



*The Voice of the Private Sector in Kenya*

**KEPSA CEO'S REMARKS DURING THE CHIEF JUSTICE ROUNDTABLE  
TUESDAY, JULY 16TH, 2024 AT 10:00AM  
VENUE: TRADE MARK HOTEL, VILLAGE MARKET**

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**Salutation!**

Hon. Lady Justice Martha Koome, EGH,

Captains of Industries,

All protocol observed

**Good morning!**

1. We are gathered for the Chief Justice Roundtable 2024, a pivotal forum for enhancing collaboration between the Judiciary and the Kenya Private Sector. We are happy to note that the collaborative efforts between the Judiciary and the Kenya private sector have yielded socio-economic fruits since our last Chief Justice Roundtable in 2022. Some of the notable achievements since our previous Chief Justice Roundtable in 2022 include:

- **Judicial Accessibility and Efficiency:** The introduction of e-court processes has significantly improved access to justice, especially in commercial matters. This has reduced the time to resolve disputes, fostering a more predictable business environment.

The Judiciary's commitment to the multi-door approach to justice delivery has increased the options available for dispute resolution, making it easier and faster for businesses to resolve conflicts.

- **Economic Growth and Business Environment:** KEPSA's continuous engagement with the Judiciary has facilitated policy reforms that have enhanced the ease of doing

business in Kenya. Our collaborative efforts have contributed to Kenya's steady economic growth, with a gross domestic growth of 5.6% in 2023.

**2. We, Kenya Private Sector Alliance, have been able to make significant strides in actioning promises made by the private sector in our last Chief Justice Roundtable among them:**

- a) Through the **Ajira Digital Project**, we have been instrumental in digitizing various government entities. Notably, the Judiciary **Pilot Project supported 482 court stations and produced 253,742 transcripts** thereby enhancing the judicial process and creating 2,608 jobs with decent earnings.
- b) KEPSA signed a Memorandum of Understanding to provide a general framework to govern cooperation between KEPSA and Nairobi Centre for International Arbitration (NCIA), towards promoting sensitization of Mediation as an alternative dispute resolution mechanism. The Parties have agreed to work together to facilitate the provision of mediation venues and the adoption of privately settled Mediation Settlement Agreements by the court(s).
- KEPSA has since, worked in collaboration with Nairobi Centre for International Arbitration (NCIA) to sensitize members on mediation and work together to facilitate the provision of mediation venues and adoption of private settlement mediation agreements. We take this opportunity to thank the judiciary for effecting the waiver which has further catalyzed the uptick of Alternative dispute resolution (ADR) over and above the sensitization campaigns which are still ongoing via sensitization webinars; the last one held was on 15/03/2024.
- Alternative dispute resolution (ADR) is now mainstreamed into the Small Claims Courts and we would like this to be adopted even into the Large Claims Courts. Ultimately, we need to unlock more than KES 500Billion in commercial court cases through these approaches.

- c) Working in collaboration with your Environment and Land court (**ELC**)Team, we have developed a **training curriculum** for judges in the Environment and Land court. Depending on the availability of funds, training of cohort 1 is set to happen in this FY 2024/25
- d) KEPSA committed to fundraising for the operationalization of Small Claims Courts. To this end, KEPSA through the Private Sector Economic Manifesto, which it had the privilege of presenting to various coalitions as they developed their respective manifestos advocated for a well-resourced Judiciary. KEPSA further advanced its advocacy post the 2022 elections and engaged the Exchequer and H.E President William Roto upon assuming office, on the Judiciary's budget allocation. We pleasantly noted that in the just concluded FY 23/24, there was an increase in the budget allocation of the Judiciary.
- e) KEPSA in partnership with the Centre for International Private Enterprise developed a popular version of the **Bribery Laws** to aid in sensitization and awareness creation on the implications of bribery and corruption in both public and private sectors.
- f) **Hon. Chief Justice**, KEPSA has been co-opted to participate in several fora and this has allowed us an opportunity to work closely with the Judiciary on various focus areas.
  - a. **Milimani Environment and Land Court [Environment and Land court]:** KEPSA remains an active member of the Nairobi Land Justice Working Group. The Working Group aims to improve case management efficiency and enhance the effectiveness of adjudicating land disputes. The involvement of KEPSA in the working group has been instrumental in the efforts towards building a fair, efficient, and equitable framework for addressing land-related issues and reflects the shared commitment to finding sustainable and equitable solutions.
  - b. KEPSA was privileged to join other stakeholders in the tree planting exercise as a member of the **Environment and Land court EP Division Working**

**Group** which prioritizes access to justice on environment and climate change-related matters through a multi-sectoral approach.

**c. Court Users' Committee [CUC]:**

As a co-opted member of the Court Users' Committee, KEPSA has participated in the validation of ELC – Milimani CUC Guidelines (2024) as well as the Environment and Land court Act (Amendment) Bill, 2023.

**d. National Council on the Administration of Justice [NCAJ]:**

KEPSA, as a council member of the **Administration of Justice**, nominated a representative to the Working Committee on Anti-Corruption geared towards developing the justice sector anti-corruption guiding framework and roadmap to join other stakeholders in designing and implementing solutions to curb corruption in our country.

***'But we are not yet there, more can be done'***

**Hon Chief Justice**, to ensure that we all keep the eyes on the ball, today's discussions will focus on some key areas of improvement that demand a collaborative approach but which if successfully addressed, shall go a long way in enhancing the efficiency of our judicial system. These focus areas are;

1. **Specialized skills and Knowledge Capacity Building:** How can we ensure continuous capacity building on emerging legal issues for sustainable reliability and competitiveness?
2. **Inconsistent Application of Judicial Discretion:** What measures can be put in place to for consistent application of judicial discretion across different judges to predictability and transparency?
3. **Championing Business Sustainability:** How can the judiciary innovatively but effectively incorporate ESG principles to support business sustainability?

4. **Expedited Resolution of Matters:** What has to be done to streamline court procedures and reduce delays in resolving investment-related cases?
5. **Enhancement of Automated Judicial Services:** How can we improve the user experience and reliability of automated judicial services to benefit all regions equally?
6. **A Corruption-free Court System:** What policies and practices should be implemented to ensure a corruption-free judicial system and maintain public trust?

3. **Hon. Chief Justice**, in attempt to answer these questions KEPSA states as follows:

- ✓ To **stay abreast of emerging issues**, our judiciary must collaborate closely with the private sector, conduct thorough knowledge gap analyses, and facilitate joint workshops, seminars, and conferences. Partnering with academic institutions and industry leaders will also be vital in delivering high-quality training. Legislative changes should be advocated to help the judiciary adapt to our evolving professional and commercial environments.
- ✓ There is need to **develop clear guidelines and provide comprehensive training on the use of discretion**, especially in complex cases. Establishing standardized protocols, ensuring detailed articulation of legal reasoning in judgments, limiting adjournments per case, and promoting transparency through regular dialogue between the judiciary and the private sector are essential steps forward.
- ✓ **Environmental, Social, and Governance (ESG) principles** are increasingly integral to business operations. Our judiciary must develop proficiency in these areas to support sustainability and ethical governance. Specialized ESG training programs for judges and legal staff, collaboration with lawmakers for robust ESG

legislation, and awareness campaigns about the significance of ESG principles in litigation are necessary measures.

- ✓ Addressing the persistent **case backlog** in Kenyan courts is crucial for our economic growth. We need to further review and streamline current court mechanisms, promote Alternative Dispute Resolution (ADR) mechanisms such as mediation, and develop structured mediation programs tailored to business needs.
  - ✓ **Advancing automated judicial services** will enhance efficiency and service delivery. Technological upgrades, comprehensive change management for judiciary staff and court users, establishing internet hubs in county courts, and raising funds for technological advancements through initiatives like the Ajira program are vital steps.
  - a) **Lastly, addressing corruption within our judiciary** is paramount for transparency and efficiency. We must adopt comprehensive monitoring tools for the Judicial Service Commission (JSC), publish regular progress reports on anti-corruption efforts, establish an independent oversight body for the JSC, enforce strong whistleblower protection policies, and strengthen investigative and complaints resolution processes.
4. **As I conclude**, our collaboration with the Judiciary is essential for fostering a conducive business environment that promotes economic growth and sustainable development. We look forward to continued engagement and partnership with the Judiciary to achieve our common goals of justice, economic prosperity, and national development.

**Thank you!**

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