

## **Access to Justice in the Era of COVID-19: Adaptations and Coping Mechanisms of the legal Services Industry in Kenya**

**By: Prof. Tom Ojienda, SC\* &**

---

\*LLD (University of South Africa), LLM (King's College London), LLB (University of Nairobi). Prof Tom Ojienda, SC is a practising Advocate of the High Court of Kenya of over 25 years of law practice. The Managing Partner: Prof. Tom Ojienda & Associates. He is an Associate Professor of Public Law: Moi University School of Law. He is a former chair of the Law Society of Kenya (LSK), former President of the East African Law Society (EALS) and former Vice President and Financial Secretary of Pan African Lawyers Union (PALU). He has also served as a Commissioner in the Judicial Service Commission (JSC), Commissioner in the Truth Justice and Reconciliation Commission (TJRC) established after the 2007-2008 post-election violence in Kenya, Chair of the Land Acquisition Compensation Tribunal, and member of the National Environmental Tribunal. Currently, he is a Council Member of the International Bar Association, Member of the Board of American Biographical Society, Member of the Council of Legal Education, Member of the Public Law Institute of Kenya, Kenya Industrial Property Institute, and Associate Professor of Public Law at Moi University.

Prof. Ojienda, SC has published over 40 articles and 15 books. The books include "Conveyancing: Theory and Practice" published by T.O. Ojienda and A.D.O. Rachier, Faculty of Law Moi University; "Constitution Making and Democracy in Kenya" edited by T.O. Ojienda ISBN: 9966-9611-3-6; "The Dawn of a New Era 2004" edited by Tom Ojienda, ISBN-9811-4-4; "A General Introduction to the New Law of the Sea" Published by T.O. Ojienda and Kindiki Kithure; "The Legal Profession and Constitutional Change in Kenya; Anti-Corruption and Good Governance in East Africa: Laying Foundations for Reform" edited by Tom O. Ojienda and published by Law Africa Publishing (K) Ltd, Co-op Trust Plaza, 1st Floor, ISBN.9966-7121-1-9, 221 pages; "Conveyancing Principles and Practice" by Tom O. Ojienda and published by Law Africa Publishing (K) Ltd, Co-op Trust Plaza, 1st Floor, 521 pages; 'Conveyancing Principles and Practice' by Dr. Tom O. Ojienda and published by Law Africa Publishing (K) Ltd, Co-op Trust Plaza, 1st Floor (Revised edition); "Professional Ethics" by Prof. Tom Ojienda & Katarina Juma published by Law Africa Publishing (K) Ltd, Co-op Trust Plaza, 1st Floor. (Revised Edition) 195 pages; "The Enforcement of Professional Ethics in Kenya" (with Prof. Cox), Amazon Publishers, 2014; "Constitutionalism and Democratic Governance in Africa" (with Prof Mbodenyi), pulp publishers, 2013; "Mastering Legal Research" published by Law Africa, 2013; "Professional Ethics, A Kenyan Perspective" published by Law Africa 2012; "Anti-Corruption and Good Governance in East Africa" published by Law Africa, 2007; and "Conveyancing Theory and Practice" published by Law Africa, 2002.

Prof. Ojienda, SC's published articles include: "Sustainability and The Ivory Trade. Whither the African Elephant?" published in the 2002 issue of the East African Law Review; "Pitfalls in the Fight against Corruption in Kenya: Corruption or Inertia?" in "Anti-Corruption and Good Governance in East Africa: Laying Foundations for Reform" by T. O. Ojienda (eds) pages 95 – 131; "Exploring New Horizons in the Discipline of Advocates, Towards a Review of the Existing Regime of Law" published in "The Advocate; Learning Law by Doing Law: The Theoretical Underpinnings and Practical Implications of Clinical Legal Education in Kenya";

---

and “An Inventory of Kenya’s Compliance with International Rights Obligations: A Case Study of the International Covenant on Civil and Political Rights” the *East African Journal of Human Rights and Democracy* Vol. 1, Issue No. 1, September 2003 at page 91-104; “Sectoral Legal Aid in Kenya: The Case of the Rift Valley Law Society Juvenile Legal Aid Project”, published in various journals including the *Advocate*, the *Lawyer*, and the *Newcastle Law Bulletin*; “Surrogate Motherhood and the Law in Kenya: A Comparative Analysis in a Kenya Perspective”; “Polygamous Marriages and Succession in Kenya: Whither “the other woman?”; “Reflections on the Implementation of Clinical Legal Education in Moi University, Kenya” published in the *International Journal of Clinical Education* Edition No. 2, June 2002 at page 49-63; “Taking a Bold Step Towards Reform: Justifying Calls for Continuing Legal Education and Professional Indemnity” published in *Law society of Kenya Publication* (2003); “Terrorism: Justifying Terror in Kenya?” published in *The East African Lawyer*, Issue No. 5 at pages 18-22; “Land Law and Tenure Reform in Kenya: A Constitutional Framework for Securing Land Rights”; “A Commentary on Understanding the East African Court of Justice” published in the *East African Lawyer*, Issue No. 6 at pages 52-56; “Where Medicine Meets the Law: The Case of HIV/AIDS Prevention and Control Bill 2003” published in *The Advocate* at page 36-40; “The Advocates Disciplinary Process-Rethinking the Role of the Law Society” published in *The Lawyer*, Issue No. 78 at pages 15-16; “Ramifications of a Customs Union for East Africa” published in *The East African Lawyer*, Issue No. 4 at pages 17-25; “Gender Question: Creating Avenues to Promote Women Rights after the Defeat of the proposed Constitution” published in the *Moi University Journal* Vol. 1 2006 No.1, pages 82–92; “Of Mare Liberum and the Ever Creeping State Jurisdiction: Taking an Inventory of the Freedom of the Seas” published in the *Moi University Journal* Vol. 1 2006 No. 1, pages 105 – 131; “Legal and Ethical Issues Surrounding HIV and AIDS: Recommending Viable Policy and Legislative Interventions” published in *The East African Lawyer*, Issue No. 12 at pages 19-24; “Implementing the New Partnership for Africa’s Development (NEPAD): Evaluating the Efficiency of the African Peer Review Mechanism” published in the *Kenya Law Review*, 2007 Vol. 1, pages 81-119; “Protection and Restitution for Survivors of Sexual and Gender Based Violence: A case for Kenya.” (with R. A. Ogwang and R. Aura) 90 Pages, ISSN:1812–1276; “Legal and Institutional Framework of the TJRC - Way Forward” published in the *Law Society of Kenya Journal* Vol. 6 2010 No. 1, pages 61 – 95; “A Critical Look at the Land Question in the New Constitution” published in *Nairobi Law Monthly*, Vol. 1, Issue No. 1 of 2010 at pages 76 – 81; and a Book Chapter entitled “Land Law in the New Dispensation” in a book edited by P.L.O. Lumumba and Dr. Mbondenyei Maurice.

As a robust litigation counsel, Prof. Ojienda, SC, has successfully handled numerous landmark cases at the Supreme Court of Kenya, on Land and Environment Law, Electoral Law, Commercial Law, Family Law, and other areas of law. Prof. Ojienda, SC represents various individuals, State agencies, private entities, county governments and multinational agencies. He has represented these entities before Kenyan courts, from the subordinate courts, all the way to the Supreme Court of Kenya. Some of his landmark cases at the apex Court include, *Independent Electoral and Boundaries Commission & 2 others v. Evans Kidero* (Petition 20 of 2014); *Justus Kariuki Mate & another v. Hon. Martin Nyaga Wambora* (Petition 32 of 2014); *In the Matter of the National Land Commission - National Land Commission v. Attorney General & 5 others* (Advisory Opinion Reference No 2 of 2014); *Speaker of the Senate & another v Attorney-General & 4 others* [2013] eKLR; *Lemanken Aramat v. Harun Meitamei Lempaka & 2 others* [2014] eKLR; *Cyprian Awiti & another v. Independent Electoral and Boundaries Commission & 2 others* [2019] eKLR; *Mohamed Abdi Mahamud v. Ahmed Abdullahi Mohamad & 3 others*; *Martin Wanderi & 106 others v. Engineers Registration Board*

## ***Lydia Mwalimu Adude†***

---

& 10 others [2018] eKLR; *Moi v. Rosanna Pluda* [2017] eKLR; *Town Council of Awendo v. Nelson O. Onyango & 13 others*, among many others which are available at [www.proftomojiendaandassociates.com](http://www.proftomojiendaandassociates.com). Prof Ojienda, SC can be reached through [tomojienda@yahoo.com](mailto:tomojienda@yahoo.com).

† Lydia Mwalimu Adude holds a Master of Laws (LLM) degree from Harvard Law School (Cambridge, Massachusetts, United States of America) and a Bachelor of Laws (LLB) degree from Kenyatta University School of Law (Nairobi, Kenya). Currently, she heads the Legal Research and Policy Team at Prof. Tom Ojienda & Associates. Her main areas of research and focus are Comparative Constitutional Law, Public International Law, International Criminal Law, Human Rights Law, Governance and the Law, and the Law of Contract. She has relevant national and international legal experience as concerns legal research, analysis and writing on Kenyan and International Law. Her master's thesis at Harvard Law School was on 'Enforcing International Criminal Justice in Africa: Is it a Tussle of Legal Systems?' She was also a Harvard Summer Academic Fellow in 2016 and her research was on 'Rights-based versus Duty-based Models of Child Protection: A Comparative Study of the Child Rights System in Kenya and the Child Protection System in the United States.' She has worked as a Part-time Lecturer in Law in Kenya teaching Bachelor of Laws (LLB) degree students Private International Law (Conflict of Laws) at Kenyatta University School of Law (Nairobi, Kenya), and International Human Rights Law and Criminal Law at Riara University Law School (Nairobi, Kenya).

Previously, Lydia has also worked as a Legal Trainee at the European Center for Constitutional and Human Rights (Berlin, Germany) and as a Legal Intern at both the Special Tribunal for Lebanon (Leidschendam, The Netherlands) and the International Criminal Court (The Hague, The Netherlands). Currently, she is a member of the Young International Council for Commercial Arbitration (Young ICCA) because of her added interest in International Investment Law and International Commercial Arbitration issues and practice. She is also a member of the Harvard Club of Kenya where she has previously served as Secretary to the Board of Directors. Her recent publication is a book chapter on 'Sovereign and Diplomatic Immunity vis-a-vis International Criminal Justice' published in Joseph O. Wasonga and James Nyawo (eds.) (2019), 'International Criminal Justice in Africa Since the Rome Statute' (Nairobi: LawAfrica Publishing Ltd). Lydia can be reached via [lydiaadude@gmail.com](mailto:lydiaadude@gmail.com).

### **Abstract**

*The Coronavirus Disease 2019 (COVID-19) pandemic has taken a toll on countries and most, if not all, sectors of their economies. From early 2020, countries across the globe, including Kenya, went into battle with this common enemy, the COVID-19 or coronavirus pandemic. The cure for the virus is still fully unknown although use of hand sanitizers, washing of hands using soap and water, regular disinfecting of surfaces, coughing and sneezing etiquette, not touching the face, and social distancing have been recommended as means to break down and stop the spread of the virus from one person to another. As such, the immediate remedy to curb the spread of COVID-19 has been the avoidance of contact with those infected and the surfaces touched by the infected persons. Consequently, as a means to suppress and control the spread of the virus, various countries announced partial or total lockdowns. The COVID-19 directives equally entailed stay-at-home directives and closure of private businesses and public institutions, including those in the legal services industry. The COVID-19 measures and directives have necessitated adaptations and coping mechanisms for businesses and public institutions in Kenya and the world over. This article considers adaptations and coping mechanisms of the legal services industry in Kenya in the face of the COVID-19 directives and measures put in place in the course of the pandemic.*

**Keywords:** *COVID-19 directives; legal services industry; business adaptations; access to justice; Kenya; COVID-19 economic relief packages.*

---

### **Introduction**

Who knew we would start a new decade battling a virus that threatens all humankind, age, gender, race, class, ethnicity, nationality, religious, political and other human differences notwithstanding! On 11 March 2020, the World Health Organization (WHO) declared the outbreak of the Coronavirus disease 2019 (COVID-19)<sup>1</sup> a global pandemic.<sup>2</sup> WHO stated that the mantra or tools

---

<sup>1</sup> Hereinafter also referred to as ‘coronavirus’ or ‘the virus’.

<sup>2</sup> World Health Organization (WHO), ‘WHO Director-General’s opening remarks at the media briefing on COVID-19 - 11 March 2020’

for suppressing and controlling the spread of COVID-19 is for countries to ‘detect, test, treat, isolate, trace, and mobilize their people in the response’ to the COVID-19 pandemic.<sup>3</sup> The measures to suppress and control COVID-19 have aimed to ensure that countries strike a balance between protecting health, minimizing economic and social disruption, and respecting human rights, a fight which has faced drawbacks as countries struggle with the of lack of capacity, lack of resources and the lack of resolve.<sup>4</sup>

At first, the COVID-19 pandemic took a greater toll on particular countries such as China, Iran, the Republic of South Korea, Italy and the United States of America (US), amongst other countries that have been worst hit by the pandemic, but the whole world, including Kenya, went into battle with this common enemy, the COVID-19 pandemic.<sup>5</sup> The symptoms of the virus have included, fever, coughing and sneezing, sore throat, headache, difficulty breathing, and loss of smell and taste, and while some have survived the virus, others have succumbed to it. The cure for the virus is still fully unknown

---

<<https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>> accessed 24 March 2020.

<sup>3</sup> *Ibid* (According to WHO ‘countries must take a whole-of-government, whole-of-society approach, built around a comprehensive strategy to prevent infections, save lives and minimize impact.’ WHO has further summarized COVID-19 response measures in four key areas: ‘First, prepare and be ready. Second, detect, protect and treat. Third, reduce transmission. Fourth, innovate and learn.’ Therefore, the WHO Director-General in his rallying call to the nations of the world stated that, ‘I remind all countries that we are calling on you to activate and scale up your emergency response mechanisms; Communicate with your people about the risks and how they can protect themselves – this is everybody’s business; Find, isolate, test and treat every case and trace every contact; Ready your hospitals; Protect and train your health workers. And let’s all look out for each other, because we need each other’.

<sup>4</sup>*Ibid*. However, it goes without saying that the COVID-19 pandemic caught countries unawares hence the impact of the aftermath of the pandemic will be unprecedented. No one saw it coming! See e.g., World Economic Forum, ‘Insights on handling coronavirus from an earlier report on business and outbreaks’ <<https://www.weforum.org/reports/outbreak-readiness-and-business-impact>> accessed 24 March 2020.

<sup>5</sup>See World Health Organization (WHO), ‘Situation report – 63: Coronavirus disease 2019 (COVID-19)’ (23 March 2020) <[https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200323-sitrep-63-covid-19.pdf?sfvrsn=2176eb7a\\_2](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200323-sitrep-63-covid-19.pdf?sfvrsn=2176eb7a_2)> accessed 24 March 2020.

although use of hand sanitizers, washing of hands using soap and water, regular disinfecting of surfaces, coughing and sneezing etiquette, not touching the face, and social distancing have been recommended as means to breakdown and stop the spread of the COVID-19 from one person to another.<sup>6</sup> As a result, the immediate remedy to curb the spread of COVID-19 has entailed the avoidance of contact with those infected and the surfaces touched by the infected persons. Consequently, as a means to suppress and control the spread of the virus, various countries announced partial or total lockdowns. The COVID-19 directives and measures equally entailed stay-at-home directives and closure of private businesses and public institutions, including those in the legal services industry. Economic sectors and businesses were categorized into essential and non-essential sectors in order to determine which businesses stayed open while the rest remained closed until further notice. Accordingly, it goes without saying that the COVID-19 measures and directives have necessitated adaptations and coping mechanisms for businesses and public institutions in Kenya and the world over.

### **COVID-19 Directives and Measures Put in Place in Kenya to Curb the Pandemic**

In the life cycle of the COVID-19 pandemic, the Government of Kenya put in place a number of directives and measures to suppress and control the spread of COVID-19 among the Kenyan populace. On 28 February 2020, the President issued Executive Directive No. 2 of 2020, the first of the COVID-19 directives put in place by the national government, and made orders directing that:<sup>7</sup>

---

<sup>6</sup>See e.g., World Health Organization (WHO), 'Pass the message: Five steps to kicking out coronavirus; WHO, FIFA launch joint campaign to equip football community to tackle COVID-19', (*News Release*, 23 March 2020) <<https://www.who.int/news-room/detail/23-03-2020-pass-the-message-five-steps-to-kicking-out-coronavirus>> accessed 24 March 2020 (For the five key steps for people to follow to protect themselves from contracting COVID-19; which are 'hand washing, coughing etiquette, not touching your face, physical distance and staying home if feeling unwell.')

<sup>7</sup>See Ministry of Foreign Affairs, 'Executive Order No. 2 of 2020' <<http://www.mfa.go.ke/wp-content/uploads/2020/03/executive-order-2-2.pdf>> accessed 24 March 2020; Vincent Kejitan, 'Uhuru issues five orders regarding coronavirus' (*Standard media*, 28 February 2020)

- i) The national isolation and treatment facility at Mbagathi Hospital be completed and ready to receive patients within seven days from the issuance of the Executive Order;
- ii) The identification and preparation of isolation and treatment facilities in Level V and Referral Hospitals across the country be concluded by 15 March 2020;
- iii) The National Emergency Response Committee on Coronavirus is hereby established;
- iv) The Cabinet's Ad-hoc Committee on Health and the Inter-Ministerial Technical Committee on Government Response to the Coronavirus Outbreak are hereby subsumed into the National Emergency Response Committee and stand dissolved;<sup>8</sup> and
- v) The National Emergency Response Committee shall be constituted with the Cabinet Secretary for Health as chairperson, the Director of Public Health as the Secretariat, and the following as Members of the Committee: Cabinet Secretary for Foreign Affairs; Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works; Cabinet Secretary for Defence; Cabinet Secretary for ICT, Innovation and Youth Affairs; Chairperson Health Committee, Council of Governors; Principal Secretary, Interior and Citizen Services; Chief of Staff, Office of the President; Principal Administrative Secretary, Office of the President; Principal Secretary, Health; Principal Secretary, National Treasury; Principal Secretary, Foreign Affairs; Principal Secretary, Transport; Principal Secretary, Telecommunications and Broadcasting; Director-General, Medical Services; Director-General, Kenya Civil Aviation Authority; Director-General, Kenya

---

<<https://www.standardmedia.co.ke/ureport/article/2001362253/uhuru-issues-five-orders-regarding-coronavirus>> accessed 24 March 2020.

<sup>8</sup> Daniel Wesangula, 'President disbands disaster team as fear mounts over Corona' (*Standard Digital*, 29 February 2020)

<<https://www.standardmedia.co.ke/health/article/2001362289/uhuru-disbands-disaster-team-as-fear-mounts-over-corona>> accessed 26 March 2020.

Airports Authority; Director, Immigration; Director of Medical Services, Kenya Defence Forces; and Government Spokesperson.

It is noteworthy that the legal services industry is not represented in the National Emergency Response Committee as constituted. Hence, the legal services industry has had to adjust itself in response to the COVID-19 directives and measures put in place by the national government, with the Ministry of Health on the lead. The terms of reference of the National Emergency Response Committee on Coronavirus (NERC) entail:<sup>9</sup>

- i) Co-ordinate Kenya's preparedness, prevention and response to the threat of Coronavirus Disease;
- ii) Co-ordinate capacity building of medical personnel and other professionals so as to enable the Country respond quickly and effectively to any suspected cases or outbreak of the Disease anywhere within the Republic;
- iii) Enhance surveillance at all Ports/Points of Entry in Kenya;
- iv) Coordinate the preparation of national, County and Private isolation and treatment facilities;
- v) Coordinate the supply of testing-kits, critical medical products/supplies, pharmaceuticals, masks and other protective gear within the Republic;
- vi) Conduct Economic Impact Assessments and develop mitigation strategies with regard to the Disease;
- vii) Co-ordination of both local and international technical, financial and human resource assistance efforts with development partners and key stakeholders;
- viii) Formulating, enforcing and reviewing of processes and requirements that regulate the entry into Kenya of any persons or class of persons known or suspected to have travelled from a Coronavirus affected area;
- ix) Conduct any other matter ancillary to or in furtherance of any of the foregoing Terms of Reference; and

---

<sup>9</sup>Executive Order No. 2 of 2020.



- x) The committee may co-opt any other persons as may be required to assist it in the discharge of its functions.

On 12 March 2020, NERC presented its initial report to President Uhuru Kenyatta stating that no positive cases of COVID-19 had been reported in the country.<sup>10</sup> NERC proceeded to brief the President on various measures that had been taken to cushion the country against the COVID-19 pandemic. Such measures included: the mandatory screening of all persons entering Kenya through airports, sea ports and land crossings; an isolation and treatment capacity at Mbagathi Hospital which was ready for use; establishment of isolation capacity in level 4 and 5 hospitals across the country in collaboration with County Governments; provision of backup capacity for treatment at Kenyatta University Teaching Research and Referral Hospital, Kenyatta National Hospital and Moi Teaching and Referral Hospital as well as privately owned health facilities; training and sensitization of healthcare workers, service providers in the transport sector including matatu crews, taxis, security personnel, airport and border staff among others; suspension of international conferences, meetings and events scheduled to take place in Kenya for a period of 30 days; suspension of non-essential international travel by Government officials; provision of personal protective equipment to all County health facilities, security and response teams; and enhanced diagnostic capability at the National Influenza Center and KEMRI.<sup>11</sup>

Following the NERC meeting with the President, additional COVID-19 measures were agreed upon. The measures entailed: enforcement of the directive barring Government officials from undertaking non-essential travel out of the country; businesses and private citizens were advised not to engage in non-essential travel especially to high-risk areas; all returning Kenyans and other visitors from high risk areas were directed to self-quarantine for not less than 14 continuous days in line with global practice and as recommended by the WHO; as part of the continuous messaging on safe hygiene, all educational

---

<sup>10</sup>The Presidency, 'President Kenyatta Receives Initial Report of the National Emergency Response Committee on Coronavirus' (*Latest News*, 12 March 2020) <<https://www.president.go.ke/2020/03/12/17428/>> accessed 24 March 2020.

<sup>11</sup>*Ibid.*

institutions were directed to ensure that safe hygiene is practiced and enforced daily, especially the washing of hands with soap and water; and direction on the development of specific prevention strategies to take care of low income and vulnerable populations especially in informal settlements by leveraging on existing community structures including chiefs, ward administrators, religious leaders and ‘Nyumba Kumi’ (means ten houses clusters neighbourhood concept) elders to raise awareness and coordinate responses.<sup>12</sup> The President also directed that the necessary review and adjustment of budgets towards prevention and management response actions and to cushion the economy against the negative effects of the COVID-19 pandemic be undertaken.

However, on 13 March 2020, Kenya announced the first positive COVID-19 test result,<sup>13</sup> and since then, the Kenyan national government, through the Ministry of Health and NERC, has been keeping tabs on the number of positive COVID-19 test results across the country, recoveries, and deaths.<sup>14</sup> On 15 March 2020, two additional positive COVID-19 test results were reported. As a consequence, additional COVID-19 measures were announced through a press statement by President Uhuru Kenyatta. The measures were as follows:<sup>15</sup>

1. The Government is suspending travel for all persons coming into Kenya from any country with reported Coronavirus cases.
2. Only Kenyan Citizens, and any foreigners with valid residence permits will be allowed to come in provided they proceed on self-quarantine or to a government designated quarantine facility.

---

<sup>12</sup>*Ibid.*

<sup>13</sup>See e.g., Ministry of Foreign Affairs, ‘Press Statement by H.E. Uhuru Kenyatta’ (*Recent media*, 16 March 2020) <<http://www.mfa.go.ke/?p=3115>> accessed 24 March 2020.

<sup>14</sup>See e.g., Nasibo Kabale, ‘Kenya’s Covid-19 cases rise to 31’ (*The East African*, 26 March 2020) <<https://www.theeastafrican.co.ke/scienceandhealth/Kenyas-Covid-19-cases-rise-to-31/3073694-5505040-ctd7bjz/index.html>> accessed on 26 March 2020; Adonijah Ochieng’, ‘Kenya reports first coronavirus-related death’ (*Business Daily*, 26 March 2020) <https://www.businessdailyafrica.com/news/Kenya-reports-the-first-coronavirus-related-death/539546-5505372-nexpy2z/index.html>> accessed 26 March 2020.

<sup>15</sup>See *Ministry of Foreign Affairs* (n 15).

This will take effect within the next 48 hours to cater for any passengers who may be enroute. This directive will remain in effect for the next 30 days or as varied by the National Emergency Response Committee.

3. All persons who have come into Kenya in the last 14 days must self-quarantine. If any person exhibits symptoms such as cough, or fever, they should present themselves to the nearest health facility for testing;
4. We have suspended learning in all our education institutions with immediate effect. Consequently, and to facilitate a phased approach, primary and secondary day schools are to suspend operations from tomorrow.
5. For those in boarding schools, the school administration is to ensure that students are home by Wednesday, 18th March 2020 while Universities and Tertiary Institutions are to close by Friday, 20th March 2020;
6. Where possible, government offices, businesses and companies are encouraged to allow employees to work from home, with the exception of employees working in critical or essential services.
7. In order to avoid the risk of transmission through physical handling of money, we encourage the use of cashless transactions such as mobile money and credit cards. We appeal to mobile operators and banks to take into consideration the situation, and reduce the cost of transactions during this period.
8. In line with the directive to avoid crowded places, citizens are encouraged to:
  - a. Avoid congregating including in places of worship;
  - b. Minimize attendance to social gatherings including weddings and funerals, and restrict the same to immediate family members;
  - c. Avoid crowded places including shopping malls and entertainment premises;
  - d. Minimize congestion in public transport wherever possible;

- e. Limitation of visitors to hospitalised patients in both public and private hospitals.
9. Hospitals and shopping malls are encouraged to provide soap, water and hand sanitizers and ensure that all their premises are regularly cleaned and disinfected.

NERC, under the leadership of the Ministry of Health, has been issuing updates and additional directives aimed at suppressing and controlling the spread of COVID-19 in Kenya as the number of positive tests of COVID-19 have continued to increase.<sup>16</sup> The directives issued on 22 March 2020 by NERC, through the Cabinet Secretary for Health, Honourable Mutahi Kagwe, in a bid to curb the spread of coronavirus in the country were as follows:<sup>17</sup>

1. All international flights are suspended effective Wednesday March 25th, 2020 at midnight with the exception of cargo flights whose crew must observe strict guidelines. Those coming into the country between now and Wednesday will undergo mandatory quarantine at a government designated facility at their own expense.  
Countries wishing to evacuate their nationals must make their arrangements to do so within this period. Kenyans who are currently in foreign countries, and will not have come back within the period are advised to observe the guidelines issued in the respective countries wherever they are.
2. Whereas we had allowed Kenyans and foreigners with valid residence permits to come in to the country, we have observed that there are those who are not observing the self-quarantine protocol. Consequently, NERC has decided that all persons who violate the self-quarantine requirement will be forcefully quarantined for a

---

<sup>16</sup>See e.g., Ministry of Health, Press Releases on COVID-19, <<http://www.health.go.ke/press-releases/>> accessed 26 March 2020.

<sup>17</sup>Ministry of Foreign Affairs, 'National Emergency Response Committee Press Statement on the Update of Coronavirus in the Country and Response Measures as at 22<sup>nd</sup> March 2020' (*Recent media*, 22 March 2020) <<http://www.mfa.go.ke/?p=3260>> accessed 24 March 2020.

- full period of 14 days at their cost, and thereafter arrested and charged under the Public Health Act.
3. Effective midnight tonight, all BARS will remain closed until further notice. Restaurants are to remain open but only for purposes of facilitating take away services. This is meant to secure the social distance requirement, noting the increased risk of transmission these facilities cause.
  4. Further in order to give effect to the social distance requirement in the public transport sector all public service vehicles must adhere to the directive issued on Friday March 20th, 2020 failure to which the respective Sacco licenses will be revoked. The Inspector General of Police has been already directed to enforce this directive.
  5. Lastly, having noted the non-compliance of religious institutions to the social distance requirement as issued on Friday March 20th, 2020, the NERC has directed the suspension of all church, mosques, and other religious gatherings. This also includes weddings, funerals and other social gatherings which are restricted to immediate family members only. These directives take effect immediately until further notice.

On 25 March 2020, President Uhuru Kenyatta made a *Presidential Address on the State Interventions to Cushion Kenyans against Economic Effects of Covid-19 Pandemic* and ordered and directed that:<sup>18</sup>

- 1 That the National Treasury implements the following immediate reliefs and increase disposable income to the people of Kenya, through:
  - I. 100 % Tax Relief for persons earning gross monthly income of up to Ksh. 24,000.

---

<sup>18</sup> The Presidency, 'Presidential Address on the State Interventions to Cushion Kenyans Against Economic Effects of Covid-19 Pandemic on 25th March, 2020' <<https://www.president.go.ke/2020/03/25/presidential-address-on-the-state-interventions-to-cushion-kenyans-against-economic-effects-of-covid-19-pandemic-on-25th-march-2020/>> accessed 26 March 2020.

- II. Reduction of Income Tax Rate (Pay-As-You-Earn) from 30% to 25%.
  - III. Reduction of Resident Income Tax (Corporation Tax) from 30% to 25%;
  - IV. Reduction of the turnover tax rate from the current 3% to 1% for all Micro, Small and Medium Enterprises (MSMEs);
  - V. Appropriation of an additional Ksh. 10 Billion to the elderly, orphans and other vulnerable members of our society through cash-transfers by the Ministry of Labour and Social Protection, to cushion them from the adverse economic effects of the COVID-19 pandemic;
  - VI. Temporary suspension of the listing with Credit Reference Bureaus (CRB) of any person, Micro, Small and Medium Enterprises (MSMES) and corporate entities whose loan account fall overdue or is in arrears, effective 1<sup>st</sup> April, 2020.
1. The National Treasury shall cause immediate reduction of the VAT from 16% to 14%, effective 1<sup>st</sup> April, 2020;
  2. That all Ministries and Departments shall cause the payment of at least of Ksh. 13 Billion of the verified pending bills, within three weeks from the date hereof. Similarly, and to improve liquidity in the economy and ensure businesses remain afloat by enhancing their cash flows, the private sector is also encouraged to clear all outstanding payments among themselves; within three weeks from the date hereof.
  3. That the Kenya Revenue Authority shall expedite the payment of all verified VAT refund claims amounting to Ksh. 10 Billion within 3 weeks; or in the alternative, allow for offsetting of Withholding VAT, in order to improve cash flows for businesses.
  4. That Ksh. 1.0 billion from the Universal Health Coverage kitty, be immediately appropriated strictly towards the recruitment of additional health workers to support in the management of the spread of COVID-19.

- 5.1 In that regard, I further direct the Ministry of Health, the County Governments and the Public Service Commission to expedite the recruitment process.
5. In sharing the burden occasioned by the present global health pandemic, over the duration of the global crisis and commencing immediately, my Administration has offered a voluntary reduction in the salaries of the senior ranks of the National Executive, as follows:
  - 6.1 The President & Deputy President – 80%;
  - 6.2 Cabinet Secretaries – 30%;
  - 6.3 Chief Administrative Secretaries – 30%;
  - 6.4 Principal Secretaries – 20%
6. I call on the other arms of Government and tiers of Government to join us in this national endeavour, by making similar voluntary reductions; which will free-up monies to combat this pandemic.
7. Further to the guidelines issued encouraging State Agencies to establish and implement frameworks for staff to work from home;
- 8.1 I hereby order and direct that all State and Public Officers with pre-existing medical conditions and/or aged 58 years and above, serving in Job Group S and below or their equivalents, take leave or forthwith work from home, excluding personnel in the security sector and other essential services as outlined in the circular issued to the Public Service on 16th March, 2020. (...)
8. The Central Bank of Kenya has additionally rolled out the following Measures:
  - 9.1 The lowering of the Central Bank Rate (CBR) to 7.25% from 8.25% which will prompt commercial banks to lower the interest rates to their borrowers, availing the much needed and affordable credit to MSMEs across the country.
  - 9.2 The lowering of the Cash Reserve Ratio (CRR) to 4.25 percent from 5.25 percent will provide additional liquidity of Ksh. 35 Billion to commercial banks to directly support borrowers that

are distressed as a result of the economic effects of the COVID-19 pandemic.

- 9.3 The Central Bank of Kenya shall provide flexibility to banks with regard to requirements for loan classification and provisioning for loans that were performing as at March 2, 2020 and whose repayment period was extended or were restructured due to the pandemic.
9. I have re-organized the ordinary calendar of Cabinet, its committees and key State Agencies so as to apply a whole-of-government approach to the COVID-19 Pandemic, and to foster enhanced responses to the same.
10. We have further introduced close co-ordination and collaboration with the County Governments; in addition to the establishment of sectoral Working Groups to more effectively and expeditiously implement action-points. (...)
11. On behalf of a grateful nation, I extend our heartfelt and eternal gratitude to our Medical Professionals and Health Workers, for their exemplary work that is the backbone of our continuing successes in limiting COVID-19 within our Borders.
12. I also wish to recognize and thank all Kenyans serving in critical and essential service sectors, for their excellent efforts which have ensured the continuity of our supply-chains and the provision of critical and essential services.
13. To honour their hard work and sacrifice, it is incumbent on every Kenyan to support the efforts of our Medical Professionals, Health Workers, Critical and Essential Services Providers, and the Government as a whole by reducing movement and congregating in large groups.
14. To that end, the National Security Council has sanctioned and caused the issuance of a Public Order Number 1 on the Coronavirus Pandemic, with the following key aspects:
- 15.1 That effective Friday, 27th March, 2020; a Daily Curfew from 7 p.m. to 5 a.m. shall be in effect in the territory of the Republic of Kenya, with all movement by persons not authorized to do so or not being Medical Professionals, Health Workers, Critical and



Essential Services Providers, being prohibited between those hours (The full list of Critical and Essential Service Providers is annexed to this Statement); and

- 15.2 That with immediate effect, the management of the Kenya Ferry Services is vested in the National Police Service, the Coast Guard and the National Government Administration Officers (NGAO). (...)

The list of critical and essential services annexed to the President's statement of 25 March 2020, as far as the 7 p.m. to 5 a.m. curfew is concerned, are: Medical Professionals & Health Workers; National Security, Administration and Co-ordination Officers; Public Health and Sanitation officers in the County Governments; Licensed Pharmacies and Drug Stores; Licensed Broadcasters and Media Houses; Kenya Power & Lightening Company Limited; Food Dealers, Distributors, Wholesalers & Transporters of Farm Produce; Licensed Supermarkets, Mini-Markets and Hypermarkets; Licensed Distributors and Retailers of Petroleum and Oil Products and Lubricants; Licensed Telecommunication Operators and Service Providers; Licensed Banks, Financial Institutions and Payment Financial Services; Fire Brigade and other Emergency Response Services; Licensed security firms. It is notable that legal services were not listed among the critical and essential services. However, the Law Society of Kenya (LSK) petitioned the court and the court made orders to the effect that members of LSK be included in the list of services, workers and personnel exempted from the dusk to dawn curfew order.<sup>19</sup>

Various sectors of Kenya's economy have been hard-hit by the directives and measures taken by the Kenyan national government, and the county governments alike, in response to the COVID-19 pandemic. These include banking and capital markets,<sup>20</sup> health, transport, education, tourism and the

---

<sup>19</sup> *Law Society of Kenya v Hillary Mutyambai Inspector General National Police Service & 4 others ; Kenya National Commission on Human Rights & 3 others (Interested Parties)* [2020] eKLR, HCCHR, Petition No. 120 of 2020 (COVID 025) <<http://kenyalaw.org/caselaw/cases/view/193192/>> accessed 15 October 2020.

<sup>20</sup> See e.g., Scot Baret, Anna Celner, Monica O'Reilly and Mark Shilling, 'COVID-19 potential implications for the banking and capital markets sector' (*Deloitte Insights*,

larger hospitality industry. The judiciary and the larger legal services industry have not been spared either.<sup>21</sup>

### **Actions taken by the Judiciary of Kenya as a result of the COVID-19 Directives and Measures taken by the Kenyan National Government**

The Judiciary, an independent arm of government, is not part of and is not represented in the Executive's NERC. However, the Judiciary has issued its own COVID-19 directives in line with the directives and measures taken by the Kenyan national government, the Executive, through NERC. On 15 March 2020, the National Council on the Administration of Justice (NCAJ), through the Chief Justice and President of the Supreme Court, David Maraga, SCJ, issued a *Press Statement on 'Administrative and Contingency Management Plan To Mitigate Covid-19 In Kenya's Justice Sector'*.<sup>22</sup> The measures taken by the Judiciary in order to protect the court officers and staff, litigants, and members of the public from the spreading COVID-19 pandemic were as follows:

1. In compliance with the directive issued by the National Emergency and Response Committee, we shall forthwith scale

---

16 March 2020) <<https://www2.deloitte.com/us/en/insights/economy/covid-19/banking-and-capital-markets-impact-covid-19.html>> accessed 24 March 2020.

<sup>21</sup>See e.g., Joseph Wangui, 'Maraga's vision on case backlogs in doubt as virus, budget cuts take toll' (*Daily Nation*, 24 March 2020)

<<https://www.nation.co.ke/news/Maraga-vision-on-case-backlogs-in-doubt-as-virus-takes-toll/1056-5501678-r8bisqz/index.html>> accessed 24 March 2020. ('... the courts shut down operations for one month following the outbreak of the Covid-19 pandemic. At least 20 tribunals under the judiciary have also scaled down operations. The Co-operative Tribunal has suspended fresh filings while the Transport Licensing Appeals Board has postponed cases. This is on top of the budget cuts and the few number of judges and magistrates.'))

<sup>22</sup>National Council on the Administration of Justice, 'Press Statement: Administrative and Contingency Management Plan to Mitigate Covid-19 in Kenya's Justice Sector' (15 March 2020) <<https://www.judiciary.go.ke/download/press-statement-administrative-and-contingency-management-plan-to-mitigate-covid-19-in-kenyas-justice-sector/>> accessed 24 March 2020; Judiciary, 'Press Statement: Administrative and Contingency Management Plan to Mitigate Covid-19 in Kenya's Justice Sector' (*News Release*, 15 March 2020) <<https://www.judiciary.go.ke/press-statement-administrative-and-contingency-management-plan-to-mitigate-covid-19-in-kenyas-justice-sector/>> accessed 24 March 2020.

down court activities throughout the country over the next two weeks effective tomorrow, March 16, 2020 in order to allow further consultations and design appropriate measures to prevent the spread of the virus.

2. During this time, prisoners and remandees will not be presented to court.
3. With regard to new arrests, all cases except serious ones will be dealt with at the police stations in accordance with guidelines to be issued by the Inspector General of Police.
4. All appeals, hearings and mentions in Criminal and Civil cases in all courts are suspended with immediate effect.
5. All execution proceedings are also suspended during the two weeks.
6. Courts will continue to handle certificates of urgency and taking plea for serious cases.
7. During this time, all judicial officers and staff will continue being on duty. However, there will be no open court appearances.
8. Judges in all stations will in the meantime review the deserving cases already identified by Prisons authorities and issue appropriate revision orders in an effort to decongest the prisons. Magistrate Courts will also review bail terms for those in remand.
9. All conferences, workshops, colloquia and training programmes are suspended until further notice.
10. There will be no foreign travel for the next 30 days for staff of the justice sector institutions, whether official or private, save for exceptional circumstances.
11. An ad-hoc Inter-Agency Committee has been established to liaise with the National committee and advise the NCAJ on further precautionary measures on an ongoing basis.
12. NCAJ will review these directions from time to time as need arises.

As a result, the Judiciary was left with no option but to provide only minimal essential services in the various court stations across the country in order to ensure access to justice as much as was possible in the prevailing circumstances, especially as concerns plea taking in serious criminal cases and other civil matters filed under certificate of urgency.

However, ‘Further Directions on Court Operations in Mitigating the Effects of COVID-19’ were issued on the 23 March 2020 through an internal memo from the Chief Registrar of the Judiciary, Anne Amadi directing all judiciary staff to work from home until further advised, in order to protect them from the COVID-19 pandemic.<sup>23</sup> The further directions were informed by the press statement released by the Cabinet Secretary for Health on 22 March 2020 on the seriousness of the COVID-19 pandemic in Kenya. Per these further directions, the only access to the court was through telephone and email inquiries to the two contacts provided for each court station in respect of urgent matters, with the hope that the inquiries from litigants and the public would be responded to promptly and appropriately.

The directions also called on litigants to embrace the *Electronic Case Management Practice Directions, 2020* where practicable.<sup>24</sup> The *Electronic*

---

<sup>23</sup>See Judiciary, ‘Judiciary directs all its staff to work from home’ (*News Release*, 24 March 2020) <<https://www.judiciary.go.ke/judiciary-directs-all-its-staff-to-work-from-home/>> accessed 24 March 2020; Joseph Wangui, ‘Coronavirus: Judiciary staff directed to work from home’ (*Daily Nation*, 24 March 2020) <<https://www.nation.co.ke/news/Judiciary-staff-to-work-from-home/1056-5502168-194bh0/index.html>> accessed 24 March 2020.

<sup>24</sup>See Kenya Law Reports, ‘Gazette Notice No. 2357’ <<http://kenyalaw.org/kl/index.php?id=10211>> accessed 16 October 2020. The Electronic Case Management Practice Directions, 2020 were put in place by the Chief Justice acting pursuant to Articles 159 (2) and 161 (2) (a) of the Constitution of Kenya, 2010 <<http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=Const2010>>, section 10 of the Judicature Act, Cap. 8, Laws of Kenya <<http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%208>>, and section 81 (3) of the Civil Procedure Act, Cap. 21, Laws of Kenya <<http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%2021>>, in order to keep the Judiciary running even in the face of the COVID-19

*Case Management Practice Directions, 2020* provide guidance on the integration of Information Communication Technology (ICT) in judicial proceedings, especially: electronic filing and electronic service of court documents (e-filing and e-service); electronic case search; electronic court diary; electronic case tracking system; electronic payment and receipting of case filing fees and other court fees; electronic signature and electronic stamping of documents; exchange of electronic documents, including pleadings and statements; and use of technology in case registration and digital recording of proceedings for the expeditious resolution of cases.<sup>25</sup>

### **The Impact of the COVID-19 Pandemic on the Legal Services Industry in Kenya**

The COVID-19 pandemic has impacted on the legal services industry in a number of ways. One, the courts and tribunals are not yet fully in session and the various registries which were closed at some point are not yet fully accessible for in-person services. Filing of new cases, case management, mentions, hearings and judgment delivery are mostly proceeding virtually via electronic media and less through in-person sessions. The *Judiciary E-Filing System* was launched on 16 June 2020 for Nairobi Courts and the filing of cases and documents is now being done through the said platform since 1 July 2020 with the help of the *Electronic Case Management Practice Directions, 2020*.<sup>26</sup>

Two, most of the law firms closed because of the COVID-19 pandemic except for those running on low staff. Three, the various law schools and the Kenya

---

pandemic. See also, Moses Odhiambo, 'Managing Disruption: CJ Maraga team sets up infrastructure for e-courts' (*The Star*, 23 March 2020) <<https://www.the-star.co.ke/news/2020-03-23-cj-maraga-team-sets-up-infrastructure-for-e-courts/>> accessed 24 March 2020; and Jemimah Mueni, 'Court Holds Skype Session as Corona Effects Take Toll in Kenya' (*Capital FM News*, 23 March 2020) <<https://www.capitalfm.co.ke/news/2020/03/courts-hold-skype-session-as-corona-effects-take-toll-in-kenya/>> accessed 24 March 2020.

<sup>25</sup> *Electronic Case Management Practice Directions, 2020*, directions 5 and 6.

<sup>26</sup> See <<https://efiling.court.go.ke/>> accessed 15 October 2020.

School of Law closed too following the government directive for the closure of all learning institutions until further notice. Four, currently Continuous Professional Development (CPD) Programs, and other workshops, trainings and conferences run by LSK for its members and those led by other legal stakeholders were either cancelled, postponed or put on hold until further notice; these have now resumed but mostly through virtual means.

In essence, nothing was really happening in the legal services industry during the early stages of the COVID-19 pandemic as legal actors downed their tools to stay at home in order to remain safe and alive. The same could be said of their clients who, like the rest of the Kenyan populace and the world, were staying at home trying to remain alive and safe from COVID-19.

### **The Legal Services Industry as a Critical and Essential Service during the COVID-19 Pandemic**

The almost total shut-down of the Judiciary as a response to the COVID-19 pandemic, hence zero activity within the legal services industry during the earlier stages of the COVID-19 pandemic was however a dangerous move. This is because the legal services industry is still critical and essential even in the face of an epidemic or a pandemic such as the COVID-19 pandemic.

As already highlighted above, per WHO the measures taken by countries to suppress and control COVID-19 must strike a balance between protecting health, minimizing economic and social disruption, and respecting human rights.<sup>27</sup> Since the Judiciary and the larger legal services industry is not represented in NERC, this means that the Judiciary and the courts must remain active to keep tabs on the COVID-19 directives issued by the Executive, in order to ensure that that the WHO balance is adhered to. That aside, there is necessity for the courts to continue to make pronouncements on critical petitions and applications that cannot be avoided despite the occurrence of a pandemic or an epidemic.

---

<sup>27</sup> WHO (n 4).

In that regard, a comparative study of other jurisdictions shows varied responses as various legal jurisdictions gave the COVID-19 pandemic a fight in a bid not to bring the wheels of justice to a complete halt.<sup>28</sup> This comparative study mainly relates to the very early stages of the COVID-19 pandemic. In South Africa, the Office of the Chief Justice issued a media statement on 25 March 2020 regarding the operations of South African Courts during the COVID-19 pandemic, and stated that ‘the courts will, as an essential service, remain open for the filing of papers and hearing of urgent applications, bail applications and appeals or matters relating to violations of liberty, domestic violence, maintenance and matters involving children’.<sup>29</sup> However, pursuant to *Section 165 of the Constitution of South Africa* and *Section 8 of the Superior Courts Act*, the Chief Justice delegated the authority to all Heads of Superior and Lower or Magistrate Courts to make customised directives that would enable courts to remain open and operational to a limited extent as they deem fit.

Courts in some other countries are opted to continue working behind closed doors or remotely, by employing the aid of video or telephone conference facilities while restricting such measures to urgent and essential matters only and postponing the not-so-urgent matters. A good example is the United Kingdom (UK) where the Supreme Court Building and Registry were closed on 20 March 2020 because of the COVID-19 pandemic, but the Court proceeded to operate remotely hearing and handing judgments in all cases.<sup>30</sup> On 24 March 2020, the UK Supreme Court heard an appeal remotely

---

<sup>28</sup>See e.g., Clyde & Co, ‘Covid-19 - Impact on courts and arbitration’ (26 March 2020) <<https://www.clydeco.com/insight/article/covid-19-impact-on-courts-and-arbitration>> accessed 26 March 2020); and Hugo Miller, Ellen Milligan and Gaspard Sebag, ‘UK Courts Carry on While Virus Halts E.U. Cases, Lawsuits’ (*Bloomberg*, 16 March 2020) <<https://www.bloomberg.com/news/articles/2020-03-16/virus-closes-european-courts-but-can-t-stop-u-k-tradition>> accessed 26 March 2020).

<sup>29</sup>See <[https://www.judiciary.org.za/images/news/2020/Media\\_Statement\\_-\\_Courts\\_to\\_be\\_Operational\\_to\\_a\\_Limited\\_Extent\\_During\\_the\\_Lockdown\\_Period\\_From\\_27\\_March\\_to\\_16\\_April\\_2020.pdf](https://www.judiciary.org.za/images/news/2020/Media_Statement_-_Courts_to_be_Operational_to_a_Limited_Extent_During_the_Lockdown_Period_From_27_March_to_16_April_2020.pdf)> accessed 26 March 2020.

<sup>30</sup>See The Supreme Court, ‘Registry Update’ (23 March 2020) <<https://www.supremecourt.uk/news/registry-update.html>> accessed 26 March 2020; and William James and Andy Bruce, ‘UK supreme court switches to video conferencing’ (*Reuters*, 23 March 2020) <<https://www.reuters.com/article/health->

and the delivery of judgment also followed suit. The first judgment of the Court (delivered remotely in the history of the Court through the use of video conferencing) was handed down on the 25 March 2020 in the case of *Elgizouli (AP) v. Secretary of State for the Home Department*.<sup>31</sup>

On the hand, the operations of the other courts and tribunals in the UK was restricted to urgent matters only, which were being heard remotely where possible in order to avoid physical hearings and introducing social distancing measures in courts and tribunals where physical attendance was necessary.<sup>32</sup> *Practice Direction 51Y*, passed pursuant to the UK's *Coronavirus Act, 2020*<sup>33</sup> allows for video or audio hearings in the duration of the coronavirus pandemic, which must be recorded in either format as hearings take place in private, with public hearings being allowed only where live streaming is possible.<sup>34</sup>

Owing to the court directives in other jurisdictions that allowed courts to somehow continue operating, there was pressure on the NCAJ, and the Chief Justice of Kenya to review the Judiciary directives issued in response to the government's directives in relation to the COVID-19 pandemic. Some of the recommendations to keep the Judiciary in Kenya running were as follows:

---

coronavirus-britain-courts/uk-supreme-court-switches-to-video-conferencing-idUSS8N28M0IT> accessed 26 March 2020.

<sup>31</sup>[2020] UKSC 10

<<https://www.supremecourt.uk/watch/uksc-2019-0057/judgment.html>> accessed 26 March 2020.

<sup>32</sup>See The Government of the United Kingdom, 'Guidance: HMCTS daily operational summary on courts and tribunals during coronavirus (COVID-19) outbreak' (Updated 26 March 2020) <<https://www.gov.uk/guidance/hmcts-daily-operational-summary-on-courts-and-tribunals-during-coronavirus-covid-19-outbreak>> accessed 26 March 2020; Court of Session, 'Guidance Note for Practitioners – 25 March 2020: COVID-19' <<https://www.scotcourts.gov.uk/docs/default-source/default-document-library/cos-covid-guidance---updated-25-03-2020.pdf>> accessed 26 March 2020.

<sup>33</sup>See <[http://www.legislation.gov.uk/ukpga/2020/7/pdfs/ukpga\\_20200007\\_en.pdf](http://www.legislation.gov.uk/ukpga/2020/7/pdfs/ukpga_20200007_en.pdf)> accessed 26 March 2020 (Sections 53-57 of the Coronavirus Act, 2020 make provision for the use audio and video conferencing technology in courts and tribunals during the coronavirus pandemic.)

<sup>34</sup>See <<http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part51/practice-direction-51y-video-or-audio-hearings-during-coronavirus-pandemic>> accessed 26 March 2020.



- i) In respect to petitions and applications requiring the appearance of two advocates, the High Court and the Court of Appeal should hear the litigants in person in chambers;
- ii) For petitions and applications that were coming up for hearing, the High Court and the Court of Appeal should give the litigants five minutes to highlight submissions in chambers or open court as applicable;
- iii) Alternatively, where litigants consent in writing, the judges of the High Court and the Court of Appeal should be able to proceed to rely on the written submissions of the litigants and expedite the delivery of judgments and rulings in respect of such petitions and applications;
- iv) Other than the judges and their assistants, only the litigants and the parties they are representing should be allowed to attend the judges in chambers or in open court as applicable;
- v) The matters to be heard on each particular day must be limited to a maximum of five and each matter should be heard at a specified time to avoid congestion in the court as the litigants wait for their matters to be called out; and
- vi) Social distancing, coughing and sneezing etiquette and other hygiene requirements to suppress the spread of coronavirus must still be adhered to by the judges, court staff, litigants and the parties being represented.

Subsequently, courts have put in place standard operating procedures during the COVID-19 pandemic to ensure access to justice while protecting the judicial officers, court staff, litigants and the public.<sup>35</sup> Each court and tribunal has customized operations as necessitated by its own needs and the resources available to it.

---

<sup>35</sup> See e.g., Milimani Law Courts and Milimani Commercial Courts, 'Court Standard Operating Procedures During the COVID-19 Pandemic' <<http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Court-Processes-During-The-Upscaling-Of-Court-Service-At-Milimani-Law-Courts.Pdf>> accessed 16 October 2020.

## **Impact on the Legal Services Industry in the aftermath of the COVID-19 Pandemic**

After the COVID-19 or coronavirus pandemic has passed, the legal services industry will inevitably suffer a number of impacts even as various sectors of the Kenyan economy fight to salvage themselves from the impacts of the directives and measures put in place by the Kenyan national government to curb the spread of the virus. The directives and measures put in place to curb the spread of coronavirus entailed stay-at-home directives and closure of businesses among others as already highlighted above.

The impacts on the legal services industry in the aftermath of the COVID-19 pandemic are numerous. One, an economic meltdown as both legal practitioners and their clients struggle to stay afloat and in business. Two, job layoffs because of struggling businesses and a nationwide economic struggle. Three, a backlog of cases with hearings and mentions having been put on hold as a result of the stay-at-home directives and complete closure of the courts at the beginning of the pandemic.

## **Remedies to cushion the Legal Services Industry from the Negative Impacts of the COVID-19 pandemic**

The following are some of the measures that the Kenyan national government and the Judiciary may consider in salvaging the legal services industry in the aftermath of the COVID-19 or coronavirus pandemic:

- i) The President should confirm the appointments of the forty one superior court judges recommended for appointment by the Judicial Service Commission in order to ease the workload on the current judges of the superior courts of Kenya;<sup>36</sup>
- ii) The government, through the Kenya Revenue Authority, should look into further tax waivers and other tax reliefs and incentives to ease the economic burden on businesses, including law firms, especially in the 2019/2020 and the 2020/2021 fiscal years;

---

<sup>36</sup> See *Adrian Kamotho Njenga v Attorney General; Judicial Service Commission & 2 others (Interested Parties)* [2020] Eklr <<http://kenyalaw.org/caselaw/cases/view/189157/>> accessed 30 March 2020.

- iii) The National Treasury should consider more budgetary allocation to the Judiciary to take care of the backlog of cases created by the stay-at-home directives issued in a bid to suppress and control the spread of COVID-19.
- iv) The Judiciary should encourage and fast track the use of alternative dispute resolution mechanisms, especially mediation, in resolving disputes so as to reduce the inevitable pressure that will be put on court processes and resources. On 27 August 2020, the Judiciary launched the *Alternative Justice Systems Baseline Policy* and *Policy Framework*.<sup>37</sup>

On a different note, during the early stages of the COVID-19 pandemic, it was also thought necessary for the legal services industry, being one of the noble professions, to come up with Corporate Social Responsibility (CSR) initiatives in response to the COVID-19 pandemic. This has been done through the Law Society of Kenya and individual law firms and advocates acting alone or in partnerships to contribute to efforts to suppress and control the spread of COVID-19 in Kenya. The CSR initiatives have taken the form of monetary donations to a kitty established by LSK in response to the negative economic impacts of the COVID-19 outbreak on the vulnerable populations both within and outside the legal services industry.<sup>38</sup> Other monetary and non-monetary CSR initiatives and activities have aimed to boost government endeavours to ensure that critical medical and hygiene products or supplies in the fight against the COVID-19 pandemic are available for our counterparts in the health sector, other critical and essential services actors, and the general public, such as hand sanitizers and surgical masks.

---

<sup>37</sup> See Judiciary, 'Launch of Alternative Justice Systems' <<https://www.judiciary.go.ke/launch-of-alternative-justice-systems/>> and <<https://www.judiciary.go.ke/download/alternative-justice-systems-baseline-policy-and-policy-framework/>> accessed 16 October 2020.

<sup>38</sup> See e.g., 'LSK to cushion struggling lawyers against Covid-19 effects' (*Daily Nation*, 13 May 2020) <<https://nation.africa/kenya/news/LSK-to-cushion-members-against-Covid-19-effects/1056-5535536-i7flvvz/index.html>> accessed 15 October 2020.

### **Economic Reliefs in the Face of the COVID-19 Pandemic**

The COVID-19 pandemic has rampaged the world in varying degrees from country to country. Many have been infected and died in some countries more than others. The economic impact of the COVID-19 pandemic has also varied from country to country depending on each country's collective economic standing. The economic impact of the COVID-19 pandemic has equally varied across the sectors of the economy, whether the sector has proven to be essential or non-essential during the pandemic. It is notable that in coming up with directives and measures to suppress and control the spread of COVID-19 in Kenya, Kenya has looked up to the rest of the world.

In the course of the COVID-19 pandemic, various countries came up with tax reliefs and other economic aid packages to cushion their nationals and businesses from the negative economic effects of the COVID-19 pandemic, as follows:<sup>39</sup>

---

<sup>39</sup>See Cristina Enache, Elke Asen, Daniel Bunn and Justin Dehart, 'Tracking Economic Relief Plans Around the World during the Coronavirus Outbreak' (*Tax Foundation*, 26 March 2020) <<https://taxfoundation.org/coronavirus-country-by-country-responses/>> accessed 26 March 2020 (for a breakdown of the fiscal reliefs by various countries in response to the COVID-19 pandemic); and Matt Apuzzo and Monika Pronczuk, 'Covid-19's Economic Pain Is Universal. But Relief? Depends on Where You Live' (*New York Times*, 23 March 2020) <<https://www.nytimes.com/2020/03/23/world/europe/coronavirus-economic-relief-wages.html>> accessed 26 March 2020; Danske Bank 'The Big Picture: Global fiscal and monetary responses to COVID-19' (*Research*, 20 March 2020) <<https://research.danskebank.com/research/#/Research/articlepreview/6bbaf621-3014-4bd4-87bd-3d2b75bbd479/EN>> accessed 26 March 2020; and EY, 'Staying up-to-date with COVID-19 stimulus responses' (*Tax COVID-19 Stimulus Tracker* updated 25 March 2020) <<https://globaltaxnews.ey.com/news/2020-5400-breaking-tax-news-staying-up-to-date-with-covid-19-stimulus-responses?uAlertID=i0IR2QZBkNsmSALRwpFeXw%3d%3d>> accessed 26 March 2020.

No.	Country	Fiscal/Economic Reliefs
	United States of America <sup>40</sup>	–Extension of deadline for filing of tax returns from 15 April 2020 to 15 July 2020. –Various economic reliefs under COVID-19 influenced legislation. <sup>41</sup>
	Iceland <sup>42</sup>	–Icelandic Government took up to seventy five per cent of salaries to allow employers to keep workers on their payrolls rather than laying them off—this included wage benefits for the self-employed and freelancers too; –State-backed bridging loans for companies;

<sup>40</sup>See IRS, ‘Filing and Payment Deadline Extended to July 15, 2020 – Updated Statement’ (*News*, 21 March 2020) <<https://www.irs.gov/newsroom/payment-deadline-extended-to-july-15-2020>> accessed 24 March 2020; and IRS, ‘Treasury, IRS and Labor announce plan to implement Coronavirus-related paid leave for workers and tax credits for small and midsize businesses to swiftly recover the cost of providing Coronavirus-related leave’ (*News Releases*, 20 March 2020) <<https://www.irs.gov/newsroom/treasury-irs-and-labor-announce-plan-to-implement-coronavirus-related-paid-leave-for-workers-and-tax-credits-for-small-and-midsize-businesses-to-swiftly-recover-the-cost-of-providing-coronavirus>> accessed 24 March 2020.

<sup>41</sup> See also, Coronavirus Aid, Relief, and Economic Security Act, 2020 (CARES Act), Public Law No. 116-136 <<https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>> accessed 1 April 2020; Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020, Public Law 116-123 <<https://www.congress.gov/116/plaws/publ123/PLAW-116publ123.pdf>> accessed 1 April 2020; and Families First Coronavirus Response Act, 2020, Public Law 116-127 <<https://www.congress.gov/116/bills/hr6201/BILLS-116hr6201enr.pdf>> accessed 1 April 2020.

<sup>42</sup>See Government of Iceland, ‘Icelandic Government announces 1.6bn USD response package to the COVID-19 crisis’ (Article, 21 March 2020) <<https://www.government.is/diplomatic-missions/embassy-article/2020/03/21/Icelandic-Government-announces-1.6bn-USD-response-package-to-the-COVID-19-crisis/>> accessed 26 March 2020.

		<ul style="list-style-type: none"><li>-Deferral of tax payments as companies were given the opportunity to postpone the payment of taxes until next year to improve liquidity in business operations;</li><li>-Financial support for the tourism sector as hotel taxes were abolished until the end of 2021;</li><li>-A one-off child benefit payment was made on 1 June 2020 to all families with children under the age of eighteen, whereby those with an average monthly income lower than a set amount were paid higher than those with an average income higher than the set amount;</li><li>-Access to third-pillar pension savings (private/voluntary pension savings), whereby monthly withdrawals of up to a set limit are allowed for the next 15 months;</li><li>-Extension of Value Added Tax (VAT) reimbursement provision to the third sector organizations including charities and sports associations;</li><li>-The Government of Iceland, along with local municipalities, initiated a special project, aimed at increasing investment in transport, public construction and technology infrastructure; and</li><li>-Government contributions to research and science were also increased.</li></ul>
--	--	--

	<p>United Kingdom<sup>43</sup></p>	<ul style="list-style-type: none"> <li>–A Coronavirus Job Retention Scheme for all UK businesses for an initial period of three months starting from 1 March 2020, to be extended if necessary, which applied to employees who had been asked to stop working, but who were being kept on the pay roll (‘furloughed workers’) and in which Her Majesty's Revenue and Customs (HMRC) would reimburse eighty per cent of their wages, up to £2,500 per month;</li> <li>–Deferring VAT payments for three months, from 20 March 2020 to 30 June 2020;</li> <li>–Income Tax Self-Assessment payments due on the 31 July 2020 could be deferred until 31 January 2021;</li> <li>–A Self-employment Income Support Scheme to support self-employed individuals (including those in partnerships) who have lost income due to COVID-19 by allowing them to claim a taxable grant worth eighty per cent of their trading profits up to a maximum of £2,500 per month for three months—to be extended where necessary;</li> <li>–A Statutory Sick Pay relief package for small and medium sized businesses (SMEs) for sickness absence due to</li> </ul>
--	------------------------------------	---

<sup>43</sup>Government of the United Kingdom, ‘COVID-19: guidance for employees, employers and businesses’ (Updated on 26 March 2020) <<https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19/covid-19-support-for-businesses>> accessed 26 March 2020.

		<p>COVID-19 from the date of the stay-at-home directive;</p> <ul style="list-style-type: none"> <li>–A twelve-month business rates holiday for all retail, hospitality, leisure and nursery businesses in England for the 2020 to 2021 tax year;</li> <li>–A one-off small business grant funding of £10,000 for all business in receipt of small business rate relief or rural rate relief to help them meet their ongoing business costs;</li> <li>–The Retail and Hospitality Grant Scheme which provides businesses in the retail, hospitality and leisure sectors with a cash grant of up to £25,000 per property depending on the rateable value of the property;</li> <li>–The Coronavirus Business Interruption Loan Scheme offering loans of up to £5 million for SMEs through the British Business Bank;</li> <li>–The COVID-19 Corporate Financing Facility from the Bank of England to help support liquidity among larger firms to allow them to meet their short-term liabilities, e.g. the Bank of England was to buy short term debt from the firms; and</li> <li>–All businesses and self-employed people in financial distress, and with outstanding tax liabilities, could be eligible to receive support with their tax affairs through the HMRC Time To Pay Scheme.</li> </ul>
--	--	---



		<p>–The UK enacted the Coronavirus Act, 2020<sup>44</sup></p>
	<p>The Netherlands<sup>45</sup></p>	<p>–Three-months deferral of tax payments for wage taxes, personal income taxes, VAT and corporate income tax;                  –Reduction of tax and levy interest to 0.01 per cent for wage taxes, personal income taxes, VAT and corporate income tax;                  –Waiver of administrative fees for late payment for wage taxes, personal income taxes, VAT and corporate income tax                  –A Temporary Emergency Measure for the Preservation of Jobs (NOW) to compensate salary costs for three months for businesses that expected to lose at least twenty per cent of their revenue, up to ninety per cent of the business’ wage bill— to be eligible, a business was not to dismiss any employees from their jobs for economic reasons during the period covered by the allowance;                  –Emergency relief for the self-employed whereby had recourse to an expedited procedure allowing them to apply for additional income support to help them pay their costs of living for a three-month period—alternatively, the self-employed could apply for support in the form of a</p>

<sup>44</sup> See <[http://www.legislation.gov.uk/ukpga/2020/7/pdfs/ukpga\\_20200007\\_en.pdf](http://www.legislation.gov.uk/ukpga/2020/7/pdfs/ukpga_20200007_en.pdf)>.

<sup>45</sup> The Government of the Netherlands, ‘Coronavirus: Dutch government adopts package of new measures designed to save jobs and the economy’ (*News Item*, 17 March 2020) <<https://www.government.nl/latest/news/2020/03/19/coronavirus-dutch-government-adopts-package-of-new-measures-designed-to-save-jobs-and-the-economy>> accessed 26 March 2020.

		<p>working capital loan at a favourable interest rate;</p> <ul style="list-style-type: none"> <li>–Expanding existing government corporate guarantee financing scheme to allow for guarantee of loans to small to medium enterprises;</li> <li>–A temporary emergency measure for government-provided microfinancing, whereby small companies impacted by the COVID-19 pandemic are granted a six-month deferment of repayment, and the interest rate on their loans are automatically lowered to two per cent during the COVID-19 pandemic period;</li> <li>–The government temporarily underwrote working capital granted to farms and horticultural companies as part of the Guarantee SME Loans scheme for small and medium-sized farms; and</li> <li>–The government equally worked on a Compensation Scheme for Impacted Sectors (affected by the COVID-19 measures) such as cafes, restaurants and the travel industry.</li> </ul>
	Ireland <sup>46</sup>	<ul style="list-style-type: none"> <li>–A €3 billion economic aid package inclusive of loans and direct subsidies;</li> <li>–A Temporary COVID-19 Wage Subsidy Scheme whereby employers were refunded up to seventy per cent of an employee's wages up to a maximum</li> </ul>

<sup>46</sup> Department of the Taoiseach, ‘Government announces new COVID-19 Income Support Scheme’ (*gov.ie*, 24 March 2020) <<https://www.gov.ie/en/press-release/a6d8fa-government-announced-new-covid-19-income-support-scheme/#supports-for-business>> accessed 26 March 2020.

		<p>weekly tax free amount of €410 per week to help affected companies keep paying their employees during the COVID-19 pandemic;<sup>47</sup></p> <ul style="list-style-type: none"> <li>–COVID-19 pandemic unemployment payment of €350 (initially, €203) per week for workers who are laid off;</li> <li>–COVID-19 illness payment of €350 per week;</li> <li>–Enhanced protections for people facing difficulties with their mortgages, rent or utility bills; legislation to prevent termination of residential tenancies and any rent increases for the duration of the COVID-19 pandemic.</li> <li>–Suspension of interest on late payments for January/February VAT and both February and March “pay as you earn” (PAYE) employers’ liabilities;</li> <li>–Suspension until further notice of all debt enforcement activity;</li> <li>–Current tax clearance status to remain in place for all businesses over the COVID-19 affected months;</li> <li>– Suspension of the Relevant Contract Tax (RCT) rate review scheduled to take place in March; and</li> <li>–Critical pharmaceutical products and medicines were given a Customs ‘green</li> </ul>
--	--	---

<sup>47</sup>Office of the Revenue Commissioners, ‘Temporary COVID-19 Wage Subsidy Scheme’ <<https://www.gov.ie/en/service/578596-covid-19-wage-subsidy/>> accessed 26 March 2020.

		routing’ to facilitate uninterrupted importation and supply.
--	--	--

The above are merely examples of fiscal reliefs put in place by five countries selected randomly.

Following in those footsteps and as already highlighted above, the Government of Kenya also came up with economic reliefs to cushion Kenyan businesses, including law firms, from the economic shock waves brought about by the COVID-19 pandemic.<sup>48</sup> Kenyans anticipated Parliamentary interventions in the nature of a comprehensive COVID-19 legislation to back the presidential directives in order for the directives to obtain the force of law and longevity.<sup>49</sup> Further consideration by the Parliament of Kenya seemed imperative to improve the economic directives wherever necessary in order to pass a favourable and workable economic aid package for Kenyans and Kenyan businesses in response to the COVID-19 pandemic, as had been done elsewhere.<sup>50</sup> However, with the Parliament of Kenya having gone on

<sup>48</sup> See The Presidency, ‘Presidential Address on the State Interventions to Cushion Kenyans Against Economic Effects of Covid-19 Pandemic on 25th March, 2020’ <<https://www.president.go.ke/2020/03/25/presidential-address-on-the-state-interventions-to-cushion-kenyans-against-economic-effects-of-covid-19-pandemic-on-25th-march-2020/>> accessed 26 March 2020. See also Paul Wafula, ‘Uhuru Offers tax breaks to cushion Kenyans, traders’ (*Daily Nation*, 26 March 2020) <<https://www.nation.co.ke/news/Uhuru-offers-tax-breaks-to-cushion-Kenyans/1056-5504426-ro2ycu/index.html>> accessed 26 March 2020.

<sup>49</sup> See e.g., Kepha Muiruri, ‘Coronavirus: Hits and misses in Government’s relief measures’ (*Citizen Digital*, 26 March 2020) <<https://citizentv.co.ke/business/coronavirus-hits-and-misses-in-governments-relief-measures-328089/>> accessed 26 March 2020; and Jackson Okoth, ‘Uhuru’s Fiscal Plan Needs Parliamentary Approval’ (*The Kenyan Wall Street*, 26 March 2020) <<https://kenyanwallstreet.com/uhurus-fiscal-plan-needs-parliamentary-approval/>> accessed 26 March 2020.

<sup>50</sup> See e.g., ‘Germany’s Lower House Passes Massive Coronavirus Economic Aid Package’ (*VOA News*, 25 March 2020) <<https://www.voanews.com/science-health/coronavirus-outbreak/germanys-lower-house-passes-massive-coronavirus-economic-aid>> accessed 26 March 2020; Prime Minister’s Office, 10 Downing Street and the Rt Hon Boris Johnson, MP, ‘PM address to the nation on coronavirus: 23 March 2020’ (*GOV.UK*, 23 March 2020) <<https://www.gov.uk/government/speeches/pm-address-to-the-nation-on->

lockdown too at some point, the economic directives have largely operated as presidential directives, except for the enactment of the *Tax Laws (Amendment) Act, 2020* on 25 April 2020.<sup>51</sup> Thus, apart from the tax laws, the longevity of any other COVID-19 economic directives is up to the President as he thinks fit.

## **Conclusion**

Gradually, countries across the globe have eased down on the measures and directives put in place to combat the COVID-19 pandemic. Kenya too has relaxed its directives and measures on COVID-19 to allow normalcy to resume. Nonetheless, the negative economic impact of the COVID-19 pandemic will be felt for some time beyond the pandemic. Accordingly, it is hoped that Kenya will equally look at and adopt, with necessary adaptations, the best practices of the other nations of the world as we ease out of the

---

coronavirus-23-march-2020> accessed 27 March 2020; and the United Kingdom's Coronavirus Act, 2020 <[http://www.legislation.gov.uk/ukpga/2020/7/pdfs/ukpga\\_20200007\\_en.pdf](http://www.legislation.gov.uk/ukpga/2020/7/pdfs/ukpga_20200007_en.pdf)>. See also, the United State of America's: Coronavirus Aid, Relief, and Economic Security Act, 2020 (CARES Act), Public Law No. 116-136 <<https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>> accessed 1 April 2020; Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020, Public Law 116-123 <<https://www.congress.gov/116/plaws/publ123/PLAW-116publ123.pdf>> accessed 1 April 2020; and Families First Coronavirus Response Act, 2020 Public Law 116-127 <<https://www.congress.gov/116/bills/hr6201/BILLS-116hr6201enr.pdf>> accessed 1 April 2020.

<sup>51</sup>See

<[http://kenyalaw.org/kl/fileadmin/pdfdownloads/AmendmentActs/2020/TaxLaws\\_Amendment\\_Act\\_No.2of2020.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/AmendmentActs/2020/TaxLaws_Amendment_Act_No.2of2020.pdf)>; and The Presidency, 'President Kenyatta Assents to the Tax Laws (Amendment) Bill, 2020' (Latest News, 25 April 2020) <<https://www.president.go.ke/2020/04/25/president-kenyatta-assents-to-the-tax-laws-amendment-bill-2020/>> accessed 15 October 2020. The Tax Laws (Amendment) Act, 2020 amended tax-related laws in Kenya such as the Income Tax Act (Cap. 470), the Value Added Tax Act, 2013 (No. 35 of 2013), the Excise Duty Act, 2015 (No. 23 of 2015), the Tax Procedures Act, 2015 (No. 29 of 2015), Miscellaneous Levies and Fees Act, 2016 (No. 29 of 2016), the Kenya Revenue Authority Act, 1995 (No. 2 of 1995), and the Retirement Benefits Act, 1997 (No. 3 of 1997) in light of the COVID-19 economic directives issued by the President on 25 March 2020.

pandemic, especially in a bid to heal and restore our economy, which was nonetheless hailing already before COVID-19 struck.

Even so, the legal services industry in Kenya, like any other businesses, and Kenya, like any other country, must be prepared to cushion themselves and the economy against global disease outbreaks in the nature of the COVID-19 pandemic in the future, and not allow themselves to be caught unawares again. For businesses, preparedness for the outbreak of global pandemics and epidemics would entail enhanced corporate resilience and responsiveness to emerging threats of infectious diseases; for example, through enhanced data and communication technology and vigilant corporate governance that is capable of protecting business assets, employees and the surrounding communities.<sup>52</sup> For the legal services industry, embracing and making technology work in the delivery of legal services from the law schools to the courts, and the law firms to the law society is no longer an option but a necessity.

### Cases

1. Adrian Kamotho Njenga v Attorney General; Judicial Service Commission & 2 others (Interested Parties) [2020] eKLR <<http://kenyalaw.org/caselaw/cases/view/189157/>> accessed 30 March 2020.
2. Elgizouli (AP) v. Secretary of State for the Home Department [2020] UKSC 10 <<https://www.supremecourt.uk/watch/uksc-2019-0057/judgment.html>> accessed 26 March 2020.
3. Law Society of Kenya v Hillary Mutyambai Inspector General National Police Service & 4 others ; Kenya National Commission on Human Rights & 3 others (Interested Parties) [2020] eKLR, HCCHR, Petition No. 120 of 2020 (COVID 025) <<http://kenyalaw.org/caselaw/cases/view/193192/>> accessed 15 October 2020.

---

<sup>52</sup>See generally, World Economic Forum, 'Insights on handling coronavirus from an earlier report on business and outbreaks' <<https://www.weforum.org/reports/outbreak-readiness-and-business-impact>> accessed 24 March 2020; and World Economic Forum & Harvard Global Health Institute, 'Outbreak Readiness and Business Impact: Protecting Lives and Livelihoods' (*World Economic Forum White Paper*, January 2019) <[http://www3.weforum.org/docs/WEF%20HGHI\\_Outbreak\\_Readiness\\_Business\\_Impact.pdf](http://www3.weforum.org/docs/WEF%20HGHI_Outbreak_Readiness_Business_Impact.pdf)> accessed 24 March 2020.

## **Legislation**

### **Kenyan Legislation**

1. Electronic Case Management Practice Directions, 2020, Gazette Notice No. 2357 <<http://kenyalaw.org/kl/index.php?id=10211>> accessed 16 October 2020.
2. The Tax Laws (Amendment) Act, 2020 <[http://kenyalaw.org/kl/fileadmin/pdfdownloads/AmendmentActs/2020/TaxLaws\\_Amendment\\_Act\\_No.2of2020.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/AmendmentActs/2020/TaxLaws_Amendment_Act_No.2of2020.pdf)> accessed 15 October 2020.

### **UK Legislation**

1. Coronavirus Act, 2020 <[http://www.legislation.gov.uk/ukpga/2020/7/pdfs/ukpga\\_20200007\\_en.pdf](http://www.legislation.gov.uk/ukpga/2020/7/pdfs/ukpga_20200007_en.pdf)> accessed 26 March 2020.

### **US Legislation**

1. Coronavirus Aid, Relief, and Economic Security Act, 2020 (CARES Act), Public Law No. 116-136 <<https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>> accessed 1 April 2020.
2. Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020, Public Law 116-123 <<https://www.congress.gov/116/plaws/publ123/PLAW-116publ123.pdf>> accessed 1 April 2020.
3. Families First Coronavirus Response Act, 2020, Public Law 116-127 <<https://www.congress.gov/116/bills/hr6201/BILLS-116hr6201enr.pdf>> accessed 1 April 2020.

## **Bibliography**

1. 'Germany's Lower House Passes Massive Coronavirus Economic Aid Package' (*VOA News*, 25 March 2020) <<https://www.voanews.com/science-health/coronavirus-outbreak/germanys-lower-house-passes-massive-coronavirus-economic-aid>> accessed 26 March 2020.
2. 'LSK to cushion struggling lawyers against Covid-19 effects' (*Daily Nation*, 13 May 2020) <<https://nation.africa/kenya/news/LSK-to-cushion-members-against-Covid-19-effects/1056-5535536-i7flvz/index.html>> accessed 15 October 2020.
3. <<http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part51/practice-direction-51y-video-or-audio-hearings-during-coronavirus-pandemic>> accessed 26 March 2020.
4. <[https://www.judiciary.org.za/images/news/2020/Media\\_Statement\\_-\\_Courts\\_to\\_be\\_Operational\\_to\\_a\\_Limited\\_Extent\\_During\\_the\\_Lockdown\\_Period\\_From\\_27\\_March\\_to\\_16\\_April\\_2020.pdf](https://www.judiciary.org.za/images/news/2020/Media_Statement_-_Courts_to_be_Operational_to_a_Limited_Extent_During_the_Lockdown_Period_From_27_March_to_16_April_2020.pdf)> accessed 26 March 2020.
5. Apuzzo M and Pronczuk M, 'Covid-19's Economic Pain Is Universal. But Relief? Depends on Where You Live' (*New York Times*, 23 March 2020)

- <<https://www.nytimes.com/2020/03/23/world/europe/coronavirus-economic-relief-wages.html>> accessed 26 March 2020.
6. Baret S, Celner A, O'Reilly M and Shilling M, 'COVID-19 potential implications for the banking and capital markets sector' (*Deloitte Insights*, 16 March 2020) <<https://www2.deloitte.com/us/en/insights/economy/covid-19/banking-and-capital-markets-impact-covid-19.html>> accessed 24 March 2020.
  7. Clyde & Co, 'Covid-19 - Impact on courts and arbitration' (26 March 2020) <<https://www.clydeco.com/insight/article/covid-19-impact-on-courts-and-arbitration>> accessed 26 March 2020).
  8. Court of Session, 'Guidance Note for Practitioners – 25 March 2020: COVID-19' <<https://www.scotcourts.gov.uk/docs/default-source/default-document-library/cos-covid-guidance---updated-25-03-2020.pdf>> accessed 26 March 2020.
  9. Danske Bank 'The Big Picture: Global fiscal and monetary responses to COVID-19' (*Research*, 20 March 2020) <<https://research.danskebank.com/research/#/Research/articlepreview/6bbaf621-3014-4bd4-87bd-3d2b75bbd479/EN>> accessed 26 March 2020.
  10. Department of the Taoiseach, 'Government announces new COVID-19 Income Support Scheme' (*gov.ie*, 24 March 2020) <<https://www.gov.ie/en/press-release/a6d8fa-government-announced-new-covid-19-income-support-scheme/#supports-for-business>> accessed 26 March 2020.
  11. Enache C, Asen E, Bunn D and Dehart J, 'Tracking Economic Relief Plans Around the World during the Coronavirus Outbreak' (*Tax Foundation*, 26 March 2020) <<https://taxfoundation.org/coronavirus-country-by-country-responses/>> accessed 26 March 2020.
  12. EY, 'Staying up-to-date with COVID-19 stimulus responses' (*Tax COVID-19 Stimulus Tracker* updated 25 March 2020) <<https://globaltaxnews.ey.com/news/2020-5400-breaking-tax-news-staying-up-to-date-with-covid-19-stimulus-responses?uAlertID=i0IR2QZBkNsmSALRwpFeXw%3d%3d>> accessed 26 March 2020.
  13. Government of Iceland, 'Icelandic Government announces 1.6bn USD response package to the COVID-19 crisis' (Article, 21 March 2020) <<https://www.government.is/diplomatic-missions/embassy-article/2020/03/21/Icelandic-Government-announces-1.6bn-USD-response-package-to-the-COVID-19-crisis/>> accessed 26 March 2020.
  14. Government of the United Kingdom, 'COVID-19: guidance for employees, employers and businesses' (Updated on 26 March 2020) <<https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19/covid-19-support-for-businesses>> accessed 26 March 2020.
  15. IRS, 'Filing and Payment Deadline Extended to July 15, 2020 – Updated Statement' (*News*, 21 March 2020) <<https://www.irs.gov/newsroom/payment-deadline-extended-to-july-15-2020>> accessed 24 March 2020.



16. IRS, 'Treasury, IRS and Labor announce plan to implement Coronavirus-related paid leave for workers and tax credits for small and midsize businesses to swiftly recover the cost of providing Coronavirus-related leave' (*News Releases*, 20 March 2020) <<https://www.irs.gov/newsroom/treasury-irs-and-labor-announce-plan-to-implement-coronavirus-related-paid-leave-for-workers-and-tax-credits-for-small-and-midsize-businesses-to-swiftly-recover-the-cost-of-providing-coronavirus>> accessed 24 March 2020.
17. James W and Bruce A, 'UK supreme court switches to video conferencing' (*Reuters*, 23 March 2020) <<https://www.reuters.com/article/health-coronavirus-britain-courts/uk-supreme-court-switches-to-video-conferencing-idUSS8N28MOIT>> accessed 26 March 2020.
18. Judiciary, 'Judiciary directs all its staff to work from home' (*News Release*, 24 March 2020) <<https://www.judiciary.go.ke/judiciary-directs-all-its-staff-to-work-from-home/>> accessed 24 March 2020;
19. Judiciary, 'Launch of Alternative Justice Systems' <<https://www.judiciary.go.ke/launch-of-alternative-justice-systems/>> and <<https://www.judiciary.go.ke/download/alternative-justice-systems-baseline-policy-and-policy-framework/>> accessed 16 October 2020.
20. Judiciary, 'Press Statement: Administrative and Contingency Management Plan to Mitigate Covid-19 in Kenya's Justice Sector' (*News Release*, 15 March 2020) <<https://www.judiciary.go.ke/press-statement-administrative-and-contingency-management-plan-to-mitigate-covid-19-in-kenyas-justice-sector/>> accessed 24 March 2020.
21. Kabale N, 'Kenya's Covid-19 cases rise to 31' (*The East African*, 26 March 2020) <<https://www.theeastafrican.co.ke/scienceandhealth/Kenyas-Covid-19-cases-rise-to-31/3073694-5505040-ctd7bjz/index.html>> accessed on 26 March 2020.
22. Kejitan V, 'Uhuru issues five orders regarding coronavirus' (*Standard media*, 28 February 2020) <<https://www.standardmedia.co.ke/ureport/article/2001362253/uhuru-issues-five-orders-regarding-coronavirus>> accessed 24 March 2020.
23. Milimani Law Courts and Milimani Commercial Courts, 'Court Standard Operating Procedures During the COVID-19 Pandemic' <<http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Court-Processes-During-The-Upscaling-Of-Court-Service-At-Milimani-Law-Courts.Pdf>> accessed 16 October 2020.
24. Miller H, Milligan E and Sebag G, 'UK Courts Carry on While Virus Halts E.U. Cases, Lawsuits' (*Bloomberg*, 16 March 2020) <<https://www.bloomberg.com/news/articles/2020-03-16/virus-closes-european-courts-but-can-t-stop-u-k-tradition>> accessed 26 March 2020).
25. Ministry of Foreign Affairs, 'Executive Order No. 2 of 2020' <<http://www.mfa.go.ke/wp-content/uploads/2020/03/executive-order-2-2.pdf>> accessed 24 March 2020.
26. Ministry of Foreign Affairs, 'National Emergency Response Committee Press Statement on the Update of Coronavirus in the Country and Response

- Measures as at 22<sup>nd</sup> March 2020' (*Recent media*, 22 March 2020) <<http://www.mfa.go.ke/?p=3260>> accessed 24 March 2020.
27. Ministry of Foreign Affairs, 'Press Statement by H.E. Uhuru Kenyatta' (*Recent media*, 16 March 2020) <<http://www.mfa.go.ke/?p=3115>> accessed 24 March 2020.
  28. Ministry of Health, Press Releases on COVID-19, <<http://www.health.go.ke/press-releases/>> accessed 26 March 2020.
  29. Mueni J, 'Court Holds Skype Session as Corona Effects Take Toll in Kenya' (*Capital FM News*, 23 March 2020) <<https://www.capitalfm.co.ke/news/2020/03/courts-hold-skype-session-as-corona-effects-take-toll-in-kenya/>> accessed 24 March 2020.
  30. Muiruri K, 'Coronavirus: Hits and misses in Government's relief measures' (*Citizen Digital*, 26 March 2020) <<https://citizentv.co.ke/business/coronavirus-hits-and-misses-in-governments-relief-measures-328089/>> accessed 26 March 2020.
  31. National Council on the Administration of Justice, 'Press Statement: Administrative and Contingency Management Plan to Mitigate Covid-19 in Kenya's Justice Sector' (15 March 2020) <<https://www.judiciary.go.ke/download/press-statement-administrative-and-contingency-management-plan-to-mitigate-covid-19-in-kenyas-justice-sector/>> accessed 24 March 2020.
  32. Ochieng' A, 'Kenya reports first coronavirus-related death' (*Business Daily*, 26 March 2020) <<https://www.businessdailyafrica.com/news/Kenya-reports-the-first-coronavirus-related-death/539546-5505372-nexpy2z/index.html>> accessed 26 March 2020.
  33. Odhiambo M, 'Managing Disruption: CJ Maraga team sets up infrastructure for e-courts' (*The Star*, 23 March 2020) <<https://www.the-star.co.ke/news/2020-03-23-cj-maraga-team-sets-up-infrastructure-for-e-courts/>> accessed 24 March 2020.
  34. Office of the Revenue Commissioners, 'Temporary COVID-19 Wage Subsidy Scheme' <<https://www.gov.ie/en/service/578596-covid-19-wage-subsidy/>> accessed 26 March 2020.
  35. Okoth J, 'Uhuru's Fiscal Plan Needs Parliamentary Approval' (*The Kenyan Wall Street*, 26 March 2020) <<https://kenyanwallstreet.com/uhurus-fiscal-plan-needs-parliamentary-approval/>> accessed 26 March 2020.
  36. Prime Minister's Office, 10 Downing Street and the Rt Hon Boris Johnson, MP, 'PM address to the nation on coronavirus: 23 March 2020' (*GOV.UK*, 23 March 2020) <<https://www.gov.uk/government/speeches/pm-address-to-the-nation-on-coronavirus-23-march-2020>> accessed 27 March 2020.
  37. The Government of the Netherlands, 'Coronavirus: Dutch government adopts package of new measures designed to save jobs and the economy' (*News Item*, 17 March 2020) <<https://www.government.nl/latest/news/2020/03/19/coronavirus-dutch-government-adopts-package-of-new-measures-designed-to-save-jobs-and-the-economy>> accessed 26 March 2020.

38. The Government of the United Kingdom, 'Guidance: HMCTS daily operational summary on courts and tribunals during coronavirus (COVID-19) outbreak' (Updated 26 March 2020) <<https://www.gov.uk/guidance/hmcts-daily-operational-summary-on-courts-and-tribunals-during-coronavirus-covid-19-outbreak>> accessed 26 March 2020.
39. The Presidency, 'President Kenyatta Assents to the Tax Laws (Amendment) Bill, 2020' (Latest News, 25 April 2020) <<https://www.president.go.ke/2020/04/25/president-kenyatta-assents-to-the-tax-laws-amendment-bill-2020/>> accessed 15 October 2020.
40. The Presidency, 'President Kenyatta Receives Initial Report of the National Emergency Response Committee on Coronavirus' (*Latest News*, 12 March 2020) <<https://www.president.go.ke/2020/03/12/17428/>> accessed 24 March 2020.
41. The Presidency, 'Presidential Address on the State Interventions to Cushion Kenyans Against Economic Effects of Covid-19 Pandemic on 25th March, 2020' <<https://www.president.go.ke/2020/03/25/presidential-address-on-the-state-interventions-to-cushion-kenyans-against-economic-effects-of-covid-19-pandemic-on-25th-march-2020/>> accessed 26 March 2020.
42. The Supreme Court, 'Registry Update' (23 March 2020) <<https://www.supremecourt.uk/news/registry-update.html>> accessed 26 March 2020.
43. Wafula P, 'Uhuru Offers tax breaks to cushion Kenyans, traders' (*Daily Nation*, 26 March 2020) <<https://www.nation.co.ke/news/Uhuru-offers-tax-breaks-to-cushion-Kenyans/1056-5504426-ro2ycu/index.html>> accessed 26 March 2020.
44. Wangui J, 'Maraga's vision on case backlogs in doubt as virus, budget cuts take toll' (*Daily Nation*, 24 March 2020) <<https://www.nation.co.ke/news/Maraga-vision-on-case-backlogs-in-doubt-as-virus-takes-toll/1056-5501678-r8bisqz/index.html>> accessed 24 March 2020.
45. Wangui, J 'Coronavirus: Judiciary staff directed to work from home' (*Daily Nation*, 24 March 2020) <<https://www.nation.co.ke/news/Judiciary-staff-to-work-from-home/1056-5502168-194bh0/index.html>> accessed 24 March 2020.
46. Wesangula D, 'President disbands disaster team as fear mounts over Corona' (*Standard Digital*, 29 February 2020) <<https://www.standardmedia.co.ke/health/article/2001362289/uhuru-disbands-disaster-team-as-fear-mounts-over-corona>> accessed 26 March 2020.
47. World Economic Forum & Harvard Global Health Institute, 'Outbreak Readiness and Business Impact: Protecting Lives and Livelihoods' (*World Economic Forum White Paper*, January 2019) <[http://www3.weforum.org/docs/WEF%20HGHI\\_Outbreak\\_Readiness\\_Business\\_Impact.pdf](http://www3.weforum.org/docs/WEF%20HGHI_Outbreak_Readiness_Business_Impact.pdf)> accessed 24 March 2020.

48. World Economic Forum, 'Insights on handling coronavirus from an earlier report on business and outbreaks'  
<<https://www.weforum.org/reports/outbreak-readiness-and-business-impact>>  
accessed 24 March 2020.
49. World Economic Forum, 'Insights on handling coronavirus from an earlier report on business and outbreaks'  
<<https://www.weforum.org/reports/outbreak-readiness-and-business-impact>>  
accessed 24 March 2020.
50. World Health Organization (WHO), 'Pass the message: Five steps to kicking out coronavirus; WHO, FIFA launch joint campaign to equip football community to tackle COVID-19', (*News Release*, 23 March 2020).
51. World Health Organization (WHO), 'Situation report – 63: Coronavirus disease 2019 (COVID-19)' (23 March 2020)  
<[https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200323-sitrep-63-covid-19.pdf?sfvrsn=2176eb7a\\_2](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200323-sitrep-63-covid-19.pdf?sfvrsn=2176eb7a_2)> accessed 24 March 2020.
52. World Health Organization (WHO), 'WHO Director-General's opening remarks at the media briefing on COVID-19 - 11 March 2020'  
<<https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>> accessed 24 March 2020.