

Preamble

Greetings!

Welcome to the Spring 2025 edition of the Legal Digest. The issue provides notable legal developments in the country and across the world meant to educate readers on the ever-dynamic law and spark debates concerning these matters. It also outlines the impact of these developments on the university and each individual as citizens of Kenya. It begins with an analysis of the recently passed Tax Laws (Amendment) Act 2024 which introduced a number of changes to the income tax which impact the disposable income of individuals and affect the tax obligations of the institution. Thereafter it breaks down the changes introduced by the new Income Tax Act Regulations on Charitable Organisations.

The digest then proceeds to discuss law proposals being considered in Parliament to become laws once passed by the National Assembly or the Senate. The bills noted in this digest are the Birth and Death Registration Bill that seeks to decentralise the reporting of births and deaths to make the service more accessible and efficient and the Environmental Professionals Institute of Kenya Bill that will allow for recognition of environmental professionals and also increase opportunities for those who are working in the sector.

Thereafter the digest looks into notable cases, both domestic and international, analysing the significant developments these have in various sectors such as Data Privacy, Real Estate, Healthcare, Gender-Based Violence and Artificial Intelligence.

There is also a section of fun facts; which includes a number of Did You Knows; these are interesting legal facts that you probably did not know about for example the legal guardianship of persons with dementia and some concerns around Artificial Intelligence and its development in the world today featuring interesting remarks by Prof. Paul Tiyambe Zeleza.

Your feedback and input on this Digest and previous issues of the Digest is encouraged and will be highly appreciated. We hope that you will find this issue informative and educational in matters within the legal sphere.

Disclaimer: This publication is provided for general informational purposes only and does not, in any way, constitute legal advice. Readers are advised to seek the services of a qualified lawyer to address any specific legal concerns or situations they may have.

LEGISLATION

1. The Tax Laws (Amendment) Act 2024

The Tax Laws (Amendment) Act 2024 was assented to on December 11 2024 and took effect on 27 December 2024. It introduced significant changes to the *Income Tax Act*, *Value Added Tax Act*, *Miscellaneous Fees and Levies Act* and *Excise Duty Act*. Below are notable amendments and their impacts.

2.1 Amendments made to the Income Tax act:

i) Non-Monetary Benefit Threshold amendments

The previous limit was KES 36,000 annually which has been increased to KES 60,000 annually. The impact of this amendment is a reduction on an individual's tax liability while enabling employers to offer greater benefits without triggering additional tax obligations.

ii) Meal Benefit deduction limit amendment

Previously the limit was KES 48,000 per employee annually which has been increased to KES 60,000. This change equally reduces the tax liability for individuals and increases the flexibility for employers to offer meal benefits.

iii) Gratuity Contributions to pension schemes limit

The previous limit for deductions was KES 240,000 annually (KES 20,000 per month) and the new limit was KES 360,000 annually (KES 30,000 per month). The Retirement Benefits Authority notes that this is an increase of about 50% and is a very welcome change considering the law has not been amended in over a decade.¹ The impact of this amendment is reduced PAYE liability which would in turn encourage individuals to increase their pension contributions and better long-term planning.

iv) Digital Content and Market Place Income

Section 10 of the Income Tax Act includes a provision that makes income gained from digital content monetization taxable.

¹ The Tax Laws (Amendment) Act 2024 : A detailed analysis of < [DLS Copyright Reserved](https://www.rba.go.ke/the-tax-laws-amendment-act-2024-a-detailed-analysis-of-the-amendments-benefiting-the-retirement-benefits-sector/#:~:text=The%20amendment%20increases%20the%20tax,registered%20pension%20or%20provident%20ofunds.> accessed 8 Jan 2025</p></div><div data-bbox=)

Section 12E which previously provided for the Digital Service Tax has been replaced with a provision that provides for Significant Economic Presence imposing a 10% tax on profits earned by non-resident digital service providers with significant presence such as Netflix.

The impact of these changes is increased tax obligations for digital service providers which may potentially affect the pricing for digital services.

v) Affordable Housing Levy, Social Health Insurance Fund and Post-Retirement Medical Fund amendments

Contributions to a Post-Retirement Medical Fund (up to KES 15,000) as well as those made to Affordable Housing Levy and Social Health Insurance Fund are now deductible for purposes of computing employment income. The impact of these changes is reduced tax burden for employees and reduced medical burdens of retirees.

vi) Mortgage Interest deduction

Previously, the limit for interest that could be deducted when calculating employment income was KES 300,000 annually which has been increased to KES 360,000 for residential properties financed through the first six financial institutions specified in the fourth schedule. This translates to a reduction in tax liability for individuals allowing for them to have more disposable income.

vii) Pension Contribution deductions

The limit for deductions allowed for employee and employer contributions to pension schemes has been increased from KES 240,000 annually (20,000 per month) to KES 360,000 annually (30,000 per month). This change reduces PAYE liabilities and enables individuals to make higher pension savings which in turn improves retirement planning.

General impact of amendments to the Income Tax Act

These amendments consider the present inflation and economic realities, increasing thresholds for deductions to enhance disposable income. They also address the needs of retirees by reducing tax burdens on medical and pension contributions, fostering financial security and better retirement outcomes.

2. Income Tax (Charitable Organisations and Donations Exemption) Rules 2024

The Income Tax (Charitable Organisations and Donations Exemption) Regulations 2024² (hereinafter New Regulations) were introduced to prescribe the requirements for an entity to be exempted from tax liability as a charitable organisation under paragraph 10 of the first schedule as well as the procedure for application, processing and granting of an exemption under the Act. They also provide the conditions of deductibility for expenditure under section 15 (2)(w) of the Income Tax Act, which provides that donations to charitable organisations that are tax exempt are an allowable deduction for purposes of determining taxable income.

The regulations came into force on 18th June 2024 and require that institutions -such as USIU-Africa- that were exempt prior to the said date, comply with the requirements under the regulations by 18th June 2025.

Under the New Regulations, for an entity to be tax exempt as a charitable organisation is must: i) Operate exclusively for a charitable purpose, ii) Be a non-profit, iii) Revert to another charitable organisation with similar objects upon dissolution and iv) Be compliant with the laws of Kenya.

Charitable purposes under the New Regulations are limited to the following four purposes: Relief of Poverty, Relief of distress of the public, Advancement of religion and Advancement of education.

Rule 12 of the Regulations provides that an educational institution wishing to be exempted would have to show under the advancement of education test, that, it operates exclusively for an educational purpose, meets the public benefit requirements, it is accessible to the needy and poor, it caters for the educational needs of persons with disabilities and abandoned children and that 10% of its student population are students from needy and poor backgrounds on **full scholarship** and that their selection was done according to the criteria specified in the Regulations.

² Income Tax (Charitable Organisations and Donations Exemption Rules (2024). The entire subsidiary legislation can be accessed on the following link: [The Income Tax \(Charitable Organisations and Donations Exemption\) Rules, 2024 - Kenya Law](#)

The criteria for selection of beneficiaries is provided in Rule 8(7) which provides that an institution will be foul of the requirements, if its definition of beneficiaries:

- i) Excludes the needy or poor
- ii) Is based on personal connection (family, employment or other connection irrelevant to the purpose of the institution)
- iii) Proposes a numerically negligible number of beneficiaries
- iv) Is in a manner that is capricious or irrelevant to the purpose of the institution
- v) Unless otherwise provided in the regulations, limits beneficiaries to those within the institution

Additionally, the new Regulations provide for a Surplus Funds Restriction. Surplus Funds are defined in the Regulations as excess of income in any accounting period that is unrelated to the exempt charitable purpose or to work in connection with the business that is carried on by beneficiaries or profit from rent of property leased or from chattels rented out.

The Restriction applies to grants and donations received by Charitable Organisations and seeks to regulate the accumulation of donations and grant income that is not directed at the charitable purpose of the organisation.

In addition to the Restriction, exempted organisations are required to obtain a separate tax Personal Identification Number (PIN) for any gains and profits that are unrelated to the charitable purpose or any activities that are not carried out to support charitable activities which would then be subjected to tax.

Notably, under the new Regulations there are four tests that the institution would be required to meet which are: -

- i) Organisational test which requires that the organisation be structured in a manner that lends itself to the charitable purpose.
- ii) Operational test which requires that the operations of the entity be lawful and focused on the accomplishment of the particular exempt charitable purpose
- iii) Public Benefit test which provides that the beneficiaries be capable of attesting to the benefits and no unreasonable restriction.
- iv) Purpose test where the activities are solely for the exempt charitable purpose, that beneficiaries are those in need and there is tangible proof of the relief provided.

General impact of the new Regulations

These new regulations require charitable organisations to provide proof that they indeed are operating as a charitable organisation with a clearly identified charitable purpose that can be evidenced by the way in which the organisation operates and carries on business. They also require the organisation to distinguish between grants or profits or gains obtained for its charitable purpose and those obtained for other activities and have separate PINs for the two categories to clearly determine what part of the organisations income is taxable and which part is not.

BILLS (PROPOSED LAWS)

In this section the proposed laws that are being debated in parliament are broken down and discussed especially in regards to their impact to the institution. The bills that will be discussed are the Birth and Death Registration (Amendment) Bill and the Environmental Professionals Institute of Kenya Bill.

1. Birth and Death Registration (Amendment) Bill

This Bill proposes the establishment of birth and death registration centers in every constituency, addressing the current shortfall of only 143 centers nationwide. By amending Section 5 of the Births and Deaths Registration Act, the Cabinet Secretary will be empowered to expand access to these services, aligning with Article 6(3) of the Constitution.

Impact:

The proposed amendment will significantly benefit rural residents, who currently must travel long distances to obtain birth and death certificates. Increased accessibility will enhance accountability for unregistered deaths, a prevalent issue in many African countries, including Kenya. According to UN data, only 73% of nations report 90% of births, and 68% report 90% of deaths, highlighting flaws in civil registration systems.

For USIU, these centers will improve the verification of students' and staff documents, streamlining the validation of national records. Reliable registration systems will ensure accurate and continuous vital statistics, replacing error-prone methods like sample surveys and censuses. This reform will not only serve citizens but also contribute to better national data collection and governance.

2. Environmental Professionals Institute of Kenya Bill

The primary objective of this Bill is to establish the Environmental Professionals Institute

of Kenya and provide a legal framework for promoting professionalism within the environmental field. It outlines mechanisms for the registration, licensing, and regulation of environmental professionals and their practices.

The Bill includes provisions for the formation and governance of the Institute, such as the composition and powers of the Council, appointment of a Registrar, qualifications, committees, and staff. It also addresses financial management, enforcement measures, including penalties for false registration, and collaboration with the National Environment Management Authority (NEMA).

Impact:

- The Institute can significantly benefit the USIU community, particularly students and professionals interested in environmental careers, through:
- Skill Development: Offering courses and certifications that enhance knowledge of environmental laws, regulations, and technology.
- Networking Opportunities: Facilitating connections with professionals for collaboration, mentorship, and job opportunities.
- Professional Recognition: Providing certifications that validate adherence to ethical standards and best practices, improving career prospects.
- Access to Resources: Offering exclusive materials, research, and tools to stay updated on industry trends.
- Advocacy: Promoting sustainable practices and addressing environmental professionals' concerns at local and global levels.

By fostering knowledge, advocacy, and professional growth, the Institute will be a valuable asset, enhancing careers and advancing sustainable practices when effectively implemented.

HOT FROM THE BENCH

Introduction

This section discusses the cases that are both ongoing or have been heard and determined by the Courts both nationally and internationally.

National Matters

1. **Landmark Judgement: Muhanda v LP Holdings Limited (2025) KEHC 393 KLR**³

Michelle Muhanda, the appellant in this case, sought the refund of KES 230,000 which she had paid as a rental deposit that her former landlord had withheld. The case was heard initially at the Small Claims Court where LP Holdings argued that the case was outside the Court's jurisdiction and should be determined by the Rents and Rates Tribunal instead. The Small Claims Court agreed with the reasoning of LP Holdings and dismissed the case.

Michelle then appealed to the High Court where the uncertainty regarding the jurisdiction of Courts in rental matters was clarified. The precedent that was relied on in the initial case by the LP Holdings and subsequently by the Small Claims Court in its ruling was that of *Christofferson v Kavneet Kaur Sehmi* (2022) which is a case relating to unpaid rent.

Justice Namisi in her ruling, highlighted that the claims made by the appellant were not related to a rental claim but one for breach of contract as well as heavy handedness of her former landlord. For this reason, she found that the Small Claims Court erred in finding that the matter related to a rental claim and set aside the ruling. The case is to be heard and determined on merit by a different adjudicator at the Small Claims Court.

Impact

For some time now, former tenants have had trouble accessing their rental deposits from their landlords who unjustly withhold the sums when tenants terminate their Tenancy Agreement. A key takeaway from this case is that having written Tenancy Agreements is important as they form the legal basis of the claim to reclaim a deposit that is being withheld without justifiable reason. This decision, notes that withholding of rental deposit is a breach of contract issue and as such tenants can bring a case against heavy handed landlords before the Courts where there is a valid contract in place.

2. **Musa and Another v Makini Schools Limited [2025] KEELRC 17 (eKLR)**⁴

In this case, the 1st Claimant, Japhar Nanjira Musa, was an Islamic Religious Education teacher and shop steward at Makini Schools for 18 years. He was accused of gross misconduct, including collaborating to sabotage the school, sharing confidential information, and attacking the HR Director. These allegations arose after a blogger

³ Muhanda v LP Holdings Limited (2025) Civil Appeal E256 of 2023 eKLR < [Muhanda v LP Holdings Ltd \(Civil Appeal E256 of 2023\) \[2025\] KEHC 393 \(KLR\) \(Commercial and Tax\) \(23 January 2025\) \(Judgment\) - Kenya Law](#) > accessed on 15 April 2025

⁴ Musa and another v Makini Shools Limited (2025) Cause E815 of 2022 eKLR < [Musa & another v Makini Schools Limited \(Cause E815 of 2022\) \[2025\] KEELRC 17 \(KLR\) \(17 January 2025\) \(Judgment\) - Kenya Law](#) > accessed on 23 February 2025.

published defamatory posts about the school, prompting an investigation during which WhatsApp messages between Musa and a colleague, Silas Wafula, were accessed from Wafula's **work laptop**. Based on this evidence, Musa was suspended, a disciplinary hearing was had and eventually he was summarily dismissed from the institution.

Musa challenged the dismissal, alleging unfairness in the process and unlawful access to his private communications. The Court analysed the case on substantive and procedural grounds. It found no direct evidence linking Musa to the blogger's actions and noted that his role as a shop steward required him to handle sensitive information in employees' interests. Procedurally, the Court ruled the disciplinary process was unfair as Musa was not given adequate time to prepare, could not cross-examine key witnesses, and raised valid objections to the disciplinary panel's composition, which were ignored.

While the Court found the dismissal unfair due to the lack of substantive justification and procedural fairness, it declined to reinstate Musa, citing the lapse of time and strained relations, but awarded him ten months' salary as compensation for unfair termination and one month's salary in lieu of notice. This case underscores the importance of adhering to fair disciplinary procedures and respecting employees' rights in the workplace.

A notable outcome from the case is from the position the Court took on the use of WhatsApp evidence obtained from a work device, which was found to be lawful

Impact

From this case it is important for employees to note that messages that are found on company devices are admissible evidence in administrative proceedings properly conducted as well as in Courts. The argument that Mr Musa's privacy rights were violated did not hold as these messages were found on a Makin Schools' device. Therefore, it would be prudent for individuals to refrain from logging into their personal social media accounts on company devices.

For the institution, it is important to ensure that any decision or action taken against an employee is done in a procedurally sound manner. The dismissal in this case was invalid owing to the fact that first, the valid objections to the composition of the disciplinary committee were disregarded, second, the accused was not given an opportunity to cross-examine witnesses and finally, he was given inadequate time to prepare. This violated

Musa's constitutional right to fair administrative action rendering the decision made invalid.

3. **ODPC Complaint No. 1159 of 2024: Bharat Thakrar v WPP Scangroup PLC and 2 others**

In the case of *Bharat Thakrar vs. WPP ScanGroup PLC, WPP PLC, and Control Risks Group*, Bharat Thakrar, the founder and former CEO of WPP ScanGroup PLC, filed a complaint with Kenya's Office of the Data Protection Commissioner (ODPC). Thakrar alleged that during an investigation into alleged misconduct, Control Risks Group unlawfully accessed personal data from his **private** laptop, including WhatsApp messages, without his consent. This data was subsequently shared with WPP ScanGroup, WPP PLC, and the Capital Markets Authority (CMA). Thakrar argued that this violated his data privacy rights and caused significant personal and professional harm.

The ODPC found that the respondents had breached data protection principles, including lawful processing and data minimization, by accessing and sharing Thakrar's private communications without a legitimate basis. Although sharing data with the CMA was considered lawful, the overall handling of his personal information was deemed improper. Additionally, the ODPC determined that Thakrar's right to access his personal data related to his employment had been infringed when the request he made to WPP ScanGroup was denied.

As a result, the ODPC ordered the respondents to pay Thakrar a total of KES 1,950,000 in compensation, divided among WPP ScanGroup PLC, WPP PLC, and Control Risks Group. They were also directed to provide Thakrar with access to his personal data within seven days and comply with an enforcement notice to align with data protection regulations.

WPP ScanGroup PLC has expressed disagreement with the decision and is considering an appeal. This case highlights the importance of corporates adhering to data protection laws and the consequences organizations may face for mishandling personal information, particularly when it infringes on individuals' privacy rights.

In contrast to the case discussed before, the data accessed by WPP ScanGroup were from the **personal** device of Mr Thakrar and the improper manner in which the data was processed and shared violated his privacy rights.

Impact

This case highlights the difference in treatment of data obtained from personal devices and those obtained from work devices. Notably, an individual has more protections available to them when the data used in an investigation is obtained from a private device. Additionally, any personal information obtained and processed should be accessible to the person to whom the data relates. Individuals have a right to request to see what data is being processed about them, who has access to it, what it is being used for amongst other details and such a right cannot be denied.

Institutions should ensure that the data they process meets the principles of data processing and that they grant data subjects access to their data when such a request is made.

4. Asebe v Kenya Revenue Authority (Case E347 OF 2022)

Eric Asebe, the claimant, was employed by the Kenya Revenue Authority (KRA) as a Clerk in the Customs and Border Control Department starting December 15, 2015. On January 27, 2022, he was summoned to a disciplinary hearing concerning allegations of soliciting a bribe, supported by WhatsApp messages. He requested access to his phone, held by KRA, to verify these messages, but the request was denied. Subsequently, on February 25, 2022, his employment was terminated.

Asebe filed a case in Court contending that his termination was unfair and unlawful and sought to be reinstated or, alternatively, compensated. Judge J. Rika presided over the matter and dismissed Asebe's claim, concluding that the termination was lawful and that KRA had adhered to fair disciplinary procedures. He upheld the use of WhatsApp messages as valid evidence in the case, which provided clear indications of his involvement in soliciting a bribe from Ryce East Africa Limited. These communications, which included discussions about specific bribe amounts and strategies, were deemed to directly relate to his official duties and thus constituted serious misconduct. The Court concluded that both the procedure of obtaining the messages and the substantive content justified Asebe's dismissal, affirming that the termination was fair and lawful.

Impact

The key takeaway from this case was the fact that Asebe, while under investigation, had given consent to his personal device being searched and for this reason he could not claim that personal data had been wrongfully obtained when it was used against him later.

In contrast to the case of Thakrar, here data obtained from a personal device was no longer protected as the data subject had given up these rights when they consented and handed over the phone for investigations to be done.

The institution should ensure that when investigating personal devices of its employees it has obtained the required consent to do so to avoid having any evidence obtained being dismissed for being improperly obtained.

Equally, individuals should be aware that their personal devices can be search and the evidence obtained from them used against them where the proper procedure has been used and the consent required was granted.

5. ODPC Complaint No. 0497 of 2024: Kennedy Wainaina Mbugua v Bolt Operations and another

In the case of *Kennedy Wainaina Mbugua vs. Bolt Operations*, the complainant, Kennedy Wainaina Mbugua, filed a complaint against Bolt Operations, alleging unauthorized processing of his personal data. Mbugua claimed that Bolt Operations collected and processed his personal information without his consent, violating the Data Protection Act, 2019.

Upon investigation, the Office of the Data Protection Commissioner (ODPC) examined the circumstances under which Bolt Operations collected and utilized Mbugua's data. The ODPC assessed whether Bolt had adhered to the principles of lawful processing, purpose limitation, and data minimization, as outlined in the Data Protection Act.

The ODPC's determination concluded that Bolt Operations had indeed processed Mbugua's personal data without obtaining explicit consent, thereby contravening the Data Protection Act. The ODPC emphasized the necessity for data controllers and processors to obtain clear and informed consent from data subjects before collecting or processing personal information.

As a result, the ODPC issued an enforcement notice against Bolt Operations, mandating the company to cease processing Mbugua's personal data immediately. Additionally, Bolt

was instructed to implement measures ensuring compliance with the Data Protection Act, including revising its data collection and processing practices to align with legal requirements.

Impact

This case underscores the critical importance of obtaining explicit and informed consent from individuals before collecting or processing their personal data. Consent for purposes of Data Protection requires that organisations or individuals processing data inform the people they are obtaining data from of the reasons they will be using their data and limit the data processing to the disclosed purposes.

As such individuals should carefully read the reasons why their data is being requested and assess whether the data they are being asked to provide will help to achieve the objective that the data processor says it wishes to achieve.

Institutions on the other hand ought to ensure that the data they collect is necessary for collection and that it is being handled according to the principles outlined in the Data Protection Act.

6. Mwaniki v Attorney General and 6 others (Constitutional Petition E342 of 2020)⁵

In this case, Peter Maina Mwaniki, the petitioner, brought a case against several state actors and private entities. His claim arose from events following the death of his mother, Ruth Muthoni Mwaniki, who died without a will on November 1, 2004. At the time of her death, she maintained an account with Amica Savings and Credit Limited (the Sacco).

The petitioner contended that soon after his mother's death, other individuals fraudulently appropriated the funds from the account. It was further alleged that these individuals, with the assistance of certain public officers namely, the District Officer and a Sacco manager secured a letter that purported to enable the unauthorized withdrawal of the funds.

⁵ Mwaniki v AG and 6 others (2023) eKLR < [Mwaniki v Attorney General & 6 others \(Constitutional Petition E342 of 2020\) \[2023\] KEHC 22385 \(KLR\) \(Constitutional and Human Rights\) \(21 September 2023\) \(Judgment\) - Kenya Law](#)>

Since 2005, the petitioner had been attempting to obtain the detailed account information—including the balance and transaction history—from the Sacco in order to obtain letters of administration over his mother’s estate to pursue the individuals who had withdrawn the money. His failure to receive any disclosure of these details led him to initiate the case, arguing that his right to information among others had been breached.

The case led to the Court discussing Data Protection rights of a deceased person. The legislative framework—specifically the Access to Information Act—provides for the protection of privacy even if the data concerns a deceased individual. In this context, the petitioner’s demand to have every detail of his late mother’s account disclosed raised a larger issue regarding the balance between individual data rights and the need for institutions to follow established legal procedures when handling sensitive personal data.

The Court revisited the constitutional right to access information under Article 35 and stressed that this right, while fundamental, is not absolute and can be limited for privacy concerns. Therefore, while the petitioner’s claim that the Sacco’s refusal amounted to a violation of his data access rights was understandable, any enforcement of the right of access to detailed personal or posthumous account information must be weighed against the need to observe statutory and procedural safeguards.

Ultimately, the Court dismissed the petition as unmerited and held that even though individuals have a right to access information, the disclosure of sensitive data (including details related to a deceased person’s account) is restricted to protect both privacy interests and the integrity of ongoing administrative and legal processes to ensure the estate of a deceased person is effectively administrated and distributed in an accountable manner.

Impact

The impact of this decision is that individuals cannot gain access to information of a deceased person in their family without the proper authorisation. This buttresses the legal requirement for the property of a deceased person to only be dealt with when the people dealing with the estate have the letters of administration which are issued by the Court.

For institutions this case provides a protection for the refusal to disclose information to dependants or individuals related to the deceased who do not possess the legal documents to support their request for information about a deceased person.

International matters

A. UnitedHealth care CEO Shooting

On December 4, 2024, UnitedHealth care CEO Brian Thompson was fatally shot in Midtown Manhattan. Luigi Mangione, a 26-year-old, Ivy League graduate from Towson, Maryland, was arrested on December 9, 2024, in Altoona, Pennsylvania and charged with Thompson's murder. The subsequent proceedings following his arrest have raised a number of legal debates and concerns around how arrested persons are treated as discussed below.

Mangione's arrest and subsequent "perp walk" —the public parading of a suspect before the media— have raised significant legal concerns.⁶ Critics argue that perp walks can undermine the presumption of innocence by subjecting defendants to public judgment before trial. Such exposure may influence potential jurors, potentially jeopardizing the fairness of judicial proceedings. These concerns were exasperated by the scale at which Luigi's "perp walk" was done as he was heavily guarded and in chains making him seem like a person who was very violent and likely to commit a grievous crime.

The extensive media coverage of Mangione's case, including documentaries, podcast episodes and news reports, further complicates the case. Public opinion, shaped by this coverage, can exert pressure on the judicial process, potentially affecting jury impartiality. Ensuring the case is heard by an unbiased jury becomes challenging when prospective jurors are exposed to pervasive media narratives from nearly every media source.

Additionally, the portrayal of Mangione in various media outlets has led to public debates and polarized views, with some individuals expressing support for him. This phenomenon underscores the complexities of high-profile cases, where public sentiment can intersect with legal proceedings, potentially impacting the administration of justice.

⁶ The Munich Eye "The controversial case of Luigi Mangione: Media Sensation and its implications" Barcelona Eye Jan 2025 < [Luigi Mangione's Case: Media Sensation and Judicial Implications](#)> accessed on 23 February 2025

In summary, the legal proceedings against Luigi Mangione highlight critical issues regarding the influence of media exposure and public opinion on the fairness of the judicial process, emphasizing the need for careful consideration to uphold the integrity of legal outcomes.

For institutions, this case underscores the importance of monitoring any media that is related to active cases that they are involved in to ensure that the possibility of the opinion of adjudicators is not swayed and to know whether it would be prudent to request for closed Court sessions.

B. Landmark Sexual Violence Case: Gisele Pelicot v Dominique Pelicot and 50 others

The Gisèle Pelicot case, heard in Avignon, France, marked a significant moment in addressing systemic issues of sexual violence, consent, and justice. Gisèle's husband, Dominique Pelicot, was charged with drugging and raping her over a decade and facilitating assaults by at least 83 other men without her knowledge. The case involved 51 defendants, including Dominique, whose crimes were discovered after his arrest for an unrelated illicit photography case in 2020.

In September 2024, Dominique and the other 50 defendants stood trial where Gisele courageously waived her right to anonymity, insisting on a public trial to highlight the issue of drug-facilitated sexual assault.

From a legal perspective, the case highlighted the challenges of prosecuting crimes involving incapacitation through drugs and the lack of direct witness testimony. The prosecution relied heavily on digital evidence, such as videos and communications found on Dominique's devices, to establish the facts, marking a shift in how such cases are handled.

Dominique Pelicot was sentenced to 20 years in prison, with his accomplices receiving sentences ranging from 3 to 15 years. The case set a novel legal standard by emphasizing the seriousness of drug-facilitated sexual violence and holding all participants accountable, even when the victim is unaware of the assaults.

The case also ignited debates on the definition of consent in French law, which has been criticized for its ambiguity. Advocacy from the case spurred calls for reforms to better align

French laws with international standards that define consent as an ongoing, affirmative process.

Additionally, Gisèle Pelicot's decision to waive her anonymity to pursue justice publicly drew attention to the systemic gaps in handling sexual violence and fueled discussions on legislative and procedural reforms, reinforcing the need for clearer victim rights and stronger protections against sexual violence.

This case highlighted the various legal gaps in processes of handling such cases. Equally in Kenya, though the law does not expressly provide for some of the steps to be taken in investigations and handling of cases of sexual or gender based violence, these can be filled by referencing other laws such as witness and victim protection laws to ensure that the matter is handled effectively.

C. Case against Walmart and Jetson Electric Bikes: AI Hallucinations

This case concerned a claim that was brought against Walmart and Jetson Electric Bikes by the parents of a child who allegedly had gotten burned after using a hover board that was manufactured by Jetson and sold by Walmart.

During the proceedings of this case it was discovered that the lawyers of the parents had quoted nine fictitious cases which suggested the use of AI. The lawyers admitted to using AI and stated that the AI tool hallucinated the cases and withdrew the faulty documents that they had filed.

This case is one of the many instances in the recent past where AI-generated inaccuracies have led to legal concerns and in some cases disciplinary action being taken. It also adds to the discourse around the integration of AI in legal work and the risks of employing the use of AI tools in day to day work.

The view on the use of AI in the legal field features a spectrum of opinions with some arguing for the increased use of AI while others worry about the accuracy and authenticity of the output by generative AI.

Nevertheless, these incidences of inaccuracy serve as cautionary tales while the regulation of AI is still being discussed and it would be prudent for individuals to be cautious about when and how they use AI especially where academic or professional output is being

developed. For employers and learning institutions it is important to caution employees and students from the unchecked and reckless use of AI in their work.

FUN FACTS

1. Legal guardianship for individuals with dementia

In the recent past, Kenya has become an increasingly fast paced society and this has in turn affected the ability for individuals to provide attentive care to their ailing loved ones round the clock. Particularly for individuals with dementia, the risks of them being taken advantage of (either by their own kin or third parties) have increased.

Under the Mental Health Act, the law provides for legal guardianship for persons with dementia which ensures that they are cared for and their property is managed and well administrated. Legal guardians are appointed by Courts and the Courts maintain an oversight role to ensure proper guardianship. To have a legal guardian appointed, a family member or a concerned party files the petition seeking guardianship accompanied by medical evidence and consent of other family members with equal right to be guardians. In the absence of consent, the Court has liberty to determine the matter. The Court will then assess the suitability of the proposed guardian to ensure they act in the best interests of the person with dementia.

However, this is not the only route one could employ. Other alternatives to legal guardianship include: a) **Power of attorney** where the individual before the onset of dementia could appoint a trusted representative to manage their affairs and b) **Issuing advance directives**- which are legal documents through which an individual could specify their preferred treatment, medical care, financial management among other issues before the illness sets in.

2. New NSSF Contribution rates

The National Social Security Fund (NSSF) announced new deduction rates that would be effective from the 1st February 2025. These are adjustments that are made in line with the statutory provisions of the NSSF Act and revise the contribution caps and remittance structures for employers and employees.

The new rates will see the following changes come into force:

- i) The upper limit has been increased to KES 72,000 doubling the previous cap which was at KES 36,000.
- ii) The lower limit has increased to KES 8,000 from KES 7,000
- iii) The maximum limit for contributions being increased to KES 8,640 from KES 4,320

According to the NSSF Act 2013 there are two tiers of contributions. The first tier relates to the mandatory contribution that should be made by the employee and the equivalent contribution that should be made by the employer. Under the new rates there is a mandatory deduction of 480 shillings (240 shillings each from the employee and employer) for earnings up to 8,000 shillings. The second tier relates to the optional contribution based on earnings between KES 8,000 and KES 72,000 which individuals could pay to NSSF or an alternative scheme approved by the Retirement Benefits Authority.

For organisations or individuals with alternative schemes the change to their contributions is minor although those who do not have an alternative scheme, there will be an increase in their usual deduction.

Notably persons earning below KES 36,000 will have their contributions unchanged as they fall below the upper earning limit.

3. FTC updated rules on Children's Online Privacy

On 16 January 2025, the Federal Trade Commission (FTC) announced updates to the Children's Online Privacy Protection Act (COPPA) Rule which apply to online operators of child directed websites as well as those who operate general audience platforms aware they are collecting data from children.

The updates made introduced some notable changes to the way in which personal data relating to children is to be processed. The definition of personal data was expanded to include among other things, the usernames used online, their IP address, their geographical location data, a government issued identifier such as a social security number, their photographs, biometric data including DNA sequence, voiceprints, face prints and gait patterns, telephone number, online contact and information relating to their parents.

Under the updated rules, processing of any personal data relating to children cannot be for an indefinite period and can only be shared with third parties where there is explicit opt-in consent from the parents.

Additionally, the proposal to out rightly restrict push notifications was not included though the FTC noted the potential harms of these to children's mental wellbeing and that they may pursue enforcement actions against operators that engage in practices that unfairly manipulate the engagement of children with online services.

Parents and the community generally should be cautious about the websites and applications that children interact with and look out for instances where their children could have their data sold off to third parties or otherwise used without consent. It is advisable to carefully review the terms of applications and data protection policies of websites especially for online services that are children directed to ensure that children's privacy is not violated.

4. Artificial Intelligence Today

In the ever evolving world of Artificial Intelligence (AI), advancements are happening at an exponential rate in almost every sector and these have raised very many policy concerns. Considering that many of the developments in the field are happening simultaneously and within short periods there is great concern around both the preparedness of individuals to deal with adverse effects of AI enabled systems and the ability to mitigate the adverse effects.

Nick Bostrom in his book Superintelligence, discusses the risks of AI and the concern around the scale of impact as one fault could affect output of a system across the world in a matter of seconds. In the Precipice, Toby Ord discusses the risks of "hallucination" in AI systems as well as those around the absence of a human operator to counter such hallucinations among other risks.

In the world today, these risks are being manifested in many ways such as the indirect discrimination occasioned by learning enabled AI systems creating new rules for their application. Financial Services institutions such as Tala have integrated AI tools that use the data accessed from a user's phone to profile them and after some time would use similarities to form a new rule such as the rule where loan limits are determined by the amount of money in a mobile wallet. This is risky because the AI systems use the data from

individual personal devices to identify those more likely to default on repayment and creates a new rules based on this data where the assumptions made are not always true.⁷

In the employment sphere, AI tools help to sieve out applicants but after some time those with learning capability would identify similarities among the selected candidates and create that as a new rule leading to the discrimination of persons. For example, if a company after employing the tool selected many candidates who studied in the same institution, the system would identify that institution as a preferred criterion and discriminate against candidates who did not study in that institution.

Aside from the risks of discrimination, there are also concerns around data privacy where information is being collected about individuals from the online cookies they accept, to their app activity that is tracked across apps and sold off to third parties and the access that Large Language Models (LLMs) have to personal data.

Another concern revolves around inaccuracies occasioned by training data which in sectors such as healthcare lead to misdiagnosis if the system is trained using data predominantly from a specific demographic.

It is also difficult to understand and explain how AI systems make the decisions they do to then remedy any issues or to ensure these errors are not replicated. This also makes the liability question complex.

It has become evident over the years that it would be necessary to regulate the area and possibly soon but the regulation is always behind development in the area and faces a lot of push back from industry players who argue that regulation hinders development and stifles creativity.

Over and above this, the inclusion of perspectives from the third world has been largely missing and this poses a great risk for instance where individuals from these countries are used as cheap labour for training of machines, an activity that has left many traumatised from some of the data they had to interact with as well concerns around the unfair labour practices these individuals are subjected to.

⁷ Cecil Abungu, *Algorithmic Decision-Making and Discrimination in Developing Countries*, 13 Case W. Res. J.L. Tech. & Internet 39 (2022). Available at: <https://scholarlycommons.law.case.edu/jolti/vol13/iss1/3>

There is also concern around the increasing divide between the developed and developing world due to the limited access in the developing world. As such there are many who are advocating for more inclusive AI governance discussions, a decolonisation of AI governance and democratisation of AI development among others.

In his remarks at the African Indigenous Knowledge and African Languages International Conference at Howard University held from 21st to 22nd February 2025 Prof. Paul Tiyaambe Zeleza, a renowned scholar and public intellectual, emphasized the urgent need to centre African Indigenous knowledge systems in shaping the future of AI.⁸ He critiqued mainstream AI development as overly rooted in Western rationalism, which prioritizes optimization and mechanistic hierarchies, neglecting relational and communal dimensions of intelligence. Highlighting Indigenous epistemologies, he argued that intelligence in many African traditions is inherently relational—flowing through people, generations, land, and spiritual connections—rather than being confined to individual computational prowess. He called for AI to evolve beyond its current limitations by integrating Indigenous perspectives, which could foster more holistic, inclusive technologies. The conference, he noted, was a critical platform for reclaiming marginalized narratives and ensuring African Indigenous knowledge informs global digital advancements, aligning with Howard University's broader goals of deepening diasporic engagement and thought leadership in AI.

5. Romantic Relationships and Sexual Harassment in the Workplace: Where do we draw the line

When the Court delivered the final judgement in the *MNM v G4S Kenya Limited (2024)* case, they found that employers could not dismiss an employee for being in a consensual relationship with the colleague unless this had a direct impact on their performance at work.

This decision found that employers could not police the romantic lives of consenting adults as this would amount to a violation of their privacy therefore limiting the extent of blanket bans on office relationships.

However, in March 2025, the Employment and Labour Relations Court delivered its ruling on a matter concerning a manager at Co-operative Bank who had been dismissed from work

⁸ His address can be accessed at the following link: [AI and Indigenous Knowledge: Reclaiming Intelligence for a More Just Future](#)

for spanking his co-worker. The manager alleged that the “friendly” butt slap had been a way to appreciate their junior’s good work.

Though they vehemently alleged that there was no malicious intention and insisted that there was no meaning to the act, the Court found the behaviour to be inappropriate and unprofessional upholding the individual’s dismissal.

The two cases lead one to ask where to draw the line between allowable conduct and conduct that would amount to harassment. Considering that this cases are determined on a case by case basis, there is no hard and first rule on how relationships at the work place are to be dealt with, however, there are best practices that lend themselves towards caution to prevent cases of harassment and ensure there are less blurred lines.

The first is to look into consent and training employees on what amounts to consent. The key components of consent are summed up in the acronym FRIES. This provides that consent ought to be Freely given, Revocable, Informed, Enthusiastic and Specific. This goes to show that consent in the proper sense, can only be present where the party giving it is fully aware of what they are consenting to, is not intimidated, coerced or manipulated into giving their consent and can at any point revoke their consent.

For this reason, consent would be lacking in any situation where an employee feels intimidated or persuaded to give their consent to gain a benefit or advantage or to avoid a penalty, whether or not the fear they have or the threat is apparent/ explicit or not.

For employers, it is advisable to have clear policies on workplace relationships and sexual harassment. The policies on workplace relationships should define acceptable conduct and require disclosure of relationships particularly where there is a reporting relationship. The policy should also address the procedure or steps to be taken where a relationship is likely to cause a conflict of interest.

The Sexual Harassment policies should amongst other things provide for hostile work environments to discourage retaliation particularly in circumstances where an individual is rejected or their offer is declined.

While the ruling in the G4S case limited the control employers had over workplace relationships it did not absolve them from their responsibility to ensure that the workplace

remains safe and conducive for others to work. As such employers should be alive to the risks and ensure that they nip any conduct that would amount to harassment or misconduct in the bud.