

WCEL Webinar: 13 November 2020

**Recent Legislative, Policy and
Judicial Developments in
Environmental Rule of Law in Kenya**

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Presentation Outline

- Introduction
- Recent Legislative and policy developments
- Recent Judicial Developments(case law)
- Plastic ban case
- Road Network sanitary facilities or toilets Case
- Lead Poisoning Case
- Conclusion

Introduction

- Justice Antonio Benjamin in a past webinar series stated that: “we cannot protect the environment and nature without a strong presence of judges who are informed of the science behind environmental conservation.
- That we are the keepers of the status quo and it is hard for us to change.
- This is a wakeup call for judges to be forward looking and ready to embrace the new normal in environmental conservation and application of the constitutional and international principles.

Recent Legislative and Policy developments

- Environmental policy is anchored on the provisions of the Constitution which guarantees every person in Kenya the right to clean and healthy environment.
- The 2010 Constitution also recognizes the fundamental principles of environmental law which include sustainable development, equity, protection of indigenous knowledge and genetic resources. States are also obliged to sustainably exploit the genetic resources.

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- The Ministry of Environment and Forestry recently launched a National Strategy for achieving and maintaining over 10% tree cover by 2022.
- The strategy is a cross- sectoral framework that aims to address issues of acceleration of tree cover, impacts of climate change and protection, conservation and sustainable management of forests.

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- On 22nd May 2020 Kenya declared on the 27th International Biodiversity Day through reforestation project to plant 1.8 billion trees by 2022 in order to preserve biodiversity.
- These are ambitious goals but if implemented to the letter, then it would help in the conservation of the environment for the present and future generations.

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- There are serious threats to the environment posed by leaded paints to which the Kenya Bureau of Standards (KEBS) has developed and gazetted the East African Standard to curb the production importation, exportation, sale whose lead content exceeds 90 parts per million (ppm).
- Sessional paper No. 3 of 2016 on National Climate Change Framework Policy by the Ministry of Environment and Natural Resources was developed to facilitate a coordinated, coherent and effective response to the local, national and global challenges and opportunities presented by climate change.
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Judicial Developments

- Plastic ban case.
- **Kenya Association of Manufacturers & 3 others v Cabinet secretary, Ministry of Environment and Natural Resources & 3 others [2018] eKLR**
- the dispute emanated from the decision of the Cabinet Secretary, Ministry of Environment and Natural Resources and the National Environment Management Authority to ban the use, manufacture and importation of certain types of plastic bags used for commercial and household packaging. The petitioners filed 3 separate suits which were later consolidated

Plastic ban case cont'd

- The Honourable Judges formulated ten issues arising from the pleadings and the evidence and came to the conclusion that no rights had been violated therefore the gazette notice banning the use and importation of certain categories of plastic was in order and could not be impugned.

Road Network sanitary facilities or toilets Case

- **In the case of Adrian Kamotho Njenga v Council of Governors & 3 others [2020] eKLR**
- The Petitioner in this case sought a declaration that the Respondents have breached Article 42 of the Constitution and a prohibitory order to restrain the Respondents from charging any fee, or obstructing citizens from accessing or using existing public sanitary facilities or toilets

Road Network sanitary facilities or toilets Case cont'd

- The petitioner also sought for an order of mandamus to direct the Respondents to set up and operate hygienic sanitary facilities including functional public toilets within their lawful jurisdictions and throughout Kenya's road network within 60 days.
- He stated that due to the lack of options for proper sanitary facilities, motorists and commuters urinate, defecate and excrete human waste on the streets, road reserves, adjacent bushes or open spaces and that the Respondents had made no effort towards providing critical sanitary amenities to the users hence commuters suffer biological, metabolical and physiological torture.

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- The court ordered the Cabinet Secretary in charge of transport to constitute and chair the Working Group which will include representatives of all the Respondents, to formulate a policy for the provision of toilets and other sanitation facilities on the country's road network to give effect to the right to a clean and healthy environment on the roads.

Lead Poisoning Case

- **KM & 9 others v Attorney General & 7 others[2020] eKLR**
- The Petitioners' claim against the respondents was that the 8th Respondent leased a neighbouring plot to the 7th Respondent which set up a lead acid batteries recycling factory which activity produced toxic waste.
- That the waste seeped into the village causing the Petitioners and area residents various illnesses and ailments as a direct consequence of lead poisoning with more than 20 deaths attributed to it.
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- The Petitioners claimed violation of several rights which include, right to life, right to a clean and healthy environment, right to the highest attainable standard of health and right to clean and safe water as guaranteed by Article 43(1)(a) and (d), Article 12 (1) and (2)(a) of the (ICESR), Article 24 of the (CRC) and Article 16 of the (ACHPR and general damages amongst other prayers.

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- The court allowed the prayers in respect to the right to a clean and healthy environment, right to life and rights to the highest attainable standard of health and right to clean and safe water. The court awarded Kshs.1.3 Billion as general damages to be paid within a period of 90 days from the date of the judgment and in default, the petitioners be at liberty to execute.
- The court further directed the named liable respondents to clean-up the soil, water and remove any wastes deposited within the settlement by the 7th respondent within 4 months (120 days) from date of the judgment.

Conclusion

- These are forward looking decisions which if enforced to the letter can help in the sustainable conservation and management of the environment.

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Thank you for listening