219
Kerugoya	297	267	19	0	6	589
Kiambu	141	140	8	17	14	320
Kibera	1	0	0	0	0	1
Kigumo	202	41	1	0	1	245
Kikuyu	344	401	31	101	22	899
Kilgoris	17	2	1	0	1	21
Kilifi	419	91	6	2	23	541
Kilungu	289	65	1	1	16	372
Kimilili	196	67	4	0	36	303
Kisii	1,734	535	90	0	93	2,452
Kisumu	1,335	948	42	3	92	2,420
Kitale	591	168	22	22	222	1,025

MC Station	Civil Cases	Probate and Admin	Divorce and Separation	Workman Compensation	Children Civil	All Civil Cases
Kithimani	590	86	0	9	4	689
Kitui	837	167	22	3	22	1,051
Kwale	563	55	4	5	19	646
Kyuso	42	4	2	0	7	55
Lamu	25	0	0	0	24	49
Limuru	419	327	11	42	35	834
Lodwar	22	2	1	0	41	66
Loitoktok	40	27	2	6	4	79
Machakos	979	396	29	2	74	1,480
Makadara	4	0	0	0	0	4
Makindu	248	50	6	8	19	331
Makueni	95	59	2	14	9	179
Malindi	141	16	4	0	14	175
Mandera	14	0	0	0	5	19
Maralal	8	0	0	0	1	9
Mariakani	377	16	1	91	53	538
Marimanti	16	30	3	0	16	65
Marsabit	31	5	0	0	18	54
Maseno	93	58	1	0	2	154
Maua	90	22	5	1	14	132
Mavoko	928	37	8	919	12	1,904
Mbita	6	13	1	0	1	21
Meru	551	354	26	0	78	1,009
Migori	816	135	28	0	17	996
Milimani Anti	0	0	0	0	0	0
Milimani Childrens	7	0	0	0	1,389	1,396
Milimani Commercial	8,523	0	687	1,714	0	10,924
Milimani CM	0	0	0	0	0	0
Molo	301	55	4	0	6	366
Mombasa	7,582	371	110	8	0	8,071
Moyale	42	3	0	0	3	48
Mpeketoni	17	1	1	0	2	21
Mukurwe-ini	118	278	8	0	8	412
Mumias	107	19	3	1	17	147
Murang'a	389	1,009	19	1	18	1,436
Mutomo	40	0	1	6	3	50
Mwingi	147	12	10	0	2	171
Nairobi City	9,032	0	0	0	0	9,032
Naivasha	802	214	6	343	21	1,386
Nakuru	1,399	567	58	1	239	2,264
Nanyuki	208	62	2	7	4	283
Narok	368	91	11	3	22	495
Ndhiwa	120	84	11	12	0	227
Ngong'	68	17	3	1	6	95
Nkubu	123	128	4	2	15	272
Nyahururu	519	295	9	31	164	1,018
Nyamira	153	37	6	5	9	210
Nyando	356	110	7	12	33	518
Nyeri	471	809	12	4	110	1,406
Ogembo	252	48	6	7	22	335
Othaya	31	48	3	0	6	88

MC Station	Civil Cases	Probate and Admin	Divorce and Separation	Workman Compensation	Children Civil	All Civil Cases
Oyugis	200	223	16	0	1	440
Rongo	620	10	1	70	5	706
Runyenjes	16	97	0	0	11	124
Shanzu	4	0	0	0	15	19
Siakago	81	74	3	0	14	172
Siaya	286	198	1	2	6	493
Sirisia	35	11	1	0	20	67
Sotik	230	55	9	2	37	333
Tamu	76	11	1	13	2	103
Taveta	18	9	3	0	7	37
Tawa	82	8	0	1	0	91
Thika	2,676	585	22	106	68	3,457
Tigania	26	10	0	0	0	36
Tononoka	9	0	0	0	302	311
Ukwala	65	40	1	1	26	133
Vihiga	297	142	2	3	31	475
Voi	342	56	10	39	15	462
Wajir	24	0	0	0	1	25
Wang'uru	304	213	4	2	22	545
Webuye	197	35	9	14	38	293
Winam	546	76	8	6	8	644
Wundanyi	45	54	1	0	20	120
<b>All Courts</b>	<b>58,391</b>	<b>15,698</b>	<b>1,646</b>	<b>4,512</b>	<b>4,433</b>	<b>84,680</b>



**Annex 2.10 Resolved civil cases by type and Magistrate Court Station.**

MC Station	Civil Cases	Probate and Admin.	Divorce and Separation	Workman Compensation	Children Civil	All Civil Cases
Baricho	152	105	5	0	15	277
Bomet	98	0	11	0	36	145
Bondo	188	368	8	1	1	566
Bungoma	1,081	120	12	121	4	1,338
Busia	205	95	5	37	2	344
Butali	144	2	2	160	4	312
Butere	127	217	1	13	85	443
Chuka	146	66	5	0	13	230
Eldama Ravine	162	42	2	8	27	241
Eldoret	2,230	70	33	53	66	2,452
Embu	753	199	54	8	111	1,125
Engineer	70	56	1	6	9	142
Garissa	20	0	0	0	4	24
Garsen	15	0	0	0	4	19
Gatundu	328	241	2	109	7	687
Gichugu	37	234	7	0	4	282
Githongo	70	25	5	0	7	107
Githunguri	220	235	22	19	0	496
Hamisi	43	51	2	10	15	121
Hola	40	2	6	0	3	51
Homa bay	109	108	9	12	21	259
Isiolo	61	7	7	1	11	87
Iten	69	43	0	34	1	147
JKIA	0	0	0	0	0	0
Kabarnet	31	47	1	0	22	101
Kajiado	167	63	8	231	2	471
Kakamega	306	112	12	7	44	481
Kakuma	0	0	4	0	0	4
Kaloleni	142	7	0	140	1	290
Kandara	202	14	2	21	18	257
Kangema	60	23	7	4	8	102
Kangundo	233	62	8	0	1	304
Kapenguria	21	24	2	3	17	67
Kapsabet	159	66	6	14	5	250
Karatina	214	170	8	0	2	394
Kehancha	14	4	2	0	2	22
Kericho	491	124	21	35	35	706
Keroka	537	8	1	22	1	569
Kerugoya	306	161	24	2	5	498
Kiambu	255	174	17	52	10	508
Kibera	2	0	0	0	0	2
Kigumo	349	45	3	3	0	400
Kikuyu	259	178	34	75	9	555
Kilgoris	93	1	2	0	3	99
Kilifi	468	88	3	36	32	627
Kilungu	366	9	2	14	19	410
Kimilili	142	17	8	0	21	188
Kisii	1,235	130	53	0	88	1,506
Kisumu	840	275	43	26	76	1,260
Kitale	615	84	26	27	156	908

MC Station	Civil Cases	Probate and Admin.	Divorce and Separation	Workman Compensation	Children Civil	All Civil Cases
Kithimani	233	40	2	0	0	275
Kitui	317	169	9	4	7	506
Kwale	474	3	4	11	12	504
Kyuso	123	5	2	0	1	131
Lamu	25	0	0	0	24	49
Limuru	249	168	22	55	33	527
Lodwar	23	1	1	1	13	39
Loitoktok	7	12	0	5	1	25
Machakos	1,548	162	35	258	80	2,083
Makadara	6	0	0	0	0	6
Makindu	715	7	9	1	15	747
Makueni	194	43	1	14	1	253
Malindi	531	2	10	77	31	651
Mandera	16	0	0	0	3	19
Maralal	9	5	1	0	10	25
Mariakani	367	1	2	131	39	540
Marimanti	14	24	2	0	6	46
Marsabit	34	0	0	0	18	52
Maseno	295	37	0	5	2	339
Maua	1,146	281	61	17	138	1,643
Mavoko	734	0	4	703	5	1,446
Mbita	30	7	2	1	0	40
Meru	2,164	172	142	1	54	2,533
Migori	430	41	24	0	8	503
Milimani Anti	0	0	0	0	0	0
Milimani Childrens	4	0	0	0	4,042	4,046
Milimani Commercial	4,031	2	683	1,892	0	6,608
Milimani CM	0	0	0	0	0	0
Molo	243	12	0	1	1	257
Mombasa	6,436	46	50	524	1	7,057
Moyale	11	0	1	1	16	29
Mpeketoni	21	0	1	0	0	22
Mukurwe-ini	52	70	3	0	4	129
Mumias	290	3	4	22	15	334
Murang'a	336	147	12	10	1	506
Mutomo	59	0	1	6	3	69
Mwingi	184	153	13	0	3	353
Nairobi City	8,904	0	0	0	0	8,904
Naivasha	670	193	11	352	13	1,239
Nakuru	2,490	165	60	308	157	3,180
Nanyuki	180	56	22	4	13	275
Narok	235	11	6	0	13	265
Ndhiwa	82	33	10	4	0	129
Ngong'	57	17	2	1	4	81
Nkubu	351	120	23	0	46	540
Nyahururu	275	135	12	19	66	507
Nyamira	104	4	9	1	5	123
Nyando	210	15	8	16	19	268
Nyeri	460	269	31	7	119	886
Ogembo	437	1	10	72	17	537
Othaya	72	56	2	0	6	136

MC Station	Civil Cases	Probate and Admin.	Divorce and Separation	Workman Compensation	Children Civil	All Civil Cases
Oyugis	233	215	16	0	0	<b>464</b>
Rongo	224	37	10	0	11	<b>282</b>
Runyenjes	43	96	1	0	2	<b>142</b>
Shanzu	7	0	0	0	5	<b>12</b>
Siakago	204	202	14	0	16	<b>436</b>
Siaya	172	316	7	6	7	<b>508</b>
Sirisia	30	4	2	0	14	<b>50</b>
Sotik	393	20	13	10	45	<b>481</b>
Tamu	80	2	0	28	2	<b>112</b>
Taveta	7	3	0	0	0	<b>10</b>
Tawa	183	7	0	0	0	<b>190</b>
Thika	1,399	489	31	196	106	<b>2,221</b>
Tigania	74	6	6	0	9	<b>95</b>
Tononoka	12	0	0	0	229	<b>241</b>
Ukwala	202	40	2	1	31	<b>276</b>
Vihiga	174	68	8	1	8	<b>259</b>
Voi	140	47	4	85	27	<b>303</b>
Wajir	14	0	0	0	11	<b>25</b>
Wang'uru	340	151	12	1	19	<b>523</b>
Webuye	167	9	7	16	23	<b>222</b>
Winam	480	1	26	67	14	<b>588</b>
Wundanyi	25	54	1	1	29	<b>110</b>
<b>All Courts</b>	<b>54,356</b>	<b>8,627</b>	<b>1,963</b>	<b>6,240</b>	<b>6,700</b>	<b>77,886</b>

## Annex 2.11 Pending criminal and civil cases by type and Magistrate Court Station

MC Station	Pending Criminal Cases						Pending Civil Cases					
	Criminal Cases	Sexual Offences	Inquest	Children Criminal	Traffic	All Criminal Cases	Civil Cases	Probate and Admin	Divorce Separation	Workman Compensation	Children Civil	All Civil Cases
Baricho	579	111	1	34	403	1,128	822	59	4	6	27	918
Bomet	414	36	1	3	58	512	351	1	13	4	176	545
Bondo	180	3	1	1	22	207	146	151	3	11	3	314
Bungoma	733	186	52	10	0	981	967	20	45	43	52	1,127
Busia	2,929	462	83	98	213	3,785	435	384	3	32	6	860
Butali	627	45	5	1	21	699	240	47	0	344	69	700
Butere	257	41	1	36	7	342	658	46	5	27	22	758
Chuka	680	66	4	23	360	1,133	943	77	40	0	47	1,107
Eldama Ravine	136	41	3	0	10	190	184	149	0	18	5	356
Eldoret	5,126	950	51	63	1,369	7,559	2,923	286	45	95	60	3,409
Embu	1,175	94	0	40	258	1,567	381	59	21	8	111	580
Engineer	426	73	7	6	111	623	245	56	1	6	3	311
Garissa	986	97	1	10	214	1,308	149	0	1	1	42	193
Garsen	314	56	1	6	24	401	16	0	0	1	2	19
Gatundu	722	85	0	19	23	849	810	83	13	96	1	1,003
Gichugu	297	27	2	10	1	337	373	80	4	1	16	474
Githongo	305	67	1	14	11	398	156	16	6	2	10	190
Githunguri	461	52	8	2	2	525	259	125	9	22	2	417
Hamisi	818	64	2	11	28	923	10	0	0	0	11	21
Hola	167	34	2	13	6	222	22	0	5	0	12	39
Homa bay	687	54	14	15	97	867	395	356	13	2	17	783
Isiolo	769	65	8	1	75	918	172	2	4	1	14	193
Iten	411	58	12	0	0	481	27	0	0	0	4	31
JKIA	91	1	1	0	13	106	0	0	0	0	0	0
Kabarnet	118	18	0	1	5	142	18	0	0	2	15	35
Kajiado	1,212	87	22	79	227	1,627	1,677	27	4	737	12	2,457
Kakamega	3,395	250	26	268	433	4,372	1,206	570	54	176	151	2,157
Kakuma	183	19	0	2	6	210	7	0	0	0	8	15
Kaloleni	85	65	2	1	44	197	303	22	0	102	1	428
Kandara	870	112	0	31	61	1,074	338	66	0	200	0	604
Kangema	256	45	1	1	42	345	114	136	0	1	13	264
Kangundo	779	89	3	16	18	905	218	26	3	4	1	252
Kapenguria	1,034	103	3	70	39	1,249	9	0	0	0	8	17
Kapsabet	1,434	407	30	49	8	1,928	1,354	101	15	160	13	1,643
Karatina	562	72	6	8	54	702	929	190	14	121	14	1,268
Kehancha	201	24	0	9	10	244	9	2	1	0	1	13
Kericho	1,520	181	24	69	247	2,041	1,585	58	55	108	44	1,850
Keroka	455	88	10	5	71	629	15	0	8	0	1	24
Kerugoya	416	11	14	7	78	526	1,056	106	10	2	1	1,175
Kiambu	960	87	6	5	47	1,105	1,086	34	9	35	5	1,169
Kibera	6,006	360	36	28	6,022	12,452	0	0	0	0	0	0
Kigumo	1,853	154	84	5	424	2,520	190	4	2	4	1	201
Kikuyu	1,365	139	8	89	155	1,756	1,292	223	42	136	13	1,706
Kilgoris	782	139	5	17	6	949	270	1	9	6	2	288
Kilifi	735	238	7	28	60	1,068	105	3	16	37	8	169
Kilungu	318	54	3	20	85	480	229	56	1	13	3	302
Kimilili	910	147	19	22	29	1,127	289	50	23	0	68	430
Kisii	1,387	152	27	297	30	1,893	2,867	405	108	21	6	3,407
Kisumu	2,317	77	14	81	2,534	5,023	2,889	673	29	135	406	4,132
Kitale	3,021	492	15	67	265	3,860	1,402	84	102	69	92	1,749
Kithimani	632	130	12	16	46	836	482	46	2	10	4	544
Kitui	2,083	425	23	26	26	2,583	4,413	2	100	1	27	4,543
Kwale	931	248	1	39	177	1,396	1,311	52	10	32	25	1,430

MC Station	Pending Criminal Cases						Pending Civil Cases					
	Criminal Cases	Sexual Offences	Inquest	Children Criminal	Traffic	All Criminal Cases	Civil Cases	Probate and Admin	Divorce Separation	Workman Compensation	Children Civil	All Civil Cases
Kyuso	75	6	3	1	5	90	148	5	3	0	7	163
Lamu	325	71	6	1	0	403	0	0	0	0	0	0
Limuru	948	83	5	3	26	1,065	1,138	159	2	92	2	1,393
Lodwar	546	168	6	9	36	765	1	1	0	1	48	51
Loitoktok	98	1	2	47	1	149	33	15	2	1	3	54
Machakos	1,185	107	7	104	435	1,838	2,339	234	70	256	4	2,903
Makadara	6,738	730	32	99	1,229	8,828	0	0	0	0	0	0
Makindu	2,307	366	58	45	692	3,468	1,385	43	20	7	16	1,471
Makueni	365	74	23	10	23	495	385	16	1	11	11	424
Malindi	1,417	263	70	17	244	2,011	306	14	1	14	168	503
Mandera	51	33	0	2	3	89	7	1	1	0	1	10
Maralal	854	54	1	14	73	996	12	5	2	0	5	24
Mariakani	417	73	3	10	124	627	856	15	1	154	14	1,040
Marimanti	323	46	0	4	0	373	51	6	5	0	27	89
Marsabit	415	39	0	0	24	478	0	5	0	0	0	5
Maseno	728	139	7	14	76	964	723	21	3	5	0	752
Maua	2,474	116	11	82	279	2,962	441	175	29	16	32	693
Mavoko	806	69	40	23	313	1,251	1,149	37	7	2,062	7	3,262
Mbita	489	75	7	4	74	649	84	6	11	1	1	103
Meru	1,070	58	14	15	108	1,265	3,047	182	80	589	849	4,747
Migori	718	114	1	21	93	947	2,688	94	26	0	10	2,818
Mil. Anti-corruption	114	0	0	34	0	148	0	0	0	0	0	0
Mil. Childrens	1,680	10	0	593	0	2,283	159	0	2	2	6,678	6,841
Mil. Commercial	0	0	0	0	0	0	36,151	0	5,718	5,677	0	47,546
Mil. Magistrate	4,555	63	48	55	14,420	19,141	0	0	0	0	0	0
Molo	1,496	310	59	39	423	2,327	992	43	4	1	5	1,045
Mombasa	8,918	350	92	32	8,344	17,736	21,101	325	256	5,377	3	27,062
Moyale	199	26	0	0	23	248	39	3	0	0	9	51
Mpeketoni	215	22	1	0	6	244	0	1	0	0	2	3
Mukurwe-ini	52	12	2	0	2	68	106	208	5	0	4	323
Mumias	718	52	3	75	60	908	1	16	5	24	15	61
Murang'a	1,017	51	25	70	205	1,368	3,224	862	27	1	85	4,199
Mutomo	369	58	0	3	22	452	11	0	0	0	0	11
Mwingi	646	73	3	6	150	878	417	141	12	0	27	597
Nairobi City	612	14	8	23	48	705	130	0	0	0	0	130
Naivasha	1,447	211	55	247	2,046	4,006	2,075	21	46	1,431	13	3,586
Nakuru	6,539	598	86	320	744	8,287	15,781	402	303	1,675	1,497	19,658
Nanyuki	1,306	161	10	4	46	1,527	1,821	6	73	20	42	1,962
Narok	371	168	35	42	263	879	1,241	80	19	90	17	1,447
Ndhiwa	243	60	6	2	16	327	282	51	8	8	1	350
Ngong'	847	102	1	76	20	1,046	11	0	2	0	2	15
Nkubu	689	36	6	32	43	806	264	8	13	11	31	327
Nyahururu	1,371	200	71	431	152	2,225	1,904	160	41	47	99	2,251
Nyamira	768	173	14	2	44	1,001	727	33	0	4	24	788
Nyando	817	145	5	83	336	1,386	1,980	95	27	345	14	2,461
Nyeri	751	80	26	43	3	903	1,450	540	59	21	141	2,211
Ogembo	1,214	117	11	3	30	1,375	1,170	47	28	30	71	1,346
Othaya	321	18	2	33	19	393	10	8	1	0	0	19
Oyugis	576	28	6	17	50	677	94	8	0	0	1	103
Rongo	656	79	3	1	109	848	664	27	9	83	7	790
Runyenjes	344	42	0	4	29	419	21	1	2	0	13	37
Shanzu	1,910	335	15	24	509	2,793	0	0	0	0	0	0
Siakago	972	102	25	46	46	1,191	429	128	25	0	14	596
Siaya	565	61	4	1	7	638	532	118	0	4	1	655

MC Station	Pending Criminal Cases						Pending Civil Cases					
	Criminal Cases	Sexual Offences	Inquest	Children Criminal	Traffic	All Criminal Cases	Civil Cases	Probate and Admin	Divorce Separation	Workman Compensation	Children Civil	All Civil Cases
Sirisia	367	67	5	16	19	474	32	7	1	0	10	50
Sotik	234	19	7	0	29	289	435	35	17	8	183	678
Tamu	169	40	3	16	1	229	58	9	1	19	0	87
Taveta	208	32	10	7	14	271	105	6	7	0	31	149
Tawa	243	53	0	3	12	311	71	1	1	1	1	75
Thika	1,663	92	12	1	483	2,251	8,616	89	155	418	37	9,315
Tigania	1,749	57	5	21	50	1,882	670	4	8	1	27	710
Tononoka	218	14	0	352	0	584	16	0	0	0	962	978
Ukwala	320	58	0	8	3	389	3	0	3	0	15	21
Vihiga	528	72	5	25	227	857	967	74	16	15	98	1,170
Voi	445	41	12	6	0	504	884	9	16	38	42	989
Wajir	366	55	1	13	18	453	21	0	0	0	9	30
Wang'uru	385	68	5	73	53	584	310	62	9	4	28	413
Webuye	723	117	49	24	81	994	530	26	2	30	24	612
Winam	1,011	129	9	207	52	1,408	577	75	8	15	15	690
Wundanyi	206	29	1	1	1	238	74	0	0	1	29	104
<b>All Courts</b>	<b>128,592</b>	<b>14,566</b>	<b>1,704</b>	<b>5,411</b>	<b>47,691</b>	<b>197,964</b>	<b>157,296</b>	<b>9,697</b>	<b>8,045</b>	<b>21,442</b>	<b>13,187</b>	<b>209,667</b>

### Annex 2.12 Case Backlog by Age in Magistrate Court

MC Station	1 - 3 years	3 - 5 years	Over 5 years	All backlog
Baricho	1,185	42	3	1,230
Bomet	597	59	3	659
Bondo	246	28	20	294
Bungoma	962	438	331	1,731
Busia	1,967	842	158	2,967
Butali	798	96	14	908
Butere	195	154	3	352
Chuka	1,172	72	403	1,647
Eldama Ravine	292	66	5	363
Eldoret	4,619	1,663	1,712	7,994
Embu	923	142	89	1,154
Engineer	325	263	15	603
Garissa	772	70	29	871
Garsen	256	28	0	284
Gatundu	534	266	20	820
Gichugu	386	12	15	413
Githongo	234	2	36	272
Githunguri	438	144	51	633
Hamisi	454	119	14	587
Hola	106	6	5	117
Homa bay	374	141	2	517
Isiolo	589	117	28	734
Iten	199	156	14	369
JKIA	60	3	2	65
Kabarnet	68	28	7	103
Kajiado	1,126	694	921	2,741
Kakamega	3,338	925	277	4,540
Kakuma	161	17	0	178
Kaloleni	271	6	100	377
Kandara	779	134	143	1,056
Kangema	112	23	9	144
Kangundo	505	8	2	515
Kapenguria	1,123	48	7	1,178
Kapsabet	1,730	492	318	2,540
Karatina	754	159	261	1,174
Kehancha	143	21	0	164
Kericho	2,084	640	618	3,342
Keroka	149	82	136	367
Kerugoya	932	75	175	1,182
Kiambu	901	362	939	2,202
Kibera	8,405	587	173	9,165
Kigumo	648	1,175	55	1,878
Kikuyu	1,248	424	215	1,887
Kilgoris	841	276	11	1,128
Kilifi	623	278	267	1,168
Kilungu	318	66	20	404
Kimilili	680	130	103	913
Kisii	2,127	270	77	2,474
Kisumu	5,276	447	99	5,822
Kitale	2,062	632	168	2,862
Kithimani	908	28	43	979

MC Station	1 - 3 years	3 - 5 years	Over 5 years	All backlog
Kitui	1,973	997	1,997	4,967
Kwale	1,080	356	216	1,652
Kyuso	99	15	17	131
Lamu	284	19	19	322
Limuru	579	710	197	1,486
Lodwar	386	15	11	412
Loitoktok	40	53	2	95
Machakos	1,207	398	326	1,931
Makadara	3,592	822	197	4,611
Makindu	2,756	726	182	3,664
Makueni	221	326	120	667
Malindi	1,691	568	77	2,336
Mandera	15	3	0	18
Maralal	510	1	5	516
Mariakani	874	35	30	939
Marimanti	278	16	11	305
Marsabit	237	7	0	244
Maseno	667	353	183	1,203
Maua	2,151	114	299	2,564
Mavoko	2,674	245	215	3,134
Mbita	350	95	2	447
Meru	1,569	961	211	2,741
Migori	1,867	598	7	2,472
Mil. Anti-corruption	30	14	14	58
Mil. Childrens	2,767	3,250	1,818	7,835
Mil. Commercial	6,529	12,826	11,888	31,243
Mil. Magistrate	16,531	767	283	17,581
Molo	1,430	673	564	2,667
Mombasa	14,878	3,730	16,321	34,929
Moyale	236	12	8	256
Mpeketoni	17	18	2	37
Mukurwe-ini	63	16	11	90
Mumias	546	220	121	887
Murang'a	2,166	549	657	3,372
Mutomo	212	39	43	294
Mwingi	522	191	207	920
Nairobi City	130	109	267	506
Naivasha	2,964	1,047	923	4,934
Nakuru	5,673	3,216	2,216	11,105
Nanyuki	2,322	188	145	2,655
Narok	704	388	304	1,396
Ndhiwa	247	37	8	292
Ngong'	126	7	8	141
Nkubu	270	25	28	323
Nyahururu	494	850	444	1,788
Nyamira	702	192	67	961
Nyando	1,241	375	229	1,845
Nyeri	1,157	361	129	1,647
Ogembo	1,066	546	256	1,868
Othaya	245	4	21	270
Oyugis	15	7	33	55
Rongo	556	212	26	794



MC Station	1 - 3 years	3 - 5 years	Over 5 years	All backlog
Runyenjes	147	26	5	178
Shanzu	978	452	32	1,462
Siakago	748	127	295	1,170
Siaya	266	51	322	639
Sirisia	60	9	0	69
Sotik	270	121	30	421
Tamu	131	12	5	148
Taveta	195	59	0	254
Tawa	157	40	5	202
Thika	757	1,353	2,215	4,325
Tigania	616	643	344	1,603
Tononoka	1,016	325	67	1,408
Ukwala	38	21	12	71
Vihiga	410	99	163	672
Voi	808	85	86	979
Wajir	267	4	0	271
Wang'uru	278	59	82	419
Webuye	529	138	105	772
Winam	1,107	325	213	1,645
Wundanyi	223	37	12	272
<b>All Courts</b>	<b>152,935</b>	<b>54,244</b>	<b>53,474</b>	<b>260,653</b>

### Annex 2.13 SJT implementation status on reduction of case backlog in Magistrate Court

MC Station	SJT target on reduction of case backlog older than 5 years as at 1st Jan 2017	Resolved backlog cases older than 5 years between 1st Jan 2017 and 30th June 2018	Case backlog older than 5 years as at 30th June, 2018	% change in case backlog older than 5 years between 1st Jan 2017 and 30th June 2018
Baricho	24	3	27	-88%
Bomet	52	3	51	-94%
Bondo	10	20	28	100%
Bungoma	709	331	3,036	-53%
Busia	152	158	91	4%
Butali	83	14	86	-83%
Butere	17	3	118	-82%
Chuka	499	403	122	-19%
Eldama Ravine	101	5	91	-95%
Eldoret	848	1712	571	102%
Embu	776	89	1,320	-89%
Engineer	6	15	2	150%
Garissa	34	29	33	-15%
Garsen	1	0	0	-100%
Gatundu	174	20	494	-89%
Gichugu	16	15	65	-6%
Githongo	4	36	36	800%
Githunguri	215	51	166	-76%
Hamisi	21	14	16	-33%
Hola	12	5	20	-58%
Homa bay	27	2	18	-93%
Isiolo	41	28	19	-32%
Iten	903	14	2,063	-98%
JKIA	0	2	2	100%
Kabarnet	37	7	63	-81%
Kajiado	1,007	921	217	-9%
Kakamega	351	277	153	-21%
Kakuma	0	0	0	0%
Kaloleni	57	100	143	75%
Kandara	153	143	21	-7%
Kangema	48	9	75	-81%
Kangundo	40	2	47	-95%
Kapenguria	20	7	39	-65%
Kapsabet	442	318	172	-28%
Karatina	323	261	68	-19%
Kehancha	52	0	100	-100%
Kericho	745	618	307	-17%
Keroka	114	136	208	19%
Kerugoya	67	175	221	161%
Kiambu	1,074	939	348	-13%
Kibera	320	173	133	-46%
Kigumo	205	55	290	-73%
Kikuyu	315	215	211	-32%
Kilgoris	36	11	59	-69%
Kilifi	729	267	1,106	-63%
Kilungu	2	20	9	900%
Kimilili	169	103	31	-39%

MC Station	SJT target on reduction of case backlog older than 5 years as at 1st Jan 2017	Resolved backlog cases older than 5 years between 1st Jan 2017 and 30th June 2018	Case backlog older than 5 years as at 30th June, 2018	% change in case backlog older than 5 years between 1st Jan 2017 and 30th June 2018
Kisii	351	77	1,344	-78%
Kisumu	347	99	535	-71%
Kitale	664	168	605	-75%
Kithimani	33	43	102	30%
Kitui	2,360	1,997	158	-15%
Kwale	345	216	266	-37%
Kyuso	33	17	5	-48%
Lamu	9	19	21	111%
Limuru	61	197	519	223%
Lodwar	17	11	9	-35%
Loitoktok	0	2	0	0%
Machakos	2,659	326	2,337	-88%
Makadara	1,061	197	699	-81%
Makindu	637	182	498	-71%
Makueni	157	120	77	-24%
Malindi	418	77	465	-82%
Mandera	5	0	0	-100%
Maralal	6	5	3	-17%
Mariakani	34	30	53	-12%
Marimanti	7	11	19	57%
Marsabit	2	0	2	-100%
Maseno	322	183	554	-43%
Maua	871	299	1,147	-66%
Mavoko	22	215	1	877%
Mbita	7	2	4	-71%
Meru	4,023	211	2,222	-95%
Migori	39	7	114	-82%
Mil. Anti-corruption	34	14	17	-59%
Mil. Childrens	5,702	1,818	2,709	-68%
Mil. Commercial	19,836	11,888	5,407	-40%
Mil. Magistrate	389	283	144	-27%
Molo	738	564	709	-24%
Mombasa	21,855	16,321	4,076	-25%
Moyale	9	8	6	-11%
Mpeketoni	1	2	1	100%
Mukurwe-ini	8	11	7	38%
Mumias	261	121	658	-54%
Murang'a	849	657	1,134	-23%
Mutomo	41	43	7	5%
Mwingi	434	207	213	-52%
Nairobi City	314	267	73	-15%
Naivasha	1,638	923	274	-44%
Nakuru	17,950	2,216	2,606	-88%
Nanyuki	311	145	161	-53%
Narok	473	304	173	-36%
Ndhiwa	10	8	2	-20%
Ngong'	74	8	4	-89%
Nkubu	244	28	124	-89%

MC Station	SJT target on reduction of case backlog older than 5 years as at 1st Jan 2017	Resolved backlog cases older than 5 years between 1st Jan 2017 and 30th June 2018	Case backlog older than 5 years as at 30th June, 2018	% change in case backlog older than 5 years between 1st Jan 2017 and 30th June 2018
Nyahururu	1,400	444	275	-68%
Nyamira	145	67	72	-54%
Nyando	1,187	229	70	-81%
Nyeri	452	129	1,441	-71%
Ogembo	501	256	458	-49%
Othaya	4	21	10	425%
Oyugis	60	33	65	-45%
Rongo	41	26	57	-37%
Runyenjes	9	5	37	-44%
Shanzu	20	32	9	60%
Siakago	491	295	290	-40%
Siaya	116	322	936	178%
Sirisia	7	0	9	-100%
Sotik	192	30	546	-84%
Tamu	12	5	16	-58%
Taveta	17	0	46	-100%
Tawa	10	5	12	-50%
Thika	3,022	2,215	849	-27%
Tigania	484	344	119	-29%
Tononoka	89	67	21	-25%
Ukwala	10	12	70	20%
Vihiga	369	163	705	-56%
Voi	177	86	91	-51%
Wajir	2	0	1	-100%
Wang'uru	53	82	113	55%
Webuye	237	105	160	-56%
Winam	326	213	471	-35%
Wundanyi	9	12	18	33%
All Courts	<b>106,134</b>	<b>53,474</b>	<b>49,727</b>	<b>-50%</b>

**Annex 2.14: Filed cases by type and Kadhis' Court Station, FY 2017-18**

Station	Divorce	Registration of Marriage	Matrimonial Cause	Misc. Application	Registration of Divorce	Marriages	Succession	Other Matters	All Cases
Balambala	14	15	4	1	2	7	0	0	43
Bungoma	4	21	0	3	0	7	2	3	40
Busia	2	38	0	0	1	1	0	0	42
Bute	11	17	11	0	4	6	3	0	52
Daadab	73	16	6	10	2	3	0	0	110
Eldas	8	7	4	1	9	2	0	0	31
Eldoret	6	26	1	8	3	4	6	0	54
Elwak	60	32	12	0	27	12	6	0	149
Faza Island	11	16	0	2	8	34	10	0	81
Garbatulla	19	39	12	4	4	1	1	0	80
Garissa	213	119	49	3	20	28	33	0	465
Garsen	14	3	17	4	0	25	4	1	68
Habaswein	0	6	0	0	1	1	0	6	14
Hamisi	7	31	1	8	2	6	2	1	58
Hola	17	6	11	10	2	6	7	3	62
Homabay	6	18	4	2	0	4	0	0	34
Ijara	44	31	1	0	13	0	2	0	91
Isiolo	37	62	1	7	19	6	31	0	163
Kajiado	14	23	0	0	1	2	5	0	45
Kakamega	4	18	1	1	0	8	2	0	34
Kakuma	16	0	3	1	1	8	2	0	31
Kericho	7	32	2	2	3	37	1	0	84
Kibera	14	12	0	3	2	2	3	0	36
Kilifi	9	17	3	5	3	36	26	0	99
Kisumu	51	35	5	18	10	44	7	4	174
Kitui	10	6	0	0	0	3	10	0	29
Kwale	5	15	1	7	1	3	301	0	333
Lamu	24	42	2	30	15	12	6	2	133
Machakos	10	13	0	0	0	22	5	1	51
Malindi	69	42	0	1	1	0	35	0	148

Station	Divorce	Registration of Marriage	Matrimonial Cause	Misc. Application	Registration of Divorce	Marriages	Succession	Other Matters	All Cases
Mandera	38	24	2	12	0	4	22	1	103
Mariakani	20	43	0	1	17	0	14	0	95
Marsabit	20	25	13	1	25	10	10	0	104
Maua	5	4	0	0	2	0	4	0	15
Merti	5	17	31	0	4	22	4	0	83
Migori	6	2	0	0	0	2	2	0	12
Mombasa	156	900	2	11	201	85	199	0	1,554
Moyale	20	28	2	4	7	7	28	7	103
Mpeketoni	6	13	0	6	1	5	1	10	42
Msambweni	2	27	2	4	7	6	32	0	80
Muranga	1	2	0	2	0	14	1	0	20
Mwingi	0	9	0	9	0	0	1	0	19
Nairobi	138	212	132	380	210	587	98	0	1,757
Nakuru	29	10	3	0	1	42	3	0	88
Nyeri	8	15	0	0	8	2	26	0	59
Takaba	71	48	0	4	11	6	1	0	141
Thika	2	16	0	0	4	0	1	0	23
Voi	9	13	0	1	2	1	3	0	29
Wajir	47	69	108	73	47	39	4	8	395
<b>All Stations</b>	<b>1,362</b>	<b>2,235</b>	<b>446</b>	<b>639</b>	<b>701</b>	<b>1,162</b>	<b>964</b>	<b>47</b>	<b>7,556</b>

**Annex 2.14: Resolved cases by type and Kadhis' Court Station, FY 2017-18**

KC Station	Divorce	Registration of Marriage	Matrimonial Cause	Misc Application	Registration of Divorce	Marriages	Succession	Other Matters	All Cases
Balambala	9	25		3	0	0	1	0	38
Bungoma	2	21		2	0	0	2	1	29
Busia	18	17		4	0	0	0	0	39
Bute	11	26		3	0	1	0	2	43
Daadab	81	10		7	3	1	47	0	149
Eldas	8	2		0	0	2	1	0	13
Eldoret	3	31		1	8	2	2	1	48
Elwak	66	27		8	0	18	27	2	148
Faza Island	10	9		0	3	7	39	4	72
Garbatulla	33	23		5	6	1	1	1	70
Garissa	98	121		128	0	19	1	24	391
Garsen	13	1		7	1	1	6	1	30
Habaswein	0	7		0	0	1	0	0	11
Hamisi	7	32		0	6	1	5	2	54
Hola	24	5		11	8	3	1	6	61
Homabay	14	7		0	1	0	5	0	27
Ijara	46	28		1	0	12	1	5	93
Isiolo	49	59		0	8	19	6	39	180
Kajiado	13	18		0	0	1	2	10	44
Kakamega	10	12		0	0	1	1	0	25
Kakuma	10	1		0	2	1	2	0	16
Kericho	43	22		3	3	1	2	1	76
Kibera	14	16		0	2	6	3	3	45
Kilifi	9	23		2	3	5	20	19	81
Kisumu	23	35		8	28	14	32	32	178
Kitui	11	6		0	2	0	.	11	31
Kwale	20	9		1	6	33	1	275	345
Lamu	18	32		23	21	11	18	16	140
Machakos	7	10		0	0	1	1	5	25
Malindi	29	53		23	14	3	3	11	136

Mandera	33	27	1	9	3	0	17	1	91
Mariakani	17	38	0	1	0	0	5	0	61
Marsabit	31	3	7	0	0	2	4	0	47
Maua	6	0	1	0	1	0	2	0	10
Merti	6	17	18	0	0	8	0	0	49
Migori	3	0	0	0	0	0	1	0	4
Mombasa	235	793	12	14	20	91	199	0	1,364
Moyale	31	28	4	4	5	7	34	9	122
Mpeketoni	11	13	0	0	0	1	2	7	34
Msambweni	8	5	15	6	2	2	32	0	70
Muranga	0	0	0	0	0	0	2	0	2
Mwingi	0	9	0	9	0	1	0	0	19
Nairobi	161	458	64	306	186	252	77	0	1,504
Nakuru	11	10	2	0	1	35	14	0	73
Nyeri	5	3	1	1	1	10	12	0	33
Takaba	41	63	0	4	2	20	2	0	132
Thika	1	17	0	0	1	0	0	0	19
Voi	9	10	0	2	3	0	5	0	29
Wajir	91	69	109	62	14	10	6	0	361
<b>All courts</b>	<b>1,399</b>	<b>2,251</b>	<b>474</b>	<b>543</b>	<b>404</b>	<b>669</b>	<b>885</b>	<b>37</b>	<b>6,662</b>



**Annex 2.15 Trend in filed and resolved cases in Kadhis' Court by station**

KC Station	2013/14		2014/15		2015/16		2016/17		2017/18	
	IC	RC	IC	RC	IC	RC	IC	RC	IC	RC
Balambala	-	-	-	-	-	-	51	47	43	38
Bungoma	88	72	53	56	37	6	39	41	40	29
Busia	-	-	-	-	-	-	25	12	42	39
Bute	-	-	-	-	32	0	45	78	52	43
Dadaab	-	-	-	-	129	13	106	51	110	149
Eldas	-	-	-	-	9	0	38	6	31	13
Eldoret	32	46	4	7	40	9	60	51	54	48
Elwak	-	-	-	-	-	0	173	158	149	148
Faza	-	-	-	-	-	-	237	229	81	72
Garbatulla	-	-	-	-	-	0	46	32	80	70
Garissa	278	442	68	74	264	32	231	277	465	391
Garsen	35	31	66	57	72	21	85	79	68	30
Habaswein	-	-	-	-	47	19	40	6	14	11
Hamisi	-	-	-	-	-	-	57	12	58	54
Hola	56	45	101	79	65	19	65	86	62	61
Homabay	-	-	-	-	0	0	17	2	34	27
Ijara	-	-	-	-	20	0	124	172	91	93
Isiolo	42	13	0	0	10	8	147	295	163	180
Kajiado	6	2	0	0	24	4	50	40	45	44
Kakamega	185	195	0	0	153	20	107	12	34	25
Kakuma	-	-	-	-	462	18	92	63	31	16
Kericho	-	-	-	-	27	1	83	72	84	76
Kibera	-	-	0	0	15	3	29	41	36	45
Kilifi	44	26	15	11	30	8	50	63	99	81
Kisumu	35	47	23	68	140	33	88	41	174	178
Kitale	6	2	10	9	11	0	-	-	-	-
Kitui	-	-	56	49	12	1	28	20	29	31
Kwale	440	321	169	47	244	159	407	355	333	345
Lamu	47	41	81	70	115	34	172	326	133	140
Machakos	8	5	56	49	11	0	17	24	51	25
Makindu	-	-	456	135	-	-	-	-	-	-
Malindi	68	43	14	17	127	44	46	92	148	136
Mandera	241	227	105	100	109	9	173	180	103	91
Mariakani	-	-	-	-	9	0	105	102	95	61
Marsabit	80	71	0	0	128	51	122	111	104	47
Maua	-	-	-	-	-	-	16	14	15	10
Merti	-	-	-	-	-	-	122	119	83	49
Migori	-	-	28	16	14	7	7	6	12	4
Mombasa	528	320	210	350	255	202	536	507	1,554	1,364
Moyale	40	28	0	0	8	19	95	57	103	122
Mpeketoni	-	-	-	-	-	-	18	14	42	34
Msambweni	-	-	-	-	-	0	99	69	80	70
Murang'a	9	8	0	0	3	2	14	5	20	2
Mwingi	-	-	-	-	0	0	12	4	19	19
Nairobi	329	275	328	294	462	389	803	585	1,757	1,504
Nakuru	-	-	-	-	121	30	136	25	88	73
Nyeri	31	25	0	0	42	13	58	70	59	33
Takaba	-	-	-	-	-	0	181	61	141	132
Thika	57	53	24	23	8	3	8	13	23	19
Voi	227	222	11	5	67	0	52	47	29	29
Wajir	407	403	0	0	413	30	192	61	395	361
All Stations	<b>3,319</b>	<b>2,963</b>	<b>1,878</b>	<b>1,516</b>	<b>3,735</b>	<b>1,207</b>	<b>5,504</b>	<b>4,833</b>	<b>7,556</b>	<b>6,662</b>

### Annexure 3.1: Tribunals' Locations and Chairpersons

Name of Tribunal	Location	Name of Chair person
Business Premises Rent Tribunal	View Park Towers, 7th & 8th floor (Has regional offices)	Denis Silas Mbichi Mboroki
Standards Tribunal	KIRDI Block 'D', door '10' along Popo road, South 'C'	Gladys Muthoni Mburu
Cooperative Tribunal	Reinsurance Plaza, 12th floor room 1208, Taifa Road,	Hon Alex K. Ithuku
State Corporations Appeal Tribunal	Reinsurance Plaza 7th floor Aga Khan Walk/Taifa road	N/A
Education Tribunal	Jogoo House B, Room No. 433	Kiragu Wa Magochi
Transport Licensing Appeals Board	Transcom House, 2nd Floor, Community, Ngong Road.	Dick Waweru Mbugua
Rent Restriction Tribunal	Crescent House, 1st, 2nd and 3rd Floor, Muindi Mbingu/Moktar Daddah Street.	Hillary K. Korir- Chairperson
Energy Tribunal	Nyayo Hse, 24th floor Kenyatta Avenue	Kioko Kilukumi
National Environment Tribunal	Department of Resource Surveys and Remote Sensing (DRSRS), Popo Road, South C (Belle Vue)	Mohamed Balala
Competition Tribunal	Kenya Re Towers, 10 <sup>th</sup> Floor, Off Ragati Rd, Upper Hill	Stephen Kipkenda
Public Private Partnership Petition Committee	Crescent House, 3rd & 4th Floor, Muindi Mbingu/Moktar Daddah Street.	James Muruthi Kihara
Micro & Small Enterprises Tribunal	12th Floor, Re-insurance Plaza, Taifa Road	Hon. Joseph M. Were
Competent Tribunal	Sheria House, State Law Office, Harambee Avenue	Dr. Henry Kibet Mutai
Sports Tribunal	NSSF Building, BLOCK A 24Floor Western Wing	John Morris Ohanga
HIV & Aids Tribunal	NHIF Building, 15th floor, Ragati road	Jotham Arwa
Industrial Properties Tribunal	Weights & Measures Complex, Block A , Popo Road ,South C	Brown M. Kairaria
Communication & Multi-Media Appeals Tribunal	Transcom House, 9th Floor, Ngong Road	Hon. William Oketch
National Civil Aviation Tribunal	Transcom House, 3rd floor, Ngong Rd	Hon. Peter O. Muholi
Legal Education Tribunal	Jogoo House A, 5th Floor, Harambee Avenue.	Rose Waithera Njoroge
Political Parties Disputes Tribunal	Milimani Law Courts, Court Room 3, Nairobi	Kyalo Mbobu

## LIST OF JUDGES

JUDGES IN HIGH COURT (AS AT DECEMBER 2017)

	NAME	COURT
	<b>HIGH COURT JUDGES</b>	
1	Hon. Mr. Justice Richard Mwongo	HIGH COURT
2	Hon. Mr. Justice Mbogholi Msagha	HIGH COURT
3	Hon. Mr. Justice Hatari P. G. Waweru	HIGH COURT
4	Hon. Lady Justice Jessie W. Lesiit	HIGH COURT
5	Hon. Lady Justice R. P.V. Wendo	HIGH COURT
6	Mr. Justice George M. Abaleka Dulu	HIGH COURT
7	Hon. Lady Justice Mary M. Kasango	HIGH COURT
8	Hon Mr. Justice J.K. Serгон	HIGH COURT
9	Hon. Mr. Justice Joel Mwaura Ngugi	HIGH COURT
10	Hon.Mr. Justice Fredrick A.Ochieng	HIGH COURT
11	Hon.Mr. Justice Luka K.Kimaru	HIGH COURT
12	Hon. Lady Justice Ruth Nekoye Sitati	HIGH COURT
13	Hon. Mr. Justice Joseph R. Karanja	HIGH COURT
14	Hon. Lady Justice Hellen A. Omondi	HIGH COURT
15	Hon. Mr.Justice Aggrey O.Muchelule	HIGH COURT
16	Hon. Lady Justice Florence Muchemi	HIGH COURT
17	Hon. Lady Justice Maureen A. Odero	HIGH COURT
18	Hon. Mr. Justice Said J. Chitembwe	HIGH COURT
19	Hon Lady Justice Grace M. Ngugi	HIGH COURT
20	Hon. Mr. Justice Edward M.Muriithi	HIGH COURT
21	Hon Lady Justice Abida Aroni	HIGH COURT
22	Hon. Lady Justice Pauline Nyamweya	HIGH COURT
23	Hon. Mr. Justice David A.S. Majanja	HIGH COURT
24	Hon. Lady Justice Cecilia Wathaiya Githua	HIGH COURT
25	Hon. Lady Justice Beatrice Nthiori Thurania Jaden	HIGH COURT
26	Hon. Mr. Justice Weldon Kipyegon Korir	HIGH COURT
27	Lady Justice Grace Nzioka	HIGH COURT
28	Hon. Lady Justice Christine W. Meoli	HIGH COURT
29	Hon. Lady Justice Hedwig I.Ong'undi	HIGH COURT
30	Hon. Lady Justice Stella N. Mutuku	HIGH COURT
31	Hon. Mr. Justice James Wakiaga	HIGH COURT
32	Hon. Lady Justice Rose E. A. Ougo	HIGH COURT
33	Hon. Mr. Justice Erick K. O. Ogola	HIGH COURT
34	Hon. Mr. Justice George V.Odunga	HIGH COURT
35	Hon. Mr. Justice Hilary K. Chemitei	HIGH COURT
36	Hon. Mr. Justice James A. Makau	HIGH COURT

37	Hon. Mr. Justice Francis Tuiyot	HIGH COURT
38	Hon. Lady Justice Roselyne C. Korir	HIGH COURT
39	Hon. Mr. Justice George K. Kimondo	HIGH COURT
40	Hon. Mr. Justice Alfred Mabeya	HIGH COURT
42	Hon. Lady Justice Lydia A. Achode	HIGH COURT
43	Hon. Lady Justice Abigail Mshila	HIGH COURT
44	Hon. Mr. Justice William M. Muasya	HIGH COURT
45	Hon. Lady Justice N.J. Kamau	HIGH COURT
46	Hon. Mr. Justice Ngaah Jairus	HIGH COURT
47	Hon. Mr. Justice Francis M. Gikonyo	HIGH COURT
48	Hon. Mr. Justice Martin Mati Muya	HIGH COURT
49	Hon. Lady Justice Esther N. Maina	HIGH COURT
50	Hon. Lady Justice Lilian Nabwire Mutende	HIGH COURT
51	Hon. Lady Justice Grace W. Ngenye	HIGH COURT
52	Hon. Lady Justice Margaret Waringa Muigai	HIGH COURT
53	Hon. Justice Enock Mwita	HIGH COURT
54	Hon. Justice Charles Kariuki Mutungi	HIGH COURT
55	Hon. Lady Justice Farah Amin	HIGH COURT
56	Hon. Lady Justice Roselyne E. Aburili	HIGH COURT
57	Hon. Justice Anthony Murima	HIGH COURT
58	Hon. Justice Robert Limo	HIGH COURT
59	Hon. Justice Justus Bwonwonga	HIGH COURT
60	Hon. Justice Janet Mulwa	HIGH COURT
61	Hon Mr Justice Riechi Stephen Nyangau	HIGH COURT
62	Hon Lady Justice Sewe Olga Akech	HIGH COURT
63	Hon Lady Justice Winfrida Adhiambo Okwany	HIGH COURT
64	Hon Mr Justice Otieno Patrick Okwaro	HIGH COURT
65	Hon Mr Justice Anthony Kimani Ndungu	HIGH COURT
66	Hon Lady Justice Mugure Thande	HIGH COURT
67	Hon Lady Justice Margaret Njoki Mwangi	HIGH COURT
68	Hon Mr Justice Githinji Stephen	HIGH COURT
69	Hon Lady Justice Dorah O Chepkwony	HIGH COURT
70	Hon Lady Justice Ongeru Asenath Nyaboke	HIGH COURT
71	Hon Mr Justice Kiarie Waweru Kiarie	HIGH COURT
72	Hon Lady Justice Njunguna Lucy Mwihaki	HIGH COURT
73	Hon Mr Justice Mativo Muting'a John	HIGH COURT
74	Hon Mr Justice Nyakundi Reuben Nyambati	HIGH COURT
75	Justice Onyiego John Nyabuto	HIGH COURT
76	Lady Justice Cherere Thrispisa Wamae	HIGH COURT
77	Justice Ogola Daniel Ogembo	HIGH COURT
78	Lady Justice Gitari Lucy Waruguru	HIGH COURT

79	Lady Justice Ngetich Rachel C. Biomondo	HIGH COURT
	Justice Kemei David Kipyegomen	HIGH COURT
80	Lady Justice Onginjo Anne ColletaApondi	HIGH COURT
81	Lady Justice MathekaTeresiaMumbua	HIGH COURT
82	Mr. Justice Nyagah Jesse Njagi	HIGH COURT
	<b>EMPLOYMENT &amp; LABOUR RELATIONS COURT</b>	
1	Hon. Mr. Justice Mathews N. Nduma	ELRC
2	Hon. Lady Justice Monica W. Mbaru	ELRC
3	Hon. Mr. Justice Marete Njagi	ELRC
4	Hon. Lady Justice Maureen Onyango	ELRC
5	Hon. Mr. Justice Jorum N. Abuodha	ELRC
6	Hon. Lady Justice Hellen S. Wasilwa	ELRC
7	Hon. Mr. Justice Stephen O.Radido	ELRC
8	Hon. Mr. Justice James Rika	ELRC
9	Hon. Lady Justice Linnet Ndolo N.	ELRC
10	Hon. Mr. Justice Onesmus N. Makau	ELRC
11	Hon. Mr. Justice Byram Ongaya	ELRC
12	Hon. Mr. Justice Nzioki Wa Makau	ELRC
	<b>ENVIRONMENT &amp; LAND COURT</b>	
1	Hon. Lady Justice Anne A. Omollo	ELC
2	Hon. Mr. Justice Oscar A. Angote	ELC
3	Hon. Mr. Justice John M. Mutungi	ELC
4	Hon. Mr. Justice Nathan Boaz Olao	ELC
5	Hon. Mr. Justice Antony O.Ombwayo	ELC
6	Hon. Mr. Justice Antony K. Kaniaru	ELC
7	Hon. Lady Justice Lucy N. Gacheru	ELC
8	Hon. Lady Justice Lucy N. Waithaka	ELC
9	Hon. Mr. Justice Peter M. Njoroge	ELC
10	Hon. Mr. Justice Stephen M. Kibunja	ELC
11	Hon. Mr. Justice Samson O. Okong'o	ELC
12	Hon. Mr. Justice Munyao Silas	ELC
13	Hon. Lady Justice Mary M. Gitumbi	ELC-JTI
14	Hon. Mr. Justice Elijah Ogoti Obaga	ELC
15	Hon. Lady Justice Antonina KossyBor	ELC
16	Hon. Lady Justice Onyango Jane Muyoti	ELC
17	Hon. Lady Justice Ochieng Christine E. Atieno	ELC
18	Hon. Mr. Justice Eboso Benard Mweresa	ELC
19	Hon. Lady Justice Odeny Milicent Akinyi	ELC
20	Hon. Lady Justice Mbugua Lucy NgimaHiuhu	ELC
21	Hon. Lady Justice Matheka Nelly Awori	ELC
22	Hon. Mr. Justice AngimaYuvinalisMaronga	ELC

23	Hon. Mr. Justice Yano Charles Kimutai	ELC
24	Hon. Mr. Justice Kullow Mohamed Noor	ELC
25	Hon. Mr. Justice Olola James Otieno	ELC
26	Hon. Lady Justice Mary Clausina Oundo	ELC
27	Hon. Mr. Justice Njoroge Francis Mwangi	ELC
28	Hon. Lady Justice Kemei Kimutai Grace	ELC
29	Hon. Lady Justice Komingoi Loice Chepkemai	ELC
30	Hon. Mr. Justice Ohungo Dalmas Omondi	ELC
31	Hon. Mr. Justice Cherono Enock Chirchir	ELC
32	Hon. Mr. Justice Ongondo George Martin Atunga	ELC
33	Hon. Mr. Justice Mbogo Charles Gitonga	ELC



## VISION

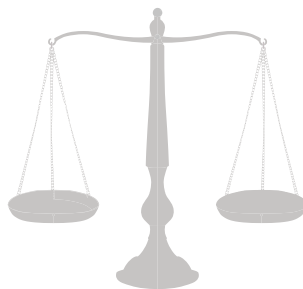
To be an Independent Institution of Excellence  
in the Delivery of Justice to All.



## MISSION

To Administer Justice in a Fair, Timely,  
Accountable and Accessible Manner, Uphold  
the Rule of Law, Advance Indigenous  
Jurisprudence and Protect the Constitution.

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