



# Why lawyers are getting foothold in world of business

By EVANS ONGWAE >>> eongwae@ke.nationmedia.com

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Consultancy on finance in the corporate sector is changing. Whereas in the past firms were content with using accountants as legal advisors on financial matters, now they are embracing lawyers.

Lawyers have delved into accounting and consultancy services because the pervasive nature of law has given them a foothold. On matters governance, finance, banking and tax, lawyers are finding a hearing from corporate bosses keen not to slip and to ensure they remain on the right side of the law. Some executives, including board members, even go as far as insuring their actions so that they are not liable for certain happenings in the companies they manage or are associated with.

This is because practically any business decision has legal implications.

Law has been around almost for as long as humanity has existed. Any society, or group

within it, however small, will make rules for the purposes of organisation, to promote the safety and convenience of members and to regulate their relationships with each other. The law responds and develops as required by the society in which it operates, and affects everyone.

Law concerns the relations between individuals as such relations affecting the social and economic order. It is both the product of civilisation and the means by which civilisation is maintained. As such, the law reflects the social, economic, political, religious and moral philosophy of a society.

Law is also an instrument of social control. Its function is to regulate, within certain limitations, human conduct and human relations. Accordingly, the laws of Kenya affect the life of every citizen. At the same time, the laws of each State influence the life of each of its citizens and the lives of many non-citizens too. The rights and duties of all individuals, as well as the safety and security of all people and their property, depends on the law.

The law is pervasive in nature. It permits, forbids, and/or regulates practically every known human activity



New advocates descending on the stairs of the Supreme Court of Kenya soon after they were admitted to the Bar during a swearing in ceremony led by the Chief Justice David Maraga , Nairobi. March 13, 2019. Picture Kanyiri Wahito

and affects all persons either directly or indirectly. Law is, in part, prohibitory: Certain acts must not be committed. For example, one must not steal; one must not murder. Law is also partly mandatory: Certain acts must be done or be done in a prescribed way. Thus, taxes must be paid; corporations must make and file certain reports with State authorities; traffic must keep to the left.

For example, the Companies Act Cap 486 decrees that, “every balance sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of its financial

year, and every profit and loss account of a company shall give a true and fair view of the profit or loss of the company for the financial year.

“A company’s balance sheet and profit and loss account shall comply with the requirements of the Sixth Schedule, so far as applicable thereto.”

The Companies Act Cap 486 is an Act of Parliament to amend and consolidate the law relating to the incorporation, regulation and winding up of companies and other associations, and to make provision for other matters relating thereto and connected therewith.

## Kenyan law firms have made major strides but gaps persist

By EVANS ONGWAE >>> eongwae@ke.nationmedia.com

A look at the modern legal firm in Kenya shows that diversification is the name of the game. Rather than restrict themselves to a few areas of specialisation, the most successful farms handle diverse fields of law.

Respected law firm Rachier & Amollo Advocates’ full scope, for example, typifies this picture. This legal firm handles various aspects of commercial, constitutional as well as family law. Others include environmental law, Oil and Gas law, sports and entertainment among a host of other diversifications. The firm also offers arbitration services as well as legal consultancy and audit.

Last year, at a party to celebrate the achievements of a local university in legal training, invited guests made interesting remarks about the profession. They said local practitioners were yet to fully explore some areas of legal practice.

They asked, for example, does Kenya have enough experts in maritime law?

This is a pertinent question because the country has vast marine resources and a growing shipping industry. Does the country have enough maritime law experts who can play their role when conflicts in this industry arise?

How well is the legal profession in Kenya prepared to deal with the challenges of artificial intelligence and other modern technologies? If an advanced robot demands to be presented in court over one right or the other, which lawyer in Kenya understands the law on modern

**“ Globalisation is leading to open borders. Firms are doing business across borders with geographical boundaries not a major restriction.**

technology to be able to represent his or her client well enough?

In similar vein, globalisation is leading to open borders. Firms are doing business across borders with geographical boundaries not a major restriction. This explains why law firms such as Robson Harris & Company Advocates have built an impressive record on cross-border transactions. The firm has acted for clients on transfer of property, cross-border ventures, international taxation, business set up, licensing, financial and commercial obligations.

This is besides its other offerings such as advisory services for various large scale real estate and infrastructure development projects. They advise on all aspect of real estate transactions including structuring of joint ventures, sale and purchases, fractional ownerships, tenant purchase and leasing. They act for banks and financial institutions and are involved in the preparation and perfection of securities and provision of advisory services, among other services.

**Smart Thinking • Pragmatic Solutions**

We are a modern, progressive & dynamic Corporate & Commercial Law Firm. Our main areas of practice are:

- Banking & Finance
- Corporate Reorganisations
- Energy
- Intellectual Property
- Legal & Governance Audits
- Mergers & Acquisitions
- Private Equity
- Real Estate
- Tax Advisory
- Tax Dispute Resolution

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# TOP LEGAL FIRMS



## Distinguished law firm for all seasons

### MBALUKA & COMPANY ADVOCATES FIRM'S PROFILE

Mbaluka & Company Advocates is a firm of Advocates duly registered as a Business Law Firm under the Registration of Business Names Act Cap 499.

### LOCATION:

The head offices for Mbaluka & Company Advocates are situated on the 12th floor of Bruce House, along Standard Street, Nairobi.

### GENERAL PRACTICE

Generally, our firm provides legal services in several spheres of the law, including but not limited to dealings in property and business law, banking law and finance, taxation, property conveyancing, leases, property development, the structure of business entities, joint ventures, acquisitions, mergers, take-overs, trade finance law, corporate law trusts, contract law and practice, foreign investment, debt collection (recoveries) and other general corporate law practice areas.

Lawyers in our firm also have specific experience and expertise on matters of Banking Law, conveyancing and perfection of bank securities, Commercial Law, Company Law and debt recovery, having worked for various State corporations, County Governments, banks and other institutions on the various fields of law in our practice. The firm thus has the capacity and infrastructure to support business entities on the diverse spheres of law relevant in the corporate world. The firm is tax, NHIF and NSSF compliant.

### MANAGEMENT:

The firm is managed by a team of eight experienced and practicing Advocates of the High Court of Kenya and all the other subordinate courts thereto with the Managing Partner being Joel Kyatha Mbaluka Advocate, a Commissioner for Oaths, a Notary Public and a Certified Public Secretary (CPS), who holds Masters Degree in Law (LL M) specialising in Banking and Financial Services-Perfection of Securities from The University of Nairobi. He is also an alumni of the same university from where he obtained his Bachelor of Laws Degree (LL B).

### INSURANCE IDEMUNITY COVER:-

The firm is insured by a Professional Indemnity Insurance Cover of Kenya Shillings Five Hundred Million (KShs.500,000,000) from Britam Insurance.

### Areas of Specialisation:-

The firm practices law broadly, but with special



**Mr Joel Kyatha Mbaluka LL M {UON}, LL B {UON}, Advocate of the High Court, Commissioner for Oaths, Notary Public, Certified Public Secretary & The Managing Partner, Mbaluka & Company Advocates**

emphasis on the following Departments of Law each headed by a lawyer specialist on the field:

### Conveyancing:-

Preparation and registration of land transfers and charges/mortgages on properties under various Land Law Regimes under The Land Registration Act, 2012 and The Land Registration (General) Regulations, 2017;

- Preparation and registration of Sale Agreements on Property Transactions.
- Preparation and registration of Lease Agreements in respect of Residential or Commercial Properties.
- Preparation and Registration of Powers of Attorneys Cautions and Caveats over properties.

### Commercial Law:-

This includes:-

- Preparation of Debentures and Chattel Mortgages.
- Incorporation of Companies under the Companies Act.
- Handling of Company Secretarial Work i.e. filing returns/change of directorship
- Directorship and any other company secretarial work.

- Amendment to the Memorandum and Articles of Association and any other legal work arising from the provisions of the Companies Act.
- Registration and Protection of Intellectual Property rights. Trademarks and copy rights.
- Preparation of Transfer of Business Agreements i.e. where a proprietor wishes to sell his or her business as a going concern.

### Insurance Law:-

This includes:-

Appearing on court for and on behalf of insurance companies to defend claims against them or prosecute civil suits on their behalf in all courts in Civil and Criminal matters in the Republic.

Giving Legal Advice on the Interpretation of Insurance Act (Cap 487) of the Laws of Kenya and any amendments thereof.

Giving Legal Advice on re-insurance matters, action on behalf of Insurance Companies.

Giving Legal Advice on the application of Insurance (motor vehicle third party risks) Act Cap 405 of the Laws of Kenya.

### Litigation:-

This involves:-

Appearing before all classes of Courts in Kenya either on civil or criminal matters. We have the ability to handle Complex Litigation matters with strong negotiators, aggressive litigators and a sharp management team.

Handling court disputes matters relating to labour laws of this country e.g. disputes that arise out of the provisions of Employment Act No. 11 of 2007, Labour Relations Act No. 14 of 2007, Work Injury Benefits Act of 2007, Occupational Safety and Health Act No. 15 of 2007 and other statutes regulating matters of employment.

### Debt Collection:-

This involves acting for clients by expeditiously recovering debts owed to them by defaulters or loanees. The process usually involves the issuance of legal letters of demand and statutory notices

threatening legal action against the debtor in default. Usually these demands yield positive results whereupon we proceed to close our file upon payment of the debt to our client by the debtor. When this happens, we only charge a mutually agreeable nominal fee. However, where the debtor becomes adamant, we proceed and institute court recovery action against the debtor with a view of obtaining summary judgement against him or her. Under this debt collection docket, we also sue, prosecute and defend suits filed by, for or against our clients.

### International Business:-

- The area including giving legal advice on international contracts and sale agreements.
- Drafting and reviewing of Investment Agreements and International Taxation.

We also give our legal opinions and consultancy services on all matters of legal nature on all spheres of law.

### CLIENTELE: -

We are currently offering legal services to various institutions, Banks, commissions and county governments on the various spheres of Law ranging from Legal drafting of statutes for County Governments, Commissions, Land conveyancing and perfection of securities, Litigation, Authentications of Business Registration Certificates and debt recovery and undertaking related assignments for other entities in the Commercial and Corporate Sector. We are currently offering our legal services to inter alia the following entities:-

- Parliamentary Service Commission;
- Nairobi County Government;
- Kitui County Government;
- Equity Bank (Kenya) Limited;
- Co-operative Bank of Kenya Limited;
- National Bank of Kenya Limited;
- Consolidated Bank of Kenya Limited;
- Sidian Bank Limited;
- Family Bank Limited;
- Spire Bank Limited;
- Rafiki Microfinance Bank Limited;
- Caritas Microfinance Bank Limited;
- Unaitas Sacco Society Limited;
- Catholic Diocese of Machakos;
- Bishop Urbanus Kioko Hospital;
- Kingsway Group of Companies;
- M P Shah Hospital; etc



**Mirriam Wangui Kamunya, Family Law & Childrens matters Division**



**Paul M John, Commercial transactions & recoveries**



**Maureen M Cosmas, Litigation Division**



**Eunice K Kyatha, Conveyancing & Bank Securities Division**



**Patrick N. Kitinga, Business & Companies Registrations**



**Janet M Muvindye, Environment, Land & Constitutional Law related matters**



**Anthony M Kiilu, Commercial transactions & recoveries**



**Jane N Mutuku, Litigation Division**



**Vincent M Kito, Company's & Co-operatives Registry**



**Christine N Kimani, Lands Registry transactions**



**Julia N Mbithi, Courts Registry Transactions**



**Leonidah N Kyalya, Investigations & Recoveries Division**



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ROBSON HARRIS & CO ADVOCATES

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Edward Ratemo



Eugene Kubally



Gad Ouma



Jane Mwangi



Julie Mwaniki



Kelvin Mbogo

# Where customer is king and success the driving force

*Legal Consultants, Advocates, Arbitrators, Legal and Governance Auditors*

**R**obson Harris & Company Advocates, established in 1956 is one of the leading law firms in the country. We serve a distinguished array of clients comprising of listed companies, multinationals, state corporations, leading private enterprises and individual clients.

We are deeply committed to the satisfaction and success of our clients and in achieving this we are always driven by the desire to give “nothing but the best” legal services. We invest our time to understand our client’s needs in order to gain a deeper understanding of their priorities, goals and challenges. Our approach is commitment to excellence, client focused teamwork, responsiveness and cross-disciplinary collaboration in order to provide practical, efficient and expeditious solutions to our client’s legal needs.

Our team consists of skilled and experienced advocates who have developed a reputable track record in diverse areas of legal practice. In addition

to our strong capacity, we have established solid collaborations with other international legal experts geared towards providing the best legal services to our esteemed clients.

The Firm provides advisory services for various large scale real estate and infrastructure development projects. We advise on all aspect of real estate transactions including structuring of joint ventures, sale and purchases, fractional ownerships, tenant purchase and leasing. We continue to act for banks and financial institutions and we are involved in the preparation and perfection of securities and provision of advisory services.

The Firm has the unique advantage of representing the government, various State Corporations and private companies in procurement matters. Moreover, the Firm advises several clients on the structuring of Public Private Partnerships in the transport, infrastructure, and housing and urban renewal sectors. Robson

Harris has acted on behalf of leading State Corporations in the energy sector and other private sector players on various transactions. We have also advised clients in the mining and extractive sectors including regulatory and compliance matters, mining rights, titles, royalties, taxation, transfer pricing, financing, lobbying, concessions and mining related disputes.

Robson Harris has an impressive record on cross border transactions. The Firm has acted for clients on transfer of property, cross border ventures, international taxation, business set up, licensing, financial and commercial obligations.

The Firm has a strong Dispute Resolution and Litigation Department actively involved in a wide variety of alternative dispute resolution processes, practices and techniques. We have handled a variety of constitutional and judicial review matters by successfully prosecuting and defending several petitions and applications.

## Main Areas of Practice

- Litigation & Dispute Resolution
- Real Estate & Property
- Immigration Law
- Public Procurement Law & Public Private Partnerships
- Project Finance & Infrastructure
- Banking Securities & Finance
- Capital Markets
- Family Law
- Constitutional and Administrative Law
- Corporate Governance Law
- Labour & Employment Law
- Corporate & Commercial
- Mining and Energy Law
- Mergers and Acquisitions
- Environmental Law
- Intellectual Property
- Tax Law
- Competition Law
- Legal Audit

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## We understand our Clients

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**MOHAMMED MUIGAI LLP**
**Advocates, Notaries, Commissioners for Oaths and Patent Agent**

# TOP LEGAL FIRMS


**Senior Partners:** Mohammed Nyaoga, Professor Githu Muigai, SC

**Managing Partner:** Geoffrey Imende

**Deputy Managing Partner:** Emmanuel Wetang'ula

**Partners:** Guto Mogere, Georgiadis Khaseke, Wanjiru Ngige

**Associates:** Gabriel Mwangi, Caroline Wanjia, Joanne Njoroge, David Angwenyi, Simon Njege, Muigai Githu, Sharon Buyanzi, Dennis Mungai, Ronald Makokha, Batula Abdi, Stella Njagi

**Mohammed Nyaoga**

**Prof. Githu Muigai, SC**

## A Boutique law firm for your tailored legal solutions

### Firm Overview

Mohammed Muigai LLP is a boutique law firm that prides itself on its ability to provide tailored advisory solutions to our clients. Founded in 1988, Mohammed Muigai LLP has grown to become one of the leading law firms in Kenya. The firm's presence in Kenya for over 30 years has brought recognition in providing specialised legal advisory services, high-level dispute resolution (through both litigation and alternative dispute resolution mechanisms), complex and large value property and commercial transactions.

Mohammed Muigai LLP through its vast experience in Kenya and the East African region, has garnered immense expertise and keen understanding of the legal, commercial and regulatory environment in the region. That the firm's operations and reach in the region is complimented by its association with EuroLaw Group. EuroLaw Group is a boutique consultancy and transaction company focused on the implementation of capital markets, escrow agent, paymaster, project funding, monetization and merger & acquisitions transactions for medium-sized and larger firms. The group's core strategy is based on a partnership concept through which experts from the fields of legal advice, asset management, paymaster, escrow services, fiduciary, audit and tax advice deliver their services.

Following the rebranding of the firm in September 2018, Mohammed Muigai LLP is organised into four departments; the Dispute Settlement (Litigation and Alternative Dispute Resolution) Department, Commercial and Corporate Department, Conveyancing Department and the Legal Advisory and Consultancy Department.

### Main Areas of Practice

#### Dispute Settlement (Litigation and Alternative Dispute Resolution):

Mohammed Muigai LLP is involved in day to day dispute resolution matters before both domestic and international courts and tribunals.

The firm's advocates handle briefs before all courts in Kenya's judicial hierarchy. This representation also extends to various tribunals including the Public Procurement Administrative Review Board, the Petition Committee established under the Public Private partnerships Act, the National Environment Tribunal, the Retirement Benefits Appeals Tribunal and the Tax Appeals Tribunal to mention but a few.

With a hard-to-rival success rate, Mohammed Muigai LLP remains the firm to consult in respect of complex litigation


**30th Anniversary Cocktail Party**

and alternative dispute resolution matters within the East African region. The firm's advocates have vast experience and expertise in numerous areas of legal practice including public procurement law, judicial review, constitutional and administrative law, media law, environment and land law, tax law, employment law, banking law and finance law, corporate governance and intellectual property law.

The firm's expertise and experience is not limited to appearing before the various judicial fora. Some of the firm's partners are Chartered Arbitrators and Mediators who have conduct of high value arbitration, negotiation, and reconciliation and mediation matters.

Mohammed Muigai LLP's continued commitment to its clients ensures that any matter is prosecuted efficiently and effectively to guarantee a favourable result. The firm's clientele includes State corporations, banking and finance institutions, nongovernmental organisations as well as individuals.

In the past year, Mohammed Muigai LLP has been engaged in several high value complex litigation, representing some of the leading companies, State Corporations and Local (Government) Authorities.

### Commercial & Corporate

Mohammed Muigai LLP advises a large number of locally and internationally-based corporations. The firm efficiently offers a variety of corporate and commercial services in a number of fields such as equity investments and joint ventures, company public listing, share issues, mergers, acquisitions and disposals, corporate restructure and trade finance and others.

The services relate to a wide range of commercial transactions, including share purchase agreements, settlement agreements, deeds of variation, shareholders agreements, asset purchase agreements, non-compete agreements, consortia agreements, non-disclosure agreements, joint ventures, merger and acquisitions, de-mergers, escrow agreements, deeds of subordination, trust deeds, partnership deeds, technology transfer agreements, licensing assignments, privacy and disclosure agreements, annual maintenance contracts and value adding reseller agreement and attendant due diligence reports.

The firm also has a well-earned regional reputation as leading lawyers for banking,



Anderson Mori &amp; Tomotsune

**Emmanuel Wetang'ula** is frequently mandated on litigation and arbitration, acting for clients in sectors ranging from aviation to energy. With experience before all levels of court, he undertakes both public law disputes and commercial claims.

"Young, enthusiastic and passionate," **Geoffrey Imende** is a respected litigator with notable experience in construction disputes, IP enforcement and commercial contract breaches. He also acts on constitutional and human rights matters and is managing partner of the firm.

**Githu Muigai** recently returned to the firm after having served as Kenya's Attorney General. He brings significant expertise in both litigation and arbitration and is widely regarded in the legal community as "a well-respected practitioner."

**Guto Mogere** is considered "a good litigator" with a promising future. His expertise spans litigation and arbitration, acting on banking and employment disputes, as well as judicial review. He is head of the firm's litigation and dispute resolution department.

**Mohammed Nyaoga** is highly valued for his commercial awareness, with sources going on to note: "He's a person to be admired for both his grasp of strategy and the law." Currently chair of the board of directors of the Central Bank of Kenya, he remains a well-respected litigator and is further recognised as "an authority when it comes to corporate governance issues."

insurance and financial institutions. The firm's approach to corporate and commercial transactions entails the conduct a critical review of its clients' requirements vis a vis the prevailing conditions in the external market. The firm also analyses documentation and scrutinises current strategies, policies, rules and regulations prevailing in the market which affect clients' business.

### Conveyancing

The firm provides a wide range of services to its clients including the conduct of due diligence in land transactions, conducting searches at the relevant lands registries, obtaining titles, preparing high level and complex property schemes, advising and effecting change of user, negotiation, creation and perfection of securities. Services relate to a wide range of land transactions, including sale agreements, charges, transfers, amalgamations, professional undertakings, discharge of charges and assignments. The firm has numerous clients in the banking and financial industry who engage the advocates in their property and security transactions. The firm's advocates have the knowledge, expertise and proper professional background with unique exposure to land and related transactions.

### Legal Advisory & Consultancy

The firm's success and prominent practice in

advisory matters is built on the strength, experience and expertise of its advocates in the relevant disciplines. Mohammed Muigai LLP's involvement in advisories range from the conduct of Legal and Governance Audits, to the assessment of various Bills, Treaties and Government Policy Papers and includes substantive experience in Legislative Drafting.

The advisory component of the Firm's practice remains diverse and vibrant, as the Firm has been able to handle contemporary and emerging issues such as aspects of Competition Law in the Telecommunication Industries.

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# TOP LEGAL FIRMS



## Unsecured Demand Payment Guarantees in international transactions

CYRIL KUBAI AND ANTHONY MWANGI  
Advocates, Dispute Resolution Department

**B**ank guarantees and letters of credit are the fulcrum upon which international financial transactions are hinged. They are an enabler of international business.

However, the legal regime governing their application is complex, often, by virtue of their international character. The risks which the issuer of such guarantees assumes upon issuing them are immense and the remedies for default are often unsuitable, if available.

For this purpose, we shall concern ourselves with one specific form of guarantee; the “demand guarantee”. A demand guarantee is one that obligates the issuer to pay the beneficiary on demand where the principal fails to perform its obligations under the primary contract. In principle, a demand guarantee is autonomous and the obligations of the guarantor are not affected by any dispute between the principal and the beneficiary. Once a demand is made by the beneficiary, the guarantor is under an obligation to pay. The most common exception entitling the issuing bank to avoid payment is in case of fraud which the bank was not aware of. Other exceptions are set-off, initial illegality and prevention of payment by force majeure.

The applicable law in Kenya is contained in the Law of Contract Act which subsumes the English common law into Kenya and complemented by the ICC Uniform Rules for Demand Guarantees. However, considering the cross-border nature of these transactions, it follows therefore that Kenyan law is often inadequate or wholly inapplicable.

Considering its mandatory nature, banks ought to assure themselves that they receive sufficient consideration prior to accepting to issue demand guarantees. Without such consideration, the risk likely to arise if the guarantee is called in by the beneficiary would open the bank to serious financial losses and a situation in which the bank has to queue with other creditors. In an increasingly volatile world economy, poor planning and corruption in

third world economies and a fluid international financial ecosystem, banks and other financial institutions have no choice but to carefully guard its interests through appropriate legal instruments.

Such consideration would include a corresponding deposit of cash or other securities offered by the principal and sufficient to meet the value of the guarantee should the same be called; securing an assignment of any receivables due to the principal from the beneficiary based on the work to be performed under the primary contract or albeit, risky, securing corresponding guarantees from other companies associated with the principal. Whereas it's the desire of all parties that the contract should be concluded, often times, the principal fails to meet its obligations triggering a call up of the guarantee leaving the issuer with no option but to pay.

It can get murky; where the principal is a foreign company and is declared insolvent or is put under receivership or enters into a composition with its creditors, the likelihood of the bank recovering monies paid or due under a demand guarantee becomes one messy challenge.

Banks should not only undertake due diligence on the credit worthiness of foreign companies they do business with, they should also endeavour to receive sufficient consideration or assurances prior to issuing demand guarantees. For they are, in our view, the easiest route to insolvency. In the event you need more information on issues of letter of credit and guarantees, do visit our website [www.gumboassociates.co.ke](http://www.gumboassociates.co.ke)

**“ Banks should not only undertake due diligence on the credit worthiness of foreign companies they do business with, they should also endeavour to receive sufficient consideration or assurances prior to issuing demand guarantees.**

### WHO WE ARE

G&A Advocates LLP is a Corporate Commercial law firm deliberately focused on providing contemporary legal services. Our clarion call in practice has been to tailor appropriate and practical solutions to our client's needs in the diverse areas of practice that we specialize in. The firm has a prominent foot print in both Nairobi and Western Kenya to facilitate quick and convenient response to our clientele which currently comprises of some of the leading Banking Institutions, County Governments, parastatals, Regulatory Authorities as well as leading private and public companies. Our practice puts particular emphasis in building solid partnerships with our clients while offering exciting opportunities to our very vibrant and highly skilled team members.



Eric Gumbo, Managing Partner

### AREAS OF SPECILISATION

- **Dispute Resolution;** this team is split into Litigation and Alternative Dispute Resolution dealing with Constitutional matters, Public Interest Litigation, Commercial disputes, Insolvency Practice, Civil Litigation, Intellectual Property Litigation, Land and Environment matters, Labour and Employment cases, Procurement Review cases and Appellate litigation, both in the Court of Appeal and the Supreme Court.
- **Commercial and Intellectual Property** the team specializes in; Banking & Finance, Capital Markets, Corporate Compliance & Governance, Corporate Restructuring, Energy & Mining, Power, Oil and Gas, Information Technology and Communication, Insurance, Joint Ventures, Project Finance, Public Private Partnerships, Tax, Telecommunications, Incorporation of start ups, Mergers and Acquisitions, Contracts and Bilateral Agreements and emerging areas of practice including Cross-border Commercial transactions and Public Procurement transactional advice.
- **Real Estate & Conveyance;** Which has focused on advising leading banks and developers in the structuring and preparation of the legal transaction documents for all types of developments, undertaking detailed due diligence and review of contractual documents, negotiation and preparation of securities in both single bank and syndicated facilities.
- **Legal/Governance Audit and Policy;** We boast of a highly trained team with experience in Legal and Governance Audits which apart from being an accepted good management practice has now been entrenched in our laws for Parastatals and all Public listed Companies.

### OUR CONTACTS

*Customer focus,  
Solutions Oriented,  
Integrity, Excellence  
and Partnership*

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# Ways Contracts Are an Entrepreneur's Best Friend

**W**hether you're a solo freelancer or leading a startup with several employees, there's one thing you'll definitely need to protect your business and yourself at some point: an enforceable contract.

Many beginning business owners (and more than a few experienced ones, too) view the contract as a hassle and a waste of time. Some might even think that a written agreement is the equivalent of "anticipating trouble."

When properly drafted though, contracts do not create problems -- they solve them. And while many entrepreneurs believe their clients would react negatively to it, contracts are commonly encountered in most industries because written agreements are essential for a good working

relationship with providers, vendors, partners and clients or customers.

Let's look at how they help your business succeed and protect the interests of both parties.

## 1. They remove doubt and provide certainty.

A well-drafted contract will specify each party's expectations. It helps both parties focus on their business relationship instead of anticipating problems or trying to sort out open-ended questions.

To understand this, think about your biggest client or customer, preferably one that does regular business with your company. How many different aspects of your transactions with this person or business could you identify?

Let's say you sell paper, and this client is a law firm. What size paper do they need? How much of it per month are you required to deliver? What price are they obligated to pay, and when?



The paper transaction is a pretty simple one example. Most business deals are more complicated, and as a result, present many more opportunities for uncertainty. Written contracts help remove the uncertainty inherent in those complex transactions and help both parties make more effective and reliable plans.

## 2. Contracts outline obligations and remedies.

In a related vein, uncertainty can cost you quite a bit of time, effort and money if you or your client are unclear about your obligations in any way. Quantities, prices per unit, delivery

CONTINUED ON PAGE VIII >>>



**Kwengu & Co. Advocates**  
Commissioners for Oaths and Notaries Public

**Kwengu Co. Advocates**  
**are Advocates, Lawyers & Commissioners For Oath & Notaries Public**  
**Know more about our Vision and Mission**

### OUR VISION

To be one of the globally recognized firms in terms of providing the best legal services to our clients

### OUR MISSION

To provide quality services to our clients and ensure that, at all costs justice prevails in all matters that we are handling.

### Kwengu Advocates Values

We appreciate the need to achieve the results desired by our client within the legal parameters. Our services are couched to ensure that justice prevails at all costs in tandem with the maxim that where there is a right there is a remedy.

We appreciate the need to achieve the results desired by our client within the legal parameters.

We conduct thorough investigations, due diligence and searches in our Clients cases-and matters to ensure that our clients are accorded proper representation in their matters.

We are efficient and give all matters that we take priority in recognition of the maxim justice delayed is justice denied.

We are innovative in the way we approach our client's cases and ensure that all the relevant legal provisions that touch on the clients' case are properly articulated in the case to enable the courts and officers dealing with our matters reach a just decision.

We abhor violation of human rights and any form of injustice committed against our client and their representatives.

Our services are pegged on our clients needs

We are a professional firm.

We advice and act with honesty and integrity.

### Areas of Specialization

1. CONVEYANCE AND COMMERCIAL
2. BANKING AND COMMERCIAL LITIGATION DEPARTMENT
3. LAND AND ENVIRONMENTAL LAW LITIGATION DEPARTMENT

4. INSURANCE, LABOUR RELATIONS AND CIVIL LITIGATION DEPARTMENT
5. SUCCESSION, MATRIMONIAL, CHILDREN AND CRIMINAL DEPARTMENT

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# TOP LEGAL FIRMS

By EVANS ONGWAE >>> eongwae@ke.nationmedia.com

Demand for legal services in Kenya is high and still growing. In the midst of this demand, some law firms have excelled and built solid reputations, attracting a growing list of clients while others still struggle to keep their doors open.

Law is considered one of the prestigious degree courses alongside medicine, engineering and architecture. So, every year, an impressive number of students who complete their secondary school studies choose law as a preferred career – and many go on to qualify as lawyers. Naturally, then, the number of lawyers serving the Kenyan public grows year on year.

Clearly, Kenya's legal profession has evolved over time. It has grown in terms of numbers of legal professionals as well as variety of services offered to the public. This growth has turned Kenya into a legal hub in the East African region. Not only does the country demand, it also provides highly-

skilled and specialised legal services. Legal services have grown out of the capital city to spread across the country, taking them even closer to the people.

The diversity of legal services has grown to include different areas of specialisation. This has been driven mainly by economic growth, new ways of doing business, new technologies and new legal requirements, the demands of a global village and the accompanying changes in lifestyles.

Evolving human rights trends, new discoveries and the attendant conflict resolution requirements among others have increased the demand for these services. Global networks are now seeking partnerships with Kenyan firms as the demand for a footprint in the region and Africa grows.

These global firms, which boast plenty of experience, seek to pair up with reputable and highly professional local partners. Kenya has a sizeable number of such firms, some whose practices match the best in other parts of the world.



## Providing our clients with uncompromising excellence and professionalism

Rachier & Amollo Advocates LLP is an internationally recognized law firm founded in the year 1998. We are a firm that is customer centred and result oriented. We pride ourselves in our ability to provide our clients with uncompromising excellence and professionalism expected of top level firms. Our service is predicated upon clients' needs and understanding of what is important to them and using our vast legal experience, knowledge and skill in meeting the needs. The firm aspires to become a pillar of efficient and un-paralleled legal practice and expertise; large enough to handle the multinational conglomerates, yet modest and caring enough to grant audience to the financially challenged, yet aggrieved members of society.

Our practice areas include but is not limited to tax law, intellectual property, mergers and acquisition, financial restructuring and insolvency, energy, banking and finance, bank securities, investment, joint ventures, international trade, cross-border transaction, (generally referred to as commercial law), constitutional law and judicial review litigation, criminal and civil litigation, conveyance, family law and succession, environmental law, Oil and Gas law, sports and entertainment, insurance, alternative dispute resolution including arbitration and mediation, labour and employment disputes resolution, immigration law, retirement benefits, health law and legal consultancy and audit.

We have a dedicated and vastly experienced team of six partners, namely Ambrose D. O. Rachier, Hon. Dr. Otiende Amollo, Jotham Okome Arwa, Francis Olalo, Stephen Ligunya and Alvin Rachier. They are supported by 10 Associates, several pupils and legal assistants and other support staff made up of Human Resource and Operations Managers, Accountants, IT specialists and other administrative staff.

We are located at 5th Floor Mayfair Centre, Ralph Bunche Road next to Upperhill Medical Centre. We can be reached at telephone number 0722204778 or 0733616662 or 0202716012, our email address is lawtechs@rachieradvs.co.ke and our webpage is www.rachieradvs.co.ke.

We also have presence on social media: our Facebook page is Rachier & Amollo Advocates; Twitter handle is @rachieramollo and LinkedIn profile at Rachier and Amollo Advocates.

Rachier & Amollo Advocates LLP, service beyond expectation.

## KTK ADVOCATES

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**Key Firm Contacts:**  
**Managing partner:** Donald B. Kipkorir  
Donald was admitted as an Advocate of the High Court of Kenya in 1992. He is a founding partner of KTK Advocates and holds the position of Managing Partner and is also the Litigation Lead within the Litigation Department at the Firm. With over 25 years in practice, Donald has a wealth of experience in Corporate and Commercial Law, an exceptional track record with Commercial Litigation and Alternative Dispute Resolution and is a registered Patent Agent, as well as a Commissioner for Oaths and Notary Public.



**Quick Firm Facts:**

- Languages - English and Swahili
- Professional Indemnity Insurance Cover of KES 1 Billion with AIG KENYA.

**Firm Overview:**  
KTK Advocates is a leading Law Firm in Kenya, established in 1996, with an excellent reputation on all forms of commercial and corporate legal matters.

The collective experience and knowledge of our Advocates across various practice areas, positions KTK Advocates to deliver on its commitment to excellence in legal services provision.

The Firm acts as legal advisors for many of the leading banks, insurance companies, parastatals and government bodies, universities, societies, regulatory authorities as well as several leading companies in Kenya. KTK Advocates has also done significant work for various regional and international clients.

The Firm has built strong associations and working relationships with leading law firms in; South Africa, Uganda, Tanzania, Rwanda, Sudan, Ethiopia, Eritrea, England, France and Saudi Arabia giving it considerable strength in legal matters with an international or regional ingredient.

KTK Advocates' commercial and pragmatic approach demonstrates a genuine market commitment to the Clients it serves in the various sectors of industry. The Firm's resources are focused towards service delivery thereby developing products that add value to our Client's business.



**Client Care:**  
Our **Managing Partner, Mr. Donald B. Kipkorir**, is the overall partner in charge of all legal services provided and will ensure all the quality and cost guidelines are strictly adhered to.

We always strive to provide our Clients with excellent service of the highest quality. For every matter that we handle there is an Advocate tasked with responsibility for the conduct of the matter, and if a further point of reference is needed, our Heads of Department and Managing Partner are available to assist.



**Key Transactional Practices:**  
The Firm provides a wide range of legal services to both Kenyan and International clients. Areas of expertise include but are not limited to:-

Commercial Litigation, Banking and Finance Law, Corporate and Commercial Law, Real Estate and Property Law, Debt Restructuring, Anti Trust and Competition Law, Alternative Dispute Resolution, Intellectual Property Law, Capital Markets and Securities Law, Tax Law, Mergers and Acquisitions, Private Equity, Legislative Drafting, among others.



**Sector Expertise:**  
KTK Advocates serves both the public and private sector. Our team has done significant work for various clients in varied areas of industry, such as:

Financial Services, Energy (electrical power, geothermal power, oil and gas), Infrastructure, Information and Communication Technology, Agriculture, Education, Healthcare, Public Sector & Government, Real Estate, Insurance, Tax and Manufacturing.

## Recent Key Transactional Highlights:

- 1. Commercial Litigation and Alternative Dispute Resolution:**
  - Representing one of the foremost universities in Kenya in successful arbitration proceedings against a contractor for termination of a contract worth KES 2.4 Billion.
  - Representing a County in proceedings to recover KES 62 Billion from a state agency resulting from appropriation of county land.
- 2. Corporate Lending:**
  - Advising and securing the interests of a leading financier in Kenya, extending banking facilities worth KES 6 Billion to a corporate borrower.
- 3. Real Estate:**
  - Representing an investment management company in a land purchase valued at KES 1.26 Billion and providing core legal advisory services to negotiate, prepare and procure title documentation in favour of our client.
- 4. Commercial Transactional and Legal Advisory Services:**
  - Acting as Legal Transactional Advisor on a solar power project, representing the Client throughout the entire project process. Services include but are not limited to; special purpose vehicle (SPV) registration, acquisition of project land by purchase or lease, facilitating change of user applications and development permissions, facilitating procurement of statutory approvals and licenses and preparing and perfecting various commercial agreements.
- 5. Protecting Public Property:**
  - Successfully recovered prime properties worth billions of shillings for two key public institutions that had been grabbed by "private developers" in Kilimani and Mombasa Road, collaborating with the offices of the Director of Public Prosecutions (DPP) and the Ethics and Anti-corruption Commission (EACC) and ensuring that the properties were handed back to the institutions.
- 6. Intellectual Property Protection:**
  - Provision of legal advisory services to various clients in the registration and protection of their trademarks both within the Kenyan jurisdiction and in other jurisdictions.
- 7. Legislative Drafting:**
  - Our practitioners have contributed to the drafting of various pieces of legislation, including but not limited to, advising on Parliamentary and Senate Bills, statutory enactment and the legislative process; among other legislative issues.



**Global Rankings and Accolades:**  
KTK Advocates has been ranked by IFLR1000, an international financial law ranking, as a recommended law firm for financial and corporate law.





# Ways Contracts Are an Entrepreneur’s Best Friend

>>> CONTINUED FROM PAGE VI

costs and who pays them are just a few examples of some terms you should take care to spell out in writing.

In addition, it's important to outline remedies in case one party breaches the agreement. In some jurisdictions, even if you win a case for breach of contract, you can't recoup the costs of that case (for example, attorney's fees) unless you specify them in a written contract.

### 3. They provide procedures for thorny disputes.

What happens if there is a disagreement between you and your client?

You don't have to proceed directly to court. Certainly, litigation is prudent (possibly even required) in some situations. However, a lawsuit isn't a very effective way of resolving business disputes. Business litigation can be very expensive and take a long time to reach

a final conclusion, thanks to appellate procedures.

A contract can specify an alternative means of resolving your dispute, such as mediation or arbitration. Many parties in business disputes find these methods preferable to filing a lawsuit. However, unless you both agree to pursue these methods first, there's usually no obligation for the other party to participate. (Some states do require parties to some cases to pursue alternative dispute resolution methods before being able to file a lawsuit.)

### 4. Contracts help you end relationships cleanly.

Without some means and provisions for canceling or terminating a contract, the end of a business relationship can create obstacles that can't be resolved through clear communication.

When the buyer for your goods or services suddenly cancels the deal, it



can cause many problems. Chief among those problems is the interruption in anticipated cash flow. A termination clause can help you by requiring the buyer to give you advance notice of some amount of time (a month is common). That notice gives you time to find additional buyers or clients to replace the lost revenue.

### 5. They address the

### unforeseen.

A commonly included clause in business contracts is called “force majeure” or the “act of God” provision. This clause or section of a contract essentially sets out the parties’ obligations and rights in the event of an unforeseeable event, such as a natural disaster, or any other circumstances beyond their control that make it unreasonably difficult to perform under the contract.

Let's say you're obligated to provide 20 crates of imported tea, but the shipping container gets blown overboard during a storm. With a force majeure clause, you won't be deemed in breach of the contract, even though technically you failed to perform your obligations.

If you're new to contracts, it's best to hire an attorney with transactional experience in your industry to create a contract for your company. You can present this contract to future partners and clients, although they may request changes to the document. Be careful in reviewing and accepting those requested changes, as contract law can be quite complex and outcomes may depend on even slight changes in wording.

ENTREPRENEUR



S.S. MALONZA & COMPANY  
ADVOCATES  
COMMISSIONER FOR OATHS & NOTARY PUBLIC

#### COMPANY OVERVIEW

S.S. Malonza & Co Advocates is a medium size law firm that was established in 2012 that provides specialised legal services in over 12 business areas with skilled personnel our services include Commercial Law, Litigation and arbitration, family law, intellectual property, Tax law.

S.S. Malonza & Co Advocates is regarded as one of the respected law firms in Kenya. We advise on high-profile and pioneering local and international transactions and have a diverse client list that range from start-ups, government, financial institutions and Top corporations. We are best known for our stand-out expertise in Arbitration, Engineering, procurement & Construction Contracts, Transaction Advisory services for Public Private Partnership investment Initiatives.

This segment knowledge is very much in the DNA of our firm. But our proficiencies span far wider than that be it Wealth Management, intellectual Property, Real Estate or information, our expertise enables us to support our clients, as well as to help them successfully develop, grow and protect their assets. Our advice is industry specific, commercial and strategic. Whilst we consistently provide advice that is of the highest excellence and have a team of Lawyers that operate at the top of their disciplines whom share our clients business values.

#### OUR MISSION

S.S. Malonza & Co. Advocates strives to make a positive difference for our clients and serve our clients by helpingthem achieve great business outcomes. Our firm's lawyers exhibit a dedicated willingness to explore the options to help resolve disputes and are able to work with other parties to realize the best course. It is through the use of these skills that we are able to deliver value for our clients.

#### KEY PRINCIPLES

**Law with a Personal Touch**  
We have passion for our work and inspiration for our practice and have a professional and Personal touch in everything we do.

**Our Clients Our Focus**  
Being distinctive and unique in every business and case. We provide smart business solutions individually tailored to meet the specific needs and expectations of each client. To ensure we meet our client needs we continuously review, develop and have propriety procedures with respect to workwhich is designed to provide assurance on our staff competence and professional care.

**International Standards with Local Appliance**

As a national Law firm with local expertise and global experience we maintain international standards and know how to apply the best legal solutions for our clients in the ever changing environment

#### OUR SERVICES

- Commercial & Company Law
- Litigation, Dispute Resolution & Risk Management
- Intellectual Property
- Tax Law
- Legislation drafting & policy formulation
- Energy Law
- Compliance, CSR & Corporate Governance
- Specialized Training
- Real Estate & Construction Law
- Transnational Oil & Gas Law
- Engineering, procurement & Construction
- Contracts, Transaction Advisory services for Public Private Partnership investment Initiatives
- General Oil and gas regulation, permitting and compliance strategies

#### Our Services include:

- Legal support for development ad construction projects at all stages, from development of urban planning and commissioning of design documentation.
- Structuring and support transactions in real estate and construction
- Carrying out legal due diligence for acquisition of real estate or investment projects
- Drafting of regulations and compliance appraisal of draft regulations for real estate and construction

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Some of Our Clients

