

# KITUO Newsletter

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We Care For Justice



The National Land Commission (NLC) Chair, Mr Mohammed Swazuri and Mr Hamisi Mboga of Secretary General –Association of Local Government Authorities of Kenya (ALGAK) and Former Member of the Task Force for Devolved Government (TFDG) officially unveiling the devolution manual

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The elections are fast approaching yet there is no clear framework to guide the country in the face of a recurrence of violence despite the fact that Kituo cha Sheria's Regional Office in Mombasa launched a simplified guide on the devolved government system in Kenya. The Launch took place at Pride Inn Hotel in Mombasa on 30th January 2013. Fifty (50) guests attended the event, comprising twenty-six (26) men and twenty four (24) women. They included community members, key stakeholders including SAFE partners and other civil society organizations.

The very colourful dinner ceremony marked the end of a two days training of twenty (20) Trainers on Devolution. The trainers comprised community leaders

drawn from Mombasa, Kwale and Taita-Taveta counties. These activities were conducted under the Supporting Active Participation in Peaceful and Fair Elections at the Coast Project, dubbed the “SAFE project”, which is funded by PACT Inc, ACT! and USAID. The curtain raiser event was instrumental in highlighting emerging concerns around devolution in an effort to raise attention on the implementation of the devolution as provided within the Constitution particularly touching on devolution.

The Training of Trainers (TOT) on devolution was facilitated by Mr. Hamisi Mboga, the Secretary –General of Association of Local Government Authorities of Kenya (ALGAK) and formerly a member of the Task Force



on Devolution and Mr. Titus Ogalo of Kituo cha Sheria. The theme of the TOT on Devolution was “The Promise of Devolution for Coast Region, Threats and Opportunities”. The objective behind the training was to enhance citizens’ active and peaceful participation in the devolved structure of government. The community representatives had an opportunity to meaningful engage with the Mr. Mboga during this very interactive training. Following the training, the TOTs facilitated caucuses, using the Devolution Self Training Manual, within their various counties to raise awareness around the new system of governance.

The launch of the Devolution Self Training Manual was graced by Dr Mohammed Swazuri, the Chairperson of the National Land Commission, Mr. Hamisi Mboga, a former member of the Task Force on Devolution and Secretary-General of ALGAK and Mr. Elijah Ambasa, a Programmes Officer of Transparency International and Consultant who reviewed the draft Devolution Manual.

Speaking during the ceremony, the Chairperson of the National Land Commission focused on resource allocation, participation and representation of the people and land in the devolved system of governance. He reiterated that the team in the Commission is very eager and determined to begin its work as much as they face legal and financial constraints at the time. He further encouraged community members to make use of the devolved structures of the National Land Commission, more specifically the County Land Boards and recommended public education on devolution at the grassroots level.

On the other hand, Mr. Ambasa Elijah emphasized on the roles of various government agencies particularly Transition Authority. He expressed the importance of the Authority in enhancement of civic education on devolution.

The manual summarizes the concept of devolution and highlights salient features of the new framework of governance. Among the key sections of the manual includes: Principles and objectives of devolution, national and county governments’ relationships and their corresponding functions, representation of the people in the new framework, devolved government structures and public participation. It is envisaged that the document will enhance community understanding for realization of the benefits of devolution through informed participation.

*Annette Mbogoh*

*Coordinator, Regional Office Mombasa*



**KITUO CHA SHERIA**  
The Centre for Legal Empowerment  
*we care for justice*



## A SIMPLIFIED GUIDE ON THE DEVOLVED GOVERNMENT SYSTEM IN KENYA



**USAID**  
FROM THE AMERICAN PEOPLE



## Kituo Aid in Access to Education

**K**ituo cha Sheria is one of the longest serving legal NGOs helping marginalized communities’ refugees included to access legal services i.e. legal intervention and court representation.

Kituo under its Forced Migration Program/FMP does referrals to its Urban Refugee Protection Network/ URPN partners providing other services; with special emphasis on education as prescribed by Universal Declaration of Human Rights Article 26 and anchored in the Kenyan Constitution under Article 53(1) (b) of the Bill of Rights. At Kituo we believe children should have custody of their future and that could mainly be realized by educating them. That is why we make it one of our sole responsibility among others to do referrals and follow ups.

Early this year we referred two clients/pupils, Hanni H. Ocholla and Winnie Girma Obang to Jesuit Religious Services (JRS), an organisation that offers scholarship for secondary education. The students who are refugees performed exceptionally well and managed to secure scholarships at Kanga High school and Kangaru girls respectively.

It is vital for children to be able to access the right to education and Kituo is glad to be part of such initiatives that go a long way in realizing that right.

*Ojunni O. Ochalla - FMP*







## SUCCESS STORY - Inmate in Nyeri Prison acquitted

**M**UNENE MWAI was an inmate serving sentence at the Nyeri Main prison vide Criminal Appeal Case No. 28 of 2003 at the Nyeri High Court and before Justice J.K. Sergon originating from Criminal Case No. 903 of 2002 at the Kerugoya Law Courts before magistrate Wilkson Nyanga Njagi as recorded in the Kenya Police Occurrences Book Charge Sheet Police Case No. 221/191/2002, Date to Court 2/9/2002 that with respect to Count 1; together with his wife PURITY WAMBUI MIANO on diverse dates between 31st November 1999 and 24th November 2001 at Kiang'ombe village in Kirinyaga District within the Central Province, jointly by fraudulent means conspired to defraud STELA MUTHONI KIBAKI a sum of Ksh. 175,000/= by falsely pretending that they will sell the land parcel No. KABARE/GACIGI/1331 to STELLA MUTHONI and Count 2; obtaining land registration by false pretences contrary to Section 329 of the Penal Code.

Following the appeal to the High Court, the appellant was released from custody on bond pending appeal on 24th October 2003. Hon. Justice Joseph K. Sergon delivered the judgement and quashed conviction on Count 1 but dismissed prayers in Count 2 and the appellant was required to serve the remainder of the sentence in the latter. According to his committal warrant under custody of the Nyeri Prison Service, the section under which the prisoner was adjudged reads Section 317 of the Penal Code that was squashed by the appellant judge instead of Section 320 of the Penal Code which provides a sentence of one year imprisonment and not five years.

Martin Munene Mwai was a beneficiary of the Hamasa Magerezani, and Judicial Reform and Access

to Justice Project implemented by KITUO funded by UNDP-Amkeni Wakenya and PACT Kenya (now ACT!) respectively. The Hamasa Magerezani project strived to offer civic education on elections in prisons with the view of empowering the prison fraternity encompassing the administrators in the community legal empowerment project with the main focus on criminal law and procedure. The access to justice project seek to advocate for inter alia; enactment of the Legal Aid Bill.

Martin not only graduated from the paralegal trainings offered in Nyeri Prison but continuously shown interest in understanding basic human rights issues in preparation for his appeal. He was an active participants in all the sessions. According to him, he served a wrong sentence and the appellate Judge silenced him by upholding the decision of the lower Court.

On 8th February 2012, Martin through his wife Purity Munene launched a complaint to the Magistrate and Vetting Board based in Nairobi registering his reservation for professional misconduct by the above judicial officers to occupy the position of High Court Judge and Magistrate respectively. In his complaint, the two raised inter alia; unlawful sentence pursuant to S. 320 of the penal court by the Magistrate Njagi whilst the Hon. Judge Sergon failed to notice the mistake thereto. Via the letter dated 13th February 2013, Martin Munene appear before the JUDGES AND MAGISTRATE VETTING BOARD (JMBV) on Tuesday 19th February 2013 at 9.30am at the interview of Hon. Wilkison Nyaga where he made his complaint jointly with his wife Purity.

On 13th March 2013 The JMBV through their Chairman, SHARAD RAO found HON. WILKISON NJAGI unfit to serve in the Judiciary for two counts namely; made two errors in judgment, including presiding over a case where he was in debt to the defendant and failing to correct his actions after issuing a wrong sentence and leaving someone unjustly in prison. In mid April 2013, Martin Munene was set free after (according to him) a communication from the Chief Justice Hon. Willy Mutunga to the Officer in Charge, Nyeri Prison. On 18th April 2013, Martin Munene visited KITUO to register his appreciation for the legal empowerment here above.



Kituo Staff, Prison administrators and Paralegals after training at Nyeri Prison (Martin Munene is arrowed)

Kevin Ogema - Research, Documentation & Monitoring Officer



## Prisoners have a right to vote

**K**ituo has been on the forefront of ensuring that individual rights are not violated by a minority of entrepreneurs or the government and this has been achieved in a number of public interest litigation cases.

Through Public interest litigation Kituo cha sheria exposed IEBC for failure to register prisoners to vote in the March 4 polls.

Kituo Cha Sheria filed a case seeking orders to compel IEBC to reopen the registration process and set up polling stations at prisons. Kituo had sent several notices to IEBC demanding the gazettment of prisons as polling stations and registration of inmates as voters. Despite this IEBC failed to fulfil its legal obligation.

In 2010, a number of prisoners voted during the referendum after Kituo successfully petitioned Independent constitutional Dispute Resolution court.

The High Court, directed IEBC to file an affidavit in court stating what steps it had taken to ensure prisoners vote on March 4. Justice Majanja dismissed IEBC defence that it had established polling centres near prisons to facilitate voting saying the position was inadequate to deal with the concerns raised by Kituo.

The judge gave the ruling on January 21<sup>st</sup>, 2013 and ordered the Independent Electoral and Boundaries Commission (IEBC) to ensure prisoners who were registered before incarceration vote on March 4.

Justice David Majanja directed IEBC to put in place measures to ensure that inmates are registered to vote in future elections and referendums.

He declared it a violation by IEBC and the State on failing to register prisoners to vote. "IEBC had failed to demonstrate before the Honorable Court, her efforts to register prisoners for the 4th March General Elections" said Hon. Justice Majanja.

Justice Majanja further indicated that prisoners are vulnerable and marginalised members of the society and their right to elect leaders is immediate and not progressive. The IEBC was asked to ensure that these rights are protected.

In the orders, the court was however committed not to kill democracy and therefore ruled in public interest that the petitioner prayers to compel IEBC to have fresh registration for prisoners were indeed a violation of Article 38. The High Court logistically felt that opening a new register for prisoners may interfere with the preparations done to have the elections including nominations.

Kituo continues to show what immense impact can be achieved by availing justice to the poor and the marginalized through Public interest litigation cases.

*Jackline Anyango - Communication  
& Media*



Attentive prisoners during a training session organised by Kituo at the Shimo la Tewa prison







## The Kamiti Justice Centre: Continuing the Access to Justice agenda

The Kamiti Justice Centre was established in March 2012 with the support of UNDP Amkeni. 25 inmates and 5 prison wardens were successfully trained as paralegals to provide legal aid services to the wider prison community.

To date, the Kamiti Justice Centre has handled over 300 cases from the prisoners and over 150 inmates have been acquitted while in some cases re-trials have been ordered. 3 out of the trained inmates have also been released from prison.

The success of the Kamiti Justice Centre appealed to a section of the prison community who expressed interest in the paralegal programme. The trained paralegals then conducted a training workshop for 22 new paralegals known as the Second Class Paralegal Students. These new students were trained in Paralegalism, Human

Rights and the Criminal Law. This training was conducted on the 7th of February to the 27th of March, 2013.

One of the newly recruited paralegals, John Isaboke said he had joined the paralegal team in the prison because he had seen the work that the older paralegals were doing in the prison and that it was impressive. He also joined the team because he was moved by wanting to help fellow prisoners.

He foresees that if he gets out of prison, the knowledge that he has acquired from the justice centre would be used even for his family and other friends outside.

*Aimee Ongeso - Program Officer AGCP*



An inmate at Kamiti asking questions during a moot court session





## “Go Matatu” Campaign on prompting Peaceful Election Dispute Resolution

Kituo Cha Sheria’s regional office in Mombasa, through the support of PACT, ACT! and USAID, is sensitising residents of Mombasa county on election dispute resolution mechanisms through the courts. The innovative initiative is dubbed “The Go *Matatu* Campaign”. It involves civic education to commuters done in motion by Kituo cha Sheria staff, paralegals from Kisauni Community Development Initiative (KICODI) and Lamukani and volunteer law students from Students Association for Legal Aid and Research (SALAR).

On 5<sup>th</sup> April 2013, the Go *Matatu* was flagged off from KICODI community justice centre in Mlaleo by representatives from Kituo cha Sheria, KICODI, Lamukani, Yes Youth Can and Coast Interfaith Council of Clerics (CICC). For two weeks now, the “Go *Matatu*” has plied virtually all routes within Mombasa county. The areas reached include Bamburi, Ferry, Mtwapa, Kongowea, Mainland Magongo, Bombolulu, Mshomoroni, Mwembe Tayari, Likoni, Ukunda, Docks Changanwe, Kiembeni and GPO (Posta). So far over 1,500 people have been reached through this campaign. The Go *Matatu* campaign came to an end on 16<sup>th</sup> April 2012.

The Go *Matatu* offered free rides to residents in exchange for interactive and compelling discussions on the laws and procedures around electoral dispute resolution. The project activity was particularly timely. Just one week before we began implementation, the Supreme Court delivered its ruling on the presidential election petition. This allowed for free deliberations even on the Supreme Court decision without fear of being *subjudiced*.

The main aim behind this short term project activity is to encourage and raise awareness around resolution of electoral disputes through courts and to avert any possible eruption of violence with regards to the elections outcome. For instance, Mombasa county,

already has a number of election petitions filed against gubernatorial and parliamentary outcome. Nonetheless, most *wananchi* remain unaware of the positive changes in the electoral laws and a reformed judiciary that can result in a just outcome.

The content of the civic education aboard the Go *Matatu* included the Constitutional threshold on conduct of elections, the positive aspects of the Elections Act and the newly conferred powers of a reforming judiciary when determining an election petition. The civic educators hinged their discussions on article 38 of the Constitution on right of every Kenyan to a free, fair and regular elections based on universal suffrage. They touched on the reform areas in the Elections Act No. 24 of 2011. More specifically, section 74 of the Elections Act where the Independent Electoral and Boundaries Commission is empowered to resolve disputes within 7 days before the elections and the declaration of results. The civic educators emphasised on the courts being the appropriate avenue to resolve disputes arising from the elections. The courts have six months to hear and determine gubernatorial, senatorial, National and County Assembly election petitions. They highlighted that the Elections Act confers powers on the High Court to hear and determine gubernatorial, senatorial and the National Assembly election petitions. On the other hand, county assembly petitions are heard and determined by the Resident Magistrates’ Court and appeals therefrom heard and determined at the High Court. It was emphasised that appeals should



Kituo Staff and Partners during the campaign







be heard and determined within 6 months after being filed. Unlike in the previous law regime, courts have been conferred with powers to declare a winner of an election following a recount rather than ordering a by-election that would cause delays and waste resources

The other reform areas under the Elections Act that were shared to the commuters include the ability to serve the opposing party by personal service or through advertisement in a newspaper of national circulation. The law provides that the advertisement should be broad enough not to escape the attention of a reader.

The civic education has stirred myriad feelings from the people. Commuters posed questions, sincerely expressed their views and had an avenue to peacefully vent out their feelings. Firstly, there was a lot of disquiet and dissatisfaction around the Supreme Court ruling on the presidential election petition. Some expressed discontent with the constitutional period within which a presidential election petition is meant to be heard and determined. Having followed the proceedings in the CORD election petition, most viewed the fourteen (14) days period as short and insufficient; others expressed that the case was determined technically rather than by its merits. The general feeling of commuters was that Kenyans had to accept the Supreme Court ruling and move on as the decision was final. In addition, most commuters vented that they would have preferred that the reasons for the Supreme Court decision should have been delivered on the same day rather than wait for another two weeks. Many viewed that a delay in delivering the reasons may result in biasness.

The Mombasa county residents were unhappy with ethnicised politics shown by the presidential voting patterns. Whereas a majority of the commuters respected the way of the majority, they opined that leadership in Kenya has been determined along ethnic leanings. They further argued that as long as a particular ethnic community had the necessary numbers, they could surely take the leadership mantle over and over again. In this view, some suggested that presidency should be rotational

based on regions within Kenya. Others strongly opined that democracy is impossible as larger ethnic communities will keep on successfully electing leaders of their choice; they indicated that they would not participate in future elections.

While implementing the project some commuters were of opinion that the Constitution should be amended to accommodate the runners up in the presidential elections in opposition politics. They further suggested that this should be considered bearing in mind the huge following and consequent percentage of votes garnered by a runner up presidential candidate during the voting exercise.

The election dispute resolution topic proved to be sensitive. Some commuters in the Go *Matatu* declined to discuss the outcome of the elections and the petitions filed thereafter. They held that they had chosen to accept the outcome and embrace peace. They promised to keep Kenya moving forward.

Indeed the Go *Matatu* experience has been enriching on Kituo staff, paralegals and partners as well as the commuters who chose to get on board. We intend to continue using this innovative initiative to reach Coastal residents on various other legal issues and hence setting the pace as a leading human rights organisation in the region.

*Annette Mbogob-Coordinator-Mombasa Regional Office and Nyambati Jodom-Legal Aid Department Intern Mombasa Regional Office*



Kituo Staff facilitates during the Go Matatu Ride from Kongowea to Mainland Magongo



## KITUO Launches new office branch

**K**ituo Cha Sheria, a centre for Legal empowerment launched its new office that relocated from Eastleigh to Jogoo road-Harshi Energy building at Maziwa stage along Jogoo road on 11<sup>th</sup> April 2013.

The Forced Migration Program (FMP), formally based in Eastleigh estate of Nairobi, has since January 2013 had its offices relocate to Harshi Energy building along Jogoo Road, Maziwa stage. Since its inception in 2008, the program has grown into being one of the Kituo Cha Sheria's core programs. The program hosts a number of projects dealing with statelessness, asylum seekers, deportees, evictees, Internally Displaced Persons (IDPs) and refugees.

The Programme ensures the implementation of the Refugees Act of 2006, so that refugees' rights under the new laws are respected and promoted.

The programme also offers legal advice on all legal issues, legal representation, assists refugees in obtaining work permits, birth and death certificates, identity cards, referral service to our other partners and investigations of systematic Human Rights violations against refugees. Urban Refugee Intervention Program helps its target group in litigating on Public Interest issues touching on refugees, monitoring cases of Insecurity and Gender Based Violence, research, and Training on Human rights and Refugee law.

FMP offices launch arises from the need to familiarize the key stakeholders (partners, community members, relevant government agencies, media etc) of the new FMP offices, for the purposes of effective referrals of persons of concern to our offices.

The half day gala was a celebration and reflection for Kituo cha Sheria and the Forced Migration Program on the strides, contributions made and challenges encountered so far in refugee protection in Kenya five years after inception of the project. There will also be a discussion on the progress of the case about refugee relocation.



Among the invited guests who graced the occasion included Hon. Priscilla Nyokabi, M.P, Nyeri County Women representative, UNHCR Deputy County representative, DRA Commissioner, Kamukunji DC, community representatives, the media, and Kituo major stakeholders.

*Jackline Anyango - Communication & Media*

Former ED Priscilla Nyokabi now the MP for Nyeri County Women Representative cuts the tape to officially open the new offices







## UPCOMING ACTIVITIES/EVENTS (May - July 2013)

1. Debate at the Kamiti Maximum Prison on the Constitutional Interpretation of life imprisonment
2. Community awareness sessions on the Legal Aid Bill: Kibera, Kamukunji, Korogocho, Nyando, Kisauni, Likoni
3. Meeting Session with the National Land Commission in Mombasa
4. Community information sessions on the Mwea PIL case
5. Community Paralegals ADR Training
6. Volunteer Advocates Recruitment – Wote in May
7. PIL case Muthurwa- judgement, May
8. Machakos Legal aid clinic, May
9. PIL case Pois Robo, May
10. Kiambu VA recruitment drive, May
11. Industrial area prison legal aid clinic, June
12. Embu mobile legal aid clinic, June
13. Formal launch of M –Sheria, June
14. Volunteer advocates recruitment Naivasha, July
15. Turkana Legal aid clinic, July
16. Moot court in Shimo La Tewa and Kamiti Prisons
17. Election dispute resolution cinema-May
18. Public lecture on rights of workers under devolution-April
19. Radio talk show-30th april-1st May
20. Establishment of shimo la tewa women community justice centre
21. Legal Aid Clinic, Umoja, Dagoretti corner, Embakasi, Kiamaiko, Juja - May, June , July
22. Refugee forum graduation ceremony 16 – 17th May
23. World Refugee day commemoration forum 18 – 19 th June
24. World refugee Day 20th June



Kituo Board of Directors Chair, Mr. Ken Nyaundi, UNHCR County representative cut the cake during the official opening of the new Kituo offices along Jogoo road



## Bula Fot Community compensated - A success story

In 2006, the Bulla fot Community in Garissa approached Kituo Cha Sheria seeking legal aid and representation after they were in several occasions evicted by government officers from their ancestral land in Garissa District. The number of the people affected were about 3, 000. Kituo did a fact finding mission and established that there were grave human rights violations as to the manner in which the evictions were done. The community was forcefully evicted from their ancestral land that they had lived in since time immemorial although they did not have any titles to the land as the lands hadn't been demarcated. There was no consultation with the community and no notice was given to them before the evictions. Furthermore during the evictions, the people were subjected to untold human suffering and they lost property during the process. It therefore turned that the whole process was arbitrary, unfair, illegal, unprocedural and unlawful.

Kituo moved to file a petition on behalf of the Bulla Fot Community in Nairobi High Court. The case was in the name of Musa Mohammed Dagane and 25 other who represent the larger Bulla Fot community. The case was later transferred to Embu in 2010 as per the rules of the Court. The Petition was brought under section 75 of the old Constitution. Section 75 protects the right to property and states that in case of any compulsory acquisition, the persons affected persons shall be entitled to prompt payment and full compensation.

On 16th November 2012, Embu high court issued a ruling and stated that their land was taken away in a manner which is against the Constitution and the Convention against forceful eviction, the community was moved to an area with no basic amenities and they lost valuable items during the forceful eviction. The court also stated that the government has a constitutional obligation towards the Bullafot Community, It must provide services to the community in a sustainable manner

that promotes social and economic development and encourages growth and sustenance of basic rights, it must respect, promote and fulfill basic rights protected in the Constitution to ensure that no violation or encouragement on the rights and the acts by the government of evicting the community from their ancestral home are against the spirit and purpose of the Constitution. The state must take all the appropriate measures taking into consideration available resources to ensure that adequate alternative housing, resettlement and access to basic amenities is available.

The court agreed that the community was subjected to inhuman and degrading treatment and that they lost land and property in a manner contrary to law. The people were entitled to compensation and redress for their grievances and that can only be done after hearing oral evidence of all the persons affected.

The judgement was delivered on 19th February 2013 by Embu resident judge Hedwig Ong'udi and the court ordered the following:

- a) A permanent injunction against any further evictions
  - b) Special damages for each petitioner all totalling Ksh. 8, 066, 000
  - c) General damages of 250, 000 for each petitioner.
- As Kituo continues to pursue Public Interest Litigation Cases, we only hope that the Bulafot Judgement will serve as a precedent against forceful eviction.

*Jackline Anyango - Communication & Media*



Members of the bula fot community







## Success Story of Evalyne Ngonyere Kedogo

**K**ituo has been on the forefront in ensuring individuals get access to justice. It is on this mission that Kituo came into the case of Evalyne Ngonyere Kedogo

Evalyne a middle-aged woman and a mother was employed as a general casual worker by Superfoam Limited in August 1998.

Her story is that she was employed as aforesaid and her pay was Kshs 349 during the day and Kshs 807 at night all constituting a monthly pay of Kshs 10,000/=. She hysterically states that on 3rd January 2012 she had an injury in her house and sought permission from her supervisor to seek for medication that was granted but when she came back on 9th January 2012 she was sucked.

Evalyne came to kituo for aid and Kivungi, a legal assistant with Kituo did not hesitate to take legal action on the Superfoam Ltd

Kivungi sent out a demand letter which elicited no response. Kituo was relentless and filed the labour matter in the Industrial Court being Industrial Court Cause No 694 of 2012. After her employer got the court summons, It knew Kituo meant business in ensuring there is justice and equity even for the indigent. The Superfoam Ltd immediately instructed a lawyer to defend the case. When the matter was fixed for hearing the Claimant called upon Mr Kivungi who briefed the claimant on how to self represent herself in Court.

The Matter came for hearing before Justice D.K. Njagi Marete who awarded to the claimant Kshs 470,500.00.

Thanks to Kituo's intervention, Evalyne got Kshs 470,500.00 together with costs of the suit. However the respondents M/S Superfoam have filed an application for stay of execution pending appeal.

*Nathan Kivungi - Legal Aid*



Kivungi giving Court papers to Evalyne Ngonyere, in reply for application for stay





## Which Way Your Honours - Justice or Time

The Supreme Court is given exclusive original jurisdiction under Article 163(3) to determine disputes relating to presidential elections.

On 26<sup>th</sup> March 2013 the Supreme Court made a ruling rejecting further affidavits in a presidential petition filed without leave of the Court. The same has sent shivers down many legal practitioners in the Country. Infact the Law society of Kenya Chairman sent out a circular restraining its members from citing the decision in normal practice because of the retrogressive nature of the decision.

This is because Article 163(7) stipulates that all courts other than the Supreme Court itself are bound by decisions made by the Supreme Court. The decision of the Supreme Court decision seems to be in direct conflict with not only the constitution but also with current trend of practice. Since the establishment of the Ouko Task Force Report on Judicial Reforms and the follow-up amendment of the provisions of the Civil Procedure Rules 2010 to include the oxygen principles as applied by the Court of Appeal, the High Court and all other subordinate courts as a matter of course the trend has been more to avoid technicalities than to embrace them.

Article 140(1) of the constitution provides that Appeals be filed within 7 days after the declaration of the result of presidential election.

Article 140(2) provides that the petition shall be heard and determined within 14 days from the date of filing of the petition in the Supreme Court.

The question to ask though is was it possible for the Supreme Court to extend time? Yes it was. After all, this was not the 1<sup>st</sup> time the supreme has made decision contrary to the letter of the Constitution. If the letter of the Constitution is practically rigid, the Supreme Court can read the constitution in a way to give life and meaning within the prevailing circumstances. This is the reasons why the country has not complied with one third female gender rule for members of parliament notwithstanding that the Constitution came into force in August 2010.

Strict adherence to the letter of the Constitution would have meant that the country ought to have gone to election in August 2012. This was not to be because of practical consideration and preparedness of the country at the time could not allow. Thank God the Supreme Court was alive to this.



Gertrude Angote, Advocate of Kituo cha Sheria with other lawyers attending to the poor and marginalised during a free legal aid clinic at Kituo Gardens





The Court Rules are supposed to be handmaidens of justice. This is why the Court ought not to have thrown away the contentious affidavit as filed. The Constitution under Article 159(2)d provide that justice shall be administered without regard to procedural technicalities. Further the Oxygen Rules and principles as applied by the court of Appeal and the High Court more often than not overlook legal technicalities. The Supreme Court ought to have been alive to this unfolding rich trend and tradition in lower courts.

Therefore the court should have extended time in the interest of justice and allowed the Petitioner's affidavit though filed without leave to be deemed as properly on record. Thereafter the Court ought to have allowed the Respondents time to Respond notwithstanding that judgment might have been given outside the strict 14 days deadline for the hearing and determination. After all was the final considered decision in the petition made after the 14 days limitation?

However this does not mean that the Rules should not be adhered to. Enforcement of the Rules is necessary. Parties who do not conform to the Rules should be penalised. The penalty should be more to make the party in breach of the rules understand that the rules are not made in vain and less to defeat substantive justice. Parties who do not comply should be penalised to pay cost. Advocates who do not comply should be barred from

acting in the Petition. His is because substantive justice also involves moving forward, it involves spending less time and more-so it includes minimising road blocks in the judicial process.

Having said that, the Supreme Court should by way of a written opinion recommend to the Attorney General, IEBC and Parliament to champion the amendment to the Constitution and enlarge to 28 days as the period which the Supreme Court out to hear and determine a presidential petition. This is because of the difficulty and current impossible practicality of obtaining the required evidence within 7 days.

As regards legal practitioners the wisdom of the stand taken by Law Society should prevail in the meantime but in the overall LSK and its members should move the Supreme Court to review its decision and declare that the decision was wrong in law and as such should be ignored as a bad precedent. Other Courts should decline to follow the decision and treat the same as having been made **per incuriam**.

*HERBERT MWENDWA - ADVOCATE, Legal Aid and Education Program*



Advocate Herbert Mwendwa offering legal aid to clients during a legal Aid clinic at Kituo gardens





## Civil Society Opposes move to resettle Refugees in Daadab

**K**ituo in collaboration with Refugee Consortium of Kenya and members of the Urban Refugee Protection Network held a press conference at Kituo HQ on 22<sup>nd</sup> January 2013.

The press conference was to speak on behalf of refugees and asylum seekers - victims of human rights abuses as a result of the directive issued by the Kenyan government on December 18, 2012.

The directive ordered all Somali refugees and asylum-seekers to move to Dadaab Refugee Camps in northeastern Kenya, and for all other refugees and asylum-seekers from other nationalities to move to Kakuma Refugee Camp in the northwest of the country.

Since the Kenyan government announced this directive that refugees should move to the camps, we have seen a dramatic increase in attacks on Somali refugees and Kenyans of Somali origin in Nairobi.

Furthermore the tendency of the media to link refugees to insecurity without producing any evidence has aggravated xenophobic attitudes towards genuine refugees and asylum seekers who are law-abiding people seeking protection from persecution and conflict in their home countries.

According to the UNHCR, the Somali refugee population in Kenya has reached 450,000, stretching infrastructure and services. This number is far beyond the original intended capacity of Ifo, Dagahaley and Hagadera camps in Dadaab, with a capacity of 90,000. More than 80,000 refugees and asylum seekers live at Kakuma camp. These include an estimated 43,000 Somalis. Other refugees come mainly from Sudan, Ethiopia and the Democratic Republic of Congo.

Due to congestion in Dadaab, new arrivals settled around the area while others moved to urban areas, complicating registration and straining service delivery. As a result, the host communities and refugees competed for scarce water and wood for fuel, leading to clashes.

We call upon all security officers to respect the fundamental human rights of refugees and asylum seekers and for all members of the general public to be tolerant with all persons regardless of nationality as we strive to work towards efforts for our collective security and protection of human rights for all.

*Jackline Anyango - Communication & Media*



Civil Organisations hold press conference at the Kituo gardens to oppose move to relocate refugees to Daadab Refugee camp







# KENYA TUNA UWEZO Partners' reflection on Kenya General Elections

Kenya Tuna Uwezo Partners converged together at AACC westlands on 15th March to reflect on the general election that took place on March 4th 2013.

The guests who attended the ceremony included community members from Kibera, Kiambiu, Mathare and Korogocho; Religious leaders; representatives from Kenya police; Wamama wa amani from kibera; representative from Ministry of Justice; representative from National Steering Committee on peace building; International Rescue Committee (IRC); USAID Mission director; Kenya Tuna Uwezo (KTU) implementing partners: CHF-International, Kituo cha Sheria and Peacenet and most importantly the US Ambassador.

Paster Oninga representing Kibera cohesion champions thanked Kenya Tuna Uwezo for their interventions in the informal settlements to ensure peace and cohesion in the areas that were torn by post 2007/08 election skirmishes. Through KTU program cohesion champions in Kibera were able to organize Baraza's where they met and dialogued with youth groups informing them on the need for

peaceful coexistence.

Inspector Simon Bitok assured the community and KTU partners of the commitment of police in ensuring safety, security and sustainable peace.

In his key note the Chief Guest US. Ambassador Godec acknowledged with gladness the contribution of all partners in building peace in Kenya. He called the partners to reflect and most importantly celebrate the peaceful election. He emphasised that more work needed to be done and called upon the KTU partners to continue with their collective work in urging the communities to uphold and sustain peace in the coming few days as the country awaited the Supreme Court's ruling on election petition.

Madam Getrude Openda gave a vote of thanks and certificates of appreciation were awarded to the cohesion champions and peace ambassadors by US Missions director Karen Freeman assisted by Madam Selline Korir.

*Susan Mukindia - AGCP*



From Left, Seline Korir, program Director KTU, US Missions director Karen Freeman issuing certificate to Ms Jane in recognition for peace keeping during the general elections



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*we care for justice*

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