



Report

**REPORT OF THE CHIEF JUSTICE
ROUNDTABLE MEETING HELD ON
1ST NOVEMBER AT 9:30 AM – 11:00 AM**

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KEPSA hosted the Chief Justice Hon. Justice Martha Karambu Koome, the Deputy Chief Justice Hon. Justice Philomena Mbete Mwilu, alongside members of the Kenya Magistrates and Judges Association (KMJA) in a roundtable meeting held on 1ST November 2021 to discuss ways through which the Judiciary can facilitate an enabling business environment in Kenya.

KEPSA CEO Ms. Carole Kariuki, expressed her gratitude for the opportunity to meet with the leaders and members of the Judiciary. She appreciated the partnership between the two institutions and outlined KEPSA's involvement in the Judicial reforms' agenda from the year 2013 when the first Judiciary Roundtable was convened.

"These efforts and collaboration of government agencies, private sector and civil society in Judicial reforms have placed Kenya at position 56 in the Doing Business Index globally, compared to position 129 in 2014. Of importance is the performance on enforcing contracts, where we have equally improved from position 151 in 2014 to the current position 89", said Ms. Kariuki.

Some of these reforms include increased efficiency in resolution of disputes, introduction of customer care desks in various courts increasing access to justice, the introduction of Court Annexed Mediation programme, operationalization of the Small Claims Court and digitization of courts through the Ajira programme.

The KEPSA CEO also touched on the private sector perspective of the National Council on the Administration of Justice (NCAJ). She asserted that access to justice is not limited to criminal law and children in conflict with the law, as even in commercial dispute resolution, the timely resolution of disputes, predictability of the application of the law, uniformity in interpretation of the law, well-informed decisions, established court procedures and efficient case flow management are key factors in building confidence of investors in the judicial system.

Private Sector's contribution to the administration of justice includes:

- Fundraising to support operationalization of the Small Claims Court as part of the Ease of Doing Business Agenda. There are gaps in financing that need to be urgently addressed to support infrastructure requirements such as setting up dedicated facilities for the court and the ICT system development.
- Efforts to support the Milimani Law Courts Environment and Land Court (ELC) through automation support and capacity building on new and emerging areas in the land and environment space, such as green financing and sustainable waste management.

- Private sector has also been a part of the Business Court Users Committee (BCUC) which is a special CUC composed of private sector members who represent the different private sector associations. It provides a platform for the Judiciary to consider improvements in the operations of the courts.
- KEPSA spearheaded the formation of the Business Against Corruption Kenya (BACK), a platform which led to the drafting of the Bribery Bill enacted into law in 2016. The Act came into force on 13 January 2017, and places obligations on public and private entities to put in place procedures that are appropriate to their size, scale and nature of operations, for prevention of bribery and corruption.

KEPSA Board Chair Ms. Flora Mutahi appreciated the role that the Judiciary plays in being a defender of the rule of law and the citizen's watchdog, even as an arbitrator in KEPSA's day to day conflicts and operations.

She expressed hope that the Judiciary will look out for the best and efficient reform practices globally to increase the country's competitiveness, and emphasized that the Judiciary should not shy away from overhauling the legal and institutional frameworks in the country in line with our Constitution. This will ensure predictability and consistencies in our laws, especially in the commercial and tax, environment and lands, and labour and industrial disputes.

KEPSA Board Director in charge of Legal & Professionals, Lands and Physical Planning, **Mr. Allen Gichuhi**, took the meeting through some of the administrative challenges faced by litigants such as bottlenecks in civil procedure and limited court access. He also highlighted the concerns from private sector over the colossal damages awarded by the Employment and Labour Relations Courts against employers.

Hon. Justice Martha Koome, appreciated the hand of collaboration and partnership that KEPSA has extended to the Judiciary over the years. She stated that this resonates with the '*Social Transformation through Access to Justice (STAJ)*' vision of the Judiciary that lays emphasis on collaborative partnerships with the private sector and development partners in a quest to make the delivery of justice in Kenya efficient, cost effective, and expeditious.

In response to the private sector asks, the Chief Justice committed the Judiciary to work on:

1. Enhanced use of technology in the delivery of judicial services;
2. Virtual Courts and blended hearings;
3. Stamping of Court documents filed electronically;
4. Increased Court access;
5. Enactment of the Tribunals Bill to rationalise the operations of Tribunals and complete their transition into the Judiciary in terms of the Constitution;
6. Uptake of arbitration and mediation as avenues for resolution of disputes in the post-2010 dispensation;
7. Setting up of Mediation Suits in court stations where the Judiciary has necessary physical infrastructure to accommodate the suits and also sensitization and training

- of judges and magistrates on the need for them to encourage alternative disputes resolution as this is now a constitutional command; and
8. Rolling-out of Small Claims Court throughout the Country.

The Chair, KEPSA Board Committee on Governance and Leadership, **Ms. Catherine Musakali**, outlined the following as the **way forward for private sector**:

1. KEPSA will keep fundraising for the Small Claims Court to ensure its operationalized to the maximum possible capacity;
2. KEPSA will continue to support the digitization of court proceedings through the Ajira programme and will scale up efforts under Ajira 2, targeting 104 court stations across 35 counties;
3. KEPSA will sensitize its members on Court Annexed Mediation so as to increase uptake, and to explore the Mediation Accreditation Committee's proposal to partner with KEPSA in order to have more disputes settled outside court by accredited mediators, and only the settlement agreements be brought to court for adoption. This will decongest the courts;
4. KEPSA will partner with its members with expertise that can be used to build the capacity of judges in the Commercial and Tax division, as well as the Environment and Land court;
5. KEPSA will lead in the promotion and protection of environmental and land justice for sustainable economic development of our country;
6. KEPSA to share a proposal on instant fines for traffic cases for the Judiciary's consideration;
7. KEPSA to collate list of cases that have been pending for more than 5 years;
8. KEPSA to partners with KMJA for a joint training of both KMJA and KEPSA members; and finally
9. KEPSA to make a list of the long-term cases and those that have high impacts on investment and progress and showcase the same for them to end sooner than later.

Ms. Musikali reiterated that the private sector is keen to continue open and regular dialogue with institutions involved in the administration of justice, and that it is KEPSA's common duty to incorporate good practices to enhance the quality and efficiency in the court system and support institutions, and consequently increase access to Justice.

While summarizing the Judiciary's resolutions and commitments, **Senior Counsel Patricia Nyaundi**, Rule of Law Advisor to the Hon. Chief Justice (NCAJ), appreciated that the Judiciary has had a long history of collaboration with KEPSA as the two have interests that converge, especially when it comes to delivery of effective and efficient justice.

She re-affirmed the commitments made by the Chief Justice, especially on the Judiciary-KEPSA partnership on public awareness campaigns on anti-corruption and the strengthening of Business Court User and Bar-Bench Committees within the National Council on Administration of Justice (NCAJ).